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Friday
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August 14, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

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Presidential Documents

Title 3—

The President

Presidential Determination No. 92–37 of August 3, 1992

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby designate Haitian refugee applicants as qualifying for assistance under section 2(b)(2) of that Act, and determine that such assistance will contribute to the foreign policy interests of the United States.

You are directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, August 3, 1992.

[FR Doc. 92–19546
Filed 8–12–92; 3:21 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Parts 1806, 1863, 1925, 1944, 1945, 1951, 1955, 1962, and 1965

Elimination of Loan Cost Payments Through the "MISPAY" Accounting System at the National Finance Center

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the internal processing of loan cost items through the "MISPAY" accounting system at the National Finance Center. The intended outcome of this action is to reduce confusion in the field offices, by simplifying the process of paying administrative costs related to loans.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Tony Bainbridge, Operating Accountant, Administrative and Program Control Section, FmHA, USDA, Finance Office, 1520 Market Street, St. Louis, Missouri 63103, telephone FTS 262–6349 or commercial (314) 539–6349.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291, and since this action has no impact on FmHA borrowers or other members of the public, it has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts, notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking since it involves only internal Agency management and publication for comment is unnecessary.

Discussion

Specifically, the regulations are revised due to the fact that Form FmHA 2024–1, "Miscellaneous Payment System," will no longer be used. The Form AD–838, "Purchase Order," and Form FmHA 838–B, "Invoice-Receipt Certification," will be used in place of the Form FmHA 2024–1 for the purpose of paying administrative costs. Also, references to Standard Form (SF) 1034, "Public Voucher for Purchases and Services Other Than Personal," and SF 1143, "Advertising Order," are being removed since these documents are no longer required as supporting documentation.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an environmental impact statement is not required.

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under the following numbers:

10.404 Emergency Loans
10.407 Farm Ownership Loans
10.410 Low Income Housing Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.418 Water and Waste Disposal Systems for Rural Communities
10.422 Business and Industrial Loans
10.423 Community Facilities Loans

Intergovernmental Consultation

For the reasons set forth in the final rule related to notice 7 CFR part 3015, subpart V, (48 FR 29115, June 24, 1983) this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. This action does not directly effect any FmHA programs or projects which are subject to intergovernmental consultation.

List of Subjects

7 CFR Part 1806

Insurance, Loan programs—Agriculture, Real property insurance, Rural areas.

7 CFR Part 1925

Real property taxes, Taxes.

7 CFR Part 1944

Administrative practice and procedure, Aged, Handicapped, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Nonprofit organizations, Rent subsidies, Rural housing.

7 CFR Part 1945

Agriculture, Disaster assistance, Intergovernmental relations, Livestock, Loan programs—Agriculture.

7 CFR Part 1951

Accounting servicing, Credit, Debt restructuring, Grant program—Housing and community development, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing, Reporting requirements, Rural areas.

7 CFR Part 1955

Government acquired property, Government property management, Sale of Government acquired property, Surplus Government property.

7 CFR Part 1962

Crops, Government property, Livestock, Loan programs—Agriculture, Rural areas.

7 CFR Part 1965

Administrative practice and procedure, Foreclosure, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mortgages, Rural areas.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PARTS 1944, 1951, 1955, 1965—[AMENDED]

1. The authority citations for the following parts are revised to read as follows:

Part 1944—Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Part 1951—Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

2. The authority citations for the following parts continue to read as follows:

Part 1955—Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Part 1965—Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

CHAPTER XVIII—[AMENDED]

3. 7 CFR Chapter XVIII is amended by changing the reference from "FmHA Instruction 2024–P" to "FmHA Instruction 2024–A" in the following places:

(a) Part 1944, subpart E, § 1944.235(f)(1).

(b) Part 1951, subpart E, § 1951.230(d)(l)(i).

(c) Part 1955, subpart A, § 1955.5(d).

PART 1806—[AMENDED]

4. The authority citation for part 1806 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Real Property Insurance

5. Section 1806.4 is amended by revising the last two sentences in paragraph (b)(l) to read as follows:

§ 1806.4 Examining and general servicing of insurance.

* * * * *

(b) * * *

(1) * * * In any case where there is an additional premium due because of vacancy, unoccupancy, tenant occupancy, or other increased hazard, and upon demand to FmHA from the company or agent because the borrower cannot, or will not, pay the additional premium, it may be paid in accordance with FmHA Instruction 2024–A, to the company or agent. For FP and section 502 RH borrowers, property insurance will not be obtained except in cases where an unusual and severe hazard exists and insurance is necessary to protect the interests of the Government.

* * * * *

6. Section 1806.6 is amended by revising the first sentence in paragraph (a)(1)(v) and the second sentence in paragraph (c)(2) to read as follows:

§ 1806.6 Failure of borrower to provide insurance.

* * * * *

(a) * * *

(1) * * *

(v) If the borrower refuses to pay the insurance premium with his own funds or arrange with the agent for subsequent payment by premium not or otherwise, the County Supervisor will pay the amount of the insurance premium in accordance with FmHA Instruction 2024–A. * * *

* * * * *

(c) * * *

(2) * * * The County Supervisor will, in accordance with FmHA Instruction 2024–A, pay the amount of the premium for a period of one year. * * *

* * * * *

PART 1863—REAL ESTATE TAX SERVICING [REMOVED]

7. Part 1863 is removed and reserved.

PART 1925—[ADDED]

8. Part 1925 is added to read as follows:

PART 1925—TAXES

Subpart A—Real Estate Tax Servicing

Sec.
1925.1 General.
1925.2 Definition of tax.
1925.3 Servicing taxes.
1925.4 Servicing delinquent taxes.
1925.5–1925.50 [Reserved]

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Real Estate Tax Servicing

§ 1925.1 General.

This Instruction applies to borrowers with a Farm Ownership (FO), Operating Loan (OL), Soil and Water (SW), Recreation Loan (RL), Emergency (EM), Economic Opportunity (EO), Rural Rental Housing (RRH), Rural Cooperative Housing (RCH), Labor Housing (LH), Softwood Timber (ST), and Non-Program (NP) loans secured by real estate. It also applies to section 502 and section 504 Rural Housing borrowers (Single Family Housing (SFH)) who also have a Farmer Program loan. It does not apply to borrowers who have a SFH loan only; those will be serviced under § 1965.105 of Subpart C of Part 1965 of this chapter. Borrowers are responsible for paying taxes on the real estate security to the proper taxing authorities before taxes become delinquent. This obligation is set forth in the security instrument securing the loan.

§ 1925.2 Definition of tax.

For the purpose of this instruction, the word "tax" means all taxes, assessments, levies, irrigation and water charges or other similar obligations which are or will, on nonpayment, become a lien upon the real estate prior to the mortgage securing the Farmers Home Administration (FmHA) loan.

§ 1925.3 Servicing taxes.

(a) The County Supervisor will be responsible for ascertaining that all mortgaged real estate is listed properly for tax purposes.

(b) The County Supervisor will be responsible for taking all actions in connection with taxes as may be necessary to protect the Government's security interests. Any unusual situations that may arise with respect to tax servicing should be referred to the State Office for consideration.

(c) The County Supervisor will encourage each borrower to pay taxes promptly in order to avoid any penalties. Normally, this can be accomplished through routine servicing of loans by emphasizing the advantages of setting aside sufficient income to meet tax obligations when they become due. Taxes will be adequately budgeted for those borrowers with whom Form FmHA 431–2, "Farm and Home Plan," is developed. Each borrower will be encouraged to notify the County Supervisor when he has paid his taxes. After the delinquent date, it will be necessary for the County Supervisor to determine the borrowers whose taxes are delinquent. Forms FmHA 1905–1, "Management System Card-Individual," FmHA 1905–5, "Management System Card- Individual (Rural Housing Only)," and FmHA 1905–10, "Management System Card-Association," will be used in posting servicing action on delinquent taxes.

§ 1925.4 Servicing delinquent taxes.

(a) The County Supervisor will contact each borrower with a delinquent tax and make every practical effort to have him pay the tax with his own funds. He will use the Management System Card for follow-up of delinquent taxes. If the delinquent tax is not paid and the borrower comes to the office with proceeds for application on the FmHA account secured by the real estate, the County Office personnel will endeavor to get the borrower to use the proceeds to pay the delinquent tax. If the amount of the delinquent tax is less than the amount of the proposed payment, the difference will be applied on the FmHA account in accordance with the policy outlined in FmHA Instructions 1951–A and 1951–G.

(b) Prior (usually about 90 days) to the time it is legally possible for action to be taken that will cause the borrower to lose title or right of possessions of the security property or the use of essential water, the County Supervisor will contact the borrower and definitely determine if he will pay the delinquent tax immediately. If the borrower is unable or unwilling to pay the delinquent tax with his own funds after every appropriate effort has been made to have him do so, the County Supervisor will refer to FmHA Instruction 2024–A and utilize the Type 60 Purchase Order System to pay the amount of the delinquent taxes plus the amount of any accrued penalty to bring taxes current.

(1) In an exceptional case where reasons for delinquent taxes have been removed and planned income during the next year covers payment of current obligations plus delinquent taxes not vouchered, only the delinquent taxes will be paid that could cause the borrower to lose title or right of possession of security property.

(2) If the Government is holding a mortgage other than a first mortgage on the property, do not initiate payment request until the County Supervisor has determined that (i) the prior lien holder will not pay the delinquent tax, (ii) the Government's security will be jeopardized if the delinquent tax is not paid, and (iii) the value of the security is sufficient to justify the advance.

§§ 1925.5–1925.50 [Reserved]

PART 1945—EMERGENCY

9. The authority citation for part 1945 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Economic Emergency Loans

10. Section 1945.135 is revised to read as follows:

§ 1945.135 Loan Servicing.

Loans will be serviced under part 1806 (FmHA Instruction 426.1), and Subpart A of parts 1925, 1962 and 1965 of this chapter.

PART 1951—[AMENDED]

Subpart E—Servicing of Community and Insured Business Programs Loans and Grants

11. Section 1951.220 is amended by revising paragraph (d) to read as follows:

§ 1951.220 General servicing actions.

* * * * *

(d) *Property taxes.* Real property taxes are serviced according to Subpart A of part 1925 of this chapter. If State statutes permit a personal property tax lien to have priority over FmHA's lien, such taxes are serviced according to §§ 1925.3 and 1925.4 of subpart A of part 1925 of this chapter.

* * * * *

§ 1951.227 [Amended]

12. Section 1951.227 (c) is amended by changing the reference from "FmHA Instruction 2024–A and 2024–P" to "FmHA Instruction 2024–A".

Subpart K—Predetermined Amortization Schedule System (PASS) Account Servicing

§ 1951.514 [Amended]

13. Section 1951.514 is amended by changing the reference from "Subpart P of Part 2024" to "FmHA Instruction 2024–A".

Subpart S—Farmer Programs Account Servicing Policies

§ 1951.911 [Amended]

14. Section 1951.911(b)(6)(ii) is amended in the second sentence by changing the reference from "§ 2024.753(c) of FmHA Instruction 2024–P" to "FmHA Instruction 2024–A".

15. Exhibit H of subpart S is amended by revising the last sentence in paragraphs (VII)(C) and (VII)(H) to read as follows:

Exhibit H of Subpart S—Primary Loan Service Programs (Farm Debt Restructure and Conservation Easements)

* * * * *

(VII) * * *

(C) * * * Title opinion costs will be considered nonrecoverable costs and will be paid in accordance with FmHA Instruction 2024–A (Instructions and forms are available in any FmHA Office).

* * * * *

(H) * * * Cost of recording the easement will be considered a nonrecoverable cost and will be paid by FmHA in accordance with FmHA Instruction 2024–A (Instructions and forms are available in any FmHA Office).

* * * * *

PART 1955—[AMENDED]

16. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Management of Property

17. Section 1955.55 is amended by revising the last sentence in paragraph (e) to read as follows:

§ 1955.55 Taking abandoned real or chattel property into custody and related actions.

* * * * *

(e) * * * Costs will be paid in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

§ 1955.55 [Amended]

18. In § 1955.55, paragraph (f)(1)(ii) is amended by changing the word "not" to "no".

19. In § 1955.65, paragraph (c)(1) is amended in the last sentence by removing the words "Exhibit J, paragraph II C, 'Procurement Preference Program,' of" and by changing the reference from "FmHA Instruction 2024–A" to "FmHA Instruction 2024–Q"; and paragraph (c)(4) is revised to read as follows:

§ 1955.65 Management of inventory and/or custodial real property.

* * * * *

(c) * * *

(4) *Costs.* Costs incurred with the management of property will be paid according to FmHA Instruction 2024–A (available in any FmHA office). For management of custodial property, costs will be charged to the borrower's account as recoverable; and for management of inventory property as nonrecoverable. Except for management fees, costs of managing MFH inventory property when tenants are still in residence will be paid to the extent possible with rental income. Management fees will be paid to the manager in accordance with FmHA Instruction 2024–A (available in any FmHA Office).

* * * * *

20. Section 1955.67 is amended by revising the second sentence in the introductory text of paragraph (a) and the last sentence in paragraph (b) to read as follows:

§ 1955.67 Payment of liens.

(a) * * * Payment will be made according to FmHA Instruction 2024–A (available in any FmHA office). * * *

* * * * *

(b) * * * The County Supervisor or District Director will obtain from the lienholder a statement of the amount owed and request payment to the lienholder in accordance with FmHA Instruction 2024–A, (available in any FmHA Office) which will be charged to the inventory account as a nonrecoverable cost.

21. Section 1955.68 is amended by revising the first sentence in paragraph (a) to read as follows:

§ 1955.68 Payment of taxes.

* * * * *

(a) *Suitable or program property.* When property is suited for program purposes, the payment of taxes will be paid in accordance with FmHA Instruction 2024–A, (available in any FmHA Office) charging them as nonrecoverable costs to the inventory account. * * *

* * * * *

22. Section 1955.69 is amended by revising the last sentence in paragraph (a) as follows:

§ 1955.69 Insurance.

* * * * *

(a) * * * Premiums will be paid in accordance with FmHA Instruction 2024–A, (available in any FmHA Office) and charged to the inventory account as a nonrecoverable cost.

* * * * *

Subpart C—Disposal of Inventory Property

23. Section 1955.108 is amended by revising paragraph (d)(3) to read as follows:

§ 1955.108 Sale of surplus property (CONACT).

* * * * *

(d) * * *

(3) Advertising will be ordered in accordance with FmHA Instruction 2024–A (available in any FmHA Office).

* * * * *

§ 1955.139 [Amended]

24. Section 1955.139 (c)(2)(v) is amended by changing the reference from "§ 1955.137 (e)" to "§ 1955.137(a)".

25. Section 1955.141 is amended by revising the last sentence in paragraph (a) to read as follows:

§ 1955.141 Transferring title.

(a) * * * Any FmHA expenses involved will be paid in accordance with FmHA Instruction 2024–A (available in any FmHA Office).

* * * * *

PART 1962—[AMENDED]

26. The authority citation for part 1962 is revised to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Servicing and Liquidation of Chattel Security

27. In § 1962.29, paragraph (a)(1) is amended by removing the words "and 2075–A" and by revising the introductory text of paragraph (b) to read as follows:

§ 1962.29 Payment of fees and insurance premiums.

* * * * *

(b) *Insurance premiums.* County Supervisors are authorized to voucher for the payment of bills for insurance premiums on chattel security, in accordance with FmHA Instruction 2024–A (available in any FmHA Office). Bills may be paid when:

* * * * *

28. Section 1962.40 is amended by revising paragraph (e)(4) to read as follows:

§ 1962.40 Liquidation.

* * * * *

(e) * * *

(4) Costs incurred by FmHA in protecting its interest in security or EO property may be paid in accordance with FmHA Instruction 2024–A, (available in any FmHA Office) and may be charged to the borrower's loan account, or paid from proceeds of the sale of security or EO property.

* * * * *

29. In § 1962.42, paragraph (b)(1) is amended by changing the references from "FmHA Instruction 1955–D" to "FmHA Instruction 1955–B" and "Form FmHA 120–10, 'Solicitation, Quotation, Purchase Order, Inspection and Invoice' " to "Form AD–838, 'Purchase Order' ", by changing the reference from "Form FmHA 120–10" to "Form AD–838" in paragraphs (b)(2) and (b)(3), and by revising the last sentence in paragraph (a)(1)(v) and the first sentence in paragraph (c)(7) to read as follows:

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) * * *

(1) * * *

(v) * * * When prior liens are paid, the payment will be made in accordance with FmHA Instruction 2024–A (available in any FmHA Office) and charged to the borrower's account.

* * * * *

(c) * * *

(7) If expenses must be paid before the sale or if cash proceeds are not available from the sale of the property to pay costs referred to in § 1962.44(b) of this subpart or to pay lienholders, such costs or prior liens will be paid in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * *

* * * * *

PART 1965—[AMENDED]

Subpart A—Servicing of Real Estate Security for Farmer Program Loans and Certain Note-Only Cases

§ 1965.3 [Amended]

30. Section 1965.3 is amended by changing the reference from "Part 1863 of this chapter (FmHA Instruction 425.1)" to "Subpart A of Part 1925 of this chapter".

31. Section 1965.11 is amended by revising the second sentence in the introductory text of paragraph (b) and paragraph (b)(3) to read as follows:

§ 1965.11 Preservation of security and protection of liens.

* * * * *

(b) * * * Any advances made for the following purposes will be considered protective advances and will be paid in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * *

* * * * *

(3) *Taxes and assessments.* Real estate taxes and assessments will be handled in accordance with Subpart A of Part 1925 of this chapter.

* * * * *

Subpart B—Security Servicing for Multiple Housing Loans

32. Section 1965.75 is amended by revising the last sentence in paragraph (c)(2) to read as follows:

§ 1965.75 Abandonment.

* * * * *

(c) * * *

(2) * * * The fees will be paid on a monthly basis in accordance with FmHA Instruction 2024–A (available in any FmHA office).

* * * * *

Subpart C—Security Servicing for Single Family Rural Housing Loans

33. Section 1965.104 is amended by revising the last sentence in the introductory text of paragraph (b) to read as follows:

§ 1965.104 Preservation of security and protection of liens.

* * * * *

(b) * * * FmHA Instruction 2024–A must be followed for payment to be charged to the borrower's account as recoverable costs. Advances are authorized for:

* * * * *

(c) * * *

(1) * * *

(ii) * * * If payment by voucher is not acceptable, the procedures outlined in FmHA Instruction 2024–A (available in any FmHA Office) must be followed and the applicable forms prepared and submitted in time to receive a check before the sale date.

* * * * *

Dated: July 8, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–19250 Filed 8–13–92; 8:45 am]

BILLING CODE 3410–07–M

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Docket No. R–0744; Regulation CC]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form, with minor modifications, its interim rule amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The amendments allow banks to extend holds, on an exception basis, to "next-day" and "second-day" availability checks and allow one-time notices of exception holds in certain cases. The amendments should benefit and reduce costs for all banks that choose to take advantage of the rule changes.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3825), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division, Board of Governors of the Federal Reserve System. For information regarding modifications to Model Forms or appendix C, contact Jane E. Ahrens, Staff Attorney (202/452–3667), or Dale I. Nishimura, Staff Attorney (202/452–2412), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA, Pub. L. 102–242, section 225, 105 stat. 2236 (1991)) amended the provisions in section 604 of the Expedited Funds Availability Act (Act) (12 U.S.C. 4003) regarding safeguard exceptions to the availability schedules, effective December 19, 1991. The Board adopted interim amendments to Regulation CC (12 CFR part 229), effective January 15, 1992, to conform the regulation to the amendments to the Act (57 FR 3277, January 29, 1992). The Board has adopted the interim amendments, with technical and clarifying modifications, in final form.[1]

Background

Regulation CC implements the Act and was effective September 1, 1988. Among other things, the regulation establishes availability schedules to limit the holds banks [2] can place on deposits in transaction accounts and requires banks to disclose their funds availability policies to their customers.

As a general matter, the availability of a deposit is linked to the degree of risk associated with the deposit and the amount of time necessary for a bank to learn whether a deposited check will be returned unpaid. Accordingly, nonlocal [3] checks generally must be made available for withdrawal on the fifth business day after deposit, local checks on the second business day, and certain "low-risk" checks, such as government, cashier's, certified, and teller's checks, on the next business day. (Most "next-day" checks, if not deposited in person at a staffed teller facility, must be made available for withdrawal on the second business day after deposit.)

The Act (section 604) and the regulation (§ 229.13) provide for certain safeguard exceptions to the availability schedules. Under these exceptions, the depositary bank may extend the hold on a deposit for a reasonable period of time. The exception holds apply to deposits to new accounts, daily aggregate check deposits in excess of $5,000, checks that have returned unpaid and redeposited, checks deposited into an account that has been repeatedly overdrawn, checks the depositary bank may reasonably expect to be uncollectible, and checks deposited during emergency conditions, such as a computer failure, natural disaster, or other emergency beyond the bank's control.

Applicability of Exception Holds to "Next-Day" and "Second-Day" Checks

Prior to the enactment of the FDICIA, most of the exception holds did not apply to checks that must be accorded next-day or second-day availability under section 603(a)(2) of the Act and § 229.10(c) of the regulation, such as government, cashier's, certified, and teller's checks. In three reports to Congress on the implementation of the Act, the Board expressed concern that the inapplicability of the exception holds to next-day and second-day checks exposed depositary banks to substantial risk that such checks would be returned after the proceeds had been made available for withdrawal.[4] The Board noted that fraud loss reduction would benefit banks as well as their customers, who otherwise may face increased service fees or decreased service levels.

Section 225 of the FDICIA amended section 604 of the Act to authorize the Board to prescribe regulations to apply most of the safeguard exception holds to checks that otherwise would receive next-day or second-day availability. The Board's interim rule allowed banks to apply the exceptions for large deposits (§ 229.13(b)), redeposited checks (§ 229.13(c)), accounts with repeated overdrafts (§ 229.13(d)), and emergency conditions (§ 229.13(f)) to checks otherwise covered by § 229.10(c). In addition, the interim rule made the reasonable cause exception (§ 229.13(e)), which previously had applied to local and nonlocal checks

[1] Section 227 of the FDICIA amends section 603(e) of the Act to eliminate the shorter availability schedules for deposits at nonproprietary ATMs that were to become effective November 28, 1992. Section 212(h) of the FDICIA amends the administrative enforcement provisions in section 810(a) of the Act. The Board proposed amendments to Regulation CC regarding these provisions separately from the interim rule (57 FR 3365, January 29, 1992). The Board has adopted final amendments to Regulation CC to implement these changes (see Docket No. R–0745, elsewhere in today's **Federal Register**).

[2] For purposes of Regulation CC, the term "bank" includes commercial banks, savings institutions, and credit unions.

[3] A check generally is "local" if the bank by which it is payable and to which it is sent for collection ("paying bank") is in the same Federal Reserve check processing region as the bank that receives the check for deposit ("depositary bank").

[4] See, Board of Governors of the Federal Reserve System, Report to Congress Under the Expedited Funds Availability Act, September 1991, March 1990, and June 1989.

and only certain next-day or second-day checks (i.e., checks drawn on Federal Reserve Banks or Federal Home Loan Banks and cashier's, certified, and teller's checks), available for all checks covered by § 229.10(c).[5] The Board adopted Commentary to the interim rule to reflect the broader scope of the exception holds.

The Board's interim rule also amended § 229.13(h), which governs the availability of deposits subject to the exception holds. The interim rule provided that, with respect to most checks subject to the next-day (or second-day) availability requirement (i.e., Treasury checks, U.S. Postal Service money orders, checks drawn on Federal Reserve Banks or Federal Home Loan Banks, state and local government checks, and cashier's, certified, and teller's checks), the depositary bank may extend the time funds must be made available for withdrawal under the large deposit, redeposited check, repeated overdraft, or reasonable cause exception by a reasonable period. The reasonable period is presumed to be five business days for local checks and six business days for nonlocal checks, unless the depositary bank establishes otherwise. This reasonable period may be added to the availability schedule that would have applied had the checks not been subject to the next-day (or second-day) availability requirement. In other words, the additional hold is added to the local or nonlocal schedule that would apply based on the location of the paying bank. (Treasury checks and U.S. Postal Service money orders would be considered drawn on local paying banks.) For on us checks that must be afforded next-day availability under § 229.10(c)(1)(vi), the reasonable additional hold is presumed to be one business day, which is added to the next-day requirement.

The Board received 57 comments on the interim rule. Forty-nine of the commenters supported the rule, four opposed its adoption, and four expressed no opinion. The distribution by type of commenter is shown below:

Type	Number
Commercial banks/bank holding companies	26
Savings institutions	9
Credit unions	6
Clearing houses	1
Trade associations	8
Federal Reserve Banks	4
Other	4
Total	57

Thirty-six commenters addressed the applicability of the safeguard exception holds to checks that otherwise would be granted next-day or second-day availability. All but one of these commenters supported the change, generally because of the reduction in risk to depositary banks. Eleven commenters believed that the change would reduce the potential for fraud loss due to the withdrawal of funds made available to depositors before the depositary bank receives notification from the paying bank that checks are being returned. One commenter noted that banks would be able to conserve valuable resources because of the reduction in fraud, and that the customers might benefit if banks no longer needed to increase service fees or reduce service levels to cover fraud-related costs. Another commenter, however, believed the amendment still exposed banks to a certain amount of risk. One commenter believed that banks should not be permitted to impose an exception hold based on "reasonable cause" to doubt the collectibility of the check.

The Board agrees with the majority of the commenters that the interim rule reduces risk for depositary banks. The Board has adopted the interim rule and Commentary applying the safeguard exceptions to next-day and second-day checks as a final rule, with minor technical and clarifying amendments.

One commenter, a mortgage lender, believed that the interim rule calls into question the acceptance of cashier's checks in real estate transactions in states that have "good funds" laws because of the possibility that a large deposit hold could be placed on those checks. (Generally, state "good funds" laws prohibit escrow holders from disbursing funds from an escrow account until the funds are available for withdrawal as a matter of right.) The commenter believed this problem could be avoided if banks were allowed to apply all exception holds except the large deposit exception hold to checks normally afforded next-day or second-day availability. In contrast, a commercial bank commented that the ability to use the large deposit exception would reduce losses to depositary banks associated with the acceptance of cashier's, certified, and teller's checks.

The Board recognizes that the ability of a bank to place an exception hold on the portion of a cashier's or teller's check in excess of $5,000 may delay disbursement of funds from or require earlier prefunding of escrow accounts, unless an alternative form of payment, such as an electronic payment, is used. However, should the check be returned for forgery or another reason, such holds may reduce the risk of loss for the depositary bank and for other parties to the transaction such as the seller, escrow holder, or title insurance company. Despite the possibility that a bank could place holds on cashier's or teller's checks, those types of checks likely would continue to be desirable payment instruments for many types of transactions because (1) it is difficult to stop payment of such checks and (2) when cashier's or teller's checks are taken in payment for an obligation, the obligation is discharged under UCC 3-310(a).[6]

One commenter stated that large deposit exception holds on next-day checks should not apply to U.S. Treasury checks, because the primary risk associated with government checks is the risk of forged indorsements. The depositary bank generally would not learn of the forgery until after the expiration of the exception hold period.

The Board recognizes that the Treasury may return checks with forged indorsements long after the exception hold period has elapsed. However, Treasury checks could be returned for other reasons within a much shorter time frame. For example, stale-dated Treasury checks generally are returned within seven business days of presentment. Thus, the Board believes it is appropriate to retain the exception holds for Treasury checks, as authorized by the Act.

One commenter noted that the interim rule did not apply to new accounts, which are governed by § 229.13(a). Under § 229.13(a), the first $5,000 of most "next-day" and "second-day" checks must be made available on the next or second day after deposit as provided in § 229.10(c), and the remainder may be held until the ninth business day after the day of deposit. (This nine-day maximum hold period is mandated by the Act.) The commenter noted that this provision could result, in certain cases, in deposits of "next-day" checks to new accounts becoming available faster than deposits of similar checks to established accounts (assuming a seven or eleven-day hold was placed on a "next-day" check deposited into an established account). The Board acknowledges this inconsistency between the statutory hold period for "next-day" checks deposited in new accounts and the regulatory hold period for "next-day" checks deposited in established accounts. The Board does not have the statutory authority, however, to increase the hold periods for new accounts or to apply the exception holds described in § 229.13 (b) through (f) to new accounts.

One commenter asked whether the reasonable hold period may be added to the calculated availability schedule, which banks may compute for nonconsumer accounts in accordance with § 229.19(d). A bank may add the reasonable hold period to its calculated availability schedule, but should reflect that practice in its disclosures.

One-Time Hold Notices

Prior to the enactment of the FDICIA, section 604(f) of the Act and § 229.13(g) of the regulation provided that each time a depositary bank invoked an exception to the availability schedules under § 229.13 (b) through (f) (the large deposit, redeposited check, repeated overdraft, reasonable cause, and emergency conditions exceptions, respectively), it had to notify the customer of the exception hold. Section 229.13(g) required that the exception hold notice be given at the time of the deposit or by the first business day following the day the facts upon which the exception hold was based became known to the depositary bank.

Although individual notices may be appropriate in the case of the reasonable cause or emergency conditions exceptions, which must be invoked on a case-by-case basis, they are less appropriate for the large deposit, redeposited check, or repeated overdraft exceptions. In these latter cases, it would be more efficient and less costly to depositary banks if the notice requirement could be tailored to the exception invoked. Customers, as well, would benefit from receiving advance notice of any exception holds that the bank would invoke under certain conditions or for a certain period of time, rather than receiving on-the-spot or after-the-fact notices upon each deposit. In its three reports to Congress regarding implementation of the Act, cited above, the Board recommended that the Act be amended to provide banks with greater flexibility in giving notices of exception holds.

Section 225 of the FDICIA amends section 604(f) of the Act to authorize the Board to prescribe regulations to allow the depositary bank, in certain cases, to send one notice of an exception hold applicable to a customer's future deposits rather than sending a separate notice for each deposit. The amendments to section 604(f) set out two types of one-time notices and the circumstances under which they apply, as follows:

1. Large Deposit and Redeposited Check Exception Hold Notices

Sections 229.13 (b) and (c) of the regulation provide that a depositary bank may apply exception holds to aggregate daily deposits of checks in excess of $5,000 and to deposits of checks that have been returned unpaid and redeposited. Under the amendments to section 604(f) of the Act, if a depositary bank applies the large deposit or redeposited check exception to nonconsumer accounts, it may give its nonconsumer customers a single notice at or prior to the time notice otherwise must be given. The Board's interim amendments to § 229.13(g) and revisions to the Commentary implemented these amendments to the Act.

As provided in the interim amendments to § 229.13(g)(2), the one-time notice for the large deposit and redeposited check exceptions must explain the reason the exception(s) may be invoked and the time period within which deposits subject to the exception(s) would be available for withdrawal. The notice should reflect the bank's priorities in placing exception holds on deposits consisting of different types of checks, such as next-day, local, and nonlocal checks.

A depositary bank may provide a one-time notice to a nonconsumer customer under § 229.13(g)(2) only if each exception cited in the notice (the large deposit and/or the redeposited check exception) will be invoked for most check deposits to the customer's account to which the exception could apply. The Board adopted Model Notice C-13B, which may be used by those banks that want to provide a one-time notice of these exception holds to their nonconsumer customers. Alternatively, a depositary bank may choose to send hold notices for each individual deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C-13).

2. Repeated Overdraft Exception Hold Notice

Section 229.13(d) of the regulation provides that a depositary bank may, for a six-month period, apply longer holds to deposits to an account that has been repeatedly overdrawn. Under § 229.13(d), an account is repeatedly overdrawn if it is overdrawn on six or more banking days, or is overdrawn by $5,000 or more on two or more banking days, within the preceding six months.

Section 229.13(g) of the regulation originally provided that, when invoking the repeated overdraft exception, a depositary bank must provide a notice to the customer upon each deposit. Act, if an account (either consumer or nonconsumer) is subject to the repeated overdraft exception, the depositary bank may provide one notice to its customer for each time period during which the exception will apply, rather than giving a notice upon each deposit during that time period. The Board adopted interim amendments to § 229.13(g) and revisions to the Commentary to implement the amendments to the Act.

Section 229.13(g)(3) of the interim amendment provides that the one-time repeated overdraft notice must state the customer's account number, the fact that the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply. A depositary bank may provide a one-time notice to a customer under § 229.13(g)(3) only if the repeated overdraft exception will be invoked for most check deposits to the customer's account. A depositary bank may send a notice, such as that contained in Model Notice C-13C, to its customer at the start of each period for which the repeated overdraft exception will be in effect.

Twenty-four commenters addressed the concept of one-time notices. Fourteen commenters supported the amendments as a means to improve the efficiency of and reduce costs to banks. Three of these commenters stated that customers would also benefit by receiving advance notice of exception holds, rather than receiving notification at the time of deposit, or later. Several other commenters stated that, although one-time notices would not necessarily be more cost effective than an individual notice of each hold or be useful to their own operations, they supported the option as a means of providing flexibility to banks. Other

[5] The new account exception was not affected by the amendments. The next-day (or second-day, for those checks not deposited at a staffed teller station) availability requirements for Treasury checks, U.S. Postal Service money orders, Federal Reserve Bank and Federal Home Loan Bank checks, state and local government checks, and cashier's, certified, and teller's checks continue to apply for the first $5,000 deposited in a new account on any one banking day, with the remainder available on the ninth business day after deposit, as provided in § 229.13(a). The amendments to the Act do not allow extended holds for these types of checks when deposited in new accounts.

[6] In addition, the Board has proposed amendments to its Regulation D (12 CFR part 204), governing reserve requirements, that would classify teller's checks as reservable liabilities. If adopted, the Regulation D amendment could prompt teller's check providers to move to other types of instruments that would not be accorded next-day availability, even for the first $5,000. Thus, use of checks that are neither cashier's nor teller's checks in real estate and other types of transactions could become more prevalent, despite the lack of next-day availability for those checks.

commenters noted that the proposed procedure was onerous and that some clarification was necessary. One commenter suggested that banks that give customers individual notice of each hold should receive consideration in the form of simplified hold criteria. One other commenter opposed the option of one-time notices because it would not reduce losses.

The Board believes that the one-time notices provide flexibility to banks and may reduce the cost of providing hold notices in certain cases. The Board has adopted the interim rule and Commentary provisions relating to one-time notices, with minor technical and clarifying amendments.

One commenter suggested that the Board revise § 229.16(c) of Regulation CC to clarify the applicability of the one-time exception hold notice for banks with a case-by-case hold policy. The Board has amended the Commentary to § 229.16(c) (1) and (3) to clarify that depository banks that use case-by-case disclosure policies may use the one-time notice provisions of § 229.13(g) (2) and (3) and that the provisions of § 229.16(c)(3) regarding overdraft and returned check fees apply only to case-by-case notices provided pursuant to § 229.16(c)(2).

Twenty commenters discussed the amendment allowing one-time notices to nonconsumer customers of exception holds on large deposits and redeposited checks. One commenter favored these one-time notices because the notice could be incorporated into the bank's initial disclosure provided to the customer when an account is opened. Another commenter stated that the option would not be of use to community banks, but that larger banks might find the option useful. A commercial bank commenter indicated that it would continue to apply exception holds using individual notices, as it does not invoke the holds on most deposits. Further, this commenter noted that most of the holds invoked for large deposits and redeposited checks were on consumer accounts, rather than nonconsumer accounts. Another commercial bank commenter stated that larger business customers that routinely make aggregate daily deposits in excess of $5,000 and retailers that redeposit a significant number of checks usually have well-established relationships with their banks and generally do not have exception holds placed on their accounts.

One commenter suggested that the § 229.13(g)(2) one-time notice should include the account number of the depositor. This commenter noted that businesses may have multiple accounts and this information would help the bank to identify the account to which the hold applies. Banks may include the account number in the one-time notice, but the Board has not required that they do so. Requiring the customer's account number on each notice would force banks to individualize each notice, thereby precluding such a notice from being part of an initial policy disclosure given to all customers.

Several commenters believed that the interim rule needed additional clarification. For example, a commenter recommended that the rule state clearly that a one-time notice may be sent out on an individual account basis. Several commenters requested further clarification of the terms "most check deposits," "generally available," "consumer account," and "nonconsumer account." The Board believes that the § 229.13(g) regulatory and Commentary language clearly indicates that the one-time notice may be applied on an account-by-account basis. The Board also believes that banks may rely on the plain meaning of the terms "most check deposits" and "generally available" and that further detail is unnecessary. The Board has amended the Commentary to the definition of "consumer account" to clarify that any account that does not meet the consumer account definition is a nonconsumer account and to add cross-references.

One commenter believed that a bank may have difficulty issuing one-time notices if the bank aggregates deposits to multiple accounts as permitted by § 229.13(b). The commenter noted that the depositing customer may not be the sole holder of the accounts and the other holders of the accounts may not all be the same. The commenter recommended that the final regulation specify that a bank may place applicable holds on all accounts after giving the one-time notice to one of the account holders. Although a bank may aggregate deposits to different accounts for purposes of meeting the $5,000 large deposit threshold, under § 229.13(g)(2) one-time notices must be provided for each nonconsumer account on which large deposit holds will be placed. Thus, banks should send one-time notices to the address associated with each nonconsumer account on which a hold will be placed, rather than to a single common account-holder.

The same commenter noted that redeposits by the bank are easier to track operationally than redeposits by the customer. Therefore, the requirement that "the exception hold be invoked for most check deposits to which the exception could apply" should apply separately to redeposits by the depositary bank and redeposits by the customer. The commenter did not believe that this would require any change to the wording of Model Notice C–13B. Although a bank is free to apply the one-time exception notice to a specific subset of redeposited checks, such as those automatically redeposited by the bank under an agreement with its customer, the specific subset of checks should be described in the one-time notice. For example, Model Form 13–B describes only "checks that have been returned unpaid;" a bank that wishes to use the one-time notice for only a subset of returned checks should elaborate on that description.

One commenter asked whether the one-time notice for large deposits and redeposited checks is valid for the entire life of the account. Neither the statute nor the regulation specify an expiration period for the one-time notice described in § 229.13(g)(2).

Fourteen commenters discussed the provision for a one-time repeated overdraft exception notice. Twelve commenters supported the provision, citing cost savings, reduced notification burden, and reduced exposure to loss from accounts with repeated overdrafts. Three of these commenters supported the option, although they did not believe they would use one-time notices. Another commenter indicated that the change would be of no benefit to banks that are not capable of invoking holds on a widespread, automated basis.

Several commenters suggested technical or editorial changes regarding the interim rule and the model notice. For example, commenters noted that the language in Model Notices 13–B and 13–C referring to local and nonlocal checks could be confusing for customers of banks that normally do not distinguish between local and nonlocal checks. The model notices may be tailored to a bank's availability policy, and the references to local and nonlocal checks may be eliminated where appropriate. Another commenter believed that the statement regarding the applicability of exception holds to local and nonlocal checks, as well as to next-day checks, as repeated unnecessarily throughout the Commentary to § 229.13. The Board has retained the statements in the separate paragraphs of the Commentary to § 229.13 for purposes of clarity. Another commenter made a number of suggestions intended to make the amendments more clear and precise, some of which have been adopted by the Board (i.e., the Board has removed references in § 229.13 to the temporary schedule, which is no longer in effect, added an example of the exception hold period calculation in § 229.13(h), and made other minor wording changes throughout § 229.13.) The Board also has made a technical change to § 229.1 (amending the statutory authority citations).

Suggestions of further changes to Regulation CC were also received, such as extending the safeguard exception holds to new accounts, extending the definition of a new account beyond the current thirty days, extending the allowable hold on a local check to three days, adding new safeguard exceptions, expanding the notice of nonpayment requirement to include checks greater than $500 returned because of a closed account, making the reasonable exception hold period the same for local and nonlocal checks, and clarifying the applicability of Regulation CC to "paper debits," those items that have all the features of checks except the account holders signature. These matters were not subject to public comment, and some would require a statutory amendment. The Board may consider further regulatory changes at a later date.

Questions on Consumer Account Classifications

The Board's interim amendment did not relieve banks from the requirement of providing consumer account-holders with large deposit and redeposited check exception hold notices upon each deposit to which the exception is applied. The amendment to § 604(f) of the Act authorized the Board to apply the one-time notice provision for the large deposit and redeposited check exceptions to classes of consumer accounts that generally have a large number of such deposits. The Board requested comment on whether the one-time notice provision for these types of exceptions should be extended to certain classes of consumer accounts, and if so, how those classes of accounts should be categorized. Specifically, the Board requested comment on the following questions:

i. Are there classes of consumer accounts, such as high balance accounts, that would generally have a large number of daily aggregate deposits of checks in excess of $5,000?

ii. What is a proper measurement of a "large number" of large deposits or redeposited checks, and over what period of time should such a measurement be taken?

iii. Would it be operationally feasible for depositary banks to monitor deposits to consumer accounts to determine which accounts have a large number of daily aggregate deposits of checks in excess of $5,000 or a large number of deposits of redeposited checks?

Twenty-nine commenters responded to the questions posed by the Board. Generally, commenters indicated that while the designation of certain classes of consumer accounts to receive one-time notices was possible, it would not be feasible operationally because the size of any such classes would probably be very small.

Fourteen commenters believed that the exception holds should be extended to consumer accounts as well as nonconsumer accounts, with three commenters citing losses from consumer accounts and the large number of holds placed on consumer accounts as reasons for the extension. Generally, the commenters believed that it would not be feasible to monitor one class of consumer accounts and provide one-time notices to these customers, while providing individual notices to other consumer customers. They noted that a uniform policy would eliminate the possibility of teller confusion associated with invoking such exceptions, and consequently there would be less risk of error. These commenters suggested that the information regarding the availability of deposits in excess of $5,000 could be incorporated in the funds availability policy disclosure given to all customers, reducing confusion. One of these commenters stated that it appeared that the language contained in FDICIA section 225 was sufficiently general to support this interpretation. In addition, one commenter believed that banks were as likely to experience fraud in low-balance accounts as in high-balance ones.

Question (i)

Nine commenters stated they were unable to identify a specific class of consumer accounts that have a high incidence of aggregate daily deposits greater than $5,000, or have a large number of redeposited checks. Two of these commenters added that even if such accounts could be identified, they would likely be accounts on which the bank generally does not place exception holds.

Other commenters attempted to identify specific classes of consumer accounts that might be eligible for one-time notices. One commenter believed an appropriate class might be composed of persons that do not consider themselves to be commercial customers or do not pay commercial checking service charges, such as doctors, lawyers, small merchants, or real estate trusts. Another commenter stated that certain high-balance consumer accounts should be subject to the one-time notice, with the definition of "high balance" to be determined by each bank. Another commenter suggested that the class of accounts be determined by account history. Two commenters stated that the Federal Reserve should conduct research to determine such classes. One commenter recommended that, for simplicity, one-time notices be allowed only on nonconsumer accounts.

Question (ii)

Thirteen commenters addressed the question of how to define "large number" and what time period would be appropriate to use as a measurement. Six commenters provided specific numbers, ranging from two deposits to as many as eight deposits during a one-month time period. Four other commenters recommended a threshold that could vary from bank to bank. One commenter suggested that marketers of check kiting software be consulted regarding their experience.

Question (iii)

Eighteen commenters discussed whether it would be operationally feasible to monitor consumer accounts to determine which accounts have a large number of large deposits or redeposited checks. Although most of these commenters agreed that the capability existed to monitor consumer accounts, it generally was not considered feasible because of its cost. Seven commenters indicated that consumer accounts normally do not have aggregate daily deposits in excess of $5,000 or a large number of redeposited checks, therefore monitoring would not be cost effective. One commenter was concerned that monitoring would be burdensome to banks and not in keeping with the President's moratorium on regulatory initiatives that could hinder growth and profitability. Another commenter believed that monitoring the number of redeposited checks deposited to consumer accounts would require those checks to be encoded, necessitating a change in industry standards. Two commenters cited the expense of systems development. One other commenter believed that monitoring accounts would be more onerous than the current notification system. Two commenters indicated that monitoring might be feasible if done on all accounts, not just specific classes.

The Board has not expanded the applicability of the one-time exception hold notice for large deposits and redeposited checks. The Act specifically limits the applicability of the one-time

hold notice to consumer accounts "that generally have a large number of such deposits." The Board does not believe there is an easily-identifiable subset of consumer accounts that meets this requirement, nor would it be practicable for banks to monitor consumer accounts to verify that they meet any criteria the Board established.

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The rule applies to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost for all depositary banks by broadening the scope of the exception holds and providing the one-time notice requirement in certain cases. Because the rule should benefit and reduce costs for all institutions that choose to take advantage of the rule change, it is not necessary to consider alternatives to minimize the economic impact.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, the interim rule amending Regulation CC, 12 CFR part 229, which was published at 57 FR 3277–3282 on January 29, 1992, is adopted as a final rule with the following changes:

PART 229—[AMENDED]

1. The authority citation for part 229 is revised to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.1, paragraph (a) is revised to read as follows:

§ 229.1 Authority and purpose; organization.

(a) *Authority and purpose.* This part (Regulation CC; 12 CFR part 229) is issued by the Board of Governors of the Federal Reserve System (Board) to implement the Expedited Funds Availability Act (Act) (title VI of Pub. L. 100–86, 101 Stat. 552, 635), as amended by section 1001 of the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. 101–625, 104 Stat. 4079, 4424) and sections 212(h), 225, and 227 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236, 2303, 2307).

* * * * * * *

3. In § 229.13, the term ", 229.11" is removed in paragraphs (b), (c) introductory text, (d) introductory text, (e)(1), (f) introductory text, (h)(1), and (h)(3); the phrase "§ 229.11 or" is removed in paragraph (h)(2); the word "in" is removed after the first occurrence of the word "under" in paragraph (h)(4); and paragraphs (g)(2)(ii) and (g)(3)(iii) are revised as follows:

§ 229.13 Exceptions.

* * * * * * *

(g) *Notice of exception.* * * *

(2) * * *

(ii) The time period within which deposits subject to the exception generally will be available for withdrawal.

* * * * * * *

(3) * * *

(iii) The time period within which deposits subject to the exception generally will be available for withdrawal; and

* * * * * * *

Appendix E to Part 229—[Amended]

4. Appendix E is amended as set forth below:

a. In the Commentary under section 229.2(n), a new sentence is added after the first sentence and the last sentence is revised;

b. In the Commentary under section 229.13, the term ", 229.11" is removed in the first paragraph of paragraph (g) and the fifth paragraph of paragraph (h); in paragraph (b), the last sentence of the second paragraph is revised; in paragraph (d), the last paragraph is revised; in paragraph (e), the third sentence of the first paragraph is revised; in paragraph (f), the fifth sentence is revised; in paragraph (g), the second sentence of the sixth paragraph, the first and last sentences of the seventh paragraph, and the second sentence of the ninth paragraph are revised and two new sentences are added before the last sentence of the seventh paragraph; and in paragraph (h), a new sentence is added to the end of the fourth paragraph;

c. In the Commentary under section 229.16(c), the last paragraph of paragraph (c)(1) is revised and a new sentence is added to the end of paragraph (c)(3) as follows:

Appendix E—Commentary

* * * * * * *

Section 229.2 Definitions

* * * * * * *

(n) * * * An account that does not meet the definition of "consumer account" is a nonconsumer account. * * * Section 229.13(g)(2) (one-time exception notice) and § 229.19(d) (use of calculated availability) apply only to nonconsumer accounts.

* * * * * * *

Section 229.13 Exceptions

* * * * * * *

(b) *Large deposits.*

* * * * * * *

* * * An additional $4,900 of the proceeds of the local check must be available for withdrawal on Wednesday in accordance with the local schedule, and the remaining $4,000 may be held for an additional period of time under the large deposit exception.

* * * * * * *

(d) *Repeated overdrafts.*

* * * * * * *

This exception applies to local and nonlocal checks, as well as to checks that otherwise would be made available on the next (or second) business day after the day of deposit under § 229.10(c). When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii).

(e) *Reasonable cause to doubt collectibility.* * * * When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). * * *

* * * * * * *

(f) *Emergency conditions.* * * * When a bank places or extends a hold under this exception, it need not make the first $100 of a deposit available for withdrawal on the next business day, as otherwise would be required by § 229.10(c)(1)(vii). * * *

(g) *Notice of exception.*

* * * * * * *

* * * When paragraph (g)(2) or (g)(3) requires disclosure of the time period within which deposits subject to the exception generally will be available for withdrawal, the requirement may be satisfied if the one-time notice states when on us, local, and nonlocal checks will be available for withdrawal if an exception is invoked. * * *

Under paragraph (g)(2), if a nonconsumer account (see Commentary to 229.2(n)) is subject to the large deposit or redeposited check exception, the depositary bank may give its customer a single notice at or prior to the time notice must be provided under paragraph (g)(1). * * * A one-time notice may state that the depositary bank will apply exception holds to certain subsets of deposits to which the large deposit or redeposited check exception may apply, and the notice should identify such subsets. For example, the depositary bank may apply the redeposited check exception only to checks that were redeposited automatically by the depositary bank in accordance with an agreement with the customer, rather than to all redeposited checks. In lieu of sending the one-time notice, a depositary bank may send individual hold notices for each deposit subject to the large deposit or redeposited check exception in accordance with § 229.13(g)(1) (see Model Notice C–13).

* * * * * * *

* * * Notices sent pursuant to paragraph (g)(3) must state the customer's account number, the fact the exception was invoked under the repeated overdraft exception, the time period within which deposits subject to the exception will be made available for withdrawal, and the time period during which the exception will apply (see Model Form C–13C). * * *

* * * * * * *

(h) *Availability of deposits subject to exceptions.* * * *

* * * * * * *

* * * For example, if a customer deposits a $7,000 cashier's check drawn on a nonlocal bank, and the depositary bank applies the large deposit exception to that check, $5,000 must be available for withdrawal on the next business day after the day of deposit and the remaining $2,000 must be available for withdrawal on the eleventh business day following the day of deposit (six business days added to the five-day schedule for nonlocal checks), unless the depositary bank establishes that a longer hold is reasonable.

* * * * * * *

Section 229.16 Specific Availability Policy Disclosure

* * * * * * *

(c) *Longer delays on a case-by-case basis*—(1) * * *

* * * * * * *

A bank that imposes delays on a case-by-case basis is still subject to the availability requirements of this regulation. If the bank imposes a delay on a particular deposit that is not longer than the availability required by § 229.12 for local and nonlocal checks, the reason for the delay need not be based on the exceptions provided in § 229.13. If the delay exceeds the time periods permitted under § 229.12, however, then it must be based on an exception provided in § 229.13, and the bank must comply with the § 229.13 notice requirements. A bank that imposes delay on a case-by-case basis may avail itself of the one-time notice provisions in § 229.13(g)(2) and (3) for deposits to which those provisions apply.

* * * * * * *

(3) * * * Paragraph (c)(3) applies when a bank provides a case-by-case notice in accordance with paragraph (c)(2) and does not apply if the bank has provided an exception hold notice in accordance with § 229.13.

* * * * * * *

By order of the Board of Governors of the Federal Reserve System, August 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–19076 Filed 8–13–92; 8:45 am]

BILLING CODE 6210–01–F

12 CFR Part 229

[Docket No. R–0745; Regulation CC]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation CC to conform to recent amendments to the Expedited Funds Availability Act. The amendments make permanent the current availability schedules for deposits at nonproprietary automated teller machines and reaffirm the administrative enforcement authority of federal regulatory agencies over U.S. offices and branches of foreign banks.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associated General Counsel (202/452–3625), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only:* Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA," Pub. L. No. 102–242, 105 Stat. 2236 (1991)) amended the Expedited Funds Availability Act ("Act") (12 U.S.C. 4001–4010), effective December 19, 1991. Section 227 of the FDICIA amended section 603(e) of the Act regarding deposits at nonproprietary automated teller machines ("ATMs"). Section 212(h) of the FDICIA amended section 610(a) of the Act to reaffirm the administrative enforcement authority of federal regulatory agencies over U.S. branches and agencies of foreign banks. The Board requested comment on proposed amendments to Regulation CC (12 CFR part 229) and revisions to the Commentary to implement the amendments to the Act (57 FR 3277, January 29, 1992). The Board is adopting the proposed amendments in final form.[1]

The Board received 38 comments on the proposed amendments, all of which discussed the availability schedules for deposits at nonproprietary ATMs. Six commenters also discussed the proposed amendment regarding administrative enforcement powers over U.S. offices and branches of foreign banks. The distribution by type of commenter is shown below:

Type	Number
Commercial banks/bank holding companies	16
Credit unions	6
Savings institutions	3
Clearing houses	1
Trade associations	6
Federal Reserve Banks	4
Other	2
Total	38

Deposits at Nonproprietary ATMs

Currently, under § 229.12(f)(1) of Regulation CC, a depositary bank may treat all deposits made by its customers at a nonproprietary ATM [2] as though the deposits were nonlocal checks, i.e., make them available by the fifth business day after the day of deposit. This special treatment was accorded deposits made at nonproprietary ATMs because the depositary bank cannot ascertain the composition of these deposits (i.e., whether the deposit consists of cash, checks generally subject to next-day availability, or local or nonlocal checks). As of November 28, 1992, § 229.12(f)(2) would have required nonproprietary ATM deposits of cash, "next-day" checks (as described in § 229.10(c)(1)(i) through (v) and (vii)), and local and other checks (as described in § 229.12(b)) to be made available by the second business day following the banking day of deposit. Depositary banks could have continued to make nonlocal checks deposited at a nonproprietary ATM available by the fifth business day following the banking day of deposit.[3]

[1] Section 225 of the FDICIA amended section 605 of the Act regarding exception holds for "next-day" and "second-day" availability checks and one-time exception hold notices. To allow banks to avail themselves of these changes immediately, the Board adopted interim amendments to Regulation CC (57 FR 3365, January 29, 1992) and has adopted the interim rule, with technical and clarifying changes, in final form. See Docket R–0744, elsewhere in today's **Federal Register**.

[2] A nonproprietary ATM generally is an ATM that is not owned or operated by the depositary bank.

[3] The effective date for the shorter schedules for nonproprietary ATM deposits was extended from

Continued

Banks and ATM operators raised concerns with Congress and the Board about the operational problems and potential for fraud under the shorter schedules for nonproprietary ATM deposits. In two reports to Congress on the implementation of the Act and two reports specifically discussing deposits to nonproprietary ATMs,[4] the Board summarized these concerns and recommended that Congress amend the Act to provide fifth-day availability for all deposits at nonproprietary ATMs on a permanent basis.

The FDICIA amendments to section 603(e) of the Act eliminated the shorter holds for deposits at nonproprietary ATMs that were scheduled to take effect in November 1992 and extended the current 5-day hold permanently. The Board proposed amendments to §§ 229.12(a) and (f) of the regulation and revisions to the Commentary to reflect these changes.

Thirty-four commenters supported the proposed amendments. Fourteen commenters believed that banks would be exposed to increased risk of fraud and loss of the availability scheduled for deposits made at nonproprietary ATMs were the same as the availability schedule for deposits made at proprietary ATMs or teller's stations. Seven commenters stated that because banks lack the technology to ascertain the composition of deposits made at nonproprietary ATMs, the current availability schedule should be made permanent.

Six commenters stated that, although they did not allow their customers to make deposits at nonproprietary ATMs, they supported the amendment because it would give banks increased flexibility and protection. Several of these commenters stated that they might begin providing nonproprietary ATM deposit services, given the reduced risk provided by the amendment. Five commenters believed that the amendment would ensure that nonproprietary ATM deposit services would continue to be offered to customers, as some banks were considering discontinuing the service because of the shorter schedule that would have taken effect in November 1992.

One commenter that currently does not accept deposits at nonproprietary ATMs believed that individual ATM networks should have the right to require participating banks to provide prompter availability if supporting agreements are executed between the participants. The Board notes that depositary banks are free to provide faster availability for any type of deposit than is required by the regulation.

Another commenter stated his understanding that Hawaiian banks could extend the five-day hold of deposits at nonproprietary ATMs by an additional day. Section 229.12(e) provides that a one-day extension is permissible for deposits in Hawaii, as well as deposits in Alaska, Puerto Rico, and the U.S. Virgin Islands. However, this one-day extension applies only to checks for which the paying bank is not located in the same state as the depositary bank. Therefore, the one-day extension may not be helpful to a depositary bank that can not ascertain the composition of a deposit to a nonproprietary ATM.

One commenter indicated that the amendment was unclear as to whether deposits at nonproprietary ATMs were subject to the $100 next-day availability requirement. Under the Act and the regulation, the next-day availability provisions (including the $100 provision) do not apply to deposits at nonproprietary ATMs. The Commentary to § 229.12(f) adopted by the Board clearly explains that § 229.10(c)(1)(vii), which requires a depositary bank to make up to $100 of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit, does not apply to deposits to a nonproprietary ATM.

The Board is adopting the proposed amendments to §§ 229.12 (a) and (f) and the corresponding Commentary, with minor technical changes.

Administrative Enforcement

Title II, Subtitle A of the FDICIA affirmed the supervisory responsibilities of U.S. banking regulatory agencies over U.S. offices and branches of foreign banks. Section 212(h) of the FDICIA made conforming changes to the administrative enforcement provisions in section 610(a) of the Act. These amendments were effective December 19, 1991. The Board proposed conforming amendments to § 229.3(a) of Regulation CC. (U.S. branches and agencies of foreign banks are already subject to the substantive requirements of the Act and Regulation CC.) Six commenters supported the proposed amendments without specific comment. The Board is adopting the conforming amendments as proposed.

Final Regulatory Flexibility Analysis

Two of the three requirements of final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The rule will apply to all depository institutions, regardless of size, as required by the amendments to the Expedited Funds Availability Act. The rule should not have a negative economic impact on small institutions, but rather will decrease the risk and cost of all depositary banks by eliminating the requirement for shorter holds on deposits made to nonproprietary ATMs after November 27, 1992. In addition, small institutions should not be effected by the clarification of U.S. banking regulatory agencies' administrative enforcement authority over U.S. offices and branches of foreign banks. Because the rule should benefit and reduce costs for all institutions that choose to take advantage of the rule change, it is not necessary to consider alternatives to minimize the economic impact.

List of Subjects in 12 CFR Part 229

Banks, banking, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 229 is amended as follows:

PART 229—[AMENDED]

1. The authority citation for part 229 is revised to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

2. In § 229.3, paragraph (a)(1) is revised and concluding text to paragraph (a) is added after paragraph (a)(3) to read as follows:

§ 229.3 Administrative enforcement.

(a) * * *

(1) Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818 *et seq.*) in the case of—

(i) National banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(ii) Member banks of the Federal Reserve System (other than national banks), and offices, branches, and agencies of foreign banks located in the United States (other than Federal branches, Federal agencies, and insured State branches of foreign banks), by the Board; and

(iii) Banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

* * * * *

The terms used in paragraph (a)(1) of this section that are not defined in this part or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

* * * * *

3. In § 229.12, paragraph (a) is revised, paragraphs (f)(1)(ii) and (f)(2) are removed, and the designation "(1)(i)" in paragraph (f) is removed to read as follows:

§ 229.12 Permanent availability schedule.

(a) *Effective date.* The permanent availability schedule contained in this section is effective September 1, 1990.

* * * * *

Appendix E to Part 229—[Amended]

4. Appendix E to part 229 is amended, in the Commentary under section 229.12, by removing the second and third sentences of paragraph (a) and revising paragraph (f) to read as follows:

Appendix E—Commentary

* * * * *

Section 229.12 Permanent Availability Schedule

* * * * *

(f) *Deposits at nonproprietary ATMs.* The Act and regulation provide a special rule for deposits made at nonproprietary ATMs. This paragraph does not apply to deposits made at proprietary ATMs. All deposits at a nonproprietary ATM must be made available for withdrawal by the fifth business day following the banking day of deposit. For example, a deposit made at a nonproprietary ATM on a Monday, including any deposit by cash or checks that would otherwise be subject to next-day (or second-day) availability, must be made available for withdrawal not later than Monday of the following week. The provisions of § 229.10(c)(1)(vii) requiring a depository bank to make up to $100 of an aggregate daily deposit available for withdrawal on the next business day after the banking day of deposit do not apply to deposits at a nonproprietary ATM.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 5, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-19077 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

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[4] September 1, 1990, to November 28, 1992, by the Cranston-Gonzalez National Affordable Housing Act of 1990 (Pub. L. No. 101-625; § 1001). The Board adopted conforming amendments to Regulation CC at that time. *See* 55 FR 50816, December 11, 1990, (interim rule) and 56 FR 7790, February 26, 1991 (final rule).

[4] *See*, Board of Governors of the Federal Reserve System, Report to Congress Under the Expedited Funds Availability Act, September 1991 and March 1990, and Deposits at Nonproprietary Automated Teller Machines: Report to Congress Pursuant to the Expedited Funds Availability Act, October 1989 and July 1990.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 91-ANM-21]

Amendment to VOR Federal Airway V-235; WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters a portion of the description of VOR Federal Airway V-235 in the vicinity of Rock Springs, WY. A step-down approach fix, which this action provides, is necessary to facilitate aircraft arriving and descending into the Rock Springs terminal area. This action increases safety.

EFFECTIVE DATE: 0901 UTC, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On March 31, 1992, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend a portion of VOR Federal Airway V-235 in the vicinity of Rock Springs, WY (57 FR 10848). A step-down approach fix, which this action provides, is necessary to facilitate aircraft arriving and descending into the Rock Springs terminal area. This action increases safety. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations alters the description of Federal Airway V-235 by establishing an approach fix northeast of Rock Springs, WY, VOR. This fix allows lowering of the minimum en route altitude for a segment of that airway from 9,500 feet mean sea level (MSL) to 9,200 feet MSL, thereby improving the approach angle into the Rock Springs terminal area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, VOR Federal airways.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O.10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-235 [Revised]

From Peach Springs, AZ; Mormon Mesa, NV, via INT Mormon Mesa 059° and Cedar City, UT, 197° radials; Cedar City; Milford, UT; Delta, UT; Fairfield, UT; 10 miles, 15 miles, 135 MSL, 40 miles, 125 MSL, Fort Bridger, WY. From Rock Springs, WY, 20 miles, 41 miles, 92 MSL, 37 miles, 107 MSL, Muddy Mountain, WY, to Newcastle, WY.

* * * * *

Issued in Washington, DC, on August 5, 1992.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 92-19382 Filed 8-13-92; 8:45 am]

BILLING CODE 4910-13-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2619

Valuation of Plan Benefits in Single-Employer Plans; Amendment Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This amendment to the regulation on Valuation of Plan Benefits in Single-Employer Plans contains the interest rates and factors for the period beginning September 1, 1992. The use of these interest rates and factors to value benefits is mandatory for some terminating single-employer pension plans and optional for others. The Pension Benefit Guaranty Corporation adjusts the interest rates and factors periodically to reflect changes in financial and annuity markets. This amendment adopts the rates and factors applicable to plans that terminate on or after September 1, 1992, which will remain in effect until the PBGC issues new interest rates and factors.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant general Counsel, Office of the General Counsel, Code 22500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006, 202-778-8850 (202-778-8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) sets forth the method for valuing plan benefits of terminating single-employer plans covered under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding.

Appendix B in part 2619 sets forth the interest rates and factors that are to be used in the formulas contained in the regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The rates and factors currently in use have been in effect since August 1, 1992. This amendment adds to Appendix B a new set of interest rates and factors for valuing benefits in plans that terminate on or after September 1, 1992, which set reflects a decrease of ¼ percent in the immediate interest rate from 6 percent to 5¾ percent.

Concurrently with the first publication of prospective interest rates and factors, the PBGC issued a rate book containing tables of actuarial factors to assist persons working with the interest rates. See, Notice of proposed change in the method for setting the interest rate and factors, 45 FR 38415, 38417 (June 9, 1980). The tables in the PBGC's rate book are based on interest rate assumptions from 6 percent to 11 percent, and do not apply to interest rates above or below those percentages. Accordingly, the rate book cannot be used in connection with the 5¾ rate now being published. The PBGC believes, however, that the advent and widespread use of the microcomputer as a business tool since 1980 and the consequent automation of actuarial functions have essentially eliminated the need for such tables by plan administrators and plan actuaries who are valuing benefits.

Generally, the interest rates and factors will be in effect for at least one month. However, any published rates and factors will remain in effect until such time as the PBGC publishes another amendment changing them. Any change in the rates normally will be published in the **Federal Register** by the 15th of the month preceding the effective date of the new rates or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans that will terminate on or after September 1, 1992, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making the rates set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this is not a "major rule" under the criteria set forth in Executive Order 12291, because it will not result in an annual effect on the economy of $100 million or more, a major increase in costs for consumers or individual industries, or significant adverse effects on competition, employment, investment, productivity, or innovation.

List of subjects in 29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

In consideration of the foregoing, part 2619 of chapter XVI, title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 is revised to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. Rate Set 99 of appendix B is revised and Rate Set 100 of appendix B is added to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates and Quantities Used to Value Immediate and Deferred Annuities

In the table that follows, the immediate annuity rate is used to value immediate annuities, to compute the quantity "Gy" for deferred annuities and to value both portions of a refund annuity. An interest rate of 5% shall be used to value death benefits other than the decreasing term insurance portion of a refund annuity. For deferred annuities, k_1, k_2, k_3, n_1, and n_2 are defined in § 2619.45.

Rate set	For plans with a valuation date: On or after	For plans with a valuation date: And before	Immediate annuity rate (percent)	Deferred annuities: k_1	k_2	k_3	n_1	n_2
• • • • •								
99	8-1-92	9-1-92	6.00	1.0525	1.0400	1.0400	7	8
100	9-1-92		5.75	1.0500	1.0400	1.0400	7	8

Issued in Washington, DC, on this 11th day of August, 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-19447 Filed 8-13-92; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal—Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of the valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of September 1992.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 553 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in cost or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and pensions.

In consideration of the foregoing, part 2676 of Subchapter H of chapter XXVI of title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. §§ 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest Rates.*

For valuation dates occurring in the month:	The values for i_t are: i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_n
•																
September 1991	.06375	.0625	.06125	.06	.05875	.0575	.0575	.0575	.0575	.0575	.05625	.05625	.05625	.05625	.05625	.055

Issued at Washington, DC, on this 11th day of August 1992.

James B. Lockhart III,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-19446 Filed 8-13-92; 8:45 am]

BILLING CODE 7708-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NH2-3-5463, A-1-FRL-4191-9]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Readoption of the Rules Governing the Control of Air Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a state implementation plan (SIP) revision submitted by the State of New Hampshire consisting of a readoption of the Rules Governing the Control of Air Pollution for the State of New Hampshire. The State regulations have been revised with miscellaneous language changes and renumbering for the purpose of reorganization. Other

more significant revisions amend EPA-approved regulations and add new regulations to the New Hampshire SIP. The intended effect of this action is to approve the revision made by the State of New Hampshire. The action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective on September 14, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and New Hampshire Air Resources Division, Department of Environmental Services, 64 North Main Street, Caller Box 2033, Concord, NH 03302–2033.

FOR FURTHER INFORMATION CONTACT: Jeanne F. Cosgrove, (617) 565–3246.

SUPPLEMENTARY INFORMATION: On March 15, 1983 (48 FR 10830), EPA approved major revisions to the New Hampshire SIP involving format changes, miscellaneous language changes for purposes of consistency, and renumbering of the State regulations governing the control of air pollution. Since that time, revisions to several parts of the SIP have been made to meet federal statutory and regulatory requirements.

On October 29, 1991 (56 FR 55644), EPA published a Notice of Proposed Rulemaking (NPR) for the State of New Hampshire. The NPR proposed approval of a revision to New Hampshire's SIP consisting of a readoption of CHAPTERS Env-A 100–1300 of the Rules Governing the Control of Air Pollution for the State of New Hampshire. The formal SIP revision was submitted by New Hampshire on February 12, 1991. Most of the State regulations in the submittal are federally approvable because they were previously approved by EPA in the March 15, 1983 **Federal Register** notice. Except for those regulations specifically identified and discussed in the NPR, this action does not approve substantive revisions to existing regulations or approve additional regulations to the New Hampshire SIP.

For more details on the changes discussed in the NPR, and the minor changes not mentioned, refer to the technical support document prepared by EPA for this revision which is available from the EPA Regional office listed in the ADDRESSES section of this notice.

On May 7, August 20 and August 26, 1991, the New Hampshire Air Resources Division (NHARD) submitted letters asking that certain portions of the February 12, 1991 submittal be withdrawn since they are either in the process of revision or not federally enforceable. In addition, on June 12, 1991, the NHARD submitted a supplement to the revision to the State's SIP entitled "NHARD Policy and Procedure for Air Quality Impact Modeling, Revised." This document has been incorporated by reference by the State in the Rules Governing the Control of Air Pollution at Sections Env-A 405.05(c)–(d), 603.02(p) and 603.03(g). A preliminary review of this document determined that it contains several inconsistencies with EPA policy. On January 28, 1992, EPA sent the NHARD a letter outlining the necessary changes to be made to make the document, last revised on April 4, 1991, approvable and consistent with EPA policy. The State has decided not to revise the document at this time and submitted letters on March 6 and May 6, 1992 withdrawing the document entitled "NHARD Policy and Procedure for Air Quality Impact Modeling, Revised" and the sections which reference this document from the February 12, 1991 SIP submittal. The sections that were withdrawn by the NHARD in the May 7, August 20 and August 16, 1991, March 6 and May 6, 1992 letters are as follows:

Chapter Env-A 100: Sections Env-A 101.21, .27, .33, .51, .53, .58, .63 and .98; and Parts Env-A 102–103
Chapter Env-A 200: Part Env-A 206; Part Env-A 208; and Sections 209.01–.04
Chapter Env-A 300: Part Env-A 304
Chapter Env-A 400: Section Env-A 405.05(c)–(d); and Part Env-A 406
Chapter Env-A 500: Parts Env-A 603.02(p) and 603.03(f)–(g)
Chapter Env-A 600: Sections Env-A 501–506
Chapter Env-A 800: Part Env-A 803
Chapter Env-A 1000: Part Env-A 1002
Chapter Env-A 1100: Part Env-A 1101
Chapter Env-A 1200: Sections Env-A 1204.12 and 1206.03
Chapter Env-A 1300: Parts Env-A 1301–1305.

Other specific requirements of this rulemaking and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the following portions of the Rules Governing the Control of Air Pollution submitted as a revision to the New Hampshire SIP on February 12, 1991:

Chapter Env-A 100: Sections Env-A 101.01–.20, 101.22–.26, 101.28–.32, 101.34–50, 101.52, 101.54–.57, 101.59–.62, 101.64–.97 and 101.99
Chapter Env-A 200: Parts Env-A 201–205; Part Env-A 207; Section Env-A 209.05; and Part Env-A 210
Chapter Env-A 300: Parts Env-A 301–303
Chapter Env-A 400: Part Env-A 401–405.05(b) and 405.06
Chapter Env-A 600: Parts Env-A 601–602; Sections Env-A 603.01–.02(o) and 603.03(a)–(e); and Parts Env-A 604–616
Chapter Env-A 700: Parts Env-A 701–705
Chapter Env-A 800: Parts Env-A 801–802; and Part Env-A 804
Chapter Env-A 900: Parts Env-A 901–903
Chapter Env-A 1000: Part Env-A 1001
Chapter Env-A 1200: Parts Env-A 1201–1203; Sections 1204.01–.11 and 1204.13–.19; Part Env-A 1205; Sections Env-A 1206.01–.02 and 1206.04–.06; and Parts Env-A 1207–1208.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225).

EPA has submitted a request for a permanent waiver from Office of Management and Budget (OMB) review for Table 2 and 3 SIP Revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

OMB has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

EPA has reviewed the revision of this notice for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. Although New Hampshire submitted this SIP revision after November 15, 1990, EPA has determined that this action is approvable. The revision may not include all of the new Title I and Title V requirements; however, it strengthens the requirements in New Hampshire's existing SIP. Furthermore, many of the provisions of the new law do not require State submittals until some time in the future. EPA has recently issued guidance on the revised Title I requirements; New Hampshire will adopt regulations meeting these new requirements and submit them in a separate submittal. EPA had decided to approve this revision today in order to strengthen the SIP during this transition period.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of New Hampshire was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 24, 1992.

Paul Keough,

Acting Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart EE—New Hampshire

2. Section 52.1520 is amended by adding paragraph (c)(45) to read as follows:

§ 52.1520 Identification of plan.

* * * * *

(c) * * *

(45) Revisions to the State Implementation Plan consisting of a readoption of the Rules Governing the Control of Air Pollution for the State of New Hampshire submitted by the New Hampshire Air Resources Division on February 12, 1991.

(i) Incorporation by reference.

(A) Letter from the New Hampshire Air Resources Division dated February 12, 1991 submitting revisions to the New Hampshire State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the State of New Hampshire effective on December 27, 1990:

- Chapter Env-A 100: Sections Env-A 101.01–.20, 101.22–.26, 101.28–.32, 101.34–50, 101.52, 101.54–.57, 101.59–.62, 101.64–.97 and 101.99.
- Chapter Env-A 200: Parts Env-A 201–205; Part Env-A 207; Section Env-A 209.05; and Part Env-A 210.
- Chapter Env-A 300: Parts Env-A 301–303.
- Chapter Env-A 400: Part Env-A 401–404; Sections Env-A 401–404; Sections Env-A 405.01–.05(b) and 405.06.
- Chapter Env-A 600: Parts Env-A 601–602; Sections Env-A 603.01–.02(o) and 603.03(a)–(e); and Parts Env-A 604–616.
- Chapter Env-A 700: Parts Env-A 701–705.
- Chapter Env-A 800: Parts Env-A 801–802; and Part Env-A 804.
- Chapter Env-A 900' Parts Env-A 901–903.
- Chapter Env-A 1000: Part Env-A 1001.
- Chapter Env-A 1200: Parts Env-A 1201–1203; Sections 1204.01–.11 and 1204.13–.19; Part Env-A 1205; Sections Env-A 1206.01–.02 and 1206.04–.06; and Parts Env-A 1207–1208.

(ii) Additional materials.

(A) Letters from the New Hampshire Air Resources Division dated May 7, August 20, and August 26, 1991, March 6, and May 6, 1992 withdrawing certain portion of the February 12, 1991 SIP submittal.

3. In § 52.1525, the Table 52.1525 is revised to read as follows:

§ 52.1525 EPA-approved New Hampshire State Regulations

* * * * *

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE

Title/subject	State citation chapter [2]	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
Organizational Rules: Definitions.	CH Air 100	12/17/81	3/15/83	48 FR 10830	(c)(22)	Sections Air 101.01–.03; .27; .31; .50; .52; .57; .63; .70–.73; .76; .78; .90; .97 and PARTs Air 102 and 103 are not part of the approved SIP.
		7/21/83	2/01/84	49 FR 3989	(c)(28)	Approved Section Air 101.74, Def. of 'process weight.'
	Env-A 100	11/18/89	6/13/91	56 FR 27197	(c)(43)	Approved Sections Env-A 101.79, Def. of 'Reasonable Available Control Technology' and Env-A 101.98, Def. of 'Volatile Organic Compound.'
		12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 101 renumbered and completely replaced; Sections Env-A 101.21; .27; .33; .51; .53; .58; .63; .98; and Parts Env-A 102 and 103 are not part of the approved SIP.
Procedural Rules	CH Air 200	12/17/81	3/15/83	48 FR 10830	(c)(22)	Parts Air 201–204 and Parts Air 206–210 are not part of the approved SIP.
		10/21/82	4/21/83	48 FR 17077	(c)(24)	Section Air 205.10 added.
	Env-A 200	12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Parts Env-A 206 and 208 and Sections Env-A 209.01–04 are not part of the approved SIP.

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE—Continued

Title/subject	State citation chapter [2]	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
Ambient Air Quality Standards.	CH Air 300	12/17/81	3/15/83	48 FR 10830	(c)(22)	Part Air 304 is not part of the approved SIP.
	Env-A 300	12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 304 is not part of the approved SIP.
Sulfur Content Limits in Fuels.	CH Air 400	12/17/81	3/15/83	48 FR 10830	(c)(22)	Section Air 402.02 is not part of the approved SIP.
		2/20/75	3/23/84	49 FR 11094	(c)(26)	Section Air 402.02 added, raising allowable sulfur-in-oil limit for but 10 sources.
		10/20/83	8/07/84	49 FR 31415	(c)(29)	Revision to Section Air 402.02, raises allowable sulfur-in-oil limit for 5 source excluded at (c)(26) above.
		12/15/83	8/01/84	49 FR 30695	(c)(31)	Revision to Section Air 402.02, raises allowable sulfur-in-oil limit for 2 sources excluded at (c)(26) above.
		4/17/86	2/02/87	52 FR 3117	(c)(35)	Revision restricting emission limits for Dartmouth College.
		1/17/85	4/15/87	52 FR 12184	(c)(36)	Revision to Section Air 402.02, raises allowable sulfur-in-oil limit for James River Corp.—Cascade.
		9/09/85	12/14/87	52 FR 47392	(c)(38)	Revision to Section Air 402.02, raises allowable sulfur-in-oil limit for James River Corp.—Groveton.
	Env-A 400	12/24/90	[Insert Date of FR of this document].	[Insert FR citation from published date].	(c)45)	Part Env-A 405 renumbered and completely replaced; Section Env-A 405.05 (c) and (d); and Part Env-A 406 are not part of the approved SIP.
Statewide Permit System	CH Air 600	12/17/81	3/15/83	48 FR 10830	(c)(22)	Part Air 609 repealed at (c)(16).
		1/26/84	3/13/85	50 FR 10004	(c)(36)	Revisions to Part Air 610.
	Env-A 600	12/24/90	[Insert Date of FR publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 603 renumbered and completely replaced; Sections Env-A 603.02(p), 603.03(f) and 603.03(g) are not part of the approved SIP.
Permit Fee System	CH Air 700	12/17/81	3/15/83	48 FR 10830	(c)(22)	
		12/20/84	9/17/87	52 FR 35082	(c)(37)	Revisions to Sections Air 704.01-.02 and Air 706.01-.02.
	Env-A 700	12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	
Testing and Monitoring	CH Air 800	12/17/81	3/15/83	48 FR 10830	(c)(22)	Part Air 803 is not part of the approved SIP.
	Env-A 800	11/16/89	6/13/91	56 FR 27197	(c)(43)	Part Env-A 804 added; Revision to Section Env-A 802.07.
		12/24/90	8/14/91	56 FR 40253	(c)(41)	Sections Env-A 802.09-.10 added.
		12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 803 is not part of the approved SIP.
Owner or Operator Obligations.	CH Air 900	12/17/81	3/15/83	48 FR 10830	(c)(22)	
	Env-A 900	11/16/89	6/13/91	56 FR 27197	(c)(43)	Sections Env-A 901.021-.022 and 901.05 added; Revision to Section Env-A 901.02.
		12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	
Prevention, Abatement, and Control of Open Source Air Pollution.	CH Air 1000	12/17/81	3/15/83	48 FR 10830	(c)(22)	Part Air 1002 is not part of the approval SIP.
	Env-A 1000	12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Part Env-A 1002 is not part of the approval SIP.
Prevention, Abatement, and Control of Stationary Source Air Pollution Part.	CH Air 1200	6/17/82	3/15/83	48 FR 10830	(c)(22)	Section Air 1201.07 and Part Air 1206 are not part of the approved SIP.
		2/19/80	10/31/83	48 FR 50077	(c)(27)	Revisions to Section 1204.02(c) and 1204.21(j); Section 1204.17 added.
		7/21/83	2/01/84	49 FR 3989	(c)(28)	Revision to Section Air 1204.01.
		2/16/84	6/01/84	49 FR 24724	(c)(30)	Section Air 1201.05(e) added.

TABLE 52.1525—EPA-APPROVED RULES AND REGULATIONS [1]—NEW HAMPSHIRE—Continued

Title/subject	State citation chapter [2]	Date adopted State	Date approved EPA	Federal Register citation	52.1520	Comments
		12/20/84	9/17/87	52 FR 35082	(c)(37)	Revisions to Sections Air 1202.07-.09; Section Air 1202.10 added.
	Env-A 1200	11/16/89	6/13/91	56 FR 27197	(c)(43)	Revisions to Sections Env-A 1204.01-.16; Section Env-A 1204.19 added.
		12/24/90	[Insert Date of FR Publication of this document].	[Insert FR citation from published date].	(c)(45)	Section Env-A 1206.03 is not part of the approved SIP.

[1] These regulations are applicable statewide unless otherwise noted in the COMMENTS section.
[2] When the New Hampshire Department of Environmental Services was established in 1987, the citation chapter title for the air regulations changed from CH Air to Env-A.

4. Section 52.1526 is removed and reserved

5. Section 52.1527 is amended by revising paragraph (b) to read as follows:

§ 52.1527 Rules and regulations.

* * * * *

(b) The following elements are not part of the approved SIP:

(1) Intergovernmental consultations
(2) Public notification

(3) Conflict of Interest
(4) Non-SIP regulations' numbers listed below:

- Chapter Env-A 100: Sections Env-A 101.21, .27, .33, .51, .53, .56., .63 and
- 98; and Parts Env-A 102-103
- Chapter Env-A 200: Part Env-A 206; Part Env-A 208; and Sections 209.01-.04
- Chapter Env-A 300: Part Env-A 304
- Chapter Env-A 400: Section Env-A 405.05(c)-(d) and Part Env-A 406
- Chapter Env-A 500: Parts Env-A 501-506
- Chapter Env-A 600: Sections Env-A 603.02(p), 603.03(f)-(g)
- Chapter Env-A 800: Part Env-A 803
- Chapter Env-A 1000: Part Env-A 1002
- Chapter Env-A 1100:Part Env-A 1101
- Chapter Env-A 1200: Sections Env-A 1206.03
- Chapter Env-A 1300; Parts Env-A 1301-1305

§ 52.1530 [Removed]

6. Section 52.1530 is removed and reserved.

[FR Doc. 92-19328 Filed 8-13-92; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Leadbetter Point, Washington, to Cape Falcon, Oregon, at midnight, August 6, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 67,500 coho salmon for the subarea will be reached by midnight, August 6, 1992. The closure is necessary to conform to the preseason announcement of 1992 management measures. This action is intended to ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, August 6, 1992. Actual notice to affected fishermen was given prior to the next scheduled opening of this fishery at 0001 hours local time, August 9, 1992, through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through August 28, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 recreational fishery for all salmon species in the subarea from Leadbetter Point, Washington, to Cape Falcon, Oregon, would open July 19 and continue through the earliest of September 13 or the attainment of either a subarea quota of 67,500 coho salmon or an overall quota of 33,000 chinook salmon north of Cape Falcon, Oregon.

Based on the best available information on August 6, 1992, the recreational fishery catch in the subarea from Leadbetter Point to Cape Falcon is projected to reach the 67,500 coho salmon quota by midnight, August 6, 1992. Therefore, the fishery in this subarea is closed to recreational fishing for all salmon species effective 2400 hours local time, August 6, 1992.

In accordance with the revised inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this closure was given prior to the next scheduled opening of this fishery at 0001 hours local time, August 9, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding the closure of the recreational fishery between Leadbetter Point, Washington, and Cape Falcon, Oregon. The States of Washington and Oregon will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 28, 1992.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19431 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS announces the closure of the commercial salmon fishery for all salmon species in the exclusive economic zone (EEZ) from Cascade Head, Oregon, to the U.S.-Mexico border at midnight, August 7, 1992, to ensure that the coho salmon ceiling for the subarea south of Cascade Head is not exceeded; regularly scheduled commercial fisheries from Cascade Head, Oregon, to the U.S.-Mexico border are reopened for all salmon species except coho salmon at 0001 hours August 8, 1992. The Director, Northwest Region, NMFS (Regional Director), has determined that the subarea catch ceiling for coho salmon has been reached, and the fishery for all salmon species should be closed at midnight, August 7, 1992. The closure is necessary to conform to the preseason announcement of 1992 management measures. This action is intended to ensure conservation of coho salmon.

DATES: Effective at 2400 hours local time, August 7, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Regularly scheduled commercial fisheries in this subarea reopen for all salmon species except coho salmon effective at 0001 hours local time, August 8, 1992. Comments will be accepted through August 28, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070; or Gary Matlock, Operations Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140, or Rodney R. McInnis at (310) 980-4030.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 661.21(a)(1) state that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 66.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fishery from Cape Falcon, Oregon, to the U.S.-Mexico border is limited to an overall combined catch and hooking mortality impact of 60,000 coho and an overall catch quota of 57,000 coho salmon. Within this overall catch quota, there is a subarea catch ceiling that allows a harvest of no more than 40,000 coho south of Cascade Head, Oregon.

Based on the best available information on August 6, 1992, the commercial fishery catch south of Cascade Head, Oregon, is projected to reach the 40,000 coho salmon catch ceiling by midnight, August 7, 1992. Therefore, commercial salmon fishing for all salmon species from Cascade Head, Oregon, to the U.S.-Mexico border is closed effective 2400 hours local time, August 7, 1992. As announced in the notice of 1992 management measures, regularly scheduled commercial fisheries from Cascade Head, Oregon, to the U.S.-Mexico border reopen for all salmon species except coho salmon effective 0001 hours local time, August 8, 1992.

In accordance with the revised inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this closure was given prior to 2400 hours local time, August 7, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding the closure of the commercial fishery from Cascade Head, Oregon, to the U.S.-Mexico border. The states of Oregon and California will manage the recreational fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 28, 1992.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19432 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135, and 1138

[Docket No. AO-14-A65R01, etc; DA-91-013]

Milk in the New England and Certain Other Marketing Areas; Emergency Reopened Hearing on Proposed Amendments to Tentative Marketing Agreements and to Orders

7 CFR part and marketing area	AO Nos.
1001 New England	AO-14-A65-R01
1002 New York-New Jersey	AO-71-A80-R01
1004 Middle Atlantic	AO-160-A68-R01
1005 Carolina	AO-388-A5-R01
1007 Georgia	AO-366-A34-R01
1011 Tennessee Valley	AO-251-A36-R01
1030 Chicago Regional	AO-361-A29-R01
1033 Ohio Valley	AO-166-A62-R01
1036 Eastern Ohio-Western Pennsylvania	AO-179-A57-R01
1040 Southern Michigan	AO-225-A43-R01
1044 Michigan Upper Peninsula	AO-299-A27-R01
1046 Louisville-Lexington-Evansville	AO-123-A63-R01
1049 Indiana	AO-319-A40-R01
1065 Nebraska-Western Iowa	AO-86-A48-R01
1068 Upper Midwest	AO-178-A46-R01
1079 Iowa	AO-295-A42-R01
1093 Alabama-West Florida	AO-386-A12-R01
1094 New Orleans-Mississippi	AO-103-A54-R01
1096 Greater Louisiana	AO-257-A41-R01
1097 Memphis, Tennessee	AO-219-A47-R01
1098 Nashville, Tennessee	AO-184-A56-R01
1099 Paducah, Kentucky	AO-183-A46-R01
1106 Southwest Plains	AO-210-A53-R01
1108 Central Arkansas	AO-243-A44-R01
1124 Pacific Northwest	AO-368-A20-R01
1126 Texas	AO-231-A61-R01
1131 Central Arizona	AO-271-A30-R01
1131 Southwestern Idaho-Eastern Oregon	AO-380-A10-R01
1138 New Mexico-West Texas	AO-335-A37-R01

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of reopened public hearing on proposed rulemaking.

SUMMARY: A hearing held a year ago on the above-listed orders is reopened on the basis of an August 4, 1992, ruling by the U.S. District Court Judge for the Western District of Kentucky at Louisville. The hearing is being reopened for the limited purpose of addressing what yield factor should be incorporated in the Class III-A price formula for the New England, Middle Atlantic, and Pacific Northwest markets where pricing changes have been tentatively adopted.

DATES: The hearing will reconvene at 9 a.m. local time on August 20, 1992.

ADDRESSES: The hearing will be held at the Old Colony Inn, North Washington and First Streets (625 First Street), Alexandria, Virginia 22314 (703) 548-6300.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing issue on small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act (7 U.S.C. 608c(15)(A)), any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his/her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

It is noted that the original hearing notice for this proceeding listed 31 milk orders. The initial number of markets involved has been reduced by two as a result of the consolidation of three southwest markets (Lubbock-Plainview, Rio Grande Valley and Texas Panhandle) into a new single order designated as the New Mexico-West Texas marketing area.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33396).

Tentative Decision: Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; published January 2, 1992 (57 FR 15).

Interim Amendment of Orders: Issued December 27, 1991; published January 3, 1992 (57 FR 173).

Notice is hereby given of a reopened public hearing to be held in response to an August 4, 1992, ruling by the U.S. District Court for the Western District of Kentucky at Louisville. The reopened hearing will begin at 9:00 a.m. local time on August 20, 1992, with respect to the appropriate yield factor that should be incorporated in the Class III-A price formula for the New England, Middle Atlantic, and Pacific Northwest markets

where Class III–A pricing changes have been tentatively adopted.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the single limited issue identified by the U.S. District Court and any appropriate modification to the tentative marketing agreements and the orders. There is no proposed amendment that has received the approval of the Secretary of Agriculture.

Last summer a hearing was held to consider the establishment of a separate class and price (III–A) for milk used to make butter and nonfat dry milk under 31 orders. The intent of the proposal by operating cooperatives was to price such milk on the basis of market prices for butter and nonfat dry milk rather than the currently used Minnesota-Wisconsin price.

The Department issued a tentative decision on this issue last December, adopting the new pricing for nonfat dry milk only and for just three orders—New England, Middle Atlantic, and Pacific Northwest. Because of the emergency nature of the issue, a tentative decision was issued so that the pricing changes could be implemented temporarily while public comments were being received on the decision.

The price changes were blocked, however, when a major cooperative in the Southeast obtained a temporary restraining order. On August 4, 1992, Judge Charles R. Simpson III of the U.S. District Court for the Western District of Kentucky at Louisville issued an opinion and order regarding the continuation of the restraining order. The Judge ruled that the Department's adoption of the new Class III–A price for three orders was legally valid but that the Department erred procedurally in the manner in which it arrived at the yield factor that was incorporated in the Class III–A price formula.

On this basis, the Court enjoined the Department from implementing the price changes until all interested parties have been given a further opportunity to address the question of what the yield factor in the Class III–A price formula should be. The most practical way to accomplish the Court's intentions is to reopen the hearing. Since the proper yield factor is the only matter that the Court believes needs to be addressed, the reopened hearing is therefore being limited to this single issue for the three markets where pricing changes were tentatively adopted.

Evidence also will be taken to determine whether emergency marketing conditions exist to such an extent that expedited action is warranted. Because of the emergency nature of this issue, only limited advance notice of this hearing is being provided to interested parties.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with six copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135, and 1138

Milk marketing orders.

The authority citation for the aforesaid 7 CFR parts continues to read as follows:

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Copies of this reopened hearing notice may be obtained from any market administrator or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Dairy Division, Agricultural Marketing Service (Washington office only); Offices of the Market Administrators for the aforementioned Marketing Areas.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: August 11, 1992.

Daniel D. Haley,

Administrator.

[FR Doc. 92–19480 Filed 8–13–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1209

[FV–91–276A]

RIN 0581–AA49

Mushroom Promotion, Research, and Consumer Information Order; Amendment to Referendum Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to Referendum Order.

SUMMARY: This action amends the referendum order which was published in the June 10, 1992, issue of the **Federal Register**. It changes the voting period for the referendum during which mushroom producers and importers will vote on whether the Mushroom Promotion, Research, and Consumer Information Order will become effective. The voting period has been rescheduled for August 24, 1992, through September 14, 1992.

DATES: A referendum shall be conducted from August 24, 1992, through September 14, 1992.

ADDRESSES: Richard Schultz, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2533–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard Schultz at the above address or telephone (202) 720–5976.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Proposed Rule published in the October 4, 1991, issue of the **Federal Register** [56 FR 50283]; Proposed Rule and Meeting Notice published in the January 15, 1992, issue of the **Federal Register** [57 FR 1666]; and Proposed Rule and Referendum Order published in the June 10, 1992, issue of the **Federal Register** [57 FR 24719].

The initial referendum order specified that the voting period for the referendum would be from July 22, 1992, through august 12, 1992. This voting period was postponed as a result of a temporary restraining order (TRO) requested by United Foods, Inc. (United). The period for the TRO has expired and United's attempts for a preliminary injunction were denied by the courts. Therefore, the voting period has been rescheduled

for August 24, 1992, through September 14, 1992.

The referendum order is hereby amended to read as follows:

It is hereby directed that a referendum be conducted among mushroom producers and importers to determine whether producers and importers favor the establishment of a national mushroom promotion, research, consumer information, and industry information program. Such a program would be implemented through a Mushroom Promotion, Research, and Consumer Information Order (order). the representative period for establishing voter eligibility for the referendum shall be the period from July 1, 1990, through June 30, 1992. A referendum shall be conducted from August 24, 1992, through September 14, 1992.

The Mushroom Promotion, Research, and Consumer Information Act of 1990 (Act) specifies that the Secretary of Agriculture (Secretary) will conduct a referendum among mushroom producers and importers to determine whether the order shall become effective. The Act further specifies that the order shall become effective, if the Secretary determines that the order has been approved by a majority of the producers and importers voting in the referendum, which majority, on average, annually produces and imports into the United States more than 50 percent of the mushrooms annually produced and imported by all those voting in the referendum.

Richard Schultz and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Division, Agricultural Marketing Service, P.O. Box 96456, U.S. Department of Agriculture, Washington, DC 20090–6456, are designated as the referendum agents of the Secretary of Agriculture to conduct this referendum. The Procedure for the Conduct of Referenda in Connection with the Mushroom Promotion, Research, and Consumer Information Order, 7 CFR 1209.300–1209.307 shall be used to conduct the referendum.

Ballots to be cast in the referendum, and any related material relevant to the referendum, will be mailed by the referendum agents to all known mushroom producers and importers. Persons who have produced or imported, on average, over 500,000 pounds of mushrooms that were marketed or imported annually for fresh use during the representative period are eligible to vote. Such persons shall establish their eligibility by providing information on the ballot concerning their volume of production or importation. Such information may be subject to verification. Should any eligible producer or importer not receive a ballot and related material, such producer or importer should immediately contact the referendum agents.

List of Subjects in 7 CFR Part 1209

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Mushrooms, Reporting and recordkeeping requirements.

Dated: August 12, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–19524 Filed 8–12–92; 1:22 pm]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[Docket No. PRM–20–19]

General Electric Stockholders' Alliance, Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM–20–19) from Betty Schroeder on behalf of the General Electric Stockholders' Alliance, et al. The petitioner requested that the NRC issue a regulation to require that a detectable odor be injected into the emissions of nuclear power plants and other nuclear processes over which the NRC has jurisdiction. The petition is being denied on the basis that the proposed action is not necessary because: (1) Current monitoring and emergency response procedures provide an adequate level of safety; (2) it would not result in any increased protection of the public health and safety and as a result would not meet the Commission's "Backfit Rule," 10 CFR 50.109; (3) the proposed action is not technically feasible; and (4) the injection of odors in detectable concentrations over the Emergency Planning Zone for a nuclear power plant or suitable area for other nuclear facility would likely be detrimental to the environment.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3638.

SUPPLEMENTARY INFORMATION:

The Petition

In a letter dated October 8, 1988, Ms. Betty Schroeder, Secretary of the GE Stockholders' Alliance, filed a petition for rulemaking with the NRC on behalf of herself, the Alliance, and "all the people in the country [USA] and all future generations." The petitioner requested that the NRC issue a regulation to require that a detectable odor be injected into the emissions of nuclear power plants and other nuclear processes over which the NRC has jurisdiction. The petition specified that the injected odor be similar to, but recognizably different from, the mercaptans used in natural gas.

Basis for Request

As a basis for the requested action, the petitioner stated that compliance with this requirement would immeasurably improve health and safety of the public by providing for early detection of radiation leaks, giving the public notice of the need to take protective measures. The petitioner recognized that nuclear facilities are required to maintain monitoring stations, but alleges that the accident at Three Mile Island demonstrates deficiencies in the capability to alert the public of dangerous releases. In addition, the petitioner claims that radiation plumes are erratic and unpredictable in their dispersion upon release because of varying weather and geo-physical characteristics of the terrain. Furthermore, the petitioner asserts that scientific studies prove that even the smallest amounts of ionizing radiation cause harmful health effects, stating that there is ample evidence that radiation causes increased infant mortality, genetic abnormalities, cancer and leukemia, and makes the body more prone to disease by "lowering" the immune system.

By example, the petitioner asserts that the natural gas industry requires inexpensive, non-toxic mercaptans (recognizable odors) to be injected into gas to help people detect gas leaks and to provide confidence that the use of gas is safe.

Public Comments on the Petition: Summary and Analysis

On February 1, 1989 (54 FR 5089), the NRC published a notice of receipt of the petition for rulemaking in the **Federal Register**. Interested persons were invited to submit written comments or suggestions concerning the petition by April 3, 1989. The NRC received 52 letters of comment in response to the notice: 28 letters from individuals with 3 opposed, 24 in favor, and 1 urging a feasibility analysis; 10 letters from industry and industrial organizations argued against the petition; 13 public interest groups responded with 1 opposed, 10 in favor, and 2 requesting that NRC examine the technical feasibility of such a requirement; and 1 local governmental entity in favor.

Many of the commenters in favor of the petition gave no reasons for their support. Some only provided statements, without giving the basis for their statements, that this requirement would provide assistance in detecting leaks and/or normal releases, that it would provide the public an advanced warning of leaks, or that it would enhance the public's ability to take protective actions or save lives. A number of commenters stated or implied that it would improve public health or safeguard the future. Two commenters suggested property loss and damage would also be avoided. One commenter stated that it would improve NRC awareness of public exposure. Several of the commenters who favored the petition felt it was important to assuage worries of the public, increase public awareness or aid public acceptance concerning nuclear power and radioactive emissions. One commenter, however, suggested that if an odorant were added to all emissions that it could mean the end of nuclear power. One commenter wanted to be able to detect leaks because she does not trust the government. One commenter also stated that if the NRC was unwilling to require the odorant, the NRC would be demonstrating to the public that it was hiding the danger from emissions. One commenter, who was apparently in favor of the petition, simply submitted an article which addressed lasting problems resulting from the accident at Three Mile Island. A few commenters seemed to be in favor of the odorant only for leaks or abnormal releases, a few clearly believed that information on all releases should be provided to the public in this way. One of these commenters contended that there was no proof that allowable levels of releases were not harmful. Two commenters stated that the public had a right and a need to know about all exposures. Although a few commenters gave an opinion that it would be technically feasible, none gave any information to support that statement other than noting the benefits of the use of mercaptans in natural gas.

None of the commenters presented any information which was convincing concerning the need for or the feasibility of the proposed requirement.

Although the petitioner's proposal, if it were feasible, would provide one method of warning the public, the means currently in place are more effective. As discussed further below, the comparison with mercaptans in natural gas breaks down when one goes beyond the simplest of factors. As for this method providing more information to the NRC on public exposures, current systems for measuring releases, estimating doses to the public, and reporting to the NRC are more accurate than the use of an odorant in emissions would be. As to the public's right and need to know what their exposures are, existing information, though not direct, is available to the public. For example, the NRC publishes an annual report entitled "Radioactive Materials Released from Nuclear Power Plants" compiled by Brookhaven National Laboratory for U.S. Nuclear Regulatory Commission, NUREG/CR-2907[1]. Various volumes cover different report years (each also summarizes previous data). Whether or not such a requirement in the long run would improve or diminish the public's faith in nuclear power would be difficult to predict; however, the question becomes irrelevant given the many arguments against the use of an odorant.

Three of the commenters that supported adding an ordorant to emissions also suggested the addition of a safe, non-toxic colorant.

This suggestion is outside the scope of the original petition. However, the Commission notes that although a colorant might have some small advantage in terms of the timing of any warning, most of the considerations applicable to the use of an odorant would also be relevant to a similar use of a colorant.

The commenters that opposed the petition presented significant reasons for their opposition. Many commenters stated that there would be no significant increase in the protection of public health and safety. A few commenters concluded that the requirement would have a negative impact on public health and safety and the environment. Some concluded this because of the difficulty of choosing an ordorant that would not be toxic when using the large quantifies that would be necessary. Others were concerned that the safety of plants would be reduced. Some of the reasons expressed for this second concern were that: An odorant would make it difficult for workers to respond in an emergency, problems of odorants at the plant would make a nuclear incident more probable, an odorant might be explosive in the containment or corrosive, an odorant might be detrimental to the functioning of emergency equipment, and modification to systems might be necessary.

A number of the commenters stated that existing effluent monitors and notification procedures are more feasible, more sensitive, and more orderly and that present regulations require the integration of instrumentation and public notification procedures that would allow an adequate time for protective actions. Some concluded that the use of an odorant would be unreliable and inaccurate.

Many of the commenters indicated that use of an odorant is not feasible and discussed the technical difficulties. The main points were that: (1) the quantity of odorant required for even a threshold detection in an Emergency Planning Zone (radius of about 10 miles) for a nuclear power plant is greater than is feasible, (2) odors could not be related to the amount of radiation because of different half-lives or different concentrations, and (3) it is technically untenable to label fission products with an odor. Some commenters discussed the differences between radioactive emissions and the use of mercaptans in natural gas. They pointed out that : (1) Natural gas is piped directly to and used in homes and buildings where there are no other warning devices and where a leak can create an immediate hazard to life and health, (2) mercaptans in natural gas is intended for the detection of very localized leaks, thus very small concentrations are used, and (3) mercaptans are gasses which dissolve into the natural gas. These commenters stated that the situation with radioactive emissions is drastically different with the objective of detecting releases to the unbounded outdoors for miles around.

Some commenters indicated the importance of a unique odor and discussed problems with the choice of an odorant. A number of commenters

[1] Copies of NUREGS may be purchased from the Superintendent of Documents, U.S: Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

including one in favor of the requirement pointed out problems with mercaptans or similar compounds. One commenter submitted extensive information concerning the toxicity of various mercaptan compounds. One commenter suggested peppermint or a specific perfume. Another commenter pointed out that even a usually pleasant odorant could be an allergen to some people.

Other problems pointed out by the commenters were: (1) The odorant would be overwhelming on site and possibly toxic to workers, (2) there would be a likelihood of false alarms as a result of similar odors or because of system malfunctions, (3) the length of time for the odor to reach the public would be unacceptably long, (4) the cost of the system would be an unnecessary financial burden to licensees, and (5) the public would have to be trained to recognize the odor. Some problems pertaining particularly to the use of an odorant in routine emissions were noted: (1) A problem of aesthetics for nearby residents, (2) olfactory fatigue, and (3) the possibility that the odor would become too familiar and not be responded to when appropriate.

Generally, the NRC agrees with those commenters who were opposed to the petition. Although there may have been a few minor overstatements or misstatements, the NRC agrees that all of the basic reasons given by the commenters for opposing the petition are valid.

In addition, two responders submitted that in accordance with 10 CFR 2.803, the NRC should not have instituted this proceeding on the basis that the petition was without merit and a waste of NRC, industry, and public resources and presumably not worth public comment.

The NRC's regulations require that a petition that meets the threshold requirements in 10 CFR 2.802(c) be docketed as a petition for rulemaking. Although publication for comment in the **Federal Register** is discretionary, it is not a burdensome procedure and affords members of the public an opportunity to participate in the Agency's deliberative processes that would not otherwise be available. Public comment is frequently of value in considering the merits of a petition, particularly where the petition raises an issue for the first time. Generally, the NRC prefers to err on the side of openness rather than invite public distrust.

Reasons for Denial

The NRC has considered the petition, the public comments received, and other related information and has concluded that the issues raised by the petition are without merit. The following is a discussion of the details of that conclusion.

The primary concern of the petitioner is a perceived need to improve the health and safety of the public by improving the detection of radiation leaks and providing the public with notification to take protective measures. In fact, for he case of nuclear power reactors, systems for the detection of radioactive leaks and the ability to quickly notify the public to take protection measures are in place as required by NRC regulations. A number of these measures were instituted based on lessons learned from the TMI accident.

Sensitive and redundant radiation monitors are located throughout nuclear power plants to provide detection and alarm capability at the point of release. These monitors measure, numerically and directly, the amount of radiation. In contrast, if detection of radiation were dependent upon identification of an odor by a person of site rather than an instrument, the detection would be delayed at least the time it would take to reach the first person offsite trained to recognize the odor. At best, the use of an odorant in conjunction with radioactive emissions would be an indirect and not a quantitative indication of the presence of radioactivity.

The petitioner contends that the accident at Three Mile Island demonstrated deficiencies in the ability to alert the population of dangerous releases [2]. After the accident, the NRC did conclude that the requirements for emergency preparedness needed to be significantly upgraded. Consequently, regulations elaborating the scope and contents of emergency plans for nuclear power plants were instituted. Included in these requirements are capabilities to promptly and accurately detect releases of radioactivity, as well as the potential for a release, and to notify the public within 15 minutes of the declaration of an emergency. Before a nuclear power plant is licensed to operate, the NRC must verify that the licensee's emergency plans and procedures are adequate to protect the public health and safety in the event of an accident. Further, the emergency planning for these licensees must be coordinated with local and State authorities. Also, emergency plans must be maintained and updated annually and exercises must be conducted annually (with State and local participation biannually). In addition, the NRC inspects licensees annually to ensure compliance with the regulatory requirements.

In summary, for the case of nuclear power plants, a system is already in place, which the NRC has previously determined provides adequate protection of the public health and safety. It is unlikely that the addition of an odorant to emissions could add any margin of safety to that provided by existing systems. Therefore, the addition of an odorant to the radioactive emissions from power reactors would not meet the Commission's Backfit Rule, 10 CFR 50.109.

In the case of NRC licenses other than those for power reactors, emergency preparedness is commensurate with the hazard. The potential radioactive hazards from most of these licensees are not sufficient to affect the general public. However, for those licensees with sufficient materials to meet the criteria for requiring an emergency plan, the appropriate surveys and monitoring for radioactive releases are required, as well as timely reporting of radioactive releases to the proper authorities. As in the case of power reactors, the existing required systems have been judged adequate and are superior to the indirect indication that would be provided by an associated odorant.

The petitioner specifically asserts that radiation plumes are erratic and unpredictable in their dispersion upon release because of varying weather and geo-physical characteristics of the terrain.

Plumes of radioactive substances behave in accordance with their physical and chemical characteristics. In this respect, they are no different from plumes of stable elements with the same physical and chemical characteristics, such as temperature, velocity, density, particle size, etc. The NRC, other Federal agencies, and licensees routinely predict the dispersion of radioactive plumes based on dispersion models (that are often computerized) that include factors such as weather and terrain. As with all modeling there are associated uncertainties. These models are used to predict the path of plumes and to enable public officials to recommend protective actions before the plume arrives at downwind, populated areas.

In contrast, the use of odorants would require the arrival of the plume in populated areas to initiate any protective actions. Precautionary evacuation, with virtually no radiation dose to the public, would not be an

[2] The petitioner should note that careful analysis of the actual radioactive release during the accident at Three Mile Island showed that the resultant dose to the public was comparable to that which would result from one or two trans-Atlantic commercial airline trips, and therefore, would not be considered dangerous.

option with the use of an odorant. An additional problem is that a "gaseous odorant may not have the same physical characteristics as the radioactive releases and thus may not follow the same path as the radioactive emissions. If this were the case, the detectability of the odorant may not be a good indicator of the presence or the concentration of radioactivity.

As discussed extensively by some of the commenters, the use of an odorant for the purpose of warning people of radioactive releases is not feasible. Most sources of potential releases are not in a form such that an odorant could be dissolved into or otherwise associated with the radioactive material in a way that they would be automatically released together. It would be necessary to rely on a system of detecting radioactivity, such as existing measuring devices, which would then trigger the addition of odorants to stack effluents or venting systems. It would not be possible to account for all sources of releases, although main stacks or vents would be the primary sources of releases. In part because of the complexity of implementing such a requirement, reliance on licensee compliance and government enforcement would still be necessary. Thus, the problem of lack of trust of a segment of the public in the licensees and the government could not be eliminated.

A further concern is that the concentrations of odorants used would have to be very high at the point of release in order to be detectable at any significant distance. Concentrations reaching people would vary considerably, depending on the distance from the source and other factors, such that odors would likely be overwhelming onsite and in some locations offsite and quite possibly toxic while being undetectable at other locations. As noted above, it would also be impossible for the chemical and physical characteristics of the odorant to match those of all the releases which are both gaseous and particulate. Thus, the concentrations of odorants would not remain proportional with the concentrations of contaminants. The concentrations of odorants would also not match the relative hazard of contaminants, because the radiotoxicity of various nuclides varies greatly.

The prospect of injecting an odorant into emissions of radioactivity also raises an environmental issue. If the odorant were used in connection with normal permitted releases as specifically suggested by some of the commenters, it would cause the institution of an objectionable and continual insult to the air quality in and downwind from licensed facilities. For example, it is highly likely that the addition of a mercaptan-like odorant to radionuclides used in the nuclear medicine sections of hospitals would be intolerable. Similarly, residents downwind from nuclear power plants would be subjected to a decreased quality of air. It would be difficult, if not impossible, to select an odorant which would not be toxic in the concentrations required. As discussed above, the addition of an odorant would provide little, if any, benefit to the protection of the public health and safety. Therefore, the detrimental effects on the environment outweigh the benefits, if any, of injecting an odorant into radioactive emissions from NRC licensed facilities.

The petition erroneously states that scientific studies prove that even the smallest amounts of ionizing radiation cause harmful health effects. On the contrary, there is a controversy in science on the health effects, if any, of very small doses of ionizing radiation. Nonetheless, the NRC regulates on the basis of the linear nonthreshold hypothesis which assumes that there is no threshold of dose below which there is no harm, i.e., that even the smallest dose are potentially harmful.[3]

Taking all the considerations above into account with respect to the early detection goal of the proposed requirement, the petitioner fails to recognize that more timely and sensitive methods of detection of radioactive emissions are already in place. Similarly, with respect to the ability to notify the public to take protective actions in a timely manner, the petitioner does not recognize that an effective method for notifying the public is already in place.

Therefore, there would be little, if any, increased benefit to the public health and safety as a result of the proposed requirement.

In conclusion, the NRC finds the petition without merit, and denies the petition.

Dated at Rockville, Maryland, this 27th day of July, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-19453 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

[3] The petitioner also erroneously states that the natural gas industry requires the injection of odors into gas for commercial and domestic use. In fact, it is the Federal government that requires the use of odorants in natural gas as stated in the regulations (49 CFR 192.626).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91-NM-173-AD]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. This proposal would require installation of a placard to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch on, modification of the airbrake auto-retract function, and an associated temporary revision to the FAA-approved Airplane Flight Manual (AFM). This proposal is prompted by a report of the spool-down/roll-back and subsequent shutdown of one or more engines during the same flight. The actions specified by the proposed AD are intended to prevent the loss of sufficient power to sustain flight.

DATES: Comments must be received by September 14, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-173-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 am. and 3:00 pm., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-173-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-173-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes. The CAA advises that an operator reported the spool-down/roll-back and subsequent shutdown of one or more engines during the same flight on a Model BAe 146-200 series airplane.

Approximately 20 seconds prior to entering an air mass that was warmer than normal at 29,000 feet, thrust was reduced to bring the airplane to rough air penetration speed. Following this thrust reduction, but still prior to entering the warm air mass, airframe "ANTI-ICE ON" was selected for both the outer wing and tailplane. The engine and intake "ANTI-ICE ON" had been selected for some time prior to entering the warm air mass.

Within two to three minutes after the airplane entered the warm air mass, the engines spooled-down/rolled-back. Approximately five minutes following the encounter with the warm air mass, the fan speed on three of the four engines reduced as a result of the compressor bleed bands opening due to the combination of bleed air demand, warm ambient air, and the reduced thrust setting. A subsequent command for additional thrust failed to close the bleed bands, resulting in an engine overtemperature condition. The pilot took action to reduce the engine temperature. Consequently, the engines entered a sub-idle condition and eventually were shut down. Recently, the FAA has received additional reports of similar incidents.

This problem is caused by a combination of unusual environmental conditions, engine fuel control unit calibration, bleed band scheduling, and the demand for bleed air of airframe anti-ice systems. This condition, if not corrected, could result in the loss of sufficient power to sustain flight.

British Aerospace has issued Service Bulletin 11-97-01285A, Revision 1, dated April 3, 1992, which describes procedures for installation of a placard below the ice protection switches on the flight deck overhead panel stating that, when operating above flight level 250 with engine "ANTI-ICE ON," prior to the selection of airframe "ANTI-ICE ON," all engines must be set to an N2 of 90 percent minimum; thereafter, a minimum of 87 percent must be maintained.

The service bulletin also describes a modification involving changes to the electrical wiring to inhibit the thrust lever actuated airbrake auto-retract function. Accomplishment of this modification will enable the airbrake to be operated at high altitude to assist in descent when thrust levers are forward, in compliance with the placard. The CAA classified this service bulletin as mandatory.

The service bulletin also references Temporary Revisions (TR) to the "Limitations" and "Normal/Abnormal Procedures" Sections of the Airplane Flight Manual (AFM). These TR's, which are associated with the modification described previously, are identified as follows: TR22 (for Model BAe 146-100A series airplanes), TR28 and TR33 (for Model BAe 146-200A series airplanes), and TR12 (for Model BAe 146-300A series airplanes). These TR's describe new limitations and normal/abnormal procedures for handling the airplane in icing conditions above 25,000 feet.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of a placard to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch on, modification of the airbrake auto-retract function, and an associated temporary revision to the FAA-approved AFM. The installation and modification would be required to be accomplished in accordance with the service bulletin described previously.

Note: On April 8, 1992, the FAA issued telegraphic airworthiness directive T92-08-51, which addresses the portion of the unsafe condition described above that involves engine fuel control unit calibration and bleed band scheduling. This proposal addresses the portion of the problem that relates to the demand for bleed air of airframe anti-ice systems.

The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,175. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1)

is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91–NM–173–AD.

Applicability: Model BAe 146–100A, –200A, and –300A series airplanes; as listed in British Aerospace Service Bulletin 11–97–01285A, Revision 1, dated April 3, 1992; certificated in any category.

Compliance: Required within 30 days after the effective date of this AD, unless accomplished previously.

To prevent the loss of sufficient power to sustain flight, accomplish the following:

(a) Install a placard below the ice protection switches on the flight deck overhead panel to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch on, in accordance with British Aerospace Service Bulletin 11–97–01285A, Revision 1, dated April 3, 1992.

(b) Modify the airbrake auto-retract function, in accordance with British Aerospace Service Bulletin 11–97–01285A, Revision 1, dated April 3, 1992.

(c) Amend the FAA-approved Airplane Flight Manual (AFM) by inserting the applicable Temporary Revision (TR) in the Limitations and Normal/Abnormal Procedures Sections, as follows:

(1) For British Aerospace Model 146–100A series airplanes: TR 22.

(2) For British Aerospace Model 146–200A series airplanes: TR 28 or TR 33, as applicable.

(3) For British Aerospace Model 146–300A series airplanes: TR 12.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations or Maintenance Inspector, as applicable, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 15, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19381 Filed 8–13–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASO–9]

Proposed Alteration of Control Zone, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Orlando, FL Control Zone by adding and deleting arrival area extensions. A VOR/DME standard instrument approach procedure (SIAP) has been developed to serve Runway 7 at the Orlando Executive Airport. Concurrent with publication of the planned SIAP, the VOR Runway 13 instrument approach procedure will be cancelled. This proposed action would add an arrival area extension west of the airport to provide additional controlled airspace for instrument flight rules (IFR) aircraft executing the VOR/DME Runway 7 SIAP. The existing Runway 13 arrival area extension northwest of the airport would be eliminated.

DATES: Comments must be received on or before September 30, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92–ASO–9, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763–7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763–7646.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–ASO–9." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the Orlando, FL Control Zone. A VOR/DME SIAP has been developed to serve Runway 7 at the Orlando Executive Airport. This proposed action would add an arrival area extension west of the airport to provide additional controlled airspace for IFR aircraft executing the SIAP. Concurrent with publication of the VOR/DME Runway 7 SIAP the VOR Runway 13 approach procedure would be cancelled. This proposed action also would eliminate the arrival area extension northwest of the airport. Control Zones are published in § 71.171 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control Zones, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

ASO FL CZ Orlando, FL [Amended]
Orlando Executive Airport, FL (lat. 28Z32'43" N, long. 81Z19'59" W)
Orlando VORTAC (lat. 28Z32'33" N, long. 81Z20'07" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4-mile radius of Orlando Executive Airport and within 3.8 miles each side of the Orlando VORTAC 254Z radial extending from the 4-mile radius to 8.1 miles west of the VORTAC; excluding that portion within the Orlando, FL Terminal Control Area (TCA).

* * * * *

Issued in East Point, Georgia, on August 4, 1992.

Don Cass,

Acting Manager, Air Traffic Div., Southern Region.

[FR Doc. 92–19383 Filed 8–13–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 92N–0072]

Public Information; Communications With Foreign Government Officials; Removal of Restrictions on International Cooperation on New Product Approval; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to September 24, 1992, the comment period for the proposed rule, which appeared in the **Federal Register** of June 26, 1992 (57 FR 28647). The document proposed to amend the regulations governing communication with foreign government officials to provide that the agency may disclose to foreign governments, under certain conditions, confidential commercial information submitted to FDA or incorporated into agency-prepared records. FDA is taking this action in response to a request for an extension of the comment period.

DATES: Written comments by September 24, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Office of Policy (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 26, 1992 (57 FR 28647), FDA published a proposed rule to amend its regulations governing communications with foreign government officials to provide that the agency may disclose to foreign government officials confidential commercial information submitted to FDA or incorporated into agency-prepared records, provided that certain conditions are met, and that such disclosure will not make the information available to the public. Interested persons were given until August 25, 1992, to respond to the proposal.

FDA has received a request for an extension of the comment period for an additional 60 days. After careful consideration, the agency is granting an extension of the comment period. However, the agency is granting a 30-day extension, rather than the requested 60 days. Accordingly, the comment period is extended to September 24, 1992.

Interested persons may, on or before September 24, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 10, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–19389 Filed 8–13–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 366

RIN: 1820–AA81

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Notice of extension of comment period.

SUMMARY: On July 10, 1992, the Department of Education published in he **Federal Register** an advance notice of proposed rulemaking (ANPRM) for the Centers for Independent Living program (57 FR 30866). The comment period for the ANPRM currently is scheduled to end August 24, 1992. In response to requests from the public, the Secretary extends the comment period from August 24, 1992 to September 8, 1992.

DATES: Comment period extended from August 24, 1992 to September 8, 1992.

ADDRESSES: All comments concerning the advance notice of proposed rulemaking should be addressed to Nell C. Carney, Commissioner, Rehabilitation Services Administration, room 3028 Mary E. Switzer Building, 400 Maryland Avenue S.W., Washington, DC 20202–2575.

FOR FURTHER INFORMATION CONTACT: John Nelson, room 3326 Mary E. Switzer Building, 400 Maryland Avenue SW., Washington, DC 20202–2741. Telephone: (202) 205–9362. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, D.C. 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: August 10, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92–19413 Filed 8–13–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Forest Service proposes to amend the regulations governing the use and occupancy of National Forest System lands to minimize application expenses, streamline and make more efficient environmental analysis of special use proposals, provide the ability to use one-time payments for easements as presently used in the market place, limit certain liability requirements to amounts determined by a risk assessment, make certain definitions more explicit, and clarify direction on renewal of existing special use regulations. The intended effect is to reduce costs to proponents and the agency, expedite decisionmaking, and administer authorizations in a more "user friendly" manner by removing certain requirements deemed unnecessary and/or outdated. Public comment is invited.

DATES: Comments must be received in writing by September 28, 1992.

ADDRESSES: Send written comments to the Lands Staff (2720), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed rule in the Office of the Director of Lands, 4th Floor, South Wing, Auditor's Building, 14th and Independence Avenue NW., Washington, DC, between the hours of 8:30 am. and 4:30 p.m. Those wishing to inspect comments are encouraged to call ahead (202/205–1407) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Myers, Lands Staff, 202–205–1248, or William T. Svensen, Recreation, Cultural Resources, and Wilderness Management Staff, 202–205–1407.

SUPPLEMENTARY INFORMATION:

Background

In his 1992 State of the Union message, the President directed Federal agencies to review and revise existing programs to remove regulatory burdens on the public. Accordingly, the Forest Service has reviewed its existing regulations at 36 CFR part 251, subpart B—Special Uses which apply to authorizations for the use and occupancy of National Forest System lands. The agency concludes that there are several opportunities to eliminate unnecessary and burdensome provisions and to achieve cost efficiencies by streamlining the authorization application process, with particular emphasis on reducing costs of implementation of the National Environmental Policy Act, and by removing or revising certain requirements deemed unnecessary or outdated in administering existing permits.

Approximately 72,000 special use authorizations are in effect. These uses cover a wide range of activities from public and private uses to large-scale commercial facilities. Applicants for and holders of authorizations include individuals, organizations, businesses, and State, county, and local governments. Examples of authorized land uses include road rights-of-way serving private residences, apiaries, domestic water supplies, telephone and electric rights-of-way, municipal sewage treatment plants, ski areas, resorts, marinas, and public parks and playgrounds. About 6,000 applications are received each year for uses of National Forest System lands.

There are 15 statutory authorities authorizing special uses on National Forest System lands. These authorities, which are listed at 36 CFR 251.53, include statutes of broad application, such as the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976, and the Bankhead-Jones Farm Tenant Act of 1937. The basic authority of the Secretary to regulate the occupancy and use of National Forest System lands is 16 U.S.C 551.

Additionally, the Independent Offices Appropriations Act of 1952 and OMB Circular A–25 require holders of authorizations to pay for the use of the Federal land. The Federal Land Policy and Management Act of 1976 requires holders of rights-of-way authorizations to pay annually, in advance, the fair market value of the use of the Federal land and its resources. The 1976 Act also provides that fees may be waived, in whole or in part, under specified conditions when equitable and in the public interest.

Requirements of the National Environmental Policy Act, the Wilderness Act of 1964, the Archeological Resources Protection Act of 1979, the Federal Land Policy and Management Act of 1976, and Executive Orders 11990 (Floodplains) and 11988 (Wetlands) also bear directly on the issuance of special use authorizations.

The application for and administration of authorizations are also directly influenced by numerous court rulings that require the agency to incorporate decisions and findings into regulations to ensure that authorizations are legally sufficient. Several rulings have upheld the Secretary's authority to issue regulations governing the use and occupancy of the National Forest System lands and to require authorizations for such uses.

The current regulations ensure that the rights of all citizens regarding uses of National Forest System lands are protected. The special use regulations provide a means of legal control over those who would misuse or degrade National Forest System resources; protect health and safety of the public when using the services of commercial entities authorized to use the Federal lands; and ensure that environmental safeguards are employed and that authorized uses do not have adverse environmental effects on National Forest System lands.

This proposed rulemaking would not remove any of these basic safeguards and protections. The proposed rule does propose efficiencies in the application and approval or denial process as well as in the administration of authorizations with significant cost savings to applicants, holders, and the Federal government.

Review of the regulations reveals an opportunity to make the issuance and administration of special use authorizations a less cumbersome and costly process. There are opportunities to clarify requirements, and remove overlapping or redundant direction, thereby improving a proponent's ability to understand and act efficiently when making application.

A section-by-section description of the proposed revisions follows.

Section 251.51 Definitions

This section of the current regulations defines some of the significant and commonly-used terms and phrases used in subpart B. However, other definitions are found throughout the text of subpart B. The proposed rule would place all definitions in one location. Further, four terms currently used in the text of the subpart are not defined; thus, the proposed rule would add definitions for Revocation, Sound business management principle, Suspension, and Termination. These revisions are minor, but collectively will improve the public's understanding and use of the regulations.

Section 251.54 Special Use Applications

This section of the current regulations sets forth the procedure by which the agency accepts and acts upon applications for special use authorizations, including pre-application discussions with the proponent, where to file, content, and agency response to applications. Currently, the regulation does not provide clear direction about accepting or denying an application or identifying the point where a decision is made to approve a special use. In addition, the current regulations make it difficult to deny a special use request from a proponent who does not meet certain minimum requirements prior to submission of a formal application. This has resulted in unnecessary paperwork and expenses for both the proponent and Forest Service.

In the proposed rule, this section would be retitled as "Special use application procedure and authorization," and would be revised to include a decisionmaking process which explicitly defines required activities and outcomes in the special use application and authorization procedure. The main feature of this proposal, found in proposed paragraph (a), is to institute a process of screening proposed uses prior to processing a formal application. This screening would result in a determination as to whether to accept or reject the application. Nine minimum requirements applicable to all special uses would be used to screen proposals prior to processing a formal permit application. After a proposed use passes all the screens, a "proposal" as defined in 40 CFR part 1508.23 (Council on Environmental Quality regulations) would exist. A discussion of the nine minimum requirements follows.

1. Proposed paragraph (a)(1)(i)—The use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws. The Forest Service is obligated to comply with applicable Federal law and regulation in managing the National Forest System. In addition, while State and local officials are responsible for enforcing State and local laws that apply to uses on National Forest System lands, an authorized officer has an obligation to ensure that all health and sanitation standards can be met. For example, an officer might need to restrict uses or surface disturbances to prevent contamination of water supplies.

2. Proposed paragraph (a)(1)(ii)—The use is consistent with the direction and guidelines of the applicable approved land and resource management plan or other approved management plan for the area or can be made consistent with the current plan by modification of the proposed use or through amendment of the plan. Required by the National Forest Management Act (NFMA) (16 U.S.C. 1600 *et seq.*), land and resource management plans allocate National Forest System lands and resources to various uses and set forth management direction and prescriptions to guide Forest Service employees in managing the lands. The plans are developed in accordance with the rules at 36 CFR part 219 and adopted with extensive public participation and comment. In addition to National Forest plans, occasionally there are distinct management plans required by statute establishing special areas within the National Forest System, such as scenic areas, wilderness, or wild and scenic rivers. Generally, these plans are incorporated as part of the applicable forest plans. NFMA requires that proposed uses be consistent with the forest plan.

3. Proposed paragraph (a)(1)(iii)—The use will not create a serious and substantial risk to public health or safety. This requirement is essential to protect not only visitors or users on National Forest System lands but also adjacent landowners and residents from unsafe or unhealthful effects of special uses conducted on National Forest System lands. The phrase "serious and substantial risk" is intended to limit the discretion of the authorized officers to findings of situations of very real risk to public health and safety.

4. Proposed paragraph (a)(1)(iv)—The use will not create an exclusive or perpetual right of use or occupancy. This requirement would be added to the rules to make clear what has been the longstanding congressional and administrative policy on occupancy and use—that a use authorization issued by the Forest Service, acting on behalf of the public, does not grant a permittee exclusive or perpetual right of occupancy of lands owned by the public. All standard clauses included in permits establish that uses are not exclusive (Forest Service Handbook 2709.11, Special Uses Handbook, Chapter 50—Terms and Conditions).

5. Proposed paragraph (a)(1)(v)—The use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System land. This requirement recognizes that special uses may conflict or interfere to a degree with Forest Service administrative use, scheduled or authorized uses, and use by adjacent landowners, but not unreasonably conflict with these pre-existing uses.

6. Proposed paragraph (a)(1)(vi)—The applicant does not have outstanding debts owed to the Forest Service under terms and conditions of a prior authorization. This requirement responds to a situation where a person formerly holding an authorization may reapply for an authorization at any time and the fact that the holder has shown bad faith under the prior authorization cannot be used to disqualify that applicant from receiving another authorization. This is not a prudent management practice. Private lessors would not issue a new lease to a lessee who owes back rent or amounts for damages. The Federal government should be equally prudent in administering the lands of the National Forest System.

7. Proposed paragraphs (a)(1)(vii)–(ix)—The activity does not involve gambling or providing of sexually-oriented commercial services, even if permitted under State law; The use does not involve military or paramilitary training or exercises by private

organizations or individuals, unless such training is federally funded; The use does not involve disposal of solid waste or storage or disposal of radioactive or other hazardous material. These minimum requirements are activities already prohibited by agency policy (Forest Service Manual Chapter 2710) because they are inconsistent with National Forest System purposes, or represent an unacceptable environmental or safety hazard. These prohibited uses are proposed to be included in paragraph (a) because they have general applicability and future effect and thus are more appropriate in regulations than agency policy. In addition, these prohibitions on solid waste or hazardous material disposal respond to the liability risks to the Federal government associated with the provisions of the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act.

A proposal passing this initial screening process would then be submitted by the proponent as a formal written application. Action on the application would lead to a decision to approve or disapprove a special use. The "approval" decision is the linchpin for National Environmental Policy Act compliance and the focus of the Federal action which is taken after a proposal is screened and it after is concluded that a valid need exists, that the special use would be in the public interest, and that the need may be fulfilled by a special use at the site requested.

The benefits of implementing this initial screening process would derive from efficiency improvements, thus reducing administrative costs by both the applicant and the agency. Screening would permit review of the proposal before the proponent or the Forest Service invests time and expense in providing information to accompany the application or in a detailed evaluation of the proposed special use. Proponents whose special use requests are rejected in the screening process would save money through the avoidance of the costs of preparing an application and its supporting documentation. For those proposals that meet the minimum requirements of the screening process, the proposed rule would require the authorized officer to provide information and guidance on the contents of the application; thus the proponent would know what information to submit and what the agency would use to evaluate the request. Applicants also would receive direct benefits in time savings derived from the screening process. The screening process would eliminate time-consuming and costly processing of applications that cannot meet minimum requirements, thereby allowing a faster agency response on those applications that pass the initial screening. The efficiency gains would be achieved with minimal additional administrative costs to the Forest Service.

Proposed paragraph (c) of this section, requiring applicants to obtain appropriate licenses or permits from other governmental entities as a condition of obtaining a Forest Service permit, would be revised to remove the requirement that applicants must file simultaneous application with the Forest Service since this requirement is redundant of requirements in § 251.50.

Paragraph (e), entitled "Application content," would be revised to correct references to numbered paragraphs appearing later. Paragraph (e)(3), setting forth requirements for describing the project, would be revised in the proposed rule to remove the requirement to describe the project's impact on the environment. This paragraph would also be clarified by requiring applications to include appropriate resource information in addition to maps. Paragraph (e)(4), requiring an environmental protection plan to be included with the application for permit would be removed. These requirements would be appropriately covered in proposed paragraphs (g) and (h).

Paragraph (i) of § 251.54 of the current regulations, describing factors leading to agency denial of applications, would be retitled "Receipt and denial of applications for special uses" to more accurately reflect the content of this paragraph, and would be redesignated as paragraph (f) in the proposed rule. The relocation of this paragraph in the proposed rule would place the denial of the application in the proper sequence of agency consideration of the application.

A new provision, paragraph (f)(1) in the proposed rule, would be added stating that an application which passes the initial screening set forth in paragraph (a) shall be received by the agency for consideration. This addition is made to show that an application is only considered received until the criteria in paragraphs (f)(2) (i)–(v) are met, at which time they are considered accepted.

Five of the six criteria for denying a special use application, listed in paragraph (i) of the current rule, would appear in paragraph (f)(2). Two of these criteria would be revised in the proposed rule. One criterion would be removed. Redesignated paragraph (f)(2)(i), which provides for denial if the use would be inconsistent or incompatible with the purposes for which the lands are managed, would be revised to add a reference to the nine screening criteria listed in paragraph (a)(1) . Redesignated paragraph (f)(1)(iv), which provides for denial if the applicant does not or cannot demonstrate technical feasibility or financial capacity, would be revised to include the inability to demonstrate economic feasibility of the proposed use. The criterion that use would otherwise be inconsistent with applicable Federal and state laws would be removed because this requirement is already covered in redesignated paragraph (a)(1)(i).

The concluding undesignated sentence of paragraph (i) of the current regulations would be removed, thus eliminating the requirement to consider an alternative site when an application is denied. It is not appropriate for the agency to suggest alternative sites when considering an applicant's proposed site. This revision would reduce the time taken by the agency to respond to an application, thus allow faster response to the applicant.

A new provision, paragraph (f)(3) in the proposed rule, would be added stating that the decision to deny a special use application, based on the factors listed in paragraph (f)(2), would not constitute a "proposal" as defined by Council of Environmental Quality regulations and thus would not require the agency to prepare an environmental analysis and documentation. As previously noted, this change would avoid costly investment by the applicant and the agency when an application fails to meet the minimum requirements of this section.

Existing paragraph (f) of § 251.54, entitled "Processing applications," would be redesignated as (g) in the proposed regulations. Paragraph (f)(1) would be revised to remove requirements placed on the authorizing officer to complete environmental documentation requirements, consult with other parties, and take other actions necessary to evaluate an application, These provisions are being moved to proposed paragraph (g), (h), and (j) to achieve consistency with other revisions made in this section and because the evaluations called for would not be timely at this stage of action on the permit application. Again, it should be noted that this proposed revision does not represent a departure from or decrease in agency compliance with NEPA procedures.

A new paragraph (g)(3) would be added to provide guidance on

processing applications for planning permits. This provision would limit application information to that required to make a decision on issuance of a planning permit and make clear that a planning permit would not require preparation of an environmental assessment or environmental impact statement. This provision would be a useful reference to the categories of special uses suitable for exclusion from documentation in an environmental assessment or an environmental impact statement that are defined in agency administrative directives—Forest Service Manual Chapter 1950 and Forest Service Handbook 1909.15. It does not represent any change in agency environmental analysis and documentation requirements. If a proponent subsequently made formal application to develop the project, the proponent would at that time provide the detailed information required to evaluate the project and its environmental effects. This provision is aimed at applications for major commercial uses, particularly for recreational uses, such as resorts and ski areas. A discussion of the need for and benefits of this proposed revision follows under the description of revisions to redesignated paragraph (h).

Paragraph (g) of § 251.54, entitled "Special application procedures," would be redesignated as (h) under the proposed rule. This paragraph currently describes special procedures for handling applications for oil and gas pipeline and large electric transmission line rights-of-way. This proposed rule contains a technical amendment to set the heading of paragraph (h)(1) in italic type for consistency with other paragraphs. Also, the proposed regulations would add a third special type of application—major resort development. This provision would make a substantial change in the way an application for authorization for a major commercial development, such as a ski area, would be processed.

Currently, an application for a special use authorization for a major commercial development triggers the initiation of environmental analysis and documentation. This generally occurs before the proponent has fully defined the project, which would be done through a master development plan. As a result, the decision and accompanying environmental documentation may require the applicant to substantially revise the proposal, which, if done, would then require preparation of supplemental environmental documentation at considerable additional cost to the applicant and the agency.

The proposed revision would provide for a 2-step process. The decision to issue a permit for preliminary planning for major resort developments would be separated from the decision to approve or disapprove the special use permit for the development. A proponent with a proposal for a major development, after passing the preliminary screening process described earlier, would submit an application for a five-year planning permit to complete a master development plan. The planning permit would be separate from the application for special use and would not prejudice acceptance or denial of a special use permit for the development. On-the-ground activities associated with master development planning are usually minor and of the type that can often be categorically excluded from documentation in an environmental assessment or environmental impact statement. Consistent with proposed paragraph (j) of this section, only one decision requiring environmental analysis and documentation would be made regarding approval of the major development: approve, deny, or approve the development with specified modifications.

The benefits from this proposed change in the regulations would result from cost savings in eliminating unnecessary paperwork and reducing the time for planning and approval of a major development.

Paragraph (h) of the current regulations would be redesignated as paragraph (i). This paragraph describes the factors used to deny a special use permit application for distribution of noncommercial printed material or for a group event for the public expression of views. No substantive revisions are proposed to this subsection.

A new paragraph (j), entitled "Action taken on accepted applications," would be added by the proposed rule. It would provide guidance for the action to be taken by the Forest Service when processing an application. It is at the point of acceptance of a formal application that environmental analysis and documentation occurs. The proposed provision would clarify that the decision to be made in considering a special use application would be: (1) To approve; (2) to deny; or (3) to approve with modification. By specifying the range of decisions available, the proposed rule would result in better focused environmental analysis and documentation with less time and expense required to evaluate the special use application. This proposed change would enable the agency to more clearly define in the environmental analysis the purpose and need of the project to which the agency is responding. This approach is modeled on that taken by other Federal agencies, notably the Federal Energy Regulatory Commission (FERC) and the Corps of Engineers ("Corps"). [For the Corps procedures, see 33 CFR part 325, Appendix B (1988), as well as Sylvester v. Army Corps of Engineers, 871 F.2d 817 (9th Cir. 1989). For FERC's procedures, see 18 CFR part 380, as well as North Carolina v. City of Virginia Beach, 951 F.2d 596 (4th Cir. 1991).] This paragraph also would provide that the authorized officer could join several applications involving the same or similar land uses together in one decision. This often occurs when seasonal activities on the National Forests, such as placement of bee hives or harvesting of fishing worms, result in a large number of applications for the same use.

Paragraph (k), entitled "Authorization and reauthorization of a special use," would provide guidance on the issuance of the special use authorization following the decision to authorize the special use. This paragraph specifies that an authorized officer would issue one or more authorizations appropriate to the type of use to be authorized. The language also provides that special uses may be reauthorized at any time consistent with the decision that initially approved the use as long as the initial analysis is consistent with the current land and resource management plan and environmental documentation procedures.

Section 251.56 Terms and Conditions.

This section of the current rule sets forth the terms and conditions to be included in each special use authorization. Paragraph (d) prescribes the liability of the holder of an authorization. Paragraph (d)(2) would be revised to clarify requirements prescribing limits of liability for certain high hazard special use authorizations.

Holders of rights-of-way authorizations that are of high risk, such as powerlines, are liable under the current regulations for injury, loss, or damage (including fire suppression costs), without regard to negligence, up to $1 million should the holder's use and occupancy cause damage to National Forest System land and resources. This maximum amount of strict liability is usually incorporated into authorizations by the authorized officer without consideration of the risks associated with the location of the right-of-way. This means that the limit on strict

liability for a right-of-way through dense, mature trees could be the same as through an area of sparse shrubs in open land. This standard treatment without regard to the specific situation potentially creates inequities between holders of authorizations who must make appropriate financial arrangements for the strict liability.

To eliminate the potential inequity, the proposed revision would require the authorized officer to conduct a local risk assessment to establish the amount of strict liability associated with the use. This risk assessment would consider environmental conditions and values, historical fire data, the National Forest Land and Resource Management Plan, and other pertinent information. In no case would the strict liability of the holder be higher than $1 million for any one occurrence. The risk assessment approach ensures protection of the public while eliminating the potential for requiring a higher strict liability than is appropriate to the risk and would represent a savings to proponents whose risk is under the current $1 million maximum. Nothing is the proposed change would affect the limits of liability that might result from negligence.

Section 251.57 Rental Fees

This section of the special use regulations currently requires that holders of special use authorizations pay an annual rental fee in advance which is based on fair market value of the rights and privileges authorized, prescribes the conditions under which all or part of those fees may be waived, and the circumstances under which additional fees may be assessed. A recent amendment to the Federal Land Policy and Management Act of 1976 (43 CFR 1701 et seq.) allows payment of fees either annually or for more than one year at a time. The act allows holders who are private individuals (as opposed to commercial entities) whose annual fees are $100 or more the option of making annual payments or payments covering more than one year. Paragraph (a) of this section of the proposed rule would be revised to incorporate this statutory amendment, thus allowing a holder of a permit for which the annual fee is small to pay several years fees at one time, thus avoiding annual administrative costs. Savings to the agency also would result by avoiding annual billing costs.

The Forest Service currently administers about 5800 special use authorizations for large commercial operations (such as communication sites and rights-of-way for powerlines, telephone lines, and pipelines). These uses are authorized as permits requiring yearly payment of fees. The existing regulations allow the use of easements and leases to authorize such uses. An easement or lease conveys a limited right to occupy the land for a specified time and grants the holder rights (transfer, compensation, tenure) not available with permits. The authority to grant easements and leases for certain types of special uses is found in title V of the Federal Land Policy and Management Act of 1976 and is covered by the existing regulation. However, long-standing agency practice has been to use permits, not easements or leases.

Review of the rules and agency administration of these rules has led the agency to conclude that offering easements and leases for large commercial operations has substantial benefits for the holder and the government. A change in agency directives will be needed to provide for the use of easements and leases.

Under proposed paragraph (a), use of easements and leases instead of permits, as authorized by the Federal Land Policy and Management Act, would allow the holder to make a one-time payment of fees based on fair market value covering the life of the easement or lease. Reauthorization of these permits, and authorization of new uses as easements or leases would reduce the average number of payments per use authorization from 30 annual payments, for example, to 1 payment in the first year. The current regulations direct the Forest Service to reappraise the fee for each of these permits every five years over the life of the permit. Conversion to an easement or lease would reduce the number of appraisals by five for each permit. The process of reviewing an application for easements or leases would follow the same procedures for all proposed uses. The Forest Service would realize considerable administrative cost savings from reduction in billing expenses and appraisals. Additionally, the conversion from a permit to an easement or lease could reduce the administrative costs to the holder and could be a potential savings to the consumer. Further, easements or leases would have additional value to holders operating as licensed utilities. As opposed to permits, easements and leases are considered capital assets which earn a fixed return based on standards set by State public utility commissions. The capital asset value of an easement or lease is estimated to be two-tenths of 1 percent of the one- time payment amount.

The conversion from a permit to an easement or lease (which would occur as permits expire) would convey some additional rights to the holder. The fair market value of any additional rights would be realized in increased fees, resulting in increased returns to the Treasury and the taxpayer.

Finally, under the proposed rule current paragraph (g) of this section would be removed. This provision, which permitted a test of fee waivers on the Mark Twain National Forest, expired on December 31, 1990, and thus should be removed from the Code of Federal Regulations.

Section 251.60 Termination, Revocation, and Suspension

This section of the current regulations prescribes the conditions under which a special use authorization may be suspended, revoked, or terminated. The proposed addition of definitions for suspension, revocation, and termination in § 251.51 requires that paragraphs (b), (e), (f), and (h) of § 251.60 be revised to be consistent with those definitions. As revised, these paragraphs would clarify the confusion that exists over the use of the terms in the current regulation. For example, termination and revocation have been used as synonyms resulting in confusion. The proposed revisions would make it clear that termination is the cessation of a special use authorization under its own terms, while revocation would mean the cessation of a special use authorization by action of the authorized officer. Suspension would be defined as a temporary revocation. Changes in this section will contribute to the regulation's clarity and the public's and agency's understanding and use of the regulations.

Paragraphs (g) and (i) of § 251.60 would be revised to correct the reference to regulations relating to appeals of decisions relating to the occupancy and use of National Forest System lands. The appeal regulations were substantially revised on January 23, 1989 (54 FR 3362), and relocated to subpart C of part 251.

Section 251.61 Modifications

This section of the current regulation describes those situations under which the holder is required to modify an existing authorization and the information necessary to cause the agency to modify the authorization. The proposed rule would revise paragraph (c) to clarify that modifications for which the approval of the authorized officer is necessary are not limited to "maintenance or other activities" and would include all those which impact the environment, other users, or the public.

Summary

The President's direction to review and revise existing government regulations to remove burdens or promote economic growth has led the Forest Service to identify opportunities to improve its regulations for authorizing the use and occupancy of National Forest System lands. The agency's proposed rule seeks to streamline the application and decisionmaking process in authorizing special uses and achieve cost savings to applicants and holders of authorizations and the Federal government. The proposed revisions to the regulations would: (1) Establish a pre-application screening process to weed out proposals that do not meet minimum use requirements, (2) streamline and better focus the analysis requirements of the National Environmental Policy Act used when evaluating proposed uses, (3) allow the use of easements instead of permits which would allow one-time payment of fees rather than annual payments, (4) base the strict liability imposed on holders of authorizations for high-risk uses on risk assessments, and (5) make the regulations more "user-friendly" by clarifying certain provisions. Adoption of the proposed revisions to the special use regulations could be accomplished at minimal additional cost by the Forest Service.

The Forest Service invites individuals, organizations, businesses, and public agencies and governments to comment on this proposed rule. To aid in analysis of comments, it would be helpful if reviewers would key their comments to specific proposed sections or topics. Respondents should also know that in analyzing and considering comments, the Forest Service will give more weight to substantive comments than to simple "yes", "no", or "check off" responses to form letter/questionnaire submissions.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this is not a major rule. The rule will not have an annual effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, or State or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. To the contrary, adoption of this proposed rule would have positive benefits to the economy by creating efficiency benefits to the Forest Service and special use proponents and holders. This rule has also been reviewed in light of the President's regulatory review guidance of January 28, and it has been determined that the expected benefits of this rule outweigh the expected costs to society, and that the rule is fashioned to maximize net benefits to society, and the rule provides clarity to the regulated community.

Moreover, this rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been determined that this action will not have a significant adverse economic impact on a substantial number of small entities as defined by that act. To the contrary, the efficiencies and cost savings to be achieved by this rule will benefit small entities who apply for special use authorizations.

This regulation also has been reviewed for its impact on private property rights in accordance with Executive Order 12630. No impacts on private property rights which might constitute a taking would result because these regulations apply to the discretionary use of Federally owned land.

Environmental Impact

Based on both experience and environmental analysis, this proposed rule will have no significant effect on the human environment, individually or cumulatively. The rule is procedural and sets forth the manner in which the agency will conduct its business operations related to evaluating and administering special use authorizations. Therefore, it is categorically excluded from documentation in an environmental assessment or an environmental impact statement. Moreover, the proposed rule would result in better focused environmental analysis and documentation and has no substantive effect on agency compliance with Council of Environmental Quality regulations.

Controlling Paperwork Burdens on the Public

This rule will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, it is proposed to amend subpart B of part 251 of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for subpart B continues to read:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. In § 251.51, revise the definitions of "Easement" and "Lease" and add definitions for "Revocation," "Sound business management principle," "Suspension," and "Termination" in the appropriate alphabetical order to read as follows:

§ 251.51 Definitions.

* * * * *

Easement—a type of special use authorization, usually granted for linear rights-of-way, utilized in those situations where a conveyance of a limited and transferable interest in National Forest System land is necessary or desirable to serve or facilitate authorized long-term uses, and may be compensable according to its terms.

* * * * *

Lease—a type of special use authorization, usually granted for improvements requiring substantial capital investment for occupancy of specific sites of a non-linear nature, used in those situations where a conveyance of a limited and transferable interest in National Forest System land is necessary or desirable to serve or facilitate authorized long-term uses, and may be compensable according to its terms.

* * * * *

Revocation—the cessation of a special use authorization by action of an authorized officer prior to the end of the specified period of occupancy or use due to the holder's noncompliance with the terms of the authorization, failure to exercise the privileges granted, or for reasons in the public interest.

* * * * *

Sound business management principle—an accepted practice or method used to establish fees and charges. Examples include, but are not limited to, appraisals as a component of the process used to obtain the appropriate charge for a special use, fee schedules, competitive bidding, negotiation between the authorized officer and the applicant, and application of other economic factors,

such as cost efficiency, supply and demand and administrative costs.

* * * * *

Suspension—a temporary revocation.

* * * * *

Termination—the cessation of a special use authorization by operation of law or the occurrence of a fixed or agreed-upon condition, event or time without the necessity for any decision or action by the authorized officer, such as expiration.

3. In § 251.54, remove paragraph (e)(4); redesignate paragraph (e)(5) as (e)(4) and paragraphs (i), (f), (g), and (h) as (f), (g), (h) and (i) respectively; revise the section heading, paragraphs (a), (c), the introductory text to paragraph (e), paragraph (e)(3) and redesignated paragraphs (f), (g) introductory text, (g)(1) and (3), (h)(1) heading and (h)(3); and add new paragraphs (j) and (k) to read as follows:

§ 251.54 Special use application procedure and authorization.

(a) *Initial screening.* (1) When occupancy of National Forest System land for purposes other than the distribution of non-commercial printed material or for a group event for the public expression of views is desired, a proponent is required to contact the Forest Service office(s) responsible for the management of the affected land as early as possible in advance of the proposed use. Upon notice of or written application for a proposed use, the authorized officer shall screen the proposals to insure that the use meets the following minimum requirements applicable to all special uses:

(i) The use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable state and local health and sanitation laws.

(ii) The use is consistent with the direction and guidelines of the applicable approved land and resource management plan or other approved management plan for the area or can be made consistent with the current plan by modification of the proposed use or through amendment of the plan.

(iii) The use will not create a serious and substantial risk to public health or safety.

(iv) The use will not create an exclusive or perpetual right of use or occupancy.

(v) The use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System land.

(vi) The applicant does not have outstanding debts owed to the Forest Service under terms and conditions of a prior authorization.

(vii) The activity does not involve gambling or providing of sexually-oriented commercial services, even if permitted under state law.

(viii) The use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training is federally funded.

(ix) The use does not involve disposal of solid waste or storage or disposal of radioactive or other hazardous material.

(2) Proposed uses that appear to not meet all of the minimum requirements of paragraph (a)(1)(i)–(ix) of this section shall not be subject to further evaluation and processing. The authorized officer shall advise the proponent in writing that the use does not meet the minimum requirements. In the case where a written application has been submitted, the application shall be returned along with the written notice that the use does not meet the minimum requirements applicable to all special uses.

(3) For those proposals that appear to meet the minimum requirements, the authorized officer shall provide the proponent guidance and information on the following, to the extent practicable:

(i) Possible land use conflicts as identified by review of land management plans, landownership records, and other readily available information sources;

(ii) Application procedures and probable time requirements;

(iii) Applicant qualification;

(iv) Fees, charges, bonding and security requirements;

(v) Necessary associated clearances, permits, and licenses;

(vi) Environmental and management considerations;

(vii) Special conditions; and

(viii) Identification of on-the-ground investigations which will require temporary use permits.

(4) If requested by the proponent, the Forest Service, to the extent reasonable and authorized by law, will not disclose project and program information revealed during pre-application contacts.

* * * * *

(c) *Coordination of applications.* Authorizations for use of National Forest System land may be conditioned to require State, county or other Federal agency license, permit, certificate, or other approval document, such as Federal Communication Commission license, Federal Energy Regulatory Commission license, State water right, or county building permit.

* * * * *

(e) *Application content.* As a minimum, applications shall include the information contained in paragraphs (e)(1) through (4) of this section.

* * * * *

(3) *Project description.* Except where application for a permit for a major resort development, a project description, including map(s) and appropriate resource information, shall be required in sufficient detail to enable the authorized officer to determine the feasibility of the project or activity proposed, any benefits provided to the public, the safety of the proposal, the lands to be occupied or used, the terms and conditions to be included, and the proposal's compliance with applicable laws, regulations and orders.

* * * * *

(f) *Receipt and denial of applications for special uses.*

(1) An application which passes the initial screening set forth in paragraph (a) of this section shall be received by the agency for consideration.

(2) An authorized officer shall deny issuance of an authorization, including group events not subject to paragraph (h) of this section, if that officer determines that:

(i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, with other uses, or with the minimum requirements of § 251.54(a)(1)(i)–(ix); or

(ii) The proposed use would not be in the public interest; or

(iii) The applicant is not qualified; or

(iv) The applicant does not or cannot demonstrate technical or economic feasibility of the proposed use or financial capacity to undertake the use and fully comply with the terms and conditions of the authorization; or

(v) There is no person or entity authorized to sign a special use authorization on behalf of the group applying for an authorization and/or there is no person or entity willing to accept responsibility for the group's adherence to the terms and conditions of the authorization.

(3) A special use application which does not meet the criteria established in paragraphs (f)(2)(i) through (f)(2)(v) of this section does not constitute a proposal as defined in 40 CFR 1508.23, and does not require environmental analysis and documentation.

(g) *Processing applications.* The authorized officer shall acknowledge in writing acceptance of an application.

(1) The authorized officer shall assess the applicant's qualifications and determine compliance of the proposal with applicable laws, regulations, and orders and other criteria established in paragraph (f) of this section.

* * * * *

(3) For planning permits, including those issued for a major resort development as described in paragraph (h)(3) of this section, the authorized officer shall only assess the applicant's financial and technical qualifications and determine compliance with other applicable laws, regulations, and orders. Permits for planning may be categorically excluded from documentation in an environmental assessment or environmental impact statement pursuant to Forest Service Handbook 1909.15.

(h) * * *

(1) *Oil and gas pipeline rights-of-way.*

* * * * *

(3) *Major resort development.* Proponents of a major resort development may submit an application for a 5-year planning permit. Applicants for this planning permit must include the information contained in paragraphs (e)(1) through (e)(2) of this section. Upon completion of a master development plan developed under a planning permit, proponents may then submit an application for a long-term permit to construct and operate the resort. This application must include, as a minimum, the information contained in paragraphs (e)(1) through (e)(4) of this section. Issuance of a planning permit does not prejudice approval or denial of a subsequent application for a special use permit for the development.

* * * * *

(j) *Action taken on accepted applications.* Except for applications for a planning permit, upon acceptance of an application for a special use, the authorized officer shall evaluate the proposed use for the requested site, including effects on the environment, and decide whether to: approve the proposed use; approve the proposed use with modifications; or deny the proposed use. A group of similar special uses may be approved in one decision. The authorized officer may request additional information as described in paragraph (e)(4) of this section. Special use applications that are denied are to be returned to the proponent with an explanation for the denial.

(k) *Authorization and reauthorization of a special use.* Upon a decision to approve a special use or a group of similar uses, the authorized officer may issue one or more special use authorizations as defined in § 251.51 of this subpart. Special uses may be reauthorized upon expiration so long as such use remains consistent with the decision that approved the special use or group of uses. If significant new information or circumstances have developed, appropriate environmental analysis must accompany the decision to reauthorize the special use.

4. In § 251.56 revise paragraph (d)(2) to read as follows:

§ 251.56 Terms and conditions.

* * * * *

(d) * * *

(2) Holders of special use authorizations for high risk use and occupancy, such as, but not limited to, powerlines, and oil and gas pipelines, shall be held liable for all injury, loss, or damage, including fire suppression costs, caused by the holder's use or occupancy, without regard to the holder's negligence, provided that maximum liability shall be specified in the special use authorization as determined by a risk assessment, prepared in accordance with established agency procedures, but shall not exceed $1,000,000 for any one occurrence. Liability for injury, loss or damage, including fire suppression costs, in excess of the specified maximum shall be determined by the laws governing ordinary negligence of the jurisdiction in which the damage or injury occurred.

* * * * *

5. In § 251.57, remove paragraph (g), redesignate paragraph (h) as (g) and revise paragraph (a) to read as follows:

§ 251.57 Rental fees.

(a) Except as otherwise provided in this part or when specifically authorized by the Secretary of Agriculture, special use authorizations shall require the payment in advance of an annual rental fee as determined by the authorized officer.

(1) The fee shall be based on the fair market value of the rights and privileges authorized as determined by appraisal or other sound business management principles.

(2) The authorized officer may require either annual payment or a payment covering more than one year at a time. Holders of authorizations who are private individuals may, at their option, elect to make either annual payments or payments covering more than one year, if the annual fee is greater than one hundred dollars.

* * * * *

6. In § 251.60, revise paragraphs (b), (e) through (i) to read as follows:

§ 251.60 Termination, revocation, and suspension.

* * * * *

(b) A permit may be suspended or revoked at the discretion of the authorized officer for reasons in the public interest.

* * * * *

(e) Prior to revocation or suspension, the authorized officer shall give the holder written notice of the grounds for such action and reasonable time to cure any noncompliance.

(f) Immediate suspension of a special use authorization, in whole or in part, may be required when the authorized officer determines it to be necessary to protect the public health or safety or the environment. In any such case, the superior of the authorized officer will arrange, within 10 days of request of the holder, for an on-site review of the adverse conditions with the holder. Following this review, the superior officer will take prompt action to affirm, modify or cancel the suspension.

(g) Except for suspension or termination of easements issued pursuant to § 251.53 (e) and (1) of this part all appeals from any decision of an authorized officer under this section shall be taken under 36 CFR part 251, subpart C of this chapter.

(h) The authorized officer may take actions to suspend or revoke easements issued pursuant to § 251.53 (e) and (1) of this part under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under 7 CFR 1.130 through 1.151. No administrative proceeding shall be required if the easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

(i) The Chief may terminate any easement granted under the provisions of the Act of October 13, 1964, 78 Stat. 1089 (16 U.S.C. 534):

(1) By consent of the owner of the easement,

(2) by condemnation, or

(3) upon abandonment after nonuse by the owner of the easement for a period of 5 years. Before any easement is terminated for nonuse or abandonment, the owner of the easement must be given notice and, upon the owner's request made within 60 days after receipt of the notice, an opportunity to present relevant information in accordance with the provisions of 36 CFR part 251, subpart C of this chapter.

* * * * *

7. In § 251.61, revise paragraph (c) to read as follows:

§ 251.61 Modifications.

* * * * *

(c) A holder must obtain prior approval of the authorized officer for all activities that will impact the environment, other users, or the public.

Dated: August 10, 1992.

George M. Leonard,

Associate Chief.

[FR Doc. 92-19371 Filed 8-13-92; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 920773-2173]

Designated Critical Habitat; Sacramento River Winter-Run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposes to designate critical habitat for the Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*) pursuant to the Endangered Species Act (ESA). The habitat proposed for designation includes (1) the Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta; (2) all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait; (3) all waters of San Pablo Bay westward of the Carquinez Bridge; and (4) all waters of San Francisco Bay from San Pablo Bay to the Golden Gate Bridge. In addition, the proposed critical habitat designation identifies those physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection. The economic and other impacts resulting from this critical habitat designation, over and above those arising from the listing of the species under the ESA, are expected to be minimal. The designation of proposed critical habitat provides explicit notice to Federal agencies and the public that these areas and features are vital to the conservation of the species.

DATES: Comments must be received on or before October 13, 1992. Requests for a public hearing must be received on or before September 28, 1992.

ADDRESSES: Comments and requests for a public hearing should be addressed to Dr. Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213 at (310) 980-4015, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910 (301) 713-2322.

SUPPLEMENTARY INFORMATION:

Background

Although winter-run chinook salmon are currently listed as threatened (55 FR 46515, November 5, 1990), NMFS published a proposed rule to reclassify the species as endangered on June 19, 1992 (57 FR 27416). Critical habitat was not designated at the time of listing since an analysis of the impacts of designation, as required by section 4(b)(2) of the ESA, had not been completed. In the final rule listing winter-run chinook salmon as threatened, NMFS indicated that deferral of the critical habitat designation was not considered detrimental to the conservation of the species since (1) section 7 consultations conducted by NMFS would identify any Federal actions that might harm the species including the modification or destruction of its habitat and (2) all prohibitions on taking the species would be in effect which would allow NMFS to treat actions likely to adversely modify or destroy the species' habitat as a take of the species. NMFS indicated that critical habitat would be proposed in a separate rulemaking following completion of the required analyses.

When NMFS published an emergency interim rule, August 4, 1989, (54 FR 32088) to list the winter-run chinook salmon as threatened under the ESA, portions of the Sacramento River were designated as critical habitat. The designation included a portion of the Sacramento River extending from Red Bluff Diversion Dam, Tehama County (River Mile 243) to Keswick Dam, Shasta County (River Mile 302), and included the adjacent riparian zones, the river water, and the river bottom. This portion of the Sacramento River contains almost all of the habitat where suitable conditions for spawning, egg incubation, and rearing of juvenile fish exist if water management strategies are implemented to maintain suitable water temperatures. This designation represented the minimum amount of habitat that NMFS believed was necessary to ensure the survival and development of spawned eggs and the successful rearing of juveniles during the period when the emergency rule was in effect.

During the period covered by the emergency listing, NMFS published a proposed rule to list the winter-run chinook as a threatened species under the ESA (March 20, 1990, 55 FR 10260). To avoid a hiatus in protection of the species until the formal listing process was completed, NMFS published a second emergency interim rule on April 2, 1990 (55 FR 12191) which included a designation of critical habitat identical to that included in the first emergency rule.

NMFS has completed an assessment of the economic impacts of listing the winter-run chinook salmon and designating critical habitat (Hydrosphere 1991). This assessment focused on identifying the economic consequences (costs and benefits) of implementing alternative water management strategies to achieve specific temperature and flow criteria for various alternative critical habitat designations. In addition, NMFS has prepared an environmental assessment (EA), pursuant to the National Environmental Policy Act (NEPA), to evaluate both the environmental and economic impacts of the proposed critical habitat designation.

Critical Habitat Definition

Critical habitat is defined in section 3(5) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species." Areas outside the current range of a species' habitat can only be designated if a designation limited to the species' present distribution would be inadequate to ensure the conservation of the species. The term conservation, as defined in section 3(3) of the ESA, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

The criteria to be considered in designating critical habitat are specified

under 50 CFR 424.12. In making critical habitat designations, requirements that are essential to the conservation of species and that may require special management considerations or protection are considered. NMFS must consider requirements of the species including (1) space for individual and population growth, and for normal behavior, (2) food, water, air, light, minerals, or other nutritional or physiological requirements, (3) cover or shelter, (4) sites for breeding, reproduction, or rearing of offspring and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species.

In addition, NMFS must focus on and list the known physical and biological features (primary constituent elements) within the designated area(s) that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality or quantity, and vegetation and soil types.

Consideration of Economic and Other Factors

The economic, environmental and other impacts of a designation must also be evaluated and considered. NMFS must identify present and anticipated activities that may adversely modify the proposed critical habitat or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species.

The impacts considered in this analysis are only those incremental impacts specifically resulting from a critical habitat designation, above the economic and other impacts attributable to listing the species. Because listing a species under the ESA provides significant protection to the species' habitat, the direct economic and other impacts resulting from critical habitat designation, over and above the impacts of the listing itself, may be minimal (see Significance of Designating Critical Habitat section of this preamble). In general, the designation of critical habitat only duplicates and reinforces the substantive protection resulting from listing.

Impacts attributable to listing include those resulting from the taking prohibitions under section 9 of the ESA and associated regulations. "Taking" as defined in the ESA includes harm to a listed species. Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly impairs essential behaviors including breeding, feeding or sheltering.

Impacts attributable to listing also include those resulting from the duty of Federal agencies under section 7 to ensure that their actions are not likely to jeopardize endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or modification of its habitat regardless of whether that habitat has been designated as critical.

Significance of Designating Critical Habitat

The designation of critical habitat does not, in itself, restrict human activities within the area or mandate any specific management or recovery action. A critical habitat designation contributes to conservation of the species primarily by identifying critically important areas and describing the features within the areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the ESA, the only direct impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement, and does not affect strictly state or private activities.

Under the section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 404.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, activities that destroy or adversely modify critical habitat also are likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation usually only duplicates the protection provided under the section 7 jeopardy provision. However, critical habitat may provide additional benefits to a species if areas outside the species' current range have been designated because Federal agencies also would be expected to consult on actions that occur in these areas.

A designation of critical habitat provides a clearer indication to Federal agencies as to when consultation under section 7 is required, particularly if the actions would not result in direct mortality or injury to individuals of a listed species (e.g., an action occurring within the critical area when a migratory species is not present). Also, describing the essential features of the habitat assists in determining which activities conducted outside the designated area are subject to section 7 requirements (i.e., activities that may affect essential features of the designated area). For example, diversions of water upstream from a critical habitat area may affect the essential features of the designated habitat (e.g., water-flow) and would be subject to section 7 requirements.

Also, a critical habitat designation would assist Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. This is particularly true if there are alternative areas that would provide for the conservation of the species. With a designation of critical habitat, potential conflicts between projects and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of critical habitat is that it helps focus Federal, state and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat areas, including conservation regulations to restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time of proposal, and therefore, are not considered in the critical habitat designation process. Other Federal, state, and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

Process for Designating Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated and essential habitat areas and features identified. If there are alternative areas that would provide for the conservation of the species, these alternatives are also identified. Second, the need for special management considerations or

protection of the area(s) or features is evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, the proposed critical habitat is published in the **Federal Register** for comment. After considering comments on the proposal and impacts assessment, the final critical habitat designation is published within one year of the propcsal. As new data become available, final critical habitat designations maybe revised using the same process.

A description of the essential habitat, need for special management, and impacts of designating critical habitat, as well as the proposed action, are described in the following sections for the Sacramento River winter-run chinook salmon.

Essential Habitat of the Sacramento River Winter-run Chinook Salmon

The winter-run chinook salmon is a unique population of chinook salmon that spawns in the Sacramento River and is distinguishable from the other chinook runs found in the river based on the timing of its upstream migration and spawning season. The biology of the winter-run chinook salmon is discussed in previous **Federal Register** notices including 52 FR 6041 (February 27, 1987), 55 FR 10260 (March 20, 1990), and 55 FR 46515 (November 5, 1990). These notices include information on the status of the species, its life history characteristics and habitat requirements as well as projects, activities, and other factors affecting the species. The current status of winter-run chinook salmon is presented in the EA prepared for this critical habitat designation and in the proposed rule to reclassify the species as endangered (June 19, 1992, 57 FR 27416).

It is likely that modification and loss of spawning and rearing habitat have been major factors contributing to the decline of the winter-run chinook salmon population in the Sacramento River. Essential elements of suitable spawning habitat for the species are the availability of clean gravel that provides a substrate for redd construction, adequate flow of oxygenated water through the spawning gravel to aerate the developing eggs, and water temperatures (between 42.5 and 57.5 °F) (5.8 and 14.12 °C) that allow successful egg development. Historically, winter-run chinook found and used this type of habitat in the cold spring-fed tributaries at the headwaters of the Sacramento River.

Construction of the Shasta and Keswick Dams as part of the U.S. Bureau of Reclamation's Central Valley Project blocked the winter-run chinook salmon's access to its historical spawning habitat in the headwaters of the Sacramento River. However, the operations of these dams also created new habitat for winter-run chinook by the release of cold hypolimnitic waters from Shasta Reservoir into the mainstem of the upper Sacramento River. During the late spring and summer months when winter-run chinook spawn, cold water released from Shasta and Keswick Dams may decrease ambient water temperatures downstream to about Red Bluff Diversion Dam and thus contribute to creating suitable spawning and rearing conditions in most normal water years. However, during dry years when less cold water is available for release from Shasta Dam, river temperatures below Keswick Dam are not as low for as long a period as they may be in normal water years. This temperature increase over time progressively reduces the availability of suitable spawning and rearing conditions for winter-run chinook salmon in the upper Sacramento River.

Winter-run chinook spawning occurs principally between Keswick Dam and Red Bluff Diversion Dam; however, the distribution of spawning adults in this river reach varies considerably between years depending on the size of the run, river temperatures, and operation of the diversion dam gates during the species' upstream migration. In recent years, raising the diversion dam gates from December 1 through April 1, has allowed migrating adults free passage upstream. About 61 percent of winter-run adults spawned between Keswick Dam and Ball's Ferry, 34 percent from Ball's Ferry to Red Bluff Diversion Dam, and 5 percent downstream of the diversion dam.

Spawning success of winter-run chinook highly depends on river water temperatures during the period of egg incubation and early fry development. Temperature requirements for chinook salmon have been documented from laboratory studies, and generally water temperatures of 56 °F (13.3 °C) or below are necessary for normal egg and fry development. Mortality of developing eggs and pre-emergent fry begins at 57 °F (13.8 °C) and reaches 100 percent at 62 °F (16.6 °C) (Boles 1988). Elevated temperatures can also adversely affect spawning adults, egg maturation and viability, and pre-emergent fry.

In general, suitable water temperatures for winter-run spawning and incubation only occur upstream of Red Bluff Diversion Dam. In most years, water temperatures downstream of the diversion dam are above the suitable range for egg incubation during the months winter-run chinook spawn. For example, Hallock and Fisher (1985) estimated that suitable temperature occurred downstream of the diversion dam only four times between 1967–1984.

Female winter-run chinook salmon also require proper spawning gravel sites for redd excavation when they are fully ripened. Spawning redd areas may vary in size between 1.25 and 15 square meters.

Spawning habitat in the upper Sacramento River has also been degraded by decreases in the rate of replenishment of gravel suitable for spawning, and this has been identified as a factor in the curtailment of the winter-run chinook run. Construction of Shasta and Keswick Dams precluded the recruitment of new gravel from the river and its tributaries above those dams, and gravel mining in tributary streams below the dams has slowed the recruitment of new gravel into the river. As a consequence, the amount of suitable spawning habitat has been decreasing. Since 1985, state and Federal agencies have conducted a spawning gravel replenishment program in the Sacramento in an attempt to remedy this problem.

Winter-run chinook require sustained high velocity water flows near the gravel surface to spawn successfully, and appropriate intra-gravel water flows to maintain adequate oxygen delivery, remove metabolic wastes, and allow emergence of alevins from the gravel. This flow is affected by depth, substrate porosity, and channel morphology. Significant decreases in flow during these spawning and incubation periods, particularly, can disrupt spawning activity, salmon redds, or result in reduced interstitial flow through spawning gravels that can suffocate developing eggs. Significant fluctuations in water releases from Keswick Dam, particularly reductions that decrease in-river flows during winter-run chinook spawning, incubation, fry development, and fry emergence, can adversely impact winter-run chinook salmon. Operational and structural limitations of the Anderson-Cottonwood Irrigation District Dam, and coordination of flow reductions with the Bureau of Reclamation through reduced releases at Keswick Dam can exacerbate these problems.

Since newly hatched chinook fry are small and consequently incapable of maintaining their position in fast currents, they usually are found in calm habitats characterized by fine sediments. As they become larger, they gradually use deeper and faster water associated with coarser substrates (Chapman and Bjornn 1969, Lister and Genoe 1970). Optimal temperature range for winter-run fry is 53.6 to 57.2 °F (12 to 14 °C), where maximum growth occurred at 55 °F (12.7 °C) (Boles 1988).

Studies of chinook salmon smolts in the middle reaches of the Sacramento River found higher densities in natural, eroding bank habitats with woody debris that may provide protection against predation (Michny 1988a). Studies of bank protection projects in the Sacramento River have demonstrated that juvenile salmon show a marked preference for non-riprapped areas over riprapped areas (Schaffter *et al.* 1983, Michny and Hampton 1984). Additional bank stabilization efforts that destroy or modify natural conditions can be expected to reduce further salmon rearing habitat.

Outmigrating chinook salmon smolts in estuaries generally feed in schools within saltmarshes, mudflats, and other intertidal habitats. Fall-run chinook in the Sacramento-San Joaquin Delta have been found to feed primarily on zooplankton. As the smolts increase in size, fish become a more important food item (Cannon 1982).

Successful initiation of upstream migration may depend on temporary increases in river discharge and relative onshore wind conditions to assist in olfactory recognition of home streams by adult chinook salmon (Banks 1969). A substantial increase or decrease in any of these conditions may adversely affect upstream migration (Hallock, *et al.* 1970, Bell 1973). Reversal of flows in the lower Sacramento-San Joaquin Delta resulting from export pumping at the Federal (Central Valley Project) and state (State Water Project) facilities can adversely affect upstream migrating adults by causing them to stray into the Delta rather than pass up the Sacramento River.

Physical and biological features that are essential for the conservation of winter-run chinook salmon, based on the best available information, include (1) unimpeded access from the Pacific Ocean to appropriate spawning areas in the upper Sacramento River, (2) the availability of clean gravel for spawning substrate, (3) adequate river flows for successful spawning, incubation of eggs, fry development and emergence, and downstream transport of juveniles, (4) water temperatures between 42.5 and 57.5 °F (5.8 and 14.1 °C) for successful spawning, egg incubation, and fry development, (5) habitat and prey free of contaminants, (6) riparian habitat that provides for successful juvenile development and survival, and (7) unimpeded passage of juveniles downstream from the spawning grounds to San Francisco Bay and the Pacific Ocean.

Need for Special Management Considerations or protection

In the areas proposed for critical habitat, NMFS has determined that certain physical and biological features may require special management considerations or protection. In particular, specific water temperature criteria, minimum instream flow criteria, and water quality standards represent physical features of the winter-run chinook's habitat that are essential for the species' conservation. Similarly, biological features of the designated critical habitat that are considered vital for winter-run chinook salmon include unimpeded adult upstream migration routes, spawning habitat, egg incubation and fry emergence areas, rearing areas for juveniles, and unimpeded downstream migration routes for juveniles.

To achieve the maximum conservation and recovery benefits for winter-run chinook salmon, the average daily water temperature in the Sacramento River should not exceed 56 °F (13.3 °C) between Keswick Dam and Red Bluff Diversion Dam from April 15 through September 30, and at no more than 60 °F (15.5 °C) from October 1 through October 31. Survival of winter-run chinook's developing eggs are adversely affected at temperatures above 56 (13.3 °C).

Similarly for maximum recovery, instream flows should be no less than 6,000 cubic feet per second (cfs) at Keswick Dam from April 15 through October 15. Flows below 6,000 cfs at Keswick Dam during this critical period may increase mortality to a level that is not acceptable. In addition, reductions in flows from 6,000 to 6,000 cfs at Keswick Dam should not occur at a rate of more than 1,000 cfs per day. Finally, instream flows in the Sacramento River should be maintained at levels necessary to ensure that a 500 cfs bypass flow occurs in the lower side channel between the fish bypass outlet at the Glenn-Colusa Irrigation District facility and the Sacramento River between July 31 and October 31. Absent unusual circumstances, the 500 cfs bypass flow in this area is considered the minimum necessary to ensure this portion of the winter-run chinook's critical habitat is not degraded.

Water quality is another essential feature of winter-run chinook habitat. In particular, dredging activities may degrade critical habitat used by winter-run chinook in San Francisco Bay and elsewhere. In the past, NMFS has evaluated dredging projects both in terms of their quantitative and qualitative impact on water quality. In general, small scale dredging projects, typically 100,000 cubic yards or less, were thought to have a minor impact while larger projects, especially projects involving contaminated sediments, were thought to have potentially significant adverse impacts on water quality. NMFS is attempting to evaluate and establish more specific criteria for use in judging the impact that dredging activities may have on this important habitat feature.

Management considerations and protection are not limited to activities conducted in the area proposed for designation as critical habitat. Activities that affect essential critical habitat features, regardless of their location, are a matter of concern. For example, a bank restoration project on the Sacramento River or in the Delta may degrade the associated habitat area utilized by winter-run chinook. Similarly, timber harvesting activities, authorization of pesticide use, highway and construction projects, and similar activities, may have the potential to modify or destroy the habitat and consultation is recommended.

This discussion of special management considerations and protective measures is provided to inform the public and to provide general guidance to Federal agencies. The recommended temperature and flow criteria have not been included in the regulatory text describing the critical habitat; rather, this discussion is to alert the public to recommendations that NMFS may make on a case-by-case basis as a part of the section 7 consultation process.

In addition, special considerations and protection for these and other habitat features will be evaluated in the development and implementation of a recovery plan for winter-run chinook salmon. If adequate protection cannot be provided through consultation or through the recovery planning process, separate management actions with binding requirements may be considered.

Activities That May affect the Essential Habitat

A wide range of activities may affect the essential habitat requirements of

winter-run chinook salmon. These activities include water management operations by the Bureau of Reclamation's Central Valley Project (e.g., Shasta and Keswick Dams, Red Bluff Diversion Dam, the Tehama-Colusa Canal, the Delta Cross Channel, and delta export facilities) that affect the Sacramento River and Delta, water management operations by the California Department of Water Resource's State Water Project (including export of water from the Sacramento-San Joaquin Delta) that affect both the Sacramento River and Delta, small and large water diversions by private entities such as the Anderson Cottonwood Irrigation District and the Glenn-Colusa Irrigation District that are located on the Sacramento River, bank restoration activities by the U.S. Army Corps of Engineers (Corps) in the Sacramento River and Sacramento-San Joaquin Delta, and Corps permitting activities that authorize dredging and other construction-related activities in the Sacramento River, Sacramento-San Joaquin Delta, and San Francisco Bay.

The Federal agencies that most likely will be affected by this critical habitat designation include the U.S. Bureau of Reclamation, the Corps, the U.S. Fish and Wildlife Service, the Federal Energy Regulatory Commission, the U.S. Navy, and NMFS. This designation will provide clear notification to these agencies, private entities, and the public of the existence of critical habitat for winter-run chinook salmon and the boundaries of the habitat and the protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies, and others as required, in evaluating the potential effects of their activities on the winter-run chinook salmon and its critical habitat, and in determining when consultation with NMFS would be appropriate.

Expected Impacts of Designating Critical Habitat

Under section 7 of the ESA, Federal agencies are required to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of listed species' critical habitat. Also, takings of winter-run chinook salmon are prohibited under regulations issued when the species was listed as threatened.

This action will identify specific habitat areas that have been determined to be essential for the conservation of the winter-run chinook salmon and that may be in need of special management considerations or protection. This designation would also require Federal agencies to evaluate their activities with respect to the critical habitat of winter-run chinook salmon and to consult with NMFS pursuant to section 7 of the ESA before engaging in any action that may affect the critical habitat. Federal agencies must ensure that their activities are not likely to result in the destruction or adverse modification of this critical habitat.

Currently, Federal agencies active within the range of the winter-run chinook salmon are required to consult with NMFS regarding projects and activities they permit, fund, or otherwise carry-out that may affect the species since it is listed as threatened under the ESA. Thus, even without this critical habitat designation, Federal agencies would be required to consult with NMFS, in most if not all situations, if winter-run chinook habitat might be adversely affected since any action that is likely to affect the habitat of winter-run chinook would also be expected to affect the species. For this reason, additional consultations resulting from this critical habitat designation are unlikely.

Designation of critical habitat for winter-run chinook salmon is not likely to have any additional adverse economic impacts on Federal, state, or private activities beyond those that already occur as a result of listing a species under the ESA. Following designation of critical habitat, Federal agencies will continue to engage in section 7 consultations to determine if the actions they authorize, fund, or carry out are likely to jeopardize the continued existence of winter-run chinook salmon; however, with the designation they will also need to address explicitly impacts to the species' critical habitat as well. However, this is not expected to materially affect the scope of future consultations or result in greater economic impacts since the impacts to winter-run chinook habitat are already considered in section 7 consultations.

Hydrosphere (1991) evaluated the economic impacts of implementing various special water management alternatives (i.e., specific temperature and instream flow criteria within the geographically defined critical habitat) that NMFS believes would improve the critical habitat of winter-run chinook salmon and, therefore, benefit the species. NMFS is currently using these same general hydrologic attributes to determine whether proposed or existing actions are likely to result in jeopardy to winter-run chinook salmon. For this reason, it is difficult to separate the estimated costs of the critical habitat designation from the costs associated with listing the species and the taking prohibition. However, for the purpose of this analysis, costs associated with achieving the identified hydrologic attributes (e.g., minimum flow requirements and temperature goals) within the critical habitat designation were analyzed. The resulting changes in hydrology and associated economic costs or benefits were then estimated.

Some actions that would improve winter-run habitat were not included in the analysis conducted by Hydrosphere since they (e.g., the Shasta temperature control device) are already in the planning or financing stages and are expected to be implemented regardless of whether critical habitat for winter-run chinook salmon is designated.

An evaluation of costs associated with achieving specified hydrologic attributes, such as minimum flow requirements and temperature goals, within the designated critical habitat concluded that total economic benefits and costs would be about $82.5 million and $69.6 million, respectively, with an overall net economic benefit of $12.9 million (Hydrosphere 1991).

Proposed Critical Habitat; Essential Features

Based on available information, NMFS proposes to designate critical habitat that is considered essential for the survival and recovery of the winter-run chinook salmon and that requires special management consideration or protection. The critical habitat designation proposed by this rule includes areas that are currently utilized by winter-run chinook salmon including the Sacramento River, all waterways and bays westward of Chipps Island to San Francisco Bay, and San Francisco Bay.

Proposed specific critical habitat includes (1) the Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, (2) all waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, (3) all waters of San Pablo Bay westward of the Carquinez Bridge, and (4) all waters of San Francisco Bay from San Pablo Bay to the Golden Gate Bridge.

Within the Sacramento River, this designation would include the river water, river bottom (including those areas and associated gravels utilized by winter-run chinook salmon as spawning substrate), and adjacent riparian zone used by fry and juveniles for rearing. In the areas westward from Chipps Island, including San Francisco Bay to the Golden Gate Bridge, this designation would include the estuarine water column and essential foraging habitat and food resources utilized by winterrun chinook as part of their juvenile outmigration or adult spawning migration.

Although it is important, the proposed critical habitat does not include the open ocean habitat utilized by winter-run chinook because degradation of this portion of the species habitat, or other factors associated with the open ocean, do not appear to be significant factors in the decline of the species. In addition, existing laws appear adequate to protect these areas, and special management of this habitat is not considered necessary at this time. NMFS will continue to monitor activities in this area under its general ESA responsibilities although it is not included in the area proposed for critical habitat designation.

NMFS has not proposed that specific areas outside the current geographical area occupied by winter-run chinook salmon be included in this designation since these areas are not considered essential for conservation of the species. Although some may recommend removing dams (e.g., Shasta and Keswick) along the Sacramento River so that the former upriver habitat could once again be made available to winter-run chinook, NMFS has concluded that proper management of the existing habitat is sufficient to provide for the survival and recovery of this species.

Public Comments Solicited

NMFS is soliciting information, comments, or recommendations on any aspect of this proposal from all interested parties. NMFS will consider all information, comments and recommendations received before reaching a final decision. The ESA also provides for a public hearing on this proposal, if requested. Hearing requests must be made in writing and received within 45 days (see **DATES** and **ADDRESSES**).

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The regulations are not likely to result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions or (3) a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act. The designation of critical habitat only duplicates and reinforces the substantive protection resulting from listing; therefore, the economic and other impacts resulting from designation are expected to be minimal, and a regulatory flexibility analysis is not required.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

The Assistant Administrator has determined that the proposed designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the State of California. This determination has been submitted for review by the responsible State agency under section 3.7 of the Coastal Zone Management Act.

NOAA Administrative Order 216–6 states that critical habitat designations under the ESA, generally, are categorically excluded from the requirement to prepare an EA or an environmental impact statement. However, in order to more clearly evaluate the minimal impacts of the proposed critical habitat designation, NMFS has prepared an EA. Copies of the assessment are available on request (see **FOR FURTHER INFORMATION CONTACT**).

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List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: August 5, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Subpart C, which was reserved, is added to read as follows:

Subpart C —Critical Habitat for Fish

§ 226.21 Sacramento River winter-run chinook salmon (Oncorhynchus tshawytscha).

The following waterways, bottom and water of the waterways and adjacent riparian zones: The Sacramento River from Keswick Dam, Shasta County (River Mile 302) to Chipps Island (River Mile 0) at the westward margin of the Sacramento-San Joaquin Delta, all

waters from Chipps Island westward to Carquinez Bridge, including Honker Bay, Grizzly Bay, Suisun Bay, and Carquinez Strait, all waters of San Pablo Bay westward of the Carquinez Bridge, and all waters of San Francisco Bay from San Pablo Bay to the Golden Gate Bridge.

[FR Doc. 92-19373 Filed 8-13-92; 8:45 am]
BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ACTION

Agency Information Collection

AGENCY: ACTION.

ACTION: Information Collection Request submitted to the Office of Management and Budget (OMB) for review.

SUMMARY: This notice provides information about an information collection proposal by ACTION, the Federal Domestic Volunteer Agency, covered under the Paperwork Reduction Act (44 U.S.C. Chapter 35), currently under review by OMB. ACTION is requesting a review by OMB with final action by October 9, 1992 so that the approved form can be used to plan the first training conference beginning in the middle of November, 1992.

DATES: OMB and ACTION will consider comments on the proposed collection of information and recordkeeping requirements received within 30 days from the date of publication.

ADDRESSES: Send comments to both—

Janet A. Smith, Clearance Officer, ACTION, 1100 Vermont Avenue NW., Washington, DC 20525, (202) 606-5245

Steve Semenuk, Desk Officer for ACTION, Office of Management and Budget, 3002 New Executive Office Bldg., Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Office of Action Issuing Proposal: Office of Policy Research and Evaluation/ Program Analysis and Evaluation Division.

Title of Forms: ACTION Training Conference Evaluation.

Need and Use: ACTION's legislation requires it to provide technical assistance to agencies and non-profit organizations which utilize or desire to utilize volunteers in connection with carrying out the purpose of the Domestic Volunteer Service Act of 1973. Information gathered in this information collection will be used to make changes in the later training conferences and plan future training conferences for project directors of ACTION programs.

Type of Request: Reinstatement of a previously approved data collection for which appproval has expired.

Respondent's Obligation to Reply: Voluntary.

Frequency of Collection: Once a year.

Estimated Number of Responses: 1,835.

Average Burden Hours per Response: 0.33 hours

Estimated Annual Reporting or Disclosure Burden: 606 hours.

Regulatory Authority: 42 U.S.C. 4993.

Dated: August 7, 1992.

Jane A. Kenny,

Director, ACTION.

[FR Doc. 92-19393 Filed 8-13-92; 8:45 am]
BILLING CODE 6050-28-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

SES Performance Review Board

AGENCY: Department of the Interior.

ACTION: Notice of Senior Executive Service (SES) Performance Review Board Appointments.

SUMMARY: This notice provides the names of those individuals who have been appointed by the Chairman of the Advisory Council on Historic Preservation to serve as members of the Advisory Council's SES Performance Review Board. Pursuant to the Memorandum of Understanding between the Advisory Council and the Department of the Interior, the SES performance appraisal plan for the Department has been adopted for use by the Advisory Council. The Performance Review Board will review the appraisal, award, and bonus recommendations for the SES members of the Advisory Council staff, and recommend final action to the Chairman. This notice is processed on behalf of the Advisory Council, as required by 5 U.S.C. 4314(c)(4).

DATE: These appointments are effective August 15, 1992.

FOR FURTHER INFORMATION CONTACT: J. Lynn Smith, Personnel Officer, Office of the Secretary (PSP), Department of the Interior, Washington, DC 20240, Telephone number: (202) 208-6702.

The names of the SES Performance Review Board members are:

Mr. Peter J. Basso (Career), Director, Office of Fiscal Services, Federal Highway Administration, Department of Transportation

Mr. Charles B. Respass (Career), Deputy Assistant Secretary for Operations, Department of State

Mr. Jerry L. Rogers (Career), Associate Director for Cultural Resources, National Park Service, Department of the Interior.

Dated: August 6, 1992.

John E. Schrote,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 92-19285 Filed 8-13-92; 8:45 am]
BILLING CODE 4310-RK-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92-138-1]

Procedures for Importing Animals Through the Harry S Truman Animal Import Center (HSTAIC)

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of application period and lottery for importation of animals through HSTAIC.

SUMMARY: We are giving notice of the date and location of the lottery for authorization for the use of the Harry S Truman Animal Import Center in calendar year 1993. We are also giving notice of the period during which applications for the use of HSTAIC will be accepted.

DATES: Applications for the use of HSTAIC in 1993, and accompanying deposits, must be received no earlier than September 1, 1992, and no later than September 15, 1992. The lottery for authorization to use HSTAIC during 1993 will be held October 6, 1992.

ADDRESSES: Completed applications and accompanying deposits must be sent to the Administrator, c/o Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Application forms may be obtained by writing to the same address, or by calling the telephone number provided under the heading "FOR FURTHER INFORMATION CONTACT." The

lottery will be held in the Epic Room, 7th Floor, Federal Building, 6505 Belcrest Road, Hyattsville, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Joyce Bowling, Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92, §§ 92.430, 92.431, 92.522, and 92.523 (referred to below as the regulations), set forth the conditions under which importers may qualify animals to enter the United States through the Harry S Truman Animal Import Center (HSTAIC) in Fleming Key, Florida.

Because the demand for quarantine space at HSTAIC has traditionally exceeded the space available, the regulations provide that a lottery will be held each year during the first 7 days of October, to determine the priority of applications for the following calendar year. To be included in the October lottery, applications must reach the Import-Export Animals Staff no earlier than September 1 and no later than September 15 of the year of the lottery. Additionally, certain applications must include a deposit in the form of an irrevocable letter of credit, in the name of the applicant and in the amount of $50,000 payable to the United States Department of Agriculture, Animal and Plant Health Inspection Service. Those applications which must include this deposit are identified in the regulations.

The regulations provide that applications received will be place in one of four categories, depending on the type of animal to be imported and the location from which the animal is exported. The categories are ranked in priority order, with applications in each category taking precedence over those in subsequent categories. In the event that the Import-Export Animals Staff, Veterinary Services, does not receive more than one application between September 1 and September 15, a lottery will not be held, and the Animal and Plant Health Inspection Service will grant exclusive right to use HSTAIC during the next calendar year in the order applications are received.

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 37.2(d).

Done in Washington, DC, this 11th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-19455 Filed 8-13-92; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-489-603]

Acetylsalicylic Acid (Aspirin) From Turkey; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on acetylsalicylic acid (aspirin) from Turkey. Interested parties who object to this revocation must submit their comments in writing not later than 30 days from the date of publication of this notice.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-0983 or 377-1767.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 1987, the Department of Commerce ("the Department") published a countervailing duty order on acetylsalicylic acid (aspirin) from Turkey (52 FR 32156). The Department has not received a request to conduct an administrative review of the countervailing duty order on acetylsalicylic acid (aspirin) from Turkey for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than 30 days from the date of publication of this notice, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review by August 31, 1992, nor object to the Department's intent to revoke within 30 days of the publication of this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 10, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-19427 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-796-601]

Carbon Steel Wire Rod From Zimbabwe; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on carbon steel wire rod from Zimbabwe. Interested parties who object to this revocation must submit their comments in writing not later than 30 days from the date of publication of this notice.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-0983 or 377-1767.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1986, the Department of Commerce ("the Department") published a countervailing duty order on carbon steel wire rod from Zimbabwe (51 FR 29292). The Department has not received a request to conduct an administrative review of the countervailing duty order on carbon steel wire rod from Zimbabwe for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity to Object

Not later than 30 days from the date of publication of this notice, interested parties, as defined in section 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review by August 31, 1992, nor object to the Department's intent to revoke within 30 days of the publication of this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 10, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-19428 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-DS-M

University of California, Berkeley, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Public Law 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 92-035.

Applicant: University of California, Berkeley, Berkeley, CA 94720.

Instrument: Brewster Angle Microscope.

Manufacturer: Nanofilm Technologie GmbH, Germany.

Intended Use: See notice at 57 FR 14388, April 20, 1992.

Reasons: The foreign instrument provides capability of imaging any type of two-dimensional objects (such as mono-molecular crystals or films) at the water surface.

Advice Submitted By: National Institutes of Health, June 2, 1992.

Docket Number: 92-040.

Applicant: U.S. Department of Agriculture, Greenbelt, MD 20770-1443.

Instrument: ICP Mass Spectrometer, Model PlasmaQuad-PQ 2.

Manufacturer: VG Elemental, United Kingdom.

Intended Use: See notice at 57 FR 14388, April 20, 1992.

Reasons: The foreign instrument provides: (1) Sensitivity of 1.0×10^{-6} (low mass) and 5.0×10^{-7} (high mass) and (2) air-cooled radio frequency electronics for optimum stability and precision.

Advice Submitted By: National Institutes of Health, June 2, 1992.

Docket Number: 92-044.

Applicant: National Institute of Standards and Technology, Gaithersburg, MD 20899.

Instrument: Dead-weight Testing Machine for Hardness.

Manufacturer: Officine Galileo, Italy.

Intended Use: See notice at 57 FR 14388, April 20, 1992.

Reasons: The foreign instrument provides dead-weight applied force with uncertainty of less than 100 ppm and a vibration free loading mechanism.

Advice Submitted By: National Institutes of Health, June 2, 1992.

Docket Number: 92-048.

Applicant: University of California, Irvine, Irvine, CA 92717.

Instrument: Mass Spectrometer, Model Autospec.

Manufacturer: VG Instruments, United Kingdom.

Intended Use: See notice at 57 FR 15283, April 27, 1992.

Reasons: The foreign instrument provides: (1) Resolution to 60,000, (2) a fast scan magnet system (5 scans per second) and (3) an HPLC interface with LC-FAB.

Advice Submitted by: National Institutes of Health, June 2, 1992.

Docket Number: 92-049.

Applicant: University of Illinois at Chicago, Chicago, IL 60680.

Instrument: Extremely High Pressure Computer Controlled High Pressure Generator.

Manufacturer: Nova Werke, A.G., Switzerland.

Intended Use: See notice at 57 FR 15283, April 27, 1992.

Reasons: The foreign instrument provides pressure ranges of 0.1 to 400 megapascals and computer stabilized pressures to ±0.1 MPa.

Advice Submitted By: National Institutes of Health, June 2, 1992.

The National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-19428 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 920114-2014]

Grant Funds; Materials Science and Engineering Laboratory

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Announcing availability of grant funds; materials, science and engineering.

SUMMARY: The purpose of this notice is to inform potential applicants that the Materials Science and Engineering Laboratory, National Institute of Standards and Technology (NIST), is continuing its Research Grants Program to academic institutions, non-federal agencies, and independent and industrial laboratories. Applications are now being accepted for grants in the areas of Ceramics, Metallurgy, Polymer Sciences, Neutron Scattering Research and Spectroscopy. (Catalog of Federal Domestic Assistance No. 11.609 "Measurement and Engineering Research Standards"). Each applicant must submit one signed original and two copies of each proposal along with a Grant Application, (Standard Form 424 REV. 4/88), as referenced under the provisions of OMB Circular A-110 and 15 CFR 24.

DATES: Proposals will be received throughout the remainder of the year. Applicants should allow up to 120 days processing time.

ADDRESS: Proposals should be submitted to The National Institute of Standards and Technology, Materials Science and Engineering Laboratory, Building 223, room B344, Gaithersburg,

Maryland 20899; Attention: Patty Salpino. Each package should be clearly marked to identify the field of research.

FOR FURTHER INFORMATION CONTACT: Technical inquiries should be directed to the following contact persons: George Birnbaum—(301) 975–5727 (Office of Intelligent Processing Materials), Mr. Sandy Dapkunas—(301) 975–6119 (Ceramics Division), Bruno Fanconi—(301) 975–6762 (Polymers Division), John Manning—(301) 975–6157 (Metallurgy Division—transformations, phases, microstructure and kinetic processes in metals and their alloys), Leonard Mordfin—(301) 975–6168 (Metallurgy Division—sensors for analytical models for metallurgical processes), Richard Ricker—(301) 6023 (Metallurgy Division—degradation of materials in their services environment), John Rush—(301) 976–6220 (Reactor Radiation Division).

SUPPLEMENTARY INFORMATION: As authorized 15 U.S.C. 272, the Materials Science and Engineering. Laboratory, conducts directly and through grants and cooperative agreements, a basic and applied research program supported by NIST. Approximately $500,000 will be available to support grants under this program. The Materials Science and Engineering Laboratory Grants Program is limited to innovative ideas which are generated by the proposal writer on what research to carry out and how to carry it out. Proposals will be considered for research projects from one to three years. When a proposal for a multi-year grant is approved, funding will be provided for only the first year of the program. Funding for the remaining years of the program is contingent upon satisfactory performance and subject to the availability of funds, but no liability shall be assumed by the government because of non-renewal or non-extension of a grant.

Program Objectives

All grant proposals submitted must be in accordance with the program objectives listed below. The appropriate Program Manager for each field of research may be contacted for clarification of the program objectives.

I. Office of Intelligent Processing of Materials, 851

The primary objective is to measure the far infrared (FIR) and mid-infrared continuum absorption of primarily nonpolar gases and liquids found in the atmospheres of the outer planets, in particular, gaseous and liquid CH4, and gaseous mixtures of N2 and CH4, and to analyze these data.

II. Ceramics Division, 852

Grants to supplement division activities in the area of ceramic processing, tribology, composites, machining, interfacial chemistry, and microstructural analysis.

III. Polymers Division, 854

Grants for synthesis of polymers for research purposes, and collaborative research efforts in which the contractor provides mechanical, electrical, optical, transport, or structure data on polymeric materials.

IV. Metallurgy Division, 855

Develop techniques to predict, measure and control transformations, phases, microstructure and kinetic processes in metals and their alloys.

V. Metallurgy Division, 855

Develop new and improved sensors and analytical models for metallurgical processes in order to facilitate the development and adoption of intelligent processing systems for materials.

VI. Metallurgy Division, 855

Develop techniques to predict, measure and control the degradation of materials in their service environment.

VII. Reactor Radiation Division, 856

Develop cold and thermal neutron research approaches and related physics and materials applications.

Proposal Review Process

Both technical value of a proposal and the relationship of the work proposed to the needs of the specific program are taken into consideration. Proposals will be reviewed by a panel of individuals knowledgeable about areas covered by this request for applications.

Selection Criteria

The criteria to be used in evaluating the proposal include: Rationality (coherence of approach, relation to scientific/technical issues), Qualifications of Technical Personnel, Resources Availability, and Technical Merit of Contribution. Each of these factors will be given equal weight in the selection process.

Paperwork Reduction Act

The Standard Form 424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and it has been approved by OMB under Control No. 0348–0006.

Additional Requirements

Each applicant must submit a certification ensuring that employees of the applicant are prohibited from engaging in the unlawful manufacturing, distribution, dispensing, possession or use of a controlled substance at the work site, as required by the regulations implementing the Drug-Free Workplace Act of 1988, 15 CFR part 26, subpart F. Applicants are subject to the Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

Section 319 of Public Law 101–121 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. A "Certification for Contracts, Grants, Loans, and Cooperative Agreements" and the SF–LLL, "Disclosure of Lobbying Activities" (if applicable), is required to be submitted with any application.

Applicants are reminded that a false statement may be grounds for denial or termination of funds, and grounds for possible punishment by fine or imprisonment. Any recipient/applicant who has an outstanding indebtedness to the Department of Commerce will not receive a new award until the debt is paid or arrangements satisfactory to the Department are made to pay the debt.

Awards under the Materials Science and Engineering Laboratory Research Program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

The Materials Science and Engineering Grants Program does not directly affect any state or local government. Accordingly, the Department of Commerce has determined that Executive Order 12372 is not applicable to the Materials Science and Engineering Grants Program.

Dated: August 7, 1992.

John Lyons,

Director.

[FR Doc. 92–19358 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–13–M

Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Government Owned Inventions available for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Bruce E. Mattson, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, Building 221, room B256, Gaithersburg, Maryland 20899. Any request for information should include the NIST Docket No. for the relevant invention(s) as indicated below.

SUPPLEMENTARY INFORMATION: The inventions available for licensing are:

NIST Docket No. 86–001; "Method for Production of Predetermined Concentration Graded Alloys", relates to a process for the production of a composition modulated alloy having a predetermined concentration in which alternating layers of at least two metals are successively deposited. The individual thicknesses of at least one metal's layers are varied in a predetermined manner.

NIST Docket No. 86–008; "Predetermined Concentration Graded Alloys" relates to a variety of composition modulated alloys with a plurality of alternating layers of at least two metals in which at least one metal's layer thickness is varied in a predetermined manner over the overall thickness of the alloy.

NIST Docket No. 87–026; Patent No. 5,103,682, "Ultra-sensitive Force Detector Employing Servo-stabilized Tunneling Junction" relates to a highly sensitive force detector using a tunneling junction as a strain gauge.

NIST Docket No. 88–022; Patent No. 5,104,478, "A Method for Making Single Crystals" relates to a method of producing large single crystals including single crystals of proteins.

NIST Docket No. 88–044; "Process for the Preparation of Fiber-Reinforced Ceramic Matrix Composites" relates to a process for the production of fiber-reinforced ceramic matrix composites. The process allows the continuous coating of a fiber with a slurry of a ceramic matrix composite material in an ultraviolet curing resin. The continuous coating process provides improved properties in the composites incorporating the fibers.

NIST Docket No. 90–002; "Tunnel-Stabilized Magnetic Reading and Recording" relates principally to methods and apparatus for recording data on and reading data from a magnetizable medium using a scanning tunneling technique. This invention replaces the conventional rigid probes used in scanning tunneling microscopy (STM) with compliant magnetic probe wherein the STM image is a convolution of magnetic forces and the surface topography of the magnetizable medium. Data can be written to the medium by increasing the tunneling current, reducing the scan rate, and/or increasing the magnetization of the magnetic tunneling tip in order to alter the local magnetic characteristics of the medium. The compliant probe of the device may also be employed for imaging the local surface magnetization of a magnetic member.

NIST Docket No. 90–014, "Matrix Modification in the Electrophoretic Separation of Nucleic Acids" is a method for enhancing the separation of polynucleotides or polypeptides of various chain lengths or a mixture of polynucleotides and polypeptides of various chain lengths using electrophoretic processes to sharpen sample component zones and produce maximum resolution of electrophoretically separated macromolecules by modifying the matrix of electrophoretic gel.

NIST Docket No. 90–016, "Method and Apparatus for Assessment of Surface Smoothness Using Reflected Energy" relates to a method and apparatus for remotely sensing the smoothness of a coated surface.

NIST Docket No. 90–021; "Localized Plasma Processing", relates to an apparatus and method for localized plasma processing of the surface of a unit. The device is especially useful when only a portion of a substrate requires processing or reprocessing and/or when in-situ monitoring of unit performance parameters and/or processing parameters is required.

NIST Docket No. 90–038; "Hard X-ray Magnification Apparatus and Method with Submicrometer Spatial Resolution of Images in One, Two or Three Dimensions", relates to an apparatus and method for using hard x-rays to obtain high resolution magnification of either the internal structure or surface feature details of a specimen at the submicron level in up to three dimensions.

NIST Docket No. 91–003; "Azeotropic Refrigerant Comprising Bis-(Difluoromethyl) Ether and 1,1,2-Trifluoroethane", relates to an azeotropic mixture for use as a refrigerant to replace R114 refrigerant. The azeotrope is specifically suited for use in water chiller equipment in maritime applications. It may also have applications in foam production.

NIST Docket No. 91–005; "Two-Dimensional, Josephson-Array, Voltage-Tunable, High-Frequency Oscillator", relates to a high frequency oscillator which is capable of emitting coherent power of predetermined frequencies. The oscillator operates without the application of external high frequency signals or a connection to a cavity resonator. The oscillator has advantages over one dimensional arrays in that phase locking is less likely to be affected by nonidentical junctions, greater power output can be realized, an output having a narrower line width is produced and impedance matching is relatively easy.

NIST Docket No. 91–011; "Object/Anti-Object Neural Network Segmentation" relates to a character recognition system which applies self-organizing and/or supervised learning network methods to the problem of segmentation.

NIST Docket No. 91–012; "Apparatus and Method for Evaporative Concentration of a Liquid Sample", relates to an inexpensive and efficient apparatus and method for the concentration of a liquid sample through evaporation.

NIST Docket No. 91–014; "Calibration System for Determining the Accuracy of Phase Modulation and Amplitude Modulation Noise Measurement Apparatus", relates to an apparatus and method for determining the error due to inherent PM and AM noise in a noise measurement device.

Dated: August 7, 1992.

John W. Lyons,

Director.

[FR Doc. 92–19407 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

[Docket No. 920805–2205]

Pelagic Fisheries of the Western Pacific Region

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce

ACTION: Notice of control date for entry into the handline fishery off the Island of Hawaii.

SUMMARY: This notice announces that persons who, after July 2, 1992, enter the Hawaii handline fishery, which occurs around Cross Seamount and around the four offshore NOAA weather buoys off the Island of Hawaii, will not necessarily be assured of eligibility for continuing participation if the Western Pacific Fishery Management Council (Council) prepares, and the Secretary of

Commerce approves, a program limiting entry or effort in the fishery in the future. This announcement is intended to alert potential participants who cannot document landings from State of Hawaii statistical reporting areas 15217, 15717, 15818, 16019, and 16223 by July 2, 1992, that their investment may be at risk should they enter the fishery after that date and the Council decides to limit effort. This announcement does not commit the Council to completing a plan to limit effort in the future, nor does it prevent any other date for eligibility to participate in the fishery from being proposed and implemented in the future.

FOR FURTHER INFORMATION CONTACT: Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, (808–523–1368); or Svein Fougner, Southwest Region, NMFS (310–980–4034); or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS (808–955–8831).

SUPPLEMENTARY INFORMATION: The pelagics fisheries based in Hawaii are undergoing rapid change. In the late 1980s, the longline fishery sector grew at a phenomenal rate, resulting in instability and the risk of harm to property and persons. To provide relief from this pressure and allow time for rational fishery management planning, a moratorium on new entry into the longline fishery was established. The planning is now underway for a program to replace the moratorium in 1994.

However, another pelagic fishery sector is now experiencing explosive growth. This is a handline fishery currently operating in the exclusive economic zone (EEZ) waters within the 1000 fathom curve around Cross Seamount and four NOAA weather buoys off the Island of Hawaii. Handline fishing gear means one or more fishing lines deployed by hand, usually less than 100 fathoms long, and having one baited hook per line. This gear is currently used in the surface handline fisheries for tunas and other species around Hawaii (known locally as "ika-shiba" and "palu-ahi"). Landings by this fishery have grown from a negligible amount in 1989 to more than 250,000 pounds in just the first 6 months of 1992. The number of trips grew from near zero in 1989 to 66 in the first 6 months of 1992. It is unclear whether this level of effort or landings can be sustained, whether the fishery (which harvests immature bigeye tuna) will impact the stocks or other fishery sectors, or whether the markets can accommodate continuing increases in landings. It also is uncertain whether there is a need to limit effort in or landings from the fishery to ensure a stable, healthy fishery.

At its December 1991 meeting, the Council was presented with testimony from fishery participants and was asked to evaluate the need for a moratorium on new entry into the fishery. The Council asked its Plan Development Team to examine the available data and provide recommendations to the Council. The Plan Team did not make any recommendations concerning the moratorium, but did indicate the need for yield-per-recruit analyses to determine the theoretical impacts of the new harvests on stock dynamics. The Team recommended that available data be examined in greater detail to examine fishery participation patterns, market impacts, and other changes that may be occurring due to the development of this fishery.

At its July 1–2, 1992, meeting, the Council considered the views of the fishermen, the data compiled from State of Hawaii landings records, and the recommendations of the Team, and concluded that it would be prudent to designate a control date for possible use in establishing eligibility for participation in a limited effort fishery. Experience has shown that discussion of limited entry can escalate the entry of new effort into the fishery in question. The Council already has established a moratorium on new entry into the longline fishery based in Hawaii, and has initiated a process for discussing limited entry alternatives and other regulatory options for other pelagic fishery sectors. In the Council's view, there is a risk of speculative entry into the fishery while the Council further analyzes the potential benefits and costs of limited entry alternatives. The control date is designed to discourage speculative entry in this period. Establishment of the July 2, 1992, control date does not commit the Council or the Secretary to any particular management regime or criterion for limiting effort in the handline fishery. After more information is available on the status of the stocks and the effort levels necessary to optimally harvest and market those stocks, the Council may choose a different control date, or it may choose a management regime that does not make use of such a date. The Council may choose to give variable consideration to fishermen in the fishery before and after the control date. The Council also may choose to take no further action to control entry or access to the fishery.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 10, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92–19434 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Industry Advisory Subcommittee on August 27, 1992, beginning at 1 p.m., at the Ramada Inn, 78 Industrial Highway, Essington, DE., (telephone: 215–521–9600). The meeting is being held to develop surf clam and ocean quahog quota recommendations for 1993 and to review the proposed penalty schedule.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone (301) 674–2331.

Dated: August 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19433 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment and Amendment to the 1992 Agreement Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Hong Kong

August 11, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On December 5, 1991, a notice was published in the **Federal Register** (56 FR 63716) announcing the 1992 agreement limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong.

In a Memorandum of Understanding dated July 29, 1992, the Governments of the United States and Hong Kong agreed to amend their Bilateral Textile Agreement of August 4, 1986, for the 1992–1995 agreement periods to establish new limits for women's and girls' cotton and man-made fiber trousers. The new limits for 1992 are listed below:

Category	New 1992 limit
Sublevels in Group II 347/348	6,756,037 dozen of which not more than 2,980,551 dozen shall be in Category 347; not more than 5,289,495 dozen shall be in Category 348; not more than 6,056,037 dozen shall be in Categories 347-W/348-W [1] of which not more than 4,589,495 dozen shall be in Category 348-W.
648	1,021,598 dozen of which not more than 966,686 dozen shall be in Category 648-W [2].

[1] Category 347-W: only HTS numbers 6203.19.1020, 6203.19.4020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[2] Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementotion of Textile Agreements.

[FR Doc. 92–19430 Filed 8–13–92; 8:45 am]

BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations with the Government of Qatar on Certain Cotton Textile Products

August 10, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on categories for which consultations have been requested, call (202) 377–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 28, 1992, under the terms of Section 204 of the Agricultural Act of 1956, as amended, the Government of the United States requested consultations with the Government of Qatar with respect to cotton trousers, breeches and shorts in Categories 347/348, produced or manufactured in Qatar.

The purpose of this notice is to advise the public that, if no solution is agreed upon in consultations with the Government of Qatar, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Qatar and exported during the twelve-month period which began on July 28, 1992 and extends through July 27, 1993, at a level of not less than 326,241 dozen.

A summary market statement concerning Categories 347/348 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 347/348, or to comment on domestic production or availability of products included in Categories 347/348, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of Qatar.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 347/348. Should such a solution be reached in consultations with the Government of Qatar, further notice will be published in the Federal Register.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 56 FR 60101, published on November 27, 1991).

Market Statement—Qatar

Category 347/348—Cotton Trousers, Slacks and Shorts

July 1992

Import Situation and Conclusion

U.S. imports of cotton trousers, slacks, and shorts, Category 347/348, from Qatar surged to 354,857 dozen in the year ending May 1992, more than double the 156,614 dozen imported during the year ending May 1991. During the first five months of 1992, imports of Category 347/348 from Qatar reached 247,728 dozen, almost three times the 89,823 dozen imported in January-May 1991, and 26 percent greater than Qatar's total calendar year 1991 imports.

The sharp and substantial increase in Category 347/348 imports from Qatar is

causing disruption in the U.S. market for cotton trousers, slacks, and shorts.

U.S. Production, Import Penetration, and Market Share

U.S. production of cotton trousers, slacks, and shorts, Category 347/348, declined from 48,816,000 dozen in 1987 to 46,749,000 dozen in 1991, a decline of 4 percent. U.S. imports of cotton trousers, slacks, and shorts, Category 347/348, increased from 29,132,000 dozen in 1987 to 39,448,000 dozen in 1991, an increase of 35 percent. Category 347/348 imports continue to increase in 1992, up 42 percent in the first five months of 1992 over the January-May 1991 level. The domestic manufacturers' share of the U.S. cotton trousers market fell from 63 percent in 1987 to 54 percent in 1991, a decline of nine percentage points. The ratio of imports to domestic production increased from 60 percent in 1987 to 84 percent in 1991.

Duty-Paid Value and U.S. Producers' Price

Approximately 75 percent of Category 347/348 imports from Qatar during the year ending May 1992 entered under HTSUSA numbers 6203.42.4050—men's woven cotton shorts; 6204.62.4020—women's woven cotton trousers other than of corduroy and denim and 6204.62.4055—women's cotton woven shorts. These trousers and shorts entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable garments.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-19387 Filed 8-13-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 14, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List:

Commodities

Tool Box, Portable, 5140-00-226-9018
Nonprofit Agency: Custom Manufacturing Services, Inc., Louisville, Kentucky.

Mask, Surgical, 6515-00-448-5179
Nonprofit Agency: Cincinnati Association for the Blind, Cincinnati, Ohio.

Services

Document Processing, BATF National Tracing Center, 3361F 75th Avenue, Landover, Maryland
Nonprofit Agency: Sheltered Occupational Center of Northern Virginia, Arlington, Virginia.

Janitorial/Custodial

Defense Construction Supply Center, Columbus, Ohio
Nonprofit Agency: Licking-Knox Goodwill Industries, Inc., Newark Ohio.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-19444 Filed 8-13-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 14, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 19, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (57 FR 27440) of a proposed addition to the Procurement List. After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. The action will not have a severe economic impact on current contractors for the service.
3. The action will result in authorizing small entities to furnish the service to the Government.
4. There are no know regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Grounds Maintenance, Centre County Memorial USARC, 1250 Fox Hollow Road, State College, Pennsylvania

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92-19445 Filed 8-13-92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Subject Area Committee #2 of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: August 24, 1992.

TIME: 3 p.m. (EDT).

LOCATION: National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, 20002-4233, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 U.S.C. 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Subject Area Committee #2 of the National Assessment Governing Board will meet from 3 p.m. until adjournment, approximately 4:30 p.m. In this meeting the Committee will take final action on the math and science items developed for the 1993 assessment—approval of their inclusion in the field test instrument. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's's deliberations. The public is given less than fifteen days notice of this meeting since the committee's schedule and project timelines did not allow the meeting to be set earlier. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: August 11, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92-19456 Filed 8-13-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Request for Public Comment Relating to Maximizing the Economic Producibility of Oil From Shallow Shelf Carbonate (Class II) Reservoirs

AGENCY: Bartlesville Project Office and Pittsburgh Energy Technology Center, Department of Energy.

ACTION: Notice of request for public comment, announcement of public meeting and sources sought relative to DOE's Class II Oil Program opportunity notices.

SUMMARY: The U.S. Department of Energy, Bartlesville Project Office through the Pittsburgh Energy Technology Center, announces that it intends to issue two (2) competitive Program Opportunity Notices (PONs) in support of maximizing the economic producibility of oil from shallow shelf carbonate (Class II) reservoirs. Prior to the release of these solicitations the DOE is seeking public comment relative to the producibility problems associated with this reservoir class. A public meeting is scheduled.

DATES: The public meeting is scheduled for August 25, 1992 at 9 a.m. The scheduled release date for the solicitations is October 15, 1992.

ADDRESSES: The "DOE/BPO Class II Oil Program" public meeting will be held at the Sheraton Crowne Hotel and Conference Center, 15700 JFK Blvd., Houston, TX 77032, 713/442-5100. Copies of the solicitations may be obtained by writing to the Department of Energy, Pittsburgh Energy Technology Center, Attention Keith R. Miles, Contract Specialist, P.O. Box 10940, Mail Stop 921-118, Pittsburgh, PA 15234. Requests may be faxed to 412/892-6216.

SUPPLEMENTARY INFORMATION:

Program Opportunity Notice No.

DE-PS22-93BC14806

Title of Solicitation

Class II Oil Program: Near-Term Activities

Objective

The specific objective of this Program Opportunity Notice is to solicit applications to conduct cost shared projects in domestic shallow shelf carbonate reservoirs that lead to maximizing the economic producibility of the domestic oil resource. Using a focused technology transfer plan, these projects should extend the economic life of shallow shelf carbonate reservoirs through the improved understanding of the reservoir, the potential application of reservoir management technologies, and other extraction techniques. Field demonstration(s) may be proposed under this solicitation, but are not mandatory to Near-Term projects.

Program Opportunity Notice No.

DE-PS22-93BC14807

Title of Solicitation

Class II Oil Program: Mid-Term Activities

Objective

The specific objective of this Program Opportunity Notice is to solicit applications to conduct cost shared projects in domestic shallow shelf carbonate reservoirs that lead to maximizing the economic producibility of the domestic oil resource. These projects should demonstrate and transfer advanced technologies aimed at resolving specific producibility problems which will result in a significant increase of domestic reserves in shallow shelf carbonate reservoirs. Field

demonstration(s) must be included in all Mid-Term projects.

Advanced technologies, as defined in this PON, include advanced reservoir characterization techniques or tools, advanced reservoir management techniques, and advanced recovery technologies. The understanding of the interaction of the reservoir architecture and the recovery process is essential to the application of these advanced technologies. Advanced technologies represent a significant improvement in process effectiveness (i.e., greater sweep efficiencies or improved economics) or applicability over currently available technologies or represent a new technology not successfully demonstrated in the field.

Some examples of advanced technologies are: (1) Advanced Reservoir Characterization Techniques or Tools (e.g., cross borehole tomography, measurement while drilling, or three dimensional simulation), (2) Advanced Recovery Technology (e.g., mobility control agents (foams) with gas injection, or horizontal drilling), and (3) Advanced Reservoir Management Techniques (e.g., simulation, or fracture stimulation).

Request for Public Comment

The Department of Energy is requesting public comment regarding specific problems in the following three (3) advanced technology areas: (1) Reservoir characterization problems associated with defining the geological and reservoir engineering aspects of shallow shelf carbonate reservoirs (e.g., how to define the heterogeneous nature of the reservoir through detailed, integrated engineering/geological studies); (2) Operational problems related to the recovery processes commonly utilized in shallow shelf carbonate reservoirs (e.g., how to improve sweep efficiency in CO_2 injection projects by mobility control methods); and (3) Operational problems related to wellbore and production facilities and other reservoir management problems found in shallow shelf carbonate reservoirs (e.g., how to maximize artificial lift efficiency with CO_2-related corrosion and scale problems).

Specifically, what are the problems, how are they currently being addressed, and what new techniques are being developed to attack these problems in the future? Responses will be integrated into the two (2) Program Opportunity Notices which are planned for release on October 15, 1992.

Additionally, the Department intends to conduct a Public Meeting in Houston, Texas on August 25, 1992, 9 a.m. to discuss various aspects of the Class II Oil Program. Overnight reservations (Corporate lodging rate $69/night) for the meeting should be made directly with the hotel, and should reference the "DOE/BPO Class II Oil Program."

Organizations interested in providing comments, as well as those interested in being placed on the Department's source list for the upcoming solicitation, are encouraged to submit a written request to the address listed in this announcement. Public comments must include: the company name, address, and point of contact, including telephone number, and be submitted within 30 days from publication of this announcement for consideration by DOE.

Dated: July 29, 1992.

Dale A. Siciliano,

Contracting Officer.

[FR Doc. 92-19414 Filed 8-13-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, NREL Area Office; Grant Award to Clark Atlanta University

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Clark Atlanta University for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program at DOE. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Mr. John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: Clark Atlanta University has been conducting research to develop genetic engineering techniques to enhance the capability of fungi/bacteria to degrade lignocellulose to simpler materials. Successful completion of this research would advance the goal of converting biomass to useful chemicals and other products. A detailed understanding of the processes that control the reactivity and specificity of enzymatic reactions within the fungi/bacteria will provide the knowledge needed to exploit these reactions for technological applications. To date, the research has focused on the enzyme polyphenol oxidase (PPO) in the fungus *Coriolus versicolor*. This effort has been supported by the DOE Office of Industrial Processes.

The research conducted at Clark Atlanta has led to an increased understanding of how PPO is synthesized in the fungus, *Coriolus versicolor*, and how PPO is later secreted and degrades lignocellulose. This information was necessary before attempting to over-produce PPO by stimulating its synthesis and then regulating PPO secretion. The proposed one year effort will (1) complete the attempt to over-produce PPO; (2) establish the route and complete the regulation of PPO secretion; (3) develop batch culture techniques for *C. versicolor*; (4) develop methods for rapidly extracting PPO from the fungus and (5) extend the investigation to other enzymes secreted by *C. versicolor*.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on completion of the activity. Also, the applicant has exclusive domestic capability to perform the activity successfully, based upon unique technical expertise. Funding in the amount of an estimated $43,000 is to be provided by DOE. The anticipated term of the proposed grant will be twelve months.

Issued in Chicago, Illinois, on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division

[FR Doc. 92-19417 Filed 8-13-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office, NREL Area Office; Grant Award to The University of Pittsburgh

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE) pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the University of Pittsburgh for continuing research efforts in support of the Biological and Chemical Technologies Research (BCTR) program. The BCTR program seeks to improve operations and decrease energy use in the chemical and petrochemical industries.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden Colorado 80401, Attention: Mr. John W. Meeker, Contract Specialist. The Contracting Officer for this action is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The University of Pittsburgh has been conducting research for DOE to develop an understanding of biocatalysis at the molecular level. The biocatalytic reaction selected, electron transfer, is the focus of theoretical study. A detailed understanding of the processes that control the reactivity and specificity of enzymatic reactions will provide the knowledge needed to exploit these reactions for technological applications. This effort has been supported by the DOE Office of Industrial Processes.

Research conducted at the University of Pittsburgh in FY 1991 demonstrated the useful application of protein modeling to describe the chemical reaction routes (via electron transfer) that enzymes follow. Several modeling software packages were developed that were now being used by industry and university and government laboratories. The proposed one year effort will refine these modeling capabilities and apply them to the investigation of electron transfer reactions of selected protein systems. This will begin the model verification experimental component of this work. Ultimately, the validated model will be used to guide the research effort to design new enzymes with specific reaction capabilities and the genetic engineering of natural enzymes for enhanced reaction capabilities.

In accordance with 10 CFR 600.7, it has been determined that the activity to be funded is necessary to the satisfactory completion of an activity presently being funded by DOE and for which competition for support would have an significant adverse effect on completion of the activity. Also the applicant has exclusive domestic capability to perform the activity successfully, based upon unique technical expertise. Funding in the amount of an estimated $52,000 is to be provided by DOE. The anticipated term of the proposed grant will be twelve months from the effective date of the award.

Issued in Chicago, Illinois, on August 6, 1992.

Johnnie D. Greenwood,

Director, Contracts Division.

[FR Doc. 92-19416 Filed 8-13-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-737-000, et al.]

Pennsylvania Power & Light Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 7, 1992.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power & Light Co.

[Docket No. ER92-737-000]

Take notice that on July 21, 1992, Pennsylvania Power & Light Company (PP&L) tendered for filing a Supplement to the Capacity and Energy Sales Agreement between PP&L and Baltimore Gas and Electric Company.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Jackson Valley Energy Partners, L.P.

[Docket Nos. QF82-208-006 and QF82-208-007]

On July 30, 1992, Jackson Valley Energy Partners, L.P. (Applicant), submitted for filing an application requesting dual recertification of a facility as both a qualifying cogeneration and a small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The 15.1 MW facility is currently certified as a topping-cycle cogeneration facility and as a small power production facility [55 FERC ¶ 62,305 (1991)]. The instant recertification is requested due to changes in the ownership structure.

Comment date: September 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Newark Bay Cogeneration Partnership, L.P.

[Docket No. QF86-1014-005]

On July 29, 1992, Newark Bay Cogeneration Partnership, L.P. (Applicant) submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the City of Newark, New Jersey. The Commission previously certified the facility as a qualifying cogeneration facility, Newark Bay Cogeneration Partnership, L.P., 52 FERC ¶ 62,049 (1990). The instant recertification is requested in light of a Plant Operating and Maintenance Agreement between Applicant and CEA Newark Bay Services, Inc.

Comment date: September 14, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Doswell Limited Partnership

[Docket No. EL92-37-000]

Take notice that on August 3, 1992, Doswell Limited Partnership (Doswell) pursuant to rules 206 and 207 of the Commission's regulations tendered for filing a Petition for Declaratory Order and Request for Expedited Consideration. Doswell states that it entered into two contracts (the "Power Purchase Agreements") with Virginia Electric and Power Company which it filed as rate schedules with the Commission and which the Commission accepted for filing and found "just and reasonable" by the Commission's order issued on February 28, 1990. Doswell seeks a declaration by the Commission of the rights and responsibilities of the parties under the Power Purchase Agreements.

Comment date: September 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19424 Filed 8-13-92; 8:45 am]

BILLING CODE 6717-01-M

Application Filed With the Commission

August 10, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* Major License.

b. *Project No.:* 10766–001.
c. *Date Filed:* June 29, 1992.
d. *Applicant:* JDJ Energy Company.
e. *Name of Project:* Nimrod.
f. *Location:* On the Fourche La Fave River in Perry County, Arkansas.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Stewart Noland, PE, 5210 Sherwood Rd., Little Rock, AR 72207, (501) 661–9228.
i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.
j. *Comment Date:* August 28, 1992.
k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Nimrod Dam and would consist of: (1) A trash rack; (2) extension and bifurcation of an existing 15 foot diameter penstock; (3) a powerhouse containing two turbine generator units having a combined capacity of 3000 kilowatts; (4) a tailrace; (5) a switchyard; and (6) a transmission line. The transmission line is proposed to be interconnected to the local utility distribution system.
l. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merits, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days after the application is filed and serve a copy of the request on the applicant.

Lois D. Cashell,
Secretary.
[FR Doc. 92–19376 Filed 8–13–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. CP92–620–000, et al.]

United Gas Pipe Line Company, et al.; Natural Gas Certificate Filings

August 7, 1992.

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Company

[Docket NO. CP2–620–000

Take notice that on July 29, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251 1478, filed in Docket No. CP92–620–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate certain facilities pursuant to section 7(c) of the Natural Gas Act that were previously constructed under section 311(a) of the Natural Gas Policy Act and § 284.3(c) of the Commission's Regulations under the Natural Gas Act (18 CFR 284.3(c)) under its blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it is seeking section 7(c) authorization for pipeline, pipeline interconnects, taps and piping and flow equipment. United further states that the facilities are located in Iberville, St. Charles, West Carroll, Richland and Caoddo Parishes, Louisiana. It is indicated that the proposed facilities would enable United to provide transportation services under its blanket transportation certificate through all of its facilities to all current and potential customers.

Comment date: September 18, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. East Tennessee Natural Gas Company

[Docket No. CP92–634–000]

Take notice that on August 6, 1992, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–634–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to operate a jurisdictional receipt point as a delivery point in order to effectuate delivery of natural gas to Virginia Gas Company (Virginia Gas), under its blanket certificate issued in Docket No. CP82–412–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

East Tennessee states that it currently transports natural gas for Virginia Gas pursuant to § 284.223 of the Regulations and pursuant to a contract dated January 1, 1992, as amended. It is indicated that Virginia Gas is proposing to evaluate the Early Grove production field in Washington County, Virginia as a storage project. It is also indicated that to accomplish their testing of the field, Virginia Gas has requested that an existing receipt used by East Tennessee in the transportation service be turned as necessary to allow for physical delivery of natural gas for storage field testing. East Tennessee states that it has agreed to deliver for testing up to 3,000 Mcf per day over a 30 to 60-day period. It is also indicated that upon completion of Virginia Gas' evaluation, Virginia Gas will resume deliveries to East Tennessee.

East Tennessee states that the operation of this point as a delivery point would have no impact on East Tennessee's peak day or annual deliveries. East Tennessee also states that the total quantity of gas to be delivered for Virginia Gas' account after establishment of the delivery point would not exceed the total quantities currently authorized and that the establishment of the delivery point is not prohibited by East Tennessee's tariff.

Comment date: September 21, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Public Service Company of Colorado

[Docket No. CP92–633–000]

Take notice that on August 5, 1992, Public Service Company of Colorado (Public Service), 1225 17th Street, Denver, Colorado 80202, filed in Docket No. CP92–633–000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.224 of the Commission's Regulations under the Natural Gas Act (NGA) for a blanket certificate of public convenience and necessity authorizing Public Service to engage in the sale, transportation and assignment of natural gas in interstate commerce in the same manner that intrastate pipelines are authorized to engage in such activities by sections 311 and 312 of the Natural Gas Policy Act of 1978. (NGPA) and subparts C, D and E of part 284 of the Commission's Regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Public Service states that it is a regulated local distribution company serving customers in the state of Colorado and whose rates, facilities and services are subject to the Colorado Public Service Utilities Commission (CPUC). It is also stated that Western Gas Supply Company (WestGas) is a wholly-owned subsidiary of Public Service engaging in the intrastate purchase, transmission and sale for resale of natural gas in Colorado and is a Hinshaw pipeline exempt from regulation under section 1(c) of the NGA. It is indicated that WestGas' rates, facilities and services are regulated by the CPUC.

Public Service states that on July 2, 1992, Public Service and WestGas filed a joint application with the CPUC requesting authority to merge WestGas into Public Service. Public Service states that as part of its application it indicated that it would adopt WestGas' tariffs currently on file with the CPUC. It is also indicated that Public Service would also assume WestGas' contractual obligations as a legal consequence of the merger. Public Service states that it must obtain a blanket certificate in order to continue to provide service to customers currently receiving service under transportation agreements entered into pursuant to WestGas' blanket certificate issued by order issued October 26, 1982, in Docket No. CP81–345. It is indicated that the blanket certificate would apply only to service through the former WestGas transmission facilities and not to Public Service's distribution facilities.

Public Service states that it elects pursuant to § 284.123(b)(1) (ii) of the Commission's Regulations to use the rates contained in WestGas' current transportation rate schedules for intrastate service on file with the CPUC. It is also indicated that upon CPUC approval of the merger, Public Service would adopt WestGas' tariffs. Public Service states that during the twelve month period ending June 30, 1992, WestGas received 87,570,647 Mcf of natural gas within or at the boundary of Colorado, which was exempt from the Commission's Natural Gas Act jurisdiction by reason of section 1(c) of the NGA and the same volume of gas from all sources.

Comment date: August 28, 1992, in accordance with Standard Paragraph F at the end of this notice.

4. Panhandle Eastern Pipe Line Company

[Docket No. CP92–625–000]

Take notice that on August 3, 1992, Panhandle Eastern Pipe Line (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed an application with the Commission in Docket No. CP92–625–000 pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a sales service to Northern Illinois Gas Company (NI-Gas), an existing jurisdictional sales customer under Panhandle's FERC Rate Schedule LS–2, all as more fully set forth in the application which is open to the public for inspection.

Panhandle states that it seeks permission for and approval to abandon firm sales service to NI-Gas under Rate Schedule LS–2, because NI-Gas has elected to terminate this service effective November 1, 1992. NI-Gas has elected to convert to a firm transportation service under Panhandle's Rate Schedule PT-Firm on November 1, 1992.

Panhandle also states that it filed with the Commission revised tariff sheets at Docket Nos. RP91–52–000, RP91–53–000, and RP91–118–000 to recover take-or-pay costs from each of its customers, including NI-Gas. Additionally, Panhandle states that it has filed revised tariff sheets to recover portions of other costs in Docket Nos. RP92–125–000, RP92–127–000, and RP92–128–000. The portion of such costs attributable to NI-Gas have been described therein, and may be amended, supplemented, revised, or modified pursuant to Commission authorizations or as required by law. By this filing Panhandle does not waive or relieve NI-Gas from any of NI-Gas' cost responsibilities associated with these take-or-pay costs or any other costs properly attributed to NI-Gas. The abandonment authority sought herein is expressly conditioned on and subject to the ultimate recovery by Panhandle of all such residual costs associated with service to NI-Gas and NI-Gas' continuing obligation to Panhandle in connection therewith until extinguished by full payment, in addition to any other amounts payable pursuant to the Gas Sales Contract.

Panhandle also states that it does not propose to abandon any facilities herein.

Comment date: August 28, 1992, in accordance with Standard Paragraph F at the end of the notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.
[FR Doc. 92–19419 Filed 8–13–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RS92–45–000]

Natural Gas Pipeline Co. of America; Conference

August 7, 1992.

Take notice that a conference will be convened in the above-captioned restructuring docket on Thursday, September 3, 1992, beginning at 9 a.m. The conference will be held at the Washington Hilton and Towers, 1919 Connecticut Avenue, NW. (intersection of Connecticut Avenue and Columbia Road, NW.), Washington, DC.

The conference is being held so that Natural Gas Pipeline Company of America (Natural) can explain to the Staff of the Federal Energy Regulatory Commission and the intervenors in this proceeding Natural's Order No. 636 Restructuring Proposal. Natural provided all parties to the proceeding a Summary of its Restructuring Proposal on July 7, 1992.

All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested

persons can call John Myler at (202) 208–0974.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19420 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–73–000]

Pacific Interstate Offshore Co.; Rescheduled Conference

August 7, 1992.

Take notice that the conference in the above-captioned docket to discuss Pacific Interstate Offshore Company's (PIOC) summary of its proposed plan for implementation of Order No. 636, previously scheduled for August 12, 1992, is cancelled and rescheduled to convene on September 29, 1992.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208–0708 or Marilyn Rand at (202) 208–0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19421 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–74–000]

Pacific Offshore Pipeline Co.; Rescheduled Conference

August 7, 1992.

Take notice that the conference in the above-captioned docket, to discuss Pacific Offshore Pipeline Company's (POPCO) summary of its proposed plan for implementation of Order No. 636, previously scheduled for August 13, 1992, is cancelled and rescheduled to convene on September 28, 1992.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Erica Yanoff at (202) 208–0708 or Marilyn Rand at (202) 208–0327.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19422 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CI92–69–000]

Universal Resources Corp., Application for Blanket Certificate With Pregranted Abandonment

August 10, 1992.

Take notice that on August 5, 1992, Universal Resources Corporation (Universal) filed an application under sections 4 and 7 of the Natural Gas Act (NGA) for a blanket certificate with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. Universal's application is on file with the Commission and open to public inspection.

To be heard or to protest the application a person must file a motion to intervene or a protest on or before August 31, 1992. A person filing a protest or motion to intervene must follow the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All protests or motions to intervene must be filed with the Federal Energy Regulatory Commission, Washington, DC 20426.

The Commission will consider all filed protests in deciding the appropriate action to take but filing a protest does not make a protestant a party to a proceeding. A person wanting to be a party to a proceeding or to participate as a party in a hearing must file a motion to intervene.

Under the procedure provided for here, unless otherwise advised, Universal will not have to appear to be represented at any hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19423 Filed 8–13–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4195–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 27, 1992 through July 31, 1992 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–AFS–J65191–UT Rating EC1, Kamas Valley Grazing Allotment Management Plan, Implementation, Wasatch-Cache National Forest, Kamas Ranger District, Summit County, UT.

Summary

EPA had environmental concerns with the proposed action. EPA also believed that additional information is required concerning water quality to better document potential environmental impacts. EPA expressed concerns regarding information disclosing applicable water quality standards and impacts. EPA requested that the final document contain additional water quality information and expand the discussion on the selection of the preferred alternative over the environmentally preferred alternative.

ERP No. D–AFS–J65192–CO Rating EC2, Trout Mountain Analysis Area Timber Harvest, Road Construction and Aspen Management Plan Projects, Implementation, Trout and Decker Creeks, Del Norte Ranger District, Rio Grande National Forest, Rio Grande and Mineral Counties, CO.

Summary

EPA expressed environmental concerns regarding wetlands and water quality impacts. EPA requested additional analysis be incorporated into the final document on these issues.

ERP No. D–AFS–L65166–OR Rating EO2, Quosatana and Bradford Timber Sales and Integrated Resource Projects, Implementation, Siskiyou National Forest, Gold Beach Ranger District, Curry County, OR.

Summary

EPA had environmental objections to the proposed project based on the lack of information on potential water quality standards violation and on air quality impacts analysis related to prescribed burning; the lack of a complete no action alternative; potential impacts to threatened species; the need for complete monitoring and mitigation discussion; and the need for a broader cumulative effects analysis.

ERP No. D–BLM–J67015–WY Rating LO, Mulligan Draw Gas Field Project, Natural Gas Field Drilling, Operation, Abandonment and Reclamation, Approval, Right-of-Way Grants, COE Section 404 Permits and EPA RCRA Permits, Sweetwater County, WY.

Summary

EPA had no objections to the draft environmental impact statement.

ERP No. D–BLM–K67015–CA Rating EC2, Baltic Open-Pit Heap Leach Gold and Silver Mine Project, Construction and Operation, Plan of Operation, Reclamation Plan, Mining Reclamation Plan and Conditional Use Permit, Approval, Kern County, CA.

Summary

EPA expressed environmental concerns regarding potential project impacts to air quality and requested additional information in the FEIS on air, water quality and reclamation activities. EPA requested that coordination be undertaken with the local air pollution control district on the project's air quality impacts, air permits and mitigation.

ERP No. D–BOP–D81021–PA Rating EC2, Philadelphia, Pennsylvania Metropolitan Detention Center Construction and Operation, Site Selection near the existing Byrne Federal Courthouse, City of Philadelphia, PA.

Summary

EPA expressed environmental concerns with the proposed project based on hazardous waste mitigation and the insufficiency of alternative analysis.

ERP No. DS–DOE–K03007–CA Rating EO2, Petroleum Production at Maximum Efficient Rate, Naval Petroleum Reserve No. 1 Continued Operation, Updated Information, Elk Hills, Kern County, CA Kern County, CA.

Summary

EPA expressed objections regarding potential project impacts to regional air quality, groundwater resources, wildlife habitats, and threatened and endangered species. EPA suggested the development of a fourth alternative that would include provisions of the No Action Alternative in the near term and the provisions of the Preferred Alternative in the future. EPA also encouraged efforts to reduce the amount of hazardous materials used, and hazardous waste generated, from petroleum production operations.

ERP No. DS–USA–B11010–00 Rating LO1, Fort Huachuca, Fort Devens and Fort Monmouth Base Realignment, Transfer of Missions and Functions, Updated Information, Cochise County, AZ; Worcester and Middlesex Counties, MA and Monmouth County, NJ.

Summary

EPA had no objections to the proposed action.

Final EISs

ERP No. F–COE–L39046–AK, Southeast Alaska Harbors Improvement, Construction of Offshore Breakwaters in Sitka Channel for Protection and Expansion of Thomsen Harbor, Implementation, AK.

Summary

EPA still had concern regarding indirect and cumulative environmental impacts and the proposed monitoring program.

ERP No. F–NOA–K90025–CA, Monterey Bay National Marine Sanctuary, Establishment, Designation and Management Plan, San Mateo, Santa Cruz and Monterey Counties, CA.

Summary

The FEIS addressed the questions EPA raised in its DEIS comments and therefore, EPA has no objection to the proposed action. Additional EPA comments were provided to clarify areas that are subject to EPA jurisdiction under the Clean Water Act and the Marine Protection, Research and Sanctuaries Act.

ERP No. F–SFW–J64004–WY Rating, Cokeville Meadows National Wildlife Refuge, Management Plan, Implementation and Land Acquisition, Bear River Valley, Lincoln County, WY.

Summary

EPA had no objection to the proposed actions.

ERP No. FS–AFS–L01004–ID, Sunbeam Mining Project, Grouse Creek Gold and Silver Mines Plan of Development and Operation Modifications, Approval and COE Section 404 Permit, Custer County, ID.

Summary

EPA expressed environmental concerns regarding project-related wetland and riparian resource impacts, potential acid rock drainage, tailings pond cyanide levels, and air emission. EPA requested that mitigation measures be fully stipulated in federal authorizations.

Dated: August 10, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–19499 Filed 8–13–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4195–3]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5075 OR (202) 260–5076.

Availability of Environmental Impact Statements Filed August 3, 1992 Through August 7, 1992, Pursuant to 40 CFR 1506.9.

EIS No. 920316, DRAFT EIS, FHW, NC, Winston-Salem Northern Beltway (Western Section), Construction, US 158 Northward to US 52, Funding and COE Section 404 Permit, Forsyth County, NC, Due: September 30, 1992, Contact: Nicholas L. Graf (919) 856–4346.

EIS No. 920317, FINAL EIS, FHW, MO, US 71 Improvement, I–144 to Arkansas State Line, Funding and section 404 Permit, Jasper, Newton and McDonald Counties, MO, Due: September 14, 1992, Contact: James Mullen (314) 636–7104.

EIS No. 920318, DRAFT EIS, AFS, WA, Threemile Area Timber Sales and Other Projects, Harvesting Timber and Other Resource Management Activities, Colville National Forest, Sullivan Lake Ranger District, Pend Oreille County, WA, Due: October 1, 1992, Contact: Andrew C. Mason (509) 446–7500.

EIS No. 920319, FINAL EIS, FHW, IN, US 24 Relocation, IN–13 to IN–9/37, Funding and 404 Permits, Wabash and Huntington Counties, IN, Due: September 14, 1992, Contact: Douglas N. Head (317) 269–7494.

EIS No. 920320, FINAL EIS, AFS, OH, Wayne National Forest, Amendment Land and Resource Management Plan, Determination of Lands Suitable for Oil and Gas Leasing and COE Section 404 Permit, Several Counties, OH, Due: September 14, 1992, Contact: Regis E. Terney (812) 275–5987.

EIS No. 920321, FINAL EIS, FHW, PA, I–81 Connector/LR–1067, Section A01 Construction, US 11/Harrisburg Exchange to I–81 on the North, Funding and 404 Permit, Cumberland County, PA, Due: September 18, 1992, Contact: Manuel A. Marks (717) 782–2222.

EIS No. 920322, FINAL EIS, AFS, UT, Uinta National Forest Plan Amendment, Rangeland Ecosystem Management Plan, Implementation, Sanpete, Wasatch, Utah, Toole and Juab Counties, UT, Due: September 14, 1992, Contact: Norman L. Huntsman (801) 377–5780.

EIS No. 920323, DRAFT EIS, USN, CA, AZ, US Naval Observatory Optical

Interferometer Project, Construction, Operation and Site Selection, Anderson Peak and Chews Ridge in Los Padres National Forest, Monterey County, CA or US Naval Observatory Station in Flagstaff County, AZ, Due: September 28, 1992, Contact: Patricia Duff (415) 244–3715.

Amended Notices

EIS No. 920305, DRAFT EIS, COE, CA, Arts Park LA Development and Construction, Approval, Lake Balboa Park, Sepulveda Flood Control Basin, San Fernando Valley, City of Los Angeles, Los Angeles County, CA, Due: September 14, 1992, Contact: Mr. Gene Seagle (213) 894–5030. Published FR 07–31–92—Correction to Telephone Number.

Dated: August 10, 1992.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 92–19498 Filed 8–13–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

Dated: August 7, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street NW., suite 640, Washington, DC 20036, (202) 452–1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0391.

Title: Monitoring Program for Impact of Federal-State Joint Board Decisions.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Quarterly and annually.

Estimated Annual Burden: 708 responses; 1.94 hours average burden per response; 1,376 hours total annual burden.

Needs and Uses: In a Recommended Decision and Order, released March 31, 1987, the Federal-State Joint Board in Docket No. 80–286 (Joint Board) recommended increasing subscriber line charges, expanding the federal lifeline assistance program, retargeting the formula for high cost assistance, and modifying the common line pooling system. At the behest of the members of the Congressional Oversight Committees, it also recommended establishing a monitoring program to track the impact of these changes. The Commission adopted the Docket No. 80–286 Joint Board recommendations on April 16, 1987. In a Recommended Decision and Order, released May 28, 1987, the Joint Board made specific recommendations on the details of the monitoring program. In a Recommended Decision and Order, released July 8, 1992, the Joint Board recommended an extension of the monitoring program. In an Order released July 20, 1992, the Commission adopted this recommendation. The monitoring program is necessary for the Commission, the Joint Board, Congress, and the general public to assess the impact of the Joint Board decisions. Failure to implement the program would have made it impossible to determine the impact of these decisions and to assure that they do not produce unanticipated results contrary to the public interest. We note that the Monitoring Report has not revealed any harmful effects of Commission decisions to date. Nevertheless, the reports should be continued because they have proven to be a valuable source of information and some of the Commission decisions bear continued monitoring.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–19365 Filed 8–13–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–950–DR]

Arkansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Arkansas (FEMA–950–DR), dated July 24, 1992, and related determinations.

EFFECTIVE DATE: August 6, 1992.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Arkansas, dated July 24, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 24, 1992:

Pike County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92–19450 Filed 8–13–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of May 19, 1992

In accordance with § 271.5 of its rules regarding availability of information, there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on May 19, 1992.[1] The Directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests on balance that economic activity is expanding at a moderate pace. Total nonfarm payroll employment increased somewhat in April, and the civilian unemployment rate edged down to 7.2 percent. Industrial production rose appreciably further in April partly reflecting some further recovery in motor vehicle assemblies. A rebound in retail sales in April about offset the decline in March. Single-family housing starts fell considerably for a second month in April. Recent data on orders and shipments of nondefense capital goods indicate appreciable increases in outlays for business equipment, and building contracts point to some slowing of the decline in nonresidential construction. The nominal U.S. merchandise trade deficit in January-February was somewhat below its average rate in the fourth quarter. Incoming data on prices and labor costs suggest little change from recent trends.

Most interest rates have fallen since the Committee meeting on March 31. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies declined on balance over the intermeeting period.

M2 and M3 contracted in March and April; and expansion in transactions balances, which had accounted for much of the growth in the broader aggregates over previous months, slowed markedly. Through April, expansion of M2 was slightly above and that of M3 was slightly below the lowers ends of the ranges established by the Committee for the year.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 2-1/2 to 6-1/2 percent and 1 to 5 percent, respectively, measured from the fourth quarter of 1991 to the fourth quarter of 1992. The monitoring range for growth of total domestic nonfinancial debt was set at 4-1/2 to 8-1/2 percent for the year. With regard to M3, the Committee anticipated that the ongoing restructuring of depository institutions would continue to depress the growth of this aggregate relative to spending and total credit. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree pressure on reserve positions. In the context of the Committee's long-run objectives for price stability and sustainable economic growth, and giving careful consideration to economic, financial, and monetary developments, slightly greater reserve restraint or slightly lesser reserve restraint might be acceptable in the intermeeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from April through June at annual rates of about 2-1/2 and 1-1/2 percent, respectively.

By order of the Federal Open Market Committee, August 6, 1992.

Normand Bernard,

Deputy Secretary, Federal Open Market Committee.

[FR Doc. 92–19394 Filed 8–13–92; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Record of policy actions of the Committee for the meeting of May 19, 1992, are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Allied Irish Banks, p.l.c., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 8, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Allied Irish Banks, p.l.c., Dublin, Ireland, and First Maryland Bancorp, Baltimore, Maryland; to engage *de novo* in making equity or debt investments in non-profit entities formed to promote economic development by assisting the development of small businesses in economically depressed areas pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Maryland, Delaware, Pennsylvania, Virginia, and the District of Columbia.

Board of Governors of the Federal Reserve System, August 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–19395 Filed 8–13–92; 8:45 am]

BILLING CODE 6210–01–F

Carolina First Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 8, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Carolina First Corporation, Greenville, South Carolina; to acquire 9.8 percent of the voting shares of ComSouth Bankshares, Inc., Columbia, South Carolina, and thereby indirectly acquire Bank of Charleston, National Association, Charleston, South Carolina, and thereby indirectly acquire Commercial Bank of the South, N.A., Columbia, South Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Mansura Bancshares, Inc., Mansura, Louisiana; to merge with Cottonport Bancshares, Inc., Cottonport, Louisiana, and thereby indirectly acquire Cottonport Bank, Cottonport, Louisiana; and to merge with Cen-La Bancshares, Inc., Marksville, Louisiana, and thereby indirectly acquire Central Louisiana Bank & Trust, Marksville, Louisiana.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Albrecht Financial Services, Inc., Wall Lake, Iowa; to become a bank holding company by acquiring 80 percent of the voting shares of Norwalk-Cumming State Bank, Norwalk, Iowa.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. H & H Holding Company, Alton, Illinois; to become a bank holding company by acquiring at least 86.9 percent of the voting shares of Greene County National Bank in Carrollton, Carrollton, Illinois, and 100 percent of the voting shares of Godfrey State Bank, Godfrey, Illinois.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to merge with Am-Can Investment, Inc., Moorhead, Minnesota, and thereby indirectly acquire Moorhead State Bank, Moorhead, Minnesota.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of Manufacturers Bancorp, Inc., Leavenworth, Kansas, and thereby indirectly acquire Manufacturers State Bank, Leavenworth, Kansas; First National Bank of Bonner Springs, Bonner Springs, Kansas; and Lenexa Bancorporation, Inc., Lenexa, Kansas, and thereby indirectly acquire Lenexa National Bank, Lenexa, Kansas.

2. FSB Bankshares, Inc., Fowler, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of Fowler State Bank, Fowler, Kansas.

G. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. WSB Bancshares, Inc., Wellington, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Wellington Delaware Financial Corporation, Dover, Delaware, and thereby indirectly acquire Wellington State Bank, Wellington, Texas. In connection with this application, Wellington Delaware Financial Corporation has applied to become a bank holding company by acquiring 100 percent of the voting shares of Wellington State Bank, Wellington, Texas.

2. U B & T Holding Co., Abilene, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, Abilene, Texas.

Board of Governors of the Federal Reserve System, August 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19396 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

Frances Gourley Lott Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 1992.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Frances Gourley Lott Trust, Fort Worth, Texas, to acquire 7 percent; Mary Theresa Lott Trust, Fort Worth, Texas, to acquire 33 percent; Gayle Gourley Trust, Fort Worth, Texas, to acquire 34 percent; and W.J. Gourley III Trust, Fort Worth, Texas, to acquire 26 percent of the voting shares of Security Bank of Arlington, Arlington, Texas.

Board of Governors of the Federal Reserve System, August 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19397 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

NBD Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 8, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. NBD Bancorp, Inc., and NBD Indiana, Inc., both located in Detroit, Michigan; as part of their application to acquire INB Financial Corporation, Indianapolis, Indiana, to acquire INB's 4.65 percent interest in BHC Securities, Inc., Philadelphia, Pennsylvania, for a total of 8.34 percent, and thereby provide securities brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

2. Old Kent Financial Corporation, Grand Rapids, Michigan; to acquire First Federal of Elgin, F.S.A., Elgin, Illinois, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. Upon acquisition, it will be merged into Old Kent Bank, Elmhurst, Illinois.

Board of Governors of the Federal Reserve System, August 10, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19398 Filed 8-13-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 213]

Cooperative Agreement With American National Red Cross (ANRC) and the National Human Immunodeficiency Virus (HIV)/AIDS Information and Education Prevention Program; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for continuation of the cooperative agreement to the American National Red Cross (ANRC) for the development, implementation, and distribution of programs and materials relating to the prevention of transmission of the human immunodeficiency virus (HIV). The target audiences served by the ANRC are the general public, youth, minorities and workers in the workplace. Priority areas include capacity building, communications, educational programming and evaluation. The public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the section Where To Obtain ADditional Information.)

Authority

This program is authorized under sections 301(a) and 317(a) of the Public Health Service Act, [42 U.S.C. 241(a) and 247b(a)] as amended. Applicable program regulations are found in 45 CFR part 74—Administration of Grants.

Eligible Applicants

Assistance will be provided only to the American National Red Cross for this project. No other applications will be solicited.

The FY 1992 United States House of Representatives, Committee on Appropriations Report, elucidated the continuing need for CDC to continue its support of the ANRC in providing local communities across the country with effective training programs and educational materials that are targeted to both the general public and specific audiences in HIV/AIDS prevention. The ANRC is the only organization with the unique capacity to provide HIV/AIDS information education on both national and local (state, county, city, etc.) levels simultaneously. The ANRC (1) has a strong and effective system for providing health and education training programs in local communities and neighborhoods; (2) has a network of local affiliate chapters in almost every county of the United States; (3) relies on volunteers and staff (a ratio of 7 volunteers to 1 staff) for service delivery; and (4) is able to obtain the latest scientific and epidemiologic information about HIV/AIDS because of its blood programs.

Availability of Funds

Approximately $7,000,000 is available in FY 1992 to fund this cooperative agreement. The above estimate is subject to change based on the scope and quality of the application.

It is expected that the award will be made for a 12-month budget period within a project period of up to five years.

Continuation awards within the project period will be made on the basis of satisfactory progress based on reporting requirements from the local community's HIV/AIDS efforts as defined in subsequent sections and availability of funds.

No funds will be provided for direct patient medical care (including substance abuse treatment and medical prophylaxis or drugs). Although contracts with other organizations are allowable under this cooperative agreement, the applicant must perform a substantial portion of the activities for which funds are requested.

Purpose

The purpose of this program is to provide primary prevention messages to the general public and targeted segments: youth, minorities, and workers. This allows ANRC chapters at the local level to be an HIV/AIDS education and support access point throughout the nation.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

1. Provide specific, measurable, time-phased objectives for the execution of its HIV/AIDS Education Program within the framework of the national program goals. This can include relevant international activities.

2. Communicate with the general public to provide primary prevention messages at the local community level and document the number of persons receiving educational programs and the involvement of key local leadership and organizations.

3. Develop program materials to meet program needs at the local level.

4. Conduct process evaluations and baseline needs assessments to access the effectiveness of program materials in meeting changing needs at the local level.

5. Develop and implement an evaluation plan that measures the accomplishments of the program objectives at the national, regional, and local levels, including systems that identify methods of reporting: (1) Methods to measure outcome objectives; and (2) methods to measure program delivery at the local community level.

6. Provide partnership activities and linkages with other national organizations, with proof of support (i.e., verification of linkages with local affiliates, signed workplans, and/or other evidence of previous, current, or expected area-specific collaboration).

ANRC shall accomplish the following specific program areas during the first budget period:

a. Integrate outreach and marketing activities with other community outreach activities of the ANRC, including volunteer recruitment, training, and retention.

b. Convene meeting of CDC staff, ANRC Office of HIV/AIDS Education staff, ANRC Regional Managers and State Coordinators to detail steps for full implementation of HIV/AIDS educational programming.

c. Detail how local chapters will become information and referral centers for local communities, including linkages with media, wherever appropriate. Plan should include summaries of site visits to provide technical assistance to local chapters and documentation of (1) activities by local chapters currently involved in HIV/AIDS activities; (2) mechanisms to be used to address local concerns; and (3) accomplishments and problems encountered in meeting objectives. ANRC should specify the manner in which technical assistance will be given to chapters.

d. Identify specific activities to be undertaken that will support comprehensive school health education, and youth-serving organizations.

e. Evaluate the feasibility of providing minigrants to local ANRC Chapters for HIV education, based on targeted audiences served, such as Latino and other minority populations, out-of-school populations, parents of children and youth, and underserved youth populations (e.g., incarcerated migrant youth).

f. Identify specific activities to be undertaken by the ANRC which will support comprehensive workplace education, specifically education of employees and provisions through its 2700 chapters.

g. Identify specific activities to be undertaken by the ANRC which will support minority education.

h. Detail how local chapters will be able to adopt and support community-based organizations through jointly funded projects in a minimum of five different communities.

i. Develop a workplan to address elements such as donor education, volunteer education, and collaboration in media messages and public relations.

j. Hire a Program Manager that: (1) has supervisory responsibility and delegated authority for each major component of the ANRC HIV/AIDS Education Program and (2) reports directly to the Director of the Office of HIV/AIDS Education.

B. CDC Activities

1. Provide consultation and technical assistance in planning, operating, and evaluating program activities.

2. Provide available survey data, current scientific information regarding risk factors for HIV infection, prevention measures, program strategies, and other resources for prevention of HIV infection.

3. Provide technical assistance in the evaluation of program effectiveness—process, impact, and outcome evaluation of activities and services.

4. Assist in the collaboration efforts with state/local health and education departments, national organizations, and corporate America.

Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

A. Communication to the General Public

The extent to which the applicant demonstrates its ability to communicate with the general public to provide primary prevention messages at the local community level. This would include reporting the number of persons who receive educational programs, involvement of key local leadership and organizations, and identification of the ANRC as an information and referral center at the local community level. Application should include how local chapters will be an ongoing information and referral center for the community, including linkages to available ANRC HIV/AIDS education resources for the general public, minorities, youth and workers in the workplace. CDC will provide available survey data and other resources, such as database services of the CDC National AIDS Clearinghouse. (25 points)

B. Developing and Updating Information

The extent to which the applicant program and materials will be updated and evaluated to continue to meet program needs at the local level. Such evaluation already includes process evaluation and baseline needs assessment; these should be briefly outlined. Applicant should list activities and process objectives to measure outcome objectives at the national and local community levels. (15 points)

C. Partnership Activities

The extent to which the applicant provides linkages by partnerships with other national organizations, with proof of support from other organizations. This would include letters of support from national organizations and verification of linkages with affiliates at the local community level. This can be shown through signed workplans, agreements or other evidence of collaboration describing [previous, current, as well as future] areas of collaboration. (10 points)

D. Measurable Objectives

The extent to which the proposed objectives are specific, measurable, time-phased, related to the proposed activities, and work to create an accepting and supporting environment for HIV-prevention messages at the local community level. (15 points)

E. Methods to Obtain Objectives

The quality of the applicant's plan for conducting program activities, the potential effectiveness of the proposed methods in meeting its objectives, and the extent to which requested funds are for delivery and marketing of HIV-prevention materials and programs at the national and local level. (15 points)

F. Evaluation

The extent to which the evaluation plan measures the accomplishment of program objectives at the national, regional and local level. Systems which identify methods of reporting should be included. (20 points)

Executive Order 12372 Review

The application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.118, Acquired Immunodeficiency Syndrome (AIDS) Activities.

Other Requirements

HIV/AIDS Requirements

Recipients must comply with the document entitled, "Content of AIDS-Related Written Materials, Pictorials, Adiovisuals, Qestionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs" (June 15, 1992), a copy of which is included in the application kit. In complying with the Program Review Panel requirements, recipients are encouraged to use an existing program review panel such as one created by the state health department's HIV/AIDS Prevention Program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application Submission and Deadline

The American National Red Cross must submit an original and two copies of the application PHS Form 5161–1 to Clara M. Jenkins, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305.

Where to Obtain Additional Information

If you are interested in obtaining information regarding this program, please refer to Announcement 213 and contact Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842–6575 for business management technical assistance. Programmatic technical assistance may be obtained from Dr. Margaret Scarlett, AIDS Information and Education Specialist, National AIDS Information and Education Program, Office of the Deputy Director (HIV), 1600 Clifton Road, NE., Mailstop A–24, Atlanta, GA 30333, (404) 639–0979.

Please refer to Announcement Number 213 when requesting information and submitting an application.

A copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone 202–783–3238).

Dated: August 7, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–19449 Filed 8–13–92; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

Food and Drug Industry Exchange Meetings Concerning Avoidance of Illegal Animal Drug Residues Through Proper Drug Use; Notice of Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) will hold a series of industry exchange meetings to discuss how to avoid illegal animal drug residues through proper drug use. The meetings will help the agency prepare regulatory and educational initiatives directed at the on-farm use of animal drugs.

DATES: The industry exchange meetings will be held on Tuesday, September 1, 1992; Wednesday, September 2, 1992; Thursday, September 3, 1992; Tuesday, September 22, 1992; Thursday, September 24, 1992; and Friday, September 25, 1992, from 10 a.m. to 2 p.m.

ADDRESSES: The industry exchange meetings will be held at the following locations:

September 1, 1992: Bethlehem Public Library, Community Rm., 451 Delaware Ave., Del Mar, NY 12054.

September 2, 1992: University of Wisconsin, Wisconsin Center, 702 Langdon St., Madison, WI 53706.

September 3, 1992: Des Moines Convention Center, 501 Grand Ave., Des Moines, IA 50309.

An additional notice will be published regarding the meeting sites for the following meetings: September 22, 1992: Tulare, CA; September 24, 1992: Amarillo, TX; and September 25, 1992: Tampa, FL.

People interested in attending these meetings should call the contact person listed below to preregister.

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Food and Drug Administration (HFV–244), Center for Veterinary Medicine, 7500 Standish Pl., Rockville, MD 20855, 301–295–8769.

SUPPLEMENTARY INFORMATION: FDA will hold a series of industry exchange meetings to discuss how to avoid illegal animal drug residues through proper drug use.

FDA is responsible for programs and regulatory activities associated with the prevention of illegal drug residues in food derived from treated animals. Illegal drug residues in edible products can constitute a health hazard to people consuming such food. The principal causes of illegal drug residues are the failure to observe proper withdrawal periods prior to slaughter or milk discard times, the failure to follow label dosage directions, the failure to use drugs properly, and negligence. Regardless of the reason, it is FDA's policy to hold responsible any individual in the production and marketing chain who can be shown to have caused (by an act of commission or omission) illegal residues in edible animal products. These individuals may be charged with violations of the Federal Food, Drug, and Cosmetic Act.

As a partial response to a task force report concerning avoidance of illegal residues, FDA will be developing specific guidance for its investigators concerning proper animal drug use by producers of livestock and poultry. This information will be used to determine when it is appropriate to take regulatory action against an individual associated with a violative residue in meat, milk, or eggs. Before preparing this guidance, the agency is holding a series of meetings to obtain from interested persons information concerning proper animal drug use by livestock producers. Subjects for which information is needed include drug use, drug storage, recordkeeping, and animal identification. The information obtained at these meetings will also support development of educational initiatives directed at the on-farm use of animal drugs.

Dated: August 10, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–19443 Filed 8–13–92; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Availability of Funds for Grants for (State) Demonstration Projects With Respect to Alzheimer's Disease or Related Disorders

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of approximately $3.9 million in fiscal year (FY) 1992 for 5 to 15 grants to States for demonstration projects with respect to Alzheimer's Disease or related disorders.

In order to allow States sufficient time to prepare applications, the application packages, guidance materials, and availability of funds announcements were sent directly to Offices of State Governors on June 19, 1992. This notice announces to the general public that FY 1992 grant funds are available for demonstration projects with respect to Alzheimer's Disease or Related Disorders.

The purpose of this program is to assist grantees in carrying out demonstration projects in planning, establishing, and operating respite care and supportive service programs as follows:

Program Development

To coordinate with public and private nonprofit organizations the development and operation of diagnostic, treatment, care management, respite care, legal counseling and education services provided within the State to individuals with Alzheimer's Disease or related disorders and to the families and care providers of these individuals; and

Services Delivery

Not less than 50 percent of the grant award) to provide home health care, personal care, day care, companion services, short-term (up to 14 days per annum) respite care in health and long-term are facilities, and other respite care to families and individuals with Alzheimer's Disease or related disorders; and

Information Dissemination

To provide to health care providers, to individuals with Alzheimer's Disease or related disorders, to the families of such individuals, to organizations established for such individuals and such families, and to the general public, information with respect to: (a) Diagnostic services, treatment services, and related services available to them; (b) sources of assistance in obtaining such services, including assistance under entitlement programs; and (c) the legal rights of such individuals and such families.

This program is authorized by Section 398 of the Public Health Service (PHS) Act, 42 U.S.C. 280c and grants will be awarded subject to Sections 399 and 399A of the PHS Act as amended by Public Law (Pub. L.) 101–557, Home Health Care and Alzheimer's Disease Amendments of 1990, 42 U.S.C. 280c–4 and 280c–5.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Alzheimer's Disease (or related disorders) Demonstration Grant (to States) Program directly addresses the Healthy People 2000 objectives by improving access to information and services for persons with Alzheimer's Disease and their families, including respite care services for underserved populations, particularly minority groups, and other disadvantaged populations. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–01) through the Superintendent of Documents, Government Printing Office, Washington, DC 20042–9325 (Telephone 202–783–3238).

ADDRESSES: Application kits and additional guidance (Form PHS 5161–1, with revised face sheet DHHS Form 424, as approved by the Office of Management and Budget under control number 0937–0189) may be obtained from, and completed applications should be mailed to: Joseph Hayden, Acting Grants Management Officer (GMO), Bureau of Primary Health Care, Health Resources and Services Administration, 12100 Parklawn Drive, Rockville, Maryland 20857. The telephone number is (301) 443–5902, and FAX number is (301) 443–5906. The Grants Management Officer is available to provide assistance on business management issues.

DATES: The deadline date for receipt of applications is August 22, 1992. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(2) *Sent* on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For general program information or technical assistance, contact Carol E. Sherman, D.M.D., M.P.H., Division of Special Populations Program Development (DSPPD), Bureau of Primary Health Care (BPHC), room 9–12, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–9371.

SUPPLEMENTARY INFORMATION:

Eligible Applicants

Eligible applicants are States. The term "State" includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. Only one application per State will be accepted. The State must designate the agency responsible for implementing this demonstration program.

Available Funds

Approximately $3.9 million for discretionary grants to States to assist in carrying out demonstration projects for planning, establishing, and operating programs will be awarded in FY 1992.

Number of Awards

Between 5 to 15 awards will be made. Awards will be made for a one year budget period. Project periods may be for up to three years.

Grant Requirements

- A State must agree to expend at least 50 percent of the grant award for the provision of the following services: home health care, personal care, day care, companion services, short-term (up to 14 days per annum) respite care services in health care and long-term care facilities, and other respite care to individuals with Alzheimer's Disease or related disorders.
- A State must agree that no more than 10 percent will be expended for administrative expenses with respect to the approved grant.
- A State may not make payments from a grant for any item or service to the extent that payment has made, or can reasonably be expected to be made, under any State compensation program, under an insurance policy, under any Federal or State health benefits program, or by an entity that provides health services on a prepaid basis. Grant funds may not be used to supplant State funds for services that are currently supported or for services from which State funds have recently been withdrawn.
- Matching Requirement: Under this program, the amount of Federal grant funds may not exceed 75 percent of the cost of services to be provided by the State for the first year, 65 percent for the second year, and 55 percent for the third year. Amounts provided by the federal government, or services assisted or subsidized to any significant extent by the Federal government, may not be counted toward the non-Federal contribution requirement. Non-Federal contributions may be in case or in kind, fairly evaluated, including plant, equipment, or services in accordance with applicable PHS guidelines.

Criteria for Evaluating Applications

In its review of applications for grants for the provision of services and activities under Sections 398 of the PHS Act, HRSA will consider the following evaluation criteria:

(a) Need: The extent to which the proposed plan has:

(1) identified and documented the need for respite care or supportive services for persons with Alzheimer's Disease or related disorders, for their families and their caregivers; (2) projected the number of persons to be served by the proposal; (3) identified traditionally underserved populations to be served, and; (4) described barriers to overcome in accessing respite care and supportive services.

(b) Proposed Plan: The extent to which the proposed plan has:

(1) Specified activities that will address identified needs for respite care and supportive services; (2) provided a specific description of proposed program services and activities which demonstrate that at least 50 percent of program funds will be used for direct services for program participants; (3) specified outreach activities to traditionally underserved populations; (4) provided a description of their quality assurance program; and (5) described the applicant's experience in providing outreach, respite care, and other supportive services, including a description of the proposed staffs' qualifications and experience.

(c) Project Administration, Collaboration and Coordination: The extent to which an applicant: (1) Has and will collaborate (and described strategies) with other public or private nonprofit agencies to link, coordinate and integrate the service system; (2) has an adequate plan and appropriately trained staff for the overall management of the project, including procedures for fiscal control and supervision of contracts.

(d) Budget: The extent to which the proposed budget is adequate and appropriate to support and meet the objectives of the program.

(e) Outcome and Evaluation: The adequacy of the plan to monitor the progress of the program and assess and document outcomes of the program.

Other Award Information

All grants to be awarded under this notice are subject to the provisions of Executive Order 12372, as implemented by 45 CFR part 100, which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit made available for this program contains a listing of States which have chosen to set up a review system and identifies a State Single Point of Contact (SPOC) in each State for the review. Applicants are advised to contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on State process.

In the OMB Catalog of Federal Domestic Assistance, the Alzheimer's Demonstration Grant (to States) Program is listed as Number 93.951.

Dated: August 10, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–19390 Filed 8–13–92; 8:45 am]

BILLING CODE 4160–15–M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1992.

Name: National Advisory Council of the National Health Service Corps.

Dote ond Time: September 12–15, 1992, 2:00 p.m.

Place: Rancho Viejo Property, Rancho Viejo Drive; Expressway 77/83, Brownsville, Texas 78520.

The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The meeting will begin at 2 p.m. on Saturday, September 12, and adjourn at 6 p.m. On Sunday, September 13, the meeting will be from 8:30 a.m. to 6 p.m. On Monday, September 14, the Council will leave the hotel at 8 a.m. to begin site visits. The Council will visit the Brownsville Community Health Center in Brownsville, Texas; Hidalgo Health Care Corporation, Pharr, Texas; Su Clinica in Harlingen, Texas and Cameron County Health Department in San Benito, Texas.

The meeting is open to the public, however, no transportation will be provided to the sites.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, room 7A–39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1470.

Agenda Items are subject to change as priorities dictate.

Dated: August 10, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–19391 Filed 8–13–92; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services covers the Social Security Administration. Notice is given that Chapter S1, the Office of the Deputy Commissioner for Finance, Assessment and Management is being amended to reflect the establishment of the Division of Disability Hearings Quality (S1KC3), Office of Disability Program Quality (S1KC) in the Office of Program and Integrity Reviews (S1K).

The new material is as follows:

Section S1K.10. The Office of Program and Integrity Reviews—(Organization):

F. The Office of Disability Program Quality (S1KC).

Add:

3. The Division of Disability Hearings Quality (S1KC3).

Section S1K.20 The Office of Program and Integrity Reviews—(Functions):

F. The Office of Disability Program Quality (S1KC).

Add:

3. The Division of Disability Hearings Quality (S1KC3).

a. Plans, designs and maintains a quality assurance (QA) review system to assess quality in adjudication of disability claims in which a hearing before an administrative law judge (ALJ) has been requested.

b. Conducts QA reviews of the disability and procedural aspects of a sample of claims decided by the ALJ including State Agency reconsideration determinations that have been appealed by an ALJ hearing.

C. Plans and issues periodic reports related to the QA reviews of ALJ decisions.

d. Designs and conducts special studies of significant issues that are identified during the QA review.

Dated: August 6, 1992.

Ruth A. Pierce,

Deputy Commissioner for Human Resources.

[FR Doc. 92–19354 Filed 8–13–92; 8:45 am]

BILLING CODE 4190–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–1917; FR–2934–N–91]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal

landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll-free information line at 1–800–927–7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the Federal Register, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agency at the following address: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; U.S. Air Force: Bob Menke, USAF, Bolling AFB, SAF–MIIR, Washington, DC 20332–5000; (202) 767–6235; GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501–0067; (These are not toll-free numbers).

Dated August 7, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/14/92

Suitable/Available Properties

Buildings (by State)

California

Bldgs. 604, 605, 612, 611, 613–618
Point Arena Air Force Station
Mendocino County, CA 95468–5000
Landholding Agency: Air Force
Property Numbers: 189010237–189010246
Status: Unutilized
Comment: 1232 sq. ft. each; stucco-wood frame; most recent use—housing.

Bldg. 21180
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Location: Hwy 1, Hwy 246, Coast Rd., PT Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130384
Status: Unutilized
Comment: 7487 sq. ft., 1 story/wood shingle structure, most recent use—contracting administrative office, needs major rehab.

Guam

Anderson VOR
In the municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1 and Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010267
Status: Unutilized
Comment: 550 sq. ft., 1 story perm/concrete; on 226 acres.

Anderson Radio Beacon Annex
In the municipality Dededo
Dededo Co: Guam GU 96912–
Location: Approximately 7.2 miles southwest of Anderson AFB proper; access is from Route 3, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010268
Status: Unutilized
Comment: 480 sq. ft.; 1 story perm/concrete; on 25 acres; most recent use—radio beacon facility.

Annex No. 4
Anderson Family Housing
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Access is through Route 1, Marine Drive.
Landholding Agency: Air Force
Property Number: 189010545
Status: Underutilized
Comment: various sq. ft.; 1 story frame/modified quonset; on 378 acres; portions of building and land leased to Government of Guam.

Harmon VORsite (Portion) (AJKZ)
Municipality of Dededo
Dededo Co: Guam GU 96912–
Location: Approx. 12 miles southwest of Anderson AFB proper.
Landholding Agency: Air Force
Property Number: 189120234
Status: Unutilized
Comment: 550 sq. ft. bldg., needs rehab on 82 acres.

Idaho

Bldg. 121
Mountain Home Air Force Base
Main Avenue
Elmore County, ID 83648–
Landholding Agency: Air Force
Property Number: 189030007
Status: Excess
Comment: 3375 sq. ft.; 1 story wood frame; potential utilities; needs rehab; presence of asbestos; building is set on piers; most recent use—medical administration, veterinary services.

Louisiana

Barksdale Radio Beacon Annex
Barksdale Radio Beacon Annex
Curtis Co: Bossier LA 71111–
Location: 7 miles south of Bossier City on highway 71 south; left 1¼ miles on highway C1552.
Landholding Agency: Air Force
Property Number: 189010289
Status: Unutilized
Comment: 360 sq. ft.; 1 story wood/concrete; on 11.25 acres.

Michigan

Bldg. 21
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 2146 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—storage.

Bldg. 22
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010777
Status: Excess
Comment: 1546 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 30
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010779
Status: Excess
Comment: 2593 sq. ft.; 1 floor; concrete block; possible asbestos; potential utilities; most recent use—communications transmitter building.

Bldg. 40
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010780
Status: Excess
Comment: 2069 sq. ft.; 2 floors; concrete block; possible asbestos; potential utilities; most recent use—administrative facility.

Bldg. 41
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010781
Status: Excess
Comment: 2069 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 42
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010782
Status: Excess
Comment: 4017 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—dining hall.

Bldg. 43
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010783
Status: Excess
Comment: 3674 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—dormitory.

Bldg. 44
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010784
Status: Excess
Comment: 7216 sq. ft.; 2 story; concrete block; possible asbestos; potential utilities; most recent use—dormitory.

Bldg. 45
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010785
Status: Excess
Comment: 6070 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—administrative facility.

Bldg. 46
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010786
Status: Excess
Comment: 5898 sq. ft.; 2 story; concrete block; potential utilities; possible asbestos; most recent use—visiting personnel housing.

Bldg. 47
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010787
Status: Excess
Comment: 83 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 48
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010788
Status: Excess
Comment: 96 sq. ft.; 1 story; concrete block; potential utilities; most recent use—storage.

Bldg. 49
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010789
Status: Excess
Comment: 1944 sq. ft.; 1 story; concrete block; potential utilities; most recent use—dormitory.

Bldg. 50
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010790
Status: Excess
Comment: 6171 sq. ft.; 1 story concrete block; potential utilities; possible asbestos; most recent use—Fire Department, vehicle parking building.

Bldgs. 51–62
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010791–189010802
Status: Excess
Comment: 1134 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldgs. 63–67
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010803–189010807
Status: Excess
Comment: 1306 sq. ft. each; 1 story wood frame residence with garages; possible asbestos.

Bldg. 68
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010808
Status: Excess
Comment: 1478 sq. ft.; 1 story wood frame residence with garage; possible asbestos.

Bldg. 70
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010809
Status: Excess
Comment: 1394 sq. ft.; 1 story concrete block; possible asbestos; most recent use—youth center.

Bldgs. 72–89
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010811–189010828
Status: Excess
Comment: 1168 sq. ft. each; 1 story wood frame residence; potential utilities; possible asbestos.

Bldg. 97
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010829
Status: Excess
Comment: 171 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 98
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010830
Status: Excess
Comment: 114 sq. ft.; 1 floor; potential utilities; most recent use—pump house.

Bldg. 14
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010833
Status: Excess
Comment: 6751 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—gymnasium.

Bldg. 16
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010834
Status: Excess
Comment: 3000 sq. ft.; 1 floor concrete block; most recent use—commissary facility.

Bldgs. 9–13
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010835–189010839
Status: Excess
Comment: 1056 sq. ft. each; 1 story wood frame residences.

Bldgs. 5–8
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010840–189010843
Status: Excess
Comment: 864 sq. ft. each; 1 floor wood frame residences; possible asbestos.

Bldg. 4
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010844
Status: Excess

Comment: 2340 sq. ft.; 1 floor concrete block; most recent use—heating facility.
Bldg. 3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010845
Status: Excess
Comment: 5314 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—maintenance shop and office.
Bldg. 1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010846
Status: Excess
Comment: 4528 sq. ft.; 1 floor concrete block; possible asbestos; most recent use—office.
Bldgs. 216–224, 212, 214
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010847–189010855, 189010859, 189109861
Status: Excess
Comment: 780 sq. ft. each; 1 story wood frame housing garages.
Bldg. 215
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010856
Status: Excess
Comment: 390 sq. ft.; 1 story wood frame housing garage.
Bldg. 158
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010857
Status: Excess
Comment: 3603 sq. ft.; 1 story concrete/steel; possible asbestos; most recent use—electrical power station.
Bldg. 15
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010864
Status: Excess
Comment: 538 sq. ft.; 1 floor; concrete/wood structure; potential utilities; most recent use—gymnasium facility..
Bldg. 23
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010865
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldg. 24
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010866
Status: Excess
Comment: 44 sq. ft.; 1 story; metal frame; prior use—storage of fire hoses.
Bldgs. 31–35
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010867–189010871
Status: Excess
Comment: 36 sq. ft.each; 1 story; metal frame; prior use—storage of fire hoses.
Bldgs. 36–37, 39, 201–207
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Numbers: 189010872–189010874, 189010879–189010885
Status: Excess
Comment: 25 sq. ft. each; 1 floor metal frame; prior use—storage of fire hoses.
Bldg. 153
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010886
Status: Excess
Comment: 4314 sq. ft.; 2 story concrete block facility; (radar tower bldg.) potential use—storage.
Bldg. 154
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010887
Status: Excess
Comment: 8960 sq. ft.; 4 story concrete block facility; (radar tower bldg.) potential use—storage.
Bldg. 157
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: Air Force
Property Number: 189010888
Status: Excess
Comment: 3744 sq. ft.; 1 story concrete/steel facility; (radar tower bldg.); potential use—storage.

Oregon

Duplexes 126
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034
Landholding Agency: GSA
Property Number: 549220014
Status: Surplus
Comment: 1064 to 2204 sq. ft., wood frame, 1 story, 2 & 3 bedrooms, needs rehab, sewer treatment plant unable to accommodate fully operational facility, possible asbestos, also 38 acres of land w/water well.
GSA Number: 9–D–OR–434I.
38 Single Family Residences
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034
Landholding Agency: GSA
Property Number: 549220015
Status: Surplus
Comment: 1064 to 2204 sq. ft., wood frame, 1 story, 3 & 4 bedrooms, needs rehab, sewer treatment plant unable to accommodate fully operational facility, possible asbestos, also 38 acres of land w/water well.
GSA Number: 9–D–OR–434I.
10 Miscellaneous Buildings
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034
Landholding Agency: GSA
Property Number: 549220016
Status: Surplus
Comment: 1 story, most recent use—fire station, storage sheds, quonset hut, well housings.
GSA Number: 9–D–OR–434I.

Land (by State)

California

60 ARG/DE
Travis ILS Outer Marker Annex
Rio-Dixon Road
Travis AFB Co: Solano, CA 94535–5496
Location: State Highway 113
Landholding Agency: Air Force
Property Number: 189010189
Status: Excess
Comment: .13 acres; most recent use—location for instrument landing system equipment.

Guam

Annex 1
Andersen Communication
Dededo Co: Guam, GU 96912–
Location: In the municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010427
Status: Underutilized
Comment: 862 acres; subject to utilities easements.
Annex 2, (Partial)
Andersen Petroleum Storage
Dededo Co: Guam, GU
96912–
Location: In the Municipality of Dededo.
Landholding Agency: Air Force
Property Number: 189010428
Status: Underutilized
Comment: 35 acres; subject to utilities easements.

Michigan

Calumet Air Force Station
Section 1, T57N, R31W
Houghton Township
Calumet Co: Keweenaw, MI 49913–
Landholding Agency: Air Force
Property Number: 189010862
Status: Excess
Comment: 34 acres; potential utilities.
Calumet Air Force Station
Section 31, T58N, R30W
Houghton Township
Calumet Co: Keweenaw, MI 49913–
Landholding Agency: Air Force
Property Number: 189010863
Status: Excess
Comment: 3.78 acres; potential utilities.

Suitable/Unavailable Properties

Buildings (by State)

California

Hawes Site (KHGM)
March AFB
Hinckley Co: San Bernardino, CA 92402
Landholding Agency: Air Force
Property Number: 189010084
Status: Unutilized
Comment: 9,290 sq. ft., 2 story concrete, most recent use—radio relay station, possible asbestos, land belongs to Bureau of Land Management, potential utilities.

Michigan

Bldg. 20
Calumet Air Force Station

Calumet Co: Keweenaw, MI 49913–
Landholding Agency: Air Force
Property Number: 189010775
Status: Excess
Comment: 13,404 sq. ft.; 1 floor; concrete block; potential utilities; possible asbestos; most recent use—warehouse/supply facility.
Bldg. 28
Calumet Air Force Station
Calumet Co: Keweenaw, MI 49913–
Landholding Agency: Air Force
Property Number: 189010778
Status: Excess
Comment: 1,000 sq. ft.; 1 floor; possible asbestos; potential utilities; most recent use—maintenance facility.

Missouri

Jefferson Barracks ANG Base
Missouri National Guard
1 Grant Road
St. Louis Co: St. Louis MO 63125–4118
Landholding Agency: Air Force
Property Number: 189010081
Status: Underutilized
Comment: 20 acres; portion near flammable materials; portion on archaeological site; special fencing required.

New Mexico

Bldg. 13 1606 ABW/DE
Kirtland AFB
Wyoming Avenue
Kirtland Co: Bernalillo NM 87117–5496
Landholding Agency: Air Force
Property Number: 189010072
Status: Unutilized
Comment: 520 sq. ft., 1 story portable building, off-site use only.

South Dakota

54 Bldgs.—Renel Heights
Ellsworth AFB Co: Pennington SD 57706–
Location: Across from main gate turn off.
Landholding Agency: Air Force
Property Numbers: 189010343–189010355, 189010386–189010426
Status: Unutilized
Comment: 852 sq. ft. to 1,652 sq. ft. each; 1 story concrete masonry block residences; secured area with alternate access; unstable foundation; utilities disconnected; possible asbestos.
124 Bldgs.—Skyway
Ellsworth AFB Co: Pennington SD 57706–
Location: Between main gate turn off and school gate.
Landholding Agency: Air Force
Property Numbers: 189010356–189010384, 189010760–189010774, 189030008–189030015, 189040003–189040028, 189110033–189110080
Status: Unutilized
Comment: 481 sq. ft. to 1,256 sq. ft. each; 1 and 2 story wood frame residences; structurally deteriorated; possible asbestos; secured area with alternate access; potential utilities.
Bldg. 1108, 1109, 1113, 1114
Ellsworth Air Force Base
Center Drive
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189010439–189010442
Status: Unutilized
Comment: 10,303 sq. ft.; 2 story wood frame with basement; possible asbestos; secure facility with alternate access; potential utilities.

Texas

Bldg. 697
Brooks Air Force Base
San Antonio Co: Bexar TX 78235
Landholding Agency: Air Force
Property Number: 189110092
Status: Unutilized
Comment: 770 sq. ft., possible asbestos, most recent use—supply store, needs rehab.
Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235
Landholding Agency: Air Force
Property Number: 189110093
Status: Unutilized
Comment: 5,815 sq. ft., 1 story corrugated iron, possible asbestos, needs rehab, most recent use—recreation, workshop.
Bldg. 605
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110090
Status: Unutilized
Comment: 392 sq. ft.; 1 story sheet metal building; most recent use—storage possible asbestos; needs rehab.
Bldg. 696
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110091
Status: Unutilized
Comment: 1,344 sq. ft.; possible asbestos; most recent use—auto hobby shop; needs rehab.
Bldg. 699
Brooks Air Force Base
San Antonio Co: Bexar TX 78235–
Landholding Agency: Air Force
Property Number: 189110094
Status: Unutilized
Comment: 2,659 sq. ft.; 1 story; possible asbestos; most recent use—arts and crafts center.

Land (by State)

Alaska

Former Ft. Wainwright Annex
Corner of 12th Ave. and Alasdom Road
Fairbanks, AK 99707
Landholding Agency: GSA
Property Number: 549220013
Status: Surplus
Comment: 1.89 acres, easement restrictions
GSA Number: 9–D–AK–0537R.

California

Norton Com. Facility Annex
Norton AFB
Sixth and Central Streets
Highland Co: San Bernadino, CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010194
Status: Excess
Comment: 30.3 acres; most recent use—recreational area; portion subject to easements.
Camp Kohler Annex
McClellan AFB
Sacramento Co: Sacramento, CA 95652–5000
Landholding Agency: Air Force
Property Number: 189010045
Status: Unutilized
Comment: 35.30 acres + .11 acres easement; 30+ acres undeveloped; potential utilities; secured area; alternate access.

Florida

Eglin AFB
Mossy Head Co: Walton, FL 32533–
Location: NW quadrant of Florida Highway 285 and I–10. Bounded on the North by Louisville RR near Mossy Head, Florida.
Landholding Agency: Air Force
Property Number: 189010134
Status: Excess
Comment: 50 acres; Parcel 9; previous buffer zone; potential utiltiies.
Eglin AFB
Mossy Head Co: Walton, FL 32533–
Location: NE quadrant of Florida Highway 285, I–10 intersection. Bounded on the North by Louisville and Nashville RR near Mossy Head, Florida.
Landholding Agency: Air Force
Property Number: 189010135
Status: Excess
Comment: 265 acres; Parcel 10; previous buffer zone; potential utilities.
Eglin AFB
Mossy Head Co: Walton, FL 32533–
Location: Approximately 1 mile east of Florida Highway 285 and US Highway 90 on north side.
Landholding Agency: Air Force
Property Number: 189010136
Status: Excess
Comment: 47 acres; Parcel 11; previous buffer zone; potential utilities.

Suitable/To Be Excessed

Nevada

Bldgs. 300–302
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark, NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120001–189120003
Status: Unutilized
Comment: 1,573 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldgs. 303–306
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark, NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120004–189120007
Status: Unutilized
Comment: 2,750 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldgs. 307–310, 318, 320–322
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark, NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120008–189120011, 189120019, 189120021–189120023
Status: Unutilized
Comment: 2,170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.
Bldgs. 311–317, 319, 324–326
Nellis Air Force Base
Indian Springs AF Aux. Field

Indian Springs Co: Clark, NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120012–189120018, 189120020, 189120025–189120027
Status: Unutilized
Comment: 2,424 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 323
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120024
Status: Unutilized
Comment: 1233 sq. ft., one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldgs. 331–341, 343, 354–346, 348–353
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120028–189120047
Status: Unutilized
Comment: 1170 sq. ft. each, one story family housing, easement restrictions, potential utilities, off-site removal only.

Bldg. 400
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120048
Status: Unutilized
Comment: 2464 sq. ft., one story recent use-maintenance shop, easement restrictions, potential utilities, off-site removal only.

Bldg. 402
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120049
Status: Unutilized
Comment: 2570 sq. ft., one story, most recent use-Chapel, easement restrictions, potential utilities, off-site removal only.

Bldg. 404
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120050
Status: Unutilized
Comment: 2376 sq. ft., one story, most recent use-religious education facility, easement restrictions, potential utilities, off-site removal only.

Bldg. 406
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120051
Status: Unutilized
Comment: 2605 sq. ft., one story, most recent use-child care facility, easement restrictions, potential utilities, off-site removal only.

Bldgs. 3027, 3029–3040
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Numbers: 189120052, 189120054–189120065
Status: Unutilized
Comment: 120 sq. ft. each, one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

Bldg. 3028
Nellis Air Force Base
Indian Springs AF Aux. Field
Indian Springs Co: Clark NV 89018–
Landholding Agency: Air Force
Property Number: 189120053
Status: Unutilized
Comment: 60 sq. ft., one story, most recent use-storage, easement restrictions, potential utilities, off-site removal only.

North Dakota

Bldg. 101
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Location: Located on North Dakota State Highway 5, four miles west of Fortuna and approximately 60 miles north of Williston via U.S. Highway 85.
Landholding Agency: Air Force
Property Number: 189110095
Status: Excess
Comment: 768 sq. ft.; 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldgs. 102–106
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110096–189110100
Status: Excess
Comment: 988 sq. ft. each; 3 bedroom single family housing unit; needs rehab; off-site use only.

Bldgs. 107, 110–111
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110101–189110103
Status: Excess
Comment: 768 sq. ft. each; 2 bedroom single family housing unit; needs rehab; off-site use only.

Bldgs. 112–116, 123–129
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110104–189110108, 189110115–189110121
Status: Excess
Comment: 1510 sq. ft. each; 3 bedroom single family housing unit; with attached garage; needs rehab; off-site use only.

Bldgs. 117, 119–122
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110109, 189110111–189110114
Status: Excess
Comment: 1595 sq. ft. each; 3 bedroom single family housing units with attached garages; needs rehab; off-site use only.

Bldg. 118
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189110110
Status: Excess
Comment: 2295 sq. ft.; 4 bedroom single family housing unit, needs rehab; off-site use only.

Bldg. 141
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Number: 189110122
Status: Excess
Comment: 364 sq. ft.; 1 stall vehicle garage; needs rehab; off-site use only.

Bldgs. 142–145
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110123–189110126
Status: Excess
Comment: 624 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.

Bldgs. 201–218
Fortuna Air Force Station
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110127–189110144
Status: Excess
Comment: 1203 sq. ft. each; 3 bedroom single family relocatable housing units; needs rehab; off-site use only.

Bldgs. 221–229
Fortuna Air Force Base
Fortuna Co: Divide ND 58844–
Landholding Agency: Air Force
Property Numbers: 189110145–189110153
Status: Excess
Comment: 672 sq. ft. each; 2 stall vehicle garages; needs rehab; off-site use only.

Unsuitable Properties

Buildings (by State)

Alaska

Bldgs. 203, 113
Tin City Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010296–189010297
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldgs. 165, 150, 130
Sparrevohn Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010298–189010300
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 306
King Salmon Airport
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010301
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 1401
Galena Airport
21 CSG/DEER

Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010302
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 11–230, 21–116, 34–616, 43–010, 63–320, 63–325
Elmendorf Air Force Base
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010303–189010308
Status: Unutilized
Reason: Secured Area, Contamination.

Bldg. 103, 110, 112–115, 116, 1001, 1018, 1025, 1055
Ft. Yukon Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010309–189010319
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 107, 115, 113, 150, 152, 301, 1001, 1003, 1055, 1056
Cape Lisburne Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010320–189010329
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 103–105, 110, 114, 202, 204–205, 1001, 1015
Kotzebue Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Numbers: 189010330–189010339
Status: Unutilized
Reason: Secured Area, Isolated area, Not accessible by road, Contamination.

Bldg. 50
Cold Bay Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010433
Status: Unutilized
Reason: Other, Isolated area, Not accessible by road.
Comment: Isolated and remote; Arctic environment.

Alabama

48 Bldgs.
Maxwell AFB
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Numbers: 189010002–189010005, 189110165–189110167, 189120231–189120232, 189130335–189130336, 189130370–189130381, 189140010–189140014, 189220005–189220014
Status: Unutilized
Reason: Secured Area.

22 Bldgs.
Gunter AFB
Montgomery Co: Montgomery AL 36114–
Landholding Agency: Air Force
Property Numbers: 189010011–189010013, 189010015–189010016, 189010019–189010020, 189010022, 189040853–189040855, 189130349, 189140001–189140009, 189140021
Status: Underutilized
Reason: Secured Area.

Bldg. 1435–1436, 1440–1441
Maxwell Air Force Base
Mimosa Road
Montgomery Co: Montgomery AL 36112–
Landholding Agency: Air Force
Property Numbers: 189030220–189030223
Status: Unutilized
Reason: Floodway, Secured Area.

Bldg. 1004
Reserves Forces Training Facility
Maxwell Air Force Base
Montgomery Co: Montgomery AL 36112–
Location: 1004 Maxwell Blvd. & Kelly Street
Landholding Agency: Air Force
Property Number: 189010389
Status: Unutilized
Reason: Secured Area, Within airport runway clear zone.

Arizona

Dormitory Building 632
Williams Air Force Base
Corner of 4th and D Street
Williams AFB Co: Maricopa AZ 85240–5000
Landholding Agency: Air Force
Property Number: 189040856
Status: Unutilized
Reason: Secured Area.

California

Bldg. 4052
March AFB
Ice House in West March
Riverside Co: Riverside CA 92518–
Landholding Agency: Air Force
Property Number: 189010082
Status: Unutilized
Reason: Within airport runway clear zone.

Bldg. 392 60 ABG/DE
Travis Air Force Base
Hospital Drive
Travis AFB Co: Solano, CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010187
Status: Underutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldg. 1182 60 ABG/DE
Travis Air Force Base
Perimeter Road
Travis AFB Co: Solano, CA 94535–5496
Landholding Agency: Air Force
Property Number: 189010188
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

Bldgs. 152, 159, 384 60 ABG/DE
Travis Air Force Base
Broadway Street
Travis AFB Co: Solano, CA 94535–5496
Landholding Agency: Air Force
Property Numbers: 189010190–189010192
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldgs. 707, 502, 23 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino, CA 92409–5045
Landholding Agency: Air Force
Property Numbers: 189010193, 189010196–189010197
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldg. 575 63 ABG/DE
Norton Air Force Base
Norton Co: San Bernadino, CA 92409–5045
Landholding Agency: Air Force
Property Number: 189010195
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material.

Bldgs. 100–101, 116, 202
Point Arena Air Force Station
Co: Mendocino, CA 95468–5000
Landholding Agency: Air Force
Property Numbers: 189010233–189010236
Status: Unutilized
Reason: Secured Area.

Bldgs. 201–204
Vandenberg Air Force Base
Point Arguello
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Highway 1, Highway 246, Coast Road, Pt Sal Road, Miguelito Cyn.
Landholding Agency: Air Force
Property Numbers: 189010546–189010549
Status: Unutilized
Reason: Secured Area.

Bldgs. 1009–1010, 1015, 1022–1024
Vandenberg Air Force Base
Off Tangair Road
Vandenberg AFB Co: Santa Barbara, CA 93437–
Landholding Agency: Air Force
Property Numbers: 189010558–189010563
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldgs. 1100–1101, 1103–1107, 1110, 1108
Vandenberg Air Force Base
Off Terra Road
Vandenberg AFB Co: Santa Barbara, CA 93437–
Landholding Agency: Air Force
Property Numbers: 189010567–189010569, 189010571–189010574, 189010579–189010580
Status: Unutilized
Reason: Within 2,000 ft. of flammable or explosive material, Secured Area.

Bldg. 23102
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Highway 1 and Highway 246; Coast Road, Pt. Sal Rd; Miguelito Cyn
Landholding Agency: Air Force
Property Number: 189110082
Status: Unutilized
Reason: Secured Area.

Bldgs. 1011–1014, 1016–1021, 1023
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, Pt Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Numbers: 189130350–189130360
Status: Unutilized

Reason: Secured Area, Within 2,000 ft. of flammable or explosive material.
Bldg. 5015
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, Pt Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Number: 189130361
Status: Excess
Reason: Secured Area, Within 2,000 ft. of flammable or explosive material, Within airport runway clear zone.
Bldgs. 8006, 8011, 11443, 1011–1014, 1016–1021, 1027, 1031, 6105, 8111, 8118–8119, 8140–8141, 9341, 10312, 10314, 10503, 5431, 8117, 13009, 13012, 13013, 13015, 13021, 13221
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara, CA 93437–
Location: Hwy 1, Hwy 246, Coast Road, Pt Sal Rd., Miguelito CYN
Landholding Agency: Air Force
Property Numbers: 189130362, 189140028–189140029, 189210007–189210028, 189230005–189230006, 189230014–189230019
Status: Unutilized
Reason: Secured Area.
Bldg. 10748
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437–
Landholding Agency: Air Force
Property Number: 189210029
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldgs. 11195, 10004, 10702, 10704, 10706, 10710, 10726, 10742, 16104
Vandenberg Air Force Base
Vandenberg AFB Co: Santa Barbara CA 93437
Landholding Agency: Air Force
Property Number: 189220017, 189230007–189230013, 189230020
Status: Unutilized
Reason: Secured Area.

Colorado

Bldg. 24
Buckley Air Nat'l Guard Base
Aurora Co: Arapahoe CO 80011–9599
Location: Demolished 7 Dec. 90.
Landholding Agency: Air Force
Property Number: 189010249
Status: Unutilized
Reason: Secured Area.
Bldg. 291
Lowry Air Force Base
Denver Co: Denver CO 80230–5000
Location: South of 6th Avenue and east of Rosemary Court.
Landholding Agency: Air Force
Property Number: 189010250
Status: Excess
Reason: Secured Area.

Delaware

Bldg. 230
Dover Air Force Base
436 ABG/DE
Dover AFB Co: Kent DE 19902–
Landholding Agency: Air Force
Property Number: 189140017
Status: Unutilized
Reason: Secured Area.
Bldg. 1900, 1304
436 CSG Dover AFB
Dover Co: Kent DE 19902–5516
Landholding Agency: Air Force
Property Numbers: 189120230, 189140018
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

Florida

Bldg. 42, 6058–6059
Eglin Air Force Base
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Numbers: 189110001–189110003
Status: Unutilized
Reason: Secured Area.
Bldg. 8501, 8505, 8507
Eglin Air Force Base
Site A–5
Eglin AFB Co: Okaloosa FL 32542–5000
Landholding Agency: Air Force
Property Numbers: 189110005–189110006, 189110008
Status: Unutilized
Reason: Floodway, Secured Area.
Bldg. 1635
Patrick Air Force Base
River Picnic Area/Skeet Range
Cocoa Beach Co: Brevard FL 32925–
Landholding Agency: Air Force
Property Number: 189110161
Status: Unutilized
Reason: Secured Area.
Bldg. 400
Patrick Air Force Base
C Street bet. First & Second Streets
Cocoa Beach Co: Brevard FL 32925
Landholding Agency: Air Force
Property Number: 189220001
Status: Unutilized
Reason: Secured Area.
Bldg. 430
Patrick Air Force Base
Third Street bet. B and C Streets
Cocoa Beach Co: Brevard FL 32925
Landholding Agency: Air Force
Property Number: 189220002
Status: Underutilized
Reason: Secured Area.
Bldg. 902
Tyndall Air Force Base
Panama City Co: Bay FL 32403–5000
Landholding Agency: Air Force
Property Number: 189130348
Status: Underutilized
Reason: Secured Area.
Facility 01322
Cape Canaveral AFS
1301 Flight Control Road
Cape Canaveral Co: Brevard FL 32920
Landholding Agency: Air Force
Property Number: 189220004
Status: Unutilized
Reason: Secured Area.

Idaho

Bldgs. 1012, 923, 604
Mountain Home Air Force Base
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Numbers: 189030004–189030006
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.
Bldg. 229
Mt. Home Air Force Base
1st Avenue and A Street
Mt. Home AFB Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 189040057
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone.

Illinois

Bldg. 3191
Scott Air Force Base
East Drive 375/ABC/DE
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Number: 189010247
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.
Bldgs. 3670, 503, 869, 865
Scott Air Force Base
Scott AFB Co: St. Clair IL 62225–5001
Landholding Agency: Air Force
Property Numbers: 189010248, 189010725, 189110087, 189130347
Status: Unutilized
Reason: Secured Area.

Indiana

Bldg. 520, 309, 301
Grisson Air Force Base
Grisson Co: Miami IN 46971–
Landholding Agency: Air Force
Property Numbers: 189010183–189010184, 189010186
Status: Underutilized
Reason: Secured Area.
Bldg. 219, 307
Grissom Air Force Base
Grissom AFB Co: Miami IN 46971–5000
Landholding Agency: Air Force
Property Numbers: 189110084–189110085
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.
Bldg. 707
Parallel to NE–SW runway & alternate runway
Grissom AFB Co: Miami IN 46971–
Landholding Agency: Air Force
Property Number: 189130334
Status: Unutilized
Reason: Within airport runway clear zone, Secured Area.

Lousiana

Bldg. 3477
Barksdale Air Force Base
Davis Avenue
Barksdale AFB Co: Bossier LA 71110–5000
Landholding Agency: Air Force
Property Number: 189140015
Status: Unutilized
Reason: Secured Area.

Massachusetts

Bldg. 1900, 1833
Westover Air Force Base
Chicopee Co: Hampden MA 01022–
Landholding Agency: Air Force
Property Numbers: 189010438, 189040002
Status: Unutilized

Reason: Secured Area.

Maryland

Bldg. 4–5
Brandywine Storage Annex
1778 ABW/DE Brandywine Road, Route 381
Andrews AFB Co: Prince George's MD 20813–
Landholding Agency: Air Force
Property Numbers: 189010261, 189010264
Status: Unutilized
Reason: Secured Area.
Bldg. 3427
Andrews Air Force Base
3427 Pennsylvania Avenue
Andrews AFB Co: Prince Georges MD 20335–
Landholding Agency: Air Force
Property Number: 189140016
Status: Unutilized
Reason: Secured Area.

Maine

Bldg. 5200, 6200, 6100
Loring Air Force Base
Limestone Co: Aroostook ME 04750–
Landholding Agency: Air Force
Property Numbers: 189010541–189010543
Status: Unutilized
Reason: Secured Area.

Michigan

Bldg. 560, 5658, 560, 856, 1005, 1012, 1041, 1412, 1434, 1688, 1689, 5870
Selfridge Air National Guard Base
Selfridge Co: Macomb MI 48054-
Landholding Agency: Air Force
Property Numbers: 189010522–189010533
Status: Unutilized
Reason: Secured Area.
Bldg. 71
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 1890100810
Status: Excess
Reason: Other
Comment: sewage treatment and disposal facility.
Bldg. 99–100
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010831–189010832
Status: Excess
Reason: Other
Comment: water well.
Bldg. 118, 120, 168
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010875–189010876, 189010878
Status: Excess
Reason: Other
Comment: Gasoline Station.
Bldg. 166
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010877
Status: Excess
Reason: Other
Comment: Pump lift station.
Bldg. 69
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010889
Status: Excess
Reason: Other
Comment: Sewer pump facility.
Bldg. 2
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913-
Landholding Agency: Air Force
Property Numbers: 189010890
Status: Excess
Reason: Other
Comment: Water pump facility.

Missouri

Bldg. 42, 45-47, 61
Jefferson Barracks ANG Base
1 Grant Road, Missouri National Guard
St. Louis Co: St. Louis MO 63125-
Landholding Agency: Air Force
Property Numbers: 189010726, 189010728-189010731
Status: Unutilized
Reason: Secured Area.

Montana

Bldg. 140
Malmstrom AFB
Between Goddard Avenue & 2nd Street
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Numbers: 189010076
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental.
Bldg. 280
Malmstrom AFB
Flightline & Avenue G
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Numbers: 189010077
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area, Other environmental.
Bldg. 621
Malmstrom AFB
1st Street & Avenue I
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Numbers: 189010078
Status: Unutilized
Reason: Other environmental, Secured Area.
Comment: Friable asbestos.
Bldg. 1500, 1502
Malmstrom AFB
Perimeter Road
Malmstrom Co: Cascade MT 59402-
Landholding Agency: Air Force
Property Numbers: 189010079-189010080
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Other environmental.
Bldg. 627, 677
Malmstrom Air Force Base
Great Falls Co: Cascade MT 59402–
Landholding Agency: Air Force
Property Numbers: 189010722–189010723
Status: Unutilized
Reason: Secured Area, Other environmental.
Bldg. 1991
Malmstrom Air Force Base
Between Avenue G and H
Malmstrom Co: Cascade MT 59405–
Landholding Agency: Air Force
Property Number: 189040057
Status: Underutilized
Reason: Secured Area, Other environmental.

Nebraska

Offutt Communications Annex–#3
Offutt Air Force Base
Scribner Co: Dodge NE 68031–
Landholding Agency: Air Force
Property Number: 189210006
Status: Unutilized
Reason: Other
Comment: former sewage lagoon.
Bldgs. 637, 639
Lincoln Municipal Airport
2301 West Adams
Lincoln Co: Lancaster NE 68524
Landholding Agency: Air Force
Property Numbers: 189230021–18923022
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

North Carolina

Bldg. 187
Pope Air Force Base
317 CSG/DE Reilly Road
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189010262
Status: Unutilized
Reason: Secured Area.
Bldg. 4230—Youth Center
Cannon Ave.
Goldsboro Co: Wayne NC 27531–5005
Landholding Agency: Air Force
Property Number: 189120233
Status: Underutilized
Reason: Secured Area.
Bldg. 459
Pope Air Force Base
Armistead Street
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189140019
Status: Unutilized
Reason: Secured Area.
Bldg. N. 024
Pope Air Force Base
Reilly Road
Pope AFB Co: Cumberland NC 28308–5045
Landholding Agency: Air Force
Property Number: 189220003
Status: Underutilized
Reason: Secured Area.

North Dakota

Bldg. 422
Minot Air Force Base
Minot Co: Ward ND 58705–
Landholding Agency: Air Force
Property Number: 189010724
Status: Underutilized
Reason: Secured Area.

New Hampshire

Bldg. 132, 317, 343, 439
Pease Air Force Base
Pease AFB Co: Rockingham NH 03803–
Landholding Agency: Air Force
Property Numbers: 189010536–189010539
Status: Excess

Reason: Within 2000 ft. of flammable or explosive material.

New Mexico

Bldg. 20330
Kirtland Air Force Base
1606 ABW/DEEVR
Kirtland AFB Co: Bernalillo NM 87117–5496
Landholding Agency: Air Force
Property Number: 189110083
Status: Unutilized
Reason: Secured Area.

Bldg. 831
833 CSG/DEER
Holloman AFB Co: Otero NM 88330–
Landholding Agency: Air Force
Property Number: 189130333
Status: Unutilized
Reason: Secured Area.

Bldgs. 48013, 0002
Kirtland Air Force Base
Kirtland AFB Co: Bernalillo NM 87117–5496
Landholding Agency: Air Force
Property Number: 189140020, 189230004
Status: Unutilized
Reason: Secured Area.

New York

Bldg. 626 (Pin: RVKQ)
Niagara Falls International Airport
914th Tactical Airlift Group
Niagara Falls Co: Niagara NY 14303–5000
Landholding Agency: Air Force
Property Number: 189010075
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 272, 868
Griffiss Air Force Base
Rome Co: Oneida NY 13441–
Landholding Agency: Air Force
Property Numbers: 189140022–189140023
Status: Excess
Reason: Secured Area.

Facilities 814, 808, 807
Griffiss Air Force Base
Rome Co: Oneida NY 13441
Landholding Agency: Air Force
Property Numbers: 189230001–189230003
Status: Excess
Reason: Within airport runway clear zone, Secured Area.

Ohio

Facility 30205
Wright-Patterson Air Force Base
Greene Co: Greene OH 45433–
Landholding Agency: Air Force
Property Number: 189010434
Status: Unutilized
Reason: Secured Area.

910 TAG
Base Sewage Treatment Plant
Vienna Co: Trumbull OH 44473–5000
Location: West of the 910 TAG Base on Ridge Road. Youngstown Municipal Airport
Landholding Agency: Air Force
Property Number: 189110081
Status: Excess
Reason: Other
Comment: Sewage treatment plant.

Bldg. 404, Hydrant Fuel
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220015
Status: Unutilized
Reason: Secured Area.

Bldg. 405, Test Cell
910 Airlift Group
Kings-Graves Road
Vienna Co: Trumbull OH 44473–5000
Landholding Agency: Air Force
Property Number: 189220016
Status: Unutilized
Reason: Secured Area.

Oklahoma

Bldg. 604
Vance Air Force Base
Enid Co: Garfield OK 73705–5000
Landholding Agency: Air Force
Property Number: 189010204
Status: Unutilized
Reason: Secured Area, Within 2000 ft. of flammable or explosive material.

Puerto Rico

Bldg. 10
Punta Salinas Radar Site
Toa Baja Co: Toa Baja PR 00759–
Landholding Agency: Air Force
Property Number: 189010544
Status: Underutilized
Reason: Secured Area.

South Dakota

176 Bldgs., Renel Heights
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Location: Across from main gate turn off.
Landholding Agency: Air Force
Property Numbers: 189010443–189010521, 189010732–189010759, 189030016–189030032, 189040027–189040055, 189040058, 189110011–189110032
Status: Unutilized
Reason: Other
Comment: Earth movement/shifting, cracked exterior and interior walls with separations several inches wide; earth shift severed sewer lines.

101 Bldgs., Skyway
Ellsworth Air Force Base
Ellsworth Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189120066–189120166
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

220 Bldgs., Renel Heights
Ellsworth Air Force Base
Ellsworth Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Numbers: 189120167–189120229, 189130001, 189130003–189130157, 189130382
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

175 Bldgs., Skyway
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Numbers: 189130158–189130331, 189130383
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 8904
Maintenance Work Center Unit
204 Harrison Terrace
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 189130332
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 88513, 88501
Ellsworth Air Force Base
Ellsworth AFB Co: Meade SD 57706
Landholding Agency: Air Force
Property Numbers: 189210001–189210002
Status: Unutilized
Reason: Extensive deterioration.

Texas

Bldg. 400
Laughlin Air Force Base
Val Verde Co. Co: Val Verde TX 78843–5000
Location: Six miles on Highway 90 east of Del Rio, Texas.
Landholding Agency: Air Force
Property Number: 189010173
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone.

Bldg. 645
Reese Air Force Base
Lubbock Co: Lubbock TX 79489–
Location: West of Lubbock
Landholding Agency: Air Force
Property Number: 189010210
Status: Excess
Reason: Secured Area.

Bldg. 02106
Reese Air Force Base
Lubbock Co: Lubbock TX
Landholding Agency: Air Force
Property Number: 189210005
Status: Unutilized
Reason: Secured Area.

Utah

11 Bldgs.
Hill Air Force Base
Co: Davis UT 84056–
Landholding Agency: Air Force
Property Numbers: 189010275, 189010277, 189010279, 189010281, 189010283, 189010285, 189010287, 189010289, 189010291, 189010293, 189010295
Status: Unutilized
Reason: Secured Area.

Bldg. 788–790
Hill Air Force Base
Co: Davis UT 84056–
Landholding Agency: Air Force
Property Numbers: 189040858–189040860
Status: Unutilized
Reason: Within airport runway clear zone, Secure Area.

Washington

21 Bldgs.
Fairchild AFB
Fairchild Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Numbers: 189010139–189010159
Status: Unutilized
Reason: Secured Area.

Bldg. 100, Geiger Heights
Grove and Hallet Streets
Fairchild AFB Co: Spokane WA 99204–
Landholding Agency: Air Force
Property Numbers: 189210004
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Wyoming

Bldg. 31, 34, 37, 284, 385, 803
F.E. Warren Air Force Base
Cheyenne Co: Laramie WY 82005–
Landholding Agency: Air Force
Property Numbers: 189010198–189010203
Status: Unutilized
Reason: Secured Area.

Land (by State)

Alaska

Champion Air Force Station
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010430
Status: Unutilized
Reason: Other, Isolated area, not accessible by road
Comment: Isolated and remote area; Arctic environment.

Lake Louise Recreation
21 CSG–DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010431
Status: Unutilized
Reason: Other, Isolated area, not accessible by road
Comment: Isolated and remote area; Arctic environment.

Nikolski Radio Relay Site
21 CSG/DEER
Elmendorf AFB Co: Anchorage AK 99506–5000
Landholding Agency: Air Force
Property Number: 189010432
Status: Unutilized
Reason: Other, Isolated area, not accessible by road
Comment: Isolated and remote area; Arctic environment.

Florida

Land
MacDill Air Force Base
6801 S. Manhattan Avenue
Tampa Co: Hillsborough FL 33608–
Landholding Agency: Air Force
Property Number: 189030003
Status: Excess
Reason: Floodway.

Maryland

Land
Brandywine Storage Annex
1776 ABE/DE Brandywine Road, Route 381
Andrews AFB Co: Prince Georges MD 20613–
Landholding Agency: Air Force
Property Number: 189010263
Status: Unutilized
Reason: Secured Area.
5,835 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 779230001
Status: Excess
Reason: Other
Comment: Drainage Ditch.

South Dakota

Badlands Bomb Range
60 miles southeast of Rapid City, SD
1½ miles south of Highway 44
Co: Shannon, SD
Landholding Agency: Air Force
Property Number: 189210003
Status: Unutilized
Reason: Secured Area.

Virginia

Parcel 1 (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010435
Status: Unutilized
Reason: Floodway.

Parcel 3, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010436
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material

Parcel 2, (Byrd Field)
Richmond IAP
5680 Beulah Road
Richmond Co: Henrico VA 23150–
Landholding Agency: Air Force
Property Number: 189010437
Status: Unutilized
Reason: 2000 ft. of flammable or explosive material, Secured Area.

ANG Site
Camp Pendleton
Virginia Air National Guard
Virginia Beach Co: (See County) VA 23451–
Landholding Agency: Air Force
Property Number: 189010589
Status: Untilized
Reason: Secured Area.

Washington

Fairchild AFB
SE corner of base
Fairchild AFB Co: Spokane WA 99011–
Landholding Agency: Air Force
Property Number: 189010137
Status: Unutilized
Reason: Secured Area.

Fairchild AFB
Fairchild AFB Co: Spokane WA 99011–
Location: NW corner of base
Landholding Agency: Air Force
Property Number: 189010138
Status: Unutilized
Reason: Secured Area.

[FR Doc. 92–19269 Filed 8–13–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–919–02–4830–02–ADVB]

Northern Alaska Advisory Council Public Meetings

The Northern Alaska Advisory Council will hold a public meeting Monday, August 24, 1992, in Barrow, Alaska, in addition to the Tuesday, August 25, 1992, public meeting in Coldfoot, Alaska (as published in the July 21, 1992, **Federal Register**). The Barrow public meeting will be from 2 to 4 p.m. in the North Slope Borough Assembly Room, with public comments taken from 2:30 to 3:30 p.m. The Coldfoot public meeting will be from 8 to 9:30 p.m., with public comments taken from 8:30 p.m. to 9 p.m. Written comments may be submitted at both meetings.

The meetings will be held during a field trip that will familiarize the council members with Bureau of Land Management facilities along the Dalton Highway. During the August 24 to 26 trip, and during the public meetings, the council will discuss the present status of public facilities along the Dalton, and the need to develop facilities to accommodate visitor safety, dispense information and protect and conserve the public land and its natural resources.

For information, contact the Public Affairs Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709, telephone (907) 474–2231.

Dated: August 6, 1992.

Roger Bolstad,

Designated District Manager.

[FR Doc. 92–19438 Filed 8–13–92; 8:45 am]
BILLING CODE 4310–JA–M

[AK–060–02–4230–13; F–081162]

Realty Action: Noncompetitive Sale of Public Lands at Wiseman, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

The following described land has been found to be suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713.), at not less than the fair market value (FMV). The lands will not be offered for sale until at least 60 days after the date of this notice and will be offered to the individual indicated below.

Applicant	USS 5276 Lot No. and acreage	Appraised fair market value
Mr. William Ray Lytle, 50 Fairview Circle, Chico, California 95927.	Lot 23 3.56 Acres.	$7,825.00

The land described is hereby segregated from appropriation under the public land laws, including the mining laws pending disposition of this action or 270 days from the publication of this notice, whichever comes first.

The land is being offered for direct sale to the applicant to protect equities arising from inadvertent unauthorized use.

The sale is consistent with the Utility Corridor Resource Management Plan (RMP). The land conveyance will accommodate the subject inadvertent trespass upon public land.

It has been determined that the subject parcel does contain known mineral values; therefore, mineral interests shall not be conveyed in the patent.

The patent, when issued, will contain reservations for all minerals to the United States and will be subject to a right-of-way for ditches and canals. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Arctic District Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Arctic District Office, at the above address. Objections will be reviewed by the Alaska State Director, who may sustain, vacate, or modify this realty action. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: August 7, 1992.

David E. Liebersbach,

Acting Arctic District Manager.

[FR Doc. 92-19439 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-JA-M

[AZ-920-02-4212-12; AZA-23606]

Realty Actions; Sales, Leases, Etc.: Arizona Correction

August 5, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Issuance of Land Exchange Documents; correction.

SUMMARY: This Notice corrects the description of land previously published in the **Federal Register** on December 30, 1991, (56 FR 67326) in a Notice of issuance of exchange documents between the United States and the State of Arizona.

1. On page 67326, first column, line 49, the last call should read "N½SW¼ NW¼."

2. On page 67326, second column, line 19 should read "Sec. 32, all."

Mary Jo Yoas,

Chief, Branch of Lands Operations.

[FR Doc. 92-19356 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-32-M

[OR-943-4214-10; GP2-384; OR-48432 (WASH)]

Public Meeting; Proposed Withdrawal and Initiation of Resource Management Plan Amendment; Washington

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice.

SUMMARY: A District Resource Management Plan (RMP) Amendment-Environmental Assessment will be prepared to address the U.S. Department of the Army, Corps of Engineers application to withdraw public lands to expand the Yakima Firing Center. This notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding both the proposed RMP amendment and the proposed withdrawal.

DATES: The public meeting will be held September 16, 1992.

FOR FURTHER INFORMATION CONTACT: Jim Fisher, BLM, Wenatchee Resource Area Office, 1133 N. Western Ave., Wenatchee, Washington 98801, telephone 509-662-4223.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a meeting will be held to provide an opportunity for public involvement regarding the application by the U.S. Department of the Army, Corps of Engineers to withdraw 9,745.82 acres of public lands within the Yakima Firing Center expansion area. Public involvement is also needed for the concurrent proposal to amend the BLM Spokane District Resource Management Plan to allow the subject withdrawal. The public lands are mostly checkerboard tracts, and are located in the portion of BLM's Saddle Mountain Management Area west of the Columbia River, extending south from I-90 to the present boundary of the Yakima Firing Center. These lands are currently managed for wildlife habitat, range, and recreation. The proposed withdrawal would close the lands to settlement, sale location, and entry under the general land laws, including the U.S. mining laws (30 U.S.C. ch. 2), and from applications and offers under the mineral leasing laws, subject to valid existing rights. This proposal will be evaluated by an interdisciplinary team of natural resource specialists, including a wildlife biologist, range conservationist, botanist, archaeologist, recreation specialist and realty specialist.

The meeting will begin at 7 p.m., Wednesday, September 16, 1992, at the Hal Holmes Center, 201 N. Ruby Street, Ellensburg, Washington. The agenda will include (1) information briefings by both the BLM and the U.S. Army Corps of Engineers, (2) oral statements by interested parties; and (3) a question and answer period.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Spokane District Office. Oral statements would be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management and the Corps of Engineers before any recommendation concerning the proposed withdrawal is submitted to the Secretary of the Interior for final action under the authority of section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714. Documents relative to the plan amendment may be obtained from the BLM Spokane District Office (E. 4217 Main, Spokane, WA 99202), the BLM Wenatchee Resource Area Office (address given above), and the U.S. Army Corps of Engineers, Seattle District (P.O. Box 3755, Seattle, WA 98124-2255).

Dated: August 7, 1992.

Betty M. McCarthy,

Acting Chief, Branch of Lands and Minerals Operations, BLM Oregon/Washington State Office.

[FR Doc. 92-19357 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-33-M

[OR-943-4214-10; GP2-367; OR-47267]

Partial Termination of Proposed Withdrawal and Reservation of Land; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has canceled its application in part to withdraw certain land to protect the Thunder Egg Lake Agate Beds in the Fremont National Forest. This action will terminate a portion of the proposed withdrawn and will relieve the land of the temporary segregative effect.

EFFECTIVE DATE: September 14, 1992.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208-2965, 503-280-7162.

SUPPLEMENTARY INFORMATION: The notice of the U.S. Department of Agriculture, Forest Service, application OR-47267 for withdrawal was published as FR Doc. 91-19317 of the issue of August 14, 1991. The purpose of the proposed withdrawal is to protect the Thunder Egg Lake Agate Beds. The applicant agency has determined that a portion of the proposed withdrawal is no longer needed and has canceled the application insofar as it effects the following described land:

Willamette Meridian

Fremont National Forest

T. 40 S., R. 21 E.,
Sec. 8, N½, N½SW¼, SW¼SW¼, N½ SE¼SW¼, SE¼;
Sec. 17, E½NE¼, W½NW¼, W½SE¼ NW¼, SE¼SE¼NW¼.

The area described contains 810.00 acres in Lake County, Oregon.

Pursuant to the regulation 43 CFR 2310.2-1(c), at 8:30 a.m., on September 14, 1992, the proposed withdrawal will be terminated in part and the land described above will be relieved of the segregative effect of the above-referenced application. The land has been and will remain open to mineral leasing.

The land remaining in withdrawal application OR-47267 is described and amended to read as follows:

Willamette Meridian

Fremont National Forest

T. 40 S., R. 21 E.,
Sec. 8, S½SE¼SW¼;
Sec. 17, W½NE¼, NE¼NW¼, NE¼SE¼ NW¼.

The area described contains 150.00 acres in Lake County, Oregon.

Dated: August 4, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-19355 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

Strategic Plan; Availability

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of Strategic Plan.

SUMMARY: This notice announces the availability of the Strategic Plan, which describes a broad, long-term framework for Reclamation's program.

DATES: The document will be available on or about August 24, 1992, under the title "Strategic Plan."

ADDRESSES: Single copies of the document will be made available at no charge to the public upon written request to:

Bureau of Reclamation, Publications and Records Management Branch (Attention D-7923), P.O. Box 25007, Denver, CO 80225-0007, or by calling (303) 236-6741.

FOR FURTHER INFORMATION CONTACT: Contact any of the following:

Dorothy W. Kuhn, Public Affairs Officer, Bureau of Reclamation, Washington Office, 1849 C Street, NW., Washington, DC 20240, telephone (202) 208-4662.

M. Louisa Beld, Media Production Chief, Bureau of Reclamation, Denver Office, P.O. Box 25007, Denver, Colorado 80225-0007, telephone (303) 236-7000.

Deborah L. Schwarz, Public Affairs Officer, Bureau of Reclamation, Pacific Northwest Regional Office, P.O. Box 043, Boise, ID 83724, telephone (208) 334-1937.

Jeff J. McCracken, Public Affairs Officer, Bureau of Reclamation, Mid-Pacific Regional Office, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825, telephone (916) 978-4918.

Julian Rhinehart, Public Affairs Officer, Bureau of Reclamation, Lower Colorado Regional Office, P.O. Box 61470, Boulder City, NV 89005, telephone (702) 293-8420.

Berry D. Wirth, Public Affairs Officer, Bureau of Reclamation, Upper Colorado Regional Officer, P.O. Box 11568, Salt Lake City, UT 84147, telephone (801) 524-6477.

Rodney J. Ottenbreit, Public Affairs Officer, Bureau of Reclamation, Great Plains Regional Office, P.O. Box 36900, Billings, MT 59101, telephone, (406) 657-6218.

SUPPLEMENTARY INFORMATION: In 1987, the Bureau of Reclamation examined the direction of its programs. That examination, "Assessment '87," recognized the need for increased emphasis on improved management of projects and the protection of environmental values. In 1989, President Bush established the management objective for the Department of the Interior "to improve the use and management of the Nation's water resources." A major milestone for accomplishing this objective was to "refine the definition and implementation of the new Bureau of Reclamation program priorities that were outlined in 1987." This milestone has now been reached with completion of the Strategic Plan. The Strategic Plan defines the twenty-five elements of Reclamation's overall program, as well as specific goals and strategies for each element. The details on the specific tasks required to carry out the strategies will be developed in an Implementation Plan for each of the elements. Development of most of the Implementation Plans is presently underway. The Strategic Plan document contains an invitation to provide comments on or input to the development of specific Implementation Plans. Each Implementation Plan will also be available for public distribution after it has been completed.

Dated: August 7, 1992.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92-19458 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Extension of the Public Comment Period for the Draft Revised Grizzly Bear Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of comment period.

SUMMARY: The U.S. Fish and Wildlife Service is extending the comment period for review of the Draft Revised Grizzly Bear Recovery Plan.

DATES: Comments on the draft recovery plan must be received on or before October 8, 1992.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting Dr. Chris Servheen, Grizzly Bear Recovery Coordinator, U.S. Fish and Wildlife Service, NS312, University of Montana, Missoula, Montana 59812. Written comments and materials regarding this draft recovery plan should be sent to Dr. Chris Servheen at the above address. Comments and materials received are available on request for public inspection, by appointment, during

normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Chris Servheen (see ADDRESSES above) at telephone (406) 329–3233.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) published a Notice of Availability of the Draft Revised Grizzly Bear Recovery Plan which appeared in the **Federal Register** on July 8, 1992 (57 FR 30226). It established a public comment period ending on August 24, 1992. Due to the complexity and length of the plan, the Service has received requests for extending the comment period. The comment period is, therefore, extended to October 8, 1992.

PUBLIC COMMENTS SOLICITED: The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Dated: August 6, 1992.

William F. Hartwig,

Acting Regional Director, Region 6.

[FR Doc. 92–19435 Filed 8–13–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for the White Bladderpod for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the white bladderpod (*Lesquerella pallida*) which the Service listed as an endangered species on March 11, 1987. The plant, white bladderpod is known from six sites on private land and a county road right-of-way in San Augustine County, Texas. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before September 28, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Arthur Coykendall, Fish and Wildlife Service Biologist, telephone (512) 888–3346 or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a pubic comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The white bladderpod is an endangered species known from six sites on private land and a county road right-of-way in San Augustine County, Texas. It is restricted to open areas where outcrops of the Weches Formation occur. The species is threatened by invasion of woody species into its limited habitat and competition with weedy plant species—both promoted by overgrazing—, conversion of its habitat to improved pasture, quarrying of Weches outcrops for gravel, and possible extirpation of its small populations from successive years of unfavorable growing conditions.

The white bladderpod recovery plan has been reviewed by the appropriate Service staff in Region 2 and selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority: The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 30, 1992.

Lynn B. Starnes,

Acting Regional Director.

[FR Doc. 92–19457 Filed 8–13–92; 8:45 am]

BILLING CODE 4310–55–M

Availability of Draft Maps of Hawaii Areas Under Consideration for Inclusion in the Coastal Barrier Resources System

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of section 6 of the Coastal Barrier Improvement Act of 1990 (16 U.S.C. 3503), the Secretary of the Interior is required to provide to Congress maps identifying the boundaries of those undeveloped coastal barriers of the United States bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the Coastal Barrier Resources System. Recommendations made by the Secretary will be advisory only; any changes to the Coastal Barrier Resources System will require an act of Congress. This notice is to announce the availability of draft Hawaii maps with supporting delineation criteria and a report to Congress for public review and comments. Appendix A of this notice lists the potential Coastal Barrier Resources System Units along Hawaii.

DATES: Comments should be received no later than November 9, 1992.

ADDRESSES: H. Dale Hall, Assistant Regional Director—Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181.

FOR FURTHER INFORMATION CONTACT: Dennis D. Peters, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181, (503) 231–6154.

SUPPLEMENTARY INFORMATION: On October 18, 1982, President Reagan signed the Coastal Barrier Resources Act (CBRA) into law (Pub. L. 97–348). Section 4 of CBRA establishes the Coastal Barrier Resources System (System) as referred to and adopted by Congress, and sections 5 and 6 prohibit all new Federal expenditures and financial assistance within the units of that System unless specifically excepted by the Act. These provisions of the Act became effective immediately. The statutory ban on the sale of new Federal flood insurance for new construction or substantial improvements within the System went into effect on October 1, 1983.

On November 16, 1990, President Bush signed the Coastal Barrier Improvement Act of 1990 (CBIA). Section 6 of the CBIA directs the Secretary of the Interior to prepare a study which examines the need for protecting undeveloped coastal barriers along the Pacific coast of the United States and to prepare maps identifying undeveloped coastal barriers bordering the Pacific Ocean south of 49 degrees north latitude which the Secretary and the appropriate Governor consider to be appropriate for inclusion in the System. In addition, Congress has directed the Secretary to prepare a report which examines the need for protecting undeveloped coastal barriers along the Pacific coast.

An existing 1988 report, Report to Congress: Coastal Barrier Resources System, Coastal Barriers of the Pacific Coast: Summary Report, by Dr. Joel W. Hedgpeth, will be reviewed and revised as necessary.

The criteria used to map the undeveloped coastal barriers along the Pacific coast are described in this notice. Draft maps, as well as the report, will be provided upon request (See addresses provided above). The maps may be inspected at, and hand delivered comments may be taken to, Regional Office, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, 4th Floor East Wing, Portland, Oregon. Copies of the maps may be inspected, during normal business hours, at the following locations: U.S. Fish and Wildlife Service, Honolulu Field Office, 300 Ala Moana Boulevard, Honolulu, Hawaii 96813, (808) 541–2749, and Office of State Planning, Hawaii Coastal Zone Management Program, Capitol Center, 2d Floor, 1177 Alakea Street, Honolulu, Hawaii, (808) 587–2878.

Definition of Coastal Barriers for Purposes of the Study

This section presents a statement of definitions used to identify undeveloped coastal barriers for purposes of the Report to Congress required by section 6 of the CBIA. The study's definition is based on guidance provided by section 3(1) of CBRA.

A. General Definition

Based on the definition of a coastal barrier contained in section 3(1) of the CBRA, a coastal barrier is a depositional geologic feature (such as a bay barrier, tombolo, barrier spit, or barrier island) that:

- Is subject to wave, tidal, and wind energies, and
- Protects landward aquatic habitats including adjacent wetlands, marshes, estuaries, inlets, and nearshore waters.

B. Types of Coastal Barriers

Coastal barriers may be described generally, as in the CBRA definition, with respect to their relationship to the mainland as bay barriers, tombolos, barrier spits, barrier islands and fringing mangroves. The "mainland" includes the continental landmass as well as large islands. The accepted scientific classification is:

1. Bay Barriers—coastal barriers that connect two headlands, and enclose a pond, marsh, or other aquatic habitat.
2. Tombolos—sand or gravel beaches that connect one or more offshore islands to each other or to the mainland.
3. Barrier Spits—coastal barriers that extend into open water and are attached to the mainland at only one end. They can develop into bay barriers if they grow completely across a bay or other aquatic habitat. On the other hand, bay barriers can become spits if an inlet is created.
4. Barrier Islands—coastal barriers completely detached from the mainland. Barrier spits may become barrier islands if their connection to the mainland is severed by creation of a permanent inlet. The barrier island represents a broadened barrier beach, commonly sufficiently above high tide to have dunes, vegetated zones, and wetland areas.
5. Fringing mangroves—bands of mangrove along subtropical or tropical mainland shores in areas of low wave energy. Many of these areas are located behind coral reefs, which, together with the mangroves themselves, afford significant protection for the mainland from storm impact.

C. Composition of Coastal Barriers

Generally, coastal barriers consist entirely of unconsolidated sediment, composed of sand or gravel, but sometimes include silt, cobbles, or large rocks.

D. Factors that Shape Coastal Barriers

Wind, waves, and tides are the immediate forces that maintain and modify coastal barriers. The action of wind, wave (directly and by creating littoral, onshore-offshore or other currents), and tidal energy on unconsolidated sedimentary materials generally results in continuous linear or curvilinear features—a beach ridge or berm located along the unprotected side of the coastal barrier.

Where a suitable sediment source and sufficient wind, wave and tidal energy exist, secondary coastal barriers occasionally develop on the mainland side or large bays or lagoons behind coastal barrier systems. These secondary coastal barriers are included in the inventory.

E. Associated Aquatic Habitat

Associated aquatic habitat includes adjacent wetlands, marshes, estuaries, inlets, and nearshore waters.

Definition of "Undeveloped"

A coastal barrier is considered undeveloped if it contains less than one (1) structure per five (5) acres that is "roofed and walled" and covers at least 200 square feet and constructed in conformance with Federal, State, or local legal requirements. However, units containing fewer than roughly one structure per five acres of fastland, can be considered developed when geomorphic and ecological processes are altered to the extent that the long-term perpetuation of the coastal barrier is threatened by one or more of the following:

(a) Extensive shoreline manipulation or stabilization;

(b) Pervasive canal construction and maintenance;

(c) Major dredging projects and resulting sedimentary deposits;

(d) Intensive capitalization development projects which effectively establish a commitment to stabilize an area, even though there are few actual structures.

The Act does not require an entire coastal barrier to be included, and specifically allows for inclusion of undeveloped portions of coastal barriers. An undeveloped portion of a coastal barrier is included if there exists a minimum of approximately one-quarter mile of shoreline on the unprotected (seaward) side of the coastal barrier. Each unit must include an undeveloped area extending through the fastland from the beach to the associated landward aquatic habitat, and must independently satisfy the definitional criteria in section 3(1)(A) of the Act.

Delineation of Coastal Barrier Units

Undeveloped coastal barriers of at least one-quarter mile in shoreline length and their associated aquatic habitats were delineated using aerial photography, U.S. Fish and Wildlife Service National Wetlands Inventory maps and U.S. Geological Survey 7.5' quadrangle maps.

A. Delineation of the Landward Boundary

The coastal barrier unit boundary is a line drawn perpendicular to the unprotected (seaward) side of the fastland and extends landward to include the associated aquatic habitat. For partially developed coastal barriers, the boundary was drawn at the edge of the development. The entire associated aquatic habitat was included in cases where the coastal barrier is 50 percent or more undeveloped, as determined by the perpendicular projection of developed versus undeveloped portions of the unprotected shoreline. Isolated clusters of approximately 10 or more structures were excluded from units where the impact of the development on geological and ecological processes is local and confined primarily to the fastland on which the structures are located. A boundary is drawn around the cluster of development to exclude it from the unit.

The landward boundary is a continuous line that follows the interface between the aquatic habitat and the mainland. In areas with aquatic habitats extending for many miles inland, geologic features such as the next dune line or natural constrictions in aquatic habitats and man-made features such as highways, dikes and levees were used to determine landward boundaries. In addition the landward boundary was normally drawn not to exceed an elevation of 20 feet above the mean high water level of the system. The maximum extent of the landward boundary was 5 miles for wetlands (exposed or vegetated portions of bays, freshwater wetlands) and was measured from the high water line on the unprotected (seaward) side of the coastal barrier. For open water (subtidal bays, large lakes) the maximum landward extent was one mile and was measured either from the farthest landward extent of wetlands on the protected side of the barrier or from the mean high water line on the unprotected side of the barrier.

B. Delineation of Seaward Side

The unit contains the entire sand-sharing system, including the beach, shoreface, and offshore bars. The sand-sharing system of coastal barriers is normally defined by the 30-foot bathymetric contour. In large coastal embayments the sand-sharing system is more limited in extent. In these cases, the sand-sharing system is defined by the 20-foot bathymetric contour or a line approximately one mile seaward of the shoreline, whichever is nearer the coastal barrier.

APPENDIX A—PROPOSED HAWAII COASTAL BARRIER RESOURCES SYSTEM UNITS

Island and number	Location	Map name
Hawaii:		
HI-01-91	Pololu Valley	Honokane.
HI-02-91	Waimanu Bay	Honokane.
HI-03-91	Waipio Bay	Kukuihaele.
HI-04-91	Honokohau Bay	Keahole Point.
HI-05-91	Kiholo Bay	Kiholo.
HI-06-91	Makaiwa	Puu Hinai/Anaehoomalu.
Maui:		
HI-07-91	Waihee	Wailuku/Paia.
HI-08-91	Paukukalo	Wailuku/Paia.
HI-09-91	Kanaha Pond	Wailuku/Paia.
HI-10-91	Kealia Pond	Maalaea.
Molokai:		
HI-11-91	Pipio Fishpond	East Half Molokai East.
HI-12-91	Keawanui Fishpond	West Half Molokai East.
HI-13-91	Paialoa Fishpond	West Half Molokai East.
HI-14-91	Lepelepe	West Half Molokai East.
HI-15-91	Pahoa	West Half Molokai East.
HI-16-91	Pelekunu Bay	West Half Molokai East.
HI-17-91	Alii Fishpond	West Half Molokai East.
HI-18-91	Kamiloloa	East Half Molokai West.
HI-19-91	Kaunakakai	East Half Molokai West.
HI-20-91	Kahanui	East Half Molokai West.
Kauai:		
HI-21-91	Wainiha Bay	Haena/Hanalei.
HI-22-91	Lumahai Beach	Haena/Hanalei.
HI-23-91	Puu Poa Point Area	Haena/Hanalei.
HI-24-91	Kilauea Bay	Anahola.
Oahu:		
HI-25-91	Kii NWR	Kahuku.
HI-26-91	Kahana Bay	Kahana.
HI-27-91	Molii Pond	Kahana.
HI-28-91	Waiahole Beach	Kaneohe.
HI-29-91	Heeia	Kaneohe.
HI-30-91	Nuupia Pond	Mokapu.
Niihau:		
HI-31-91	Leahi Point	Niihau South.
HI-32-91	Nonopapa	Niihau South.
HI-33-91	Kiekie	Niihau South.
HI-34-91	Kaununui	Niihau North.

Dated: August 10, 1992.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92-19437 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 1, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by August 31, 1992.

Beth L. Savage,

Chief of Registration, National Register.

ALABAMA

Butler County

Howard, John W., House and Outbuildings, AL 10E, Greenville vicinity, 92001090

Madison County

Butlers' Store 5498 Main Dr., New Hope, 92001089

Tuscaloosa County

Queen City Pool and Pool House Jct. of Queen City Ave. and Riverside Dr., Tuscaloosa, 92001088

ARKANSAS

Baxter County

Buford School Building (Public Schools in the Ozarks MPS), AR 126, Buford, 92001128

Benton County

Coal Gap School (Public School in the Ozarks MPS), Co. Rd. 920, Larue vicinity, 92001123

Cleburne County

Quitman High School Building (Public Schools in the Ozarks MPS), AR 25, *Quitman, 92001126*

Quitman Home Economics Building (Public Schools in the Ozarks MPS), 2nd Ave., *Quitman, 92001127*

Independence County

Jamestown School (Public Schools in the Ozarks MPS), N of AR 230, Jamestown, 92001106

Locust Grove School (Public Schools in the Ozarks MPS), AR 230 S of jct. with AR 25, Locust Grove, 92001107

Moorefield School (Public Schools in the Ozarks MPS), N side of Ham St., Moorefield, 92001109

Thido Grove School (Public Schools in the Ozarks MPS), Co. Rd. 20, Thida, 92001108

Marion County

Aggie Hall (Public Schools in the Ozarks MPS), Co. Rd. 9, Bruno, 92001115

Aggie Workshop (Public Schools in the Ozarks MPS), AR 235 Spur, Bruno, 92001113

Bruno School Building (Public Schools in the Ozarks MPS), Co. Rd. 9, Bruno, 92001112

Eros School Building (Public Schools in the Ozarks MPS), Co. Rd. 9, Eros, 92001110

Fairview School Building (Public Schools in the Ozarks MPS), Co. Rd. 203, Fairview, 92001116

Hirst—Mathew Hall (Public Schools in the Ozarks MPS), AR 235 Spur, Bruno, 92001114

Pyott School Building (Public Schools in the Ozarks MPS), Co. Rd. 12, Pyatts, 92001111

Stone County

Alco School (Public Schools in the Ozarks MPS), Just N of AR 66, Alco, 92001125

Luber School (Public Schools in the Ozarks MPS), Co. Rd. 214, Luber, 92001124

Van Buren County

Damascus Gymnasium (Public Schools in the Ozarks MPS), AR 285, Damascus, 92001122

Washington County

Agriculture Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Campus Dr., Fayetteville, 92001098

Business Administration Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Campus Dr., Fayetteville, 92001099

Chemistry Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Campus Dr., Fayetteville, 92001100

Chi Omega Greek Theatre—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Dickson St., Fayetteville, 92001101

Dodson Memorial Building (Public Schools in the Ozarks MPS), Jct. of Pleasant St. and Emma Ave., NE corner, Springdale, 92001118

Durham School (Public Schools in the Ozarks MPS), Co. Rd. 183, Durham, 92001121

Fishback School (Public Schools in the Ozarks MPS), AR 68N, Springdale, 92001120

Home Economics Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), W of Campus Dr., Fayetteville, 92001102

Men's Gymnasium—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Garland Ave., Fayetteville, 92001103

Spring Valley School District 120 Building (Public Schools in the Ozarks MPS), Co. Rd. 379, Spring Valley, 92001119

Student Union Building—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS) Jct. of Campus Dr. and Maple St., SE corner, Fayetteville, 92001104

Tontitown School Building (Public Schools in the Ozarks MPS), AR 412, Tontitown, 92001117

Wolker, Vol. Library—University of Arkansas, Fayetteville (Public Schools in the Ozarks MPS), Campus Dr., Fayetteville, 92001105

DELAWARE

New Castle County

Archmere, 3600 Philadelphia Pike, Claymont, 92001143

Armor, James, House, 4905 Lancaster Pike, Christiana Hundred, Wilmington vicinity, 92001141

Brook Ramble (Dwellings of the Rural Elite in Central Delaware MPS), Jct. of Co. Rds. 458 and 459, Appoquinimink Hundred, Townsend vicinity, 92001137

Cloud, Abner, House, 14 Ravine Rd., Brandywine Hundred, Wilmington vicinity, 92001144

Green Meadow (Dwellings of Rural Elite in Central Delaware MPS), Thomas Landing Rd. (DE 440), Appoquinimink Hundred, Odessa vicinity, 92001132

Hill Island Farm (Dwellings of the Rural Elite in Central Delaware MPS), 3379 Dupont Pkwy. (US 13), Appoquinimink Hundred, Odessa vicinity, 92001139

Johnson Home Farm (Dwellings of the Rural Elite in Central Delaware MPS), Co Rd. 453 E of jct. with DE 9, Blackbird Hundred, Taylor's Bridge vicinity, 92001133

Mount Pleasant (Dwellings of the Rural Elite in Central Delaware MPS), Sunnyside Rd. (Rt. 90), Duck Creek Hundred, Smyrna vicinity, 92001134

Savin—Wilson House (Dwellings of the Rural Elite in Central Delaware MPS), Co. Rd. 326, between DE 12 and Co. Rd. 83, Duck Creek Hundred, Smyrna vicinity, 92001135

Springer, Charles, Tavern, 4921 Lancaster Pike, Christiana Hundred, Wilmington vicinity, 92001142

Thomas, David W., House (Dwellings of the Rural Elite in Central Delaware MPS), 326 Thomas Landing Rd., Appoquinimink Hundred, Odessa vicinity, 92001136

Vandyke—Heath House (Dwellings of the Rural Elite in Central Delaware MPS), 385 Green Spring—Vandyke Rd. (Co. Rd. 47), Appoquinimink Hundred, Townsend vicinity, 92001130

Windsor (Dwellings of the Rural Elite in Central Delaware MPS), 1060 Dutch Neck Rd., St. Georges Hundred, Port Penn vinicity, 92001131

GEORGIA

Bartow County

Cassville Post Office, 1813 Cassville Rd. (Old Dixie Hwy.), Cassville, 9201129

MISSISSIPPI

Wilkinson County

Centerville Historic District, Roughly bounded by Cherokee, Laurel and St. Mary Sts., Centerville, 92001091

MISSOURI

St. Louis Independent City

Eliot School (St. Louis Public Schools of William B. Ittner MPS), 4242 Grove, St. Louis (Independent City), 92001092

Emerson, Ralph Waldo, School (St. Louis Public Schools of William B. Ittner MPS), 5415 Page Blvd., St. Louis (Independent City), 92001145

Field, Eugene, School (St. Louis Public Schools of William B. Ittner MPS), 4466 Olive, St. Louis (Independent City). 92001093

Jackson School (St. Louis Public Schools of William B. Ittner MPS), 1632 Hogan St., St. Louis (Independent City). 92001094

Mann, Horace, School (St. Louis Public Schools of William B. Ittner MPS), 4947 Juniata, St. Louis (Independent City). 92001095

Rock Spring School (St. Louis Public Schools of William B. Ittner MPS), 3974 Sarpy Ave., St. Louis (Independent City). 92001097

Wyman, Edward, School (St. Louis Public Schools of William B. Ittner MPS), 1547 S. Teresa, St. Louis (Independent City). 92001096

NEW JERSEY

Morris County

Mott Hollow, Roughly, Gristmill Rd. from Millbrook Ave. to Zandep Ln. and adjacent area along Millbrook, Randolph Township, Millbrook vicinity, 92001065

NORTH CAROLINA

Forsyth County

Kapp, John Henry, Farm, N side NC 65, 0.1 mi. E of jct. with NC 67 (4647 Bethania—Tobaccoville Rd.). Bethania vicinity, 92001067

New Hanover County

Carolina Place Historic District, Bounded by Market St., Wallace Park, Gibson Ave., Wrightsville Ave. and S. Eighteenth St., Wilmington, 92001066

OHIO

Cuyahoga County

Forest City Bank Building, 1400 W. Twenty-fifth St., Cleveland, 86003827

WISCONSIN

Green Lake County

Huron Street Historic District, Roughly, Huron St. from Fox R. to 124 E. Huron, including adjacent side streets, Berlin, 92001140

[FR Doc. 92-19275 Filed 8-13-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Section 5a Application No. 70 (Amendment No. 10)]

Western Motor Tariff Bureau, Inc.—Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision and opportunity for comment.

SUMMARY: Western Motor Tariff Bureau, Inc. (Western or petitioner) has filed a petition seeking approval of amendments to its ratemaking agreement approved under 49 U.S.C. 10706(b). The amendments would: (1) Create the California-Mexico Dry Freight Committee to simplify procedures involving traffic moving between points in California and Mexico; and (2) enable Western to broaden its services as a publishing agent to include all motor common carriers that file and post tariffs, mileage guides, or freight classifications with Federal and State regulatory bodies. The Commission has issued a decision proposing to approve the amendments, subject to public comment.

DATES: Comments from interested persons are due September 14, 1992. Replies are due 15 days thereafter. If no timely adverse comments are received, the sought relief will become effective automatically at the close of the comment period. If opposition comments are filed, the comments and any reply will be considered, and the Commission will issue a further decision.

ADDRESSES: An original and 10 copies, if possible, of comments referring to Section 5a Application No. 70 should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. A copy of any comments filed with the Commission also must be served on applicant's representative. .

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610, (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Copies of Western's approved agreement and the amendments are available for public inspection and copying at the Public Docket Room (room 1227 of the Commission in Washington, DC, and from Western's representative: William E. Kenworthy, 1920 N Street, NW., suite 420, Washington, DC 20036.

Western's proposed amendments relating to the establishment of a rate bureau committee responsible for procedures governing international traffic between California and Mexico will result in steamlined procedures, tariff simplification, and facilitated ratemaking over a significant geographic area. The proposal is similar in impact to other rate bureau amendments approved by the Commission involving international traffic. See, section 5a Application No. 60, Rocky Mountain Motor Tariff Bureau, Inc.—Agreement (not printed), served November 14, 1991. The amendments which permit the broadening of Western's services as a publishing agent provide petitioner with an opportunity to enhance its revenues in areas not subject to the Commission's jurisdiction. The Commission tentatively has found the proposals here to be in the public interest.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721).

Authority: 49 U.S.C. 10321 and 10706 and 5 U.S.C. 553.

Decided: August 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman Emmett, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19448 Filed 8-13-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32028]

Blackstone Capital Partners L.P., Blackstone Transportation Partners L.P.—Control Exemption—the Pittsburgh & Conneaut Dock Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pusuant to 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, the acquisition by Blackstone Capital Partners L.P. and Blackstone Transportation Partners L.P. of control of the Pittsburgh and Conneaut Dock Company. The exemption is subject to standard employee protective conditions. The Commission further finds that 49 U.S.C. 11321 (Panama Canal Act) is not applicable to the transaction.

DATES: The exemption is effective on September 14, 1992. Petitions to stay must be filed by August 24, 1992, and petitions to reopen must be filed by September 3, 1992.

ADDRESSES: Send pleadings referring to Finance Docket No. 32028 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. (2) Petitioners, representatives: John W. Barnum, Anne D. Smith, White & Case, 1747 Pennsylvania Avenue NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: August 3, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19441 Filed 8-13-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 243X)]

Chicago and North Western, Transportation Company—Abandonment Exemption—Between Beloit, WI and South Beloit, IL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 1.73 mile line of railroad between milepost 90.53, near South Beloit, IL and milepost 92.26, near Beloit, WI, in Winnebago County, IL and Rock County, WI.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) the line is not used for movement of overhead traffic as all overhead traffic has recently been rerouted to alternate lines (the line has been stub-ended since the Beloit-Evansville line was abandoned in 1979); (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 13, 1992 (unless stayed). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 24, 1992,[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 3, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Robert T. Opal, Commerce Counsel, Chicago and North Western Transportation Company, One North Western Center, Chicago, IL 60606-1551.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 19, 1992. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 4, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19436 Filed 8-13-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32131]

Burlington Northern Railroad Company—Trackage Rights Exemption—Norfolk and Western Railway Company

Burlington Northern Railway Company (BN) has filed a notice of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights over Norfolk and Western Railway Company (NW) lines from NW Milepost SD-334.6 at McCoy, IA, through the crossing of Iowa Highway 46, to BN Milepost 67.3 at East Des Moines, IA, and between BN Mileposts 67.5 and 68.3 in Des Moines, IA, all located in Polk County, IA. The purpose of the trackage rights is to improve operating efficiencies. The exemption became effective on August 11, 1992, and the parties intend to consummate the transaction on August 24, 1992.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102-5384.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Cost Ry., Inc.—Lease and Operate, 360 I.C.C 653 (1980).

Dated: August 10, 1992

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19440 Filed 8-13-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background

The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

[1] Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

List of Recordkeeping/Reporting Requirements Under Review

As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement
The title of the recordkeeping/reporting requirement
The OMB and/or Agency identification numbers, if applicable
How often the recordkeeping/reporting requirement is needed
Whether small businesses or organizations are affected
An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent
The number of forms in the request for approval, if applicable
An abstract describing the need for and uses of the information collection

Comments and Questions

Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202–523–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202–395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Extension

Mine Safety and Health Administration
Radiation Sampling and Exposure Records
1219–0003
Weekly; annually
Underground uranium mine operators and metal and nonmetal mine operators where radon daughter concentrations exceed 0.3 WL 1,000 respondents; 7.75 hours per response; 7,750 total burden hours

Requires operators of uranium mines and metal and nonmetal mines, where concentrations of radon daughters exceeds 0.3 WL, to calculate, record, and report to MSHA individual miner's exposure to concentrations of radon daughters. Records are maintained by the mine operator and are submitted to MSHA annually.

Signed at Washington DC this 11th day of August, 1992.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

[FR Doc. 92–19406 Filed 8–13–92; 8:45 am]

BILLING CODE 4510–43–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC. this 27th day of July 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Ansewn Shoe Co (Co)	Howland, ME	07/27/92	06/27/92	27,528	Handsewn Shoe Uppers.
Ansewn Shoe Co (Co)	Showhegan, ME	07/27/92	06/09/92	27,529	Handsewn Shoe Uppers.
Basf Corp. Information Systems (Wkrs)	Bedford, MA	07/27/92	07/16/92	27,530	Audio & Computer Tapes, Diskettes
Coalinga Corp (Wrks)	Ira, TX	07/27/92	07/15/92	27,531	Crude Oil.
Sackville Mills, Inc (ACTWU)	Wallingford, PA	07/27/92	07/01/92	27,532	Interlinings For Apparel.
Proctor Products (ACTWU)	Bourbon, MO	07/27/92	07/01/92	27,533	Shoe Counters..
Snow's Card & Gift Shop (Wkrs)	Birmingham, AL	07/27/92	07/07/92	27,534	Frillie Necklace & Earrings.
Toby Sportswear Inc. (Wkrs)	York, PA	07/27/92	07/15/92	27,535	Childrens Dresses and Sportswear.
General Electric Aerospace (Wkrs)	Moorestown, NJ	07/27/92	07/17/92	27,536	Connectors.
Sterling Plastics (Wkrs)	Mountainside, NJ	07/27/92	07/10/92	27,537	Injection Molded Plastic Products.
Unocal Corp., Southwestern Reg Off (Co)	Midland, Texas	07/27/92	07/15/92	27,538	Oil and Gas.
Mid Plains Div./Total Petrol., Inc. (Wkrs)	Oklahoma City, OK	07/27/92	03/16/92	27,539	Refined Petroleum Products.
Adobe Mining (Wkrs)	Grove City, PA	07/27/92	07/19/92	27,540	Coal Mining.
KBA Motter Corp (Wkrs)	York, PA	07/27/92	07/13/92	27,541	Printing Presses
Unocal Corp., Andrews District (Co)	Andrews, TX	07/27/92	07/15/92	27,542	Oil and Gas.

APPENDIX—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Unocal Corp., Farmington District (Co)	Farmington, NM	07/27/92	07/15/92	27,543	Oil and Gas.
Unocal Corp., Midland District (Co)	Levelland, TX	07/27/92	07/15/92	27,544	Oil and Gas.

[FR Doc. 92–19404 Filed 8–13–92; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–27,195]

Bull Printing Systems (BPS) Oklahoma City, OK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Bull Printing Systems (BPS), Oklahoma City, Oklahoma. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–27,195; Bull Printing Systems (BPS)
Oklahoma City, Oklahoma (August 5, 1992)

Signed at Washington, DC this 7th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–19403 Filed 8–13–92; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 24, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 3rd day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petioner: Union/workers/firm—	Location	Date received	Date of petition	Petion No.	Articles produced
Conoco, Inc., EPNA (wkrs)	Midland, TX	08/03/92	07/20/92	27,545	Crude oil and natural gas.
Marathon Oil Co (wkrs)	Houston, TX	08/03/92	07/23/92	27,546	Oil and gas.
Eastern States Exploration/Prod. (wkrs)	Snow Shoe, PA	08/03/92	07/27/92	27,547	Natural gas.
Fina Oil & Chemical Co (Hqrs) (wkrs)	Dallas, TX	08/03/92	07/22/92	27,548	Crude oil and natural gas.
Fina Oil & Chemical Co (So. La Div) (wkrs)	Houston, TX	08/03/92	07/22/92	27,549	Crude oil and natural gas.
Fina Oil & Chemical Co (So. Tx Div) (wkrs)	Houston, TX	08/03/92	07/22/92	27,550	Crude oil and natural gas.
Fina Oil & Chemical Co (E. Tx Div) (wkrs)	Tyler, TX	08/03/92	07/22/92	27,551	Crude oil and natural gas.
Kawneer Co (ABGWU)	Harrisonburg, VA	08/03/92	07/22/92	27,552	Curtain & window wall extensions.
Dyac Corp., dba Joseph Dyson & Sons (IFWU)	Painesville, OH	08/03/92	07/21/92	27,553	Forgings.
Sew Wright Apparel (Co)	Miami, OK	08/03/92	07/06/92	27,554	Ladies and mens' jeans.
United Gas Pipeline Co (wkrs)	Houston, TX	08/03/92	07/22/92	27,555	Natural gas transmission and marketing.
Roydon Wear, Inc (wkrs)	Soperton, GA	08/03/92	07/20/92	27,556	Children's jeans and shorts.
Blocker Services, Inc (wkrs)	Alice, TX	08/03/92	07/24/92	27,557	Oil and gas drilling.
Trexpro, Inc (wkrs)	Sedalia, CO	08/03/92	07/22/92	27,558	Oil, gas exploration.
Grasso Supply Co (wkrs)	Houston, TX	08/03/92	07/21/92	27,559	Sell drilling parts for oil, gas.
General Electric Aerospace Oper. (IUE)	Pittsfield, MA	08/03/92	07/23/92	27,560	Defense systems.
Outer Stuff (wkrs)	Altoona, PA	08/03/92	07/20/92	27,561	Children's coats and jackets.
BP Exploration (Alaska), Inc (Co)	Anchorage, AK	08/03/92	07/21/92	27,562	Oil and gas exploration, prodiction.
Chile Offshore Corp (wkrs)	Houston, TX	08/03/92	07/22/92	27,563	Crude oil and natural gas drilling.
Giddings & Lewis (UIW)	Lima, OH	08/03/92	07/20/92	27,564	Lathes and component parts.
Engineered Well Services, Inc (Co)	Dickinson, ND	08/03/92	07/22/92	27,565	Oil service.
Eastman Christensen (wkrs)	Houston, TX	08/03/92	07/24/92	27,566	Oil, gas drilling.
Hosking Geophysical Corp. (Co)	Mt. Pleasant, MI	08/03/92	07/24/92	27,567	Oil and gas.
Multi-Shot, Inc (wkrs)	Broussard, LA	08/03/92	07/20/92	27,568	Oil and gas.
Thomas & Betts Corp. (wkrs)	Iowa City, IA	08/03/92	07/20/92	27,569	Comuter connectors.
Brown Shoe Company (Co)	Clayton, MO	08/03/92	07/17/92	27,570	Administrative services.
HOMCO International, Inc (Co)	Wilburton, OK	08/03/92	07/20/92	27,571	Oil and gas.
Quebec Sports (wkrs)	Allentown, PA	08/03/92	07/21/92	27,572	Children's sportswear.
Shape, Inc (wkrs)	Biddeford, ME	08/03/92	07/13/92	27,573	Audio and video casettes.
Sutton Shirt Corp (wkrs)	Burkesville, TX	08/03/92	07/20/92	27,574	Men's flannel shirts.

Appendix—Continued

Petitioner: Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Dailey Petroleum Services, Inc. (wkrs)	Conroe, TX	08/03/92	07/13/92	27,575	Oilfield equipment.
Whitaker Oil Tools (wkrs)	Odessa, TX	08/03/92	07/09/92	27,578	Rent tools for oil industry.
Briggs & Stratton Corp (AIW)	Menomonee Falls, WI	08/03/92	07/23/92	27,577	Small cast iron engines.
Briggs & Stratton Corp (AIW)	Wauwatosa, WI	08/03/92	07/23/92	27,578	Small cast iron engines.
Briggs & Stratton Corp (AIW)	West Allis, WI	08/03/92	07/23/92	27,579	Small cast iron engines.
Shape, Inc. (wkrs)	Kennebunk, ME	08/03/92	07/13/92	27,580	Audio and video casettes.
Fina Oil & Chemical Co (W. Tx Div) (wkrs)	Midland, TX	08/03/92	07/22/92	27,581	Crude oil and natural gas.
Fina Oil & Chemical Co (offshore) (wkrs)	Houston, TX	08/03/92	07/22/92	27,582	Crude oil and natural gas.

[FR Doc. 92-19405 Filed 8-13-92; 8:45am]
BILLING CODE 4510-30-M

[TA-W-27,273]

John E. Chance & Associates, Inc., Lafayette, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at John E. Chance & Associates, Inc., Lafayette, Louisiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27,273; John E. Chance & Associates, Inc.
Lafayette, Louisiana (August 4, 1992)

Signed at Washington, DC this 7th day of August 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-19402 Filed 8-13-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-26, 441 Tulsa, OK TA-W-26, 442 Wheatland, OK TA-W-26, 443 Belle Chasse, LA]

Quarles Drilling Corp.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

Operating at Various Locations in the Following States: TA-W-26, 443A Texas. TA-W-26, 443B New Mexico, TA-W-26, 443C Mississippi, TA-W-26, 443D Wyoming, TA-W-26, 443E Louisiana (except Belle Chasse), TA-W-26, 443F Oklahoma (except Wheatland and Tulsa)

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on December 9, 1991 applicable to all workers of Quarles Drilling Corporation, Tulsa and Wheatland, Oklahoma and Belle Chase, Louisiana. The notice was published in the **Federal Register** on December 27, 1991 (56 FR 67104).

At the request of the State Agency the Department is amending the subject certification to include the States of Texas, New Mexico, Mississippi, Wyoming and other locations in Oklahoma and Louisiana.

Also, the Department discovered a coverage overlap with these certifications and TA-W-21, 934, TA-W-21, 935 and TA-W-21, 936 which expired on February 23, 1991. Therefore, to correct this period of double coverage, the Department is changing the impact date for the subject firm to February 23, 1991.

The amended notice applicable to TA-W-26, 441, TA-W-26, 442 and TA-W-26, 443 is hereby issued as follows:

All workers of Quarles Drilling Corporation, Tulsa, Oklahoma; Wheatland, Oklahoma; Bell Chase, Louisiana and operating at various locations in the States of Texas, New Mexico, Mississippi, Wyoming, Oklahoma, except Tulsa and Wheatland and Louisiana, except Belle Chase, who became totally or partially separated from employment on or after February 23, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington DC, this 5th day of August 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-19401 Filed 8-13-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27,079 Woodward, OK; TA-W-27,079A Dallas, TX; TA-W-27,079B All Other Locations in Texas]

Supreme Well Service Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on June 3, 1992, applicable to all workers of Supreme Well Service. The notice was published in the **Federal Register** on June 26, 1992 (57 FR 28706).

At the request of the State Agency the Department reviewed the subject certification. The findings show that workers were laid off at other locations in Texas. Therefore, the Department is amending the subject certification to include all other locations in Texas.

The intent of the Department's certification is to include all workers of Supreme Well Service Company who were adversely affected by increased imports.

The amended notice applicable to TA-W-27,079 and TA-W-27,079A is hereby issued as follows:

All workers of Supreme Well Service Company, Woodward, Oklahoma; Dallas, Texas and other locations in Texas who became totally or partially separated from employment on or after March 16, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of August 1992.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-19400 Filed 8-13-92; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Volume II

Texas:
TX91-65 (Aug. 14, 1992)..... p. All.
TX91-66 (Aug. 14, 1992)..... p. All.
TX91-67 (Aug. 14, 1992)..... p. All.
TX91-68 (Aug. 14, 1992)..... p. All.
TX91-70 (Aug. 14, 1992)..... p. All.
TX91-71 (Aug. 14, 1992)..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Florida:
FL91-45 (Feb. 22, 1991)..... p. 211, pp. 212-213.
Kentucky:
KY91-31 (Feb. 22, 1991)..... p. All.
New York:
NY91-1 (Feb. 22, 1991)..... p. 773, pp.774-776.
NY91-18 (Feb. 22, 1991)..... p. 931, pp. 932-933.

Volume II

Arkansas:
AR91-1 (Feb. 22, 1991)..... p. All.
AR91-8 (Feb. 22, 1991)..... p. All.
Illinois:
IL91-2 (Feb. 22, 1991)..... p. 97, pp.100, 103-104, p. 114a.
IL91-6 (Feb. 22, 1991)..... p. 133, p. 134.
IL91-8 (Feb. 22, 1991)..... p. 145, p. 148.
IL91-9 (Feb. 22, 1991)..... p. 153, p. 155.
IL91-14 (Feb. 22, 1991)..... p. 195, p. 196.
Indiana:
IN91-6 (Feb. 22, 1991)..... p. 315, pp. 317, 320, pp. 326-334b.
Kansas:
KS91-6 (Feb. 22, 1991)..... p. All.
KS91-7 (Feb. 22, 1991)..... p. All.
KS91-8 (Feb. 22, 1991)..... p. All.
KS91-9 (Feb. 22, 1991)..... p. All.
KS91-10 (Feb. 22, 1991)..... p. All.
KS91-12 (Feb. 22, 1991)..... p. All.
KS91-13 (Feb. 22, 1991)..... p. All.
KS91-14 (Feb. 22, 1991)..... p. All.
KS91-15 (Feb. 22, 1991)..... p. All.
KS91-16 (Feb. 22, 1991)..... p. All.
Michigan:
MI91-12 (Feb. 22, 1991)..... p. All.
Nebraska:
NE91-1 (Feb. 22, 1991)..... p. All.
NE91-2 (Feb. 22, 1991)..... p. All.
NE91-11 (Feb. 22, 1991)..... p. All.
Ohio:
OH91-1 (Feb. 22, 1991)..... p. All.
OH91-3 (Feb. 22, 1991)..... p. All.
OH91-28 (Feb. 22, 1991)..... p. All.
Wisconsin:
WI91-19 (Feb. 22, 1991)..... p. 1285, pp. 1286-1302.

Volume III

Alaska:
AK91-1 (Feb. 22, 1991)..... p. All.
California:
CA91-2 (Feb. 22, 1991)..... p. All.
CA91-4 (Feb. 22, 1991)..... p. All.
Idaho:
ID91-1 (Feb. 22, 1991)..... p. All.
Utah:
UT91-20 (Feb. 22, 1991)..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year,

regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 7th day of August 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-19199 Filed 8-13-92; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) a request for clearance of the following proposal for the collection of information under the provisions of the Paperwork Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted by September 14, 1992.

ADDRESSES: Send comments to Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Ms. Judith E. O'Brien, National Endowment for the Arts, Administrative Services Division, room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests the review of a new collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be recorded; (3) who will be required or asked or asked to record; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Section 504 Program Evaluation Workbook.

Frequency of Collection: One-time.

Respondents: State or local governments, non-profit institutions;

Use: Recipients of National Endowment for the Arts grants are required to complete an evaluation of their policy and practices toward the disabled population. This self-evaluation is retained by the grantee.

Estimated Number of Respondents: 3,547.

Average Burden Hours per Response: 4.

Total Estimated Burden: 14,188.

Judith E. O'Brien,

Management Analyst, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 92-19388 Filed 8-13-92; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Alternative Means of Dispute Resolution; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement.

SUMMARY: This Policy statement presents the policy of the Nuclear Regulatory Commission (NRC) on the use of "alternative means of dispute resolution" (ADR) to resolve issues in controversy concerning NRC administrative programs. ADR processes include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration or combination of these processes. These processes present options in lieu of adjudicative or adversarial methods of resolving conflict and usually involve the use of a neutral third party.

DATES: This policy statement is effective on August 14, 1992. Because this is a general statement of policy, no prior notice or opportunity for public comment is required. However, an opportunity for comment is being provided. The period for comments expires on September 28, 1992. Comments received after this date will be considered to the extent practical; however, to be of greatest assistance to the Commission in planning the implementation of its ADR policy, comments should be received on or before this date.

ADDRESSES: Mail written comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, Deliver comments to One White Flint North, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined and/or copied for a fee at the NRC Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC, between 7:45 a.m. and 4:15 p.m.

FOR FURTHER INFORMATION CONTACT: James M. Cutchin IV, Special Counsel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone: (301) 504-1568.

SUPPLEMENTARY INFORMATION:

Background

Congress enacted the Administrative Dispute Resolution Act (Public Law 101-552) on November 15, 1990. The Act requires each Federal agency to designate a senior official as its dispute resolution specialist, to provide for the training in ADR processes of the dispute resolution specialist and certain other employees, to examine its administrative programs, and to develop, in consultation with the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS), and adopt, a policy that addresses the use of ADR and case management for resolving disputes in connection with agency programs. Although the Act authorizes and encourages the use of ADR, it does not require the use of ADR. Whether to use or not to use ADR is committed to an agency's discretion. Moreover, participation in ADR processes is by agreement of the disputants. The use of ADR processes may not be required by the agency.

Discussion

The Act provides no clear guidance on when the use of ADR is appropriate or on which ADR process is best to use in a given situation. However, section 581 of the Act appears to prohibit the use of ADR to resolve matters specified under the provisions of sections 2302 and 7121(c) of title 5 of the United States Code, and section 582(b) identifies situations for which an agency shall consider not using ADR. Nevertheless, numerous situations where the use of ADR to resolve disputes concerning NRC programs would be appropriate may arise. A document issued by ACUS in February 1992, entitled "The Administrative Dispute Resolution Act: Guidance for Agency Dispute Resolution Specialists," suggests that the use of ADR may be appropriate in situations involving a particular type of dispute when one or more of the following characteristics is present:

Parties are likely to agree to use ADR in cases of this type;

Cases of this type do not involve or require the setting of precedent;

Variation in outcome of the cases of this type is not a major concern;

All of the significantly affected parties are usually involved in cases of this type;

Cases of this type frequently settle at some point in the process;

The potential for impasse in cases of this type is high because of poor communication among parties, conflicts within parties or technical complexity or uncertainty;

Maintaining confidentiality in cases of this type is either not a concern or would be advantageous;

Litigation in cases of this type is usually a lengthy and/or expensive process; or

Creative solutions, not necessarily available in formal adjudication, may provide the most satisfactory outcome in cases of this type.

As the Act requires, a Dispute Resolution Specialist has been designated, NRC administrative programs have been reviewed, a policy on the use of ADR has been adopted, and the training of certain NRC employees has begun. As the Act requires, input on development of the policy has been sought from ACUS and FMCS. Although the Act does not require it, input on the policy and its implementation is being sought from the public, including those persons whose activities the NRC regulates, because the possible benefits of ADR cannot be realized without the agreement of all parties to a dispute to participate in ADR processes. Among the possible benefits of ADR are:

More control by the parties over the outcome of their dispute than in formal adjudication;

A reduction in levels of antagonism between the parties to a dispute; and

Savings of time and money by resolving the dispute earlier with the expenditure of fewer resources.

Paperwork Reduction Act Statement

This policy statement contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Statement of Policy

This statement sets forth the policy of the Commission with respect to the use of "alternative means of dispute resolution" (ADR) [1] to resolve issues in controversy concerning NRC administrative programs.

The Commission has conducted a preliminary review of its programs for ADR potential and believes that a number of them may give rise to disputes that provide opportunities for the use of ADR in their resolution. For example, as the Commission has long recognized, proceedings before its Atomic Safety and Licensing Boards (ASLBs) provide opportunities for the use of ADR and case management. The Commission has encouraged its ASLBs to hold settlement conferences and to encourage parties to negotiate to resolve contentions, settle procedural disputes and better define substantive issues in dispute. The Commission also has stated that its ASLBs at their discretion should require trial briefs, prefiled testimony, cross-examination plans and other devices for managing parties' presentations of their cases, and that they should set and adhere to reasonable schedules for moving proceedings along expeditiously consistent with the demands of fairness. Statement of Policy on Conduct of Licensing Proceedings, (46 FR 28533, May 27, 1981); CLI-81-8, 13 NRC 452 (1961). In addition, the Commission has indicated that settlement judges may be used in its proceedings in appropriate circumstances. Rockwell International Corporation (Rocketdyne Division), CLI-90-5, 31 NRC 337 (1990).

Opportunities for the use of ADR in resolving disputes may arise in connection with programs such as those involving licensing, contracts, fees, grants, inspections, enforcement, claims, rulemaking, and certain personnel matters. Office Directors and other senior personnel responsible for administering those programs should be watchful for situations where ADR, rather than more formal processes, may appropriately be used and bring them to the attention of the NRC's Dispute Resolution Specialist. Persons who become involved in disputes with the NRC in connection with its administrative programs should be encouraged to consider using ADR to resolve those disputes where appropriate.

The Commission supports and encourages the use of ADR where appropriate. The use of ADR may be appropriate: (1) Where the parties to a dispute, including the NRC, agree that ADR could result in a prompt, equitable, negotiated resolution of the dispute; and (2) the use of ADR is not prohibited by law. The NRC's Dispute Resolution Specialist is available as a resource to assist Office Directors and other senior personnel responsible for administering NRC programs in deciding whether use of ADR would be appropriate. That individual should receive the cooperation of other senior NRC personnel: (1) In identifying information and training needed by them to determine when and how ADR may appropriately be used; and (2) in implementing the Commission's ADR policy.

The Commission believes that certain senior NRC personnel should receive training in methods such as negotiation, mediation and other ADR processes to better enable them: (1) To recognize situations where ADR processes might appropriately be employed to resolve disputes with the NRC; and (2) to participate in those processes.

The Commission recognizes that participation in ADR processes is voluntary and cannot be imposed on persons involved in disputes with the NRC. To obtain assistance in identifying situations where ADR might beneficially be employed in resolving disputes in connection with NRC programs and steps that can be taken to obtain acceptance of NRC's use of ADR, input from the public, including those persons whose activities the Commission regulates, should be solicited.

After a reasonable trial period, the Commission expects to evaluate whether use of ADR has been made where its use apparently was appropriate and whether use of ADR has resulted in savings of time, money and other resources by the NRC. The Commission will wait until some practical experience in the use of ADR has been accumulated before deciding whether specific regulations to implement ADR procedures are needed.

Public Comment

The NRC is interested in receiving comments from the public, including those persons whose activities the NRC regulates, on any aspect of this policy statement and its implementation. However, the NRC is particularly interested in comments on the following:

Specific issues, that are material to decisions concerning administrative programs of the NRC and that result in disputes between the NRC and persons substantially affected by those

[1] ADR is an inclusive term used to describe a variety of joint problem-solving processes that present options in lieu of adjudicative or adversarial methods of resolving conflict. These options usually involve the use of a neutral third party. ADR processes include, but are not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration or combinations of these processes.

decisions, that might appropriately be resolved using ADR processes in lieu of adjudication.

Whether employees of Federal government agencies should be used as neutrals in ADR processes or whether neutrals should come from outside the Federal government and be compensated by the parties to the dispute, including the NRC, in equal shares.

Actions that the NRC could take to encourage disputants to participate in ADR processes, in lieu of adjudication, to resolve issues in controversy concerning NRC administrative programs.

Dated at Rockville, Maryland this 7th day of August, 1992.

For the Nuclear Regulatory Commission.

Samuel J Chilk,

Secretary of the Commission.

[FR Doc. 92-19454 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

Proposed Generic Communication; NRC Generic Letter: Analog-to-Digital Replacements Under the 10 CFR 50.59 Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a Generic Letter on the replacement of analog safety systems with digital safety systems under 10 CFR 50.59. The Generic Letter states the NRC staff's position that an analog to digital replacement of a safety system is an unreviewed safety question as defined in 10 CFR 50.59 and will require an NRC staff review. The NRC is seeking comments from interested parties regarding both the technical and regulatory aspects of the proposed Generic Letter. In particular, the NRC is interested in existing licensee analog-to-digital replacement procedures and policies, the type and scope of replacements that are planned or underway, and the type and scope of replacements that have already been completed.

DATES: Comment period expires September 14, 1992. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to room P-223, Phillips Buildings, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:14 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clyde Shiraki (301) 504-3101.

SUPPLEMENTARY INFORMATION: A generic letter is an NRC document that transmits information and/or NRC positions to licensees or permit holders regarding matters of safety, safeguards, or environmental significance.

The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The proposed generic letter, in its entirety, is also available for public inspection in the Public Document Room. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Room. The proposed generic letter text is given in its entirety below.

Dated at Rockville, Maryland, 6th this August 1992.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III-3, Division of Reactor Projects-III/IV/V, Office of Nuclear Reactor Regulation.

To: All Holders of Operating Licenses or Construction Permits for Nuclear Reactors

Subject: Analog-to-Digital Replacements Under the 10 CFR 50.59 Rule

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to inform licensees of the staff's position that the installation of digital based safety systems (1) is an unreviewed safety question, (2) will require a review by the NRC staff, and (3) cannot be performed under the 10 CFR 50.59 rule. The staff's position applies to all safety-related digital equipment that uses software and in particular, to microprocessor-based systems.

The age degradation of some earlier analog electronic systems and the difficulties in obtaining qualified replacement components for those systems, have prompted some licensees to replace existing analog systems with digital systems. After reviewing a number of these replacement projects and after monitoring digital equipment failures in both nuclear and non-nuclear applications, the staff has identified concerns that apply to the nuclear industry and that could be significant to safety. The staff's concerns stem from the design characteristics of the new digital electronics which could result in new failure modes and system malfunctions that were either not considered during the initial plant design or may not have been evaluated in sufficient detail to support the new digital systems. These concerns include but are not limited to the use of software, the effect of electromagnetic interference, the use and control of configuration equipment, the effect that some digital designs have on diverse trip functions, failures specific to digital hardware, effective system integration, and the commercial dedication of digital electronics. The most notable of these concerns is the use of software.

Software cannot be thought of in the traditional licensing sense, as an electronic component similar to other components installed in redundant channels that are physically and electrically separated from each other. Once a final software package is developed, this exact same package (component) is installed in each redundant channel including any errors and failure mechanisms that may be induced by the software itself. With the exact same software component installed in each redundant channel and/or train of a safety system, the potential now exists to have a failure that could occur at the exact same instant in time (within milliseconds) and could fail in the exact same manner in multiple safety trains. Such a failure would affect the ability of the safety system to perform its intended safety function. This concern is compounded by the use and control of portable configuration equipment that can alter the software in the field. As a result, the concern yields questions regarding the application of the single failure, independence, and separation criteria that were inherent in the original safety analysis. Furthermore, since some digital system designs use common information highways and/or can handle multiple input functions, a single digital equipment failure in one train could affect a number of the available trip functions thereby reducing the availability and functional diversity of existing designs.

These concerns create the possibility of a new malfunction and a possible reduction in the current safety margin and call into question the performance of an analog-to-digital modification of a safety system under the 10 CFR 50.59 rule. Therefore, the staff's position is that the installation of digital based safety systems does represent an unreviewed safety question that will require a review by the NRC staff and cannot be performed under the 10 CFR 50.59 rule. This position should not be interpreted to discourage the installation of digital systems. However, the staff's position does reflect the regulatory mechanism by which such a modification can be performed, and the potential safety significance of digital equipment failures.

Backfit Discussion

The staff's position is necessary to ensure compliance with 10 CFR 50.59. Therefore, a backfit analysis is not required in accordance with 10 CFR 50.109 (a)(4)(i).

Dated at Rockville, Maryland, the 6th of August 1992.

For the Nuclear Regulatory Commission.

John N. Hannon, Director,

Project Directorate III-3, Division of Reactor Projects-III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-19329 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

Update of Activities on Performance Demonstration Initiative; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The staff of the Nuclear Regulatory Commission will meet with the staffs of the Nuclear Management and Resources Council (NUMARC) and Performance Demonstration Initiative (PDI) to inform NRC of PDI activities to implement the requirements of the American Society of Mechanical Engineers Code Section XI, Appendix VIII on performance demonstration qualification of inspectors.

DATES: November 6, 1992.

TIME: 10 a.m.

ADDRESSES: 11555 Rockville Pike, room: 1 F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Z. Serpan, Jr., Chief, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington DC 20555. Telephone: (301) 492-3835.

SUPPLEMENTARY INFORMATION: Following publication by the ASME Code of Mandatory Appendix VIII on "Performance Demonstration for Ultrasonic Examination Systems" in the 1989 Addenda, the U.S. nuclear industry formed an organization called Performance Demonstration Initiative (PDI) to implement the requirements of this appendix. Activities underway by PDI include definition and preparation of flawed test samples, plus development of the testing protocols. NRC is moving to incorporate Mandatory Appendix VIII into the Federal Regulations through incorporation into 10 CFR 50.55a; thus, NRC is very interested to learn of PDI's activities toward implementation of the appendix' requirements. This meeting is the second, annual information update meeting put forth by PDI for the NRC staff.

Dated at Rockville, Maryland, this 6th day of August, 1992.

For the Nuclear Regulatory Commission.

Charles Z. Serpan, Jr.,

Chief, Materials Engineering Branch, Office of Nuclear Regulatory Research.

[FR Doc. 92-19452 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

Procedures for Providing Security Support for NRC Public Meetings/ Hearings

The Nuclear Regulatory Commission is revising its procedures for providing security support for all public NRC forums. This revision will provide a single set of procedures which will serve to ensure consistency and uniformity of application. These procedures will be used by NRC Headquarters and regional staff and are applicable to public hearings/meetings held at NRC Headquarters buildings, other NRC space in the Washington, D.C. area and/or regional locations, to include space leased for the occasion. This **Federal Register** notice supersedes the previous **Federal Register** notice regarding Security Support for NRC Meetings/ Hearings that was published on November 1, 1991.

In order to balance the orderly conduct of government business with the right of free speech, the following procedures regarding attendance at NRC public meetings and hearings have been established:

- Visitors (other than properly identified Congressional, press and government personnel) may be subject to personnel screening such as passing through metal detectors and visitors' briefcases, packages, etc., may be subject to inspection.
- Signs, banners, posters and displays will be prohibited from all NRC adjudicatory proceedings (Commission and Atomic Safety and Licensing Board Panel hearings) because they are disruptive to the conduct of the adjudicatory process. Signs, banners, posters and displays not larger than 18" square will be permitted at all other NRC proceedings, but cannot be waved, held over one's head or generally moved about while in the meeting room. Signs, banners, posters and displays larger than 18" square will not be permitted in the meeting room because they are disruptive both to the participants and to the audience. Additionally, signs, banners, posters and displays affixed to any sticks, poles or other similar devices will not be permitted in the meeting room.
- The presiding official will note any disruptive behavior on the record and warn the person to cease such behavior. If the person does not cease the behavior, the presiding official will call a brief recess to restore order or ask one of the security personnel on hand to remove the person.

FOR FURTHER INFORMATION CONTACT: David A. Dittmeier, Chief, Facilities Security Branch, Division of Security, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-4124.

Dated at Rockville, Maryland, this 11th day of August 1992.

For the Nuclear Regulatory Commission.

Raymond J. Brady,

Director, Division of Security, Office of Administration.

[FR Doc. 92-19451 Filed 8-13-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted Service, as required by civil service rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606-0950.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on July 20, 1992 (57 FR 32034). Individual authorities established or revoked under Schedules A and B and established under Schedule C between June 1 and June 30, 1992, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities

as of June 30, 1992, will also be published.

Schedule A

The following exception was established:

Smithsonian Institution

Positions at GS–15 and below at the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Positions like this comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative or program support positions. Effective June 11, 1992.

Schedule B

No Schedule B authorities were established or revoked during June.

Schedule C

Department of Agriculture

One Director, Press and Media Affairs, to the Manager, Federal Crop Insurance Corporation. Effective June 10, 1992.

One Associate to the Manager, Federal Crop Insurance Corporation. Effective June 12, 1992.

Agency for International Development

One Special Assistant to the Assistant Administrator, Bureau for Asia. Effective June 4, 1992.

Department of Commerce

One Confidential Assistant to the Deputy Under Secretary for Travel and Tourism, U.S. Travel and Tourism Administration. Effective June 1, 1992.

One Confidential Assistant to the Deputy Assistant Secretary for Technology Policy. Effective June 4, 1992.

One Communications Officer to the Counsellor to the Secretary and Director of the Office of Public Affairs. Effective June 4, 1992.

One Special Assistant to the Director of Public Affairs, International Trade Administration. Effective June 7, 1992.

One Special Assistant for Legislative Issues to the Deputy Under Secretary, National Oceanic and Atmospheric Administration. Effective June 19, 1992.

Department of Defense

One Special Assistant for Public Policy to the Assistant Deputy Under Secretary of Defense for Policy Planning. Effective June 1, 1992.

One Secretary (Steno/Office Automation) to the Assistant Secretary of the Air Force (Acquisition). Effective June 10, 1992.

One Private Secretary to the General Counsel. Effective June 10, 1992.

One Staff Assistant to the Special Assistant to the Secretary of the Army/Executive Director of the Department of Defense 50th Anniversary of World War II Commemoration Committee. Effective June 10, 1992.

One Special Assistant to the Assistant Secretary of Defense for Public Affairs. Effective June 19, 1992.

One Law Clerk to a Judge, U.S. Court of Military Appeals. Effective June 30, 1992.

Department of Transportation

Two Special Assistants to the Secretary. Effective June 4, 1992.

Department of Education

Two Confidential Assistants to the Assistant Secretary for Postsecondary Education. Effective June 1, 1992.

One Special Assistant to the Assistant Secretary for Post-secondary Education. Effective June 1 1992.

One Special Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs. Effective June 1, 1992.

One Director, Regional Liaison Staff, to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective June 4, 1992.

One Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective June 4, 1992.

One Confidential Assistant to the Director of Communications/Counselor to the Secretary. Effective June 10, 1992.

One Confidential Assistant to the Assistant Secretary for Policy Planning, Office of Policy and Planning. Effective June 12, 1992.

One Special Assistant to the Assistant for Intergovernmental and Interagency Affairs. Effective June 12, 1992.

One Confidential Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective June 30, 1992.

One Special Assistant to the Deputy Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective June 30, 1992.

Department of Energy

One Special Assistant to the Secretary of Energy, Office of the Secretary. Effective June 12, 1992.

Equal Employment Opportunity Commission

One Special Assistant for Media to the Director, Office of Communications and Legislative Affairs, Office of the Chairman. Effective June 15, 1992.

Environmental Protection Agency

One Special Assistant to the Assistant Administrator, Office of Solid Waste and Emergency Response. Effective June 1, 1992.

One Program Advisor to the Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances. Effective June 22, 1992.

One Deputy to the Associate Administrator, Office of Regional Operations and State/Local Relations. Effective June 30, 1992.

Federal Labor Relations Authority

One Executive Assistant to the General Counsel. Effective June 22, 1992.

Department of Health and Human Services

One Confidential Assistant to the Executive Secretary, Office of the Secretary. Effective June 7, 1992.

One Speechwriter to the Deputy Assistant Secretary for Public Affairs (Media), Office of the Assistant Secretary for Public Affairs. Effective June 7, 1992.

One Director, Office of Public Liaison, to the Associate Administrator for Communications, Health Care Financing Administration. Effective June 30, 1992.

One Confidential Assistant to the Administrator, Health Care Financing Administration. Effective June 30, 1992.

Department of Housing and Urban Development

One Deputy Assistant Secretary for Single Family Housing to the Assistant Secretary for Housing. Effective June 1, 1992.

One Staff Assistant to the Deputy Assistant Secretary for Public Affairs. Effective June 10, 1992.

One Special Assistant to the Assistant Secretary for Policy Development and Research, Effective June 17, 1992.

One Deputy Assistant Secretary for Operations to the Assistant Secretary for Community Planning and Development. Effective June 19, 1992.

Department of Justice

One Special Assistant to the Director, Office of Policy and Communication. Effective June 1, 1992.

Department of Labor

One Special Assistant to the Assistant Secretary for Mine Safety and Health. Effective June 1, 1992.

National Endowment for the Arts

One Attorney-Advisor to the Chairman. Effective June 17, 1992.

Office of Management and Budget

One Confidential Assistant to the Associate Director for Legislative Reference and Administration. Effective June 17, 1992.

Office of National Drug Control Policy

One Confidential Assistant to the Associate Director for State and Local Affairs. Effective June 4, 1992.

One Special Assistant to the Director. Effective June 12, 1992.

President's Commission on White House Fellowships

One Associate to the Director. Effective June 10, 1992.

Small Business Administration

One Special Assistant to the Associate Deputy Administrator for Finance, Investment and Procurement. Effective June 4, 1992.

Department of State

One Special Assistant to the Assistant Secretary, Congressional Relations, Bureau of Near Eastern Affairs. Effective June 12, 1992.

One Supervisory Protocol Officer (Visits) to the Foreign Affairs Officer/Assistant Chief of Protocol, Office of the Chief of Protocol. Effective June 12, 1992.

United States Tax Court

One Trial Clerk to a Judge. Effective June 30, 1992.

Department of the Treasury

One Confidential Assistant to the Assistant Secretary for Public Affairs and Public Liaison. Effective June 19, 1992.

One Staff Assistant (Correspondence Review) to the Executive Secretary. Effective June 19, 1992.

Department of Veterans Affairs

One Special Assistant to the Assistant Secretary for Human Resources and Administration. Effective June 19, 1992.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p.218.

Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–19362 Filed 8–13–92; 8:45 am]

BILLING CODE 6325–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Arapahoe Meadows, Arapahoe County, CO

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the property known as Arapahoe Meadows, located near the City of Aurora, Arapahoe County, Colorado, is affected by section 10 of the Coastal Barrier Improvement Act of 1990, as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the property may be mailed or faxed to the RTC until November 12, 1992.

ADDRESSES: Copies of detailed descriptions of the property, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Fred Ambrogi, Resolution Trust Corporation, Northcorp Realty Advisors, Inc., 707 Broadway, NW.; suite 101, Albuquerque, NM 87102, (505) 246–9330, FAX (505) 246–9352.

SUPPLEMENTARY INFORMATION: The Arapahoe Meadows property is located in an unincorporated portion of Arapahoe County, southeast of Aurora, Colorado, at the southeast quadrant of the intersection of South Liverpool Street and East Arapahoe Road. The property has wetlands, historical and archaeological value. The site is contiguous with property managed by the East Arapahoe Improvement District for recreational purposes. The property is covered property within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Characteristics of the property include: The property consists of approximately 414 acres of undeveloped land. The area is semirural with gently rolling hills. A band of wetlands is present along the Piney Creek drainage which crosses the site. The property contains a ranch complex with features of historic significance and pre-historic camp sites of archaeological value.

Property size: Approximately 414 acres.

Written notice of serious interest in the purchase or other transfer of the property must be received on or before November 12, 1992 by the Resolution Trust Corporation at the address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government
2. Agencies or entities of State or local government and
3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3))

Written notices of serious interest to purchase or effect other transfer of the property must be submitted by November 12, 1992 to Mr. Fred Ambrogi at the above **ADDRESSES** and in the following form:

Notice of Serious Interest

Re: Arapahoe Meadows, Federal Register Publication Date: August 14, 1992.

1. Entity name
2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2))
3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing)
4. Declaration by entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes
5. Authorized Representative (Name/Address/Telephone/Fax)

Dated: August 10, 1992.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 92–19377 Filed 8–13–92; 8:45 am]

BILLING CODE 6714–01–M

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund twenty-four presently existent Small Business Development Centers (SBDCs) on October 1, 1992. Currently there are 57 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Alabama, Alaska, Connecticut, Delaware, Iowa, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New York (Upstate), New York (Downstate), Ohio, Puerto Rico, Dallas, Houston, Lubbock, San Antonio, Vermont, Virgin Islands, West Virginia and Wyoming. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to

Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR part 135.

EFFECTIVE DATE: November 12, 1992.

ADDRESSES: Comments should be addressed to Ms. Monika Edwards Harrison, Associate Administrator for SBDC Programs, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Ms. Monika Edwards Harrison, Associate Administrator for SBDC Programs, (202) 205–6766.

Notice of Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR part 135, effective September 30, 1983.

In accord with these regulations, specifically 135.4, SBA is publishing this notice to provide public awareness of the pending application of twenty-four presently existent Small Business Development Centers (SBDCs) for refunding. Also published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published three months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Monika Edwards Harrison, Associate Administrator for SBDC Program, U.S. Small Business Administration, 409 Third Street, SW., Fifth Floor, Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 90 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 90-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentor prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties.

SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of P.L. 96–302, as amended by P.L. 98–395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

(a) Strengthen the small business community;

(b) Contribute to the economic growth of the communities served;

(c) Make assistance available to more small businesses than is now possible with present Federal resources;

(d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. to the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information, and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hours week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Dated: July 29, 1992.

Patricia Saiki,

Administrator.

Addresses of Relevant SBDC State Directors

Mr. John Sandefur, State Director, University of Alabama, 1717 11th Ave. South, Suite 419, Birmingham, AL 35294, (205) 934–7260

Mr. John P. O'Connor, State Director, University of Connecticut, Box U–41, Room 422, Storrs, CT 06269–2041 (203) 486–4135

Mr. Ronald Manning, State Director, Iowa State University, 137 Lynn Avenue, Ames, IA 50010, (515) 292–6351

Dr. John Baker, State Director, Northeast Louisiana University, College of Business Admin. 700 University Avenue, Monroe, LA 71209, (318) 342–5510

Mr. John Ciccarelli, State Director, University of Massachusetts, School of Management, Amherst, MA 01003, (413) 545–6301

Mr. Raleigh Byars, State Director, University of Mississippi, Old Chemistry Building, University, MS 38677, (601) 232–5001

Mr. James L. King, State Director, State University of New York, SUNY Plaza, S–523, Albany, NY 12246, (518) 443–5398

Ms. Jan Fredericks, State Director, University of Alaska/Anchorage, 430 West 7th Avenue, Suite 115, Anchorage, AK 99501, (907) 274–7232

Ms. Linda Fayerweather, State Director, University of Delaware, Suite 005—Purnell Hall, Newark, DE 19711, (302) 831–2747

Ms. Janet Holloway, State Director, University of Kentucky, 225 Business & Economics Bldg., Lexington, KY 405506–0034, (606) 257–7668

Mr. Woodrow McCutchen, State Director, Department of Economic and Employment Development, 217 East Redwood St., 10th Floor, Baltimore, MD 21202, (301) 333–6998

Dr. Norman Schlafmann, State Director, Wayne State University 2727 Second Avenue, Detroit, MI 48201, (313) 577–4848

Mr. Max Summers, State Director, University of Missouri, Suite 300, University Place, Columbia, MO 65211, (314) 882–0344

Ms. Holly Schick, State Director, Ohio Department of Development, 77 South High Street, Columbus, OH 43226–1001, (614) 466–2711

Mr. Jose Romaguera, Director, University of Puerto Rico, Box 5253—College Station, Mayaguez, PR 00708, (809) 834–3590

Dr. Elizabeth Gatewood, Region Director, University of Houston, 601 Jefferson, Suite 2330, Houston, TX 77002, (713) 752–8444

Mr. Robert McKinley, Region Director, Univ. of Texas at San Antonio, San Antonio, TX 78249, (512) 224–0791

Dr. Solomon Kabuka, Jr., Director, Univ. of the Virgin Islands, Grand Hotel Building, Annex B, P.O. Box 1087, St. Thomas, US V. Islands 00804, (809) 776–3206

Mr. Jim Glover, State Director, Casper Community College, 111 West Second Street, Suite 416, Casper, WY 82601, (307) 235–4825

Ms. Marty Jones, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75215, (214) 565–5833

Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973

Mr. Norris Elliott, State Director, University of Vermont, One Blair Park, Suite 13, Burlington, VT 05495–9404, (802) 878–0181

Ms. Eloise Jack, State Director, Governor's Office of Community and Industrial Development, 1115 Virginia Street, East, Charleston, WV 25310, (304) 558–2960

[FR Doc. 92–19067 Filed 8–13–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 7, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48284.

Date filed: August 4, 1992.

Parties: Members of the International Air Transport Association.

Subject: TC23 Reso/C 0209 dated May 22, 1992. Europe-South Asian Subcontinent Reso 002.

Proposed Effective Date: October 1, 1992.

Docket Number: 48285.
Date filed: August 4, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1430 dated June 16, 1992. Mid Atlantic-Europe Resos; R-1 To R-37.
Proposed Effective Date: October 1, 1992.

Docket Number: 48286.
Date filed: August 6, 1992.
Parties: Members of the International Air Transport Association.
Subject: Telex TW768, Comp Mail Vote 586-Reso 024], Telex TW790, Comp Mail Vote 586-Voting Results.
Proposed Effective Date: January 1, 1992.

Docket Number: 48287.
Date filed: August 6, 1992.
Parties: Members of the International Air Transport Association.
Subject: MV/PSC/085 dated June 24, 1992, Mail Vote S059 Resos 740 (R-1) and 743a (r-2).
Proposed Effective Date: September 1, 1992.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-19385 Filed 8-13-92; 8:45 am]
BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 7, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 45723.
Date filed: August 5, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 2, 1992.
Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for Amendment of its foreign air carrier permit, to permit it to engage in the scheduled air transportation of persons, property and mail on the scheduled routes: (1) Mexico City (Benito Juarez) (MEX)/Toluca (Morelos) (TLC), on the one hand, and Albuquerque, N.W. (ABQ), on the other hand; (2) Zihuantanejo/Ixtapa (ZIH), Mexico, on the one hand, and Albuquerque, NM (ABQ, on the other hand; (3) Chihuahua (CUU), Mexico on the one hand, and Albuquerque, NM (ABQ) on the other hand; and (4) Ciudad Juarez (CJS) Mexico, on the one hand, and Albuquerque, NM (ABQ) on the other hand.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-19386 Filed 8-13-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Air Carrier/General Aviation Maintenance Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee Air Carrier/General Aviation Maintenance Subcommittee.

DATES: The meeting will be held on September 28, 1992, at 1 p.m. Arrange for oral presentations by September 16, 1992.

ADDRESSES: The meeting will be held at the Pittsburgh Hilton and Towers, Gateway Center, Pittsburgh, PA, at 1 p.m. .

FOR FURTHER INFORMATION CONTACT: Ms. Jacqueline Renaud, Meeting Coordinator, Aircraft Maintenance Division, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-7461.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92.-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Air Carrier/General Aviation Maintenance Subcommittee to be held on September 28, 1992. The agenda for the meeting will include reports from the working groups dealing with establishment of current standard weights for passengers and baggage, development of a notice proposed rulemaking (NPRM) for part 65 of the Federal Aviation Regulations (FAR), development of an NPRM for reporting requirements of §§ 121.703 and 121.705 of the FAR, development of an advisory circular for Special Federal Aviation Regulation (SFAR) 36, and development of an NPRM and advisory circular for maintenance recordkeeping and retention of records.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements on or before September 16, 1992, to present oral statements at the meeting. Written statements (75 copies) may be presented to the committee at any time through the meeting coordinator. Arrangements may be made by contacting the meeting coordinator listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on August 10, 1992.

Frederick J. Leonelli,
Executive Director, Air Carrier/General Aviation Maintenance Subcommittee, Aviation Rulemaking Advisory Committee.
[FR Doc. 92-19384 Filed 8-13-92; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Mercedes-Benz

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by Mercedes-Benz of North America, Inc. (Mercedes-Benz) for exemption from the parts making requirements of the vehicle theft prevention standard for a high theft car line (whose nameplate is confidential), pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard.*

DATES: The exemption granted by this notice is effective beginning with the 1994 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION: On December 19, 1991, the agency received a letter from Mercedes-Benz of North America, Inc. (Mercedes-Benz) requesting an exemption from the theft prevention standard for an existing car line. The letter was submitted pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard. Mercedes-Benz requested an exemption from parts marking based on the installation of a theft deterrent system as standard equipment for the car line that is the subject of this notice.*

The information submitted by Mercedes-Benz constitutes a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter dated December 20, 1991 to Mercedes-Benz, the agency granted the petitioner's extensive requests for confidential treatment of the information in its petition. Confidential treatment was granted for the nameplate of the car line.

In its petition, Mercedes-Benz provided a description of the identity, design, and location of the components of the antitheft device proposed for the car line that is the subject of this notice, including diagrams of the components and their location in the vehicle. Mercedes-Benz stated that the proposed antitheft system incorporates an alarm function, engine starter interrupt function, and to ensure reliability, an improved fault diagnosis feature.

Mercedes-Benz stated that the proposed antitheft system is automatically activated by the normal locking of the vehicle door. In order to arm the system, the key must be removed from the ignition switch; all of the doors, trunk lid, hood lid, and storage compartments must be closed; and the driver's or front passenger's door must be locked with the ignition key or a remote unit. The agency does not consider the remote unit to be an integral feature of the antitheft system but as an added feature that complements the passive system. Locking any door ensures that all doors, the hood, and trunk are locked. The system monitors the vehicle's doors, hood, trunk, storage compartments, ignition switch, radio, and brake pedal.

If the system is armed and unauthorized entry is attempted, the antitheft system will be triggered, setting off audible and visual signals to attract attention. Additionally, the antitheft system will activate the starter-interrupt relay, preventing the starting of the engine from the ignition switch. Mercedes-Benz stated that to prevent defeat of the antitheft system, all system components are in inaccessible locations. Mercedes-Benz described further measures to prevent unauthorized operation of its new car line.

Mercedes-Benz addressed the reliability and durability of its proposed antitheft system by describing the tests that were conducted on the system. This discussion included a description of a built-in fault diagnostic feature in the system.

In discussing why it believes the antitheft system will be effective in reducing and deterring motor vehicle theft, Mercedes-Benz stated that an existing Mercedes-Benz car line has an antitheft system similar to that proposed for the car line that is the subject of this notice. Mercedes-Benz stated that the theft rate for the existing car line decreased for the first year that the antitheft system was included as standard equipment, and that its theft rates have remained below the MY 1983/84 median theft rate of 3.2712 since then. Mercedes-Benz asserted that these theft data alone indicate the effectiveness of the antitheft system, and that the system that is the subject of the petition will be even more effective because of certain improvements and upgrades in the antitheft system.

Mercedes-Benz also compared its proposed antitheft system with similar antitheft systems, manufactured by other manufacturers, that have been previously granted exemptions from this agency. Mercedes-Benz stated that the theft rates of these comparable lines decreased when the antitheft systems was made standard equipment, and have remained below the 3.2712 median. The agency concurs with Mercedes-Benz that these antitheft systems manufactured by other manufacturers are comparable to the system proposed by Mercedes-Benz for its car line.

NHTSA believes that there is substantial evidence indicating that the antitheft systems to be installed as standard equipment in the Mercedes-Benz car line that is the subject of this notice, will likely be as effective in reducing and deterring motor vehicle theft as compliance with the requirements of the theft prevention standard (49 CFR part 541). This determination is based on the information Mercedes-Benz submitted with its petition and on other available information. The agency believes that the device will provide all of the types of performance listed in § 543.6(a)(3): Promoting activation, preventing defeat or circumventing of the device by unauthorized persons, preventing operation of the vehicle by unauthorized entrants, and ensuring the reliability and durability of the device.

As required by section 605)(b) of the statute and 49 CFR § 543.6(a)(4), the agency also finds that Mercedes-Benz has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Mercedes-Benz provided on its device. This information included a description of reliability and functional tests conducted by Mercedes-Benz for the antitheft systems and its components.

For the foregoing reasons, the agency hereby exempts the Mercedes-Benz car line that is the subject of this notice, in whole from the requirements of 49 CFR part 541.

If Mercedes-Benz decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, that car line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs continue to make it difficult to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Mercedes-Benz wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis* then it should consult the agency before preparing and submitting a petition to modify.

Authority: 15 U.S.C. 2025; delegation of authority at 49 CFR 1.50.

Issued on: August 10, 1992.

Marion C. Blakey,
Acting Administrator.
[FR Doc. 92-19378 Filed 8-13-92; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 92-78]

Determination That Merchandise Imported From the People's Republic of China, Manufactured by Xuzhou Forging and Pressing Machine Works, Is Being Produced by Convict, Forced or Indentured Labor

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Determination that Merchandise is Subject to 19 U.S.C. 1307.

SUMMARY: This document advises that the Commissioner of Customs, with the approval of the Secretary of the Treasury, has determined that certain machine presses/mechanical stamping presses, which are being, or are likely to be imported into the United States from the People's Republic of China (PRC), are being manufactured with the use of convict labor and/or forced labor and/or indentured labor by the Xuzhou Forging and Pressing Machine Works, Jiangsu Branch, Xuzhou, Jiangsu Province, PRC. The Commissioner of Customs, pursuant to 19 CFR 12.42(f) has determined, on the basis of a Customs investigation, that such merchandise is being, or is likely to be imported into the United States in violation of section 307 of the Tariff Act of 1930, as amended. As such importations of the aforementioned machine presses/mechanical stamping presses shall be considered and treated as prohibited by section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), unless, pursuant to 19 CFR 12.42(g), 12.43, and 12.44, the importer establishes by satisfactory evidence that the merchandise was not mined, produced, or manufactured in any part with the use of a class of labor specified herein.

DATES: This determination shall take effect on or before August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Maria E. Herrera, Acting Director, Fraud Investigations Division, Office of Enforcement, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202) 566-6188.

SUPPLEMENTARY INFORMATION:

Background

Section 307, Tariff Act of 1930, as amended, (19 U.S.C. 1307), provides in pertinent part:

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

Forced labor is defined to mean:

All work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily. See, 19 U.S.C. 1307.

Pursuant to section 307, the Secretary of the Treasury promulgated implementing regulations found at 19 CFR 12.42, *et seq.* These regulations set forth the procedure for the Commissioner of Customs to make a finding that an article is being, or is likely to be imported into the United States which is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions so as to come within the purview of 19 U.S.C. 1307.

Paragraph (f) of § 12.42, Customs Regulations (19 CFR 12.42(f)), provides that if the Commissioner of Customs finds that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported, [s]he will, with the approval of the Secretary of the Treasury, publish a finding to that effect in a weekly issue of the Customs Bulletin and in the **Federal Register**.

Finding

Pursuant to § 12.42(f), Customs Regulations (19 CFR 12.42(f)), it is hereby determined that certain articles of the People's Republic of China are being, or are likely to be, imported into the United States, which are being produced, whether by mining, manufacture, or other means, with the use of convict, forced, or indentured labor.

Accordingly, based upon this finding, Customs officers shall withhold release of any of these articles from the People's Republic of China. Such articles may be exported only.

Articles

Item Number from the Harmonized Tariff Schedule (19 U.S.C. 1202)

Machine Presses/Mechanical Stamping Presses 8462.10.00 (manufactured by Xuzhou Forging and Pressing Machine Works).

Carol Hallett,

Commissioner of Customs.

Approved: July 22, 1992.

Peter R. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-19392 Filed 8-13-92; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "*Convivencia:* Jews, Muslims and Christians in Medieval Spain," formerly titled "*Convivencia:* Art and Society in Medieval Iberia" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Jewish Museum's temporary exhibition space at the New York Historical Society from on or about September 20, 1992 to on or about December 20, 1992; thence to the Meadows Museum of Southern Methodist University, Dallas, Texas, from on or about January 28, 1993 to on or about April 11, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 7, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-19361 Filed 8-13-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Magritte" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about September 12, 1992, to on or about November 22, 1992; The Menil Collection, Houston, Texas, from on or about December 15, 1992 to on or about February 21, 1993; and The Art Institute of Chicago from on or about March 18, 1993 to on or about May 30, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 7, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-19410 Filed 8-13-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m. August 19, 1992.

PLACE: Room 9306, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20573-0001.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 92-33—*Marine Terminal Facilities Agreements—Exemption*—Consideration of Comments.
2. Docket No. 92-22—*Tariff Filing By Non-Vessel-Operating Common Carriers*—Consideration of Comments.
3. Docket No. 92-19—*Revision of Financial Responsibility Requirements for Non-Performance of Transportation*—Consideration of Comments.
4. Docket No. 92-29—*Free Time and Demurrage Charges on Import Property at the Port of New York; Truck Detention at the Port of New York*—Consideration of Comments.
5. Docket No. 92-36—*Reduction of Notice Requirements for Tariff Increases in the Domestic Offshore Trade—Exemption Under Section 35 of the Shipping Act, 1916*—Consideration of Comments.
6. Docket No. 91-51—*Financial Reports of Common Carriers by Water in the Domestic Offshore Trades*—Consideration of Comments.
7. Docket No. 92-20—*Service Contracts in Foreign-to-Foreign Trades*—Consideration of Comments.
8. Docket No. 92-21—*Amendments to Service Contracts*—Consideration of Comments.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92-19525 Filed 8-12-92; 1:11 pm]

BILLING CODE 6730-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 9:00 a.m., Tuesday, August 25, 1992.

PLACE: Room 410, 1825 K Street, NW., Washington, DC 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Comments submitted pertaining to the Commission's proposed revision of certain of its Rules of Procedure published on May 12, 1992 at 57 FR 20220-20234.

CONTACT PERSON FOR MORE INFORMATION: Earl R. Ohman, Jr., (202) 634-4015.

Dated: August 12, 1992.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 92-19538 Filed 8-12-92; 2:32 pm]

BILLING CODE 7600-01-M

Corrections

Federal Register
Vol. 57, No. 158
Friday, August 14, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8413]

RIN 1545-AG95

Reduction of Tax Overpayments by Amount of Past-Due, Legally Enforceable Debt Owed to a Federal Agency

Correction

In rule document 92-8569 beginning on page 13035 in the issue of Wednesday, April 15, 1992, make the following corrections:

1. On page 13036:

a. In the second column, in the first full paragraph, in the second line, "to" should read "of" and "of" should read "to".

b. In the third column, in the second full paragraph, in the first line, "301.6401-6T(a)(2)" should read "301.6402-6T(a)(2)".

c. In the same column, after the third full paragraph, the sentence beginning "Therefore" should be included as part of the previous paragraph.

d. In the same column, in the last paragraph, in the first line, remove "do not".

2. On page 13037, in the third column, in the last paragraph, in the seventh line, "Once" should read "One".

3. On page 13038:

a. In the first column, in the third paragraph, in the first line, "commentator" was misspelled.

b. In the same column, in the same paragraph, in the eighth line, "been" should read "to be".

c. In the same column, in the last line, "illegally" should read "legally".

§ 301.6402-6 [Corrected]

d. In the third column, in § 301.6402-6(a)(2)(ii), in the last line, "Security" was misspelled.

e. In the same column, in § 301.6402-6(b)(1)(i), "Tax" should read "tax".

4. On page 13039, in the first column, in § 301.6402-6(b)(2), in the fourth line, "service" should read "Service".

5. On page 13040, in the first column, in § 301.6402-6(j), in the fourth line, "Financial" was misspelled.

6. On the same page, in the second column, in § 301.6402-6(m), in the fourth line, "connection" was misspelled; and in the sixth line, "code" should read "Code".

BILLING CODE 1505-01-D

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Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171 et al.
Intermediate Bulk Containers for Hazardous Materials

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 178, and 180

[Docket No. HM-181E; Notice No. 92-7]

RIN 2137-AC23

Intermediate Bulk Containers for Hazardous Materials

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: RSPA proposes to amend the Hazardous Materials Regulations (HMR) by adopting requirements for the construction, maintenance and use of intermediate bulk containers (IBCs) for the transportation of hazardous materials. This proposal is based on IBC specifications and performance standards contained in the United Nations Recommendation on the Transport of Dangerous Goods (UN Recommendations) and the IBC/commodity assignments set forth in the International Maritime Organization (IMO) International Maritime Dangerous Goods (IMDG) Code. The purpose of this proposal is to promote flexibility and technological innovation in the development of IBC design types, eliminate existing DOT exemptions applying to polyethylene, rigid, and flexible IBCs, provide a safer transportation system, and remove a dual domestic and international regulatory system. The adoption of these standards would enhance technological innovation particularly in the development of polyethylene and composite IBCs, resulting in higher integrity packaging.

DATES: Comments must be received by September 14, 1992.

ADDRESSES: Comments to this NPRM should be addressed to the Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. Comments should identify the Docket (HM-181E) and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard showing the docket number. The Dockets Unit is located in Room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001. Telephone: (202) 366-5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Cramer, Office of Hazardous Materials Technology, (202) 366-4545, or John Potter, Office of Hazardous Materials Standards, RSPA, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590-0001, (202) 366-4488.

SUPPLEMENTARY INFORMATION: On January 28, 1992, President Bush announced a 90-day moratorium and review of regulations to identify unnecessary and burdensome government regulations. In response to the President's announcement, DOT published on February 7, 1992, Docket RR-1, Notice 92-1 (57 FR 4744), soliciting public comments on the DOT's regulatory programs. Comments addressing the HMR were requested to be submitted to RSPA's Docket Unit. In response to that notice, RSPA received over 40 comments. Many comments addressed notices of proposed rulemaking that have not been finalized. Those comments will be given full consideration along with all other comments prior to taking final action under those dockets. Comments addressing certain other issues are under review for consideration in future rulemaking actions. RSPA also conducted a review of each of its regulations and identified the detailed specifications in Subpart H of Part 178 as an area in which the adoption of performance standards would decrease packaging costs and improve packaging efficiency. Therefore, RSPA is proposing to provide performance standards for intermediate bulk containers.

Intermediate bulk containers (IBCs) usually are reusable packagings designed to facilitate the intermodal transferring of hazardous materials. With capacities averaging between 300 and 400 gallons (a 330-gallon IBC is equal in capacity to six 55-gallon drums), IBCs fill a niche in the packaging spectrum between the 55-gallon drum and a 5,000- gallon cargo tank. Most rigid and flexible IBC types are equipped with special handling (e.g., grips or straps), stabilizing (e.g., steel cages) and load/off-load (e.g., bottom outlets) accoutrements. Although amendments to the HMR under Docket HM-181 were very comprehensive, they did not address the issue of IBCs. Commenters to the docket stated that the rulemaking would be incomplete without addressing IBCs.

IBC prototypes were first regulated in the early 1970's when the DOT adopted standards for the construction and use of metal portable tanks under DOT specifications 52, 53, 56, and 57. Although DOT specifications 52 and 53 can no longer be manufactured, all four are currently authorized packagings for hazardous materials. Since the 1970's, the IBC industry has rapidly diversified to meet new intermodal bulk distributional requirements. As a result of these changes, RSPA has granted exemptions, authorizing a broad range of non-DOT Specification IBC design types. In 1986, the UN added recommendations for IBC specifications and performance test requirements in the fourth revised edition of the UN Recommendations. In 1989, IMO became the first agency to authorize IBCs for hazardous materials transportation.

On December 24, 1990, RSPA received a petition for rulemaking from the Rigid Intermediate Bulk Container Association (RIBCA) requesting adoption of requirements for the construction, maintenance, and use of IBCs in accordance with the UN Recommendations. In addition, RIBCA requested that RSPA adopt commodity assignments based on the IMDG Code but, if possible, without the addition of another commodity table.

This proposal would extend the performance-oriented standards and principles advanced in Docket HM-181 and respond to the petition for rulemaking from RIBCA. These principles and standards include promotion of flexibility and technological innovation in the development of IBC design types, elimination of existing DOT exemptions applying to polyethylene, rigid, and flexible IBCs, and removal of a dual domestic and international regulatory system.

Elimination of exemption requirements would enhance technological innovation particularly in the development of polyethylene and composite IBCs, resulting in higher integrity packaging and a safer transportation system. The removal of these exemptions would also free manufacturers from the cost and administrative burden of filing for exemption renewals and from maintaining a continuing history of the shipping experiences of each design type. The following 111 exemptions authorizing IBCs are potentially affected by the adoption the UN performance standards for IBCs:

5520	8136	8629
6743	8146	8631
7259	8225	8653
7543	8303	8681
7622	8332	8692
7625	8351	8779
7869	8444	8784
8087	8570	8798
8094	8588	8839

8861	9319	9646
8863	9319	9889
8884	9340	9917
8910	9367	9920
8921	9374	9923
8937	9396	9938
8942	9400	9944
8982	9440	9983
9015	9498	9998
9042	9503	10021
9046	9519	10090
9052	9531	10104
9062	9533	10135
9078	9534	10273
9089	9592	10298
9092	9628	10382
9110	9637	10468
9116	9645	10478
9117	9658	10513
9118	9690	10537
9133	9692	10547
9140	9701	10562
9144	9713	10563
9150	9783	10570
9201	9789	10598
9213	9804	10633
9272	9805	10687
9289	9806	

The construction and design testing requirements for IBCs contained in this proposal are based on the standards specified in Chapter 16 of the UN Recommendations. These standards include definitions, specifications, performance test requirements, and inspection and periodic testing of metallic, rigid plastic, composite, fiberboard, wooden, and flexible IBCs.

In lieu of providing specific IBC/commodity assignments, RSPA proposes to establish generic IBC/commodity assignments in §§ 173.240 through 173.243. Assignments would be based on the lists of liquid and solid ("Substances Suitable for Transport in Intermediate Bulk Containers") contained in the IMDG Code. However, RSPA proposes to authorize the use of IBCs for some materials that are not allowed by the IMDG Code to be transported in any IBC or in a specific IBC type.

RSPA acknowledges that generic IBC/commodity assignments may be construed as being inconsistent with the table of commodity-specific assignments in the IMDG Code. By not proposing a separate table incorporating each specific IBC/commodity assignment, RSPA would maintain its objectives in HM-181 to provide simplified, generic commodity/packaging assignments throughout the HMR. RSPA believes generic IBC/commodity assignments would avoid the confusion of cross-referencing between entries in the § 172.101 Table and separately maintained table of commodity-specific IBC assignments, and the expense of revising such a table each time a new commodity is added. To allay concerns of shippers who may wish for complete alignment of the HMR with IMDG Code IBC specifications and commodity assignments, RSPA proposes to revise § 171.12(b) to permit hazardous materials to be offered for transportation in IBCs specified in the IMDG Code when vessel transportation is involved.

RSPA also proposes to prohibit the manufacture of DOT specification 56 and 57 portable tanks after October 1, 1996. DOT specification 56 and 57 portable tanks are by definition IBCs, and RSPA sees no need to maintain two standards for metallic IBCs. However, RSPA proposes to allow continued domestic use of DOT 56 and 57 portable tanks for as long as they meet the inspection and retest provisions contained in § 173.32.

Section-by-Section Review

Section 171.7. The puncture resistance standard for fiberboard packagings (ISO 3036-1975) and quality assurance standards under ISO 9000 would be added to the Table of material incorporated by reference.

Section 171.8. A general definition of "intermediate bulk container" is proposed in this section. It includes the 3,000 liter (L) upper IBC capacity limit recommended by the UN and adopted by the IMO in the IMDG Code, and a 450 L lower capacity limit. Although a 250 L lower capacity limit for IBCs is established in paragraph 26.1.2.1 of the IMDG Code, RSPA proposes to adopt a 450 L minimum to be consistent with the definition of non-bulk packaging in § 171.8. The UN Recommendations give some support to a 450 L lower limit in paragraph 16.1.2.1, defining IBCs generally as "rigid, semirigid or flexible portable packaging, *other than those* specified in Chapter 9 * * *" And in paragraph 9.1.2, the UN states that the Recommendations "do not cover" [non-bulk] packaging "with a capacity exceeding 450 L." RSPA's proposal to adopt a 450 L lower limit is also consistent with the understanding that 99% of all IBCs produced in the U.S. exist within the 450-3000 L range.

Section 171.12. This section would be revised to authorize the use of IBCs in accordance with the IMDG Code for those shipments involving transportation by vessel.

Section 172.101. The Hazardous Materials Table would be revised to include IBC/commodity assignments.

Section 172.102. Five special provisions (B-notes) would be added in paragraph (c)(3) and referenced in column 5 of the Hazardous Materials Table prohibiting particular materials in certain or all IBCs and specifying special conditions of hazardous materials transport in IBCs. For example, a material listed in the Table with B104 referenced in column 5 would be transported in an IBC provided with a device or vent to allow venting during transport and stowed with the vent uppermost.

Section 172.514. Paragraph (c)(4) would be added to require all IBCs to be labeled or placarded on two opposite sides.

Section 173.24. A new paragraph (j) would be added specifying that when packagings are used for the transportation of liquids with a flash-point of 60.5°C (141°F) (closed cup) or lower or powders liable to dust explosion, measures must be taken to prevent a dangerous electrostatic discharge.

Section 173.32. A grandfathering provision for DOT Specification 56 and 57 portable tanks is proposed in paragraph (d). Although DOT Specification 56 and 57 portable tanks would not be allowed to be manufactured after October 1, 1996, the HMR would permit them to remain in hazardous materials service for the commodities they are currently authorized to contain.

Section 173.35. Operational requirements for the use of IBCs would be added. This new section would address the IBC filling limits, vapor pressure limits for rigid plastic or composite IBCs intended to contain liquids, and the transport of empty IBCs. Authorized use of rigid plastic IBCs and composite IBCs with plastic inner receptacles would be limited to five years. If an IBC owner can show that their IBC still provides an effective level of safety, longer periods of use may be authorized by the Associate Administrator for Hazardous Materials Safety. Before being filled and offered for transportation, every IBC and its service equipment would be visually inspected to ensure that it is free from corrosion, contamination, cracks, or other damage which would render the IBC unsafe for transportation. RSPA proposes that no rigid plastic or composite IBCs with repaired plastic components, or fiberboard, wooden or flexible IBCs, can be reused. The requirements in this section would not apply to DOT specification 56 and 57 portable tanks manufactured before October 1, 1996.

Section 173.225. This section would be revised to include organic peroxide/IBC assignments and to prescribe special conditions for certain organic peroxides transported in IBCs.

Section 173.240-243. These generic bulk packaging sections would be amended to authorize the use of IBCs for certain materials. For use in transporting

particular commodities, an IBC would be required to withstand the applicable test criteria specified in Subpart O of part 178 at the Packing Group level specified in Column 5 of the Hazardous Materials Table.

Section 178.700. The general purpose and scope of this notice pertaining to IBC standards are contained in this section and general definitions associated with IBC design types specified in §§ 178.705–710 are proposed. For example, an IBC *body* means the receptacle proper, including openings and their closures. IBC *service equipment* means filling and discharge, pressure relief, safety, heating and heat-insulating devices, and measuring instruments. IBC *structural equipment* means the reinforcing, fastening, handling, protective, or stabilizing members of the body (i.e., metal cages).

Section 178.702. IBC code designations for metallic, rigid plastic, composite, fiberboard, wooden, and flexible IBCs are proposed.

Section 178.703. Requirements for the certification marking of IBCs are proposed. The IBC certification mark is comprised of the following elements: code numbers designating IBC design type, Packing Group designation, the country authorizing allocation of the mark, name, address or symbol of the manufacturer, or the approval agency certifying compliance with Subparts N and O of part 178; and the stacking test load in kilograms (kg), the maximum permissible gross mass (for flexible IBCs, the maximum permissible load in kg). Three examples of IBC certification marking are given.

Section 178.704. General requirements applicable to manufacturers before IBCs are used in hazardous materials transport are proposed. For example, paragraph (e) would require that all IBC service equipment be positioned or protected to minimize potential loss of contents resulting from damage during IBC handling and transportation.

Sections 178.704–710. Specific IBC standards for metallic, rigid plastic, composite IBCs with plastic inner receptacles, fiberboard, wooden, and flexible IBCs are proposed. For metallic IBCs, authorized steel and aluminum construction materials would be set forth in § 178.705(c)(1). Body wall thicknesses are proposed for metallic IBCs in § 178.705(c)(1)(iv)(A). Standards for inner receptacles of composite IBCs are proposed in § 178.707(c)(3), and composite outer packagings in § 178.707(c)(4). Standards for fiberboard IBCs in § 178.708 would be similar to those for nonbulk fiberboard boxes in § 178.516. However, fiberboard IBCs would also conform to the ISO international minimum puncture resistance standard (ISO 3036–1975). Rigid and flexible IBC design types include:

(1) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(2) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (21A, 21B, 21N);

(3) Metallic IBCs (31A, 31B, 31N);

(4) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and for solids which are loaded or discharged by gravity (11H1);

(5) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(6) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(7) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(8) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(9) Freestanding rigid plastic IBCs (31H2);

(10) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(11) Composite IBCs with flexible plastic inner receptacle loaded or discharged by gravity (11HZ2);

(12) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(13) Composite IBCs with flexible plastic inner receptacles loaded or discharged under pressure (21HZ2);

(14) Composite IBCs with rigid plastic inner receptacles (31HZ1);

(15) Composite IBCs with flexible inner receptacles (31HZ2);

(16) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(17) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(18) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(19) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(20) Woven plastic IBCs without coating or liner (13H1);

(21) Coated woven plastic IBCs (13H2);

(22) Woven plastic IBCs with liner (13H3);

(23) Coated woven plastic IBCs with liner (13H4);

(24) Plastic film IBCs (13H5);

(25) Textile IBCs without coating or liner (13L1);

(26) Coated textile IBCs (13L2);

(27) Textile IBCs with liner (13L3);

(28) Coated textile IBCs with liner (13L4);

(29) Paper multiwall IBCs for solids (13M1); and

(30) Paper multiwall water resistant IBCs (13M2).

(Note: For composite IBCs, the letter "Z" is replaced with a capital letter which indicates the material of construction of the outer packaging. For example, 31HA1 is a composite IBC with a metal outer packaging.)

Section 178.801. General IBC testing, inspection, and record-keeping requirements are proposed in this section. RSPA would require IBC design qualification testing conducted at the start of production of each new or different IBC design type, production testing and inspection performed on each newly manufactured IBC, and periodic retest and inspection of each IBC conducted at least every 2.5 years. RSPA also proposes to add periodic IBC design type requalification test requirements. Extending the principle established for non-bulk packagings under Docket HM–181, and in conformance with Section 16.1.4.1.1 of the UN Recommendations, RSPA believes that periodic requalification of IBC design types would provide essential quality control throughout an IBC production run, ensuring that newly manufactured IBCs maintain the integrity of original, successfully tested design types. All IBC design types would be requalified at least once every 12 months. Composite IBC design types now requalified every four months under DOT exemption would be requalified every year under this proposal. Selective testing of metallic, rigid plastic, and composite IBCs which include variations of up to a 25 percent decrease in the outer dimensions of tested IBC design types would be permitted without further testing.

RSPA proposes to require IBC manufacturers to keep records for the qualification of each IBC design type and for each periodic design requalification. Records would be maintained at each location where an IBC is manufactured and at each location where IBC design qualification and periodic design requalification testing is performed. Records must be maintained for as long as IBCs are manufactured in accordance with each qualified design type and for at least 2.5 years thereafter. Manufacturer records would include specific IBC types tested, dates of tests, location of tests, results of tests required in this part (including drop heights, hydrostatic pressures, tear propagation length, etc.), name of the person conducting the test, and name of the person responsible for testing. IBC owners would keep records of periodic retests and inspections.

Section 178.802. Requirements for the preparation of fiberboard, rigid plastic, and composite IBCs for testing are proposed. Fiberboard IBCs would be conditioned under the same temperature and relative humidity conditions as proposed for non-bulk fiberboard packagings in § 178.602(d). Although the UN recommends that manufacturers verify the compatibility of plastic construction materials with ladings intended to be contained in rigid plastic and composite IBCs, RSPA believes this is a shipper's responsibility. Therefore, RSPA proposes that the shipper compatibility requirement in § 173.24(e) be extended to IBCs.

Sections 178.803–808. Testing and certification requirements for metallic, plastic rigid, composite, fiberboard, wooden, and flexible IBC design types are proposed. Charts displaying qualification tests (specified in §§ 178.820–842) required for each IBC design type, indicated by IBC design type codes, are included.

Section 178.810. A drop test similar in many respects to requirements for non-bulk packagings in § 178.603 is proposed for all IBC design types. IBCs intended to transport liquids must be filled to at least 98% of their capacity, and 95% for solids, in preparation for the drop test. IBCs with plastic outer bodies or with plastic components would be drop tested when samples and contents have been reduced to −18 °C(0 °F) Samples of all IBC design types would be dropped onto a non-resilient, smooth, flat surface. The point of impact would be the most vulnerable part of the base of the IBC being tested. IBCs intended to carry liquids would be tested to a certain packing group level depending on the hazard of the material.

Section 178.811. A bottom lift test is proposed for IBCs designed to be lifted from the base.

Section 178.812. A top lift test is proposed for all metallic, rigid plastic, composite, and flexible IBC design types designed to be lifted from the top.

Section 178.813. A leakproofness test is proposed for the design qualification of metallic, rigid plastic, and composite IBC design types, and production units before first use, if they are intended to contain liquids or if intended for solids discharged by pressure. This test is additionally required for IBC design types and production units intended to contain solids that are loaded or discharged under pressure. The test would be performed by applying air at a gauge pressure of not less than 20 kPa (2.9 psig) for 10 minutes using suitable methods such as pressure differential or water immersion. Other methods used in accordance with Appendix B of this part may be used for rigid plastic or composite IBCs.

Section 178.814. A hydrostatic pressure design qualification test is proposed for all metallic IBC design types and all rigid plastic and composite IBC design types intended to contain liquids or intended to contain solids loaded or discharged under pressure. The test would be performed for 10 minutes at gauge pressures specified for three metallic IBC design types intended to contain liquids and four rigid plastic and composite IBC design types.

Section 178.815. RSPA proposes a stacking test for the qualification of all IBC design types designed to be stacked. Metallic IBCs would be stack tested for at least five minutes. Fiberboard, wooden, and rigid plastic and composite IBC design types fitted with structural equipment would be tested for 24 hours. Stand-alone rigid plastic and composite design types would be tested for 28 hours at 40°C (72° F). For all IBC design types, the load placed on the IBC would be 1.8 times the combined maximum permissible gross mass of the number of similar IBCs that may be stacked on top during transport.

Section 178.816. A topple test is proposed for the qualification of all flexible IBC design types at the Packing Group levels prescribed for the drop test in § 178.820.

Section 178.817. A righting test is proposed for the qualification of all flexible IBC design types designed to be lifted from the top or side.

Section 178.818. A tear test is proposed for the qualification of all flexible IBC design types.

Section 178.819. A vibration test is proposed for the qualification of all IBC design types.

Section 180.352. Requirements for initial and periodic retest and inspection of IBCs are proposed. Initially after production and every 2.5 years thereafter, metallic, rigid plastic, and composite IBCs intended for liquids or for solids loaded or discharged by pressure would be required to withstand the 20 kPa (2.9 psig) leakproofness test prescribed in § 178.828. For these design types, external inspections must be performed after production and each 2.5 years thereafter to ensure that each IBC is properly marked, is free from damage that may reduce its structural integrity during transportation, and that IBC service equipment functions properly. Internal inspections would be required to be performed initially after production and every five years thereafter. Metallic, plastic, and composite IBCs would be inspected for cracks, warpage, and corrosion. Metallic IBCs would be inspected for corrosion of construction material below required minimum thicknesses. An IBC found with such defects would have to be removed from hazardous materials service. Flexible, fiberboard, or wooden IBCs would be inspected to ensure they are properly marked and that they meet required construction and design specifications. For example, each flexible IBC would be inspected to ensure that seams are free from defects in stitching, heat sealing, or gluing. The requirements in this section would not apply to DOT Specification 56 and 57 portable tanks.

49 App. U.S.C. 1804(a)(4) (A) and (B).

In a February 28, 1991 final rule [56 FR 8616], RSPA added a new preemption standard to § 107.202 to mirror the requirements of the Hazardous Materials Transportation Act (HMTA). Section 105(a)(5) of the HMTA, as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), provides that if DOT issues a regulation concerning any of the covered subjects after the date of enactment of the HMTUSA (November 16, 1990), DOT must determine and publish in the **Federal Register** the effective date of the Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance and not later than two years after the date of issuance.

To the extent that the requirements of Docket HM–181E involve covered subjects, States, political subdivisions, or Indian tribes would only be allowed to establish, maintain, and enforce laws, regulations, or other requirements concerning such subjects if they are substantively the same as the requirements proposed in Docket HM–181E. In a May 13, 1992 final rule [57 FR 20424] RSPA defined the phrase "substantially the same". Therefore, RSPA is requesting public comments on the effective date for the Federal preemption of the requirements of Docket HM–181E.

Administrative Notices

A. Executive Order 12291

This rule, as proposed, does not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule and is not a significant rule under the regulatory procedures of

the Department of Transportation [44 U.S.C. 11034]. This proposed rule does not require a Regulatory Impact Analysis, or an environmental assessment or impact statement under the National Environmental Policy Act [42 U.S.C. 4321 et seq.]. A regulatory evaluation is available for review in the Docket.

B. Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 and, based on information available at this time, RSPA does not believe that this notice would have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Impact on Small Entities

Based on limited information concerning the size and nature of entities likely to be affected by this proposed rule, I certify this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities. This certification is subject to modification as a result of a review of comments received in response to this proposal.

D. Paperwork Reduction Act

The requirements for information collection have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) under OMB control number 2137-0018 (expiration date: July 31, 1992).

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Explosives, Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous material transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 171, 172, 173, 178 and 180 would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 would continue to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1818; 49 CFR part 1.

2. In the § 171.7(a)(3) Table, the following entries are added at the end of the entries under *International Organization for Standardization* to read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * *	
International Organization for Standardization	
* * * * *	
ISO 3036-1975 Puncture resistance standard	178.706
ISO 9000 Quality assurance standard	178.801
* * * * *	

* * * * *

3. In § 171.8, the following definitions would be added in appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Intermediate bulk containers (IBCs) are rigid, semi-rigid, or flexible portable packagings other than those specified in subpart L of part 178 of this subchapter that have a capacity of not more than 3000 liters (797 gallons) and not less than 450 L (119 gallons), and are designed for mechanical handling.

* * * * *

Secondary containment means placing the IBCs into freight containers or vehicles. Such freight containers or vehicles should have rigid sides or fencing at least to the height of the IBCs. For some substances and materials, a closed freight container or vehicle is specified.

* * * * *

§ 171.12 [Amended]

4. In § 171.12, paragraph (b)(5) would be amended by revising the word "Bulk" to read "bulk" and by adding the wording "Except for intermediate bulk containers which comply with the requirements of the IMDG Code," immediately preceding the word "bulk".

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

5. The authority citation for part 172 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

6. In § 172.101, the following entries in the Hazardous Materials Table would be revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *) Exceptions	Non-bulk packaging	Bulk packaging	Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	[Revise]												
	Acetyl chloride	3	UN1717	II	Flammable liquid, corrosive.	A3, A6, A7, B100, N34, T18, T26.	None	202	243	1 L	5 L	B	40
	Acetyl iodide	8	UN1898	II	Corrosive	B2, B101, T9	154	202	242	1 L	30 L	C	8, 40
	Alkali metal amides	4.3	UN1390	II	Dangerous when wet.	A6, A7, A8, A19, A20, B102.	None	212	241	15 kg	50 kg	E	40
	Allyl ethyl ether	3	UN2335	II	Flammable liquid, poison.	B101, T8	None	202	243	1 L	60 L	E	40
	Allyl iodide	3	UN1723	II	Flammable liquid, corrosive.	A3, A6, B100, N34, T18.	None	201	243	0.5 L	2.5 L	B	40
	Ammonium nitrate, liquid (*hot concentrated solution*).	5.1	UN2426		Oxidizer	B5, B100, B17, T25.	None	None	243	Forbidden	Forbidden	D	59, 60
	Benzene	3	UN1114	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	40
	Benzotrichloride	8	UN2226	II	Corrosive	B2, B101, T15.	154	202	242	1 L	30 L	A	40
	Butyl vinyl ether, inhibited.	3	UN2352	II	Flammable liquid.	B101, T7	150	202	242	5 L	60 L	B	40
	n-Butylamine	3	UN1125	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	40
	Butyryl chloride	3	UN2353	II	Flammable liquid, corrosive.	B100, T9, T26.	None	202	243	1 L	5 L	C	40
	Calcium hypochlorite mixtures, dry, *with more than 10 per cent but not more than 39 per cent available chlorine.*	5.1	UN2208	III	Oxidizer	A1, A29, B103, N34.	152	213	240	25 kg	100 kg	A	56, 58, 69, 106
	Calcium silicide	4.3	UN1405	II	Dangerous when wet.	A19, B100	None	212	241	15 kg	50 kg	B	85, 103
				III	Dangerous when wet.	A1, A19	None	213	241	25 kg	100 kg	B	85, 103
	Chloral, anhydrous, inhibited.	6.1	UN2075	II	Poison	B101, T14	None	212	243	25 kg	100 kg	D	40
	Chlorobutanes	3	UN1127	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	
	Chloroformates, n.o.s., *flash point not less than 23 degrees C.*	6.1	UN2742	II	Poison, corrosive.	5, B101	None	202	243	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
	Chloromethyl-chloroformate.	6.1	UN2745	II	Poison, corrosive.	B101, T18	None	202	243	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
	Chloropicrin mixtures, n.o.s.	6.1	UN1583	I	Poison	5	None	201	243	Forbidden	Forbidden	C	40
				II	Poison	B100	None	202	243	Forbidden	Forbidden	C	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	Keep away from food.	B100	153	203	241	Forbidden	Forbidden	C	40
	Chlorosilanes, n.o.s., *flashpoint not less than 23 degrees C.*	8	UN2986	II	Corrosive, flammable liquid.	B100	None	202	243	1 L	30 L	C	23, 40
	Chlorosilanes, n.o.s. *flashpoint less than 23 degrees C.*	3	UN2985	II	Flammable liquid, corrosive.	B100, T18, T26.	None	201	243	1 L	5 L	B	40
	Cyclobutylchloroformate.	6.1	UN2744	II	Poison, corrosive.	B101, T18	None	202	243	1 L	30 L	A	12, 13, 22, 25, 40, 48, 100
	Cyclohexane	3	UN1145	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	Cyclohexene	3	UN2256	II	Flammable liquid.	B101, T7	150	202	242	5 L	60 L	E	
	Cyclohexylamine	8	UN2357	II	Corrosive, flammable liquid.	B100, T8, T26.	None	202	243	1 L	30 L	A	12, 21, 40, 48
	Cyclopentane	3	UN1146	II	Flammable liquid.	B101, T14	150	202	242	5 L	60 L	E	
	Cyclopentene	3	UN2246	II	Flammable liquid.	B101, T13	150	202	242	5 L	60 L	E	
	Diallylether	3	UN2360	II	Flammable liquid, poison.	B101, N12, T8.	None	202	243	1 L	60 L	E	40
	1,1-Dichloroethane	3	UN2362	II	Flammable liquid.	B101, T7	150	202	242	5 L	60 L	B	40
	Diethyl sulfate	6.1	UN1594	II	Poison	B101, T14	None	202	243	5 L	60 L	C	
	Diethyl sulfide	3	UN2375	II	Flammable liquid.	B101, T14	None	202	243	1 L	60 L	E	
	Diethylamine	3	UN1154	II	Flammable liquid.	B101, N34, T8.	150	202	242	5 L	60 L	E	
	Diethyldichlorosilane	8	UN1767	II	Corrosive, flammable liquid.	A7, B6, N34, B100, T8, T26.	None	202	243	Forbidden	30 L	C	21, 40
	Diisopropyl ether	3	UN1159	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	40
	Diisopropylamine	3	UN1158	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	
	Dimethyl sulfide	3	UN1164	II	Flammable liquid.	B100, T14	None	201	243	1 L	30 L	E	40
	Dinitrotoluenes, molten.	6.1	UN1600	II	Poison	B100, T14	None	202	243	Forbidden	Forbidden	C	
	Ethyl bromide	6.1	UN1891	II	Poison	B100, T17	None	202	243	5 L	60 L	B	40
	Ethyl butyl ether	3	UN1179	II	Flammable liquid.	B1, B101, T1	150	202	242	5 L	60 L	B	
	Ethyl propyl ether	3	UN2615	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	2-Ethylhexyl chloroformate.	6.1	UN2748	II	Poison, corrosive.	B101, T42	None	202	243	1 L	30 L	A	12, 13, 25, 40, 48, 95 40
	Ethyltrichlorosilane	3	UN1196	II	Flammable liquid, corrosive.	A7, B100, N34, T15, T26.	None	201	243	Forbidden	2.5 L	B	
	Ferrous metal borings, shavings, turnings or cuttings *in a form liable to self-heating.*	4.2	UN2793	III	Spontaneously combustible.	A1, A19, B102.	None	213	241	25 kg	100 kg	A	
	Fluorobenzene	3	UN2387	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *)			Quantity limitations		Vessel stowage requirements	
							Exceptions	Non-bulk packaging	Bulk packaging	Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Gasoline	3	UN1203	II	Flammable liquid.	B33, B101, T8.	150	202	242	5 L	60 L	E	
	n-Heptene	3	UN2278	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	
	Hexadienes	3	UN2458	II	Flammable liquid.	B101, T7	None	202	242	5 L	60 L	B	
	Hexamethylene diisocyanate.	6.1	UN2281	II	Poison	B101, T14	None	202	243	5 L	60 L	B	13, 40
	Hexamethyleneimine	3	UN2493	II	Flammable liquid, corrosive.	B100, T8	None	202	243	1 L	5 L	B	40
	Hexanes	3	UN1208	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	1-Hexene	3	UN2370	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	Hydrogen peroxide and peroxyacetic acid mixtures, *with acids, water and not more than 5 per cent peroxyacetic acid, stabilized.*	5.1	UN3149	II	Oxidizer, corrosive.	A2, A3, A6, B12, B53, B104, T14.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with more than 40 per cent but not more than 60 per cent hydrogen peroxide (stabilized as necessary).*	5.1	UN2014	II	Oxidizer, corrosive.	12, A3, A6, B12, B53, B80, B81, B85, B104, T14, T37.	None	202	243	Forbidden	Forbidden	D	25, 66, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 8 per cent but less than 20 per centhydrogen peroxide (stabilized as necessary).*	5.1	UN2984	III	Oxidizer	17, A1, B104, T8, T37.	152	203	241	2.5 L	30 L	B	25, 75, 106
	Hydrogen peroxide, aqueous solutions *with not less than 20 per cent but not more than 40 per cent hydrogen peroxide (stabilized as necessary).*	5.1	UN2014	II	Oxidizer, corrosive.	A2, A3, A6, B12, B53, B104, T14, T37.	None	202	243	1 L	5 L	D	25, 66, 75, 106
	Hypochlorite solutions *with more than 5 per cent but less than 16 per cent available chlorine.*	8	UN1791	III	Corrosive	B104, N34, T7.	154	203	2412	5 L	60 L	B	26
	Isobutylamine	3	UN1214	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	40
	Isobutyryl chloride	3	UN2395	II	Flammable liquid, corrosive.	B100, T9, T26.	None	202	243	1 L	5 L	C	40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *) Exceptions	Non-bulk packaging	Bulk packaging	Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Isocyanato- benzotrifluorides.	6.1	UN2285	II	Poison	5, B101, T14	None	202	243	5 L	60 L	B	25, 40, 48
	Lithium hydride, fused solid.	4.3	UN2805	II	Dangerous when wet.	A8, A19, A20, B102.	None	212	241	15 kg	50 kg	E	
	Methyl acetate	3	UN1231	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	
	Methyl allyl chloride	3	UN2554	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	Methyl bromoacetate	6.1	UN2643	II	Poison	B100, T8	None	202	243	5 L	60 L	D	40
	Methyl tert butyl ether.	3	UN2398	II	Flammable liquid.	B101, T14	150	202	242	5 L	60 L	E	
	Methyl propionate	3	UN1248	II	Flammable liquid.	B101, T2	150	202	242	5 L	60 L	B	
	Methyltetrahydrofuran.	3	UN2536	II	Flammable liquid.	B101, T7	150	202	242	5 L	60 L	B	
	Natural gasoline	3	UN1257	I	Flammable liquid.	T8	150	201	243	1 L	30 L	E	
				II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	E	
	Nitrating acid mixtures, spent *with not more than 50 percent nitric acid.*	8	UN1826	II	Corrosive	B2, B100, T12, T27.	None	158	242	Forbidden	30 L	D	40
	p-Nitrosodimethylaniline.	4.2	UN1369	II	Spontaneously combustible.	A19, A20, B102, N34.	None	212	241	15 kg	50 kg	D	34
	Paper, unsaturated oil treated *incompletely dried (including carbon paper).*	4.2	UN1379	III	Spontaneously combustible.	B102	None	213	241	Forbidden	Forbidden	A	
	Perchloric acid not more than 50 percent acid by mass.	8	UN1802	II	Corrosive, oxidizer.	B101, N41, T9.	None	202	243	Forbidden	30 L	C	66, 89
	Phenol, molten	6.1	UN2312	II	Poison	B14, B100, T8.	None	202	243	Forbidden	Forbidden	B	40
+	Phenyl isocyanate	6.1	UN2487	II	Poison	B101	None	227	244	5 L	60 L	D	40
	Phenylchloroformate	6.1	UN2746	II	Poison, corrosive.	B101, T12	None	202	243	1 L	30 L	A	12, 13, 25, 40, 48
	Propionyl chloride	3	UN1815	II	Flammable liquid, corrosive.	B100, T8, T26.	None	202	243	1 L	5 L	B	40
	Self-heating substances, solid, n.o.s..	4.2	UN3088	II	Spontaneously combustible.	B101	None	212	241	25 kg	100 kg	C	
				III	Spontaneously combustible.	B101	None	213	241	25 kg	100 kg	C	
	Thiophene	3	UN2414	II	Flammable liquid.	B101, T2	150	202	242	5 L	60 L	B	40
	Thiophosphoryl chloride.	8	UN1837	II	Corrosive	A3, A7, B2, B6, B25, B101, N34, T12.	None	202	242	Forbidden	30 L	C	8, 40
	Toluene diisocyanate	6.1	UN2078	II	Poison	B101, T14	None	202	243	5 L	60 L	B	25, 40

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials description and proper shipping names	Hazard class or division	Identification Nos.	Packing group	Label(s) required (if not excepted)	Special provisions	Packaging authorizations (§ 173. * * *) Exceptions	Non-bulk packaging	Bulk packaging	Quantity limitations Passenger aircraft or railcar	Cargo aircraft only	Vessel stowage requirements Vessel stowage	Other stowage provisions
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Triethylamine	3	UN1296	II	Flammable liquid.	B101, T8	150	202	242	5 L	60 L	B	40
	Vinyl ethyl ether, inhibited.	3	UN1302	II	Flammable liquid.	A3, B100, T14.	None	201	243	1 L	30 L	E	
	Vinylpyridenes, inhibited.	6.1	UN3073	II	Poison, flammable liquid.	B100, T8	None	212	243	5 L	60 L	B	40

7. In § 172.102, paragraph (c)(3) would be amended by adding Special Provisions B100, B101, B102, B103, and B104 in numerical order to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(3) * * *

Code/Special Provisions

* * * * *

B100 IBCs are not authorized.

B101 Rigid plastic and composite IBCs are not authorized

B102 Flexible, rigid plastic, composite, fiberboard, and wooden IBCs are not authorized.

B103 If an IBC packaging is used, the package must be transported in a closed transport vehicle.

B104 IBCs must be provided with a device to allow venting during transport. The inlet must be situated in the vapor space of the packaging and lading during transport.

* * * * *

8. In § 172.514, paragraph (c)(3) would be amended by replacing the period at the end of the paragraph with a semicolon; and paragraph (c)(4) would be added to read as follows:

§ 172.514 Bulk packagings other than tank cars.

* * * * *

(c) * * *

(4) All intermediate bulk containers.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

9. The authority citation for Part 173 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

10. In § 173.24, paragraph (j) would be added to read as follows:

§ 173.24 General requirements for packagings and packages.

* * * * *

(j) When packagings are used for the transportation of liquids with a flash-point of 60.5°C (141°F) (closed cup) or lower, or powders liable to dust explosion, measures must be taken to prevent a dangerous electrostatic discharge.

10a. In § 173.32, paragraph (d) would be revised to read as follows:

§ 173.32 Qualification, maintenance and use of portable tanks other than Specification IM portable tanks.

* * * * *

(d) *Use of Specifications 52, 53, 56 and 57 tanks.* Continued use of an existing portable tank constructed to Specification 52 or 53 is authorized only for a tank constructed before June 1, 1972. Continued use of an existing portable tank constructed to Specification 56 or 57 is authorized only for a tank constructed before October 1, 1996.

* * * * *

11. Section 173.35 would be added to read as follows:

§ 173.35 Hazardous materials in intermediate bulk containers (IBCs).

(a) No person may offer or accept a hazardous material for transportation in an IBC except as authorized by this subchapter. Each IBC used for the transportation of hazardous materials must conform to the requirements of its specification and regulations for the transportation of the particular commodity. A specification IBC, for which the prescribed periodic retest or inspection under subpart D of part 180 of this subchapter is past due, may not be filled and offered for transportation until the retest and inspection have been successfully completed. This requirement does not apply to any IBC filled prior to the retest or inspection due date.

(b) Before being filled and offered for transportation, each IBC and its service equipment must be visually inspected to ensure that it is free from corrosion, contamination, cracks, or other damage which would render the IBC unsafe for transportation. No rigid plastic or composite IBCs with repaired plastic components may be reused. Fiberboard, wooden, or flexible IBCs may not be reused.

(c) A metallic IBC, or a part thereof, subject to thinning by corrosion or mechanical abrasion due to the lading, must be protected by providing the IBC, or part of the IBC, with a suitable increase in thickness of material, a lining or some other suitable method of protection. Increased thickness for corrosion or abrasion protection must be added to the wall thickness specified in § 178.705(c)(1)(iv) of this subchapter.

(d) Notwithstanding requirements in § 173.24b, when filling IBCs with liquids, sufficient ullage must be left to ensure that, at the mean bulk temperature of 50°C (122°F), the IBC is not filled to more than 98% of its water capacity.

(e) Where two or more closure systems are fitted in series, that nearest to the substance being carried must be closed first.

(f) During transportation—

(1) No hazardous material may remain on the outside of the IBC; and

(2) IBCs must be securely fastened to or contained within the transport unit.

(g) IBCs used for solids which may become liquid at temperatures likely to be encountered during transportation must also be capable of containing the substance in the liquid state.

(h) Unless otherwise approved by the Associate Administrator for Hazardous Materials Safety, the authorized period of use of rigid plastic IBCs and the plastic inner receptacles of composite IBCs for the transportation of hazardous materials is five years from the date of manufacture.

(i) Liquid hazardous materials can only be offered for transportation in metallic, rigid plastic, or composite IBCs that are appropriately resistant to an increase of internal pressure likely to develop during transportation.

(1) Rigid plastic or composite IBCs must be filled only with a liquid having a vapor pressure:

(i) Such that the total guage pressure in the IBC (i.e., the vapor pressure of the filling substance plus the partial pressure of air or other inert gases, less 100 kPa (14.5 psig)) at 55°C (131°F), determined on the basis of a maximum degree of filling in accordance with paragraph (d) of this section and a filling temperature of 15°C (27°F)), will not exceed two-thirds of the marked test pressure; or

(ii) At 50°C (122°F), less than four-sevenths of the sum of the marked test pressure plus 100 kPa (14.5 psig); or

(iii) At 55°C (131°F), less than two-thirds of the sum of the marked test pressure plus 100 kPa (14.5 psig).

(2) IBCs may not be used to carry liquids having a vapor pressure of more than 110 kPa (16 psig) at 50°C (122°F) or 130 kPa (18.9 psig) at 55°C (131°F).

(j) The requirements in this section do not apply to DOT Specification 56 and 57 portable tanks.

11a. In § 173.225, the following entries in the Organic Peroxides Table in paragraph (b) would be revised, "Note 24" would be added to the "Notes" following the Organic Peroxides Table and paragraph (e)(4) would be added to read as follows:

§ 173.225 Packaging requirements and other provisions for organic peroxides.

* * * * *

(b) * * *

ORGANIC PEROXIDES TABLE

Technical name	ID No.	Concentration (Mass %)	Diluent (Mass %)			Water (Mass %)	Packing method	Temperature (°C)		Notes
			A	B	I			Control	Emergency	
(1)	(2)	(3)	(4a)	(4b)	(4c)	(5)	(6)	(7a)	(7b)	(8)
[Revised]										
Di-(4-tert-butylcyclohexyl)peroxydicarbonate as a stable dispersion in water.	UN3119	<=42					OP8A	30	35	24
Dicetyl peroxydicarbonate as a stable dispersion in water.	UN3119	<=42					OP8A	30	35	24
Dilauroyl peroxide as a stable dispersion in water	UN3109	<=42					OP8A			24
Dimyristyl peroxydicarbonate as a stable dispersion in water.	UN3119	<=42					OP8A	30	35	24

Notes:

24. This material may be transported in IBCs under the provision of § 173.225(e)(4).

* * * * *

(e) * * *

(4) *Intermediate bulk containers.* Specification 31HA1 composite IBCs that are tested at the packing group II performance level in accordance with Part 178 of this subchapter.

12. In § 173.240, paragraph (d) would be added to read as follows:

§ 173.240 Bulk packaging for certain low hazard solid materials.

* * * * *

(d) *Intermediate bulk containers.* (1) The following IBCs are authorized subject to the conditions and limitations of paragraph (d)(2) of this section if they conform to the requirements in Part 178 of this subchapter at the packing group performance level specified in column 5 of the § 172.101 Table for the material being transported:

(i) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(ii) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psig) (21A, 21B, 21N);

(iii) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and which are loaded or discharged by gravity (11H1);

(iv) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(v) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(vi) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(vii) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(viii) Composite IBCs with flexible plastic inner receptable loaded or discharged by gravity (11HZ2);

(ix) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(x) Composite IBCs with flexible plastic inner receptacle or discharged under pressure (21HZ2);

(xi) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(xii) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(xiii) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(xiv) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(xv) Woven plastic IBCs without coating or liner (13H1);

(xvi) Coated woven plastic IBCs (13H2);

(xvii) Woven plastic IBCs with liner (13H3);

(xviii) Coated woven plastic IBCs with liner (13H4);

(xix) Plastic film IBCs (13H5);

(xx) Textile IBCs without coating or liner (13L1);

(xxi) Coated textile IBCs (13L2);

(xxii) Textile IBCs with liner (13L3);

(xxiii) Coated textile IBCs with liner (13L4);

(xxiv) Paper multiwall IBCs (13M1);

(xxv) Paper multiwall water resistant IBCs (13M2);

(xxvi) Metallic IBCs (31A, 31B, 31N);

(xxvii) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(xxviii) Freestanding rigid plastic IBCs (31H2);

(xxix) Composite IBCs with rigid plastic inner receptacles (31HZ1); and

(xxx) Composite IBCs with flexible inner receptacles (31HZ2).

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) Only materials in packing group II and III may be transported in an IBC;

(ii) Materials in packing group II must be transported in an IBC which employs a secondary containment;

(iii) Flexible, fiberboard and wooden IBCs are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(iv) Specification 13L1 IBCs may not be used for materials meeting the definition of Division 5.1 or Division 6.1 packing group II;

(v) Divisions 4.1 and 4.3 materials in packing group II that are packed in flexible, fiberboard or wooden IBCs must be transported in closed transport vehicles;

(vi) Flexible, fiberboard or wooden IBCs that are used to transport Class 8 materials must be water resistant;

(vii) IBCs transporting Divisions 4.1, 4.2, and 4.3 materials in packing group II must be hermetically (i.e., vapor tight) sealed;

(viii) Metallic IBCs are only authorized for those liquids with a vapor pressure of equal to or less than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F);

(ix) IBCs with bottom openings may not be used for materials with a primary hazard class of 3 and a subsidiary hazard class of Division 6.1.

(3) For composite IBCs, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example 31HA1 is a composite IBC with a metal outer packaging.

13. In § 173.241, paragraph (d) would be added to read as follows:

§ 173.241 Bulk packagings for certain low hazard liquid and solid materials.

* * * * *

(d) *Intermediate bulk containers.* (1) The following IBCs are authorized subject to the conditions and limitations of paragraph (d)(2) of this section if they conform to the requirements in Part 178 of this subchapter at the packing group performance level specified in column 5 of the § 172.101 Table for the material being transported:

(i) For liquids and solids: (A) Metallic IBCs (31A, 31B, 31N);

(B) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(C) Freestanding rigid plastic IBCs (31H2);

(D) Composite IBCs with rigid plastic inner receptacles (31HZ1); and

(E) Composite IBCs with flexible inner receptacles (31HZ2).

(ii) For solids: (A) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(B) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psi) (21A, 21B, 21N);

(C) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and which are loaded or discharged by gravity (11H1);

(D) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(E) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(F) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(G) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(H) Composite IBCs with flexible plastic inner receptacle loaded or discharged by gravity (11HZ2);

(I) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(J) Composite IBCs with flexible plastic inner receptacle loaded or discharged under pressure (21HZ2)

(K) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(L) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(M) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(N) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(O) Woven plastic IBCs without coating or liner (13H1);

(P) Coated woven plastic IBCs (13H2);

(Q) Woven plastic IBCs with liner (13H3);

(R) Coated woven plastic IBCs with liner (13H4);
(S) Plastic film IBCs (13H5);
(T) Textile IBCs without coating or liner (13L1);
(U) Coated textile IBCs (13L2);
(V) Textile IBCs with liner (13L3);
(W) Coated textile IBCs with liner (13L4);
(X) Paper multiwall IBCs (13M1); and
(Y) Paper multiwall water resistant IBCs (13M2).

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) Only materials in packing group II and III may be transported in an IBC;

(ii) Materials in packing group II must be transported in an IBC which employs a secondary containment;

(iii) Flexible, fiberboard and wooden IBCs are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(iv) Specification 13L1 IBCs may not be used for materials meeting the definition of Division 5.1 or Division 6.1 packing group II;

(v) Divisions 4.1 and 4.3 materials in packing group II that are packed in flexible, fiberboard or wooden IBCs must be transported in closed transport vehicles;

(vi) Flexible, fiberboard or wooden IBCs that are used to transport Class 8 materials must be water resistant;

(vii) IBCs transporting Divisions 4.1, 4.2, and 4.3 materials in packing group II must be hermetically (i.e., vapor tight) sealed;

(viii) Metallic IBCs are only authorized for those liquids with a vapor pressure of equal to or less than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F);

(ix) IBCs with bottom openings may not be used for materials with a primary hazard class of 3 and a subsidiary hazard class of Division 6.1.

(3) For composite IBCs, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example 31HA1 is a composite IBC with a metal outer packaging.

14. In § 173.242, paragraph (d) would be added to read as follows:

§ 173.242 Bulk packagings for certain medium hazard liquids and solids, including solids with dual hazards.

* * * * *

(d) *Intermediate bulk containers.* (1) The following IBCs are authorized subject to the conditions and limitations of paragraph (d)(2) of this section if they conform to the requirements in part 178 of this subchapter at the packing group performance level specified in column 5 of the § 172.101 Table for the material being transported:

(i) For liquids and solids: (A) Metallic IBCs (31A, 31B, 31N);

(B) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(C) Freestanding rigid plastic IBCs (31H2);

(D) Composite IBCs with rigid plastic inner receptacles (31HZ1); and

(E) Composite IBCs with flexible inner receptacles (31HZ2).

(ii) For solids: (A) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(B) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psig) (21A, 21B, 21N);

(C) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and which are loaded or discharged by gravity (11H1);

(D) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(E) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(F) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(G) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(H) Composite IBCs with flexible plastic inner receptacle loaded or discharged by gravity (11HZ2);

(I) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(J) Composite IBCs with flexible plastic inner receptacle loaded or discharged under pressure (21HZ2);

(K) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(L) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(M) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(N) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(O) Woven plastic IBCs without coating or liner (13H1);

(P) Coated woven plastic IBCs (12H2);

(Q) Woven plastic IBCs with liner (13H3);

(R) Coated woven plastic IBCs with liner (13H4);

(S) Plastic film IBCs (13H5);

(T) Textile IBCs without coating or liner (13L1);

(U) Coated textile IBCs (13L2);

(V) Textile IBCs with liner (13L3);

(W) Coated textile IBCs with liner (13L4);

(X) Paper multiwall IBCs (13M1); and

(Y) Paper multiwall water resistant IBCs (13M2).

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) Only materials in packing group II and III may be transported in an IBC;

(ii) Materials in packing group II must be transported in an IBC which employs a secondary containment;

(iii) Flexible, fiberboard and wooden IBCs are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(iv) Specification 13L1 IBCs may not be used for materials meeting the definition of Division 5.1 or Division 6.1 packing group II;

(v) Divisions 4.1 and 4.3 materials in packing group II that are packed in flexible, fiberboard or wooden IBCs must be transported in closed transport vehicles;

(vi) Flexible, fiberboard or wooden IBCs that are used to transport Class 8 materials must be water resistant;

(vii) IBCs transporting Divisions 4.1, 4.2, and 4.3 materials in packing group II must be hermetically (i.e., vapor tight) sealed;

(viii) Metallic IBCs are only authorized for those liquids with a vapor pressure of equal to or less than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F);

(ix) IBCs with bottom openings may not be used for materials with a primary hazard class of 3 and a subsidiary hazard class of Division 6.1.

(3) For composite IBCs, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example 31HA1 is a composite IBC with a metal outer packaging.

15. In § 173.243, paragraph (d) would be added to read as follows:

§ 173.243 Bulk packaging for certain high hazard liquids and dual hazard liquids which pose a moderate hazard.

* * * * *

(d) *Intermediate bulk containers.* (1) The following IBCs are authorized subject to the conditions and limitations of paragraph (d)(2) of this section if they conform to the requirements in part 178 of this subchapter at the packing group performance level specified in column 5 of the § 172.101 Table for the material being transported:

(i) For liquids and solids: (A) Metallic IBCs (31A, 31B, 31N);

(B) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked (31H1);

(C) Freestanding rigid plastic IBCs (31H2);

(D) Composite IBCs with rigid plastic inner receptacles (31HZ1); and

(E) Composite IBCs with flexible inner receptacles (31HZ2).

(ii) For solids: (A) Metallic IBCs which are loaded or discharged by gravity (11A, 11B, 11N);

(B) Metallic IBCs which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psig) (21A, 21B, 21N);

(C) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked, and which are loaded or discharged by gravity (11H1);

(D) Freestanding rigid plastic IBCs which are loaded or discharged by gravity (11H2);

(E) Rigid plastic IBCs fitted with structural equipment designed to withstand the whole load when IBCs are stacked loaded or discharged under pressure (21H1);

(F) Freestanding rigid plastic IBCs which are loaded or discharged under pressure (21H2);

(G) Composite IBCs with a rigid plastic inner receptacle discharged or loaded by gravity (11HZ1);

(H) Composite IBCs with flexible plastic inner receptacle loaded or discharged by gravity (11HZ2);

(I) Composite IBCs with rigid plastic inner receptacles loaded or discharged under pressure (21HZ1);

(J) Composite IBCs with flexible plastic inner receptacle loaded or discharged under pressure (21HZ2);

(K) Fiberboard IBCs which are loaded or discharged by gravity (11G);

(L) Natural wood IBCs with inner liner which are loaded or discharged by gravity (11C);

(M) Plywood IBCs with inner liner which are loaded or discharged by gravity (11D);

(N) Reconstituted wood IBCs with inner liners which are loaded or discharged by gravity (11F);

(O) Woven plastic IBCs without coating or liner (13H1);

(P) Coated woven plastic IBCs (13H2);

(Q) Woven plastic IBCs with liner (13H3);

(R) Coated woven plastic IBCs with liner (13H4);

(S) Plastic film IBCs (13H5);

(T) Textile IBCs without coating or liner (13L1);

(U) Coated textile IBCs (13L2);

(V) Textile IBCs with liner (13L3);

(W) Coated textile IBCs with liner (13L4);

(X) Paper multiwall IBCs (13M1); and

(Y) Paper multiwall water resistant IBCs (13M2).

(2) Intermediate bulk containers are authorized subject to the following conditions and limitations:

(i) Only materials in packing group II and III may be transported in an IBC;

(ii) Materials in packing group II must be transported in an IBC which employs a secondary containment;

(iii) Flexible, fiberboard and wooden IBCs are intended for the transport of solids only and may not be used for liquids or materials that may become liquid during transportation;

(iv) Specification 13L1 IBCs may not be used for materials meeting the definition of Division 5.1 or Division 6.1 packing group II;

(v) Divisions 4.1 and 4.3 materials in packing group II that are packed in flexible, fiberboard or wooden IBCs must be transported in closed transport vehicles;

(vi) Flexible, fiberboard or wooden IBCs that are used to transport Class 8 materials must be water resistant;

(vii) IBCs transporting Divisions 4.1, 4.2, and 4.3 materials in packing group II must be hermetically (i.e., vapor tight) sealed;

(viii) Metallic IBCs are only authorized for those liquids with a vapor pressure of equal to or less than 110 kPa (16 psig) at 50 °C (122 °F) or 130 kPa (18.9 psig) at 55 °C (131 °F);

(ix) IBCs with bottom openings may not be used for materials with a primary hazard class of 3 and a subsidiary hazard class of Division 6.1.

(3) For complete IBCs, the letter "Z" must be replaced with a capital letter which indicates the material of construction of the outer packaging. For example 31HA1 is a composite IBC with a metal outer packaging.

PART 178—SPECIFICATIONS FOR PACKAGINGS

16. The authority citation for part 178 would continue to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1, unless otherwise noted.

16a. Section 178.252–1 would be amended by adding paragraph (c) to read as follows:

§ 178.252–1 General requirements.

* * * * *

(c) The manufacture of these specification packagings is not allowed after October 1, 1996.

17. Section 178.253–1 would be amended by adding paragraph (c) to read as follows:

§ 178.253–1 General requirements.

* * * * *

(c) The manufacture of these specification packagings is not allowed after October 1, 1996.

17a. Subpart N would be added to Part 178 to read as follows;

Subpart N—Intermediate Bulk Container Performance-Oriented Standards

Sec.

178.700 Purpose, scope and definitions.
178.702 IBC identification codes.
178.703 Marking of IBCs.
178.704 General IBC standards.
178.705 Standards for metallic IBCs.
178.706 Standards for rigid plastic IBCs.
178.707 Standards for composite IBCs.
178.708 Standards for fiberboard IBCs.
178.709 Standards for wooden IBCs.
178.710 Standards for flexible IBCs.

Subpart N—Intermediate Bulk Container Performance-Oriented Standards

§ 178.700 Purpose, scope and definitions.

(a) This subpart prescribes requirements applying to intermediate bulk containers (IBCs) intended for the transport of hazardous materials. Standards for these packagings are based on the UN Recommendations.

(b) IBCs are generally defined in § 171.8 of this subchapter. The following definitions pertain to the IBC standards in this part.

(1) *Body* means the receptacle proper, including openings and their closures.

(2) *Service equipment* means filling and discharge, pressure relief, safety, heating and heat-insulating devices and measuring instruments.

(3) *Structural Equipment* means the reinforcing, fastening, handling, protective or stabilizing members of the body; for example, metal cages.

(4) *Maximum permissible gross mass* means the mass of the body and its service equipment and structural equipment and the maximum permissible load.

§ 178.702 IBC identification codes

(a) IBC code designations consist of: two numerals specified in paragraph (a)(1) of this section; and followed by the capital letter(s) specified in paragraph (a)(2) of this section; followed, when specified in an individual section, by a numeral indicating the category of IBC.

(1) IBC code number designations are presented in the following table:

Type	For solids, discharged		For liquids
	By gravity	Under pressure of more than 10 kpa (1.45 psi)	
Rigid	11	21	31
Semi-rigid	12	22	32
Flexible	13		

(2) *A* means steel (all types and surface treatments).
B means aluminum.
C means natural wood.
D means plywood.
F means reconstituted wood.
G means fiberboard.
H means plastic material.
L means textile.
M means paper, multiwall.
N means metal (other than steel or aluminum).

(b) For composite IBCs, two capital letters are used in sequence following the numeral indicating IBC design type. The first letter indicates the material of the IBC inner receptacle. The second letter indicates the outer IBC packaging material. The letter *z* is replaced with a capital letter which indicates the material of construction of the outer packaging. For example, 31HA1 is a composite IBC with a metal outer packaging.

§ 178.703 Marking of IBCs.

(a) The manufacturer shall: (1) Mark every IBC in a durable and clearly visible manner with the following information in the sequence presented:

(i) The United Nations symbol as illustrated in § 178.503(d)(1). For metallic IBCs on which the marking is stamped or embossed, the capital letters "UN" may be applied instead of the symbol;

(ii) The code number designating IBC design type according to § 178.702(a) (1) and (2);

(iii) A capital letter designating the packing group(s) for which the design type has been approved:

(A) Y for IBCs meeting Packing group II and III tests; and

(B) Z for IBCs meeting Packing group III tests only;

(iv) The month and year (last two digits) of manufacture;

(v) The country authorizing the allocation of the mark. The letters "USA" indicate that the IBC is manufactured and marked in the United States in compliance with the provisions of this subchapter;

(vi) The name and address or symbol of the manufacturer or the approval agency certifying compliance with Subparts N and O of this Part. Symbols, if used, must be registered with the Associate Administrator for Hazardous Materials Safety;

(vii) The stacking test load in kilograms (kg). For IBCs not designed for stacking, the figure "0" must be shown; and

(viii) The maximum permissible gross mass or, for flexible IBCs, the maximum permissible load, in kg.

(2) The following are examples of symbols and required markings:

(i) For a metallic IBC containing solids discharged by gravity made from steel:



(ii) For a flexible IBC containing solids discharged by gravity and made from woven plastic with a liner:



(iii) For a rigid plastic IBC containing liquids, made from plastic with structural equipment withstanding the stack load:



(iv) For a composite IBC containing liquids, with a rigid plastic inner receptacle and an outer steel body:



(b) *Additional marking.* In addition to markings in paragraph (a) of this section, each metallic, rigid plastic and composite IBC must be marked as follows in a place readily accessible for inspection. Where units of measure are used, they should be marked in both metric and US standard units e.g., 450 liters (119 gallons).

(1) For each rigid plastic and composite IBC, the following markings must be included on each plate:

(i) Capacity in liters (gallons) of water at 20 °C (68 °F);

(ii) Tare mass in kilograms (pounds);

(iii) Gauge test pressure in kPa or psig;

(iv) Date of last leakproofness test, if applicable (month and year); and

(v) Date of last inspection (month and year).

(2) For each metallic IBC, the following markings must be included on a metal corrosion-resistant plate:

(i) Capacity in liters (gallons) of water at 20 °C (68 °F);

(ii) Tare mass in kilograms (pounds);

(iii) Date of last leakproofness test, if applicable (month and year);

(iv) Date of last inspection (month and year);

(v) Maximum loading/discharge pressure, in kPa or psig, if applicable;

(vi) Body material and its minimum thickness in mm; and

(vii) Serial number assigned by the manufacturer.

(3) For each fiberboard and wooden IBC, the tare mass in kg must be shown.

(4) Each flexible IBC may be marked with a pictogram displaying recommended lifting methods.

§ 178.704 General IBC standards.

(a) IBCs must be resistant to, or protected from, deterioration due to exposure to the external environment.

(b) All service equipment must be so positioned or protected as to minimize potential loss of contents resulting from damage during IBC handling and transportation.

(c) IBC packagings, including attachments, and service and structural equipment, must be designed to withstand, without loss of hazardous materials, the internal pressure of the contents and the stresses of normal handling and transport. IBCs intended for stacking must be designed for stacking. Any lifting or securing features of IBCs must be of sufficient strength to withstand the normal conditions of handling and transport without gross distortion or failure and must be positioned so as to cause no undue stress in any part of the IBC.

(d) An IBC consisting of a packaging within a framework must be so constructed that:

(1) The body is not damaged by the framework;

(2) The body is retained within the framework at all times; and

(3) The items of equipment are fixed in such a way that they cannot be damaged if the connections between

body and frame allow relative expansion or movement.

(e) Bottom-discharge valves must be secured in the closed position and the discharge system suitably protected from damage. Valves having lever closures must be secured against accidental opening. The open or closed position must be readily apparent. For IBCs containing liquids, a secondary means of sealing the discharge aperture must also be provided, e.g., by a blank flange or equivalent device.

§ 178.705 Standards for metallic IBCs.

(a) The provisions in this section apply to metallic IBCs intended to contain liquids and solids. Metallic IBC types include:

(1) 11A, 11B, 11N for solids which are loaded or discharged by gravity;

(2) 21A, 21B, 21N for solids which are loaded or discharged at a gauge pressure greater than 10 kPa (1.45 psig); and

(3) 31A, 31B, 31N for liquids and solids.

(b) Definitions for metallic IBCs:

(1) *A metallic IBC* means a metal body together with appropriate service and structural equipment;

(2) *Protected* means being provided with additional protection against impact, for example, a multi-layer (sandwich) or double wall construction or a frame with a metal lattice-work casing.

(c) Construction requirements for metallic IBCs are as follows:

(1) *Body.* The body must be made of ductile metallic materials. Welds must be made so as to maintain design type integrity of the receptacle under conditions normally incident to transportation.

(i) The use of dissimilar metals must not result in deterioration that could affect the integrity of the body.

(ii) Aluminum IBCs intended to contain flammable liquids must have no movable parts, such as covers, closures etc., made of unprotected steel liable to rust, which might cause a dangerous reaction from friction or percussive contact with the aluminum.

(iii) Metallic IBCs must meet the following requirements:

(A) For steel, the percentage elongation at fracture must not be less than 10,000/Rm with a minimum of 20 percent; where Rm= guaranteed minimum tensile strength of the steel to be used, in N/mm²; if English units of pounds per square inch are used for tensile strength then the ratio becomes 10,000/(145Rm);

(B) For aluminum, the percentage elongation at fracture must not be less than 10,000/6 Rm with an absolute minimum of eight percent; if English units of pounds per square inch are used for tensile strength then the ratio becomes 10,000/(870Rm);

(c) Specimens used to determine the elongation at fracture must be taken transversely to the direction of rolling and be so secured that:

$Lo = 5d$

or

$Lo = 5.65\sqrt{A}$

where:

Lo = gauge length of the specimen before the test

d = diameter

A = cross-sectional area of test specimen.

(iv) Minimum wall thickness:

(A) For a reference steel having a product of Rm x Ao = 10,000 (Rm x Ao = 69.0, if tensile strength is in English units of pounds per square inch) the wall thickness must not be less than:

Capacity in liters [1]	Wall thickness in mm (inches)			
	Types—11A, 11B, 11N		Types—21A, 21B, 21N, 31A, 31B, 31N	
	Unprotected	Protected	Unprotected	Protected
>450 and <1000	2.0 (0.079)	1.5 (0.059)	2.5 (0.098)	2.0 (0.079)
>1000 and <2000	2.5 (0.098)	2.0 (0.079)	3.0 (0.120)	2.5 (0.098)
>2000 and <3000	3.0 (0.120)	2.5 (0.098)	4.0 (0.160)	3.0 (0.120)

Where: A_o = minimum elongation (as a percentage) of the reference steel to be used on fracture under tensile stress (see § 178.705(c)(1)(iv)).
[1] where: gallons = liters × 0.264.

(B) For metals other than the reference steel described in paragraph (v)(A), the minimum wall thickness is given by the following equivalence formula:

Formula for metric units

$$e_1 = \frac{21.4 \times e_0}{\sqrt[3]{Rm_1 \times A_1}}$$

Formula for nonmetric units

$$e_1 = \frac{0.843 \times e_0}{\sqrt[3]{145 \times (Rm_1 \times A_1)}}$$

where:

e_1 = required equivalent wall thickness of the metal to be used (in mm) (if e_o is in inches, use formula for nonmetric units);

e_o = required minimum wall thickness for the reference steel (in mm) (if e_o is in inches, use formula for nonmetric units);

Rm_1 = guaranteed minimum tensile strength of the metal to be used (in N/mm²) (for nonmetric units use pounds per square inch);

A_1 = minimum elongation (as a percentage) of the metal to be used on fracture under tensile stress (see § 178.705(c)(1));

Wall thickness shall not be less than 1.5 mm (0.059 inches).

(2) *Pressure relief.* The following relief requirements apply to IBCs intended for liquids:

(i) IBCs must be capable of releasing a sufficient amount of vapor in the event of fire engulfment to ensure that no rupture of the body will occur. This can be achieved by spring-loaded pressure relief devices or by other means of construction. Rupture discs are not allowed; and

(ii) The start to discharge pressure must not be higher than 65 kPa (9 psig) and no lower than the vapor pressure of the filling substance plus the partial pressure of the air or other inert gases, minus 100 kPa (14.5 psig)) at 55°C (131°F), determined on the basis of a maximum degree of filling as defined in § 173.35 of this subchapter. Pressure relief devices must be fitted in the vapor space.

§ 178.706 Standards for rigid plastic IBCs.

(a) The provisions in this section apply to rigid plastic IBCs intended to contain solids or liquids. Rigid plastic IBC types include:

(1) 11H1 fitted with structural equipment designed to withstand the whole load when IBCs are stacked, for solids which are loaded or discharged by gravity;

(2) 11H2 freestanding, for solids which are loaded or discharged by gravity;

(3) 21H1 fitted with structural equipment designed to withstand the whole load when IBCs are stacked, for solids which are loaded or discharged under pressure;

(4) 21H2 freestanding, for solids which are loaded or discharged under pressure;

(5) 31H1 fitted with strutural equipment designed to withstand the whole load when IBCs are stacked, for liquids; or

(6) 31H2 freestanding, for liquids.

(b) *Rigid plastic IBCs* consist of a rigid plastic body, which may have structural equipment, together with appropriate service equipment.

(c) Rigid plastic IBCs must be manufactured from plastic material of known specifications and be of a strength relative to its capacity and to the service it is required to perform. In addition to complying with § 173.24 of this subchapter, plastic materials must be resistant to aging and to degradation caused by ultraviolet radiation.

(1) If protection against ultraviolet radiation is necessary, it must be provided by the addition of a pigment or inhibiter such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the IBC body. Where use is made of carbon black, pigments or inhibitors, other than those used in the manufacture of the tested design type, re-testing may be omitted if changes in the carbon black content, the pigment content or the inhibitor content do not adversely affect the physical properties of the material of construction.

(2) Additives may be included in the composition of the plastic material to improve the resistance to aging or to serve other purposes, provided they do not adversely affect the physical or chemical properties of the material of construction.

(3) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of rigid plastic IBCs.

(4) IBCs must be capable of releasing a sufficient amount a vapor in the event of fire engulfment to ensure that no rupture of the body will occur. This can be achieved by spring-loaded pressure relief devices or by other means of construction. Rupture discs are not allowed. The device or other means of construction must be capable of releasing sufficient vapor to ensure that neither leakage nor permanent distortion of the IBC will occur if it is subjected to an internal pressure in excess of that for which it was hydraulically tested.

§ 178.707 Standards for composite IBCs.

(a) The provisions in this section apply to:

(1) Composite IBCs intended to contain solids and liquids. Composite IBC types include:

(i) 1HZ1 Composite IBCs with a rigid plastic inner receptacle for solids loaded or discharged by gravity;

(ii) 11HZ2 Composite IBCs with a flexible plastic inner receptacle for solids loaded or discharged by gravity;

(iii) 21HZ1 Composite IBCs with a rigid plastic inner receptacle for solids loaded or discharged under pressure;

(iv) 21HZ2 Composite IBCs with a flexible plastic inner receptacle for solids loaded or discharged under pressure;

(v) 31HZ1 Composite IBCs with a rigid plastic inner receptacle for liquids; or

(vi) 31HZ2 Composite IBCs with a flexible plastic Inner receptacle for liquids.

(2) The marking code in paragraph (a)(1) of this section must be completed by replacing the letter Z by a capital letter in accordance with § 178.702(b) to indicate the material used for the outer packaging.

(b) Definitions for composite IBC types:

(1) A *composite IBC* consists of structural equipment in the form of a rigid outer packaging enclosing a plastic inner receptacle together with any service or other structural equipment. The inner receptacle and outer packaging are so constructed that the inner receptacle and the outer packaging form an integral packaging and are filled, stored, transported, and emptied as a unit.

(2) The term *plastic* applying in this section to inner receptacles also applies to other polymeric materials, such as polyethylene, rubber, etc.

(c) Construction requirements for composite IBCs with plastic inner receptacles are as follows:

(1) The outer packaging consists of rigid material formed so as to protect the inner receptacle from physical damage during handling and transportation, but is not intended to perform the secondary containment function. It includes the base pallet where appropriate. The inner receptacle is not intended to perform a containment function without the outer packaging.

(2) A composite IBC with a fully enclosing outer packaging must be designed to permit assessment of the integrity of the inner container following the leakproofness and hydraulic tests.

(3) The inner receptacle must be manufactured from plastic material of known specifications and be of a strength relative to its capacity and to the service it is required to perform. In addition to complying with the requirements of § 173.24 of this subchapter, the material must be resistant to aging and to degradation caused by ultraviolet radiation.

(i) If protection against ultraviolet radiation is necessary, it must be provided by the addition of pigments or inhibitors such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the inner receptacle. Where use is made of carbon black, pigments, or inhibitors, other than those used in the manufacture of the tested design type, retesting may be omitted if the carbon black content, the pigment content, or the inhibitor content do not adversely affect the physical properties of the material of construction.

(ii) Additives may be included in the composition of the plastic material of the inner receptacle to improve resistance to aging, provided they do not adversely affect the physical or chemical properties of the material.

(iii) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of inner receptacles.

(iv) IBCs must be capable of releasing a sufficient amount of vapor in the event of fire engulfment to ensure that no rupture of the body will occur. This can be achieved by spring-loaded pressure relief devices or by other means of construction. Rupture discs are not allowed. The device must be capable of releasing sufficient vapor to ensure that neither leakage nor permanent distortion of the IBC will occur if it is subjected to an internal pressure in excess of that for which it was hydraulically tested.

(4) The strength of the construction material comprising the outer packaging and the manner of construction must be appropriate to the capacity of the composite IBC and its intended use. The outer packaging must be free of any projection that might damage the inner receptacle.

(i) Outer packagings of natural wood must be constructed of well seasoned wood that is commercially dry and free from defects that would materially lessen the strength of any part of the outer packaging. The tops and bottoms may be made of water-resistant reconstituted wood such as hardboard or particle board.

(ii) Outer packagings of plywood must be made of well seasoned rotary cut, sliced, or sawn veneer, commercially dry and free from defects that would materially lessen the strength of the casing. All adjacent plies must be glued with water resistant adhesive. Materials other than plywood may be used for the construction of components of outer packaging. Outer packagings must be firmly nailed or secured to corner posts or ends or be assembled by equally similar devices.

(iii) Outer packaging of reconstituted wood must be constructed of water-resistant reconstitute wood such as hardboard or particle board. Materials other than reconstituted wood may be used for the construction of components of outer packaging.

(iv) Fiberboard outer packaging must be constructed of strong, solid, or double-faced corrugated fiberboard (single or multiwall).

(A) Water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 grams per square meter (0.0316 pounds per square foot) (see ISO International Standard 535–1976 (E)). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks, or undue bending. The fluting of corrugated fiberboard must be firmly glued to the facings.

(B) The ends of fiberboard outer packagings may have a wooden frame or be constructed entirely of wood. Wooden battens may be used for reinforcements.

(c) Manufacturers joints in the bodies of outer packagings must be taped, lapped, and glued, or lapped and stitched with metal staples.

(D) Lapped joints must have an appropriate overlap.

(E) Where closing is effected by gluing or taping, a water resistant adhesive must be used.

(iv) Outer packagings of plastic materials must be constructed in accordance with the relevant provisions of paragraph (c)(3) of this section.

(5) Any integral pallet base forming part of an IBC, or any detachable pallet, must be suitable for the mechanical handling of an IBC filled to its maximum permissible gross mass.

(i) The pallet or integral base must be designed to avoid any protrusion of the base of the IBC that might be liable to damage in handling;

(ii) The outer packaging must be secured to any detachable pallet to ensure stability in handling and transport. Where a detachable pallet is used, its top surface must be free from sharp protrusions that might damage the IBC;

(iii) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the inner receptacle;

(iv) The bearing surfaces of IBCs intended for stacking must be designed to distribute loads in a safe manner. IBCs intended for stacking must be designed so that loads are not supported by the inner receptacle.

§ 178.708 Standards for fiberboard IBCs.

(a) The provisions of this section apply to fiberboard IBCs intended to contain solids which are loaded or discharged by gravity. Fiberboad IBCs are designated: 11G.

(b) Definitions for fiberboard IBC types:

(1) *Fiberboard IBCs* consist of a fiberboard body with or without separate top and bottom caps, if necessary and inner liner (but no inner packagings), appropriate service and structural equipment.

(2) *Liner* means a separate tube or bag inserted in the body but not forming an integral part of it, including the closures of its openings.

(c) Construction requirements for fiberboard IBCs are as follows:

(1) Top lifting devices are prohibited in fiberboard IBCs.

(2) Fiberboard IBCs must be constructed of strong, solid or double-faced corrugated fiberboard (single or multiwall) that is appropriate to the capacity of the outer packaging and its intended use. Water resistance of the outer surface must be such that the increase in mass, as determined in a test carried out over a period of 30 minutes by the Cobb method of determining water absorption, is not greater than 155 g per square meter (0.0316 pounds per square foot)—see ISO International Standard 535–1976 (E). Fiberboard must have proper bending qualities. Fiberboard must be cut, creased without cutting through any thickness of fiberboard, and slotted so as to permit assembly without cracking, surface breaks, or undue bending. The fluting of corrugated fiberboard must be firmly glued to the facings.

(i) The walls, including top and bottom, must have a minimum puncture resistance of 15J measured according to ISO International Standard 3036–1975.

(ii) Manufacturers joints in the bodies of IBCs must be made with an appropriate overlap and be taped, glued, stitched with metal staples or fastened by other means at least equally effective. Where joints are made by gluing or taping, a water resistant adhesive must be used. Metal staples must pass completely through all pieces to be fastened and be formed or protected so that any inner liner cannot be abraded or punctured by them.

(3) The strength of the material used and the construction of the liner must be appropriate to the capacity of the IBC and the intended use. Joints and closures must be sift proof and capable of withstanding pressures and impacts liable to occur under normal conditions of handling and transport.

(4) Any integral pallet base forming part of an IBC, or any detachable pallet, must be suitable for the mechanical handling of an IBC filled to its maximum permissible gross mass.

(i) The pallet or integral base must be designed so as to avoid any protrusion of the base of the IBC that might be liable to damage in handling.

(ii) The outer packaging must be secured to any detachable pallet to ensure stability in handling and transport. Where a detachable pallet is used, its top surface must be free from sharp protrusions that might damage the IBC.

(iii) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the inner receptacle.

(iv) The bearing surfaces of IBCs intended for stacking must be designed to distribute loads in a stable manner.

§ 178.709 Standards for wooden IBCs.

(a) The provisions in this section apply to wooden IBCs intended to contain solids which are loaded or discharged by gravity. Wooden IBC types include:

(1) 11C Natural wood with inner liner;

(2) 11D Plywood with inner liner; and

(3) 11F Reconstituted wood with inner liner.

(b) Definitions for wooden IBCs:

(1) *Wooden IBCs* consist of a rigid or collapsible wooden body together with an inner liner (but no inner packagings) and appropriate service and structural equipment.

(2) *Liner* means a separate tube or bag inserted in the body but not forming an integral part of it, including the closures of its openings.

(c) Construction requirements for wooden IBCs are as follows:

(1) Top lifting devices are prohibited in wooden IBCs;

(2) The strength of the materials used and the method of construction must be appropriate to the capacity and intended use of the IBC.

(i) Natural wood used in the construction of an IBC must be well seasoned, commercially dry and free from defects that would materially

lessen the strength of any part of the IBC. Each IBC part must consist of uncut wood or a piece equivalent in strength and integrity. IBC parts are equivalent to one piece when a suitable method of glued assembly is used (i.e., a Linderman joint, tongue and groove joint, ship lap or rabbet joint; or butt joint with at least two corrugated metal fasteners at each joint, or when other methods at least equally effective are used).

(ii) Plywood used in construction of bodies must be at least 3-ply. Plywood must be made of well seasoned, rotary cut, sliced or sawn veneer, commercially dry, and free from defects that would materially lessen the strength of the body. All adjacent plies must be glued with water resistant adhesive. Materials other than plywood may be used for the construction of components of the outer packaging.

(iii) Reconstituted wood used in construction of bodies must be water resistant reconstituted wood such as hardboard or particle board.

(iv) Wooden IBCs must be firmly nailed or secured to corner posts or ends or be assembled by similar devices.

(3) The strength of the material used and the construction of the liner must be appropriate to the capacity of the IBC and its intended use. Joints and closures must be sift proof and capable of withstanding pressures and impacts liable to occur under normal conditions of handling and transport;

(4) Any integral pallet base forming part of an IBC, or any detachable pallet, must be suitable for the mechanical handling of an IBC filled to its maximum permissible gross mass.

(i) The pallet or integral base must be designed to avoid any protrusion of the base of the IBC that might be liable to damage in handling.

(ii) The outer packaging must be secured to any detachable pallet to ensure stability in handling and transport. Where a detachable pallet is used, its top surface must be free from sharp protrusions that might damage the IBC.

(iii) Strengthening devices, such as timber supports to increase stacking performance, may be used but must be external to the inner receptacle.

(iv) The load bearing surfaces of IBCs intended for stacking must be designed to distribute loads in a safe manner.

§ 178.710 Standards for flexible IBCs.

(a) The provisions of this section apply to flexible IBCs intended to contain solid hazardous materials. Flexible IBC types include:

(1) 13H1 woven plastic without coating or liner;

(2) 13H2 woven plastic, coated;

(3) 13H3 woven plastic with liner;

(4) 13H4 woven plastic, coated and with liner;

(5) 13H5 plastic film;

(6) 13L1 textile without coating or liner;

(7) 13L2 textile, coated;

(8) 13L3 textile with liner;

(9) 13L4 textile, coated and with liner;

(10) 13M1 paper, multiwall; and

(11) 13M2 paper, multiwall, water resistant.

(b) Definitions for flexible IBCs:

(1) *Flexible IBCs* consist of a body constructed of film, woven fabric or any other flexible material or combination thereof, together with any appropriate service equipment and handling devices.

(1) *Woven plastic* means a material made from stretched tapes or monofilaments.

(3) *Handling device* means any sling, loop, eye, or frame attached to the body of the IBC or formed from a continuation of the IBC body material.

(c) Construction requirements for flexible IBCs are as follows:

(1) The strength of the material and the construction of the flexible IBC must be appropriate to its capacity and its intended use.

(i) All materials used in the construction of flexible IBCs of types 13M1 and 13M2 must, after complete immersion in water for not less than 24 hours, retain at least 85% of the tensile strength as measured originally on the material conditioned to equilibrium at 67% relative humidity or less.

(ii) Seams must be stitched or formed by heat sealing, gluing or any equivalent method. All stitched seam-ends must be secured.

(iii) In addition to complying with the requirements of § 173.24 of this subchapter, flexible IBC bodies must be resistant to aging and degradation caused by ultraviolet radiation.

(iv) For plastic flexible IBCs, if protection against ultraviolet radiation is necessary, it must be provided by the addition of pigments or inhibitors such as carbon black. These additives must be compatible with the contents and remain effective throughout the life of the inner receptacle. Where use is made of carbon black, pigments, or inhibitors, other than those used in the manufacture of the tested design type, retesting may be omitted if the carbon black content, the pigment content or the inhibitor content do not adversely affect the physical properties of the material of construction. Additives may be included in the composition of the plastic material of the inner receptacle to improve resistance to aging, provided they do not adversely affect the physical or chemical properties of the material.

(v) No used material other than production residues or regrind from the same manufacturing process may be used in the manufacture of plastic flexible IBCs. This does not preclude the re-use of component parts such as fittings and pallet bases provided such components have not in any way been damaged in previous use.

(vi) When flexible IBCs are filled, the ratio of height to width shall not be more than 2:1.

18. Subpart O would be added to part 178 to read as follows:

Subpart O—Testing of Intermediate Bulk Containers

Sec.

178.800 Purpose and scope.
178.801 General requirements.
178.802 Preparation of fiberboard IBCs for testing.
178.803 Testing and certification of metallic IBCs.
178.804 Testing and certification of rigid plastic IBCs.
178.805 Testing and certification of composite IBCs.
178.806 Testing and certification of fiberboard IBCs.
178.807 Testing and certification of wooden IBCs.
178.808 Testing and certification of flexible IBCs.
178.810 Drop test.
178.811 Bottom lift test.
178.812 Top lift test.
178.813 Leakproofness test.
178.814 Hydrostatic pressure test.
178.815 Stacking test.
178.816 Topple test.
178.817 Righting test.
178.818 Tear test.
178.819 Vibration test.

Subpart O—Testing of Intermediate Bulk Containers

§ 178.800 Purpose and scope.

This subpart prescribes certain testing requirements for IBCs identified in subpart N of this part.

§ 178.801 General requirements.

(a) *General.* The test procedures prescribed in this subpart are intended to ensure that IBCs containing hazardous materials can withstand normal conditions of transportation and are considered minimum requirements. Each packaging must be manufactured and assembled so as to be capable of successfully passing the prescribed tests and of conforming to the requirements of § 173.24 of this subchapter at all times while in transportation.

(b) *Responsibility.* It is the responsibility of the packaging manufacturer and the person who offers a hazardous material for transportation, to the extent that assembly functions including final closure are performed by the latter, to assure that each IBC is capable of passing the prescribed tests.

(c) *Definitions.* For the purpose of this subpart:

(1) *IBC design type* is defined by the design, size, material, thickness, manner of construction and means of filling and discharging, and may include various surface treatments.

(2) *Design qualification testing* is the performance of the drop, leakproofness, hydrostatic pressure, stacking, bottom and/or top lift, tear, topple, righting and vibration tests, as applicable, prescribed in this subpart, for each different IBC design type, at the start of production of that packaging.

(3) *Periodic design requalification test* is the performance of the applicable tests specified in paragraph (c)(2) of this section on an IBC design type in order to requalify the design for continued production at the frequency specified in paragraph (e) of this section.

(4) *Production inspection* is the inspection that must initially be conducted on each newly manufactured IBC.

(5) *Production testing* is the performance of the leakproofness test prescribed in § 178.813 of this subpart on each IBC intended to contain solids discharged by gravity or intended to contain liquids.

(6) *Periodic retest and inspection* is performance of the applicable test and inspections prescribed in § 180.352 of this subchapter on each IBC at the frequency specified in § 180.352 of this subchapter.

(7) *Different IBC design type* is one that differs from a previously qualified IBC design type in structural design, size, material of construction, wall thickness, or manner of construction, but does not include:

(i) A packaging which differs only in surface treatment; and

(ii) A rigid plastic IBC or the plastic inner receptacle of a composite IBC which differs only with regard to additives which conform to §§ 178.706(c), 178.707(c) or 178.710(c) of this part; or

(iii) A packaging which differs according to § 178.801(h).

(d) *Design qualification testing.* The packaging manufacturer shall achieve successful test results for the design qualification testing at the start of production of each different IBC design type.

(e) *Periodic design requalification testing.* (1) Periodic design requalification must be conducted on each qualified IBC design type if the manufacturer is to maintain authorization for continued production. The IBC manufacturer shall achieve successful test results for the periodic design requalification at sufficient frequency to ensure each packaging produced by the manufacturer is capable of passing the design qualification tests. Design requalification tests must be conducted at least once every 12 months.

(2) Changes in the frequency of design requalification testing specified in paragraph (e)(1) of this section are authorized if approved by the Associate Administrator for Hazardous Materials Safety. These requests must be based on:

(i) Detailed quality assurance programs (e.g., ISO 9000) that assure that proposed decreases in test frequency maintain the integrity of originally tested IBC design types; and

(ii) Demonstrations that each IBC produced is capable of withstanding higher standards (i.e., increased drop height, hydrostatic pressure, wall thickness, fabric weight, etc.).

(f) *Production testing and inspection.* (1) Production testing consists of the leakproofness test prescribed in § 178.813 and must be performed on each IBC intended to contain solids discharged by gravity or intended to contain liquids.

(2) Applicable inspection requirements in § 180.352 of this subchapter must be performed on each IBC initially after production.

(g) *Test samples.* The IBC manufacturer shall conduct the design qualification and periodic design requalification tests prescribed in this subpart using random samples of IBCs, according to the appropriate test section.

(h) *Selective testing of metallic, rigid plastic and composite IBCs.* Variations of up to 25 percent decreased in the outer dimensions of a tested IBC design type are permitted without further testing. In addition. the Associate Administrator for Hazardous Materials Safety may approve the selective testing of IBCs that differ only in minor respects from a tested IBC design type and which provide an equivalent or greater level of safety than the tested type.

(i) *Approval of equivalent packagings.* An IBC having standards different from those in subpart N of this part, or which is tested using methods other than those specified in this part, may be used if approved by the Associate Administrator for Hazardous Materials Safety. Such IBCs must be shown to be equally effective, and testing methods used must be equivalent.

(j) *Proof of compliance.* Notwithstanding the periodic design requalification testing intervals specified in paragraph (e) of this section, the Associate Administrator for Hazardous Materials Safety may at any time require demonstration of compliance by a manufacturer, through testing in accordance with this subpart, that packagings meet the requirements of this subpart. As required by the Associate Administrator for Hazardous Materials Safety, the manufacturer shall either:

(1) Conduct performance tests, or have tests conducted by an independent testing facility, in accordance with this subpart; or

(2) Make a sample IBC available to the Associate Administrator for Hazardous Materials Safety, or a designated representative, for testing in accordance with this subpart.

(k) *Coatings.* If an inner treatment or coating of a IBC is required for safety reasons, the manufacturer shall design the IBC so that the treatment or coating retains its protective properties even after withstanding the tests prescribed by this subpart.

(l) *Record retention.* (1) The IBC manufacturer shall keep records for the qualification of each IBC design type and for each periodic design requalification as specified in this part. Records must be maintained at each location where the IBC is manufactured and at each location where the IBC design qualification and periodic design requalification testing is performed. Records must be maintained for as long as IBCs are manufactured in accordance with each qualified design type and for at least 2.5 years thereafter. Records shall include specific IBC types tested, dates of tests, location of tests, test specifics and results (including drop heights, hydrostatic pressures, tear propagation length, etc.), name of person conducting the test, and name of person responsible for testing. Test reports for fiberboard and wooden IBC design types must include a technical description of the pallets used.

(2) The IBC owner shall keep records of periodic retests and initial and periodic inspections prescribed in § 180.352 of this subchapter. Records must include design types, dates, locations, packaging specifications, test specifics and results, and names or name of persons testing, for each packaging, and at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test;

(3) The manufacturer and owner of each IBC must make all records of design qualification tests, periodic

design requalification tests, and periodic retests and inspections, available for inspection by the Associate Administrator for Hazardous Materials Safety or a designated representative.

§ 178.802 Preparation of Fiberboard IBCs for testing.

(a) Fiberboard IBCs or composite IBCs with fiberboard outer packagings must be conditioned for at least 24 hours in an atmosphere maintained:

(1) At 50 percent ± 2% relative humidity, and at a temperature of 23°± 2°C (73°F +/−4°F); or

(2) At 65% ±2% relative humidity, and at a temperature of 20°± 2°C (68°F +/−4°F), or 27° ± 2°C (81 °F +/−4°F).

(b) Average values should fall within the limits in paragraph (a) of this section. Short-term fluctuations and measurement limitations may cause individual measurements to vary by up to ± 5% relative humidity without significant impairment of test reproducibility.

§ 178.803 Testing and certification of metallic IBCs.

One IBC of each metallic design type must withstand the applicable tests in the order presented in the following table:

Tests	See	Type of IBC	
		11A, 11B, 11N	21A, 21B, 21N, 31A, 31B, 31N
Bottom lift	178.811	Required [b]	Required.[b]
Top Lift	178.812	Required [a]	Required.[a]
Stacking	178.815	Required [b]	Required.[b]
Leakproofness	178.813	Not required	Required.
Hydrostatic pressure	178.814	Not required	Required.
Drop	178.810	Required	Required.
Vibration	178.819	Required	Required.

[a] When IBCs are designed for this method of handling.
[b] When IBCs are designed to be stacked.

§ 178.804 Testing and certification of rigid plastic IBCs.

One IBC of each rigid plastic design type must withstand the applicable tests in the order presented in the following table:

Tests	See	Type of IBCs	
		11H1, 11H2	21H1, 21H2, 31H1, 31H2
Bottom Lift	178.811	Required	Required.
Top Lift	178.812	Required [a]	Required.[a]
Stacking	178.815	Required [b]	Required.[b]
Leakproofness	178.813	Not required	Required.
Hydrostatic pressure	178.814	Not required	Required.
Drop	178.810	Required	Required.
Vibration	178.819	Required	Required.

[a] When IBCs are designed to be lifted from the top.
[b] When IBCs are designed to be stacked.

§ 178.805 Testing and certification of composite IBCs.

One IBC of each composite design type must withstand the applicable tests in the order presented in the following table:

Tests	See	Type of IBCs	
		11HZ1, 11Hz2	21HZ1, 21HZ2, 31HZ1, 31HZ2
Bottom lift	178.811	Required	Required.
Top lift	178.812	Required [a]	Required.[a]
Stacking	178.815	Required [b]	Required.[b]
Leakproofness	178.813	Not required	Required.
Hydrostatic pressure	178.814	Not required	Required.
Drop	178.810	Required	Required.
Vibration	178.819	Required	Required.

[a] When IBCs are designed to be lifted from the top.
[b] When IBCs are designed to be stacked.

§ 178.806 Testing and certification of fiberboard IBCs.

One IBC of each fiberboard design type must withstand the applicable tests in the order presented in the following table:

Test	See	11G
Bottom lift	178.811	Required.
Stacking	178.815	Required.[a]
Drop	178.810	Required.
Vibration	178.819	Required.

[a] when IBCs are designed to be stacked.

§ 178.807 Testing and certification of wooden IBCs.

One IBC of each wooden design type must withstand the applicable tests in the order presented in the following table:

Test	See	11C, 11D, 11F
Bottom lift	178.811	Required.
Stacking	178.815	Required.[a]
Drop	178.810	Required.
Vibration	178.819	Required.

[a] when IBCs are designed to be stacked.

§ 178.808 Testing and certification of flexible IBCs.

One IBC of each rigid plastic design type must withstand the applicable tests in the order presented in the following table.

Tests	See
Top lift [1]	178.812
Tear	178.818
Stacking	178.815
Drop	178.810
Topple	178.816
Righting [1]	178.817
Vibration	178.819

[1] when IBCs are designed to be lifted from the top or the side.

§ 178.810 Drop test.

(a) *General.* The drop test must be conducted for the qualification of all IBC design types and performed periodically as specified in § 178.801.

(b) *Special preparation for the drop test.* (1) Metallic, rigid plastic, and composite IBCs intended to contain solids must be filled to not less than 95% of their capacity or if intended to contain liquids to not less than 98% of their capacity. Pressure relief devices should be removed and their apertures plugged or rendered inoperative.

(2) Fiberboard, wooden, and flexible IBCs must be filled with a solid material to not less than 95% of their capacity.

(3) Testing of rigid plastic and composite IBCs must be carried out when the temperature of the packaging and its contents have been reduced to −18 °C (0 °F) or lower. Test liquids shall be kept in the liquid state by the addition of anti-freeze, if necessary.

(c) *Test method.* Samples of all IBC design types must be dropped onto a rigid, non-resilient, smooth, flat and horizontal surface. The point of impact must be the most vulnerable part of the base of the IBC being tested.

(d) *Drop height.* (1) For all IBCs, drop heights are specified as follows:

(i) Packing Group II: 1.2 m (3.9 feet).

(ii) Packing Group III: 0.8 m (2.6 feet).

(2) Drop tests are to be performed with the solid or liquid to be transported or with a non-hazardous material having essentially the same physical characteristics.

(3) The relative density and viscosity of a substituted non-hazardous material used in the drop test for liquids must be similar to the hazardous material intended for transportation. Water also may be used for the liquid drop test under the following conditions:

(i) Where the substances to be carried have a relative density not exceeding 1.2, the drop heights must be those specified in paragraph (d)(1) of this section for each IBC design type; and

(ii) Where the substances to be carried have a relative density exceeding 1.2, the drop heights must be those specified in paragraph (d)(1) of this section for each IBC design type, multiplied by the ratio of the relative density of the hazardous material to be transported, rounded off to the first decimal, to 1.2 (i.e. relative density/1.2 × specified drop height).

(e) *Criteria for passing the test.* (1) For all IBC design types except flexible IBC design types, no loss of contents. A slight discharge from a closure upon impact is not considered to be a failure of the IBC provided that no further leakage occurs.

(2) For flexible IBC design types, no loss of contents. A slight discharge (e.g., from closures or stitch holes), upon impact is not considered a failure of the flexible IBC provided that no further leakage occurs after the IBC has been raised clear of the ground.

§ 178.811 Bottom lift test.

(a) *General.* The bottom lift test must be conducted for the qualification of all IBC design types designed to be lifted from the base.

(b) *Special preparation for the bottom lift test.* The IBC must be loaded to 1.25 times its maximum permissible gross mass, the load being evenly distributed.

(c) *Test method.* All IBC design types must be raised and lowered twice by a lift truck with the forks centrally positioned and spaced at three quarters of the dimension of the side of entry (unless the points of entry are fixed). The forks must penetrate to three quarters of the direction of entry. The test must be repeated from each possible direction of entry.

(d) *Criteria for passing the test.* No permanent deformation which renders the IBC unsafe for transportation and no loss of contents.

§ 178.812 Top lift test.

(a) *General.* The top lift test must be conducted for the qualification of all IBC design types designed to be lifted from the top.

(b) *Special preparation for the top lift test.* (1) Metallic, rigid plastic and composite IBC design types must be loaded to twice the maximum permissible gross mass.

(2) Flexible IBC design types must be filled to six times the maximum permissible load, the load being evenly distributed.

(c) *Test method.* (1) A metallic or flexible IBC must be lifted in the manner for which it is designed until clear of the floor and maintained in that position for a period of five minutes. For flexible IBC design types, other methods of top lift testing and preparation at least equally effective may be used.

(2) Rigid plastic and composite IBC design types must be:

(i) Lifted by each pair of diagonally opposite lifting devices, so that the hoisting forces are applied vertically, for a period of five minutes; and

(ii) Lifted by each pair of diagonally opposite lifting devices, so that the hoisting forces are applied towards the center at 45° to the vertical, for a period of five minutes.

(d) *Criteria for passing the test.* No permanent deformation which renders the IBC, including the base pallets when applicable, unsafe for transportation, and no loss of contents.

§ 178.813 Leakproofness test.

(a) *General.* The leakproofness test must be conducted for the qualification of all IBC design types and on all production units intended to contain liquids or intended to contain solids that are loaded or discharged under pressure.

(b) *Special preparation for the leakproofness test.* Vented closures must either be replaced by similar non-vented closures or the vent should be sealed. For metallic IBC design types, the initial test must be carried out before the fitting of any thermal insulation equipment.

(c) *Test method and pressure applied.* The test must be carried out for a period of at least 10 minutes using air at a gauge pressure of not less than 20k Pa (2.9 psig). Leakproofness of IBC design types must be determined by coating the seams and joints with a heavy oil, a soap solution and water, or other

methods suitable for the purpose of detecting leaks. Other methods, at least equally effective, may be used in accordance with Appendix B of this part or if approved by the Associate Administrator for Hazardous Materials Safety.

(d) *Criterion for passing the test.* No leakage of air.

§ 178.814 Hydrostatic pressure test.

(a) *General.* The hydrostatic pressure test must be conducted for the qualification of all metallic, rigid plastic, and composite IBC design types intended to contain liquids or intended to contain solids loaded or discharged under pressure.

(b) *Special preparation for the hydrostatic pressure test.* For metallic IBCs, the test must be carried out before the fitting of any thermal insulation equipment. For all IBCs, pressure relief devices should be removed and their apertures plugged, or should be rendered inoperative.

(c) *Test method.* The test must be carried out for a period of a least 10 minutes applying a hydraulic pressure not less than that indicated in paragraph (d) of this section. The IBCs must not be mechanically restrained during the test.

(d) *Pressure applied.* (1) For metallic IBC design types, 31A, 31B, 31N: 65 kPa (9.4 psig).

(2) For metallic IBC design types 21A, 21B, 21N, 31A, 31B, 31N: 200 kPa (29 psig) gauge pressure (for metallic design types 31A, 31B, and 31N, the tests in paragraphs (d)(1) and (d)(2) of this section must be conducted consecutively).

(3) For rigid plastic IBC design types 21H1 and 21H2 and composite IBC design types 21HZ1 and 21HZ2: 75 kPa (11 psig).

(4) For rigid plastic IBC design types 31H1 and 31H2 and composite IBC design types 31HZ1 and 31HZ2: whichever is the greater of:

(i) The total gauge pressure measured in the IBC (i.e., the vapor pressure of the filling substance and the partial pressure of the air or other inert gases, minus 100 kPa (14.5 psig)) at 55°C (131°F) multiplied by a safety factor of 1.5. This total gauge pressure should be determined on the basis of a maximum degree of filling in accordance with § 173.35(d) of this subchapter and a filling temperature of 15°C (60°F);

(ii) 1.75 times the vapor pressure at 50°C (122°F) of the substance to be transported minus 100 kPa (14.5 psig), but with a minimum test pressure of 100 kPa;

(iii) 1.5 times the vapor pressure at 55°C (131°F) of the substance to be transported minus 100 kPa (14.5 psig), but with a minimum test pressure of 100 kPa; or

(iv) Twice the static pressure of the substance to be transported, with a minimum of twice the static pressure of water.

(e) *Criteria for passing the test.* (1) For metallic IBCs, subjected to the 65 kPa (9.4 psig) test pressure specified in paragraph (d)(1) of this section: no leakage or permanent deformation which renders the IBC unsafe for transport.

(2) For metallic IBCs intended to contain liquids, when subjected to the 200 kPa (29 psig) test pressure specified in paragraph (d)(2) of this section: no leakage.

(3) For rigid plastic IBC types 21H1, 21H2, 31H1 and 31H2 and composite IBC types 21HZ1, 21HZ2, 31HZ1 and 31HZ2: no permanent deformation which renders the IBC unsafe for transport and no leakage.

§ 178.815 Stacking test.

(a) *General.* The stacking test must be conducted for the qualification of all IBC design types intended to be stacked.

(b) *Special preparation for the stacking test.* (1) All IBCs except flexible IBC design types must be loaded to their maximum permissible gross mass.

(2) The flexible IBC must be filled to not less than 95% of its capacity and to its maximum permissible load, with the load being evenly distributed.

(c) *Test method.* (1) All IBCs must be placed on their base on level, hard ground and subjected to a uniformly distributed superimposed test load for a period of at least five minutes (see paragraph (d) of this section).

(2) Fiberboard, wooden, rigid plastic, and composite IBCs must be subjected to the test for 24 hours.

(3) Rigid plastic IBC types 11H2, 21H2, 31H2 and composite IBC types 11HZ2, 21HZ2, and 31HZ2 must be subjected to the test for 28 days at 40°C (104°F).

(4) For all IBCs, the load must be applied by one of the following methods:

(i) One or more IBCs of the same type loaded to their maximum permissible gross mass and stacked on the test IBC; or

(ii) Appropriate weights loaded on either a flat plate or a reproduction of the base of the IBC, which is stacked on the test IBC

(d) *Calculation of superimposed test load.* For all IBCs, the load to be placed on the IBC must be 1.8 times the combined maximum permissible gross mass of the number of similar IBCs that may be stacked on top of the IBC during transportation.

(e) *Criteria for passing the test.* (1) For metallic, rigid plastic, and flexible IBCs: No permanent deformation which renders the IBC unsafe for transport and no loss of contents.

(2) For composite, fiberboard, and wooden IBCs: No permanent deformation which renders the whole IBC including the base pallet unsafe for transport and no loss of contents.

§ 178.816 Topple Test

(a) *General.* The topple test must be conducted for the qualification of all flexible IBC design types as a design type qualification test.

(b) *Special preparation for the topple test.* The flexible IBC must be filled to not less than 95% of its capacity and to its maximum permissible load, with the load being evenly distributed.

(c) *Test method.* A flexible IBC must be toppled onto any part of its top upon a rigid, non-resilient, smooth, flat, and horizontal surface.

(d) *Topple height.* The topple height is specified as follows:

(1) Packing Group II: 1.2 m (3.9 feet).

(2) Packing Group III: 0.8 m (2.6 feet).

(e) *Criteria for passing the test.* No loss of contents. A slight discharge (e.g., from closures or stitch holes) upon impact is not considered to be a failure, provided no further leakage occurs.

§ 178.817 Righting test.

(a) *General.* The righting test must be conducted for the qualification of all flexible IBCs designed to be lifted from the top or side.

(b) *Special preparation for the righting test.* The flexible IBC must be filled to not less than 95% of its capacity and to its maximum permissible load, with the load being evenly distributed.

(c) *Test method.* The flexible IBC, lying on its side, must be lifted at a speed of at least 0.1 m/s (0.33 ft/s) to an upright position, clear of the floor, by one lifting device or by two lifting devices when four are provided.

(d) *Criterion for passing the test.* No damage to the IBC or its lifting devices which renders the IBC unsafe for transportation or handling.

§ 178.818 Tear test.

(a) *General.* The tear test must be conducted for the qualification of all flexible IBC design types.

(b) *Special preparation for the tear test.* The flexible IBC must be filled to not less than 95% of its capacity and to its maximum permissible load, the load being evenly distributed.

(c) *Test method.* Once the IBC is placed on the ground, a 100 mm (4 inch) knife score, completely penetrating the wall of a wide face, is made at a 45° angle to the principal axis of the IBC, halfway between the bottom surface and the top level of the contents. The IBC must then be subjected to a uniformly distributed superimposed load equivalent to twice the maximum permissible load. The load is applied for at least five minutes. An IBC which is designed to be lifted from the top or the side must, after removal of the superimposed load, be lifted clear of the floor and maintained in that position for a period of five minutes.

(d) *Criterion for passing the test.* The IBC passes if the cut does not propagate more than 25% of its original length.

§ 178.819 Vibration test.

(a) *General.* The vibration test must be conducted for the qualification of all IBC design types.

(b) *Test method.* (1) A sample IBC, selected at random, must be filled and closed as for shipment.

(2) The sample IBC must be placed on a vibrating platform that has a vertical double-amplitude (peak-to-peak displacement) of one inch. The IBC should be constrained horizontally to prevent them from falling off the platform, but must be left free to move vertically, bounce and rotate.

(3) The test must be performed for one hour at a frequency that causes the package to be raised from the vibrating platform to such a degree that a piece of material of approximately 1.6 mm (0.063 inch) thickness (such as steel strapping or paperboard) can be passed between the bottom of any IBC and the platform.

(4) Immediately following the period of vibration, each IBC must be removed from the platform, turned on its side and observed for any evidence of leakage.

(5) Other methods, at least equally effective, may be used, if approved by the Associate Administrator for Hazardous Materials Safety.

(c) *Criteria for passing the test.* An IBC passes the vibration test if there is no rupture or leakage from any of the packages.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

19. The authority citation for Part 180 would continue to read as follows:

Authority: 49 U.S.C. App. 1803; 49 CFR part 1.

20. A new Subpart D would be added to Part 180 to read as follows:

Subpart D—Qualification and Maintenance of Portable Tanks and Intermediate Bulk Containers

Sec.

180.350 Applicability.
180.351 Qualification of IBCs.
180.352 Requirements for retest and inspection of IBCs.

Subpart D—Qualification and Maintenance of Portable Tanks and Intermediate Bulk Containers

§ 180.350 Applicability.

This section prescribes requirements, in addition to those contained in parts 107, 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance, or periodic retesting of an IBC.

§ 180.351 Qualification of IBCs.

(a) *General.* Each IBC used for the transport of hazardous materials must be an authorized packaging.

(b) *IBC specifications.* To qualify as an authorized packaging, each IBC must conform to this subpart, the applicable requirements specified in part 173 of this subchapter, and the applicable requirements of subparts N and O of part 178 of this subchapter.

(c) *Five-year limit.* Rigid plastic IBCs may not be used in hazardous materials service for more than five years. A plastic inner receptacle of a composite IBC used in hazardous materials service for five years must be replaced with a receptacle identical to the original design type, or the entire composite packaging must be removed from hazardous materials service.

§ 180.352 Requirements for retest and inspection of IBCs.

(a) *General.* Each IBC constructed in accordance with a UN standard for which a test or inspection specified in this section is required may not be filled and offered for shipment until the test or inspection has been successfully completed. This paragraph does not apply to any IBC filled prior to the test or inspection due date. The requirements in this section do not apply to Specification 56 and 57 portable tanks.

(b) *Test and inspections.* Each metallic, rigid plastic, and composite IBC is subject to the following test and inspections:

(1) The leakproofness test prescribed in § 178.813 of this subchapter must be conducted every 2.5 years from the date of manufacture on each IBC intended for liquids or for solids loaded or discharged by pressure.

(2) An external visual inspection must be conducted initially after production and very 2.5 years from date of manufacture on each IBC to ensure that:

(i) The IBC is marked in accordance with requirements in § 178.703 of this subchapter. Missing or damaged markings, or markings difficult to read must be applied or returned to original condition;

(ii) Service equipment is fully functional and free from damage which may cause failure. Missing, broken, or damaged parts must be repaired or replaced;

(iii) The IBC, including the outer packaging if applicable, is free from damage which reduces its structural integrity. The IBC must be externally inspected for cracks, warpage and corrosion or any other damage which might render the IBC unsafe for transportation. An IBC found with such defects must be removed from service. If possible, the inner receptacle of a composite IBC must be removed from the outer frame for inspections. Defective inner receptacles may be replaced with a receptacle meeting the original design type. For metallic IBCs, thermal insulation must be removed only to the extent necessary for proper examination of the IBC body.

(3) Each metallic IBC must be internally inspected every five years to ensure that the IBC is free from damage which reduces its structural integrity.

(i) The IBC must be internally inspected for cracks, warpage, and corrosion or any other defect which might render the IBC unsafe for transportation. An IBC found with such defects must be removed from hazardous materials service.

(ii) Metallic IBCs must be checked to insure the minimum wall thickness requirements in § 178.705(c)(1)(iv)(A) of this subchapter are met. Metallic IBCs not complying with minimum wall thickness requirements must be removed from hazardous materials service.

(c) *Visual inspection.* Each flexible, fiberboard, or wooden IBC must be visually inspected to ensure that:

(1) The IBC is marked in accordance with requirements in § 178.703 of this subchapter. Additional marking allowed for each design type may be present. Required markings which are missing, damaged or difficult to read must be applied or returned to original condition.

(2) Proper construction and design specifications have been met.

(i) Each flexible IBC must be inspected to ensure that:

(A) Lifting straps if used, are securely fastened to the IBC in accordance with the design type;

(B) Seams are free from defects in stitching, heat sealing or gluing which would render the IBC unsafe for transport of hazardous materials. All stitched seam-ends must be secure; and

(C) Fabric used to construct the IBCs is free from cuts, tears and punctures. Additionally, fabric must be free form scoring which may render the IBC unsafe for transport.

(ii) Each fiberboard IBC must be inspected to ensure that:

(A) Fluting or corrugated fiberboard is firmly glued to facings;

(B) Seams are creased and free from scoring, cut, and scratches; and

(C) Joints are appropriately overlapped and glued; stitched, taped, or stapled as prescribed by the design. Where staples are used, the joints must be inspected for protruding staple-ends which could puncture or abrade the inner liner. All such ends must be protected before the IBC is authorized for hazardous materials service.

(iii) Each wooden IBC must be inspected to ensure that:

(A) End joints are secured in the manner prescribed by the design; and

(B) IBC walls are free from defects in wood. Inner protrusions which could puncture or abrade the liner must be covered.

(3) Flexible, fiberboard and wooden IBCs are prohibited from reuse.

(d) *Retest date.* The date of the most recent periodic retest must be marked on the IBC, on or near the certification plate.

(e) *Exceptions.* The requirements in this section do not apply to Specification 56 and 57 portable tanks.

(f) *Record retention.* The IBC owner shall keep records of periodic retests and initial and periodic inspections. Records must include design types, dates, locations, packaging specifications, test specifics and results, and names or name of persons testing, for each packaging, and at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test.

Issued in Washington, DC on July 22, 1992, under authority delegated in 49 CFR part 106, appendix A.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

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August 14, 1992

Part III

Department of Education

34 CFR Part 400, et al.

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 400, 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, and 428

RIN 1830-AA06

State Vocational and Applied Technology Education Programs and National Discretionary Programs of Vocational Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations governing three State-administered programs and 23 discretionary programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act (Act), Public Law 101-392, 104 Stat. 753 (1990). These regulations explain the types of activities that the Secretary may support under each program, and the basis on which the Secretary would make awards.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas L. Johns, Director, Policy Analysis Staff, Office of Vocational and Adult Education, U.S. Department of Education (Mary E. Switzer Building, room 4050), 400 Maryland Avenue, SW., Washington, DC 20202-7120. Telephone: (202) 205-8237. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

Background

The Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, which were enacted on September 25, 1990, amend the Carl D. Perkins Vocational Education Act (20 U.S.C. 2301 *et seq.* (1988)). Furthermore, amendments to the Act were made by Public Law 102-103, 105 Stat. 497 (1991). The Act authorizes Federal assistance for vocational education through fiscal year (FY) 1995.

The Act redirects Federal assistance for vocational education in order to focus the Federal funds on improving vocational education and, in particular, on improving vocational education and services for members of special populations, including disabled and disadvantaged individuals. Under the Act, a State must make broad assurances that members of the special populations will be given equal access to vocational education. In addition, an eligible recipient under Title II of the Act must make broad assurances that members of special populations will receive supplementary and other services necessary to succeed in the vocational education projects, services, and activities assisted with funds awarded under the State plan, and must give priority for assistance to limited numbers of sites or program areas that serve the highest concentrations of members of special populations. Subject to the requirements for services to members of special populations and to certain requirements for the distribution of funds, the State and its eligible recipients share increased authority to direct the use of the funds awarded under the Act to improve their vocational education programs. In exchange for this increased flexibility, the Act imposes new requirements on both a State and its eligible recipients, making them accountable for improving vocational education. Specifically, a State is required to assess the quality of its vocational education program using measurable objective criteria during each State plan cycle. Furthermore, a State is required to develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs. Using these statewide standards and measures, a recipient of funds under Title II, Part C of Act must annually evaluate the effectiveness of its projects, services, and activities receiving assistance under a basic program or a special program listed in § 403.60 or § 403.130, respectively, unless the State determines that only a broader evaluation will be effective. In cases where substantial progress is not made toward meeting these standards and measures, the recipient must implement a local program improvement plan, and, if that is not successful, a State and local joint plan for improvement.

The Secretary strongly supports increased flexibility for State and local recipients in exchange for increased accountability. "AMERICA 2000, An Educational Strategy," which was announced by the President on April 18, 1991, emphasizes the need for better and more accountable schools as well as the need to provide opportunities for adults to continue learning. Clearly, these needed improvements must be implemented by the States and local recipients. Also consistent with promoting accountability in education is the Secretary's goal to conduct evaluations of all Federal grant programs, to the extent resources permit. To conduct these evaluations, the Secretary will collect uniform data from grantees about project results.

Vocational education must play a crucial role in achieving the six national goals for educational improvement underlying the AMERICA 2000 strategy. Vocational education must be improved and made more accessible for members of special populations in order for this Nation to achieve the goal of ensuring that every adult American will possess the knowledge and skills necessary to compete in a global economy (Goal 5). Moreover, improvements in vocational education can contribute to the Nation's achievement of a high school graduation rate of at least 90 percent by the year 2000 (Goal 2). Increased integration of vocational and academic education can contribute to the national goals of producing students that demonstrate competency in challenging subject matter, including English, mathematics, science, history, and geography (Goal 3) and students who lead the world in mathematics and science achievement (Goal 4).

The Act reflects many amendments that will assist States and local recipients in improving their vocational education programs.

Analysis of Comments and Changes

On October 11, 1991, the Secretary published a notice of proposed rulemaking (NPRM) for the State Vocational and Applied Technology Education Programs and the National Discretionary Programs of Vocational Education in the **Federal Register** (56 FR 51448). In response to the Secretary's invitation in the NPRM, the Department received 808 letters commenting on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as appendix A to these final regulations.

A summary of the significant changes in the regulations since publication of the NPRM follows. The changes are described in the order that they appear in the regulations. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

The following significant changes have been made to the regulations:

(a) *Definitions.*

(1) *Coherent sequence of courses.* The definition of "coherent sequence of courses" in § 400.4(b) has been revised to include sequential units encompassed within a single adult training or retraining course that otherwise meets the requirements of the definition. The Secretary believes that Congress clearly intended that competency-based vocational programs be funded under the Act—including competency-based adult training and retraining, which are invariably conducted as single courses.

(2) *Economically disadvantaged family or individual.* The definition of "economically disadvantaged family or individual" in § 400.4(b) has been modified to include an individual who receives a Pell grant or assistance under a comparable State program of need-based financial assistance, or who is eligible to participate in programs assisted under Title II of the Job Training Partnership Act. Additionally, the phrase "or the Health and Human Services (HHS) Poverty Guidelines" has been added to paragraph (3) of the definition of "economically disadvantaged family or individual" following the reference to the Department of Commerce. The Secretary believes that receipt of a Pell grant or comparable State assistance, eligibility under Title II of the Job Training Partnership Act, and eligibility based on data from the HHS Poverty Guidelines are indices that would be representative of the economic status of students attending vocational education programs. These indices have been included in the regulations so that a case-by-case determination under paragraph (4) of the definition is not required prior to using them. A conforming change has been made to § 403.114(a).

(b) *Reporting requirements.* As part of the Department's increased efforts to reduce regulatory burden, § 400.10(b)(1) has been revised to require that recipients of grants and cooperative agreements under parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 must submit project performance reports to the Department at least semi-annually, rather than quarterly. A new paragraph (c) has been added to § 400.10 to clarify that recipients of State-administered grants under parts 403, 406, and 407 are only required to submit annual performance and financial reports to the Department. While the Secretary recognizes that reducing the reporting requirement from a quarterly reporting requirement to an annual reporting requirement would reduce paperwork burden for grantees even further, the Secretary believes that, for many of the discretionary programs funded under the Act, requiring grantees to report to the Department more frequently than once a year is essential to the Secretary's ability to provide adequate stewardship over the Federal funds awarded.

(c) *State councils on Vocational Education.*

(1) *Independence of State councils.* The clause containing the requirement that the State Council on Vocational Education perform its functions independently has been deleted from § 403.19(c)(1)(ii). The Secretary has added a new paragraph (3) to § 403.19(c), which provides that in carrying out any of its functions, whether carried out directly by council personnel or by way of one or more contracts for services, a State council must carry out its functions independent of programmatic and administrative control by other State boards, agencies, and individuals. This provision has been revised to more accurately reflect the requirement in section 112(e) of the Act that a State council must carry out all of its functions independent of programmatic and administrative control by other State boards, agencies, and individuals.

(2) *Release of grant awards to State councils.* The Secretary has revised § 403.50(b)(2) so as to provide specifically that a State council on vocational education that otherwise has complied with all applicable requirements and has submitted its annual budget will be eligible to receive its grant award for the following year once the Secretary has determined that the State plan is in substantially approvable form. The Secretary does not think that Congress intended the statutory provisions providing for an allotment to a State council to result in the undermining of the council's objectivity and autonomy or to result in providing a reward to a State council for failing conscientiously and effectively to fulfill its advisory role. Because the Secretary believes that Congress intended each State council to assist the State board in the development of a high quality State plan in an objective and effective manner, the Secretary views a grant award to a State council as being authorized at the point at which: (1) There is no further compliance activity required on the part of the council, and (2) the State plan is in substantially approvable form.

(d) *Special populations.*

(1) *Services in addition to supplementary services.* The Secretary has clarified that the requirement in § 403.111(a)(2)(i) to provide services other than supplementary services to members of special populations refers to the other services required by section 118(c) of the Act. Although the requirement for services in addition to supplementary services was recommended by the negotiators during the negotiated rulemaking, the Secretary believes that clarification of that requirement is necessary to make clear that the types of services that an eligible recipient must provide with funds awarded under Title II, Part C of the Act in addition to supplementary services are described in section 118(c) of the Act. Numerous commenters objected to the requirement to provide "other" services on the grounds that it would create an ambiguous, open-end requirement and an unwarranted burden.

(2) *Equitable participation.* Section 403.111(c)(3) has been changed to clarify that "equitable participation" means providing members of special populations with an opportunity to enter vocational education that is equal to that afforded to the general student population. This interpretation, which was added to the regulations in response to requests from numerous commenters, is similar to the one included in the draft regulations submitted to negotiated rulemaking. However, the revised regulations clarify the distinction in the Act concerning the requirement to provide an opportunity to members of special populations to enter a vocational education program as opposed to the requirement to provide the services necessary to enable members of special populations to participate fully and successfully in a vocational program.

(3) *State plan assurances.* A new § 403.188 has been added to clarify that a State's financial responsibility to serve members of special populations under the assurances in section 118(a) of the Act and § 403.32(a) (18) through (26) is not unlimited, and that a State is required to spend only funds awarded under the Act to satisfy these requirements, unless it is required by other applicable laws to spend non-Federal funds.

Equal access required by the assurances made pursuant to § 403.32(a) (18) through (19) means providing members of special populations with the opportunity to enter vocational education that is equal to the opportunity provided to general population students. The Secretary does not believe that it is possible or appropriate to limit application of the assurances of equal access to students

in specific projects, services, and activities that are funded under the Act. To do so would be inconsistent with the concept of fundamental fairness that equal access is intended to provide for members of special populations. However, the Secretary does not believe the Act creates new civil rights or individual entitlements to particular services for members of special populations, nor does the Secretary believe that the Act creates an unlimited financial responsibility for a State to serve special population students.

(4) *Assurances in the local application.* Section 403.190(b) has been changed to clarify that the assurances to provide services to members of special populations apply only to an eligible recipient's projects that are assisted with grant funds awarded under the basic and special programs—not to every project assisted under Title III of the Act. Both the basic programs under Title II of the Act, which are listed in § 403.60, and the so-called "special programs" under Title III of the Act, which are listed in § 403.130, are subject to the requirements of the State plan. While section 118(c) of the Act is clear that only recipients of funds awarded under Title II of the Act are required to make the assurances related to members of special populations, section 118 of the Act is more broadly worded as to which special populations students must be served. Both the broad language of section 118(c) of the Act and the placement of the provisions in Title I of the Act which relates to State plan and other general requirements—rather than within Title II, Part C of the Act—support a broader interpretation of the scope of these assurances. The scope of this requirement is consistent with the revision to the scope of the local evaluation required under section 117 of the Act.

(e) *Evaluation.*

(1) *Scope of the requirement.* Proposed § 403.191(a)(1) provided that a recipient of funds under Title II, Part C of the Act must evaluate annually the effectiveness of its entire vocational education program regardless of the source of funding. Sections 403.191 (a)(1), (c)(2), and (d) have been changed to indicate that a recipient of funds awarded under Title II, Part C of the Act must evaluate only the particular projects, services, and activities assisted under the basic programs in § 403.60, or the special programs in § 403.130, unless the State board determines under revised § 403.201(a)(3) that a broader evaluation is needed. Corresponding changes have been made to § 403.192(b)(1), regarding the requirement for a local improvement plan. Section 403.201(a)(3) has been changed to require a State board to determine whether a recipient of funds under Title II, Part C of the Act must evaluate more than the particular projects, services, and activities receiving assistance under a basic or special program in order to assess the effectiveness of those projects, services, and activities. Section 403.201(a)(4) has been added to require a State board to determine whether the entire local vocational education program—or which projects, services, and activities in addition to the ones assisted under a basic or special program—must be evaluated to assess the effectiveness of the particular projects, services, and activities receiving assistance under a basic or special program; and require a recipient to conduct an evaluation consistent with the State board's determination. These changes were made in response to numerous comments that the proposed requirement to evaluate a recipient's entire vocational program would impose undue burden on recipients. The Secretary notes that the change in the scope of the evaluation requirement is also in keeping with the Department's heightened efforts to reduce regulatory burden and increase flexibility for educators.

The Secretary wishes to emphasize that there are reasons why a State may decide to require a local evaluation that is broader in scope than the minimum required by § 403.191, as revised. A State has the flexibility and responsibility under revised § 403.201(a)(3) and (4) to require a broader evaluation. A State could determine that, because its recipients may use funds awarded under the Act jointly with State and local funds or for isolated costs such as equipment, the recipients cannot measure the impact of the Federal funds alone. A State also could determine, based on its particular needs and objectives and those of its recipients, that it is necessary to measure overall program improvement using the system of standards and measures developed under §§ 403.201 and 403.202 and not simply the impact of the funds awarded under the Act. In any instance in which a State decides that a broader evaluation is required under § 403.201(a)(3), a State is subject to the requirements of § 400.7(b).

In order to further reduce burden and increase flexibility, the Secretary encourages States to coordinate evaluation systems to eliminate duplication, so long as the statewide measures developed under the Act are addressed.

(2) *Sampling.* The Secretary has also reduced the burden of implementing the evaluation requirement by clarifying in § 403.191 that recipients may rely on representative samples in conducting the evaluation. Because there is a wide variety of the types of projects assisted under the basic or special programs, the populations participating, and the range in size of recipients, the regulations give recipients flexibility in using sampling. A recipient may choose, for example, to conduct an evaluation based on a representative sample of students, or of students in a particular grade, or of sites assisted under the Act. A recipient is not limited to sampling by these examples, and not all of these samples will result in reliable data for every eligible recipient. Therefore, § 403.191 gives a recipient the flexibility to determine which methods to employ as it is in the best position to know which methods are most feasible, cost effective, and reliable for it.

(3) *Use of funds.* In response to the confusion expressed by commenters, § 403.191(e) has been added to clarify that a recipient may use funds awarded under the Act to support the cost of the evaluation required in § 403.191, provided that all applicable requirements in the Act are met. In keeping with the goal of flexibility, and the Department's past practice of excluding the costs of evaluations from the costs of administration, if a recipient uses funds awarded under Title II, Part C of the Act for evaluation, the recipient is not required to count those costs as part of the five percent that a recipient may reserve for administration under section 235(c)(4) of the Act.

(f) *Tech-prep education program—Preparatory services.* A change has been made to § 406.3(b)(7) and elsewhere to indicate that preparatory services must be provided under tech-prep education programs for all populations.

Comments related to this provision make clear that the use of the term "preparatory services" in connection with tech-prep programs has created confusion. That term as defined in section 521(24) refers to services for "individuals who are not enrolled in vocational education programs" and includes services that are not applicable to students who are enrolled in vocational education programs, such as outreach and recruitment. Thus, the Secretary believes that the requirement to provide preparatory services to all "participants" under section 344(b)(7) of the Act is inconsistent with the definition of "preparatory services" in section 521(24) of the Act, which includes only services appropriate for individuals not enrolled in vocational education. Item 182 of the Conference Report accompanying the Act indicates that the requirement to provide preparatory services to all participants originated in section 212(b)(6) of the Senate amendment as a requirement to provide pre-vocational programs that assist the participants in sections 223 and 242 of the Senate amendment, which included discrete populations such as the economically disadvantaged, criminal offenders, and single parents. (H.R. Rep. No. 660, 101st Cong., 2d Sess. 138 (1990).) The conferees agreed to make a conforming amendment to change "pre-vocational" to "preparatory" and, without explanation, changed "participants in sections 223 and 242" to "all participants." Based on the legislative history of the Act, the Secretary believes that Congress intended to require preparatory services related to tech-prep education for "all populations"—not all participants.

(g) *Competition for the National Center or Centers for Research in Vocational Education Program (Notional Center).* Section 413.20 has been revised to clarify that, while the Secretary holds two competitions for the National Center and judges applications according to the criteria in § 413.21 (for applied research and development activities) and § 413.22 (for dissemination and training activities), in accordance with section 404(a)(5) of the Act, the Secretary intends to give preference in grant selection to an institution or consortium of institutions that demonstrates the ability to carry out effectively both activities listed in section 404(a) of the Act and in § 413.3(a) and (b). Section 413.20(h) of the NPRM, which provided for the assignment of five preference points to certain applications, has been deleted. In lieu of preference points, provided for in the proposed regulations, new paragraphs (h) and (i) have been added to § 413.20 to explain the specific process by which the Secretary determines the ability of applicants to carry out both program activities effectively and by which the Secretary gives preference to the selection of a single grant recipient. Finally, a new paragraph (j) has been added to § 413.20 to clarify that, in the event that no applicant institution or consortium of institutions demonstrates to the Secretary its ability to carry out both activities effectively, the Secretary makes two grant awards to the applicants scoring the highest in each of the competitions.

The Secretary believes that these revisions to § 413.20 are responsive to the commenters' concerns, provide for an equitable and efficient competition that gives a strong preference to funding a single institution or consortium, and ensure that, if a single institution or consortium is indeed funded, it will have demonstrated the ability to carry out both program functions effectively and in accordance with the purposes of section 404 of the Act.

(h) *Bilingual Vocational Instructor Training Program.* Sections 428.1, 428.3(a)(1), 428.10(h), 428.21(a)(2), 428.21(b)(1)(i) and (iii), and 428.21(b)(2) have been revised to authorize the training of secondary vocational instructors in training projects supported under the Bilingual Vocational Instructor Training Program. As proposed, § 428.1 would have limited training under the Bilingual Vocational Instructor Training Program to personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults. The proposed regulations were intended to reinforce the traditional link between the Bilingual Vocational Instructor Training Program and the Bilingual Vocational Training Program that is limited by law to training "limited English proficient out-of-school youth and adults." However, the Secretary has modified this approach because it had the disadvantage of slowing the pace with which secondary vocational education institutions might adopt the highly successful bilingual vocational training models developed under the Bilingual Vocational Instructor Training Program. It also had the disadvantage of giving local agencies and institutions less flexibility to use Federal funds to address locally defined educational needs.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

Programs covered by 34 CFR parts 402, 403, 405, 406, 407, 408, 409, 412, 414, 415, 417, 421, 422, 423, 424, 425, 426, 427, and 428 are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 400

Administrative practices and procedure, Education, Grant programs, and Vocational education.

34 CFR Parts 401, 410, and 425

Education, Indian education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 402, 407, 408, 409, 412, 415, and 423

Education, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 403

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Equal education opportunity, Manpower training programs, Minority groups, Prisoners, Private schools, Reporting and recordkeeping requirements, Schools, Vocational education, and Women.

34 CFR Parts 405 and 406

Business and industry, Colleges and universities, Education, Education of disadvantaged, Education of handicapped, Labor unions, Minority groups, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Parts 411 and 413

Education, Education research, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 414

Education, Reporting and recordkeeping requirements, Telecommunications, and Vocational education.

34 CFR Parts 416, 417, 418, and 419

Education, Reporting and recordkeeping requirements, Scholarships and fellowships, and Vocational education.

34 CFR Parts 421 and 426

Education, Business and industry, Labor unions, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 422

Education, Prisoners, Reporting and recordkeeping requirements, and Vocational education.

34 CFR Part 424

Education, Education of disadvantaged, Education of handicapped, Minority groups, Reporting and recordkeeping requirements, Vocational education, and Women.

34 CFR Parts 427 and 428

Bilingual education, Education, Reporting and recordkeeping requirements, and Vocational education.

Redesignation Table

In order to accommodate new programs authorized by the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, several part numbers in chapter IV of title 34 are redesignated. The following table lists old and new part numbers for all vocational education programs in chapter IV of title 34.

New 34 CFR Part Nos.	Title	Old 34 CFR Part Nos.
400	Vocational and Applied Technology Education—General Provisions.	400
401	Indian Vocational Education Program.	410
402	Native Hawaiian Vocational Education Program.	410
403	State Vocational and Applied Technology Education Program.	401
404	[Reserved]	
405	National Tech-Prep Education Program.	New
406	State-Administered Tech-Prep Education Program.	New
407	Supplementary State Grants Program.	New
408	Community Education Employment Centers Program.	New
409	Vocational Education Lighthouse Schools Program.	New
410	Tribally Controlled Postsecondary Vocational Institutions Program.	New
411	Vocational Education Research Program.	416
412	National Network for Curriculum Coordination in Vocational and Technical Education.	New
413	National Center or Centers for Research in Vocational EducationProgram.	417
414	Materials Development in Telecom-munications Program.	New
415	Demonstration Centers for the Training of Dislocated Workers Program.	411
416	Vocational Education Training and Study Grants Program.	New
417	Vocational Education Leadership Development Awards Program.	New
418	Vocational Educator Training Fellowships Program.	New
419	Internships for Gifted and Talented Vocational Education Students Program.	New
420	[Reserved]	
421	Business and Education Standards Program.	New
422	Educational Programs for Federal Correctional Institutions.	New
423	Vocational Education Dropout Prevention Program.	New
424	Model Centers of Regional Training for Skilled Trades Program.	New
425	Demonstration Projects for the Integration of Vocational and Academic Learning Program.	New
426	Cooperative Demonstration Programs.	412
427	Bilingual Vocational Training Program.	407
428	Bilingual Vocational Instructor Training Program.	408
429	Bilingual Materials, Methods, and Techniques Program.	409
430–444	[Reserved]	
445	Technology Education Demonstration Program.	445

Dated: August 6, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.048 (Basic Grants to the States), 84.049 (Consumer and Homemaking Education Program), 84.051 (National Vocational Education Research Program and the National Center for Research in Vocational Education), 84.053 (State Councils for Vocational Education), 84.077 (Bilingual Vocational Training Program), 84.099 (Bilingual Vocational Instructor Training Program), 84.101 (Indian and Hawaiian Natives Program), 84.174 (State Assistance for Vocational Education Support Programs by Community-Based Organizations), 84.193 (Demonstration Centers for the Training of Dislocated Workers), 84.199 (Cooperative Demonstration Programs), 84.243 (State-Administered Tech-Prep Education Program), 84.244 (Business and Education Standards Program), 84.245 (Tribally Controlled Postsecondary Vocational Institutions Program), 84.248 (Demonstration Projects for the Integration of Vocational and Academic Learning Program), and 84.253 (Supplementary State Grants Program). Catalog of Federal Domestic Assistance Numbers have not been assigned for the National Tech-Prep Education Program, Community Education Employment Centers Program, Vocational Education Lighthouse Schools Program, Materials Development in Telecommunications Program, Vocational Education Training and Study Grants Program, Vocational Education Leadership Development Awards Program, Vocational Education Training Fellowships Program, Internships for Gifted and Talented Vocational Education Students Program, Educational Programs for Federal Correctional Institutions, Vocational Education Dropout Prevention Program, and Model Centers of Regional Training for Skilled Trades.)

Chapter IV of title 34 of the Code of Federal Regulations is amended as follows:

PART 409—[REDESIGNATED AS PART 429]

1. Part 409 is redesignated as part 429.

2. Part 400 is revised to read as follows:

PART 400—VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

Sec.

400.1 What is the purpose of the Vocational and Applied Technology Education Programs?
400.2 What programs are governed by these regulations?
400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?
400.4 What definitions apply to the Vocational and Applied Technology Education Programs?
400.5 Under what conditions may funds under the Act be used for the joint funding of programs?
400.6 What are the requirements for establishing a State Committee of Practitioners?
400.7 What are the provisions governing the issuance of State core standards and measures of performance and State rules or regulations?
400.8 What are the provisions governing student assistance?
400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?
400.10 What are the reporting requirements?

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

§ 400.1 What is the purpose of the Vocational and Applied Technology Education Programs?

(a) The purpose of the Vocational and Applied Technology Education Programs is to make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population.

(b) The purpose will be achieved principally through concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society.

(Authority: 20 U.S.C. 2301)

§ 400.2 What programs are governed by these regulations?

The regulations in this part apply to the Vocational and Applied Technology Education Programs as follows:

(a) *State-administered programs.* (1) State Vocational and Applied Technology Education Program (34 CFR part 403).

(2) State-Administered Tech-Prep Education Program (34 CFR part 406).

(3) Supplementary State Grants Program (34 CFR part 407).

(b) *National discretionary programs.* (1) Indian Vocational Education Program (34 CFR part 401).

(2) Native Hawaiian Vocational Education Program (34 CFR part 402).

(3) National Tech-Prep Education Program (34 CFR part 405).

(4) Community Education Employment Centers Program (34 CFR part 408).

(5) Vocational Education Lighthouse Schools Program (34 CFR part 409).

(6) Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410).

(7) Vocational Education Research Program (34 CFR part 411).

(8) National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412).

(9) National Center or Centers for Research in Vocational Education (34 CFR part 413).

(10) Materials Development in Telecommunications Program (34 CFR part 414).

(11) Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415).

(12) Vocational Education Training and Study Grants Program (34 CFR part 416).

(13) Vocational Education Leadership Development Awards Program (34 CFR part 417).

(14) Vocational Educator Training Fellowships Program (34 CFR part 418).

(15) Internships for Gifted and Talented Vocational Education Students Program (34 CFR part 419).

(16) Business and Education Standards Program (34 CFR part 421).

(17) Educational Programs for Federal Correctional Institutions (34 CFR part 422).

(18) Vocational Education Dropout Prevention Program (34 CFR part 423).

(19) Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424).

(20) Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425).

(21) Cooperative Demonstration Programs (34 CFR part 426).

(22) Bilingual Vocational Training Program (34 CFR part 427).

(23) Bilingual Vocational Instructor Training Program (34 CFR part 428).

(24) Bilingual Materials, Methods, and Techniques Program (34 CFR part 429).

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.3 What other regulations apply to the Vocational and Applied Technology Education Programs?

The following regulations apply to the Vocational and Applied Technology Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs) (applicable to parts 401, 402, 405, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429 except that 34 CFR 75.720(b) does not apply to performance reports under parts 401, 402, 405, 408, 409, 412, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428, and to financial reports under parts 412 and 413).

(3) 34 CFR part 76 (State-Administered Programs) (applicable to parts 403, 406, and 407).

(4) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(5) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities) (not applicable to parts 401, 410, 411, 413, 418, and 419).

(6) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(7) 34 CFR part 81 (General Education Provisions Act— Enforcement).

(8) 34 CFR part 82 (New Restrictions on Lobbying) (not applicable to parts 401 and 410).

(9) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(10) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The Federal Acquisition Regulation (FAR) in 48 CFR chapter 1 and the Education Department Acquisition Regulation (EDAR) in 48 CFR chapter 34 (applicable to contracts under parts 401, 402, 411, 412, 428, 427, 428, and 429).

(c) The regulations in this part 400.

(d) The regulations in 34 CFR parts 401, 402, 403, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 421, 422, 423, 424, 425, 426, 427, 428, and 429.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 400.4 What definitions apply to the Vocational and Applied Technology Education Programs?

(a) *Definitions in EDGAR.* The following terms used in regulations for the Vocational and Applied Technology Education Programs are defined in 34 CFR 77.1:

Acquisition
Applicant
Application
Award
Budget
Contract
Department
EDGAR
Elementary school
Facilities
Federally recognized Indian tribal government
Fiscal year
Grant
Grantee

Grant period
Nonprofit
Private
Project
Public
Recipient
Secondary school
Secretary
State educational agency
Subgrant
Subgrantee
Supplies

(b) *Other definitions.* The following definitions also apply to the regulations for Vocational and Applied Technology Education Programs.

Act means the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*), as amended by Public Law 101–392, 104 Stat. 753 (1990), and Public Law 102–103, 105 Stat. 497 (1991), unless otherwise indicated.

Administration means activities of a State necessary for the proper and efficient performance of its duties under the Act, including supervision, but not including curriculum development activities, personnel development, or research activities.

All aspects of an industry includes, with respect to a particular industry that a student is preparing to enter, planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, health and safety, and environmental issues related to that industry.

Americans with Disabilities Act of 1990 or *ADA* mean the Act in 42 U.S.C. 12101 *et seq.*

Apprenticeship training program means a program registered with the Department of Labor or the State apprenticeship agency in accordance with the Act of August 16, 1937, known as the National Apprenticeship Act (29 U.S.C. 50), that is conducted or sponsored by an employer, a group of employers, or a joint apprenticeship committee representing both employers and a union, and that contains all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices.

Area vocational education school means—

(1) A specialized high school used exclusively or principally for the provision of vocational education to individuals who are available for study in preparation for entering the labor market;

(2) The department of a high school exclusively or principally used for providing vocational education in not less than five different occupational fields to individuals who are available for study in preparation for entering the labor market;

(3) A technical institute or vocational school used exclusively or principally for the provision of vocational education to individuals who have completed or left high school and who are available for study in preparation for entering the labor market; or

(4) The department or division of a junior college, community college, or university that operates under the policies of the State board and provides vocational education in not less than five different occupational fields leading to immediate employment but not necessarily leading to a baccalaureate degree, if, in the case of a school, department, or division described in paragraph (3) of this definition or in this paragraph, it admits as regular students both individuals who have completed high school and individuals who have left high school.

Career guidance and counseling means programs that—

(1) Pertain to the body of subject matter and related techniques and methods organized for the development in individuals of career awareness, career planning, career decision-making, placement skills, and knowledge and understanding of local, State, and national occupational, educational, and labor market needs, trends, and opportunities; and

(2) Assist those individuals in making and implementing informed educational and occupational choices.

Chapter 1 means chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701 *et seq.*).

Coherent sequence of courses means a series of courses in which vocational and academic education are integrated, and which directly relates to, and leads to, both academic and occupational competencies. The term includes competency-based education, academic education, and adult training or retraining, including sequential units encompassed within a single adult retraining course, that otherwise meet the requirements of this definition.

Community-based organization means a private nonprofit organization of demonstrated effectiveness that is representative of communities or significant segments of communities and that provides job training services (for example, Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, National Council of La Raza, WAVE, Inc., Jobs for Youth, organizations operating career intern programs, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in section 7(10) of the Rehabilitation Act of 1973 (29 U.S.C. 706(10)), agencies serving youth, agencies serving individuals with disabilities, including disabled veterans, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations), and an organization of demonstrated effectiveness serving non-reservation Indians (including the National Urban Indian Council), as well as tribal governments and Native Alaskan groups.

(Authority: 20 U.S.C. 2471(6); 41 U.S.C. 1503(5))

Construction includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and includes site grading and improvement and architect fees.

Cooperative education means a method of instruction of vocational education for individuals who, through written cooperative arrangements between the school and employers, receive instruction, including required academic courses and related vocational instruction by alternation of study in school with a job in any occupational field. The two experiences must be planned and supervised by the school and employers so that each contributes to the student's education and employability. Work periods and school attendance may be on alternate half days, full days, weeks, or other periods of time in fulfilling the cooperative program.

Criminal offender means any individual who is charged with, or convicted of, any criminal offense, including a youth offender or a juvenile offender.

Correctional institution means any—

(1) Prison;
(2) Jail;
(3) Reformatory;
(4) Work farm;
(5) Detention center; or
(6) Halfway house, community-based rehabilitation center, or any other similar institution designed for the confinement or rehabilitation of criminal offenders.

Curriculum materials means instructional and related or supportive material, including materials using advanced learning technology, in any occupational field that is designed to strengthen the academic foundation and prepare individuals for employment at the entry level or to upgrade occupational competencies of those previously or presently employed in any occupational field, and appropriate counseling and guidance material.

Disadvantaged refers to individuals (other than individuals with disabilities) who have economic or academic disadvantages and who require special services and assistance in order to enable these individuals to succeed in vocational education programs. This term includes individuals who are members of economically disadvantaged families, migrants, individuals of limited English proficiency, and individuals who are dropouts from, or who are identified as potential dropouts from, secondary school. For the purpose of this definition, an individual who scores at or below the 25th percentile on a standardized achievement or aptitude test, whose secondary school grades are below 2.0 on a 4.0 scale (on which the grade "A" equals 4.0), or who fails to attain minimum academic competencies may be considered "academically disadvantaged." The definition does not include individuals with learning disabilities.

Displaced homemaker means an individual who—

(1) Is an adult;

(2) Has worked as an adult primarily without remuneration to care for the home and family, and for that reason has diminished marketable skills; and

(3)(i) Has been dependent on public assistance or on the income of a relative but is no longer supported by that income;

(ii) Is a parent whose youngest dependent child will become ineligible to receive assistance under part A of Title IV of the Social Security Act (42 U.S.C. 601), Aid to Families with Dependent Children, within two years of the parent's application for assistance under the Carl D. Perkins Vocational and Applied Technology Education Act;

(iii) Is unemployed or underemployed and is experiencing difficulty in obtaining any employment or suitable employment, as appropriate; or

(iv) Is described in paragraphs (1) and (2) of this definition and is a criminal offender.

Economically disadvantaged family or individual means a family or individual that is—

(1) Eligible for any of the following:

(i) The program for Aid to Families with Dependent Children under part A of Title IV of the Social Security Act (42 U.S.C. 601).

(ii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iii) To be counted for purposes of section 1005 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1) (20 U.S.C. 2701).

(iv) The free or reduced-price meals program under the National School Lunch Act (42 U.S.C. 1751).

Note to paragraph (1)(iv): The National School Lunch Act prohibits the identification of students by name. However, State and local projects may use the total number of students participating in a free or reduced-priced meals program to determine eligibility for projects, services, and activities under the Vocational and Applied Technology Education Programs.

(v) Participation in programs assisted under Title II of the JTPA.

(2) In receipt of a Pell grant or assistance under a comparable State program of need-based financial assistance.

(3) Determined by the Secretary to be low-income according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

(4) Identified as low income according to other indices of economic status, including estimates of those indices, if a grantee demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(Authority: 20 U.S.C. 2341(d)(3))

Eligible recipient means, except as otherwise provided, a local educational agency, an area vocational education school, an intermediate educational agency, a postsecondary educational institution, a State corrections educational agency, or an eligible institution as defined in 34 CFR 403.117(a).

General occupational skills means strong experience in, and understanding of, all aspects of an industry.

High technology means state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care.

IDEA means the Individuals with Disabilities Education Act (20 U.S.C. 1400 *et seq.*), formerly entitled "Education of the Handicapped Act."

Individual with disabilities means any individual with any disability (as defined in section 3(2) of the Americans With Disabilities Act of 1990), which includes any individual who—

(1) Has a physical or mental impairment that substantially limits one or more of the major life activities of that individual;

(2) Has a record of an impairment described in paragraph (1) of this definition; or

(3) Is regarded as having an impairment described in paragraph (1) of this definition.

Note: This definition necessarily includes any individual who has been evaluated under part B of the IDEA and determined to be an individual with a disability who is in need of special education and related services; and any individual who is considered disabled under section 504 of the Rehabilitation Act of 1973.

(Authority: 42 U.S.C. 12102(2))

Individualized education program means a written statement for a disabled individual developed in accordance with sections 612(4) and 614(a)(5) of the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)).

Institution of higher education. (1) The term means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(ii) Is legally authorized within such State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program that is acceptable for full credit toward such a degree;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited—

(A) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the

accreditation standards of such an agency or association within a reasonable time; or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(2) The term also includes—

(i) Any school which provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (1) (i), (ii), (iv), and (v) of this definition; and

(ii) A public or nonprofit private educational institution in any State which, in lieu of the requirement in paragraph (1) of this definition, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who meet the requirements of section 484(d) of the Higher Education Act of 1965 (20 U.S.C. 1091(d)).

(Authority: 20 U.S.C. 1141(a))

Intermediate educational agency means a combination of school districts or counties (those divisions of a State utilized by the Secretary of Commerce in compiling and reporting data regarding counties) as are recognized in a State as an administrative agency for that State's vocational or technical education schools or for vocational programs within its public elementary or secondary schools. This term includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.

(Authority: 20 U.S.C. 2891(5))

JTPA means the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Limited English proficiency, if used with reference to individuals, means individuals—

(1)(i) Who were not born in the United States or whose native language is a language other than English;

(ii) Who come from environments where a language other than English is dominant; or

(iii) Who are American Indian and Alaska Natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency; and

(2) Who by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny those individuals the opportunity to learn successfully in classrooms where the language of instruction is English or to participate fully in our society.

(Authority: 20 U.S.C. 3223(a)(1))

Local educational agency means a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program. For the purposes of sections 114, 115, 116, 117, and 240 of the Act (implemented at 34 CFR 403.31 (e) and (f), 403.32(c)(3), 403.190, 403.191, 403.192, 403.201, 403.202, and 403.204), this term includes a State corrections educational agency.

Measure means a description of an outcome.

(Authority: H.R. Rep. No. 41, 101st Cong., 1st Sess. 13 (1989))

Postsecondary educational institution means an institution legally authorized to provide postsecondary education within a State, a Bureau of Indian Affairs-controlled postsecondary institution, or any postsecondary educational institution operated by, or on behalf of, any Indian tribe that is eligible to contract with the Secretary of the Interior for the administration of programs under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or under the Act of April 16, 1934 (25 U.S.C. 452).

Preparatory services means services, programs, or activities designed to assist individuals who are not enrolled in vocational education programs in the selection of, or preparation for participation in, an appropriate vocational education training program. Preparatory services may include, but are not limited to—

(1) Services, programs, or activities related to outreach to, or recruitment of, potential vocational education students;

(2) Career counseling and personal counseling;

(3) Vocational assessment and testing; and

(4) Other appropriate services, programs, or activities.

Private vocational training institution means a business or trade school, or technical institution or other technical or vocational school, in any State, that—

(1) Admits as regular students only persons who have completed or left elementary or secondary school and who have the ability to benefit from the training offered by the institution;

(2) Is legally authorized to provide, and provides within that State, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations;

(3) Has been in existence for two years or has been specially accredited by the Secretary as an institution meeting the other requirements of this definition; and

(4) Is accredited—

(i) By a nationally recognized accrediting agency or association listed by the Secretary;

(ii) If the Secretary determines that there is no nationally recognized accrediting agency or association qualified to accredit schools of a particular category, by a State agency listed by the Secretary; or

(iii) If the Secretary determines that there is no nationally recognized or State agency or association qualified to accredit schools of a particular category, by an advisory committee appointed by the Secretary and composed of persons specially qualified to evaluate training provided by schools of that category. The committee shall prescribe the standards of content, scope, and quality that must be met by those schools and shall also determine whether particular schools meet those standards.

Program effectiveness panel means the panel of experts in the evaluation of education programs and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in 34 CFR 786.12 or 787.12.

Program year or *academic year* mean the twelve-month period during which a State operates its vocational education program (which is most generally a period beginning on July 1 and ending on the following June 30).

(Authority: 20 U.S.C. 1225(a))

Rehabilitation Act of 1973 means the Act in 29 U.S.C. 701 *et seq.*

School facilities means classrooms and related facilities, including initial equipment, and interests in lands on which the facilities are constructed. The term does not include any facility intended primarily for events for which admission is to be charged to the general public.

Sequential course of study means an integrated series of courses that are directly related to the educational and occupational skills preparation of individuals for jobs, or preparation for postsecondary education.

Single parent means an individual who—

(1) Is unmarried or legally separated from a spouse; and

(2)(i) Has a minor child or children for which the parent has either custody or joint custody; or

(ii) Is pregnant.

Small business means a for-profit enterprise employing 500 or fewer employees.

Special populations refers to individuals with disabilities, educationally and economically disadvantaged individuals (including foster children), individuals of limited English proficiency, individuals who participate in programs designed to eliminate sex bias, and individuals in correctional institutions.

Specific job training means training and education for skills required by an employer to provide the individual student with the ability to obtain employment and to adapt to the changing demands of the workplace.

Spread means the degree to which—

(1) Project activities and results are demonstrated to others;

(2) Technical assistance is provided to others to help them replicate project activities and results;

(3) Project activities and results are replicated at other sites; or

(4) Information and material about or resulting from the project are disseminated.

Standard means the level or rate of an outcome.

(Authority: H.R. Rep. No. 41, 101st Cong., 1st Sess. 13 (1989))

State means any of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and Palau (until the Compact of Free Association with Palau takes effect pursuant to section 101(a) of Public Law 99-658 (48 U.S.C. 1681)).

State board means a State board designated or created by State law as the sole State agency responsible for the administration of vocational education or for supervision of the administration of vocational education in the State.

State corrections educational agency means the State agency or agencies responsible for carrying out corrections education programs in the State.

State council means the State council on vocational education established in accordance with 34 CFR 403.17 through 403.19.

Supplementary services means curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids and devices.

Technology education means an applied discipline designed to promote technological literacy that provides knowledge and understanding of the impacts of technology including its organizations, techniques, tools, and skills to solve practical problems and extend human capabilities in areas such as construction, manufacturing, communication, transportation, power, and energy.

Transportability means the ease by which project activities and results may be replicated at other sites, such as through the development and use of guides or manuals that provide step-by-step directions for others to follow in order to initiate similar efforts and reproduce comparable results.

Tribally controlled community college means an institution that receives assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a).

Vocational education means organized educational programs offering a sequence of courses or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.

Vocational student organizations means those organizations for individuals enrolled in vocational education programs that engage in activities as an integral part of the instructional program. These organizations may have State and national units that aggregate the work and purposes of instruction in vocational education at the local level.

Wagner-Peyser Act means the Act in 29 U.S.C. 49 *et seq.*

(Authority: 20 U.S.C. 2471)

§ 400.5 Under what conditions may funds under the Act be used for the joint funding of programs?

(a) Funds made available under the Act may be used to provide additional funds under any of the programs in—

(1) Title II, section 123 and Title III of the JTPA; or

(2) The Wagner-Peyser Act.

(b) Funds used to carry out paragraph (a) of this section may be used only if the—

(1) Program otherwise meets the requirements of the Act and the requirements of the programs in paragraph (a) (1) and (2) of this section;

(2) Program serves the same individuals that are served under the Act;

(3) Program provides services in a coordinated manner with services provided under the Act; and

(4) Funds would be used to supplement, and not supplant, funds provided from non-Federal sources.

(c) Funds that meet the conditions in paragraphs (a) and (b) of this section may be used as matching funds.

(Authority: 20 U.S.C. 2468)

§ 400.6 What are the requirements for establishing a State Committee of Practitioners?

(a) *Consultation.* A State shall appoint a State Committee of Practitioners (Committee) after consulting with—

(1) Local school officials representing eligible recipients;

(2) Representatives of—

(i) Organized labor;

(ii) Business;

(iii) Superintendents;

(iv) Community-based organizations;

(v) Private industry councils established under section 102(a) of the JTPA (29 U.S.C. 1512);

(vi) State councils;

(vii) Parents;

(viii) Special populations; and

(ix) Correctional institutions;

(3) The administrator appointed under 34 CFR 403.13(a);

(4) The State administrator of programs assisted under Part B of the IDEA;

(5) The State administrator of programs assisted under Chapter 1;

(6) The State administrator of programs for students of limited English proficiency; and

(7) Guidance counselors.

(b) *Committee selection.* The State shall select the Committee from nominees solicited from—

(1) State organizations representing school administrators;

(2) Teachers;

(3) Parents;

(4) Members of local boards of education; and

(5) Appropriate representatives of institutions of higher education.

(c)(1) *Committee membership.* The Committee must consist of—

(i) Representatives of local educational agencies, who must constitute a majority of the members of the committee;
(ii) School administrators;
(iii) Teachers;
(iv) Parents;
(v) Members of local boards of education;
(vi) Representatives of institutions of higher education; and
(vii) Students.

(2) School administrators, teachers, and members of local boards of education may be counted as representatives of LEAs for purposes of paragraph (c)(1)(i) of this section.

(Authority: 20 U.S.C. 2325 (a) and (d)(1); 2468a)

§ 400.7 What are the provisions governing the issuance of State core standards and measures of performance and State rules or regulations?

(a)(1) *State standards and measures.* A State shall convene, on a regular basis, the Committee established under § 400.6 to review, comment on, and propose revisions to a draft proposal that the State board develops for a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) The Committee shall make recommendations to the State board with respect to modifying statewide standards and measures based on information provided by the State under 34 CFR 403.201(d).

(b)(1) *State rules and regulations.* Except as provided in paragraph (b)(2) of this section, before a State publishes any proposed or final State rule or regulation for programs, services, or activities covered by the Act, the State shall convene the Committee for the purpose of reviewing the rule or regulation.

(2) In an emergency, in which a rule or regulation must be issued within a very limited time period to assist eligible recipients with the operation of projects, services, or activities, the State—

(i) May issue a proposed rule or regulation without meeting the requirements in paragraph (b)(1) of this section; but

(ii) Shall immediately convene the Committee to review the rule or regulation before it is issued in final form.

Cross-Reference: See § 400.9(c).

(3) If a State policy is binding on eligible recipients and has the same effect as a formal rule or regulation, although it is not issued as one, that policy is covered by this section.

(Authority: 20 U.S.C. 2325(a); 2468a)

§ 400.8 What are the provisions governing student assistance?

(a) The portion of any student financial assistance received under the Act that is made available for attendance costs described in paragraph (b) of this section may not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

(b) For purposes of this section, attendance costs are —

(1) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, including costs for rental or purchases of any equipment, materials, or supplies required of all students in the same course of study; and

(2) An allowance for books, supplies, transportation, dependent care, and miscellaneous personal expenses for a student attending an institution on at least a half-time basis, as determined by the institution.

(Authority: 20 U.S.C. 2466d)

§ 400.9 What additional requirements govern the Vocational and Applied Technology Education Programs?

In addition to the Act, applicable Federal laws, and regulations, the following requirements apply to Vocational and Applied Technology Education Programs:

(a) A State that receives funds under the Act shall cooperate with the Secretary in supplying the information the Secretary requires, in the form the Secretary requires, and shall comply in its reports with the information system developed by the Secretary under section 421 of the Act.

(b) Nothing in the Act is to be construed to be inconsistent with applicable Federal laws guaranteeing civil rights, or is intended to, or has the effect of, limiting or diminishing any obligations imposed under the IDEA or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(c) Any State rule, regulation, or policy imposed on the administration or operation of programs funded under the Act, including any rule, regulation, or policy based on a State's interpretation of any Federal law, regulation, or guideline, must be identified as a State imposed requirement.

(d) Funds provided under the Act may not be used for the purpose of directly providing incentives or inducements to relocate a business or enterprise from one State to another State if the relocation would result in a reduction in the number of jobs available in the State where the business enterprise is located before the incentives or inducements are offered.

(e) A State may not take into consideration payments under the Act in determining for any educational agency or institution in that State the eligibility for State aid or the amount of State aid with respect to public education within the State.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2421, 2424, 2466c, 2466b, 2468c, and 2468e(a)(2))

§ 400.10 What are the reporting requirements?

(a) Recipients of grants and cooperative agreements shall report information about students, projects, evaluations, dissemination, expenditures, accomplishments, and any other information, as may be required by the Secretary.

(b) Recipients of grants and cooperative agreements under—

(1) Parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 shall submit performance reports at least semi-annually;

(2) Part 412 shall submit monthly progress and financial status reports and an annual impact report; and

(3) Part 413 shall submit monthly exception reports and quarterly financial status reports.

(c) Recipients of grants under parts 403, 406, and 407 shall submit annual performance and financial reports.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2301 *et seq.*)

3. Part 401 is revised to read as follows:

PART 401—INDIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.
401.1 What is the Indian Vocational Education Program?
401.2 Who is eligible for an award?
401.3 What activities may the Secretary fund?
401.4 What regulations apply?
401.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

401.10 How are applications submitted?

Subpart C—How Does the Secretary Make an Award?

401.20 How does the Secretary evaluate an application?
401.21 What selection criteria does the Secretary use?
401.22 What additional factors may the Secretary consider?
401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

Subpart D—What Conditions Must Be Met After an Award?

401.30 How do the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?
401.31 What are the evaluation requirements?

Authority: 20 U.S.C. 2313(b), unless otherwise noted.

Subpart A—General

§ 401.1 What is the Indian Vocational Education Program?

The Indian Vocational Education Program provides financial assistance to projects that provide vocational education for the benefit of Indians.

(Authority: 20 U.S.C. 2313(b))

§ 401.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) A tribal organization of any Indian tribe that is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

(2) A Bureau-funded school offering a secondary program.

(b) Any tribal organization or Bureau-funded school described in paragraph (a) of this section may apply individually or jointly as part of a consortium with one or more eligible tribal organizations or schools.

(c)(1) A consortium shall enter into an agreement signed by all members of the consortium, and designating one member of the consortium as the applicant and grantee.

(2) The agreement must detail the activities each member of the consortium plans to perform, and must bind each member to every statement and assurance made in the application.

(3) The applicant shall submit the agreement with its application.

Cross-Reference: See 34 CFR 75.127–75.129—Group applications.

(Authority: 20 U.S.C. 2313(b))

§ 401.3 What activities may the Secretary fund?

(a) The Secretary provides financial assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the purposes of the Act. In the case of a grant to a Bureau-funded school, the Secretary provides a minimum grant of $35,000.

(b) Projects funded under this program are in addition to other programs, services, and activities made available under other provisions of the Act to—

(1) Eligible Indians in need of vocational education; and

(2) Eligible Indian tribes as community-based organizations that receive State vocational education assistance.

(c) An award under this program may be used to provide a stipend to a student who—

(1) Is enrolled in a vocational education project funded under this program; and

(2) Has an acute economic need that cannot be met through work-study programs.

(d) The amount of a stipend may be the greater of either the minimum hourly wage prescribed by State or local law, or the minimum hourly wage set under the Fair Labor Standards Act. A stipend may not be paid for time a student is not in attendance in a project.

(Authority: 20 U.S.C. 2313(b) (1) and (3))

§ 401.4 What regulations apply?

The following regulations apply to the Indian Vocational Education Program:

(a) The regulations in 34 CFR part 400 (except that 34 CFR parts 79 and 82 do not apply to this program).

(b) The regulations in this part 401.

(Authority: 20 U.S.C. 2313(b))

§ 401.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Act of April 16, 1934 means the Federal law commonly known as the "Johnson-O'Malley Act" that authorizes the Secretary of the Interior to make contracts for the education of Indians and other purposes (25 U.S.C. 455–457).

Acute economic need means an income that is at or below the national poverty level according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

Bureau means the Bureau of Indian Affairs, Department of the Interior.

Bureau-funded school means—

(1) A Bureau-operated elementary or secondary day or boarding school or a Bureau-operated dormitory for students attending a school other than a Bureau school;

(2) An elementary or secondary school or a dormitory that receives financial assistance for its operation under a contract or agreement with the Bureau under sections 102, 104(1), or 208 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f, 450h(1), and 458d); or

(3) A school for which assistance is provided under the Tribally Controlled Schools Act of 1988.

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 2019 (3), (4), and (5))

Indian means a person who is a member of an Indian tribe.

(Authority: 25 U.S.C. 450b(d))

Indian tribe means any Indian tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(Authority: 25 U.S.C. 450b(e))

Stipend means a subsistence allowance for a student that is necessary for the student to participate in a project funded under this program.

Tribal organization means the recognized governing body of any Indian tribe or any legally established organization of Indians that is controlled, sanctioned, or chartered by that governing body or that is democratically elected by the adult members of the Indian community to be served by the organization and that includes the maximum participation of Indians in all phases of its activities. However, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each of those Indian tribes must be a prerequisite to the letting or making of that contract or grant.

(Authority: 20 U.S.C. 2313(a)(1)(A), (b); 25 U.S.C. 450b(l))

Subpart B—How Does One Apply for an Award?

§ 401.10 How are applications submitted?

(a) An application from a tribal organization, other than a Bureau-funded school, must be submitted to the Secretary by the Indian tribe.

(b) An application for a project to serve more than one Indian tribe must be approved by each tribe to be served.

(c) An application from a Bureau-funded school may be submitted directly to the Secretary.

(Authority: 20 U.S.C. 2313(b)(1); 25 U.S.C. 450b)

Subpart C—How Does the Secretary Make an Award?

§ 401.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 401.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 401.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 401.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 401.21, the Secretary awards—

(1) Up to 5 points to applications that propose exemplary approaches that involve, coordinate with, or encourage tribal economic development plans; and

(2) Five points to applications from tribally controlled community colleges that—

(i) Are accredited or are candidates for accreditation by a nationally recognized accreditation organization as an institution of postsecondary vocational education; or

(ii) Operate vocational education programs that are accredited or are candidates for accreditation by a nationally recognized accreditation organization and issue certificates for completion of vocational education programs.

(Authority: 20 U.S.C. 2313(b))

§ 401.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which it—

(1) Proposes measurable goals for student enrollment, completion, and placement (including placement in jobs or military specialties and in continuing education or training opportunities) that are realistic in terms of stated needs, resources, and job opportunities in each occupation for which training is to be provided;

(2) Proposes goals that take into consideration any related goals or standards developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) training programs operating in the area, and, where appropriate, any goals set by the State board for vocational education for the occupation and geographic area;

(3) Describes, for each occupation for which training is to be provided, how successful program completion will be determined in terms of academic and vocational competencies demonstrated by enrollees prior to completion and any academic or work credentials acquired by enrollees upon completion;

(4) Demonstrates the active commitment in the project's planning and operation by advisory committees, tribal planning offices, the JOBS program office, the JTPA program director, and potential employers such as tribal enterprises, private enterprises (on or off reservation), and other organizations;

(5) Is targeted to individuals with inadequate skills to assist those individuals in obtaining new employment; and

(6) Includes a thorough description of the approach to be used including some or all of the following components:

(i) Methods of participant selection.

(ii) Assessment and feedback of participant progress.

(iii) Coordination of vocational instruction, academic instruction, and support services such as counseling, transportation, and child care.

(iv) Curriculum and, if appropriate, approaches for providing on-the-job training experience.

(b) *Need.* (15 points) The Secretary reviews each application to determine the extent to which the project addresses specific needs, including—

(1) The job market and related needs (such as educational level) of the target population;

(2) Characteristics of that population, including an estimate of those to be served by the project;

(3) How the project will meet the needs of the target population; and

(4) A description of any ongoing and planned activities relative to those needs, including, if appropriate, how the State plan developed under 34 CFR 403.30 through 403.34 is designed to meet those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The establishment of objectives that are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and placements;

(2) A management plan that describes the chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity; and

(3) The way the applicant intends to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) Subject to the Indian preference provisions of the Indian Self-Determination Act (25 U.S.C. 450 *et seq.*) that apply to grants and contracts to tribal organizations, how the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are reasonable in relation to the objectives of the project and the number of participants to be served; and

(3) The budget narrative justifies the expenditures.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kind of academic and work credentials acquired by participants who complete the training;

(2) The plan identifies, at a minimum, types of data to be collected and reported with respect to the achievement of project goals for the enrollment, completion, and placement of participants. The data must be broken down by sex and by occupation for which the training was provided;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(g) *Employment opportunities.* (10 points) The Secretary reviews each application to determine the quality of the plan for job placement of participants who complete training under this program, including—

(1) The expected employment opportunities (including any military specialties) and any additional educational or training opportunities that are related to the participants' training;

(2) Information and documentation concerning potential employers' commitment to hire participants who complete the training; and

(3) An estimate of the percentage of trainees expected to be employed (including self-employed individuals) in the field for which they were trained following completion of the training.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(b))

§ 401.22 What additional factors may the Secretary consider?

The Secretary may decide not to award a grant or cooperative agreement if—

(a) The proposed project duplicates an effort already being made; or

(b) Funding the project would create an inequitable distribution of funds under this part among Indian tribes.

(Authority: 20 U.S.C. 2313(b))

§ 401.23 Is the Secretary's decision not to make an award under the Indian Vocational Education Program subject to a hearing?

(a) After receiving written notice from an authorized official of the Department that the Secretary will not award a grant or cooperative agreement to an eligible applicant under § 401.2(a)(1), an Indian tribal organization has 30 calendar days to make a written request to the Secretary for a hearing to review the Secretary's decision.

(b) Within 10 business days of the Department's receipt of a hearing request, the Secretary designates a Department employee who is not assigned to the Office of Vocational and Adult Education to serve as a hearing officer. The hearing officer conducts a hearing and issues a written decision within 75 calendar days of the Department's receipt of the hearing request. The hearing officer establishes rules for the conduct of the hearing. The hearing officer conducts the hearing solely on the basis of written submissions unless the officer determines, in accordance with standards in 34 CFR 81.6(b), that oral argument or testimony is necessary.

(c) The Secretary does not make any award under this part to an Indian tribal organization until the hearing officer issues a written decision on any appeal brought under this section.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(b); 25 U.S.C. 450f)

Subpart D—What Conditions Must Be Met After an Award?

§ 401.30 How do the Indian Self-Determination Act and the Act of April 16, 1934 affect awards under the Indian Vocational Education Program?

(a) Grants, cooperative agreements, or contracts with tribal organizations are subject to the terms and conditions of section 102 of the Indian Self-Determination Act (25 U.S.C. 450f). These awards must be conducted by the recipient or contractor in accordance with the provisions of sections 4, 5, and 6 of the Act of April 16, 1934, that are relevant to the projects administered under this part. Section 4 contains requirements pertaining to submission of an education plan by a contractor. Section 5 pertains to participation of parents of Indian children. Section 6 pertains to reimbursement for educating non-resident students.

(b) Grants to Bureau-funded schools are not subject to the requirements of the Indian Self-Determination Act or the Act of April 16, 1934.

(Authority: 20 U.S.C. 2313 (b)(1)(A)(ii)(I) and (II))

§ 401.31 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired;

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided;

(3) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(4) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(5) The effectiveness of the project in promoting key elements for participants' job readiness, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic and vocational skills competencies.

(Approved by the Office of Management and Budget under Control Number 1830-0013)

(Authority: 20 U.S.C. 2313(b))

4. A new part 402 is added to read as follows:

PART 402—NATIVE HAWAIIAN VOCATIONAL EDUCATION PROGRAM

Subpart A—General

Sec.
402.1 What is the Native Hawaiian Vocational Education Program?
402.2 Who is eligible for an award?
402.3 What activities may the Secretary fund?
402.4 What regulations apply?
402.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

402.20 How does the Secretary evaluate an application?
402.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

402.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2313(c), unless otherwise noted.

Subpart A—General

§ 402.1 What is the Native Hawaiian Vocational Education Program?

The Native Hawaiian Vocational Education Program provides financial assistance to projects that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.2 Who is eligible for an award?

Any organization that primarily serves and represents native Hawaiians and that is recognized by the Governor

of the State of Hawaii is eligible to apply for an award under this program.

(Authority: 20 U.S.C. 2313(c))

§ 402.3 What activities may the Secretary fund?

The Secretary provides assistance through grants, contracts, or cooperative agreements to plan, conduct, and administer programs, or portions of programs, that provide vocational training and related activities for the benefit of native Hawaiians.

(Authority: 20 U.S.C. 2313(c))

§ 402.4 What regulations apply?

The following regulations apply to the Native Hawaiian Vocational Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 402.

(Authority: 20 U.S.C. 2313(c))

§ 402.5 What definitions apply?

The following definitions apply to the Native Hawaiian Vocational Education Program:

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part:

Native Hawaiian means any individual who has any ancestors who were natives, prior to 1778, of the area that now comprises the State of Hawaii.

(Authority: 20 U.S.C. 2313(a)(1)(B))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 402.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 402.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 402.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 402.21.

(Authority: 20 U.S.C. 2313(c))

§ 402.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Program design.* (35 points) The Secretary reviews each application to determine the extent to which—

(1) The application presents a complete program design, including identifying the services to be provided, who will provide them, how they will be provided, and the expected outcomes for each activity;

(2) The proposed program is designed to meet the identified vocational education needs of native Hawaiians;

(3) The application proposes an effective plan for coordination with the office of the Hawaii State director for vocational education; and

(4) If vocational training is proposed within the project—

(i) Proposes measurable goals for student enrollment, completion, and placement.

(ii) Proposes goals that take into consideration any related standards and measures developed for Job Opportunities and Basic Skills (JOBS) programs (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*) programs in that geographic area;

(iii) Proposes goals that take into consideration any standards set by the State board for vocational education for the occupation and geographic area; and

(iv) Describes how successful program completion will be determined for each occupation for which training is to be provided, in terms of the academic and vocational competencies demonstrated by enrollees prior to successful completion and any academic or work credentials acquired upon completion.

(b) *Management plan.* (25 points) The Secretary reviews each application to determine the quality of the management plan for the project, including—

(1) The chain of command, how staff will be managed, how coordination among staff will be accomplished, and timelines for each activity;

(2) A clear description of the interrelationship among goals, objectives, and activities;

(3) The way the applicant plans to use the resources and personnel from the grant to achieve each objective; and

(4) How any contracts awarded by the grantee will be awarded, monitored, and evaluated.

(c) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used on the project;

(iii) The time, including justification for the time, that each one of the key personnel, including the project director, will commit to the proposed project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel for this project are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields particularly related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application to determine the quality of the project's plan for an independent evaluation of the project, including, if applicable, the extent to which the plan includes activities during the formative stages of the project to help guide and improve the project, as well as a final evaluation that includes summary data and recommendations.

(2) The Secretary reviews each application to determine whether, for any training programs proposed—

(i) The plan identifies, at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers; and

(ii) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex and socio-economic status for each occupation for which training is provided.

(e) *Budget and cost-effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative is explanatory and justifies expenses;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 402.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an external evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application; and

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress when training is provided by the project, including—

(i) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex and socio-economic status for each occupation for which training has been provided.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2313(c))

5. A new part 403 is added to read as follows:

PART 403—STATE VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAM

Subpart A—General

Sec.
403.1 What is the State Vocational and Applied Technology Education Program?
403.2 Who is eligible for an award?
403.3 What regulations apply?
403.4 What definitions apply?

Subpart B—What Are the State's Organizational and Planning Responsibilities?

403.10 What is the State board?
403.11 What are the principal responsibilities of the State board?
403.12 What are the additional responsibilities of the State board?
403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?
403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?
403.15 What are the personnel requirements regarding coordination with services under Chapter 1 of Title I of the Elementary and Secondary Education Act?
403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?
403.17 What are the State's responsibilities regarding a State council on vocational education?
403.18 What are the membership requirements of a State council on vocational education?
403.19 What are the responsibilities of a State council on vocational education?

Subpart C—How Does a State Apply for a Grant?

403.30 What documents must a State submit to receive a grant?
403.31 How is the State plan developed?
403.32 What must the State plan contain?
403.33 What procedures does a State use to submit its State plan?
403.34 When are amendments to the State plan required?

Subpart D—How Does the Secretary Make a Grant to a State?

403.50 How does the Secretary make allotments?
403.51 How does the Secretary make reallotments?
403.52 When does the Secretary approve State plans and amendments?

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

403.60 What are the basic programs?
403.61 What projects, services, and activities are permissible under the basic programs?
403.62 What administrative provisions apply?
403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

State Programs and State Leadership Activities

403.70 How must funds be used under the State Programs and State Leadership Activities?
403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

403.80 Who is eligible for a subgrant or contract?
403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?
403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

Sex Equity Program

403.90 Who is eligible for a subgrant or contract?
403.91 How must funds be used under the Sex Equity Program?
403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

Programs for Criminal Offenders

403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?
403.101 How must funds be used under the Programs for Criminal Offenders?
403.102 What other requirements apply to the Program for Criminal Offenders?

Secondary, Postsecondary, and Adult Vocational Education Programs

403.110 Who is eligible for a subgrant or contract?
403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?
403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?
403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?
403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?
403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?
403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?
403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?
403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?
403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?
403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

403.130 What are the Special Programs?
403.131 Who is eligible for an award under the Special Programs?

Vocational Education Support Programs by Community-Based Organizations

403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?
403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

Consumer and Homemaking Education Programs

403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?
403.151 How must funds be used under the Consumer and Homemaking Education Programs?

Comprehensive Career Guidance and Counseling Programs

403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?
403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

Business-Labor-Education Partnership for Training Program

403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?
403.171 Who is eligible to apply to a State board for an award?
403.172 What special considerations must the State board give in approving projects, services, and activities?
403.173 What expenses are allowable?
403.174 What additional fiscal requirements apply to the Business-Labor-Education Partnership for Training Program?

Subpart G—What Financial Conditions Must Be Met by a State?

403.180 How must a State reserve funds for the basic programs?
403.181 What are the cost-sharing requirements applicable to the basic programs?
403.182 What is the maintenance of fiscal effort requirement?
403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?
403.184 How does a State request a waiver of the maintenance of effort requirement?
403.185 How does the Secretary compute maintenance of effort in the event of a waiver?
403.186 What are the administrative cost requirements applicable to a State?
403.187 How may a State provide technical assistance?
403.188 What is a State's responsibility for the cost of services and activities for members of special populations?

Subpart H—What Conditions Must Be Met by Local Recipients?

403.190 What are the requirements for receiving a subgrant or contract?
403.191 What are the requirements for program evaluation?
403.192 What are the requirements for program improvement?
403.193 What are the information requirements regarding special populations?
403.194 What are the comparability requirements?
403.195 What are the administrative cost requirements applicable to local recipients?
403.196 What are the requirements regarding supplanting?
403.197 What are the requirements for the use of equipment?

Subpart I—What Are the Administrative Responsibilities of a State Under the State Vocational and Applied Technology Education Program?

403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?
403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?
403.202 What must each State's system of core standards and measures of performance include?
403.203 What are the State's responsibilities for a State assessment?
403.204 What are the State's responsibilities for program evaluation and improvement?
403.205 What are the State's responsibilities for members of special populations?
403.206 What are the State's responsibilities regarding a State occupational information coordinating committee?
403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?
403.208 What are the requirements regarding supplanting?

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Appendix B to Part 403—Examples for 34 CFR 403.194—Comparability Requirements

Authority: 20 U.S.C. 2301 *et seq.*, unless otherwise noted.

Subpart A—General

§ 403.1 What is the State Vocational and Applied Technology Education Program?

(a) Under the State Vocational and Applied Technology Education Program, the Secretary makes grants to States, to assist them, local educational agencies, postsecondary educational institutions, and other agencies and institutions to administer and conduct vocational education programs that are authorized by the Act.

(b) The State Vocational and Applied Technology Education Program consists of the programs under the basic programs for vocational education authorized by Title II of the Act and listed in § 403.60, and the special programs authorized by Title III of the Act that are covered by the State plan and listed in § 403.130.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.2 Who is eligible for an award?

Except as otherwise provided in § 403.131, a State is eligible for an award under the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2311 and 2311a)

§ 403.3 What regulations apply?

The following regulations apply to the State Vocational and Applied Technology Education Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 403.

(Authority: 20 U.S.C. 2301 *et seq.*)

§ 403.4 What definitions apply?

The definitions in 34 CFR 400.4 apply to the State Vocational and Applied Technology Education Program.

(Authority: 20 U.S.C. 2471)

Subpart B—What are the State's Organizational and Planning Responsibilities?

§ 403.10 What is the State board?

A State that desires to participate in the programs authorized by the Act shall, consistent with State law, designate or establish a State board of vocational education (State board). The State board must be the sole State agency responsible for the administration or the supervision of the State's vocational and applied technology education program.

(Authority: 20 U.S.C. 2321(a))

§ 403.11 What are the principal responsibilities of the State board?

The principal responsibilities of the State board must include—

(a) The coordination of the development, submission, and implementation of the State plan;

(b) The evaluation of the programs, services, and activities assisted under the Act, as required by §§ 403.32 (a)(7) and (b)(9) and 403.201 through 403.204;

(c) The development, in consultation with the State council on vocational education, of the State plan and its submission to the Secretary, as required by §§ 403.30 through 403.34;

(d) Consultation with the State council on vocational education and other appropriate agencies, groups, and individuals, including business, industry, and labor, involved in the planning, administration, evaluation, and coordination of programs funded under the Act;

(e) Convening and meeting as a State board, consistent with applicable State law and procedure, when the State board determines it is necessary to meet to carry out its functions under the Act, but not less than four times annually; and

(f) The adoption of those procedures the State board considers necessary to implement State level coordination with the State job training coordinating council in order to encourage cooperation between programs under the Act and programs under the Job Training Partnership Act (JTPA) (29 U.S.C. 1501 *et seq.*).

(Authority: 20 U.S.C. 2321(a))

§ 403.12 What are the additional responsibilities of the State board?

(a) The State board shall make available to each private industry council established within the State under section 102 of the JTPA a current listing of all programs assisted under the Act.

(b)(1) The State board, in consultation with the State council on vocational education established under § 403.17, shall establish a limited number of (but at least two) technical committees to advise the State council and the State board on the development of model curricula to address State labor market needs. The technical committees shall develop an inventory of skills that may be used by the State board to define state-of-the-art model curricula. This inventory must identify the type and level of knowledge and skills needed for entry, retention, and advancement in occupational areas taught in the State.

(2) The State board shall establish procedures that are consistent with the purposes of the Act for membership, operation, and duration of the technical committees. Their membership must be composed of representatives of—

(i) Employers from any relevant industry or occupation for which the committee is established;

(ii) Trade or professional organizations representing any relevant occupations; and

(iii) Organized labor, if appropriate.

(c) Except for the functions described in § 403.11, the State board may delegate any of its other administrative, operational, or supervisory responsibilities, in whole or in part, to one or more appropriate State agencies.

(d) The State board shall carry out the responsibilities described in §§ 403.13 through 403.18 and 403.200 through 403.208.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2321(a)(1), (f), (g))

§ 403.13 What are the personnel requirements regarding the elimination of sex discrimination and sex stereotyping?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall assign one individual, within the appropriate agency established or designated by the State board under § 403.12(c), to administer vocational education programs within the State, to work full-time to assist the State board to fulfill the purposes of the Act by—

(1) Administering the program of vocational education for single parents, displaced homemakers, and single pregnant women described in § 403.81, and the sex equity program described in § 403.91;

(2) Gathering, analyzing, and disseminating data on the—

(i) Adequacy and effectiveness of vocational education programs in the State in meeting the education and employment needs of women, including the preparation of women for employment in technical occupations, new and emerging occupational fields, and occupations regarded as nontraditional for women; and

(ii) Status of men and women students and employees in the programs described in paragraph (a)(2)(i) of this section;

(3) Reviewing and commenting upon, and making recommendations concerning, the plans of local educational agencies, area vocational education schools, intermediate educational agencies, and postsecondary educational institutions to ensure that the needs of women and men for training in nontraditional jobs are met;

(4)(i) Reviewing vocational educational programs, including career guidance and counseling, for sex stereotyping and sex bias, with particular attention to practices that tend to inhibit the entry of women in high technology occupations; and

(ii) Submitting recommendations, to the State board for inclusion in the State plan, for programs and policies to overcome sex bias and sex stereotyping in the programs described in paragraph (a)(4)(i) of this section;

(5) Submitting to the State board an assessment of the State's progress in meeting the purposes of the Act with regard to overcoming sex discrimination and sex stereotyping;

(6) Reviewing proposed actions on grants, contracts, and the policies of the State board to ensure that the needs of women are addressed in the administration of the Act;

(7) Developing recommendations for programs of information and outreach to women concerning vocational education and employment opportunities for women, including opportunities for careers as technicians and skilled workers in technical fields and new and emerging occupational fields;

(8) Providing technical assistance and advice to local educational agencies, postsecondary institutions, and other interested parties in the State on expanding vocational opportunities for women;

(9) Assisting administrators, instructors, and counselors in implementing programs and activities to increase access for women, including displaced homemakers and single heads of households, to vocational education and to increase male and female students' enrollment in nontraditional programs;

(10) Developing an annual plan for the use of all funds available for programs described in §§ 403.81 and 403.91;

(11) Managing the distribution of funds pursuant to §§ 403.81 and 403.91;

(12) Monitoring the use of funds distributed to recipients under §§ 403.81 and 403.91;

(13) Evaluating the effectiveness of programs and activities supported by funds under §§ 403.81 and 403.91;

(14) On a competitive basis, allocating and distributing to eligible recipients or community-based organizations subgrants or contracts to carry out the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program;

(15) Ensuring that each subgrant or contract awarded under the Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program is of sufficient size, scope, and quality to be effective;

(16) Developing procedures for the collection from eligible recipients or community-based organizations that receive funds under §§ 403.81 and 403.91 of data appropriate to the individuals served in programs under §§ 403.81 and 403.91 in order to permit an evaluation of effectiveness of those programs as required by paragraph (a)(13) of this section; and

(17) Cooperating in the elimination of sex bias and sex stereotyping in Consumer and Homemaking Education Programs.

(b) A State shall, in accordance with § 403.180(b)(4)(i), reserve at least $60,000 to carry out the provisions of paragraph (a) of this section, including the provision of necessary and reasonable staff support.

(c) For the purposes of this section, the term "State" includes only the fifty States and the District of Columbia.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2312(a)(4)(A), 2321(b), 2335b, 2362(a)(3))

§ 403.14 What are the personnel requirements regarding coordination with services for individuals with disabilities?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office responsible for administering Part B of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1400 *et seq.*) to review the implementation of the provisions of the Act as they relate to students with disabilities by reviewing all or a representative sample of applications of eligible recipients to ensure that—

(1) Individuals with disabilities are receiving vocational educational services;

(2) Applications of the eligible recipients provide assurances of compliance with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the IDEA and regulations implementing those statutes, regarding equal access to programs; and

(3) Eligible recipients have—

(i) Identified the number of students with disabilities enrolled in the eligible recipients' vocational programs;

(ii) Assessed the vocational needs of those students; and

(iii) Developed an adequate plan to provide supplementary services sufficient to meet the needs of those students.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321(c))

§ 403.15 What are the personnel requirements regarding coordination with services under Chapter 1 of Title I of the Elementary and Secondary Education Act?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for coordinating services under chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2701 *et seq.*) to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of economically disadvantaged students has been identified; and

(2) The needs of economically disadvantaged students are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321 (c) and (d))

§ 403.16 What are the personnel requirements regarding coordination with programs for individuals of limited English proficiency?

(a) A State desiring to participate in programs authorized by the Act shall designate or assign the head of the State office or other appropriate individual responsible for administering programs for students of limited English proficiency to review all or a representative sample of applications from eligible recipients to ensure that—

(1) The number of students of limited English proficiency has been identified; and

(2) The needs of students of limited English proficiency for participation in vocational education programs are being met as outlined in the applications of eligible recipients.

(b) For the purposes of this section, the term "State" includes only the fifty States, the District of Columbia, and the Commonwealth of Puerto Rico.

(Authority: 20 U.S.C. 2321 (c) and (e))

§ 403.17 What are the State's responsibilities regarding a State council on vocational education?

(a) A State desiring to participate in the State Vocational and Applied Technology Education Program shall establish a State council on vocational education. The State council must be appointed—

(1) By the Governor; or

(2) By the State board of education, in a State in which the members of the State board of education are elected, including election by the State legislature.

(b) Each State shall certify to the Secretary the establishment and membership of the State council by June 1 prior to the beginning of each State plan period described in § 403.30.

(c) Each State shall recertify to the Secretary any new member of the State council not more than 60 days after a position on the State council is vacated.

(Authority: 20 U.S.C. 2322 (a), (b))

§ 403.18 What are the membership requirements of a State council on vocational education?

(a) Each State council must be composed of 13 individuals, and must be broadly representative of citizens and groups within the State having an interest in vocational education.

(b) Each State council must consist of—

(1) Seven individuals who are representative of the private sector in the State and who must constitute a majority of the membership—

(i) Five of whom must be representatives of business, industry, trade organizations, and agriculture including—

(A) One member who is representative of small business concerns; and

(B) One member who is a private sector member of the State job training coordinating council established pursuant to section 122 of the JTPA; and

(ii) Two of whom must be representatives of labor organizations; and

(2) Six individuals, one of whom must be representative of special education, who are representative of—

(i) Secondary and postsecondary vocational institutions (equitably distributed among those institutions);

(ii) Career guidance and counseling organizations within the State; and

(iii) Individuals who have special knowledge and qualifications with respect to the special educational and career development needs of special populations, including women, disadvantaged individuals, individuals with disabilities, individuals with limited English proficiency, and minorities.

(c) The State council may include members of vocational student organizations and school boards but may not include employees of the State board of vocational education.

(d) In selecting individuals to serve on the State council on vocational education, the State shall give due consideration to the appointment of individuals who serve on a private industry council under the JTPA, or on State councils established under other related Federal programs.

(Authority: 20 U.S.C. 2322(a))

§ 403.19 What are the responsibilities of a State council on vocational education?

(a)(1) The State council on vocational education shall meet as soon as practical after the Secretary accepts its certification and shall select from among its membership a chairperson who must be a representative of the private sector.

(2) The State council on vocational education shall adopt rules that govern the time, place, and manner of meeting, as well as council operating procedures and staffing. The rules must provide for at least one public meeting each year at which the public is given an opportunity to express views concerning the vocational education program of the State.

(b) Each State council on vocational education, during each State plan period described in § 403.30 unless otherwise indicated in the regulations in this section, shall—

(1) Meet with the State board or its representatives to advise on the development of the subsequent State plan, or any amendments to the current State plan, while the State plan or amendment is being developed;

(2) Make recommendations to the State board and make reports to the Governor, the business community, and general public of the State, concerning—

(i) The State plan;

(ii) Policies the State should pursue to strengthen vocational education, with particular attention to programs for individuals with disabilities; and

(iii) Initiatives and methods the private sector could undertake to assist in the modernization of vocational education programs;

(3) Analyze and report on the distribution of all vocational education funds in the State and on the availability of vocational education activities and services within the State;

(4) Consult with the State board on the establishment of evaluation criteria for vocational education programs within the State;

(5) Submit recommendations to the State board on the conduct of vocational education programs conducted in the State that emphasize the use of business concerns and labor organizations;

(6) Assess and report on the distribution of financial assistance under the Act, particularly the distribution of financial assistance between secondary vocational education programs and postsecondary vocational education programs;

(7) Recommend procedures to the State board to ensure and enhance the participation of the public in the provision of vocational education at the local level within the State, particularly the participation of local employers and local labor organizations;

(8) Report to the State board on the extent to which individuals who are members of special populations are provided with equal access to quality vocational education programs;

(9) Analyze and review corrections education programs; and

(10)(i) At least once every two years—

(A) Evaluate the extent to which vocational education, employment, and training programs in the State represent a consistent, integrated, and coordinated approach to meeting the economic needs of the State;

(B) Evaluate the vocational education program delivery system assisted under the Act, and the job training program delivery system assisted under the JTPA, in terms of the delivery systems' adequacy and effectiveness in achieving the purposes of both Acts; and

(C) Make recommendations to the State board on the adequacy and effectiveness of the coordination that takes place between vocational education and the JTPA;

(ii) Comment on the adequacy or inadequacy of State action in implementing the State plan;

(iii) Make recommendations to the State board on ways to create greater incentives for joint planning and collaboration between the vocational education system and the job training system at the State and local levels; and

(iv) Advise, in writing, the Governor, the State board, the State job training coordinating council, the Secretary, and the Secretary of Labor of these findings and recommendations.

(c)(1) Each State council on vocational education may—

(i) Obtain the services of the professional, technical, and clerical personnel necessary to enable it to carry out its functions under the Act;

(ii) Contract for the services necessary to enable it to carry out its evaluation functions; and

(iii) Submit a statement to the Secretary reviewing and commenting upon the State plan.

(2)(i) The expenditure of funds awarded to a State council on vocational education by the Secretary must be solely determined by that State council and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual.

(ii) Each State council on vocational education shall designate an appropriate State agency, or other public agency, eligible to receive funds under the Act, to act as its fiscal agent for purposes of disbursement, accounting, and auditing.

(3) Each State council on vocational education shall carry out its functions, whether directly or by way of contract for services, independent of programmatic and administrative control by other State boards, agencies, and individuals.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2322(c)-(e) and (f)(2); 2323(c))

Subpart C—How Does A State Apply for a Grant?

§ 403.30 What documents must a State submit to receive a grant?

(a) A State that desires to participate in the State Vocational and Applied Technology Education Program shall submit to the Secretary a State plan for a three-year period, in the case of the initial plan, and a two-year period thereafter, together with annual revisions the State board determines to be necessary.

(b) Each State shall carry out its programs under the State Vocational and Applied Technology Education Program on the basis of program years that coincide with program years under section 104(a) of the JTPA.

(c) The provisions of 34 CFR 76.103 do not apply to the State Vocational and Applied Technology Education Program.

(Approved by the Office of Management and Budget under Control No. 1830-0029)

(Authority: 20 U.S.C. 2323)

§ 403.31 How is the State plan developed?

(a) In formulating the State plan, and any amendments to the State plan, the State board shall meet with, and utilize, the State council on vocational education established under § 403.17.

(b) After providing appropriate and sufficient notice to the public, the State board shall conduct at least two public hearings in the State for the purpose of affording all segments of the public and interested organizations and groups an opportunity to present their views and make recommendations regarding the State plan.

(c) A State shall provide public notice of hearings on the State plan at least 30 days prior to the hearings.

(d) In developing a State plan, the State shall conduct an assessment according to § 403.203.

(e) The State board shall develop the portion of each State plan relating to the amount and uses of any funds proposed to be reserved for adult education, postsecondary education, tech-prep education, and secondary education after consultation with the State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education and the State agency responsible for secondary education. If a State agency finds that a portion of the final State plan is objectionable, that agency shall file its objections with the State board.

(f) The State board shall, in developing the State plan, take into

consideration the relative training and retraining needs of secondary, adult, and postsecondary students.

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2323(a)(2) and 2324(a))

§ 403.32 What must the State plan contain?

(a) *Assurances.* To participate in the programs authorized under the State Vocational and Applied Technology Program, the State shall, in its State plan, provide assurances that —

(1) The State board will comply with the applicable requirements of Titles I, II, III, and V of the Act and regulations implementing those requirements (including the maintenance of fiscal effort requirement in § 403.182);

(2) Eligible recipients will comply with the requirements of Titles I, II, III, and V of the Act and the regulations implementing those requirements;

(3) The State board will develop measurable goals and accountability measures for meeting the needs of individuals who are members of special populations;

(4) The State board will conduct adequate monitoring of projects, services, and activities conducted by eligible recipients to ensure that the eligible recipients are meeting the goals described in paragraph (a)(3) of this section;

(5) To the extent consistent with the number and location of individuals who are members of special populations enrolled in private secondary schools, the State will provide for the participation of those individuals in the vocational education projects, services, and activities assisted under §§ 403.112 and 403.113;

Cross-Reference: See 34 CFR 76.650–76.662, Participation of Students Enrolled in Private Schools.

(6) The State will comply with the provisions of § 403.180, and will distribute all of the funds reserved for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs to eligible recipients pursuant to §§ 403.112, 403.113, and 403.116;

(7) The State will develop and implement a system of standards for performance and measures of performance for vocational education programs at the State level that meets the requirements of §§ 403.201 and 403.202;

(8) In the use of funds available for programs for single parents, displaced homemakers, or single pregnant women under § 403.81, the State will—

(i) Emphasize assisting individuals with the greatest financial need; and

(ii) Give special consideration to displaced homemakers who, because of divorce, separation, or the death or disability of a spouse, must prepare for paid employment;

(9) The State will furnish relevant training and vocational education activities to men and women who desire to enter occupations that are not traditionally associated with their sex;

(10) The State will fund programs of personnel development and curriculum development to further the goals identified in the State plan;

(11) The State has thoroughly assessed the vocational education needs of identifiable segments of the population in the State that have the highest rates of unemployment, and those needs are reflected in and addressed by the State plan;

(12) The State board will cooperate with the State council in carrying out the Board's duties under the State plan;

(13) None of the funds expended under the Act will be used to acquire equipment (including computer software) in any instance in which that acquisition results in a direct financial benefit to any organization representing the interests of the purchasing entity or its employees or any affiliate of such an organization;

(14) State and local funds will be used in the schools of each local educational agency that are receiving funds under the Act to provide services that, taken as a whole, are at least comparable to services being provided in schools in those agencies that are not receiving funds under the Act;

Cross-Reference: See §§ 403.194 and 403.200.

(15)(i) The State board will provide leadership (qualified by experience and knowledge in guidance and counseling), supervision, and resources for comprehensive career guidance, vocational counseling, and placement programs; and

(ii) As a component of the assurances described in paragraph (a)(15)(i) of this section, the State board will annually assess and include in the State plan a report on the degree to which expenditures aggregated within the State for career guidance and vocational counseling from allotments under Title II of the Act are not less than expenditures for guidance and counseling within the State under the Carl D. Perkins Vocational Education Act in Fiscal or Program Year 1988;

(Authority: H.R. Rep. No. 660, 101st Cong., 1st Sess. 111 (1990))

(16) The State will provide for such fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of, and accounting for, Federal funds paid to the State, including those funds paid by the State to eligible recipients under the Act;

(17) Funds made available under Title II of the Act will be used to supplement, and to the extent practicable increase, the amount of State and local funds that would in the absence of those Federal funds be made available for the uses specified in the State plan and the local application, and in no case supplant those State or local funds;

Cross-Reference: See §§ 403.196 and 403.208.

(18) Individuals who are members of special populations will be provided with equal access to recruitment, enrollment, and placement activities;

(19) Individuals who are members of special populations will be provided with equal access to the full range of vocational education programs available to individuals who are not members of special populations, including occupationally specific courses of study, cooperative education, apprenticeship programs, and, to the extent practicable, comprehensive career guidance and counseling services, and will not be discriminated against on the basis of their status as members of special populations;

(20) Vocational education programs and activities for individuals with disabilities will be provided in the least restrictive environment in accordance with section 612(5)(B) of the IDEA and will, if appropriate, be included as a component of the individualized education program developed under section 614(a)(5) of that Act;

(21) Students with disabilities who have individualized education programs developed under section 614(a)(5) of the IDEA, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under sections 612, 614, and 615 of that Act;

(22) Students with disabilities who do not have individualized education programs developed under section 614(a)(5) of the IDEA or who are not eligible to have such a program, with respect to vocational education programs, will be afforded the rights and protections guaranteed those students under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and, for the purpose of the State Vocational and Applied Technology Education Programs, those rights and protections will include making vocational education programs readily accessible to eligible individuals with disabilities through the provision of services described § 403.190(b)(3);

(23) Vocational education planning for individuals with disabilities will be coordinated among appropriate representatives of vocational education, special education, and State vocational rehabilitation agencies;

(24) The provision of vocational education to each student with disabilities will be monitored to determine if that education is consistent with the individualized education program developed for the student under section 614(a)(5) of the IDEA, in any case in which an individualized education program exists;

(25) The provision of vocational education will be monitored to ensure that disadvantaged students and students of limited English proficiency have access to that education in the most integrated setting possible;

(26)(i) The requirements of the Act relating to individuals who are members of special populations—

(A) Will be carried out under the general supervision of individuals in the appropriate State educational agency or State board who are responsible for students who are members of special populations; and

(B) Will meet education standards of the State educational agency or State board;

(ii) With respect to students with disabilities, the supervision carried out under paragraph (a)(26)(i) of this section will be carried out consistent with, and in conjunction with, supervision by the State educational agency or State board carried out under section 612(6) of the IDEA;

(27) Funds received under the Business-Labor-Education Partnership for Training Program will be awarded on a competitive basis solely for vocational education programs, including programs that—

(i) Provide apprenticeships and internships in industry;

(ii) Provide new equipment;

(iii) Provide teacher internships or teacher training;

(iv) Bring representatives of business and organized labor into the classroom;

(v) Increase the access to, and quality of, programs for individuals who are members of special populations;

(vi) Strengthen coordination between vocational education programs and the labor and skill needs of business and industry;

(vii) Address the economic development needs of the area served by the partnership;

(viii) Provide training and career counseling that will enable workers to retain their jobs;

(ix) Provide training and career counseling that will enable workers to upgrade their jobs; and

(x) Address the needs of new and emerging industries, particularly industries in high-technology fields;

(28) In administering the Business-Labor-Education Partnership for Training Program, the State board will—

(i) Give preference to partnerships that coordinate with local chambers of commerce (or the equivalent), local labor organizations, or local economic development plans;

(ii) Give priority to programs offered by partnerships that provide job training in areas or skills where there are significant labor shortages; and

(iii) Ensure an equitable distribution of assistance under this part between urban and rural areas;

(29) Except as provided in paragraph (a)(30) of this section, not less than 50 percent of the aggregate cost of programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources, and not less than 50 percent of the non-Federal share will be provided by businesses or labor organizations participating in the partnerships; and

(30) In the event that a partnership includes a small business or labor organization, 40 percent of the aggregate cost of the programs and projects assisted under the Business-Labor-Education Partnership for Training Program will be provided from non-Federal sources and not less than 50 percent of the non-Federal share will be provided by participating business or labor organizations.

(b) *Descriptions.* To participate in programs authorized under the State Vocational and Applied Technology Education Program, the State must include the following descriptions in the State plan:

(1) The procedures and criteria for, and the results of, each of the assessments required by § 403.203, including the needs identified by the assessments.

(2) The plans for the use of the funds and how those planned uses reflect the needs described in paragraph (b)(1) of this section.

(3) The manner in which the State will comply with the requirements in the Act regarding access and services for individuals who are members of special populations and a description of the responsiveness of programs to the special needs of those students.

(4) The estimated distribution, for each instructional level—secondary, postsecondary, and adult—of funds to corrections educational agencies as prescribed by § 403.100, of funds to local educational agencies, area vocational education schools, or intermediate educational agencies as prescribed by §§ 403.112 and 403.113, and of funds to eligible institutions as prescribed by § 403.116.

(5) The criteria the State board will use —

(i) In approving applications of eligible recipients; and

(ii) For spending the amounts reserved for the State under § 403.180(b).

(6) How funds expended for occupationally specific training will be used for occupations in which job openings are projected or available, based on a labor market analysis that is not limited to the area in which the school is located.

(Authority: H.R. Rep. No. 660, 101st Cong., 1st Sess. 109 (1990))

(7) In each State plan submitted after Fiscal Year 1991, the progress the State has made in achieving the goals described in previous State plans.

(8) The methods of administration necessary for the prompt and efficient administration of programs under the Act.

(9) How the State will implement program evaluations with eligible recipients as prescribed in §§ 403.191, 403.192, 403.201(a) (3) and (4), and 403.204.

(10) The methods proposed for the joint planning and coordination of programs carried out under the Act with programs conducted under the JTPA, the Adult Education Act (20 U.S.C. 1201 *et seq.*), Chapter 1, the IDEA, and the Rehabilitation Act of 1973, and with apprenticeship programs.

(11) Procedures by which an area vocational educational school, intermediate educational agency, or local educational agency may appeal decisions adverse to its interests with respect to programs assisted under the Act.

Cross-Reference: See 34 CFR 76.401.

(12) How the State will comply with the provisions of §§ 403.32(a)(18)–(26), 403.115, and 403.205.

(13) The State's rationale for distribution of funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs.

(14) The State corrections educational agency or agencies designated to administer vocational education

programs assisted under the Act, and the plan for the use of funds provided under § 403.180(b)(5).

(15) Any delegation of functions under § 403.12(c).

(16) The manner in which the State board will comply with the applicable requirements of Titles I, II, III, and V of the Act (including the maintenance of fiscal effort requirements in § 403.182).

(17) A summary of recommendations made at public hearings on the State plan and the State board's response.

(18) How the State will determine which LEAs are located in a rural sparsely-populated area for purposes of § 403.112(d)(3).

(19) Which indices of economic status the State will use to determine the number of economically disadvantaged students attending vocational educational programs for the purposes of § 403.114.

(20) What method the State will use to distribute minimal amounts for the purpose of § 403.119(a).

(21) As appropriate, what method the State will use to distribute funds under § 403.118.

(c) *Consultations.* A State desiring to participate in the State Vocational and Applied Technology Education Program shall include in its State plan—

(1) A statement, if any, from the State advisory council on vocational education reviewing and commenting on the State plan;

(2) As necessary, the State's reasons for not accepting the recommendations of the State Committee of Practitioners for modifying standards and measures to be used in the statewide system of core standards and measures of performance; and

(3) As necessary, the State's response to any objections raised by State agencies consulted during the development of the State plan as required by § 403.31(e).

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2321(a)(2); 2322(e); 2323(a)(2)(B), (b); 2324(a); 2325(a), (d)(3); 2328(a); 2336(a)(1); 2341(b)(2), (d)(3); 2341b(a); 2392(b); 2463; and 2468e(a)(1))

§ 403.33 What procedures does a State use to submit its State plan?

(a)(1) The State board shall submit its State plan for review and comment to the State job training coordinating council under section 122 of the JTPA not less than sixty days before the State plan is submitted to the Secretary.

(2) If the matters raised by the comments of the State job training coordinating council are not addressed in the State plan, the State board shall submit those comments to the Secretary with the State plan.

(b) The State board shall submit its State plan for review and comment to the State council on vocational education not less than sixty days before the State plan is submitted to the Secretary.

Cross-Reference: See § 403.19(c)(1)(iii).

(c) Each State plan must be submitted to the Secretary by May 1 preceding the beginning of the first fiscal year for which the plan is to be in effect.

(d) The State plan is considered to be the general application required by section 435 of the General Education Provisions Act (20 U.S.C. 1232d).

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2322(d)(1) and (2)(A), (e); 2323(a)(2)(A); and 2324(b))

§ 403.34 When are amendments to the State plan required?

The State board, in consultation with the State council, shall submit amendments to the State plan to the Secretary when required by 34 CFR 76.140 or when changes in program conditions, labor market conditions, funding, or other factors require substantial amendment of an approved State plan. All amendments must be submitted for review by the State job training coordinating council and the State council on vocational education before submittal to the Secretary.

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2323(c))

Subpart D—How Does the Secretary Make a Grant to a State?

§ 403.50 How does the Secretary make allotments?

(a)(1) From funds made available under section 3(c) of the Act for the basic programs listed in § 403.60, and under section 3(d) of the Act for the special programs listed in § 403.130, the Secretary allots funds each fiscal year according to the provisions of section 101 of the Act to the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands.

(2) Upon approval of its State plan and any annual amendments, the Secretary makes one or more grant awards from those allotments to a State.

(b)(1) From funds made available under sections 3(b)(2) of the Act, the Secretary allots funds each fiscal year for State councils on vocational education according to the provisions of section 112(f)(1) of the Act.

(2) The Secretary makes an award to a State council upon the State council's submission of an annual budget covering the proposed expenditures of the State council for the following program year, and when the Secretary has determined that the State plan is in substantially approvable form.

(c) From funds made available under section 3(b)(1)(B) of the Act for the territories, the Secretary allots funds each fiscal year according to the provisions of section 101A(a) of the Act.

(d)(1) The Secretary awards funds remaining after allotments are made under paragraph (c) of this section to the Center for the Advancement of Pacific Education (CAPE) or its successor entity, such as the Pacific Regional Educational Laboratory.

(2) CAPE or its successor entity shall make grants for vocational education and training in Guam, American Samoa, Palau, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, and the Republic of the Marshall Islands for the purpose of providing direct educational services, including—

(i) Teacher and counselor training and retraining;

(ii) Curriculum development; and

(iii) Improving vocational education and training programs in secondary schools and institutions of higher education (as defined in § 403.117(b)), or improving cooperative programs involving both secondary schools and institutions of higher education.

(3) CAPE may not use more than five percent of the funds received under paragraph (d)(1) of this section for administrative costs.

(Authority: 20 U.S.C. 2311; 2311a; and 2461)

§ 403.51 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 403.50(a) will not be required for any fiscal year for carrying out the program for which the allotment was made, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(b))

§ 403.52 When does the Secretary approve State plans and amendments?

(a)(1) The Secretary approves a State plan, or an amendment to a State plan, within sixty days of its receipt unless the plan or amendment is—

(i) Inconsistent with the requirements and purposes of the Act; or

(ii) Not of sufficient quality to meet the objectives of the Act, including the objective of developing and implementing program evaluations and improvements.

(2) Before the Secretary finally disapproves a State plan, or an amendment to a State plan, the Secretary gives reasonable notice and an opportunity for a hearing to the State board.

(b)(1) In reviewing a State plan, or an amendment to a State plan, the Secretary considers available comments from—

(i) The State council on vocational education;

(ii) The State agency responsible for supervision of community colleges, technical institutes, or other two-year postsecondary institutions primarily engaged in providing postsecondary vocational education;

(iii) The State agency responsible for secondary education;

(iv) The State Committee of Practitioners established under 34 CFR 400.6; and

(v) The State job training coordinating council.

(2) In reviewing an amendment to a State plan, the Secretary considers available comments from the State job training coordinating council and the State council on vocational education.

(Authority: 20 U.S.C. 2323(c), 2324, and 2325(d)(3))

Subpart E—What Kinds of Activities Does the Secretary Assist Under the Basic Programs?

General

§ 403.60 What are the basic programs?

The following basic programs are authorized by Title II of the Act:

(a) State Programs and State Leadership Activities.

(b) Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(c) Sex Equity Programs.

(d) Programs for Criminal Offenders.

(e) Secondary School Vocational Education Programs.

(f) Postsecondary and Adult Vocational Education Programs.

(Authority: 20 U.S.C. 2302)

§ 403.61 What projects, services, and activities are permissible under the basic programs?

Projects, services, and activities described in §§ 403.70, 403.71, 403.81, 403.91, 403.101, and 403.111 may include—

(a) Work-site programs such as cooperative vocational education, programs with community-based organizations, work-study, and apprenticeship programs;

(b) Placement services and activities for students who have successfully completed vocational education programs; and

(c) Programs that involve students in addressing the needs of the community in the production of goods or services that contribute to the community's welfare or that involve the students with other community development planning, institutions, and enterprises.

(Authority: 20 U.S.C. 2468e(c))

§ 403.62 What administrative provisions apply?

(a) Any project assisted with funds made available for the basic programs must be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.

(b) Each State board receiving financial assistance for the basic programs may consider granting academic credit for vocational education courses that integrate core academic competencies.

(Authority: 20 U.S.C. 2468e (b) and (d))

§ 403.63 How does a State carry out the State Vocational and Applied Technology Education Program?

(a) Unless otherwise indicated in the regulations in this part, a State board shall carry out projects, services, and activities under the State Vocational and Applied Technology Education Program—

(1) Directly;

(2) Through a school operated by the State board;

(3) Through awards to State agencies or institutions, such as vocational schools or correctional institutions; or

(4) Through awards to eligible recipients.

(b) For the purpose of paragraph (a) of this section, a State board acts directly if it—

(1) Carries out projects, services, or activities using its own staff (except at a school operated by the State board); or

(2) Contracts for statewide projects, services, or activities such as research, curriculum development, and teacher training.

(c) The regulations in this part also authorize a State to carry out certain projects, services, and activities under the State Vocational and Applied Technology Education Program by making an award to an entity other than an eligible recipient, such as a community-based organization, employers, private vocational training institutions, private postsecondary education institutions, labor organizations, and joint labor management apprenticeship programs.

(d) If projects, services, and activities are carried out by a school operated by the State board under paragraph (a)(2) of this section or are carried out by a State agency or institution under paragraph (a)(3) of this section, the requirements dealing with local applications (§§ 403.190 and 403.32(b)(5)(i)) apply in the same manner as to other eligible recipients.

(Authority: 20 U.S.C. 2323(b)(5), (6); 2335(a)(3); 2335b; 2342(c)(2)(N); and 2343)

State Programs and State Leadership Activities

§ 403.70 How must funds be used under the State Programs and State Leadership Activities?

A State shall use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) to conduct programs, projects, services, and activities that include—

(a) Professional development activities—

(1) For vocational teachers and academic teachers working with vocational education students, including corrections educators and counselors and educators and counselors in community-based organizations; and

(2) That include inservice and preservice training of teachers in programs and techniques, including integration of vocational and academic curricula, with particular emphasis on training of minority teachers;

(b) Development, dissemination, and field testing of curricula, especially curricula that—

(1) Integrate vocational and academic methodologies; and

(2) Provide a coherent sequence of courses through which academic and occupational skills may be measured; and

(c) Assessment of programs conducted with assistance under the Act including the development of—

(1) Performance standards and measures for those programs; and

(2) Program improvement and accountability with respect to those programs.

(Authority: 20 U.S.C. 2331(b))

§ 403.71 In what additional ways may funds be used under the State Programs and State Leadership Activities?

In addition to the required activities in § 403.70, a State may use funds reserved under section 102(a)(3) of the Act for the State Programs and State Leadership Activities in accordance with § 403.180(b)(3) for programs, projects, services, and activities that include—

(a) The promotion of partnerships among business, education (including educational agencies), industry, labor, community-based organizations, or governmental agencies;

(b) The support for tech-prep education as described in 34 CFR part 406;

(c)(1) The support of vocational student organizations that are an integral part of the vocational education instructional program, especially with respect to efforts to increase minority participation in those organizations.

(2) The support of vocational student organizations may include, but is not limited to, expenditures for—

(i) The positions of State executive secretaries and State advisors for vocational student organizations;

(ii) Leadership development workshops;

(iii) The development of curriculum for vocational student organizations; and

(iv) Field or laboratory work incidental to vocational training so long as the activity is supervised by vocational education personnel who are qualified in the occupational area and is available to all students in the instructional program without regard to membership in any student organization.

(3) The support of vocational student organizations may not include—

(i) Lodging, feeding, conveying, or furnishing transportation to conventions or other forms of social assemblage;

(ii) Purchase of supplies, jackets, and other effects for students' personal ownership;

(iii) Cost of non-instructional activities such as athletic, social, or recreational events;

(iv) Printing and disseminating non-instructional newsletters;

(v) Purchase of awards for recognition of students, advisors, and other individuals; or

(vi) Payment of membership dues;

(d) Leadership and instructional programs in technology education; and

(e) Data collection.

(Authority: 20 U.S.C. 2331(c); H.R. Rep. No. 660, 101st Cong., 1st Sess. 117 (1990))

Single Parents, Displaced Homemakers, and Single Pregnant Women Program

§ 403.80 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program.

(Authority: 20 U.S.C. 2335(a)(2), (3); 2335b(1))

§ 403.81 How must funds be used under the Single Parents, Displaced Homemakers, and Single Pregnant Women Program?

A State shall use funds reserved in accordance with § 403.180(b)(2)(i) for individuals who are single parents, displaced homemakers, or single pregnant women only to—

(a) Provide, subsidize, reimburse, or pay for preparatory services, including instruction in basic academic and occupational skills, necessary educational materials, and career guidance and counseling services in preparation for vocational education and training that will furnish single parents, displaced homemakers, and single pregnant women with marketable skills;

(b) Make grants to eligible recipients for expanding preparatory services and vocational education services if the expansion directly increases the eligible recipients' capacity for providing single parents, displaced homemakers, and single pregnant women with marketable skills;

(c) Make grants to community-based organizations for the provision of preparatory and vocational education services to single parents, displaced homemakers, and single pregnant women if the State determines that the community-based organizations have demonstrated effectiveness in providing comparable or related services to single parents, displaced homemakers, and single pregnant women, taking into account the demonstrated performance of such organizations in terms of cost, the quality of training, and the characteristics of the participants;

(d) Make preparatory services and vocational education and training more accessible to single parents, displaced homemakers, and single pregnant women by assisting those individuals with dependent care, transportation services, or special services and supplies, books, and materials, or by organizing and scheduling the programs so that those programs are more accessible; or

(e) Provide information to single parents, displaced homemakers, and single pregnant women to inform those individuals of vocational education programs, related support services, and career counseling.

(Authority: 20 U.S.C. 2335(a))

§ 403.82 In what settings may the Single Parents, Displaced Homemakers, and Single Pregnant Women Program be offered?

The programs and services described in § 403.81 may be provided in postsecondary or secondary school settings, including area vocational education schools, and community-based organizations that meet the requirements of § 403.81(c), that serve single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2335(b))

Sex Equity Program

§ 403.90 Who is eligible for a subgrant or contract?

Eligible recipients and community-based organizations are eligible for an award under the Sex Equity Program.

(Authority: 20 U.S.C. 2335b(1))

§ 403.91 How must funds be used under the Sex Equity Program?

Except as provided in § 403.92, each State shall use amounts reserved for the Sex Equity Program in accordance with § 403.180(b)(2)(ii) only for—

(a) Programs, services, comprehensive career guidance and counseling, and activities to eliminate sex bias and stereotyping in secondary and postsecondary vocational education;

(b) Preparatory services and vocational education programs, services, and activities for girls and women, aged 14 through 25, designed to enable the participants to support themselves and their families; and

(c) Support services for individuals participating in vocational education programs, services, and activities described in paragraphs (a) and (b) of this section, including dependent-care services and transportation.

(Authority: 20 U.S.C. 2335a(a))

§ 403.92 Under what circumstances may the age limit under the Sex Equity Program be waived?

The individual appointed under § 403.13(a) may waive the requirement in § 403.91(b) with respect to age limitations if the individual determines (through appropriate research) that the waiver is essential to meet the objectives of § 403.91.

(Authority: 20 U.S.C. 2335a(b))

Programs for Criminal Offenders

§ 403.100 What are the requirements for designating a State corrections educational agency to administer the Programs for Criminal Offenders?

(a) The State Board shall designate one or more State corrections educational agencies to administer programs assisted under the Act for juvenile and adult criminal offenders in correctional institutions in the State including correctional institutions operated by local authorities.

(b) Each State corrections educational agency that desires to be designated under paragraph (a) of this section shall submit to the State board a plan for the use of funds.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2336(a))

§ 403.101 How must funds be used under the Programs for Criminal Offenders?

In administering programs receiving funds reserved under § 403.180(b)(5) for criminal offenders, each State corrections educational agency designated under § 403.100(a) shall—

(a) Give special consideration to providing—

(1) Services to offenders who are completing their sentences and preparing for release; and

(2) Grants for the establishment of vocational education programs in correctional institutions that do not have such programs;

(b) Provide vocational education programs for women who are incarcerated;

(c) Improve equipment; and

(d) In cooperation with eligible recipients, administer and coordinate vocational education services to offenders before and after their release.

(Authority: 20 U.S.C. 2336(b))

§ 403.102 What other requirements apply to the Program for Criminal Offenders?

Each State corrections educational agency designated under § 403.100(a) shall meet the requirements in §§ 403.191 and 403.192.

(Authority: 20 U.S.C. 2471(22))

Secondary, Postsecondary, and Adult Vocational Education Programs

§ 403.110 Who is eligible for a subgrant or contract?

(a) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Secondary School Vocational Education Program:

(1) A local educational agency.

(2) An area vocational education school or intermediate educational agency that meets the requirements in § 403.113.

(b) Subject to the requirements of paragraph (c) of this section, the following entities are eligible for an award under the Postsecondary and Adult Vocational Education Programs:

(1) An institution of higher education as defined in § 403.117(b), including a nonprofit institution that satisfies the conditions set forth in § 403.111(d)(14).

(2) A local educational agency serving adults.

(3) An area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs.

(c) Only an entity that provides or will provide vocational education in a program that meets the requirements of § 403.111 is eligible to receive an award under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(Authority: 20 U.S.C. 2341(a) and (d); 2341a (a) and (d)(1); and 2342(c))

§ 403.111 How must funds be used under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a)(1) Each eligible recipient that receives an award under §§ 403.112, 403.113, or § 403.116 shall use funds under that award to improve vocational education programs.

(2) Projects assisted with funds awarded under §§ 403.112, 403.113, or § 403.116 must—

(i) Provide for the full participation of individuals who are members of special populations by providing the supplementary and other services required by § 403.190(b) necessary for them to succeed in vocational education; and

Cross-Reference: See appendix A to part 403 and §§ 403.190(c) and 403.193(e).

(ii) Operate at a limited number of sites or with respect to a limited number of program areas.

(3) If an eligible recipient that receives an award under §§ 403.112, 403.113, or 403.116 meets the requirements in this section and §§ 403.190(b) and 403.193, it may use those Federal funds to serve students who are not members of special populations.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or § 403.116 shall give priority for assistance under those sections to sites or program areas that serve the highest concentrations of individuals who are members of special populations.

Examples: Methods by which an eligible recipient may give priority to sites or program areas that serve the highest concentrations of individuals who are members of special populations include, but are not limited to, the following:

Example 1: *Method to give priority to a limited number of sites.* Based on data from the preceding fiscal year—

(a) First, a local educational agency ranks each site based on the percentage of the site's total enrollment of students who are members of special populations.

(b) Second, the local educational agency establishes a funding cut-off point for sites above the district-wide percentage of special populations enrollment. The local educational agency funds sites above the cut-off point but does not fund sites below that point.

Example 2: *Method to give priority to a limited number of program areas.* Based on data from the preceding fiscal year—

(a) First, a postsecondary institution ranks each program area based on the percentage of the program area's total enrollment of students who are members of special populations.

(b) Second, the postsecondary institution establishes a funding cut-off point for program areas that rank above the institution-wide average percentage of special populations enrollment. The postsecondary institution funds projects in a program area that is above the cut-off point but does not fund projects in program areas below that point.

Example 3: *Method to give priority to a limited number of sites.* Based on data from the preceding fiscal year—

(a) First, an LEA or postsecondary institution identifies a site with a high concentration of special populations;

(b) Second, the LEA or postsecondary institution identifies a program area at the site (such as health occupations) in which the participation rate for members of special populations has been lower than the overall rate of participation for members of special populations at the site; and

(c) Third, the LEA or postsecondary institution funds a project at the site designed to improve the participation rate of members of special populations in that program area.

Note to examples in § 403.111: Absolute counts of special population members may be used to determine the sites or program areas with the highest concentrations of special population members instead of, or in combination with, percentages of special population members.

(c) Funds made available from an award under §§ 403.112, 403.113, or § 403.116 must be used to provide vocational education in programs that—

(1) Are of sufficient size, scope, and quality as to be effective;

(2) Integrate academic and vocational education in those programs through coherent sequences of courses so that students achieve both academic and occupational competencies; and

(3) Provide for the equitable participation of members of special populations in vocational education consistent with the assurances and requirements in §§ 403.190(b) and 403.193, so that these populations have an opportunity to enter vocational education that is equal to that afforded to the general student population.

Cross-Reference: See appendix A to part 403.

(d) In carrying out the provisions of paragraph (c) of this section, an eligible recipient under §§ 403.112, 403.113, or § 403.116 may use funds for activities that include, but are not limited to—

(1) Upgrading of curriculum;

(2) Purchase of equipment, including instructional aids;

(3) Inservice training of both vocational instructors and academic instructors working with vocational education students for integrating academic and vocational education;

(4) Guidance and counseling;

(5) Remedial courses;

(6) Adaptation of equipment;

(7) Tech-prep education programs;

(8) Supplementary services designed to meet the needs of special populations;

(9) Payment in whole or in part with funds under §§ 403.112, 403.113, or § 403.116 for a special populations coordinator, who must be a qualified counselor or teacher, to ensure that individuals who are members of special populations are receiving adequate services and job skill training;

(10) Apprenticeship programs;

(11) Programs that are strongly tied to economic development efforts in the State;

(12) Programs that train adults and students for all aspects of an occupation in which job openings are projected or available;

(13) Comprehensive mentor programs in institutions of higher education offering comprehensive programs in teacher preparation, which seek to use fully the skills and work experience of individuals currently or formerly employed in business and industry who are interested in becoming classroom instructors and to meet the need of vocational educators who wish to upgrade their teaching competencies; or

(14) Provision of education and training through arrangements with private vocational training institutions, private postsecondary educational institutions, employers, labor organizations, and joint labor-management apprenticeship programs if those institutions, employers, labor organizations, or programs can make a significant contribution to obtaining the objectives of the State plan and can provide substantially equivalent training at a lesser cost, or can provide equipment or services not available in public institutions.

(Authority: 20 U.S.C. 2342)

§ 403.112 How does a State allocate funds under the Secondary School Vocational Education Program to local educational agencies?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Secondary School Vocational Education Program.

(b) *General rule.* Except as provided in paragraphs (c) and (d) of this section and § 401.119, a State shall distribute funds reserved for the Secondary School Vocational Education Program to local educational agencies (LEAs) according to the following formula:

(1) From 70 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 70 percent as the amount the LEA was allocated under section 1005 of chapter 1 (20 U.S.C. 2711) in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total amount received under section 1005 of chapter 1 by all LEAs in the State in that preceding year.

(2) From 20 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 20 percent as the number of students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA served by the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the total number of those students served by all LEAs in the State in that preceding year.

(3) From 10 percent of the amount reserved, an LEA must be allocated an amount that bears the same relationship to the 10 percent as the number of students enrolled in schools and adults enrolled in vocational education training programs under the jurisdiction of the LEA in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of students enrolled in schools in kindergarten through 12th grade and adults enrolled in vocational education training programs under the jurisdiction of all LEAs in the State in that preceding year.

Example: Assume that a State has reserved $5,000,000 of its basic programs funds under Title II of the Act for secondary school programs.

(a)(1) All LEAs in the State were allocated a total of $80,000,000 under section 1005 of Chapter 1 in the preceding fiscal year. Of that amount, school district "A" was allocated $400,000.

(2) The allocation for school district "A" is calculated by multiplying $3,500,000 (70 percent of $5,000,000) by .005 of the State total ($400,000 ÷ $80,000,000). The allocation for school district "A" would be $17,500 under paragraph (b)(1) of this section.

(b)(1) All LEAs in a State served a total of 100,000 students with disabilities who have individualized education programs under section 614(a)(5) of the IDEA in the preceding fiscal year. Of that total, school district "A" served 400 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying $1,000,000 (20 percent of $5,000,000) by .004 of the State total (400 ÷ 100,000). The allocation for school district "A" would be $4,000 under paragraph (b)(2) of this section.

(c)(1) All LEAs in a State enrolled a total of 1,000,000 students (including adults enrolled in vocational education training programs in those LEAs) in the preceding fiscal year. Of that number school district "A" enrolled 3,500 of those students in the preceding fiscal year.

(2) The allocation for school district "A" is calculated by multiplying 500,000 (10 percent of $5,000,000) by .0035 of the State total (3,500 ÷ 1,000,000). The allocation for school district "A" would be $1,750 under paragraph (b)(3) of this section.

(c) *Exception to the general rule.* In applying the provisions in paragraph (b) of this section, a State may not distribute funds to an LEA that operates only elementary schools, but shall instead distribute funds that would have been allocated for those ineligible LEAs as follows:

(1) If an LEA that operates only elementary schools sends its graduating students to a single local or regional educational agency that provides secondary school services to secondary school students in the same attendance area, a State shall distribute to that local or regional educational agency any amounts under paragraph (b) of this section that would otherwise have been allocated to LEAs operating only elementary schools.

(2) If an LEA that operates only elementary schools sends its graduating students to two or more local or regional educational agencies that provide secondary school services to secondary students in the same attendance area, the State shall distribute to those local or regional educational agencies an amount based on the proportionate number of students each agency received in the previous year from the LEA that operates only elementary schools.

(d)(1) *Minimum grant amount.* Except as provided in paragraph (d)(3) of this section, an LEA is not eligible for a grant under the Secondary School Vocational Education Program unless the amount allocated to the LEA under paragraph (b) of this section is not less than $15,000.

(2)(i) An LEA may enter into a consortium with one or more LEAs for the purpose of providing services under the Secondary School Vocational Education Program in order to meet the minimum grant requirement in paragraph (d)(1) of this section.

(ii) A consortium arrangement under paragraph (d)(2)(i) of this section must serve primarily as a structure for operating joint projects that provide services to all participating local educational agencies.

(iii) A project operated by a consortium must meet the size, scope, and quality requirement of § 403.111(c)(1).

Example: Under the distribution formula for the Secondary School Vocational Education Program, three LEAs earn $5,000 each (which is less than the $15,000 minimum grant amount for each LEA). The LEAs form a consortium in order to receive an award. One of the LEAs is designated as the fiscal agent for the consortium and receives the $15,000 award for the consortium. The consortium may operate and fund with the $15,000 a project or projects for the benefit of all participating LEAs. The fiscal agent of the consortium may not subgrant back to the participating LEAs the amounts they contributed to the consortium.

(3) A State may waive paragraph (d)(1) of this section in any case in which the LEA—

(i) Is located in a rural, sparsely populated area;

(ii) Demonstrates that it is unable to enter into a consortium for purposes of providing services under the Secondary School Vocational Education Program; and

(iii) Demonstrates that the projects to be assisted meet the size, scope, and quality requirements in § 403.111(c)(1).

(4) Any amounts that are not distributed by reason of paragraph (d)(1) of this section must be redistributed in accordance with the provisions in paragraph (b) of this section.

Cross-Reference: See 34 CFR 403.113(d).

(Authority: 20 U.S.C. 2341 (a), (b), and (c))

§ 403.113 How does a State allocate funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies?

(a) A State shall distribute funds reserved under § 403.112(a) directly to the appropriate area vocational education school or intermediate educational agency in any case in which—

(1) The area vocational education school or intermediate educational agency and an LEA—

(i) Have formed or will form a consortium for the purpose of receiving funds reserved under § 403.112(a); or

(ii) Have entered into or will enter into a cooperative arrangement for the purpose of receiving funds reserved under § 403.112(a); and

(2)(i) The area vocational education school or intermediate educational agency serves a proportion of students with disabilities and students who are economically disadvantaged that is approximately equal to or greater than the proportion of those students attending the secondary schools under the jurisdiction of all of the LEAs sending students to the area vocational education school or the intermediate educational agency; or

(ii) The area vocational education school or intermediate educational agency demonstrates that it is unable to meet the criterion in paragraph (a)(2)(i) of this section due to the lack of interest by students with disabilities and students who are economically disadvantaged in attending vocational education programs in that area vocational education school or intermediate educational agency.

(b) If an area vocational education school or intermediate educational agency meets the requirements of paragraph (a) of this section, then the amount that would otherwise be allocated to the LEA may be distributed to the area vocational education school, the intermediate educational agency, and the LEA—

(1) Based on each school's or entity's relative share of students with disabilities and students who are economically disadvantaged who are attending vocational education programs that meet the requirements of § 403.111 (based, if practicable, on the average enrollment for the prior 3 years); or

(2) On the basis of an agreement between the LEA and the area vocational education school or intermediate educational agency.

(c) Notwithstanding paragraphs (a) and (b) of this section, and §§ 403.114 and 403.115, prior to distributing funds to any LEA that would receive an allocation that is not sufficient to conduct a program that meets the requirements of § 403.111(c), a State shall encourage the LEA to—

(1) Form a consortium or enter a cooperative agreement with an area vocational education school or intermediate educational agency offering programs that meet the requirements of § 403.111(c), and that are accessible to economically disadvantaged students and students with disabilities that would be served by the LEA; and

(2) Transfer its allocation to an area vocational education school or intermediate educational agency.

(d) If an LEA's allocation under § 403.112 meets the minimum grant requirement in § 403.112(d), and the allocation is distributed in part to an area vocational education school or an intermediate educational agency pursuant to paragraphs (a) and (b) of this section, the LEA may retain the amount not distributed to the area vocational education school or an intermediate educational agency even though that amount is less than the minimum grant required by § 403.112(d).

(Authority: 20 U.S.C. 2341(d) (1), (2), and (5))

§ 403.114 How does a State determine the number of economically disadvantaged students attending vocational education programs under the Secondary School Vocational Education Program?

(a) For the purposes of § 403.113, a State may determine the number of economically disadvantaged students attending vocational education programs on any of the following bases:

(1) Eligibility for one of the following:

(i) Free or reduced-price meals under the National School Lunch Act (42 U.S.C. 1751 *et seq.*);

(ii) The program for aid to Families with Dependent Children under Part A of Title IV of the Social Security Act (42 U.S.C. 601).

(iii) Benefits under the Food Stamp Act of 1977 (7 U.S.C. 2011).

(iv) To be counted for purposes of section 1005 of Chapter 1.

(v) Participation in programs assisted under Title II of the JTPA.

(2) Receipt of a Pell grant or assistance under a comparable State program of need-based financial assistance.

(3) Status of an individual who is determined by the Secretary to be low-income according to the latest available data from the Department of Commerce or the Department of Health and Human Services Poverty Guidelines.

(4) Other indices of economic status, including estimates of those indices, if the State demonstrates to the satisfaction of the Secretary that those indices are more representative of the number of economically disadvantaged students attending vocational education programs. The Secretary determines, on a case-by-case basis, whether other indices of economic status are more representative of the number of economically disadvantaged students attending vocational education programs, taking into consideration, for example, the statistical reliability of any data submitted by a grantee as well as the general acceptance of the indices by other agencies in the State or local area.

(b) If a State elects to use more than one factor described in paragraph (a) of this section for purposes of determining the number of economically disadvantaged students enrolled in vocational education programs, the State shall ensure that the data used are not duplicative.

(Authority: 20 U.S.C. 2341(d)(3) and 2471(15))

§ 403.115 What appeal procedures must be established under the Secondary School Vocational Education Program?

The State board shall establish an appeals procedure for resolution of any dispute arising between an LEA and an area vocational education school or an intermediate educational agency with respect to the allocation procedures described in §§ 403.112 and 403.113, including the decision of an LEA to leave a consortium.

Cross-Reference: See 34 CFR 76.401, Disapproval of an application—opportunity for a hearing.

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2341(d)(4))

§ 403.116 How does a State allocate funds under the Postsecondary and Adult Vocational Education Programs?

(a) *Reservation of funds.* From the portion of its allotment under § 403.180(b)(1) for the basic programs, each fiscal year a State may reserve funds for the Postsecondary and Adult Vocational Education Programs.

(b) *General rule.* (1) A State shall distribute funds reserved for Postsecondary and Adult Vocational Education Programs to eligible institutions within the State.

(2) Except as provided in paragraph (c) of this section and §§ 403.118 and 403.119, each eligible institution must receive an amount that bears the same relationship to the amount of funds reserved for the Postsecondary and Adult Vocational Education Programs as the number of Pell Grant recipients and recipients of assistance from the Bureau of Indian Affairs enrolled in programs meeting the requirements of § 403.111, including meeting the definition of vocational education in 34 CFR 400.4, offered by the eligible institution in the fiscal or program year preceding the fiscal or program year in which the allocation is made bears to the number of those recipients enrolled in these programs within the State in that preceding year.

(c) *Minimum grant amount.* (1) A State may not provide a grant under paragraph (b) of this section to any institution for an amount that is less than $50,000.

(2) Any amounts that are not allocated by reason of paragraph (c)(1) of this section must be redistributed to eligible institutions in accordance with the provisions of paragraph (b) of this section.

(Authority: 20 U.S.C. 2341a (a) and (c))

§ 403.117 What definitions apply to the Postsecondary and Adult Vocational Education Programs?

For the purposes of §§ 403.116, 403.118, and 403.120 the following definitions apply:

(a) "Eligible institution" means an institution of higher education, an LEA serving adults, or an area vocational education school serving adults that offers or will offer a program that meets the requirements of § 403.111 and seeks to receive assistance under § 403.116.

(b)(1) "Institution of higher education" means an educational institution in any State that—

(i) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of that certificate, or who are beyond the age of compulsory school attendance;

(ii) Is legally authorized within the State to provide a program of education beyond secondary education;

(iii) Provides an educational program for which it awards a bachelor's degree or provides not less than a two-year program which is acceptable for full credit toward such a degree, or in the case of a hospital or health care facility, that provides training of not less than one year for graduates of accredited health professions programs, leading to a degree or certificate upon completion of that training;

(iv) Is a public or other nonprofit institution; and

(v) Is accredited by a nationally recognized accrediting agency or association approved by the Secretary for this purpose or, if not so accredited—

(A) Is an institution with respect to which the Secretary has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time; or

(B) Is an institution whose credits are accepted, on transfer, by not less than three institutions that are so accredited, for credit on the same basis as if transferred from an institution so accredited.

(2) This term also includes any school that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provisions of paragraphs (b)(1) (i), (ii), (iv), and (v) of this definition. If the Secretary determines that a particular category of these schools does not meet the requirements of paragraph (b)(1)(v) because there is no nationally recognized accrediting agency or association qualified to accredit schools in that category, the Secretary, pending the establishment of such an accrediting agency or association, appoints an advisory committee, composed of persons specially qualified to evaluate training provided by schools in that category, that must—

(i) Prescribe the standards of content, scope, and quality that must be met in order to qualify schools in that category to participate in the program pursuant to this part; and

(ii) Determine whether particular schools not meeting the requirements of paragraph (b)(1)(v) of this definition meet those standards.

(Authority: 20 U.S.C. 1085)

(c) "Pell Grant recipient" means a recipient of financial aid under Subpart 1 of Part A of Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–1 *et seq.*).

(Authority: 20 U.S.C. 2341a(d))

§ 403.118 Under what circumstances may the Secretary waive the distribution requirements for the Postsecondary and Adult Vocational Education Programs?

The Secretary may waive § 403.116(b)(2) for any fiscal or program year for which a State submits to the Secretary an application for such a waiver that—

(a) Demonstrates that the formula in § 403.116(b)(2) does not result in a distribution of funds to the institutions within the State that have the highest numbers of economically disadvantaged individuals and that an alternative formula would result in such a distribution.

(b) Includes a proposal for an alternative formula that may include criteria relating to the number of individuals attending institutions within the State who—

(1) Receive need-based postsecondary financial aid provided from public funds;

(2) Are members of families participating in the program for aid to families with dependent children under Part A of Title IV of the Social Security Act (42 U.S.C. 601);

(3) Are enrolled in postsecondary educational institutions that—

(i) Are funded by the State;

(ii) Do not charge tuition; and

(iii) Serve only economically disadvantaged students;

(4) Are enrolled in programs serving economically disadvantaged adults;

(5) Are participants in programs assisted under the JTPA;

(6) Are Pell Grant recipients; and

(c) Proposes an alternative formula that—

(1) Includes direct counts of students enrolled in the institutions;

(2) Directly relates to the status of students as economically disadvantaged individuals;

(3) Is to be uniformly applied to all eligible institutions;

(4) Does not include fund pools for specific types of institutions;

(5) Does not include the direct assignment of funds to a particular institution on a non-formula basis; and

(6) Identifies a more accurate count of economically disadvantaged individuals in the aggregate than does the formula in § 403.116(b)(2).

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2341a(b))

§ 403.119 Under what circumstances may the State waive the distribution requirements for Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs?

(a) This section applies in any fiscal or program year in which a State reserves 15 percent or less under § 403.180(b)(1) for distribution under—

(1) The Secondary School Vocational Education Program; or

(2) The Postsecondary and Adult Vocational Education Programs.

(b) Notwithstanding the provisions and §§ 403.112, 403.113, or § 403.116, as applicable, in order to result in a more equitable distribution of funds for programs serving the highest numbers of economically disadvantaged individuals, the State may distribute the funds described in paragraph (a) of this section—

(1) On a competitive basis; or

(2) Through any alternative method determined by the State.

(Authority: 20 U.S.C. 2341b)

§ 403.120 How does a State reallocate funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs?

(a) In any fiscal or program year that an LEA, area vocational school, intermediate school district, or eligible institution does not obligate all of the amounts it is allocated for that year under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Programs, the LEA, area vocational education school, intermediate school district, or eligible institution shall return any unobligated amounts to the State to be reallocated under §§ 403.112(b), 403.113, or § 403.116(b), as applicable.

(b) In any fiscal or program year in which amounts allocated under §§ 403.112(b), 403.113, 403.116(b), or § 403.118 are returned to the State and the State is unable to reallocate those amounts according to those sections in time for the amounts to be obligated in the fiscal or program year, the State shall retain the amounts to be distributed in combination with amounts reserved under §§ 403.112(b), 403.113, 403.116(b), or § 403.118 for the following fiscal or program year.

(Authority: 20 U.S.C. 2341c)

Subpart F—What Kinds of Activities Does the Secretary Assist Under the Special Programs?

General

§ 403.130 What are the Special Programs?

The following special programs are authorized by Title III of the Act and are subject to the requirements of the State plan:

(a) State Assistance for Vocational Education Support Programs by Community-Based Organizations.

(b) Consumer and Homemaking Education Program.

(c) Comprehensive Career Guidance and Counseling Programs.

(d) Business-Labor-Education Partnerships for Training Program.

(Authority: 20 U.S.C. 2302(d)(A)–(D))

§ 403.131 Who is eligible for an award under the Special Programs?

(a) The fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands are eligible for an award under the—

(1) State Assistance for Vocational Education Support and Programs by Community-Based Organizations;

(2) Consumer and Homemaking Education Programs; and

(3) Comprehensive Career Guidance and Counseling Programs.

(b) States, as defined in 34 CFR 400.4(b), are eligible for the Business-Labor-Education Partnerships for Training Program.

(Authority: 20 U.S.C. 2302(d)(A)–(D))

Vocational Education Support Programs by Community-Based Organizations

§ 403.140 What activities does the Secretary support under the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) The State shall provide, in accordance with its State plan, and from its allotment for this program, financial assistance to joint projects of eligible recipients and community-based organizations within the State that provide the following special vocational education services and activities:

(1) Outreach programs that facilitate the entrance of youth into a program of transitional services and subsequent entrance into vocational education, employment, or other education and training.

(2) Transitional services such as attitudinal and motivational prevocational training programs.

(3) Prevocational educational preparation and basic skills development conducted in cooperation with business concerns.

(4) Special prevocational preparations programs targeted to inner-city youth, non-English speaking youth, Appalachian youth, and the youth of other urban and rural areas having a high density of poverty who need special prevocational education programs.

(5) Career intern programs.

(6) Model programs for school dropouts.

(7) The assessment of students' needs in relation to vocational education and jobs.

(8) Guidance and counseling to assist students with occupational choices and with the selection of a vocational education program.

(b) Individuals with disabilities who are educationally or economically

disadvantaged may participate in projects under this program.

(Authority: 20 U.S.C. 2352, 2471(6))

§ 403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board also may establish requirements relating to the contents of the applications, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served that includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2351)

Consumer and Homemaking Education Programs

§ 403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Individual and family health;

(iii) Consumer education;

(iv) Family living and parenthood education;

(v) Child development and guidance;

(vi) Housing and home management, including resource management; and

(vii) Clothing and textiles.

(b) The State shall use the funds for this program for projects, services, and activities—

(1) For residents of economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage, in cooperation with the individual appointed under § 403.13(a), the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update Consumer and Homemaking Education Programs, especially those that specifically address needs described in paragraphs (b) (1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Balancing work and family;

(iv) Improving responses to individual and family crises (including family violence and child abuse);

(v) Strengthening parenting skills (especially among teenage parents);

(vi) Preventing teenage pregnancy;

(vii) Assisting the aged, individuals with disabilities, and members of at risk populations (including the homeless);

(viii) Improving individual, child, and family nutrition and wellness;

(ix) Conserving limited resources;

(x) Understanding the impact of new technology on life and work;

(xi) Applying consumer and homemaking education skills to jobs and careers; and

(xii) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;

(ix) The upgrading of equipment;

(x) Teacher supervision;

(xi) State leadership, including the activities of student organizations; and

(xii) State administration, subject to § 403.151(c).

(Authority: 20 U.S.C. 2361, 2362(a), (b))

§ 403.151 How must funds be used under the Consumer and Homemaking Education Programs?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve the home environment and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership and one or more full-time State administrators qualified by experience and educational preparation in home economics education.

(3) For purposes of the Consumer and Homemaking Education Program, State leadership includes, but is not limited to, curriculum development, personnel development, research, dissemination activities, and technical assistance.

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2362(c), 2363)

Comprehensive Career Guidance and Counseling Programs

§ 403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?

(a) The State shall conduct, in accordance with its State plan, from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decision-making, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education, and job training; and

(2)(i) Encourage the elimination of sex, age, disabling conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, individuals with disabilities, and economically disadvantaged individuals.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and counseling projects such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership;

(ix) The development of career information delivery systems; and

(x) Local administration, including supervision;

(xi) State administration, including supervision, subject to § 403.161(c);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act (29 U.S.C. 50);

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Authority: 20 U.S.C. 2382(a), (b))

§ 403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under § 403.160(b)(2) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, individuals with disabilities, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(3) For purposes of Comprehensive Career Guidance and Counseling Programs, State leadership includes, but is not limited to curriculum development, personnel development, research, dissemination activities, and technical assistance; and

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2382(c), 2383)

Business-Labor-Education Partnership for Training Program

§ 403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?

The State board shall, in accordance with the State plan, from its allotment for this program, support the establishment and operation of projects, services, and activities, that—

(a) Provide incentives for the coordination of the Business-Labor-Education Partnership for Training Program with related efforts under the—

(1) National Tech-Prep Education Program in 34 CFR part 405;

(2) State-Administered Tech-Prep Education Program in 34 CFR part 406; and

(3) JTPA; and

(b) May only include, in addition to the activities described in § 403.32(a)(27) through (30),—

(1) Training and retraining of instructional and guidance personnel;

(2) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(3) Acquisition and operation of communications and telecommunications equipment and other high technology equipment for programs authorized by this part;

(4) Other activities authorized by Title III of the Act as may be essential to the successful establishment and operation of projects, services, and activities under the Business-Labor-Education Partnership for Training Program, including activities and related services to ensure access of women, minorities, individuals with disabilities, and

disadvantaged may participate in projects under this program.

(Authority: 20 U.S.C. 2352, 2471(6))

§ 403.141 What are the application requirements for the State Assistance for Vocational Education Support Programs by Community-Based Organizations?

(a) Each community-based organization and eligible recipient that desire to participate in this program shall jointly prepare and submit an application to the State board at the time and in the manner established by the State board.

(b) The State board also may establish requirements relating to the contents of the applications, except that each application must contain—

(1) An agreement among the community-based organization and the eligible recipients in the area to be served that includes the designation of one or more fiscal agents for the project;

(2) A description of how the funds will be used, together with evaluation criteria to be applied to the project;

(3) Assurances that the community-based organization will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages sixteen through twenty-one, inclusive;

(4) Assurances that business concerns will be involved, as appropriate, in services and activities for which assistance is sought;

(5) A description of the efforts the community-based organization will make to collaborate with the eligible recipients participating in the joint project;

(6) A description of the manner in which the services and activities for which assistance is sought will serve to enhance the enrollment of severely economically and educationally disadvantaged youth into the vocational education programs; and

(7) Assurances that the projects conducted by the community-based organization will conform to the applicable standards of performance and measures of effectiveness required of vocational education programs in the State.

(Approved by the Office of Management and Budget under Control No. 1830-0030)

(Authority: 20 U.S.C. 2351)

Consumer and Homemaking Education Programs

§ 403.150 What activities does the Secretary support under the Consumer and Homemaking Education Programs?

(a) The State shall conduct, in accordance with its State plan, and from its allotment for this program, consumer and homemaking education projects that may include—

(1) Instructional projects, services, and activities that prepare youth and adults for the occupation of homemaking;

(2) Instruction in the areas of—

(i) Food and nutrition;

(ii) Individual and family health;

(iii) Consumer education;

(iv) Family living and parenthood education;

(v) Child development and guidance;

(vi) Housing and home management, including resource management; and

(vii) Clothing and textiles.

(b) The State shall use the funds for this program for projects, services, and activities—

(1) For residents of economically depressed areas;

(2) That encourage the participation of traditionally underserved populations;

(3) That encourage, in cooperation with the individual appointed under § 403.13(a), the elimination of sex bias and sex stereotyping;

(4) That improve, expand, and update Consumer and Homemaking Education Programs, especially those that specifically address needs described in paragraphs (b) (1), (2), and (3) of this section; and

(5) That address priorities and emerging concerns at the local, State, and national levels.

(c) The State may use the funds described in paragraph (a) of this section for—

(1) Program development and the improvement of instruction and curricula relating to—

(i) Managing individual and family resources;

(ii) Making consumer choices;

(iii) Balancing work and family;

(iv) Improving responses to individual and family crises (including family violence and child abuse);

(v) Strengthening parenting skills (especially among teenage parents);

(vi) Preventing teenage pregnancy;

(vii) Assisting the aged, individuals with disabilities, and members of at risk populations (including the homeless);

(viii) Improving individual, child, and family nutrition and wellness;

(ix) Conserving limited resources;

(x) Understanding the impact of new technology on life and work;

(xi) Applying consumer and homemaking education skills to jobs and careers; and

(xii) Other needs as determined by the State; and

(2) Support services and activities designed to ensure the quality and effectiveness of programs, including—

(i) The demonstration of innovative and exemplary projects;

(ii) Community outreach to underserved populations;

(iii) The application of academic skills (such as reading, writing, mathematics, and science) through consumer and homemaking education programs;

(iv) Curriculum development;

(v) Research;

(vi) Program evaluation;

(vii) The development of instructional materials;

(viii) Teacher education;

(ix) The upgrading of equipment;

(x) Teacher supervision;

(xi) State leadership, including the activities of student organizations; and

(xii) State administration, subject to § 403.151(c).

(Authority: 20 U.S.C. 2361, 2362(a), (b))

§ 403.151 How must funds be used under the Consumer and Homemaking Education Programs?

(a) A State shall use not less than one-third of its allotment under the Consumer and Homemaking Education Program in economically depressed areas or areas with high rates of unemployment for projects, services, and activities designed to assist consumers, and to help improve the home environment and the quality of family life.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership and one or more full-time State administrators qualified by experience and educational preparation in home economics education.

(3) For purposes of the Consumer and Homemaking Education Program, State leadership includes, but is not limited to, curriculum development, personnel development, research, dissemination activities, and technical assistance.

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2362(c), 2363)

Comprehensive Career Guidance and Counseling Programs

§ 403.160 What activities does the Secretary support under the Comprehensive Career Guidance and Counseling Programs?

(a) The State shall conduct, in accordance with its State plan, from its allotment for this program, career guidance and counseling projects, services, and activities that are—

(1) Organized and administered by certified counselors; and

(2) Designed to improve, expand, and extend career guidance and counseling programs to meet the career development, vocational education, and employment needs of vocational education students and potential students.

(b) The purposes of the projects, services, and activities described in paragraph (a) of this section must be to—

(1) Assist individuals to—

(i) Acquire self-assessment, career planning, career decision-making, and employability skills;

(ii) Make the transition from education and training to work;

(iii) Maintain the marketability of their current job skills in established occupations;

(iv) Develop new skills to move away from declining occupational fields and enter new and emerging fields in high-technology areas and fields experiencing skill shortages;

(v) Develop mid-career job search skills and to clarify career goals; and

(vi) Obtain and use information on financial assistance for postsecondary and vocational education, and job training; and

(2)(i) Encourage the elimination of sex, age, disabling conditions, and race bias and stereotyping;

(ii) Provide for community outreach;

(iii) Enlist the collaboration of the family, the community, business, industry, and labor; and

(iv) Be accessible to all segments of the population, including women, minorities, individuals with disabilities, and economically disadvantaged individuals.

(c) The projects, services, and activities described in paragraph (a) of this section must consist of—

(1) Instructional activities and other services at all educational levels to help students develop the skills described in paragraph (b)(1) of this section;

(2) Services and activities designed to ensure the quality and effectiveness of career guidance and counseling projects such as—

(i) Counselor education, including the education of counselors working with individuals with limited English proficiency;

(ii) Training support personnel;

(iii) Curriculum development;

(iv) Research and demonstration projects;

(v) Experimental projects;

(vi) The development of instructional materials;

(vii) The acquisition of equipment;

(viii) State and local leadership;

(ix) The development of career information delivery systems; and

(x) Local administration, including supervision;

(xi) State administration, including supervision, subject to § 403.161(c);

(3) Projects that provide opportunities for counselors to obtain firsthand experience in business and industry; and

(4) Projects that provide students with an opportunity to become acquainted with business, industry, the labor market, and training opportunities, including secondary educational programs that—

(i) Have at least one characteristic of an apprenticeable occupation as recognized by the Department of Labor or the State Apprenticeship Agency, in accordance with the National Apprenticeship Act (29 U.S.C. 50);

(ii) Are conducted in concert with local business, industry, labor, and other appropriate apprenticeship training entities; and

(iii) Are designed to prepare participants for an apprenticeable occupation or provide information concerning apprenticeable occupations and their prerequisites.

(Authority: 20 U.S.C. 2382(a), (b))

§ 403.161 How must funds be used under the Comprehensive Career Guidance and Counseling Programs?

(a) A State shall use not less than twenty percent of its allotment under the Career Guidance and Counseling Program for projects, services, and activities designed to eliminate sex, age, and race bias and stereotyping under § 403.160(b)(2) to ensure that projects, services, and activities under this program are accessible to all segments of the population, including women, disadvantaged individuals, individuals with disabilities, individuals with limited English proficiency, and minorities.

(b)(1) The State board shall ensure that the experience and information gained through carrying out projects, services, and activities under this program are shared with program administrators for the purpose of program planning.

(2) The State board shall use funds from its allotment under this program to provide State leadership that is qualified by experience and knowledge in guidance and counseling.

(3) For purposes of Comprehensive Career Guidance and Counseling Programs, State leadership includes, but is not limited to curriculum development, personnel development, research, dissemination activities, and technical assistance; and

(c) A State may use, in addition to funds reserved under § 403.180(b)(4), not more than six percent of its allotment under this program for State administration of projects, services, and activities under this program.

(Authority: 20 U.S.C. 2382(c), 2383)

Business-Labor-Education Partnership for Training Program

§ 403.170 What activities does the Secretary support under the Business-Labor-Education Partnership for Training Program?

The State board shall, in accordance with the State plan, from its allotment for this program, support the establishment and operation of projects, services, and activities, that—

(a) Provide incentives for the coordination of the Business-Labor-Education Partnership for Training Program with related efforts under the—

(1) National Tech-Prep Education Program in 34 CFR part 405;

(2) State-Administered Tech-Prep Education Program in 34 CFR part 406; and

(3) JTPA; and

(b) May only include, in addition to the activities described in § 403.32(a)(27) through (30),—

(1) Training and retraining of instructional and guidance personnel;

(2) Curriculum development and the development or acquisition of instructional and guidance equipment and materials;

(3) Acquisition and operation of communications and telecommunications equipment and other high technology equipment for programs authorized by this part;

(4) Other activities authorized by Title III of the Act as may be essential to the successful establishment and operation of projects, services, and activities under the Business-Labor-Education Partnership for Training Program, including activities and related services to ensure access of women, minorities, individuals with disabilities, and

economically disadvantaged individuals; and

(5) Providing vocational education to individuals in order to assist their entry into, or advancement in, high-technology occupations or to meet the technological need of other industries or businesses.

(Authority: 20 U.S.C. 2392(b) and 2393 (a), (d)(1))

§ 403.171 Who is eligible to apply to a State board for an award?

(a) The State board awards subgrants or contracts to partnerships between—

(1) An area vocational education school, a State agency, a local educational agency, a secondary school funded by the Bureau of Indian Affairs, an institution of higher education, a State corrections educational agency, or an adult learning center; and

(2) Business, industry, labor organizations, or apprenticeship programs.

(b) A partnership receiving an award from a State board must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2392(a)(1))

§ 403.172 What special considerations must the State board give in approving projects, services, and activities?

The State board, in approving projects, services, and activities assisted under the Business-Labor-Education Partnership Training Program, shall give special consideration to the following:

(a) The level and degree of business and industry participation in the development and operation of the program.

(b) The current and projected demand within the State or relevant labor market area for workers with the level and type of skills the program is designed to produce.

(c) The overall quality of the proposal, with particular emphasis on the probability of successful completion of the program by prospective trainees and the capability of the eligible recipient, with assistance from participating business or industry, to provide high quality training for skilled workers and technicians in high technology.

(d) The commitment to serve, as demonstrated by special efforts to provide outreach, information, and counseling, and by the provision of remedial instruction and other assistance, all segments of the population, including women, minorities, individuals with disabilities, and economically disadvantaged individuals.

(e) Projects, services, and activities to provide vocational education for individuals who have attained 55 years of age in order to assist their entry into, or advancement in, high-technology occupations or to meet the technological needs of other industries or businesses.

(Authority: 20 U.S.C. 2393-(b) and (d)(2))

§ 403.173 What expenses are allowable?

The State board shall use funds awarded under the Business-Labor-Education Partnership for Training Program only for—

(a) Expenses incurred in carrying out the programs, services, and activities described in § 403.170, including, for example, expenses for—

(1) The introduction of new vocational education programs, particularly in economically depressed urban and rural areas;

(2) The introduction or improvement of basic skills instruction, including English-as-a-second-language instruction, in order for an individual to be eligible for employment, to continue employment, or to be eligible for career advancement;

(3) Costs associated with coordination between vocational education programs, business, and industry, including advisory council meetings and newsletters; and

(4) Transportation and child-care services for students necessary to ensure access of women, minorities, individuals with disabilities, and economically disadvantaged individuals to projects, services, and activities authorized by the Business-Labor-Education Partnership for Training Program; and

(b)(1) Subject to paragraph (b)(2) of this section, expenditures for necessary and reasonable administrative costs of the State board and of eligible partners.

(2) Total expenditures for administrative costs of the State board and of eligible partners may not exceed 10 percent of the State's allotment for this program in the first year and five percent of that allotment in each subsequent year.

(Authority: 20 U.S.C. 2392(d) and 2393(a)(1))

§ 403.174 What additional fiscal requirements apply to the Business-Labor-Education Partnership for Training Program?

(a) The business and industrial share of the costs required in § 403.32(a)(29) may be in the form of either allowable costs or the fair market value of in-kind contributions such as facilities, overhead, personnel, and equipment.

(b) The State board shall use equal amounts from its allotment under this program and from its allotment for basic programs to provide the Federal share of cost of projects, services, and activities under this program.

(c) If an eligible partner demonstrates to the satisfaction of the State that it is incapable of providing all or part of the non-Federal portion of the costs of projects, services, and activities, as required by § 403.32(a)(29), the State board may designate funds available under Parts A and C of Title II of the Act or funds available from State sources in place of the non-Federal portion.

(Authority: 20 U.S.C. 2392(c))

Subpart G—What Financial Conditions Must Be Met by a State?

§ 403.180 How must a State reserve funds for the basic programs?

(a)(1) Except as provided in paragraph (a)(2) of this section, each State shall reserve from its allotment under the basic programs authorized by Title II of the Act, for—

(i) The Program for Single Parents, Displaced Homemakers, and Single Pregnant Women under § 403.81, and the Sex Equity Program under § 403.91, respectively, an amount that is not less than the amount the State reserved for each of those programs under section 202 of the Carl D. Perkins Vocational Education Act (CDPVEA) from its Fiscal Year (FY) 1991 grant from the FY 1990 appropriation; and

(ii) The Program for Criminal Offenders under § 403.101 an amount that is not less than—

(A) The amount the State reserved for projects, services, or activities under section 202(8) of the CDPVEA from its FY 1991 grant from the FY 1990 appropriation; and

(B) The amount of Federal funds under the CDPVEA, other than the one percent reserved under section 202(6) of the Act, that the State and its eligible recipients obligated for projects, services, and activities for criminal offenders in correctional institutions from its FY 1991 grant from the FY 1990 appropriation.

(2) In any year in which a State receives an amount for purposes of carrying out programs under Title II of the Act that is less than the amount the State received for those purposes in its FY 1991 grant award from the FY 1990 appropriation under the CDPVEA, the State shall ratably reduce the amounts reserved under paragraph (a)(1) of this section in the same proportion that the amount for carrying out programs under Title II of the Act is less than the amount the State received for those purposes from the FY 1990 appropriation.

(b) Except as provided in paragraph (a) of this section, from its allotment for the basic programs authorized by Title II of the Act, a State shall reserve—

(1) At least 75 percent for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs described in § 403.111;

(2) Ten and one-half percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women described in § 403.81 and the Sex Equity Program described in § 403.91, as follows:

(i) Not less than seven percent for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women.

(ii) Not less than three percent for the Sex Equity Program;

(3) Not more than eight and one-half percent for State Programs and State Leadership Activities described in §§ 403.70 and 403.71;

(4) Not more than five percent or $250,000, whichever is greater, for administration of the State plan, of which—

(i) Not less than $60,000 must be available for carrying out the provisions in § 403.13, regarding the personnel requirements for eliminating sex discrimination and sex stereotyping; and

(ii) The remaining amounts may be used for the costs of—

(A) Developing the State plan;

(B) Reviewing local applications;

(C) Monitoring and evaluating program effectiveness;

(D) Providing technical assistance;

(E) Ensuring compliance with all applicable Federal laws, including required services and activities for individuals who are members of special populations; and

(F) Supporting the activities of the technical committees it establishes under § 403.12(b)(1); and

(5) One percent for Programs for Criminal Offenders described in § 403.101.

(c) The procedure for meeting the "hold-harmless" requirements in § 403.180(a) and the $250,000 minimum for State administration provision in § 403.180(b)(4) is as follows:

(1) If the five percent reserved for administration is less than the $250,000 minimum allowed by paragraph (b)(4) of this section, or if any of the amounts reserved for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women in § 403.81, the Sex Equity Program in § 403.91, or the Program for Criminal Offenders in § 403.101, respectively, is less than the amount reserved for that program in FY 1990 (funds from the FY 1990 appropriation awarded in the States FY 1991 grant), a State shall subtract any amount necessary to satisfy the $250,000 minimum for State administration or any of the "hold-harmless" amounts from the total basic programs award received by the State.

(2) The State shall reserve $250,000 for administration and shall reserve for any program not meeting the "hold-harmless" requirement an amount necessary to meet that requirement.

(3) The State shall reserve from the remainder of the basic program award an amount for each of the remaining programs that is proportionate to the amount that program would have received in the absence of a shortfall in the amounts reserved for administration or to meet the "hold-harmless" requirements in paragraph (a)(1) of this section.

Example 1: (a) A State receives a basic programs award of $4,000,000. Five percent of the basic programs award equals $200,000, which is $50,000 less than the $250,000 minimum that may be reserved for State administration. To determine the amount of funds that will be reserved for each program under Title II, Parts A, B, and C of the Act, the State first subtracts $250,000 for State administration from the $4,000,000 basic programs award ($4,000,000−$250,000=$3,750,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under Title II, Parts A, B, and C of the Act in the absence of a shortfall in the set-aside amount for administration, as follows:

3.0%×$4,000,000=	$120,000	for Sex Equity Programs.
7.5%×$4,000,000=	300,000	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
8.5%×$4,000,000=	340,000	for State Programs and State Leadership Activities.
1.0%×$4,000,000=	40,000	for Programs for Criminal Offenders.
75%×$4,000,000=	3,000,000	for Part C of Title II.
	3,800,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have received in the absence of a shortfall ($3,800,000) and multiplies the remaining basic programs award ($3,750,000) by these percentages to determine the amount to reserve for each program under Parts A, B, and C of Title II of the Act, as follows:

($120,000/$3,800,000)×$3,750,000=	$118,421	for Sex Equity Programs.
($300,000/$3,800,000)×$3,750,000=	296,053	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
($340,000/$3,800,000)×$3,750,000=	335,526	for State Programs and State Leadership Activities.
($40,000/$3,800,000)×$3,750,000=	39,474	for Programs for Criminal Offenders.
($3,000,000/$3,800,000)×$3,750,000=	2,960,526	for Part C of Title II.
	3,750,000	

This example assumes that amounts reserved meet the "hold-harmless" requirement of section 102(c)(1) of the Act.

Example 2: A State's seven percent reserve from its FY 1992 grant for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women is $1,400,000 and the amount reserved for that program from its FY 1991 grant was $1,581,000. Therefore, the amount of FY 1992 funds reserved for that program is $181,000 less than the amount reserved in FY 1991. The State received a basic programs award of $20,000,000 in FY 1992. The other programs under Title II, Part B meet the "hold-harmless" requirement in § 403.180(a)(1), and the amount reserved for State administration exceeds $250,000. The State determines the amount of funds to be reserved for each program under Title II, Parts A, B, and C of the Act as follows:

(a) First, the State subtracts $1,581,000 from the $20,000,000 total basic programs award ($20,000,000−$1,581,000=$18,419,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under Parts A, B, and C of Title II of the Act in the absence of a shortfall in the set-aside amount for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women, as follows:

5.0%×$20,000,000=	$1,000,000	for administration.
3.5%×$20,000,000=	700,000	for Sex Equity Programs.
8.5%×$20,000,000=	1,700,000	for State Programs and State Leadership Activities.
1.0%×$20,000,000=	200,000	for Programs for Criminal Offenders.
75.0%×$20,000,000=	15,000,000	for Part C of Title II.
	18,600,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have earned in the absence of a shortfall ($18,600,000) and multiplies the remaining basic programs award ($18,419,000) by these percentages to determine the amount to reserve for each program under Parts A, B, and C of Title II of the Act, as follows:

($1,000,000/$18,600,000)×$18,419,000=	$990,269	for administration.
($700,000/$18,600,000)×$18,419,000=	693,188	for Sex Equity Programs.
($1,700,000/$18,600,000)×$18,419,000=	1,683,457	for State Programs and State Leadership Activities.
($200,000/$18,600,000)×$18,419,000=	198,054	for Programs for Criminal Offenders.
($15,000,000/$18,600,000)×$18,419,000=	14,854,032	for Part C of Title II.
	18,419,000	

This example assumes that amounts reserved for the Sex Equity Program and Programs for Criminal Offenders meet the "hold-harmless" requirement of section 102(c)(1) and (2) of the Act.

Example 3: A State's one percent reserved from its FY 1992 grant for Programs for Criminal Offenders is $200,000 and the amount reserved for that program under section 202(8) of the CDPVEA plus other amounts obligated for projects, services, and activities for criminal offenders in correctional institutions from its FY 1991 grant from the FY 1990 appropriations totals $250,000. Therefore, the amount of FY 1992 funds reserved for that program is $50,000 less than the amount reserved and obligated for that program in FY 1991. The State received a basic programs award of $20,000,000 in FY 1992. The other programs under Title II, Part B meet the "hold-harmless requirement of § 403.180(a)(1) and the amount reserved for State administration exceeds $250,000. The State determines the amount of funds to be reserved for each program under Title II, Parts A, B, and C of the Act as follows:

(a) First, the State subtracts $250,000 from the $20,000,000 total basic programs award ($20,000,000−$250,000=$19,750,000).

(b) Second, the State determines the amount that would have been reserved for each of the programs under Parts A, B, and C of Title II of the Act in the absence of a shortfall in the set-aside amount for the Programs for Criminal Offenders, as follows:

5.0%×20,000,000=	$1,000,000	for administration.
3.5%×20,000,000=	700,000	for Sex Equity Programs.
7.0%×20,000,000=	1,400,000	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
8.5%×20,000,000=	1,700,000	for State Programs and State Leadership Activities.
75.0%×20,000,000=	15,000,000	for Part C of Title II.
	19,800,000	

(c) Third, the State converts each of these amounts into a percentage by dividing each amount by the sum of the amounts the programs would have earned in the absence of a shortfall ($19,800,000) and multiplies the remaining basic programs award ($19,750,000) by these percentages to determine the amount to reserve for each program under Parts A, B, and C of Title II of the Act, as follows:

($1,000,000/$19,800,000)×$19,750,000=	$997,475	for administration.
($700,000/$19,800,000)×$19,750,000=	$698,232	for Sex Equity Programs.
($1,400,000/$19,800,000)×$19,750,000=	$1,396,465	for Programs for Single Parents, Displaced Homemakers, and Single Pregnant Women.
($1,700,000/$19,800,000)×$19,750,000=	$1,695,707	for State Programs and State Leadership Activities.
($15,000,000/$19,800,000)×$19,750,000=	$14,962,121	for Part C of Title II.
	$19,750,000	

This example assumes that amounts reserved for the Sex Equity Program and for the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women meet the "hold-harmless" requirement of sections 102(c) (1) and (2) of the Act.

(d) The procedure for meeting the ratable reduction provision in paragraph (a)(2) of this section is as follows:

(1) If a State's basic programs award under Title II of the Act for FY 1992 or in future years is less than that State's basic grant amount in FY 1991, a State shall determine the percentage that the basic programs award is of the FY 1991 basic programs award.

(2) The State shall multiply the amounts reserved in FY 1991 for each of the three programs covered by the "hold-harmless" provisions in paragraph (a)(1) of this section by this percentage.

(3) The State shall compare the amounts that would be reserved for these programs in FY 1992 to determine if these amounts are less than the ratably reduced hold-harmless amounts, and if so, shall proceed with the calculation required by paragraph (c) of this section except using the ratably reduced "hold-harmless" amounts.

(Authority: 20 U.S.C. 2312)

§ 403.181 What are the cost-sharing requirements applicable to the basic programs?

(a) A State shall match, from non-Federal sources and on a dollar-for-dollar basis, the funds reserved for administration of the State plan under § 403.180(b)(4).

(b) The matching requirement under paragraph (a) of this section may be applied overall, rather than line-by-line, to State administrative expenditures.

(c) A State shall provide from non-Federal sources for State administration under the Act an amount that is not less than the amount provided by the State from non-Federal sources for State administrative costs for the preceding fiscal or program year.

Example for paragraph (b): From the five percent reserved for the administration of the State plan, a State must reserve $60,000 to carry out the provisions in § 403.13. The $60,000 must be matched, but the matching funds need not be used for the activities described in § 403.13.

(Authority: 20 U.S.C. 2312(b) and 2468d; H.R. Rep. No. 660, 101st Cong., 2nd Sess. 103–104 (1990))

§ 403.182 What is the maintenance of fiscal effort requirement?

The Secretary may not make a payment under the Act to a State for any fiscal year unless the Secretary determines that the fiscal effort per student, or the aggregate expenditures of that State, from State sources, for vocational education for the fiscal year (or program year) preceding the fiscal year (or program year) for which the determination is made, at least equaled its effort or expenditures for vocational education for the second preceding fiscal year (or program year).

(Authority: 20 U.S.C. 2463(a))

§ 403.183 Under what circumstances may the Secretary waive the maintenance of effort requirement?

(a) The Secretary may waive the maintenance of effort requirement in § 403.182 for a State for one year only if—

(1) The Secretary determines that a waiver would be equitable due to exceptional or uncontrollable circumstances affecting the State's ability to maintain fiscal effort; and

(2) The State has decreased its expenditures for vocational education from non-Federal sources by no more than five percent.

(b) For purposes of this section, "exceptional or uncontrollable circumstances" include, but are not limited to, the following:

(1) A natural disaster.

(2) An unforeseen and precipitous decline in financial resources.

(c) The Secretary does not consider tax initiatives or referenda to be exceptional or uncontrollable circumstances.

(Authority: 20 U.S.C. 2463(b))

§ 403.184 How does a State request a waiver of the maintenance of effort requirement?

A State seeking a waiver of the maintenance of effort requirement in § 403.182 shall—

(a) Submit to the Secretary a request for a waiver; and

(b) Include in the request—

(1) The reason for the request;

(2) Information that demonstrates that a waiver is justified; and

(3) Any additional information the Secretary may require.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2463(b))

§ 403.185 How does the Secretary compute maintenance of effort in the event of a waiver?

If a State has been granted a waiver of the maintenance of effort requirement that allows it to receive a grant for a fiscal year, the Secretary determines whether the State has met that requirement for the grant to be awarded for the year after the year of the waiver by comparing the amount spent for vocational education from non-Federal sources in the first preceding fiscal year (or program year) with the amount spent in the third preceding fiscal year (or program year).

Example: Because exceptional or uncontrollable circumstances prevented a State from maintaining its level of fiscal effort in a program year 1989 (July 1, 1988–June 30, 1989) at the level of its fiscal effort in program year 1988 (July 1, 1987–June 30, 1988), the Secretary granted the State a waiver of the maintenance of effort requirement that permits the State to receive its fiscal year 1990 grant (a grant that is awarded on or after July 1, 1990 from funds appropriated in the fiscal year 1990 appropriation). To be eligible to receive its fiscal year 1991 grant (the grant to be awarded for the year after the year of the waiver), the State's expenditures from the first preceding program year (July 1, 1989–June 30, 1990) must equal or exceed its expenditures from the third preceding program year (July 1, 1987 to June 30, 1988).

(Authority: 20 U.S.C. 2463(c))

§ 403.186 What are the administrative cost requirements applicable to a State?

(a) *Basic Programs.* A State may use only funds reserved under § 403.180(b)(4) to administer the programs under Title II of the Act, including Programs for Criminal Offenders.

(b) *Special Programs.* (1) A State may use the funds reserved under § 403.180(b)(4) to administer any of the special programs listed in § 403.130.

(2) In addition to the funds reserved under § 403.180(b)(4), a State may use only an amount of funds from its allotment for the State Assistance for Vocational Education Support Programs by Community-Based Organizations that is necessary and reasonable for the proper and efficient State administration of that program.

(3) In addition to the funds reserved under § 403.180(b)(4), a State may use the amounts reserved for the Consumer and Homemaking Education Program, the Comprehensive Career Guidance and Counseling Program, and the Business-Labor-Education Partnership for Training Program under §§ 403.151(c), 403.161(c), and 403.173(b), respectively, for the proper and efficient administration of each program.

(Authority: 20 U.S.C. 2302(d) (A)–(D) and 2312(a))

§ 403.187 How may a State provide technical assistance?

(a) Except as provided in paragraph (b) of this section, a State may use only an amount of the funds reserved for each of the basic programs listed in § 403.60 and the special programs listed in § 403.130 to pay the costs of providing technical assistance that is necessary and reasonable to promote or enhance the quality and effectiveness of that program.

(b) A State may not use funds reserved under § 403.180(b)(1) for the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Program to pay the costs of providing technical assistance.

(c) In providing technical assistance under paragraph (a) of this section, a State may not use amounts to an extent that would interfere with achieving the purposes of the program for which the funds were awarded.

(Authority: 20 U.S.C. 2302(d) (A)–(D), 2312(a), and 2323(b)(5))

§ 403.188 What is a State's responsibility for the cost of services and activities for members of special populations?

A State is not required to use non-Federal funds to pay the cost of services and activities that it provides to members of special populations pursuant to § 403.32(a) (18)–(26) or to pay the cost of services and activities that eligible recipients provide to members of special populations pursuant to §§ 403.111 (a)(2)(i) and (c)(3), 403.190(b), or 403.193, unless this requirement is imposed by other applicable laws.

(Authority: 20 U.S.C. 2328)

Subpart H—What Conditions Must be Met by Local Recipients?

§ 403.190 What are the requirements for receiving a subgrant or contract?

(a) Each eligible recipient desiring financial assistance under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program must submit to the State board, according to requirements established by the State board, an application covering the same period as the State plan, for the use of that assistance. The State board shall determine requirements for local applications, except that each application must—

(1) Contain a description of—

(i) The vocational education program to be funded, including—

(A) The extent to which the program incorporates each of the requirements described in § 403.111 (a), (b), and (c); and

(B) How the eligible recipient will use the funds available under §§ 403.112, 403.113, or § 403.116 and from other sources to improve the program with regard to each requirement and activity described in § 403.111 (c) and (d);

(ii) How the needs of individuals who are members of special populations will be assessed and the planned use of funds to meet those needs;

(iii) How access to programs of good quality will be provided to students who are economically disadvantaged (including foster children), students with disabilities, and students of limited English proficiency through affirmative outreach and recruitment efforts;

(iv) The program evaluation standards the applicant will use to measure its progress;

(v) The methods to be used to coordinate vocational education services with relevant programs conducted under the JTPA, including cooperative arrangements established with private industry councils established under section 102(a) of that Act, in order to avoid duplication and to expand the range of and accessibility to vocational education services;

(vi) The methods used to develop vocational educational programs in consultation with parents and students of special populations;

(vii) How the eligible recipient coordinates with community-based organizations;

(viii) The manner and the extent to which the eligible recipient considered the demonstrated occupational needs of the area in assisting programs funded under the Act;

(ix) How the eligible recipient will provide a vocational education program that—

(A) Integrates academic and occupational disciplines so that students participating in the program are able to achieve both academic and occupational competence; and

(B) Offers coherent sequences of courses leading to a job skill; and

(x) How the eligible recipient will monitor the provision of vocational education to individuals who are members of special populations, including the provision of vocational education to students with individualized education programs developed under the IDEA;

(2) Provide assurances that—

(i) The programs funded under §§ 403.112, 403.113, or 403.116 will be carried out according to the requirements regarding special populations;

(ii) The eligible recipient will provide a vocational program that—

(A) Encourages students through counseling to pursue coherent sequences of courses;

(B) Assists students who are economically disadvantaged, students of limited English proficiency, and students with disabilities to succeed through supportive services such as counseling, English-language instruction, child care, and special aids;

(C) Is of a size, scope, and quality as to bring about improvement in the quality of education offered by the school; and

(D) Seeks to cooperate with the sex equity program carried out under § 403.91; and

(iii) The eligible recipient will provide sufficient information to the State to enable the State to comply with the requirements in § 403.113; and

(3) Contain a report on the number of individuals in each of the special populations.

(b) Each eligible recipient desiring financial assistance under Title II of the Act must provide assurances to the State board that, with respect to any project that is funded under a basic program listed in § 403.60 or a special program listed in § 403.130, it will—

(1) Assist students who are members of special populations to enter vocational education programs, and, with respect to students with disabilities, assist in fulfilling the transitional service requirement of section 626 of the IDEA;

(2) Assess the special needs of students participating in projects receiving assistance under a basic program listed in § 403.60 or a special program listed in § 403.130, with respect to their successful completion of the vocational education program in the most integrated setting possible;

(3) Provide supplementary services, as defined in 34 CFR 400.4(b), to students who are members of special populations;

(4) Provide guidance, counseling, and career development activities conducted by professionally trained counselors and teachers who are associated with the provision of those special services; and

(5) Provide counseling and instructional services designed to facilitate the transition from school to post-school employment and career opportunities.

(c) Each eligible recipient desiring financial assistance under Title II of the Act must provide the services and activities described in paragraph (b) of this section, to the extent possible with funds awarded under the Act, and indicate in its local application whether any non-Federal funds will be used for this purpose.

Cross-Reference: See § 403.193(e).

(d) Each eligible recipient desiring financial assistance under the Act shall provide sufficient information to the State, as the State board requires, to demonstrate to the State board that the eligible recipient's projects comply with § 403.32(a)(18)–(26).

(e) Each eligible recipient desiring financial assistance under the Act shall—

(1) Provide the assurance described in § 403.14(a)(2); and

(2) Include in its application, as appropriate—

(i) The number of disabled students, economically disadvantaged students, and students with limited English proficiency in its vocational program;

(ii) An assessment of the vocational needs of its students with disabilities, economically disadvantaged students,

and students with limited English proficiency; and

(iii) A plan to provide supplementary services sufficient to meet the needs identified in the assessment described in paragraph (e)(2)(ii).

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2321(c)(1), (d), (e); 2328; and 2343)

§ 403.191 What are the requirements for program evaluation?

(a) (1) Beginning in the 1992–1993 school year, each recipient of financial assistance under §§ 403.112, 403.113, or 403.116 shall evaluate annually the effectiveness of the particular projects, services, and activities receiving assistance under a basic program listed in § 403.60, or a special program listed in § 403.130, unless the State board determines pursuant to § 403.201(a)(3) that a broader evaluation is required. A recipient may conduct the evaluation required under this paragraph by evaluating either the entire population of participants or a representative sample of participants.

(2) The annual evaluation must be based on the standards and measures developed by the State board in accordance with §§ 403.201 and 403.202, including any modifications made by the recipient in accordance with paragraph (b) of this section.

(b) (1) Each recipient may modify the State standards and measures based on—

(i) Economic, geographic, or demographic factors; or

(ii) The characteristics of the populations to be served.

(2) Modifications must conform to the assessment criteria contained in the State plan.

(c) Each recipient, as part of the annual evaluation required in paragraph (a) of this section, and with the full participation of representatives of special populations, shall—

(1) Identify and adopt strategies to overcome barriers that are resulting in lower rates of access to, or success in, vocational education programs for members of special populations; and

(2) Evaluate the progress of individuals who are members of special populations.

(d) Each recipient, as a part of the annual evaluation required in paragraph (a) of this section, shall evaluate its progress in providing vocational education students with strong experience in and understanding of all aspects of the industries the students are preparing to enter.

(e) Each recipient may use funds awarded under a basic program listed in § 403.60 or a special program listed in § 403.130 to support the cost of conducting the evaluation required under paragraphs (a) through (d) of this section to the extent that the costs are—

(1) Reasonable and necessary;

(2) Related to the purposes for which the funds were awarded; and

(3) Consistent with applicable requirements, such as the requirement in § 403.196 to use funds awarded under Title II of the Act to supplement, and not to supplant, State and local funds.

(Authority: 20 U.S.C. 2325(a) and 2327(a))

§ 403.192 What are the requirements for program improvement?

(a) If, beginning not less than one year after implementing the program evaluation required in § 403.191, a recipient determines, through its annual evaluation, that it is not making substantial progress in meeting the standards and measures developed by the State under §§ 403.201 and 403.202, the recipient shall develop a plan for program improvement for the succeeding school year.

(b) The plan must be developed in consultation with teachers, parents, and students concerned with or affected by the program, and must describe how the recipient will identify and modify projects, services, and activities receiving assistance under the programs listed in §§ 403.60 and 403.130 that are in need of improvement, including a description of—

(1) Vocational education and career development strategies designed to achieve progress in improving the effectiveness of the recipient's projects, services, and activities receiving assistance under the programs listed in §§ 403.60 and 403.130 evaluated under § 403.191(a)(1); and

(2) If necessary, the strategies designed to improve supplementary services provided to individuals who are members of special populations.

Cross Reference: See 34 CFR 403.204.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2327(b))

§ 403.193 What are the information requirements regarding special populations?

(a) (1) Each local educational agency that receives funds under Title II of the Act shall provide to students who are members of special populations and their parents information concerning—

(i) The opportunities available in vocational education;

(ii) The requirements for eligibility for enrollment in those vocational education programs;

(iii) Special courses that are available;

(iv) Special services that are available;

(v) Employment opportunities; and

(vi) Placement.

(2) Each area vocational education school or intermediate educational agency that receives funds under Title II of the Act shall provide the information described in paragraph (a)(1) of this section to the students who are members of special populations and their parents in any local educational agency whose allocation was distributed in its entirety under § 403.113 to the area vocational education school or intermediate educational agency.

(b) The information described in paragraph (a)(1) of this section must be provided at least one year before the students enter, or are of an appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade.

(c) Each eligible institution that receives funds under Title II of the Act shall—

(1) Provide the information described in paragraph (a)(1) of this section to each individual who requests information concerning, or seeks admission to, vocational education programs offered by the institution; and

(2) If appropriate, assist in the preparation of applications relating to that admission.

(d) Information described under paragraph (a)(1) of this section must, to the extent practicable, be in a language and form that parents and students understand.

(e) An eligible recipient is not required by this part to use non-Federal funds to pay the cost of services and activities required by this section and §§ 403.111(a)(2)(i) and (c)(3) and 403.190(b) unless this requirement is imposed by other applicable laws.

(Authority: 20 U.S.C. 2328(b) and (c) and 2342(a) and (c)(1)(C))

§ 403.194 What are the comparability requirements?

(a) A local educational agency may receive an award of Federal funds under the State plan only if—

(1) The local educational agency uses State and local funds to provide services in secondary schools or sites served with Federal funds awarded under the State plan that, taken as a whole, are at least comparable to those services being provided in secondary schools or sites that are not being served with Federal funds awarded under the State plan; or

(2) In the event that the local educational agency serves all its

secondary schools or sites with Federal funds awarded under the State plan, the local educational agency uses State and local funds to provide services that, taken as a whole, are substantially comparable in each secondary school or site.

Cross-Reference: See Appendix B to Part 403.

(b) The comparability requirements in paragraph (a) of this section do not apply to—

(1) A local educational agency with only one secondary school or site; or

(2) A consortium composed of more than one local educational agency, except that, within a consortium, each local educational agency itself must meet the comparability requirements unless it is exempt under paragraph (b)(1) of this section.

(c) (1) A local educational agency shall develop written procedures for complying with the comparability requirements in paragraph (a) of this section, including a process for demonstrating annually that State and local funds are used to provide services in served schools and sites that are at least comparable to the services provided with State and local funds in schools or sites in the local educational agency that are not served with funds awarded under the State plan.

(2) In reaching the determination as to whether comparability requirements in paragraph (a) of this section were met, the local educational agency's written procedures—

(i) Do not have to take into account unpredictable changes in student enrollment or personnel assignments that occur after the beginning of a school year; and

(ii) May not take into account any State and local funds spent in carrying out the following types of programs:

(A) Special local programs designed to meet the educational needs of educationally deprived children, including compensatory education for educationally deprived children, that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(1)(B) of chapter 1 (20 U.S.C. 2728(d)(1)(B)).

(B) Bilingual education for children of limited English proficiency.

(C) Special education for children with disabilities.

(D) State phase-in programs that were excluded in the preceding fiscal year from comparability determinations under section 1018(d)(2)(B) of Chapter 1 (20 U.S.C. 2728(d)(2)(B)).

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2323(b)(19))

§ 403.195 What are the administrative cost requirements applicable to local recipients?

(a) Except as provided in paragraphs (b) and (c) of this section, each eligible recipient, including a State corrections educational agency, that receives an award under a basic program listed in § 403.60 or a special program listed in § 403.130, may use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of the projects, services, and activities for which the award was made.

(b) Each eligible recipient that receives an award under §§ 403.112, 403.113, or § 403.116 may use no more than five percent of those funds for administrative costs.

(c) Each eligible partner that receives an award under the Business-Labor-Education Partnership for Training Program may use no more funds under that award for administrative costs than the amounts prescribed in § 403.173(b).

(Authority: 20 U.S.C. 2342(c); 2393(a)(1) and (c))

§ 403.196 What are the requirements regarding supplanting?

(a) Funds made available under Title II of the Act must be used to supplement, and to the extent practicable increase the amount of State and local funds that would in the absence of funds under Title II of the Act be made available for the purposes specified in the State plan and the local application.

(b) Notwithstanding paragraph (a) of this section and § 403.32(a)(17), funds made available under Title II of the Act may be used to pay the costs of vocational education services required by an individualized education program developed pursuant to sections 612(4) and 614(a)(5) of the IDEA (20 U.S.C. 1412(4) and 1414(a)(5)), in a manner consistent with section 614(a)(1) of that Act, and services necessary to meet the requirements of section 504 of the Rehabilitation Act of 1973 with respect to ensuring equal access to vocational education.

(c) Any expenditures pursuant to paragraph (b) of this section must increase the amount of funds that would otherwise be available to meet the costs of an individualized education program or to comply with section 504 of the Rehabilitation Act of 1973.

(Authority: 20 U.S.C. 2468e(a)(1))

§ 403.197 What are the requirements for the use of equipment?

(a) Equipment purchased with funds under §§ 403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased, may be used for other vocational education purposes if the acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program.

(b) Equipment purchased with funds under §§ 403.112, 403.113, or 403.116, when not being used to carry out the purposes of the Act for which it was purchased or other vocational education purposes, may be used for other instructional purposes if—

(1) The acquisition of the equipment was reasonable and necessary for the purpose of conducting a properly designed project or activity under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program; and

(2) The other use of the equipment is after regular school hours or on weekends.

(c) The use of equipment under paragraphs (a) and (b) of this section must—

(1) Be incidental to the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased;

(2) Not interfere with the use of that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased; and

(3) Not add to the cost of using that equipment for the purposes under the Secondary School Vocational Education Program or the Postsecondary and Adult Vocational Education Program for which it was purchased.

(Authority: 20 U.S.C. 2342(c)(3))

Subpart I—What are the Administrative Responsibilities of a State under the State Vocational and Applied Technology Education Program?

§ 403.200 What are the State's responsibilities for ensuring compliance with the comparability requirements?

(a) The State board may not make a payment under the Act to a local educational agency unless the LEA is in compliance with § 403.194. As indicated in § 403.194(a), an LEA may demonstrate its compliance with the comparability requirements by filing an appropriate assurance.

(b) The State board shall monitor each local educational agency's compliance with the comparability requirements in § 403.194.

(c) If, after a local educational agency receives an award of Federal funds under the State plan, the local educational agency is found not to be in compliance with the comparability requirements, the State board shall—

(1) Withhold all or a portion of the local educational agency's grant award, but not less than the amount or percentage by which the local educational agency failed to achieve comparability under the local educational agency's procedures established pursuant to § 403.194(c); or

(2) Require repayment of the amount or percentage by which the local educational agency failed to achieve comparability if the local educational agency is found not to be in compliance after the period of availability of the funds awarded has ended.

(Authority: 20 U.S.C. 2323(b)(19))

§ 403.201 What are the State's responsibilities for developing and implementing a statewide system of core standards and measures of performance?

(a) (1) Each State board receiving funds under the Act shall develop and implement a statewide system of core standards and measures of performance for secondary, postsecondary, and adult vocational education programs.

(2) This system must—

(i) Be developed and implemented by September 25, 1992; and

(ii) Apply to all programs assisted under the Act.

(3) The State board must determine whether a recipient of funds under §§ 403.112, 403.113, or § 403.116 must evaluate more than the particular projects, services, and activities receiving assistance under a basic program listed in § 403.60 or a special program listed in § 403.130 in order to carry out a valid, reliable, and otherwise meaningful evaluation of the effectiveness of these projects, services, and activities as required by § 403.191(a)(1), using the standards and measures developed pursuant to paragraph (a)(1) of this section.

(4) If a State board determines under paragraph (a)(3) of this section that a recipient must evaluate more than the particular projects, services, and activities receiving assistance under a basic or special program, the State board shall—

(i) Determine whether the entire local vocational education program—or which projects, services, and activities in addition to the ones assisted under a basic or special program—must be evaluated to assess the effectiveness of the particular projects, services, and activities receiving assistance under a basic program or a special program; and

(ii) Require a recipient to conduct an evaluation consistent with the State board's determination under paragraph (a)(4)(i) of this section.

(b) To assist in the development and implementation of the Statewide system addressed in paragraph (a) of this section, the State board shall appoint a State Committee of Practitioners (Committee), as prescribed in 34 CFR 400.6.

(c) The State board shall convene the Committee on a regular basis to review, comment on, and propose revisions to the State board's draft proposal for a system of core standards and measures of performance for vocational education programs assisted under the Act.

(d) To assist the Committee in formulating recommendations for modifying standards and measures of performance, the State board shall provide the Committee with information concerning differing types of standards and measures including—

(1) The advantages and disadvantages of each type of standard or measure; and

(2) Instances in which those standards and measures—

(i) Have been effective; and

(ii) Have not been effective.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2325(a) and (d))

§ 403.202 What must each State's system of core standards and measures of performance include?

(a) The statewide system of core standards and measures of performance for vocational education programs must include—

(1) Measures of learning and competency gains, including student progress in the achievement of basic and more advanced academic skills;

(2) One or more measures of the following:

(i) Student competency attainment.

(ii) Job or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared, including occupational skills in the industry the student is preparing to enter.

(iii) Retention in school or completion of secondary school or its equivalent.

(iv) Placement into additional training or education, military service, or employment;

(3) Incentives or adjustments that are—

(i) Designed to encourage service to targeted groups or special populations; and

(ii) Developed for each student, and, if appropriate, consistent with the student's individualized education program developed under section 614(a)(5) of the IDEA; and

(4) Procedures for using existing resources and methods developed in other programs receiving Federal assistance.

(b) In developing the standards and measures included in the system developed under paragraph (a) of this section, the State board shall take into consideration and shall provide, to the extent appropriate, for consistency with—

(1) Standards and measures developed under job opportunities and basic skills training programs established and operated under a plan approved by the Secretary of Health and Human Services that meets the requirements of section 402(a)(19) of the Social Security Act (42 U.S.C. 687); and

(2) Standards prescribed by the Secretary of Labor under section 106 of the JTPA.

Cross-Reference: See 34 CFR 400.6.

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(Authority: 20 U.S.C. 2325(b), (c))

§ 403.203 What are the State's responsibilities for a State assessment?

(a) Each State board receiving assistance under the Act shall conduct an assessment of the quality of vocational education programs throughout the State using measurable objective criteria.

(b) In developing the assessment criteria, the State board shall—

(1) Consult with representatives of the groups described in 34 CFR 400.6(c); and

(2) Use information gathered by the National Occupational Information Coordinating Committee and, if appropriate, other information.

(c) Each State board shall—

(1) Develop assessment criteria no later than the beginning of the 1991–1992 school year; and

(2) Widely disseminate those criteria.

(d) Assessment criteria must include at least the following factors, but may include others:

(1) Integration of academic and vocational education.

(2) Sequential courses of study leading to both academic and occupational competencies.

(3) Increased student work skill attainment and job placement.

(4) Increased linkages between secondary and postsecondary educational institutions.

(5) Instruction and experience, to the extent practicable, in all aspects of an industry the students are preparing to enter.

(6) The ability of the eligible recipients to meet the needs of special populations with respect to vocational education.

(7) Raising the quality of vocational education programs in schools with a high concentration of poor and low-achieving students.

(8) The relevance of programs to the workplace and to the occupations for which students are to be trained, and the extent to which those programs reflect a realistic assessment of current and future labor market needs, including needs in areas of emerging technologies.

(9) The ability of the vocational curriculum, equipment, and instructional materials to meet the demands of the work force.

(10) Basic and higher order current and future workplace competencies that will reflect the hiring needs of employers.

(11) The capability of vocational education programs to meet the needs of individuals who are members of special populations.

(12) Other factors considered appropriate by the State board.

(e) The assessment must include an analysis of—

(1) The relative academic, occupational, training, and retraining needs of secondary, adult, and postsecondary students; and

(2) The capability of vocational education programs to provide vocational education students, to the extent practicable, with—

(i) Strong experience in, and understanding of, all aspects of the industry the students are preparing to enter (including planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, and health, safety, and environmental issues); and

(ii) Strong development and use of problem-solving skills and basic and advanced academic skills (including skills in the areas of mathematics, reading, writing, science, and social studies) in a technological setting.

(f) (1) Each State board shall complete the initial assessment required by paragraph (a) of this section before March 25, 1991, and, therefore, at least six months prior to the required submission of a new State plan to the Secretary.

(2) Each State board shall conduct an assessment under this section prior to the submission of each new State plan to the Secretary.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2323(a)(3), (b)(3)(B), and 2326)

§ 403.204 What are the State's responsibilities for program evaluation and improvement?

(a) If, one year after an eligible recipient has implemented its program improvement plan described in § 403.192, the State finds that the eligible recipient has not made sufficient progress in meeting the standards and measures developed as required by §§ 403.201 and 403.202, the State shall work jointly with the recipient and with teachers, parents, and students concerned with or affected by the program, to develop a joint plan for program improvement.

(b) Each joint plan required by paragraph (a) of this section must contain—

(1) A description of the technical assistance and program activities the State will provide to enhance the performance of the eligible recipient;

(2) A reasonable timetable to improve school performance under the plan;

(3) A description of vocational education strategies designed to improve the performance of the program as measured by the local evaluation; and

(4) If necessary, a description of strategies designed to improve supplementary services provided to individuals who are members of special populations.

(c) The State, in conjunction with the eligible recipient, shall annually review and revise the joint plan developed under paragraph (a) of this section and provide appropriate assistance until the recipient sustains fulfillment of State and local standards and measures developed under §§ 403.201 and 403.202 for more than one year.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2327(c), (d))

§ 403.205 What are the State's responsibilities for members of special populations?

The State board shall—

(a) Establish effective procedures, including an expedited appeals procedure, by which students who are members of special populations and their parents, teachers, and concerned area residents will be able to participate directly in State and local decisions that influence the character of programs under the Act affecting their interests; and

(b) Provide technical assistance and design procedures necessary to ensure that those individuals referred to in paragraph (a) of this section are given access to the information needed to use those procedures.

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(Authority: 20 U.S.C. 2328(d))

§ 403.206 What are the State's responsibilities regarding a State occupational information coordinating committee?

(a) A State that receives funds under the Act shall establish a State occupational information coordinating committee composed of representatives of the State board, the State employment security agency, the State economic development agency, the State job training coordinating council, and the agency administering the vocational rehabilitation program.

(b) With funds made available to it by the National Occupational Information Coordinating Committee, the State occupational information coordinating committee shall—

(1) Implement an occupational information system in the State that will meet the common needs for the planning for, and the operation of, programs of the State board assisted under the Act and of the administering agencies under the JTPA; and

(2) Use the occupational information system to implement a career information delivery system.

(Authority: 20 U.S.C. 2422(b))

§ 403.207 What are the State's responsibilities to the National Center or Centers for Research in Vocational Education?

A State shall forward to the National Center for Research in Vocational Education a copy of an abstract for each new research, curriculum development, or personnel development project it supports, and the final report on each project.

(Authority: 20 U.S.C. 2404(c))

§ 403.208 What are the requirements regarding supplanting?

(a) The State board is subject to the prohibition against supplanting in § 403.196.

(b) The State board shall monitor each eligible recipient's compliance with the supplanting requirements in § 403.196.

(Authority: 20 U.S.C. 2466e(a)(1))

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Illustration of providing full participation under 34 CFR 403.111(a). An educationally disadvantaged student is enrolled in a course that is part of a vocational education program and is having trouble understanding a math concept (e.g., negative numbers) necessary to succeed in the course. To ensure the student's full participation in the course, a local educational agency may use funds awarded under § 403.112 as needed to provide tutoring in negative numbers to enable the student to understand the concept well enough to complete the vocational education course.

Illustrations of providing equitable participation under 34 CFR 403.111(c)(3).

Example 1: An area vocational education school conducts an informal meeting to provide the information required in § 403.193(a) regarding the area vocational education school's vocational education programs, to parents of students who are members of special populations in a local educational agency whose allocation was distributed to the area vocational education school under § 403.113. The area vocational education school conducts the meeting at a time and in a location convenient for these parents and students. At the meeting, the area vocational education school provides a staff person to assist students or their parents to complete any forms necessary to enroll in the area vocational education school's vocational education program.

Example 2: A hearing-impaired student in a local educational agency could participate in the vocational education program only if an interpreter is provided for that student. The local educational agency cannot refuse to admit the student because of the need for an interpreter.

Appendix B to Part 403—Examples for 34 CFR 403.194—Comparability Requirements

Methods by which a local educational agency can demonstrate its compliance with the comparability requirements in 34 CFR 403.194(a) include the following:

Example 1: The local educational agency files with the State board a written assurance that it has established and implemented—

(a) A district-wide salary schedule;

(b) A policy to ensure equivalence among secondary schools or sites in teachers, administrators, and auxiliary personnel; and

(c) A policy to ensure equivalency among secondary schools or sites in the provision of curriculum materials and instructional supplies.

Example 2: The local educational agency establishes and implements other procedures for ensuring comparability, such as the following:

(a) Comparing the average number of students per instructional staff in each secondary school or site served with Federal funds awarded under the State plan with the average number of students per instructional staff in secondary schools or sites not served with Federal funds awarded under the State plan. A served school is considered comparable if its average does not exceed 110 percent of the average of schools or sites in the local educational agency not served with Federal funds awarded under the State plan; or

(b) Comparing the average instructional staff salary expenditures per student in each secondary school or site served with Federal funds awarded under the State plan with the average instructional staff salary expenditure per student in schools or sites in the local educational agency not served with Federal funds awarded under the State plan. A served school is considered comparable if its average is at least 90 percent of the average of schools or sites not served with Federal funds awarded under the State plan.

PART 404—[RESERVED]

6. Part 404 is [Reserved].

7. A new part 405 is added to read as follows:

PART 405—NATIONAL TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.
405.1 What is the National Tech-Prep Education Program?
405.2 Who is eligible for an award?
405.3 What activities may the Secretary fund?
405.4 What regulations apply?
405.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

405.10 What must the application contain?

Subpart C—How Does the Secretary Make an Award?

405.20 How does the Secretary evaluate an application?
405.21 What selection criteria does the Secretary use?
405.22 What additional factor does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

405.30 What are the evaluation requirements?
405.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2394–2394e, unless otherwise noted.

Subpart A—General

§ 405.1 What is the National Tech-Prep Education Program?

The National Tech-Prep Education Program provides financial assistance for projects that develop and operate four-year sequences of study designed to provide a tech-prep education program leading to a two-year associate degree or a two-year certificate and provides, in a systematic manner, strong comprehensive links between secondary schools and postsecondary educational institutions.

(Authority: 20 U.S.C. 2394(b))

§ 405.2 Who is eligible for an award?

(a) Awards are provided to consortia described in 34 CFR 406.30.

(b) Members of a consortium shall—

(1) Apply jointly to the Secretary for funds; and

(2) Enter into an agreement, in the form of a single document signed by all members, designating one member of the consortium as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

Cross-Reference: See 34 CFR 75.127–75.129—Group Applications.

(Authority: 20 U.S.C. 2394a(a))

§ 405.3 What activities may the Secretary fund?

(a) The Secretary provides grants and cooperative agreements for projects to develop and operate a four-year tech-prep education program.

(b) Each project assisted under this part must meet the requirements in 34 CFR 406.3(b) (1) through (7) and may also perform the activities described in 34 CFR 406.3(c).

(Authority: 20 U.S.C. 2394a(a) and 2394b)

§ 405.4 What regulations apply?

The following regulations apply to the National Tech-Prep Education Program:

(a) The regulations in this part 405.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.5 What definitions apply?

The definitions in 34 CFR 406.5 apply to this part.

(Authority: 20 U.S.C. 2394e)

Subpart B—How Does One Apply for an Award?

§ 405.10 What must the application contain?

The application must contain—

(a) An articulation agreement between the participants in a consortium;

(b) A three-year plan for the development and implementation of project requirements under § 405.3;

Cross-Reference: See 34 CFR 75.117.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(c) A copy of the transmittal letters the consortium sent to the State educational agency and the State agency for higher education of the State in which the consortium is located in order to notify those agencies that the consortium has submitted an application to the Secretary and to provide those

agencies with a copy of the consortium's application; and

(d) Information that indicates whether the consortium is composed of either urban participants or rural participants.

(Authority: 20 U.S.C. 2394b(b)(1) and 2394c (a), (b), (e), and (f))

Subpart C—How Does the Secretary Make an Award?

§ 405.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 405.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 405.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the Federal Register, the Secretary may assign the reserved 15 points among the criteria in § 405.21.

(e) The Secretary awards up to five points to applications that—

(1) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs. Acceptable documentation of employment placement includes letters of commitment from employers to hire individuals who complete the program;

(2) Are developed in consultation with business, industry, and labor unions; and

(3) Address effectively the issues of dropout prevention and re-entry and the needs of minority youths, youths of limited English proficiency, youths with disabilities, and disadvantaged youths.

(Authority: 20 U.S.C. 2394–2394e)

§ 405.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The proposed project demonstrates the need for and the soundness of the rationale for developing a tech-prep education program between or among the consortium participants;

(2) The proposed project will provide tech-prep education that is designed to meet current and projected occupational needs;

(3) The proposed project demonstrates that course offerings will have a strong relationship between mathematics, science, and communication and technical preparation in engineering technology, applied science, mechanical, industrial or practical art or trade, agriculture, health, or business in both the secondary and postsecondary or apprenticeship programs;

(4) The articulation agreement between the participants in the consortium is appropriate to the needs and resources of the consortium participants;

(5) The in-service training for teachers is designed to train teachers to implement tech-prep education program curricula effectively;

(6) The training activities for counselors are designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment; and

(7) Preparatory services are provided that assist all populations to participate in tech-prep education programs.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed tech-prep education program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs, including the military; and

(iv) Successful transfer of students to a variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, including whether the design will result in the project being developed, implemented, operated, and demonstrated within the grant period;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project between or among consortium participants over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and follow-up of progress by all project participants throughout the project period; and outcome measures to be used for each objective;

(6) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(7) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to the project requirements, of the project director;

(ii) The qualifications, in relation to the project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disabling condition.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire tech-prep education program equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2394–2394e)

§ 405.22 What additional factor does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 405.21, the Secretary determines whether the most highly rated applications are equitably distributed between consortia of urban participants and consortia of rural participants.

(b) The Secretary may select other applications for funding if doing so would improve the urban and rural distribution of projects funded under this program.

(Authority: 20 U.S.C. 2394c(e))

Subpart D—What Conditions Must Be Met After an Award?

§ 405.30 What are the evaluation requirements?

(a) Each grantee must provide and budget for an independent evaluation of grant activities.

(b) The evaluation shall be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(f) Reports documenting evaluation activities must be included as appendices to the grant recipient's annual and final performance reports.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2394–2394e)

§ 405.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the Federal Register the percentage of project funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2394–2394e)

8. A new part 406 is added to read as follows:

PART 406—STATE-ADMINISTERED TECH-PREP EDUCATION PROGRAM

Subpart A—General

Sec.

406.1 What is the State-Administered Tech-Prep Education Program?
406.2 Who is eligible for an award?
406.3 What activities may the Secretary fund?
406.4 What regulations apply?
406.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

406.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

406.20 How does the Secretary make allotments?
406.21 How does the Secretary make reallotments?

Subpart D—What Conditions Must be Met After a State Receives an Award?

406.30 Who is eligible to apply to a State for an award?
406.31 How does a State carry out the State-Administered Tech-Prep Education Program?
406.32 What are the local application requirements?
406.33 What are the reporting requirements?

Authority: 20 U.S.C. 2394–2394e, unless otherwise noted.

Subpart A—General

§ 406.1 What is the State-Administered Tech-Prep Education Program?

If the annual appropriation for tech-prep education exceeds $50,000,000, the State-Administered Tech-Prep Education Program provides financial assistance for—

(a) Planning and developing four-year programs designed to provide a tech-prep education program leading to a two-year associate degree or certificate; and

(b) Planning and developing, in a systematic manner, strong, comprehensive links between secondary schools and postsecondary educational institutions.

(Authority: 20 U.S.C. 2394(b))

§ 406.2 Who is eligible for an award?

A State board of vocational education (State board) in the fifty States, Puerto Rico, the District of Columbia, or the Virgin Islands is eligible for an allotment under this program.

(Authority: 20 U.S.C. 2394a(b))

§ 406.3 What activities may the Secretary fund?

(a) The Secretary makes allotments to State boards to provide funding for consortia described in § 406.30 for tech-prep education projects.

(b) A State board assists projects that must—

(1) Be carried out under an articulation agreement between the members of the consortium;

(2) Consist of the two years of secondary school preceding graduation and two years of higher education, or an apprenticeship training program of at least two years following secondary instruction, with a common core of required proficiency in mathematics, science, communications, and technologies designed to lead to an associate degree or certificate in a specific career field;

(3) Include the development of tech-prep education program curricula appropriate to the needs of the consortium participants;

(4) Include in-service training for teachers that—

(i) Is designed to train teachers to implement tech-prep education program curricula effectively;

(ii) Provides for joint training for teachers from all participants in the consortium; and

(iii) May provide training on weekends, evenings, or during the summer in the form of sessions, institutes, or workshops;

(5) Include training activities for counselors designed to enable counselors to more effectively—

(i) Recruit students for tech-prep education programs;

(ii) Ensure that students successfully complete tech-prep education programs; and

(iii) Ensure that students are placed in appropriate employment;

(6) Provide equal access to the full range of tech-prep education programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of these individuals so that these individuals have an opportunity to enter tech-prep education that is equal to the opportunity afforded to the general student population; and

(7) Provide preparatory services that assist all populations to participate in tech-prep education programs.

(c) A project assisted under this part may also—

(1) Provide for the acquisition of tech-prep education program equipment; and

(2) Acquire, as part of the planning activities of the tech-prep education program, technical assistance from State or local entities that have successfully designed, established, and operated tech-prep education programs.

(Authority: 20 U.S.C. 2394a, 2394b)

§ 406.4 What regulations apply?

The following regulations apply to the State-Administered Tech-Prep Education Program:

(a) The regulations in this part 406.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2394–2394e)

§ 406.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Articulation agreement means a commitment to a program designed to provide students with a non-duplicative sequence of progressive achievement leading to competencies in a tech-prep education program.

Community college—

(1) Has the meaning provided in 34 CFR 400.4 for the term *Institution of higher education* for an institution that provides not less than a two-year program that is acceptable for full credit toward a bachelor's degree; and

(2) Includes tribally controlled community colleges.

Institution of higher education includes an institution offering apprenticeship programs of at least two years beyond the completion of secondary school, and includes, in addition to the institutions covered by the definition of the term *institution of higher education* in 34 CFR 400.4, a—

(1) Proprietary institution of higher education;

(2) Postsecondary vocational institution;

(3) Department, division, or other administrative unit in a college or university that provides primarily or exclusively an accredited program of education in professional nursing and allied subjects leading to the degree of bachelor of nursing, or to be an equivalent degree, or to a graduate degree in nursing; and

(4) Department, division, or other administrative unit in a junior college, community college, college, or university that provides primarily or exclusively an accredited two-year program of education in professional nursing and allied subjects leading to an associate degree in nursing or an equivalent degree.

Tech-prep education program means a combined secondary and postsecondary program that—

(1) Leads to an associate degree or two-year certificate;

(2) Provides technical preparation in at least one field of engineering technology, applied science, mechanical, industrial, or practical art or trade, or agriculture, health, or business;

(3) Builds student competence in mathematics, science, and communications (including through applied academics) through a sequential course of study; and

(4) Leads to placement in employment.

(Authority: 20 U.S.C. 1088 and 2394e)

Subpart B—How Does a State Apply for a Grant?

§ 406.10 What must the State application contain?

To receive a grant under this program, a State board shall submit an application to the Secretary at such time, in such manner, as the Secretary prescribes. The State board may submit an application along with the State plan submitted in accordance with 34 CFR 403.30. The application must include a description of—

(a) The requirements for State board approval of funding of a local tech-prep education project, including—

(1) Whether the State board intends to make awards on a competitive basis or on the basis of a formula; and

(2) If a formula is to be used, a description of that formula;

(b) How the State board will perform the following:

(1) Approve applications based on their potential to create an effective tech-prep education program as described in § 406.3(b).

(2) Give special consideration to applicants that—

(i) Provide for effective employment placement activities or transfer of students to four-year baccalaureate degree programs;

(ii) Are developed in consultation with business, industry, and labor unions; and

(iii) Address effectively the issues of dropout prevention and re-entry and the needs of minority youth of limited English proficiency, youth with disabilities, and disadvantaged youth;

(3) Ensure an equitable distribution of assistance between urban and rural consortium participants;

(c) How the State board will ensure that local recipients meet the requirements of this program; and

(d) How activities under this program will be coordinated with other tech-prep education programs, services, and activities provided under the State plan.

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2394c (b)–(e))

Subpart C—How Does the Secretary Make a Grant to a State?

§ 406.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's allotment according to a formula in section 101(a)(2) of the Act.

(Authority: 20 U.S.C. 2394a(b)(1))

§ 406.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 406.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to use them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purposes for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2311(a) and (d) and 2394a(b)(1))

Subpart D—What Conditions Must Be Met After a State Receives an Award?

§ 406.30 Who is eligible to apply to a State for an award?

(a) A State board shall provide subgrants or contracts to consortia between—

(1) A local educational agency, intermediate educational agency, area vocational education school serving secondary school students, or secondary school funded by the Bureau of Indian Affairs; and

(2) A nonprofit institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5, including institutions receiving assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*);

(ii) Is not prohibited from receiving assistance under Part B of the Higher Education Act of 1965 pursuant to the provisions of section 435(a)(3) of that Act; and

(iii) Offers a two-year associate degree program, a two-year certificate program, or a two-year apprenticeship training program that follows secondary instruction; or

(3) A proprietary institution of higher education that—

(i) Is qualified as an institution of higher education as defined in § 406.5;

(ii) Is not subject to a default management plan required by the Secretary; and

(iii) Offers a two-year associate degree program.

(b) A consortia must include at least one entity from paragraph (a)(1) of this section and at least one entity from either paragraph (a)(2) or (a)(3) of this section, and may include more than one entity from each group.

(Authority: 20 U.S.C. 2394a)

§ 406.31 How does a State carry out the State-Administered Tech-Prep Education Program?

(a) A State board carries out the program by—

(1) Providing State administration of its grant; and

(2) Awarding subgrants or contracts to eligible consortia on a competitive basis or on the basis of a formula determined by the State board.

(b) A State board may use funds reserved under 34 CFR 403.180(b)(3) to provide support for the State-administered Tech-Prep Education Program.

(c) A State board may use no more than the amount of funds from its award under this part that is necessary and reasonable for—

(1) The proper and efficient administration of this program; and

(2) Technical assistance to promote or enhance the quality and effectiveness of the State's tech-prep education program.

(Authority: 20 U.S.C. 2331(c)(2); 2394a(b))

§ 406.32 What are the local application requirements?

(a) Each consortium that desires to receive an award shall submit an application to the State board.

(b) The application must be submitted at the time and contain the information prescribed by the State board, and must contain—

(1) An articulation agreement between the participants in the consortium; and

(2) A three-year plan for the development and implementation of activities under this part.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2394c(a)–(b))

§ 406.33 What are the reporting requirements?

The State board shall, in conjunction with recipients of subgrants and contracts, with respect to assistance received under this part, submit to the Secretary reports as may be required by the Secretary to ensure that grantees are complying with the requirements of this part.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2394a–2394e)

9. Part 407 is revised to read as follows:

PART 407—SUPPLEMENTARY STATE GRANTS PROGRAM

Subpart A—General

Sec.

407.1 What is the Supplementary State Grants Program?
407.2 Who is eligible for an award?
407.3 What activities may the Secretary fund?
407.4 What regulations apply?
407.5 What definitions apply?

Subpart B—How Does a State Apply for a Grant?

407.10 What must the State application contain?

Subpart C—How Does the Secretary Make a Grant to a State?

407.20 How does the Secretary make allotments?
407.21 How does the Secretary make reallotments?
407.22 How does a State carry out this program?

Subpart D—How Does an Applicant Apply to a State for an Award?

407.30 Who is eligible to apply to a State for an award?
407.31 How are funds to be used by local agencies?
407.32 What are the local application requirements?
407.33 How does a State make allotments?

Authority: 20 U.S.C. 2395–2395e, unless otherwise noted.

Subpart A—General

§ 407.1 What is the Supplementary State Grants Program?

The Supplementary State Grants Program provides financial assistance for vocational education program improvement activities, especially the improvement of facilities and acquisition or leasing of equipment to be used to carry out vocational education programs that receive assistance under the Act.

(Authority: 20 U.S.C. 2395)

§ 407.2 Who is eligible for an award?

A State board for vocational education (State board) in the fifty States, the District of Columbia, or Puerto Rico is eligible for awards under this program.

(Authority: 20 U.S.C. 2395a)

§ 407.3 What activities may the Secretary fund?

Under the Supplementary State Grants Program, the Secretary makes grants or cooperative agreements to a State board to provide funding to eligible local educational agencies (LEAs) in economically depressed areas for program improvement activities described in § 407.32.

(Authority: 20 U.S.C. 2395–2395a)

§ 407.4 What regulations apply?

The following regulations apply to the Supplementary State Grants Program:

(a) The regulations in this Part 407.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2395–2395e)

§ 407.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2395–2395e)

Subpart B—How does a State Apply for a Grant?

§ 407.10 What must the State application contain?

(a) To receive a grant under the Supplementary State Grants Program, a State board shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require. The State board may submit an application along with the State plan submitted in accordance with 34 CFR 403.30. The application must—

(1) Designate the sole State agency described in 34 CFR 403.10 as the State agency responsible for the administration and supervision of activities carried out with assistance under this program;

(2) Provide for a process of consultation with the State council established under 34 CFR 403.18;

(3) Describe how funds will be allocated in a manner consistent with § 407.33;

(4) Provide for an annual submission of data concerning the use of funds and students served with assistance under this program;

(5) Provide that the State board will keep records and provide information to the Secretary as may be required for purposes of financial audits and program evaluations; and

(6) Contain an assurance that the State board will comply with the requirements of this part.

(b) An application submitted by the State board under paragraph (a) of this section must be for a period of not more than three years and must be amended annually.

(Approved by the Office of Management and Budget under Control No. 1830–0029)

(Authority: 20 U.S.C. 2395d)

Subpart C—How Does the Secretary Make a Grant to a State?

§ 407.20 How does the Secretary make allotments?

The Secretary determines the amount of each State's grant for a given fiscal year according to the provisions in section 352 of the Act.

(Authority: 20 U.S.C. 2395a)

§ 407.21 How does the Secretary make reallotments?

(a)(1) If the Secretary determines that any amount of a State's allotment under § 407.20 will not be required for any fiscal year for carrying out the program under this part, the Secretary reallots those funds to one or more States that demonstrate a current need for additional funds and the ability to utilize them promptly and effectively upon reallotment.

(2) The Secretary announces in the **Federal Register** the dates on which funds will be reallotted.

(b)(1) No funds reallotted under paragraph (a) of this section may be used for any purpose other than the purpose for which they were appropriated.

(2) Any amount reallotted to a State under paragraph (a) of this section remains available for obligation during the succeeding fiscal year and is deemed to be part of the State's allotment for the fiscal year in which the reallotted funds are obligated.

(Authority: 20 U.S.C. 2395a and 2821)

§ 407.22 How does a State carry out this program?

(a) A State carries out the program by—

(1) Providing State administration of the grant; and

(2) Awarding 100 percent of the amounts made available under this program to eligible LEAs.

(b) A State may not use program funds for the technical assistance costs and administrative costs it incurs in carrying out its responsibilities under paragraph (a) of this section.

(Authority: 20 U.S.C. 2312(a) and 2395b(a))

Subpart D—How Does an Applicant Apply to a State for an Award?

§ 407.30 Who is eligible to apply to a State for an award?

(a) An LEA is eligible to apply to the State board for an allocation if the LEA received an award under section 1006 of Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712).

(b) A consortium of the LEAs described in paragraph (a) of this section is also eligible to apply to the State board for an award.

(Authority: 20 U.S.C. 2395b(b))

§ 407.31 How are funds to be used by local agencies?

Each LEA or consortium of LEAs that receives a grant under this program—

(a) Shall give first priority to using funds provided under the grant for improving facilities and acquiring or leasing equipment for carrying out vocational education programs that are in economically depressed areas in which economically and educationally disadvantaged individuals are served, and that receive assistance under the Act;

(b) May use any funds not required to carry out the provisions of paragraph (a) of this section for other vocational education program improvement activities, such as curriculum development or teacher training; and

(c) May use no more than the amount of funds from each award that is necessary and reasonable for the proper and efficient administration of projects, services, and activities for which the award was made.

(Authority: 20 U.S.C. 2395c)

§ 407.32 What are the local application requirements?

Each LEA or consortium of LEAs that desires to receive a grant under this program shall submit to the State board an application at the time, in the manner, and containing or accompanied by any information the State board may reasonably require, including evidence that the requirement in § 407.31(a) is being met.

(Approved by the Office of Management and Budget under Control No. 1830–0030)

(Authority: 20 U.S.C. 2395e)

§ 407.33 How does a State make allotments?

(a) *General rule.* In each fiscal year for which a State board receives a grant under this program, the State board shall allot to each eligible LEA or consortium of LEAs in the State an amount under this program that bears the same relationship to the total funds available to the State under § 407.20 as the amount allotted to that LEA or those LEAs under section 1006 of chapter 1 bears to the aggregate amount allotted to LEAs in the State under section 1006 of chapter 1 in the fiscal year in which distribution is made.

(b) *Exception to the general rule.* In applying the provisions in paragraph (a) of this section, a State may not distribute funds to an LEA that operates only elementary schools, but shall instead distribute funds that would have been allocated for those ineligible LEAs as follows:

(1) If an LEA that operates only elementary schools sends its graduating students to a single local or regional educational agency that provides secondary school services to secondary school students in the same attendance area, a State shall distribute to that local or regional educational agency any amounts under paragraph (a) of this section that would otherwise have been allocated to LEAs operating only elementary schools.

(2) If an LEA that operates only elementary schools sends its graduating students to two or more local or regional educational agencies that provide secondary school services to secondary students in the same attendance area, the State shall distribute to those local or regional educational agencies an amount based on the proportionate number of students each agency received in the previous year from the LEA that operates only elementary schools.

(Authority: 20 U.S.C. 2395b(b))

10. Part 408 is revised to read as follows:

PART 408—COMMUNITY EDUCATION EMPLOYMENT CENTERS PROGRAM

Subpart A—General

Sec.
408.1 What is the Community Education Employment Centers Program?
408.2 Who is eligible for an award?
408.3 What activities may the Secretary fund?
408.4 What regulations apply?
408.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

408.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

408.20 What awards does the Secretary make?
408.21 How does the Secretary evaluate an application?
408.22 What selection criteria does the Secretary use?
408.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

408.30 What are the requirements regarding support services?
408.31 What are the requirements regarding a parent/community coordinator?
408.32 What are the requirements regarding a Council of Advisors?
408.33 What are the requirements regarding other center personnel?
408.34 What are the evaluation requirements?

Authority: 20 U.S.C. 2396, unless otherwise noted.

Subpart A—General

§ 408.1 What is the Community Education Employment Centers Program?

The Community Education Employment Centers Program provides financial assistance to establish and evaluate model high school community education employment centers to provide low-income urban and rural youth with the education, skills, support services, and enrichment necessary to ensure—

(a) Graduation from secondary school;

(b) Successful transition from secondary school to a broad range of postsecondary educational institutions; and

(c) Employment, including military service.

(Authority: 20 U.S.C. 2396 and 2396a)

§ 408.2 Who is eligible for an award?

(a) A public secondary school or area vocational education school is eligible for an award under the Community Education Employment Centers Program if the school—

(1) Is located in or serves one or more local educational agencies that are eligible for assistance under section 1006 of chapter 1 of Title 1 of the Elementary and Secondary Education Act of 1965, as amended (chapter 1) (20 U.S.C. 2712); and

(2) Demonstrates that it will serve a student population that is predominantly educationally and economically disadvantaged.

(b) For purposes of paragraph (a)(2) of this section, an eligible recipient is considered to be serving—

(1) A predominately educationally disadvantaged population if over 75 percent of the students to be served are individuals—

(i) Who score at or below the 25th percentile on a standardized achievement or aptitude test;

(ii) Whose secondary school grades are below 2.0 on a 4.0 scale (grade "A" equals 4.0); or

(iii) Who fail to attain minimal academic competencies; and

(2) A predominately economically disadvantaged population if over 75 percent of the students to be served can be classified as economically disadvantaged individuals according to the definition of that term in 34 CFR 400.4.

(Authority: 20 U.S.C. 2396f and 2396i(1))

§ 408.3 What activities may the Secretary fund?

(a) The Secretary provides grants and cooperative agreements for community education employment centers.

(b) Each project assisted by the Secretary must—

(1) Operate a community education employment center on an extended year and extended day basis;

(2) Establish a collegial working environment, with substantial opportunities for staff training and development and shared decision-making;

(3) Maintain small class sizes, and to the extent possible, maintain an average class size of 15 students or fewer;

(4) Offer a broad array of secondary school course-work, including, to the extent possible—

(i) English, mathematics, history, geography, biology, chemistry, physics, and computer science;

(ii) Opportunities for student participation in a wide range of extracurricular activities, including community service and exploration, sports, fine and performing arts, and tutorial study sessions;

(iii) A comprehensive vocational-technical education program that—

(A) Was developed through regular consultation with employer-labor panels with knowledge of relevant industries; and

(B) Offers skills in planning, management, finances, technical and production skills, underlying principles of technology, labor and community issues, economic development and health, safety, and environment issues; and

(iv) Courses in health, nutrition, and parenting;

(5) Offer students on-site opportunities for assistance with career planning and decision-making, employability, entrepreneurial abilities, interpersonal communication skills, and remedial studies;

(6) Maintain an emphasis on the development of academic skills, regardless of student career objectives;

(7) Provide technical assistance and training to staff from other schools and local educational agencies within the State that wish to replicate community education employment center capabilities;

(8) Seek to use community organizations to provide support for educational activities and services to parents and students;

(9) Offer school-to-work transition services;

(10) Establish a support system to coordinate services for students as described in § 408.30;

(11) Meet the requirements regarding center personnel in §§ 408.31 and 408.33; and

(12) Meet the requirements regarding a Council of Advisors in § 408.32.

(c) Projects assisted by the Secretary under this part may organize community education employment centers into one or more programs specializing in different areas of study of particular interest and employment opportunities for the student population.

(Authority: 20 U.S.C. 2396b, 2396c, and 2396d(a))

§ 408.4 What regulations apply?

The following regulations apply to the Community Education Employment Centers Program:

(a) The regulations in this part 408.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definition also applies to this part:

Parent includes a legal guardian or other person standing in loco parentis.

(Authority: 20 U.S.C. 2396i)

Subpart B—How Does One Apply for an Award?

§ 408.10 What must an application contain?

An application must—

(a) Contain information demonstrating that the area where the center is to be located has a high concentration of children from low-income families, relative to the county and State as a whole, such as proof of eligibility for an award under section 1006 of the Elementary and Secondary Education Act;

(b) Describe the activities and services for which assistance is sought;

(c) Describe how the applicant will comply with the provisions of §§ 408.2, 408.3, and 408.30 through 403.34;

(d) Provide assurances that the State and local educational agencies in which the applicant is located or serves will, in any fiscal year, supply at least the same fiscal effort per student, with respect to the provision of free public education, to community education employment center students as the local educational agency provides for students attending secondary schools in the local educational agency;

(e) Describe how the applicant will use funding available from appropriate employment, training, and education programs in the State in order to provide a maximum amount of resources for instructional and student services; and

(f) Provide assurances that the community education employment center will coordinate the operations of the center with local postsecondary institutions, business, industry, labor, and other appropriate public and private community agencies in order to help meet local economic needs.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2396g)

Subpart C—How Does the Secretary Make an Award?

§ 408.20 What awards does the Secretary make?

The Secretary makes awards to establish and operate not more than 10 community education employment centers for up to five years.

(Authority: 20 U.S.C. 2396a)

§ 408.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 408.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 408.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 408.22.

(Authority: 20 U.S.C. 2396a–2396m)

§ 408.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which—

(1) The center will be located in an urban or rural area that has a high concentration of children from low-income families, relative to the county and State as a whole;

(2) Activities and services will be provided to low-income urban and rural youth with education, skills, and the enrichment necessary to ensure graduation from secondary school, transition from secondary school to postsecondary school, or employment;

(3) Proposed activities will be coordinated with the entities listed in § 408.10(f) to ensure that the operations of the community education employment center will help meet current and projected occupational needs in the area;

(4) In-service training will be provided for community education employment center teachers in techniques, procedures, and policies relevant to the community education employment center;

(5) Support services will be provided to meet the requirements of § 408.30; and

(6) Parental and community participation will be provided for, as required in § 408.31.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed community education employment center on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student performance, achievement, and learning gains in vocational competencies and skills;

(ii) Student performance, achievement, and learning gains in such subjects as English, mathematics, history, geography, biology, chemistry, physics, and computer science as measured by standardized tests;

(iii) High school graduation;

(iv) Placement of students in jobs, including military service; and

(v) Successful transfer of students to a wide variety of postsecondary educational programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project, including the provision for meeting and reporting on the requirements in § 408.34;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the services provided to participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application to assess the effectiveness and efficiency of the plan for demonstrating and disseminating information about the project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating those methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting and training others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project, including the parent/community coordinator and personnel who will be employed to meet the requirements in § 408.33;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from appropriate employment, training, and education agencies in the State to provide project services and activities, and using non-Federal resources of community organizations to provide the support services described in § 408.30; and

(4) Proposes using funds or resources available from the State or local educational agency in which the center will be located or will serve to acquire community education employment center equipment and facilities in order to provide a maximum amount of resources for instructional and student services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to assess the adequacy of resources the applicant plans to devote to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2396e, 2396g, and 2396h)

§ 408.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 408.22, the Secretary may select other than the

most highly rated applications for funding if doing so would improve the—

(a) Distribution between applicants serving rural and urban youth; or

(b) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396)

Subpart D—What Conditions Must Be Met After an Award?

§ 408.30 What are the requirements regarding support services?

Each grantee shall establish in its community education employment center a support system to coordinate services for students, including the following:

(a) A comprehensive program of confidential guidance counseling that provides—

(1) Guidance for career and personal decision-making and postsecondary institution placement;

(2) Mentoring and referral to appropriate social services; and

(3) An accessible counseling service to help parents to participate in the enhancement of student education.

(b) An on-site job service office to offer students—

(1) Career guidance, career development, and employment counseling that provides information about a broad range of occupations and alternative career paths;

(2) Labor market information, job development, career testing, and occupational placement services for part-time and summer employment, internships, cooperative programs, and part-time and full-time employment opportunities upon graduation; and

(3) Assistance in arranging part-time employment, so long as that employment does not adversely affect academic performance.

(c) Assistance in arranging a summer program of work, education, or enrichment sessions.

(d) To the extent possible, transportation to and from the community education employment center and part-time job sites.

(e) Access to day-care services for children of participating students.

(Authority: 20 U.S.C. 2396c)

§ 408.31 What are the requirements regarding a parent/community coordinator?

Each grantee shall employ a parent/community coordinator to provide for the active and informed participation of parents and appropriate community representatives in its community education employment center by—

(a) Encouraging parents and students to make informed decisions in reviewing and selecting a community education employment center program;

(b) Conducting regular parent seminars to—

(1) Inform parents about community education employment center operations;

(2) Obtain parent input; and

(3) Disseminate information on how parents can encourage student performance;

(c) Providing the parents of each student with a regular opportunity to meet with counselors, teachers, and the student to discuss student progress, plans, and needs;

(d) Providing a range of roles in which parents may work with students at home or as class assistants or volunteer coordinators; and

(e) Establishing a Council of Advisors as required in § 408.32.

(Authority: 20 U.S.C. 2396d(a))

§ 408.32 What are the requirements regarding a Council of Advisors?

(a) *Establishment.* Each grantee shall establish an advisory Council of Advisors (Council).

(b) *Membership.* The Council must consist of one representative from each of the following entities:

(1) The local educational agency in which the center is located or serves.

(2) The State council on vocational education.

(3) The State agency responsible for secondary vocational education.

(4) The student body.

(5) The local teacher organization.

(6) Guidance counselors.

(7) Community-based organizations.

(8) Parents.

(9) The appropriate private industry council established under section 102(a) of the Job Training Partnership Act (29 U.S.C. 1512).

(c) *Functions of the council.* The Council shall provide recommendations to, and work with, the grantee to—

(1) Establish annual community education employment center priorities, programs, and procedures;

(2) Establish student selection criteria to ensure that—

(i) All students in the school district have an equal opportunity to attend the community education employment center; and

(ii) Participants will be representative of the secondary school population in the school district;

(3) Promulgate a student code of conduct that must be developed in consultation with the students and teachers;

(4) Assist in the selection of the community education employment center's principal, administrators, department chairpersons, and teachers;

(5) Assist in the selection and application of assessment tools for continuous evaluation of student learning progress;

(6) Make recommendations for the selection of curriculum, textbooks, software, and other learning resources and equipment; and

(7) Make recommendations regarding the coordination of activities assisted under this part with—

(i) Activities assisted under the Job Training Partnership Act; and

(ii) School-to-work transition activities.

(Authority: 20 U.S.C. 2396d(a)(5), (b))

§ 408.33 What are the requirements regarding other center personnel?

Each grantee shall—

(a) Employ only professional staff who demonstrate the highest of academic, teaching, guidance, or administrative standards;

(b) Ensure that teachers in the center receive inservice training at least annually in techniques, procedures, and policies relevant to the community education employment center; and

(c) Employ a sufficient number of full-time certified or licensed guidance and career counselors to assist, enhance, and monitor student progress.

(Authority: 20 U.S.C. 2396e)

§ 408.34 What are the evaluation requirements?

(a) Each grantee shall provide for an independent evaluation of grant activities and student learning progress.

(b) The evaluation must be both formative and summative in nature, and must include information regarding—

(1) Student academic and vocational competencies, including competencies such as those in the academic and vocational areas described in § 408.3(a)(4) (i) and (iii)(B);

(2) Student dropout rates;

(3) Employment and earnings while the students are attending the community education employment center and upon the graduation of the students from the center;

(4) Student attendance at postsecondary institutions or student enlistment into military service upon graduation from the community education employment center;

(5) Parental, student, and community participation in the activities of the community employment education center; and

(6) Project spread and transportability.

(c) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first six months of the project period.

(d) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396h(a))

PART 429—[REDESIGNATED FROM PART 409]

11. Part 409 is redesignated as part 429 and a new part 409 is added to read as follows:

PART 409—VOCATIONAL EDUCATION LIGHTHOUSE SCHOOLS PROGRAM

Subpart A—General

Sec.

409.1 What is the Vocational Education Lighthouse Schools Program?
409.2 Who is eligible for an award?
409.3 What activities may the Secretary fund?
409.4 What regulations apply?
409.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

409.20 How does the Secretary evaluate an application?
409.21 What selection criteria does the Secretary use?
409.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

409.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2396m, unless otherwise noted.

Subpart A—General

§ 409.1 What is the Vocational Education Lighthouse Schools Program?

The Vocational Education Lighthouse Schools Program provides financial assistance for the establishment and operation of vocational education lighthouse schools.

(Authority: 20 U.S.C. 2396m(a))

§ 409.2 Who is eligible for an award?

A public secondary school or area vocational education school is eligible for an award under the Vocational Education Lighthouse Schools Program.

(Authority: 20 U.S.C. 2396m(a))

§ 409.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects to establish vocational education lighthouse schools that—

(a) Serve as a model vocational education program that—

(1) Provides each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(2) Provides each student with basic and higher order skills and develops the student's problem solving abilities in a vocational setting;

(3) Offers exceptionally high quality programs for disadvantaged and minority students;

(4) Provides the special services and modifications necessary to help individual students successfully complete the program;

(5) Is planned, developed, and implemented with the participation of staff, local employers, and local community representatives; and

(6) Offers a full range of programs, including comprehensive career guidance and counseling, for students who plan to seek employment upon graduation or who will enroll in a two- or four-year college;

(b) Provide information and assistance to other vocational education lighthouse schools funded under this part, vocational programs, vocational education personnel, parents, students, educators, community members, and community organizations throughout the State in which the project is located regarding—

(1) Curriculum materials;

(2) Curriculum development, especially the integration of vocational and academic education;

(3) Inservice and preservice staff development, training, and assistance through off-site activities and through a range of short-term and long-term opportunities to participate in activities at the demonstration site;

(4) Opportunities to systematically observe the model program; and

(5) Technical assistance and staff development, as appropriate;

(c) Use funds received under this program, together with funds from non-Federal sources, to develop and implement model programs containing the elements described in paragraph (a) of this section;

(d) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(e) Develop and disseminate model approaches—

(1) For meeting the education and training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency; and

(2) To reduce and eliminate sex bias and stereotyping.

(Authority: 20 U.S.C. 2396m(b))

§ 409.4 What regulations apply?

The following regulations apply to the National Vocational Education Lighthouse Schools Program:

(a) The regulations in this part 409.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2396m)

§ 409.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2396m)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 409.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 409.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 409.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 409.21.

(Authority: 20 U.S.C. 2396m)

§ 409.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess—

(1) The quality of the plan to—

(i) Provide each student with knowledge of, and experience in, all aspects of an industry or enterprise the student is preparing to enter;

(ii) Provide each student with basic and higher order skills and develop the student's problem solving abilities in a vocational setting;

(iii) Involve staff, local employers, and local community representatives in the planning for and developing the project;

(iv) Integrate vocational and academic education;

(v) Develop comprehensive linkages with other local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate; and

(vi) Offer exceptionally high quality programs for disadvantaged and minority students;

(2) The extent to which the project—

(i) Is specifically designed to meet the education and training needs and career counseling needs of minority students, disadvantaged students, students with disabilities, and students of limited English proficiency;

(ii) Will contribute to the reduction and elimination of sex bias and stereotyping; and

(iii) Is designed in accordance with current and projected occupational needs; and

(3) The quality of the staff development plan.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed vocational education lighthouse school on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs on such factors as—

(i) Student achievement and learning gains in vocational education;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the achievement of the outcomes described in paragraph (a) of this section and the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that result in achievement of the outcomes described in paragraph (a) of this section and address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project's management design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants in terms of the activities described in § 409.3(a), as appropriate, and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4.

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Identification of target groups and provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project;

(3) Proposes using funds available from non-Federal sources such as appropriate employment, training, and education programs in the State to acquire vocational education lighthouse school equipment and facilities in order to devote a maximum amount of resources to instructional services; and

(4) Includes documentation of the availability of funds from non-Federal sources that will be used for activities described in § 409.3(a).

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396m)

§ 409.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 409.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2396m)

Subpart D—What Conditions Must Be Met After an Award?

§ 409.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must include assessment of student achievement in areas such as those described in § 409.3(a)(1) and (2); increases in academic and vocational competencies, completion, and placement rates; and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the U.S. Department of Education for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), shall be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2396m)

12. Part 410 is revised to read as follows:

PART 410—TRIBALLY CONTROLLED POSTSECONDARY VOCATIONAL INSTITUTIONS PROGRAM

Subpart A—General

Sec.

410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?
410.2 Who is eligible for an award?
410.3 What activities may the Secretary fund?
410.4 What regulations apply?
410.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

410.10 What must an application contain?

Subpart C—How Does the Secretary Make an Award?

410.20 How does the Secretary apply the selection criteria in § 410.21?
410.21 What selection criteria does the Secretary use for institutional support grants?
410.22 What additional factors does the Secretary consider?
410.23 How does the Secretary select grantees for institutional support grants?
410.24 How does the Secretary award additional grants?

Subpart D—What Conditions Must Be Met After an Award?

410.30 What expenses are allowable under an institutional support grant?
410.31 What other provisions apply to this program?

Authority: 20 U.S.C. 2397–2397h, unless otherwise noted.

Subpart A—General

§ 410.1 What is the Tribally Controlled Postsecondary Vocational Institutions Program?

The Tribally Controlled Postsecondary Vocational Institutions Program provides grants for the operation and improvement of tribally controlled postsecondary vocational institutions to ensure continued and expanded educational opportunities for Indian students, and to allow for the improvement and expansion of the physical resources of those institutions.

(Authority: 20 U.S.C. 2397 and 2397c)

§ 410.2 Who is eligible for an award?

A tribally controlled postsecondary vocational institution is eligible for assistance under this part if it—

(a) Is governed by a board of directors or trustees, a majority of whom are Indians;

(b) Demonstrates adherence to stated goals, a philosophy, or a plan of operation that fosters individual Indian economic and self-sufficiency opportunity, including programs that are appropriate to stated tribal goals of developing individual entrepreneurships and self-sustaining economic infrastructures on reservations;

(c) Has been in operation for at least three years;

(d) Holds accreditation with or is a candidate for accreditation by a nationally recognized accrediting authority for postsecondary vocational education; and

(e) Enrolls the full-time equivalency of not fewer than 100 students, of whom a majority are Indians.

(Authority: 20 U.S.C. 2397b)

§ 410.3 What activities may the Secretary fund?

The Secretary provides grants for basic support for the education and training of Indian students, including—

(a) Training costs;

(b) Educational costs;

(c) Equipment costs;

(d) Administrative costs; and

(e) Costs of operation and maintenance of the institution.

(Authority: 20 U.S.C. 2397a)

§ 410.4 What regulations apply?

The following regulations apply to the Tribally Controlled Postsecondary Vocational Institutions Program:

(a) The regulations in this part 410.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part, except for the definition of the term *Act*.

(b) The following definitions also apply to this part:

Act means the Tribally Controlled Vocational Institutions Support Act of 1990.

Indian means a person who is a member of an Indian tribe.

Indian student count means a number equal to the total number of Indian students enrolled in each tribally controlled vocational institution, determined as follows:

(1) The registrations of Indian students as in effect on October 1 of each year.

(2) Credits or clock hours toward a certificate earned in classes offered during a summer term must be counted toward the computation of the Indian

student count in the succeeding fall term.

(3) Credits or clock hours toward a certificate earned in classes during a summer term must be counted toward the computation of the Indian student count if the institution at which the student is in attendance has established criteria for the admission of the student on the basis of the student's ability to benefit from the education or training offered. The institution is presumed to have established those criteria if the admission procedures for those studies include counseling or testing that measures the student's aptitude to successfully complete the course in which the student has enrolled. Credit earned by the student for purposes of obtaining a high school degree or its equivalent may not be counted toward the computation of the Indian student count.

(4) Indian students earning credits in any continuing education program of a tribally controlled vocational institution must be included in determining the sum of all credit or clock hours.

(5) Credits or clock hours earned in a continuing education program must be converted to the basis that is in accordance with the institution's system for providing credit for participation in those programs.

Indian tribe means any Indian tribe, band, nation, or other organized group or community, including any Alaskan native village or regional or village corporation as defined in or established pursuant to the Alaskan Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), that is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Tribally controlled postsecondary vocational institution means an institution of higher education that is formally controlled, or has been formally sanctioned or chartered by the governing body of an Indian tribe or tribes, and that offers technical degrees or certificate granting programs. This term does not include an institution that is a tribally controlled community college as defined in 34 CFR 400.4. (See Cong. Rec. S4116 (daily ed. April 5, 1990) (Statement of Senator Bingaman); Cong. Rec. H1708 (daily ed. May 9, 1989) (Statement of Rep. Richardson)).

(Authority: 20 U.S.C. 2397h and 25 U.S.C. 1801 (1) and (2))

Subpart B—How Does One Apply for an Award?

§ 410.10 What must an application contain?

(a) An application for a grant under the Tribally Controlled Postsecondary Vocational Institutions Program must include the following:

(1) Documentation showing that the institution is eligible according to the requirements in § 410.2.

(2) A description of the fiscal control and fund accounting procedures to be used for all funds received under this program that will allow the Secretary to monitor expenditures and the Education Department Inspector General, the U.S. Comptroller General, or an independent non-Federal auditor to audit the institution's programs.

(3) The institution's operating expenses for the preceding fiscal year, including allowable expenses listed in § 410.30.

(4) The institution's Indian student count.

(b) An application for an institutional support grant must also contain a comprehensive development plan addressing the following:

(1) The institutional mission statement, i.e., a broad statement of purpose, that identifies the institution's distinguishing characteristics, including the characteristics of the students the institution serves and plans to serve and the programs of study it offers and proposes to offer.

(2) Data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population.

(3) A description of how the institution is responsive to the current and projected labor market needs in its geographic area, including the institution's plans for placement of students.

(4) Assumptions concerning the institutional environment, the potential number of students to be served, enrollment trends, and economic factors that could affect the institution.

(5) Major problems or deficiencies that inhibit the institution from realizing its mission.

(6) Long-range and short-range goals that will chart the growth and development of the institution and address the problems identified under paragraph (b)(5) of this section.

(7) Measurable objectives related to reaching each goal.

(8) Time-frames for achieving the goals and objectives described in paragraphs (b)(6) and (7) of this section.

(9) Priorities for implementing improvements concerning instructional and student support, capital expenditures, equipment, and other priority areas.

(10) Major resource requirements necessary to achieve the institution's goals and objectives, including personnel, finances, equipment, and facilities.

(11) A detailed budget identifying the costs to be paid with a grant under this program and resources available from other Federal, State, and local sources that will be used to achieve the institution's goals and objectives. Budget and cost information must be sufficiently detailed to enable the Secretary to determine the amount of payments pursuant to section 386(b)(2) of the Act. The statement must include information on allowable expenses listed in § 410.30.

(12) Strategies and resources for objectively evaluating the institution's progress towards, and success in, achieving its goals and objectives.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2397b, 2397c(a), 2397d(b)(2)(B), and 2397f)

Subpart C—How Does the Secretary Make an Award?

§ 410.20 How does the Secretary apply the selection criteria in § 410.21?

(a) The Secretary evaluates an application on the basis of the criteria in § 410.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 410.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion in § 410.21 is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 410.21.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.21 What selection criteria does the Secretary use for institutional support grants?

The Secretary uses the following criteria to evaluate an application for an institutional support grant:

(a) *Institutionol goals and objectives.* (10 points) The Secretary reviews each application to determine the extent to which the applicant's current and future institutional goals and objectives are—

(1) Realistic and defined in terms of measurable results; and

(2) Directly related to the problems to be solved.

(b) *Comprehensive development plan.* (25 points) The Secretary reviews each application to determine the extent to which the plan is effectively designed to meet the applicant's current and future institutional goals and objectives, including instructional and student support needs, and equipment and capital requirements.

(c) *Implementotion strategy.* (20 points) The Secretary reviews each application to determine the extent to which an applicant's implementation strategy—

(1) For each major activity funded under this program, is comprehensive and likely to be effective, taking into account the applicant's past performance and the data for the past three academic years reflecting the number and required qualifications of the teaching and administrative staff, the number of students enrolled, attendance rates, dropout rates, graduation rates, rate of job placement or college enrollment after graduation, and the most significant scholastic problems affecting the student population;

(2) Includes a realistic timetable for each such activity; and

(3) Includes a staff management plan likely to ensure effective administration of the project activities.

(d) *Budget and cost effectiveness.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the proposed activities to be funded under this program, including capital expenditures and acquisition of equipment, if applicable;

(2) Costs are necessary and reasonable in relation to similar activities the institution carried out in previous years; and

(3) The budget narrative justifies the expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan the institution plans to use to determine its progress towards, and success in, achieving its goals and objectives, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected, expected outcomes, and how those outcomes will be measured;

(2) The methods of evaluation are appropriate and, to the extent possible, are objective and produce data that are quantifiable; and

(3) The methods of evaluation provide periodic data that can be used for ongoing program improvement.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2397–2397h)

§ 410.22 What additional factors does the Secretary consider?

(a) After evaluating applications according to the criteria in § 410.21 and consulting, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered, the Secretary determines whether the most highly rated applications are equitably distributed among Indian tribes.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects among Indian tribes.

(c) In addition to the criteria in § 410.21, the Secretary considers whether funding a particular applicant duplicates an effort already being made.

(Authority: 20 U.S.C. 2397–2397h)

§ 410.23 How does the Secretary select grantees for institutional support grants?

(a) The Secretary selects at least two eligible applicants for funding.

(b) If only one or two applicants are eligible, the Secretary selects each eligible applicant. The amount of each grant is determined by the quality of the application, based on the selection criteria in § 410.22, and the respective needs of the applicants.

(c) If there are more than two eligible applicants, the Secretary ranks each application using the selection criteria in § 410.22. The Secretary funds two or more applicants. The number of grants made and the amount of each grant is determined by taking into account the quality of the applications and the respective needs of the applicants.

(d) For fiscal years subsequent to the first year of funding, the Secretary follows the procedure in paragraphs (a) through (c) of this section, except that if appropriations for that fiscal year are not sufficient to pay in full the total amount that approved applicants are eligible to receive, the Secretary allocates the available grant amounts as required by section 388(a) of the Act.

(Authority: 20 U.S.C. 2397c(b))

§ 410.24 How does the Secretary award additional grants?

If funds remain after providing grants to all eligible institutions, the Secretary makes awards as follows:

(a) The Secretary allocates funds to institutions receiving their first grant under this part in an amount equal to the training equipment costs necessary to implement training programs.

(b) If funds remain after the Secretary makes awards under paragraph (a) of this section, the Secretary reviews training equipment needs at each institution receiving assistance under this part at the end of the five-year period beginning on the first day of the first year for which the institution received a grant under this part, and provides allocations for other training equipment needs if it is demonstrated by the institution that its training equipment has become obsolete for its purposes, or that the development of other training programs is appropriate.

(Authority: 20 U.S.C. 2397d(d))

Subpart D—What Conditions Must Be Met After an Award?

§ 410.30 What expenses are allowable under an institutional support grant?

An institutional support grant may only be used to pay expenses associated with the following:

(a) The maintenance and operation of the program, including—

(1) Development costs;

(2) Costs of basic and special instruction, including special programs for individuals with disabilities and academic instruction;

(3) Materials;

(4) Student costs;

(5) Administrative expenses;

(6) Boarding costs;

(7) Transportation;

(8) Student services;

(9) Day care and family support programs for students and their families, including contributions to the costs of education for dependents; and

(10) Training equipment costs necessary to implement training programs.

(b) Capital expenditures, including operations and maintenance, minor improvements and repair, and physical plant maintenance costs.

(c) Costs associated with repair, upkeep, replacement, and upgrading of instructional equipment.

(Authority: 20 U.S.C. 2397d(a), (d))

§ 410.31 What other provisions apply to this program?

(a) Except as specifically provided in the Act, eligibility for assistance under

this part may not preclude any tribally controlled postsecondary vocational institution from receiving Federal financial assistance under any program authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*) or any other applicable program for the benefit of institutions of higher education or vocational education.

(b) No tribally controlled postsecondary vocational institution for which an Indian tribe has designated a portion of the funds appropriated for the tribe from funds appropriated under the Act of November 2, 1921 (25 U.S.C. 13) may be denied a contract for that portion under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*) (except as provided in that Act), or denied appropriate contract support to administer that portion of the appropriated funds.

(Authority: 20 U.S.C. 2397e)

13. Part 411 is revised to read as follows:

PART 411—VOCATIONAL EDUCATION RESEARCH PROGRAM

Subpart A—General

Sec.

411.1 What is the Vocational Education Research Program?
411.2 Who is eligible for an award?
411.3 What activities may the Secretary fund?
411.4 What regulations apply?
411.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

411.20 How does the Secretary evaluate an application?
411.21 What selection criteria does the Secretary use?
411.22 What additional factors may the Secretary consider?
411.23 How does the Secretary evaluate unsolicited applications?
411.24 How does the Secretary select an unsolicited application for funding?

Authority: 20 U.S.C. 2401 and 2402, unless otherwise noted.

Subpart A—General

§ 411.1 What is the Vocational Education Research Program?

The Vocational Education Research Program is designed to—

(a) Improve access to vocational educational programs for individuals with disabilities, individuals who are disadvantaged, men and women who are entering nontraditional occupations, adults who are in need of retraining, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(b) Support research and development activities that make the United States more competitive in the world economy by developing more fully the academic and occupational skills of all segments of the population by concentrating resources on improving educational programs leading to academic and occupational skill competencies needed to work in a technologically advanced society;

(c) Improve the competitive process by which research projects are awarded;

(d) Encourage the dissemination of findings of research projects assisted under the Act to all States; and

(e) Support research activities that are readily applicable to the vocational education setting and are of practical application to vocational education administrators, counselors, instructors, and others involved in vocational education.

(Authority: 20 U.S.C. 2401)

§ 411.2 Who is eligible for an award?

(a) Any individual or public or private agency, organization, or institution may apply for an award under this part.

(b) Any individual researcher, community college, State advisory council, or State or local educator may submit an unsolicited research application.

(Authority: 20 U.S.C. 2402(a), (b))

§ 411.3 What activities may the Secretary fund?

The Secretary may directly, or through grants, cooperative agreements, or contracts, conduct applied research on aspects of vocational education that are specially related to the Act, including the following:

(a) Applied research on—

(1) Effective methods for providing quality vocational education to individuals with disabilities, disadvantaged individuals, men and women in nontraditional fields, adults, single parents, displaced homemakers, single pregnant women, individuals with limited English proficiency, and individuals who are incarcerated in correctional institutions;

(2) The development and implementation of performance standards and measures that fit within the needs of State boards of vocational education or eligible recipients as defined in 34 CFR 400.4 in carrying out the provisions of the Act and on the relationship of those standards and measures to the data system established under section 421 of the Act. Research may include an evaluation of existing performance standards and measures and dissemination of that information to State boards of vocational education and eligible recipients;

(3) Strategies for coordinating local, State, and Federal vocational education, employment training, and economic development programs to maximize their efficacy and for improving worker training and retraining;

(4) The constructive involvement of the private sector in public vocational education;

(5) Successful methods of reinforcing and enhancing basic and more advanced academic and problem-solving skills in vocational settings;

(6) Successful methods for providing students, to the maximum extent practicable, with experience in and understanding of all aspects of the industry those students are preparing to enter; and

(7) The development of effective methods for providing quality vocational education to individuals with limited English proficiency, including research related to bilingual vocational training.

(b) An evaluation of the use of performance standards and measures under the Act and the effect of those standards and measures on the participation of students in vocational education programs and on the outcomes of students in those programs, especially students who are members of special populations as defined in 34 CFR 400.4.

(Authority: 20 U.S.C. 2402(a))

§ 411.4 What regulations apply?

The following regulations apply to the Vocational Education Research Program:

(a) The regulations in this part 411.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2401 and 2402)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make a Grant?

§ 411.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 411.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of the section, based on the criteria in § 411.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 411.21.

(e) The Secretary awards five points to applications submitted by public or private postsecondary institutions.

(Authority: 20 U.S.C. 2402)

§ 411.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *National need.* (20 points) The Secretary reviews each application to determine the extent to which the project would make a contribution of national significance, as measured by such factors as—

(1) The need for the project in relation to any program priority announced in the **Federal Register**; and

(2) The likelihood that the project will make an important contribution to vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) High quality in the design of the project;

(2) An effective plan of management that ensures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plans to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 Points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each one of the key personnel, including the project director, will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable and necessary in relation to the objectives of the project.

(e) *Evaluation plan.* (5 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(4) If appropriate, identifies expected outcomes of the project participants and how those outcomes will be measured;

(5) If appropriate, will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) To the extent possible, include a third party evaluation.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(g) *Dissemination plan.* (5 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(2) A clear description of the project outcomes; and

(3) A detailed description of how information and materials will be disseminated, including—

(i) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journals articles, newsletters, and brochures;

(ii) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques; and

(iii) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2402)

§ 411.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 411.21 the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this part.

(Authority: 20 U.S.C. 2401 and 2402)

§ 411.23 How does the Secretary evaluate unsolicited applications?

(a) At any time during a fiscal year, the Secretary may accept and consider for funding an unsolicited application that has not been submitted under a competition announced in the **Federal Register** for that fiscal year, if the project proposes activities described in § 411.3.

(b) Notwithstanding the provisions of 34 CFR 75.100, the Secretary may fund an unsolicited application without publishing an application notice in the **Federal Register**.

(c) The Secretary may select an unsolicited application for funding in accordance with the procedures in §§ 411.20(e) and 411.24.

(d) The Secretary assigns the 15 points reserved under § 411.20(b) as follows:

(1) Ten points to the selection criterion in § 411.21(a)—national need.

(2) Five points to the selection criterion in § 411.21(b)—plan of operation.

(Authority: 20 U.S.C. 2402)

§ 411.24 How does the Secretary select an unsolicited application for funding?

(a) After evaluating an unsolicited research application on the basis of the criteria in § 411.21, the Secretary compares that application to other unsolicited research applications the Secretary has received.

(b) The Secretary may fund an unsolicited research application at any time during the fiscal year.

(Authority: 20 U.S.C. 2402)

14. Part 412 is revised to read as follows:

PART 412—NATIONAL NETWORK FOR CURRICULUM COORDINATION IN VOCATIONAL AND TECHNICAL EDUCATION

Subpart A—General

Sec.

412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?
412.2 Who is eligible for an award?
412.3 What activities may the Secretary fund?
412.4 What is the National Network of Directors Council?
412.5 What regulations apply?
412.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

412.20 How does the Secretary evaluate an application?
412.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

412.30 What additional activities must be carried out by Curriculum Coordination Centers?
412.31 What existing dissemination systems must be used?

Authority: 20 U.S.C. 2402(c), unless otherwise noted.

Subpart A—General

§ 412.1 What is the National Network for Curriculum Coordination in Vocational and Technical Education?

The National Network for Curriculum Coordination in Vocational and Technical Education (Network) is a system of six curriculum coordination centers that disseminate information resulting from research and development activities carried out under the Act, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

§ 412.2 Who is eligible for an award?

State and local educational agencies, postsecondary educational institutions, and other public and private agencies, organizations, and institutions are eligible for an award under this program.

(Authority: 20 U.S.C. 2402(c))

§ 412.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts to six regional curriculum coordination centers (CCCs).

(b) Each CCC must—(1) Provide for national dissemination of information on effective vocational and technical education programs and materials, with particular attention to regional programs;

(2) Be accessible by electronic means;

(3) Provide leadership and technical assistance in the design, development, and dissemination of curricula for vocational education;

(4) Coordinate the sharing of information among the States with respect to vocational and technical education curricula;

(5) Reduce duplication of effort in State activities for the development of vocational and technical education curricula; and

(6) Promote the use of research findings with respect to vocational education curricula.

(c) The six regional CCCs assisted with funds under this program must serve States according to the Department of Education's regional alignment as follows:

(1) The Northeast Curriculum Coordination Center serves Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, and the Virgin Islands.

(2) The Southeast Curriculum Coordination Center serves Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

(3) The East Central Curriculum Coordination Center serves Delaware, the District of Columbia, Indiana, Illinois, Maryland, Michigan, Minnesota, Ohio, Pennsylvania, Virginia, West Virginia, and Wisconsin.

(4) The Midwest Curriculum Coordination Center serves Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

(5) The Northwest Curriculum Coordination Center serves Alaska, Colorado, Idaho, Montana, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

(6) The Western Curriculum Coordination Center serves American Samoa, Arizona, California, Guam, Hawaii, Nevada, the Northern Mariana Islands, and Palau until the Compact of Free Association with Palau takes effect.

(Authority: 20 U.S.C. 2402(c))

§ 412.4 What is the National Network of Directors Council?

(a) The National Network of Directors Council (Council) enhances the effectiveness of the Network by—

(1) Planning for inter-center coordination, dissemination, and diffusion activities;

(2) Providing leadership to ensure cohesiveness for overall Network functions;

(3) Promoting the adoption and adaptation of curriculum materials;

(4) Maintaining liaison with dissemination systems described in § 412.32;

(5) Convening at least twice a year; and

(6) Planning for and participating in an annual meeting of CCCs that includes activities such as displays of current curriculum materials from each CCC, inservice training sessions, and hands-on experience with new technologies in vocational and technical education. This meeting must be held in a different region each year.

(b) The Council is composed of the six CCC directors and a liaison from the Department. One of the CCC directors serves as chair for the Council and has responsibilities for submitting minutes of Council meetings to the Secretary.

(Authority: 20 U.S.C. 2402(c))

§ 412.5 What regulations apply?

The following regulations apply to the National Network for Curriculum Coordination in Vocational and Technical Education:

(a) The regulations in this part 412.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2402(c))

§ 412.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2402(c))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 412.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 412.21.

(b) The Secretary may award up to 100 points, including 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 412.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 412.21.

(Authority: 20 U.S.C. 2402(c))

§ 412.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Regional need.* (30 points) The Secretary reviews each application to determine the applicant's understanding of and responsiveness to the needs of the region, including the extent to which the applicant—

(1) Demonstrates an understanding of the leadership responsibilities associated with serving as a resource center and facilitator for States in a region, including the region's need for inservice training, holding regional meetings, providing technical assistance, coordinating with State directors of vocational education, maintaining a lending library, and disseminating information regularly;

(2) Proposes adequate mechanisms and procedures for reporting the results of curriculum networking services and activities of the 50 States, District of Columbia, Puerto Rico, and the Outlying Areas;

(3) Demonstrates the capacity to disseminate information on effective vocational education materials, including curriculum materials;

(4) Demonstrates an understanding of the operation of the Vocational Education Curriculum Materials and ADVOCNET Systems and the need for establishing a Tech-Prep education clearinghouse; and

(5) Demonstrates the capacity to undertake the responsibilities associated with participation as a member of the Network Directors Council described in § 412.4.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the design of the project;

(2) The extent to which the management plan ensures proper and efficient administration of the project;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine the personnel qualifications under paragraphs (c)(1)(i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in the fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Institutional commitment.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Has experience with vocational education curriculum and dissemination;

(2) Will initiate and maintain liaison functions with regional States; and

(3) Will provide adequate facilities, equipment, and supplies.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities; and

(2) The budget contains costs that are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project; and

(2) Identifies expected outcomes of the services provided and how those services will be measured.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2402(c))

Subpart D—What Conditions Must Be Met After An Award?

§ 412.30 What additional activities must be carried out by Curriculum Coordination Centers?

In carrying out the activities described in § 412.3, each CCC must perform the following activities:

(a) Assist States in the development, adaptation, adoption, dissemination, and use of curriculum materials and services and other information resulting from research and development activities carried out under the Act, including performing these activities during at least two regional meetings involving States served by the CCC. One of these regional meetings must be conducted jointly with the other five CCCs and their regional States at the meeting described in § 412.4(a)(6).

(b) Coordinate with other curriculum coordination centers funded under this part.

(c) Coordinate with the State salaried State liaison representative (SLR), who is appointed by the State director of vocational education. The SLR has primary responsibilities for liaison activities within the States, including—

(1) Obtaining new curriculum and research and development materials for Network sharing;

(2) Informing localities and State agencies of Network services;

(3) Disseminating CCC related materials;

(4) Arranging for intrastate and interstate development and dissemination activities;

(5) Arranging for technical assistance and inservice training workshops;

(6) Participating in regional CCC meetings; and

(7) Fostering adoption and adaptations of materials available through the CCC.

(d) Maintain a lending library with a collection of vocational education curriculum, research, and development materials for use by the States served by the CCC.

(e) Each CCC must participate in the Council activities described in § 412.4.

(Authority: 20 U.S.C. 2402(c))

§ 412.31 What existing dissemination systems must be used?

In carrying out its activities, each CCC must use existing dissemination systems, including the National Diffusion Network and the National Center or Centers for Research in

Vocational Education, in order to ensure broad access at the State and local levels to the information being disseminated.

(Authority: 20 U.S.C. 2402(c))

15. A new part 413 is added to read as follows:

PART 413—NATIONAL CENTER OR CENTERS FOR RESEARCH IN VOCATIONAL EDUCATION

Subpart A—General

Sec.

413.1 What is the National Center or Centers for Research in Vocational Education?
413.2 Who is eligible to apply for the National Center or Centers?
413.3 What kinds of activities are carried out?
413.4 How does the Secretary designate a National Center or Centers?
413.5 What regulations apply?
413.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

413.20 How does the Secretary evaluate an application?
413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?
413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

Subpart D—What Conditions Must Be Met After an Award?

413.30 What are the restrictions on the use of funds?
413.31 Must a National Center have a director?
413.32 What are the requirements for coordination?
413.33 What substantive studies must the National Center or Centers conduct and submit?
413.34 What activities must be performed during the final year of an award?

Authority: 20 U.S.C. 2404, unless otherwise noted.

Subpart A—General

§ 413.1 What is the National Center or Centers for Research in Vocational Education?

The Secretary supports the establishment of one or two National Centers for Research in Vocational Education (National Center) in the areas of—

(a) Applied research and development; and

(b) Dissemination and training.

(Authority: 20 U.S.C. 2404)

§ 413.2 Who is eligible to apply for the National Center or Centers?

An institution of higher education or consortium of institutions of higher education may apply to be a National Center under this part.

Cross-Reference: See 34 CFR 75.127 through 75.129, Group Applications.

(Authority: 20 U.S.C. 2404(a)(5))

§ 413.3 What kinds of activities are carried out?

The Secretary provides a grant or cooperative agreement to a National Center or Centers that are designed to perform either one or both of the following activities:

(a) *Applied research and development activities.* (1) A major purpose of the National Center is to design and conduct research and development activities that are consistent with the purposes of the Act, including—

(i) Longitudinal studies that extend over a period of years;

(ii) Supplementary and short-term activities; and

(iii) Upon negotiation with the center, and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct applied research and development activities that include examination of the following:

(i) Economic changes that affect the skills that employers seek and entrepreneurs need.

(ii) Integration of academic and vocational education.

(iii) Efficient and effective practices for addressing the needs of special populations.

(iv) Efficient and effective methods for delivering vocational education.

(v) Articulation of school and college instruction with high quality work experience.

(vi) Recruitment, education, and enhancement of vocational teachers and other professionals in the field.

(vii) Accountability processes in vocational education, including identification and evaluation of the use of appropriate performance standards for student, program, and State-level outcomes.

(viii) Effective practices that educate students in all aspects of the industry the students are preparing to enter.

(ix) Effective methods for identifying and inculcating literacy and other communication skills essential for effective job preparation and job performance.

(x) Identification of strategic, high priority occupational skills and skills formation approaches needed to maintain the competitiveness of the United States workforce, sustain high-wage, high-technology jobs, and address national priorities such as technical jobs needed to protect and restore the environment.

(xi) Identification of practices and strategies that address entrepreneurial development for minority-owned enterprises.

(3) The applied research and development activities must include—

(i) An emphasis on the recruitment, education, and enhancement of minority and female vocational teachers and professionals; and

(ii) Activities that aid in the development of minorities and women for leadership roles in vocational education.

(b) *Dissemination and training activities.* (1) A major purpose of the National Center is to design and conduct dissemination and training activities that are consistent with the purposes of the Act, including—

(i) The broad dissemination of the results of the research and development conducted by the National Center;

(ii) The development and utilization of a national level dissemination network including functions such as clearinghouses, databases, and telecommunications;

(iii) Planning, developing, and conducting training activities; and

(iv) Upon negotiation with the Center and if funds are provided pursuant to section 404(d) of the Act, such other topics as the Secretary may designate.

(2) The National Center shall conduct dissemination and training activities that include the following:

(i) Teacher and administrator training and leadership development.

(ii) Technical assistance to ensure that programs serving special populations are effective in delivering well-integrated and appropriately articulated vocational and academic offerings for secondary, postsecondary, and adult students.

(iii) Needs assessment, design, and implementation of new and revised programs with related curriculum materials to facilitate vocational-academic integration.

(iv) Evaluation and follow-through to maintain and extend quality programs.

(v) Assistance in technology transfer and articulation of program offerings from advanced technology centers to minority enterprises.

(vi) Assistance to programs and States on the use of accountability indicators, including appropriate and innovative performance standards.

(vii) Delivery of information and services using advanced technology, if appropriate, to increase the effectiveness and efficiency of knowledge transfer.

(viii) Development of processes for synthesis of research, in cooperation with a broad array of users, including vocational and non-vocational educators, employers and labor organizations.

(ix) Dissemination of exemplary curriculum and instructional materials, and development and publication of curriculum materials (in conjunction with vocational and nonvocational constituency groups, if appropriate).

(x) Technical assistance in recruiting, hiring, and advancing minorities in vocational education.

(3) The training and leadership development activities must include an emphasis on—

(i) Training minority and female teachers; and

(ii) Programs and activities that aid in the development of minorities and women for leadership roles in vocational education.

(4) Advanced technology may include audio-video cassettes, electronic networking, satellite-assisted programming, computer-based conferencing, and interactive video.

(Authority: 20 U.S.C. 2404 (b) and (c); House Report No. 101–660, 101st Cong. 2nd Sess. p. 143 (1990))

§ 413.4 How does the Secretary designate a National Center or Centers?

(a) The Secretary designates a National Center or Centers once every five years.

(b) In designating the National Center or Centers for Research in Vocational Education, the Secretary may support—

(1) One National Center that conducts both research and development activities and dissemination and training activities; or

(2) Two National Centers: one that conducts research and development activities and one that conducts dissemination and training activities.

(Authority: 20 U.S.C. 2404)

§ 413.5 What regulations apply?

The following regulations apply to the National Center or Centers:

(a) The regulations in this part 413.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2404)

§ 413.6 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part, except that the term "institution of higher education" has the same meaning as provided in 34 CFR 403.117(b).

(Authority: 20 U.S.C. 1085(b) and 2404)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 413.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 413.21 and 413.22.

(b) The Secretary may award up to 100 points to each set of criteria in §§ 413.21 and 413.22, including a reserved 10 points for each set of criteria to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in §§ 413.21 and 413.22.

(e) The Secretary may hold two separate competitions, with the same closing date, for the National Center or Centers. One competition will be held for research and development activities and the second competition will be held for dissemination and training activities. An institution of higher education or consortium of higher education institutions may submit a research and development application; a dissemination and training application; or both as separate applications under separate covers.

(f) The Secretary evaluates applications for the research and development center and the dissemination and training center independently against the criteria in §§ 413.21 and 413.22 whether an institution or consortium of institutions is competing for either or both sets of activities.

(g) In accordance with section 404(a)(5) of the Act, the Secretary will give preference in grant selection to institutions or consortia of institutions that demonstrate the ability to carry out both the research and development and the dissemination and training activities effectively, either directly or by contract.

(h) An institution or consortium of institutions that has submitted two applications and applied for a single grant for the purpose of carrying out both activities and that has earned 80 points or higher on each of its two applications, will be deemed by the Secretary to have demonstrated the ability to carry out both activities effectively.

(i) The Secretary will award a single grant to an institution or consortium of institutions that has both—

(1) Demonstrated the ability to carry out both program activities effectively, in accordance with paragraph (h) of this section; and

(2) Earned the highest combined score among those institutions or consortia of institutions that have demonstrated the ability to carry out both activities effectively.

(j) If no institution or consortium of institutions is selected for a single grant award, the institution or consortia of institutions ranking highest in each of the two competitions will each receive a grant award.

(Authority: 20 U.S.C. 2404)

§ 413.21 What selection criteria does the Secretary use to evaluate an application proposing research and development activities?

The Secretary uses the following selection criteria in evaluating each research and development application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required research and development activities described in § 413.3(a)(2) will be of high quality and effective.

(b) *Plan of operation.* (35 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed center, including—

(1) The applicant's plan for managing the National Center;

(2) The procedures the applicant will use to implement the National Center particularly with regard to the public or private nonprofit institution of higher education with which it is associated and, in the case of a consortium, with the other member institutions of the consortium;

(3) The applicant's plan for managing the National Center's activities and personnel, including—

(i) Quality control procedures for its activities;

(ii) Procedures for assuring compliance with timelines;

(iii) Coordination procedures for communicating among staff, subcontractors, members of the consortium, if any, and the Department of Education;

(iv) Procedures for ensuring that adequate progress is being made toward achieving the goals of the grantee by subcontractors, and members of a consortium; and

(v) Procedures for ensuring that adequate budget, accounting, and recordkeeping procedures will be used;

(4) The quality of the applicant's detailed plans for year one of the National Center, including—

(i) Methodology and plan of operation;

(ii) Tasks and timelines;

(iii) Deliverables; and

(iv) Dissemination plans for each project; and

(5) The quality of the applicant's general plans for developing appropriate, coherent, and effective vocational education research and development activities, or dissemination and training activities, or both, for years two through five.

(c) *Key personnel.* (10 points) The Secretary reviews each application to determine the qualifications of the key personnel the applicant plans to use for the National Center, including—

(1) The extent to which the Director of the National Center has—

(i) Appropriate professional qualifications, relevant project management experience, and administrative skills;

(ii) A commitment to work full-time at the National Center;

(iii) A clear commitment to the goals of the project; and

(iv) Sufficient authority to effectively manage the activities of the National Center;

(2) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability; and

(3) The extent to which other key personnel to be used for the National Center—

(i) Have experience and training in project management and in fields related to the proposed activities they will be carrying out; and

(ii) Will commit sufficient time to the project.

(d) *Vocational education experience.* (10 points) The Secretary reviews each application to determine the extent to which the applicant understands the state of knowledge and practice related to vocational education, including—

(1) The applicant's experience in conducting applied research and development activities, dissemination and training activities, or both, in the field of vocational education of the type described in § 413.3;

(2) The applicant's capacity for conducting applied research and development activities, dissemination and training activities, or both, in the field of vocational education of the type described in § 413.3; and

(3) How the activities of the National Center will contribute to the advancement of relevant theory and practice in vocational education.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The Center has an adequate budget that is cost effective;

(2) The budget is adequate to support the Center's activities; and

(3) Costs are reasonable in relation to the objectives of the Center.

(f) *Coordination activities.* (5 points) The Secretary reviews each application to determine the extent to which there is an effective plan for the coordination of activities described in § 413.3 (a) and (b), and whether these activities are carried out between two institutions or within one institution.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2404)

§ 413.22 What selection criteria does the Secretary use to evaluate an application proposing dissemination and training activities?

The Secretary uses the following selection criteria in evaluating each dissemination and training application:

(a) *Program factors.* (20 points) The Secretary reviews each application to determine the extent to which each of the required dissemination and training activities, described in § 413.3(b), will be of high quality and effective.

(b) The selection criteria and points in § 413.21 (b), (c), (d), (e), and (f).

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2404)

Subpart D—What Conditions Must Be Met After an Award?

§ 413.30 What are the restrictions on the use of funds?

(a) A National Center that performs both research and development activities and dissemination and training activities shall use at least two-thirds of its award for applied research and development.

(b) Not more than 10 percent of each year's budget for a National Center may be used to respond to field-initiated needs unanticipated prior to the annual funding period and that are in the mission of the National Center, but not part of the scope of work of the grant or cooperative agreement.

(Authority: 20 U.S.C. 2404(a)(3) and (b))

§ 413.31 Must a National Center have a director?

A National Center must have a full-time director who is appointed by the institution serving as the grantee.

(Authority: 20 U.S.C. 2404)

§ 413.32 What are the requirements for coordination?

If the Secretary designates two National Centers, the two centers must coordinate their activities.

(Authority: 20 U.S.C. 2404)

§ 413.33 What substantive studies must the National Center or Centers conduct and submit?

(a) The National Center conducting research and development activities shall annually prepare a study on the research conducted on approaches that lead to effective articulation for the education-to-work transition, including tech-prep programs, cooperative education or other work-based programs, such as innovative apprenticeship or mentoring approaches.

(b) The National Center conducting dissemination and training activities shall annually prepare a study of its dissemination and training activities.

(c) Annual studies described in paragraphs (a) and (b) of this section must be submitted to the Secretary of Education, the Secretary of Labor, the Secretary of Health and Human Services, the Committee on Labor and Human Resources of the Senate, and the Committee on Education and Labor of the House of Representatives.

(Authority: 20 U.S.C. 2404 (b)(2) and (c)(2))

§ 413.34 What activities must be performed during the final year of an award?

During the fifth year of the award cycle, the National Center or Centers shall develop and remain prepared to implement a contingency plan for completing all substantive work by the end of the eleventh month of that year and transferring all projects, services, and activities to a successor during the twelfth month of that year.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2404)

16. Part 414 is revised to read as follows:

PART 414—MATERIALS DEVELOPMENT IN TELECOMMUNICATIONS PROGRAM

Subpart A—General

Sec.

414.1 What is the Materials Development in Telecommunications Program?
414.2 Who is eligible for an award?
414.3 What activities may the Secretary fund?
414.4 What regulations apply?
414.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

414.20 What priorities may the Secretary establish?
414.21 How does the Secretary evaluate an application?
414.22 What selection criteria does the Secretary use?
414.23 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

414.30 What cost-sharing requirements must be met?

Authority: 20 U.S.C. 2412, unless otherwise noted.

Subpart A—General

§ 414.1 What is the Materials Development in Telecommunications Program?

The Materials Development in Telecommunications Program provides financial assistance for the development, production, and distribution of instructional telecommunications materials and services for use in local vocational and technical educational schools and colleges.

(Authority: 20 U.S.C. 2412)

§ 414.2 Who is eligible for an award?

A public or private nonprofit educational telecommunications entity is eligible for an award under this part.

(Authority: 20 U.S.C. 2412)

§ 414.3 What activities may the Secretary fund?

The Secretary may support, through grants or cooperative agreements, projects that develop, produce, and distribute—

(a) A sequential course of study that includes either pre-produced video courseware or direct interactive teaching delivered via satellite, accompanied by a variety of print and computer-based instructional materials;

(b) Individual videocassettes or a series of videocassettes that supplement instruction that must be distributed both via broadcast and non-broadcast means;

(c) Videodiscs that produce simulated hands-on training; or

(d) Teacher training programs for vocational educators and administrators and correctional educators.

(Authority: 20 U.S.C. 2412)

§ 414.4 What regulations apply?

The following regulations apply to the Materials Development in Telecommunications Program:

(a) The regulations in this part 414.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2412)

§ 414.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2412)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 414.20 What priorities may the Secretary establish?

(a) The Secretary may announce through one or more notices published in the **Federal Register** the priorities for this program from the list of priorities in paragraph (b) of this section.

(b) In awarding grants under this part, the Secretary may give priority to programs or projects that serve—

(1) Students in area vocational and technical schools;

(2) Teachers, administrators, and counselors in need of training or retraining;

(3) Out-of-school adults in need of basic skills improvement or a high school equivalency diploma to improve the employability of these individuals;

(4) College students, particularly those who are working toward a two-year associate degree from a technical or community college;

(5) Workers in need of basic skills, vocational instruction, or career counseling to retain employment; or

(6) Workers who need to improve their skills to obtain jobs in high-growth industries.

(Authority: 20 U.S.C. 2412)

§ 414.21 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 414.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 414.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parenthesis after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 414.22.

(Authority: 20 U.S.C. 2412)

§ 414.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Educational significance.* (20 points) The Secretary reviews each application to assess the quality of the proposed project, including the extent to which the applicant—

(1) Provides a clear description of the plan to develop, produce, and distribute quality instructional telecommunications materials and services;

(2) Proposes using innovative techniques and approaches to educational problems and needs that are of national significance;

(3) Provides a clear description of how the proposed project will contribute to the improvement of education by promoting the use of instructional telecommunications materials and services in local vocational and technical educational schools and colleges;

(4) Provides a clear description of how the proposed project will provide electronic learning opportunities for populations described in § 414.20(b)(1) through (6); and

(5) Describes a project that is likely to make a significant contribution to the use of telecommunications materials and services in vocational education.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the proposed project, including—

(1) The quality of the design of the project, especially the establishment of measurable objectives for the project that are based on the project's overall goals and relate to the purpose of this program;

(2) The extent to which the plan of management is effective, ensures proper and efficient administration of the project, and includes timelines that show starting and ending dates for all tasks, activities, and significant events;

(3) Specific procedures that clearly describe how the project's objectives will be accomplished;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disabling condition.

(c) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the proposed project, including—

(i) The qualifications and experience of the project director;

(ii) The documentation of the project director's availability at the start of the project and a time commitment to the project;

(iii) The qualifications and experience of each of the other key personnel to be used on the project;

(iv) The appropriateness of the time that each person referred to in paragraphs (c)(1)(i) and (iii) of this section will commit to the project; and

(v) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1)(i) and (iii) of this section, the Secretary considers—

(i) The experience and training of key personnel in fields related to the objectives of the project;

(ii) The experience and training of key personnel in project management; and

(iii) Any other qualifications of key personnel that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is cost effective and adequate to support the project activities;

(2) The proposed expenditures for each budget category are justified in a budget narrative; and

(3) Costs are necessary and reasonable in relation to the objectives of the project.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(1) Are appropriate for the project;

(2) Will determine the effectiveness of the project in meeting the purposes of this program;

(3) Will determine the effect of the project on learning gains or competencies, or both, of persons being served by the project, especially, as appropriate—

(i) Students in area vocational and technical schools;

(ii) Teachers, administrators, and counselors in need of retraining;

(iii) Out-of-school adults in need of basic skills or a high school equivalency diploma;

(iv) College students in technical or community colleges; and

(v) Workers in need of basic skills, vocational instruction, or career counseling to retain employment.

(4) Will produce quantifiable data on the project objectives, including, as appropriate, information on—

(i) The demographic characteristics and numbers of individual participants being served and the schools they attend;

(ii) The services provided to participants, including information on duration, intensity, and costs; and

(iii) The effect of services on the quality of curricula, the retention of students in programs, and the academic and vocational competencies of students in vocational education programs.

(f) *Dissemination.* (10 points) The Secretary reviews each application to determine whether the applicant has an effective and efficient plan for disseminating information about the project, including—

(1) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) A description of the types of materials the applicant plans to make available and the methods for making the materials available, including information about the project, the results of the project, and any specialized materials developed by the project;

(3) Provisions for assisting others to adopt and successfully implement the projects or methods and techniques developed by the project; and

(4) Provisions for publicizing the findings of the project at the local, State, and national levels.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2412)

§ 414.23 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 414.22, the Secretary may select other than the most highly rated applications for funding if doing so would—

(a) Improve the geographical distribution of projects funded under this program; or

(b) Contribute to the funding of a variety of approaches for carrying out the activities under this program.

(Authority: 20 U.S.C. 2412)

Subpart D—What Conditions Must Be Met After an Award?

§ 414.30 What cost-sharing requirements must be met?

(a) *Federal share.* (1) The Secretary pays no more than the Federal share of the cost of each project.

(2) The Federal share of the cost of each project assisted under this part is 50 percent.

(b) *Non-Federal share.* The non-Federal share of the cost of each project assisted under this part must be provided from non-Federal sources.

Cross-Reference: See 34 CFR part 74, Subpart G—Cost Sharing or Matching.

(Authority: 20 U.S.C. 2412)

17. Part 415 is revised to read as follows:

PART 415—DEMONSTRATION CENTERS FOR THE TRAINING OF DISLOCATED WORKERS PROGRAM

Subpart A—General

Sec.

415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?
415.2 Who is eligible for an award?
415.3 What activities may the Secretary fund?
415.4 What regulations apply?
415.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

415.20 How does the Secretary evaluate an application?
415.21 What selection criteria does the Secretary use?
415.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

415.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2413, unless otherwise noted.

Subpart A—General

§ 415.1 What is the Demonstration Centers for the Training of Dislocated Workers Program?

The Demonstration Centers for the Training of Dislocated Workers Program provides financial assistance for establishing one or more demonstration centers for the retraining of dislocated workers.

(Authority: 20 U.S.C. 2413(a))

§ 415.2 Who is eligible for an award?

A private nonprofit organization that is eligible to receive funding under Title III of the Job Training Partnership Act (29 U.S.C. 1651 *et seq.*) is eligible to receive an award under this program.

(Authority: 20 U.S.C. 2413(d))

§ 415.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements for one or more centers that demonstrate the retraining of dislocated workers.

(b) Each center funded by the Secretary must be designed and operated to provide for the use of appropriate existing Federal, State, and local programs and resources.

(c) Each center may use funds to provide for— (1) The recruitment of unemployed workers;

(2) Vocational evaluation;

(3) Assessment and counseling services;

(4) Vocational and technical training;

(5) Support services; or

(6) Job placement assistance.

(Authority: 20 U.S.C. 2413(a))

§ 415.4 What regulations apply?

The following regulations apply to the Demonstration Centers for the Training of Dislocated Workers Program:

(a) The regulations in this part 415.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2413)

§ 415.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2413)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 415.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 415.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 415.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 415.21.

(Authority: 20 U.S.C. 2413)

§ 415.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the extent to which the proposed demonstration center for the training of dislocated workers will—

(1) Be located in a service area with a high concentration of dislocated workers, as supported by specific evidence of the need for the proposed demonstration center;

(2) Provide vocational education and technical training to meet current and projected occupational needs;

(3) Provide trainees with appropriate vocational evaluation, assessment, and counseling, support services, and job placement assistance;

(4) Result in trainees becoming employed in jobs related to their training upon completion of their training; and

(5) Use other appropriate Federal, State, and local programs to retrain, or provide services to, dislocated workers.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed demonstration center for the training of dislocated workers on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs, in such factors as—

(i) Student performance and achievement in vocational and technical training;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use innovative techniques to address educational problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective including the use of appropriate existing Federal, State, and local programs; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Identification of target groups and provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is cost effective and adequate to support the project activities;

(2) The budget contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) The budget proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire demonstration center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2413)

§ 415.22 What additional factors may the Secretary consider?

After evaluating the applications according to the criteria in § 415.21, the Secretary may select applications other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this program.

(Authority: U.S.C. 2413)

Subpart D—What Conditions Must Be Met After an Award?

§ 415.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2413)

18. Part 416 is revised to read as follows:

PART 416—VOCATIONAL EDUCATION TRAINING AND STUDY GRANTS PROGRAM

Subpart A—General

Sec.

416.1 What is the Vocational Education Training and Study Grants Program?
416.2 Who is eligible for an award?
416.3 What activities may the Secretary fund?
416.4 What regulations apply?
416.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

416.20 How does the Secretary evaluate an application?
416.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must be Met After an Award?

416.30 Which individuals are eligible to participate under this program?
416.31 What are the responsibilities of the grantee?

Authority: 20 U.S.C. 2414(a), unless otherwise noted.

Subpart A—General

§ 416.1 What is the Vocational Education Training and Study Grants Program?

The Vocational Education Training and Study Grants Program provides financial assistance for vocational teacher education, undergraduate or graduate training in vocational education, and vocational education student internships.

(Authority: 20 U.S.C. 2414(a))

§ 416.2 Who is eligible for an award?

An institution of higher education, State education agency, or State correctional education agency is eligible for an award under this part.

(Authority: 20 U.S.C. 2414(a))

§ 416.3 What activities may the Secretary fund?

The Secretary supports grants or cooperative agreements for eligible agencies or institutions to provide—

(a) Undergraduate and graduate training in vocational education;

(b) Vocational teacher education; and

(c) Opportunities for further study and professional development for gifted and talented students in vocational education programs by interning with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.4 What regulations apply?

The following regulations apply to the Vocational Education Training and Study Grants Program:

(a) The regulations in this part 416.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(a))

§ 416.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Stipend means funds used for room and board and personal living expenses, including an allowance for subsistence and other expenses for the individual and his or her dependents.

(Authority: 20 U.S.C. 2414(a))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 416.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 416.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 416.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 416.21.

(Authority: 20 U.S.C. 2414(a))

§ 416.21 What selection criteria does the Secretary use?

(a) *Project design.* (20 points) The Secretary reviews each application to determine the quality of the project design, including—

(1) The extent to which the applicant understands and has responded to any program priorities announced in the **Federal Register** for the grant competition;

(2) The geographic area to be served and of the specific training or internships to be provided, including the purposes of the training or internships;

(3) The objectives of the project;

(4) The institutional and participant selection procedures;

(5) How resources and personnel (including resources and personnel of other entities) will be used to achieve each objective;

(6) When in each budget period the applicant plans to meet each objective;

(7) The extent to which the design of the project is practical and effective to achieve the purposes and goals in § 416.3; and

(8) The extent to which the management plan provides adequately for monitoring, supervising, and evaluating all entities and individuals participating in the project.

(b) *Applicant commitment and experience.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The applicant's selection procedures, including priorities and criteria, will be effective for selecting the institutions, agencies, organizations, and Center or Centers in which trainees will be placed; and

(2) The applicant has demonstrated competence and experience in operating training or internship programs similar to that proposed, including how, if applicable, its capabilities will be extended through subgrants, contracts, or agreements with other entities. If subgrants, contracts, or agreements with other entities are proposed, the applicant must include copies of the written agreements covering the intent of all proposed entities to participate with the applicant in achieving the purposes and objectives of the proposed project.

(c) *Key personnel.* (20 points) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(1) The names and qualifications of key personnel, including the project director. If the names of key persons are not yet known, the applicant shall specify the minimum qualifications that will be used to select them;

(2) The qualifications of key personnel intended to be used under subgrants, contracts, or agreements and designation of their employment affiliation. If key personnel from other entities will be used, the applicant shall include copies of their stated intent to participate and copies of the concurrence of the entity by which they are employed to make them available for the time specified in the application;

(3) The extent to which key personnel are adequate and appropriate to achieve the objectives of the proposed project;

(4) Whether the allocation of time of key personnel to the objectives of the project seems adequate to predict achievement; and

(5) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(d) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of resources the applicant plans to use, including the extent to which the applicant—

(1) Will use its resources and those of other participating entities effectively to accomplish the purposes and objectives of the proposed project;

(2) Will devote adequate financial and material resources to the project being proposed; and

(3) Will use adequate facilities and equipment for the project being proposed.

(e) *Participant recruitment and selection plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Will make information about the learning opportunities, the financial support to be provided, eligibility requirements, and the applicant's selection criteria broadly available to all individuals eligible to participate in the project;

(2) Has proposed participant selection criteria for each training or internship activity that are consistent with § 416.30; and

(3) Will ensure that participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation of the accomplishment of the purposes and objectives of the project, including—

(1) An evaluation of student participation by sex, race or ethnic group, and language proficiency for each vocational education category and each target position in vocational education for which training or internships are intended to prepare recipients;

(2) Comparing the active career pursuits and career goals of program participants before and after participation in training or an internship under the project; and

(3) Analyzing the completeness and accuracy of and synthesizing grantee records on the level of participation and progress of project participants in their learning pursuits and the level and timing of disbursements and recovery of financial support in relation thereto.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(a))

Subpart D—What Conditions Must be Met after an Award?

§ 416.30 Which individuals are eligible to participate under this program?

(a) The following individuals are eligible for training under this program:

(1) Experienced vocational educators who want to participate in advanced study of vocational education.

(2) Certified teachers who have been trained to teach in other fields and who

want to become teachers of vocational education students, including teachers with skills related to vocational fields who can be trained as vocational educators, and especially minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminal offenders.

(3) Individuals in industry who have skills and experience in vocational fields and who want to be trained as vocational educators.

(4) Vocational educators who want to improve or maintain technological currency in their fields.

(b) Gifted and talented vocational education secondary and postsecondary students are eligible under this program for internships with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(a))

§ 416.31 What are the responsibilities of the grantee?

(a) A grantee carrying out activities under § 416.3 (a) and (b) shall—

(1) Provide training directly, or, in the case of a State educational agency or a State correctional education agency, provide for training through a contract;

(2) Select individuals for participation in training activities; and

(3) Determine the amounts participants will receive for training, fellowships, stipends, or travel allowances.

(b) A grantee carrying out activities under § 416.3(c) shall—

(1) Select individuals for participation;

(2) Coordinate with Federal or State agencies, nationally recognized vocational education associations, student organizations, or the National Center or Centers for Research in Vocational Education that are willing to participate with the project in providing internships for further study and professional development for gifted and talented vocational education students; and

(3) Determine the amount participants will receive for subsistence allowance and other expenses such as necessary travel expenses related to participation.

(c) All grantees shall—

(1) Monitor, supervise, maintain records on, and report on the level and type of participation, and on the conditions and progress of the institutions, agencies, associations, Centers, and individuals involved in the project; and

(2) Evaluate, either directly or through a contract, and report on the accomplishment of the purposes and objectives of the project.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(a))

19. Part 417 is revised to read as follows:

PART 417—VOCATIONAL EDUCATION LEADERSHIP DEVELOPMENT AWARDS PROGRAM

Subpart A—General

Sec.

417.1 What is the Vocational Education Leadership Development Awards Program?
417.2 Who is eligible for an award?
417.3 What activities may the Secretary fund?
417.4 What regulations apply?
417.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

417.20 How does the Secretary evaluate an application?
417.21 What selection criteria does the Secretary use?
417.22 What additional factors does the Secretary consider?

Subpart D—What are the Administrative Responsibilities of Institutions?

417.30 What is the role of the institution in the administration of leadership development awards?
417.31 What selection criteria and procedures must an institution use in selecting students?
417.32 What are the special requirements regarding leadership development awards?
417.33 How are funds disbursed and returned?
417.34 Under what circumstances must an institution terminate a leadership development award?

Subpart E—How Does An Individual Apply for a Leadership Development Award?

417.40 Which individuals are eligible for an award?
417.41 How does an individual apply to an institution for a leadership development award?

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

417.50 May a course of study be interrupted?
417.51 Under what conditions must a leadership development award be returned?
417.52 What is the repayment schedule?
417.53 What interest is charged?
417.54 Under what circumstances is repayment deferred?
417.55 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(b), unless otherwise noted.

Subpart A—General

§ 417.1 What is the Vocational Education Leadership Development Awards Program?

The Vocational Education Leadership Development Awards Program provides financial assistance to meet the needs of all States for qualified vocational education leaders such as administrators, supervisors, teacher educators, researchers, career guidance and vocational counseling personnel, vocational student organization leadership personnel, and teachers in vocational education programs.

(Authority: 20 U.S.C. 2414(b))

§ 417.2 Who is eligible for an award?

An institution of higher education is eligible for an award under this part if it offers a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, and that program is—

(a) Designed to substantially advance the objective of improving vocational education in the State through providing opportunities for graduate training of teachers of vocational education students, vocational supervisors and administrators, and university-level vocational education teacher educators and researchers; and

(b) Conducted by a school of graduate study in the institution of higher education.

(Authority: 20 U.S.C. 2414(b)(4))

§ 417.3 What activities may the Secretary fund?

The Secretary provides grants to institutions for leadership development awards to individuals.

(Authority: 20 U.S.C. 2414(b))

§ 417.4 What regulations apply?

The following regulations apply to the Vocational Education Leadership Development Awards Program:

(a) The regulations in this part 417.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(b))

§ 417.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part: *Academic year* means a period of time in which a full-time student is expected to complete—

(1) The equivalent of at least two semesters, two trimesters, or three quarters at an institution that measures academic progress in credit hours and uses a semester, trimester, or quarter system;

(2) At least 24 semester hours or 36 quarter hours at an institution that measures academic progress in credit hours, but does not use a semester, trimester, or quarter system; or

(3) At least 900 clock hours at an institution that measures academic progress in clock hours.

Dependent means an individual's legal spouse, natural or adopted minor child, or any other person claimed as a dependent by that individual for Federal income tax purposes.

Full-time course of study means the number of credit hours that an institution requires of a full-time student.

Full-time student means a student who—

(1) Carries a full-time course of study; and

(2) Is not employed for more than 20 hours a week.

Satisfactory proficiency means a cumulative grade point average of at least 2.0 on a 4.0 grade point scale in which failing grades are computed as part of the average, or another appropriate standard established by the institution.

(Authority: 20 U.S.C. 2414(b))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 417.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 417.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 417.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 417.21.

(Authority: 20 U.S.C. 2414(b))

§ 417.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Institutional commitment and experience.* (25 points) The Secretary reviews each application to determine the extent to which—

(1) The institution has resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education.

(2) The institution's vocational education program has been adopted as a permanent graduate program of study;

(3) The institution demonstrates competence and experience in programs and activities similar to those authorized under the Act;

(4) The applicant provides adequate documentation that its vocational education program meets the requirements in § 417.2; and

(5) The institution's vocational education program will address the need in the State for improving the quality and quantity of vocational personnel, including those referred to in § 417.1.

(b) *Academic program.* (15 points) The Secretary reviews each application to determine the adequacy of the institution's academic program including the—

(1) Range of course offerings and level and number of academic requirements for students; and

(2) Institutions's demonstrated success in preparing individuals for professional or academic careers in the vocational education field.

(c) *Key faculty.* (15 points) The Secretary reviews each application to determine the extent to which the background, education, research interests, and relevant experience of the faculty qualify them to plan and implement a successful program of high academic quality.

(d) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the academic area, including the adequacy of—

(1) The facilities the applicant plans to use; and

(2) The equipment the applicant plans to use.

(e) *Recruitment plan.* (10 points) The Secretary considers the quality of an institution's plan for selecting graduate students, including—

(1) A description of how the institution will apply the requirements in § 417.31; and

(2) The extent to which the institution will make available to all individuals eligible to participate information about learning opportunities, the financial support available, eligibility requirements, and the institutions's criteria for selecting participants.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the extent to which the applicant will conduct an annual evaluation—

(1) Of student participation by sex and racial or ethnic groups in relation to such indicators of need as the State's vocational education enrollments and the need for additional vocational education leadership in the State;

(2) Of the extent to which selection criteria and procedures used resulted in student participants who meet the eligibility requirements in § 417.40;

(3) Of the accuracy and validity of records on the level of participation and progress of program participants in their learning pursuits, and the appropriateness of the level and timing of disbursements in relation thereto; and

(4) Comparing the active career pursuits and career goals of participants before and after participating in the program to determine the extent to which they enter for the first time, returned to, or advance in work in vocational education in a leadership position.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(b))

§ 417.22 What additional factors does the Secretary consider?

(a) In addition to the criteria in § 417.21, the Secretary determines whether the most highly rated applicants are—

(1) Equitably distributed among the States; and

(2) Located in States that need additional vocational education personnel.

(b) The Secretary may select other applicants for funding if doing so would improve the equitable distribution of projects geographically and among the States needing additional trained personnel.

(Authority: 20 U.S.C. 2414(b)(5))

Subpart D—What Are the Administrative Responsibilities of Institutions?

§ 417.30 What is the role of an institution in the administration of leadership development awards?

An institution receiving an award under this part is responsible for—

(a) Administering the grant;

(b) Accepting, screening, and selecting individual applications in accordance with its own technical and academic criteria; and

(c) Disbursing and returning funds in accordance with procedures described in §§ 417.33 and 417.34, including making appropriate adjustments of any overpayment or underpayment to a

recipient of a leadership development award.

(Authority: 20 U.S.C. 2414(b))

§ 417.31 What selection criteria and procedures must an institution use in selecting students?

(a) An institution of higher education shall establish competitive selection criteria and procedures that reflect the needs of the State for qualified vocational education personnel, only after consultation with the State's vocational education leaders (such as administrators, researchers, and teachers) and analysis of relevant statewide data, including the State's vocational education enrollments.

(b) The institution shall design the selection criteria and procedures to ensure that it selects individuals—

(1) On the basis of demonstrated leadership potential, promise of continued achievement, and commitment;

(2) On the basis of the standards in § 417.40;

(3) Without regard to race, color, national origin, gender, age, disability, or economic background; and

(4) Without regard to financial need.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(b))

§ 417.32 What are the special requirements regarding leadership development awards?

(a) Leadership development awards to individuals—

(1) May not exceed $9,000 per individual per academic year or its equivalent and $3,000 per individual per summer session or its equivalent;

(2) May not be paid for more than three years; and

(3) May cover only expenses that are consistent with prevailing practices of the institution, including—

(i) Tuition and books;

(ii) Non-refundable fees;

(iii) A subsistence allowance for the individual and his or her dependents; and

(iv) Other expenses the institution deems necessary and reasonable and consistent with prevailing practices.

(b) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(c) The total financial assistance provided to an individual from all sources, other than loans, may not exceed the individual's need for that assistance.

(d) An institution may not provide a leadership development award to an individual who is not a full-time student.

(Authority: 20 U.S.C. 2414(b)(2) and (6))

§ 417.33 How are funds disbursed and returned?

(a) The institution shall disburse a leadership development award to an individual in no fewer than two installments per academic year.

(b) An institution shall make an award only to an individual who is in good standing and is making satisfactory progress.

Cross-Reference: See § 417.34(a).

(c) Before considering a leadership development award for new individuals, the Secretary provides payment to continue support for qualified individuals who—

(1) Received an award under this program in the previous year; and

(2) Are maintaining satisfactory progress as determined by the institution.

(d) If a leadership development award is vacated or discontinued, the institution shall notify the Secretary. The Secretary—

(1) Allows the award to follow the individual to another participating institution if the remaining award time comprises at least one academic quarter, semester, trimester, or summer session; or

(2) Permits the institution to use any unexpended funds from an award to make an award to an alternate applicant at that institution for a period of study that does not exceed the terms or amount of the original award.

(e) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(b))

§ 417.34 Under what circumstances must an institution terminate a leadership development award?

An institution shall—

(a) Terminate a leadership development award if the recipient of an award—

(1) Is not pursuing a full-time course of study in vocational education;

(2) Is not maintaining satisfactory proficiency in the course of study;

(3) Is engaged in gainful employment other than part-time employment by the institution in teaching, research, or similar activities;

(4) Is no longer enrolled, or is no longer in good standing at the institution; or

(5) Fails to follow the prescribed course of study for which he or she applied, unless a revised course of study is approved under this part;

(b) Terminate an award only after providing reasonable notice and an opportunity for the individual to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision; and

(c) Ensure that a recipient of a leadership development award repays all or a prorated portion of an award in accordance with the provisions in §§ 417.51 through 417.55.

(Authority: 20 U.S.C. 2414(b))

Subpart E—How Does an Individual Apply for a Leadership Development Award?

§ 417.40 Which individuals are eligible for an award?

An individual is eligible for an award if the institution participating under this part determines that the individual—

(a) Has at least three years of experience in vocational education or in industrial training, or, in the case of researchers, experience in social science research that is applicable to vocational education;

(b) Is currently employed or is reasonably assured of employment in vocational education and has successfully completed at least a baccalaureate degree program;

(c) Is recommended by his or her employer, or others, as having leadership potential in the field of vocational education and has been accepted for admission as a graduate student in an institution participating under this part; and

(d) Has made a commitment to return to the field of vocational education upon completion of education provided through the Vocational Education Leadership Development Award Program.

(Authority: 20 U.S.C. 2414(b))

§ 417.41 How does an individual apply to an institution for a leadership development award?

To apply for an award, an individual shall—

(a) Follow the application procedures established by an institution participating under this part; and

(b) Provide sufficient information concerning his or her employment experience and academic background to enable the institution to determine whether the individual is eligible to receive an award, taking into consideration the standards in § 417.40.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(b))

Subpart F—What Conditions Must be Met by Recipients of Leadership Development Awards?

§ 417.50 May a course of study be interrupted?

The Secretary approves a leadership development award only for study in the field and at the institution specified in an individual's application. The Secretary or the institution discontinues the leadership development award if the individual changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(b))

§ 417.51 Under what conditions must a leadership development award be returned?

(a) An individual shall repay to the institution all, or a prorated portion, of a leadership development award, as determined by the Secretary, if the individual—

(1) Withdraws from an approved institution of higher education;

(2) Is terminated or expelled from an approved institution of higher education; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements stated in § 417.34(a).

(b) An individual shall repay all, or a portion of, amounts received during the academic term in which the individual no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(b))

§ 417.52 What is the repayment schedule?

(a) A recipient of a leadership development award required to repay all, or a prorated portion, of the award shall begin repayments to the institution within one month of the date he or she ceases to be enrolled as a full-time student at an institution in the leadership development program.

(b) A recipient of a leadership development award must repay to the institution the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(b))

§ 417.53 What interest is charged?

(a) The Secretary charges a recipient of a leadership development award interest on the unpaid balance owed by the recipient in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 417.54.

(Authority: 20 U.S.C. 2414(b))

§ 417.54 Under what circumstances is repayment deferred?

Upon request from the recipient of a leadership development award, the Secretary may defer repayment if the recipient—

(a) Re-enrolls as a full-time student at a participating institution;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(b))

§ 417.55 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a recipient of a leadership development award shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(b))

20. A new part 418 is added to read as follows:

PART 418—VOCATIONAL EDUCATOR TRAINING FELLOWSHIPS PROGRAM

Subpart A—General

Sec.

418.1 What is the Vocational Educator Training Fellowship Program?
418.2 Who is eligible for a fellowship?
418.3 What does a fellowship include?
418.4 What regulations apply?
418.5 What definitions apply?

Subpart B—How Does an IHE Obtain Approval of its Application for Participation?

418.10 How does the Secretary approve IHEs for participation?

Subpart C—How Does An Individual Apply for a Fellowship?

418.20 Where does an individual apply for a fellowship?

Subpart D—How Does the Secretary Select Fellows?

418.30 How does the Secretary select fellows?
418.31 What criteria must IHEs consider in nominating fellows?
418.32 What additional factors does the Secretary consider in selecting fellows?
418.33 How are funds distributed to a fellow?

Subpart E—What Conditions Must be Met by a Fellow?

418.40 Where may fellows study?
418.41 What are the requirements for an individual to continue to receive a fellowship?
418.42 May fellowship tenure be interrupted?
418.43 May fellows make changes in institutions or fields of study?
418.44 Under what circumstances must a fellowship be discontinued?
418.45 Under what conditions must fellowship payments be repaid?
418.46 What is the repayment schedule?
418.47 What interest is charged?
418.48 Under what circumstances is repayment deferred?
418.49 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(c), unless otherwise noted.

Subpart A—General

§ 418.1 What is the Vocational Educator Training Fellowship Program?

Under the Vocational Educator Training Fellowship Program, the Secretary provides fellowships to individuals through approved institutions of higher education (IHEs) to—

(a) Meet the need to provide adequate numbers of teachers and related classroom instructors in vocational education who are technologically current in their fields;

(b) Take full advantage of the education that has been provided to already certified teachers who are unable to find employment in their fields of training and of individuals employed in industry who have skills and experience in vocational fields; and

(c) Encourage more instructors from minority groups and teachers with skills and experience instructing individuals of limited English proficiency to become vocational education teachers.

(Authority: 20 U.S.C. 2414(c)(1))

§ 418.2 Who is eligible for a fellowship?

Fellowships are awarded to individuals (especially minority instructors and instructors with

experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals) who—

(a)(1)(i) Are teachers of vocational education students and need an opportunity to improve or maintain technological skills;

(ii) Are certified by a State, or were so certified during the 10-year period preceding their application for a fellowship under this part, as teachers in secondary schools, area vocational education schools or institutes, or in community or junior colleges; and

(iii) Have skills and experiences in vocational fields so that those individuals can be trained to be teachers of vocational education students; or

(2) Are employed in agriculture, business, or industry (and may or may not hold a baccalaureate degree) and have skills and experience in vocational fields for which there is a need for vocational educators;

(b) Have been accepted in a program to become a vocational educator by an institution of higher education approved by the Secretary; and

(c) Have made a commitment to work in the field of vocational education upon completion of the fellowship provided under this program.

(Authority: 20 U.S.C. 2414(c)(2))

§ 418.3 What does a fellowship include?

(a) A fellowship may not be paid for more than two years.

(b) *Allowable costs.* A fellow may use fellowships under this program for—

(1) Tuition and non-refundable fees—the normal and usual costs associated with the course of study;

(2) Books;

(3) Travel to a field study site; and

(4) Subsistence and other expenses of the fellow and his or her dependents.

(c) The Secretary announces in the Federal Register the maximum amounts for each allowable cost under a fellowship. These maximum amounts are based on the prevailing amounts for costs during the past 12 months, plus projected inflationary increases.

(Authority: 20 U.S.C. 2414(c))

§ 418.4 What regulations apply?

The following regulations apply to the Vocational Educator Training Fellowship Program:

(a) The regulations in this part 418.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(c))

§ 418.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following terms used in this regulation are defined in 34 CFR 417.5:

Dependent
Full-time course of study
Satisfactory proficiency

(c) The following definitions also apply to this part:

Fellow means the individual recipient of a fellowship under this part.

Fellowship means an award made to an individual for vocational educator training under this part.

(Authority: 20 U.S.C. 2414(c))

Subpart B—How Does an IHE Obtain Approval of its Application for Participation?

§ 418.10 How does the Secretary approve IHEs for participation?

The Secretary considers for participation only IHEs that—

(a) Offer a comprehensive program in vocational education with adequate supporting services and disciplines such as education administration, career guidance and vocational counseling, research, and curriculum development, including resources and supporting services for at least five of the generally recognized fields of vocational education that are integrated into a comprehensive approach to vocational education; and

(b) Will enroll in its vocational education program individuals receiving fellowships under this part so that those individuals receive the same quality of education and training provided for undergraduate students at the institution who are preparing to become vocational education teachers.

(Authority: 20 U.S.C. 2424(c))

Subpart C—How Does an Individual Apply for a Fellowship?

§ 418.20 Where does an individual apply for a fellowship?

(a) An individual shall submit an application for a fellowship to a participating IHE.

(b) The applicant shall provide sufficient information in the application as required by institution concerning his or her employment and academic background and proposed course of study, to enable an institution and the Secretary to determine whether the individual—

(1) Meets the eligibility requirements indicated in § 418.2; and

(2) Should be selected for a fellowship under this part.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(c))

Subpart D—How Does the Secretary Select Fellows?

§ 418.30 How does the Secretary select fellows?

In selecting recipients of fellowships, the Secretary—

(a) Gives preference to individuals seeking to become teachers or improve their skills in the areas identified in § 418.32(b); and

(b) Takes into consideration the rank orders prepared by participating IHEs.

(Authority: 20 U.S.C. 2414(c)(7))

§ 418.31 What criteria must IHEs consider in nominating fellows?

In rank ordering applicants for fellowships, an IHE shall consider the following criteria in addition to its admissions standards:

(a) *Eligibility.* Whether the applicant meets the requirements in § 418.2, especially with regard to minority instructors and instructors with experience in teaching individuals who are economically disadvantaged, individuals with disabilities, students of limited English proficiency, and adult and juvenile criminals.

(b) *Academic ability.* The quality of the applicant's academic record, including—

(1) Transcripts of grades earned in secondary school and, if appropriate, postsecondary education;

(2) Results earned on specific skill aptitude tests; and

(3) Results of other tests, if appropriate.

(c) *Vocational skills.* Evidence of the applicant's performance in a work situation requiring vocational skills, including—

(1) Letters of recommendations from previous employers or others, as appropriate;

(2) Results of National Occupational Competency Testing Institute tests, if appropriate;

(3) Certificates or diplomas, as appropriate; and

(4) Work related experience, including teaching, if appropriate.

(d) *Community human relations skills.* Evidence of the applicant's skills in interpersonal relations, including experience with—

(1) Community groups;

(2) Volunteer groups;

(3) Work-related organizations;

(4) Members of minority groups;

(5) Economically or educationally disadvantaged individuals, or individuals with disabilities; and

(6) Adult and juvenile criminal offenders; and other groups, as appropriate.

(e) *National need.* As stated by the applicant in writing, the applicant's goals, objectives, and aspirations in vocational education, and their relationship to national needs with particular reference to—

(1) Technological skill upgrading; and

(2) Increasing the number of instructors who—

(i) Are members of minority groups; and

(ii) Possess skills and experience in teaching individuals who are economically disadvantaged, individuals with disabilities, individuals of limited English proficiency, and adult and juvenile criminals.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2414(c))

§ 418.32 What additional factors does the Secretary consider in selecting fellows?

The Secretary may choose fellows out of rank order if doing so would—

(a) Improve the equitable distribution of fellowships among the States, taking into account such factors as—

(1) The State's vocational education enrollments; and

(2) The need in the State for additional instructors of vocational education students, especially minority educators and individuals with skills and experience in teaching individuals of limited English proficiency, individuals who are economically disadvantaged, individuals with disabilities, and adult and juvenile criminal offenders; and

(b) Increase the number of trained persons in the areas of teaching in vocational education—

(1) In which additional personnel are needed;

(2) That will likely have need of additional personnel in the future; and

(3) In which technological upgrading may be especially critical.

(Authority: 20 U.S.C. 2414 (c) (2), (4), and (6)(A))

§ 418.33 How are funds distributed to a fellow?

(a) Funds are disbursed by the participating IHE in which a fellow is enrolled.

(b) A participating institution shall award to each fellow a fellowship that covers costs described in § 418.3.

(c) An institution shall—

(1) Pay a fellow his or her subsistence and any other allowance in installments during the term of the fellowship;

(2) Make a payment only to a fellow who meets the requirements in § 418.41;

(3) Make appropriate adjustments of any overpayment or underpayment to a fellow; and

(4) Ensure that a fellow repays all or a prorated portion of an award in accordance with the provisions in §§ 418.45 through 418.49.

(d) In determining an individual's need for assistance and the amount of the assistance, an institution shall deduct financial assistance—other than loans—received or expected to be received by the individual for his or her educational or living expenses and for the support of his or her dependents.

(Authority: 20 U.S.C. 2414(c))

Subpart E—What Conditions Must Be Met by a Fellow?

§ 418.40 Where may fellows study?

Fellows may use fellowships under this part only at institutions that have been approved under this part.

(Authority: 20 U.S.C. 2414(c))

§ 418.41 What are the requirements for an individual to continue to receive a fellowship?

A participating IHE shall continue to pay fellowships only during a period in which the fellow is—

(a) Maintaining satisfactory proficiency;

(b) Engaging in full-time study in the field of vocational education in an institution of higher education; and

(c) Not engaging in gainful employment other than part-time employment with the institution.

(Authority: 20 U.S.C. 2414(c)(5))

§ 418.42 May fellowship tenure be interrupted?

(a) With prior approval of the Secretary, a fellow may interrupt periods of vocational educator study under the fellowship for a period of up to 12 months for the purpose of work, travel, or independent study away from the institution of higher education at which the fellow is enrolled only if the—

(1) Work, travel, or independent study is supportive of the fellow's academic program;

(2) Leave of absence is approved by the institution at which the fellow is enrolled; and

(3) IHE certifies, to the Secretary in advance of the leave, that the fellow is eligible to resume his or her course of study at the end of the leave of absence.

(b) An institution may not make fellowship payments under this part for a period of time during which a fellowship is interrupted.

(Authority: 20 U.S.C. 2414(c))

§ 418.43 May fellows make changes in institutions or fields of study?

The Secretary approves a fellowship only for study in the field of study and at the institution specified in the fellow's application. The Secretary or the institution discontinues the fellowship if the fellow changes the field of study or the institution without the Secretary's prior approval.

(Authority: 20 U.S.C. 2414(c))

§ 418.44 Under what circumstances must a fellowship be discontinued?

(a) An institution shall discontinue a fellowship—

(1) If a fellow fails to comply with the provisions under this part; and

(2) Only after providing reasonable notice and an opportunity for the fellow to rebut, in writing or in an informal meeting with the responsible official in the institution, the basis for the decision.

(b) If a fellowship is vacated or discontinued the institution shall notify the Secretary. The Secretary—

(1) Allows the fellowship to follow the fellow to another participating IHE if the remaining fellowship time comprises at least one full academic quarter, semester, trimester, or summer session and the fellow maintains eligibility for a fellowship; or

(2) Permits the institution to award unexpended funds from a fellowship to an alternate fellow at that institution for a period of study that does not exceed the term or amount of the original fellowship.

(3) If the individual is no longer eligible for an award, and there is no qualified alternate applicant, the institution must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program and recover funds from the individual. The amount of unexpended funds is determined by prorating the amount received for that academic term in proportion to the amount of the academic term during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(c))

§ 418.45 Under what conditions must fellowship payments be repaid?

(a) A fellow shall repay to the institution the entire fellowship, or a prorated portion, as determined by the Secretary, if the fellow—

(1) Withdraws from an institution;

(2) Is terminated or expelled from an institution; or

(3) Is found by the institution or the Secretary to be in noncompliance with the requirements in this part.

(b) A fellow shall refund all or a portion of amounts received during the academic term in which the individual

no longer qualifies for participation under this program.

(Authority: 20 U.S.C. 2414(c))

§ 418.46 What is the repayment schedule?

(a) A fellow required to repay all, or a prorated portion, of a fellowship shall begin repayments within one month of the date he or she ceases to be enrolled as a full-time student at an IHE in the fellowship program.

(b) A fellow must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(c))

§ 418.47 What interest is charged?

(a) The Secretary charges a fellow interest on the unpaid balance owed by the fellow in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the recipient is required to commence repayment; or

(2) During which repayment has been deferred under § 418.48.

(Authority: 20 U.S.C. 2414(c))

§ 418.48 Under what circumstances is repayment deferred?

Upon request from a fellow, the Secretary may defer repayment if the fellow—

(a) Re-enrolls as a full-time student at a participating IHE;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(c))

§ 418.49 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, a fellow shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(c))

21. A new Part 419 is added to read as follows:

PART 419—INTERNSHIPS FOR GIFTED AND TALENTED VOCATIONAL EDUCATION STUDENTS PROGRAM

Subpart A—General

Sec.

419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?
419.2 Who is eligible for an internship?
419.3 What activities may the Secretary fund?
419.4 What regulations apply?
419.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

419.20 What are the procedures for applying for an internship?
419.21 How does the Secretary evaluate an application for an internship?
419.22 What selection criteria does the Secretary use?
419.23 What other factors may the Secretary consider?
419.24 How does the Secretary assign interns?
419.25 How is the amount of a stipend determined?
419.26 How is a stipend distributed?

Subpart D—What Conditions Must be Met By an Intern?

419.30 May internships be interrupted?
419.31 Under what conditions may the Secretary discontinue an internship?
419.32 Under what conditions must internship payments be returned?
419.33 What is the repayment schedule?
419.34 What interest is charged?
419.35 Under what circumstance is repayment deferred?
419.36 What is the length of the deferment of repayment?

Authority: 20 U.S.C. 2414(d), unless otherwise noted.

Subpart A—General

§ 419.1 What is the Internships for Gifted and Talented Vocational Education Students Program?

The Internships for Gifted and Talented Vocational Education Students Program provides internships to meet the need of attracting gifted and talented vocational education students into further study and professional development in the field of vocational education.

(Authority: 20 U.S.C. 2414(d)(1))

§ 419.2 Who is eligible for an internship?

A gifted and talented student from a vocational education secondary or postsecondary program is eligible for an internship under this program if the student is recommended—

(a) As gifted and talented by a vocational educator at the secondary or postsecondary school the student attends; and

(b) By a State director of vocational education.

(Authority: 20 U.S.C. 2414(d)(2))

§ 419.3 What activities may the Secretary fund?

The Secretary provides internships, of up to nine months, for gifted and talented students from vocational education secondary and postsecondary programs to work as interns for Federal and State agencies, nationally recognized vocational education associations, or the National Center or Centers for Research in Vocational Education.

(Authority: 20 U.S.C. 2414(d)(2)(A))

§ 419.4 What regulations apply?

The following regulations apply to the Internships for Gifted and Talented Vocational Education Students Program:

(a) The regulations in this part 419.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2414(d))

§ 419.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) The following definitions also apply to this part:

Gifted and talented student means a student who gives evidence of high performance capability in the field of vocational education, taking into account theoretical knowledge, applied skills, and leadership potential.

Intern means a gifted and talented student who receives payments under this program.

Sponsor means a Federal or State agency, nationally recognized vocational education association, or National Center for Research in Vocational Education that has agreed to provide further study and professional development to interns under this program.

(Authority: 20 U.S.C. 2414(d))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Select Interns?

§ 419.20 What are the procedures for applying for an internship?

(a) A gifted and talented vocational education student shall apply to the Secretary for an internship in response to an application notice published by the Secretary in the **Federal Register**.

(b) A student applying for an internship shall—

(1) Obtain a recommendation as gifted and talented from a vocational educator at the secondary or postsecondary school the student attends. The recommendation must state why the student is considered gifted and talented. The recommendation must be attached to the student's application;

(2) Submit to the State director of vocational education for the State in which the student attends a vocational education program, a copy of his or her application;

(3) Indicate, in the application, a first and second choice of agencies or organizations where the student would like to be an intern; and

(4) Submit with the application, an agreement to follow the code of conduct of the agency or organization that will sponsor the intern.

(c) The Secretary considers for internships only students recommended by State directors of vocational education. The State director's recommendation must include an assurance that—

(1) The student is available to take part in this program during the specified dates;

(2) A parent or guardian of a student who has not reached the age of majority in a State has formally consented for the student to take part in this program; and (3) The secondary or postsecondary school the student attends has provided authorization for the student to participate in this program, if the internship will interfere with school attendance.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(d))

§ 419.21 How does the Secretary evaluate an application for an internship?

(a) The Secretary evaluates an application on the basis of the criteria in § 419.22.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 419.22.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 419.22.

(Authority: 20 U.S.C. 2414(d))

§ 419.22 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Goal of the internship.* (30 points) The Secretary reviews each application to determine the extent to which there—

(1) Is a clearly stated goal to be achieved during the internship. This goal must be directly related to the present area of study the student is pursuing; and

(2) Are measurable objectives to be met during the internship.

(b) *Internship plan.* (40 points) The Secretary reviews each application to determine the quality of the internship plan, including—

(1) Choice of internship site;

(2) Statement of understanding from the proposed sponsor, including a description of the—

(i) Sponsoring agency's internship work plan, including specific assignments and learning experiences; and

(ii) Supervision to be provided to the intern through the sponsoring agency; and

(3) The length and description of the internship.

(c) *Budget.* (15 points) The Secretary reviews each application to determine the extent to which the intern has identified expenses that are reasonable and adequate to support the proposed internship.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(d))

§ 419.23 What other factors may the Secretary consider?

(a) After evaluating the applications according to the criteria in § 419.22, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of internships funded under this program.

(Authority: 20 U.S.C. 2301, 2414(d))

§ 419.24 How does the Secretary assign interns?

(a) In assigning students to internships, the Secretary considers the following:

(1) The opportunities to be provided by approved agencies or organizations.

(2) The goals of potential interns.

(3) The intern's choice of agencies or organizations.

(4) The availability of interns.

(b) In consultation with approved sponsors, the Secretary assigns interns to an agency or organization that will provide the best opportunities for an intern to accomplish his or her goals.

(Authority: 20 U.S.C. 2414(d))

§ 419.25 How is the amount of a stipend determined?

An intern's stipend is based on a subsistence allowance and other expenses of the intern, such as necessary travel expenses related to the internship, consistent with 5 U.S.C. chapter 57.

(Authority: 20 U.S.C. 2414(d))

§ 419.26 How is a stipend distributed?

The Secretary pays an intern's stipend through the agency or organization sponsoring the internship. The sponsoring agency or organization must enter into an agreement with the Secretary to establish a payment schedule.

(Authority: 20 U.S.C. 2414(d))

Subpart D—What Conditions Must be Met by an Intern?

§ 419.30 May internships be interrupted?

An intern may request a leave of absence from the Secretary for a period no longer than three months. Leave of absence is permitted at the Secretary's discretion, but only if the sponsoring agency or organization certifies that the intern is eligible to resume his or her internship at the end of the leave of absence.

(Authority: 20 U.S.C. 2414(d))

§ 419.31 Under what conditions may the Secretary discontinue an internship?

(a) The Secretary may discontinue an internship, if the intern fails to—

(1) Comply with the provisions under this part, including failure to obtain an approved leave of absence under § 419.30, or with the terms and conditions of the internship award;

(2) Disclose any information that substantially affects his or her financial need for a cost item included in the stipend; or

(3) Report any change in his or her academic status.

(b) The Secretary discontinues an internship only after providing reasonable notice and an opportunity for the intern to rebut, in writing or in an informal meeting with the responsible official in the Department, the basis for the decision.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2414(d))

§ 419.32 Under what conditions must internship payments be returned?

(a) An intern who officially or unofficially withdraws from an internship or is expelled from an agency or organization before completion of an internship shall refund to the Secretary

all or a prorated portion of the internship payments that have been received, as determined by the Secretary.

(b) If the individual is no longer eligible for an internship, the intern must return any unexpended funds received during the academic term in which the individual no longer qualifies for participation under this program. The amount of unexpended funds is determined by prorating the amount received for the internship in proportion to the amount of the internship during which the individual was no longer eligible for an award.

(Authority: 20 U.S.C. 2414(d))

§ 419.33 What is the repayment schedule?

(a) An intern required to repay all or a portion of internship payments shall begin repayments within one month of the date he or she ceases to be an intern.

(b) An intern must repay the required amount, including interest, in a lump sum or installment payments approved by the Secretary.

(Authority: 20 U.S.C. 2414(d))

§ 419.34 What interest is charged?

(a) The Secretary charges an intern interest on the unpaid balance owed by an intern in accordance with 31 U.S.C. 3717.

(b) No interest is charged for the period of time—

(1) That precedes the date on which the intern is required to commence repayment; or

(2) During which repayment has been deferred under § 419.35.

(Authority: 20 U.S.C. 2414(d))

§ 419.35 Under what circumstance is repayment deferred?

The Secretary may defer repayment if an intern—

(a) Resumes an internship;

(b) Is a member of the Armed Forces of the United States on active duty;

(c) Is in service as a volunteer under the Peace Corps Act; or

(d) Demonstrates to the Secretary's satisfaction the existence of extraordinary circumstances that prevents him or her from making a scheduled payment.

(Authority: 20 U.S.C. 2414(d))

§ 419.36 What is the length of the deferment of repayment?

(a) Unless the Secretary determines otherwise, an intern shall renew a deferment on a yearly basis.

(b) Deferments for military or Peace Corps service may not exceed three years.

(Authority: 20 U.S.C. 2414(d))

PART 420—[RESERVED]

22. Part 420 is [Reserved].

23. A new part 421 is added to read as follows:

PART 421—BUSINESS AND EDUCATION STANDARDS PROGRAM

Subpart A—General

Sec.

421.1 What is the Business and Education Standards Program?

421.2 Who is eligible for an award?

421.3 What activities may the Secretary fund?

421.4 What regulations apply?

421.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

421.20 How does the Secretary evaluate an application?

421.21 What selection criteria does the Secretary use?

Subpart D—What Conditions Must Be Met After an Award?

421.30 What is the cost-sharing requirement?

Authority: 20 U.S.C. 2416, unless otherwise noted.

Subpart A—General

§ 421.1 What is the Business and Education Standards Program?

The Business and Education Standards Program provides financial assistance for organizing and operating business-education-labor technical committees that will develop national standards for competencies in industries and trades.

(Authority: 20 U.S.C. 2416)

§ 421.2 Who is eligible for an award?

The following entities are eligible for an award under this program:

(a) Industrial trade associations.

(b) Labor organizations.

(c) National joint apprenticeship committees.

(d) Comparable national organizations, such as educational associations, industry councils, business and industry organizations, and associations of private or national research organizations.

(Authority: 20 U.S.C. 2416)

§ 421.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements for projects that organize and operate business-labor-education technical committees that propose national standards for competencies in industries and trades, including standards for—

(a) Major divisions or specialty areas identified within occupations studied;

(b) Minimum hours of study to be competent in those divisions or specialty areas;

(c) Minimum tools and equipment required in those divisions or specialty areas;

(d) Minimum qualifications for instructional staff; and

(e) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas.

(Authority: 20 U.S.C. 2416)

§ 421.4 What regulations apply?

The following regulations apply to the Business and Education Standards Program:

(a) The regulations in this part 421.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2416)

§ 421.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2416)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 421.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperation agreement on the basis of the criteria in § 421.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 421.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 421.21.

(Authority: 20 U.S.C. 2416)

§ 421.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (15 points) The Secretary reviews each application to assess the quality and effectiveness of the applicant's approach to developing national standards for competencies in industries and trades, including the extent to which the application proposes—

(1) To develop standards for—

(i) The competencies required for actual jobs, including the increased competency requirements created by the changing workplace;

(ii) Major divisions or specialty areas identified within the occupations the applicant proposes to study;

(iii) The minimum hours of study needed to be competent in those divisions or specialty areas;

(iv) Minimum tools and equipment required in those divisions or specialty areas;

(v) Minimum tasks to be included in any course of study purporting to prepare individuals for work in those divisions or specialty areas; and

(vi) Minimum qualifications for instructional staff in those divisions or specialty areas; and

(2) An adequate needs assessment of the program factors described in paragraph (a)(1) of this section as a part of the project.

(b) *Extent of need for the project.* (15 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including—

(1) The extent of the need for national standards for competencies in the major division or specialty areas identified within the occupations that the applicant proposes to study;

(2) How the applicant identified and documented those needs;

(3) How the standards to be developed will meet those needs, including the need of business for competent entry-level workers in the occupations to be studied; and

(4) The benefits to business, labor, and education that will result from meeting those needs.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The plan of management will be effective, will ensure proper and efficient administration of the program, and includes timelines that show starting and ending dates for all tasks;

(2) The specific procedures proposed will accomplish the project's objectives, including how the procedures for selecting the business-labor-education technical committees will ensure that the members are knowledgeable about the occupations to be studied and include representatives of business, labor, and education;

(3) The applicant plans to organize and operate the business-labor-education technical committees effectively in developing national standards for competencies in industries and trades;

(4) The development of proposed competencies for major divisions or specialty areas within occupations will be coordinated with education and industrial trade associations, labor organizations, and businesses;

(5) The methods the applicant proposes to use to select project participants, if applicable, will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the plan includes specific procedures for—

(1) A formative evaluation to help assess and improve the accuracy of standards for competencies; and

(2) A summative evaluation conducted by an independent evaluator.

(e) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the extent of the applicant's experience in fields related to the objectives of the project.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use including—

(i) The qualifications, in relation to project requirements, of the project director, if one is to be used;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) The experience and training of the project director and key personnel in project management.

(f) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project; and

(2) Costs are reasonable in relation to the objectives of the project.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the quality of the dissemination plan for the project, including—

(1) A clear description of the dissemination procedures;

(2) A description of the types of materials the applicant plans to make available;

(3) Provisions for publicizing the proposed national standards for competencies in industries and trades; and

(4) Provisions for encouraging the adoption and use of the proposed standards by education and training programs.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2416)

Subpart D—What Conditions Must Be Met After an Award?

§ 421.30 What is the cost-sharing requirement?

(a) The Secretary pays no more than 50 percent of the cost of a project.

(b) Each recipient of an award under this part shall provide at least 50 percent of the cost of the business-labor-education technical committees established under the award.

(Authority: 20 U.S.C. 2416(c))

24. A new part 422 is added to read as follows:

PART 422—EDUCATIONAL PROGRAM FOR FEDERAL CORRECTIONAL INSTITUTIONS

Subpart A—General

Sec.

422.1 What is the Educational Program for Federal Correctional Institutions?

422.2 Who is eligible for an award?

422.3 What activities may the Secretary fund?

422.4 What regulations apply?

422.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

422.20 How does the Secretary evaluate an application?

422.21 What selection criteria does the Secretary use?

422.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

422.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2417, unless otherwise noted.

Subpart A—General

§ 422.1 What is the Educational Program for Federal Correctional Institutions?

The Educational Program for Federal Correctional Institutions provides financial assistance for the education and training of criminal offenders in Federal correctional institutions.

(Authority: 20 U.S.C. 2417(a))

§ 422.2 Who is eligible for an award?

(a) Awards are provided to consortia of—

(1) A Federal correctional institution; and

(2) An educational institution, a community-based organization of demonstrated effectiveness, a business, or an industry.

(b) A consortium must include a Federal correctional institution and at least one entity from paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) Members of a consortium shall apply jointly to the Secretary for funds.

(2) The members of a consortium shall enter into an agreement, in the form of a single document signed by all members, designating the Federal correctional institution as the applicant and the grantee. The agreement must also detail the role each member plans to perform, and must bind each member to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2417(a))

§ 422.3 What activities may the Secretary fund?

The Secretary provides grants and cooperative agreements that may be used for—

(a) Basic education programs with an emphasis on literacy instruction;

(b) Vocational training programs;

(c) Guidance and counseling programs; and

(d) Supportive services for criminal offenders, with special emphasis on the coordination of educational services with agencies furnishing services to criminal offenders after the offenders are released from correctional institutions.

(Authority: 20 U.S.C. 2417(b))

§ 422.4 What regulations apply?

The following regulations apply to the Educational Program for Federal Correctional Institutions:

(a) The regulations in this part 422.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2417)

§ 422.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2417)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 422.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 422.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 422.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criteria.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 422.21.

(Authority: 20 U.S.C. 2417)

§ 422.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Need.* (20 points) The Secretary reviews each application to assess the need for and the soundness of the rationale for the project, including—

(1) A clear description of the need for the proposed project;

(2) Specific evidence of the need for the project;

(3) A description of any ongoing and planned activities in the Federal correctional institution relative to the need; and

(4) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs.

(b) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals, including measurable goals for learner enrollment and completion in each academic skill and occupation for which training is to be provided;

(2) Definitions of successful program completion (or a description of how successful program completion will be defined and reported to the Secretary) for each academic skill and occupation for which training is to be provided. Successful program completion must be defined in terms of the academic and vocational competencies expected of enrollees prior to successful completion, and any academic or work credentials expected to be acquired upon completion;

(3) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes a description of the respective roles of each member of the consortium in carrying out the plan;

(4) The extent to which the objectives are clearly related to project goals and activities and are measurable with respect to anticipated enrollments, completions, and pre- and post-release services for participants;

(5) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(6) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or disability.

(c) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of the key personnel the applicant plans to use on the project, including—

(i) The qualifications and experience of the project director, if one is to be used;

(ii) The qualifications and experience of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (c)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (c)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(d) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project activities;

(2) Costs are necessary and reasonable in relation to the objectives of the project and the numbers of participants to be served; and

(3) The budget narrative justifies the proposed expenditures.

(e) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the evaluation plan, including the extent to which—

(1) The plan identifies, at a minimum, types of data to be collected and reported with respect to enrollment and completion of participants by sex, racial or ethnic group and, if appropriate, by level of English proficiency, for each academic skill and occupation for which training is provided;

(2) The plan identifies at a minimum, types of data to be collected and reported with respect to the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by completers;

(3) The methods of evaluation are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable; and

(4) The methods of evaluation provide periodic data that can be used by the project for ongoing program improvement.

(f) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including—

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2417)

§ 422.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 422.21, the Secretary determines whether the most highly rated applications are equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2301; 2417)

Subpart D—What Conditions Must Be Met After an Award?

§ 422.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for either an internal or external evaluation, or both, of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include—

(1) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on the academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(2) Descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on participant enrollment and completion by sex, racial or ethnic group, and, if appropriate, by level of English proficiency for each academic skill and occupation for which training has been provided.

(d) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job enhancement, including—

(i) Coordination of services;

(ii) Improved attendance rates; and

(iii) Improved basic skills competencies.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2417)

25. A new part 423 is added to read as follows:

PART 423—VOCATIONAL EDUCATION DROPOUT PREVENTION PROGRAM

Subpart A—General

Sec.

423.1 What is the Vocational Education Dropout Prevention Program?
423.2 Who is eligible for an award?
423.3 What activities may the Secretary fund?
423.4 What regulations apply?
423.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

423.20 How does the Secretary evaluate an application?
423.21 What selection criteria does the Secretary use?
423.22 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

423.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2418, unless otherwise noted.

Subpart A—General

§ 423.1 What is the Vocational Education Dropout Prevention Program?

The Vocational Education Dropout Prevention Program provides financial assistance for projects to develop, implement, and operate vocational education programs designed to prevent students from dropping out of school.

(Authority: 20 U.S.C. 2418)

§ 423.2 Who is eligible for an award?

(a) Awards are provided to partnerships between—

(1) Local educational agencies or area vocational education schools; and

(2) Institutions of higher education or public or private nonprofit organizations that have an established record of vocational education strategies that prevent students from dropping out of school.

(b) Partnerships formed for the purpose of receiving an award under this program must include as partners at least one of the types of entities in paragraph (a)(1) of this section and one of the types of entities in paragraph (a)(2) of this section, and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2418(a))

§ 423.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate a vocational education program designed to prevent students from dropping out of secondary school.

(b) Projects assisted under this part must—

(1) Serve special populations, including significant numbers of economically disadvantaged, dropout-prone youth;

(2) Provide inservice training for teachers and administrators in dropout prevention; and

(3) Disseminate information relating to successful dropout prevention strategies and programs through appropriate dissemination networks such as the

National Dropout Prevention Network, the National Dropout Prevention Center, and the Center on Adult, Career and Vocational Education of the Educational Resources Information Clearinghouse.

(Authority: 20 U.S.C. 2418)

§ 423.4 What regulations apply?

The following regulations apply to the Vocational Education Dropout Prevention Program:

(a) The regulations in this part 423.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2418)

§ 423.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2418)

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 423.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 423.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 423.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 423.21.

(e) In addition to the 100 points to be awarded based on the criteria in § 423.21, the Secretary awards up to 10 points to applications that propose particularly effective activities that—

(1) Provide the special support services necessary to help individual students successfully complete the vocational education program such as mentoring, basic skills education, and services that address barriers to learning; and

(2) Use measures to integrate basic and academic skills instruction with work experience and vocational education.

(Authority: 20 U.S.C. 2418)

§ 423.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program design.* (15 points) The Secretary reviews each application to assess the effectiveness of the project including the quality of the—

(1) Vocational program dropout prevention model to be used in carrying out the purposes of this program, including services to be provided, who will provide them, and how they will be provided;

(2) Proposed methodology, specifically, the extent to which the project will include—

(i) Training in appropriate vocational skill areas;

(ii) A thorough assessment of individual student needs;

(iii) Flexibility in the structure of the delivery system to be used (e.g., in classroom hours, use of additional staff, classroom location, and student-teacher ratios);

(iv) Active recruitment;

(v) Thorough assessment and feedback on student progress;

(vi) Individualized treatment;

(vii) Tutoring and mentoring;

(viii) Adjustments for child care;

(ix) Coordination of vocational instruction, academic instruction, and counseling services;

(x) Coordination with other agencies providing services to dropouts or potential dropouts;

(xi) Relevant work-related experience;

(xii) Transportation from school to work;

(xiii) Parental involvement;

(xiv) Community and business involvement; or

(xv) Inservice training for teachers and administrators in dropout prevention.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed dropout prevention program on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from these programs in such factors as—

(i) Student performance and achievement in such subjects as mathematics, science, communication, and technologies;

(ii) High school graduation;

(iii) Placement of students in jobs including military service; and

(iv) Successful matriculation of students to a variety of postsecondary educational programs.

(2) Proposes project objectives that contribute to the improvement of education;

(3) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(4) Proposes a project that will be developed, implemented, operated, and demonstrated within the grant period.

(c) *Management plan.* (15 points) The Secretary reviews each application to assess the quality of the management plan for the project that includes the following elements:

(1) A clear chain of command, including how staff will be managed and how coordination among staff will be accomplished.

(2) Timelines for each activity.

(3) A clear description of the goals, objectives, and activities, and how each builds on the others.

(4) An effective strategy for the use of the resources and personnel from the grant to achieve each objective.

(5) A detailed description of how subcontracts will be awarded, monitored, and evaluated, if subcontracts are to be used.

(d) *Key personnel.* (15 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications (as described in a job description or a résumé), in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1)(i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(e) *Evaluation plan.* (15 points) The Secretary reviews each application to determine—

(1) The quality and comprehensiveness of the independent evaluation plan for the project, including the extent to which the plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations;

(2) The extent to which the plan—

(i) Is clearly explained and is appropriate to the project;

(ii) To the extent possible, is objective and will produce data that are quantifiable;

(iii) Identifies expected outcomes of the participants and how those outcomes will be measured;

(iv) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(v) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(3) The qualifications (as described in a job description or a résumé) of the independent evaluator to be used in the project.

(f) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is detailed and tied to the proposed activities;

(2) The budget narrative explains and justifies each budget item in detail;

(3) The budget is adequate to support the project; and

(4) Costs are reasonable in relation to the objectives of the project.

(g) *Demonstration and dissemination plan.* (10 points) The Secretary reviews each application to assess the quality of the plan for demonstrating and disseminating information about the project, including the—

(1) Quality of the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Target groups, timelines, and responsibilities for each dissemination activity, including provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) Description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available;

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(6) Description of the cost and logistical provisions to be made if there is an intent to engage in a subcontract with one or more of the national dissemination entities described in § 423.3(b)(3) for dissemination services.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2418)

§ 423.22 What additional factors may the Secretary consider?

After evaluating applications according to the criteria in § 423.21, the Secretary may select other than the most highly rated applications for funding if doing so would improve the geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2418)

Subpart D—What Conditions Must Be Met After an Award?

§ 423.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for a third-party evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2418)

26. A new part 424 is added to read as follows:

PART 424—MODEL CENTERS OF REGIONAL TRAINING FOR SKILLED TRADES PROGRAM

Subpart A—General

Sec.

424.1 What is the Model Centers of Regional Training for Skilled Trades Program?

424.2 Who is eligible for an award?

424.3 What activities may the Secretary fund?

424.4 What regulations apply?

424.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

424.20 How does the Secretary evaluate an application?

424.21 What selection criteria does the Secretary use?

424.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

424.30 What are the evaluation requirements?

424.31 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2419, unless otherwise noted.

Subpart A—General

§ 424.1 What is the Model Centers of Regional Training for Skilled Trades Program?

The Model Centers of Regional Training for Skilled Trades Program provides financial assistance for regional model centers that provide—

(a) Training for skilled tradesmen within a region serving several States; and

(b) Technical assistance for programs that train skilled tradesmen within a region serving several States.

(Authority: 20 U.S.C. 2419)

§ 424.2 Who is eligible for an award?

Entities proposing to develop a regional model center or existing regional model centers that provide training for skilled tradesmen within a region serving several States and technical assistance for programs that train skilled tradesmen within a region serving several States are eligible for awards under this program.

(Authority: 20 U.S.C. 2419(a))

§ 424.3 What activities may the Secretary fund?

The Secretary provides grants or cooperative agreements to model centers for regional training for skilled trades. Each project assisted by the Secretary must—

(a) Provide training and career counseling for skilled tradesmen in areas of skill shortages or projected skill shortages;

(b) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(c) Upgrade specialized craft training; and

(d) Improve the access of women, minorities, economically disadvantaged individuals, individuals with disabilities, and ex-criminal offenders to trade occupations and training.

(Authority: 20 U.S.C. 2419(b))

§ 424.4 What regulations apply?

The following regulations apply to the Model Centers of Regional Training for Skilled Trades Program:

(a) The regulations in this part 424.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2419)

§ 424.5 What definitions apply?

(a) The definitions in 34 CFR 400.4 apply to this part.

(b) As used in this part, the term "skilled trades" includes, among other occupations, "construction trades" and "firefighting," which are defined as follows:

Construction trades means a summary of groups of instructional programs that prepare individuals to erect, install, maintain, and repair buildings, highways, airports, missile sites, and other structures using materials such as metal, wood, stone, brick, glass, concrete, and composition substances. The term includes instruction in cost estimating; cutting, fastening, and fitting various materials; the use of hand and power tools; and in following technical specifications and blueprints.

Firefighting means an instructional program that prepares individuals to fight fires, and control the outbreak of fires. The term includes instruction in fire department organization; the use of water and other materials in firefighting and various kinds of equipment such as extinguishers, pumps, hoses, ropes, ladders, gas masks, hydrants, and standpipe and sprinkler systems; entry and rescue and salvage practices and equipment; and fire and arson inspection and investigation techniques.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 424.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 424.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 424.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 424.21.

(e) In addition to points awarded under § 424.21, the Secretary may award up to five points to applications that propose particularly effective training in the masonry trades.

(Authority: 20 U.S.C. 2419; H. Rep. No. 101-660, 101st Cong., 2nd Sess. 147 (1990))

§ 424.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed model center of regional training for skilled trades and how well the project will—

(1) Provide training and career counseling for skilled tradesmen in areas of labor or skill shortages or projected labor or skill shortages;

(2) Provide pre-job and apprenticeship training and career counseling in skilled trades;

(3) Upgrade specialized craft training; and

(4) Improve the access of women, minorities, economically disadvantaged individuals, individuals with disabilities and ex-criminal offenders to trade occupations and training.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed national model center of regional training for skilled trades on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) Placement of students in jobs, including military service; and

(iii) Successful matriculation of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of training for skilled tradesmen;

(3) Proposes to use innovative techniques that address problems and needs associated with training skilled tradesmen and that are of national significance; and

(4) Is likely to make a significant contribution to training skilled tradesmen in areas of skill shortages or projected skill shortages in the region in which the project will be located.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) Is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the skilled trades training methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire regional model center equipment and facilities.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2419)

§ 424.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 424.21, the Secretary considers whether the most highly rated applications are equitably distributed among the skilled trades with shortages.

(b) The Secretary may select other applications for funding if doing so would improve the distribution of projects funded under this program among the skilled trades with shortages.

(Authority: 20 U.S.C. 2419(c))

Subpart D—What Conditions Must Be Met After an Award?

§ 424.30 What are the evaluation requirements?

(a) Each grant recipient shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, placement rates, and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2419)

§ 424.31 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2419)

27. Part 425 is added to read as follows:

PART 425—DEMONSTRATION PROJECTS FOR THE INTEGRATION OF VOCATIONAL AND ACADEMIC LEARNING PROGRAM

Subpart A—General

Sec.

425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?
425.2 Who is eligible for an award?
425.3 What activities may the Secretary fund?
425.4 What regulations apply?
425.5 What definitions apply?

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

425.20 How does the Secretary evaluate an application?
425.21 What selection criteria does the Secretary use?
425.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

425.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2420, unless otherwise noted.

Subpart A—General

§ 425.1 What is the Demonstration Projects for the Integration of Vocational and Academic Learning Program?

The Demonstration Projects for the Integration of Vocational and Academic Learning Program provides financial assistance to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning.

(Authority: 20 U.S.C. 2420(a))

§ 425.2 Who is eligible for an award?

(a) The following entities are eligible for an award under the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(1) An institution of higher education.

(2) An area vocational education school.

(3) A secondary school funded by the Bureau of Indian Affairs.

(4) A State board of vocational education.

(5) A public or private nonprofit organization.

(6) A local educational agency.

(b) Consortia composed of the entities described in paragraph (a) of this section also are eligible for awards under this program.

(Authority: 20 U.S.C. 2420(a))

§ 425.3 What activities may the Secretary fund?

(a) The Secretary provides grants or cooperative agreements to projects that develop, implement, and operate programs using different models of curricula that integrate vocational and academic learning by—

(1) Designing integrated curricula and courses;

(2) Providing inservice training for teachers of vocational education students and administrators in integrated curricula; and

(3) Disseminating information regarding effective integrative strategies to other school districts through the National Diffusion Network (NDN) under section 1562 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2962), or, in the case of projects that will be funded for less than three years, disseminating information about the design of a project necessary for effective integrative strategies to be supported, so that they may be disseminated through the NDN.

(b) Each project supported under this part must serve—

(1) Individuals who are members of special populations;

(2) Vocational students in secondary schools;

(3) Vocational students at postsecondary institutions;

(4) Individuals enrolled in adult programs; or

(5) Single parents, displaced homemakers, and single pregnant women.

(Authority: 20 U.S.C. 2420(a), (b)(3) and (4))

§ 425.4 What regulations apply?

The following regulations apply to the Demonstration Projects for the Integration of Vocational and Academic Learning Program:

(a) The regulations in this part 425.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420)

§ 425.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 425.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in § 425.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 425.21.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 425.21.

(Authority: 20 U.S.C. 2420)

§ 425.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Program factors.* (10 points) The Secretary reviews each application to assess the quality of the proposed project, including—

(1) The extent to which the project involves creative or innovative methods for integrating vocational and academic learning; and

(2) The quality of the services that the project will provide to—

(i) Individuals who are members of special populations;

(ii) Vocational students in secondary schools and at postsecondary institutions;

(iii) Individuals enrolled in adult programs; or

(iv) Single parents, displaced homemakers, and single pregnant women.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successful model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques that address the need to integrate vocational and academic learning, and produce benefits that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Carries out the requirements in § 425.30;

(2) Is clearly explained and is appropriate to the project;

(3) To the extent possible, is objective and will produce data that are quantifiable;

(4) Includes quality measures to assess the effectiveness of the curricular developed by the project;

(5) Identifies expected outcomes of the participants and how those outcomes will be measured;

(6) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(7) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(8) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Identification of the audience to which the project activities will be disseminated and provisions for publicizing the project at the local, State, and national levels by conducting, or delivering presentations at, conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the methods, approaches, and techniques developed by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities, to ensure that funds awarded under this part are used to provide instructional services.

(h) *Adequacy of resources and commitment.* (5 points) (1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420)

§ 425.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 425.21, the Secretary determines whether the most highly rated applications—

(1) Are equitably distributed throughout the Nation;

(2) Offer significantly different approaches to integrating vocational and academic curricula; and

(3) Serve individuals described in § 425.3(b).

(b) The Secretary may select other applications for funding if doing so would improve the geographical distribution of, diversity of approaches in, or the diversity of populations to be served by projects funded under this program.

(Authority: 20 U.S.C. 2420(b))

Subpart D—What Conditions Must Be Met After an Award?

§ 425.30 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) Each grantee shall employ adequate measures to evaluate the effectiveness of the curriculum approaches supported by the project.

(d) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(e) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(f) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2420(b)(5))

28. Part 426 is added to read as follows:

PART 426—COOPERATIVE DEMONSTRATION PROGRAM

Subpart A—General

Sec.

426.1 What is the Cooperative Demonstration Program?
426.2 Who is eligible for an award?
426.3 What activities may the Secretary fund?
426.4 What activities does the Secretary fund under the Demonstration Projects?
426.5 What activities does the Secretary fund under the Program for Model Consumer and Homemaking Education Projects?
426.6 What activities does the Secretary fund under the Community-Based Organization Projects?
426.7 What activities does the Secretary fund under the Agriculture Action Centers?
426.8 What regulations apply?

Sec.
426.9 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

426.20 How does the Secretary evaluate an application?
426.21 What selection criteria does the Secretary use for the Demonstration Projects?
426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?
426.23 What selection criteria does the Secretary use for the Community-Based Organization Projects?
426.24 What selection criteria does the Secretary use for Agriculture Action Centers?
426.25 What additional factors may the Secretary consider?

Subpart D—What Conditions Must Be Met After an Award?

426.30 What is the requirement regarding cost-sharing?
426.31 What is the requirement regarding dissemination?
426.32 What are the evaluation requirements?
426.33 May the Secretary restrict the use of funds for equipment?

Authority: 20 U.S.C. 2420a, unless otherwise noted.

Subpart A—General

§ 426.1 What is the Cooperative Demonstration Program?

The Cooperative Demonstration Program provides financial assistance for—

(a) Model projects providing improved access to quality vocational education programs for individuals who are members of special populations and for men and women seeking nontraditional occupations;

(b) Projects that are examples of successful cooperation between the private sector and public agencies in vocational education;

(c) Projects to overcome national skill shortages;

(d) Projects that develop consumer and homemaking education programs, including child growth and development centers;

(e) Projects that assist disadvantaged youths in preparing for technical and professional health careers; and

(f) Model projects providing access to vocational education programs through agriculture action centers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.2 Who is eligible for an award?

(a) The following entities are eligible to apply for an award for activities described in §§ 426.4, 426.5, and 426.7:

(1) State educational agencies.

(2) Local educational agencies.

(3) Postsecondary educational institutions.

(4) Institutions of higher education.

(5) Other public and private agencies, organizations, and institutions.

(b)(1) Awards for activities described in § 426.6 are provided to partnerships between—

(i) Community-based organizations; and

(ii) Local schools, institutions of higher education, and businesses.

(2) A partnership formed for the purpose of receiving an award under § 426.6 shall include as partners at least one community-based organization and at least one entity from the groups listed in paragraph (b)(1)(ii) of this section, and may include more than one entity from each group.

(3) The partners shall apply jointly to the Secretary for an award under this part.

(4) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a(a))

§ 426.3 What activities may the Secretary fund?

(a) The Secretary supports, directly or through grants, cooperative agreements, or contracts, the following types of projects:

(1) *Demonstration Projects.* The Secretary supports model projects providing improved access to high quality vocational education for members of special populations and men and women seeking to enter non-traditional occupations, projects that are models of successful cooperation between the private sector and public agencies in vocational education, and projects to overcome national skill shortages, as described in § 426.4.

(2) *Program for Model Consumer and Homemaking Education Projects.* The Secretary supports model projects that improve instruction and curricula related to consumer and homemaking skills, as described in § 426.5.

(3) *Community-Based Organization Projects.* The Secretary supports community-based organizations in partnerships with entities listed in § 426.2(b)(1)(ii), to operate projects that assist disadvantaged youths in preparing for technical and professional health careers, as described in § 426.6.

(4) *Agriculture Action Centers.* The Secretary supports model projects providing improved access to vocational education programs through agriculture action centers, as described in § 426.7.

(b) All projects assisted under the Cooperative Demonstration Program must be—

(1) Of direct service to the individuals enrolled; and

(2) Capable of wide replication by service providers.

(Authority: 20 U.S.C. 2420a(a))

§ 426.4 What activities does the Secretary fund under the Demonstration Projects?

The Secretary supports the following types of projects:

(a) Model projects providing improved access to quality vocational education programs for—

(1) Individuals with disabilities;

(2) Educationally and economically disadvantaged individuals (including foster children);

(3) Individuals of limited English proficiency;

(4) Individuals who participate in programs designed to eliminate sex bias;

(5) Individuals in correctional institutions; and

(6) Men and women seeking to enter nontraditional occupations.

(b)(1) Projects that are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and private agencies, organizations, and institutions) and public agencies in vocational education (including State boards of vocational education and eligible recipients as defined in 34 CFR 400.4).

(2) The projects described in paragraph (b)(1) of this section must be designed to demonstrate ways in which vocational education and the private sector of the economy can work together effectively to assist vocational education students to attain the advanced level of skills needed to make the transition from school to productive employment, including—

(i) Work experience and apprenticeship projects;

(ii) Transitional work site job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(iii) Placement services in occupations that the students are preparing to enter;

(iv) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(v) Employment-based learning programs.

(3) The projects described in paragraphs (b) (1) and (2) of this section may include institutional and on-the-job training, supportive services authorized by the Act, and other assistance as the Secretary determines to be necessary for the successful completion of the project.

(c) Projects to overcome national skill shortages, as designated by the Secretary in cooperation with the Secretary of Labor, Secretary of Defense, and Secretary of Commerce.

(Authority: 20 U.S.C. 2420a(a) (1)–(3) and (b)(1))

§ 426.5 What activities does the Secretary fund under the Program for Model Consumer and Homemaking Education Projects?

The Secretary supports model projects that develop programs and improve instruction and curricula related to—

(a) Managing individual and family resources;

(b) Making consumer choices;

(c) Balancing work and family;

(d) Improving responses to individual and family crises, including family violence and child abuse;

(e) Strengthening parenting skills, especially among teenage parents;

(f) Preventing teenage pregnancy;

(g) Assisting aged individuals with disabilities, and members of at-risk populations, including the homeless;

(h) Conserving limited resources;

(i) Improving individual, child, and family nutrition and wellness;

(j) Understanding the impact of new technology on life and work;

(k) Applying consumer and homemaking education skills to jobs and careers;

(l) Other needs to be determined by the State board of vocational education; and

(m) Developing child growth and development centers.

(Authority: 20 U.S.C. 2420a(4))

§ 426.6 What activities does the Secretary fund under the Community-Based Organization Projects?

(a) The Secretary supports projects that assist disadvantaged youths in preparing for technical and professional health careers.

(b) The Secretary may require partnerships described in § 426.2(b)(1) to provide in-kind contributions from participating schools, institutions, and businesses and to involve health professionals serving as instructors and counselors.

(Authority: 20 U.S.C. 2420a(5))

§ 426.7 What activities does the Secretary fund under the Agriculture Action Centers?

The Secretary supports model Agriculture Action Centers that provide improved access to vocational education programs and that—

(a) Assist individuals—

(1) Who are adversely affected by farm and rural economic downturns;

(2) Who are dislocated from farming; and

(3) Who are dislocated from agriculturally related businesses and industries that are adversely affected by farm and rural economic downturns;

(b) Provide services, including—

(1) Crisis management counseling and outreach counseling that would include members of the family of the affected individual;

(2) Evaluation of vocational skills and counseling on enhancement of these skills;

(3) Assistance in obtaining training in basic, remedial, and literacy skills;

(4) Assistance in seeking employment and training in employment-seeking skills; and

(5) Assistance in obtaining training related to operating a business or enterprise;

(c) Provide for formal and on-the-job training to the extent practicable; and

(d) Are coordinated with activities and discretionary programs under Title III of the Job Training Partnership Act (29 U.S.C. 1651 *et seq.*).

(Authority: 20 U.S.C. 2420a(6))

§ 426.8 What regulations apply?

The following regulations apply to the Cooperative Demonstration Program:

(a) The regulations in this part 426.

(b) The regulations in 34 CFR part 400.

(Authority: 20 U.S.C. 2420a)

§ 426.9 What definitions apply?

The definitions in 34 CFR 400.4 apply to this part.

(Authority: 20 U.S.C. 2420a)

Subpart B—[Reserved]

Subpart C—How does the Secretary Make an Award?

§ 426.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application on the basis of the criteria in §§ 426.21, 426.22, 426.23, or § 426.24.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in §§ 426.21, 426.22, 426.23, or § 426.24.

(c) Subject to paragraph (d) of this section, the maximum possible score for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in §§ 426.21, 426.22 426.23, or § 426.24.

(Authority: 20 U.S.C. 2420a)

§ 426.21 What selection criteria does the Secretary use for the Demonstration Projects?

The Secretary uses the following criteria to evaluate an application for a demonstration project:

(a) *Program factors.* (10 points) The Secretary reviews the application to assess the quality of the proposed project, including the extent to which the project will provide—

(1) Vocational education to meet current and projected occupational needs; and

(2) For adequate and appropriate involvement and cooperation of the public and private sectors in the project, including—

(i) A clear identification of the public and private sector entities involved in the project;

(ii) A description of public and private sector involvement in the planning of the project; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(1) Bases the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(i) Student performance and achievement;

(ii) High school graduation;

(iii) Placement of students in jobs, including military service; and

(iv) Successful transfer of students to a variety of postsecondary education programs;

(2) Proposes project objectives that contribute to the improvement of education; and

(3) Proposes to use unique and innovative techniques to produce benefits that address educational

problems and needs that are of national significance.

(c) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project over the award period;

(3) How well the objectives of the project relate to the purpose of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or disability.

(d) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and is appropriate to the project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies expected outcomes of the participants and how those outcomes will be measured;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results;

(5) Will provide a comparison between intended and observed results, and lead to the demonstration of a clear link between the observed results and the specific treatment of project participants; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel as defined in 34 CFR 400.4(b).

(e) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Disseminating the results of the project in a manner that would meet the requirement in § 426.31;

(3) Identification of target groups and provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(4) Provisions for demonstrating the methods and techniques used by the project to others interested in replicating these methods and techniques, such as by inviting them to observe project activities;

(5) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(6) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(f) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project. For the Community-Based Organization Projects, the Secretary determines the qualifications, in relation to project requirements, of health professionals serving as preceptors and counselors and of each of the other key personnel to be used in the project;

(iii) The appropriateness of the time that each person referred to in paragraphs (f)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraphs (f)(1) (i) and (ii) of this section, the Secretary considers—

(i) The experience and training of key personnel in project management and in fields related to the objectives of the project. For the Program for Model Consumer and Homemaking Education Projects, the Secretary also considers the experience and training of key personnel in consumer and homemaking education; and

(ii) Any other qualifications of key personnel that pertain to the quality of the project.

(g) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which the budget—

(1) Is cost effective and adequate to support the project activities;

(2) Contains costs that are reasonable and necessary in relation to the objectives of the project; and

(3) Proposes using non-Federal resources available from appropriate employment, training, and education agencies in the State to provide project services and activities and to acquire project equipment and facilities. For the Community-Based Organization Projects, the Secretary also determines the extent to which the budget includes in-kind contributions from partnership members.

(h) *Adequacy of resources and commitment.* (5 points)

(1) The Secretary reviews each application to determine the extent to which the applicant plans to devote adequate resources to the project. The Secretary considers the extent to which the—

(i) Facilities that the applicant plans to use are adequate; and

(ii) Equipment and supplies that the applicant plans to use are adequate.

(2) The Secretary reviews each application to determine the commitment to the project, including whether the—

(i) Uses of non-Federal resources are adequate to provide project services and activities, especially resources of community organizations and State and local educational agencies; and

(ii) Applicant has the capacity to continue, expand, and build upon the project when Federal assistance under this part ends.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a)

§ 426.22 What selection criteria does the Secretary use for the Program for Model Consumer and Homemaking Education Projects?

(a) The Secretary uses the following criteria to evaluate an application for a model consumer and homemaking education project:

(1) *Program factors.* (10 points) The Secretary reviews the quality of the proposed project to assess the extent to which project activities will improve, expand, and update programs that will—

(i) Be conducted for residents of economically depressed areas or areas with high rates of unemployment;

(ii) Encourage participation of traditionally underserved populations;

(iii) Encourage the elimination of sex bias and sex stereotyping; and

(iv) Address priorities and emerging concerns at the local, State, and national levels, such as the articulation of secondary and postsecondary consumer and homemaking education programs and the integration of basic skills in consumer and homemaking education programs.

(2) *Demonstration program design.* (10 points) The Secretary reviews each application to determine the extent to which the applicant—

(i) Bases the proposed consumer and homemaking education project on successful model education programs that include components similar to the components required by this program, as evidenced by empirical data from those programs in such factors as—

(A) Student performance and achievement;

(B) Placement of students in jobs, including the preparation of students for the occupation of homemaking; and

(C) Successful transfer of students to a wide variety of postsecondary educational programs;

(ii) Proposes project objectives that contribute to the improvement of consumer and homemaking education; and

(iii) Proposes to use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance.

(b) The Secretary also uses the criteria and points in § 426.21 (c) through (h) to evaluate an application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a)

§ 426.23 What selection criteria does the Secretary use for the Community-Based Organization Projects?

The Secretary uses the following criteria to evaluate an application for a community-based organization project:

(a) *Program factors.* (10 points) The Secretary reviews the quality of a proposed community-based organization project to assess the extent to which the proposed project—

(1) Will assist disadvantaged youths in preparing for technical and professional health careers;

(2) Provides for adequate and appropriate involvement of local schools, institutions of higher education, and businesses in the project, including—

(i) Clear identification of partnership members;

(ii) Involvement of partnership members in the planning of the project;

(iii) Involvement of partnership members in the operation of the project; and

(3) Will coordinate activities to ensure that the project will help meet current and projected occupational needs in the area.

(b) *Other criteria.* The Secretary also uses the criteria and points in § 426.21 (b) through (h) to evaluate an application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a)

§ 426.24 What selection criteria does the Secretary use for Agriculture Action Centers?

The Secretary uses the following criteria to evaluate an application for an Agriculture Action Center:

(a) *Program factors.* (10 points) The Secretary reviews each application for an Agriculture Action Center to determine the extent to which the proposed center will—

(1) Provide vocational education to meet current and projected occupational needs; and

(2) Be located in a service area that includes a high concentration of individuals who are—

(i) Adversely affected by farm and rural economic downturns;

(ii) Dislocated from farming; and

(iii) Dislocated from agriculturally-related businesses and industries that are adversely affected by farm and rural economic downturns.

(b) *Other criteria.* The Secretary also uses the criteria and points in § 426.21 (b) through (h) to evaluate an application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a)

§ 426.25 What additional factors may the Secretary consider?

After evaluating applications according to criteria in §§ 426.21, 426.22, 426.23, or § 426.24, the Secretary may fund other than the most highly rated applications if doing so would improve the geographical distribution of projects funded under this part.

(Authority: 20 U.S.C. 2420a)

Subpart D—What Conditions Must Be Met After an Award?

§ 426.30 What is the requirement regarding cost-sharing?

(a) A recipient of an award under this part shall provide not less than 25 percent of the total cost (the sum of the Federal and non-Federal shares) of the project it conducts under this program.

(b) In accordance with Subpart G of 34 CFR part 74, the non-Federal share may be in the form of cash or in-kind contributions, including the fair market value of facilities, overhead, personnel, and equipment.

(Authority: 20 U.S.C. 2420a(b)(2))

§ 426.31 What is the requirement regarding dissemination?

Recipients must disseminate the results of projects assisted under this part in a manner designed to improve the training of teachers, other instructional personnel, counselors, and administrators who are needed to carry out the purposes of the Act.

(Authority: 20 U.S.C. 2420a(d))

§ 426.32 What are the evaluation requirements?

(a) Each grantee shall provide and budget for an independent evaluation of grant activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student achievement, completion, and placement rates and project and product spread and transportability.

(d) A proposed project evaluation design must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as defined in 34 CFR 400.4(b), must be submitted to the Secretary during the last year of the project period.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2420a)

§ 426.33 May the Secretary restrict the use of funds for equipment?

The Secretary may restrict the amount of Federal funds made available for equipment purchases to a certain percentage of the total grant for a project. The Secretary may announce through a notice published in the **Federal Register** the percentage of Federal funds that may be used for the purchase of equipment.

(Authority: 20 U.S.C. 2420a)

29. Part 427 is added to read as follows:

PART 427—BILINGUAL VOCATIONAL TRAINING PROGRAM

Subpart A—General

Sec.

427.1 What is the Bilingual Vocational Training Program?
427.2 Who is eligible for an award?
427.3 What activities may the Secretary fund?
427.4 What regulations apply?
427.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

427.10 What must an application contain?

Subpart C—How does the Secretary Make an Award?

427.20 How does the Secretary evaluate an application?
427.21 What selection criteria does the Secretary use?
427.22 What additional factors does the Secretary consider?

Subpart D—What Conditions Must be Met After an Award?

427.30 What are the evaluation requirements?

Authority: 20 U.S.C. 2441(a), unless otherwise noted.

Subpart A—General

§ 427.1 What is the Bilingual Vocational Training Program?

The Bilingual Vocational Training Program provides financial assistance for bilingual vocational education and training for limited English proficient out-of-school youth and adults, to prepare these individuals for jobs in recognized occupations and new and emerging occupations.

(Authority: 20 U.S.C. 2441(a))

§ 427.2 Who is eligible for an award?

(a) The following entities are eligible for an award under this program:

(1) State agencies.

(2) Local educational agencies (LEAs).

(3) Postsecondary educational institutions.

(4) Private nonprofit vocational training institutions.

(5) Other nonprofit organizations specially created to serve or currently serving individuals who normally use a language other than English.

(b) Private for-profit agencies and organizations are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(a))

§ 427.3 What activities may the Secretary fund?

(a) The Secretary provides grants, cooperative agreements, or contracts for—

(1) Bilingual vocational training projects for limited English proficient out-of-school youth and adults who are available for training and employment;

(2) Bilingual vocational education and training projects for limited English proficient out-of-school youth and adults who have already entered the labor market but who desire or need English language skills and job skills training or retraining to achieve employment in a recognized occupation or new and emerging occupations, adjust to changing work force needs, expand their range of skills, or advance in employment; and

(3) Training stipends for participants in bilingual vocational training projects.

(b) Bilingual vocational training projects must include instruction in the English language to ensure that participants in that training will be equipped to pursue occupations in an English language environment.

(c) In the Commonwealth of Puerto Rico, the Bilingual Vocational Training Program may provide for the needs of students of limited Spanish proficiency.

(Authority: 20 U.S.C. 2441(a), (e)(2))

§ 427.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this PART 427.

(Authority: 20 U.S.C. 2441(a))

§ 427.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(a))

Subpart B—How Does One Apply for an Award?

§ 427.10 What must an application contain?

(a) An application must—

(1) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(2) Propose a project of a size, scope, and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Training Program;

(3) Contain measurable goals for the enrollment, completion, and placement of program participants;

(4) Include a comparison of how the applicant's goals take into consideration any related standards and measures in the geographic area for the Job Opportunities and Basic Skills Training (JOBS) program (42 U.S.C. 681 *et seq.*) and any Job Training Partnership Act (JTPA) programs (29 U.S.C. 1501 *et seq.*) and any standards set by the State Board for Vocational Education for the occupational and geographic area;

(5) Describe, for each occupation for which training is to be provided, how successful program completion will be determined and reported to the Secretary in terms of the academic and vocational competencies to be demonstrated by enrollees prior to successful completion and any academic or work credentials expected to be acquired upon completion; and

(6) Be submitted to the State board for vocational education (State board) established under section 111 of the Act for review and comment, including comment on the relationship of the proposed project to the State's vocational education program.

(b) An applicant shall include any comments received under paragraph (a)(6) of this section with the application.

(Approved by the Office of Management and Budget under Control No. 1830–0013)

(Authority: 20 U.S.C. 2441(a), (d)(1) and (2))

Subpart C—How Does the Secretary Make an Award?

§ 427.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 427.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 427.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 427.21.

(Authority: 20 U.S.C. 2441(a))

§ 427.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria to evaluate an application:

(a) *Need.* (15 points) The Secretary reviews each application for specific information that shows the need for the proposed bilingual vocational training project in the local geographic area, including—

(1) The employment training need of limited English proficient individuals to be met;

(2) The labor market need to be met; and

(3) The relationship of the proposed project to other employment training programs in the community.

(b) *Plan of operation.* (15 points) (1) The Secretary reviews each application to determine the extent to which the project proposes measurable goals for student enrollment, completion, and placement and describes how the applicant sets the goals taking into consideration the standards and measures for JOBS programs and JTPA programs and any standards set by the State Board established under section 111 of the Act for the occupation and geographic area.

(2) The Secretary reviews each application to determine the extent to which the project defines successful program completion (or describes how successful program completion will be defined and reported to the Secretary) in a way consistent with the goals of the program for each occupation for which training is to be provided.

(3)(i) The Secretary reviews each application for specific information that, upon completion of their training, more than 65 percent of the trainees will be employed in jobs (including military specialties) related to their training, or will be enrolled for further training related to their training under this program. This information must correspond to the information described in paragraph (a) of this section.

(ii) The estimated job placement rate must be supported by past records, actual employer job commitments, anticipated job openings, or other pertinent information.

(4) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(i) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Training Program;

(ii) For each objective, the specific tasks to be performed in order to achieve the specified project objective;

(iii) How the applicant plans to use its resources and personnel to achieve each objective; and

(iv) If the applicant plans to use a project advisory committee, a clear plan for using a project advisory committee to assist in project development, to review curriculum materials, and to make recommendations about job placements.

(c) *Program factors.* (20 points) (1) The Secretary reviews each application to determine the quality of training to be provided, including—

(i) Provision of vocational skills instruction in English and the trainees' native languages;

(ii) Provision of job-related English-as-a-second language instruction;

(iii) Coordination of the job-related English-as-a-second language instruction with the vocational skills instruction;

(iv) Recruitment procedures that are targeted towards limited English proficient out-of-school youth and adults who have the greatest need for bilingual vocational training;

(v) Assessment procedures that evaluate the language and vocational training needs of the trainees;

(vi) Provision of counseling activities and employability skills instruction that prepare trainees for employment in an English language environment; and

(vii) Job development and job placement procedures that provide opportunities for career advancement or entrepreneurship.

(2) The Secretary reviews each application to determine the project's potential to have a lasting impact in the local geographic area, including the potential impact of the project on—

(i) Program participants;

(ii) The agency or agencies responsible for administering the bilingual vocational training program;

(iii) Other employment training services in the local area; and

(iv) The community.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities, equipment, and supplies that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the project;

(2) Identifies at a minimum, types of data to be collected and reported with respect to the English-language competencies and academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the training;

(3) Identifies at a minimum, types of data to be collected and reported with respect to enrollment, completion, and placement of participants by sex, racial or ethnic group, socio-economic status, and if appropriate, by level of English proficiency, for each occupation for which training is provided;

(4) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results; and

(5) Makes use of an external evaluator.

(g) *Demonstration and dissemination.* (10 points) The Secretary reviews each application for information to determine the effectiveness and efficiency of the plan for demonstrating and disseminating information about project activities and results throughout the project period, including—

(1) High quality in the design of the demonstration and dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(2) Provisions for publicizing the project at the local, State, and national levels by conducting or delivering presentations at conferences, workshops, and other professional meetings and by preparing materials for journal articles, newsletters, and brochures;

(3) Provisions for making available the methods and techniques used by the project to others interested in replicating these methods and techniques, such as

by inviting them to observe project activities;

(4) A description of the types of materials the applicant plans to make available to help others replicate project activities and the methods for making the materials available; and

(5) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(a))

§ 427.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 427.21 and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within a State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

Subpart D—What Conditions Must be Met After an Award?

§ 427.30 What are the evaluation requirements?

(a) Each grantee shall annually provide and budget for an independent evaluation of its activities.

(b) The evaluation must be both formative and summative in nature.

(c) The annual evaluation must include descriptions and analyses of the accuracy of records and validity of measures by the project to establish and report on the English-language competencies and academic and vocational competencies demonstrated and the academic and work credentials acquired.

(d) The annual evaluation must contain descriptions and analyses of the accuracy of records and validity of measures used by the project to establish and report on participant enrollment, completion, and placement by sex, racial or ethnic group, socio-economic status, and, if appropriate, by level of English proficiency for each occupation for which training has been provided.

(e) The annual evaluation must also include—

(1) The grantee's progress in achieving the objectives in its approved application, including any approved revisions of the application;

(2) If applicable, actions taken by the grantee to address significant barriers impeding progress; and

(3) The effectiveness of the project in promoting key elements for participants' job readiness, including—

(i) Coordination of services; and

(ii) Improved English-language, academic, and vocational skills competencies.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(a))

30. Part 428 is added to read as follows:

PART 428—BILINGUAL VOCATIONAL INSTRUCTOR TRAINING PROGRAM

Subpart A—General

Sec.

428.1 What is the Bilingual Vocational Instructor Training Program?
428.2 Who is eligible for an award?
428.3 What activities may the Secretary fund?
428.4 What regulations apply?
428.5 What definitions apply?

Subpart B—How Does One Apply for an Award?

428.10 What must an application contain?

Subpart C—How does the Secretary Make an Award?

428.20 How does the Secretary evaluate an application?
428.21 What selection criteria does the Secretary use?
428.22 What additional factors does the Secretary consider?

Authority: 20 U.S.C. 2441(b), unless otherwise noted.

Subpart A—General

§ 428.1 What is the Bilingual Vocational Instructor Training Program?

The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient individuals.

(Authority: 20 U.S.C. 2441(b))

§ 428.2 Who is eligible for an award?

(a) The following entities are eligible for grants, contracts, or cooperative agreements under this program:

(1) State agencies.

(2) Public and private nonprofit educational institutions.

(b) Private for-profit educational institutions are eligible only for contracts under this program.

(Authority: 20 U.S.C. 2441(b)(1))

§ 428.3 What activities may the Secretary fund?

(a) The Secretary provides assistance through grants, contracts, or cooperative agreements for—

(1) Preservice and inservice training for instructors, aides, counselors, or other ancillary personnel participating in or preparing to participate in bilingual vocational training programs; and

(2) Fellowships and traineeships for individuals participating in preservice or inservice training.

(b) The Secretary does not make an award under this program unless the Secretary determines that the applicant has an ongoing vocational education program in the field in which participants will be trained, and can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training project.

(Authority: 20 U.S.C. 2441(b))

§ 428.4 What regulations apply?

The following regulations apply to the Bilingual Vocational Training Program:

(a) The regulations in 34 CFR part 400.

(b) The regulations in this part 428.

(Authority: 20 U.S.C. 2441(b))

§ 428.5 What definitions apply?

The definitions in 34 CFR 400.4 apply to this program.

(Authority: 20 U.S.C. 2441(b))

Subpart B—How Does one Apply for an Award?

§ 428.10 What must an application contain?

An application must—

(a) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Propose a project of a size, scope and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Instructor Training Program;

(c) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(d) Describe the qualifications of principal staff to be used in the bilingual vocational instructor training project;

(e) Describe the number of participants to be served, the minimum qualifications for project participants, and the selection process for project participants;

(f) Include the projected amount of the fellowships or traineeships, if any;

(g) Contain sufficient information for the Secretary to make the determination required by § 428.3(b); and

(h) Provide an assurance that preservice training will be provided to individuals who have indicated their intent to engage as personnel in a vocational education program that serves limited English proficient individuals.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(d)(1), (4))

Subpart C—How Does the Secretary make an Award?

§ 428.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 428.21.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) or this section, based on the criteria in § 428.21.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses after the heading for each criterion.

(d) For each competition, in a notice published in the **Federal Register**, the Secretary may assign the reserved 15 points among the criteria in § 428.21.

(Authority: 20 U.S.C. 2441(b), (d)(5))

§ 428.21 What selection criteria does the Secretary use?

The Secretary uses the following selection criteria in evaluating each application:

(a) *Need.* (15 points) (1) The Secretary reviews each application to determine the need for the proposed bilingual vocational instructor training project, including—

(i) The need for the project in the specific geographic area or areas to be served by the proposed project;

(ii) The training needs of program participants to be served by the proposed project;

(iii) How these needs will be met through the proposed project; and

(iv) The relationship of the proposed project to other ongoing personnel development programs in the geographic area or areas to be served by the proposed project.

(2) The Secretary reviews each application to determine the extent to which, upon completion of their training, program participants will work with programs that provide vocational education to limited English proficient individuals.

(b) *Program design.* (20 points) The Secretary reviews each application to determine the quality of the program design and the potential of the project to have a lasting impact on the geographic area or areas to be served by the proposed project, including—

(1) Potential to increase the skill level of program participants, with particular regard to the following areas:

(i) Knowledge of the needs of limited English proficient individuals enrolled in vocational education programs, and how those needs should influence teaching strategies and program design.

(ii) Understanding of bilingual vocational training methodologies.

(iii) Techniques for preparing limited English proficient individuals for employment; and

(2) Potential to increase access to vocational education for limited English proficient individuals.

(c) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Instructor Training Program;

(2) For each objective, the specific tasks to be performed in order to achieve the specified project objective; and

(3) How the applicant plans to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points) (1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Instructor Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities that the applicant plans to use are adequate for the proposed project;

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the bilingual vocational instructor training project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies outcomes of the project in terms of enrollment, completion and after-training work commitments of participants by sex, racial or ethnic group, and by level and kinds of language proficiency;

(4) Identifies expected learning and skills outcomes for participants and how those outcomes will be measured; and

(5) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results.

(g) *Dissemination plan.* (10 points) The Secretary reviews each application to determine the effectiveness and efficiency of the plan to disseminate information about the project and demonstrate project activities and results, including—

(1) High quality in its design and procedures for evaluating the effectiveness of the dissemination plan; and

(2) A description of the types of materials the applicant plans to develop and make available to help others replicate project activities, and the methods to be used to make the materials available.

(Approved by the Office of Management and Budget under Control No. 1830-0013)

(Authority: 20 U.S.C. 2441(b))

§ 428.22 What additional factors does the Secretary consider?

(a) After evaluating the applications according to the criteria in § 428.21, and consulting with the appropriate State board established under section 111 of the Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within the affected State; or

(2) Geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 2441(d)(5))

Note: Appendix A and appendix B will not be codified in the Code of Federal Regulations.

APPENDIX A—Analysis of Comments and Changes

PART 400—VOCATIONAL AND APPLIED TECHNOLOGY EDUCATION PROGRAMS—GENERAL PROVISIONS

Definitions—Criminal offender (§ 400.4(b))

Comments: One commenter recommended that the phrase "who is charged with" be removed from the definition of "criminal offender."

Discussion: The Secretary agrees that a person who is charged with a criminal offense is not a criminal offender as that term is commonly used. However, the Secretary believes Congress included these persons under the definition of "criminal offender" so that individuals incarcerated prior to trial could receive services under the Act.

Changes: None.

Definitions—Coherent sequence of courses (§ 400.4(b))

Comments: Some commenters suggested that the regulations should not permit a single adult course to qualify as a sequence of courses. The commenters argued that the definition of "coherent sequence of courses" is incorrect and clearly misinterprets the statute. The commenters recommended that both a coherent series of courses and a sequential course of study—but not a single course—be interpreted as a "series of courses." A number of other commenters supported the position that a single course incorporating a sequence or aggregation of competencies should be eligible for funding. These commenters urged that, for the sake of clarity, the definition of "coherent sequence of courses" be revised to include a single course, rather than providing this information in the preamble.

Discussion: In defining the term "coherent sequence of courses," the Secretary was guided by the statutory definition of "vocational education," which includes competency-based applied learning. Frequently, vocational offerings designed to prepare students for employment are not structured on the basis of a sequence of courses but rather on the aggregation of competencies necessary to perform a job. In the case of adult training and retraining programs, these competencies are invariably structured as sequential units within a single course. Although the statutory definition of "vocational education" is ambiguous, the Secretary believes that Congress clearly intended that competency-based vocational programs be funded under the Act—including competency-based adult training and retraining courses. The definition of "coherent sequence of courses" in § 400.4(b) incorporates a single adult training or retraining course structure if that course leads to an aggregation of competencies necessary for employment.

Changes: The definition of "coherent sequence of courses" in § 400.4(b) has been revised to include sequential units encompassed within a single adult training or retraining course that otherwise meets the requirements of this definition.

Comments: One commenter requested that the definition of "coherent sequence of courses" be changed to include "basic and advanced academic competencies" and "specific and general occupational competencies." The commenter pointed out that Congress intended that programs focus on the broad range of both basic and advanced academic skills and on both general and specific occupational skills.

Discussion: The Secretary agrees that Congress intended that programs funded under the Act focus on the broad range of both basic and advanced academic skills and on both general and specific occupational skills. The Secretary believes that the definition of "coherent sequence of courses" contained in § 400.4(b) contemplates a broad interpretation of academic and occupational skills.

Changes: None.

Definitions—Disadvantaged (§ 400.4(b))

Comments: One commenter suggested that the regulations should clarify that an individual with disabilities may also be economically or academically disadvantaged and may need other services to meet the needs related to their disadvantages.

Discussion: The Secretary agrees that an individual with disabilities may also be economically or academically disadvantaged and, as such, may require and should receive additional services. However, the Secretary notes that the definition of "disadvantaged" is consistent with the unambiguous definition of "disadvantaged" in section 521(b) of the Act, that excludes individuals with disabilities in order to avoid duplicate counts of students.

Changes: None.

Comments: One commenter objected to the definition of "disadvantaged" as it applies to an academically disadvantaged individual as being too restrictive. The commenter felt that the "25th percentile" rule should be changed to the "40th percentile" so as to agree with the practice under Chapter 1.

Discussion: The definition of "disadvantaged" is similar to the definition of this term in the regulations that implemented the Carl D. Perkins Vocational Education Act (CDPVEA). This definition was based on the intent of Congress as expressed in Item 246 of the Conference Report accompanying the CDPVEA. (H.R. Rep. 1129, 98th Cong., 2d Sess. 100 (1984).)

Changes: None.

Definitions—Displaced homemaker (§ 400.4(b))

Comments: One commenter suggested waiving or expanding the requirement to be an adult to qualify as a "displaced homemaker." The commenter expressed concern that the definition is discriminatory if only adults qualified as displaced homemakers. Additionally, the commenter suggested that paragraph (3)(i) of the definition clarify that individuals "currently on public assistance" are included under the definition.

Discussion: The definition in section 521(14) of the Act imposes an unambiguous requirement that only an adult may qualify as a displaced homemaker. However, neither the Act nor the regulations define "adult." Therefore, the issue of whether an individual is an adult is controlled by State law.

With respect to whether individuals who are currently on public assistance would be displaced homemakers, section 521(b) of the Act does not include this group of individuals as a separate category within the definition of "displaced homemakers." However, these individuals may be included in other categories within the definition, such as individuals who are unemployed or underemployed in paragraph (3)(iii) of the definition of "displaced homemaker."

Changes: None.

Comments: One commenter expressed concern that the definition of "displaced homemaker" is overly restrictive, specifically with respect to the language regarding parents who may currently receive aid to families with dependent children. The commenter recommended that parents who have worked primarily in the home for a number of years and are currently receiving public assistance be included in the definition.

Discussion: Section 521(14)(B)(ii) of the Act establishes a condition that a parent may be considered a "displaced homemaker" if his or her youngest dependent child becomes ineligible to receive assistance under the program for aid to families with dependent children under part A of title IV of the Social Security Act within two years of the parent's application for assistance under the Perkins Act. However, the Secretary notes that an individual who may not qualify as a displaced homemaker under this provision may well qualify as a displaced homemaker under other provisions of the definition such as those related to employment status or past dependence on public assistance or the income of a relative. Additionally, this individual may be within the definition of a "single parent," and, thus, may qualify for the same services as a displaced homemaker under §§ 403.80–403.82.

Changes: None.

Definitions—Economically disadvantaged family or individual (§ 400.4(b))

Comments: A commenter noted that § 400.4(b) defines "economically disadvantaged family or individual" to include a family or an individual eligible for the free or reduced-price meals programs under the National School Lunch Act. Further, the commenter noted that the National School Lunch Act prohibits the identification of students by name, and, because of the many restrictions under the Privacy Act, it is extremely difficult for an LEA to identify and verify the number of economically disadvantaged individuals enrolled in its vocational education program. The commenter recommended that the Department further clarify how to identify and verify data on economically disadvantaged enrollment in a vocational education program without legal access to this information.

Discussion: The note to paragraph (1)(iv) of the definition of "economically disadvantaged family or individual" explains that the National School Lunch Act prohibits the identification of students by name. However, State and local projects may use the total number of students participating in the free or reduced-priced meals program to determine eligibility of sites or program areas for projects, services, and activities under the Act.

Changes: None.

Comments: Several commenters noted that the definition of "economically disadvantaged family or individual" does not include two criteria—receipt of a Pell grant or aid under a comparable State program of need-based financial assistance and eligibility for participation in programs assisted under Title II of JTPA—that were included under the regulations implementing the CDPVEA. The commenters recommended that these two criteria be retained in order to allow continued services under section 231 of the Act to the individuals who were served under the predecessor statute.

Discussion: Rather than presenting an exhaustive list of possible indicators of a person's status as economically disadvantaged, the Secretary believes it is more appropriate to list some indicators of economic status while providing grantees the flexibility to identify others, which is specifically provided for in paragraph (4) of the definition of "economically disadvantaged family or individual." However, the Secretary agrees that receipt of a Pell grant or comparable State assistance and eligibility under title II of JTPA are indices that would be representative of a number of economically disadvantaged students attending vocational education programs. Therefore, the definition in § 400.4(b) is modified to include these indices so that a case-by-case determination under paragraph (4) of the definition is not required prior to using them.

Changes: The definition of "economically disadvantaged family or individual" in § 400.4(b) has been modified to include an individual who receives a Pell grant or assistance under a comparable State program of need-based financial assistance, or who is eligible to participate in programs assisted under Title II of the JTPA. A conforming change is made to § 403.114(a).

Comments: One commenter suggested that the definition of "economically disadvantaged family or individual" should incorporate the description utilized in § 403.114.

Discussion: The definition of "economically disadvantaged family or individual" incorporates the same criteria used to identify numbers of economically disadvantaged students attending vocational education programs in § 403.114(a).

Changes: None.

Comments: One commenter recommended that the definition of "economically disadvantaged family or individual" be modified by adding "or the Office of Management and Budget" following "from the Department of Commerce." The commenter pointed out that, since JTPA program eligibility is based on data available from the Office of Management and Budget (OMB), the same data source should be available to the Secretary for defining this term in the Perkins Act.

Discussion: The data to which the commenter refers is known as the OMB Poverty Guidelines but is officially entitled the "HHS Poverty Guidelines" and is published annually in the **Federal Register** by the Department of Health and Human Services. The Secretary agrees that this publication is a direct source of data on poverty thresholds and should be reflected in the regulations so that a case-by-case determination under paragraph (4) of the definition of economically disadvantaged family or individual is not required prior to using these data.

Changes: The phrase "or the Health and Human Services Poverty Guidelines" has been added to paragraph (3) of the definition of "economically disadvantaged family or individual" following the reference to the Department of Commerce. A conforming amendment has been made to § 403.114(a) and to the definition of "acute economic need" in § 401.5(b).

Definitions—Individual with disabilities (§ 400.4(b))

Comments: One commenter asked that the definition of "individual with disabilities" be clarified. Specifically, the commenter asked what constitutes a "major life activity." Also, the commenter asked if self-identification of a disability is acceptable or if there must be an official determination by a Federal or State agency.

Discussion: The definition of "individual with disabilities" in § 400.4(b) is based on the definition of "disability" in section 3(2) of the Americans With Disabilities Act of 1990 (ADA) and includes an individual who has a physical or mental impairment that substantially limits one or more of the major life activities of that individual, has a record of this type of impairment, or is regarded as having this type of impairment. The Secretary believes the definition of "individual with disabilities" in § 400.4(b) should be modified in order to clarify the relationship between this definition and other definitions used under part B of the IDEA and under section 504 of the Rehabilitation Act of 1973.

A "major life activity" is defined in the legislative history of the ADA to mean functions such as "caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and participating in community activities." (H.R. Rep. 485(II), 101st Cong., 2d Sess. 52 (1990).) This is consistent with the definition of "major life activity" in 34 CFR 104.3(j)(2)(ii), which implements section 504 of the Rehabilitation Act of 1973, as it applies to each recipient of Federal financial assistance from the Department of Education.

A student may identify himself or herself as having a disability, but the evaluation and determination of this condition is carried out by the eligible recipient. Under the Perkins Act, an eligible recipient must identify the number of students with disabilities enrolled in vocational programs operated by the eligible recipient. Under section 111(c) of the Act, any State participating in programs authorized by the Act must designate or assign the head of the State office responsible for administering Part B of IDEA to review the implementation of the provisions of the Act as they relate to students with disabilities to ensure that eligible recipients have identified the number of students with disabilities enrolled in the eligible recipients' vocational programs. Additionally, any LEA also receiving funds under Part B of the IDEA is obligated, as a condition of receiving those funds, to locate, identify, and evaluate any student who is suspected of having a disability.

Changes: The Secretary has modified the definition of "individual with disabilities" in § 400.4(b) to clarify that this definition is based on the definition of "disability" as that term is defined in the ADA. The Secretary also has added a note to clarify that this definition necessarily includes any individual who has been evaluated under Part B of the IDEA and determined to be an individual with a disability who is in need of special education and related services, and any individual who is considered disabled under section 504 of the Rehabilitation Act of 1973.

Definitions—Terms regarding individuals with disabilities (§ 400.4(b))

Comments: One commenter suggested that terms relating to individuals with disabilities be added to the definitions section of the regulations. These include "disabled," "children with disabilities," and "transition for children with disabilities."

Discussion: It is Department practice to include in regulations definitions of terms only if necessary to implement the statute. Clearly, "children with disabilities" and "disabled" are included within the definition of an "individual with disabilities." The term "transition for children with disabilities" is not used in the regulations.

Changes: None.

Definitions—Individualized education program (§ 400.4(b))

Comments: One commenter suggested that the term "individualized education program" (IEP) be defined directly in the regulations rather than referring to the sections of the IDEA that contain the definition. Another commenter suggested that the definition of the term "individualized education program" be expanded.

Discussion: IEP is defined by reference because it is necessary for recipients to be made aware of the particular document to which the Secretary refers, rather than to receive guidance on how to develop an IEP as is provided in the definition of IEP in section 602(20) of the IDEA.

Changes: None.

Definitions—Local educational agency (§ 400.4(b))

Comments: One commenter suggested that the definition of "local educational agency" (LEA) should exclude local agencies that are created specifically to administer the Job Training Partnership Act (JTPA).

Discussion: Determination of whether agencies created specifically to administer the JTPA, that is, the so-called "private industry councils" (PICs), are included in the definition of LEA would have to be made on a case-by-case basis. However, the Secretary does not believe that a PIC generally would satisfy all the conditions of that definition. It may be possible for a PIC to fall within the final part of the definition of LEA, which includes "any other public educational institution or agency having administrative control and direction of a vocational education program." "Public" is defined in 34 CFR 77.1 to mean that an agency, organization, or institution is under the administrative supervision or control of a government other than the Federal Government. Clearly, the definition of LEA does not include a PIC that is incorporated as a private nonprofit organization, as permitted by section 103(e)(1) of the JTPA, or a PIC that does not administer directly any vocational education program, as would be permissible under 102(b)(1)(B) of the JTPA. However, a PIC that is a private nonprofit organization and that does provide job training services may qualify for funding under the Act as a "community-based organization."

Changes: None.

Comments: Some commenters questioned whether the definition of "local educational agency" includes tribally controlled school districts.

Discussion: The commenters did not provide sufficient information about what they meant by the term "tribally controlled school district" for the Secretary to determine whether the entity described is within the definition of an LEA. In any case, a State determines in the first instance whether a particular entity is an LEA based on the definition of LEA in § 400.4(b) and related definitions in 34 CFR 77.1.

Changes: None.

Definitions—Single parent (§ 400.4(b))

Comments: A commenter expressed concerns that the definition of "single parent" may be confusing to those who are neither unmarried nor legally separated, but who are separated from a spouse prior to divorce. The commenter argued that a legal separation is not a common practice, but that married couples often separate prior to legalizing the separation through a divorce or other means. The commenter recommended that the term "legally" be deleted from the definition of "single parent" to make the definition more responsive to the needs of a single parent who may be in the process of obtaining a legal separation of some type.

Discussion: The definition repeats section 521(30)(A) of the Act which requires, in part, that a person to be unmarried or legally separated from a spouse in order to qualify as a single parent. However, the question of whether an individual is "legally separated" is an issue outside the scope of the Act and, generally, must be decided as a matter of State law.

Changes: None.

Definitions—Special populations (§ 400.4(b))

Comments: One commenter recommended that the definition of "special populations" be clarified to include displaced homemakers, single parents, and single pregnant women.

Discussion: The Secretary does not believe it is appropriate to expand the unambiguous statutory definition of "special populations" to include these individuals. However, the Secretary notes that many of these individuals might well be participating in programs designed to eliminate sex bias and, thus, would be members of a special populations on this basis.

Changes: None.

Definitions—Vocational education (§ 400.4(b))

Comments: One commenter objected to the phrase "or a sequence or

aggregation of occupational competencies" as it appears in the definition of "vocational education" in § 400.4(b). The commenter argued that this language could be interpreted to authorize a single course of even the shortest length and most superficial content.

Discussion: In defining "vocational education," the Secretary was guided by the statutory definition of "vocational education," which specifically includes competency-based applied learning. Although the statutory definition of "vocational education" is ambiguous, the Secretary believes that Congress clearly intended that competency-based vocational programs be funded under the Act. Frequently, vocational offerings designed to prepare students for employment are structured not on the basis of a sequence of courses, but rather on the aggregation of competencies necessary to perform a job. This is particularly true in the case of adult training and retraining programs. However, the Secretary does not agree that a single course having a short length and superficial content would be within the definition of "vocational education." This definition imposes numerous requirements concerning the content of a vocational education program that a short, superficial course would not satisfy.

Changes: None.

Comments: One commenter recommended clarifying that the term "applied technology education" as it appears in the definition of "vocational education" is not synonymous with the term "technology education" as defined in § 400.4(b).

Discussion: The Secretary agrees that the term "applied technology education" as used in the definition of "vocational education" is not interchangeable with the term "technology education" as defined in section 521(39) of the Act. Item 285 of the Conference Report accompanying the Act indicates that the House bill revised the definition of "vocational education" and relabeled it as "applied technology education." (H.R. Rep. No. 660, 101st Cong., 2d Sess. 155 (1990).) The conferees agreed to the revised definition but retained the term "vocational education" and indicated that the term includes "applied technology education," the term used in the House bill.

The legislative history of the Act is clear that the House bill used "applied technology education" in a manner distinct from the use of the term "technology education." The report of the Committee on Education and Labor indicates that the Committee was aware that there is a movement to rename industrial arts programs as technology education programs. (H.R. Rep. 41, 101st Cong., 1st Sess. 6 (1989).) The Committee specifically indicated that it did not wish its proposed amendments to be confused with the name change of industrial arts programs and that the amendments using the term "applied technology education" would apply only to programs leading to academic and job competencies.

Changes: None.

State committee of practitioners (§ 400.6)

Comments: Several commenters expressed a concern that the membership of the Committee of Practitioners (Committee), as required by section 512(a) of the Act and implemented in § 400.6, does not include representatives from higher education. A number of other commenters indicated that the Committee is composed of too many representatives of secondary education which will have an adverse effect on the development of performance standards and measures relating to postsecondary education. These commenters recommended that the Committee be expanded to include more postsecondary education representatives. Still another commenter expressed concern that the Committee did not have a representative of individuals with disabilities.

Discussion: Section 512(a) of the Act establishes the membership requirements of the State Committee of Practitioners, which does not specifically include a representative of individuals with disabilities, but which, contrary to one comment, does include representatives of institutions of higher education. Section 512(a) of the Act on its face requires that representatives of LEAs constitute a majority of the Committee membership. The Secretary does not believe it is appropriate to modify these unambiguous membership requirements by regulation.

Changes: None.

State rules or regulations (§ 400.7(b)(3))

Comments: One commenter suggested that sections 512 and 513 of the Act are redundant. Section 512 of the Act, which is implemented in § 400.7, requires any proposed or final State rule or regulation to be reviewed by the Committee of Practitioners. Section 513 of the Act, which is implemented in § 400.9(c), requires a State to identify State imposed requirements. The commenter recommended that § 400.7(b)(3) be deleted from the final regulations, thereby reducing the redundancy of sections 512 and 513 of the Act.

Discussion: The purpose of § 400.7(b)(3) is not to establish an additional requirement that might cause a redundancy with the requirement of section 513 of the Act to identify State-imposed requirements. Section 400.7(b)(3) clarifies that any State policy that is binding on recipients is subject to the review of the State Committee of Practitioners. Section 513 of the Act requires that any State-imposed rule or policy be so identified, which is a separate and distinct requirement.

Changes: None.

Reporting requirements (§ 400.10 and Appendix B)

Comments: Although several commenters supported accountability in education programs, the commenters did not agree that the regulations should expand on the law and require more paperwork for many of the programs, e.g., Indian Vocational Education Program, Native Hawaiian Vocational Education Program, National Tech Prep Education Program, etc.

Many commenters thought that the monthly and quarterly reporting requirements in § 400.10(b) would apply to State-administered programs and therefore would affect local agencies participating under the Act. These commenters were concerned that keeping records and gathering data would divert funds or attention away from such aspects as improving the educational process, program implementation, achieving results, and meeting the needs of program participants.

Five commenters suggested that the Department should consider a more simplified, less burdensome approach to accountability. Two commenters thought that monthly and quarterly performance and financial reports in addition to annual reports would be excessive and that annual reports should suffice for accountability purposes. Two commenters noted that the Act includes no such reporting requirements. One commenter noted that the reporting requirements proposed for the National Tech-Prep Education Program are unrealistic and their frequency and timelines are inconsistent with at least one State's accounting and reporting requirements.

Discussion: Due to its silence on the issue of reporting under the State-administered formula grant programs, the summary of Major Provisions, paragraph (1)(e), Reporting Requirements, in the preamble to the proposed regulations, may have created a misimpression when it stated that, "To implement this strategy, § 400.10 establishes a general reporting requirement that must be met by recipients of funds under the Vocational

and Applied Technology Education Programs. Appendix B contains the specific information that the Secretary intends to require any grantee to submit in order to comply with the reporting requirements in § 400.10." Because neither the Summary of Major Provisions nor § 400.10 differentiated clearly between reporting requirements for federally administered discretionary programs and State-administered programs, it is possible that at least some of the commenters believed that all recipients of funds under the Act would have to meet the reporting requirements outlined in § 400.10(b).

Under § 400.10(b), the Department proposed that most discretionary grant recipients be required to provide both quarterly and annual progress reports. The § 400.10(b)(2) requirement for monthly progress reports applies only to the National Network for Curriculum Coordination in Vocational and Technical Education Program. The § 400.10(b)(3) requirement for a monthly exception report applies only to the National Center or Centers for Research in Vocational Education Program. Specific expectations for reporting activities and accomplishments under the State-administered formula grant programs were not explicated in the proposed regulations. The Secretary expects to require only annual performance reports from the States on State-administered formula grant programs, including the State-Administered Tech-Prep Education Program.

The Secretary agrees with the commenters that changing the reporting requirement for the discretionary programs listed in § 400.10(b)(1) from one for quarterly performance reports to one for only annual performance reports would have the advantage of reducing the paperwork burden on grantees. However, the Secretary would also consider such a change as having distinct disadvantages. First, requiring performance reports for discretionary programs to be submitted only on an annual basis would deprive the Department of timely information needed to identify those projects that may be experiencing difficulty in accomplishing certain program objectives. In many cases, grantees may need early technical assistance from the Department in order to improve their projects. In the past, delay in providing the Department with information about project performance has resulted in certain grantees' failure to complete their projects successfully, whereas, had the grantees received timely technical assistance from the Department, the projects might have been successful. Second, since a grantee would have a full 90 days after the end of a project period within which to file its annual performance report, by the time the report was received by the Department there would be insufficient time for the Department to consider the information provided in determining whether to fund a subsequent year's award. For grants ranging in length from 12 to 36 months, annual reports, while generally containing adequate summaries of project information for accountability purposes, have supplied the Department with information that has been both untimely and inadequate for the purposes of planning and project assistance. Thus, while the Secretary recognizes that reducing the reporting requirement from a quarterly reporting requirement to an annual reporting requirement would reduce paperwork burden for grantees, the Secretary believes that, for many of the discretionary programs funded under the Act, requiring grantees to report to the Department more frequently than once a year is essential to the Secretary's ability to provide adequate stewardship over the Federal funds awarded. Accordingly, in response to the commenters, the Secretary has amended § 400.10(b)(1) to require the submission of performance reports to the Department at least on a semi-annual basis rather than on a quarterly basis. In the event that the Secretary determines that additional reports are necessary in order to ensure program integrity and accountability, the Secretary will so notify grantees. If the information in question is available from other sources, such as continuation applications or ongoing Federal evaluation activities, the Secretary will not require recipients of grants or cooperative agreements under any of the parts listed in § 400.10(b)(1) to submit performance reports more frequently than on a semi-annual basis. Moreover, in the event that the Secretary determines that additional reports are necessary under one or more of those programs, under the Paperwork Reduction Act, requiring such additional reports would constitute an information collection request that would be published in the **Federal Register** and subject to public comment and approval by the Office of Management and Budget, thus ensuring that the burden with which the commenters were concerned would be kept to a minimum.

Changes: Section 400.10(b)(1) has been revised to require that recipients of grants and cooperative agreements under parts 401, 402, 405, 408, 409, 413, 415, 416, 417, 419, 422, 423, 424, 425, 426, 427, and 428 must submit project performance reports to the Department at least semi-annually, rather than quarterly. A new paragraph (c) has been added to § 400.10 to clarify that recipients of State-administered vocational and technology education grants under parts 403, 406, and 407 are required to submit annual performance and financial reports to the Department.

Comments: One commenter noted that since the school year is approximately nine months long and encompasses part of two calendar years, annual reporting does not result in the desired effect of clearly reflecting a program's success. The commenter believes, however, that "annual" reporting for student achievement, completion, and placement rates would result in a truer picture than quarterly reporting. This commenter believes that emphasis should be placed on implementing programs rather than on paper compliance.

Discussion: The Secretary calculates "annual" reporting from the effective date of a grant to 12 months later. The term "annual reporting" in the regulation, thus, relates not to a calendar year but to 12 months of program or project operation. The primary purpose of the semi-annual reporting required in § 400.10(b)(1) is that of enabling the Secretary to track the progress of an applicant in meeting operational objectives laid out in the original proposal. The Secretary agrees with the commenter's observation that project or program success by way of outcomes can best be tracked through annual reports. However, as the Secretary has already stated in response to comments relative to the NPRM's quarterly reports requirement for discretionary grants, annual reports are an insufficient basis upon which to plan monitoring and technical assistance, particularly since many program or projects last only 12 to 18 months. The Secretary remains convinced that having recipients under certain projects report progress more frequently than annually is essential to responsible grant and contract management and that the requirement for at least semi-annual reporting does, in fact, place emphasis upon the effective implementation of programs, as was suggested by the commenter.

Change: None.

Part 401—Indian Vocational Education Program

Definitions—Bureau-funded school (§ 401.5(b))

Comments: One commenter noted that Bureau of Indian Affairs-funded (BIA-funded) grant schools were inadvertently left out of the definition of "Bureau-funded schools." This commenter suggested that the Department add, at the end of the definition, the phrase, "or by Title V, Part B—Tribally Controlled School Grants of the Hawkins-Stafford Elementary and Secondary School Improvement Amendments of 1988, as amended (102 Stat. 385; 25 U.S.C. 2501, *et seq.*)."

Discussion: BIA-funded grant schools are included in the definition of Bureau-funded schools through the use of the phrase, "A school for which assistance is provided under the Tribally Controlled Schools Act of 1988."

Changes: None.

Submission of applications (§ 401.10(a))

Comments: One commenter noted that the term "tribal organization" as defined in § 401.5(b) would include BIA-funded contract and grant schools and tribal colleges. The commenter therefore suggested that the phrase, "other than a Bureau-funded school as defined in § 401.5," be added to the regulation to clarify that the requirement for the submission of applications under § 401.10(a) does not apply to Bureau-funded schools.

Discussion: The Secretary agrees that § 401.10(c) was intended to provide Bureau-funded schools flexibility to submit their applications directly to the Secretary or through an Indian Tribe, whichever best suits the proposed project. Section 401.10(a) is intended to apply to other tribal organizations that must submit their applications through an Indian tribe.

Changes: Section 401.10(a) has been changed to clarify that Bureau-funded schools are not subject to the application provisions in that section.

Selection criteria (§ 401.21)

Comments: One commenter noted that the Secretary's heavy emphasis in § 401.21 on job placement may communicate a program bias against continuing work-related education and training in postsecondary institutions. This commenter asked that the selection criteria make explicit reference to the fact that "job placement" does not require immediate job placement after completion of a vocational education course to the detriment of high school students who wish to pursue additional education.

Discussion: Although job placement is an important factor in this program, the Secretary agrees that it is also appropriate for a project to place participants in additional training opportunities that are related to a participant's training under the project. The additional training opportunities could very well include enrollment in postsecondary education or military specialties.

Changes: Section 401.21(a)(1) and (g) have been revised to clarify that placement in training programs or the military are appropriate activities.

Part 403—State Vocational and Applied Technology Education Program

Additional responsibilities of the State board (§ 403.12(b)(1))

Comments: One commenter suggested clarifying § 403.12(b)(1), to indicate that a State's technical committees must develop an inventory of skills needed for occupational areas that includes basic and advanced academic skills and specific and general occupational skills. The commenter stated that this is important to ensure that the work of these technical committees is consistent with the central provisions of the Act that set forth the range of skills that will be used for purposes of assessing and evaluating programs. In addition, the commenter believes that the change would reflect congressional intent that committees focus on basic and advanced academic skills and general occupational skills, not just narrow skill training.

Discussion: The Secretary agrees that the types of skills identified by the commenter should be included in an inventory of skills, as appropriate. However, the Secretary believes that § 403.12(b) is sufficiently specific on this matter. A State board may provide additional guidance to its technical committees if it chooses to do so.

Changes: None.

Duties of State personnel responsible for the elimination of sex discrimination and sex stereotyping (§ 403.13(a)(11))

Comments: Several commenters requested an explanation of the requirement in § 403.13(a)(11) that State personnel working full time to assist the State board in administering the Program for Single Parents, Displaced Homemakers, and Single Pregnant Women and the Sex Equity Program by "managing the distribution of funds" under those programs. Specifically, the commenters asked whether the so-called "sex equity coordinator" is solely responsible for the determination of recipients selected, the amounts of awards, and the priorities for each program.

Discussion: Section 111(b)(1) of the Act requires any State that wishes to participate in programs under the Act to assign one individual within the appropriate agency as designated or established by the State board to act as the "sex equity coordinator." That agency, consistent with State board policy and the requirements of the Act, defines the organizational responsibilities of the "sex equity coordinator." While the Secretary believes that Congress intended a State board to allow the "sex equity coordinator" to have considerable involvement in decisions regarding the Sex Equity Program and the Single Parents, Displaced Homemakers, and Single Pregnant Women Program, the Secretary does not believe that this was intended to diminish a State board's continuing authority as the sole State agency responsible for the administration or the supervision of the State vocational education programs. The Secretary believes that the Act together with the regulations in Part 403 provide sufficient guidance in this respect and that additional regulations, which might inappropriately limit State flexibility, are not warranted.

Changes: None.

Personnel requirements regarding coordination with services for individuals with disabilities, services under Chapter 1 of Title I of the Elementary and Secondary Act, and programs for individuals of limited English proficiency (§§ 403.14, 403.15, and 403.16)

Comments: One commenter noted apparent inconsistencies in §§ 403.14, 403.15, and 403.16, which require State personnel to coordinate services for individuals with disabilities, economically disadvantaged students, and individuals of limited English proficiency, respectively. While § 403.14 provides for a review of eligible recipients' plans, §§ 403.15 and 403.16 require a review of eligible recipients' applications. In addition, the commenter requests that the review criteria be uniform to the extent possible.

Discussion: Although sections 111(c), (d), and (e) of the Act refer to the review of "plans," the Secretary believes it is clear that Congress was referring to "applications" for funding submitted by eligible recipients. The Secretary agrees that this term should be used uniformly in §§ 403.14, 403.15, and 403.16. With respect to consistency of the criteria for review set forth in these sections, the Secretary finds that variations reflect differences in the applicable language contained in sections 111(c), (d), and (e) of the Act.

Changes: Section 403.14(a) has been changed to clarify that the documents to be reviewed are applications submitted by eligible recipients.

Comments: Several commenters suggested that in addition to the requirement for the head of the State

offices responsible for administering part B of the Individuals with Disabilities Education Act (IDEA), chapter 1 of title I of the Elementary and Secondary Education Act, and programs for students of limited English proficiency (or their designees) to review all or a representative sample of the applications received from eligible recipients, the Secretary should also require that those officials monitor and evaluate the implementation of approved plans.

Discussion: Section 113(b)(3) of the Act requires the State board to monitor its eligible recipients' programs with respect to whether they are meeting the needs of members of special populations. This is reinforced by the requirements of section 118(a)(3)(E) and (4) of the Act related to monitoring. Thus, while a State voluntarily may delegate its monitoring and evaluation responsibilities pursuant to section 111(a) of the Act, the Secretary believes it would be inappropriate to require a State to have the State personnel referred to in §§ 403.14, 403.15, and 403.16 perform monitoring and evaluation functions.

Changes: None.

Comments: Several commenters suggested deleting from § 403.15 the word "economically" so that State personnel must review the identification of, and provision of services to, all disadvantaged students—not just economically disadvantaged students. The commenters argued that, while use of the term "economically" conforms to the language in section 111(d) of the Act, upon which § 403.15 is based, it is not consistent with the overall language of the Act that accords special status to both academically and economically disadvantaged students.

Discussion: The requirement of § 403.15 reflects the unambiguous language of section 111(d) of the Act. The Secretary does not believe that it is appropriate to impose additional requirements to review services to all disadvantaged students rather than just economically disadvantaged students.

Changes: None.

State council—Establishment [§ 403.17]

Comments: Several commenters suggested that § 403.17 be revised to allow State council members to be appointed for 3-year terms on a staggered basis. Some commenters also suggested that State council members should be removed only "with cause." One commenter supported these suggestions by stating that for State councils to be independent, members must be free from intimidation by the appointing authority.

Discussion: As was the case under the predecessor statute, under section 112 of the Act as implemented by § 403.17, a State appointing authority (the Governor, or in a State in which members of the State board of education are elected, the State board of education) currently has the option of appointing State council members for staggered terms so long as the appointing authority maintains a duly certified State council throughout the period covered by the State plan. The Secretary finds no basis in the Act for requiring terms of specific duration, limitations upon the duration of terms, or the appointment of members to staggered terms. Nor does the Secretary consider it necessary to the proper functioning of State councils or to ensuring the independence of State councils to impose these requirements upon State appointing authorities.

With regard to the commenters' suggestion that appointing authorities be permitted to remove State council members only for cause, the Secretary wishes to point out that the Act also does not mandate any specific procedures for the removal or replacement of council members. Under section 112 of the Act, an appointing authority may appoint and remove council members at will so long as the action is consistent with State law and does not impede the fiscal and administrative independence of the State council, and so long as the State council remains in compliance with the membership and certification requirements of section 112 of the Act. Thus, the Secretary has determined that it is not appropriate to develop specific regulations governing the appointment or removal of State council members. Rather, in view of the flexibility provided in the Act, the Secretary considers it preferable to allow a State appointing authority to appoint and remove State council members in a manner to be determined by that appointing authority. In specific response to the commenter's concern regarding what is referred to as the potential intimidation of a State council by an appointing authority under the statutory appointment scheme, notwithstanding the determination that a State should retain the flexibility afforded to it by section 112 of the Act, the Secretary fully expects each State council to be operated free from intimidation by the appointing authority, in keeping with the requirements of section 112(e) and (f) of the Act, as implemented by these final regulations.

Changes: None.

Comments: One commenter objected to the requirement that each State recertify to the Secretary any new members of a State council within 60 days after the position is vacated. The commenter indicated that 60 days is an insufficient period and recommended that 120 days be allowed.

Discussion: The Secretary considers it important to the proper and efficient functioning of a State council to have all council vacancies filled expeditiously. The Secretary believes that 60 days is a reasonable period of time within which to require States to fill and to certify council vacancies.

Changes: None.

State council—Membership (§ 403.18(b)(2)(i)).

Comments: One commenter pointed out a discrepancy between the language in section 112(a)(2) of the Act and § 403.18(b)(2)(i). The commenter noted that while section 112(a)(2) of the Act provides that each State council must consist of "six individuals who are representatives of secondary and postsecondary vocational institutions (equitably distributed among such institutions) * * * of whom one member shall be representative of special education * * *," § 403.18(b)(2)(i) states that each State council must consist of "six individuals, one of whom must be representative of special education, who are representative of secondary and postsecondary vocational institutions (equitably distributed among those institutions)." The commenter did not make clear his objection to the phrasing in § 403.18(b)(2)(i) other than to state his opinion that the language in the Act was clearer.

Discussion: The Secretary wishes to clarify that in this provision the Secretary did not intend to impose a requirement different from the requirement contained in section 112(a)(2) of the Act. Rather, § 403.18(b)(2) was intended to implement and state more clearly the requirement contained in section 112(a)(2) of the Act. The requirement in question is that a State appoint to its council six individuals who are representative of secondary and postsecondary vocational institutions and who are equitably distributed among those institutions.

Changes: None.

State council—Responsibilities (§ 403.19).

Comments: One commenter suggested that § 403.19(a)(1) of the regulations be changed to specify that a State council be required to meet within 90 days following the Secretary's acceptance of its certification instead of "as soon as practical." The reason given for this proposed change is that, in the opinion of the commenter, imposing this 90-day deadline would prevent the appointing authority from delaying the appointment of council members.

Discussion: The Secretary agrees with the commenter that appointments of members to a State council should be made as expeditiously as possible. However, in section 112(c) of the Act, a State council is specifically provided with the flexibility to schedule its first meeting "as soon as practical after certification has been accepted by the Secretary * * *," leaving it to the discretion of the council to determine the timing of its first meeting, taking into account the variety of considerations that might come into play in scheduling such a meeting. In the view of the Secretary, imposing a specific deadline upon a council for the scheduling of its first meeting following the Secretary's acceptance of certification (such as that of 90 days as was suggested by the commenter) would eliminate the flexibility provided to a State council in section 112(c) of the Act while having a questionable effect upon the appointing authority's timing of appointments to the council. Moreover, the Secretary wishes to point out that section 112 of the Act as well as these regulations already contain requirements that are likely to encourage a State appointing authority to appoint council members expeditiously. First, under section 112(b) of the Act, a State is required to certify to the Secretary the establishment and membership of its State council by the beginning of each State plan period and cannot receive its grant award until council certification has been accepted by the Secretary. Second, § 403.17(b) specifically requires a State to certify the establishment and membership of its council by June 1st prior to the beginning of each State plan period. Third, the Secretary's acceptance of certification cannot occur until all 13 members have been properly appointed to the council. The Secretary is hopeful that these requirements will result in an expeditious State council appointment process and has concluded that it is neither appropriate nor necessary to impose a deadline for a first meeting by a State council, as has been proposed by the commenter.

Changes: None.

Comments: Several commenters were concerned that the State councils were losing independence and requested that § 403.19(c) be rewritten to ensure independence. Specifically, the commenters requested that this provision be expanded so as to prohibit a State council from performing services for other councils or agencies and to affirm that the expenditure of a State council's funds must be determined solely by that State council.

Discussion: While each State must establish a State council that fulfills all the requirements of section 112 of the Act, there is no prohibition in the Act against cooperation and coordination between the State council, job training and employment councils, or other State advisory councils or groups. In fact, this cooperation and coordination is contemplated by section 112 of the Act and the requirements contained therein relative to State Job Training Coordination Councils and State Councils on Vocational Education. Moreover, a State council may participate in or serve as a State council with broader vocational training or employment responsibilities, such as a "Human Resource Investment Council" or other "super council" so long as its activities, functions, and composition meet all the requirements of the Act pertaining to State Councils on Vocational Education. However, it is also clear that in carrying out the coordination functions contemplated in section 112 of the Act, neither the State nor a State entity may restrict a State council so as to prevent the council from carrying out its functions under the Act in an independent fashion. Section 112 of the Act specifically requires each State council to have sufficient administrative and fiscal independence to carry out its statutory responsibilities in that the administrative and fiscal independence of a State council is expressly provided for in sections 112(e) and 112(f)(2) of the Act. Section 112(e) of the Act, as implemented by § 403.19(c)(1), authorizes a State council to obtain the services of personnel or contract for services so that the council may carry out its functions under the Act, including evaluation functions. Section 403.19(c)(2) requires a council to carry out its functions independent of programmatic and administrative control by other State boards, agencies, and individuals. (See discussion of § 403.19(c) in this Appendix.) Section 112(f)(2) of the Act, as implemented by § 403.19(c)(3)(i), provides that the expenditure of funds for a State council "is to be determined solely by the State council for carrying out its functions under [the Act], and may not be diverted or reprogrammed for any other purpose by any State board, agency, or individual." It is the view of the Secretary that § 403.19 appropriately conveys both the requirement for coordination as described in this discussion, as well as the requirement for administrative and fiscal independence of the council.

Changes: None.

Comments: One commenter suggested that § 403.19(c)(1) be reorganized to combine paragraphs (c)(1) (i) and (ii). The commenter believed that this change would more accurately reflect the intent of section 112(e) of the Act.

Discussion: The Secretary has reviewed section 112(e) of the Act and agrees with the commenter that a revision of § 403.19(c) is needed. The Secretary has revised this provision to more accurately reflect the requirement in section 112(e) of the Act that a State council must carry out all of its functions independent of programmatic and administrative control by other State boards, agencies, and individuals. In these final regulations, the clause pertaining to the independence of the council now refers to those functions that are performed directly by council personnel as well as to those functions that the council may choose to perform by contracting for services.

Changes: The clause containing the requirement that the council perform its functions independently has been deleted from § 403.19(c)(1)(ii). The Secretary has added a new paragraph (3) to § 403.19(c), which provides that in carrying out any of its functions, whether carried out directly by council personnel or by way of one or more contracts for services, a State council must carry out its functions independent of programmatic and administrative control by other State boards, agencies, and individuals.

State plans—Development [§ 403.31).

Comments: One commenter requested that § 403.31(b), relating to public hearings, require that organizations and groups that are composed of, or represent, parents, students, and special populations be consulted in developing notices and hearings to ensure that they have genuine opportunities to participate in the process. The commenter stated that reports from various States indicate that these entities are not receiving timely notice, and that, where notice is provided, sufficient information for purposes of providing informed input sometimes is not available.

Several other commenters, however, expressed concern that the requirement in § 403.31(c) to provide public notice of a hearing on a State plan at least 30 days in advance is not expressly contained in the statute and may conflict with State laws.

Discussion: Sections 403.31(b) and (c) implement section 113(a)(2)(B) of the Act, which provides that a State must

hold public hearings on the State plan, after giving "appropriate and sufficient notice" to the public. The Secretary believes that some guidance is required to ensure that adequate time is provided for the public to prepare for a hearing, and that the provision in § 403.31(c) requiring 30 days notice is not burdensome for the State board. In response to the comment that the provision for 30 days notice conflicts with State law, the Secretary notes that, under § 403.32(a)(1), a State must make an assurance in its State plan that it will comply with the Act and the implementing regulations.

With respect to the comment that the regulations should provide for the participation of various groups in preparation of the notice to ensure that the notice provides the information necessary for informed participation, the requirement for appropriate and sufficient notice in § 403.31(b) applies not only to the timing of the notice but also to its form and content. The Secretary would like to clarify that, in order to meet this requirement, the State must design a notice that includes information, or instructs members of the public in how to obtain information, that is sufficient to enable members of the public to present informed views and make recommendations on the plan at the hearing.

Changes: None.

Comments: One commenter suggested the insertion of "academic, occupational" before "training and retraining needs" in § 403.31(f) in order to be consistent with section 113(a)(3)(A) of the Act. The commenter also requested the addition of "and determining the relative allocation of funds among secondary, postsecondary, and adult vocational education programs" after "in developing the State plan."

Discussion: Section 403.31(f) implements section 114(a) of the Act, which provides that the State must consider the relative training and retraining needs of secondary, postsecondary, and adult students after consulting with the appropriate State agencies, in developing the State plan. The commenter's concern with the requirement that the State consider the academic and occupational needs is addressed in § 403.203(e), which implements the requirement in section 113(a)(3)(A) of the Act that the State, in developing its plan, assess the relative academic, occupational, training, and retraining needs at the three instructional levels.

Additionally, the Secretary would like to clarify that other provisions in the regulations fully address the commenter's concern that in allocating funds between the secondary, postsecondary, and adult levels the State should consider the relative needs at the three levels. As noted, § 403.203 provides for a State assessment of the needs at the secondary, postsecondary, and adult levels. Paragraphs (b) (1), (2), and (13) of § 403.32 provide that the State plan must describe the results of the assessment, how the uses of funds address the needs identified in the assessment, and the rationale for the distribution of funds among secondary, postsecondary, and adult programs.

Changes: None.

State plan—Content (§ 403.32)

Comments: Several commenters noted that section 113(b)(20)(B) of the Act appears to require an annual report by a State demonstrating that expenditures aggregated within the State for career guidance and vocational counseling from allotments under title II are not less than the expenditures for guidance and counseling within the State in the fiscal year 1988. Noting that § 403.32(a)(15) would require this report to be submitted only once during each State plan period, the commenters requested that the regulations be changed to conform to the statutory requirement for annual reporting.

Discussion: The requirement in § 403.32(a)(15) for the report to be issued only once during each State plan period is based on congressional intent as expressed in the conference report (H.R. Rep. No. 660, 101st Cong., 1st Sess. 111 (1990)), which states that "[t]he managers intend that this provision will result in States reporting in the State plan on expenditures for guidance and counseling. Although the assessment is to be done annually, reporting is required only as part of the State plan."

Changes: None.

Comments: Some commenters expressed the view that a State's assurance to provide equal access for members of special populations must apply not only to programs funded under Title II of the Act but also to programs funded under Title III of the Act. These commenters also argued that the equal access requirements should not be limited to projects supported with Federal funds. According to one commenter, a contrary interpretation would allow States and other agencies to use "empty pockets" as an excuse not to serve special populations students.

Another commenter supported the provisions of the regulations that clarify that an eligible recipient is required to spend only Federal funds to satisfy the requirements imposed by section 118 of the Act. However, the commenter noted that the regulations did not clarify a State's financial responsibility for providing equal access under § 403.32(a)(18)–(19), and recommended that the Secretary adopt the same rule for both States and eligible recipients and clarify that a State is not required to use non-Federal funds to meet these requirements.

Discussion: The Secretary intends the State assurances to provide equal access that are required by § 403.32(a)(18)–(19) to apply to the entire vocational education program operated by the State and its recipients. These assurances broadly require that members of special populations will be provided equal access to the full range of vocational education programs available to members of the general population, including the specific projects, services, and activities funded under the Act. Equal access required by these provisions means providing members of special populations with an opportunity to enter vocational education that is equal to the opportunity provided to general population students. See the discussion in response to a comment on § 403.111 (a)(2)(i) and (c)(3). The Secretary does not believe that it is possible or appropriate to limit application of the assurances of equal access to students in specific projects, services, and activities that are funded under the Act. To do so would be inconsistent with the concept of fundamental fairness that equal access is intended to provide for members of special populations.

However, the Act does not create new civil rights or individual entitlements to particular services, nor does the Secretary agree that a State has an unlimited financial responsibility to serve special populations students.

Changes: A new § 403.188, which contains provisions parallel to those applicable to an eligible recipient under § 403.193(e), is added to clarify that a State's financial responsibility to serve members of special populations under § 403.32(a)(18)–(19) is not unlimited, and that a State is required to spend only funds awarded under the Act to satisfy these requirements, unless it is required by other applicable laws to spend non-Federal funds.

Comments: One commenter noted that all special populations are covered by a State's assurances to provide equal access. The commenter supports the goal of full and equitable participation for all students in all vocational education programs—not just students with individualized education programs (IEPs) under the Individuals with Disabilities Act (IDEA).

Discussion: The Secretary agrees that § 403.32(a)(18) and (19) requires a State to make an assurance that it will provide equal access to all members of special populations. However, as indicated in § 403.32(a)(20) through (26), other State assurances required by section 118(a) of the Act on their face do not apply to all members of special populations. For example, § 403.32(a)(22) requires a State to make an assurance that it will provide the rights and protections of section 504 of the Rehabilitation Act of 1973 to students with disabilities—not members of all of the special populations.

Changes: None.

Comments: One commenter believed that § 403.32(a)(20) should require that vocational education for students with disabilities be provided in the least restrictive environment in accordance with section 612(5)(B) of the IDEA as a component in an IEP for any student 16 years of age and, as appropriate, for any student 14 or 15 years of age.

Discussion: Section 118(a)(3)(A) requires that an IEP include as a component vocational education in the least restrictive environment if it is appropriate without regard to the age of the student. The Secretary believes that this requirement is clear from § 403.32(a)(20).

Changes: None.

Comments: Some commenters suggested moving the phrase "with respect to vocational education programs" in § 403.32(a) (21) and (22) to more closely conform to the statutory language and to clarify the meaning of the phrase.

Discussion: The Secretary believes that § 403.32(a) (21) and (22) clearly refer to the rights and protections of students with disabilities with respect to their participation in vocational education programs.

Changes: None.

Comments: Several commenters requested clarification of § 403.32(a)(22), which requires an assurance that students with disabilities who do not have IEPs under the IDEA, or who are not eligible to have IEPs with respect to vocational education programs, will be afforded the rights and protections afforded under section 504 of the Rehabilitation Act of 1973. The commenters believed that an IEP is by definition part of what makes a student qualified to be labeled as disabled. Thus, the commenters believed that the requirement to provide services to students with disabilities who are not eligible for services under the IDEA is internally inconsistent.

Discussion: The definition of "individual with disabilities" for purposes of the Perkins Act is contained in § 400.4(b) and includes individuals in addition to those who have been evaluated under part B of the IDEA and who have IEPs. "Individual with disabilities," which is based on the definition of "disabilities" contained in section 3(2) of the Americans with Disabilities Act (ADA), includes any individual who (1) has a physical or mental impairment that substantially limits one or more of the major life activities of that individual; (2) has a record of this type of impairment; or (3) is regarded as having this type of impairment. As the note to the definition in § 400.4 makes clear, this necessarily would include any individual who is considered to have a disability under either section 504 of the Rehabilitation Act of 1973 or the IDEA.

The Secretary also wishes to emphasize that section 504 of the Rehabilitation Act of 1973 applies independently of the IDEA to any program or activity that receives Federal education funds. Section 504 prohibits discrimination against otherwise qualified individuals with handicaps in federally assisted programs or activities. That Act contains a definition of "individuals with handicaps" which includes the same individuals who would be included in the definitions related to individuals with disabilities in the ADA and the Perkins Act. Therefore, even though an individual does not qualify for an IEP under the IDEA (e.g., the individual is at the postsecondary education level or has a disability that is not covered by the IDEA), that person may be within the definition of an "individual with disabilities" for purposes of the Perkins Act.

Changes: The definition of "individual with disabilities" in proposed § 400.4(b) has been changed to conform more closely to the statutory definition in the Perkins Act and to add a note to clarify the relationship of this definition to definitions contained in the IDEA and section 504 of the Rehabilitation Act of 1973.

Comments: Some commenters recommended amending § 403.32(a)(26)(i)(A) to indicate that the requirement to carry out provisions related to members of special populations under the general supervision of individuals in the appropriate State educational agency or State board who are responsible for these students refers to the personnel identified in §§ 403.13–403.16—not other vocational staff. These commenters also requested that § 403.32(a)(26)(i)(A) be expanded to require as part of this general supervision that the designated personnel and vocational staff jointly plan, review, and sign off on matters related to members of special populations in all phases, and that the State plan describe in sufficient detail the mechanisms by which this supervision occurs and how decisions actually are made jointly by these personnel and the State directors.

Discussion: Section 118(a)(5)(A) of the Act specifically refers to individuals in the State educational agency or in the "State board," which is defined in section 521(34) of the Act to mean the sole State agency responsible for the administration of vocational education, or for the supervision of the administration of vocational education in the State. Thus, the Secretary believes that the Act provides flexibility for a State to determine which personnel most appropriately would provide general supervision of the requirements related to members of special populations. Similarly, the Secretary believes that the State has flexibility to determine what specific responsibilities this individual will have in overseeing the implementation of requirements related to members of special populations. However, section 113(b)(23) of the Act, as implemented in § 403.32(b)(12), requires that the State describe in its State plan how it will comply with the provisions related to members of special populations, which would include a description of the general supervision required under § 403.32(a)(26)(i)(A).

Changes: None.

Comments: Several commenters stated that requiring a State to describe the estimated distribution of funds "for each institutional level" in § 403.32(b)(4) is unduly prescriptive and outside the scope of the Act.

Discussion: The Secretary wishes to clarify that a State must describe the estimated distribution of funds to each of the types of institutions listed by "instructional" level, i.e., secondary, postsecondary, and adult education levels, and not "institutional" levels, as indicated in proposed § 403.32(b)(4). This requirement applies separately to funds awarded under sections 225, 231, and 232 of the Act.

The Secretary believes that § 403.32(b)(4) clarifies the ambiguity in section 113(b)(4) of the Act, which could be read to require a description of the estimated distribution of funds to each individual eligible recipient. The Secretary believes this reading would impose an unnecessary burden on a State. Section 403.32(b)(4) represents a less burdensome interpretation, requiring a State to describe the estimates by instructional level, and is

consistent with the provisions in sections 113(a)(3)(A), 113(b) (1) and (2), and 114(a) of the Act that a State must, in developing its State plan, consider the needs at the secondary, postsecondary, and adult education levels, and include information in the State plan regarding these needs and how they will be met.

Changes: Section 403.32(b)(4) has been revised to clarify that a State is required to estimate the distribution of funds for each type of institution listed, by "instructional" level—secondary, postsecondary, and adult education.

Comments: One commenter stated that § 403.32(b)(6) is overly prescriptive in that it requires a State to conduct a labor market analysis "that is not limited to the area in which the school is located," a requirement not contained in section 113(b)(7) of the Act. The commenter asked if this meant that the area intended by the regulation was out of the local labor market or out of the State.

Discussion: Section 403.32(b)(6) is based on congressional intent, reflected in the conference report, that the labor market analysis "not be limited to the area in which the school is located." (H.R. Rep. No. 660, 101st Cong., 1st Sess. 109 (1990)). For some occupations, a regional or multi-State labor market analysis may more accurately reflect available job opportunities. With the exception of not limiting the market analysis to the area in which the school is located, the regulations give a State the flexibility to determine the appropriate labor market area for the purposes described in § 403.32(b)(6).

Changes: None.

State plans—Submission (§ 403.33)

Comments: Several commenters believed that the regulatory requirement for a 60-day review and comment period by the State Job Training Coordinating Council and the State Council on Vocational Education prior to the submission of State plans to the Department is not based on a statutory requirement. The commenters stated their belief that this time period is excessive.

Discussion: The Secretary believes a 60-day review period is reasonable and necessary to carry out the many provisions in the Act for coordination and review between the State board, the State council, and the State Job Training Coordinating Council. The State Council on Vocational Education (State council) is the entity formally charged with advising the State Board for Vocational Education on the development of a State plan. Section 111(a)(1)(B) of the Act requires that the State board consult with the State council in the development of the State plan, and section 113(c) of the Act requires the State council and the State Job Training Coordinating Council to review any substantial amendments to the State plan prior to submitting the amendments to the Department. Sections 112(d)(2)(A) and (e) of the Act authorize the State council to make recommendations on the State plan and to submit comments on the State plan to the Secretary, and section 113(b)(14) of the Act requires joint planning and coordination with programs conducted under the JTPA. In light of these requirements for coordination and review, the Secretary believes that the 60-day period is reasonable and necessary in order to ensure that a sufficient period of time is provided to the State council in which to perform this crucial review function.

Changes: None.

State plans—Amendments (§ 403.34)

Comments: One commenter requested clarification of what constitutes a "substantial" amendment to an approved State plan as set forth in § 403.34.

Discussion: While general guidance regarding the determination of "substantial" is contained in § 403.34 and 34 CFR 76.140(b), the Secretary believes that a State board should decide in the first instance if changes in the program require an amendment to the State plan.

Changes: None.

State allotments—Awards to State councils (§ 403.50(b)(2))

Comments: Several commenters requested that § 403.50(b)(2) be revised so as to authorize a grant award to a State council as soon as the State council has satisfied the requirements with which it must comply, even if this results in an award to a State council being made before the State plan has been fully approved by the Secretary. The commenters stated that in making the funding of a State council contingent upon the Secretary's approval of the State plan, the regulations risk jeopardizing the objectivity of State councils since the very objections to the State plan that a council might submit could delay the Secretary's approval of that State plan and, therefore, delay the council's funding. The commenters were of the opinion that, under § 403.50(b)(2), the very objectivity of a State council could lead to its fiscal demise and that the current funding scheme undermines the autonomy of a State council. The commenters suggested that the only circumstance under which a council's grant award should be withheld is when the council is not in compliance with specific requirements pertaining to State councils, and that council grants should not be withheld due to non-compliance by the State board with State plan and other statutory requirements, over which the council has no control.

Discussion: Section 501(b) of the Act provides that the Secretary shall make payment to each State council of a State that has a State plan approved under section 114 of the Act and does not specifically provide for an allotment of funds to be awarded to a State council prior to State plan review and approval. However, the Secretary has concluded that section 501(b) of the Act does provide some flexibility in this area. The Secretary recognizes that in the State plan review and approval process there may be instances where a State plan is determined by the Secretary to be in substantially approvable form at a time when the State council has fully complied with all the statutory requirements applicable to the council. The Secretary also has considered the commenters' statements regarding the potential loss of council objectivity, autonomy, or both, if a delay of council funding is the direct result of a council's legitimate objections to a State plan. The Secretary does not think that Congress intended the statutory provisions providing for an allotment to a State council to result in the undermining of the council's objectivity and autonomy or to result in providing a reward to a State council for failing conscientiously and effectively to fulfill its advisory role. It is important to recognize that, for the first time, under the Act a State board for vocational education is required to include in its State plan the results of a detailed needs assessment, as well as program planning information, that it was not required to provide under the predecessor statute. Consequently, the responsibilities of each State council have increased and the importance of each council's advisory function has been heightened by the Act. Because the Secretary believes that Congress intended each State council to assist the State board in the development of a high quality State plan in an objective and effective manner, the Secretary views a grant award to a State council as being authorized at the point at which: (1) There is no further compliance activity required on the part of the council and (2) the Secretary has determined that the State plan is in substantially approvable form. The Secretary believes that this interpretation is consistent with part 76 of the Education Department General Administrative Regulations, under which the Secretary informs a State of when it can begin to obligate funds under the Act after the Secretary determines that the State plan is in substantially approvable form. (See 34 CFR 76.703).

Changes: The Secretary has revised § 403.50(b)(2) to provide that a State council that otherwise has complied with all applicable requirements and has submitted its annual budget for the following program year will be eligible to receive its grant award for the following year once the Secretary has determined that the State plan is in substantially approvable form.

State plans—Approval (§ 403.52)

Comments: One commenter stated that § 403.52 should provide that the Secretary will inform the State council of the reasons for the delay or non-approval of the State plan. The commenter indicated that State councils must be involved in the planning, development, and review of the State plan, and consequently must be aware of any problems with that plan.

Discussion: As set forth in § 403.19, the role of the State council with respect to State plans is limited to providing advice and recommendations on the development of those plans. There is no provision in the Act requiring the State board to include the State council in the communications between the State board and the Secretary about the State plan during the period between its submission and final action, although the State board may include the State council in this process. However, if a State has to develop a new plan in response to the Secretary's review, the State council must perform its function of providing advice and recommendations on the plan in accordance with § 403.19. The Secretary wishes to point out that 34 CFR 76.106 provides that the State board is required to make available, upon request, correspondence between the Secretary and the State regarding the State plan.

Changes: None.

Comments: One commenter noted that under § 403.52(a)(1) a State plan may be rejected for lack of sufficient quality, but that standards of quality are not included in the regulations. The commenter requested that these standards be stated in the regulations before this requirement is applied.

Discussion: The Secretary is considering whether to publish guidance to clarify the requirements in section 114(a) of the Act that the State plan and amendments must be of sufficient quality to meet the objectives of the Act.

Changes: None.

Comments: One commenter recommended that § 403.52(b)(1) be changed to require the State board to allow 60 days for the State council and State Job Training Coordinating Council to review amendments to State plans. The commenter noted that this change would enable these councils to make comments available to the Secretary in a timely manner.

Discussion: The Secretary agrees that State councils and State Job Training Coordinating Councils should be afforded sufficient time to review and comment on amendments to State plans. The Secretary notes that § 403.33 requires that these councils have at least 60 days to review and comment on State plans. However, the Secretary does not believe that 60 days are needed to review and comment on amendments.

Changes: None.

Basic programs of sufficient size, scope, and quality (§ 403.62)

Comments: One commenter expressed concern that the phrase "programs of sufficient size, scope, and quality" was not defined in the regulations. The commenter expressed the view that, since accountability is a goal of the new Act, defining this term would ensure that all States work with the same criteria. Another commenter suggested that the definition of "programs of sufficient size, scope, and quality" should remain unregulated in order to permit each State the flexibility to create an appropriate State definition.

Discussion: The Secretary believes that § 403.62(a) is clear that programs must be of sufficient size, scope and quality to give reasonable promise of meeting the vocational education needs of students involved in the projects. See also the response to a similar comment related to "size, scope, and quality" as that term is used in § 403.111(c)(1).

Changes: None.

State-operated schools (§ 403.63)

Comments: Several commenters expressed concern that projects, services, and activities carried out by a school operated by a State agency would be subject to the onerous application requirements for eligible recipients described in § 403.190. The commenters did not believe these requirements should be applicable to a State-operated school.

Discussion: Section 403.190 implements the requirements in sections 111 (c)(1), (d), and (e), 116(c), and 240 of the Act, which on their face do apply to State operated schools.

Changes: None.

State programs and State leadership activities (§ 403.70)

Comments: One commenter suggested that the term "projects" as it appears in the first sentence of § 403.70 be changed to the term "programs" in order to be consistent with past Departmental interpretation of these terms.

Discussion: Historically, in the regulations implementing the State vocational education program, the Secretary has used the term "program" to refer to activities that are carried out directly by the State and has used the term "projects" to refer to activities carried out by subrecipients of a State. The Secretary agrees with the commenter that a change is needed in the regulations. The Secretary believes that under sections 201 (b) and (c) of the Act, a State could operate a "program" by carrying out the activities directly or operate a "project" by making awards to other entities to carry out the activities.

Changes: Section 403.70 has been changed to clarify that a State may operate either a "program" or a "project." A conforming change has been made to § 403.71.

Vocational student organizations (§ 403.71)

Comments: Several commenters expressed concern that § 403.71(c) provides a list of unallowable expenditures for vocational student organizations (VSOs). These commenters were particularly concerned because the regulations prohibit the use of funds under the State Programs and State Leadership Activities for student organization travel. Some of the commenters felt that travel costs and expenses to attend leadership conferences or meetings to conduct VSO national and State association business should be an allowable expenditure under the Act and recommended that § 403.71(c)(1) be revised to allow these travel costs. Several commenters indicated that the list of prohibitions on the use of funds awarded under the Act for VSOs contained in § 403.71(c) will have a "chilling effect" on the recruitment of minority students. A number of commenters also recommended that § 403.71(c)(2) be revised to permit Future Farmers of America officers to purchase appropriate supplies.

One commenter assumed that the restrictions in § 403.71(c) on expenditures for vocational student organizations applied only to expenditures under the State Programs and Leadership Activities authority and did not extend to expenditures for VSO activities under title II, part C of the Act.

Discussion: The limitations listed in § 403.71(c) are consistent with the section 521(42) of the Act, which defines "vocational student organizations" to mean those organizations for individuals enrolled in vocational education programs that engage in activities "as an integral part of the instructional program," and are supported by a clear statement of congressional intent in the conference report accompanying the

Act. (H.R. Rep. No. 660, 101st Cong., 1st Sess. 117 (1990)). Item 86 of that report stipulates that Congress intended "that current restrictions on use of Perkins funds for awards and student travel apply to the provision authorizing States to support vocational youth organizations" under section 201(c)(3) of the Act. The regulations implementing the Vocational Education Act of 1963, as amended, listed the VSO activities in § 403.71(c) as particular costs that are not integral to vocational instruction. Generally, to be an integral part of vocational education instruction, an activity would have to be supervised by vocational education personnel who are qualified in the occupational area and available to all students in the instructional program without regard to membership in any student organization. The regulations implementing the Vocational Education Act of 1973, as amended, described VSO activities that are considered to be an integral part of vocational education training, and the Secretary believes that these provide guidance to a State and its recipient as to the type of VSO costs that can be paid from funds awarded under title II, part A of the Perkins Act.

The limitation on expenditures for VSO activities is consistent with this Department's past practice of not allowing the use of grant funds for supportive services that provide direct financial benefit to individuals without clear statutory authority for these expenditures. This limitation applies to all funds awarded under the Act, not just funds awarded under title II, part A of the Act that are available for the support of VSOs.

If an eligible recipient wishes to use funds awarded under title II, part C of the Act for costs of VSO activities, these costs would be subject to the general limitations on supportive services as well as all other limitations on the use of funds under title II, part C of the Act. Because title II, part C of the Act authorizes the use of funds for supportive services only in very narrow circumstances and with respect to only a few particular populations, the Secretary believes that the same limitations stated in § 403.71(c) generally apply to the use of funds under title II, part C of the Act for VSO activities. See the discussion of supportive services for students who are economically disadvantaged, students of limited English proficiency, and students with disabilities in response to a comment on § 403.190(a)(2)(ii)(B). However, a VSO cost, for example, that would be allowable from funds awarded under title II, part C of the Act, is the cost of field or laboratory work incidental to vocational training so long as the activity is supervised by vocational education personnel who are qualified in the occupational area and is available to all students in the instructional program without regard to membership in any student organization.

Changes: Section 403.71(c) has been changed to add examples of VSO expenditures that are allowable costs under the State Programs and State Leadership Activities.

Sex Equity Program (§ 403.90)

Comments: One commenter requested that the conditions for the eligibility of community-based organizations to participate in the Sex Equity Program be identical to conditions established by § 403.81(c) for the participation of community-based organizations in the Single Parent, Displaced Homemakers, and Single Pregnant Women Program.

Discussion: The conditions established by § 403.81(c) for the participation of community-based organizations in the Single Parents, Displaced Homemakers, and Single Pregnant Women Program reflect the requirement of section 221(a)(3) of the Act. There is no parallel statutory provision for the Sex Equity Program. However, the Secretary notes that the definition of "community-based organization" in § 400.4(b) requires such an organization to be of "demonstrated effectiveness" in order to be eligible for funding under any portion of the Act. A State has the authority to interpret or further define "demonstrated effectiveness" for purposes of participation in the Sex Equity Program by a community-based organization, including the imposition of all of those conditions set forth in § 403.81(c). However, in this event, the State would have to identify this as a rule based on a State's interpretation pursuant to § 400.9(c).

Changes: None.

Programs for Criminal Offenders (§ 403.102)

Comments: One commenter stated that the Senate Report accompanying the Act requires that the State corrections educational agency responsible for administering the Programs for Criminal Offenders must distribute funds available for this program to State correctional institutions, prisons, and reformatories based on the relative number of individuals incarcerated in those institutions. The commenter requested that the regulations reflect this requirement.

Discussion: While section 225 of the Act establishes the parameters within which a State corrections educational agency must use funds reserved for programs for criminal offenders, section 225 of the Act does not require a formula for the distribution of funds as discussed by the commenter. Moreover, the distribution formula referred to by the commenter is not a provision in the Act passed by Congress.

Changes: None.

Eligibility for Secondary, Postsecondary, and Adult Vocational Education Programs [§ 403.110(c)]

Comments: One commenter felt that § 403.110(c) would allow organizations not currently existing to qualify for start-up funds to participate in programs funded under section 232 of the Act. The commenter recommended that § 403.110(c) be modified so that any funds received by a recipient not previously offering a vocational education program must be used to provide services within the grant year.

Discussion: Section 232(d)(1) of the Act, which is implemented by § 403.110(c), includes an entity that either provides or will provide vocational education in a program that meets the requirements of section 235 of the Act as an institution eligible to receive an award under the Postsecondary and Adult Vocational Education Programs. This regulation reflects the requirement of section 232(d)(1) of the Act.

Because funds not obligated during the fiscal or program year for which the funds were allocated must be returned to the State for reallocation under § 403.120(a), an entity must provide a program of services for each year an award is received.

Changes: None.

Improving vocational education (§ 403.111(a)(1))

Comments: Some commenters believed that a State should have the discretion to define the term "improve" as it is used in § 403.111(a)(1). One of these commenters believed that the State then should be held accountable for the procedure used to determine improvement. Another commenter believed that improvement would be easier to determine once a State has adopted standards and measures under section 115 of the Act. Another commenter believed that improvement of programs should be measured by the gain in student participation and performance but recommended that all proposed activities should be funded, provided a reasonable connection is made in the local plan between each activity and improved student participation and performance. One commenter recommended adding to the regulations the guidelines on "program improvement" applicable to the Carl D. Perkins Vocational Education Act to assist States in developing criteria by which local applications can be categorized according to program improvement, expansion, or new programs.

Discussion: The Secretary believes that a State and its eligible recipients should have the flexibility to determine how funds awarded under §§ 403.112, 403.113, or 403.116 will be used to "improve" vocational education programs for their students. The Secretary does not believe that it is possible to develop a definition of "program improvement" that would apply in all cases. Thus, while a State is free to use the guidelines provided in the previous regulations implementing the previous act, they are not required to do so.

Changes: None.

Comments: One commenter said that, while a State could improve selective parts of vocational education within the State with the participation of special populations, the State could not accomplish a great improvement in vocational education and at the same time ensure success of all special populations with the small amount of funds it receives under the Act. The commenter recommended that the expectation for improvement implied in § 403.111(a)(1) be limited and specifically detailed.

Discussion: The requirement of § 403.111(a)(1) to use funds awarded under §§ 403.112, 403.113, or 403.116 to improve vocational education programs applies to eligible recipients—not States. Moreover, §§ 403.190(c) and 403.193(e) make clear that the Act does not create an individual entitlement for members of special populations and a corresponding unlimited financial obligation on eligible recipients. On the contrary, once an eligible recipient makes an assurance to serve members of special populations in projects assisted under title II, part C of the Act, the eligible recipient is allowed to use Federal funds at the same time for general improvement or to serve the general student population under § 403.111(a)(3).

Changes: None.

Providing full participation (§ 403.111(a)(2)(i))

Comments: One commenter believed that limiting the requirements of § 403.111(a)(2)(i) to projects assisted with funds awarded under §§ 403.112, 403.113, or 403.116 creates ambiguity concerning the requirement for an eligible recipient to provide full participation for members of special populations. The commenter also argued that this is inconsistent with the regulatory provisions applicable to performance standards and evaluations, which apply to entire local vocational education programs. Some commenters argued "projects" should be changed to "programs" to be consistent with congressional intent that funds awarded under Title II, Part C of the Act be used only in local programs that provide for the full participation of members of special populations, including the provision of supplementary services, in the entire program. Another commenter argued that the use of the term "projects" rather than "programs" and the distinction created between access and required services is contrary to prior civil rights rulings and the Civil Rights Restoration Act, which defines the term "program" broadly, as well as the requirements of the IDEA and section 504 of the Rehabilitation Act of 1973.

Other commenters expressed confusion as to the applicability of the requirement in § 403.111(a)(2)(i) to provide for the full participation of members of special populations by providing supplementary services. These commenters argued that the Perkins Act does not require eligible recipients to provide supplementary services to members of special populations in their State and locally funded vocational programs and recommended that § 403.111(a)(2)(i) be amended to clarify that the requirement to provide supplementary services does not apply to projects not funded under the Act.

Discussion: Despite the apparent confusion of a few commenters, § 403.111(a)(2) clearly applies only to projects assisted with funds awarded under §§ 403.112, 403.113, or 403.116. (Sections 403.112, 403.113, and 403.116 implement the provisions of the Act governing the distribution of funds under title II, part C of the Act.) Moreover, the Secretary believes that limiting the applicability of § 403.111(a)(2) is well-supported by the language of the Act itself. Section 403.111(a) implements the provisions of section 235(a) of the Act, which specifically applies only to funds awarded under title II, part C of the Act. Both the express language of section 235 of the Act and its placement in the provisions of the Act specifically related to funds awarded under title II, part C of the Act support a more narrow application of the requirement to provide full participation only in projects, services, and activities receiving Federal funds under the State plan. Moreover, the Secretary has modified § 403.191 to clarify that the local evaluation required under section 117 of the Act could include only specific projects, services, and activities receiving Federal funds under the State plan, unless the State board determines under § 403.201(a)(3) that a broader evaluation is necessary to be effective. See the discussion in response to comments on § 403.191. Therefore, the Secretary is not taking an inconsistent regulatory approach in implementing section 235 of the Act from that used to implement the requirements of section 115 of the Act concerning standards and measures or of section 117 of the Act concerning evaluations.

Section 403.111(a) also reflects the differences in the requirements of section 235 of the Act and other Federal statutes. Section 116 of the Act does not define the requirement to provide "equal access" to members of special populations in terms of the definition of "program" in the Civil Rights Restoration Act or the requirements imposed by the IDEA or section 504 of the Rehabilitation Act of 1973. While specific requirements to provide rights and protections under, for example, section 504 of the Rehabilitation Act of 1973, are imposed in the Perkins Act, the term "equal access" as it is used in section 116(a) (1) and (2) of the Perkins Act, which is implemented in § 403.32(a) (18) and (19), is not tied to the provisions of any other statute. On the contrary, the use in section 235 of the Act of the terms "equitable participation" and "full participation" in imposing requirements on eligible recipients under title II, part C of the Act to serve members of special populations evidences a deliberate congressional intent to distinguish the type of services required by the Act from the rights and protections ensured by other Federal statutes, such as the IDEA and section 504 of the Rehabilitation Act of 1973, which use different terminology regarding the rights of an individual with disabilities. However, the Secretary wishes to emphasize that any individual's rights and protections conferred by the IDEA, section 504 of the Rehabilitation Act of 1973, or other Federal laws are in no way limited or diminished by the Perkins Act.

Changes: None.

Comments: Some commenters believed that § 403.111 was unclear that members of special populations must participate fully in the improvement of vocational education courses—not just receive supplementary services.

Discussion: The Secretary believes that § 403.111 is clear as to the required participation of members of special

populations. Not only does § 403.111(a)(1) require that an eligible recipient use funds awarded under § 403.112, 403.113, or 403.116 to improve vocational education programs, but § 403.111(a)(2) additionally requires that all of the projects assisted provide for the full participation of members of special populations. Thus, members of special populations must be provided full participation in projects funded under § 403.112, 403.113, or 403.116.

Changes: None.

Comments: Numerous commenters recommended deleting or narrowly defining the requirement to provide "other services" in addition to supplementary services as proposed in § 403.111(a)(2) as part of providing for the full participation of members of special populations in projects assisted under § 403.112, 403.113, or 403.116. Some commenters believed that a State should have the discretion to define the term "full participation." Other commenters believed that "other services" should be restricted to those related to the required supplementary services or should be defined in relation to vocational education or to education in general. Another commenter believed that, if the phrase "other services" is retained, the regulations should impose a cap or limit on the amount of funds that could be used for supplementary services. Some commenters argued that a broad interpretation of "other services" would change the intent of the Act and require the exhaustion of funds on supplementary services, thus depriving the general student population of funds. According to some commenters, using Federal vocational funds exclusively for special populations would imply that vocational education is for special populations students only and perpetuate a perceived stigma attached to vocational education. Most commenters believed that the definition of "supplementary services" in § 400.4(b) clearly expresses the intent of Congress as to what specific services are required to be provided to special populations as part of the requirement for "full participation" and argued that the addition of "other services" to this provision during the negotiated rulemaking created ambiguity, an open-ended requirement that was impossible to satisfy, and unlimited financial liability on the part of eligible recipients.

Other commenters concurred in or strongly supported the mandate to provide full participation through supplementary and other services to all members of special populations, including individuals in correctional institutions. One commenter noted that the addition of the words "other services" would mean that "supplementary services" are not limited only to those specific services listed in the definition of that term in § 400.4(b). The commenter believed that this indicated a confidence that local program officials are able to determine the range of supplementary services most appropriate to the needs of their special populations students. Another commenter thought that "other services" should include child care, stipends, preparatory services, or tuition. This commenter believed that, if the Secretary intended to exclude these costs from allowability, then § 403.111(a)(2)(i) should be clarified to prevent an eligible recipient's audit exposure.

Discussion: The Secretary agrees that the requirement in proposed § 403.111(a)(2)(i) to provide "other services" in addition to the supplementary services required by section 118(c) of the Act has created a great deal of confusion concerning what specific services an eligible recipient is required to provide to special populations students. The negotiators recommended the addition of this phrase to the draft regulation to clarify that an eligible recipient has the flexibility to serve its special populations students in the most suitable manner, which includes providing services other than the services within the definition of "supplementary services" as that term is defined in § 400.4(b), when an eligible recipient chooses to do so. However, even though many of the commenters have interpreted this phrase as requiring unlimited services to these students, in some cases without regard to which specific services are allowable under the Act, the types of services that an eligible recipient must provide to members of special populations with funds awarded under title II, part C of the Act in addition to supplementary services are described in section 118(c) of the Act, which is implemented by § 403.190(b). However, the Secretary wishes to emphasize that an eligible recipient may use State and local funds to provide the services to members of special populations required by full participation under § 403.111(a)(2)(i) and § 403.190(b) or to provide additional services if the State or eligible recipient determines those services are needed.

Changes: The Secretary has clarified that the reference to "other services" in § 403.111(a)(2)(i), is to the services other than supplementary services that an eligible recipient is required to provide under § 403.190(b).

Comments: One commenter recommended that "full participation" be clarified to mean "equitable participation" plus "supplementary services."

Discussion: The Secretary believes that the requirement for "full participation" is distinct from that for "equitable participation" under the Act. Section 403.111(a)(2)(i) interprets "full participation" to require the provision of supplementary services and other services required by § 403.190(b) necessary for those members of special populations already enrolled in vocational education to succeed. As discussed with respect to comments on the requirement to provide equitable participation, § 403.111(c)(3) has been modified to clarify that providing for the "equitable participation" of members of special populations means giving those students an opportunity to enter vocational education that is equal to that given to general population students. In instances where a particular service would be necessary for a special populations member to enter vocational education, such as an alternative application form or a translator who speaks the student's language, an eligible recipient must provide the service pursuant to the requirement to provide equitable participation. See the illustrations of providing equitable participation under § 403.111(c)(3) in appendix A to part 403.

Changes: None.

Comments: One commenter suggested that one example of a way of providing for "full participation" is the development, implementation, and use of a so-called "individualized vocational education plan" (IVEP), which would provide the basis for a student's recruitment and placement into a vocational education program.

Discussion: While an IVEP, such as those currently used by some States, is one way of making a determination as to which specific services an individual student may need to succeed in vocational education, this is not the only method. The Secretary believes that States and eligible entities must have the flexibility to work together in developing the most appropriate methods of ensuring the success of their students.

Changes: None.

Comments: One commenter asked for guidelines on how LEAs and postsecondary institutions must provide for the full participation of individuals in correctional institutions, who are one category of special populations, as that term is defined in § 400.4(b). The commenter questioned whether an LEA, for example, is required to provide services to individuals in a correctional institution located within the LEA's boundaries.

Discussion: The requirement to provide full participation under § 403.111(a)(2) applies only to special populations students already enrolled in an eligible recipient's projects assisted under §§ 403.112, 403.113, or 403.116. An eligible recipient whose enrollment includes individuals who are in correctional institutions must provide for the full participation of those students. However, the question of whether individuals in correctional institutions may enroll in the programs of a particular eligible recipient is an issue outside of the scope of the Act and, generally, must be decided as a matter of Federal, State, or local penal law.

Changes: None.

Serving a limited number of sites or program areas (§ 403.111(a)(2)(ii))

Comments: Some commenters opposed the requirement in § 403.111(a)(2)(ii) that eligible recipients use funds awarded under title II, part C of the Act to assist projects that operate at a limited number of sites or with respect to a limited number of program areas. These commenters believed that this restriction is inconsistent with the intent of the Act to increase the participation of special populations in the full range of vocational education programs and services, and is confusing because the Act also requires that priority be given to the sites and program areas with the highest concentrations of special populations. The commenters recommended that this restriction be deleted from § 403.111(a)(2). Another commenter felt that § 403.111(a)(2) implied that, with respect to rural districts, the number of programs offered should be limited and should not include the total range of programs traditionally considered to be offered in a comprehensive vocational education program.

Discussion: Section 403.111(a)(2)(ii) implements the requirement of section 235 of the Act that funds awarded under title II, part C of the Act be used at a limited number of sites or in a limited number of program areas. For example, as suggested by one commenter, on its face section 235 of the Act would prohibit a rural district with only one site from assisting each program area in which vocational education is offered with funds awarded under § 403.112, 403.113, or 403.116. The Secretary does not agree that this requirement is inconsistent with the requirement to give priority to sites or program areas with the highest concentrations of members of special populations. Together these requirements will concentrate funds awarded under Title II, Part C of the Act in the sites or program areas serving members of special populations.

Changes: None.

Serving general population students (§ 403.111(a)(3))

Comments: Some commenters supported the requirement of § 403.111(a)(3) to provide supplementary services to special populations before serving the general student population with funds under the Act. Another commenter objected to allowing services to general population students only after supplementary services are provided to special populations students because it would be impossible to serve the general student population. Another commenter questioned in what specific circumstances funds could be used to improve the entire vocational education effort.

Some commenters believed that § 403.111(a)(3) should be amended to include §§ 403.32(a)(18)-(26) and 403.190(d) in the list of requirements to serve members of special populations that an eligible recipient must meet before funds awarded under §§ 430.112, 403.113, and 403.116 may be used to serve students who are not members of special populations.

Discussion: While the Secretary does not believe that the Act is intended to create an individual entitlement for members of special populations, section 235(a) of the Act imposes a requirement to give priority for funding under title II, part C of the Act to sites or program areas with the highest concentrations of members of special populations. Accordingly, the provisions of both §§ 403.190(c) and 403.193(e) make clear that the services and benefits to members of special populations are required to be provided only to the extent Federal vocational education funds are available, unless those services are required by other applicable laws. However, the Secretary believes that, once an eligible recipient makes an assurance that it will serve members of special populations, an eligible recipient may serve the general student population at the same time with funds awarded under the Act. Furthermore, § 403.190(d) imposes the requirement, as a threshold for an eligible recipient to qualify for funding under the Act, that an recipient provide information in its application for funding, as the State board requires, to demonstrate its compliance with the requirements in § 403.32(a)(19)-(26). Consequently, it is not necessary to reference these requirements again in § 403.111(a)(3) as suggested by some commenters.

Changes: None.

Giving priority to sites or program areas that serve the highest concentrations of members of special populations (§ 403.111(b))

Comments: Numerous commenters supported the examples in § 403.111(b) of how an eligible recipient can give priority for assistance to sites or program areas that serve the highest concentrations of members of special populations because they provide flexibility. These commenters believed that Example 3 to § 403.111(b) allows an eligible recipient to fund program areas that have the greatest job demand and opportunities for employment even at sites that do not have the highest concentrations of members of special populations as a means of improving special populations participation in vocational education in program areas in which special populations are underrepresented. According to the commenters, this would result in more and better vocational education for students who were previously not served by making the priority serving high concentrations of members of special populations in program areas where economically viable employment possibilities exist. One commenter argued that, without such an approach, funding would be funneled into programs that have traditionally had high special populations enrollment.

Other commenters believed that the examples in § 403.111(b) imply that both sites and program areas must be prioritized and that either revisions should be made in § 403.111(b) or the examples should be deleted. Many other commenters thought that the use of a funding cut-off point in the examples was unnecessary and confusing and suggested adding different and more specific examples.

Other commenters believed that the use of a cut-off point suggested that the requirement was to fund sites or program areas with higher than average concentrations of members of special populations—not the highest concentrations. These commenters argued that "sites or program areas" must be read as a single term to capture the highest concentrations of members of special populations and that the cut-off point for funding would occur when the funds would be spread too thin to provide programs of sufficient size, scope, and quality to be effective.

Another commenter objected to Example 3 because the commenter

believed the example allows funds to go to sites or program areas that do not have the highest concentration of members of special populations. Other commenters believed that Example 3 must be tightened up to avoid abuses. Still other commenters interpreted Example 3 as not requiring that the site or program area funded have the highest concentrations of members of special populations and supported the example for this reason.

Discussion: An eligible recipient must give priority either to sites or to program areas that serve the highest concentrations of special populations students—but need not give priority to both. The Secretary does not agree that Example 3 in § 403.111(b) would allow an eligible recipient to disregard the requirement to fund either a site or a program area that has the highest concentrations of members of special populations, although the caption of Example 3 is somewhat misleading, or that Example 3 is subject to other abuse. Under Example 3, which was added to § 403.111(b) as a result of the negotiated rulemaking, an eligible recipient would first choose a site from among those sites that have the highest concentrations of special populations students. Then the eligible recipient would fund, at that site, a program area in which members of special populations have been previously underenrolled. Thus, as illustrated by Example 3, while an eligible recipient could fund a program area in which members of special populations have been underrepresented, it would have to do so at a site chosen from among those with the highest concentrations of members of special populations. As explained in the preamble to the NPRM, the intent of Example 3 is to provide new and better opportunities in vocational education for members of special populations.

The Secretary does not agree that the use of a funding cut-off point in the examples is confusing, nor does the Secretary agree that the three examples do not provide sufficient guidance as to how an eligible recipient may give priority in funding. In this respect, the Secretary notes that none of the commenters suggested alternative or additional examples that could be added to the regulations.

Changes: The caption for Example 3 in § 403.111(b) is changed to clarify that it is an example of one method of giving priority to a limited number of sites with high concentrations of members of special populations—not of giving priority to limited program areas.

Comments: Some commenters thought that actual numbers of special populations students rather than percentages should be used to determine the sites or program areas that have the highest concentrations of special populations pursuant to the requirements of § 403.111(b) because basing this determination on percentages, as the examples in § 403.111(b) do, would favor small schools and result in serving fewer students. Some commenters wanted an additional example added to § 403.111(b) to illustrate the use of actual numbers of students instead of percentages.

Discussion: The Secretary agrees that high concentrations of special populations students could be determined based on either actual numbers, percentages, or a combination of both. Section 403.111(b) provides only examples of ways in which an eligible recipient gives priority to sites or program areas, and does not prevent the use of actual numbers of students either alone or in combination with percentages.

Changes: A note is added after the three examples in § 403.111(b) to clarify that actual counts of special populations students may be used alone or in combination with percentages to determine the sites or program areas with the highest concentrations of members of special populations.

Comments: Numerous commenters did not believe that the requirement of § 403.111(b) to give priority to the sites or program areas serving the highest concentrations of members of special populations should apply in all cases. One commenter argued that, in a State that has over 50 percent special populations enrollment in vocational education, eligible recipients should not have to prioritize their use of funds under § 403.111(b) because the intent of the Act would be met by any use of funds. Other commenters believed that an eligible recipient with a large program with high numbers of special needs students should not be constrained in any way in giving priority for the use of funds. One commenter suggested that the regulations provide for a waiver of the requirement to give priority tied to a set percentage rate for special populations so that an eligible recipient whose participation rate for members of special populations exceeded the standard would have greater flexibility in the use of funds. Another commenter believed that an eligible recipient should have the flexibility to provide a proportionate share of funding to serve members of special populations in "low concentration" sites or program areas.

Discussion: The Secretary does not agree that the intent of the Act would be met by an eligible recipient that failed to give priority in the use of funds to sites or program areas with the highest concentrations of members of special populations. Not only does section 235(b) of the Act clearly require an eligible recipient under title II, part C of the Act to give this priority, but also section 235(a) of the Act requires an eligible recipient to use funds awarded under the secondary, postsecondary, and adult vocational education programs (Title II, part C of the Act) only at a limited number of sites or with respect to a limited number of program areas. Therefore, an eligible recipient must give priority to sites or program areas with highest concentrations of members of special populations in determining which particular sites or program areas to fund.

Changes: None.

Comments: One commenter questioned whether § 403.111(b) would allow an eligible recipient to fund sites and program areas that fall below the cut-off point in the examples if the needs of special populations are being met. Another commenter recommended that once priority is given to sites with high concentrations of members of special populations, any remaining funds could be used to fund additional sites or program areas.

Discussion: While § 403.111(b) requires that sites or program areas with the highest concentrations of members of special populations receive only a priority and not an absolute or exclusive preference for funding, § 403.111(a)(2)(ii) requires that the projects funded under title II, part C of the Act be operated at only a limited number of sites or with respect to a limited number of program areas. Therefore, while an eligible recipient could fund sites or program areas below a cut-off point, it could not fund all sites or program areas with funds awarded under title II, part C of the Act.

Changes: None.

Size, scope, and quality of vocational education programs assisted with funds awarded under Title II, Part C of the Act (§ 403.111(c)(1))

Comments: One commenter requested that a definition of the term "size, scope, and quality" be added to § 403.111(c)(1). According to the commenter, defining this term would ensure that all States work with the same criteria to achieve accountability.

Discussion: The Secretary believes that § 403.111(c)(1) is clear that programs must be of sufficient size, scope, and quality to be effective.

(Similarly, § 403.62 requires that projects be of sufficient size, scope, and quality to give reasonable promise of meeting the vocational education needs of the students involved in the project.) Moreover, section 115 of the Act clearly envisions that each State will develop its own standards and measures to ensure accountability for the use of vocational education funds in programs within the State.

Changes: None.

Integration of academic and vocational education in programs assisted with funds awarded under Title II, Part C of the Act (§ 403.111(c)(2))

Comments: Some commenters believed that a State should have the discretion to define the phrase "the integration of academic and vocational education," which is used in § 403.111(c)(2). Other commenters requested additional clarification of the terms in the phrase "integration of academic and vocational education" and requested that the interrelationship of this requirement to other requirements in the Act be discussed.

Discussion: The Secretary believes that the meaning of the phrase "integration of academic and vocational education" is clear from its context in § 403.111(c)(3), which requires that students achieve both academic and occupational competencies through a coherent sequence of courses. For instance, this requirement would prevent an eligible recipient from using funds awarded under title II, part C of the Act to pay the cost of academic courses that were not directly related to the occupational skills being taught in a vocational education program.

Changes: None.

Providing equitable participation (§ 403.111(c)(3))

Comments: Numerous commenters recommended that the Secretary clarify the requirement for eligible recipients to use funds awarded under title II, part C of the Act in programs that provide for the equitable participation of members of special populations. Many commenters recommended adding to § 403.111(c)(3) the definition of "equitable participation" that was deleted from the draft regulation during the negotiated rulemaking. Two other commenters believed that the language of § 403.111(c)(3) was adequate and should be retained without modification.

Some commenters believed that § 403.111(c)(3) should emphasize that the requirement to provide equitable participation means providing the services needed to succeed in high quality programs in an integrated setting in order to avoid tracking of, or watering down of curriculum for, special populations students. These commenters asked that § 403.111(c)(3) clarify that the requirement to provide equitable participation applies across the entire spectrum of each special population. The commenters were concerned that only the easiest to serve within each population would be served in the absence of clarification. These commenters also requested that the term "equitable participation" be clarified in terms of the requirements of sections 113, 117, 118, and 240 of the Act related to special populations, which the commenters believed to be mutually reinforcing.

Discussion: The Secretary agrees that more clarification of the requirement to provide "equitable participation" is needed than is provided by the examples in appendix A to part 403. As indicated in response to comments on § 403.32(a)(18)–(26), the Act does not create individual entitlements to particular services. Rather, the Secretary interprets the requirement in section 235(c)(1)(C) of the Act to provide equitable participation to members of special populations to require giving those students an opportunity to enter vocational education that is equal to that given to general population students. This interpretation is similar to the one included in the draft regulations submitted to negotiated rulemaking, but it clarifies the distinction in the Act concerning the requirement to provide an opportunity to members of special populations to enter a vocational education program as opposed to the requirement to provide the services necessary to enable members of special populations to participate fully and successfully in a vocational program. See the comment and discussion on providing full participation (§ 403.111(a)(2)(i)).

While sections 113, 117, 118, and 240 of the Act impose requirements that complement the requirement to provide equitable participation, the Secretary believes that these requirements are separate and distinct and that further clarification of the manner in which these requirements complement the equitable participation requirement is not needed.

Changes: Section 403.111(c)(3) has been changed to clarify that "equitable participation" means providing members of special populations with an opportunity to enter vocational education that is equal to that afforded to the general student population.

Comments: One commenter requested a definition of "access" as that term is used in § 403.111 and other sections implementing section 235 of the Act.

Discussion: None of the statutory or regulatory provisions cited by the commenter use the term "access." However, a State is required to make assurances that it will provide equal access to the entire vocational education program within the State under § 403.32(a) (18) and (19). These requirements are discussed in response to comments on § 403.32(a) (18) and (19).

Changes: None.

Allocation of funds under the Secondary School Vocational Education Program to local educational agencies (§ 403.112(d))

Comments: Several commenters objected to the requirement in § 403.113(d)(2)(ii) that a consortium arrangement under § 403.112(d)(2)(i) must serve primarily as a structure for operating joint projects that provide services to all participating LEAs. Some commenters argued that the requirement is too restrictive in that a consortium in a rural, sparsely populated area could not always operate joint projects under which all members receive services. These commenters, therefore, suggested that it would be better to let States decide when a waiver is needed. Other commenters supported § 403.112(d)(2) as proposed.

Discussion: The Secretary believes that Congress intended that a consortium be established primarily for undertaking joint projects serving all members. If a consortium were established simply to make subgrants to participating members to operate separate projects, then the consortium would serve no purpose that could not be achieved by direct awards from the State to these LEAs.

If an LEA is located in a rural, sparsely populated area and can demonstrate to the State that it cannot participate in a consortium operating joint projects, then a State may waive the minimum grant requirement and make a direct grant of less than $15,000 to that LEA under the authority of § 403.112(d)(3).

Changes: None.

Comments: One commenter advised that a consortium arrangement established for the purpose of meeting the $15,000 minimum grant amount for LEAs under § 403.112(d)(2) should be allowed only if the consortium centers around an area vocational education school.

Discussion: Section 231(b)(1) of the Act allows LEAs to form a consortium for purposes of meeting the minimum grant amount. An area vocational education school is considered to be an LEA if it meets the definition in § 400.4(b). In instances in which an area

vocational education school is an LEA, it can become a member of a consortium established under section 231(b)(1) of the Act.

However, in the absence of a statutory mandate, the Secretary does not believe it is appropriate to require through regulation that each consortium have as a member an area vocational education school.

Changes: None.

Comments: Several commenters suggested that § 403.112(d)(2) be clarified to bar subgrants by the fiscal agent of a consortium to participating LEAs.

Discussion: Section 403.112(d)(2) requires that a consortium arrangement must serve primarily as a structure for operating joint projects that provide services to all participating LEAs and that the projects must meet the size, scope, and quality requirement of § 403.111(c)(1). The example following § 403.112(d)(2)(iii) illustrates that the fiscal agent of a consortium may not subgrant back to a participating LEA the amount it contributed to the consortium. However, if the conditions of § 403.112(d)(2) are met, the fiscal agent of a consortium may make subgrants to the participating LEAs if the subgrants increase the administrative efficiency of a consortium. These subgrants may be for less than $15,000 but the projects assisted must meet the size, scope, and quality requirement of § 403.111(c)(1).

Changes: None.

Comments: One commenter suggested that the regulations be changed to clarify that the waiver for LEAs located in rural, sparsely populated areas does not waive the size, scope, and quality requirements of § 403.111(c)(1).

Discussion: The Secretary agrees that the waivers for LEAs located in rural, sparsely populated areas does not waive the size, scope and quality requirement of § 403.111(c)(1).

Changes: Paragraph (iii) has been added to § 403.112(d)(3) to clarify that the waiver of the minimum grant requirement does not waive the size, scope, and quality requirement of § 403.111(c)(1).

Eligibility of State corrections agencies for funding under sections 231 and 232 of the Act (§§ 403.112, 403.113, and 403.116)

Comments: One commenter maintained that the proposed regulations violate the statutory directive to include a State corrections agency in the formula entitlement under sections 231 and 232 of the Act. Another commenter stated that a State corrections agency should not be considered to be an LEA or an eligible institution, and therefore, should not be eligible for funding under section 231 or 232 of the Act. The commenter suggested that the final regulations should indicate that a State corrections agency is not eligible for an allotment under the secondary or postsecondary formula.

Discussion: A State corrections educational agency or a State or local correctional institution that has administrative control and direction over a vocational education program is included in the definition of "local educational agency" set forth in § 400.4(b) and section 521(22) of the Act. Consequently, these agencies or institutions are eligible for an allocation of funds under §§ 403.112, 403.113, and 403.116, which implement sections 231 and 232 of the Act. However, these agencies or institutions are subject to the same statutory and regulatory requirements (such as the formula and minimum grant amount requirements) as are other eligible recipients. Moreover, if both a State correctional institution and a local correctional institution apply for funding under § 403.112, 403.113, or 403.116, care must be exercised to avoid duplicative counting of any student who could be construed to be under the control of both a State and a local correctional institution.

Changes: None.

Allocating funds under the Secondary School Vocational Education Program to area vocational education schools and intermediate educational agencies (§ 403.113)

Comments: Two commenters urged that § 403.113(a)(1)(i) be changed to permit a State to encourage, but not require, the establishment of a consortium for purposes of the State's making direct allocations of funds to an area vocational education school or an intermediate educational agency that would otherwise have been allocated to an LEA.

Discussion: Neither the regulations nor the Act itself addresses the question of whether a State may require an LEA and an area vocational education school or an intermediate educational agency to form a consortium for purposes of making a direct allocation of funds to the area vocational education school or the intermediate educational agency under § 403.113(a). The Act neither prohibits the State from requiring consortia nor specifically authorizes the State to require consortia. The Secretary believes that, because this kind of issue is so inherently related to a State's administration of its program, and because the Act is silent on this issue, the question of whether authority exists to require consortia is a matter to be determined under State and local laws and regulations.

Changes: None.

Comments: One commenter objected to the provisions in § 403.113(d) that allow an LEA to retain the amount of its formula allocation not distributed to an area vocational education school or an intermediate educational agency even though that amount is less than $15,000. The commenter believed that this provision is inconsistent with congressional intent that funds be aggregated to meaningful levels. The commenter also suggested that, if the provision were retained, it at least should be amended to require an LEA with a balance of less than $15,000 to join a consortium under § 403.112(d)(2).

Discussion: The Secretary believes that the minimum grant amount requirement set forth in section 231(b)(1) of the Act establishes only the eligibility of an LEA to receive an award under the Act. Once an LEA receives a minimum allocation of $15,000 or more under the statutory allocation formula, the Secretary believes the LEA is entitled to retain and spend its award even though the remainder is less than $15,000 due to a transfer to an area vocational education school or an intermediate educational agency pursuant to section 231(d) of the Act. Moreover, the Secretary believes that the provision for establishing a consortium in section 231(b) of the Act applies only to an LEA that otherwise would be ineligible to receive funds under the Act because its formula allocation is less than $15,000.

Changes: None.

Determining the number of economically disadvantaged students (§ 403.114)

Comments: One commenter requested that the regulations be revised to allow for the use of student eligibility data under the free or reduced-price lunch program to identify particular economically disadvantaged students at school sites and in vocational education programs.

Discussion: As indicated in a note to the definition of "economically disadvantaged family or individual" in § 400.4(b), a State or recipient may use the total number of students participating in a free or reduced-price meals program to determine eligibility of sites for projects, services and activities under the Act. However, the National School Lunch Act prohibits the identification of these students by name. Therefore, that information cannot be used to identify particular economically disadvantaged students.

Changes: None.

Allocation of funds under the Postsecondary and Adult Vocational Education Programs (§ 403.116)

Comment: One commenter objected to the provisions in § 403.116(b), which requires that, under the statutory formula for distributing funds under the Postsecondary and Adult Vocational Education Programs, a State count only Pell Grant recipients and Bureau of Indian Affairs-assisted students enrolled in vocational education as defined in § 400.4(b). The commenter argued that Congress did not intend that a State count only students enrolled in a vocational education program.

Discussion: Section 232(a) of the Act requires that, in order to be counted for purposes of distributing funds, Pell grant recipients and recipients of assistance from the Bureau of Indian Affairs must be enrolled in programs meeting the requirements of section 235 of the Act, which necessarily includes satisfying the definition of "vocational education" in § 400.4(b). However, in response to the commenter, the Secretary has changed § 403.116 to more closely conform to the language of section 232 of the Act to clarify the relationship between the requirements of section 235 of the Act, which are implemented in § 403.111, and the definition of "vocational education."

Changes: Section 403.116 is amended to indicate that only students enrolled in programs meeting the requirements of § 403.111 are counted under the statutory formula for distributing funds under the Postsecondary and Adult Vocational Education Program.

Comments: Several commenters requested that § 403.116(b)(2) be amended to include counts of students assisted under the Tribally Controlled Community Colleges Assistance Act and the Navajo Community College Act.

Discussion: The Secretary does not believe it is appropriate to amend by regulation the unambiguous statutory requirement for fund distribution.

Changes: None.

Comments: One commenter requested that the regulations permit a consortium arrangement among postsecondary institutions for the purpose of meeting the $50,000 minimum grant amount requirement in section 232(c)(1) of the Act. The commenter argued that, since this consortium arrangement is permitted for LEAs for the purpose of meeting the minimum grant amount of $15,000 for those agencies, a parallel arrangement should be established for postsecondary institutions.

Discussion: Section 231(b) of the Act provides authority for an LEA to enter into a consortium arrangement with other LEAs for the purpose of meeting the minimum grant requirement for those agencies. While section 232 of the Act establishes a minimum grant requirement for postsecondary institutions, this section contains no corresponding provision for a consortium arrangement for meeting the minimum grant requirement. The Secretary believes that, if Congress had intended that a consortium arrangement for postsecondary institutions be allowed, a provision corresponding to the consortium arrangement in section 231 of the Act for LEAs would have been included in section 232 of the Act for postsecondary institutions.

Changes: None.

Comment: One commenter asked that the $50,000 minimum grant amount for recipients under the Postsecondary and Adult Vocational Education Program established by section 232(c)(1) of the Act be reduced to $15,000, which is the minimum grant amount established for recipients under the Secondary School Vocational Education Program by section 231(b)(1) of the Act.

Discussion: The Secretary does not agree that it would be appropriate through regulation to change the $50,000 minimum grant requirement imposed under section 232(c)(1) on recipients under the Postsecondary and Adult Vocational Education Programs.

Changes: None.

Alternative distribution formula for the Postsecondary and Adult Vocational Education Programs (§ 403.118)

Comments: One commenter advocated that § 403.118 should be changed to permit the use of two separate postsecondary formulas that recognize the difference in various institutional arrangements found at the postsecondary level. The commenter argued that a single formula will not work equitably given such differences as tuition charges, types of students served, and program offerings in various postsecondary institutional arrangements.

Discussion: The Secretary agrees that the statutory formula established under section 232(a) of the Act cannot always effectively identify economically disadvantaged students attending certain types of postsecondary institutions. In these instances, section 232(b) of the Act provides for a waiver of the statutory formula and permits a State to propose an alternative formula that better identifies the highest numbers of economically disadvantaged students. The Act, however, does not authorize the use of separate formulas for particular types of postsecondary institutions. Rather, the Act specifies that each institution's award must be proportionate to the relative share its enrollment of economically disadvantaged students is to that number enrolled in all eligible institutions.

Changes: None.

Comments: One commenter maintained that only students enrolled in vocational education programs should be counted under an alternative formula allowed under § 403.118. The commenter pointed out that to permit counts of non-vocational education students in an alternative formula will drive funds to institutions enrolling few vocational education students at the expense of institutions that have higher numbers of vocational education students who are economically disadvantaged.

Discussion: The Secretary shares the commenter's concern that the use of non-vocational student counts in an alternative formula might lead to substantial allocations to institutions with few vocational education students at the expense of institutions primarily offering vocational education programs. However, section 232(b) of the Act enumerates six examples of alternative criteria for allocating funds to institutions, none of which requires that students counted under the alternative formula be enrolled in a vocational education program. Therefore, the Secretary does not believe it is appropriate to impose this requirement by regulation.

Changes: None.

Comments: Several commenters objected to § 403.118(c), which establishes five conditions that must be met by an alternative formula for the distribution of funds for the Postsecondary and Adult Vocational Education Programs. The commenters maintained that the establishment of these conditions would violate the prerogative of a State to develop an alternative formula. However, other commenters agreed that there should be a positive relationship between funding and actual enrollment in institutions.

Discussion: The five conditions that must be met by an alternative formula under § 403.118 were established to clarify what the Secretary believes to be the intent of the Act with respect to waiving the statutory funding formula. The Secretary must have uniform standards against which to judge the legal sufficiency of a proposed waiver formula. The Secretary does not believe that the standards (or conditions) in § 403.118(c) exceed the intent of the Act, but rather the Secretary believes that they are logically derived from the requirements of § 403.118(b).

Chonges: None.

Comments: Several commenters objected to the requirement in § 403.118(c)(1) that an alternative formula for the distribution of funds for the Postsecondary and Adult Vocational Education Programs be based on direct counts of students enrolled in institutions. The commenters advanced differing rationales for their positions. Some commenters pointed out that direct student counts do not necessarily reflect the needs of the area served by an institution since relatively small numbers of members of special populations attend postsecondary institutions. Other commenters suggested that an alternative formula be based on population data of the area served by an institution.

Discussion: The requirement in § 403.118(c)(1) that an alternative formula include direct counts of students enrolled in institutions receiving awards implements section 232(b)(2) of the Act, which requires that alternative criteria be based on "the numbers of individuals attending institutions within the State." Section 232(b)(2) of the Act offers six examples of alternative criteria, all of which are based on direct counts of enrolled students. While other criteria are possible, the Secretary believes that Congress clearly intended that alternative criteria must relate to direct counts of enrolled students.

Changes: None.

Comments: One commenter recommended that a strict scrutiny standard be established in the regulations for granting waivers of the statutory funding formula under the Postsecondary and Adult Vocational Education Programs. The commenter pointed out that in the past States have defined their entire geographic area as economically depressed. The commenter also suggested that great care be used in reviewing the definitions and data sources used in a waiver request.

Discussion: Section 403.118(c) requires that an alternative formula include direct counts of students enrolled in institutions, and that the criteria used in identifying students to be counted directly relate to the students' status as economically disadvantaged. These standards will preclude approval of any proposed alternative formula that distributes funds on any basis other than status as economically disadvantaged. The Department also reviews data submitted with waiver requests for accuracy.

Additionally, section 232(b) of the Act allows the Secretary to waive the statutory allocation formula only in those cases where the State demonstrates that the statutory allocation formula does not result in a distribution of funds to the institutions within the State that have the highest number of economically disadvantaged individuals and that an alternative formula would result in such a distribution.

The Secretary interprets this requirement as meaning that a State must demonstrate that an alternative formula will identify a more accurate count of economically disadvantaged individuals enrolled in institutions than would the statutory formula.

Changes: Paragraph (6) has been added to § 403.118(c) to indicate that the Secretary waives § 403.116(b)(2) in those cases where an alternative formula identifies a more accurate count of economically disadvantaged individuals enrolled in institutions in the aggregate than does the formula in § 403.116(b)(2).

Reallocation of funds under the Secondary School Vocational Education Program and the Postsecondary and Adult Vocational Education Programs (§ 403.120(a))

Comments: One commenter requested that § 403.120(a) be amended to allow recipients of funds under title II, part C of the Act up to 18 months to expend those funds before unexpended amounts must be returned to the State for reallocation. The commenter pointed out that a 12-month expenditure period will force many recipients to make obligations based on hasty decisions to avoid returning funds to the State. Another commenter recommended that § 403.120 be changed to allow local recipients two years in which to expend funds.

Discussion: Section 403.120(a) establishes the expenditure period for an award as a fiscal or program year. In § 400.4(b), "program year" is defined as a 12-month period, while under 34 CFR 77.1(c), "fiscal year" also is defined as a 12-month period. However, because funds under the Act typically become available to the Department for obligation to a State on July 1 of the fiscal year in which funds are appropriated (for use, generally, during the course of the following school year), under section 411 of the General Education Provision Act, and the relevant appropriations act, the Secretary believes that a State may make funds available to an eligible recipient on this same basis under 34 CFR 76.704. Therefore, a State may make funds available to eligible recipients for a period of up to 15 months, depending on when the State itself may begin to obligate funds.

Changes: None.

State assistance for vocational education support programs by community-based organizations (§ 403.141(b)(3))

Comments: One commenter noted that § 403.141(b)(3) requires an applicant for funding under this program to give assurances that it will give special consideration to the needs of severely economically and educationally disadvantaged youth, ages 16 through 21, inclusive. The commenter recommended that the regulations clarify that this assurance for special consideration does not exclude individuals outside the 16- to 21-year-old age range from receiving services under the program.

Discussion: The Secretary agrees that the assurance for special consideration does not exclude individuals outside the 16- to 21-year-old age range from receiving services under the program. However, because the assurance requires that special consideration be given only to certain individuals within a specific age range, the Secretary feels that no additional clarification is necessary in the regulations.

Changes: None.

Business-Labor-Education Partnerships for Training Program (§ 403.173)

Comments: One commenter suggested that § 403.173(a)(2) be amended to clarify that a State may use funds for both basic and advanced academic skills instruction. The commenter noted that there is a need to reflect the Act's emphasis on advanced skills as well as basic skills.

Discussion: The enumeration of allowable expenses in § 403.173(a) is not exhaustive. Section 332(d) of the Act requires the Secretary to prescribe policies for projects carried out under this program and to include examples of allowable expenses for business-labor-education partnerships. However, the Secretary agrees that expenditures for advanced academic skills instruction would be allowable expenses under this program to the extent that these costs were incurred in carrying out the projects, services, and activities described in § 403.170.

Changes: None.

Reservation of funds under the basic programs (§ 403.180)

Comments: One commenter suggested that a mathematical example be provided in § 403.180 to illustrate how the "hold-harmless" requirement for the Programs for Criminal Offenders should be applied.

Discussion: While the regulations provide examples for reserving funds for administration in § 403.180(b)(4) and for implementing the "hold-harmless" requirements for certain programs in § 403.180(c), they do not provide a specific example of how to implement the "hold-harmless" requirement for the Programs for Criminal Offenders in § 403.180(a)(1)(ii). Because the "hold-harmless" requirement for criminal offenders differs from the other "hold-harmless" requirements with respect to funds counted, the Secretary agrees that a specific example for the Programs for Criminal Offenders would clarify the regulations.

Changes: An Example 3 has been added to follow § 403.180(c)(3) to explain how the "hold-harmless" requirement under § 403.180(a)(1)(ii) applies to the Programs for Criminal Offenders.

Comments: One commenter objected to the use of the terms "reserved" and "obligated" in § 403.180(a)(1)(ii) for establishing the "hold-harmless" level for the Programs for Criminal Offenders. The commenter pointed out that the Act was amended to establish the "hold-harmless" level for this program based on amounts "expended" for the fiscal year 1990.

Another commenter objected to the requirement in § 403.180(a)(2)(ii) (A) and (B) that establishes the "hold-harmless" level for the Programs for Criminal Offenders as the amount reserved under section 202(8) of the CDPVEA from its FY 1991 grant plus any other amounts that were obligated for this purpose from its FY 1991 grant. The commenter pointed out that the effect of this interpretation would be to increase the setaside for the Programs for Criminal Offenders to a level above one percent in some States. The commenter argued that, if this had been congressional intent, Congress would have simply increased the setaside percentage for this program. The commenter requested that § 403.180(a)(2)(ii)(B) be deleted.

Discussion: The intent of a so-called "hold-harmless" provision like the one set forth in section 102(c)(2) of the Act is to ensure that funds for a particular purpose do not decrease below a level established in a previous year. Section 102(c)(2) of the Act, as amended by Public Law 102–103, establishes a hold-harmless provision for the Programs for Criminal Offenders. Section 102(a)(5) of the Act requires a State to make available an amount equal to one percent of its allotment under section 3(a) of the Act for Programs for Criminal Offenders. The hold-harmless requirement contained in section 102(c)(1) of the Act, as originally enacted, required a State to reserve for the Programs for Criminal Offenders an amount that "is not less than the amount reserved for [this] program in FY 1990," which was also one percent. However, Public Law 102–103 amended this requirement. Section 102(c)(2) of the Act, as amended, requires a State to reserve for the Programs for Criminal Offenders not less than the amount that the "State expended under this Act for such program in the Fiscal Year 1990." In a case where Congress directs that "not less than" a particular amount be made available for a purpose, it clearly intends that the hold-harmless rule will increase the amount that otherwise would be available by establishing a floor.

Funds from the Federal appropriation for Fiscal Year 1990 are available to a State beginning July 1, 1991, until September 30, 1992. Therefore, interpreting section 102(b)(2) of the Act to require a State to reserve only that amount of the one percent reserve from FY 1990 funds for the Programs for Criminal Offenders expended prior to that time could require it to reserve considerably less than the one percent required to be reserved under section 102(a)(5) of the Act and, given the prorated reduction made if a State's allotment for Title II of the Act is less than in FY 1990, it could never be more than the amount reserved under section 102(a)(5) of the Act. Thus, to fulfill the clear congressional intent of the hold-harmless requirement, that is, that in some instances the amount reserved for Programs for Criminal Offenders be increased above the amount that is required to be reserved under section 102(a)(5) of the Act, the Secretary has interpreted the hold-harmless provision in section 102(c)(2) of the Act to include the one percent amount required to be reserved from the FY 1990 appropriation, plus any additional amount obligated from other reserves for projects, services, and activities for criminal offenders in correctional institutions from the FY 1990 appropriation. The term "obligated" is used rather than "expended" consistent with the long standing Departmental practice of interpreting "expenditure" to mean "obligation" as defined in 34 CFR 76.707.

Changes: None.

Comments: One commenter suggested that § 403.180(b)(3) be revised to require that the reserve for State Programs and State Leadership Activities must be eight and one-half percent as opposed to "not more than" eight and one-half percent as the regulations specify. The commenter believed that the programmatic change called for in the Act will not occur successfully without the assistance of the full setaside for State Programs and State Leadership Activities.

Discussion: The requirement in § 403.180(b)(3) that the reserve for State Programs and State Leadership Activities be not more than eight and one-half percent is based on the language in section 102(a)(3) of the Act, which requires that the setaside be an amount equal to not more than eight and one-half percent of a State's allotment. If Congress had intended that a State be required to reserve a full eight and one-half percent for this program, then the Act would have so stated.

Changes: None.

Maintenance of fiscal effort (§ 403.182)

Comments: A commenter noted that § 403.182 does not address the maintenance of effort requirement, but rather indicates the Secretary's responsibilities if maintenance of fiscal effort does not occur. The commenter also noted that the option of proportionately reduced allocations should be included in the regulations.

Discussion: Section 502(a) of the Act, as implemented in § 403.182, makes maintenance of fiscal effort a clear condition of a State's eligibility to receive a grant and does not provide for a proportional reduction in the grant award, as some Federal education statutes do. To allow the Secretary to implement the maintenance of effort requirement and still make grant awards on a timely basis, § 403.32(a)(1) requires a State to include in its State plan an assurance that it will comply with all the requirements of the Act and regulations, including the maintenance of effort requirement. If, after a State receives a grant, it becomes clear that the State did not maintain effort in accordance with its assurance, then that State would be required to return the full amount of the grant awarded under the State plan.

Changes: None.

Administrative cost requirements (§ 403.186)

Comments: Most commenters expressed support for § 403.186. However, a few commenters asked on what authority the Secretary (in § 403.186(b)(2)) can authorize a State to use funds reserved from its allotment for the State Assistance for Vocational Support Programs by Community-Based Organizations to administer that program.

Discussion: The Secretary believes that the authority to use funds under this program for administrative costs is contained in the "necessary and reasonable" cost principle, which is implicit in the statute and is consistent with government-wide cost principles (see Office of Management Budget

Circular No. A–87). Additionally, it is the historic practice of this Department to allow a State to use program funds for necessary and reasonable administrative costs if the Act provides for no specific setaside for this purpose, but does not prohibit or otherwise limit the use of funds for administrative costs.

Changes: None.

Local application requirements (§ 403.190(a)(1)(i))

Comments: Some commenters requested that § 403.190(a) be amended to require that an eligible recipient describe in its application: (1) how its uses of funds will reflect the needs identified under § 403.32(b)(1); (2) how members of special populations and their parents will be involved in the process of assessing their needs and identifying the services to meet those needs; (3) how access to programs of good quality will be provided to students who are educationally disadvantaged in addition to the populations listed in section 240(4) of the Act; and (4) the numbers of individuals in each special population by program area and, for students with disabilities, by individual disability.

Discussion: Section 240 of the Act gives the State board the authority to determine the requirements of local applications in addition to those specifically imposed by the Act. Accordingly, the Secretary does not wish to impose any further requirements beyond those specified in the Act, although a State board could impose these requirements if it identifies them in accordance with § 400.9(c).

Changes: None.

Comments: Some commenters objected to the requirement in § 403.190(a)(1)(i)(B) that an eligible recipient include in its application a description of how it will use funds awarded under § 403.112, 403.113, or 403.116 and funds from other sources to improve the program with regard to each requirement and activity described in § 403.111(c) and (d). The commenters argued that the effect of this provision would be to reimpose the matching requirement that the Act removed.

Discussion: Section 240(1) of the Act expressly requires that an application for funding under title II, part C of the Act include a description of how the applicant will use the funds available under title II, part C of the Act and "from other resources" to improve the program with regard to each use of funds described in section 235 of the Act. However, the Secretary does not agree that this requirement in effect reimposes a matching requirement at the local level. Neither section 240(1) of the Act nor § 403.190(a)(1)(i)(B) imposes a requirement that an eligible recipient spend any particular amount of funds; rather, these provisions require an applicant only to describe the funding, from whatever resources, that will be devoted to program improvement.

Changes: None.

Access for economically disadvantaged individuals (§ 403.190(a)(1)(iii))

Comments: One commenter supported the requirement in § 403.190(a)(1)(iii) to provide access to high quality programs for economically disadvantaged students, students with disabilities, and students of limited English proficiency through affirmative outreach and recruitment efforts—not by simply making special populations aware of available vocational education programs.

Discussion: Section 240(a)(4) of the Act clearly requires both affirmative outreach and recruitment efforts with respect to the listed groups of students in addition to the information provision requirements contained in section 118(b) of the Act.

Changes: None.

Use of funds for supportive services (§ 403.190(a)(2)(ii)(B))

Comments: One commenter supported the provisions in § 403.190(a)(2)(ii)(B), which the commenter believed permitted the use of funds for child care and other necessary supportive services to assist students to succeed. Another commenter argued that child care should be allowable under § 403.111(d) if it is conducted on a group basis and involves instruction in child care. Another commenter suggested that, since child care is costly, a State could set State-imposed requirements that would be reasonable and effective, thereby allowing access for special populations and flexibility for eligible recipients. One commenter was uncertain whether child care is an allowable expenditure under title II, part C of the Act. This commenter also questioned whether tuition or transportation would be allowable and requested a definition of "special aid."

Discussion: Section 240(12)(B) of the Act, which is implemented in § 403.190(a)(2)(ii)(B), requires an eligible recipient to include in its application for funding an assurance that it will provide a vocational program that assists students who are economically disadvantaged, students of limited English proficiency, and students with disabilities to succeed through supportive services, such as counseling, English-language instruction, child care, and special aids. While these supportive services are not expressly included in section 235(c)(2) of the Act as examples of activities that may be conducted with funds awarded under title II, part C of the Act, the Secretary does not believe that Congress intended to require these services for the populations named without authorizing the use of funds awarded under title II, part C of the Act to pay the cost of providing these supportive services. Thus, the Secretary considers the types of supportive services for the particular populations listed in § 403.190(a)(2)(ii)(B) to be allowed costs under title II, part C of the Act. However, the Secretary believes that the examples of supportive services that are included in § 403.190(a)(2)(ii)(B) provide sufficient guidance to an eligible recipient as to the types of special aids that would be allowable for these populations and that it is most appropriate for an eligible recipient to determine which supportive services and special aids will best allow its students to succeed. Services that are similar in intent and cost to counseling, English-language instruction, and child care are allowable costs as special aids. For example, transportation could be provided to economically disadvantaged students for the same reason and for about the same or a lesser cost as child care.

Changes: None.

Local application assurances—Special populations (§ 403.190(b))

Comments: The Secretary received many comments on § 403.190(b), which would require an eligible recipient that desires financial assistance under title II of the Act to make the assurances required by section 118(c) of the Act to provide certain services and activities for members of special populations with respect to any project that is funded under title II or title III of the Act. Some commenters were confused as to whether § 403.190(b) would apply the requirements of section 118(c) of the Act to any vocational project and supported limiting the requirements of § 403.190(b) to an eligible recipient's projects receiving funds under title II or title III of the Act.

Some commenters strongly opposed applying the requirements of § 403.190(b) to funds awarded under title III of the Act. Many of these commenters thought that the programs in title III of the Act made sufficient provisions for services to members of special populations and that they should not be subject to the requirements of § 403.190(b). For example, title III, part B of the Act requires that not less than one-third of the funds under that part must be used in economically depressed areas or areas with high rates of unemployment to help improve the home environment and quality of family life. Another commenter argued that, if all Federal funds were devoted to providing equal access and supplementary services to members of special populations instead of overall improvement in vocational education programs, members of special populations would be given access to separate and inferior education.

Many commenters believed that proposed § 403.190(b) would require eligible recipients under title II of the Act to provide equal access and supplementary services to all members of special populations enrolled, or planning to enroll, in vocational education. These commenters strongly objected and questioned whether this requirement would be consistent with section 118 of the Act, would subject recipients to legal and audit exposure even if the special populations students in all projects assisted under the Act received supplementary services, or would ever permit recipients to serve general population students with funds awarded under the Act.

Other commenters believed that the assurances should apply to an eligible recipient's entire vocational education program because an eligible recipient is required to give members of special populations equal access to the full range of vocational education programs available to individuals who are not members of special populations under section 118(a) of the Act. Some commenters supported requiring recipients of funds under title III of the Act—especially under the Tech-Prep Education Program—to make the same assurances as recipients under title II of the Act. Still other recipients expressed confusion as to whether, and under what circumstances, eligible recipients had to provide services to students in projects funded under title III of the Act.

Discussion: The local assurances to provide services to special populations students are applicable to any project funded under the State plan—whether the project is assisted with funds awarded under title II or title III of the Act. While section 118(c) of the Act is clear that only recipients of funds awarded under title II of the Act are required to make the assurances related to members of special populations, section 118 of the Act is more broadly worded as to which special populations students must be served. Both the broad language of section 118(c) of the Act and the placement of the provisions in title I of the Act which relates to State plan and other general requirements—rather than within title II, part C of the Act—support a broader interpretation of the scope of these assurances. The scope of this requirement is consistent with the revisions to the scope of the local evaluation required under § 403.191(a), which only requires recipients to evaluate the particular projects, services, and activities assisted under the State plan, unless the State board determines that a broader evaluation is necessary to be effective. See the discussion in response to comments on § 403.191, which implements the local evaluation requirement.

Both the basic programs under title II of the Act, which are listed in § 403.60, and the so-called "special programs" under title III of the Act, which are listed in § 403.130, are subject to the requirements of the State plan. However, the Secretary is modifying proposed § 403.130 to delete the Supplementary State Grants for Facilities and Equipment and Other Program Improvement Activities (Supplementary State Grants Program) from the list of special programs because title III, part F of the Act, which authorizes the Supplementary State Grants Program, does not require that funds awarded under that part be used in accordance with the State plan, as is required for the other programs listed in § 403.130. Similarly, the State-Administered Tech-Prep Education Program, which is authorized by title III, part E of the Act, also is not listed in § 403.130 as a special program because the Act does not require a State to conduct the program in accordance with the State plan.

Changes: Section 403.190(b) has been changed to clarify that the assurances to provide services to members of special populations apply only to an eligible recipient's projects that are assisted with grant funds awarded under the basic and special programs—not to every project assisted under title III of the Act. Section 403.130 has been changed to remove the Supplementary State Grants Program from the list of special programs, that are subject to the requirements of the State plan. Conforming changes also have been made to §§ 403.32(d), 403.131(c), 403.187(b), 407.10(a), 407.22 (b) and (c), and 407.31.

Comments: One commenter noted that the assurances required of an eligible recipient under § 403.190(b) apply only to projects assisted under the Act while the assurances required in the State plan under § 403.32(a)(18)–(26) apply to the entire vocational education program in a State—including local programs. This commenter requested that an eligible recipient's obligations be clarified.

Discussion: The State assurances in § 403.32(a) (18) and (19) require a State to ensure that members of special populations are given equal access to vocational programs within the State. Because the Secretary interprets these assurances as applying to a State's entire vocational education program, eligible recipients also are required to provide equal access to their vocational education programs. See the discussion in response to a comment on the scope of the § 403.32 assurances. However, the State assurances required under § 403.32(a)(20)–(26) relate to a State's responsibility to monitor and administer the Act consistently with requirements imposed by other statutes, for example, the IDEA, and reinforce an eligible recipient's responsibilities under those other statutes. Section 403.190(d) requires an eligible recipient to provide sufficient information to the State, as the State board requires, to demonstrate that the eligible recipient is in compliance with § 403.32(a)(18)–(26).

Changes: None.

Comments: Some commenters were concerned that, if the requirement in § 403.190(b) to provide supplementary services to special populations students, and the corresponding financial obligation, were interpreted broadly, there would not be any Federal vocational education funds available to serve general population students.

Discussion: The Act does not create an individual or unlimited entitlement for members of special populations, but it does impose a requirement to give priority to the sites or program areas with the highest concentrations of members of special populations and to provide the services and activities described in § 403.190(b) to members of special populations. However, as discussed in response to a comment on § 403.111(a)(3), the Secretary believes that, once an eligible recipient assures that members of special populations will be served, an eligible recipient may serve the general student population with funds awarded under the Act.

Changes: None.

Comments: One commenter believed that § 403.190 is unclear because it suggests that funds awarded under the Act might be used for assistance for special populations in other, non-vocational related aspects of schooling. The commenter argued that this would deplete funds for vocational education for all students.

Discussion: The Secretary does not agree that § 403.190 is unclear concerning the use of funds for vocational activities. On the contrary, § 403.190(b) specifically ties the use of

funds for supplementary services to those specific projects that are funded under basic or special programs authorized by title II or title III of the Act, respectively.

Changes: None.

Comments: One commenter believed that § 403.190(b)(1) erroneously refers to section 626 of the IDEA and requested that the reference be changed to section 602(a)(19) and (20) (20 U.S.C. 1401(a)(19) and (20)), which provides the definition of "transition services" and the required contents of the IEP, respectively. According to the commenter, section 626 of the IDEA authorizes discretionary grants to States for Statewide planning for the development and improvement of transition services for students with disabilities.

Discussion: Section 403.190(b)(1) accurately reflects section 118(c)(1), which incorporates by reference section 626 of the IDEA—not section 602(a)(19) and (20).

Changes: None.

Comments: Several commenters requested that § 403.190(b)(2) interpret the requirement that an eligible recipient assess a student's special needs. Some of these commenters also requested that the regulations clarify that the definition of "supplementary services," which lists specific services, provides only examples of minimum services that must be provided and that § 403.190(b)(3) requires that the actual services provided be based on current, valid, and relevant vocational assessment information such as that in an IEP. Some commenters recommended that this include an assessment of their interest and abilities. Some of these commenters recommended that the Secretary require a range of vocational assessment services to be made available to students, and that the specific services to be provided be included in the student's IEP or, in the case of members of special populations who are not in special education, in an individualized vocational education plan.

Discussion: The Secretary believes that States and their eligible recipients should have the flexibility to determine together what assessment of special needs will best serve their students, and, therefore, no specific definition is added to the regulations. However, the Secretary does not agree that the list of services included in the definition of "supplementary services" in section 521(38) of the Act is intended to provide only examples. The language of this statutory provision on its face clearly indicates that the list of services is exhaustive. Nor does the Secretary agree that it would be appropriate to impose further requirements to provide supplementary services beyond those imposed by the Act or other Federal laws, such as the IDEA.

Changes: None.

Comments: Some commenters requested that the assurances required by § 403.190(b)(2) and (3) be amended to require the active involvement of members of special populations and their parents in identifying the special needs of these students and the supplementary services to be provided.

Discussion: The assurances required by § 403.190(b)(2) and (3) accurately reflect the language of section 118(c)(2) and (3) of the Act. The requirement for participatory planning imposed by section 118(d) of the Act and referred to by the commenters is implemented in § 403.205.

Changes: None.

Funding for supplementary services (§ 403.190(c))

Comments: Some commenters objected to § 403.190(c) because it does not require eligible recipients to spend non-Federal funds to provide the services and activities described in § 403.190(b) to members of special populations. The commenters noted that, if § 403.190(c) required that eligible recipients provide members of special populations with the services and activities described in § 403.190(b) only to the extent possible with funds awarded under the Act, it would have the effect of limiting local services that are necessary for these students to succeed in vocational education. The commenters recommended that the words "to the extent possible with funds awarded under the Act" be deleted. Some commenters recommended deleting § 403.190(c) entirely because they argued that the assurances in § 403.190(b) are threshold, programmatic requirements that an eligible recipient must meet—without regard to source of funding—to be eligible for funding under the Act. One commenter recommended amending § 403.190(c) to clarify that, although eligible recipients are not required to use State and local funds to provide the services described in § 403.190(b) to members of special populations, they may do so.

Other commenters requested that § 403.190(c) be deleted because it implies that an eligible recipient must use non-Federal funds to provide the services required by § 403.190(b), which is inconsistent with § 403.193(e), or must exhaust its Federal funds providing services for members of special populations. Another commenter argued that § 403.190(c), in effect, reimposes the local matching requirement that was removed by the Act. The commenter argued that requiring financial information would not assist either eligible recipients or a State in achieving the intended purposes of the Act. Another commenter objected to the requirement that an eligible recipient indicate in its local application whether any non-Federal funds will be used to provide the services and activities described in § 403.190(b). This commenter felt that, because the first local applications under the Act have been submitted to the States without including this information, this requirement would be burdensome.

A different commenter argued that, since statewide maintenance of effort is required by the Act, § 403.190(c) is unnecessary and should be deleted. Another commenter recommended that the regulations clarify that, when an eligible recipient must provide services under § 403.190(b) to members of special populations in projects funded under title III of the Act, the eligible recipient is required to use only funds awarded under title II of the Act—not funds awarded under both title II and title III of the Act.

Discussion: The Secretary does not believe that the Act is intended to create an individual entitlement for members of special populations and a corresponding unlimited financial obligation on eligible recipients. Accordingly, the provisions of both §§ 403.190(c) and 403.193(e) make clear that the services and benefits to members of special populations are required to be provided only to the extent Federal vocational education funds are available, unless those services are required by other applicable laws. The circumstances under which an eligible recipient may serve general population students are discussed in response to comments on § 403.111(a)(3). However, the Secretary believes that funds awarded under title II, part C of the Act and funds awarded under the special programs authorized by title III of the Act also are available for this purpose so long as the specific services provided are allowable costs under the particular special program for which the funds were awarded.

The purpose of requiring that an eligible recipient indicate in its application for funding whether non-Federal funds will be used to provide the services in § 403.190(b) is not related to the maintenance of effort requirement, which applies only to State—not local—expenditures for vocational education, nor does it impose a local matching requirement. Rather, the Secretary intends to highlight in § 403.190(c) that an eligible recipient may use State and local funds to provide

the services described in § 403.190(b) to members of special populations—even though it may not be required. The Secretary also believes that a State must have the information required by § 403.190(c) to enable it to meet its overall responsibilities to members of special populations under section 118(a) of the Act. After the final regulations become effective, a State may allow its eligible recipients merely to amend the applications already filed without imposing additional, undue burdens.

Changes: None.

Assessment and planning for special populations (§ 403.190(e)(2))

Comments: Some commenters recommended that the word "economically" be deleted from § 403.190(e)(2) (i) and (ii) because they believed that Congress intended an eligible recipient to report on the numbers of all disadvantaged students—not just economically disadvantaged students. These commenters also recommended that § 403.190(e)(i) be amended to require that the numbers for each special population be presented by occupational program area, and for disabled students, by type of disability.

Discussion: The requirements of § 403.190(e)(2) (i) and (ii) accurately reflect the language of section 111 (d) and (e) of the Act. However, a State may impose additional requirements if it identifies them in accordance with § 400.9(c).

Changes: None.

Local evaluation—Burden of implementation (§ 403.191(a)(1))

Comments: Numerous commenters expressed the view that the requirement in § 403.191(a)(1) that a recipient must evaluate annually its entire vocational education program, without regard to the particular projects supported with funds awarded under the Act, imposes a burden on recipients. Some of these commenters believed the requirement would impose an unacceptable financial and paperwork burden on eligible recipients. None of the commenters provided estimates of the cost to a local recipient; some commenters estimated a national aggregate cost of $21,000,000 each year. Many commenters expressed the view that the cost of the proposed evaluation is disproportionate to the amount of funds awarded under the Act to a recipient, and predicted that many recipients would refuse to participate in the program assisted under the Act. Some commenters predicted that recipients would conduct superficial evaluations to hold costs down, or recipients would use most of their funds for evaluations rather than for program improvement activities and services, including supplementary services for members of special populations. Most of the commenters opposing the evaluation requirement on the basis of cost recommended that § 403.191 require a recipient to evaluate only those particular projects supported with funds awarded under the Act.

Other commenters stated that, while they support the proposed rule as the best method for an effective evaluation, they acknowledged that it might pose financial difficulties for some recipients, and urged the Secretary to consider permitting a recipient to use cost saving measures such as sampling or providing for a phase-in period. However, another commenter urged the Secretary not to permit sampling because of the high risk of error and potential for manipulation. This commenter also opposed permitting a recipient to phase in the requirement because a recipient would not collect complete data and could not precisely target program improvement activities. Another commenter asked the Secretary to indicate what constitutes an acceptable sample. Another commenter who supported the proposed rule believed that it would be less costly to conduct an annual evaluation based on all students in all projects, rather than to attempt to evaluate the extent to which students participating in projects funded under the Act have benefitted from the use of the funds awarded under the Act.

One commenter objected to the scope of the evaluation requirement, on the grounds that the statewide standards and measures in § 403.202, plus the standards and measures already in use by State and local entities, are extensive and will lead to a superficial evaluation. The commenter proposed that the regulations permit the standards and measures required by section 115(a) of the Act to be phased in over the three-year period of the State plan. Thus, for example, the State would apply, in the first year, the standards and measures relating to academics; in the second year, the standards and measures relating to vocational skills attainment; and in the third year, the standards and measures relating to follow-up and special services. Other commenters proposed evaluating the entire program over a five-year period. A few commenters proposed that the evaluation be conducted less frequently than annually because programs do not change significantly from year to year.

Many commenters argued that the requirement to evaluate an entire program unnecessarily duplicates other evaluation requirements, and that adjusting their existing evaluation systems to accommodate the requirements of the Act will be expensive. In this respect, one commenter challenged the Secretary's certification that the regulations will not have a significant economic impact, stating that every small entity in the country will have to restructure its current evaluation system to comply with the proposed rule. Another commenter, although opposed to the requirement to evaluate the entire program, conceded that much of the information required under the Act is probably already being collected. One commenter who supported the scope of § 403.191 encouraged the Secretary to coordinate the requirement for evaluation under the Act with evaluations required by regional academic accrediting agencies.

One commenter, citing the burden imposed by the evaluation requirement on recipients, suggested increasing the amount of funds a State may reserve for administration, or increasing funding of the National Center for Research in Vocational Education, "to sample programs for evaluation and comparison relative to those supported with funds awarded under the Act." Another commenter proposed that the regulations be revised to require the State board to conduct the evaluation, with increased technical assistance funding, and to require that only the specific projects funded under the Act be evaluated.

Discussion: The Secretary has carefully considered the comments that the requirement to evaluate a recipient's entire vocational program imposes undue hardship on recipients, and has determined that proposed §§ 403.191 and 403.201 should be changed. The changes in the scope of the evaluation requirement address the concerns of numerous commenters and is in keeping with the Department's heightened efforts to reduce regulatory burden and increase flexibility for educators.

Section 403.191 has been modified to provide that a recipient of funds under title II, part C of the Act must evaluate annually the particular projects, services, and activities receiving assistance under a basic program listed in § 403.60, or a special program listed in § 403.130, unless the State determines under § 403.201 that only a broader evaluation would be effective.

Section 403.201(a)(3) has been changed to require a State board to determine whether a recipient of funds under title II, part C of the Act must evaluate more than the particular projects, services, and activities receiving assistance under a basic or special program in order to assess the effectiveness of those projects, services,

and activities. Section 403.201(a)(4) has been added to require a State board to (1) determine whether the entire local vocational education program —or which projects, services, and activities in addition to the ones assisted under a basic or special program—must be evaluated to assess the effectiveness of the particular projects, services, and activities receiving assistance under a basic or special program; and (2) require a recipient to conduct an evaluation consistent with the State board's determination.

The Secretary wishes to emphasize that there are reasons why a State may decide to require a local evaluation that is broader in scope than the minimum required by § 403.191, as revised. A State could determine that, because its recipients may use funds awarded under the Act jointly with State and local funds or for isolated costs such as equipment, the recipients cannot measure the impact of the Federal funds alone. A State also could determine, based on its particular needs and objectives and those of its recipients, that it is necessary to measure overall program improvement using the standards and measures developed under §§ 403.201 and 403.202 and not simply the impact of the funds awarded under the Act. In any instance in which a State decides that a broader evaluation is required under § 403.201(a)(3), a State is subject to the requirements of § 400.7(b).

Regardless of the determination made by a State as the necessary scope of the evaluation, its recipients of funds under title II, part C of the Act may use funds awarded under title II of the Act and the special programs under title III of the Act, as listed in § 403.130, to conduct the evaluation required in § 403.191 to the extent that the costs are reasonable, necessary, and are related to the purposes for which the funds are awarded. The use of funds for the evaluation must also be consistent with applicable requirements for using funds awarded under the Act, such as the requirement in § 403.196 to use funds awarded under title II to supplement, and not supplant, State and local funds.

Also, the Secretary notes that preliminary information from the National Center for Research in Vocational Education indicates that roughly half of all States already have specific standards and measures for vocational students. Of these States, 56 percent apply the standards and measures to all students in secondary vocational education, and 64 percent apply the standards and measures to all students in postsecondary vocational education.

Thus, the Secretary encourages States to review the evaluation provision and the statewide standards and measures to design an evaluation system that is meaningful, in terms of what the State intends to measure through the local evaluation and the particular needs and objectives within the State. Regardless of the scope of the evaluation, the Secretary encourages a State and its recipients to avoid unnecessary burden by coordinating evaluation systems to eliminate duplication, so long as the statewide measures developed under the Act are addressed. State boards and recipients are also free to coordinate evaluations under § 403.191 with evaluations required by regional accrediting agencies to the degree it is appropriate. To the extent feasible, recipients should use existing data and data collection systems.

The Secretary also notes that the burden of the evaluation may be influenced by the number of indicators used. Sections 403.202(a) (1) and (2) give States the option to adopt only two measures as a part of the statewide system of core standards and measures—one for learning and competency gains, and one from the measures of performance listed in section 115(b)(2) of the Act. A recipient could, therefore, base its evaluation on a limited number of indicators. However, a State or a recipient is free to include additional measures, if it chooses.

The Secretary has also reduced the burden of implementing the evaluation requirement by clarifying in § 403.191 that recipients may rely on representative samples in conducting the evaluation. So long as the samples are representative of the targeted group, there is little potential for the abuses cited by one commenter who opposed sampling. However, the Secretary acknowledges the wide variety of the types of projects assisted under the basic or special programs, the populations participating, and the range in size of recipients. A recipient may choose, for example, to conduct an evaluation based on a representative sample of students, or of students in a particular grade, or of sites assisted under the Act. The Secretary notes that a recipient is not limited to sampling by these examples, and that not all of these samples will result in reliable data for every eligible recipient. Therefore, § 403.191 gives a recipient the flexibility to determine which methods to employ as it is in the best position to know which methods are most feasible, cost effective, and reliable for it.

The Secretary has modified proposed § 403.191, in response to comments, to permit sampling and to require a recipient to evaluate the particular projects, services, and activities receiving assistance under a basic program listed in § 403.60 or a special program listed in § 403.130, unless the State board determines under § 403.201(a)(3) that a broader evaluation is necessary to be effective. However, the Secretary does not agree with some commenters that it would be effective to permit a recipient to phase in the evaluation or the standards and measures. Recipients would have difficulty comparing progress from year to year if the standards and measures are phased in. With respect to other comments recommending that the Secretary reduce the burden of the proposed § 403.191, for instance, by requiring evaluations less frequently than annually, or by transferring the requirement to the State board, section 117(a) of the Act requires a recipient of financial assistance under title II, part C of the Act to conduct an annual evaluation.

As discussed more fully in response to comments on the uses of funds, § 403.191 has been changed to clarify that funds awarded under the Act may be used to conduct the evaluation to the extent reasonable, necessary, and consistent with all applicable requirements for using funds awarded under the Act.

The Secretary notes that the scope of § 403.191 has been modified to address the concern of some commenters that, if funds awarded under the Act could be used to pay for the cost of evaluating a recipient's entire vocational education program, funds available for activities and services to students would be severely depleted.

Changes: Sections 403.191 (a)(1), (c)(2), and (d) have been changed to indicate that a recipient of funds awarded under title II, part C of the Act must evaluate the particular projects, services, and activities receiving assistance from a basic program listed in § 403.60, or a special program listed in § 403.130, unless the State board determines that a broader evaluation is required under revised § 403.201(a)(3). Corresponding changes have been made to § 403.192(b)(1), regarding the requirement for a local improvement plan. Language has also been added to § 403.191(a)(1) to clarify that a recipient may use a representative sample in evaluating its entire vocational education program.

Local evaluation—Scope of requirement (§ 403.191(a)(1))

Comments: Numerous commenters objected to the requirement in § 403.191(a)(1), that a recipient of funds under title II, part C of the Act must evaluate its entire vocational education program. These commenters argued that the requirement is inconsistent with language in section 117(a) of the Act, which provides for an evaluation of the "effectiveness of the program conducted with assistance under this Act," and section 115(a) of the Act, requiring the development of standards and measures to be used to evaluate "all programs assisted under this Act." These commenters stated that the term "program" refers only to the particular projects assisted with funds awarded under the Act. Other commenters stated that, when Congress intends a requirement to apply regardless of the source of funding, Congress knows how to impose the requirement expressly, and that Congress would not have imposed so broad an evaluation requirement without providing the funds to pay for it.

Some commenters challenged the Secretary's rationale for requiring an evaluation of a recipient's entire program: that it is not possible to measure separately the effectiveness of the funds awarded under the Act because they are often intermingled with State and local funds. These commenters argued that, on the contrary, the requirements in section 235 of the Act to fund limited sites or program areas, and to ensure that the programs funded are of such size, scope, and quality as to be effective, ensure that the funds awarded under the Act will make an easily traceable, significant, and therefore measurable impact. Other commenters argued that it was incongruous to require a recipient to evaluate its entire vocational program regardless of the particular projects receiving funds under the Act, in light of the fact that section 235 of the Act requires a recipient to concentrate funds awarded under title II, part C of the Act at a limited number of sites or in a limited number of program areas based on high concentrations of special populations.

Some commenters expressed the view that if the purpose of the local evaluation is to assess the effectiveness of funds awarded under the Act, then only projects assisted with these funds should be evaluated. These commenters asserted that evaluating a recipient's entire vocational education program would yield unreliable data for assessing the impact of the funds awarded under the Act on the recipient's vocational education program.

A few commenters challenged the requirement to evaluate an entire program without regard to which areas of the program receive Federal funding as an instance of unwarranted Federal intrusion into State and local affairs. One commenter stated that, in contrast to section 235 of the Act, the proposed evaluation requirement was not in keeping with the intent of Congress to drive control, flexibility, and accountability to the local level. A few commenters questioned the Secretary's authority to enforce the requirement that a recipient evaluate its entire program and improve areas that are deficient whether or not those areas receive funds awarded under the Act. Another commenter questioned a State's legal authority for requiring a recipient to evaluate non-federally funded areas of its program.

Other commenters supported the proposed rule as the only effective method for tracking program progress. One commenter stated that without a broad evaluation, a recipient would not know where to devote funds to improve its program. Another commenter pointed out that Federal funding comprises only about 10 percent of the cost of vocational education in a State, and that under section 235 of the Act a recipient may shift funds among projects from year to year; therefore, an annual evaluation of the entire program is essential to assess the impact of the Federal funds.

One commenter supported the scope of the evaluation requirement, but recommended that the Secretary include a definition of the word "program," to distinguish the meaning of program in the evaluation provisions from the common use of the term to refer to sets of related courses.

Discussion: In light of the numerous comments citing the burden that proposed § 403.191 would impose on recipients, the scope of the minimum evaluation has been modified to require evaluation of only a recipient's projects, services, and activities receiving assistance under the basic or special programs listed in §§ 403.60 and 403.130, respectively, unless the State board determines under § 403.201(a)(3) that a broader evaluation is necessary to be effective. The Secretary believes that limiting the evaluation to the particular projects, services, and activities receiving assistance under a basic or special program is but one legally sound interpretation of the term "program" as it is used in sections 115(a) and 117(a) of the Act. Accordingly, § 403.201 has been revised to provide States the flexibility and responsibility to expand the scope of the evaluation, as discussed in response to comments on the burden imposed by proposed § 403.191(a)(1).

Changes: Changes have been made to §§ 403.191, 403.192, 403.201, and 403.202, as noted in response to comments on the burden of implementing proposed § 403.191(a)(1).

Comments: One commenter expressed confusion about the scope of the requirement to evaluate an entire program. The commenter appeared to believe that a recipient receiving only funds awarded under title III of the Act would be required to evaluate its entire program.

Discussion: The Secretary wishes to emphasize that only recipients of funds awarded under title II, part C of the Act are subject to the requirement to conduct an evaluation in § 403.191. Section 403.191(a)(1) provides, however, that a recipient of funds under title II, part C of the Act must evaluate the particular projects, services, and activities receiving support under the basic or special programs listed in §§ 403.60 and 403.130, respectively, including those projects that receive only funds awarded under the special programs authorized by title III of the Act.

Changes: None.

Local evaluation—Uses of funds (§ 403.191)

Comments: Commenters expressed confusion as to whether a recipient may use funds awarded under the Act to support the cost of conducting an evaluation under § 403.191. One commenter stated without elaboration that the Act does not permit recipients to use funds awarded under the Act for the evaluation. Other commenters simply requested that the final regulations clarify this matter. One commenter asked that the regulations clarify that funds received under title II, part C of the Act could be used, and that the regulations provide for a waiver of the requirements of § 403.111(d) for giving priority for funding under title II, part C of the Act to a limited number of sites or program areas, based on high concentrations of special populations. Some commenters requested clarification of whether funds awarded under title II, part C of the Act used to pay for the evaluation must be included in the five percent a recipient is permitted to use for administration under section 235(c)(4) of the Act.

Discussion: A recipient of funds under title II, part C of the Act may use funds awarded under title II of the Act and the special programs under title III of the

Act, as listed in § 403.130, to conduct the evaluation required in § 403.191, to the extent that the costs are reasonable, necessary, and are related to the purpose for which the funds are awarded, such as sex equity, or consumer and homemaking education. The use of funds for the evaluation must also be consistent with applicable requirements for using funds awarded under the Act, such as the requirement in § 403.196 to use funds awarded under title II to supplement, and not to supplant, State and local funds. The Department's practice has been to exclude the costs of evaluations from the costs of administration. If a recipient uses funds awarded under title II, part C of the Act for this purpose, the recipient is not required to count those costs as part of the five percent reserved for administration under section 235(c)(4) of the Act. The requirement in section 235(b) of the Act, to give priority, applies to a local recipient's distribution of funds to sites or program areas. This provision does not prohibit a recipient from reserving a necessary and reasonable amount of funds for evaluation or administration before distributing funds to sites or program areas. Therefore, it is not necessary to waive section 235(b) of the Act in this instance.

Changes: Section 403.191(e) has been added to clarify that a recipient may use funds awarded under the Act to support the cost of the evaluation required in § 403.191. Use of funds for evaluation must be reasonable, necessary, related to the purpose for which the funds are awarded, and consistent with applicable requirements for the use of funds awarded under the Act.

Local evaluation—Application of statewide standards and measures (§ 403.191(a)(1))

Comments: A few commenters objected to the imposition of standards and measures developed under the Act upon projects funded under other authorities, such as JTPA or JOBS; these commenters noted that these projects are already subject to evaluation requirements that do not coincide with the requirements of the Act. Other commenters argued that the evaluation required in sections 115 and 117 of the Act was designed only to apply to the particular Federal interest in serving members of special populations, and, thus, was not suited to evaluating projects funded under other authorities.

Other commenters noted that vocational education projects may address different needs and serve different populations, and expressed the view that, if all of the components of a recipient's program were subject to the statewide system of standards and measures required by section 115(a) of the Act, the results would be misleading and result in inaccurate identification of areas needing improvement. Some commenters concluded that States, in attempting to accommodate the variety within programs, would adopt the most minimal standards rather than focusing on high quality standards designed to further the goals of the Act. One commenter stated that the evaluation would not lead to consistent, reliable data for the Federal government because of the programmatic differences between States.

Discussion: With respect to applicability of the statewide standards and measures to projects that must be evaluated under § 403.191 and that also receive assistance under JOBS and JTPA, § 403.202(b) provides that a State board, in developing the statewide system of standards and measures, should consider, and provide for consistency with, the standards and measures developed under JOBS and JTPA, to the extent appropriate.

Although the scope of the evaluation has been modified, the Secretary does not agree with the comment that the evaluation and the standards and measures in §§ 403.191 and 403.202 are geared only towards "Federal interests" in serving special populations. The Secretary notes that, as clarified in response to comments on §§ 403.111(a)(3) and 403.111(b), once a recipient has ensured that the needs of special populations are met and has given priority for funding to sites or program areas with the highest concentrations of special populations, the recipient may serve the general population as well. Moreover, the standards and measures from which a State must choose in § 403.202 consist of measures of general applicability, such as completion of secondary school, and job skill attainment.

The Secretary also notes that, to the extent a State board determines under § 403.201(a)(3) that the evaluation should include projects not receiving assistance under the Act, the regulations provide ample flexibility for the State board to design standards and measures that take into account the varying needs and objectives of local programs. Section 403.201 provides that a State board must consult with the committee of practitioners, which includes representatives of recipients, in developing the standards and measures. Section 403.202(a)(3) provides that the standards and measures must include incentives and adjustments for special populations. The measures listed in § 403.202 include measures appropriate for different instructional levels and needs. Section 403.191(b)(1) also provides that recipients may modify the standards and measures according to a recipient's economic, geographic, or demographic circumstances, and the populations to be served.

Finally, the Secretary does not agree with some commenters that the purpose of the evaluation requirement is to provide uniform data about local vocational education programs to the Secretary. The evaluation is primarily intended to assist a recipient in identifying and directing resources to its deficient areas. The Act does not contemplate requiring a recipient to submit the results of the evaluation to the Secretary.

Changes: None.

Local evaluation—Modification of standards and measures (§ 403.191(b))

Comments: Some commenters expressed apprehension that a recipient, in order to boost its evaluation results, would modify standards and measures to result in lower expectations for special populations. These commenters proposed that § 403.191(b) be changed to provide that a recipient may supplement, but not weaken, the State standards and measures. The commenters also suggested that § 403.191(b) be revised to clarify that a recipient may not modify the standards and measures without the express approval of the State board.

Discussion: Section 403.191(b) provides that a recipient may modify the statewide standards and measures, based on certain factors provided in section 115(a) of the Act, and in conformance with the assessment criteria in the State plan. The Secretary believes this provision makes it clear that the State board sets the boundaries for local modification of the standards and measures and ensures that the effectiveness of its system of standards and measures is not impaired through local modification.

Changes: None.

Local evaluation—Equal access to vocational education program for members of special populations (§ 403.191(c))

Comments: Some commenters objected to § 403.191(c), which requires recipients, with the full participation of representatives of special populations, to identify and adopt strategies to overcome barriers resulting in lower rates of access to, or success in, vocational education for special populations. These commenters argued that § 403.191(c) does not accurately reflect section 117(c) of the Act, which provides that a recipient under title II, part C must conduct this evaluation, with "the full participation of representatives of individuals who are members of special populations." The commenters wanted § 403.191(c) changed to repeat the statutory language, and to clarify that section 117(c) of the Act requires the participation of outside representatives of these populations, such as parents, advocates, and members of special populations themselves, not program administrators.

Discussion: The Secretary believes that § 403.191(c) already provides for the participation of the individuals listed by the commenters—representatives of special populations, including parents, advocates, and members of special populations themselves—and, therefore, does not believe that a change to the regulations is necessary. With respect to excluding categories of individuals such as program administrators, the Secretary does not believe it is appropriate to set limits in § 403.191(c) on who may best represent the interests of members of special populations.

Changes: None.

Local evaluation—Progress in providing students with strong experience in, and understanding of, all aspects of the industry (§ 403.191(d))

Comments: Some commenters expressed concern that a recipient would narrowly construe the requirement in § 403.191(d), which provides that a recipient must include in its evaluation an assessment of the progress of the recipient's vocational education program in providing students with strong experience in, and understanding of, all aspects of the industries the students are preparing to enter. These commenters proposed that the regulations place emphasis on the need for strong experience in, and understanding of, all aspects of the industries, and the need to interpret the phrase "all aspects of the industry" broadly.

Discussion: Section 403.191(d) expressly provides that a recipient of funds under title II, part C of the Act, as part of the annual evaluation required by § 403.191(a), must evaluate its progress in providing vocational education students with strong experience in, and understanding of, all aspects of the industries the students are preparing to enter. Therefore, the Secretary does not believe that the regulations should contain additional emphasis on these elements.

Changes: None.

Local evaluation and standards and measures—Application to members of special populations (§§ 403.191 and 403.202)

Comments: One commenter requested that § 403.191 be changed to clarify that a recipient is to use the standards and measures to assess its program, not to assess individual students. The commenter wanted § 403.191 to emphasize that members of special populations may not be barred from participation in vocational programs because a recipient believes their participation will result in poor evaluation results. Additionally, the commenter felt that the Secretary should stress that "creaming"—only permitting the most successful students to participate—would not be tolerated.

Discussion: The Secretary agrees with the commenter that a recipient may not bar special populations from enrolling in its vocational program. However, the regulations have not been modified as the commenter requested because § 403.191(c) requires a recipient, in conducting the evaluation, to identify and adopt strategies to overcome barriers to access and success for members of special populations. In addition, § 403.111(c)(3) requires a recipient to provide for the equitable participation of members of special populations in the vocational program. Moreover, the State board makes an assurance, under § 403.32(a)(18), to ensure that members of special populations will be granted equal access to the full range of vocational education as that accorded to the general population. The Secretary considers these provisions significant protection against the possible abuses the commenter cited and sees no need to reiterate these provisions in § 403.191 or § 403.201.

Changes: None.

Local improvement plans—Funds available for improvement (§ 403.192)

Comments: One commenter asked what funds could be used to improve a deficient project at a site not receiving funds awarded under the Act; the commenter noted that, under section 235 of the Act, a recipient may fund only a limited number of sites or program areas, based on high concentrations of special populations.

Discussion: The scope of the evaluation under § 403.191 has been changed to include only the particular projects, services, and activities assisted under programs listed in §§ 403.60 or 403.130, unless the State board determines that a broader evaluation is required. The Secretary has made corresponding changes to the requirements for a local improvement plan, in § 403.192(b)(1). However, the Secretary points out that regardless of the scope of the evaluation, if a project covered by the evaluation is identified as deficient, funds awarded under Title II, Part C of the Act may be used to improve a deficient project at a site only if all of the requirements of the Act, including the requirement to give priority under section 235(b) of the Act, are met.

Changes: Section 403.192(b)(1) has been changed to provide that a recipient must include in the local improvement plan strategies designed to achieve progress in improving the recipient's projects, services, and activities receiving assistance under the programs listed in §§ 403.60 or 403.130.

Requirements for program improvement (§ 403.192)

Comments: A commenter noted that the requirement in § 403.192(b) for an eligible recipient to consult with teachers, parents, and students concerned with or affected by the program in developing a program improvement plan was burdensome. The commenter believed that carrying out this provision would require personnel, time, and money that could be better devoted to student services.

Discussion: Section 403.192(b) reflects the unambiguous requirement of section 117(b) of the Act. Moreover, it is consistent with the intent of the Act to have consultation on issues affecting program improvement.

Changes: None.

State and local improvement plan—Sanctions if improvement is not shown (§§ 403.192 and 403.204)

Comments: One commenter noted that the proposed regulations provided no incentive for a recipient to meet or exceed the statewide standards and measures because §§ 403.192 and 403.204, related to improvement plans, do not contain the threat of loss of funding if improvement is not demonstrated. This commenter recommended including a provision in the regulations to withdraw funding from a recipient if the recipient does not demonstrate sufficient progress.

Discussion: Sections 403.192 and 403.204 implement sections 117(b) and (c) of the Act, which do not provide for loss of funding if a recipient fails to show progress under a State and local improvement plan. Accordingly, the Secretary does not believe it is appropriate to cut off funding in these circumstances.

Changes: None.

Information requirements regarding special populations (§ 403.193)

Comments: One commenter believed that § 403.193 is unclear because it suggests that funds awarded under the Act might be used to assist special populations in other, non-vocational

aspects of schooling. The commenter argued that this would deplete funds for vocational education for all students.

Discussion: The Secretary believes that § 403.193 is quite clear from its context that it requires information be provided only about vocational education opportunities and activities available to members of special populations.

Changes: None.

Comments: Two commenters questioned whether § 403.193 requires eligible recipients to provide notification to parents of students over 18 years and recommended that § 403.193 be clarified.

Discussion: Section 403.193(b) requires any LEA, area vocational education school, or intermediate educational agency that receives funds under title II of the Act to provide the information described in § 403.193(a)(1) to students who are members of special populations and their parents at least one year before the students enter, or are of an appropriate age for, the grade level in which vocational education programs are first generally available in the State, but in no case later than the beginning of the ninth grade, regardless of the age of the student. Likewise, § 403.193(c) requires any eligible institution that receives funds under title II of the Act to provide the information described in § 403.193(a)(1) to each individual who requests information concerning, or seeks admission to, vocational education programs offered by the institution regardless of the age of the individual. Section 118(b) of the Act imposes no greater or lesser responsibility on an eligible recipient with respect to students that are over 18 years of age.

Changes: None.

Comments: Some commenters requested that § 403.193(a)(1)(i) clarify that an LEA that receives funds under title II of the Act must provide special populations students and their parents with information concerning opportunities available in vocational education in programs provided by the LEA and any area vocational education school or intermediate educational agency that serves students from the LEA.

Discussion: The Secretary believes that § 403.193(a)(1)(i) is clear that an LEA must provide information concerning all opportunities in vocational education available to a special populations student. This includes information concerning all programs open to the student, whether they are conducted directly by the LEA, an area vocational education school, or intermediate educational agency that serves students from the LEA, or directly by the State, as is sometimes the case.

Changes: None.

Comments: Some commenters requested that § 403.193(c)(2) be amended to require eligible institutions to assist in the preparation of applications related to admission when—not if — appropriate. The commenters believed that the use of "when" conveys a more affirmative sense that this assistance will be appropriate.

Discussion: The Secretary does not agree that § 403.193(c)(2) implies that this assistance will or will not be appropriate. Rather, consistent with Department style, "if" is used to refer to a condition or situation. The Department reserves the use of "when" to refer to time.

Changes: None.

Cost of providing information and supplementary services to members of special populations (§ 403.193(e))

Comments: Numerous commenters supported § 403.193(e), which provides that an eligible recipient does not have to use non-Federal funds to pay the costs of services and activities required by that section and by §§ 403.111(a)(2)(i) and (c)(3) and 403.190(b), unless the requirement is imposed by other applicable laws. Some commenters indicated that, while they supported the spirit of the equal access provision, they did not believe that equal access is a financial obligation for a recipient to pay any and all costs related to an unlimited assurance.

Other commenters requested that the provisions limiting services to members of special populations to the extent of available Federal funds be deleted because they believed that this provision was contrary to a clear statutory condition for funding. Another commenter recommended that an eligible recipient be required to spend funds awarded under the Act to meet the requirements of §§ 403.190(b) and 403.193, and be encouraged to make such expenditures from State and local funds as the eligible recipient may determine is necessary to meet the requirements of the Act.

Discussion: The Secretary does not believe that the Act is intended to create an individual entitlement for members of special populations and a corresponding unlimited financial obligation on eligible recipients. Accordingly, the provisions of both §§ 403.190(c) and 403.193(e) make clear that the services and benefits to members of special populations are required to be provided only to the extent Federal vocational education funds are available, unless those services are required by other applicable laws. Moreover, if an eligible recipient is already providing the information required in § 403.193 with non-Federal resources, it need not, of course, use Perkins Act funds to duplicate those expenditures.

Changes: None.

Comments: Many commenters noted that, even though § 403.193(e) indicates that recipients do not have to use non-Federal funds to pay for supplementary services unless the requirement is imposed by other laws, a recipient would have to spend State and local funds to provide supplementary services to all special populations students under § 403.190(b), pursuant to 34 CFR part 100, appendix B, which requires all recipients of Federal vocational education funds to spend non-Federal funds to provide equal access. These commenters indicated that they thought the proposed regulations construed equal access required by section 118(a) of the Act to be synonymous with pre-existing civil rights requirements, which independently require equal access to vocational education programs. These commenters expressed confusion over the interplay between § 403.193(e), and the requirements imposed on eligible recipients in §§ 403.111(a)(2)(i) and (c)(3), and 403.190(b). The commenters requested that the regulations clarify the interplay between these provisions and provide numerous examples.

Discussion: The "Guidelines for Eliminating Discrimination and Denial of Services on the Basis of Race, Color, National Origin, Sex, and Handicap in Vocational Education Programs," which are contained in appendix B of 34 CFR part 100, implement the requirements of title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973. While these provisions provide protection for some of the special populations under the Perkins Act, for example, individuals with disabilities and limited English proficient students, and require equal access, including the provision of supplementary services, they do not apply to other special populations under the Perkins Act, such as educationally and economically disadvantaged individuals. As § 400.9(b) makes clear, the Act does not in any way limit the rights of members of special populations accorded by other Federal laws, for example, title VI of the Civil Rights Act, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973.

However, the regulations implementing the Perkins Act do not

construe the terminology of the Perkins Act to be synonymous with the terms used in civil rights provisions, such as title VI of the Civil Rights Act. Title VI of the Civil Rights Act does not apply to all of the groups included in the definition of "special populations," as that term is used in the Perkins Act. Similarly, other Federal statutes, such as the IDEA and section 504 of the Rehabilitation Act of 1973, require services for disabled students but not other special populations as that term is used in the Perkins Act. Therefore, with respect to these populations, such as disadvantaged individuals, an eligible recipient is required to provide only the services specifically required by the Perkins Act. As noted in § 403.193(e), an eligible recipient is not required to use non-Federal funds to pay the cost of services and activities required by §§ 403.193, 403.111(a)(2)(i) and (c)(3), and 403.190(b), unless that requirement is imposed by other laws, such as title VI of the Civil Rights Act, title IX of the Education Amendments of 1972, and section 504 of the Rehabilitation Act of 1973.

Changes: None.

Comparability (§ 403.194 and appendix B to part 403)

Comments: Several commenters suggested that it would be helpful to have models of standard assurance statements to ensure compliance with the requirements in § 403.194. Some commenters indicated that the assurance models should ensure compliance that reflects "State support variation."

Discussion: There are likely to be many possible standard assurance forms that could be used by various States and local educational agencies, reflecting the flexibility in the regulations on meeting comparability requirements. To provide models may discourage flexibility. If the Department becomes aware of particularly useful model forms that would have broad applicability, it will disseminate them. With regard to the comment as it pertains to variations in State support, it does not appear likely that State support will vary within a school district, so it is not clear to what potential problem the commenters are referring. Furthermore, the Secretary provides, in paragraph (b) of Example 2 in appendix B to part 403, for a 10 percent variance in meeting comparability requirements and for exclusions from the comparability calculations for special State programs such as phase-in programs. All of these provisions allow for "State support variation."

Changes: None.

Comments: One commenter supported the proposed regulatory language and discouraged any more stringent criteria, such as requiring comparisons at the vocational education program level to determine comparability, as being too burdensome. Another commenter indicated that comparability should be limited to State and local educational agencies comparing services in vocational programs. To include more, this commenter believed, brings in too many variables and factors that are not controlled by the State or local educational agencies, such as the local property rate and teacher contracts. Examples should focus on comparing vocational education programs and services.

Discussion: Section 113(b)(19) of the Act requires that State and local funds be used in an LEA's schools that are receiving funds under the Act to provide "services, which taken as a whole, are at least comparable" to services provided in that LEA's schools that are not receiving funds under the Act. Thus, since the statute provides that services in general taken as a whole be the subject of the comparison, the statutory language does not support an interpretation that only vocational education services were intended to be included in comparability determinations.

Changes: None.

Comments: One commenter indicated that the "comparability expenditures" included in the examples in appendix B to part 403 (formerly in proposed § 403.194), were inconsistent with the "comparability services" required by the section 113(b)(19) of the Act. This commenter concluded that all sites controlled by an eligible recipient would be forced to have the same programs covering the same subject areas, which would be very costly. Often, this commenter felt, only one site offers a particular service, and students from all sites are transported to the one site. This commenter believed that Congress did not intend that all sites have identical programs, but once sites were selected, the recipient would not reduce its contribution of local funds to these sites and replace them with Federal funds.

Discussion: The Secretary believes that the examples in appendix B to part 403 are consistent with the Act, and that the examples of "services" are appropriate. The Secretary does not believe that § 403.194(a) requires having the same programs in the same subject areas. The examples in appendix B to part 403 provide considerable flexibility especially by permitting a 10 percent variance. The Secretary also disagrees that the intent of Congress was to ensure that an LEA does not reduce its contribution of State and local funds and replace them with Federal funds. While those purposes are related to the comparability requirement, they are more closely associated with "maintenance of effort" and "supplement, not supplant" provisions set forth in sections 502 and 516 of the Act.

Changes: None.

Comments: One commenter indicated it is unclear if there is a matching requirement for LEAs that have more than one school or site.

Discussion: There are no longer matching requirements that apply to LEAs under the Act. Comparability requirements are not matching requirements, but rather they require that an LEA provide comparable resources to its schools if the LEA has more than one school or site.

Changes: None.

Comments: Several commenters suggested clarifying the application of the comparability requirement to a consortium formed pursuant to section 321(b)(1) of the Act, especially if the consortium is composed of several LEAs with one high school each. One commenter suggested that an exemption for an LEA with one school apply; otherwise, the commenter said, high schools in different districts would be compared, which was not intended by the Act. Another commenter suggested that the provision be clarified to indicate that it pertains only to sites within a given LEA, and not to all sites of all the LEAs within a consortium. One commenter also suggested that an example be included that involves an area vocational district that is composed of multiple LEAs.

Discussion: The Secretary agrees with the commenters that section 113(b)(19) of the Act was intended to apply only to sites within a given LEA, and not to all sites of all LEAs within a consortium. Within each LEA in a consortium, however, comparability requirements would have to be met, but the comparability requirements do not apply to an LEA with a single high school or secondary site.

The commenter did not provide information about what was meant by the term "vocational district." However, if a "vocational district" meets the definition of an LEA in § 400.4(b), it would be subject to the comparability requirements in the same manner as other LEAs. LEAs within a "vocational district" that is not itself an LEA would be subject to the comparability requirements in the same manner as LEAs within a consortium.

Changes: A change has been made to § 403.194(b) to clarify how the comparability requirements affect consortia.

Comments: One commenter indicated that, since comparability is a new requirement, an LEA needs to be afforded some period of time to come into compliance, such as 30 days from the date that noncompliance is determined to submit a plan for meeting the requirement to the State agency. The commenter also felt that the State should have 30 days to approve or disapprove the plan, and the LEA should have 12 months from the date of the determination of noncompliance to correct the violation. The commenter also suggested that assigning a dollar value to the amount to be withheld or repaid is needed.

Discussion: If an LEA initially demonstrates its compliance with the comparability requirements, but fails to maintain compliance, the Secretary agrees that the LEA should be afforded a reasonable time to restore its compliance with the comparability requirements. Under § 403.200, the State has the responsibility to monitor and determine what steps need to be taken to ensure compliance. The Secretary wants to preserve reasonable flexibility and not be prescriptive in setting deadlines for compliance, and observes that 30 days to achieve compliance is reasonable, but that 12 months or a full year for an LEA to be out of compliance appears to be unreasonable. With regard to the dollar amount to be withheld or repaid if there is lack of compliance, section 113(b)(19) of the Act provides that a State must provide an assurance that funds are not being used in the schools of an LEA that is out of compliance with the requirement. Section 403.200(b) sets forth provisions for determining the amount the State must withhold or require to be repaid.

Changes: None.

Comments: One commenter indicated that comparability should not apply to all funded programs. The commenter felt, for example, that it would be unreasonable to require that all secondary schools in an LEA be comparable with one another before the LEA could conduct a curriculum integration project using State leadership funds.

Discussion: The Secretary believes that the comparability requirement applies to an LEA's particular school or schools that receive funds under the Act awarded under any program subject to the State plan, consistent with the State's assurance required by section 113(b)(19) of the Act. Thus, for example, an LEA conducting a curriculum leadership project with State leadership funds awarded under title II, part A of the Act must meet the comparability requirement to be eligible for those funds. However, the State leadership funds under the Act awarded to the LEA would not affect the comparability determination itself, since only State and local funding is used in the comparison. Furthermore, as noted above, the comparability requirements do not apply to all State and locally funded programs; certain programs listed in § 403.194 are exempt from comparability determinations.

Changes: None.

Comments: Several commenters requested that the examples in appendix B to part 403 (formerly in proposed § 403.194) be deleted or that they be rewritten in the regulations or issued in separate guidance. The commenters stated that Example 1 in appendix B will result in only "paper compliance" as the commenters believe a similar regulatory provision does in chapter 1 of the Elementary and Secondary Education Act of 1965, and that Example 2 in appendix B should not be allowed to substitute for all of the "requirements" in Example 1 in appendix B. Finally, the commenters indicated that, even if the examples are adequate for chapter 1, they are not adequate to measure the wide differences among vocational schools and programs that determine whether "programs" are in fact comparable.

Discussion: The examples are based on examples in the regulations for chapter 1 of the Elementary and Secondary Act of 1965, which has a similar comparability requirement. From all indications that the Secretary has, these examples in chapter 1 regulations have been effective in providing adequate guidance to grantees and in helping to ensure that the statutory provision is implemented properly. The commenters seem to base some of their suggestions on their belief that each example establishes requirements. The examples do not create requirements; they are merely illustrative. The suggested relationship of Example 1 in appendix B to Example 2 in appendix B would, therefore, be inappropriate.

With regard to the comment concerning the inadequacy of "Chapter 1-type" comparability measures to measure the differences among vocational education schools and programs, the Secretary believes that the regulations provide for appropriate measures. Congress enacted a comparability provision in the Act that is similar to the chapter 1 provision. The schools involved in chapter 1 are also diverse with regard to programs and services, and the comparability provisions have worked well.

Changes: None.

Supplanting (§ 403.196)

Comments: Several commenters supported § 403.196 and thought that paragraph (c) was particularly helpful. However, several other commenters believed that § 403.196(c) is confusing and contrary to the statutory language. These commenters asked for clarification and suggested that paragraph (c) negated paragraph (b) of § 403.196. One commenter argued that the purpose of the statutory non-supplant provision was to permit funds awarded under the Act to be used to pay for costs of vocational education services required for ensuring equal access to children with disabilities under the IDEA and to adults under the Rehabilitation Act of 1973, and to permit States and other recipients for the first time to expend available Federal funds for individuals with disabilities, regardless of whether the services to these individuals had been provided with non-Federal funds in prior years.

Discussion: Section 403.196(c) clarifies that the limited purpose of the exception to the supplanting prohibition is to allow expenditures that would otherwise constitute supplanting only in instances where the expenditures at issue would be used to increase the amount of funds that would otherwise be available to pay the costs of an IEP or of meeting the requirements of section 504 of the Rehabilitation Act of 1973 for either children with disabilities or adults with respect to their participation in vocational education programs. In the absence of the exception to the supplanting prohibition in section 516(a)(1)(B) of the Act, which is implemented in § 403.196(b), any use of funds awarded under title II of the Act to pay the costs of an IEP or of complying with section 504 of the Rehabilitation Act of 1973 would present a classic case of supplanting in violation of the supplanting prohibition in section 516(a) of the Act because the use of State and local funds for these purposes is required in the absence of the Federal vocational education funds. This would be true whether or not a State or other recipient had expended Federal funds for these services to individuals with disabilities in prior years. However, the Secretary believes that it would be inconsistent with the obvious purpose of making an exception to the supplanting prohibition, which is to make more funds available to serve individuals with disabilities, to permit a State or recipient to reduce aggregate expenditures for these purposes.

Changes: None.

Use of equipment (§ 403.197)

Comments: One commenter believed that § 403.197(a) should be interpreted to mean that only disadvantaged students may use equipment in a program during a particular class period. The commenter suggested that the regulations be revised to make clear that this narrow interpretation is correct.

Discussion: The Secretary disagrees that § 403.197 can be interpreted to limit the use of equipment to disadvantaged students. Equipment purchased with funds under § 403.112, 403.113, or 403.116 is available to all students in projects, services, or activities under § 403.111 or to other students as described in § 403.197.

Changes: None.

Comments: One commenter expressed concern that equipment purchases could be made for non-vocational needs.

Discussion: The Secretary finds that the procedural requirements set forth in § 403.197 are adequate to prevent the misuse of funds envisioned by the commenter.

Changes: None.

State responsibilities for ensuring comparability (§ 403.200)

Comments: With regard to the responsibilities of the State, several commenters suggested that the procedures for annually demonstrating comparability in § 403.194(c)(1) be developed either by the State educational agency (SEA) or by the LEA with SEA guidance and approval. Additionally, those commenters felt that § 403.194 would improperly permit an LEA to continue to receive funds (minus a "penalty") even though it continues to operate a program in violation of the comparability requirements, and, therefore, the section should be changed to indicate that an LEA that has not taken steps to comply with comparability requirements should receive no funds.

Discussion: Under § 403.200, the State board must monitor each LEA's compliance with the comparability requirements. Among the reasonable actions it could take under that authority is reviewing an LEA's procedures annually to determine if they comply with the statute and regulations, and providing guidance on those procedures if the State board feels that it is appropriate. The Secretary, however, does not believe it is necessary to mandate the steps or methods in a State's monitoring process.

With regard to the remedies for lack of compliance with the comparability requirements, §§ 403.194 and 403.200 make it clear that an LEA may receive an award under the State plan only if it meets the comparability requirements. These sections of the regulations indicate that an LEA may demonstrate compliance with the comparability requirements by filing an appropriate assurance.

The Secretary believes that the commenters have made an appropriate suggestion with regard to § 403.200, concerning the withholding of funds. The provision has been modified to indicate that, if a violation is discovered after a grant award is made but during the time the program is in operation, a State could withhold all or a part of an LEA's grant, depending on the severity of the problem. In addition, an LEA that continues to be out of compliance in subsequent years would not be eligible to receive a grant award in those years. The regulatory change addresses the commenters' concern and also provides the State with flexibility in designing appropriate remedies. The appropriate remedy for a violation found after the period of availability of funds awarded is a refund to the State board of the amount or percentage by which the LEA failed to achieve comparability. The commenters incorrectly categorize any of these measures as a "penalty."

Change: A new paragraph (a) has been added to § 403.200 and § 403.200(c) has been changed to clarify the responsibilities of the State board and an LEA.

Statewide system of standards and measures (§§ 403.201 and 403.202)

Comments: A few commenters expressed satisfaction with § 403.201(a)(1), which does not require the State board to develop separate standards and measures for secondary and postsecondary levels. One commenter believed that a State should decide whether separate standards are needed, but that a State should not be permitted to set different measures for secondary and postsecondary systems. This commenter believed that one system of measures is necessary to facilitate greater articulation between secondary and postsecondary institutions. Another commenter expressed the view that the regulation should be changed to make it clear that a State cannot develop separate systems of standards and measures for secondary, postsecondary, and adult education, but did not explain why.

Discussion: The Act neither requires nor prohibits separate standards and measures for secondary and postsecondary levels. The Secretary believes that a State board, in consultation with the committee of practitioners, is in a better position than the Secretary to determine whether separate standards and measures are appropriate.

Changes: None.

Comments: One commenter noted that, while section 115(a) of the Act requires a State board to develop standards and measures for secondary and postsecondary vocational education programs, § 403.201(a)(1) provides that the State board must develop standards and measures of performance for secondary, postsecondary, and adult education programs. The commenter argued that the inclusion of adult education programs was contrary to what the Act requires and should be deleted.

Discussion: Section 403.201(a)(1) is consistent with the requirements of section 115(a) of the Act, which provide that the standards and measures must apply to "all programs assisted under this Act." Funds awarded under section 232 of the Act provide assistance to postsecondary and adult education programs.

Changes: None.

Comments: Some commenters stated that, with respect to the statewide system of standards and measures, § 403.202(a)(1) should clarify that the measure of student progress in the achievement of basic and more advanced academic skills is not limited to the achievement of academic skills related to the vocational program. The commenters also requested that the regulations require that the standards and measures address achievement of basic and academic skills in each of the following areas: math, reading, writing, science, and social studies. One commenter requested that the regulations define basic and advanced academic skills to include fundamental reading, math, writing, speaking, listening, and decision-making skills, while advanced skills would include higher level math and science skills. Other commenters suggested incorporating the definition of "more advanced skills" from Chapter 1.

Discussion: The Secretary does not agree that the evaluation must include an assessment of a student's achievement of academic skills that are unrelated to the vocational program. The evaluation must focus on a project's progress towards the goal of providing an integrated program of vocational and academic education. With respect to whether the standards and measures must address the achievement of basic and academic skills in math, reading, writing, science, and social studies, the Secretary believes that the State board should have the flexibility to determine whether all or some of these subjects

must be addressed. The Secretary does not believe that the meaning of basic and more advanced academic skills should be prescribed by regulation. The definition offered by one commenter is an acceptable interpretation; however, a State board may devise a different, but a equally acceptable definition, depending on the needs and objectives of that State's program.

Changes: None.

Comments: Some commenters requested clarification that the measures of competency gains used in § 403.202(a)(1) refers to a student's achievement of a set of specific skills and knowledge.

Discussion: The Secretary believes that the meaning of "competency gains" is straightforward and sees no need to add a definition of the term.

Changes: None.

Comments: Some commenters pointed out that § 403.202(a)(2) requires that the statewide system of standards and measures include "one or more" of a list of measures, while section 115(b)(2) of the Act states that the standards and measures must include "one or more measures of performance, which shall include only * * *." The commenters stated that this was a significant change in meaning, but did not elaborate.

Discussion: The Secretary believes a State board should have the flexibility to add other measures of performance that are related to the goals and purposes of the Act, so long as the State board selects at least one measure from the list in § 403.202(a)(2).

Changes: None.

Comments: One commenter pointed out that § 403.201(a)(2)(i), which implements section 115(a) of the Act, requires a State to develop a system of standards and measures by September 25, 1992; however, section 115(a) of the Act provides that the State must "develop and implement" the system of standards and measures by September 25, 1992. The commenter proposed that § 403.201(a)(2)(i) be amended to reflect the requirements of section 115(a) of the Act, and include the requirement to implement the standards.

Discussion: The Secretary agrees that § 403.201(a)(2)(i) should be modified to clarify that a Statewide system of standards and measures must be developed and implemented by September 25, 1992. The omission of the requirement to "implement" the standards and measures was inadvertent.

Changes: Section 403.201(a)(2)(i) has been changed to include the requirement that a State must develop and "implement" the system of standards and measures by September 25, 1992.

Comments: One commenter asked that the "incentives or adjustments" provision in § 403.202(a)(3) be interpreted by regulation to mean the level of assistance, financial and otherwise, and not as an authority to lower standards and measures for special populations.

Discussion: Section 115(b)(3) of the Act, which is implemented in § 403.202(a)(3), requires a State to include in its system of standards and measures incentives or adjustments that are designed to encourage service to targeted groups or special populations.

Neither the statute nor its legislative history defines the term "incentives or adjustments." Consequently, the Secretary believes a State should be afforded broad authority to develop incentives or adjustments appropriate to its needs and circumstances. However, this might include establishing different standards and measures for these groups or populations.

Changes: None.

Comments: One commenter expressed the view that the provision in § 403.202(b) that a State board, in developing the system of standards and measures, must consider, and provide for consistency with, standards and measures developed under JTPA and JOBS, to the extent appropriate, exceeds the intent of the Act. The commenter offered no elaboration. Some commenters objected to the provision, on the ground that the Act requires the State board only to consider the standards and measures of JTPA and JOBS, not to attempt consistency with them. These commenters pointed out that JTPA and JOBS have different goals and objectives than the Act.

Discussion: The Secretary does not agree that requiring a State board to take into consideration, and to provide for consistency with, the standards and measures under JTPA and JOBS, to the extent appropriate, exceeds the intent of section 115(c) of the Act. Section 403.202(b) does not require standards identical to JOBS and JTPA. Rather, § 403.202(b) reflects the concern underlying section 115(c) of the Act, that the State board should not duplicate the effort of other Federal agencies in developing standards and measures under JTPA and JOBS, and that, to the extent the State board determines it is appropriate, the standards and measures developed under the Act will be consistent with standards and measures developed under JTPA and JOBS.

Changes: None.

Comments: Some commenters expressed the view that the regulations should establish a connection between § 403.202, which requires a State board to develop standards and measures, and § 403.191 (c) and (d), which requires a recipient, as part of its annual evaluation, to identify and adopt strategies to overcome barriers resulting in lower rates of access to, or success in, vocational education for members of special populations; to evaluate the progress of members of special populations; and to evaluate the recipient's progress in providing students with strong experience in, and understanding of, all aspects of the industries the students are preparing to enter. The commenters felt that the regulations should be redrafted to require a State board to develop standards and measures that address the requirements of § 403.191 (c) and (d).

Discussion: The requirements in § 403.191 (c) and (d) implement sections 117(a) (1) and (2) of the Act, which provide that it is the recipient's responsibility, not the State board's, to include these factors in its evaluation in addition to using the State board's system of standards and measures. Section 115(a) of the Act requires only that the State board include in its system two measures, and § 403.202 preserves that flexibility for the State board.

Changes: None.

Comments: Some commenters stated that the measures developed under § 403.202 must be comprehensive and broad, while the standards could be set low, initially, and raised as progress is made. These commenters also expressed the view that the regulations should emphasize the requirement that measures and standards must be accurate, valid and unbiased.

Discussion: The Secretary agrees that measures developed under §§ 403.201 and 403.202 should be comprehensive, but does not believe the regulations need to contain additional emphasis on this point. Nor does the Secretary believe it is necessary to revise the regulations to provide that standards and measures must be accurate, valid, and unbiased. These requirements are implicit in the provision that requires a State to develop a system of standards and measures.

Changes: None.

Comments: One commenter requested that the Secretary clarify what would be an acceptable level of gain under the standards set by the State board pursuant to § 403.202. The commenter also requested guidance on whether a recipient must use pre- and post-testing in assessing progress under the standards and measures, and whether a recipient could simply test random samples of students rather than testing every student. The commenter expressed uncertainty about including in the evaluation students enrolled in consumer and homemaking education, technology education, and career exploration programs because these programs are not occupational in nature, and students who failed to complete a full program of vocational education.

Discussion: Section 115(a) of the Act clearly reserves to the State board the flexibility to determine appropriate standards under the statewide system of standards and measures. The Secretary believes that the advisability of using pre- and post-testing, and which students to include in the testing, is likewise best reserved to the judgment of the State board and its recipients. Regardless of whether a recipient uses pre- and post-testing, a recipient may rely on representative samples in conducting the evaluation required in § 403.191(a)(1). With respect to what must be included in the evaluation, § 403.191 has been changed to provide that a recipient of funds under title II, part C of the Act must evaluate only its projects, services, and activities assisted under the basic or special programs listed in §§ 403.60 and 403.130, unless the State board determines that, pursuant to revised § 403.201(a)(3), a broader evaluation is required.

Changes: None.

Comments: One commenter expressed the view that the relevance of programs to the labor market should be a central element of the evaluation of a recipient's program. The commenter believed that the evaluation provision demonstrated an excessive concern with programmatic elements rather than with employer satisfaction.

Discussion: The Secretary notes that § 403.202(a)(2)(ii) provides that a State board may choose to measure "[j]ob or work skill attainment or enhancement including student progress in achieving occupational skills necessary to obtain employment in the field for which the student has been prepared * * *." In addition, § 403.202(a)(2)(iv) provides that a State board may include, as a measure, placement in employment. Representatives of business also advise the State board on the selection of the members of the committee of practitioners, with whom the State board consults in developing the standards and measures. The Secretary believes that these provisions are adequate to ensure that employer satisfaction is an element in the local evaluation, to the extent the State board deems appropriate.

Changes: None.

State and local improvement plan (§ 403.204(a))

Comments: Some commenters proposed that § 403.204 define "sufficient progress" in meeting the standards and measures under the local improvement plan to mean enough progress in one year that, if the same rate were maintained in subsequent years, the students would master the core competencies by completion of the program. The commenters also suggested that § 403.204 clarify that the State and recipient must develop the joint plan for the year after the year in which the local program does not show sufficient progress, and not two years after the program does not show improvement. The commenters felt that § 403.204 should clarify that the requirement that the State board and the recipient must work with teachers, parents, and students to develop a joint plan for improvement must enable these groups to participate meaningfully in the development of the plan.

Discussion: The Secretary does not agree that § 403.204 needs clarification on the points suggested by the commenters. Acceptable progress may vary, depending on the nature of the deficiencies that prompted the local improvement plan, and the resources available to the recipient to address the deficiencies. The State board, in consultation with the recipient, should have the latitude to determine what constitutes acceptable progress under a local improvement plan.

Also, in accordance with section 117(c) of the Act, § 403.204 properly provides that a recipient has one year in which to show improvement under the local improvement plan developed under § 403.192. Only after this year may the State board require the recipient to enter into a joint improvement plan under § 403.204. Finally, the Secretary believes that the requirement that the State board and recipient provide for effective participation by parents, teachers and students in developing the joint plan is implicit in § 403.204 and does not agree that elaboration on this point is necessary.

Changes: None.

Appendix A to Part 403—Examples for 34 CFR 403.111(a) and 403.111(c)(3)

Comments: Some commenters requested that the illustration of providing full participation under § 403.111(a) be amended to indicate that an LEA could use funds from sources other than § 403.112 to provide supplementary services to special populations students.

Discussion: The illustration provides only one example of the manner in which an eligible recipient can provide full participation for a special populations student. It is not intended to rule out any other ways of providing full participation, nor is it intended to indicate the source of funds to be used. Moreover, § 403.190(a)(1)(i)(B) expressly requires an eligible recipient applying for funds under §§ 403.112, 403.113, or 403.116 to describe how it will use those funds or funds from other sources to improve its program with regard to each requirement and activity described in § 403.111(c) and (d), including supplementary services designed to meet the needs of special populations. Thus, the Secretary does not believe that further clarification is necessary.

Changes: None.

Comments: Some commenters believed that Example 1 under the illustrations of providing equitable participation under § 403.111(c)(3) is a bad example because it provided an extremely superficial method for informing parents and students about program options and providing them with an opportunity and means to make an informed and reasoned decision when making a critical career choice.

Discussion: The Secretary believes that the example illustrates well that one way to provide equitable participation for the students in an LEA is to have an area vocational education school that will receive the LEA's allocation under the Act provide information and an opportunity for enrollment directly to the students and their parents. The example does not state that this is the only method of providing equitable participation, nor does the Secretary agree that it implies that a one-time meeting is the only service necessary to ensure the equitable participation of these students.

Changes: None.

Part 405—National Tech-Prep Education Program

Consulting with employment and training agencies and employment service agencies (§ 405.20)

Comments: One commenter noted that applications could receive extra points under § 405.20(d) if, in addition to other factors, they are developed in consultation with business, industry, and labor unions. The commenter recommended expanding the types of entities with whom applicants should consult to include employment and training agencies and employment service agencies in order to receive the extra points.

Discussion: The Secretary agrees that applicants should consult with as broad a range of entities as possible in

developing their applications, but has included in § 405.20(d) only the entities specified in section 345(d) of the Act. Section 405.21(h)—Adequacy of resources and commitment— includes a factor for evaluating the use of non-Federal resources to provide project services and activities. The Secretary believes that this factor sufficiently encompasses the types of entities the commenter has suggested be involved with proposed projects.

Changes: None.

Equal access for special populations (§ 405.21)

Comments: Several commenters suggested amending the selection criteria to give substantial weight to the quality of the applicant's plan for serving individuals who are members of special populations. The commenters did not believe that the selection criteria adequately reflected the requirement of section 344(b)(6) of the Act to provide equal access to the full range of tech-prep education programs to individuals who are members of special populations, including the development of tech-prep education program services appropriate to the needs of these individuals.

Discussion: Under section 344(b)(6) of the Act, providing equal access to members of special populations is a threshold requirement that must be met before an application can be considered for funding. Therefore, the Secretary does not agree that providing equal access to members of special populations should be a factor in the evaluation process.

Changes: None.

Part 406—State-Administered Tech-Prep Education Program

Extending tech-prep education programs to grades lower than the last two years of secondary school (§ 406.3(b)(2))

Comments: Several commenters were concerned that tech-prep education programs are restricted to sequences of study beginning in the eleventh grade. Because they believed that students need to be adequately prepared for tech-prep education programs prior to their enrollment in these programs, the commenters recommended that projects be allowed to use tech-prep education program funds to identify appropriate academics, restructure curriculum, and provide career counseling and vocational assessment to students enrolled in the tenth grade and lower.

One commenter stated that students' success in tech-prep education programs could be enhanced by exposing students to more academically rigorous courses and applied teaching techniques before they enroll in tech-prep education programs.

Another commenter cautioned that tech-prep education programs will likely attract a higher proportion of females and minorities to these programs and that allowable support services should be made available to students before they make a commitment to the program.

While most commenters did not specify at which grade these services should begin, several urged that tech-prep education programs provide flexibility for using funds beginning in grade nine; another commenter recommended that projects offer services to students as early as the seventh grade.

Discussion: The Secretary agrees that students should receive services to prepare them for entry into tech-prep education programs at the eleventh grade. Section 344(b)(2) of the Act specifies that tech-prep education programs be offered during the two years of secondary school preceding graduation followed by two years of higher education or two or more years in an apprenticeship program. However, with respect to tech-prep education at grades before the 11th grade, section 235(c)(1)(G) of the Act allows funds under title II, part C of the Act to be used for tech-prep education programs that fall within the definition of vocational education without regard to the grade level of the participants. Moreover, as discussed in response to comments on § 406.3(b)(7), the Secretary has determined that tech-prep education programs must provide preparatory services to all populations, which as defined in § 400.4(b) includes outreach, guidance, and counseling services to potential candidates for these programs.

Changes: None.

Clarify the services and activities for individuals who are members of special populations (§ 406.3(b)(6))

Comments: Several commenters recommended providing guidance concerning the meaning of equal access and services for individuals who are members of special populations by referring to section 118 of the Act.

Discussion: The Secretary agrees that it would be helpful for applicants to know which services members of special populations must receive under section 344(b)(6) of the Act, but does not agree that section 118 of the Act applies to the State-Administered Tech-Prep Education Program. The Secretary believes that the assurances required in section 118 of the Act apply only to the programs under Title III of the Act that the Act requires to be operated in accordance with the State plan.

The applicable standard under the tech-prep education program is to provide members of special populations with an opportunity to enter tech-prep education that is equal to the opportunity afforded to the general student population.

Changes: Section 406.3(b)(6) has been changed to clarify that providing equal access for members of special populations means providing an opportunity for these students to enter tech-prep education that is equal to the opportunity provided to the general student population.

Providing preparatory services in connection with tech-prep education programs (§ 406.3(b)(7))

Comments: Several commenters urged that projects be allowed to use tech-prep education program funds to provide preparatory services for students enrolled in the tenth and lower grades. The commenters observed that funding for tech-prep education programs is restricted to providing services to students beginning in the eleventh grade and that this restriction prevents programs from providing preparatory services to students before they become enrolled in tech-prep education programs.

Some commenters noted a contradiction in the requirement to provide preparatory services to assist participants in tech-prep education programs contained in section 344(b)(7) of the Act and the definition of "preparatory services" contained in section 521(24) of the Act. One commenter recommended that the definition of "preparatory services" be applied consistently throughout the regulations.

Discussion: The use of the term "preparatory services" in connection with tech-prep programs has created confusion. That term as defined in section 521(24) refers to services for "individuals who are not enrolled in vocational education programs" and includes services that are not applicable to students who are enrolled in vocational education programs, such as outreach and recruitment. Section 344(b)(7) of the Act requires the inclusion of "preparatory services" that will assist all participants enrolled in tech-prep programs. Thus, the Secretary agrees that the requirement to provide preparatory services to all participants under section 344(b)(7) of the Act is inconsistent with the definition of "preparatory services" in section 521(24) of the Act, which includes only services to individuals not enrolled in vocational education. Item 182 of the Conference Report accompanying the Act indicates

that the requirement to provide preparatory services to all participants originated in section 212(b)(8) of the Senate amendment as a requirement to provide pre-vocational programs that assist the participants in sections 223 and 242 of the Senate amendment, which included discrete populations such as the economically disadvantaged, criminal offenders, and single parents. (H.R. Rep. No. 660, 101st Cong., 2d Sess. 138 (1990).) The conferees agreed to make a conforming amendment to change "pre-vocational" to "preparatory" and, without explanation, changed "participants in sections 223 and 242" to "all participants." Thus, the Secretary believes that Congress intended to require preparatory services related to tech-prep education for "all populations"—not all participants.

Changes: The language of § 406.3(b)(7) has been changed to indicate that preparatory services must be provided under tech-prep education programs for all populations. A conforming change has been made to § 405.21(a)(7).

Broadening program scope and definitions (§ 406.5)

Comments: One commenter recommended providing a measure of flexibility in program definitions in order to enhance program effectiveness and broaden the scope of projects that could be funded under the program. The commenter, however, did not provide specific examples of definitions that might need to be clarified, modified, or expanded to provide for greater flexibility.

Discussion: The Secretary agrees that the program definitions should provide for a degree of flexibility within the requirements and specifications of the Act. Even though the definitions specified for the State-Administered Tech-Prep Education Program are taken almost verbatim from the definitions specified in the Act, the Secretary believes that these definitions provide sufficient flexibility for applicants to propose a variety of tech-prep education programs that will be both effective and wide ranging in scope.

Changes: None.

Bureau-funded schools or tribally controlled community colleges (§ 406.10(b))

Comments: A commenter noted that the statute provides that the Bureau of Indian Affairs funded schools and tribal colleges are eligible recipients for the tech-prep program. The commenter recommended that a requirement be added to § 406.10(b) to ensure equal consideration for all applications from consortia that include secondary schools funded by the Bureau of Indian Affairs or tribally controlled community colleges.

Discussion: While the Secretary does not believe there is a need to modify the language in § 406.10(b), the Secretary wishes to emphasize that §§ 406.30(a)(1) and 406.30(a)(2)(i) make it clear that an institution receiving assistance as a secondary school funded by the Bureau of Indian Affairs and non-profit institutions of higher education, including institutions that receive assistance under the Tribally Controlled Community College Assistance Act of 1978 (25 U.S. 1801 *et seq.*), are eligible to apply to a State for an award.

Changes: None.

Administration of consortia (§ 406.30)

Comments: Several commenters recommended that a tech-prep education program consortium be administrated only by an accredited vocational education program provider. The commenters observed that this requirement would prevent consulting organizations or service providers from skimming off administrative charges and adding staff by using Federal money to administer other programs.

Discussion: The Secretary agrees that tech-prep education program consortia should be administrated only by accredited vocational education program providers. However, because the Act does not specify that the members of a consortium be accredited, the Secretary believes that the issue of whether the members of a consortium should or must be accredited should be left to the discretion of State boards of vocational education.

Regarding the issue of consulting organizations or other service providers using tech-prep education money for purposes other than those set forth in the Act, the Secretary notes that only educational agencies, schools, or institutions are eligible to be members of a consortium, as specified in § 406.30(a). Although a consortium may contract with a consulting organization or other service provider for certain goods or services, the administration of the tech-prep education program should remain within the members of the consortium. In terms of the use of Federal funds, the Secretary notes that the State boards of vocational education are responsible for ensuring that local recipients meet the requirements of the program.

Changes: None.

Applicability of Part 403

Comments: Several commenters stated that many of the provisions of part 403, such as State assessment, State plans, and evaluation, are relevant and applicable to the State-Administered Tech-Prep Education Program. The commenters recommended that portions of part 403 be made applicable to the State-Administered Tech-Prep Education Program to ensure that tech-prep education programs are not developed and implemented in isolation from the processes by which the State makes plans for addressing and improving the overall vocational education programming in the State.

Discussion: The Secretary does not believe that Congress intended the requirements related to the State plan to apply to the State-Administered Tech-Prep Education Program. Unlike other programs authorized by title III of the Act, States are not required to conduct the tech-prep education program in accordance with the State plan.

Changes: Sections 406.2 and 406.10 have been changed to clarify that the State-Administered Tech-Prep Education Program is not subject to State plan requirements.

Part 407—Supplementary State Grants Program

Applicability of Part 403 (§§ 407.4 and 407.31)

Comments: Some commenters believed that Part 403, which contains the regulations applicable to the State Vocational and Applied Technology Program, should apply at least in part to the Supplementary State Grants Program because this program was intended to provide funds to supplement the basic grant awarded under Part 403. These commenters recommended that §§ 407.4 and 407.31 be clarified in this respect. Other commenters objected to the requirement imposed in § 407.10(a) that a State include its application for a supplementary State grant in its State plan. These commenters argued that this requirement is too restrictive and recommended that the Secretary establish a separate application process.

Discussion: The Secretary believes that the Supplementary State Grants Program was intended to supplement local vocational education programs—not simply the particular projects, services, and activities assisted under the basic grant awarded under Part 403, as suggested by some commenters. Thus, the Secretary is clarifying that funds awarded under Part 407 must be used only to assist activities designed to improve an LEA's vocational education facilities or program. Consistent with this, the Secretary has clarified that only an LEA providing secondary school services may receive funds under the Supplementary State Grants Program and that the State must distribute any funds allocated to an LEA that operates only elementary programs to one or more local or regional educational

agencies based on the number of students each agency received in the previous year from the LEA.

The Secretary does not agree that the Supplementary State Grants Program should be subject to the requirements of Part 403 for a State to include its application for a supplementary State grant in its State plan. On the contrary, the authority for this program, which is contained in title III, part F of the Act, does not require that this program be conducted by a State in accordance with its State plan, as do some of the programs authorized in title III of the Act. Although the funds awarded under the Supplementary State Grants Program are to be used to supplement local vocational education facilities and programs, title III, part F clearly specifies the allowable uses of those funds, which are more limited than the allowable uses of the basic grant, as reflected in § 407.31. Moreover, section 355 of the Act expressly gives the Secretary the authority to determine the time, manner, and contents of an application under this program. Therefore, after considering these comments and other comments concerning the scope of the local assurances required by § 403.190(b), the Secretary is amending § 403.130 to clarify that the Supplementary State Grant Program is not a special program subject to the requirements of the State plan. See the discussion of the special programs subject to the State plan requirements in response to a comment on § 403.190(b).

Changes: Sections 407.1 and 407.31(b) have been changed to clarify that funds awarded under the Supplementary State Grants Program must be used to assist in improving only vocational education facilities or programs. Section 407.33(b) has been added to clarify that the State may not distribute funds awarded under the Supplementary State Grants Program to an LEA that operates only elementary programs but rather must distribute any funds allocated to an ineligible LEA to one or more local or regional educational agencies based on the number of students each agency received in the previous year from the LEA. Section 403.130(e) has been changed to remove the Supplementary State Grants Program from the list of special programs that are subject to the requirements of the State plan. Conforming changes also have been made to §§ 403.32(d), 403.131(c), 403.187(b), 407.10(a), 407.22(b) and (c), and 407.31.

Part 408—Community Education Employment Centers Program

Eligibility requirement—75 percent predominantly educationally disadvantaged applicant (§ 408.2(b))

Comments: Several commenters suggested that if, as an eligibility requirement, an applicant must be serving a population that is both predominantly educationally disadvantaged and predominantly economically disadvantaged, then the figure of 75 percent may be too high as a threshold for determining "predominantly educationally disadvantaged." The commenters noted that, although this threshold was satisfactory for economically disadvantaged students, the use of this figure for both predominantly educationally disadvantaged and predominantly economically disadvantaged may penalize an applicant that is doing a good job of boosting the academic achievement of economically disadvantaged students.

Discussion: The Secretary notes that Congress' intent is that the Community Education Employment Centers Program serve those individuals with the greatest educational and economic need. The Secretary further notes that 75 percent has been used previously as a measure of the term "predominantly" under this program, and the Secretary finds this to be a reasonable definition. Moreover, the Secretary finds nothing in the Act to support applying different percentages for determining predominantly educationally disadvantaged and predominantly economically disadvantaged.

Changes: None.

Coordinating with service delivery areas under the JTPA program and other youth employment and training programs (§ 408.10(f))

Comment: One commenter recommended identifying service delivery areas under the JTPA program and other youth employment and training programs as being among the appropriate public and private community agencies that applicants must provide assurances that they will coordinate with in the operation of community education and employment centers.

Discussion: The Secretary believes it is appropriate for projects funded under this program to coordinate with service delivery areas. However, the Secretary finds the enumeration of the entities listed in § 408.10(f) sufficiently broad to include all appropriate parties.

Changes: None.

Incorporate required activities into selection criteria (§ 408.22)

Comments: Several commenters suggested that the selection criteria did not give sufficient attention to how well applicants address some of the basic program requirements specified in § 408.3(a). The requirements the commenters recommended incorporating into the selection criteria are those included in §§ 408.3(a)(2), 408.3(a)(3), 408.3(a)(4)(iii), 408.3(a)(6), and 408.3(a)(7). The commenters proposed strengthening the language of selection criterion (e)— Demonstration and dissemination—to incorporate a full program of technical assistance and training, which the commenters believed is warranted by the language of § 408.3(a)(7). Finally, the commenters asked for assurance that basic program requirements would be considered as application eligibility factors.

Discussion: An applicant must describe how it will comply with the program requirements to which the commenters referred in order for its application to be eligible for review in a competition. Therefore, it is not necessary to consider these requirements again in the selection criteria.

Regarding selection criterion (e), the Secretary agrees that the language of the criterion could be strengthened by including a reference to applicants' plans for providing technical assistance and training to others wishing to replicate project methods and techniques.

Changes: Section 408.22(e)(5)—Demonstration and dissemination—has been changed to include a reference to the provision of technical assistance and training activities.

Promulgating a student code of conduct (§ 408.32(c)(3))

Comment: Several commenters requested additional guidance regarding the requirement for the development of a student code of conduct in consultation with students and teachers. The commenters recommended clarifying the requirement by incorporating language to indicate that consultation must be organized, systematic, ongoing, informed, and timely in relation to decisions about the development of a student code of conduct.

Discussion: The Secretary expects that this and other administrative requirements will be carried out efficiently and effectively as described by the commenters. However, the Secretary does not believe that the suggested regulatory language is appropriate or necessary.

Changes: None.

Evaluation requirements (§ 408.34)

Comments: Several commenters recommended adding language to the evaluation requirements regarding student academic and vocational competencies to embrace the broad range of academic and vocational skill areas required for this program. The commenters recommended this change in order to ensure that the evaluation would not be too narrowly focused on particular course-work or skill areas.

Discussion: The Secretary agrees that it would be helpful to coordinate the evaluation requirements with the focus of the academic and vocational skills areas specified in § 408.3(a)(4)(i) and (iii)(B).

Changes: Section 408.34(b)(1) has been changed to include a reference to the academic and vocational competencies listed in § 408.3(a)(4)(i) and (iii)(B).

Part 409—Vocational Education Lighthouse Schools Program

Developing linkages with employment, training, and social service programs (§§ 409.3(d) and 409.21(a)(1)(v))

Comments: One commenter recommended adding employment, training, and social service programs as being among the entities with which applicants must develop comprehensive linkages in establishing vocational education lighthouse schools.

Discussion: The Secretary agrees that vocational education lighthouse schools should develop comprehensive linkages with employment, training, and social service programs. The Act, however, only requires applicants to develop comprehensive linkages with local schools, community colleges, four-year colleges, private vocational schools, community-based organizations, labor unions, employers, and other business groups, as appropriate. Although comprehensive linkages are not required, selection criterion (g)—Budget and cost effectiveness—does include a factor for measuring an applicant's proposed use of funds available from non-Federal sources such as appropriate employment, training, and education programs to acquire equipment and facilities.

Changes: None.

Education and training needs (§ 409.3(e))

Comments: Several commenters recommended changing the language in § 409.3(e), "education training needs," to "education and training needs" to be consistent with the legislative history of the provision.

Discussion: The Secretary agrees that the language of this section should be consistent with other references to education and training needs.

Changes: Section 409.3(e)(1) has been changed to clarify that education and training are distinct activities. A conforming change has been made to § 409.21(a)(2)(i).

Selection criteria—Program factors (§ 409.21(a))

Comments: Several commenters recommended adding provisions to the selection criterion program factors to include certain activities specified under § 409.3(a), including the offering of exceptionally high quality programs for disadvantaged and minority youth and providing special services and modifications necessary to help individual students successfully complete the program.

Discussion: The Secretary agrees that these factors should be included in the selection criteria. However, a review of the pertinent portions of the regulations reveals that they are already addressed adequately.

Changes: None.

Selection criteria—Educational significance (§ 409.21(b))

Comments: Several commenters recommended substituting language relating to the activities specified in § 409.3(a) for the data elements specified for the selection criterion in § 409.21(b)(1) and the factors identified in § 409.21(b)(2) and (3). The commenters suggested that the proposed data elements could result in focusing on programs that do not have key elements pertinent to the establishment and operation of Lighthouse Schools. Additionally, the commenters urged that more emphasis be placed on new and innovative approaches rather than on basing models on other successful vocational education programs that may or may not have data elements related to the components needed for Lighthouse Schools.

Discussion: The Secretary agrees that the language of the criteria should relate as much as possible to the activities specified for the program. The Secretary notes, however, that the activities specified in § 409.3 have, in large part, already been incorporated into selection criterion (a)—Program factors.

Regarding the selection of applications based on new and innovative approaches, the Secretary notes that the use of new and innovative techniques is one of the factors specified for this criterion. Vocational education lighthouse schools, however, also should include components based on successful programs that are supported by the empirical data specified in § 409.21(b)(1).

Paragraphs (2) and (3) in § 409.21(b) are, by design, intended to encourage applicants to relate the objectives and techniques of vocational education lighthouse schools to nationally significant needs and problems. The Secretary agrees, however, that the language of these factors could be tied more closely to the outcomes of the program identified in criterion (a)—Program factors.

Changes: Sections 409.21(b)(2) and (3) have been changed to clarify that the educational significance of an application will be assessed in terms of the program activities in § 409.21(a).

Selection criteria—Evaluation plan (§ 409.21(d))

Comments: Several commenters recommended relating the expected outcomes of participants under § 409.21(d) to the required activities described in § 409.3(a).

Discussion: The Secretary agrees that certain of the six required activities in § 409.3(a) could and should be related to participant outcomes. Others are not participant-oriented and would not be appropriate to evaluate in terms of participant outcomes.

Changes: Section 409.21(d)(3) has been changed to clarify that an application's evaluation plan will be assessed on the basis of how well the expected outcomes of participants identified in the plan relate to the activities required in § 409.3(a), as appropriate.

Selection criteria—Demonstration and dissemination (§ 409.21(e))

Comments: Several commenters recommended expanding the language of the criterion in § 409.21(e) to reflect the specific demonstration and dissemination activities required in § 409.3(b) and in the Act.

Discussion: The Secretary agrees that the demonstration and dissemination criterion could incorporate more specifically the required activities in § 409.3(b), but believes that successful applicants will have no difficulty in relating the specific activities described in § 409.3(b) to the more generic criterion factors stated in § 409.21(e).

Changes: None.

Evaluation requirements (§ 409.30)

Comments: Several commenters recommended clarifying the evaluation requirement in § 409.30 to measure student achievement to include increases in student knowledge, experience, basic and higher order skills, and problem solving abilities, as specified in § 409.3(a)(1) and (2). The commenters urged this change in order to relate student achievement to the

broad range of academic and vocational skill areas required for the program.

Discussion: The Secretary agrees that student achievement should be related to the broad range of academic and vocational skill areas required for the program.

Changes: Section 409.30(c) has been changed to clarify that the areas described in § 409.3(a)(1) and (2) are the types that must be included in the evaluation of grant activities.

Incorporating legislative history into regulations

Comments: Several commenters recommended adding to Part 409 a number of factors stated in a Senate proposal for Vocational Education Lighthouse Schools Program. These factors include: (1) assistance of the State educational agency in assisting and co-sponsoring the project; (2) use of other funds to cover core program costs; (3) matching requirement; (4) minimum grant size; (5) location in urban and rural areas; and (5) consultation with others in developing the application.

Discussion: The provisions to which the commenters refer are contained in a Senate version of the legislation which was not enacted into law. However, the intent of several of the factors identified by the commenters is reflected in the selection criteria and additional factors for the program. The selection criteria (g)—Budget and cost effectiveness—and (h)—Adequacy of resources and commitment—provide for evaluating the extent to which non-Federal resources and funds are used to support project activities. Selection criterion (a)—Program factors—provides for an assessment of the involvement of others in planning for and developing the project. The Act does not mandate minimum grant size or a matching requirement. However, the commenters' final concern is addressed by the additional factor specified in § 409.22, which should ensure an equitable geographical distribution of projects in urban and rural areas.

Changes: None.

Part 410—Tribally Controlled Postsecondary Vocational Institutions Program

Evaluating applications (§ 410.20)

Comments: Several commenters believe that the proposed regulations combine and confuse the Indian Vocational Education Program covered by Part 401 and the Tribally-Controlled Postsecondary Vocational Institutions Program covered by Part 410. Specifically, the commenters pointed out that the Department proposed, in § 410.20, to apply only 85 percent of the selection points to the criteria in § 410.21. The Secretary proposed to reserve fifteen points that would be allocated at a later date among the selection criteria in § 401.21. The commenters think that it would be impossible for an applicant to simultaneously adhere to both sets of award rules and that applicants would be confused as to which of the selection criteria would be applied in the competition. The commenters proposed that the Secretary delete § 410.20(b) and (d) from the regulations and apply all of the award points to the selection criteria in § 410.21.

Discussion: The Secretary agrees with the commenters that typographical errors in § 410.20(b) and (d) make it appear that the two programs were combined and confused. The Secretary intends to evaluate applications using the selection criteria in § 410.21. Moreover, the 15 points reserved under § 410.20(b) will be distributed among the selection criteria in § 410.21 in order to emphasize one or more criteria in a particular competition, if the Secretary deems this necessary. The commenters are right in that § 410.20(b), (c), and (d) should each refer to the criteria in § 410.21 instead of to the criteria in § 401.21.

Changes: Sections § 410.20 (b), (c), and (d) have been changed to refer to § 410.21 instead of § 401.21.

Additional factors (§ 410.22)

Comments: Several commenters were concerned that § 410.22(a) and (b) appear to say the Secretary may make awards without regard to the clear statutory directive that the first two awards are intended for the Crownpoint Institute of Technology and United Tribes Technical College.

Discussion: There are no statutory provisions that limit the first two awards to Crownpoint Institute of Technology and United Tribes Technical College. While these two institutions were the only institutions that applied for funds in the first funding cycle, many more institutions may be eligible and may apply for support in future funding cycles.

Changes: None.

Comments: Several commenters believed that the additional factors in § 410.22(a) and (b) regarding an equitable distribution of funds among Indian tribes are in conflict with the statute. As support for the argument, the commenters cited section 383(b) of the Act specifying that funds are to be used for "basic support for the education and training of Indian students" and section 384 of the Act which establishes eligibility criteria. The commenters believed that the Department should award grants based on the most highly rated applications when reviewed against the eligibility requirements of § 410.2.

Discussion: The Secretary has followed carefully the statutory language in establishing eligibility requirements in § 410.2 and believes it is reasonable to reserve, in § 410.22(a) and (b), authority to avoid an inequitable distribution of awards among Indian tribes especially should there be an increase in the number of institutions applying for and receiving an award under this program.

The commenters confuse factors for eligibility with factors for competitive selection from among all of the eligible institutions that apply. The Secretary, first, applies the eligibility requirements of § 410.2 to all applications for funding. Only those applications meeting all of the eligibility requirements of § 410.2 are reviewed against the selection criteria in § 410.21 and the equitable distribution factors in § 410.22. Applications not meeting any of the eligibility requirements in § 410.2 are returned to the applicants on the basis of their ineligibility without being reviewed against the selection criteria. The equitable distribution factors in § 410.22 would be used only when the number of institutions applying outstripped the ability of the Federal government to provide awards for all of them.

Changes: None.

Comments: Several commenters urged the Department to define how it intends to carry out § 410.22(a) requiring the Secretary to consult, to the extent practicable, with boards of trustees and the tribal governments chartering the institutions being considered. The commenters stated that no consultation has occurred since the enactment of this provision of the Act 15 months ago.

Discussion: The commenters are correct that the Secretary was not able to consult with boards of trustees and tribal governments chartering the institutions applying in the first funding cycle of this program. Section 385 of the Act requires the consultation "to the extent practicable." The desired target date for grant awards established by the Congress for the first award cycle made any such consultation impracticable. The Secretary, of course, intends to comply with the provisions of section 385(c) of the Act in the future. Moreover, the Secretary does not ordinarily regulate the administrative responsibilities of the Department and, therefore, would not regulate the consultation process.

Changes: None.

Comments: Several commenters noted that § 410.22(c), which permits the Secretary to consider whether funding a particular applicant duplicates an effort already being made, should be reconsidered and elaborated upon in the light of sections 387 (a), (b), and (c) of the Act. The commenters noted that, under these sections of the statute, eligible institutions may seek non-duplicative financial aid from other sources.

Discussion: The Secretary has reviewed § 410.22(c) within the context of sections 387(a), (b), and (c) of the Act. The Secretary believes that the statute ensures that the eligible institutions have the freedom to seek non-duplicative funding. The Secretary does not believe that detailed, and possibly restrictive, regulations are needed on this provision.

Changes: None.

Part 412—National Network for Curriculum Coordination in Vocational and Technical Education (Network)

Comments: Several commenters suggested adding to § 412.3 a provision that the information-gathering and sharing functions of the Network include the Lighthouse School (part 409) and the Community Education Employment Centers (part 408). In addition, the commenters thought these programs should be made explicitly eligible for awards under § 412.2.

Discussion: The National Network for Curriculum Coordination in Vocational and Technical Education (Network), consisting of six curriculum coordination centers, is a system that disseminates information resulting from research and development activities carried out under the Act to ensure broad availability of information at the State and local levels. This broad access would include sharing information with many organizations and individuals including Lighthouse Schools and Community Education Employment Centers.

State and local educational agencies, postsecondary educational institutions, and other public and private agencies, organizations, and institutions are eligible for an award under this program. Therefore, the Lighthouse Schools and Community Education Employment Centers would be eligible to apply for an award when competitions are conducted. The Secretary does not believe it is necessary to explicitly list the specific agencies that are eligible under § 412.2.

Changes: None.

Part 413—National Center or Centers for Research in Vocational Education

Types of activities (§ 413.3)

Comments: Several commenters urged deletion of the phrase, "or cooperative agreement," from § 413.3 as being outside the scope of the Act since the Act gives the Secretary authority only to award a grant or grants. One commenter pointed out that a grant is the instrument that has been used with past and current Centers; hence, a precedent has been established. Another commenter stated that although a cooperative agreement is a form of a grant, for those who are responsible for the establishment and implementation of a national research program, stability of mission over the life of the grant is important.

Discussion: The Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95–224) authorizes the Department to use cooperative agreements in lieu of grants when substantial involvement is anticipated between the Department and the recipient during performance of the contemplated activity. The Secretary makes a determination of when a cooperative agreement is a more appropriate instrument for the use of funds on a case-by-case basis.

Changes: None.

Comments: Several commenters requested that the research and development activities listed in § 413.3(a) be modified to include language specifically addressing career guidance and counseling.

Discussion: Because section 404(b) of the Act does not designate specific disciplines, it would be inappropriate for the Secretary to do so by regulation. The Secretary believes that the regulations provide the National Center with sufficient guidance to select from a range of disciplines that would be appropriate in developing programs to accomplish the purposes of the Act.

Changes: None.

Comments: One commenter stated that section 404(b)(2)(L) of the Act which reads "upon negotiation with the Center, and if funds are provided pursuant to subsection (d), such other topics as the Secretary may designate" has been omitted from the draft regulations. The commenter pointed out that the flexibility provided by the omitted activity is necessary for the Center to respond to emergent issues.

Discussion: The statutory authority established by section 404(b)(2)(L) of the Act is repeated in § 413.3(a)(1)(iii) of the regulations. An identical provision for dissemination and training activities is repeated in § 413.3(b)(1)(iv) of the regulations. Also, the Secretary interprets § 413.30(b) of the regulations as providing an additional opportunity for the National Center to respond to emergent needs.

Changes: None.

Separate competitions (§ 413.20)

Comments: Several commenters stated that holding two separate competitions for the National Center or Centers would appear to be awkward and extremely time-consuming and would appear to give preference to splitting the functions of the research center into two centers rather than giving preference to maintaining one comprehensive center as it now exists and as is clearly preferred by Congress. The commenters stated that it was the intent of Congress to have all applicants submit three applications simultaneously: One demonstrating the applicant's capacity to create an applied research and development center; one demonstrating the applicant's capacity to create a dissemination and training center; and one demonstrating the applicant's capacity to carry out both functions. The commenters suggested that, in order to be consistent with legislative intent, the Secretary should first review the applications that propose to perform both sets of activities. If none of those applications demonstrate the applicant's capability of carrying out both sets of activities, then and only then should separate applications be considered. The commenters also believed that awarding five preference points for each competition could result in the two competitions being won by different institutions even in the event that there is at least one institution capable of carrying out both functions. The commenters further expressed the opinion that only allowing five preference points provides inadequate competitive advantage to those applicants that are able to demonstrate their capacity to effectively carry out both functions.

Discussion: The Secretary agrees that, in section 404(a)(5) of the Act, Congress expressed its preference that a single center be funded for the purpose of carrying out both the research and development and the dissemination and training activities referenced in section 404(a) of the Act, if a single institution or consortium demonstrated its ability to carry out both of the activities effectively. The Secretary also agrees that, as expressed in section 404(a)(5) of the Act, Congress intended the funding of two separate centers to occur only in the event that no single institution or consortium of institutions could demonstrate the ability to carry out both functions effectively. However, the Secretary does not agree with the commenters' suggestion that applicants should be required to submit three applications, two for carrying out the

two program activities separately and one for carrying out both activities together. In the view of the Secretary, this proposal would impose an unnecessary burden upon applicants by requiring them to provide voluminous duplicative material that would serve little, if any, function in assisting the Secretary to evaluate either the activities proposed by an applicant or an applicant's ability to carry out both program activities effectively. In addition, the Secretary considers the Act's reference to an applicant's ability to carry out both activities "effectively" as authorizing him to make a single award only if he has determined that the applicant will use the funds awarded in accordance with the purposes of section 404 of the Act. Finally, the Secretary continues to believe that the most equitable and efficient means by which he can determine the ability of each applicant institution or consortium of institutions to carry out both program activities effectively, is to hold the two competitions provided for in § 413.20 of the NPRM and to review and evaluate each application according to the criteria in §§ 413.21 and 413.22.

However, in response to the comments on the program competition as set forth in the NPRM as well as in response to the commenters' opinion that a five-point preference fails to provide sufficient consideration to an institution or consortium that is able to carry out both activities effectively, the Secretary has revised § 413.20. Under § 413.20, the Secretary will review each application submitted, evaluate and score each application according to the applicable criteria, and determine whether an applicant submitting applications to carry out both program activities under section 404(a) of the Act has demonstrated its ability to do so effectively. After the Secretary has reviewed, evaluated, and scored each application, each applicant that has submitted two applications and has earned a score of 80 points or higher on each of its two applications, will be deemed by the Secretary to have demonstrated the ability to carry out both activities effectively and will be placed in a pool with any other applicant that has earned a score of 80 points or higher on each of its two applications. The applicant scoring the highest combined score from among the applicants in the pool will be the recipient of a single grant award for the purpose of carrying out both program activities. If only one applicant can demonstrate the ability to carry both activities effectively, then that applicant will be awarded a single grant. If no applicant can demonstrate the ability to carry out both activities effectively, then, as provided for in section 404(a)(5) of the Act, the Secretary will award separate grants to two institutions, one for each of the activities under section 404(a) of the Act.

The Secretary believes that these revisions to § 413.20 are responsive to the commenters' concerns, provide for an equitable and efficient competition that gives a strong preference to funding a single institution or consortium, and ensure that if a single institution or consortium is indeed funded, it will have demonstrated the ability to carry out both program functions effectively and in accordance with the purposes of section 404 of the Act.

Changes: Section 413.20 has been revised to clarify that while the Secretary holds two competitions and judges applications according to the criteria in §§ 413.21 and 413.22, the Secretary intends to give preference in grant selection to an institution or consortium of institutions that demonstrates the ability to carry out effectively both activities listed in section 404(a) of the Act and in § 413.3(a) and (b). Section 413.20(h) of the NPRM, which provided for the assignment of five preference points to certain applications, has been deleted. In lieu of preference points, new paragraphs (h) and (i) have been added to § 413.20 to explain the specific process by which the Secretary determines the ability of applicants to carry out both program activities effectively and by which the Secretary gives preference to the selection of a single grant recipient. Finally, a new paragraph (j) has been added to § 413.20 to clarify that, in the event that no applicant institution or consortium of institutions demonstrates to the Secretary its ability to carry out both activities effectively, the Secretary makes two grant awards to the applicants scoring the highest in each of the competitions.

Selection criteria (§§ 413.21 and 413.22)

Comments: Several commenters questioned the allocation of 35 out of 100 points to the selection criterion "Plan of operation" as compared to 20 out of 100 points for "Program factors," arguing that the weight given to these selection criteria does not reflect sufficiently the quality of the research and development activities. The commenters questioned the same allocation of points to dissemination and training activities. The commenters suggested shifting points from "Plan of operation" to "Program factors" for both research and development activities and dissemination and training activities so they would be more equally weighted.

Discussion: The Secretary assigns points to each set of criteria as a means of encouraging applicants to give greater consideration to certain criteria. The Secretary assigned less weight to "Program factors" than to the "Plan of operation" since the kinds of activities to be carried out by the National Center are based upon statutory requirements whereas a plan of operation is not specified in the Act. Moreover, the NPRM contained a technical error in the number of points reserved by the Secretary for distribution among the criteria in §§ 413.21 and 413.22 in accordance with paragraph (d) of §§ 413.21 and 413.22. The number of reserved points for each set of criteria is 10 instead of 15, as indicated in proposed § 413.20(b).

Changes: Section 413.20(b) has been changed to indicate that the Secretary reserves 10 points to be distributed among the criteria in §§ 413.21 and 413.22.

Comments: Several commenters expressed concern that the selection criteria were not specific enough to provide a basis on which to judge the quality of both the research and development activities and the dissemination and training activities. The commenters believed that the quality of research and development activities and the dissemination and training activities should be judged by: (1) The highest standards of quantitative research methodology, and (2) previous experience in conducting similar activities. The commenters expressed additional concern that the proposed regulations did not sufficiently focus on the coordination between the research and development activities and the dissemination and training activities. In addition, the commenters suggested that the criteria for selecting key personnel should be based on their competency in all phases of applied social science methodology.

Discussion: The Secretary believes that the issue of quality is adequately addressed under §§ 413.21(a) and 413.22(a) which stress that each of the required activities, whether research, development, dissemination, or training, should be of high quality and effectiveness. The Secretary points out that one of the selection criteria is vocational education experience in conducting applied research and development or dissemination and training activities, or both, in the field of vocational education. The Secretary further points out that the coordination

issue is addressed under the criterion "Coordination activities" which requires that applicants submit an effective plan for the coordination of activities described in § 413.3(a) and (b). In the Secretary's view, an effective plan that will ensure coordination of the research and development activities and the dissemination and training activities, whether between two centers, or within one center, is essential.

The Secretary agrees that key personnel should have appropriate professional qualifications in fields related to the proposed activities. The Secretary believes, however, that § 413.21(c)(2)(i) provides sufficient guidance in this regard.

Changes: None.

Part 419—Internship for Gifted and Talented Vocational Education Student Program

Vocational student organizations (§ 419.3)

Comments: One commenter requested that the designation, "vocational student organizations," be added as one of the groups for which gifted and talented students selected under this program might work as interns. The commenter also requested that the designation, "vocational student organizations," be added to the definition of "Sponsor."

Discussion: The groups listed in the § 419.3—Federal and State agencies, nationally recognized vocational education associations, or the National Center or Centers for Research in Vocational Education—are explicit in section 414(d)(2)(a) of the Act. The Secretary considers vocational student organizations to be nationally recognized vocational education associations that can provide quality internship opportunities. However, the Secretary does not believe it is appropriate to list in the regulations the specific nationally recognized organizations that are eligible to provide internships under this program.

Changes: None.

Part 421—Business and Education Standards Program

Comparable national organizations (§ 421.2(d))

Comments: Several commenters stated they did not think that educational associations should be listed in § 421.2(d) as an example of a "comparable" national organization to industrial trade organizations, labor groups, or joint apprenticeship committees eligible to receive grants. Another commenter felt neither educational associations, nor private and national research organizations are "comparable national organizations." One commenter suggested that educators should serve as members, as consultants, or as both to these committees, which should be composed of a broad representation of industry representatives. Others felt standards developed by educational associations could be self-serving and impede progress.

Discussion: The Secretary does not agree that educational associations or private national research organizations should be deleted from the list of comparable national organizations. Numerous occupations frequently cut across multiple industries and to choose a specific industry or trade association to represent one of these occupations would not be equitable or productive. There are many national educational professional associations, and private and national research organizations that primarily have membership from these multi-industrial occupational clusters, have ties with the industries or trade groups they represent, or both. Many have expertise in skills standards development and certification, and limiting their participation in the development of national standards would foreclose the use of this valuable expertise.

Changes: None.

Comments: One commenter requested that vocational student organizations be added as one of the groups that are comparable national organizations to industrial trade associations, labor organizations, and national joint apprenticeship committees.

Discussion: The Secretary does not believe that vocational student organizations are comparable national organizations to industrial trade associations, labor organizations, and national joint apprenticeship committees. Thus, student organizations are not included as eligible applicants in § 421.2. However, the Secretary recognizes the high potential of vocational student organizations to participate on or provide input into the technical committees charged with the responsibility of developing national standards for competencies in industries and trades.

Changes: None.

Grants to update existing standards (§ 421.3)

Comments: One commenter questioned whether the Department intends to award grants under the Business and Education Standards Program for initiatives to update existing national standards as well as those to develop new standards and recommended that the rules not be limited to new standards development. This commenter believed that, due to rapid technological changes in many sectors of our economy, standards for competencies in industries and trades must be updated to keep pace with these technological changes. The commenter requested corresponding amendments to §§ 421.1, 421.3, 421.21(a), and 421.21(b)(1).

Discussion: The Secretary agrees that standards for competencies and trades should be updated periodically and believes that the existing language of the regulations allows for the support of technical committees to update standards. However, like other applications, applications proposing to update standards will be evaluated under the selection criterion related to the extent of the need for the project.

Changes: None.

Selection criteria (§ 421.21)

Comments: Several commenters suggested that § 421.21(a) be changed to add as additional program factors the extent to which an application proposes to develop standards that address—

(a) Strong experience in and understanding of all aspects of the industry the workers will be entering (including planning, finance, management, technical and production skills, underlying principles of technology, labor, community, and health, safety, and environment); and

(b) Strong development and use of problem-solving skills and basic and advanced academic skills (including skills in the areas of reading, writing, mathematics, science, and social studies) in a technological setting.

The commenters stated that these provisions are needed to ensure that any standards are consistent with the basic thrust of the overall Act, the specific focus for skill standards used in the State assessment required in developing the State plan under the Act, and Congress's concerns for avoiding overly narrow definitions of job specific skills.

Discussion: The Secretary notes that section 416(b)(2)(A) of the Act requires that, at a minimum, standards must relate to major divisions or specialties within the occupations the applicant proposes to study. Each applicant must decide how to identify the skills from all aspects of the industry that are necessary for specific divisions or specialties within the occupation. Similarly, while the Secretary concurs that education programs should provide a broad range of transferable skills, each applicant must decide how to define these concepts and to meet these goals while identifying the specific skill standards needed for specific divisions or specialties within occupations. In order to allow maximum flexibility in addressing these issues, the Secretary

chooses not to regulate on these points. Furthermore, the Secretary expects that any standards generated by these grants will be useful to vocational education programs.

Changes: None.

Comments: Several commenters suggested that a new selection criterion be inserted in § 421.21 that would specify the composition of the proposed technical committee.

Discussion: Technical committees should be composed of individuals who are knowledgeable about the occupations to be studied and are representative of business, labor, and education. The Secretary believes that the criterion in § 421.21(c)(2) adequately specifies the composition of a proposed technical committee.

Changes: None.

Comments: One commenter proposed an addition to the criterion contained in § 421.21(g)—Dissemination plan—to include a program to encourage the implementation and use of the standards by training programs.

Discussion: The Secretary agrees with the commenter that a program to assist in the adoption or implementation of the standards once they have been developed would contribute to the overall success of the program.

Changes: Paragraph (4) has been added to § 421.21(g) to encourage the adoption and use of the proposed standards by education and training programs.

Part 425—Demonstration Project for the Integration of Vocational and Academic Learning Program

Populations to be served (§ 425.3)

Comments: Several commenters suggested that section 420(b)(3) of the Act requires each project to serve individuals who are members of special populations in addition to one or more of the populations specified in section 420(b)(4) of the Act and that the language of § 425.3(b) does not meet this requirement.

Discussion: The Secretary does not agree that section 420(b) of the Act imposes requirements applicable to the individual projects supported under this program. On the contrary, section 420(b) requires that the Secretary consider certain factors when selecting applications for funding, in order to ensure that the projects supported under this program together, for example, offer significantly different approaches to integrating curricula. In order to ensure that the Department funds applications that together serve the populations or groups listed in section 420(b) (3) and (4) of the Act, the Secretary requires under § 425.3(b) that each project serve at least one of these populations. Then, in selecting applications for funding under § 425.22(a)(3), the Secretary funds applications to ensure that the projects supported under this program together serve the populations listed in § 425.3(b).

Changes: None.

Inservice training (§ 425.3)

Comments: One commenter recommended providing inservice training in integrated curricula to academic faculty and to counselors in addition to teachers of vocational education students. The commenter pointed out that, in order to integrate vocational and academic learning, the concepts of "vocational" and "academic" need to be expanded and that traditional boundaries between the two areas must be broken. Noting that both vocational and academic instructors must cross over into the other realm in order for effective integration to occur, and that counselors must also understand curriculum offerings in order to properly advise students, the commenter recommended that projects provide inservice training to all teachers, counselors, and administrators involved in integrated curriculum efforts.

Discussion: The Secretary agrees that in order to integrate vocational and academic learning, projects should provide inservice training for both academic and vocational instructors. The regulations permit both academic and vocational teachers to receive this type of training, provided they are teachers of vocational education students.

Although the Secretary concurs that counselors and teachers of all students could also benefit from inservice training in integrated curricula, the Secretary does not believe that it is appropriate to expand § 425.3(a)(2) to include groups that do not serve vocational education students.

Changes: None.

Non-baccalaureate bound secondary students served (§§ 425.3 and 425.21)

Comment: One commenter recommended modifying §§ 425.3 and 425.21 in order to expand the student population groups to be served to include general education students in addition to vocational education students at the secondary level. The commenter pointed out that, while the integration of vocational and academic learning programs enhances learning opportunities for vocational students, general education students can gain equally or more from these integrated efforts.

Discussion: Section 420 of the Act limits the types of projects that can be funded under this program to only those that integrate vocational and academic learning. Thus, any student, including a general education student, who is enrolled in these types of projects may be served at any educational level under this program.

Changes: None.

Selection criteria—Program factors (§ 425.21(a))

Comments: Several commenters suggested that the extent to which each project will serve the populations specified in section 420(b) of the Act should reflect the fact that serving individuals who are members of special populations is mandatory and not optional.

Discussion: As discussed in response to a similar comment related to § 425.33, the Secretary does not believe that section 420(b) of the Act imposes requirements on the particular projects funded under this program, but rather it addresses overall the projects to be funded. The Secretary believes that §§ 425.3 and 425.22(a)(3) fully implement the requirements of section 420(b) of the Act.

Changes: None.

Selection criteria and evaluation requirements (§§ 425.21(b), 425.21(d), and 425.30)

Comments: Several commenters stated that the selection criteria and other requirements rely too heavily on generic language and should reflect the specific needs relating to academic-vocational integration outlined in the Act.

Discussion: The Secretary agrees that the criteria and other requirements should, as much as possible, relate to the language of the Act. Although selection criteria (b)— Educational significance—and (d)—Evaluation plan—are largely generic for all demonstration programs, both criteria contain references that are specific for the Demonstration Projects for the Integration of Vocational and Academic Learning Program. Additionally, selection criterion (a)— Program factors—includes language specifically tailored to the needs and purposes of this program.

The evaluation requirements for this program are, by intent, generic for all demonstration programs. Those requirements, for the most part, refer to how an applicant would structure a proposed evaluation rather than, for example, the specific indicators that would be used.

Changes: None.

Part 426—Cooperative Demonstration Program

Disadvantaged youths and adults (§§ 426.1 and 426.3(a)(3))

Comments: Several commenters recommended that projects to assist individuals in preparing for technical and professional health careers should serve disadvantaged adults in addition to disadvantaged youth.

Discussion: Although the Secretary agrees that disadvantaged adults could benefit from such services, the Act authorizes projects only to assist disadvantaged youth in preparing for technical and professional health careers.

Changes: None.

Part 427—Bilingual Vocational Training Program

Eligible applicants (§ 427.2)

Comments: Two commenters expressed the view that the intent of the Bilingual Vocational Training Program and the Bilingual Vocational Instructor Training Program is to improve the capacity of local educational agencies. The commenters, therefore, thought that for-profit agencies should not be eligible for contracts, but should be able to serve only as sub-contractors.

Discussion: Section 441(a)(1) of the Act specifically establishes the eligibility of "private for-profit agencies and organizations" for contracts under the Bilingual Vocational Training Program, and section 441(b)(1) establishes the eligibility of "private for-profit educational institutions" for contracts under the Bilingual Vocational Instructor Training Program.

Changes: None.

Comments: One commenter recommended that agencies that received funding under the Bilingual Vocational Training Program in the past should not be eligible to reapply for funding unless they are expanding to a new occupational area or serving a new linguistic group. In support of this position, the commenter stated that the intent of the Bilingual Vocational Training Program is to develop model programs and disseminate successful practices, not maintain programs that receive no local or State education funds. The commenter further stated that some bilingual vocational training projects have been in operation for 14 years, and, given the small budget for the activity, more institutions could be impacted if long-term commitment to a few successful sites were disallowed.

Discussion: Section 441(a)(1) of the Act establishes the Bilingual Vocational Training Program in order to provide "bilingual vocational education and training for individuals with limited English proficiency to prepare such individuals for jobs in recognized occupations and new and emerging occupations." The Secretary agrees with the commenter that recipients of grants under the Bilingual Vocational Training Program should disseminate and demonstrate their successful practices to others who could benefit from them. The selection criterion in § 427.21(g)—Demonstration and dissemination—implements this idea.

The Department's practice under this program has been to limit funding of a project to two years for each competition. However, since the Act provides no basis for ruling current or past recipients of Bilingual Vocational Training Program funds ineligible for subsequent competitions, an eligible entity can compete in any competition regardless of whether it received an earlier grant.

Changes: None.

Types of projects (§ 427.3)

Comments: One commenter requested the addition, to § 427.3 or 427.21, of a requirement similar to that in § 428.3(b) for the Bilingual Vocational Instructor Training Program. Specifically, the commenter recommended that applicants for funding under the Bilingual Vocational Training Program be required to have an ongoing vocational education program in the field in which participants will be trained and to have instructors with adequate language capabilities in a language other than English. The commenter noted that the complexity of both curriculum development and the accommodation of a new population of enrollees requires a high level of institutional readiness if a project is to be successful in the two-year time period allowed.

Discussion: The requirement this commenter wishes to add to the regulations for the Bilingual Vocational Training Program is a statutory requirement that applies only to the Bilingual Vocational Instructor Training Program and is specifically authorized by section 441(b)(3) of the Act.

Changes: None.

Selection criteria (§ 427.21)

Comments: One commenter noted that since the funding for bilingual vocational training is so limited, the Bilingual Vocational Training Program should provide seed money for bilingual vocational training and award points to projects that demonstrate the ability to continue with other sources of funding.

Discussion: Awarding points for an applicant's ability to continue a project with other sources of funding would have the advantage of giving priority to applicants with access to ongoing non-Federal funding sources. It would have the disadvantage of penalizing some community-based groups and organizations that are very skilled with bilingual vocational instruction but that lack eligibility for ongoing State and local education funding sources. The Act makes private nonprofit vocational training institutions and other nonprofit organizations, whether specially created to serve or currently serving individuals who normally use a language other than English, eligible for grants. Thus, the Secretary believes that evaluating applications using the factor suggested by the commenter would have a negative effect on the ability of some eligible entities to compete.

Changes: None.

Selection criteria—Need (§ 427.21(a))

Comments: One commenter pointed out that proposed paragraphs (2), (3), and (4) of § 427.21(a) do not seem to pertain to the need for the project. The commenter suggested that these items be moved to the selection criterion "Program factors."

Discussion: The Secretary agrees with the commenter that proposed § 427.21(a)(2), (3), and (4) would be more appropriately grouped with selection criteria other than "Need." The Secretary believes, however, that these factors would be more appropriate to the selection criterion "Plan of operation" than to the selection criterion "Program factors," as has been suggested by the commenter. Moreover, moving the items to the selection criterion "Plan of operation" would promote consistency between the format of Part 427 and the format for other education and training programs in these regulations.

Changes: Paragraphs (a) (2), (3), and (4) of proposed § 427.21 have been moved to § 427.21(b)—Plan of operation.

Comments: One commenter stated that § 427.21(a) (1) and (2) (proposed § 427.21(a)(1) (i) and (ii)) suggest a distinction between the terms "employment training need" and "labor market need" that may not exist for certain occupational fields. This commenter suggested that the regulations be changed to focus purely on "the employment need to be met," which the commenter believed combines employment training need and labor market need.

Discussion: By "employment training need," the Secretary means the need of limited English proficient individuals for employment training. By "labor market need," the Secretary means the need of employers for more persons trained to meet the current demands of the workplace. The Secretary believes that

applicants should address the need for the project from each of these two perspectives.

Changes: Section 427.21(a)(1) has been revised to clarify the meaning of "employment training need."

Comments: One commenter noted that, while bilingual vocational training projects should demonstrate collaboration with the Job Training Partnership Act (JTPA) programs and Job Opportunity Basic Skills (JOBS) programs, the JTPA standards in serving the limited English proficient trainees are vague, and placement standards for the general population are too low to be meaningful for a competitive application. The commenter believes that instead of collaborating with JTPA and JOBS, projects funded under this program should be setting new, higher standards for training the limited English proficient individuals for all agencies in the process.

Discussion: To encourage consistency, the Secretary expects projects to set goals, taking into consideration the standards and measures developed for JOBS, JTPA, and the State-Administered Vocational Education and Applied Technology Education Program. If the standards of other programs are not as high as an applicant would like, the applicant is free to establish higher standards. At the very least, the Secretary expects applicants to set goals high enough to improve the quality of training and the placement of participants.

Changes: None.

Selection criterion—Plan of operation (§ 427.21(b))

Comments: One commenter noted that the job placement rate can be supported by past records of anticipated job openings, but not by obtaining letters of job commitments from employers. The commenter explained that during this recession, especially in areas of high unemployment, it is difficult, if not impossible, to obtain letters of job commitment from employers. The commenter, therefore, requested that the term "actual employer job commitment" be changed to "employer letters of support."

Discussion: To establish the anticipated placement rate of participants, applicants may choose from among the four sources listed in § 427.21(b)(3)(ii) (proposed § 427.21(a)(4)(ii)) or may provide information from all sources. This is signaled to the applicant by the fact that the connecting word in the series of four is "or." The Secretary understands that some applicants may have a greater likelihood of placing participants than others depending on the economic conditions in the area. The Secretary wishes applicants to provide the strongest evidence they can that the participants in the project will be provided job placement in the occupation for which they are to be trained.

Changes: None.

Selection criteria—Demonstration and dissemination (§ 427.21(g))

Comments: One commenter thought that the specificity of § 427.21(g)—Demonstration and dissemination—is very constricting. To encourage demonstration and dissemination plans that are more project-specific, the commenter suggested deleting § 427.21(g) (1) through (5).

Another commenter opposed the provisions in § 427.21(g)(2), basing the opposition on several factors, among them, that the Bilingual Vocational Training Program was intended for the direct delivery of training and services; that providing the required demonstration and dissemination activities would result in a reduction in the human and financial resources that projects now devote exclusively to the primary missions of training and placement; and that accomplishing the demonstration and dissemination activities would require hiring a different and higher salaried staff capable of producing professional papers for national conferences and meetings.

Finally, the commenter opposed this selection criterion because the commenter did not believe that covering the costs of travel, mailing, duplicating, and rental of audio-video equipment at conference sites was anticipated in the legal requirements for the use of funds described in § 427.3. This commenter believed the regulations should limit the requirements for demonstration and dissemination activities to the local level and to community-based organizations rather than encourage activities at the State or national levels.

Discussion: Eliminating § 427.21(g) (1) through (5) would have the advantage of permitting applicants to devise their demonstration and dissemination plans as narrowly as they chose in relation to the specific language groups being served, specific types of institutions providing bilingual vocational training programs, and geographic boundaries within which these services would be provided. It would have the disadvantage of failing to convey the Secretary's expectations that the results of projects are to be broadly disseminated and demonstrated and made available without regard to types of institutions or geographic boundaries, and that the dissemination and demonstration activities are to be evaluated. The Secretary wishes these factors to influence the applicant's program design, management plan, and budget. The Secretary believes that applicants have been given broad latitude in shaping and describing the project-specific types of materials that will be disseminated, and the Secretary encourages applicants' creativity in shaping the methods and procedures that each applicant will use for helping others replicate successful practices.

The Secretary believes that, when a bilingual vocational training model is successfully disseminated and demonstrated, other vocational education and training programs across the country serving the limited English proficient can also increase their level of success. Demonstration and dissemination activities can multiply the effect of this program by providing information to service providers that have broad access to other sources of funding, such as the State-Administered Vocational and Applied Technology Education Program.

Changes: None.

Duration of projects

Comments: One commenter believed that projects under the Bilingual Training Program should be funded for a three-year period with a yearly non-competitive review to ensure attainment of stated objectives and placement rate. This commenter believed that a three-year funding period is justified by the new dissemination and impact objectives that the Secretary has built into the regulations.

Discussion: The Secretary announces in the **Federal Register** the expected duration of projects in any notice requesting applications. Implementing the commenter's suggestion would not require a change in these regulations.

Changes: None.

Part 428—Bilingual Vocational Instructor Training Program

Purpose of program (§ 428.1)

Comments: Several commenters pointed out that § 428.1 excluded secondary vocational instructors from participation in the Bilingual Vocational Instructor Training Program. These commenters considered it essential that the regulations be changed to permit the participation of secondary vocational instructors. Other commenters expressed support for restricting the use of training funds to individuals instructing out-of-school youth and adults.

Discussion: As proposed, § 428.1 would have limited training under the Bilingual Vocational Instructor Training Program to personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient out-of-school youth and adults. The proposed regulations were intended to reinforce the traditional link between the Bilingual Vocational Instructor Training Program and the Bilingual Vocational Training Program that is limited by law to training "limited English proficient out-of-school youth and adults."

While limiting the Bilingual Vocational Instructor Training Program in this way has the advantage of reinforcing and strengthening the Bilingual Vocational Training Program, it has the disadvantage of slowing the pace with which secondary vocational education institutions adopt the highly successful bilingual vocational training models developed under the Bilingual Vocational Instructor Training Program. It also has the disadvantage of giving local agencies and institutions less flexibility to use Federal funds to address locally-defined educational needs.

Changes: Sections 428.1, 428.3(a)(1), 428.10(h), 428.21(a)(2), 428.21(b)(1) (i) and (iii), and 428.21(b)(2) have been revised to authorize the training of secondary vocational instructors in training projects supported under the Bilingual Vocational Instructor Training Program.

Types of projects (§ 428.3(b))

Comments: One commenter observed that the requirement for an "ongoing vocational education program in the field in which participants will be trained" is not relevant to inservice programs and should only apply to preservice programs that train vocational teachers or aides. The commenter stated that, in the case of inservice training, trainees will already be skilled as either vocational or English language instructors or counselors. The commenter suggested that § 428.3(b) be revised so that it applies only to preservice training programs and requires institutions providing inservice training programs to have an ongoing program or expertise in bilingual vocational, bilingual/multicultural, or adult ESL teacher training.

Discussian: Section 441(b)(3) of the Act, on which § 428.3(b) is based, does not differentiate between preservice and inservice training programs in requiring the applicant to have "an ongoing vocational training program in the field in which participants will be trained and [to] provide instructors with adequate language capabilities in the language other than English to be used in the program."

Changes: None.

Selection criteria—Evaluation plan (§ 428.21(f)(3))

Comments: Several commenters interpreted § 428.21(f)(3) as requiring participating institutions to provide data on completion and after-training work commitments of students. The commenters recommended that this selection criterion be changed to read: "provide data on performance and performance standards" in order to accommodate secondary school students.

Discussion: The Secretary intends that agencies and institutions receiving grants to train bilingual vocational training instructors will provide data on the "after-training work commitments" of those instructors, not the students of the instructors. The Secretary hopes that the instructors, of both secondary school students and out-of-school youth and adults, will report that their after-training work commitments include the direct vocational training of limited English proficient individuals, the training of other instructors for this purpose, or both. Changing the selection criterion would have the effect of placing more emphasis on the quality of "inputs" to the training program and less emphasis on the program's "outcomes." The Secretary prefers the current balance between these two factors.

Changes: None.

Comments: One commenter stated that the selection criterion "evaluation plan" should apply only to preservice training programs. The commenter expressed the view that trainees in inservice training programs are already employed and that, therefore, after-training work commitments would not change. The commenter also believed that since few inservice programs involve courses, completion data do not apply.

Discussion: The Secretary does not agree with the commenter that all individuals enrolled in inservice training programs may be presumed to be already employed in bilingual vocational training. The Secretary believes that some participants in inservice training programs may be employed in vocational education or counseling programs that presume the enrollees or clients already have an English language capability. By the regulation as written, the Secretary wishes to know whether these enrollees will be making a transition into bilingual vocational training programs.

The Secretary also disagrees with the commenter that since few inservice programs involve courses, completion data do not apply. The Secretary recognizes that preservice and inservice training programs differ. Therefore, § 428.21(f)(4) provides flexibility for applicants to identify expected learning and skills outcomes for participants and how those outcomes will be measured. The Secretary expects inservice projects to report on completions in terms of the number of enrollees who acquired the learning and skills expected rather than on courses completed.

Changes: None.

General

Selection criteria—Evaluation plan and evaluation requirements (§§ 405.21(d), 405.30, 425.21(d), and 425.30)

Comments: One commenter noted that the technical expertise and time required for a valid evaluation requires project research and evaluation staff working in concert with project implementation staff across the entire funding period. The commenter requested that the Secretary place an emphasis on fully funding costs related to research and evaluation personnel and materials as these costs are not only "reasonable and necessary" but critical for meeting increased accountability.

Discussion: The Secretary believes that it is prudent and fair to communicate expectations for rigorous evaluation designs and program accountability measures to potential applicants before they write applications for funding. The Secretary expects that advance knowledge of the additional requirements will influence not only how applicants plan and manage their projects, but how they propose to budget grant funds in their applications.

Changes: None.

Evaluation requirements (§§ 405.30 and 425.30)

Comment: One commenter noted that evaluative data are required for demonstration programs (including those covered by Parts 405 and 425) that include "information regarding student achievement, completion, and placement rates." The commenter expressed a concern that it is difficult, particularly in the early stages of a project, to delineate clearly a "cause and effect" relationship. The commenter, therefore, recommended that other data, including product availability and use, attendance rates, suspension rates, and attitudinal changes, also be taken into account.

Discussion: The Secretary recognizes the difficulty of establishing a "cause and effect" relationship during the early stages of a project. However, the requirement to base the evaluation on student achievement, completion, and placement rates is to be met over the

course of the project, not just during the early stages of a project. Although projects are free to gather evaluative data other than those specified in the regulations, the Secretary expects a project's evaluative data to include the information specified in §§ 405.30 and 425.30.

Changes: None.

The information collection requirements contained in this appendix will be submitted to the Office of Management and Budget for approval at which time the public will have an opportunity to comment on them pursuant to the Paperwork Reduction Act.

Appendix B—Reporting Requirements

Recipients of grants and cooperative agreements will be required to provide the following information in accordance with 34 CFR 400.10:

(a) Each recipient of an award under the National TechPrep Education Program (34 CFR part 405), Community Education Employment Centers Program (34 CFR part 408), Vocational Education Lighthouse Schools Program (34 CFR part 409), Demonstration Centers for the Training of Dislocated Workers Program (34 CFR part 415), Vocational Education Dropout Prevention Program (34 CFR part 423), Model Centers of Regional Training for Skilled Trades Program (34 CFR part 424), Demonstration Projects for the Integration of Vocational and Academic Learning Program (34 CFR part 425), and Cooperative Demonstration Programs (34 CFR part 426) shall—

(1) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing project activities for the reporting period; and

(2) Include as appendices to the annual performance report, as appropriate—

(i) Quantitative analyses of data and information regarding student achievement, completion, and placement rates;

(ii) Quantitative analyses of data and information regarding project and product spread and transportability as defined in 34 CFR 400.4(b);

(iii) Copies of "awareness" level materials being distributed about the project;

(iv) Copies of materials related to training used to help others replicate project activities;

(v) Copies of instructional, classroom, or curriculum materials that can be submitted to appropriate dissemination networks such as the National Network for Curriculum Coordination in Vocational and Technical Education and the Clearinghouse on Adult, Career, and Vocational Education of the Educational Resources Information Center;

(vi) A directory of individuals to whom training or technical assistance has been provided to replicate project activities; and

(vii) Demographic and evaluation data from sites where project activities have been replicated.

(b) Each recipient of an award under the Community Education Employment Centers Program (34 CFR part 408) shall also include as an appendix to the annual and final performance reports information documenting activities required in 34 CFR 408.34.

(c) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401), Native Hawaiian Vocational Education Program (34 CFR part 402), Educational Program for Federal Correctional Institutions (34 CFR part 422), and Bilingual Vocational Training Program (34 CFR part 427) shall—

(1) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate those barriers; and

(2) Submit to the Secretary a semi-annual statistical report covering quantitative analyses of the academic and vocational competencies demonstrated by participants and the number and kinds of academic and work credentials acquired by individuals who complete the program.

(d) Each recipient of an award under the Indian Vocational Education Program (34 CFR part 401) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix, quantitative analyses of data and information regarding—

(1) Student enrollment, completion, and placement rates for the most recently completed training cycle(s), by sex and by occupations for which training is being provided; and

(2) Project referrals to social services and related services for participant employment readiness.

(e) Each recipient of an award under the Native Hawaiian Vocational Education Program (34 CFR part 402) shall—

(1) Include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of student enrollment, completion, and placement for the most recently completed training cycle(s), by sex and socio-economic status for each occupation for which training is being provided; and

(2) Submit to the Secretary an annual evaluation report that must include descriptions and analyses of the accuracy of records and the validity of measures used by the project to establish and report on—

(i) The academic and vocational competencies demonstrated and the academic and work credentials acquired; and

(ii) Participant enrollment, completion, and placement by sex, and socio-economic status for each occupation for which training has been provided.

(f) Each recipient of an award under the Educational Program for Federal Correctional Institutions (34 CFR part 422) shall include in the semi-annual performance report described in paragraph (c)(1) of this appendix quantitative analyses of data and information regarding—

(1) Student enrollment and completion rates by sex, ethnic or racial group, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Project referrals to pre and post release services for employment enhancement.

(g) Each recipient of an award under the Bilingual Vocational Training Program (34 CFR part 427) shall include in the semi-annual statistical report described in paragraph (c)(2) of this appendix quantitative analyses of—

(1) Student enrollments, completions, and placements for the most recently completed training cycle by sex, ethnic or racial group, socioeconomic status, and where appropriate, by level of English proficiency for each occupation for which training is being provided; and

(2) Data and information regarding activities to enhance project operations such as coordination activities, training or upgrading of personnel, and the provision of support services.

(h) Each recipient of an award under the Tribally Controlled Postsecondary Vocational Institutions Program (34 CFR part 410) shall—

(1) Submit the following to the Secretary:

(i) On an annual basis, an accurate and detailed accounting of its operating and maintenance expenses, and other information concerning costs as the Secretary may require.

(ii) Information in the detail as the Secretary may require to prepare a budget needs estimate to support each institution's subsequent year of operation including updated information on employment needs, economic development needs, and population training needs.

(iii) Any information the Secretary may require to determine the feasibility of awarding additional grants to pay training equipment costs necessary for implementing training programs.

(2) Participate in the study of training and housing needs authorized by section 389(a) of the Act, and the long-term study of facilities authorized by section 389(b) of the Act, including providing information on—

(i) Training equipment needs;

(ii) Housing needs of families whose heads of household are students and whose dependents have no alternative source of support while those heads of household are students; and

(iii) A five year projection of training facilities, equipment, and housing needs, projected service population, and employment and economic development projections.

(i) Each recipient of an award under the National Network for Curriculum Coordination in Vocational and Technical Education (34 CFR part 412) shall submit to the Secretary—

(1) Semi-annual progress reports summarizing project activities for the reporting period;

(2) Semi-annual financial reports summarizing project spending for the reporting period; and

(3) An annual impact report of the curriculum coordination center's activities. The report must highlight the CCC's services and the program improvement practices resulting from these services. This report is due on December 31 of each year of the award.

(j) Each recipient of an award under the National Center or Centers for Research in Vocational Education (34 CFR part 413) shall submit to the Secretary the following:

(1) Monthly exception reports that describe—

(i) Any problems, delays, or adverse conditions that materially impair the ability of the National Center to accomplish its purposes, along with an explanation of any action taken or contemplated to resolve the difficulties; and

(ii) Any favorable developments that will permit the National Center to accomplish its purposes sooner, at less cost, or more effectively than projected.

(2) Semi-annual performance reports, unless the Secretary requires more frequent reporting, that describe the progress, problems, and future plans for each significant activity of the National Center within 30 days of the end of each six months.

(3) Quarterly financial status reports within 30 days of the end of each quarter. The annual financial status report may be submitted in place of the quarterly financial status report for the fourth quarter of each year.

(4) Ten copies of all substantive reports and products produced.

(k) Each recipient of an award under the Vocational Education Training and Study Grants Program (34 CFR part 416) shall—

(1) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing project activities for the reporting period and, if applicable, actions taken by the grantee to address any significant barriers impeding progress; and

(2) Append to the annual performance report an evaluation report that includes both statistical tables and narrative responding to the key evaluation questions in 34 CFR 416.21(f).

(l) Each institution receiving an award under the Vocational Education Leadership Development Awards Program (34 CFR part 417) shall—

(1) Provide to the Secretary, prior to disbursing awards, a certification from an appropriate official at the institution stating whether each proposed recipient of a leadership development award qualifies for the award based on the requirements in 34 CFR 417.34(a);

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of awards;

(3) Keep records verifying that recipients of leadership development awards—

(i) Meet the requirements in 34 CFR 417.40; and

(ii) Receive an award for no more than three years;

(4) Submit to the Secretary semi-annual performance reports, unless the Secretary requires more frequent reporting, summarizing significant project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them; and

(5) Submit to the Secretary a semi-annual statistical report covering quantitative analyses, by sex and racial or ethnic groups, of—

(i) Level and duration of learner participation and degree of progress;

(ii) Level of graduate study;

(iii) Institution and program in which enrolled;

(iv) The categories of personnel named in 34 CFR 417.1; and

(v) State from which the participant was selected.

(m) Each institution of higher education participating under the Vocational Educator Training Fellowship Program (34 CFR part 418) shall—

(1) Provide to the Secretary, prior to disbursing funds to a fellow, a certification from an appropriate official at the institution stating whether each proposed recipient of a fellowship meets the requirements in 34 CFR 418.41;

(2) Keep such records as are necessary to establish the timing and amount of all disbursements of fellowship payments; and

(3) Keep records verifying that each fellow—

(i) Meets the requirements in 34 CFR 418.2; and

(ii) Receives a fellowship for no more than two years.

(n) Each agency or organization sponsoring an intern under the Internships for Gifted and Talented Vocational Education Student Program (34 CFR part 419) shall submit to the Secretary two copies of a mid-term and final report summarizing the intern's activities and progress achieved in meeting the goals of the internship.

(o) Each recipient of an award under the Bilingual Vocational Instructor Training Program (34 CFR part 428) shall submit to the Secretary—

(1) A semi-annual performance report, unless the Secretary requires more frequent reporting, summarizing significant and project accomplishments and, if applicable, barriers impeding progress and steps taken to alleviate them;

(2) A semi-annual statistical report of learner participation in instructor training in terms of enrollment, completion, and after-training work commitments of participants by sex and racial or ethnic group and, where appropriate, by level and kinds of language proficiency; and

(3) An annual report on the results of the evaluation to answer the key questions raised in 34 CFR 428.21(f).

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Part IV

Environmental Protection Agency

40 CFR Part 261
Deferral of Petroleum UST-Contaminated Media and Debris From RCRA Hazardous Waste Requirements: Notice of Data Availability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL-4194-2]

Deferral of Petroleum UST-Contaminated Media and Debris From RCRA Hazardous Waste Requirements: Notice of Data Availability

AGENCY: Environmental Protection Agency.

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is today publishing a notice describing several studies which the Agency has completed concerning the temporary deferral from the hazardous waste Toxicity Characteristics (TC) rule of petroleum-contaminated media and debris from underground storage tanks (USTs). Since the temporary deferral was published on March 29, 1990, EPA has conducted several studies and held meetings with interested members of the public regarding the temporary deferral and the anticipated effects of regulating UST petroleum-contaminated media and debris as hazardous wastes under Subtitle C of the Resource Conservation and Recovery Act (RCRA). This notice summarizes the findings of the studies and the results of the public meetings. These materials will be used by the Agency to make a final determination regarding the hazardous waste regulatory status of petroleum UST-contaminated media and debris. EPA encourages public review and comment on these materials.

DATES: Written comments on these materials must be submitted on or before September 28, 1992.

ADDRESSES: Written comments on the materials described in today's notice should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, RCRA Docket (OS-305), 401 M Street, S.W., Washington, DC 20460. One original and two copies of comments should be sent and identified by regulatory docket reference number F-92-DPUA-FFFFF. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260-9327. Copies of docket materials may be made at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, please contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, Washington, DC 20460, (800) 424-9346 (toll-free) or (202) 260-3000 (local). For the hearing impaired, the number is (800) 553-7672 (toll-free), or (202) 260-9652 (local). For specific information about the studies and meetings described in this notice or about the UST deferral, please contact John Heffelfinger in the EPA Office of Underground Storage Tanks at (703) 308-8881.

SUPPLEMENTARY INFORMATION:

I. Background

A. Toxicity Characteristics Rule

The Toxicity Characteristics (TC) rule for identifying hazardous wastes was promulgated by the Agency on March 29, 1990 (55 Fed. Reg. 11798) and became effective on September 25, 1990. The rule replaced the Extraction Procedure (EP) leach test with the Toxicity Characteristic Leaching Procedure (TCLP), added 25 organic chemicals to the list of toxic constituents of concern, and established regulatory levels for these organic chemicals.

The overall effect of the TC rule was to subject additional solid wastes to regulatory control under the hazardous waste provisions of Subtitle C of RCRA. Under this rule, a waste may be a hazardous waste if any chemicals listed in the rule, such as benzene, are present in leachate from the waste (generated from use of the TCLP) at or above the specified regulatory levels. Management of such hazardous waste is subject to stringent RCRA Subtitle C controls.

B. The UST Deferral

Among the wastes that could be TC wastes are petroleum-contaminated media and debris. At the time of promulgation of the final TC rule, the Agency made a determination to temporarily defer applicability of the TC rule to media and debris (*e.g.* soils and groundwater) contaminated with petroleum from underground storage tanks (USTs) that are subject to the corrective action requirements of Subtitle I of RCRA. 55 FR 11836 (March 29, 1990). The deferral was limited to the 25 newly listed organic chemicals under the TC (i.e. Hazardous Waste Codes D018 through D043 only). *See* 40 CFR 261.4(b)(10).

The deferral was the result of several factors. Because the potential impact of the TC on materials generated from UST cleanups did not become apparent until very late in the rulemaking process, at the time of promulgation of the final TC rule, the Agency had little information regarding the full impact of the TC rule on UST cleanups, particularly regarding the amount of contaminated media that would become hazardous waste and the type of management feasible and appropriate for such waste. However, available information suggested that the impact of applying Subtitle C to UST cleanups might be severe in terms of the administrative feasibility of both the Subtitle C and Subtitle I programs. A preliminary assessment indicated that the number of UST cleanup sites and the amount of media and debris at each site that would exhibit the toxicity characteristic could be extremely high, with EPA expecting hundreds of thousands of UST releases to be identified in the next few years. The Agency believed that subjecting all, or even a significant portion, of these sites to Subtitle C requirements could overwhelm the hazardous waste permitting program and the capacity of existing hazardous waste treatment, storage, and disposal facilities.

In addition, EPA believed that imposition of the requirements could delay UST cleanups significantly, require an enormous new commitment of Federal and State resources, and undermine the State and local focus of the UST program. All of these factors suggested that EPA needed additional time to determine with more certainty what the impacts of the TC would be on UST cleanups before subjecting such materials to hazardous waste requirements. In addition, EPA needed time to investigate whether regulatory changes could be made to the RCRA Subtitle C regulations to allow appropriate integration of the two programs. EPA also believed that the UST regulations governing cleanups at these sites would be adequate to protect human health and the environment in the interim, until a final determination was made regarding the regulation of UST wastes.

In the preamble explaining the need for the deferral, EPA committed to undertaking several studies and meetings in order to make a final determination concerning the regulation of these UST wastes under the Subtitle C program. The studies and meetings described below are those that EPA agreed to undertake in the 1990 TC rule. The information that EPA is making available to the public today for review and comment will provide key inputs into EPA's final determination regarding the permanent regulatory status of UST petroleum-contaminated media and debris as hazardous waste under RCRA Subtitle C.

II. EPA's Studies

As explained above, the application of the TC rule to UST cleanups was temporarily deferred to allow cleanups under the UST program to proceed while the Agency evaluated the extent and nature of the potential impacts of Subtitle C requirements if applied to the UST program and the feasibility of regulatory alternatives for program integration. In fulfillment of the commitment the Agency made in the preamble to the final TC rule, EPA has completed studies that will be used as key inputs to the final determination regarding the regulation of petroleum UST-contaminated media and debris as hazardous waste. These studies are available for review in the docket for this notice and are briefly described below.

A. Technical Study

The Agency is making available today for public comment a draft report entitled "TC Study of Petroleum Contaminated Media." This report is organized as follows:

- Estimates of the amounts of UST petroleum-contaminated soils that might be expected to exhibit the hazardous waste characteristic of toxicity if subject to the TCLP test;
- Impacts on hazardous waste capacity nationwide if these materials required management as hazardous waste;
- State management practices for petroleum-contaminated soils from USTs;
- Overview of technologies currently used for management of petroleum-contaminated soils and groundwater; and
- Impacts on the RCRA Subtitle I and C programs of removing the temporary deferral.

B. Impacts Study

The Agency is also making available today for public comment a draft report entitled "The Impacts of Removing the TCLP Deferral for Petroleum-Contaminated Media at Underground Storage Tanks Sites." This report is organized as follows:

- Procedural impacts of removing the deferral with regard to changes that would be required in cleanup procedures, technologies and the pace of UST corrective actions;
- Cost impacts of removing the deferral, to the regulated community as well as to EPA and the States; and
- Preliminary assessment of health risk impacts associated with removing the temporary deferral.

C. Study Findings

The findings of these two reports corroborate the preliminary assessment that EPA made at the time of promulgation of the temporary deferral. Specifically, the findings of the two studies indicate that removing the TC deferral would significantly affect UST cleanup procedures, delay remedial actions, and increase soil remediation costs. Further, delays in site remediation caused by compliance with Subtitle C requirements could increase health and environmental risks prior to cleanup.

In addition to findings concerning the impacts of removing the deferral, these studies also indicate that many States have programs in place to regulate the management of UST petroleum-contaminated media and debris. The vast majority of these State programs address in some manner the entire cycle of UST petroleum-contaminated soils and groundwater management, from initial characterization through storage and ultimate treatment or disposal.

EPA is interested in any comments that the public may have on the content of these studies and in the use of these studies to support a final determination concerning the regulation of UST petroleum-contaminated media and debris as hazardous waste.

III. Public Meetings

In the preamble to the 1990 TC rule, EPA also stated its intention to convene a public forum to discuss the issues associated with regulating UST petroleum-contaminated soils and debris under Subtitle C of RCRA. To fulfill this commitment, in September and December, 1991, EPA convened several meetings with various interested parties (including representatives from the States, Congressional staff, environmental groups and the waste treatment and waste generating industries) to discuss issues related to the cleanup of petroleum contamination from UST at well as non-UST sources, and the potential impacts of the TC rule on these cleanups.

The thirteen States attending these meetings expressed significant concern about the adverse environmental impacts resulting from the application of the TC rule to petroleum UST releases. In the view of many States, the delays associated with RCRA Subtitle C management would allow for volatilization and migration of certain TC constituents, such as benzene prior to cleanup. Groups representing the waste generating industries generally agreed with the States, although several stated that this problem was not unique to petroleum-contaminated media.

Representatives of environmental groups and certain members of the hazardous waste treatment industry expressed concerns with the deferral as a mechanism for solving the implementation problems posed by Subtitle C regulation of petroleum-contaminated media and debris. They suggested that EPA consider modifying the hazardous waste requirements to accommodate these cleanup wastes rather than exempting the wastes entirely from important procedural and substantive hazardous waste requirements.

A complete summary of these meetings is in the docket for this action. The various viewpoints expressed in these meetings will be considered as part of EPA's final decisionmaking concerning the deferral.

IV. Schedule for Final Determination

EPA will review and evaluate the public comments on the studies and meetings described in this notice as part of its decisionmaking concerning the regulatory status of UST petroleum-contaminated media and debris. The Agency also expects to publish later this year another notice addressing the regulatory status of UST petroleum-contaminated media and debris. That notice will include EPA's evaluation of whether and how the Subtitle C regulations can be amended to accommodate the UST wastes and avoid the administrative and environmental problems associated with regulation of UST wastes as hazardous that are noted above and were discussed in the preamble to the 1990 TC final rule.

Following review of all the public comments submitted on these notices, EPA plans to publish a final determination that will terminate the temporary deferral (codified at 40 CFR 261.4(b)(10)), permanently exempt UST petroleum-contaminated media and debris from the TC, or take some other regulatory action concerning the applicability of hazardous waste requirements to these cleanup wastes. EPA currently expects to publish this determination in the **Federal Register** by March 31, 1993.

Dated: July 23, 1992.

Don R. Clay,

Assistant Administrator.

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Supplemental Assistance for Facilities to Assist the Homeless (SAFAH); Fund Availability; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3478; FR-3196-N-01]

Supplemental Assistance for Facilities To Assist the Homeless (SAFAH); Fund Availability

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of fund availability.

SUMMARY: This Notice announces the availability of $10.4 million in funds for assistance under the Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) program. The purpose of this year's SAFAH competition is to test integrated approaches that involve partnerships of State and local governments and private nonprofit organizations, and that are designed to prevent the recurrence of homelessness among homeless families with children graduating from transitional housing. Grants will be available to fund activities related to helping families locate and secure permanent housing (*e.g.*, housing search and housing counseling activities, first and last months' rent, moving expenses), and to providing case management services for up to a year after families secure permanent housing.

Grantees are expected to ensure that families served have access to a range of needed supportive services by incorporating local collaboration mechanisms in the planning and delivery of services for participant families. This coordinating activity must be funded through other sources. HUD will give special consideration to applications that demonstrate linkages with HHS' Homeless Families Support Center grants or other similar collaborative efforts aimed at maximizing supportive service resources available to participant families.

The body of this document contains additional information on the focus of this year's SAFAH program, eligible activities, and selection criteria.

DATES: Applications for SAFAH assistance must be received by 5:15 pm Eastern Time on December 15, 1992 in HUD's Office of Special Needs Assistance Programs at the address listed below.

FOR A COPY OF THE APPLICATION PACKAGE, CONTACT: Application packages are available from the HUD field offices listed at the end of this Notice. Additional information regarding the submission of applications is included in the package.

ADDRESSES: An original and one copy of the completed application must be submitted to the following address: Department of Housing and Urban Development, Office of Community Planning and Development, Special Needs Assistance Programs, room 7262, 451 Seventh Street SW., Washington, DC 20410, Attention: Mr. James N. Forsberg.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300 or TDD (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this Notice have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506-0111, expiration date December 31, 1992.

I. Purpose and Substantive Description

A. Authority

The assistance made available under this Notice is authorized by title IV of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11381-11388), as implemented by HUD regulations at 24 CFR part 579 and supplemented by this Notice, and as amended by sections 106, 834(c), and 836 of the National Affordable Housing Act (Pub. L. 101-625, approved November 28, 1990).

B. Allocation Amounts

This Notice announces the availability of $10.4 million in funds appropriated by the HUD appropriations act for fiscal year 1992 (Pub. L. 102-139, enacted October 28, 1991). The maximum amount that a State may receive is $1 million, including amounts requested for grant administration costs, to be used over a three-year period. HUD reserves the right, however, to reduce the amounts requested by an individual applicant. The Department expects to award 12-14 grants.

C. Eligibility

1. Purpose

The purpose of this year's SAFAH competition is to test integrated approaches that involve partnerships of State and local governments and private nonprofit organizations, and that are designed to prevent the recurrence of homelessness among homeless families with children graduating from transitional housing by: (1) Assisting such families in locating and securing permanent housing, and (2) providing case management services that establish linkages with health care, supportive services, income assistance, and longer-term supportive services essential to these families' efforts to achieve the highest level of self-sufficiency possible after moving to permanent housing.

Unlike the past SAFAH funding rounds, this year's SAFAH competition will not fund activities other than case management activities and assistance to families in locating and securing permanent housing. This change has been made so that the program's limited resources will be directed to activities that the Department considers essential for linking families with necessary services available through community-based programs. This year's competition, therefore, emphasizes collaboration involving key local and private nonprofit organizations to help ensure that necessary services are available.

2. Background

In January, 1990, the Secretaries of the Departments of Housing and Urban Development and Health and Human Services signed a Memorandum of Understanding (MOU) committing the Departments to develop and implement cooperative efforts to help homeless persons or persons at risk of homelessness move toward economic independence and self-sufficiency. One of the initiatives resulting from this MOU was the creation of an interagency working group on homeless families with children to design strategies that encourage the development of accessible supportive service and housing assistance systems to prevent homeless families with children from becoming homeless again. The working group initially took steps to improve its understanding of the needs of homeless families and to determine the best way to provide services to meet identified needs.

Studies such as Homeless Families with Children: Programmatic Responses of Five Communities by Macro Systems, Inc. and Families on the Move: Breaking the Cycle of Homelessness by The Edna McConnell Clark Foundation highlight the fact that programs serving homeless families often are characterized by weak linkages between service and housing agencies and by the lack of follow-up services necessary to ensure that families who are relocated to permanent housing are able to maintain their housing. Recent studies of family homelessness in the Bay Area of California and New York City indicate that 44 and 50 percent of homeless families, respectively, had been homeless more than once. The need for follow-up services and more effective linkages to public and charitable mainstream programs to help to prevent repeated homelessness is clearly supported by recent studies, and is a point about which a wide array of public and private service providers, policy makers, and others agree.

This announcement responds to the working group's recommendation to support efforts that integrate services and housing intended to prevent the recurrence of homelessness. In selecting applications, the Department will give special consideration to applications that link SAFAH assistance with other efforts to integrate services available to families with children, such as HHS' Homeless Family Support Center sites, Family Self-Sufficiency programs developed by Public Housing Authorities, the HUD-Robert Wood Johnson Foundation Homeless Families Program, or other local collaboration efforts.

3. Eligible Applicants

State governments are the only eligible applicants. States may submit only one application, but may include more than one local jurisdiction in the application and may identify more than one transitional housing facility within each local jurisdiction. States are expected to collaborate with local governments and private nonprofit organizations in the planning and implementation of the projects. States are expected to solicit interest in the program from local governments and, especially, private nonprofit organizations.

4. Program Components

In this year's SAFAH competition, HUD is seeking to fund programs that contain the following major components:

(1) Evidence of collaboration between state and local governments and private nonprofit organizations within each local jurisdiction to coordinate the delivery of supportive services to families who have moved from transitional into permanent housing. This system should ensure that services necessary for families to achieve and sustain the highest level of self-sufficiency possible are available to families who have relocated to permanent housing, minimize the burden to families associated with accessing multiple service systems, and reduce duplication of effort by local agencies. This collaboration may include new activities or linkages with existing collaborative efforts that target similar populations, such as those by HHS' Homeless Family Support Center grantees, Family Self-Sufficiency programs developed by Public Housing Authorities, the HUD-Robert Wood Johnson Foundation Homeless Families Program, or other local collaborative efforts. States also are encouraged to target resources to the development and continuance of this activity.

Examples of organizations that might be partners in this collaboration effort include:

—Head Start agencies
—County health departments
—Public or voluntary coalition/coordinating groups on homelessness
—Community action agencies
—Local education agencies
—Institutions of higher education
—Public hospitals
—Community development corporations
—Private industry councils
—Community health centers
—Public housing agencies (PHAs)
—Other public or private nonprofit organizations specializing in provision of social services

A local collaboration mechanism is essential to receive SAFAH assistance for the activities specified in the (2) and (3). SAFAH assistance, however, may not be used to fund the collaboration efforts.

(2) The provision of housing-related activities to help families graduating from transitional housing to locate, secure, and move into permanent housing. Families graduating from transitional housing are those who have been determined ready to move to permanent housing after completing a transitional housing program designed to prepare the family for independent living. A program is considered transitional housing if it includes, at a minimum, an intensive assessment to identify the needs of the family; the provision or direct linkage to a comprehensive range of services to address those needs, such as basic life skills training, education, employment-related activity, child care, and health care; and periodic assessment of the family's progress in meeting identified needs. A program that meets these standards, regardless of whether it is formally referred to as transitional housing, may be considered transitional housing for purposes of this notice.

Housing-related activities eligible for SAFAH assistance include, but are not limited to:

—Housing counseling and housing search assistance (including fair housing counseling and assistance for families with children that encounter housing discrimination)
—Linkage to housing subsidy mechanisms
—Security deposits
—First and last months' rents (but not ongoing rental assistance)
—Payment of housing-related arrearages to assist the family to move from transitional to permanent housing if the arrearages directly contributed to the family's homelessness and are necessary to allow the family to move to permanent housing
—Moving expenses
—Furnishings

States and local jurisdictions are encouraged to provide subsidies or other housing resources, which will count as leveraging, to assist in the implementation of projects in one or more localities.

(3) A family case manager function, integrated with the collaboration described in paragraph (1), which ensures, either directly or through relationships with existing service providers, that families who have moved to permanent housing have access to services, funded from other sources, that meet identified needs for benefits and services. This should include conducting individualized needs assessments to identify services that will complement those provided in transitional housing and helping families secure needed services from a community-based service system.

The services, which are to be funded from other sources, may include:

—Health and mental health services
—Food and nutrition programs
—Family crisis counseling
—Drug and alcohol counseling
—Child development programs
—Child care
—Job training and education
—Parenting classes
—Programs for young adults and teens
—Other services necessary to achieve independent living and the highest level of self-sufficiency possible to prevent the recurrence of homelessness

The SAFAH program will fund up to twelve months of family case management services after the family relocates to permanent housing. SAFAH funds may not be used for supportive services other than housing-related activities and case management, as described in paragraphs (2) and (3).

(4) A plan for tracking and reporting on the progress of families served in

order to measure program effectiveness. Expected outcomes include:

—Prevention of future homelessness
—Improvement of the physical, social, economic, and education status of participant families
—Achievement of progress toward independence and self-sufficiency
—An increase in literacy levels and basic employment skills

Grantees will be expected to track and report on the progress of families for an additional year following the completion of SAFAH-funded family case management services. This activity may be funded from the five percent of the SAFAH assistance eligible to be used for grant administration. In addition to costs related to tracking clients and costs associated with preparing reports for submission to HUD, grant administration includes costs associated with accounting for the use of grant funds, obtaining program audits, and other similar costs. If administrative funds remain after the end of the third year of the grant, they may be used to fund costs associated with tracking and reporting on clients in the year following that third year.

The Department may contract for an independent evaluation of the program. Grantees will be expected to cooperate with such third-party evaluation contractors, including cooperating in the collection and submission of data to the contractor and in other activities necessary to ensure an effective evaluation.

D. Comprehensive Housing Affordability Strategy

An applicant must submit a certification with its application that the proposed activities are consistent with its Comprehensive Housing Affordability Strategy (CHAS), in accordance with 24 CFR part 91. If an applicant has not yet submitted this CHAS for fiscal year 1993, the certification of consistency may be made with respect to the CHAS for fiscal year 1992. (See 24 CFR 91.60.)

E. Threshold Review

The selection process for the SAFAH program includes an initial technical threshold review to determine whether applications are eligible for ranking under the rating criteria discussed in Section F of this notice. The threshold review will determine (1) whether the application is adequate in form, timeliness, and completeness; (2) whether the applicant and the population to be served are eligible; (3) whether the proposed activities are eligible for assistance under the program; and (4) whether the applicant is in compliance with the civil rights requirements in 24 CFR 570.325(a).

F. Rating Criteria

Applications that meet the threshold review requirements described in Section E will be rated and ranked, with a maximum of 1,000 points, based on four criteria. Since all applications must be targeted to homeless families with children, applications will not be rated on the criterion found at 24 CFR 579.215(b)(4), Special homeless populations. To be eligible for an award, applicants must receive points under the comprehensiveness, innovation, and cost effectiveness criteria, but need not receive points under the leveraging criteria. The selection of proposals will be based on their overall score. If the application includes more than one local jurisdiction, the selection criteria will be applied to the application as a whole, rather than separately to each local jurisdiction.

1. Comprehensiveness (700 points)

(1) Housing assistance (250 points)—HUD will award up to 250 points based on the extent to which the applicant proposes a housing package that will improve families' access to permanent affordable housing in the community. In assessing an application under this criterion, HUD will consider the extent to which: (a) all necessary housing-related activities are provided through SAFAH assistance or other sources; (b) there are demonstrated commitments that ensure that permanent, affordable housing is available to participant families; and (c) the background and experience of the agencies and staff that will provide housing-related activities demonstrate the ability to provide the proposed housing services effectively and efficiently.

(2) Supportive services (200 points)—HUD will award up to 200 points based on the extent to which necessary supportive services (excluding case management, which is considered under "coordinated service delivery") will be provided. In assessing an application under this criterion, HUD will consider the extent to which the applicant: (a) Demonstrates an understanding of the needs of the target population; (b) proposes services that will complement those provided in transitional housing and help families achieve and sustain the highest level of self-sufficiency possible; and (c) provides commitments that ensure that the services will be readily accessible to participant families.

(3) Coordinated service delivery (250 points)—HUD will award up to 250 points based on the extent to which the housing assistance and supportive services described above will be provided in coordinated manner through the effective use of case management linked with a collaborative mechanism involving state and local governments and private nonprofit providers.

Case management will be assessed based on the extend to which: (a) The case management model proposed reflects a sound understanding of the needs of the target population; (b) a workable plan is proposed to ensure that families are assisted in accessing needed benefits and services; and (c) the background and experience of project staff demonstrate the ability to provide the proposed case management services in an effective and efficient manner.

The project's collaborative mechanism will be assessed based on the extent to which it: (a) Includes state and local government agencies and nonprofit providers capable of targeting and pooling their resources so that benefits and services will be available to project clients when needed; (b) incorporates activities to reduce duplication of effort in accessing benefits and otherwise improves administrative procedures and policies that may impede the timely and efficient delivery of benefits and services; and (c) provides evidence that the collaborative mechanisms will be continued beyond the life of the SAFAH grant. A greater number of points will be awarded to applications that demonstrate a direct linkage with existing collaborative efforts aimed at maximizing supportive service resources available to similar populations, including HHS-funded programs such as Homeless Family Support Centers, HUD-funded programs such as Family Self-Sufficiency and the joint HUD-Robert Wood Johnson Homeless Families Program, or similar state- or locally-funded integration initiatives.

2. Innovation (100 points)

HUD will award up to 100 points based on the innovative quality of the proposal for helping families achieve and sustain independent living and the highest level of self-sufficiency possible, when compared to other applications. Innovation quality will be assessed in terms of (a) responding to the needs of the families to be served; (b) a clear link between the innovation and its proposed effect; and (c) its ability to be used as a model in other communities. HUD will also assess the appropriateness and adequacy of the applicant's monitoring plan in relation to the innovative approach of the proposal, including the extent to which measurable expected results for participating families are identified and a plan is proposed to monitor these results.

3. Leveraging (100 points)

HUD will award up to 100 points based on the extent to which the applicant will leverage the amount of SAFAH assistance requested with volunteer resources and cash from other public and private sources that are directly tied to helping families locate, secure, or remain in permanent housing. The resources must be (1) related to the housing related activities, case management, or tracking and follow-up activities specified in this notice, or (2) permanent, affordable housing resources that are directly targeted to project families. The resources may only be counted to the extent that they are not reimbursed with SAFAH assistance. Supportive service resources will be a critical rating factor but may not count toward leveraging. Leveraged resources may include, but are not limited to, State and local housing resources specifically targeted to SAFAH participants, the salaries to staff who provides housing counseling services to participant families, or the salaries of staff carrying out tracking and follow-up activities.

4. Cost Effectiveness (100 points)

HUD will award up to 100 points on an evaluation of the requested SAFAH funds in relation to the total package of benefits and services to be provided. HUD will consider the extent to which the applicant is able to pool or consolidate services from other programs into this effort.

II. Application Process

Application packages will be available beginning August 21, 1992 from the HUD field offices listed at the end of this notice. Additional information regarding the submission of applications is included in the package.

Only timely applications will be considered for funding. To be considered timely, the original and one copy must be received at the Office of Special Needs Assistance Programs at the address listed at the beginning of this Notice by no later than 5:15 p.m. on December 15, 1992. Applications received after this date and time will not be accepted even if postmarked by the deadline date. Applications sent by facsimile (FAX) will not be accepted.

III. Application Submission Requirements

Complete applications submission requirements, including a checklist of all necessary information and certifications to be provided, are contained in the application package. Potential applicants who have questions about the preparation or submission of applications may contact the Office of Special Needs Assistance Programs at (202) 708–4300.

IV. Corrections to Deficient Applications

A. Notification

HUD will notify an applicant, in writing, of any curable technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

B. Curable Technical Deficiencies

Curable technical deficiencies are items that are not necessary for HUD review under ranking factors (*e.g.*, failure to submit a required certification with the application). Items that would improve the substantive quality of the application may not be submitted after the application due date has expired.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410.

B. Federalism Impact

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice do not have federalism implications within the meaning of the Order. The Notice implements a program to provide assistance to States to be used for homeless families with children, thereby strengthening States in helping their homeless population find permanent homes and reenter the mainstream of American life. The Notice does not affect the relationship between the Federal government and States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under the Executive Order.

C. Family Executive Order

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the policies in this Notice may have a potentially significant impact on the maintenance and general well-being of participating homeless families. Participation of families in the program can be expected to support family values, by helping families remain together; by enabling them to live in decent, safe, and sanitary housing; and by offering the supportive services that are necessary to acquire the skills and means to live independently in mainstream American society. Since this impact is a beneficial one, the policies are not subject to review under the Executive Order.

D. Section 102 HUD Reform Act—Documentation and Public Access Requirements; Applicant/Recipient Disclosures

1. Documentation and Public Access

HUD will ensure that documentation and other information regarding each application submitted pursuant to this Notice are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection of a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance under this Notice in its quarterly **Federal Register** Notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the Notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this Notice. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a

period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 12. (See 24 CFR part 12, subpart C, and the Notice published in the Federal Register on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.

E. *Section 103 HUD Reform Act*

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 TDD/Voice. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. *Section 112 HUD Reform Act*

Section 112 of the Housing and Urban Development Reform Act of 1989 (Reform Act) added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3531). Section 13 contains two provisions concerning efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the Federal Register on May 17, 1991 (56 FR 29912). Appendix A of the rule contains examples of activities covered by the rule. Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; (202) 708–3815 TDD/Voice. (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. *Prohibition Against Lobbying Activities*

The use of funds awarded under this Notice is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have or will be spent on lobbying activities in connection with the assistance.

Dated: August 6, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

Appendix—Listing of HUD Field Offices

Alabama: Jasper Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 3000, Birmingham, AL 35209–3144; (205) 731–1672.

Alaska: Colleen Craig, Federal Bldg., 222 W. 8th Ave., #64, Anchorage, AK 99513–7537; (907) 271–3669.

Arizona: Diane Domzalski, 400 North First St., Suite 1600, Phoenix, AZ 85004–2361; (602) 379–4754.

Arkansas: Billy M. Parsley, Lafayette Bldg., 523 Louisiana, Ste. 200, Little Rock, AR 72201–3707; (501) 324–5375.

California:

(Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235.

(Northern) Gordon H. McKay, 450 Goldengate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576.

Colorado: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Connecticut: Daniel Kolesar, 330 Main St., Hartford, CT 06106–1860; (203) 240–4508.

Delaware: John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665.

District of Columbia: James H. McDaniel, 820 1st St. NE, Washington, DC 20002; (202) 275–0094.

Florida: James N. Nichol, 325 W. Adams St., Jacksonville, FL 32202–4303; (904) 791–3587.

Georgia: Charles N. Straub, Russell Fed. Bldg., Room 688, 75 Spring St. SW, Atlanta, GA 30303–3388; (404) 331–5139.

Hawaii: Patty A. Nicholas, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96815–4918; (808) 541–1327.

Idaho: John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596; (503) 326–7018.

Illinois: Richard Wilson, 77 W. Jackson Blvd., Chicago, IL 60604; (312) 353–1696.

Indiana: Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2528; (317) 226–5169.

Iowa: Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Rd., Omaha, NE 68154–3955; (402) 492–3144.

Kansas: Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184.

Kentucky: Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394.

Louisiana: Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212.

Maine: David Lafond, Norris Cotten Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640.

Maryland: Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202–1865; (410) 962–2417.

Massachusetts: Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343.

Michigan: Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343.

Minnesota: Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019.

Mississippi: Jeanie E. Smith, Dr. A.H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765.

Missouri: (Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524.

(Western) Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184.

Montana: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Nebraska: Gregory A. Bevirt, Executive Tower Centre, 10909 Mill Valley Rd., Omaha, NE 68154–3955; (402) 492–3144.

Nevada: (Las Vegas, Clark Cnty) Diane Domzalski, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754. (Remainder of state) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576.

New Hampshire: David Lafond, Norris Cotten Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640.

New Jersey: Frank Sagarese, Military Park Bldg., 60 Park Pl., Newark, NJ 07102–5504; (201) 877–1776.

New Mexico: R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483.

New York: (Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768.

(Downstate) Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885.

North Carolina: Charles T. Ferebee, 2306 W. Meadowview Rd., Greensboro, NC 27407–3707; (919) 547–4005.

North Dakota: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Ohio: John E. Riordan, 200 North High St., Columbus, OH 43215–2499; (614) 469–6743.

Oklahoma: Katie Worsham, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4973.

Oregon: John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596; (503) 326–7018.

Pennsylvania: (Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493.

(Eastern) John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665.

Puerto Rico: Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576.

Rhode Island: Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343.

South Carolina: Louis E. Bradley, Acting, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564.

South Dakota: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Tennessee: Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 549–9422.

Texas: (Northern) R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX; 76113–2905; (817) 885–5483.

(Southern) Robert W. Hicks, Washington Sq., 800 Dolorosa, San Antonio, TX; (512) 229–6820.

Utah: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Vermont: David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640.

Virginia: Joseph Aversano, Fed. Bldg., 400 N. 8th St., P.O. Box 10170, Richmond, VA 23240–9998; (804) 771–2624.

Washington: John Peters, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101–2054; (206) 442–0374.

West Virginia: Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493.

Wisconsin: Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, WI 53203–2289; (414) 297–3113.

Wyoming: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

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August 14, 1992

Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 100

National Vaccine Injury Compensation Program; Revision of the Vaccine Injury Table; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 100

RIN: 0905-AD64

National Vaccine Injury Compensation Program; Revision of the Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking; findings.

SUMMARY: The Secretary has made findings as to the illnesses and conditions that can reasonably be determined in some circumstances to be caused or significantly aggravated by certain vaccines. Based on these findings, the Secretary proposes to amend the Vaccine Injury Table (Table) by regulation pursuant to section 312 of the National Childhood Vaccine Injury Act of 1986 and section 2114(c) of the Public Health Service Act (the Act). These proposed regulations would have effect only for petitions for compensation under the National Vaccine Injury Compensation (NVIC) Program filed after the new regulations become effective.

DATES: Comments must be submitted on or before February 11, 1993. A public hearing on this proposed rule will be held before the end of the public comment period. A separate notice will be published in the **Federal Register** to provide the details of this hearing.

ADDRESSES: Written comments should be addressed to Fitzhugh Mullan, M.D., Director, Bureau of Health Professions (BHPr), Health Resources and Services Administration (HRSA), room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Office of Program Development, BHPr, Room 8A-55, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Geoffrey Evans, M.D., Chief Medical Officer and Deputy Director, Division of Vaccine Injury Compensation, BHPr, (301) 443-6593. David Benor, Senior Attorney, Office of the General Counsel, (301) 443-2006.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986, title III of Pub. L. 99-660 (42 U.S.C. 300aa-10 et seq.) established a Federal compensation program for persons thought to be injured by vaccines. Petitions for compensation under this Program are filed with the United States Claims Court, with a copy served on the Secretary, who is denominated the "Respondent." The Claims Court, acting through special masters, makes findings as to eligibility for, and amount of, compensation.

In order to gain an award under this program, the petitioner must establish a vaccine-related injury or death, either by showing an event which is presumed to be caused by a vaccine or by proving causation in fact. In some cases, the petitioner may simply demonstrate the occurrence of what has been referred to as a "Table injury." That is, it may be shown that the vaccine recipient suffered an injury of the type enumerated in section 2114(a) of the Act (42 U.S.C. 300aa-14(a))—the "Vaccine Injury Table"—corresponding to the vaccination in question, and that the *onset* of such injury took place within a time period from the vaccination also specified in the Table. If so, the Table injury is in effect presumed to have been caused by the vaccination, and the petitioner is automatically entitled to compensation, *unless* it is affirmatively shown that the injury was caused by some factor other than the vaccination (see secs. 2111(c)(1)(C)(i), 2114(a), and 2113(a)(1)(B)). Congress recognized that the Table initially set forth in the statute inevitably would compensate some individuals whose injuries were not actually caused by the vaccine. Congress was willing to accept some such inaccuracy for simplicity's sake, and in order to ensure compensation of most persons actually injured by the enumerated vaccines.

The legislative history states: The Committee recognizes that there is public debate over the incidence of illnesses that coincidentally occur within a short time of vaccination. The Committee further recognizes that the deeming of vaccine-relatedness adopted here may provide compensation to some children whose illness is not, in fact, vaccine-related. The Committee anticipates that the research on vaccine injury and vaccine safety now ongoing and mandated by this legislation will soon provide more definitive information about the incidence of vaccine injury and that, when such information is available, the Secretary or the Advisory Commission on Childhood Vaccines * * * may propose to revise the Table, as provided below in section 2114 (Initial Table). Until such time, however, the Committee has chosen to provide compensation to all persons whose injuries meet the requirements of the petition and the Table and whose injuries cannot be demonstrated to be caused by other factors. [H.R. Rept. 99-908, Part 1, September 26, 1986, page 18 (or as found in 1986 U.S. Code Cong. and Admin. News, Vol. 6, page 6359)].

Since the enactment of the statute, there have been serious concerns about the degree to which the assumptions underlying the Vaccine Injury Table were founded in science, and concerns that substantial numbers of petitions were being compensated inappropriately because they are being compensated for non-vaccine related injuries. Indeed, when it first enacted the statute creating this Program, Congress mandated a review to be undertaken by the IOM with the express purpose of providing a better scientific rationale for any presumptions of vaccine causation. Under section 312 of Pub. L. 99-660, Congress mandated that the IOM review the scientific literature and other information on specific adverse consequences of pertussis and rubella vaccines.

The Secretary has completed a review of the relevant medical and scientific information pertaining to pertussis vaccines and related illnesses and conditions, as well as a review of vaccines containing rubella (including measles, mumps and rubella vaccine) and related illnesses and conditions (section 312(b)). At the request of the Secretary, the Institute of Medicine (IOM) of the National Academy of Sciences conducted this review, and published its report, entitled *Adverse Effects of Pertussis and Rubella Vaccines*, on August 27, 1991.

The IOM acted through a Committee which was made up of 11 experts in infectious disease, pediatrics, internal medicine, neurology, epidemiology, biostatistics, decision analysis, immunology and public health, who devoted 20 months to the review of the data. The committee held five public meetings in which commentary and other information pertinent to the committee's task was sought from persons outside the committee. Committee members took the opportunity to consider new or controversial data and various points of view and to identify gaps in knowledge. The Report is an inventory and review of existing information about adverse reactions following immunization with pertussis and rubella vaccines, including scientific articles, government reports, lay publications, testimony given in public meetings and communications with informed individuals. The bibliography contains approximately 1,400 citations. No original research was conducted by the Committee.

The IOM Committee undertook the task of judging whether, based on available evidence, a causal relationship exists between each adverse event examined and exposure to pertussis or rubella vaccine. A classification system was used to categorize their conclusions about the strength of a causal association.

The Public Health Service (PHS) Task Force on the National Vaccine Injury Compensation Program made the initial recommendations regarding review of the IOM Report and possible revision of the Vaccine Injury Table. On November 8, 1991, a subcommittee of the National Vaccine Advisory Committee (NVAC) (section 2105 of the Act) made an initial review of the PHS Task Force recommendations. This subcommittee was composed of members of the NVAC and received testimony from outside experts from the fields of epidemiology, pediatric infectious disease, and pediatric neurology. The recommendations of the Subcommittee were forwarded to the full NVAC for its review at its meeting of November 25 and 26, 1991.

The Advisory Committee on Childhood Vaccines (ACCV), whose membership, by statutory directive, reflects a variety of views relating to childhood immunizations (section 2119 of the Act), considered the NVAC report as well as the PHS Task Force recommendations at its meeting of December 11 and 12, 1991. The ACCV deliberations included public policy considerations, whereas the NVAC charge was to consider only the scientific issues raised by the existing table, the recent IOM report, and other scientific information.

The Secretary has examined the recommendations of the NVAC and its subcommittee, and of the ACCV, and proposes that the initial Table set forth in section 2114 of the Act be revised as set forth below. As provided in section 2114(c)(4), the New Table will apply only to petitions filed under the Program after the effective date of the final regulation.

Pursuant to section 313 of Pub. L. 99-660, the Secretary has arranged with the IOM for an additional broad study of the risks associated with each vaccine set forth in the Vaccine Injury Table, other than the risks previously identified in the section 312 mandated IOM study discussed above. Vaccine and conditions not previously studied under section 312 will be made a part of this study. Furthermore, the IOM has included Hepatitis B vaccine and Haemophilus influenzae type b vaccine in this study. Following a review of this section 313 mandated IOM study, the Secretary may propose additional amendments to the Vaccine Injury Table, as well as to the Qualifications and Aids to Interpretation.

The Department publishes a Notice of Proposed Rulemaking in the **Federal Register** before a regulation is promulgated. The public is invited to submit comments on this proposed rule. In addition, a public hearing will be held for this proposed rule. After the public comment period has expired, the Department will publish the final rule in the **Federal Register**. The comments received on the proposed rule and the Department's responses to the comments will be addressed in the preamble to the final regulation.

Findings

Pursuant to section 312(b) of Pub. L. 99-660 (42 U.S.C. 300aa-1 note), and based on the IOM Report, the Secretary has made and now publishes the following specific findings:

1. The scientific evidence indicates that there is no causal relation between vaccines containing pertussis and: Infantile spasms, hypsarrhythmia, Reye syndrome, Sudden Infant Death Syndrome or afebrile seizures.

2. There is no evidence bearing on a causal relation between vaccines containing pertussis and autism.

3. The evidence is insufficient to indicate a causal relation between vaccines containing pertussis and: Epilepsy, aseptic meningitis, chronic neurologic damage, erthema multiforme or other rash, Guilliam-Barre syndrome, hemolytic anemia, juvenile diabetes, learning disabilities and attention-deficit disorder, peripheral mononeuropathy, thrombocytopenia, or permanent neurologic damage or death following hypotonic-hyporesponsive episodes.

4. The evidence is consistent with a causal relation between vaccines containing pertussis and: Acute encephalopathy and shock and "unusual shock-like state."

5. The evidence indicates a causal relation between vaccines containing pertussis and: Anaphylaxis, protracted, inconsolable crying, and febrile seizures.

6. The evidence is insufficient to indicate a causal relation between rubella vaccine and: Radiculoneuritis and other neuropathies, or thrombocytopenic purpura.

7. The evidence is consistent with a causal relation between rubella vaccine and chronic arthritis.

8. The evidence indicates a causal relation between rubella vaccine and acute arthritis.

Discussion of Proposed Table Changes

The following proposed revision of the Table and the related Qualifications and Aids to Interpretation takes into account the recommendations of the ACCV and NVAC. These two outside reviewing bodies have based their recommendations primarily on the IOM Report as well as other relevant scientific information. Set forth below is a discussion of each proposed change to the Initial Table, including an explanation of the rationale for the change.

The Department notes that the removal of a condition from the Table, or the inclusion of a revised definition thereof, will not necessarily result in compensation being denied where it would previously have been awarded. Rather, the result will be that a presumption of vaccine causation will no longer apply. Petitioners may still prevail by providing proof of causation in fact.

I. DTP; P; DTP/Polio Combination; or Any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Bacteria, or Specific Pertussis Antigen(s) DT; Td; or Tetanus Toxoid

Note: DT, Td or Tetanus toxoid were not separately covered in the IOM report. However, since diphtheria vaccine and tetanus toxoid are given a part of the DTP vaccine, and because most of the epidemiologic evidence regarding pertussis is based on study of the pertussis antigen as part of the DTP vaccine, it follows that changes made for Encephalopathy and Residual Seizure Disorder for DTP should also be made for these-nonpertussis components. Pending the IOM Review of DT, TD and tetanus toxoid, the Department proposes to continue to include anaphylaxis or anaphylactic shock and encephalopathy as compensable "Table" injuries; however, the Department is aware of little credible evidence for a causal relation between these antigens and encephalopathy, and thus advises that it is likely that encephalopathy will be removed from the Table following the additional IOM review under section 313.

A. Anaphylaxis or Anaphyloctic Shock: Arrow Timeframe from 24 Hours to 4 Hours

The Department proposes to narrow the timeframe for anaphylaxis or anaphylactic shock following DTP, DTP/Polio, P, DT, Td, or tetanus toxoid vaccination from 24 hours to 4 hours. Anaphylaxis and anaphylactic shock

refer to a sudden, potentially life-threatening, systemic condition mediated by highly reactive molecules released from mast cells and basophils. Clinical signs may occur within minutes to a few hours depending on the rate at which the antigen enters the circulation and the degree of sensitization (IgE antibody formation) (*IOM report, page 144*). For purposes of this rule, "life threatening" means that medical intervention was required to prevent death. That medical intervention may include oxygen, epinephrine, fluids or antihistamines. A standard textbook of Pediatrics specifies the onset of anaphylaxis as beginning within seconds to minutes after exposure and "rarely as late as 1 hour." (*Buckley RH: Allergy. In Rudolph AM. (ed): Rudolph's Pediatrics. ed 19. Norwalk, Appleton and Lange, 1991, p. 518*) The proposed 4 hour limit thus provides a wide margin for a presumption of vaccine causation.

B. Encephalopathy: Amend Definition in Qualifications and Aids to Interpretation

The issue of encephalopathy for vaccines containing pertussis antigen is a difficult one. The IOM found evidence "consistent with a causal relation" for *acute* encephalopathy, but found "insufficient evidence" to demonstrate a relation between such vaccines and *chronic* neurologic damage. Because the statute requires that a petitioner must show 6 months of residual effects of a Table injury, a finding of a relation between pertussis-containing vaccines and acute, but not chronic, encephalopathy does not justify continuing the presumption of causation for long-term neurologic damage.

Although the IOM report found evidence consistent with a causal relation between the DTP vaccination and acute encephalopathy, the NVAC review noted that the evidence was not overwhelming for a causal relation. Only the National Childhood Encephalopathy Study (NCES) found a statistically significant relationship. Three other controlled epidemiological studies did not demonstrate a statistically significant risk. Furthermore, analysis of the NCES by other epidemiologists suggested errors and potential bias in the study. The NVAC voted to remove encephalopathy from the Table, thus requiring petitioners to prove causation in fact for cases alleging this condition.

The ACCV, on the other hand, felt that reliance on the finding of a causal relation by the IOM justified retaining encephalopathy as a condition for which causation could be presumed. Recognizing weaknesses in the initial statutory definition of "encephalopathy" in the Qualifications and Aids to Interpretation, the ACCV voted to retain the condition on the Table, but only with a new definition that more properly reflected the scientific understanding of the condition and the knowledge of alternative causes of the condition. The new definition is discussed in detail below.

The Department appreciates the analysis of the NVAC on this matter. The Department notes that the evidence is indeed scanty to justify a presumption that long-term neurologic damage may result from vaccines containing pertussis antigen. Nevertheless, given the statutory requirement for a demonstration of 6 months of continued effects of a Table injury, here—an encephalopathy—the Department is persuaded that the ACCV approach is reasonable. The petitioner must demonstrate not only that an encephalopathy, as defined in the Qualifications and Aids to Interpretation, occurred, but also that the encephalopathy led to at least 6 months of residual effects. Therefore, the absence of evidence linking the vaccine to chronic neurologic damage does not require that the condition be removed from the Table. In effect, while the petitioner may be entitled to a presumption that the vaccine caused the acute condition, he or she would still have to prove that the chronic condition was a sequela (see proposed definition of this term) or a residual effect of the acute event, lasting at least 6 months. On this basis, the Department proposes to retain encephalopathy as a Table injury, subject to the changes noted.

C. Shock-collapse or HHE: Remove from Table

Shock collapse or hypotonic hyporesponsive collapse was found by the IOM report to be consistent with a causal relation to DTP. This clinical syndrome includes a variety of signs and is poorly understood in terms of pathophysiology. Although the IOM did find evidence for causation between the DTP vaccine and HHE (category #4), it concluded the evidence proving any neurologic sequelae was "insufficient." The three controlled studies which have examined this issue have found no such relation (*IOM report, pages 176 and 177*).

Because there is no proven relationship between HHE and residual neurologic damage, any injuries following an HHE event should be proven to be a direct result of the vaccine. Both the NVAC and the ACCV recommended deleting this condition from the Table. By removing this as a Table injury, the petitioner is given the burden of proving that an HHE that occurred was caused by a vaccine and that is directly resulted in death or residual effects lasting at least 6 months.

D. Residual Seizure Disorder: Remove from Table

Residual Seizure Disorder was also examined by the IOM. No causal relationship was found between DTP and afebrile seizures based on three controlled studies and "insufficient evidence" for DTP and epilepsy (recurrent afebrile seizures) based on only one controlled study. There is good evidence from controlled studies that febrile seizures are causally related to the DTP vaccine. However, even when a febrile seizure follows a STP shot, there is no evidence that any resulting neurologic deficits are causally related to the vaccine (*IOM report, pages 106, 107, 117 and 118*). Because febrile seizures and afebrile seizures following DTP vaccination have not been proven to cause permanent neurologic damage, a presumption of causation should not be made. By removing this as a Table Injury, the petitioner is given the burden of proof that a residual seizure disorder occurred as a result of the vaccine and that it directly resulted in death or residual effects for at least 6 months.

*E. Any acute complication of sequela (including death) * * * No change.*

II. Measles, Mumps, and Rubella Vaccines (Alone or in Combination)

A. Anaphylaxis or Anaphylactic Shock: Narrow Timeframe from 24 hours to 4 hours.

Note: Delete "DT; Td; or Tetanus Toxoid" from this category, as they more properly belong with pertussis in category I. above.

The Department proposes to narrow the timeframe for anaphylaxis or anaphylactic shock from 24 hours to 4 hours following measles, mumps, and rubella vaccinations (alone or in combination), for the reasons stated above, under category I.A.

B. Encephalopathy: Narrow Timeframe of Onset from 0–15 Days to Onset from 5 to 15 Days

Note: The Department has deleted references to "DT, Td or tetanus toxoid" and placed these vaccines in category I. above. Side effects following the administration of measles, mumps, and rubella vaccines, alone or in combination, begin 5 to 15 days following vaccination and are generally mild and limited to susceptible vaccines. Based on epidemiologic data, any adverse neurological event before or after this timeframe should not be presumed the result of the measles, mumps, and rubella vaccination (alone or in combination). (*Landrigan PJ, Witte JJ: Neurologic disorders following live measles-virus vaccination. JAMA 1973; 223:1459–1462) (Miller CL: Surveillance after measles vaccination in children. Practitioner 1982; 226:535–537*)

C. *Residual Seizure Disorder: Narrow Timeframe of Onset from 0–15 Days to Onset from 5 to 15 Days.*

Note: Delete references to "DT, Td or tetanus toxoid." Side effects following the administration of measles, mumps, and rubella vaccines, alone or in combination, begin 5 to 15 days following vaccination and are generally mild and limited to susceptible vaccines. Based on epidemiologic data, any adverse neurological event before or after this timeframe should not be presumed the result of the measles, mumps, and rubella vaccination (alone or in combination). (*Landrigan PJ, Witte JJ:Neurologic disorders following live measles-virus vaccination. JAMA 1973; 223:1459–1462) (Miller CL. Surveillance after measles vaccination in children. Practitioner 1982; 226:535–537*)

D. *Any acute complication or sequela (including death* * * * No change.

E. *Chronic arthritis: Add to the Table: Onset within 42 days.*

The IOM report found evidence to be consistent with a causal relation between rubella vaccine and chronic arthritis. It also concluded that the evidence indicates a causal relation between rubella vaccine and acute arthritis. Because the statue specifies that any residual effects must be present for at least 6 months following the vaccine, acute arthritis would not be eligible for compensation. However, the Department must resolve the issue of creating a presumption of causation for cases of chronic arthritis. In doing so, the Department has considered the views of the NVAC and the ACCV.

The NVAC and the ACCV made different recommendations regarding the addition of chronic arthritis to the Table of Injuries. The NVAC first looked at the proposed criteria for defining cases of arthritis which could be linked to the rubella vaccine that had been proposed by the PHS Task Force on the basis of the IOM's recommendation for further testing (*IOM report, pages 195–197*). These criteria included isolation of the rubella virus from the synovial fluid or leukocytes of the individual and identification of the virus as the vaccine strain. The NVAC concluded that most clinical laboratories do not now have the ability to conduct such tests, and therefore, that it would not be feasible to require a petitioner to provide laboratory results showing that a case of chronic arthritis was in fact vaccine-related. Accordingly, the NVAC voted to recommend that the condition not be included at all in the revised Table.

The ACCV, on the other hand, recommended that even without these criteria, the remaining requirements for finding a case compensable (onset of acute arthritis within 42 days of rubella vaccination, no prior history of arthropathy (joint disease), objective signs of chronic arthritis lasting at least 6 months; see Qualifications and Aids to Interpretation) would be sufficiently restrictive to limit compensable cases to those with a high probability of vaccine causation. On this basis, the Department proposes to include chronic arthritis on the Table, with criteria similar to those proposed by the ACCV.

The time guidelines specified in the Table are from published reports of onset of signs of acute arthritis following ruebella vaccination. (*Polk BF, et al: A controlled comparison of joint reactions among women receiving one of two rubella vaccines. American Journal of Epidemiology 1982; 115:19–25) (Weibel RE, et al: Clinical and laboratory studies of live attenuated RA 27/3 and HPV 77–DE rubella virus vaccines. Proceedings of the Society of Experimental Biology and Medicine 1980;165;44–49)*

III. Polio Vaccines (Other Than Inactivated Polio Vaccine)

The Department does not recommend any changes.

IV. Inactivated Polio Vaccine

A. *Anaphylaxis or anaphylactic shock: narrow timeframe from 24 hours to 4 hours.*

The Department proposes to narrow the timeframe for anaphylaxis or anaphylactic shock from 24 hours to 4 hours for inactivated polio vaccination, for the reasons stated above under category I.A.

B. *Any acute complication or sequela (including death)*: No change.

V. Qualifications and Aids to Interpretation

A. *Add "anaphylaxis and anaphylactic shock"—add new definition (see paragraph (b)(1)).*

While the initial statutory qualifications and aids to interpretation provided guidance for the other Table conditions, anaphylaxis and anaphylactic shock were omitted. Language describing the clinical signs or symptoms associated with anaphylaxis and anaphylactic shock are therefore proposed to be added to the Aids to Interpretation. Because the Program reviews cases of death, it is important for the Court to have some written guidelines which reflect the current scientific understanding of this life-threatening condition. (*Geha RS., Umetsu DT., et al: Immunology. In: Avery ME. first LR. (eds). Pediatric Medicine. Baltimore, Williams and Wilkins, 1989, p. 100–1010) (Heimlick EM., Sheldon SC., Anaphylaxis, In: Kelly VC. (ed). Practice of Pediatrics. Philadelphia, Harper and Row, 1986; 2(79): p.1–5) (IOM Report, p. 144–150)*

B. *Delete "shock–collapse or hypotonic–hyporesponsive collapse" consistent with Table revision.*

C. *Redefine "residual seizure disorder"—see paragraph (b)(3) and the related paragraph (b)(4).*

Because the Table is proposed to be amended to include this condition only for measles, mumps, and rubella vaccines (alone or in combination), the new definition would apply only to these vaccines. In addition, the Department proposes other changes to have the definition reflect medical understanding of this condition more precisely. Among the significant changes are the following:

(1) Remove "petit mal and absence seizures

Petit mal epilepsy is a genetic disorder which rarely presents before 4–5 years of age. Absence seizures are also rare under a year of age and, like petit mal epilepsy, are not associated with acute encephalopathy. (*Dreifuss F: Generalized Seizures: Absence. In Dreifuss, F (ed): Pediatric Epileptology. Boston, J. Wright/PSG, 1983, p. 65–91.)*

(2) Add "jerking movements or staring episodes alone are not necessarily an indication of seizure activity"

Examples of paroxysmal disorders which are not epileptic in nature include breathholding spells, spasmus nutans, nystagmus and sleep myoclonus. Staring episodes are an indication of petit mal or absence epilepsy which are not a sequelae of acute encephalopathy as noted above. (*McMillian JA., Nieburg PI., Oski FA., (eds): Whole Pediatric Catalogue. Philadelphia, W.B. Saunders Co. 1977, (1):331–335) (Lockman LA: Nonepileptic Paroxysmal Disorders. In Swaiman, KF (ed): Pediatric Neurology-Principles and Practice. St. Louis, C.V. Mosby Co., 1989, (1): p.444)*

(3) Add "infantile spasms (with or without hypsarrhythmia), if properly diagnosed, shall not be considered to be a condition set forth in the Table"

The IOM concluded that both infantile spasms and hypsarrhythmia are not

causally related to the DTP vaccine. Infants with idiopathic infantile spasms who experience their first myoclonic seizure following a DTP vaccination are presently compensated under the Program (*IOM report, pages 76 and 77*). Despite the evidence in the medical literature that there is no causal association between DTP and infantile spasms, the Court has consistently ruled in favor of the petitioner if the first myoclonic seizure occurs within 72 hours of DTP vaccine administration. The proposed change would require that this non-vaccine related neurologic disorder not be viewed as a condition set forth in the Table. The Department is including a definition of "infantile spasms" in the Qualification and Aids to Interpretation (see proposed paragraph (b)(8)).

(4) Add definition of temperature threshold for fever so as to distinguish between febrile seizure versus afebrile seizures

There is no definitive literature on the threshold temperature for febrile seizures in children. No temperature standard exists. The proposed temperature guidelines (101.0 °F. rectally or 100.0 °F. orally) reflect a more commonly accepted temperature standard for determining the presence of fever. The 102 degree guideline used in the Initial Table has no basis in the medical literature. *(Moffet HL: Pediatric Infectious Diseases—A Problem Oriented Approach, ed 3. Philodelphia, Lippincott, 1989, p. 277)*

(5) Add requirement for the 2 post-immunization afebrile seizures to be at least 24 hours apart

Seizures commonly occur in clusters. By requiring a 24 hour separation in time, the Department is making the recurrence of a seizure more likely to be indicative of a recurring epileptic disorder. Seizures that occur on the same day are generally regarded as a single event. (*Houser WA et al: Seizure recurrence after a first unprovoked seizure. NEJM 1982; 307(9):522–528*) This time requirement is intended to identify those children who have a true seizure disorder versus those who have an isolated cluster of seizures.

D. *Add standards defining chronic arthritis.*

Because the Department is proposing to add chronic arthritis to the Table, guidance is necessary to help define when the condition will be presumed to be vaccine-related. The primary elements of this guidance are as follows:

Vaccine-related chronic arthritis shall be found in a person with no previous history of arthropathy (joint disease) on the basis of:

(1) Medical documentation, at the time of the administration, of a rubella vaccine;

(2) Medical documentation, within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred within 42 days after a rubella vaccination; and

(3) Medical documentation of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following, and within 3 years of, the onset of acute arthritis.

E. *Add definition of "sequela"—see paragraph (b)(5).*

The Initial Tale included a "sequela" of a condition listed on the Table as an event for which causation would be presumed. No definition of the word was included, however. The Department proposes to define "sequela" to require a showing that a subsequent event or condition was caused in fact by a Table injury.

F. *Revise definition of "encephalopathy".*

The initial guidance in the Qualifications and Aids to Interpretation did not reflect precisely medical knowledge of the condition encephalopathy. The proposed rule sets forth more precise information about the condition and includes more explicit statements reflecting knowledge of what non-vaccine causes lead to the condition and should therefore not be presumed to be vaccine-related. Among the significant changes are the following:

(1) Because the residual seizure disorder is proposed to be eliminated for vaccines containing pertussis antigens, the relationship of seizures to encephalopathy is articulated more fully than previously. While a seizure may in fact constitute a sign of an encephalopathy, seizures alone will not be presumed to be vaccine-related.

(2) For children under 24 months of age, signs of encephalopathy are often difficult to diagnose. The proposed rule would set forth different standards for this condition in children younger than 24 months.

(3) Guidance is included to distinguish between acute and chronic encephalopathies. Children who return to a normal neurological state after an acute encephalopathy, but later develop signs of a chronic encephalopathy will not be presumed to have a vaccine-related condition.

(4) The IOM found that both Sudden Infant Death Syndrome and infantile spasms are not causally related to pertussis vaccines. Because the application of the initial statutory Table of Injuries has led to many cases of these conditions being compensated as vaccine-related injuries or deaths, the proposed rule would explicitly provide that these conditions are not to be found to be Table injuries for encephalopathy. To reflect the possibility of an improper diagnosis, however, the Qualifications would limit this provision to cases which are "properly diagnosed." Definitions of both "Sudden Infant Death Syndrome" and "infantile spasms" are included as proposed paragraphs (b)(7) and (b)(8) respectively in the Qualification and Aids to Interpretation.

(5) Add "without regard to whether the cause of the infection, toxin, trauma, metabolic disturbance, structural lesion, or genetic disorder is known"

This language would provide that the specific cause, for example of an infection, need not be shown; it is enough to show that the vaccine is not implicated.

Regulatory Flexibility Act and Executive Order 12291

The Secretary certifies that this regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

The Department has also determined that this proposed rule does not meet the criteria for a major rule as defined by section 1(b) of Executive Order 12291. In addition, costs will not exceed the threshold criteria of $100 million for major rules; therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

This regulation has no information collection requirements.

List of Subjects in 42 CFR Part 100

Biologics, Compensation, Health insurance, Immunizations.

Dated: April 10, 1992.

James O. Mason,

Assistant Secretary for Health.

Approved: June 12, 1992.

Louis W. Sullivan,

Secretary.

For the reasons stated above, it is proposed to amend 42 CFR part 100 as set forth below.

PART 100—VACCINE INJURY COMPENSATION

1. The authority citation for Part 100 is revised to read as follows:

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 2115 of the PHS Act, 100 Stat. 3767, as amended (42 U.S.C. 300aa–15); with respect to the Vaccine Injury Table: sec. 312 of Pub. L. 99–660 (42 U.S.C. § 300aa–1 note) and sec. 2114(c) of the PHS Act (42 U.S.C.)300aa–14(c)).

2. Section 100.3 is added to read as follows:

§ 100.3 Vaccine Injury Table.

(a) In accordance with section 312(b) of the National Childhood Vaccine Injury Act of 1986, title III of Pub. L. 99–660 (42 U.S.C. 300aa–1 note) and section 2114(c) of the Public Health service Act (42 U.S.C. 300aa–14(c)), the following is a table of vaccines, the injuries, disabilities, illnesses, conditions, and deaths resulting from the administration of such vaccines, and the time period in which the first symptom or manifestation of onset or conditions, and deaths is to occur after vaccine administration for purposes of receiving compensation under the Program:

VACCINE INJURY TABLE

Illness, disability, injury or condition covered	Time period for first symptom or manifestation of onset or of significant aggravation after vaccine administration
I. DTP; P; DT; Td; or Tetanus Toxoid; or in any combination with Polio; or any Other Vaccine Containing Whole Cell Pertussis Bacteria, Extracted or Partial Cell Pertussis Bacteria, or Specific Pertussis Antigen(s)	
A. Anaphylaxis or anapyhlactic	4 hours.
B. Encephalopathy (or encephalitis)	72 hours.
C. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II(a). Measles, mumps, rubella, or any vaccine containing any of the foregoing as a component;	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Encephalopathy (or encephalitis)	5–15 days (not less than 5 days and not more than 15 days) (for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component).
C. Residual seizure disorder in accordance with subsection (b)(3)	5–15 days (not less than 5 days and not more than 15 days) (for measles, mumps, rubella, or any vaccine containing any of the foregoing as a component).
D. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
II(b). In the case of measles, mumps, rubella (MMR), measles, rubella (MR) or rubella vaccines only	
A. Chronic arthritis	42 days.
B. Any sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury or condition arose within the time period prescribed.	Not applicable.
III. Polio Vaccines (other than Inactivated Polio Vaccine)	
A. Paralytic Polio	
——in a non-immunodeficient recipient	30 days.
——in an immunodeficient recipient	6 months.
——in a vaccine associated community case	Not applicable.
B. Any acute complication or sequela (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.
IV. Inactivated Polio Vaccine	
A. Anaphylaxis or anaphylactic shock	4 hours.
B. Any acute complication or sequila (including death) of an illness, disability, injury, or condition referred to above which illness, disability, injury, or condition arose within the time period prescribed.	Not applicable.

(b) *Qualifications and Aids to Interpretation.* The following qualifications and aids to interpretation shall apply to the Vaccine Injury Table in paragraph (a) of this section:

(1) *Anaphylaxis and anaphylactic shock* refer to an acute, severe, and potentially lethal systemic allergic reaction. Most cases resolve without sequelae. Signs and symptoms begin minutes to a few hours after exposure. Death, it if occurs, usually results from airway obstruction caused by laryngeal edema or bronchospasm and may be associated with cardiovascular collapse. Other significant clinical signs and symptoms may include the following: Cyanosis, hypotension, bradycardia, tachycardia, arrhythmia, edema of the pharynx and/or trachea and/or larynx with stridor and dyspnea. Autopsy finding may include acute emphysema which results from lower respiratory tract obstruction, edema of the hypopharynx, epiglottis, larynx, or trachea and minimal findings of eosinophilia in the liver, spleen and lungs. When death occurs within minutes of exposure and without signs of respiratory distress, there may not be significant pathologic findings. Sudden Infant Death Syndrome (SIDS), if properly diagnosed, shall not be considered to be a condition set forth in the Table in paragraph (a) of this section.

(2) The term "*encephalopathy*" means any acute or chronic significant acquired abnormality of, or injury to, or impairment of function of, the brain.

(i) *Acute Encephalopathy shall be defined as follows:* An acute encephalopathy should be sufficiently severe to require health care intervention and hospitalization.

(A) *For children less than 24 months of age* who present without an associated seizure event, an acute encephalopathy shall be defined as a significantly decreased level of consciousness, specifically stupor or coma, lasting for at least 24 hours. Those children less than 24 months of age who present following a seizure shall be viewed as having an acute encephalopathy if their stupor or coma persists beyond 24 hours and cannot be attributed to a posticta1 state or medication.

(B) *For children 24 months or age or older* an acute encephalopathy is one that persists for at least 24 hours and characterized by at least two of the following:

(1) A significant change in mental status that is not medication related; specifically a confusional state, or a delirium, or a psychosis;

(2) A significantly decreased level of consciousness, which is independent of a seizure and cannot be attributed to the effects of medication; or

(3) A seizure associated with loss of consciousness.

(C) Increased intracranial pressure may be a clinical feature of acute encephalopathy in any age group.

(D) The following clinical features alone, or in combination, do not qualify as evidence of an acute encephalopathy or a significant change in either mental status or level of consciousness as described above: Sleepiness, irritability (fussiness), high-pitched and unusual screaming, persistent inconsolable crying, and bulging fontanelle. Seizures in themselves are not sufficient to constitute a diagnosis of encephalopathy. In the absence of other evidence of an acute encephalopathy, seizures shall not be viewed as the first symptom or manifestation of the onset of an encephalopathy.

(ii) *Chronic encephalopathy* is defined as persistence of the acute findings for an extended period, usually several months to years beyond the acute episode. Individuals who return to a normal neurological state after the acute encephalopathy shall not be presumed to have suffered residual neurologic damage from the vaccine; any subsequent chronic encephalopathy shall not be presumed to be a sequela of the acute encephalopathy. Children with evidence of a chronic encephalopathy secondary to genetic, prenatal or perinatal factors shall not be considered to have a condition set forth in the Table.

(iii) Sudden Infant Death Syndrome (SIDS) and infantile Spasms, if properly diagnosed, shall not be considered to be conditions set forth in the Table.

(iv) An encephalopathy shall not be considered to be a condition set forth in the Table if in a proceeding on a petition, it is shown by a preponderance of the evidence that an encephalopathy was caused by an infection, a toxin, a metabolic disturbance, a structural lesion, a genetic disorder or trauma. (without regard to whether the cause of the infection, toxin, trauma, metabolic disturbance, structural lesion or genetic disorder is known). If at the time a decision is made on a petition filed under section 2111(b) for a vaccine-related injury or death, it is not possible to determine the cause by a preponderance of the evidence of an encephalopathy, the encephalopathy shall be considered to be a condition set forth in the Table.

(v) An encephalopathy which has been shown by a preponderance of evidence to be caused by a pre-existing condition cannot be presumed to be significantly aggravated by the vaccine if the condition is following its natural clinical course.

(vi) In determining whether or not an encephalopathy is a condition set forth in the Table, the court shall consider the entire medical record.

(3) *Residual seizure disorder.* (i) A petitioner shall not be considered to have suffered a residual seizure disorder if the petitioner suffered a seizure or convulsion unaccompanied by fever (defined as a rectal temperature equal to or greater than 101.0 degrees Fahrenheit or an oral temperature equal to or greater than 100.0 degrees Fahrenheit) before the fifth day after the administration of the vaccine involved.

(ii) A petitioner may be considered to have suffered a residual seizure disorder if the first seizure or convulsion occurred 5–15 days (not less than 5 days and not more than 15 days) after administration of the vaccine and 2 or more additional distinct seizure or convulsion episodes (defined as occurring at least 24 hours apart) occurred within 1 year after the administrative of the vaccine which were unaccompanied by fever (defined as a rectal temperature equal to or greater than 101.0 degrees Fahrenheit or an oral temperature equal to or greater than 100.0 degrees Fahrenheit).

(4) For purposes of paragraphs (b)(2) and (3) of this section, the terms "*seizure*" and "*convulsion*" include grand mal, myoclonic, generalized tonic-clonic, and simple partial seizures and signs. Petit mal and absence seizures shall not be considered to be conditions set forth in the Table. Jerking movements or staring episodes alone are not necessarily an indication of seizure activity. Infantile spasms (with or without hypsarrhythmia), if properly diagnosed, shall not be considered to be a condition set forth in the Table.

(5) The term "*sequela*" means a condition or event which is caused by a condition listed in the Vaccine Injury Table. The petitioner must prove by a preponderance of the evidence that the condition listed in the Vaccine Injury Table is the cause-in-fact of the resulting sequela. The petitioner must prove a logical sequence of cause and effect supported by a generally accepted medical or scientific explanation.

(6) Chronic arthritis: (i) Vaccine-related chronic arthritis shall be found in a person with no prior history of arthropathy (joint disease) on the basis of:

(A) Medical documentation, at the time of the administration, of a rubella vaccine;

(B) Medical documentation, within 30 days after the onset, of objective signs of acute arthritis (joint swelling) that occurred within 42 days after a rubella vaccination; and

(C) Medical documentation of the persistence of objective signs of intermittent or continuous arthritis for more than 6 months following, and within 3 years of the onset of, acute arthritis.

(ii) The following shall not be considered conditions set forth in the Table in paragraph (a) of this section: Musculoskeletal disorder such as diffuse connective tissue diseases (including but not limited to rheumatoid arthritis, juvenile rheumatoid arthritis, systemic lupus erythematosus, systemic sclerosis, mixed connective tissue disease, polyositis/dermatomyositis, necrotizing vasculitis and vasculopathies and Sjogren's Syndrome), degenerative joint disease, infectious agents other than rubella (whether by direct invasion or as an immune reaction), metabolic and endocrine disease, trauma, neoplasms, neuropathic disorders, bone and cartilage disorders and arthritis associated with ankylosing spondylitis, psoriasis, inflammatory bowel disease, Reiter's syndrome, or blood disorders.

(iii) Arthralgia (joint pain) or stiffness without joint swelling shall not be viewed as arthritis.

(7) A *proper diagnosis* of Sudden Infant Death Syndrome (SIDS) shall mean the sudden death of an infant under 1 year of age which remains unexplained after a complete (including macroscopic and microscopic anatomical examinations) postmortem examination and a review of the case history. Nothing will have been found to otherwise explain the death in any death scene investigation that may have been undertaken.

(8) Infantile spasms, whether or not the etiology is known, is a specific form of infantile myoclonic epilepsy whose onset is limited almost entirely to the first year of life. The condition is characterized by the following:

(i) Brief flexor extensor, or mixed flexor-extensor seizures that tend to occur in clusters. They rarely occur during sleep, but frequently occur upon, or soon after arousal.

(ii) Electroencephalographic (EEG) abnormalities of hypsarrhythemia or modified hypsarrhythmia. The absence of hypsarrhythmia does not preclude the diagnosis of infantile spasms.

(iii) Psychomotor retardation in the majority (85–95%) of children. The absence of retardation does not preclude diagnosis of infantile spasms.

(c) *Effective date provisions:* The revised Table of Injuries set forth in paragraph (a) of this section applies to petitions for compensation under the Program filed with the United States Claims Court on or after the effective date of this section. The qualifications and Aids to Interpretation set forth in paragraph (b) of this section apply to petitions filed with the United States Claims Court on or after the effective date of this section. The petitions for compensation filed with the United States Claims Court before the effective date of this section shall be governed by section 2114(a) ("Initial Table") and section 2114(b) (initial "Qualifications and Aids to Interpretation") of the Public Health Service Act.

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S. 2641/P.L. 102–334
To partially restore obligation authority authorized in the Intermodal Surface Transportation Efficiency Act of 1991. (Aug. 6, 1992; 106 Stat. 858; 1 page) Price: $1.00

H.R. 3836/P.L. 102–335
Pacific Yew Act. (Aug. 7, 1992; 106 Stat. 859; 5 pages) Price: $1.00

H.R. 5059/P.L. 102–336
To extend the boundaries of the grounds of the National Gallery of Art to include the National Sculpture Garden. (Aug. 7, 1992; 106 Stat. 864; 1 page) Price: $1.00

S. 2917/P.L. 102–337
To amend the National School Lunch Act to authorize the Secretary of Agriculture to provide financial and other assistance to the University of Mississippi, in cooperation with the University of Southern Mississippi, to establish and maintain a food service management institute, and for other purposes. (Aug. 7, 1992; 106 Stat. 865; 1 page) Price: $1.00

H.R. 4026/P.L. 102–338
Zuni River Watershed Act of 1992. (Aug. 11, 1992; 106 Stat. 866; 3 pages) Price: $1.00

H.R. 5343/P.L. 102–339
To provide additional time to negotiate settlement of a land dispute in South Carolina. (Aug. 11, 1992; 106 Stat. 869; 2 pages) Price: $1.00

S.J. Res. 270/P.L. 102–340
To designate August 15, 1992, as "82d Airborne Division 50th Anniversary Recognition Day". (Aug. 12, 1992; 106 Stat. 871; 2 pages) Price: $1.00

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August 17, 1992

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ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
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1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

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Federal Register
Vol. 57, No. 159
Monday, August 17, 1992

Presidential Documents

Title 3—

The President

Proclamation 6464 of August 12, 1992

82nd Airborne Division 50th Anniversary Recognition Day, 1992

By the President of the United States of America

A Proclamation

Members of the United States Armed Forces have proved, time and again, that they are the most highly prepared and thoroughly effective defense forces in the world. On this occasion, as we celebrate the 50th anniversary of the Army's 82nd Airborne Division, we salute an elite group of military personnel who stand among the best of the best.

Emerging from the ranks of the first "All Americans," an infantry unit that participated in three major campaigns during World War I and saw more consecutive days on the front lines than any other unit, the 82nd was reactivated just a few months after the United States entered World War II. The unit was designated as the Army's first airborne division on August 15, 1942.

The first such infantry unit of its kind, the 82nd Airborne quickly established its reputation as a leader in courage and achievement as well. From its initial parachute and glider assaults into Sicily and Salerno, through its participation at the Battle of the Bulge—where it helped to inflict the blows that led to the final collapse of the Nazi war machine—the 82nd proved to be a fearsome weapon in the Allied struggle against tyranny. "Those devils in the baggy pants," as an exhausted enemy soldier once described them, found no sacrifice too great, no counter-fire too fierce as they stormed from the skies in defense of freedom. By the end of World War II, more than 3,000 members of the 82nd had been killed or were missing in action. Another 12,604 had been wounded. Today we know that their extraordinary selflessness and daring not only hastened the day of victory but also offered enduring evidence of America's resolve to preserve liberty and democracy.

Members of the 82nd Airborne Division have maintained its tradition of excellence well beyond the events of a half-century ago, and on this occasion, we also recall their more recent heroism in the Dominican Republic, Vietnam, Grenada, and Central America. Just a few years ago, more than 2,000 Division paratroopers took part in Operation Just Cause, which liberated the people of Panama from a ruthless dictator. During the successful international effort to free Kuwait from the sinister aggression of Iraq's Saddam Hussein, members of the 82nd proved, once again, why they are the United States' premier rapid deployment force.

Ready at all times to deploy anywhere in the world, and with just 18 hours notice, the 82nd Airborne Division is a leader among leaders, a special object of pride among the strong and the brave. Thus, while all of America's service members and veterans deserve our respect and thanks, on this 50th anniversary of the 82nd Airborne, we raise a special salute to "America's Guard of Honor."

The Congress, by Senate Joint Resolution 270, has designated August 15, 1992, as "82nd Airborne Division 50th Anniversary Recognition Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby encourage all Americans to join in celebrating the 50th anniversary of the activation of the 82nd Airborne Division. Let us honor with appropriate ceremonies and activities the courageous individuals who have served in the 82nd over the years, and let us remember through public and private prayer all those who have died in the line of duty.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of August, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

[FR Doc. 92-19651
Filed 8-13-92; 2:42 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
Vol. 57, No. 159
Monday, August 17, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 327

RIN 0583-AB60

[Docket No. 92-014F]

Imported Product; Addition of Croatia and Slovenia to the List of Eligible Countries

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; Confirmation of interim rule.

SUMMARY: The Food Safety and Inspection Service is confirming the interim rule, published on April 29, 1992 (57 FR 18079), which amended the Federal meat inspection regulations to reflect the newly recognized States of Croatia and Slovenia as continuing to be eligible to import meat products into the United States. On April 7, 1992, the government of the United States recognized the independent countries of Croatia and Slovenia (formerly Republics of Yugoslavia). FSIS had determined that these newly recognized States continue to be eligible to import meat products into the United States in accordance with the requirements of part 327 of the Federal meat inspection regulations. This action clarifies that the newly recognized States of Croatia and Slovenia continue to be eligible to import meat products into the United States.

EFFECTIVE DATE: April 29, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. William Dubbert, (202) 720-3473.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator, FSIS, has determined that this final rule is not a major rule under Executive Order 12291. It is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. All State and local laws, regulations or policies, except those that are consistent with the final rule and apply to imported meat and meat products after entry into the United States, are preempted. This final rule is not intended to have retroactive effect. There are no administrative procedures to be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Effect on Small Entities

The Administrator has made a determination that this final rule would not have a significant economic impact on a substantial number of small entities, in accordance with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601). This action confirms the addition of the newly recognized States of Croatia and Slovenia to the list of countries eligible to import meat products into the United States. The current amount of product exported to the United States from Croatia or Slovenia is expected to remain the same.

Background

Prior to April 7, 1992, the United States Government recognized the country of Yugoslavia, consisting of the Republics of Bosnia-Hercegovina, Croatia, Macedonia, Montenegro, Serbia, and Slovenia. On April 7, 1992, the United States Government recognized Bosnia-Hercegovina, Croatia and Slovenia as independent States. Montenegro, Serbia, and Macedonia remain in the common State currently known as Yugoslavia, although Macedonia has declared its independence from Yugoslavia.

Yugoslavia was listed as eligible to import products of cattle, sheep, swine, and goats into the United States on June 25, 1959. Inspection officials of the national government of Yugoslavia have maintained supervisory control over the inspection programs in the Yugoslav Republics. The laws, regulations, and other documents were issued by the national government and enforced by inspection officials in the Republics. Republic inspection officials were responsible to the national government to ensure that all United States requirements were met.

During the last 32 years, Yugoslav inspection officials have annually certified approximately 15 plants as fully complying with requirements "at least equal to" all the inspection, building construction standards, and other requirements for the slaughter and preparation of carcasses, parts thereof, meat and meat food products of cattle, sheep, swine, and goats as applied to official establishments in the United States.

On January 1, 1991, Yugoslavia certified one plant in Slovenia (establishment 22), three plants in Croatia (establishments 5, 10 and 139), and twelve plants in Serbia. Yugoslavia notified FSIS on October 18, 1991, that it would no longer maintain supervisory control over establishment 22 in Slovenia as of October 21, 1991, and it delisted establishment 22 on October 21, 1991. On January 23, 1992, Yugoslavia notified FSIS that it would no longer maintain supervisory control over the plants in Croatia, and delisted establishments 10 and 139 on January 15, 1992. The other plant in Croatia, establishment 5, was closed and delisted on October 18, 1991.

Inspection officials of the Republic of Slovenia notified FSIS on April 17, 1992, that they continued to maintain supervisory control over the meat inspection system in Slovenia after October 18, 1991. Slovenian officials stated that they had legal authority and responsibility to enforce the same laws and regulations that were in effect prior to October 18, 1991. Further, the same qualified inspectors were assigned to establishment 22 to ensure that "at least equal to" standards for inspection, sanitation, quality, species verification, residues, and other requirements were applied in this plant. An FSIS representative had conducted an on-site review of the meat inspection system at establishment 22 on June 11, 1991, and

FSIS determined that the meat inspection system was acceptable.

Inspection officials of the Republic of Croatia notified FSIS on April 17, 1992, that they continued to maintain supervisory control over the meat inspection system in Croatia after January 15, 1992. Further, the same qualified inspectors were assigned to establishments 10 and 139 to ensure that "at least equal to" standards for inspection, quality, species verification, residues, and other requirements were applied in these plants. An FSIS representative had conducted an on-site review of the meat inspection systems at establishments 10 and 139 on June 10, 1991, and FSIS determined that the meat inspection systems were acceptable.

The meat inspection system in the Republic of Serbia was also reviewed by an FSIS representative during June 1991. Following the review, FSIS determined that the meat inspection system maintained by Yugoslavian officials was acceptable.

Each of the former Yugoslav Republics continues to maintain a meat inspection system under the same laws and regulations and employs competent and qualified inspectors to ensure that standards "at least equal to" the standards applied to products produced in the United States are enforced in plants certified to prepare products for export to the United States. Therefore, FSIS has determined that the Foreign Official Meat Establishment Certificates as provided in 9 CFR 327.2(a)(3) and the Official Meat Inspection Certificates as provided in 9 CFR 327.4 that have been or will be signed by meat inspection officials in Yugoslavia (Serbia), the Republic of Croatia, and the Republic of Slovenia are acceptable.

Therefore, on April 25, 1992, FSIS published an interim rule (57 FR 12087), effective immediately, which added the Republic of Croatia and the Republic of Slovenia to the list of countries eligible to import meat and meat products into the United States. FSIS received one comment in response to the interim rule. The commenter fully supported FSIS's action.

Since publication of the interim rule, FSIS inspection officials made onsite visits to individual establishments and laboratories and assessed the inspection systems of Croatia and Slovenia. As a result, the inspection systems have been judged to be "at least equal to" the Federal system of meat inspection in the United States.

Because the meat inspection systems in Croatia and Slovenia have been judged to be "at least equal to" the United States meat inspection system, the newly recognized States remain eligible to import meat products into the United States. Therefore, FSIS is confirming the interim rule, published on April 29, 1992 (57 FR 18079), which amended the Federal meat inspection regulations by adding the Republic of Croatia and the Republic of Slovenia to the list of eligible countries in 9 CFR § 327.2 as set forth below.

List of Subjects in 9 CFR Part 327

Imported products; Meat inspection.

PART 327—IMPORTED PRODUCTS

Accordingly, FSIS is adopting as a final rule, without change, the interim rule that amended § 327.2 which was published on April 29, 1992 at 57 FR 18079.

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

Done at Washington, DC, on: August 3, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92–19465 Filed 8–14–92; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF ENERGY

Office of Fossil Energy

10 CFR Parts 220, 300, and 320

Existing Regulations and Programs; Regulatory Review

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy's Office of Fossil Energy is eliminating the regulations codified at 10 CFR part 220, entitled "Strategic Petroleum Reserve Crude Oil Allocation;" 10 CFR part 300, entitled "Coal Loan Guarantee Program;" and 10 CFR part 320, entitled "University Coal Research Laboratories Program," pursuant to the regulatory review program requested in the President's January 28, 1992, Memorandum for Certain Department and Agency Heads on the subject of "Reducing the Burden of Government Regulation."

EFFECTIVE DATE: August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Keith N. Frye, Director, Office of Business Operations (FE–13), United States Department of Energy, Washington, DC 20585, (301) 903–2644.

SUPPLEMENTARY INFORMATION: On June 19, 1992, the Department of Energy, Office of Fossil Energy, published a Notice of Proposed Rulemaking in the **Federal Register** (57 FR 27395) proposing that 10 CFR parts 220, 300 and 320 be eliminated for the reasons set forth below. The DOE allowed a 30 day comment period. No comments were received, and the proposed rule is now being issued as final.

The regulations codified at 10 CFR part 220, entitled "Strategic Petroleum Reserve Crude Oil Allocation," are being eliminated because they refer to options for allocating crude oil which are no longer available, due to the expiration of the Emergency Petroleum Allocation Act. Furthermore, in 1982, Strategic Petroleum Reserve Plan Amendment Number Four added a number of the terms and conditions that would apply to the use of a directed sales method to distribute SPR crude oil. Accordingly, the Department believes that if the directed sales method were to be employed, it would be appropriate to publish new regulations, rather than rely on 10 CFR part 220 as now written.

The regulations codified at 10 CFR part 300, entitled "Coal Loan Guarantee Program," are being eliminated because the program applicable to these regulations was suspended effective August 8, 1986, due to a lack of program loan budget authority and public interest in the program (51 FR 24610, July 9, 1986).

The regulations codified at 10 CFR part 320, entitled "University Coal Research Laboratories Program," are being eliminated since no budget authority was provided for the program and the regulations were never utilized. In lieu of it, budget authority was provided for Fossil Energy's Advanced Research and Technology Development Program, which provides competitive university research awards pursuant to general procurement regulations.

Review under Executive Order 12291: In accordance with the requirements of Executive Order 12291, this rule has been reviewed by the Office of Management and Budget.

List of Subjects

10 CFR Part 220

Oil and Gas reserves, Petroleum allocation, Strategic and critical materials.

10 CFR Part 300

Coal, Loan programs—Energy, Mines.

10 CFR Part 320

Coal, Colleges and Universities, Grant programs—Energy, Inventions and patents, Laboratories, Reporting and recordkeeping requirements, Research.

Issued in Washington, DC on July 24, 1992.

James G. Randolph,

Assistant Secretary for Fossil Energy.

For the reasons set forth in the preamble, title 10, chapter II, of the Code of Federal Regulations is amended as set forth below:

PART 220—STRATEGIC PETROLEUM RESERVE CRUDE OIL ALLOCATION

(1) Part 220 is removed.

PART 300—COAL LOAN GUARANTEE PROGRAM

(2) Part 300 is removed.

PART 320—UNIVERSITY COAL RESEARCH LABORATORIES PROGRAM

(3) Part 320 is removed.

[FR Doc. 92–19429 Filed 8–14–92; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–95–AD; Amendment 39–8323; AD 92–16–14]

Airworthiness Directives; Beech Model 400A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech Model 400A series airplanes. This action requires a one-time inspection of the flame arrestor filter located in the aft fuel tank vent system to determine its manufacturing material, and replacement with a filter made of aluminum honeycomb material, if necessary. This amendment is prompted by an investigation conducted by the manufacturer, which determined that certain aft fuel tank vent systems may contain flame arrestor filters that are not manufactured of aluminum honeycomb material, which is required for the proper operation of the flame arrestor assembly. The actions specified in this AD are intended to prevent fire and potential explosion of the fuselage fuel tanks.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–95–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Propulsion Branch, ACE–140W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4145; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: The manufacturer has advised the FAA that certain Beech Model 400A series airplanes currently may have a flame arrestor filter constructed of phenolic honeycomb material installed in the aft fuselage fuel tank vent system instead of a flame arrestor filter constructed of aluminum honeycomb material. Aluminum honeycomb material is essential because the heat transfer characteristics of phenolic honeycomb material are inadequate to extinguish a fire in the vent system. (Beech Model 400A type design requires that the flame arrestor filter be fabricated from aluminum honeycomb material.) This condition, if not corrected, could result in fire and potential explosion of the fuselage fuel tanks.

To date, there have been no accidents or incidents of fire or explosion involving Beech Model 400A series airplanes on which a flame arrestor filter made of phenolic honeycomb material has been installed in the aft fuel tank vent system. However, the fuselage fuel tank vent system of the affected airplanes is totally unprotected from any ignition source, either on the ground or airborne. These airplanes are particularly susceptible to the unsafe condition during the summer months because of increased outside temperatures, which cause an increase in the development of fuel vapors, and the increased frequency of lightning. In light of this, it is essential that the flame arrestor filter assembly operate properly in order to ensure that it is capable of extinguishing a fire in the vent system should one occur.

The FAA has reviewed and approved Beech Service Bulletin 2445, dated June 1992, that describes procedures for a one-time visual inspection of the flame arrestor filter of the aft fuel tank vent to determine its manufacturing material, and replacement, if necessary. Some of the filters installed on the affected airplanes may have been taken from stock that was manufactured of phenolic honeycomb material instead of aluminum honeycomb material. Aluminum honeycomb is required so that the flame arrestor assembly will properly function.

Since an unsafe condition has been identified that is likely to exist or develop on other Beech Model 400A series airplanes of the same type design, this AD is being issued to prevent fire and potential explosion of the fuselage fuel tanks. This AD requires a one-time visual inspection of the flame arrestor filter of the aft fuel tank vent to determine its manufacturing material, and replacement with a filter made of aluminum honeycomb material, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

This AD also prohibits the future installation on these airplanes of any flame arrestor filters made of phenolic honeycomb material.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **"ADDRESSES."** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and

suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-95-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-14. Beech: Amendment 39-8323. Docket 92-NM-95-AD.

Applicability: Model 400A series airplanes having serial numbers RK-1 through RK-28, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fire and potential explosion of the fuselage fuel tanks, accomplish the following:

(a) Within 14 days after the effective date of this AD, conduct a one-time visual inspection of the flame arrestor filter, Beech part number 45A48235-3, to determine whether it is manufactured of aluminum honeycomb (silver-colored) or phenolic honeycomb (brown-colored) material, in accordance with Beech Service Bulletin 2445, dated June 1992.

(1) If the filter is made of aluminum honeycomb material, no further action is required.

(2) If the filter is made of phenolic honeycomb material, prior to further flight, replace the currently installed flame arrestor filter with one having Beech part number 45A48235-5, or with Beech part number 45A48235-3 that has been confirmed to be made of aluminum.

(b) As of the effective date of this AD, no flame arrestor filter, Beech P/N 45A48235-3, constructed of phenolic honeycomb material shall be installed on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection shall be done in accordance with Beech Service Bulletin 2445, dated June 1992.

Note: The issue date of this Beech Service Bulletin 2445 is indicated only on page 1 of 4; no other page is dated.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 110, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19490 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-125-AD; Amendment 39-8329; AD 92-16-19]

Airworthiness Directives; Lockheed Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lockheed Model L-1011-385 series airplanes, that currently requires a one-time inspection to direct missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary. That amendment was prompted by reports of detached, fractured, and deformed pins found in the horizontal stabilizer lower actuator attach fitting. This amendment requires either a one-time magnetic particle inspection to detect cracks on the horizontal stabilizer actuator pins and replacement of any cracked pins found, or replacement of each of the fur actuator pins. This AD also requires placing a life limit on certain actuator pins. Loss of a single pin could result in an increased load on the remaining pins; this condition, if not corrected, could result in the accelerated failure of the remaining pins, and consequent total loss of pitch control.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-125-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at FAA, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas B. Peters, Aerospace Engineer, Flight Test Branch, ACE-160A, FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991-3915; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION: On May 28, 1992, the FAA issued AD 92-10-51, Amendment 39-8271 (57 FR 224356, June 9, 1992), to require a one-time inspection to detect missing, sheared, or deformed horizontal stabilizer lower actuator attach pins, and replacement of the pins, if necessary. That action was prompted by reports of detached, fractured, and deformed pins found in the horizontal stabilizer lower actuator attach fitting. Loss of a single pin could result in an increased loan on the remaining pins; this condition, if not corrected, could result in the accelerated failure of the remaining pins, and consequent total loss of pitch control.

Since the issuance of that AD, the FAA has reviewed and approved Lockheed Service Bulletin 093-27-3-04, Revision 1, dated May 28, 1992, which describes procedures for a one-time magnetic particle inspection to detect cracks on the horizontal stabilizer actuator pins and replacement of any cracked pins found. The service bulletin also describes procedures for replacement of each of the four actuator pins as an alternative to performing the magnetic particle inspection. In addition, the service bulletin describes procedures for establishing a life limit of 12,000 landings for actuator pins having part number 1563117-101.

The FAA has determined that the magnetic particle inspection is necessary in order to ensure that cracks in he actuator pins are found in a timely manner and addressed prior to the failure of the pin. Such cracking may not be detected by visual inspection alone, as currently required by AD 92-10-51. Additionally, due to the service history of the part number 1563117-101 actuator pins, the FAA considers that placing a life limit of 12,000 landings on these pins is warranted in order to maintain an acceptable level of safety. The FAA has determined that the accomplishment of these actions will positively address the unsafe condition identified as failure of the actuator pins and consequent total loss of pitch control of the airplane.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 92-10-51 to require either a one-time magnetic particle inspection to detect cracks on the horizontal stabilizer actuator pins and replacement of any cracked pins found, or replacement of each of the four actuator pins. This AD would also require placing a life limit of 12,000 landings on part number 1563117-101 actuator pins.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-125-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft.

It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8271 (57 FR 24356, June 9, 1992), and by adding a new airworthiness directive (AD), amendment 39-8329, to read as follows:

92-16-19. Lockheed Aeronautical Systems Company: Amendment 39-8329. Docket 92-NM-125-AD. Supersedes AD 92-10-51, Amendment 39-8271.

Applicability: All Model L-1011-385 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of airplane pitch control, accomplish the following:

(a) Prior to the accumulation of 12,000 landings, or within 3 days after June 24, 1992 (the effective date of AD 92-10-51, Amendment 39-8271), whichever occurs later, accomplish the procedures specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(1) Gain access to the lower end of the stabilizer hydraulic actuators (four per airplane) where they attach to the front spar of the horizontal stabilizer center box structure at Fuselage Station FS 1875.

(2) Inspect for missing, sheared, or deformed stabilizer lower actuator attach pins, part number 1563117-101 (one per actuator).

(3) If any pin is missing, sheared, or deformed, replace the pin prior to further flight.

(b) At the applicable time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, either perform a one-time magnetic particle inspection to detect cracks on each of the four lower horizontal stabilizer actuator pins (part number 1563117-101), *or* replace each of the four actuator pins (part number 1563117-101) with a new pin, in accordance with Lockheed Service Bulletin 093-27-304, Revision 1, dated May 28, 1992.

(1) For airplanes that have accumulated less than 12,000 landings as of the effective date of this AD: Prior to the accumulation of 12,000 landings, or within 60 days after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated at least 12,000 landings but not more than 20,000 landings as of the effective date of this AD: Within 45 days after the effective date of this Ad.

(3) For airplanes that have accumulated more than 20,000 landings as of the effective date of this AD: Within 30 days after the effective date of this AD.

(c) If a magnetic particle inspection is performed in accordance with paragraph (b) of this AD, accomplish the procedures specified in paragraph (c)(1) or (c)(2), as applicable:

(1) If any actuator pin is found to be cracked: Prior to further flight, replace the cracked pin with a new pin, in accordance with Lockheed Service Bulletin 093-27-304, Revision 1, dated May 28, 1992. Thereafter, prior to the accumulation of 12,000 landings on each actuator pin, part number 1563117-101, it must be replaced with a new pin.

(2) If no actuator pins are found to be cracked: Prior to the accumulation of 1,000 landings after accomplishing the magnetic particle inspection, replace the pin with a new pin, in accordance with Lockheed Service Bulletin 093-27-304, Revision 1, dated May 28, 1992. Thereafter, prior to the accumulation of 12,000 landings on each actuator pin, part number 1563117-101, it must be replaced with a new pin.

(d) If each of the four actuator pins, part number 1563117-101, are replaced with a new pin in accordance with paragraph (b) of this AD: Thereafter, prior to the accumulation of 12,000 landings on each actuator pin, it must be replaced with a new pin.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of the AD can be accomplished.

(g) The inspection and replacement shall be done in accordance with Lockheed Service Bulletin 093-27-304, Revision 1, dated May 28, 1992, which contains the following list of effective pages:

Page Number	Revision Level	Date
1—8	1	May 28, 1992.
9—11	Original	May 15, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Western Export Company (LWEC), Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19487 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-139-AD; Amendment 39-8342; AD 92-17-13]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC-10 series airplanes. This action requires a one-time visual inspection to detect cracks of the wing pylon aft bulkheads and upper spar webs, and repair, if necessary. This amendment is prompted by reports of fatigue cracking that occurred in the wing pylon aft bulkheads on two airplanes. Cracking in these area, if not detected and corrected in a timely manner, could lead to failure of the wing pylon aft bulkhead and subsequent separation of the engine and pylon from the airplane.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-139-Ad, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Technical Publications & Technical Administrative Support C1-L5B (56-60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5238; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: Recently, the FAA was notified of the discovery of cracking in the wing pylon aft bulkheads of two McDonnell Douglas Model DC-10 series airplanes:

On one airplane, the bulkhead crack initiated from the lower surface of the upper forward flange at the forward edge. This crack was determined to have been initiated and propagated by fatigue. The subject airplane had accumulated 57,176 flight hours and 23,028 flight cycles at the time of the discovery of the crack.

On the other airplane, the bulkhead crack initiated at a bolt hole in the upper forward flange. The cause of the crack at the point of origin could not be determined, due to post-fracture mechanical damage; however, crack propagation was determined to have been caused by fatigue. This airplane also had a fatigue crack in the aft end of the upper spar web. [Inspections of the upper spar web are required by AD 92-02-08, Amendment 39-8144 (57 FR 3931, February 3, 1992), in accordance with McDonnell Douglas Report Number L26-012, "DC-10 Supplemental Inspection Document (SID)." That document defines this area as Principal Structural Element (PSE) numbers 54.10.021 and 54.10.022.]

Cracking in the wing pylon aft bulkhead and upper spar web, if not detected and corrected in a timely manner, could lead to failure of the wing pylon aft bulkhead and subsequent separation of the engine and pylon from the airplane.

The FAA has reviewed and approved McDonnell Douglas DC-10 Alert Service Bulletin A54-106, dated July 9, 1992, that describes procedures for visually inspecting the left and right wing pylon aft bulkhead and upper spar web to detect cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other Model DC-10 series airplanes of the same type design, this AD is being issued to prevent failure of the wing pylon aft bulkhead and subsequent separation of the engine and pylon from the airplane. This AD requires a one-time visual inspection to detect fatigue cracks of the left and right wing pylon aft bulkhead and upper spar web. The inspections are required to be accomplished in accordance with the service bulletin described previously. If cracks are detected in the wing pylon aft bulkhead, operators must replace that bulkhead. If cracks are detected in the upper spar web, operators must repair them in accordance with a method approved by the FAA. Additionally, operators are required to submit a report of their inspection findings to the FAA.

Airplanes that previously have been inspected within the last 45 days in accordance with paragraph (g)1. of AD 80-11-05 R1, Amendment 39-3981, are not required to be inspected in accordance with this AD. Paragraph (g)1. of AD 80-11-05 R1 requires that a schedule for repetitive visual and eddy current inspections of the pylon aft bulkhead be incorporated into operators' maintenance programs as an amendment to the operations specifications.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-139-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-17-13. McDonnell Douglas: Amendment 39-8342. Docket 92-NM-139-AD.

Applicability: Model DC–10–10, –15, –30, –40, and KC–10 (military) series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the wing pylon aft bulkhead and subsequent separation of the engine and pylon from the airplane, accomplish the following:

(a) Except as provided by paragraph (b) of this AD: Prior to or upon the accumulation of 4,000 total flight cycles, or within 10 days after the effective date of this AD, whichever occurs later, visually inspect the left and right wing pylon aft bulkhead and the upper spar web to detect cracks, in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A54–106, dated July 9, 1992.

(b) The inspection specified in paragraph (a) of this AD is not required to be accomplished on airplanes on which a visual inspection of the left and right wing pylon aft bulkhead and the upper spar web has been accomplished within 45 days prior to the effective date of this AD, in accordance with one of the methods specified in either paragraph (b)(1) or (b)(2) of this AD:

(1) The inspection method specified in McDonell Douglas DC–10 Alert Service Bulletin A54–106, dated July 9, 1992; or

(2) The inspection required by paragraph (g)1. of AD 80–11–03 R1 (Amendment 39–3981).

(c) If any cracks are found in the wing pylon aft bulkhead, prior to further flight, replace the wing pylon aft bulkhead in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) If any cracks are found in the upper spar web, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(e) Submit a report of inspection findings to the Manager, Los Angeles ACO, 3229 East Spring Street, Long Beach, California 90806–2425, (fax (310) 988–5210), at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which the inspection is accomplished after the effective date of this AD: Submit the report within 10 days after performing the inspection required by paragraph (a) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspection shall be done in accordance with McDonnell Douglas DC–10 Alert Service Bulletin A54–106, dated July 9, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801, Attention: Business Unit Manager, Technical Publications & Technical Administrative Support C1–L5B (56–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700 Washington, DC.

(i) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 24, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19488 Filed 8–14–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–102–AD; Amendment 39–8322; AD 92–16–13]

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnel Douglas Model MD–11 series airplanes. This action requires replacing the aisle light transformer. This amendment is prompted by an investigation which revealed that the currently installed transformer for the mid cabin aisle light is underrated for actual load conditions. The actions specified in this AD are intended to prevent the transformer for the mid cabin aisle light from overheating. An overheated transformer potentially could cause a fire at the transformer and cause smoke to enter the passenger cabin.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–102–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brett E. Portwood, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM–132L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5347; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: Analysis conducted by the manufacturer has revealed that the transformer for the mid cabin aisle light on Model MD–11 series airplanes is underrated for actual load conditions. Subsequent investigation revealed that the currently installed transformer will not provide continuous power for a 248 volt/amps load requirement; this situation could cause the transformer to overheat. (However, there have been no in-service instances in which the transformer for the mid cabin aisle light has overheated.) An overheated transformer, if not corrected, potentially could cause a fire at the transformer and cause smoke to enter the passenger cabin.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin 33–23, dated May 29, 1992, and Revision 1, dated July 1, 1992, both of which describe procedures for replacing the aisle light transformer with one of higher voltage/amperage. Replacing the transformer with a 300 volt/amps transformer will meet necessary load requirements and minimize potential transformer failure. This modification will be incorporated prior to delivery on all Model MD–11 airplanes beginning with fuselage number 507 and subsequent.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to prevent the transformer for the mid cabin aisle light from overheating. This AD requires replacing the transformer for the mid cabin aisle light with one of higher voltage/amperage. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–102–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92–16–13. McDonnell Douglas: Amendment 39–8322. Docket 92–NM–102–AD.

Applicability: Model MD–11 series airplanes; serial numbers 48407 through 48414, 48416 through 48421, 48426 through 48429, 48434 through 48437, 48443 through 48461, 48472 through 48475, 48481, 48484 through 48485, 48487, 48489 through 48491, 48495 through 48496, 48499 through 48500, 48505, and 48527; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the transformer for the mid cabin aisle light from overheating, accomplish the following:

(a) Within 30 days after the effective date of this AD, replace the currently installed transformer for the mid cabin aisle light, part number 17093, with a transformer having part number 16753, in accordance with McDonnell Douglas Service Bulletin 33–23, dated May 29, 1992, or Revision 1, dated July 1, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with McDonnell Douglas Service Bulletin 33–23, dated May 29, 1992; or McDonnell Douglas Service Bulletin 33–23, Revision 1, dated July 1, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19489 Filed 8–14–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92-NM-116-AD; Amendment 39-8324; AD 92-16-15]

Airworthiness Directives; Scott Aviation Oxygen Mask Plug-In Connectors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Scott Aviation oxygen mask plug-in connectors. This action requires a one-time inspection to detect the presence of an over-sized diameter of the probe portion of oxygen mask plug-in connectors, and replacement, if necessary. This amendment is prompted by reports that plug-in connectors do not fully enter the fitting on portable emergency oxygen bottles, preventing the flow of emergency oxygen through face masks. The actions specified in this AD are intended to prevent a lack of oxygen flow from portable emergency oxygen bottles when these connectors are used to plug in face masks.

DATES: Effective September 1, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 1, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 16, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-116-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Scott Aviation, 225 Erie Street, Lancaster, New York 14086. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 East Spring Street, Long Beach, California 90806-2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Los Angeles ACO, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5336; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: The FAA recently has received reports of discrepant probe diameters on oxygen mask plug-in connectors, Part No. 289-57, manufactured by Scott Aviation. One report stemmed from an occurrence that took place in flight, when a passenger required emergency oxygen. Eight portable oxygen bottles were tried; three bottles would not function at all. Investigation of this occurrence revealed that the diameter of the probe portion of the oxygen mask plug-in connectors was over-sized. In each instance, the plug-in connector did not fully enter the fitting on the oxygen bottle, preventing the flow of oxygen into the mask. This condition, if not corrected, could result in a lack of oxygen flow from portable emergency oxygen bottles when these connectors are used to plug in face masks.

The FAA has reviewed and approved Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992; and Service Bulletin 289-35-15, Revision 1, dated June 12, 1992; that describe procedures for a one-time inspection to detect the presence of an over-sized diameter of the probe portion of oxygen mask plug-in connectors, and replacement of discrepant connectors. The plug-in connector, Part No. 289-57, is identified by the words "SCOTT" or "SIERRA" on one side, and "289-57" on the other side. The connector color is natural (white). The service bulletin recommends that plug-in connector parts that pass the inspection be marked "OK," using a permanent marker, on the rear of the connector. The manufacturer has advised that this problem has been corrected on plug-in connectors manufactured currently. The new connectors are light green in color.

Since an unsafe condition has been identified that is likely to exist or develop on other components of the same design installed on transport category airplanes, this AD is being issued to prevent a lack of oxygen flow from portable emergency oxygen bottles. This AD requires a one-time inspection to detect the presence of an over-sized diameter of the probe portion of oxygen mask plug-in connectors, and replacement of discrepant connectors with connectors of the correct size. This AD also requires that plug-in connector parts that pass the inspection be marked "OK." The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-116-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must

be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-15. Scott Aviation: Amendment 39-8324. Docket 92-NM-116-AD.

Applicability: Scott Aviation Oxygen Mask Plug-In Connectors, Part Number 289-57, as installed in, but not limited to Boeing Model 727, 737, 747, 757, and 767 series airplanes; McDonnell Douglas Model DC-8, DC-9-80 (MD-80), and DC-10 series airplanes; and Fokker Model F-28 and F-100 series airplanes; certificated in any category.

Note: The constant-flow oxygen masks to which the subject connectors might be fitted include, but are necessarily limited to, the following Scott Part Numbers: 289-127-5, 289-601-34, 289-601-35, and 289-601-234.

Compliance: Required as indicated, unless accomplished previously.

To prevent a lack of oxygen flow from portable emergency oxygen bottles due to discrepant oxygen mask plug-in connectors, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection to detect the presence of an over-sized diameter of the probe portion on the oxygen mask plug-in connector, Part Number 289-57, in accordance with Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992, or Revision 1, dated June 12, 1992.

(b) If the probe portion on the oxygen mask plug-in connector is found to be over-sized as a result of the inspection required by paragraph (a) of this AD, prior to further flight, replace the discrepant connector in accordance with Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992, or Revision 1, dated June 12, 1992.

(c) If the probe portion on the oxygen mask plug-in connector is not found to be over-sized as a result of the inspection required by paragraph (a) of this AD, prior to further flight, write the word "OK" on the rear of the connector in accordance with Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992, or Revision 1, dated June 12, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with Scott Aviation Service Bulletin 289-35-15, dated April 27, 1992; or Scott Aviation Service Bulletin 289-35-15, Revision 1, dated June 12, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Scott Aviation, 225 Erie Street, Lancaster, New York 14086. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3229 E. Spring Street, Long Beach, California 90806-2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 1, 1992.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19486 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-07-AD; Amendment 39-8352; 92-18-08]

Airworthiness Directives; Bendix/King KAP 150/KFC 150 Flight Control Systems Installed on Piper Aircraft Corporation Models PA-46-310P and PA-46-350P Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Bendix/King KAP 150/KFC 150 Flight Control Systems installed on certain Piper Aircraft Corporation (Piper) Models PA-46-310P (Malibu) and PA-46-350P (Mirage) airplanes. This action requires the installation of a pitch servo cover kit. The Federal Aviation Administration (FAA) has received two reports where corrosion was found on the electronic circuit board of the affected flight control systems. The actions specified by this AD are intended to prevent moisture from entering the electronic circuit board through the pitch servo, which could possibly lead to undesired movement of the elevator.

DATES: Effective October 2, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 2, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from Bendix/King, Product Support Department, 400 N. Rogers Road, Olathe, Kansas 66062-0212. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Dale Vassalli, Aerospace Engineer, Systems and Equipment Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4132; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to Bendix/King KAP 150/KFC 150 Flight Control Systems installed on certain Piper Models PA-46-310P and PA-46-350P airplanes was published in the **Federal Register** on March 2, 1992 (57 FR 7332). The action proposed the installation of a pitch servo kit, part number 050-3007-0000, in accordance with the instructions in Bendix/King Installation Bulletin No. 312, dated March 19, 1990.

The proposed AD is only applicable to the pitch servo cover installation and does not apply to the yaw servo cover installation that is referenced in Bendix/King Installation Bulletin No. 312. The FAA has determined that failure of the

yaw servo would not result in an unsafe condition.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter was in favor of the proposed AD. The other commenter, who is an operator of one of the affected airplanes, feels that the proposed AD is unjustified because the operator has never found moisture or corrosion in the electronic circuit board of the operator's airplane. The FAA does not concur that the proposed AD is unjustified. While the FAA acknowledges that this operator may not have experienced this problem as yet, the FAA issues airworthiness directives based upon unsafe conditions that not only exist but that are likely to develop in certain airplanes. Since two reports of corrosion in the electronic circuit board caused by moisture entering through the pitch servo have been received, the FAA has determined that the AD as proposed is justified.

No comments have been received on the FAA's determination of the cost of the proposed AD to the public.

After careful review of all available information including the comments discussed above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The compliance time for this AD is presented in calendar time instead of hours time-in-service (TIS). The FAA has determined that a calendar time for compliance is the most desirable method because the unsafe condition described by this AD is caused by corrosion. Corrosion can occur on airplanes regardless of whether the airplane is in service. In addition, the utilization rate of the affected airplanes varies throughout the fleet. For example, one operator may utilize the airplane 50 hours TIS in one week, while another operator may not operate the airplane 50 hours TIS in one month. Therefore, to ensure that corrosion is detected and corrected on all airplanes within a reasonable period of time without inadvertently grounding any airplanes, a compliance schedule based upon calendar time instead of hours time-in-service is utilized.

The FAA estimates that 233 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 3 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $260 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $99,025. Bendix/King reports that it has sold 297 kits. Based on this information, the FAA estimates that as many as 50 percent of the affected airplanes have been modified, which greatly reduces the cost impact of this action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92-18-08 Bendix/King: Amendment 39-8352; Docket No. 92-CE-07-AD.

Applicability: KAP 150/KFC 150 Flight Control Systems installed on Piper Models PA-46-310P and PA-46-350P airplanes, certificated in any category.

Compliance: Required within the next 90 calendar days after the effective date of this AD, unless already accomplished.

To prevent moisture from entering the electronic circuit board through the pitch servo, which could possibly lead to undesired movement of the elevator, accomplish the following:

(a) Install a pitch servo cover kit, part number 050-03007-0000, in accordance with the instructions in Bendix/King Installation Bulletin No. 312, dated March 19, 1990.

Note 1: Installation of the yaw servo cover kit, part number 050-03006-0000, which is referenced in Bendix/King Installation Bulletin No. 312, is not required by this AD action.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) The installation required by this AD shall be done in accordance with Bendix/King Installation Bulletin No. 312, dated March 19, 1990. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bendix/King, Product Support Department, 400 N. Rogers Road, Olathe, Kansas 66062-0212. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-8352) becomes effective on October 2, 1992.

Issued in Kansas City, Missouri, on August 10, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19540 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-CE-06-AD; Amendment 39-8351; 92-18-07]

Airworthiness Directives; Fairchild Aircraft (formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 91-23-04, which currently requires a one-time modification of the engine power lever flight idle detent arms and cover assembly on certain Fairchild Aircraft SA226 and SA227 series airplanes. SA226 series service information that is required to accomplish AD 91-23-04 has been updated, and the Federal Aviation Administration (FAA) has determined that the actions of AD 91-23-04 should be accomplished in accordance with the revised service information. The actions specified by this AD are intended to prevent improper operation of the engine power lever flight idle detent arms, which could result in loss of control of the airplane.

DATES: Effective October 2, 1992.

The incorporation by reference of Fairchild Service Bulletin No. 226-76-008, issued January 15, 1991, revised December 17, 1991, listed in the regulations is approved by the Director of the Federal Register as of October 2, 1992.

The incorporation by reference of Fairchild Service Bulletin No. 227-76-002, issued January 15, 1991, revised May 9, 1991, listed in the regulations was previously approved by the Director of the Federal Register as of December 10, 1991.

ADDRESSES: Service information that is applicable to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Alma Ramirez-Hodge, Aerospace Engineer, Fort Worth Airplane Certification Office, FAA, Fort Worth, Texas 76193-0150; Telephone (817) 624-5147.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Fairchild Aircraft SA226 and SA227 series airplanes was published in the **Federal Register** on March 11, 1992 (57 FR 8585). The action proposed to supersede AD 91-23-04 with a new AD that would (1) retain the modification of the engine power lever flight idle detent arms and cover assembly required by AD 91-23-04; and (2) incorporate Fairchild Service Bulletin No. 226-76-008, issued January 15, 1991, revised December 17, 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 770 airplanes in the U.S. registry will be affected by this AD, that it would take approximately 8 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $214 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $503,580. AD 90-13-12, which will be superseded by this action, required the same actions except for a revision in the service information. Therefore, there would be no additional cost impact of the required AD on U.S. operators than that which is already required by AD 90-13-12.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a major rule under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 91-23-04, Amendment 39-8073 (56 FR 57236, November 8, 1991), and adding the following new AD:

92-18-07 Fairchild Aircraft (formerly Swearingen Aircraft Corporation): Amendment 39-8351; Docket No. 92-CE-06-AD. Supersedes AD 91-23-04, Amendment 39-8073.

Applicability: The following model and serial numbered airplanes, certificated in any category:

Model	Serial Nos.
SA226-T	T201 through T275, and T277 through T291.
SA226-T(B)	T(B)276, and T(B)292 through T(B)417.
SA226-AT	AT001 through AT074.
SA226-TC	TC201 through TC419.
SA227-TT	TT421 through TT541.
SA227-AT	AT423 through AT695.
SA227-AC	AC406, AC415, AC416, and AC420 through AC777.
SA227-BC	BC762, BC764, BC766, and BC777.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent loss of control of the airplane because of improper operation of the power lever flight idle detent arms, accomplish the following:

(a) Modify the power lever detent arms and cover assembly in accordance with the instructions in Fairchild Service Bulletin (SB) No. 226-76-008, issued January 15, 1991, revised December 17, 1991; or Fairchild SB

No. 227-76-002, issued January 15, 1991, revised May 9, 1991, whichever is applicable.

(b) If the modification required by paragraph (a) of this AD has been accomplished in accordance with either Fairchild SB No. 228-76-006 or Fairchild SB No. 227-76-002, both issued January 15, 1991, revised May 9, 1991, whichever is applicable (superseded AD 91-23-04), then no further action is required by this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office, FAA, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Aircraft Certification Office.

(e) The modification required by this AD shall be done in accordance with Fairchild Service Bulletin No. 228-76-006, issued January 15, 1991, revised December 17, 1991; or Fairchild Service Bulletin No. 227-76-002, issued January 15, 1991, revised May 9, 1991. The incorporation by reference of Fairchild Service Bulletin No. 228-76-008, issued January 15, 1991, revised December 17, 1991, was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The incorporation by reference of Fairchild Service Bulletin No. 227-76-002, issued January 15, 1991, revised May 9, 1991, was previously approved by the Director of the Federal Register on December 10, 1991, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39-8351) supersedes AD 91-23-04, Amendment 39-8073.

(g) This amendment (39-8351) becomes effective on October 2, 1992.

Issued in Kansas City, Missouri, on August 3, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19539 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Furnaces

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission announces that the present ranges of comparability for furnaces will remain in effect until new ranges are published.

Under the rule, each required label on a covered appliance must show a range, or acale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Commission publishes the ranges annually in the Federal Register if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published. The ranges of efficiencies for furnaces have not changed by as much as 15% since the last publication. Therefore, the ranges published on March 1, 1990 remain in effect until new ranges are published.

EFFECTIVE DATE: August 17, 1992.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule [1] covering seven appliance categories, including furnaces. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all furnaces presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a covered product is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[2] Because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is subject to change.

To keep the required information in line with any changes that may occur, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect until new ranges are published.

The annual reports for furnaces have been received and analyzed and it has been determined that neither the upper nor lower limits of the ranges for this product category have changed by 15% or more since the last publication of the ranges on March 1, 1990.[3]

In consideration of the foregoing, the present ranges for furnaces will remain in effect until the Commission publishes new ranges for these products.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94-163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95-619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100-12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100-357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92-19515 Filed 8-14-92; 8:45 am]

BILLING CODE 6750-01-M

[1] 44 FR 66466, 16 CFR part 305 (Nov. 19, 1979).

[2] Reports for furnaces are due by May 1.

[3] 55 FR 7302.

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend postal regulations to prohibit drivers who have no driver's license, or who have a revoked or suspended driver's license or privilege to drive, from driving vehicles in or on limited-access postal property, such as a postal garage.

EFFECTIVE DATE: August 17, 1992.

FOR FURTHER INFORMATION CONTACT: H.J. Bauman, (202) 268-4415.

SUPPLEMENTARY INFORMATION: State laws on driving without a license, or with a suspended or revoked license or privilege to drive, generally only apply to public accessed areas, which do not include areas of postal property with limited access. The same situation occurs with respect to vehicle registration, license, and tag laws. When a driver commits these types of violations on limited-access postal property, the state law does not apply, and currently no postal regulation prohibits these acts. Part 232 is amended by adding two new subsections specifically requiring valid licenses, tags, and permits. This change will permit Postal Police Officers to charge these types of violations on limited-access postal property.

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

Accordingly, title 39 CFR, is amended as follows:

PART 232—CONDUCT ON POSTAL PROPERTY

1. The authority citation for part 232 is revised to read as follows:

Authority: 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c, sec. 613, Treasury, Postal Service, and General Government Appropriations Act, 1992, Pub. L. 102-141, 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844.

2. Section 232.1 is amended by redesignating existing paragraphs (k)(1), (k)(2), and (k)(3) as paragraphs (k)(3), (k)(4), and (k)(5) respectively, and by adding new paragraphs (k)(1) and (k)(2) to read as follows:

§ 232.1 Conduct on Postal property.

* * * * *

(k) * * *

(1) Drivers of all vehicles in or on property shall be in possession of a current and valid state or territory issued driver's license and vehicle registration, and the vehicle shall display all current and valid tags and licenses required by the jurisdiction in which it is registered.

(2) Drivers who have had their privilege or license to drive suspended or revoked by any state or territory shall not drive any vehicle in or on property during such period of suspension or revocation.

* * * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-19501 Filed 8-14-92; 8:45 am]

BILLING CODE 7710-12-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

45 CFR Part 1180

Institute of Museum Services; General Operating Support for Museums

AGENCY: Institute of Museum Services, NFAH.

ACTION: Final regulations.

SUMMARY: The Institute of Museum Services amends its regulations governing the duration of the grant period for General Operating Support awards. IMS establishes that the grant period be limited to two years and that a successful applicant to the General Operating Support program in one Federal fiscal year will not be eligible to apply for an additional General Operating Support award in the immediately following Federal fiscal year. IMS establishes that the maximum award amount for fiscal year 1993 and following years be set at 15 percent of the museum's prior year operating income or $112,500 whichever is less, but that a museum may receive a minimum award of $7,500, subject to statutory limitations. The award amount may be obligated by the grantee over a period of two years.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Rebecca W. Danvers, Program Director; Telephone: 202/786-0539; Deaf and hearing impaired individuals may call 202/786-9136 for TDD services.

SUPPLEMENTARY INFORMATION:

1. General Background

The Museum Services Act ("the Act"), Title II of the Arts, Humanities and Cultural Affairs Act of 1976, was enacted on October 8, 1976, and was amended in 1980, 1982, 1984, 1985, and 1990. The purpose of the Act as stated in section 202, is as follows:

To encourage and assist museums in their educational role * * *; to assist museums in modernizing their methods and facilities so that they may be better able to conserve our cultural, historic, and scientific heritage; and to ease the financial burden borne by museums as a result of their increasing use by the public.

An award for General Operating Support may be used to carry out such activities.

2. The Need for the Amendment

The IMS regulations for General Operating Support contain provisions regarding the duration of the grant period and the amount of the award. Since 1978, the grant period has been limited to one year. Every applicant, whether successful or not in any given fiscal year, is required to reapply for General Operating Support in the following fiscal year. As a result, museums had only a one-year period in which to obligate the funds and could not predict that funds would be available beyond that one-year period. IMS establishes with these amendments that the grant period be extended to two years and that successful applicants in one Federal fiscal year not be eligible to apply in the following Federal fiscal year.

IMS establishes that an applicant may receive 15 percent of its most recently completed fiscal year operating income up to a maximum of $112,500, to be obligated over a period of two years.

3. Potential Benefits

The changes in the General Operating Support program grow out of a comprehensive 1990 study of that program commissioned by IMS. The study concluded that a concern that their chances for funding are limited is a significant reason that museums decline to participate in the program. To address these concerns, IMS will award General Operating Support grants on a two-year basis with the provision that a successful museum will not be eligible to apply for a grant during the Federal fiscal year following the Federal fiscal year in which the museum receives an award. At the same time, the ceiling on General Operating Support grants will be increased to $112,500 or 15 percent of the museum's prior year operating income, whichever is less, to reflect the fact that a museum is receiving an award to cover a two-year period. (The minimum award will be increased from $5,000 to $7,500, subject to statutory limitations.) IMS anticipates a number

of benefits from these changes in grant procedures:

(1) Museums that would receive awards in two succeeding Federal fiscal years are relieved of the burden of filing an application in the second year.

(2) These museums will have a longer period to plan the use of their funds.

(3) These museums will have a longer period to use their funds.

(4) For museums that are reluctant to apply because of the perception that the chances of funding are limited, the new procedures will eliminate from competition in the second year a number of museums that otherwise would have competed for grants, thus expanding funding opportunities for other museums.

(5) The new procedures may encourage underserved museums to participate in the General Operating Support program.

IMS recognizes that the changes in the grant procedures will result in a smaller number of GOS awards on an annual basis and that a limited number of museums that receive General Operating Support awards each year under the current procedures may obtain a smaller amount over the two-year grant period if they continue to be successful in obtaining awards. IMS believes that the substantial benefits of the proposed changes to the museum community as a whole far outweigh these effects.

4. Response to Public Comment

A notice proposing revised regulations for the museum services program was published on February 21, 1992. 57 FR 6208. The preamble to the notice of proposed rulemaking contained an amendment by amendment analysis explaining the purpose of each amendment. 57 FR 6208. Public comment was invited on the proposed changes. 57 FR 6208. All comments received were of great value in the consideration of any program changes. The Institute of Museum Services wishes to extend its thanks to all those participants in the museum community.

Of the 101 comments received, 73 responses (72%) were in full support with the changes given. Comments are summarized below. The comments most commonly cited were that the changes will result in (1) a fairer distribution of GOS money to deserving museums, (2) a major savings in time to prepare application, and (3) increased financial stability to grantees.

The Institute agrees with the observations of these commenters who supported the changes and has made the changes final in the regulatory amendments set forth below.

In addition, IMS received 13 comments (13 percent) that opposed the proposed changes in the GOS regulations on a variety of grounds. These comments and the responses of IMS to them are set forth below:

Comment: One commenter questioned whether the changes in the GOS award system run counter to the original intent of the Museum Services Act to support institutional excellence.

Response: The changes in the length of the GOS award period made by the final regulations do not constitute a change in basic IMS policy with respect to GOS and are consistent with the original intent of the Act. Since the commencement of the GOS program and the launching of the Institute, IMS has devoted the preponderance of its resources to GOS, has considered GOS applications in accordance with broad funding criteria that emphasize institutional operations and high quality in museum services, and has evaluated the institution as a whole in making awards. The present changes in award procedures do not alter these basic arrangements or make changes in the IMS regulations affecting these matters. On the contrary, the changes made in the funding period and the ceiling provisions are designed to provide additional flexibility to museums and to broaden, to the extent possible, participation in the program.

Comment: A number of comments expressed the concern that the proposed changes could lead to hard year-easy year cycle where the first year's successful applicant were removed from the following year's competition.

Response: The 1990 study upon which the changes are based found that IMS applications are generally of high quality. IMS is convinced, on the basis of the report as well as its own observations, that, when the changes are implemented, a GOS grant will remain as a mark of prestige under the new system. Indeed, it is expected that the GOS program will reach new applicants of high quality that have not been previously funded. As indicated, the basic funding criteria have not been altered by the changes, and it is these funding criteria, administered through a rigorous peer review system, that ensure the continued high quality of IMS applications. Accordingly, IMS does not anticipate a set of easy years for its GOS applicants, particularly in view of its assessment that the GOS program has not in the past been able to reach many fine applicants.

Comments: Several commenters questioned the reduction in the level of IMS support in the sense that the new ceiling for the two year period is less than the aggregate for the single years under the current system.

Response: IMS believes that the revised ceiling will maintain a meaningful level of funding for successful museums while allowing for somewhat wider distribution of grants. Moreover, the modest reduction in the two year aggregate is designed to reflect in part the reduction in a museum's administrative burden in avoiding the need to file applications each year and the additional flexibility available in knowing in advance the amount of a GOS award over a two year period, knowledge designed to assist in longer range planning than is possible under the system in effect prior to the changes being made through this document. IMS has attempted to balance these considerations in the manner set forth in the regulations and believes that the balance is proper and reasonable and will strengthen the program for the reasons indicated.

Comment: A few commenters saw the changes as a substitute for larger appropriations that would meet the needs of museums for greater GOS support.

Response: The issue of funding levels is a legislative matter separate and apart from the development of regulations. IMS must conduct the GOS program within applicable budgetary constraints and use available funds as efficiently as possible to meet the purposes of the Act. This would be so even with larger appropriations. The objectives of the changes in the regulations—to achieve greater flexibility; enhance advance planning by museums; provide for increased stability for grantees; and reduce burden for museums in the preparation of applications—are all objectives that IMS would consider worth pursuing irrespective of the level of appropriations. That budgetary constraints may invite efforts to distribute available funds as broadly as possible is not a reason for IMS to abandon the proposed changes.

Comment: Several commenters questioned whether the motivation for the annual evaluation would be lost as a result of the changes. These and some other commenters expressed the view that the present system works well and should not be changed.

Response: While in general IMS believes that the current system has worked to the benefit of the museum community, IMS has a duty to seek improvements in that system for the benefit of that community. The 1990 study which it commissioned suggested changes along the lines of those made. Moreover, the community itself, while generally supportive of the program, has sought constructive changes over a long period of time particularly with respect to the issue of broader distribution of GOS funds among a somewhat wider spectrum of museums. IMS has therefore considered that it had a duty to propose the changes which evidently meet with the approval of the large majority of the commenters. IMS does not believe that the benefits of the evaluation will be impaired as a result of the changes. It believes that these changes will better serve the broader museum community and will preserve the beneficial aspects of the program as presently constructed. As indicated above, IMS, with the policy direction of the Board, has concluded that the substantial benefits of the changes will outweigh the effects described by the commenters who expressed concerns.

Accordingly, in keeping with the proposed regulations, the final regulations set forth below amend the sections in question.

5. Executive Order 12291

This amendment has been reviewed in accordance with Executive Order 12291. It is classified as non-major because it does not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Director certifies that the amendment will not have a significant economic impact on a substantial number of museums. The amendment will affect certain museums receiving Federal financial assistance under the Museum Services Act. However, it will not have significant economic impact on the entities affected, because it does not impose excessive regulatory burdens or require unnecessary Federal supervision.

6. Paperwork Reduction Act of 1980

This regulation does not contain any information collection requirements under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511)

List of Subjects in 45 CFR Part 1180

Grant programs—education, Museums, Nonprofit organizations.

Part 1180 of title 45 of the Code of Federal Regulations is revised as follows:

PART 1180—[AMENDED]

1. The authority citation for part 1180 continues to read as follows:

Authority: 20 U.S.C. 961–69, unless otherwise noted.

2. A new § 1180.8 is added to read as follows:

§ 1180.8 Two-Year grant period.

(a) IMS makes General Operating Support grants for a period of twenty-four months beginning with the first month of the grant period.

(b) A museum that receives a General Operating Support grant in a Federal fiscal year may not apply for an additional General Operating Support grant in the succeeding Federal fiscal year.

Example. A museum applies for a General Operating Support grant in Federal fiscal year 1993. The museum receives a grant that it may use during the applicable 24-month grant period. The museum may not apply for an additional General Operating Support grant in Federal fiscal year 1994.

3. Section 1180.9 is revised to read as follows:

§ 1180.9 Limitation on amount of General Operating Support grants.

(a) *General rule.* IMS makes General Operating Support grants in an amount not to exceed the lesser of:

(1) the ceiling amount established under paragraph (b);

(2)(i) 15 percent of the applicant museum's non-Federal operating income for its most recently completed fiscal year that is prior to the Federal fiscal year in which the application is filed; or

(ii) $7,500, if larger.

(b) *Ceiling amount.* The ceiling amount of a General Operating Support grant will be established through a notice published in the Federal Register. Beginning in FY 1993, the ceiling amount is $112,500.

(c) *Statutory requirement.* Under section 206(c) of the Act, IMS may not make a grant in excess of 50 percent of the annual cost of the program for which the grant is made. If the application of the $7,500 limitation in paragraph (a)(2) of this section causes a General Operating Support grant to exceed 50 percent of the museum's annual operating income for the grant period in question, IMS reduces the grant to that level in order to satisfy the statutory requirement.

(d) *Computation of non-Federal operating income.* For the purposes of this section, a museum may include in non-Federal operating income an amount reflecting the reasonable and conservative value of non-cash contributions to the museum in the applicable fiscal year.

Examples. The application of these rules is set forth in the following examples:

(1) In fiscal year 1993, a museum with calendar year 1991 operating income of $5,000,000 applies to IMS for a General Operating Support grant. Its application is approved. It may receive a grant of no more than $112,500, the lesser of $112,500 and $750,000 which is 15 percent of the museum's non-Federal operating income.

(2) In fiscal year 1993, a museum with calendar 1991 operating income of $700,000 applies to IMS for a General Operating Support grant. Its application is approved. It may receive a grant of no more than $105,000 the lesser of $112,500 and 15 percent of the operating income which is $105,000.

(3) In fiscal year 1993, a museum with calendar 1991 operating income of $40,000 applies to IMS for a General Operating Support grant. Its application is approved. It may receive a grant of no more than $7,500, the larger of $7,500 or 15 percent of the museum's operating income which is $6,000. The grant satisfies the requirement of paragraph (c) (and the statute) that it not exceed 50 percent of the museum's operating income for that year.

4. Section 1180.15 is revised to read as follows:

§ 1180.15 Duration of grants.

The grantee may use grant funds during the period specified in the grant document unless the grant is suspended or terminated. If the grantee needs additional time to complete the grant, the grantee may apply for an extension of the grant period without additional funds. The Director may approve this extension at his or her discretion.

5. Section 1180.16 is revised to read as follows:

§ 1180.16 Contributions, restricted accounts.

(a) For a particular fiscal year, and for one or more programs, the Board may determine that an amount equal to the amount to be awarded (or a percentage thereof) to an applicant under the Act must consist of non-Federal funds contributed to the museum in excess of the non-Federal funds contributed to the museum for its immediately preceding fiscal year.

(b) A museum shall maintain a restricted account for funds received under the Act.

6. Section 1180.20(b)(3) is revised to read as follows:

§ 1180.20 Guidelines and standards for conservation grants.

* * * * *

(b) * * *

(3) Section 1180.16(b), which provides for the maintenance of a restricted

account, does apply to conservation grants.

* * * * *

Susannah Simpson Kent,

Director, Institute of Museum Services.

[FR Doc. 92-19482 Filed 8-14-92; 8:45 am]

BILLING CODE 3137-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-103; RM-7973]

Radio Broadcasting Services; New London, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290C3 to New London, Missouri, in response to a petition filed by New London Broadcasting. See 57 FR 21055, May 18, 1992. The coordinates for Channel 290C3 are 39-41-44 and 91-20-10. There is a site restriction 13.5 kilometers (8.4 miles) north of the community. With this action, this proceeding is terminated.

DATES: *Effective:* September 24, 1992. The window period for filing applications for Channel 290C3 at New London will open on September 25, 1992, and close on October 26, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92-103, adopted July 22, 1992, and released August 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding New London, Channel 290C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19477 Filed 8-14-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-7; RM-7879]

Radio Broadcasting Services; Scotland Neck and Pinetops, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WYAL Radio, Inc., substitutes Channel 238C3 for Channel 238A at Scotland Neck, North Carolina, reallots the channel to Pinetops, North Carolina, and modifies the construction permit of Station WWRT (FM) accordingly. See 57 FR 3159, January 28, 1992. Channel 238C3 will provide Pinetops with its first local aural transmission service. Channel 238C3 can be allotted to Pinetops in compliance with the Commission's minimum distance separation requirements with a site restriction of 18 kilometers (11.1 miles) north to accommodate petitioner's desired transmitter site and avoid short-spacings to Stations WRNS, Channel 236C, Kinston, North Carolina, and WKML, Channel 239C, Lumberton, North Carolina, at coordinates North Latitude 35-55-54 and West Longitude 77-40-11. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-7, adopted July 21, 1992, and released August 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 238A, Scotland Neck and adding Pinetops, Channel 238C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19462 Filed 8-14-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920780-2180]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Interim rule; publication of Office of Management and Budget (OMB) control number and announcement of effectiveness of a collection-of-information requirement.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the effectiveness of a collection-of-information requirement, whereby any owner or operator of a shrimp trawler who wishes to use restricted tow times in lieu of turtle excluder devices (TEDs) within a small pre-designated area off the North Carolina coast is required to register with NMFS' Southeast Regional Office prior to their first fishing trip. This rule also publishes the applicable OMB control number.

EFFECTIVE DATE: Section 227.72(e)(8)(i), of the interim rule published July 29, 1992 (57 FR 33455), is effective August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Phil Williams, National Sea Turtle Coordinator, NMFS, at 301/713-2322 or Chuck Oravetz, Chief, Protected Species Program, Southeast Region, NMFS, at 813/893-3366.

SUPPLEMENTARY INFORMATION: An interim rule to allow limitations on tow times as an alternative to the requirement to use TEDs by shrimp trawlers in a restricted area off the coast of North Carolina was published July 29, 1992 (57 FR 33455). Section 227.72 (e)(8)(i) of that rule requires owners or operators of shrimp trawls to contact the Southeast Regional Office at least 24 hours before their first fishing trip, following the effective date of this rule, to provide the name and official number of the vessel; the time and date of the telephone registration; the number of the state permit authorizing fishing in the restricted area; a statement that the owner or operator intends to trawl in the North Carolina restricted area using the limited tow times option; and the dates trawling operations in the North Carolina restricted area are expected to be conducted. Because that requirement constitutes a collection-of-information requirement subject to the Paperwork Reduction Act, it could not be enforced before OMB approval of the requirement. Delayed enforcement of § 227.72(e)(8)(i) was announced in the July 29, 1992, rule pending OMB approval. OMB has approved the collection-of-information requirement under OMB control number 0648-0267. Section 227.72(e)(8)(i) is effective August 14, 1992, and will be enforced from that date on.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine Mammals, Transportation.

Dated: August 7, 1992.

Samuel W. McKeen,

Program Management Office.

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

For the reasons set forth in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

2. Section 227.72 is amended by revising paragraph (e)(8)(i) to read as follows:

§ 227.72 Exceptions to prohibitions.

* * * * *

(e) * * *

(8) *North Carolina restricted area*—(i) *Registration requirement.* Any owner or operator of a shrimp trawler (regardless of length) who wishes to trawl in the North Carolina restricted area, other than those who are in compliance with paragraph (e)(2) of this section, must register with the Southeast Regional Director, NMFS, at least 24 hours before the first fishing trip following the effective date of this rule by telephone at 813/893-3163 and providing the following information:

(A) The name and official number of the vessel;

(B) The time and date of the telephone registration;

(C) The number of the state permit authorizing fishing in the restricted area;

(D) A statement that the owner or operator intends to trawl in the North Carolina restricted area using the limited tow times option; and

(E) The dates trawling operations in the North Carolina restricted area are expected to be conducted.

* * * * *

[FR Doc. 92-19461 Filed 8-14-92; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 683

[Docket No. 920530-2192]

Western Pacific Bottomfish and Seamount Groundfish Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to extend for 6 years the moratorium on fishing in the Hancock Seamount fisheries under the Fishery Management Plan for the Bottomfish and Seamount Groundfish Fisheries of the Western Pacific Region (FMP). This rule is intended to ensure that fishing mortality in the exclusive economic zone (EEZ) will not contribute to further declines in the seamount groundfish stocks and may help foster a rebound of those stocks throughout their range. The seamount groundfish stocks are overfished, and if the moratorium is not extended and fishing resulted, the recovery of the stocks would be further threatened.

EFFECTIVE DATE: August 27, 1992.

ADDRESSES: Copies of the document requesting and supporting this action and the environmental impact statement prepared for the FMP imposing the initial Hancock Seamount fishery moratorium may be obtained from the Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, NMFS at 310-980-4034; or Alvin Katekaru, NMFS, at 808-955-8831.

SUPPLEMENTARY INFORMATION: The FMP was prepared by the Western Pacific Fishery Management Council (Council) and approved and implemented by the Secretary of Commerce in 1986 (51 FR 27413, July 31, 1986). The FMP established a moratorium on fishing for bottomfish and seamount groundfish (mainly pelagic armorhead and alfonsin) within the Hancock Seamount subares of the EEZ due to the severely depressed status of the stocks. It was noted at the time that the range of the stocks extends beyond EEZ, and that action in the EEZ alone not ensure rebuilding of the stocks. Nonetheless, it was concluded that affirmative action in the EEZ was appropriate. The moratorium was designed to last for 6 years (i.e., until August 27, 1992), after which it was hoped that stocks would have rebounded in the EEZ to permit a fishery.

The FMP also provided a procedure (codified at 50 CFR 683.24) for changing the conservation and management measures through rulemaking rather than an FMP amendment.

NMFS has conducted periodic assessments of the stocks in the EEZ for the past 5 years and has concluded that the stocks have not recovered. In its annual report on the bottomfish and seamount groundfish fisheries for the 1990 fishing year, the Council's plan team indicated that the estimated current spawning potential ratio (SPR), which is a measure of the spawning biomass relative to the spawning biomass prior to the fishery, was only 1.0 percent, far below the threshold (SPR = 20 percent) established to define overfishing for bottomfish and seamount groundfish stocks. The catch per unit effort of pelagic armorhead in research fishing was at the lowest point since research fishing began in 1985. The team recommended that the Council request that the moratorium be extended indefinitely.

At its March 1992 meeting, the Council considered the information from the team and concluded that extension of the moratorium is warranted. The Council subsequently submitted a request for NMFS to take action under the framework procedure of the FMP. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has agreed that there is a sound basis for this request.

As discussed in the proposed rule (57 FR 26816, June 16, 1992), the rule extends the moratorium on harvest of bottomfish and seamount groundfish in the EEZ through August 31, 1998. The extension provides additional time for recovery of the stocks in the EEZ and may contribute to a recovery of the stocks throughout their range. NMFS will continue to monitor the status of the stocks and will advise the Council of its findings annually.

Comments and Responses

No comments were received on the proposed rule.

Classification

This rule is published under the authority of 50 CFR part 683 and was prepared at the request of the Council. The Assistant Administrator has determined that this final rule is necessary for the conservation and management of the western Pacific bottomfish and seamount groundfish fishery and is consistent with the Magnuson Fishery Conservation and Management Act and other applicable law.

An environmental impact statement (EIS) was incorporated into the original FMP and included assessment of the impacts of the moratorium for the seamount groundfish fishery proposed and implemented at that time. There has been no change in the condition of the stocks and extension of the moratorium is within the range of alternatives considered in the EIS. Therefore, this action is categorically excluded from the requirement to prepare an environmental assessment in accordance with paragraph 6.02c.3.(f) of NOAA Administrative Order 216–6. A copy of the EIS is available from the Council (see **ADDRESSES**).

In a May 13, 1991, Biological Opinion analyzing the effects of the fishery on listed species and critical habitat, NMFS concluded that the FMP and the fisheries themselves, including the moratorium on the Hancock Seamount fishery, would not jeopardize the continued existence of any species listed under the Endangered Species Act or adversely affect any critical habitat for listed species. Extension of the moratorium for 6 years will not affect any listed species or any critical habitat in a manner not analyzed in that Biological Opinion.

The Assistant Administrator has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This conclusion is based on the original combined FMP/EIS, regulatory impact review, and the supplementary document prepared for this rule. Copies of the supporting documents are available from the Council (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

In order to afford maximum opportunity for public comment and participation, the Administrative Procedure Act (5 U.S.C. 553) requires that, generally, final rules be published not less than 30 days before they become effective. This 30-day period may be shortened or waived if the rulemaking agency publishes with the rule an explanation of what good cause justifies an earlier date. This rule extends the moratorium on the seamount groundfish fishery implemented by the FMP in 1986 and should become effective August 27, 1992, when the existing moratorium expires, in order to prevent a lapse in the management regime. The public comment period on the proposed rule ended on July 16, 1992, and although this final rule has been issued as expeditiously as possible, it is not possible to provide a full 30 days before the existing moratorium expires. Good cause is found for not providing the full 30 days because this final rule merely extends the existing moratorium on fishing in the Hancock Seamount fisheries, and to do otherwise would impair the overfished resource.

List of Subjects in 50 CFR Part 683

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 11, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 683 is amended as follows:

PART 683—WESTERN PACIFIC BOTTOMFISH AND SEAMOUNT GROUNDFISH FISHERIES

1. The authority citation for part 683 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 683.23 is revised to read as follows:

§ 683.23 Fishing moratorium on Hancock Seamount.

Fishing for bottomfish and seamount groundfish on the Hancock Seamount is prohibited through August 31, 1998.

[FR Doc. 92–19528 Filed 8–14–92; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 159
Monday, August 17, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 140

[Docket No. PRM 50–54]

Public Citizen—Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM 50–54) from Daniel Borson on behalf of the Public Citizen. The petitioner requested that the NRC amend its regulations regarding the licensing of independent power producers to construct or operate commercial nuclear power reactors. The petition is being denied on the basis that current NRC regulations provide authority for the licensing of an Independent Power Producer (IPP)[1] should such an application be submitted and for a review of the applicant's financial qualifications to construct and operate a commercial power reactor.

ADDRESSES: Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection or copying in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3795.

SUPPLEMENTARY INFORMATION:

I. The Petition
II. Basis for Request
III. Public Comments on the Petition
IV. Reasons for Denial

I. The Petition

In a letter dated November 22, 1989, Mr. Daniel Borson, on behalf of the Public Citizen, filed a petition for rulemaking with the NRC. The petition, which consisted of two parts, requested that: (1) NRC promulgate rules concerning the licensing of IPPs in general; and (2) these rules include specific criteria for financial qualifications for an IPP seeking a construction permit, or an operating license for a commercial nuclear power reactor.

II. Basis for Petitioners Request

Since all licensees of commercial nuclear power plants are presently regulated utilities, NRC regulations for financial qualification of licensees for the construction and operation of these facilities assume that local, State or Federal regulatory bodies will ensure that nuclear licensees have sufficient funds to safely operate their facilities. Regulated utilities have defined fixed markets for their electricity and usually are assured a set return on the amount of investment in plants which is included in the rate base. However, IPPs, on the other hand, must compete openly in the wholesale marketplace and may not have a steady supply of customers for their power. Consequently, while their rates are usually set by the Federal Energy Regulatory Commission (FERC), if IPPs fail to sell all the electricity they produce, or if their plants fail to produce enough electricity, they may not make a profit. Therefore, the long term financial stability of an IPP is less certain than that of a regulated utility. This potentially precarious financial position may adversely affect the accrual of decommissioning funds, the promptness of necessary maintenance and repairs, the payment of waste fees, and the ability to pay funds in the event of an accident at any commercial nuclear plant as specified under the Price-Anderson Act. Currently, there are no regulations specifically addressing the licensing of IPPs or the transfer of licenses to IPPs.

In light of the above, Public Citizen petitioned NRC to require an affirmative showing of financial qualification by an IPP seeking a construction permit, an operating license, or a transfer of license. Additionally, Public Citizen requested that the specific financial qualifications be made part of the IPPs application for a license. The financial questions should include but not be limited to requiring the IPP to:

Establish a procedure to ensure that sufficient funds will be available for payment to the Nuclear Waste Fund established by the Nuclear Waste Policy Act.

Establish a mechanism to assure that the money which the Price-Anderson Act requires licensees to pay in the event of an accident at any commercial nuclear plant would be available when needed.

Pre-pay into an external fund the cost of decommissioning the reactor, or demonstrate the absolute assurance by a financial institution that sufficient funds will be available for decommissioning.

III. Public Comments on the Petition

A notice of receipt of the petition for rulemaking was published in the **Federal Register** on March 12, 1990 (55 FR 9137). Interested persons were invited to submit written comments or suggestions concerning the petition by May 11, 1990. The NRC received 17 comments in response to the notice: 9 from public utilities/industry representatives, 2 from public corporations, 2 from State agencies, 2 from citizens groups, 1 from a private citizen, and 1 from the Department of Energy (DOE). The majority of the commenters (13) opposed granting the petition. The main reasons cited by the commenters who were opposed to the petition were:

The DOE, the New York Power Authority, and others, stated that they believed that current NRC regulations are sufficient to recognize an entity other than an electrical utility as a licensee for a nuclear power plant. Further, they stated that part 50 contains language that allows the Commission to obtain information on the financial integrity of an IPP to assure itself that the IPP is qualified to build, operate, and provide for other financial obligations in

[1] The staff views an independent power producer as one example of a class of non-utility applicants. The staff believes that any action should include all non-utility applicants which, at present, may include several different entities with differing names, corporate structures, and operating characteristics. For example, IPPs, Affiliated Power Producers (APPs), Qualifying Facilities (QFs), and Exempt Wholesale Generators (EWGs). Not all of these entities are IPPs; however, all of them would be non-utility applicants if they were to apply for a license to construct or operate a reactor.

connection with the plant for the life of the license.

The Nuclear Management and Resources Council (NUMARC) as well as several utilities pointed out that the petitioner failed to indicate any specific areas of the regulations that required change or to provide any arguments to justify the need for additional regulations at this time.

Financial qualifications for licensees are addressed in the current regulations (10 CFR parts 50 and 140) and apply to all applicants.

A private citizen pointed out that the promulgation of additional rules is not required to ensure the protection of the health and safety of the public.

Several commenters pointed out that any lender or investor supporting an application from an IPP would clearly insist on adequate financial arrangements address all significant contingencies.

The Palisades Generating Company pointed out that the IPP concept has not yet been applied to nuclear plants; even in the non-nuclear segment of the electric industry, the concept is still evolving.

The remaining four commenters were in favor of granting the petition. The reasons provided for supporting the petition are as follows:

The State of Illinois stated that specific financial qualifications should be made a part of the application for an operating license. Satisfactory monetary provisions for plant decommissioning, Price-Anderson insurance, and disposal of radioactive waste must be assured. IPPs should have no less culpability than a regulated utility.

The Ohio Citizens for Responsible Energy stated that NRC has developed no substantive rules or a body of case law to address a situation such as the completion and operation of a nuclear reactor such as Perry 2 by an IPP. Stringent financial qualification review and standards are essential to ensure that the IPPs have sufficient funds to cover appropriate expenses.

The Alabama Public Service Commission stated that the assumption should not be made that current regulations would encompass new entrants such as IPPs. Further, IPPs need to know what will be required by the NRC to determine whether to construct or operate a nuclear reactor and be reasonably sure of making a profit.

Public Citizen sent in a letter to NRC and reiterated essentially what had been stated in their petition.

IV. Reasons for Denial

Upon receipt of the petition from Public Citizen, the staff examined the petition in detail to determine which specific regulations the petitioner believed should be amended to address the licensing of an IPP, or which regulations were inadequate to determine the financial qualifications of an IPP. However, the petitioner provided no specific reference to the regulations in 10 CFR chapter I that should be amended.

The staff then examined each of the 17 comments submitted by the public on the petition. None of the four commenters who favored granting the petition provided any reference to the specific regulations which should be amended by rulemaking. One of the commenters stated that specific financial qualifications should be made a part of the application for an operating license and that satisfactory monetary provisions for plant decommissioning, Price-Anderson insurance, and disposal of radioactive waste should be assured. The staff agrees that this type of information is important to any license application and such information will be reviewed in detail during any license review of an IPP. Another commenter stated that IPPs should have no less culpability than a regulated utility. The staff also agrees with this statement. Another commenter stated that NRC has not developed a "body of case law" to address IPPs. NRC has not developed a "body of case law" because an IPP has yet to submit an application for a construction permit or operating license, and the staff believes the current regulations provide authority to review an application by an IPP should one be submitted.

In its petition, Public Citizen has not presented any tangible evidence as to why or how the NRC regulations are inadequate. Nor does the Public Citizen demonstrate or state how the NRC would fail to apply existing regulations on a case-by-case basis to the circumstances of an IPP before making the necessary public health and safety findings prior to the issuance of any permit or license. The staff agrees with the comments of the DOE, NUMARC, and others that the current regulations in 10 CFR Part 50 can be appropriately applied to IPPs.

The staff believes the existing regulations in 10 CFR 50.33 and 50.75 provide the authority to request the necessary information from non-utility applicants to perform a financial qualifications review, as well as require the applicants to set aside funds for decommissioning of the reactor. The regulations in 10 CFR 50.75(d) specifically address "non-electric utility applicants" and require these applicants to submit a decommissioning report to the Commission describing the cost estimate for decommissioning the facility and the manner (which must be acceptable to the Commission) in which the funds will be set aside. Moreover, 10 CFR 50.75(e)(2) specifically defines the acceptable financial assurance mechanisms for a licensee other than an electric utility. Public Citizen has not indicated in its petition where the Commission's regulations are inadequate for accommodating a non-utility applicant.

Non-utility applicants for operating licensees must demonstrate financial qualifications pursuant to 10 CFR 50.57, and 10 CFR 50.80 allows the Commission to request information on the financial qualifications of any applicant for license transfer.

Each licensee, utility or non-utility, is required by 10 CFR 140.21 to maintain adequate monies, through several approved methods indicated in that section, to guarantee payment of deferred premiums to satisfy its responsibility under the Price-Anderson Act. Moreover, if the suggested methods of guarantee are for any reason inadequate or inapplicable for a particular licensee, 10 CFR 140.21(f) provides for "such other types of guarantee as may be approved by the Commission."

Pursuant to Public Citizen's concern that non-utility applicants will not have sufficient monies available to fund their requisite payment to the Nuclear Waste Fund, the staff believes that DOE, the agency that administers the Fund, is the best judge of whether a licensee has sufficient funds set aside to meet the costs of disposal of radioactive waste.

For the reasons cited above, the NRC denies the petition.

Dated at Rockville, Maryland this 27th day of July, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 92-19509 Filed 8-14-92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of he Comptroller of the Currency

12 CFR Part 34

[Docket No. 92-12]

Office of Thrift Supervision

12 CFR Part 563

[Docket No. 92-348]

RIN 1550-AA56

Real Estate Lending Standards: Supplementary Analysis

AGENCIES: Office of the Comptroller of the Currency and Office of Thrift Supervision, Treasury.

ACTION: Proposed rule; request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) are requesting comments on a supplementary description of the costs and benefits that are likely to accrue as a result of implementing proposed amendments to their real estate lending standards. the two agencies specifically invite commenters to provide any data they may have on the costs and benefits of the proposed rule on the economy at large. For example, comment is requested on the impact on real estate lending operations at depository institutions, including the possible reduction in losses on real estate lending; the deposit insurance funds; the availability of credit for economically sound projects; and on loan documentation, monitoring and processing time. The proposed amendments are described in a notice of proposed rulemaking that was published in the **Federal Register** of July 16, 1992.

DATES: All comments must be submitted on or before August 31, 1992. Commenters are encouraged to incorporate their comments on the costs and benefits of the proposed amendments into their submission on the notice of proposed rulemaking. Separate comment letters on the issues raised in this request for comments will also be accepted.

ADDRESSES: OCC: Office of the Comptroller of the Currency, Communications Division, 250 E St. SW, Washington, DC 20219, Attention: Docket No. 92-12. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OCC. Comments will be available for public inspection and photocopying at the same location.

OTS: Comments should be directed to Director, Information Services Division (ISD), Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention: Docket No. 92-348. These submissions may be hand delivered to 1700 G Street NW. from 9 a.m. and 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906-7755, or extension (202) 906-7753. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1778 G Street, NW., Street level.

FOR FURTHER INFORMATION CONTACT:

OCC: Frank R. Carbone, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874-5170; William W. Templeton, Attorney, Legal Advisory Services Division, (202) 874-5330; Mitchell Stengel, Financial Economist, Banking Research and Statistics (202) 874-5240.

OTS: Robert Fishman, Program Manager for Credit Risk, (202) 906-5672; William J. Magrini, Project Manager for Credit Policy, (202) 906-5744, Fred Phillips-Patrick, Senior Financial Economist, (202) 906-7295; Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On July 16, 1992, the OCC and the OTS, along with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, published in the **Federal Register** [57 FR 31594] a joint notice of proposed rulemaking (proposal) for implementing the requirements of section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). FDICIA, which was enacted on December 19, 1991, requires each federal banking agency to adopt uniform regulations prescribing standards for extensions of credit secured by liens on interests in real estate. The requirements of section 304 also cover extensions of credit made for the purpose of financing the construction of a building or other improvements to real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agencies are to consider: (a) The risk posed to the deposit insurance funds by such extensions of credit; (b) the need for safe and sound operation of insured depository institutions; and (c) the availability of credit. The agencies are to adopt uniform regulations within nine months of the date of enactment of FDICIA. The regulations are to become effective within 15 months following enactment of FDICIA.

In connection with the publication of the proposal, the OTS and the OCC made a preliminary determination that the proposal does not constitute a "major rule" within the meaning of Executive Order 12291. Accordingly, a regulatory impact analysis was not required at that time.

The OTS and the OCC desire to issue final regulations implementing section 304 of FDICIA that yield the greatest net benefits. Toward that end, the two agencies are providing this supplementary analysis of the types of costs and benefits that are likely to accrue as a result of implementing the regulatory approaches outlined in the proposal.

To assist the OTS and the OCC in evaluating the nature and magnitude of the impact of the proposed rule, the two agencies specifically invite commenters to provide any data they may have on the costs and benefits of the proposal on the economy at large, including real estate lending, the deposit insurance funds, paperwork and compliance burdens, how well the proposal conforms with existing standards applied by depository institutions and other lenders, and the availability of credit for economically sound projects.

II. Supplementary Analysis

Costs and Benefits of Proposed Loan-to-Value (LTV) Ratio Limits Under Section 304 of FDICIA

A. Introduction

Prior to 1982, national bank real estate lending was governed by statutory and regulatory requirements relating to five aspects of lending activity: Loan-to-value (LTV) ratios, amortization requirements, maturity requirements, aggregate limits, and leasehold requirements. The Garn-St Germain Depository Institutions Act of 1982 removed statutory restrictions on real estate lending by national banks. The OCC was given authority to impose conditions and limitations by regulation or order.

In 1983, the OCC rescinded the existing regulations on real estate lending, including loan-to-value ratios. OCC policy still requires national banks to have in place prudent real estate lending policies which include loan-to-value ratios. Examiners routinely monitor the existence of such policies, their appropriateness for the particular institution, and whether the institution follows its internal policies. However, it was felt that prudent lending and the

safety and soundness of the national banks were better served by a flexible approach that allowed institutions to tailor their policies to differences in market conditions and management philosophies, rather than strict, quantitative standards applied uniformly to all institutions. As the OCC stated at the time, "Decisions concerning the forms and terms of national bank lending are properly the responsibility of each bank's directorate and management."

Similarly, the Garn-St. Germain Act of 1982 removed statutory limitations on LTV ratios for federal savings associations. In May 1983, specific LTV ratios for various types of secured loans were removed from Federal Home Loan Bank Board (the OTS's predecessor) regulations, though some requirements were retained.

In subsequent years, some institutions made imprudent real estate-related loans that required little or no equity investment on the part of the borrower, with costly consequences to financial institutions, the real estate industry, and the federal bank and thrift insurance funds. The proposed regulation, which would limit LTV ratios for real estate lending, is intended to insure that this problem does not recur.

The proposed regulation may produce economic costs and benefits to society and to the depository institutions in at least two areas: (1) Lowering the risk of bank and thrift failures and the attendant costs to the insurance funds; and (2) Altering the availability of credit for real estate lending.

Through its requirement of minimum equity participation levels by borrowers, the proposed regulation establishes a buffer for the absorption of unexpected losses by the borrower. This has three salutary effects. First, the borrower now has a stronger incentive to ensure that the project is successful. This may reduce the waste of economic resources on uneconomic real estate projects. Second, any loss to the institution, and, if the institutions fails, to the insurance funds, is reduced. Third, to the extent fewer institution fail, established borrowers will not face costly disruptions.

To the extent that the proposed LTV limits reduce lending to economically viable projects, the regulation will impose additional costs on depository institutions, on the real estate industry, and on the economy as a whole.

The agencies are cognizant of the important role that the real estate industry plays in the U.S. economy, including its historical role as an engine of recovery from recessions. As such, our goal is to minimize any unnecessary costs imposed on the real estate industry or the economy by this regulatory action.

These issues, and others, are discussed in more detail in the following sections.

B. Summary of Proposed Regulation

The proposal contains two alternative approaches to the regulation of real estate lending through LTV ratio limits. Alternative 1 would require each institution to develop its own LTV ratios for real estate lending within broad ranges set by the regulators and subject to examiner review. Alternative 2 would impose upper limits on all institutions.

PROPOSED LTV RATIO LIMITATIONS UNDER ALTERNATIVES 1 AND 2

Loan type	LTV ranges under alternative #1[1] (percent)	LTV maximums under alternative 2[1] (percent)
Raw land	50–65	60
Preconstruction/development	55–70	65
Construction/land development	65–80	75
Improved property	65–80	75
1-to-4 family residential	80–95	95
Home equity	80–95	95

[1] In some cases, certain qualifying conditions must be met for maximum LTV ratio loans. Please refer to the proposed rule for details.

The types of costs and benefits outlined below would be the same under both alternatives. However, because of the flexibility of Alternative 1, it is more difficult to provide quantitative estimates of the costs and benefits. The agencies believe that Alternative 1 would have a less restrictive impact on the volume of real estate lending, because few, if any, institutions are likely to adopt loan-to-value limits more stringent than those imposed in Alternative 2. At the same time, the risk of loss may rise if institutions set LTV ratios at the higher levels permitted under Alternative 1.

In addition to the two options on LTV ratio limitations proposed in the regulation, the agencies considered other alternatives for fulfilling the statutory mandate. Other options ranged from much more detailed, quantitative requirements concerning other important components of real estate lending (such as maximum maturity limitations, amortization requirements, concentration limits, documentation requirements, etc.) to general regulatory language that required only that institutions undertake prudent real estate lending in a safe and sound fashion. The agencies decided to propose LTV ratio limitations because such limits have long been a significant factor used in institutions' real estate lending decisions.

C. Problems of Measuring Costs and Benefits

The agencies recognize that, whatever our intent, the impact of the regulation is difficult, if not impossible, to assess with certainty. While the effect of the proposal may be estimated for a particular point in time, the potential impact in the future is extremely difficult to assess. Regulatory limits that appear reasonable and prudent today may, in the future, have significant consequences from being too lenient or too stringent.

A first step in estimating the costs and benefits of the proposal is to estimate the degree to which lending by affected depository institutions would be restrained by the proposed limits and exceptions. This is particularly difficult because:

1. Commercial real estate is a volatile and cyclical industry. This volatility creates significant difficulties for the estimation of costs and benefits of the proposed regulation. Standards that might not restrict lending by depository institutions in one time period may restrict lending in another period. For example, based on various market indicators, anecdotal evidence, and an informal survey of a number of national bank examiners, the agencies believe that, at this time, the proposal would, at most, only modestly restrain new lending for commercial real estate. The current weakness of the macro-economy and the severe oversupply of commercial real estate have curtailed new construction and development in many markets across the country. Consequently, loan demand is considerably diminished. In addition, because of weaknesses in local markets, depository institutions have tightened their underwriting standards, including reducing the maximum acceptable loan-to-value ratios. Thus, the proposed standard may have little short-term effect. However, the proposal may have more of an impact on lending as the economy, real estate markets, and loan demand recover.

2. In almost all cases, the data needed to quantify the costs and benefits of the proposed limits to society at large and to the depository institutions are, to our knowledge, unavailable. For example, with the exception of single family residential mortgages, information on loan originations and losses by LTV ratio is not routinely collected for the various types of real estate lending.

While the necessary data are largely unavailable to the agencies, it is likely that the costs and benefits of the proposed LTV ratio limits will differ widely across categories of real estate lending because loss rates are so varied.

For example, focusing only on depository institutions, in 1991, losses on 1-to-4 family residential loans (including both first and second mortgages and home equity loans) held by commercial banks were 0.19% of the dollar amount of commercial banks' average investment in 1-to-4 family loans. Moreover, although 1-to-4 family loans represented almost 50% of all real estate loans held by commercial banks in 1991, they made up less than 10% of the losses from real estate lending. By contrast, losses on all types of construction and land development loans in 1991 were 2.98% of the total of such loans outstanding; construction and land development loans represented only 14% of all real estate loans held by commercial banks in 1991, but accounted for 41% of real estate losses.

Similarly, for thrifts, losses on 1-to-4 family residential loans (including first and second mortgage loans and home equity loans) in 1991 were 0.11% of the dollar amount of thrifts' average investment in 1-to-4 family loans. Although 1-to-4 family loans made up over 75% of all real estate loans held by thrifts in 1991, they made up only 23% of the losses from real estate lending.

By contrast, losses on construction and land development loans in 1991 were 2.16% of the total of such loans outstanding. Construction and land development loans represented only 4.4% of all real estate loans held by thrifts in 1991, but they accounted for 28% of real estate losses.

Refining this data further, for savings associations, losses on residential construction loans in 1991 were 1.3% of the total of such loans outstanding; losses on nonresidential construction loans were 7.2% of the total of such loans outstanding; and, losses on land loans were 1.8% of the total of such loans outstanding.

With such wide differences in loss rates, the benefits of reduced losses from the proposed LTV ratio maximums are also likely to vary considerably for various types of real estate lending. The loss data suggest they will be higher for assets such as commercial construction and land development lending than for 1-to-4 family residential mortgage and home equity lending.

Because of the limited available information, it is not possible to draw conclusions about the net effect of the proposal on future lending activities. Parts D and E of this section provide only general descriptions of the major costs and benefits of the proposal. The quantitative descriptions that are included in the discussion of costs and benefits are also very general and do not treat each of the proposed LTV ratios separately.

D. Benefits

1. *Reduction in uneconomic real estate projects.* The primary benefit of the proposal would be the reduction in the volume of uneconomic real estate projects. To the extent that the proposed loan-to-value limits are lower than those that would otherwise be required, the new regulation will require a greater equity commitment on the part of borrowers or guarantors. The higher equity requirement may discourage some borrowers from proceeding with uneconomic projects. (Other borrowers may find other, non-bank, sources of credit.) If alternative sources of funding cannot be found at acceptable costs, the level of real estate activity will be reduced. This reduction may have social benefits to the economy if resources are instead used for other types of economic activity that have a greater value to society than the real estate projects.

Insured depository institutions that could no longer make these uneconomic real estate loans would benefit to the extent that the regulation reduces uneconomic lending. The institutions would gain because the volume of real estate loans that ultimately fail to perform (and result in losses) will be reduced. Additional gains will accrue to the institutions in those cases where borrowers are able to meet the new requirements and the loans are made, since the higher equity commitment will provide a greater cushion for the lending institution, and borrowers will absorb greater losses before the collateral value falls below the loan amount.

In both of these cases, benefits will accrue to the owners of the depository institutions (who would have to absorb the losses). Benefits may also accrue to the Federal depository institution insurance funds, if institutions avoid losses on real estate loans that would otherwise have resulted in their insolvency.

It is not possible to attach a quantitative estimate to the potential benefits to society with the data available at this time.

In the case of single family mortgages, the agencies do have data that show that default rates (and, presumably, loss experience) increase as LTV ratios increase. For example, the Texas mortgage default experience was one of the worst in recent history and is used as a standard for stress tests.

Cumulative default experience (through April 30, 1989) on 30-year fixed rate home mortgage loans originated in Texas in 1981 and 1982 and sold to the Federal National Mortgage Association (FNMA) show the following default rates:

TEXAS DEFAULT EXPERIENCE ON 30-YEAR FIXED RATE HOME MORTGAGE LOANS

LTV ratio at origination (percent)	Cumulative default rates[1] (percent)
Less than 60	0.7
61–70	1.6
71–75	3.8
76–80	8.1
81–90	14.1
Greater than 90	24.1

[1] Loans originated 1981–1982, experience through 1989.

Similarly, national data from private mortgage insurance companies (which, in general, only insure home mortgage loans that have LTV ratios in excess of 80% at origination) show the following default rates:

NATIONAL DEFAULT EXPERIENCE ON LOANS WITH PRIVATE MORTGAGE INSURANCE

LTV ratio at origination (percent)	Average default per 100 loans[1] (percent)
80–85	2.38
85–90	4.01
90–95	7.83

[1] Loans originated 1975–1985, experience through 1989.

These data are applicable only to single family home mortgage loans. The agencies do not have comparable data that demonstrate the difference in losses or profits that accrue to institutions based on the LTV ratio of commercial real estate loans. While it seems logical that fewer losses will accrue on loans originated at 60% to 70% of appraised value rather than 95% to 100%, the magnitude of the difference is not known. At the same time, the interest rate charged by the lenders may be higher for loans with higher LTV ratios, in order to compensate for the greater risk of default. Further, the difference in losses experienced with loans with slightly different LTV ratios, such as 80% loan and an 85% loan, is not known and may be due to a range of factors not addressed in the proposed regulation.

2. *Fewer and less costly failures of depository institutions.* Many of the depository institutions that have failed in recent years have had

disproportionately high exposures to real estate. For example, for those insured commercial banks that failed in 1991,[1] commercial real estate loans,[2] the largest source of real estate loan losses, made up 24.2% of total loans at the end of 1989, compared with 14.8% for insured commercial banks that did not fail. Thus, the impact of the proposal may be disproportionately greater on depository institutions vulnerable to failure. If these institutions incur reduced real estate losses, possibly fewer banks will fail. This in turn will mean smaller losses to the Bank Insurance Fund (BIF) and Savings Association Insurance Fund (SAIF). Protection of the BIF and SAIF is one of the mandated objectives of section 304 of FDICIA and the proposal. It is not possible to attach a quantitative estimate to this category of benefits with the data available at this time.

3. *Reduced losses for surviving institutions.* While real estate losses were a principal cause of the failure of many institutions, they also resulted in losses at institutions that did not fail. If institutions incur fewer and/or smaller real estate losses due to the new LTV requirements, their loan losses are likely to be reduced and their earnings increased.

As a first approximation, this benefit might be estimated as a percentage of the real estate losses incurred by depository institutions.

For commercial banks, the record losses of recent years are the result of loans made several years earlier, and may not be indicative of the losses that might be expected to occur several years from now, when the condition of real estate markets will have changed. In fact, given the cyclical nature of commercial real estate, loan originations are likely to be substantially lower when the new regulation takes effect in 1993 and in subsequent years than they have been in recent years. The restraining impact of the loan-to-value limits and any resultant reduction in subsequent losses will also be correspondingly reduced. Thus, it might be more appropriate to use loss rates from a period before the recent increase in real estate lending as a benchmark for estimating benefits for commercial banks.

Real estate loans outstanding at commercial banks and real estate loan losses were both considerably lower in the period 1984–1989 than in more recent years. Total real estate loans outstanding averaged $557 billion in the earlier period, compared to $829 billion for 1990–1991. Real estate loan losses were approximately $2 billion per year in the earlier period compared to $7.25 billion per year more recently. It seems likely that conditions in the mid-1990s, when the first impacts of the proposed regulation would be felt, will more closely resemble the 1984–1989 experience than the 1990–1991 experience.

Based on this assumption, if, for example, real estate losses to surviving institutions were reduced by an amount equal to 5% of the 1984–1989 average losses of $2 billion per year, benefits would be approximately $100 million per year. Other hypothetical percentage reductions in losses, and the corresponding benefits, are shown in the table below.

ESTIMATED BENEFITS FROM REDUCED REAL ESTATE LOSSES FOR COMMERCIAL BANKS

Percentage of average 1984–1989 real estate losses	Annual benefits
5	$100 million.
10	200 million.
15	300 million.

For thrift institutions, the OTS does not believe that the 1984–1989 time period would be the appropriate benchmark, due to the overhang of insolvent thrift institutions for much of this period and because of the subsequent tremendous shrinkage in the industry. Using instead the loss experience of the last two years, which shows net annual real estate loan losses (excluding single family home mortgage loans which have fewer losses) averaging approximately $1.4 billion, the table below illustrates several hypothetical percentage reductions in losses and the corresponding benefits.

ESTIMATED BENEFITS FROM REDUCED REAL ESTATE LOSSES FOR THRIFTS

Percentage of average 1990–1991 real estate losses	Annual benefits
5	$70 million.
10	140 million.
15	210 million.

4. *Smoothing regional macroeconomic cycles.* The volatility of the real estate industry has greatly exacerbated the instability of regional economies in areas such as Texas (1986–88) and New England (1989–present). Furthermore, many believe that depository institutions contributed to the real estate overbuilding in these areas by providing funding for marginal projects.

This phenomenon of funding for marginal projects, which may contribute to regional "booms" and "busts," may be due, in part, to information deficiencies on the part of lenders. Major real estate projects often involve a significant lead time (for example, obtaining approval from local zoning bodies, which can take years in some jurisdictions). This long lead time, coupled with a lack of knowledge concerning the plans of other developers and lenders in the area, requires lenders to make lending decisions based on their limited information about future economic conditions. Thus, real estate projects that appear to have been viable when initiated, may be marginal or uneconomic when actually completed, several years later.

Some depository institutions may have made the problem of information deficiency worse by originating real estate loans with very high loan-to-value ratios. By restricting real estate lending to more conservative levels, the new regulation could temper the impact of regional "booms" and "busts" caused by information deficiencies and imprudent lending. The regulation may reduce the magnitude of overbuilding during "boom" times and thus moderate the severity of any subsequent regional recession, with its widespread economic and social costs. It is not possible to attach a quantitative estimate to this category of benefits with the data available at this time.

5. *Simplified monitoring and enforcement of supervisory standards.* Thrift institutions are currently subject to a number of real estate-related statutory and regulatory quantitatively-based restrictions. For example, the Financial Institutions Reform, Recovery and Enforcement Act of 1989 limited thrift institutions' authority to make nonresidential real estate loans to 400% of their total capital. Further, the OTS's risk-based capital rule, promulgated in 1989, treats as "equity investments" the portion of land loans and nonresidential construction loans in excess of 80% loan-to-value ratio. These equity investments are deducted from regulatory capital under the risk-based capital rule. Other restrictions on thrift institutions include LTV ratio limitations, term limitations, and private mortgage insurance requirements for high LTV ratio home mortgage loans. See 12 CFR 545.32, 545.33, 545.35, 545.97, 567.5.

Since 1983, there have been no regulatory quantitative restrictions on real estate lending for commercial banks, providing bank regulators and examiners with a less specific standard in determining prudent standards. More importantly, this may have led to differences of interpretation between examiners and banks.

Alternative 1, as set forth in the proposal, would formally limit the potential discretion and the potential for differences of interpretation. However, flexibility would remain. Alternative 2 would set uniform standards, applicable to all depository institutions, and would thus make it easier for examiners and regulators to monitor performance and to enforce compliance with the standards. It is not possible to attach a quantitative estimate to this category of benefits with the data available at this time.

[1] Total resolutions, including both closures and assisted banks.

[2] Construction and land development loans plus nonfarm nonresidential loans.

E. Costs

1. *Reduced prudent real estate lending.* As discussed earlier, the agencies' intent in drafting the proposed rule is to impose reasonable, prudent standards on all institutions, not to forestall extensions of credit that are sound. Nonetheless, the proposed limitations may result in institutions not making loans that they would otherwise make and that would not result in losses. The depository institution would most likely put these funds to use elsewhere, either in other categories of lending or in investments, but presumably at lower overall rates of return. Alternatively, the depository institution may choose to reduce its liabilities, and thereby shrink in size.

Such reductions in the volume of real estate lending by depository institutions will mean, in some cases, that borrowers will have to pay more to obtain financing from nonbank sources; in other cases, borrowers will not be able to obtain the funds elsewhere, and economically viable activities that would have been financed will not be undertaken. This could result in a net cost to society, if the real estate activities that are not undertaken are the best use of available resources. Such resources may, instead, be expended on activities that will not produce as high a net benefit to society.

It is not possible to attach a quantitative estimate to the potential costs to society with the data available at this time.

To estimate the magnitude of this cost to depository institutions, the reduction in performing real estate lending and the differential nominal earnings rate between real estate lending and other forms of lending or investments must be established. The highly cyclical nature of the commercial real estate industry and the fact that the industry is currently at a low point of a very severe cycle indicate that any reduction in commercial real estate lending may be small when the loan-to-value limits become effective early in 1993. Therefore, it might be more appropriate to estimate the impact of the new regulation on the basis of a less extreme period, such as 1984–1988, rather than more recent years.

Over the 1984–1989 period, the average year-end aggregate volume of non-1-to-4 family real estate loans outstanding at all insured commercial banks was approximately $310 billion. If, for example, the proposed LTV ratio requirements reduced "good" loans in these categories by 2%, and alternative investments earned 50 basis points less than real estate lending for the institutions, then the foregone earnings for the industry would be $31 million per year. The table below shows the estimate of reduced earnings per year for different hypothetical combinations of reductions in loan volume, expressed as a percentage of the 1984–1989 average, and differentials in earnings between real estate lending and alternative investments.

ESTIMATES OF REDUCED EARNINGS PER YEAR AS RESULT OF REDUCTIONS IN "GOOD" REAL ESTATE LENDING FOR COMMERCIAL BANKS (EXCLUDING 1-TO-4 FAMILY REAL ESTATE LOANS

[Dollars in Millions]

Reduction in real estate lending (percent of 1984–89 average)	Earnings differential (basis points)		
	50	100	200
1	$15.5	$31	$62
2	31	62	124
5	77.5	155	310

Similarly, for thrift institutions one method to assess the effect of the proposal is to review the potential reduction in earnings due to a reduction in real estate lending. As discussed above, the OTS believes that the time period 1984–1989 may not be an appropriate benchmark for thrifts. Using instead the lending experience of the last two years, during which real estate loans (excluding 1-to-4 family permanent mortgage loans) average approximately $121 billion, the table below illustrates several hypothetical percentage reductions in losses, earnings differentials, and the corresponding earnings reductions.

ESTIMATES OF REDUCED EARNINGS PER YEAR AS RESULT OF REDUCTIONS IN "GOOD" REAL ESTATE LENDING FOR THRIFTS (EXCLUDING 1-TO-4 FAMILY REAL ESTATE LOANS

[Dollars in Millions]

Reduction in real estate lending (percent of 1984–89 average)	Earnings differential (basis points)		
	50	100	200
1	$6	$12.1	$24.2
2	12.1	24.2	48.4
5	30.25	60.5	121

A special situation with regard to the cost of reduced prudent real estate lending may arise in the case of the LTV requirement for lending by depository institutions to agricultural property. Under Alternative 2 of the proposal, the maximum permissible LTV ratio for loans secured by farmland committed to ongoing agricultural production is 75%. Under Alternative 1 of the proposal, the LTV ratio can be set as high as 80%. In contrast, some government-sponsored lending programs permit higher maximum LTVs for the extensions of credit secured by agricultural property. For example, the maximum LTV ratio under the rules of the Farm Credit Banks is 85%. The lower LTV limit proposed for depository institutions may mean that these institutions will no longer be able to offer competitive terms for agricultural real estate loans.

2. *Impact of exceptions provision.* The degree of restraint on the level of real estate lending under the proposed regulation will be determined by the combination of the LTV limits and the exceptions provision. The latter provision allows each institution to make loans that do not conform with the LTV limits up to an amount equal to 15% of total capital. The exception limit is designed to apply to the total dollar amount of all loans that exceed the appropriate LTV ratio maximum. This exception provision may be of limited value to small depository institutions, since they may reach their exception limit with one or two real estate loans.

To assess the impact of this exception provision on small commercial banks with high levels of capital, the size of the exceptions category was determined for banks with assets up to $300 million and total capital equal to 10% or more of total assets, using Call Report data from year-end 1991. For all 3750 banks, the average limit for loans in the exceptions category would have been $965,000.

The table below gives a more detailed breakdown of these strongly capitalized small banks. The table indicates that the proposed exceptions limit would be very restrictive only for a very small number of banks; the affected banks are generally small in size, and their real estate lending is concentrated in agricultural properties.

IMPACT ON PROPOSED EXCEPTION PROVISION ON STRONGLY CAPITALIZED SMALL BANKS

Total dollar amount of nonconforming loans permitted	No. of banks	Average bank asset size ($ millions)	Maximum bank asset size ($ millions)
$100,000 or less	36	$4.0	$6.5
$100,000–$250,000	352	10.1	18.6
$250,000–$8.5 million	3,362	55.8	300

Using the same criteria discussed above (assets of $300 million or less and total capital to total assets of 10% or more), the table below shows the impact of the proposed exception provision on strongly capitalized small thrifts.

IMPACT OF PROPOSED EXCEPTION PROVISION ON STRONGLY CAPITALIZED SMALL THRIFTS

Total dollar amount of nonconforming loans permitted	No. of thrifts	Average thrift asset size ($ millions)	Maximum thrift asset size ($ millions)
$100,000 or less	5	$3	$5
$100,000–$250,000	20	9	14
$250,000 plus	314	81	300

3. *Compliance costs to depository institutions.* Depository institutions are currently required to have written policies governing real estate lending. LTV ratios have long been regarded as one important factor in the lending decision, and are currently recorded in loan files as part of the normal process of loan documentation and administration. Thus, any requirement to consider LTV ratios in the lending decision and to maintain records that document these ratios should not impose new recordkeeping or paperwork costs.

Alternative 1 of the proposal sets ranges within or below which each institution may set its own maximum LTV ratio limits. However, the proposal establishes the low end of the range as the benchmark and then states that: ". . . each institution would be permitted to establish a higher maximum LTV ratio, within the supervisory range, for each category of loan based on the institution's demonstrated expertise in a particular type of lending, its assessment of local and regional market conditions, the institution's capital position, its asset quality, and other appropriate considerations." An institution that decides to adopt one or more LTV ratio limits above the low end of the relevant range may need to provide support for this decision that results in a recordkeeping or reporting burden.

In addition, the agencies may require institutions to develop information and reporting systems on loans made under the exception provision, in order to monitor the total volume of such loans outstanding and to ensure that the total does not exceed the specified limit.

Any changes in the Call Reports and Thrift Financial Reports because of the new regulation may also require changes in information and reporting systems.

Any new information and reporting systems would require one-time start-up costs in the initial year(s), followed by ongoing data entry and maintenance costs.

The proposed regulation, like the other banking rules, may also result in new legal costs to depository institutions as any failure to conform with a regulation constitutes a violation of law.

It is not possible to attach a quantitative estimate to this category of costs with the data available at this time.

4. *Compliance costs to regulators.* To monitor compliance with the new regulation, regulators will have to make minor adjustments to examination procedures. For example, procedures would have to be developed for examiners to monitor and report on the total volume of loans outstanding in the exceptions category. It is not possible to attach a quantitative estimate to this category of costs with the data available at this time.

5. *Impact on loans to low and moderate income individuals.* Some institutions, to make loans to low and moderate income individuals and loans designed to promote the economic development and rehabilitation of low-income areas, may originate relatively high LTV-ratio loans. The proposal did not include a specific exemption for these types of loans. Thus, the proposal may limit the ability of institutions to make these loans. (It should be noted, however, that the preamble to the proposal states that the agencies do not wish to restrict such lending, and solicits comment on how such programs might be accommodated within the spirit of the statutory mandate of section 304.)

If the proposal reduces such lending activity, costs will be borne by potential borrowers who do not have access to other sources of funding. Fewer losses, however, may be incurred by lenders. It is not possible to attach a quantitative estimate to this category of costs with the data available at this time.

6. *Impact of loans to small businesses.* The proposed rule applies to an institution's loans to all real estate borrowers, regardless of the size of business. Because some of these borrowers are small businesses which may not have as many alternatives as other borrowers for securing credit, the proposed rule may impact the availability of credit to them. It is not possible to attach a quantitative estimate to this category of costs with the data available at this time.

7. *Costs of reduced flexibility.* Alternative 2 of the proposed regulation would set uniform loan-to-value standards for all institutions. This would result in a loss of flexibility, compared to existing policy and to Alternative 1. If institutions cannot set their own real estate lending policies with regard to loan-to-value ratios, they will be less able to tailor their policies to reflect market conditions and management philosophies. Two costs of this reduced flexibility may be losses of market share to nonregulated lenders and reductions in prudent real estate lending (see E. 1., above).

It is not possible to attach a quantitative estimate to this category of cost with the data available at this time.

F. Requests for Comment

The agencies request comment on all the issues discussed above and on the following specific questions:

1. What information is available that can help the agencies quantify the costs and benefits discussed above? In particular, are there data available on loan originations and loss experience by LTV ratio or different categories of real estate lending?

2. What additional costs should the agencies consider on their evaluation of the proposed rule?

3. What additional benefits should the agencies consider in their evaluation of the proposed rule?

4. What alternative formulations of the proposed regulation should the agencies consider to ensure that the objectives of section 304 of FDICIA are met without imposing unnecessary costs on insured depository institutions or on the economy? How would the costs and benefits differ if loan-to-value ratio limits were established in agency policy statements rather than in regulation?

5. Are the proposed real estate lending standards generally the same as those currently prevailing in the industry? If they are not the same, what LTV ratio limitations are generally used by depository institutions or by other credit sources?

6. What are the costs and benefits of setting uniform loan-to-value standards, as opposed to allowing institutions to establish their own policies? How would the costs and benefits change if the regulation were to establish different loan-to-value limits, for example, for different regions of the country, or for large metropolitan areas as opposed to smaller cities or rural areas?

7. Would the proposed exception limit provide sufficient flexibility for small institutions to make prudent loans? If not, what alternative exception provisions might provide sufficient flexibility without providing unwarranted risk?

8. Would the proposed LTV ratio limits restrict economically viable real estate projects? If so, to what extent?

9. Are there significant differences between the costs and benefits of Alternative 1 and those of Alternative 2?

10. Under Alternative 1, each institution would be required to have a lending policy that includes internal LTV ratio limits and specifies the criteria used to qualify loans up to these limits. These standards will be subject to examiner review and would become a basis for determining compliance with the proposed regulation. Is this requirement likely to impose excessive recordkeeping or reporting requirements? And, if so, why? Commenters who believe the requirement will be excessive are requested to provide examples or an estimate of the burden involved.

Office of the Comptroller of the Currency.

Dated: August 12, 1992.

Stephen R. Steinbrink,

Acting Comptroller of the Currency.

Office of Thrift Supervision.

Dated: August 12, 1992.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 92-19622 Filed 8-14-92; 8:45 am]

BILLING CODE 4810-33-M, 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-33-AD]

Airworthiness Directives; Beech 90, 99, 100, 200, and 1900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech 90, 99, 100, 200, and 1900 series airplanes. The proposed action would require a one-time inspection to ensure that the pilot and copilot chair locking pins will fully engage in the seat tracks and modification of the subject chair if a locking pin fails to fully engage or is misaligned. The Federal Aviation Administration (FAA) has received reports of pilot and copilot chair locking pin malfunctions, which in one instance caused the pilot chair to slide back from the full forward position. The actions specified by the proposed AD are intended to prevent inadvertent movement of the pilot or copilot chair, which could result in loss of control of the airplane if it occurs during a critical flight maneuver.

DATES: Comments must be received on or before October 23, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-33-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085; Telephone (316) 676-7111. This information may also be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Aerospace Engineer, Airframe Branch, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4128; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-33-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-33-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received two in-flight reports and three factory reports of pilot and copilot chair malfunctions on certain Beech 90, 99, 100, 200, and 1900 series airplanes. These reports indicate that a chair locking pin was not fully engaged or was misaligned with the subject seat track, which could cause the chair to slide back while in the full forward position. During one of the referenced in-flight incidents, the pilot slid back in the chair during landing and temporarily lost contact with the rudder pedals. In this instance, the pilot was able to maintain control of the airplane without further incident. This condition, if not detected and corrected, could result in loss of control of the airplane if it occurs during a critical flight manuever.

Beech has issued Service Bulletin (SB) No. 2444, dated April 1992, which specifies inspection procedures for the

pilot and copilot chair locking pins for proper engagement when the chairs are in the full forward position. This service bulletin also details modification procedures that, if accomplished, would ensure that a locking pin would fully engage the locking pin receptacle when the chair is in the full forward position.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent inadvertent movement of the pilot or copilot chair, which could result in loss of control of the airplane if it occurs during a critical flight maneuver.

Since the condition described is likely to exist or develop in other Beech 90, 99, 100, 200, and 1900 series airplanes of the same type design, the proposed AD would require a one-time inspection to ensure that the pilot and copilot chair locking pins are fully engaged and the locking pins are properly aligned with the seat tracks, and modification of the subject chair if a locking pin is not fully engaged or is misaligned. The proposed actions would be accomplished in accordance with Beech SB No. 2444, dated April 1992.

The FAA estimates that 4,298 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately .5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $118,195.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 92–CE–33–AD.

Applicability: The following Model and Serial Number airplanes, certificated in any category:

Models	Serial numbers
65–90, 65–A90, 65–A90–1,65–A90–2, 65–A90–3, 65–A90–4, B90, C90, C90A, E90, F90, and H90.	LJ–1 through LJ–1311, LW–1 through LW–347, LA–2 through LA–236, LM–1 through LM–141, LS–1, LS–2, LS–3, LT–1, LT–2, LU–1 through LU–15, and LL–1 through LL–61.
99, 99A, A99A, B99, and C99.	U–1 through U–239.
100, A100, and B100..	B–1 through B–247 and BE–1 through BE–137.
200, 200C, 200CT, 200T, A200, A100–1, A200CT, B200, B200C, B200CT, and B200T.	BB–2 through BB–1405, BC–1 through BC–75, BD–1 through BD–30, BJ–1 through BJ–66, BL–1 through BL–137, BN–1 through BN–4, BP–1 through BP–71, BT–1 through BT–33, BU–1 through BU–12, BV–1 through BV–12, FC–1, FC–2, FC–3, FE–1 through FE–9, FG–1, FG–2, and GR–1 through GR–19.
1900, 1900C, and 1900D.	UA–1, UA–2, UA–3, UB–1 through UB–74, UC–1 through UC–174, UD–1 through UD–6, and UE–1 through UE–20.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent inadvertent movement of the pilot or copilot chair, which could result in loss of control of the airplane if it occurs during a critical flight maneuver, accomplish the following:

(a) Inspect the pilot and copilot chairs in the full forward position to ensure that the chair locking pin on each chair is fully engaged and each locking pin is properly aligned with the seat tracks in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Beech Service Bulletin (SB) No. 2444, dated April 1992.

(b) If either locking pin is not fully engaged or is misaligned with the seat tracks as a result of the inspection required by paragraph (a) of this AD, prior to further flight, modify the subject chair in accordance with the "ACCOMPLISHMENT INSTRUCTIONS" section of Beech SB No. 2444, dated April 1992.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201–0085; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 3, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19494 Filed 8–14–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–67–AD]

Airworthiness Directives; Boeing Models 707, 727, 737, 747, and 757 Series Airplanes; and McDonnell Douglas Models DC–8, DC–9, and DC–10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Boeing and McDonnell Douglas airplanes, which currently requires certain operational and equipment changes and design modifications to be accomplished to maximize fire detection and protection in main deck cargo compartments. The existing rule was issued based on the FAA's determination that the existing Class B cargo compartment firefighting procedures and fire protection features were inadequate, and could result in the loss of an airplane. This action would require certain design modifications and operational requirements to ensure an adequate level of safety on airplanes with Class B cargo compartments. This proposal is prompted by comments from the public and additional information received after issuance of the existing AD.

DATES: Comments must be received no later than October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–67–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning Boeing airplanes, contact Ms. Susan Letcher, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2670, fax (206) 227–1181. For information concerning McDonnell Douglas airplanes, contact Mr. Kevin Kuniyoshi (for McDonnell Douglas airplanes), Aerospace Engineer, Los Angeles Aircraft Certification Office, Mechanical/Environmental and Crashworthiness Section, ANM–131L, FAA, Transport Airplane Directorate, 3229 E. Spring Street, Long Beach, California 90806–2425, telephone (310) 988–5337, fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–67–AD." The post card will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–67–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On May 3, 1990, the FAA issued AD 89–18–12 R1, Amendment 39–6557 (55 FR 11163, March 27, 1990), applicable to certain Boeing and McDonnell Douglas airplanes, to require (1) conversion of all main deck Class B cargo compartments to Class C, or (2) the carriage of all cargo in Class C containers, or (3) the use of individuals trained to fight cargo fires and the installation of certain modifications to the airplane. (Class B and C cargo compartments are defined in 14 CFR 25.857.) That action was prompted by an FAA evaluation of fire protection features of "Combi" airplanes following the loss of a Boeing Model 747–200 Combi that developed a major fire in the main deck Class B cargo compartment. The AD had a two-step compliance program, requiring certain equipment and operational upgrades within one year and more substantial modifications within three years.

After AD 89–18–12 R1 was issued, however, the FAA determined that some of the technical requirements and compliance dates must be re-evaluated based on new information from the FAA Technical Center and unanticipated difficulties encountered by operators in complying with the rule. On April 19, 1991, the FAA issued AD 91–10–02, Amendment 39–6986 (56 FR 20529, May 6, 1991), to supersede AD 89–18–12 R1. AD 91–10–02 was essentially identical to AD 89–18–12 R1, except that it provided relief from the one-year compliance time for some requirements and requested the submittal of comments on all requirements.

AD 91–10–12 was issued through an expedited NPRM process to ensure that relief from certain one-year requirements could be provided prior to the deadline for their compliance, which was May 3, 1991. Because this expedited process would not allow sufficient time for the public to prepare comments on the more extensive three-year requirements, the AD had a provision to continue to accept comments on these proposed requirements after the final rule was issued. This proposal is based on those later comments received; recent test results from the FAA Technical Center; discussions with the Boeing Commercial Airplane Group and industry representatives; and coordination with airworthiness authorities from other countries.

This rulemaking action proposes to supersede, rather than amend, AD 91–10–02 because the changes being proposed are significant. This proposal would eliminate the option provided in paragraph B.3. of AD 91–10–02, which allowed the use of trained firefighters, in conjunction with an extensive cargo compartment liner, a 15-minute halon fire knock-down system, and other equipment upgrades. That option would be replaced with an option to use blankets/containers for all cargo, and a second option to install an extended halon (or equivalent) fire suppression system. Both of these options would also require certain equipment and operational modifications, including manual firefighting equipment, an upgraded barrier between the cargo and passengers, and upgraded smoke detection. This proposal would also eliminate the requirement for a thermal monitoring system, which was required by both AD 89–18–12 R1 and AD 91–10–02. The one-year requirements of AD 91–10–02 would remain essentially unchanged by this proposal, but the three-year requirements would be significantly different, including an extension of the compliance time.

The following summarizes the background for determining the requirements of the proposed rule and the comments that were received after AD 91–10–02 was issued. All comments received were given due consideration in formulating this proposed rule.

Note: The format of this proposed rule has been restructured to be consistent with the standard **Federal Register** style. The main difference in formatting is the paragraph designations. Whereas the previously issued AD's used upper case letters to designate major paragraphs (i.e., "A., B., and C."), the new proposal uses lower case letters in parentheses to designate major paragraphs [i.e., "(a), (b), and (c)"]. Throughout the following discussion all references to specific paragraphs that appeared in the previously issued AD's cite the actual paragraph

designations that appeared in those AD's; references to paragraphs in the proposed rule use the new paragraph designations.

Discussion of Background and Issues

The FAA issued the original "Combi AD," AD 89-18-12 R1, based on a study after a South African Airways (SAA) 747 Combi accident, which showed that past certification criteria for Combis were inadequate. The requirements of AD 89-18-12 R1 applied to all large transport Combis, with no distinction between wide-body and narrow-body airplanes. That AD was superseded by AD 91-10-02, which also made no such distinction. (As noted previously, AD 91-10-02 was essentially identical to AD 89-18-12 R1, except that it provided relief from some of the one-year compliance requirements and requested the submittal of comments on all requirements of the rule.)

Paragraph B. of AD 91-10-02 offered operators three options for compliance by May 3, 1993. These were: (1) Converting the main deck cargo compartment to Class C; (2) carrying all cargo in Class C containers; or (3) using trained firefighters, in conjunction with design improvements that included a cargo compartment liner and a 15-minute halon knock-down system. Because of the high cost to convert to a Class C configuration, and the unavailability and inflexibility of Class C containers, virtually all Boeing Model 747 Combi operators elected to pursue the third option (paragraph B.3. of AD 91-10-02). Many of these operators subsequently reported serious concerns about the cost and logistics of complying with the paragraph B.3. option. Installation of the cargo compartment liner and the logistics of implementing the requirement for trained firefighters appeared to be the most difficult problems for the operators. Concurrently, test data from the FAA Technical Center indicated that the provisions of the paragraph B.3. option did not provide the level of safety previously predicted. In particular, the FAA and the airworthiness authorities from other countries reconsidered the effectiveness of trained firefighters in many fire situations that could occur on large transport category Combis.

Testing at the FAA Technical Center has demonstrated that there are severe limitations to manual firefighting in the cargo compartment environment. A high level of training, including recurrent training, would be required to effectively prepare firefighters to fight airplane cargo fires. There was a reluctance on the part of the Boeing Model 747 operators in Europe and North America to provide such a training program due to cost, labor, and logistics considerations. Moreover, even a highly trained firefighter would only be effective against very small, accessible fires. Other fires would be likely to grow out of control quickly and compromise flight safety. For these reasons, the concept of using trained firefighters is not being considered in this proposed rule, effectively eliminating the paragraph B.3. option of AD 91-10-02.

Removal of the firefighter option would leave operators with two choices: Converting to Class C or using Class C containers. However, the operators have already found these options to be unworkable. As a result, the FAA began to examine alternative methods of compliance that would provide an acceptable level of safety. Consequently, two additional options are being offered in this proposed rule: using containers or blankets for all cargo, or installing a 90-minute halon protection system.

Proposed Blanket/Container Option

Testing at the FAA Technical Center and by the United Kingdom Civil Aviation Authority (CAA) has demonstrated that fire-resistant blankets are an effective method of containing cargo fires. These blankets completely cover the cargo, thereby limiting the supply of oxygen to the fire and effectively preventing its growth and spread to other cargo. Testing has demonstrated that blankets can contain a fire for at least three hours, but it is surmised that blankets could contain a fire considerably longer and, in some cases, actually cause it to extinguish. Similar test results have been achieved with fire resistant containers. Based on this information, the FAA has already granted alternative methods of compliance with AD 91-10-02 to some operators in Alaska to use blankets/containers to achieve an acceptable level of safety. An option, similar to the alternative methods of compliance previously granted to certain U.S. operators operating in Alaska, to use blankets/containers has been included in this proposed rule. The paragraph (b)(3) option of this proposed rule stipulates that blankets/containers may be used for all cargo, but also specifies that associated equipment, airplane modifications, and enhanced training must be incorporated if this option is selected. This option omits the requirement for trained firefighters because testing at the FAA Technical Center has shown that attempting to manually fight a fire under a blanket or in a container could introduce oxygen to the fire and worsen the situation. The best approach appears to be leaving the fire alone while the airplane diverts and lands, except in the unlikely event that it breaks out of the blanket or container. However, enhanced training of the crew for responding to alarms, and monitoring and controlling fires, would still be required under this new option. This rulemaking action also proposes to omit the requirement to provide a means to shut off ventilation to the cargo compartment, currently required in the paragraph B.3. option of AD 91-10-02, because blankets and containers effectively provide this function. This option would continue to require an upgraded barrier between the passenger and cargo compartments to prevent flame and smoke penetration into the passenger compartment.

Operators who elect to accomplish the blanket/container option would be required to submit sufficient data to the FAA to show that the devices selected will adequately contain fires. The FAA may require actual full-scale testing, similar to that performed at the FAA Technical Center, to demonstrate fire containment. The tests conducted at the FAA Technical Center to evaluate fire containment ability have involved the use of a cardboard/paper fire load ignited in a container or under a blanket. This test need not be performed on an airplane, however. Operators would also be required to establish FAA-approved procedures for the use and maintenance of the devices, taking into consideration cargo loading procedures and possible degradation during service.

Although AD 91-10-02 made no mention of the use of blankets, the FAA received some comments regarding them. One commenter states that blankets are difficult to maintain, could prevent fire detection, and could hamper firefighting efforts. The FAA recognizes that the nature of some operations may make this option unfeasible, due to damage control and the logistics of ensuring that enough blankets are available at all the appropriate airports. Although testing at the FAA Technical Center has shown that blankets can tolerate some damage, operators selecting this option would still be required to demonstrate that blankets and containers would be properly maintained.

The FAA concurs that blankets and containers could delay smoke detection, but does not consider that such a delay would be significant. Fires under blankets or in containers would be kept sufficiently small such that they would not pose an immediate threat to the airplane. Additionally, blankets and containers have demonstrated the ability to contain fires for extended periods of time.

The FAA concurs that blankets could hamper firefighting. As previously discussed, testing at the FAA Technical Center has shown that manual intervention of a fire under a blanket or in a container is not advisable. Because blankets and containers have demonstrated successful fire containment, the necessity for manual firefighting is not anticipated, except in the unlikely event that the blanket or container fails to contain the fire. If the blanket/container option is selected, the operator's training program would be required to address this possibility.

Proposed Extended Halon System Option

The FAA recognizes that the blanket/container option may be difficult to implement for some Boeing Model 747 Combi operators in Europe and North America, due to operational and logistical concerns. For this reason, a fourth option, requiring the installation of an extended halon, or equivalent, protection system, has been incorporated in this proposed rule. This option, provided by proposed paragraph (b)(4) of this notice, would require the installation of a halon extinguishing system that provides 90 minutes of protection, along with additional design and equipment modifications, and training requirements. The additional required modifications would be similar to those required by the paragraph B.3. option of AD 91-10-02, except that the extensive liner and the thermal monitoring system requirements would be omitted. The requirement for an upgraded barrier between the passenger and cargo compartments would be retained to prevent flame and smoke penetration into the passenger compartment.

A total of 90 minutes of halon protection was selected for this option based on a survey of current Boeing Model 747 operations in Europe and North America. This survey showed that most existing Combi flights were within 120 minutes of a suitable landing site, and that 90% of flight time was within 90 minutes of a suitable landing site. Upgrading the duration to 120 minutes would impart unreasonable cost, weight, and design penalties on operators of existing airplane designs, particularly in light of the fact that at least 90% of Combi flight time is afforded full halon coverage, and a fire is a rare event. The FAA also recognizes that Combi Class B compartments cannot be easily sealed, due to leakage through the floor. Therefore, in order to obtain 90 minutes of protection, halon must be continuously released into the compartment to account for leakage. To accommodate this, significantly more halon would be required than for sealed areas, such as lower lobe Class C cargo compartments. In the worst case, where the airplane was actually 120 minutes from a suitable landing site, other factors would contribute to the likelihood of a safe landing. First, a halon system certified to provide 3% halon for 90 minutes would continue to provide some protection after the halon decayed below the 3% level. It is also possible that the halon system may extinguish the fire. Rekindling of the fire may not necessarily be instantaneous upon decay of the halon, particularly after 90 minutes, which would allow cooling of the core. In the case of a self-oxygenating fire, the halon would prevent its spread to adjoining cargo, and it is likely that the source would fully expend long before the 90-minute halon system was depleted. Additionally, in the event that manual intervention was required, the additional firefighting equipment and associated training required as part of this proposal would be in place, and the crew would have 90 minutes to prepare for manual firefighting. The operator's training program would be required to consider this possibility.

As previously stated, the extended halon option would not require the extensive cargo compartment liner required by paragraph B.3. of AD 91-10-02. Instead, operators would be required to install an upgraded barrier between the passenger and cargo compartments, and to ensure that critical systems in the cargo compartment are adequately protected for the period between fire initiation and halon effectiveness. In conjunction with the continuous release of halon into the compartment, this would ensure similar benefits to those provided by the use of an extensive liner. Critical systems of concern include flight controls, electrical wiring, airplane structure, and the windows. Exclusion of critical systems from the cargo compartment, use of protective covers, and separation of critical components are methods of providing critical system protection.

The FAA recognizes that some critical systems could remain exposed in the compartment because of their inherent ability to withstand fire conditions, or due to other factors, such as their location in the compartment. In evaluating the methods used by operators who elect this proposed option, the FAA will use the requirements of FAR 25, Appendix F, Part III (Amdt. 25-60) to evaluate the adequacy of protective covers and exposed systems, unless more suitable criteria, such as test data from the FAA Technical Center, can be justified and approved by the FAA. Testing at the FAA Technical Center has shown that flames can break out and that fires can grow rapidly within moments of smoke detection. Because of this, a five-minute exposure period to fire will be assumed in assessing protective features. This five-minute criterion is based on a conservative estimate of the time required to manually confirm the fire after alarm, inform the flight deck, initiate ventilation shut-down and halon release, and for the halon to reach an effective concentration. If five minutes of protection cannot be adequately demonstrated, the FAA may require automatic ventilation shut-down and halon release on alarm, or the installation of a second detection means in the compartment to eliminate the time required to manually confirm the fire.

Proposed Omission of Method to Discharge Extinguishers in Containers

Several commenters recommend that the requirement of paragraph B.3.h. of AD 91-10-02 to provide a method to safely discharge extinguishers into containers be eliminated because no such means currently exists. The FAA concurs, based on FAA Technical Center results that indicate fighting fires in containers or under blankets could actually intensify the fire, and the fact that the options being offered in the proposed rule no longer rely on manual firefighting. The proposed rule reflects this.

Proposed Omission of Thermal Monitoring System Requirement

The firefighter option, provided by paragraph B.3. of AD 91-10-02, required the installation of a thermal monitoring system as a second means of fire detection over the existing smoke detection system. The FAA considered continuing to require the thermal monitoring system in this proposed rule, but determined that it should not be included. The FAA considers that the limited benefit of adding the thermal monitoring system does not justify its high cost for either the blanket/container option or the extended halon option.

The requirement for a thermal monitoring system first appeared in the original Combi AD, AD 89-18-12 R1, as part of the firefighter option. Two different roles for the system were envisioned. One role of the system was to complement the existing smoke detectors to ensure the earliest possible

warning, recognizing that any delay in detection could allow the fire to grow beyond the limited capabilities of the trained firefighter. Of particular concern were deep-seated and low smoke fires. The other role was to provide compartment temperature information to aid in deciding whether to expend the 15-minute halon knock-down system, required under that option, immediately or to attempt to manually fight the fire first. In either case, the requirement for the thermal monitoring system was closely associated with the use of trained firefighters. Since the new options offered in this proposed rule do not rely on trained firefighters, the requirement for a thermal monitoring system is unnecessary.

The FAA's justification for omitting the thermal monitoring system from the paragraph (b)(3) option of this proposed rule is that blankets/containers have demonstrated containment of fires for long time periods. Although smoke detection could be delayed, the contained fire would not be immediately threatening to the airplane, and any minor delay in detection would not prevent a safe diversion to the nearest suitable airport. In addition, limited testing at the FAA Technical Center using blankets has shown that the difference between detection times for smoke detection and infrared-based thermal monitoring systems is insignificant.

The FAA's justification for not requiring a thermal monitoring system for the extended halon option provided by paragraph (b)(4) of this proposed rule is that this option is similar to a Class C compartment, since both rely on the use of halon for fire control. The main difference between the extended halon option and an actual Class C compartment is that a Class C compartment requires a full liner and halon protection for the maximum diversion flight time. The role of the liner in Class C compartments is to contain the halon, such that a sufficient concentration is maintained, and to protect local systems prior to halon effectiveness. Although the option provided by proposed paragraph (b)(4) would not require this liner, it would provide the benefits of the liner. Halon concentration would be maintained for 90 minutes. This would probably require continuous release of halon into the compartment to ensure adequate concentration due to leakage. Operators would also be required to demonstrate adequate protection of critical systems, as previously discussed. The extended halon option of proposed paragraph (b)(4) therefore would provide a similar level of safety to a Class C compartment for 90 minutes. Smoke detectors alone have demonstrated acceptable performance in the past for Class C compartments. In addition, testing at the FAA Technical Center has shown that the difference between the time a fire in a polyethylene covered pallet is detected by a thermal detector and the time it is detected by a smoke detector is insignificant. Therefore, a thermal monitoring system is not necessary for the proposed paragraph (b)(4) option.

The FAA received several comments regarding the specific design of thermal monitoring systems. These comments have been addressed, below, from a general standpoint, although the thermal monitoring system requirement has been removed from the proposed rule.

One commenter recommends that threshold temperatures for the thermal monitor should be established just above the maximum expected ambient temperature, which is 160 degrees Fahrenheit. The commenter indicates that a lower threshold could be established, while preventing false alarms, by monitoring the rate of temperature rise and integrating the thermal monitoring system with smoke detection. The FAA concurs that providing the earliest detection with minimal false alarms for any fire detection system is ideal, and that monitoring the rate of temperature rise could play a role in obtaining earlier detection. Integrating a thermal monitoring system with the smoke detection possibly could provide earlier detection and minimize false alarms, although the FAA has no data to indicate that smoke detection systems alone are inadequate.

Proposed Omission of Extensive Liner Requirement

The paragraph B.3. option of AD 91–10–02 required the installation of an extensive cargo compartment liner. Under that option, the liner would have been required on all surfaces of the cargo compartment, with the exception of the floor. The intent of the requirement was to protect the critical systems and structure of the airplane until the trained firefighter was able to effectively control and extinguish the fire. The FAA received numerous comments concerning the severe cost and limited benefit of the extensive liner.

This rulemaking action proposes to remove the paragraph B.3. option, due to concerns about the effectiveness of manual firefighting, as previously discussed. That option would be replaced with two options: (1) The use of blankets/containers for all cargo, or (2) the installation of a 90-minute halon protection system. The FAA considered the cost to operators of existing Combi airplane designs in formulating the new options. The FAA considered continuing to require the extensive cargo compartment liner for the new options being proposed, but determined that such a liner is unnecessary.

A liner would have two roles: Containment of the fire until it is controlled, and containment of halon, if required (usually applies to lower lobe Class C compartments). FAA Technical Center testing has demonstrated that blankets/containers can effectively contain and control cargo fires, eliminating the need for a liner when these devices are used. The FAA considers that the extensive liner would not be necessary for the extended halon option, provided that critical systems and structure are protected for the period prior to halon effectiveness, and sufficient halon concentration is maintained in the compartment through continuous halon release.

Single Rule Approach for Wide-Body and Narrow-Body Airplanes

Two commenters to AD 91–10–02 recommend that separate AD's be prepared: One for wide-body airplanes and another for narrow-body airplanes. The FAA disagrees. The threat of an uncontrolled fire is equivalent for both types of airplanes. The FAA recognizes that the solutions may differ based on size of the airplane. However, airline route structure will also have an impact on the design. For instance, the design solution for wide-body Combis involved in long over-water flights would differ significantly from the same airplanes used on shorter route structures. It is impractical to address each operator's unique circumstance in this AD or through a collection of AD's, due to the varied airplane types and route structures. The FAA considers that the case with the most significant impact, from a design standpoint, is the use of wide-body airplanes on long route structures, such as some of the European and North American Boeing 747 Combi operations. The details of this proposed rule are based on this case, recognizing that the options being provided would ensure adequate safety for all Combi operations. The FAA fully understands that an alternative for some of the requirements, such as a reduction in the quantities of halon or protective breathing specified in this proposal, could be justified for some operators, such as short-range narrow-body airplane operators in Alaska. Operators who can demonstrate that full compliance with the specific requirements of this proposed rule is not necessary in order to ensure adequate safety are encouraged to apply for approval of alternative methods of compliance with the proposed rule, as provided for by paragraph (d).

Proposed Change to Preflight Inspection Requirement

Several commenters recommend that a person other than the flight deck crewmember or firefighter be permitted to perform the preflight inspection of the cargo compartment required by paragraphs A. and B. of AD 89–18–12 R1 and AD 91–10–02. The FAA concurs. The intent of that requirement was to ensure that proper access was provided for manual firefighting and to provide a general familiarization with the type and layout of cargo in the compartment. This inspection was, in no manner, intended to relieve the pilot of his/her responsibility to ensure proper operation of the airplane, as required by FAR 91.3. Although the trained firefighter option has been eliminated from this proposed rule, the proposal retains the preflight inspection requirement for familiarization only, and includes an additional requirement for a crewmember to be assigned "firefighting" duties for each flight. Operators would be required to ensure that crewmembers assigned firefighting duties have received adequate training in performing preflight inspections, responding to alarms, and monitoring and controlling cargo compartment fires, based on the option selected. The preflight inspection would ensure a first hand knowledge of the cargo layout in the compartment in the event that a fire occurred. The intent of this inspection is not to verify correct loading of the compartment per the loading placards. The FAA intends this preflight inspection to be performed by the crewmember who has been assigned "firefighter" duties for the flight and who has received appropriate training as specified in this proposed rule. This crewmember would not necessarily need to be a member of the flight crew. As stated previously, however, this preflight inspection is not intended to relieve the pilot of responsibilities in accordance with FAR 91.3. The proposed rule reflects this.

Requirement for One-Minute Smoke Detection

AD 91–10–02 required that smoke detectors be upgraded to the one-minute detection criteria of FAR 25.858 (Amendment 25–54). This would continue to be required in this proposed rule. One commenter recommends that the criteria for smoke detection be an average detection time under 70 seconds with maximum allowable excursions to 100 seconds, in order to decrease the likelihood of false alarms. This commenter also proposes that smoke generation during testing continue beyond 60 seconds until smoke detection occurs. Approval of the commenter's proposal is not within the scope of this rulemaking action because it would impact future certification of all smoke detection systems. However, the FAA is currently in the process of evaluating this proposal, independent of this AD action.

The FAA recognizes that some existing smoke detection systems installed on older airplanes, which do not necessarily meet the FAR 25.858 one-minute detection criteria, may be adequate for the purposes of this proposed rule, particularly in light of the new options being proposed and the significant cost of implementing one-minute smoke detection systems on older airplanes. These older systems were certificated to the older FAA five-minute detection criteria. The FAA recognizes that, although certain systems may have been certificated to the five-minute criteria, they actually perform significantly better than the five-minute requirement. For instance, the FAA has reviewed Model 747–100/–200/–300 Combi certification test data, and determined that the existing smoke detection systems on those airplanes typically alarm within two minutes, and that most detections occur in a considerably shorter period of time. Detection delays would be most appreciable in small fires that produce little smoke, which are not immediately threatening to the airplane. Very little delay would occur in detection of the most threatening fires, which are those that erupt violently and grow quickly. The FAA would consider approving as alternative methods of compliance those existing smoke detection systems on older airplanes, which may not meet the FAR 25.858 one-minute detection criteria, if these systems have demonstrated sufficient early detection in testing and in service.

Proposed Increase in Protective Breathing/Garment Quantities

This rulemaking action also proposes to modify the quantity requirements for protective garments and protective breathing equipment (PBE). AD 91–10–02 does not specify a quantity of protective garments. This proposed rule specifies two sets of garments, which would provide for two persons to enter the compartment for manual firefighting. This proposed rule also would increase the amount of PBE protection required from 30 minutes to 30 minutes for two persons, plus an additional quantity of 90 minutes of PBE for one person, in order to allow for continuous monitoring of the compartment after alarm until the airplane has landed safely. This proposed rule would require that all PBE and protective garments be located outside the cargo compartment.

Proposed Change in Illumination Criteria

Several commenters recommend the use of the Boeing Model 747–400 Combi sidewall lighting configuration to meet the illumination requirement of paragraph B.3.f. of AD 91–10–02. The FAA concurs that the Model 747–400 lighting configuration is adequate, and the proposed rule reflects Model 747–400 lighting data. The FAA recognizes that the lighting requirement was included in the existing Combi AD as an integral part of the firefighter option. Because that option has been removed from this proposed rule, the lighting requirements for the blanket/container and extended halon options have been revised to allow for qualitative acceptance of existing lighting on older airplanes as the FAA determines to be appropriate on a case-by-case basis. The FAA also recognizes that tactile or low level lighting markers could be used to identify pathways in lieu of pathway lighting. Such methods will be evaluated by the FAA through alternative methods of compliance requests. (Pathways include longitudinal and cross aisles.)

One commenter suggests that the lighting criteria of paragraph B.3.f. of AD 91–10–02 would increase the risk of fire in the cargo compartment. The FAA has no data to support this. The proposed rule also provides for a qualitative evaluation of existing systems to determine if they are adequate to meet the intent of the requirement.

Proposed Extension of Compliance Time

Several commenters request extensions of compliance times for various requirements of paragraph B. of AD 91–10–02. The FAA concurs that it is unrealistic to require full compliance by May 3, 1993, for the requirements of paragraph B. of the existing AD, particularly in light of the significant changes which are being proposed in this action. These commenters also recommend that compliance dates be coordinated with the Joint Airworthiness Authorities (JAA), since this rulemaking action has a worldwide impact. The FAA concurs and has been coordinating all portions of this proposed rule with the JAA and

Transport Canada Aviation. This action proposes to extend the compliance period for these requirements [specified in paragraph (b) of this proposed rule] by approximately two years.

Other Issues

Several commenters recommend that cargo accessibility could be adequately demonstrated in a ground test, rather than a flight test. The FAA concurs, and the proposed rule reflects this.

One commenter recommends the removal of the Model DC–9–80 series airplanes from the applicability of the rule because these airplanes do not have certified main deck cargo compartments. The FAA concurs and the proposed rule reflects this.

One commenter requests that the individual airline's safety record for cargo handling be taken into account in establishing requirements. The FAA agrees with the commenter, but such a provision in the proposed rule is impractical. In the past, the FAA has taken airline safety records, as well as airplane size and airline route structure, into account in granting alternative methods of compliance with AD 89–18–12 R1. The FAA will continue to recognize that the specific requirements of this proposed rule can be "tailored," based on the individual circumstances of each operator, through requests for approval of alternative methods of compliance.

One commenter disagrees with relaxation of the requirements of AD 91–10–02 for economic reasons. The FAA concurs. Although significant changes are being proposed in this rulemaking action, the options being presented have been determined to provide a greater level of safety than those specified in AD 91–10–02. These options have the additional benefit of being more acceptable to the affected operators from both economic and operational standpoints.

One commenter states that crew notification of a fire is one of the most important safety measures. The FAA concurs with the comment, and considers that the options being offered in this proposed rule ensure adequate crew notification.

Cost Impact

There are approximately 278 Boeing Models 707, 727, 737, 747, and 757 series airplanes and 124 McDonnell Douglas Model DC–8, DC–9, and DC–10 series airplanes of the affected design in the worldwide fleet. It is estimated that approximately 80 Boeing Model 707, 727, 737, 747, and 757 series airplanes, and 79 McDonnell Douglas Model DC–8, DC–9, and DC–10 series airplanes, of U.S. registry have been certificated to operate with a Class B main deck cargo compartment. Many of these airplanes are operated permanently in the all-passenger configuration and are, therefore, not affected by this rule. Approximately 40 of these airplanes, currently operated by U.S. operators in the mixed cargo/passenger configuration, are affected by this amendment.

The design alternative selected by the operator and the type of airplane will have a significant impact on the cost of complying with this AD. The highest cost option is expected to be the conversion to a Class C compartment, as defined in paragraph (b)(1) of this proposal.

A conservative cost estimate for incorporating the extended halon option into Boeing Model 747 airplanes, based upon costs of required materials, labor, and testing, is $2,000,000 per airplane. A conservative estimate for incorporating the blanket/container option on Boeing Model 747 airplanes, based upon the costs of required materials, labor, and testing, is $200,000.

The FAA is not aware of any U.S. Model 747 Combi operators. Most U.S.-registered Combis are Boeing Models 727 and 737 airplanes operated in Alaska. The FAA has granted these operators alternative methods of compliance with AD 89–18–12 R1 in the past. These alternative methods of compliance are acceptable to meet the intent of this proposed rulemaking action. Therefore, this proposed rulemaking should incur no additional cost on U.S operators.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6986 (56 FR 20529, May 6, 1991) and by adding a new airworthiness directive (AD), to read as follows:

Boeing and McDonnell Douglas: Docket No. 92–NM–67–AD. Supersedes AD 91–10–02, Amendment 39–6986.

Applicability: Boeing Models 707, 727, 737, 747, and 757 series airplanes and McDonnell Douglas Models DC–8, DC–9, and DC–10 series airplanes; equipped with a main deck Class B cargo compartment, as defined by Federal Aviation Regulations (FAR) 25.857(b) or its predecessors, with a volume exceeding 200 cubic feet; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To minimize the hazard associated with a main deck Class B cargo compartment fire, accomplish the following:

(a) Within one year after May 3, 1990 (the effective date of Amendment 39–6557, AD 89–18–12 R1), or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the following in accordance with the appropriate technical data approved by the Manager, Seattle Aircraft Certification Office (for Boeing series airplanes), FAA, Transport Airplane Directorate; or the Manager, Los Angeles Aircraft Certification Office (for McDonnell Douglas series airplanes), FAA, Transport Airplane Directorate:

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

"FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT: Prior to flight, a flight deck crewmember must make a visual inspection throughout the Class B cargo compartment to verify access to cargo and the general fire security of the compartment after the cargo door is closed and secured."

Note: This visual inspection is in no manner intended to relieve the pilot of his/her responsibility to ensure safe operation of the airplane, as required by FAR 91.3.

(2) Incorporate the following systems and equipment:

(i) Provide a minimum of 48 lbs. Halon 1211 fire extinguishant, or its equivalent, in portable fire extinguisher bottles readily available for use in the cargo compartment. At least two bottles must be a minimum of 16 lb. capacity.

(ii) Provide at least two Underwriters Laboratories (UL)2A (2–12 gallon) rated water portable fire extinguishers, or its equivalent, adjacent to the cargo compartment entrance for use in the compartment.

(iii) Provide a means for two-way communication between the flight deck and the interior of the cargo compartment.

(iv) Install placards in conspicuous place(s) within the cargo compartment clearly defining the cargo loading envelope and limitations that provide sufficient access of sufficient width for firefighting along the entire length of at least two sides of a loaded pallet or container. Amend the appropriate Weight and Balance and loading instructions by description and diagrams to include this information.

(3) Incorporate the following systems and equipment:

(i) Provide appropriate protective garments stored adjacent to the cargo compartment entrance.

(ii) Provide a minimum of 30 minutes of protective breathing. This equipment must meet the requirements of Technical Standard Order (TSO) C–116, Action Notice 8150.2A, or equivalent, and be stored adjacent to the cargo compartment entrance.

(b) Within thirty months after the effective date of this AD, or prior to carrying cargo in a Class B cargo compartment, whichever occurs later, accomplish the requirements of paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD:

(1) *Option 1:* Modify the Class B cargo compartment to comply with the requirements for a Class C cargo compartment, as defined in FAR 25.855 (Amdt. 25–60), 25.857(c), and 25.858 (Amdt. 25–54).

(2) *Option 2:* Modify all main deck Class B cargo compartments to require the following placard installed in conspicuous locations approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate (for Boeing airplanes), or the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate (for McDonnell Douglas airplanes), throughout the compartment:

"Cargo carried in this compartment must be loaded in an approved flame penetration-resistant container meeting the requirements of FAR 25.857(c) with ceiling and sidewall liners and floor panels that meet the requirements of FAR 25, Appendix F, Part III, (Amdt. 25–60)."

(3) *Option 3:* In addition to the requirements of paragraph (a)(2) of this AD, accomplish the following in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes):

(i) Carriage of all cargo in Class B cargo compartments must meet the requirements of (b)(3)(i)(A) or (b)(3)(i)(B) of this AD:

(A) Cover cargo with fire containment covers (FCC).

(B) Carry cargo in fire containment containers.

(ii) Provide a smoke or fire detection system in the Class B cargo compartment that meets the requirements of FAR 25.858 (Amdt. 25–54) and also provides an aural and visual warning to the crewmembers in the passenger compartment.

(iii) Provide a barrier between the Class B cargo compartment and the passenger compartment to prevent the penetration of smoke or flames from the cargo compartment into the passenger compartment. The barrier must extend from the cargo compartment floor to the upper crown area of the fuselage, and from the right sidewall to the left sidewall of the cargo compartment, completely isolating the cargo compartment from the passenger compartment. The barrier and associated seals/interfaces must meet the requirements of FAR 25, Appendix F, Part III (Amdt. 25–60).

(iv) Provide illumination of the Class B cargo compartment as specified in paragraphs (b)(3)(iv)(A) and (b)(3)(iv)(B) of this AD:

(A) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height, or as approved by the FAA.

(B) Illumination of the longitudinal access pathways, required by paragraph (a)(2)(iv) of this AD, with an average illumination of 5 foot-candles when measured at 40 inch intervals along a line that is within 2 inches of and parallel to the floor centered on the pathway, or illumination under visibility conditions likely to occur in the cargo compartment in the event of a fire.

(v) Establish FAA-approved procedures and training as specified in paragraphs (b)(3)(v)(A) and (b)(3)(v)(B) of this AD:

(A) Use and maintenance of items required by paragraph (b)(3)(i).

(B) Responding to alarms, and monitoring and controlling Class B cargo compartment fires.

(vi) Provide a viewport into the Class B cargo compartment from the passenger compartment. The viewport must be located such that a crewmember can readily identify the overall smoke conditions in the compartment prior to entering it.

(vii) Demonstrate the following features and functions, specified in paragraphs (b)(3)(vii)(A), (b)(3)(vii)(B), and (b)(3)(vii)(C) of this AD:

(A) Smoke or Fire Detection System, required by paragraph (b)(3)(ii) of this AD, by flight test.

(B) Prevention of smoke penetration into occupied compartments [Refer to FAR 25.857(b)(2) and 25.855(e)(2).], by flight test.

(C) Cargo accessibility, as specified in paragraph (a)(2)(iv) of this AD.

(viii) Provide the following systems and equipment:

(A) Provide appropriate protective garments for two persons stored in the passenger compartment, adjacent to the Class B cargo compartment entrance.

(B) Provide a minimum of 120 minutes of protective breathing for one person, and an additional 30 minutes of protective breathing for an additional person. This equipment must meet the requirements of Technical Standard Order (TSO) C–116, Action Notice 8150.2A, or equivalent, and at least 30 minutes of the total protective breathing must be stored adjacent to the Class B cargo compartment entrance. All protective breathing equipment must be located outside the cargo compartment.

(ix) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

"FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT: Prior to flight, a crewmember who is assigned firefighting responsibility for the flight must make a visual inspection throughout the Class B cargo compartment for familiarization, after the cargo door is closed and secured."

Note: This visual inspection is in no manner intended to relieve the pilot of his/her responsibility to ensure safe operation of the airplane, as required by FAR 91.3.

(4) *Option 4:* In addition to the requirements of paragraph (a)(2) of this AD, accomplish the following in accordance with technical data approved by the Manager, Seattle Aircraft Certification Office (for affected Boeing series airplanes), or the Manager, Los Angeles Aircraft Certification Office (for affected McDonnell Douglas series airplanes):

(i) Provide a cargo compartment fire extinguishing system in the Class B cargo compartment that provides an initial fire extinguishant concentration of at least 5 percent of the empty compartment volume of Halon 1301 or equivalent, and a fire suppression extinguishant concentration of at least 3 percent of the empty compartment volume of Halon 1301 or equivalent, for a period of time not less than 90 minutes.

(ii) Provide a smoke or fire detection system in the Class B cargo compartment that meets the requirements of FAR 25.858 (Amdt. 25–4) and also provides an aural and visual warning to the crewmembers in the passenger compartment.

(iii) Provide a means from the flight deck to shut off ventilation system inflow to the Class B cargo compartment.

(iv) Provide a barrier between the Class B cargo compartment and the passenger compartment to prevent the penetration of smoke or flames from the cargo compartment into the passenger compartment. The barrier must extend from the cargo compartment floor to the upper crown area of the fuselage, and from the right sidewall to the left sidewall of the cargo compartment, completely isolating the cargo compartment from the passenger compartment. The barrier and associated seals/interfaces must meet the requirements of FAR 25, Appendix F, Part III (Amdt. 25–60).

(v) Provide appropriate protection of the cockpit voice and flight data recorders, and all systems or components required for safe flight and landing of the airplane, unless it can be demonstrated that these systems are not susceptible to damage in the event of a fire in the Class B cargo compartment.

(vi) Provide illumination of the Class B cargo compartment as specified in paragraphs (b)(4)(vi)(A) and (b)(4)(vi)(B) of this AD:

(A) General area illumination of the cargo with an average illumination of 0.1 foot-candle measured at 40-inch intervals both at one-half the pallet or container height, and at the full pallet or container height, or as approved by the FAA.

(B) Illumination of the longitudinal access pathways, required by paragraph (a)(b)(iv) of this AD, with an average illumination of 5 foot-candles when measured at 40 inch intervals along a line that is within 2 inches of and parallel to the floor centered on the pathway, or illumination under visibility conditions likely to occur in the cargo compartment in the event of a fire, as approved by the FAA.

(vii) Establish FAA-approved procedures and training for responding to alarms, and monitoring and controlling cargo compartment fires.

(viii) Provide a viewport into the Class B cargo compartment from the passenger compartment. The viewport must be located such that a crewmember can readily identify the overall smoke conditions in the compartment prior to entering it.

(ix) Demonstrate the following features and functions:

(A) Fire extinguishant concentration, required by paragraph (b)(4)(i) of this AD, by flight test.

(B) Smoke or fire detection system, required by paragraph (b)(4)(ii) of this AD, by flight test.

(C) Prevention of smoke penetration into occupied compartments [Refer to FAR 25.857(b)2 and 25.855(e)2.], demonstrated by flight test.

(D) Cargo accessibility, as specified in paragraph (a)(2)(iv) of this AD.

(x) Provide the following systems and equipment:

(A) Provide appropriate protective garments for two persons stored in the passenger compartment, adjacent to the Class B cargo compartment entrance.

(B) Provide a minimum of 120 minutes of protective breathing for one person, and an additional 30 minutes of protective breathing for an additional person. This equipment must meet the requirements of Technical Standard Order (TSO) C-16, Action Notice 8150.2A, or equivalent, and at least 30 minutes of the total protective breathing must be stored adjacent to the Class B cargo compartment entrance. All protective breathing equipment must be located outside the cargo compartment.

(xi) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement:

"FOR EACH FLIGHT IN WHICH CARGO IS TRANSPORTED IN THE CLASS B CARGO COMPARTMENT: Prior to flight, a crewmember who is assigned firefighting responsibility for the flight must make a visual inspection throughout the Class B cargo compartment for familiarization, after the cargo door is closed and secured."

Note: This visual inspection is in no manner intended to relieve the pilot of his/her responsibility to ensure safe operation of the airplane, as required by FAR 91.3.

(c) Compliance with paragraphs (b)(1) or (b)(2) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD. Compliance with paragraphs (b)(3) or (b)(4) of this AD constitutes terminating action for the requirements of paragraphs (a)(1) and (a)(3) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for Boeing series airplanes); or the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate (for McDonnell Douglas series airplanes). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager of the Seattle ACO, or the Manager of the Los Angeles ACO, as appropriate.

Note: Alternative methods of compliance previously granted for Amendment 39-557, AD 89-18-12 R1; or Amendment 39-986, AD 91-60-02; continue to be considered as acceptable alternative methods of compliance for this amendment.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19485 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-137-AD]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Model DHC-7 series airplanes. This proposal would require installation of a water deflector over the elevator servo drum assembly. This proposal is prompted by a report of uncommanded pitch excursion that occurred during flight while the autopilot was engaged, apparently caused by ice accumulation in the elevator servo drum assembly. The actions specified by the proposed AD are intended to prevent freezing of the elevator servo drum assembly, which could lead to an uncommanded pitch excursion with the autopilot engaged and reduced controllability of the aircraft.

DATES: Comments must be received by September 22, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-137-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Michele Maurer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-137-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-137-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on all de Havilland Model DHC-7 series airplanes. Transport Canada Aviation advises that a case has been reported of uncommanded pitch excursion during flight, while the autopilot was engaged. Investigation has determined that water ingested into the elevator servo drum assembly had subsequently frozen, thus restricting elevator servo drum movement. The autopilot system generated excessive commands in order to overcome this restriction. A sudden release of the frozen drum, after compensatory autopilot elevator input, caused a rapid elevator deflection, which resulted in pitch excursion. This condition, if not corrected, could result in freezing of the elevator servo drum assembly, which could lead to an uncommanded pitch excursion with the autopilot engaged and reduced controllability of the airplane.

De Havilland, Inc. has issued Service Bulletin 7-55-10, dated October 25, 1991, which describes procedures for installation of Modification No. 7/2605, which involves installing a water deflector onto the front spar of the vertical stabilizer, directly above the elevator servo drum assembly. The water deflector will shield the assembly from draining moisture and prevent restriction of the elevator servo and cable drum. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-92-11 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installation of a water deflector onto the front spar of the vertical stabilizer, directly over the elevator servo drum assembly. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $75 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $17,500. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92-NM-137-AD.

Applicability: All Model DHC-7 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent freezing of the elevator servo drum assembly, which could lead to an uncommanded pitch excursion with the autopilot engaged and reduced controllability of the aircraft, accomplish the following:

(a) Within 60 days after the effective date of this AD, install a water deflector onto the front spar of the vertical stabilizer, directly over the elevator servo assembly, Modification No. 7/2605, in accordance with paragraph III. of de Havilland Service Bulletin 7-55-10, dated October 25, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 23, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19484 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-133-AD]

Airworthiness Directives; de Havilland, Inc., Model DHC-7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model DHC-7 series airplanes. This proposal would require a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary. This proposal is prompted by a report of a takeoff procedure that was completed with an inadvertent flap setting of 0 degrees. The actions specified by the proposed AD are intended to prevent a takeoff with an incorrect flap indication of 25 degrees when the flaps are retracted, which could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane.

DATES: Comments must be received by September 21, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-133-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Michèle Maurer, Systems and Equipment Branch, ANE-173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-133-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-133-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC-7 series airplanes. Transport Canada Aviation advises that a case has been reported of a takeoff procedure that was completed with an inadvertent flap setting of 0 degrees. The flap selector had been set at 25 degrees and the flap indicator was reading 25 degrees. A trailing flap caution light was illuminated during takeoff. The caution light indicated a trailing flap relay failure, which caused the flaps to "lock" at 0 degrees; they could be retracted, but not extended. The investigation established that two resistors, 2751-R3 and 2751-R4, supplied as part of the flap position trim control box assembly of Modification No. 7/2093, were interchanged, resulting in an erroneous reading on the flap indicator. This combination of problems caused the flaps to "lock" at 0 degrees and the flap indicator to incorrectly read 25 degrees. This condition, if not corrected, could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane.

De Havilland, Inc., has issued Alert Service Bulletin A7-27-86, dated December 19, 1991, which describes procedures for a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-92-13, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, and modification, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,500. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92-NM-133-AD.

Applicability: Model DHC-7 series airplanes; serial numbers 3 and subsequent, having Modification No. 7/2093 installed, except airplanes fitted with Customer Special Installation 78358 (flap indication rework); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.To prevent a takeoff with an incorrect flap indication, which could lead to insufficient lift and increased takeoff distance, resulting in reduced controllability of the airplane, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform a one-time inspection to detect incorrect ohm readings of the flap position trim control box assembly, in accordance with paragraph III. of de Havilland Alert Service Bulletin A7-27-86, dated December 19, 1991. If any discrepancies are detected, prior to further flight, modify the assembly in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 22, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19491 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

Revision of the Commerce Control List; Chemical Weapons Precursors

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of receipt of petition for rulemaking and request for public comments.

SUMMARY: The Bureau of Export Administration maintains export controls on chemical weapons precursors (classified under ECCN 1C60C on the Commerce Control List (CCL)) to most destinations. However, General License G-DEST is available for one sample shipment of a 55-gallon container (209 liters) or less of each chemical to any one consignee per calendar year except to certain specified countries. General license G-DEST is also available, except to Country Groups S and Z, and the South African military and policy, for compounds that are created from chemicals controlled under ECN 1C60C provided that the compound itself is not controlled. Mixtures that contain chemicals controlled under ECCN 1C60C are controlled as precursors, except when the precursor chemical is merely an impurity that was not intentionally added or is a normal ingredient in consumer goods intended for retail sales.

Several members of the business community have requested revisions to the controls on mixtures containing chemical weapons precursors revised to cover additional business situations. BXA, in consultation with other government agencies, has explored several ways of doing this. One way is to allow shipments of mixtures under general license G-DEST if the precursor chemical comprises is less than a given percent by weight for dry mixtures or volume for liquids. G-DEST would continue to be available for precursor chemicals that are a normal ingredient in consumer goods intended for retail sales and when the precursor is merely an impurity that was not intentionally added.

This notice of receipt of petition and request for comments is being issued to solicit public comments on the specific situations and problems that the business community faces when exporting mixtures containing chemical weapons precursors. Upon review of public comments, BXA will consider publishing a rule to revise the mixture provision for export of chemicals classified under ECCN 1C60C on the CCL.

DATES: Comments must be received by September 16, 1992.

ADDRESSES: Written comments (six copies) should be sent to Nancy Crowe, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe, Regulations Branch, Office Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-4819.

Authority: Pub. L. 95-223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended.

Dated: August 10, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92-19370 Filed 8-14-92; 8:45 am]

BILLING CODE 3510-DT-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1145

Proposed Rule to Regulate Under the Consumer Product Safety Act Risks of Injury Associated With Lighters That Can Be Operated by Children

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has initiated a rulemaking proceeding to develop mandatory requirements to reduce risks of injury that are associated with

cigarette lighters and similar lighters because such lighters can be operated by young children. In this notice, the Commission proposes, under section 30(d) of the Consumer Product Safety Act, to issue any rule or to take any other regulatory action to address risks of injury that are associated with lighters due to the fact that they can be operated by children under the Consumer Product Safety Act (CPSA) rather than the Federal Hazardous Substances Act (FHSA) or the Poison Prevention Packaging Act (PPPA).

DATES: Comments concerning this proposal must be received in the Office of the Secretary by September 16, 1992.

ADDRESSES: Written comments should be addressed to Sheldon Butts, Deputy Secretary, Comment CC 92–2, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, and mailed to that address or delivered to room 528, 5401 Westbard Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Harleigh Ewell, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980.

SUPPLEMENTARY INFORMATION

A. Introduction

The Commission proposes to regulate under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051–2083) those risks of death and injury that are associated with lighters intended for igniting smoking materials and that are due to the fact that the lighters can be operated by young children. Such risks would be regulated under the CPSA rather than under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261–1277) or the Poison Prevention Packaging Act (PPPA) (15 U.S.C. 1471–1476).

Section 30(d) of the CPSA (15 U.S.C. 2079(d)) provides that a risk of injury associated with a consumer product which could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA. Elsewhere in this issue of the **Federal Register**, the Commission is proposing a rule under the CPSA that would impose child-resistance requirements on disposable lighters and novelty lighters. The comment period on that proposal is 75 days. Section 30(d) provides, however, that the comment period on a proposal to regulate under the CPSA may not exceed 30 days. Accordingly, comments on this proposed rule under section 30(d) are due September 16, 1992.

The Commission has considered available information concerning risks of death and injury associated with lighters that can be operated by children, and the applicable provisions of the CPSA, the FHSA, and the PPPA. The Commission recognizes that it might be possible to adequately reduce those risks by action taken under the FHSA or the PPPA. Nevertheless, the Commission has preliminarily determined that it is in the public interest to regulate those risks of injury under the CPSA rather than the FHSA or the PPPA because the authority of the CPSA is more appropriate to address risks of injury associated with a mechanical, flame-producing device than the authorities of the FHSA or the PPPA.

B. Background

In the **Federal Register** of March 3, 1988 (53 FR 6833), the Commission published an advance notice of proposed rulemaking (ANPR) to begin a proceeding for development of requirements for lighters to address risks of injuries from fires started by children playing with lighters. In the ANPR, the Commission estimated that during the years 1980 through 1985, residential fires started by children playing with lighters claimed an average of 120 lives each year. The Commission estimated that during the same period over 750 persons were injured each year, on average, in residential fires started by children playing with lighters.

Lighters are flame-producing devices used by consumers primarily to light cigarettes and other smoking materials. More than 500 million lighters are sold each year in the United States. Disposable butane lighters account for approximately 95 per cent of those sales. These lighters are filled with liquid butane under pressure, which is released from a fuel reservoir in a gaseous state. Approximately five percent of all lighters sold in the United States are refillable. Some refillable lighters use petroleum distillate fuel; others use butane. Most lighters, both disposable and refillable, utilize a flint and thumb-activated roller mechanism to ignite the fuel. Others have an electronic ignition mechanism.

The ANPR stated that the rulemaking proceeding which it initiated is authorized by the CPSA, the FHSA, and the PPPA. In the description of regulatory options under consideration by the Commission, the ANPR discussed the possibility of issuing a consumer product safety standard under provisions of the CPSA, a banning rule under provisions of the FHSA, and a rule to establish requirements to make lighters "significantly difficult for children under five years of age" to operate under provisions of the PPPA.

C. Statutory Authority

1. The Consumer Product Safety Act

A lighter is a "consumer product" as that term is defined by section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1), because it is an article which is produced or distributed for sale to consumers for use in or around a household, in recreation, or in other similar places and activities. Sections 7 and 9 of the CPSA (15 U.S.C. 2056, 2058) authorize the Commission to issue a consumer product safety standard consisting of labeling or performance requirements for a consumer product if those requirements are "reasonably necessary to prevent or reduce an unreasonable risk of injury" associated with a consumer product.

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires each manufacturer of a consumer product that is subject to a consumer product safety standard to issue a certificate of compliance stating that the product conforms to all applicable consumer product safety standards. Section 14(c) of the CPSA requires that the certificate of compliance must be based upon a test of each product or a "reasonable testing program." Section 14(b) of the CPSA authorizes the Commission to issue rules to prescribe a reasonable testing program. Section 14(c) of the CPSA authorizes the Commission to issue rules requiring labels containing the date and place of manufacture and a suitable identification of the manufacturer, unless the product bears a private label, in which case the label shall identify the private labeler and contain a code mark that will permit the seller of the product to identify the manufacturer upon the request of the purchaser. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules requiring manufacturers to maintain records of the testing specified in any rule prescribing a reasonable testing program.

Section 9(g)(2) of the CPSA authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of the consumer product safety rule and its effective date at a rate that is established by the rule and is significantly greater than the rate at which such product was produced or imported during a base period ending

before the promulgation of the consumer product safety rule.

2. The Federal Hazardous Substances Act

Butane or petroleum distillate fuel contained within a lighter meets the definition of the term "hazardous substance" in section 2(f)1(A) of the FHSA (15 U.S.C. 1261(f) 1(A)) because it is "flammable," and in some cases is "toxic" or "generates pressure," and may cause substantial personal injury or illness as a proximate result of customary or reasonably foreseeable use. Except for certain lighters containing petroleum distillate fuel that have been exempted at 16 CFR 1500.83(a)(20), lighters which contain fuel when sold to consumers are subject to the labeling provisions of section 2(p) of the FHSA (15 U.S.C. 1261(p)) because they contain a hazardous substance which is intended or packaged in a form suitable for use in the household.

Section 3(b) of the FHSA (15 U.S.C. 1262(b)) authorizes the Commission to issue rules to prescribe special labeling requirements for hazardous substances intended for use in the household if the Commission determines that the labeling specified by section 2(p) of the FHSA is not adequate to protect the public health and safety in view of the special hazard presented by that substance. Section 2(q)(1)(B) of the FHSA (15 U.S.C. 1261(q)(1)(B)) authorizes the Commission to issue a rule banning a hazardous substance intended for use in the household if the Commission determines that, notwithstanding any labeling which is or could be required by the FHSA, the degree or nature of the hazard is so great that protection of the public health and safety can be adequately served only by keeping the product out of channels of interstate commerce. A banning rule issued under section 2(q)(1)(B) of the FHSA could take the form of a conditional ban: That is, a rule banning all lighters that do not meet certain performance or design requirements specified in the rule.

3. The Poison Prevention Packaging Act

Sections 2, 3, and 5 of the PPPA (15 U.S.C. 1471, 1472, and 1474) authorize the Commission to issue a rule to require packaging that is "significantly difficult" for children younger than five years of age to open or "obtain a toxic or harmful amount" of the substance contained therein for any substance which is a "hazardous substance" as that term is defined in the FHSA. To issue such a rule, the Commission must make and support findings that child-resistant packaging is required to protect children from serious personal injury or illness from "handling, using, or ingesting" the substance. As noted above, the fuel contained within a lighter is a "hazardous substance" as that term is defined in the FHSA. A lighter meets the definition of the term "package" set forth in section 2(3) of the PPPA (15 U.S.C. 1471(3)) because it is the "immediate container" in which a hazardous substance is contained for use by individuals in a household.

Section 4(a) of the PPPA (15 U.S.C. 1473(a)) provides that for the purpose of making any substance which is subject to requirements for child-resistant packaging available to elderly or handicapped persons, the manufacturer may package that substance in conventional packaging in one size, provided that (1) the substance is also supplied in child-resistant packaging; and (2) the conventional packaging is labeled with the statement "This package for households without young children."

D. Preliminary Determination of Most Appropriate Statutory Authority

The Commission preliminarily determines that the provisions of the CPSA are most appropriate for development of requirements for lighters to address risks of injury associated with lighters that can be operated by children. Those risks of injury arise because lighters are mechanical devices intended to produce flame and can be operated by children who do not appreciate all of the consequences of using the product. Those consequences include the ignition of clothing and other articles in the household, and may result in injury or death of the child operating the lighter, or other persons.

The CPSA includes provisions authorizing the Commission to issue performance and labeling requirements applicable to the lighter when such requirements are "reasonably necessary" to eliminate or reduce an unreasonable risk of injury associated with that product. This authority is suitable for issuing requirements to address hazards associated with young children starting fires with lighters.

The CPSA also authorizes the Commission to issue certification rules for products subject to a consumer product safety standard. Such rules may contain a prescribed testing program upon which the certificate of the manufacturer or private labeler is based. The effectiveness of the rule for lighters that is proposed elsewhere in this issue of the **Federal Register** depends in large part on the testing conducted by the manufacturer under the certification rule. It is possible that similar testing requirements could be promulgated under the authority of section 10(a) of the FHSA, 15 U.S.C. 1269(a), that the Commission may issue "regulations for the efficient enforcement" of the FHSA. However, the authority of the CPSA is more explicit in this regard.

Section 9(g)(2) of the CPSA, 15 U.S.C. 2058 (g)(2), authorizes the Commission to issue stockpiling rules for products subject to a consumer product safety rule. Stockpiling rules prevent the manufacture or importation of excessive numbers of products that do not comply with the rule. The Commission has determined that a stockpiling rule is desirable for the proposed standard for lighters. Such a rule could not be issued under either the FHSA or the PPPA.

The FHSA includes provisions which authorize the Commission to require special labeling for, and in some circumstances to ban, a household product that contains or consists of a "hazardous substance." Provisions of the FHSA authorize the Commission to regulate lighters because they are containers of lighter fuel, which is a "hazardous substance" as that term is defined in the FHSA. No provision of the FHSA authorizes the Commission to address any hazard which is associated with the mechanical operation of a lighter as a flame-producing device.

The PPPA authorizes the Commission to regulate a lighter as a "package" containing a "hazardous substance"—the lighter fuel. Under the PPPA, the Commission may issue a rule requiring the "package"—that is, the lighter—to be "significantly difficult" for children younger than five years of age "to open or obtain a toxic or harmful amount of the substance contained therein." However, the ability of young children "to open" the lighter or "obtain a toxic or harmful amount" of the fuel contained within the lighter is not the risk of injury associated with lighters under consideration by the Commission. Rather, it is the risk of death and injury from fires started by children with lighters. This risk arises from the mechanical operation of the lighter, and the ability of young children to manipulate the lighter to produce a flame. Additionally, the PPPA allows the manufacturer of a substance subject to requirements for special packaging to package that substance in conventional packaging which is not child-resistant if the substance is also distributed in child-resistant packages, and the packages which are not child resistant are labeled "This package for households without young children." This provision, by allowing the marketing of non-child-resistant lighters

of the types covered by the rule, could significantly reduce the effectiveness of the rule to reduce the risk of injury.

E. Impact on Small Businesses

The Regulatory Flexibility Act (RFA), 5 U.S.C. 603, requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposed rule on small entities, including small businesses. The RFA further provides, however, that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the rule, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

The regulation proposed below, if issued on a final basis, will not by itself impose any legal or other obligation on any person or firm. The rule would simply express the Commission's determination that any action taken to eliminate or reduce risks of injury associated with lighters that can be operated by children will be taken under the authority of the CPSA rather than the FHSA or the PPPA.

If the Commission issues a final rule based on the proposal published below, and then decides to issue a consumer product safety standard or to take other action to address the risks of injury associated with lighters that can be operated by children, the Commission will be required to follow all applicable provisions of the CPSA before it can impose any obligation on any person or firm.

Because a final rule based on the proposal published below imposes no obligation on any person or firm, the Commission hereby certifies that a rule based on the proposal, if issued on a final basis, will not have a significant economic impact on a substantial number of small businesses.

F. Environmental Considerations

The rule proposed below falls within the categories of Commission action described in 16 CFR 1021.5(c) as having little or no potential for affecting the human environment. For that reason, neither an environmental assessment nor an environmental impact statement is required.

G. Conclusion and Proposal

After consideration of the information discussed above, the Commission preliminarily finds that if regulatory action is needed to address risks of injury associated with lighters due to the fact that they can be operated by children, it would be in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. This proposal does not affect other hazards associated with lighters, such as that some lighters are subject to FHSA labeling because the lighters contain fuel which is flammable or toxic or generates pressure.

Provisions of the FHSA and the PPPA authorize the Commission to address risks of injury associated with the fuel contained within a lighter because the fuel is a "hazardous substance" as that term is defined by the FHSA. However, a lighter is more than a container or a package of a hazardous substance. It is a device which incorporates a mechanism for igniting the fuel and is intended to be operated to produce a flame.

The Commission preliminarily determines that the provisions of the CPSA are the most appropriate to address risks of injury associated with a mechanical device due to the fact that it can be operated by children to produce flame. The Commission also preliminarily determines that it is in the public interest to regulate this risk associated with lighters under the CPSA because it is desirable to issue certification and stockpiling rules in connection with the requirements applicable to the performance of lighters; such rules are most appropriate, or only available, under the CPSA.

Interested persons are invited to submit written comments by September 16, 1992. Comments may be accompanied by written data, views, and arguments, and should be addressed to the Secretary, Consumer Product Safety Commission, Washington, DC 30307.

Comments that are received on the proposed rule may be seen in the Commission's Public Reading Room, 5401 Westbard Avenue, Room 528, Bethesda, Maryland, between 8:30 a.m. and 5 p.m., Monday through Friday, except holidays.

List of Subjects in 16 CFR Part 1145

Administrative practice and procedure, Consumer protection, Infants and children.

For the reasons given above, the Commission proposes to amend title 16, chapter II, subchapter B, of the Code of Federal Regulations as follows:

PART 1145—REGULATION OF PRODUCTS SUBJECT TO ACTS UNDER THE CONSUMER PRODUCT SAFETY ACT

1. The authority citation for part 1145 continues to read as follows:

Authority: Sec. 30(d), Public Law 92–573, 86 Stat. 1231, as amended 90 Stat. 510; 15 U.S.C. 2079(d).

2. A new § 1145.16 is added to read as follows:

§ 1145.16 Lighters that are intended for igniting smoking materials and that can be operated by children; risks of death or injury.

(a) The Commission finds that it is in the public interest to regulate under the Consumer Product Safety Act any risks of injury associated with the fact that lighters intended for igniting smoking materials can be operated by young children, rather than regulate such risks under the Federal Hazardous Substances Act or the Poison Prevention Packaging Act of 1970.

(b) Therefore, if the Commission finds regulation to be necessary, risks of death or injury that are associated with lighters that are intended for igniting smoking materials and that can be operated by young children shall be regulated under one or more provisions of the Consumer Product Safety Act. Other risks associated with such lighters based on the fact that the lighters contain a hazardous substance shall continue to be regulated under the Federal Hazardous Substances Act.

Dated: August 7, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–19261 Filed 8–14–92; 8:45 am]

BILLING CODE 6355–01–M

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16 CFR Part 1210

Proposed Safety Standard for Cigarette Lighters

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to require that disposable and novelty lighters meet specified requirements for child-resistance. The proposed requirements would be issued under the Consumer Product Safety Act and are intended to reduce the risk of the injuries and deaths that occur from fires started by children under the age of 5 playing with cigarette lighters. The proposal also includes labeling, testing, recordkeeping, reporting, and stockpiling requirements for manufacturers and importers.

DATES: Written comments are due no later than November 2, 1992. An opportunity for the presentation of oral comments will be provided at 10 a.m. on October 21, 1992. Requests to make oral comments must be received by the Commission's Office of the Secretary no later than September 30, 1992. In order to participate, speakers must submit a written copy of their statement, or a detailed and comprehensive summary specifying all significant issues to be raised, no later than October 7, 1992.

ADDRESSES: Written comments and data, preferably in five copies, should be captioned or conspicuously identified as "Comments CC 92–1." Requests to make oral comments and copies of oral statements or summaries thereof should be captioned or conspicuously identified as "Oral Presentation CC 92–1." All these materials should be mailed to Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to room 528, 5401 Westbard Avenue, Bethesda, MD 20816; telephone (301) 504–0800; telefax (301) 504–0127.

The oral presentation of comments will be held in room 556, 5401 Westbard Avenue, Bethesda, Maryland. The rules of 16 CFR Part 1052, "Procedural Regulations for Informal Oral Presentations in Proceedings Before the Consumer Product Safety Commission," shall apply. Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes, excluding time consumed by questions of the presenters and the presenters' answers to those questions.

FOR FURTHER INFORMATION CONTACT: Barbara Jacobson, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477.

SUPPLEMENTARY INFORMATION:

I. Background

The Product: Lighters

There are two common types of fuel and three basic operating methods among the various models of lighters available to consumers. In the most widely used operating method, a flint and spark wheel ignite a jet of butane gas (or, rarely, a propane gas mixture) released by a thumb-operated valve-and-lever assembly; this "roll and press" method has been predominant among disposable pocket lighters since their general introduction in the early 1960's. In a past variation of this method, a push-button mechanism was used to roll the wheel and release the gas with a single motion; this variant is commonly known as a "ratchet" lighter.

A second, more recently introduced operating method uses a push-button-activated piezoelectric ignition module to ignite the (typically butane) gas without mechanical spark generation. A past variation of this method used a touch-sensitive light beam circuit for activation.

In these first two methods, the flame is extinguished when the lever or push button is released and the flow of gas is interrupted.

In a third operating method, a flint and spark wheel ignites liquid fuel (typically naphtha) drawn through a wick; these may be operated by rolling the spark wheel or, less commonly, by means of a mechanical push button. Liquid-fuel lighters may have a cap or other means of shutting off the fuel or oxygen supply.

Regulatory Background

In April 1985, Ms. Diane Denton, a nurse at Kosair Children's Hospital in Louisville, Kentucky, petitioned the Commission (Petition No. 85–2) to require that disposable butane lighters be child-resistant. Information available to the Commission at the time it received the petition indicated that residential fires started by children playing with cigarette lighters claimed an estimated 140 lives each year. Information available in 1985 indicated that children younger than five years old were the principal victims of fires set by child play, accounting for 125 of the 140 deaths, but the information did not establish whether children younger than five were also the principal operators of the lighters involved in the fires. Additionally, the types of cigarette lighters involved could not be identified. Information about the patterns of how children used lighters that could indicate how the products might be changed to make them child-resistant was also not available.

During 1986 and 1987, a field study was conducted by the Commission with the help of fire departments around the United States. Two hundred seventy-seven fires involving lighters and child play were investigated. Ninety-six percent of the lighters involved in the incidents were disposable butane models.

Most of the children who operated the lighters in the child-play incidents were less than five years old, primarily ages three and four. The most common method of operation by children was with two hands, using one hand to steady the lighter and the thumb or index finger of the other hand to roll the wheel and press the fuel lever.

On December 31, 1987, the Commission voted to grant the petition. At the same time, the Commission voted to publish an advance notice of proposed rulemaking ("ANPR") for child-resistant cigarette lighters and to expand the project to consider whether all lighters should be covered, rather than just disposable lighters. The ANPR was published in the **Federal Register** on March 3, 1988. 53 FR 6833. The ANPR stated that the Commission was considering a number of alternatives that would prevent or reduce the deaths and injuries caused by children playing with cigarette lighters. The ANPR also stated that the Commission would consider establishing performance requirements for cigarette lighters, either under sections 7 and 9 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2056, 2058, section 2(q)(1)(B) of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261(q)(1)(B), or sections 3 and 5 of the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1472, 1474. The Commission also stated that it would consider requirements for labeling cigarette lighters to warn adults to keep these products out of the hands of children.

Finally, the Commission said it would consider the possibility that the voluntary standard for cigarette lighters, ASTM F400–85, could be revised to include performance requirements to make cigarette lighters resistant to operation by children or to require that lighters be marked with additional or revised warnings to keep these products out of the hands of children.

Development of the Performance Test Protocol.

In 1987, the Commission contracted with COMSIS Corporation to develop strategies for improving the child-resistance of cigarette lighters and to develop a test protocol for evaluating child-resistance. The test protocol recommended by COMSIS is based on the testing procedure for child-resistant packaging in the Poison Prevention Packaging Act Regulations. The protocol includes a test using panels of children to determine the child-resistance of cigarette lighters and a test using panels of adults to determine the ease of operation of the lighters by adults. A report, "Recommendations for Evaluation of Cigarette Lighter Child-Resistance," was provided by COMSIS in June 1988.

When testing whether children can operate a cigarette lighter, a lighter without fuel that does not produce a flame must be used to insure the safety of the children. A "surrogate" lighter that produces an audible or visible signal when operated in a manner that would produce a flame in an ordinary lighter was developed for use in the pilot test by the Commission's Engineering Sciences Laboratory. This surrogate lighter consists of a small radio transmitter, which is located inside the

lighter body, and a separate receiver that is capable of receiving the transmitted signal up to 30 feet from the lighter. When the signal is received, a buzzer sounds and a small light shines. ("Development of the Surrogate Lighter", R. Reichel and W. Stratton, May 1988.)

In September 1988, the Commission contracted with Perritt Laboratories, Inc., to conduct a pilot test of the draft protocol. The pilot test results indicated that the child and adult protocols recommended by COMSIS were suitable procedures for evaluating child-resistant lighters. ("Results of the Pilot Test of the Adult and Child Protocols for Testing Child-Resistant Cigarette Lighters". B.J. Jacobson, September 1, 1989.)

Subsequent to the pilot test, the staff stopped working on an adult test protocol. The Commission preliminarily concludes that a mandatory performance test is not needed to assure that adults are able to operate child-resistant lighters. Unlike many of the products regulated under the PPPA, where it is essential for adults to have access to their medications, no equivalent health-related need exists for lighters. In addition, for nonprescription products, the PPPA allows that a product can be packaged in one size of non-child-resistant packaging if the product also is supplied in child-resistant packaging. Prescription products subject to PPPA regulations may be dispensed in non-child-resistant packaging if so directed by the prescriber or the purchaser. Because non-child-resistant packaging is available for products regulated under the PPPA, it is important to insure that the child-resistant packaging is easy for adults to use in order to encourage adults to use the child-resistant version.

However, the proposed rule would be issued under the CPSA rather than the PPPA, and the PPPA provisions that require non-child-resistant alternatives do not apply. Furthermore, the effectiveness of a rule would be reduced if covered lighters were available in non-child-resistant versions. The Commission does not believe that a requirement for child-resistant cigarette lighters will result in a significant increase in the use of matches. The child-resistant designs known to the Commission are not difficult to use. The lighter's convenience of one-handed operation and 1000 to 1500 lights, compared to two-handed operation and 20–30 lights with a book of matches, insures that the large majority of consumers will continue to use cigarette lighters.

Accordingly, it is not necessary to mandate requirements to insure that the child-resistant lighter is easy for adults to use. The Commission believes that the lighter manufacturers themselves would adequately insure ease of use by adults so that their products will not be at a competitive disadvantage.

Baseline testing was conducted in 1989 and 1990 to determine the extent to which currently-marketed lighters can be operated by children and to support the establishment of an appropriate acceptance criterion for child-resistant lighters. The surrogate lighters used for the baseline testing were designed and provided by lighter manufacturers who serve on ASTM Task Group F15.02, Safety Standards for Lighters. Data were collected using two brands of roll-and-press lighters and two brands of push-button lighters. The proportion of children unable to operate currently available, non-child-resistant lighters was 55 percent for the roll and press lighters and 16 percent for the push-button lighters.

The results of the baseline testing were also analyzed to provide information about factors, such as the age or sex of the child, that contributed significantly to success in operating the lighter. A report on the results of the baseline testing was prepared by the Commission's staff in June 1990. ("Statistical Analysis of Baseline Cigarette Lighter Data," R. Newman and S. Kyle, June 19, 1990.)

The baseline results for the non-child-resistant disposable lighters, weighted to reflect product usage, suggest that the child-resistance of currently marketed lighters is approximately 50 percent. Using this figure, the potential benefits of improved child-resistance required by a standard can be predicted. For example, the proposed standard would increase the minimum allowable child-resistance of lighters to 85 percent. This constitutes at least a 70 percent improvement over the existing degree of child-resistance (the new 85 percent minimum minus the existing 50 percent equals 35 percent additional child-resistance, which when divided by the original 50 percent child-resistance gives a 70 percent improvement). See Section IX of this notice, below, which discusses the magnitude of the potential benefits of the proposed rule.

Because large numbers of child-resistant lighters have not been on the market (and for other reasons discussed below), the presently-available fire-incident data do not establish how closely the results of the child testing correlate to the prevention of fires in the home. The Commission preliminarily concludes, however, that the results of the tests of children provide a reasonable approximation of the ability of children to operate lighters in the home, which in turn should be directly reflected in the incidence of fires started by children with lighters.

The Commission reaches this conclusion for the following reasons. First, there has been no suggestion of another test that would both (1) more accurately reflect the likelihood that children will start house fires with lighters and (2) result in a lower estimate of benefits for a standard using that test.

Second, because large numbers of child-resistant lighters have not been on the market for a long period of time, fire-incident data cannot be analyzed to provide an empirical corroboration of the correlation between child-test results and child-play house fires. It is not feasible for the Commission to conduct a test to demonstrate this correlation. Such a test would require that the Commission (1) distribute a huge number of child-resistant lighters to a representative sample of lighter users, (2) somehow ensure that the users used the child-resistant lighters in the same way they would if all disposable and novelty lighters were required to be child-resistant, and (3) obtain information on the rate of fires started by children playing with the child-resistant lighters.

In addition, the accuracy of the estimate of benefits need not be great in order to support the rule. Even if the benefits of the proposed rule are only half what the child test results indicate, the benefits would have the prerequisite reasonable relationship to the costs. See Section IX of this notice, below.

Furthermore, the Commission's experience with a similar type of test for child-resistance under the Poison Prevention Packaging Act of 1970 has shown reductions in the ingestion rate of a magnitude sufficient to justify this proposed rule. For example, the PPPA regulation requiring child-resistant packaging for oral prescription drugs was issued in 1973, with an effective date in 1974. A Commission staff study shows that the fatalities per million children under age 5 have declined from over 4 in 1972 to about 2 in 1986. After taking into account the number of prescriptions written and the general decline in the rate of accidents to children, the study concludes that the fatality rate from 1974 to 1988 averaged about 1.6 deaths per million children less than would have been expected in the absence of PPPA requirements for oral prescription drugs. ("An Examination of the Effect of CPSC Prescription Drug Child-Resistant Packaging Requirements on Child Fatalities," CPSC Directorate for Economic Analysis, M. Robins, November 1989.)

The number of deaths of children under age 5 due to all household chemicals has declined 81 percent since 1972. (1992 National Poison Prevention Week Editor's Fact Sheet, Q. No. 12.) The number of deaths of children under age 5 from ingestion of aspirin products has declined 93 percent over the same period. *Id.* Although not all of these declines may be due to child-resistant packaging, it seems likely that much of the decline is due to such packaging.

The child-resistance requirements being proposed for lighters in this notice may be even more effective than child-resistant packaging, because prescription products can be ordered in non-child-resistant packaging and manufacturers of nonprescription products subject to PPPA requirements can package one size of the product in non-child-resistant packaging pursuant to 15 U.S.C. 1473. In contrast, there are no exceptions from child resistance provided for the disposable and novelty lighters subject to the rule proposed in this notice. Furthermore, users often render child-resistant packaging ineffective by leaving the cap off or loose, in order to make it easier to obtain the substance in the package. In the case of cigarette lighters, however, the proposed rule requires the child-resistant feature to reset after every operation of the lighter. Therefore, the proposed child-resistance requirements for lighters may be even more effective than the similar requirements for child-resistant packaging for this reason also.

For the reasons discussed above, the Commission preliminarily concludes that the results of the child tests will provide a reasonable approximation of the extent to which a lighter will be used by children to start house fires and demonstrate that the benefits to be obtained by the proposed rule will have a reasonable relationship to the costs imposed by the rule.

Development of the Voluntary Standard

In January 1988, following the Commission's decision to grant petition PP 85–2, the Commission's staff wrote to ASTM's Task Group F15.02, Safety Standards for Lighters, requesting that they revise the current lighter standard to prohibit the design and marketing of lighters that are not child-resistant. (Letter to Mr. Edward Lewiecki from Nicholas V. Marchica, January 22, 1988.)

In June of 1988, the ASTM Task Group formed a Technical Subcommittee to develop a voluntary requirement for child-resistant lighters. The first action by the Technical Subcommittee was a review of the protocol proposed by COMSIS. The protocol was reviewed at a meeting in July 1988, and a summary of the discussion and suggested changes were provided to the Commission's staff. (Edward M. Lewiecki memorandum to members of F15.02 Technical Subcommittee, July 30, 1988.)

The Technical Subcommittee began drafting a voluntary standard in September 1989, using the Commission's protocol as a base. Throughout the development of the test protocol, the staff worked closely with she Technical Subcommittee. The ASTM Task Group included an adult test protocol as an appendix for advisory purposes. An adult test is not a requirement of the draft ASTM standard.

Lighter Association's Request That the Commission Issue the Draft Voluntary Standard as a Mandatory Requirement

In July 1990, the Lighter Association Inc. requested that the Commission adopt the draft ASTM voluntary standard for child-resistant cigarette lighters as a mandatory consumer product safety standard under section 9 of the Consumer Product Safety Act. [88] [1] The Association endorses a mandatory standard because this would assure that all lighter manufacturers and importers will comply and because a mandatory federal standard would preempt state-by-state regulations addressing this risk. The Association represents manufacturers, importers, and distributors of the majority of cigarette lighters sold in this country.

In March 1991, the members of ASTM Task Group F15.02 voted to suspend work on the voluntary standard and support the Commission's work on a mandatory standard. [124]

Verification Testing

(See CPSC staff report "Statistical Analysis of Non-Child-Resistant Roll and Press Cigarette Lighter Data," April 1992.) To verify that the test results from the protocol are reproducible when the tests are conducted by different laboratories, the CPSC's staff requested the cooperation of members of the ASTM Task Group F15.02 during their March 1990 meeting. One major lighter manufacturer and the Department of Consumer and Corporate Affairs of Canada offered to participate. The manufacturer completed a 50-child test and provided a report to the staff in July 1990. The results of those tests are consistent with the baseline testing conducted by the Commission. The initial testing in Canada was conducted in Montreal and Toronto; this testing was completed in December 1990. A preliminary analysis of the results of the Canadian testing indicated that the results of the tests in Montreal were consistent with the other results from the baseline testing and the tests by the manufacturer mentioned above. The tests from Toronto, however, showed that fewer of the children tested there were able to operate the surrogate lighters than would be expected from the previous test results and from the results of the Montreal tests.

A CPSC staff member went to observe some of the later testing in Toronto, and concluded that the testers there were not following the test protocol in the way that had been done for the baseline testing. In addition, the surrogate function of two lighters performed unreliably during this testing, and the lighters were returned to the manufacturer for repair. Because of these problems, the CPSC's staff concluded that the Toronto data should not be considered as part of the verification testing.

Because of the unexpected results from Toronto, the Canadian Government agreed to conduct additional tests there, using another contractor. Largely because of the need to determine that the test protocol for determining the child-resistance of cigarette lighters was repeatable and reproducible, the Commission voted in May 1991 to postpone a decision on whether to publish a proposed mandatory standard for child-resistant cigarette lighters until after receipt of the Toronto retest results. The staff received the final test data on March 2, 1992.

The results for this second round of testing in Toronto were consistent with the data from other test locations when two activations of the surrogate lighter are used as the criterion for whether a child has successfully operated the lighter ($p=.097$). (The symbol "p" represents the chi-square probability in a maximum likelihood analysis of variance. A factor, such as location, has a significant effect on the rate of success if p is 0.05 or less.) When one activation of the lighter is used as the criterion, the variation, while only slightly greater, became statistically significant ($p=.043$).

These borderline results around $p=.05$ for one and two lighter activations led the staff to investigate the effect of tester variability on the successful operation of lighters by children. The staff found that the results of the Toronto retest were affected by one tester (out of six) who was

[1] Numbers in brackets refer to the number of a document at the List of Relevant Documents at the end of this notice.

especially adept at obtaining the children's cooperation. That tester, who conducted 30 percent of the tests, had an excessive effect on the success rate. If that tester is weighted as having conducted one-sixth (17 percent) of the Toronto tests, the results in Toronto would have been consistent with the data from other sites for either definition of success ($p=0.34$ and $p=0.12$). As a result of the analysis of the verification testing data, changes have been made to the testing protocol so that the test results will be more consistent. The changes include requiring panels of 100 children instead of panels of 50 children and requiring the testers to test approximately equal numbers of children (20 ± 2 children each for 5 testers and 17 ± 2 children each for 6 testers).

The verification tests show that the age and sex of the child being tested are significant factors affecting the likelihood of success, but that whether the child comes from a home with a smoker that uses a cigarette lighter is not a significant factor affecting the results. Therefore, the previous requirement in the draft test protocol that a minimum number of children be from homes with smokers who use cigarette lighters has been deleted.

II. Comments On The ANPR

The Commission received submissions from 13 commenters in response to the ANPR that was published in March 1988. In addition, some late submissions were received that are being considered in the same manner as comments on the ANPR. The commenters raised the following major issues:

1. The need for a mandatory standard, 2. The relative risk of matches vs. lighters, 3. Alternative solutions to the problem, 4. The scope of the standard, and 5. Human factors issues.

The Commission's staff prepared detailed responses to the issues raised by the comments. The Commission's views on the major issues presented by the comments are explained below:

The Need for a Mandatory Standard

Some commenters supported Commission action toward a mandatory standard and recommended proceeding as expeditiously as possible. Other commenters believed that a mandatory standard was unnecessary and premature and that the Commission's data were not sufficient to show an unreasonable risk.

The Commission preliminarily concludes that an unreasonable risk does exist, as shown by the hazard data and the projected relation of costs and benefits of a standard, described in section IX of this notice. The proposed rule is expected to prevent about 85–120 deaths per year and to result in a total annual savings, including savings in deaths, injuries, and property damage, of $210–290 million. The annual costs to consumers of the proposed rule are estimated to be about $95 million. Thus, the expected benefits substantially outweigh the estimated costs to the public. Further, the commenters who suggested that an unreasonable risk might not exist have now requested that the Commission issue a mandatory standard.

The Relative Risk of Matches vs. Lighters

Some commenters stated variously that matches are a greater hazard than cigarette lighters, that a standard for lighters may cause a switch to matches, or that the Commission's ANPR should cover both matches and lighters.

In terms of frequency, estimated fire losses (fires, deaths, injuries, property loss) associated with children playing with matches are somewhat higher than losses associated with lighters. However, the available data on child-play fires indicate that the proportion of these losses attributable to fires started by children under 5 years old, the ones considered most amenable to prevention by a child-resistant design, are substantially lower for matches than for lighters. Among a group of about 100 match fires that were investigated by CPSC field staff in 1989, only 43 percent of the fires, 35 percent of the deaths, and 37 percent of the injuries were incurred in fires started by children under five years old, compared with the respective percentages of 73 percent, 93 percent, and 83 percent that were found among 277 cigarette lighter child-play fires that were investigated from 1985 through 1987.

If these percentages are applied to the average annual fire losses estimated for 1987 through 1988 and adjusted to include injuries that occurred in fires that were not attended by fire departments, then the average annual losses attributed to fire starters under the age of 5 are as follows:

TABLE 1.—ESTIMATED ANNUAL FIRE LOSSES, 1987–1988

	Lighter child play fires		Match child play fires	
	All	Started by children <5	All	Started by children <5
Fires	8,100	5,900 (73%)	13,400	5,800 (43%)
Deaths	180	170 (93%)	210	70 (35%)
Injuries *	1,650	1,150 (70%)	1,390	400 (29%)

* Includes victims treated in hospital emergency rooms for injuries suffered in child-play fires not attended by fire departments.
Source: U.S. Fire Administration, National Fire Protection Association, CPSC investigations, NEISS, CPSC staff.

Thus, the estimated frequency of death and injury specifically attributable to play by children under 5 years old is substantially higher for cigarette lighters than for matches, even though the estimated number of fires started by children under age 5 are about the same.

Estimates of relative risk require a combination of the frequency of injury and consumer exposure to the product. In the case of lighters and matches, exposure can be expressed in several ways:

1. The number of "lights" per year (estimated by one commenter);
2. The number of products used during a given time period;
3. The number of households in which such products are found;
4. The number of households that have both young children and lighters or matches; or
5. The number of products and locations in households with young children where such products are accessibly located.

The best measure of relative risk for these products involves the presence of lighters and matches in accessible locations in households with young children. The estimated fire, death, and injury rates in residential structural fires started by children under age 5 with cigarette lighters or matches are shown in Table 2, along with the relative rates for these products. The death and injury rates for lighters, with respect to accessible locations, are more than three times the rates for matches. This suggests that a shift in consumer preferences for matches would probably not substantially reduce the benefits of a rule requiring lighters to be child-resistant.

TABLE 2.—FIRE, DEATH, AND INJURY RATES IN RESIDENTIAL STRUCTURAL FIRES STARTED BY CHILDREN UNDER AGE FIVE PLAYING WITH CIGARETTE LIGHTERS OR MATCHES

	Rate per 100,000 accessible product locations in homes with children under age 5		Relative rate lighters/matches
	Lighters	Matches	
Fires	115.2	83.5	1.4
Deaths	3.3	1.0	3.3
Injuries	22.4	5.8	3.9

Source: U.S. Consumer Product Safety Commission—1990 Survey on Lighters and Matches.

The Commission believes that the risks associated with both lighter and match child-play are matters of concern. However, it is reasonable to address lighters and matches separately unless matches are more hazardous than lighters and substantial numbers of adults may switch to matches in the event of a child-resistant lighter standard. There is no convincing evidence that either of these conditions is likely.

Alternative Approaches to Risks From Cigarette Lighters

Some commenters stated that the solution to the problem of fires started by children playing with cigarette lighters lies in changing human behavior rather than in changing the product. Labeling and education to achieve proper adult supervision were suggested alternatives. Other commenters, however, believed that labeling is an inadequate remedy.

Most lighters or their packaging, including virtually all disposables, are already labeled "keep away from children," among several other cautionary messages. Efforts are underway by ASTM Subcommittee F15.02, Safety Standards for Lighters, to strengthen and emphasize this warning in the voluntary standard. The Commission's staff believes that although a well-designed label can be beneficial, it would not adequately reduce the risk of child-play fires. Although a required label would not add significantly to manufacturers' costs, the benefits may also be negligible. To the extent that labeling would be effective, the benefits should be achieved by lighters subject to the revisions to the ASTM standard governing lighter labeling, ASTM F–400, that are being developed.

Information campaigns to raise the consumer's level of awareness and change adult behavior may also be beneficial, but past studies suggest that the effect is likely to be gradual and will require continuing reinforcement.

The Commission concludes preliminarily that the most successful strategy lies in changing product performance to reduce the ability of children under age 5 to operate the lighter. However, it would be desirable to combine elements of labeling or education with performance requirements to maximize a reduction in hazard.

Scope of the Standard

Some commenters stated that the regulation should cover all lighters, including novelty lighters that are shaped like various other objects or that have lighters incorporated into other products, such as a watch. One commenter urged that novelty lighters be banned. The Commission's proposed rule includes all novelty lighters. See Section III of this notice.

Human Factors Issues

The following comments related to human factors issues:

1. Child-resistant lighters may give a false sense of security and make adults more lax;
2. A disproportionate number of children in fire-play incidents may be under emotional stress, in an unstable family environment, or suffering from a clinical disorder;
3. Lighters are not intended for children; and
4. Proper adult supervision would have averted the lighter incidents.

The Commission believes that although cigarette lighters are intended for adults, they attract children's natural curiosity. Thus, a number of children can be expected to try to obtain the lighter even though the adult takes some degree of care in not leaving the lighter where it can be readily noticed by a young child. Thus, laxness of an adult is not a prerequisite to a child's gaining possession of a lighter. The Commission concludes that it is impractical to rely solely on adult supervision to avert these accidents.

Investigations indicate that adults already frequently leave non-child-resistant lighters within children's reach. There are no data showing that using a child-resistant lighter would make adults significantly more lax than is the case already.

The information available to the Commission does not support the commenter's assertion that juvenile fire setters generally are troubled children. A study conducted in Rochester, NY, indicates that the majority of child-play fires responded to by the fire department did not involve troubled children, but rather were due to children's curiosity and lack of understanding of the dangers of playing with fire. Even if the commenter's contention were correct, however, it would not be expected to reduce the estimated effectiveness of the standard.

III. Scope of the Proposed Rule

The proposed rule covers "disposable" and "novelty" lighters, as those terms are defined in the rule. Broadly speaking, disposable lighters are those that are used for a relatively short period of time and then thrown away when empty. Lighters that cannot be refilled are obviously disposable. Some other factors that may affect disposability are cost, durability, repairability, rarity; and esthetic qualities.

A field study conducted by the Commission in 1986 and 1987 showed that 96 percent of the lighters involved in child-play fire incidents were nonrefillable butane models. Since then, however, a number of inexpensive refillable butane lighters have been introduced. These are typically the least expensive refillable models, and their very low price substantially reduces the likelihood that they would be refilled (much less repaired). Therefore, these lighters are essentially disposable and are widely referred to by industry as "refillable disposables." Since they would be treated as disposables—*i.e.*, more than one commonly is owned and the extras can be left in areas that may be accessible to young children—the Commission proposes to include these lighters within the scope of the rule.

The draft ASTM standard, and earlier CPSC staff efforts, specified various physical characteristics of the lighters that were intended to separate disposable lighters from nondisposable ones. In the earlier draft ASTM standard, disposable lighters were defined as those that have all of the following characteristics: (1) The fuel is butane, isobutane, propane, or other liquefied hydrocarbon, or a mixture containing any of them, whose vapor pressure at 75° F (24° C) exceeds a gage pressure of 15 psi (103 kPa), (2) a plastic pressure vessel containing a supply of fuel, and (3) a gross weight of the fueled lighter of less than 50 grams. The original definition recommended to the Commission by its staff was very similar to this draft ASTM definition.

By letters dated November 30 and December 7, 1990, the Lighter Association requested that the limitation in the definition of disposable that the gross weight of the fueled lighter be less than 50 grams be replaced by a minimum ratio of the weight of the fuel to the empty weight of the lighter. The Lighter Association suggested that disposable lighters should include lighters where this ratio exceeds 5.0.

The Commission's staff evaluated the "less than 50 grams" and "weight ratio" definitions for disposable lighter and found that they both had problems; either they included lighters that the staff did not consider to be disposable or they excluded lighters that the staff believed were disposable, or both. Therefore, the staff developed a definition based on the cost of the lighter, which appears to be the major factor in whether a lighter is treated as a disposable. Accordingly, the proposed definition of disposable lighter includes all lighters that are not refillable with fuel and all lighters having a Customs Valuation or ex-factory price of under $2. The proposal provides that this value would be adjusted every five years in accordance with changes in the monthly Wholesale Price Index. At the present time, lighters covered by the proposed price criterion would typically sell at retail for less than $6 each; some may sell for up to $8 or $9 apiece. It is possible that some lighters could be imported at just over $2 in Customs Valuation and sold at retail for $3 to $4; such lighters could compete with some higher-priced models subject to the proposed rule. There are currently no known imports of such lighters. The Commission believes it is unlikely that manufacturers or importers would increase prices of significant numbers of lighters simply to avoid compliance with the proposed rule.

Colibri Corp., a major importer of lighters, has told the Commission's staff that, assuming a reasonable level of convenience among child-resistant lighters, non-child-resistant substitutes would not compete successfully at the $3-$4 retail level and would probably not gain significantly in market share relative to complying disposables.

On the other hand, the importer of Cricket lighters wrote to the Commission's staff expressing concern that the profit margins on lighters above the proposed $2 level for disposable lighters could be small enough that non-child-resistant lighters could compete with the child-resistant disposable lighters covered by the proposed rule. Cricket recommends that the $2 figure be raised to $4. The Commission solicits comment on this issue, including (1) the size of profit margins for importers, distributors, and retailers that could be associated with lighters and (2) the retail prices at which consumers are likely to treat lighters as disposable.

The proposed rule does not cover most so-called "luxury" lighters, which are refillable and generally have metal cases and cost more than the proposed definition of disposable would include. This group includes those products known as "table lighters," which are typically not intended to be carried in a pocket or purse. As noted above, about 96 percent of the fire incidents caused by child play involved disposable butane lighters. The industry argues that luxury lighters are used somewhat differently than are disposable lighters, in that they are more likely to be carried by the owner and extra lighters are not as likely to be kept, as is frequently the case for disposable lighters, since the luxury lighter can be refilled when it runs out of fuel and costs too much to discard. In contrast, disposable lighters are inexpensive and are often sold in packages containing more than one lighter. Users are likely to have extra disposables so that a lighter will be available when the one that is being used runs out of fuel; this would tend to increase the number of disposable lighters left lying in places accessible to small children.

Also, as discussed in more detail below, different cost-benefit considerations associated with child-resistance would apply to luxury lighters than apply to disposable lighters. Because fewer luxury lighters than disposable lighters are made, the cost of making luxury lighters child-resistant is estimated to be considerably higher on a per-unit basis than the cost per disposable lighter. Including luxury lighters within the scope of the proposed rule would significantly increase the overall cost of the rule to consumers; concomitant benefits, however, would be unlikely to result.

For the reasons given above, the Commission decided not to propose to include luxury lighters within the scope of the rule.

The proposed rule also covers all "novelty" lighters, which are defined in the rule as lighters that resemble any other object in physical form or function, for example, a car, a gun, a spaceship, a watch, a pack of cigarettes, an ice cream cone, etc. A novelty lighter can operate on butane or liquid fuel and can be refillable or nonrefillable as to fuel and flint, although nonrefillable lighters already are subject to the rule under the definition of disposable.

This definition of novelty lighters was essentially the definition that was in the draft ASTM standard that the Lighter Association asked the Commission in July 1990 to mandate. In a letter dated October 26, 1990, however, the Lighter Association asked that the definition of novelty lighter be narrowed to include only a lighter that "imitates in physical form or function a product normally associated with children playing, *e.g.*, a car, an ice cream cone, a spaceship, a gun, etc."

The Commission, however, decided not to narrow the proposal in this manner. This suggested definition is somewhat indefinite, in that there could be some dispute about whether particular lighters resemble a product "normally associated with children playing," especially since children often will play with any object that is available. Also, the available data indicate that novelty lighters as a class may be more dangerous, on a per-lighter basis, than the luxury lighters that are not covered by the proposed rule.

Field investigations were conducted over the period 1985–1989 to identify the types of lighters involved in residential structural fires. [111] Novelty lighters and luxury lighters each accounted for an estimated 2 percent of residential structural fires started by children under 5 years of age. However, novelty lighters account for less than 1 percent, and luxury lighters for approximately 5 to 8 percent, of lighters in use in the United States. These data suggest that novelty lighters may have a higher risk of involvement in lighter child-play fire incidents than do luxury lighters.

In view of these factors, the Commission decided to propose that all novelty lighters should be subject to the child-resistance requirements of the standard.

Like the ANPR, the proposed rule does not cover matches. Although a significant number of fires are started by children playing with matches, a lesser percentage of match fires than lighter fires are started by children under age 5. Children under age 5 are more likely to be deterred by child-resistance than are older children.

Also, matches would require different technical solutions to the feasibility and effectiveness of child-resistant features and a different child-test protocol. Accordingly, the Commission decided not to include matches within the scope of the proposal. The Commission, however, does not mean to imply that it will not consider possible separate remedial action in the future to reduce the number of deaths and injuries caused by children playing with matches.

The proposed rule also does not cover any mechanical or electric lighting devices not primarily intended for use with smoking materials, for example, lighters intended for fireplaces or charcoal or gas grills. Lighters that do not produce a flame, such as those using an electrically-heated coil, which are commonly found in automobiles, are also excluded. The Commission lacks data showing that these products present the same types of risks as the lighters covered by the rule.

IV. Requirements for Lighters

A. General

The proposed rule provides that lighters shall be capable of resisting operation by at least 85 percent of children in a specified test. The test involves giving the children 5 minutes to attempt to successfully operate the lighter. If they do not successfully operate the lighter within that time, they are given three visual demonstrations of operation of the lighter, followed by another 5-minute period during which they are to attempt to operate the lighter.

If more than 15 percent of the children successfully operate the lighter, it fails the acceptance criterion. This percentage is applied to 200 children, but it may not be necessary to test that many. The proposed test provides that panels of 100 children shall be tested sequentially. As explained below, depending on the results with the first panel, it may be possible to demonstrate statistically with the results from one panel that 85 percent of the 200 children would be unable to operate the lighter. The children would have to be from the United States, except that children from another country could be used if tests of one child-resistant lighter design in the United States and in the other country gave results that are not significantly different at $p=.05$.

B. Acceptance Criterion

A letter dated July 20, 1990, from the Lighter Association stated that some of the manufacturers of disposable lighters in the Association have developed prototype child-resistant lighters that will meet an 80 percent acceptance criterion. The draft ASTM voluntary standard includes an acceptance criterion of 80 percent, as does the existing protocol for child-resistance of packaging under the PPPA.

The Commission's staff is testing four different models of child-resistant lighters. Three of the lighters are over 95 percent child-resistant. The preliminary child-resistance of the fourth lighter is 78 percent.

Because the available information indicates that some cigarette lighters can be made child-resistant at levels that exceed the 80 percent level previously under consideration, the Commission decided to raise the criterion. Even though some design prototypes have achieved over 95 percent child-resistance effectiveness in testing, the Commission is proposing an acceptance criterion of 85 percent for the following reasons.

First, the testing of non-child-resistant lighters in the verification testing, described above, indicates that there probably is more variability in test results of cigarette lighters than there is in tests of packaging under the PPPA. In order for a manufacturer to be able to conclude that its lighter design would pass future tests with an acceptance criterion of 85 percent, the manufacturer would have to conduct a test in which lighters representing production models of the design averaged at least 89 percent child resistance. Thus, to assure compliance at the 85 percent level, firms would have to market lighters that were at least 89 percent child resistant, on the average.

In addition, the Commission cannot conclude that other manufacturers will be able to use the designs for which the Commission has test data, due to a lack of information on the patent and licensing situation involving these designs. Other designs may not achieve the high results currently known to the Commission's staff. However, the Commission solicits' comment on the feasibility of requiring in the final rule that lighters meet an acceptance criterion of 90 percent.

C. Sequential Testing

The proposed testing of sequential test panels of 100 children is intended to provide a reliable means of determining compliance with the requirement for child-resistance, while reducing the cost and time associated with conducting the tests. Sequential testing has been used successfully with panels of 50 children under the PPPA. Due to the potentially higher variability associated with cigarette lighter testing, however, the Commission is proposing to use 100-child panels for testing cigarette lighters.

The pass/fail criteria were selected so that a lighter would be considered child-resistant if the probability of a child operating the lighter is 15 percent or less in a sample of 200 children. In the sequential testing program incorporated in the proposed rule, up to 2 panels of 100 children each may be used. Based on the results in the first test panel of 100 children, the decision is made to pass the lighter, to fail the lighter, or to continue testing with the additional panel.

The pass/fail criteria for the first test panel were designed so that, if the probability of operating the lighter is 10 percent or less, the lighter will be accepted as child resistant 95 percent of the time. If the probability of operating the lighter is greater than 20 percent, the cigarette lighter will be rejected 95 percent of the time. If the lighter is not accepted or rejected under these probabilities for the first panel, the second panel is tested. Accordingly, in the first test panel of 100 children, the lighter passes if 10 or fewer children operate it, the lighter fails if 19 or more children operate it, and testing continues if 11 to 18 children operate it.

Table 3 gives the pass, continue to test, and fail criteria for sequential testing.

TABLE 3.—SEQUENTIAL TESTING CRITERIA

Test panel	Cumulative number of children	Successful lighter operations		
		Pass	Continue	Fail
1	100	0–10	11–18	19 or more.
2	200	11–30	.....	31 or more

Thus, the child test protocol specifies the use of 100 children initially, and, depending on the results, it would be determined that the lighter is either child-resistant or not child-resistant or that further testing, with a total of 200 children, is needed.

The protocol also requires that particular numbers of children shall be in each of 3 age groups of children on each panel, 42–44, 45–48, and 49–51 months old, with 30, 40, and 30 percent of the children in each age group, respectively. Each age group consists of approximately two-thirds boys and one-third girls. Although it was originally considered that about one-half of each age and sex subgroup of children shall be from homes where there is at least one smoker who uses a lighter, the verification testing showed that there is no difference in the success rate for children from smoking and nonsmoking households. Accordingly, the Commission is not proposing this requirement.

D. Surrogate Lighter

Because using an operable lighter in these tests could expose children to a risk of injury from fire, the child tests use "surrogate lighters," which are lighters that are without fuel and that produce an audible signal or visible signal when operated in each manner that would create a flame in the lighters that they represent. (The Commission recommends that if a visual signal is used, it be located away from the lighter. If the visible signal is not away from the lighter, the visible signal could not be demonstrated to the children, as required at the beginning of the test, without also demonstrating the lighter's operation. Although a visible signal that is not remote from the lighter is permissible, it could increase the number of children who can operate the lighter, because the children in effect will get an additional demonstration of the lighter's operation at the beginning of the first 5-minute test period.)

Surrogate lighters must approximate the appearance, size, shape, and weight of the lighter intended for use and must be identical in all other factors that affect child-resistance (including operation and the forces (s) required to operate the lighter) as the lighter intended for use.

E. Number of Demonstrations

The proposed protocol provides that the child test shall be briefly suspended after 5 minutes if either of the pair of children being tested has not successfully operated the lighter. Any child that has not operated the lighter by that time is then given a visual demonstration of three operations of the lighter, and the test is resumed for another 5 minutes. Concern has been raised about whether a single demonstration would adequately simulate the conditions in the homes of smokers, where a child may see the lighter operated many times. The staff's test data on child-resistant lighters show that one demonstration is not adequate. Of the children given one demonstration, only one percent was able to operate the surrogate signal, even once. Of the children given three demonstrations, five percent were able to operate the lighter once and three percent were able to operate the lighter twice. In order to insure that the children are provided an adequate opportunity to observe lighter operation during the test, the Commission is proposing to include three visual demonstrations of the operation of the surrogate lighter midway through the 10-minute test.

F. Successful Operation

A successful operation in the test is defined as one operation of the surrogate signal, of any time duration, during the 10-minute test. During the development of the test, the industry expressed concern that one brief signal might be produced "accidentally," without the child knowing how the signal had been achieved and with the child being unable to repeat it; the industry argued that such an instantaneous operation would not present a hazard. The industry therefore sought a requirement that a successful operation should be an operation of the signal that continued for two seconds.

The staff determined that it is too difficult for children to maintain the signal for two seconds in the limited time provided by the test. The staff considered specifying that two activations of the signal would be required for a successful operation for the purposes of the test in order to address the industry's concern about accidental instantaneous activation. However, results for the verification tests and the child-resistant lighter tests show that, for the large majority of children, one brief operation of the surrogate signal indicates potential for a second operation. Although a brief signal may not represent the ability to maintain a flame, it is a strong predictor of future success. Therefore, the Commission is proposing the "one operation of any duration" definition of successful operation.'

G. Standardized Test Instructions

Although the Commission is not able to quantify the effect of using differently worded instructions for the child test, it is generally agreed that standardized tester instructions are helpful in preventing bias. Because of the variability in the success rates related to different testers in the verification test data, the proposed test procedures include considerable detail on how to interact with the children.

V. Statutory Authority

In the ANPR of March 3, 1988, the Commission cited provisions of the CPSA, the FHSA, and the PPPA as authority for this rulemaking proceeding. Summarized briefly, the following provisions of these three acts are relevant to this proceeding:

A. The CPSA

A cigarette lighter is a "consumer product" as that term is defined by section 3(a)(1) of the CPSA (15 U.S.C. 2052(a)(1)) because it is an article that is produced or distributed for sale to consumers for use in or around a household, in recreation, and in similar places and activities. Sections 7 and 9 of the CPSA (15 U.S.C. 2056, 2058) authorize the Commission to issue a consumer product safety standard consisting of labeling or performance requirements for a consumer product if those requirements are "reasonably necessary to prevent or reduce an unreasonable risk of injury" associated with a consumer product.

Section 14(a) of the CPSA (15 U.S.C. 2063(a)) requires each manufacturer of a consumer product that is subject to a consumer product safety standard to issue a certificate of compliance stating that the product conforms to all applicable consumer product safety standards. Section 14(c) of the CPSA requires that the certificate of compliance must be based upon a test of each product or a "reasonable testing program." Section 14(b) of the CPSA authorizes the Commission to issue rules to prescribe a reasonable testing program. Section 14(c) of the CPSA authorizes the Commission to issue rules requiring labels containing the date and place of manufacture and a suitable identification of the manufacturer, unless the product bears a private label, in which case the label shall identify the private labeler and contain a code mark that will permit the seller of the product to identify the manufacturer upon the request of the purchaser. Section 16(b) of the CPSA (15 U.S.C. 2065(b)) authorizes the Commission to issue rules requiring manufacturers to maintain records of the testing specified in any rule prescribing a reasonable testing program.

Section 9(g)(2) of the CPSA (15 U.S.C. 2058(g)(2)) authorizes the Commission to issue rules prohibiting the stockpiling of products that are subject to a consumer product safety rule. Stockpiling means the manufacturing or importing of a product between the date of promulgation of the consumer product safety rule and its effective date at a rate that is established by the rule and is significantly greater than the rate at which such product was produced or imported during a base period ending before the promulgation of the consumer product safety rule. The proposed rule includes a stockpiling provision in subpart C.

B. The FHSA

Butane or petroleum distillate fuel contained within a cigarette lighter meets the definition of the term "hazardous substance" in section 2(f)(1)(A) of the FHSA (15 U.S.C. 1261(f)(1)(A)) because it is "flammable" and in some cases is "toxic" or "generates pressure," and may cause substantial personal injury or illness as a proximate result of any customary or reasonably foreseeable use. Lighters which contain fuel when sold to consumers are subject to the labeling provisions of section 2(p) of the FHSA (15 U.S.C. 1261(p)) because they contain a hazardous substance which is intended or packaged in a form suitable for use in the household. Section 3(b) of the FHSA, 15 U.S.C. 1262(b), authorizes the Commission to issue rules to prescribe special labeling requirements for hazardous substances intended for use in the household if the Commission determines that the labeling specified by section 2(p) of the FHSA is not adequate to protect the public health and safety in view of the special hazard presented by that substance. Section 2(q)(1)(B) of the FHSA (15 U.S.C. 1261(q)(1)(B)) authorizes the Commission to issue a rule banning a hazardous substance intended for use in the household if the Commission determines that, notwithstanding any labeling which is or could be required by the FHSA, the degree or nature of the hazard is so great that the protection of the public health and safety can be adequately served only by keeping the product out of channels of interstate commerce. A banning rule issued under section 2(q)(1)(B) of the FHSA could take the form of a conditional ban: That is, a rule which bans any lighter which does not meet certain performance or design requirements specified in the rule.

C. The PPPA

Sections 2, 3, and 5 of the PPPA (15 U.S.C. 1471, 1472, and 1474) authorize the Commission to issue a rule to require packaging that is "significantly difficult" for children younger than five years of age to open or "obtain a toxic or harmful amount" of any substance contained therein which is a "hazardous substance" as that term is defined in the FHSA. To issue such a rule, the Commission must make and support findings that child-resistant packaging is required to protect children from serious personal injury or illness from "handling, using, or ingesting" the substance. As noted above, the fuel contained within a cigarette lighter is a "hazardous substance" as that term is defined in the FHSA. A cigarette lighter meets the definition of the term "package" in section 2(3) of the PPPA (15 U.S.C. 1471(3)) because it is the "immediate container" in which a hazardous substance is contained for use by individuals in a household.

Section 4(a) of the PPPA (15 U.S.C. 1473(a)) provides that for the purpose of making any substance which is subject to requirements for child-resistant packaging available to elderly or handicapped persons, the manufacturer may package that substance in conventional packaging in one size, provided that the substance is also supplied in child-resistant packaging, and the conventional packaging is labeled with the statement "This package for households without young children."

Proposal Under Section 30(d) of the CPSA

Section 30(d) of the CPSA (15 U.S.C. 2079(d)) provides that a risk of injury associated with a consumer product which could be eliminated or reduced to a sufficient extent by action under the FHSA or the PPPA may be regulated under the CPSA only if the Commission, by rule, finds that it is in the public interest to regulate such a risk of injury under the CPSA.

Elsewhere in this issue of the **Federal Register**, the Commission has published a proposed rule under the provisions of section 30(d) to express the Commission's preliminary finding that if regulatory action is needed to address the risk of injury associated with cigarette lighters that can be operated by children, it would be in the public interest to regulate such risks under the CPSA rather than the FHSA or the PPPA. That proposal states that provisions of the FHSA and the PPPA authorize the Commission to address risks of injury associated with the fuel contained within a lighter because the fuel is a "hazardous substance." However, in the proposed 30(d) rule, the Commission observes that a lighter is more than a container or package of fuel. It is a device that incorporates a mechanism for igniting the fuel and is intended to be operated to produce a flame. In the proposed 30(d) rule, the Commission expresses its preliminary determination that the provisions of the CPSA are the most appropriate to address risks of injury associated with a mechanical device that is intended to produce flame and that can be operated by children who are unable to appreciate all of the consequences of their use of the product. Those consequences may include ignition of clothing and other articles, which may injure or kill the child operating the lighter or other persons.

The notice of proposed rulemaking for the 30(d) rule solicits written comments from all interested persons on the proposal through September 16, 1992. The maximum comment period allowed by section 30(d) of the CPSA is 30 days, whereas the comment period for this proposed standard is 75 days. However, comments on the 30(d) rule that are submitted within the 75-day comment period for the proposed standard will be considered.

If the Commission issues a final rule under section 30(d) of the CPSA and decides to prescribe mandatory requirements for lighters concerning the

extent to which the lighters can be operated by children, or to take any other regulatory action with regard to those lighters, the Commission will use the applicable procedures of the CPSA rather than those of the FHSA or the PPPA. If the Commission does not issue a final rule under provisions of section 30(d) of the CPSA, any requirements applicable to lighters which can be operated by children, or any other regulatory action with regard to those products, will be taken under the authority of the FHSA or the PPPA.

VI. Certification, Testing, and Recordkeeping Requirements

Section 14 of the CPSA, 15 U.S.C. 2063, provides that every manufacturer (including importers) or private labeler of a consumer product that is subject to a consumer product safety standard under the CPSA and is distributed in commerce shall issue a certificate that certifies that such product conforms to all applicable standards. The statute specifies that such certificates shall accompany the product or shall otherwise be furnished to any distributor or retailer to whom the product is delivered. In addition, any certificate must be based on a reasonable testing program or a test of each product, state the name of the certifying firm, and include the date and place of manufacture. The Commission may, by rule, prescribe the reasonable testing programs to be used for a product subject to a consumer product safety standard under the CPSA.

The proposed cigarette lighter standard requires that cigarette lighters resist operation by children. As explained above, the standard requires that surrogates of such lighters be tested by children in order to determine that the surrogates meet the child-resistance requirement. 16 CFR 1210.5. For these tests to be meaningful, the surrogates must be identical in all characteristics that affect child-resistance to the lighters that are produced for sale. It is, therefore, particularly important that manufacturers test surrogates, establish specifications, and maintain quality assurance programs to insure that production lighters are identical in all crucial respects to the surrogates, within reasonable manufacturing tolerances.

The proposed certification requirements include general requirements for certification, testing, recordkeeping, and reporting that are designed to insure that manufacturers or importers (1) conduct tests with surrogate lighters, (2) develop reasonable specifications and manufacturing tolerances to insure that production lighters are sufficiently identical to the surrogates, and (3) maintain those specifications and tolerances during production of their lighters. The Commission believes that these requirements reflect good engineering and manufacturing practice. Because the proposed rule requires the manufacturer or importer of a cigarette lighter to issue the certificate of compliance, private labelers are exempted, pursuant to section 14(b) of the CPSA, from the requirement to issue a certificate. Private labelers must, however, insure that any certificate that is provided with the product by the manufacturer or importer is provided to any distributor or retailer that receives the product from the private labeler.

The proposed certification requirements will not only insure that distributors and retailers will be aware that cigarette lighters comply with the standard but will also provide a mechanism for efficient monitoring and prompt enforcement of the requirements by the Commission.

Section 14(c) of the CPSA authorizes the Commission to issue rules requiring that products be labeled with the date and place of manufacture and with a suitable identification of the manufacturer of the consumer product, unless the product bears a private label. If the product bears a private label, the label shall identify the private labeler and contain a code mark that will permit the seller of the product to identify the manufacturer to the purchaser, upon the purchaser's request. Under this authority, the proposal requires that the label contain the name of the manufacturer, or the name of the private labeler with a code mark so the private labeler can identify the manufacturer at the request of the purchaser. In addition, the proposal requires the product to be labeled with an identification of the time period during which the product was manufactured. This time period would not exceed 30 days in length.

In addition to the authority in section 14 of the CPSA, the Commission has used the authority of sections 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2065(b), 2066(g), and 2076(e). Section 16(b) gives the Commission the authority to require manufacturers, importers, and private labelers to establish and maintain such records, make such reports, and provide such information as may be necessary to determine compliance with rules prescribed under the CPSA. Section 17(g) allows the Commission to condition the importation of a product on the manufacturer's (including importer's) compliance with recordkeeping requirements and with the Commission's reporting rules relating to such requirements. Section 27(e) authorizes the Commission to require manufacturers to provide to the Commission such performance and technical data related to performance and safety as may be required to carry out the purposes of the CPSA. For the provisions proposed under the authority of section 27(e), the Commission preliminarily finds that the provision of these performance and technical data related to performance and safety is required to protect the public against unreasonable risks of injury.

The proposed recordkeeping and reporting requirements will allow the Commission's staff to ensure that lighters comply with the standard and will provide the Commission with important performance and technical data about product designs on the market.

Summary of Certification Provisions, and Discussion; Section 1210.12—Certificate of Compliance

This provision restates the requirement in section 14(a) of the CPSA that a certificate of compliance must accompany the product or be furnished to any distributor or retailer to whom the product is delivered, establishes labeling requirements, and refers to the reporting and recordkeeping requirements described below. This section also summarizes the duties of parties subject to the regulation.

A certificate of compliance is required to accompany each shipping unit (for example, a case) of the product. This certificate is required to contain a statement that the product complies with the safety standard, the name and address of the manufacturer, importer, or private labeler, the date(s) of manufacture, and, if it is not on the lighter, the address of the place of manufacture. Each lighter is required to bear a label, which may be in code, identifying the manufacturer or private labeler and identifying the time period, not to exceed 30 days, during which the lighter was manufactured.

Wilkinson Sword wrote to the Commission opposing the requirement that the certificate of compliance include the date(s) of manufacture. They contend that this requirement duplicates the requirement for a date range marking on the lighter and that a given shipment could include a wide variety of production dates.

The Commission, however, does not agree that date codes on individual lighters are an adequate substitute for a certificate that provides that information. Customers, U. S. Customs, and the Commission's enforcement staff should not have to open a large number of boxes in a shipment in order to obtain this basic information. In addition, section 14(a)(1) of the CPSA, 15 U.S.C. 2063 (a)(1), specifically requires that the certificate of compliance "shall include the date and place of manufacture." Comment is requested, however, on the burden involved in providing this information on the certificate of compliance.

Section 1210.13, .14 & .16—Certification Testing

These provisions establish minimum requirements for the reasonable testing program and require that manufacturers and importers perform qualification testing using surrogate lighters, followed by reasonable production testing. Corrective action or further testing must be undertaken when production testing indicates that lighters in a production interval may not comply with the standard. The Commission believes that this test scheme is consistent with normal manufacturing processes. The qualification testing and production testing required by this paragraph may be performed before the effective date of the standard.

Wilkinson Sword also wrote to the Commission arguing against the previous draft requirement which stated that production and distribution shall cease if testing indicates that lighters may not meet the requirements. The firm believes that the draft was ambiguous and that the rule should require cessation of production and distribution only for lighters that are part of the production interval where there are failing test results. While this is consistent with the originally intended meaning of the provision, more explicit language has been added.

Section 1210.15—Specifications

This provision requires that manufacturers, private labelers, and importers establish specifications for their cigarette lighters to ensure that the production lighters will be as child-resistant as the surrogates used in the child-based qualification tests. This will enable the Commission to compare actual production lighters to the firm's specifications to ascertain that the production lighters are identical, within reasonable manufacturing tolerances, to the surrogate lighters in all aspects that affect child-resistance. The Commission has found that these provisions are necessary to insure compliance with the standard, and proposes them under the authority of sections 14(b) and 16(b) of the CPSA.

Section 1210.17(a)—Recordkeeping Requirements

This provision, authorized by sections 16(b) and 27(e) of the CPSA, requires that the manufacturer or importer maintain records in English of its testing and specifications and provide the Commission's staff with access to these records. This will allow the Commission to determine whether the lighters being manufactured are sufficiently identical to the surrogate lighters and whether adequate controls have been placed on the manufacturing process.

Most of the required records and the surrogate lighters that were tested must be kept in the United States and be accessible to the Commission's staff within 48 hours of a request. This is so these records may be reviewed quickly to determine whether lighters comply with the standard, particularly where the lighters are being held by U. S. Customs. However, it may be convenient to maintain records of production testing at the production facility. Because many of the cigarette lighters subject to the proposed standard are manufactured outside the United States, this provision allows these records to be kept outside the United States, so long as they can be provided to the Commission's staff within seven days of a request. The Commission may perform tests with the surrogate lighters in order to determine the accuracy of the records and the child-resistance of the lighters.

Wilkinson Sword also contended that one week does not provide sufficient time for manufacturers to copy and produce records that are kept outside the United States. They suggest that three weeks would be needed.

The Commission considers three weeks to be too long. The Commission's agreement with the U. S. Customs Service specifies that the Commission's staff will make a decision within two weeks about whether an imported product violates Commission requirements. If the decision is not made within that time, Customs will conditionally release the goods. Three weeks is also too long if lighters—which have a relatively short shelf life—are in domestic commerce when the staff discovers a potential noncompliance.

Therefore, the Commission is proposing one week as the time required for production of records that are kept outside the United States. Comment is requested on the problems involved in meeting this requirement.

The records and surrogate lighters are required to be kept for three years after the events to which they relate have ceased. Thus, records of qualification tests and surrogate specifications, and surrogate lighters, must be kept for three years after the production of that model has ceased, and records of production testing must be kept for three years after the date of testing.

Except for production records, records must be kept on paper, microfiche, or similar media that can be directly examined. Production records may be kept on these media or on computer tape or other retrievable media.

Section 1210.17(b)—Reporting

This section requires that the manufacturer or importer submit basic information about its product, and a prototype or production unit of the lighter model, at least one month prior to the initial importation or distribution in commerce of each model. This will make it easier to identify products that either do not comply with the standard or have not been properly certified. This will particularly assist the Commission and the U.S. Customs Service in recognizing noncomplying imports.

Section 1210.17(c)—Confidentiality

The Commission recognizes that some of the recordkeeping and reporting requirements may require firms to provide information to the Commission that the firms view as trade secret or as other confidential commercial information. Under section 6(a)(2) of the CPSA, information in the possession of the Commission that contains or relates to a trade secret or other matter referred to in 18 U.S.C. 1905 or subject to 5 U.S.C. 552(b)(4) shall be considered confidential and shall not be disclosed. 15 U.S.C. 2055(a)(2). Under this section, and in accordance with 16 CFR 1015.18–1015.19, persons submitting information for which they desire confidential treatment must request that the information be considered exempt from disclosure. If the Commission's staff nevertheless determines that the information may be disclosed because it is not confidential information, the person submitting the information will be given notice in writing of the staff's intention at least 10 working days before the information is released. This provision gives the submitter an opportunity to seek judicial review of the Commission's determination prior to release of the information. 16 CFR 1015.19; see also, 16 CFR part 1101.

Section 1210.18—Refusal of Importation

Pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), this section conditions the importation of lighters on the manufacturer's compliance with the inspection and recordkeeping

requirements of this Act and the Commission's rules. Thus, importation of lighters may be denied if the importer has not complied with the reporting and recordkeeping requirements of the proposed rule, particularly if the lighters do not comply with the specifications for the surrogate.

VII. Anti-Stockpiling Provision

Subpart C of the proposed rule contains anti-stockpiling provisions of the standard that would limit the production or importation of noncomplying lighters between the promulgation of the rule and its effective date to 120 percent of each firm's rate during a base period; this base period could be any 365-consecutive-day period of a firm's choosing during the 5 years prior to the publication date of the final rule. Noncomplying lighters manufactured in, or imported into, the United States before the promulgation date of the standard could be sold to consumers at any time without being affected by the stockpiling rule.

VIII. Effective Date

The Commission proposes that the rule become effective 12 months after the date of publication of a final rule in the **Federal Register**. Lighters subject to the standard and manufactured or imported after the effective date would be required to comply. The 12-month period was selected in order to get child-resistant lighters into consumers' hands as quickly as reasonably possible, while allowing sufficient time for manufacturers and importers of most lighters to design, produce and import safer products. The 12-month period would also minimize any potential disruption that may occur among small importers of lighters subject to the standard. The potential effects on safety and industry of this and shorter effective dates are discussed below in Section IX of this notice.

IX. Initial Regulatory Analysis and Proposed Statutory Findings

The proposed rule is published under the authority of the Consumer Product Safety Act (CPSA). Section 9(c) of the CPSA, 15 U.S.C. 2058(c), requires that the Commission publish a preliminary regulatory analysis containing:

1. A preliminary description of the potential benefits and potential costs of the proposed rule, including any benefits or costs that cannot be quantified in monetary terms, and an identification of those likely to receive the benefits and bear the costs;

2. A discussion of the reasons any standard or portion of a standard submitted to the Commission was not published by the Commission as the proposed rule or part of the proposed rule;

3. A discussion of the reasons for the Commission's preliminary determination that efforts proposed and assisted by the Commission would not, within a reasonable period of time, be likely to result in the development of a voluntary consumer product safety standard that would eliminate or adequately reduce the risk of injury addressed by the proposed rule; and

4. A description of any reasonable alternatives to the proposed rule, together with a summary description of their potential costs and benefits, and a brief explanation of why such alternatives should not be published as a proposed rule.

In addition, section 9(f)(1) of the CPSA, 15 U.S.C. 2058(f)(1), requires the Commission, when issuing a final rule, to consider and make appropriate findings for inclusion in the rule regarding:

1. The degree and nature of the risk of injury the rule is designed to eliminate or reduce;

2. The approximate number of consumer products, or types or classes thereof, subject to such rule;

3. The need of the public for the consumer products subject to such rule, and the probable effect of such rule upon the utility, cost, or availability of such products to meet such need; and

4. Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety. Because these findings are required to be in the final rule, they are included in § 1210.5 of the rule proposed below.

The following additional specific findings are required to be included in a final consumer product safety standard by section 9(f)(3) of the CPSA, 15 U.S.C. 2058(f)(3):

1. That the rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;

2. That the promulgation of the rule is in the public interest;

3. If the rule relates to a risk of injury with respect to which persons who would be subject to such rule have adopted and implemented a voluntary safety standard, that either (a) compliance with such voluntary standard is not likely to result in the elimination or adequate reduction of such risk of injury or (b) it is unlikely that there will be substantial compliance with such voluntary safety standard;

4. That the benefits of the rule bear a reasonable relationship to its costs; and

5. That the rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

The following discussion addresses the subjects about which the Commission is required by section 9 (c) and (f) of the CPSA to make appropriate findings. The findings that are required by the CPSA to be in the final rule are proposed at § 1210.5.

Product and Market Information

Consumers purchased more than 600 million lighters in the United States in 1991. About 95 percent of these were nonrefillable disposable pocket cigarette lighters. All nonrefillable lighters use butane fuel. These lighters are widely available through a variety of mass-merchandise retailers and are inexpensive (from under 50 cents to about $3.00 each).

About five percent of the lighters purchased by consumers in 1991 were refillable. Refillable lighters use butane or liquid fuel. About two percent of all lighters sold were inexpensive ($1.49–$4.00) pocket refillables. About three percent were luxury lighters, which are often distributed through higher-end retailers such as jewelers. Luxury lighters generally retail for above $10 and include pocket and table lighters. Less than one percent of all lighters sold were novelty lighters, which retail for about $5 and up.

There are about 50 lighter importers in the U.S. One firm manufactures disposable lighters in the United States, and another firm manufactures luxury lighters in the United States. In 1989, three firms marketed more than 95 percent of all disposable lighters (90 percent of all lighters) sold in the United States. By the end of 1991, these three firms marketed about 70 percent of all disposable lighters. The decline in their market share is the result of a steady market penetration of recently introduced, very low-priced ($0.35–$0.75 retail), disposable roll-and-press lighters. The estimated 1991 sales are shown in Table 4.

TABLE 4.—LIGHTER SALES—1991 ESTIMATES [1]

Type	Units (millions)	Percent of sales
Disposable:		
Nonrefillable (roll & press)	530	87
Nonrefillable (pushbutton)	50	8

TABLE 4.—LIGHTER SALES—1991 ESTIMATES [1]—Continued

Type	Units (millions)	Percent of sales
Inexpensive refillable [2]	10	2
Subtotal	590	97
Novelty	1	<1
Luxury refillables:		
Pocket butane [2]	9	2
Pocket liquid [2]	7	1
Table	2	<1
Subtotal	18	3
Total	607	[3] 100

Notes: [1] Figures represent point estimates within ranges.
[2] Categories each include some pipe lighters, all of which total less than 1 million units and 0.2 percent.
[3] Proportions are rounded within each category
Source: Lighter Association and individual company data and CPSC/Economic Analysis estimates.

The popularity of the various lighter types is reflected in the composition of the stock of lighters in consumers' hands. Over one-half billion lighters are estimated to be "consumed" annually in the United States. The vast majority of lighters in use consists of butane-fueled nonrefillables. A CPSC-sponsored national household survey (L. Smith, C. Smith, & D. Ray, "Lighters and Matches: An Assessment of Risks Associated With Household Ownership and Use," CPSC, June 1991) revealed that in 1990:

- 29 million households owned one or more working lighters; average ownership was about 3.5 lighters per household;
- A total of 104 million lighters were in consumers' hands, over 88 percent of which were disposable (72 percent roll and press, and 16 percent pushbutton); all types of pocket refillables accounted for about 10 percent of all owned lighters;
- Although many more households (a total of 60 million) owned matches, and matches in homes outnumbered lighters 10 to 1, lighters were used more than 600 million times per day, compared to about 200 million times per day for matches; and
- Lighting smoking materials accounted for 90 percent of lighter use, and about 60 percent of match use.
- Based on the survey data and on historical sales figures, it is estimated that roughly 3 to 5 percent of all lighters in use are inexpensive "refillable disposables," and that about 5 to 8 percent are "luxury" pocket refillables. Novelty lighters and table lighters probably account for less than 1 percent each.

There are about 50 manufacturers and importers of lighters in the U.S. In 1989, three firms marketing traditional major brands—BIC, Wilkinson Sword (Cricket/Feudor), and Scripto/Tokai—accounted for over 90 percent of all units, including over 95 percent of all disposables, shipped in the U.S. By the end of 1991, however, these proportions had changed significantly: The traditional "big three" accounted for about 70 percent of unit shipments. Since the late 1980's, there has been a steady market penetration of very low-priced ($0.35–$0.75 retail) disposable butane roll-and-press lighters, principally from Korea, China, Thailand, and the Philippines. Low labor costs in these nations and competition among local component part suppliers reportedly allow per-unit production costs of 10 cents or less for standard-size models. The market share of one importer, Westco, reportedly rivals those of the big three. The estimated market share of low-priced disposables was over 30 percent in 1991. Two firms, Ronson and Zippo, are dominant in the pocket refillables market, though their overall market shares are very low.

All of the major firms are importers. BIC also manufactures disposable butane lighters in the U.S. Zippo is the only known supplier of domestically-manufactured refillable lighters; there are roughly 10 other firms that import only "luxury" refillables. Though production estimates from industry sources vary, most lighters sold in the U.S. are imported. Each of the major firms manufactures or imports other products in addition to lighters; however, lighters constitute a significant portion of their total revenues.

Potential Benefits of the Proposed Rule

The proposed rule is intended to reduce the risk of fire associated with young children playing with lighters. The potential benefits to the public consist of the projected decrease in the cost of child-play lighter fires in terms of deaths, injuries, and property damage. It is expected that the effectiveness of the proposed rule would be limited primarily to preventing fires started by young children, especially those under the age of 5. Most child-play lighter fire casualties result from fires started by children under 5 (a yearly average of 170 deaths out of a total of 180). Match-related child-play fires, by contrast, are more often started by older children.

Based on the latest available multi-year fire loss data, the estimated annual cost of fires started by children under 5 playing with lighters is about $415 million. The proposed rule would substantially reduce this cost. To the extent that the proposed rule would avert some fires started by older children, potential benefits would be greater; this slight potential effect is not included in the estimates of likely benefits.

Two factors may reduce the potential benefits of the proposed rule. First, not all lighters in consumers' hands after the issuance of a rule could be expected to be child-resistant: Not all lighters would have to comply, and some previously-manufactured or previously-imported units—especially refillable models—may remain in use for many years. Second, some consumers may find child-resistant lighters inconvenient to operate and may choose to use matches instead (this effect is lessened to the extent that relatively less risky non-child-resistant refillables, rather than matches, are substituted for child-resistant models). The extent of these effects is uncertain. To be conservative with respect to potential benefits and roughly consistent with the ownership data from the consumer survey conducted by the Commission, the proportion of non-child-resistant lighters in use after the effective date of a rule is assumed to be greater than zero but not more than 20 percent. Some consumers would probably switch to matches, but the number who would do so would not be likely to exceed 10 percent (even this level would presume a substantial shift, given the estimated 750 billion lights consumed annually in the U.S.). The ranges of expected benefits noted below reflect the extremes of these two factors. An estimate using 10 percent non-child-resistant lighters in use and 5 percent switching to matches provides perhaps the best approximation of overall benefits; under these conditions (and assuming conservatively that the risk from matches is the same as the risk from non-child-resistant lighters), total benefits would be 85.5 percent (*i.e.*, .90×.95) as great as if there were no such effects.

At the 85 percent level of child-resistance that would be required by the proposed rule (and assuming full compliance), it is estimated that between 85 and 120 deaths per year may be prevented, and that the range of total annual savings, including reductions in deaths, injuries, and property damage, may be approximately $210–290 million. This estimate includes a range of annual injury cost and property damage savings of about $35–50 million. Under the best estimate, using the assumptions above, about 100 deaths would be avoided and total annual savings would be approximately $250 million.

In order to minimize the possibility that the Commission's staff would test a manufacturer's lighter and obtain results less than the 85 percent level required in the proposed rule, manufacturers would

attempt to produce lighters that perform better in child panel tests than 85 percent; this would allow firms to maintain achievable levels of quality control in component specification tolerances and in manufacturing practices. The actual effectiveness of child-resistant lighters would, therefore, be somewhat greater than 85 percent. The estimated annual benefits of a 90-percent-child-resistance standard, for example, would be about $240–$330 million, with a point estimate of about 115 deaths averted and societal savings of approximately $285 million.

Potential Costs of the Proposed Rule

Significant economic costs would likely accompany the proposed rule. Costs to industry of developing and producing child-resistant lighters would probably be passed on to consumers in the form of higher prices. The utility derived from lighters by consumers may be adversely affected, depending on how difficult the operation of lighters is made due to the use of child-resistant features or designs. Many lighter models would probably be discontinued. Although some existing novelty lighters may already meet the requirements of the proposed test method, producers and importers would still have to test and certify. Total lighter sales could be adversely affected, at least temporarily, depending on the degree of consumer switching to matches. Individual companies' short-run sales could also be restricted as a result of proposed anti-stockpiling provisions.

Effects on Industry

Manufacturers would have to modify their products to comply with the proposed rule. Most lighters would probably incorporate some sort of multi-action, spring loaded button or lever, somewhat like the safety used on firearms but which automatically resets after each activation. A variety of fixed and variable costs would be associated with these modifications. Some of these costs were incurred prior to the publication of the proposed rule. These costs include the following:

- Research and development toward finding the most promising approaches to improving child-resistance, including building prototype surrogate test lighters and conducting preliminary child panel testing;
- Redesigning products;
- Tooling and other production equipment changes, to the extent that they exceed normal periodic changeover costs;
- Incorporating additional components and assembly steps into the manufacturing process;
- Certification, testing, recordkeeping, and reporting for each new model;
- Lost revenues if sales were adversely affected; and
- Various administrative costs of compliance, such as legal support and executive time spent at standards-development meetings and activities.

Some of the larger manufacturers and importers have estimated the cost of developing child-resistant lighters. Industry-wide research and development costs on the order of tens of millions of dollars would likely be incurred by producers to design new models to meet the proposed rule. These costs would vary with the requirements (regarding scope, acceptance criterion, test protocol provisions, and effective date) of the final rule. Child-panel testing costs would also be incurred; at over $5,000 per panel and multiple panels per model, individual firms' development-related testing costs may be tens of thousands of dollars.

Based on extrapolations from individual firms' cost data, the estimated one-time tooling and related plant and equipment costs associated with new child-resistant lighters are $20–$30 million. These costs would be amortized over a number of years. The estimated level of recurring, production-related variable costs directly attributable to the proposed rule, *i. e.*, independent of changes that would accompany the normal, routine introduction of new models, is at least $25 million annually.

Certification and testing costs include costs of producing surrogate lighters where applicable (at an estimated $2,000–$3,000 per surrogate), conducting child-panel tests (at over $5,000 per test), conducting production testing, and issuing certificates and maintaining records for each model (at up to a few thousand dollars per firm, depending on how many different models are marketed by each firm). Overall industry-wide certification and testing costs to manufacturers and importers are estimated to be on the order of $1–$5 million annually. Approximately 10 percent of this total would be spent to build surrogates, 51 percent to do child testing, 27 percent to do production testing, and 12 percent for recordkeeping, reporting, and certificate issuance. Almost all of these annual costs would be necessary to a quality control program to ensure that the lighters comply with the standard. The incremental costs due to the specific requirements of the proposed rule for testing, recordkeeping, and reporting are very small.

The total cost of the proposed rule to industry may be expressed in terms of the effect on the overall per-unit cost of lighters. Though a wide range of manufacturing costs exists for the various types of lighters on the market, present overall manufacturing costs for some imported disposables can be as low as 10 cents or less per unit; the range for most disposables is 15 to 25 cents. Thus, an increase of a few cents per unit constitutes a significant cost impact. The likely increase in manufacturing costs due to the imposition of the proposed rule is estimated to vary, among the various lighter types and models, between 2 and 50 cents per unit, with an average of between 5 and 10 cents per unit. The range of expected cost increases amounts to about 10–40 percent of per-unit total manufacturing costs, with increases of less than 20 percent for most models.

Child-resistant features may be particularly difficult to incorporate into some refillable lighters with unusual designs or ignition mechanisms. Producers and importers would probably discontinue such models. For example, it may not be commercially feasible for manufacturers to add child-resistant features to certain "novelty" models, the unusual sizes or shapes of which may not readily lend themselves to the addition of buttons or other appendages. Many novelties would probably be discontinued if the proposed rule were promulgated. Novelty models for which redesign would be fairly simple would probably remain on the market. Prices for some could be higher as a result, but since the market for novelties is relatively less cost-competitive and markups are relatively higher than for other lighters, changes to improve child-resistance may not add appreciably to retail prices, especially for lighters that are already high-priced, *i.e.*, $20 or higher.

As noted above, refillable lighters that are not novelty lighters would be subject to the proposed rule only if their Customs Valuation or manufacturer's (or "ex-factory") price is less than $2.00. It is possible but unlikely that firms would be induced to raise their prices above this level in an effort to market a disposable lighter that would not have to be child-resistant. Most "refillable disposables" are reportedly not close to $2.00 in Customs Valuation or ex-factory price (no such lighters are currently produced domestically); competitive pressures would likely prevent firms from raising prices simply to avoid compliance with the proposed rule.

It is conceivable that the importer-to-retailer markup could be sufficiently small to allow an over-$2.00 (Customs Valuation) lighter to retail for only $3.00, and therefore be price-competitive with the very highest-priced child-resistant disposables. No such products are currently known to be on the market, however. The $2.00 figure provides a reasonable cutoff between disposable lighters, which are intended to be subject to the proposed rule, and luxury lighters, which are not. A lower dollar figure would allow some low-priced refillable-disposables to remain on or enter the market without a child-resistant feature; a higher dollar figure would cover some models that do not present the risk addressed by the proposal.

The proposed rule contains provisions, authorized by section 9(g)(2) of the CPSA, designed to prohibit stockpiling of noncomplying lighters between the promulgation date of a final rule (i.e., the date of publication in the **Federal Register**) and its effective date (12 months later). This essentially limits the interim production or importation of lighters that could be manufactured or imposed after the rule's effective date. Lighters in U.S. firms' inventories would not be affected if they were produced in the U.S. or imported before the promulgation date. The proposed anti-stockpiling provisions would establish a base period of any 365 consecutive-day period during the previous 5 years, and an allowable production/importation rate of 120 percent. Thus, firms manufacturing or importing lighters subject to the proposed rule could manufacture or import noncomplying lighters during the interim year at a rate not to exceed 120 percent of the rate during their chosen 365-day base periods.

The anti-stockpiling provisions would have no significant effect on most firms subject to the proposed rule, but would restrict sales growth for some small importers whose sales have increased substantially in recent years and are expected to continue to grow in the future. Some firms have doubled their sales since 1990; as noted in the discussion on competitive effects, below, these firms may be at a temporary disadvantage in the market as a result. All firms would incur administrative costs associated with recordkeeping and monitoring of production and importation levels; these costs would account for a minor proportion of overall costs of compliance.

Effects on Consumers

It is likely that the increased cost of producing child-resistant lighters would be passed on to consumers in the form of higher retail prices. Applying the estimated percentage cost increases for each product type—the various butane disposables, low-cost butane refillables, and "novelty" lighters—the likely impact on prices and on consumers' retail expenditures can be calculated. Prices of lighters that currently retail for under $3 may increase by roughly 10–40 cents per unit; for some more expensive models, including most novelties, retail prices may rise by as much as $1–5. The average increase among all lighters is estimated at about 15 cents. Costs may be lower if cost-reducing production economies are achieved, particularly among disposables; costs may be higher if presently-anticipated methods of achieving compliance were inadequate and more costly methods were necessary. The total annual cost of the proposed rule to consumers is estimated to be $95 million.

Some uncertainty exists as to how well all manufacturers would be able to incorporate necessary changes into their products. In a worst-case scenario in which manufacturers' costs were much higher and retail prices were raised by an average of 25 percent for all types of lighters, the total annual cost to consumers could be about $165 million and the maximum cost per life saved could approach $2 million. Though this scenario probably overstates the likely cost significantly, the estimated cost per life saved still falls within what is considered a reasonable range.

Another potential "cost" to consumers is the potential decrease in the utility, or convenience of operation, of the product. By their child-resistant design, complying lighters would probably be somewhat more difficult for adults to use than are the currently marketed non-child-resistant designs. Older adults, or adults with arthritis or other physical impairments, may find child-resistant lighters particularly troublesome (*i. e.*, hard to operate with one hand). This constitutes a loss to consumers; this loss which is not readily quantifiable, may diminish as more convenient complying designs are devised over time. As noted above, some consumers may switch to matches (which are free, if less convenient) if child-resistant lighters were perceived as too difficult to use. No significant long-term impact on lighter and match production and consumption is expected, though sales of some especially inconvenient or costly lighter designs could suffer. Manufacturers and importers routinely test-market their new products to establish consumer acceptance; refinements of new designs would undoubtedly be made over time as needed.

If certain novelty lighter models were discontinued due to the technical difficulty of incorporating child-resistant features into the specialized designs or physical configurations of the products, there could be a loss of utility to collectors or to other consumers who would have purchased such lighters. Some novelties, especially the higher-priced models, would probably remain on the market if the proposed rule were issued on a final basis. It is possible that some particularly unusual existing lighter models may be viewed as more collectible after their discontinuation, and may therefore increase in market value. The likely overall magnitude of any potential loss to consumers is slight.

Effects on Competition

The proposed rule may have adverse effects on competition in two areas: Among marketers of disposable lighters, and between marketers of refillables and disposables. A few major manufacturers of disposables were heavily involved in the development of the ASTM F15.02 draft voluntary standard, and gained substantial knowledge about how best to achieve compliance, how to build surrogate lighters, and other aspects of CPSC's regulatory development process. Other firms not directly participating in the ASTM standard development or not members of the Lighter Association may possess less advanced or detailed knowledge about the Commission's activities or about how to approach child-resistance as a marketing goal. Thus, some firms would be considerably closer than others to having production-ready child-resistant lighters in time to meet the proposed rule.

This may lead to some disruption of manufacturing practices among foreign producers, and could result in a temporary interruption of lighter shipments from some of those sources until all manufacturers can design new complying models and develop reasonable test programs to support certificates of compliance. For disposables generally, a significant potential effect of the proposed rule would be the narrowing of the cost and price gap between lighters marketed by the major suppliers and the recently-introduced very low-priced imports from Korea, China, Thailand, and the Philippines.

The proposed rule's anti-stockpiling provisions would also temporarily

restrict the expected growth in sales among certain small importers of the lowest-priced lighters. Up to 50 percent or more of these firms' anticipated increased shipments in the year following promulgation of the rule could be affected. This may constitute a moderate trade barrier and would confer a competitive advantage upon firms—including the largest firms — for whom significant sales increases are not expected. No permanent adverse impact on small importers is expected. Further, no significant impact on foreign trade generally is likely to be associated with the proposed rule. All manufacturers represented in the U.S. market could continue to supply non-child-resistant lighters to other world markets.

As noted above, most models of pocket refillable lighters, *i.e.*, the so-called "luxury" lighters, would remain on the market and would not be covered by the proposed rule. Some consumers may purchase these products as substitutes for child-resistant disposables, thus increasing luxury lighter sales at the expense of less costly models. Since substantial price differences would continue to exist between complying lighters and those not required to comply, the magnitude of this effect is estimated to be negligible.

Another area of market competition that may be affected by the proposed rule involves a relatively small number of imported, high-cost, "added perceived value" disposables—whose Customs Valuation may approach or exceed $2.00 by virtue of special features, such as detachable leather or metallic covers that can be reused with successive disposable lighters—and moderate cost refillables that are also close to (but higher than) $2.00. These two kinds of products compete for use as advertising or promotional aids, often by cigarette companies, and are generally given away to consumers (or as a premium with the purchase of cigarettes). The disposables would be subject to the proposed rule regardless of value, while the over-$2.00 refillables would not. If the disposables were perceived as too inconvenient compared to the refillables, then the proposed rule could adversely affect competition in the disposables segment of the market. On the other hand, if the child-resistant features of complying lighters were viewed as positive attributes by consumers, an advantage could accrue to suppliers of complying models. The extent of any such effect is uncertain, and would depend in large measure upon public perceptions about the utility of child-resistant lighters.

All lighter producers serve world markets. In order to maximize global sales, firms are expected, if the proposed rule is issued, to market both child-resistant lighters for the U. S., and non-child-resistant models for other nations. The major lighter suppliers generally have multiple manufacturing sources around the world, some of which may continue to produce only non-child-resistant models. Firms with only one manufacturing plant, or those without multinational production capability, may incur somewhat higher than average per-unit costs, *e.g.*, for production line additions (as opposed to changeover) and additional inventory controls. How this might affect prices of lighters bound for the U.S. is uncertain.

The Commission gives special consideration to the potential impact of its rules on small businesses. Most importers of lighters, particularly importers of novelties, could be considered to be small firms. It is estimated that 30–35 of the approximately 40 covered importers are small. As noted above, some of these firms may cease distribution of novelty lighters. Others may experience some disruption in supply. No significant long-term adverse impact on the profitability or viability of any importers or manufacturers is expected to result from the proposed rule; however, some temporary effects could occur.

Other Standards

As noted in the previous description of the requirements of the proposed rule, a voluntary safety standard for lighters, ASTM F400–87, exists but is not generally intended to address the risk of child-play fires. A provision of this ASTM standard calls for "keep away from children" product labeling; the Commission was aware of this standard when it determined that a regulatory proceeding should be initiated to address the potential unreasonable risk associated with lighters.

In another voluntary standard development effort, the ASTM Task Group on Safety Standards for lighters drafted a child-resistance standard for lighters. This draft standard is similar to the proposed CPSC mandatory rule. The Lighter Association has requested that the Commission propose the draft ASTM F15.02 child-resistance standard as a mandatory rule. This request is consistent with the rulemaking provisions of Section 9(a)(5) of the CPSA. The Commission assisted ASTM and industry representatives (including members of the Lighter Association) in the development of this draft standard during 1989 and 1990.

The draft ASTM voluntary standard is quite similar to the proposed mandatory rule; notwithstanding some performance requirement and test protocol differences, the technical requirements of the ASTM draft, if universally adopted, might adequately address the risk. Mandating the principal provisions of the draft ASTM standard would probably achieve almost the same level of benefits to the public as would the version developed by CPSC. Thus, although the CPSC proposal incorporates more stringent requirements supported by child test data, various aspects of the draft voluntary standard were adopted in the proposed rule.

If there were widespread voluntary conformance with child-resistance requirements, substantial safety benefits could be achieved. Uncertainy about the expected level of conformance, however, leads to the conclusion that the ASTM child-resistance effort would not adequately reduce the risk in the absence of a mandatory rule. As noted above, a significant number of very low-priced disposable lighters recently entered the price-competitive U.S. market. The share of the disposables market for these price leaders increased from under 5 percent in 1989 to 15–20 percent in 1990 and to 30–35 percent in 1991. Many of these very low-priced imports allegedly do not meet the existing ASTM F400 standard; industry sources have stated that it is unlikely that many of these products would conform to a voluntary child-resistance standard.

The extent to which manufacturers and importers would conform to a voluntary child-resistance standard is uncertain. Many firms, including most of the largest, would likely continue to market some non-child-resistant lighters indefinitely unless prohibited from doing so. The five or six largest suppliers (*i.e.*, those most likely to conform, at least in part, to a voluntary child-resistance standard) accounted for about 75–80 percent of all U.S. shipments in 1991. Thus, for a projected 1992 market approaching 650 million units, up to about 160 million non-child-resistant lighters may still be sold even if 100 percent of the current industry leaders' products conformed to the ASTM draft standard.

The major firms may feel competitive pressure to continue marketing substantial quantities of non-child-resistant lighters. Conforming firms, most of whom are already at a price disadvantage in the low end of the market, may face an additional competitive disadvantage if they passed

the costs of child-resistant lighter development on to consumers in the form of higher prices. This effect could be mitigated by product liability concerns, which could also ultimately encourage more widespread conformance among the very low-priced imports as they gain in market share and in potential liability exposure. On balance, the level of conformance to the draft voluntary standard for child resistance would, over a period of a few years, probably not be high.

The larger firms would probably market child-resistant and non-child-resistant lighters if the draft ASTM voluntary standard were adopted. Smaller suppliers would probably market only non-child-resistant models. Under these circumstances, perhaps half of all lighters sold might be child-resistant. If 50 percent of all lighters sold conformed to the draft voluntary standard (which incorporates a nominal 80 percent acceptance criterion), the estimated economic benefits would be much lower than under the proposed rule: The projected $210–$290 million in annual accident savings associated with the proposed rule would be reduced by some $125–$165 million, to approximately $85–$125 million; the estimated number of deaths avoided annually would drop from about 85–120 to about 35–50. Costs to consumers would also be lower to the extent that prices for nonconforming lighters do not increase. The effect on consumers' retail expenditures may be reduced to about $50 million. Yearly net benefits of $35–$75 million may be expected.

The proposed rule, or any of the reasonable alternatives described below, would have higher expected net benefits than the draft ASTM voluntary standard. Thus, that voluntary standard, while technically similar in most respects to the CPSC proposal, may not adequately reduce the risk associated with lighters.

Alternatives to the Proposed Rule

As described in the previous sections on benefits and costs, the proposed rule is estimated to have potential benefits to consumers of approximately $210–$290 million, and costs of roughly $95 million, annually; thus, expected yearly net benefits of the proposed rule would be about $115–$195 million. The Commission also considered reasonable alternatives to the proposed rule. The principal alternatives considered included a broader or narrower scope of product coverage, alternate acceptance criteria, and alternate effective dates. The Commission could also determine that a rule is not needed, *i.e.*, that a combination of volunary action and consumer information/education would adequately address the risk.

Alternative Scope

If the Commission broadened the scope of the proposed rule to cover all lighters, the approximately 2–3 percent of lighters sold annually that are not expected to be made child-resistant would have to comply. This could increase the expected benefits of the proposed rule, to the extent that these lighters otherwise could have been involved in future accidents that would be prevented. Consumers would not, however, be able to substitute non-child-resistant lighters for complying models. This may slightly increase the likelihood that matches would be substituted. It may also increase any adverse impact the proposed rule would have on older or handicapped consumers who might wish to use non-child-resistant luxury models.

The likelihood that benefits would be significantly increased under this alternative is slight. A very small proportion (about 6 percent) of injuries resulting from fires started by children under age 5 during the 5-year period of 1985–1989 involve refillable lighters of any kind; only one death during that period was associated with a refillable that is still on the market. If all refillables were made child-resistant, an increase in potential benefits of at most $5–$10 million annually could result. The actual increase would probably be lower.

Costs would also be increased under this alternative. Assuming that the estimated 10–20 million lighters not required to be child-resistant under the proposed rule were modified to comply, the additional estimated annual cost to consumers would be about $20–$25 million. Total annual costs would be increased to an estimated $115–$120 million, and net benefits would decrease slightly, to $100–$185 million.

Child-resistant features may also be relatively more costly to incorporate into liquid-fuel lighters, depending on the chosen method of achieving compliance. The effect on prices is uncertain; a $5 average price increase is estimated for liquid-fuel lighters, reflecting a "cost-plus" pricing assumption (*i.e.*, that a given percentage cost increase will lead to a price increase in proportion to the retail markup of the entire product). Relatively few liquid-fuel lighters are sold; thus, the total costs of the proposed rule are not particularly sensitive to even large variations in this cost component. As noted in the cost discussion above, manufacturers may incur costs of producing non-child-resistant models for shipment to other nations. One domestic firm which exports a substantial portion of its lighters may be so affected. The precise potential impact of this additional cost on prices of such firms' child-resistant models is unknown, but probably would be slight.

The Commission could also limit the scope of the proposed rule to exclude novelty lighters. These account for less than 1 percent of all lighters sold annually and for an estimated 2 percent of the fires started by children under age 5. Yet, a large number of models (probably over 100) exist; these would have to be made child-resistant or discontinued. Excluding novelty lighters would reduce the cost of the proposed rule by 1–5 percent, and would allow continued sales to consumers of products that would otherwise probably be discontinued. However, the risk associated with non-child-resistant novelty lighters, which may be particularly attractive to young children, would not be reduced; a number of fires have been associated with novelties, especially those in the shape of guns. Thus, the potential benefits of the proposal may be lessened slightly if novelties were excluded.

Alternate Acceptance Criterion

The proposed rule would require that complying lighters be tested using controlled panels of young children, and be inoperable by at least 85 percent of the children in the specified test series. Most firms would be able to meet this acceptance criterion without substantial technical difficulty, although significant costs may accompany the institution of additional component quality and manufacturing process controls. The Commission considered lower (80 percent) and higher (90 percent) acceptance criterion alternatives during the development of the proposal.

Under the 80 percent alternative, minimum benefits would be slightly lower—about $175–$250 million per year, compared to $210–$290 million per year for the proposed 85 percent rule. Costs could be slightly lower, to the extent that some firms may be able to comply with designs that could not meet an 85 percent rule. Firms accounting for most lighters sold, however, can reportedly achieve 85 percent with designs intended to meet a development target of 80 percent; thus, estimated costs are similar under either alternative, and net benefits would likely be higher under the proposed 85 percent rule. Although some firms, including some small importers, may have difficulty in complying with the proposed rule, lowering the acceptance

criterion to 80 percent would probably not significantly reduce the potential effects on costs and competition.

Under the 90 percent alternative, minimum benefits would be somewhat higher—about $240–$330 million per year, assuming that firms could comply in about the same manner as under the proposed 85 percent rule. No test data exist, however, for production units of child-resistant lighter designs. Some firms may be able to meet a 90 percent rule; however, most probably cannot reliably mass-produce complying lighters at this level. As noted in the cost discussion above, in order to meet a given acceptance criterion within component and assembly quality control limits, and considering potential variation in the results of testing, manufacturers would have to make products that perform somewhat better than the specified level. Under the proposed 85 percent rule, lighters on the market would have to achieve test results averaging at least 89 percent child-resistance, in order to provide reasonable assurance that tests by the Commission's staff would not give results below 85 percent in a sample of 200 children.

A 90 percent rule would essentially require production lighters to obtain test results averaging at least 93 percent child-resistance, in order to allow for possible variations in future test results and variations in child-resistance that could be caused by manufacturing tolerances. Although new lighter designs would likely be sufficiently child-resistant to comply with an 85 percent acceptance criterion, such designs are less likely to be successful at the 90 percent level.

The level of costs associated with a 90 percent rule is uncertain; it would probably be substantially higher, however, than under the proposed 85 percent rule. Assuming technical feasibility and price increases of up to 25 percent for some models, the annual cost of a 90 percent rule to consumers may be roughly $135 million. Some models, particularly push-button units using flints (including most novelties), may be discontinued, at least temporarily, under this alternative. The potential adverse impact of the rule on the utility and convenience of the product may also be significantly greater, although no data exist to estimate the incremental extent of this effect. Although yearly net benefits could be about as high ($105–$195 million) under this alternative as under the 85 percent proposal, no data exist to confirm the technical and commercial feasibility of lighters that would meet a 90 percent rule; the available evidence suggests that additional economic disruption may result, and that consumer choice may be limited, if such a rule were issued.

Alternative Effective Date

The proposed rule contains an effective date of 12 months after publication of the final rule in the **Federal Register**. This means that lighters subject to the rule that are manufactured or imported on and after the effective date must comply. The Commission also considered a shorter, 6-month effective date, which would confer the benefits of child-resistant lighters upon consumers as soon as possible. Child-resistant versions of the most popular brands of disposable lighters could probably be introduced within 6 months. Introductions of some are anticipated to occur before the issuance of a final rule; it is possible that a majority of lighters subject to the proposal would be child-resistant by that time. Thus, although benefits during the year following the issuance of a final rule might be somewhat greater under a 6-month effective date, the extent of this effect is uncertain.

The potential safety benefits of mandating a shorter effective date are uncertain, and may depend on a number of factors, including the extent to which firms introduce complying lighters early, the level of consumer stockpiling of noncomplying units, and the ability of some firms to increase short-run production or importation to meet consumer demand for disposable lighters. A significant portion of the annual benefits projected for the proposed rule would probably accrue during the period between the promulgation of the rule and its effective date, assuming early, voluntary introduction of child-resistant lighters by the major firms. One lighter manufacturer is known to be shipping a child-resistant electronic ignition pushbutton model for delivery to the United States. The benefits could be increased by imposing a 6-month effective date, if there were no effect on sales and use of disposable lighters.

A 6-month effective date would also increase the economic burden of the proposal. Some importers may experience difficulty in receiving shipments of complying lighters, since some foreign firms may not have designed their child-resistant models, and since extra time may be needed for overseas shipment. The proposed effective date of 12 months, rather than 6 months, after the publication date of the final rule minimizes this potential adverse effect. It is unlikely that the overall cost of the proposed rule would be greatly affected by a 6-month effective date, assuming that major firms with complying products could increase their production to satisfy consumer demand. A 12-month effective date would, however, virtually eliminate any potential import disruption. The Commission solicits comment on the extent to which an effective date shorter than 12 months might increase safety benefits or increase costs and impose other disruptive effects on the cigarette lighter industry.

No Regulatory Action: Rely on Voluntary Action or Information and Education Programs

The Commission considered whether it should conclude that a rule is not reasonably necessary to reduce the risk associated with lighters. Under this alternative, voluntary action, presumably under an ASTM or other industry-wide standard, would be relied upon to provide safety to the public. This could be coupled with CPSC information and education activities, either similar to those presently in operation or at some enhanced level. Potential product liability exposure may be a powerful incentive for the major lighter marketers to conform to a voluntary standard. It is also possible that some states, localities, or even other nations (*e.g.*, Canada) may adopt the draft standard, or some variation of it, as mandatory.

The potential effects of this alternative on estimated benefits and costs are described in the section on other standards, above. Although costs may be the lowest of any alternative considered, net benefits would also be the lowest. Under a generous set of assumptions about likely conformance to the ASTM draft, the net benefits associated with a voluntary industry action alternative would probably be about half the level associated with the proposed rule.

Cost savings associated with this alternative may be reduced to the extent that state or other regulations differed from the proposed rule or from each other; the preemptive effect of a mandatory CPSC rule would eliminate some potential costs of meeting multiple, possibly conflicting state or other regulations. Further, since substantial uncertainty exists about the prospect for continued conformance to existing voluntary guidelines, potential benefits of a no-mandatory-action option could decline over time.

CPSC currently sponsors information campaigns about matches and lighters. Costs to the public associated with any new information programs would be essentially zero. Although the likely level of safety benefits of such programs is difficult to estimate, the level would be very low compared to that which could be achieved with either a mandatory or voluntary standard. Information/education activities probably would be continued or enhanced if a mandatory rule were issued; the estimate of benefits of the proposed rule takes this presumption into account.

A summary of the likely economic impact of the proposed rule and major alternatives is provided in Table 5. The table shows that substantial net benefits may be expected to result from action to address the risk of child-play lighter fires. The proposed rule covering all disposable lighters, including "disposable refillables," and novelties offers the greatest potential net benefits.

TABLE 5.—SUMMARY IMPACT OF PROPOSED RULE AND ALTERNATIVES

Annual Impact on Consumers ($ million)

Alternative	Estimated benefits	Estimated costs	Net benefits
Proposed Rule	210–290*	95	115–195
Expanded Scope (all lighters)	215–300*	115	100–185
Limited Scope (exclude novelties)	205–280*	90	115–190
Lower Acceptance Criterion (80 percent level)	175–250	95	80–155
Higher Acceptance Criterion (90 percent level)	240–330	135**	105–195**
No Action (rely on vol. action) assuming 50 percent conformance	85–125	50	35–75

* Assumes 85 percent acceptance criterion, CPSC test protocol; benefits would likely be somewhat higher if lighter modifications were more effective than rule required.

** Technical and commercial feasibility of 90 percent rule is uncertain; this level may not be attainable for most firms. Costs are therefore unknown; estimate given assumes technical and commercial feasibility and price increases of 25 percent for some models.

Source: CPSC/Economic Analysis estimates. All numbers rounded to nearest $5 million for ease of comparison.

After considering the foregoing information, the Commission concludes preliminarily that:

1. The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product;

2. The promulgation of the rule is in the public interest;

3. The benefits of the rule bear a reasonable relationship to its costs; and

4. The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.

X. Preliminary Environmental Assessment

Pursuant to the National Environmental Policy Act and in accordance with CPSC's procedures, consideration was given to the potential environmental effects of the proposed consumer product safety rule for lighters.

Most of the over 600 million lighters sold annually in the U.S. and subject to the proposed rule are imported; only one firm presently manufactures lighters that would be subject to the proposed rule in the United States. To achieve compliance with the rule, most producing firms would likely add mechanical child-resistant features to their products. Some models of lighters, accounting for less than one percent of all lighter shipments, may be discontinued as a result of the proposed rule. The proposed rule is prospective in nature, and would not require the recall, destruction, or disposal of existing units. Products manufactured or imported before the effective date of the proposed rule could be sold after the effective date, so existing product inventories would be unaffected. Anti-stockpiling provisions of the proposed rule would limit the production or importation of noncomplying lighters between the rule's promulgation date and effective date.

Molds used in the production of component parts are replaced periodically by manufacturers. While some of these may be replaced more quickly than normal for some firms, the proposed effective date of 12 months after publication of a final resistance rule would allow most firms ample time for such changes.

No changes in the amounts of butane or other fuels used in lighters would result from the issuance of the proposed rule. Production of prototype test lighters may require occasional emptying of butane gas from production line samples, but the extent of this practice would be very slight (typically under 100 individual lighters per production facility; there are probably fewer than 5 such facilities in the U.S.).

The proposed rule contains no labeling or packaging requirements that would change the way lighters are packaged for sale. There would be no significant impact on either domestic consumption of or domestic and foreign suppliers of raw materials used in the manufacture of the various plastic and metal lighter components. No significant change in the consumption or disposal of lighters by consumers is anticipated as a result.

It is concluded from the available information that the proposed rule for lighters would not significantly affect raw material use, air or water quality, manufacturing processes, or disposal practices in a way that would cause any significant impact on the environment.

XI. Initial Regulatory Flexibility Analysis

Introduction

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires that proposed rules be reviewed for their potential economic impact on small entities, including small businesses. The RFA, at 5 U.S.C. 603, requires agencies to prepare and make available for public comment an Initial Regulatory Flexibility Analysis describing the impact of the proposed rule on small entities and identifying impact-reducing alternatives, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

The Initial Regulatory Flexibility Analysis is required to contain:

1. A description of the reasons why action by the agency is being considered;

2. A succinct statement of the objectives of, and legal basis for, the proposed rule;

3. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the types of professional skills necessary for the preparation of the report or record; and

5. An identification, to the extent possible, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.

In addition, the Initial Regulatory Flexibility Analysis must contain a

description of any significant alternatives to the proposed rule that would accomplish the stated objectives of the applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities. Suggested alternatives for discussion include: different compliance or reporting requirements for small entities; clarification, consolidation or simplification of compliance or reporting requirements for small entities; the use of performance rather than design standards; and partial or total exemptions from coverage for small entities.

From the information currently available to the Commission, it is uncertain whether the proposed rule would have a significant economic impact on a substantial number of small entities. About 40 firms—all importers—are believed to manufacture or import lighters subject to the proposed rule; 30–35 of these reportedly have annual sales of less than $5 million and fewer than 50 employees, and may be considered to be small. The single known domestic manufacturer of lighters subject to the proposal, which also, imports lighters, is not small.

Reasons for Agency Action

The Commission's proposed rule on lighters addresses the risk of death and injury from accidental residential fires started by young children playing with lighters. From 1987 to 1989, an estimated 180 deaths per year resulted from such fires. About 170 of these deaths, plus nearly 1,200, injuries and $60 million in property damage, resulted from fires started by children under the age of 5. Fire-related injuries include thermal burns—many of high severity—as well as nonfatal anoxia and other, less serious injuries. The annual cost of such fires to the public is estimated at about $415 million (in 1990 dollars). Fires started by young children (under age 5) are those against which the proposed rule would be most effective.

A draft voluntary safety standard was developed during 1989 and 1990 by the ASTM F15.02 Task Group, Safety Standards for Lighters, in cooperation with the Lighter Association, an industry trade organization. The Commission considered relying on this voluntary effort as an alternative to a proposed mandatory rule. Work on the development of this voluntary standard was suspended in 1991, however, and the Lighter Association requested that the Commission adopt the ASTM draft's provisions as a mandatory rule. Although the larger firms would probably market some child-resistant lighters in the absence of mandatory action, the likely overall level of voluntary conformance is uncertain, and may be unacceptably low.

Objectives of and Legal Basis for the Proposed Rule

As noted above, the proposed rule is designed to reduce the risk of fires, deaths, and injuries caused by children playing with lighters. By requiring that lighters be made child-resistant (as defined in the proposed rule and in accordance with a prescribed test method), a substantial reduction in the incidence and cost to society of these accidental fires may be expected. A majority of deaths and injuries from such accidents would be avoided if the proposed rule were promulgated. The statutory authority for issuing the rule is discussed earlier in this notice and in the proposed rule under section 30(d) of the CPSA that is published elsewhere in this issue of the **Federal Register**.

Firms Subject to the Proposed Rule

The proposed rule covers certain manufacturers and importers of lighters intended for sale to consumers. Roughly 50 U.S. firms manufacture or import lighters. About 40 of these firms market products subject to the proposed rule. The largest four firms account for over 80 percent of all lighters sold. Although a substantial proportion of subject lighters are domestically produced by the largest firm (BIC Corporation), all known firms in the market are importers. Only BIC currently manufactures lighters in the U.S. Some firms are subsidiaries or affiliates of foreign manufacturers or other companies.

Of the roughly 40 known importers covered by the proposed rule, 30–35 are believed to have annual sales of less than $5 million and to have fewer than 50 employees. These firms are considered to be small for the purposes of this analysis.

Requirements of the Proposed Rule

The proposed rule contains performance requirements that would require most kinds of cigarette lighters to be child-resistant. The major component of the proposal is a test protocol for use in establishing and verifying compliance. The protocol prescribes tests in which panels of young children would attempt to operate lighters that do not contain fuel and that provide a signal to indicate when they have been operated in a way that would cause a flame in a production lighter. Manufacturers and importers would be required to label individual lighters, certify that their products comply with the rule, provide evidence of a reasonable testing program to support such certification, maintain testing and production records, and provide reports and product samples to the Commission. Firms would use the protocol in the proposed rule to evaluate and certify their child-resistant designs. Most manufacturers would build modified or "surrogate" lighters to perform the test protocol. Complying lighter designs would be those for which test lighters were not operable by at least 85 percent of the children tested under the protocol. It is proposed that lighters manufactured or imported 12 months after the date of publication of a final rule in the **Federal Register** would have to comply. In addition, proposed anti-stockpiling provisions would limit the production or importation of noncomplying lighters between the publication date and effective date of a final rule.

Some small firms may lack the technical capability to develop child-resistant lighters that would meet the proposed rule. Some small firms may leave the U.S. market, at least temporarily; others may experience disruption in the supply of lighters, which may adversely affect their competitive positions in the U.S. market. In addition, potential production cost increases attributable to the proposed rule, which could lead to higher importers' costs and higher wholesale and retail prices, may disproportionately affect small firms due to their low unit sales volumes.

Small manufacturers and importers would be subject to all of the performance, testing, and certification provisions of the proposed rule. Some small manufacturers and importers would not generally possess the necessary skills to conduct testing. Product testing would likely be performed by independent quality control or other engineering laboratories equipped to conduct such tests. Records would probably be prepared by the test laboratories and maintained by manufacturing plant personnel; copies of reports and certification records would probably be maintained by importers or their legal counsels. No special skills not already available to manufacturers and importers would be required to establish or verify compliance with the proposed rule.

Other Federal Rules

No Federal rules are known to exist which duplicate, overlap, or conflict with the proposed rule.

Alternatives to the Proposed Rule

As noted above, the Commission encouraged and participated in the development of a voluntary safety standard for lighters. The major provisions of the draft of this standard are similar to those of the proposed mandatory rule. Although the voluntary action alternative was considered by the Commission, it is unlikely that more than a few of the largest firms would market significant numbers of child-resistant lighters if not required to do so. In fact, the likelihood that small firms would not voluntarily market child-resistant lighters is a prominent factor in the decision to propose a mandatory rule. The Commission concludes that voluntary action would not adequately reduce the risk; that alternative, therefore, is not discussed further in this analysis.

The Commission considered three basic alternatives to elements of the proposed rule in an effort to lessen the potential burden on small firms. These involve: (1) Narrowing the scope of coverage; (2) modifying certain performance or other technical requirements; and (3) extending the effective date. These alternatives are discussed below.

Alternative Scope

The proposed rule covers most, but not all, kinds of lighters intended primarily for use with smoking materials. The products covered are butane-fueled disposable lighters, including all nonrefillable models and inexpensive refillables, and "novelty" lighters, which are defined as any lighters that resemble other objects. Novelties are often in the shape of guns, animals, automobiles, airplanes, ice cream cones or other articles that might be particularly attractive to children. This scope would cover an estimated 97–98 percent of all lighters marketed in the U.S. The proposal excludes an identifiable category of higher-priced products known as "luxury" lighters, principally on the basis that the likely costs to consumers and the potential adverse effects on small manufacturers and importers of these items would not be justified by the negligible beneficial impact of making such products child-resistant. Although the proposed rule would not specifically exempt small firms, a vast majority of the products not covered by the proposed rule are marketed by small firms.

Some small firms may find the modifications required by the proposed rule more difficult or costly to achieve than will larger firms with more technical expertise or experience with developing products to comply with regulations. Although no firms are expected to go out of business as a result of the proposed rule, some novelty lighters imported by small firms would probably be discontinued if the proposed rule is enacted. To the extent that this would occur, excluding some or all such products from coverage would tend to reduce the impact on small firms. It is estimated that limiting the scope to exclude some or all novelty lighters would yield annual cost savings to small firms of up to a few million dollars. The potential safety benefits of the proposed rule to the public would also decrease by a small but uncertain amount, since non-child-resistant novelty lighters, which may be particularly attractive to children, would remain on the market.

Alternative Requirements

The Commission considered a variety of alternatives to the performance and other technical requirements of the proposed rule. Chief among these were alternate acceptance criteria for child-resistant lighter performance. The proposed rule would require that lighters be inoperable by at least 85 percent of the children in the test panel. Both lower and higher levels of required test performance were considered. The higher level (90 percent), if technically feasible, potentially could have greater safety benefits to consumers, but it also could entail potentially significant disruptive effects on industry, including small importers. The lower level (80 percent), which would reduce the stringency and the potential benefits—of the proposed rule, would yield uncertain, if any, economic savings for small firms.

The anti-stockpiling provisions of the proposed rule, however, may significantly affect competition among firms, and may confer an advantage upon larger firms, whose sales are not generally increasing. A number of small importers have experienced rapid sales growth—up to 100 percent annually—in recent years, mainly because of the retail price advantage their products enjoy in the highly competitive U.S. market. The proposed limitation on stockpiling would cap the rate of production or importation of noncomplying lighters for any manufacturer or importer at 120 percent of the rate in a base period (any 365-consecutive-day period during the 5 years prior to the publication date of the final rule) selected by the firm.

It is likely that small firms would be relatively less able to secure supplies of complying lighters before the effective date. Thus, the proposed anti-stockpiling provisions could adversely affect sales growth that might otherwise occur among small importers, beyond any impact of the performance requirements. The extent of this effect is uncertain, since market acceptance of new designs is untested and small firms' sales of available complying lighters may not grow at the rates projected for existing, non-child-resistant models. The overall likelihood, however, is that small importers would be disproportionately affected by the proposed anti-stockpiling provisions. This anti-competitive impact on small firms could be mitigated by exempting small firms from the anti-stockpiling provisions, or by substantially increasing the allowable importation rate (e.g., to 150 percent) of noncomplying products during the 12-month interim period. This would, however, tend to confer the economic benefit on small firms at the expense of larger ones, and could allow up to 150 million or more non-child-resistant lighters to be sold during that interim year. This would delay a portion of the expected safety benefits of the proposed rule until such time as all lighters available to consumers complied with the rule.

Alternative Effective Date

The proposed rule would become effective 12 months after publication of the final rule in the **Federal Register**, and all lighters subject to the rule that are manufactured in the United States or are imported on or after the effective date must comply. Some small importers, particularly those representing smaller foreign manufacturers, may experience difficulty in receiving shipments of complying lighters by the effective date. Since the anti-stockpiling provisions of the proposed rule would limit the number of non-child-resistant lighters that could be imported after promulgation of a final rule, small firms unable to secure complying units may be adversely affected to the extent that their sales volume of noncomplying lighters could not increase by more than 20 percent of their previous highest-volume 365-day period. This effect would likely be smaller for large firms.

Delaying the effective date by an additional 6–12 months would allow delaying the introduction of some models of complying lighters, and might reduce the potential disruption among small firms. Companies that would benefit from such a delay accounted for about 20–25 percent of all lighters sold during 1991. This share could increase significantly in the short run if consumers preferred noncomplying models (*e.g.*, because of lower prices or greater convenience of operation).

While the overall effect of an additional delay in the proposed rule's effective date on the cost of the proposed rule is uncertain, a reduction

in potential safety benefits to consumers is likely. This adverse impact on potential benefits may exceed the potential reduction in costs to small firms or to consumers. The proposed 12-month effective date in the proposed rule provides a balance between the need to confer the safety benefits of child-resistant lighters upon consumers as soon as reasonably possible and consideration of the proposal's potential effects on industry, including small importers.

Summary and Conclusion

The Commission's proposed rule on lighters affects most U.S. firms manufacturing or importing these products. Most of the firms whose lighters would be subject to the rule are small firms that import lighters from foreign manufacturers. The proposal may have temporary disproportionate adverse effects on small firms, although it is uncertain whether the potential effects would be "significant."

The Commission considered a variety of burden-reducing alternatives during the development of the proposed rule. Some provisions incorporated into the proposal would minimize potential adverse economic effects on small companies. Examples of this include: (1) Excluding certain lighters from the proposed scope of coverage; (2) setting the acceptance criterion and other performance requirements at levels attainable with existing technology; and (3) establishing a proposed effective date that accounts for difficulties in developing new designs and in obtaining complying lighters from foreign suppliers. Alternatives that would further reduce potential effects on small firms were considered in each of these areas; the proposed rule balances the need for consumer safety and the potential economic costs of a rule to consumers and to industry, including small importers. The proposed rule contains a number of other provisions regarding certification, labeling, and recordkeeping; these would not have significant adverse effects on small firms.

XII. Paperwork Reduction Act

As noted above, the proposed standard and certification provisions will require manufacturers and importers of disposable and novelty lighters to perform testing and to maintain records relating to the lighters that they produce or import. For this reason, the proposed rule published below contains "collection of information requirements," as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Therefore, this proposal has been submitted to the Office of Management and Budget ("OMB") in accordance with 44 U.S.C. 3504(h) and implementing regulations codified at 5 CFR 1320.13. Any person who desires to comment to OMB on the collection of information requirements in the proposal should address those comments to:

Office of Management and Budget, Office of Information and Regulatory Policy, Attention: Shawn Canter, Desk Officer, Washington, DC 20503, (Telephone (202) 395–7340).

XIII. Extension of Time To Issue Final Rule

Section 9(d) (1) of the CPSA, 15 U.S.C. 2058 (d) (1), provides that a final consumer product safety rule must be published within 60 days of publication of the proposed rule unless the Commission extends the 60-day period for good cause and publishes its reasons for the extension in the **Federal Register**. Executive Order 12662, which implements the United States-Canada Free-Trade Implementation Act, provides that publication of proposed standards-related measures shall ordinarily be at least 75 days before the comment due date. Accordingly, the Commission has provided a comment period of 75 days for this proposal. After the comments are received, they must be analyzed, and a briefing package will be prepared for the Commission's consideration that describes the comments received, the staff's recommended responses to the issues in the comments, any new information concerning the relevant issues and findings, and a staff recommendation on whether to issue a final rule. In addition, the Commission will have to vote on whether to issue a final rule, and, if a final rule is approved, a **Federal Register** notice responding to the comments on the proposal and containing the required findings will have to be prepared.

The Commission estimates that the activities described above are likely to take about 9 months after publication of the proposed rule and that this constitutes good cause for extending the 60-day period after publication of a proposed rule that is provided by the CPSA as the time during which a final rule shall be published. Accordingly, the Commission extends the time during which it may publish the final rule to April 30, 1993. This period may be extended further for good cause.

Public Law 101–608 amended section 9(c) of the CPSA to require that a proposed rule be issued within 12 months of the publication of an ANPR, unless the Commission determined that a proposed rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury or that a proposed rule is not in the public interest. Consumer Product Safety Improvement Act of 1990, Public Law 101–608, section 109, 1990 U.S. Code Cong. & Admin. News (104 Stat.) 3113. The Commission also may extend the 12-month period for good cause. *Id.*

Since the ANPR in this proceeding was issued more than 1 year before the enactment of Pub. L. No. 101–608, the Commission concludes that the requirement that a proposed rule be published within 12 months of its ANPR is inapplicable to this proceeding and that it is unnecessary to formally extend the period for issuing the proposal. In any event, the following facts constitute good cause for issuing this proposed rule more than 12 months after publication of the ANPR:

1. That the statutory amendment was enacted more than 1 year after the publication of the ANPR, and

2. That additional testing was required to resolve inconsistent results obtained in the verification testing and to determine the performance of various designs in tests of child-resistant lighters.

List of Subjects in 16 CFR Part 1210

Cigarette lighters, Consumer protection, Fire prevention, Hazardous materials, Infants and children, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, title 16 chapter II, subchapter B, of the Code of Federal Regulations is proposed to be amended as set forth below.

1. A new part 1210 is added to read as follows:

PART 1210—SAFETY STANDARD FOR CIGARETTE LIGHTERS

Subpart A—Requirements for Child-Resistance

Sec.
1210.1 Scope and application, and effective date.
1210.2 Definitions.
1210.3 Requirements for cigarette lighters.
1210.4 Test protocol.
1210.5 Findings.

Authority: 15 U.S.C. 2056, 2058, 2079(d).

Subpart B—Certification Requirements

Sec.
1210.11 General.
1210.12 Certificate of compliance.
1210.13 Certification tests.
1210.14 Qualification testing.
1210.15 Specifications.
1210.16 Production testing.
1210.17 Recordkeeping and reporting.
1210.18 Refusal of importation.

Authority: 15 U.S.C. 2063, 2065(b), 2066(g), 2076(e), 2079(d).

Subpart C—Stockpiling

Sec.
1210.20 Stockpiling.

Authority: 15 U.S.C. 2058 (g) (2), 2079(d).

Subpart A—Requirements for Child-Resistance

§ 1210.1 Scope, application, and effective date.

This part 1210, a consumer product safety standard, prescribes requirements for disposable and novelty lighters. These requirements are intended to make the lighters subject to the standard's provisions resistant to successful operation by children younger than 5 years of age. This standard applies to all disposable and novelty lighters, as defined in § 1210.2, that are manufactured or imported after the date that is 12 months after publication of a final rule in the **Federal Register**.

§ 1210.2 Definitions.

As used in this part 1210:

(a) *Cigarette lighter.* See "lighter."

(b) *Disposable lighter* means a lighter that either is: (1) not refillable with fuel or (2) (i) its fuel is butane, isobutane, propane, or other liquified hydrocarbon, or a mixture containing any of these, whose vapor pressure at 75°F (24°C) exceeds a gage pressure of 15 psi (103 kPa), and

(ii) it has a Customs Valuation or ex-factory price under $2.00, as adjusted every 5 years, to the nearest $0.25, in accordance with the percentage changes in the monthly Wholesale Price Index from the month preceding the date of publication of a final rule in the **Federal Register**.

(c) *Lighter*, also referred to as "cigarette lighter," means a flame-producing product commonly used by consumers to ignite cigarettes, cigars, and pipes, although they may be used to ignite other materials. This term does not include matches or any other lighting device intended primarily for igniting materials other than smoking materials, such as fuel for fireplaces or for charcoal or gas-fired grills. When used in this part 1210, the term "lighter" includes only the disposable and novelty lighters to which this regulation applies.

(d) *Novelty lighter* means a lighter that resembles any other object in physical form or function, for example, a car, an ice cream cone, a spaceship, a gun, a wrist watch, a tool, a pack of cigarettes, a camera, a liquor bottle, a spark plug, or a tourist memento (*e.g.*, a model of the Statue of Liberty). A novelty lighter may operate on any fuel, including butane or liquid fuel.

(e) *Successful operation* means one signal of any duration from a surrogate lighter within the 10-minute test period specified in § 1210.4(f).

(f) *Surrogate lighter* means a device that approximates the appearance, size, shape, and weight of, and is identical in all other factors that affect child-resistance (including operation and the force (s) required for operation); within reasonable manufacturing tolerances, to, a lighter intended for use, but which has no fuel, does not produce a flame, and produces an audible or visual signal that will be clearly discernible when the surrogate lighter is activated in each manner that would normally produce a flame in a production lighter. (This definition does not require a lighter to be modified with electronics or the like to produce a signal. Manufacturers may use a lighter without fuel as a surrogate lighter if a distinct signal such as a "click" can be heard clearly when the mechanism is operated in each manner that would produce a flame in a production lighter and if a flame cannot be produced in a production lighter without the signal. But see § 1210.4(f)(1).)

§ 1210.3 Requirements for cigarette lighters.

(a) A lighter subject to this part 1210 shall be resistant to successful operation by at least 85 percent of the child-test panel when tested in the manner prescribed by § 1210.4.

(b) The mechanism or system of a lighter subject to this part 1210 that makes the product resist successful operation by children must:

(1) Reset itself automatically after each operation of the ignition mechanism of the lighter, (2) Not impair safe operation of the lighter when used in a normal and convenient manner,

(3) Be effective for the reasonably expected life of the lighter, and

(4) Not be easily overriden or deactivated.

§ 1210.4 Test protocol.

(a) *Child test panel.* (1) The test to determine if a lighter is resistant to successful operation by children uses a panel of children to test a surrogate lighter representing the production lighter intended for use. Written informed consent shall be obtained from a parent or legal guardian of a child before the child participates in the test.

(2) The test shall be conducted using at least one, but no more than two, 100-child test panels in accordance with the provisions of § 1210.4(f).

(3) The children for the test panel shall be from the United States, except that children from another country may be used if the firm required to certify first tests one of its child-resistant lighter designs in both the United States and the other country and the results are not significantly different at $p=0.05$.

(4) The age and sex distribution of each 100-child panel shall be:

(i) 30 children (20 males; 10 females) 42 through 44 months old; (ii) 40 children (26 males; 14 females) 45 through 48 months old;

(iii) 30 children (20 males; 10 females) 49 through 51 months old.

(5) No child with a permanent or temporary illness, injury, or handicap that would interfere with the child's ability to operate the surrogate lighter shall be selected for participation.

(6) Two children at a time shall participate in testing of surrogate lighters. Extra children whose results will not be counted in the test may be used if necessary to provide the required partner for test subjects, if the extra children are within the required age range and a parent or guardian of each such child has signed a consent form.

(7) No child shall participate in more than one test panel or test more than one surrogate lighter. No child shall participate in both child-resistant package testing and surrogate lighter testing on the same day.

(b) *Test sites, environment, and adult testers.* (1) Surrogate lighters shall be tested at 5 or more test sites for each 100-child panel, with a maximum of 20 children tested at each site.

(2) Testing of surrogate lighters shall be conducted at a location that is familiar to the children on the test panel (for example, their customary nursery school or day care center). The area in which the testing is conducted shall be well-lighted and isolated from distractions. The children shall be allowed freedom of movement to work with their surrogate lighters, as long as the tester can watch both children at the same time. Two children at a time shall participate in testing of surrogate lighters. The children shall be seated side by side in chairs approximately 1.5 feet apart, across a table from the tester. The table shall be normal table height for the children, so that they can sit up at the table with their legs underneath and so that their arms will be at a comfortable height when on top of the table. The children's chairs shall be "child-size."

(3) Each tester shall be at least 18 years old. Five or 6 adult testers shall be used for each 100-child test panel. Each tester shall test an approximately equal number of children from a 100-child test panel (20 ± 2 children each for 5 testers and 17 ± 2 children each for 6 testers).

(c) *Surrogate lighters.* (1) Six surrogate lighters shall be used for each 100-child panel. The six lighters shall represent the range of forces required for operation of lighters intended for use. All surrogate lighters shall be the same color. The surrogate lighters shall be numbered sequentially from one through six. The same six surrogate lighters shall be used for the entire 100-child panel. The surrogate lighters shall not be damaged or jarred during storage or transportation. The surrogate lighters shall not be exposed to extreme heat or cold. The surrogate lighters shall be tested at room temperature. No surrogate lighter shall be left unattended.

(2) Each surrogate lighter shall be used for 14–18 children in the 100-child panel.

(3) Before each 100-child panel is tested, each surrogate lighter shall be examined to verify that it approximates the appearance, size, shape, and weight of a production lighter intended for use.

(4) Before and after each 100-child panel is tested, force measurements shall be taken on all operating components that could affect child-resistance to verify that they are within reasonable operating tolerances for a production lighter intended for use.

(5) Before and after testing surrogate lighters with each child, each surrogate lighter shall be operated outside the presence of any child participating in the test to verify that the lighters produce a signal. If the surrogate lighter will not produce a signal before the test, it shall be repaired before it is used in testing. If the surrogate lighter does not produce a signal when it is operated after the test, the results for the preceding test with that lighter shall be eliminated. The lighter shall be repaired and tested with another eligible child (as one of a pair of children) to complete the test panel.

(d) *Encouragement.* (1) Prior to the test, the tester shall talk to the children in a normal and friendly tone to make them feel at ease and to gain their confidence.

(2) The tester shall tell the children that he or she needs their help for a special job. The children shall not be promised a reward of any kind for participating, and shall not be told that the test is a game or contest or that it is fun.

(3) The tester shall not discourage a child from attempting to operate the surrogate lighter at any time unless a child is in danger of hurting himself or another child. The tester shall not discuss the dangers of lighters or matches with the children to be tested prior to the end of the 10-minute test.

(4) Whenever a child has stopped attempting to operate the surrogate lighter for a period of approximately one minute, the tester shall encourage the child to try by saying "keep trying for just a little longer."

(5) Whenever a child says that his or her parent, grandparent, guardian, etc., said never to touch lighters, say "that's right—never touch a real lighter—but your [parent, etc.] said it was OK for you to try to make a [beep, click, etc.] with this special lighter because it can't hurt you."

(6) The children in a pair being tested may encourage each other to operate the surrogate lighter and may tell or show each other how to operate it. (This interaction is *not* considered to be disruption as described in paragraph (e)(2) below.) However, neither child shall be allowed to operate the other child's lighter. If one child takes the other child's surrogate lighter, that surrogate lighter shall be immediately returned to the proper child. If this occurs, the tester shall say "No. He(she) has to try to do it himself(herself)."

(e) *Children who refuse to participate.* (1) If a child becomes upset or afraid, and cannot be reassured before the test starts, select another eligible child for participation in that pair.

(2) If a child disrupts the participation of another child for more than one minute during the test, the test shall be stopped and both children eliminated from the results. An explanation shall be recorded on the data collection record. These two children should be replaced with other eligible children to complete the test panel.

(3) If a child is not disruptive but refuses to attempt to operate the surrogate lighter throughout the entire test period, that child shall be eliminated from the test results and an explanation shall be recorded on the data collection record. The child shall be replaced with another eligible child (as one of a pair of children) to complete the test panel.

(f) *Test procedure.* (1) To begin the test, the tester shall say "I have a special lighter that will not make a flame. It make a ["beep," "click," or other descriptive term for the signal] like this." Except where doing so would block the child's view of a visual signal, the adult tester shall place a 8½ by 11 inch sheet of cardboard or other rigid opaque material upright on the table in front of the surrogate lighter, so that the surrogate lighter cannot be seen by the child, and shall operate the surrogate lighter once to produce its signal. The tester shall say "Your parents said it is OK for you to try to make that [beep, click, etc.] with your lighter." The tester shall place a surrogate lighter in each child's hand and say "now you try to make a [beep, click, etc., as appropriate for signal used by the particular surrogate lighter] with your lighter."

(2) The adult tester shall observe the children for 5 minutes to determine if either or both of the children can successfully operate the surrogate lighter by producing one signal of any duration. If a child achieves a spark without defeating the child-resistant feature, say "that's a spark—it won't hurt you—try to make a [beep, click, etc.] with your lighter." If any child successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(3) If either or both of the children are unable to successfully operate the surrogate lighter during the 5-minute period specified in § 1210.4(f)(3), the adult tester shall demonstrate the operation of the surrogate lighter. To conduct the demonstration, secure the children's full attention by saying "put your lighters down for a minute and I will show you how to make the lighter [beep, click, etc.]." Use one of the children's lighters. Hold the surrogate lighter approximately two feet in front of the children at their eye level so that the child-resistant feature is oriented toward the children. Operate the lighter three times in a normal one-handed manner with approximately three seconds between each operation. Do not exaggerate operating movements. Do not verbally describe the lighter's operation.

Note: Testers must be able to operate the surrogate lighters three times in sequence using only appropriate operating movements. If this is not accomplished during the demonstration for any pair of children, the results for that pair of children shall be eliminated from the test. Another pair of eligible children shall be used to complete the test panel.

(4) Each child who fails to successfully operate the surrogate lighter in the first 5 minutes is then given another 5 minutes in which to attempt to complete the successful operation of the surrogate lighter. The tester shall say "now try to make a [beep, click, etc.] with your lighter." If any child successfully operates the surrogate lighter during this period, the surrogate lighter shall be taken from that child and the child shall not be asked to try to operate the lighter again. The tester shall ask the successful child to remain until the other child is finished.

(5) At the end of the second 5-minute test period, take the surrogate lighter from any child who has not successfully operated it.

(6) After the test is over, say: "These are special lighters that don't make fire. Real lighters can burn you. Will you promise me that you'll never try to work a real lighter?" Wait for the child's answer; then thank the child for helping.

(7) Escort the children out of the room used for testing.

(8) After a child has participated in the testing of a surrogate lighter, and on the same day, provide written notice of that fact to the child's parent or guardian. This notification may be in the form of a letter provided to the school to be given to the parents or guardian of each child. The notification shall state that the child participated, shall ask the parent or guardian to warn the child not to play with lighters, and shall remind the parent or guardian to keep all lighters and matches, whether child-resistant or not, out of the reach of children. For children who operated the surrogate lighter, the notification shall state that the child was able to operate the child-resistant lighter. For children who do not defeat the child-resistant feature, the notification shall state that, although the child did not defeat the child-resistant feature, the child may be able to do so in the future.

(g) *Data collection and recording.* Except for recording the times required for the children to activate the signal, recording of data should be avoided while the children are trying to operate the lighters, so that the tester's full attention is on the children during the test period. The following data shall be collected and recorded for each child in the 100-child test panel:

(1) Sex (male or female).

(2) Date of birth (month, day, year).

(3) Age (in months, to the nearest month).

(4) The number of the lighter tested by that child.

(5) Date of participation in the test (month, day, year).

(6) Location where the test was given (city, state, country, and the name of the site or a unique number or letter code that identifies the test site).

(7) The name of the tester who conducted the test.

(8) The elapsed time at which the child achieved any operation of the surrogate signal in the first 5-minute test period.

(9) The elapsed time at which the child achieved any operation of the surrogate signal in the second 5-minute test period.

(h) *Evaluation of test results and acceptance criterion.* To determine whether a surrogate lighter resists operation by at least 85 percent of the children, sequential panels of 100 children each, up to a maximum of 2 panels, shall be tested as prescribed below.

(1) If no more than 10 children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered to be resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted. If 11 through 18 children in the first 100-child test panel successfully operate the surrogate lighter, the test results are inconclusive, and the surrogate lighter shall be tested with a second 100-child test panel in accordance with this § 1210.4. If 19 or more of the children in the first 100-child test panel successfully operated the surrogate lighter, the lighter represented by the surrogate shall be considered not resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted.

(2) If additional testing of the surrogate lighter is required by § 1210.4(h)(1), conduct the test specified by this § 1210.4 using a second 100-child test panel and record the results. If a total of no more than 30 of the children in the combined first and second 100-child test panels successfully operated the surrogate lighter, the lighter represented by the surrogate lighter shall be considered resistant to successful operation by at least 85 percent of the child test panel, and no further testing is performed. If a total of 31 or more children in the combined first and second 100-child test panels successfully operate the surrogate lighter, the lighter represented by the surrogate lighter shall be considered not resistant to successful operation by at least 85 percent of the child test panel, and no further testing is conducted.

TABLE 1.—EVALUATION OF TEST RESULTS—§ 1210.4(E)

Test panel	Cumulative No. of children	No. of successful operations		
		Successful Operations of Surrogate Lighter		
		Pass	Continue	Fail
1	100	0–10	11–18	19 or more.
2	200	11–30		31 or more.

§ 1210.5 Findings.

Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule.

(a) *The degree and nature of the risk of injury the rule is designed to eliminate or reduce.* The standard is designed to reduce the risk of death and injury from accidental fires started by children playing with lighters. From 1987 to 1989, an estimated 180 deaths per year resulted from such fires. About 170 of these deaths, plus nearly 1,200 injuries and about $60 million in property damage, resulted from fires started by children under the age of 5. Fire-related injuries include thermal burns—many of high severity—as well as anoxia and other, less serious injuries. The annual cost of such fires to the public is estimated at about $415 million (in 1990 dollars). Fires started by young children (under age 5) are those which the standard would be most effective at reducing.

(b) *The approximate number of consumer products, or types or classes thereof, subject to the rule.* The standard covers certain flame-producing devices, commonly known as lighters, which are primarily intended for use in lighting cigarettes and other smoking materials. Lighters may be gas- or liquid-fueled, mechanical or electric, and of various physical configurations. Over 600 million lighters were sold to consumers

in the U.S. in 1991; over 100 million are estimated to be in use at any given time. Over 95 percent of all lighters sold are pocket-sized disposable butane models; of the remaining 5 percent, most are pocket refillable butane models. A small proportion of refillables is comprised of pocket liquid-fuel models; still smaller proportions are represented by table lighters and by "novelty" lighters, that is, those having the physical appearance of other specific objects. Nearly 600 million pocket butane (nonrefillable) disposables, 10–20 million pocket butane refillables, 5–10 million pocket liquid fuel refillables, and 1–3 million novelty and other lighters were sold to consumers in 1991. The standard covers disposable lighters, including inexpensive butane refillables, and novelty lighters. Roughly 30 million households have at least one lighter; ownership of more than one lighter is typical, especially among smoking households.

(c) *The need of the public for the consumer products subject to the rule, and the probable effect of the rule on the utility, cost, or availability of such products to meet such need.* Consumers use lighters primarily to light smoking materials. Most other lighting needs that could be filled by matches may also be filled by lighters. Disposable butane lighters are, chiefly by virtue of their low price and convenience, the closest available substitutes for matches. Although matches are found in far more households, lighters have steadily replaced matches since the 1960's as the primary light source among American consumers.

(1) The standard generally requires that lighters not be operable by most children under 52 months of age. This would likely be achieved by modifying products to incorporate additional-action switches, levers, or buttons, thereby increasing the difficulty of product activation. Depending on the method of compliance chosen by manufacturers, there could be some adverse effect on the utility of lighters. This may occur to the extent that operation of the products by adult users is made more difficult by the incorporation of child-resistant features. This may lead some consumers to switch to matches, at least temporarily, which could reduce the expected level of safety provided by the standard. In addition, some "novelty" lighters will probably be discontinued, due to the technical difficulty of incorporating child-resistant features or designs. Some loss of utility derived from those products by collectors or other users may result, though many novelty models will probably remain on the market.

(2) The cost of producing lighters subject to the standard is expected to increase due to manufacturers' and importers' expenditures in the areas of research and development, product redesign, tooling and assembly process changes, certification and testing, and other administrative activities. Total per-unit production costs for the various lighter types may increase by 10–40 percent, with an average of less than 20 percent. Cost increases will likely be passed on to consumers in the form of higher retail prices. Disposable lighters may increase in price by 10–40 cents per unit; prices of other lighters may increase by as much as $5. The estimated average per-unit price increase for all lighters subject to the standard is about 15 cents. The total annual cost of the standard to consumers is estimated at about $95 million. The estimated cost of the standard per life saved is about $1 million; this is within the range of the consensus of research on the statistical value of life.

(3) A wide range of lighter types and models will continue to be available to consumers. As noted above, some models of novelty lighters—all of which account for less than 1 percent of lighters sold—will likely be discontinued; this should not have a significant impact on the overall availability of lighters to consumers.

(d) *Any means of achieving the objective of the order while minimizing adverse effects on competition or disruption or dislocation of manufacturing and other commercial practices consistent with the public health and safety.* The Commission considered the potential effects on competition and business practices of various aspects of the standard, and, as noted below, incorporated some burden-reducing elements into the proposal. The Commission also encouraged and participated in the development of a draft voluntary standard addressing the risk of child-play fires.

(1) A draft voluntary safety standard was developed by members of an ASTM task group (now a subcommittee) to address much of the risk addressed by the proposed CPSC rule. This draft voluntary standard contained performance requirements similar, but not identical, to those in the CPSC proposal. Development work on the voluntary standard ceased in 1991; industry representatives requested that the Commission issue the draft ASTM provisions in a mandatory rule.

(2) One possible alternative to this mandatory standard would be for the Commission to rely on voluntary conformance to this draft standard to provide safety to consumers. The expected level of conformance to a voluntary standard is uncertain, however; although some of the largest firms may market some child resistant lighters that conform to these requirements, most firms (possibly including some of the largest) probably would not. Even under generous assumptions about the level of voluntary conformance, net benefits to consumers would be substantially lower under this alternative than under the standard. Thus, the Commission finds that reliance on voluntary conformance to the draft ASTM standard would not adequately reduce the unreasonable risk associated with lighters.

(e) *The rule (including its effective date) is reasonably necessary to eliminate or reduce an unreasonable risk.* The Commission's hazard data and regulatory analysis demonstrate that lighters covered by the standard pose an unreasonable risk of death and injury to consumers. The Commission considered a number of alternatives to address this risk, and believes that the standard strikes the most reasonable balance between risk reduction benefits and potential costs. Further, the amount of time before the standard becomes effective will provide manufacturers and importers of most products adequate time to design, produce, and market safer lighters. Thus, the Commission finds that the standard and its effective date are reasonably necessary to reduce the risk of fire-related death and injury associated with young children playing with lighters.

(f) *The benefits expected from the rule bear a reasonable relationship to its costs.* The standard will substantially reduce the number of fire-related deaths, injuries, and property damage associated with young children playing with lighters. The cost of these accidents, which is estimated to be about $415 million annually, will also be greatly reduced. Estimated annual benefits of the standard are $210-$290 million; estimated annual costs to the public are about $95 million. Expected annual net benefits would therefore be $115-$195 million. Thus, the Commission finds that a reasonable relationship exists between potential benefits and potential costs of the standard.

(g) *The rule imposes the least burdensome requirement which prevents or adequately reduces the risk of injury for which the rule is being promulgated.* The Commission considered and evaluated several alternatives during the development of the standard which might reduce the potential burden on industry (especially small importers) and on consumers. These alternatives involve different performance and test requirements and different definitions determining the scope of coverage among products. Other alternatives generally would be more burdensome to industry and would have higher costs to consumers. Some less burdensome alternatives would have lower risk-reduction benefits to consumers; none has been identified that would have higher expected net benefits than the standard.

(1) The scope of this mandatory standard is limited to disposable lighters and novelty lighters. This is similar but not identical to the scope of a draft voluntary industry standard developed in response to the Commission's advance notice of proposed rulemaking of March 3, 1988 (53 FR 6833). The mandatory standard does not apply to "luxury" lighters (including most higher priced refillable butane and liquid fuel models). This exclusion significantly reduces the potential cost of the standard without significantly affecting potential benefits.

(2) The Commission considered limiting the scope of the standard to exclude some or all novelty lighter models. Though limiting the scope would ease the potential burden of the standard on manufacturers and importers slightly, inherently less safe non-child-resistant lighters resembling articles that may be especially attractive to children would remain on the market, thereby reducing the potential safety benefits to the public. The Commission finds that it would not be in the public interest to exclude novelty lighters.

(3) The Commission considered the potential effect of alternate performance requirements during the development of the standard. A less stringent acceptance criterion of 80 percent (rather than the standard's 85 percent) might slightly reduce costs to industry and consumers. The safety benefits of this alternative, however, would likely be reduced disproportionately to the potential reduction in costs. A higher (90 percent) acceptance criterion was also considered. It is uncertain whether this higher performance level is technically feasible for the industry as a whole; the Commission believes that this more stringent alternative may have significant adverse effects on manufacturing and competition, and may increase costs disproportionate to benefits. The Commission believes that the requirement that complying lighters not be operable by at least 85 percent of children in prescribed tests strikes a reasonable balance between improved safety for a substantial majority of young children and other potential fire victims and the potential for adverse competitive effects and manufacturing disruption.

(4) The Commission believes that the standard should become effective as soon as reasonably possible. The standard will become effective 12 months from its date of publication in the **Federal Register**. The Commission also considered an effective date of 6 months after the date of issuance of the final rule. While most lighters sold in the U.S. could probably be made child-resistant within 6 months, some disruptive effects on the supply of some imported lighters would result; this could have a temporary adverse impact on the competitive positions of some U.S. importers. The 12-month period in the standard would tend to minimize this potential effect, and would allow more time for firms to design, produce, and import complying lighters. The Commission estimates that there would be no significant adverse impact on the overall supply of lighters for the U.S. market.

(h) *The promulgation of the rule is in the public interest.* As required by the CPSA and the Regulatory Flexibility Act, the Commission considered the likely benefits and costs of the standard and various alternatives. While certain alternatives are estimated to have net benefits to consumers, the standard maximizes these net benefits. Thus, the Commission finds that the standard, if promulgated on a final basis, would be in the public interest.

Subpart B—Certification Requirements

§ 1210.11 General.

Section 14(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 1263(a), requires every manufacturer, private labeler, or importer of a product that is subject to a consumer product safety standard and that is distributed in commerce to issue a certificate that such product conforms to the applicable standard and to base that certificate upon a test of each item or upon a reasonable testing program. The purpose of this subpart B of part 1210 is to establish requirements that manufacturers, importers, and private labelers must follow to certify that their products comply with the Safety Standard for Cigarette Lighters. This Subpart B describes the minimum features of a reasonable testing program and includes requirements for labeling, recordkeeping, and reporting pursuant to sections 14, 16(b), 17(g), and 27(e) of the CPSA, 15 U.S.C. 2063, 2065(b), 2066(g), and 2076(e).

§ 1210.12 Certificate of compliance.

(a) *General requirements.*

(1) *Manufacturers (including importers).* The manufacturer (including an importer) of any lighter subject to the standard must issue the certificate of compliance required by section 14(a) of the CPSA and this subpart B, based on a reasonable testing program or a test of each product, as required by §§ 1210.13–1210.14 and 1210.16. Manufacturers and importers must also label each lighter subject to the standard as required by paragraph (c) of this section and keep the records and make the reports required by §§ 1210.15 and 1210.17.

(2) *Private labelers.* Because private labelers necessarily obtain their products from a manufacturer or importer that is already required to issue the certificate, private labelers are not required to issue a certificate. However, private labelers must ensure that the lighters are labeled in accordance with paragraph (c) of this section and that any certificate of compliance that is supplied with each shipping unit of lighters in accordance with paragraph (b) of this section is supplied to any distributor or retailer who receives the product from the private labeler.

(3) *Testing on behalf of importers.* If the required testing has been performed by or for a foreign manufacturer of a product, an importer may rely on such tests to support the certificate of compliance, provided that the importer is a resident of the United States or has a resident agent in the United States and the records are in English and the records and the surrogate lighters tested are kept in the United States and can be provided to the Commission within 48 hours (§ 1210.17(a)) or, in the case of production records, can be provided to the Commission within 7 calendar days in accordance with § 1210.17(a) (3). The importer is responsible for ensuringthat the foreign manufacturer's records show that all testing used to support the certificate of compliance has been performed properly (§§ 1210.14–1210.16), the records provide a reasonable assurance that all lighters imported comply with the standard (§ 1210.13(b)(1)), the records exist in English 1210.17(a)), the importer knows where the required records and lighters are located and that records required to be located in the United States are located there, arrangements have been made so that any records required to be kept in the United States will be provided to the

Commission within 48 hours of a request and any records not kept in the United States will be provided to the Commission within 7 calendar days (§ 1210.17(a)), and the information required by § 1210.17(b) to be provided to the Commission's Division of Regulatory Management has been provided.

(b) *Certificate of compliance.* A certificate of compliance must accompany each shipping unit of the product (for example, a case), or otherwise be furnished to any distributor or retailer to whom the product is sold or delivered by the manufacturer, private labeler, or importer. The certificate shall state:

(1) That the product "complies with the Consumer Product Safety Standard for Cigarette Lighters (16 CFR part 1210)",

(2) The name and address of the manufacturer or importer issuing the certificate or of the private labeler, and

(3) The date(s) of manufacture and, if different from the address in paragraph (c) (2) of this section, the address of the place of manufacture.

(c) *Labeling.* The manufacturer or importer must label each lighter with the following information, which may be in code.

(1) An identification of the period of time, not to exceed 30 days, during which the lighter was manufactured.

(2) An identification of the manufacturer of the lighter, unless the lighter bears a private label. If the lighter bears a private label, it shall bear a code mark or other label which will permit the seller of the lighter to identify the manufacturer to the purchaser upon request.

§ 1210.13 Certification tests.

(a) *General.* As explained in § 1210.11 of this subpart, certificates of compliance required by Section 14(a) of the CPSA must be based on a reasonable testing program.

(b) *Reasonable testing programs.*

(1) *Requirements.* (i) A reasonable testing program for lighters is one that demonstrates with a high degree of assurance that all lighters manufactured for sale or distributed in commerce will meet the requirements of the standard, including the requirements of § 1210.3. Manufacturers and importers shall determine the types and frequency of testing for their own reasonable testing programs. A reasonable testing program should be sufficiently stringent that it will detect any variations in production or performance during the production interval that would cause any lighters to fail to meet the requirements of the standard.

(ii) All reasonable testing programs shall include qualification tests, which must be performed on surrogates of each model of lighter produced, or to be produced, to demonstrate that the product is capable of passing the tests prescribed by the standard (see § 1210.14) and production tests, which must be performed during appropriate production intervals as long as the product is being manufactured (see § 1210.16).

(iii) Corrective action and/or additional testing must be performed whenever certification tests of samples of the product give results that do not provide a high degree of assurance that all lighters manufactured during the applicable production interval will pass the tests of the standard.

(2) *Testing by third parties.* At the option of the manufacturer or importer, some or all of the testing of each lighter or lighter surrogate may be performed by a commercial testing laboratory or other third party. However, the manufacturer or importer must ensure that all certification testing has been properly performed with passing results and that all records of such tests are maintained in accordance with § 1210.17 of this subpart.

§ 1210.14 Qualification testing.

(a) *Testing.* Before any manufacturer or importer of lighters distributes lighters in commerce in the United States, surrogate lighters of each model shall be tested in accordance with § 1210.4, to ensure that all such lighters comply with the standard.

(b) *Product modifications.* If any changes are made to a product after initial qualification testing that could affect the ability of the product to meet the requirements of the standard, additional qualification tests must be made on surrogates for the changed product before the changed lighters are distributed in commerce.

(c) *Requalification.* If a manufacturer or importer chooses to requalify a lighter design after it has been in production, this may be done by following the testing procedures at § 1210.4.

§ 1210.15 Specifications.

(a) *Requirement.* Before any lighters that are subject to the standard are distributed in commerce, the manufacturer or importer shall ensure that the surrogate lighters used for qualification testing under § 1210.14 are described in a written product specification. (Section 1210.4(c) requires that six surrogate lighters be used for testing each 100-child panel.)

(b) *Contents of specification.* The product specification shall include the following information:

(1) A complete description of the lighter, including size, shape, weight, fuel, fuel capacity, ignition mechanism, and child-resistant features.

(2) A detailed description of all dimensions, force requirements, or other features that could affect the child-resistance of the lighter, including the manufacturer's tolerances for each such dimension or force requirement.

(3) Any further information necessary to adequately describe the lighters and any child-resistant features.

§ 1210.16 Production testing.

(a) *General.* Manufacturers and importers shall test samples of lighters subject to the standard as they are manufactured, to demonstrate that the lighters meet the specifications, required under § 1210.15, of the surrogate that has been shown by qualification testing to meet the requirements of the standard.

(b) *Types and frequency of testing.* Manufacturers, private labelers, and importers shall determine the types of tests for production testing. Each production test shall be conducted at a production interval short enough to provide a high degree of assurance that, if the samples selected for testing pass the production tests, all other lighters produced during the interval will meet the standard.

(c) *Test failure.*

(1) *Sale of lighters.* If any test yields results which indicate that any lighters manufactured during the production interval may not meet the standard, production and distribution in commerce of lighters that may not comply with the standard must cease until it is determined that the lighters meet the standard or until corrective action is taken. (It may be necessary to modify the lighters or perform additional tests to ensure that only complying lighters are distributed in commerce. Lighters from other production intervals having test results showing that lighters from that interval comply with the standard could be produced and distributed unless there was some reason to believe that they might not comply with the standard.)

(2) *Corrective actions.* When any production test fails to provide a high degree of assurance that all lighters comply with the standard, corrective action must be taken. Corrective action may include changes in the manufacturing process, the assembly process, the equipment used to manufacture the product, or the product's materials or design. The corrective action must provide a high degree of assurance that all lighters produced after the corrective action will comply with the standard. If the corrective action changes the product from the surrogate used for qualification testing in a manner that could affect its child-resistance, the lighter must undergo new qualification tests in accordance with § 1210.14.

§ 1210.17 Recordkeeping and reporting.

(a) *Records.* Every manufacturer and importer of lighters subject to the standard shall maintain the following records in English on paper, microfiche, or similar media and make such records available to any designated officer or employee of the Commission in accordance with section 16(b) of the Consumer Product Safety Act, 15 U.S.C. 2065(b). Such records must also be kept in the United States and provided to the Commission within 48 hours of receipt of a request from any employee of the Commission, except as provided in paragraph (a)(3) of this section. Legible copies of original records may be used to comply with these requirements.

(1) Records of qualification testing, including a description of the tests, the dates of the tests, the data required by § 1210.4(d), the actual surrogate lighters tested, and the results of the tests, including video tape records, if any. These records shall be kept for a period of 3 years after the production of the particular model to which such tests relate has ceased. If requalification tests are undertaken in accordance with § 1210.14(c), the original qualification test results may be discarded 3 years after the requalification testing, and the requalification test results and surrogates, and the other information required in this subsection for qualification tests, shall be kept in lieu thereof.

(2) Records of procedures used for production testing required by this subpart B, including a description of the types of tests conducted (in sufficient detail that they may be replicated), the production interval selected, the sampling scheme, and the pass/reject criterion. These records shall be kept for a period of 3 years after production of the lighter has ceased.

(3) Records of production testing, including the test results, the date and location of testing, and records of corrective actions taken, which in turn includes the specific actions taken to improve the design or manufacture or to correct any noncomplying lighter, the date the actions were taken, the test result or failure that triggered the actions, and the additional actions taken to ensure that the corrective action had the intended effect. These records shall be kept for a period of 3 years following the date of testing. Records of production testing results may be kept on paper, microfiche, computer tape, or other retrievable media. Where records are kept on computer tape or other retrievable media, however, the records shall be made available to the Commission on paper copies upon request. A manufacturer or importer of a lighter that is not manufactured in the United States may maintain the production records required by this paragraph (a)(3) outside the United States, but shall make such records available to the Commission in the United States within 1 week of a request from a Commission employee for access to those records under section 16(b) of the CPSA, 15 U.S.C. 2065(b).

(4) Records of specifications required under § 1210.15 shall be kept for a period of 3 years after production of each lighter model has ceased.

(b) *Reporting.* At least 30 days before it first imports or distributes in commerce any model of lighter subject to the standard, every manufacturer and importer must provide a written report to the Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207. Such report shall include:

(1) The name, address, and principal place of business of the manufacturer or importer,

(2) A detailed description of the lighter model and the child-resistant feature(s) used in that model,

(3) A description of the qualification testing, including a description of the surrogate lighters tested, the specification of the surrogate lighter required by § 1210.15, a summary of the results of all such tests, the dates the tests were performed, the location(s) of such tests, and the identity of the organization that conducted the tests,

(4) An identification of the place or places that the lighters were or will be manufactured,

(5) The location(s) where the records required to be maintained by paragraph (a) above are kept, and

(6) A prototype or production unit of that lighter model.

(c) *Confidentiality.* Persons who believe that any information required to be submitted or made available to the Commission is trade secret or otherwise confidential shall request that the information be considered exempt from disclosure by the Commission, in accordance with 16 CFR 1015.18. Requests for confidentiality of records provided to the Commission will be handled in accordance with section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), the Freedom of Information Act as amended, 5 U.S.C. 552, and the Commission's regulations under that act, 16 CFR part 1015.

§ 1210.18 Refusal of importation

(a) *For noncompliance with reporting and recordkeeping requirements.* The Commission has determined that compliance with the recordkeeping and reporting requirements of this subpart is necessary to ensure that lighters comply with this part 1210. Therefore, pursuant to section 17(g) of the CPSA, 15 U.S.C. 2066(g), the Commission may refuse to permit importation of any lighters with respect to which the manufacturer or importer has not complied with the recordkeeping and reporting requirements of this subpart. Since the records are required to demonstrate that production lighters comply with the specifications for the surrogate, the Commission may refuse importation of lighters if production lighters do not comply with the specifications required by this subpart or if any other recordkeeping or reporting requirement in this part is violated.

(b) *For noncompliance with this standard and for lack of a certification certificate.* As provided in section 17(a) of the CPSA, 15 U.S.C. 2066(a), products subject to this standard shall be refused admission into the customs territory of the United States if, among other reasons, the product fails to comply with this standard or is not accompanied by the certificate required by this standard.

Subpart C—Stockpiling

§ 1210.20 Stockpiling.

(a) *Definition.* "Stockpiling" means to manufacture or import a product between the date of issuance of a consumer product safety rule and its effective date at a rate which is significantly greater than the rate at which such product was produced or imported during a base period.

(b) *Base Period.* For purposes of this rule, "base period" means, at the option of the manufacturer or importer, any period of 365 consecutive days during the 5-year period prior to the date of promulgation of the final rule.

(c) *Prohibited act.* Manufacturers and importers of disposable and novelty cigarette lighters shall not manufacture or import lighters that do not comply with the requirements of this part between the date that this part is issued and the date that it becomes effective at a rate that is greater than the rate of production or importation during the base period plus 20 percent of that rate.

Dated: August 7, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

List of Relevant Documents

(Note: The following list of relevant documents will not be printed in the Code of Federal Regulations.)

1. Denton, D., Petition on Disposable Lighters and materials submitted in support of petition, April 29, 1985.
2. Shakin, A., "Petition on Disposable Lighters—Petition and Supporting Information Submitted by Diane L. Denton, R.N.," CPSC Office of General Counsel, May 29, 1985.
3. Morrow, S., "Preliminary Report on Petition PP 85–2, Disposable Cigarette Lighters," CPSC/OPMB, November 8, 1985.
4. Fahy, R., "Fatal Fires and Unsupervised Children," *"Fire Journal,"* January 1986.
5. Sharman, L.J. and Hoebel, J., "Cigarette Lighters," CPSC/OPMB, January 8, 1986.
6. Cole, R., et al., "Children and Fire: Rochester Fire Related Youth Project, Second Report," New York State Department of State, Office of Fire Prevention and Control, 1986.
7. Ray, D., "Cigarette Lighters: Accident Cost Update," CPSC, Economic Analysis, May 5, 1987.
8. Log of meeting of ASTM Task Group F15.02 on Safety Standards for Lighters, June 3, 1987.
9. Harwood, B., "Fire Hazards Involving Children Playing with Cigarette Lighters," CPSC, Epidemiology, September 29, 1987.
10. O'Connor, J., "Examination of Cigarette Lighters Associated with Children's Use," CPSC, Engineering Sciences, September 29, 1987.
11. Consumer Product Safety Alert, "Danger—Children and Lighters," September 1987.
12. Ray, D., "Lighters," CPSC, Economic Analysis, October 8, 1987.
13. Mathers, W., "Evaluation of Ability of Children to Operate Cigarette Lighters," CPSC, Epidemiology, October 28, 1987.
14. Jacobson, B., "Cigarette Lighters Petition Briefing Package," CPSC, Health Sciences, November 3, 1987.
15. Letter from T. Scanlon, Chairman, CPSC, to J. Florio, Chairman, Subcommittee on Commerce, Consumer Protection and Competitiveness, U.S. House of Representatives, re: Commission action on child-resistant cigarette lighters, November 18, 1987.
16. Briefing Package on Cigarette Lighter Petition PP–85–2, Fire and Thermal Burn Hazard Program Staff, Consumer Product Safety Commission, November 1987.
17. Press Release by the Lighter Association, Inc., announcing manufacturers' efforts to make lighters more child-resistant, December 14, 1987.
18. Supplemental Information on Cigarette Lighter Petition PP–85–2, Consumer Product Safety Commission, December 29, 1987.
19. American Society for Testing and Materials (ASTM), Safety Standard F400–85 for Cigarette Lighters, 1987.
20. Ray, D., "Retail Price Information for Refillable Lighters," CPSC Economic Analysis, January 15, 1988.
21. Log of Meeting at CPSC Bethesda, MD, office with representatives from Safety Concept, Inc., on a child-resistant lighter design, March 1, 1988.
22. Cigarette Lighters: Advance Notice of Proposed Rulemaking and Request for Comments and Information, 53 Fed. Reg. 6833 (March 3, 1988).
23. ANPR Comment CA 5–88–2, Henry Gluckstern, Attorney, March 16, 1988.
24. Lerner, N.D., Sedney, C.A., Cannon-Bowers, J., COMSIS Corporation and Denham, S.A., George Mason University, "Abilities of Young Children to Operate Butane Cigarette Lighters," March 1988.
25. ANPR Comment CA 5–88–1, A. O'Neill, Vice President, National Fire Protection Association, April 6, 1988.
26. ANPR Comment CA 5–88–4, G.M. Loveless, Safety Concepts, Received April 27, 1988.
27. ANPR Comment CA 5–88–7, M.E. Fise, Consumer Federation of America, April 27, 1988.
28. ANPR Comment CA 5–88–10, M. Forys, Scripto Tokai, Inc., April 28, 1988.
29. ANPR Comment CA 5–88–12, M. Schuler, Zippo Manufacturing Co., April 29, 1988.
30. Sharman, J., Office of Program Management and Budget, "(Summary of) Comments on Advance Notice of Proposed Rulemaking," April 29, 1988.
31. ANPR Comment CA 5–88–5, R. Narkewicz, M.D., American Academy of Pediatrics, April 29, 1988.
32. ANPR Comment CA 5–88–8, J. Thomas, American Society of Testing and Materials, April 29, 1988.
33. Letter from E. Lewiecki, Chairman, ASTM Task Groups F15.02, to N.V. Marchica, Voluntary Standards Coordinator, CPSC, re: Child-Resistant Cigarette Lighter Standard, April 30, 1988.
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35. ANPR Comment CA 5–88–9, BIC Corporation, Received May 2, 1988.
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114. Letter from J. Ogle, Vice President, Wilkinson Sword, Inc., to Chairman J. Jones-Smith, CPSC, "Draft Notice of Proposed Rulemaking for Child-Resistant Lighters.", January 16, 1991.
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CPSC, re: effective date of a final rule, January 16, 1991.

116. Memorandum from B. Jacobson, Project Manager, HS, to the Commission, "Bimonthly Status Report for the Cigarette Lighter Project," January 17, 1991.

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119. Memorandum from D. Ray, ECPA, to B. Jacobson, HS, re: "Lighters: Proposed Effective Date," February 8, 1991.

120. Memorandum from D. Schmeltzer, EXCE, to B. Jacobson, Project Manager, HS, re: "Request for sign-off on extension of effective date of cigarette lighter rule," February 14, 1991.

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139. Memorandum from B. Jacobson; Project Manager, HS, to the Commission, "Bimonthly Status Report for Cigarette Lighter Project," June 28, 1991.

140. Letter from M. Paquette, Mechanical and Electrical Hazards Division, Consumer and Corporate Affairs Canada, to J. Hoebel, CPSC, "Study on the Performance of Lighters Available on the Canadian Market for 1990–91," July 11, 1991.

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153. Letter from G. Whalen, Scientific Project Officer, Consumer and Corporate Affairs Canada, to B. Jacobson, CPSC, re: protocol for determining the child-resistance of cigarette lighters, March 20, 1992.

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155. Memorandum from R. Newman, EP to B. Jacobson, HS, "Statistical Analysis of Non-Child-Resistant Roll and Press Cigarette Lighter Data Including Toronto Retest," April 8, 1992.

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159. Letter from F. Levinger, President, Colibri Corporation, to D. Ray, CPSC, re: definition of disposable lighters, May 4, 1992.

160. Memorandum from B. Jacobson, HS, to A. Ulsamer, HS, "Protocol for Testing Child-Resistant Lighters—Discussion of Outstanding Issues," May 8, 1992.

161. Letter from J. Bouchand, Ministere de L'Economie et des Finances, Paris, France, to E. Peterson, Executive Director, CPSC, re: concern about Commission action on child-resistant cigarette lighters, May 19, 1992.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915 and 1926

[Docket No. H–71]

RIN 1218–AA96

Occupational Exposure to Methylene Chloride

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; notice of informal public hearing; notice of additional issues.

SUMMARY: This notice supplements the Notice of Informal Public Hearing on Occupational Exposure to Methylene Chloride (MC) in the **Federal Register** (57 FR 24438, June 9, 1992) by advising the public of the Occupational Safety and Health Administration's consultation with the Advisory Committee on Construction Safety and Health, reporting the recommendations of that Committee, and extending the deadlines for filing of notice of intention to appear at the informal public hearings, written testimony and comments on issues regarding the construction industry.

DATES: All informal public hearings will begin at 9:30 a.m. on the first day of the hearing and at 9 a.m. on each succeeding day. The two informal public hearings are scheduled to begin on the following dates:

Washington, DC: September 16, 1992.
San Francisco, CA: October 14, 1992.

Notices of intention to appear at the informal public hearings to testify regarding the construction-related issues raised in this supplemental notice must be postmarked by September 8, 1992. Notice of intention to appear at the informal public hearings to testify on all other issues must be postmarked by August 24, 1992.

Testimony and all evidence which will be introduced into the hearing record regarding the construction-related issues raised in this supplemental notice must be postmarked by September 8, 1992 for the Washington, DC hearing and by September 22, 1992 for the San Francisco, CA hearing. Testimony and all evidence to be introduced into the hearing record regarding all other issues must be postmarked by August 24, 1992 for the Washington, DC hearing and by September 22, 1992 for the San Francisco, CA hearing.

Comments on the construction-related issues raised in this supplemental notice must be postmarked by September 22, 1992. Comments on all other issues must be postmarked by August 24, 1992.

ADDRESSES: Notices of intention to appear at the hearing and testimony and documentary evidence which will be introduced into the hearing record must be submitted in quadruplicate to Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615.

Comments are to be submitted in quadruplicate to: The Docket Office, Docket No. H–71, room N–2634, United States Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone No. (202) 523–7894.

Comments limited to 10 pages or less in length also may be transmitted by facsimile to (202) 523–5046, provided that the original and three copies of the comment are sent to the Docket Officer thereafter.

The locations of the informal public hearings are as follows:

Washington, DC: The Auditorium of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

San Francisco, CA: The Coit Room, Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA 94108 (415) 433–6600.

FOR FURTHER INFORMATION CONTACT:

Hearings: Mr. Tom Hall, Occupational Safety and Health Administration, Division of Consumer Affairs, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8615.

Proposal: Mr. James F. Foster, Office of Public Affairs, U.S. Department of Labor, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue NW., Washington, DC 20210; (202) 523–8151.

SUPPLEMENTARY INFORMATION: On November 7, 1991, OSHA proposed to amend its existing regulation for employee exposure to Methylene Chloride (MC), so that the permissible exposure limits (PELs) would appropriately reflect the available animal and human data. The Agency proposed to reduce the permissible 8-hour time-weighted average (TWA) exposure from 500 parts per million (ppm) to 25 ppm. In addition, OSHA proposed to delete the existing ceiling limit concentration of 1000 ppm and to reduce the short-term exposure limit (STEL) from 2,000 ppm (measured over 5 minutes in any 2 hours as a maximum peak concentration) to 125 ppm, measured as a 15-minute TWA.

The proposal also set requirements for exposure control, personal protective equipment, employee exposure monitoring, training, medical surveillance, hazard communication, regulated areas, emergency procedures and recordkeeping. In order to minimize the compliance burdens of employers whose employees have consistently low exposures to MC, the Agency has proposed an "action level" of 12.5 ppm, measured as an 8-hour TWA. The Notice of Proposed Rulemaking (NPRM) presented 48 issues, including one issue specifically addressing methylene chloride use and exposure in the construction industry, through which the Agency sought to elicit information and comments.

At the time the NPRM was published, the Agency had not yet consulted with the Advisory Committee on Construction Safety and Health (ACCSH) regarding the application of the proposed rule to the construction industry, because the Committee's members, whose terms expired in June 1990, had not yet been reappointed or replaced. OSHA stated (56 FR 57115–16) that the NPRM for MC provides the necessary rationale for regulatory action and sets out the requirements needed to protect employees in all industries, including construction, from the health hazards associated with occupational exposure to MC.

On May 4, 1992, the ACCSH was reconstituted (57 FR 19139). On May 19, 1992, the Advisory Committee convened and established a work group to gather information for consideration by the full Committee at its next meeting, scheduled for July 28, 1992. In preparing its report, the methylene chloride work group addressed questions regarding MC use and exposure in the construction industry which OSHA had presented to the Committee. In addition, the work group generated issues and information that went beyond the scope of OSHA's questions.

On June 9, 1992, OSHA published a Notice of Informal Public Hearing (57 FR 24438) which scheduled hearings and raised 16 issues (including Issue 10, which focused on the construction industry, repeating the questions presented to the ACCSH) regarding which the Agency sought testimony, with supporting information. The hearing notice also reopened the comment period for the NPRM. In addition, the hearing notice stated that OSHA would publish a supplemental hearing notice once the Agency had completed its consultation with the Advisory Committee, so that the Committee's recommendations could be addressed in testimony at the hearings or in comments.

On July 28, 1992, the Advisory Committee received the report of the methylene chloride work group. The Committee approved the work group report and formally presented the report to OSHA as the compilation of its recommendations regarding OSHA's proposal to regulate occupational exposure to MC in the construction industry. OSHA has placed the work group report in the Docket for this rulemaking (Ex. 21–69), so it is available for public inspection and copying.

This notice summarizes the Committee's recommendations and extends the deadlines for filing notice of intention to appear at the informal public hearings, written testimony and comments on issues regarding MC in the construction industry. The limited extension of deadlines for input regarding construction issues provides additional time for interested members of the public to review the recommendations set forth by the Advisory Committee on Construction Safety and Health and to prepare comments or testimony on these issues.

The Agency has reviewed the Committee's recommendations and has determined that those recommendations

call for no revisions to the proposed regulatory text as regards the construction industry. The Committee's recommendations, and any public input regarding those recommendations, will be further considered in drafting the final rule for occupational exposure to MC. The responses to the eight questions presented to the Advisory Committee (repeated in Issue 10 of the hearing notice) are presented in Item 1 through Item 8, below. In addition, recommendations that addressed matters not raised by the eight questions are presented in Item 9, below.

The Agency solicits testimony and comments, with supporting information, regarding the issues raised by the recommendations of the Advisory Committee, as discussed below.

1. Exposed Employee Population

Regarding the inquiry about construction worker exposures to MC and specific trades where exposure is significant, the Committee suggested several populations of construction workers which OSHA should investigate in order to identify potentially exposed workers. In particular, the ACCSH discussed MC exposure among lead paint abatement workers, painters, hazardous waste workers, workers in confined spaces, workers in trades where adhesives are used, mechanics, electricians, plumbers, carpenters and employees of small independent contractors. Data was submitted on the total number of workers for several of these populations, although data describing the number of workers exposed to methylene chloride in these situations was not available.

2. Duration of Employee Exposure

Regarding the inquiry about the amount of time employees are exposed to MC, the Committee noted that there are only limited data available. It was suggested that OSHA review the National Occupational Exposure Survey data and a study of solvent exposures among painters in Alaska.

3. Control of Employee Exposure

Regarding the inquiry about the engineering controls, work practices and personal protective equipment used to protect employees from MC exposure, the Advisory Committee stated that there are few engineering controls currently in use to protect against exposure to MC in the construction industry. The Committee suggested that OSHA review the asbestos rulemaking record for information on engineering control issues. Also, the report stated that work practices should be reviewed on a trade-by-trade basis to determine where changes should be made. In addition, the ACCSH noted there is a widely held view that it is impractical to use supplied-air respirators to control MC exposure at construction sites.

4. Construction Industry-Specific Concerns

In response to OSHA's request for information and recommendations regarding any special problems which might be encountered by the construction industry in complying with the proposed requirements for medical surveillance and exposure monitoring, the Committee recommended that OSHA consider requiring that the originators of proposals specify that provisions for exposure monitoring and medical surveillance be included in all bids received, so that all contractors would be required to address and cost these items in their submitted bids.

5. Medical Surveillance and Exposure Monitoring

Regarding the inquiry about potential problems in complying with the proposed medical surveillance and exposure monitoring requirements, the Committee discussed different approaches for medical surveillance programs, including surveillance administered at the national level, either by trade unions or by a governmental body (e.g. OSHA or NIOSH).

The ACCSH noted that exposure monitoring may be difficult because exposure levels vary so widely in the construction industry, adding that air monitoring should not be tied to medical surveillance. The Committee also observed that, while virtually all exposure monitoring at construction work sites is performed under contract by outside personnel, there is a shortage of industrial hygienists to monitor construction industry exposures. In addition, concern was expressed regarding the cost of the industrial hygiene resources needed to perform the exposure monitoring required by the proposed rule.

The Committee suggested that OSHA consider triggering specific requirements of the rule (such as exposure monitoring and medical surveillance) by frequency of use in addition to, or in place of, the exposure level triggers currently proposed. In addition, the ACCSH suggested increased emphasis on product labeling, establishment of regulated areas as a partial replacement of some of the monitoring requirements, and the feasibility of using real-time monitoring instead of periodic monitoring to detect exposures to MC.

6. Substitute Products and Processes

With regard to the feasibility of substitutes for methylene chloride in construction industry applications, the Committee submitted the proceedings from the International Conference on Reducing Risk in Paint Stripping, sponsored by the Environmental Protection Agency and held in Washington, DC on February 12–13, 1991. It was suggested that manufacturers issue alerts to let employers known of suitable substitutes for MC. OSHA notes that this document is already available for inspection and copying in the Docket for this rulemaking (Ex. 21–76).

7. Use of Respiratory Protection

Regarding the inquiry about respirator usage in the construction industry, the Committee replied "Currently, construction workers do not wear respirators to control for exposure to MC." The NIOSH recommendations concerning respirators (Ex. 19–46) were discussed. Because NIOSH considers MC to be a carcinogen, that Agency does not recommend respirators to control exposure to MC. The Committee stated that, if a respirator were to be used, the most effective type would be a pressure demand, supplied-air respirators with an auxiliary self-contained breathing apparatus. Air-purifying respirators were not recommended for reducing exposure to MC because of poor breakthrough qualities and lack of end-of-service-life-indicators.

8. Impact of Proposed 25 ppm PEL

Regarding the inquiry about any anticipated changes in construction worksites resulting from efforts to comply with a 25 ppm 8-hour TWA PEL, the Advisory Committee stated that there would not be a great deal of difference between the compliance strategy used for 25 ppm and that used for 50 ppm. The ACCSH also stated that OSHA should consider how employers would monitor compliance with the short-term exposure limits. In addition, the Committee suggested that OSHA also consider the frequency of MC use in triggering specific provisions of the proposed rule.

9. Additional Recommendations

A. Availability of Training and MSDSs

The Advisory Committee suggested that OSHA add a discussion to the preamble of the final rule and a non-mandatory appendix concerning lead abatement and MC issues. The Committee suggested that the non-mandatory appendix include information about training, such as non-mandatory "minimum" curriculum recommendations. The ACCSH noted that training employers/employees through the use of videos is considered to be superior to on-the-job training with safety coordinators because of the amount of knowledge required, and because safety supervisors may not have sufficient time or information to provide thorough training. The Committee also noted that videos are more effective than written materials, as they are accessible to employees who are illiterate, and that bilingual videos or other training material should be available for non-English speaking workers. The ACCSH also noted that safety information videos may be borrowed from the NIOSH library, for the cost of postage, that the Laborers Union has videos and safety cards for dissemination, and that an EPA pilot program on disk is also available.

The Advisory Committee also stated that, in addition to training, workers need material safety data sheets (MSDS) that are understandable. The Committee noted that a non-mandatory appendix in the final rule could be the appropriate place to provide an example of how to simplify the information in material safety data sheets.

B. Emergency Procedures

The ACCSH noted that it may also be useful to discuss in the non-mandatory appendix information about emergency procedures for spills and related occurrences.

C. Responsibility for Compliance

The ACCSH recommended that OSHA consider assigning responsibility for safety and health responsibility at multi-employer worksites. In particular, the Committee suggested that the Agency consider designating the worksite owner, or "host" employer as being responsible for overall worksite safety.

D. Information in Non-mandatory Appendix.

The Advisory Committee suggested that the Agency add information in a non-mandatory appendix to address how employers should handle MC in construction. In particular, the Committee suggested that OSHA provide (1) examples of specification language for contracts which require specific compliance with OSHA standards on jobs which require use of MC; (2) examples of air monitoring programs; and (3) examples of medical surveillance or preventative medicine programs. The ACCSH noted that surveillance and preventative medicine issues may be of interest because of heightened awareness in public health toward prevention.

E. Significance of Risk

The Advisory Committee stated that it was inappropriate for OSHA to set one excess death for each thousand workers as the threshold for finding that a substance addressed in a section 6(b)(5) proceeding presented a significant risk of material harm to exposed workers. The Committee stated that the risk of premature death among workers exposed to MC at the levels that would be allowed based on the "1 in a 1000" approach is unacceptable.

OSHA is interested in receiving comments and testimony concerning the recommendations of the ACCSH. Persons interested in submitting comments or in participating in the hearing should refer to the notice of proposed rulemaking on Occupational Exposure to Methylene Chloride (56 FR 57036) and the Notice of Hearing (57 FR 24488) for the text of the proposed standard and a more thorough discussion of issues.

Public Participation—Notice of Hearing

Pursuant to section 6(b)(3) of the Act, an opportunity to submit oral testimony concerning the issues raised by this notice will be provided at an informal public hearing scheduled to begin at 9:30 a.m. on September 16, 1992 in the Auditorium, Frances Perkins Department of Labor Building, 200 Constitution Avenue NW., Washington, DC 20210 and at 9:30 a.m. on October 14, 1992 in the Coit Room, Holiday Inn, Financial District, 750 Kearny St., San Francisco, CA 94108.

Notice of Intention to Appear

All persons desiring to participate at the hearing regarding the construction-related issues raised in this supplemental notice must file a notice of intention to appear postmarked on or before September 8, 1992. All persons desiring to participate at the hearing regarding any other issues must file a notice of intention to appear postmarked on or before August 24, 1992. All notices of intention to appear must be submitted in quadruplicate, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket H–71, room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523–8615. The notice of intention to appear also may be transmitted by facsimile to (202) 523–5046, provided the original and 3 copies of the notice are sent to the above address thereafter.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Technical Data Center Docket Office, room N–2625, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 523–7894, must contain the following information:

(1) The name, address, and telephone number of each person to appear;
(2) The capacity in which the person will appear;
(3) The approximate amount of time requested for the presentation;
(4) The specific issues that will be addressed;
(5) A statement of the position that will be taken with respect to each issue addressed; and
(6) Whether the party intends to submit documentary evidence, and if so, a brief summary of that evidence.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 10 minutes for a presentation at the hearing, or who will submit documentary evidence, must provide in quadruplicate the complete text of his testimony, including any documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs. For the Washington, DC hearing, materials dealing with the construction-related issues raised in this supplemental notice must be postmarked by September 8, 1992 and materials relating to all other issues must be postmarked by August 24, 1992. For the San Francisco hearing, materials relating to all issues must be postmarked by September 22, 1992. These materials will be available for inspection and copying at the Technical Data Center Docket Office. Each such submission will be reviewed in light of the amount of time requested in the Notice of Intention to Appeal. In those instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Any party who has not substantially complied with this requirement may be limited to a 10-minute presentation. Any party who has not filed a notice of intention to appear may be allowed to testify, as time permits, at the discretion of the Administrative Law Judge.

OSHA emphasizes that the hearing is open to the public, and that interested persons are welcome to attend. However, only persons who have filed proper Notices of Intention to Appear at the hearing will be entitled to ask

questions and otherwise participate fully in the proceeding.

Any participant who requires audiovisual equipment during the oral testimony, must submit a request for such equipment in the Notice of Intent to Appear, specifying the type of equipment needed.

Conduct and Nature of Hearing

The hearing will commence at 9:30 a.m., on September 16, 1992 in Washington, DC. An additional hearing will convene at 9:30 a.m., on October 14, 1992 in San Francisco. At those times, any procedural matters relating to the proceeding will be resolved. The informal nature of the rulemaking hearings to be held is established in the legislative history of section 6 of the Act and is reflected by the OSHA hearing regulations (see 29 CFR 1911.15 (a)). Although the presiding officer is an Administrative Law Judge and questioning by interested persons is allowed on crucial issues, it is clear that the proceeding shall remain informal and legislative in type. The intent, in essence, is to provide an opportunity for effective oral presentation by interested persons which can be carried out expeditiously and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

The hearings will be conducted in accordance with 29 CFR part 1911. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR part 1911 including the powers:

(1) To regulate the course of the proceedings;
(2) To dispose of procedural requests, objections and comparable matters;
(3) To confine the presentation to the matters pertinent to the issues raised;
(4) To regulate the conduct of those present at the hearing by appropriate means;
(5) In the Judge's discretion, to question and permit the questioning of any witness and to limit the time for questioning; and
(6) In the Judge's discretion, to keep the record open for a reasonable, stated time to receive written information and additional data, views, and arguments from any person who participated in the oral proceedings.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health. The Administrative Law Judge does not make or recommend any decisions as to the content of the final standard.

The proposed standard will be reviewed in light of all testimony and written submissions received as part of the record and a standard will be issued based on the entire record of the proceeding, including the written comments and data received from the public.

Written Comments

Interested persons are invited to submit written data, views, and arguments with respect to this proposed standard. Any comments regarding the construction-related issues raised in this supplemental notice must be postmarked on or before September 22, 1992. Comments on all other issues must be postmarked on or before August 24, 1992. All comments must be submitted in quadruplicate to the Docket Officer, Docket No. H–71, room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Comments limited to 10 pages or less also may be transmitted by facsimile to (202) 523–5046, provided the original and three copies are sent to the Docket Office thereafter. Written submissions must clearly identify the proposed provisions or the hearing notice issues which are addressed and the position taken with respect to those provisions or issues.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions will be made a part of the record of the proceeding.

Authority and Signature

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033) and 29 CFR part 1911.

Signed at Washington, DC on this 12th day of August 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–19580 Filed 8–12–92; 4:46 pm]

BILLING CODE 4510–26–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

[MB–42–P]

RIN 0938–AF13

Medicaid Program; Qualified Family Members

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: Under the Aid to Families with Dependent Children (AFDC) program, States may elect to limit the number of months of benefits provided to families who are eligible by reason of the unemployment of the principal wage earner. This proposed rule would ensure that States which have exercised this option continue to provide Medicaid to qualified family members beyond the time when AFDC ends solely because of the State's election of a time limit. The proposed rule conforms the regulations with sections 1902(a)(10)(A)(i)(V) and 1905(m) of the Social Security Act, as added by section 401(d) of the Family Support Act of 1988.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 16, 1992.

ADDRESSES: Address comments in writing to: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–42–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to: Office of Information and Regulatory Affairs, Attn: Laura Oliven, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code MB–43–P. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: Richard Coyne, (410) 966–4458.

SUPPLEMENTARY INFORMATION:

Background

In general, under the Medicaid program, title XIX of the Social Security Act (the Act), individuals who are eligible for certain public assistance programs, e.g., Aid to Families with Dependent Children (AFDC) under Part A of title IV of the Act and Supplemental Security Income (SSI) under title XVI of the Act, are eligible for medical assistance as members of a categorically needy group. Similarly, unless expressly provided for by statute, loss of eligibility for AFDC or SSI benefits may result in termination of Medicaid eligibility as categorically needy. (Title XIX of the Act requires coverage of certain categorical groups other than cash assistance recipients. In addition, Title XIX provides States with various options to provide Medicaid coverage to additional categorical groups. Hence, cessation of receipt of AFDC or SSI need not necessarily result in an individual's loss of Medicaid.) This proposed rule concerns the extension of Medicaid eligibility to certain individuals whose AFDC has been terminated because a State elects to impose a time limit on AFDC cash benefits available to a family with an unemployed principal wage earner.

Under the AFDC program, States provide assistance to certain families that meet the eligibility criteria. In accordance with section 407 of the Act, until October 1, 1990, States had the option to provide AFDC assistance to two-parent families when the principal wage earner was unemployed. These families were eligible for Medicaid by virtue of their eligibility for AFDC. Effective October 1, 1990, under section 401 of the Family Support Act of 1988 (Pub. L. 100–485), all States are required to furnish AFDC to these families. However, States which had not previously chosen to provide benefits to these families are permitted to deny AFDC cash payments to a family which had received AFDC on the basis of the unemployment of the principal wage earner in at least six months out of the preceding 12 months. The October 1, 1990 date does not apply to Guam, Puerto Rico, American Samoa, and the Virgin Islands where the effective date is October 1, 1992.

Section 401(d) of the Family Support Act of 1988 also added new sections 1902(a)(10)(A)(i)(V) and 1905(m) to title XIX, which define "qualified family member" and require State plans to make Medicaid available to qualified family members. Section 1905(m)(1) of the Act defines a "qualified family member" as an individual (other than a qualified pregnant woman or child, as defined in section 1905(n) of the Act) who is a member of a family that would be receiving aid under the State plan under Part A of title IV pursuant to section 407 if the State had not exercised its option under section 407(b)(2)(B)(i) of the Act to limit the number of months it will pay AFDC to a family with an unemployed principal wage earner.

Section 401(d) of the Family Support Act of 1988 also contains a sunset provision, which provides that the requirement for States to provide Medicaid to qualified family members terminates effective October 1, 1998. The statute states that no individual may be a qualified family member for any period after September 30, 1998.

Proposed Revisions

We are proposing to revise 42 CFR part 435, Subpart B, Mandatory Coverage of the Categorically Needy and Special Groups, by adding a new § 435.119. This section would provide for mandatory categorical eligibility for qualified family members and define a qualified family member.

We would redesignate existing § 435.119 under undesignated subheading, Mandatory Coverage of Adoption Assistance and Foster Care Children as new § 435.145 under the same undesignated subheading.

Section 1905(m) of the Act defines a qualified family member as a member of a family that would be receiving AFDC cash benefits based on the unemployment of the principal wage earner had the State not chosen to place a time limit on those benefits, but excludes from the definition those family members who would be eligible as qualified pregnant women or qualified children as defined in section 1905(n) of the Act. Under the authority of section 1902(a)(19) of the Act, which allows for safeguards to ensure that Medicaid care and services will be provided in a manner consistent with simplicity of administration and the best interests of recipients, and the Secretary's authority to publish rules and regulations necessary to the efficient administration of the programs under the Social Security Act, 42 U.S.C. section 1302, we propose to modify the definition. We would define qualified family member as any member of a family that would be receiving AFDC cash benefits based on the unemployment of the principal wage earner had the State not chosen to place a time limit on those benefits, whether or not those individuals would be eligible as qualified pregnant women or qualified children.

Under our proposed definition, a pregnant woman or child could receive coverage as either a qualified pregnant woman or child or as a qualified family member. Qualified pregnant women, qualified children and qualified family members are all mandatory eligibility groups and all are eligible for the same scope of services under the State Medicaid plan (section 1902(a)(10)(B)). Because the statutory exception is a distinction without a difference, we believe that this interpretation is clearer, simpler, and therefore, easier to administer. We do not believe that any individual will be harmed by the proposed definition; however, we specifically invite public comment on whether this is so.

In addition, under existing §§ 435.916 and 435.930, States are required to redetermine eligibility when circumstances change and must continue to provide Medicaid until the recipient is found ineligible. We have interpreted this requirement for redetermination, pursuant to the decision in *Stenson* v. *Blum*, 476 F. Supp 1331 (S.D., N.Y. 1979) *affirmed* 628F. 2nd 1345, *cert. denied*, 499 U.S. 885 (1980), to mean determining whether the individual is eligible on any basis. Therefore, when an individual ceases to meet the definition of qualified family member, the State is required to determine if the individual is eligible under any other group before terminating his or her Medicaid eligibility. Pregnant women and children who have been considered qualified family members but who also meet the eligibility requirements as qualified pregnant women or qualified children (as well as low-income pregnant women, infants and children and medically needy individuals) will be discovered at this time.

We note that the parenthetical provision of § 435.116(a)(1) and the provisions of § 435.116(a)(2) are not effective while section 401(d) of Pub. L. 100–485 is in effect; i.e., until October 1, 1998. These two provisions refer to situations in which the State's AFDC plan does not include an AFDC unemployed parent program and, until October 1, 1998, all States will be

required to include such a program in their AFDC State plan. The pregnant women to whom these provisions would apply are eligible under the mandatory coverage provisions of § 435.116(a)(3) and Pub. L. 100-485.

We propose to revise the title of § 435.116 to read, Qualified pregnant women and children who are not qualified family members.

We propose to amend 42 CFR part 436, which contains the eligibility provisions applicable to Guam, Puerto Rico, and the Virgin Islands. Those geographical areas are not subject to the SSI provisions, but rather participate in the cash programs (Title X, Aid to the Blind; Title XIV, Aid to the Permanently and Totally Disabled; Title XVI, Aid to the Aged, Blind or Disabled). We propose to make corresponding changes to § 436.120 to revise the title to read, Qualified pregnant women and children who are not qualified family members. We would also add a new § 436.121 entitled, Qualified family members, which would contain provisions essentially identical to those in new § 435.119 with the following exception. The statute provides a later effective date for implementation of these provisions in American Samoa, Guam, Puerto Rico and the Virgin Islands. Consequently, the provisions of §§ 435.119 (for American Samoa) and 436.121 would be effective on October 1, 1992.

Paperwork Reduction Act

Sections 435.119 and 436.121 of this proposed rule contain information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, et seq.). The information collection requirements concern State plan amendments, which must be completed by States. Reporting burden for the collection of information in §§ 435.119 and 436.121 are estimated to be one hour per State plan amendment. A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the OMB official whose name appears in the **"ADDRESS"** section of this preamble.

Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. 12291 criteria for a "major rule;" that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if this rule has a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we consider a small rural hospital as a hospital that has fewer than 50 beds and is located outside a Metropolitan Statistical Area.

We estimate the Medicaid program expenditures as a result of conforming these regulations to the statute to be as follows:

FY	Cost (dollars in millions)
Federal	
1992	$75
1993	90
1994	100
States	
1992	57
1993	68
1994	75

Although we anticipate increased costs to Federal and State governments as indicated above, we believe that these costs will have a beneficial effect on society. If anything, we expect increased health care coverage for families as a result of the implementation of these regulations.

For the most part, costs as a result of these proposed regulations would be incurred regardless of the promulgation of these regulations. The provisions of this rule merely conform the regulations to the legislative provisions of sections 1902(a)(10)(A)(i)(V) and 1905(m) of the Act, as added by section 401(d) of the Family Support Act of 1988. Therefore, we have not prepared an analysis under E.O. 12291.

We have determined, and the Secretary certifies, that these proposed regulations would not have significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a regulatory flexibility analysis or an analysis of effects on small rural hospitals.

Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of the rule.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

A. 42 CFR part 435 would be amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The title of § 435.116 is revised to read as follows:

§ 435.116 Qualified pregnant women and children who are not qualified family members.

* * * * *

§ 435.119 [Redesignated as § 435.145]

3. Section 435.119 is redesignated as new § 435.145 under undesignated subheading, Mandatory Coverage of Adoption Assistance and Foster Care Children.

4. New § 435.119 is added under a new undesignated subheading, Mandatory Coverage of Qualified Family Members to read as follows:

Mandatory Coverage of Qualified Family Members

§ 435.119 Qualified family members.

(a) *Definition.* A *qualified family member* is any member of a family, including pregnant women and children eligible for Medicaid under § 435.116 of this subpart, who would be receiving AFDC cash benefits on the basis of the unemployment of the principal wage earner under section 407 of the Act had the State not chosen to place time limits on those benefits as permitted under section 407(b)(2)(B)(i) of the Act.

(b) *State plan requirement.* The State plan must provide that the State makes Medicaid available to any individual who meets the definition of *qualified family member* through September 30, 1998.

(c) *Effective date.* This regulation is effective on October 1, 1992 for American Samoa.

B. 42 CFR part 436 would be amended as set forth below:

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. The title of § 436.120 is revised to read as follows:

§ 436.120 Qualified pregnant women and children who are not qualified family members.

* * * * *

3. A new § 436.121 is added to read as follows:

§ 436.121 Qualified family members.

(a) *Definition.* A *qualified family member* is any member of a family, including pregnant women and children eligible for Medicaid under § 436.120 of this subpart, who would be receiving AFDC cash benefits on the basis of the unemployment of the principal wage earner under section 407 of the Act had the State not chosen to place time limits on those benefits as permitted under section 407(b)(2)(B)(i) of the Act.

(b) *State plan requirement.* The State plan must provide that the State makes Medicaid available to any individual who meets the definition of *qualified family member* through September 30, 1998.

(c) *Effective date.* The provisions contained in this section are effective on October 1, 1992.

(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Program)

Note: This document received in the Office of the Federal Register on August 5, 1992.

Dated: July 31, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: November 1, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-18965 Filed 8-14-92; 8:45 am]

BILLING CODE 4120-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-163, RM-8037]

Radio Broadcasting Services; Clinton, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Clinton Radio Co. proposing the substitution of Channel 237C3 for Channel 237A and modification of the license for Station KDKD (FM) to specify operation on the higher class channel at Clinton, Missouri. The coordinates for Channel 237C3 are 38-24-32 and 93-46-50.

DATES: Comments must be filed on or before October 1, 1992, and reply comments on or before October 16, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Timothy K. Brady, P.O. Box 986, Brentwood, Tennessee 37027-0986.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-163, adopted July 21, 1992, and released August 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-19476 Filed 8-14-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-175; RM-7720]

Radio Broadcasting Services; Ravenswood and Williamstown, WV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the petition for rule making filed by MediaCom, Inc. for the reallotment of Channel 291A from Ravenswood to Williamstown, West Virginia. See 56 FR 30375, July 2, 1991. We find that there are minimal public interest benefits that would result from reallotting a full-time service from a relatively isolated community to a smaller community when that action would result in a loss of reception service to a substantial number of persons. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-175, adopted July 22, 1992, and released August 11, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–19475 Filed 8–14–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1207 and 1249

[Ex Parte No. MC–206]

Revision to Accounting and Reporting Requirements for Motor Carriers of Property

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served July 27, 1992 (57 FR 33314, July 28, 1992), the Commission sought public comment by August 26, 1992, on a proposal to adopt new accounting and reporting rules. The American Trucking Association (ATA) requests a 45-day extension until October 12, 1992, and The International Brotherhood of Teamsters (IBT) requests a 30-day extension until September 25, 1992, of the comment due date. ATA states additional time is needed so members can carefully consider and discuss this proposal at various meetings being held during the next two months. IBT indicates additional time is needed to respond in detail to various elements contained in the proposed action and to consult with individuals who currently are unavailable due to vacation plans. In view of the Commission's interest in expediting review of deregulatory proposals a 30-day extension will be permitted.

DATES: Comments are due on September 25, 1992.

ADDRESSES: Send an original and 15 copies, if possible, of comments should be sent to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee: (202) 927–5660 [TDD for the hearing impaired: (202) 927–5721].

Decided: August 12, 1992.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92–19531 Filed 8–14–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS announces that the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) have submitted Amendment 6 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP) for review by the Secretary of Commerce (Secretary). Written comments on Amendment 6, which includes a regulatory impact review (RIR), initial regulatory flexibility analyses (IRFA), and environmental assessment (EA), are requested from the public.

DATES: Written comments must be received on or before October 6, 1992.

ADDRESSES: Copies of Amendment 6 may be obtained from the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609, or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, suite 306, Charleston, SC 29407–4699.

Comments should be sent to Mark F. Godcharles, NMFS, Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act), as amended, requires that a Council-prepared fishery management plan or amendment be submitted to the Secretary for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary immediately publish a notice that the document is available for public review and comment. The Secretary will consider public comment in determining approvability of the amendment.

Amendment 6 proposes to: (1) Revise the problems and objectives statements of the FMP; (2) specify periods for rebuilding overfished stocks; (3) change the required frequency of stock assessments from annual to biennial; (4) add to the management measures that may be implemented or modified by the framework procedure; (5) provide for the establishment of separate subgroups of the Gulf migratory group of king mackeral, divided at the Florida/Alabama boundary, when the assessment panel is able to provide ranges of acceptable biological catch for the subgroups; (6) allow the earned income requirement for a commercial vessel permit for king or Spanish mackeral to be met in any one of the 3 years preceding the permit application; (7) change the fishing year for recreational bag limits to the calendar year; (8) remove the provisions for reducing recreational bag limit to zero during a fishing year; (9) increase the minimum size limit for king mackerel to 20 inches (50.8 cm) fork length; and (10) implement commercial vessel trip limits for Atlantic migratory group Spanish mackerel.

Proposed regulations to implement Amendment 6 are scheduled for publication within 15 days.

Dated: August 11, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19523 Filed 8–12–92; 12:55 pm]

BILLING CODE 3510–22–M

Notices

Federal Register

Vol. 57, No. 159

Monday, August 17, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Alternative Agricultural Research and Commercialization (AARC) Center; Alternative Agricultural Research and Commercialization Grant and Cooperative Agreement Program; Request for Pre-Proposals

Program Description

Purpose

The Alternative Agricultural Research and Commercialization (AARC) Center is requesting pre-proposals under the AARC Grant and Cooperative Agreement Program (Program) to assist emerging industrial products/processes involving the use of agricultural or forestry materials. The authority for the Program is contained in section 1660 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 5904. The Program is administered by the AARC Center, which is an independent entity within the U.S. Department of Agriculture. The objectives of the AARC Center are:

- To search for new nonfood, nonfeed products that may be produced from agricultural commodities and for processes to produce such products.
- To conduct product and co-product/process development and demonstration projects, as well as provide commercialization assistance for industrial products from agricultural and forestry materials.
- To encourage cooperative development and marketing efforts among manufacturers, private and government laboratories, universities, and financiers to assist in bridging the gap between research results and marketable, competitive products and processes.
- To collect and disseminate information about commercialization projects that use agricultural or forestry materials and industrial products derived therefrom.

Under the Program, the AARC Center will award competitive grants and cooperative agreements to support research and development of new industrial products or processes derived from agricultural or forestry commodities. The AARC Center will use the pre-proposals submitted to determine the products/processes that may have the most potential for commercialization, the degree to which the proposed project may meet the AARC Center's mission, and, for those projects to be considered further, to point out areas of such projects that may need to be strengthened.

Available Funding

Currently, approximately $4.0 million is available from Federal sources. However, the AARC Board also may choose to use Fiscal Year 1993 funds when such funds become available. It is anticipated that these additional funds will be approximately $7.0 million.

Some level of matching of funds is required with the amount of such matching to be determined after pre-proposals are reviewed, but in no case will funds provided by the AARC Center under the Program exceed two-thirds of the total cost of the project. A preference may be given to those projects for which the ratio of Center funds to non-Center funds would be the lowest or those projects with the lowest effective overhead and administrative costs.

Eligibility

Pre-proposals are invited from any private firm, individual, public or private educational or research institution or organization, Federal agency, cooperative, or nonprofit organization. Cooperative projects involving any of the above are encouraged.

Program Emphasis

As determined by the AARC Board from a series of public hearings held around the country, each pre-proposal should focus on products/processes from the following material categories: Starches/Carbohydrates, Fats and Oils, Fibers, Forest Materials, Animal Products, Other Plant Materials used as pharmaceuticals, fine chemicals, encapsulation agents, rubber, etc.

The AARC Center's primary interest, in this request for pre-proposals, is in providing assistance to technology development projects that will commercialize new non-food, non-feed uses from new and existing agricultural and forestry materials. Special emphasis will be given to those pre-proposals whose products are closest to commercialization. Pre-proposals that request funds for research may be considered; however, such requests must include an overall development plan that contains potential markets, development costs, and industry participation.

Pre-Proposal Preparation

Pre-proposal Format

Applicants should submit a brief pre-proposal, not more than four pages in length that includes the following:

- *Cover Sheet.* List the name, address, telephone and FAX numbers of project leader and names of other partners.
- *Brief Project Description.* Explain the product/process characteristics, the management structure, stage of commercialization and when commercial impact is expected.
- *Benefits of the Project.* Explain the potential impact on the market (return on investment and crop utilization potential), environment, and rural communities.
- *Capabilities of Participants.* Describe the relationship among participants (if more than one entity is involved) and their capabilities for bringing the product/process to market.
- *Budget.* Show all funding sources and separate equipment, personnel costs, and supplies as line items. Include current financial statements on any existing partnership/corporate structure.
- *Other.* Explain any assistance required (other than funding) to accelerate commercialization.

Pre-proposal Submission

The original and three copies of the pre-proposal must be received by 3 p.m. on October 30, 1992. One of the following addresses should be used, as applicable:

Regular U.S. mail	Overnight delivery
USDA AARC Center, 14th & Independence Avenue SW., 342 Aerospace Center, Washington, DC 20250–2200	USDA AARC Center, 901 D Street SW., 342 Aerospace Center, Washington, DC 20250–2200

Evaluation Criteria

The AARC Board seeks projects that will have market impact on new and existing agricultural products and will favor projects that:

- Are market-driven;
- Have private sector involvement;
- Incorporate sharing of resources and risks (cash and expertise), and
- Have a high probability for commercial success.

The statute indicates that the AARC Board may use the following criteria when the grants or cooperative agreements are made under the Program:

- The prospect of developing technologies that could make it possible to use or modify existing agricultural commodities to provide an economically viable quantity of new nonfood, nonfeed products;
- The potential market size of the new nonfood, nonfeed product, the likely time period needed to bring the product into the stream of commerce for general use, and the likely availability of the agricultural commodity used to produce the product;
- The potential for job creation in an economically distressed rural area;
- The anticipated State or local participation;
- The anticipated financial participation of private entities;
- The likely impact on reducing Federal crop subsidies and other Federal agricultural assistance program costs;
- The unavailability of adequate funding from other sources;
- The likely positive impact on resource conservation and the environment;
- The likely positive effect of helping family-sized farmers and rural communities near the affected agricultural and forested areas.

Pre-proposals will receive both a business and a technical review. After review, the AARC Board will seek full proposals on projects that best address the evaluation criteria outlined above. Such proposals will be reviewed on a competitive basis by a peer review panel established by the AARC Board, with the AARC Board making the final award decisions.

Other Considerations

With respect to projects carried out with private researchers or commercial companies, information submitted by applicants incident thereto will be kept confidential, except with the approval of the person providing the information or in a judicial or administrative proceeding in which such information is subject to protective order.

Intellectual property rights, such as patents and licenses, shall remain with the owner unless other arrangements are negotiated beforehand. Inventions made under an award under this Program shall be owned by the awardee in accordance with 35 U.S.C. 200–204 and 37 CFR part 401.

No grant or cooperative agreement may be entered into under the Program for the acquisition or construction of a building or facility.

Entities that submit a pre-proposal must file a declaration of compliance with 31 U.S.C. 1352 regarding limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions either prior to pre-proposal submission or simultaneously. The required certification form may be obtained by contacting either person listed above.

Due to limited funds, all projects meriting support may not be funded by the AARC Center.

Inquiries

Questions regarding the AARC Center or the pre-proposal process should be directed to:

Beverly Gillot, 202–401–4860

or

Patricia Dunn, 202–401–4640.

Done at Washington, DC, on August 12, 1992.

Paul O'Connell,

Acting Director, Alternative Agricultural Research and Commercialization Center.

[FR Doc. 92–19508 Filed 8–14–92; 8:45 am]

BILLING CODE 3410–22–M

Agriculture Marketing Service

Meetings for the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463), as amended, the Agricultural Marketing Service announces forthcoming meetings of the National Organic Standards Board (NOSB) Committees.

DATES: September 10–11, 1992.

ADDRESSES: The Processing and Labeling Committee of the National Organic Standards Board (NOSB) will meet at the Sheraton Inner Harbor, 300 South Charles St., Baltimore, MD on September 10, from 9 a.m. to 5 p.m. The Livestock Committee of the NOSB will meet at the Sheraton Inner Harbor on Friday, September 11, from 9 a.m. to 3 p.m. A session to receive public input will be held in the Baltimore Convention Center Inner Harbor on Friday, September 11, 1992, from 5 p.m. to 9 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, National Organic Standards Board, Room 4006–South Building, P.O. Box 96456, Washington, DC 20090–6465. Telephone: (202) 720–2704.

SUPPLEMENTARY INFORMATION: Section 2119 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Fact Act), Pub. L. No. 101–624, (7 U.S.C. section 6518, requires establishment of a National Organic Standards Board. The purpose of the Board is to assist in the development of standards for substances to be used in organic production and handling and to advise the Secretary on any other aspects of the implementation of Title XXI of the Fact Act. The NOSB met for the first time in Washington, DC, in March and formed six committees to work on various aspects of the Program. The committees are: Crop Standards, Livestock Standards, Processing, Labeling and Packaging, National Materials List, International Issues, and Accreditation.

The purpose of this meeting of the Processing, Labeling, and Packaging Committee is to work on draft documents and position papers for presentation to the full Board at a future meeting, and to receive input on processing and labeling standards issues from individuals and organizations. Issues to be discussed include: An organic handling plan; audit trail; material inputs; and packaging issues. The Livestock Committee is seeking input on: materials needed for livestock and poultry health; livestock farm plan; livestock feed; and audit trail. Both committees are interested in consumer and environmental concerns as they relate to the organic program.

A final agenda will be available on August 21, 1992, which will include detailed agendas for each committee. Persons requesting copies should contact Mrs. Fox at the above address or telephone number.

The meeting will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Dr. Harold S. Ricker at the above address or FAXED to (202) 690–0330 by September 3, 1992, in order to be scheduled. The Committees will schedule time for public input on Friday, September 11, beginning at 5 p.m. and continuing until

9 p.m. The first two hours are designated for processing input and the last two hours for general comments and concerns. Each individual or organization will be allocated 10 minutes for orally presenting the key issues of concern, and should provide copies of written material, elaborating on those issues for the committees.

Dated: August 12, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–19526 Filed 8–14–92; 8:45 am]

BILLING CODE 3410–02–M

Cooperative State Research Service

Agricultural Science and Technology Review Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the following meeting:

Name: Agricultural Science and Technology Review Board (hereafter referred to as the Review Board).

Date: August 31, 1992.

Time: 8 a.m.–4 p.m.

Place: One Washington Circle Hotel, Washington, DC.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person named below.

Purpose: The purposes of the meeting are to: Review the missions and responsibilities of the Review Board; Determine activity priorities; Agree on approaches to address responsibilities; Establish agenda for next meeting; Elect Chair and other officers.

Contact Person for Agenda and More Information: Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, room 3M12, Annex Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 401–4662.

Done in Washington, DC, this 5th day of August 1992.

Clare I. Harris,

Associate Administrator.

[FR Doc. 92–19492 Filed 8–14–92; 8:45 am]

BILLING CODE 3410–22–M

Forest Service

Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Hot Springs Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service is exempting from appeal any decision related to the harvest and restoration of lands affected by drought-induced timber mortality covered under the Holey Dome and Sycamore Insect Salvage Environmental Assessments on the Hot Springs Ranger District. The environmental assessments are being prepared in response to continuing timber mortality on the Hot Springs Ranger District. The unusual mortality is being caused by drought and related insect and disease infestations.

The proposed Holey Dome and Sycamore Insect Salvage Environmental Assessments include the area from the Northern District boundary south to Dunlap Meadow and the Western District boundary east to a line running north to south at Sentinel Peak. All areas are within the General Forest Zone as delineated by the Sequoia National Forest Land and Resource Management Plan.

There are currently higher than normal levels of tree mortality occurring throughout the Sequoia National Forest as a result of six consecutive years of below normal precipitation. This drought condition has caused a high degree of stress within the trees which reduces their natural defense mechanisms and weakens them to the extent that they are now predisposed to attack by bark and engraver beetles and white pine blister rust. The Hot Springs District is experiencing drought-related mortality well above average for the District and Forest.

Trees subject to insect attack act as hosts for producing new broods of insects. The commercial value of lumber recovered from infested trees declines rapidly as the wood deteriorates. Prompt removal of affected timber helps to reduce the growth rates of insect populations and minimize value and volume loss in salvaged timber. Excessive numbers of dead trees can lead to heavy fuel concentrations, making wildfire control difficult as witnessed two summers ago when the Stormy Complex fires burned approximately 24,000 acres on the District.

In the Holey Dome Insect Salvage project area, salvage sales are being proposed to harvest approximately four million board feet (MMBF) on approximately 12,725 acres using helicopter and ground-based logging systems. No new specified road construction will be proposed for the salvage operations. Existing roads and landings will be used. Approximately 2 miles of temporary roads are being proposed to access the salvage timber.

In the Sycamore Insect Salvage project area, salvage sales are being proposed to harvest approximately one million board feet on approximately 6,300 acres. Both ground-based logging systems and helicopter will be used in this timber sale. All harvesting will occur from existing roads.

Salvage logging, especially helicopter logging, is costly when compared to logging green timber sales because of the typically low volumes per acre removed and the scattered nature of the dead trees. To be economically feasible, timber value must be high enough to compensate for the higher logging costs. If dead timber is not removed promptly, the decline in value and volume cause by deterioration will prevent economical removal by both ground-based and helicopter logging systems. For this reason, it is necessary to remove dead and dying timber as soon as possible if an environmental analysis supports the decision to do so.

Pursuant to 36 CFR 217.4(a)(11), I have determined that good cause exists to exempt from appeal any decision relating to the harvest and restoration of lands following drought-induced timber mortality which is covered under the Holey Dome and Sycamore Insect Salvage Environmental Assessments on the Hot Springs Ranger District of the Sequoia National Forest. The environmental documents being prepared will address the effects of the proposed actions on the environment, will document public involvement and will address the issues raised by the public.

EFFECTIVE DATE: This decision will be effective August 17, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648, or Sandra H. Key, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257, (209) 784–1500.

ADDITIONAL INFORMATION: The environmental analyses for these proposals will be documented in the Holey Dome Insect Salvage and Sycamore Insect Salvage Environmental Assessments. Pursuant to 40 CFR 1501.7, scoping was initiated on the Holey Dome Insect Salvage on November 7, 1991. Scoping for the Sycamore Insect Salvage was begun May 14, 1992. Scoping was conducted by the Hot Springs District Small Sales Officer and Timber Management Officer in order to

determine some of the issues to be addressed in the environmental analyses. The District is expected to complete the environmental documentation for the proposed projects at the end of August or early September. The environmental assessments and related maps will be available for public review at the Hot Springs Ranger Station, Rt. 4, Box 548 California, Hot Springs, CA 93207 and at the Supervisor's Office, Sequoia National Forest, 900 W. Grand Avenue, Porterville, CA 93257.

The catastrophic damage presently occurring in the central portion of the Hot Springs District covers approximately 70,000 acres. Within this area approximately 19,000 acres and five million board feet (MMBF) is presently being proposed for salvage. The value to the Forest Service of 5 MMBF salvage volume is estimated between $1.7 and $2.9 million dollars. This does not include the many jobs and thousands of dollars in benefits that are realized in related service, supply and construction industries. Tulare County will share in 25% of the revenue collected from these timber sales. Rehabilitation and restoration measures will be necessary for watershed protection, erosion prevention, and fuels reduction.

Salvage projects are not expected to adversely affect snag dependent wildlife species. Snags will be left in numbers to meet or exceed the guidelines stated in the Sequoia National Forest Land and Resources Management Plan and Mediated Land Management Plan 1990 Settlement Agreement, and the Regional guidelines of three to four snags per acre in suitable spotted owl habitat. There will be no salvage harvesting in designated California Spotted Owl Habitat Areas (SOHA's). The giant sequoia groves will not be harvested and each grove will have a 1,000 foot no cut buffer around them. Any threatened or endangered plants or animals located within the project areas will be protected. The nesting and roosting areas for the California Condor (*Gymnogyps Californianus*) will be excluded from cutting. Four "sensitive" species, spotted owl (*Strix occidentalis occidentalis*), northern goshawk (*Accipiter gentilis*), fisher (*Martes pennanti*), and pine marten (*Martes americana*) have been found within the project area in the past. Any threatened or endangered wildlife species which is identified during salvage preparation or operations will be protected using current contract provisions. Surveys for sensitive plants and cultural resources will be completed prior to approval of the Environmental Assessments. All sensitive plants or cultural resources will be protected using current contract provisions. Sequoia National Forest Riparian Standards and Guidelines will be applied in the areas that will be harvested.

Delays for any reason could jeopardize chances of accomplishing recovery and rehabilitation of the damaged resources during this field season. These delays would result in volume and value losses, and increase the chances of wildfires occurring due to the large additional quantity of standing and down fuels.

Dated: August 11, 1992.

Dale N. Bosworth,

Reviewing Officer, Deputy Regional Forester.

[FR Doc. 92-19496 Filed 8-14-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Oregon Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on August 26, 1992, at the Red Lion-Lloyd Center, 1000 NE. Multnomah, Portland, Oregon 97232. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Jeannette Y. Pai or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 11, 1992.

Carol-Lee Hurley,

Chief, Regional Coordination Unit.

[FR Doc. 92-19466 Filed 8-12-92; 12:04 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

[Docket No. 920790-2190]

Notice of Plan to end the Premium Service of the National Trade Data Bank (NTDB) and Request for Comments

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The "Premium Service" of the National Trade Data Bank (NTDB) has been available to subscribers since August 23, 1990; however, it has never had many subscribers and since January 1, 1992, only one subscriber has used the service. The net cost of this service is unnecessary and the Department of Commerce wishes to save money by ending the Premium Service on September 30, 1992. Magnetic tapes containing NTDB information will continue to be sold as requested.

DATES: Comments must be submitted on or before September 16, 1992.

ADDRESSES: Written comments should be addressed to: John E. Cremeans, Director, Office of Business Analysis, Economics and Statistics Administration, room H4878, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: John E. Cremeans, (202) 377-1405.

SUPPLEMENTARY INFORMATION: The Premium Service of the NTDB resides on the National Institutes of Health (NIH) computer. Data may be downloaded via modem or copied on magnetic tape and shipped to the subscriber. Subscribers must deposit $300.00 with the National Technical Information Service and are charged $45.00 per hour of connect time with NIH computer and $125.00 per reel of magnetic tape ordered. Access is to all NTDB information programs in bulk; that is, subscribers may order all the data in a given information program or all the changes to an information program since the last session, but the software does not permit users to select individual data items, e.g., subscribers may obtain all market research reports or all new market research reports, but subscribers may not search for or obtain a specific market research report via this service. Since its initiation, all data transfer has been via magnetic tape; that is, no user has requested download of bulk data via modem.

The Premium Service was announced via **Federal Register** notices on August 18, 1989, and May 1, 1990, and other channels. It was the first means to obtain NTDB data, and received significant attention from potential users in its early months of availability, but the maximum number of subscribers since August 1990 was seven and only one user has accessed the Premium Service since January 1992. The net cost to the Department of operating the Premium Service is unnecessary.

In contrast, the "Standard Service" of the NTDB, which consists of the monthly production of a Compact Disc—Read Only Memory (CD-ROM), has been very successful, and the NTDB data users that formerly subscribed to the Premium Service have become Standard Service subscribers. The NTDB CD-ROMs are distributed at no charge to almost 700 Federal Depository Libraries throughout the country, and 807 discs were sold to private and government users in June 1992. If the present rate of growth continues, the NTDB will be selling approximately 1,000 discs per month by October 1992. Users of NTDB data have overwhelmingly chosen the Standard Service and CD-ROMs over the Premium Service.

Private information vendors and state and local governments obtain NTDB information via the Standard Service and make the data available to their subscribers. Some of these redistributors make the data available on line.

The Department plans to end the Premium Service on September 30, 1992. After that date, NTDB data on magnetic tape will be supplied to users requesting that medium from a less costly Departmental microcomputer system. Thus no present user will be denied access or have their service reduced.

Discs currently provided through the Premium Service are formatted in a highly structured manner due to the database management system required to operate the Premium Service. Tapes issued directly from the Office of Business Analysis (OBA) after September 30, 1992, will be restructured in an easier to use flat file formation similar to the format available when extracting data directly from the CD-ROM. Copies of the planned format are available from OBA.

This plan was presented to the Interagency Trade Data Advisory Committee (ITDAC) on June 15, 1992, and its advice sought and carefully considered.

Susanne H. Howard,

Associate Under Secretary, Economics and Statistics Administration.

[FR Doc. 92-19500 Filed 8-14-92; 8:45 am]

BILLING CODE 3510-EA-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a plastic MM tray to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 16, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On October 11, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (56 FR 51375) of the proposed addition of the tray to the Procurement List. Comments were received from one of the current contractors for the MM tray. The contractor objected to the proposed addition as a further reduction of the Postal Service market for products which constitute the major portion of its business. The contractor's reference was to a previous action by the Committee to add a portion of the Government requirement for another Postal Service tray and lid manufactured by his firm to the Procurement List. The contractor also advised that the firm was experiencing considerable difficulty and had laid off employees as a result of a Postal Service specification change for this tray. The contractor indicated that the addition of this tray to the Committee's Procurement List would further aggravate the firm's problems and reduce its production efficiencies. Such impacts would, according to the contractor, force additional layoffs in an economically depressed area without comparable job opportunities. The contractor also noted that the Postal Service specification change would prevent it from retaining some business by serving as a supplier to nonprofit agencies authorized by the Committee to make the trays.

The Committee has considered the contractor's comments, including the potential impact of its previous actions. The Committee also took into account the Postal Service's tentative plans to purchase these trays in a larger size, which has not previously been procured and would not be affected by the is action. In both its previous action and this case, the Committee has chosen to place only a portion of the Postal Service requirements for the trays on the Procurement List, thereby providing the contractor with continued opportunities to bid on the items involved. This approach was taken to assure that the contractor which submitted comments would not be severely adversely impacted by the Committee's actions.

For the current addition, the Committee has also reduced the size of the portion of the Postal Service requirement being added to the Procurement List from that announced in the notice of proposed rulemaking to eliminate the part currently under contract to this contractor. While the Committee did not consider this action to be absolutely necessary to avoid having severe adverse impact on this contractor, it acted to reduce the impact to the lowest level which would still create a meaningful amount of employment for blind persons.

The Committee has concluded that the possible loss of employment by the current contractor's work force as a result of this Committee action is offset by the job and training opportunities that will be generated for persons who are blind, who have a very high unemployment rate. The adverse impact of a loss of production efficiency, use of equipment, and business opportunities as a supplier was caused by the Postal Service specification change and did not result from the Committee's addition of the trays to the Procurement List. Given the fact that the contractor will continue to have the opportunity to compete for a sizeable part of the Postal Service's requirements for the two trays on the Procurement list and the larger trays expected to be procured during FY 1993, if it can meet the specifications, the Committee has concluded that the proposed addition of the MM tray to the Procurement List would not constitute sever adverse impact on this contractor.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity

listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List.

Accordingly, the following commodity is hereby added to the Procurement list: Plastic MM Tray, P.S. Item No. 3925, (U.S. Postal Service requirements for Mail Transport Equipment (MTE) areas 5, 7 and 10).

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 92–19533 Filed 8–14–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List plastic bags to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 16, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 17, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (57 FR 13715) of the proposed addition of these bags to the Procurement List. Comments were received from two of the three current contractors for these plastic bags and from two members of Congress and the central nonprofit agency which the Committee has appointed to represent the nonprofit agency employing blind persons which will produce the bags under the Committee's program. One of the members of Congress asked that the Committee take into account the concerns of one of the commenting contractors, which the Committee has done. The other member of Congress asked the Committee to work with a plastic trash bag manufacturing company owned by an Indian tribe to assure that it is not harmed by the Committee's action. The company, which is not a current contractor for the bags being added to the Procurement List, will be afforded an opportunity to compete as a supplier of plastic film to the nonprofit agency which will produce the bags. The central nonprofit agency urged the Committee to add the bags to the Procurement List to create jobs for blind persons who have lost their jobs because of reduced sales caused by Government downsizing and inventory reduction.

One of the contractors noted that it was a small minority owned business that employs over 100 minority individuals or persons with disabilities. It claimed that it had afforded the Government considerable savings over a previous supplier because of improved production techniques and lower profit margins. It objected to the proposed addition to the Procurement List because it does not want to lose a contract it worked so hard to gain.

While the Committee regrets depriving this contractor of the potential to compete for future contracts, it believes that the creation of employment for currently unemployed blind persons offsets the loss, particularly as the contractor has not indicated that any of its employees will lose their jobs as a direct result of the Committee's action. In addition, as explained below, this contractor will have one more opportunity to compete for a contract for these bags, and will also in the future be given the opportunity to compete to supply plastic film to the nonprofit agency which will produce the bags. Finally, the contractor's current bag contract represents just under 10 percent of its expected 1992 sales. The Committee does not consider a sales loss of this size to constitute severe adverse impact when, as in this case, there are no other significant adverse factors.

The other contractor noted that it has been a supplier of these bags to the Government since 1987 and that loss of these sales would have a significant effect on its total sales and would require layoff of at least twenty employees. It claimed that loss of these sales would eliminate revenue needed to cover capital costs incurred to meet Government requirements for the bags. It also noted that the nonprofit agency proposed to produce the bags would lose no current jobs if the bags are not added to the Procurement List and would be able to compete with other firms to produce the bags for the Government.

The Committee believes that the sales impact figures presented by the contractor are higher than warranted by the current procurement outlook. The figures reflect the unusually high sales caused by Operation Desert Storm or are annualizations of five months of the current year. The Committee has relied on other figures which indicate that, because future Government demand for the bags will be less than that reflected in the contractor's figures, the impact of losing these sales would be less and, even considering the contractor's history as a supplier of these bags, would not constitute severe adverse impact on the contractor, which is the applicable standard in the currently effective Committee regulations.

In regard to the contractor's claim that it would lose the opportunity to amortize its capital expenditures if the bags were added to the Procurement List, it should be noted that the contractor has been supplying the bags to the Government since 1987 and should have amortized some of its costs by now. Moreover, the contractor will continue to have the opportunity to compete to supply these bags to the Government throughout most if not all of 1993 and possibly through January 1994, during which time plant and equipment costs could continue to be amortized. This opportunity will exist because the nonprofit agency which will produce the bags will assume supply responsibility on a partial basis and build up to a full responsibility by the end of January 1994. Also, although the plastic bags purchased by GSA are of a higher quality than those sold commercially, the machines used by the contractor to produce the GSA bags can be employed to make the similar, but lower quality commercial bags. Thus, the contractor has the potential to continue to recoup its capital costs through sales to the commercial market.

Although the Committee agrees that no existing jobs would be eliminated if this action were not taken, it does not agree that the nonprofit agency designated to produce the bags and the blind people it serves would not be harmed. The agency itself would be frustrated in fulfilling its mission of generating employment opportunities for blind persons, particularly those residing in rural communities. More importantly, blind people who are currently unemployed or underemployed would lose out on the opportunity to obtain well-paying, full-time jobs and training. Because of the extremely high unemployment rate among blind people, the Committee believes that the creation of employment for these individuals offsets the loss of employment for the contractor's employees, whose chances of securing other employment are much greater than those of blind persons. In this case, the Committee noted that the disparity in employment opportunities is even greater because the contractor's plants are located in metropolitan areas, while more than half of the blind individuals who will be employed live in rural areas with fewer job possibilities.

Congress created the Committee's program as a mandatory procurement source program in order to make it possible for nonprofit agencies to provide stable employment opportunities for persons with severe disabilities. Thus, it is implicit in the Committee's mission that these agencies should not be expected to participate in Federal projects—particularly those requiring substantial capital investment—unless they have a guarantee that contracts will be forthcoming on a recurring basis. This guarantee is provided by the Committee's program. To argue, as the contractor does, that the nonprofit agency could have an opportunity to supply the bags without their being added to the Procurement List is inconsistent with Congress's conclusion regarding the need for the Committee's program. Consequently, the Committee does not regard this argument as one that justifies a decision not to add the bags to the Procurement List.

The contractor noted that several suppliers provide general purpose plastic bags to the Government. It claimed that this diversity of suppliers affords the Government a "safety net" in the event that one or more contractors fail to meet their contract requirements. It questioned the wisdom of having only one supplier for the bags, as an act of God or man could disrupt the supply from a single facility.

The Committee concurs that placing all the requirements with a single facility would be risky. However, in this case, the designated nonprofit agency will produce the bags at two facilities, thereby providing a "safety net." This approach is acceptable to the Federal procuring agency.

The contractor stated that it began supplying the bags to the Government after the Government had experienced severe difficulties with quality, delivery, and price of bags from other suppliers and that it had eliminated these problems for the Government. In noted that the designated nonprofit agency does not have any experience producing these plastic bags. It further stated that it produces the bags from raw plastic pellets, unlike the designated nonprofit agency which will produce them from plastic film. It argued that its approach, which gives the contractor control over the entire manufacturing process, is superior to a two-step process which introduces additional opportunities for quality problems.

The nonprofit agency has been successfully producing other similar plastic bags for the Government for some time. It produces these bags from plastic film rather than raw plastic pellets. The nonprofit agency will conduct tests to determine that the film meets Government specifications before it produces the bags. It will also conduct a series of quality tests on the finished products. The Federal procuring agency has indicated that this arrangement meets its quality requirements.

The contractor stated that production of the bags by the designated nonprofit agency rather than by competitive contractors will have "inevitable adverse effects on pricing." It claimed that, because the three plastic bags to be added to the Procurement List represent nearly all of its Government plastic bag sales, its price to the Government for other plastic bags would have to increase if the three are added to the Procurement List because it would lose the volume discounts from its suppliers which it currently enjoys.

The Committee is required by law, 41 U.S.C. 47(b), to set a fair market price for each item on the Procurement List. The fair market price for the bags was established using competitive bidding data from the most recent procurement, which is the usual procedure for commodities which have previously been procured competitively. The producing nonprofit agency will be required to accept this price when its sells the bags to the Government under the Committee's program. The nonprofit agency—and the central nonprofit agency which the Committee has designated to represent the nonprofit agency—have independently assured the Committee that the nonprofit agency will be able to produce the bags at this price. If the loss of a volume discount requires a contractor to set its price for other related items at a higher level on future bids, the competitive system will ensure that the Government receives a fair price by awarding the contract to another bidder.

The contractor questioned the correctness of the Committee's assertion in its notice of proposed rulemaking that the addition of these bags to the Procurement List would authorize small entities to produce the bags and would not have a significant impact on a substantial number of small entities. It identified five small businesses which it claimed would be significantly affected by the Committee's action. Two of these businesses are the commenting contractors which, as discussed in the preceding paragraphs, the Committee has determined will not be severely impacted by the addition of the bags to the Procurement List. The other three, which are not current contractors for the bags, will lose only the opportunity to bid on future contracts for the bags. The Committee does not consider loss of this opportunity alone to constitute significant impact. Moreover, any impact on these five companies would be mitigated by the opportunity they would have to compete to supply plastic film to the nonprofit agency which will produce the bags, in accordance with a Committee regulation which encourages nonprofit agencies participating in the Committee's program to subcontract with small businesses.

Contrary to the contractor's assertion, the addition of these bags to the Procurement List will authorize small entities to produce the bags. The designated nonprofit agency is a small entity. Addition of the bags to the Procurement List may also authorize other small entities (i.e., other nonprofit agencies employing people with severe disabilities) to produce the bags in the future if Government needs require additional productive capacity.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or

other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Accordingly, the following commodities are hereby added to the Procurement List:

Bag, Plastic
8105–01–195–8730
8105–01–183–9768
8105–01–183–9769.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 92–19534 Filed 8–14–92; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF ENERGY

Chicago Field Office, NREL Area Office; Noncompetitive Financial Assistance Award Green Pricing Pilot Project

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR part 600, is announcing its intention to amend Grant number DE–FG02–91CH10488 with the American Council for an Energy Efficient Economy (ACEEE). The amendment will allow for implementation of a program designed to provide energy consumers with information regarding trade-offs in the use of renewable power sources. The program is entitled "Green Pricing Pilot Project".

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, NREL Area Office, 1617 Cole Boulevard, Golden, Colorado 80401. Attention: John W. Meeker, Contract Specialist, Paul K. Kearns, Contracting Officer.

SUPPLEMENTARY INFORMATION: DOE intends to award a grand amendment to ACEEE for a Green Pricing Project. ACEEE has been conducting a Federally sponsored program entitled "The Regulatory Assistance Program" (RAP) as a result of the Clean Air Act Amendments of 1990. This program is intended to provide intensive, on-site training and educational assistance to state public utility commissions on all aspects of least-cost integrated utility planning. The Green Pricing Project will facilitate development and implementation of pilot Green Pricing programs in at least four states.

The Green Pricing Program proposal was reviewed in accordance with DOE Financial Assistance Rules, 10 CFR 600, and the activity was determined to be worthy of funding as a continuation of work currently funded by DOE. ACEEE is considered to be an integral part of the program to promote technology development and use of renewable energy. DOE has determined that ACEEE has an exclusive capability to perform the Green Pricing Pilot Project partially due to the fact that they were the originators of the Green Pricing concept. The total value of the project is $100,000 and the performance period is 21 months.

Issued in Chicago, Illinois, on August 5, 1992.

Johnnie D. Greenwood,
Director, Contracts Division.
[FR Doc. 92–19418 Filed 8–14–92; 8:45 am]
BILLING CODE 6450–01–M

Support of Cannon Low-NO_x Digester System

AGENCY: Department of Energy.

ACTION: Justification for support of an unsolicited proposal (cooperative agreement) award.

SUMMARY: The Department of Energy (DOE), announces that pursuant to 10 CFR 600.14(e), it is intending to award a cooperative agreement from an Unsolicited Proposal to Southern California Gas Company, for the "Support of the Cannon Low-NO_x Digester System."

SCOPE: The objective of this project is to reduce NO_x emissions to no more than 40 ppmv, as required at the California site of the available host boiler. The researcher, (Cannon Boiler Works, Inc.) has achieved a level of 2 ppm in pilot-scale testing. The participant intends to provide economic data on continuous operation of the commercial-scale boiler (17 MBtu/h), and to develop data leading to design improvements. The plans include a nine-month period of monitored, on-line operation.

The facility available for this project is a gas-fired boiler at a dairy company (Alta-Dena). It will provide an acceptable scale of operation, a low cost to install the modifications and the economy of using regular plant labor for the long-duration test. The owner is required to abate the current NO_x emissions to comply with the regulations of the South Coast Air Quality Management District. The particular appeal of the Cannon technology is its potential to yield very high performance at an economically competitive cost.

In accordance with the criteria presented under 10 CFR 600.14(e) criteria (i) and (ii), the Southern California Gas Company has been selected as the cooperative agreement recipient. The unique, overall merit of the proposal is the concept of converting the relatively water insoluble NO_x emissions to a form which can be removed in a water spray chamber.

The remediation of acid rain precursors is encompassed by DOE's mission; therefore, the support and investigation of this novel technology will be directly beneficial to PETC's Advanced Combustion Technology Program. The public purpose to be served is the potential for reducing atmospheric pollution by the identification and development of effective, economical technology.

The project period of the cooperative agreement is for 1 year. The estimated value for the project period is $356,251. This funding will be shared by the following: DOE (25%), Southern California Gas Company (16.7%), Cannon Boiler Works (33.2%), Alta-Dena Dairy (16.7%), and South Coast Air Quality Management District (8.4%).

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Attn: Maryann Lundgren, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Telephone: AC (412) 892–5912.

Richard D. Rogus,
Contracting Officer.
[FR Doc. 92–19415 Filed 8–14–92; 8:45 am]
BILLING CODE 6450–01–M

Senior Executive Service; Performance Review Board

AGENCY: U.S. Department of Energy.

ACTION: Designation of PRB Chair and Addition to PRB Standing Register.

SUMMARY: This notice designates the Performance Review Board Chair for the Department of Energy, and adds the names of Senior Executive Service participants from other agencies to our standing register who will serve as PRB Subcommittee members.

EFFECTIVE DATE: These appointments are effective as of August 10, 1992.

Performance Review Board Chair

Douglas J. Bielan, Chief of Staff, Office of Administration and Human Resource Management, Department of Energy.

Performance Review Board Subcommittee Members

William D. Miller, II, Equal Employment Opportunity Commission.

James R. Perez, Federal Bureau of Investigation.

Issued in Washington, DC, August 12, 1992.

Dolores L. Rozzi,
Director of Administration and Human Resource Management.
[FR Doc. 92–19532 Filed 8–14–92; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RS92–3–000]

Arkla Energy Resources; Notice of Conference

August 11, 1992.

Take notice that on Wednesday, August 26 and, if necessary, Thursday, August 27, 1992, a conference will be convened in the above-captioned restructuring docket to discuss Arkla Energy Resources' summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The conference will begin at 9 a.m. on August 26, 1992. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Richard White at (202) 208–0491 or Robert Steinberg at (202) 208–1032.

Linwood A. Watson, Jr.
Acting Secretary.
[FR Doc. 92–19511 Filed 8–14–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RS92–30–000]

Carnegie Natural Gas Co.; Notice of Prefiling Conference

August 11, 1992.

Take notice that on August 25, 1992, a conference will be convened in the above-captioned docket to discuss Carnegie Natural Gas Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. For additional information, interested parties may call Joan Dreskin at (202) 208–0738.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 92–19512 Filed 8–14–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. RS92–5–000, et al. and RS92–6–000, et al.]

Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co., Location of Prefiling Conference

August 11, 1992.

Take notice that the prefiling conference to be convened August 19, 1992 at 10 a.m. in these proceedings, pursuant to the notice issued August 6, 1992, will be held at the United States Department of Labor auditorium. The entrance to the main lobby of the Department of Labor building is on Third Street at C Street, NW., Washington, DC. The auditorium is located off the main lobby. Photographic identification may be required to enter the building.

For additional information, contact Donald A. Heydt at (202) 208–0740.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 92–19514 Filed 8–14–92; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. RP92–171–000 and TA92–1–17–005]

Texas Eastern Transmission Corp.; Notice of Further Conference

August 11, 1992.

Pursuant to the Commission's notice issued on July 17, 1992, a conference was convened on Thursday, July 30, 1992, to resolve the issues raised in the above-captioned proceeding. At the conference, the parties agreed to a further conference. Accordingly, a conference has been scheduled for Thursday, August 27, 1992, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and staff are permitted to attend.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 92–19513 Filed 8–14–92; 8:45 am]
BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 92–35–LNG]

Yukon Pacific Corp.; Order Transferring Authorization To Export Liquefied Natural gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order transferring the export authorization granted Yukon Pacific Corporation in DOR/FE Opinion and Order Nos. 350 and 350–A to Yukon Pacific Company, L.P. The transfer is being made solely to meet the future management and financing needs of the Trans-Alaska Gas System Project and will not affect or change any of the conditions underlying FE's public interest determinatioin embodied in Order 350.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 11, 1992.

Anthony J. Comb,
Director, Office of Coal and Electricity, Office of Fuels Programs, Office of Fossil Energy.
[FR Doc. 92–19535 Filed 8–14–92; 8:45 am]
BILLING CODE 6450–01–M

Western Area Power Administration

Rate Order No. WAPA–53 Salt Lake City Area Integrated Projects and Colorado River Storage Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice is given of Rate Order No. WAPA–53 (WAPA–53) by the Assistant Secretary for Conservation and Renewable Energy placing into effect on an interim basis the rate for firm power from the Salt Lake City Area Integrated Projects (Integrated Projects) and the rate for firm transmission from the Colorado River Storage Project (CRSP).

SUMMARY: Notice is given of the confirmation and approval by the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) of the Department of Energy (DOE) of WAPA–53 and Rate Schedules SLIP–F4 placing increased firm power rates for capacity and energy from the Integrated Projects, and SP–FT4, placing increased rates for transmission capacity from the CRSP of the Western Area Power Administration (Western) into effect on an interim basis. The interim rates, hereafter called the provisional rates, will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them in effect on a final basis or until they are replaced by another rate.

In the order issued April 14, 1992, in Docket No. EF92–5171–000, FERC confirmed and approved Rate Schedule SLIP–F3 for firm power from the Integrated Projects. The firm power rate expires on September 30, 1992.

The provisional firm power rate contains an increase in the energy charge of 0.5 mills per kilowatthour (mills/kWh), resulting in a total firm energy charge of 8.60 mills/kWh, and an increase in the capacity charge of $0.19 per kilowatt per month ($/kW–month), resulting in a total firm capacity charge of $3.63/kW-month. The combined rate (calculated at a 58.2-percent load factor) increases from 16.2 mills/kWh to 17.14 mills/kWh. This is a 5.8-percent increase.

Pursuant to Delegation Order No. 0204–108, FERC, in the order issued November 1, 1989, in Docket No. EF89–5151–000, confirmed and approved Rate Schedule SP–FT3 for firm transmission service in CRSP administered by Western's Salt Lake City Area Office. The rate was approved for the 3-year period July 1, 1989, through June 30, 1992. The current transmission rate was extended for 1 year from its expiration date of June 30, 1992, to June 30, 1993, by a Federal Register notice dated May 7, 1992 (57 FR 19619). Western is adjusting the CRSP firm power rate to establish equity between the two rates and to save Western and its customers time and administrative costs. The CRSP firm transmission rate adjustment is needed because of increased operation and maintenance and investment costs and changes in rate study methodology since the last rate adjustment. The current transmission rate is $21.72 per kilowatt-year ($/kW-year) and is increasing to $22.68/kW-year. This is a 4.4-percent increase.

The rate adjustments for Integrated Projects firm power and CRSP firm transmission are to be placed into effect on an interim basis effective October 1, 1992. The adjusted firm power rate will earn approximately $5.9 million annually in additional power revenue while the adjusted firm transmission rate will earn approximately an additional $182,500 annually for fiscal years (FY) 1993–96.

A comparison of existing and revised firm rates follows:

	Existing rate	Revised rate
Integrated Projects Firm Power Service Rate Schedule	SLIP–F3	SLIP–F4
Firm Capacity Charge ($/kW-month)	$3.44	$3.63
Firm Energy Charge (mills/kWh)	8.10	8.60
Combined Rate (mills/kWh)	16.20	17.14
CRSP Firm Transmission Service Rate Schedule	SP–FT3	SP–FT4
Transmission Rate ($/kW-year)	$21.72	$22.68

DATES: Rate Schedules SLIP–F4 and SP–FT4 will be placed into effect on an interim basis on October 1, 1992, and will remain effective until FERC confirms, approves, and places the rate schedules in effect on a final basis for a 4-year period, or until the rate schedules are superseded.

FOR FURTHER INFORMATION CONTACT:

Mr. Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–6372.

Ms. Deborah Linke, Chief, Rates and Statistics Branch, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1535.

Mr. Joel Bladow, Assistant Administrator for Washington Liaison, Western Area Power Administration, Room 8G–061, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0001, (202) 586–5581.

SUPPLEMENTARY INFORMATION: By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary of the DOE; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Firm power rates for the Integrated Projects and firm transmission rates for the CRSP are established pursuant to the DOE Organization Act, 42 U.S.C. 7152(a) and 7191; the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the projects involved.

On July 3, 1991, a letter announcing an informal customer meeting was mailed to all firm power customers and other interested persons. This meeting was conducted on August 1, 1991, in Salt Lake City, Utah. At this informal meeting, representatives of Western and the Department of the Interior's Bureau of Reclamation explained the need for the increase and answered questions from those attending. Both the need for a FY 1992 special "expedited rate" and a longer term (FY 1993–96) rate adjustment (this rate adjustment) were discussed at this meeting. The rate process for the expedited rate began immediately and went into effect on an interim basis on December 1, 1991. FERC confirmed and approved the expedited rate and placed it into effect on a final basis through an order issued on April 14, 1992.

The initial formal consultation and comment period for this (longer term) rate process was initiated on September 18, 1991, with publication of a Federal Register notice (56 FR 47203), which officially announced the proposed rate adjustment and procedures for public participation. A public information forum was held on November 13, 1991, in Salt Lake City; and a public comment forum was also held in Salt Lake City on December 4, 1991. This initial consulation and comment period was closed on December 19, 1991. At the December 4, 1991, public comment forum, Western received oral comments from 21 entities or individuals. By the end of the comment period, 295 comment letters were received including 51 written letters and 244 form letters. Several commenters requested that additional time be given to comment on some unresolved issues relative to the rate adjustment. For this reason, a second formal consultation and comment period on the rate adjustments was initiated with the publication of a Federal Register notice on January 27, 1992 (57 FR 3053). An additional public information forum was held on March 30, 1992, and an additional public comment forum was held on April 14, 1992, both in Salt Lake City, Utah. The second consultation and comment period closed on May 1, 1992.

Western received seven oral comments at the second public comment forum; and 508 comment letters were received by the end of the comment period, including 15 written letters and 493 form letters. During these two comment periods, which comprised 188 days (95 days for the first and 93 for the second), Western received a total of 803 comment letters.

Most of the comments received at public meetings and in written comments stated that: (1) Costs of environmentally related studies of powerplant operations, etc., and increased purchased power costs associated with decreased powerplant capacity resulting from changed powerplant operations should be nonreimbursable; (2) estimated operation and maintenance costs should be from the latest fiscal-year budgets and should not include unbudgeted items or contingencies; (3) hydrology (generation) estimates should not deviate in the near term from estimates based on long-term modeling, and (4) the comment period should be extended so that the public can see and comment on the final rate order power repayment study.

WAPA–53, confirming, approving, and placing the proposed Integrated Projects firm power and CRSP firm transmission rate adjustments in effect on an interim basis, is issued, and Rate Schedules SLIP–F4 and SP–FT4 will be promptly submitted to FERC for confirmation and approval on a final basis.

Issued in Washington, DC, August 10, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy Assistant Secretary for Conservation and Renewable Energy

Order Confirming, Approving, and Placing the Salt Lake City Area Integrated Projects Firm Power Service Rate and

The Colorado River Storage Project Firm Transmission Rate Into Effect on an Interim Basis

In the matter of: Western Area Power Administration Rate Adjustment for Colorado River Storage Project and Salt Lake City Area Integrated Projects

[Rate Order No. WAPA–53]

August 10, 1992.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.A. 371 *et seq.*, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 2 to Delegation Order No. 0204–108, published August 23, 1991 (56 FR 41835), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western), (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary), and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37385).

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

$/kW-month	Monthly charge for capacity (usage $ per kilowatt-month).
$/kW-year	Yearly charge for capacity (usage $ per kilowatt-year).
Addendum Brochure.	The addendum to the October 1991 rate brochure dated March 1992.
Basin Fund	That account in the U.S. Department of the Treasury, established by the CRSP Act, into which all CRSP revenues are deposited and from which all CRSP obligations are paid.
Billing Demand	The greater of (1) the highest 30-minute demand measured during the month, not to exceed the contract obligation; or (2) the contract rate of delivery.
Colibran	Colibran Project.
Cost Evaluation Period.	First 5 future years in the power repayment study.
CREDA	Colorado River Energy Distributors Association (customer association).
CROD	Contract rate of delivery.
CRSM	Colorado River Simulation Model—a computerized model of water flows through the Colorado River developed and used by Reclamation.
CRSP	Colorado River Storage Project.
CRSP Act	Act of April 11, 1956, chapter 203, 70 Stat. 105, 43 U.S.C. 620–620o.
CUP	Central Utah Project.
Customer Brochure.	A document prepared for public distribution explaining the background of the initial rate proposal, dated October 1991.
DOE	Department of Energy.
DOE RA 6120.2	A DOE order which provides guidelines for Power Marketing Administration Financial Reporting.
EIS	Environmental Impact statement.
Exception Criteria	An agreement entered into by Western and Reclamation on October 21, 1991, setting forth conditions for operating Glen Canyon powerplant outside of parameters set during test flows and in subsequent interim operating criteria, including system regulation, emergency situations, and for the specific purpose of avoiding high-cost replacement power purchases.
FDR	Facilities Development Report. A planning document prepared by Western for all transmission system construction.
FERC	Federal Energy Regulatory Commission.
FY	Fiscal year.
GCD-EIS	Glen Canyon Dam Environmental Impact Statement.
GCES	Glen Canyon Environmental Studies.
General Fund	Account in the U.S. Department of the Treasury.
Integrated Projects.	Salt Lake City Area Integrated Projects, which encompass the combined sales and resources of the CRSP, Colibran, and Rio Grande Projects.
Integrated Projects Rate Order PRS.	A PRS which combines the CRSP, Colibran, and Rio Grande project's PRSs to resolve the blended rate charge for the Integrated Projects' capacity and energy, and which supports a rate order.
IPA	Interim Purchases Amendment.
Interim Purchases	The energy and capacity purchased by Western on behalf of its customers to replace power made unavailable at Glen Canyon Dam by environmentally related water-release restrictions.
kW	Kilowatt (1,000 watts).
kWh	Kilowatthour (1 kW for 1 hour).
M&I	Municipal and industrial.
mills	One-tenth of 1 cent.
mills/kWh	Mills per kilowatthour.
MW	Megawatt (1,000 kW).
NEPA	National Environmental Policy Act.
O&M	Operation and maintenance.
PRS	Power repayment study.
Reclamation	Bureau of Reclamation, U.S. Department of the Interior.
Rio Grande	Rio Grande Project.
RIP	Recovery Implementation Program for endangered fish species in the Upper Colorado River Basin.
RMGC	Rocky Mountain Generation Cooperative, Inc.
SLCAO	Salt Lake City Area Office.
Treasury	U.S. Department of the Treasury.

Upper Colorado River Basin.	The northern part of the Colorado River Basin above Lees Ferry, Arizona, consisting of southwestern Wyoming, western Colorado, northwestern New Mexico, and eastern Utah.
WAPA-45	Description of a Rate Order for the Integrated Projects that corresponds with Rate Schedule SLIP-F2 which was placed into affect on an interim basis on October 1, 1990.
WAPA-52	Description of a Rate Order for the Integrated Projects that corresponds with Rate Schedule SLIP-F3 which was placed into effect on an interim basis on December 1, 1991.
Western	Western Area Power Administration, U.S. Department of Energy.

Effective Date

The provisional rates for firm power and firm transmission service will become effective on an interim basis on October 1, 1992, and will be in effect pending FERC's approval on a final basis for a 4-year period through September 30, 1996, or until superseded.

Public Notice and Comment

The Procedures and Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, have been followed by Western in the development of these firm power and firm transmission rates. The provisional firm power rate and the provisional firm transmission rate represent an increase of more than 1 percent in total Integrated Projects and CRSP revenues; therefore, they are major rate adjustments as defined at 10 CFR 903.2(e) and 903.2(f)(1). The distinction between a minor and a major rate adjustment is used only to determine the public procedures for the rate adjustment.

The following summarizes the steps Western took to ensure involvement of interested parties in the rate process

1. A letter dated July 3, 1991, announcing an informal customer meeting to be held on August 1, 1991, in Salt Lake City, Utah, was mailed to all firm power customers and other interested parties. At this informal meeting, Western and Reclamation representatives explained the need for the increase and answered questions from those attending.

2. A **Federal Register** notice was published on September 18, 1991 (56 FR 47203), officially announcing the proposed firm power rate and firm transmission rate adjustments, initiating the formal public consultation and comment period, announcing the public information and public comment forums, and presenting procedures for public participation. The proposed firm power rate contained in this notice consisted of an energy charge of 11.9 mills/kWh and a capacity charge of $5.06/kW-month or a combined rate of 23.8 mills/kWh. The proposed firm transmission rate was $25.20/kW-year or $2.10/kW-month. The public comment period closed on December 19, 1991.

3. Letters were mailed from Western's Salt Lake City, Loveland, and Phoenix Area Offices on October 8, 10, and 11, 1991, respectively, to all Integrated Projects customers and other interested parties announcing and enclosing a copy of the **Federal Register** notice of September 18, 1991.

4. On October 17, 1991, a customer brochure was mailed from all three Area Offices to all customers and other interested persons. This mailing also included a letter of reminder of the dates and locations of the public information and comment forums.

5. At the public information forum held on November 13, 1991, Western representatives explained in greater detail the need for the rate increases and answered questions.

6. A public comment forum was held on December 4, 1991, to give the public an opportunity to comment for the record. Twenty persons representing 21 customers and customer groups made oral comments at the forum.

7. The first public comment period ended December 19, 1991, during which 21 oral comments and 295 comment letters were received.

8. A **Federal Register** notice was published on January 27, 1992 (57 FR 3053), which announced a second formal consultation and comment period and changed the expected date of the proposed rates from July 1, 1992, to October 1, 1992. The second comment period ended on May 1, 1992.

9. On January 31, 1992, a letter was mailed from the Salt Lake City Area Office to Salt Lake City Area customers and interested parties enclosing the second **Federal Register** notice, which announced the second period of public consultation and comment. A similar letter was mailed from the Phoenix Area Office on February 5, 1992, and the Loveland Area Office on February 3, 1992, to Phoenix and Loveland Area customers.

10. A March 1992 addendum to the October 1991 Customer Brochure was sent to customers and other interested parties on March 13, 1992. This addendum noted changes that had been made to the original customer brochure due to customer comments during the first consultation and comment period and a proposed adjustment to align net revenue between the PRS and the audited financial statements. The revised proposed firm power rate indicated by the addendum brochure PRS was 8.7 mills/kWh for energy and $3.67/kW-month for capacity for a combined rate of 17.34 mills/kWh. The revised transmission rate study produced a rate of $21.96/kW-year, which was only slightly different from the existing rate of $21.72/kW-year.

11. A second public information forum was held in Salt Lake City on March 30, 1992, to explain changes to the proposed rate as indicated by the March 1992 Addendum to the October 1991 Customer Brochure. Questions concerning the proposed rate were also answered.

12. A second public comment forum was held in Salt Lake City on April 14, 1992. Seven oral comments were heard from customers and customer representatives, and 508 comment letters were received.

13. A total of 803 comment letters were received during the two consultation and comment periods which ended May 1, 1992. All formally submitted comments have been considered in the preparation of this rate order.

Project History

The Integrated Projects consist of the CRSP, Rio Grande, and Collbran Projects. The projects were integrated for marketing and ratemaking purposes on October 1, 1987. The goals of integration were to increase marketable resources, simplify contract and rate development and project administration, ensure repayment of Collbran and Rio Grande Project costs, and create a blended rate. The projects maintain their individual identities for financial accounting and repayment purposes, but their revenue requirements are integrated into one PRS for ratemaking purposes.

The CRSP transmission system was constructed with the main-stem water storage and powerplant units of CRSP. In 1978 when Western was created, the transmission portion of the CRSP was transferred to Western while Reclamation retained operation of the powerplants. Since that time, several additions to the system have been made. The purpose of the CRSP transmission system is to reliably transmit power produced at Integrated Projects generation facilities to Federal points of delivery.

Power Repayment Studies

PRSs are prepared each FY to determine if power revenues will be sufficient to pay, within the prescribed time periods, all costs assigned to the power function. Repayment criteria are based on law, policies, and authorizing legislation. DOE RA 6120.2, section 12(b), states:

> In addition to the recovery of the above costs (O&M and interest expenses) on a year-by-year basis, the expected revenues are at least sufficient to recover (1) each dollar of power investment at Federal hydroelectric generating plants within 50 years after they become revenue producing, except as otherwise provided by law; plus, (2) each annual increment of Federal transmission investment within the average service life of such transmission facilities or within a maximum of 50 years, whichever is less; plus, (3) the cost of each replacement of a unit of property of a Federal power system within its expected service life up to a maximum of 50 years; plus, (4) each dollar of assisted irrigation investment within the period established for the irrigation water users to repay their share of construction costs; plus, (5) other costs such as payments to basin funds, participating projects, or States.

Separate PRSs were prepared for each of the Integrated Projects to establish their individual revenue requirements as described below.

The Final FY 1991 Collbran Project PRS, completed in December 1991 and incorporated into this rate order, indicated a need for $1.56 million/year in annual average power-related gross revenue for the effective period (FY 1993–96). Revenues must cover the costs within the ratesetting year for a project to earn sufficient income.

The Final FY 1991 Rio Grande Project PRS, completed in December 1991 and incorporated into this rate order, indicated a need for $2.45 million/year in annual average power-related gross revenue for the effective period (FY 1993–96).

The Final FY 1991 CRSP PRS showed a need for $127.2 million in annual average firm power-related gross revenue for the effective period (FY 1993–96).

The FY 1991 Integrated Projects PRS was developed by taking the Final FY 1991 CRSP PRS and adding the total annual power-related revenue requirements, generation, and capacity of the Collbran and Rio Grande Projects in the appropriate columns and years.

The FY 1991 Integrated Projects PRS was modified relative to customer comments, the inclusion of 1993 budget data, and a significant audit adjustment to create the rate Order PRS. These modifications reduced the revenue requirements from what was shown in the final CRSP and previous Integrated Projects PRSs.

The Integrated Projects rate order PRS, dated June 1992, indicated the average annual firm power-related revenue requirement is $109.6 million for the effective period (FY 1993–96). This is $5.9 million more in annual average firm power-related gross revenue than would be earned for FYs 1993–96 at the current Integrated Projects combined firm power rate of 16.2 mills/kWh.

Transmission Rate Studies

Transmission rate studies are also prepared each FY to ensure that the firm transmission rate is based on the cost of service of the transmission system.

The Rate Order Transmission Study dated June 1992 indicated that the rate needs to be adjusted from its current level of $21.72/kW-year to $22.68/kW-year for a 4.4-percent increase. This provisional rate would earn an additional $162,500 annually over the 4-year effective period (FY 1993–96) from the existing firm contracts for CRSP firm transmission.

Comparison of Proposed and Provisional Rates

A comparison of the rates as they have evolved during the public consultation and comment period follows:

COMPARISON OF PROPOSED AND PROVISIONAL FIRM POWER AND TRANSMISSION RATES

	Federal Register (September 1991)	Original brochure (October 1991)	Public information forum (November 1991)	Addendum (March 1992)	Rate order (June 1992)
Energy:					
(Mills/kWh)	11.90	11.30	10.36	8.70	8.60
Capacity:					
($/kW-month)	5.06	4.80	4.40	3.67	3.63
($/kW-year)	60.72	57.60	52.80	44.04	43.56
Combined:					
(Mills/kWh)	23.80	22.6	20.70	17.34	17.14
Transmission:					
($/kW-month)	2.10	2.10	2.10	1.83	1.89
($/kW-year)	25.20	25.20	25.20	21.96	22.68

The **Federal Register** notice of September 18,1991, proposed that combined firm power rate to be 23.80 mills/kwh. The rate published in the brochure (October 1991) for the combined firm power rate, had decreased to 22.6 mills/kWh due to updating of studies and clarifications. At the public information forum, it was noted that the estimated purchased power costs from interim operations decreased from $22.7 million to $11.6 million, along with other minor revisions to the study. The combined rate was reduced to 20.70 mills/kWh. A second consultation and comment period was held and an addendum brochure (March 1992) was sent to the customers and interested parties. The addendum brochure proposed the combined firm power rate of $17.34 mills/kWh, based upon more realistic assumptions for purchased power costs and decisions about some of the original issues raised affecting the PRS, such as elimination of use of a trendline analysis, use of budget estimates for annual replacement expense, and elimination of unbudgeted O&M. The addendum brochure included a $51.1 million audit adjustment and the 1993 budget estimates. This Integrated Projects Rate Order PRS has resulted in a provisional combined rate of 17.14 mills/kWh. This final revision to the March 1992 proposal is largely due to the reduction of the audit adjustment to $28.7 million and the revision of cost estimates for interim operations energy costs.

The **Federal Register** notice of September 18, 1991, proposed a CRSP transmission rate of $25.20/kW-year. Because of the use of the 1993 budget estimates in the addendum brochure, the

rate was reduced to $21.96/kW-year. It was proposed at the second information forum that the current rate of $21.72/kW-year would remain as the CRSP transmission rate. During the public information forums and public comment forums, it was suggested that economy energy sales were overestimated in PRS. As a result of this comment, Western reviewed all the revenue credits in the CRSP transmission study. The revenue credits for exchange capacity charges were increased by $677,000 because of a recent change in contract rates. Also, in reviewing financial records, revenues from phase-shifting transformer services were negligible; so it was concluded not to include potential revenues from phase-shifting transformer services. Therefore, the CRSP transmission rate was revised to $22.68/kW-year.

Existing and Provisional Rates

The existing firm power rate was placed into effect on an interim basis on December 1, 1991, and was approved on a final basis by FERC on April 14, 1992. This "expedited rate" was estimated to be necessary to pay the cost of purchased power during FY 1992 due to changed interim operations at Glen Canyon Dam. The expedited rate added a combined rate increment of 1.7 mills/kWh to the 14.5-mill combined rate that had been in effect for the Integrated Projects since October 1, 1990.

The existing firm transmission rate has been in effect since July 1, 1989. Because the firm transmission rate would have expired on June 30, 1992, 3 months before the provisional rate was to be effective, the current firm transmission rate schedule SP–FT3 was extended 1 year by **Federal Register** notice dated May 7, 1992 (57 FR 19619), until June 30, 1993.

A comparison of the existing and provisional rates for both firm power and firm transmission follows:

	Existing rate	Provisional rate
Integrated Projects Firm Power Service Rate Schedule	SLIP–F3	SLIP–F4
Firm Capacity Charge ($/kW-month)	$3.44	$3.63
Firm Energy Charge (mills/kWh)	8.10	8.60
Combined Rate (mills/kWh)	16.20	17.14
CRSP Firm Transmission Service Rate Schedule	SP–FT3	SP–FT4
Transmission Rate ($/kW-year	$21.72	$22.68

Certification of Rate

Western's Administrator has certified that the Integrated Projects firm power and the CRSP firm transmission rates placed in effect on an interim basis herein are the lowest possible consistent with sound business principles.

Discussion

Firm Power Rate

Due to growing concern for resources downstream from Glen Canyon Dam, Reclamation is preparing the GCD–EIS to consider alternative long-range plans for operating the dam.

On August 1, 1991, Reclamation changed the operation of Glen Canyon Dam and restricted its peaking power operations. This necessitated the purchase of power to replace that which otherwise would have been generated during peak hours to meet Western's firm contractual commitments. The restrictions, known as interim operations, are anticipated to last through 1994. At that time, it is expected that a permanent water-release regime will be established by Reclamation.

Reclamation's interim operating parameters have changed the timing and pattern of water releases from Glen Canyon Dam. Because Glen Canyon Powerplant produces 70–75 percent of the total power produced by the Integrated Projects, any change in the pattern of its water releases has a major effect on power operations. Reclamation's interim operating parameters require that water be released from Glen Canyon Dam with less fluctuation throughout the day. Reclamation's interim operating parameters mean that Western has less Glen Canyon generation during times of high on-peak load and more during low-load, off-peak periods. This shifting of power generation requires Western to purchase additional power on-peak in order to meet its contractual commitments and to sell additional excess power off-peak at prices normally below the on-peak surplus prices.

Since the beginning of interim operations, many customers have sought an amendment to their contracts that would allow them to purchase needed capacity themselves rather than have these costs reflected in Western's firm power rate. Western has proceeded with a power sales contract amendment to allow interim purchases of capacity. The power sales contract amendment is now referred to as the IPA. With the IPA in effect, Western has reduced its interim operations cost projections in the PRS for 1992–96 to an average of about $3.7 million/year. For customers that chose not to execute the IPA, a purchased power adjustment applicable only to them will be included in the rate schedule. This adjustment is necessary to recover any additional costs that Western may incur for replacement capacity and energy purchases because of interim operations at Glen Canyon Dam. The adjustment is applicable to all customers who request Western to purchase additional capacity for them.

Other reasons for the proposed firm power rate increase are environmentally related costs for the Endangered Fish Recovery Implementation Program, Glen Canyon Environmental Studies, Glen Canyon Dam EIS, and Integrated Projects Electric Power Marketing EIS. The following environmentally related costs have been incurred through FY 1991 and are expected to be incurred through FY 1996:

1984	$441,734
1985	877,815
1986	2,211,616
1987	2,912,557
1988	2,782,501
1989	2,926,481
1990	8,059,600
1991	28,551,929
Subtotal	48,764,233
1992	22,471,000
1993	14,681,000
1994	14,306,000
1995	12,210,000
1996	9,243,000
Subtotal	72,911,000
Total	121,675,233

Along with these added environmental costs, the Upper Colorado River Basin is in the sixth year of a severe drought which has further curtailed hydro-generation and increased the amount of purchased power costs required to meet Western's contractual commitments. The reduction in revenue and increase in costs have created a deficit condition within the project which has increased interest expenses.

Subsequent to the first comment period, Western identified a major difference in cumulative net revenue between the PRS and the FY 1990 audited financial statement that was put into the PRS as an adjustment. The audit adjustment has been reduced to $26.8 million from the original $51.1 million estimate. In an attempt to ensure that power rates are as low as possible, Western has evaluated several options on how to include this adjustment in the rate order PRS. If the adjustment is entered in equal amounts over 5 future years, as noted on page 12 of the Addendum Brochure and as discussed at the March 30 public information forum, the PRS shows a need for a firm power rate of 17.8 mills/kWh (combined) beginning in FY 1993. However, if the adjustment is entered as a FY 1991 study year adjustment, the PRS solves at 17.14 mills/kWh (combined) in FY 1993. The difference in rates comes from letting FY 1991 show a net deficit and allowing the PRS to repay that obligation in 1998 when money becomes available. It means that the firm power rate only has to recover $3.3 million in annual interest on the deficit, rather than $7.2 million in annual expense to pay the entire amount between FYs 1992 and 1998. That $3.9 million in annual savings through a very "tight" period results in a 0.66 mills/kWh (combined) reduction in the firm power rate.

Other miscellaneous factors such as added investment and increased O&M costs, increased purchased power for firming, and increased interest expense have also contributed to the need for a rate increase. The relative magnitude of these increases is shown in the table detailing revenue and related expenses.

The existing rate consists of an energy charge of 8.10 mills/kWh and a capacity charge of $3.44/kW-month, or a combined rate of 16.2 mills/kWh. The provisional rate consists of an energy charge of 8.60 mills/kWh and a capacity charge of $3.63/kW-month, or a combined rate of 17.14 mills/kWh. This rate increase will result in a $5.9 million increase in annual revenues for the following 4 years (FY 1993–96).

The rate increase is necessary to satisfy the cost-recovery criteria set forth in DOE RA 6120.2.

Firm Transmission Rate

A transmission rate adjustment is needed because of increased O&M and investment costs and changes in rate study methodology that have occurred since the last rate adjustment. The current transmission rate of $21.72/kW-year is increased to $22.68. This is a 4.4-percent increase. The current transmission rate, which would have expired on June 30, 1992, was extended for 1 year by a **Federal Register** notice dated May 7, 1992 (57 FR 19619), so that Western could adjust the transmission rate concurrently with the power rate adjustment. The CRSP firm transmission rate is established to ensure that CRSP firm transmission customers equitably share in payment of costs associated with the CRSP transmission system. Therefore, transmission revenues are credited as "other revenue" to CRSP, thereby lowering the repayment obligations of firm power customers.

The rate adjustment public processes for the Integrated Projects firm power and CRSP firm transmission are being combined because they are interdependent and to avoid duplication and to save both customer and Western administrative costs. All data included in the CRSP transmission rate study are consistent with corresponding data for the rate order PRS.

A CRSP system-wide approach was used in formulating the transmission rate. All costs associated with the CRSP transmission system were summarized and divided by the total firm transmission capacity of both power customers and transmission customers to produce a rate that would be charged to transmission customers. Revenues attributable to the transmission system that are not firm transmission sales, such as nonfirm transmission revenues and miscellaneous revenues, were considered revenue credits and deducted from the annual costs included in the firm transmission rate.

During the public information forums and public comment forum it was noted that economy energy sales were overestimated in the PRS. As a result of this comment, Western reviewed all the revenue credits in the CRSP transmission study. The revenue credits for exchange capacity charges were increased by $677,000 because of a recent change in contract rates. In reviewing financial records, revenues from phase-shifting transformer services were negligible, so it was decided not to include potential revenues from phase-shifting transformer services. Therefore, the CRSP transmission rate was adjusted to $22.68/kW-year.

CRSP TRANSMISSION RATE STUDY

	FY 1993	FY 1994	FY 1995	FY 1996	Average
Cumulative investment	$395,670,124	$404,378,272	$442,859,830	$454,535,786	N/A
Net annual costs to recover	$45,458,939	44,720,236	$48,666,948	$49,972,963	47,204,772
Total capacity (MW)	2059.7	2062.6	2083.0	2083.0	2077.0
Unit cost ($/kW-year)	$22.071	$21.473	$23.364	$23.991	$22.725
Unit cost ($/kW-month)	1.839	1.789	1.947	1.999	1.894

Proposed Rate $/kW-month = $1.89 or $/kW-year = $22.68

Statement of Revenue and Related Expenses

Firm Power

The following table provides a summary of revenue and expense data for the Rate Order No. WAPA–53 rate approval period FY 1993-96. It should be noted that revenue estimates for economy energy sales are much lower than projected in the PRS supporting WAPA-45 and WAPA-52. Since the FY 1989 Integrated Projects PRS was prepared, Reclamation has implemented "interim operation" flow restrictions at Glen Canyon Dam. Those operations have severely restricted sales of economy energy. The restrictions are anticipated to continue into the foreseeable future.

SALT LAKE CITY AREA INTEGRATED PROJECTS COMPARISON OF 5 YEARS RATE STUDY SUMMARY (FY 1993-96) FY 1989 PRS VS. FY 1991 PRS ($1,000)

	FY 1989 PRS [1] FY 1993–96	FY 1991 PRS FY 1993–96	Difference
Revenues:			
Firm power	$364,122	$438,324	$74,202
Economy energy	138,000		(138,000)
Other	50,236	36,982	(13,254)
Total revenues	552,358	475,306	77,052
Revenue distribution:			
Operations and maintenance	140,406	177,314	36,908
Environmental		35,416	35,416
Purchased power:			
Firming	9,080	37,497	28,417
Economy energy	114,000		(114,000)
Interim operations		15,024	15,024
Transmission expenses	26,793	26,276	(517)
Interest	86,948	138,013	51,065
Investment repayment [2]	160,908	29,721	(131,187)
Payments to Colbran and Rio Grande	14,223	16,045	1,823
Capitalized expenses [3]			
Prior-year adjustments			
Total revenue distribution	552,358	475,306	(77,052)
Repayment:			
Payments on deficit		29,721	29,721
Payments on project investment			
Payments on additions	126,991		(126,991)
Payments on replacements	33,917		(33,917)
Payments on irrigation aid [4]			
Total repayment	160,908	29,721	(131,187)
Total investment (as of FY 1996):			
Project	678,860	622,746	(56,114)
Additions [5]	178,630	326,473	147,843
Replacements	84,171	117,078	32,907
Irrigation aid	112,218	122,930	10,712
Total	1,053,879	1,189,227	135,348
Unpaid investment (as of FY 1996):			
Project	205,583	230,708	25,125
Additions	18,026	249,882	231,856
Replacements [6]		47,783	47,783
Irrigation aid	95,798	107,933	12,135
Total	319,407	636,306	316,899

[1] The rate order PRS for the WAPA–45 rate process produced a combined rate of 13 mills/kWh. An adder of 1.5 mills/kWh (making a total rate of 14.5 mills/kWh) was imposed for 2 years based on a cash-flow analysis. In 1991 an expedited rate process (WAPA–52), using an incremental approach, added 1.7 mill/kWh to the existing rate of 14.5 mills making a total rate of 16.2 mills/kWh (existing rate). This column includes only the WAPA–45 (13 mills/kWh) PRS since rate increments added since that time were made using analysis that are not comparable to the FY 1991 PRS.
[2] Includes capitalized deficits, replacements, additions, and irrigation aid.
[3] Sum of projected Groups 8 and 9 loans.
[4] Does not include Municipal and Industrial revenues which are credited towards power's obligation to irrigation aid.
[5] The increase in the FY 1991 PRS is due to a reassignment of investments from project to additions.
[6] In the FY 1989 PRS, replacements were projected to be paid off in FY 1996.

Firm Transmission

The following table provides a comparison of rates and revenues for the FY 1993–96 rate approval period for firm transmission currently under contract:

CRSP FIRM TRANSMISSION REVENUES COMPARISON EXISTING RATE VS. PROVISIONAL RATE

	Existing Rate	Provisional rate
$/kW-year	21.72	22.68
$/kW-month	1.81	1.89
Revenues (FY 1993–96)	$16,513,716	$17,243,604

Basis for Rate Development

The provisional Integrated Projects firm power rate was designed to continue to maintain an approximate 50/50 split between revenue earned from demand charges and that earned from energy charges and was based on a 58.2-percent load factor. Because of downstream water delivery obligations, the system load factor in the initial CRSP marketing plan was 58.2 percent. This figure was written into the first CRSP power sales contracts in the mid-1960's. The actual system load factor is estimated to average 53.2 percent for FY 1987–96, but customers have requested that for comparison purposes the 58.2-percent factor remain a part of the rate design. The cost to individual customers will vary, because of differences in their choice of capacity purchases compared to allocated energy amounts.

The provisional firm rate contains a $3.63/kW-month firm-capacity charge and an 8.60 mills/kWh firm-energy charge beginning in FY 1993. Assuming a 58.2-percent load factor, the necessary combined rate is 17.14 mills/kWh, which is an increase of 5.8 percent. The requested rate approval period will extend through September 30, 1996.

The interim firm CRSP transmission rate contains a $1.89/kW-month or $22.68/kW-year capacity charge. This is an increase of 4.4 percent over the existing rate of $1.81/kW-month, or $21.72/kW-year. The existing rate was extended 1 year beyond its expiration date of June 30, 1992, because its adjustment was proposed to be made concurrently with the firm power rate on October 1, 1992.

Comments

During the two comment periods that comprised 188 days, Western received 803 comment letters (295 during the first period and 508 during the second) on the rate adjustments. At the December 4, 1991, comment forum 20 oral commenters were heard representing 21 entities. At the second comment forum, held on April 14, 1992, seven oral commenters were heard. All formal comments were reviewed and considered in the preparation of this rate order.

Written comments were received from the following:

First Comment Period
- Representative J. Brent Haymond (UT)
- Robert E. Burnham (UT)
- Intermountain Rural Electric Association (CO)
- Roosevelt Irrigation District (AZ)
- Dixie-Escalante Rural Electric Association, Inc. (UT)(2)
- Irrigation and Electric Districts Association of Arizona (AZ)
- Electrical District #7 (AZ)
- Bridger Valley Electric Association, Inc. (WY)
- Darwin Hulit (UT)
- Bountiful City Light and Power (UT)
- Brighman City Corporation (UT)
- Union Carbide Industrial Gases, Inc. (NY)
- Strawberry Electric Service District (UT)
- Overton Power District #5 (NV)
- Ferrel D. Hansen (NV)
- Basic Management, Inc. (NV)
- Marion H. Arnoldsen (NV)
- Edith F. Day (UT)
- City of Mesa (UT)
- Michael Singleton (UT)
- City of Ely (UT)
- Public Service Commission of Wyoming (WY)
- Lincoln County Power District #1 (NV)
- Maricopa Water District (AZ)
- City of Boulder City (UT)
- Platte River Power Authority (CO)
- Moon Lake Electric Association, Inc. (UT)
- Electrical District #3 (AZ)
- Lehi City Corporation (UT)
- Arizona Power Pooling Association (UT)
- Flowell Electric Association, Inc. (UT)
- Electrical District #4 (AZ)
- Wellton-Mohawk Irrigation and Drainage District (AZ)
- Arizona Municipal Power Users' Association (AZ)
- Leo L. Curto (NV)
- Electric District #5 (AZ)
- Plains Electric Generation and Transmission Cooperative, Inc. (NM)
- Parowan City Corporation (UT)
- Arizona Electric Power Cooperative, Inc. (AZ)
- Electrical District #2 (AZ)
- National Wildlife Federation (DC)
- Salt River Project (AZ)
- Bureau of Indian Affairs (AZ)
- Kerr-McGee Chemical Corporation (NV)
- Ak-Chin Indian Community (AZ)
- Logan City Light and Power Department (UT)
- Colorado River Commission of Nevada (NV)
- Tri-State Generation and Transmission Association, Inc. (CO)
- Colorado River Energy Distributors Association (UT)
- Mt. Wheeler Power, Inc. (NV)
- Intermountain Consumer Power Agency (UT)
- Form letters (244)

Second Comment Period
- Bruce E. Weight (UT)
- Moon Lake Electric Association (UT)
- Garkane Power Association, Inc. (UT)
- Arizona Power Pooling Association (AZ)
- Intermountain Consumer Power Association (UT)
- Colorado River Energy Distributors Association (UT)
- Bountiful City Light and Power (UT)
- Irrigation and Electrical Districts Association of Arizona (AZ)
- Arizona Municipal Power Users' Association (AZ)
- Strawberry Electric Service District (UT)
- Dixie-Escalante Rural Electric Association, Inc. (UT)
- Tri-State Generation and Transmission Association, Inc. (CO)
- Platte River Power Authority (CO)
- National Wildlife Federation, Grand Canyon Trust, and Colorado Wildlife Federation (DC)
- Mt. Wheeler Power, Inc. (NV)
- Form letters (493)

Representatives of the following organizations made oral comments:

First Comment Period (December 4, 1991)
- Dixie-Escalante Rural Electric Association, Inc. (UT) (2)
- Blanding City (UT) (2)
- Colorado River Energy Distributors Association (UT) (3)
- Tri-State Generation and Transmission Association, Inc. (CO)
- Plains Electric G&T (NM)
- Irrigation and Electrical District Association of Arizona (AZ)
- Garkane Power Association (UT)
- Bountiful City Light and Power (UT)
- City of St. George (UT)
- Utah Municipal Power Agency (UT)
- Murry City Power Department (UT)
- Intermountain Consumer Power Association (UT) (2)
- Logan City Light and Power Department (UT)
- Uintah Water Conservancy District (UT)
- Lyle Norcoss (NV)
- City of Fort Morgon (CO)

Second Comment Period (April 14, 1992)
- Mt. Wheeler Power (NV)
- Colorado River Energy Distributors Association (UT) (3)
- Intermountain Consumer Power Association (UT)
- Irrigation and Electrical District Association of Arizona (AZ)
- Murray City Power Department (UT)

The contents of the comments are summarized according to 10 major comment areas as follows:

1. Operation and Maintenance Costs
2. New Investment Costs
3. Environmental Costs
4. Basin Fund Management/Financial Risk
5. Rate Design
6. Public Process
7. Purchased Power Costs
8. Unbudgeted Costs
9. Audit Adjustment
10. Miscellaneous

Following are synopses of the public comments (written and verbal) received during the first and second public consultation and comment periods relating to the proposed Integrated Projects firm power rate and CRSP firm transmission rate increases presented in the October 1991 Customer Brochure and its March 1992 Addendum, and Western's responses. Comments are grouped according to the subject being addressed.

1. Operation and Maintenance Costs

Comment 1.1: O&M costs should be revised to reflect Reclamation's and Western's current estimates (FY 1993 budgets) for the 5 budget years, FY 1992–96. Final FY 1991 financial data should be included in the PRS.

Response: The rate order PRS O&M estimates were revised to reflect Reclamation's and Western's final FY 1991 financial data and CRSP FY 1993 budget estimates for FY 1992–96. The only exception to use the FY 1993 budget estimates was the addition of $1 million/year for emergency O&M. This addition is explained in the response to Comment 1.6.

Comment 1.2: Input from CREDA's O&M review process should be reflected in the budgets.

Response: Input from CREDA's O&M review process was reflected in the FY 1993 budget estimates, and these budget estimates are included in the Integrated Projects Rate Order PRS.

Comment 1.3: O&M increases were not fully explained. Western and others involved should have outside people come in and investigate where the maintenance costs are and see if there is a way to cut costs.

Response: O&M increases from the FY 1989 PRS to the FY 1991 PRS for FY 1991–96 are displayed and explained on pages 9 and 21 of the October 1991 Customer Brochure. The largest increase in O&M occurs in FY 1991. The future O&M cost estimates in the FY 1989 PRS were based on figures in the FY 1990 budgets. The future O&M cost estimates in the FY 1991 brochure PRS were based on figures in the FY 1992 budget.

As explained in the October customer brochure on page 21, Reclamation has tended to underestimate costs beyond the first future budget year. Table 2 of the October customer brochure compares an underestimated value for FY 1991 from the FY 1990 budget with FY 1991 current year estimate from the FY 1992 budget. In the FY 1989 PRS, 1991 was an "out year." These differences for Reclamation were mostly in the category of powerplant O&M and administrative and general expense. The largest difference in Western's O&M estimates was in the category of General Western Allocation.

O&M estimates from the FY 1993 budget used in the March addendum and the rate order PRS are generally lower than those from the FY 1992 budget used in the October customer brochure. The FY 1993 budget is less because of Western's and Reclamation's establishment of a better budgeting process due to cost containment initiatives and budget tracking and partly a result of customer participation in the planning and review process.

Comment 1.4: It was suggested that Western put the latest budget information for Collbran and Rio Grande, developed in the O&M review process for the FY 1993 budget, into the PRS.

Response: Western felt that the FY 1991 Collbran and Rio Grande PRSs, which included the FY 1992 budget data, were appropriate studies to use in the rate order PRS. Western used the FY 1993 CRSP budget data in the FY 1991 CRSP rate order PRS because concern was manifested about the validity of the budget estimates from the FY 1992 budget for CRSP. Western compared the Collbran and Rio Grande budget data for 1992 and 1993 and determined that there would be little or no rate impacts, since revenue requirements for the two projects are less than 5 percent of the total revenue requirements for the Integrated Projects.

Comment 1.5: The "trend-line" should not be used to establish projections. However, the trend-line analysis could be used as a tool in comparing the relative productivity of the agencies and in evaluating cost containment.

Response: Since estimates shown in the FY 1993 budget were considered to be more realistic than those of previous years' budgets, the trend-line concept included in the original rate brochure is no longer being proposed. Both Western and Reclamation have committed to estimate budgets more closely in the out years. The trend-line analysis has been and will continue to be used as a tool for budget comparison. Also see response to comment 1.3.

Comment 1.6: There was no apparent attempt to base the level of emergency expenses on historical experience. Object to including $1 million per year for "emergency" O&M for Reclamation.

Response: Pages 24 and 25 of the October brochure show that $2.65 million was the annual average emergency expenditure for Reclamation for FY 1978 through 1990. Western concluded that at least $1 million annual amount is an appropriate entry into the rate order PRS and will be included in future O&M budgets to cover unforeseen contingencies.

Comment 1.7: Costs of Navajo Dam repairs are attributable to the Safety of Dams Act and should be nonreimbursable.

Response: This issue was discussed in the WAPA–45 rate order proceeding. Reclamation's position has not changed since the WAPA–45 rate order proceeding. At that time, Reclamation indicated that it had funded Navajo Dam repairs under section 5 of the CRSP Act rather than under the Safety of Dams Act.

2. New Investment Costs

Comment 2.1: Upgrades should be funded by appropriations rather than from the Basin Fund.

Response: Western's upgrades and transmission facility additions are funded by appropriations. Reclamation has informally agreed to seek appropriations for new additions.

Comment 2.2: Decisions to make additions should be based on benefit-cost analyses.

Response: When Western considers a facility addition, it prepares an FDR. In this report, an analysis is done to determine if the action is favorable. Western bases its decision to construct additions on several factors including system reliability, need for additional capacity, customer interest and/or participation, cost, and impact on rates. These justification analyses, where possible, include a quantification of benefits and costs. Reclamation has made few additions since the main-stem storage and generation facilities were completed in the late 1970's. Additions that have been made were required by Government regulation or were analyzed with a benefit-cost analysis.

Comment 2.3: The benefits of new transmission investment should be reflected the year the new investment is added.

Response: This has been done. For example, the estimated transmission costs Western will pay to Public Service Company of New Mexico have been reduced in 1994 when the Ojo Line Extension is planned to be in place.

Comment 2.4: Future investments should not be included in the rate. Rates charged to current ratepayer should reflect current costs, not prepay costs for future ratepayer.

Response: Planned power investments expected to be put into the PRS within the cost evaluation period (FY 1992–96) and replacements for the life of the project are included in the rate as required by DOE RA 6120.2. Western is also required to include construction and set revenue apportionment obligations for the CRSP participating projects unless specifically exempted by the terms of the Western/Reclamation agreement of August 26, 1983.

Comment 2.5: Costs of the Central Utah Project (CUP) should not be included in the rate base, neither "A" nor "B" costs.

Response: This issue was discussed in detail in a previous rate order proceeding (WAPA–45) and Western's position remains the same. The "A" or sunk costs of the CUP are included in the rate base. The "B" costs are those that do not meet the criteria set forth in the Western/Reclamation agreement on CRSP PRSs dated August 26, 1983. The "B" costs are not included in the ratesetting years in the PRS.

Comment 2.6: Western should not include components of CUP which are not authorized and funded.

Response: See comments 2.4 and 2.5 above. If projects do not meet the criteria established, they are not put into the power rate. CUP costs are authorized but some facilities are not funded. Under the 1983 agreement mentioned in comment 2.5 above, funding availability is not a factor when determining if the costs should be included in the ratesetting years in the PRS.

Comment 2.7: Is is inappropriate to speculate about future Federal legislation and to include estimated cost impacts in the rate proposal.

Response: No costs for any "speculative" legislation are in the rate order PRS. Such costs would be considered in the next rate process if legislation were passed.

Comment 2.8: Western should include an additional 3 mills in the rate to "catch up" with delayed Federal repayment. Western should institute a 4-mill surcharge for peak power from July 1, 1992, through September 30, 1992.

Response: CRSP investments are repaid as revenue is available rather than according to an amortized repayment schedule. This flexibility allows for the fluctuation in revenues available for investment repayment inherent in hydro-generation power facilities. The PRS takes into account these fluctuations in generation when it solves for a rate so that, according to Delegation Order No. 0204–108, the rate is the lowest possible consistent with sound business principles. Therefore, there is no need for any kind of "catch up" of delayed Federal repayment. Also, by incorporating near-term generation, reflecting drought conditions, the PRS calculations reflect an appropriate level of required revenues. Capitalized deficits which have previously accrued will be repaid within 5 years.

Comment 2.10: Western should follow sound business practices in developing power repayment and ratemaking studies halting the use of the "highest interest first" repayment methodology.

Response: Paying highest interest debt first, is generally considered a prudent business practice. Moreover, Western normally distributes the power revenues for repayment to the "highest interest-bearing" investment first according to DOE RA 6120.2, paragraph 8(c)(3). Under the Western/Reclamation agreement dated August 26, 1983, "project costs will be repaid in the manner that minimizes their effect upon CRSP revenue requirements" which sometimes requires deviation from the requirement of paying the highest interest-bearing investments first.

3. Environmental Costs

Comment 3.1: All environmental costs (RIP, GCES, GCD–EIS, Integrated Project EIS, and Interim Operations) should be nonreimbursable, and funded by appropriations under section 8 (CRSP) and should not be repaid by power revenues.

Response: This issue was addressed in two previous rate proceedings (WAPA–45, Docket No. EF90–5151–000 and WAPA–52, Docket No. EF92–5151–000). Western's position on this issue has not changed. However, legislation is pending (Grand Canyon Protection Act) that could affect Western's position. If such legislation is enacted, Western will change future PRSs as required by the legislation. Furthermore, Reclamation is reviewing the issue to see if its policy can and should be changed regarding reimbursability of environmental costs Reclamation-wide. If Reclamation changes its position concerning the reimbursability of any Integrated Projects costs paid with power revenues, appropriate adjustments will be made in the next PRS and the next rate process.

Comment 3.2: Oppose ratepayer paying full cost for environmental studies. If Grand Canyon is national treasure then costs should be paid by all U.S. taxpayers.

Response: See response to comment 3.1.

Comment 3.3: Western's purchased power costs for Interim Operations are section 8 (CRSP) and should not be charged to Basin Fund and power users.

Response: See response to comment 3.1. The Secretary of the Interior has directed Reclamation to restrict operation of the Glen Canyon Power Plant while the effects upon the Canyon environment due to various releases are being studied. These release restrictions have made it necessary for Western to purchase power to meet contractual obligations. These added annual costs are reflected in the rate. The costs of this purchased power required as a result of flow restrictions is considered to be reimbursable from power revenues.

Comment 3.4: Contingency funds should not be budgeted for future environmental studies and programs.

Response: No contingency amounts for environmental programs are included in the budgets. All estimates are for planned environmental studies.

Comment 3.5: U.S. Government has an obligation to replace any lost capacity at Glen Canyon Dam or to investigate a reregulation dam below Glen Canyon Dam.

Response: The U.S. Government is obligated only to replace lost capacity and energy that is required to meet its contractual obligations. Most of Western's customers have chosen to assume the risk associated with lost capacity at Glen Canyon Dam through the IPA. For those customers who do not exercise this option, Western will purchase the capacity required to meet all CROD obligations. The cost of the purchased power will be passed on to those customers who receive it.

4. Basin Fund Management/Financial Risk

The following public comments were made concerning the management of the Upper Colorado River Basin Fund:

Comment 4.1: We urge Western to give further consideration to CREDA's recommendations for a ratemaking methodology that incorporates risk management.

Comment 4.2: We urge Western to avoid hedging its expense and generation estimates and reconsider CREDA's recommendation to make a comprehensive review of all its financial risks in conjunction with each rate proposal.

Comment 4.3: Western proposes essentially to overestimate expenses in order to address a financial risk.

Comment 4.4: Contingencies for financial risks, such as the loss of exception criteria, should be part of Western's overall risk management policy.

Comment 4.5: Western's rate proposal incorporates costs based on something other than the best available estimate of its expenses. It has excused itself for the likelihood that such estimates will recover more than actual expenses by indicating that this conservatism will safeguard against future cash-flow problems and will be used to pay off investment and reduce interest more quickly than would otherwise occur. Oppose Western's approach of managing its financial and rate risks by overstating costs of certain items in order to provide what it perceives as a necessary cushion of additional revenues over and above its expected costs.

Comment 4.6: Rather than basing rates on biased forecasts, the better approach is for Western to directly address its financial risks. This should include determining the source and level of uncertainty in future revenues and costs; evaluating the combined, not isolated, effect of these uncertainties; and developing cash management and rate policies to mitigate this risk to an acceptable level. (CREDA lists five proposals for managing the financial risks to the Basin Fund.)

Comment 4.7: Oppose Western's proposal to fund replacements and emergencies as an O&M expense item. Cost of renewals and replacements should not be funded in this manner.

Comment 4.8: Oppose Western's proposal for a separate reserve fund in the Basin Fund for replacements and emergency expenditures. Not in accordance with DOE RA 6120.2.

Suggest Western needs to address and then manage financial risks.

Comment 4.9: Oppose the proposed changes concerning advance payment for replacements, including the creation of a "slush-fund" (reserve). If this fund were established, it should earn interest.

Response (Comments 4.1–4.9):

Risk management, as proposed by CREDA, relates to Western's management of the Basin Fund. Western appreciates CREDA's efforts to provide a risk management plan and will investigate it further in the future.

However, Western does not intend to implement it at this time for the following reasons:

1. Western has dropped the proposal of implementing and maintaining a reserve for replacements and emergency expenditures funded by additional power revenues.

2. Western has dropped the proposal of using a trend-line for O&M estimates beyond the first 2 years of the cost evaluation period and will instead require better budgeting by both Western and Reclamation.

3. Western has transferred most of the financial risk related to the exception criteria for the interim flow restrictions at Glen Canyon Dam to the customers through the IPA to their contracts.

4. Western has concluded that risk management of the Basin Fund is not a rate process issue, but is an internal management issue for the following reasons:

a. The CRSP Act provides for the retention of revenues from power sales in the Basin Fund to be used as a funding source for O&M, replacements, and emergency expenditures rather than transferring the cash to the General Fund and then requesting appropriations for these purposes.

b. Every dollar paid by the power customers is credited toward the repayment of project expenses allocated to be repaid by power revenues including investment costs. This is the case whether these payments are retained in the Basin Fund or transferred as cash payments to the General Fund. The firm power rate is not affected as long as Western retains sufficient revenues in the Basin Fund. Power revenues designated for investment repayment by the PRS (including replacements) reduce project repayment obligations and, therefore, reduce further investment interest costs. Since the revenues are credited as repayment, no interest is earned on these revenues.

c. Western has recently incurred less expense than anticipated for purchased power and other anticipated costs and has retained more monies in the Basin Fund during FY 1991. This has left more cash in the Basin Fund than originally projected.

Western's risk management plan for the Basin Fund will consist of the following:

1. Sufficient revenues will be retained in the Basin Fund to provide for the planned O&M, replacements, and emergency expenditures for the 5-year cost evaluation period over and above a conservative estimate of expected revenues.

2. Further cash transfers to the General Fund will not be made until sufficient cash amounts are available to meet operating needs through the cost evaluation period.

3. Western will make the best estimates with the available information; and if shortfalls occur for purchased power, unbudgeted environmental expenses, emergency expenses, etc., Western will cover these additional expenses from amounts retained in the Basin Fund.

4. Western will follow the same methodology for future estimates and calculations as in previous years. All methods used will be in accordance with DOE Order RA 6120.2.

5. Western will continue to capitalize replacements for repayment purposes. This will require customers to repay the investment with interest over the estimated service life of the investment or 50 years, whichever is less.

6. Customer reviews of program planning will aid in the preparation of estimates for generation, O&M, additions, and replacements.

7. Any amounts not collected because the rate was too low will be factored into the next rate process.

Comment 4.10: CREDA is concerned with Western's failure to explicitly address financial risk management in its addendum proposal * * * CREDA does not consider Western's removal from its addendum proposal of several, but not all, contingencies included in previous expense estimates the equivalent of financial risk management.

Response: Western recognizes that CREDA has spent considerable effort in developing a risk analysis. Western welcomes the assistance of CREDA and other customers in this regard and will work with them on evaluating management of the Basin Fund. At the present time, however, Western takes the position that it has been responsive to comments from the customers.

5. Rate Design

In the October 1991 Customer Brochure, Western asked for comments concerning the following questions:

a. Should Western give greater weight to the capacity charge, since a greater capacity value may encourage more efficient usage of capacity?

b. Should the billing determinants or "Billing Demand" be examined?

c. Should the "take or pay" provision, which is the highest 30-minute demand or the CROD, whichever is greater, be changed to charge on actual demand used in any given month?

d. Should the energy charge be "capped" by the least-cost alternative energy cost? The resultant revenue deficiency would then be made up through an increased capacity charge.

The following public comments were made concerning rate design.

Comment 5.1: Customers oppose any change in the current capacity/energy split, and believe some customers may not be benefitted by a change in rate design.

Comment 5.2: Some customers want cost recovery through cost-based rates as the first priority.

Comment 5.3: Customers are not opposed to the possibility of rate design on a mutually agreeable basis if that is a better utilization of CRSP power.

Comment 5.4: The customers want to institute an on-peak/off-peak pricing structure.

Comment 5.5: Some customers expressed a desire that the majority of revenue should come from energy, while others felt Western should place a higher value on capacity.

Comment 5.6: Some customers want rate design to encourage conservation and efficiency.

Comment 5.7: The customers want Western to sell excess capacity and energy to existing customers first.

Comment 5.8: Some customers want Western to encourage demand-side management. Others feel that this penalizes those who have little control over consumption.

Comment 5.9: Some customers believe that Western would have more short-term capacity available to sell if monthly demand charges replace the seasonal CROD charge. They think the 35-percent minimum schedule requirement has been a serious problem for systems needing energy in excess of the capacity factor of the CRSP (Integrated Projects) resource, and Western should allow customers to purchase their energy from Western to more correctly match their needs and not be limited to make such purchases based upon the historical energy available from CRSP (Integrated Projects).

Comment 5.10: Some customers believe it is not appropriate to use thermal generation as a target for hydroelectric rates.

Response: (Comments 5.1–5.10):

Western agrees with the comment that cost recovery through cost-based rates is the first priority. One customer has requested that excess capacity and/or energy during off-peak periods be made available to customers. This request is being studied by Western. Another customer objected to Western using thermal generation as a target for hydroelectric rates. Western rates are cost-based and do not use a target of thermal generation. Thermal generation was only used as an example of an alternative source for energy in the October brochure.

Western is maintaining the 50/50 cost assignments in the provisional rate. The majority of the customers wanted to retain the current rate design.

Western's Conservation and Renewable Energy Program has been encouraging the adoption of demand-side management programs for several years now. In the future, it is expected that Western customers will be encouraged to evaluate demand-side management options as an important component of Western's proposed Energy Planning and Management Program. As a result of customers comments in this rate process, Western's SLCAO is investigating a voluntary alternative rate that has an objective of shifting load from on-peak to off-peak using price differentials to encourage conservation and to improve the efficiency of the overall power system, which if implemented would also encourage demand-side management.

As part of this study, the SLCAO will offer direct technical assistance to one utility customer who will participate with Western in a 2-year pilot rate project. All proposed rate design changes will meet Western's goals of avoiding cross subsidies and meeting repayment obligations to the Treasury. The components of the pilot rate project will:

—Test the various effective rate designs on all participants.
—Collect information on Western and customer loads.
—Determine the long-run incremental costs for Western's resources and purchases.
—Determine the overall benefits and costs of participants and nonparticipants in the pilot rate project.
—Determine the price signal effects on end users through load monitoring.
—Determine the effect on the customers' other suppliers.
—Determine any necessary contract changes needed to implement a rate.
—Examine the billing determinants such as charging capacity and energy on a monthly basis rather than a seasonal basis and off-peak/on-peak pricing differentials.
—Evaluate the overall effectiveness of the rate for inclusion in a subsequent rate process.

Because the first year of this 2-year study will consist of baseline load monitoring and rate development, the alternative rate will not be developed in time for this rate adjustment.

6. Public Process

Comment 6.1: Commenters requested that Western reopen the comment period.

Response: On January 27, 1992, Western opened a second consultation and comment period which was announced in the **Federal Register**. It closed on May 1, 1992.

Comment 6.2: Commenters requested that Western extend public process beyond May 1, 1992.

Response: Western feels that no new issues have been raised that would require further extension of the comment period. The 95-day extension of the initial 93-day public comment period has provided ample time to comment on the proposed rate action.

Comment 6.3: Commenters requested that Western continue team effort to amend the contracts for interim purchases.

Response: Contracts have been offered to customers for amendment. It is anticipated that most customers will choose to have their contracts amended.

Comment 6.4: Commenters requested that Western resolve terms and conditions of the Integrated Projects contract amendment for interim purchases and include in public process and proposed rate.

Response: See response to comment 6.3

Comment 6.5: Commenters stated that the public process is restricted by FERC rate order approval of the expedited rate [EF92–5171–000]; i.e., any change Western makes after the final information forum cannot be reviewed by the public prior to FERC filing. Information provided by Western after the last information forum should not be put into the rate.

Response: Western agrees that no new issues should be generated or raised for the first time after the final consultation period is closed. However, Western reserves the right to incorporate changes made after the end of the comment period in response to public comments in the provisional rate. This is a longstanding Western practice. Customers are provided documentation of the rate order and decision after filing with FERC.

Comment 6.6: Commenters stated that Western failed to provide sufficient information on the rate adjustment for the public to prepare fully informed comments.

Response: Western provided a rate brochure and an addendum (October 1991 and March 1992) that explained the proposed rates, two consultation and comment periods during which interested persons were given the opportunity to review the information used in developing the rates, two information forums, and two comment forums. Western has made all information available to interested parties, has responded to all data requests, and has given ample time to obtain the needed information within the 188-day public process period.

7. Purchased Power Cost

Comment 7.1: Questioned the basis for projections of hydroelectric generation, specifically the use of (a) a 5-year moving average for raw projections of annual energy and capacity from the CRSM results and (b) the near-term CRSP annual generation adjustment. Suggested the use of unadjusted CRSM results for average generation as the basis for purchased power costs.

Response: In the public process for this rate adjustment, Western has provided analytical support for the use of a modified 5-year moving average, or "smoothing," to the raw projections of annual energy and capacity from the CRSM results prepared by Reclamation (see March 1992 Addendum Brochure, section F, page 7). Western continues to support this accepted forecasting method, which has been consistently applied in previous PRSs for the Integrated Projects.

Similarly, Western continues to support the application of a near-term adjustment applied to the average annual generation projections from the CRSM for the period 1992 through 1996. This analytical support is based upon the concern that the hydrologic conditions used in the CRSM modeling were limited to the historic inflow period through 1985, and therefore excluded the effects of below-normal inflow events that occurred after 1985. Absent such adjustments, annual revenues may not be sufficient to meet annual expenses. This conclusion, and the associated adjustment, were presented by Western in the March 30 Public Information Forum (see transcript 27–31) and in the March 1992 Addendum Brochure, section F, pages. 7–8.

Comment 7.2: Western is correct in using the near-term generation estimates for the rate order PRS.

Response: See response to comment 7.1.

Comment 7.3: The model used by Western to simulate the scheduling of power from Glen Canyon Dam was found to account improperly for current operating restrictions. CREDA has been led to believe that Western has received a revised model which, presumably, it will ultimately use to estimate purchased power costs.

Response: The most current, peak-shaving algorithm developed by the Environmental Defense Fund, was used in simulating hourly patterns of generation from Glen Canyon with and without Interim Release constraints. The latest version of the program reflects consideration of the current release constraints at Glen Canyon, which have been refined since their initial application in August 1991.

Comment 7.4: The evaluation of purchased power expense fails to properly account for generation from non-main-stem projects, including Seedskadee, Provo, Rio Grande, and Collbran. This understates available generation and accordingly overstates net purchased power expenses. While Western has provided CREDA the pricing calculations, it has failed to provide any quantitative or qualitative explanation of the pricing differences assumed between the two cases [base case and change case].

Response: In the March 1992 Interim Release Assessment, Western neglected to consider the generation available from the smaller Integrated Projects (Rio Grande and Collbran Projects). Therefore, Western revised the Interim Release Study and PRS interface to include resources from collbran and Rio Grande. Since CRSP purchases the available output from Provo River and Seedskadee projects, these resources are already included in the Integrated Projects generation. Many comments received were focused on other specific assumptions and methods that Western applied in the determination of the annual purchased power expenses and foregone nonfirm sales revenues associated with future operation of the Integrated Projects, with constraints at Glen Canyon Dam. In the March 1992 Addendum Brochure, Western estimated the increased annual expense associated with changes at Glen Canyon in the addendum brochure to range from $6–$8 million.

Western considered all critical comments on the estimate of increased annual expense and has made several significant modifications to certain methods and assumptions. These modifications have resulted in the reduction in estimated impacts associated with interim releases to be approximately $3.7 million annually. The most significant modifications are summarized below.

1. Loads and Resource Assumptions and Relationship to PRS: To remedy double-accounting problems previously identified by CREDA from the March 92 Addendum Brochure, Western has assured that the components of annual load and resources used in the rate order PRS are also used in the hourly analysis of interim release expenses for FY 1992, 1994, and 1996, and in the annual estimate of impacts from 1993, 1995, and 1997 through 2004.

2. Peak-Shaving Methods, Glen Canyon Generation: See response to comment 7.3.

3. Purchase Power Projections and Pricing: Many changes have been made to the projections of purchase power amounts and to the structure of pricing assumptions for purchase power. Purchase power projections now consider the additional transmission loss associated with purchases from other sources. Pricing of replacement energy reflects:

a. Identical price and structure for both the base case (without interim release constraints) and change case condition (with interim release constraints);

b. Seasonal price variation between winter and summer seasons;

c. Variable period pricing to reflect differing value of energy between weekday and weekend (Sunday) periods, and on-peak and off-peak periods; and

d. Tier pricing reflecting Western's obligations under an existing long-term purchase agreement.

4. Nonfirm Sales Projections and Pricing: The basis for projecting nonfirm energy sales has been revised to omit nonfirm sales under base-case conditions and to only estimate "forced" nonfirm sales under change-case conditions. Application of the previously proposed regression analysis for forecasting nonfirm sales will be deferred until additional analytic work has been completed and adequate support has been established. Under change-case conditions, forced off-peak generation that exceeds firm load is regarded as a "forced" nonfirm sale. The expense associated with this forced generation was calculated by multiplying the surplus off-peak generation by the difference between the upper-tier purchase price and the off-peak purchase price. This is a conservative approach because it assumes that the forced off-peak generation would have gone to displace an on-peak purchase rather than to make a nonfirm sale.

5. Purchased Power Expense and Interim Release Impacts Beyond 1996: Rather than continue the past proposal to hold constant the FY 1996 financial impacts for each future year through 2004, Western has developed differing annual estimates of purchased power and foregone nonfirm sales revenues which are linked to the projected hydrologic conditions within each year between FY 1996 and FY 2004.

The complete documentation for this recent analysis, which details these significant modifications, and other lesser changes, is contained in separate work papers entitled, "Interim Release Expense Analysis, FY 1992–2004, Salt lake City Area Integrated Projects, June 1992," (June 1992 interim release analyses) and is incorporated by reference here and included as a component of this final rate order record. It will be made available upon request.

Comment 7.5: Western has failed to explain the significant discrepancies between the total purchased power expenses incorporated in the addendum PRS and the results of the analyses presented in a data request. The calculation of purchased power expenses, as set forth in the spreadsheets provided by Western to explain and support its purchased power projections, are inconsistent.

Response: To remedy double-accounting problems previously identified, Western has assured that the components of annual load and resources used in the rate Order PRS are also used in the *hourly* analysis of interim release expenses for FY 1992, 1994, and 1996, and in the *annual* estimate of impacts from 1997 through 2004.

All discrepancies between the addendum PRS and the March Interim Release analysis have been remedied in the Integrated Projects Rate Order PRS and the June 1992 Interim Release analysis.

Comment 7.6: Western has explained that it forecasted total, nonfirm sales using a mathematical equation that was estimated by a statistical analysis of historical sales data. In response to CREDA's request, it has also provided the data itself, but only the numeric data actually incorporated in the estimate. No explanation was provided, however, to justify the relationships embodied in the equation or the appropriateness of the historic data series utilized for the analysis, or even describing the data variables themselves.

Response: See response to comment 7.3.

Pricing of projected "avoided" nonfirm sales has been based on the conservative assumption that "forced" nonfirm sales during off-peak periods would result in increased on-peak purchases, which are then valued at the incremental "expense", or the difference between the highest on-peak purchase expense and the off-peak purchase expense (which is identical to the off-peak sales revenue).

The complete documentation for the projection of future purchase power expenses and associated "forced" nonfirm energy sales is contained in separate work papers entitled, "Interim Release Expense Analysis, FY 1992–2004, Salt Lake City Area Integrated Projects, June 1992," and is included in the record as a component of this rate order.

Comment 7.7: Western has based its pricing assumptions on its agreement with RMGC but has consistently purchased nonfirm energy below those contract rates.

Response: See response to comment 7.4. Purchase price assumptions used in the June 1992 analysis of interim release expenses ("Interim Release Expense Analysis, FY 1992–2004, Salt Lake City Area Integrated Projects, June 1992") continue to assume that prices contained in the long-term energy purchase agreement with RMGC are representative of future energy purchases up to the limit of the obligation in the agreement and the purchase need. Beyond the schedule obligations of the RMGC agreement, Western has established a multitier pricing structure based on historical pricing relationships.

Comment 7.8: Use $3 million rather than $22.7 million for interim operations costs.

Response: Earlier estimates of interim release annual net expenses, including the $3 million estimate, considered only firming purchases of nonfirm energy. The current approach incorporates the added impact of "forced" nonfirm economy energy sales and the resultant expense of on-peak energy purchases. This approach, and the consideration of conservative pricing assumptions, results in an additional financial impact of approximately $3.7 million annually. Also see response to comment 7.10.

Comment 7.9: Disagree that Western may lose the exception criteria after March 31, 1992.

Response: There is no certainty that exception criteria will continue beyond any extension.

Comment 7.10: Most customers want to amend contracts to include pass-through cost concept.

Response: Since the beginning of interim operations, many customers have sought an amendment to their contracts that would allow them to purchase needed capacity themselves rather than have these costs reflected in Western's firm power rate. Western has proceeded with a power sales contract amendment to allow interim purchases of capacity. A power sales contract amendment is now referred to as the "Interim Purchases Amendment" (IPA). With the IPA in effect, Western has reduced its interim operations purchased power cost projections in the PRS for 1992–96 to an average of about $3.7 million/year. For customers that chose not to execute the IPA, a purchased power adjustment applicable only to them will be included in the rate schedule. This adjustment is necessary to recover any additional costs that Western may incur for replacement capacity and energy purchases because of interim operations at Glen Canyon Dam. The adjustment is applicable to all customers who request Western to purchase additional capacity for them.

Comment 7.11: Some customers think energy sales by Western should not be limited to the CRSP resource.

Response: Western does not plan at this time to market non-Integrated Projects power on a long-term firm basis above the amount needed for firming purchases. Western is presently conducting an environmental impact statement on the Electric Power Marketing Plan and Criteria for the Integrated Projects. Western is considering several options as part of that effort for various levels of power production. Integrated Projects power marketed is supported by firming purchases needed to meet contractual commitments.

8. Unbudgeted Cost

Comment 8.1: It is inappropriate to guess at future costs.

Response: Western has incorporated the estimates of it's and Reclamation's FY 1993 budgets in the Integrated Projects Rate Order PRS. There are presently no "unbudgeted" O&M costs in the proposed rate, with the exception of $1 million per year for emergencies, which will be put into future budgets.

Comment 8.2: Budgeting process should be based on definite guidelines or criteria to ensure accuracy. Western should have good support for using other than budgeted numbers. Western should correct the budgeting process rather than create a budget floor.

Response: Western and Reclamation have initiated a customer participation review process to estimate expenses for future years. Both agencies have agreed to limit their Basin Fund requests to amounts included in their approved budgets, except in unforeseeable emergencies.

Comment 8.3: Care should be taken not to set rates for current and future customers to recover funds not correctly collected from past customers.

Response: Western is required to recover all costs assigned to power for repayment. All of these costs are factored into the rate base and the rate is set to recover these costs within the required period.

9. Audit Adjustment

Comment 9.1: CREDA appreciates Western's efforts to reduce the magnitude of the adjustment (audit adjustment), since this has a significant impact on the rates. CREDA strongly disagrees, however, that interest should be accrued on this adjustment.

Response: The interest amount of $6.9 million is included in FY 1991. This adjustment affected years 1987 through 1990. To not recalculate interest during that period would effectively grant an interest-free loan to Western's customers. In the past, the auditors have recalculated interest on audit adjustments for both increases and decreases to net revenues. This is a generally accepted accounting principle that Western has and will continue to follow.

Comment 9.2:

What structure or procedure has DOE or Western adopted to implement the Chief Financial Officer (CFO) Act of 1991?

2. Does Western have a CFO, a deputy CFO? Who are they?

3. Did DOE or Western help prepare a 5-year financial management system plan as called for in this act?

4. Did DOE or Western prepare as of March 31, 1992, an annual report or statement of financial operations in compliance with the Act? If so, what was the status of this financial statement; how does it fit with the PRS?

5. How does this report fit with CRSP accounting mechanisms? Will this financial statement ever be audited apart from whatever audits Western conducts?

6. What procedures and plans, if any, does Western have to relieve accountable officials from liability under this Act? Has Western taken steps for relief of financial liability.

Response:

This comment is outside the scope of this rate adjustment.

1. To implement the Act, Western has implemented the requirements of DOE Secretarial Order SEN–34–91 dated August 15, 1991.

2. Yes, Western's CFO is Richard Redenius, the Assistant Administrator for Management.

3. Yes, Western prepared a 5-year financial management system plan.

4. Yes, Western prepared an unaudited annual report for FY 1991 which included the combined power-related activities of the generating agencies. The annual report supplemental schedule (each project) balances are reconciled to the corresponding balances in the respective PRS.

5. The financial statement presentation for CRSP is the same as for other projects. The combined financial statement for FY 1991 was audited by a independent certified public accounting firm and received an unqualified opinion.

6. The CFO Act does not change Western's liability. It does increase Western's responsibility. The relief process is not changed by this Act. It remains as included in Title 7 of GAO's "Policy and Procedures Manual for Guidance of Federal Agencies."

10. Miscellaneous

Comment 10.1: Reclamation is distanced from the anger vented by paying customers and is no longer sensitive to the needs of the CRSP distribution systems. Separation of Reclamation and Western did not accomplish efficiencies. The time has come to reunite Reclamation and Western.

Response: This comment is outside the scope of this rate adjustment. Reclamation is actively participating in Western's ratemaking process. CREDA now has the opportunity for financial reviews of both Western and Reclamation budgets and thus has an input on the budgets to be prepared.

Comment 10.2: The rate brochure should have explained each element of revenue requirement that was included or excluded and explained generation estimates. Then revenue requirements should be divided by generation. Finally, the revenue requirements should be used to design the rate.

Response: This procedure has been followed with the October 1991 Customer Brochure and its March 1992 Addendum and the respective PRSs. Revenue requirements divided by available resources are always used to compute Western's firm power rates.

Comment 10.3: Western deliberately set rates too low in the past.

Response: Each year Western prepares a PRS to determine if revenues are sufficient to pay annual costs and to repay the Federal investment associated with the project. Western is mandated to seek the "lowest possible rate using sound business principles," and strives to meet this requirement.

Comment 10.4: The rate study capitalizes deficits during the cost evaluation period. This in contrary to DOE RA 6120.2 which does not allow for deficits.

Response: The rate order PRS does not generate deficits after FY 1992. DOE RA 6120.2 states that the current rates for a power system will be adequate if the expected revenues are at lest sufficient to recover annual cost, except for a possible initial short transition period. It also states that the recovery of the annual short transition period. It also states that the recovery of the annual interest expense may be deferred in unusual circumstances for short periods of time.

Comment 10.5: Smaller customers should be considered in the Interim Purchases Amendment.

Response: All customers are given the opportunity to enter into the IPA. Those who choose not to enter into the IPA will have a purchased power adjustment included in their rate schedule as noted in Rate Schedule SLIP–F4. This means that customers who choose not to purchase their own power will be served by Western's purchases and will be billed accordingly.

Comment 10.6: The following comments were made on economic impacts:

1. Rate increase hard on retired persons.

2. Rate increase will hit farmers hard.

3. Cannot absorb further rate increases.

4. Cost increases are undermining the economic base of our service area.

5. The Integrated Projects rate is approaching the level of alternate sources of electrical power.

Response: Western is concerned about the impacts to customer and has implemented a cost containment initiative to control Westerns costs. However, Western is also required by law to recover the costs assigned to power to be repaid during the prescribed time period.

Comment 10.7: Western failed to account for the FERC-ordered PacifiCorp refund.

Response: Although FERC ordered PacifiCorp to make a refund to Western (FERC Docket No. ER91–494–0000 and ER91–471–0000, issued April 24, 1992), there is a rehearing request pending on that order and a settlement proposal pending. Western cannot include the refund in the PRS until either settlement has been reached and actual refunds are made to Western or a new ruling is issued upon rehearing. The effect of this refund, if any, will be included in the next rate process after the refund is received.

Comment 10.8: The negative conditions caused by regulating the flow of Glen Canyon Dam far outweigh the positive ones.

Response: The Glen Canyon EIS will assess the benefits and costs of the several alternative operating criteria at Glen Canyon Dam.

Environmental Evaluation: In compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR part 1500–1508); and DOE NEPA Regulations (10 CFR part 1021). Western has determined that this action is categorically excluded from the preparation of an environmental assessment or EIS.

Executive Order 12291: DOE has determined that this rate action is not a major rule within the meaning of the criteria of section 1(b) of Executive Order 12291. In addition, Western is exempt from sections 3, 4, and 7 of that order, and therefore will not prepare a regulatory impact statement.

Availability of Informotion: Information regarding this rate adjustment, including PRSs, comments letters, memorandums, and other supporting material made or kept by Western for the purpose of developing the power rates, is available for public review in the Salt Lake City Area Office, Western Area Power Administration, Office of the Assistant Area Manager for Power Marketing, 257 East 200 South, suite 475, Salt Lake City, Utah 84111; Western Area Power Administration, Division of Marketing and Rates, 1627 Cole Boulevard, Golden, Colorado 80401; and Western Area Power Administration, Office of the Assistant Administrator for Washington Liaison, room 8G–061, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Submission to Federal Energy Regulatory Commission: The rate herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I confirm and approve on an interim basis, effective October 1, 1992, Rate Schedules SLIP–F4 and SP–FT4. The rate schedules will remain in effect on an interim basis, pending FERC confirmation and approval of them or substitute rates on a final basis, through September 30, 1996.

Issued in Washington, DC, August 10, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Rate Schedule SLIP–F4 (Supersedes Schedule SLIP–F3)

United States Department of Energy
Western Area Power Administration

Salt Lake City Area Integrated Projects, Arizona, Colorado, Nevada, New Mexico, Utah, Wyoming

Schedule of Rate for Firm Power Service

Effective: Beginning October 1, 1992, and extending through September 30, 1996.

Available: In the area served by the Salt Lake City Area Integrated Projects.

Applicable: To wholesale power customers for firm power service supplied through one meter at one point of delivery, or as otherwise established by contract.

Character: Alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points established by contract.

Monthly Rate: Demand Charge: $3.63 per kilowatt of billing demand. Energy Charge: $8.6 mills per kilowatthour if use.

Billing Demand: The billing demand will be the greater of (1) the highest 30-minute integrated demand measured during the month up to, but not in excess of, the delivery obligation under the power sales contract, or (2) the contract rate of delivery.

Adjustment for Transformer Losses: If delivery is made at transmission voltage but metered on the low-voltage side of the substation, the meter readings will be increased to compensate for transformer losses as provided for in the contract.

Adjustment for Power Factor: The customer will be required to maintain a power factor at all points of measurement between 95-percent lagging and 95-percent leading.

Adjustment for Purchased Power:

Purpose of Adjustment: The purpose of this purchased power adjustment is to ensure that Western has sufficient revenues to support firm capacity purchases made necessary becaue of restricted generation from Glen Canyon Dam as the result of restrictions on water releases from the dam.

Applicability: This adjustment is applicable to those contractors that are not receiving service under an Interim Purchase Amendment to their firm power sales contract.

Adjustment: If Western Area Power Administration (Western) finds it necessary to purchase firm capacity to replace generation lost at Glen Canyon Dam because of the above-listed restrictions, Western will, beginning on the first month that such purchases are made, include in the contractor's monthly power bill an estimate of that contractor's proportionate share of net capacity purchase costs. The cost of purchasing such capacity will be offset by the revenue that Western receives from the sale of energy, if any, associated with the purchased capacity.

In its October bill each year, Western will reconcile the previous fiscal year actual purchased power expenses and the monthly estimated costs paid by the contractor. If the contractor has paid more than its proportionate share of actual power purchase expenses, the excess amount will be shown as a credit to the contractor's October power bill. If the contractor has paid less than its proportionate share of actual power purchase expenses, Western will add such amount to the contractor's October power bill.

Notification: If Western finds it necessary to implement this adjustment, it will give a one-time notification to the contractor and the Federal Energy Regulatory Commission at least 10 days before initially adding purchased power costs to the contractor's monthly power bill.

United States Department of Energy
Western Area Power Administration

Colorado River Storage Project, Arizona, Colorado, New Mexico, Wyoming, Utah

Schedule of Rate for Firm Transmission Service

Effective: Beginning on October 1, 1992, and extending through September 30, 1996.

Available: In the area served by the Colorado River Storage Project (CRSP) transmission system.

Applicable: To firm transmission service customers for which power and energy are supplied to the CRSP transmission system at points of interconnection with other systems and transmitted and delivered, less losses, to points of delivery on the CRSP transmission system established by contract.

Character and Conditions of Service: Transmission service for alternating current, 60 hertz, three-phase, delivered and metered at the voltages and points of delivery established by contract.

Rate: Transmission service charge: $22.68 per kilowatt-year for each kilowatt of transmission service contracted for, payable monthly at the rate of $1.89 per kilowatt-month.

Requirements for Reactive Power: Requirements for reactive power shall be as established by contract; otherwise, there shall be no entitlement to transfer of reactive kilovolt amperes at delivery points except when such transfers may be mutually agreed upon by the contractor and the contracting officer or their authorized representatives.

Adjustments for Losses: Power and energy losses incurred in connection with the transmission and delivery of power and energy under this rate schedule shall be supplied by the customer as established by contract.

[FR Doc. 92–19536 Filed 8–14–92; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42166; FRL–4082–5]

Testing Consent Agreement Development for Refractory Ceramic Fibers; Solicitation of Interested Parties and Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's procedures for requiring the testing of chemical substances and mixtures under section 4 of the Toxic Substances Control Act (TSCA) include the adoption of enforceable consent agreements (ECAs) and promulgation of test rules. ECAs may be adopted where consensus on an industry test program is reached in a timely manner by EPA, affected manufacturers and/or processors, and other interested parties. If timely consensus cannot be reached or appears unlikely, and the Agency is able to make the statutory finding as required under TSCA, then EPA would issue a section 4 test rule. This notice serves three purposes under these procedures. First, it requests interested persons who wish to participate in exposure testing negotiations for Refractory Ceramic

Fibers (RCF) to identify themselves to EPA. Second, it announces a public meeting to initiate testing negotiations for this chemical. Third, it proposes a target schedule for implementation of the consent agreement process.

DATES: A public meeting will be held on September 2, 1992, at 1 p.m.

ADDRESSES: Submit written comments, in triplicate, identified by the docket number OPTS-42166, by mail to: TSCA Public Docket Office (TS-793), rm. NE-G004, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, before August 28, 1992.

Persons interested in attending the public meeting should notify EPA by writing Mark Henshall (TS-794), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, FAX 202-260-1216, on or before August 28, 1992

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: The regulations at 40 CFR part 790 (51 FR 23706; June 10, 1986), establish procedures for using ECAs to develop testing requirements under section 4 of TSCA.

I. Background

On November 21, 1991, the Agency concluded that based on the preliminary hazard and exposure information available, that in accordance with section 4(f) of TSCA, there may be a reasonable basis to conclude that RCFs present or will present a significant risk of serious harm to human beings from cancer. Given the Agency's concern over RCF exposures, EPA is interested in establishing an exposure testing program with the manufacturers of RCF to monitor workplace exposures throughout the lifecycle of the chemical (i.e., manufacturing, fabrication, processing, installation, and removal).

II. Identification of Interested Parties

Under 40 CFR 790.22, the testing negotiation procedures are initiated by the publication of a **Federal Register** notice which invites persons interested in participating in or monitoring negotiations for the development of an ECA to notify the Agency in writing. Those individuals and groups who respond to EPA's notice by the deadline established in this notice will have the status of "interested parties" and will be afforded the opportunity to participate in the negotiation process. These "interested parties" will not incur any obligations by being designated "interested parties." The procedures for these negotiations are described in 40 CFR 790.22.

III. Public Meeting

A public meeting will be held on Wednesday, September 2, 1992, at 1 p.m. at the Washington Information Center (WIC), rm. 1, EPA Headquarters, 401 M St., SW., Washington DC 20460. EPA will announce its preliminary requirements for RCF exposure monitoring. Individuals and groups desiring to have the status of "interested parties" in the development of the ECA for RCF should submit a written request to the Agency at the address given above on or before August 28, 1992.

IV. Timetable for Negotiating Test Agreements

In accordance with the procedures for the development of ECAs established in 40 CFR 790.22, EPA intends to follow the schedule set forth below to conduct negotiations and develop a consent agreement for exposure monitoring of RCF.

August 28, 1992—Deadline for notice of "interested parties" designation.

September 2, 1992—Public Meeting to initiate testing.

September 16, 1992—December 1, 1992 - Negotiations

December 18, 1992—Decision by EPA on whether to use consent order to test rule.

January 11, 1993—Draft Consent order sent to interested parties (if EPA decides to use consent order).

April 19, 1993—Consent order published in the **Federal Register**.

Dated: August 5, 1992.

Linda Vlier Moos,

Acting Director, Chemicol Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-19522 Filed 8-14-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Program, April 1, 1992-June 30, 1992; Summary Report

Total Number of Sponsored Events	21
Total Number of Sponsoring Organizations	18
Total Number of Different Commissioners/Employees Attending	40
Total Amount of Reimbursement Expected:	
Transportation	$23,061.93
Subsistence	19,607.33
Other Expenses	3,862.29
Total	$46,531.55

Travel Reimbursement Program Individual Event Report

Sponsoring Organization: Association of National Advertisers, Inc., 1725 K Street, NW., Washington, DC 20006.
Date of the Event: May 20, 1992.
Description of the Event: A.N.A.'s Television Advertising Committee, New York, New York.
Commissioners Attending: None.
Other Employees Attending: Robert L. Pettit—General Counsel.
Amount of Reimbursement:

Transportation	$118.00
Subsistence	34.00
Other Expenses	93.50
Total	245.50

Sponsoring Organization: Bell Atlantic Network Services Inc., 1133 20th Street, NW., Suite 810, Washington, DC 20036.
Date of the Event: April 27-30, 1992.
Description of the Event: 1992 Regional Accounting Witness Meeting, San Antonio, Texas.
Commissioners Attending: None.
Other Employees Attending: Kenneth Ackerman—Accounting and Audits Division.
Amount of Reimbursement:

Transportation	$415.15
Subsistence	86.75
Other Expenses	42.90
Total	544.80

Sponsoring Organization: Honorable Fred Grandy, United States House of Representatives, Washington, DC 20515.
Date of the Event: April 27, 1992.
Description of the Event: Cable Legislation Roundtable Discussion, Fort Dodge, Iowa.
Commissioners Attending: None.
Other Employees Attending: Doug Webbink—Chief, Policy and Rules Division, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$715.00
Subsistence	90.50
Other Expenses	27.25
Total	832.75

Sponsoring Organization: Federal Communications Bar Association, 1150 Connecticut Avenue, NW., Suite 1050, Washington, DC 20036.
Date of the Event: May 8-10, 1992.
Description of the Event: FCBA's Annual Seminar, Williamsburg, Virginia.
Commissioners Attending: Commissioner Ervin S. Duggan.
Other Employees Attending: Terry L. Haines—Chief of Staff, Office of the Chairman
Robert L. Pettit—General Counsel
Linda Townsend Solheim—Director, Legislative Affairs
Amount of Reimbursement:

Transportation	$.00
Subsistence	459.00
Other Expenses	282.75
Total	741.75

Sponsoring Organization: Communications Fraud Control Association, 2033 M Street, NW., suit 402, Washington, DC 20036.
Date of the Event: June 23-26, 1992.
Description of the Event: Annual International Conference, Seattle, Washington.
Commissioners Attending: None.
Other Employees Attending: Gerald P. Vaughan—Deputy Chief, Operations, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$364.00
Subsistence	273.94
Other Expenses	25.50
Total	663.44

Sponsoring Organization: Posts and Telecommunications International Japan, c/o Embassy of Japan, 2520 Massachusetts Avenue, NW., Washington, DC 20008.
Date of the Event: June 11, 1992.
Description of the Event: Conference Entitled "Global Symposium in Telecommunications", Tokyo, Japan.
Commissioners Attending: None.
Other Employees Attending: John P. Copes—Attorney, International Policy Division, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$1,172.00
Subsistence	1,064.00
Other Expenses	100.00
Total	2,336.00

Sponsoring Organization: Interexchange Resellers Association, P.O. Box 5090, Hoboken, New Jersey 07030.
Date of the Event: May 27-28,1992.
Description of the Event: 1992 Spring Conference, San Diego, California.
Commissioners Attending: None.
Other Employees Attending: Madelon Kuchera—Legal Advisor, Commissioner Barrett.
Amount of Reimbursement:

Transportation	$356.00
Subsistence	184.00
Other Expenses	45.00
Total	585.00

Sponsoring Organization: National Association of Broadcasters, Regulatory Affairs, 1771 N Street, NW., Washington, DC 20036.
Date of the Event: April 12-16, 1992.
Description of the Event: NAB Convention, Las Vegas, Nevada.
Commissioners Attending: Chairman Alfred C. Sikes
Commissioner Andrew C. Barrett
Commissioner Ervin S. Duggan
Commissioner Sherrie P. Marshall
Commissioner James H. Quello
Other Employees Attending: Robert Corn-Revere—Legal Advisor, to Commissioner Quello
Michele C. Farquhar—Senior Legal Advisor, to Commissioner Duggan
Brian F. Fontes—Special Advisor, to Commissioner Quello
Milton O. Gross—Chief, Fairness/ Political Programming, Mass Media
Terry L. Haines—Chief of Staff, Office of the Chairman
William H. Hassinger—Ass't. Chief Engr., Mass Media
John C. Hollar—Legal Advisor, to Commissioner Duggan
Charles W. Kelley—Chief, Enforcement Division Mass Media Bureau
Byron F. Marchant—Legal Advisor, to Commissioner Barrett
John W. Reiser—Electronics Engineer, Mass Media Bureau
Peter D. Ross—Senior Advisor, to Commissioner Marshall
Richard M. Smith—Chief, Field Operations Bureau
Roy J. Stewart—Chief, Mass Media Bureau
Alexandra Wilson—Legal Advisor, to Chairman Sikes
Amount of Reimbursement:

Transportation	$6,665.88
Subsistence	7,110.66
Other Expenses	1,376.89
Total	15,153.43

Sponsoring Organization: National Association of Broadcasters, 1771 N Street, NW., Washington, DC 20036.
Date of the Event: June 10-13, 1992.
Description of the Event: NAB Radio Montreux, Montreux, Switzerland.
Commissioners Attending: Commissioner Ervin S. Duggan.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$746.00
Subsistence	1,014.00
Other Expenses	61.00
Total	1,821.00

Sponsoring Organization: North American National Broadcasters Association, 1500 Bronson Avenue, Ottawa, Ontario Canada K1G 3J5.
Date of the Event: April 27-30, 1992.
Description of the Event: 7th World Conference of Broadcasting Unions, Mexico City, Mexico.
Commissioners Attending: None.
Other Employees Attending: Walda Roseman—Director, Office of International Communications.
Amount of Reimbursement:

Transportation	$521.50
Subsistence	701.25
Other Expenses	65.39
Total	1,288.14

Sponsoring Organization: United States Telephone Association, 900 19th Street, NW., suite 800, Washington, DC 20008.
Date of the Event: June 21-25, 1992.
Description of the Event: NARUC Engineers Conference, Phoenix, Arizona.
Commissioners Attending: None.
Other Employees Attending: Fatina Franklin-Chief, Depreciation Rates Branch, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$356.00
Subsistence	203.80
Other Expenses	153.75
Total	713.55

Sponsoring Organization: National Cable Television Association, 1724 Massachusetts Avenue NW., Washington, DC 20036.
Date of the Event: May 3-6, 1992.
Description of the Event: 41st Annual Convention and Exposition, Dallas, Texas.
Commissioners Attending: Chairman Alfred C. Sikes
Commissioner Ervin S. Duggan
Commissioner Sherrie P. Marshall

Other Employees Attending:
Robert Corn-Revere—Legal Advisor, to Commissioner Quello
Terry L. Haines—Chief of Staff, to Chairman Sikes
John C. Hollar—Legal Advisor, to Commissioner Duggan
William H. Johnson—Deputy Chief, Mass Media Bureau
Byron F. Marchant—Legal Advisor, to Commissioner Barrett
Ronald Parver—Chief, Cable Television Branch Mass Media Bureau
Robert M. Pepper—Chief, Plans and Policy
Robert L. Pettit—General Counsel
Peter D. Ross—Legal Advisor, to Commissioner Marshall
Lorrie A. Secrest—Director, Public Affairs
Richard M. Smith—Chief, Field Operations Bureau
Linda Townsend Solheim—Director, Legislative Affairs
Other Employees Attending:
Thomas P. Stanley—Chief Engineer, Office of Engineering and Technology
Roy J. Stewart—Chief, Mass Media Bureau
Alexandra Wilson—Legal Advisor, Chairman Sikes
John P. Wong—Supervisor Electronics Engineer, Mass Media Bureau
Amount of Reimbursement:

Transportation	$7,555.00
Subsistence	5,248.95
Other Expenses	848.62
Total	13,652.57

Sponsoring Organization: Society of Cable Television Engineers, 669 Exton Commons, Exton, Pennsylvania 19341.
Date of the Event: June 15–17, 1992.
Description of the Event: Program Committee for Cable-Tec Expo '92, San Antonio, Texas.
Commissioners Attending: None.
Other Employees Attending:
Michael L. Lance—Mass Media Bureau
John P. Wong—Mass Media Burea
Amount of Reimbursement:

Transportation	$504.00
Subsistence	1,194.00
Other Expenses	181.58
Total	1,879.58

Sponsoring Organization: Telephony Magazines, 55 East Jackson Boulevard, Chicago, Illinois 60604.
Date of the Event: May 11–13, 1992.
Description of the Event: SS7 Summit, Chicago, Illinois.
Commissioners Attending: Chairman Alfred C. Sikes.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$189.00
Subsistence	152.23
Other Expenses	13.80
Total	355.03

Sponsoring Organization: Technology Marketing Corporation, One Technology Plaza, Norwalk, Connecticut 06854.
Date of the Event: June 11, 1992.
Description of the Event: TBT Spring '92, Chicago, Illinois.
Commissioners Attending: None.
Other Employees Attending: Terry L. Haines—Chief of Staff, to Chairman Sikes.
Amount of Reimbursement:

Transportation	$378.00
Subsistence	143.50
Other Expenses	2.37
Total	523.87

Sponsoring Organization: Telestrategies Inc., 1355 Beverly Road, suite 100, McLean, Virginia 22101.
Date of the Event: April 14–15, 1992.
Description of the Event: International Resale Conference, East Rutherford, New Jersey.
Commissioners Attending: None.
Other Employees Attending: William Kirsch—Deputy Assistant Chief, International, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$128.00
Subsistence	250.50
Other Expenses	44.25
Total	422.75

Sponsoring Organization: United States Telephone Association, C/o Robert Creighton, 900 19th Street NW., suite 800, Washington, DC 20006.
Date of the Event: June 15–18, 1992.
Description of the Event: Three-Way Depreciation Meeting, Denver, Colorado.
Commissioners Attending: None.
Other Employees Attending: Bryan Clopton—Depreciation Rates Branch, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$302.00
Subsistence	425.50
Other Expenses	39.09
Total	766.59

Sponsoring Organization: United States Telephone Association, c/o Robert Creighton, 900 19th Street NW., suite 800, Washington, DC 20006.
Date of the Event: June 1–4, 1992.
Description of the Event: Three-Way Depreciation Meeting, Charlotte, North Caroline.
Commissioners Attending: None.
Other Employees Attending: Fatina Franklin—Chief, Depreciation Rates Branch, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$380.00
Subsistence	280.00
Other Expenses	24.75
Total	684.75

Sponsoring Organizotion: Utilities Telecommunications Council, 1140 Connecticut Avenue, NW., suite 1140, Washington, DC 20036.
Date of the Event: June 23–25, 1992.
Description of the Event: Annual Meeting, Phoenix, Arizona.
Commissioners Attending: None.
Other Employees Attending:
Beverly G. Baker—Deputy Chief, Private Radio Bureau
Micheal B. Hayden—Chief, Microwave Branch Private Radio Bureau
Thomas P. Stanley—Chief Engineer, Office of Engineering and Technology
Amount of Reimbursement:

Transportation	$927.00
Subsistence	146.10
Other Expenses	207.75
Total	1,282.85

Sponsoring Organization: Viacom Entertainment, 1515 Broadway, New York, New York 10036.
Date of the Event: April 30, 1992
Description of the Event: Joint Viacom Strategic Meetings, Naples, Florida.
Commissioners Attending: None.
Other Employees Attending: Terry L. Haines—Chief of Staff, to the Chairman Sikes.
Amount of Reimbursement:

Transportation	$352.00
Subsistence	197.05
Other Expenses	137.75
Total	686.80

Sponsoring Organization: Wissenschaftliches Institut fur Kommunikationsdienste GmbH, Postfach 2000, 5340 Bad Honnef 1, Bonn, Germany.
Date of the Event: June 23–24, 1992.
Description of the Event: International Conference on "Three Years after Liberalization Telecommunications Markets in Germany", Bonn, Germany.
Commissioners Attending: None.
Other Employees Attending: Kenneth Robinson—Senior Advisor, to Chairman Sikes.
Amount of Reimbursement:

Transportation	$917.40
Subsistence	345.60
Other Expenses	88.40
Total	1,351.40

Federal Communications Commission
Donna R. Searcy,
Secretary.
[FR Doc. 92–19504 Filed 8–14–92; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 92–606]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.
ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the third quarter review under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date For Member Community Support Statements for Members Selected in Third Quarter Review:* September 30, 1992.
Due Date For Public Comments on Members Selected in Third Quarter Review: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate (202) 408–2825, or Kathleen S. Brueger, Associate Director, Housing Finance Directorate (202) 408–2821, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. Only members with post-July 1, 1990 CRA Evaluations and members not subject to CRA will be selected for review in the first two years following the effective date of the regulation. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members to be Reviewed in Third Quarter 1992, Grouped by FHLBank District

Member	City	State
Federal Home Loan Bank of Boston—District 1, Post Office Box 9106, Boston, Massachusetts 02205–9106.		
Old Stone Bank of CA, a FSB.	Hayward	CA
Great Country Bank	Ansonia	CT
Collinsville Savings Society.	Collinsville	CT
First New London S&LA, Inc.	New London	CT
Norwalk Savings Society	Norwalk	CT
Eastern S&LA	Norwich	CT
Southington Savings Bank.	Southington	CT
The Equity Bank	Wethersfield	CT
Northwest Bank for Savings.	Winsted	CT
Andover Bank	Andover	MA
Roxbury-Highland Cooperative Bank.	Jamaica Plain	MA
The Massachusetts Co., Inc..	Boston	MA
Brookline Savings Bank	Brookline	MA
The Bank of Canton/Canton Institution for Savings.	Canton	MA
Charlestown Co-operative Bank.	Charlestown	MA
Danvers Savings Bank	Danvers	MA
First FSB of America	Fall River	MA
Lafayette FSB	Fall River	MA
Haverhill Co-op Bank	Haverhill	MA
Milford FS&LA	Milford	MA
Pemigewasset National Bank.	Plymouth	MA
Plymouth Five Cents Savings Bank.	Plymouth	MA
Revere FS&LA	Revere	MA
Bangor Savings Bank	Bangor	ME
Bar Harbor S&LA	Bar Harbor	ME
Bar Harbor Banking and Trust Co.	Bar Harbor	ME
Bethel Savings Bank, FSB.	Bethel	ME
Calais FS&LA	Calais	ME
First Citizens Bank	Presque Isle	ME
Rockland S&LA	Rockland	ME
The Waldoboro Bank, FSB.	Waldoboro	ME
Centerpoint Bank	Bedford	NH
Cornerstone Bank	Derry	NH
First S&LA of NH	Exeter	NH
Milford Co-Op Bank	Milford	NH
First National Bank of Portsmouth.	Portsmouth	NH
Newport S&LA	Newport	RI
Citizens Savings Bank	Providence	RI
Westerly Savings Bank	Westerly	RI
Bank of Vermont	Burlington	VT
Union Bank	Morrisville	VT
Federal Home Loan Bank of New York—District 2, One World Trade Center, 103d Floor, New York, New York 10048.		
Bogota S&LA	Bogota	NJ
Somerset Savings Bank, SLA.	Bound Brook	NJ
Century FS&LA of Bridgeton.	Bridgeton	NJ
United Roosevelt S&LA	Carteret	NJ
Valley Savings Bank	Closter	NJ
NVE Savings Bank, SLA	Englewood	NJ
Premium FSB	Gibbsboro	NJ
Glen Rock Savings Bank, SLA.	Glen Rock	NJ
Haddon S&LA	Haddon Heights.	NJ
Statewide Savings Bank, SLA.	Jersey City	NJ
Monarch Savings Bank, FSB.	Kearny	NJ
Lincoln Park S&LA	Lincoln Park	NJ
Metuchen S&LA	Metuchen	NJ
Roselle S&LA	Roselle	NJ
Boiling Springs S&LA	Rutherford	NJ
Gloucester County FSB	Sewell	NJ
Roma FSB	Trenton	NJ
South Jersey S&LA	Tumersville	NJ
Lehigh Savings Bank, SLA.	Union	NJ
Security Savings Bank, SLA.	Vineland	NJ
The Westwood Savings Bank, SLA.	Westwood	NJ
Elmira Savings Bank	Elmira	NY
First FS&LA of Middletown.	Middletown	NY
American S&LA	New York	NY
Chinatown FSB	New York	NY
Pioneer S&LA	Roslyn	NY
Wallkill Valley FS&LA	Wallkill	NY
Oriental Federal Savings Bank.	Humaco	PR
Federal Home Loan Bank of Pittsburgh—District 3, 625 West Ridge Pike, Suite B–107, Conshohocken, Pennsylvania 19428.		
Bernville Bank, N.A	Bernville	PA
Union B&LA	Beaver	PA
Pennsylvania State Bank.	Camp Hill	PA
Farmers Trust Company	Carlisle	PA
First FS&LA of Carnegie	Carnegie	PA

Member	City	State
Unitas National Bank	Chambersburg	PA
Slovenian S&LA of Franklin-Conemaugh.	Conemaugh	PA
People's National Bank of Susquehanna County.	Halfstead	PA
Mifflinburg Bank and Trust Co.	Mifflinburg	PA
Community Banks, N.A.	Millersburg	PA
New Bethlehem Bank	New Bethlehem.	PA
Polonia FS&LA	Philadelphia	PA
Republic Bank	Philadelphia	PA
Pittsburgh Home Savings Ass.	Pittsburgh	PA
Slovak S&LA	Pittsburgh	PA
Pennsylvania National Bank & Trust Co.	Pottsville	PA
Century National Bank and Trust Company.	Rochester	PA
Schuylkill Haven Trust Company.	Schuylkill Haven.	PA
Merchants National Bank of Shenandoah.	Shenandoah	PA
Northern Central Bank	Williamsport	PA
Peoples State Bank of Wyalusing.	Wyalusing	PA
The Drovers & Mechanics Bank.	York	PA
York FS&LA	York	PA
The Charleston National Bank.	Charleston	WV
Community Bank & Trust, N.A.	Fairmont	WV
First National Bank in Fairmont.	Fairmont	WV
United National Bank-Central.	Glenville	WV
Old National Bank	Martinsburg	WV
Citizens Bank of Morgantown.	Morgantown	WV
Advance Financial Savings Bank, FSB.	Wellsburg	WV

Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348.

Member	City	State
SouthTrust Bank of Alabama, N.A.	Birmingham	AL
First FS&LA of Dekalb County.	Fort Payne	AL
First FSB of DeFuniak Springs.	DeFuniak Springs.	FL
Charter S&LA of Florida	Delray Beach	FL
Destin Bank	Destin	FL
Unifirst Federal Savings Bank.	Hollywood	FL
First FS&LA of Osceola County.	Kissimmee	FL
Eagle National Bank of Miami.	Miami	FL
Murdock Savings Bank	Murdock	FL
First National Bank of Naples.	Naples	FL
Turnberry S&LA	North Miami Beach.	FL
Lochaven Federal S&LA	Orlando	FL
Flamingo Bank	Pembroke Pines.	FL
Presidential Bank, a State SB.	Sarasota	FL
First Florida Bank, N.A	Tampa	FL
Indian River FSB	Vero Beach	FL
Allatoona FSB	Acworth	GA
Bank of Adairsville	Adairsville	GA
Metro Bank	Atlanta	GA
Bainbridge National Bank.	Bainbridge	GA
First FSB of Bainbridge	Bainbridge	GA
Baxley FSB	Baxley	GA
First Federal Savings Bank.	Calhoun	GA
Cherokee Federal Bank, FSB.	Canton	GA
Douglas Federal Bank e FSB.	Douglasville	GA
Elberton FS&LA	Elberton	GA
Liberty Savings Bank, FSB.	Macon	GA
Mountain National Bank	Tucker	GA
Advance FS&LA	Baltimore	MD
Belmar FS&LA	Baltimore	MD
Hamilton FS&LA	Baltimore	MD
Leeds FS&LA	Baltimore	MD
Madison and Bradford FS&LA.	Baltimore	MD
Westview FS&LA	Baltimore	MD
Presidential Savings Bank, FSB.	Bethesda	MD
First Security FSB	Chevy Chase	MD
Laurel FSB	Laurel	MD
Baltimore Cty. Savings Bank, FSB.	Perry Hall	MD
Baltimore S&LA, F.A.	Pikesville	MD
Reisterstown FSB	Reisterstown	MD
American Federal Savings Bank.	Rockville	MD
First Shore FS&LA	Salisbury	MD
Ashburton FS&LA	Westminster	MD
Cowenton FS&LA	White Marsh	MD
Orange FS&LA	Chapel Hill	NC
Clyde Savings Bank	Clyde	NC
Gaston FS&LA	Gastonia	NC
First Carolina FSB	Kings Mountain	NC
Home Federal Savings Bank.	Kings Mountain	NC
Scotland S&LA	Laurinburg	NC
Progressive S&LA, Ltd	Lumberton	NC
Mooresville FS&LA	Mooresville	NC
Roxboro S&LA	Roxboro	NC
Western Carolina S&LA	Valdese	NC
Haywood S&LA, Inc	Waynesville	NC
Perpetual FSB	Anderson	SC
Spratt S&LA	Chester	SC
Atlantic Savings Bank, FSB.	Hilton Head Island.	SC
Heritage FS&LA	Laurens	SC
Coastal FSB	Myrtle Beach	SC
Home FS&LA of South Carolina.	Rock Hill	SC
Oconee S&LA	Seneca	SC
First Commonwealth Savings Bank.	Alexandria	VA
Acacia Federal Savings Bank.	Annandale	VA
Fairfax Bank and Trust Company.	Fairfax	VA
Virginia Savings Bank	Front Royal	VA
Co-operative Savings Bank, FSB.	Lynchburg	VA
First FSB of Virginia	Petersburg	VA
Regency Bank	Richmond	VA
Community FSB	Staunton	VA
Virginia Beach FSB	Virginia Beach	VA
Jefferson S&LA	Warrenton	VA

Federal Home Loan Bank of Cincinnati—District 5, Post Office Box 598, Cincinnati, Ohio 45201.

Member	City	State
Catlettsburg FS&LA	Catlettsburg	KY
Sunrise Bank for Savings, FSB.	Fort Mitchell	KY
Harlan FS&LA	Harlan	KY
The Cumberland FSB	Louisville	KY
First FS&LA	Morehead	KY
Commonwealth Bank, FSB.	Mt. Sterling	KY
Republic Bank of Shelby County.	Shelbyville	KY
Great Northern Savings Co.	Barberton	OH
Belmont FS&LA	Bellaire	OH
First FS&LA of Wood County.	Bowling Green	OH
First FS&LA of Bucyrus	Bucyrus	OH
First FS&LA of Centerburg.	Centerburg	OH
BMF Federal Savings Bank.	Cincinnati	OH
Cherry Grove Savings Bank.	Cincinnati	OH
Cottage Savings Assoc. FA.	Cincinnati	OH
Suburban FSB	Cincinnati	OH
The Franklin S&L Co.	Cincinnati	OH
Warsaw FS&LA of Cincinnati.	Cincinnati	OH
The First FSB	Cleveland	OH
Third FS&LA of Cleveland.	Cleveland	OH
State Savings Bank	Columbus	OH
Midwest Savings Bank	De Graff	OH
Liberty Savings Bank, FSB.	Hillsboro	OH
NCB Savings Asso	Hillsboro	OH
First FSB of Kent	Kent	OH
Home S&L Co. of Kenton.	Kenton	OH
Kenwood S&LA	Kenwood	OH
First FS&LA of Lakewood.	Lakewood	OH
Fairfield FS&LA of Lancaster.	Lancaster	OH
Leesburg FS&LA	Leesburg	OH
First FS&LA of Lima	Lima	OH
South Side Savings Bank, FSB.	Lima	OH
Citizens Loan & Savings Co.	London	OH
Security FS&LA of Cleveland.	Mayfield Heights.	OH
New Carlisle FSB	New Carlisle	OH
Fidelity FS&LA	Norwood	OH
Third S&L Co	Piqua	OH
Home City FS&LA of Springfield.	Springfield	OH
1st Ohio Savings Bank, FSB.	St. Bernard	OH
Perpetual FSB	Urbana	OH
First FS&LA of Warren	Warren	OH
First FSB of Washington Ct. House.	Washington Ct. House.	OH
Jefferson Savings Bank	West Jefferson	OH
Milton FS&LA	West Milton	OH
Tennessee National Bank.	Columbia	TN
First City Bank	Murfreesboro	TN
Newport FS&LA	Newport	TN
First FS&LA of Giles Co	Pulaski	TN

Federal Home Loan Bank of Indianapolis—District 6, P.O. Box 60, Indianapolis, IN 46205–0060.

Member	City	State
Boonville FSB	Boonville	IN
First State Bank	Brazil	IN
Union S&LA	Connersville	IN
Union FS&LA of Crawfordsville.	Crawfordsville	IN
First FSB	Evansville	IN
Citizens SB of Frankfort	Frankfort	IN
Union FSB of Frankton	Frankton	IN
Kentland Bank	Kentland	IN
The Logansport S&LA	Logansport	IN
Home Bank, SB	Martinsville	IN
Community Bank, FSB	Michigan City	IN
Peoples Bank, FSB	Munster	IN
Mid-Southern Savings Bank.	Salem	IN
Owen County State Bank.	Spencer	IN
The Merchants NB of Terre Haute.	Terre Haute	IN
Homestead Savings Bank, FSB.	Albion	MI
LaSalle FSB	Buchanan	MI
Branch County FS&LA	Coldwater	MI

Member	City	State
Marshall Savings Bank, FSB.	Marshall	MI
Colonial Central Savings Bank, FSB.	Mount Clemens.	MI
New Buffalo Savings Bank, a FSB.	New Buffalo	MI
Citizens FSB	Port Huron	MI

Federal Home Loan Bank of Chicago—District 7, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Member	City	State
Batavia Savings Bank, FSB.	Batavia	IL
Bradley Bank	Bradley	IL
Centralia Savings Bank, FA.	Centralia	IL
Illinois-Service FS&LA	Chicago	IL
National Security Bank	Chicago	IL
Northwestern S&LA	Chicago	IL
South Central Bank & Trust Co.	Chicago	IL
Home FS&LA of Elgin	Elgin	IL
Fairbury FS&LA	Fairbury	IL
Galena State Bank & Trust Co.	Galena	IL
Highland S&LA	Highland	IL
Fairfield S&LA	Long Grove	IL
Republic Savings Bank, FSB.	Matteson	IL
McHenry Savings Bank	McHenry	IL
The Farmers Bank	Mt. Pulaski	IL
Regency Savings Bank, FSB.	Naperville	IL
Financial Federal Trust & SB.	Olympia Fields	IL
Pekin S&LA	Pekin	IL
Homebanc, FSB	Rockford	IL
Citizens State Bank of Shipman.	Shipman	IL
Town & Country Bank of Springfield.	Springfield	IL
Tremont S&L	Tremont	IL
Northwest Federal Banking & Savings, FA.	Amery	WI
Banner Banks	Birnamwood	WI
North Shore Bank, FSB	Brookfield	WI
Anchor S&LA	Madison	WI
Peoples State Bank	Mazomanie	WI
Milton S&LA	Milton	WI
KK Federal Bank, FSB	Milwaukee	WI
Mutual Savings Bank of WI, SA.	Milwaukee	WI
Fox Cities Bank, FSB	Neenah	WI
Oshkosh S&LA	Oshkosh	WI
Federated Bank, SSB	Wauwatosa	WI

Federal Home Loan Bank of Des Moines—District 8, 907 Walnut Street, Des Moines, Iowa 50309.

Member	City	State
Perpetual SB	Cedar Rapids	IA
Dubuque Bank & Trust Co.	Dubuque	IA
Harvest SB, FSB	Dubuque	IA
First FSB of Fort Dodge	Fort Dodge	IA
Security Bank	Marshalltown	IA
Webster City FSB	Webster City	IA
American FSB	East Grand Forks.	MN
Community FS&LA of Little Falls.	Little Falls	MN
First FSB	Morris	MN
Security Financial B&S, FSB.	St. Cloud	MN
Winona National and SB	Winona	MN
The Farmers Bank	Carrollton	MO
First Bank, a SB	Clayton	MO
Joachim S&LA	DeSoto	MO
Fulton S&LA	Fulton	MO
Southwest Bank of Hickory Co.	Hermitage	MO
Mutual Savings Bank	Jefferson City	MO
The Brookside Savings Bank, FSB.	Kansas City	MO
First Savings Bank	Mt. Vernon	MO
Progressive Ozark Bank, FSB.	Salem	MO
Central West End Bank, a FSB.	St. Louis	MO
Reliance FS&LA	St. Louis	MO

Federal Home Loan Bank of Dallas—District 9, 5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038.

Member	City	State
Benton S&LA	Benton	AR
Home FS&LA	Jonesboro	AR
Newport FS&LA	Newport	AR
Grant County S&LA	Sheridan	AR
United FSB	Springdale	AR
First FS&LA of Texarkana.	Texarkana	AR
Crowley B&LA	Crowley	LA
Jefferson S&LA	Gretna	LA
Eureka Homestead Society.	New Orleans	LA
Fidelity FA	New Orleans	LA
Iberville B&LA	Plaquemine	LA
New South BFS, FSB	Batesville	MS
Grand BFS, FSB	Leakesville	MS
Home FS&LA	Meridian	MS
First FS&LA of Pascagoula.	Pascagoula	MS
Home FSB of New Mexico.	Deming	NM
Gallup FS&LA	Gallup	NM
Century Bank FSB	Santa Fe	NM
Shelby County SA	Center	TX
Henderson S&LA	Henderson	TX
Texas Trust SB, FSB	Horseshoe Bay	TX
Coastal Banc SA	Houston	TX
Sun SA	Houston	TX
Angelina S&LA	Lufkin	TX
Lufkin FS&LA	Lufkin	TX
The First NB of Palestine.	Palestine	TX
Olympic SA	Refugio	TX
First FS&LA of Tyler	Tyler	TX

Federal Home Loan Bank of Topeka—District 10, Post Office Box 176, Topeka, Kansas 66601.

Member	City	State
The First NB of Canon City.	Canon City	CO
The Burns National bank of Durango.	Durango	CO
Colorado SB, FSB of Grand Co.	Englewood	CO
Home Federal Savings Bank.	Fort Collins	CO
Morgan County FS&LA of Fort Morgan.	Fort Morgan	CO
Vectra Bank of Lakewood.	Lakewood	CO
Colorado Federal Savings Bank.	Sterling	CO
Citizens S&LA	Leavenworth	KS
First Savings Bank, FSB	Manhattan	KS
First FS&LA of Olathe	Olathe	KS
First National Bank and Trust.	Osawatomie	KS
Commercial Federal Bank, A FSB.	Omaha	NE
American Savings Bank, A FSB.	Ada	OK
Cimmarron FS&LA	Muskogee	OK
Republic Bank of Norman.	Norman	OK
First Western FS&LA	Oklahoma City	OK
First City Bank	Tulsa	OK

Federal Home Loan Bank of San Francisco—District 11, 307 East Chapman Avenue, Orange, California 92666.

Member	City	State
Bank of Stockdale, FSB	Bakersfield	CA
Paramount Savings Bank.	Bakersfield	CA
Union Federal Savings Bank.	Brea	CA
Fremont Bank	Fremont	CA
Inland Savings and Loan Asso.	Hemet	CA
Long Beach Bank, SSB	Long Beach	CA
Metrobank	Los Angeles	CA
The Vintage Bank	Napa	CA
American Liberty Bank, SSB.	Oakland	CA
Great Pacific Bank, SSB	Pacifica	CA
Redlands FS&LA	Redlands	CA
Bay Cities National Bank	Redondo Beach.	CA
Summit Savings	Rohnert Park	CA
Great American Bank, a FSB.	San Diego	CA
Lake S&LA	San Francisco	CA
National Bank of Southern CA.	Santa Ana	CA
Bank of Walnut Creek	Walnut Creek	CA
Watsonville FS&LA	Watsonville	CA
American Federal Savings Bank.	Reno	NV
Home Federal Bank, SB	Reno	NV

Federal Home Loan Bank of Seattle—District 12, 1501 4th Avenue, Seattle, Washington 98101-1693.

Member	City	State
Northrim Bank	Anchorage	AL
Guam Savings and Loan Asso.	Agana	GU
Finance Factors, Ltd	Honolulu	HI
American Bank of Commerce.	Boise	ID
First FSB of Twin Falls	Twin Falls	ID
Pioneer Federal S&LA	Deer Lodge	MT
United Savings Bank, F.A.	Great Falls	MT
Pacific Continental Bank	Eugene	OR
First FS&LA of McMinnville.	McMinnville	OR
Douglas National Bank	Roseburg	OR
Odgen First FS&LA	Odgen	UT
Home Credit Bank	Salt Lake City	UT
Columbia Savings Bank, a FSB.	Longview	WA
Continental Savings Bank.	Seattle	WA
Olympia Savings Bank	Seattle	WA
Washington First International Bank.	Seattle	WA

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBank no later than September 30, 1992.

All public comments concerning the Community Support performance of selected members must be submitted to the member's FHLBank no later than September 30, 1992.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each

member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actural review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

Dated: August 7, 1992.

By the Federal Housing Finance Board.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92-19425 Filed 8-14-92; 8:45 am]

BILLING CODE 6725-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 92-45]

West Gulf Maritime Association v. the Port of Houston Authority; Filing of Complaint and Assignment

Notice is given that a complaint filed by West Gulf Maritime Association ("Complainant") against The Port of Houston Authority ("Respondent") was served August 7, 1992. Complainant alleges that Respondent has violated sections 10(b)(11) and (12) of the Shipping Act of 1984, 46 U.S.C. app. 1709(b)(11) and (12), by entering into negotiations with Houston Deepwater, Inc. and excluding other potential lessees or operators of a terminal facility sometimes called Omniport Terminal, and by adopting a resolution authorizing the entering into of a lease under which wharfage is not paid in the manner as other users of Respondent's terminal facilities.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 9, 1993, and the final decision of the Commission shall be issued by December 7, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92-19474 Filed 8-14-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[Dkt. C-3386]

Pyraponic Industries II, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a San Diego-based company and its owner from making false or unsubstantiated representations that the Phototron indoor greenhouse, or any air cleaning device, removes or reduces indoor air contaminants.

DATES: Complaint and Order issued July 30, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Linda Badger, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Tuesday, May 19, 1992, there was published in the **Federal Register**, 57 FR 21291, a proposed consent agreement with analysis In the Matter of Pyraponic Industries II, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 712; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-19516 Filed 8-14-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 911-0068]

Quality Trailer Products Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Texas manufacturer, seller, and distributor of axle products from requesting, suggesting, urging, or advocating that its competitors raise, fix or stabilize prices or price levels, or cease providing discounts. It also would prohibit the respondent from entering into agreements that would fix, raise, or stabilize prices.

DATES: Comments must be received on or before October 16, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Antalics, FTC/S-2627, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Quality Trailer Products Corporation, a corporation, hereinafter sometimes referred to as proposed respondent or "Quality Trailer Products" and it now appearing that Quality Trailer Products is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Quality Trailer Products, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Quality Trailer Products Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of Texas with its principal place of business located at 633 Northwest Parkway, Azle, Texas and with its headquarters mailing address at P.O. Box 1349, Azle, Texas 76020.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For purposes of this order, the following definitions shall apply:

A. "Respondent" means Quality Trailer Products Corporation, its predecessors, subsidiaries, divisions, groups, and affiliates controlled by Quality Trailer products Corporation, and all their respective directors, officers, employees, agents and representatives, and all their respective successors and assigns.

B. "Axle products" means axles of any size, hubs, spindles, brakes, and any other products used in making axles.

II.

It is ordered That respondent, directly or indirectly, through any corporation, subsidiary, division or other device, in connection with the manufacture, advertising, offering for sale, sale or distribution of any axle products, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith cease and desist from:

A. Requesting, suggesting, urging, or advocating that any other producer or seller of axle products raise, fix or stabilize prices or price levels, cease providing discounts, or engage in any other pricing action; and

B. Entering into, threatening or attempting to enter into, adhering to, maintaining, or carrying out any combination, conspiracy, agreement, understanding, plan or program with any other producer or seller of axle products to fix, raise, establish, control, maintain or stabilize prices or price levels.

Provided, That nothing in this order shall prohibit respondent from: (1) Agreeing to purchase or distribute any competitor's axle products, and (2) negotiating or agreeing upon the price under which any competitor's axle product will be purchased by respondent.

III.

It is further ordered that respondent shall:

A. Within thirty (30) days after the date on which this order becomes final, provide a copy of this order to all of its directors, officers, and management employees;

B. For a period of five (5) years after the date on which this order becomes final, and within ten (10) days after the date on which any person becomes a director, officer, or management employee of respondent provide a copy of this order to such person; and

C. Require each person to whom a copy of this order is furnished pursuant to subparagraphs III. A. and B. of this order to sign and submit to Quality Trailer Products Corporation within thirty (30) days of the receipt thereof a statement that: (1) Acknowledges receipt of the order; (2) represents that the undersigned has read and understands the order; and (3) acknowledges that the undersigned has been advised and understands that non-compliance with the order may subject

respondent to penalties for violation of the order.

IV.

It is further ordered That respondent shall:

A. File with the Commission a verified written report setting forth in detail the manner and form in which respondent has complied and is complying with this order within sixty (60) days from the date on which this order becomes final, annually thereafter for five (5) years on the anniversary date of this order, and at such other times as the Commission may by written notice to the respondent require; and

B. Notify the Commission at least thirty (30) days prior to any change in respondent such as dissolution, assignment or sale resulting in the emergency of a successor corporation, or any other change in the corporation, including the creation or dissolution of subsidiaries, that may affect compliance obligations arising out of this order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Quality Trailer Products Corporation, a manufacturer of trailer axles with its principal place of business located at 633 Northwest Parkway, Azle, Texas.

The proposed consent order has been placed on the public record for 60 days for reception of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint alleges that two representatives of Quality Trailer Products Corporation visited one of its competitors and invited the competitor to fix prices. The complaint alleges that the invitation to collude, if accepted, would constitute an agreement in restraint of trade. The complaint further alleges that the invitation itself violates section 5 of the Federal Trade Commission Act. The challenged conduct did not relate to any proposed bona fide integration between the parties.

Quality Trailer Products Corporation has signed a consent agreement to the proposed consent order. The order prohibits Quality Trailer Products Corporation from requesting, suggesting, urging, or advocating that any other producer or seller of trailer axles raise, fix or stabilize prices or price levels, cease providing discounts, or engage in any other pricing action. The proposed consent order also prohibits Quality Trailer Products Corporation from entering into, threatening or attempting to enter into, adhering to, maintaining, or carrying out any combination, conspiracy, agreement, understanding, plan or program with any other producer or seller of axle products to fix, raise, establish, control, maintain or stabilize prices or price levels. The order's provisions apply to axle products which are defined as axles of any size, hubs, spindles, brakes, and any other products used in making axles. The order expressly does not prohibit Quality Trailer Products Corporation from agreeing to purchase or distribute any competitor's axle products or negotiating or agreeing upon the price under which any competitor's axle product will be purchased by respondent.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Quality Trailer Products Corporation, File 911–0068

The available evidence shows that officers of Quality Trailer Products Corporation made an uninvited visit to the headquarters of a competitor and, in a face-to-face meeting with an officer of that competitor, made an unambiguous offer to fix the prices of certain products. No justification or excuse has been advanced for this conduct. In these limited circumstances, and based on evidence independent of any testimony or material within the control of the competitor who received the offer, I have voted to accept this proposed consent agreement for public comment.

Concurring Statement of Commissioner Deborah K. Owen in the Matter of Quality Trailer Products Corporation File No. 911–0068

The complaint in this matter alleges that two of respondent's representatives invited an officer of a competitor to fix prices. Specifically, they told the competitor that certain of its prices were too low and that there was "no need" for the companies to compete on price, and provided assurances that respondent would not sell below a specified price. The invitation was not accepted. The conduct did not relate to any proposed, bona fide integration between the parties.

If the alleged invitation had been accepted, it clearly would have constituted a restraint of trade. However, in this case, the invitation to collude itself—the attempt to engage in a naked price restraint—is alleged to be an unfair method of competition in violation of section 5 of the Federal Trade Commission Act. No allegation is made in the complaint as to respondent's market power.

The proposed order in this case would prohibit the respondent from: (1) Suggesting or advocating that any other producer or seller fix prices or engage in any other pricing action; and (2) entering, or attempting to enter, into any agreement with another producer or seller to fix prices. Purchasing, or negotiating the purchase of, a competitor's product is expressly not prohibited.

Enforcement actions with respect to invitations to collude on price are no longer novel. *See United States* v. *American Airlines*, 743 F.2d 1114 (5th Cir. 1984). However, the conduct in *American Airlines* was challenged as an illegal attempt to monopolize in violation of section 2 of the Sherman Act. Under section 2, proof of market power was required. Here, the complaint does not allege market power or dangerous probability of monopolization. The issue is whether Commission action is appropriate with respect to collude on price in oligopolistic or unconcentrated markets.

Invitations to collude on price in such markets fall outside the parameters of the Sherman Act, and require invocation of section 5 of the FTC Act. Although the reach of section 5 has been argued vigorously, legislative history and case law support its extension beyond the strict purview of the Sherman and Clayton Acts, and preventing monopolization in its incipiency enjoys special recognition.[1] Nonetheless, invoking the penumbra of the antitrust laws through the use of section 5 warrants cautious analysis.[2]

[1] For a general discussion of the scope of the statute, see Averitt, *The Meaning of "Unfair Methods of Competition" in Section 5 of the Federal Trade Commission Act*, 21 B.C.L. Rev. 227 (1980).

[2] As noted in the 1989 Report of the American Bar Association Section of Antitrust Law Special Committee to Study the Role of the Federal Trade Commission (at 20 n.11), "[a]lthough it is well established that section 5's ban on 'unfair methods of competition' permits the FTC to proscribe conduct not reached by prevailing interpretations of the Sherman and Clayton Acts, there is a debate about how far section 5 reaches beyond those Acts." The Report generally cautions that the "Commission should file a case only when it can anticipate relief that is practical, likely to remedy

Continued

With respect to oligopolistic markets, Professors Areeda and Turner have argued that "a solicitation to raise prices in concert may reduce [firms'] uncertainty, either by setting a target price or by raising confidence that rivals will follow."[3] The invitation to collude may, by its very existence, and whether or not it is accepted, facilitate pricing coordination among rivals. Areeda and Turner suggest section 5 of the FTC Act as one avenue for attacking such solicitations,[4] and the *Ethyl* case makes clear that under circumstances of "oppressive" behavior, section 5 covers certain unilateral conduct in an oligopolistic setting.[5]

Another possibility, in a market with relatively few competitors, is that in invitation to collude comes from a representative of a broader group of competitors, who are now colluding, or who wish to collude in the future. if the group is sufficiently broad, acceptance of the offer will clearly injure consumers. However, having to allege and prove some broader conspiracy or other alternative to market power can be difficult. There may be no clear, observable manifestation of such conduct, and those engaged in it will usually take precautions to avoid leaving a paper trail to any agreement.

Apparently unconcentrated markets present the most difficult cases to analyze. Nonetheless, various theories of harm from solicitations to collude in such markets have been posited. First, invitations to collude on price may cause injury even in an unconcentrated market. For instance, as the recently issued Department of Justice and Federal Trade Commission Horizontal Merger Guidelines make clear, a firm may have the ability to price discriminate as to certain customers, or within certain smaller geographic regions.[6] Under those circumstances, injury from acceptance of the invitation may be foreseeable since an apparently unconcentrated market may actually be narrower than would first seem. Furthermore, parties to the invitation may have differentiated products that are the first and second choices of certain buyers in the market, or they may share relative advantages in serving some buyers.[7] Similarly, in a given bidding situation, the potential for harm to an individual customer may exist.[8]

The question then becomes: Is it reasonable to assume from the solicitation to collude, in and of itself, that acceptance would injure consumers? Economists frequently tell us that firms do not usually engage in irrational acts. This could suggest that a party who solicits price collusion harbors some expectation that its acceptance will actually produce anticompetitive gains: why would anyone risk going to jail for price-fixing if he would not even benefit if the invitation were accepted? It may therefore be appropriate to begin with a rebuttable inference that acceptance of the solicitation would have harmed consumers. Requiring a showing of market power, or equivalent alternative, may shield attempts to reach such collusive agreements from antitrust penalties. In a sense, the offender may be given a free bite at the apple—if its solicitation is spurned, it is not subject to antitrust penalties, and if the invitation is accepted, an agreement may be consummated that presumptively harms consumers, but might never be detected.

While I find these arguments in favor of deterring invitations to collude on price compelling, it is not without a reservation. If it is objectively unlikely that the firms in question would succeed in exercising market power, or if some other theory of harm cannot be proffered, one might question whether the participants indeed anticipated any anticompetitive gains. This raises the concern that the solicitation that is being characterized as a solicitation to price-fix may in fact be something else, perhaps a solicitation to embark on a broader joint venture or some other efficient agreement. Some procompetitive joint ventures necessarily involve ancillary agreements that affect prices. Accordingly, we do not want to prohibit attempts to implement procompetitive joint activities simply because one of the terms the joint venturers must agree on is price, such as in the *BMI* situation.[9] Otherwise, we could deprive consumers of efficient new forms of marketing or new products. This consideration imposes on us a duty to ensure that the conduct involved is indeed an invitation to join in a naked price restraint, and not an efficient agreement. Thus, while an iron-clad demonstration of harm is not, in my view, a prerequisite to prosecuting a section 5 case against attempted price-fixing, the absence of potential injury compels us to check our facts on the issue of whether a pure naked restraint alone is involved.[10]

It is from this perspective that I believe we should also view the remedies in this case. Where the Commission finds reason to believe that the law has been violated, it will frequently "fence-in" the challenged conduct, prohibiting conduct that would otherwise be legal. This can ensure against future violations, facilitate enforcement of its order, and remedy any lingering effect of the violation. The order in this case, by imposing a blanket prohibition on urging any price action by a competitor, or attempting to enter into an agreement to fix prices, could be interpreted to prohibit, in addition to naked price-fixing invitations, a solicitation to enter into a procompetitive joint venture that incidentally involved the setting of prices. While such a prohibition might be acceptable in this case for fencing-in and enforcement purposes, I do not interpret this action to mean that the Commission intends to discourage solicitations to joint venture, or any other legitimate activity that may involve price discussions. Indeed, the Analysis of Proposed Consent Order to Aid Public Comment expressly notes that the facts in this case did not involve any bona fide integration, and the proviso expressly permits the discussion of prices with respect to certain sales between competitors.[11]

the perceived harm, and not unduly burdensome", *Id.* at 17, thus implying that some sort of demonstration of injury is appropriate.

[3] P. Areeda & D. Turner, 6 *Antitrust Law* 117 (1986).

[4] *Id.* at 118.

[5] *E.I. DuPont de Nemours & Co. v. FTC*, 729 F.2d 128, 139 (2d Cir. 1984).

[6] §§ 1.12 & 1.22. 5 (CCH) Trade Reg. Rep. ¶ 13,104 (Apr. 2, 1992) ("Merger Guidelines").

[7] Merger Guidelines, § 2.21.

[8] The theory behind the cases brought by the Justice Department, in which market power has not been alleged, is that the solicitation is an attempted fraud on the customer because it is "'an attempt to inflate prices [the] customers would be deceived into believing * * * were governed by market forces, not the secret agreement of competitors.'" *See*, "Report from Official Washington," Remarks of James F. Rill, Assistant Attorney General, Antitrust Division, before the 39th Annual Antitrut Spring Meeting of the Section of Antitrust Law, American Bar Association (Apr. 12, 1991), at 9 (quoting *U.S.* v. *Critical Industries Co.*).

[9] *Broodcast Music, Inc.* versus *Columbio Broadcasting Sys., Inc.* 441 U.S. 1 (1979). *See also Notional Bancard Corp.* versus *Visa, U.S.A., Inc.*, 779 F.2d 592 (11th Cir. 1986).

[10] In this case, I believe that at least one of the theories of harm applies and no bona fide, proposed integration was involved.

[11] In light of the respondent's consent to these broad prohibitions, it is fair to assume that this particular company does not anticipate any future joint venture, or joint bid activity, that would be prohibited under this Order. This would not necessarily be true of other companies, and more tailored relief might be appropriate under different facts. Furthermore, in the event that the respondent's plans change, they could petition the Commission for an order modification pursuant to 16 CFR 2.51.

In sum, I have voted in favor of this consent agreement because the facts of the case compel a conclusion that an attempt was made to engage in hard-core, price-fixing. On that basis, and because of the Commission's unique enforcement needs here, I do not interpret our action to stifle legitimate efforts to joint venture. Finally, I believe that the conduct of the respondent was not harmless.

[FR Doc. 92-19517 Filed 8-14-92; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Hanford Thyroid Morbidity Study Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control (CDC) announces the following committee meeting.

Name: Hanford Thyroid Morbidity Study Advisory Committee.

Time and Date: 7 p.m.-10 p.m., September 1, 1992.

Place: Wyndham Garden Hotel, 18118 Pacific Highway South, Seattle, Washington 98188.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Director, CDC, regarding the scientific merit and direction of the Hanford Thyroid Morbidity Study. The committee will review development of the study protocol and recommend changes of scientific merit to CDC, advise on the conduct of the pilot study using the approved protocol, and assist in determining the feasibility of a full-scale epidemiologic study. If the full-scale epidemiologic study is carried out, the committee will advise CDC on the design and conduct of the study and analysis of the results.

Matters to be Discussed: The Hanford Thyroid Morbidity Study Advisory Committee will meet to discuss: (1) A summary of the workshop held May 14, 1992, on the use of screening methods for thyroid disease in populations near the Department of Energy's nuclear facilities and, (2) A proposal to add ultrasound examinations to the clinical component of the Hanford Thyroid Disease Study conducted by the Fred Hutchinson Cancer Research Center.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road NE., (F-35), Atlanta, Georgia 30333, telephone 404/488-7040.

Dated: August 11, 1992.

Robert L. Foster,

Assistant Director for Special Projects, Office of Program Support, Centers for Disease Control.

[FR Doc. 92-19497 Filed 8-14-92; 8:45 am]
BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92N-0259]

Bio-Blood Components, Inc.; Revocation of U.S. License No. 785-002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 785-002) and the product licenses issued to Bio-Blood Components, Inc., for the manufacture of Source Plasma and Source Leukocytes. The licenses were revoked for the location at 800 Travis St., Shreveport, LA. Other locations under U.S. License No. 785 were not affected by this action. In a letter to FDA dated September 18, 1991, the firm requested that its establishment and product licenses be revoked and thereby waived an opportunity for a hearing on this matter.

DATES: The revocation of the establishment license (U.S. License No. 785-002) and product licenses became effective March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 785-002) and the product licenses issued to Bio-Blood Components, Inc., 800 Travis St., Shreveport, LA 71101, for the manufacture of Source Plasma and Source Leukocytes. The mailing address for Bio-Blood Components, Inc., is in care of Interstate Blood Bank, Inc., 766 West Napa St., Sonoma, CA 95476.

FDA conducted two inspections of Bio-Blood Components, Inc., between June 11 and July 26, 1991. These inspections and a concurrent investigation documented serious deviations from the applicable Federal regulations. Deviations identified during the two inspections included, but were not limited to, the following: (1) Failure to maintain a complete record from which unsuitable donors may be identified so that products from such individuals will not be distributed, in that (a) products from two donors who tested reactive for the hepatitis B surface antigen (HBsAg) were labeled as nonreactive and distributed, and (b) several products from four donors who were ineligible to donate, based on previous reactive test results for the antibody to the human immunodeficiency virus, Type 1 (anti-HIV-1), were distributed; (2) failure to maintain a complete and up-to-date donor deferral file in that a donor who previously tested reactive for HBsAg and one donor who tested reactive for anti-HIV-1 were not included on the permanent deferral list; and (3) failure to ensure that personnel were adequately trained to perform the critical steps involved in the plasmapheresis procedure in that no training documentation was on file for four current employees. In addition, FDA's investigation documented that deviations routinely occurred in areas of the plasmapheresis operation. These included: (1) The direct reinfusion into the donor of whole blood collected in excess of the maximum allowed; (2) the falsification of daily quality control records involving the refractometer, blood typing reagents, microhematocrit centrifuges, and donor scales; and (3) the falsification of training records and in the dating of donor physical records.

FDA determined that the deviations from Federal regulations were serious and constituted a danger to public health. In a letter to Bio-Blood Components, Inc., dated August 2, 1991, FDA suspended the firm's licenses. In a letter to FDA dated August 5, 1991, the firm requested that revocation of the licenses be held in abeyance. In a letter to Bio-Blood Components, Inc., dated September 10, 1991, FDA denied the firm's request that revocation of the licenses be held in abeyance, based on the seriousness and willfulness of the deficiencies outlined above and the firm's inadequate responses to those findings. In the same letter, FDA issued Bio-Blood Components, Inc., notice of FDA's intent to revoke U.S. License 785-002 and announced its intent to offer an opportunity for a hearing. In a letter to FDA dated September 18, 1991, Bio-Blood Components, Inc., voluntarily requested that its licenses be revoked and thereby waived its opportunity for a hearing. The agency granted the licensee's request by letter dated March 16, 1992, which revoked the establishment license (U.S. License No. 785-002) and the product licenses for the manufacture of Source Plasma and Source Leukocytes.

FDA has placed copies of the letters relevant to the license revocations on file, under the docket number found in brackets in the heading of this document, with the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under section 351 of the Public Health Service Act (42 U.S.C. 262), 21 CFR 601.5, and under authority delegated to the Commissioner of Food and Drugs at 21 CFR 5.10 and redelegated to the Director, Center for Biologics Evaluation and Research at 21 CFR 5.68, the establishment license (U.S. License No. 785-002) and the product licenses issued to Bio-Blood Components, Inc., for the manufacture of Source Plasma and Source Leukocytes were revoked, effective March 16, 1992.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: August 6, 1992.

Gerald V. Quinnan, Jr.,

Deputy Director, Center for Biologics Evaluation and Research.

[FR Doc. 92-19502 Filed 8-14-92; 8:45 am]
BILLING CODE 4160-01-F

Public Health Service

National Toxicology Program (NTP); Public Meeting To Receive Comments on the Final Report of the Advisory Review of the NTP

A public meeting will be held on September 11, 1992, in Washington, DC, to provide opportunity for comments on the final report of the Advisory Review of the NTP by the NTP Board of Scientific Counselors on April 14 and 15, 1992. The complete report was published in the **Federal Register** (V.57, No. 138, pp. 31721-31730, Friday, July 17, 1992). The meeting will be held in the first floor auditorium of the Hubert Humphrey Building, 200 Independence Avenue SW., beginning at 9 a.m. with NTP agency scientific staff present to take public comments on the report.

The charge to the Board and the main thrust of the Report were concerned with reviewing and making recommendations to the Director, NTP, and the Program's Executive Committee on three specific issues having to do with how:

- To improve the quality of chemicals nominated for testing by assuring that they have the greatest public health significance;
- To assure that emphasis is placed on studies of the mechanisms of toxicity and carcinogenicity; and
- To develop and validate alternate assays that may reduce the need for long-term testing in animals.

A fourth issue, for which advice is being sought from the NTP Executive Committee, is concerned with how to improve the procedures for alerting regulatory agencies and the public about test results on chemicals (particularly data which suggest potential hazard to humans from chemicals of widespread importance). Comments on this issue also will be accepted. Additionally, suggestions of other activities to improve the NTP will be welcomed.

Comments at the meeting should be as brief as possible and may be supplemented by written comments, if desired, which should be received by the Program by C.O.B. September 4, 1992. Although registration is not required, it would be helpful for organizing the time available to hear in advance from persons who plan to make comments or statements. An order of speakers can then be assigned. Please contact the Executive Secretary, NTP Board of Scientific Counselors, Dr. Larry G. Hart, by telephone at 919/541-3971. Written comments may be sent to Dr. Hart at NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, or by FAX to 919/541-2260.

Dated: August 11, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92-19463 Filed 8-14-92; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-020-00-4212-13; U-66674]

Salt Lake District; Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of lands in Summit and Wasatch Counties, Utah.

SUMMARY: The following described public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1716):

Description	Acres
T. 2S., R. 4E, SLM	
Sec. 9, SE¼	
Sec. 10, SW¼	
Sec. 14, N½	
Approximate acres	110.00

Final determination on the exchange will await completion of an environmental analysis. In accordance with the regulations in 43 CFR 2201.1(b), the publication of this notice will segregate the public lands as described above, from appropriation under the public land laws, including the mining laws, but not the mineral leasing laws.

Information on the exchange is available from the District Manager, Bureau of Land Management, Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 92-19493 Filed 8-14-92; 8:45 am]
BILLING CODE 4310-DQ-M

INTERSTATE COMMERCE COMMISSION

[Final Docket No. 32129]

Burlington Northern Railroad Company—Trackage Rights Exemption—Norfolk and Western Railway Company

Norfolk and Western Railway Company (NW) has agreed to grant approximately 4.4 miles of overhead trackage rights to Burlington Northern Railroad Company (BN) between Bridge, MO and Oakwood Control Point, MO, as follows: Between NW/BN Junction at Bridge, MO (NW Milepost DH-515.3 corresponding to BN Milepost 120.3), via Hannibal, MO (NW Milepost 515.5 corresponding to NW Milepost H-0.0) and via Outer Depot, MO, to Oakwood Control Point, MO (NW Milepost H-4.2). The trackage rights will be effective on August 24, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102-5384.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under *Norfolk and Western Ry. Co—Trackage Rights—BN*, 354

I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: August 11, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19529 Filed 8-14-92; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub-No. 406x)

CSX Transportation, Inc.—Abandonment Exemption—in Weakley County, TN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-10904 the abandonment by CSX Transportation, Inc., of a portion of its Mobile Division, Memphis Subdivision, between Milepost ND-129.6 and Milepost ND-132.05 at Dresden, a distance of approximately 2.45 miles in Weakley County, TN, subject to employee protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 16, 1992. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by August 27, 1992. Petitions to stay must be filed by September 1, 1992. Petitions to reopen must be filed by September 11, 1992. Requests for public use conditions must be filed by September 7, 1992.

ADDRESSES: Send pleadings, referring to Docket No. AB-55 (Sub-No. 406X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioner's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610; (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927-5721).

Decided: August 10, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett did not participate in the disposition of this proceeding.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19530 Filed 8-14-92; 8:45 am]

BILLING CODE 7035-01-M

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-46]

NASA Advisory Council (NAC), Task Force for Shuttle Mission Review; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Task Force for Shuttle Mission Review.

DATES: August 31, 1992, from noon to 4 p.m.

ADDRESSES: 600 Maryland Avenue, SW., 300 East Capital Gallery, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mr. William Vantine, Code MB, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2510.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room (which is approximately 30 persons including Task Force members and other participants). The NAC Task Force for Shuttle Mission Review is reviewing the agency's process for assuming the responsibility for accomplishing satellite rescue and repair missions. The Task Force is chaired by Dr. Eugene Covert, Head of the Department of Aeronautics and Astronautics, Massachusetts Institute of Technology and is composed of 15 members. The purpose of this meeting is to discuss the potential population of satellites that could be eligible for rescue and repair through the year 2000. Public comments on other aspects of satellite rescue and repaid will also be solicited at this meeting. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: August 13, 1992.

Danalee Green,

Director, Management Controls Office.

[FR Doc. 92-19606 Filed 8-13-92; 11:40 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Grant Application Availability Notice for Fiscal Year 1993

AGENCY: Institute of Museum Services, NFAH.

ACTION: Grant application availability notice for fiscal year 1993.

SUMMARY: This grant application announcement applies to the General Operating Support (GOS), Conservation Project Support (CP), Conservation Assessment Program (CAP), Museum Assessment Program (MAP I), Museum Assessment Program (MAP II), Museum Assessment Program III (MAP III) and Professional Services Program (PSP) awards under 46 CFR part 1180 for Fiscal Year 1993.

ADDRESSES: Institute of Museum Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, IMS Public Information Officer, (202) 786-0536; after September 25, 1992 call (202) 606-8536. Deaf and hearing impaired individuals may call the TDD Line, (202) 786-9136, after September 25, 1992 call (202) 606-8636.

SUPPLEMENTARY INFORMATION: The purpose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions.

Eligibility

Museums meeting the definitions in 45 CFR 1180.3 may apply for these programs. The definition of "museum" includes (but is not limited to) the following institutions if they satisfy the other provisions of this section: aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art; history (including historic buildings); natural history; science and technology; and planetariums.

To be eligible for support from IMS a museum must:

Be organized as a public or private nonprofit institution and exist on a permanent basis for essentially educational or aesthetic purposes; and

Exhibit tangible objects through facilities it owns or operates; and

Have at least one professional staff member or the full-time equivalent whose primary responsibility is the care, or exhibition to the public of objects owned or used by the museum; and

Be open and have provided museum services to the general public on a regular basis for at least two full years * prior to the date of application to IMS; and

Be located in one of the fifty States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Program Categories

General Operating Support (GOS) IMS makes awards under the GOS program to museums to maintain, increase, or improve museum services through support for basic general operating expenses.

Conservation Project Support Program (CP) Awards are made through the CP program to assist with the conservation of museum collections, both living and non-living.

Conservation Assessment Program (CAP) Awards are made through CAP to provide an overall assessment of the condition of a museum's environment and collections to identify conservation needs and priorities. CAP is a non-competitive, one-time funding opportunity, offered on a first-come, first-served basis. It is administered in cooperation with the National Institute for Conservation, See 45 CFR part 1180, subpart D.

Museum Assessment Program (MAP) The MAP I funds an overall assessment of a museum's operations. The MAP II funds an assessment of the museum's collection-related policies. The MAP III provides an assessment of the public dimension of museum operations. All of the Museum Assessment Programs are non-competitive, one-time funding opportunities, offered on a first-come, first-served basis. The Museum Assessment Programs are administered in cooperation with the American Association of Museums through a memorandum of understanding. See 45 CFR part 1180, subpart D.

Professional Services Program (PSP) This program provides matching funds to professional museum associations for projects that serve the museum community.

Section 206 of the Museum Services Act, Title II of Pub. L. 94-462, as amended, contains authority for these programs. (20 U.S.C. 965)

Deadline Date for Transmittal of Applications

Applications must be mailed or hand-delivered by the deadline date:

Program	Deadline
GOS	January 22, 1993.
CP	October 16, 1992 and April 2, 1993.
PSP	March 19, 1993.
CAP	December 4, 1992.
MAP I	October 30, 1992 and April 30, 1993.
MAP II	January 29, 1993.
MAP III	February 26, 1993.

For GOS, CP and PSP Applications that are sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue NW., room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-canceled by the U.S. Postal Service.

Applications that are hand-delivered must be taken to the Institute of Museum Services, 1100 Pennsylvania Avenue NW., room 609, Washington, DC 20506. Hand-delivered applications will be accepted between 9 a.m. and 4:30 p.m. (Washington DC time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

For MAP I, MAP II, and MAP III Applicants must apply to IMS through the American Association of Museums (AAM). IMS supplies the AAM with application forms and instructions. These are forwarded by AAM to applicant museums. The Director of IMS approves applications meeting the MAP I, MAP II, and MAP III requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. If a museum's MAP I, MAP II or MAP III application is received on or before the indicated dates, it will be processed together with other MAP I, MAP II, or MAP III applications received during that period. Applications received after the indicated dates will be processed during the subsequent MAP I, MAP II or MAP III periods. In no event will MAP applications received after April 30, 1993, MAP II applications received after January 29, 1993, or MAP III application received after February 26, 1993 be processed for Fiscal Year 1993 awards. Applicants should contact the American Association of Museums, 1225 Eye Street, NW., Washington, DC 20005, for application packets.

For CAP Applicants must apply to IMS through the National Institute for Conservation (NIC). IMS supplies the NIC with application forms and instructions. These are forwarded by NIC to applicant museums. The Director of IMS approves applications meeting the CAP requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards subject to the availability of funds. Applicants must be received by December 4, 1992. Applications for FY 1993 awards which cannot be funded will not be carried over to the next fiscal year. All unfunded applicants who wish to receive an award in the subsequent year, must reapply. Interested parties should contact the National Institute for Conservation, 3299 K Street NW., suite 403, Washington, DC 20007 for applications.

Program Information

GOS program regulations are contained in 45 CFR XI 1180.7 (1988) and related provisions.

CP program regulations are contained in 45 CFR 1180.20 (1988) and related provisions.

CAP and MAP program regulations are contained in 45 CFR part 1180, subpart D (1988).

PSP program regulations are contained in 45 CFR part 1180, subpart E (1988).

Further program information may be found in the Application forms and accompanying instructions in the Application. See paragraph on Application Forms.

* Applicants to the Museum Assessment Program and the Conservation Assessment Program need not be open for two years.

Available Funds

As of publication time, funds for fiscal year 1993 have not been appropriated. Figures given in this section pertain to available funds for the 1992 fiscal year.

GOS For FY 1992, $20,868,000 was available for this program. The GOS program award is equal to 15% of the museum's operating budget to a maximum of $112,500 to be spent over a two-year period. The grant amount is determined annually by the National Museum Services Board. A museum that receives an award in one fiscal year may not apply for the following year's competition. (See 45 CFR 1190.16(b)).

CP For FY 1992, $2,940,000 was available for this program. Normally, IMS makes matching conservation grants of no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, with the advice of the Board, may award a Conservation Project Support grant which obligates in excess of $25,000 in Federal funds to a maximum of $75,000. The Director may make such a determination with respect to a category of Conservation grants by notice published in the Federal Register. IMS awards Conservation Project Support grants only on a matching bases. At least 50% of the costs of a project must be met with non-federal funds. See 45 CFR 1180.20(f)).

CAP For FY 1992, $905,000 was available for this program.

MAP I, MAP II, MAP III For FY 1992, $570,000 was available for this program.

PSP For 1992, $246,000 was available for this program. This program provides matching funds for cooperative agreements that generally do not exceed $50,000.

Funding Priorities for Conservation Project Support Program

The National Museum Services Board, by notice published in the Federal Register, may establish funding priorities among the types of projects. IMS Conservation Project Support guidelines identify four broad categories of museum collections: non-living; systematics/natural history collections; living collections/animals; and living collections/plants.

For each of the categories, with the exception of living collections/animals, the funding priority is a general conservation survey of collections and environmental conditions including development of institutional long-range conservation plans. For living collections/animals the funding priority is research for improved conservation techniques.

Application Forms

IMS mails application forms and program information in General Operating Support, Conservation Project Support and Professional Services Program application packets to museums and other institutions on its mailing list. Applicants may obtain application packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue NW., room 609, Washington, DC 20506, (202) 786–0539. After September 25, 1992 call (202) 606–8536. Deaf and hearing impaired individuals may call the TDD Line, (202) 786–9136, after September 25, 1992 call (202) 606–8636.

To receive an application for the Conservation Assessment Program contact the National Institute for Conservation, 3299 K Street, NW., suite 403, Washington, DC 20007 (202) 625–1495.

To receive an application for the Museum Assessment Programs contact the American Association of Museums,1225 Eye Street, NW., Washington, DC 20005 (202) 289–1818.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: August 11, 1992.

Susannah Simpson Kent,

Director, Institute of Museum Services.

[FR Doc. 92–19483 Filed 8–14–92; 8:45 am]

BILLING CODE 7036–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31016; International Series Release No. 433; File No. SR–Amex–92–03]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing of Index Warrants Based on the Japan Index

August 11, 1992.

On January 21, 1992 the American Stock Exchange ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to list warrants based on the Japan Index ("Japan Index" or "Index"), a broad-based index of 210 Japanese stocks traded on the Tokyo Stock Exchange ("TKE").

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

Notice of the proposal appeared in the Federal Register on February 10, 1992.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the Amex's proposal.

I. Description of the Proposal

The Exchange proposes to list index warrants [5] based on the Japan Index, a price-weighted index developed by the Amex consisting of 210 actively-traded stocks traded on the TKE. Previously, the Commission reviewed the Amex's Japan Index when the Commission approved a proposal by the Amex to trade options based on the Japan Index.[6]

The design and construction of the Japan Index has not changed since the Commission approved the trading of options on the Index. Specifically, the TKE-traded securities selected by the Amex for the Japan Index must meet eligibility standards with respect to market value, trading activity, and price level. Additionally, the Exchange implements share price eligibility standards to ensure that no single issue will have a disproportionate impact on the Japan Index. Moreover, in order to ensure that no industry group within the Japanese market dominates the Index, when selecting component Japanese securities for inclusion in the Index, the Amex gives consideration to the selection of securities that are representative of the various industry group components of the Japanese stock market.

The Japan Index is a price-weighted index.[7] The Amex, for the purposes of calculating the Japan Index, uses last sale price information of the component securities from the TKE. The Japan Index is denominated in U.S. dollars and calculated once a day and disseminated before the opening of trading in the United States. In calculating the Japan Index, 100 yen is assigned to equal one U.S. dollar. Thus, if the aggregate price of the Index's component stocks is 30,500 yen, the Japan Index value will be 305. This assures that the Japan Index value will correspond directly to changes in the aggregate yen prices of the component stocks and will not affected by fluctuating yen/dollar exchange rates.

The Amex is submitting its proposal to list Japan Index warrants pursuant to the requirements of a 1988 Commission order ("Index Warrant Approval Order") that, among other things, permitted the Exchange to list warrants on established market indexes, both foreign and domestic.[8] Consistent with the Index Warrant Approval Order, the Amex represents that the Japan Index warrant issues will conform to the listing guidelines in section 106 of the Amex Company Guide. Specifically, section 106 provides that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earning requirements in section 101(a) of the Amex Company Guide; [9] (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

The Amex proposes that the warrants will be direct obligations of their issuer subject to cash-settlement during their term, and exercisable throughout their life (*i.e.*, American style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Japan Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Japan Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because index warrants are derivative in nature and closely resemble index options, the Amex has proposed safeguards that are designed to meet the investor protection concerns raised by the trading of index warrants. First, the Exchange proposes to apply its options suitability standard to Japan Index warrant recommendations and the requirement that discretionary orders in Japan Index warrants be approved on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). In addition, the Exchange has recommended that Japan Index warrants only be sold to options approved accounts. Moreover, the Exchange represents that, prior to the commencement of trading of Japan Index warrants, circulars will be distributed to its members calling attention to the specific risks associated with warrants on the Japan Index and any additional sales practice requirements that will be imposed.

II. Comments Received

The Commission received one comment letter from the TKE opposing the Amex proposal. In general, the TKE questioned the benefits of derivative products and indicated its belief that derivative products based on Japan stocks have been a factor "in bringing about the current, vulnerable [TKE] market situation." To this end, the TKE points out that it has resorted to "every possible measure to prevent an excessive expansion of derivative markets and to alleviate their impacts on the underlying market." [10] In sum, the TKE believes that "a healthy and sound stock market is of critical importance not only for all sorts of participants therein but also for those of derivative markets based thereon."

Accordingly, the TKE is concerned that the Amex proposal would lead to a proliferation of derivative products based on the Japanese market and with the "collective impact" of additional derivative products on the underlying TKE market. As a result, the TKE requested that the SEC give due consideration to the possible impact of the Amex's proposal on the TKE because the TKE is the exchange where the stocks underlying the Japan Index are traded. In that regard, the TKE asserted that to date the SEC has not approved warrants based on U.S. stocks because of concern regarding the impact of such warrants on the underlying U.S. market.[11]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[12] Specifically, the Commission believes that Japan Index warrants can provide investors a means by which to hedge against exposure to the Japanese equity market and act as surrogate instruments for trading the Japanese securities market.[13] In addition, the Commission notes that by permitting U.S. persons access to Japan Index warrants competition among the markets for Japanese-based derivatives will be enhanced.

A. Index Design

The Commission also believes that the Japan Index warrants are consistent with the guidelines previously articulated in the Index Warrant Approval Order. Because the Japan Index is a broad-based index comprised of actively-traded, highly-capitalized stocks,[14] the trading of cash-settled warrants on the Japan Index on the Amex does not raise unique regulatory concerns. The commission believes, as it did when the Amex's Japan Index option proposal was approved, that the broad diversification, large capitalization, and liquid markets for the Japan Index's component stocks significantly minimize

[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 30336 (February 4, 1992), 57 FR 4898. The Amex amended its proposal on June 2, 1992 to provide that only American-style Japan Index warrants would be listed. See letter from Ellen T. Kander, Special Counsel, Derivative Securities, Amex, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated June 2, 1992.

[4] See letter from Minora Nagaoka, President & CEO, TKE, to Jonathan G. Katz, Secretary, SEC, dated February 28, 1992 ("TKE Letter"), discussed *infra* note 23.

[5] Warrants on stock indexes are securities that incorporate certain characteristics of both equity and options. Like debt, they are issued by a corporation that serves as guarantor of the warrant obligation. Like a stock index option, however, an index warrant is based on the performance of an underlying index and has a fixed expiration date. Index warrants also are cash-settled.

[6] For additional information regarding the Japan Index, See Securities Exchange Act Release No. 28475 (September 27, 1990), 55 FR 40492 ("Japan Index Option Approval Order").

[7] In a price-weighted index, an issue's weight in the index is based on its price per share rather than its total market capitalization (*i.e.*, price per share times the number of shares outstanding). In order to prevent certain high-priced securities in the Index from having an inordinately higher weight in comparison to other stocks in the Index, the Amex "down scales" the price of these securities. In particular, for those component securities with a par value greater than 50 yen, the Amex calculates the price of that stock, for Index purposes, to be equal to the last sale price of the stock divided by the ratio of the par value of the stock to a par value of 50. Currently, there are four securities in the Index that are subject to this provision.

Continued

[8] See Securities Exchange Act Release No. 26152 (October 3, 1988), 53 FR 39832.

[9] Section 101(a) of the Amex Company Guide requires the issuer to have stockholders' equity of at least $4,000,000 and pre-tax income of at least $750,000 in its last fiscal year, or in two of its last three fiscal years.

[10] See TKE letter, *supra* note 4 at 2. Among other things, the TKE notes that margin requirements for stock index futures and options traded in Japan have been increased from 9% to 30%.

[11] See note 23, *infra* and accompanying text which addresses these assertions.

[12] 15 U.S.C. 78f(b)(5) (1982).

[13] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest and consistent with the protection of investors. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[14] See Japan Index Option Approval Order, *supra* note 6.

the potential for manipulation of the Index.[15]

B. Sales Practice Requirements

The Commission notes that the Amex's rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to Japan Index warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the Exchange has addressed adequately the potential public customer problems that could arise from the derivative nature of Japan Index warrants. Moreover, as described above, the Exchange plans to distribute a circular to its membership calling attention to the specific risks associated with Japan Index warrants and, pursuant to the Exchange's listing guidelines, only companies capable of meeting their warrant obligations will be eligible to issue Japan Index warrants.[16]

C. Surveillance Sharing

The Commission as a general matter believes that surveillance sharing agreements between the relevant foreign and domestic exchanges are important where a foreign stock index product is to be traded in the United States. Such agreements are an important measure for surveillance of the derivative and underlying securities markets. Most importantly, they ensure the availability of information which is necessary to detect and deter potential manipulations and other trading abuses. In most cases, in the absence of such a surveillance sharing agreement, the Commission believes that it would not be possible to conclude that a derivative product, such as a Japan Index warrant, was not readily susceptible to manipulation.

Although the Amex and the TKE do not have a written surveillance sharing agreement that covers the trading of Japan Index warrants,[17] a number of other factors mitigate against such a conclusion and support approval of the proposal in this case.[18] First, while the size of an underlying market is not necessarily determinative of whether a particular derivative product based on that market is readily susceptible to manipulation, the sheer size of the market for the securities underlying the Japan Index make it less likely that the proposed Japan Index warrants are readily susceptible to manipulation.[19] Second, the Commission notes that the TKE is under the regulatory oversight of the Japanese ministry of Finance ("MOF"). The MOF has responsibility for both the Japanese securities and derivative markets. Accordingly, the commission believes that the ongoing oversight of the trading activity on the TKE by the MOF will help to ensure that the trading of Japan Index warrants will be carefully monitored with a view to preventing unnecessary market disruptions.

Third, the Commission notes that it has a longstanding working relationship with the MOF on a number of matters. This relationship, which has developed over a number of years through the SEC's and the MOF's active involvement in the International Organization of Securities Commissions, bilateral meetings between the SEC and the MOF, and trilateral meetings between the SEC, MOF, and the Department of Trade and Industry and the Securities and Investments Board of the United Kingdom, provides a framework for ongoing discussions in the event any particular market activity raised concerns regarding potential market manipulation or other improper or illegal trading involving Japan Index warrants. Moreover, at least since the introduction of stock Index futures based on Japanese equities, both the TKE and MOF repeatedly have acted to address any market disruption concerns that have arisen.

Fourth, the SEC and the MOF have concluded a Memorandum of Understanding ("MOU") that provides a framework for mutual assistance in investigatory and regulatory matters.[20] Based on the longstanding relationship between the SEC and the MOF and the existence of the MOU, the Commission is confident that it and the MOF could acquire information from one another similar to that available pursuant to a surveillance sharing agreement between the Amex and the TKE about transactions in TKE-traded stocks related to Japan Index warrant transactions on the Amex and vice versa.[21]

Nevertheless, the Commission continues to believe strongly that a surveillance sharing agreement between the TKE and the Amex covering Japan Index warrants would be an important measure to deter and detect potential manipulations or other improper or illegal trading involving Japan Index warrants. Accordingly, the Commission believes it is critical that the TKE and the Amex continue to work together to consummate a formal surveillance sharing agreement to cover Japan Index warrants as soon as practicable.[22]

Additionally, the Commission finds that, in light of the composition of the Japan Index, the customer protection provisions applicable to trading in the warrants, and the Exchange guidelines for the listing of the warrants, trading in Japan Index warrants will not have an adverse impact on U.S. financial markets. In fact, the Commission believes that Japan Index warrants will benefit U.S. markets by providing investors with an opportunity to hedge against stock market fluctuations in Japan.

The Commission is mindful of the TKE's concern about the potential impact of Amex-listed Japan Index warrants on the TKE.[23] The Commission believes that the TKE overstates the potential impact of the Amex's proposal on the market for component stocks in Japan. First, the Commission notes that the Japan Index is broad-based and diversified and includes more than 200 highly capitalized securities that generally are actively traded on the TKE. Second, numerous derivative products based on TKE-listed stocks trade on several exchanges, including the TKE, the Osaka Stock Exchange, the Singapore International Monetary Exchange, the Chicago Mercantile Exchange, and the Chicago Board of Trade. Moreover, numerous warrant and off-exchange options are traded world-wide on Japanese stock market indexes, and Nikkei warrants and Japan Index options are traded on the Amex.

[15] See Japan Index Option Approval Order, *supra* note 6.

[16] In its orders approving other stock index warrants, the Commission also expressed concern about the potential credit risk and systemic risk inherent in issuing and trading stock index warrants. See e.g., Securities Exchange Act Release No. 30463 (March 11, 1992), 57 FR 9284 (order approving the listing of FT-SE Eurotrack 200 Index options and warrants. Accordingly, the Commission believes the Amex should monitor these risks in the context of trading warrants on the Japan Index.

[17] The Amex and the TKE, however, currently have a surveillance sharing agreement in place that covers other derivative products traded on the Amex. That agreement in the past has been amended by the Amex and the TKE to include new products, such as the trading of Japan Index options. Accordingly, the Commission believes that the Amex and TKE similarly should amend their existing agreement to include Japan index warrants. See Agreement between the Amex and the TKE to Share market Surveillance Information ("Amex/TKE Agreement"), dated November 4, 1988 and Amendment No. 2 to the Amex/TKE Agreement, dated September 27, 1990.

[18] For some time, the Amex has sought to establish a surveillance agreement with the TKE to cover these warrants, but the TKE is opposed to the proliferation of derivative products.

[19] In evaluating the manipulative potential of a proposed index derivative product, as it relates to the securities that comprise the index and the index product itself, the Commission has considered several factors, including: (1) The number of securities comprising the index or group; (2) the capitalization of those securities; (3) the depth and liquidity of the secondary markets for those securities; (4) the diversification of the group or index; (5) the manner in which the index or group is weighted; and (6) the ability to conduct surveillance of the product. See, *e.g.*, letter from Jonathan G. Katz, Secretary, SEC, to Dr. Paula Tosini, Director, Division of Economic Analysis ("DEA"), Commodity Futures Trading Commission ("CFTC"), dated April 18, 1988 and letter from Jonathan G. Katz, Secretary, SEC, to Paula Tosini, Director, DEA, CFTC, dated September 1, 1988.

[20] Memorandum of the United States Securities and Exchange Commission and the Securities Bureau of the Japanese Ministry of Finance on the Sharing of Information, dated May 23, 1986.

[21] The information could include transaction, clearing, and customer information necessary to conduct an investigation.

[22] See *supra* note 17.

[23] Although, as the TKE noted, domestic index warrants are not traded in the U.S., the Commission currently is considering proposals by U.S. exchanges to list index warrants based on indexes comprised of U.S. stocks. Moreover, the Commission's regulatory scheme has not precluded the development in the U.S. of very active derivative products based on U.S. stock market indexes. For example, the Chicago Board Options Exchange's OEX option contract based on the Standard and Poor's 100 Index is the most active option contract in the world, and trading volume in these options dwarfs that of Nikkei warrants on the Amex.

Continued

IV. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) and the rules and regulations thereunder.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR-Amex-92-03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19507 Filed 8-14-92; 8:45 am]

BILLING CODE 8010-01-M

[24] 15 U.S.C. 78s(b)(2) (1982).

[25] 17 CFR 200.30-3(a)(12) (1989).

[Rel. No. IC-18885; 811-5373]

AIM Government Funds, Inc.; Application

August 7, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: AIM Government Funds, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 31, 1992 and amended on June 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 1, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Eleven Greenway Plaza, suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272-7779, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is an open-end diversified management investment company. On October 26, 1987, applicant filed a notification of registration pursuant to section 8(a) under the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement was declared effective on January 15, 1988, and applicant commenced public offering of its shares on January 25, 1988.

2. On June 15, 1990, applicant's Board of Directors approved an Agreement and Plan of Reorganization (the "Plan") by and between applicant, with respect to its sole series portfolio, AIM U.S. Government Securities Fund (the "Portfolio"), and Short Term Investments Co. (the "Trust"), a Massachusetts business trust, with respect to AIM Limited Maturity Treasury Portfolio (the "Fund"), a class of the Limited Maturity Treasury Portfolio, which is a series portfolio of the Trust.

3. Proxy materials relating to a special meeting of shareholders and describing the Plan were mailed to shareholders on August 15, 1990.

4. On September 14, 1990, applicant's shareholders approved the Plan at the special meeting of shareholders.

5. As of October 2, 1990, there were 150,867.897 shares outstanding of applicant, with an aggregate net asset value of $1,386,988.56 and a per share net asset value of $9.19.

6. Pursuant to the Plan, all of the Portfolio's assets were transferred to the Trust on behalf of the Fund on October 3, 1990. In exchange, applicant received 141,529.445 shares of the Fund with an aggregate net asset value of $1,386,988.56 and a per share net asset value of $9.80. Applicant then distributed to its shareholders 0.9381 shares of the Fund for each share of applicant, in complete liquidation of the Portfolio and applicant.

7. In connection with the reorganization under the Plan, applicant incurred expenses, including legal fees, accounting fees, transfer agent fees, and printing and mailing costs for proxy solicitation, all of which have been assumed and paid by AIM Advisors, Inc., applicant's investment adviser.

8. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19471 Filed 8-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18886; 811-5185]

AIM Tax-Exempt Funds, Inc.; Application

August 7, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: AIM Tax-Exempt Funds, Inc.

RELEVANT 1940 ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on January 31, 1992 and amended on June 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 1, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, Eleven Greenway Plaza, suite 1919, Houston, Texas 77046.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272–7779, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Maryland corporation, is an open-end non-diversified management investment company. On June 1, 1987, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement was declared effective on June 12, 1987, and applicant commenced public offering of its shares on June 15, 1987.

2. On January 31, 1990, applicant's Board of Directors approved an Agreement and Plan of Reorganization (the "Plan") by and between applicant, with respect to its sole series, AIM California Tax-Free Intermediate Fund (the "Portfolio"), and Associated Planners Investment Trust, a Massachusetts business trust, with respect to its Associated Planners California Tax-Free Fund series (the "Fund").

3. Proxy materials relating to a special meeting of shareholders and describing the Plan were mailed to shareholders on March 15 and 16, 1990.

4. On April 23, 1990, applicant's shareholders approved the Plan at the special meeting of shareholders.

5. As of April 30, 1990, there were 502,107.388 shares outstanding of the Portfolio, with an aggregate net asset value of $4,946,300.56 and a per share net asset value of $9.85.

6. Pursuant to the Plan, all of the Portfolio's assets were acquired by the Fund on May 1, 1990. In exchange, applicant received 527,886.933 shares of the Fund with an aggregate net asset value of $4,946,300.56 and a per share net asset value of $9.37. Applicant then distributed to its shareholders 1.14096 shares of the Fund for each share of applicant, in complete liquidation of the Portfolio and applicant.

7. In connection with the reorganization under the Plan, applicant incurred expenses, including legal fees, accounting fees, transfer agent fees, and printing and mailing costs for proxy solicitation, all of which have been assumed and paid by AIM Advisors, Inc., applicant's investment adviser.

8. Applicant has no other assets or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19470 Filed 8–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18883; No. 811–4613]

Fortis Benefits Insurance Co. et al.; Applications

August 7, 1992

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Fortis Benefits Insurance Company ("Fortis Benefits"), Variable Account C of Fortis Benefits Insurance Company ("Account C"), and Fortis Investors, Inc. ("Investors") (collectively, "Applicants").

RELEVANT 1940 ACT SECTIONS. Order requested under section 6(c) of the 1940 Act for exemptions from the provisions of Sections 2(a)(32), 22(c), 26(a)(2)(C), 27(a)(3), 27(c)(1), 27(c)(2) and 27(d) and Rules 22c-1, 6e-3(T)(b)(12), 6e-3(T)(b)(13) and 6e-3(T)(d)(1)(ii) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit them to issue flexible premium variable life insurance policies that enable Fortis Benefits to: (1) Credit the policyholder's account with "policy value advances" and later recover the policy value advances from the assets of Account C; (2) deduct any premium tax charge not previously deducted as part of a contingent deferred charge ("CDSC"); and (3) deduct sales charges, in a manner that may result in deductions in one period being considered to be higher than deductions taken out in a subsequent period.

FILING DATE: The application was filed on June 5, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 28, 1992, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, David A. Peterson, Esq., Fortis Benefits Insurance Company, 500 Bielenberg Drive, Woodbury, Minnesota 55125, and Thomas C. Lauerman, Esq., Freedman, Levy, Kroll & Simon, 1050 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Attorney (202) 272–2676, or Wendell Faria, Deputy Chief (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Fortis Benefits, a Minnesota corporation, is an indirect wholly-owned subsidiary of Fortis, Inc., which is itself indirectly owned 50% by N.V. AMEV and 50% by Compaignie Financiere et de Reassurance de Group AG. Fortis, Inc. manages the United States operations for these two foreign companies.

2. Fortis Benefits established Account C under the laws of Minnesota as a segregated investment account for the purpose of funding variable life insurance policies, including Fortis Benefits' VUL–500 Plus Flexible Premium Variable Life Insurance Policy ("Policy") described herein. Account C, a registered unit investment trust under the 1940 Act, currently consists of six subaccounts: Growth Stock Subaccount, U.S. Government Securities Subaccount, the Money Market Subaccount, the Diversified Income Subaccount, the Asset Allocation Subaccount and the Global Growth Subaccount (collectively the "Subaccounts"). Each Subaccount invests exclusively in shares of a corresponding portfolio of Fortis Series Fund, Inc., a registered management investment company.

3. Investors (formerly AMEV Investors, Inc.), an affiliated company of Fortis Benefits, is the principal underwriter for the policies. Investors is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc.

4. The Policy permits a policy owner to select, and change from time-to-time, between two death benefit options. Under one option, the "policy value" is added to the policy face amount of insurance coverage for purposes of computing the death benefit. The Policy owner also may change the face amount from time-to-time, subject to certain restrictions.

5. The Policy owner may allocate the Policy value to one or more of the Subaccounts and/or to Fortis Benefits' General Account ("General Account") and may change the allocations or transfer amounts previously allocated from time-to-time, subject to certain limitations.

6. The Policy may be fully surrendered at any time for its surrender value and, generally after the first Policy year, the Policy owner may make a partial withdrawal of the surrender value once a year. The Policy owner also may take out loans and may vary the frequency and amount of premium payments.

7. The Policy will not lapse for the lesser of twelve years from the Policy date or until age 65 (five years if over age 60 at issue) if certain minimum premium payments are made. For purposes of this "guaranteed death benefit," the premium payment requirement is based on monthly minimum premiums, which are also used, among other things, to make certain sales charge and Policy value advance computations. While different monthly minimum premiums may be used for different purposes, in no case will the sum of twelve monthly minimum premiums with respect to a Policy or benefit change exceed the guideline annual premium with respect to such Policy or change, respectively, as defined in Rule 6e-3(T)(c)(8).

8. The "Policy value" is the amount available to earn a return for the Policy owner. Unless prohibited by applicable state insurance law, a Policy may be eligible for a credit in the form of a Policy value advance ("Advance") on the last day of the ninth year (twelfth year in Oregon) and each subsequent Policy year. Except in Oregon, where there are no premium payment requirements for an Advance, eligible Policies may receive an Advance only if, as of the date of the credit, (1) the cumulative amount of premiums paid over the life of the Policy, less any outstanding Policy loans, and less the cumulative amount of partial withdrawals taken by the Policy owner, at least equals (2) the cumulative monthly minimum premiums to date. No further Advances will be paid if the premium requirement is not met for any credit.

9. Advances paid at the end of the ninth (twelfth year in Oregon) and each subsequent policy year will equal ten percent (five percent in Oregon), of the average of the total minimum premiums for each year to date. Advances at the foregoing rate are not guaranteed, and Fortis Benefits reserves the right to reduce them, subject to guaranteed minimum rates. The guaranteed rates are based on the insured's age at Policy issue, as follows: ages 0–40, 10%; ages 41–43, 9%; ages 44–46, 8.25%; ages 47–50, 7.5%; ages 51–55, 6%; ages 56–60, 5.5%; and ages 61–70 (and all ages in Oregon), 5%. These guarantees apply through the 19th (21st in Oregon) Policy year, but do not apply thereafter.

10. Advances will be allocated among the General Account and the Subaccounts on a pro rata basis in proportion to the amount of Policy Value in each, exclusive of amounts transferred to the General Account as a result of Policy loans. Following such allocation, these amounts will be credited with investment performance and otherwise be treated the same as any other amounts of Policy value.

11. Fortis Benefits will notify Policy owners that they may be forfeiting Advances by failing to make sufficient premium payments. An annual statement will inform each Policy owner of the dollar amount that must be paid for the year, plus any unpaid amounts from prior years, to be eligible for Advances, or if no such premiums must be paid.

12. Advances are subject to recovery by Fortis Benefits through the following deductions made after the payment of the Advance: $4.00 per month plus a daily deduction at an annual rate of .27% of the value of the Policy's net assets in Account C. These deductions continue until their cumulative amount equals the cumulative amount of Advances paid, irrespective of any return that may be earned thereon in Account C or in the General Account. No CDSC is imposed to recover Advances.

13. Unless prohibited by applicable state insurance law, a Policy may be eligible for an increase in Policy value in the form of a "cash value bonus" ("Bonus" or "Bonuses") on the last day of the ninth and each subsequent Policy year. The amount of any Bonus is a percentage of the surrender value at the date of the Bonus, as follows:

BONUS AS A PERCENT OF SURRENDER VALUE AT THE END OF POLICY YEAR

Surrender Value On Date of Bonus	9 to 19 (percent)	20 and later (percent)
Less than $50,000	.00	.00
$50,000 to $299,999	.10	.10
$300,000 to $499,999	.55	.55
$500,000 or more	.55	.80

Bonuses at the foregoing rates are not guaranteed, and Fortis Benefits retains the right in its sole discretion to reduce or discontinue them.

Bonuses will be allocated among the General Account and the Subaccounts on a *pro rata* basis. These amounts will be fully vested and will be credited with investment performance and otherwise will be treated the same as any other amounts allocated to the Subaccounts or the General Account, respectively.

14. A premium tax charge in the amount of 2.3% and a sales charge in the amount of 7.5% of all premium payments are assessed through monthly and daily deductions from Policy value. These charges are not deducted from premium payments.

15. The monthly deduction for premium tax and sales charges totals $4.00 per month, and the daily deduction is an aggregate annual rate of .27% of the value of the Policy's net assets in Account C. These deductions will be waived to the extent that the cumulative amount of all such deductions would exceed 9.8% of all premium payments made to date. Premium tax and sales charge deductions will not be made at any time when similar deductions for Advances are being made. Any portion of these charges that are not recovered through monthly and daily deductions

may be deducted as part of the surrender charge ("Surrender Charge").

16. As part of the Surrender Charge, Fortis Benefits imposes an additional CDSC in the amount of 22% of premiums paid in the first two Policy years that are not in excess of the sum of twelve monthly minimum premium payments.

17. An additional CDSC also will be payable as part of the Surrender Charge on certain total surrenders or Policy lapses following an increase in face amount requested by a Policy owner. The maximum additional CDSC will be 22% of the lesser of (1) the sum of twelve monthly minimum premiums for the face amount increase or (2) the amount of actual premium payments deemed attributable to the increase which are made not later than two years after the date of the increase.

18. A charge of $5.00 per thousand dollars of a Policy's initial face amount and per thousand dollars of any increase in face amount will be imposed for other policy issuance expenses as part of the Surrender Charge. This charge will not exceed the amount permitted by Rule 6e–3(T)(b)(13)(iii)(A).

19. The Surrender Charge may be assessed upon the lapse or full surrender of a Policy before the eleventh Policy anniversary or the eleventh anniversary of a face amount increase. No Surrender Charge is deducted upon a partial withdrawal of policy value or a face amount decrease. The maximum Surrender Charge is the sum of: (1) Any portion of the current 2.3% premium tax charge and the 7.5% sales charge that has not yet been collected through the monthly and daily deductions; (2) the additional CDSCs; and (3) the charge for other Policy (or increase) issuance expenses. The sales charge component of clause (1) above and all of clause (2) constitute CDSCs.

20. The entire Surrender Charge is subject to an overall upper limit or "cap," based on the insured's age and the face amount or face amount increase, as follows:

Insured person's age at time of policy issuance or face amount increase	Overall "Cap" on surrender charge (per thousand dollars of face amount or of face amount increase)
0 to 30 Years	$9.00
31 to 40	10.00
41 to 45	12.00
46 to 50	14.00
51 to 55	16.00
56 to 60	21.00
61 to 65	28.00
66 to 70	40.00

The cap decreases on the fifth and each subsequent Policy anniversary or face amount increase anniversary until it reaches zero on the eleventh Policy anniversary or increase anniversary. There will be no Surrender Charge on surrenders or lapses as of the later of the eleventh Policy anniversary or the eleventh anniversary of any face amount increase.

21. The monthly deduction from Policy value includes: (1) Premium tax and sales charges or recovery of Advances; (2) the cost of insurance charge; (3) while the Guaranteed Death Benefit is in effect, a monthly charge in the amount of $.01 per thousand dollars of face amount under the Policy or any optional riders; (4) the charge for optional insurance benefits added by riders; and (5) the monthly administrative expense charge of $4.50 per Policy. Fortis Benefits reserves the right to raise the monthly administrative expense charge to not more than $7.50 per month and to impose an additional monthly administrative expense charge of up to $.13 per thousand dollars of face amount then in force. This charge will not exceed the amount permitted by Rule 6e–3(T)(b)(13)(iii)(A).

22. A daily charge at an annual rate of .90% of the average daily value of the net assets in Account C that are attributable to the policies is made for mortality and expense risks assumed by Fortis Benefits.

23. Fortis Benefits reserves the right to deduct (1) charges to defray its administrative expenses in effecting transfers of Policy value or partial withdrawals and (2) charges for any federal income taxes that Fortis Benefits may incur.

Applicants' Request for Relief and Legal Analysis

1. Applicants request exemptions from sections 26(a)(2)(C) and 27(c)(1) of the 1940 Act to the extent necessary to permit the deduction of monthly and daily charges to recover Advances.

2. Section 27(c)(2) provides that an investment company may not offer periodic payment plan certificates unless, among other things, the proceeds of all payments (other than the sales load) on such certificates are deposited with a trustee or custodian having the qualifications prescribed in section 26(a)(1) and are held by that trustee or custodian under an indenture or agreement containing, in substance, the provisions required by section 26(a)(2).

3. Section 26(a)(2)(C) provides that no payments to the depositor of, or principal underwriter for, a registered unit investment trust (or any affiliated person or agent of such depositor or principal underwriter) shall be allowed the trustee or custodian as an expense, except for payment of a fee not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative services of a character normally performed by the trustee or custodian.

4. Applicants submit that the recovery of all or part of an Advance returns to Fortis Benefits its own assets and that such recovery is not a payment of the sort addressed by section 26(a)(2)(C). Applicants state that, in this respect, deductions to recover Advances are similar to the removal from separate account assets of amounts necessary to secure Policy loans, or to secure additional Policy loans that are made automatically in order to "capitalize" loan interest that the Policy owner has not otherwise paid. Similarly, deductions to recover Advances may reasonably be viewed as capital adjustments rather than a charge or expense subject to section 26(a)(2)(C).

5. Section 27(c)(2) requires only that the "proceeds" of "payments" (*i.e.*, amounts paid by the investor) be deposited with a trustee and held subject to the requirements of section 27. Applicants believe that the statutory language lends support to the conclusion that recovery of Advances is outside the ambit of those provisions, insofar as the Advance does not constitute "proceeds" of "payments" made by an investor, but is rather an advance made by Fortis Benefits from its own funds.

6. Advances provide a significant potential benefit to eligible Policy owners by increasing the amount available to earn a return for the Policy owner. In many cases, an Advance will not be recovered or will be partially recovered because no CDSC for unrecovered Advances is imposed upon death of the insured, surrender, withdrawal or lapse. The total amount deducted to recover Advances under any Policy will never exceed the amount of Advances actually paid.

7. The Policy owner receives a further benefit during the time when deductions for Advances are being made because similar monthly and daily deductions for premium taxes and sales charges are suspended. Deferred premium tax and sales charges are equal to the monthly and daily deductions for Advances, assuming the 9.8% maximum on the monthly and daily premium taxes and sales charge deductions would not have otherwise been reached.

The monthly and daily deductions for premium taxes and sales charges resume after Advances have been fully recovered, unless total deductions for premium taxes and sales charges have reached 9.8% of all premiums paid to date. The Policy owner is not deemed to have "paid" any deferred periodic premium tax and sales charges that otherwise would have been deducted during the period when deductions to recover Advances were being made. The deferral of these charges is a significant benefit that enhances the value of the Advance feature by tending to offset the deductions made to recover Advances.

8. An Advance will increase the Policy value and, consequently, may increase the amount of certain charges that are deducted on the basis of a percentage of Account C or Fortis Series assets: *i.e.*, the mortality and expense risk charge and the Fortis Series investment advisory fee. The increased asset-based charges are the price paid for the opportunity of having amounts attributable to the transaction participate in the investment performance of Account C. Increased asset-based charges can be avoided in each case by allocating the Policy value to the General Account, rather than to Account C.

9. There is no assurance that separate account investment performance earned on Advances will be sufficient to offset the additional asset-based charges resulting from the Advances. The timing of the Advances and the deductions to recover them are factors that indirectly determine the amount of return that would be credited. A Policy owner who wants to be assured of earning a rate of return greater than the rate of asset-based charges can allocate amounts attributable to Advances to the General Account.

10. Advances involve various costs to Fortis Benefits, including the costs of amounts advanced and developing and administering the Advance feature. Even if the development and administration costs are disregarded, there is no reasonable set of assumptions under which (1) the value to Fortis Benefits of (a) the revenues from deductions for Advances plus (b) any increased mortality and expense risk charge and advisory fee revenues resulting from Advances would exceed (2) Fortis Benefits' additional costs associated with Advances. Advances and related charges thus could not be said to involve any "back door" attempt to impose additional charges to Policy owners.

11. Deductions for Advances are designed to reimburse Fortis Benefits for amounts advanced out of its own funds to the Policy owner. Deductions for Advances do not contain hidden charges, are not intended to finance sales expenses, and do not result in profits to Fortis Benefits. Such deductions, as well as the possibility of increased asset-based charges, will be fully disclosed in the prospectus for the policies.

12. Advances and Bonuses are benefits intended to attract prospective purchasers and encourage Policy owners to retain and make regular premium payments in order to enhance Fortis Benefits' financial strength and stability and the security of the Policy owners' investment in and coverage under the policies. Life insurance policies are typically unprofitable to an insurance company in the policies' early years because of high initial issuance costs and relatively small asset-based revenues. To the extent that the objectives of the Advances and Bonuses are achieved, Fortis Benefits may not need to raise its charges for cost of insurance and administrative expenses for certain Policy features; rather, Fortis Benefits may be able to offer additional investment options or reduce charges under policies in the future. Policy owners also benefit from lower expense ratios of the management investment company funding the policies as a result of increased assets. Insufficient sales or poor persistency also can produce a small or non-diverse pool of mortality risks and, thus, expose Fortis Benefits to the possibility of erratic mortality experience. This problem is exacerbated because policies tend not to be surrendered when the insured is in poor health. A high rate of surrenders would thus tend to decrease the overall quality of the mortality pool represented by the policies.

13. Advances and Bonuses also will promote fairness between persisting and surrendering Policy owners. Persisting Policy owners make substantial premium payments and accumulate substantial amounts of cash value and, thus, generate greater profits for Fortis Benefits. It is therefore equitable for persisting Policy owners to receive additional benefits in the form of Advances and Bonuses.

14. Fortis Benefits has designed Advances and its method of operation so as to address any state regulatory concerns. Fortis Benefits has specifically designed the Advances to avoid any substantial discontinuities in projected values. All sales illustrations used by Fortis Benefits will specifically disclose the amount of any Advances and the rate of any Bonuses are not contingent on Fortis Benefits actually earning profits, and Fortis Benefits will establish current reserves for planned Advances.

15. Applicants also request exemptions from sections 2(a)(32), 22(c), 27(c)(1) and 27(d) and Rules 6e–3(T)(b)(12), 6e–3(T)(b)(13) and 22c–1 to the extent necessary to permit the amount of any premium tax charges that have not been previously collected by means of a deduction from Policy value to be included in the Surrender Charge.

16. Sections 2(a)(32), 27(c)(1) and 27(d), in pertinent part and in effect, prohibit Applicants from selling interests under a Policy unless they are redeemable securities entitling a Policy owner, upon surrender, to receive his or her proportionate share of Account C's current net assets. Section 2(a)(32) defines a "redeemable security" as any security which entitles the holder, upon its presentation to the issuer, to receive approximately a proportionate share of the issuer's current net asset value, or the cash equivalent thereof. Section 27(c)(1) provides that no issuer of a periodic payment plan certificate shall sell such certificate unless the certificate is a "redeemable security." Section 27(d), in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances and recover certain amounts of sales charges.

Rule 22c–1, adopted pursuant to section 22(c), in pertinent part and in effect, prohibits Applicants from redeeming interest under a Policy except at a price based on the current net asset value that is next computed after receipt of the request for full or parital redemption of interests under the policy.

Rule 6e–3(T)(b)(12) and 6e–3(T)(b)(13) provide exemptions from section 22(c) and 27(c)(1), and Rule 6e–3(T)(b)(13) provides an exemption from section 27(d), to the extent necessary for the payment of a flexible contract's cash value to be regarded as satisfying the requirements of those provisions if specified conditions are satisfied. Applicants represent that the Policies satisfy all of such conditions.

17. The method adopted under the Policy for deducting all or part of the charges for premium taxes is more favorable to investors because more Policy value is available to earn a return for the investor. Applicants represent that (1) no premium tax charge will be designed to yield a profit, (2) the total amount charged for premium taxes, including any amounts that may subsequently be deducted from premium payments, will be no greater than if all such charges were taken from premiums when paid, and (3) the premium tax charges will not take into account the "time value" of money, which would increase the charge to factor in the investment cost to Fortis Benefits of deferring collection of the charge.

18. Applicants further request an exemption from the "stair step" requirements of section 27(a)(3) and Rules 6e–3(T)(b)(13)(ii) and 6e–3(T)(d)(1)(ii).

19. Section 27(a)(3), in pertinent part, prohibits the sale of the Policies if the sales load deducted from any one of the first twelve monthly payments thereon "exceeds proportionately the amount deducted from any other such payment, or the amount deducted from any subsequent payment exceeds proportionately the amount deducted from any other subsequent payment."

20. Rule 6e–3(T)(b)(13)(ii), in relevant part, provides an exemption from section 27(a)(3), provided that the proportionate amount of sales load deducted from any payment shall not exceed the proportionate amount deducted from any prior payment." Rule 6e–3(T)(d)(1)(iii)(A) provides, in relevant part, that, with respect to sales charges deducted other than from premiums (excluding asset-based sales charges), Rule 6e–3(T)(b)(13)(ii) is deemed satisfied if "the amount of sales load deducted pursuant to any method . . . does not exceed the proportionate amount of sales load deducted prior thereto pursuant to the same method." Rule 6e–3(T)(d)(1)(ii)(B), in pertinent part, provides comparable relief for asset-based sales charges, provided that "the percentage of assets taken as sales load does not exceed any of the percentages previously taken pursuant to the same method."

21. Applicants request an exemption from these "stair step" requirements to the extent necessary because of the following three aspects of the policies. First, part of the $4.00 monthly charge deducted pursuant to each Policy is a sales charge. While this charge will not change from month-to-month, except in the case of a reduction as a result of a transfer from another plan of insurance, it will vary from month-to-month as a percentage of premiums paid and as a percentage of the Policy value. Assessing part of the sales charge as a flat monthly deduction rather than deducting it from premium payments is beneficial to Policy owners because (1) a greater amount is available to earn an investment return, (2) deductions will be more predictable than deducting the entire sales charge through a daily percentage charge, and (3) there will be an enhanced ability to make plans based on expected amounts of sales charge deductions. Applicants are requesting relief to eliminate any uncertainty as to the application of the stair step provisions in this context.

22. Second, the monthly and daily sales charge deductions may cease for certain periods of time and subsequently be resumed. These charges are suspended when deductions to recover Advances are being made and when the maximum amount of such charges, as a percentage of premium payments, has been reached. Sales charges will also cease if additional deductions would cause sales charges to exceed permitted maximums, as a percentage of premiums actually paid. These situations create a question regarding compliance with the requirements of Rule 6e–3(T)(d)(1)(ii)(A) and (B), respectively, that the proportionate or percentage amount of sales charges deducted not exceed the proportionate or percentage amount previously deducted pursuant to this same method.

23. Applicants assert that, if section 27(a)(3) and the related provisions of Rule 6e–3(T) are interpreted to prevent the resumption of sales charge deductions from contract assets, the utility of policy designs providing for such deductions would be greatly reduced. Deducting part of the sales charges from Policy value, rather than from premium payments, is advantageous to Policy owners because more assets are put to work as Policy value with the potential of earning a return for the Policy owner's benefit. Applicants are requesting relief in order to eliminate any uncertainty as to the applicability of the stair step provisions in these circumstances.

24. Third, Rule 6e–3(T)(c)(4) defines "sales load" for any contract period as the excess of premium payments over changes in "cash value" (other than from investment performance) and certain enumerated charges. An increase or decrease in a Policy's cash value resulting from the payment of an Advance or a Bonus or from subsequent deductions to recover an Advance could be deemed to result in an increase or decrease in the otherwise applicable sales load for the contract period in which the transaction occurs. The stair step provisions could apply because the operation of the Advance or Bonus could cause such sales load to be at a higher rate than in a preceding period or at a lower rate than in a subsequent period. Applicants submit that the Advances and Bonuses provide a significant potential benefit to Policy owners and that the policies' charge structure complies with Rules 6e–3(T)(b)(13)(ii) and (d)(1)(ii).

25. The stair step issues under the policies result from the imposition of deferred sales charges in the form of monthly and daily deductions and, in the case of policies that are surrendered or lapse before a certain time, the Surrender Charge. The stair step issues under the policies do not result from early deduction of front-end charges. No sales charges will be deducted from premiums. Although sales charges will be deducted through several different types of deductions, the rate of these charges will never increase.

Conclusion

Section 6(c) of the 1940 Act, in pertinent part, provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security or transaction, or any classes thereof from any provisions of the 1940 Act or rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. For all the reasons set forth above, Applicants submit that their requested exemptive relief meets these standards for exemptive relief under section 6(c) and, therefore, should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19472 Filed 8–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18884; 812–7924]

General Securities, Incorporated, et al.; Application

August 7, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: General Securities, Incorporated (the "Investment Company"), Craig-Hallum, Inc. (the "Adviser") and Hamilton Investments, Inc. ("Hamilton").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemption from section 15(a).

SUMMARY OF APPLICATION: Applicants seek an order that would permit (i) implementation, without shareholder approval, of a new investment advisory agreement between the Investment Company and the Adviser, as approved by the Investment Company's Board of Directors, and (ii) the Adviser to receive, subject to shareholder approval, fees earned under the new agreement from the date on which CH Holdings

Corporation ("Newco"), a wholly-owned subsidiary of Hamilton, merges with and into Craig-Hallum Corporation ("CH Corp."), the parent corporation of the Adviser, to the date the new investment advisory agreement is approved or disapproved by the Investment Company's shareholders, which period shall be no longer than 120 days (the "Interim Period").

FILING DATES: The application was filed on May 20, 1992 and amended on July 9, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 1, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Investment Company and Adviser, c/o Charles P. Moorse, Esq., Lindquist & Vennum, 4200 IDS Center, 80 South Eighth Street, Minneapolis, MN 55402. Hamilton, c/o Allison Shank, Esq., Hamilton Investments, Inc., 2 North LaSalle Street, Chicago, IL 60602.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272–7779 or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Investment Company is registered under the Act as an open-end management investment company. Its investment objective is to select securities with a view to possible long-term capital appreciation and security of principal. At May 31, 1992, the Investment Company's total net assets were $25,829,457.

2. The Adviser, a wholly-owned subsidiary of CH Corp., is registered as an investment adviser under the Investment Advisers Act of 1940 and as a broker-dealer under the Securities Exchange Act of 1934 (the "Exchange Act"). The Adviser, through its approximately 165 employees, acts as the Investment Company's investment adviser, principal underwriter and distributor, registrar, and transfer agent. The advisory fees paid by the Investment Company are 1% per annum of average daily net assets up to $15,000,000, ¾ of 1% per annum for the next $15,000,000 of average daily net assets, and ½ of 1 % per annum of average daily net assets over $30,000,000.

3. Hamilton is a registered broker-dealer under the Exchange Act and a wholly-owned subsidiary of Household International, Inc., a financial services company with businesses in consumer finance, banking, and life insurance. Newco, a Delaware corporation, is a wholly-owned subsidiary of Hamilton.

4. Applicants seek an exemption from section 15(a) to permit, during the Interim Period, (i) implementation, without shareholder approval, of a new investment advisory agreement (the "New Agreement") between the Investment Company and the Adviser, and (ii) the Adviser to receive, subject to shareholder approval, fees earned under the New Agreement.

5. In February 1992, representatives of Hamilton and CH Corp. met to discuss a possible transaction between the two. On March 20, 1992, Hamilton and CH Corp. entered into a letter of intent that contemplated a merger of Hamilton or one of its affiliates with CH Corp. On May 4, 1992, the Board of Directors of CH Corp. approved and executed an Agreement and Plan of Merger, and issued a press release to announce the transaction.

6. Management of CH Corp. and the Adviser decided that the interests of the shareholders of CH Corp. and the Investment Company would best be served if consummation of the merger were not subject to approval by the Investment Company's shareholders or contingent upon the relief requested by this application since such delay and protracted uncertainty as to the future of the Adviser could cause defections of the Adviser's registered representatives. A large number of such defections might threaten the Adviser's viability and diminish the services it provides to the Investment Company.

7. On June 5, 1992, pursuant to the Agreement and Plan of Merger, Newco merged with and into CH Corp., the surviving corporation, became a wholly-owned subsidiary of Hamilton. The Adviser remains a wholly-owned subsidiary of CH Corp., and continues to operate as a separate subsidiary in substantially the same manner as it did before the merger.

8. Applicants state that it was not possible for the Investment Company to obtain shareholder approval of the New Agreement prior to the merger. The Investment Company did not have notice of the proposed transaction, and shareholders meetings require preparation and clearance of proxy materials as well as a sufficient solicitation period to obtain a quorum.

9. On May 19, 1992, five members of the Investment Company's Board of Directors, including a majority who are not interested persons (the "Independent Directors"), as defined in section 2(a)(19) of the Act, of the Investment Company, concluded unanimously, with the advice and assistance of counsel, that it would be in the best interests of the Investment Company and its shareholders to apply for an order of the Commission as a necessary step in implementing a new advisory agreement during the Interim Period. Applicants filed an application with the Commission on May 20, 1992.

10. On May 27, 1992, the Investment Company's Board of Directors, including the Independent Directors, unanimously approved the New Agreement between the Investment Company and the Adviser. The New Agreement has the same terms and conditions as the previous advisory agreement. In addition, the Adviser and Hamilton assured the Independent Directors that, during the Interim Period, the Investment Company will receive the same investment advisory services, provided in the same manner by essentially the same personnel, as it received prior to the merger.

11. Applicants represent that for a period of three years after the merger, at least 75% of the members of the Board of Directors of the Investment Company will be Independent Directors. In addition, applicants represent that the merger will not impose an unfair burden on the Investment Company.

Applicants' Legal Conclusions

1. As a result of the merger, Hamilton owns 100% of CH Corp., which in turn owns 100% of the outstanding voting securities of the Adviser. Thus, the merger may be deemed to have resulted in an assignment, within the meaning of section 2(a)(4), of the previous advisory agreement between the Adviser and the Investment Company. Under section 2(a)(4), an assignment includes any direct or indirect transfer of a contract by the assignor, or of a controlling block of the assignor's outstanding voting

securities by a security holder of the assignor.

2. Under section 15(a), it is unlawful for any person to serve or act as investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such investment company. Further, section 15(a) requires that such written contract provide for automatic termination in the event of its assignment. Thus, the previous advisory agreement between the Adviser and the Investment Company may be deemed to have terminated automatically as of the date of the merger.

3. Applicants believe that the relief they request from the provision of section 15(a) that requires prior shareholder approval of an investment advisory contract is reasonable, necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that the relief they seek is within the spirit of rule 15a–4, which sets forth the circumstances under which, following an assignment of an investment advisory contract, the investment adviser may continue to serve for 120 days at the previous compensation rate. Applicants submit that there will be no diminution in the scope or quality of services provided to the Investment Company during the Interim Period. In addition, applicants submit that the assignment was not foreseeable by the Investment Company or the Adviser. The form and timing of the merger were determined in response to a number of factors beyond the scope of the Act and not related to the Investment Company or the Adviser. The extremely rapid culmination of the negotiations between CH Corp. and Hamilton did not present, and the form of transaction deemed most appropriate did not permit, an opportunity to secure approval of the New Agreement by shareholders of the Investment Company prior to the merger. Finally, applicants submit that to deprive the Adviser of its customary fees for the Interim Period would be a harsh and unreasonable penalty to attach to the merger transaction.

Applicants' Conditions

1. The New Agreement implemented during the Interim Period has the same terms and conditions as the previous advisory agreement.

2. Fees earned by the Adviser and paid by the Investment Company during the Interim Period in accordance with the terms of the New Agreement will be maintained in an interest bearing escrow account, and amounts in the account will be paid to (a) the Adviser, only upon approval by the Investment Company's shareholders, or (b) the Investment Company, in the absence of such approval.

3. The Adviser will pay the costs of preparing and filing this application and the costs of holding all special meetings of the Investment Company's shareholders necessitated by the assignment, including the cost of proxy solicitations. Additionally, the Adviser will pay the incremental costs necessitated by the Assignment in connection with meetings of the Investment Company's shareholders which otherwise would be held by the Investment Company.

4. The Adviser will take all appropriate steps so that the scope and quality of advisory and other services provided to the Investment Company during the Interim Period will be at least equivalent, in the judgment of the Investment Company's Board of Directors, including a majority of the Independent Directors, to the scope and quality of services provided previously. In the event of any material change in personnel providing services pursuant to the advisory agreement, the Adviser will appraise and consult with the Investment Company's Board of Directors in order to assure that they, including a majority of the Independent Directors, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19469 Filed 8–14–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18889; 812–7857]

Jupiter Industries, Inc.; Application

August 11, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval of Stock Option Plan under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

APPLICANT: Jupiter Industries, Inc.

RELEVANT ACT SECTIONS: Section 61(a)(3)(B).

SUMMARY OF APPLICATION: Applicant seeks an order approving applicant's Stock Option Plan for Non-Employee Directors and the grant of certain stock options thereunder.

FILING DATES: The application was filed on January 22, 1992. Amendments were filed on February 21, 1992, and July 27, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 8, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 5454 Wisconsin Avenue, Chevy Chase, Maryland 20815.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a business development company within the meaning of section 2(a)(48) of the Act. Applicant seeks an order pursuant to section 61(a)(3)(B) of the Act approving its Stock Option Plan for Non-Employee Directors (the "Non-Qualified Stock Option Plan") and the automatic grant thereunder of options to purchase shares of applicant's common stock (a) on the later of the date of approval of such plan by (i) applicant's shareholders and (ii) order of the SEC (the "Plan Approval Date"), to each director of applicant who is neither an officer nor an employee of applicant ("non-employee director"), and (b) subsequent to the Plan Approval Date, to each new non-employee director of applicant who may be elected or appointed in the future to applicant's board of directors. Applicant will submit the Non-Qualified Stock Option Plan to applicant's shareholders for their approval at the next annual meeting of shareholders to be held on August 21, 1992.

2. Applicant states that its primary investment objective is to achieve long-term capital appreciation through investing in new and developing companies and in companies which are experiencing financial difficulties. Applicant does not have an external "investment adviser" within the meaning of the Act; applicant's investment decisions are made by its officers and directors. Applicant typically provides a substantial commitment of capital to its investee companies and makes available to them significant managerial assistance.

3. Applicant's officers and employees receive cash compensation and benefits in the form of salaries, medical and life insurance benefits, and paid vacation and holiday time. An employee stock option plan provides officers and key employees (including employee directors) with the opportunity to acquire equity securities of the applicant. In addition, it has no warrants, options, or rights to purchase its voting securities outstanding, other than those granted (or to be granted as of the Plan Approval Date) to its directors, officers, and employees pursuant to the executive compensation plans described in the application.

4. Grants of options under the proposed Non-Qualified Stock Option Plan would be subject to the per centum limitations on outstanding rights, options, and warrants established by section 61(a)(3)(B), and would be limited to 5,000 shares of the applicant's common stock to each non-employee director. In addition, pursuant to the terms of the plan, 50% of the options would vest and become exercisable six months following the date of grant, and the remaining 50% of the options would vest and become exercisable ratably on a monthly basis over an eighteen-month period beginning on the seven-month anniversary of the date of grant. Options would be exercisable at any time after they become exercisable until the tenth anniversary of the date of grant, provided that, as more fully described in the application, if a non-employee director left applicant for any reason other than death, the options would terminate, and if a non-employee director died, the options would be exercisable within a prescribed time period. The exercise price of the options would be 100% of the fair market value of applicant's common stock on the date of grant. On the Plan Approval Date, the aggregate amount of applicant's voting securities that would result from the exercise of all options issued or issuable under the Non-Qualified Stock Option Plan and applicant's existing employee stock option plan would be 200,000 shares, or approximately 19.7% of the 1,013,370 shares of applicant's common stock outstanding.

Applicant's Legal Analysis

1. Section 63(3) of the Act permits a business development company to sell its common stock at a price below current net asset value upon the exercise of any option issued in accordance with section 61(a)(3) of the Act.

2. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a business development company may issue to its non-employee directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (a) The options expire by their terms within ten years; (b) the exercise price of the options is not less than the current market value of the underlying securities at the date of the issuance of the options, or if no such market value exists, the then-current net asset value of the underlying securities; (c) the proposal to issue such options is authorized by the company's shareholders, and is approved by order of the Commission upon application; (d) the options are not transferable except for disposition by gift, will or intestacy; (e) no investment adviser of the company receives any compensation described in section 205(1) of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (f) the company does not have a profit-sharing plan described in section 57(n) of the Act.

3. In addition, section 61(a)(3) of the Act provides that the amount of the company's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25 per centum of the company's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to such company's directors, officers, and employees pursuant to an executive compensation plan would exceed 15 per centum of the company's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options and rights at the time of issuance shall not exceed 20 per centum of the outstanding voting securities of such company.

4. Applicant asserts that its directors are actively involved in the oversight of applicant's affairs, and that it relies extensively on the judgment and experience of the directors. In addition, applicant represents that one or more of its officers and directors often are elected to the boards of directors of portfolio companies. Accordingly, applicant believes that the skill and experience of its management and directors are critical to its success. Applicant states that in order to attract and retain qualified personnel, it must provide non-employee directors with incentives in the form of an executive compensation program, as contemplated by section 61(a).

5. Applicant asserts that the Non-Qualified Stock Option Plan and the stock options to be granted automatically to applicant's non-employee directors and the stock options to be granted automatically to future non-employee directors of applicant pursuant to such plan would meet all applicable requirements of the Act: (a) The options would expire by their terms within ten years; (b) the exercise price of the options would not be less than the current market value of the underlying securities at the date of the issuance of the options; (c) the proposal to issue the options would be authorized by applicant's shareholders; (d) the options would not be transferable except for disposition by gift, will or intestacy; (e) applicant does not have an investment adviser; and (f) applicant does not have a profit-sharing plan described in section 57(n) of the Act.[1] In addition, the total amount of voting securities that would result from the exercise of all outstanding warrants, options and rights at the time of issuance would not exceed 20 per centum of the outstanding voting securities of applicant.

6. Applicant submits that the terms of the Non-Qualified Stock Option Plan and the stock options to be granted automatically to applicant's non-employee directors on the Plan Approval Date and the options to purchase shares of its common stock to be granted automatically to each non-employee director who joins applicant's board in the future are fair and reasonable and do not involve any overreaching of applicant or its shareholders. The total number of shares for which options would be granted under the Non-Qualified Stock Option Plan would depend on whether there are changes in applicant's board of directors. However, if all five non-employee directors currently serving on

[1] Applicant states that it should not be viewed as having a profit-sharing plan as described in section 57(n) of the Act, because contributions to or payments under its compensation plans are not based upon applicant's profits or financial performance.

applicant's board of directors exercised all of the options proposed to be granted to them, 25,000 shares, or approximately 2.5% of the applicant's outstanding common stock, would have been issued under the Non-Qualified Stock Option Plan. Given this relatively small amount of stock, applicant submits that the exercise of the options would not, absent extraordinary circumstances, have a substantial dilutive effect on the net asset value of the common stock of the applicant.

7. Applicant asserts that because 50% of the stock options granted to a non-employee director would vest six months following the date of grant, and the remaining 50% would vest ratably on a monthly basis over the next eighteen months, the plan would provide non-employee directors with incentives to remain with applicant. In addition, applicant contends that because the options granted pursuant to the plan have no value unless the price of applicant's common stock exceeds the exercise price of the stock option, the options provide significant incentives to its non-employee directors to devote their best efforts to the success of applicant's business. Applicant also represents that the options provide a means for its directors to increase their ownership interest in applicant, thereby helping to ensure a closer identification of their interests with those of applicant and its shareholders. Applicant contends that incentives in the form of such stock options enable it to maintain continuity in its board membership and to attract and retain as directors the highly experienced, successful, and dedicated business and professional people that are critical to its success as a business development company and to the success of its investee companies.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19467 Filed 8-14-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25602]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 7, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 31, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective

Arkansas Power & Light Company (70-7834)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Energy Corporation, a registered holding company, has filed a post-effective amendment to its application-declaration filed with this Commission under sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder. The Commission first issued a notice of the filing of the post-effective amendment on July 2, 1992 (HCAR No. 25569).

By order dated March 20, 1991 (HCAR No. 25278) ("Order"), the Commission, among other things, authorized AP&L, for the period during which any shares of the new preferred stock [1] are outstanding to: (1) Redeem shares of its outstanding New Preferred Stock to be issued under the exemptive provisions of Rule 52, in accordance with any mandatory or optional redemption provisions established at the time of the New Preferred Stock's initial issuance; (2) redeem (or purchase in lieu of redemption) outstanding New Preferred Stock, in accordance with the sinking fund provisions established at the time of the New Preferred Stock's initial issuance. These redemption provisions applied to the New Preferred Stock that was issued through August 31, 1992.

AP&L now intends to issue $35 million of New Preferred Stock, through December 31, 1993, under the exemptive provisions of Rule 52 ("Remaining Stock"). For the period during which any shares of the Remaining Stock are outstanding, AP&L proposes to: (1) Redeem shares of its Remaining Stock, in accordance with any mandatory or optional redemption provisions established at the time of the Remaining Stock's initial issuance; and (2) redeem (or purchase in lieu of redemption) outstanding Remaining Stock, in accordance with the sinking fund provisions established at the time of the Remaining Stock's initial issuance.

In addition, AP&L was further authorized by the Order to acquire from time-to-time prior to August 31, 1992, in whole or in part, prior to their respective maturities, certain of AP&L's outstanding securities, up to and including: (1) $350 million aggregate principal amount of one or more series of AP&L's outstanding first mortgage bonds ("First Mortgage Bonds"); (2) $175 million aggregate principal amount of one or more series of the outstanding pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's outstanding preferred stock. AP&L has acquired $21.45 million of the First Mortgage Bonds leaving a balance of $328.55 million of First Mortgage Bonds to be acquired.

AP&L now proposes to extend its authorization, from August 31, 1992 to December 31, 1993 to acquire not to exceed: (1) $328.55 million aggregate principal amount of the outstanding First Mortgage Bonds; (2) $175 million aggregate principal amount of one or more series of the outstanding pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's outstanding preferred stock.

Consolidated Natural Gas Co. (70-7909)

Consolidated Natural Gas Co. ("Consolidated"), a registered holding company, and its wholly-owned, nonutility subsidiary, CNG Energy Company ("CNG Energy"), both at the CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222-3199, and Lakewood Cogeneration, L.P. ("Partnership"), 100 Clinton Square, Syracuse, New York 13202-1049, (collectively, "Applicants") have filed a post-effective amendment to their application-declaration under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder.

By supplemental order dated December 3, 1986 (HCAR No. 24253) ("1986 Order"), CNG Energy was authorized to invest up to $100 million in qualifying cogeneration facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 and the rules promulgated thereunder by the Federal Energy Regulatory Commission. By supplemental order dated June 13, 1989 (HCAR No. 24902) ("1989 Order"), CNG Energy was authorized to invest in a QF project in Lakewood, New Jersey ("Lakewood Project"). Pursuant to the 1986 Order and the 1989 Order, CNG Energy entered into the Partnership with two nonaffiliates (collectively, "Partners"), which took over the development, financing, construction, ownership and operation of the Lakewood Project. The authority under both supplemental orders expired on December 31, 1991.

The Applicants now propose to fund up to $50 million, through December 31, 1996, to the Lakewood project. The Applicants propose to channel such funding from Consolidated to CNG Energy, from CNG energy to CNG Lakewood, Inc. ("CNG Lakewood") (to be formed as a wholly-owned, special-purpose subsidiary of CNG Energy), from CNG Lakewood to the Partnership, and from the Partnership to the Project, as described below. (Alternatively, CNG Energy may bypass CNG Lakewood and invest directly in the Partnership.) The funds will be passed from entity to entity through any one or a combination of (i) common stock acquisitions, (ii) open account advances ("Advances"), or (iii) long-term loans ("Long-Term Loans"), also as described below. The amount of financings and other obligations, as described below, will not exceed $50 million at any one level. In order to facilitate such financing methods, it is also requested that Consolidated, CNG Energy and CNG Lakewood be authorized to make guarantees, obtain letters of credit and deliver accommodation letters (requiring the parent to provide its subsidiary with sufficient capital to fulfill its obligations) ("Keep Well Letter") (collectively, "Support Arrangements") with respect to the obligations of CNG Energy and/or CNG Lakewood and the Partnership, as the case may be, as necessary to support debt service obligations (through the maintenance of the debt reserve requirements of the Partnership), equity contribution commitments and other Lakewood Project obligations. The Support Arrangements would be up to an amount that, when combined with equity contributions and investments in subordinated long-term notes (to be issued by the Partnership as part of a third-party financing facility, described below), will not exceed $50 million. It is estimated that a fee in an amount not exceeding one percent per annum would be paid with respect to the letters of credit, and the letters of credit may require recourse to Consolidated, CNG Energy or CNG Lakewood, as the case may be.

Each and every Advance and Long-Term Loan made pursuant to this application-declaration will have the same effective terms and interest rates ("Financing Terms"):

(1) Advances may be made to provide working capital and to finance the activities authorized by the Commission. Advances will be made under letter agreement and will be repaid on or before a date not more than one year from the date of the first Advance with interest at the same effective rate of interest as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

(2) Long-Term Loans shall be evidenced by long-term non-negotiable notes (documented by book entry only) maturing over a period of time (not in excess of 30 years) to be determined by the Officers of the lender (Consolidated, CNG Energy or CNG Lakewood, as the case may be), with the interest predicated on and equal to the effective cost of money to Consolidated obtained through the most recent of its long-term debt financing. In the event Consolidated does not issue long-term debt during the period June 1, 1992 through December 31, 1996, the proceeds of which are allocable to CNG Energy, long-term borrowing rates will be tied to debt issuances published in Salomon Brothers Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown. Such rate will be adjusted to match Consolidated's cost of borrowing if Consolidated subsequently issues long-term debt within one year of the date of takedown. Should Consolidated not issue long-term debt during the subsequent twelve-month period the proceeds of which are allocable to the borrower (CNG Energy, CNG Lakewood or the Partnership, as the case may be), the indicative rate at the time of takedown will be used for the life of the note.

It is proposed that: (i) CNG Energy obtain funds, through December 31, 1996, for the Lakewood Project and the Partnership through any one or a combination of (a) selling shares of CNG Energy common stock, $1,000 par value per share, to Consolidated, (b) taking out Advances from Consolidated; and (ii) Consolidated make Support Arrangements (Consolidated Support Arrangements").

CNG Energy proposes to make, from time to time through December 31, 1996: (i) capital contributions to the Partnership; (ii) Long-Term Loans to the Partnership and/or (iii) Support Arrangements (collectively, "CNG Energy Commitments").

CNG Energy also proposes to create and capitalize CNG Lakewood which may, in turn, make all or a pat of the investments in the Lakewood Project. It is proposed that, from time to time through December 31, 1996, CNG Lakewood obtain funds through: (i) The sale of up to 5,000 shares of CNG Lakewood common stock, $10,000 par value per share, to CNG Energy; (ii) Advances from CNG Energy; and/or (iii) Long-Term Loans from CNG Energy.

It is also proposed that CNG Lakewood make, from time to time through December 31, 1996: (i) Capital contributions to the Partnership; (ii) Long-Term Loans to the Partnership and/or (iii) Support Arrangements (collectively, "CNG Lakewood Commitments").

It is stated that CNG Energy expects that its return on its equity investment in the Lakewood Project will not be lower than 12%.

It is also proposed that the Partnership enter into financing with third parties for the construction and development of the Lakewood Project. The construction and development of the Lakewood Project during the construction phase will be financed by up to $262 million in construction financing ("Construction Financing") through non-recourse construction loans made to the Partnership pursuant to a credit facility ("Facility") with a group of banks and an institutional leader. The Facility will provide for Construction Financing during a construction phase of up to 28 months. Of the total $262 million in Construction Financing, $187 million will be provided by the bank lenders and $75 million by the institutional lender. A portion of the proceeds from the Construction Financing will be used to reimburse the Partners for previously made

[1] AP&L was authorized to issue and sell shares of its preferred stock, $.01 par value ("Class A Preferred"). The Class A Preferred has an aggregate price payable in the event of involuntary liquidation ("Liquidation Value") not to exceed: (1) $100 million, and/or (2) four million shares of AP&L's preferred stock, cumulative, par value $25; and/or (3) one million shares of AP&L's preferred stock, cumulative, par value $100; provided, however, that the aggregate of the Liquidation Value of the Class A Preferred issued, together with the total par value of the other classes issued, shall not exceed $100 million (collectively, "New Preferred Stock").

expenditures with respect to the Lakewood Project.

At the inception of the permanent phase under the Facility, (i) $136 million of the bank portion of the Construction Financing and the entire $75 million of the institutional lender portion of the Construction Financing will be converted into non-recourse long-term loans having a term not exceeding 19 years ("Permanent Financing"), (ii) the Partnership will obtain from the Facility banks a $2 million revolving credit facility ("Working Capital Financing"), for an initial term of five years, for working capital, and (iii) the Partners will make their respective capital contributions to the Partnership (estimated to be an aggregate of $51 million or approximately $17.85 million in the case of CNG Energy or CNG Lakewood, as the case may be). Any difference between the final cost of the Lakewood Project and the sum of the Permanent Financing loans and the Partner equity contributions may be covered by long-term loans from the Partners, for which the Partnership will issue subordinated long-term notes having a maturity not exceeding 30 years and bearing an interest rate not in excess of 15% per annum. To the extent that CNG Energy and/or Lakewood provide any such loans, the amount of such loans would not, when aggregated with the other investments in and obligations to the Partnership, exceed the $50 million authorization requested herein.

The interest rate on the bank borrowings will fluctuate at a set percentage spread over LIBOR (London Interbank Offered Rate), certificate of deposit or prime rates. The interest rate on institutional lender borrowings will be a fixed rate set at a percentage over the rate of 2 year and 15 year U.S. Treasury securities at the inception of the Construction Financing and Permanent Financing, respectively. Additionally, the Partnership's power agreement contains a provision allowing for adjustment in the capital charge based upon 15 year U.S. Treasury bond rates at the date of conversion from Construction Financing to Permanent Financing. The interest rate on the Working Capital Financing will fluctuate at a set percentage over prime rate. In no event will the set percentage over the base rate exceed 3.25% for the Construction Financing, Permanent Financing and Working Capital Financing.

As a condition to the conversion of the bank Construction Financing to Permanent Financing, the Partnership must hedge the interest rate in at least 75% of the $136 million of the bank long-term debt. The applicants propose that the Partnership enter into variable to fixed interest rate swap agreements ("Swaps") from time to time through December 31, 1996, in notational amounts that in the aggregate will not exceed $102 million (75% of $136 million). Under a Swap, the Partnership would agree to make payments to a counter-party, payable periodically in arrears, at a fixed rate of interest calculated on the notional amount. The counter-party would agree to make payments to the Partnership at a variable rate of interest calculated on the notional amount. The Swaps will be for terms that will not exceed 20 years. The Swaps will be for terms that will not exceed 20 years. The Swaps will have a fixed maximum interest rate of 13% per annum and generally would provide that the Partnership could terminate the agreement with the consent of the counter-party, with respect to which the Partnership may incur early termination payments which could be substantial under certain market conditions. The Partnership could be required to pay various fees and other expenses in connection with the Swaps and, in the event that an intermediary between the Partnership and the counter-party is required for the guarantee of payment obligations, the intermediary would require a fee, which would, however, not exceed 1% per annum on the notional amount. The Partnership believes it will be able to acquire the most favorable terms for the Swaps through negotiation with the counter-parties. It is consequently requested that the Swaps be exempt from the competitive bidding requirements of Rule 50 under the exception set forth in subsection (a)(5) thereof.

The Applicants request that the Construction Financing, Permanent Financing, Working Capital Financing and Swap transactions by the Partnership be exempt from section 6(a) of the Act pursuant to the provisions of section 6(b), with such exemption for the Working Capital Financing to terminate on the fifth anniversary of the date of the initial take-down of such financing.

The Applicants also propose, through December 31, 1992, that CNG Energy and/or CNG Lakewood acquire ("Acquisition") up to a 1% general partnership interest in the Partnership and up to an additional 33% limited partnership interest in the Partnership, in such amounts that the combined total partnership interests held by CNG Energy and/or CNG Lakewood will exceed neither 1% of total general partnership interests nor 34% total limited partnership interests. CNG Energy currently has a 1% limited partnership interest in the Partnership. Thus, following the Acquisition, CNG Energy's and/or CNG Lakewood's total partnership interests will not exceed 35% of the aggregate partnership interests (including general and limited partnership interests) ("Interests") in the Partnership. On July 10, 1991, CNG Energy, pursuant to the Partnership agreement of August 31, 1990, exercised an option ("Option") and incurred a legally binding obligation to acquire the Interests. The Acquisition will be effected without any additional payment of consideration. CNG Energy will assume the increased obligations to (and will receive the additional potential benefits from) the Partnership that accompanies the Acquisition. The current Partnership agreement will be restated to reflect the changed ownership composition prior to the closing date on the Lakewood Project financing. It is stated that the Acquisition will close on or before December 31, 1992. The Interests will be acquired from HYDRA-CO, a wholly owned subsidiary of Niagara Mohawk Power Corporation, a public-utility holding company exempt from the Act pursuant to section 3(a)(2) and Rule 2 thereunder.

Public Service Company of New Hampshire (70-8036)

Public Service Company of New Hampshire ("PSNH"), 1000 Elm Street, Manchester, New Hampshire 03101, an electric utility company subsidiary of Northeast Utilities ("Northeast"), a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

In a series of transactions not jurisdictional under the Act at the time, the Business Finance Authority of the State of New Hampshire (formerly, The Industrial Development Authority of the State of New Hampshire) issued five series of pollution control revenue bonds ("Bonds") for financing PSNH's share of the cost of constructing certain pollution control, sewage, and solid waste disposal facilities at the Seabrook Nuclear Electric Generating Station, Unit No. 1. The Bonds included two series of taxable pollution control revenue bonds: (i) The $114,500,000 Pollution Control Revenue Bonds (Public Service Company of New Hampshire Project—1991 Taxable Series D Bonds) ("Series D Bonds"); and (ii) the $114,500,000 Pollution Control Revenue Bonds (Public Service Company of New Hampshire Project—1991 Taxable Series E Bonds) ("Series E Bonds") (collectively, "Taxable Bonds").

In order to improve the credit ratings of, and to support, the Taxable Bonds, PSNH obtained two letters of credit from Citibank, N.A. ("Citibank") one for each series of the Taxable Bonds. Since the issuance of the Taxable Bonds, Citibank's rating in the financial markets has deteriorated. In addition, PSNH states that it has been advised by remarketing agents that: (i) Many institutional investors that otherwise would be interested in purchasing the Taxable Bonds will not purchase securities secured by letters of credit issued by Citibank; and (ii) those investors that are still willing to purchase the Taxable Bonds are demanding an interest rate premium that is causing PSNH's effective interest cost to be higher than it would otherwise be.

PSNH now proposes to replace the Citibank letter of credit for the Series D Bonds with a substitute letter of credit issued by Barclays Bank PLC, New York Branch ("Barclays"). The Barclays letter of credit would be issued in the amount of $121,014,000, representing principal in the amount of $114,500,000 and interest in the amount of $6,514,000 calculated at the maximum rate of 16% for 128 days. The Barclays letter of credit would expire three years from its date of issuance unless terminated earlier pursuant to its terms, and it would be issued pursuant to a Series D Letter of Credit and Reimbursement Agreement ("Barclays Reimbursement Agreement") between Barclays and PSNH. The proposed credit facility substitution will be carried out on or before December 31, 1992.

Under the Barclays Reimbursement Agreement, PSNH would be obligated: To pay annual letter of credit commissions and fronting and participation fees at rates aggregating approximately 0.99072% per annum (based upon the amount available to be drawn under the Barclays letter of credit on account of principal); to pay certain transfer, drawing, cancellation and other fees; to comply with certain business covenants that will be substantially similar to those contained in the reimbursement agreements for the Citibank letters of credit; and, to reimburse Barclays for any amounts drawn under the Barclays letter of credit. The Barclays Reimbursement Agreement will provide that all letter of credit drawings other than drawings to pay the principal portion of the purchase price for unremarketed bonds are immediately reimbursable by PSNH to Barclays. Drawings to pay the principal portion of the purchase price for unremarketed, tendered bonds would be treated as advances or loans by Barclays to PSNH ("Tender Advances"), payable upon the expiration of the Barclays letter of credit. Tender Advances would bear interest until paid at one of three rates specified in the Barclays Reimbursement Agreement: (i) Prime rate; (ii) certificate of deposit rates plus 0.875%; or (iii) the London Interbank Offered Rate plus 0.750%. Certain of PSNH's obligations to Barclays under the Barclays Reimbursement Agreement, including without limitation its obligation to reimburse Barclays for drawings made under the Barclays letter, would be evidenced and secured by PSNH's $114,500,000 First Mortgage Bonds, Series F.

PSNH also requests authorization to begin negotiations pursuant to an exception from the requirements of Rule 50, pursuant to subsection (a)(5) thereunder, with Barclays to document the terms of the substitution of the new letter of credit. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19468 Filed 8-14-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 7, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 42096.

Date filed: August 4, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 1, 1992.

Description: Application of Air Haiti, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, requests the Department to renew its foreign air carrier permit issued by Order 87-8-55; Air Haiti further invokes the automatic extension provisions of 14 CFR part 377.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-19478 Filed 8-14-92; 8:45 am]

BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement; Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs.

DATES: The Agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on September 18, 1992, beginning at 10:15 a.m. and ending at approximately 1 p.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by September 7, 1992, to the address shown below. If sufficient time is available, questions received after the September 7 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by September 7, 1992, and the issues to be discussed will be mailed to interested personnel by September 11, 1992, and will be available at the meeting.

ADDRESSES: Questions for the September 18 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, room 5401, 400 Seventh Street, SW., Washington, DC 20590. The meeting will be held at the Ramada Inn, 8270 Wickham Road, Romulus, Michigan 48174 (by the Detroit Metropolitan Airport).

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's rulemaking, research and enforcement programs, on September 18, 1992. The meeting will be held at the

Ramada Inn, 8270 Wickham Road, Romulus, Michigan. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB September 9, 1992.

Issued: August 10, 1992.

Stanley Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 92–19479 Filed 8–14–92; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0005.

Form Number: ATF F 3210.1.

Type of Review: Extension.

Title: Application for Restoration of Firearms and/or Explosives Privileges.

Description: Certain categories of persons are prohibited from possessing explosives and firearms. This form is the basis for ATF investigating the merits of an applicant to have his rights restored.

Respondents: Individuals or households.

Estimated Number of Respondents: 5,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,500 hours.

OMB Number: 1512–0247.

Form Number: ATF REC 5000/2.

Type of Review: Extension.

Title: Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

Description: These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 50.

Estimated Burden Hours Per Recordkeeper: 6 hours, 30 minutes.

Frequency of Response: Other.

Estimated Total Reporting Burden: 325 hours.

OMB Number: 1512–0399.

Form Number: ATF F 5400.21.

Type of Review: Extension.

Title: Application Permit for User Limited Special Fireworks (18 U.S.C. Chapter 40, Explosives).

Description: This form is used to verify the eligibility of and grant permission to the holder to buy or transport explosives in interstate commerce on a one-time basis.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 1,650.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 540 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW. Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92–19519 Filed 8–14–92; 8:45 am]

BILLING CODE 4810–31–M

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0908.

Form Number: IRS Forms 8282 and 8283.

Type of Review: Extension.

Title: Donee Information Return (Sale, Exchange or Other Disposition of Donated Property) (8282). Noncash Charitable Contributions (8283).

Description: Regulations section 1.170A–13(c) requires donors of property valued over $5,000 to file certain information with their return in order to receive the deduction. Donees must also inform the IRS if they dispose of the property within two years.

Respondents: Individuals or households, Businesses of other for-profit, Non-profit institutions.

Estimated Number of Respondents/Recordkeepers: 1,501,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form 8282:	
Recordkeeping	3 hours, 7 minutes.
Learning about the law or the form.	30 minutes.
Preparing the form and sending the form to the IRS.	34 minutes.
Form 8283:	
Recordkeeping	3 hours, 7 minutes.
Learning about the law or the form.	30 minutes.
Preparing the form	35 minutes.
Copying, assembling, and sending the form to the IRS.	35 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,699,180 hours

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW. Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports, Management Officer.

[FR Doc. 92–19520 Filed 8–14–92; 8:45 am]

BILLING CODE 4830–01–M

Customs Service

[T.D. 92–79]

Customs Approval of Altol Petroleum Products Service, Inc., as a Commercial Gauger

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval of Altol Petroleum Products Service, Inc., as a commercial gauger.

SUMMARY: Altol Petroleum Products Service, Inc., of Guayanilla, Puerto Rico recently applied to Customs for approval to gauge imported petroleum, petroleum products, organic chemicals and vegetable and animal oils under § 151.13(f) of the Customs Regulations (19 CFR 151.13). Customs has determined that Altol Petroleum Products Service, Inc. meets all of the requirements for approval as a commercial gauger.

Therefore, in accordance with § 151.13(f) of the Customs Regulations, Altol Petroleum Products Service, Inc. is approved to gauge the products named above in all Customs districts.

EFFECTIVE DATE: August 7, 1992.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Special Assistant for Commercial and Tariff Affairs, Office of Laboratories and Scientific Services, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, DC 20229 (202–927–1060).

Dated: August 12, 1992.

Jimmy E. Harrell,

Acting Director, Office of Laboratories and Scientific Services.

[FR Doc. 92–19495 Filed 8–14–92; 8:45 am]

BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 159
Monday, August 17, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 34807.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Tuesday, August 25, 1992.

CHANGE IN THE AGENDA: The Commodity Futures Trading Commission has added to the agenda an Application of the Chicago Board of Trade for contract designation in Clean Air Options.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-19597 Filed 8-13-92; 10:11 am]
BILLING CODE 6351-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1451]

TIME AND DATE: 10 a.m. (EDT), August 19, 1992.

PLACE: Chattanooga Office Complex Auditorium, Chattanooga, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on July 29, 1992.

ACTION ITEMS:

New Business

A—Budget and Financing

A1. Fiscal Year 1993 Capital Budget Financed from Power Proceeds and Borrowings.

A2. Fiscal Year 1993 Operating Budget Financed from Power System Revenue.

C—Power

C1. Simultaneous Billing for Wholesale Power Distributors.

E—Real Property Transactions

E1. Sale of Permanent and Construction Easements Affecting Approximately 0.57 Acre of the Russellville, Kentucky, Power Service Center Property.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Supplement to Personal Services Contract No. TV-77636A with Robison & McAulay.

F3. Supplement to Personal Services Contract No. TV-82911V with RHR International Company.

F4. Supplement to Personal Services Contract No. TV-81877V with R.L. Cloud Associates, Inc.

F5. Supplement to Personal Services Contract No. TV-79584T with Fish and Wildlife Associates, Inc.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: August 12, 1992.

Edward S. Christenbury,
General Counsel and Secretary.

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Part II

Department of Commerce

National Institute of Standards and Technology

15 CFR Part 280

Procedures for Implementation of the Fastener Quality Act; Proposed Rule

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 280

[Docket No. 910778-1178]

RIN 0639-AA92

Procedures for Implementation of the Fastener Quality Act

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) requests comments on proposed regulations to implement the Fastener Quality Act (the Act), and announces the opening of a 75 day comment period for that purpose. The Act protects the public safety by requiring that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured; providing for accreditation of laboratories engaged in fastener testing; and requiring inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act.

The Secretary of Commerce, acting through the Director of the National Institute of Standards and Technology (NIST), proposes to implement the Act by establishing these procedures, under which laboratories in compliance with the Act may be listed; laboratories may apply to NIST for accreditation; private laboratory accreditation entities (bodies) may apply to NIST for approval to accredit laboratories; and foreign laboratories accredited by their governments or by organizations recognized by the NIST Director under section 6(a)(1)(C) of the Act can be deemed to satisfy the laboratory accreditation requirements of the Act. The regulation also establishes within the Patent and Trademark Office (PTO) a recordation system to identify the manufacturer or distributor of covered fasteners to ensure that the fasteners may be traced to their manufacturers or private label distributors. In addition, the proposed procedures contain provisions on enforcement of the regulations, civil penalties, and hearing and appeal procedures.

Public comments are specifically requested on the following matters: The draft regulations implementing the Fastener Quality Act which are included in this notice; the Regulatory Impact Analysis/Regulatory Flexibility Analysis for the Fastener Quality Act which has been prepared by NIST, including comments on the data, estimates, and assumptions used in preparing this analysis, which may be obtained by contacting NIST at the address shown below; and classes of fasteners which are not used in critical applications but which are otherwise covered by the Act and this regulation, and which might be waived from coverage under these proposed regulations, or conversely, classes of fasteners which are used in critical applications but which are not covered by the Act and this regulation, and which should be covered under these proposed regulations.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Comments on the proposed regulation and the Regulatory Impact Analysis/Regulatory Flexibility Analysis must be submitted to: Dr. Stanley I. Warshaw, FQA Program Manager, Office of Standards Services, National Institute of Standards and Technology, Administration Building, room A603, Gaithersburg, MD 20899, telephone number (301) 975-4000. Copies of the Regulatory Impact Analysis/Regulatory Flexibility Analysis may be obtained by writing or calling this address.

FOR FURTHER INFORMATION CONTACT: For subparts A, B, G, H, and I: Michael R. Rubin, Deputy Chief Counsel for NIST, (301) 975-2803; for subpart C: Albert Tholen, Chief, National Voluntary Laboratory Accreditation Program, (301) 975-4016; for subparts D, E and F: John L. Donaldson, Chief, Standards Code and Information Program, (301) 975-4029; and for subpart J: Lynn Beresford, Trademark Legal Administrator, (703) 305-9464.

SUPPLEMENTARY INFORMATION:

Background—Summary of the Act and Provisions Implemented or Interpreted by the Proposed Rule

In 1990, Congress enacted the Fastener Quality Act (the Act) to protect public safety, deter introduction of non-conforming fasteners into commerce, improve the tracing of fasteners used in critical applications, and provide customers with greater assurance that fasteners meet stated specifications. The Act requires that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured; provides for accreditation of laboratories engaged in fastener testing; and requires the inspection, testing and certification (in accordance with standardized methods) of fasteners covered by the Act.

Section 4 of the Act authorizes the Secretary to waive the requirements of the Act for specific categories of fasteners when the Secretary determines that they are not being used in critical applications. Section 4 also authorizes the Secretary to add additional categories of fasteners when the Secretary determines that they are being used in critical applications.

Section 5 of the Act prohibits selling (or offering for sale) any fastener unless it is part of a lot which: (1) Conforms to the standards and specifications to which the manufacturer represents it has been manufactured; and (2) has been inspected, tested, and certified as provided by the Act. An exception to this pre-sale requirement is provided for certain small lots. These small lots must be tested as soon as practicable after delivery to the purchaser. Section 5 also provides that fastener inspection and testing be performed by a laboratory accredited in accordance with procedures and conditions specified by the Secretary of Commerce.

Section 6 requires the Secretary of Commerce, acting through the Director of NIST, to issue regulations including: (1) Procedures and conditions for NIST accreditation of fastener testing laboratories; (2) conditions (consistent to the extent practicable with requirements of national or international consensus documents) under which private entities may apply for approval to directly accredit laboratories in accordance with the requirements of the Act; and (3) conditions under which the accreditation of foreign laboratories by their governments or organizations recognized by the NIST Director will be deemed to satisfy the requirements of the Act.

The Act leaves to the discretion of the Director the procedures NIST will use to determine the competency of foreign governments' (or other organizations') laboratory accreditation programs. In some cases, NIST may use memoranda of understanding or other forms of agreement with such bodies to define the requirements for continued NIST listing of accreditation programs.

Section 7 of the Act makes it unlawful for any shipment of domestically produced fasteners to be sold unless accompanied at the time of delivery by a certificate indicating: (1) That they have been manufactured in accordance with applicable standards and have been tested by an accredited laboratory in accordance with the procedures and conditions established by the Secretary of Commerce; and (2) that an original copy of the laboratory report is on file for inspection. It is also unlawful for any person to sell to any importer or for any importer to purchase shipments of fasteners of foreign origin, unless delivery is accompanied by a manufacturer's certificate and an original laboratory testing report for each lot from which such fasteners were taken. The proposed regulations establish specific informational requirements for certificates, laboratory reports, and standard forms to be used for these purposes.

Section 7 of the Act also provides an option for importers and private label distributors to accept delivery of a lot or portion of a lot of fasteners without an original copy of the laboratory test report if: (1) The manufacturer provides to such importer or distributor a certificate stating that the fasteners comply with the requirements of the applicable standards and specifications; and (2) the importer or private label distributor assumes responsibility in writing for the inspection and testing of such fasteners in accordance with the Act.

Section 7 also requires that any person who significantly alters a fastener so that it no longer conforms to the description in the relevant certificate and offers such fastener for subsequent sale is to be treated as a manufacturer for purposes of the Act. Such person must have the altered fastener inspected and tested in accordance with the requirements of the Act, unless delivery of such fastener to the purchaser is accompanied by a written statement: (1) Noting the original lot number; (2) disclosing the subsequent alteration; and (3) warning that such alteration may affect the dimensional or physical characteristics of the fastener.

Section 7 also governs the commingling of fasteners from different lots in the same container. This section, which does not apply to sales by original equipment manufacturers (OEM) to their authorized dealers for use in assembling or servicing products produced by them, makes it unlawful for any manufacturer or any person who purchases any quantity fasteners for resale (at wholesale) to commingle like fasteners from different lots in the same container. An exception to this prohibition is that a manufacturer or other person may commingle like fasteners of the same type, grade, and dimension from not more than two tested and certified lots in the same container during repackaging and plating operations if that container is conspicuously marked with the lot identification numbers of both lots. NIST does not propose, at this time, to further define labeling or other requirements for commingling.

Section 7 prohibits the resale of fasteners to any person who purchases such fasteners: (1) For sale at wholesale; or (2) for assembling components of a product or structure for sale—unless the container is conspicuously marked with the lot number from which the fasteners were taken. (This requirement does not apply to sales by OEMs to their authorized dealers for use in assembling or servicing products produced by the OEM.) In addition, upon request by any other type of purchaser prior to or at time of sale, the seller must conspicuously mark the container with the lot number.

Section 8 prohibits offering fasteners for sale that are required by an applicable standard or specification to bear a raised or depressed insignia identifying the manufacturer or distributor unless the manufacturer or distributor has complied with the requirements of a program to be established by the Secretary of Commerce for the registration of such insignia to ensure that the fasteners may be traced to their manufacturers or private label distributors. However, the Act does not establish any particular recordation system to effect that purpose. The Patent and Trademark Office (PTO) was charged with establishing such a system. These requirements are proposed as subpart J of this rule.

Section 9(a) of the Act authorizes the Attorney General to bring an action in U.S. district courts for declaratory and injunctive relief against persons who violate the Act or implementing regulations. Section 9(b) requires the Secretary of Commerce to establish "notice and opportunity for hearing" procedures for the assessment of civil penalties not to exceed $25,000 for each violation of the Act or implementing regulations, authorizes penalty recovery actions by the Attorney General, and authorizes the Secretary to issue subpoenas of witnesses or documents. A "substantial evidence" standard of judicial review is provided. Proposed regulations implementing sections 9(a) and 9(b) are contained in subparts G, H and I. Section 9(c) of the Act provides for criminal penalties, which are enforced by the Department of Justice.

Section 10 of the Act provides for 10-year retention of all records of inspection, testing and certifications of fasteners under the Act by laboratories, manufacturers, importers, private label distributors, and persons who make significant alterations to fasteners.

Section 15 makes the Act applicable only to fasteners fabricated 180 days or more after the Secretary issues final regulations required by sections 5, 6, and 8 of the Act, but permits extensions of this time period if the Secretary determines that an insufficient number of laboratories have been accredited to perform the volume of inspection and testing required. Periodic reports to Congress would be required while any such extension is pending.

Overall Scheme Accreditation of Laboratories to Test Fasteners under the Act

The Act is designed to ensure that all fasteners sold in U.S. commerce for critical applications are tested by laboratories that have been determined competent to conduct required fastener testing and that actually test fasteners correctly. As discussed below, fastener testing laboratories may be accredited by NVLAP under the Fastener Laboratory Accreditation Program being established to implement the Act; by an accrediting body operating a NIST-approved accreditation program; or by an accreditation program of a foreign government or other government-like body recognized by the Director.

As noted above, one intention of the Act is that NIST "approve" (under appropriate conditions) other accreditation programs as being qualified to determine the competency of laboratories to test fasteners for purposes of the Act. The Act requires that this be done "using to the extent practicable the requirements of national or international consensus documents." The requirements contained in this proposed rule for such recognition have been based upon two international consensus documents, International Organization for Standardization (ISO) Guides 54 and 55.

The Department's responsibility to ensure compliance is made explicit in section 6(c) of the Act, which provides that the Secretary "shall ensure" that:

(1) Private entities accrediting laboratories under procedures and conditions established under the Act comply with such procedures and conditions, and

(2) Laboratories accredited by such entities or by foreign governments pursuant to the Act comply with the requirements for such accreditation.

Since NIST is responsible for ensuring compliance with the Act by all fastener testing laboratories—whether accredited by NVLAP, programs operated by private entities which have been approved by NIST, or by foreign government bodies or "other bodies

recognized by the Director"—NIST has adopted the concept of "listing." The "Accredited Laboratory List" required under subpart B is to be a listing of all fastener testing laboratories accredited for testing under the Act. Only listed laboratories may test fasteners under the Act.

Section-by-Section Discussion of the Proposed Rule

Subpart A—"General". This Subpart sets out the purpose of the rule, and presents a general description of the rule. It also contains definitions that apply throughout the rule; procedures by which the applicability of the rule may be waived; procedures for the inclusion of new fasteners under the coverage of the rule; describes sampling procedures; and establishes a format and required content for laboratory test reports.

Subpart B—"Laboratory Accreditation." All laboratories that desire to engage in fastener testing covered by the Act and its implementing regulations must be listed by NIST in the "Accredited Laboratory List" established by this subpart. NIST will prepare and maintain the List, which shall be composed of all laboratories currently accredited under subparts C, D, and E of these regulations. Only laboratory test reports prepared by an accredited laboratory currently listed in the Accredited Laboratory List shall be deemed to meet the requirements of the Act. Procedures for removing a fastener testing laboratory from listing and for appeals of listing decisions are also included.

Subpart C—"NIST Fastener Laboratory Accreditation Procedures". In order to make these regulations as easy to use as possible, NIST has prepared this rule so that it is complete as it stands, and the reader does not need to refer to any other regulation. To accomplish this, NIST has restated in subpart C of this rule relevant portions of the NVLAP procedures, which are published at part 7 of title 15 of the Code of Federal Regulations. This step was necessary because section 6 of the Act provided that the "old" NVLAP procedures were to be used to accredit laboratories under the Act. NIST has used its statutory authority to supplement the NVLAP procedures found at part 7 of title 15 of the CFR by establishing this subpart C, which will govern the operation of NVLAP for the purposes of the Fastener Quality Act only.

The original NVLAP rule, found at 15 CFR part 7, consists of four subparts: A—General Information; B—Establishing a LAP; C—Accrediting a Laboratory; and D—Conditions and Criteria for Accreditation. The first two subparts are largely not applicable to the NVLAP Fastener Program because they deal with issues which are already addressed in the Act. For example, the mechanism in Part 7 dealing with the establishment of accreditation programs has no applicability to the NVLAP Fastener Program because that Program was established by the Act. Accordingly, virtually all of subparts A and B of part 7 are omitted from the regulations being published today.

This Subpart sets out the procedures and technical requirements of the NVLAP Fasteners Testing Program for the accreditation of laboratories that test fasteners. Each section of subparts C and D of the original NVLAP procedures is repeated in this new subpart, with minor modifications made as necessary to focus this regulation upon the Fastener Quality Act.

Accreditation is available to any laboratory that demonstrates competence to provide services according to the criteria specified in this subpart. Any laboratory that uses test methods included in this program may apply for NVLAP accreditation. It is up to the laboratory to select the areas and specific tests within each area for its proposed scope of accreditation. A laboratory may be accredited to test and/or measure fasteners in any one or more of the areas of chemical, dimensional, mechanical and physical, non-destructive, or metallography testing.

Subpart D—"NIST Approval of Accreditation Programs." This Subpart governs NIST approval of accreditation programs operated by private entities. All private accreditation entities that seek to accredit fastener testing laboratories must receive recognition under this subpart. Renewal and revocation of such approval are also covered in subpart D.

Subpart E—"Recognition of Accreditation Programs." In accordance with section 6(a)(1)(C) of the Act, this subpart sets forth the conditions under which the accreditation of foreign laboratories by their governments or by organizations recognized by the Director shall be deemed to meet the requirements of section 7 of the Act. The Subpart provides that consistent with applicable laws and regulations, the Director may negotiate and conclude agreements with the governments of other countries implementing section 6(a)(1)(C) of the Act.

Subpart F—"Requirements for the Fastener Laboratory Accreditation Bodies". This subpart sets out requirements that must be met by all accreditation bodies approved by NIST under subpart D. These requirements, which are based on requirements contained in the International Organization for Standardization (ISO) Guide 54, are intended to assure that the approved laboratory accreditation body has the administrative and technical capability to conduct a fastener accreditation program which meets all the requirements of the Act.

Subpart F also sets out the requirements against which an approved accreditation body assesses the technical competence of an applicant testing laboratory. These requirements shall be consistent with the requirements contained in subpart C of the regulations and all technical requirements established under that Subpart. Additional requirements may be prescribed by the accreditation body, provided that they are consistent with International Organization for Standardization/International Electrotechnical Commission (ISO/IEC) Guide 25 and do not negate or undermine any requirements imposed under subpart C.

Subpart G—"Enforcement". This Subpart and the following two subparts set forth the procedures governing the Commerce Department's administrative procedures for assessment of civil penalties and remedies where there has been a determination that a violation of the Act has occurred. They will govern civil remedy and penalty proceedings as provided for in section 9 of the Act. Subpart G defines the specific rules for the filing and service of documents in the administrative proceedings covered.

Subpart H—"Civil Penalties". This subpart governs the Commerce Department's administrative procedures for the assessment of civil penalties under the Fastener Quality Act.

Subpart I—"Hearing and Appeal Procedures". This Subpart states the procedures governing the conduct of the hearings and the issuance of final decisions by the judge or Under Secretary in administrative proceedings involving alleged violations of the Fastener Quality Act and of the regulations promulgated relevant to the implementation of the Act.

Subpart J—"Insignia". This Subpart contains the conditions and procedures for manufacturers' insignias to be recorded by the Patent and Trademark Office (PTO). The purpose of Section 8 of the Act is to ensure that fasteners may be traced. The Act effects this purpose by requiring manufacturers and private label distributors, as defined by the Act, to inscribe any fastener, required by the standards and specifications to which it was

manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor, with insignias that can be used to trace the fastener to its original manufacturer or private label distributor. However, the Act does not establish any particular recordation system to effect that purpose. The Patent and Trademark Office (PTO) was charged with establishing such a system.

Ultimately, the PTO focused on five possible systems for recording fastener insignias; these alternatives are described in appendix F of the Regulatory Impact Analysis/Regulatory Flexibility Analysis. After considerable discussion of these five alternatives, the PTO determined that the PTO should permit the manufacturer or private label distributor who has a trademark duly registered with the PTO to use that trademark as its fastener insignia. For manufacturers or private label distributors who do not have a trademark registered with the PTO, the PTO would assign an alphanumeric designation to that manufacturer or private label distributor. The assigned alphanumeric designation would be a unique three digit number followed by a letter e.g. 123A. The PTO would not assign any alphanumeric designation which is already used in the industry to indicate quality or compliance with a standard.

Request for Comments

The Director of the National Institute of Standards and Technology requests comments on the draft regulations to appear at 15 CFR part 280 implementing the Fastener Quality Act which are included in this notice.

Public comments are specifically requested on the following matters: (1) The draft regulations to appear at 15 CFR part 280 implementing the Fastener Quality Act which are included in this notice; (2) the Regulatory Impact Analysis/Regulatory Flexibility Analysis for the Fastener Quality Act which has been prepared by NIST, including comments on the data, estimates, and assumptions used in preparing this analysis; and (3) classes of fasteners which are not used in critical applications but which are otherwise covered by the Act and this regulation, and which might be waived from coverage under § 280.4 of these proposed regulations, or conversely, classes of fasteners which are used in critical applications but which are not covered by the Act and this regulation, and which should be covered under § 280.4 of these proposed regulations.

Persons interested in commenting on the proposed regulations should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection Facility, room 6020, Hoover Building, Washington, DC 20230.

Classification

Executive Order 12291

The Department has determined that this rule is a major rule within the meaning of section 1 of Executive Order 12291. The Department of Commerce estimates that the annual cost to the United States economy of this regulation might be as low as roughly $20 million, but could exceed $485 million, using a "worst case" estimate. As a result, a Regulatory Impact Analysis has been prepared on the expected costs that will be incurred by both government and industry to implement these regulations, as well as on the expected benefits to be derived from the rule's implementation.

The Fastener Quality Act requires that certain fasteners sold in commerce conform to the specifications to which they are represented to be manufactured; provides for accreditation of laboratories engaged in fastener testing; and requires the inspection, testing and certification (in accordance with standardized methods) of fasteners covered by the Act. To the extent that the Act permitted some flexibility in the development of the implementing regulations, the Department has sought and incorporated advice from its Fastener Advisory Committee, chartered pursuant to the Act, to maximize the cost effectiveness of the proposed regulations. This proposed rule reflects their advice to the extent that it was consistent with the requirements of the Act.

However, the Advisory Committee also examined a number of regulatory alternatives that it felt would improve the cost effectiveness of the Act and implementing regulations. These regulatory alternatives were not in accord with the Act as now written and would require legislative amendment to incorporate them. Cost estimates based on these regulatory alternatives were requested by the Office of Management and Budget and were included in the analysis, though they are not discussed here. A copy of the analysis is available from NIST at the address listed above.

While there are a number of incidental costs which were not included in the analysis (such as the cost of educating buyers and the general public), costs identified by the Fastener Advisory Committee and others as being the most significant ones likely to be incurred in the implementation of the Fastener Quality Act are discussed in the analysis.

In assessing the annual effect on the economy of implementing this draft regulation, the Department of Commerce has considered only those new costs that are to be created by the regulation.

This is important because many of the requirements contained in the Fastener Quality Act and implemented in the draft regulation reflect current industry practice and will not result in new costs for compliance.

The analysis was based upon the assumption that anywhere from roughly 1 percent up to 25 percent of the fastener industry may eventually be covered by this regulation. The one percent estimate was based upon the findings of the Commerce, Science, and Transportation Committee of the United States Senate, which stated in its report on the Fastener Quality Act that approximately 200 billion bolts, screws and other fasteners are sold in the United States. Of these, approximately one percent are used in critical applications that will be covered by the Act. However, a "worst case" estimate provided by industry of a 25 percent rate of coverage was also used in this analysis as an upper bound in estimating costs. A narrower estimated range used by the Fastener Advisor Committee was also used to estimate costs in the analysis.

Costs will be incurred by government to: (1) Establish a Laboratory Accreditation Program for fastener testing laboratories (Fastener LAP) under the National Voluntary Laboratory Accreditation Program; (2) establish a program to approve other private sector (domestic and foreign) laboratory accreditation programs for fastener laboratories; (3) establish a manufacturers' insignia program; (4) establish a program to recognize programs of government/quasi-government laboratory accreditation programs; (5) develop implementing regulations in compliance with all rulemaking requirements; and (6) to enforce the requirements of the Act and the implementing regulations.

It is anticipated that the first three activities will be self-supporting and that program developmental and operating costs will be recovered through fees charged to users. The costs associated with establishing a recognition program for fastener accreditation programs of other governments, and rulemaking costs are not expected to be recoverable. These

costs could not be estimated based on available data. Such costs are expected to exceed $150,000.

Compliance costs will also be directly incurred by testing laboratories, fastener manufacturers, and distributors. In most cases, these costs will be passed on to fastener users/purchasers; and, in turn, to the users/buyers of products assembled with those fasteners. As noted above, these costs will vary with the percent of industry assumed to be covered under the Act. Industry costs considered in this analysis included: laboratory accreditation costs; laboratory recordkeeping costs; manufacturer test costs; manufacturer recordkeeping costs; manufacturer insignia costs; manufacturer nonconforming product costs; distributor recordkeeping and warehousing costs; and distributor inventory costs. Total annual industry costs in these areas are expected to fall between $19.5 million and $486.7 million.

Expected annual laboratory accreditation costs are estimated to range from $.3 million to $6.4 million for the accreditation of between 20 and 640 laboratories depending on the percent of fasteners assumed to be covered under the Act. Accreditation cost per laboratory will vary with the scope of accreditation sought (the number of test methods for which the laboratory seeks accreditation); however, the average cost per laboratory is expected to be approximately $10,000.

Manufacturers will be required by the Act to have a sample from each fastener lot (covered by the Act) tested in an accredited laboratory. It should be noted that manufacturers which include a grade mark on their fasteners are already obligated by existing laws to test those fasteners to ensure that they are not improperly labeled or misrepresented. If the 1 to 25 percent range is used, the number of fastener lots requiring testing will be between 115,000 and 2,875,000. The Department of Commerce estimates that between $.2 million to $6.0 million (excluding additional spectrochemical or mill heat test costs) will be expended by fastener manufacturers in the United States to conduct required additional tests on fasteners which are not presently being performed.

In addition, the Department of Commerce's Fastener Advisory Committee identified one major area where additional tests would be required in excess of current industry practice. Industry practice prior to enactment of the Fastener Quality Act was to perform chemical tests on raw materials rather than on finished fasteners. However, these so-called mill-heat tests will not be sufficient to meet the requirements of the Act. The industry will be required to conduct chemical tests on each lot of fasteners. Based upon information supplied by the Fastener Advisory Committee that a single basic alloy spectra-chemical analysis costs roughly $35, the total costs of these new test requirements would range from $4.0 million to $100.6 million assuming a range of 1 to 25 percent industry coverage.

Annual costs incurred by the estimated 5,000 U.S. distributors to comply with the noncommingling and recordkeeping requirements of the Act are estimated at between $15.0 million and $373.7 million. Information provided by the Fastener Advisory Committee also supports the conclusion that the economic impact of the Act will be greatest on distributors. Distributors that sell grade-marked fasteners covered by the Act will incur additional costs to comply with the non-commingling and lot tracing requirements of the Act. However, the economic impact on fastener distributors will vary, depending on whether the distributor already has a computerized inventory system and whether that distributor already has the personnel and warehouse space to keep track of individual lots of fasteners. In addition, some distributors are already providing lot trace and would not require additional staff or space.

Currently, not all nonconforming fasteners are necessarily unusable. It has been industry practice to allow customers to evaluate and, at their discretion, accept a nonconforming fastener based on the requirements of their end use or application. Acceptances are most common in cases of fasteners with only minor nonconformances. Fasteners with significant nonconformances which affect useability are generally reworked, discarded, or scrapped. Under the Act, all sales/acceptances by buyers/users of nonconforming critical fasteners are prohibited. Because the costs associated with being unable to sell fasteners with minor nonconformances vary by manufacturer depending on the effectiveness of the quality system employed during the manufacturing process and the willingness of customers to accept fasteners with nonconformance, these costs could not be estimated, though they must be considered in evaluating the total costs of the rule.

Industry will also incur annual costs to comply with the additional recordkeeping requirements placed on laboratories and manufacturers and to obtain manufacturer insignias in instances where manufacturers and private label distributors lack a registered trademark. These costs could not be estimated based on available data. However, they too must be factored into any evaluations involving the total cost of implementing the proposed rule.

There are also expected benefits to be derived from implementing the proposed rule. Information on such benefits was only available in the form of narrative accounts by individuals and agencies and could not be quantified. However, Congress determined that passage of the Act was required in order to protect the public safety, deter introduction of non-conforming fasteners into commerce, improve tracing of fasteners used in critical applications, and provide customers with greater assurance that fasteners meet stated specifications. Congress expects that the Fastener Quality Act will: (1) Increase the costs of fastener manufacturers and others, currently mismarking and/or misrepresenting grade-marked and/or through-hardened fasteners, who now choose to comply with the law; and/or (2) will increase the probability of locating and imposing penalties on those who continue to mismark and misgrade fasteners covered by the Act. In either case, the incidence of misrepresentation and mismarking of grade-marked and/or through-hardened fasteners covered by the Act is expected to be reduced.

Executive Order 12612

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

Small Business

Consistent with the requirements of the Regulatory Flexibility Act, NIST has prepared an initial regulatory flexibility analysis of the proposed regulation. As permitted by section 605 of title 5 of the United States Code captioned "Avoidance of Duplicative or unnecessary analyses", the initial regulatory flexibility analysis has been prepared in conjunction with and as part of the Regulatory Impact Analysis described above.

Paperwork Reduction Act

This proposed rule contains information collection requirements subject to the Paperwork Reduction Act. Under the authority of the Fastener Quality Act (Act) (Pub. L. 101–592), the Department of Commerce (acting through NIST and PTO) is required to establish three new programs, each of which will impose some paperwork burden on the public. Most of the procedures and requirements for these three programs are contained in the proposed rule, 15 CFR Part 280—Procedures for Implementation of the Fastener Quality Act.

Under the Act, NIST is required to establish a new Fastener Laboratory Accreditation Program (Fastener LAP) under its National Voluntary Laboratory Accreditation Program (NVLAP). The Information Collection System used for the Fastener LAP will be part of the existing National Voluntary Laboratory Accreditation Program (NVLAP) Information Collection System approved for use through 04/30/93 under OMB No. 0693–0003. The forms will be part of the Agency Form Series No. 1144. In addition, the Act requires accredited laboratories retain all records pertinent to the testing and certification of fasteners for a period of ten years. The recordkeeping requirements under the Fastener LAP are consistent with this requirement in the Act.

NIST is also required to establish a program under which private entities may apply to NIST for approval to engage directly in the accreditation of laboratories for the testing of fasteners under the Act. Under this new information collection system, NIST will solicit applications from U.S. and foreign private accreditation entities (bodies). The information collected will enable NIST to evaluate applications to determine if the fastener accreditation program described in the application meets all the requirements of the Act and of the proposed 15 CFR part 280. Only NIST authorized personnel will have access to the information submitted in the application for use in assessment and evaluation. The application procedures and requirements will be as streamlined as possible, while allowing NIST to obtain adequate information to reach a decision on each application. The decision to approve or disapprove any fastener accreditation program cannot be made without this information. No unnecessary information requirements will be imposed.

Information requirements contained in application package are specific to this program and are not duplicated by other government programs. The information obtained through the application process does not exist elsewhere—only applicants can supply the necessary information.

Public reporting burden for this NIST information collection system is estimated to average four hours per response, including the time for reviewing the instructions, searching existing data source, gathering and maintaining the data needed, and completing and reviewing the collection of information. While the total number of applicants is not known, NIST does not expect more than five applicants in the first year. Any informational requirements which are deleted from the proposed rule will also be deleted from the form.

Section 6(c) of the Act provides that: "(T)he Secretary may require any such private entity [accreditation body] to provide all records and materials that may be necessary to allow the Secretary to carry out this subsection [Ensuring Compliance]." Because the Act requires accredited laboratories to retain all records pertinent to the testing and certification of fasteners for a period of ten years, retention of information on the fastener accreditation process and results of that process for each accredited fastener laboratory must also be retained for ten years in order for NIST to fulfill its compliance responsibilities under the Act. Retaining accreditation records for less than ten years would make it difficult, if not impossible, for NIST to determine whether the cause of any violations of the Act uncovered during that ten year period is assignable in whole or in part to deficiencies or errors in the accreditation process and to impose appropriate civil and/or criminal penalties as required under the Act.

Any comments on the paperwork burden imposed under these two programs should be sent to the FQA Program Manager, NIST, Building 101, room A629, Gaithersburg, MD 20899 and to the Office of Management and Budget, Paperwork Reduction Project (OMB Numbers: 0693–0003 and 0693–0015), Washington, DC 20503.

Under section 8 of the Act, the Secretary of Commerce, acting through PTO, is required to establish a third program, the Insignia Program, to ensure the ability to trace fasteners. The Act requires manufacturers and distributors of fasteners to apply an identifying insignia to the head of any fastener or to another surface area if the fastener has no head. This requirement applies to all fasteners covered by the Act which are sold or offered for sale. U.S. and foreign manufacturers and private label distributors who lack a registered trademark may apply to PTO for the assignment of a unique identifying insignia. The process of obtaining an insignia will be on a first come, first served basis and will be the same for all manufacturers and private label distributors (domestic and foreign), regardless of size. The appearance of either a registered trademark or an identifying insignia on a fastener will ensure that it may be traced to its original manufacturer or private label distributor as required by the Act.

The application procedures and requirements for obtaining an insignia are minimal and the public reporting burden for this PTO information collection system is estimated to average five minutes per response. The information requirements for the Insignia Program are specific to the program, and are not duplicated by other government programs.

Approximately 900 applications are expected during the first year. If the application is approved, a certificate of recordal will be issued to the applicant. The certificate of recordal is valid for a period of five years and may be renewed for five consecutive five-year periods from the date of issuance of the original certificate.

Any comments on the paperwork burden imposed under the Insignia Program should be sent to the Office of Management and Organization, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, DC 20231 and to the Office of Management and Budget, Paperwork Reduction Project (OMB Number: 0651–0028), Washington, DC 20503.

List of Subjects in 15 CFR Part 280

Business and industry, Fastener industry, Imports.

Dated: August 7, 1992.

Samuel Kramer,

Acting Director.

For reasons set forth in the preamble, it is proposed that title 15 of the Code of Federal Regulations be amended by adding part 280 to read as follows:

PART 280—FASTENER QUALITY

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280.2 Definitions.
280.3 Relationship to State laws.
280.4 Waiver requirement.
280.5 Inclusion of new fasteners.
280.6 Laboratory test reports.
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280.8 Ownership of laboratories by manufacturers.
280.9 Subcontracting of testing.
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Subpart B—Laboratory Accreditation

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280.100 Introduction.
280.101 Accredited Laboratory List.
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280.200 Introduction.
280.201 Applicability of part 7, title 15 Code of Federal Regulations.
280.202 Establishment of the Program.
280.203 NVLAP Program Handbook.
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280.205 Assessing and evaluating a laboratory.
280.206 Granting and renewing accreditation.
280.207 Conditions for accreditation.
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280.212 Approved Signatory.
280.213 Referencing accredited status and use of NVLAP logo.
280.214 Compliance with existing laws.

Subpart D—NIST Approval of Private Accreditation Programs

Sec.
280.300 Introduction.
280.301 Application.
280.302 Review and decision process.
280.303 Criteria for approval.
280.304 Maintaining approved status.
280.305 Renewal of NIST approval.
280.306 Voluntary termination of approval.
280.307 Revocation of approval by NIST.

Subpart E—Recognition of Accreditation Programs

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Subpart F—Requirements for Fastener Laboratory Accreditation Bodies

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280.500 Introduction.
280.501 Summary of accreditation process.
280.502 General requirements for approval.
280.503 Organization of approved accreditation bodies.
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280.510 Financial resources.
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280.513 Confidentiality.
280.514 Publications.
280.515 Records.
280.516 Delegation.
280.517 Liability.
280.518 Exchange of experience.
280.519 Assessors.
280.520 Assessment.
280.521 Assessment report.
280.522 Proficiency testing.
280.523 Surveillance of accredited laboratories.
280.524 Accredited laboratory test report.
280.525 User information.
280.526 Complaints procedure.

Subpart G—Enforcement

Sec.
280.600 Purpose and scope.
280.601 Initiation of inquiries & investigations.
280.602 Prohibited acts.
280.603 Conduct and scope of investigations.
280.604 Compulsory processes and service.
280.605 Subpoenas.
280.606 Depositions.
280.607 Filing and service of documents.

Subpart H—Civil Penalties

Sec.
280.700 General.
280.701 Administrative procedures after receipt of a notice of violation.
280.702 Hearings and administrative review.
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280.704 Payment of assessed civil penalty.
280.705 Modification of a civil penalty.
280.706 Joint and several liability.
280.707 Factors considered in civil penalty assessment.

Subpart I—Hearing and Appeal Procedures

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General

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Discovery

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280.816 Depositions.
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280.819 Production of documents and inspection.
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280.822 Evidence.
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280.921 Notification of changes of address.
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280.925 Cumulative listing of recordal information.
280.926 Records and files of the Patent and Trademark Office.

Authority: Section 13 of the Fastener Quality Act (Pub.L. 101–592).

Subpart A—General

§ 280.1 Purpose/description of rule.

The Fastener Quality Act (the Act) (Pub.L. 101–592) is intended to protect the public safety, to deter the introduction of nonconforming fasteners into commerce, to improve the ability to trace fasteners covered by the Act, and generate greater assurance that fasteners meet stated specifications. The Act: (a) Requires that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured, (b) provides for accreditation of laboratories engaged in fastener testing; and (c) requires inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act.

§ 280.2 Definitions.

Unless the context requires otherwise or unless specifically stated the terms in this part have the meanings prescribed in the statute. In addition the following definitions apply:

Accreditation means laboratory accreditation.

Accreditation criteria means a set of requirements used by an accreditation body which a laboratory must meet to be accredited.

The Act means the Fastener Quality Act (Pub.L. 101–592).

Agency means the National Institute of Standards and Technology within the U.S. Department of Commerce.

Alter means to alter by through hardening; by electroplating of fasteners having a minimum tensile strength of 150,000 pounds per square inch; or by machining.

Applicable statute means the Fastener Quality Act and any regulations promulgated by the U.S. Department of Commerce to implement it.

Certificate of accreditation is a document issued by an accreditation body to a laboratory that has met the criteria and conditions of accreditation. The certificate may be used as proof of accredited status.

Civil Penalty means an assessed penalty of not more than $25,000 for each violation where it has been determined after notice and an opportunity for a hearing, that a person or entity has violated the Act or any regulation promulgated under the Act.

Commissioner means the Commissioner of Patents and Trademarks.

Consensus standards organization means the American Society for Testing and Materials, American National Standards Institute, American Society of Mechanical Engineers, Society of Automotive Engineers, or any other standards setting organization determined by the Secretary to have comparable knowledge, expertise, and concern for the health and safety in the field for which such organization purports to set standards.

Container means any package of fasteners traded in commerce.

Critical application means any use of a fastener which is consistent with the physical, mechanical, and performance requirements as described in applicable standards and specifications to which the fastener was manufactured and for which it is reasonably foreseeable that a failure of a fastener would result in serious personal injury or death, significant property damage, or significant repair costs.

Decision means an initial or final determination by a judge or other designated hearing officer.

Director means the Director of the National Institute of Standards and Technology (NIST).

Ex parte communication means an oral or written communication which is not part of the public record with respect to which reasonable prior notice to all parties is not given, but does not include inquiries regarding procedures, scheduling or case status.

Fastener means any screw, nut, bolt, or stud, washer or other item included within the definition for fastener contained in section 3(5) of the Fastener Quality Act, and shall also include any category of fastener included within the definition by the Director in accordance with the provisions of § 280.5 of this part, but shall not include any category of fastener waived by the Director in accordance with the provisions of section 280.4 of these regulations.

Fastener set means a collection of small quantities of products, including fasteners, of similar configuration with varying sizes, collected together and sold as a package.

Final administrative decision means an order or decision of the agency assessing a civil penalty which is not subject to further agency review.

General Counsel means the General Counsel of the United States Department of Commerce or his or her designee.

Grade identification marking means any symbol appearing on a fastener purporting to indicate that the fastener's base material, strength properties, or performance capabilities conform to a specific standard of a consensus standards organization, government agency or major end user of fasteners.

Importer means a person located within the United States who contracts for the initial purchase of fasteners manufactured outside the United States for resale or such person's use within the United States.

Initial decision means a decision of a judge or other designated hearing officer, which under applicable statute and regulation, which is subject to review by the Under Secretary, but which becomes the final administrative decision in the absence of such review.

Investigation means an undertaking by the Agency to obtain information for implementing, enforcing, or determining compliance with the Fastener Quality Act and regulations promulgated under the Act. The term investigation includes, but is not limited to investigational hearings and inquiries, making use of subpoenas and depositions.

Judge means a judge or other designated hearing officer.

Laboratory accreditation is the formal recognition that a testing laboratory is competent to carry out specific test(s) or specific type(s) of tests.

(Laboratory) accreditation body means a legal or administrative entity that accredits laboratories.

Laboratory assessment means the on-site examination of a testing laboratory to evaluate its compliance with specified criteria.

Laboratory test report means a report prepared by an accredited laboratory in accord with § 280.6 of these regulations.

Lot means a quantity of fasteners of one part number fabricated by the same production process from the same coil or heat number of metal as provided by the metal manufacturer and submitted for inspection and testing at one time.

Major end user means a recognized developer and publisher of standards bearing such user's identification which have characteristics similar to national consensus standards and which have been developed or modified to fit the specific needs of such user. A major end user purchases fasteners and installs them into a structure or a sub-assembly or complete assembly.

Manufacturer means a person who fabricates fasteners, or who alters any item so that it becomes a fastener.

NIST means the National Institute of Standards and Technology, U.S. Department of Commerce.

NVLAP means the National Voluntary Laboratory Accreditation Program operated by the National Institute of Standards and Technology.

OEM means an original equipment manufacturer.

Original equipment manufacturer means a person who uses fasteners in the manufacture or assembly of its products and sells fasteners to authorized dealers as replacement or service parts for its products.

Party means the respondent or the Agency as represented by counsel.

Person means any person, partnership, limited partnership or corporate entity and/or a representative, agent or designee.

Private label distributor means a person who contracts with a manufacturer for the fabrication of fasteners bearing the distributor's insignia.

Product includes any type or category of manufactured goods, constructions, installations, or natural or processed materials.

Proficiency testing means the determination of laboratory testing performance by means of comparing and evaluating tests on the same or similar items or materials by two or more laboratories in accordance with predetermined conditions.

Scope of accreditation is a document issued by an accreditation body to an accredited laboratory which lists the test methods or test services for which the laboratory is accredited.

Secretary means the Secretary of Commerce.

Significantly alter means to alter or take any other action which could

weaken or otherwise materially affect the performance or capabilities of the fastener as it was originally manufactured and tested. The term does not include the application of adhesives or sealants, locking elements, cutting off, provisions for lock wires, or coatings and platings of parts with a specified minimum tensile strength of less than 150,000 pounds per square inch. The fasteners so treated do not require retesting of initial properties, but may require tests as specified by the applicable specification requirements, such as prevailing torque or salt spray, and do not require remarking with the alterers recorded insignia.

Standards and specifications means the provisions of a document published by a consensus standards organization, a government agency, or a major end-user of fasteners which defines or describes dimensional characteristics, limits of size, acceptable materials, processing, functional behavior, plating, baking, inspecting, testing, packaging, and required markings of any fastener.

Testing laboratory is a laboratory which measures, examines, tests, calibrates or otherwise determines the characteristics or performance of products.

Through-harden means heating above the transformation temperature followed by quenching and tempering.

Traceability. The accuracy of a measuring instrument is said to be "traceable" or "fully traceable" if there exists a documented chain of comparisons connecting the accuracy of the instrument to other measuring instruments of higher accuracy and, ultimately, to a primary standard.

Under Secretary means the Under Secretary for Technology, Technology Administration, United States Department of Commerce.

§ 280.3 Relationship to State laws.

Nothing in the Act or these regulations shall be construed to preempt any rights or causes of action that any buyer may have with respect to any seller of fasteners under the law of any State, except to the extent that the provisions of the Act or these regulations are in conflict with such State law.

§ 280.4 Waiver requirement.

(a) If the Director determines that any category of fastener is not used in critical applications, the Director shall waive the requirements of the Act and these regulations with respect to such category.

(b) Before making a waiver under paragraph (a) of this section, the Director shall provide advance notice and the opportunity for public comment.

§ 280.5 Inclusion of new fasteners.

(a) If the Director determines that any category of fastener not presently covered by this regulation is used in critical applications, the Director may include such category within the definition of fasteners under this regulation.

(b) Before making a determination under paragraph (a) of this section, the Director shall provide advance notice and the opportunity for public comment.

§ 280.6 Laboratory test reports.

(a) When performing tests for which they are accredited under this part, each laboratory accredited under subparts C, D, or E of this part and currently listed in the Accredited Laboratory List shall issue test reports of its work which accurately, clearly, and unambiguously present the test conditions, test set-up, test results, and all required information. All reports must be in English or be translated into English, must be signed by an approved signatory, must be on tamper-proof paper, and contain the following information:

(1) Name and address of the laboratory;

(2) Unique identification of the test report including date of issue and serial number, or other appropriate means;

(3) Name and address of client;

(4) Name and title of approved signatory accepting technical responsibility for the tests and test report;

(5) Fastener Description, including:

(i) Product family (screw, nut, bolt, washer, or stud), drive and/or head configurations as applicable;

(ii) Head markings (describe or draw manufacturer and grade identification symbols);

(iii) Diameter; length of bolt, screw or stud; thickness of load bearing washer or nut; thread form and class of fit;

(iv) Product specification related to the laboratory in writing by the manufacturer, importer or distributor;

(v) Lot identification number and other numbers as appropriate;

(vi) Sample size tested;

(vii) Manufacturer (name and address);

(viii) Specification and grade of material;

(ix) Heat treated to the requirements of the following specification;

(x) Coating material, thickness, process applied, baking, if any, and corrosion resistence testing, if applicable;

(6) Standard or reference for sampling scheme;

(7) Production lot size and the number sampled and tested;

(8) Name and affiliation of person performing the lot sampling;

(9) Actual tests required by specification;

(10) Test results for each sample;

(11) Date of last accreditation audit;

(12) All deviations from the test method;

(13) Signature of approved signatory;

(14) All other items required by the test method;

(15) A statement that the samples tested either conform or do not conform to the fastener specifications or standards;

(16) A statement that the report must not be reproduced except in full;

(17) A statement to the effect that the test report relates only to the item(s) tested; and

(18) The name of the body which accredited the laboratory for the specific tests performed which are the subject of the report, and the current period of accreditation.

(b) The laboratory shall issue corrections or additions to a test report only by a further document suitably marked, e.g. "Supplement to test report serial number * * *". This document must specify which test result is in question, the content of the result, the explanation of the result, and the reason for acceptance of the result.

§ 280.7 Recordkeeping requirements.

(a) Each laboratory accredited under subparts C, D, or E of this part shall retain for 10 years after the performance of a test all records pertaining to that test concerning the inspection and testing, and certification, of fasteners under the Act and these regulations. The final test report or the test folder maintained by the laboratory must contain sufficient information for the exact test conditions to be reproduced at a later time if a retest is necessary.

(b) Manufacturers, importers, private label distributors, and persons who significantly alter fasteners shall retain for 10 years after the performance of a test all records pertaining to that test concerning the inspection and testing, and certification, of fasteners under the Act and these regulations, and shall provide copies of any applicable laboratory testing report or manufacturer's certification upon request to any subsequent purchaser of fasteners taken from the lot to which such testing report or manufacturer's certificate relates.

§ 280.8 Ownership of laboratories by manufacturers.

(a) If the Director finds that, as to a specific type of fastener, and as to a specific type of inspection or testing, a ban on manufacturer ownership or affiliation with a laboratory performing tests under the Act and these regulations would increase the protection of health and safety of the public or industrial workers, the Director may impose such a ban.

(b) Before imposing a ban under paragraph (a) of this section, the Director shall provide advance notice and the opportunity for public comment.

§ 280.9 Subcontracting of testing.

(a) Whenever a laboratory accredited under subparts C, D, or E of this part issues a test report under the Act and this part, it is implied that the report reflects work performed, and results obtained, by the personnel, equipment, and procedures of that laboratory. However, in some cases a laboratory may require the use of another facility due to equipment failure, need for specialized equipment, work overload, or to perform tests outside the laboratory's own scope of accreditation.

(b) Whenever a laboratory accredited under subparts C, D, or E of this part subcontracts to another laboratory the performance of any test or portion of a test it must:

(1) Place the work with another laboratory accredited under either subpart C, D, or E of this part;

(2) Clearly identify in its records, and in the report to the client, specifically which test method(s) or portions of a test method(s) were performed by the accredited laboratory and which were performed by the subcontractor; and,

(3) Inform the client, before the fact, that subcontracting will be necessary.

§ 280.10 Sampling.

In the event that the standard or specification to which a manufacturer represents the fasteners in a particular sample to have been manufactured does not provide for the size, selection or integrity of the sample to be inspected and tested, inspections and tests under section 5 of the Act shall be carried out using ASME/ANSI B18.18.2M, Inspection and Quality Assurance For High-Volume Machine Assembly Fasteners.

§ 280.11 Surplus fasteners.

Fasteners offered or held out as "surplus" must meet the requirements of the Act. That is:

(a) Such fasteners must have been inspected and tested and found to be in compliance with the Act;

(b) Lot integrity must be preserved; and,

(c) Sales must be accompanied by a written statement noting the original lot number, the identity of the seller and the fastener manufacturer, and a certified copy of the manufacturer's certificate of compliance with the Act.

Subpart B—Laboratory Accreditation

§ 280.100 Introduction.

The Fastener Quality Act sets out three alternatives by which a laboratory may become accredited for testing under the Act. This part 280 sets out implementing procedures for each of those alternatives: (a) Subpart C contains procedures by which the National Institute of Standards and Technology National Voluntary Laboratory Accreditation Program will accredit laboratories for the testing of fasteners under the Act; (b) Subpart D sets out procedures under which private entities may apply to NIST for approval to engage directly in the accreditation of laboratories for the testing of fasteners under the Act; and (c) Subpart E sets out conditions under which the accreditation of foreign laboratories by their governments or organizations recognized by the Director shall be deemed to satisfy the laboratory accreditation requirements for the testing of fasteners under the Act.

§ 280.101 Accredited Laboratory List.

NIST shall prepare and maintain an Accredited Laboratory List of laboratories accredited under subparts C, D, and E of this part. Only laboratory test reports describing tests performed by an accredited laboratory listed in the Accredited Laboratory List at the time the report was issued, and which are within the scope of fastener testing for which the laboratory has been accredited, shall be deemed to meet the requirements of the Act.

§ 280.102 Procedures for inclusion in the Accredited Laboratory List.

(a) NVLAP, and all entities approved by NIST under subpart D or recognized by NIST under subpart E shall promptly notify NIST of each accreditation action taken under subparts C, D, or E, respectively. Accreditation actions include initial accreditation, denials of accreditation, renewals, suspensions, terminations, revocations and changes in scope. Notifications shall be filed with: The FQA Program Manager, Office of Standards Services, Administration Building Room A603, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

(b) Each notification to NIST shall include the following information, in English: The name of the laboratory accreditation body which has conducted the accreditation and taken the accreditation action; the name and address of the laboratory affected by the accreditation action; the nature of the accreditation action; a copy of the laboratory's accreditation certificate which states the fastener test methods for which it has been accredited; the name and telephone number of the authorized representative(s) and approved signatory(s) of the fastener testing laboratory; information concerning the physical locations of all organizational units involved in fastener testing, and the specific scope of fastener testing for each organizational unit for which accreditation has been granted.

(c) NIST shall revise the list of accredited laboratories promptly when it is notified of a new accreditation action taken under subparts C, D, or E, including initial accreditation, denials of accreditation, renewals, suspensions, terminations, revocations and changes in scope, and shall take appropriate steps to make the information on the list available to the public.

§ 280.103 Compliance with requirements of accreditation.

(a) NIST may remove from the Accredited Laboratory List any fastener testing laboratory accredited under subpart C, D or E if NIST deems such action to be in the public interest. Laboratory test reports describing tests performed by a laboratory after it has been removed from the Accredited Laboratory List under this section shall not be deemed to meet the requirements of the Act.

(b) A laboratory which has been removed from the Accredited Laboratory List may appeal the removal to the Director by submitting a statement of reasons of why the laboratory should not be removed from the list. NIST may, at its discretion, hold in abeyance the removal action pending a final decision by the Director. Within sixty days following receipt of the appeal, the Director shall inform the laboratory in writing of his or her decision.

Subpart C—NIST Fastener Laboratory Accreditation Procedures

§ 280.200 Introduction.

This subpart sets out the procedures and technical requirements of the NVLAP Fasteners Testing Program ("the Program") for the accreditation of laboratories that test fasteners. Laboratories which are granted accreditation under this program for certain tests will be eligible to provide testing services and test reports required by the Fastener Quality Act for those

tests. Accreditation is available to any laboratory that demonstrates competence to provide services according to the criteria specified in this subpart. Any laboratory (including: commercial; manufacturers'; university; and laboratories located in foreign countries) that uses test methods included in this program may apply for NVLAP accreditation. It is up to the laboratory to select the areas and specific tests within each area for its proposed scope of accreditation. A laboratory may be accredited to test and/or measure fasteners in any one or more of the areas of chemical, dimensional, nondestructive, mechanical and physical, or metallography testing. Laboratories located in foreign countries must meet certain additional requirements including: Additional fees for travel outside the U.S. and provision of a language translator.

§ 280.201 Applicability of Part 7, Title 15, Code of Federal Regulations.

As permitted by section 6 of the Act, and for the purposes of that Act only, the provisions of part 7, title 15 of the Code of Federal Regulations are superseded by the procedures and requirements set forth in this subpart. The provisions of part 7, title 15 of the Code of Federal Regulations remain in effect except as they pertain to laboratory accreditation actions required by the Act.

§ 280.202 Establishment of the Program.

(a) NVLAP shall develop the technical requirements for the Program based on expert advice. This advice may be obtained through one or more informal public workshops or other suitable means.

(b) NVLAP shall make every reasonable effort to ensure that the affected testing community within the scope of the Program is informed of any planned workshop. Summary minutes of each workshop will be prepared. A copy of the minutes will be made available for inspection and copying at the NIST Records Inspection Facility.

(c) As a means of assuring effective and meaningful cooperation, input, and participation by those federal agencies that may have an interest in and may be affected by the Program, NVLAP shall communicate and consult with appropriate officials within those agencies.

(d) When NVLAP has completed the development of the technical requirements of the Program and established a schedule of fees for accreditation, NVLAP shall publish a notice in the **Federal Register** announcing the establishment of the Program.

(e) The notice will:

(1) Identify the scope of the Program; and

(2) Advise how to apply for accreditation.

(f) NVLAP shall establish fees in amounts that will enable the Program to be self-sufficient. NVLAP shall revise the fees when necessary to maintain self-sufficiency.

§ 280.203 NVLAP Program Handbook.

NVLAP may prepare a NVLAP Program Handbook for the Fastener Testing Program for use by applicant and accredited laboratories. The purpose of the Handbook is to provide specific technical details for fastener testing as they apply to on-site assessment, proficiency testing, test equipment and facilities, and scope of accreditation. The Handbook also provides procedural details as they apply to the conduct of the NVLAP program on matters such as fees, application procedures and forms, and requirements which have to be disclosed for the purposes of assessment of competence or in determining compliance with criteria. The Handbook provides a method of supplementing the criteria and conditions of this subpart.

§ 280.204 Applying for accreditation.

(a) Any laboratory may request an application for accreditation in the Program in accordance with instructions provided in notices announcing its formal establishment.

(b) Upon receipt of a laboratory's application, NVLAP shall:

(1) Acknowledge receipt of the application;

(2) Request further information, if necessary;

(3) Confirm payment of fees before proceeding with the accreditation process; and

(4) Specify the next step(s) in the accreditation process.

§ 280.205 Assessing and evaluating a laboratory.

(a) Information used to evaluate a laboratory's compliance with the conditions for accreditation set out in § 280.207, the criteria for accreditation set out in § 280.208, and the technical requirements established will include:

(1) On-site assessment reports;

(2) Laboratory responses to identified deficiencies; and

(3) Laboratory performance on proficiency tests.

(b) NVLAP shall arrange the assessment and evaluation of applicant laboratories by contract or other means in such a way as to minimize potential conflicts of interest.

(c) NVLAP shall inform each applicant laboratory of any action(s) that the laboratory must take to complete the requirements for assessment and evaluation.

§ 280.206 Granting and renewing accreditation.

(a) NVLAP, after reviewing an evaluation report, shall grant or renew, suspend, or propose to deny or revoke accreditation of an applicant laboratory, no later than 30 days following the date of submittal of the report. If accreditation action is not taken within this time limit, NVLAP shall notify the laboratory stating the reasons for the delay.

(b) Accreditation is granted for one year. Initial accreditation is granted when a laboratory has met all of the NVLAP requirements. One of four anniversary dates for renewal is assigned, January 1, April 1, July 1, or October 1. Once a laboratory has been assigned an accreditation date, that date is retained as long as the laboratory remains in the program. Accreditation will both expire and be renewed on that date.

(c) If accreditation is granted or renewed, NVLAP shall:

(1) Provide a certificate of accreditation to the laboratory;

(2) Identify the scope and terms of the laboratory's accreditation;

(3) Provide guidance on referencing the laboratory's accredited status, and the use of the NVLAP logo by the laboratory and its clients, as needed; and

(4) Remind the laboratory that accreditation does not relieve it from complying with applicable federal, state, and local laws and regulations.

(d) NVLAP shall notify an accredited laboratory at least 30 days before its accreditation expires advising of the action(s) the laboratory must take to renew its accreditation. Each participating laboratory will be sent a Renewal Application Package. Fees for renewal will be charged according to services required. The application and fees must be received by NIST prior to expiration of the laboratory's current accreditation to avoid a lapse in accreditation.

(e) If an accredited laboratory fails to complete the assessment and evaluation process for renewal before its accreditation expires, NVLAP shall notify the laboratory stating that its accreditation has expired and reiterating the action(s) the laboratory must take to renew its accreditation.

§ 280.207 Conditions for accreditation.

To become accredited and maintain accreditation by NVLAP, a laboratory shall:

(a) Agree in writing to:

(1) Be assessed and evaluated initially and on a periodic basis not to exceed once each year;

(2) Demonstrate, on request by NVLAP, that it is able to perform the tests representative of those for which it is seeking accreditation;

(3) Pay all relevant fees;

(4) Participate in proficiency testing as required;

(5) Be capable of performing the tests for which it is accredited according to the latest version of the test method within one year after its publication or within another time limit specified by NVLAP;

(6) Limit the representation of the scope of its accreditation to only those tests or services for which accreditation is granted;

(7) Limit all its test work or services for clients to those areas where competence and capacity are available;

(8) Limit references to its accredited status to letterheads, brochures, test reports, and professional, technical, trade, or other laboratory services publications, and use the NVLAP logo to the conditions set out in § 280.213 of this part;

(9) Inform its clients that the laboratory's accreditation or any of its test reports in no way constitutes or implies product certification, approval, or endorsement by NIST;

(10) Maintain records of all actions taken in response to testing complaints for 10 years, as required by § 280.7 of this part;

(11) Maintain an independent decisional relationship between itself and its clients, affiliates, or other organizations so that the laboratory's capacity to render test reports objectively and without bias is not adversely affected;

(12) Maintain a list of staff members designated to fulfill NVLAP requirements for authorized representative, approved signatory(s), technical manager (or similar title), person responsible for maintaining the Quality Manual;

(13) Maintain confidentiality of proprietary and client information;

(14) Maintain a laboratory Quality System;

(15) Report to NVLAP within 30 days any major changes involving the location, ownership, management structure, authorized representative, approved signatories, or facilities of the laboratory; and

(16) Return to NVLAP the Certificate of Accreditation or the Scope of Accreditation for possible revision or other action should it:

(i) Be requested to do so by NVLAP;

(ii) Voluntarily terminate its accredited status;

(iii) Become unable to conform to any of the conditions of this Subpart or related technical requirements; or

(iv) Voluntarily change its scope of accreditation by addition or deletion.

(b) Provide, in English, upon request by NVLAP, the following information:

(1) Legal name and full address;

(2) Ownership of the laboratory;

(3) Organization chart showing the position of the laboratory in the organization and relationships of the laboratory with other parts of the organization that are relevant to performing testing covered in the accreditation request;

(4) General description of the laboratory, including its facilities and scope of operation;

(5) Name and telephone number of the authorized representative of the laboratory;

(6) Names or titles and qualifications of laboratory staff nominated to serve as approved signatories of test reports that reference NVLAP accreditation; and

(7) Other information as NVLAP may require.

§ 280.208 Criteria for accreditation.

To become accredited and maintain accreditation by NVLAP a laboratory shall successfully meet all performance requirements and criteria as demonstrated during on-site assessments and proficiency testing, and satisfactorily resolve all deficiencies. A laboratory which is currently accredited must inform NVLAP in writing within 30 days of notification that all deficiencies have been resolved. If the deficiencies are not resolved to the satisfaction of NVLAP, the laboratory faces possible revocation, suspension, or expiration without renewal of its accreditation.

(a) *Quality system.* (1) The laboratory shall operate under an internal quality assurance program appropriate to the type, range, and volume of work performed. The quality assurance program must be designed to ensure the required degree of accuracy and precision of the laboratory's work and should include key elements of document control, sample control, data validation, and corrective action. The quality assurance program must be documented in a quality manual or equivalent which is available for use by laboratory staff. A staff member(s) must be identified as having responsibility for maintaining the quality manual.

(2) The quality manual must include as appropriate:

(i) Policies and procedures for complying with § 280.207, Conditions for accreditation.

(ii) Policies and procedures directly related to compliance with the Fastener Act;

(iii) Quality assurance responsibilities for each function of the laboratory;

(iv) Specific quality assurance practices and procedures for each test, type of test, or other specifically delineated function performed;

(v) Specific procedures for retesting, control charts, reference materials, and inter-laboratory tests;

(vi) The laboratory's quality assurance policies including procedures for corrective action for detected test discrepancies;

(vii) Procedures for dealing with testing complaints; and

(viii) Policies and procedures concerning staff training and competency review programs.

(3) The laboratory shall review its quality assurance system annually by or on behalf of management to ensure its continued effectiveness. These reviews must be documented with details of any corrective action taken.

(b) *Staff.* (1) The laboratory shall:

(i) Be staffed by individuals having the necessary education, training, technical knowledge, and experience for their assigned functions; and

(ii) Have a job description for each professional, scientific, supervisory and technical position, including the necessary education, training, technical knowledge, and experience.

(2) The laboratory shall maintain required staff documentation either with the staff member's personnel records or in some other appropriate, official information folder.

(3) The laboratory shall document the test procedures each staff member has been assigned to perform.

(4) The laboratory shall have a training program for ensuring that new or untrained staff members are able to perform tests properly and uniformly to the requisite degree of precision and accuracy.

(5) The laboratory shall have a program for ensuring that staff members have adequate qualifications and training to perform new duties as assigned.

(6) The laboratory shall be organized:

(i) So that staff members are not subjected to undue pressure or inducement that might influence their judgment or results of their work; and

(ii) In such a way that staff members are aware of both the extent and the limitation of their area of responsibility.

(7) The laboratory shall have a technical manager (or similar title) who has overall responsibility for the technical operations of the laboratory.

(8) The laboratory shall have one or more signatories approved by NVLAP to sign test reports that reference NVLAP accreditation. Approved signatories shall:

(i) Be competent to make a critical evaluation of test results; and

(ii) Occupy positions within the laboratory's organization which makes them responsible for the adequacy of test results.

(9) The laboratory shall evaluate the competence of each staff member for each test method the staff member is authorized to conduct. An evaluation and an observation of performance shall be conducted annually by the immediate supervisor or a designee appointed by the laboratory director. A record of the annual evaluation of each staff member must be dated and signed by the supervisor and the employee.

(c) *Facilities and equipment.* (1) The laboratory shall be furnished with all items of equipment and facilities for the correct performance of the tests and measurements for which accreditation is granted and shall have adequate space, lighting, and environmental control, and monitoring to ensure compliance with prescribed testing conditions.

(2) All equipment must be properly maintained to ensure protection from corrosion and other causes of deterioration. Instructions for a proper maintenance procedure for those items of equipment which require periodic maintenance must be available. Any item of equipment or component thereof which has been subjected to overloading or mishandling, gives suspect results, or has been shown by calibration or otherwise to be defective, must be taken out of service and clearly labelled until it has been repaired. When placed back in service, this equipment must be shown by test or calibration to be performing its function satisfactorily.

(3) Records of each major item of equipment must be maintained. Each record must include:

(i) The name of the item of equipment;

(ii) The manufacturer's name and type, identification and serial number;

(iii) Date received and date placed in service;

(iv) Current location, where appropriate;

(v) Details of maintenance; and

(vi) Date of last calibration, next calibration due date, and calibration report references.

(4) Equipment and facilities may be leased or rented for the purposes of testing within the laboratory scope of accreditation. These items are subject to all of the requirements placed on laboratory-owned equipment including: calibration, documentation, and maintenance.

(5) The laboratory shall maintain procedures for assuring that automated test systems function properly and are used properly.

(d) *Calibration.* The laboratory shall:

(1) Have procedures and policies in its Quality Manual that address all aspects of calibration;

(2) Have a Calibration Manual which must contain or refer to documentation which details the laboratory's procedures for maintaining proper and current calibration of all equipment which may require calibration in order to perform fasteners and metals testing;

(3) Recalibrate, at regular intervals, in-service testing equipment with the calibration status readily available to the operator;

(4) Perform checks of in-service testing equipment between the regular calibration intervals, where relevant;

(5) Maintain adequate records of all calibrations and recalibrations;

(6) Provide traceability of all calibrations and characterizations to reference standards that are traceable to national standards maintained by NIST or by an equivalent foreign national standards authority where these standards exist. Where traceability of measurements to primary (national or international) standards is not applicable, the laboratory shall provide satisfactory evidence of the accuracy or reliability of test results (e.g., by participation in a suitable program of interlaboratory comparison);

(7) Document the reference standards used and the environmental conditions at the time of calibration for all calibrations;

(8) Provide satisfactory evidence of the accuracy or reliability of test results when traceability of measurements to primary (national or international) standards is not applicable;

(9) Apply all applicable calibration requirements to new test equipment before putting it into service, equipment that has been repaired or modified, and to equipment that has been leased or rented.

(e) *Test Methods and Procedures.* The laboratory shall:

(1) Conform in all respects with the test methods and procedures required by the specifications against which the test item is to be tested, except that whenever a departure becomes necessary for technical reasons the departure must be acceptable to the client and recorded in the test report;

(2) Have data to prove that any departures from standard methods and/or procedures due to apparatus design or for other reasons do not detract from the expected or required precision of the measurement;

(3) Maintain a test plan for implementing testing standards and procedures including adequate instructions on the use and operation of all relevant equipment, on the handling and preparation of test items (where applicable), and on standard testing techniques where the absence of such instructions could compromise the test. All instructions, testing standards, specifications, manuals, and reference data relevant to the work of the laboratory must be kept up-to-date and made readily available to the staff;

(4) Maintain measures for the detection and resolution of in-process testing discrepancies for manual and automatic test equipment and electronic data processing equipment, where applicable;

(5) Maintain a system for identifying samples or items to be tested, which remains in force from the date of receipt of the item to the date of its disposal, either through documents or through marking to ensure that there is no confusion regarding the identity of the samples or test items and the results of the measurements made; and

(6) Maintain rules for the receipt, retention, and disposal of test items, including procedures for storage and handling precautions to prevent damage to test items which could invalidate the test results. Any relevant instructions provided with the tested item must be observed.

(f) *Records.* The laboratory shall:

(1) Maintain a record system which contains sufficient information to permit verification of any issued report;

(2) Retain all original observations, calculations and derived data as required in § 280.7;

(3) Maintain records, which may be reviewed during on-site visits on quality system; staff training records and competency reviews; and problems with test system and documentation of resolution; and

(4) Hold records secure and in confidence, as required.

(g) *Test reports.* (1) The laboratory shall issue test reports of its work which accurately, clearly, and unambiguously present the specified test results and all required information. The required contents of test reports which satisfy the Act are listed in § 280.6.

(2) The laboratory shall issue corrections or additions to a test report only by a further document suitably marked, e.g. "Supplement to test report serial number * * *".

(3) Supplemental information collected by the laboratory which is not included in the test report but which is relevant to the results shall be retained by the laboratory in an appropriate manner.

§ 280.209 Denying, suspending, and revoking accreditation.

(a) If NVLAP proposes to deny or revoke accreditation of a laboratory, NVLAP shall inform the laboratory of the reasons for the proposed denial or revocation and the procedure for appealing such a decision.

(b) The laboratory will have 30 days from the date of receipt of the proposed denial or revocation letter to appeal the decision to the Director of NIST. If the laboratory appeals the decision to the Director of NIST, the proposed denial or revocation will be stayed pending the outcome of the appeal. The proposed denial or revocation will become final through the issuance of a written decision to the laboratory in the event that the laboratory does not appeal the proposed denial or revocation within that 30-day period.

(c) If NVLAP finds that an accredited laboratory has violated the terms of its accreditation or the provisions of these procedures, NVLAP may, after consultation with the laboratory, suspend the laboratory's accreditation, or advise of his/her intent to revoke its accreditation. If accreditation is suspended, NVLAP shall notify the laboratory of that action stating the reasons for and conditions of the suspension and specifying the action(s) the laboratory must take to have its accreditation reinstated. Conditions of suspension will include prohibiting the laboratory from using the NVLAP logo on its test reports during the suspension period. The determination of NVLAP whether to suspend or to propose revocation of a laboratory's accreditation will depend on the nature of the violation(s) of the terms of its accreditation.

(d) A laboratory whose accreditation has been denied, revoked, terminated, or expired, or which has withdrawn its application before being accredited, may reapply and be accredited if the laboratory:

(1) Completes the assessment and evaluation process; and

(2) Meets the conditions and criteria for accreditation that are set out in §§ 280.207 and 280.208.

§ 280.210 Voluntary termination of accreditation.

A laboratory may at any time terminate its participation and responsibilities as an accredited laboratory by advising NVLAP in writing of its desire to do so. NVLAP shall terminate the laboratory's accreditation and shall notify the laboratory stating that its accreditation has been terminated in response to its request.

§ 280.211 Authorized representative.

The laboratory shall designate an Authorized Representative to sign the NVLAP application form and commit the laboratory to fulfill the NVLAP requirements. Only the Authorized Representative can authorize a change in the scope or nature of the laboratory's application. This person will receive all correspondence and inquiries from NVLAP. The Authorized Representative may also be an Approved Signatory. The laboratory must provide to NVLAP the name and address of the Authorized Representative and must, within 30 days, notify NVLAP of a change of Authorized Representative.

§ 280.212 Approved signatory.

(a) The laboratory shall designate one or more staff members as Approved Signatories. Approved Signatories shall be persons with appropriate responsibility, authority and technical capability within the organization. The laboratory must maintain a list of Approved Signatories and make that list available for review during on-site assessments. The laboratory must provide to NVLAP the name(s) and address(es) of the Approved Signatory(s) and must, within 30 days, notify NVLAP of a change of Approved Signatory(s).

(b) The original signature of at least one Approved Signatory must appear on each test report that is written in compliance with the Act and endorsed with the NVLAP logo. The approved signatory is responsible for the technical content of the report and is the person to be contacted by NVLAP, laboratory clients, or others in case of questions or problems with the report.

§ 280.213 Referencing accredited status and use of the NVLAP logo.

(a) The term NVLAP and the NVLAP logo are Federally registered trademarks of the National Institute of Standards and Technology and the Federal Government, who retain exclusive rights therein. Permission to use the term and/or the logo is granted to NVLAP accredited laboratories for the limited purposes of announcing their accredited status, and for use on test reports that describe only testing within the scope of accreditation. NIST reserves the right to control the quality of the use of the term NVLAP and of the logo itself.

(b) The permission granted in paragraph (a) of this section is limited to announcements which accurately represent the scope of the tests or services for which NVLAP has granted accreditation.

(c) Laboratories may refer to their accredited status in professional, technical, trade, or other laboratory services publications. However, such reference must not imply product endorsement or certification by NVLAP, NIST, or the U.S. Government based solely on accreditation by NVLAP. Laboratories shall not reference their accredited status in product advertising or on product labels, containers and packaging. Advertising must not encourage a consumer to purchase a product because it was tested by an accredited laboratory.

§ 280.214 Compliance with existing laws.

Accreditation does not relieve the laboratory of the need to comply with any other Federal, State, or local statutes, ordinances, or regulations that may be applicable to its operations.

Subpart D—NIST Approval of Private Accreditation Programs

§ 280.300 Introduction.

In accordance with section 6(a)(1)(B) of the Act, this subpart sets forth the procedures and conditions under which private entities may apply for approval by NIST to engage directly in the accreditation of laboratories for the testing of fasteners under the Act.

§ 280.301 Application.

(a) Any accreditation body which considers its fastener accreditation program to meet the conditions listed in this subpart and in subpart F of this part may apply to NIST for approval to accredit laboratories for testing under the Act. Applications should be sent to the FQA Program Manager, Office of Standards Services, Administration Building Room A603, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

(b) Upon request, NIST will provide application forms and instructions. The applicant shall complete the application in English and provide whatever enclosures, attachments or exhibits the applicant deems appropriate.

(c) Each application shall include:

(1) The name and address of the accreditation body;

(2) The specific scope of fastener testing accreditation for which approval is sought, for each organizational unit concerned;

(3) Information concerning the function and physical location for each organizational unit which shall be involved in fastener laboratory accreditation;

(4) Names, titles, education, training, technical knowledge, and experience of persons listed as being responsible for the validity of laboratory accreditation actions;

(5) The name and telephone number of the authorized representative(s) of the accreditation body;

(6) Quality Manual of the accreditation body, e.g., complete description of the internal organization and quality system used to control the quality of laboratory accreditation services;

(7) A description of the accreditation body, including its primary functions; corporate entity name; ownership; relationship of the body to any larger corporate entity; address; legal status; management personnel; organizational chart defining relationships that are relevant to laboratory accreditation; and technical resources, including its facilities, equipment, and scope of operation;

(8) A thorough description of the process that the accreditation body uses to accredit fastener testing laboratories;

(9) A description of how the accreditation body selects laboratory assessors, what is the source of assessors, and a description of the assessor training program;

(10) A description of how the accreditation body makes a decision on an accreditation action;

(11) A description of how the accreditation body avoids conflicts of interest by its staff, its assessors, any committees or contractors utilized;

(12) Information showing the financial stability of the applicant, including resources, liability coverage, etc.;

(13) A statement in which the authorized representative declares awareness of the manner in which the NIST approval program functions;

(14) A statement that the accreditation body agrees to receive and cooperate with the NIST evaluation team;

(15) A statement that the accreditation body agrees to comply with all requirements for approval and shall assume all responsibilities associated with that approval;

(16) A statement that the applicant agrees to inform fastener testing laboratories accredited by the applicant of their responsibilities under the Act;

(17) A certification accompanied by documentary evidence demonstrating that the accreditation body is completely independent of any fastener testing laboratory that it accredits, as well as a statement that the accreditation body agrees to maintain such independence, in order to assure the complete impartiality and objectivity of all accreditation actions taken by the accreditation body; and

(18) Such additional information as NIST may from time to time require.

(d) The applicant shall reimburse NIST for all costs incurred in the evaluation of its fastener accreditation program and subsequent costs incurred in ensuring the continued compliance of its program. Reimbursement will be in accordance with the fee schedule established by NIST for this purpose.

(e) An application may be revised by an applicant at any time prior to the final decision by NIST. An application may be withdrawn by an applicant, without prejudice, at any time prior to the final decision by the Director.

§ 280.302 Review and decision process.

(a) Applications submitted by eligible laboratory accreditation bodies will be accepted by NIST and their receipt acknowledged in writing. The applications will be reviewed by NIST against the criteria specified in this subpart and in subpart F. NIST may request additional information as needed from the applicant.

(b) NIST shall conduct on-site assessments of the facilities of the applicant and of all of the applicant's organizational units covered by the application. The on-site assessment shall include the applicant's technical and administrative facilities, and all sites where accreditation assessments are carried out.

(c) If the applicant's program is deemed by NIST to have met the requirements for approval, the applicant shall be notified by NIST in writing, as evidenced by a letter of approval from the Director or his designate which shall include the dates when the approval begins and ends. In no event will the approval be for a period longer than one year. NIST will periodically publish a list of approved fastener accreditation programs in the **Federal Register.**

(d) If the applicant's program does not meet the requirements for approval, the applicant shall be notified in writing, listing the specific requirements from this subpart and subpart F which the applicant's program has not met. After receipt of a notification of disapproval, and within the response period provided, the applicant may:

(1) Submit a revised application for further review, which could result in a positive finding. Reviewing the new submission may involve additional on-site visits by NIST personnel. Additional fees may be in order. Or,

(2) Submit a request that the original application be reconsidered, including a statement of reasons of why the application should have been approved.

§ 280.303 Criteria for approval.

An applicant for NIST approval must demonstrate its ability to operate an accreditation program consistent with the requirements set in this subpart and in subpart F of this part.

§ 280.304 Maintaining approved status.

(a) Approved fastener accreditation programs shall continue to satisfy all the requirements of approval during the approval period.

(b) Upon request by NIST, approved fastener accreditation programs shall make available to NIST in English all records and materials pertaining to the program.

(c) NIST may elect to have a representative participate as an observer during on-site visits to testing laboratories seeking laboratory accreditation by an approved accreditation body.

(d) Neither the accreditation body, nor any laboratory it accredits under the Act and these regulations shall take any action which states or implies fastener certification, approval, or endorsement by NIST or any other agency of the U.S. government. In addition, neither the accreditation body, nor any laboratory it accredits under the Act and these regulations shall take any action which states or implies that the accreditation body or its accredited laboratories are recognized by NIST in any testing or other area(s) beyond those for which NIST has approved the accreditation body. Approved fastener accreditation programs shall not engage in misrepresentation of the scope or conditions of its approval by NIST.

(e) The accreditation body shall maintain a completely independent relationship between itself and any fastener testing laboratory that it accredits, in order to assure the complete impartiality and objectivity of all accreditation actions taken by the accreditation body. Specifically, the accreditation body's ownership, functional and administrative management, Board of Directors, and finances shall be completely independent of any laboratory that it accredits.

§ 280.305 Renewal of NIST approval.

(a) An accreditation body operating an approved fastener accreditation program may seek to renew its approval by filing a renewal request at the address cited above. To assure continuity, the renewal request must be filed at least four months before the current approval expires.

(b) The renewal request will be treated as a new application and will be reviewed in accord with § 280.302 of this part.

(c) When an accreditation body operating an approved fastener accreditation program has filed a timely and sufficient renewal request, the program's current approval will remain in effect until a final decision has been made by NIST on the request.

(d) The laboratory accreditation body shall reimburse NIST for all costs incurred in the renewal of its approval and subsequent costs incurred in ensuring the continued compliance of its fastener accreditation program as required by the Act.

§ 280.306 Voluntary termination of approval.

At any time, an accreditation body may voluntarily terminate its program's approval by giving written notice to NIST and to all laboratories accredited by that body under its fastener laboratory accreditation program. The written notice shall state the date on which the termination will take effect.

§ 280.307 Revocation of approval by NIST.

(a) NIST may revoke its approval of an accreditation body if NIST deems such an action to be in the public interest.

(b) Before revoking the approval of an accreditation body, NIST will notify the accreditation body in writing, giving it the opportunity to rebut or correct, within a reasonable period, the alleged deficiencies which would form the basis of the proposed revocation. If the deficiencies are not corrected or reconciled within 30 days, or such longer time as NIST in its sole discretion may grant, the revocation will become effective.

(c) The accreditation body may appeal the revocation to the Director by submitting a statement of reasons of why the approval should not be revoked. NIST may, at its discretion, hold in abeyance the revocation action pending a final decision by the Director. Within sixty days following receipt of the appeal, the Director shall inform the accreditation body in writing of his or her decision.

(d) Fastener testing laboratories which have been listed by NIST in accordance with subpart B of this part based on their accreditation by an laboratory accreditation body whose approval has been revoked shall be removed from the list, unless an exception is granted by NIST.

Subpart E—Recognition of Accreditation Programs

§ 280.400 Introduction.

In accordance with section 6(a)(1)(C) of the Act, this subpart sets forth the conditions under which the accreditation of foreign laboratories by their governments or by organizations recognized by the Director shall be deemed to meet the requirements of section 7 of the Act.

§ 280.401 International recognition agreements.

Consistent with applicable laws and regulations, the Director may negotiate and conclude agreements with the governments of other countries implementing section 6(a)(1)(C) of the Act. At a minimum, any agreement concluded under this section must provide that accredited foreign laboratories meet conditions for accreditation comparable to and consistent with those set out in § 280.207 of this part, and criteria for accreditation comparable to those set out at § 280.208 of this part.

Subpart F—Requirements for Fastener Laboratory Accreditation Bodies

§ 280.500 Introduction.

This subpart sets out organizational, operational and other requirements that must be met by all accreditation bodies approved by NIST under subpart D. This subpart also sets out the requirements against which an approved accreditation body assesses the technical competence of an applicant testing laboratory. These requirements include conditions with respect to subpart C of this part.

§ 280.501 Summary of accreditation process.

(a) Approved accreditation bodies shall administer a program that includes:

(1) The gathering of information necessary for the evaluation of the applicant laboratory, including any data necessary for ensuring that the fastener testing laboratory meets all general requirements imposed under subpart C of this part and the specific technical requirement imposed under that subpart;

(2) The appointment of one or more qualified assessors designated to assess the applicant laboratory;

(3) The on-site assessment of the applicant laboratory, the preparation of an on-site assessment report, and the documentation of laboratory responses to identified deficiencies;

(4) The review of all evaluation material collected, including relevant information from proficiency testing;

(5) The decision to grant or deny accreditation to the applicant laboratory, with or without conditions, and the definition of the scope of that accreditation;

(6) The provision by the accreditation body to the accredited fastener testing laboratory of a certificate of accreditation which includes the scope of the accreditation granted; and

(7) The notification to NIST required by subpart B of this part.

(b) An approved accreditation body shall require the following information from any applicant to it for accreditation under the Act as a fastener testing laboratory for use in the preparation of on-site assessments:

(1) The general features of the applicant laboratory (corporate entity name, address, legal status, management personnel and technical resources), prior to the on-site assessment;

(2) General information concerning the laboratory covered by the application, such as primary function, relationship in a larger corporate entity and physical location of laboratories involved;

(3) For every technical entity concerned, the list of the tests for which accreditation is sought;

(4) Names, titles, education, training, technical knowledge, and experience of persons listed as being responsible for the technical validity of test reports;

(5) A description of the laboratory's training program for ensuring that new or untrained staff are able to perform tests properly and uniformly to the requisite degree of precision and accuracy;

(6) Description of the internal organization and quality system used by the applicant laboratory to give confidence in the quality of its testing services (quality manual, main quality plans, traceability of measurements to national standards, list of relevant measuring equipment, etc.) which demonstrates that it complies with the requirements defined in § 280.208(a);

(7) The results of internal audits and reviews undertaken by the laboratory;

(8) Examples of the test reports that the applicant laboratory plans to issue, if it is accredited. Test reports shall include as a minimum all information required under § 280.6;

(9) Details of any complaints received by the laboratory and actions taken; and

(10) Any other information and agreements required by § 280.207 of this part.

(c) The approved accreditation body shall conduct on-site assessments of applicant fastener testing laboratories. The applicant fastener testing laboratory, including all the technical entities covered by the application, shall be subjected to an initial assessment at the laboratory premises, or other site(s) where testing is carried out, by qualified assessors and, where appropriate, other representatives of the accreditation body. Applicants shall be informed of the date of assessment and of the name(s) of the qualified assessor(s) nominated to carry out the assessment, with sufficient notice so that they may have an opportunity to object to the appointment of any particular assessor. The mandate given to the assessor(s) shall be clearly defined and made known to the applicant laboratory, which should be required to advise the accreditation body of any prior association with the assessor(s).

(d) The assessment team shall receive from the approved accreditation body a comprehensive report comprised of all relevant information concerning the ability of the applicant laboratory to comply with the accreditation requirements, including any which may come about from the results of proficiency testing. This report shall include the information listed in § 280.501(b).

(e) A detailed report on the outcome of the assessment shall be prepared by the assessment team. This report shall include the information listed in § 280.521. A copy of this report shall be provided to the applicant laboratory. The applicant laboratory shall be invited to present its comments on this report and to comment on the corrective actions taken (or planned to be taken within a definite time) to remedy any non-compliances with the accreditation requirements identified during the assessment.

(f) All information gathered concerning an applicant shall be reviewed and evaluated by the approved accreditation body. The advice of technical committees or other experts may be sought to assist with this review. The aim of this review is to determine whether or not the information gathered indicates that the applicant laboratory complies with all the accreditation requirements.

(g) The decision by an approved accreditation body as to whether or not to accredit a fastener testing laboratory shall be based on the assessment documentation collected and reviewed in accordance with § 280.501(g). Accreditation shall be granted only if the fastener testing laboratory meets conditions for accreditation consistent with and no less stringent than those set out in § 280.207 of this part, criteria for accreditation consistent with and no less stringent than those set out in § 280.208 of this part, and complies with all other requirements of the program.

(h) An accreditation shall be valid for a period not to exceed one year. The continuation of accreditation shall be subject to surveillance as defined in § 280.523.

(i) Approved accreditation bodies shall specify the arrangements by which application for accreditation is to be made, the conditions for the granting, maintenance and renewal of accreditation and the conditions under which accreditation may be denied, suspended or withdrawn.

(j) Approved accreditation bodies shall have arrangements to maintain, suspend or withdraw accreditation, change the scope of accreditation or require reassessment, and to immediately notify NIST of such action as required by subpart B of this part, in the event of:

(1) Changes which affect the fastener testing laboratory's activity and operation, such as changes in personnel or equipment; or

(2) If analysis of a complaint or any other information indicates that the testing laboratory no longer complies with the requirements of the accreditation body.

(k) Approved accreditation bodies shall have arrangements relating to the status of accreditation when any information provided on the application (e.g. ownership) of the accredited laboratory changes.

§ 280.502 General requirements for approval.

To be considered for approval by NIST, an applicant accreditation body:

(a) Shall have the administrative and technical capability to conduct a fastener testing laboratory accreditation program which meets all the requirements of the Act and these regulations.

(b) Shall be able to document that the administration of its accreditation program is free of any financial or structural conflicts-of-interests in granting an accreditation.

(c) Shall agree not to deny accreditation solely on the basis of a fastener testing laboratory's affiliation or non-affiliation with manufacturing, distributing, or vending organizations, or because a laboratory is a foreign firm.

§ 280.503 Organization of approved accreditation bodies.

(a) An approved laboratory accreditation body must:

(1) Be an identifiable private legal entity;

(2) Have legal rights and responsibilities relevant to its accreditation activities;

(3) Operate a program which has developed sufficient experience in all aspects of testing laboratory accreditation;

(4) Have a permanent staff under a senior executive who is responsible to the organization, body or board to which he reports;

(5) Ensure that the senior executive, staff, and technical committees are free from any commercial, financial and other pressures which might influence the results of the accreditation process, and that they have no financial or employment interest with any laboratory that the body accredits or considers accrediting.

(6) Ensure that its senior executive has sufficient experience in the development and operation of a testing laboratory accreditation program;

(7) Have an organizational structure, including a quality system, that enables it to clearly demonstrate its ability to operate a fastener testing laboratory accreditation program satisfactorily;

(8) Not offer any consulting or other services or advice which might compromise any accreditation actions taken; and

(9) Not make access to any fastener accreditation program it operates be conditional upon membership in any association or group, nor shall there be undue financial conditions, such as excessive fees, to restrict participation. The procedures under which the fastener accreditation program operates shall be administered in a non-discriminatory manner.

(b) The grant of approval to an accredited body by NIST under these regulations shall not confer such approval on any entity other than that approved by NIST. Specifically, mutual recognition agreements between an approved laboratory accreditation body and other laboratory accreditation bodies shall have no effect under these regulations.

§ 280.504 Policy and decision making processes.

(a) Approved laboratory accreditation bodies shall have policy and decision making processes based on information from all parties adequate for:

(1) Adjudicating all matters relating to its operation;

(2) Reviewing the implementation of its policies;

(3) Reviewing its finances;

(4) Creating committees, as required, to which defined activities may be delegated;

(5) Granting, maintaining, suspending and withdrawing accreditation; and

(6) Providing for opportunity for comment by affected bodies.

(b) Approved accreditation bodies shall have in effect policy and decision making processes that prevent any confusion between laboratory accreditation and the certification of products, the registration of quality systems or the accreditation of certification/quality system registration bodies.

§ 280.505 Technical committees.

(a) Approved accreditation bodies shall have one or more technical committees or the equivalent, each responsible, within its scope, for advising the body on the technical requirements for fastener accreditation and on technical matters related to the operation of an accreditation program for fastener testing.

(b) When the technical committees are involved in the formal decision making process, they shall have formal rules and structure.

§ 280.506 Quality system.

(a) Approved accreditation bodies shall operate a quality system appropriate to the type, range and volume of work performed. This system shall be documented and be available for use by the accreditation body staff. The laboratory accreditation body shall designate a person having direct access to its highest executive level, to take responsibility for the quality system and the maintenance of the quality documentation.

(b) The quality documentation shall contain information regarding:

(1) A quality policy statement;

(2) The organizational structure of the laboratory accreditation body;

(3) The operational and functional duties and services pertaining to quality, so that each person concerned will know the extent and the limits of their responsibility;

(4) General quality system procedures;

(5) Quality system procedures specific to each step of the accreditation process;

(6) Arrangements for feedback and corrective actions whenever discrepancies are detected; and

(7) A procedure for dealing with appeals, complaints and disputes.

(c) The quality system shall be systematically and periodically reviewed by or on behalf of management to ensure the continued effectiveness of the arrangements, and corrective action initiated. Such reviews shall be recorded together with details of any corrective action taken.

§ 280.507 Accreditation documents.

(a) An approved accreditation body shall transmit to each fastener testing laboratory it accredits a formal accreditation document such as a letter or a certificate signed by an officer who has been assigned such responsibility. These formal accreditation documents shall state that accreditation is granted in compliance with the requirements of the Fastener Quality Act and shall clearly identify:

(1) The technical entities accredited by name and address;

(2) The scope of the accreditation including a comprehensive list of test methods and/or other descriptors that specify the tests or types of tests for which accreditation is granted;

(3) The persons recognized by the laboratory accreditation body as being responsible for the test reports; and

(4) The date from which the accreditation is effective, and the term of the accreditation, not to exceed one year.

(b) The approved accreditation body shall have arrangements for controlling the ownership, use and display of the accreditation documents and/or controlling the manner in which the accredited fastener testing laboratory may refer to its accredited status.

(c) The approved accreditation body shall have available all records and materials as may be required to conduct the program to ensure compliance with the Act.

§ 280.508 Appeals procedure.

An approved accreditation body shall have non-discriminatory arrangements for the consideration of appeals against its decisions.

§ 280.509 Contractual arrangements.

(a) The approved accreditation body shall require a duly authorized representative of any fastener testing laboratory it accredits to sign a contract or other document acknowledging the rights and duties of the accredited laboratory and the accreditation body, and committing the laboratory to comply with these duties.

(b) The approved accreditation body shall require its assessors to sign a contract or other document by which they commit themselves to comply with the rules defined by the accreditation body, including those relating to confidentiality and those relating to independence from commercial and other interests, including any prior association with laboratories to be assessed.

§ 280.510 Financial resources.

(a) The approved accreditation body shall have the financial stability and resources required for the operation of an accreditation program.

(b) The approved accreditation body shall provide to NIST a description of the means by which it receives its financial support.

§ 280.511 Staff.

The approved accreditation body shall have an adequate number of competent permanent staff under a senior executive responsible for carrying out the day-to-day operations; be organized so as not to subject staff members to undue pressure or inducement that might influence their judgement or the results of their work; and have adequate arrangements for the recruitment and employment of impartial experts appointed to provide technical advice and to carry out assessments.

§ 280.512 Equipment and facilities.

The approved accreditation body shall have equipment and premises appropriate to its activities.

§ 280.513 Confidentiality.

Consistent with applicable laws, the approved accreditation body shall have adequate arrangements to ensure, at all levels of its organization, including technical committees, confidentiality of the information obtained relating to the application, assessment and accreditation of testing laboratories.

§ 280.514 Publications.

(a) Approved accreditation bodies shall have procedures in place which permit the prompt notification to interested parties of any change in the management, organizational structure, or requirements of its laboratory accreditation program.

(b) The laboratory accreditation body shall publish at least annually, update at adequate intervals, and make available to NIST and other interested parties:

(1) Information about the authority under which fastener laboratory accreditation program operated by the laboratory accreditation body was established;

(2) The requirements for fastener testing laboratory accreditation, especially and changes in them;

(3) A document stating the arrangement for obtaining and maintaining fastener accreditation;

(4) The fees charged to applicant and accredited fastener testing laboratories;

(5) A description of the rights and duties of accredited fastener testing laboratories, including requirements, restrictions or limitations on the use of the laboratory accreditation body's logo and on the ways of referring to the accreditation granted;

(6) A directory of accredited fastener testing laboratories that identifies the scope of the accreditation granted; and

(7) All technical criteria, booklets, technical notes, nontechnical criteria or requirements, all policy statements or guidance notes for laboratory assessors in the area of fastener testing.

(c) Approved accreditation bodies shall document and make available to interested parties their general requirements and specific technical requirements.

§ 280.515 Records.

(a) Approved laboratory accreditation bodies shall maintain records to demonstrate that accreditation criteria and procedures for fastener testing have been effectively fulfilled; particularly application forms, assessment reports, and reports relating to granting, maintaining, suspending or withdrawing accreditation. Accreditation documents shall form part of the record.

(b) The records shall be retained for a period of at least 10 years, and shall be available to NIST personnel and other persons considered by the accreditation body to have a right of access to these records.

(c) The accreditation body shall possess and maintain up-to-date records on assessors consisting of name and address; position in employer's organization; educational qualifications and professional status; work experience; training in quality assurance, assessment and calibration; experience in testing laboratory assessment, together with field of competence; and date of most recent updating of record.

§ 280.516 Delegation.

If an approved laboratory accreditation body decides to delegate fully or partially the assessment of a fastener testing laboratory to another competent body or individual, then:

(a) The laboratory accreditation body must inform NIST in writing prior to taking such action.

(b) The laboratory accreditation body shall take full responsibility for such an assessment made on its behalf, and

(c) Granting, maintaining, suspending or withdrawing the accreditation shall not be by the body or individual to whom assessment has been delegated.

(d) The laboratory accreditation body shall ensure that the party to which assessment has been delegated is recognized by NIST as an accreditation body for fasteners.

§ 280.517 Liability.

Approved laboratory accreditation bodies shall have adequate liability insurance to cover liabilities arising from their operations and/or activities.

§ 280.518 Exchange of experience.

(a) Approved accreditation bodies shall encourage an exchange of experience among the testing laboratories accredited by it.

(b) Approved accreditation bodies shall be prepared to exchange information with NVLAP and other accreditation bodies to create confidence in and harmonize the interpretation of standards.

§ 280.519 Assessors.

(a) Approved accreditation bodies shall ensure that assessors appointed to assess a testing laboratory for accreditation to test fasteners shall:

(1) Be familiar with the relevant legal regulations, accreditation procedures and accreditation requirements;

(2) Be familiar with the general requirements of subpart C of this part and all technical requirements established under that subpart;

(3) Have a thorough knowledge of the relevant assessment method and assessment documents;

(4) Be technically knowledgeable about the specific tests or types of tests for which accreditation is sought and, where relevant, with the associated sampling procedures;

(5) Be able to communicate effectively, both in writing and orally; and

(6) Be free of any commercial, financial or other pressures that might cause assessor(s) to act in other than an impartial or nondiscriminatory manner.

(b) Approved accreditation bodies shall have an adequate procedure for qualifying assessors, comparable to that used in subpart C, comprised of an examination of the competence and training of the assessors and attendance at one or more actual assessments of a fastener testing laboratory with an already qualified assessor.

(c) Approved accreditation bodies shall have procedures to:

(1) Ensure that a qualified assessor agrees to be appointed to assess a particular laboratory within a required time;

(2) Appoint a lead assessor, if relevant; and

(3) Guard against conflicts-of-interest.

(d) Approved accreditation bodies shall ensure that assessors are at all times provided with:

(1) An up-to-date set of accreditation procedures which provide all necessary assessment instructions, other appropriate documents (such as worksheets and checklists), and all relevant information on accreditation arrangements; and

(2) All other necessary information.

§ 280.520 Assessment.

(a) A description of the assessment method used to ensure the compliance of the applicant laboratory with the accreditation requirements shall be documented, updated, and placed at the applicant laboratories' and assessors' disposal by the approved accreditation body.

(b) Approved accreditation bodies shall provide adequate time and financial support for the conduct of the assessment.

(c) The approved accreditation body shall ensure that a comprehensive and correct assessment has been conducted.

§ 280.521 Assessment report.

The comprehensive assessment report shall follow a model established by the approved accreditation body. It shall include the following as a minimum:

(a) The names of the assessors;

(b) The names and addresses of the technical entities assessed;

(c) The scope of the accreditation sought;

(d) Information on the technical qualifications, experience and authority of the staff encountered and especially the persons responsible for the technical validity of test record;

(e) Comments on the physical facilities (i.e., the environment and test equipment) and on the laboratory, including maintenance and calibration in relationship to the volume of work undertaken;

(f) Comments on the adequacy of the internal organization and procedures adopted by the applicant laboratory to give confidence in the quality of its testing services;

(g) Information on any proficiency testing performed by the applicant laboratory, the results of this proficiency testing, and the use of these results by the laboratory;

(h) Comments of the assessment team on the compliance of the applicant laboratory with the accreditation requirements;

(i) Comments on the presentation of test reports; and

(j) Comments on the actions taken to correct any noncompliance identified at previous assessments.

§ 280.522 Proficiency testing.

(a) The approved accreditation body shall require each fastener testing laboratory it accredits, and each laboratory which has applied to it for accreditation to participate in proficiency testing comparable to that conducted under subpart C by NVLAP.

(b) Although an accreditation shall not be granted or maintained only on the basis of the results of proficiency testing, accreditation shall not be granted or maintained if required proficiency testing participation is unsatisfactory.

§ 280.523 Surveillance of accredited laboratories.

The approved accreditation body shall make provisions to ensure that each accredited laboratory continues to comply with all accreditation requirements. Such surveillance shall be conducted at regular intervals and shall be consistent with the requirements imposed on fastener laboratories under subpart C of this part.

§ 280.524 Accredited laboratory test report.

An approved accreditation body shall allow an accredited fastener testing laboratory to refer to its accreditation only in test reports that relate to tests or types of tests for which accreditation is held. Test reports must contain the information specified in § 280.6 of this part.

§ 280.525 User information.

(a) Approved accreditation bodies shall prepare and publish at least once a year a directory of accredited fastener testing laboratories and the scope of each laboratory's accreditation.

(b) Approved accreditation bodies shall periodically prepare supplements to the directory of accredited fastener testing laboratories covering new accreditation actions taken, including initial accreditation, renewals, suspensions, terminations, and revocations.

(c) Each approved accreditation body shall have procedures in place which permit the prompt notification to interested parties of any change in the accreditation status of laboratories accredited under the Act by that body, and shall, on the request of any person, verify the current accreditation status of any laboratory which that body has accredited.

§ 280.526 Complaints procedure.

Approved accreditation bodies shall have a documented policy and procedure for the resolution of complaints received from laboratories about the handling of accreditation matters, or from users of testing services regarding accredited fastener testing laboratories.

Subpart G—Enforcement

§ 280.600 Purpose and scope.

This subpart sets forth the procedures governing the Commerce Department's administrative procedures for assessment of civil penalties and remedies where there has been a determination that a violation of the Act has occurred.

§ 280.601 Initiation of inquiries and investigations.

Inquiries and/or investigations as described in § 280.603 will be initiated by the Agency in any manner authorized by law.

§ 280.602 Prohibited acts.

The following acts are prohibited under the Act and this part:

(a) The manufacture for sale, the sale or offering for sale, in commerce or the importation, into the United States or the introduction delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery any fastener or fastener set without appropriate testing and certification and an original laboratory report on file with the manufacturer as required by section 5(a) of the Act.

(b) The manufacture for sale, the sale or the offering for sale, in commerce or the importation into the United States or the introduction or causing to be transported in commerce for the purpose of sale or delivery any fastener or fastener set without conformity to standards, testing and certification as delineated under section 5(a) of the Act.

(c) The manufacture for sale, the sale or the offering for sale, in commerce, or the importation into the United States or the introduction, delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery any fasteners in lots of 50 or less during the 10-day statutory waiver of testing under section 5(a)(2)(A) of the Act, without written notice to the purchaser (except at retail unless notice is requested) that the fastener has not yet been tested.

(d) Failure to test, using the applicable sampling procedures prescribed by the Secretary as required by section 5(b)(2)(B) of the Act.

(e) Falsification of a laboratory report of testing required by section 5(b) of the Act.

(f) Failure to comply with the procedures and conditions of laboratory accreditation, or approval or recognition of accrediting bodies pursuant to sections 6(a) and 6(b) of the Act or these regulations, or falsification of any document relating to laboratory accreditation, or approval or recognition of accrediting bodies, as required by sections 6(a) or 6(b) of the Act, or this part.

(g) The manufacture for sale, the sale, or the offering for sale, in commerce, or importation into the United States or the introduction, delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery of a fastener or fastener set without a written certificate by the manufacture which accompanies the fastener at the time of delivery stating that the fastener has been tested as required by section 7(a) of the Act.

(h) Failure to provide the Secretary with all records and material necessary to ensure compliance with the laboratory accreditation program as required by sections 6(a) and 6(b) of the Act, and this part.

(i) The sale or the offering for sale, in commerce, or the introduction, delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery, imported fasteners or fastener sets manufactured outside the United States without the manufacturer's certificate and the original laboratory testing report with respect to each lot from which the fasteners are taken (except that imports from nations with which the United States has a free trade agreement(s) need not have an original laboratory report for any lots) as required by section 7(b) of the Act.

(j) Failure to re-test and certify a fastener that has been significantly altered subsequent to manufacture as required by section 7(d) of the Act, unless delivery of such fastener to the purchaser is accompanied by a written statement noting the original lot number, disclosing the subsequent alteration, and warning that such alteration may affect the dimensional or physical characteristics of the fastener.

(k) Commingling by a manufacturer, or by any person who purchases any quantity of fasteners for resale at wholesale, of fasteners from different lots in the same container, as prohibited by section 7(e)(1) of the Act; except commingling during repackaging and plating operations of not more than two lots of fasteners which have been tested and certified under the Act, and which

are of the same type, grade, and dimensions, as permitted by section 7(e)(1), and except for sales by original equipment manufacturers to their authorized dealers for use in assembling or servicing products produced by the original equipment manufacturer, as permitted by section 7(e)(2).

(l) Failure to conspicuously identify separate lots of fasteners as required by section 7(f) of the Act.

(m) The manufacture for sale, the sale, or the offering for sale, in commerce, or importation into the United States or the introduction, delivery for introduction, transportation or causing to be transported in commerce for the purpose of sale or delivery of a fastener which fails to bear the manufacturer's recorded insignia as required by section 8(b) of the Act, or by this part.

(n) Failure of a party or witness to respond to a subpoena, attend and provide testimony at a hearing and provide relevant papers, books, and documents, as required by section 9(b)(6) of the Act, or by this part.

(o) Failure of a laboratory which performs inspections to maintain records for 10 years, as required by section 10(a) of the Act, or by this part.

(p) Failure of a manufacturer, importer, private label distributor or any person who significantly alters a fastener to maintain for 10 years all records concerning the inspection and testing, and certification, of fasteners under section 5 of the Act as required by section 10(b) of the Act, or by this part.

§ 280.603 Conduct and scope of investigations.

(a) After an investigation or inquiry is initiated, as set forth in § 280.601 an officer or employee duly designated by the Agency shall issue the notice of investigation ("notice"). Upon presenting the notice, along with appropriate credentials, to the person or agent in charge of the firm to be investigated, the Agency officer or employee is authorized for the purposes set forth herein:

(1) To demand the production of, have access to and to copy all relevant records, books, documents, papers, packaging or labeling which:

(i) Are required by the Agency to be established, made or maintained; or

(ii) Show or relate to the production, inventory, testing, distribution, sale, transportation, importation, or receipt of any fastener or fasteners that are otherwise relevant to determining whether any person or firm has acted or is acting in compliance with the Act and regulations, rules and orders promulgated under the Act.

(2) To obtain: (i) Information, both oral and written, concerning the production, inventory, testing, distribution, sale, transportation, importation, marking or receipt of any fastener and the organization, business, conduct, practices, and management of any person or firm being inspected and its relation to any other person or firm; (ii) Samples of items at retailer's cost unless voluntarily provided; and (iii) Information, both oral and written, concerning any matter referred to in the Act and this part.

(b) A separate notice shall be given for each investigation. Each investigation shall be commenced at and completed within a reasonable period of time.

(c) The notice of investigation shall include the name and address of the person or firm being investigated; the name and title of the Agency officer or employee; the date and time of the anticipated entry; pertinent extracts from the statutory provisions upon which the right to production of information is based; pertinent extracts from the section of this part setting forth the authority of the Agency, officers or employees and the types of information and items they are authorized to obtain; a statement that the investigation will be conducted and the information will be provided with the cooperation of the person or firm being investigated; a statement which sets forth the purposes of the investigation and the nature of the information and items to be obtained and/or copied.

(d) If upon being presented with a notice by an officer or employee duly designated by the Agency as the person or agent-in-charge, the person being investigated refuses to produce documents which have been requested, the Agency may then take other appropriate legal action, including issuing a subpoena under the provisions of § 280.605.

§ 280.604 Compulsory processes and service.

(a) In addition to or in lieu of authorizing the issuance of a notice, the Agency may elect to use any other reasonable means authorized by law to initiate investigations to obtain information for the purposes set forth in § 280.603, including but not limited to the following compulsory processes: Subpoenas and Depositions.

(b) Service in connection with any of the compulsory processes shall be effected:

(1) By personal service upon the person or agent in charge of the firm being investigated, inspected or inquired of; or

(2) By certified mail or delivery to the last known residence or business address of anyone being investigated, inspected or inquired of.

(c) The date of service of any form of compulsory process shall be the date on which the document is received by mail, delivered in person or published in the **Federal Register.** In computing a period of time in which a party is required or permitted to act, the day from which the time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(d) The requirements of this part shall be referred to in any notice of compulsory process served upon a person or firm.

(e) Any one submitting information in response to any of the compulsory processes referred to in § 280.604 should state whether any of the information submitted is believed to contain or relate to a trade secret or other matter which should be considered by the Agency to be confidential in accordance with Departmental regulations or whether any of the information is believed to be exempt from disclosure by the Agency under the provisions of the Freedom of Information Act (5 U.S.C. 552). Any claim of confidentiality must be in writing, and any request for exemption from disclosure must be made in accordance with the Freedom of Information Act.

§ 280.605 Subpoenas.

(a) The Agency may issue to any person or firm a subpoena requiring the production of documentary evidence (subpoena duces tecum) and/or attendance and testimony of witnesses (subpoena ad testificandum) relating to any matter under investigation. Procedures regarding compliance with subpoenas and motions to limit or quash subpoenas are provided for in § 280.615.

(b) In case of contempt or refusal to obey a subpoena served upon any person pursuant to this section, the Agency may make application to any district court of the United States in which the person is found, resides, or transacts business to issue an order requiring such person to appear and give testimony before the Agency or to appear and produce documents before the Agency.

§ 280.606 Depositions.

(a) The Agency by subpoena may require testimony to be taken by deposition at any stage of any investigation. Depositions may be taken before any person who is designated by the Agency and has the power to administer oaths. The person before whom the deposition is taken shall put the deponent under oath. The testimony given shall be reduced to writing by the person taking the deposition or under that person's direction and shall then be submitted to the deponent for signature unless the deponent waives the right to sign the deposition. All depositions shall be closed to the public, unless otherwise ordered by the Agency. The release of the record of such depositions shall be governed by the Freedom of Information Act (5 U.S.C. 552), and other applicable laws or regulations, except that the deponent may, in accordance with § 280.816, obtain a copy of his or her deposition.

(b) Any changes which the deponent desires to make shall be entered on the face of the deposition and shall state the reasons for such changes. The deposition shall then be signed by the deponent, unless the deponent waives the right to sign, cannot be found, or is unable or refuses to sign. The deponent must sign the deposition within 30 days of its submission to him or her, or within such shorter time period as the Agency may designate. Whenever a deponent is required to sign in less than ten days, the Agency shall notify the deponent of the reasons for such shorter time period.

(c) If the deponent does not sign the deposition within the prescribed time period, the Agency designee shall sign it and state on the record, the fact of the waiver and the right to sign or of the illness or absence of the deponent, or the deponent's inability or refusal to sign, together with the reason if any is given. The deposition may be used in any administrative proceeding, as provided by this part or any other proceeding, as allowed by applicable rules.

§ 280.607 Filing and service of documents.

(a) Whenever this part requires the service of a document or other paper, such service may be effectively made on the agent for service of process or on the attorney for the person to be served or other designated representative. Refusal by the person to be served, or his agent or her agent, or attorney or designated representative for service, of a document or other paper, will be considered effective service of the document or other paper as of the date of such refusal. Service will be considered effective when the document is mailed to an addressee's last known, proper address.

(b) Any documents or pleadings filed or served must be signed:

(1) By the person or persons filing the same; or

(2) By an officer of a corporation; or

(3) By an officer or authorized employee of a government instrumentality; or

(4) By a partner or a designated agent of a partnership; or

(5) By an attorney or other person having the authority to sign.

(c) A pleading or document will be considered served and/or filed as of the date of the postmark (or otherwise shown for government-franked mail) as of the date actually delivered in person; or as shown by electronic mail transmission.

(d) Time periods begin to run on the day following the date of the document, paper or event that begins the time period. Saturdays, Sundays and Federal holidays will be included in computing such time, except that when such time expires on a Saturday, Sunday or Federal holiday, such period will be extended to include the next business day. This method also applies to any act, such as paying a civil penalty, required by this part to take place within a specified period of time. When the period of time prescribed or allowed is less than 11 days, intermediate Saturdays, Sundays or legal holidays will be excluded in the computation.

Subpart H—Civil Penalties

§ 280.700 General.

(a) This subpart sets forth the procedures governing the Commerce Department administrative procedures for the assessment of civil penalties under the Fastener Quality Act.

(b) A Notice of Violation will be issued by the Commerce Department's General Counsel. This will be served personally or by registered mail, return receipt requested, upon the person alleged to be subject to a civil penalty (the respondent) or his or her designated agent for process. The Notice of Violation will contain: (1) A concise statement of the facts believed to show the violation; (2) A specific reference to the provision of the Act or the regulations in this part allegedly violated; (3) The findings and conclusions upon which the Department bases the penalty assessment; and (4) The amount of the civil penalty assessed. The Notice will also advise of the respondent's rights upon receipt of the Notice Rights Section. A copy of the regulations governing the proceedings will also be included.

(c) In assessing a civil penalty, the Department will take into account information available to the Department concerning any fact which might be considered under the Act relevant to the alleged violation.

(d) The Notice of violation may also contain, where appropriate, a proposal for settlement of the case. The Department may also attach to the Notice documents derived from an investigation of the allegations or any other document which delineates facts which point to a violation of the Act.

§ 280.701 Administrative procedures after receipt of a notice of violation.

(a) The respondent has 30 days from the receipt of the Notice of Violation in which to respond. During this period the respondent may:

(1) Accept the penalty or settlement offer, if any, by taking the action required in the Notice.

(2) Seek to have the Notice amended, modified or rescinded.

(3) Request a hearing under this section.

(4) Request an extension of time to respond under this section. The General Counsel may grant such an extension of time to respond up to 30 additional days unless it is determined that the requester, exercising due diligence, could have responded within the original 30 day period. In that case such a request will be denied. A telephonic response within 48 hours of the request will be considered an effective response when it is followed by a written confirmation.

(5) The General Counsel may, for good cause, grant an extension beyond 30 days where the interest of justice will be served.

(6) Take no action. This signals that the Notice is final under § 280.700.

(b) If the respondent requests a hearing, such request must be in writing and be dated. It must be served either in person or by the mail, return receipt requested, to the address specified in the Notice. A copy of the Notice must be attached to the request and the appropriate case number should be referred to in the request. The General Counsel will then promptly forward the request for hearing to the judge.

(c) Any denial of a request which bases the denial on untimeliness shall be in writing.

(d) The General Counsel may, at his or her discretion, treat any communication from a respondent, as a request for a hearing under paragraph (a)(3) of this section.

§ 280.702 Hearings and administrative review.

(a) Any hearing request under § 280.701(a)(3) is governed by the

hearing and review procedures under subpart I.

(b) In any hearing held in response to a request under § 280.701(a)(3), a judge will render an initial decision. Any party to the action may seek the Under Secretary's review of the judge's initial decision subject to the provisions of Subpart I.

§ 280.703 Final Administrative Decision.

If there is no timely request for a hearing by the respondent as provided for in § 280.701(a)(3), the Notice becomes effective as the final administrative decision and order of the Department on the 30th day after service of the Notice or on the last day of any extension period granted.

§ 280.704 Payment of assessed civil penalty.

(a) The respondent must make full payment of the civil penalty assessed within 30 days of the date upon which the assessment becomes effective as the final administrative decision and order of the Department under § 280.830 of subpart I. Payment must be made by mailing or delivering to the Department at the address specified in the Notice, a check or money order made payable in United States currency for the full amount of the assessed penalty. This check or money order should be addressed to "Treasurer of the United States" or as otherwise directed.

(b) If the respondent fails to pay the civil penalty assessed in full and in a timely manner the Department may request that the Department of Justice recover the amount assessed in any appropriate United States District Court.

§ 280.705 Modification of a civil penalty.

(a) The General Counsel has the sole discretion to compromise, modify, remit or mitigate with or without conditions, any civil penalty assessed which would serve the interest of justice.

(b) The modification authority of the General Counsel under this section is in addition to any similar authority provided for in any other statute or regulation and may be exercised either upon the initiative of the General Counsel or in response to the request of an alleged violator or interested party. Any such request should be sent to the General Counsel at the address listed in the Notice.

(c) The existence of the modification authority of the General Counsel under this section in no way alters the date upon which the assessment becomes final or penalty is due.

§ 280.706 Joint and several liability.

(a) The General Counsel may assess a civil penalty against two or more respondents jointly and severally. Each respondent is liable for the entire penalty, but no more than the amount finally assessed may be collected from the respondents.

(b) A hearing request by one of the respondents will be considered a request by the other respondents. The General Counsel, having received the hearing request from one respondent, will send a copy of it to the other joint and several respondents in the case.

(c) A decision by the judge or the Under Secretary after a hearing before the judge requested by one joint and several respondents, is binding on all parties and on all other joint and several respondents, whether or not they enter an appearance.

§ 280.707 Factors considered in civil penalty assessment.

(a) The following factors shall be considered in the assessment of a civil penalty: The nature, circumstances and gravity of the alleged violation; with respect to the person alleged to have committed the violation, the degree of culpability; any history of prior offenses; the respondent's ability to continue to do business, any good faith effort to achieve compliance, ability to pay the penalty and other such matters as justice and fairness may require.

(b) The Department may, in consideration of the respondent's ability to pay, increase or decrease a penalty from an amount that would otherwise be warranted by the other relevant factors. A penalty may be increased if the respondent's ability to pay is such that a higher penalty is necessary to deter future violations or for commercial violators to make a penalty more than just a cost of doing business. A penalty can be decreased if the respondent establishes that he or she is unable to pay an otherwise appropriate penalty amount.

(c) If the respondent asserts that a penalty should be reduced because of an inability to pay, the respondent has the burden of proving such an inability by providing verifiable, complete and accurate financial information to the General Counsel. The General Counsel will not consider the respondents inability to pay unless the respondent, upon request, submits such financial information as the General Counsel determines is necessary to evaluate the financial condition of the respondent. Depending on the circumstances, the General Counsel may require the respondent to answer specific interrogatories or submit a financial statement. If the respondent is unwilling to submit the requested information, it will be presumed that he or she has the ability to pay the penalty imposed.

(d) Financial information relevant to a respondent's ability to pay includes but is not limited to: The respondent's cash and liquid assets, ability to borrow, net worth, liabilities, income, profits, anticipated profits, cash flow and the ability of the respondent to pay in installments over time. A respondent will be considered able to pay a penalty even if he or she must take such actions as pay the installments over time, borrow money, liquidate assets or reorganize his or her business. The Department's consideration of the respondent's ability to pay does not preclude an assessment of a penalty that would cause or contribute to the bankruptcy or other discontinuation of the respondent's business.

(e) Financial information regarding the respondent's ability to pay should be submitted to the General Counsel as soon as possible after the receipt of the Notice of Violation. If the respondent requests a hearing on the offense alleged in the Notice and wants his or her ability to pay to be considered in the course of the initial decision of the judge—verifiable financial information must be submitted to the General Counsel at least 15 days in advance of the hearing. In deciding whether to submit such information, the respondent should keep in mind that the judge may assess de novo a civil penalty either greater or lesser than that assessed in the Notice.

(f) Issues regarding the ability to pay will not be considered in an administrative review of an initial decision if the financial information provided was not previously presented by the respondent to the judge at the hearing.

Subpart I—Hearing and Appeal Procedures

General

§ 280.800 Scope.

(a) This subpart states the procedures governing the conduct of the hearings and the issuance of decisions by the judge or Under Secretary in administrative proceedings involving alleged violations of the Fastener Quality Act and of the regulations promulgated relevant to the implementation of the Act.

(b) Each judge is delegated the authority to render the initial or final decision of the Agency in proceedings subject to the provisions of this subpart, and to take action to promote the efficient and fair conduct of hearings as set out in this subpart. The judge has no

authority to rule on challenges to the validity of the regulations promulgated by the U.S. Department of Commerce.

(c) This subpart is not an independent basis for claiming the right to a hearing, but instead prescribes procedures for the conduct of hearings.

§ 280.801 The docketing of cases.

Each request for a hearing will be assigned a docket number and thereafter the proceeding will be referred to by number. Written notice of the assignment of a hearing to a judge will be given promptly to the parties. The docket number must appear on all subsequent documents, pleadings and papers relating to the case.

§ 280.802 Filings.

(a) Pleadings, papers and all other documents must be filed in conformance with § 280.805 and copies must be served on all interested parties.

(b) Unless otherwise ordered by the judge, discovery requests and answers will be served on the opposing parties and copies will be delivered in person or via the mail, return receipt requested, to the judge.

§ 280.803 Judge—scope of authority.

The judge has all the powers and authority necessary to preside over the parties and the proceedings, to hold prehearing conferences, to conduct the hearing, to make the decision in accordance with this part and 5 U.S.C. 554 through 557, including but not limited to the following:

(a) Rules on a request to participate as a party to the proceeding by allowing, denying or limiting such participation;

(b) Schedule the time, place and manner of conducting a prehearing conference or hearing, to continue the conference or hearing from day to day, adjourn the hearing to a later date or a different place and to reopen the hearing at any time before the issuance of a decision. These decisions are all at the discretion of the judge but considering the convenience and necessity of the parties and witnesses;

(c) Schedule and monitor the course of the hearing and conduct of the participants and the media, including the authority to close hearings in the interests of justice; seal the record from public scrutiny to protect privileged information, trade secrets, information which requires protection due to national security interests and/or confidential commercial or financial information; and to strike testimony of a witness who refuses to answer a question ruled to be proper;

(d) Administer oaths and affirmations to witnesses;

(e) Rule on discovery requests, establish discovery schedules, and whenever the ends of justice require such, take or cause depositions or interrogatories to be taken and to issue protective orders in accordance with § 280.815;

(f) Rule on motions, procedural requests and similar matters;

(g) Receive, exclude, limit and otherwise rule on offers of proof and evidence;

(h) Examine and cross-examine witnesses and introduce into the record, on the judge's own initiative documentary evidence;

(i) Rule on requests for appearances of witnesses or production of documents and take appropriate action upon the failure of a party to effect the appearance or production of a witness or a document ruled relevant and necessary to the proceeding; as authorized by law, issue subpoenas for the appearance of witnesses or production of documents;

(j) Take judicial notice of any appropriate matter not appearing in evidence;

(k) Assess a penalty de novo without being bound by the amount assessed in the Notice of Violation where there is just cause for such an action and the reasons for the penalty are clearly stated;

(l) Prepare and submit a decision or other appropriate disposition document and certify the record;

(m) Grant interim or preliminary relief where irreparable injury would otherwise occur to an interested party or where the interests of justice requires such relief.

§ 280.804 Disqualification of the judge.

(a) The judge may withdraw voluntarily from a particular case when the judge deems it necessary that he or she be disqualified for good cause.

(b) A party may, in good faith, request a judge to withdraw from a case on the grounds of personal bias or other conflict which requires such disqualification. The party seeking the disqualification must file a timely affidavit with the judge which sets forth the facts alleged to constitute the grounds for the disqualification, and the judge will rule on the matter. If the judge rules against disqualification, all matters relating to the disqualification will be placed on the record.

§ 280.805 Pleadings, motions and service of process.

(a) The original of all pleadings and documents, containing the appropriate docket number, must be filed with the judge and a copy must be served upon each party to the case. All pleadings and documents, when submitted for filing, must show that appropriate and proper service has been made upon all parties. Such service must be made in accordance with § 280.607.

(b) Motions must normally be made in writing and must clearly state the purpose of and the relief sought by the motion. It must cite the legal authority relied upon in making the request and the facts claimed to constitute the grounds requiring the relief requested.

(c) Unless otherwise provided, the answer to any written motion, pleading or petition must be served within 20 days after the date of service thereof. If a motion states that opposing counsel has no objection, it may be acted on as soon as practicable, without waiting for the full 20-day period to expire. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully advise the parties and the judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon.

(d) A response to an answer will be called a *reply*. The reply may be served within 15 days of the service of an answer. The judge has the discretion to dispense with the reply. No further responses are permitted.

§ 280.806 Amendment of the pleadings and/or the record.

The judge, upon his or her own initiative or upon application by a party may order a party to make a more definite statement of any pleading. The judge has discretion to permit either party to amend its pleadings upon conditions fair to both parties. Harmless errors may be corrected and broad discretion will be exercised by the judge in permitting such corrections.

§ 280.807 Extensions of time.

The judge, where appropriate, may grant, as provided for in § 280.803 any reasonable request for an extension of time. Requests for extension of time, except in extraordinary circumstances, must be in writing.

§ 280.808 Summary decision.

(a) A Motion for a Summary Decision may be made, by a party or on the judge's own motion, anytime after commencement of the proceedings which may, if granted, may dispose of all or some of the issues.

(b) A summary decision may be rendered if the entire record shows as to the issue(s) under consideration: (1)

There is no genuine issue as to any material fact; and (2) That the moving party is entitled to a summary decision as a matter of law.

§ 280.809 Failure to appear.

(a) If a party should fail to appear after proper notice of service, the hearing may proceed. The record will note the failure to appear and the hearing may be conducted with the parties present, or may be canceled if the judge, in his or her discretion, determines that proceeding with the hearing will not aid in rendering a decision.

(b) The judge will place in the record all the facts concerning the issuance and service of notice concerning the time and place of the hearing.

(c) The judge may deem a failure of a party to appear, after proper notice, a waiver of any right to a hearing and consent to the making of a decision on the record.

§ 280.810 Dismissal for failure to prosecute or defend.

Whenever the record shows that a party has failed to file documents, respond to orders or notices from the judge or to otherwise indicate an intention on the part of either party not to participate further in the proceeding, the judge may issue an order to show cause why the case should not be dismissed or disposed of adversely to that party's interest, or make such order as is necessary for the just and expeditious resolution of the case, including the dismissal of the matter from the docket for failure to prosecute or defend.

§ 280.811 Settlements and settlement offers.

If a settlement offer is made and accepted before the judge has certified the record, the judge may require the submission of a copy of the settlement agreement to assure that the judge's consideration of the case is completed and to order the matter dismissed on the basis of the agreement.

§ 280.812 Stipulations.

The parties may stipulate to any matter involved in the proceedings and include such stipulations in the record with the consent of the judge. Written stipulations must be signed and served on all parties.

§ 280.813 Case consolidation.

A judge may order that two or more cases be consolidated where the issues involved or the parties involved are substantially the same as long as such a consolidation will not adversely affect the rights of any interested party.

§ 280.814 Prehearing conferences.

(a) Prior to any hearing or at any other time deemed appropriate, the judge, may upon his or her own initiative, or upon the application of any party, arrange for a telephonic conference and where appropriate, record such a conference, or direct the parties to appear for such a conference to consider:

(1) Simplification or clarification of the issues or the settlement of the case by consent;

(2) The possibility of obtaining stipulations, admissions, agreements or rulings on the admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(3) Agreements and rulings necessary to facilitate the discovery process;

(4) Limitation of the number of expert witnesses or other avoidance of other cumulative evidence;

(5) The procedure, course and conduct of the hearing;

(6) The distribution to the parties and to the judge, prior to the hearing of written testimony and exhibits in order to expedite the hearings;

(7) Such other matters as may aid in the disposition of the proceeding;

(b) The judge in his or her own discretion may issue an order showing the matters disposed of in the course of such a conference.

Discovery

§ 280.815 Discovery generally.

(a) Prior to any hearing the judge will normally require from the parties a written submission stating their preliminary position on legal, factual and procedural issues. It will also include a listing of potential witnesses and a summary of their testimony as well as a listing of exhibits. This document must be served on all other parties and will normally eliminate the need for further discovery. Failure to provide the requested information may result in the exclusion of witnesses and/or exhibits at the hearing. A party has an affirmative obligation to supplement the submission as new information becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the judge may allow additional discovery only on a showing of relevance, need and reasonable scope of evidence sought by one or more of the following methods:

(1) Deposition upon oral examination or written questions;

(2) Written interrogatories;

(3) Production of documents or items for inspection or other purposes;

(4) Requests for admission.

(c) *Time limitations.* Motions for depositions, interrogatories, admissions or production of documents or items may not be filed within 20 days of a hearing except on the order of a judge for good cause shown. Oppositions to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by a judge.

(d) *Opposition.* Opposition to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely manner constitutes waiver of objection.

(e) *Scope of discovery.* The judge may limit the scope of discovery, subject matter, method, time, place or manner of discovery. Unless otherwise limited by order of the judge the scope of discover will be as follows:

(1) *In General.* As followed under paragraph (b) of this section, parties may obtain discovery of any matter, not privileged, that is relevant to the allegations of the charging document, to the proposed relief, or to the defenses of the respondent, or that appears reasonably calculated to lead to the discovery of admissible evidence.

(2) *Hearing preparation—materials.* A party may not obtain discovery of materials prepared in anticipation of litigation except upon a showing that the party seeking the discovery has a substantial need for the materials in preparation of his or her case, and is unable without undue hardship to obtain the substantial equivalent of the materials by other means. Mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party are not discoverable under this section.

(3) *Hearing preparation—experts.* A party may discover the substance of the facts and opinions to which an expert witness is expected to testify and a summary of the grounds for each opinion. A party may also discover facts known or opinions held by an expert consulted by another party in anticipation of litigation but not expected to be called as a witness upon a showing of exceptional circumstances making it impracticable for the party seeking discovery to obtain such facts or opinions by other means.

(f) *Failure to comply with subpoena.* If a party fails to comply with any order or subpoena concerning discovery, the judge may, in the interest of justice:

(1) Make the inference that the admission, testimony documents, or other evidence would have been adverse to the party;

(2) Rule that the matter or matters covered by the subpoena are established adversely to the party;

(3) Rule that the party may not introduce evidence or otherwise rely upon, in support of any claim or defense, testimony by such party, officer or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to the introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Strike part or all of a pleading, a motion or other submission by the party, concerning matters covered by the order or subpoena;

(6) Render a decision of the proceeding against the party.

§ 280.816 Depositions.

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the judge, the party taking the deposition of any person must serve on that person, and each other party, written notice at least 15 days before the deposition would be taken (or 30 days if the deposition is to be taken ontside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name and mailing address of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

(b) *Taking depositions.* Depositions may be taken before any officer authorized to administer oaths by the law of the United States or of the place where the examination is to be held, or before each person appointed by the judge. Each deponent will be sworn, and any party has the right to cross-examine. Objections are not waived by failure to make them during the deposition unless the ground of the objection is one that might have been removed if presented at that time. The deposition will be recorded, transcribed, and signed by the deponent, unless waived, and certified by the officer by whom the deposition was taken. All transcription costs associated with the testimony of a deponent will be borne by the party seeking the deposition. Each party will bear its own expense for any copies of the transcript.

(c) *Alternative methods for taking depositions.* By order of the judge, the parties may use other methods of deposing parties or witnesses, such as telephonic depositions or depositions upon written questions. Objections to the form of the written questions are waived unless made within five days of service of the questions.

(d) *Use of depositions at hearing.* (1) At hearing any part or all of a deposition, so far as admissible under the Rules of Evidence applied as though a witness were then testifying, may be used against any party who was present or represented at the taking of the deposition, or had reasonable notice.

(2) The deposition of a witness may be used by any party for any purpose if the judge finds:

(i) That the witness is unable to attend due to death, age, health, imprisonment, disappearance or distance from the hearing site;

(ii) That exceptional circumstances make it desirable, in the interest of justice, to allow a deposition to be used;

(3) If only part of the deposition is offered in evidence by a party, any party may introduce any other part.

§ 280.817 Interrogatories to parties.

(a) *Use at hearing.* If so ordered by the judge, any party may serve upon any other party written interrogatories. Answers may be used in the same manner as depositions under § 280.816.

(b) *Answers and objections.* Answers and objections must be made in writing, under oath, and reasons for the objection must be stated. Answers must be signed by the person making them and objections by the attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of interrogatories.

(c) *Option to produce records.* Where the answer to an interrogatory may be ascertained from the records of the party upon whom the interrogatory is served, it is sufficient to specify such records and afford the party serving the interrogatories an opportunity to examine them.

§ 280.818 Admissions.

(a) *Request.* If ordered by the judge any party may serve on any other party a written request for admission of the truth of any relevant matter of fact set forth in the request, including an assessment as to whether or not any relevant document described in the request is in fact genuine. Copies of the documents must be served with the request. Each matter of which an admission is requested must be separately stated.

(b) *Response.* Each matter is admitted unless a written answer or objection is served within 20 days of service of the request, or within such other time as the judge may allow. The answering party must specifically admit or deny each matter,or state the reasons why he or she cannot truthfully admit or deny it.

(c) *Effect of admission.* Any matter admitted is conclusively established unless the judge on motion permits withdrawal for good cause shown.

§ 280.819 Production of documents and inspection.

(a) *Scope.* If ordered by the judge, any party may serve on any other party a request to produce a copy of any document, or to inspect, copy, photograph or test any tangible thing in possession, custody or control of the party upon whom the request is served.

(b) *Procedure.* The request must set forth:

(1) The items to be produced or inspected by item or by category, described with reasonable particularity, and a reasonable time, place and manner for inspection.

(2) The party upon whom the request is served must serve within 20 days a response or objections, which must address each item or category and include copies of the requested documents.

§ 280.820 Subpoenas.

(a) *In general.* Subpoena for attendance and testimony of witnesses and the production of documentary evidence for the purpose of discovery or hearing may be issued as authorized by the statute.

(b) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or disposition.

(c) *Motions to quash.* Any person whom a subpoena is directed or any party may move to quash or limit the subpoena within 10 days of its service or on or before the time specified for compliance, whichever is shorter. The judge may quash or modify the subpoena.

(d) *Enforcement.* Where there is refusal to respond to a subpoena or where the subpoena is not fully complied with, the Technology Administration may request that the Justice Department invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of evidence.

§ 280.821 Hearings: notice of time, place and hearing.

(a) The judge will promptly serve on the parties notice of the time and place of the hearing. The hearing will not, except in extraordinary circumstances, be held less than 20 days after service of the notice of hearings.

(b) In setting a place for the hearing, the judge will consider the convenience and costs to the parties, including but not limited to transportation costs, living expenses of witnesses, attorneys and

the judge; place of residence of the respondent(s); scheduling of other hearings within the same region; and the availability of facilities and court reporters.

(c) The judge may order that all or part of the proceeding be heard on submissions or affidavits if it appears that substantially all important issues of material fact may be resolved by means of written materials and that efficient disposition of the proceeding can be made without oral hearing. For good cause, the judge may also order that the testimony of witnesses be taken by telephone.

§ 280.822 Evidence.

(a) At the hearing, every party has the right to present oral or documentary evidence in support of its case or defense, to submit rebuttable evidence, and to conduct such cross examination as may be required for a full and true disclosure of the facts. This paragraph should not be interpreted so as to diminish the powers and duties of the judge under this subpart.

(b) All evidence that is relevant, material, reliable, and probative and not unduly repetitious or cumulative, is admissible at the hearing. Formal rules of evidence do not necessarily apply to the proceedings, and hearsay evidence is not admissible as such.

(c) Formal exceptions to the rulings of the judge are unnecessary. It is sufficient that a party, at the time of the ruling makes known the action that it desires the judge to take or its objection to an action taken, and the grounds therefore. Rulings on each objection must appear in the record.

(d) In any case involving a charged violation of the Act or its implementing regulations in which the party charged had admitted an allegation, evidence may be taken to establish matters of aggravation or mitigation.

(e) Exhibits in a foreign language may be translated into English before such exhibits are offered into evidence. Copies of both the translated and untranslated versions of the proposed exhibits, along with the name of the translator, must be served on the opposing party at least 10 days prior to a hearing unless the parties otherwise agree.

(f) A party who intends to raise an issue concerning the law of a foreign country must give reasonable notice. The judge, in determining foreign law may consider any relevant material or source, whether or not submitted by a party.

§ 280.823 Witnesses.

(a) Any witness not a party may have a personal counsel to advise him or her as to his or her rights, but such counsel may not otherwise participate in the hearing.

(b) Witnesses who are not parties may be excluded from the hearing room prior to the taking of testimony.

(c) Witnesses other than employees of the Agency subpoenaed under this part, including § 280.820, will be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken are entitled to the same fees as are paid for like services in the courts of the United States. Fees and any other related expenses for Agency employees as authorized by the Department Travel Manual will be paid by the party at whose instance the witness appears or the deposition is taken.

(d) If a witness is expected to testify in a language other than the English language, the party sponsoring the witness must provide for the service of an interpreter and advise opposing counsel 10 days prior to the hearing concerning the extent to which interpreters are used. When available, the interpreter must be court certified under 28 U.S.C. 1827.

§ 280.824 Interlocutory appeals.

(a) At the request of a party or on the judge's own initiative, the judge may certify to the Under Secretary for review, a ruling that does not finally dispose of the proceeding, if the judge determines that an immediate appeal therefrom may materially advance the ultimate disposition of the matter.

(b) Upon certification by the judge of the interlocutory ruling for review, the parties have 10 days to serve any briefs associated with the certification. The Under Secretary will promptly decide the matter.

(c) No interlocutory appeal lies as to any ruling not certified by the judge.

§ 280.825 Ex parte communications.

(a) Except to the extent required for disposition of ex parte matters as required by law, after issuance of the Notice of Violation and until final decision of the Agency is effective under this part, no ex parte communication relevant to the merits of the proceeding may be made, or knowingly caused to be made:

(1) By the judge or an Agency employee involved in the decisional process of the proceeding to any interested person outside the Department of Commerce or to any Agency employee involved in the investigation or prosecution of the case;

(2) By any Agency employee involved in the investigation or prosecution of the case to the judge or to any Agency employee involved in the decisional process of the proceeding; or

(3) By an interested person outside the Department of Commerce to the judge or to any agency employee involved in the decisional process of the proceeding.

(b) An agency employee or judge who makes or receives a prohibited communication must place in the hearing record the communication and any response thereto, and the judge or the Under Secretary, as appropriate, may take any action consistent with this part, the applicable statute and 5 U.S.C. 556(d) and 557(d).

(c) Agency counsel may not participate or advise in the decision of the judge or the Under Secretary's review thereof except as a witness or counsel in the proceeding in accordance with this subpart. In addition, the judge may not consult any person or party on a fact in issue unless notice and an opportunity for all parties to participate is provided.

(d) (1) Paragraphs (a) and (b) of this section do not apply to communications concerning national security or foreign policy matters. Such ex parte communications to or from an Agency employee on national security or foreign policy matters, or from employees of the United States Government involving intergovernmental negotiations, are allowed if the communicators position with respect to those matters cannot otherwise be fairly presented for reasons of national security or foreign policy.

(2) Ex parte communications subject to this paragraph (d) will be made part of the record to the extent that they do not include information classified under an Executive Order. Classified information will be included in a classified portion of the record that will be available for review only in accordance with applicable law.

§ 280.826 Post hearing: official transcript.

(a) The official transcript of testimony taken, together with any exhibits, briefs or memoranda of law filed therewith, will be filed with the judge. Transcripts of testimony will be available in any proceeding and will be supplied to the parties upon the payment of fees at the rate provided for in the agreement with the reporter.

(b) The judge may determine whether an "ordinary" copy, "daily copy", or other copy (as those terms are defined by contract) will be necessary and required for the proper conduct of the proceeding.

§ 280.827 Post hearing briefs.

(a) Unless a different schedule is established in the discretion of the judge, including the procedure in paragraph (b) of this section, the parties may file proposed findings of fact and conclusions of law, together with supporting briefs, within 30 calendar days from service of the hearing transcript. Reply briefs may be submitted within 15 days after service of the proposed findings and conclusions to which they respond, unless the judge sets a different schedule.

(b) In cases involving few parties, limited issues, and short hearings, the judge may require that any proposed findings, conclusions and reasons in support be presented orally at the close of the hearing. In such case, the judge will advise the parties in advance of such a hearing.

§ 280.828 Documents, copies and exhibits.

(a) If original documents have been received in evidence, a true copy thereof or for such part as may be material or relevant, may be submitted in lieu of the original during the hearing or at its conclusion. The judge may in his or her discretion, and after notice to the other parties, allow the withdrawal of original exhibits or any part thereof by the party entitled thereto for the purpose of substituting copies. The substitution of true copies of exhibits, or any part thereof, may be required by the judge in his or her discretion as a condition of granting permission for withdrawal of the original.

(b) Photographs may be substituted for physical evidence in the discretion of the judge.

(c) Except upon the judge's order, or upon request by a party, physical evidence will be retained after the hearing by the authorized enforcement office responsible for the case.

§ 280.829 Record of decision.

(a) The exclusive record of decision consists of the official transcript of testimony and proceedings; exhibits admitted into evidence; briefs pleadings and other documents filed in the proceeding; and descriptions or copies of matters, facts, or documents officially noticed in the proceeding. Any other exhibits and records of any ex parte communications will accompany the record of the decision.

(b) The judge will arrange for appropriate storage of the records of any proceeding, which place of storage need not necessarily be located physically within the office of the judge.

(c) Exhibits offered after the close of a hearing will not be admitted, unless the judge specifically keeps open or reopens the record to admit them.

§ 280.830 Decision.

(a) After expiration of the period provided for in § 280.805, for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the judge will render a written decision upon the record finding in the case setting forth:

(1) Findings and conclusions, and the reasons and basis thereof, on all material issues of fact, law or discretion presented on the record, and on the ruling of any proposed findings or conclusions presented by the parties;

(2) A statement of any facts noticed or relied upon in the decision; and

(3) Such other matters as the judge considers appropriate.

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the judge may at the termination of the hearing announce the decision subject to the later issuance of a written decision made under paragraph (a) of this section. The judge may in such a case direct the prevailing party to prepare proposed findings, conclusions and an order.

(c) The judge will serve the written decision on each of the parties by registered or certified mail, return receipt requested, and will promptly certify to the Under Secretary, the record, including the original copy of the decision, as complete and accurate.

(d) Unless the judge orders a stay or unless a petition for discretionary review is filed or the Under Secretary issues an order to review upon his or her own initiative, an initial decision becomes effective as the final administrative decision of the U.S. Department of Commerce, 30 days after service, unless otherwise provided by statute or regulation.

§ 280.831 Petition for reconsideration.

Unless an order or a judge specifically provides otherwise, any party may file a petition for reconsideration of an order or decision issued by the judge. Such petitions must state the matter claimed to have been erroneously decided and the alleged errors or relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such an order or decision or its effective date. Within 15 days after the petition is filed, any party to the proceeding may file an answer in support or opposition. In the judge's discretion, the hearing may be reopened to consider that matters raised in the petition that could not have been reasonably foreseen prior to the issuance of the order or decision.

§ 280.832 Administrative review of the decision.

(a) Subject to the requirements of this section, any party may petition for review of an initial decision of the judge within 30 days after the date the decision is served. The petition shall be addressed to the Under Secretary and filed at the following address: Under Secretary for Technology, United States Department of Commerce, room 4824, 14th & Constitution Avenue, NW., Washington, DC 20230.

(b) Review by the Under Secretary of an initial decision is discretionary and is not a matter of right. A petition for review must be served upon all parties. If a party files a timely petition for discretionary review, or action is taken by the Under Secretary on his or her own initiative, the effectiveness of the initial decision is stayed until further order of the Under Secretary.

(c) Petitions for discretionary review may be filed only upon one or more of the following grounds:

(1) A finding of a material fact is clearly erroneous based upon the evidence in the record;

(2) A necessary legal conclusion is contrary to law or case precedent;

(3) A substantial and important question of law, policy or discretion is involved (including the amount of the civil penalty); or

(4) A prejudicial error has occurred.

(d) Each issue must be separately numbered, concisely stated, and supported by detailed citations to the record, statutes, regulations, and principal authorities. Issues of fact or law not argued before the judge may not be raised on review unless they were raised for the first time in the initial decision, or could not reasonably have been foreseen and raised by the parties during the course of the hearings. The Under Secretary will not consider new or additional evidence that is not part of the record before the judge.

(e) No oral argument on petitions for discretionary review will be allowed.

(f) Within 30 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. No further replies are allowed.

(g) If the Under Secretary declines to exercise discretionary review, such order will be served on all the parties personally or by registered or certified mail, return receipt requested, and will specify the date upon which the judge's decision will become effective as the final decision of the U.S. Department of

Commerce. The Under Secretary need not give the reasons for declining the review.

(h) If the Under Secretary grants a petition for discretionary review, he or she will issue an order specifying issues to be briefed and a briefing schedule. Such issues may constitute one or more of the issues raised in the petition for discretionary review and/or matters the Under Secretary wishes to review on his or her own initiative. Only those issues specified in the order may be argued in the briefs and considered by the Under Secretary. No oral argument will be permitted.

(i) After the expiration period for filing briefs under paragraph (h) of this section, the Under Secretary will render a written decision on the issues under review. The Under Secretary will transmit the decision to each of the parties by registered or certified mail, return receipt requested. The Under Secretary's decision becomes the final administrative decision on the date served, unless otherwise provided for in the decision.

Subpart J—Recordal of Insignia

§ 280.900 Recorded insignia required prior to offer for sale.

(a) Any manufacturer or private label distributor of a fastener must, prior to any sale or offer for sale of any fastener which is required by the standards and specifications by which it is manufactured to bear a raised or depressed insignia identifying its manufacturer or private label distributor, apply for and record an insignia to be applied to any fastener which is to be sold or offered for sale to ensure that each fastener may be traced to its manufacturer or private label distributor.

(b) The manufacturer's or private label distributor's insignia must be applied to the head of any fastener which is sold or offered for sale. If the fastener has no head, the insignia must be applied to another surface area in a legible manner.

(c) The insignia must be applied through a raised or depressed impression. The insignia must be readable with no greater than 10x magnification.

The Written Application

§ 280.910 Applications for insignia.

(a) Each manufacturer or private label distributor must submit a written application for recordal of an insignia along with the prescribed fee. The application must be in a form prescribed by the Commissioner.

(b) The written application must be in the English language and must include the following:

(1) The name of the applicant;

(2) The address of the applicant;

(3) The entity, domicile, and state of incorporation, if applicable, of the applicant;

(4) Either (i) A request for recordal and issuance of a unique alphanumeric designation by the Commissioner, or (ii) A request for recordal of a trademark, which is the subject of either a duly filed application or a registration for fasteners in the name of the applicant for fasteners in the U.S. Patent and Trademark Office on the Principal Register, indicating the application serial number or registration number and accompanied by a copy of the drawing page of the application or a copy of the registration;

(5) A statement that the applicant will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the person signing the application on behalf of the applicant has knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the applicant; and

(7) A verification stating that the person signing declares under penalty of perjury under the laws of the United States of America that the information and statements included in the application are true and correct.

(c) An applicant may designate only one registered trademark for recordal on the Fastener Insignia Register in a single application. The trademark application or registration which forms the basis for the fastener recordal must be in active status at the time of the application for recordal.

(d) Applications and other documents should be addressed to the Commissioner of Patents and Trademarks, Washington DC 20231; Box Fastener.

§ 280.911 Review of the application.

The Commissioner will review the application. If the application does not contain one or more of the elements required by § 280.910, the Commissioner will not issue a certificate of recordal, and will return the papers and fees. The Commissioner will notify the applicant of any defect in the application. Applications for recordal of an insignia may be re-submitted to the Commissioner at any time.

§ 280.912 Certificate of recordal.

If the application complies with the requirements of § 280.910, the Commissioner shall accept the application and issue a certificate of recordal. Such certificate shall be issued in the name of the United States of America, under the seal of the Patent and Trademark Office, and a record shall be kept in the Patent and Trademark Office. The certificate of recordal shall display the recorded insignia of the applicant, and state the name, address, legal entity and domicile of the applicant, as well as the date of issuance of such certificate.

§ 280.913 Recordal of additional insignia.

(a) A manufacturer or private label distributor to whom the Commissioner has issued an alphanumeric designation may apply for recordal of its trademark for fasteners if the trademark is the subject of a duly filed application or is registered in the U.S. Patent and Trademark Office on the Principal Register. Upon recordal, either the alphanumeric designation or the registered mark, or both, may be used as recorded insignias.

(b) A manufacturer or private label distributor for whom the Commissioner has recorded a trademark as its fastener insignia, may apply for issuance and recordal of an alphanumeric designation as a fastener insignia. Upon recordal, either the alphanumeric designation or the trademark, or both, may be used as recorded insignias.

Post-Recordal Maintenance

§ 280.920 Maintenance of the certificate of recordal.

(a) Certificates of recordal remain in an active status for five years and may be maintained in an active status for five-year periods running consecutively from the date of issuance of the certificate of recordal upon compliance with the requirements of § 280.920(c).

(b) Maintenance applications shall be required only if the holder of the certificate of recordal is a manufacturer or private label distributor at the time the maintenance application is required.

(c) Certificates of recordal will be designated as inactive unless, within six months prior to the expiration of each five-year period running consecutively from the date of issuance, the certificate holder files the prescribed maintenance fee and the maintenance application. The maintenance application must be in the English language and must include the following:

(1) The name of the applicant;

(2) The address of the applicant;

(3) The entity, domicile, and state of incorporation, if applicable, of the applicant;

(4) A copy of applicant's certificate of recordal;

(5) A statement that the applicant will comply with the applicable provisions of the Fastener Quality Act;

(6) A statement that the person signing the application on behalf of the applicant has knowledge of the facts relevant to the application and that the person possesses the authority to act on behalf of the applicant; and

(7) A verification stating that the person signing declares under penalty of perjury under the laws of the United States of America that the information and statements included in the application are true and correct.

(d) Where no maintenance application is timely filed, a certificate of recordal will be designated inactive. However, such certificate may be designated active if the certificate holder files the prescribed maintenance fee and application and an additional surcharge within six months following the expiration of the certificate of recordal.

(e) After the six-month period following the expiration of the certificate of recordal, the certificate of recordal shall be deemed active only if the certificate holder files an application with the prescribed fee for obtaining a fastener insignia and attaches a copy of the expired certificate of recordal.

(f) A separate maintenance application and fee must be filed and paid for each recorded insignia.

§ 280.921 Notification of changes of address.

The applicant or the holder of a certificate of recordal shall notify the Commissioner of any change of address or change of name within six months. The holder must do so whether the certificate of recordal is active or inactive.

§ 280.922 Transfer or amendment of the certificate of recordal.

(a) The certificate of recordal cannot be transferred or assigned.

(b) The certificate of recordal may be amended only to show a change of name or change of address.

§ 280.923 Transfer or assignment of the trademark registration or the fastener insignia.

(a) A trademark application or registration which forms the basis of a fastener recordal may be transferred or assigned. Any transfer or assignment of such an application or registration shall be recorded in the Patent and Trademark Office within three months of the transfer or assignment. A copy of such transfer or assignment must also be sent to the Commissioner of Patents and Trademarks, Washington, DC 20231, Box Fastener.

(b) Upon transfer or assignment of a trademark application or registration which forms the basis of a certificate of recordal, the Commissioner shall designate the certificate of recordal as inactive. The certificate of recordal shall be deemed inactive as of the effective date of the transfer or assignment. Certificates of recordal designated inactive due to transfer or assignment of a trademark application or registration cannot be reactivated.

(c) An assigned trademark application or registration may form the basis for a new certificate of recordal.

(d) A fastener insignia consisting of an alphanumeric designation issued by the Commissioner cannot be transferred or assigned.

§ 280.924 Change in status of trademark registration or amendment of the trademark.

(a) The Commissioner shall designate the certificate of recordal as inactive, upon:

(1) Issuance of a final decision on appeal which refuses registration of the application which formed the basis for the certificate of recordal; or

(2) Abandonment of the application which formed the basis for the certificate of recordal; or

(3) Cancellation or expiration of the trademark registration which formed the basis of the certificate of recordal.

(b) Any amendment of the mark in an application or registration which forms the basis for a certificate of recordal will result in such certificate of recordal being designated inactive. The certificate of recordal shall become inactive as of the date of the amendment of the trademark. Application for recordal of the amended registered trademark may be submitted to the Commissioner at any time.

(c) Certificates of recordal designated inactive due to cancellation, expiration, abandonment or amendment of the trademark application or registration cannot be reactivated.

§ 280.925 Cumulative listing of recordal information.

The Commissioner shall maintain a record of the names, current addresses, and legal entities of all recorded manufacturers and private label distributors and their recorded insignia.

§ 280.926 Records and files of the Patent and Trademark Office.

The records relating to fastener insignia shall be open to public inspection. Copies of any such records may be obtained upon request and payment of the fee set by the Commissioner.

[FR Doc. 92-19228 Filed 8-14-92; 8:45 am]
BILLING CODE 3510-13-M

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Monday
August 17, 1992

Part III

Congressional Budget Office

Transmittal of Sequestration Update for Fiscal Year 1993 to Congress and Office of Management and Budget; Notice

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CONGRESSIONAL BUDGET OFFICE

Transmittal of Sequestration Update Report for Fiscal Year 1993 to Congress and the Office of Management and Budget

Pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(b)), the Congressional Budget Office hereby reports that it has submitted its Sequestration Update Report for Fiscal Year 1993 to the House of Representatives, the Senate, and the Office of Management and Budget.

Stanley L. Greigg,

Director, Office of Intergovernmental Relations, Congressional Budget Office.

[FR Doc. 92-19527 Filed 8-14-92; 8:45 am]

BILLING CODE 2107-**1-M**

federal register

Monday
August 17, 1992

Part IV

The President

Panama Canal Commission

35 CFR Part 133
Tolls for Use of Canal; Final Rule

THE PRESIDENT

PANAMA CANAL COMMISSION

35 CFR Part 133

RIN 3207-AA32

Tolls for Use of Canal

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This rule announces an increase of approximately 9.9% in the rates of tolls to become effective October 1, 1992. The basis for the toll increase is that the Commission anticipates that in fiscal years 1992 and 1993, it will experience, in the aggregate, a significant deficit created by a trend of nominal traffic and revenue growth inadequate to absorb cost increases due to inflation. The increase is necessary to comply with the requirement that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements, and working capital. The effect of this action is to increase the rate of tolls for: Merchant vessels, yachts, army and navy transports, colliers, hospital ships and supply ships, when carrying passengers or cargo, from $2.01 to $2.21 per net Panama Canal ton; vessels in ballast without passengers or cargo, from $1.60 to $1.76 per net Panama Canal ton; and other floating craft including warships, other than transports, colliers, hospital ships and supply ships from $1.12 to $1.23 per ton of displacement.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street, NW., suite 550, Washington, DC 20036-4996, (Telephone: (202) 634-6441).

SUPPLEMENTARY INFORMATION: On April 15, 1992, an advance notice of proposed rulemaking was published in the **Federal Register** (57 FR 13067) recommending a 9.9% increase in the rates of Canal tolls, to become effective on October 1, 1992. At that time, a written analysis showing the basis and justification for the proposed toll increase was made available to interested parties. The analysis demonstrates that the increase is necessary, notwithstanding that existing rates have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1991, because the Commission anticipates significant deficits in the aggregate during the next two fiscal years. These deficits are the result of the continuing trend of traffic growth revenues inadequate to absorb cost increases due to inflation. This growing imbalance between inflation and traffic growth underlies the clear need for placing a toll rate increase of 9.9%.

Written comments were solicited and received from interested parties, and a public hearing was held in Washington, DC on June 4, 1992. The views presented by the interested parties were considered by the Board of Directors of the Commission at its quarterly meeting of July 1992. On July 16, 1992, the Board recommended to the President that the proposed 9.9% increase be implemented on October 1, 1992. The proposed rule and recommendation to the President was published in the **Federal Register** (57 FR 32187) on July 21, 1992. A complete record of the proceedings since the initiation of the proposals, including the data, views and arguments submitted by interested parties, was included in the Canal Commission's final recommendation and was forwarded to the President.

Section 1602(b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, as well as to provide capital for plant replacement, expansion and improvements, and working capital. From a review of the information submitted by the Commission, it is evident that for the Canal to remain self-sufficient, a toll increase of 9.9% is required.

List of Subjects in 35 CFR Part 133

Panama Canal, Vessels.

Accordingly, 35 CFR part 133 is amended as follows.

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for part 133 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, $2.21 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, $1.76 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, $1.23 per ton of displacement.

Dated: August 11, 1992.

George Bush,

President.

[FR Doc. 92-19503 Filed 8-14-92; 8:45 am]

BILLING CODE 3640-04-M

federal register

Monday
August 17, 1992

Part V

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1992.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344), section 1014(e) requires a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to Congress.

This report gives the status, as of August 1, 1992, of 128 rescission proposals and 11 deferrals contained in the special messages for FY 1992. These messages were transmitted to Congress on September 30, and December 19, 1991, and on February 19, March 10, March 20, April 8, April 9, and June 25, 1992.

Rescissions (Table A and Attachment A)

The President proposed 128 rescissions totaling $7,879.5 million. Public Law 102–298 (approved June 4, 1992) rescinded $2,066.9 million of the $7,879.5 million proposed by the President. Attachment A shows the history and status of each rescission proposed during FY 1992.

Deferrals (Table B and Attachment B)

As of August 1, 1992, $3,498.6 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1992.

Information from Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the **Federal Registers** cited below:

56 FR 50620, Monday, October 7, 1991.
56 FR 67402, Monday, December 30, 1991.
57 FR 6644, Wednesday, February 26, 1992.
57 FR 11140, Wednesday, April 1, 1992.
57 FR 11528, Friday, April 3, 1992.
57 FR 13151, Wednesday, April 15, 1992.
57 FR 13779, Friday, April 17, 1992.
57 FR 29610, Thursday, July 2, 1992.

Richard Darman,

Director.

BILLING CODE 3110–01–M

TABLE A

STATUS OF FY 1992 RESCISSIONS

	Amounts (In millions of dollars)
Rescissions proposed by the President	7,879.5
Accepted by Congress as of August 1, 1992	2,066.9
Rescission proposals for which funding was previously withheld and has been released	7,330.1
Rescission proposals for which funding was not withheld	25.0
Rescission proposals for which funding is currently being withheld	---

TABLE B

STATUS OF FY 1992 DEFERRALS

	Amounts (In millions of dollars)
Deferrals proposed by the President	5,774.2
Routine Executive releases through August 1, 1992 (OMB/Agency releases of $4,138.6 million, partially offset by cumulative positive adjustments of $1,863.0 million)	-2,275.6
Overturned by the Congress	---
Currently before the Congress	3,498.6

Attachments

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF AGRICULTURE								
Cooperative State Research Service								
Building and facilities	R92-36		250	3-20-92	250	5-29-92		
	R92-37		500	3-20-92	500	5-29-92		
	R92-38			3-20-92	500	5-29-92	500	P.L. 102-298
	R92-39		2,710	3-20-92	2,710	5-29-92		
	R92-40		375	3-20-92	375	5-29-92		
	R92-41		3,050	3-20-92	3,050	5-29-92		
	R92-42		225	3-20-92	225	5-29-92		
Cooperative State Research Service	R92-43		225	3-20-92	225	5-29-92		
	R92-44			3-20-92	750	5-29-92	750	P.L. 102-298
	R92-45		94	3-20-92	94	5-29-92		
	R92-46		39	3-20-92	39	5-29-92		
	R92-47		387	3-20-92	387	5-29-92		
	R92-48		85	3-20-92	85	5-29-92		
	R92-49			3-20-92	49	5-29-92	49	P.L. 102-298
	R92-50		125	3-20-92	125	5-29-92		
	R92-51		185	3-20-92	185	5-29-92		
	R92-52		120	3-20-92	120	5-29-92		
	R92-53		134	3-20-92	134	5-29-92		
	R92-54		100	3-20-92	100	5-29-92		
	R92-55		46	3-20-92	46	5-29-92		
	R92-56		200	3-20-92	200	5-29-92		
	R92-57		250	3-20-92	250	5-29-92		
	R92-58			3-20-92	50	5-29-92	50	P.L. 102-298
	R92-59		187	3-20-92	187	5-29-92		
	R92-60		140	3-20-92	140	5-29-92		
	R92-61		76	3-20-92	76	5-29-92		
Extension Service								
Extension Service	R92-62		647	3-20-92	647	5-29-92		
	R92-63		150	3-20-92	150	5-29-92		

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National Agricultural Library								
National Agricultural Library	R92-64		500	3-20-92	462 1/	5-29-92		
Animal and Plant Inspection Service								
Salaries and expenses	R92-35		100	3-20-92	100	5-29-92		
DEPARTMENT OF COMMERCE								
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction	R92-2		18,425	3-10-92	21,425	5-11-92	3,000	P.L. 102-298
DEPARTMENT OF DEFENSE								
Operation and Maintenance								
Operation and maintenance, Army	R92-3		80,798	3-10-92	92,850	5-11-92	12,052	P.L. 102-298
Operation and maintenance, Navy	R92-4		104,520	3-10-92	104,650	5-11-92	130	P.L. 102-298
Operation and maintenance, Marine Corps	R92-5		14,834	3-10-92	22,000	5-11-92	7,166	P.L. 102-298
Operation and maintenance, Air Force	R92-6		3,848	3-10-92	4,500	5-11-92	652	P.L. 102-298
Operation and maintenance, Defense Agencies	R92-7		20,200	3-10-92	20,200	5-11-92		
Procurement								
Aircraft procurement, Army	R92-103		133,000	4-9-92	133,000	6-19-92		
Procurement of weapons and tracked combat vehicles, Army	R92-9		60,000	3-10-92	110,000	5-11-92	50,000	P.L. 102-298
	R92-104		225,000	4-9-92	225,000	6-19-92		
	R92-105			4-9-92			196,300	P.L. 102-298
	R92-106		17,600	4-9-92	17,600	6-19-92		
Procurement of ammunition, Army	R92-10		1,000	3-10-92	1,000	5-11-92		
Aircraft procurement, Navy	R92-11		223,000	3-10-92	262,000	5-11-92	39,000	P.L. 102-298

1/ Only $462,000 was withheld from obligation.

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
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Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
	R92-107			4-9-92			15,000	P.L. 102-298
	R92-108		8,000	4-9-92	8,000	6-19-92		
	R92-12		13,200	3-10-92	13,200	5-11-92		
Weapons procurement, Navy	R92-109		130,000	4-9-92	130,000	6-19-92		
	R92-110			4-9-92			4,000	P.L. 102-298
	R92-111			4-9-92			60,000	P.L. 102-298
Shipbuilding and conversion, Navy	R92-13		238,100	3-10-92	238,100	5-11-92		
	R92-101		1,615,900	3-20-92	2,765,900	5-21-92	1,150,000	P.L. 102-298
Other procurement, Navy	R92-14		41,300	3-10-92	41,300	5-11-92		
	R92-102			3-20-92	189,400	5-21-92	189,400	P.L. 102-298
	R92-112		10,000	4-9-92	10,000	6-19-92		
	R92-113		4,000	4-9-92	4,000	6-19-92		
	R92-114		2,000	4-9-92	2,000	6-19-92		
Procurement, Marine Corps	R92-15		40,200	3-10-92	40,200	5-11-92		
	R92-115		6,500	4-9-92	6,500	6-19-92		
Procurement, Defense Agencies	R92-16		154,800	3-10-92	154,800	5-11-92		
National guard and reserve equipment	R92-116		21,000	4-9-92	21,000	6-19-92		
	R92-117		799,300	4-9-92	799,300	6-19-92		
	R92-118		67,000	4-9-92	67,000	6-19-92		
	R92-119		9,300	4-9-92	9,300	6-19-92		
	R92-120		45,000	4-9-92	45,000	6-19-92		
	R92-121		15,000	4-9-92	15,000	6-19-92		
	R92-122		20,000	4-9-92	20,000	6-19-92		
	R92-123		60,000	4-9-92	60,000	6-19-92		
	R92-124		15,000	4-9-92	15,000	6-19-92		
Research, Development, Test and Evaluation								
Research, development, test, and evaluation, Army	R92-18		102,200	3-10-92	102,200	5-11-92		
	R92-125		4,000	4-9-92	4,000	6-19-92		
Research, development, test, and evaluation, Navy	R92-19		140,600	3-10-92	140,600	5-11-92		

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
Research, development, test, and evaluation, Air Force	R92-20		127,100	3-10-92	127,100	5-11-92		
	R92-21		320,900	3-10-92	375,900	5-11-92	55,000	P.L. 102-298
	R92-126		3,000	4-9-92	3,000	6-19-92		
	R92-127			4-9-92			248,800	P.L. 102-298
Research, development, test, and evaluation, Defense Agencies	R92-128		5,000	4-9-92	5,000	6-19-92		
	R92-129		6,000	4-9-92	6,000	6-19-92		
	R92-130		70,000	4-9-92	70,000	6-19-92		
Military Construction								
Military construction, Army	R92-22		200	3-10-92	9,050	5-11-92	8,850	P.L. 102-298
Military construction, Navy	R92-23		17,400	3-10-92	17,400	5-11-92		
Military construction, Air Force	R92-24		6,000	3-10-92	6,000	5-11-92		
Military construction, Defense Agencies	R92-25		39,000	3-10-92	48,000	5-11-92	9,000	P.L. 102-298
Military construction, Army National Guard	R92-26		16,565	3-10-92	16,565	5-11-92		
Military construction, Air National Guard	R92-27			3-10-92	306	5-11-92	306	P.L. 102-298
Military construction, Army Reserve	R92-28		2,749	3-10-92	2,749	5-11-92		
Military construction, Naval Reserve	R92-29		25,100	3-10-92	36,000	5-11-92	10,900	P.L. 102-298
DEPARTMENT OF DEFENSE-CIVIL								
Corps of Engineers								
Construction, general	R92-91		3,000	3-20-92	3,000	5-21-92		
Operation and maintenance, general	R92-92		1,350	3-20-92	1,350	5-21-92		
DEPARTMENT OF ENERGY								
Energy Programs								
Fossil energy research and development	R92-34		1	4-8-92	1	6-18-92	144	P.L. 102-298

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R92-30		25,000 2/	3-10-92				
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Annual contributions for assisted housing	R92-65		547,659	3-20-92	547,659	5-21-92		
	R92-66		1,500	3-20-92	1,500	5-21-92		
	R92-67		1,000	3-20-92	1,000	5-21-92		
	R92-68		2,000	3-20-92	2,000	5-21-92		
	R92-69		150	3-20-92	150	5-21-92		
	R92-70		100	3-20-92	100	5-21-92		
	R92-71		1,200	3-20-92	1,200	5-21-92		
	R92-72		1,000	3-20-92	1,000	5-21-92		
	R92-73		1,300	3-20-92	1,300	5-21-92		
	R92-74		3,900	3-20-92	3,900	5-21-92		
	R92-75		2,500	3-20-92	2,500	5-21-92		
	R92-76		1,500	3-20-92	1,500	5-21-92		
	R92-77		500	3-20-92	500	5-21-92		
	R92-78		1,000	3-20-92	1,000	5-21-92		
	R92-79		1,000	3-20-92	1,000	5-21-92		
	R92-80		505	3-20-92	505	5-21-92		
	R92-81		65	3-20-92	65	5-21-92		
	R92-82		101	3-20-92	101	5-21-92		

2/ Funding was never withheld.

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
	R92–83		1,500	3–20–92	1,500	5–21–92		
	R92–84		700	3–20–92	700	5–21–92		
	R92–85		1,000	3–20–92	1,000	5–21–92		
Annual contributions for assisted housing	R92–86		800	3–20–92	800	5–21–92		
Congregate services program	R92–1		16,700	2–19–92	16,700	4–6–92		
Flexible subsidy fund	R92–31		25,000	3–10–92	25,000	5–11–92		
Policy Development and Research								
Research and technology	R92–87		400	3–20–92	400	5–21–92		
DEPARTMENT OF THE INTERIOR								
National Park Service								
Construction	R92–89		7,700	3–20–92	7,700	5–21–92		
Operation of the national park system	R92–90		1,975	3–20–92	1,975	5–21–92		
Bureau of Indian Affairs								
Operation of Indian programs	R92–32		5,880	3–10–92	5,880	5–11–92		
Construction	R92–88		2,696	3–20–92	8,593	5–21–92	5,897	P.L. 102–298
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Local rail freight assistance	R92–33		9,880	3–10–92	9,880	5–11–92		

ATTACHMENT A
Status of FY 1992 Rescission Proposals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Amount Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
ENVIRONMENTAL PROTECTION AGENCY								
Research and development	R92-98		116	3-20-92	116	5-21-92		
Abatement, control and compliance	R92-93		1,250	3-20-92	1,250	5-21-92		
	R92-94		390	3-20-92	390	5-21-92		
	R92-95		70	3-20-92	70	5-21-92		
	R92-96		1,450	3-20-92	1,450	5-21-92		
Buildings and facilities	R92-97		20,000	3-20-92	20,000	5-21-92		
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Construction of facilities	R92-99		3,400	3-20-92	3,400	5-21-92		
Research and development	R92-100		750	3-20-92	750	5-21-92		
TOTAL RESCISSIONS		0	5,812,527		7,330,191		2,066,946	

ATTACHMENT B
Status of FY 1992 Deferrals – As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(–): Cumulative OMB/ Agency	Releases(–): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8–1–92
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Economic support fund	D92–1	244,777		09–30–91					
	D92–1A		1,623,312	12–19–91	1,876,410			1,108,866	1,100,545
Foreign military financing	D92–8	1,908,000		12–19–91					
	D92–8A		93,098	06–25–92	996,300			695,578	1,700,376
Agency for International Development									
International disaster assistance,									
Executive	D92–2	40,704		09–30–91					
	D92–2A		12,483	02–19–92	65,032			34,068	22,224
Demobilization and transition fund	D92–9	13,000		12–19–91					13,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Cooperative work	D92–3	482,378		09–30–91	135,434				346,944
Expenses, brush disposal	D92–10	101,006		12–19–91					101,006
Timber salvage sales	D92–11	131,549		02–19–92					
	D92–11A		50,000	06–25–92	30,000				151,549
DEPARTMENT OF DEFENSE – CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense	D92–4	1,416		09–30–91	93				1,324

ATTACHMENT B
Status of FY 1992 Deferrals -- As of August 1, 1992
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments (+)	Amount Deferred as of 8-1-92
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration									
Limitation on administrative expenses	D92-5	7,317		09-30-91					7,317
DEPARTMENT OF STATE									
Bureau for Refugee Programs									
United States emergency refugee and migration assistance fund, executive	D92-6	30,053		09-30-91					
	D92-6A		24,750	12-19-91	25,000			24,520	54,323
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration									
Facilities and equipment (Airport and airway trust fund)	D92-7	1,010,375		09-30-91	1,010,375				0
TOTAL, DEFERRALS		3,970,575	1,803,643		4,138,644	0		1,863,033	3,498,607

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[3] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
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2000-End	(869-017-00025-6)	11.00	Jan. 1, 1992
8	(869-017-00026-4)	17.00	Jan. 1, 1992
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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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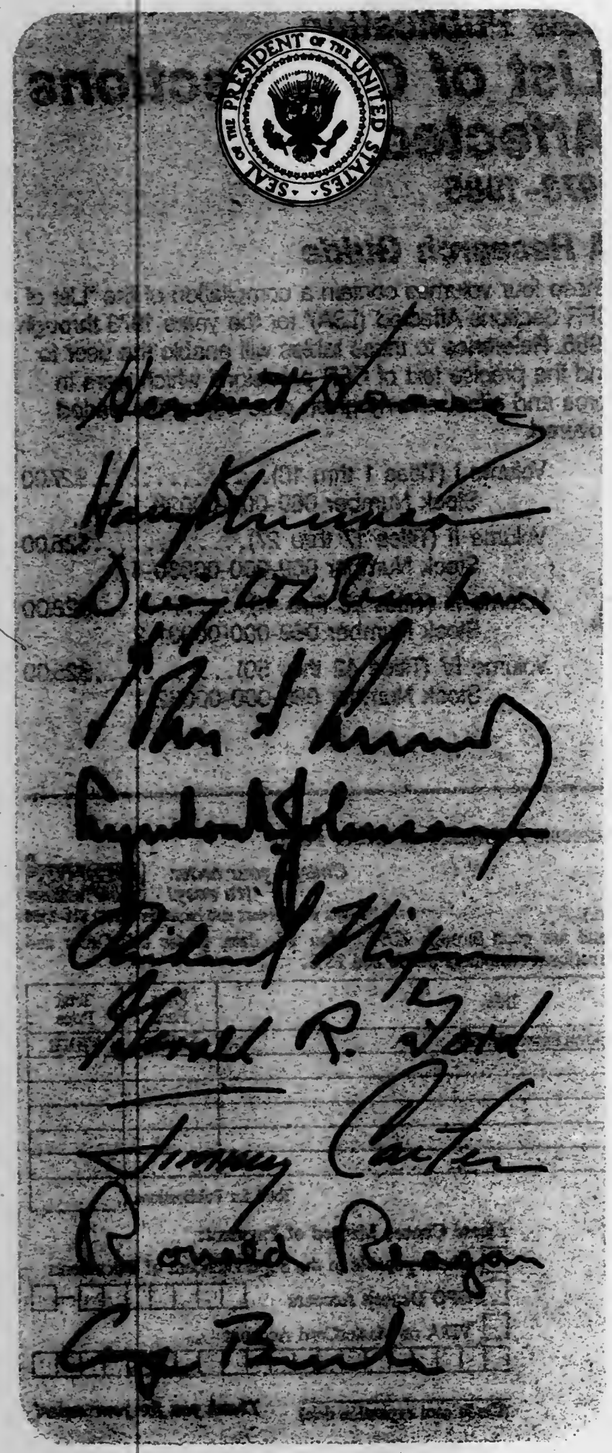
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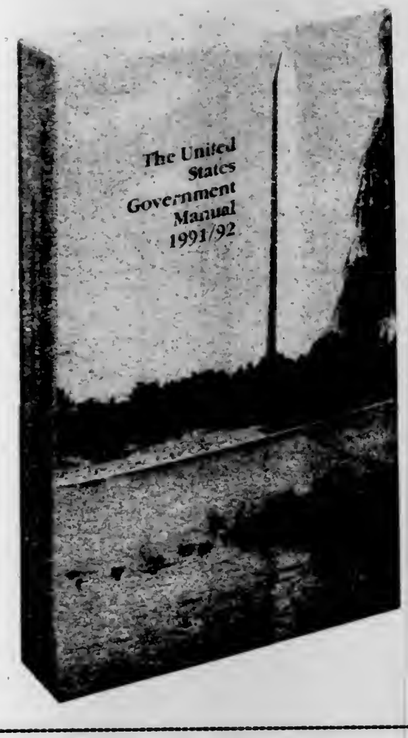
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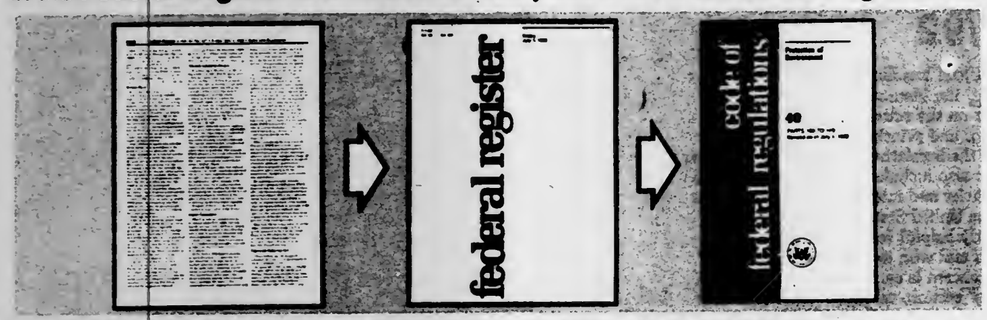
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Tuesday
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federal register

Tuesday
August 18, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 302

[Docket No. 88-202-2]

District of Columbia; Movement of Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are removing the regulations concerning movement of plants and plant products into and out of the District of Columbia from the Code of Federal Regulations.

We have determined that this action is warranted because these regulations specifically pertaining to the District of Columbia are duplicative of, or exceed the requirements of, other Federal regulations that restrict the movement of plants and plant products into and from other jurisdictions in the United States, including the District of Columbia. We believe that the restrictions imposed by the other existing Federal regulations are adequate to prevent the introduction and interstate spread of plant pests that present a significant threat to U.S. agriculture. This action will remove inspection and certification requirements that are unnecessary.

The Animal and Plant Health Inspection Service will continue to provide inspection and documentation services for plants and plant products moving from the District of Columbia when inspection or documentation is required by Federal laws or regulations or, when applicable, by the laws or regulations of countries that receive plants or plant products from the District of Columbia.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Sidney Cousins, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 644, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6365.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 1988, we published in the **Federal Register** (53 FR 37772-37774, Docket No. 85-368), a document proposing to revise the regulations in 7 CFR part 302, "District of Columbia; Movement of Plants and Plant Products." The intent of the proposed revisions was to remove unnecessary restrictions on the interstate movement of plants and plant products and to clarify the regulations, which have been in effect since 1959, for persons who must comply with them.

Our proposal invited the submission of written comments, due on or before November 28, 1988. We received two comments prior to this closing date, both from State departments of agriculture bordering the District, and both objecting to the proposal as written. In response to these comments, and as a result of further agency review, we withdrew Docket No. 85-368 in a document published in the April 24, 1992, **Federal Register** (57 FR 15033-15034, Docket No. 88-202), and proposed to remove 7 CFR part 302 in its entirety. Comments on the April 24, proposed rule were required to be received on or before June 23, 1992. We did not receive any comments. Therefore, we are removing 7 CFR part 302 in its entirety.

We continue to believe that other existing Federal regulations are adequate to prevent the introduction and interstate spread of plant pests that present a significant threat to U.S. agriculture. Maintaining special regulations pertaining specifically to plants and plant products moved into or from the District of Columbia is not necessary. These regulations are duplicative of, or exceed the requirements of, other Federal regulations that restrict the movement of plants and plant products into and from other jurisdictions in the United States, including the District of Columbia. By removing the requirements mandating inspection and certification of plants and plant products entering or leaving the District of Columbia, we eliminate the need for 7 CFR part 302.

Based on the rationale set forth in the proposal and in this document, we are withdrawing 7 CFR part 302.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Removing the "District of Columbia; Movement of Plants and Plant Products" regulations will relieve inspectors of the requirement to perform inspections and issue documents that are not necessary for the protection of agriculture from plant pests or diseases.

However, removing these regulations will not increase or decrease trade movements or sales since inspection and documentation to meet other Federal regulations, as well as applicable foreign country laws and regulations, will continue to be provided. APHIS will continue to provide inspectors as needed to meet these other regulations, since the District of Columbia does not employ such inspectors. There are fewer than ten small entities that move plants into an out of the District of Columbia. Because the volume of plants moving into and out of the District is so small, there will be no significant economic impact created by the removal of the unnecessary requirements.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to

Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 302

District of Columbia, Nursery stock, Plant diseases and pests, Quarantine, Transportation.

PART 302—[REMOVED]

Under the authority of the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act of 1912, as amended (7 U.S.C. 151–165, and 167), title 7, Code of Federal Regulations is amended by removing "PART 302—DISTRICT OF COLUMBIA; MOVEMENT OF PLANTS AND PLANT PRODUCTS."

Done in Washington, DC, this 12th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19583 Filed 8–17–92; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 92–009–2]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Florida from Class B to Class A. We have determined that Florida meets the standards for Class A status. This action was necessary to relieve certain restrictions on the interstate movement of cattle from Florida.

EFFECTIVE DATES: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. John Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6188.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 21, 1992, and published in the **Federal Register** on April 27, 1992 (57 FR 15219–15220, Docket No. 92–009), we amended the brucellosis regulations in 9 CFR part 78 by removing Florida from the list of Class B States § 78.41(c) and adding it to the list of Class A States in § 78.41(b). This action relieved certain restrictions on moving cattle interstate from Florida.

Comments on the interim rule were required to be received on or before June 26, 1992. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information complied by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Florida from Class B to Class A will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from Florida. However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The principal entities affected by the rule are owners of noncertified herds in Florida not known to be affected with brucellosis who seek to sell cattle interstate.

There are an estimated 21,300 herds in Florida that could potentially be affected by this rule change. We estimate that 98 percent of these herds are owned by small entities. During fiscal year 1991, Florida tested 58,348 eligible cattle at livestock markets. We estimate that approximately 10 percent of this testing was done to qualify cattle for interstate movement for purposes other than slaughter. Testing costs approximately $4 per head. Since herd sizes vary, larger herds will accumulate more savings than small herds. Also, not all herd owners will choose to market their cattle in a way that accrues these costs savings. Overall, the rule should provide a very small economic benefit to small entities.

Under these circumstances, the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.41 that was published at 57 FR 15219–15220 on April 27, 1992.

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–128, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC this 12th day of August 1992.

Robert Melland,

Administator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19581 Filed 8–17–92; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 78

[Docket No. 92–005–2]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Mississippi from Class B to Class A. We have determined that Mississippi meets the standards for Class A status. This action was necessary to relieve certain restrictions on the interstate movement of cattle from Mississippi.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. John Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6188.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective January 27, 1992, and published in the **Federal Register** on January 31, 1992 (57 FR 3717–3719, Docket No. 92–005), we amended the brucellosis regulations in 9 CFR part 78 by removing Mississippi from the list of Class B States in § 78.41(c) and adding it to the list of Class A States in § 78.41(b). The action relieved certain restrictions on moving cattle interstate from Mississippi.

Comments on the interim rule were required to be received on or before March 31, 1992. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Mississippi from Class B to Class A reduces certain testing and other requirements governing the interstate movement of cattle from Mississippi. However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The principal entities affected by the rule are owners of noncertified herds in Mississippi not known to be affected with brucellosis who seek to sell cattle interstate.

There are an estimated 27,000 herds in Mississippi that could potentially be affected by this rule change. We estimate that 98 percent of these herds are owned by small entities. During fiscal year 1991, Mississippi tested 168,967 eligible cattle at livestock markets. We estimate that approximately 5 percent of this testing was done to qualify cattle for interstate movement for purposes other than slaughter. Testing costs approximately $1.50 per head. Since herd sizes vary, larger herds will accumulate more savings than small herds. Also, not all herd owners will choose to market their cattle in a way that accrues these cost savings. Overall, the rule should provide a very small economic benefit to small entities.

Under these circumstances, the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR 78.41 that was published at 57 FR 3717–3719 on January 31, 1992.

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 12th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19582 Filed 8–17–92; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 94

[Docket No. 92–031–1]

Meat and Meat Products From Northern Ireland and the Republic of Ireland; Restrictions on Importations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations to add certain restrictions concerning the importation into the United States of meat of ruminants and swine, and certain other animal products, from Northern Ireland and the Republic of Ireland. The imposition of additional import restrictions is a necessary response to new conditions which make possible the commingling of disease-contaminated meat or meat products with disease-free meat or meat products in these countries. In Northern Ireland, conditions have changed with respect to swine vesicular disease-

contamination of meat or meat products only. This action protects against the introduction into the United States of swine vesicular disease, rinderpest, and foot-and-mouth disease.

DATES: Interim rule effective August 18, 1992. Consideration will be given only to comments received on or before October 19, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-031-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Chief Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 756-A, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7885.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various diseases, including rinderpest, foot-and-mouth disease (FMD), and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

Both the Republic of Ireland (also referred to in the regulations as Ireland) and Northern Ireland are included in the list of countries declared, in § 94.1(a)(2) of the regulations, to be free of rinderpest and FMD. Both countries also appear in the list of countries declared free of swine vesicular disease, in § 94.12(a). We are now adding the Republic of Ireland to the list of countries in § 94.11 that, although free of rinderpest and FMD, are subject to special restrictions on the importation into the United States of their ruminant and swine meat and meat products. That list already includes Northern Ireland. We are also adding Northern Ireland and the Republic of Ireland to the list of countries in § 94.13 that, although free of SVD, are subject to the same kind of special restrictions.

The regulations in §§ 94.11 and 94.13 provide that countries free of rinderpest and FMD, in the first case, and of SVD, in the second, are, under certain circumstances, subject to special restrictions on the importation into the United States of their ruminant and swine meat and meat products.

Special Restrictions

The countries listed in §§ 94.11 and 94.13(a) are subject to special restrictions because at least one of the following conditions applies:

(1) They supplement their national meat supply by importing fresh, chilled, or frozen meat from countries in which one of the diseases of concern is considered to exist;

(2) They have a common land border with countries in which one of these diseases exists; or

(3) They import ruminants or swine from countries in which one of these diseases exists, under conditions that are less restrictive than would be acceptable for importation into the United States.

The special restrictions placed on meat and other animal products of ruminants and swine in §§ 94.11 and 94.13 generally require that the meat be:

(1) Cooked in the manner specified;

(2) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and

(3) Accompanied by a certificate issued by an official of the national government of the country of origin, assuring that the meat and meat products therefrom have not been commingled or exposed to meat or other animal products imported from or transported through a rinderpest-, FMD-, or SVD-infected country, and are otherwise handled in accordance with the requirements of this section.

As members of the European Community, in preparation for the "border-free Europe" of July 1, 1992, Northern Ireland and the Republic of Ireland are in the process of changing their import requirements, and will have to accept meat and animal products from all countries within the European Community, regardless of rinderpest-, FMD-, or SVD-status. These altered trade conditions mean that the meat and other animal products produced in Northern Ireland and the Republic of Ireland may be commingled with the fresh, chilled, or frozen meat of animals from a country or countries where one of the diseases of concern exists, presenting a risk that meat and other animal products exported from either country to the United States could be contaminated and introduce SVD, rinderpest or FMD.

We are, therefore, taking this action to further restrict the importation of meat and meat products from Northern Ireland, in accordance with § 94.13, and to restrict the importation of meat and meat products from the Republic of Ireland in accordance with §§ 94.11 and 94.13.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to respond to changes in the animal health regulations of Northern Ireland and the Republic of Ireland. Those changes take effect July 1, 1992. Less restrictive meat and meat product import requirements in the two countries mean that the commingling of rinderpest-, FMD-, or SVD-contaminated meat and meat products with rinderpest-, FMD-, or SVD-free products could occur in either country.

Failure to restrict the importation of meat and meat products at this time increases the risk of rinderpest-, FMD-, or SVD-contaminated meat or meat products being introduced into the United States.

Since prior notice and other public procedures with respect to this interim rule as impracticable and contrary to the public interest under these conditions, there is a good cause under 5 U.S.C. 553 for making it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The amount of beef and pork imported from both Northern Ireland and the Republic of Ireland into the United States has been minimal in recent years. Official records indicate that no commercial shipments of pork have been imported from Northern Ireland since 1989. No meat product of ruminants, other than beef, has been imported from the Republic of Ireland since 1988. In 1987-88, the most recent year for which figures are available, the value of beef imported from the Republic of Ireland was $1,855,000; the value of pork was less than $10,000. This small volume suggests that few beef and pork importers will be affected by this rule. Moreover, officials in the Republic of Ireland indicate that they will be able to issue the certificates required under the regulations in 9 CFR part 94, for meat and meat products shipped from the Republic of Ireland to the United States. The few importers affected by the new regulations can continue to import meat and other animal products from the Republic of Ireland, subject to the added restrictions. Alternatively, they can purchase those products from other sources.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR, part 3015, subpart V.)

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in §§ 94.11 and 94.13 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579-0015.

List of Subjects in 9 CFR Part 94

African swine fever, Animal disease, Exotic Newcastle disease, Foot-and-mouth disease, Fowl pest, Garbage, Hog cholera, Imports, Livestock and livestock products, Meat and meat products, Milk, Poultry and poultry products, Rinderpest, Swine vesicular disease.

Accordingly, the regulations in 9 CFR part 94 are amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), NEWCASTLE DISEASE (AVIAN PNEUMOENCEPHALITIS), AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The heading for part 94 is revised as set forth above.

2. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450, 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.11 [Amended]

3. In § 94.11, paragraph (a) is amended by adding "Republic of Ireland," immediately after "New Guinea,".

§ 94.13 [Amended]

4. In § 94.13, the introductory text is amended by adding "Northern Ireland, Republic of Ireland," immediately after "Luxembourg,".

Done in Washington, DC, this 12th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-19584 Filed 8-17-92; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TREASURY

Office of Thrift Supervision

12 CFR Parts 545 and 571

[No. 92-265]

RIN 1550-AA48

Branch Offices, Exclusive Leases, and Similar Agreements

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is repealing certain of its regulations because they are unnecessary and obsolete. These regulations prohibited savings associations from entering into leases and other arrangements that would give an association the exclusive right to occupy the premises of a chain store or regional shopping center. The regulations were adopted by the OTS's predecessor agency, the Federal Home Loan Bank Board (Bank Board) because exclusive lease arrangements were considered a potentially unsafe or unsound practice for savings associations due to their anti-competitive nature. However, the OTS believes these regulations are unnecessary because existing Federal and state laws addressing anti-competitive behavior are sufficient to address potential abuses that may arise in this area.

EFFECTIVE DATE: August 18, 1992.

FOR FURTHER INFORMATION CONTACT: Eileen M. McCarthy, Policy Analyst, Supervision Policy, (202) 906-5652, or Michael P. Vallely, Senior Attorney, Corporate and Securities Division, (202) 906-6241, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On July 15, 1972, the Bank Board adopted a rule currently at 12 CFR 545.92(i), to prohibit federal savings associations from entering into any agreement that would result in the exclusive right to operate a branch office in a regional shopping center or in a majority of all locations of a chain store, or that would exclude other financial institutions from operating offices in a regional shopping center or any location of a chain store where the association does not have an office.[1] On February 20, 1976, the Bank Board adopted another rule, currently at 12 CFR 571.11, expressing a policy of prohibiting any leasing or other arrangements under which a savings association could prevent competing financial institutions from occupying office space in a regional shopping center.[2]

These two regulations were adopted by the Bank Board because it believed that exclusive lease agreements were anti-competitive and would expose associations to substantial liability under the antitrust laws, with attendant risk to the deposit insurance fund. Like other restrictive covenants, exclusive lease provisions may involve unreasonable restraints of trade under section 1 of the Sherman Act, 15 U.S.C. 1, attempts to monopolize under section

[1] See 37 FR 13164 (July 4, 1972).

[2] See 41 FR 2805 (January 20, 1976).

2 of the Sherman Act, 15 U.S.C. 2, or unfair methods of competition under section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

Notice of the OTS's proposal to repeal these regulations was published in the **Federal Register** on April 13, 1992. See 57 FR 12760 (April 13, 1992). The notice solicited public comment for a 30-day period beginning on the date of publication. Upon consideration of all the comments received during the public comment period, the OTS is repealing the regulation, as proposed.

As noted in the proposal, the OTS is aware of no instances where a savings association's lease arrangements were successfully challenged as anti-competitive, or where a lease arrangement otherwise presented significant safety or soundness concerns. Moreover, current Federal and state antitrust laws establish a wide range of administrative and judicial sanctions against, and remedies for, anti-competitive lease arrangements. Thus, the OTS concluded that these provisions are unnecessary and obsolete.

Summary of Comments

The comment period closed May 13, 1992. The OTS received 2 comments on the proposal from trade groups. Both comments favored repeal of these regulations for the reasons set forth in the proposal.

Repeal of §§ 545.92(i) and 571.11

Upon consideration of the public comments, the OTS has determined to repeal 12 CFR 545.92(i) and 571.11 as set forth in the proposal.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Executive Order 12291

The OTS has determined that this final rule does not constitute a "major rule" for purposes of Executive Order 12291 and, therefore, does not require the preparation of a regulatory impact analysis.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings association.

12 CFR Part 571

Accounting, Conflicts of interest, Gold, Investments, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the OTS hereby amends part 545, subchapter C, and part 571, subchapter D, chapter V, title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER C—REGULATIONS FOR FEDERALS SAVINGS ASSOCIATIONS

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

§ 545.92 [Amended]

2. Section 545.92(i) is removed and reserved

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL FEDERAL SAVINGS ASSOCIATIONS

PART 571—STATEMENTS OF POLICY

1. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464.

§ 571.11 [Removed]

2. Section 571.11 is removed.

Dated: June 15, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-19367 Filed 8-17-92; 8:45 am]

BILLING CODE 6720-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 239

[Release No. 33-6951; File No. S7-32-85]

RIN: 3235-AC64

Technical Amendment to Form F-6

AGENCY: Securities and Exchange Commission.

ACTION: Final rule—technical amendment.

SUMMARY: This document corrects a reference to "Rule 457(j) (§ 230.457(j) of this chapter)" in General Instruction II of Form F-6 which was adopted in a release entitled American Depositary Receipts published Thursday, March 24, 1983 (48 FR 12346).

EFFECTIVE DATE: August 18, 1992.

FOR FURTHER INFORMATION CONTACT: Anita Klein, (202) 272-3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: When the Commission published Form F-6 in 1983, the reference in General Instruction II. thereof to rule 457(j) under the Securities Act of 1933 was correct. In a subsequent Commission release published Friday, January 17, 1986 (51 FR 2472), however, paragraphs (b)-(m) of Rule 457 were redesignated paragraphs (c)-(n) of Rule 457. No amendment to General Instruction II. of Form F-6 was adopted at that time to correct the reference to Rule 457(j) in accordance with the redesignation. Since the effective date of the redesignation, therefore, Form F-6 has contained an error which may prove to be misleading and is in need of clarification.

List of Subjects in 17 CFR Part 239

Reporting and recordkeeping requirements; Securities.

Accordingly, 17 CFR part 239 is amended as follows.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for part 239 continues to read as follows:

Authority: 15 U.S.C. 77a, *et seq.*, unless otherwise noted.

2. By amending the final sentence of General Instruction II. of Form F-6 (§ 239.36) to read as follows:

§ 239.36 Form F-6, for registration under the Securities Act of 1933 of depositary shares evidenced by American Depositary Receipts.

General Instructions

* * * * *

II. * * *

Rule 457(k) (§ 230.457(k) of this chapter) describes the method of computing the filing fee.

* * * * *

Dated: August 12, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19549 Filed 8-17-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 25 and 202

[Docket No. R-92-1499; FR-2801-C-04]

RIN 2501-AB01

Mortgagee Review Board; Corrections

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; corrections.

SUMMARY: On July 13, 1992 (57 FR 31048), the Department published in the **Federal Register**, a final rule that made comprehensive changes in the Department of Housing and Urban Development's Mortgagee Review Board (Board) procedures. The purpose of this document is to correct editorial errors that were inadvertently made in the publication of the final rule.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT:

For discussion of legal issues or matters of regulatory interpretation: Emmett N. Roden, III, Assistant General Counsel, Inspector General and Administrative Proceedings Division, Department of Housing and Urban Development, room 10251, 451 Seventh Street, SW., Washington, DC 20410, Telephone (202) 608-3200.

For programmatic issues: William Heyman, Director, Office of Lender Activities and Land Sales Registration, Department of Housing and Urban Development, room 9146, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 708-1824. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Accordingly, in FR Doc. 92-16200, the final rule published in the **Federal Register** on July 13, 1992 (57 FR 31048), is corrected to read as follows:

1. On page 31046, in the preamble, in the third column, under the title heading *"Discussion of Section 25.2 Establishment of Board"*, in the fourth paragraph under *"Response:"*, capitalize "Title I" wherever it appears.

2. On page 31051, in the preamble, in the first column, under the title heading *"Executive Order 12612, Federalism"*, correct the first sentence to read, "* * * that the policies contained in this rule do not have a substantial direct effect * * *."

§ 25.2 [Corrected]

3. On page 31051, in § 25.2, in the third column, correct by capitalizing the phrase, "Title I".

§ 25.3 [Corrected]

4. On page 31051, in § 25.3, under the definition *"Lender."*, correct by capitalizing the phrase, "Title I", wherever it appears.

5. On page 31052, in § 25.3, under the definition *"Probation"*, correct the first sentence to read, "* * *, while an evaluation is made of the mortgagee's compliance with HUD/FHA requirements, the Equal Credit Opportunity Act (ECOA), (15 U.S.C. 1601), the Fair Housing Act (42 U.S.C. 3601-3619), * * *."

§ 25.4 [Corrected]

6. On page 31052, in § 25.4(b), correct the first sentence to read, "The Inspector General or his or her designee, and the Director of the Office of Lender Activities * * *."

§ 25.5 [Corrected]

7. On page 31052, in § 25.5(b), correct the fourth sentence to read, "* * *, the Equal Credit Opportunity Act, (15 U.S.C. 1601), * * *."

8. On page 31052, in § 25.5(c)(3), correct the first sentence to read, "* * * HUD will not endorse any mortgagee originated by the suspended mortgagor * * *."

9. On page 31053, in § 25.5(d)(3)(i), correct the phrase "withdrawn mortgagor" to read "withdrawn mortgagee".

§ 25.9 [Corrected]

10. On page 31054, in § 25.9(cc), correct by capitalizing "Title I".

§ 25.13 [Corrected]

11. On page 31055, in § 25.13, correct the first sentence by capitalizing "Title I".

§ 202.8 [Corrected]

12. On page 31056, in § 202.8(d), in the second sentence, correct by capitalizing "Title I".

Dated: August 12, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92-19586 Filed 8-17-92; 8:45 am]

BILLING CODE 4210-32-M

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 905

[Docket No. R-92-1371; FR-2208-C-05]

RIN 2577-AA32

Indian Housing: Revised Consolidated Program Regulations; Corrections

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule; corrections.

SUMMARY: On June 24, 1992 (57 FR 28240), the Department published in the **Federal Register**, a final rule that modified slightly an interim rule already in effect that consolidated rules applicable to all aspects of the Indian housing programs administered by Indian Housing Authorities (IHAs). The purpose of this document is to correct typographical errors in the published final rule.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dominic Nessi, Director, Office of Indian Housing, room 4140, Department of Housing and Urban Development, Washington, DC 20410; telephone (202) 708-1015 (voice), or (202) 708-0850 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Accordingly, in FR Doc. 92-14057, a final rule published in the **Federal Register** of June 24, 1992 (57 FR 28240), is corrected to read as follows:

§ 905.440 [Corrected]

1. On page 28292, in § 905.440, in the middle column, paragraph "(e)(i)" is corrected to read paragraph "(e)(1)".

§ 905.963 [Corrected]

2. On page 28349, in § 905.963, in the middle column, the section heading is corrected to read, **"§ 905.963 HUD's role in activities under this subpart."**.

Dated: August 12, 1992.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 92-19587 Filed 8-17-92; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8427]

RIN 1545-AQ21

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Amendment

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations under section 7216 relating to the circumstances under which tax return information may be disclosed for purposes of conducting quality or peer reviews. The regulations affect tax return preparers and are necessary to

permit tax return information to be disclosed and used for purposes of a quality or peer review of a tax return preparer's accounting or auditing practice.

EFFECTIVE DATE: These regulations are effective December 28, 1990.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of the Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:CORP:T:R), or by telephone at 202–622–6232 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On December 27, 1991, the Service published in the **Federal Register**, a proposed amendment to the Regulations on Procedure and Administration (26 CFR part 301) under section 7216(b)(3) of the Internal Revenue Code of 1986 (56 FR 67024). A public hearing was held on June 3, 1992. After consideration of all comments regarding the proposed amendment, the amendment is adopted as revised by this Treasury decision.

Explanation of Provisions

Section 7216(b)(3) of the Internal Revenue Code of 1986 permits tax return information to be disclosed and used for purposes of conducting a quality or peer review. Existing regulations under section 7216 (§ 301.7216–2(o)) define a quality or peer review as a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation services.

The proposed regulations would permit a preparer's auditing and accounting services to be included within the scope of this definition and therefore be eligible for a review. The proposed regulations state that a quality or peer review is a review of a preparer's "tax preparation, accounting *and* auditing services" (*emph.* added).

One commentator expressed concern that the proposed regulations could be interpreted as permitting a review only of preparers who offer each of these three types of services. The commentator noted that some preparers offer less than all of these services and suggested replacing the word "and" with the word "or". To clarify that individuals who offer less than all of these services may be reviewed, the Service adopts the commentator's suggestion. Accordingly, this change is reflected in the final regulations.

Some commentators suggested that including accounting or auditing services within the definition of a quality or peer review would unnecessarily expand the scope of the regulation. They noted that accounting or auditing services may not be related to tax return preparation and recommended that the proposed regulations not be adopted.

This suggestion was not adopted because some preparers must undergo a review of their auditing or accounting services to comply with requirements of government agencies, and in order to be properly completed, these reviews may require disclosure of tax return information. For example, an audit peer review may require an examination of how the auditor treated prepaid or accrued, but unpaid, income taxes.

The Service also received comments stating that § 301.7216–2(o) should be revoked and comments suggesting that the classes of persons permitted to conduct a quality or peer review should be expanded to include non-certified, licensed public accountants (LPAs) who are neither enrolled agents, nor otherwise eligible to practice before the Service. Because these comments are not within the scope of the proposed regulations they are not considered in this document.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is David L. Meyer, Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, personnel from other offices of the IRS and Treasury Department participated in their development.

List of Subjects 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows.

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7216–2(o) is amended by revising the third sentence to read as follows:

§ 301.7216–2 Disclosure or use without formal consent of taxpayer.

* * * * * * *

(o) *Disclosure or use of information for quality or peer reviews.* * * * A quality or peer review is a review that is undertaken to evaluate, monitor, and improve the quality and accuracy of a tax return preparer's tax preparation, accounting or auditing services. * * *

* * * * * *

Dated: July 31, 1992.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved:

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–19460 Filed 8–17–92; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Regulatory Program—Reclamation Bond Pool

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with an exception of proposed amendments to the Kentucky regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Addressed in this rulemaking are amendments to Kentucky Revised Statutes (KRS) found in House Bill 676, Senate Bill 202, and Senate Bill 338 which pertain to the reclamation bond pool and the abandoned mine lands enhancement program. Also addressed are amendments to Kentucky Administrative Regulations (KAR) at 405 KAR 10:200 which implement Senate Bill 338. The amendments would relax the requirements for membership in the reclamation pool, limit the pool's liability to no more than the amount of the bond, and expand the pool to include participants in the abandoned mine land enhancement program.

EFFECTIVE DATE: August 18, 1992.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION

I. Background on the Kentucky Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Kentucky Program

The Secretary of the Interior conditionally approved the Kentucky regulatory program effective May 18, 1982. Background information on the permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16 and 917.17.

II. Submission of the Amendment

By letter dated September 18, 1989 (Administrative Record No. KY–916), Kentucky submitted proposed regulations to revise 405 KAR 10:200, the regulations governing the Kentucky Bond Pool. These revisions were undertaken in response to the enactment of Senate Bill 338. OSM announced receipt of the proposed amendments in the October 31, 1989, **Federal Register** (54 FR 45787), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on November 30, 1989. By letter dated January 19, 1990 (Administrative Record No. KY–957), Kentucky resubmitted proposed regulations to revise 405 KAR 10:200. OSM announced receipt of the revised amendment in the February 14, 1990, **Federal Register** (55 FR 5227), and in the same notice, reopened the public comment period and provided an opportunity for a public hearing. The public comment period ended on March 16, 1990.

In addition to the proposed amendment described above, this final rule addresses prior submissions from Kentucky that pertain to the bond pool on which the Director of OSM had deferred final action. In the August 10, 1990, **Federal Register** (55 FR 32618), OSM announced approval of proposed amendments submitted by Kentucky on April 21, 1988 (Administrative Record No. KY–800). In announcing his approval, the Director deferred action on Senate Bill 338, which was part of Kentucky's April 21, 1988, submission, in order to evaluate the results of a study of the reclamation bond pool.

In the February 6, 1991, **Federal Register** (56 FR 4721), OSM announced approval, with certain exceptions, of program amendments submitted by Kentucky on May 8, 1990 (Administrative Record No. KY–983). In announcing his approval, the Director deferred action on the amendments contained in House Bill 676 and Senate Bill 202 which revised Kentucky Revised Statutes (KRS) 350.710 through 350.750. These revisions pertain to the reclamation bond pool.

In the April 13, 1992, **Federal Register** (57 FR 12776), OSM announced the reopening and extension of the comment period for all of the above amendments in order to provide an opportunity for the public to comment on the amendments with respect to a January 8, 1992, actuarial study of the bond pool (Administrative Record No. KY–1102). This comment period closed on April 28, 1992.

A. Description of Proposed Amendments to Kentucky Revised Statutes

1. KRS 350.595 Bond Pool Fund for Abandoned Mine Land Enhancement Program

a. Section 1(1) of SB–338 amends KRS 350.595 to provide that an applicant desiring to remine property classified as abandoned mine land may apply to the bond pool commission for inclusion in the abandoned mine land enhancement program. The amendment further provides that the bond pool commission may provide coverage under the bond pool fund not to exceed 50 percent of the bond amount determined by the cabinet under KRS 350.060.

b. Section 1(2) of SB–338 amends KRS 350.595 to require that when bond provided under KRS 350.060 is increased or reduced, or is released in whole or in part, the coverage provided by the bond pool shall be proportionately increased or reduced.

c. Section 1(3) of SB–338 amends KRS 350.595 to provide that, in the event of bond forfeiture, moneys from the bond pool shall be used to supplement the forfeited bond.

2. KRS 350.700 Bond Pool Established

a. Section 2(2) of SB–338 amends KRS 350.700 to provide that the bond pool fund, which consists of money collected pursuant to KRS 350.725, shall include, civil penalties collected in excess of $800,000 in any fiscal year, as well as all moneys previously deposited in the abandoned mine land enhancement fund.

b. Section 2(3) of SB–338 amends KRS 350.700 to expand the bond pool fund to include the abandoned mine land enhancement program as described at KRS 350.595.

3. KRS 350.705 Bond Pool Commission

Section 3(9) of SB–338 amends KRS 350.705 to free the commission, the bond pool administrator, or their agents or employees of liability for any action taken in the performance of their powers and duties.

4. KRS 350.710 Powers of Commission

Section 4(9) of SB–338 amends KRS 350.710 to include as a responsibility of the bond pool commission the duty to determine the amount of bond coverage provided for properties in the abandoned mine land enhancement program.

5. KRS 350.715 Pool Administrator

Section 5(2)(h) of SB–338 amends KRS 350.715 to add to the responsibilities of the bond pool administrator the duty to account for the amount of coverage provided for properties in the abandoned mine land enhancement program.

6. KRS 350.720 Bond Pool; Criteria; Compliance Record

a. Section 10(5) of SB–202 and section 1(5) of HB–676 amend KRS 350.720 to delete reference to two acre-or-less operations from those operations or facilities not eligible for bond coverage by the bond pool fund.

b. Section 1 of HB–676 amends KRS 350.720 to expand the meaning of the term "bond pool applicant" to include bond pool "member." As a result, any duty or responsibility or eligibility criteria applicable to an applicant is also applicable to existing members of the bond pool.

c. Sections 6(7)(a)1, (b)1, and (c)1 of SB–338 amend KRS 350.720 by adding the phrase "or other permittee names as provided in paragraph (d) of this subsection" in determining the length of time the applicant has held a permit for purposes of assigning a rating to the

applicant. These amendments are required because of the amendment contained in SB–338 section 6(7)(d) which provides that, when approved by the commission on a case-by-case basis, permits held by persons other than the applicant may be used to demonstrate the years of mining experience of the applicant. This provision is applicable to (1) a person who owns 50 percent or more of the applicant; (2) a person who is owned 50 percent or more by a person discussed in subparagraph 1 of this paragraph; or (3) persons whose combined ownership of the applicant is 50 percent or more, provided that each person shall meet the years of mining experience required under KRS 350.720(7).

d. Section 6(10) of SB–338 amends KRS 350.720 to provide that where persons other than the applicant are considered in determining the number of years of mining experience of the applicant, each such person's compliance record shall be considered.

e. Section 1(11) of HB–676 amends KRS 350.720 to add the effective date of the suspension of the Federal rule covering the two-acre exemption in identifying experience which shall not be considered in the applicant's ratings assignment.

f. Section 6(14) of SB–338 adds a provision to KRS 350.720 which states that a person need not be a member of the bond pool in order to be provided coverage under the abandoned mine land enhancement program. In response to concerns raised by OSM (Administrative Record No. KY–859), Kentucky has clarified this provision by stating that nonmembers covered by the bond pool under the abandoned mine land enhancement program are subject to the bond requirements at KRS 350.060(14) and that total bond amounts will be determined in the same manner for members and nonmembers.

7. KRS 350.725 Membership Fee; Tonnage Fee

a. Section 7(1)(b) of SB–338 amends KRS 350.725 to delete the $500 reduction in the bond pool membership fee if the permittee files an application for membership within 60 days of July 15, 1986.

b. Section 2(1)(b) of HB–676 amends KRS 350.725 to add cash, cashier checks, and money orders as acceptable methods for payment of the bond pool membership fee.

c. Section 7(2) of SB–338 amends KRS 350.725 to change the tonnage fee to be paid by each member from eight cents per ton of coal extracted by surface mining activities and one cent per ton of coal extracted by underground mining methods, to a fee set by the bond pool commission based upon recommendations contained in the most recent actuarial study conducted in accordance with KRS 350.710(6).

8. KRS 350.735 Permit Specific Bond

Section 8(3) of SB–338 amends KRS 350.735 to provide that the permit-specific bond released in accordance with cabinet procedures for bond release shall be released in its entirety upon successful completion of that portion of reclamation set forth in KRS 350.093(4)(a) and the regulations promulgated pursuant thereto.

9. KRS 350.745 Payments from Fund for Reclamation

a. Section 9(2) of SB–338 amends KRS 350.745 by providing that, in case of a forfeiture, the sum of the amount paid from the bond pool fund and the amount of the forfeited permit-specific bond shall not exceed the bond amount under KRS 350.060 required to be in effect at the time of forfeiture. The amendment contained in SB–338 section 9(3) modifies KRS 350.745 by making the payments made by the bond pool administrator to the cabinet for estimated reclamation costs subject to the limitations set forth in SB–338 section 9(2).

b. Section 9(4) of SB–338 amends KRS 350.745 by adding provisions for the forfeiture of the bond for a permit in the abandoned mine land enhancement program. The amendment provides that the cabinet shall first use other bonds posted under KRS 350.060 and any additional money necessary to reclaim the permit area shall be withdrawn from the bond pool fund to the extent coverage has been provided and to the extent money exists in the fund. The amendment further provides that the sum of the amount of the forfeited bond shall not exceed the bond amount under KRS 350.060 required to be in effect at the time of forfeiture. In addition, the bond pool administrator shall pay to the cabinet the amount determined under this section within seven days following receipt of an official estimate of reclamation costs prepared by the cabinet.

10. KRS 350.750 Revocation of Membership in Bond Pool

a. Section (10)(2) of SB–338 amends KRS 350.750 by providing that whenever a bond pool member is issued a final order for cessation and immediate compliance for failure to abate a violation of contemporaneous reclamation or the secretary has issued a final order finding that a member has committed a pattern of violations, the bond pool administrator shall inform the commission which may revoke said membership, and when two such orders are issued to a member, that membership shall be automatically revoked. Prior to these amendments, membership in the bond pool was automatically revoked upon the issuance of an order for cessation and immediate compliance for failure to abate a violation of contemporaneous reclamation requirements or whenever the Secretary issued a final order finding that a member had committed a pattern of violations.

b. Section 5(4) of HB–676 amends KRS 350.750 by adding a provision whereby the bond pool member who transfers more than 50 percent of any class of stock or other ownership interest, whether by sale, gift or otherwise, and the person to whom more than 50 percent of the interest is transferred shall notify the bond pool administrator in writing within 15 days. The amendment further provides that the administrator shall review the eligibility of all persons who own or control, are owned or controlled by, or are under common ownership or control with the member. Finally, the commission shall revoke the membership if it determines that the member after the transfer does not meet the eligibility criteria.

11. KRS 350.990 Penalties

Section 11(1) of SB–338 amends KRS 350.990 to provide that all civil penalties collected in excess of $800,000 in any fiscal year shall be deposited in the bond pool fund. The amendment also provides that all moneys previously deposited in the abandoned mine land enhancement program shall be redeposited in the bond pool fund. The amendment deletes outdated loan and repayment arrangements between the abandoned mine land enhancement program and the bond pool fund, and deletes reference to administration of the abandoned mine land enhancement program by the secretary.

B. Description of Proposed Amendments to 405 KAR 10:200 Kentucky Bond Pool

1. Section 1, Definitions

Kentucky proposes to modify its definition of "member" by deleting the requirement that only permits held by bond pool members can be covered by the bond pool. This modification is made to implement the change to KRS 350.720(14) which authorizes bond pool coverage for participants in the abandoned mine land enhancement program.

2. Section 5, Review of Applications

Kentucky proposes to add 405 KAR 10:200(5)(3) which authorizes the bond pool commission to defer its decision on an application for membership if the applicant, any person who owns or controls the applicant, any person who is owned or controlled by the applicant, or any person who is under common ownership or control with the applicant has appealed a violation or cessation order or has a violation or cessation order pending an appeal or penalty assessment that would affect the applicant's eligibility or rating.

3. Section 7, Determination of Reclamation Compliance Record

Kentucky proposes to revise the criteria that the commission uses to determine the compliance record of an applicant for membership in the bond pool. To obtain an excellent or acceptable compliance rating, the applicant must never have committed a violation for mining without having first obtained a mining permit. The purpose of this new provision is to bar wildcat operators from participation in the bond pool. Also, the applicant must never have had a permit revoked.

Other criteria under the proposed rules will be relaxed. For example, an applicant may receive an excellent compliance rating even through he has had one failure-to-abate cessation order in the most recent 36 months of operation provided that the order was abated in a timely manner and was not for a violation of contemporaneous reclamation. Furthermore, an applicant may receive an excellent rating even though he has been issued one cessation order within the most recent 36 months because a condition or practice created imminent danger to the public or imminent significant environmental harm to land, air or water resources provided the order was abated in a timely manner. Previously, no cessation orders of these types were allowed.

Still other revisions in section 7 will allow applicants to receive an excellent compliance rating if they have a violation of contemporaneous reclamation requirements so long as the violation is abated in a timely manner. Certain violations may be excluded from consideration in determining compliance ratings if they have been terminated by the cabinet with no civil penalty and the commission is acting for good cause and by unanimous vote. A similar relaxation is also proposed for the criteria to be used in determining an acceptable compliance record.

4. Section 8, Acceptance of Permit Areas into Bond Pool.

Kentucky proposed to add a new provision at KAR 10:200(8)(5) that would require bond pool members to notify the bond pool administrator in writing within 14 calendar days of the submission of a preliminary permit application to the cabinet.

III. Director's Findings

Set forth below pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendments to the Kentucky program. Only substantive changes will be discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

Section 509(c) of SMCRA authorizes the Secretary of Interior to approve as part of a State or Federal program an alternative bonding system that will achieve the objectives and purposes of the bonding program as stated in section 509. These objectives and purposes are codified at 30 CFR 800.11(e) as follows:

(A) The alternative must assure that the regulatory authority will have available sufficient money to complete the reclamation plan for any areas which may be in default at any time; and

(B) The alternative must provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

Kentucky's existing statutes and rules governing the bond pool were found by OSM to satisfy these objectives and purposes on July 18, 1986 (51 FR 26002), and March 9, 1987 (52 FR 7136), when the reclamation bond pool was first proposed for inclusion in the Kentucky program. OSM's evaluation today seeks to determine whether these same objectives and purposes can still be achieved given the proposed revisions to the bond pool.

OSM's analysis is made less speculative by the fact that Kentucky has already implemented the proposed revisions. On January 19, 1990, Kentucky notified OSM that revisions to 405 KAR 10:200 had become effective on January 9, 1990 (Administrative Record No. KY–957). Also, on April 21, 1988, Kentucky notified OSM that the statutory revisions found in Senate Bill 338 became effective on July 15, 1988 (Administrative Record No. KY–800). OSM does not recognize these revisions as part of Kentucky's approved state program. Nonetheless, the proposed revisions have been in effect for nearly four years, making the immediate impact a matter of record rather than speculation.

The Kentucky bond pool is governed by a seven member bond pool commission which reports to the Governor each year on the status of the bond pool. In the Commission's most recent report which covered the period October 1, 1990, to September 30, 1991, the Commission reported that the pool has 32 members. The bond pool had bonded 306 separate permits or increments covering 8,669.85 acres for which it was potentially liable for $17,534,034 in the event of forfeiture of all bonded acres. The pool's September 30, 1991, account balance was $5,897,585.37. Receipts during the fiscal year, taking into consideration both operating and investment accounts, exceeded expenditures by $1,002,783.37 (Administrative Record No. KY–1159). Since the pool was started on July 18, 1986, there has been only one member who could not satisfy his reclamation obligations. This member forfeited bond on one permit which has been successfully reclaimed by the Commission. Forfeiture proceedings have been initiated on two other permits held by this former member for which the pool is financially liable.

Under Kentucky law (KRS 350.710(6)), the Commission must employ a qualified actuary to conduct an actuarial study of the bond pool every three years. The most recent study was completed on January 8, 1992, based upon data available on June 30, 1991 (Administrative Record No. KY–1102). OSM relied heavily upon this study in reaching conclusions about the proposed amendments.

OSM evaluated the proposed revisions to determine whether the bond pool will have available sufficient money to complete the reclamation plan of pool participants for any areas which may be in default at any time as required by 30 CFR 800.11(e)(1). The following proposed revisions were considered to have an impact on satisfying this objective.

1. Relaxation of Reclamation Compliance Ratings

Kentucky proposes to revise the criteria at KRS 350.720 and 405 KAR 10:200(7) which determine a bond pool applicant's reclamation compliance rating. The effect of these changes is to allow companies with weaker compliance records to be eligible for pool membership and for those already eligible to receive a higher rating. This has the potential of increasing the risk of forfeiture and placing a greater financial burden on the pool.

SMCRA does not place limitations on participation in alternative bonding systems. As of September 1991, there were 32 members in the pool which is about the same number as existed prior to the time when the proposed revisions became effective. All of the members have "A" ratings except for one which has a "B" rating. Membership in the pool has been relatively stable in spite of the relaxation in reclamation compliance ratings. Further, there has been no increase in risk of forfeiture evidenced by the relaxation in membership requirements. The January 8, 1992, actuarial analysis of the Kentucky Bond Pool considered the proposed weaker compliance records and did not expect that they would jeopardize the quality of members when considered in light of Kentucky's established record of carefully screening applicants (Administrative Record No. KY-1102).

2. Relaxation of Membership Revocation Standard

Kentucky proposes to amend KRS 350.750 so that revocation of bond pool membership by the commission is discretionary rather than mandatory for those members who have been issued a final order for cessation and immediate compliance for failure to abate a violation of contemporaneous reclamation or when there is a final order finding a pattern of violations. There is no Federal rule which corresponds to this regulation. The effect of this proposed revision depends on how the commission exercises its discretionary powers. The Director believes that the commission will continue to act responsible in such matters and will not place the pool in undue risk.

3. Adjustment of Tonnage Fees

Kentucky proposes to revise KRS 350.725 to allow the bond pool commission to establish tonnage fees based on recommendations in the most recent actuarial study. Previously each member paid eight cents per ton of coal extracted by surface mining activities and one cent per ton extracted by underground mining methods. As previously stated, the pool, after expenses, increased by slightly over one million dollars during the past fiscal year. The adjustments to tonnage fees appear to be warranted in light of the large increase in the account balance.

SMCRA does not specify how an alternative bonding system is to be financed. The only requirement is that sufficient funds be available to complete reclamation in the event of forfeiture. The current annual fees were set by the Commission at five cents per ton for surfaced mined coal and one cent per ton for underground mined coal. The January 8, 1992, actuarial analysis which was based on these fees concluded that the overall funding arrangements of the pool including the tonnage fees are expected to be more than adequate to cover forfeiture costs.

4. Expansion of Coverage

Kentucky proposes to amend KRS 350.595 to expand pool coverage to include those operators who plan to remine property under the abandoned mine land enhancement program. The proposed amendment would authorize coverage in an amount not to exceed 50 percent of the total bond. Because abandoned mine sites are usually more difficult to mine and successfully reclaim, this provision is likely to increase the risk of forfeiture. The experience of the last four years has shown that few operators desire to participate in the abandoned mine land enhancement program. There is only one operator in the abandoned mine land enhancement program. This operator is also a participant in the bond pool. There is no evidence to suggest that his type of pool participant will increase in number. Further, the January 8, 1992, actuarial analysis concluded that the incorporation of the abandoned mine land enhancement fund into the bond pool fund had an overall positive financial impact on the bond pool.

5. Deposit of Civil Penalties

Under proposed KRS 350.990, all civil penalties collected by Kentucky in excess of $800,000 in any fiscal year and all monies previously in the abandoned mine land enhancement program will be deposited in the bond pool fund. In 1988, this provision resulted in a transfer of $2.4 million to the bond pool. Civil penalty collections transferred to the bond pool during fiscal year 1991 were $543,880.51. Annual receipts from civil penalties are expected to continue at about the same level. The impact of KRS 350.990 has been to significantly enhance the financial viability of the bond pool without a corresponding increase in liability.

6. Cap on Pool Liability

Proposed KRS 350.745(2) limits the pool's liability to the amount of bond determined under KRS 350.060. Under existing law, there is no limit to the fund's liability. The fund is required to complete the reclamation plan no matter what the cost. Where the cost of reclamation has been significantly underestimated, forfeiture can negatively impact the pool's financial solvency. The proposed limit on pool liability to the amount of bond determined by Kentucky reduces the risk that any one forfeiture or group of forfeitures could bankrupt the pool.

While the concept of a cap on liability is desirable from an actuarial standpoint, the Director must examine the proposed provision within the framework of SMCRA and the regulations promulgated thereunder. The rules at 30 CFR 800.11(e)(1) require an alternative bonding system to assure sufficient funds to complete the reclamation plan in the case of forfeiture. There can be no such assurance when a cap is placed on liability. For this reason, the Director finds that KRS 350.745(2) is less stringent than the minimum requirements of section 509(c) of SMCRA and less effective than the Secretary's rules at 30 CFR 800.11(e)(1). KRS 350.745(2) is therefore not approved.

The January 8, 1992, actuarial study, giving consideration to the proposed revisions described above, arrived at the general conclusion that the June 30, 1991, fund balance was sufficient to cover expected liabilities and provide a large margin for adverse conditions. Thus, based on OSM's review and this private actuarial study, the Director finds that the proposed amendments, with the one exception noted above, are not inconsistent with section 509(c) of SMCRA and the Federal rules at 30 CFR 800.11(e)(1).

OSM evaluated the proposed revisions to determine whether the second objective and purpose of an alternative bonding system could be satisfied. As stated at 30 CFR 800.11(e)(2), the alternative bonding system must provide substantial economic incentive for the permittee to comply with all reclamation provisions. The Federal regulations are silent on the form which this incentive must take and state only that it must exist.

The bond pool has several provisions that can be considered economic incentives for operators to comply with all reclamation requirements of the Kentucky program. Under KRS 350.750(2), whenever a member of the bond pool is issued an order for cessation and immediate compliance for failure to abate a violation of contemporaneous reclamation requirements, the bond pool administrator is required to inform the bond pool commission which may revoke the operator's membership in the pool. If two such orders are issued, membership is automatically revoked. Furthermore, the bond pool administrator is required under KRS 350.750(3) to inform the bond pool commission whenever a member of the pool is issued an order for cessation and immediate compliance for failure to abate any violation. The Commission may revoke the member's membership in the bond pool upon review of the violation. Thus, the threat of loss of membership in the pool and the associated economic benefit to the operator is considered an incentive to comply with all reclamation provisions of the Kentucky program.

KRS 350.755 states that no person shall be eligible to receive another permit or to begin another operation if, as a result of bond forfeiture, monies from the bond pool have been expended to reclaim such person's operation and the person has not reimbursed the bond pool for monies expended. This provision is considered an incentive to avoid forfeiture since the offending operator would be prevented from continuing mining operations.

During a May 27, 1992, meeting, OSM questioned Kentucky concerning economic incentives that will encourage operators to complete reclamation and obtain final bond release if tonnage fees were suspended as provided by KRS 350.730 and if the permit-specific penal bond had been already released. This concern arose out of past experience during the interim program when operators found it advantageous to delay completing the final steps in reclamation plans because the cost of maintaining sites under bond was minimal. Kentucky responded that the bond pool administrator reviews all member's compliance records in order to make recommendations to the Commission as required by KRS 350.720(8). As part of this review, the administrator checks to determine if the member has received timely bond releases as required by KRS 350.720(9). Failure to obtain timely bond releases will result in a recommendation to downgrade the operator's membership rating and increase the permit-specific bond. Kentucky contended that this will motivate operators to complete reclamation in a timely manner. The Director finds, based upon this response and the provisions in Kentucky's program related to pool membership revocation and loss of eligibility to receive future permits, that the amendment is no less effective than 30 CFR 800.11(e)(2) and is not inconsistent with section 509(c) of SMCRA.

IV. Summary and Disposition of Comments

OSM solicited public comment and provided opportunity for a public hearing on the proposed amendment. Substantive comments were received from Coal Operators and Associates, Inc. (COA) and the Kentucky Resources Council (KRC).

COA supported the amendment which they believed would strengthen the bond pool by increasing participation by small and medium-sized operators who would otherwise not be eligible for membership. They considered the relaxation of membership requirements warranted in light of the complexities of the mining process and the increased enforcement stance of Kentucky's Department for Surface Mining Reclamation and Enforcement (DSMRE).

The KRC had several concerns about the proposed amendment which related to bond pool funding, scope of coverage and membership eligibility. KRC believed that the fund should maintain solvency solely through the assessment of tonnage fees sufficient to cover reasonable worst-case actuarial risk and not rely upon investment and penalty income which it believed were subject to significant fluctuations. OSM recognizes that investment income will fluctuate with interest rates, civil penalty income will fluctuate with level of enforcement activity and diligence of operators, and tonnage fees will vary with mining activity which is dependent on coal markets. Consequently, there is a continuing need to monitor revenues and expenditures and potential future liabilities. OSM believes the Kentucky bond does this. KRS 350.710 requires the bond pool commission to perform audits biennially and to perform an actuarial study no less than every three years. KRS 350.725(2) requires that tonnage fees be set by the Commission based upon the most recent actuarial study. Furthermore, KRS 350.730(3) provides that the minimum and maximum amounts in the fund shall automatically be increased to conform to recommendations from the most recent actuarial study. Thus, tonnage fees can be reinstated for those operators who were eligible for suspension of payments and adjusted in amount in response to fluctuations in forfeiture levels, interest rates, penalty income and coal production. The Director believes there is sufficient flexibility in the pool to assure solvency and therefore rejects the KRC comment that solvency must be accomplished solely through the assessment of tonnage fees.

KRC commented that the solvency of the pool is dependent on an artificial cap on liability created by proposed KRS 350.745(2) which states that in the event of forfeiture the sum of the amount paid from the bond pool fund and the amount of forfeited permit-specific bond, if any, shall not exceed the bond amount under KRS 350.060(11). KRC also commented that the implementing rules at KAR 10:020(1) require the bond amount initially to be computed to be sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture. KRC stated that OSM's Lexington Field Office's Annual Reports have documented the inadequacy of bond amounts and that limiting bond pool liability to the arbitrary bond levels set by DSMRE will result in sites being unreclaimed or partially reclaimed rather than fully restored to permanent program standards. KRC asserts that as a consequence, the proposed amendments fail to meet the requirements of section 509(c) of SMCRA.

OSM agrees with KRC. The proposed cap on liability is not being approved. Second, OSM agrees that Kentucky's bond amounts are inadequate. Kentucky law and regulations require that the amount of bond shall be the estimated cost to the cabinet if it had to perform the reclamation, restoration and abatement work required by the operator under his permit and the Kentucky permanent program. Kentucky has not fully implemented this provision. In his November 19, 1990, letter to the Secretary of the Kentucky National Resources and Environmental Protection Cabinet, the Director of OSM stated: "Bond amounts are insufficient to complete reclamation on a majority of the forfeited permanent program permits. Kentucky has not changed its method of calculating bond amounts. This situation continues to support the conclusion that bond amounts are not adequate" (Administrative Record No. KY-1016). To address this problem, DSMRE established a bond steering committee with representatives from the coal and surety industries and public interest groups. The committee was scheduled to complete its report in September 1991, with recommendations to correct the problem. This schedule for completion has been revised and the committee is now expected to finish its report later this year. OSM believes that once Kentucky fully implements KRS 350.060(11) and KAR 10:020(1) bond amounts will be sufficient in the majority of forfeiture cases to complete the reclamation plans. The inadequacy of bond amounts is a program wide problem which affects both bond pool participants and non-participants. The Director therefore believes that it is appropriate to address it in the context of the entire program rather than the bond pool.

The KRC is correct in its assertion that the inadequate bond amounts and the proposed cap on liability weaken the commission's most recent actuarial study of the bond pool by understating the potential liabilities. The analysis however does provide a large margin for error. Under the most adverse scenario, the bond fund balance is projected to be adequate to cover costs and provide a margin for additional variability in each year. This adverse scenario utilizes claim costs at a level expected to exceed actual cost ninety percent of the time. It also assumes no penalty income is collected and that new member growth is at twice the best estimate growth rate. Given these extremely adverse assumptions, fund balances of between $5 million and $6 million are projected for all of the next five years (Administrative Record No. KY–1102). The Director believes that this financial strength compensates for any under estimation of liabilities which the commenter has noted.

KRC commented that the bond pool should serve as a third party guarantor to assure full reclamation in the event of default by pool members. Under 30 CFR 800.11(e)(1), all alternative bonding systems must assure the availability of sufficient money to complete the reclamation plan. The amendment would assure that sufficient money be available to cover the estimated cost of reclamation as determined by DSMRE when setting the amount of bond. There may be differences between estimated cost and actual cost of reclamation. As previously discussed, OSM has determined that to be as effective as 30 CFR 800.11(e)(1), an alternative bonding system must assure the availability of sufficient money to complete the reclamation plan. Limiting liability to the amount of bond determined by DSMRE does not provide the required assurance. The Director has consequently determined that the proposed language at KRS 350.745(2) which limits bond pool liability to the amount of bond set under KRS 350.060 is not as effective as 30 CFR 800.11(e)(1) which would require the expenditure of funds from the bond pool until the reclamation plan is complete.

KRC commented that it believed the number of forfeitures estimated was understated. The January 8, 1992, actuarial study assumed a forfeiture rate of two percent based on an examination of summaries of forfeitures of permanent program permits in Kentucky through 1990. Companies mining more than 500,000 tons were excluded from consideration since they have free forfeitures and might have distorted the results. The Director believes this estimating procedure is reasonable and is likely to result in a conservative estimate of the forfeiture rate.

KRC objected to the revision of KRS 350.595 which incorporated the abandoned mine land enhancement fund into the bond pool fund. The Director addressed this topic when he endorsed the finding of the January 8, 1992, actuarial study which concluded that, overall, this revision significantly enhanced the viability of the bond pool without a corresponding increase in liability.

KRC objected to the proposed relaxation of reclamation compliance ratings set forth at KRS 350.720 and 405 KAR 10:200(7). The Director addressed this topic above when he concluded that bond pool membership has been relatively stable and that the bond commission carefully screens all applicants. He does not believe the commenters' objections are justified in light of the performance of the bond pool during the past four years.

KRC commented that subsidence impacts must be within the scope of bond liability with the adjustment of bond levels to reflect the costs of restoration of subsidence impacts once such impacts occur. The commenter appears to be objecting to KRS 350.720(6) which states that the bond pool fund shall not assume any part of a member's responsibility for damage due to subsidence which occurs in connection with underground mining or auger mining. This provision was approved by OSM in the March 9, 1987, **Federal Register** (52 FR 7132). Kentucky is not proposing to amend KRS 350.720(6).

V. Director's Decision

Based on the findings discussed above, the Director is approving, with an exception: (A) The proposed bond pool amendment submitted to OSM by Kentucky on September 18, 1989, and resubmitted on January 19, 1990; (B) that part of Kentucky's April 21, 1988, amendment upon which the Director deferred final action; and (C) that part of Kentucky's May 8, 1990, amendment upon which the Director deferred final decision. The Director has determined that the amendment, with the exception of proposed KRS 350.745(2), is no less stringent than SMCRA and consistent with regulations issued by the Secretary of Interior. The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relates to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to a State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved programs. In the oversight of the Kentucky program, the Director will recognize only the approved program, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kentucky of such provisions.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that

such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 7, 1992.

Ronald Recker,

Acting Assistant Director, Eastern Support Center.

For reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15, is amended by adding a new paragraph (kk) to read as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(kk) The following amendments to the Kentucky Administrative Regulations (KAR) as submitted to OSM on September 18, 1989, and revised on January 19, 1990, and to the Kentucky Revised Statute (KRS) as submitted to OSM on April 21, 1988, and May 8, 1990, with the exception of KRS 350.745(2). The approved amendments consist of modification to the 405 KAR 10:200 and KRS 350.710–710 which pertain to the reclamation bond pool and the abandoned mine land enhancement program. The exception pertains to the limitation of bond pool liability to the bond amount determined under KRS 350.060.

[FR Doc. 92–19570 Filed 8–17–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Revised Program Amendment Number 53 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise one rule in the Ohio Administrative Code concerning the characteristics of highwalls which are not entirely eliminated in areas to be covered by impoundments.

EFFECTIVE DATE: August 18, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Siebel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated September 10, 1991 (Administrative Record No. OH–1581), Ohio submitted proposed Program Amendment Number 53. The amendment proposed to delete Ohio Administrative Code (OAC) Section 1501:13–9–04 paragraph (H)(2)(e). This paragraph currently requires operators to eliminate highwalls in areas which are to be covered by permanent impoundments. In place of this existing provision, Program Amendment Number 53 proposed a new paragraph (H)(1)(i) to OAC Section 1501:13–9–04. This new paragraph would require that the vertical portion of any remaining highwall beneath the surface of impoundments shall be located far enough below the low-water line of the impoundment to provide adequate safety and access for future users of the impoundment.

OSM announced receipt of proposed Program Amendment Number 53 in the October 2, 1991, **Federal Register** (56 FR 49856), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on November 1, 1991. The public hearing scheduled for November 28, 1991, was not held as no one requested an opportunity to testify.

By letter dated December 17, 1991 (Ohio Administrative Record No. OH–1617), Ohio submitted Revised Program Amendment Number 53 containing four additional proposed revisions to OAC Section 1501:13–9–04. The four new revisions proposed in the December 17, 1991, submission concerned the remaining vertical portion of the highwall below the water line, the final slope of the reduced portion of the highwall, and the vegetative cover of the reduced portion of the highwall.

OSM announced receipt of proposed Revised Program Amendment Number 53 in the January 17, 1992, **Federal Register** (57 FR 2066), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on February 18, 1992. The public hearing scheduled for February 1, 1992, was not held as no one requested an opportunity to testify.

By letter dated March 25, 1992 (Ohio Administrative Record No. OH–1670), OSM provided Ohio with its questions and comments about the September 10 and December 17, 1991, amendment submissions. By letter dated April 27, 1992 (Ohio Administrative Record No. OH–1688), Ohio responded with two further revisions to OAC Section 1501:13–9–04. In this newest version of Revised Program Amendment Number 53, Ohio is deleting reference to the "remaining" portion of the highwall and is deleting proposed language which would have established the maximum allowable final slope of the reduced portion of the highwall. Ohio is now proposing that OAC Section 1501:13–9–04 paragraph (H)(2)(g) read: "The reduced portion of any highwall shall have a final slope appropriate for the postmining land use and shall have a minimum static safety factor of 1.3."

OSM announced receipt of Ohio's additional proposed changes to Revised Program Amendment Number 53 in the June 2, 1992, **Federal Register** (57 FR 23179), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on June 17, 1992. The public hearing scheduled for June 12, 1992, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment. Revisions which are not discussed below concern minor nonsubstantive language changes or paragraph letter notations to reflect organizational changes resulting from this amendment.

1. *OAC 1501:13–9–04 (H)(1)(i), (H)(2)(d), and (H)(2)(e)*

Ohio is adding a new subparagraph (H)(1)(i) to OAC 1501:13–9–04 to require that the vertical portion of any remaining highwall beneath the surface of impoundments shall be located far enough below the low water line of the impoundment to provide adequate safety and access for future users of the impoundment. Further, new subparagraph (H)(1)(i) requires that the vertical portion of the remaining highwall for permanent impoundments shall also meet the requirements of paragraph (H)(2)(d) of this rule. Ohio is deleting subparagraph (H)(2)(e) which currently requires operators to eliminate highwalls in areas which are to be covered by permanent impoundments.

Ohio is amending subparagraph (H)(2)(d), which requires that final grading of permanent impoundments provide for adequate safety and access for proposed water users, by adding the statement "[f]or impoundments where the vertical portion of a highwall remains, the vertical portion shall be located at least eight feet below the low-water line."

The proposed provision at subparagraph (H)(1)(i) is nearly identical to the Federal regulations at 30 CFR 816/817.49(a)(9) except for the statement that the vertical portion of the remaining highwall at permanent impoundments shall also meet the requirements of (H)(2)(d). The current rule at subparagraph (H)(2)(d) is substantively identical to the Federal counterpart at 30 CFR 816/817.49(b)(4). The proposed language differs from the Federal regulations at 30 CFR 816/817.49(b)(4) in that the proposed Ohio provision establishes a minimum depth beneath which the vertical portion of the highwall must remain.

In May 1982, OSM published "Planning and Management of Mine-Cut Lakes at Surface Coal Mines" (Technical Release No. 82/1). This reference states that recreation, livestock and wildlife uses of mine-cut impoundments require accessible slopes. Appropriate design for these uses would suggest a gradual slope above and below the water line, avoiding dangerous drop-offs. Also, it is suggested that a safe shore for human access should have a gentle slope to a six-foot water depth before dipping more steeply. A person could easily wade in six-foot water without the fear of a sudden drop-off. Steep underwater slopes may be dangerous for swimmers, poor for waterfowl, and a barrier to livestock watering.

In the final rule notice approving the Federal rule at 30 CFR 816.49(a)(9) (48 FR 43994, 43999, September 26, 1983) OSM reworded the proposed rule to clarify that the intent of the requirement is to ensure safety and access as well as stability and protection of exposed surfaces. OSM responded to commenters who suggested deleting the language "far enough below" by retaining the language "far enough below" to ensure that water coverage is adequate even during the low-water periods. Likewise, the Federal rule at 30 CFR 816.49(b)(4), which applies specifically to permanent impoundments, requires that final grading provide for adequate safety and access for proposed water users. Section 515(b)(8) of SMCRA permits the creation of permanent impoundments if it is demonstrated that, among other things, the water level be reasonably stable and final grading provide adequate safety and access for proposed water users.

In conclusion, based on OSM's guidelines and the Federal regulations, Ohio's proposal for the existence of submerged highwalls within permanent impoundments at a minimum depth of eight feet provides a greater margin of safety for the swimmer and can be considered safe and no less effective than the corresponding Federal rules. The Director finds, therefore, that proposed subparagraphs (H)(1)(i) and (H)(2)(d) are no less effective than the Federal rule at 30 CFR 816/817.49 (a)(9) and (b)(4). In addition, the proposed deletion of former subparagraph (H)(1)(e) does not render the Ohio program to be less effective than the Federal regulations because 30 CFR 816/817.49 allows submerged highwalls under the proper conditions.

2. *OAC 1501:13–9–04(H)(2)(g)*

Ohio is adding a new subparagraph (H)(2)(g) to provide that the reduced portion of any highwall shall have a final slope appropriate for the postmining land use and shall have a minimum static safety factor of 1.3. There is no specific counterpart Federal rule which addresses stability requirements for highwalls which are reduced to construct permanent impoundments. However, in the Federal regulations at 30 CFR 816/817.102(a)(3) OSM has required the 1.3 safety factor for each backfilled and graded area. Ohio implements the 1.3 minimum safety factor for backfilled and graded areas at OAC 1501:13–9–14(C)(1). Since this amendment reduces highwalls so that they no longer are vertical, they must meet the requirements of 30 CFR 816/817.102(a)(3). The Director, therefore, finds that the proposed rule is consistent with the Federal rules at 30 CFR 816/817.102(a)(3).

3. *OAC 1501: 13–9–04(H)(2)(h)*

At subparagraph (H)(2)(h) Ohio is requiring that "[t]he face of the reduced portion of any highwall shall be vegetated with species appropriate for the postmining land use." This reduced portion, which is above the waterline, must meet the Federal regulations at 30 CFR 816.817.111. These regulations require that a vegetative cover be established on regraded areas and that the plant species be compatible with the approved postmining land use. In addition, Ohio's proposed rule is consistent with its revegetation rules at OAC 1501:13–9–15 (B) and (C). The Director, therefore, finds the proposed rule is consistent with the revegetation requirements at 30 CFR 816/817.111.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing in the October 2, 1991, **Federal Register** closed on November 1, 1991. Comments were received from the Ohio Historic Preservation Office (OHPO) and the Central Ohio Coal Company (COCC). In the January 17, 1992, **Federal Register**, the public comment period was reopened until February 18, 1992, to afford the public an opportunity to once again consider the proposals in light of additional information submitted by Ohio. Comments were received from the Ohio Mining and Reclamation Association (OMRA). The public comment period was reopened again in the June 2, 1992, **Federal Register**, until June 17, 1992, to afford the public an opportunity to consider the proposals in light of revisions submitted by Ohio. No one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

All comments received during the comment periods are discussed below.

1. The OHPO stated that under the Section 106 review process Federal agencies are required to take into account how each of its undertakings could affect historic properties and to give the Advisory Council on Historic Preservation an opportunity to comment. The OHPO did not object to the proposed amendment. Rather the OHPO commented that, since the proposed amendment will affect mining operations within a permit area which would have already been subjected to the section 106 review process, the proposed changes do not appear to have a direct bearing on this process. The Director notes that the proposed amendment concerns a performance standard and not a permitting action. Therefore, as long as the proposed amendment satisfies the performance standards requirements of 30 CFR parts 816 and 817, it may be approved.

2. The COCC responded and provided comments in support of the proposed amendment. In response, the Director notes that the proposed provisions referenced by the COCC are being approved.

3. The OMRA objected to Ohio's proposal that the vertical portion of the remaining highwall shall be located at least eight feet below the low-water line. The OMRA commented that this eight-foot minimum would not be conducive to creating additional wildlife habitats, that it would not allow for good impoundments in certain areas, and that eight feet was an artificial figure. The Director disagrees. SMCRA at section 515(b)(8) and 30 CFR 816/817.49(a)(9) require that the final grading must provide adequate safety and access for proposed users. As discussed in the above findings, Ohio is exceeding the recommended depth of six feet for human accessibility, the safety of swimmers, and the postmining land use. Eight feet is not an artificial number because it ensures that the water level will be well over the head of an individual whose height exceeds six feet. Anyone over six feet tall would already be treading water by the time he/she reached the eight-foot depth and thus would not be surprised by a sudden drop-off. The Director has determined that Ohio's proposed rules are no less effective than the Federal rules.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Department of Agriculture, Soil Conservation Service, and the U.S. Army Corps of Engineers responded that they had no comments. The U.S. Department of Labor, Mine Safety and Health Administration, commented that the proposed amendment did not conflict with MSHA's regulations. No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Program Amendment Number 53, as submitted by Ohio on September 10, 1991, and revised and submitted by letters dated December 17, 1991, and April 27, 1992.

The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore, unnecessary.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based

solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 16, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (fff) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(fff) The following amendment to the Ohio regulatory program, as submitted to OSM on September 10, 1991, and revised on December 17, 1991, and April 27, 1992, is approved, effective August 18, 1992: Revised Amendment Number 53 which consists of revisions to the Ohio Administrative Code (OAC) at 1501:13–9–04 (H)(1)(i), (H)(2)(d), (H)(2)(e), (H)(2)(g), and (H)(2)(h) concerning the characteristics of highwalls which are not entirely eliminated in areas to be covered by impoundments.

[FR Doc. 92–19569 Filed 8–17–92; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of proposed Revised Program Amendment Number 51 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an adjacent unreclaimed area.

EFFECTIVE DATE: August 18, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, Room 202, Columbus, Ohio 43232; (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated July 9, 1991 (Administrative Record Number OH–1546), the Director of OSM provided the Ohio Department of Natural Resources, Division of Reclamation (Ohio), with clarification concerning OSM's position on the reclamation of abandoned mine lands by a mine operator in conjunction with surface coal mining and reclamation operations. Specifically, the Director's purpose was to provide guidelines to states that were interested in reclaiming abandoned mine lands using excess spoil from adjacent areas where mining is conducted under permits issued pursuant to Title V of SMCRA or its state equivalent. The Director noted that a contract for reclamation approved under Title IV of SMCRA (or under an equivalent State Abandoned Mine Lands (AML) program) is equivalent to a permit and bond and is thus consistent with the excess spoil disposal requirements of section 515 of SMCRA. Therefore, the placement of excess spoil on an abandoned site which is receiving Federal AML funds is not inconsistent with section 515(b)(22) of SMCRA (55 FR 21329). State programs which issue such contracts under a non-Federally funded program must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project. Before issuing such contracts, States must first submit and receive OSM approval of the State policies and procedures applicable to such non-Federally funded contracts.

In response to the Director's letter, Ohio submitted proposed Program Amendment Number 51 by letter dated July 22, 1991 (Ohio Administrative Record No. OH–1547). The amendment proposed to add a new paragraph (H) to Ohio Administrative Code (OAC) section 1501:13–9–07 to authorize the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an adjacent unreclaimed area. As part of and in support of proposed Program Amendment Number 51, Ohio also submitted Administrative Record information on the relevant provisions of the Ohio Revised Code (ORC), a draft policy statement clarifying eligibility requirements, performance standards for off-permit spoil placement, and an example of a reclamation contract executed pursuant to section 1513.27 of the ORC.

OSM announced receipt of proposed Program Amendment Number 51 in the August 9, 1991 **Federal Register** (56 FR 37871), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on September 9, 1991. The public hearing scheduled for September 3, 1991, was not held as no one requested an opportunity to testify.

By letter dated January 10, 1992 (Ohio Administrative Record No. OH–1627), OSM provided Ohio with its questions and comments about the July 22, 1991, amendment submissions. By letter dated April 27, 1992 (Ohio Administrative Record No. OH–1687), Ohio responded to OSM's questions and comments and provided Revised Program Amendment Number 51. This new amendment submission contains one revised rule, revised Administrative Record information, and a revised policy statement. All of the revisions concern the disposal of excess spoil on unpermitted areas adjacent to a coal mining permit.

In its April 27, 1992, submittal, Ohio is further revising OAC section 1501:13–9–07 paragraph (H) to delete reference to ORC section 1513.18 concerning reclamation of permanent program sites for which bonds have been forfeited by Ohio. The effect of this deletion is that Ohio no longer proposes to allow the placement of excess spoil from a validly permitted site onto an unreclaimed adjacent site formerly permitted under Ohio's permanent surface mining program, but for which the performance bond has been forfeited. The additional policy and clarifying information contained in the April 27, 1992, cover letter provided by Ohio cover the topics of eligibility of projects for State or Federal AML funding, creation of fills in excess of approximate original contour (AOC), facilitation of mining, monitoring during and after construction, reclamation standards, contractor incentives, bond forfeiture, and environmental review of proposed excess spoil placement sites.

OSM announced receipt of Revised Program Amendment Number 51 in the June 2, 1992 **Federal Register** (57 FR 23176), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on June 17, 1992. The public hearing scheduled for June 12, 1992, was not held as no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Revisions which are not discussed below correct paragraph letter notations or make minor nonsubstantive language changes to improve the clarity of the rules.

Along with an accompanying written policy document, Ohio is proposing to add a new paragraph (H) to OAC 1501:13–9–07 to allow the use of excess spoil from a permitted coal mining operation for the reclamation of an adjacent, unreclaimed area provided that the excess spoil is placed (1) in an environmentally and technically sound manner and (2) where it will not destroy or degrade features of environmental value. The proposed amendment provides for off-permit placement of excess spoil on unreclaimed areas which meet the eligibility requirements of Ohio Revised Code (ORC) sections 1513.27 or 1513.37. ORC section 1513.27 governs reclamation, with State funds, of sites affected by mining before April 10, 1972. ORC section 1513.37 governs reclamation, with Federal AML funds, of sites mined, abandoned, and left unreclaimed prior to August 3, 1977, the effective date of SMCRA.

In his July 9, 1991, letter to Ohio the Director of OSM clarified OSM's position concerning the standards and requirements which apply to the usage of excess spoil for reclamation of abandoned mine land sites. OSM focused on the parameters for excess spoil disposal outside the permit area as established, in part, in several final rules approving such a provision in the West Virginia program (45 FR 69254–69255, October 20, 1980; 46 FR 5919, January 21, 1981; and 55 FR 21328–21329, May 23, 1990).

In the January 21, 1981, West Virginia final rule (46 FR 5919), the Secretary found that, for purposes of excess spoil disposal, a reclamation contract governing work to be performed on a Federal AML reclamation grant project is the equivalent of permit and bond under title V of SMCRA. In the May 23, 1990, final rule (55 FR 21329), OSM found that disposal of excess spoil on a Federally funded AML reclamation project is approvable provided the spoil is not necessary to restore AOC on or otherwise reclaim the active mine; nor can the placement of spoil off-permit facilitate the mining operation on the permitted area. In addition, as stated in the May 23, 1990, final rule, fills are not to be created on AML reclamation projects. Spoil deposited on such sites may be used only to complete reclamation and to return the site to its AOC. OSM restricted eligibility for such spoil deposition to AML reclamation projects funded through the Federal AML grant process. The May 23, 1990, finding, however, did not prohibit the use of "no-cost reclamation" contracts allowing spoil disposal on AML sites not included in Federally funded grants. Procedures for such contracts would need specific OSM approval to ensure meaningful performance incentives and valid environmental and technical performance requirements. Any proposed amendment authorizing excess spoil disposal on AML sites via no-cost reclamation contracts must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project.

In further elaborating upon OSM's rationale for limiting West Virginia's off-site spoil disposal to approved AML reclamation grant projects, the Director's July 9, 1991, letter states that this limiting stipulation is meant to ensure that:

(1) Only eligible sites are considered;

(2) Projects are properly planned in accordance with Federal grant application requirements;

(3) Projects are conducted in accordance with Federal grant terms and conditions;

(4) Projects are monitored by the State during and after construction;

(5) Projects are completed;

(6) If failures develop after completion, funds will be available to take corrective action (this provision is an essential substitute for the performance bond requirements of title V);

(7) The environmental safeguards and other provisions of the March 6, 1980, "Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819) will receive consideration; and

(8) Sites will be subject to OSM oversight.

These specific criteria, in addition to the parameters established in the referenced West Virginia final rules, constitute the review criteria for State-proposed provisions allowing off-permit spoil deposition.

Ohio has submitted proposed Policy/Procedure Directive 92 (PPD) to clarify the eligibility requirements and performance standards applicable to off-permit placement of excess spoil. The PPD, together with the April 27, 1992, cover letter, describe, as follows, the methods and procedures by which Ohio intends to implement the proposed rule at OAC 1501:13–9–07(H).

1. Eligibility Requirements

Excess spoil from an active coal mining operation may be used to reclaim an adjacent state AML or Federal AML project under a direct negotiated, no-cost, or competitively bid contract executed pursuant to Ohio Revised Code section 1513.27 or 1513.37. The adjacent unreclaimed area must be referenced in the permit application at the time of issuance or later by amendment and identified on the permit map. The unreclaimed area will not be included in the permit acreage, will not be subject to the requirements for performance bond, and will not delay or otherwise affect bond release on the permitted area.

2. Eligibility of Projects for State or Federal AML Funding

Once an AML area has been identified for reclamation using off-permit placement of excess spoil, there is no difference in design, construction or contract provisions based on the area's eligibility for State or Federal AML funds. However, in the event of failure at a State AML site that may occur after a project is accepted as final, funds necessary to correct the reclamation failure shall be drawn from

the Unreclaimed Lands Fund, subject to review and approval by the Board on Unreclaimed Strip Mined Lands. For reclamation failure at a Federal AML site after the project is accepted as final and the final payments have been made, Ohio's AML grant allocations would constitute one source of funds available to correct reclamation failure.

3. Backfilling Abandoned Mine Areas

Construction of a "fill" on the off-permit area would be allowed only in the event that an engineer certifies that construction of a "fill" is necessary to establish positive drainage. Such "fills" would include diversions or underdrains, as necessary, to control erosion, prevent water infiltration into the fill, and ensure stability.

OSM concurs with Ohio that certain backfilling is necessary to fill in areas with internal drainage that were created as a result of the mining operations. The most likely reason for construction of such a "fill" will be to eliminate holes or depressions caused by erosion or other factors during the mining operations. However, these "fills" will not contain excess spoil beyond that amount needed to restore the area to its AOC and to establish positive drainage (i.e., drainage away from the AML site). In addition, no "fill" will be constructed solely for the purpose of excess spoil disposal. In other words, the excess spoil used on the AML area must be necessary for the reclamation of that area. Finally, where "fills" are constructed to eliminate depressions which impound water, elimination of the depressions must be performed in accordance with section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). The Director notes that Ohio has used the word "fill" to describe the practice of using excess spoil to return holes or depressions to their premining surface levels. It is important that these "fills" not be confused with valley, head-of-hollow or durable rock fills which are constructed solely for the purpose of excess spoil disposal, and which must comply with all permanent program design and performance standards. Valley, head-of-hollow or durable rock fills will not be allowed on the off-permit areas which are the focus of this proposed program amendment.

4. Facilitation of Mining

The spoil material removed from the permitted area and placed in the unreclaimed area must not be necessary for the achievement of approximate original contour on the permitted area nor can the placement of spoil off-permit facilitate the mining operation on the permitted area by providing additional area solely for spoil disposal or maneuvering of equipment. The excess spoil must be placed in an environmentally and technically sound manner, and in an area where it will not destroy or degrade features of environmental value.

5. Monitoring During and After Construction

The State AML Program Inspector will be primarily responsible for monitoring reclamation of the off-permit AML area to ensure that the reclamation work is performed in accordance with the contract. Such monitoring will be conducted as described in section 5.6 of the AML Procedures Manual (Administrative Record Number OH–1720). The Regulatory Inspector assigned to the adjacent permit area shall assist the AML Inspector, as requested, and shall notify the AML Inspector when reclamation activities commence on the off-permit area. In the event an operator/contractor fails to meet the terms of the contract, the AML Program Inspector will issue a Field Order to Stop Work. The AML Program Inspector will notify the Regulatory Program Inspection and Enforcement Manager, as well as the AML Field Supervisor of the issuance of the order. Post-construction review monitoring of the off-permit AML area will be conducted as described in section 5.10 of the AML Procedures Manual (Administrative Record Number OH–1726).

6. Reclamation Standards

Reclamation of off-permit AML areas shall be planned and performed in accordance with the standards and requirements enumerated in Section C of OSM's March 6, 1980, "Guidelines for Reclamation Programs and Projects" (45 FR 14810–14819). The final configuration of the off-permit AML area shall be suitable for the post-reclamation land use and compatible with the natural surroundings. Other specific standards for placement of the spoil on abandoned mine lands will be contained in the construction contracts.

7. Contractor Incentives

The Ohio Division of Reclamation (Division) may assess liquidated damages or require the off-permit area to be permitted and bonded, if appropriate, in the event of operator default on the off-site area. The Chief of the Division shall determine, based on the nature and severity of the failure to comply with the contract and the operator's compliance record on the adjacent permit area, whether to terminate the contract and assess liquidated damages in the amount of $2,500 per acre affected by the operator, or to terminate the contract and issue a Notice of Violation requiring the operator to revise the permit boundary to include any off-site acreage affected by the operator to facilitate mining and to post bond in the amount of $2,500 per acre, which is the bond amount required for all surface mining permits issued pursuant to Ohio's permanent program. These contractor incentive provisions are intended to satisfy the requirements of the Director's July 9, 1991, letter to Ohio (Administrative Record Number OH–1546) that no-cost reclamation contracts contain "meaningful performance incentives."

In the event of forfeiture of the coal mining permit with which an off-permit AML area is associated, any off-permit area which was improperly used to facilitate coal mining on the permit area will be included in the bond forfeiture. For all other portions of the AML site, the Division will proceed with the appropriate contract remedies, including liquidated damages and contract termination.

8. Environmental Review

An environmental review will be conducted by a Permitting or Special Studies Environmental Specialist (ES) to determine whether any of the following exist on the unreclaimed area: cultural or historic resources; wetlands or stable impoundments with good water quality; federal or state endangered or threatened plant or animal species, or their critical habitats; plant communities or habitat types unique to the region or possessing particular value or productivity; or any other desirable environmental or socioeconomic quality of high value, utility or uniqueness. If the unreclaimed area is located in a floodplain or within 1,000 feet of the normal waterline of a designated wild or scenic river, this information shall be noted in the environmental review and considered in the design process.

The environmental review findings will be documented by the ES and, if any of the features described above exist, the ES shall recommend mitigatory or enhancement measures, if appropriate, or avoidance of the area. Such recommendations shall, at a minimum, conform with protections afforded these areas by state or federal law. The ES may consult with state or federal agencies, such as the ODNR Division of Natural Areas and Preserves or the State Historic Preservation Office, when developing recommendations for mitigation. The recommended mitigatory or enhancement measures shall be included in the contract specifications.

The Director has determined that the Ohio proposed regulations, PPD, Administrative Record Document, and April 27, 1992, cover letter contain guidelines and safeguards for Federally funded AML sites, State-funded AML sites, and "no-cost" sites which are similar in purpose and function to a surface mining permit and accompanying performance bond. However, as stated in the May 23, 1990, final rule, fills are not to be created on AML reclamation projects (55 FR 21329). In addition, section 515(b)(22)(B) of SMCRA does not allow the creation of fills on AML Reclamation projects. Spoil deposited on such sites may be used only to complete reclamation and to return the site to its AOC. Ohio's reference to "fills" in its PPD refers only to disposal areas which will contain only enough excess spoil to accomplish restoration of the area to AOC. As such, these "fills" are not the same as valley, head-of-hollow or durable rock fills which are constructed solely for the purpose of excess spoil disposal. Since any "fills" to be constructed on AML sites in Ohio are for reclamation purposes only, and since the amount of spoil placed in these "fills" cannot exceed the amount needed to restore the area to AOC and to create positive drainage, construction of such "fills" does not conflict with the May 23, 1990, final rule. The Director is not, however, approving the construction of fills on the off-permit area which would include more excess spoil than is needed to return the area to AOC. Since there is no Federal counterpart to this rule and its inclusion does not render the Ohio program less effective than the Federal regulations, the Director finds the proposed amendment, proposed PPD, and Administrative Record information to be not inconsistent with the requirements of SMCRA, the Federal regulations, except as noted above with regard to "fills." Further, the Director finds that Ohio's no-cost provisions meet the requirements of the July 9, 1991, letter to Ohio from the Director (Administrative Record Number OH–1546).

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the August 9, 1991, **Federal Register** (56 FR 37871) closed on September 9, 1991. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

The public comment period was subsequently reopened and announced in the June 2, 1992, **Federal Register** (57 FR 23176). The public comment period closed on June 17, 1992. The Ohio Mining and Reclamation Association (OMRA) responded and provided comments in support of the proposed amendment. In response, the Director notes that the proposed provisions referenced by the OMRA are being approved. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio Program. The U.S. Department of Agriculture, Soil Conservation Service, the U.S. Department of Labor, Mine Safety and Health Administration, U.S. Department of Labor, and the U.S. Army Corps of Engineers responded that they had no comments on the proposed amendment.

The U.S. Environmental Protection Agency concluded that the proposed amendment to Ohio's program demonstrates the legal authority, administrative capability, and the technical conformity with controlling National Pollutant Discharge Elimination System (NPDES) regulations necessary to maintain water quality standards promulgated under the authority of the CWA, as amended (33 U.S.C. 1251 *et seq.*).

No other comments were received.

V. Director's Decision

Based on the above findings, the Director is approving Ohio Revised Program Amendment Number 51, originally submitted by Ohio as Program Amendment Number 51 on July 22, 1991, and revised and submitted by letter dated April 27, 1992. The creation of fills on unpermitted AML sites is approved only to the extent that the fills are created for reclamation purposes only and not merely to provide an area for excess spoil disposal, that the amount of excess spoil placed in the fill area does not exceed the amount necessary to restore the area to AOC, and that the elimination of holes or depressions which impound water is accomplished in accordance with section 404 of the CWA (33 U.S.C. 1344). The construction of valley, head-of-hollow, durable rock or any other type of fill which would include more excess spoil than is needed to restore the off-permit area to AOC is not approved. The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement the decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is, therefore, unnecessary. However, by letter dated February 3, 1992 (Administrative Record Number OH–1642), EPA submitted its concurrence.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the

Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Poperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistont Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In Section 935.15, a new paragraph (eee) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(eee) The following amendment to the Ohio regulatory program, as submitted to OSM on July 22, 1991, and revised and resubmitted on April 27, 1992, is approved except as noted below, effective August 18, 1992. Revised Amendment Number 51 which consists of revisions to the Ohio Administrative (OAC) at 1501:13–9–07 paragraph (H), a Policy/Procedure Directive, an Administrative Record Document, and the April 27, 1992, cover letter to the Revised Amendment Number 51, all concerning the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an adjacent, unreclaimed area. Construction of "fills" on adjacent unreclaimed areas is approved only insofar as such "fills" are constructed for reclamation purposes only and not merely to provide an area for excess spoil disposal, the amount of excess spoil placed in the area does not exceed the amount necessary to restore the area to AOC, and the elimination of any holes or depressions which impound water is accomplished in accordance with section 404 of the Clean Water Act (33 U.S.C. 1344). The construction of valley, head-of-hollow, durable rock, or any other type of fill which would include more excess spoil than is needed to return the off-permit area to AOC is not approved.

[FR Doc. 92–19576 Filed 8–17–92; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Availability of Department of the Navy Records and Publication of Navy Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is publishing a system name change to an exempt system of records at 32 CFR 701.119. The system of records was amended on July 28, 1992, at 57 FR 33326.

EFFECTIVE DATE: August 18, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwen Aitken (703) 614–2004.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Director, Administration and Management has determined that this proposed rule is not a major rule. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and does not have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Regulatory Flexibility Act of 1980

The Director, Administration and Management certifies that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) and does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The Director, Administration and Management certifies that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 701

Privacy.

For reasons set forth in the preamble, 32 CFR part 701 is amended as follows:

1. The authority citation for 32 CFR part 701, subpart G continues to read as follows:

Authority: Public Law 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.119 is amended by revising the paragraph (i), introductory text, and the first paragraph of (i)(1) as follows:

§ 701.119 Exempt Navy record systems.

* * * * *

(i) *Navy and Marine Corps Exchanges.*

(1) *ID–N04060–1.*

System Name. Navy and Marine Corps Exchange Security Files.

* * * * *

Dated: August 4, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–18751 Filed 8–17–92; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL22–1–5229; FRL–4194–9]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Final rule.

SUMMARY: The USEPA is taking action to approve revisions to part 215, subpart T (Pharmaceutical Manufacturing) of title 35 of the Illinois Administrative Code (35 IAC) and to associated

definitions contained in part 211 of 35 IAC for the ozone attainment areas in Illinois. This action will have no effect on the requirements for ozone nonattainment areas in Illinois. Although the Clean Air Act (CAA) does not require States to adopt Reasonably Available Control Technology (RACT) regulations for attainment areas, the State has authority under section 116 of the CAA to adopt regulations consistent with the purpose of the CAA. Because the USEPA believes that this action is noncontroversial, it is being taken with no prior proposal.

Since the State submitted these rules on June 11, 1991, the State has revised and consolidated its Volatile Organic Compound (VOC) stationary source control measures for the Chicago and Metro East St. Louis ozone nonattainment areas into parts 218 and 219 of 35 IAC respectively. Therefore, the rules, which are the subject to today's rulemaking, have been superseded as they pertain to the Chicago and Metro East St. Louis ozone nonattainment areas. Consequently, USEPA's approval is limited to their applicability in the ozone attainment areas within Illinois. USEPA intends to rulemake on the stationary source control measures for the Chicago and Metro East St. Louis ozone nonattainment areas in a separate rulemaking.

USEPA's action is based upon a State Implemenetation Plan (SIP) revision request which was submitted by the State.

DATES: This action will be effective October 19, 1992, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following addresses: (It is recommended that you telephone Edward Doty at (312) 886–6057 before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulations Development Section, Regulations Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of today's revision to the Illinois SIP is available for inspection at: U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Edward Doty, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6057.

SUPPLEMENTARY INFORMATION:

I. Summary of State Submittal

On June 11, 1991, the Illinois Environmental Protection Agency (IEPA) submitted to USEPA a requested revision of the Illinois SIP dealing with the control of VOC emissions from pharmaceutical manufacturing operations. The requested SIP revision covers amendments of 35 Illinois Administrative Code (35 IAC) parts 211 and 215. These amendments were adopted in final form by the Illinois Pollution Control Board (IPCB) on April 25, 1991, and the final rule revision was published in the **Illinois Register** on May 24, 1991. The rule revision became state-effective on May 14, 1991. The discussion which follows outlines the rule amendments.

Section 211.122 (Definitions)

Section 211.122 has been amended to add the following definitions:

"Accelacota": A pharmaceutical coating operation which consists of a horizontally rotating perforated drum in which tablets are placed, a coating is applied by spraying, and the coating is dried by the flow of air across the drum through the perforations.

"Air suspension coater/dryer": A pharmaceutical coating operation which consists of vertical chamber in which tablets or particles are placed, and a coating is applied and then dried while the tablets or particles are kept in a fluidized state by the passage of air upward through the chambers.

"Enclose": With respect to Subpart T of 35 IAC, to cover any volatile organic liquid surface that is exposed to the atmosphere.

"Organic compound": Any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metal carbides or carbonates, and ammonium carbonate.

"Pharmaceutical coating operation": A device in which a coating is applied to a pharmaceutical, including any drying or curing of the coating.

"Plant": All of the pollutant emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control), except the activities of any marine vessel. Pollutant emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two digit source code) as described in the "Standard Industrial Classification Manual", 1987.

"Refrigerated condenser": A surface condenser in which the coolant supplied to the condenser has been cooled by a mechanical device, other than by a cooling tower or evaporative spray cooling, such as a refrigeration unit or steam chiller unit.

"Tablet coating operation": A pharmaceutical coating operation in which tablets are coated.

"Volatile Organic Material Content" or "VOMC": The emissions of volatile organic material which would result from the exposure of a coating, printing ink, fountain solution, tire spray, dry cleaning waste or other similar material to the air, including any drying or curing, in the absence of any control equipment. VOMC is typically expressed in units of kilograms of volatile organic material per liter (kg VOM/liter) (lb VOM/gallon) of coating or coating solids, or kg VOM/kg (lb VOM/lb) of coating solids, of coating material, or material.

Existing definitions in section 211.122, as amended, read as follows:

"Control device" is amended to include equipment, such as an afterburner, adsorber, scrubber, condenser, cyclone or baghouse used to remove or prevent the emission of air pollutants from a contaminated exhaust stream.

"Volatile organic material" is amended to mean any organic compound which participates in atmospheric photochemical reactions unless specifically exempted from this definition. For purposes of determining compliance with emission limits, volatile organic material shall be measured by the reference test methods incorporated by reference in 35 IAC section 211.105. Where such a method also inadvertently measures compounds with negligible photochemical reactivity, an owner or operator may exclude these negligibly reactive compounds. [The previous and current definitions listed negligibly photochemical reactive compounds that are acceptable to the USEPA.] [1]

[1] On February 3, 1992, (57 FR 3941) the USEPA finalized rulemaking on a revised definition of VOC. The compounds listed as negligibly reactive in Illinois' definition of "voletile organic material" are consistent with the compounds listed as nonreactive in USEPA's revised definition of VOC.

Section 215.102 (Testing Methods)

Section 215.102 (Testing Methods) is amended to remove the requirements for the measurement of vapor pressures.

Section 215.105 (Incorporation by Reference)

Section 215.105 (Incorporation by Reference) is amended to add updated testing procedures and new references related to emissions from pharmaceutical manufacturing. The following documents are added for incorporation by reference:

Elsevier Scientific Publishing company, New York, "The Vapor Pressure of Pure Substances" (1973), Boublik, T., Fried, and Hala, E.;

McGraw-Hill Book Company, *Perry's Chemical Engineer's Handbook* (1984);

Chemical Rubber Publishing Company, *CRC Handbook of Chemistry and Physics* (1968–1987);

McGraw-Hill Book Company, *Lange's Handbook of Chemistry* (1985), Dean, J., editor; and

United States Environmental Protection Agency, Research Triangle Park, North Carolina, "Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products", (December 1978, EPA–450/2–78–029).

Section 215.108 (Measurement of Vapor Pressures)

Section 215.108 (Measurement of Vapor Pressures) has been added to the rules to cover the vapor pressure measurement regulations removed from section 215.102. In addition, the vapor pressure measurement requirements have been modified. New rules have been added to make a distinction between the measurement of vapor pressures for Volatile Organic Liquids (VOL), organic materials or solvent, and Volatile Organic Material (VOM). Within each category of material (or solvent or liquid), a distinction is made between materials made up of only one compound and materials made up of multiple compounds. For organic materials, distinction is also made between organic materials containing only organic material compounds and organic materials containing some non-organic material compounds. For VOM, distinction is made between materials containing only VOM and materials also containing some non-VOM material.

If a VOL consists of only a single compound, the vapor pressure may be determined by the use of ASTM Method D2879–86 or an applicable method obtained from a published source, such as "The Vapor Pressure of Pure Substances", "Perry's Chemical Engineer's Handbook", "CRC Handbook of Chemistry and Physics", or "Lange's Handbook of Chemistry". If the VOL is a mixture of compounds, the total vapor pressure is determined by summing the partial vapor pressures (determined for each compound using the test method or references used for a single compound VOL) on a mole fraction basis.

If an organic material or solvent consists of only one compound, the vapor pressure shall be determined by the use of the test method or references listed for the single compound VOL. If the organic material or solvent contains a mixture of both organic compounds and non-organic compounds, the vapor pressure shall be determined by summing the partial vapor pressures of the organic compounds (determined for each compound using the test method or references used for a single compound VOL) weighted by the mole fractions of the organic compounds. If the organic material or solvent contains only organic compounds, the vapor pressure shall be determined by the use of the test method ASTM Method D2879–86 or by the method used for organic compound/non-organic compound mixtures. These test methods are expected to give equivalent results.

The vapor pressure of a VOM shall be determined using procedures equivalent to those applied for organic materials or solvents.

Section 215.480 (Applicability of Subpart T)

Subsection 215.480(a) is amended to change the reference to "coating operations" to more specifically "pharmaceutical coating operations". In addition, this section is amended to exempt emission sources from the requirements of subpart T (except for sections 215.483 through 215.485) if the sources emit less than 2,268 kg/year (2.5 tons/year) of VOM and less than 45.4 kg/day (100 pounds/day) of VOM.

Subsection 215.480(b) is amended to state that the air suspension coater/dryer, fluid bed dryers, tunnel dryers, and Accelacotas located in Libertyville Township, Lake County, Illinois shall be exempt from the rules of subpart T (except for sections 215.483 through 215.485) if the emissions of VOM not vented to air pollution control equipment do not exceed the following levels: 2,268 kg/year for the air suspension coater/dryer; 4,535 kg/year for each fluid bed dryer; 6,803 kg/year for each tunnel dryer; and 6,903 kg/year for each Accelacota.

The following subsections have been added to section 215.480:

(e) This subsection requires emissions subject to subpart T to be controlled at all times in a manner consistent with the requirements of subpart T;

(f) This subsection requires emission control devices required by section 215.483 to be operated at all times;

(g) This subsection requires emission sources subject to the requirements of sections 215.481, 215.482 or 215.486 on or after the compliance date specified in subsection 215.490(a) to remain subject to these requirements even if the emissions from the sources drop below the applicability criteria of section 215.480;

(h) This subsection requires the determination of daily and/or annual emission rates to be based on the hourly emission rates or on the emissions per unit of throughput and the recording of appropriate daily and annual source operations, material throughput rates, or material consumption rates. In the absence of representative test data pursuant to section 215.487, rates of emissions shall be determined using engineering calculations, including the methods described in appendix B of "Control of Volatile Organic Emissions from Manufacture of Synthesized Pharmaceutical Products". The IEPA reserves the right to require other emissions tests pursuant to section 215.487.

Section 215.481 (Control of Reactors, Distillation Units, Crystallizers, Centrifuges, and Vacuum Dryers)

Subsection 215.481(a) has been amended to allow the use of emission control equipment other than surface condensers for these sources. If a scrubber, carbon adsorber, thermal incinerator, catalytic incinerator or other air pollution control equipment (other than a surface condenser) is used, such equipment shall provide a VOM emission reduction of 90 percent or more. Subsection 215.481(b) has been amended to allow less than full enclosure of centrifuges when production, sampling, maintenance, or inspection procedures require operator access. Subsection 215.481(b) requires the enclosure of centrifuges used to manufacture pharmaceuticals, where volatile organic liquids in the centrifuges are exposed to the air outside of the centrifuges and the VOM in the liquids have a total vapor pressure of 3.45 kiloPascals or more at a temperature of 294.3 degrees Kelvin.

Section 215.482 (Control of Air Dryers, Production Equipment Exhaust Systems and Filters)

Subsection 215.482(b), which requires enclosures for certain rotary vacuum filters and other filters used to manufacture pharmaceuticals, has been amended to allow less than full enclosure when production, sampling, maintenance, or inspection procedures require operator access.

Section 215.483 (Material Storage and Transfer)

Subsection 215.483(a) has been amended to remove an allowance for the use of equivalent emission control systems in the control of VOM emissions from truck and railcar deliveries to storage tanks with capacities equal to or greater than 7.57 cubic meters (2,000 gallons) that store organic liquids with vapor pressures greater than 28.0 kiloPascals (4.1 psi) at 294.3 degrees Kelvin (70 degrees Fahrenheit). Only vapor balance systems are allowed in such situations.

Subsection 215.483(b) has been modified to require the operation and maintenance of pressure/vacuum vents on storage tanks that store volatile organic liquids. This subsection has also been amended to allow pressure/vacuum conservation vents set at pressures exceeding 0.2 kiloPascals (0.03 psi). In addition, the allowance for equivalent control devices has been removed from this subsection.

Section 215.487 (Testing)

Subsection 215.487(a) has been amended to require the owner or operator of a VOM emission source to demonstrate compliance with subpart T requirements only upon the request of the IEPA. Sources exempted from the requirements of subpart T are also subject to the requirement to demonstrate compliance with the requirements of (or the validity of the exemption from) Subpart T.

Subsection 215.487(b) has been completely replaced by the requirement that a person planning to conduct a VOM emissions test, to demonstrate compliance with or to determine the applicability of provisions of subpart T, notify the IEPA of the intent to test not less than 30 calendar days prior to the planned initiation of the test.

Subsection 215.487(c) test procedures have been revised to the following:

(1) The determination of VOM concentrations shall be made by the use of 40 CFR part 60, appendix A, Methods 18, 25, or 25A as appropriate for the conditions at the site. The test method selection shall be based on consideration of the diversity of organic species present and their total concentration and on consideration of the potential presence of interfering gases. Except as indicated in subsections 215.487(c)(1)(A) and (B), the test must consist of three separate runs, each lasting a minimum of 60 minutes unless the IEPA determines that the source processes dictate shorter times.

(A) When the test is to be conducted to determine the efficiency of a fixed bed carbon adsorption system with a common exhaust stack for all individual adsorber vessels, the test must consist of three separate runs, with each run coinciding with one or more complete sequences through the adsorption cycles of all of the individual adsorber vessels.

(B) When the test is to be used to determine the efficiency of a fixed bed carbon adsorption system with individual exhaust stacks for each adsorption vessel, each adsorption vessel shall be tested individually using three separate runs set to coincide with one or more complete adsorption cycles.

The following test procedures have also been added to subsection 215.487(c): 40 CFR part 60, appendix A, method 1 or 1A for sample and velocity traverses; 40 CFR part 60, appendix A, method 2, 2A, 2C, or 2D for velocity and volumetric flow rates; 40 CFR part 60, appendix A, method 3 for gas analysis; 40 CFR part 60, appendix A, method 4 for stack gas moisture determination; and 40 CFR part 60, appendix A, methods 2, 2A, 2C, 2D, 3 and 4, as applicable at least twice during each test run.

The rule provides that no part of section 215.487 may affect the authority of the USEPA under section 114 of the Clean Air Act.

Section 215.488 (Monitors for Air Pollution Control Equipment)

Subsection 215.488(a) has been amended to require continuous monitors for outlet gas temperatures of a refrigerated condenser and for temperatures of a non-refrigerated condenser coolant supply system.

Section 215.489 (Recordkeeping)

This section replaces many of the recordkeeping requirements previously contained in subpart T. The following records are required.

The owner or operator of a pharmaceutical manufacturing plant must keep the following records:

(a) A record of all parameters listed in Section 215.488; and

(b) For sources subject to Section 215.481, the vapor pressure of the VOM being controlled for every process.

For any leak subject to section 215.485 and which can not be readily repaired within 1 hour after detection, the following records are required:

(a) Name of the leaking component;

(b) Date and time the leak was detected;

(c) Action taken to repair the leak;

and

(d) Date and time the leak was repaired.

The following records shall be kept for emission sources subject to section 215.484 which contain VOL:

(a) For maintenance and inspection:

(1) The date and time each cover is opened;

(2) The length of time the cover is left open; and

(3) The reason why the cover is opened;

(b) For production and sampling, written procedures or manufacturing directions specifying the circumstances under which covers may be opened and the procedures for opening covers.

For each source with emissions claimed to be below the applicability limits of the regulations, the owner or operator of a pharmaceutical plant shall:

(a) Maintain a demonstration, including detailed engineering calculations, of the maximum daily and annual emissions for each such source showing that the emissions are below the applicability cutoffs for the current and prior year;

(b) Maintain operating records for each emission source to identify whether the cutoffs are ever exceeded; and

(c) Provide written notification to the IEPA within 30 days of determination that such an emissions source has exceeded an applicability cutoff.

Records under section 215.489 must be maintained by the owner or operator for a minimum of 2 years after the date on which they are created. Copies of the records must be made available to the IEPA upon verbal or written request.

Section 215.490 (Compliance Schedule)

For sources which commenced construction prior to the effective date of the amended rules, the owner or operator of the pharmaceutical plants must comply with the regulations by April 30, 1991. For sources which commence construction after the effective date of the amended rules, the source must be constructed so that it will operate in compliance with subpart T.

II. USEPA's Analysis of State Submittal

The rules addressed by the revisions are no longer applicable as part of a federally enforceable SIP for the Chicago ozone nonattainment area. The ozone SIP rules for the Chicago ozone nonattainment area have been replaced by regulations contained in the Federal Implementation Plan (FIP) promulgated by the United States Environmental Protection Agency (USEPA) for the Chicago area on June 29, 1990, (55 FR

26814). The regulations contained in the requested SIP revision, however, reflect those contained in the FIP for pharmaceutical manufacturing.

It should be noted that the State has submitted a new part 218 of its adopted rules to completely update the VOC (VOM) rules for the Chicago area. A similar set of rules, part 219, has been submitted to cover the Metro East St. Louis ozone nonattainment area. These rules supersede part 215 rules in the ozone nonattainment areas. These revised rules are undergoing separate review. USEPA believes that, if State rules are to replace the Chicago FIP, the rulemaking on these State rules should be accomplished in a single rulemaking rather than in a piecemeal fashion. Therefore, rulemaking on the control measures for the synthetic pharmaceutical manufacturing industry for the State's ozone nonattainment areas should be undertaken as part of the rulemaking on the complete ozone control strategy for the ozone nonattainment areas. The rulemaking proposed here, therefore, does not apply to the ozone nonattainment areas in Illinois.

III. USEPA's Rulemaking Action

USEPA approves the requested SIP revision as it applies to ozone attainment areas in the State and takes no action on the SIP revision for the ozone nonattainment areas of Chicago and Metro East St. Louis since this rule has been superseded by parts 218 and 219 of 35 IAC. Final action on the revision of the pharmaceutical manufacturing rule will be taken for the nonattainment areas when the USEPA acts on the part 218 and part 219 stationary source control strategies.

Although the CAA does not require States to adopt RACT for attainment areas, the State has authority under section 116 of the CAA to adopt regulations consistent with the purposes of the CAA. These rules provide for a reduction of the emission of VOC into the ambient air and, therefore, are consistent with the CAA.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. The action will become effective on October 19, 1992. However, if we receive notice by September 17, 1992 that someone wishes to submit critical comments, then USEPA will publish: (1) A notice that withdraws the action, and (2) a notice that begins a new rulemaking by proposing the action and establishing a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989, (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Table Three SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver of Table Two and Table Three SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Under 5 U.S.C. 605(b), the Administrator certifies that SIP approvals under sections 107, 110, and 172 of the Clean Air Act will not have significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids the USEPA to base its actions concerning SIPs on such grounds.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Illinois was approved by the Director of the Federal Register on July 1, 1992.

Dated: August 3, 1992.

Robert Springer,

Acting Regional Administrator.

40 CFR Part 52, subpart O—Illinois, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 reads as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(90) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(90) On June 11, 1991, Illinois submitted regulations concerning the emission of volatile organic compounds from pharmaceutical manufacturing.

(i) Incorporation by reference.

(A) Title 35 of the Illinois Administrative Code: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter C: Emissions Standards and Limitations for Stationary Sources, Part 215: Organic Material Emission Standards and Limitations, Subpart T: Pharmaceutical Manufacturing, Subpart A: General Provisions: Amendments to sections 215.102 and 215.105 and Creation of section 215.108. Adopted at 15 **Illinois Register** 80 18, effective May 14, 1991.

(B) Title 35 of the Illinois Administrative Code: Environmental Protection, Subtitle B: Air Pollution, Chapter 1: Pollution Control Board, Subchapter C: Emissions Standards and Limitations for Stationary Sources, Part 211: Definitions and General Provisions, Subpart B: Definitions. Adopted at 15 **Illinois Register** 79 01, effective May 14, 1991.

[FR Doc. 92–19604 Filed 8–17–92; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 87–120, FCC 92–315]

Flexible Allocation of Frequencies in the Domestic Public Land Mobile Radio Service for Paging and Other Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; order on reconsideration.

SUMMARY: This action partially sets aside a prior reallocation of frequencies, in the 470–512 MHz band. It was taken in response to a petition for partial reconsideration of Second Report and Order (Flexible Paging II), 4 FCC Rcd 6415 (1989), wherein the Commission reallocated all of the 470–512 MHz band that was not in current use from two-way common carrier use to common carrier control use by wide area paging systems. The intended effect of the action is to fulfill the Commission's commitment, in Flexible Paging II, not to disrupt current use of the 470–512 MHz band.

EFFECTIVE DATE: September 17, 1992.

FOR FURTHER INFORMATION CONTACT: Terrence E. Reideler, Common Carrier Bureau at (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration of Second Report and Order, CC Docket No. 87–120, adopted July 7, 1992 and released July 20, 1992.

The full text of this decision is available for inspection and copy during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of the decision may also be purchased from the Commission's copy contractor, The Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036.

Summary of Order on Reconsideration

In 1980 the Commission, in response to a demonstrated need, allocated the 470–512 MHz portion of the UHF–TV spectrum for two-way common carrier use on a shared basis in each of thirteen specified metropolitan areas, including New York-Northeastern New Jersey. By 1984, however, a steady decline in the use of these frequencies had begun, principally due to the introduction of cellular service in the nation's larger Metropolitan Statistical Areas (MSAs). Because of the decreased need for the 470–512 band for two-way service, the Commission, in Flexible Paging II, reallocated some of the frequencies to common carrier control use. Interelectronics Corporation (Interelectronics), the licensee for the two-way mobile service in the New York metropolitan area, petitioned the Commission to reconsider its decision to reallocate all of the 470–512 MHz frequencies in the New York City area.

Interelectronics argued that the Commission erred in reallocating the twenty-four paired UHF frequencies assigned to the New York-Northeastern New Jersey MSA since a number of these were being utilized. Interelectronics explained that it provides two-way mobile radio telephone service in this MSA to 151 subscriber units and that it has commitments for an additional 50 units. In view of this fact, Interelectronics claimed that the Commission's stated pledge not to disrupt existing two-way use of the band was breached. Consequently, Interelectronics requested that at least five of the 24 frequency pairs be reserved for two-way use in the New York-Northeastern New Jersey MSA.

The Commission, in response to Interelectronics' arguments, noted that in Notice of Proposed Rule Making, in CC Docket 87–120, 2 FCC Rcd 2795, 52 FR 19741, May 27, 1987, it required all two-way licensees in the specified MSAs to submit traffic loading studies and to specify the number of frequency pairs that would be needed to meet existing service requirements in their respective MSAs. It also noted that Interelectronics had failed to provide this information because it did not think it necessary since it was the only licensee in its MSA that was providing two-way service. Although the Commission said that Interelectronics' excuse was unconvincing, it nevertheless reallocated five frequency pairs in the 470–512 MHz band for two-way use in the New York-Northeastern New Jersey MSA. The Commission took this action, it said, because its primary concern was for the subscribers using Interelectronics' two-way service, and because of its commitment not to disrupt existing two-way service.

Ordering Clauses

Accordingly, *it is ordered* that pursuant to the authority contained in Sec. 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), Part 22 of the Commission's Rules, 47 CFR part 22 is amended as set forth below.

It is further ordered that the Petition for Partial Reconsideration filed by Interelectronics Corporation is granted to the extent discussed herein.

It is further ordered that the Petition for Partial Stay filed by Interelectronics Corporation is dismissed.

It is further ordered that the rule changes made herein will become effective September 17, 1992.

List of Subjects in 47 CFR Part 22

Communications common carrier, Radio.

Donna R. Searcy,

Secretary.

Part 22 of title 47 of the Code of Federal Regulations is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for part 22 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended (47 U.S.C. 154, 303), sec. 553 of the Administrative Procedure Act (5 U.S.C. 553), unless otherwise noted.

2. Section 22.501(j) is amended by adding a group entry for New York—Northeastern New Jersey after Los Angeles, Group 2 to read as follows:

§ 22.501 Frequencies.

* * * * *

(j) * * *

* * * * *

New York—Northeastern New Jersey

Group I:

473.0125	473.1125	479.0875
473.0375	479.0125	479.1125
473.0625	479.0375	
473.0875	479.0625	

* * * * *

3. Section 22.501(j)(7)(i) is amended by adding entry of New York—Northeastern New Jersey after Los Angeles, California in Table A to read as follows:

* * * * *

(j) * * *

(7) * * *

(i) * * *

* * * * *

New York—Northeastern

New Jersey	40°45'06"–73°59'39"

* * * * *

4. Section 22.501(k)(4) is amended by revising the heading and the frequencies for the grouping of "Chicago, Cleveland, New York—Northeastern New Jersey" to read as follows:

* * * * *

(k) * * *

(4) * * *

* * * * *

New York—Northeastern New Jersey

Group 1:

470.0125	470.2125	476.1125
470.0375	470.2375	476.1375
470.0675	470.2625	476.1625
470.0875	470.2875	476.1875
470.1125	476.0125	476.2125
470.1375	476.0375	476.2375
470.1625	476.0675	476.2625
470.1875	476.0875	476.2875

Group 2:

473.1375	473.2625	479.2125
473.1625	473.2875	479.2375
473.1875	479.1375	479.2625
473.2125	479.1625	479.2875
473.2375	479.1875	

* * * * *

[FR Doc. 92-19363 Filed 8-17-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 64

[CC Docket No. 90-313; FCC 92-247]

Operator Service Providers

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order on reconsideration.

SUMMARY: Six petitions for reconsideration and/or clarification were filed regarding Policies and Rules Concerning Operator Service Providers, (CC Docket No. 90-313, 6 FCC Rcd 2744 (1991), 56 FR 18519 (April Report and Order)), in which the Commission adopted regulations to establish policies and standards for the provision of operator services and to implement provisions of the Telephone Operator Consumer Services Improvement Act of 1990 (47 U.S.C. 226), (TOCSIA). In response to the petitions, the Commission adopted an Order on Reconsideration (Order) in which it clarified (1) that OSPs may provide the first audible identification or "brand" before or immediately after the bong tone, and that OSPs using automated equipment that route calls to other OSPs based on the billing information provided by the consumer may brand immediately after the input of such billing information so that the consumer hears only the brand of the OSP who is actually handling the call; (2) that the OSP named in the brand must be consistent with the OSP named in the written information posted on or near the telephone by the aggregator; (3) that OSPs in equal access areas who cannot subscribe to a form of access that provides answer supervision capability are prohibited from "knowingly" billing for unanswered calls; and (4) that OSPs using automated equipment may route emergency calls to a live operator for handling.

EFFECTIVE DATE: June 18, 1992.

FOR FURTHER INFORMATION CONTACT: Sally J. Novak, Enforcement Division, Common Carrier Bureau, (202) 632-4887.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 90-313 (FCC 92-247), adopted June 9, 1992, and released June 18, 1992. The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The full text of the Order on Reconsideration may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street, NW., Washington, DC 20036, (202) 452-1422.

Summary of Order on Reconsideration

I. Background

1. On June 14, 1990, the Commission adopted the initial Notice of Proposed Rule Making in CC Docket No. 90-313,[1] in which it proposed specific rules aimed at solving problems in the operator services industry that had persisted despite previous Commission action. The Commission asked interested parties to express their views on a number of related issues and proposals.[2]

2. Prior to final action by the Commission on the NPRM, Congress passed TOCSIA, which was signed into law in October 1990. The purpose of TOCSIA is "to protect consumers who make interstate operator services calls from pay telephones, hotels, and other public locations against unreasonably high rates and anticompetitive practices." [3]

3. Under TOCSIA, the Commission was required to, *inter alia*, conduct a "general" rule making proceeding beyond the scope of the initial *NPRM* and prescribe regulations to implement statutory provisions and establish certain standards and policies. On December 21, 1990, the Commission released a Further Notice of Proposed Rule Making.[4] The rules proposed in the FNPRM supplanted those proposed in the initial NPRM. On April 9, 1991, after reviewing comments filed by numerous interested parties, the Commission adopted the regulations that are the subject of the petitions for reconsideration that are addressed in this Order.

II. Discussion

A. Section 64.703 Branding

1. Timing of First Brand

4. In the April Report and Order, the Commission stated that the first brand, required by Section 64.703(a) [5] must occur prior to the bong tone and, for automated systems, prior to the validation of a billing number provided by the consumer and before the bong tone.[6]

5. Upon reconsideration, the Commission is persuaded that allowing OSPs to brand either before or immediately after the bong tone, except as indicated below, is consistent with TOCSIA. The legislative history of TOCSIA requires only that the first brand occur at the beginning of the call; it does not specify that the first brand occur prior to the bong tone.[7] The Commission's goal of ensuring that consumers can make informal choice of OSP will be furthered by allowing the first brand before or immediately after the bong tone without imposing additional costs on OSPs to retrofit their systems.

[1] Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Notice of Proposed Rule Making, 5 FCC Rcd 4630 (1990) (hereinafter "NPRM"). This action was partially in response to a petition for rule making filed by the National Association of Regulatory Utility Commissioners as well as our growing awareness that significant problems persisted in the operator services industry. *See* Petition of the National Association of Regulatory Utility Commissioners, RM-6767 (filed April 17, 1989).

[2] NPRM, 5 FCC Rcd at 4631-35, 4637-38 (these related issues included double branding, charging for unanswered or uncompleted calls, and standards for the handling of emergency calls).

[3] S. Rep. No. 439, 101st Cong., 2d Sess. 1 (1990) (Senate Report); see also H.R. Rep. No. 213, 101st Cong., 1st Sess. 2 (1989) ("The purpose of [the Act] is to protect telephone consumers against unfair prices and practices of some operator service providers (OSPs), yet allow the legitimate companies in the industry the opportunity to compete in the market.").

[4] Policies and Rules Concerning Operator Service Providers, CC Docket No. 90-313, Further Notice Of Proposed Rule Making, 6 FCC Rcd 120 (1990) (hereinafter "FNPRM").

[5] Section 64.703(a) of the Commission's rules, 47 CFR 64.703(a), provides that Each provider of operator services shall:

(1) identify itself audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call.

Accord 47 U.S.C. 226(b)(1)(A).

[6] April Report and Order, 6 FCC Rcd at 2757.

[7] The purpose of this provision is to ensure that consumers are informed of the identity of the carrier handling their call. * * *

By identifying itself at the beginning of the call, the carrier ensures that the consumer has the opportunity to hang up or request a transfer of the call before the call is put through and before the consumer incurs a charge for the call.

Senate Report at 12.

6. With regard to OSPs using automated equipment [8] that will under certain circumstances transfer a call to another carrier, the Commission finds that it is consistent with TOCSIA to allow that brand after the input of billing information. This approach should help minimize consumer confusion by avoiding situations where a consumer hears the brand of the OSP using automated equipment, inputs billing information, hears the brand of a second OSP that will actually be handling the call, and then hears yet a third brand by the latter OSP prior to connection of that call. The Commission notes that OSPs using automated equipment who brand after the input of billing information (and do not transfer a call as described above) and OSPs to whom a call is transferred must also provide a second brand before the call is connected and before the consumer incurs any charge for the calling compliance with § 64.703(c) of the Commission's rules.[9] The Commission cautions that any such transfers by an OSP using automated equipment must not result in call splashing [10] in violation of § 64.705(a)(3) of the Commission's rules.[11]

2. OSP Named in Brand

7. In the April Report and Order, the Commission held that to the extent that multiple parties are involved in setting rates for particular operator services, these parties may jointly decide which party will be named in the brand.[12] The Commission prohibited parties from branding in the name of another party if that party has not consented to the use of its name in the brand.[13]

8. Upon reconsideration, the Commission is not persuaded that requiring branding to be consistent with a LEC's presubscription records will further the goals of TOCSIA or the Commission of providing consumers with sufficient information to make informed choices from among competing OSPs. The Commission reiterates that parties involved in rate setting may agree on the name to be used in the brands.[14] The Commission emphasizes, however, that branding and signage must be consistent in all instances.[15] The OSP named in the brands must be the OSP identified in the signage posted by aggregators at their telephones. To require otherwise would lead to consumer confusion rather than achieve the Commission's goal of informed consumers using the OSP of their choice. The Commission will not address the issue of who should pay for a signage change, because that issue is best treated as a private matter to be worked out between the parties involved. The Commission notes that "agreggators" are responsible for placing correct signage on their telephones and joint aggregators are jointly responsible for complying with posting requirements of § 64.703(b) of the Commission's rules. Further, each OSP must ensure that each aggregator for whom such OSP is the presubscribed OSP complies with the posting requirement. See 47 CFR 64.703(e); accord 7 U.S.C. 226(b)(1)(D).

B. Section 64.705 Billing for Unanswered Calls

9. Section 64.705(a) of the Commission's rules, 47 CFR 64.705(a),[16] requires that OSPs not bill for unanswered telephone calls in areas where equal access is available and not knowingly bill for unanswered telephone calls where equal access is not available. In the April Report and Order, the Commission stated that OSPs in equal access areas are prohibited from billing for unanswered calls.[17]

10. The Commission is persuaded, upon reconsideration, that some clarification of § 64.705(a) is appropriate. A review of the legislative history of TOCSIA indicates Congress' concern that "[i]f the carrier subscribes to a form of access that does not include 'answer supervision', there is no way for the carrier to 'know' whether any of those calls are answered." [18] Indeed, while answer supervision is available in equal access end offices, the record in this proceeding does not support a finding that answer supervision is available to all OSPs in equal access areas.[19] Accordingly, OSPs in equal access areas that cannot subscribe to a form of access that provides answer supervision capability are prohibited from knowingly billing for unanswered calls under § 64.705(a)(2) of the Commission's rules.[20] The Commission cautions, however, that as answer supervision becomes available to these OSPs, such OSPs will be held to the strict standard contained in § 64.705(a)(1) of the Commission's rules.[21] Further, the Commission stresses that OSPs in equal access areas that can subscribe to a form of access that provides answer supervision capability are prohibited from billing for unanswered calls [regardless of whether they choose to subscribe to such access]. An OSP may not avoid the requirement of § 64.705(a)(1) of the Commission's rules simply by choosing not to subscribe to a form of access that includes answer supervision capability if that type of access is available.

C. Section 64.706 Immediate Routing of Emergency Calls

11. In the April Report and Order, the Commission adopted a minimum standard regarding the handling of emergency calls by OSPs. The Commission requires OSPs to connect an emergency call immediately to the emergency service provider that responds to the type of reported emergency at the site of the emergency, if known, or, if not known, to the originating location of the call.[22]

[8] "OSPs using automated equipment" refers to OSPs using S&F, bong-in-the box, and other automated technologies. "Store-and-forward," as well as "bong-in-the-box," devices are microprocessors located within telephones that perform automated call completion and billing services.

[9] 47 CFR 64.703(c); *accord* 47 U.S.C. 226(b)(2).

[10] "Call splashing" is the transfer of a telephone call from one provider of operator services to another such provider in such a manner that the subsequent provider is unable or unwilling to determine the location of the origination of the call and, because of such inability or unwillingness, is prevented from billing the call on the basis of such location.

47 CFR 64.708(c); *accord* 47 U.S.C. 226(a)(3).

[11] 47 CFR 64.705(a)(3); *accord* 47 U.S.C. 226(b)(1)(H). The Commission further cautions that it will be sensitive to consumer complaints regarding mis-billing or double billing of these calls.

[12] April Report and Order, 6 FCC Rcd at 2757.

[13] *Id.*

[14] Of course, nothing would preclude any entity that uses its own records to prepare signage for its telephones from requiring, through contract or some other means, that it be apprised of any changes regarding service to those telephones.

[15] The Commission notes that "XYZ Telecommunications Corporation" may brand as "XYZ" and meet our requirement for consistency between signage and branding.

[16] Accord 47 U.S.C. 226(b)(1)(F)-(G).

[17] April Report and Order, 6 FCC Rcd at 2764.

[18] Senate Report at 14.

[19] The record reflects that no LEC has challenged the assertion that answer supervision is unavailable to competitive pay telephones. The Commission notes further that some parties have taken the position that "answer supervision" contemplated by § 64.705(a) means "unbundled answer supervision." TOCSIA's legislative history, however, speaks only in terms of a "form of access that provides answer supervision," not in terms of unbundled answer supervision. See Senate Report at 14. Issues regarding the precise form or terms of answer supervision are beyond the scope of this proceeding.

[20] 47 CFR 64.705(a)(2); accord 47 U.S.C. 226(b)(1)(G).

[21] 47 CFR 64.705(a)(1); accord 47 U.S.C. 226(b)(1)(F).

[22] April Report and Order, 6 FCC Rcd at 2767.

Section 64.706 of the Commission's rules, 47 CFR 64.706, provides that upon receipt of any emergency telephone call, a provider of operator services shall immediately connect the call to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

12. Upon reconsideration, the Commission finds that, in the case of automated systems, it is not unreasonable for the OSP to satisfy the immediate routing requirement by having the consumer follow a call sequence that allows them to speak with a live operator who will process the emergency call. The Commission notes that the emergency standard it has adopted is a minimum standard that is not intended to preempt state emergency call standards.[23] The Commission will not, at this time, prescribe a set amount of time between the dialing of any sequence to initiate an emergency call and the connection of the consumer with a live operator although the Commission expects such a transfer to be completed as quickly as possible. The Commission cautions that it will further consider the need for such action if it finds that emergency calls are being unreasonably delayed because of this arrangement. The Commission reiterates that states may adopt requirements that go beyond the minimum requirements embodied in the Commission's rule.

D. Section 64.708(b) Definition of Aggregator

13. Both TOCSIA and the Commission's rule define "aggregator" as "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises, for interstate telephone calls using a provider of operator services."[24]

14. The Commission determined that "[e]ach entity that exercises control over telephone equipment, whether through ownership of the equipment, control of access to the equipment or some other means, will be responsible as an 'aggregator' under [TOCSIA] and our rules."[25] The Commission further stated that joint aggregators are equally responsible for compliance with TOCSIA and the Commission's rules.[26]

15. In the *April Report and Order*,[27] the Commission found that the appropriate balance between the interests of the pay telephone owner and the premises owner was achieved by interpreting the definition of aggregator broadly enough to ensure compliance with the goals of ensuring the availability of consumer information and consumer choice.[28] The Commission is not persuaded on reconsideration that this approach is incorrect. The Commission noted in the April Report and Order that "in some situations" a pay telephone owner and a premises owner will have joint responsibility as aggregators because of their joint access to and control over the telephone equipment.[29] This is a determination that must be made based on the facts of each situation.[30] A blanket determination regarding who the aggregator is with regard to all pay telephones would not appear to further any Commission or TOCSIA goal. The adoption of a new rule exempting LECs from aggregator status in certain situations will likewise serve no useful purpose. Accordingly, the Commission reaffirms its determination that joint aggregators are equally responsible for compliance with and equally liable for failure to comply with the requirements of TOCSIA and our rules. The Commission points out that it will not hesitate to take appropriate action under its forfeiture authority against entities violating its rules.[31]

E. Summary

16. The rules, as clarified in this Order, will help protect consumers from unfair and deceptive practices related to their use of operator services to place interstate telephone calls and ensure that consumers have the opportunity to make informed choices in making such calls.

III. Ordering Clauses

17. Accordingly, *it is ordered*, Pursuant to sections 1, 4(i), 4(j), 201–205, 226, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 226, and 405, that the petitions for reconsideration, partial reconsideration and/or clarification filed by American Public Communications Council, Bell Atlantic, HF Communications Corporation, Intellicall, Inc., National Telephone Cooperative Association, and Public Telecommunications Council in this proceeding are denied, except as provided herein.

18. *It is further ordered* That the Motion for Stay Pendente Lite filed on May 24, 1991 by Intellicall, Inc., and the Petition for Partial Temporary Waiver filed on May 23, 1991, and amended on June 17, 1991, by the Ameritech Operating Companies are dismissed; and that the Motion for Leave to File Out of Time filed on August 9, 1991 by RCI Long Distance, Inc. is denied.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-19278 Filed 8-10-92; 8:45 am]

BILLING CODE 6712-01-M

[23] See April Report and Order, 6 FCC Rcd at 2767.

[24] 47 CFR 64.708(b); accord 47 U.S.C. 226(a)(2). On February 6, 1992, the Association of College and University Telecommunications Administrators (ACUTA) along with the American Council on Education and the National Association of College and University Business Officers filed a Petition for Clarification (ACUTA Petition) regarding the status of universities as "aggregators" with respect to telephones located in dormitory rooms. This issue will not be addressed herein, but rather is being addressed separately in response to the ACUTA Petition. See Public Notice, 7 FCC Rcd 1928 (1992).

[25] April Report and Order, 6 FCC Rcd at 2751.

[26] *Id.* at 2751–2752.

[27] *Id.* at 2750–2752.

[28] *Id.* at 2751.

[29] *Id.*

[30] *Id.*

[31] See *id.* at 2762.

Proposed Rules

Federal Register
Vol. 57, No. 160
Tuesday, August 18, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T; Docket No. R-0772]

Securities Credit Transactions; Review of Regulation T, "Credit by Brokers and Dealers"

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking and request for comment.

SUMMARY: As part of a program of continually reviewing regulations, the Board proposes to amend Regulation T to recognize the current financial environment, classify new products and transactions, and clarify the reach of existing definitions. Comment is invited on all areas of Regulation T.

Regulation T was completely rewritten in 1983 after several years of review and comments. The completely revised and simplified regulation appears in general to have met the Board's statutory obligations under the Securities Exchange Act of 1934 with a greatly reduced burden. The Board has amended Regulation T several times since 1983 to increase the types of securities that can be purchased on credit and/or used as collateral in a margin account and to allow broker-dealers to help customers exercise employee stock options. In 1990 the Board adopted a series of amendments to accommodate transactions in foreign securities. The continuing introduction of new products and types of transactions and the expansion of global markets, however, creates the need for a more broadly based review. In addition, over the past several years, Board staff has issued numerous opinions concerning the provisions of Regulation T. Some of these opinions may be codified in the regulation as a result of this review. After the review of Regulation T is completed, the Board may propose related changes to its other margin regulations, Regulations G, U, and X.

DATES: Comments should be received on or before October 16, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0772, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.6 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.6.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Assistant Director, or Scott Holz, Senior Attorney (202/452/2781), Division of Banking Supervision and Regulation , Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, D.C.

SUPPLEMENTARY INFORMATION: Comment is invited on all areas of Regulation T. Some of the areas already identified for review are listed below in alphabetical order.

Arranging

In 1990, the Board adopted a number of amendments to Regulation T to accommodate transactions in foreign securities. The "arranging" provision found in § 220.13 was amended at that time to allow broker-dealers to arrange for a customer to obtain credit from a foreign lender on foreign securities without regard to the broker-dealer's ability to extend the credit itself. In adopting the amendment, the Board declined to add language suggested by some commenters to allow broker-dealers to arrange (1) short sales in foreign markets, and (2) loans of foreign securities. The Board indicated that these proposed enlargements would be addressed after some experience was gained with the amendments adopted at that time. The Securities Industry Association has recently raised the issue again. Comment is requested on the advisability of such amendments, subject to the considerations explained below.

The Board has long taken the position that an investor with a given amount of money should not be able to effect a greater amount of short selling than long buying. There is some concern about encouraging customers of U.S. broker-dealers to sell short in countries that do not have such a requirement. Also, some countries allow short sales to be effected without disclosure of the parties and without identifying whether the sale is short or long. Comments should, therefore, address the possible effect that allowing broker-dealers to arrange for foreign short sales could have on short sales in the United States.

In addition, comment is invited on the appropriateness of allowing broker-dealers to arrange for the borrowing and lending of foreign securities without regard to the limitations found in § 220.16 of Regulation T, the section which covers broker-dealers when they lend or borrow securities directly. As discussed immediately below, the Board is also inviting comment on that section. If that section is amended to allow broker-dealers greater freedom when borrowing and lending securities, an amendment to the arranging section may not be needed. Comments should address situations in which it is appropriate to allow broker-dealers to arrange transactions of this type which they cannot effect themselves.

Borrowing and Lending of Securities

Section 220.16 of Regulation T restricts the ability of broker-dealers to borrow and lend securities in two ways: (1) A loan of securities must be for a permitted purpose, i.e., to complete a short sale or failure to receive securities, and (2) a loan of securities must be at least 100 percent collateralized with specific types of collateral. Board staff is unaware of other valid purposes for borrowing and lending securities. If commenters believe other purposes should be permitted, they should identify appropriate situations.

Comment is invited on additional types of appropriate collateral. Originally, all loans of securities had to be collateralized by cash. Treasury securities were the first noncash instruments allowed as collateral for these loans. The Board expanded the list

of acceptable collateral in 1982 to include securities issued or guaranteed by United States agencies and certain bank letters of credit, certificates of deposit, and bankers acceptances. Since that time, Board staff has indicated it believes that marginable foreign sovereign debt securities should be allowed as collateral for loans of securities denominated in that foreign currency.

One of the reasons for restricting the ability of broker-dealers to borrow and lend securities is the possible evasion of the margin requirements by someone who obtains 100 percent credit on a security through characterization of the transaction as a stock loan. Permissible collateral for broker-dealers who borrow securities from their customers is also covered in Securities and Exchange Commission (SEC) Rule 15c3-3 (17 CFR 240.15c3-3), the SEC's customer protection rule. The Board intends to coordinate its approach in this area with that of the SEC as closely as possible, while taking into account the different reasons for the two rules.

As noted above in the section on arranging, it has been suggested that broker-dealers should be able to arrange for the borrowing and lending of foreign securities without regard to the purpose of the transaction or the collateral securing it. Interested commenters should identify those situations in which it would be appropriate to allow broker-dealers to arrange these transactions outside of the parameters of § 220.16 of Regulation T.

Section 220.16 as currently written clearly applies to exempted securities. Comment is invited on the need for continuing regulation of borrowing and lending of U.S. government securities in Regulation T. At least one primary dealer has argued that government securities dealers cannot easily document that their securities borrowing and lending is for a permitted purpose, although short sales and fails are the primary reasons for such transactions (see staff opinion in the Federal Reserve Regulatory Service at 5-615.19). In addition, the enactment of the Government Securities Act of 1986 has imposed new regulation in this market, raising the question of whether Regulation T requirements are still appropriate.

Borrowing by Creditors

Section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)) restricts the ability of broker-dealers to borrow using exchange-traded securities as collateral. Under this section, the only lenders to whom a broker-dealer can pledge exchange-traded securities are banks that are members of the Federal Reserve System; nonmember banks (including foreign banks with U.S. branches and agencies) that have agreed to be bound by the provisions in the Federal Reserve Act, the Banking Act of 1933, and the Securities Exchange Act of 1934 covering securities loans; and other broker-dealers as specified in Regulation T. The requirements of section 8(a) can be found in § 220.15 of Regulation T and § 221.4 of Regulation U (12 CFR 221.4). In addition, § 207.4 of Regulation G (12 CFR 207.4) mirrors the statutory limitation by prohibiting lenders who are neither banks nor broker-dealers from lending to broker-dealers on the collateral of margin stock, unless the loan is to meet emergency needs arising from exceptional circumstances.

Some broker-dealers have expressed the opinion that the statutory limitation on the types of lenders to whom they can pledge exchange-traded securities is overly restrictive and anti-competitive. The Board does not have the authority to expand the eligible types of lenders for loans that are not to meet "emergency needs." Comment is invited on whether the Board should recommend legislative changes to permit additional types of entities, such as insurance companies, to lend to broker-dealers on the collateral of exchange-traded securities.

Cash Account

Since the last revision of Regulation T in 1983, Board staff has received many inquiries concerning the ability to use a cash account for transactions not specifically authorized in § 220.8, the section governing cash accounts. Investors and some self regulatory organizations (SROs) have indicated that certain institutional customers are precluded, either under state law or corporate charter, from opening a margin account or leaving cash and securities at a broker-dealer. These customers sometimes wish to engage in a variety of transactions, generally involving options, where their risk is limited to an amount deposited in a cash account or evidenced by an escrow receipt. Situations which Board staff could not conclude were covered by the language of § 220.8 have sometimes been referred to the SEC for a possible "no-action" position (see staff opinion in the Federal Reserve Regulatory Service at 5-666.251). Comment is invited on possible revisions to the cash account provisions to accommodate transactions in which combinations of securities limit the customer's exposure and cash or securities in the account cover that exposure.

Another area in which Board staff has received numerous inquiries about the cash account concerns transactions in exempted securities. These questions generally concern net settlement of multiple transactions or repurchase/reverse repurchase agreements.

Transactions in a cash account are settled individually to prevent "free-riding," the purchase of a security by a customer who does not have the ability to pay for it followed by the sale of the same security so that the purchase can be paid for with the proceeds of its sale. In order to reduce the number and size of large-dollar wire transfers, however, Board staff has not objected to net settlement in the cash account of transactions in exempted securities for institutional customers whose business is conducted on a delivery-versus-payment basis through a depository environment.

An SRO has noted that institutions sometimes purchase U.S. government securities in a cash account and finance their purchase through a repurchase agreement. This type of transaction appears to be more appropriate for the margin account given the current language of the cash account, but some customers may be unable to use a margin account. Comment is invited on the appropriate treatment of transactions in exempted securities in a cash account. Repurchase transactions are also discussed generally in a separate section below.

Cross-Margining

Financial futures and options on financial futures are often based on the same securities index as index options traded on a national securities exchange. Although one may be a "commodity" and the other a "security," the products are related. The concept of "cross-margining" includes the recognition that positions in financial futures can be used to hedge positions in securities index options and vice versa. While most would agree that cross-margining should be encouraged, there is a statutory limitation in this area. Section 7(c) of the Securities Exchange Act of 1934 generally prohibits broker-dealers from extending credit to purchase or carry securities unless the loan is collateralized by securities in accordance with Board rules. This statutory prohibition has prevented Board staff from opining that commodities can serve as margin for related securities positions under Regulation T. In lieu of an opinion, Board staff has indicated that it does not object to the issuance of an SEC "no-action" position permitting cross-margining for specialists in certain circumstances. Comment is solicited on methods of accommodating cross-margining.

"Customer" Status of Certain Broker-Dealers

Broker-dealers who use another broker-dealer to clear and carry their proprietary trades are treated as customers of the clearing broker-dealer. It has been suggested that "customer" status for these broker-dealers is unnecessary as they are also subject to the SEC's net capital rule (17 CFR 240.15c3-1). However, this may present equitable problems if the SEC's net capital rule requires less capital for broker-dealers with no public customers than the amount of margin required for a non-broker-dealer with the same positions.

If broker-dealers continue to be treated as customers of their clearing broker-dealers for proprietary positions, should the provision in Regulation T covering joint and common back offices (§ 220.11(a)(2)) be amended? This provision allows broker-dealers who do not clear and carry their own transactions to avoid being treated as customers of their clearing firms if the non-clearing broker-dealer has an ownership interest in the clearing firm. When the Board adopted this provision, it declined to define an appropriate ratio between the non-clearing broker-dealer's interest in the clearing firm and the amount of transactions it needs cleared. However, several SROs have expressed concern that this section of Regulation T is being abused by non-clearing broker-dealers who make a minimal investment in a clearing firm. If this section of the regulation is being used by broker-dealers to avoid other provisions of Regulation T, comment is invited on how those sections can be amended to reduce the incentive to abuse the section on joint and common back offices.

Questions have also arisen on the treatment of foreign broker-dealers. Some parts of Regulation T apply to brokerdealers generally, such as the section on borrowing and lending securities (§ 220.16). Other parts apply only to broker-dealers registered with the SEC, such as omnibus accounts (§ 220.10). Should Regulation T take greater account of foreign broker-dealers? If so, how can the phrase "foreign broker-dealer" be defined? Also, should affiliated foreign broker-dealers be treated differently from non-affiliated foreign broker-dealers?

Derivative Securities

Margin requirements for securities positions are found in the Regulation T supplement, § 220.18. Margin depends on the type of security involved: margin equity security, margin debt security, exempted security, short options position, etc. Different margins are required for long purchases and short sales. Following the introduction of standardized, exchange-traded options in 1973, the Board amended Regulation T frequently to accommodate new options products and transactions. In 1985, the Board simplified its rules in this area by defining margin for the writing of options by reference to the maintenance rules of the exchange that trades the option. In the past few years, a variety of new products have been developed, such as index participations and capped options, that do not fit easily into one of the categories in the supplement. Board staff has tried to respond to inquiries on new products on an ad hoc basis. Comment is invited on possible generic approaches to categorizing the margin treatment of the continuing list of new products, especially those with characteristics of more than one type of security.

There appears to be an increasing number of transactions involving nonstandardized, over-the-counter options. The margin for these options is the amount required by the maintenance margin rules of the broker-dealer's SRO. Margin must be collected for nonstandardized options that are "issued, endorsed, or guaranteed" by the broker-dealer. Board staff has recently been asked about over-the-counter options that are not issued, endorsed, or guaranteed by a broker-dealer. The argument has been made that a broker-dealer who buys such an option from its customer is merely purchasing a security and no margin need be charged to the customer because the broker-dealer does not have a continuing obligation vis-a-vis the customer. One of the reasons broker-dealers traditionally endorse or guarantee OTC options is to make them transferable. Although OTC options that are not endorsed or guaranteed by a broker-dealer may not be transferable, there is nothing to stop a broker-dealer from writing a similar option to offset the option purchased from the customer. This is in many ways the equivalent of endorsing a customer option for sale to another investor. Comment is requested on the appropriate treatment of OTC options, whether or not endorsed or guaranteed by a broker-dealer.

Extensions of Time

Most customer purchases in a margin or cash account must be paid for within seven business days of trade date or the broker-dealer is required to cancel or otherwise liquidate the transaction. Under §§ 220.4(c)(3) and 220.8(d), a broker-dealer may obtain an extension of this time period from an SRO. One SRO has asked the SEC to approve a rule requiring broker-dealers to obtain extensions of time from their designated examining authority. Staff of the SEC is currently studying this issue and exploring the possibility of requiring the SRO that grants the extension to do compliance examinations. Others have suggested that broker-dealers should be able to grant extensions of time without approval from any SRO. There is some concern that this would allow broker-dealers to grant more favorable extensions to certain customers. In addition, the Board believes settlement and payment should occur as soon as possible. The Group of Thirty, a private sector group concerned with international financial issues, has recommended a world-wide standard of settlement on the third day after trade date. The Board may consider shortening the time for customer payment once the settlement period is shortened from the current five days. Comment is invited on the current need for changes to rules regarding extensions of time for customer payment.

Hedges, Offsets, and Cover in Lieu of Margin

Under § 220.18(c), the short sale of a nonexempted security requires a margin of 150 percent of the security's current market value. One hundred percent is met by the proceeds of the short sale and the customer must post an additional 50 percent margin. The additional 50 percent is not required if the account also holds securities "exchangeable or convertible within 90 calendar days without restriction other than the payment of money." Concerns have been raised about the equity of using a corporate warrant as a hedge for a short sale of the underlying stock because the warrant is not of comparable value to the underlying security. In addition, the continuing proliferation of derivative securities has led to the suggestion that like, but not identical, products should be recognized as hedges. Comment is invited on this area. Commenters who believe the relationship between like products should be recognized should describe how close a correlation between the

products should be required for the hedge to be recognized.

Specialists in options are permitted good faith credit in their specialty option and any "permitted offset positions" specified in § 220.12(b). However, permitted offsets are determined by the "underlying" security, defined in § 220.2(aa) as "the security that will be delivered upon exercise of an option." This precludes the use of permitted offsets for specialists in cash-settled index options, as no securities are delivered upon exercise. While this can be remedied by changing definitions, comment is invited generally on the area of permitted offsets.

Although margin for the writing of exchange-traded options is generally determined by reference to the rules of the exchange that trades the option, the Federal Reserve still determines what qualifies as cover and positions in lieu of margin for equity securities options. Section 220.5(c) of Regulation T recognizes lesser margin requirements for various option positions such as certain spreads and straddles. These combinations are treated as one position for Regulation T purposes. Board staff has received letters from investors who believe certain new or additional strategies should be recognized, especially multiple combinations of option positions. Comment is invited on improvements and simplifications in this area.

Repurchase and Reverse Repurchase Agreements (See Also Cash Account Above)

It is generally recognized that while repurchase (repo) and reverse repurchase agreements involve the purchase and sale of a security, the transactions can be used as a financing tool. The Board has not specified the exact treatment of these agreements for purposes of Regulation T. Because U.S. government securities are entitled to good faith loan value and are often valued at very close to 100 percent of their current market value, the repo of such a security does not present problems under Regulation T from a credit standpoint. On the other hand, the repo of a margin equity security at greater than 50 percent would be a violation of the margin regulations. Corporate debt securities fall somewhere in between U.S. government securities and corporate equities. Most corporate debt securities are entitled to good faith loan value. However, the combination of credit risk and the maintenance rules of the SROs means that such securities are not generally given as high a loan value as U.S. government securities. Comment is invited on how repurchase agreements can be defined to identify those transactions that may be effected without restriction under the margin regulations. Additional comment is sought concerning which accounts may be used to effect such transactions.

Two-Tiered Market

One of the issues often discussed in the past few years is the ability of so-called sophisticated investors to operate with lesser regulation than so-called average investors. In the margin area, the Board took note of sophisticated investors when it amended, in 1975, the general prohibition on broker-dealers arranging for credit they cannot themselves extend to allow broker-dealers to arrange for credit in private placements. The Board's rationale was that the SEC and the courts have recognized that private placements are made to limited, sophisticated group of persons who will not be lured into the transaction by the availability of credit. At the SRO level, the New York Stock Exchange has established special accounts with less regulation for large institutions. Comment is invited on the desirability of adopting less restrictive rules to apply to specified customers who are sophisticated investors. Comments must necessarily address how such customers can be identified and which restrictions can be eliminated.

When-Distributed Securities

Purchases in the cash account must generally be paid for within seven business days from trade date. A 1943 amendment to Regulation T recognized an exception for "when-distributed" securities. These securities were usually issued by public utility companies undergoing reorganizations. The amendment allows customers a maximum of seven business days from the date when the "when-distributed" security is made available, rather than seven business days from trade date.

In the 1980s, the cash account provision on "whendistributed" securities (§ 220.8(b)(1)(i)(C)) was used in connection with privatizations in the United Kingdom done on an installment basis. While publicly-traded stock is not sold on an installment basis in this country, large issues in the U.K. have used this method. Characterizing these securities as not being distributed until final payment is made therefor allowed U.S. broker-dealers to participate in the offering without being viewed as arranging for impermissible credit in a new issue. Board staff indicated that it would not object to the use of the "when-distributed" exception as an accommodation to a foreign government privatizing its state-owned companies. Questions have recently been raised about the ability of foreign private issuers to use the "when-distributed" language in Regulation T. Comment is invited on this area, including possible amendments that would recognize foreign sovereign and possibly private installment sale offerings without relying on the "when-distributed" exception.

By order of the Board of Governors of the Federal Reserve System, August 13, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-19640 Filed 8-17-92; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 552 and 563

[No. 92-137]

RIN 1550-AA47

Regulations for Federal Savings Associations; Incorporation, Organization, and Conversion of Federal Stock Associations; Combinations Involving Federal Stock Associations; Conversions to Federal Stock Associations; Regulations Applicable to All Savings Associations; Operations; Merger, Consolidation, Purchase or Sale of Assets, or Assumption of Liabilities.

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Proposed rule with request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its regulations governing mergers and combinations involving Federal stock savings associations to implement sections 501 and 502 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).[1] In general, the FDICIA amendments to the insurance conversion provisions of the Federal Deposit Insurance Act (FDIA) [2] and to the Savings and Loan Holding Company Act provisions of the Home Owners' Loan Act (HOLA) [3] ease previous restrictions on conversion transactions to permit all insured depository institutions to merge, assume each other's deposits, and transfer assets to each other in exchange for assuming deposit liabilities, provided the applicable Federal banking agency (AFBA) approved the transaction and the resulting institution continues to pay proportionate assessments to the Appropriate Federal deposit insurance fund. The OTS is amending its regulations to effect these changes.

This proposal would amend the OTS's current regulations governing mergers and other combinations involving Federal savings associations to allow Federal savings associations to convert directly to state and national banks, and to permit any insured depository institution that qualified for Federal Home Loan Bank membership and otherwise meets the requirements of a federal thrift charter to convert to a Federal savings association charter, as long as the transaction is approved by the AFBA of the resulting depository institution. In addition, the proposal would amend the OTS's regulations governing mergers and merger application procedures to specify the types of transactions that would require either prior notice or application to the OTS and the time frames governing review of these filings. Finally, the proposal would further clarify, streamline and consolidate OTS regulations by incorporating the OTS's merger and transfer of assets policy statement into the merger regulation.

DATES: Comments must be received on or before September 17, 1992.

ADDRESSES: Send comments to: Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. [92-137]. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent via facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 4 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for public inspection at 1776 G Street, NW., street level.

FOR FURTHER INFORMATION CONTACT: Michael P. Vallely, Senior Attorney, Corporate and Securities Division, (202) 906-6241; Therese L. Monahan, Project Manager, Supervisory Programs, (202) 906-5740; or Gary Masters, Financial Analyst, Corporate Activities Division, (202) 906-6729; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Financial Institutions Reform, Recovery, and Enforcement Act of 1989

Section 5(d) of the FDIA, in effect since the enactment of the Financial institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA),[4] contains a series of provisions that restrict so-called "conversion transactions" whereby an insured depository institution switches insurance funs or combines with or transfers deposits to a depository institution insured by a different fund.[5] This provision generally prohibits any SAIF-insured savings association from engaging in any conversion transaction until August 8, 1994.[6]

Until enactment of the FDICIA, exceptions to the five-year moratorium were available in four situations only: (1) Transfers of deposits between institutions that involved an amount defined to be an insubstantial portion of the total deposits of each participating depository institution; (2) certain conversion transactions involving the acquisition of a SAIF or BIF member in default or in danger of default; (3) combinations of SAIF-insured savings associations and BIF-insured bank subsidiaries of holding companies under the so-called "Oakar amendment" to the FDIA;[7] and (4) conversions by a SAIF-insured savings association to a bank charter, provided the resulting bank remains a SAIF member, under the so-called "Sasser amendment" to the FDIA.[8]

B. The FDICIA Amendments to the FDIA and the HOLA

New section 5(d)(3) of the FDIA eases the general conversion prohibition to permit mergers, consolidations and transfer of asset and assumption of liability transactions between SAIF and BIF insured institutions, provided that certain conditions are met and that proportionate insurance premiums are paid to both the SAIF and the BIF funds after the transaction.[9]

Specifically, the FDICIA expands the FIRREA's "Oakar" exception to eliminate the requirement that the combining bank and thrift be under the common control of a bank holding company, and to eliminate relative asset size requirements for the institutions involved. The FDICIA requires prior OTS approval of combinations between savings associations and other types of insured depository institutions where the acquiring, assuming, or resulting institution is a savings association. The OTS is required to review such transactions under the standards of section 18(c) of the FDIA (the Bank Merger Act (BMA)) [10] and must determine that the resulting savings association and any holding company thereof meet applicable capital requirements upon consummation.[11] The savings association resulting from the transaction must continue to pay proportionate assessments to the BIF and SAIF insurance funds based on the deposits of the acquiring institutions and the acquired deposits.[12]

In conjunction with this expansion of the "Oakar" provision, the FDICIA also gives Federally-chartered savings associations specific authority to undertake mergers, consolidations and transfer of asset and assumption of liability transactions with banks and other insured depository institutions, consistent with new section 5(d)(3) of the FDIA. Specifically, new section 10(t) of the HOLA provides that, subject to certain laws, any Federal savings association may acquire or be acquired by any insured depository institution.[13] The term "acquire" is defined to mean to acquire, directly or indirectly, ownership or control through a merger or consolidation or an acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.[14]

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[1] Pub. L. No. 102-242, 105 Stat. 2236, 2388.

[2] Title V. section 501 of the FDICIA, amending section 5(d)(3) of the FDIA, 12 U.S.C. 1815(d)(3).

[3] Title V. Section 501 of the FDICIA, adding subsection (t) to section 10 of the HOLA, to be codified at 12 U.S.C. 1467a(t).

[4] Pub. L. 101-73, 103 Stat. 183 (1989).

[5] A conversion transaction" is broadly defined to include (1) a change in status from a Savings Association Insurance Fund ("SAIF") member to a Bank Insurance Fund ("BIF") member; (2) the merger or consolidation of a SAIF member with a BIF member; (3) the assumption of any liability by a BIF member to pay any deposits of a SAIF member; and (4) the transfer of assets by a SAIF member to a BIF member in consideration of the BIF member's assumption of any portion of the SAIF member's deposit liabilities. Conversion transactions are also defined to include BIF-to-SAIF insurance conversions and deposit transfers. See 12 U.S.C. 1815(d)(2)(B).

[6] 12 U.S.C. 1815(d)(2)(A)(ii).

[7] 12 U.S.C. 1815(d)93) (1988 & Supp. 1991).

[8] 12 U.S.C. 1815(d)(2)(G).

[9] See sections 5(d)(3)(B), (C), (D), (E) and (F) of the FDIA, to be codified at 12 U.S.C. 1815(d)93)(B), (C), (D), (E) and (F).

[10] 12 U.S.C. 1828(c)(2).

[11] Section 5(d)(3)(E)(iv) of the FDIA, to be codified at 12 U.S.C. 1815(d)(3)(E)(iv).

[12] Sections 5(d)(3)(B), (C) and (D) of the FDIA, to be codified at 12 U.S.C. 1815(d)(3)(B), (C) and (D).

[13] Section 10(t)(1) of the HOLA, to be codified at 12 U.S.C. 1467a(t)(1).

[14] Section 10(t)(3) of the HOLA, to be codified at 12 U.S.C. 1467a(t)(3).

New section 10(t) of the HOLA mandates that any application by a savings association to acquire or be acquired by another insured depository institution shall be approved or disapproved in writing by the Director before the end of the 60-day period beginning on the date such application is filed with the agency.[15] This period can be extended for an additional 30-day period if the Director determines that an applicant has not furnished all the necessary information or the information furnished is substantially inaccurate or incomplete.[16]

II. Proposed Amendments

A. Expansion of Permissible Combinations for Federal Associations

The proposed regulation would revise § 552.13(c) [17] to permit Federal stock savings associations to "acquire" or "be acquired by" any insured depository institution, upon compliance with appropriate application or notice requirements, described in Section 11.C. below. In addition, the proposed regulation would add definitions for the terms "acquire" and "insured depository institution" to implement the new provisions of the HOLA and the FDIA.[18]

B. Charter Conversions by and to Federal Associations

The proposal adds a new § 552.2–7 to the Federal stock association regulations that specifically permits Federal stock savings associations to convert to state or national banks. Applications under new § 552.2–7 would be subject to the requirements of the OT's merger and transfer of assets regulation at § 563.22,[19] and would be processed in accordance with the expedited process established by new paragraph (h)(1) of that regulation. Applications would be in the form of a notice described in Section II.C. below.

In addition, the proposal amends § 552.2–6 of the regulations [20] to permit any stock-form insured depository institutions that is, or is eligible to become, a member of a Federal Home Loan Bank and other requirements of a Federal savings association charter, to convert to a Federal stock charter, provided such conversion was permissible under Federal or state law governing conversion by the institution. This change would provide financial institutions with a reciprocal chartering option, thereby further enhancing the ability of a bank or thrift to operate pursuant to whatever charter it chooses. Applications filed under revised § 552.2–6 would need to comply with § 552.2–1 and other sections in part 552 regarding establishment of a Federal thrift charter.

C. Application Processing

As noted, the FDICIA requires prior OTS approval of combinations between savings associations and other types of insured depository institutions where the acquiring, assuming, or resulting institution is a savings association. In such transactions, the OTS will require an application under the merger regulations.[21] The OTS will continue to process and review such applications under the current procedures and review standards for transactions requiring OTS approval under the BMA.

Under current regulations, any savings association that proposes to transfer deposit liabilities to a bank in an Oakar transaction, or convert to a bank in a Sasser conversion, is required to file a transfer of assets application with the OTS.[22] The OTS continues to believe that an application process requiring prior written approval is necessary in certain situations, discussed below. However, with respect to Sasser transactions, and Oakar transactions in which no savings association survives, the OTS's experience has indicated that a notice requirement would be sufficient. In such transactions, the OTS believes an application is unnecessary because the Federal banking regulator of the surviving institution will perform a detailed review under applicable laws and regulations. A notice to the OTS will enable the agency, among other things, to identify any pending or potential supervisory concerns or enforcement actions involving the savings associations that are parties to the transaction, and advise the future bank regulatory agency regarding these concerns.

The OTS believes that a notice procedure also would be appropriate for transactions in which less than all or substantially all of a savings association's deposit liabilities are transferred to a bank, and for purchases of assets by a savings association or sales of less than all or substantially all of the assets of an association (*i.e.*, "bulk sales and transfers not in the ordinary course of business"),[23] that are not subject to OTS approval under the BMA, provided that the association is well capitalized and otherwise qualifies for "expedited treatment" under the OTS's Applications Restructuring regulation at part 516.[24] Accordingly, the OTS proposes to establish notice and application procedures, as set forth below.

1. New Filing Requirements and Processing Time Frames

Under the proposal, a new paragraph (h) has been added to the merger regulations at § 563.22 setting forth special procedures applicable to: (1) Charter conversions under new § 522.2–7 of the regulations; (2) Oakar transactions under section 5(d)(3) of the FDIA; and (3) purchases of assets by a savings association that do not require OTS approval under the BMA, or bulk sales of less than all or substantially all of the assets of an association.

a. Transactions with no surviving savings association. Section 563.22(h)(1) of the proposal requires a notice to be submitted to the OTS for thrift-to-bank charter conversions and Oakar transactions where no savings association will survive consummation of the transaction. The notice would be in the form of either a letter describing material information regarding the transaction or a copy of a filing made with the regulatory agency of the resulting institution that must approve the transaction. These notices must be filed at the same time the application is filed with the regulatory agency of the resulting agency to give the OTS the opportunity to identify any pending or potential supervisory concerns or enforcement actions involving the savings associations that are parties to the transaction and alert the regulatory authority of the resulting institution regarding any supervisory concerns over the disappearing savings association or associations.

b. Transactions where a savings association survives. Section 563.22(h)(2) of the proposal establishes an "expedited notice" or "standard application" requirement, depending on the health of the savings associations involved, for three categories of transactions in which one or more savings associations would survive the transaction: (1) Purchases of assets by a savings association that do not require

[15] Section 10(t)(2)(A) of the HOLA, to be codified at 12 U.S.C. 1467a(t)(2)(A). This provision applies to any application required to be filed with the OTS under section 5(d)(3) of the FDIA.

[16] Section 10(t)(2)(B) of the HOLA, to be codified at 12 U.S.C. 1467a(t)(2)(B).

[17] 12 CFR 552.13(c).

[18] Section 10(t)(3) of the HOLA, to be codified at 12 U.S.C. 1467a(t)(3); section 3(c)(2) of the FDIA, 12 U.S.C. 1813(c)(2).

[19] 12 CFR 563.22.

[20] 12 CFR 552.2–6.

[21] 12 CFR 563.22(a), (c), (d), (e) and 571.5.

[22] 12 CFR 563.22(b).

[23] 12 CFR 571.5(a). Applications to engage in these transfer transactions are currently required under 12 CFR 563.22(b).

[24] *See* 57 FR 14329 (April 20, 1992).

OTS approval under the BMA; (2) bulk sales of less than all or substantially all of the assets of an association; and (3) Oakar transactions under section 5(d)(3) of the FDIA in which a savings association transfers less than all or substantially all of its deposit liabilities to a bank, a so-called "Oakar branch sale."

Under proposed § 563.22(h)(2)(i), an expedited notice procedure is available for all three categories of transactions where all constituent savings associations meet the conditions for "expedited treatment" under § 516.3(a).[25] Notices under this provision of the proposal would be deemed approved automatically 30 days after receipt, unless the OTS determines that an application is required.

Under proposed § 563.22(h)(2)(ii) and 563.22(h)(2)(iii), a standard application procedure must be followed where any constituent savings association does not meet the criteria for "expedited treatment" under § 516.3(a), or where a notice filed under § 563.22(h)(2)(i) is incomplete or otherwise does not satisfy the notice requirements. These applications will be subject to the review periods set forth in part 516, with certain exceptions. As with other applications, the OTS is required to notify an applicant under proposed § 563.22(h)(2)(iii) within 30 calendar days after proper submission of an application whether it is "sufficient" or "complete," and what additional information is required, if any, in order to render the submission sufficient, or that the submission is materially deficient and will not be processed.[26] In addition, the 60-day period for review for an application under this provision of the proposal commences on the date the OTS determines the application to be sufficient.[27]

Under part 516, the OTS may extend the application review period for an additional 30-day period upon notice to the applicant,[28] and also permits the OTS to extend the review period in cases involving a significant issue of law or policy [29] or where a protest has been filed under the Community Reinvestment Act ("CRA").[30] However, § 563.22(h)(2)(iii) of this proposal specifically provides that the 60-day review period for an application may be extended only if the OTS determines that the applicant has failed to furnish information requested by the OTS, or if the information furnished is substantially inaccurate.

The OTS solicits comment on the proposed processing procedures and time frames, including whether applications under proposed § 563.22(h)(2)(iii) should be deemed "filed" for purposes of the new section 10(t)(2) of the HOLA when deemed complete under § 516.2. In addition, comments are requested on whether the OTS should suspend the proposed processing time frames for applications challenged on CRA grounds.

2. Review Standards

The OTS policy statement on mergers and transfers of assets currently set forth, among other things, the review standards for mergers and combinations among savings associations and between savings associations and banks under the Oakar and Sasser provisions of the FDIA.[31] The OTS intends to continue to apply the standards currently set forth in §§ 571.5(b) through (j) of the merger policy statement to transactions requiring OTS approval under the BMA and to Oakar transactions where a savings association survives. To streamline applicable regulations, the OTS proposes to amend § 563.22 to incorporate these standards, and to eliminate § 571.5.

The OTS requests comments on the standards that should be used to review these transactions. More specifically, comments are requested on whether any of the standards in current section § 571.5 should be streamlined, clarified or otherwise modified or deleted in connection with their incorporation into § 563.22.

D. Mandatory Federal Home Loan Bank Membership for Converting Savings Associations

Federal Home Loan Bank (FHLBank) membership is statutorily required of Federal savings associations [32] and has been required of state-chartered associations as a condition of deposit insurance.[33] In addition, since enactment of the FIRREA, the OTS has required resulting institutions in thrift-to-bank charter conversions and Oakar transactions to continue participation in the FHLBank system in accordance with the requirements of the Federal Housing Finance Board.

On March 12, 1992, the OTS proposed amending its regulations regarding operations of all savings associations to add a provision requiring all savings associations to obtain and maintain FHLBank membership.[34] In proposing the mandatory FHLBank membership rule, the OTS emphasized that membership in the FHLBank system contributes to the safety and soundness of both the thrift industry as a whole and individual savings associations.[35] Among other benefits of FHLBank membership noted by the OTS, the FHLBank system provides savings associations with a potential source of borrowings to use as a tool to manage their interest rate risk effectively and to meet their liquidity requirements.[36]

The OTS solicits comment on whether the OTS should continue to require FHLBank membership of resulting institutions in the context of thrift-to-bank mergers and charter conversions not resulting in one or more savings associations, and if such converting thrifts are not required to remain FHLBank members, the manner in which they should contribute to Resolution Funding Corporation interest financing. In addition, comment is solicited on the manner in which any such requirement would be imposed in connection with the notice requirement of proposed § 563.22(h)(1).

E. Issues Regarding Mutual Savings Associations

The current regulations generally provide that merger transactions involving Federal mutual savings associations must result in a mutual form of association, unless the mutual institution converts to a stock association as part of the transaction.[37] The proposal would not amend these regulations. Accordingly, a mutual savings association would still not be permitted to merge with a stock thrift or bank except in conjunction with a mutual-to-stock conversion process. The OTS solicits comment as to whether the mutual savings associations should be

[25] To be codified at 12 CFR 516.3(a).

[26] To be codified at 12 CFR 516.2(c).

[27] To be codified at 12 CFR 516.2(d).

[28] To be codified at 12 CFR 516.2(e).

[29] To be codified at 12 CFR 516.2(f).

[30] To be codified at 12 CFR 516.2(c)(6). Under this provision, the automatic approval time frames in part 516 may be temporarily suspended in the case of an application protested on CRA grounds until a record sufficient to support a determination on the protest is developed.

[31] See 12 CFR 563.22(c)(1), cross-referencing the OTS' policy statement on mergers and transfers of assets, 12 CFR 571.5.

[32] See section 5(f) of the HOLA, 12 U.S.C. 1464(f).

[33] FHLBank membership was required by order of the Federal Home Loan Bank Board ("Bank Board") as a condition of insurance of accounts, pursuant to the Bank Board's general authority to ensure the safe and sound operation and regulation of savings associations. The Director of the OTS has been conferred the same authority under the HOLA. See 12 U.S.C. 1462a and 1463.

[34] 57 FR 8732 (March 12, 1992).

[35] 57 FR at 8733.

[36] *Id.*

[37] 12 CFR 552.13(c)(1).

permitted to merge with banks or other institutions otherwise than in conjunction with a mutual-to-stock conversion, and if permitted what safeguards should be established with respect to these transactions.[38]

F. Technical Amendments

Sections 552.13(b)(1) through 552.13(b)(11) have been renumbered §§ 552.13(b)(1) through 552.13(b)(13) to accommodate the addition of new definitions for "acquire" and "insured depository institution," in proper alphabetical order. In addition, the definition of "merger" at renumbered § 552.13(b)(9), and "resulting association" at renumbered § 552.13(b)(11), have been amended to substitute "depository institution" for "association," in order to the broaden the definitions' application to transactions permitted under new § 552.13(c).

Under the proposal, paragraph (d) of § 552.13 and paragraphs (b) and (e) of § 563.22 regarding application requirements and approval standards for mergers and other combinations have been amended to cross-reference the requirements and procedures set forth in proposed paragraph (h) of § 563.22. In addition, paragraph (a) of § 563.22 regarding applications under the Bank Merger Act has been amended to clarify that paragraph (a)(1) is applicable only in situations in which the acquiring or resulting institution is a savings association.

G. Regulatory Streamlining

To streamline and consolidate the regulations governing combinations of savings associations, the OTS proposes to incorporate the provisions of the policy statement on mergers and transfers of assets into the regulation that implements the BMA and requires prior approval of transfer transactions. As previously noted, the OTS is also proposing to incorporate the approval standards, definitional provisions and other provisions of the merger policy statement into § 563.22. Although the OTS is proposing this revision to its regulations, the proposed regulatory text set forth below does not incorporate this aspect of the proposal. Commenters should refer to § 571.5 for the text of the provisions proposed to be incorporated into revised § 563.22.

[38] For example, if mutual thrifts were permitted to merge with banks or other institutions without first converting to stock form, should such transactions be treated as a liquidation of the mutual institution with the attendant protections accorded to account holders? See 12 CFR 563b.3(f).

Solicitation of Comments

The OTS requests public comment on all aspects of the proposals set forth herein. To facilitate processing of comments, the OTS requests that any comments clearly reference the Resolution Number of this proposal. The OTS has determined that a thirty (30)-day public comment period is appropriate because prompt action is mandated by the FDICIA and is in the public interest.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities. Accordingly, an initial Regulatory Flexibility Analysis is not required.

Executive Order 12291

The OTS has determined that this proposed regulation does not constitute a "major rule" for purposes of Executive Order 12291. Therefore, preparation of a preliminary Regulatory Impact Analysis is not required.

List of Subjects

12 CFR Part 552

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Flood insurance, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Accordingly, the Director of the OTS hereby proposes to amend parts 552 and 563, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER C—REGULATIONS FOR FEDERAL SAVINGS ASSOCIATIONS

PART 552—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL STOCK ASSOCIATIONS

1. The authority citation for part 552 continues to read as follows:

Authority: Sec 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a).

2. Section 552.2–6 is revised to read as follows:

§ 552.2–6 Conversion from stock insured depository institution to Federal stock association.

With the approval of the Office, any stock depository institution, the deposits of which are insured by the Federal Deposit Insurance Corporation and which is, or is eligible to become, a member of a Federal Home Loan Bank and otherwise qualifies for a federal savings association charter, may convert into a Federal stock association.

3. Section 552 is amended by adding a new § 552.2–7 to read as follows:

§ 552.2–7 Conversion to National banking association or State bank.

A Federal stock savings association may convert to a National banking association or a State bank after giving notice to the Office in accordance with § 563.22(h) of subchapter D of this chapter.

4. Section 552.13 is amended by revising paragraphs (b) through (d) to read as follows:

§ 552.13 Combinations involving Federal stock associations.

* * * * *

(b) *Definitions.* The following definitions apply to §§ 552.13 and 552.14 of this part:

(1) *Acquire.* For purposes of paragraph (c)(4) of this section, "acquire" means to acquire, directly or indirectly, ownership or control through a merger or consolidation or acquisition of assets or assumption of liabilities, provided that following such merger, consolidation, or acquisition, an acquiring insured depository institution may not own the shares of the acquired insured depository institution.

(2) *Association.* "Association" has the same meaning as the term "savings association," as defined in § 561.43 of subchapter D of this chapter.

(3) *Bulk purchase of assets.* A transfer of all or substantially all the assets and may include the assumption of all or substantially all the liabilities of an association or a depository institution to or from a Federal stock association.

(4) *Consolidation.* Fusion of two or more associations into a newly-created association having the combined powers and rights of all its constituents.

(5) *Constituent association.* Resulting or disappearing association.

(6) *Depository institution.* Any commercial bank (including a private bank), a savings bank, a trust company, a savings and loan association, a building and loan association, a homestead association, a cooperative bank, an industrial bank or a credit union, chartered in the United States and having its principal office located in the United States.

(7) *Disappearing association.* An association whose corporate existence does not continue after a merger or consolidation effected under this section.

(8) *Insured depository institution.* Any depository institution the deposits of which are insured by the Federal Deposit Insurance Corporation.

(9) *Merger.* Uniting two or more depository institutions by the transfer of all property rights and franchises to the resulting depository institution, which retains its corporate identity.

(10) *Mutal association.* Any association organized in a form not requiring non-withdrawable stock under Federal or State law.

(11) *Resulting institution.* Any depository institution whose corporate existence continues after a merger, or the depository institution resulting from a consolidation of two or more depository institutions.

(12) *State.* Includes the District of Columbia, Commonwealth of Puerto Rico, and States, territories, and possessions of the United States.

(13) *Stock association.* Any association organized in a form requiring non-withdrawable stock.

(c) *Forms of combination.* (1) A Federal stock association may require or be acquired by any insured depository institution, provided that:

(i) The acquisition is in compliance with, and receives all applicable approvals required under, sections 5(d)(3) and 18(c) of the Federal Deposit Insurance Act;

(ii) If any constituent savings association is a mutual association, the resulting institution shall be mutually held, unless:

(A) The transaction involves a supervisory merger;

(B) The transaction is approved under part 563b of subchapter D of this chapter; or

(C) The transaction involves an interim stock Federal savings association or an interim stock State association.

(2) A Federal stock association may make bulk purchases of assets and/or assumptions of deposit liabilities, provided that:

(i) The resulting association meets the requirements for Federal Home Loan Bank membership and insurance of accounts;

(ii) The resulting association conforms with the time prescribed by the Director, or his delegate, to the requirements of section 5(c) of the Home Owners' Loan Act; and

(iii) The selling or transferring institution is not a mutual association, except in the context of a mutual holding company reorganization under section 10(o) of the Home Owners' Loan Act.

(d) *Office approval.* Prior written approval of the Office is required for every combination, except as provided in § 563.22(h) of subchapter D of this chapter. In determining whether to confer to such approval, the Office shall apply the criteria set out in § 563.22 of subchapter D of this chapter and shall impose any conditions it deems necessary or appropriate to ensure compliance with those criteria and the requirements of this chapter. Prior written approval of the Federal Deposit Insurance Corporation is required for every combination involving both a Federal association insured by the Federal Deposit Insurance Corporation and an association not insured by such corporation.

* * * * *

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 563—OPERATIONS

5. The authority citation for part 563 continues to read as follows:

Authority: Sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 11, as added by sec. 301, 103 Stat. 342 (12 U.S.C. 1468); sec. 18, 64 Stat. 891, as amended by sec. 321, 103 Stat. 267 (12 U.S.C. 1828); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); sec. 202, 87 Stat. 982, as amended (42 U.S.C. 4106).

6. Section 563.22 is amended by revising paragraphs (a) and (b), by revising the introductory text of paragraph (e)(1), and by adding a new paragraph (h) to read as follows:

§ 563.22 Merger, consolidation, purchase or sale of assets, or assumption of liabilities.

(a) No savings association may, without application to and approval by the Office:

(1) Merge or consolidate with any insured depository institution, if the acquiring or resulting institution is to be a savings association; or

(2) Directly or indirectly acquire the assets of, or assume liability to pay any deposit made in, any insured depository institution.

(b) No savings association may convert to a national or state bank, merge or consolidate with another insured depository institution where the savings association is not the resulting institution, or make any other transfer, as defined in § 571.5 of this subchapter (excluding transfers subject to paragraph (a) of this section), without application to and approval by the Office, except as provided in paragraph (h) of this section.

* * * * *

(e) *Automatic approvals by the Office.* (1) Applications filed pursuant to paragraphs (a) and (b) of this section, not involving a transaction subject to paragraph (h) of this section, shall be deemed to be approved automatically by the Office 30 calendar days after the Office sends written notice to the applicant that the application is complete, unless:

* * * * *

(h) *Special requirements and procedures for certain transactions*—(1) *Transactions with no surviving savings association.* A notice must be submitted to the Office for any transaction under paragraph (b) of this section or § 552.2–7 of subchapter C of this chapter in which no savings association survives the transaction. Notices must be submitted at the same time the application is filed with the regulatory agency of the resulting institution, and may be in the form of either a letter describing the material features of the transaction or a copy of a filing made with another Federal or state regulatory agency seeking approval from that agency for the transaction under the Bank Merger Act or other applicable statute.

(2) *Transactions in which one or more savings associations survive*—(i) *Expedited treatment.* A notice in conformity with § 516.3(a)(2) of subchapter A of this chapter may be submitted to the Office for any transaction under paragraph (b) of this section in which one or more savings associations survive, provided all constituent savings associations meet the conditions for expedited treatment under § 516.3(a) of subchapter A of this chapter. Notices submitted under this paragraph shall be deemed approved automatically by the Office 30 calendar days after receipt, unless the Office advises the applicant in writing prior to the expiration of such period that the proposed transaction may not be consummated without the Office's approval of an application under paragraph (h)(2)(ii) or (2)(iii) of this section.

(ii) *Standard treatment.* An application in conformity with § 516.3(b)(2) of subchapter A of this chapter and paragraph (c)(2) of this section must be submitted to and

approved by the Office for any transaction under paragraph (b) of this section in which one or more savings associations survive, where any constituent savings association does not meet the conditions for expedited treatment under § 516.3(a) of subchapter A of this chapter, except as provided in paragraph (h)(2)(iii) of this section. Applications under this paragraph shall be processed in accordance with the time frames set forth in § 516.2 of subchapter A of this chapter.

(iii) *Standard treatment for transactions under section 5(d)(3) of the Federal Deposit Insurance Act.* An application in conformity with § 516.3(b)(2) of subchapter A of this chapter must be submitted to and approved by the Office for any transaction under section 5(d)(3) of the Federal Deposit Insurance Act. (12 U.S.C. 1815(d)(3)) and paragraph (b) of his section in which one or more savings associations survive, where any constituent savings association does not meet the conditions for expedited treatment under § 516.3(a) of subchapter A of this chapter. However, the period for review may be extended only if the Office determines that the applicant has failed to furnish all requested information or that the information submitted is substantially inaccurate.

Dated: March 27, 1992.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Deputy Director for Washington, Operations.

[FR Doc. 92-19366 Filed 8-17-92; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-37-AD]

Airworthiness Directives; Piper Aircraft Corporation PA-32R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Piper Aircraft Corporation (Piper) PA-32R series airplanes. The proposed action would require inspection, possible repair, and modification of the airframe and engine mount supporting structure. The Federal Aviation Administration (FAA) has received several reports of cracks developing in the engine mount cluster welds near the upper nose gear drag brace bushings on the affected airplanes. The actions specified by the proposed AD are intended to prevent separation of the engine from the airplane because of a cracked engine mount structure.

DATES: Comments must be received on or before November 6, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-37-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Perry, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; Telephone (404) 991-2910; Facsimile (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-37-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-37-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of cracks developing in the engine mount cluster welds near the upper nose gear drag brace bushings on certain Piper PA-32R series airplanes. Further investigation reveals that some of the referenced in-service airplanes may have been assembled with an improperly secured nose gear actuator attachment bracket. If not detected and corrected, cracking of the engine mount structure could result in separation of the engine from the airplane.

Piper has issued Service Bulletin (SB) No. 955, dated March 3, 1992, which specifies procedures for (1) inspecting the engine mount for cracks and repairing any cracks; and (2) inspecting and reinforcing the nose gear actuator attachment bracket. This service bulletin also references instructions contained in Engine Mount Drag Link Installation Kit, Piper Part No. 766-252 (for turbocharged models); and Engine Mount Drag Link Installation Kit, Piper Part No. 766-253 (for normally aspirated models).

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent separation of the engine from the airplane because of a cracked engine mount structure.

Since the condition described is likely to exist or develop in other Piper PA-32R series airplanes of the same type design, the proposed AD would require (1) an inspection of the engine mount structure for cracks, and repair of any cracked structure; (2) modification of the airframe structure to strengthen the landing gear and engine mount attach areas; and (3) an inspection and possible reinforcement of the nose gear actuator attachment bracket. The proposed actions would be accomplished in accordance with Piper SB No. 955, dated March 3, 1992, and the instructions to the referenced installation kits.

The FAA estimates that 1,968 normally aspirated airplanes and 803 turbocharged airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 15 workhours per normally aspirated airplane and 30 workhours per turbocharged airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $295 per normally aspirated airplane and $330 per turbocharged airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,794,100 ($2,204,160 for normally aspirated airplanes plus $1,589,940 for turbocharged airplanes).

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES".**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation Docket No. 92-CE-37-AD.

Applicability: The following model and serial number airplanes, certificated in any category:

Model	Serial Nos.	
PA-32R-300	32R-7680001 through 32R-7880068.	
PA-32RT-300	32R-7885001 through 32R-7985105.	
PA-32RT-300T	32R-7887001 through 32R-7987126.	
PA-32R-301	32R-8013001 through 32R-8613005 and 3213001 through 3213037.	
PA-32R-301T	32R-8629001 through 32R-8629006 and 3229001 through 3229003.	

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

Note 1: The compliance times referenced in this AD take precedence over those cited in the referenced service information.

To prevent separation of the engine from the airplane because of a cracked engine mount structure, accomplish the following:

(a) Inspect the engine mount as specified in and in accordance with the INSTRUCTIONS: PART I section of Piper Service Bulletin (SB) No. 955, dated March 3, 1992. Prior to further flight, repair any cracks in accordance with Piper SB No. 955.

(b) Modify the airframe structure and strengthen the landing gear and engine mount attach areas in accordance with the instructions contained in either Engine Mount Drag Link Installation Kit, Piper Part No. 766-252 (for turbocharged models); or Engine Mount Drag Link Installation Kit, Piper Part No. 766-253 (for normally aspirated models). These kits are referenced in Piper SB No. 955, dated March 3, 1992.

(c) Inspect the nose gear actuator attachment bracket for correct rivet dimensions in accordance with the INSTRUCTIONS: PART III section of Piper SB No. 955, dated March 3, 1992. If any rivets are found that are not of the dimensions referenced in Piper SB No. 955, prior to further flight, reinforce the nose gear actuator attachment bracket in accordance with the referenced service information.

(d) If the parts that are required to accomplish the modification specified in paragraph (b) of this AD have been ordered, but are not available from the manufacturer, reinspect the engine mount as required by paragraph (a) of this AD at intervals not to exceed 100 hours TIS until parts become available.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 12, 1992.

Dwight A. Young,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19592 Filed 8-17-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 207, 213, 220, 221, 231, 232, 234, 242, and 244

[Docket No. R-92-1534; FR-2892-P-01]

RIN 2502-AF14

Expansion of Operating Loss Loan Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to implement section 427 of the Housing and Community Development Act of 1987. That section expands the coverage of insured operating loss loans in connection with HUD insured multifamily projects to include operating losses (and certain mortgagor cash contributions) for any consecutive 24-month period within the first 10 years after the date of completion of the project. Before the enactment of section 427, operating loss loans were limited to losses incurred during the first 24 months of operation of the project.

DATES: Comment Due Date: October 19, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Linda D. Cheatham, Acting Director, Office of Insured Multifamily Housing Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3000. A telecommunications device for deaf persons (TDD) is available at (202) 708–4594. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Section 427 of the Housing and Community Development Act of 1987 (Pub.L. 100–242, approved February 5, 1988) extensively amends subsection 223(d) of the National Housing Act. As amended, subsection 223(d) is described below:

(d)(1) Notwithstanding any other provision of this Act, the Secretary is authorized to insure loans made to cover the operating losses of certain projects that have existing project mortgages insured by the Secretary. Insurance under this subsection shall be in the Secretary's discretion and upon such terms and conditions as the Secretary may prescribe, and shall be provided in accordance with the provisions of this subsection. For purposes of this subsection, the term "operating loss" means the amount by which the sum of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expense of maintenance and operation of the project covered by the mortgage, exceeds the income of the project.

(2) To be eligible for insurance pursuant to this paragraph—

(A) The existing project mortgage (i) shall have been insured by the Secretary at any time before or after the date of enactment of the Housing and Community Development Act of 1987; and (ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling;

(B) The operating loss shall have occurred during the first 24 months after the date of completion of the project, as determined by the Secretary; and

(C) The loan shall be in an amount not exceeding the operating loss.

(3) To be eligible for insurance pursuant to this paragraph—

(A) The existing project mortgage (i) shall have been insured by the Secretary at any time before or after the date of enactment of the Housing and Community Development Act of 1987; (ii) shall cover any property, other than a property upon which there is located a 1-to 4-family dwelling; and (iii) shall not cover a subsidized project, as defined by the Secretary;

(B) The loan shall be in an amount not exceeding 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Secretary, except that in no event may the amount of the loan exceed the operating loss during such period;

(C) The loan shall be made within 10 years after the end of the period of consecutive months referred to in the preceding subparagraph; and

(D) The project shall meet all applicable underwriting and other requirements of the Secretary at the time the loan is to be made.

(4) Any loan insured pursuant to this subsection shall (A) bear interest at such rate as may be agreed upon by the mortgagor and mortgagee; (B) be secured in such manner as the Secretary shall require; (C) be limited to a term not exceeding the unexpired term of the original mortgage; and (D) be insured under the same section as the original mortgage. The Secretary may provide insurance pursuant to paragraph (2) or (3), or pursuant to both such paragraphs, in connection with an existing project mortgage, except that the Secretary may not provide insurance pursuant to both such paragraphs in connection with the same period of months referred to in paragraphs (2)(B) and (3)(B). The Secretary is authorized to collect a premium charge for insurance of loans pursuant to this section in an amount computed at the same premium rate as is applicable to the original mortgage. This premium shall be payable in cash or in debentures of the insurance fund under which the loan is insured at par plus accrued interest. In the event of a failure of the borrower to make any payment due under such loan or under the original mortgage, both the loan and original mortgage shall be considered in default, and if such default continues for a period of thirty days, the lender shall be entitled to insurance benefits computed in the same manner for the original mortgage, except that in determining the interest rate under section 224 for the debentures representing the portion of the claim applicable to the loan, the date of the commitment to insure the loan shall be taken into consideration rather than the commitment or insurance date for the original mortgage.

(5) A loan involving a project covered by a mortgage insured under section 213 that is the obligation of the Cooperative Management Housing Insurance Fund shall be the obligation of such fund, and loans involving projects covered by the mortgage insured under section 236 or under any section of this title pursuant to subsection (e) of this section shall be the obligation of the Special Risk Insurance Fund.

The major change from previous law effected by the 1987 Act was the inclusion of the above-quoted subsection (d)(3) authorizing an operating loan program for unsubsidized projects which (1) does not limit coverage to losses in the first 24 months of operation and (2) can be in an amount "not exceeding 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project".

It should be noted that, under these new statutory provisions, the amount of any loan may not exceed the "operating loss" for the period of 24 or fewer months covered by the loan. The "operating loss" is defined in section 223(d)(1) of the statute. Only expenditures made to cover such operating losses will be eligible for treatment as an "unreimbursed cash contribution" under the proposed rule.

This rule proposes to implement the above quoted subsection 223(d)(3) of the National Housing Act. It should be noted the rule provides that, where the FHA Commissioner has already insured a loan under the pre-1987 law covering the first two years of losses, only one additional loan can be insured under new, post-1987 authority. In no event, may more than two operating loss loans be insured by the Commissioner for any particular project.

Procedural Matters

This rule does not constitute a "major rule" as that term is defined in section 1(d) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with a respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule would expand the availability of operating loss loans for FHA multifamily mortgagors. This limited category of small entities would be provided additional assistance in their efforts to maintain and operate successful multifamily projects.

This rule was listed as item H–35–90 (Sequence No. 1146) in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804, 16824) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. By providing additional assistance to FHA mortgagors for the successful maintenance and operation of their multifamily projects the rule should prove beneficial to families who rent units in these projects.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have Federalism implications and, thus, are not subject to review under the Order. The rule does not change in any way existing relationships between HUD, the States and local governments.

The Catalog of Federal Domestic Assistance program number is 14.167.

List of Subjects

24 CFR Part 207

Manufactured homes, Mortgage Insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 213

Cooperatives, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 220

Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Urban renewal.

24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 231

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs—health, Loan programs—housing and community development, Mortgage insurance, Nursing homes, Reporting and recordkeeping requirements.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 242

Hospitals, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 244

Health facilities, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 207, 213, 220, 221, 231, 232, 234, 242 and 244 are amended to read as follows:

PART 207—MULTIFAMILY HOUSING MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 207 would continue to read as follows:

Authority: 12 U.S.C. 1701z–11(e), 1713, and 1715b; 42 U.S.C. 3535(d).

2. Section 207.4 would be amended by revising paragraph (f)(3) and by adding a new paragraph (g), to read as follows:

§ 207.4 Maximum mortgage amounts.

* * * * *

(f) * * *

(3) *Maximum interest rate.* The loan may bear interest at a rate agreed upon by the mortgagor and mortgagee. Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

(g) In addition to the insurance of loans to cover two-year operating losses under paragraph (f) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

((iii) shall not cover a subsidized project. For purposes of this paragraph (g)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based certificates, LMSA, Property Disposition).

(2) The principal amount for the loan shall not exceed the lesser of the following:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses, as defined in paragraph (f)(1) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner, or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 207 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (g)(2) of this section.

(4) Project shall meet all applicable underwriting and other requirements of

the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (g) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance under § 207.4(f) or under this paragraph (g), or under both paragraphs (f) and (g) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both of these paragraphs in connection with the same period of months referred to in paragraph (g)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 207.4(f), no more than one additional loan may be insured under this paragraph (g). Where no previous insurance has been provided under § 207.4(f), a maximum of two loans may be insured under this paragraph (g).

PART 213—COOPERATIVE HOUSING MORTGAGE INSURANCE

3. The authority citation for 24 CFR part 213 would continue to read as follows:

Authority: 12 U.S.C. 1715b, 1715e; 42 U.S.C. 3535(d).

4. Section 213.7 would be amended by revising paragraph (k)(3) and by adding a new paragraph (n), to read as follows:

§ 213.7 Maximum insurable amounts.

* * * * *

(k) * * *

(3) *Maximum interest rate.* The loan may bear interest at such rate as may be agreed upon by the mortgagor and mortgagee. Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

(n) In addition to the insurance of loans to cover two-year operating losses under paragraph (k) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) shall not cover a subsidized project. For purposes of this paragraph (n)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed the lesser of:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (k) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner, or

(ii) an amount which, when added to the existing indebtedness relating to the property, does not exceed the amount insurable under section 213 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (n)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (n) shall (i) bear interest at a rate agreed upon by the mortgagor and mortgagee; (ii) be secured in such manner as the Commissioner shall require; (iii) be limited to a term not exceeding the unexpired term of the original mortgage; and (iv) be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 213.7(k) or under this paragraph (n), or under both paragraphs (k) and (n) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both of these paragraphs in connection with the same period of months referred to in paragraph (n)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 213.7(k), no more than one additional loan may be insured under this paragraph (n). Where no previous insurance has been provided under § 213.7(k), a maximum of two loans may be insured under this paragraph (n).

PART 220—MORTGAGE INSURANCE AND INSURED IMPROVEMENT LOANS FOR URBAN RENEWAL AND CONCENTRATED DEVELOPMENTS AREAS

5. The authority citation for 24 CFR part 220 would continue to read as follows:

Authority: 12 U.S.C. 1713, 1715b, 1715k; 42 U.S.C. 3535(d).

6. Section 220.507 would be amended by adding a new paragraph (f) to read as follows:

§ 220.507 Maximum mortgage amounts.

* * * * *

(f) In addition to the insurance of loans to cover two-year operating losses under paragraph (e) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) shall not cover a subsidized project. For purposes of this paragraph (f)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (e) of this section incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner, or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 220 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (f)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (f) shall

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 220.507(e) or under this paragraph (f), or under both paragraphs (e) and (f), in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both of these paragraphs in connection with the same period of months referred to in paragraph (f)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 220.507(e), no more than one additional loan may be insured under this paragraph (f). Where no previous insurance has been provided under § 220.507(e), a maximum of two loans may be insured under this paragraph (f).

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

7. The authority citation for 24 CFR part 221 would be revised to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715*l*; 42 U.S.C. 3535(d).

8. Section 221.514 would be amended by revising paragraph (e)(3) and by adding a new paragraph (f), to read as follows:

§ 221.514 Maximum mortgage amounts.

* * * * *

(e) * * *

(3) *Maximum interest rate.* The loan may bear interest at a rate agreed upon by the mortgagor and mortgagee. Interest shall be payable in monthly installments on the principal then outstanding.

* * * * *

(f) In addition to the insurance of loans to cover two-year operating losses under paragraph (e) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) shall not cover a subsidized project. For purposes of this paragraph (f)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed 80:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (e) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner, or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 221 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (f)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (f) shall

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 221.514(e) or under this paragraph (f), or under both paragraphs (e) and (f) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both of these paragraphs in connection with the same period of months referred to in paragraph (f)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 221.514(e), no more than one additional loan may be insured under this paragraph (f). Where no previous insurance has been provided under § 221.514(e), a maximum of two loans may be insured under this paragraph (f).

PART 231—HOUSING MORTGAGE INSURANCE FOR THE ELDERLY

9. The authority citation for 24 CFR part 231 would continue to read as follows:

Authority: 12 U.S.C. 1715b, 1715v; 42 U.S.C. 3535(d).

10. Section 231.7 would be revised to read as follows:

§ 231.7 Loans to cover operating loss.

(a) *Loans to cover operating loss during first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (b)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses (as defined in paragraph (a) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner, or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 213 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 231.7(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both of these paragraphs in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 231.7(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 231.7(a), a maximum of two loans may be insured under this paragraph (b).

PART 232—MORTGAGE INSURANCE FOR NURSING HOMES, INTERMEDIATE CARE FACILITIES, AND BOARD AND CARE HOMES

11. The authority citation for 24 CFR part 232 would continue to read as follows:

Authority: 12 U.S.C. 1715b, 1715w, and 1715z(9); 42 U.S.C. 3535(d).

12. Section 232.31a would be revised to read as follows:

§ 232.31a Loans to cover operating loss.

(a) *Loans to cover operating loss during first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at such rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987 and

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling.

(2) The principal amount of the loan shall not exceed:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses, as defined in paragraph (a) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner, or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 232 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 232.31a(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both of these paragraphs in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 232.31a(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 232.31(a), a maximum of two loans may be insured under this paragraph (b).

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

13. The authority citation for 24 CFR part 234 would continue to read as follows:

Authority: 12 U.S.C. 1707(a), 1715b, and 1715y; 42 U.S.C. 3535(d).

14. Section 234.531 would be revised to read as follows:

§ 234.531 Loans to cover operating loss.

(a) *Operating loss loans during the first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987;

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling; and

(iii) Shall not cover a subsidized project. For purposes of this paragraph (b)(1)(iii), subsidized projects are:

(A) Projects insured under section 236.

(B) Projects insured under the section 221(d)(3) Below Market Interest Rate (BMIR) program.

(C) Insured projects with Rent Supplement contracts.

(D) Insured projects with Rental Assistance Payments (RAP).

(E) Insured projects with project-based Section 8 assistance (e.g., new/sub rehab, mod rehab, project-based certificates, LMSA, Property Disposition).

(2) The principal amount of the loan shall not exceed:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses (as defined in paragraph (a) of this section) incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner, or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 234 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter on the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 234.531(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both of these paragraphs in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 234.531(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 234.531(a), a maximum of two loans may be insured under this paragraph (b).

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

15. The authority citation for 24 CFR part 242 would continue to read as follows:

Authority: 12 U.S.C. 1715b, 1715n(f), and 1715z-7; 42 U.S.C. 3535(d).

16. Section 242.95 would be revised to read as follows:

§ 242.95 Loans to cover operating loss.

(a) *Operating loss loans during the first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage:

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987 and

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling.

(2) The principal amount of the loan shall not exceed:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project, to cover operating losses as defined in paragraph (a) of this section, during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner, or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 242 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) Be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 242.95(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both of these paragraphs in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 242.951(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 242.951(a), a maximum of two loans may be insured under this paragraph (b).

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

19. The authority citation for 24 CFR part 244 would be revised to read as follows:

Authority: 12 U.S.C. 1715b, 1749aaa–5; 42 U.S.C. 3535(d).

20. Section 244.38 would be revised to read as follows:

§ 244.38 Loans to cover operating loss.

(a) *Operating loss loans during the first two years.* (1) When the Commissioner determines that an operating loss has occurred during the first two years following completion of the project, the Commissioner may, in his or her discretion, accept for insurance under this part, a loan to cover the loss. For the purposes of this section, an operating loss shall occur when the Commissioner determines that the total of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and the expenses of maintenance and operation of the project (excluding depreciation) exceeds the project income.

(2) The loan shall be secured by an instrument in a form approved by the Commissioner for use in the jurisdiction in which the project is located.

(3) The loan may bear interest at a rate agreed upon by the mortgagee and the mortgagor. Interest shall be payable in monthly installments on the principal then outstanding.

(4) The loan shall be limited to a term not exceeding the unexpired term of the original mortgage.

(b) *Other operating loss loans.* In addition to the insurance of loans to cover two-year operating losses under paragraph (a) of this section, the Commissioner may also insure any operating loss loan that meets the following conditions:

(1) The existing project mortgage

(i) Shall have been insured by the Commissioner at any time before or after the date of enactment of the Housing and Community Development Act of 1987 and

(ii) Shall cover any property, other than a property upon which there is located a 1- to 4-family dwelling.

(2) The principal amount of the loan shall not exceed the lesser of the following:

(i) 80 percent of the unreimbursed cash contributions made on or after March 18, 1987, by the project owner for the use of the project to cover operating losses, as defined in paragraph (a) of this section, incurred during any period of consecutive months (not exceeding 24 months) in the first 10 years after the date of completion of the project, as determined by the Commissioner, or

(ii) An amount which, when added to the outstanding indebtedness relating to the property, does not exceed the maximum amount insurable under section 244 of the Act.

(3) The loan shall be made within 10 years after the end of the period of consecutive months referred to in paragraph (b)(2) of this section.

(4) The project shall meet all applicable underwriting and other requirements of the Commissioner at the time the loan is to be made.

(5) Any loan insured under this paragraph (b) shall:

(i) Bear interest at a rate agreed upon by the mortgagor and mortgagee;

(ii) Be secured in such manner as the Commissioner shall require;

(iii) Be limited to a term not exceeding the unexpired term of the original mortgage; and

(iv) be insured under the same part of this chapter as the original mortgage.

(6) The Commissioner may provide insurance in accordance with § 244.38(a) or under this paragraph (b), or under both paragraphs (a) and (b) of this section, in connection with an existing project mortgage, except that the Commissioner may not provide insurance under both of these paragraphs in connection with the same period of months referred to in paragraph (b)(2) of this section.

(7) Where the Commissioner has already provided insurance under § 244.38(a), no more than one additional loan may be insured under this paragraph (b). Where no previous insurance has been provided under § 244.38(a), a maximum of two loans may be insured under this paragraph (b).

Dated: August 11, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–19521 Filed 8–17–92; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF LABOR

Occupational Safety and health Administration

29 CFR Parts 1910, 1915, 1917, 1918, 1926, and 1928

[Docket No. H–020 A]

RIN 1218–AB26

Air Contaminants

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; extension of comment period and postponement of hearings.

SUMMARY: The Occupational Safety and Health Administration (OSHA) proposed on June 12, 1992, at 57 FR 26002, to issue more protective exposure limits for 376 toxic substances for employees in the construction, maritime and agriculture industries. A comment period and hearings were scheduled. This proposal followed a similar final rule for air contaminants in general industry issued January 19, 1989, at 54 FR 2332.

On July 7, 1992, in *American Federation of Labor, et al.* v. *Occupational Safety and Health Administration*, (No. 89–7185 et al.), the Eleventh Circuit Court of Appeals vacated and remanded the general industry final rule for air contaminants. OSHA continues to believes that the final rule is necessary to protect worker health and is considering appropriate responses to the decision.

The Air Contaminant proposal for construction, maritime and agriculture is similar in approach to the general industry rule. Accordingly, the court's decision makes it advisable to extend the comment period and delay the hearings while future actions in response to the decision are implemented.

Therefore, OSHA is indefinitely extending the comment period which had been set to close September 25, 1992 for the proposal. OSHA is also postponing the hearings which had been scheduled for Washington, DC on October 20–30, 1992, San Diego, California on November 17–20, 1992 and Des Moines, Iowa on December 8–11, 1992. OSHA is also withdrawing the requirement to file a notice of intention to appear by September 11, 1992.

The record for the Air Contaminants proposal for construction, maritime and agriculture will remain open, and parties may continue to submit comments to Docket No. H–020A. In approximately six months OSHA will publish a new closing date for comments and notices of intention to appear, and a new schedule for hearings. It is anticipated that when a new notice is published, approximately three months will be allowed for the close of the comment period and the commencement of hearings.

DATES: The comment period scheduled to close September 25, 1992 is indefinitely extended. The requirement to file a notice of intention to appear by September 11, 1992 is withdrawn. The hearings which had been scheduled for October, November and December, 1992 are postponed.

ADDRESSES: Written comments should be submitted to the OSHA Docket Office, Docket No. H–020A, room N–2634, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523–7894.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 523–8151.

Signed at Washington, DC this 12th day of August, 1992.

Dorothy L. Strunk,

Acting Assistant Secretary of Labor.

[FR Doc. 92–19591 Filed 8–17–92; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to make the requirements of the Illinois program no less effective than the Federal program, to enhance the clarity of Illinois' regulations, and to meet State codification rules and guidelines. It concerns changes made to the Illinois Administrative Code (IAC), title 62, Mining, chapter I.

This document sets forth the times and locations that the Illinois program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. September 17, 1992. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on September 14, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 2, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James F. Fulton, Director, Springfield Field Office, at the address listed below. Copies of the Illinois program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendment by contacting OSM's Springfield Office.

Office of Surface Mining Reclamation and Enforcement, Springfield Field Office, 511 West Capitol, suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

Illinois Department of Mines and Minerals, 300 West Jefferson Street, suite 300, Springfield, Illinois 62791, Telephone: (217) 782–4970.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Director, Springfield Field Office; (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.11, 913.15, 913.18, and 913.17.

II. Discussion of Proposed Amendment

OSM notified Illinois of deficiencies in its program regulations which were determined to be less effective than the Federal regulation requirements for surface mining and reclamation operations in the **Federal Register** decision notice of an Illinois program amendment approved by the Director on December 13, 1991 (56 FR 64986). Illinois identified additional regulations that required amendment in order to clarify their purposes and to be consistent with their Federal counterparts. Illinois is also taking this opportunity to reorganize its hearing regulations in order to more effectively carry out its responsibilities under the State Act. The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors and to accomplish necessary recodification required by the addition or deletion of provisions.

In response to the OSM notification and its own initiatives, Illinois by letter dated June 22, 1992 (Administrative Record No. IL–1192) submitted the following proposed changes to its program.

Illinois proposes the following revisions at 62 IAC 1701. Appendix A, which contains general definitions. Under the definition of "land use," the land use categories of "cropland," "pastureland," "grazingland," "recreation," "fish and wildlife habitat," and "developed water resources" are revised to define allowable support facilities and joint or seasonal uses within specific land use categories. The land use category of "undeveloped land or no current use or land management" is revised to limit its use to areas not to be affected by mining operations. The definition of "public park" is revised by adding the word "primarily" before the phrase "for public recreational use" to make it consistent with its Federal counterpart definition. A definition for "riparian zone" is added for clarification purposes. The definition of "valid existing rights" is deleted from this section and its substantive provisions are moved to part 62 IAC 1761. Statutory citations throughout the section are amended to reflect correct dates, and clerical errors are corrected.

Illinois proposes the following revisions at 62 IAC 1702.11 which contains application requirements and procedures for the exemption of coal extraction incidental to the extraction of other minerals. The heading "Application for exemption" is added to subsection (a). Subsection (a)(2) is revised by correcting the reference

citation. In subsection (f), the administrative review citation is revised to reflect reorganization of the Illinois hearing regulations, and a new sentence "The hearing shall be conducted in accordance with 62 Ill. Adm. Code 1847.3" is added.

At 62 IAC 1702.12(g), a typographical error is corrected.

Illinois proposes the following revisions at 62 IAC 1702.17, which provides revocation and enforcement of exemptions for coal extraction incidental to the extraction of other minerals. In subsection (c)(1) a notification provision in the event a decision is made not to revoke an exemption is added, and a typographical error is corrected. In subsections (c)(2) and (c)(3), the old administrative hearing section citation is revised to reflect reorganization of the Illinois hearing regulations.

At 1702.18(a)(1), a typographical error is corrected.

Illinois proposes to revise 62 IAC 1705.21 by changing the appeals procedures citation for restriction on financial interest of state employees in order to reflect reorganization of the Illinois hearing regulations.

Illinois proposes the following revisions at 62 IAC 1761 which contains provisions for areas designated by Act of Congress. A new § 1761.5 is added to define "valid existing rights" and to specify how such rights may be established.

Illinois proposes the following restrictions at 62 IAC 1761.11 which specifies the areas where mining is prohibited or limited. At subsection (g) a new sentence, "Cemeteries may be relocated if authorized by applicable State law or regulations," is added. Subsection (h) is removed since it is duplicative of other provisions.

Illinois proposes the following revisions at 62 IAC 1761.12 which contains procedures for implementing the limitations and prohibitions of § 1761.11. A new subsection (b) is added to specify what information must be submitted during the permitting process by a person claiming to have VER to mine in a § 1761.11 area, and the existing subsections are redesignated (c) through (h). It is clarified in subsection (c)(2) that VER is not something that is requested, but rather an assertion by an operator that he has the right to conduct mining within a prohibited area. Subsections (d) and (e) are changed to clarify that they contain procedures for those cases where the mining applicant does not have VER. Subsection (d)(4) is changed to clarify that the road authority does not make any determination for mining activity within 100 feet of a road, and the word "affected" is moved to modify both "public" and "landowners." A heading, "Effect of waiver," is added for subsection (e)(3). The administrative and judicial review code citations in subsection (h) are changed to reflect the reorganization of the Illinois hearing regulations.

At 62 IAC 1764.19(d), Illinois proposes to revise the judicial review citation in order to reflect the reorganization of the Illinois hearing regulations.

At 62 IAC 1772.12(e), Illinois proposes to add a section heading, "Notice and review," and the administrative and judicial review citation in paragraph (2) is changed to reflect reorganization of the Illinois hearing regulations.

Illinois proposes the following revisions to 62 IAC 1773.13 which contains provisions for public participation in permit application processing. Subsection (a)(1)(E) is revised to require that permit applicants, in specified instances, include in their advertisement a description of the activities proposed within 100 feet of a road. Subsection (c)(2) is revised by changing the time limit within which the Department must hold an informal conference regarding its decision on a permit application from 75 days to a reasonable time. Subsection (d)(3) is revised by updating the statutory citation date.

Illinois proposes the following revisions at 62 IAC 1773.15 which contains the requirements for review of permit applications. Subsection (b)(1)(B) is revised to clarify that any review under 30 CFR 775.13 will be conducted by the federal district court and not the state circuit court. Administrative and judicial appeal citations are revised in subsections (b)(1)(B) and (b)(3) to reflect reorganization of the Illinois hearing regulations. A typographical error is corrected in subsection (c)(12). The existing language in subsection (d) is removed, and new language is proposed which provides for expiration of the written findings within one year if performance bond and permit fees are not submitted by the applicant.

Illinois proposes at 62 IAC 1773.20(b)(2)(B) and 62 IAC 1773.21(c) to revise administrative and judicial review citations in order to reflect reorganization of the Illinois hearing regulations.

Illinois proposes at 62 IAC 1774.11 to revise the administrative and judicial review citation in subsection (c) in order to reflect reorganization of the Illinois hearing regulations.

Illinois proposes the following revisions at 62 IAC 1774.13 which contains the provisions for permit revisions. Subsection (b)(2)(E) is revised to define under what circumstances a significant permit revision would be required for land use changes. Subsection (d)(2) is revised to clarify that incidental boundary revisions are allowable if contiguous to the shadow area and to allow non-contiguous incidental boundary revisions for long-term surface support facilities at underground mines.

Subsection (d)(4) is revised to clarify that non-contiguous incidental boundary revisions will be subject to the performance standards for minor underground facilities. Subsection (d)(5) is revised to limit the amount of acreage which may be added to an existing non-contiguous incidental boundary area. A new subsection (d)(6) is added to provide public notice and comment for incidental boundary revision applications. Old subsection (d)(6) is redesignated as subsection (e). The administrative and judicial review citation in subsection (f) is revised to reflect reorganization of the Illinois hearing regulations.

Illinois proposes to repeal part 62 IAC 1775, which contained the requirements and procedures for administrative and judicial review of administrative decisions, in order to reflect reorganization of the Illinois hearings regulations. The substantive provisions of part 62 IAC 1775 are incorporated into proposed new part 62 IAC 1847.

At 62 IAC 1777.17, which contains the requirements for submission of permit fees, Illinois proposes the following revisions. New subsection (a) contains the provisions of old subsection (c). New subsections (b)(1) and (b)(2) contain the provisions of old subsections (a) and (b). New subsection (c) adds provisions for payment of permit fees. New subsection (d) adds the provision that failure to submit permit fees within one year after the issuance of written findings approving a permit application will result in the expiration of the findings.

At 62 IAC 1778.15, which contains provisions for right-of-entry information, Illinois proposes the following revisions. The first proposed revision to subsection (a) eliminates confusion by deleting the words "and related surface activities" from the first sentence. The second proposed revision to subsection (a) clarifies that the permit applicant must provide a description of the documents upon which it bases its legal right to enter and mine, rather than the actual documents, and that Illinois has the authority to require the documents during the permitting process. New subsection (e) is added to clarify that permit applicants claiming valid existing rights must comply with additional permitting requirements.

At 62 IAC 1779.19(b), a comma is added to separate a dependent clause from an independent clause, and the reference regulation citation is corrected.

Illinois proposed the following revisions at 62 IAC 1780 which contains the minimum requirements for the reclamation and operation plans for surface mining permit applications. Section 1780.21 contains the requirements for hydrologic information, and the revisions to subsections (b)(1)(A) and (b)(1)(B) require additional hydrologic information from the applicant. In § 1780.33, a clerical error in a reference citation is corrected in the first paragraph. The repeal of § 1780.38 is proposed in order to be consistent with Federal regulations.

At 62 IAC 1783.19(b), a reference regulation citation is corrected.

Illinois proposes the following revisions at 62 IAC 1784 which contains the minimum requirements for the reclamation and operation plans for underground mining permit applications. Section 1784.14 contains the requirements for hydrologic information, and subsections (b)(1)(A) and (b)(1)(B) are revised to require additional hydrologic information from the applicant. In § 1784.18, a clerical error in a reference regulation citation is corrected in the first paragraph. The repeal of § 1784.27 is proposed in order to be consistent with Federal regulations.

At 62 IAC 1785.13, revisions are proposed for two subsections. In subsection (a), a statute citation date is updated and a regulation citation is revised. In subsection (g), the administrative and judicial review citation is revised to reflect reorganization of the Illinois hearing regulations.

Illinois proposes the following revisions at 62 IAC 1800.11 which contains provisions for the filing of a performance bond. Subsection (a) is proposed to be revised by adding paragraph (1) to clarify that failure to file a performance bond within one year of the written findings approving a permit application will result in the expiration of the findings and by adding paragraph (2) to provide provisions and restrictions for filing of a minimum performance bond. A heading, "Bond coverage," is added to subsection (b). Illinois proposes the following revisions at 62 IAC 1800.40 which contains provisions for the release of performance bonds. Subsection (a)(3) is added to require the permittee to include with his bond release application a notarized statement certifying that all statutory and regulatory requirements have been met. The bond release hearing provisions are removed from subsections (e) through (h) and are added to 62 IAC 1847.9 to reflect reorganization of the Illinois hearing regulations.

Illinois proposes the following revisions at 62 IAC 1800.50 which contains the requirements for forfeiture of bonds. The bond forfeiture hearing provisions are removed from subsections (c)(2) through (c)(5) and are added to 62 IAC 1847.7 to reflect reorganization of the Illinois hearing regulations. A heading, "Reclamation costs," is added at subsection (e). Subsection (g) is added to clarify Illinois' policy that it may elect not to proceed with state enforcement action during bond forfeiture proceedings in specified situations.

Illinois proposes to revise 62 IAC 1816.42, which contains hydrologic balance requirements for surface mining activities, by updating citations in order to reflect the Illinois Department of Mines and Minerals, Land Reclamation Division's designation as a regulatory authority pursuant to 35 Ill. Adm. Code 620 and to require additional information necessary to implement groundwater quality standards.

Illinois proposes the following revision at 62 IAC 1816.43 which contains requirements for diversions for surface mining activities. The proposed revision to subsection (a)(2)(D) corrects the date for the statutory citation. Subsection (b)(4) is amended to clarify the design standard for post-mining riparian zones.

Illinois proposes the following revisions at 62 IAC 1816.49 which contains requirements for impoundments. Subsection (a)(9)(B) is revised to require quarterly inspections during construction with the provision that at least one inspection be conducted for impoundments completed in less than one quarter. A minor wording change is proposed for subsection (a)(10). The existing temporary impoundment provisions of subsections (c)(2)(A) and (c)(2)(B) are reorganized into subsection (c)(2)(A) and an alternate spillway system provision is added to subsection (c)(2)(B).

Illinois proposes to revise 62 IAC 1816.84(b)(2), which contains construction requirements for coal mine waste impounding structures, by providing a spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event or greater event as specified by Illinois.

Illinois proposes the following revisions at 62 IAC 1816.116 which contains requirements for revegetation success standards for surface mining operations. The proposed revisions to subsection (a)(2)(C) further define normal husbandry practices in Illinois. The proposed revisions to subsections (a)(3)(A) and (a)(3)(B) specify the percentage of ground cover required for each land use and when in the responsibility period the ground cover is to be measured. Proposed revisions to subsections (a)(3)(C) and (a)(3)(E) specify proper management of cropland, pasture, hayland, and grazingland during the responsibility period if the productivity standards have been met prior to the last year of the responsibility period. A proposed revision to subsection (b)(2) adds language that specifies that the report of reclamation activities conducted during the previous calendar year are ones which initiate or alter the responsibility period and deletes old language of a partial listing of activities to be reported.

Illinois proposes the following revisions at 62 IAC 1816.117 which contains the revegetation requirements for tree and shrub vegetation. A proposed revision to subsection (a)(1) eliminates any confusion as to when success of vegetation for trees and shrubs shall be determined by specifying the fifth year of the responsibility period or later in the responsibility period. A proposed revision to subsection (a)(2) adds the requirement that vegetative ground cover shall not be less than 70 percent during the last year of the responsibility period. A proposed revision to subsection (a)(5) adds references to all of the normal conservation practices approved for rill and gully repairs in 62 IAC 1816.116. The proposed revision to subsection (b) clarifies the tree or shrub population requirement for riparian zones. It is proposed that subsection (d)(6) be deleted since the substantive provisions are added to other sections.

Illinois proposes to revise 62 IAC 1816.151(b), which contains requirements for primary roads, by adding design standards as an alternative to the minimum static factor of safety of 1.3.

Illinois proposes to revise 62 IAC 1817.42, which contains hydrologic balance requirements for underground mining activities, by updating citations in order to reflect the Illinois Department of Mines and Minerals,

Land Reclamation Division's designation as a regulatory authority pursuant to 35 Ill. Adm. Code 620 and to require additional information necessary to implement groundwater quality standards.

Illinois proposes the following revisions at 62 IAC 1817.43 which contains requirements for diversions for underground mining operations. The proposed revision to subsection (a)(2)(D) corrects the date within the statutory citation. Subsection (b)(4) is amended to clarify the design standard for post-mining riparian zones.

Illinois proposes the following revisions at 62 IAC 1817.49 which contains requirements for impoundments for underground mining operations. Subsection (a)(9)(B) is revised to require quarterly inspections during construction with the provision that at least one inspection be conducted for impoundments completed in less than one quarter. A minor wording change is proposed for subsection (a)(10). The existing temporary impoundment provisions of subsections (c)(2)(A) and (c)(2)(B) are proposed to be reorganized into subsection (c)(2)(A). An alternate spillway system provision is proposed in subsection (c)(2)(B).

Illinois proposes to revise 62 IAC 1817.84(b)(2), which contains construction requirements for coal mine waste impounding structures, to provide a spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event or greater event as specified by Illinois.

Illinois proposes the following revisions at 62 IAC 1817.116 which contains requirements for revegetation success standards for underground mining operations. A typographical error is corrected in subsection (a)(2)(A). The proposed revisions to subsection (a)(2)(C) further define normal husbandry practices in Illinois. The proposed revisions to subsection (a)(3)(A) and (a)(3)(B) specify the percentage of ground cover required for each land use and when in the responsibility period the ground cover is to be measured. A typographical error is corrected in subsection (a)(3)(C). Proposed revisions to subsections (a)(3)(C) and (a)(3)(E) specify proper management of cropland, pasture, hayland, and grazingland during the responsibility period if the productivity standards have been met prior to the last year of the responsibility period. A proposed revision to subsection (b)(2) adds language that specifies that the report of reclamation activities conducted during the previous calendar year are ones which initiate or alter the responsibility period and deletes old language of a partial listing of activities to be reported.

Illinois proposes the following revision at 62 IAC 1817.117 which contains the revegetation requirements for tree and shrub vegetation for underground mining operations. A proposed revision to subsection (a)(1) eliminates any confusion as to when success of vegetation for trees and shrubs shall be determined by specifying the fifth year of the responsibility period or later in the responsibility period. A proposed revision to subsection (a)(2) adds the requirement that vegetative ground cover shall not be less than 70 percent during the last year of the responsibility period. A proposed revision to subsection (a)(5) adds references to all of the normal conservation practices approved for rill and gully repairs in 62 IAC 1817.116. The proposed revision to subsection (b) clarifies the tree or shrub population requirement for riparian zones. A sentence deletion in subsection (c)(4) corrects a clerical error. It is proposed that subsection (d)(6) be deleted since the substantive provisions are added to other sections.

Illinois proposes to revise 62 IAC 1817.151(b) which contains requirements for primary roads for underground mining operations, by adding design standards as an alternative to the minimum static factor of safety of 1.3.

Illinois proposes the following revisions at 62 IAC 1817.182 which contains requirements regarding minor underground mine facilities. A regulation citation is corrected in subsection (a). A heading, "Roads," is added at subsection (d). Subsections (d)(2), (d)(3)(C) and (d)(4)(B) are proposed to be revised by updating the regulation code citations.

Illinois proposes the following revisions at 62 IAC 1827.12 which contains performance standards for coal preparation plants not located within the permit area of a mine. A regulation code citation is updated in subsection (b). A revision to subsection (d) adds ground water quality compliance requirements for coal preparation plants and removes the phrase "all discharges from these areas."

Illinois proposes to revise 62 IAC 1843.12(i) by updating the state enforcement appeal citation in order to reflect reorganization of the Illinois hearing regulations.

Illinois proposes the following revisions at 62 IAC 1843.13 which contains requirements for suspension or revocation of permits. A heading, "Requirements," added for subsection (a), and a heading, "Considerations," is added for subsection (a)(4). In subsection (c), the hearing regulation citation for an order to show cause is revised to reflect reorganization of the Illinois hearing regulations. The hearing and review provisions for show cause orders are removed from subsections (e) through (i) and (k) and added to 62 IAC 1847.6 to reflect reorganization of the Illinois hearing regulations. Subsection (j) is redesignated as (f).

At 62 IAC 1843.14(a)(2), additional alternative means of service of notices of violation, cessation orders and show cause orders are proposed. Illinois is proposing a revision at 62 IAC 1843.15(a) to clarify that an informal public hearing for a notice of violation or cessation order which requires cessation of mining may be waived.

Illinois is proposing to repeal 62 IAC 1843.16, which contained provisions for a formal review of citations, since its substantive provisions are added to 62 IAC 1847.4 in order to reflect reorganization of the Illinois hearing regulations.

Illinois is proposing to repeal 62 IAC 1843.17, which contained provisions for temporary injunctive relief for enforcement citations, since its substantive provisions are added to 62 IAC 1847.4(o) In order to reflect reorganization of the Illinois hearing regulations.

Illinois is proposing to repeal 62 IAC 1843.20, which contained provisions for intervention in state enforcement proceedings, since its substantive provisions are added to 62 IAC 1848.8 in order to reflect reorganization of the Illinois hearing rules.

Illinois is proposing to repeal 62 IAC 1843.21, which contained provisions for discovery in state enforcement proceedings, since its substantive provisions are added to 62 IAC 1848.9 in order to reflect reorganization of the Illinois hearing regulations.

Illinois proposes to revise 62 IAC 1845.12, which provides provisions for penalty assessment, by adding new subsections (c) and (d) to clarify Illinois' policy and practice that an assessment below $1,100 is not required to be paid unless it is the permittee's second related violation within a 12-month period.

Illinois is proposing the following revisions at 62 IAC 1845.13(b)(4) which provides provisions for the award of good faith credit for achieving rapid compliance in the abatement of a violation. Paragraphs (A) is revised to clarify that good faith credit awards are based upon rapid compliance and extraordinary measures, rather than simply abating the violation within the time set for abatement. Paragraph (B) was revised to define rapid compliance. Paragraph (C) was added to clarify that good faith credit would not be awarded for normal compliance, and defines normal compliance. Paragraph (D) was added to clarify Illinois' policy and practice that administrative violations are not eligible for good faith credit awards.

Illinois is proposing the following revisions at 62 IAC 1845.17 which provides procedures for assessment of civil penalties. Subsection (b) is revised to provide an alternative means of service of proposed assessments. Subsections (b)(2)(B) and (c) are revised by updating the hearing regulation citations to reflect reorganization of the Illinois hearing regulations. Illinois is proposing the following revisions at 62 IAC 1845.18, which contains requirements for payment of a penalty. Subsection (a)(2) is revised by updating the hearing regulation citation, and subsection (c) is removed and added to 62 IAC 1847.5(a) to reflect reorganization of the Illinois hearing regulations.

Illinois proposes to repeal 62 IAC 1845.19, which contains procedures for civil penalty administrative and judicial hearings, since its substantive provisions are added to 62 IAC 1847.5 in order to reflect reorganization of the Illinois hearing regulations.

Illinois proposes that the hearing regulation citation at 62 IAC 1845.20(a) be updated to reflect reorganization of the Illinois hearing regulations.

Illinois proposes that the administrative review regulation citation at 62 IAC 1846.17(b)(1) be updated to reflect reorganization of the Illinois hearing regulations.

Illinois proposes that the administrative review regulation citation for civil penalty assessments at 62 IAC 1846.18(b) be updated to reflect reorganization of the Illinois hearing regulations

Illinois proposes new part 62 IAC 1847, which contains provisions for the various types of Illinois administrative reviews, in order to reorganize the Illinois hearing regulations for consistency and clarity.

Illinois proposes new part 62 IAC 1848, which contains general rules relating to procedure and practice applicable to administrative hearings, in order to reorganize the Illinois hearing regulations for consistency and clarity.

III. Public Comments Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15.

If the amendment is deemed adequate, it will become part of the Illinois program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the OSM Springfield Field Office will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on September 2, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT**". All such meetings will be open to the public, and, if possible, notices of meetings will be posted at the locations under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-19575 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Kansas permanent regulatory program (hereinafter, the "Kansas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Kansas regulations pertaining to general requirements, definitions, permit application, public hearings, civil penalties, permit review, coal exploration, bonding procedures, performance standards, underground mining, small operator assistance, lands unsuitable for mining, blaster and enforcement. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This document sets forth the times and locations that the Kansas program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.d.t. September 17, 1992. If requested, a public hearing on the proposed amendment will be held on September 14, 1992. Requests to present oral testimony at the hearing must be received by 4 p.m., c.d.t. on September 2, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Kansas program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, room 500, Kansas City, MO 64105, Telephone: (816) 374-6405.

Kansas Department of Health and Environment, Surface Mining Section, 1501 S. Joplin, P.O. Box 1418, Pittsburg, KS 66762, Telephone: (316) 231-8615.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning Kansas' program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Proposed Amendment

By letter dated July 10, 1992, (Administrative Record No. KS-511) Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 916.16(b) and at the States own initiative to improve its program.

The regulations that Kansas proposes to amend are: Kansas Administrative Regulations (K.A.R.) 47-1-9, Notice of Citizen Suits; 47-2-14, Complete and Accurate Application Defined; 47-2-53a, Regulatory Program Defined; 47-2-58, Significant, Imminent Environmental Harm to Land, Air, or Water Resources Defined; 47-2-67, Surety Bond Defined; 47-2-75, Definitions-Adoption by Reference; 47-3-2, Application for Mining Permit-Adoption by Reference; 47-3-3a, Application for Mining Permit-Maps; 47-3-42, Application for Mining Permit-Adoption by Reference; 47-4-14a, Administrative Hearing Procedure; 47-4-15, Administrative Hearings, Discovery; 47-4-17, Administrative Hearings, Award of Costs and Expenses; 47-5-5a, Civil Penalties-Adoption by Reference; 47-5-16, Civil Penalties-Final Assessment and Payment; 47-6-1, Permit Review; 47-6-3, Permit Renewals-Adoption by Reference; 47-6-4, Permit Transfers, Assignments, and Sales-Adoption by Reference; 47-6-7, Permit Suspension or Revocation; 47-6-8, Termination of Jurisdiction-Adoption by Reference; 47-6-9, Exemption for Coal Extraction Incident to Government Financed Highway or Other Construction-Adoption by Reference; 47-6-10, Exemption for Coal Extraction Incidental to the Extraction of Other Minerals-Adoption by Reference; 47-7-2, Coal Exploration-Adoption by Reference; 47-8-9, Bonding Procedures-Adoption by Reference; 47-8-11, Use of Forfeited Bond Funds; 47-9-1, Performance Standards-Adoption by Reference; 47-9-4, Interim Program Performance Standards-Adoption by Reference; 47-10-1, Underground Mining-Adoption by Reference; 47-11-8, Small Operator Assistance Program-Adoption by Reference; 47-12-4, Lands Unsuitable for Surface Mining-Adoption by Reference; 47-13-4, Training and Certification of Blasters-Adoption by Reference; 47-13-5, Responsibilities of Operators and Blasters-in-Charge; 47-14-7, Employee Financial Interest-Adoption by Reference; 47-15-1a, Inspection and Enforcement-Adoption by Reference; 47-15-4, Injunctive Relief; 47-15-7, State Inspections; and 47-15-8, Citizen's Request for State Inspections.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable programs criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kansas program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. September 2, 1992. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Hearing

If only one person requests an opportunity to testify at a hearing, a public hearing, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made part of the administrative record.

IV. Procedural Determinations

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 15, 1992.

Raymond L. Lowrie,

Assisant Director, Western Support Center.

[FR Doc. 92-19577 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 920

Maryland Permanent Regulatory Program; Excess Spoil

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment allows excess spoil from a permitted area to be placed on an abandoned mine land site to aid reclamation.

This document sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 17, 1992 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on September 14, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 2, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office, at the address listed below. Copies of the Maryland program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office:

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone (301) 689-4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, **Federal Register** (47 FR 7214-7217). Subsequent actions concerning amendments to the Maryland Program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Amendment

The Maryland Bureau of Mines submitted a program amendment to OSM on June 23, 1992. The amendment (Administrative Record Number MD–555.00) is a copy of the Maryland General Assembly's House of Delegates Bill Number 1234. The bill that is now referenced as chapter 599 of the 1992 laws of Maryland revises the section 7–508(b) of the Natural Resources Article, Annotated Code of Maryland by adding paragraph (b)(2). The new paragraph allows excess spoil from a permitted area to be placed on an abandoned mine site. To be considered excess, the spoil must not be needed to achieve approximate original contour or to meet any other permit requirements. Excess spoil placement must be approved by the Maryland Department of Natural Resources. Chapter 599, signed by the Governor on May 26, 1992, takes effect on October 1, 1992.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on September 2, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92–19573 Filed 8–17–92; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 920

Maryland Permanent Regulatory Program; Definitions

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the definition of the term, "operator."

This notice sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before September 17, 1992 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held on September 14, 1992. Requests to present oral testimony at the hearing must be received on or before September 2, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field Office at the address listed below. Copies of the Maryland program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania, 17101, Telephone: (717) 782–4036.

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone (301)–689–4136.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Maryland Program

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1992, **Federal Register** (47 FR 7214–7217). Subsequent actions concerning amendments to the Maryland program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Amendment

The Maryland Bureau of Mines submitted a program amendment to OSM on June 11, 1992. The amendment (Administrative Record Number MD–554.00) is a copy of the Maryland General Assembly's Senate Bill Number 114. The bill that is now referenced as Chapter 76 of the 1992 laws of Maryland revises the definition of the term "operator" in sections 7–101(k), 7–510(o) and 7–5A–01(h), Natural Resources Article, Annotated Code of Maryland. As revised, the definition of operator means any person, partnership, or corporation who removes or intends to remove more than 250 tons of coal from the earth by surface coal mining or deep coal mining within 12 consecutive calendar months in any one location. Chapter 76, signed by the Governor on May 5, 1992, is effective October 1, 1992.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on September 2, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Harrisburg Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from section 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-19571 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Evaluation of Revegetation Success

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period on Revised Program Amendment No. 25 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Ohio has submitted one rule change and additional Administrative Record information describing the statistically valid sampling method which Ohio proposes to use to evaluate revegetation success. Ohio also discusses the statistical validity of a 100-percent sample and discusses training for Ohio's staff in the use of Ohio's proposed sampling method. Ohio's submission is intended to demonstrate that the Ohio program will be as effective as the corresponding Federal regulations regarding revegetation success.

This notice sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 17, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on September 14, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 2, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

On December 15, 1989 (54 FR 51397), the Director of OSM announced his decision on Ohio's initial submission of Revised Program Amendment No. 25. In that decision, the Director found that Ohio had not demonstrated that its method of evaluating the success of revegetation is no less effective than the Federal rules at 30 CFR 816.116(a). The Director therefore continued the requirement at 30 CFR 935.16(f) that Ohio amend its program to include a statistically valid technique to evaluate revegetation success and provided additional time for Ohio to amend its program.

By letter dated December 12, 1989 (Administrative Record No. OH-1245), Ohio proposed a continuation of Revised Program Amendment Number 25. In this continuation, Ohio proposed to revise section 1501:13-9-15 of the Ohio Administrative Code (OAC) to include a statistically valid method of evaluating revegetation success in order to satisfy the OSM requirement at 30 CFR 935.16(f).

On January 8, 1990, OSM published a notice in the **Federal Register** (55 FR 649) announcing receipt of Ohio's proposed continuation of Revised Program Amendment No. 25 and inviting public comment on its adequacy. The public comment period ended on February 7, 1990. The public hearing scheduled for February 2, 1990, was not held because no one requested an opportunity to testify.

By letter dated March 23, 1990 (Administrative Record No. OH-1292), OSM notified Ohio that the proposed revisions to OAC section 1501:13-9-15 were less effective than the Federal regulations at 30 CFR 816.116(a) because Ohio proposed to use statistically valid sampling methods only on "questionable" areas.

By letter dated July 24, 1990 (Ohio Administrative Record No. OH-1343), Ohio submitted further proposed revisions to OAC section 1501:13-9-15 which were intended to respond to OSM's comments of March 23, 1990. Ohio proposed to revise paragraph (I)(1) to specify that success of revegetation shall be measured by using a statistically valid sampling technique with a ninety per cent statistical confidence interval (i.e. one-sided test with 0.10 alpha error). Ohio also proposed to revise paragraph (i)(3)(c)(iv) to delete the requirement that, for Phase III bond release, species planted must meet the standard that no single area with less than thirty percent cover shall exceed the lesser of three thousand square feet or 0.3 percent of the land affected.

On August 10, 1990, OSM published a notice in the **Federal Register** (55 FR 32643) announcing receipt of Ohio's further revisions to the continuation of Revised Program Amendment No. 25 and inviting public comment on its adequacy. The public comment period ended on September 10, 1990. The public hearing scheduled for September 4, 1990, was not held because no one requested an opportunity to testify.

By letter dated October 24, 1990 (Administrative Record No. OH-1398), OSM provided Ohio with its questions and comments about the additional revisions submitted on July 24, 1990. OSM requested that Ohio provide the details of Ohio's statistically valid sampling method for OSM's review and approval. OSM also requested that Ohio provide a justification for the proposed deletion of the vegetation standard limiting the size of areas with less than thirty percent vegetative cover.

By letter dated March 1, 1991 (Administrative Record No. OH-1471), Ohio submitted administrative record information in support of the revisions proposed on July 24, 1990, and intended to respond to OSM's comments of October 24, 1990. This administrative record information provided the details of Ohio's proposed statistically valid method of sampling revegetation success and was intended to justify the deletion of the standard for areas with less than thirty percent vegetative cover.

By letter dated March 21, 1991 (Administrative Record No. OH-1489), Ohio withdrew its March 1, 1991, submission of Administrative Record information. Ohio also withdrew the revisions to Ohio Administrative Code section 1501:13-9-15 paragraphs (I)(1) and (I)(3)(c)(iv) which the State proposed on July 24, 1990. OSM announced Ohio's withdrawal of the July 24, 1990, and March 1, 1991, amendment submissions in the **Federal Register** on May 7, 1991 (56 FR 21113).

By letter dated June 19, 1991, Ohio submitted an informal version of Revised Program Amendment Number 25 for preliminary review by OSM. This informal submission proposed that Ohio will use two visual estimates of revegetation success followed by statistical verification of those visual estimates. In this informal submission, Ohio proposed to retain the revegetation standard limiting the size of areas with less than thirty percent vegetative cover.

By letter dated August 9, 1991 (Administrative Record No. OH-1556), Ohio withdrew the informal submission of June 18, 1991, and resubmitted a formal version of Revised Program Amendment Number 25. In this formal amendment submission, Ohio proposed revisions to Ohio administrative Code (OAC) section 1501:13-9-15 to delete the revegetation standard at paragraph (I)(3)(c)(i)(d) limiting the size of areas with less than thirty percent vegetative cover and to add new paragraph (I)(3)(C)(ii) stating that "Success of the ground-cover [for phase III bond release shall be measured using a statistically valid sampling technique with a ninety per cent statistical confidence interval (i.e. one-sided test with 0.10 alpha error."

As part of its August 9, 1991, resubmission, Ohio also reinstated the March 1, 1991, Administrative Record information which provided the details of Ohio's proposed statistically valid sampling method modeled on the Rennie-Farmer Stick Method. The March 1, 1991, Administrative Record information also proposed justification to support Ohio's proposed deletion of its vegetation standard limiting the size of areas with less than thirty percent vegetative cover.

On August 27, 1991, OSM published a notice in the **Federal Register** (56 FR 42299) announcing receipt of Ohio's August 9, 1991, submission of Revised Program Amendment No. 25 and inviting public comment on its adequacy. The public comment period ended on September 26, 1991. The public hearing scheduled for September 23, 1991, was not held because no one requested an opportunity to testify.

By letter dated January 3, 1992 (Administrative Record No. OH-1623), OSM provided Ohio with its questions and comments about the August 9, 1991, submission of the amendment. OSM requested that Ohio provide the details of Ohio's procedure for statistical analysis of the sampling results. OSM also requested that Ohio provide a justification that Ohio's proposed standard of 70 percent ground cover is comparable to unmined sites in the Ohio mining area. Finally, OSM requested that Ohio further revise the rule to require statistically valid sampling for ground cover, production, and stocking.

By letter dated February 10, 1992 (Administrative Record No. OH-1647), Ohio requested a meeting between Ohio, OSM, and Ohio Agricultural Research and Development Center (OARDC) personnel to clarify the issues and concerns expressed in OSM's January 3, 1992, letter. On March 31, 1992, representatives of Ohio, OSM, and the OARDC met at OARDC to discuss those issues (Administrative Record OH-1683).

By letter dated June 22, 1992 (Administrative Record No. OH- 1725), Ohio submitted a new version of Revised Program Amendment Number 25 and withdrew its August 9, 1991, submission. The new submission is intended to address the issues in OSM's January 3, 1992, letter. The June 22, 1992, submission proposes to revise OAC 1501:13-9-05 paragraph (J)(1) to incorporate additional language previously proposed in Ohio's July 24, 1990, submission of paragraph (I)(1) and in Ohio's August 9, 1991, submission of paragraph (I)(3)(c)(ii). In its June 22, 1992, submission, Ohio is proposing to add the following sentence at the end of OAC 1501:13-9-05 paragraph (J)(1):

Success of revegetation shall be measured using a statistically valid sampling technique with a ninety percent statistical confidence interval (i.e. one-sided test with 0.10 alpha error).

Accompanying this proposed rule change, Ohio has submitted four Administrative Record documents. These documents discuss the statistical validity of a 100-percent census of a population, provide the details of the visual method of ground cover evaluation which Ohio proposes to use on 100 percent of proposed bond release areas, and discuss the methods by which Ohio will train and refresh the training of its inspectors in the use of the visual method of estimating revegetation success.

In the June 22, 1992, resubmission of Revised Program Amendment Number 25, Ohio is retaining the single barren area ground cover standard which restricts areas with less than thirty percent vegetative cover.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on September 2, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment

and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-19572 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 935

Ohio Permanent Regulatory Program; Revision of Administrative Rule

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of proposed Program Amendment Number 59 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the permitting of coal preparation plants or support facilities operated in connection with a coal mine but not located within the permit area for a specific mine.

This document sets forth the times and locations that the Ohio program and proposed amendments to that program will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 17, 1992. If requested, a public hearing on the proposed amendments will be held at 1 p.m. on September 14, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 2, 1992.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Mr. Richard J. Seibel, Director, Columbus Field Office, at the address listed below. Copies of the Ohio program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSM's Columbus Field Office:

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, Telephone: (614) 866-0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H-3, Columbus, Ohio 43224, Telephone: (614) 265-6675.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Discussion of the Proposed Amendments

By letter dated June 30, 1992 (Administrative Record No. OH-1730), Ohio submitted proposed Program Amendment No. 59. This amendment proposes to add the phrase "in connection with a coal mine but" to paragraph (A) of Ohio Administrative Code (OAC) section 1501:13-13-06. Revised paragraph (A) would read:

(A) Applicability. Each person who operates a coal preparation plant or support facility *in connection with a coal mine* but not located within the permit area for a specific mine shall obtain a permit in accordance with paragraph (I) of rule 1501:13-4-12 of the Administrative Code, obtain a bond in accordance with these rules and operate the plant or support facility in accordance with these rules (emphasis added).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendments proposed by Ohio satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on September 2, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Columbus Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**" All such meetings shall be open to the public and, if possible, notices of the meetings will be posted at the locations listed under "**ADDRESSES.**" A written summary of each public meeting will be made a part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-19574 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 257

RIN Number—1510-AA26

Payment on Account of Deposits in the Postal Savings System

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to remove the regulation governing payment on account of deposits in the Postal Savings System. This regulation is obsolete. Application for payment are precluded by the Postal Savings System Statute of Limitations Act of 1984 (Pub. L. 98-359). The effect of this notice is to remove an unnecessary regulation.

DATES: Comments must be submitted on or before September 17, 1992.

ADDRESSES: Comments should be sent to Director, Funds Management Division, Financial Management Service, Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: Mia Abeya on (202) 874-8740.

SUPPLEMENTARY INFORMATION: In 1966, the Postmaster General was directed to transfer unpaid Postal Savings System deposits to the Treasury Department. Public Law 89-377, 80 Stat. 92 (March 28, 1966). The Treasury Department promulgated this regulation in 1968 to instruct claimants on how to file a claim for Postal Savings System deposits. In 1984, the Postal Savings System Statute of Limitations Act, Public Law 98-359, 98 Stat. 402, established July 18, 1985, as the final date upon which a claim for a Postal Savings System deposit could be filed. Therefore, this regulation is no longer necessary.

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. The removal of this unused regulation will

have little or no effect on the economy or consumers. It is hereby certified that removal of this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The removal of this unused regulation will have little or no effect on small entities.

List of Subjects in 31 CFR Part 257

Claims, Investments.

For the reasons set out in the preamble, 31 CFR Part 257 is proposed to be removed as follows:

PART 257—[REMOVED]

Part 257 is removed.

Russell D. Morris,

Commissioner.

[FR Doc. 92-19564 Filed 8-17-92; 8:45 am]

BILLING CODE 4810-35-M

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150-AE34

Acquisition Regulation (NRCAR); Organizational Conflicts of Interest

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment to its proposed Nuclear Regulatory Commission Acquisition Regulation (NRCAR) concerning organizational conflicts of interest. The proposed NRCAR, published for public comment on October 2, 1989 (54 FR 40420), addresses a full range of agency acquisition matters. A portion of the proposed NRCAR, relating to debarment, suspension and ineligibility procedures, has been adopted as a final agency regulation (57 FR 29220; July 1, 1992). The remainder of the proposed NRCAR is in preparation for publication as a final rule. One aspect of the NRCAR relates to the agency's organizational conflicts of interest rules. The amendment proposed by this notice modifies a section of the conflicts of interest rules relating to work for others during the period work is being performed for NRC. If the NRCAR is issued as a final rule before the Commission decides on the amendment proposed by this notice, the proposed amendment will be considered for amendment of the NRCAR. Otherwise, the proposed amendment will be considered for incorporation into the NRCAR when published as a final rule.

DATES: The comment period expires September 17, 1992. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit written comments to: The Secretary of the Commission; U.S. Nuclear Regulatory Commission; Attention: Docketing and Service Branch, Washington, DC 20555. Copies of comments received may be examined or obtained for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC (telephone (202) 634-3273).

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-4347.

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1991, the Commission approved a revision to its proposed NRCAR published October 2, 1989 (54 FR 40420) concerning organizational conflicts of interest (COI). The thrust of this revision limited COI restrictions to the relatively narrow scope and shorter duration of individual task orders rather than to the entire scope and term of the basic contract. While the NRC staff believed that the revised policy would increase competition for NRC technical assistance and research work, additional restrictions were added to (a) avoid the potential for unfair competitive advantage that could result if NRC contractors were permitted to market their services while working for NRC at a licensee site, and (b) ensure that NRC contractors do not have divided financial interests while working at a licensee site.

Two of NRC's major technical assistance and research contractors commented that the COI provision, approved on August 15, 1991, was overly restrictive and would impede rather than enhance NRC's ability to increase competition in the technical assistance marketplace. Therefore, the NRC held a public meeting on March 26, 1992, in order that all interested parties could provide further comments on the proposed revision of the Commission's COI regulation or provide alternatives that would achieve an equivalent level of COI protection (57 FR 4652; February 6, 1992).

Statement of Considerations

The nature of the comments received in connection with the March 26, 1992, meeting varied with respect to how the commenters viewed the restrictiveness of the policy. While a number of commenters found the existing COI language adequate, others stated the policy was overly restrictive and lacking in flexibility.

The Commission has considered the comments concerning the substantial restrictions against performing any work at an NRC licensee site where the contractor performs on-site work for NRC, coupled with the lack of flexibility in applying this restriction, and agrees that exceptions to the blanket restriction may be permitted in appropriate cases. Thus, the Commission has modified the restriction to authorize the NRC contractor to perform work for NRC licensees at the site of work performed for NRC if:

(a) The work is not the same technical area as the work performed for NRC; and

(b) The contracting officer determines that the specific situation will not pose a potential for technical bias or unfair competitive advantage.

In making the determination, the contracting officer will consider factors such as: The relative value of the work for NRC; whether there has been an on-going contractual or financial relationship between the NRC contractor and the NRC licensee that predates the NRC contract; whether the NRC contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract; the relative amount of time spent at the site by the NRC contractor's personnel; whether the work for NRC at the site is specific or is a part of a generic task or contract; and any other factors that may indicate financial ties or competitive advantage.

Another section of this clause on which the Commission received objections related to the requirement to disclose all other work proposed to be done by the contractor for others that may give rise to a COI situation. The specific objection related to the requirement that the NRC be informed of the work at least 15 days in advance of undertaking the work. Some companies complained that it is difficult for diversified firms to ensure that the division performing the work for NRC would be aware of the work by other divisions 15 days in advance in all cases. Giving due consideration to these comments, the Commission has

modified the provision to require that the contractor use due diligence to identify and obtain information about work for others that would fall within the scope of the NRC contract, and report the information to NRC 15 days in advance of undertaking the work. The Commission has also added a corresponding provision which indicates that the contracting officer may approve reporting not in accordance with this provision in cases where the contractor justifies the deviation on the grounds of urgency or by showing that despite the exercise of due diligence, the contractor's officials responsible for the NRC contract were not aware of the work for others falling within this provision.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq) exempts rules relating to public contracts from the prior notice and comment procedure normally required for rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. The Commission published the proposed NRCAR, including proposed COI regulations, on October 2, 1989 (54 FR 40420). Nonetheless, this proposal provides a further opportunity for public comment on a proposed amendment to the conflict of interest provisions presented in the October 2, 1989, proposed rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c) (5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

This proposed rule establishes the policy, procedures, and requirements necessary to comply with 42 U.S.C. 2221, section 170 A of the Atomic Energy Act of 1954, as amended, as it addresses COI. This provision will not have an additional adverse economic impact on any contractor or potential contractor because it merely implements the statute which governs COI in the award of NRC's contracts.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the agency's COI policy and procedures to comply with 42 U.S.C. 221, section 170 A of the Atomic Energy Act of 1954, as amended. Because the proposed rule establishes procedures applicable only in certain instances, these provisions do not have a significant economic impact on any contractor, including small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule. Therefore, a backfit analysis is not required because the rule does not involve any provision which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 48 CFR Chapter 20

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and FAR subpart 1.3, the NRC is proposing to adopt the following amendments to the provisions of paragraphs (c) and (d) of proposed section 2052.209-74, "Contractor organizational conflicts of interest", which was contained in the proposed rule published in the **Federal Register** on October 2, 1989 (54 FR 40420).

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for part 2052, as proposed to be added at 54 FR 40436; October 2, 1989, continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

2. Section 2052.209-74, as proposed to be added at 54 FR 40437; October 2, 1989, is proposed to be further amended by revising paragraphs (c) and (d) to read as follows:

2052.209-74 Contractor organizational conflicts of interest.

* * * * *

(c) *Work for others.* (1) Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe, with respect to itself or any employee, that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest; the contractor shall obtain the written approval of the contracting officer before the execution of such contractual arrangement.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are subject of the audit, inspection, or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate), except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

(3) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work in the same or similar

technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(d) *Disclosure after award.* (1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570–2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the government.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, and any other documents that are needed to fully describe the proposed work for the regulated utility or other regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task order which includes the technical area and, if site-specific, the site, or when the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

* * * * *

Dated at Bethesda, Maryland this 6th day of August, 1992.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 92–19627 Filed 8–17–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

48 CFR Parts 5446 and 5452

DLA Acquisition Regulation; Statistical Process Control

AGENCY: Defense Logistics Agency, DOD.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Defense Logistics Agency (DLA) is withdrawing the proposed Defense Logistics Agency acquisition regulation on the use of Statistical Process Control (SPC) in select DLA contracts. The proposed coverage would have established a new 48 CFR chapter 54 by adding prescriptive language and a contract clause at parts 5446 and 5452, respectively. The proposed rule was published for public comment in the **Federal Register** on December 20, 1991 (56 FR 66008). A correction to the proposed rule was published in the **Federal Register** on March 12, 1992 (57 FR 8740), and the comment period was reopened.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Logistics Agency, DLA-PPR at (703) 274–6431.

SUPPLEMENTARY INFORMATION: In the past, DLA relied on end item inspection to assess the quality of the products it purchased. Now, however, emphasis is being placed on controlling quality in the early stages of product manufacture. SPC is a widely recognized techique that provides for continuous quality assessment and improvement by focusing on the manfacturing process rather than the end-product.

Neither the Federal Acquisition Regulation (FAR) nor the Defense FAR Supplement (DFARS) currently contains regulatory coverage on SPC. As a result, DLA proposed adding coverage on SPC to its DLAR 4105.1, which implements and supplements the FAR, the DFARS, and other DOD publications, and establishes DLA procedures relating to the acquisition of supplies and services. The supplementary coverage would have standardized the use of SPC as a quality control tool by the various supply centers in DLA. The coverage was designed to encourage the use of SPC at contractor facilities to ensure consistent production of conforming material. However, after careful consideration of the comments received and the current emphasis on minimizing the burden of Government regulation, the determination was made to withdraw the proposed rule.

List of Subjects in 48 CFR Parts 5446 and 5452

Government procurement.

By order of the Director.

Jack S. Carver,

Acting Chief, Publications Division, Office of Administration.

[FR Doc. 92–19550 Filed 8–17–92; 8:45 am]

BILLING CODE 3620–01–M

Notices

Federal Register
Vol. 57, No. 160
Tuesday, August 18, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Bylaws of Corporation

The Bylaws of the Commodity Credit Corporation, amended July 29, 1992, are as follows:

Offices

1. The principal office of the Corporation shall be in the City of Washington, District of Columbia, and the Corporation shall also have offices at such other places as it may deem necessary or desirable in the conduct of its business.

Seal

2. There is impressed below the official seal which is hereby adopted for the Corporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced.

Meetings of the Board

3. Regular meetings of the Board shall be held, whenever necessary, on Wednesday at 9:30 a.m. in the Board meeting room in the U.S. Department of Agriculture in the City of Washington, DC Notice of such meetings shall be provided in the same manner as is specified for special meetings in Paragraph 4. No regular meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

4. Special meetings of the Board may be called at any time by the Chairman, the Vice Chairman, or by the President, or the Executive Vice President and shall be called by the Chairman, the Vice Chairman, the President, or the Executive Vice President at the written request of any five Members. Notice of special meetings shall be given either personally or by mail (including intradepartmental mail channels of the Department of Agriculture or interdepartmental mail channels of the Federal Government) or by mailgram, and notice by telephone shall be personal notice. Any member may waive in writing such notice as to himself, whether before or after the time of the meeting, and the presence of a Member at any meeting shall constitute a waiver of notice of such meeting. No notice of an adjourned meeting need be given. Any and all business may be transacted at any special meeting unless otherwise indicated in the notice thereof. No special meetings of the Board shall be held except in accordance with provisions of the Government in the Sunshine Act (5 U.S.C. 552b).

5. The Secretary of Agriculture shall serve as Chairman of the Board. The Deputy Secretary of Agriculture shall serve as Vice Chairman of the Board and, in the absence or unavailability of the Chairman, shall preside at meetings of the Board. In the absence or unavailability of the Chairman and the Vice Chairman, the President of the Corporation shall preside at meetings of the Board. In the absence or unavailability of the Chairman, the Vice Chairman, and the President, the Members present at the meeting shall designate a Presiding Officer.

6. At any meeting of the Board a quorum shall consist of five Members. The act of a majority of the Members present at any meeting at which there is a quorum shall be the act of the Board.

7. The General Counsel of the Department of Agriculture, whose office shall perform all legal work of the Corporation, and the Associate General Counsel in the Office of the General Counsel who is in immediate charge of legal work for the Corporation shall, as General Counsel and Associate General Counsel of the Corporation, respectively, attend meetings of the Board.

8. The Executive Vice President, the Vice President who is the Associate Administrator of the Agricultural Stabilization and Conservation Service, and the Secretary shall attend meetings of the Board. Each of the other Vice Presidents and Deputy Vice Presidents, and the Controller shall attend meetings of the Board during such time as the meetings are devoted to consideration of matters as to which they have responsibility.

9. Other persons may attend meetings of the Board upon specific authorization by the Chairman, Vice Chairman, or President.

Compensation of Board Members

10. The compensation of each Member shall be prescribed by the Secretary of Agriculture. Any Member who holds another office or position under the Federal Government, the compensation for which exceeds that prescribed by the Secretary of Agriculture for such Member, may elect to receive compensation at the rate provided for such other office or position in lieu of compensation as a Member.

Officers

11. The officers of the Corporation shall be a President, Vice Presidents, and Deputy Vice Presidents as hereinafter provided for, a Secretary, a Controller, a Treasurer, a Chief Accountant, and such additional officers as the Secretary of Agriculture may appoint.

12. The Under Secretary of Agriculture for International Affairs and Commodity Programs shall be ex officio President of the Corporation.

13. The following officials of the Agricultural Stabilization and Conservation Service (hereinafter referred to as ASCS), Foreign Agricultural Service (hereinafter referred to as FAS), Food and Nutrition Service (hereinafter referred to as FNS), and the Agricultural Marketing Service (hereinafter referred to as AMS) shall ex officio officers of the Corporation:

Administrator, ASCS; Executive Vice President.
Administrator, AMS; Vice President.
Administrator, FAS; Vice President.
Deputy Administrator, FNS; Vice President.

General Sales Manager and Associate Administrator, FAS; Vice President.
Associate Administrator, ASCS; Vice President.
Deputy Administrator, State and County Operations, ASCS; Deputy Vice President.
Deputy Administrator, Commodity Operations, ASCS; Deputy Vice President.
Deputy Administrator, Management, ASCS; Deputy Vice President.
Deputy Administrator, Policy Analysis, ASCS; Deputy Vice President.
Executive Assistant to the Administrator, ASCS; Secretary.
Director, Executive Analysis and Appraisal Staff, Office of the Administrator, ASCS; Deputy Secretary.
Director, Financial Management Division, ASCA; Controller.
Deputy Director for Domestic Programs, Financial Management Division, ASCS; Deputy Controller.
Deputy Director for Foreign Programs, Financial Management Division, ASCS; Treasurer.
Chief, Financial Accounting, Reports and Analysis Branch, Financial Management Division, ASCS; Chief Accountant.

The person occupying, in an acting capacity, the office of any person designated ex officio by this paragraph 13 as an officer of the Corporation shall, during his occupancy of such office, act as such officer.

14. Officers who do not hold office ex officio shall be appointed by the Secretary of Agriculture and shall hold office until their respective appointments shall have been terminated.

The President

15. (a) The President shall have general supervision and direction of the Corporation, its officers and employees.

(b) The President shall establish and direct an Office of the Secretariat. Such office shall be responsible for obtaining on developing, or as the President determines, information on major program or policy proposals submitted to the Board.

The Vice Presidents

16. (a) The Executive Vice President shall be the chief executive officer of the Corporation and shall be responsible for submission of all Corporation policies and programs to the Board. Except as provided in paragraphs (b), (c), (d), and (e) below, the Executive Vice President shall have general supervision and direction of the preparation of policies and programs for submission to the Board, of the administration of the policies and programs approved by the Board, and of the day-to-day conduct of the business of the Corporation and of its officers and employees.

(b) The Vice President who is the Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of those policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. He shall also have responsibility for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FAS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(c) The Vice President who is Administrator, AMS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of AMS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(d) The Vice President who is the General Sales Manager and Associate Administrator, FAS, shall be responsible for preparation for submission by the Executive Vice President to the Board of policies and programs of the Corporation which are for performance through the facilities and personnel of FAS. He shall also have responsibility for the administration of those operations of the Corporation, under the policies and programs approved by the Board, which are carried out through facilities and personnel of FAS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

(e) The Vice President who is the Administrator, FNS, shall be responsible for the administration of those operations of the Corporation, under policies and programs approved by the Board, which are carried out through facilities and personnel of FNS. He shall also perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, or the President of the Corporation.

17. The Vice President who is the Associate Administrator, ASCS, and the Deputy Vice Presidents shall assist the Executive Vice President in the performance of his duties and the exercise of his powers to such extent as the President or the Executive Vice President shall prescribe, and shall perform such special duties and exercise such powers as may be prescribed, from time to time, by the Secretary of Agriculture, the Board, the President of the Corporation, or the Executive Vice President of the Corporation.

The Secretary

18. The Secretary shall attend and keep the minutes of all meetings of the Board; shall attend to the giving and serving of all required notices of meetings of the Board; shall sign all powers and instruments to which his signature shall be necessary or appropriate; shall attest the authenticity of and affix the seal of the Corporation upon any instrument requiring such action and shall perform such other duties and exercise such other powers as are commonly incidental to the Office of Secretary as well as such other duties as may be prescribed, from time to time, by the President or the Executive Vice President.

The Controller

19. (a) The Controller shall have charge of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements, claims activities, and formulation of prices in accordance with established policies; and shall perform such other duties as may be prescribed, from time to time, by the President or the Executive Vice President.

(b) The Deputy Controller shall assist the Controller in the administration of all fiscal and accounting affairs of the Corporation, including all borrowings and related financial arrangements, claims activities, and formulation of prices in accordance with established policies; and shall perform such other duties as may be prescribed, from time to time, by the President or the Executive Vice President.

The Treasurer

20. The Treasurer, under the general supervision and direction of the Controller, shall have charge of the custody, safekeeping and disbursement of all funds of the Corporation; shall designate qualified persons to authorize disbursement of corporate funds; shall direct the disbursement of funds by disbursing officers of the Corporation or by the Treasurer of the United States, Federal Reserve Banks and other fiscal agents of the Corporation; and shall issue instructions incidental thereto; shall be responsible for documents

relating to the general financing operations of the Corporation, including borrowings from the United States Treasury, commercial banks and others; shall arrange for the payment of interest on and the repayment of such borrowings; shall arrange for the payment of interest on the capital stock of the Corporation; shall coordinate and give general supervision to the claims activities of the Corporation and shall have authority to collect all monies due the Corporation, to receipt therefor and to deposit same for the account of the Corporation; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time to time, by the Controller.

The Chief Accountant

21. The Chief Accountant, under the general supervision and direction of the Controller, shall have charge of the general books and accounts of the Corporation and the preparation of financial statements and reports. He shall be responsible for the initiation, preparation and issuance of policies and practices related to accounting matters and procedures, including official inventories, records, accounting and related office procedures where standardized, and adequate subsidiary records of revenues, expenses, assets and liabilities; and shall perform such other duties relating to the fiscal and accounting affairs of the Corporation as may be prescribed, from time to time, by the Controller.

Other Officials

22. Except as otherwise authorized by the Secretary of Agriculture or the Board, the operations of the Corporation shall be carried out through the facilities and personnel of ASCS, FAS, FNS, and AMS in accordance with any assignment of functions and responsibilities made by the Secretary of Agriculture and, within his respective agency or office, by the Administrators of ASCS, FAS, FNS, AMS, or the General Sales Manager and Associate Administrator, FAS.

23. The Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of the ASCS shall be Contracting Officers and executives of the Corporation in general charge of the activities of the Corporation carried out through their respective divisions or offices. The responsibilities of such Directors in carrying out activities of the Corporation, which shall include the authority to settle and adjust claims by and against the Corporation arising out of activities under their jurisdiction, shall be discharged in conformity with these Bylaws and applicable programs, policies, and procedures.

Contracts of the Corporation

24. Contracts of the Corporation relating to any of its activities may be executed in its name by the Secretary of Agriculture or the President. The Vice Presidents, the Deputy Vice Presidents, the Controller, the Deputy Controller, the Treasurer, and the Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of the ASCS may execute contracts relating to the activities of the Corporation for which they are respectively responsible.

25. The Executive Vice President who is the Administrator of ASCS and, subject to the written approval by such Executive Vice President of each appointment, the Vice Presidents, the Deputy Vice Presidents, the Controller, the Deputy Controller, and the Directors of the divisions and the Directors of the Kansas City Commodity Office and the Kansas City Management Office of the ASCS may appoint, by written instrument or instruments, such Contracting Officers as they deem necessary, who may, to the extent authorized by such instrument or instruments, execute contracts in the name of the Corporation. A copy of each such instrument shall be filed with the Secretary.

26. Appointments of Contracting Officers may be revoked by written instrument or instruments by the Executive Vice President or by the official who made the appointment. A copy of each instrument shall be filed with the Secretary.

27. In executing a contract in the name of the Corporation, an official shall indicate his title.

Annual Report

28. The Executive Vice President shall be responsible for the preparation of an annual report of the activities of the Corporation, which shall be filed with the Secretary of Agriculture and with the Board.

Amendments

29. These Bylaws may be altered or amended or repealed by the Secretary of Agriculture, or subject to his approval by action of the Board at any regular meeting of the Board or at any special meeting of the Board, if notice of the proposed alteration, amendment, or repeal be contained in the notice of such special meeting.

Approval of Board Action

30. The actions of the Board shall be subject to the approval of the Secretary of Agriculture.

I, James V. Hansen, Secretary, Commodity Credit Corporation, do hereby certify that the above is a full, true, and correct copy of the Bylaws of Commodity Credit Corporation, as amended July 29, 1992.

In witness whereof I have officially subscribed my name and have caused the corporate seal of the said Corporation to be affixed this tenth day of August, 1992.

James V. Hansen,

Secretary, Commodity Credit Corporation.

[FR Doc. 92-19623 Filed 8-17-92; 8:45 am]
BILLING CODE 3410-05-M

Forest Service

Polk Inlet Project Area, Tongass National Forest, Ketchikan Area, Prince of Wales Island, AK

AGENCY: Forest Service, USDA.

ACTION: Revision of notice of intent to prepare environmental impact statement.

The Department of Agriculture, Forest Service, hereby revises the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the Polk Inlet project area. The Notice of Intent for this project was published September 6, 1991.

The project planning area for the Polk Inlet Environmental Impact Statement will be expanded to include all of Management Areas K17 and K18, including areas outside the Ketchikan Pulp Company Sale Area. Timber sale offerings within the Primary Sale Area would be made available to Ketchikan Pulp Company. Sale offerings outside the Primary Sale Area could be made available to either the Long-Term Sale Contract or the Ketchikan Area Independent Timber Sale Program.

The Responsible Official has been delegated from the Regional Forester to the Ketchikan Area Forest Supervisor.

DATES: Initial scoping was accomplished during the Fall of 1991. Additional comments concerning this clarification need to be received by September 15, 1992.

ADDRESSES: Written comments must be sent to David D. Rittenhouse, Forest Supervisor, Tongass National Forest,

Ketchikan Area, Federal Building, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to David Arrasmith, Planning Team Staff Officer, Tongass National Forest, Ketchikan Area, Federal Building, Ketchikan, AK 99901, phone 907-225-3101.

David D. Rittenhouse, Forest Supervisor, Tongass National Forest, Ketchikan Area, Federal Building, Ketchikan, Alaska, is the responsible official. The responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision.

Dated: August 12, 1992.

David D. Rittenhouse,

Forest Supervisor.

[FR Doc. 92-19595 Filed 8-17-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Overseas Business Interest Questionnaire.

Agency Form Number: ITA-471P.

OMB Approval Number: 0625-0039.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 500 hours.

Number of Respondents: 1,000.

Avg Hours Per Response: 30 minutes.

Needs and Uses: This collection allows U.S. firms participating in overseas trade events sponsored by ITA to specifically identify their marketing objective for the event, as well as current marketing activities and status in the specific foreign markets where the event will take place. The U.S. and Foreign Commercial Service/ITA overseas posts use the information to schedule business appointments during the trade event, arrange "blue ribbon" calls on key agents or distributors identified by participants prior to an event, and to issue specific show invitations to appropriate prospective overseas business partners.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Gary Waxman, (202) 395-7340, room 3208, New Executive Office Building, Washington, DC 20503.

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Geostationary Operational Environmental Satellite (GOES) Weather Facsimile Transmission System (WEFAX).

Agency Form Number: No number assigned.

OMB Approval Number: 0648-0227.

Type of Request: Revision of a currently approved collection.

Burden: 50 hours.

Number of Respondents: 200.

Avg Hours Per Response: 15 minutes.

Needs and Uses: Respondents are an International User Community in the public domain who desire to receive and use satellite-derived products from GOES, TIROS, GMS, and METSAT satellites. NOAA requires information to determine the users station location, receiving status, and the type of satellite transmissions received.

Affected Public: Individuals, state or local governments, farms, business or other for-profit organizations, Federal agencies or employees, non-profit institutions, small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ron Minsk, (202) 395-3084, room 3019, New Executive Office Building, Washington, DC 20503.

Copies of the above information collection proposals can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer listed above.

Dated: August 12, 1992.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-19579 Filed 8-17-92; 8:45 am]

BILLING CODE 3510-CW-F

Bureau of Export Administration

[Docket Numbers OEE-1-92, OEE-2-92]

Karl Cording and A. Rosenthal (PTY) Ltd., Appellants; Final Decision and Order

On March 19, 1992, at the request of the Deputy Chief Counsel for Enforcement and Litigation, the then Acting Assistant Secretary for Export Administration issued an Order temporarily denying export privileges (TDO) to Appellants and others. The request stated that an investigation by the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (the Department) gave reason to believe that Appellants "have obtained and may continue to obtain U.S.-origin shotguns having a barrel length of 18 inches or more (shotguns), by misrepresenting the shotguns' end user and ultimate destination, in order to divert them from their licensed destination to South Africa, either directly, or indirectly through other African nations." In particular, the request asserted that U.S.-origin shotguns licensed for export to a Charleshill Trading Company in Ghanzi, Botswana, had been and were likely to be diverted to Namibia and South Africa, countries subject during various times to an arms embargo.

Based on this information, the Acting Assistant Secretary issued the TDO pursuant to the provisions of § 788.19 of the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)), issued pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401-2420 (1991)).[1] The Acting Assistant Secretary found that "an order temporarily denying the export privileges of respondents is necessary in the public interest to prevent an imminent violation of the Act and the Regulations and to give notice to companies in the United States and abroad to cease dealing with respondents in goods and technical data subject to the Act and the Regulations." The TDO is to be effective for 180 days.

On July 22, 1992, the Administrative Law Judge entered a Recommended Decision in which he concluded, "[T]here is neither a factual nor legal basis for the Temporary Denial Order." Recommended Decision, p. 22. The ALJ recommended that the TDO be vacated.

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991)).

The ALJ dismissed the Department's contention that the Charleshill Trading Company did not exist and that the inclusion of U.S.-origin guns and munitions in a catalog and advertisement circulated in Namibia as well as South Africa demonstrated an intention to violate U.S. export controls. The ALJ concluded, "[T]he record in support of a temporary denial order, when such action is permitted, must include at least a probable cause showing of a violation as well as evidence of the probability of an imminent violation." Recommended Decision, pp. 21-22.

Pursuant to section 13(d)(2) of the Export Administration Act, a TDO is to be affirmed "only if it is reasonable to believe that the order is required in the public interest to prevent an imminent violation of this act or any regulation, order, or license issued under this Act (citations omitted)." 50 U.S.C.A. app. 2412(b)(2). I note that the Department received credible information from a commercial officer in the American Embassy in Botswana that Charleshill did not exist. Most significantly in this regard, the Botswana police, which maintains an "arms registry", had no record of Charleshill being listed as a company authorized to buy, sell, or trade arms and/or ammunition. Moreover, correspondence from Respondent Cording suggests that Charleshill ceased operations in the late 1980's. Therefore, I find that the evidence in the record is sufficient to support the TDO. The conclusion of the ALJ is hereby vacated.

The ALJ also held that the Department lacked legislative authority to issue the TDO in light of the expiration of the Export Administration Act of 1979. On May 15, 1992, the Department's General Counsel provided the ALJ with a Memorandum of Law on the effect of the expiration. The General Counsel advised that Executive Order 12730 issued by the President on September 30, 1990 pursuant to his authority under the Constitution and the International Economic Emergency Powers Act provided the necessary authority for administrative proceedings to enforce export control regulations. In In the Matter of Iran Air (Docket No. 0120-01), I adopted this opinion *in toto*. I do likewise here. Therefore, the General Counsel's opinion is the law in this case and all references in the ALJ's Recommended Decision that purport to question the Department's authority under the Export Administration Act and Regulations as provided by Executive Order 12730 are also hereby vacated.

Accordingly, I find that the record supports a reasonable belief that a temporary denial order is required to prevent an imminent violation of U.S. export controls. I hereby affirm the TDO against Appellants. This constitutes the final agency action on this matter.

Dated: July 29, 1992.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

[FR Doc. 92-19599 Filed 8-17-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-100-003 and C-100-004]

Advanced Notice of Additional Streamlining Procedures for the Antidumping and Countervailing Duty Investigations of Certain Steel Products From Various Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 18, 1992. Written comments will be considered before the Department issues a final decision regarding this matter, if received not later than five business days after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Ann Sebastian, APO Specialist for Investigations, at (202) 377-3354, or Gary Taverman, Division Director, Office of Antidumping Investigations, at (202) 377-0161.

SUMMARY: The International Trade Administration (ITA) is proposing an additional streamlining procedure to be used in the antidumping (AD) and countervailing duty (CVD) investigations of certain steel product from various countries.

Under the proposal, the records of the AD investigations of each class or kind of merchandise from one country would be combined to create a single AD record for each country, as is now being done in the CVC investigations. A single administrative protective order (APO) would apply to the consolidated record for each country subject to AD or CVD investigations. Under this proposal, respondents would file only one set of AD or CVD questionnaire responses, as appropriate, for all relevant classes or kinds of merchandise for each country, including both the narrative response, and computer tape/diskette submissions, rather than separate responses and databases for each class or kind of merchandise subject to investigation. Likewise, only a single set of ten copies, rather than up to four sets of ten copies, of any other submission by any party would have to be made for one country. The intent is that each party would make only one APO version (and one public version) of any submission for each country, rather than one for each separate class or kind, or different combinations of classes or kinds of merchandise. A single APO version of a submission substantially reduces the possibility of inadvertent APO violations.

Under this proposal, only the records would be combined under a lead case number. Separate investigations for each class or kind of merchandise will continue to be conducted. The proposed procedure is intended to simplify the administration of the AD and CVD duty provisions of the Tariff Act of 1930, as amended. It is also intended to reduce the number of filings required of parties in each investigation, and to prevent inadvertent APO violations.

If adopted, any party to the proceedings who wishes to apply for an APO would submit its applications using the lead case number for all applicable classes or kinds of merchandise from that country being investigated. Lead case numbers are currently being utilized in the CVD investigations. The lead AD case numbers by country would be as follows: Argentina (A-357-808), Australia (A-602-803), Austria (A-433-803), Belgium (A-423-803), Brazil (A-351-814), Canada (A-122-820), Finland (A-405-802), France (A-427-806), Germany (A-428-813), Italy (A-475-807), Japan (A-588-824), Korea (A-580-814), Mexico (A-201-808), Netherlands (A-421-803), Poland (A-455-802), Romania (A-485-803), Spain (A-469-802), Sweden (A-401-805) and United Kingdom (A-412-814). For example, counsel participating in any of the above-referenced AD investigations from France would file one application to include hot-rolled, cold-rolled and corrosion resistant carbon steel flat products and certain cut-to-length carbon steel plate from France, using (A-427-806) as the lead case number. However, all appropriate case numbers should continue to appear on each document. Similar practices would continue to be followed in the CVD investigations.

This would not affect the deadlines for filing applications for APO as set forth in 19 CFR 353.34(b) and 355.34(b). The Department would accept amendments to previously submitted protective order requests to reflect these changes.

Comments: Written comments will be considered before the Department issues a final decision regarding this matter, if

received not later than five business days after publication of this notice. Address written comments (10 copies) to Alan M. Dunn, Assistant Secretary for Import Administration, Central Records Unit, room B-099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. Comments should be addressed: Attention: Notice of Proposed Combined Steel Records.

Dated: August 14, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-19825 Filed 8-14-92; 8:45 am]

BILLING CODE 3300-8-710-M

National Oceanic and Atmospheric Administration

Florida Keys, National Marine Sanctuary Advisory Council; Meetings

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Florida Keys National Marine Sanctuary Advisory Council notice of open meeting.

SUMMARY: The Council was established in December 1991 to advise and assist the Secretary of Commerce in the development and implementation of the comprehensive management plan for the Florida Keys National Marine Sanctuary.

TIME AND PLACE: August 31 and September 1, 1992 from 9 a.m. until adjournment. The meeting location will be at the Hawks Cay Resort, Mile Marker 61, Route 1, Duck Key, Florida.

AGENDA:

1. Discussion of Water Use Zoning Scheme.
2. Discussion of Management Alternatives.
3. Discussion of Interim Memorandum of Agreement between NOAA and the State of Florida.

PUBLIC PARTICIPATION: The meeting will be open to public participation; each day the time periods from 11:30 a.m. to noon, and 4 p.m. to 5 p.m., will be set aside for oral comments and questions. Seats will be set aside for the public and the media. Seats will be available on a first-come first-served basis.

FOR FURTHER INFORMATION CONTACT: Pamala James at (305) 743-2437 or Ben Haskell at (202) 606-4016.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program.

Dated: August 8, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-19596 Filed 8-17-92; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Bilateral Textile Consultations with the Government of India on Certain Cotton and Man-Made Fiber Textile Products

August 12, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On July 28, 1992, under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, between the Governments of the United States and India, the United States Government requested consultations with the Government of India with respect to cotton and man-made fiber coats in Categories 334/634.

The purpose of this notice is to advise the public that, pending agreement on a mutually satisfactory solution concerning Categories 334/634, the Government of the United States has decided to control imports during the ninety-day period which began on July 28, 1992 and extends through October 25, 1992.

If no solution is agreed upon in consultations between the two governments, CITA, pursuant to the agreement, may later establish a specific limit for the entry and withdrawal from warehouse for consumption of textile products in Categories 334/634, produced or manufactured in India and exported during the prorated period beginning on July 28, 1992 and extending through December 31, 1992, of not less than 36,587 dozen.

A summary market statement concerning Categories 334/634 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 334/634, under the agreement with the Government of India, or to comment on domestic production or availability of products included in Categories 334/634, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of India.

Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Categories 334/634. Should such a solution be reached in consultations with the Government of India, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see

Federal Register notice 56 FR 60101, published on November 27, 1991).

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—India

Category 334/634—Cotton and Man-Made Fiber Coats

July 1992

Import Situation and Conclusion

U.S. imports of men's and boys' cotton and man-made fiber coats, Category 334/634, from India reached 70,160 dozen in the year ending May 1992, 79 percent above the 39,098 dozen imported a year earlier. During the first five months of 1992, imports of Category 334/634 from India reached 21,732 dozen, 28 percent above their January-May 1991 level.

The sharp and substantial increase in Category 334/634 imports from India is causing a real risk of disruption in the U.S. market for men's and boys' cotton and man-made fiber coats.

U.S. Production, Import Penetration, and Market Share

U.S. production of men's and boys' cotton and man-made fiber coats, Category 334/634, declined from 5,380,000 dozen in 1987 to 3,714,000 dozen in 1991, a 31 percent decline. In contrast, U.S. imports of men's and boys' cotton and man-made fiber coats, Category 334/634, increased from 5,164,000 dozen in 1987 to 5,792,000 dozen in 1991, an increase of 12 percent. Category 334/634 imports surged in 1992, increasing 24 percent over the January-May 1991 level. The domestic manufacturers' share of the U.S. men's and boys' cotton and man-made fiber coats market fell from 51 percent in 1987 to 39 percent in 1991, a drop of 12 percentage points. The ratio of imports to domestic production increased from 96 percent in 1987 to 156 percent in 1991.

Duty-Paid Value and U.S. Producers' Price

Approximately 73 percent of Category 334/634 imports from India during the year ending May 1992 entered under HTSUSA numbers 6201.92.2050—men's cotton anoraks, windbreakers, and similar coats, other than those of corduroy or blue denim and 6201.93.3000—men's or boys' water resistant man-made fiber anoraks, windbreakers, and similar coats. These coats entered the U.S. at landed duty-paid values below U.S. producers' prices for comparable coats.

Committee for the Implementation of Textile Agreements

August 12, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 6, 1987, as amended and extended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on August 19, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 334/634, produced or manufactured in India and exported during the ninety-day period beginning on July 28, 1992 and extending through October 25, 1992, in excess of 24,877 dozen [1].

Textile products in Categories 334 and 634 which have been exported to the United States on and after January 1, 1992 shall remain subject to the Group II limit established in the directive dated January 13, 1992 for the period January 1, 1992 through December 31, 1992.

Textile products in Categories 334 and 634 which have been exported to the United States prior to July 28, 1992 shall not be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-19600 Filed 8-17-92; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after July 27, 1992.

COPYRIGHT ROYALTY TRIBUNAL

CRT [Docket No. 92-2-PBRA]

1992 Adjustment of the Public Broadcasting Royalty Rates and Terms

AGENCY: Copyright Royalty Tribunal.

ACTION: Deferring date for submission of direct cases.

SUMMARY: The Copyright Royalty Tribunal commenced the public broadcasting rate proceeding effective June 30, 1992 and established a date of September 21, 1992 for the filing of direct cases (57 FR 29066). At the request of the Public Broadcasting Service and the National Public Radio, in order to permit additional time for possible settlement, the Tribunal extends the date for the submission of the direct cases until October 19th.

DATES: Direct cases are to be submitted by October 19, 1992.

FOR FURTHER INFORMATION CONTACT: J.C. Argetsinger, Commissioner, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009, (202) 606-4400.

Dated: August 13, 1992.

Cindy Daub,

Chairman.

[FR Doc. 92-19628 Filed 8-17-92; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

General Services Administration

National Aeronautics and Space Administration

[OMB Control No. 9000-0029]

OMB Clearance Request for Extraordinary Contractual Action Requests

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0029).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Extraordinary Contractual Action Requests.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This request covers the collection of information as a first step under Public Law 85-804, as amended by Public Law 93-155 and Executive Order 10789 dated November 14, 1958, that allows contracts to be entered into, amended, or modified in order to facilitate national defense. In order for a firm to be granted relief under the Act, specific evidence must be submitted which

supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

The information is used by the Government to determine if relief can be granted under the Act and to determine the appropriate type and amount of relief.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 100; responses per respondent, 1; total annual responses, 100; preparation hours per response, 16; and total response burden hours, 1,600.

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests, in all correspondence.

Dated: August 5, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92–19561 Filed 8–17–92; 8:45 am]

BILLING CODE 6820–34–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: HEALTH PROFESSIONS ACCESSION FORMS; ATC Forms 1322, 1402, and 1437; OMB No. 0701–0078.

Type of Request: Revision.

Average Burden Hours/Minutes per Response: 1 Hour and 45 Minutes.

Responses per Respondent: 1.

Number of Respondent: 3,600.

Annual Burden Hours: 6,300.

Annual Responses: 3,600.

Needs and Uses: These forms are used by field recruiters in the processing of Health Professions applicants applying for a commission in the United States Air Force.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of the Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington Virginia 22202–4302.

Dated: August 12, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19559 Field 8–17–92; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: OFFICER TRAINING GROUP ACCESSIONS; ATC Forms 1413 and 1422; OMB No. 0701–0080.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Average Burden Hours/Minutes per Response: 1 Hour and 15 Minutes.

Responses per Respondent: 1.

Number of Respondents: 2,000.

Annual Burden Hours: 2,500.

Annual Responses: 2,000.

Needs and Uses: These forms are used by field recruiters in the processing of Officer Training Group applications for commissioning in the United States Air Force.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated August 12, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19560 Filed 8–17–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Monday, 31 August 1992.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, Inc. 2011 Crystal Drive, suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. app. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: 12 August 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 92–19562 Filed 8–17–92; 8:45 am]

BILLING CODE 3810–01–M

DOD Government-Industry Technical Data Committee; Meeting Cancellation

AGENCY: Office of The Under Secretary of Defense (Acquisition).

ACTION: Cancellation.

SUMMARY: The DoD Government-Industry Technical Data Committee meeting scheduled for August 20, 1992 (57 FR 34913, August 7, 1992) is hereby cancelled. The meetings scheduled for August 19 and September 16–17 are not affected by this change.

Dated: August 12, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19563 Filed 8–17–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Armed Forces Epidemiological Board Meeting

AGENCY: Armed Forces Epidemiological Board, DOD.

ACTION: Notice of open meeting.

1. In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.

Date of Meeting: 29–30 October 1992.

Time: 0830–1700—29 October 1992; 0800–1100—30 October 1992.

Place: Parson's Island, Chester, Maryland.

Proposed Agenda: Military preventive medicine program reports, military health care and infectious disease issues.

2. This meeting will be open to the public but limited by space accommodations. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Interested persons wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92–19551 Filed 8–17–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84–021A]

Fulbright-Hays Group Projects Abroad Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The Group Projects Abroad program provides grants to institutions of higher education, State departments of education, and private nonprofit educational organizations to support overseas projects in training, research, and curriculum development in modern foreign languages and area studies by teachers, students, and faculty engaged in a common endeavor. Projects may include short-term seminars, curriculum development, group research or study, or advanced intensive language projects.

Eligible Applicants: Institutions of higher education, State departments of education, private nonprofit educational organizations, and consortia of such institutions, departments, and organizations.

Deadline for Transmittal of Applications: October 23, 1992.

Applications Available: September 4, 1992.

Available Funds: The Administration has requested $2,300,000 for this program for FY 1993. However, the actual level of funding is contingent upon final congressional action.

Estimated Range of Awards: $40,000 to $200,000.

Estimated Average Size of Awards: $70,000.

Estimated Number of Awards: 32.

Project Period: five weeks for short-term seminar projects, six to eight weeks for curriculum development projects, two to twelve months for group research or study projects and up to 36 months for advanced overseas intensive language training projects.

Applicable Regulations: (a) Higher Education Programs in Modern Foreign Language Training and Area Studies—Group Projects Abroad program, 34 CFR part 664; and (b) Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86.

Priorities

Competitive Priority

Under 34 CFR 75.105(c)(2)(i) and 34 CFR 664.32, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards up to 5 pbints to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Short-term seminars that develop and improve foreign language and area studies at elementary and secondary schools.

Absolute Priorities

Under 34 CFR 75.105(c)(3) and 34 CFR 664.32, the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under this program only applications that meet one of these absolute priorities. The priorities are the following world areas:

Absolute Priority 1—Sub-Saharan Africa.

Absolute Priority 2—Latin America and the Caribbean.

Absolute Priority 3—East Asia.

Absolute Priority 4—Southeast Asia and the Pacific.

Absolute Priority 5—East Central Europe (i.e., Poland, Czechoslovakia, Hungary, Bulgaria, Albania, Rumania, and the new republics that were formerly part of Yugoslavia(, the Baltic States, and other new republics of the former Union of Soviet Socialist Republics.

Absolute Priority 6—The Near East and North Africa.

Absolute Priority 7—South Asia.

For Applications or Information Contact: Lungching Chiao, U.S. Department of Education, 400 Maryland Avenue SW., room 3052, ROB–3, Washington, DC 20202–5332. Telephone: (202) 708–7283. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: August 11, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–19589 Filed 8–17–92; 8:45 am]

BILLING CODE 4000–01–M

International Education Programs: Undergraduate International Studies and Foreign Language Program and the Business and International Education Program

AGENCY: Department of Education.

ACTION: Combined notice inviting applications for new awards for fiscal year (FY) 1993.

SUMMARY: Applications are invited for new awards for FY 1993 under title VI of the Higher Education Act of 1965, as amended (the HEA), for the Undergraduate International Studies and Foreign Language Program and the Business and International Education Program. These programs support America 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy.

ADDRESSES: The addresses for obtaining applications for, or further information about, these two programs are in the respective announcements for the programs. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

INTERNATIONAL EDUCATION PROGRAMS

Title and CFDA No.	Applications available	Application deadline date	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated average size of awards	Estimated number of awards
Undergraduate International Studies and Foreign Language Program (84.016)	9/4/1992	11/2/1992	1/4/1993	$1,896,500	$30,000 to 85,000	$61,000	31
Business and International Education Program (84.153)	9/4/1992	11/9/1992	1/11/1993	$1,658,500	$40,000 to 100,000	$73,000	23

Note: The Department is not bound by any estimates in this notice.

CFDA No. 84.016—Undergraduate International Studies and Foreign Language Program

Purpose of Program: Provides grants to strengthen and improve undergraduate instruction in international studies and foreign languages in the United States.

Eligible Applicants: Institutions of higher education, combinations of institutions of higher education, and public and private nonprofit agencies and organizations, including professional and scholarly associations.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 655 and 658.

Priority

Under 34 CFR 75.105(c)(2)(i) and section 604(a)(4), title VI of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992, the Secretary gives preference to applications that meet the following competitive priority. The Secretary awards 5 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Applications from institutions of higher education or combinations of such institutions that require entering students to have successfully completed at least 2 years of secondary school foreign language instruction or that require each graduating student to earn 2 years of postsecondary credit in a foreign language (or have demonstrated equivalent competence in the foreign language) or, in the case of a two-year degree granting institutions, offer 2 years of postsecondary credit in a foreign language.

Project Period: 24 to 36 months.

Matching Requirements: An institutional grantee shall pay a minimum of 50 percent of the cost of the project for each fiscal year. This is a new statutory requirement under the Higher Education Amendments of 1992.

For Applications or Information Contact: Christine Corey, U.S. Department of Education, 400 Maryland Avenue SW., room 3053 ROB-3, Washington, DC 20202-5332. Telephone: (202) 708-7283.

Program Authority: 20 U.S.C. 1124.

DFDA No. 84.153—Business and International Education Program

Purpose of Program: Provides grants to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Eligible Applicants: Institutions of higher education that have entered into agreements with business enterprises, trade organizations or associations engaged in international economic activity.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 85 and 86; and (b) The regulations for this program in 34 CFR parts 655 and 661.

Project Period: 24 months.

For Applications or Information Contact: Susanna C. Easton, U.S. Department of Education, 400 Maryland Avenue SW., room 3053 ROB-3, Washington, DC 20202-5332. Telephone: (202) 708-7283.

Program Authority: 20 U.S.C. 1130-1130b.

Dated: August 11, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-19588 Filed 8-17-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-765-000, et al.]

Potomac Electric Power Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Potomac Electric Power Co.

[Docket No. ER92-765-000]

August 10, 1992.

Take notice that on August 4, 1992, the Potomac Electric Power Company (Pepco) tendered for filing Notice of Termination for Pepco FPC Rate Schedule No. 18. An effective date of July 31, 1992 is requested for good cause.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. New England Power Co.

[Docket No. ER92-764-000]

August 10, 1992.

Take notice that on August 4, 1992, New England Power Company (NEP) tendered for filing a new transmission tariff entitled FERC Electric Tariff Original Volume No. 7, Tariff for Transmission Service Over the New Hampshire Corridor. NEP states that the tariff is designed to implement the New Hampshire Corridor Proposal that was approved by the Commission in Northeast Utilities Service Company, Docket Nos. EC90-10-000, *et al.* NEP requests an effective date of September 3, 1992.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Northeast Utilities Service Co. (Re: Public Service Company of New Hampshire)

[Docket No. ER92-766-000]

August 10, 1992.

Take notice that on August 4, 1992, Northeast Utilities Service Company (NUSCO) tendered for filing Transmission Tariff No. 4, pursuant to NUSCO's commitment to file the rates, terms and conditions for firm transmission service implementing the New Hampshire Corridor Plan within sixty (60) days of the consummation of the merger between Northeast Utilities (NU) and Public Service Company of New Hampshire (PSNH). NUSCO requests that Tariff No. 4 be made effective on October 5, 1992, which is sixty (60) days after the date of this filing. When effective Tariff No. 4 will make available for subscription 440 MW of long-term firm transmission service across the PSNH system with termination dates ranging from October 31, 2000 to October 31, 2020.

Copies of the filing have been served by first-class mail upon all parties on the official service list compiled by the Secretary in this proceeding. This includes delivery to the public utility commissions in all six New England states.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER92-761-000]

August 10, 1992.

Take notice that on July 31, 1992, Entergy Services, Inc. (Entergy Services), as agent for Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc. on July 31, tendered for filing a Transmission Service Agreement (TSA) between Entergy Services and Entergy Power, Inc. (Entergy Power). The TSA sets out the terms and conditions of firm and non-firm transmission service, for two separate sales of power and energy by Entergy Power to Oglethorpe Power Corporation, under the Entergy Operating Companies Transmission Service Tariff, which has been filed in Docket No. ER91-569-002.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Co.

[Docket No. ER92-466-000]

August 10, 1992.

Take notice that on August 5, 1992, Virginia Electric and Power Company (Virginia Power or the Company) tendered an amendment to its filing of an initial rate schedule in the form of a limited term power purchase agreement (the Agreement) between the Company and Old Dominion Electric Cooperative (Old Dominion) dated November 26, 1991. The schedule provides for Virginia Power to supply Old Dominion with peaking capacity and associated energy for a period beginning January 1, 1993 and ending no later than December 31, 1996. Under the power service agreement, Virginia Power will supply Old Dominion with firm capacity and energy until such time as Old Dominion's output is available from the Clover Generating Station, which is jointly owned by Virginia Power and Old Dominion. This limited term power sales does not affect the Company's existing rates currently on file with the Commission which are applicable to Old Dominion's supplemental power requirements.

Copies of the amended filing were served upon Old Dominion and its counsel, Virginia Municipal Electric Association No. 1, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Connecticut Light and Power Co.

[Docket No. ER92-523-000]

August 10, 1992.

Take notice that on July 31, 1992, Northeast Utilities Service Company (NUSCO) as agent for The Connecticut Light and Power Company (CL&P) tendered for filing supplemental information regarding a short term sales agreement and addenda for sales to the New York Power Authority (NYPA).

NUSCO states that the filing was made in response to a request by the Commission for additional information. The filing also provides for additional sales pursuant to the original agreement and provides that CL&P's affiliate, Public Service Company of New Hampshire, will be a partial supplier of capacity and energy to NYPA in July, 1992.

NUSCO states that a copy of this filing has been mailed to NYPA.

NUSCO requests that the Commission waive its standard notice period and filing notice regulations to the extent necessary to permit the rate schedule originally filed to become effective April 20, 1992 and for the addenda to become effective June 1, June 17, and July 1, 1992 as dated.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Tucson Electric Power Co.

[Docket No. ER92-762-000]

August 10, 1992.

Take notice that on August 3, 1992, Tucson Electric Power Company (Tucson) tendered for filing a Notice of Cancellation of the Short Term Power Sale Agreement between Tucson Electric Power Company and Citizen's Utilities Company.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Central and South West Services, Inc.

[Docket No. ER92-760-000]

August 10, 1992.

Take notice that on July 31, 1992, Central and South West Services, Inc. (CSWS), on behalf of the four Central and South West Corporation Operating Companies, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company, tendered for filing a revised Transaction Cost Compensation Procedure for the Central and South West system. The revised Procedure makes available to each of the CSW Operating Companies the option to participate in directly compensating

non-CSW companies for losses by returning energy in kind.

CSWS requests that the revised Procedure be made effective as of October 1, 1992. Copies of the filing have been served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas. Copies of the filing are also available for inspection in the main offices of each of the CSW Operating Companies.

Comment date: August 24, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. KIAC Partners

[Docket No. QF91-54-002]

August 10, 1992.

On July 24, 1992 and August 4, 1992, KIAC Partners tendered for filing two amendments to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendments provide additional information pertaining primarily to the ownership structure of the cogeneration facility.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Citizens Utilities Co.

[Docket No. ES92-50-000]

August 11, 1992.

Take notice that on August 6, 1992, Citizens Utilities Company (Citizens) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authorization to issue not more than 781,260 shares of common stock, Series B, pursuant to the Citizens Utilities Company 1992 Employee Stock Purchase Plan. Also, Citizens requests exemption from the Commission's competitive bidding regulations.

Comment date: September 8, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Iowa Southern Utilities Co.

[Docket No. ES92-17-001]

August 11, 1992.

Take notice that on August 5, 1992, Iowa Southern Utilities Company (Iowa Southern) filed an amendment with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting that the authorization be amended as follows:

1. Increase the amount of short-term notes authorized to $50 million for a interim period of 90 days.

2. Permit Iowa Southern to use the inter-company money pool, in addition to commercial paper and short-term notes issued through commercial banks, for short-term financing.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19608 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3706-010 Pennsylvania]

American Hydro Power Co.; Availability of Environmental Assessment

August 12, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed an application to breech the timber frame portion of Mussers Dam and to decommission the remaining project facilities. The purpose of the proposed action would be to address concerns regarding the safety of the timber frame portion of the dam.

The Commission's OHL prepared an Environmental Assessment (EA) for the proposed action. The EA concludes that approval of the proposed action would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19614 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-2-31-005]

Arkla Energy Resources, a Division of Arkla, Inc., Petition for Waiver of Commission's Regulations

August 12, 1992.

Take notice that on July 30, 1992, Arkla Energy Resources, a division of Arkla, Inc. (AER), hereby requests a waiver of the Commission's PGA regulations to permit AER to continue to include certain costs in its rates.

AER states that on April 16, 1992, the Commission accepted and suspended the tariff sheets it filed on February 18, 1992. In its order, the Commission required AER to recalculate its assessment of past performance test to reflect the removal of exchange transactions for the third and fourth test intervals. AER states that on May 18, 1992, it filed its tariff sheets to comply with the Commission's April 16 order.

AER states that on June 30, 1992, the Commission issued an order in this proceeding indicating that in performing the recalculation required in the April 16 order, AER had exceeded by $24,352 the 103% threshold for the third test interval in its May 18 filing. AER asserts that the Commission direct AER to either remove the cost from its Account No. 191 or to file a request for waiver of the Commission's regulations to include these costs in its rates.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 19, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19552 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-63-001 and TQ92-7-63-000]

Carnegie Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 12, 1992.

Take notice that on August 6, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following substitute primary and alternate revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Sub Thirty-Fourth Revised Sheet No. 8
Sub Thirty-Fourth Revised Sheet No. 9
Sub Alt Thirty-Fourth Revised Sheet No. 8
Sub Alt Thirty-Fourth Revised Sheet No. 9

The above tariff sheets are proposed to become effective September 1, 1992.

Carnegie states that, pursuant to § 154.305(c)(4) of the Commission's regulations, it is updating its Annual PGA filed on July 2, 1992, in Docket No. TA92-1-63-000, to reflect recent changes in the effective sales rates of Carnegie's pipeline supplier, Texas Eastern Transmission Corporation ("Texas Eastern"), pursuant to Texas Eastern's July 30, 1992 filing in Docket No. TQ92-7-17-000. Carnegie states that, except for the correction of a transportaion error in the PGA demand surcharge rate for Rate Schedules LVWS and CDS, no other changes to Carnegie's originally-filed Annual PGA are reflected in this filing.

Carnegie's filing reflects a current estimated average cost of gas of $1.8002 per Dth, based upon total projected commodity costs of $12,007,404 and projected jurisdictional sales of 6,670,000 Dth. The revised rates reflect the following changes from Carnegie's last fully-supported PGA filing in Docket No. TQ92-6-63-000: a $0.0110 per Dth decrease in the demand component of its sales rates under its LVWS and CDS rate schedules; a $0.0347 per Dth decrease in the commodity component of its sales rates under its LVWS and CDS rate schedules; a $0.0003 per Dth decrease in the DCA component of its sales rates under its LVWS and CDS rate schedules; a 0.0351 per Dth decrease in the maximum commodity rate under Rate Schedule SEGSS and a 0.0347 per Dth decrease in the minimum commodity rate under Rate Schedule SECSS.

Carnegie also states that the base rates reflected in its proposed tariff sheets correspond with the respective base rate changes proposed in the primary and alternate tariff sheets filed by Carnegie in Docket No. RP92-190-000 on June 16, 1992. Carnegie requests that the Commission's acceptance of either the substitute primary or substitute alternate tariff sheets filed in this Annual PGA proceeding be made subject to the outcome of the proceeding in Docket No. RP92-190-000.

Carnegie states that copies of its filing have been served on all jurisdictional customers and interested state commissions.

Any person desiring to intervene or protest said filing should file an intervention and/or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 214 and 211 of the Commission's Rules of practice and procedure (18 CFR sections 385.214 and 385.211). All such pleadings should be filed on or before August 19, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19553 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-14-000]

CNG Transmission Corp.; Prefiling Conference

August 12, 1992.

Take notice that a prefiling conference will be held in this proceeding on Thursday, August 27, 1992, at 9 a.m. at a location in Washington, DC to be determined later. The purpose of the conference is to discuss CNG's proposed plan for implementation of Order Nos. 636 and 636-A. All parties and the Commission Staff are invited to attend. For additional information, contact William J. Collins at (202) 208-0248.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19610 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 2809-008 Maine]

Consolidated Hydro Maine, Inc.; Availability of Environmental Assessment

August 12, 1992.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for a license amendment to include 1-foot-high flashboard already existing at the American Tissue Project on the Cobbosseecontee Stream, Kennebec County, Maine. The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed actions. In the EA, the staff concludes that approval of the amendment would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D.Cashell,

Secretary.

[FR Doc. 92-19615 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-217-000]

Distrigas of Massachusetts Corp.; Proposed Changes in FERC Gas Tariff

August 12, 1992.

Take note that the Distrigas of Massachusetts Corporation ("DOMAC"), on August 5, 1992, tendered for filing of its FERC Gas Tariff. First Revised Sheet Volume No. 1, the following tariff sheets:

First Revised Sheet No. 75
Original Sheet No. 75A

These tariff sheets have a proposed effective date of September 4, 1992.

The proposed changes would modify the limits, or "caps," on the call payment that DOMAC is allowed to charge for firm service by including on an interim basis in the formula for calculating the call payment cap under the FVSS rate schedule the demand charges associated with an alternative firm service available in DOMAC's market. The purpose of the proposed change is not to increase customer charges but to permit DOMAC to respond flexibly to current competitive market conditions.

DOMAC states that copies of the filing were served upon DOMAC's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protect such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Procedures. All such motions or protests should be filed on or before August 19, 1992. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19555 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RS92-60-002 and RS92-60-003]

El Paso Natural Gas Co.; Clarifying Procedures

August 12, 1991.

On July 31, 1992, El Paso Natural Gas Company (El Paso), tendered for filing and acceptance, certain tariff sheets, in order to partially comply with Order No. 636. These tariff sheets would (i) implement a capacity releasing program; and (ii) establish procedures for the assignment of firm upstream capacity held by El Paso. On August 7, 1992, El Paso amended the partial compliance filing in light of Order No. 636-A.

Notice is given that any protest to, or comments on, El Paso's partial compliance filing must be filed with the Commission within 21 days of the August 7, 1992 amended filing, or August 28, 1992. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19609 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-216-000]

Florida Gas Transmission Co., Petition for Limited Waiver of Tariff Provisions

August 12, 1992.

Take notice that on August 5, 1992, Florida Gas Transmission Company (FGT) hereby petitions the Federal Energy Regulatory Commission (Commission) for a limited waiver of Commission policy and FGT's FERC Gas Tariff, to the extent necessary, to permit Peoples Gas System, Inc. (Peoples) to retain its existing priority date while adding a new delivery point to an agreement for firm transportation service under Rate Schedule FTS-1; to an agreement for preferred transportation service under Rate Schedule PTS-1; and to an agreement for interruptible transportation service under Rate Schedule ITS-1.

FGT states that good cause exists for granting the requested waivers in that (i) FGT will continue to serve the same customer, Peoples; (ii) the new delivery point will be located in the same geographic location as other existing delivery points at which FGT presently serves Peoples; and (iii) the new delivery point will not interfere with FGT's ability to render firm service to FGT's other customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 19, 1992 file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or protest in accordance with § 385.211 and 385.214 of the Commission's Rules of practice and procedure 18 CFR 385.211 and 385.214. Protests will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19556 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-16-000]

Florida Gas Transmission Co.; Prefiling Conference

August 12, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 2, 1992 at 1:30 p.m. It is expected to continue on September 3, 1992. It will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. The conference will address the July 7, 1992 summary of proposal to comply with Order No. 636 submitted by Florida Gas Transmission Company (Florida Gas), together with any changes in that proposal that Florida Gas may submit before September 2, 1992 or at the time of the conference.

All interested parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested parties can call Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19611 Filed 8-11-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-73-000]

National Fuel Gas Supply Corp.; Informal Settlement Conference

August 12, 1992.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Friday, September 11, 1992. The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC, for the purpose of exploring the possible settlement of the above-captioned proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Joanne Leveque at (202) 208-5705 or Warren Wood at (202) 208-2091.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19613 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-10-000]

Southern Natural Gas Co.; Conference

August 12, 1992.

Take notice that on Friday, September 11, 1992, at 9:30 a.m., a conference will be convened in the above-captioned docket to discuss Southern Natural Gas Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held at the Four Seasons Hotel, Salon A, 2800 Pennsylvania Avenue NW., Washington, DC 20007. All interested parties are invited to attend. Attendance at the conference will not confer party status. For additional information, interested persons can call Barbara Reideler, (202) 208-2015, or Robert J. Szekely at (202) 208-0442.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19612 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-48-005]

Viking Gas Transmission Co.; Compliance Filing

August 12, 1992.

Take notice that on August 5, 1992, Viking Gas Transmission Company ("Viking") filed the following tariff sheets to be effective June 1, 1992:

Original Volume No. 1

First Revised Nineteenth Revised Sheet No. 6
Sup. Alternate 19th
Substitute Second Revised Sheet No. 60
Substitute Second Revised Sheet No. 64
Second Substitute Second Revised Sheet No. 65
Substitute Third Revised Sheet No. 81E
Third Substitute Original Sheet No. 97A
Third Substitute Original Sheet No. 97B
Substitute Original Sheet No. 97C

Viking states that the purpose of this filing is to comply with the order issued by the Commission on July 21, 1992 in the above-referenced docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's rules of Practice and procedure 18 CFR 385.211. All such protests should be filed on or before August 19, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19554 Filed 8-17-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket Nos. 92-99-NG, 92-105-NG]

Neste Trading (USA), Inc., Redwood Resources Inc.; Applications for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that the applications identified in the attached appendix were filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. The applicants request blanket authorization to import or export natural gas from or to Canada or Mexico on a short-term or spot market basis over a period of two years beginning on the date of the first delivery. The proposed imports and exports would take place at any point on the borders of the United States that would not require the construction of new pipeline facilities.

Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, at the below address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. You are invited to submit protests, motions to intervene, notices of intervention, and written comments with respect to any docket listed above.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in the specific docket at the address listed below no later than 4:30 p.m., eastern time, September 17, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4819.

SUPPLEMENTARY INFORMATION: Notice of these applications is consolidated for administrative reasons, but DOE is conducting separate proceedings and will issue individual decisions on each application. Any protestor, intervenor, commenter, or other respondent who wishes to participate in more than one docket must submit a separate filing in each docket. DOE's decision on applications for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose any of these applications, should comment on these issues as they relate to the requested import/export authority. The applicants assert that their proposals are in the public interest. Parties opposing any of these applications bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in these proceedings until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to a proceeding and to have written comments considered as the basis for any decision on an application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to an application will not serve to make the protestant a party to that proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on an application. The filing of an intervention with respect to a particular docket will not serve to make the person a party in any other docket. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed to the specific docket with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on an application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any

request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Issued in Washington, DC, on August 12, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

APPENDIX

Filing date	Applicant name and docket No.	Two-year maximum		Comments
		Import volume	Export volume	
7/30/92	Neste Trading (USA) Inc. (92-99-NG)		21.9 Bcf [1]	Exports to Canada and Mexico.
8/10/92	Redwood Resources Inc. (92-105-NG)	50.0 Bcf		Imports from Canada.

[1] Combined total of exports.

[FR Doc. 92-19639 Filed 8-17-92; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4196-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR), abstracted below, has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 17, 1992.

FOR FURTHER INFORMATION OR A COPY OF THIS ICR, CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Amendment to the Information Collection Request Application for Motor Vehicle Emission Certification and Fuel Economy Labeling (OMB No. 2060-0104); Inherently Low-Emission Vehicle Emission Certification and Fuel Economy Labeling: Clean Fuel Fleet Credit Programs, Transportation Control Measure Exemptions, and Related Provisions (ICR No. 783.19).

This ICR requests revision of a currently approved collection.

Abstract: The Clean Air Act (CAA) Amendments of 1990 require that a Clean Fuel Fleet Program be established in certain areas which have significant air pollution problems. A percentage of new vehicles purchased annually by certain fleet owners in these areas must meet clean-fuel fleet vehicle (CFFV) emission standards. CFFVs are to be exempt from certain temporal-based transportation control measures (TCMs). A fleet credit program will also be instituted which will grant CFFV credits to fleet owners who choose to exceed the program's minimum requirements (e.g., by purchasing more CFFVs than required in a given year or by purchasing cleaner vehicles than required). The fleet program is to be established, administered, and enforced by the individual states which contain the air quality areas of concern. One additional aspect of the program, that of inherently low-emission vehicles (ILEVs), will be administered by EPA. Because of their fuel or technology, ILEVs will have no significant evaporative emissions and greatly reduced notrigen oxide (NOx) emissions. ILEVs bought for fleet use in covered areas will be exempt from ordinances which restrict certain traffic lanes to high-occupancy vehicles (HOVs). Participation in the ILEV program is voluntary for fleet owners and vehicle manufacturers.

This supporting statement amends the existing ICR to reflect the new regulations associated with the certification of ILEVs. Any federal information collection burden which may be associated with other aspects of the fleet program will be covered in a later IRC, prepared in conjunction with an upcoming Notice of Proposed Rulemaking on the general provisions of the fleet program.

Burden Statement The public reporting burden for this collection of information is estimated to average 4,100 hours per response, including time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. This results in an overall program average of 15,092 hours per response.

Respondents: Motor Vehicle Manufacturers.

Estimated Number of Respondents: 86.

Estimated Totol Annual Burden on Respondents: 1,417,000 Hours.

Frequency of Collèction: Annually.

Send comments regarding the burden estimate, or any other aspect of this information collection, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street SW., Washington, DC 20460,

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: August 11, 1992.

Richard D. Wilson,

Director, Office of Mobile Sources.

[FR Doc. 92-19643 Filed 8-17-92; 8:45 am]
BILLING CODE 6560-50-M

[FRL-4195-5]

EPA's Scientific Reassessment of Dioxin

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of upcoming activities regarding EPA's reassesment of dioxin.

SUMMARY: The EPA has scheduled two peer-review workshops to be held in mid-September 1992 to review draft documents on exposure assessment procedures and health assessment issues related to its reassessment of dioxin. These draft documents, authored primarily by outside scientific experts, are, at this stage, very preliminary, developmental, and do not represent Agency policy. The draft documents are being made available in advance of the workshops as part of the Agency's continuing commitment to conduct the reassessment of dioxin in an open and participatory manner, to keep the public informed of its progress, and to encourage public participation in the document development process. The public is invited to attend the workshops, to present oral comments, and/or to submit written comments. Seating will be limited, and advance reservations are suggested. Information about attending the meetings and obtaining copies of the draft documents is provided elsewhere in this notice. After the workshops, external review drafts will be prepared by the Agency and will be released for public review and comment and review by the Agency's Science Advisory Board.

At the first workshop, scheduled for September 10 and 11, 1992, a panel of scientific experts from outside the Agency will review a draft document on procedures for assessing exposure to dioxin titled, Estimating Exposures to Dioxin-Like Compounds (EPA/600/6-88/005B). Information about obtaining copies of this draft document is provided elsewhere in this **Federal Register** notice.

The second workshop, scheduled for September 22 through 25, 1992, will focus on a review of draft chapters that will ultimately be part of a full health assessment of 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin (TCDD) and related compounds. The peer-review panel, a group of scientific experts from outside the Agency, also will discuss and formulate points to be included in a risk characterization chapter, which will be further developed by the Agency following the workshop. Information about obtaining copies of these draft chapters is provided elsewhere in this **Federal Register** notice.

DATES: The peer-review workshop to review the draft document on procedures for assessing exposures to dioxin will be held September 10 and 11, 1992. Copies of the draft document will be available on or about August 10, 1992.

The peer-review workshop to review the draft health assessment chapters will be held September 22 through 25, 1992. Copies of the draft chapters will be available on or about August 24, 1992.

ADDRESSES: Eastern Research Group, Inc. (ERG), an EPA contractor, is providing logistical support for the peer-review workshops. Both meetings will be held at the Sheraton Premiere at Tysons Corner, 8661 Leesburg Pike, Tysons Corner, VA. For additional information, please contact Helen Murray, ERG, at (617) 674-7307 or fax (617) 674-2906. Further, members of the public wishing to present formal statements at either meeting should request a time when making their reservations. Time will be limited in order to give everyone an equal opportunity to speak. Individuals and organizations who are not assigned a time in advance of the workshops will be heard as time permits. In addition, during the meetings some time will be designated for questions and comments from the floor to encourage interactions among authors, peer-panel members, and the other meeting attendees.

Members of the public may also submit written comments and other materials relevant to the scientific reassessment of dioxin to: Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02173-3198, Attention: Helen Murray. Comments will be accepted up to 10 working days following each meeting. After that time, written comments should be directed to: Office of Health and Environmental Assessment (RD-689), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, Attention: Dioxin Reassessment.

Members of the public wishing to make a reservation simply to attend one or both of the meetings may phone ERG at (617) 674-7270 to leave their name on ERG's automated registration system. The system is available 24 hours a day.

To obtain a copy of the draft exposure document or any of the draft health assessment chapters, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569-7562; fax (513) 569-7566. Please provide your name, mailing address, and the appropriate document title and number from the list below.

Estimating Exposures to Dioxin-Like Compounds EPA/600/6-88/005B

Health Assessment Chapters:

Chapter 1. Disposition and Pharmacokinetics EPA/600/AP-92/AP-92/001a.
Chapter 2. Mechanisms of Toxic Actions EPA/600/AP-92/001b.
Chapter 3. Acute, Subchronic, and Chronic Toxicity EPA/600/AP-92/001c.
Chapter 4. Immunotoxic Effects EPA/600/AP-92/001d.
Chapter 5. Reproductive and Developmental Toxicity EPA/600/AP-92/001e.
Chapter 6. Carcinogenicity of TCDD in animals EPA/600/AP-92/001f.
Chapter 7. Epidemiology/Human Data EPA/600/AP-92/001g.
Chapter 8. Dose-Response Relationships EPA/600/AP-92/001h.

Once available, the draft documents also will be provided for inspection at the ORD Public Information Shelf, EPA Headquarters Library, 401 M Street, SW., Washington, DC 20460, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except for Federal holidays, and at all of the EPA Regional and Laboratory libraries.

FOR FURTHER INFORMATION CONTACT: For copies of documents: ORD Publications Center, CERI-FRN, Office of Research and Development, U.S. Environmental Protection Agency, 26 W. Martin Luther King Drive, Cincinnati, OH 45268; telephone (513) 569-7562; fax (513) 569-7566. For questions on exposure: John Schaum, Exposure Assessment Group, Office of Health and Environmental Assessment (RD-689), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260-5988; fax (202) 260-1722.

For questions on the health assessment: William Farland, Office of Health and Environmental Assessment (RD-689), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260-7315; fax (202) 260-0393.

SUPPLEMENTARY INFORMATION: In April 1991, EPA Administrator William Reilly announced that EPA would conduct a scientific reassessment of the risks of exposure to 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) and chemically similar compounds collectively known as dioxin. The reassessment is part of the Administrator's goals of improving the research and science base of the Agency, and incorporating improved research and science into EPA decisions.

The EPA has undertaken this task in response to emerging scientific knowledge of the biological, human health, and environmental effects of dioxin. Significant advances have

occurred in the scientific understanding of mechanisms of dioxin toxicity, of the carcinogenic and other adverse health effects of dioxin in people, of the pathways to human exposure, and of the toxic effects of dioxin to the environment.

The EPA is making this reassessment of dioxin an open and participatory effort. It has convened two public meetings (on November 15, 1991, and April 28, 1992) to inform the public of the Agency's plans and activities, to hear and receive public comments and reviews of the proposed plans for the reassessment, and receive any current, scientifically relevant information.

The scientific reassessment of dioxin consists of five activities:

1. Development of a biologically based dose-response model for dioxin.
2. Update and revision of the health assessment document for dioxin.
3. Laboratory research in support of the dose-response model.
4. Update and revision of the dioxin exposure assessment document.
5. Research to characterize ecological risks in aquatic ecosystems.

The first three activities will be combined as the reassessment activities result in a revised health assessment. The process for developing the health assessment document consists of three phases:

Phase 1 includes completing state-of-the-science chapters and a dose-response model for the health assessment document and conducting a peer review by a panel of experts. Drafts of the chapters, which ultimately will comprise the Agency's health assessment document for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) and related compounds, have been completed, and the peer-review workshop is scheduled.

Phase 2, preparation of the risk characterization, will begin during the workshop. The peer-review panel will discuss and formulate points to be carried forward into the risk characterization. Following the workshop, a draft health assessment document will be assembled.

Phase 3 will involve review of the draft health assessment and exposure documents by the EPA's Science Advisory Board (SAB) and the public. These activities will be announced in the **Federal Register** at the appropriate time. Anticipated dates include public review and comment of the two draft documents in late 1992 and completion of Phase 3 in mid-1993.

The fourth activity has been completed. A draft exposure document titled, Estimating Exposures to Dioxin-Like Compounds, will be the subject of a separate peer-review workshop and additional reviews as outlined in the preceding paragraph.

The fifth activity is in progress. EPA's Environmental Research Laboratory in Duluth, Minnesota, is directing the efforts and conducting studies related to characterizing ecological risks in aquatic ecosystems from exposure to dioxins. Research efforts are focused on the study of organisms in aquatic food webs to identify the effects of dioxin exposure that are likely to result in significant population impacts. Both the study results and the risk characterization will undergo peer and SAB review in 1994. Ultimately, these data will support the development of aquatic life criteria which will aid in the implementation of the Clean Water Act.

Dated: August 7, 1992.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 92-19621 Filed 8-17-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4195-9]

Virginia: Adequacy Determination of the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of tentative determination on application of the Commonwealth of Virginia for adequacy determination, public comment period, and public hearing (if necessary).

SUMMARY: Section 4005(c)(1)(B) of RCRA, as amended by HSWA, requires States to develop and implement permit programs to ensure that Municipal Solid Waste Landfills (MSWLFs) which may receive hazardous household wastes or small quantity generator waste will comply with the revised Federal MSWLF Criteria. Section 4005 (c)(1)(C) requires the EPA Administrator to review these state permit programs to determine if they are adequate to ensure compliance with the Federal Criteria. This authority has been delegated to the Regional Administrator. The EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that allows for States and Tribes to apply for and receive approval of partial permit programs. Adequacy determinations will be made based on the draft STIR and statutory authorities and requirements. Virginia has applied for a determination of adequacy under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency, Region III, has reviewed Virginia's application and has made the tentative decision that Virginia's existing municipal solid waste permit program, along with revisions committed to by the State, in a schedule acceptable to EPA, satisfies all requirements necessary to qualify for a determination of adequacy. Virginia's application is available from EPA Region III and the State for public review and comment. A public hearing will be held to solicit comment and public opinion if sufficient public interest is expressed during the comment period.

DATES: The public hearing, if held, will be in Richmond, Virginia, on October 14, 1992. All comments on Virginia's application for a determination of adequacy must be received at EPA Region III by the close of business on October 14, 1992.

ADDRESSES: Copies of Virginia's application for adequacy determination are available from 9 a.m. to 4 p.m. during normal working days at the following addresses for inspection and copying: Virginia Department of Waste Management, 101 North 14th Street, Richmond, Virginia, 23219, Attn: Mr. Michael Murphy; and U.S. EPA Region III, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107; Attn: Mr. Andrew Uricheck, mailcode 3HW53. Written comments should be sent to the EPA Region III office.

FOR FURTHER INFORMATION CONTACT: EPA Region III, 841 Chestnut Street, Philadelphia, Pennsylvania, 19107, Attn: Mr. Andrew Uricheck, mailcode 3HW53, telephone 215-597-7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Section 4005 of Subtitle D also requires that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To define State application procedures and the EPA review process, the Agency has drafted and is currently in the process of proposing the State/Tribal Implementation Rule (STIR). This rule specifies the requirements that State and Tribal programs must satisfy to be determined adequate to ensure compliance with Part 258. It also provides for partial program approval if the State can demonstrate that limited and discrete State requirements must be revised to comply with Part 258. Partial approval would allow the Agency to approve those provisions of the State permit program that meet the requirements and provide the State time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved. Under this procedure, those portions of the Federal Criteria which were not included in the approval would remain in effect, or become effective, and apply directly to the owner/operator. The application must address the authorities and provide a narrative discussion of the structure of the State program that includes a summary of State technical requirements that demonstrate technical comparability with the Federal revised Criteria. The STIR also includes procedures EPA and its Regional Offices should follow in reviewing and determining the adequacy of State permitting programs for MSWLFs.

B. Commonwealth of Virginia

On May 29, 1992, Virginia's application for adequacy determination was received by EPA Region III. EPA has reviewed Virginia's application and has tentatively determined that the State's program, including future revisions committed to by the State, meets all requirements necessary to qualify for a determination of partial approval of adequacy to ensure compliance with the Federal Criteria. Upon completion of the committed revisions to the State's municipal solid waste landfill liner design requirements and their financial assurance requirements as described in its application, the State will submit an amended application to EPA Region III to obtain full approval. Virginia has provided a schedule in their application which indicates that all proposed regulatory revisions, except for those pertaining to financial assurance requirements, will be adopted and effective by January 1993. The financial assurance requirements will be adopted by December 1993.

This partial approval determination is based on the State's commitment to revise its existing liner and financial assurance requirements, and shall automatically expire on October 9, 1995, as suggested in STIR. The State's program will automatically be determined to be inadequate if the proposed revisions have not been made by that time.

In addition to the two major changes required to be made to the Virginia program noted above, the State in its application, proposed numerous other changes to existing regulations to more exactly comply with the requirements of 40 CFR part 258. After these proposed revisions are made, the Virginia municipal solid waste permitting regulations will be virtually identical to the recently issued Federal Criteria.

The major revision to the existing State landfill liner requirement will be the adoption of the composite landfill liner as described in 40 CFR 258.40 as the minimum acceptable liner design. A composite liner consists of two components, the upper component being a flexible membrane liner installed in direct and uniform contact with the lower component of at least two feet of extremely low hydraulic conductivity compacted soil.

The major revision to the existing State financial assurance statutes and regulations is that their applicability will be extended to public landfill owners and operators. They are currently exempt from these requirements.

EPA will consider all public comments received on its tentative determination through October 14, 1992, by letter and at the public hearing on October 14, 1992, if held. Persons requesting that EPA hold a public hearing and/or wishing to be notified of the specific time and location of the hearing, if held, should contact the EPA Region III office no later than September 25, 1992.

EPA will publish its final determination in the **Federal Register**.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

40 CFR 258, which this action implements, has fulfilled the requirements of the Regulatory Flexibility Act.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended.

Dated: August 11, 1992.

Edwin B. Erickson,

Regional Administrator.

[FR Doc. 92-19641 Filed 8-17-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-59948; FRL 4160-9]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 7 such PMN(s) and provides a summary of each.

DATES: Close of review periods:

Y 92-177, August 18, 1992.
Y 92-178, August 20, 1992.
Y 92-179, August 23, 1992.
Y 92-180, 92-181, August 20, 1992.
Y 92-182, August 24, 1992.
Y 92-183, August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

Y 92-177

Manufacturer. Reichhold Chemicals, Inc.

Chemical. (G) Alkyd resin.

Use/Production. (S) Industrial coatings. Prod. range: Confidential.

Y 92-178

Manufacturer. Confidential.

Chemical. (G) Acrylic copolymer solution.

Use/Production. (G) Paint vehicle. Prod. range: Confidential.

Y 92-179

Manufacturer. Confidential.
Chemical. (G) Styrene-acrylic polymer, sodium salts.
Use/Production. (G) Printing ink and coatings vehicle. Prod. range: Confidential.

Y 92-180

Importer. Confidential.
Chemical. (G) Fatty acid polyester.
Use/Import. (G) Printing ink. Import range: Confidential.

Y 92-181

Manufacturer. Eastman Chemical Program.
Chemical. (G) Aliphatic polyester.
Use/Production. (G) Coating intermediate. Prod. range: Confidential.

Y 92-182

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyurethane.
Use/Production. (G) Coatings. Prod. range: Confidential.

Y 92-183

Manufacturer. Henkel Corporation.
Chemical. (G) Polyester.
Use/Production. (S) Plasticizer for polyvinyl chloride resin. Prod. range: 100,000–150,000 kg/yr.

Dated: August 12, 1992.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-19650 Filed 8-17-92; 8:45 am]

BILLING CODE 6560-50-F

[AMS-FRL-4196-1]

Transportation and Air Quality Planning Guidelines; Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This action is announcing the availability of a guidance document regarding the transportation and air quality planning process. This guidance is intended to provide State and local governments with an overview of the transportation/air quality provisions of the CAAA of 1990. This action is published in response to the requirements of Section 108(e) of the CAAA of 1990.

DATES: The guidance document will be available August 18, 1992.

ADDRESSES: The documents are available to federal, State, and local governmental Agencies and may be requested from Ms. Norma Gray, Emission Control Strategies Branch, U.S. EPA National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313)–741–7884. Facsimile: 313–668–4368. It is suggested that request be made by facsimile. Copies of the document will be available for public viewing in the National Vehicle and Fuel Emissions Laboratory Library, at the same address. The document will be available to non-governmental requestors through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: (703)–487–4650. Request Document PB 92–201458.

FOR FURTHER INFORMATION CONTACT: Mr. Richard L. Williams II, Emission Control Strategies Branch, U.S. EPA National Vehicles and Fuels Emission Laboratory, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4419. Facsimile: 313–668–4368.

SUPPLEMENTARY INFORMATION: Section 108(e) of the Clean Air Act Amendments (CAAA) of 1990 directs the Administrator of the EPA to update the 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. This document is designed to assist State and local government officials in planning for transportation-related emissions reductions that will contribute to the attainment and maintenance of the NAAQS. It has been prepared in consultation with the Department of Transportation. Public comment was solicited in a Notice of Availability, published in the **Federal Register** on September 4, 1991 at (56 FR 43758).

This Guidelines document provides an overview of the air quality planning process, the transportation planning process and the ways in which they overlap in light of the CAAA. An overview is also provided of the transportation-related provisions of the CAAA. Considerations in the planning process are addressed. These include: planning procedures as required by Section 174; consideration for developing inventory and vehicle miles traveled data; consideration for developing transportation control measures; considerations for addressing PM–10; Conformity; funding; and public participation. Examples of State actions concerning planning procedures are also included.

Dated: August 10, 1992.

Michael Shapiro,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 92-19644 Filed 8-17-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4195-8]

Revision of the Iowa National Pollutant Discharge Elimination System (NPDES) Program To Authorize the Issuance of General Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of the national pollutant discharge elimination system general permits program of the State of Iowa.

SUMMARY: On August 4, 1992, the Regional Administrator for the Environmental Protection Agency (EPA), Region 7, approved the State of Iowa's National Pollutant Discharge Elimination System (NPDES) General Permits. This action authorizes the State of Iowa to issue general permits in lieu of individual NPDES permits.

FOR FURTHER INFORMATION CONTACT: Donald C. Toensing, Chief, Permits/Compliance Section, Water Compliance Branch, U.S. Environmental Protection Agency, Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7034.

SUPPLEMENTARY INFORMATION:

I. Background

EPA regulations at 40 CFR 122.28 provide for the issuance of general permits to regulate discharges of wastewater which result from substantially similar operations, contain the same types of wastes, require the same effluent limitations or operating conditions, require similar monitoring, and are appropriately controlled under a general permit rather than individual permits.

Iowa was authorized to administer the NPDES Permit program in 1978. As previously approved, the State's program did not include provisions for the issuance of general permits. There are several categories of discharges which could appropriately be regulated by general permits in Iowa, including storm water. Therefore, the Iowa Department of Natural Resources requested a revision of its NPDES program to provide for issuance of general permits.

Each general permit will be subject to EPA review as provided by 40 CFR 123.44. Public notice and opportunity to request a hearing is also provided for each general permit.

II. Discussion

The State of Iowa submitted, in support of its request, a Program Description and revised NPDES Memorandum of Agreement between EPA and the State, as well as copies of relevant statutes and regulations. The State also submitted a statement by the Attorney General certifying, with appropriate citations to the statutes and regulations, that the State has adequate legal authority to administer a general permit program consistent with the applicable federal regulations. Based upon Iowa's submission and its experience in administering an approved NPDES program, EPA has concluded that the State will have the necessary approved procedures and resources to administer the general permits program.

Under 40 CFR 123.62, NPDES program revisions are either substantial (requiring publication of proposed program approval in the **Federal Register** for public comment) or non-substantial (where approval may be granted by letter from EPA to the State). EPA has determined that assumption by Iowa of general permit authority is a non-substantial revision of its NPDES program. EPA has generally viewed approval of such authority as non-substantial because it does not alter the substantive obligations of any discharger under the State program, but merely simplifies the procedures by which permits are issued to a number of similar point sources.

Moreover, under the approved program, the State retains authority to issue individual permits where appropriate, and any person may request the State to issue an individual permit to a discharger otherwise eligible for general permit coverage. While not required under 40 CFR 123.62, EPA is publishing notice of this approval action to keep the public informed of the status of its general permits program approvals.

III. Federal Register Notice of Approval of State NPDES Program or Modifications

The following table provides the public with an up-to-date list of the status of State NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of Iowa's authority to issue general permits.

STATE NPDES PROGRAM STATUS

	Approved State NPDES permit program	Approved to regulate Federal facilities	Approved State pretreatment program	Approved general permit program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75			03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74			
Georgia	06/28/74	12/06/80	03/12/81	01/28/91
Hawaii	11/26/74	06/01/79	06/12/83	09/30/91
Illinois	10/23/77	09/20/79		01/04/84
Indiana	01/01/75	12/09/78		04/02/91
Iowa	06/10/78	06/10/78	06/03/81	06/04/92
Kansas	06/28/74	06/28/85		
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	06/07/83	
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81		04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	06/31/78		07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/26/75	06/13/80		
North Carolina	10/19/75	09/26/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90		01/22/90
Ohio	03/11/74	01/26/83	07/27/83	
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78		08/02/91
Rhode Island	09/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	
Tennessee	12/28/77	09/30/86	06/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74		03/16/82	
Virgin Islands	06/30/76			
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73		09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81		09/24/91
Totals	39	34	27	31

Number of Fully Authorized (Federal Facilities, Pretreatment, General permit) = 22.

IV. Review Under Executive Order 12291 and the Regulatory Flexibility Act

The Office of Management and Budget has exempted this rule from the review requirements of Executive Order 12291 pursuant to section 8(b) of that Order.

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. Pursuant to section 605(d) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq), I certify that this State General Permit Program will not have a significant impact on a substantial number of small entities. Approval of the Iowa NPDES State General Permit Program establishes no new substantive requirements, nor does it alter the regulatory control over any industrial category. Approval of the Iowa NPDES State General Permit Program merely provides a simplified administrative process.

Dated: August 7, 1992.

Morris Kay,

Regional Administrator, Region 7.

[FR Doc. 92-19642 Filed 8-17-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

August 10, 1992.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washingon, DC 20036, (202) 452-1422. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814

OMB Number: 3060-0072

Title: Application fo.· Individual Airborne Mobile Radio Telephone License in the Public Mobile Radio Service.

Form Number: FCC Form 409.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting.

Estimated Annual Burden: 3.000 responses; .084 hours average burden per response; 252 hours total annual burden.

Needs and Uses: FCC Form 409 reporting requirement is necessary for the Commission to fulfill its regulatory responsibilities under the Communications Act of 1934, as amended. The FCC Form 409 is used in applying for authority to operate an airborne mobile radio telephone by individual users who intend to become subscribers to a common carrier service. The form is also used for the modification and renewal of such licenses. FCC 409 is required by 47 CFR part 22. The applicant may be subject to requirements in addition to those specified on the form. Section 22.15(i)(3) requires applicants to include an affirmative representation that he/she has made definite arrangements with a wireline common carrier for service and billing. The data is used by FCC staff to determine the qualifications of the applicant.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-19566 Filed 8-17-92; 8:45 am]

BILLING CODE 6712-01-M

[General Docket No. 91-2; DA 92-1084]

Information on Application Filing Procedures for the Interactive Video and Data Service

Released: August 14, 1992.

On January 16, 1992, the Commission adopted a Report and Order (R&O) in GEN Docket No. 91-2 establishing an Interactive Video and Data Service (IVDS) under part 95 of its Rules (47 CFR part 95). In the R&O the Commission stated that it would announce by Public Notice the date on which it would begin accepting applications for IVDS system licenses as well as other pertinent information concerning licensing IVDS systems. The purpose of this Public Notice is to establish an IVDS application filing window and explain the filing procedures necessary for filing applications for an IVDS system license in service areas #6 (Boston, MA), #7 (San Francisco, CA), #8 (Washington, DC), #9 (Dallas, TX), and #10 (Houston, TX). For a description of the service areas see the Commission's January 24, 1992, Public Notice, Report No. 92-40.

Applications for an IVDS license for these five service areas must be received at the official filing location listed herein during the three-day filing period beginning September 15, 1992, and ending September 17, 1992. Applications received before September 15, or after September 17, 1992, will be dismissed as untimely filed. The back-up filing procedure and the extra day policy do not apply to IVDS applications.[1]

Note: Applicants may have an interest in only one application in each service area.

All applications must be filed on FCC Form 155 (a separate application is required for each service area) and each application must be accompanied by a separate check made out to the Federal Communications Commission or FCC in the amount of $1,400.00. Failed payment or postdated checks will result in the application being dismissed with prejudice. In section I of Form 155, the "Applicant Name" block must include the applicant's name (either typed or printed) followed by the signature (original) of an individual authorized to sign the application. The mailing address should be addressed to which the applicant wishes official correspondence sent. The number of the service area being applied for (either "006", "007", "008", "009", or "010") must be specified in the box labeled "Call Sign". The fee type code entered in Column (A) must be "PAI", the fee multiple in Column (B) must be "40", and the fee due in column (C) must be $1,400.00. Each individual application (Form 155) and accompanying check ($1,400.00) must be in an individual sealed envelope and properly addressed (see mail in address). Multiple applications, properly packaged, may be delivered in one larger, properly addressed container.

The Commission's official filing location for these applications is Mellon Bank in Pittsburgh, Pa. Applications may be delivered to Mellon Bank in one of two ways, either mailed in or walked in.

[1] The back-up filing procedure enables certain applicants to file late if they follow certain procedures and if their applications are lost or delayed in transit to Pittsburgh, Pennsylvania. The extra day policy allows certain applicants to file one day after the filing deadline. These policies, however, only apply to time critical, feasable applications previously filed in Washington, D.C. and IVDS applications, which are new, have never been filed in Washington. Thus, if an IVDS application is received in Pittsburgh on September 18, 1992, the day after the filing window closes, or thereafter (regardless of the reason for delay), the application will be dismissed as untimely filed.

Mail-Ins

Filings mailed in must be mailed to:
Federal Communications Commission,
Interactive Video and Data Service,
P.O. Box 358365, Pittsburgh, PA 15251-5365 (This address must be used on the individually sealed envelopes.)

Walk-Ins

Pursuant to provision of 47 CFR 0.401(b)(2), applications may be hand-delivered. Applications hand-delivered must be in a sealed envelope with the mail-in address specified above on its face. A separate envelope is needed for each application and accompanying check. Hand-delivered applications must be deliverd to One Mellon Bank Center, 500 Grant Street, Pittsburgh, PA. 15258 anytime between 12:01 a.m. September 25, 1992, and 11:59 p.m. September 17, 1992.

The street entrance to the Window Filing location is on the Grant Street side of the building (across from the US Air ticket office). Signs will be posted in both One Mellon Bank Center and Three Mellon Bank Center indicating the Filing Window location. The "deliverer" should proceed directly to the street entrance described above and identify himself (herself) as having applications for the IVDS filing window. If a copy is proferred for stamping, one receipt only will be date stamped per application and returned.

Caution: The filing instructions incorporated in this Public Notice are only in effect for the purposes stated herein. These procedures override any other procedures that may be set forth in the Commission's Rules. Failure to follow the filing procedures specified herein will render an application unacceptable for filing. Such an application will be dismissed with prejudice.

After the filing window has closed the Commission will issue a Public Notice as soon as feasible listing the applications filed for these five service areas. In the event the Commission receives more than two acceptable applications for an IVDS system license for any of the service areas, all the applications for that particular service area will be considered mutually exclusive. The Commission will use a lottery conducted in accordance with 47 CFR 1.972 to choose among mutually exclusive applications. If a lottery is necessary, the Commission will announce by Public Notices: (1) When a lottery will be held and (2) the lottery winners (tentative selectees). Tentative selectees will then have two business days from the date of the Public Notice announcing the winners to file a FCC Form 574 (plus required showings) amending their original application. The burden will be on the tentative selectees to provide all necessary information. If for some reason one or both of the tentative selectees' applications in a service area are dismissed, the Commission will open another filing window for that service area.

While the Commission intends to open all 734 service areas as quickly as possible, it will not issue system licenses until the first IVDS transmitter has been type accepted for operation in this service. Moreover, it is important to remember that an applicant that has been awarded an IVDS system license must meet certain construction benchmarks or automatically lose the license. Further an IVDS system licensee is prohibited from transferring the license until the 5-year construction benchmark has been met.

For further information contact Consumer Assistance Branch, 717-337-1212.

Federal Communications Commission.

William F. Catch,

Assistant Secretary.

[FR Doc. 92-19785 Filed 8-17-92; 8:45 am]

BILLING CODE 6712-01-M

[DA 92-1095]

Comments Invited on Georgia Public Safety Plan

August 11, 1992.

The Commission has received the public safety radio communications plan for Georgia (Region 10).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 10 consists of the State of Georgia (General Docket No. 87-112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, interested parties may file comments on or before September 17, 1992 and reply comments on or before October 2, 1992. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, DC 20554 and should clearly identify them as submissions to PR Docket 92-189 Georgia-Public Safety Region 10.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-19565 Filed 8-17-92; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1902]

Petitions for Reconsideration of Actions in Rule Making Proceedings

August 12, 1992.

Petitions for reconsideration have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Oppositions to these petitions must be filed September 2, 1992. § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (St. Augustine, St. Augustine Beach, and Gainesville, Florida) (MM Docket No. 90-164, RM Nos. 6814, 6926, 7706, 7707) Number of Petitions Filed: 1.

SUBJECT: Amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Inglis, Florida) (MM Docket No. 92-11, RM No. 7881) Number of Petitions Filed: 1.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 92-19567 Filed 8-17-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families Administration on Children, Youth, and Families Head Start Bureau, HHS.

ACTION: Notice. Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) for approval of information collection requirements contained in a new regulation at 45 CFR part 1305 governing which children will be served

by the Head Start program. The new information collection requirements entitled "Final rule 45 CFR part 1305—Eligibility, Recruitment, Selection, Enrollment and Attendance in Head Start" is submitted by the Head Start Bureau of the Administration for Children and Families.

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503 (202) 395–7316.

Information on Document

Title: Final Rule 45 CFR Part 1305—Eligibility, Recruitment, Selection, Enrollment, and Attendance in Head Start.

OMB No.: New Request.

Description: The Head Start Bureau of the Administration for Children, Youth and Families of the Administration for Children and Families has promulgated a new 45 CFR part 1305, Eligibility, Recruitment, Selection, Enrollment and Attendance in Head Start which governs eligibility requirements and limitations for enrollment of children in Head Start. The final regulations contain specific categories of information collection requirements that are integral to the formulation of an effective community needs assessment. These data are readily available in the community from sources such as census data, the United Way and community action agencies as well as from grantee records.

Each grantee must identify its proposed service area in its Head Start grant application and define it by county or Sub-county area. Each grantee must also develop a community needs assessment within its service area once every three years.

The community needs assessment must, among other things, include the collection and analysis of the following information about the grantee's Head Start service area:

—The demographic make-up of Head Start eligible children and families, including their estimated number, geographic location, and racial and ethnic composition;

—Other child development and child care programs that are serving Head Start eligible children, and the approximate number of Head Start eligible children served by each;

—The estimated number of children with disabilities four years old or younger, including types of disabilities and relevant services and resources provided to these children by community agencies; (see section 1305.3)

Annual Number of Recordkeepers: 447.

Annual Hours per Recordkeeper: 40.

Total Recordkeeping Hours: 17,880.

Dated: August 2, 1992.

Naomi B. Marr,

Director, Office of Information Systems Management.

[FR Doc. 92–19547 Filed 8–17–92; 8:45 am]

BILLING CODE 4130–01–M

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Alcohol Abuse and Alcoholism; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism for September 1992.

The Council will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6), 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of the committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 16C–20, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–4375).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: National Advisory Council on Alcohol Abuse and Alcoholism.

Meeting Date: September 17–18, 1992.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

Open: September 17, 9 a.m.—3 p.m.

Closed: September 17, 3 p.m.—adjournment, September 18, 9 a.m.—adjournment.

Contact: Mr. James F. Vaughan, Room 16C–20, Parklawn Building, Telephone (301) 443–4375.

Dated: August 12, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–19618 Filed 8–17–92; 8:45 am]

BILLING CODE 4160–20–M

Office for Substance Abuse Prevention; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Committee on Substance Abuse Prevention of the Office for Substance Abuse Prevention for September 1992.

The National Advisory Committee on Substance Abuse Prevention will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

A summary of the meeting and roster of committee members may be obtained from: Ms. D. Herman, OSAP Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Rockwall II Building, suite 630, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301–443–4783). Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: National Advisory Committee on Substance Abuse Prevention.

Meeting Date(s): September 17–18, 1992.

Place: Marriott Residence Inn, 7335 Wisconsin Avenue, Bethesda, Maryland 20814.

Open: September 17, 9:30 a.m.–12:30 p.m., September 18, 9 a.m.–3 p.m.

Closed: Otherwise.

Contact: Yuth Nimit, Ph.D., Rockwall II Building, room 630, Telephone (301) 443–4783.

Dated: August 12, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–19619 Filed 8–17–92; 8:45 am]

BILLING CODE 4160–20–M

Health Resources and Services Administration

Final Funding Preferences for New and Expanded Community and Migrant Health Centers

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final funding preferences.

SUMMARY: The Health Resources and Services Administration announces final funding preferences for new starts and new area expansion activities under sections 330 and 329 of the Public Health Service (PHS) Act for Community and Migrant Health Centers (C/MHC) and for related major capital improvements up to $200,000.

Proposed funding preferences were published for public comment in the **Federal Register** on April 10, 1992 at 57 FR 12503. Two comments were received during the 30 day comment period.

COMMENT AND RESPONSES: The notice gives preferential consideration for the award of new or expansion grants to areas which are not included in the service areas of existing sections 330 or 329 projects. Two respondents commented on this funding preference. One respondent commented that it would be more cost effective to expand the provision of services in areas with existing CHCs, utilizing their pre-existing administrative and support structures.

Another respondent commented that this funding preference would limit access of Asian Pacific Americans who are not able to receive care within the service areas of existing section 330 grantees because of linguistic and cultural barriers.

Regarding the respondent's comment about the health care needs of Asian Pacific Americans or other unique populations, the Secretary has, in former years, funded grants for centers to provide care to specific populations and may continue to fund programs to provide access for services to such populations as the need is demonstrated. The Secretary is also placing emphasis on required translation services to improve provision of services to persons of limited English speaking ability.

With regard to the respondent's comment about the expansion of services through existing grantees, the Secretary recognizes the importance of seeking a balance between using available funds to strengthen existing centers and using funds to establish new service delivery points. However, it is both congressional intent and the Administration's policy for this fiscal year to target new funds toward increasing access to care in areas not currently served.

Considering the many areas without capacity to provide primary care services, the C/MHC success in developing a network of providers, and the C/MHC interrelationships with other State and local providers, the Secretary believes that the most effective way to meet the health care needs of the largest number of underserved persons is to continue to fund the expansion of services into new areas. In addition, the regulations governing the programs under sections 330 and 329 contain provisions which limit the Secretary in making grant awards where the service area of a center/project overlaps the service area of another center/project funded under these sections. For the reasons described above, the Secretary has concluded that no action should be taken to modify the funding preference addressed in these comments.

One respondent commented that the criteria for evaluation of all grant applications are inequitable when applied to small and/or rural States which have continuing health care needs but not the high need indices published in the notice.

The Secretary wishes to point out that this comment relates to the application evaluation criteria which are not subject to comment under the published notice. The Secretary believes, furthermore, that the regulatory criteria and the funding preferences, as applied, will result in equitable treatment of projects in small and rural states.

FOR FURTHER INFORMATION CONTACT: For technical assistance and general program information about the availability of sections 329 and 330 funds, contact Richard C. Bohrer, (301) 443–2260. For additional information about funding major capital needs contact Ray Vacca, (301) 443–5295.

SUPPLEMENTARY INFORMATION: In the Catalog of Federal Domestic Assistance, the Community Health Center program is listed as Number 93.224 and the Migrant Health Center program is number 93.246.

Dated: August 13, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–19605 Filed 8–17–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Heart, Lung, and Blood Institute; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

This meeting will be open to the public to discuss administrative details relating to Special Emphasis Panel (SEP) business for approximately one half hour at the beginning of the meeting. Attendance by the public will be limited to space available. This meeting will be closed thereafter in accordance with the provisions set forth in sec. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Pub. L. 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, National Heart, Lung, and Blood Institute, Westwood Building, room 7A15, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–7548, will furnish a summary of the meeting and rosters of panel members. Substantive program information may be obtained from each Scientific Review Administrator whose telephone number is provided. Since it is necessary to schedule meetings well in advance, it is suggested that anyone planning to attend a meeting contract the Scientific Review Administrator to confirm the exact date, time and location.

Name of Panel: NHLBI SEP Review for Multi-Device Registry (Conference Phone Call).

Scientific Review Administrator: Dr. David Monsees, Telephone 301–495–7361.

Dates of Meetings: August 26, 1992.

Place of Meeting: Westwood Building—room 550.

Time of Meeting: 11:30 a.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: August 7, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–19590 Filed 8–17–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-030-92-4111-16]

Mulligan Draw Gas Field Project; Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the Final Environmental Impact Statement (FEIS) on the Mulligan Draw Gas Field Project in southeast Sweetwater County, Wyoming.

SUMMARY: This FEIS was prepared to assess the environmental consequences of a proposed gas field development in the Mulligan Draw Area, in southeastern Sweetwater County, Wyoming in accordance with the National Environmental Policy Act of 1969. This FEIS incorporates by reference the material presented in the DEIS and should be used in conjunction with the DEIS. The DEIS was modified as appropriate in response to public comments received. This project, as proposed by Celsius Energy Company, Amoco, and other operators, is to explore for and develop natural gas reserves in the Mulligan Draw Project Area.

DATES: The public comment period on the FEIS will begin on August 21, 1992, and will end on September 21, 1992. In order to assure that comments are considered in the Record of Decision (ROD) for the Mulligan Draw Gas Field Project, they must be received no later than close of business on Monday, September 21, 1992.

ADDRESSES: Comments on the FEIS should be addressed to Bureau of Land Management, Great Divide Resource Area, c/o Bud Holbrook, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT: Bob Tigner, phone (307) 324-7171, or Bud Holbrook, phone (307) 324-4841 or contact the address listed above.

SUPPLEMENTARY INFORMATION: This Final Environmental Impact Statement assesses the environmental consequences of gas development in the Mulligan Draw area in southeastern Sweetwater County, approximately 20 miles south of Wamsutter, Wyoming. The Draft Environmental Impact Statement was released to the public on May 15, 1992, and the comment period closed on July 15, 1992. A Public meeting was held on June 3, 1992 and four individuals offered comments at that time. Eight comment letters were received during the comment period. The proposed project entails the drilling, operation, abandonment, and reclamation of a natural gas field in the Mulligan Draw Project Area by Celsius Energy Company and other operators. Approximately 45 wells and associated roads and pipelines would result in the initial disturbance of approximately 645 acres within the 47,300 acre Mulligan Draw Project Area.

Dated: August 11, 1992.

Ray Brubaker,

State Director, Wyoming.

[FR Doc. 92-19648 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-22-M

Bureau of Land Management

[MT-020-02-4211-02]

Montana; Meeting

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of special meeting.

SUMMARY: The Miles City District Advisory Council will meet September 17, 1992. The Council will meet on urgent planning matters for the District at 2 p.m. The meeting will be held in the District Office Conference Room on Garryowen Road.

The meeting is open to the public. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and reproduction during regular business hours within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: District Manager, Miles City District, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301 or phone (406) 232-4331.

Janet L. Edmonds,

Acting District Manager.

[FR Doc. 92-19646 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-DN-M

[MT-930-4212-13; MTM 76849]

Conveyance of Certain Lands in Beaverhead, Carbon, Deer Lodge, and Madison Counties, Montana, and Order Providing for Opening of Public Land in Carbon and Madison Counties; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order will open located in Carbon County which were reconveyed to the United States in an exchange under the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq. (FLPMA), to the operation of the public land laws, mining laws, and leasing of minerals other than oil and gas. It will also open lands located in Madison County, which were reconveyed to the United States, to the operation of the public land laws and leasing of minerals other than oil and gas. The lands acquired in the exchange provide additional access to the Madison and Big Hole Rivers, wildlife habitat, and increased opportunity for habitat improvement projects. The exchange also allows increased management efficiency of public land.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION: 1. Notice is hereby given that pursuant to section 206 of FLPMA coal only was transferred to Meridian Minerals company:

Principal Meridian, Montana

T. 5 N., R. 27 E.,
Sec. 4, lots 1-4, incl.
T. 6 N., R. 27 E.,
Sec. 18, lots 1-4, incl., E½, E½W½;
Sec. 20, all;
Sec. 28, all;
Sec. 30, lots 1-4, incl., E½, E½W½;
Sec. 32, N½, SE¼;
Sec. 34, N½, SW¼.
Total acreage conveyed; 3,673.16 acres.

2. In exchange for the above selected land, the United States acquired the following described surface estate and all minerals except oil and gas from Meridian Minerals Company:

Principal Meridian, Montana

a. Beaverhead County:
T. 1 N., R. 13 W.,
Sec. 9, SW¼, NW¼NW¼;
Sec. 17, part lying SE of C/L of Bid Hole River;
Sec. 19, part lying SE of C/L of Big Hole River.
Containing 1,297.92 acres, more or less.

b. Carbon County:
T. 9 S., R. 21 E.,
Sec. 1, lots 1-4, incl.;
Sec. 3, lots 2, 3, 4, S½N½, S½;
Sec. 5, lots 1-4, incl., S½N½, N½S½, S½SE¼;
Sec. 7, lots 1-4, incl., E½W½, E½;
Sec. 9, NE¼, N½NW¼, S½SW¼;
Sec. 11, all;
Sec. 13, lots 3 and 4;
Sec. 15, N½, W½SW¼, E½SE¼, SW¼SE¼;
Sec. 17, all;
Sec. 19, lots 1-4, incl., E½W½, E½;
Sec. 21, all;
Sec. 23, all;
Sec. 25, lots 1-3, incl.;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1-4, incl.;
Sec. 33, lots 1-4, incl;
Containing 7,700.25 acres, more or less.

c. Deer Lodge County:
T. 1 N., R. 13 W.,
Sec. 17, part of W½NW¼ lying W of C/L of Big Hole River;
Sec. 19, part lying NW of C/L of Big Hole River,
Containing 177.56 acres, more or less.

d. Madison County:
T. 8 S., R. 1 W.,
Sec. 15, part lying W of East bank of Madison River;
Sec. 25, part of N½NE¼ lying E of West bank of Madison River.
T. 9 s., R. 1 W.,
Sec. 1, lots 6 and 7, SW¼NE¼.
Containing 697.45 acres, more or less.
Total acres reconveyed to U.S.; 9,873.18.

3. The value of the Federal coal was appraised at $730,000.00 and the private land was appraised at $1,149,700.00. The difference in value was donated to the U.S., and no cash equalization payment was made.

4. At 9 a.m. on September 28, 1992, only the lands described in paragraph 2b above (Carbon County) will be opened to the operation of the public land laws, generally, mining and leasing of minerals other than oil and gas. The lands described in paragraph 2d above (Madison County) will be opened only to the operation of the public land laws and leasing of minerals other than oil and gas, subject to valid existing rights and requirements of applicable law. The lands in paragraphs 2a and 2c (Beaverhead County and Deer Lodge County) are not open at this time pending completion of planning. All valid applications received at or prior to 9 a.m. on September 28, 1992, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: August 7, 1992.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 92-19542 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-DN-M

[NV-055-801-4333-13-4894]

Ash Springs Area, CA; Overnight Camping

AGENCY: Bureau of Land Management, Las Vegas District, Caliente Resource Area.

ACTION: Proposal to establish the following rules on the public lands portion of Ash Springs.

Rules for the Public Portion of Ash Springs

1. No overnight camping.
2. Recreation time is limited to two hours for each group or individual.
3. No placement of sport or exotic (aquarium) fish into the pond.
4. No adding of any detergents, soaps or other toxic materials into the pond.
5. No cutting of vegetation for firewood.

COMMENTS: Please submit written comments by [30 days after date of publication] to: Bureau of Land Management, Ben Collins, District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, NV 89126.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Curtis G. Tucker, Area Manager, Caliente Resource Area, P. O. Box 237, Caliente, Nevada 89008 (telephone (702) 726-8100).

ADDITIONAL INFORMATION: Ash Springs contains the White River Springfish (*Crenichthys baileyi baileyi*) a Federally Endangered species. A Coordinated Resource Management Plan was developed for the area in which one of the planned actions was to establish rules to restrict certain activities to help protect the fish species.

Ben F. Collins,

District Manager.

[FR Doc. 92-19548 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 4, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 2, 1992.

Beth L. Savage,

Acting Chief of Registration, National Register.

ARKANSAS

Arkansas County

First United Methodist Church (Structures in Arkansas Represented by the Charles L. Thompson Design Collection TR), Jct. of Jefferson and Cross Sts., DeWitt, 92001158

Franklin County

First Methodist Episcopal Church, South, 503 W. Commercial St., Ozark, 92001154

Garland County

Carpenter Dam, 1398 Carpenter Dam Rd., Hot Springs vicinity, 92001083

Hot Spring County

Remmel Dam, Remmel Dam Rd., Jones Mill vicinity, 92001084

Pulaski County

Arkansas Power & Light Building, Jct. of Ninth St. and Louisiana St., Little Rock, 92001156
Cherry—Luter Estate, 521 W. Scenic Dr., North Little Rock, 92001155

Washington County

House at 712 N. Mill Street, 712 N. Mill St., Springdale, 92001157

INDIANA

Allen County

South Wayne Historic District, Roughly bounded by W. Wildwood Ave., S. Wayne Ave., Packard Ave. and Beaver Ave., Fort Wayne, 92001146

Carroll County

Raber, Fred and Minnie, Farm, IN 218 E of Co. Rd. 425 W, Camden vicinity, 92001169

Huntington County

Huntington Courthouse Square Historic District, Roughly bounded by State, Court and Cherry Sts., Park Dr. and the alley between Warren and Guilford Sts; Huntington, 92001163

Jay County

Redkey Historic District, Roughly, High St. between Oak and Meridian Sts., Redkey, 92001168

Kosciusko County

Hall Farm, Jct. of 600 N and 400 W, Clunette, 92001164
Pierceton Historic District, N. First St. from Catholic St. to the Conrail RR tracks, Pierceton, 92001147
Silver Lake Historic District, 100 blocks of N. and S. Jefferson and E. and W. Main Sts., Silver Lake, 92001148

Parke County

Bridgeton Historic District, Roughly bounded by the N bank of Big Raccoon Cr., George and Clark Sts., Mill Alley and the alley E of Main St; Bridgeton, 92001167

Porter County

Coambs, Norris and Harriet, Lustron House, 411 Bowser Ave., Chesterton, 92001165

Shelby County

Liberty Township Schoolhouse No. 2, Jct. of IN 244 and Co. Rd. 600 E, Waldron vicinity, 92001170

Vigo County

Wabash Avenue East Historic District (Boundary Increase), 26—34 Eighth Sts., Terre Haute, 92001166

Wabash Avenue East Historic District (Boundary Decrease), 20—32 S. 7th Sts., Terre Haute, 92001185

IOWA

Polk County

Ashby Manor Historic District (Suburban Developments in Des Moines Between the World Wars MPS), Roughly bounded by Beaver Ave. and Ashby Park, Des Moines, 92001150

MARYLAND

Baltimore Independent City

Madison Avenue Methodist Episcopal Church, 1327 Madison Ave., Baltimore (Independent City), 92001153

NEVADA

Clark County

Little Church of the West, 3960 Las Vegas Blvd. S., Las Vegas, 92001161

Storey County

Marlette Lake Water System, Roughly, from Marlette Lake E to NV 80, Virginia City vicinity, 92001162

NEW HAMPSHIRE

Merrimack County

Harvey, Matthew, House, W side of Harvey Rd., 0.25 mi. N of jct. with Keyser St., Sutton, 92001042

NORTH CAROLINA

Davie County

McGuire—Setzer House, NC 1139 0.2 mi. S of Mocksville town limits, Mocksville vicinity, 92001152

OHIO

Jefferson County

Carnegie Library of Steubenville, 407 S. Fourth St., Steubenville, 92001160

Lucas County

Isham, John, Farmstead, 8460 S. River Rd., Waterville, 92001159

VERMONT

Chittenden County

Williston Village Historic District (Boundary Increase), Off US 2, over Allen Brook, Williston, 92001151

[FR Doc. 92-19568 Filed 8-17-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-368X]

The Monongahela Connecting Railroad Company—Abandonment and Discontinuance Exemption—In Allegheny County, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission is exempting from the prior approval requirements of 49 U.S.C. 10903–10904 the Monongahela Connecting Railroad Company's abandonment of four segments of line totalling 2.2 miles and discontinuance of service over a 0.7-mile segment (the Whitehall Lead), in Pittsburgh, PA, subject to employee protective and historic preservation conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 17, 1992. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [1] must be filed by August 28, 1992. Requests for public use conditions must be filed by September 8, 1992. Petitions to stay must be filed by September 2, 1992. Petitions to reopen must be filed by September 14, 1992.

ADDRESSES: Send pleadings referring to Docket No. AB–368X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Mark H. Sidman, Weiner, Brodsky, Sidman & Kider, 1350 New York Avenue, NW., Washington, DC 20005–4797.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: August 11, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19664 Filed 8-17-92; 8:45 am]

BILLING CODE 7035-01-M

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) an estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514–4415. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Refugee/Asylee Relative Petition.

(2) I–730. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The I–730 information is used to file petitions on behalf of the applicant's spouse and/or child who has never had refugee or asylee status.

(5) 2,500 annual responses at .083 hours per response.

(6) 207 annual burden hours.

(7) Not applicable under 3504(h).

(1) Assurance by a United States Sponsor in Behalf of an Applicant for Refugee Status.

(2) I–591. Immigration and Naturalization Service.

(3) On occasion.

(4) Individuals or households. The I–591 information is used by a U.S. sponsor in behalf of a refugee as acceptable sponsorship agreement and guarantee of transportation in order to be approved for refugee status under Section 207 of the Immigration and Nationality Act.

(5) 5,000 annual responses at .332 hours per response.

(6) 1,660 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: August 12, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-19558 Filed 8-17-92; 8:45 am]

BILLING CODE 4410-15-M

Jack Colbert, et al.; Notice of Lodging of a Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 13, 1992, a proposed consent decree in *United States* v. *Jack Colbert, et al.*, 87 Civ. 4789 (MGC), was lodged with the United States District Court for the Southern District of New York. The decree resolves claims of the United States against defendants Arnold Schwartz, Arnold Fader, New Island Investors, and Lynric Associates, Inc. ("Settling Defendants") in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Signo Trading Site, 11 Hartford Avenue, Mount Vernon, New York (the "Site"). In the proposed consent decree the Settling Defendants agree to pay the United States $71,000.00 in settlement of the United States' claims for response costs incurred by the Environmental Protection Agency at the Site.

The proposed decree may be examined at the Office of the United States Attorney, One Saint Andrews Plaza, New York, New York; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20004, (202) 347–2072. A copy of the decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy of the decree, please enclose a check for $3.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of publication of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Jack Colbert, et al.*, (DOJ Reference No. 90–11–3–244).

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92-19729 Filed 8-17-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—Petroleum Environmental Research Forum

Notice is hereby given that, on July 14, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 90–02 have filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the project, and (2) the nature and objectives of the project. The notification was filed for the purpose of invoking the Act's provisions limiting the potential recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties participating in the project and its general area of planned activities are given below.

The parties to the project are: Amoco Corporation, Naperville, IL; ICI Chemical Industries PLC, Norwich, ENGLAND; Exxon Research & Engineering, Florham Park, NJ; and Mobil Research and Development Corporation, Paulsboro, NJ.

The nature and objective of the project performed in accordance with Project No. 90–02, "Environmental and Process Optimization of Halogen Antimicrobial Performance in Cooling Water Systems: Alternatives to Gaseous Chlorine," is directed to comparing the efficiency of bromine versus chlorine for cooling water microbiological control. The proposed research will address process kinetics as a means of optimizing halogen antimicrobial application to cooling water systems. The parties intend to file additional written notification disclosing all changes in membership of this project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-19541 Filed 8-17-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: September 21, 1992, 10 a.m.–12 noon. Rm. N–3437 A&B, Department of Labor Building, 200 Constitution Ave., NW., Washington, DC 20210.

Purpose: To discuss trade negotiations and trade policy of the United States.

This meeting will be closed under the authority of section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552(c)(1). The Committee will hear and discuss sensitive and confidential matters concerning U.S. trade negotiations and trade policy.

For further information, contact: Fernand Lavallee, Director, Trade Advisory Group, Phone: (202) 523–2752.

Signed at Washington, DC this 12th day of August, 1992.

Shellyn G. McCaffrey,

Deputy Under Secretary, International Affairs.

[FR Doc. 92-19647 Filed 8-17-92; 8:45 am]

BILLING CODE 4510-28-M

Employment and Training Administration

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of July 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,356; Silite, Inc., Chicago, IL
TA-W-27,248; Maxtec International Corp., Telemotive Div., Chicago, IL
TA-W-27,328; Graniteville Co., Graniteville, SC
TA-W-27,204; Cooper Industries, Wagner Lighting Div., Sparta, TN
TA-W-27,077; Itron, Inc., Spokane, WA
TA-W-27,298; J & G Shake Co., Forks, WA
TA-W-27,294; Torch Operating Co., Houma, LA
TA-W-27,335; Kenmar Manufacturing Co., Philadelphia, PA
TA-W-27,355; Rowe International, Inc., Whippany, NJ

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,283; ABC Service, Inc., Dickinson, ND

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,349; Lewis Casing Crews, Inc., Odessa, TX

The investigation revealed that criterion (1) has not been met. Significant number or proportion of the workers did not become totally or partially separated as required for certification.

TA-W-27,359; Mobil Natural Gas, Inc., (MNGI), Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,415; GP/Sorenson, Glasgow, KY

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,382; General Electric Co., Linton, IN

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,299; Sprague Electric Co., Stafford, CT

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,288; Kerr-McGee Coal Corp., Headquarters, Oklahoma City, OK

U.S. imports of coal are negligible.

TA-W-27,301; Marine Cascade Iron Works, Clinton, ME

U.S. imports of fabricated structural steel declined absolutely and relative to domestic shipments in 1991 compared to 1990 and in the first three months of 1992 compared to the same period in 1991.

TA-W-27,202 United States Steel Group, South Plant, Chicago, IL

U.S. imports of fabricated structural steel declined absolutely and relative to domestic shipment in 1991 compared to 1990 and in the first three months of 1992 compared to the same period in 1991.

TA-W-27,258; Hinchen Brothers Shingle and Shake Co, Inc, Forks, WA

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-27,208; High Country Contacts, Inc., Delta, CO

A certification was issued covering all workers separated on or after April 13, 1991.

TA-W-27,275; Hondo Oil and Gas Co., Roswell, NM

A certification was issued covering all workers separated on or after May 6, 1991.

TA-W-27,288; H & M Dress, Wilkes-Barre, PA

A certification was issued covering all workers separated on or after June 8, 1991.

TA-W-27,385; Henson Kickernick, Greenville, TX

A certification was issued covering all workers separated on or after May 11, 1991.

TA-W-27,399; Spartus Corp., Louisville, MS

A certification was issued covering all workers separated on or after June 10, 1991.

TA-W-27,432; Sojourner Drilling Corp., Abilene, TX

A certification was issued covering all workers separated on or after June 24, 1991.

TA-W-26,324; Acme United Corp., Bridgeport, CT

A certification was issued covering all workers producing cast iron scissors and shears separated on or after April 18, 1991.

TA-W-26,736; M H Rhodes, Inc., Avon, CT

A certification was issued covering all workers separated on or after December 3, 1990.

TA-W-27,386; Petro-Log, Inc., Lafayette, LA

A certification was issued covering all workers separated on or after May 31, 1991.

TA-W-27,363; Halliburton Services, Stimulation Services Flex Crew Headquartered in Duncan, OK

A certification was issued covering all workers separated on or after September 1, 1991.

TA-W-27,445, TA-W-27,446, TA-W-27,447 & TA-W-27,448; The Louisiana Land & Exploration Co., New Orleans, LA, Houston TX, Denver CO, Oklahoma City, OK

A certification was issued covering all workers separated on or after June 19, 1991.

TA-W-27,154; The GHK Co., Oklahoma City, OK

A certification was issued covering all workers separated on or after April 3, 1991.

TA-W-27,327; Graniteville Co., Vaucluse, SC

A certification was issued covering all workers separated on or after May 19, 1991.

TA-W-27,396; Frigidaire Co., Mansfield, OH

A certification was issued covering all workers separated on or after June 5, 1991.

TA-W-27,244, TA-W-27,245 & TA-W-27,246; Coors Energy Co., Golden, CO, Erie, CO, Roosevelt, UT

A certification was issued covering all workers separated on or after April 8, 1991.

TA-W-27,332; Sonat Exploration Co., (Including Marshall Exploration, Inc)., Fort Smith, AR

A certification was issued covering all production workers separated on or after January 1, 1992.

TA-W-27,358; Sonat Exploration Co., (Including Marshall Exploration, Inc.) Headquartered in Houston, TX and Operating at Various Locations in the Following States A; AR, B; LA, C; OK, D; TX

A certification was issued covering all production workers separated on or after January 1, 1992.

TA-W-27,364; D.L. Knitting Co., Inc., North Arlington, NJ

A certification was issued covering all workers separated on or after May 27, 1991.

TA-W-27,350; The Western Co. of North America, Headquarters in Houston, TX & Operating at Various Locations in the Following States A; AL, B; MS, C; LA, D; CO, E; NM, F; TS, G; KS, H; OK

A certification was issued covering all workers separated on or after May 27, 1991.

TA-W-27,286; Kerr-McGee Corp., Headquartered in Oklahoma City, OK & Operating in the Following Other Locations: A; Lafayette, LA, B; Midland, TX, C; Houston, TX, D; Tyler, TX, and E; Casper, WY

A certification was issued covering all workers separated on or after November 28, 1991.

TA-W-27,199; Schlumberger Well Services, Land Services, Houma, AL & Operating in The Following Locations in the State of Texas: A; Abilene, B; Amarillo, C; Andrews, D; Brenham, E; Dallas, F; Edinsburg, G; Graham, H; Liberty, I; Midland, J; San Angelo, K; Sonora, L; Tyler, M; Webster, N; Houston, O; Wichita Falls

A certification was issued covering all workers separated on or after August 23, 1991.

TA-W-27,218; Schlumberger Well Services, Land Services, Div. Headquarters, Shreveport, LA & at Other Locations in The Following States: A; AL, B; AR, C; CA, D; CO, E; FL, F; KS, G; KY, H; LA, I; MI, J; MS, K; MT, L; NM, M; ND, N; OH, O; OK, P; PA, Q; WV, R; WY

A certification was issued covering all workers separated on or after August 23, 1991.

I hereby certify that the aforementioned determinations were issued during the month of July 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 11, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-19645 Filed 8-17-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92-463, that the National Commission on America's Urban Families will hold a meeting in Chicago, Illinois on September 2-3, and a hearing the afternoon of September 3, 1992. For exact times and locations of meeting and hearing, please contact the Commission two days prior to the event at 202-690-6462.

The purpose of the meeting is to deliberate on the issues to be covered in the report to the President. The purpose of the hearing is to inform the Commission about programs and approaches that work to strengthen America's urban families and to enable participants to express their views on this topic.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW., room 305-F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92-19510 Filed 8-17-92; 8:45 am]

BILLING CODE 4150-04-M

NATIONAL SCIENCE FOUNDATION

Program Announcement; Presidential Faculty Fellows Program for Outstanding Young Science and Engineering Faculty (Closing Date: October 30, 1992)

This printed information contains the essence of the announcement for this program, and is not a full copy of the actual brochure containing the guidelines for submission. Before submitting a nomination, please obtain a printed copy of the guidelines by contacting the NSF publications unit.

The National Science Foundation (NSF) announces the competition for the Presidential Faculty Fellows Program (PFF) for FY 1993. The PFF program was established at the request of the President of the United States to recognize and support the scholarly activities of some of the Nation's most outstanding science and engineering faculty members early in their careers. The National Science Foundation seeks nominations of tenure-track faculty members who have demonstrated an exceptionally high level of research and teaching competence and who have the highest potential for leadership in academic pursuits. Awards are intended to allow Fellows to undertake self-designed, innovative research and teaching projects, to establish research and teaching programs, and to pursue other academic related activities. Awards will be announced by the White House in early 1993, and will carry a grant from the National Science Foundation of $100,000 per year for five years, subject to the availability of funds. Thirty PFF awards are planned of which fifteen (15) will be in engineering disciplines and fifteen (15) in science disciplines.

Eligibility Criteria

Institutional Eligibility

All institutions in the United States—including its territories or possessions, and the commonwealth of Puerto Rico—that offer a baccalaureate, master's or doctoral degree in a field supported by the Foundation are eligible to participate in this program. Each institution that can be identified by a separate Federal Entity Number may submit up to two nominations per year.

Nominating Official Eligibility

Nominations for PFF awards MUST be submitted by the institution's chief academic officer, such as the President, the Chancellor, or the Provost.

Faculty Eligibility

Any tenure-track or equivalent faculty (research and teaching) members, doing work in science, engineering, or research in the teaching or the learning of science, mathematics or engineering may be nominated.

Only U.S. citizens, nationals, or permanent residents who hold such status on or before October 30, 1992, are eligible to compete for a PFF award.

The Foundation will verify through the Immigration and Naturalization Service

the status of those individuals identified as permanent residents. The Foundation requests that permanent residents provide their residency or "A" number to accomplish this verification. Delay in providing such information may result in a delay in processing the nomination. To be eligible for nomination to the PFF program, nominees must:

• Have a doctoral degree (Ph.D or equivalent) awarded between January 1, 1985 and October 30, 1992;

• Hold a faculty tenure-track or equivalent position at their nominating institution by October 30, 1992; and

• Have begun their first faculty tenure-track or equivalent position at an eligible institution on or after January 1, 1989 but no later than October 30, 1992.

Calculating Nominee's Academic-Age for PFF Eligibility

Nominee eligibility is based on a nominee's academic age derived from the nominee's years from receipt of a doctoral degree and years in tenure-track or equivalent positions. Receipt of permanent residency is not a factor in determining academic age.

Generally, the controlling date used to determine academic age is the receipt of PhD. The start of a nominee's tenure-track position clock generally should not precede receipt of PhD. Nominees who left the tenure-track within six months of receipt of PhD may use as their qualifying tenure-track date the date of the first tenure-track or equivalent position after receipt of PhD.

In some instances, nominees who interrupted their careers because of parental leave may qualify as eligible nominees. Written confirmation from the NSF PFF Program Office of such eligibility must be obtained prior to nomination.

Current or former awardees of the Presidential Young Investigator (PYI) and NSF Young Investigator (NYI) programs who meet all the stated eligibility criteria, are eligible for PFF awards. In successful cases, such awardees will have their PYI or NYI awards terminated if active, and their PFF awards will be limited in duration to the number of years unused on their PYI or NYI awards. In no case, however, will the tenure of a PFF award be less than two years.

Discipline Eligibility

Nominees may work in any branch of science or engineering normally supported by the Foundation. Research in the teaching and learning of science, mathematics, technology and engineering is also eligible for support. However, activities such as the development of instructional materials or courses (including software, hardware, or laboratory equipment design), teacher education, or informal education are evidence of educational leadership and do not satisfy the criterion for the research plan.

The Foundation normally will not support biomedical research with disease-related goals, including work on the etiology, diagnosis, abnormality, or malfunction in human beings or animals. Animal models of such conditions, or development or testing of drugs or other procedures for their treatment also generally are not eligible for support.

Review and Selection

PFF is a Foundation-wide, cross-directorate (multi-disciplinary) program coordinated by the Directorate for Education and Human Resources. The NSF makes final assignment for merit review. An acknowledgement card will be sent to the nominee when the Foundation has recorded receipt of the nomination in its electronic system of records.

Fellows will be selected on the basis of merit, including leadership and leadership potential in research and education. NSF will administer the review process and fund awards; the final award decisions will be made by the White House. Recommendations for awards will be based on advice from outside scientists and engineers and may include consideration of factors related to science and engineering infrastructure, such as disciplinary, institutional and geographic distribution and representation of women, underrepresented minorities and instructors of undergraduates.

The review criteria for the nominee include:

Competence and Leadership as an Educator in science or engineering, including the potential for continuing outstanding contributions, as evidenced by implementation of new curricula, design of new courses, significant educational books, referred publications, papers presented at national or international meetings, honors, distinguished service, recognition by the community for contributions to public understanding of science or engineering, and other noteworthy education contributions.

Competence and Leadership as a Researcher in science or engineering, including the potential for continuing outstanding contributions, particularly as evidenced by definitive research accomplishments, referred publications, technical books published, patent and software credits, significant technical papers presented at national or international meetings, honors, distinguished service, recognition by the community for contributions to the public understanding of research by lay-persons, and other noteworthy research contributions.

Impact of Nominee on Nominating Institution as evidenced by factors such as significant facilitation of cross-disciplinary research efforts, recognized contributions to educational reforms, and other noteworthy service to the institution and in the community on behalf of the institution.

Nomination Procedures

A PFF submission consists of nine (9) complete sets of the nomination materials (signed original plus 8 copies), one (1) set of an additional forms package to be used for administrative purposes, and four (4) reference letters. Type styles should be no smaller than 12 characters per inch.

Nomination Materials

• Cover Sheet (NSF Form 1273B) and one (1) copy of the Certification Regarding Lobbying, page 28 of NSF 90–77 "Grants for Research and Education in Science and Engineering" (GRESE).

• Nominator's Statement (Limit: 3 pages)

• Nominee's Teaching and Research Qualifications (Limit: 1 page)

• Nominee's Research Description (Limit: 2 pages)

• Nominee's Teaching Plan (Limit: 1 page)

• Biographical Sketch (Limit: 3 pages)

Reference Letters

Up to four (4) reference letters are allowed. Do not submit more than four reference letters. Letters should be from persons who are familiar with the research and teaching capabilities of the nominee, and should not be from individuals at the nominating institution. They should be in the form of a letter addressed to the NSF Director and specifically address at least one of the review criteria. Letters do not have to be confidential or submitted to NSF in referee-sealed envelopes. Do not send letters directly to NSF. Reference letters that are sent under cover separate from the Nomination Submission may miss review.

Deadline for Submission of Nominations

All nomination submissions must be received at NSF by October 30, 1992. All nomination materials, forms and reference letters should be submitted as a single unit in a large envelope addressed to: Presidential Faculty Fellows (NSF 92–84), National Science Foundation, 1800 G Street, NW., room 1202, Washington, DC 20550.

Support and Commitments

Institutions are expected to make a significant contribution to the support of awardees by guaranteeing their full academic-year salary. None of the funds provided by NSF under PFF awards may be used for the academic-year salary of the awardee. Indirect costs are limited to 10% of the total PFF funds provided by NSF. PFF awardees must remain in tenure-track or equivalent positions at an eligible institution at all times during the tenure of their awards. Awardees who do not comply with this regulation must resign their awards. The Foundation interprets sabbatical periods during the tenure of a PFF award as compatible with remaining in a tenure-track or equivalent position.

After awardees have been selected, they will be asked to submit a budget through their nominating institutions. Based on satisfactory annual progress reports and the availability of funds, the Foundation will provide support in annual increments. Awardees may expect to receive additional guidance regarding the administration of their grants.

Inquiries

General inquiries regarding the PFF program, including requests for copies of NSF publications, may be addressed to the Presidential Faculty Fellows (PFF) Program, National Science Foundation, Washington, DC 20550, or telephoned to (202) 357–9466.

Copies of the PFF guidelines or any other NSF publication, including GRESE, may be obtained from the NSF Publications Unit, Washington, DC 20550, telephone number (202) 357–7861. The PFF program announcement number is: 92–84. Electronic mail users who have access to either BITNET or INTERNET may address requests to pubs@nsf or pubs@nsf.gov, respectively. Fax requests for NSF publications may be addressed to: NSF Publications Unit, Fax number: (703) 644–4278. In any publications request, please include the NSF publication number and title, number of copies, your name, and a complete mailing address. Information on NSF programs is also available through the Science and Technology Information System (STIS), NSF's online publishing system, described in NSF91–1–(Revised 10/4/91), the "STIS flyer." To get a paper copy of the flyer, call the NSF Publications Unit at 202–357–7861. For an electronic copy, send an E-mail message to stisflyer@nsf.gov (INTERNET) or stisflyer@nsf (BITNET).

Dated: August 11, 1992.

Terence L. Porter,

Division Director.

Mary F. Sladek,

Program Officer.

[FR Doc. 92–19380 Filed 8–17–92; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SPACE COUNCIL

Meeting of the Space Launch Strategy Implementation Review Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting.

SUMMARY: The Vice President's Space Policy Advisory Board Space Launch Strategy Implementation Review Task Group will meet September 2 and 3, 1992.

DATES: September 2 and 3, 1992.

ADDRESSES: 1215 Jefferson Davis Highway, suite 800, Arlington, Virginia, 22202.

FOR FURTHER INFORMATION CONTACT: Stephen Hopkins, (703) 685–3307 or James Beale, National Space Council, Executive Office of the President, Washington, DC, (202) 395–6175.

SUPPLEMENTARY INFORMATION: The Space Launch Strategy Implementation Review Task Group of the Vice President's Policy Advisory Board will meet between 8:30 a.m. and 5:30 p.m. on September 2, 1992 and between 8:30 a.m. and 12:00 p.m. on September 3, 1992 at the ANSER Corporation, suite 800, 1215 Jefferson Davis Highway, Arlington, Virginia. This meeting will be closed to the public under exception 1 of the Government in the Sunshine Act (5 U.S.C.S. 552b) from 4:15 p.m. to 5:30 p.m. September 2, 1992. All others portions will be open session. Persons interested in attending should contact Stephen Hopkins, (703) 685–3307 no later than September 1, 1992.

James R. Beale,

Designated Federal Officer.

[FR Doc. 92–19607 Filed 8–17–92; 8:45 am]

BILLING CODE 3128–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Revised Meeting Notice

Notice was published in the **Federal Register** on Tuesday, August 4, 1992 (57 FR 34321), announcing the ACRS Subcommittee meeting on Thermal Hydraulic Phenomena to be held on Tuesday, August 18, 1992, at the Holiday Inn, Bethesda, MD. The meeting will now be held at 7920 Norfolk Avenue, room P–110, Bethesda, MD. All other items pertaining to this meeting remain the same as previously published.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Boehnert, the cognizant ACRS staff engineer (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: August 11, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–19625 Filed 8–17–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Joint Meeting of the Subcommittees on Plant License Renewal/Reliability and Quality, Postponed

A joint meeting of the ACRS Subcommittees on Plant License Renewal and Reliability and Quality scheduled to be held on Tuesday, August 18, 1992, room P–110, 7920 Norfolk Avenue, Bethesda, MD has been postponed to September 16, 1992, as requested by the NRC staff. Notice of this joint meeting was published in the **Federal Register** on Tuesday, August 4, 1992 (57 FR 34321).

FOR FURTHER INFORMATION CONTACT: Mr. Elpidio Igne, the cognizant ACRS staff engineer, (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: August 11, 1992.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 92–19626 Filed 8–17–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–446–CPA; ASLBP No. 92–668–01–CPA]

Texas Utilities Electric Company (Construction Permit Amendment), Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding to rule on petitions for leave to intervene and/or requests for hearing and to preside over the proceeding in the event that a hearing is ordered.

Texas Utilities Electric Company

Comanche Peak Steam Electric Station, Unit No. 2, Construction Permit No. CPPR-127

This Board is being established pursuant to a notice published by the Commission on June 29, 1992, in the **Federal Register** (57 FR 28885) entitled, "Environmental Assessment and Finding of No Significant Impact." The proposed action would amend the construction permit by extending the latest construction completion date from August 1, 1992 to August 1, 1995.

The Board consists of the following administrative judges:

Morton B. Margulies, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

James H. Carpenter, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

All correspondence, documents and other materials shall be filed with the Board in accordance with 10 CFR 2.701 (1980).

Issued at Bethesda, Maryland, this 11th day of August 1992.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92-19624 Filed 8-17-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council; Meetings

AGENCY: Office Of Personnel Management.

ACTION: Notice of meetings.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the thirteenth through the sixteenth meetings of the Federal Salary Council will be held at the times and places shown below. The agenda for these meetings will be the discussion of issues relating to the new locality-based comparability payments authorized by the Federal Employees Pay Comparability Act of 1990 (FEPCA). The meetings will be open.

DATES: September 2 and 23, 1992, and October 5 and 28, 1992, beginning at 10 a.m.

ADDRESSES: Office Of Personnel Management, 1900 E Street, NW., room 7B09, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth O'Donnell, chief, Salary Systems Division, Office Of Personnel Management, 1900 E Street, NW., room 6H31, Washington, DC 20415-0001. Telephone number: (202) 606-2838.

For the President's Pay Agent.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-19481 Filed 8-17-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request copy available from: Securities and Exchange Commission Office of Filings, Information and Consumer Services, 450 5th Street, NW., Washington, DC 20549.

Proposed Revisions

Form S-3 File No. 270-61
Form 8-A File No. 270-54
Regulation C File No. 270-68
Regulation 12B File No. 270-70

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions of Form S-3, Form 8-A Regulation C, and Regulation 12B.

Form S-3 is used to register securities under the Securities Act of 1933 ("Securities Act") provided that certain registrant and transaction requirements are met. As proposed to be revised, approximately 2,280 respondents would file Form S-3 annually and incur an average estimated 419 burden hours to comply with the form requirements.

Form 8-A is used to register pursuant to Section 12(b) or (g) of the Securities Exchange Act of 1934 ("Exchange Act") of securities of any issuer required to file reports pursuant to Sections 13 or 15(d) of the Exchange Act of pursuant to Sections 13 or 15(d) of the Exchange Act or pursuant to an order exempting the exchange on which the issuer has securities listed from registration as a rational securities exchange. Approximately 1,940 issuers would file Form 8-A annually and incur an average estimated 7.5 burden hours to comply with the form requirements.

Regulation C provides standard instructions to guide registrants filing registration statements under the Securities Act. Regulation 12B provides instructions to guide registrants filing registration statements and reports under the Exchange Act. Each of these regulations is assigned only one burden hour since the disclosure requirements that impose burdens on registrants are specified in the individual Securities Act and Exchange Act forms.

The estimated average burdens are solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative sample or study of the costs of the Securities and Exchange Commission's rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden for compliance with SEC forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Projects 3235-0058, 0062, 0073, and 0074), room 3208, New Executive Office Building, Washington, DC 20543.

Dated: July 31, 1992.

[FR Doc. 92-19637 Filed 8-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31010; File No. SR-CBOE-92-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to Index Options with Quarterly Expirations

August 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 16, 1992, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby proposes to list for trading options on the Standard & Poor's ("S&P") 100 and S&P 500 Stock Indexes that will expire on the first business day of the month following the end of each calendar quarter ("Quarterly Index Expirations" or "QIXs").[1]

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

In response to the proliferation of over-the-counter ("OTC"), non-exchange traded options, and in order to accommodate institutional investors whose performance is judged on a quarterly basis, the Exchange is proposing to list options on the S&P 100 and S&P 500 stock indexes that expire on the first business day of the month following the end of a calendar quarter, rather than the customary expiration date of "the Saturday immediately following the third Friday of the expiration month." For example, if QIXs were currently listed, the expiration dates for the next three quarters would be October 1, 1992, January 4, 1993 and April 1, 1993. The exercise settlement value for QIXs will be based on the closing value of the corresponding index on the last business day before expiration, or, in other words, the last business day of the preceding calendar quarter. The symbols for S&P 100 and 500 QIXs will be OEQ and SPQ, respectively. The Exchange intends to list up to eight quarterly expirations for both OEQ and SPQ options.

Contract terms for the QIX options will be similar to the corresponding S&P 100 ("OEX") and S&P 500 ("SPX") Stock Index options that presently trade on the Exchange. For example, S&P 100 QIXs will have American-style exercise, with the daily exercise settlement value based on the index value derived from the closing prices of component stocks. Similarly, QIXs on the S&P 500 will have European-style exercise and the exercise settlement value will be based upon the index value derived from the closing prices of component stocks on the last trading day prior to expiration.

Other than the change of the expiration date, the only other change in the contract terms for QIX index options is that the multiplier for QIX index options may be set at 500 rather than the customary 100. The Exchange has retained the discretion to list larger QIX contracts because an increased value contract may be justified given the values of the portfolios managed by institutional customers. In this regard, however, if the multiplier for a class of QIX options is set at 500, then positions in such options class will be multiplied by five in determining compliance with the applicable position and exercise limits. In addition, QIX index options will be aggregated with positions in other CBOE-traded options based on the S&P 100 and 500 Indexes for position and exercise limit purposes and will be subject to the Exchange's position and exercise limits applicable to index options settled based on the closing prices of the index's component securities. Accordingly, the position limits for OEQ and SPQ options will be 25,000 contracts, with no more than 15,000 of which are in the near-term expiration month.

Consistent with the authority of the Exchange to change the arrangement of expiration months,[2] the CBOE further proposes that any proposed modification in the arrangement of expiration months for index option classes be effective immediately upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act. Presently, the Exchange's index option contracts may expire at three-month intervals or in consecutive months, with up to six expiration months outstanding and none of these further out than twelve months.[3] The CBOE proposal does not alter the existing expiration month procedure but instead codifies the Exchange's authority to change the arrangement of expiration months consistent with Commission approval.[4]

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in

[1] The CBOE first submitted the filing on June 26, 1992, but amended it on July 16, 1992. These amendments, which are incorporated in this notice, relate to the expiration dates of QIXs, the scope of the Exchange's filing, and position and exercise limits applicable to QIXs.

[2] See Securities Exchange Act Release No. 23257 (May 29, 1986), 51 FR 19434.

[3] The instant proposal only impacts the CBOE's twelve-month or less index option contracts. The CBOE, however, lists and trades long-term index options named "LEAPS" that expire up to 36 months from the date of issuance. Under CBOE Rule 5.8, the Exchange is granted the authority to list index options that expire up to 36 months from issuance with an additional six expiration months.

[4] See *supra* note 2.

accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by September 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19636 Filed 8-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31019; File No. SR-NASD-92-22]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Exemption From Free-Riding and Withholding for Securities of Issuers That Wholly Own a Member Firm

August 11, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 2, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Below is the text of the proposed rule change to section 13 of Schedule E of the NASD By-Laws. Proposed new language is italicized.

Schedules to the By-Laws

Schedule E

* * * * *

Section 13—Sales to Employees—No Limitations

Notwithstanding the provisions of the Board of Governors' Interpretation With Respect To "Free-Riding and Withholding," a member may sell securities issued by a member, a parent of a member, *an entity which wholly owns a member*, or by an issuer treated as a member or parent of a member under Section 9 hereof to the member's employees; potential employees resulting from an intended merger, acquisition, or other business combination of members resulting in one public successor corporation; persons associated with the member; and the immediate family of such employees or associated persons without limitation as to amount and regardless of whether such persons have an investment history with the member as required by that interpretation; provided, however, that in the case of an offering of equity securities for which a bona fide independent market does not exist, such securities shall not be sold, transferred, assigned, pledged, or hypothecated for a period of five months following the effective date of the offering.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Interpretation of the Board of Governors—"Free-Riding and Withholding" under Article III, Section 1 of the NASD Rules of Fair Practice ("Free-Riding Interpretation")—requires NASD members to make a bona fide public distribution at the public offering price of securities in a public offering which trade at a premium in the secondary market, whenever such secondary market begins. The Free-Riding Interpretation is based on the NASD belief that failure to make a bona fide public distribution when there is a demand for an issue can be a factor in artificially raising the price at which the security trades in the secondary market. In particular, failure to make a bona fide distribution when the member may have information relating to the demand for the securities or other factors not generally known to the public, is inconsistent with high standards of commercial honor and just and equitable principles of trade and leads to an impairment of public confidence in the fairness of the investment banking and securities business.

Section 13 to Schedule E of the NASD By-Laws ("Section 13") provides an exemption from the Free-Riding Interpretation to permit an NASD member to sell certain securities in a public offering that trade at a premium in the secondary market to: the member's employees; to potential employees of the member resulting from a merger, acquisition, or other business combination of members that results in one public successor corporation; to persons associated with the member; and to the immediate family of such employees or associated persons. The exemption provided by section 13 of the Free-Riding Interpretation may only be relied on when securities are offered in a public offering by (i) the member, (ii) a parent of a member, or (iii) an issuer treated as a member or parent of a member pursuant to Section 9 of Schedule E to the NASD By-Laws.[1] Section 13 is based on the NASD belief that employees of members may naturally wish to have an ownership interest in their member-employer or its parent that is a public company and that investment by employees in their employers is beneficial to the employee/employer relationship.

Section 2(h) of Schedule E defines the term "parent" for purposes of section 13 as any entity affiliated with a member from which member the entity derives 50% or more of its gross revenues or in which it employs 50% or more of its assets. large, diversified holding companies cannot meet this definition of a parent of a member due to the fact that the activities of the broker/dealer are only a small part of their business. Employees and other associated persons of NASD member firms owned by such large holding companies are, therefore, not permitted to rely on the section 13 exemption to the Free-Riding Interpretation to purchase shares of their respective holding company in a public offering. Upon review, the NASD has determined that it would be appropriate and within the intent of section 13 and the Free-Riding Interpretation to allow employees and other section 13 associated persons of NASD members wholly-owned by large holding companies to purchase the securities offered by such entities even though the holding company does not come within the Schedule E definition of "parent." The NASD, therefore, is proposing that the section 13 exemption of the Free-Riding Interpretation be expanded to provide that a member may sell the securities to its employees and other associated persons designated under section 13 when the securities are issued by an entity which wholly owns the member.

[1] Section 9 of Schedule E provides that certain offerings that result in the issuer's affiliation or public ownership of the NASD member shall be subject to the provisions of Schedule E to the same extent as if the transaction had occurred prior to the filing of the offering.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act.[2] In pertinent part, Section 15A(b)(6) requires that the rules of a national securities association be designed to "promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest." The NASD believes that investment by employees in their employers is beneficial to the employee-employer relationship, and thus is in the interest of investors, and in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 8, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19636 Filed 8-17-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31022; File No. SR-PSE-92-26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Extension of the Pacific Options Exchange Trading System Pilot Program

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend until October 31, 1992, its automated options trading system pilot program designated as the Pacific Options Exchange Trading System ("POETS").[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In January 1990 the Commission approved POETS on a pilot basis.[2] Subsequently, the Commission approved several Exchange proposals to extend the pilot, including most recently, a one-year extension through July 31, 1992.[3]

Currently, the Exchange has 11 POETS connections with 21 firms and anticipates having an additional five connections before the end of 1992. The PSE represents that it has experienced no capacity problems with POETS during the current pilot extension and, in addition, that POETS availability during 1992 has been 99.99%.

The Exchange believes that POETS is a viable and effective trading system and that an uninterrupted continuation

[1] POETS is a completely automated trading system comprised of an automatic execution system, an options order routing system ("ORS"), an on-line limit order book system ("Auto-Book"), and an automatic market quote update system ("Auto-Quote"). The Commission approved the PSE's POETS system on a six-month pilot basis on January 18, 1990. See Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (order approving File SR-PSE-89-26). The initial six-month approval expired on July 22, 1990, and was extended until October 22, 1990 in order to allow the PSE to complete installation of the system's hardware. See Securities Exchange Act Release No. 28264 (July 26, 1990), 55 FR 32172 (order approving File No. SR-SPE-90-28). In January 1991, the POETS pilot program was extended until June 30, 1991. *See* Securities Exchange Act Release No. 28778 (January 14, 1991), 56 FR 2576 (order approving File No. SR-PSE-90-36). In April 1991, the Commission approved the PSE's proposal to implement the system's automatic and semi-automatic execution features, termed "Auto-Ex" and "Semi Auto-Ex," respectively, on a floor-wide basis, and to extend the pilot until July 31, 1992. *See* Securities Exchange Act Release No. 29104 (April 18, 1991), 56 FR 19134.

[2] See *supra*, note 1 for a description of POETS

[3] See Securities Exchange Act Release No. 29104, *supra* note 1.

[2] 15 U.S.C. 78o-3 (1991).

of the pilot program is warranted based on the importance of maintaining the quality and efficiency of the Exchange's markets. The Exchange states that it plans to continue its evaluation of the pilot program and to advise the Commission of the results of the evaluation when the PSE seeks permanent approval of the pilot program on or before October 31, 1992.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that the trading system promotes just and equitable principles of trade while affording protection to investors and the public interest. In addition, the Exchange believes that the proposal is consistent with section 11A(a)(1)(B) of the Act in that it facilitates an environment that serves to promote an efficient and fair marketplace, resulting in benefits to the public and to the securities industry.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the pilot program is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 thereunder.[4] In particular, the Commission finds that the extension of the pilot is consistent with Section 6(b)(5) of the Act based on the PSE's representatives that the Exchange has experienced no capacity problems with POETS during the current pilot extension and that POETS availability during 1992 has been 99.99%. In addition, as the Commission has found in previous extensions of the pilot program, POETS is consistent with Section 6(b)(5) of the Act because, according to the PSE, POETS has facilitated the efficient execution of public customer market and limit orders, has facilitated trading on high volume days, and has provided the PSE's Regulation Department with more accurate trade information.[5] The Commission continues to believe that the enhanced efficiency of order processing resulting from POETS should help the PSE to provide deeper, more liquid and more efficient options markets. Moreover, POETS should allow the Exchange to develop more accurate and timely audit trails, thereby helping the PSE to maintain the integrity of its markets.

In addition, before approving POETS on a permanent basis, or extending it further on a pilot basis, the Commission expects the PSE to submit a full pilot report providing detailed statistics on POETS usage and the operation of the pilot.[6] Specifically, the Commission expects that the report will address, at a minimum: (1) The extent to which member firms are using the system; (2) the amount of order flow that is being routed through the system; (3) the amount of order flow that is being executed through the system; (4) any complaints received by the Exchange regarding the operation of the pilot; (5) any disciplinary action taken by the Exchange against a member or member organization as a result of their activities involving the system; (6) the impact of the system on the efficiency of order execution on the PSE; (7) the impact of the systems on the Exchange's ability to conduct market surveillance; and (8) any significant failures or outages.

The Commission finds good cause for approving the extension of the pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the uninterrupted continuation of the pilot program. In addition, because there have been no adverse comments concerning the pilot program since its implementation or prior to the Commission's approval of POETS in January 1990 and because of the importance of maintaining the quality and efficiency of the PSE's options markets, the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 8, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR-PSE-92-26) relating to an extension of the POETS pilot program until October 31, 1992, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19635 Filed 8-11-92; 8:45 am]

BILLING CODE 8010-01-M

[4] 15 U.S.C. 78f(b)(5) (1982).

[5] In its July 1990 request to extend the pilot program, the PSE represented that POETS had benefited Exchange members and public investors as follows: (1) by providing faster order turnaround time; (2) by providing better tracking of orders for members, member firms and Exchange staff due to the ability of POETS to retain large amounts of order and transaction information; (3) by facilitating trading during periods of high activity due to the ability of POETS to adjust to market fluctuations by upgrading its capability while on-line; and (4) by providing the Exchange's Regulation Department with more accurate trade data and information. See Securities Exchange Act Release No. 28264, *supra* note 1. See also Securities Exchange Act Release Nos. 28778 and 29104, *supra* note 1.

[6] In order to properly evaluate the pilot for permanent approval, we would expect the PSE to submit its report on the pilot at least six weeks prior to the pilot's expiration.

[7] 15 U.S.C. § 78s(b)(2) (1982).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

August 12, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Aracruz Cellulose S.A.
American Depository Shares, No Par Value (File No. 7-8919)
Devon Energy Corp.
Common Stock, $.10 Par Value (File No. 7-8919)
Fabri-Centers of America, Inc.
Common Stock, No Par Value (File No. 7-8920)
MacFrugal's Bargains
Common Stock, $.028 Par Value (File No. 7-8921)
Patriot Premium Dividend Fund II
Common Stock, No Par Value (File No. 7-8922)

These securities are listed and registered on one or more other national securities exchange you are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 2, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-19630 Filed 8-17-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exhange, Inc.

August 12, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Applied Power, Inc.
Class A Common Stock, $.20 Par Value (File No. 7-8899)
CNL Realty Investors, Inc.
Common Stock, $.01 Par Value (File No. 7-8900)
American Medical Response, Inc.
Common Stock, $.01 Par Value (File No. 7-8901)
Enron Liquids Pipeline, L.P.
Common Units Representing Limited Parthnership Interests (File No. 7-8902)
Omega Healthcare Investors, Inc.
Common Stock, $.01 Par Value (File No. 7-8903)
Tadiran Limited
Ordinary Shares, NIS 6.2 Par Value (File No. 7-8904)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 2, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly makets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-19632 Filed 8-17-92; 8:45 am]

BILLING CODE 8010-01-M

Self-regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Pacific Stock Exchange, Incorporated

August 12, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

ACM Government Securities Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-8892)
Brinker International, Inc.
Common Stock, $.10 Par Value (File No. 7-8893)
Columbia Laboratories, Inc.
Common Stock, $.01 Par Value (File No. 7-8894)
Pilgrim Prime Rate Trust
Shares of Beneficial Interest, No Par Value (File No. 7-8895)
Prime Hospitality Corp.
Common Stock, $.01 Par Value (File No. 7-8896)
Blackrock Investment Quality Term Trust, Inc.
Common Stock, $.01 Par Value (File No. 7-8897)
Delta Air Lines, Inc.
Depositary Shares, Series C Cumulative Convertible;
Depositary Preferred (File No. 7-8898)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 2, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-19633 Filed 8-17-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 12, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Smith Barney Municipal Fund, Inc.
Common Stock, $.001 Par Value (File No. 7-8905)
Indresco, Inc.

Common Stock When Issued, $.25 Par Value(File No. 7–8906)
Applied Power, Inc.
Common Stock, $.20 Par Value (File No. 7–8907)
American Medical Response, Inc.
Common Stock, $.01 Par Value (File No. 7–8908)
Team, Inc.
Common Stock, $.030 Par Value (File No. 7–8909)
Omega Healthcare Investor, Inc.
Common Stock, $.10 Par Value (File No. 7–8910)
Tadiran Limited
Ordinary Shares 0.2 Par Value (File No. 7–8911)
Hallwood Group, Inc.
Common Stock, $.10 Par Value (File No. 7–8912)
Excelsior Income Shares, Inc.
Common Stock, $.01 Par Value (File No. 7–8913)
Orion Capital Corporation
$2.125 Cum. Conv. Exch. Pfd., $1.00 Par Value (File No. 7–8914)
Pacific American Income Shares, Inc.
Common Stock, $.01 Par Value (File No. 7–8915)
Sequa Corporation
Class A Common Stock, No Par Value (File No. 7–8916)
Primerica Corporation
Depositary Shares, Cum. Pfd Series A $1 Par Value (File No. 7–8917)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 2, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92–19631 Filed 8–17–92; 8:45 am]
BILLING CODE 8010–01–M

[Rel. No. IC–18891; File No. 812–7887]

The Manufacturers Life Insurance Company of America, et al.

August 11, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: The Manufacturers Life Insurance Company of America (the "Company"), Separate Account Four of The Manufacturers Life Insurance Company of America ("Separate Account Four") and ManEquity, Inc. (the "Underwriter") (collectively, the "Applicants").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) of the 1940 Act exempting Applicants from the provisions of Sections 27(a)(1), 27(c)(2) and 27(h)(1) of the 1940 Act and paragraph (c)(4)(v) of Rule 6e–3(T) thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit them to make deductions from premium payments received in connection with certain individual flexible premium variable life insurance policies for the federal tax liability incurred by the Company as a result of its receipt of such premiums.

FILING DATE: The application was filed on March 12, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally, or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 8, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reasons for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. The Company and Separate Account Four, 1600 Market Street, Philadelphia, PA 19103. The Underwriter, 200 Bloor Street East, Toronto, Ontario, Canada M4W 1E5.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney, at (202) 272–3046 or Wendell M. Faria, Deputy Chief, at (202) 272–2060, Office of Insurance Products, (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is a stock life insurance company organized under the laws of Pennsylvania on April 11, 1977. It is a wholly-owned subsidiary of The Manufacturers Life Insurance Company of Michigan, which in turn is a wholly-owned subsidiary of The Manufacturers Life Insurance Company ("Manufacturers Life"), a mutual life insurance company based in Toronto, Canada.

2. The Company established Separate Account Four on March 17, 1987, as a separate account under Pennsylvania law. Separate Account Four holds assets that are segregated from all of the Company's other assets, and separate account assets equal to reserves and other separate account liabilities may not be charged with liabilities which arise from any other business the Company conducts. Separate Account Four is used to support the Company's variable life insurance policies that may be described either as flexible premium variable life insurance policies or as variable universal life insurance policies (the "VUL Policies"). Separate Account Four is registered with the Commission as a unit investment trust (File No. 811–5130). Separate Account Four currently has six sub-accounts, each of which invests in the shares of one of the six portfolios that presently comprise the Manulife Series Fund, Inc., a registered open-end management investment company.

3. The Underwriter is an indirect wholly-owned subsidiary of Manufacturers Life. The Underwriter acts as the principal underwriter for variable life insurance and variable annuity contracts issued by the Company. The Underwriter is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. VUL Policies are sold by registered representatives of either the Underwriter or other broker-dealers having distribution agreements with the Underwriter.

4. The Company, through Separate Account Four, now offers certain VUL Policies to the public pursuant to an offering registered under the Securities Act of 1933 (the "1933 Act") (File No. 33–13774) (the "Old VUL Policies"). The Company also intends to offer other VUL Policies through a new offering to be registered under the 1933 Act and may in the future offer additional VUL Policies through Separate Account Four or other similar separate accounts. The VUL Policies other than the Old VUL Policies are referred to herein as the "New VUL Policies."

5. In connection with offering any New VUL Policies, Applicants propose to make certain deductions from premium payments received in the approximate amount of any increase in the Company's federal tax obligations that are based upon those premiums. No such deductions will be made in connection with the Old VUL Policies.

6. In the Omnibus Budget Reconciliation Act of 1990 ("OBRA"), Congress increased insurance company tax revenues by adopting Section 848 of the Internal Revenue Code of 1986 (the "Code"), which, in relevant part, requires insurance companies to capitalize (and deduct over a period of ten years) a percentage of its deductions, all of which formerly would have been deductible in the current tax year. The amount of deductions that would have to be amortized over ten years rather than deducted in the year incurred is based solely upon "net premiums" received in connection with certain types of insurance contracts. "Net premiums" for a type of contract is defined in section 848 of the Code as gross premiums received by the insurance company on such contracts minus return premiums on such contracts and minus premiums paid by the insurance company for reinsurance of its obligations under such contracts. Because the Company will not pay return premiums on the VUL Policies and would reinsure its obligations under a VUL Policy outside the Manufacturers group of companies only to the extent that the Policy's face amount exceeded $7.5 million, it is reasonable to assume that virtually the entire amount of any VUL Policy premiums received would constitute "net premiums," as that phrase is used in section 848.

7. The Applicants assert that the action taken by Congress has virtually the same economic impact as an explicit federal premium tax. The more premium dollars the insurance company receives, the greater will be the amount of its deductions that it would be forced to capitalize (and deduct over a period of ten years rather than immediately) and thus the greater will be its income tax liability for the current year. The fewer premium dollars the company receives, the less will be the amount of its deductions that it must capitalize and the less will be its income tax liability for the current year. Thus, in economic reality, section 848 imposes a federal premium tax.

8. The amount of general deductions that mut be capitalized varies, depending upon the type of contract to which the premiums received relate, according to a schedule set forth in section 848. The VUL Policies would be classified as individual life insurance contracts for purposes of section 848.

Accordingly, Section 848 would require an amount of the Company's general deductions equal to 7.7% of VUL Policy premiums received during the year to be capitalized.

9. For each $1000 of premiums received in connection with the VUL Policies, section 848 requires the Company to capitalize $77 of its general deductions, regardless of the source of those deductions. Pursuant to section 848(a)(2), only $3.85 of the $77 could be deducted in the current year, thus exposing the remainder to immediate taxation at the corporate tax rate of 34%. As a result, the Company would owe $24.87 more in taxes for the current year than before the OBRA tax changes, solely due to having received the $1000 of VUL Policy premiums.

10. The ultimate cost to the Company would be less than the full amount of the increased tax liability for the current years, because the Company could deduct the remaining $73.15 in its subsequent ten years' returns. However, when estimating the economic impact of the tax increase, the benefit to the Company of future tax deductions must be discounted, so that only the present value of those future deductions would be compared to the $24.87 of increased tax obligation. It is the Company's business judgment that a rate of 9.68% is an appropriate discount rate. That rate represents a simple average of the composite, long-term Treasury bond rates for the past ten years (as of November 29, 1991). Using a 9.68% discount rate, the present value of the Company's increased tax obligation caused by receipt of $1000 of VUL Policy premium payment would be $9.08, or 9.908% of that premium payment.

11. Amounts added to premiums to pay federal income taxes are not themselves tax-deductible and thus would represent increased taxable income to the Company. Accordingly, in order to charge for the full impact of the new federal tax on the Company, the Company must charge enough more than .908% to cover the increased taxable income created by the charge itself. To achieve this result, the charge would need to be 1.38%.

12. Based on prior experience, the Company believes that it is reasonable to project that virtually all future deductions will be useful. It is the Company's judgment that a charge of 1.25% would reimburse it for most of the impact of the new tax liabilities created by section 848. That amount is identical to the amount charged for such tax liabilities by certain of the Company's competitors (who presumably treat the deduction as sales load for purposes of measuring compliance with the sales load restrictions of the 1940 Act and the rules thereunder). By deducting 1.25% of VUL Policy premiums received, the Company will thus be deducting no more than the approximate amount of its increased tax liability caused by receipt of those premiums.

Applicants' Legal Analysis and Conditions

1. Separate Account Four is, and any similar separate account of the Company created in the future will be, regulated under the 1940 Act as if it were the issuer of periodic payment plan certificates. Accordingly, Separate Account Four (and any future similar separate account), the Company (as the depositor for the separate account) and the Underwriter (as principal underwriter of the VUL Policies) are deemed to be subject to Section 27 of the 1940 Act.

2. Applicants request a Commission order granting relief from the provisions of section 27(a)(1), 27(c)(2), 27(h)(1) and paragraph (c)(4)(v) of Rule 6e–3(T) to the extent necessary to permit deductions to be made from payments received in connection with flexible premium variable life insurance policies of the Company issued through Separate Account Four or other similar separate accounts of the Company, in an amount approximately equal to or less than the Company's increased federal tax liability created by its receipt of such premium payments, and without treating such deduction as deductions for sales load.

3. Sections 27(a)(1) and 27(h)(1) of the 1940 Act limit sales load on periodic payment plan certificates to 9% of total payments to be made. Section 27(c)(2) of the 1940 Act, in effect prohibits deductions from payments received under a periodic payment plan other than amounts deducted for sale load. Rule 6e–3(T)(c)(4)(v) excludes from the definition of sales load a deduction for state premium taxes.

4. Rules 6e–3(T) provides a broad range of exemptive relief for the offering of flexible premium variable life insurance policies such as the VUL Policies, including relief from each of the paragraphs of section 27 from which

exemptive relief is sought in the application. Rule 6e–3(T)(b)(13)(iii)(E) provides exemptive relief to deduct from premium payments amounts to be use to pay taxes incurred as a result of receipt of those premium payments without regard to whether the taxes are imposed by states or by other governmental entities. The relief from section 27(c)(2) sought in this application is requested only to preclude the possibility that the deductions proposed might be deemed not to be entitled to the exemptive relief provided by Rule 6e–3(T)(b)(13)(iii)(E), based on the argument that Section 848 of the Code does not purport to impose a tax on life insurance companies.

5. Further, the literal wording of Rule 6e–3(T)(c)(4)(v) would appear to require deductions for federal tax obligations caused by the receipt of premiums to be treated as sales load. Therefore, an exemption from Rule 6e–3(T)(c)(4)(v) is requested to permit the deductions to be made without treating the deductions as if they were used to pay sales and distribution expenses. The relief requested under sections 27(a)(1) and 27(h)(1) is identical to that provided by Rule 6e–3(T) in connection with deductions for state premium taxes.

6. Applicants assert that it is reasonable to characterize the deduction as one for premium or other taxes. Also, according to Applicants, the propriety of making a deduction from variable life insurance premiums for taxes payable by the life insurance company on the basis of premiums received and of excluding such a deduction from sales load is the same, regardless of whether the taxing entity is a state or the federal government. Premium tax deductions have been considered by the Commission in connection with the adoption of Rules 6e–2 and 6e–3(T), in each case the Commission permitted the deduction for premium taxes and permitted the deduction to be treated as other than sales load. Applicants submit that there is no logical reason that deductions made to pay federal taxes should be treated as part of sales load, nor is there any language in the releases in which the Commission adopted or amended Rule 6e–3(T) which suggests such a result was intended. Further, the Applicants assert that nothing in the releases dealing with Rule 6e–3(T) suggests that the exclusion of premium tax deductions from the definition of sales load was based on the type of governmental entity imposing such taxes.

7. Preventing excess sales loads from being charged in connection with the sale of periodic payment plan certificates is the policy that underlies the provisions of Section 27 that limit such sales loads. According to the Applicants, treating as sales load amounts that are used to pay taxes incurred as a result of receipt of insurance premiums rather than used to pay sales commissions or other costs of distribution does not further this legislative process.

8. Section 2(a)(35) of the 1940 Act excludes from "sales load" amounts deducted from payments for issue taxes, or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants state that issue taxes incurred as a result of selling an investment company security would be similar to premium taxes incurred as a result of the sale of a variable life insurance policy. This suggests that it is consistent with the 1940 Act's policies to exclude from the definition of "sales load" in Rule 6e–3(T) deductions made to pay federal tax obligations incurred as a result of receipt of premiums.

9. According to Applicants, the exclusion from the section 2(a)(35) definition of sales load of administrative expenses or fees that are "not properly chargeable to sales or promotional activities" suggests that only deductions that are properly chargeable to such activities are intended to fall within the definition of sales load. As the proposed deductions will be used to pay federal taxes and are not properly chargeable to sales or promotional activities, that language is another indication that not treating such deductions as sales load is consistent with the policies of the 1940 Act.

Conclusion

Applicants submit that for the reasons and upon the facts set forth above, the requested exemptions from sections 27(a)(1), 27(c)(2) and 27(h)(1) of the 1940 Act and paragraph (c)(4)(v) of Rule 6e–3(T) thereunder to permit the Company to deduct 1.25% of premium payments under the New VUL Contracts meet the standards in Section 6(c) of the 1940 Act. In this regard, Applicants assert that granting the relief requested in this application would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19634 Filed 8–17–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1674]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.6(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130).

EFFECTIVE DATE: July 23, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Section 38(g)(4)(A) of the Arms Export Control Act (AECA) prohibits the issuance of export licenses to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person" means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization, or group, including governmental entities. The term "party to the export" means the president, the chief executive officer, and other senior officers of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis.

Section 127.6 of the ITAR authorizes the Assistant Secretary of State for Politico-Military Affairs to prohibit certain persons convicted of violating or conspiracy to violate the AECA from participating directly or indirectly in the export of defense articles or in the furnishing of defense services.

Such a prohibition is referred to as a statutory debarment, which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.6(c). The period for debarment will normally be three years. The ITAR provides the Assistant Secretary with discretion to determine an alternative period of time for debarment. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as section required by section 38(g)(4) of the AECA.

Statutory debarment is based solely upon the outcome of a criminal proceeding, conducted by a court of the United States, that established guilt beyond a reasonable doubt in accordance with due process. Thus, the procedures of part 128 of the ITAR that apply to administrative debarment are not applicable in such cases.

During the period of statutory debarment the Department of State will not consider applications for licenses or requests for approvals that involve any person or any part to the export who has been convicted of violating the AECA, or of conspiracy to violate the AECA. Persons who have been statutorily debarred may appeal to the Under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision.

The Department of State policy permits debarred persons to apply for an exception from the statutory debarment one year after the date of the debarment. Debarred persons may seek such an exception from the Director of the Office of Defense Trade Controls, in accordance with section 38(g)(4)(A) and under 22 CFR 127.6. If the exception is granted, the debarment will be suspended. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) have been satisfied.

Pursuant to section 38(g)(4)(A) of the AECA and § 127.6 of the ITAR, the Assistant Secretary for Politico-Military Affairs has debarred five persons who have been convicted of violating the AECA, or of conspiracy to violate the AECA.

These persons have been debarred for a three year period following their conviction, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to § 127.6(c) of the ITAR, the names of these persons (and their offense, date of conviction(s) and court of conviction(s)) are being published in the Federal Register. Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States and is thus excluded from the procedures of 5 U.S.C. 553 and 554 and Executive Order 12291 (44 FR 13193). It implements statutory and regulatory requirements that entered into force on December 22, 1987 and April 4, 1988, respectively.

In accordance with these authorities the following persons are debarred for a period of three years following their conviction for violating, or conspiring to violate, the AECA (name/ offense/ date/ court):

1. Dilligas Trading Co., Inc., 22 U.S.C. 2778(b)(1)(A), December 13, 1991, Eastern District of Virginia
2. George R. Mitchell, 22 U.S.C. 2778, 22 CFR parts 123 and 127.1 and 18 U.S.C. 2, January 17, 1992, District of Maryland
3. Novacom, Inc., 22 U.S.C. 2778(b)(1)(A), December 13, 1991, Eastern District of Virginia
4. Pan Aviation, Inc., 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), 22 U.S.C. 2778(b)(2), 22 U.S.C. 2778(c), 22 CFR part 127.02 and 127.01(c), 18 U.S.C. 1001, January 23, 1992
5. Sarkis G. Soghanalian, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), 22 U.S.C. 2778(b)(2), 22 U.S.C. 2778(c), 22 CFR parts 127.01, 127.02 and 127.01(c), 18 U.S.C. 2, 18 U.S.C. 1001 and 1002, January 29, 1992, Southern District of Florida

Dated: August 7, 1992.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Politico Military Affairs.

[FR Doc. 92–19557 Filed 8–17–92; 8:45 am]

BILLING CODE 4710–25–M

[Public Notice 1672]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group a Meeting

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) Study Group A will meet on August 27, 1992 at 9:30 a.m. in room 1912 at the Department of State, 2201 C Street NW., Washington, DC 20520.

The agenda for the meeting will include preparations for upcoming CCITT Study Groups II, III, and I international Working Party meetings scheduled for Geneva, September 14–18; September 28–October 9 (one week in Winchester, England), and October 12–16, 1992 respectively.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Persons who plan to attend should advise the Office of Early Barbely, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting order to be admitted. All attendees must use the C Street entrance.

Please bring 60 copies of documents to be considered at this meeting. If the document has been mailed, bring only 10 copies.

Dated: August 3, 1992.

Earl Barbely,

Director, Telecommunications and Information Standards, Chairman U.S. CCITT National Committee.

[FR Doc. 92–19545 Filed 8–17–92; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 1673]

U.S. Organizations for the International Radio Consultative Committee (CCIR) and International Telegraph and Telephone Committee (CCITT) Meeting

The Department of State announces that the U.S. Organizations for the International Radio Consultative Committee (CCIR National Committee) and International Telegraph and Telephone Committee (CCITT National Committee) will hold a joint open meeting, September 1, 1992 at the Department of State, 2201 C Street NW, Washington, DC in room 1912 commencing at 9:30 a.m.

The CCIR and CCITT are permanent organs of the International Telecommunications Union (ITU), a specialized agency of the United Nations, established by the International Telecommunications Convention.

The agenda for the meeting will consist of a review of the current status of issues related to mobile communications services, (i.e. FPLMTS, UPT, PCS etc.) that impact U.S. activities within the CCIR and CCITT. Consideration will be given to the possibility of establishing a joint CCIR/ CCITT coordination group which will provide guidance and direction to the Department of State in its treatment of these issues in the International Telecommunications Union.

Entrance to the Department of State is controlled but can be facilitated by making attendance arrangements in advance. Persons planning to attend the meeting should so advise this office at: (202) 647–0201, (fax 202 647–7407) no later than two days before the meeting. Notification should include name, date of birth and Social Security number. All attendees must use the C Street entrance.

Dated: August 4, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

Earl Barbely,

Chairman, U.S. CCITT National Committee.

[FR Doc. 92–19544 Filed 8–17–92; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Crow Wing County, MN; Correction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI); correction.

SUMMARY: The FHWA is issuing this notice to correct Notice FR Doc. 92–18268, printed August 3, 1992, on Page 34162, as indicated above.

Issued on: August 7, 1992.

Alan J. Friesen,

Program Operations Engineer, FHWA Minnesota Division, St. Paul, Minnesota.

[FR Doc. 92–19543 Filed 8–17–92; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: August 12, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary for Tax Policy.

[FR Doc. 19603 Filed 8–17–92; 8:45 am]

BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 160
Tuesday, August 18, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 24, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board, (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92–19803 Filed 8–14–92; 3:31 pm]

BILLING CODE 6210–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–92–24]

TIME AND DATE: August 26, 1992 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–622 (Preliminary) (Dry Film Photoresist from Japan)—briefing and vote.
5. Continuation of discussion of APO matters.
6. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Paul R. Bardos, Acting Secretary, (202) 205–2000.

Dated: August 12, 1992.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–19795 Filed 8–14–92; 2:54 pm]

BILLING CODE 7020–02–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Atlanta, Georgia: Aviation Accident

In accordance with its investigation of the aviation accident involving GP Express Airlines Flight 861, a Beech 99, at Fort McClellan, Anniston, Alabama, June 8, 1992, the National Transportation Safety Board will convene a public hearing at 1:00 p.m. (eastern daylight time), on Wednesday, September 30, 1992, in the North Ballroom of the Radisson Hotel located at 165 Courtland Street, Atlanta, Georgia. For further information contact Ted Lopatkiewicz, Office of Public Affairs, National Transportation Safety Board, 490 L'Enfant Plaza East, S.W., Washington, DC 20594, telephone (202) 382–0660.

Dated: August 14, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92–19802 Filed 8–14–92; 3:31 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 17, 24, 31, and September 7, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 17

Tuesday, August 18

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 24—Tentative

Wednesday, August 26

11:30 a.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Week of August 31—Tenative

Tuesday, September 1

3:00 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 3

1:00 p.m.
Briefing by EPRI on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Week of September 7—Tentative

Tuesday, September 8

10:00 a.m.
Briefing on Advanced and Evolutionary Reactor Topics: Form and Content for a Design Certification Rule and Follow-Up to SECY–90–016 (Public Meeting) (Contact: Dennis Crutchfield, 301/504–1199)

Wednesday, September 9

3:30 p.m.
Affirmative/Discussion and Vote (Public Meeting) (if needed)

Friday, September 11

8:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)
8:30 a.m.
Briefing by Charlie Meinhold on 1990 Recommendations of the International Commission on Radiological Protection (ICRP Publication 60) (Public Meeting)
10:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Raymond Fraley, 301/492–8049)

ADDITIONAL INFORMATION: By a vote of 3–0 (Commissioners Rogers and Curtiss not present) on August 12, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Rule to Extend the Implementation Date of Revised 10 CFR Part 20, 'Standards for Protection Against Radiation' " and "Affirmation of Commission Vote to Override OMB Denial of Information Collection for 10 CFR Parts 2 and 35—Quality Management Rule" (Public Meeting) to be held on August 12 and on less than one week's notice to the public.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: August 14, 1992.
William M. Hill, Jr.,
Office of the Secretary.
[FR Doc. 92-19792 Filed 8-14-92; 2:59 pm]
BILLING CODE 7590-01-M

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 9 a.m., Tuesday, August 11, 1992.

PLACE: Room 410, 1825 K Street, NW., Washington, DC. 20006.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Comments submitted pertaining to the Commission's proposed revision of certain of its Rules of Procedure published on May 12, 1992 at 57 FR 20220-20234.

CONTACT PERSON FOR MORE INFORMATION: E. Patrick, Moran, (202) 634-4015.

Dated: July 30, 1992.
E. Patrick Moran,
Deputy General Counsel.
[FR Doc. 92-19791 Filed 8-14-92; 2:51 pm]
BILLING CODE 7600-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week August 17, 1992.

Closed meetings will be held on Tuesday, August 18, 1992, at 2:30 p.m., Thursday, August 20, 1992, at 2:30 p.m., and on Friday August 21, 1992, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Beese, as duty officer, voter to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 18, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Thursday, August 20, 1992, at 2:30 p.m., will be:

Opinions.

The subject matter of the closed meeting scheduled for Friday, August 21, 1992, at 10:00 a.m., will be:

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272-2000.

Dated: August 13, 1992.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 92-19790 Filed 8-14-92; 2:47 pm]
BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 35885 August 11, 1992]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, August 5, 1992.

CHANGE IN THE MEETING: Time change.

A closed meeting schedule for Wednesday, August 12, 1992, at 2:30 p.m., has been rescheduled for Thursday, August 13, 1992, at 2:30 p.m.

Commissioner Beese, as duty officer, determined that Commission businsss required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Bruce Rosenblum at (202) 272-2300.

Dated: August 12, 1992.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 92-19793 Filed 8-14-92; 3:03 pm]
BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 57, No. 160
Tuesday, August 18, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8385]

RIN 1545-AP75

Allocations Attributable to Partnership Nonrecourse Liabilities

Correction

In rule document 91-30843 beginning on page 66978 in the issue of Friday, December 27, 1991, make the following corrections:

1. On page 66979, in the 1st column, under *I. Introduction*, in the 1st paragraph, in the 12th line, "regulation" should read "regulations".

2. On page 66980, in the 3d column, under "G. Rules For Partner Nonrecourse Debt", in the 2d paragraph, in the 14th line, after "are" remove "still".

3. On page 66981, in the first column, in the third line, after "are" insert "still".

4. On page 66981, in the 1st column, under *III. Description of Minimum Gain Chargeback Approach in the Temporary Regulations*, in the 1st paragraph, in the 13th line, "partner's" should read "partners'".

5. On page 66982, in the second column, in the last paragraph, in the third line, "But" should read "Both".

§ 1.704-2 [Corrected]

6. On page 66983, in the first column, in § 1.704-2(a), in the table of contents, (f)(2) and (f)(3) should read:

(f) • • •
(2) Exception for certain conversions and refinancings.
(3) Exception for certain captial contributions.

7. On page 66984, in the third column, in § 1.704-2(d)(4)(ii), in the seventh line, after "increases" insert "or decreases".

8. On page 66985, in the third column, in § 1.704-2(f)(7), *Example 1*, in the paragraph following the table, in the third line from the end of the paragraph, "partner's" should read "partners'".

9. On page 66986, in the first column, in § 1.704-2(g)(1)(ii), in the ninth line "§ 1.704" should read "§ 1.704-1".

10. On page 66988, in the third column, in § 1.704-2(i)(1)(iii)(A), in the ninth line, after "section" insert a closing parenthesis.

11. Section 1.704-2(m), *Example 1*, is corrected as follows:

a. On page 66989, in the second column, in the first paragraph, in the second line, "partnership" was misspelled.

b. On the same page, in the third column, in the tenth line, "(2)(ii)(*b*)(T33)" should read "(2)(ii)(*b*)(*3*)"; in the paragraph before the table, the third line from the end of the paragraph should read "allocations of these losses 90 percent to"; and in the last line of the table, columns two and three should read "$27,000" and "$3,000" respectively.

c. On page 66990, in the first column, in paragraph (i), in the last line of the table, columns two and three should read "($49,500)" and" ($5,500)", respectively, and in the undesignated paragraph following the table, in the ninth line, "the" was misspelled.

d. On the same page, in the 2d column, in paragraph (ii), in the last line of the table, columns two and three should read "($21,500)" and "($33,500)", respectively, and in the undesignated paragraph following the table, in the 16th line, "of" should read "to".

e. On the same page, in the 3d column, in paragraph (iv), in the table, in the 6th line, columns two and three should read "$32,400" and "$3,600", respectively; in paragraph (v), in the 14th line, "the" should read "that"; and in the 15th line, "700,000" should read "$700,000".

f. On page 66991, in the 1st column, in paragraph (vi), in the 10th line, "95,000" should read "$95,000"; in the 12th line, "expense" was misspelled; in the 35th line remove the first "of" appearing in the line; in the last line of the table, columns two and three should read "($144,000)" and "($16,000)", respectively; and in the undesignated paragraph following the table, in the last line, "1,000,000" should read "$1,000,000, and "550,000" should read "$550,000".

g. On the same page, in the 2d column, in the 19th line, "200,000" should read "$200,000"; in the 35th line "180,000" should read "$180,000"; in the last line of the table, columns two and three should read "($403,000)" and "($47,000)", respectively.

12. Section 1.704-2(m), *Example 3*, is corrected as follows:

a. On page 66992, in the second column, in the last line of the table, columns two and three should read "$50,000".

b. On the same page, in the third column, in the last line of the table, columns two and three should read "($35,000)".

c. On page 66993, in the first column, in paragraph (ii)(a), in the last line of the table, columns two and three should read "$100,000".

d. On the same page, in the 3d column, in paragraph (iii)(b), in the 29th line, after "agreement" insert a comma; in the table appearing in the middle of the page, in the first entry, columns two and four should read "($35,000)", and in the fourth entry, insert a solid line under columns two through six.

e. On page 66994, in paragraph (iv)(b), in the table appearing at the top of the page, in the first entry, columns two and four should read "($75,000)"; in the fourth entry, insert a solid line under columns two through seven; and in the undesignated paragraph following the table, in the ninth line, after "year" insert a comma.

f. On the same page, in paragraph (v)(b), in the table appearing in the middle of the page, in the third entry, insert a solid line under columns two through seven.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[T.D. 8411]

RIN 1545-AH13

Definition of Resident Alien

Correction

In rule document 92-8496 beginning on page 15237, in the issue of Monday, April 27, 1992, make the following corrections:

§ 301.7701(b)-1 [Corrected]

1. On page 15243, in the third column, in § 301.7701(b)-1(e), in *Example 1.*, in the seventh line, "year. B" should read "year, B".

§ 301.7701(b)-2 [Corrected]

2. On page 15244, in the third column, in § 301.7701(b)-2(f)(1–4), column, "Form 1" should read "Form I" each place it appears.

3. On the same page, in the same column, in § 301.7701(b)-2(f)(6), in the second line, "23O" should read "230".

§ 301.7701(b)-3 [Corrected]

4. On page 15246, in the third column, in § 301.7701(b)-3(c)(2), in the fourth line, "test;" should read "test,".

§ 301.7701(b)-8 [Corrected]

5. On page 15252, in the third column, in § 301.7701(b)-8(b)(2)(ii), in the second line, "bad" should read "had".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N-0162]

Food Labeling: Format for Nutrition Label

Correction

In proposed rule document 92-16942, beginning on page 32058 in the issue of Monday, July 20, 1992, make the following corrections:

1. On page 32063, in the first column, the second full paragraph is corrected to read as follows:

Also, FDA does not fully agree that giving instruction or practice with newer labels is an acceptable procedure for evaluating formats. There is no way to translate a one-on-one instruction of shopper by an interviewer in a test situation to the educational equivalent of familiarizing potential label users in the population with the features of a format. The test situation bypasses the normal real world requirements of delivering a message to the intended audience and of ensuring that it is received, is understood, and motivates the receiver to respond appropriately. The cost to achieve a comparable education effort in the real world are not estimatable but are undoubtedly very large.

2. On page 32067, in the third column, table 6 is reprinted as a full size illustration.

Table 6

MACARONI & CHEESE

NUTRITION INFORMATION PER SERVING

	In Pkg.	As Prepared	
Serving Size:	¼ box (45g)	¾ cup	
Servings per Container:	4	4	
Calories	190	290	
Calories from fat	20	120	
	PERCENT OF DAILY VALUE		**DAILY VALUE (DV) †**
Total Fat (2, 13g) #	3	17	75 g or less
Saturated fat (1, 5g)	4	20	25 g or less
Polyunsaturated fat (0, 4g)			
Monounsaturated fat (1, 4g)			
Cholesterol (10, 30mg)	3	10	300 mg or less
Total carbohydrate (31, 31g)	10	10	325 g or more
Complex carbohydrate (31, 31g)			
Sugars (0, 0g)			
Dietary fiber (0, 0g)	‡	‡	25 g
Protein (4, 5g)			50 g
Sodium (420, 660mg)	18	27	2400 mg or less
Potassium (55, 95mg)	2	3	3500 mg
Vitamin A	‡	4	
Vitamin C	‡	‡	
Calcium	8	12	
Iron	10	10	

† As part of a 2,350 calorie diet

‡ Contains less than 2 percent of the DV of this nutrient

Amount in package and as prepared

INGREDIENTS: XXXX

VOL
57
SS
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federal register

Tuesday
August 18, 1992

Part II

Environmental Protection Agency

40 CFR Part 148 et al.

Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270 and 271

[FRL-4132-4]

RIN 2050-AD36

Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing treatment standards under the land disposal restrictions (LDR) program for certain hazardous wastes listed after November 8, 1984, pursuant to a proposed consent decree filed with the District Court that established a promulgation date of June 1992 (*EDF* v. *Reilly*, Civ. No. 89-0598, D.D.C.). EPA is also finalizing revised treatment standards for debris contaminated with listed hazardous waste or debris that exhibits certain hazardous waste characteristics (hereinafter referred to as hazardous debris), and several revisions to previously promulgated standards and requirements. These actions are being taken as part of the RCRA Reform Initiative, and are expected to facilitate implementation of the LDR program.

EFFECTIVE DATES: This final rule is effective on June 30, 1992, except for §§ 148.17(a), 260.10, 261.3(c)(2)(ii)(C), 268.2, 268.5, 268.7, 268.9, 268.36(a), 268.40, 268.41, 268.42, 268.43, 268.45, 268.46, 268.50, 270.14, 270.42, 270.72, and 271.1, which are effective November 16, 1992; and §§ 262.34, 264.110, 264.111, 264.112, 264.140, 264.142, part 264 subpart DD, 265.110, 265.111, 265.112, 265.140, 265.142, 265.221, and part 265 subpart DD, which are effective February 18, 1993.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-92-CD2F-FFFFF, and is located in the EPA RCRA Docket, room 2427, 401 M Street SW., Washington, DC 20460. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, except on Federal holidays. The public must make an appointment to review docket materials by calling (202) 260-9327. A maximum of 100 pages from the docket may be copied at no cost. Additional copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424-9346 (toll free) or (703) 920-9810 locally. For information on treatment standards for newly listed wastes or hazardous debris, contact the Waste Treatment Branch, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8434. For information on capacity determinations or national capacity variances, contact the Capacity Programs Branch, Office of Solid Waste (OS-321W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8440.

SUPPLEMENTARY INFORMATION:

Outline

I. Background
- A. Summary of the Hazardous and Solid Waste Amendments of 1984
- B. Pollution Prevention (Waste Minimization) Benefits

II. Summary of Final Rule
- A. Newly Listed Wastes
- B. Changes to Current Regulations
- C. Hazardous Debris

III. Detailed Discussion of Final Rule: Newly Listed Wastes
- A. Recent Petroleum Refining Wastes (F037 and F038)
- B. Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107, K108, K109, and K110)
- C. 2-Ethoxyethanol Wastes (U359)
- D. Wastes from the Production of Dinitrotoluene and Toluenediamine (K111 and K112, U328 and U353)
- E. Wastes from the Production of Ethylene Dibromide (K117, K118, and K136) and Wastes from the Production of Methyl Bromide (K131 and K132)
- F. Wastes from the Production of Ethylenebisdithiocarbamic Acid (K123, K124, K125, and K126)

IV. Detailed Discussion of Final Rule: Changes to Existing Regulations
- A. Revisions to the F001-F005 Spent Solvents Treatment Standards
- B. Conversion of Wastewater Standards Based on Scrubber Water
- C. Revisions to Treatment Standards for K061, K062, and F006
- D. Vanadium: Treatment Standards and Appendix VIII
- E. Notification and Certification for Characteristic Wastes
- F. Wastes Listed Because they Exhibit a Characteristic
- G. Storage and Treatment in Containment Buildings
- H. Retrofitting Surface Impoundments Under Land Disposal Restrictions

V. Detailed Discussion of Final Rule: Hazardous Debris
- A. Overview
- B. Definitions of Debris and Hazardous Debris
- C. Treatment Standards for Hazardous Debris
- D. Exclusion of Hazardous Debris from Subtitle C Regulation
- E. Regulation of Treatment Residuals
- F. Permit Requirements for Treatment Facilities
- G. Capacity Variance for Hazardous Debris
- H. Other Issues

VI. Capacity Determinations
- A. Capacity Analysis Results Summary
- B. Available Capacity
- C. Petroleum Refining Wastes and Other Organic Wastes
- D. Required and Available Capacity for Newly Listed Wastes Mixed with Radioactive Contaminants
- E. Required and Available Capacity for Debris Contaminated with Newly Listed Wastes
- F. Capacity Determination for Underground Injected Wastes
- G. Revisions to Treatment Standards for K061, F006, and K062

VII. Implementation
- A. Facilities Qualifying for Interim Status Due to Storage of Prohibited Wastes
- B. Containment Buildings at Generator Sites
- C. Addition of Waste Management Capacity at Permitted and Interim Status Facilities
- D. Conversion of Enclosed Waste Piles to Containment Buildings at Permitted and Interim Status Facilities

VIII. State Authority
- A. Applicability of Rules in Authorized States
- B. Effect on State Authorization

IX. Regulatory Requirements
- A. Economic Impact Screening Analysis Pursuant to Executive Order 12291
- B. Regulatory Flexibility Analysis
- C. Paperwork Reduction Act

I. Background

A. Summary of the Hazardous and Solid Waste Amendments of 1984

The Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), enacted on November 8, 1984, allow hazardous wastes to be land disposed only if they satisfy either of two conditions: (1) They can either be treated, or otherwise satisfy, the requirement of section 3004(m), which provision requires EPA to set levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized; or (2) they can be land disposed in units satisfying the so-called no-migration standard in sections 3004 (d)(1), (e)(1), and (g)(5). Land disposal includes any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave. RCRA section 3004(k).

EPA was required to promulgate land disposal prohibitions and treatment standards by May 8, 1990 for all wastes that were either listed or identified as hazardous at the time of the 1984 amendments, a task EPA completed within the statutory timeframes. RCRA section 3004 (d), (e), and (g). EPA is also required to promulgate prohibitions and treatment standards for wastes identified or listed after the date of the 1984 amendments (wastes referred to in this notice as "newly listed and identified wastes") within six months after the listing or identification takes effect. RCRA section 3004(g)(4). EPA has filed with the District Court a proposed consent decree that would put the Agency on a schedule for adopting prohibitions and treatment standards for newly identified and listed wastes. The promulgation date for the newly identified and listed wastes dealt with in this rule is set for June 1992. (*EDT* v. *Reilly*, Civ. No. 89-0598, D.D.C.)

The land disposal restrictions are effective upon promulgation. RCRA section 3004(h)(1). However, the Administrator may grant a national capacity variance from the effective date and establish a later effective date (not to exceed two years) based on the earliest date on which adequate alternative treatment, recovery, or disposal capacity which protects human health and the environment will be available. RCRA section 3004(h)(2). The Administrator may also grant a case-by-case extension of the effective date for up to one year, renewable once for up to one additional year, when an applicant(s) successfully makes certain demonstrations. RCRA section 3004(h)(3). See 55 FR 22526 (June 1, 1990) for a more detailed discussion on national capacity variances and case-by-case extensions.

In addition to prohibiting land disposal of hazardous wastes, Congress prohibited storage of any waste which is prohibited from land disposal unless such storage is solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal. RCRA section 3004(j). The provision applies, of course, only to storage which is not also defined as land disposal in section 3004(k).

B. Pollution Prevention (Waste Minimization) Benefits

EPA's progress over the years in improving environmental quality through its media-specific pollution control programs has been substantial. Over the past two decades, standard industrial practice for pollution control concentrated to a large extent on "end-of-pipe" treatment or land disposal of hazardous and nonhazardous wastes. EPA believes that reducing or eliminating discharges and/or emissions to the environment through the implementation of environmentally sound recycling and source reduction practices sometimes offer more cost effective ways of achieving environmental goals.

The Agency has identified a number of waste streams where environmentally sound recycling has been identified as BDAT. For example, we are promulgating today in section IV.C alternate treatment standards for electroplating sludges (F006) and spent pickle liquor (K062), based on high temperature metals recovery (HTMR). The Agency has determined that many of these wastes have sufficient concentrations of metals (nickel and chromium), with low concentrations of interfering chemicals, to be amenable for recovery in HTMR units. Moreover, the Agency is granting a generic exclusion for F006 and K062 HTMR nonwastewater residuals, provided that these residuals meet designated concentration levels, are disposed of in Subtitle D units, and exhibit no characteristics of hazardous waste. (This exclusion is similar to the one that was promulgated on August 8, 1991 for K061. See 56 FR 41164, August 19, 1991.) The Agency expects that these provisions will encourage more generators to choose treatment technologies for their wastes which also recover some materials for reuse. In addition, treatment standards for the newly listed petroleum refining wastes (F037 and F038) are based on some recovery technologies (critical fluid extraction and thermal desorption), as well as on incineration.

II. Summary of Final Rule

Today's final rule is the first rulemaking adopting treatment standards for newly identified and listed wastes as outlined in the consent decree described above.

Before discussing the final rule, EPA notes that certain aspects of the rule could be affected by the recently proposed rule (57 FR 21450, May 20, 1992) dealing with the question of when wastes are hazardous, concentration levels and circumstances when wastes are not hazardous, as well as circumstances when land disposal prohibitions might and might not apply. At present, however, the mixture and derived from rules remain in effect (57 FR 7628, March 3, 1992), and so apply to the rule adopted today. In addition, as explained in more detail later in the preamble, the Agency is codifying the so-called contained-in policy with respect to contaminated debris, and the preamble likewise explains how and when debris can be a hazardous waste based on application of this principle.

A. Newly Listed Wastes

EPA has promulgated a number of hazardous waste listings since enactment of HSWA in 1984. Section III of today's rule describes the treatment and/or recycling technologies that have been identified as BDAT for 20 of these listings and finalizes LDR treatment standards based on BDAT. Wastes included in today's rule include petroleum refining wastes (F037 and F038), wastes from the production of unsymmetrical dimethylhydrazine (K107-K110), wastes from the production of dinitrotoluene and toluenediamine (K111 and K112); wastes from the production of ethylene dibromide (K117, K118, and K136), wastes from the production of ethylenebisdithiocarbamic acid (K123-K126), wastes from the production of methyl bromide (K131 and K132), and several organic U wastes (U328, U353, and U359). Future proposals will include newly listed wastes not covered in today's rule. Soil contaminated with the newly listed wastes for which standards are finalized today will be addressed in a future proposal.

B. Changes to Current Regulations

The Agency is finalizing revisions to the existing treatment standards for organic constituents in F001-F005 wastes, involving conversion from TCLP standards to standards based on total concentrations. In addition, the Agency is finalizing the conversion of wastewater standards for 24 F and K waste codes based on wastewater treatment data for the constituents of concern.

EPA is also finalizing alternate treatment standards for F006 and K062, and is also extending the K061 generic exclusion published on August 19, 1991 (56 FR 41164) to certain F006 and K062 wastes. The generic exclusion levels have been slightly revised to reflect a somewhat different fate and transport model, the EPA Composite Model for Landfills (EPA CML).

EPA is also revising the notification and certification for prohibited characteristic wastes and clarifying existing rules regarding the status under part 268 of wastes listed solely because they exhibit a characteristic.

Finally, EPA is establishing a new waste management unit known as a containment building. EPA is indicating that containment buildings are not land disposal units, so that hazardous wastes may be managed in such units without first meeting treatment standards.

C. Hazardous Debris

Debris contaminated with listed prohibited wastes is already subject to the LDR treatment standards for those wastes, as is debris exhibiting a hazardous waste characteristic for which EPA has promulgated treatment standards. Today, the Agency is revising the treatment standards for such debris. The Agency is also finalizing treatment standards for debris that is contaminated with those newly listed wastes for which standards are promulgated in this rule. This rule does not identify or list any debris as hazardous, and so does not bring any additional debris into the subtitle C management system. Only hazardous debris that is currently subject to subtitle C standards is covered by today's rule. The Agency is requiring hazardous debris to be treated prior to land disposal, using specific technologies from one or more of the following families of debris treatment technologies: Extraction, destruction, or immobilization. In the alternative, hazardous debris may continue to be handled in accordance with the Agency's contained-in policy, and so may be land disposed if it no longer "contains" a hazardous waste.

To ensure effective treatment of debris (i.e., treatment sufficient to constitute BDAT), treatment must be performed in accordance with specified performance standards (see new Table 1 in today's rule). The consequence of performing this treatment would be two-fold. Not only would the debris no longer be prohibited from land disposal, but EPA would consider the treated debris to no longer be or contain a hazardous waste provided a destruction or extraction technology is used for all debris types/contaminant combinations and provided that the treated debris does not exhibit any characteristic of hazardous waste. Such treated debris could, therefore, be reused, returned to the natural environment, or disposed of in a subtitle D facility.

Residuals generated from the treatment of debris contaminated with listed wastes would still be hazardous wastes by virtue of the derived-from rule and would be subject to the hazardous waste management system. The Agency is today requiring that residuals generated from the treatment of hazardous debris be subject to the numerical treatment standards for the wastes contaminating the debris. A detailed discussion is provided in section V.G.

Finally, the Agency considered and rejected proposing numerical standards for hazardous debris because of the difficulty of sampling hazardous debris. However, based on numerous comments to the proposed rule, EPA is allowing people the option of treating debris to meet the existing treatment standards. Such debris would remain hazardous waste under the derived-from rule, unless delisted.

III. Detailed Discussion of Final Rule: Newly Listed Wastes

Since the enactment of HSWA in 1984, EPA has promulgated a number of hazardous waste listings under 40 CFR part 261 subpart D and has expanded the number of wastes covered under 40 CFR part 261 subpart C. This section of today's rule describes the treatment and/or recycling technologies that have been identified as BDAT for 20 of these "newly listed" wastes. The Agency is finalizing treatment standards under 40 CFR 268.41, .42, and .43 for these wastes based on the transfer of performance data from treating other hazardous wastes that have been determined to be similar or more difficult to treat than these wastes.

This section does not, however, finalize treatment standards for the following newly identified or listed hazardous wastes: Those recently identified under the TC rule (D018–D043); characteristic wastes generated by mineral processing activities; spent potliners from aluminum manufacturing (K088); and listed wastes from wood preserving (F032, F034, and F035). These wastes, as well as wastes from coking operations and chlorotoluene production, will be addressed in subsequent **Federal Register** notices.

Before discussing these new treatment standards, the Agency wishes to clarify one point as to its methodology in establishing treatment standards. The Agency has explained in a number of past preambles that it accounts for treatment process variability in establishing treatment standards, and does so by applying a statistically derived variability factor to the mean concentration of constituent concentrations in treatment residues from the model BDAT technologies (see 55 FR 22539 as an example). This variability factor, EPA has explained, is derived through a quantitative procedure that determines the statistical 99th percentile for the treatment standard.

Some commenters have inferred from this explanation that the treatment standards can only be achieved 99 percent of the time even by properly operated treatment units. This is an incorrect inference, although EPA acknowledges that some of its preamble language has promoted this reading. In fact, EPA expects the treatment standards to be achievable 100 percent of the time by properly operating facilities. Data points above the 99th percentile of the statistical model would in fact represent extreme departures from the mean and almost certainly reflect quality control problems in operation of the treatment technology. All of the data used in establishing treatment standards are actually much lower than 99th percentile values, as well as values in excess of that 99th percentile. (In addition, as EPA has already explained, for standards based on combustion technology, the technology routinely reduces waste concentrations to lower than detection values, yet the treatment standards nevertheless apply a variability factor to a numerical detection limit, resulting in treatment standards that are "greater than the achievable levels (which are at or below the detection limits) and should be easily met by a well-designed, well-operated incineration system."

A. Recent Petroleum Refining Wastes (F037 and F038)

F037—Any sludge generated from the gravitational separation of oil/water/solids during the storage or treatment of process wastewaters and oily cooling wastewaters from petroleum refineries. Such sludges include, but are not limited to, those generated in: Oil/water/solids separators; tanks and impoundments; ditches and other conveyances; sumps; and stormwater units receiving dry weather flow. Sludge generated in storm water units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges generated in aggressive biological treatment units as defined in 40 CFR § 261.31(b)(2) (including sludges generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and K051 wastes are not included in this listing

F038—Any sludge and/or float generated from the physical and/or chemical separation of oil/water/solids in process wastewaters and oily cooling wastewaters from wastewaters from petroleum refineries. Such wastes include, but are not limited to, all sludges and floats generated in: Induced air flotation (IAF) units, tanks and impoundments, and all sludges generated in DAF units. Sludges generated in storm water units that do not receive dry weather flow, sludges generated from non-contact once-through cooling waters segregated for treatment from other process or oily cooling waters, sludges and floats generated in aggressive biological treatment units as defined in § 261.31(b)(2) (including sludges and floats generated in one or more additional units after wastewaters have been treated in aggressive biological treatment units) and F037, K048, and K051 wastes are not included in this listing

F037 and F038 are hazardous wastes generated by facilities in the petroleum refining industry. Detailed technical descriptions of the specific processes or operations that generate these two wastes can be found in 45 FR 74884, May 19, 1980; 55 FR 46354, November 2, 1990; 56 FR 21955, May 13, 1991; and the associated listing background document.

EPA is today promulgating treatment standards for F037 and F038; these standards are the same as those proposed on January 9, 1992 (57 FR 958). (The specific regulated constituents and treatment standards for these wastes are listed in the tables at the end of this section). Since EPA is promulgating concentration levels as the treatment standards for wastewater and nonwastewater forms of F037 and F038, any treatment technology capable of reaching the treatment standards can be used except for impermissible dilution.

EPA's rationale and technical details for promulgating today's treatment standards can be found later in this section of the preamble and in the Final BDAT Background Document for F037 and F038. However, in summary, commenters to the January 9, 1992, proposal generally concurred with EPA's assertion that F037 and F038 have similar treatment characteristics to those of K051 and K048 (as well as other petroleum wastes). Most commenters also supported the transfer of available K048–K052 performance data from K048 to F038 and from K051 and K049 to F037. In fact, new data submitted to EPA in response to the May 30, 1991, Advance Notice of Proposed Rulemaking (ANPRM) and the January 9, 1992, proposal corroborates EPA's transferring of existing K048–K052 performance data to F037 and F038. These new data show that there are other technologies in addition to incineration and solvent extraction that are capable of achieving the treatment standards for the regulated constituents of concern in petroleum wastes believed as difficult to treat as F037 and F038.

The majority of commenters also supported EPA's proposal for regulating the same constituents in F037 and F038 that are regulated in K051 and K048. These commenters agreed with EPA that adoption of the proposal should reduce the administrative requirements and compliance efforts required for the petroleum wastes.

1. Regulated Constituents

EPA proposed regulating up to 18 BDAT List hazardous constituents that are known to be present in wastewater or non-wastewater forms of F037 or F038 as well as additional hazardous constituents likely to be present in F037 and F038 because they are known to be present in K048 and K051. (See discussion in January 9, 1992, proposed rule, 57 FR 962.)

One commenter who generates petroleum wastes such as API and DAF sludges, submitted data characterizing "four K sludges and five potential refinery F waste sludges from five surface impoundments." The commenter believes that these data do not support the inclusion of most of the constituents of concern associated with the LDRs.

EPA is not persuaded to change its proposed approach. The fact that the commenter's presumably untreated K or F sludges do not show certain constituents at or above detection levels should not be construed as an indication that those undetected constituents were absent. EPA's treatment studies on petroleum wastes have shown, in fact, that it is not unusual for hazardous constituents to go undetected in untreated wastes due to analytic matrix interferences and, later on, be measured in the treated wastes when the interferences are removed by treatment. In addition, several members of the regulated community responding to the ANPRM of May 30, 1991, commented that F037 and F038 wastes are likely to show variabilities in chemical and physical composition and in the treatment characteristics for the same K or F wastes from one refinery to another.

EPA is therefore promulgating treatment standards for all those constituents proposed for regulation. Regulating the same constituents present in K048 and K051 should reduce the administrative requirements and compliance efforts for all of these petroleum wastes. (See Response to Technical Comments Background Document for additional discussion.)

2. Treatment Standards for Wastewaters

EPA proposed to transfer the treatment standards for organics in wastewater forms of F037 and F038 from the F039 wastewater treatment standards (multi-source leachate). These F039 wastewater treatment standards were also proposed as a revision to K048 and K051. All commenters supported this proposal. As a result, EPA is promulgating these wastewater treatment standards for F037 and F038.

For metals in wastewater forms of F037 and F038, the treatment standards are based on chromium reduction followed by lime and sulfide precipitation and vacuum filtration. For cyanides in wastewater forms of F037 and F038, the treatment standards are based on incineration. Levels of cyanide were measured, in fact, in K048 incineration scrubber waters. EPA does not expect any constituents in F037 and F038 to interfere or behave differently from those constituents in K048–K052 or from the other wastes from which performance data were transferred.

3. Treatment Standards for Nonwastewaters

EPA is promulgating the treatment standards for F037 and F038 nonwastewaters that were proposed. In particular, the treatment standards proposed for the metals in nonwastewater forms of F037 and F038 were based on stabilization of K048–K052 solvent extraction residuals; thus, these standards are set as concentrations measured in waste extracts (as measured by the TCLP). Similarly, EPA proposed for cyanide in nonwastewater forms of F037 and F038 treatment standards based on incineration of K048 and K051. Owing to the similarities in waste composition of F037 and F038 to K048–K052, stabilization is considered BDAT for the metals in F037 and F038 nonwastewaters and incineration is considered BDAT for cyanide in F037 and F038 nonwastewaters.

The proposed treatment standards for the organics in nonwastewater forms of F037 and F038 were based on the incineration and solvent extraction of K048–K052. Owing to the similarities in waste composition of F037 and F038 to K048–K052, EPA has determined that incineration and solvent extraction are also BDAT for F037 and F038. The majority of the commenters supported this determination by EPA. In doing so, EPA is applying the same approach as used to develop treatment standards for the K048–K052 wastes in the Third Third rule. In essence, allowing somewhat more lenient treatment standards than those based on performance of incineration alone, which standards nevertheless result in substantial reductions in waste toxicity and also allow for hydrocarbon recovery, furthering statutory resource recovery objectives.

EPA's modified methodology of June 1, 1990, incorporates protocols that take into account several concerns that were expressed by members of the regulated community and hazardous waste treatment industry at that time with regard to the use and the applicability of hydrocarbon recovery technologies for the whole spectrum of petroleum refining wastes. EPA also adopted the modified statistical analysis for

determining which technology performs best so as not to preclude the use of one or more hydrocarbon recovery technologies that can significantly reduce levels of toxic organics in these wastes, and also recover some of the wastes' hydrocarbon values.

After evaluating comments on the Third Third proposal, EPA determined that it was appropriate to promulgate treatment standards based on both incineration and hydrocarbon recovery technologies. EPA concluded further that although treatment standards based on solvent extraction may be somewhat higher (i.e., less stringent) than those based on incineration, solvent extraction was still providing substantial treatment to the organics of concern. In addition, EPA determined that solvent extraction provided the benefit of recovering valuable oil, and this benefit could also be provided by other available hydrocarbon recovery technologies such as thermal distillation. (See 55 FR 22596, June 1, 1990). This same reasoning applies to the F037/F038 wastes that are the subject of today's rule.

4. Response to Major Comments

The Agency is responding in this preamble to a number of the major comments received in response to the January 9, 1992, proposal. The major issues raised and addressed in this section are:

- Grab versus Composite Samples.
- Must the Treatment Standards for Nonwastewater Organics be More Stringent?

Other comments received by the Agency, including the review of new performance data, are addressed by the Agency in the Response to Technical Comments Background Document that is available in the docket associated with this rulemaking.

a. *Grab versus Composite Samples.* The American Petroleum Institute (API) and the National Petroleum Refiners Association (NPRA) are both trade associations that represent most members of the petroleum refining regulated community. API and NPRA support EPA's proposed treatment standards for the organics in wastewater forms of F037 and F038. Since the majority of the treatment performance data are based on composite samples from wastewater treatment processes, API and NPRA urged the Agency to enforce the applicable treatment standards for wastewater forms based on composite samples and not on grab samples.

EPA in fact, enforces treatment standards based on the sampling analysis protocol used (i.e., grab or composite) to support promulgation of the standard, §§ 268.41(a), 268.43(a). EPA's proposal mistakenly stated in the preamble tables that enforcement of these wastewater treatment standards would be based solely on grab samples for all the regulated constituents. EPA is correcting this error in the final rule. (See 268.41 and 268.43).

b. *Should the Treatment Standards for Nonwastewater Organics be More Stringent?* TDI Thermal Dynamics (formerly Southdown Thermal Dynamics) resubmitted comments on a thermal process that enables the recovery of valuable organics from petroleum wastes while reducing the volume of wastes needing land disposal. TDI's data are based on the treatment of K048, K049, and K051 by a thermal distillation patented process referred to by the commenter as "HT–5 Process." TDI's data show that all the proposed organic treatment standards can be achieved, indeed, potentially surpassed, through use of this technology.

Another treatment company, Retec, also submitted comments in support of the proposed treatment standards. Retec's comments include performance data from an "8,000 gallon prototype unit" and some "field data" that have treated sludges of K048, K050, K051, F037, and F038 by biological treatment. Retec refers to its biological treatment process as the "bioslurry process." These data show that most of the constituents of concern can be treated to achieve (or, in some cases, surpass) the treatment standards.

The two commenters' ultimate point is that their technologies remove more toxics than the proposed levels and should therefore be the basis for the promulgated standards.

Comments submitted by TDI and the Natural Resources Defense Council (NRDC) also state that EPA's proposed F037 and F038 treatment standards are not protective of human health and the environment and so do not satisfy the RCRA section 3004(m) criteria requiring substantial reduction in the toxicity of the waste so that threats to human health and the environment are minimized. TDI believes, in fact, that their "HT–5 Process", the CF Systems' five-path process, and fluidized incineration meet the 3004(m) criteria and that data from these three processes should support promulgation of more stringent standards. TDI and NRDC also urged EPA to promulgate treatment standards that are pursuant to EPA's protocols to establish "best" treatment and that conform to Congressional intent in section 3004(m).

EPA has reviewed comments from TDI and NRDC. Based on this review, EPA is not persuaded to promulgate more stringent standards. EPA also believes (contrary to TDI's and NRDC's positions) that today's promulgated treatment standards provide substantial treatment of F037 and F038 wastes.

First, EPA is not persuaded by NRDC's comments that, by setting treatment standards for F037 and F038 based on "less effective treatment technologies such as incineration (and solvent extraction), (EPA) may diminish the market and the availability of HT–5 for mixed wastes." Even if this were a relevant consideration, which it most likely is not, today's promulgated treatment standards are expressed as a concentration-based level for all of the (organic) constituents regulated in nonwastewater forms of F037 and F038. EPA has clearly emphasized that today's standards do not preclude the use of other treatment or recovery technologies.

The actual issue is whether the statute requires that technology-based treatment standards be optimized, i.e., be technology-forcing, in all cases (always assuming that the jurisdictional minimize threat level is not yet reached), or whether treatment that results in substantial reduction of waste toxicity is sufficient.

Technology-based treatment standards are permissible as a means of achieving the statutory objective of treatment that minimizes threats given the current uncertainty in determining what that level is (see 55 FR 6641, February 26, 1990) and *HWTC* v. *EPA*, 886 F. 2d 355, 362 (D.C. Cir. 1989). (However, technology standards are not the only means to achieve the statutory objectives. For example, the Agency recently proposed concentration levels that could serve as "minimize threat levels", which could require modification of a purely technology-based approach to establishing treatment standards (57 FR 21450, May 20, 1992.)) However, these technology-based standards need not be technology forcing. Rather, the Agency has stated that treatment standards are to be based on the use of available technologies that are capable of substantially reducing the threats that the wastes may pose when they are land disposed (55 FR 6641).

The legislative history confirms that Congress did not necessarily envision section 3004(m) treatment standards to be technology-forcing, such as these the commenters advocate. Rather, such standards were intended to require the use of generally available effective types of treatment (see 125 Cong. Rec. S9178, July 25, 1984, statement of Senator Chaffee introducing the amendment that became section 3004 (m)):

> The requisite levels [or] methods of treatment established by the Agency should be the best that has [sic] been demonstrated to be available. This does not require a BAT-type process as under the Clean Air or Clean Water Acts which contemplates technology-forcing standards. The intent here is to require utilization of available technologies in lieu of continued land disposal without prior treatment. (Congressional Record of July 25, 1984, S9178).

Thus, standards based on use of "best" treatment technologies need not be limited to optimally performing treatment (as under the Clean Water Act), but include available types of treatment that substantially reduce wastes' toxicity and short-term and long-term threats the wastes could pose when land disposed.

In light of this legislative intent, and the fact that BDAT for F037 and F038 wastes is based on the performance of two commercially available treatment technologies that provide substantial treatment to petroleum wastes that are as difficult to treat as F037 and F038, EPA believes that the BDAT Methodology adopted in this rulemaking is justified and allowed under 3004(m). Detailed discussions of EPA's data analysis and rationale can be further found in the Final BDAT Background Document for F037 and F038.

TDI also argued that EPA's approach is inconsistent with the Agency's own promulgated methodology for establishing treatment standards. To some extent, this argument reprises the point just addressed. (For example, the commenter's point that use of Analysis of Variability protocols show that performance of its technology to be superior really raises the further question of whether treatment standards must therefore be based on performance of that technology). In any case, EPA used the same revised methodology it adopted in developing the treatment standards for K048–K052 wastes in the Third Third rule.

TDI submitted comments regarding EPA's Methodology and Protocols for Developing BDAT Treatment Standards for F037/F038 wastes. TDI disputes EPA's evaluation of their performance data and, in particular, EPA's determination of the proposed treatment standards for organics in nonwastewater forms of F037 and F038. TDI submitted a report entitled Analysis of U.S. EPA's Proposed Land Disposal Restrictions for F037 and F038 Newly Listed Petroleum Refining Wastes. On the basis of this report, TDI believes EPA has violated its own "standard protocol procedures", and, after reanalyzing all the performance data, TDI urged EPA to withdraw the proposed treatment standards. TDI's comments (and TDI's technical report) seem to indicate that TDI analyzed the F037 and F038 proposal's performance data based on EPA's protocols and statistical procedures found in the Final Best Demonstrated Available Technology (BDAT) Background Document for Quality Assurance/Quality Control Procedures and Methodology of October 23, 1991. TDI reviewed the available performance data based on analyses and methodologies that EPA employs when developing treatment standards that are based on destruction or immobilization treatment technologies.

However, the QA/QC document clearly states that when EPA identifies the potential for developing treatment standards based on recovery or recycling technologies, EPA may choose to modify its methodology in developing BDAT treatment standards (EPA also used modified methodologies in the promulgation of amended organic treatment standards for K048–K052, in the Third Third final rule, and the recent final rule for K061, High Zinc Subcategory nonwastewaters. A brief description of each of EPA's modified approaches is presented in the October 23, 1991, document (see pp. 3–12—3–17, of the October 23, 1991, Quality Assurance/Quality Control Document)). This is exactly what EPA is doing here; see the Proposed BDAT Background Document for F037 and F038 for the explanation.

BDAT TREATMENT STANDARDS FOR F037

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Anthracene	28
Benzene	14
Benzo(a)anthracene	20
Benzo(a)pyrene	12
Bis(2-ethylhexyl)phthalate	7.3
Chrysene	15
Di-n-butyl phthalate	3.6
Ethylbenzene	14
Naphthalene	42
Phenanthrene	34
Phenol	3.6
Pyrene	36
Toluene	14
Xylenes (total)	22
Cyanides (total)	1.8

BDAT TREATMENT STANDARDS FOR F037—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Regulated constituent	Maximum for any single grab sample—TCLP (mg/l)
Chromium (total)	1.7
Nickel	0.20

BDAT TREATMENT STANDARDS FOR F037

[Wastewaters]

Regulated constituent	Maximum for any 24 composite sample—Total composition (mg/l)
Acenaphthene	0.059
Anthracene	0.059
Benzene	0.14
Benzo(a)anthracene	0.059
Benzo(a)pyrene	0.061
Bis(2-ethylhexyl)phthalate	0.28
Chrysene	0.059
Di-n-butyl phthalate	0.057
Ethylbenzene	0.057
Fluorene	0.059
Naphthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Pyrene	0.067
Toluene	0.080
Xylenes (total)	0.32
Regulated constituent	Maximum for any single grab sample—Total composition (mg/l)
Cyanides (total)	0.028
Chromium (total)	0.20
Lead	0.037

BDAT TREATMENT STANDARDS FOR F038

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Benzene	14
Benzo(a)pyrene	12
Bis(2-ethylhexyl)phthalate	7.3
Chrysene	15
Di-n-butyl phthalate	3.6
Ethylbenzene	14
Naphthalene	42
Phenanthrene	34

BDAT TREATMENT STANDARDS FOR F038—Continued

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Phenol	3.6
Pyrene	36
Toluene	14
Xylenes (total)	22
Cyanide (total)	1.8

Regulated constituent	Maximum for any single grab sample—TCLP (mg/l)
Chromium (total)	1.7
Nickel	0.20

BDAT TREATMENT STANDARDS FOR F038

[Wastewaters]

Regulated constituent	Maximum for any 24 composite sample—Total composition (mg/l)
Benzene	0.14
Benzo(a)pyrene	0.061
Bis(2-ethylhexyl)phthalate	0.28
Chrysene	0.059
Di-n-butyl phthalate	0.057
Ethylbenzene	0.057
Fluorene	0.059
Naphthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Pyrene	0.067
Toluene	0.080
Xylenes (total)	0.32

Regulated constituent	Maximum for any single grab sample—Total composition (mg/l)
Cyanides (total)	0.028
Chromium (total)	0.20
Lead	0.037

B. Wastes from the Production of Unsymmetrical

Dimethylhydrazine (K107, K108, K109, and K110)

K107—Column bottoms from product separation from the production of 1,1-dimethylhydrazine from carboxylic acid hydrazides

K108—Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazides from carboxylic acid hydrazine

K109—Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazides from carboxylic acid intermediates

K110—Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine from carboxylic acid hydrazide intermediates

EPA proposed on January 9, 1992 (57 FR 965) to establish treatment standards for these wastes expressed as required methods of treatment. As was discussed in the preamble to the proposed rule, these wastes are being regulated despite the fact that EPA is not aware of facilities generating them. For nonwastewater forms of these wastes, the required method of treatment was incineration. For wastewater forms, the required methods of treatment were incineration or, alternatively, chemical oxidation followed by carbon adsorption. The basis for expressing the proposed treatment standards as required methods of treatment was that these wastes are relatively unstable in water resulting in difficulties in accurate quantification in treatment residues. (See 57 FR 965.)

The wastewater standards promulgated today for these wastes differ from the proposed standards in that EPA is adding biodegradation followed by carbon adsorption, (BIODEG fb CARBN) to the methods designated as method-of-treatment standards for K107–K110 wastewaters in tables 1 and 2 of 40 CFR 268.42. The Agency is adding this standard to be consistent with other sections of this rulemaking, where in response to comments supporting the use of biodegradation as an alternative method of treatment, the Agency is promulgating biological treatment as equivalent to chemical oxidation. The Agency is including biodegradation plus carbon adsorption for these hydrazine wastes based on hydrolysis data indicating that hydrazines break down rapidly in water.

The definition of BIODEG as a technology-based standard for listed wastewaters calls for operating the unit such that "a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals." EPA believes that this provision allows permitting and compliance authorities enough control over the BIODEG unit so that biodegradation can be designated BDAT for these wastes, which are known to hydrolyze rapidly to compounds amenable to biological degradation.

EPA received no comments on its proposed treatment standards for the nonwastewater forms of these wastes. Therefore, the Agency is promulgating the treatment standards for K107–K110 nonwastewaters as proposed: incineration (INCIN) as a method of treatment.

C. 2-Ethoxyethanol Wastes (U359)

EPA is promulgating methods of treatment for 2-ethoxyethanol wastes (U359), whose generation and characteristics are described in the proposed rule preamble (57 FR 968). The promulgated standards differ somewhat from the proposed standards; first, EPA is adding biodegradation followed by carbon adsorption, (BIODEG fb CARBN) to the methods designated as method-of-treatment standards for U359 wastewaters in Tables 1 and 2 of 40 CFR 268.42. The proposed wastewater treatment standard was incineration or chemical oxidation followed by biological treatment or carbon adsorption. Second, EPA is promulgating also fuel substitution (FSUBS) as an alternative standard to incineration (INCIN) for U359 nonwastewaters. (See 57 FR 969.)

EPA had proposed methods-of-treatment as standards, rather than concentration-based numerical standards, because this waste is relatively unstable in water, resulting in difficulties in accurate quantification in treatment residuals. Several commenters, however, requested that the Agency set concentration-based standards for 2-ethoxyethanol wastes and suggested several innovative analytical methods to quantify 2-ethoxyethanol. EPA acknowledges that 2-ethoxyethanol can be quantified by direct injection methods (i.e. those not requiring a purge step in the analytical procedure). EPA is, nevertheless, promulgating methods of treatment as standards because EPA has only limited treatability data for 2-ethoxyethanol to serve as a basis for calculating numerical treatment standards. EPA's decision to change the wastewater standards to include biodegradation followed by activated carbon adsorption is consistent with the revision in this rule of the K107–Kl10 wastewater standards allowing BIODEG as a method-of-treatment based on the waste components' extreme instability in water.

The definition of BIODEG as a technology-based standard for listed wastewaters calls for operating the unit such that "a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals." EPA believes that this provision allows permitting and compliance authorities adequate control over the BIODEG unit so that biodegradation can be designated BDAT for these wastes since 2-ethoxyethanol is known to hydrolyze rapidly to ethanol, which is known to be amenable to biological treatment.

EPA is promulgating incineration (INCIN) as a method-of-treatment standard for U359 nonwastewaters as proposed, but is also including fuel substitution (FSUBS) as an alternative. EPA is adding FSUBS because 2-ethoxyethanol is a readily oxidizable carbon, hydrogen, and oxygen compound that will not release undesirable combustion products such as halogen acids, nitrogen, or sulfur dioxides.

D. Wastes From the Production of Dinitrotoluene and Toluenediamine (K111 and K112, U328 and U353)

K111—Product wash waters from the production of dinitrotoluene via nitration of toluene

K112—Reaction byproducts from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene

U328—Ortho-toluidine

U353—Para-toluidine

EPA proposed on January 9, 1992, to establish treatment standards for these wastes expressed as required methods of treatment. The proposed rule discussed the generation and characteristics of these wastes in greater detail (57 FR 965). For nonwastewater forms of these wastes, the required method of treatment was incineration. For wastewater forms, the required methods of treatment were incineration or, alternatively, chemical oxidation followed by carbon adsorption. The basis for expressing the proposed treatment standards as required methods of treatment was that many constituents of these wastes are relatively unstable in water resulting in difficulties in accurate quantification in treatment residues. (See 57 FR 965)

The Agency is finalizing the proposed standards with two substantive changes for K111, K112, U328, and U353: First, EPA is replacing the proposed methods-of-treatment standards for K111 wastewaters and nonwastewaters with concentration-based standards numerically equal to the F039 standards for 2,4-dinitrotoluene and 2,6-dinitrotoluene. Second, EPA is adding biodegradation followed by carbon adsorption (BIODEG fb CARBN) to the methods of treatment specified as treatment standards for K112, U328, and U353 wastewaters in Tables 1 and 2 of 40 CFR 268.42.

In particular, data from one commenter indicated that the concentrations of 2,4-dinitrotoluene and 2,6-dinitrotoluene in K111 wastewaters and nonwastewaters are sufficiently high such that treating the K111 wastes to the F039 treatment standards for these constituents should be an acceptable surrogate to ensure that the other constituents are treated to acceptably low levels.

The other constituents include nitrocresols, nitrophenols, and nitrobenzoic acid; since reliable analytical methods are not available to quantify these constituents in waste matrices, the Agency will not set concentration-based treatment standards for them. By setting concentration-based standards for the quantifiable components of K111 wastewaters and nonwastewaters, EPA is allowing the use of any treatment system (other than impermissible dilution) that meet these numbers for the dinitrotoluenes.

Data from this same commenter also indicated that biological treatment can achieve significant reductions in the concentration of toluenediamines in K112 wastewater streams. Based on the commenter's data demonstrating substantial reductions in K112 wastewater toluenediamine concentrations in the course of biological treatment, EPA is adding biodegradation (BIODEG) to the set of methods-of-treatment designated as treatment standards for K112 wastewaters.

EPA believes, in addition, that o-toluidine and p-toluidine, the listing components of U328 and U359, are sufficiently chemically similar to toluenediamines that the treatment standards for K112 should also apply to U328 and U359 wastes. EPA is, therefore, including BIODEG among the methods-of-treatment standards promulgated for U328 and U359 wastewaters.

The definition of BIODEG as a technology-based standard for listed wastewaters calls for operating the unit such that "a surrogate compound or indicator parameter has been substantially reduced in concentration in the residuals." EPA believes that this provision allows permitting and compliance authorities adequate control over the BIODEG unit so that biodegradation can be designated BDAT for these wastes, which have been documented to amenable to biological treatment.

EPA is promulgating treatment standards for K112, U328 and U359 nonwastewaters as proposed: incineration (INCIN) as a method of treatment.

BDAT TREATMENT STANDARDS FOR K111

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
2,4-Dinitrotoluene	140
2,6-Dinitrotoluene	28

BDAT TREATMENT STANDARDS FOR K111

[Wastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/l)
2,4-Dinitrotoluene	0.32
2,6-Dinitrotoluene	0.55

E. Wastes From the Production of Ethylene Dibromide (K117, K118 and K136) and Wastes From the Production of Methyl Bromide (K131 and K132)

K117—Wastewater production from the reactor vent gas scrubber in the production of ethylene dibromide via bromination of ethylene.

K118—Spent adsorbent solids from purification of ethylene dibromide via bromination of ethylene dibromide via bromination of ethylene.

K136—Still bottoms from the purification of ethylene dibromide in the production of ethylene dibromide via bromination of ethylene.

K131—Wastewater from the reactor and spent sulfuric acid from the acid dryer from the production of methyl bromide.

K132—Spent adsorbent and wastewater separator solids from the production of methyl bromide.

With one exception, today's rule promulgates the treatment standards for ethylene dibromide wastes (K117, Kl18 and K136) and methyl bromide wastes (K131 and K132) that the Agency proposed in the January 9, 1992 proposed rule, where it discussed the generation and characteristics of these wastes (57 FR 966–967). These are concentration-based standards numerically equal to the FO39 standards for the constituents of these wastes; the BDAT Background Document for U and P Wastes and Multi-Source Leachate (F039) (volumes A and C) describes how each standard was calculated. The nonwastewater standards (volume C) are based on the results of a series of incineration tests performed by the Agency in the course of developing treatment standards for earlier land disposal restrictions rulemakings. The wastewater standards (volume A) are based on data collected by EPA's Office

of Water and Office of Research and Development and reflect a variety of industrial wastewater technologies. Technologies used to develop the wastewater numbers promulgated here include steam stripping, activated sludge, and air stripping.

The one change that EPA is making is as follows: EPA proposed treatment standards for "1,1,2-tribromomethane" in the January 9, 1992, notice (57 FR 996 and 997). (This was a misprint for 1,1,2-tribromoethane, a constituent present in the ethylene dibromide process waste stream K118). At the time of the proposed rule, EPA was considering adding 1,1,2-tribromoethane to its BDAT List of constituents known to be amenable to quantification in waste matrices with existing SW–846 methods. EPA has since decided not to add 1,1,2-tribromoethane to the BDAT List and is consequently not promulgating treatment standards for this compound.

As a result of soliciting data on the proposed standards in the May 30, 1991, Advance Notice of Proposed Rulemaking and then in the January 9, 1992, Proposed Rule, EPA received comments from the two facilities believed to generate all of these waste streams. Both supported the use of steam stripping for treating brominated wastewaters. One of the two commenters submitted data characterizing the results of steam stripping groundwater that had become contaminated with ethylene dibromide and several other brominated and chlorinated compounds. Because these data did not clearly identify corresponding influent and effluent streams, they could not be used to evaluate the performance of the system in terms of contaminant removal.

This commenter also endorsed the incineration-based numerical treatment standards for nonwastewater forms of these wastes. A second commenter objected, however, to the incineration-based nonwastewater standards. In particular, the commenter claimed that bromine forms corrosive hydrogen bromide in incinerator combustion chambers. This commenter, the sole generator of K118, reported difficulties in incinerating a batch of K118 nonwastewater at a commercial facility and requested that EPA base all treatment standards for organobromine wastes on steam stripping.

The Agency acknowledges that there may be difficulties in incinerating brominated wastes (even though one commenter explicitly endorses incineration-based standards for K117, K118, K131, and K132 nonwastewaters). In the absence of performance data on an alternative process for nonwastewaters, EPA is promulgating the incineration-based nonwastewater standards that were originally proposed. Steam stripping, and any other forms of waste treatment other than impermissible dilution, may also be used to achieve the numerical treatment standards regardless of which technology served as the basis of the standards. Furthermore, the regulated community has options, including applying for treatability or capacity variances, for overcoming technical difficulties in treating especially problematic batches of wastes.

BDAT TREATMENT STANDARDS FOR K117, K118, AND K136

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Ethylene dibromide	15.0
Bromomethane	15.0
Chloroform	5.6

BDAT TREATMENT STANDARDS FOR K117, K118, AND K136

[Wastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/l)
Ethylene dibromide	0.028
Bromomethane	0.11
Chloroform	0.046

BDAT TREATMENT STANDARDS FOR K131 AND K132

[Nonwastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/kg)
Bromomethane (methyl bromide)	15

BDAT TREATMENT STANDARDS FOR K131 AND K132

[Wastewaters]

Regulated constituent	Maximum for any single grab sample—Total composition (mg/l)
Bromomethane (methyl bromide)	0.11

F. Wastes From the Production of Ethylenebisdithiocarbamic Acid (K123. K124, K125, and K126)

K123—Process wastewater (including supernatants, filtrates and wash waters) from the production of ethylenebisdithiocarbamic acid and its salts.

K124—Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.

K125—Purification solids (including filtration, evaporation and centrifugation solids) from the production of ethylenebisdithiocarbamic acid and its salts.

K126—Baghouse dust and floor sweepings in milling and packaging operations from the production of ethylenebisdithiocarbamic acid and its salts.

EPA is promulgating the treatment standards as proposed for ethylenebisdithiocarbamic acid wastes (EDBC) (K123–K126). The preamble in the proposed rule describes the generation and characteristics of these wastes in greater detail (57 FR 967). The Agency proposed incineration (INCIN) as a method of treatment as the treatment standard for K123–K126 nonwastewaters and incineration or chemical oxidation followed by biological treatment or carbon adsorption (INCIN or CHOXD) for K123–K126 wastewaters. EPA received no comments challenging these treatment standards.

Although EPA is expanding the set of methods of treatment as standards to include BIODEG by itself for the methyl hydrazine wastes K107–K110, the toluenediamine waste K112, the toluidine wastes U326 and U353, and 2-ethoxyethanol U359, EPA is not adding BIODEG alone to the set of methods of treatment for the EDBC wastewaters. For each of the cases where EPA is today adding BIODEG to the list of promulgated methods of treatment as standards, EPA has either treatability data documenting successful treatment of these wastes or their close analogues in a biological unit or data demonstrating that these wastes readily hydrolyze to simple, relatively nontoxic compounds known to be readily amenable to biological degradation. In the absence of any such data about EDBC waste amenability to hydrolysis or biodegradation, EPA chooses not to include BIODEG as a primary method of treatment for EDBC wastewaters.

IV. Detailed Discussion of Final Rule: Changes to Existing Regulations

A. Revisions to the F001–F005 Spent Solvents Treatment Standards

F001—The following spent halogenated solvents used in degreasing: Tetrachloroethylene, trichloroethylene, methylene chloride, 1,1,1-trichloroethane, carbon tetrachloride, and chlorinated fluorocarbons; all spent solvent mixtures/blends used in degreasing containing, before use, a total of 10 percent or more (by volume) of one or more of the above halogenated solvents or those solvents listed in F002, F004, and F005 and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F002—The following spent halogenated solvents: Tetrachloroethylene, methylene chloride, trichloroethylene, 1,1,1-trichloroethane, chlorobenzene, 1,1,2-trichloro-1,2,2-trifluoroethane, ortho-dichlorobenzene, trichlorofluoromethane, and 1,1,2-trichloroethane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more of the above halogenated solvents or those listed in F001, F004, or F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F003—The following spent nonhalogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and methanol; all spent solvent mixtures/blends containing, before use, only the above spent nonhalogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above nonhalogenated solvents, and a total of 10 percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F004—The following spent nonhalogenated solvents: Cresol and cresylic acid and nitrobenzene; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

F005—The following spent nonhalogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of 10 percent or more (by volume) of one or more of the above nonhalogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures.

The Agency is promulgating revised treatment standards for solvent wastewaters of F001–F005 wastes as proposed in the January 9, 1992 notice (57 FR 969–971).

1. Regulatory Background

a. *Listing Definitions.* On May 19, 1980 (45 FR 33119), the Environmental Protection Agency (EPA) listed 26 commonly used organic solvents as hazardous wastes when spent or discarded. The solvents were listed as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005. These listed wastes included certain spent halogenated and nonhalogenated solvents, including still bottoms from the recovery of these solvents.

On December 31, 1985 (50 FR 53315), the Agency promulgated an amendment to the listings to include mixtures containing a total of 10 percent or more (by volume) of one or more of the listed solvents (the 10 percent threshold always applied to solvent mixtures before use). The Agency believed that establishing a threshold level below the minimum solvent concentration typically used in solvent formulations would bring the majority of solvent mixtures used in commerce into the hazardous waste management system, while excluding dilute mixtures. The Agency also clarified in the December 31, 1985, **Federal Register** (50 FR 53315), that the listings cover only those solvents that are used for their "solvent" properties, i.e., to solubilize (dissolve) or mobilize other constituents. Manufacturing process wastes where solvents were used as reactants or ingredients in the formulation of commercial chemical products are not covered by the listing.

The definition of the spent solvents listing did not include four solvents that were added to the F001–F005 listing on February 25, 1986 (51 FR 40607): Benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane.

b. *F001–F005 Treatment Standards.* The Agency promulgated treatment standards for the F001–F005 spent solvent wastes on November 7, 1986 (51 FR 40593). The Agency also promulgated a requirement that compliance with the treatment standard be measured in the waste extract as measured by the Toxicity Characteristic Leaching Procedure (TCLP).

This approach was taken because useful data were not available on total constituent concentrations in treated residuals, and as a result, the TCLP data were considered to be the best measure of performance.

Since that time EPA has based treatment standards for all organic constituents on the total constituent concentration analysis found in the treated waste. EPA has based this decision on the fact that the best demonstrated available treatment (BDAT) for organic wastes generally destroy the hazardous organic constituents. Accordingly, treatment should reflect the extent to which the various organic compounds have been destroyed or the total amount of constituent remaining after treatment.

c. *Methylene Chloride Standard Revised.* As part of the First Third Rule, the Agency revised and promulgated the treatment standard for methylene chloride in F001–F005 wastewaters from the pharmaceutical industry (53 FR 31152). The revised treatment standard was based on the transfer of wastewater treatment data from steam stripping of methylene chloride. Compliance with this treatment standard is measured by a total constituent analysis.

d. *Setting Treatment Standards for Four (4) "Newly Listed" Constituents (51 FR 6737, February 25, 1986).* In the Third Third rule (55 FR 22578), the Agency promulgated treatment standards for 1,1,2-trichloroethane, benzene, 2-ethoxyethanol, and 2-nitropropane in F002 and F005 spent solvents. (EPA did not amend the previously promulgated treatment standards for the other solvent constituents in F002 and F005). The concentration-based treatment standards for 1,1,2-trichloroethane and benzene in wastewater forms were based on performance data generated from: biological treatment, steam stripping, carbon adsorption, liquid extraction, and others. The concentration-based treatment standards promulgated for 1,1,2-trichloroethane and benzene in nonwastewater forms were based on performance data from incineration. These treatment standards are measured by total constituent analysis. EPA had also determined that the available data were insufficient to establish concentration-based treatment standards for wastewater and nonwastewater forms of F005 containing 2-nitropropane and 2-ethoxyethanol and instead promulgated methods of treatment as the treatment standards. Again, EPA is not revising this previously promulgated treatment standard.

2. Overlap Between F001–F005 Solvents and Other BDAT Standards.

Many of the solvent constituents that are regulated in F001–F005 wastes are also regulated in the First, Second, and Third Third rules, as discussed in the preamble to the January 9, 1992 proposed rule (57 FR 970).

In the November 22, 1989 proposed rule for the Third Third wastes, EPA proposed two alternative sets of

concentration-based treatment standards for wastewater forms for the majority of the U and P listed wastes, many of which are solvent constituents found in F001–F005 wastes. One set of treatment standards was based on the concentration of each constituent in incinerator scrubber water; whereas, the second set of treatment standards was based on wastewater treatment performance data for each constituent. On the basis of comments received, the Agency promulgated treatment standards based on wastewater treatment performance data. These treatment standards were promulgated on June 1, 1990 (55 FR 22601).

The Agency also proposed treatment standards for nonwastewater forms of U and P listed wastes on November 22, 1989 (54 FR 48372). In the final Third Third rule, the Agency promulgated treatment standards for approximately 75 constituents, establishing either concentration-based standards, or incineration as a method of treatment as BDAT.

Treatment standards for several F and K listed wastes containing the same solvent constituents as are present in F001–F005 solvent wastes were also promulgated in the Third Third rule as discussed in the January 9, 1992 proposed rule (57 FR 970).

3. Comments Received on the January 9, 1992 Proposed Rule

The Agency received a number of generally favorable comments on the proposed approach—that is, most commenters supported revising the nonwastewater treatment standards from the existing TCLP standards to standards based on total concentrations. Hazardous Waste Treatment Council (HWTC) expressed concerns, however, with regard to meeting concentration based standards for five constituents: chlorobenzene, n-butyl alcohol, o-cresol, ethyl acetate, and nitrobenzeneone. EPA acknowledges HWTC's concerns with regard to potential analytical difficulties in the analysis of these five constituents. EPA has, in fact, addressed this issue in the June 1, 1990 final rule (55 FR 22541). If the treater uses incineration to treat these wastes and achieves a non-detect level within an order of magnitude of the promulgated treatment standards, then they are considered to have achieved the standard (see 55 FR 22541, June 1, 1990).

Most of HWTC's problem constituents would be able to comply with the treatment standard after the order of magnitude allowance is taken into account. One constituent, o-cresol, according to the data submitted by HWTC, appears to exceed the proposed treatment standard. After reviewing available incineration and combustion data for this constituent, EPA believes the proposed treatment standards (and the one order of magnitude allowance) are reasonable and achievable. In fact, the Agency has promulgated treatment standards for o-cresol in K019, F039 and U052 at a level of 5.6 ppm with detection limits of less than 2.0 ppm. Also, o-cresol is a regulated constituent in K052, whose treatment standard of 6.2 ppm is based on a detection limit of 2.2 ppm which was based on treatment data submitted from industry (55 FR 22594). EPA is therefore, promulgating today, treatment standards for each one of the five constituents as proposed on January 9, 1992 (57 FR 971).

4. Final Approach

The Agency is promulgating revised treatment standards for both nonwastewater and wastewater forms of F001–F005 wastes as proposed. (See the Table at end of this section for specific treatment levels.) The methodology used to develop the treatment standards for both nonwastewater and wastewater forms of F039 (multisource leachate) was used to determine the revised treatment standards for the F001–F005 spent solvents. These revisions do not, however, include the four solvents that were added to the solvents listings: benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane. Treatment standards for these constituents were promulgated in the Third Third final rule in accordance with the previously mentioned methodology.

Today's rule does not include revised treatment standards for nonwastewater forms of carbon disulfide, cyclohexanone, or methanol based on total constituent analysis. These three constituents are not well suited for total constituent analysis, and, in fact, are more appropriately analyzed by the TCLP methodology. The Agency did not propose to revise the existing TCLP treatment standards, for these three constituents, in the January 9, 1992 rulemaking. The Agency is retaining the existing TCLP standards for these three constituents in F001–F005 nonwastewaters in today's rulemaking. (TCLP treatment standards for these three constituents appear in a table at the end of this section).

Because the Agency does not want to require unnecessary and burdensome testing, the TCLP test will only have to be performed if the waste includes only one, two or all three of these constituents. If the waste contains any of these three constituents along with any of the other 26 constituents found in F001–F005 for which the Agency is promulgating treatment standards based on total constituents analysis, only the total analysis need be performed. It is assumed that after treatment is performed, for these organic constituents, and the total constituent standards are achieved, that these three constituents will also have been treated.

a. *Revisions to the Standards for Cresols.* In the Solvents and Dioxins rule, the Agency promulgated BDAT treatment standards for "cresols." At that time, the Agency did not distinguish between the various isomers that are present in cresols. As a result, the Agency promulgated a concentration-based treatment standard for cresol wastewaters of 2.82 mg/l based on the performance of activated carbon adsorption. For nonwastewaters, the Agency had no data on TCLP extracts of residues from the incineration of cresols (cresylic acid) to use in the development of the treatment standard. EPA, instead, used chemical structure as the basis for transferring the treatment data from methyl ethyl ketone to cresols (cresylic acid) in spent solvents. The treatment standard of 0.75 mg/l for nonwastewaters is based on the transferred data.

In the Third Third rule, EPA promulgated treatment standards for U052. U052 is listed as "cresols (Cresylic acid). U052 typically contains various levels of ortho-cresol, meta-cresol, and para-cresol. Analytical methods are usually reported for o-cresol (CAS No. 95–48–7) and a combination of m- and p-cresols, because m-cresol and p-cresol cannot generally be distinguished by analytical methods. Thus, the Agency promulgated concentration-based standards for U052 based on an analysis for o-cresol and the mixture of m-cresol and p-cresol.

Based on this, the Agency is today modifying the current treatment standards for the constituent "cresols" in F001–F005 wastes as proposed. (57 FR 970, January 9, 1992).

b. *Modification to the Regulatory Placement of F001–F005 Standards.* In today's rule, EPA is promulgating revised treatment standards for solvent wastewaters (F001–F005) in Table CCW (40 CFR 268.43) as proposed. (The following treatment standards for wastewaters are based on F039 wastewater data, and for nonwastewater is based on incineration data).

PROMULGATED BDAT TREATMENT STANDARDS FOR F001–F005 SPENT SOLVENT WASTES

[Wastewater; Total Concentration]

Regulated constituent	Wastewater (mg/l)
Acetone	0.28
n-Butyl alcohol	5.6
Carbon disulfide	0.014
Carbon tetrachloride	0.057
Chlorobenzene	0.057
Cresol(m- and p- isomers)	0.77
o-Cresol	0.11
Cyclohexanone	0.36
1,2-Dichlorobenzene	0.088
Ethyl acetate	0.34
Ethyl benzene	0.057
Ethyl ether	0.12
Isobutyl alcohol	5.6
Methanol	5.6
Methylene chloride	[1] 0.089
Methyl ethyl ketone	0.28
Methyl isobutyl ketone	0.14
Nitrobenzene	0.068
Pyridine	0.014
Tetrachloroethylene	0.056
Toluene	0.08
1,1,1-Trichloroethane	0.054
Trichloroethylene	0.054
1,1,2-Trichloro-1,2,2,-trifluoroethane	0.057
Trichloromonofluoromethane	0.02
Xylenes (total)	0.32

[1] The methylene chloride treatment standard for wastewaters generated from pharmaceutical plants is 0.44 mg/l.

NA: Not applicable.

PROMULGATED BDAT TREATMENT STANDARDS FOR F001–F005 SPENT SOLVENT WASTES

[Nonwastewater; Total Concentration]

Regulated constituent	Nonwastewater (mg/kg)
Acetone	160
n-Butyl alcohol	2.6
Carbon disulfide	[1] NA
Carbon tetrachloride	5.6
Chlorobenzene	5.7
Cresol(m- and p- isomers)	3.2
o-Cresol	5.6
Cyclohexanone	[1] NA
1,2-Dichlorobenzene	6.2
Ethyl acetate	33
Ethyl benzene	6.0
Ethyl ether	160
Isobutyl alcohol	170
Methanol	[1] NA
Methylene chloride	33
Methyl ethyl ketone	36
Methyl isobutyl ketone	33
Nitrobenzene	14
Pyridine	16
Tetrachloroethylene	5.6
Toluene	28
1,1,1-Trichloroethane	5.6
Trichloroethylene	5.6
1,1,2-Trichloro-1,2,2,-trifluoroethane	28
Trichloromonofluoromethane	33
Xylenes (total)	28

[1] These treatment standards are based on TCLP, not total constituent concentration (see following table with TCLP treatment standards).

NA: Not applicable.

PROMULGATED BDAT TREATMENT STANDARDS FOR F001–F005 SPENT SOLVENT WASTES

[Nonwastewater; Toxicity Characteristic Leaching Procedure]

Regulated constituent	Nonwastewater (mg/l)
Carbon disulfide	4.8
Cyclohexanone	0.75
Methanol	0.75

B. Conversion of Wastewater Standards Based on Scrubber Water

K015—Still bottoms from the distillation of benzyl chloride
K016—Heavy ends or distillation residues from the production of carbon tetrachloride
K018—Heavy ends from the fractionation column in ethyl chloride production
K019—Heavy ends from the distillation of ethylene dichloride in ethylene dichloride production
K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride production
K023—Distillation light ends from the production of phthalic anhydride from naphthalene
K024—Distillation bottom tars from the production of phthalic anhydride from naphthalene
K028—Spent catalyst from the hydrochlorinator reactor in the production of 1,1,1-trichloroethane
K030—Column bottoms or heavy ends from the combined production of trichloroethylene and perchloroethylene
K048—Dissolved air flotation (DAF) float from the petroleum refining industry
K049—Slop oil emulsion solids from the petroleum refining industry
K050—Heat exchanger bundle cleaning sludge from the petroleum refining industry
K051—API separator sludge from the petroleum refining industry
K052—Tank bottoms (leaded) from the petroleum refining industry
K087—Decanter tank tar sludge from coking operations
K093—Distillation light ends from the production of phthalic anhydride from ortho-xylene
K094—Distillation bottoms from the production of phthalic anhydride from ortho-xylene
U028—Bis(2-ethylhexyl)phthalate
U069—Di-n-butyl phthalate
U088—Diethyl phthalate
U102—Dimethyl phthalate
U107—Di-n-octyl phthalate
U190—Phthalic anhydride (measured as Phthalic acid)

On November 22, 1989 (54 FR 48372), EPA proposed as part of the Third Third rule concentration-based treatment standards for numerous listed wastes based on the performance of incineration. For the wastewaters, the treatment standards were based on the concentration of the constituents of concern in incineration scrubber waters. In the final rule (55 FR 22520), however, EPA altered its approach to setting these standards and promulgated treatment standards for wastewaters based on actual wastewater treatment data for the constituents of concern. This change was adopted for a number of reasons.

First, it was stated in the final rule for the Second Third wastes (54 FR 26629) and reiterated in the final rule for Third Third wastes (55 FR 22577) that when the Agency had appropriate wastewater treatment data from well-designed and well-operated wastewater treatment units it preferred to use those data rather than scrubber water data to develop wastewater treatment standards. This is because incineration is not a normal treatment method for wastewaters. In addition, alternative standards were proposed in the Third Third notice for multisource leachate (F039) wastewaters based on a transfer of performance data from various sources. Second, commenters on the proposed Third Third rule had urged the Agency to develop treatment standards for wastewater forms based on residues from wastewater treatment technologies rather than incineration scrubber waters. Commenters on previous rules had also stated that when EPA had performance data from technologies treating wastewaters containing the same or similar constituents that EPA should use it to develop treatment standards.

The Agency reviewed all of the aforementioned data during the Third Third comment period and promulgated constituent-specific concentration-based standards. Detailed information on the development of the wastewater treatment standards can be found in the background document titled Final Best Demonstrated Available Technology (BDAT) Background Document for U and P Wastes and Multi-Source Leachates (F039), Volume A: Wastewater Forms of Organic U and P Wastes and Multi-Source Leachates (F039) for Which There Are Concentration-Based Treatment Standards. (This document can be found in the RCRA docket for the Third Third final rule).

As part of the First Third and Second Third rules, EPA promulgated treatment standards for wastewater forms of 23 K and U wastes (i.e., K015, K016, K018, K019, K020, K023, K024, K028, K030, K048, K049, K050, K051, K052, K087, K093, K094, U028, U069, U088, U102, U107, and U190). These wastewater treatment standards were based on data from incineration scrubber waters. Upon review of all available data and comments, the Agency believes that

BDAT for these wastewaters is better represented by concentration-based treatment standards based on actual wastewater treatment technologies rather than scrubber waters generated from incineration. Therefore, the Agency is today promulgating concentration-based treatment standards for these wastewaters as proposed. The wastes affected by this change come primarily from three general treatability groups: chlorinated organics, petroleum wastes, and phthalate wastes. The Agency believes that this change is consistent with the changes made to the wastewater standards in the final Third Third rule. It should be noted, however, that any technology not otherwise prohibited (e.g., impermissible dilution) may be used to meet the concentration-based treatment standards for these wastewaters, including incineration.

Finally, during the development of the Third Third rule, the Agency determined that for pentachloroethane (a regulated constituent in K018, K028, and K030), complications arose in terms of how reliably the constituent could be quantified (55 FR 22611). As such, the Agency made a decision to promulgate a method (or methods) of treatment, rather than a constituent-specific standard. Today, EPA is deleting pentachloroethane from further regulation in the wastewater forms of K018, K028, and K030, as discussed in the January 9, 1992 proposed rule. Treatment of other constituents will act as reliable surrogates for the treatment of pentachloroethane in these wastes.

PROMULGATED TREATMENT STANDARDS FOR VARIOUS F AND K WASTEWATERS

Waste code and regulated organic constituent	Revised standard (mg/l)
K015:	
Anthracene	0.059
Benzal chloride	0.28
Benzo(b and/or k)fluoranthene	0.055
Phenanthrene	0.059
Toluene	0.080
K016:	
Hexachlorobenzene	0.055
Hexachlorobutadiene	0.055
Hexachlorocyclopentadiene	0.057
Hexachloroethane	0.055
Tetrachloroethene	0.056
K018:	
Chloroethane	0.27
Chloromethane	0.19
1,1-Dichloroethene	0.059
1,2-Dichloroethane	0.21
Hexachlorobenzene	0.055
Hexachlorobutadiene	0.055
Pentachloroethane	NA
1,1,1-Trichloroethane	0.054
Hexachloroethane	0.055
K019:	
bis(2-chloroethyl)-ether	0.033
Chlorobenzene	0.057
Chloroform	0.046
1,2-Dichloroethane	0.21
p-Dichlorobenzene	0.09
Fluorene	0.059
Hexachloroethane	0.055
Naphthalene	0.059
Phenanthrene	0.059
1,2,4,5-Tetrachlorobenzene	0.055
Tetrachloroethene	0.056
1,2,4-Trichlorobenzene	0.055
1,1,1-Trichloroethane	0.054
K020:	
1,2-Dichloroethane	0.21
1,1,2,2-Tetrachloroethane	0.057
Tetrachloroethene	0.056
K023: Phthalic anhydride (measured as phthalic acid)	0.069
K024: Phthalic anhydride (measured as phthalic acid)	0.069
K028:	
1,1-Dichloroethane	0.059
Trans 1,2-Dichloroethane	0.054
Hexachlorobutadiene	0.055
Hexachloroethane	0.055
Pentachloroethane	NA
1,1,1,2-Tetrachloroethane	0.057
1,1,2,2-Tetrachloroethane	0.057
Tetrachloroethene	0.056
1,1,1-Trichloroethane	0.054
1,1,2-Trichloroethane	0.054
K030:	
o-Dichlorobenzene	0.088
p-Dichlorobenzene	0.09
Hexachlorobutadiene	0.055
Hexachloroethane	0.055
Pentachloroethane	NA
1,2,4,5-Tetrachlorobenzene	0.055
Tetrachloroethene	0.056
1,2,4-Trichlorobenzene	0.055
K048:	
Benzene	0.14
Benzo(a)pyrene	0.061
Bis(2-ethylhexyl)-phthalate	0.28
Chrysene	0.059
Di-n-butyl phthalate	0.057
Ethylbenzene	0.057
Fluorene	0.059
Napthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Pyrene	0.067
Toluene	0.080
Xylenes (total)	0.32
K049:	
Anthracene	0.059
Benzene	0.14
Benzo(a)pyrene	0.061
Bis(2-ethylhexyl)-phthalate	0.28
Carbon disulfide	0.014
Chrysene	0.059
2,4-Dimethylphenol	0.036
Ethylbenzene	0.057
Napthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Pyrene	0.067
Toluene	0.080
Xylenes (total)	0.32
K050:	
Benzo(a)pyrene	0.061
Phenol	0.039
K051:	
Acenaphthene	0.059
Anthracene	0.059
Benz(a)anthracene	0.059
Benzene	0.14
Benzo(a)pyrene	0.061
Bis(2-ethylhexyl)-phthalate	0.28
Chrysene	0.059
Di-n-butyl phthalate	0.057
Ethylbenzene	0.057
Fluorene	0.059
Napthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Pyrene	0.067
Toluene	0.080
Xylenes (total)	0.32
K052:	
Benzene	0.14
Benzo(a)pyrene	0.061
o-Cresol	0.11
p-Cresol	0.77
2,4-Dimethylphenol	0.036
Ethylbenzene	0.057
Naphthalene	0.059
Phenanthrene	0.059
Phenol	0.039
Toluene	0.080
Xylenes (total)	0.32
K087:	
Acenaphthalene	0.059
Benzene	0.14
Chrysene	0.059
Fluoranthene	0.068
Indeno(1,2,3-cd)pyrene	0.055
Naphthalene	0.059
Phenanthrene	0.059
Toluene	0.080
Xylenes (total)	0.32
K093: Phthalic anhydride (measured as Phthalic acid)	0.069
K094: Phthalic anhydride (measured as Phthalic acid)	0.069
U028: Bis(2-ethylhexyl)-phthalate	0.28
U069: Di-n-butyl phthalate	0.057
U088: Diethyl phthalate	0.2
U102: Dimethyl phthalate	0.047
U107: Di-n-octyl phthalate	0.017
U190: Phthalic anhydride (measured as phthalic acid)	0.069

NA: Not applicable.

C. Revisions to Treatment Standards for K061, K062, and F006

With two exceptions, the Agency is promulgating as proposed the treatment standards for the iron and steel process wastes K061 and K062 and the electroplating waste F006. The January 9, 1992, proposed rule (57 FR 975–977) contained three major provisions for K061, K062, and F006: (1) Removing the Low Zinc and High Zinc subcategories for K061 electric arc furnace dust wastes and establishing the high zinc subcategory nonwastewater standards for all K061 nonwastewaters regardless of zinc level; (2) setting alternative treatment standards for K062 and F006 nonwastewaters with recoverable amounts of nickel and chromium; and (3) excluding from regulation as a hazardous waste nonwastewater residues generated from high-temperature metals recovery (HTMR) treatment of F006 and K062 provided the residues meet the designated generic exclusion levels, they are disposed of in a subtitle D unit, and they do not exhibit one or more of the hazardous waste characteristics.

One of the two changes the Agency has made between proposal and promulgation consists of basing the promulgated generic exclusion on a different fate-and-transport model than the proposed exclusion and thus promulgating different exclusion levels for several contaminants. The second change is that EPA is promulgating neither treatment standards nor exclusion levels for vanadium, thus effectively deleting vanadium from the K061, K062, and F006 rulemaking.

The August 19, 1991 (56 FR 41164), final rule for K061 (electric arc dust) set numerical treatment standards for high-zinc K061 nonwastewaters based on the performance of high-temperature metals recovery units. This final rule also promulgated a generic exclusion from the derived-from rule for nonwastewater residues generated from HTMR processing of K061 wastes.

Today's rule extends both the HTMR-based treatment standards and the generic exclusion criteria for HTMR residues to K062 (steel finishing pickle liquor) and F006 (electroplating wastewater treatment sludges) nonwastewaters.

1. Removal of the Low Zinc Subcategory for K061 Wastes

The Agency is today transferring the treatment standards promulgated for high-zinc (greater than 15 percent) K061 nonwastewaters (56 FR 41164, August 19, 1991) to low-zinc K061 nonwastewaters; by doing this, the Agency eliminates the low- vs. high-zinc categories and regulates all K061 nonwastewaters with the same numerical treatment standards and generic exclusion levels. The promulgated treatment standards are based on the performance of high-temperature metals recovery (HTMR); however, since these are concentration-based standards, any technology, including stabilization, that meets the treatment standards can be used.

2. Alternative Treatment Standards for F006 and K062 Nonwastewaters Based on High Temperature Metals Recovery (HTMR)

The Agency is promulgating alternative treatment standards for K062 and F006 nonwastewaters as proposed. These treatment standards, based on HTMR, are the same as those promulgated in August 1991 for "high-zinc" nonwastewaters and the standards promulgated in this rule for all K061 nonwastewaters.

EPA is also promulgating a new regulatory section (40 CFR 268.46) for any treatment standards serving as alternates for compliance with standards in 40 CFR 268.41, 268.42 and 268.43.

The alternative treatment standards for F006 includes standards for cyanides. Although the Agency has no HTMR performance data for cyanide, EPA believes (as discussed in the proposed rule at 57 FR 975) that HTMR treats cyanide to a level comparable to incineration. Since no commenters challenged this belief and there is no reason to believe HTMR units will not destroy cyanide as efficiently as incineration, EPA is promulgating alternative cyanide standards for F006 developed from incinerator performance. The HTMR-based alternative treatment standards are higher numerically for several constituents (chromium in K062; cadmium, nickel and silver in F006) than the original stabilization-based standards. These higher numbers are acceptable to the Agency as alternative treatment standards because the HTMR-based alternatives regulate more constituents than the original stabilization-based standards, and also because they express the Agency's preference for recycling methods.

3. Generic Exclusion of F006 and K062 HTMR Nonwastewater Residues

EPA is promulgating generic exclusion levels for nonwastewater residues generated from HTMR of F006 and K062 in rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations, or industrial furnaces. These residues can go into subtitle D units if the residues meet the generic exclusion levels for all constituents and these residues that do not exhibit any of the hazardous characteristics. The Agency received a variety of comments on the generic exclusion for all K061, K062, and F006 HTMR residues. Some of the comments supported this extension of the generic exclusion: Others objected to the exclusion levels and to the Agency's decision to limit the generic exclusion to HTMR residues.

Although the vertical and horizontal spread (VHS) model was the basis for calculating the proposed generic exclusion levels, EPA indicated in the January 9, 1992 proposed rule preamble that it also was considering basing exclusion levels on an alternative model, the EPA Composite Model for Landfills (EPACML) (see 57 FR 976; see also 56 FR 67197, December 30, 1991 for adopting use of the model in site specific delistings). Most commenters discussed the EPACML alternative and urged the Agency to use it rather than the VHS model to develop generic exclusion levels for this rule.

The most salient consequence of the change in models from VHS to EPACML is that EPACML generic exclusion levels for arsenic and zinc are higher than the BDAT standards in the HTMR-based alternative treatment standards for K062 and F006 and in the HTMR-based BDAT standards for K061. EPA retained the EPACML-based generic exclusion numbers regardless of their values relative to HTMR BDAT standards because the generic exclusion is independent from BDAT in such a way that EPA has no reason to adjust generic exclusion levels in order to reconcile them with BDAT standards when the numerical values differ significantly for a particular compound. The different, and occasionally overlapping, sets of numbers for BDAT standards and generic exclusion levels reflect the fact that these are two different sets of regulatory controls on HTMR residues from K061, K062, F006. BDAT standards apply to residuals from treatment of hazardous waste—which are themselves still hazardous wastes because of the derived-from rule intended for land disposal. They reflect the best level of performance that treatment technology can provide and they apply to hazardous wastes concentrations of contaminants determined (by the model) to pose minimal health risks when the waste is disposed in a unit permitted under RCRA Subtitle D. A generic exclusion takes a waste out of the hazardous-waste universe because when a waste meets generic exclusion levels the exclusion essentially exempts it from subtitle C management.

The Agency also received a number of significant comments on the proposal to grant a generic exclusion for residues from HTMR processing of F006 and K062 nonwastewaters. Many commenters favored the proposed exclusion. Waste Management Inc., (WMI) and the Hazardous Waste Treatment Council (HWTC) objected, however, on several grounds.

WMI submitted comments similar to those it previously submitted for the K061 high-zinc subcategory rule. In particular, the commenter objected to the generic exclusion for a number of reasons. First, there are relatively few HTMR treaters of F006 and K062; site-specific delistings are a more

appropriate alternative. Second, excluding slag to be used as a road-base material is an inappropriate application of the VHS. Third, EPA based the exclusion decision on inadequate data regarding the different types of HTMR processes that are potentially subject to the exclusion and on inadequate data on the fate of organic species that may be present in the feedstocks. Fourth, the VHS model to exclude K061 did not consider exposures from runoff or wind dispersion. Fifth, there is concern about unaddressed air emissions problems with the HTMR processes themselves.

The Agency responded to the substantive issues in these comments in the K061 high-zinc subcategory final rulemaking. EPA's position remains that, although the generic exclusion may affect a small number of facilities at the time of promulgation, other HTMR facilities may be constructed in the future. More important, however, EPA's generic exclusion decision in regard to these wastes depends on the potential hazard (e.g., waste volume, composition) of the waste generated, not on the number of facilities generating the waste.

In today's final rule, the Agency is using EPACML instead of the VHS model to represent more accurately the groundwater hydraulics at landfills. EPACML predicts the potential for groundwater contamination from wastes that are co-disposed with municipal solid waste in an unlined land disposal unit and is, therefore, an appropriately conservative methodology for evaluating the risk from landfilled HTMR residue. In addition, as in the August 19, 1991 rule for K061, the Agency is limiting the generic exclusion to F006 and K062 HTMR residues, among other things, disposed of in a subtitle D unit and thus is not evaluating the appropriateness of EPACML for quantifying the safety of any use constituting a disposal scenario such as-use as roadbase. Consequently, this generic exclusion does not cover material to be used as a product.

The Agency disagrees with the comment that inadequate data were collected from the different types of HTMR processes that are potentially subject to exclusion. In determining the BDAT treatment levels, the Agency reviewed all the treatment performance data available from various HTMR processes. (These data are available in the Background Document supporting this rulemaking). EPA then calculated the final treatment standards based on the data from well-designed and well-operated HTMR processes. Thus, EPA believes that it has adequately characterized the performance of the major HTMR processes with respect to achieving the BDAT treatment levels. EPA notes further that since the exclusion levels are essentially risk-based numbers (i.e., the numbers are based either on the model or are the slightly lower technology-based numbers), the issue of the sufficiency of treatment performance characterization data does not affect the validity of the generic exclusion standards. To address the Agency's intent to establish "minimize threat levels" which could require modification of the purely technology-based BDAT standards, EPA is evaluating the alternatives proposed in the Hazardous Waste Identification Rule (HWIR) (see 57 FR 21450, May 20, 1992).

In response to the commenter's concern about the fate of organic species in the feed to HTMR processes, the Agency remains convinced that, considering that HTMR units operate at higher temperatures and longer residence times than incinerators, that HTMR units will destroy organic constituents as well as incinerators. All available data showed no quantifiable levels of organic constituents in treated residues, confirming EPA's engineering opinion; nor do the processed wastes typically contain appreciable concentrations of organics. (The Agency notes that while developing the BDAT treatment standards for nonwastewater HTMR K061 residues it investigated whether toxic organic constituents were present in the HTMR residues. The available treatment performance data did not indicate the presence of BDAT list organic constituents at detectable levels). In addition, as part of its delisting petition request for residual slag from treatment of K061 waste by HTMR, Horsehead Resource and Development Company (HRD) analyzed residual slag samples for sixteen polycyclic aromatic hydrocarbon (PAHs) constituents most likely to be products of incomplete combustion. None of the sixteen PAHs was detected in any of the samples generated from coke-fired and coal-fired processing.

WMI objected that using the VHS model to generate generic exclusion levels for K061, K062, and F006 is not appropriate because it only considered contaminant transport in groundwater and excludes exposures from run-off or wind dispersion.

As already indicated, the Agency has chosen to limit the scope of the current generic exclusion to slag disposed of in a subtitle D unit. The Agency is confident that the EPACML is appropriate for a land disposal scenario and is therefore finalizing the generic exclusion for F006 and K062 residues from HTMR processes with the condition that such disposal occur. See the discussion of the EPACML model at 56 FR 32993, July 18, 1991.

The Hazardous Waste Treatment Council (HWTC) also objected to the Agency's proposal to include F006 and K062 residues resulting from HTMR processing in the generic exclusion. HWTC was concerned that the exclusion was an automatic, self-implementing process requiring neither analytical verification nor review by EPA or the public. Section IV.E. of today's rule describes EPA's revised recordkeeping requirements for generically excluded HTMR K061, K062, and F006 residues (and characteristic wastes). This section explains EPA's choice of a tracking and handling system for generically excluded wastes.

With respect to the issue concerning air emissions, the Agency notes that all existing HTMR units use baghouses, wet scrubbers, or some other form of air pollution control device (APCD) to capture particulate matter present in the off-gases. These units may also be addressed pursuant to amended section 112 of the Clean Air Act. The amended section 112 requires the application of maximum achievable control technology (MCAT) controls to major sources of hazardous air pollutants, plus further risk-based controls (if necessary) at a later time. Therefore, EPA does not believe that these units need also be subject to the BIF regulations (see 56 FR 7142, February 21, 1991 for further discussion on EPA's basis for not regulating air emissions from these units under subtitle C).

Another issue was HWTC's objection to EPA's granting a generic exclusion for HTMR residuals from processing F006 and K062 while denying the exclusion for other non-HTMR recycling and treatment technologies treating F006 and K062.

The Agency based the decision to grant a generic exclusion for HTMR residues only for the following reasons: The generic exclusion will only apply to those nonwastewater residues generated by HTMR processes and not to other non-HTMR processes, such as hydrometallurgical processes or stabilization. The Agency currently lacks sufficient data to evaluate the residues from hydrometallurgical processes or to develop an appropriate sampling and analysis methodology for residues from hydrometallurgical processes.

The Agency presented the reasons for not generically excluding stabilized residues in the August 19, 1991 K061

high zinc final rule (56 FR 41173). The HTMR residues demonstrate consistent leaching behavior whereas stabilized matrices do not. The chemical bonding that occurs in the high temperature and oxidation/reduction conditions within the HTMR units is inherently different from the bonding that forms the basis of cementitious and pozzolanic stabilization. In addition, the kinetics of the reaction forming the bonds in these HTMR processes are superior in terms of immobilizing metals to the kinetics of bond formation in cementitious reactions because they are faster. (Common forms of cement are not typically considered set until after a minimum of 72 hours and often not considered fully cured until after 28 days). Furthermore, stabilization is highly matrix-dependent and prone to chemical interference. Most commercial stabilization facilities develop special mixes to control curing time and/or product integrity.

EPA reminds the regulated community that it is not prohibiting stabilization as treatment for K061, K062, and F006 waste, and that facility-specific delisting remains an option for stabilized K061, K062, and F006 wastes. Because of the inherent differences between HTMR and stabilization stated above and because existing data do not support a generic exclusion for stabilized K061, K062, and F006 wastes, the Agency chooses not to extend generic exclusion to these stabilized residues.

D. Vanadium: Treatment Standards and Appendix VIII

The Agency is deferring the expansion of the list of inorganic constituents in appendix VIII and is not including vanadium in the treatment standards. These remain technical issues that EPA has not yet resolved in the brief time allocated in promulgating today's regulations. The proposed HWIR (57 FR 21450, May 20, 1992) identified exclusion criteria for Vanadium, and the Agency is continuing to assess how to address Vanadium in HWIR and future Land Disposal Restrictions.

Because of concerns about Vanadium's low volatility and consequent tendency to accumulate in slag residual, the August 19, 1991, rule for high-zinc K061 nonwastewaters reserved vanadium rather than set a numerical treatment standard. Data reviewed by the Agency for the high-zinc rule since that time does not support setting a treatment standard for vanadium. EPA is therefore not promulgating treatment standards for vanadium in K061 nor promulgating vanadium standards in alternative standards for K062 and F006 wastes in this rule.

FINAL GENERIC EXCLUSION LEVELS FOR K061 AND K062 HTMR RESIDUES

[Nonwastewaters]

Regulated constituent	Maximum for any single composite sample—TCLP (mg/l)
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

FINAL GENERIC EXCLUSION LEVELS FOR F006 HTMR RESIDUES

[Wastewaters]

Regulated constituent	Maximum for any single composite sample—TCLP (mg/l)
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Regulated constituent	Maximum for any single composite sample—(mg/kg)
Cyanide (Total)	1.8

FINAL TREATMENT STANDARDS FOR K061

[Low and high zinc subcategories, nonwastewaters]

Regulated constituent	Maximum for any single composite sample—TCLP (mg/l)
Antimony	2.1
Arsenic	0.055
Barium	7.6
Beryllium	0.014
Cadmium	0.19
Chromium (Total)	0.33
Lead	0.37
Mercury	0.009
Nickel	5.0
Selenium	0.16
Silver	0.30
Thallium	0.078
Zinc	5.3

TREATMENT STANDARDS FOR K062

[Nonwastewaters]

Regulated constituent	Alternative treatment standards based on HTMR performance maximum for any single composite sample—TCLP (mg/l)	Treatment standards based on stabilization maximum for any single grab sample—TCLP (mg/l)
Antimony	2.1	NA
Arsenic	0.055	NA
Barium	7.6	NA
Beryllium	0.014	NA
Cadmium	0.19	NA
Chromium (Total)	0.33	0.094
Lead	0.37	0.37
Mercury	0.009	NA
Nickel	5.0	NA
Selenium	0.16	NA
Silver	0.30	NA
Thallium	0.078	NA
Zinc	5.3	NA

NA—Not Applicable.

TREATMENT STANDARDS FOR F006

[Nonwastewaters]

Regulated constituent	Alternative treatment standards based on HTMR performance maximum for any single composite sample—TCLP (mg/l)	Treatment standards based on stabilization maximum for any single grab sample—TCLP (mg/l)
Antimony	2.1	NA
Arsenic	0.055	NA
Barium	7.6	NA
Beryllium	0.014	NA
Cadmium	0.19	0.066
Chromium (Total)	0.33	5.2
Lead	0.37	0.51
Mercury	0.009	NA
Nickel	5.0	0.32
Selenium	0.16	NA
Silver	0.30	0.072
Thallium	0.078	NA
Zinc	5.3	NA

Regulated constituent	Alternative treatment standards based on HTMR performance maximum for any single composite sample (mg/kg)	Treatment standards based on alkaline chlorination maximum for any single grab sample (mg/kg)
Cyanides (Total)	1.8	590
Cyanides (Amenable)	NA	30

NA—Not Applicable.

E. Notification and Certification for Characteristic Wastes

The Agency is finalizing a revision to the recordkeeping requirements for certain wastes that meet LDR standards and are treated to nonhazardous levels. The change in notification and certification requirements affects two groups of wastes: characteristic wastes that meet LDR standards and are treated below the regulatory levels established for characteristic wastes, and K061, K062, and F006 residues from high temperature metal recovery that meet the generic exclusion levels and do not exhibit any hazardous waste characteristics. As proposed (see 57 FR 977), the Agency will no longer require the generator or treater to submit to EPA or an authorized state a notification and certification for each off-site shipment of these wastes. Instead, amended § 268.9(d) and § 261.3(c)(2)(ii)(C) now require that the generator or treater prepare the notification and certification for the initial shipment only, place one copy in the generator's or treater's own files, and send another copy to the appropriate EPA region or authorized state. The documentation must be retained by the generator or treater for at least five years. The generator's or treater's records must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes; however, the generator or treator need only notify EPA or an authorized state on an annual basis (at the end of the calendar year but no later than December 31) if the process or operation generating the waste changes or if the subtitle D facility receiving the waste changes. The document must include the name and address of the subtitle D facility receiving the waste, a waste description, applicable treatment standards, and a certification that the standards have been met. For K061, K062, and F006 residues from high temperature metal recovery, the recordkeeping requirements in § 261.3(c)(2)(ii)(C) supersede those in § 268.7(a)(6).

The Agency proposed this change because the existing requirements appeared to pose an unnecessary paperwork burden. It did not appear necessary for EPA or the states to be notified concerning every shipment of characteristic wastes and K061, K062, and F006 residues treated to nonhazardous levels; yet, at the same time, EPA and the states still need to be able to verify such treatment when conducting inspections of waste management operations. The Agency requested comment on the paperwork burden of the existing requirements, on its proposal, and on several alternative requirements that would also reduce the recordkeeping burden (see 57 FR 977).

Several commenters described the existing burden as "significant" or "onerous." One commenter said the requirement is especially burdensome for facilities with multiple shipments per day and is unnecessary since the waste is deemed nonhazardous. Another commenter stated that one of its plants had submitted over 1300 identical notification and certification documents in an eighteen-month period as a result of the § 268.9(d) requirement. Still other commenters said the existing requirement is not onerous, since facilities can use fill-in-the-blank type forms.

The majority of commenters, however, supported the requirement being finalized today. Those who supported the requirement promulgated today interpreted it to require a reasonable level of recordkeeping while providing readily available information to allow identification of the subtitle D facilities receiving the waste. Several of these commenters said the alternative proposals were overly burdensome without providing attendant benefits.

Commenters who supported the existing recordkeeping requirements argued that submittal of a certification to EPA is the only incentive for generators to ensure that excluded waste going to subtitle D units is properly treated. One commenter argued that the new proposal would weaken the RCRA system of cradle-to-grave protection. Another commenter advocated notification to the subtitle D facility receiving the waste, because only the generator or treater has sufficient information to determine if it meets the land disposal restrictions.

After considering all comments, EPA is finalizing the proposed revision because it is confident that there is little need for documentation of every shipment of the identical nonhazardous waste, nor is there a need for EPA or states to be informed of each shipment for disposal, as long as the information is available to inspectors. As for requiring notification of subtitle D facilities receiving the waste, EPA remains concerned that such a requirement would be counterproductive (see discussion at 55 FR 22662 to 22663).

F. Wastes Listed Because They Exhibit a Characteristic

In the January 9, 1992 proposed rule, EPA proposed a clarifying change to the existing regulations dealing with the applicability of land disposal prohibitions to wastes that are listed solely because they exhibit a non-toxic characteristic of hazardous wastes (see 57 FR 978). An example are the non-chlorinated solvents listed as F003 for which EPA promulgated numerical treatment standards in 1986. EPA had previously stated that such wastes cannot be diluted to meet the treatment standards and that these wastes must be treated to meet the part 268 treatment standards (56 FR 3871, January 31, 1991; 57 FR 976). Put another way, the land disposal prohibitions would apply at the point of generation for such wastes. EPA's proposed clarification was that the same principles apply with respect to mixtures of wastes listed because they exhibit a characteristic and other solid wastes (57 FR 978).

Upon reviewing this issue further, however, EPA realized that the principle appeared inconsistent (or could be read to be inconsistent), with respect to wastewaters listed because they exhibit a characteristic, with the rules adopted in the Third Third regulation regarding management of characteristic wastewaters. In the Third Third regulation, EPA applied prohibitions at the point of disposal for wastes that are hazardous because they exhibit a characteristic and are disposed in non-hazardous Class I injection wells; the Agency also applied dilution prohibitions at the point of disposal for most characteristic wastewaters managed in wastewater treatment systems ultimately discharging pursuant to sections 307 or 402 of the Clean Water Act. See §§ 148.1(d), 268.3(b); and 55 FR 22656–22659 (June 1, 1990). This would indicate that wastewaters which are listed because they exhibit a characteristic would not be prohibited from disposal by underground injection provided they do not exhibit a characteristic when they are injected. In addition, such wastewaters can permissibly be diluted to meet the treatment standards before management in surface impoundments, provided the impoundments are part of treatment systems that are discharging pursuant to Clean Water Act requirements and provided the waste does not exhibit a characteristic when placed in an impoundment.

After considering this issue, and after soliciting and receiving further public comment on the point, EPA is interpreting its rules so as to be consistent with the approach of the Third Third rule with respect to wastewaters that exhibit a characteristic for the reasons set out in that rule. Thus, prohibitions for wastewaters that are listed solely because they exhibit a characteristic will apply at the point of disposal as explained above. Put another way, EPA is reading the existing rules in §§ 148.1 and 268.3(b) as applying to wastewaters that are listed solely because they exhibit a non-toxic characteristic.

The Agency is not reconsidering, or reopening, the issue of treatment standards for nonwastewaters that are listed because they exhibit a characteristic. Thus, such wastes cannot be land disposed until treated to meet the applicable treatment standards, and cannot be diluted to meet those treatment standards (56 FR 3871). This would also be true of mixtures involving such listed wastes, since otherwise the prohibitions would have no real meaning.

Finally, with respect to wastewaters, the Agency recognizes that the issue of the legality of the Agency's application of prohibitions for characteristic wastewaters at the point of disposal has been submitted for judgment to a panel of the District of Columbia Circuit Court as part of the litigation over the Third Third rule (*Chemical Waste Management* v. *EPA*, No. 90–1230). The Agency's action today clarifying that the same rules apply to wastewaters listed because they exhibit a characteristic and other characteristic wastewaters thus would be subject to the decision reached in this litigation.

G. Storage and Treatment in Containment Buildings

In some cases, hazardous wastes prohibited from land disposal must be stored for short periods of time to facilitate recycling, recovery, treatment, or transport off site to meet LDR standards; treatment may also be performed while these materials are being stored. Some of these non-liquid hazardous wastes are generated in large volumes (often in batches), and may not be amenable to management in RCRA tanks or containers. These wastes are sometimes stored or treated on concrete pads or similar floors inside buildings.

EPA currently classifies this type of management unit as an indoor waste pile, which EPA considers to be a land disposal unit based on the statutory definition of land disposal in section 3004(k). See 52 FR 40605 (November 7, 1986). Lead slags and spent potliners from primary aluminum production are examples of hazardous wastes that are amenable to management in such units because of their volume or bulk; contaminated debris may also be managed in such units. EPA believes that management of a hazardous waste inside a unit designed and operated to contain the hazardous waste within the unit—akin to storage in a RCRA tank or container—does not pose the types of potential harms or uncertainties Congress sought to address in defining land disposal, as it did in RCRA section 3004(k). These include uncertainties regarding containment of hazardous constituents placed on the land and the potential for persistence, toxicity, mobility and bioaccumulation of hazardous wastes placed on the land. A unit designed, constructed, and operated to contain the hazardous waste within it may, moreover, fulfill the congressional goal of waste management that is protective of human health and the environment. See section 3004(d)(1)(A)–(C) and 1003(a)(5).

EPA is today promulgating standards allowing management of hazardous wastes, including but not limited to lead slags, spent potliners, and contaminated debris within units, to be termed "containment buildings", which will not be considered placement on the land and thus not constitute land disposal as defined in section 3004(k) of RCRA. To allow storage and treatment of prohibited wastes in containment buildings, EPA today is establishing a new definition of containment building, amending the existing definition of pile to exclude containment buildings, and including containment buildings within those units covered by § 268.50 as permissible for storage of prohibited wastes (since these buildings are no longer land disposal units), albeit subject to the prohibition on extended storage. EPA is also establishing specific design and operating standards for such units under §§ 264 and 265, and allowing generators' containment buildings to be eligible under § 262.34 for the 90-day generator provisions if their unit(s) meets all of the technical requirements for containment buildings (refer to discussion on 90-day applicability upcoming in this section).

Under today's rule, all containment buildings—both permitted and unpermitted—must achieve the same level of performance. Accordingly, EPA today is promulgating standards that require containment buildings operating under the part 265, subpart DD interim status standards to be designed, operated, and maintained to meet the same design and operating requirements as permitted containment buildings. These are either the design and operating standards in subparts DD of parts 264 or 265.

Virtually all public comments supported the establishment of this new type of management unit. The rule promulgated today incorporates only minor changes from the proposed rule.

To provide adequate time for design and construction of containment buildings, the effective date for these provisions shall be February 18, 1993. However, owner/operators who wish to begin operating containment buildings under these provisions prior to the effective date may do so provided that they notify the Regional Administrator of their intent, and they comply with the requirements of subpart DD prior to beginning operation.

1. Containment Buildings Are Not Land Disposal Units

The final rule indicates that containment buildings are not land disposal units. Thus, prohibited wastes can be stored in containment buildings without first meeting a treatment standard.

We explain below in detail how containment buildings are defined. However, the key features for determining that they are not land disposal units are that wastes are stored indoors in a secure structure (securely walled, roofed, and floored) that is designed to provide containment comparable to that provided by tanks or containers. EPA sees no statutory command precluding Agency discretion to define such units as not involving land disposal, nor did any commenter suggest that the Agency was barred from this determination. Moreover, storage in such units does not raise the types of environmental concerns and uncertainties (see section 1002(b)(7) and 3004(d)(1)(A)–(C)) that Congress sought to address in requiring hazardous wastes to be pretreated before being land disposed. Also, by defining containment buildings as not involving land disposal, the Agency is preventing the anomaly of bulk hazardous wastes not amenable to tank storage, yet requiring storage before treatment, being unable to be legally stored because non-tank or container storage would be defined as land disposal. An example is battery parts and groups that must be staged before being smelted. (55 FR 22637.) Accordingly, EPA is exercising its discretion to define containment buildings as not being land disposal units.

2. Definition of Containment Building

EPA today defines in § 260.10 a new unit, "containment building," as a "hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of parts 264 and 265." Subpart DD of parts 264 and 265 enumerates the design and operating standards for these units that ensure containment comparable to that of a RCRA tank or container. EPA is

also modifying the definition of "waste pile" to exclude these units.

Under today's rule, a containment building unit is not defined as land disposal pursuant to RCRA section 3004(k) if the unit meets the requirements of § 264.1100 and § 265.1100. The unit must, among other things, be completely enclosed and have self-supporting walls, a primary barrier, designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment in the unit, a secondary containment system (unless the unit manages non-liquid wastes only or has obtained a variance from the secondary containment standard), a liquid collection system, and controls for fugitive dust. The floors, walls, and roof of the unit must be constructed of man-made materials with sufficient structural strength to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit. The unit also must be designed and operated to prevent tracking of materials out of the unit.

3. Applicability of the 90-Day Accumulation Exclusion in § 262.34

a. *Containment Buildings Are Eligible for 90-Day Status.* Under § 262.34, a generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided he complies with the requirements of subpart I, J, or W of 40 CFR part 265, among other requirements. To date, EPA has limited applicability of this 90-day provision to generators' containers, tanks, or drip pads (see 55 FR 50450, December 6, 1990). EPA today is extending the 90-day generator exemption in § 262.34 to include containment buildings. The extension of the 90-day generator exemption to containment buildings is consistent with the application of the 90-day generator exemption to similar types of hazardous waste storage units, e.g., tanks and containers.

Commenters to the proposed rule overwhelmingly supported the extension of the 90-day generator exemption to these units. Some commenters also suggested that EPA extend this exemption to all containment buildings; others suggested extending this exemption beyond 90 days. The 90-day generator provision is premised on the need to avoid undue interference with generators' production processes (45 FR 2730, February 26, 1980) and stands as a narrow exception to otherwise applicable permitting requirements. This rationale does not appear to apply to off-site facilities. Therefore, the Agency is not extending its applicability in today's rule. However, EPA notes that extensions may be granted to the 90-day time period under existing rules when certain specific circumstances apply (see 55 FR 50450, December 6, 1990).

Specific to the comments suggesting that EPA extend the 90-day generator provision to all containment buildings including off-site facilities, EPA is not taking action in today's rule. EPA will, however, take comment on a proposal to expand the 90-day generator exemption to all containment buildings in the upcoming proposal for petroleum contaminated debris to be deferred from the TC. At that time, the Agency will evaluate whether the Agency's narrow exemption for 90-day units to generators should be expanded to off-site units for all tanks, containers, and containment buildings.

b. *Documenting Compliance with 90-Day Limitations.* In the proposed rule, EPA requested comment on whether generators who store or treat hazardous waste in containment buildings pursuant to the 90-day accumulator provisions should be required to maintain on site, for the operating life of the containment building, a description of the procedures ensuring that no waste remains in the containment building for more than 90 days. EPA proposed that documentation of each waste removal be required in the generator's on-site files recording, at a minimum, the quantity of waste removed and the date and time of removal. EPA also noted that certain operations, for example, the continuous processing of wastes or blending of wastes, might complicate the generator's ability to determine when a particular waste volume ceased to be present within the containment building. EPA requested public comment on how best to ensure and document generator compliance with the requirement limiting the time waste may be accumulated within the containment building to 90 days or less.

Several commenters suggested a "mass balance" approach wherein the volume removed from a containment building over the course of 90 days would be required to be at least equal to the amount placed in the unit during that period to ensure compliance with the time limit. EPA does not believe that this would be adequate. While such an approach might ensure that the average residence time of wastes in the unit is less than 90 days, it could not assure that all wastes reside in the unit for less than that period.

Instead, EPA agrees with commenters who suggested that documented procedures ought to assure that each volume of waste resides in the unit for no more than 90 days. This requirement could be met in two ways: (1) By documenting that the unit is emptied at least once every 90 days, or (2) by having and documenting (in writing) the procedures in place to ensure that wastes in the unit are segregated by age and that no portion of the stored wastes is allowed to remain beyond the time limit. As part of that latter demonstration, owner/operators must document that the nature of their hazardous waste management operation is consistent with respecting that 90-day limit. For example, a generator who plans to use such a unit to accumulate waste for off-site shipment on a monthly basis should be able to meet this test; one who ships waste off site semi-annually could not do so. Given the statute's normal permitting scheme as well as the constraints on extended storage in section 3004(j), EPA believes this degree of assurance of actual waste turnover is justified.

EPA does not seek to require documentation of each individual addition or removal of waste from the unit; rather, the required written documentation must show that procedures are in place to ensure that individual additions and removals of wastes are consistent with the 90-day time limit for each portion of the wastes managed in the unit. However, if the generator cannot meet the 90-day time limit or if a hazardous waste is stored or treated in an off-site containment building, the unit must have interim status or a permit in accordance with existing regulations.

c. *Reclassification of Regulated Units to 90-Day Status.* EPA anticipates that some currently operating units that have been previously classified as waste piles will be converted to containment buildings as a result of today's rule. It is possible that there may be (or have been) releases of hazardous wastes from such units. When this rule was proposed, EPA raised the issue of whether unit-specific corrective action authority under RCRA should be retained for new units and for existing interim status or permitted units that subsequently become 90-day generators with containment buildings as their only RCRA activity. EPA pointed out that, even without RCRA corrective action authority, generators would still be liable for any releases under CERCLA.

Several commenters suggested that some or all units converted to containment buildings should not be subject to corrective action. While the Agency understands these commenters' concerns, the Agency believes that unit-specific corrective action is an

appropriate part of the standards for containment buildings to remediate releases that conceivably occur or may occur from the unit. Such standards are a routine part of every standard for a RCRA hazardous waste management unit, including 90-day generator units. See, e.g. § 265.196 (corrective action for tanks including 90-day tanks) and § 265.443(m) (corrective action for drip pads including 90-day drip pads). The Agency knows of no legal or policy justification for excluding these units from corrective action requirements (i.e., not redressing hazardous waste releases from such units).

However, new units operating under the 90-day generator provision will not trigger facility-wide corrective action under RCRA by themselves under the terms of today's rule, because no permit is required for their operations and the units have never had interim status or permits (see RCRA sections 3004(u) and 3008(h)). These units, however, must remediate unit-specific releases as just discussed, and also would be solid waste management units if the facility requires a RCRA permit for other units.

For previously regulated units, EPA expects that the "unit" for the purpose of corrective action will include the entire structure, or the entire portion of the structure operated, when the containment building is a part of a larger structure.

As noted above, 90-day containment buildings must meet the same substantive standards as permitted and interim status units. This includes a requirement of obtaining certification by a professional engineer that the unit is designed and constructed to meet the requirements for containment buildings and must maintain such certification at the facility (§ 262.34(a)(1)(iv)). The subject of such certifications is discussed at greater length below. Generators planning to convert to or install containment buildings in advance of the effective date for these requirements are required to place certifications for these units in the facility's operating record no later than 60 days from the date of initial operation of the unit as a containment building. After February 18, 1993, PE certification is required prior to operation of the unit.

4. Containment Building Requirements

The specific requirements for a containment building restrict the types of hazardous wastes that may be stored or treated in the unit and specify performance standards for the design and operation of the unit to ensure a measure of protection of human health and the environment greater than that provided by an indoor waste pile, and substantially equivalent to that provided by a RCRA tank or container. See subpart DD, parts 264 and 265.

a. *Acceptable Wastes.* Many commenters supported EPA's proposal to allow dry wastes or wastes with "very small quantities" of free liquids to be managed in containment buildings. Comments were divided on whether the term "very small" used in the proposal required an explicit definition or implied an unnecessary and arbitrary limit on the amount of liquid included in a hazardous waste to be managed in a containment building. Today's rule states that wastes managed in containment buildings not be liquid in form (i.e., flow under their own weight to fill the vessel in which they are placed, or contain so much liquid that they are readily pumpable) or release such large quantities of liquid into the unit that liquid removal systems cannot prevent accumulation of liquid to significant depths. (These liquid wastes can, of course, be managed in tanks and containers that are inside containment buildings.)

EPA developed the containment building standards so that owner/operators could store or treat hazardous wastes that are not liquid in form, and which are not amenable to management in tanks or containers (perhaps because the waste occurs in a bulky form, or because it is produced in great volume.) This can facilitate owner/operator compliance with the prescribed BDAT standards. However, any waste that is non-liquid in form can also be stored/treated in containment buildings even if the waste already comply with the land disposal restriction standards. The standards discussed below will ensure that these wastes will not pose a hazard to human health or the environment when managed in containment buildings.

Prior to incorporating these concepts into this rule, EPA considered developing a Policy Directive whereby certain hazardous wastes, i.e., aluminum spent potliners, recycled lead batteries, and possibly electric arc furnace dusts, were definitively identified as candidates for management within containment buildings. Although EPA believed wastes that are non-liquid in form could also be managed more practicably in containment buildings rather than tanks or containers, information on such wastes remained lacking. EPA considered two options regarding hazardous wastes eligible for management in these units: (1) All hazardous wastes, including contaminated debris; and (2) only contaminated debris and certain additional bulky, high volume hazardous wastes that EPA currently understands cannot be practicably stored/treated in tanks or containers. Public comments on the proposed rule stated that EPA should not limit eligibility to debris and certain bulky, high volume hazardous wastes or to specific waste codes, and that a specific limitation on the amount of liquid included in the waste was also not appropriate.

EPA sees no reason to restrict eligibility to only those hazardous wastes for which EPA has data available or to only prohibited wastes. When designed, constructed, and operated in accordance with the standards being promulgated today, a containment building managing hazardous waste that is non-liquid in form will ensure protection of human health and the environment.

Example: A secondary lead smelting facility recovers lead from battery plates and groups taken from lead-acid batteries. One of the steps involved in this process, battery cracking, necessarily generates wet lead-bearing materials. For process efficiency, among other reasons, free liquids are removed to the extent feasible prior to staging the materials for furnace feed. However, some residual free liquid remains and cannot be removed easily. In this example, the overall form of the material is non-liquid, even though some amount of free liquid remains despite attempts to remove it. These wastes are eligible for management in containment buildings.

Example: A facility is cleaning up an area containing contaminated soil. The excavated soil contains water in the soil matrix, and is at or near the point of saturation. Visual inspection of the soil reveals that the amount of free liquid expected to be released in a containment building is very small in comparison with the total volume of the waste and the liquids management capacity of the unit. This material may be managed in a containment building.

b. *Acceptable Activities.* Containment buildings can be used to store hazardous waste for such activities as treatment (including recovery or other recycling) or transport off site to meet LDR treatment standards. As noted elsewhere in today's rule, wastes may be treated in containment buildings as well as stored in them. Examples of such treatment could include some of the technologies discussed in appendix I to this preamble for treatment of contaminated debris. Many of these technologies require the use of liquid. In many cases, such treatment would be conducted in tanks or containers within such buildings, and the existing

standards for tanks and containers would apply. For example, a method for treating hazardous debris could include treatment in a tank within a containment building followed by storage for a short-period in the containment building. In this example, treatment in the tank would be regulated under the RCRA tank standards, while subsequent storage of the treated waste would be regulated under the containment building standards.

In other cases, treatment in tanks and containers as such may not be possible. For example, personnel may not be able to apply safely some of the prescribed debris treatment technologies to large bulky debris within a tank or container. Therefore, EPA is also allowing treatment that utilizes the addition of liquid as part of BDAT treatment in designated areas within containment buildings. Any drainage or accumulation of liquids applied to hazardous debris must comply with relevant regulations. EPA is requiring that liquids be removed from the containment building at the earliest practicable time in order to preserve the effectiveness of liquid containment systems (§ 264.1101(b)(2)(ii) and § 265.1101(b)(2)(ii)).

c. *Design and Operating Standards.* EPA is promulgating the following design and operating standards for permitted units, units operated under interim status, and units under the 90-day accumulation exemption. In general, the design and operating standards are intended to ensure containment of waste equivalent (or, with regard to air emissions superior) to the containment achieved by tanks. Thus, the units must be designed to contain releases to land through primary and in some cases secondary containment systems, and to contain potential particulate emissions as well. The unit is also to be designed to prevent exposure of waste to precipitation and wind. As noted above, EPA is determining that these units are not engaged in land disposal based on designs for this level of containment. Moreover, the design and operating standards should ensure protection of human health and the environment (as do the tank standards).

Thus, to distinguish these units from waste piles—i.e., land disposal units—hazardous wastes managed in these units must be fully contained within the unit. As such, the unit must be completely enclosed with a floor, walls and a roof to prevent exposure to precipitation and wind (§ 264.1101(a)(1) and § 265.1101(a)(1)). Many of the hazardous wastes currently managed in these waste piles may have significant volumes of fine particulates. EPA believes that enclosure within a structure, in conjunction with other measures to control fugitive dust emissions, will prevent the escape of these fine particulates from the unit. Although a number of commenters to the proposed rule did not believe complete enclosure to be necessary, EPA continues to regard this as key to ensuring complete containment of wastes managed in these units, and thus distinguishing these units from land disposal units such as piles.

i. Floors, Walls, and Roof. The floor, walls, and roof of the unit must be constructed of man-made materials with sufficient structural strength to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit. Fragile barriers that would not withstand repeated contact with handling equipment used in the unit thus are not suitable, and units designed with such ineffective barriers would not be containment buildings. Operating events such as deliberate or accidental placement of materials against containment walls must be taken into account in designing and constructing the unit. Factors such as settlement, frost-heave, and exposure to wind force must also be considered. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. Because the intended use for these units is short-term storage or treatment, the unit must be designed to accommodate appropriate levels of loading and unloading activity during its operating lifetime. (See § 264.1101(a)(2) and § 265.1101(a)(2).)

ii. Primary and Secondary Containment. EPA is requiring several measures to ensure that hazardous wastes are managed in a fashion that ensures containment of contaminants and prevents releases into the environment. All containment buildings must be equipped with a primary barrier designed and constructed of materials to prevent hazardous wastes from being accidentally or deliberately placed on the land beneath or outside the unit. The design and construction of the primary barrier will vary depending on the type of waste to be managed in the unit. For containment buildings used to manage wastes without free liquids, the primary barrier may be a concrete floor if the wastes to be managed will not migrate into the concrete matrix. Containment buildings used to manage wastes with even small amounts of free liquids must be provided with a primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier and a liquid collection and removal system that will minimize the accumulation of liquid on the primary barrier (§ 264.1101(b)(2) and § 265.1101(b)(2)). In this case, the primary barrier might be a steel or flexible membrane liner covered by a concrete wear surface. The liquid collection and removal system above the primary barrier should be designed, constructed, and operated to minimize the accumulation of liquids above the primary barrier. EPA expects that a minimum one degree slope for the primary barrier combined with appropriate means for collecting and removing liquids (e.g. troughs, drains, dikes, or sumps and/or pumps as necessary) will meet this goal. The determination of the presence of free liquids must be made using, for example, the paint filter test (EPA test method SW-846) if applicable, a visual examinations, or other appropriate means.

The primary barrier must be sloped to drain liquids or other wastes to the collection system, and to ensure that liquids are not released into any portions of the unit that are not provided with secondary containment. This latter requirement for separation between "wet" and "dry" areas of a containment building is discussed below in greater detail.

In all cases, the primary barrier must be designed to withstand the movement of personnel, wastes, and handling equipment in the unit. (See § 264.1101(a)(4) and § 265.1101(a)(4).) By this, EPA means that coatings or membranes that might be exposed to abrasion or tearing by personnel, wastes, or equipment must be sufficiently durable to withstand that activity, be protected from it, or be scheduled for replacement on a regular basis as needed as part of the design of the unit. The primary barrier must be maintained to be free of cracks, gaps, corrosion, or other deterioration that could result in the significant release of hazardous waste.

Portions of containment buildings used to manage hazardous wastes containing free liquids must, in addition, be provided with secondary containment systems including (1) a secondary barrier and (2) a leak detection system. The secondary barrier must be designed and constructed of materials to prevent the migration of hazardous constituents into this barrier. The leak detection system, which lies below the primary barrier and above the secondary barrier, must be capable of detecting, collecting, and removing leaks of hazardous constituents through the primary barrier at the earliest practicable time. In keeping with the design standards for liners and leak detection systems (57 FR 3462), this may be achieved by installation of a system that is, at a minimum: (1) Constructed with a bottom slope of 1 percent or more; and (2) constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more. The secondary containment system must be constructed of materials that are chemically resistant to the waste managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building.

If only portions of a containment building are equipped with secondary containment, then "dry" areas (those without secondary containment) and "wet" areas (those areas with secondary containment) must be hydraulically separate. By this, EPA means that the containment building must be designed and operated so that liquids managed in "wet" areas are prevented from draining into "dry" areas by measures such as dikes, walls, trenches, differences in grade, etc. (See § 264.1101(b)(3)(i) and § 265.1101(b)(3)(i).) Wastes entering a "dry" area of the containment building, from a "wet" area of the unit must not contain more than de minimis amounts of free liquids (and a paint filter or equivalent test could be passed, if the physical form of the material would allow such a test to be performed).

In addition, today's rule clarifies that treatment of hazardous wastes within containment buildings may involve the addition of free liquids. As with any "wet" containment building areas, portions of containment buildings where wastes are treated with liquids must meet design standards that the Agency is promulgating today and that are equivalent to those applicable to tanks. These areas thus must be designed to prevent any release of liquids, wet materials, or liquid aerosols to other portions of the unit. In particular, treatment technologies involving liquids under high pressure such as high pressure washing must be restricted to dedicated cells or areas within the containment buildings designed and operated to prevent such releases. Barriers to such releases should be designed and constructed to be appropriate to the nature of the physical and chemical nature of the treatment to be performed, and should ensure proper control of wastes and moisture throughout the operating life of the unit. EPA notes that use of a number of treatment technologies including technologies specified elsewhere in today's rule may require barriers to movement of moisture into unit walls equivalent to those generally required to prevent migration of hazardous constituents into the primary barrier.

For example, soil washing may be conducted in a treatment area of the containment building. After treatment, the soil is allowed to drain. While significant quantities of free liquid remain, the soil must be managed in "wet" areas with secondary containment. When only de minimis quantities free liquids remain the materials may be managed in "dry" areas without secondary containment.

EPA recommends, but is not requiring, that owner/operators of containment buildings consider providing the entire unit with secondary containment in order to guard against contaminant releases and their associated costs in the event of operator error, equipment failure, or other unanticipated circumstance.

EPA believes containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 264.193(d)(1), i.e. that it is designed and operated to contain 100 percent of the capacity of the largest tank within its boundary, designed and operated to prevent run-on or infiltration of precipitation into the secondary containment system, free of cracks or gaps, and designed and installed to surround the tank completely and to cover all surrounding areas likely to come into contact with the waste. In addition, the containment building must meet the requirements of § 264.193(b) and § 264.193(c)(1) and (2) to be considered an acceptable secondary containment system for a tank.

iii. Waiver from and Delay of Compliance with Secondary Containment. Under today's rule, the Regional Administrator has the discretion to waive the secondary containment requirement for containment buildings or areas of containment buildings where the only liquids to be used in the unit are liquids that will be used to control dust or to otherwise protect worker health and safety in accordance with OSHA requirements. Thus, in some cases, the Regional Administrator may determine on a case-by-case basis that secondary containment is not necessary where liquids are used in this fashion. For 90-day units where owner/operators wish to use liquids to control dust or otherwise protect worker health and safety and do not believe that secondary containment is necessary, the owner or operator must make a demonstration that the use of liquids in such a manner will not result in the release of contaminants and have a professional engineer certify to the fact.

EPA is also allowing the option of a delayed compliance date for the secondary containment requirement. Existing units converting to containment buildings and which are equipped with a primary barrier and a liquid collection system may be granted up to a two-year delay for compliance with the secondary containment requirement if these units substantially meet all other standards spelled out in today's rule. This may be the case for some existing buildings currently surpassing the design requirements applicable to indoor waste piles but not having secondary containment.

To avail themselves of this extension, owner/operators must provide a written request to the Regional Administrator by February 18, 1993. This request must include a description of the unit and its operating practices with special reference to the design and performance of any existing barrier layer(s), liquid collection and removal systems. Existing data and/or reports on materials, permeability, and drainage characteristics must be included, together with existing available quality assurance data on how the existing unit was constructed. It must describe specific plans including a schedule for retrofitting these units to meet the standards promulgated today.

The Regional Administrator will review this plan, and approve or provide comments. If owner/operators receive comments from the Regional Administrator, they will have 30 days to revise their submissions and respond to comments. The Regional Administrator will review the revised submission, and decide whether to grant up to a 2-year delay for secondary containment and may specify conditions for its approval. This decision will be based on whether the Regional Administrator has confidence that substantially meets the other standards in the rule, so that the unit will not release contaminants to the land prior to the required retrofit.

iv. Height of Waste in Unit. Another measure to ensure containment of hazardous waste managed in these units is today's requirement that the level of the waste inside the unit cannot exceed the height of the containment walls

intended to come in contact with the hazardous waste. (See § 264.1101(c)(1)(ii) and § 265.1101(c)(1)(ii).) EPA considers it a necessary good housekeeping practice to prevent stored/treated hazardous waste from spilling over the walls of the unit and, in the case of certain hazardous wastes, to be able to contain any potential "landsliding" of material out of the unit. It is important to note that the walls referred to in this provision are those containment walls, or parts thereof, designed and constructed to be in contact with the hazardous waste and to support its weight. The following example highlights this distinction.

Example: A facility has constructed a containment building to accumulate its hazardous waste prior to conducting treatment to meet LDR standards. The unit has a reinforced concrete floor and 10-foot high reinforced concrete walls. The remainder of the sidewalls, built atop the concrete wall and extending to the roof, are constructed of steel framing with fiberglass panels. In this example, the hazardous waste stored/treated inside the unit must not be piled any higher than the 10-foot reinforced concrete walls. The remainder or upper portion of the walls are not designed to support the weight of the waste and may not provide adequate containment of the waste in the event of an unexpected shift in the position of a portion of the waste, i.e., hazardous waste could escape through the panel joints.

A number of commenters to the proposed rule had concerns with the prohibition on piling wastes above the height of the walls intended to contain them, noting correctly that many wastes can be formed into conical piles extending substantially above the height of walls which may be supporting a portion of their weight. EPA's reason for including this requirement is to assure that there was no possibility of accidentally overtopping the containment walls. Accordingly, today's rule retains this requirement. EPA notes, however, that this requirement is intended to apply only to those walls that could come into contact with the waste and are intended to contain the waste. The examples below clarify EPA's intent.

Example: If waste is stored in a room within the containment building, where the interior walls, i.e., the walls of that room, are designed to support and/or contain hazardous wastes, those walls must meet the standards for containment walls. Exterior walls that could not come into contact with the waste would not have to meet those requirements in this case.

Example: If waste is stored in "stalls" within the containment building, where the walls that define the stalls are not designed and constructed to meet the requirements for containment walls, then the exterior walls must do so. Note, however, if the stalls are intended to separate wet and dry areas or to document that wastes are accumulated for less than 90 days, the stalls must be constructed to fulfill their function under normal operating conditions.

v. Standards for Doors and Other Openings. A related set of issues in the proposed rule refers to specifications for door and other wall openings used for equipment and personnel. EPA proposed that these doors and openings should be capable of providing the same level of structural support and containment as the rest of the wall, and invited public comment on specific standards for doors and openings that are part of a wall otherwise providing support and containment of hazardous waste managed within a containment building.

Today's rule departs somewhat from the proposed rule on these issues. In response to many public comments, EPA is clarifying that doors and other openings do not necessarily need to meet the same structural standards as walls. Depending on the nature of the wastes and the operations to be carried out in a particular unit, a relatively light-weight door may be adequate if: (1) It provides an effective barrier that controls fugitive dust emissions from the unit to meet the no visible emissions standard (see § 264.1101(c)(1)(iv) and § 265.1101(c)(1)(iv)), and (2) the unit is designed and operated in a fashion that assures that wastes will not actually come in contact with the door. This latter requirement could be satisfied, in many cases, by a set-back of wastes stored in the unit. As noted above, these requirements may be satisfied by either interior or exterior walls, subject to constraints posed by the way the waste is managed.

vi. Measures to Prevent Tracking. EPA believes routine handling of hazardous waste within many of these units demands the frequent, if not constant, presence of personnel and handling equipment, e.g., front-end loaders, cranes. As such, particularly when the hazardous waste includes small particulates or where handling of the hazardous waste generates dust, the potential for tracking hazardous waste out of the unit may be significant. Therefore, EPA is requiring that the owner/operator ensure the containment of hazardous waste within the unit with appropriate measures to prevent this. (See § 264.1101(c)(1)(iii) and § 265.1101(c)(1)(iii).) Wash-down of vehicles and equipment prior to exiting the unit and dedicating vehicles and equipment for the sole purpose of operating within the unit are examples of measures that owners/operators of these units could take when the potential exists for tracking of hazardous waste out of the unit. In addition, owner/operators must prevent tracking of water or wet materials from "wet" areas to "dry" areas.

vii. Control of Fugitive Dust Emissions. Because of the dusty nature of many of the hazardous wastes that may be managed in these units and the dusty conditions that can be caused by the handling of these wastes within the unit, EPA also is requiring that owner/operators control fugitive dust emissions during normal operating conditions. (See § 264.1101(c)(1)(iv) and § 265.1101(c)(1)(iv).) EPA has revised these requirements from the proposed rule based on extensive public comment. Today's rule provides substantial additional flexibility to owner/operators in how they may achieve the required degree of control. However, EPA is also specifying the standard more rigorously, and clarifying the presumption that owner/operators must install and operate systems to control fugitive dust emissions unless they can demonstrate that the wastes to be managed in the unit will not release significant amounts of fine particulates from the building as they are handled or treated.

The proposed rule required a system whereby a negative pressure was maintained within the unit and particulates collected, e.g., by fabric filter or electrostatic precipitator. In response to public comments, today's rule provides greater flexibility in controlling fugitive dust, but more specificity in the degree of control that must be attained.

The final rule requires that there be no visible emissions through any unit openings. This state of no visible emissions must be maintained effectively at all times during routine and operating and maintenance conditions, including when vehicles and personnel are entering and exiting the containment building. This standard is based on current standards required by EPA's Air Office. A test method found in 40 CFR part 60 appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares—can be used to determine compliance with the no visible emissions requirement. It is a timed method where an observer, using a stopwatch, determines if for a given period of time a source has visible emissions. If used to meet these standards, negative pressure dust control systems should assure that the air flow through openings such as windows and doors is inward at all times. All dust control systems must be operated and maintained in accordance with sound air pollution control practices (these practices are described in more detail in 40 CFR part 60, subpart 292).

Techniques other than the maintenance of negative pressure may be utilized where they can be shown to maintain no visible emissions from openings in the unit. The owner or operator of a containment building is required to maintain control of fugitive dust emissions such that any unit openings (e.g., doors, windows, seams, vents, cracks, etc.) exhibit no visible emissions outside the containment building. Compliance with this requirement may include such measures as double door (airlock-type) entry designs. All units must have the certification of a professional engineer that any dust control system is designed to achieve the no visible emissions standard.

Notwithstanding any other requirements of subpart DD of parts 264 and 265, if the method of controlling fugitive dust emissions includes the application of liquids, the Regional Administrator has the discretion to waive the secondary containment requirement for containment buildings or areas of containment buildings where liquids will be used to control dust or to otherwise protect worker health and safety in accordance with OSHA requirements. (See § 264.1101(e) and § 265.1101(e).) EPA notes that the application of free liquids alone may not be sufficient to control fugitive dust emissions.

viii. Inspection Plan. To ensure the unit is operating as designed, EPA is requiring all owner/operators to have an inspection plan for all containment buildings that establishes an inspection program that ensures maintenance of the structural integrity of the unit and prompt detection of any leaks or releases to the air, ground, or water. EPA is requiring an inspection schedule for these units whereby, at least every seven days, monitoring/leak detection equipment, the containment building, and the area surrounding the containment building is checked to ensure the unit is being properly operated and that no leaks/releases have occurred to the air, ground, or water. (See § 264.1101(c)(4) and § 265.1101(c)(4).) This is consistent with the existing inspection requirements for drip pads and for liner and leak detection systems. These observations must be recorded in the facility's operating record. In the event that a condition is detected that has led or could lead to a release of hazardous waste, the owner or operator must repair the condition within a reasonably prompt time following discovery in accordance with the standard procedures for similar units. (See § 264.1101(c)(3) and § 265.1101(c)(3).)

In response to comments on these inspection requirements, EPA points out in today's rule that these weekly inspections need not be unduly burdensome. Electronic monitoring of liquid in secondary containment systems or of air pressure differentials between the inside and outside of a containment building are examples of relatively cost-effective monitoring techniques.

ix. Engineering Certification. In the proposed rule, EPA identified that it was considering but was not proposing a requirement for written certification by an independent registered professional engineer (e.g., one who is not an employee of the company, or of its parent or subsidiary.) The benefit of such a certification would be to ensure that any new or existing containment building is designed and constructed with sufficient structural integrity to safely manage and contain the hazardous waste. Public comment was divided on the appropriateness of requiring independent certification. EPA has decided not to require that this certification be made by an independent professional engineer. Since professional engineers are certified and licensed by States and thus have a substantial incentive to maintain their professional reputation, a professional engineer must certify that the containment building has been designed with sufficient structural integrity and is acceptable for storing and treating hazardous waste according to the standards specified by EPA. The assessment must show that the foundation, structural support, primary barrier, secondary containment system (where required), fugitive dust control system, and leak detection system are designed to meet today's standards and that the containment building has sufficient structural strength and compatibility with the waste to be stored or treated. (See § 264.1101(c)(2) and § 265.1101(c)(2).)

x. Temporary Containment Buildings. Finally, EPA is aware that in situations such as hazardous waste site remediation efforts, appropriately designed and operated containment buildings could serve to enhance the performance of bioremediation treatment technologies. It may not always be appropriate for containment buildings intended for temporary use to be constructed or operated in exactly the fashion outlined in today's rule. EPA plans to address temporary containment buildings in a future rulemaking.

d. *Closure Requirements.* Today's rule promulgates requirements for closure of containment buildings that are consistent with the closure requirements that apply to waste piles (§§ 264.258 and 265.258) and tanks (§§ 264.197 and 265.197). At closure, owners or operators of both permitted and 90-day containment buildings will be required to clean close the units by removing all hazardous waste from the containment building and by removing or decontaminating all hazardous waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste, and managing them in accordance with the Subtitle C regulations. If the unit containment building cannot be clean closed, the unit must satisfy the requirements for closure that apply to landfills under § 264.310 or 265.310. For a discussion of the requirements for clean closure and the "remove or decontaminate" standard, see 52 FR 8504, March 19, 1987.

Owner/operators of interim status waste piles who wish to convert these units to interim status containment buildings need not necessarily clean close their units prior to conversion; closure requirements applicable to these units may be deferred until closure of the containment building.

5. Revised Definition of Pile

EPA today is revising the regulatory definition of pile to exclude containment buildings. Specifically, EPA is revising the definition of "pile" to explicitly exclude containment buildings that accumulate or treat prohibited wastes under the proposed requirements of Parts 264 and 265. Although EPA has previously classified all roofed structures used to manage dry wastes as indoor waste piles, EPA believes that there are distinctions between indoor waste piles that constitute land placement and containment buildings.

Most commenters generally supported these changes as proposed, although a limited number of commenters suggested that EPA revise the definitions of "pile" and "tank" more extensively. EPA may refine those definitions further in separate action at

a later date, but EPA believes that the definitions in today's rule (which are substantially similar to those in the proposed rule) identify the distinctions between the various types of units with sufficient clarity to indicate which are land disposal and which aren't.

Under existing § 264.250, indoor waste piles are required to exclude liquids or material containing free liquids, be protected from surface water run-on, control dispersal of waste by means other than wetting, and not generate leachate through decomposition or other reactions. In contrast, the containment building design and operating standards provide a higher level of containment and are in many ways comparable to RCRA tanks—that is, the hazardous waste is contained during storage or treatment. For example, containment buildings must be fully enclosed, have weight-bearing walls and floor systems designed and constructed of materials to prevent migration of hazardous constituents, be equipped with a secondary containment system in areas where the hazardous waste contains significant quantities of free liquids, and be provided with fugitive dust emission controls. Whereas containment buildings are designed to manage moisture associated with non-liquid wastes, indoor waste piles are precluded from including any water whatsoever.

6. Amendment of § 268.50 Storage Prohibition and Permit Requirements

Under existing § 268.50, the storage of hazardous wastes prohibited from land disposal is also prohibited unless, among other requirements, the waste is stored in tanks or containers on site solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate recovery, treatment, or disposal. At the time EPA adopted this provision, tanks and containers were the only types of storage units that did not also involve land disposal. Under today's rule, there will also be other types of storage units (i.e., containment buildings, subpart X storage units) not involving land disposal. There may also be other types of miscellaneous storage units in the future, which units would be regulated under subpart X. EPA is thus promulgating this rule to conform § 268.50 to include these units.

7. Amendments to the Permit Modification Procedures in § 270.42

Today's rule also amends appendix I of § 270.42 by adding section M which will classify permit modifications involving containment buildings. In addition, today's rule amends the modifications for waste piles by adding an item which classifies a modification to a waste pile to meet the standards for a containment building as a Class 2 modification. EPA believes that many facilities will make modifications to their permitted waste piles to meet the standards for containment buildings. For more information on these permit modification procedures, see 53 FR 37912, September 28, 1988.

EPA is also amending section I of appendix I of § 270.42 to add item I.8, which allows permitted facilities to convert existing waste piles to containment buildings by submitting a Class 2 modification to the Agency. EPA believes that the public should have the opportunity to comment on the modification request, which the Class 2 procedures provide. However, EPA believes that this modification is not significant enough to warrant the Class 3 procedures because the unit is an existing unit, and the technical standards are more stringent for containment buildings than for waste piles.

Some of the hazardous debris treatment processes that were proposed as BDAT under § 268.45 would take place in units that EPA proposed to define as containment buildings. To assist in the development of treatment capacity by permitted facilities to meet the requirements of this rule, the Agency proposed to change the criteria that must be met to grant a temporary authorization. The existing regulation at § 270.42(e)(3)(ii)(B) allows approval of the request if the activity is necessary to treat or store restricted wastes in tanks or containers in accordance with part 268. Today's rule amends these criteria to include the treatment or storage of hazardous debris in containment buildings meeting the requirements in proposed subpart DD, parts 264 and 265.

8. Amendments to the Change During Interim Status Procedures in § 270.72

Section 270.72(b)(6) lifts the reconstruction limit for changes to treat or store in tanks and containers hazardous waste subject to land disposal restrictions imposed by part 268, provided that such changes are made solely for the purpose of complying with part 268. EPA believes that this change should also apply to treatment or storage of hazardous wastes in containment buildings. Today's rule amends § 270.72(b)(6) to make treatment or storage in containment buildings as regulated under subpart DD, parts 264 and 265, exempt from the reconstruction limit.

9. Amendment of § 268.7 Waste Analysis and Recordkeeping Requirements

Today's rule amends § 268.7 Waste Analysis and Recordkeeping requirements to include the management or treatment of prohibited waste in containment buildings.

10. Revision of § 260.10 Definition of Miscellaneous Unit

Today's rule also makes a conforming change to the § 260.10 definition of a miscellaneous unit by excluding containment buildings from that definition.

H. Retrofitting Surface Impoundments Under Land Disposal Restrictions

1. Regulatory Background

On February 4, 1992, EPA proposed a rule reconciling apparent conflicts in statutory language regarding surface impoundments receiving newly identified and listed prohibited hazardous wastes that have not been treated to meet a treatment standard (57 FR 4170). EPA is taking final action on that proposal in this FR Notice because the issue is relevant to wastes (particularly F037/F038) for which standards are being adopted today. (EPA also discussed this issue in the proposal to this rule at 57 FR 999–1000.)

a. *Issue.* EPA has identified a conflict in the Resource Conservation and Recovery Act (RCRA) concerning the deadline by which surface impoundments managing wastes that are both newly identified or listed as hazardous (i.e., identified or listed after the date of enactment of HSWA) and prohibited from land disposal must come into compliance with the minimum technological requirements (MTRs) of section 3004 (o)(1)(A) and 3005(j)(1). The MTRs require surface impoundments to have a double liner with a leak detection system, and a ground-water monitoring system.[1] In a typical situation, an impoundment will be receiving a hazardous, prohibited wastewater or generating a hazardous, prohibited sludge in the impoundment. These wastes typically will not meet treatment standards when placed in impoundments. The statutory conflict arises because one set of provisions states that impoundments can receive

[1] EPA has stated that land disposal facilities newly regulated under subtitle C of RCRA as a result of a newly identified or listed hazardous waste must install a ground-water monitoring system within one year of the effective date of the listing or characteristic rule (55 FR 39409, September 27, 1990). This deadline will not change as a result of this final rule.

untreated prohibited wastes only if they meet MTRs. Moreover, it is assumed that the lack of MTR impoundments creates a shortage of treatment capacity, justifying a variance. A further potential problem exists because normally only MTR impoundments are allowed to receive restricted wastes subject to capacity variances. On the other hand, a different statutory provision allows impoundments up to four years to achieve compliance with MTRs (or to close). The conflict arises if the LDR prohibitions come into play before this four-year period expires.

We now describe the relevant statutory provisions in more detail. Section 3005(j)(6) allows a four-year compliance period for meeting the surface impoundment MTRs after the promulgation of additional listings or characteristics of hazardous waste. At the end of the four-year period, the impoundment must either meet MTRs or cease receiving, treating, or storing hazardous waste (referred to as "closing" in this discussion). (Thus impoundments newly in the system are given the same four years to retrofit or close that existing impoundments receive. Section 3005(j)(1).) Congress thus acknowledged that retrofitting or closure is not a quick process, but rather one that requires time, thus tempering the need to protect the environment with an acknowledgement that there must be a reasonable period for changing operations.[2]

Section 3004(g)(4) requires EPA to prohibit newly identified or listed hazardous wastes from land disposal (i.e., promulgate treatment standards for all such wastes not disposed in no migration units) within six months of the date of the new listing or characteristic. Section 3004(h)(4), which also deals with land disposal restrictions, states that during a national capacity variance (which EPA issues if sufficient treatment capacity is unavailable nationwide) or case-by-case extension period (for individual facilities demonstrating that they are unable to find existing treatment but have a binding contractual commitment to provide treatment capacity), wastes not meeting the treatment standards may be placed in a surface impoundment only if the impoundment is in compliance with the MTRs.[3] *Mobil Oil Corp.* v. *EPA*, 871 F.2d 149 (D.C. Cir. 1989). Finally, section 3005(j)(11) states that only surface impoundments meeting MTRs, and that are dredged annually, may receive prohibited wastes that have not yet met a treatment standard.

As noted above, these provisions raise two sources of potential conflict. The first is how long non-MTR impoundments can continue to receive prohibited wastes (i.e., wastes not meeting a treatment standard and for which there is no capacity variance). Section 3005(j)(6) indicates four years while section 3005(j)(11) does not allow it. A second conflict occurs for impoundments managing wastes granted a national capacity variance or case-by-case extension when treatment standards are promulgated, because it is unclear whether surface impoundments must be in compliance with the MTRs at that time (per section 3004(h)(4)) or four years after the promulgation of the new listing or characteristic.

b. History. This conflict was not apparent when Congress enacted the Hazardous and Solid Waste Amendments of 1984 (HSWA) or when EPA first implemented the land disposal restrictions, even though the earliest land disposal restrictions dates (24 months from the enactment of HSWA for solvents and dioxins and 36 months for the California list wastes) would appear to cut short the November 8, 1988 retrofit deadline (four years after HSWA enactment) for interim status surface impoundments if they received wastes for which EPA granted a capacity variance. The issue did not arise because EPA interpreted section 3004(h) differently at that time; rather than requiring an individual unit receiving restricted waste to meet the MTRs, EPA required only those units within the same facility that were otherwise subject to the MTRs to be in compliance. As a practical matter, that meant that only new, replacement, or expansion units had to meet the MTRs.

In the August 17, 1988 rule promulgating the land disposal restrictions for the First Third Scheduled Wastes (53 FR 31138), EPA changed its interpretation to require individual units to comply with the MTRs. That reinterpretation became effective four years after the enactment of HSWA and was upheld in *Mobil Oil Corp.* v. *EPA*, 871 F.2d 149 (D.C. Cir. 1989). There was no conflict at that time because the four-year retrofitting period ended at the same time that the revised interpretation took effect.

The conflict was mentioned in the Third Third proposal (54 FR 48499, November 22, 1989), which stated that if EPA issues a capacity variance for newly identified or listed hazardous wastes, it would have to reconcile the differences in sections 3005(j)(6) and 3004(h)(4). (The notice did not allude to potential conflicts with section 3005(j)(11) because it was assumed that the lack of MTR impoundments would give rise to circumstances justifying capacity variances, triggering the potential conflict with section 3004(h)(4).) Several commenters responded to this issue. Some stated that section 3005(j)(6) explicitly afforded four years to retrofit surface impoundments newly brought under subtitle C regulation. Another commented that the four years provided to retrofit surface impoundments managing regulated mineral processing wastes may not be adequate, and that the schedule should be determined site-specifically.

Others disagreed, however, that a conflict exists between sections 3004(h)(4) and 3005(j)(6). They argued that: (1) EPA's interpretation of section 3004(h)(4), rather than any inherent flaw in the statute, led to the apparent "conflict," and (2) the general language of section 3004(h)(4) cannot override the specific language of section 3005(j)(6), wherein the issue of newly identified or listed hazardous waste is addressed directly. EPA did not resolve this issue in the final Third Third land disposal restrictions rule, but rather left it for later resolution. EPA is taking this opportunity to resolve the conflict.

2. Agency Interpretation

a. *How long can impoundments continue to be used to receive or generate newly identified or listed hazardous wastes?* The first set of provisions potentially in conflict are 3005(j)(6) and 3005(j)(11). As noted above, one provision allows four years to retrofit or close an impoundment, the other says that only MTR impoundments can receive prohibited wastes not meeting a treatment standard. Once EPA promulgates a treatment standard, the question is whether a non-MTR impoundment can receive prohibited wastewaters, and continue to generate prohibited sludges, i.e., whether these wastes can continue to be land disposed (section 3004(k)) within the non-MTR impoundment, assuming, as is almost

[2] Section 3005(j) is actually a series of deadlines connected with the retrofitting of surface impoundments. For those units that undoubtedly have to retrofit, the time period is four years, while those that may qualify for variances are subject to interim deadlines for application and action on the variance request, and then a period, if the variance is denied, to retrofit within the time remaining in the four-year period. There are also retrofit deadlines for units initially granted variances, but later found to be leaking. These units are given shorter periods (two or three years depending on the variance), but this is appropriate where there is an actual leak.

[3] RCRA sections 3004(h)(2) and 3004(h)(3) restrict the duration of national capacity variances and case-by-case extensions to a maximum of four years. If capacity becomes available sooner, it must be used.

certain, that the wastes do not meet the treatment standard when they are disposed in the impoundment.[4]

As noted below, the same question arises if one assumes that lack of existence of MTR impoundments triggers capacity variances, because § 268.5(h) (codifying section 3004(h) (4)) indicates that only MTR impoundments are eligible to receive the restricted wastes subject to the variance (assuming impoundments disposal).

EPA believes that this set of provisions is in conflict, since any other reading means that Congress gave a four-year window for continued non-MTR impoundment use with one hand, and snatched it away with the other by means of section 3005(j)(11).[5] The Agency is resolving this conflict by allowing interim status surface impoundments a four-year period (from the effective date of the waste identification or listing) to continue using the impoundment to receive prohibited wastewaters and generate prohibited sludges. This allows the period Congress appeared to deem typically necessary to close or retrofit an impoundment (see also section 3005(j)(1) where Congress provided the same four-year period for impoundments managing wastes identified or listed as hazardous on the date of enactment of the 1984 amendments).

Although Congress goal is not to put untreated wastes into non-MTR-compliant surface impoundments, it recognized that MTR compliance cannot be achieved immediately. Although the legislative history does not expressly articulate it, the structure of section 3005(j) shows that Congress thought that the goal of environmental protection (served by retrofitting) needed to be balanced against the goal of avoiding sudden disruptions and capacity losses in waste treatment and disposal that a six-month deadline could cause. Congress felt that four years struck an appropriate balance.

Although EPA recognizes that not all impoundments will take four years to close or retrofit (see 57 FR at 4173–74 (Feb. 4, 1992)), an interpretation that would allow EPA to review individual determinations of whether a full four-year period is needed to close or retrofit (for example, through review of applications for case-by-case capacity extensions) appears unduly disruptive of plant waste management determinations (i.e., EPA or State officials second-guessing determinations of the necessary length of time to close or retrofit), and wasteful of Agency resources as well. In addition, Congress indicated that a four-year window was appropriate. Thus, the Agency is interpreting these provisions to state that non-MTR impoundments can remain operating for four years after the effective date of the waste identification or listing notwithstanding that they are receiving prohibited waste not meeting a treatment standard.[6]

This same potential conflict is raised in duplicative fashion during the period of a national or case-by-case capacity variance. Not only is there the conflict with section 3005(j)(11) as discussed above, but a conflict with section 3004(h)(4) as well, since under that provision (as implemented in section 268.5(h)) only MTR impoundments can receive wastes during the period of a capacity variance. EPA is resolving this conflict by allowing a four-year retrofit period for the same reasons given above. Thus, the Agency reads section 3005(j)(6) as an exception to the general rule of section 3004(h)(4) (and 3005(j)(11)); that is, surface impoundments newly brought into the subtitle C system by a new listing or characteristic have four years to retrofit even if they receive wastes subject to a national capacity variance or case-by-case extension. However, EPA notes that the potential conflict between statutory provisions exists whether or not treatment capacity exists outside of the surface impoundment (see fn. 6).[7]

b. Resolution where treatment capacity exists outside the surface impoundment. If treatment capacity exists outside the surface impoundment, however, a further issue exists with respect to sludges generated within a surface impoundment, since these sludges can be removed for treatment elsewhere. In the January 9, 1992 proposed rule, the Agency proposed to resolve these issues by requiring annual dredging of F037 and F038 sludges, plus requiring clean closure of the unit (assuming the unit would be closed rather than retrofitted). The proposal was premised on the logic that if retrofitted impoundments receiving wastes not meeting a treatment standards had to be dredged annually (because of section 3005(j)(11)), unretrofitted impoundments should be subject to the same standard if there was a means of treating the waste being removed. The proposed clean closure requirement was based on the notion that if treatment capacity exists, it should be used in preference to disposal in a non-MTR impoundment. In the Feb. 4 proposal, EPA also noted a general principle of requiring use of treatment capacity for wastes in section 3005(j)(6) impoundments where such treatment capacity exists. (57 FR 4170.)

Commenters noted that aspects of the proposal did not necessarily make environmental sense. They noted that an annual dredging requirement was unlikely to provide significant environmental benefit because the impoundments were likely to be closed in a short time in any event, when some sludge removal was likely. Before closure, the impoundment would be monitored and subject to corrective action requirements. In addition, an annual dredging requirement could interfere with on-going use of the impoundment. With respect to clean closure, commenters pointed out (correctly) that this would entail removal not only of accumulated sludges but subsurface contaminated soils as well which are not the focus of the treatment requirements, and that forcing clean closure could interfere with otherwise available and potentially more cost-effective types of closure options.

EPA finds many of these comments persuasive and believes that the following interpretation best resolves these issues. First, EPA is not interpreting these provisions as necessitating annual dredging of accumulated sludges. Either the impoundment will close in a short time (no more than four years), or it will be retrofitted and become subject to the annual dredging requirement in section 3005(j)(11) (as implemented by § 268.4(a)(2)(ii)). If the impoundment closes, EPA is interpreting the provisions to allow closure with wastes in place (unless the unit operator chooses to clean close the impoundment). Thus, under this reading, continued use of the impoundment would be allowed during the four-year retrofit/closure period (as explained in section 1 above), use of the impoundment during that time would not be disrupted by a dredging requirement, and the impoundment would be allowed to close with wastes in place. These are the same options that were available to impoundments in 1984 managing wastes already identified or listed as hazardous.

3. Technical Analysis

a. *Introduction.* Owners or operators of surface impoundments managing newly listed or characteristic hazardous wastes have several options for complying with the minimum technological requirements. Facilities may retrofit the surface impoundments with liners and leak detection systems in compliance with the requirements of section 3004(o)(1)(A)(i). Alternatively, facilities may replace their treatment surface impoundments with wastewater treatment tanks regulated under the Clean Water Act or may opt to close the surface impoundments and send the waste off-site.

EPA believes that very few facilities managing newly regulated wastes in surface impoundments will choose to retrofit their impoundments. For example, the Chemical Manufacturers Association (CMA) conducted an informal survey of 582 chemical manufacturing facilities in the fall of 1989 to obtain information about the management of "non-hazardous wastes" in surface impoundments. Twenty-seven facilities reported that 85 surface impoundments would be newly regulated as a result of the Toxicity Characteristic rule (55 FR 11798, March 29, 1990); of these 85, only 9 would be retrofitted with liners and leak detection systems. Replacing surface impoundments with tank systems was the most frequently planned method of compliance for the respondents to this survey. Past experience also indicates that surface impoundment owners or operators are more likely to replace their surface impoundments with tank systems than to retrofit the impoundments. RCRA section 3005(j)(1) required surface impoundments that were in existence and that qualified for interim status on the date of enactment of HSWA to come into compliance with the MTRs by November 8, 1988. Most facilities with surface impoundments replaced their impoundments with tanks in response to this deadline. Less than five percent of these facilities actually retrofitted their surface impoundments.

To support today's rulemaking, EPA undertook an analysis to determine how much time is needed for owners or operators of newly regulated surface impoundments to comply with the MTRs either by replacing the impoundments with wastewater treatment tanks exempt from RCRA subtitle C standards, or by retrofitting the surface impoundments with liners and leak detection systems according to the requirements of section 3004(o)(1)(A)(i). EPA collected information from a variety of sources, including facilities that have implemented these practices in the past or plan to do so in the future (e.g., in response to the TC), tank manufacturers, and engineers. The results were summarized in the proposed rule (57 FR 4170), and are available in the background document.[8]

4. Conclusion

EPA found that the time needed to comply with the MTRs varies considerably based on case-by-case factors (e.g., current waste management practices, land availability) and regional factors (e.g., climate). According to EPA's information sources, six months appears not to be enough time to either retrofit a surface impoundment or replace the impoundment with a wastewater treatment tank. Replacing a surface impoundment with a tank frequently takes two to four years, and retrofitting a surface impoundment frequently takes two to three years.

EPA believes that most interim status surface impoundments managing wastes newly identified or listed as hazardous will be able to comply with the surface impoundment MTRs within four years of the date promulgating the listing or characteristic. Thus, the four-year period allowed in section 3005(j)(6) is a reasonable period within which to come into compliance.

V. Detailed Discussion of Final Rule: Hazardous Debris

A. Overview

The Agency is today promulgating a final rule for the treatment of hazardous debris. Until today, debris destined for land disposal that was contaminated with a prohibited RCRA hazardous waste or that exhibited a prohibited RCRA hazardous characteristic was subject to the treatment standard for that listed waste or characteristic. See, e.g., 55 FR 22649 and RCRA sections 3004 (d)(3) and (e)(3). Although hazardous waste debris (as well as contaminated media) is subject to the LDR prohibitions, there is no requirement that it have the same treatment standards as the wastes with which it is contaminated. Indeed, because hazardous debris may be a matrix significantly different from the underlying prohibited waste, it is appropriate as a technical matter to determine whether different treatment standards were appropriate.

Today, EPA is promulgating treatment standards for hazardous debris prohibited from land disposal. Under today's rule, hazardous debris must be treated by specified technologies based on the type of debris and type of contaminant(s) present or, as an alternative, meet the LDRs for the specified prohibited listed or characteristic waste with which it is contaminated.

EPA has specified a number of BDAT technologies for hazardous debris, with the choice of technology left up to the generator and/or treater managing the waste. The technologies include widely used treatment methods. EPA thus believes that it is preserving in this rule as much flexibility for the treatment of hazardous debris as possible.

[4] The Agency adheres to its consistently held view that wastes generated in surface impoundments are land disposed within the meaning of section 3004(k). The Land Disposal Restrictions for Solvents and Dioxins final rule, which laid the foundation for future Land Disposal Restriction rules, stated that "residuals that exceed the treatment standards must be removed at least annually from the time the waste is first placed in the impoundment" (51 FR 40601, Nov. 7, 1986). Hence, it presupposed that sludges generated in surface impoundments would be regulated by the rule. This presupposition is also apparent at 53 FR 17581, Aug. 17, 1988, and 54 FR 26598, June 23, 1989. Certainly, generation of a sludge in an impoundment fits the definition of land disposal in section 3004(k): "any placement of such hazardous waste in a * * * surface impoundment * * *" In addition, since sludges are virtually never generated outside of impoundments and then put into them, any construction that sludges generated in impoundments are not also disposed in them would result in the overwhelming majority of impoundments managing hazardous wastes being outside the scope of the land disposal restrictions. This would undermine a principal Congressional purpose, since impoundments are singled out as the most environmentally adverse form of hazardous waste management unit. See, e.g., RCRA section 1002(b)(7); *CMA* v. *EPA*, 9 F.2d 158 (D.C. Cir. 1990). EPA has consistently taken into account the volumes of sludges generated in surface impoundments in the capacity determinations required for RCRA section 3004(h) (53 FR 17607, May 17, 1988; 53 FR 31191, Aug. 17, 1988; 54 FR 26636, June 23, 1989; 54 FR 48471, Nov. 22, 1989; and 55 FR 22832, June 1, 1990).

[5] The Agency does not believe it fruitful to argue about which provision is more specific. One is more specific with regard to dealing with newly listed waste, but the other is more specific in addressing the relationship of impoundments and the land disposal restriction provisions.

[6] As noted above, another way of viewing this question is to say that the conditions for some form of treatment capacity variance are satisfied because even if treatment capacity exists outside the surface impoundment, wastes must continue to be land disposed in the impoundment for some period of time while the impoundment is closed or retrofitted. EPA would give the same answer (i.e., four years of continued use) if the question were conceptualized in terms of capacity variances.

[7] Of course, prohibited sludges generated outside of impoundments could not be managed in a non-MTR impoundment in any case. If treatment capacity is available for such sludges, it must be utilized. If treatment capacity is unavailable (i.e., there is a capacity variance in place for such wastes), the wastes must be disposed in an MTR landfill, or impoundment, or some other type of land disposal units such as land treatment (§ 268.5(h)).

[8] It should be noted that the potential statutory conflict at issue in this rulemaking is most immediately relevant to wastes newly regulated as a result of the Toxicity Characteristic (TC) rule (55 FR 11798, March 29, 1990). According to the regulatory impact analysis for the TC, about 730,000,000 metric tons per year of wastewaters managed in surface impoundments at over 2,000 facilities are estimated to exhibit the TC (U.S. EPA, OSW, U.S. EPA Background Document, Toxicity Characteristic Regulatory Impact Analysis, Final Report, March 1990). This potential conflict will also arise with respect to all future newly identified or listed hazardous wastes; however, the TC rule is used as an example throughout this section.

Prohibited hazardous debris is defined generally as solid material (that is not a process waste) having a particle size of 60 mm or larger and that is intended for land disposal and exhibits a prohibited characteristic of hazardous waste or that is contaminated with a prohibited listed hazardous waste. Hazardous debris must be treated by one of the specified treatment technologies for each "contaminant subject to treatment" defined as: (1) The BDAT constituents for the listed waste that are subject to land disposal restriction standards (as found in § 268.41 and 268.43); and (2) the RCRA hazardous waste constituent(s) for which the hazardous debris fails the Extraction Procedure toxicity characteristic, in addition to any other characteristic which causes the debris to be hazardous (i.e., ignitability, reactivity). As an alternative, the generator of the hazardous debris may choose to treat the hazardous debris to the existing waste-specific treatment standards for the waste contaminating the debris. However, in choosing this alternative, the generator or treater would be required to sample and analyze the treated debris to ensure compliance with the treatment standards prior to disposal in a Subtitle C land disposal unit.

To ensure effective treatment, the treatment unit would be required to meet performance standards or design and operating conditions specified in the rule. In addition, the treatment unit would generally be subject to the Part 264 and 265 standards for treatment facilities to ensure protection of human health and the environment.

The rule addresses not only the issue of when hazardous debris is sufficiently treated, but the further question of when it is a hazardous waste. Under the rule, treated hazardous debris would be excluded from the definition of hazardous waste provided that: (1) The debris is treated to the performance or design and operating standards by an extraction or destruction technology rather than an immobilization technology [9]; and (2) the treated debris does not exhibit a characteristic of hazardous waste. If an immobilization technology is used, the treated debris would not be automatically deemed a nonhazardous waste. In addition, the Agency could determine on a case-by-case basis under today's rule that debris no longer "contains" hazardous waste and is excluded from Subtitle 6 regulation.

Residuals generated by the treatment of hazardous debris are subject to the numerical treatment standards for the waste contaminating the debris.

B. Definitions of Debris and Hazardous Debris

1. Definition of Debris

EPA is today defining debris as solid material exceeding 60 mm (2.5 inch) particle size that is: (1) A manufactured object; or (2) plant or animal matter; or (3) natural geologic material (e.g., cobbles and boulders), except that any material for which a specific treatment standard is provided in Subpart D, part 268, is not debris.[10] A mixture of debris and other material such as soil or sludge is also subject to regulation as debris if the mixture is comprised primarily of debris by volume, based on visual inspection. Process residuals such as smelter slag and residues from the treatment of waste (e.g., incinerator ash), wastewater, sludges, or air emissions residues (e.g., collected particulate matter) are not debris. We discuss below that debris must be intended for discard (i.e., rather than continued use), that debris must be a solid material, the rationale for selecting a 60 mm particle size criterion for debris (i.e., as opposed to the 9.5 mm particle size proposed) and for applying the size criterion to all debris (i.e., not just to geologic materials as proposed), the rationale for regulating as debris mixtures of primarily debris and other materials, the rationale for not regulating process residuals as debris, and the rationale for regulating nonempty containers as hazardous waste subject to existing LDRs rather than as debris.

a. *Debris Must Be Discarded or Intended for Discard.* Debris must of course be either a solid waste or media (e.g., boulders) that is discarded or intended for discard to be subject to the treatment standards in today's rule. Those commenters on the proposed rule expressing concern that the proposed rule in some way vitiated (or was intended to vitiate) this basic principle were mistaken. This means that such materials that might at some later time become debris, such as equipment or building structures, but that are still in use are not subject to the treatment standards. Such in-use material is not a solid waste because it has not been discarded or intended for discard, as these terms are used in § 261.33 (i.e., likely abandoned, as defined in § 261.2 (a)(2)(i) and (b))

Media debris (e.g., boulders) is also not subject to regulation as solid waste unless discarded or intended for discard and so is not automatically subject to the treatment standards.

Once debris becomes a solid waste by virtue of being discarded (including media debris that becomes subject to regulation as solid waste by virtue of being discarded), it is not necessarily subject to the treatment standards. For example, contaminated debris that is not actively managed after the effective date of the prohibitions (i.e., the effective date of the LDRs for the hazardous waste contaminating the debris) would not be subject to the standards. See 53 FR 31148 (Aug. 17, 1988). On the other hand, debris which is contaminated with hazardous waste disposed before the hazardous waste listing effective date and which is actively managed is subject to the prohibitions and so would have to be treated to satisfy the treatment standards promulgated today before the debris could be land disposed (assuming disposal will not occur in a no-migration unit). *Chemical Waste Management* v. *EPA*, 869 F. 2d 1526 (D.C. Cir. 1989).

b. *Debris Must Be a Solid Material.* The rule defines debris as a "solid material." This means solid in a literal sense as defined in a common dictionary. A solid material is a material that retains its volume at room temperature without the need for support by a container. Examples of solid materials that are debris if intended for discard and if their particle size is 60 mm (2.5 inches) or greater include: (1) Glass; (2) concrete (excluding cementitious or pozzolanic stabilized hazardous wastes); (3) masonry and refractory bricks; (4) nonintact containers [11] e.g., crushed drums); (5) tanks; (6) pipes, valves, appliances, or industrial equipment; (7) scrap metal (as defined in 40 CFR 261.1(c)(6)); (8) animal carcasses; (9) tree stumps and other plant matter; (10) rock (e.g., cobbles and boulders); and (11) paper, plastic, and rubber. Not only is defining debris as solid material in accord with the common-sense view of what debris is, but, more importantly, it is geared to the treatment standards adopted today that ensure effective decontamination of solid materials by removal or destruction of hazardous waste. Clearly, if a liquid could be considered debris, the concept of cleaning off the outer surface to remove contamination does not make sense.[12]

Even though debris must be a solid material, it may contain or be mixed with free liquids.[13] The liquids may be waste or ground or surface water that may be entrapped in the debris (e.g., in partially crushed containers (see discussion below on regulation of containers)) or may be still oozing from the debris if the debris was newly generated or newly excavated from a remediation site. (If liquids separate from hazardous debris prior to treatment of the debris, they must be managed as hazardous waste.) Liquids that are entrapped in debris will be effectively treated under today's treatment standards for extraction or destruction technologies. If an extraction technology is used, the toxic constituents in the liquid will be removed from the debris as a treatment residue and is subject to the LDRs for the waste contaminating the debris. If a destruction technology is used, the toxic constituents in the liquid should be destroyed.

We note, however, that debris that is immobilized prior to land filling may not contain free liquids as provided by §§ 264.314 and 265.314. Thus, free liquids (including liquids in crushed containers) cannot be present in debris that is macroencapsulated or sealed, and cannot be present in debris that has been micorencapsulated.

c. *Debris Has a Particle Size Larger Than 60 mm.* Today's rule defines debris as solid material with a particle size of 60 mm (2.5 inches) or greater. We discuss below the rationale for increasing the particle size to 60 mm from the proposed 9.5 mm particle size, the rationale for applying the size criterion to all debris, not just to geologic matter as proposed, the rationale for defining 60 mm or larger clumps of fine-grained materials (e.g., clumps of compacted clay) as nondebris material, and how the particle size criterion is to be implemented.

(1) Rationale for Increasing the Particle Size of Debris From 9.5 mm to 60 mm. The Agency is today defining debris as solid material with a particle size of 60 mm (2.5 inches) or greater for a number of reasons: (a) Fine grain materials (e.g., soil, glass cullet) are not amenable to the surface removal technologies specified in today's rule and are not commonly thought of as debris; (b) fine grain materials are likely to be amenable to the treatment technologies that were the basis for the LDRs for the waste contaminating the material; (c) fine grain materials, unlike large particle size materials, can be reasonably sampled for analysis to document compliance with the concentration-based LDRs for the waste contaminating the material; (d) material normally considered to be soil should be subject to the Agency's planned LDRs for contaminated soil rather than defined as debris [14]; (e) the selection of a 60 mm particle size criterion is within the range of reasonable particle sizes the Agency could have selected for defining debris; and (f) many commenters suggested a larger particle size, and the only commenters that suggested a particular size suggested 60 mm.

We note that a number of commenters suggested that the Agency consider raising the particle size breakpoint as the Agency is doing here. Two commenters suggested an alternative sieve size of 60 mm, stating that existing soil-washing equipment such as rotary screens and wet vibratory screens are capable of handling particles sizes of several inches, and the suggested 60 mm cut-off size would result in more soil being subject to the existing LDRs which require sampling and analysis to document compliance with concentration-based treatment standards.

While the Agency believes that it could have selected other particle sizes, the Agency selected the 60 mm (2.5 inch) particle size from the range of 9.5 mm (⅜ inch) to 200 mm (8 inches) because: (1) It is a commonly used sieve size that is commercially available, (2) it would define as soil pebbles and smaller particles, and define as debris cobbles and boulders [15] in accord both with common understanding and with materials most amenable to effective treatment by the methods adopted today; and (3) it meets the criteria discussed above (e.g., smaller particle size material can be readily sampled to document compliance with the numerical LDR treatment standards for the waste contaminating the material).[16] In addition, this size object is normally readily amenable to effective treatment by the methods specified in today's rule.

(2) Rationale for Applying the Particle Size Criterion to All Debris. The Agency has broadened the particle size test to apply to all debris, not just to geologic debris as proposed. We believe that the reasons enumerated above for increasing the particle size to 60 mm apply equally to applying the particle size to all debris (e.g., small particle size objects—e.g., glass, metal fragments—can be readily sampled representatively to document compliance with the LDRs for the waste contaminating the material).

(3) Compacted Clumps of Fine Grained Materials are not Defined as Debris. The Agency is basing the size criterion on the particle size of the solid material rather than the sieve size to ensure that 60 mm (or larger) compacted clumps of materials with a particle size less than 60 mm are not defined as debris. The most common example is clayey soil. Clay particles are extremely cohesive and can form clumps during normal excavation and handling operations. The contaminated debris treatment methods are not intended to clean clumps of clay. Clumps of agglomerated clay soil are subject to the treatment standards for the waste contaminating the soil.

In addition, the Agency is concerned that generators may have the incentive to intentionally agglomerate small particle size materials (e.g., soil or even manufactured materials) so that they would meet the definition of debris and so be excluded from regulation under subtitle C upon treatment by an extraction or destruction technology. If such contaminated materials were not

[9] In the Phase II land disposal restrictions rule, the Agency will reopen and request comment on the issue of whether immobilized debris should be excluded from Subtitle C regulation. (See discussion in Section V.D.2.)

[10] For example, lead acid or cadmium batteries are not debris because they are subject to specific treatment standards under § 268.42.

[11] See discussion in section V.B.1.f of the text regarding regulation of intact and nonintact containers.

[12] While most of the debris treatment methods are extraction methods, some methods destroy the hazardous constituents; although these would be applicable to liquid material, most of the treatment methods simply remove the contamination from the debris for subsequent detoxification treatment.

[13] To determine otherwise would result in large quantities of solid materials being subject to the existing LDRs for the waste contaminating the materials. Those solid materials would be very difficult to sample representatively to document compliance with the LDRs. Further, the solid materials would be readily amenable to the debris treatment standards promulgated today notwithstanding the presence of free liquids, and hence appropriately classified as debris.

[14] We note that numerous commenters were concerned that the proposed particle size criterion of 9.5 mm would inappropriately define most soil as debris. (We note further that the proposed rule could have been interpreted to define as debris geologic material that was comprised of only one particle (e.g., a rock) with a particle size of 9.5 mm or greater. Thus, fine grain soil containing one 9.5 mm or greater sized rock could have been considered debris. The final rule addresses mixtures by defining as debris mixtures of primarily debris with other materials. See discussion in the text in Section V.B.1.d).

[15] See the May 11, 1992, memorandum from Kerry Rice, Radian to Mark Mercer, EPA, entitled "Particle Size Definitions and Sieve Sizes"; and the May 18, 1992, memorandum from Peter Shields, Radian, to Mark Mercer, EPA, entitled "Sieves with Openings Greater than Four Inches".

[16] We note that the Agency is considering proposing Phase II land disposal restrictions that would establish treatment standards for contaminated soil. In that proposal, the Agency is considering requesting comment in particular on whether soils with a particle size between 9.5 mm and 60 mm can be effectively treated under those proposed standards.

regulated as debris, they would be subject to the LDRs for the waste contaminating them and would remain subject to subtitle C regulation after treatment. Basing the size criterion on particle size rather than sieve size precludes the potential for such sham activities.

(4) Implementation of the Particle Size Criterion. To make today's rule workable, equipment operators need to be able to determine quickly whether material being remediated is debris or nondebris (e.g., soil, waste). In some cases, the determination will vary from one front end loader bucketfull of material to another. Accordingly, the Agency intends for the size criterion to be implemented by visual observation. Screening is not required. If screening is used, however, the screen may be either a square grid with openings 60 mm on a side or a circular grid with circles with a 60 mm diameter.

(d) Waste for Which a Specific Treatment Standard Has Been Established is not Debris. There is one further exception to this definition of debris. EPA is indicating that debris-like material for which the Agency has promulgated a specific treatment standard is not considered to be debris. The reason is that the Agency will have determined that specific treatment standards are appropriate for the material, rather than the assortment of technologies adopted for debris generally. See 57 FR 983 c.3 (Jan. 9, 1992).

The chief examples of a material subject to a specific treatment standard rather than the general debris standards are lead acid batteries and cadmium batteries. EPA has promulgated a treatment standard of metal recovery for each of these materials. See § 268.42. Thus, this more specific treatment standard takes precedence over the more general debris standard adopted today.[17]

d. Mixtures of Debris with Other Materials are Subject to Regulation as Debris if Debris is the Primary Material Present. A further issue needing to be addressed is the status of mixtures of debris and other materials such as soils or sludge. This situation arises often, particularly in remedial situations where debris is rarely present in a pristine state. Since the treatment standards for debris and other materials—sludge or contaminated soil—differ, the issue of classification is an important one. In developing a means of classification, the Agency on the one hand is seeking to prevent the debris classification from invariably overriding the treatment standards for other hazardous wastes. On the other hand, it is important to have a means of classification that is easy to apply by equipment operators in the field.

The Agency has therefore decided to classify [18] as debris any mixture where the debris portion comprises the largest amount of material present by volume, to be determined by visual inspection.[19] Thus, for example, if upon examination, a mixture of cobbles (i.e., with a particle size of 60 mm or more), soil, and sludge is comprised mostly of cobbles, the mixture is classified as debris. After being treated by one of the treatment methods for debris promulgated in today's rule, it could then be land disposed. (Residues from applying the treatment method could be land disposed after being treated to meet the treatment standards for the prohibited waste contaminating the debris.)

The definition of debris encompasses this classification principle by stating that "A mixture of debris and other material such as soil or sludge is also debris if the mixture is comprised primarily of debris by volume, based on visual inspection." It should be clear from this discussion that the rule does not require debris and nondebris materials to be separated prior to treatment (an unintended implication of the proposed rule). Rather, mixtures are either classified as debris or some other type of waste treatability group according to the classification test discussed above.

We note that the "primary material" test for classifying debris does not apply to intact, nonempty containers. Given that such containers are not debris (see discussion below in section V.B.1.f) and can be readily separated from debris (or mixtures of debris and other materials), they are not considered in applying the "primary material" test. Consequently, intact, nonempty containers must not be included in making the volume determinations to classify mixtures of debris.

There is one further point to be made. Although EPA is classifying mixtures that are predominantly debris as debris, this does not mean that debris can be deliberately mixed with other wastes in order to change their treatment classification. Such mixing is impermissible dilution under § 268.3 since it is a substitute for adequate treatment. See also 53 FR 31145 (Aug. 17, 1988); dilution to change treatability groups is ordinarily impermissible. In addition, such situations where debris is used merely to dilute another prohibited waste, the mixture would remain subject to the most stringent treatment standard of any waste that is part of the mixture. See § 268.41(b).

e. *Process Residuals Are Not Debris.* Today's definition of debris explicitly excludes process residuals by stating: "Process residuals such as smelter slag and residues from the treatment of waste (e.g., incinerator ash), wastewater, sludges, or air emissions residues (e.g., collected particulate matter) are not debris." The Agency believes that debris should be limited to manufactured objects (e.g., metal, glass) and naturally occurring objects (e.g., boulders, tree stumps). The Agency developed the treatment standards generally to ensure effective treatment of hazardous waste contaminating an object, rather than effective treatment of a large particle size hazardous waste such as slag.[20]

Several commenters requested clarification as to what the Agency meant in the proposed rule by excluding from the definition of debris "solids that are listed wastes or can be identified as being residues from treatment of wastes and/or wastewaters." The commenters felt that it was unclear whether this phrase exempts from the definition of debris only pollution control residues, or material such as metal filters, ceramic column packing, or discarded pollution control equipment. Commenters suggested that EPA clarify, through examples, that discarded industrial equipment (such as filters, pumps, etc.) would be included in the definition of

[17] A number of commenters questioned the jurisdictional basis for regulating battery plates and groups from lead acid batteries as "solid wastes" subject to subtitle C regulation. EPA adheres to the response set out at 57 FR 960–961 in the proposed rule.

[18] We note that although such mixtures are classified as debris and are subject to the debris treatment standards, if the nondebris materials are separated from the debris prior to treatment by a specified technology, the separated material is no longer classified as debris. If the separated material is a hazardous waste (or soil contaminated with a hazardous waste), it is subject to the waste-specific treatment standards. When treatment residue (i.e., soil, waste, or other nondebris material) is separated from treated debris as required by today's debris standards for extraction or destruction technologies, the residue is subject to the waste-specific standards for the waste contaminating the debris.

[19] Some materials (e.g., soil) mixed with debris may contain free liquids that may still be oozing from the material. The volume of such entrapped liquids need not be considered in determining whether the mixture is primarily debris because it is impracticable to determine the volume of such liquids by visual inspection.

[20] We note that previous debris definitions (see § 268.2(g)) considered "slag" as debris. The Agency has reconsidered this issue and has determined the slag is not debris because it is not the type of material for which today's debris treatment standards were developed—objects contaminated (generally surficially) with hazardous waste.

debris even if the equipment was used to treat wastes or wastewaters. The commenters are correct. A discarded pump or filter used to treat a waste is debris, but the waste pumped or filtered is not debris. Although some filtered or pumped waste will contaminate the pump or filter (indeed, that is the basis for subjecting the filter or pump to the treatment standards), the contaminated pump or filter will virtually always be comprised primarily of debris rather than waste and so would be classified as debris.

f. *Intact Containers Are Not Debris.* A number of commenters requested comment on the relationship between the proposed treatment standards for debris and the so-called empty container rule in § 261.7. That rule states in essence that with respect to containers holding hazardous waste, what is regulated is the hazardous waste in the container and not the container itself. Thus, empty containers are not regulated, and the hazardous wastes in nonempty containers are. An empty container is one from which all hazardous wastes have been removed using practices commonly utilized for waste removal, and in which not more than 2.5 centimeters of waste remains. (Slightly different tests apply to containers holding acutely hazardous wastes.)

Since containers are potentially a form of debris, there is a question whether either empty or nonempty containers are subject to the treatment standards for debris notwithstanding § 261.7. EPA is indicating in this rule that the debris treatment standards do not override the empty container rule, so that rule remains in effect. EPA is taking this step largely because it did not propose the issue for comment, and any fundamental changes to the empty container rule merit fuller public participation than afforded here. In addition, EPA has not fully studied the implications of making changes in the empty container rule to accommodate regulations under the land disposal prohibitions program.

Today's final rule thus indicates that intact containers are never considered to be debris, and thus would never be subject to treatment standards for debris. Intact containers are either empty or nonempty. If empty they are not subject to regulation, as provided by § 261.7(a)(1). If nonempty, the hazardous waste within the container is subject to the land disposal prohibitions (as well as the rest of subtitle C regulations). EPA also does not consider intact tanks to be debris, so that any hazardous wastes in tanks would be subject to the standards for those wastes, not (potentially) to treatment standards for debris.

It should be noted, however, that EPA is reading the empty container rule in § 261.7 to apply to intact containers. The Agency is doing so because the rule was clearly intended for devices that function as containers, not for crumpled drums that are not easily emptied by normal means. See § 261.7(b)(1)(i). Nonfunctional containers are more naturally classifiable as debris and the treatment standards adopted today are appropriate for such damaged containers being disposed.

By "intact container", the Agency means a container that can still function as a container. The Agency believes that a container that is unbroken and still retains at least 75% of its original holding capacity (i.e., has not been crushed more than 25%) is still intact. The Agency selected the 75% criterion because: (1) It is within a reasonable range of 50% to 90%; (2) selecting an original volume criterion on the high end of the range (e.g., 90%) would result in containers containing large quantities of waste being considered debris even though the containers could be readily separated from debris; and (3) selecting an original volume criterion on the low end of the range (e.g., 50%) would subject the waste in containers that have been severely crushed to the treatment standards for the waste. This would require removal of the waste from the container for treatment which may be impracticable for severely crushed containers.

Finally, it should be noted that by observing the empty container rule, EPA is creating a limited exception to the nonsegregation principle discussed above. In situations where intact containers are mixed with true debris (i.e., materials classified as debris under today's rule), the intact containers thus would have to be removed and managed separately.

The following example indicates how these principles would apply. At a remediation site, ruptured drums are discovered still containing some prohibited hazardous waste. Mixed in with these drums are other drums some of which are not significantly damaged or crumpled and all still contain prohibited hazardous wastes. All of these drums are going to be disposed of off site.

Under today's rule, the ruptured drums are debris (broken or ruptured containers are always debris if contaminated with prohibited waste) and cannot be land disposed until they are treated by one of the debris treatment methods. If hazardous waste is removed from the drum during treatment, the waste, like all treatment residues, is subject to the treatment standards for the prohibited waste. With respect to the unruptured drums, those that are intact (i.e., those that retain at least 75% of their original volume) are nonempty containers under § 261.7. The waste in these drums is subject to the treatment standards for the prohibited waste. Those that are not intact (i.e., those that retain less than 75% of their original volume) are debris.

2. Definition of Hazardous Debris

a. *Which Debris is Hazardous, and of this Debris, Which is Prohibited?* This rule applies only to debris that is subject to subtitle C regulation when it is generated. As EPA proposed, this means: (1) Debris that contains listed hazardous wastes (either on the debris surface, or in its interstices, such as pore structure); or (2) debris that exhibits a characteristic of hazardous. See 57 FR 983. To be prohibited, and hence subject to the treatment standards adopted today, the debris would have to be contaminated with listed wastes that are also prohibited, or exhibit a prohibited characteristic. Thus, only debris that is contaminated with a listed waste for which EPA has established a treatment standard, and debris exhibiting the characteristics of ignitability, corrosivity, reactivity, or EP toxicity (plus exhibiting the TC characteristic, since the debris must still be a hazardous waste) are subject to the treatment standards adopted today. (Most of these debris wastes, of course, are already prohibited by virtue of previous rulemakings; only debris contaminated exclusively with the newly listed wastes for which EPA is adopting treatment standards today would be newly prohibited under today's rule.)

b. *Codification of Contained in Principle for Debris.* In adopting the definition that debris containing listed hazardous waste is regulated under subtitle C, EPA is codifying the "contained in" principle, which has heretofore served as an interpretive gloss on the existing mixture and derived from rules. See 57 FR 983, *CMA v. EPA*, 869 F. 2d 1526 (D.C. Cir. 1989). As explained at proposal, *id.* at 986, the contained in concept will apply to both media and nonmedia debris (an approach with unanimous support in the public comments).

Furthermore, EPA is also codifying the corollary part of the contained in principle: That debris which no longer "contains" listed hazardous waste

would no longer be subject to subtitle C regulation, provided that it does not exhibit any hazardous waste characteristic. This involves a case-by-case determination by EPA, made upon request, that debris does not contain hazardous waste at significant levels, taking into consideration such factors as site hydrogeology and potential exposure pathways, but excluding management practices.[21] Debris found not to contain hazardous waste (and not exhibiting a hazardous waste characteristic) would not be subject to further subtitle C regulation, and so could be land disposed without further treatment. In addition, these levels could be achieved by any form of treatment other than impermissible dilution, and thus need not result from application of the debris treatment methods adopted today. *Id.* at 983-84.

3. Relation of Today's Rule to the Hazardous Waste Identification Rule

On May 20, 1992, EPA proposed comprehensive revisions to the regulatory definition of hazardous waste, asking for comment on a series of options for redefining what a hazardous waste is. See 57 FR 21450. These rules could affect which debris is considered to be hazardous when it is generated (both through modifications to the hazardous waste definitions and the contained in principle), and so could affect both the definition of hazardous debris used in this rule, and possibly the extent such debris must be treated by prescribed methods of treatment. EPA has attempted to note in each of the sections below the potential overlap of this proposed rule on the rules adopted today.

Although the Hazardous Waste Identification Rule (HWIR) when promulgated will affect the definition of hazardous debris subject to today's treatment standards, the Agency believes that it is nonetheless appropriate to make the treatment standards effective immediately upon promulgation. The Agency does not believe that today's rule will place an unreasonable burden on generators of hazardous debris that may subsequently be determined by HWIR not to be hazardous because the Agency has provided a national, case-by-case capacity variance for hazardous debris that defers the effective date of today's treatment standards until May 8, 1993. By that time, the Agency believes that the final HWIR will be promulgated and the treatment of debris that HWIR determines is no longer hazardous will be precluded.

C. Treatment Standards for Hazardous Debris

1. Overview

In this section, we discuss: (1) The treatment technologies proposed as BDAT; (2) the contaminants subject to treatment; (3) the debris treatment standards; (4) alternative LDR standard; (5) performance standards that must be met to ensure effective treatment and to comply with the BDAT standards; (6) contaminant restrictions for certain treatment methods; (7) use of treatment trains for multiple contaminants and debris types; (8) treatment of characteristic debris; (9) standards for debris that is inherently toxic (i.e., it fails the TC and EP for metal contamination because it is fabricated from a toxic metal); (10) relationship of TSCA PCB rules to today's rule; (11) relationship of existing agency standards for asbestos to today's rule; (12) special requirements for radioactive debris; and (13) implementation of treatment standards.

2. BDAT Debris Treatment Technologies

a. *Identification of BDAT Treatment Technologies.* The Agency considered a treatment technology to be "available" if the technology itself or the services of the technology are able to be purchased, and the technology substantially diminishes the toxicity of the waste or reduces the likelihood of migration of the waste's hazardous constituents. The technologies that the Agency has identified as best demonstrated available technologies (BDAT) have been used to treat hazardous debris at Superfund sites, to remove radioactive metals from debris, to treat debris-like material contaminated with compounds similar to one or more of the compounds in the debris contaminant categories or, based on engineering judgment, are applicable to debris.

The Agency considered a technology to be demonstrated for a particular waste if the technology currently is in commercial operation for treatment of the waste or constituent of interest or similar wastes or constituents of interest, including wastes not regulated under RCRA, such as PCBs and radioactive waste. The Agency identified demonstrated technologies either through a review of the literature in which current waste treatment practices were discussed, or through information provided by specific facilities currently treating the waste or similar wastes. EPA also considered as demonstrated technologies those used to separate or otherwise process chemicals and other materials which are similar to the waste or constituent of interest.

The Agency also reviewed the properties of debris which may directly affect the efficiency of treatment technologies. Debris characteristics which may affect the performance or effectiveness of treatment technologies to clean various types of debris include:

- Destructibility;
- Hardness and brittleness;
- Moisture content;
- Permeability;
- Size, homogeneity, and location (in situ versus ex situ);
- Surface texture; and
- Total organic carbon (TOC).

Under today's rule, the Agency has identified the following 17 treatment technologies as BDAT for hazardous debris:

- Extraction Technologies:

—Physical Extraction
—Abrasive blasting
—Scarification, grinding, and planing
—Spalling
—Vibratory finishing
—High pressure steam and water sprays
—Chemical Extraction
—Water washing and spraying
—Liquid phase solvent extraction
—Vapor phase solvent extraction
—Thermal Extraction
—High temperature metals recovery
—Thermal desorption

- Destruction Technologies

—Biodegradation
—Chemical oxidation
—Chemical reduction
—Thermal destruction

- Immobilization Technologies

—Macroencapsulation
—Microencapsulation
—Sealing

Summary descriptions of these technologies are presented in Appendix I of today's preamble and treatment performance standards for each technology are prescribed in Table I, § 268.45. Further, detailed information on the various treatment technologies is presented in the Hazardous Debris Final Rule Technical Support Document.

b. *Changes in Identification of BDAT Technologies From Proposal.* Based on public comment and the Agency's further evaluation, the Agency has determined that two debris treatment technologies proposed as BDAT—electropolishing and ultraviolet radiation—are not BDAT, and an additional technology not proposed as BDAT—high temperature metal recovery—is, in fact, BDAT for hazardous debris. The basis for these determinations is discussed below.

(1) Electropolishing Is Not BDAT. The Agency has determined that electropolishing is not BDAT for hazardous debris because of concerns that the technology is intended primarily for smoothing clean metal parts. Painted or contaminated metal parts might not be effectively treated by this method. A contaminating organic waste or paint could electrically insulate the surface from the solution and prevent surface removal of contaminants.

(2) Ultraviolet Radiation Is Not BDAT. The Agency deleted ultraviolet radiation treatment from the list of BDAT technologies for hazardous debris because of difficulties of specifying performance standards that would ensure effective treatment in all cases. This technology is primarily intended for liquid waste treatment where the fluid is passed by a ultraviolet radiation source in a thin stream. This approach is designed to ensure that the ultraviolet light reaches all of the toxic molecules and detoxifies them. If the technology were to be applied to hazardous debris, it would be virtually impossible to ensure that all toxic molecules contaminating the debris were adequately radiated. Sludge and soil caked onto debris would preclude radiation of both inner layers of caked material and the debris surface. Further, even for debris that is relatively free of caked-on materials, the debris would have to be systematically turned to expose all contaminated surfaces to the radiation. The use of sunlight to provide the ultraviolet radiation as proposed as an alternative to an artificial source poses even greater problems of ensuring exposure to ultraviolet radiation at levels that would ensure effective treatment. The Agency's effort to provide for innovative debris treatment at proposal simply went too far.

(3) High Temperature Metal Recovery Is BDAT. The Agency has added high temperature metal recovery (HTMR) to the list of acceptable debris treatment technologies. It is a very effective method for treatment of recoverable metal values in both metal debris and debris that is contaminated with metal-bearing hazardous waste. The Agency did not include HTMR as BDAT at proposal simply because of oversight. Several commenters suggested that we include this method, and the Agency agrees.

We note that HTMR can also effectively treat toxic organic contaminants. If the debris contains more than a total of 500 ppm of toxic organic compounds listed in appendix VIII, part 261, the HTMR facility is subject to the Boiler and Industrial Furnace (BIF) Rule. See § 266.100. The HTMR would be subject to the same controls on organic emissions [22] as other BIFs burning hazardous waste. When the total concentration of toxic organic compounds in the waste is less than 500 ppm, the Agency believes that any emissions of organic compounds attributable to those organic compounds will not pose a hazard to human health and the environment.

3. Contaminants Subject to Treatment

Today's rule requires hazardous debris to be treated by one of the specified technologies [23] for each "contaminant subject to treatment" defined as: (1) the BDAT constituents identified in §§ 268.41 and 268.43 for the listed waste contaminating the debris that are present at detectable levels; [24] (2) the constituents for which the debris exhibits Extraction Procedure toxicity; and (3) cyanide or sulfide if debris exhibits reactivity due to the presence of those constituents. As discussed in section V.C.5 below, although debris may contain several contaminants subject to treatment, the treatment standards generally do not require treatment by multiple technologies (i.e., a treatment train). This is because many of the specified technologies effectively treat various types of contaminants (e.g., metals, aromatic and aliphatic organic compounds, halogenated and nonhalogenated organic compounds).

In the proposed rule, the Agency proposed a broader definition of "contaminants subject to treatment" that would have included constituents on appendix VIII, part 261, that the generator could reasonably know may contaminate the debris at detectable levels. Further, the Agency requested comment on whether the rule should require that debris that is hazardous solely because it exhibits a characteristic (i.e., toxicity, ignitability, or reactivity) be treated for all constituents on appendix VIII, part 261, that the generator could reasonably know may contaminate the debris at detectable levels. The Agency addressed these provisions at proposal because of concern that all toxic constituents present be effectively treated given that debris treated by an extraction or destruction technology and that does not exhibit a characteristic is excluded from subtitle C regulation.

We have determined, however, that neither of these provisions is likely to be necessary to ensure effective treatment of hazardous debris for a number of reasons. Thus, these provisions are not included in today's rule. First, we believe that enough contaminants subject to treatment will be identified for most debris to ensure effective treatment of other toxic contaminants that may be present. Given that most debris is generated by remediation, the debris is often associated with a variety of wastes that will result in a number of contaminants being designated contaminants subject to treatment—either because listed wastes or known to be present, or more likely, because the debris fails the EP [25] for one or more constituents. For example, it is highly unlikely that debris will exhibit only ignitability or reactivity and not fail the TC or be contaminated with a listed waste (and thus, require only deactivation of the ignitability or reactivity characteristic under today's rule) if, in fact, toxic constituents are present at significant levels. Given that most of the debris treatment technologies specified in today's rule are not restricted to specific contaminants other than metal vs. nonmetal contaminants and that many technologies (e.g., surface removal, incineration) have no contaminant restrictions (see section V.C.5 below), the designation of a few contaminants subject to treatment should be sufficient to ensure effective treatment of other toxic contaminants that may be present.

Further, commenters argued, and the Agency agrees, that it would be difficult to implement and enforce a rule that required generators to treat toxic constituents that they have reason to know are present at detectable levels. First, whether the generator, in fact, could have reason to know that a toxic constituent is present is highly

[21] We note that consideration of management practices for exclusion from subtitle C is being evaluated through the proposed Hazardous Waste Identification Rule discussed below in the text.

[22] Emissions of metals, HCl, Cl_2, and particulate matter are also controlled by the BIF rule.

[23] Unless EPA determines the hazardous debris no longer contains hazardous waste (see discussion in section V.B.2 of the text) or unless the generator elects to comply with the waste-specific treatment standards for the waste contaminating the debris (see discussion in section V.C.4 of the text).

[24] We note that the generator may presume that the BDAT constituents for the listed waste are present at detectable levels and is not required to sample and analyze the debris to make that determination. If, however, the generator elects to sample and analyze the debris, the Agency acknowledges that this may be a difficult task for many types of debris and debris mixtures. In this situation, the generator must use best engineering judgement to obtain samples that are as representative as practicable.

[25] We note that the Agency is considering proposing treatment standards for TC wastes and debris contaminated with TC wastes. If that rule is promulgated, debris will be identified as hazardous debris if it exhibits the TC for an additional 26 organic compounds many of which are commonly found at remediation sites. Thus, over time, additional debris contaminants will become designated contaminants subject to treatment.

subjective and difficult to enforce. Second, the Agency upon additional consideration believes that, if treatment of such additional toxic constituents were to be required, treatment should only be required if the constituent is present at significant levels, not merely at detection levels. This raises the issue of what is a significant level. Possible criteria include a level of potential health significance or the F039 treatment levels. (We note that the Agency, in fact, requested comment on using these criteria to determine when these other (i.e., other than EDAT constituents for listed waste contaminating the debris and the constituents for which the debris fails the EP) toxic constituents known to be present would be contaminants subject to treatment. See 57 FR 984, n. 11.) Not only is the Agency unsure which approach would be more appropriate, but under either approach—i.e, health-based levels or F039 levels—sampling and analysis would be required if the generator did not want to presume that a toxic constituent known to be present was present at the trigger level. Since it is particularly difficult to take representative samples of untreated debris, EPA considers this approach to be inadvisable.

4. Debris May Be Treated to the Existing Waste-Specific LDRs in Lieu of Today's Debris Treatment Standards

Today's rule gives generators the option of treating hazardous debris to the existing waste-specific treatment standards for the waste contaminating the debris. The treated debris, however, must continue to be managed under subtitle C. If land disposed, the debris must be disposed in a subtitle C landfill. However, such debris would be excluded from subtitle C regulation if the Agency determined that it no longer contained hazardous waste (see discussion above in section V.B.2) or if the treater determined that the debris no longer contained hazardous constituents at levels that may be established under a final Hazardous Waste Identification Rule (see discussion above in section V.B.3).

The Agency is providing this option in today's rule based on the request of numerous commenters. For example, one commenter routinely adds the tyvek suits and rubber gloves worn by facility operators to the waste stream leaving his factory, and wishes to continue doing so. The proposed rule would have required the tyvek suits and rubber gloves (as debris) to be separated from the waste for treatment by the specified technology. The commenter preferred to treat the waste/debris mixture to the waste-specific standards and the Agency believes that this practice is appropriate to provide an additional means of treating debris that substantially reduces toxicant mobility or concentration.

The Agency developed special treatment standards for hazardous debris because of concern that, in most cases, the waste-specific standards would not be practicable for debris given the difficulty in obtaining representative samples of treated debris to document compliance with the concentration-based waste-specific standards. The Agency acknowledges, however, that some types of debris may be amenable to representative sampling and therefore compliance with the waste-specific standards may be workable.[26]

Debris that is treated to the waste-specific treatment standards rather than today's debris treatment standards remains subject to subtitle C regulation because toxic constituents may continue to be present at levels that could pose a hazard to human health and the environment. EPA believes that this position is appropriate for two reasons. First, there is no reason to exclude from subtitle C regulation hazardous debris treated to the waste-specific standards when the waste itself is not excluded when treated to those standards. Second, and moreover, the Agency believes that today's treatment standards will treat debris to levels resulting in minimum threat to human health and the environment. See discussion below. Although meeting the waste-specific standards may result in some cases in levels of toxic constituents in the treated debris that do not pose a hazard to human health and the environment, the Agency is not certain that this will be the case in all situations (and in any case, the issue is more appropriate for resolution in the context of the May 20, 1992, proposed rule, 57 FR 21450).

5. Treatment Standards

In this section, we provide the rationale for the treatment standards for each technology and explain how the standards work, and we explain how the final treatment standards differ from those proposed.

a. *Overview.* Today's rule establishes performance and/or design and operating requirements for 17 treatment technologies that the Agency has designated as BDAT for hazardous debris. See Table 1 of § 268.45. Although any technology may be used to treat any debris, the treatment standards vary for many technologies according to the type of debris treated.[27] In addition, the rule prohibits the use of some technologies to treat specific types of contaminants. For example, the physical extraction technologies (e.g., abrasive blasting) have no contaminant type restrictions, while thermal desorption may not be used to treat metals other than mercury. Generators (and owners and operators of treatment facilities) may select any treatment technology that is not restricted for the contaminant subject to treatment.

The Agency has attempted to establish performance or design and operating requirements for each of the extraction and destruction technologies that will optimize treatment effectiveness such that hazardous contaminants would not be present at residual levels in the debris that could pose a hazard to human health and the environment. Thus, the treated debris could be excluded from subtitle C regulation. Unfortunately, the Agency was not able to develop objective performance or design and operating standards for all extraction and destruction technologies that would ensure treatment to minimum threat levels (e.g., thermal desorption, biodegradation, and chemical destruction; see discussion below). For these technologies, the Agency is concerned that residual levels of hazardous contaminants may remain in the debris at levels that could pose a hazard to human health and the environment. Consequently, today's rule requires for these technologies that the owner or operator of the treatment unit must make an "Equivalency Demonstration" to the Agency under existing § 268.42(b) that documents that the technology treats contaminants subject to treatment to a level equivalent to that required by the performance and design and operating standards for the other technologies in

[26] We note that commenters may have requested this option out of frustration that the proposed rule did not effectively address the issue of debris mixtures. The proposed rule appeared to require either separation of debris types prior to treatment or the extensive use of treatment trains to treat different debris types. This problem has been remedied in today's final rule by acknowledging the ability of the treatment technologies to treat a greater variety of debris types than proposed. See discussion in section V.C.5 of the text.

[27] In addition, although the rule does not prohibit treatment of specific debris types by a technology, the treatment standards cannot be met as a practical matter for certain debris/technology combinations (e.g., high pressure steam and water sprays cannot remove 0.6 cm of the surface layer of brick, concrete, etc). In other situations, the definition of the technology as a practical matter precludes the use of some technologies for some debris types (e.g., the definition of spalling cannot be met when applied to treat cloth).

Table 1, § 268.45, such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent subtitle C control.

Today's treatment standards establish performance standards rather than design and operating standards where supporting data were available. The Agency believes that performance standards will better ensure effective treatment given the variability in contaminant and debris types and properties that affect treatability. Further, performance standards give the owner and operator of the treatment unit the flexibility to tailor the design and operation of the unit to the specific debris/contaminant(s) being treated. An example of a performance standard is the standard for physical extraction technologies (e.g., abrasive blasting) used to treat a metal object where the standard requires decontamination to a "clean metal finish" as defined in the regulation. An example of a design and operating standard is the standard for thermal desorption that limits the thickness of porous debris to 10 cm (4 inches).

EPA recommends that the generator or owner or operator of the treatment facility consider the thermal, chemical, and physical properties of the debris and the contaminants on the debris before selecting a treatment technology to ensure that the performance or design and operating requirements can by achieved. The Agency plans to develop a nonregulatory implementation assistance document to provide assistance on how to select the most appropriate technologies for a given debris/contaminant combination.

Although hazardous debris treatment operations are generally subject to regulation under the interim status or permit standards of parts 270 and 264, 265, or 266,[28] today's hazardous debris performance or design and operating standards are neither interim status nor permit standards. The hazardous debris treatment standards are adopted pursuant to section 3004(m) of RCRA to ensure that debris is treated to minimize the hazardous constituents' toxicity or mobility during future management, while the interim status and permit standards are designed to protect human health and the environment from the operation of the storage, treatment, or disposal facility itself. It is for this reason that today's treatment standards do not address control of emissions that can occur from debris treatment; the Agency is relying on the applicable interim status and permit standards to control treatment emissions. See discussion below in section V.F.

The Agency has grouped the various treatment technologies into categories of like treatment type. Each category is based on the same (or similar) performance or design and operating standards. See Table 1 of § 268.45. We discuss below for each group of treatment technologies the basis for the standards and how the standards will work. Note that the performance or design and operating standards must be met for all debris surfaces that are contaminated with hazardous waste. Thus, if a pipe or pump was used to manage hazardous waste, the performance standards must be met for the inside surfaces of the pipe or pump. Decontamination of the outer surfaces only does not constitute compliance with the debris treatment standards.

b. *Extraction Technologies.* The Agency has classified the extraction technologies as physical extraction, chemical extraction, and thermal extraction.

(1) Physical Extraction Technologies. The physical extraction technologies are: abrasive blasting; scarification, grinding, and planing; spalling; vibratory finishing; and high pressure steam and water sprays. For these technologies, the rule establishes performance standards based on removal of the contaminated layer of the debris. Any contaminant subject to treatment may be treated by these technologies,[29] because the contaminants are removed as residue [30] subject to the treatment standards for the waste contaminating the debris.

In addition, any debris type (e.g., metal, concrete, wood, paper, cloth) may be treated by these technologies. The Agency reasoned that any debris type would be effectively treated provided that the contaminated layer of the debris is removed. We note that, although the rule allows the use of physical extraction technologies on any debris type, it will be impracticable to use these technologies on some debris types and the performance standards cannot be met for some technology/debris combinations. For example, it is impracticable to spall paper or cloth. However, we realize that debris often is comprised of a mixture of debris types, and physical extraction may be the most reasonable technology for the predominate debris type while other types of debris present would be removed as residue. An example is large chunks of concrete that have paper labels adhered to them. Spalling or another physical extraction technology may be practicable for the concrete and the paper labels will be removed as residue. An example of where the performance standard cannot be met for a technology/debris combination is high pressure steam and water spray used to treat brick or concrete. As discussed below, because these debris types are porous and toxic contaminants may be adsorbed below the surface of the debris, the performance standard requires removal of at least the outer 0.6 centimeter surface layer. This technology cannot meet that performance standard for those types of debris. Rather than explicitly prohibiting such practices, however, such practices will be precluded because of the inability to comply with the standards.

To ensure that the contaminated layer of debris is removed and to account for the physical properties of different types of debris, the rule establishes different performance standards for different types of debris.

(a) Metal Objects. Metal objects must be treated to remove foreign matter adhering to the metal to produce a "clean debris surface". The rule defines a "clean debris surface" as a surface that, when viewed without magnification, shall be free of all visible contaminated soil and hazardous waste, except that residual staining caused by soil and waste consisting of light shadows, slight streaks, or minor discolorations, and soil and waste in cracks, crevices, and pits may be present provided that such staining and soil and waste in cracks, crevices, and

[28] Unless treatment occurs in an on-site container, tank, or containment building, the hazardous debris is treated within 90 days of generation, and the unit complies with the appropriate standards of part 265, or unless the treatment occurs within the Area of Containment (AOC) at a Superfund remediation site and the generator complying with today's treatment standards in order to remove the treated debris from the AOC and manage it as debris excluded from subtitle C. See discussion in section V.F. of the text.

[29] As discussed below in the text, today's rule establishes additional requirements for certain technologies in order to exclude the treated debris from subtitle C when the debris is contaminated with waste that is listed for dioxins (EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027). The Agency did establish such additional requirements for treatment of debris contaminated with dioxin-listed waste when treated by the physical extraction technologies, however, because the Agency believes that it is highly unlikely that compliance with the rigorous performance standards for these physical extraction technologies will allow significant residual levels of contaminants such that even highly toxic contaminants could pose a hazard to human health and the environment absent subtitle C control.

[30] Except that for spalling, the spalled material is considered untreated debris, not residue, and must be treated before land disposal. See additional discussion in the text.

pits shall be limited to no more than 5% of each square inch of surface area.

The rule allows minor residual staining caused by soil and waste and soil and waste to remain in cracks, crevices, and pits of up to 5% of each square inch of surface area [31] because of the impracticability of cleaning metal debris to a "white metal finish" as proposed. The Agency selected the 5% surface area criterion because: (1) it is within the range of reasonable levels—1% to 10%—that could have been selected; (2) it is generally equivalent to the Steel Structures Painting Council's specification for "Near-White Blast Cleaning" for cleaning steel surfaces by the use of abrasives; [32] and (3) it should not allow toxic contaminants to remain at levels that could pose a hazard to human health and the environment absent subtitle C regulation, and should remove contaminants so that threats posed by disposal of the debris are minimized.

(b) Brick, Cloth, Concrete, Paper, Rock, Pavement, and Wood. The performance standard for these types of debris requires: (1) Removal of at least 0.6 centimeters of the surface layer; and (2) treatment to a "clean debris surface." Removal of 0.6 centimeters of the surface layer is required for these types of debris because they may be porous and toxic contaminants may by absorbed within the debris. (The Agency recognizes that, as a practical matter, the 0.6 cm surface removal requirement precludes the use of this technology for most porous debris.) To ensure removal of contaminants that may be absorbed to depths beyond 0.6 centimeters, the rule requires removal of virtually all staining that could be indicative of the presence of toxic contaminants. The rule allows minor residual staining and foreign matter in cracks and crevices on up to 5% of the surface area (on a square inch basis) as a reasonable and practicable method to help ensure that the standards do not require treatment to a level beyond that necessary to ensure that the treated debris does not pose a hazard to human health and the environment absent subtitle C regulation. We note that staining that is not indicative of the potential presence of hazardous waste or contaminated soil (e.g., rust stains on concrete adjacent to steel reinforcing bars) need not be removed and is not considered in determining compliance with the maximum 5% surface area limit on residual staining. The basis for the 5% surface area limit (on a square inch basis) on residual staining and foreign matter in cracks and crevices is the same as the basis discussed above for the definition of clean metal finish.

(c) Glass, Rubber, Plastic. The physical extraction performance standards for these types of debris are the same as for brick, concrete, etc., except that removal of at least 0.6 centimeters of the surface layer is not required. Removal of the surface layer for glass, rubber, or plastic is not required because glass is nonporous and will not absorb contaminants below the surface, and rubber and plastic, although permeable, are not likely to leach absorbed contaminants at substantial rates.

(2) Chemical Extraction. The technologies classified as chemical extraction are water washing and spraying; liquid phase solvent extraction; and vapor phase solvent extraction. The performance standards for these technologies are based on dissolution of the contaminants into the cleaning solution. Removal of the outer debris layer is not intended.

(a) Water Washing and Spraying. Water sprays or water baths will effectively treat debris when sufficient temperature, pressure, residence time, agitation, surfactants, acids, bases, and/or detergents are used to meet the performance standards in accord with the contaminant restrictions. The rule requires that the debris must be treated to a "clean debris surface" (see discussion above) to ensure effective treatment to levels of hazardous contaminants that are not likely to pose a hazard to human health and the environment absent subtitle C control.

For porous debris—brick, cloth, concrete, paper, pavement, rock, and wood—the rule provides two other requirements. The thickness (i.e., one dimension) of each piece of porous debris may not be more than 1.2 cm (i.e., ½ inch), and the contaminants must be soluble to at least 5% by weight in the water solution or 5% by weight in the emulsion, as applicable. The Agency is applying these standards for porous debris to ensure effective extraction of toxic contaminants that may be absorbed below the surface layer of the debris.

If reducing the thickness of debris to 1.2 cm to meet the treatment standards results in debris that no longer meets the 60 mm minimum particle size limit for debris, such material is subject to the waste-specific treatment standards for the waste contaminating the material, unless the debris has been cleaned and separated from contaminated soil and hazardous waste before size reduction. This is consistent with the Agency's position that material with a particle size less than 60 mm is amenable to conventional treatment for process waste and small particle-sized material (i.e., as opposed to large debris objects) and that such material can be reasonably sampled for analysis to document compliance with the concentration-based treatment standards for the waste contaminating the material.

If the debris has been cleaned and separated from contaminated soil and hazardous waste before size reduction, the material remains classified as debris subject to today's treatment standards even if it no longer has a 60 mm particle size. The Agency believes that cleaning and separation of contaminated soil and hazardous waste will substantially reduce the concentration of toxic constituents such that the debris should contain minimum threat levels subsequent to treatment by an extraction or destruction technology. The level of cleaning and separation that is required is the same as required for separation of treatment residue from treated debris. See Note 9 to Table 1, § 268.45. At a minimum, simple physical or mechanical methods must be used such as vibratory or trommel screening or water washing. The debris surface need not be cleaned to a "clean debris surface" as defined in Table 1; rather, the surface must be free of caked soil, waste, or other nondebris material. Nondebris materials so separated are subject to the waste-specific treatment standards for the waste contaminating the material.

Porous debris (i.e., brick, cloth, concrete, paper, pavement, rock, or wood) that is contaminated with a waste listed for dioxin—EPA Hazardous Waste Numbers F020, F021, F022, F023, F026, or F027—is subject to additional controls. Because of the potential toxicity of the constituents in these wastes, the Agency believes that it is prudent to require additional controls to ensure that the potentially highly toxic constituents in these wastes are extracted from below the debris surface and that the treated debris poses minimum threat to human health and the environment absent subtitle C control. Accordingly, the rule requires the treater to make an "Equivalency Demonstration" to the Agency under existing § 268.42(b) that documents that the technology treats contaminants subject to treatment in these dioxin-listed wastes to a level equivalent to that required for these contaminants by the performance and design and operating standards for other technologies in Table 1, § 268.45, such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent subtitle C control.

(b) Liquid Phase Solvent Extraction. This technology decontaminates debris surfaces by applying a nonaqueous liquid or liquid solution which causes the toxic contaminants to enter the liquid phase and be flushed away from the debris along with the liquid or liquid solution using agitation, temperature, and residence time sufficient to meet the performance standards. The treatment standards for this technology are the same as for water washing and spraying because the technologies use the same principles to extract toxic contaminants from debris.

(c) Vapor Phase Solvent Extraction. This technology decontaminates debris surfaces by applying an organic vapor which causes the toxic contaminants to enter the vapor phase using sufficient agitation, residence time, and temperature and to be flushed away with the organic vapor such that the performance standards are achieved. The treatment standards for this technology are the same as for water washing and spraying, except that porous debris surfaces must be in contact with the organic vapor for more than 60 minutes. This treatment time is consistent with state-of-the-art practices and is necessary to ensure effective extraction of contaminants.

(3) Thermal Extraction. The Agency has classified two technologies as thermal extraction: High temperature metals recovery and thermal desorption.

(a) High Temperature Metals Recovery (HTMR). HTMR furnaces are smelting, melting, or refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces (see § 260.10 definition of "industrial furnace")) that use sufficient heat, residence time, mixing, fluxing agents, and/or carbon to extract metals from debris. HTMR furnaces are potentially subject to regulation under the Boiler and Industrial Furnace (BIF) Rule (subpart H, part 266) when they burn hazardous debris.[33]

Today's rule requires that, for nonslagging furnaces (e.g., refining furnaces), treatment residuals must be separated from the debris. In addition, such separated residue must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris prior to further treatment. Further, these residues must meet the waste-specific treatment standards for all BDAT constituents in the waste contaminating the debris prior to land disposal. Finally, if debris is contaminated with a dioxin-listed waste, HTMR is not BDAT and the treated debris is not excluded from subtitle C unless the treater makes an "Equivalent Technology" demonstration to the Agency under § 268.42(b) that documents that the technology treats contaminants subject to treatment to a level equivalent to that required by the performance and design and operating standards for other technologies in Table 1, § 268.45, such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent subtitle C control.

Today's rule does not establish performance or design and operating standards for slagging HTMR furnaces (other than the requirements inherent in the definition—a melting or smelting furnace must melt metals and extract the metals from debris) because a slagging furnace is likely to provide effective treatment for all contaminants, except perhaps for chlorinated dioxins as discussed below, and for all debris types.

For nonslagging (i.e., refining furnaces such as roasters) HTMR furnaces, the rule ensures treatment of both metal and organic contaminants. First, the definition of HTMR furnaces requires that metals must be separated from the debris. Thus, not only will metals be removed, but temperatures hot enough to separate metals from debris should also remove organic contaminants from the debris (with perhaps the exception of dioxins, as discussed below). Second, to help ensure that the HTMR unit has effectively removed organic contaminants in the debris the rule requires that the residue be separated from the treated debris and that the separated residue must meet the waste-specific treatment standards for the BDAT organic contaminants in the waste contaminating the debris prior to further treatment.

In addition, the Agency is concerned that potentially extremely toxic contaminants may not be destroyed (or removed with the residue) to levels that would not pose a hazard to human health and the environment absent subtitle C control. Consequently, if debris is contaminated with a dioxin-listed waste, HTMR is not BDAT for the debris and the debris is not excluded from subtitle C after treatment unless the treater obtains approval from the Director under an equivalent technology demonstration provided by § 268.42(b) for the design and operating conditions of the HTMR unit. The rule provides this restriction for dioxin-listed waste because of concern that if such contaminants remained undestroyed even at low concentrations in the residue and were not completely removed from the treated debris, that the debris could pose a health or environmental hazard absent subtitle C control.

(b) Thermal Desorption. Thermal desorption is heating in an enclosed chamber under either oxidizing or nonoxidizing atmospheres at sufficient operating temperature and residence time such that the contaminants subject to treatment are vaporized and removed from the heating chamber in a gaseous exhaust streams.[34] The rule establishes operating and performance standards and contaminant restrictions, and requires the treater to make a demonstration of "Equivalent Technology" under § 268.42(b) to document that the technology treats contaminants subject to treatment to a level equivalent to that required by the performance and design and operating standards for other technologies in Table 1, § 268.45, such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent subtitle C control.

The Agency attempted to develop objective treatment standards that would obviate the need for an equivalency demonstration (see discussion above). The Agency determined, however, that it was very difficult to establish universal operating

[31] Note that the 5% surface area criterion is applied to each square inch of the debris surface that has been contaminated with hazardous waste. The area covered by large stains cannot be averaged against large unstained areas. Only 5% of the area within any square inch can contain a residual stain.

[32] See the May 18, 1992, memorandum from Peter Shields, Radian, to Mark Mercer, EPA, entitled "Industry Standards for Cleanliness of Metal Surfaces".

[33] See § 266.100(c) that states generally that a smelting, melting, or refining furnace that burns a hazardous waste with a heating value of 5,000 Btu/lb or more or that contains a total concentration of toxic organic compounds exceeding 500 ppm by weight is subject to the BIF Rule.

[34] We note that a thermal desorber is regulated either as an incinerator (if the device is direct-fired or if the off-gas is burned in an afterburner) under subpart O of part 264 or 265, or as a thermal treatment unit under subpart X, part 264 or subpart P, part 265. To distinguish between thermal desorption and thermal destruction (for which separate debris treatment standards are provided) for purposes of complying with this rule, the primary purpose of thermal desorption is to volatilize contaminants and to remove them from the treatment chamber for subsequent destruction or treatment. We note that the treatment standards in Table 1, § 268.45 for thermal destruction specifically excludes thermal desorbers.

limits for the key operating parameters that affect treatment efficiency—temperature, residence time, size of porous debris, bed depth, and volatility of the contaminant—that would strike a balance between ensuring treatment to minimum threat levels and establishing requirements that could grossly over-regulate in many situations. Rather, the Agency believes that operating requirements can best be determined on a case-by-case basis (i.e., under an equivalent technology demonstration under § 268.42(b)) considering the parameters listed above. In addition, the Agency believes that the performance standard used for physical and chemical extraction—treatment to a clean debris surface—is not practicable for thermal desorption because treated debris surfaces will continue to have a dusting of residue after separation of the debris from the residue by simple, physical or mechanical means (unless water washing is used). See discussion below regarding the requirement for separation of debris from residue.

The treatment standards for thermal desorption require, in addition to the case-by-case Agency approval of design and operating conditions, that hazardous contaminants be vaporized (by virtue of the definition of thermal desorption), and restricts the use of the technology for metal contaminants other than mercury (i.e., thermal desorption is not BDAT for metals other than mercury). In addition, to help ensure extraction of contaminants from below the surface of porous debris, the rule establishes a maximum thickness (in one dimension) for porous debris of 10 cm (4 inches).[35] The 4 inch maximum thickness limit is consistent with state-of-the-art practices. The restriction on metals other than mercury is provided because they are not likely to be extracted from below the debris surface at normal desorption temperatures and residence times.

We note that we considered restricting the use of thermal desorption for only porous debris that is contaminated with a metal other than mercury. We reasoned that metal contaminants in soil or waste on the surface of nonporous debris will be physically separated from the debris along with the soil or waste during or after desorption, and thus a restriction would not be necessary. However, we are also concerned about metal contaminants that may remain on the surface of nonporous (and porous) debris after desorption and after separation of the treated debris from the residue. An example is a piece of steel contaminated with a metal-bearing paint that causes the steel to fail the TC. The metal may not be desorbed and the paint would not be separated from the steel during the simple physical or mechanical separation of residue from debris. Although the steel would continue to fail the TC, it would have been treated to meet BDAT and could be land disposed in a subtitle C facility. This is inconsistent with the Agency's view that BDAT for a TC waste must cause the waste to no longer exhibit the TC.

The treatment standard for thermal desorption also requires separation of the treated debris from treatment residuals and soil, waste, or other nondebris material (collectively referred to as residuals) because residuals are subject to the treatment standards for the waste contaminating the debris. See discussion in Section V.E. Not only will these residuals contain unvolatilized metals that require further treatment, but the Agency is using the residue separated from debris as a surrogate means to ensure effective debris treatment. The rule achieves this objective by requiring that the residue separated from the treated debris must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris. If the residue (prior to further treatment) does not meet applicable treatment standards for organic compounds, it is an indication that the desorption process did not effectively extract the organic contaminants subject to treatment. Thus, the treatment is not BDAT, the treated debris is not excluded from subtitle C, and both the residues and the debris cannot be land disposed without further treatment.

Separation of the desorbed debris from treatment residuals (i.e., soil, waste, or other nondebris materials) must be accomplished using simple physical or mechanical means such as vibratory or trommel screens or water washing. The separation process need not produce a "clean debris surface" [36] as discussed above, however; rather the debris surface must be free of caked residuals or nondebris materials such as soil or waste. For example, debris need not be water washed after trommel screening to remove dust from residuals or nondebris material. (Note that the use of water washing to separate thermally desorbed debris from residuals and nondebris materials need not comply with the treatment standards for water washing (e.g., treatment to a "clean debris surface") because the debris has already been treated by an alternative technology.)

c. *Destruction Technologies.* The Agency has identified two classifications of destruction technologies: chemical destruction and thermal destruction. These technologies are designed and operated to destroy hazardous contaminants on debris surfaces and in surface pores.

(1) Biodegradation. Biodegradation is the removal of hazardous contaminants from debris surfaces and surface pores in an aqueous solution and biodegradation of organic or nonmetallic inorganic compounds (i.e., inorganics that contain phosphorus, nitrogen, or sulfur) in units operated under either aerobic or anaerobic conditions. The rule establishes operating and performance standards and contaminant restrictions, and requires the treater to make a demonstration of "Equivalent Technology" under § 268.42(b) to document that the technology treats contaminants subject to treatment to a level equivalent to that required by the performance and design and operating standards for other technologies in Table 1, § 268.45, such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent subtitle C control.

The Agency attempted to develop objective treatment standards that would obviate the need for an equivalency demonstration (see discussion above). The Agency determined, however, that it was very difficult to establish universal operating limits for the key operating parameters that affect treatment efficiency—type of matrix contaminating the debris, biological proprieties of the contaminant, temperature, pH, treatment time, biomass concentration, moisture level, and for aerobic biodegradation, oxygen concentration—that would strike a balance between ensuring treatment to minimum threat levels and establishing requirements that could

[35] See previous discussion in the text that, if size reduction of debris to meet the treatment standards reduces the particle size to below the minimum 60 mm size limit for the definition of debris, such nondebris material is subject to the waste-specific treatment standards for the waste contaminating the material, unless the debris has been cleaned and separated from contaminated soil and waste prior to size reduction.

[36] "Clean debris surface" means the surface, when viewed without magnification, shall be free of all visible soil, waste, paint, or other foreign (i.e., nondebris) matter, except that residual staining consisting of light shadows, slight streaks, or minor discolorations, and foreign matter in cracks and crevices may be present provided that such staining and foreign matter in cracks and crevices shall be limited to no more than 5% of each square inch of surface area.

grossly over-regulate in many situations. Rather, the Agency believes that operating requirements can best be determined on a case-by-case basis (i.e., under an equivalent technology demonstration under § 268.42(b)) considering the parameters listed above.

In addition, the Agency believes that the performance standard used for physical and chemical extraction—treatment to a clean debris surface—is not practicable for biodegradation because treated debris surfaces are likely to fail that standard even though organic contaminants may have been destroyed and metal contaminants may have been extracted. Further, the Agency could not identify a generic standard that would ensure effective treatment of organic contaminants that may be beneath the surface of porous debris.

In addition to the requirement to make an equivalency demonstration, the treatment standards establish a maximum thickness (in one dimension) for porous debris of 1.2 cm (½ inch.[37] These requirements will help ensure extraction of contaminants from below the surface of porous debris.

The rule also restricts the use of biodegradation for metal contaminants because metals are not destroyed by the biomass (i.e., biodegradation is not BDAT for metals). Further, the performance and design and operating standards would not ensure that undestroyed metal would partition to the biomass for treatment to the numeric standards for the waste contaminating the debris. This is because the performance standard does not require treatment to a "clean debris surface" as discussed above, so that neither the performance standard nor the requirement to separate treated debris from residuals (see discussion below) would ensure that metal contaminants would partition to the residue.

The treatment standard for biodegradation requires separation of the treated debris from treatment residuals (i.e., soil, waste, or other nondebris material) because residuals are subject to the numerical treatment standards for the waste contaminating the debris. See discussion in section V.E. Not only will these residuals contain metal contaminants that require further treatment, but the Agency is using the residue separated from debris as a surrogate means to ensure effective debris treatment. Accordingly, the debris treatment standard also requires that the residue separated from the treated debris must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris prior to further treatment. If the residue (prior to further treatment) does not meet applicable treatment standards for organic compounds, it is an indication that the biodegradation process did not effectively destroy the organic contaminants subject to treatment. Thus, the treatment is not BDAT, treated debris is not excluded from subtitle C, and both the residues and the debris cannot be land disposed without further treatment.

Separation of the biodegraded debris from treatment residuals, soil, waste, or other nondebris materials (collectively referred to as residuals and subject to the treatment standards for residuals) must be accomplished using simple physical or mechanical means such as vibratory or trommel screens or water washing. The separation process need not produce a "clean debris surface" as discussed above, however; rather the debris surface must be free of caked biomass or nondebris materials such as soil or waste. For example, the use of water to wash off the biomass or other foreign matter from the debris after removal from the treatment process does not subject the debris to the treatment standards for water washing (e.g., treatment to a "clean debris surface"). This is because the debris has already been treated by an alternative technology.

(2) Chemical Destruction. The rule establishes two chemical destruction technologies as BDAT: Chemical oxidation and chemical reduction.

(a) Chemical Oxidation. Chemical oxidation is chemical or electolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combination of reagents: Hypochlorite (e.g., bleach); chlorine; chlorine dioxide; ozone or UV (ultraviolet light) assisted ozone; peroxides; persulfates; perchlorates; permanganates; and/or other oxidizing reagents of equivalent destruction efficiency. Chemical oxidation specifically includes what is referred to as alkaline chlorination.

The Agency was not able to develop objective performance or design and operation standards because of the variety of oxidation reagents that could be used and the variety of chemical and physical properties of debris and hazardous contaminants. In addition, the Agency believes that the performance standard used for physical and chemical extraction—treatment to a clean debris surface—is not practicable for chemical oxidation because treated debris surfaces are likely to fail that standard even though organic contaminants may have been destroyed and metal contaminants may have been extracted. Further, the Agency could not identify a generic standard that would ensure effective treatment of organic contaminants that may be beneath the surface of porous debris. Consequently, the primary treatment standard for chemical oxidation requires the treater to make a demonstration of "Equivalent Technology" under § 268.42(b) to document that the technology treats contaminants subject to treatment to a level equivalent to that required by the performance and design and operating standards for other technologies in Table 1, § 268.45, such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent subtitle C control. See discussion above.

The rule also restricts the use of chemical oxidation for metal contaminants because metals are not destroyed by the chemical reagents (i.e., chemical oxidation is not BDAT for metals). Further, the performance and design and operating standards would not ensure that undestroyed metal would partition to the residue for treatment to the numeric standards for the waste contaminating the debris. This is because the performance standard does not require treatment to a "clean debris surface" as discussed above, so that neither the performance standard nor the requirement to separate treated debris from residuals (see discussion below) would ensure that metal contaminants would partition to the residue.

In addition, to help ensure effective treatment, the treatment standard requires that porous debris—brick, cloth, concrete, paper, pavement, rock, and wood—cannot have a thickness exceeding 1.2 cm (½ inch) [38] prior to treatment to ensure effective treatment of contaminants absorbed beyond the debris surface.

Finally, the rule requires that the treated debris must be separated from

[37] See previous discussion in the text that, if size reduction of debris to meet the treatment standards reduces the particle size to below the minimum 60 mm size limit for the definition of debris, such nondebris material is subject to the waste-specific treatment standards for the waste contaminating the material, unless the debris has been cleaned and separated from contaminated soil and waste prior to size reduction.

[38] See previous discussion in the text that, if size reduction of debris to meet the treatment standards reduces the particle size to below the minimum 60 mm size limit for the definition of debris, such nondebris material is subject to the waste-specific treatment standards for the waste contaminating the material, unless the debris has been cleaned and separated from contaminated soil and waste prior to size reduction.

treatment residues, and that such separated residue must meet the waste-specific treatment standards for organic compounds for the waste contaminating the debris. See discussion above for rationale and information on how this provision works.

(b) Chemical Reduction. Chemical reduction is a chemical reaction utilizing the following reducing reagents (or waste reagents) or a combination of reagents: Sulfur dioxide; sodium, potassium, or alkali salts of sulfites, bisulfites, and metabisulfites, and polyethylene glycols (e.g., NaPEG and KPEG); sodium hydrosulfide; ferrous salts; and/or other reducing reagents of equivalent efficiency. The treatment standards for chemical reduction are identical to those for chemical oxidation because the technologies are based on similar chemical reactions.

(3) Thermal Destruction. Thermal destruction is treatment in an incinerator operating in accordance with subpart O of part 264 or 265, a boiler or industrial furnace operating in accordance with subpart H of part 266, or other thermal treatment unit operated in accordance with subpart X, part 264 (permit standards) or subpart P, part 265 (interim status standards).

As noted above in the discussion of treatment standards for thermal desorption, a thermal desorber is regulated either as an incinerator (if the device is direct-fired or if the off-gas is burned in an afterburner) under subpart O of part 264 or 265, or as a thermal treatment unit under subpart X, part 264 or subpart P, part 265. To distinguish between thermal desorption and thermal destruction (for which separate debris treatment standards are provided) for purposes of complying with this rule, the primary purpose of thermal desorption is to volatilize contaminants and to remove them from the treatment chamber for subsequent destruction or treatment. The definition of thermal destruction in Table 1, § 268.45, specifically excludes thermal desorbers.

Today's rule requires that treatment residuals be separated from the debris and restricts the use of thermal destruction (i.e., thermal treatment is not BDAT) for inorganic debris contaminated with a metal other than mercury. In addition, if debris is contaminated with a dioxin-listed waste, thermal destruction is not BDAT and the treated debris is not excluded from subtitle C unless the treater makes an "Equivalent Technology" demonstration to the Agency under § 268.42(b) that documents that the technology treats contaminants subject to treatment to a level equivalent to that required by the performance and design and operating standards for other technologies in Table 1, § 268.45, such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent subtitle C control. (Note as discussed below that these restrictions do not apply to vitrification.)

Given that thermal destruction uses substantially higher temperatures and often longer residence times than thermal desorption, the Agency believes that thermal destruction will destroy all but the most toxic hazardous nonmetal contaminants to minimum threat levels. Although metal contaminants will not be destroyed, metal contaminants in organic debris (e.g., wood, paper) will be removed from the treated debris. Metals in organic debris will partition to the residue (i.e., the material resulting from treatment that remains subject to numerical treatment standards) because the organic debris will be destroyed. Given that the treatment standards require separation of treated debris from the residue, the metals from the organic debris will partition to the residue for subsequent treatment to the waste-specific treatment standards for the waste contaminating the debris.[39] Thus, only metals contaminating inorganic debris (e.g., concrete, bricks) may remain untreated if they are not volatilized. To ensure treatment of such metals, the rule restricts the use of thermal destruction (i.e., thermal treatment is not BDAT) for inorganic debris contaminated with a metal other than the highly volatile mercury.

The treatment standards also require that the residue separated from the treated debris must meet the waste-specific treatment standards for the BDAT organic contaminants in the waste contaminating the debris prior to further treatment. This will help ensure that the thermal destruction unit has effectively destroyed organic contaminants in the debris.

In addition, the Agency is concerned that extremely toxic contaminants may not be destroyed (or removed with the residue) to levels that would not pose a hazard to human health and the environment absent subtitle C control. Consequently, if debris is contaminated with a dioxin-listed waste, incineration is not BDAT for the debris and the debris is not excluded from subtitle C after treatment unless the treater obtains approval from the Director of the design and operating conditions of the thermal destruction unit. We considered applying this restriction only to porous, inorganic debris under the reasoning that the contaminants in dioxin-listed waste would partition to the residue for nonporous debris (e.g., metal) and organic, porous debris (e.g., wood). We were concerned, however, that if such contaminants remained undestroyed even at low concentrations in the residue and were not completely removed from the treated debris, that the debris could pose a health or environmental hazard absent subtitle C control. Given that the requirements for separation of residue and treated debris do not require a "clean debris surface" but, rather allow a dusting of residue to remain on the debris, we believe that it is prudent to establish this restriction on dioxin-listed waste.

Finally, we note that vitrification is a type of thermal destruction and that the rule establishes special (i.e., reduced) requirements for vitrification. Although the Agency classified vitrification as both thermal destruction and an immobilization technology at proposal (57 FR 1036), the Agency believes that the regulation is more easily understood if vitrification is classified only as thermal destruction with appropriate consideration given to the fact that vitrification heats the debris to extremely high temperatures resulting in the formation of nonasbestiform glass. The fact that vitrification transforms debris into a glass-like residue is the basis for the special requirements established for vitrification: (1) The restriction on metal contaminants for porous, inorganic debris does not apply; and (2) the requirement for Agency approval of design and operating conditions to treat debris contaminated with dioxin-listed waste does not apply. Nonetheless, the vitrified residue, like all debris treatment residue, is subject to the waste-specific treatment standards for the waste contaminating the debris.

d. *Immobilization Technologies.* The Agency has identified three immobilization technologies as BDAT for hazardous debris: macroencapsulation, microencapsulation, and sealing. Immobilized debris must be land disposed in a subtitle C facility;[40] it is not excluded from subtitle C regulation because the contaminants have not been destroyed or removed but rather contained indefinitely. Today's rule

[39] Although metals in soil or waste contaminating the debris may be removed by separation of the treated debris from these materials as the rule requires, metals in metal-bearing, heat resistant coatings on inorganic debris may neither be volatilized nor separated from the treated debris.

[40] In the Phase II land disposal restrictions rule, the Agency will reopen and request comment on the issue of whether immobilized debris should be excluded from subtitle C regulation.

establishes only general, nonobjective performance standards for these technologies rather than the more prescriptive standards that were proposed (57 FR 1035–1036) because, based on public comment and the Agency's re-evaluation, the Agency is concerned that the proposed prescriptive standards may be overly restrictive (i.e., by requiring conditions that are more than necessary to ensure immobilization prior to subtitle C management)[41] in some cases and ineffective in others. Nonetheless, the Agency believes that the performance standards promulgated will substantially reduce the likelihood of migration of hazardous constituents from the debris as required by RCRA section 3004(m)(1).

(a) Macroencapsulation. Macroencapsulation is the application of surface coating materials such as polymeric organics (e.g., resins and plastics) or the use of a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media. The treatment standard requires that the encapsulating material must completely encapsulate the debris (i.e., the encapsulant must completely surround the debris and be unbroken). Further, the encapsulating material must be resistant to degradation by the debris and its contaminants and materials into which it may come into contact after placement (leachate, other waste, microbes) to ensure that the likelihood of migration of toxic contaminants has been substantially reduced.

(b) Microencapsulation. Microencapsulation is stabilization of the debris with the following reagents (or waste reagents) such that the leachability of the hazardous contaminants is reduced: Portland cement; or lime/pozzolans (e.g., fly ash and cement kiln dust). Reagents (e.g., iron salts, silicates, and clays) may be added to enhance the set/cure time and/or compressive strength, or to reduce the leachability of the hazardous constituents. The performance standard for microencapsulation requires that the leachability of the hazardous contaminants must be reduced.

We note that the proposed rule would have prohibited the presence of free liquids in the microencapsulated debris. Today's rule does not provide this explicit prohibition because free liquids are prohibited from land disposal facilities under existing requirements—§ 264.314 or 265.314.

[41] For example, by requiring a minimum 7 day cure time for microencapsulation when some reagents can adequately stabilize some debris types in much less time.

If the treater reduces the particle size of debris to make it amenable to microencapsulation so that the debris no longer meets the 60 mm minimum particle size limit for debris, such material is subject to the waste-specific treatment standards for the waste contaminating the material, unless the debris has been cleaned and separated from contaminated soil and waste before size reduction. This is consistent with the Agency's position that material with a particle size less than 60 mm is amenable to conventional treatment for process waste and small particle-sized material (i.e., as opposed to large debris objects) and that such material can be reasonably sampled for analysis to document compliance with the concentration-based treatment standards for the waste contaminating the material.

If the debris has been cleaned and separated from contaminated soil and hazardous waste[42] before size reduction, the material remains classified as debris subject to today's treatment standards even if it no longer has a 60 mm particle size. The Agency believes that cleaning and separation of contaminated soil and hazardous waste will substantially reduce the concentration of toxic constituents such that, upon microencapsulation and placement in a subtitle C unit, the toxic constituents should not pose a hazard to human health and the environment.

The level of cleaning and separation that is required is the same as required for separation of treatment residue from treated debris. See Note 9 to Table 1, § 268.45. At a minimum, simple physical or mechanical methods must be used such as vibratory or trommel screening or water washing. The debris surface need not be cleaned to a "clean debris surface" as defined in Table 1; rather, the surface must be free of caked soil, waste, or other nondebris material. Nondebris materials so separated are subject to the waste-specific treatment standards for the waste contaminating the material.

(c) Sealing. Sealing is the application of an appropriate material which adheres tightly to the debris surface to avoid exposure of the surface to potential leaching media. When necessary to effectively seal the surface, sealing entails pretreatment of the debris surface to remove foreign matter and to clean and roughen the surface. Sealing materials include epoxy, silicone, and urethane compounds; paint may not be used as a sealant.

The performance standard requires that the sealing must be performed to avoid exposure of the debris surface to potential leaching media—that is, the sealant must completely enclose the debris. Further, the sealant must be resistant to degradation by the debris and its contaminants and materials into which it may come into contact after placement (leachate, other waste, microbes) to ensure that the likelihood of migration of toxic contaminants has been substantially reduced.

e. *Changes to the Proposed Rule.* In addition to the changes from proposal discussed above, today's final rule greatly simplifies presentation of the treatment standards. Proposed Table 1 (indicating by YES or NO which technologies would be BDAT for which debris types when specific contaminant categories were present) and Table 2 (classifying contaminants by category) are not promulgated. Nonetheless, the final rule will operate essentially as the Agency had intended for the proposal rule. Rather than explicitly identifying acceptable technology/debris/contaminant combinations in two tables and providing the performance or design and operating standards in a third table as proposed, the final rule establishes the treatment standards in a single table—Table 1 of § 268.45. Not only was the proposed approach confusing, but proposed Table 1 forced unintended consequences.

Proposed Table 1 would have prohibited the use of particular technologies to treat certain debris types contaminated with certain hazardous constituents. In most cases, the proposed prohibition was based on the impracticability of applying the technology to the debris type rather than a determination as to whether the technology would effectively treat the debris if it was (or could be) applied. An example is the proposed prohibition on using abrasive blasting for paper, cloth, rubber, and plastic. The Agency has determined that abrasive blasting should be allowed for these types of debris because they may be mixed with debris that is amenable to the technology and would be converted to a treatment residue. An example is a steel I-beam that has paper labels on it. If abrasive blasting was used to treat the I-beam, the performance standards would ensure that the paper labels became part of the treatment residual subject to the treatment standard for the waste contaminating the debris.

We note, however, that depending on the type of contaminants subject to

[42] We note that mixtures of contaminated soil, waste, and debris are regulated as debris if the mixture is at least 50% debris by volume. Thus, materials regulated as debris may contain high concentrations of toxic constituents.

treatment and the technology selected to treat the debris, more than one treatment technology may be required to meet the standards. For example, if water washing was used as an extraction technology for a porous debris (e.g., concrete) with a contaminant subject to treatment that was not soluble to at least 5% by weight in the water solution, another technology (e.g., thermal desorption) must be used to treat that contaminant.

In summary, today's final rule uses the definition of the technology, the performance or design and operating standards, and the contaminant restrictions provided by Table 1 of § 268.45 to ensure effective treatment of hazardous debris.

6. Treatment of Characteristic Debris

EPA proposed that debris that exhibits a characteristic of ignitability or reactivity, or that is contaminated with wastes that are ignitable, reactive, or corrosive, be treated to deactivate the waste. See 57 FR 1021. The Agency solicited comment on the question of whether such debris should also be treated for all Appendix VIII constituents that could reasonably be expected to be contaminating the debris (see 57 FR 984–85), and whether simple dilution should be allowed as a means of achieving deactivation, *id.* at 990.

In the third third final rule, EPA established deactivation as a treatment standard for certain ignitable, corrosive, and reactive wastes, and allowed dilution as a means of achieving this standard. In large part, this was due to the enormous diversity of wastes exhibiting these characteristics and the difficulty of ascertaining the existence or extent of contamination not attributable to the characteristic property itself for this enormously disparate group of wastes. See 55 FR 22654. These concerns are less apparent for debris exhibiting ignitability or reactivity, or contaminated with ignitable, corrosive or reactive wastes, because there appears to be much less of it (almost no debris could be ignitable, given that most ignitable wastes must be liquids (see § 261.21(a)(1) and (2)), none is corrosive (only liquids can be corrosive wastes), and also because a large proportion of debris would likely be contaminated with hazardous constituents because most hazardous debris comes from remediation sites. *Id.* at 985.

Most commenters opposed requiring treatment for specific hazardous contaminants. They also urged that all dilution be allowed as a form of treatment. Some commenters argued that this result was compelled by the statute. (This issue is presently awaiting decision by a panel of the District of Columbia Circuit Court of Appeals.) Others expressed concern with the practical difficulties inherent in sampling for hazardous constituents, or otherwise ascertaining their presence.

After considering the record, the Agency has decided to adopt the same treatment standards for ignitable, corrosive, or reactive (ICR) debris as for other hazardous debris because ICR debris is just as likely to be contaminated with hazardous constituents. See 55 FR 22654. (EPA will subcategorize ICR wastes and develop specific treatment standards, rather than allowing all types of dilution as treatment when a specific toxicity threat is apparent.) We are adopting a treatment standard of deactivation for these wastes but are requiring that the standard be achieved by use of the treatment methods adopted for other debris, unless the generator or treater demonstrates to the Agency that the debris does not contain toxic constituents. See discussion on codification of the contained-in principle above in Section V.B.2.b. (If necessary, petitioners could also make an equivalency demonstration under § 268.42(b) if they wish to treat by some means other than one of the methods set out in the rule.) This will result in some treatment of hazardous constituents that are present, rather than allowing simple dilution to be used. (Many treatment methods for debris involve some type of dilution, and are permissible under today's rule. The effect of today's rule is to prohibit dilution other than that occurring as a result of a designated treatment method. An example of impermissible dilution could be packing ignitable, corrosive, or reactive debris in sand.) In addition, the types of concerns voiced by the Agency in the third third rule against adopting this type of standard for all ignitable, corrosive, and reactive wastes are not present for debris. The Agency is not requiring identification of hazardous contaminants that may be present, as proposed, in part due to the practical concerns voiced by commenters, in part because the Agency is not adopting this approach for other debris, and because most of the treatment methods will provide some treatment of most if not all hazardous contaminants.

EPA is not providing the option of treating by existing treatment standards for these wastes. This is because the existing treatment standard for most ignitable, corrosive, or reactive wastes can be achieved by deactivation involving any type of dilution. Since this is the very result that the Agency is seeking to avoid, EPA is indicating in the rule that this option is not available for this one class of debris.

EPA noted at proposal that special rules would be needed for debris that is reactive due to presence of cyanide in order that cyanide by treated adequately. See 57 FR 990. We are adopting this approach in the final rule. Any such debris must therefore be treated by one of the specified technologies for which the treatment standards can be achieved for cyanide. In addition, any residues of such treatment may not be disposed until cyanide is treated to levels established in existing Table CCW of § 268.43 (the treatment standard for waste that is reactive because of cyanide). This approach is consistent with that adopted for reactive cyanide wastes in the third third rule and should ensure that the cyanide known to be present is treated adequately before land disposal.

7. Special Requirements for Inherently Hazardous Debris

The proposed rule also considered the regulatory status of debris that is itself hazardous because it is fabricated with toxic constituents. Because such debris will continue to exhibit the toxicity characteristic after treatment by an extraction or destruction technology, today's rule requires treatment by an immobilization technology to reduce the likelihood of migration of hazardous contaminants. See § 268.45(b)(4). Examples are lead pipe, or refractory brick containing chromium. See 57 FR 990. (This debris is referred to in this preamble discussion as "inherently hazardous debris".) Such debris can also be contaminated with listed wastes. In the proposed rule, the Agency discussed how the land disposal restrictions would apply if such debris were disposed of, and also indicated that an alternative for much of this debris would be to recycle it as scrap metal, in which case an existing regulatory exemption could apply. *id.* EPA also solicited comment on what standards should apply to residues from treating inherently hazardous debris, and also requested comment on whether there were situations when immobilization would not be an appropriate treatment technology for such debris. *Id.* at n. 26 and 990–91.

The Agency is essentially adopting the proposed approach in the final rule. However, some of the issues raised in the proposal require additional clarification, which is provided below.

a. *Inherently Hazardous Debris that Is Disposed.* When recycling of inherently hazardous debris is not practicable and it is to be disposed, today's rule requires treatment by an immobilization technology to reduce the likelihood of migration of hazardous contaminants, followed by disposal in a subtitle C facility. In response to commenters' concerns about the need for size reduction for immobilization, we note that the treatment standards for macroencapsulation and sealing may be achieved in some cases without size reductions.[43]

A number of commenters questioned whether any treatment was needed to be performed on inherently hazardous debris or whether it could simply be disposed directly. The statute forecloses that option. Section 3004(m)(1) indicates that the Agency is to establish "levels or methods of treatment, if any" which substantially reduce waste toxicity and mobility and minimize threats. If there are not such methods, the situation EPA believes contemplated by the clause "if any" in section 3004(m), the waste cannot be land disposed. See section 3004 (d), (e), and (g); see also *API v. EPA*, 906 F. 2d 729, 736 (D.C. Cir. 1990) (use of comparative risk assessment to compare safety of treatment methods versus land disposal of untreated wastes is unnecesary given that the statute forecloses land disposal as an option). Thus, some treatment of inherently hazardous debris is needed in order for it to be land disposed. As indicated above, the Agency believes that such methods exist (i.e., immobilization).

If inherently hazardous debris is also contaminated with listed wastes, then that waste also must be treated by one of the prescribed treatment methods, the same approach adopted for all other debris. Note that the contaminants in the waste contaminating the debris need not be treated prior to immobilization of the debris if the performance standards for the immobilization technology can be achieved without such prior treatment.

Residues from treating inherently hazardous debris would not require further treatment unless the residues also exhibited a prohibited hazardous waste characteristic. However, if the inherently hazardous debris is contaminated with a listed waste, residues from treating the debris would remain subject to the numerical standards applicable to that listed waste. Furthermore, if the debris were treated first to remove or destroy the listed waste (i.e., treated by an extraction or destruction technology prescribed in today's rule) and subsequently treated again by immobilization due to its inherent content, the Agency would not consider the debris to be contaminated any longer with a listed waste, since the initial treatment would have removed or destroyed it. Thus, any residues from subsequent immobilization would not be subject to treatment standards unless those residues exhibited a characteristic. For example, if lead pipe contaminated with listed solvents was first treated to remove the solvent and then treated to immobilize the lead, only residues from removing the solvent would have to meet the numerical solvent treatment standards. This approach mirrors that adopted for all other hazardous debris.

b. *Inherently Hazardous Debris that Is Scrap Metal and Is Recycled.* EPA's rules provide for an exemption from regulation for scrap metal that is recycled. See § 261.6(a)(3)(iv); scrap metal is defined at § 261.1(c)(6). EPA consequently indicated at proposal that the land disposal prohibitions would not apply to inherently hazardous debris that was also scrap metal being recycled. EPA adheres to that approach, which simply restates current rules (and was not reopened for reconsideration). The only obligation for generators handling such scrap metal is to keep a record of the scrap and its subsequent disposition or recycling by metal reclamation. See § 268.7(a)(6). If the scrap metal is also contaminated with listed waste, the exemption continues to apply since the material would still meet the regulatory definition of scrap metal. However, any residues from processing the waste would remain hazardous by the derived from rule, and would require treatment to meet the standard for that listed waste before it could be land disposed. Thus, persons treating such scrap metal would become hazardous waste generators, and would also incur responsibilities under the land disposal restriction rules (see § 268.7(a) (1) and (2)). As explained in the previous section, however, if the scrap metal were to be treated first by a prescribed removal or destruction technology, it would no longer be considered to be contaminated with a listed waste, and any residues generated subsequently would not be hazardous wastes unless they exhibited a hazardous waste characteristic. Thus, it may be advantageous to arrange for pretreatment of contaminants before this type of scrap metal is recycled.

c. *Status of Stainless Steel Debris.* The Agency provided an example in the proposed rule of demolition of a building containing stainless steel fixtures and indicated that if a representative sample of the demolition debris exhibited a characteristic debris would be hazardous waste. The Agency noted that stainless steel could also be removed before demolition and managed separately, perhaps by recycling it as scrap metal. See 57 FR 990.

In providing this example, the Agency was not stating that discarded stainless steel artifacts are hazardous wastes, and in fact has no information indicating that such materials, much less demolition debris containing small bits of stainless steel, would exhibit a characteristic. Although it may be worthwhile (for environmental and economic reasons) to remove metal artifacts for recycling rather than destroying them when demolition occurs, today's rule does not mandate any such conduct.

8. Relationship of the TSCA PCB Rules to Today's Rule

As proposed, the final rule requires that hazardous debris that is also a waste PCB under 40 CFR part 761 must comply with both the applicable PCB requirements and today's debris treatment standards, by satisfying the more stringent applicable requirements.

The treatment standards for hazardous debris also apply to debris contaminated with both PCBs and RCRA hazardous wastes. See § 268.45(a)(5). This is consistent with the approach taken in the third third final rule. See 55 FR 22678 (June 1, 1990). Debris treated to today's performance standards by an extraction or destruction technology (and that does not exhibit a hazardous characteristic) remains subject only to TSCA rules because it is excluded from subtitle C regulation, whereas debris treated by an immobilization technology remains subject to applicable requirements under both statutes.

Under the Toxic Substances Control Act (TSCA), disposal of debris contaminated with PCBs is regulated under 40 CFR 761.60. In addition, disposal of debris and materials resulting from the cleanup of certain PCB spills is subject to the PCB Spill Cleanup Policy, as provided under 40 CFR 761.125.

9. Relationship of Existing Agency Standards for Asbestos to Today's Rule

As proposed, the Agency is today requiring that the treatment standards for hazardous debris also apply to debris subject to standards for asbestos

[43] Certainly, size reduction to that normally achieved prior to microencapsulation is not necessary.

under OSHA, TSCA, and NESHAPs.[44] EPA acknowledges that many of the treatment technologies specified in today's rule for hazardous debris would not be practicable for asbestos debris because of the potential for occupational exposure or environmental release of asbestos. However, the Agency believes that several technologies could be used to treat hazardous debris in compliance with the applicable OSHA, NESHAPs, and TSCA by using filtration devices on air and water emissions to control asbestos—water washing and spraying; liquid phase solvent extraction; vapor phase solvent extraction; biodegradation; chemical oxidation; chemical reduction; and macroencapsulation.

The Agency considered the argument made by several commenters that asbestos-contaminated hazardous debris and hazardous debris contaminated with asbestos should be managed according to existing EPA and OSHA regulations (i.e., bagging) and placing the bagged material in a subtitle C facility. The Agency agrees with the commenters that, if bagging meets the performance standard for macroencapsulation, such debris may then be disposed of in a subtitle C facility.

10. Special Requirements for Radioactive Debris

The Agency is today requiring that hazardous debris that is subject to regulations under the Atomic Energy Act (AEA) because of its radioactivity (i.e., mixed waste) is also subject to today's debris treatment standards.[45] This is consistent with the Agency's regulation of the waste that is contaminating the debris—if a prohibited waste is also a mixed waste, it is nonetheless subject to the treatment standards for the waste.

Commenters expressed concern that the treatment of certain radioactive mixed waste debris may pose an unreasonable risk to human health and the environment due to the radiological nature of the waste. The Agency understands commenters' concerns but believes that there is sufficient flexibility in the debris treatment standards to enable generators or treaters to select a technology that will effectively treat the hazardous contaminants without posing an unreasonable risk to human health and the environment because of the radiological nature of the waste.

11. Documentation of Compliance With the Treatment Standards

When hazardous debris is treated to today's treatment standards, treaters must comply with the applicable residue analysis, notification, certification, and recordkeeping and requirements of revised § 268.7. In today's rule, the Agency has revised several paragraphs in § 268.7 and added one paragraph to accommodate hazardous debris.

Paragraph (a)(1) is revised to require generators who ship their hazardous debris to a storage or treatment facility to provide a notice that includes the information already required for restricted wastes as well as a listing of the contaminants subject to treatment. This will assist the treater in determining which treatment technology is appropriate for the debris. In addition, the notice must inform the treater that the debris is subject to (i.e., eligible for) the alternative treatment standards of Table 1; § 268.45.

Paragraph (a)(2) is revised to exempt generators of hazardous debris who obtain a determination from the Agency that the debris does not contain hazardous waste (see § 261.3(e)(2)) from the notification requirements of that paragraph for facilities receiving the shipment. Given that such debris is no longer hazardous waste, the notification requirement is not necessary.

Paragraph (a)(3) is revised to require generators whose restricted hazardous debris is not yet prohibited debris (because of, for example, the capacity variance discussed in section V.G below) to provide a notice that includes the information already required for restricted wastes as well as a listing of the contaminants subject to treatment and a statement that the debris is subject to (i.e., eligible for) the alternative treatment standards of Table 1, § 268.45. See discussion above for the rationale for requiring that this additional information be submitted to the receiving facility.

Paragraph (a)(4) is revised to exempt generators who treat their debris by one of the technologies specified in Table 1, § 268.45, from the waste analysis requirements of that paragraph. As discussed elsewhere in today's notice, the debris treatment standards are technology-specified standards rather than numerical concentration standards. Thus, analysis of the debris is generally not necessary (except to determine where knowledge about the debris is not available whether the debris exhibits a characteristic of hazardous waste).

Paragraph (b)(4) is revised to exempt facilities that treat hazardous debris so that it is excluded from the definition of hazardous waste under § 261.3(e) (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the Agency has determined does not contain hazardous waste) from the notification requirements of that paragraph. Paragraph (b)(4) requires treaters of prohibited waste to notify the land disposal facility receiving each shipment of waste of information including the treatment standards applicable to the waste. We revised this requirement because notification of receiving facilities is not necessary for debris that is excluded from subtitle C regulation. We note, however, that treaters of excluded debris are subject to the new notification (to EPA) and certification requirements provided by paragraph (d), as discussed below.

Paragraph (b)(5) is revised to exempt facilities that treat hazardous debris so that it is excluded from the definition of hazardous waste under § 261.3(e) from the certification requirements of that paragraph. Such facilities are subject to the new certification requirements, however, provided by paragraph (d), as discussed below.

Finally, paragraph (d) is added to subject generators and treaters who first claim that their debris is excluded from the definition of hazardous waste under § 261.3(e) to notification and certification requirements. Such generators and treaters are required to submit to EPA a one-time notice identifying the name and address of the subtitle D facility receiving the excluded debris, a description of the debris before treatment (i.e., as-generated), and, if the debris is excluded because it was treated by an extraction or destruction technology specified in Table 1, § 268.45 (i.e., it is not excluded as a result of a contained-in determination), the treatment technology used. The Agency will use this information for enforcement purposes. Not only will the notification identify those facilities that claim that hazardous debris is excluded from regulation, but the information on the type of debris treated and the technology used will enable the Agency to establish a priority for inspections taking into account how difficult it may be to treat the debris to the performance and design and operating standards with the selected technology.

In addition, for debris treated by a technology specified in Table 1, § 268.45 (i.e., debris not excluded as a result of a contained-in determination), the treater must document and certify compliance with the treatment standards specified in Table 1. The rule requires the treater to record in the facility's files all inspections, evaluations, and analyses (e.g., determinations that a physical extraction technology has removed at least 0.6 cm of the debris surface and that the debris is treated to a "clean debris surface") of the treated debris that the treater made to determine compliance with the standards, as well as any data or information pertaining to key operating parameters the treater may have generated during treatment of the debris (e.g., exit gas temperature and feed rate, of a thermal desorber). The rule also requires the treater to place a certification in the facility's files for each shipment of excluded debris that the debris has been treated in accordance with the standards specified in Table 1. These requirements will enable the Agency to enforce the debris treatment standards.

D. Exclusion of Hazardous Debris From Subtitle C Regulation

Under today's rule, hazardous debris may be excluded from subtitle C regulation either by: (1) the Agency's determination that the debris no longer contains hazardous waste (i.e., the contained-in policy discussed in section V.B.2) as provided by new § 261.3(e) (2); or (2) by compliance with the debris treatment standards for extraction or destruction technologies for exclusion from subtitle C provided in Table 1 of § 268.45 (and provided the debris does not exhibit a hazardous characteristic after treatment). The basis for excluding debris determined to no longer contain hazardous waste is discussed above in section V.B.2. We discuss here the basis for excluding from subtitle C regulation debris that is treated to meet today's performance standards requisite to such exclusion.

1. Basis for Excluding Debris Treated by Extraction or Destruction Technologies and That Is Not Characteristic

Debris treated by a prescribed extraction or destruction technology and that does not exhibit a hazardous characteristic is excluded from subtitle C regulation. As discussed in section V.C.5 above, the Agency has given careful consideration as to whether each debris/contaminant type would be effectively treated by each BDAT technology to levels that present minimum risk (i.e., would no longer pose a hazard to human health or the environment). The Agency believes that debris treated to those standards would pose minimum risk for a number of reasons. First, the Agency has deleted two technologies (i.e., electropolishing and ultraviolet radiation) from the proposed list of BDAT technologies because they are not likely to provide effective treatment. Second, the final rule requires separation of nonempty intact containers of hazardous waste from debris for treatment to the waste-specific treatment standards. Thus, containerized waste that is readily amenable to separation from debris by equipment operators in the field and that may have high concentrations of toxic constituents will be subject to concentration-based, waste-specific treatment standards rather than to the debris standards. Third, the final rule raises the particle size used to define debris from 9.5 mm to 60 mm and applies the size limit to all debris, not just geologic matter. Thus, materials that should be amenable to treatment methods for process waste are subject to the waste-specific treatment standards rather than to the debris standards. Fourth, the final rule specifically excludes process waste of any particle size (e.g., slag) from the definition of debris. Thus, process wastes with potentially high concentrations of hazardous constituents will be subject to the waste-specific treatment standards rather than to the debris standards.

Most important, the performance and design and operating standards that the rule establishes for exclusion of treated debris from subtitle C are rigorous standards. Examples are the requirements that physical extraction technologies treat metal to a "clean metal finish" and other debris surfaces to a "clean debris surface". A minimum of 0.6 cm of the surface layer of porous debris must be removed as well. Another example is the maximum thickness standard for porous debris that is to be treated by chemical extraction.

For several technologies, the Agency was concerned that the performance and design and operating standards may not ensure treatment to minimum risk levels. Consequently for these technologies—thermal desorption, biodegradation, chemical oxidation and reduction and thermal destruction of debris contaminated with dioxin-listed wasted [46]—treated debris would be excluded only after the treater successfully makes an equivalent technology demonstration to the Agency under § 268.42(b) documenting that the technology treats a particular type of debris/contaminant combination as effectively as the other BDAT technologies to residual levels of hazardous contaminants that would not pose a hazard to human health and the environment absent management controls.

Finally, the rule requires separation of the treated debris from all treatment residues, including soil, waste, or other nondebris material that could remain adhered to the debris surface. This will ensure that metal contaminants in the residue will not continue to contaminate the treated debris and that any waste or contaminated soil in a primarily debris mixture as it was generated is separated from the treated debris prior to exclusion from subtitle C.

The philosophy underlying this approach is similar to that contained in principle: It is not normally the debris itself that is hazardous, but rather hazardous waste that is contaminating the debris. Thus, the goal of treatment should be to destroy or remove the contamination (if possible) and if this is achieved, to dispose of the cleaned debris as a nonhazardous waste. The removed residues from this treatment contain the contamination, and must meet numerical concentration levels before they can be land disposed.

Not only are the treatment methods developed to achieve this objective, but the various separation requirements (both before and after treatment) forcing removal of all nondebris materials such as soil and other wastes, and the definition of debris itself (which limits the debris classification to materials most amenable to the treatment methods, and classifies materials most amenable to meaningful sampling as nondebris subject to numerical treatment standards) are intended to achieve the same goal. As discussed above, the debris treatment standards are written wherever possible as performance standards to ensure that contamination is in fact removed from the debris. In addition, the rule specifies which contaminants are unsuitable for certain of the treatment methods. In short, the Agency believes that treatment of contaminated debris by the methods established here will result in clean debris which may then be land disposed, and should also no longer be regulated as a hazardous waste.

EPA notes, however, that the notion of excluding wastes from subtitle C regulation without sampling for hazardous constituent concentration levels is potentially at odds with many of the approaches recently proposed for public comment in the Hazardous Waste

[44] For a summary of OSHA, TSCA, and NESHAP controls on asbestos, see the proposed rule at 57 FR 993–994.

[45] We note that the Agency has established treatment standards in § 268.42 for several types of radioactive wastes (e.g., D006: Radioactive lead solids subcategory) that may be generated in particle sizes greater than 60 mm, the minimum size limit for debris. Nonetheless, such wastes are excluded from the definition of debris (see § 268.2(g)) and are subject to the waste-specific treatment standards.

[46] Note that the standards provide other restrictions for debris contaminated with dioxin-listed waste.

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Identification Rule (HWIR). See 57 FR (May 20, 1992). In that rule, the Agency asked for comment on means of identifying and excluding hazardous wastes from subtitle C regulation that potentially take into account presence of a majority of the hazardous constituents listed in appendix VIII of part 261. If these approaches are adopted, they could provide a principled means of evaluating wastes heretofore excluded from subtitle C regulation without requiring analysis of hazardous constituent concentrations, such as the debris being excluded in today's rule, or residues from "empty containers" discussed above in Section V.B.2. EPA expects that hazardous constituent levels in debris treated by the methods adopted today will be consistent with levels resulting from the May 20 proposal, and in addition, for many types of treated debris there remain difficulties in obtaining representative samples necessary to make hazardous waste identification and listing determinations, and for this reason is finalizing the rule today rather than delaying action pending the results of the May 20 rulemaking. Nevertheless, the Agency believes it an appropriate issue for comment in the HWIR rulemaking the extent to which those standards should be used to replace exclusions from the definition of hazardous waste that are established without requiring analysis of hazardous constituent levels in the excluded waste.

2. Rationale for Continued Subtitle C Regulation of Debris Treated by Immobilization

Debris treated by an immobilization technology would remain subject to subtitle C regulation. EPA currently has insufficient data to demonstrate generically that debris which can be contaminated with both organic and inorganic constituents would be nonhazardous when treated by any of the immobilization technologies. Until the Agency gathers further data, EPA is concerned that, absent subsequent subtitle C management, hazardous contaminants may migrate from certain immobilized debris at levels that could pose a hazard to human health and the environment. Thus, EPA believes it inappropriate to promulgate a self-implementing exclusion at this time. Nonetheless, in the Phase II land disposal restrictions rule, the Agency will reopen and request comment on the issue of whether immobilized debris should be excluded from subtitle C regulation. The Agency plans to investigate this issue further and will publish in the Phase II proposed rule any information or data that are available. In addition, the Agency will specifically explore the potential of using the TCLP, and if so, under what circumstances, in determining whether immobilized hazardous debris should be excluded from subtitle C control. To assist the Agency in this effort, we ask for data on the performance of specific immobilization technologies and short- or long-term leachibility studies. Based on past experiences, the Agency has found that uncertainty over the technical performance of immobilization precludes a general exemption from subtitle C for all types of immobilized hazardous debris. However, the Agency will continue to evaluate all available and new information about the performance of immobilization technologies which could limit the technical uncertainty. To the extent that sufficient information that meets proper quality assurance/quality control procedures is available, the Agency plans to propose in the Phase II LDR rule an exclusion from subtitle C for those immobilized hazardous debris.

E. Regulation of Treatment Residuals

1. Overview

In this section, we discuss: (1) The rationale for subjecting treatment residues to the waste-specific treatment standards for the waste contaminating the debris; (2) separation of treated debris from treatment residue; (3) special requirements for debris treated by spalling; (4) special requirements for residue from the treatment of debris contaminated with cyanide reactive waste; and (5) special requirements for ignitable wastewater residue.

2. Treatment Residues Are Subject to the Waste-Specific Treatment Standards for the Waste Contaminating the Debris

Residuals from the treatment of hazardous debris are subject to the waste-specific treatment standards for the waste contaminating the debris. The residual must be treated to those standards for all BDAT constituents specified in §§ 268.41, 268.42 and 268.43 for the waste.

The Agency had proposed to require treatment of nonsoil residuals to the multi-source leachate F039 levels and soil residuals to the waste-specific treatment standards for the waste contaminating the debris. Based on public comment and the Agency's re-evaluation of this issue, the Agency had determined that it is more appropriate to subject all treatment residues—soil, wastewater, and nonwastewater—to the waste-specific treatment standards for the waste contaminating the debris for a number of reasons. First, the waste-specific treatment standards currently apply to treatment residuals, and the Agency does not know of a compelling reason to change that position. Second, requiring compliance with the waste-specific treatment standards rather than the F039 standards may be somewhat easier to understand and implement because the treatment standards for the BDAT constituents in the residue can be determined at the same time that the BDAT constituents are identified as contaminants subject to treatment (i.e., the contaminants subject to treatment in the contaminated debris are the same contaminants that must be treated in treatment residuals). Third, the Agency is considering simplifying and revising the treatment standards for all prohibited waste to "universal standards" in the Phase II proposed land disposal restrictions rule.

Several commenters suggested that the thermal destruction process of vitrification should be considered immobilization of debris. Thus, commenters argued that such vitrified debris could be land disposed under subtitle C without being subject to the waste-specific treatment standards for the waste contaminating the debris. The Agency disagrees with this view. Vitrification is a type of thermal destruction that produces a residue that is vitrified. Thus, the vitrified residue is subject to the same treatment standards as any debris treatment residue—the waste-specific standards for the waste contaminating the debris. This is consistent with the Agency's position that slag from high temperature metals recovery is residue, not debris, subject to the waste-specific treatment standards.

3. Treated Debris Mixed With Treatment Residue Is Subject to Regulation as Residue

As discussed above in section V.C.5, treatment residues generally contain high levels of toxic contaminants removed from the debris. Examples are residue from thermal desorption or incineration of debris contaminated with metal-bearing waste, and residue from water washing of debris. As discussed below, treatment residuals are subject to the waste-specific treatment standards for the waste contaminating the debris. Thus, to ensure that treatment residuals are treated effectively before land disposal and to ensure that treated debris is not contaminated with the treatment residue, the treatment standards require that the treated debris must be separated from the treatment residue. If the debris is not separated from the treatment residue, it remains a prohibited waste and may not be land disposed. It also remains subject to all other subtitle C standards.

The Agency defines treatment residuals as residuals such as biomass from biodegradation and ash from incineration as well as soil, waste, or other nondebris material that may remain adhered to the treated debris. We note further that slag from a high temperature metals recovery furnace and vitrified residue from a thermal destruction unit are treatment residues rather than debris. In both cases, the original debris no longer exists and the residuals from soil or waste contaminating the debris are integral components of the slag and vitrified residue.

Separation of the treated debris from treatment residuals must be accomplished using simple physical or mechanical means such as vibratory or trommel screens or water washing. The separation process need not produce a "clean debris surface" [47] as discussed above, however; rather the debris surface must be free of caked residuals or nondebris materials such as soil or waste. For example, thermal desorption debris need not be water washed after trommel screening to remove dust from residuals or nondebris material. (Note that the use of water washing to separate thermally desorbed debris from residuals and nondebris materials need not comply with the treatment standards for water washing (e.g., treatment to a "clean debris surface") because the debris has already been treated by an alternative technology.)

4. Special Requirements for Debris Treated by Spalling

As proposed and as discussed in Section V.C.5, debris removed by spalling remains debris subject to the debris treatment standards. Debris surfaces removed by spalling are, by definition of the technology, large pieces of debris. The Agency believes that such pieces of spalled debris are more debris-like than waste or residual-like and are more amenable to treatment by the debris treatment standards than the waste-specific treatment standards.

[47] "Clean debris surface" means the surface, when viewed without magnification, shall be free of all visible contaminated soil and hazardous waste, except that residual staining consisting of light shadows, slight streaks, or minor discolorations, and soil and waste in cracks, crevices, and pits may be present provided that such staining and soil and waste in cracks, crevices, and pits shall be limited to no more than 5% of each square inch of surface area.

5. Special Requirements for Residue From the Treatment of Debris That Is Cyanide-Reactive

As proposed, the final rule requires that residues from the treatment of debris that is reactive because of cyanide is subject to the waste-specific treatment standards for cyanide under § 268.43. As with cyanide-reactive waste, EPA believes that BDAT for cyanide-reactive debris requires treatment of cyanide because of its toxicity.

6. Special Requirements for Ignitable Nonwastewater Residue

As proposed, the final rule requires that ignitable nonwastewater residue containing greater than or equal to 10% total organic carbon be subject to the technology-based standards for D001: "Ignitable Liquids based on 261.21(a)(1)" under § 268.42. This residue must be treated by fuel substitution (i.e., burning as fuel in a boiler or industrial furnace), recovery of organic constituents (e.g., distillation, carbon adsorption), or incineration. EPA has established these technologies as BDAT for high total organic carbon ignitable liquids because they will effectively remove or destroy the toxic organic constituents.

F. Permit Requirements for Treatment Facilities

Treatment of hazardous debris (except as discussed below for 90-day on-site treatment in a container, tank, or containment building) is currently subject to the applicable interim status and permit standards of parts 264, 265, 266, and 270 that ensure protection of human health and the environment from the operation of the treatment unit. (We note that, for containment buildings, interim status and permit standards and requirements for 90-day on-site treatment are promulgated in today's rule as discussed elsewhere in this notice.) Today's debris treatment standards to implement the land disposal restrictions of section 3004(m) of the statute do not affect those existing facility standards. For example, today's treatment standards do not reopen interim status eligibility for debris treatment facilities. (We note, however, that today's rule does establish the interim status eligibility date for containment buildings given that these units are newly regulated by this rule, assuming that such buildings are located at facilities containing no other regulated units.) Rather, today's debris treatment standards subject generators and treaters to additional requirements to ensure effective treatment of hazardous debris prior to exclusion from subtitle C (for debris treated by an extraction or destruction technology and that does not exhibit a hazardous characteristic) or land disposal in a subtitle C facility (for debris treated by an immobilization technology).

As information for the reader, we note that the existing facility standards for the following common debris treatment operations (other than for 90-day on-site treatment in a container, tank, or containment building) are:

- Debris treatment technologies conducted in tanks such as high pressure steam and water spraying, chemical extraction, and biodegradation are subject to the standards for tank facilities in subpart J of part 264 (permit standards) and part 265 (interim status standards).
- Storage or treatment in containment buildings is subject to the subpart DD, parts 264 and 265, standards also promulgated today (see discussion elsewhere in today's notice).
- Physical extraction technologies such as abrasive blasting or spalling used to treat debris in place but that is intended for discard (e.g., treatment of a contaminated building prior to demolition) are subject to the permit standards of subpart X, part 264 for miscellaneous units or the interim status standards for chemical, physical, or biological treatment in subpart Q, part 265.
- Incinerators are subject to subpart O, part 264 (permit standards) and part 265 (interim status standards).
- High temperature metal recovery furnaces are conditionally exempt from the rules for boilers and industrial furnaces burning hazardous waste in subpart H, part 266.
- Thermal desorbers are subject either to the incinerator or thermal treatment standards, depending on whether the unit meets the incinerator definition. Thermal treatment units are subject to subpart X, part 264 (permit standards for miscellaneous units) and subpart P, part 265 (interim status standards).

1. Adding Capacity for Debris Treatment to Existing Facilities

Today's rule amends the permit and interim status standards of part 270, as proposed, to facilitate the expansion of existing debris treatment capacity and the addition of new debris treatment capacity at existing facilities currently subject either to permit or interim status standards for managing hazardous waste. However, if an owner or operator of a facility that is not currently managing hazardous waste under the permit or interim status standards wants

to construct a debris treatment facility, he must first obtain a RCRA permit.

a. *Facilities With a RCA Permit.* Facilities with a RCRA permit may add new treatment processes and additional capacity by applying for a permit modification under § 270.42. See 53 FR 37912 (Sept. 28, 1988). Although regulations at § 270.42 were promulgated under pre-HSWA authority, EPA may use these regulations in authorized States when necessary to implement HSWA provisions such as the land disposal restrictions. See 53 FR 37933.

The types of modifications needed to add new capacity or processes would likely require submittal of a Class 2 or 3 modification. The Class 2 modification process requires Agency action on the request within 120 days. This action would consist of approval or denial, reclassification as a Class 3 modification, or authorization to conduct activities (in containers, tanks, and containment buildings, as discussed below) for up to 180 days pending Agency action. Further, for Class 2 modifications, construction to implement the requested facility change may commence 60 days after submission of the request. There is no deadline for Agency action for Class 3 modifications, which apply to more substantial changes.

Permitted facilities may apply under existing § 270.42(e)(3)(ii)(B) for a temporary authorization to initiate necessary activities to treat or store restricted wastes (e.g., hazardous debris) in tanks or containers while a Class 2 or 3 permit modification is undergoing review, or to undertake a treatment or storage activity which will be of short duration (e.g., decontamination of a building intended for demolition). Today's rule revises that section to enable the Agency also to grant a temporary authorization for containment buildings meeting the requirements promulgated today in subpart DD of parts 264 and 265.

Any request for a temporary authorization must demonstrate compliance with the part 264 standards and also meet the criteria of § 270.42(e) for approval. Interested members of the public (i.e., those that have previously expressed interest in any permitting action for the facility) will receive notice by mail of a facility's request for a temporary authorization. The temporary authorization may be renewed once if the additional procedures of § 270.42(e) are followed, including submission of appropriate permit modification information and the initiation of public meetings and public comment period. See 53 FR 37919.

b. *Facilities Operating Under Interim Status.* Facilities managing hazardous waste under interim status may add new treatment processes or additional treatment or storage capacity by using the existing procedures for changes during interim status in § 270.72. Under these procedures, a facility must submit to EPA a revised Part A permit application and justification explaining the need for the change. The change must then be approved by EPA.

Such changes must meet one of several criteria specified in § 270.72, such as being necessary to comply with a Federal, State, or local requirement. However, changes generally may not be made if they amount to reconstruction of the facility. The Agency considers the facility to be "reconstructed" if the capital investment for the changes to the facility exceed 50% of the capital cost of a comparable entirely new facility.

Existing § 270.72(b)(6) lifted the reconstruction limit for changes to treat or store in tanks and containers hazardous waste subject to land disposal restrictions imposed by part 268, provided that such changes are made solely for the purpose of complying with part 268 land disposal restrictions. Today's rule revises that paragraph to lift the reconstruction limit for containment buildings as well. See the the new subpart DD, part 264 and 265, standards for containment buildings that are also promulgated today.

2. On-Site Treatment of Debris in Containers, Tanks, and Containment Buildings

Existing § 262.34 exempts from permit requirements generators who store or treat hazardous debris on-site in tanks or containers for a period not exceeding 90 days provided that the tank or container is designed and operated in compliance with subpart I (for containers) and subpart J (for tanks) of part 265. Today's rule revises § 262.34, as proposed, to also provide this exemption to containment buildings designed and operated in compliance with the subpart DD, part 265, standards also promulgated today.

G. Capacity Variance for Hazardous Debris

In the May 15, 1992, Notice to Approve Hazardous Debris Case-By-Case Capacity Variance, the Agency approved a generic, one year extension of the LDR effective date applicable to all persons managing hazardous debris (57 FR 20766). For the purpose of the extension, the term "debris" was defined as set out in the preamble to the June 1, 1990 Third Third final rule. See 55 FR 22650 and § 268.2(g). Furthermore, the Agency indicated that it will explain in the debris rule how a change in definition will affect the case-by-case extensions.

Although in general, both definitions will identify the same materials as debris, there are differences that may result in situations where either definition could include debris not included by the other. Of concern is the situation where someone has entered into contracts for, or actually initiated the process of, removing for disposal debris which met the old definition but does not meet the current definition. To avoid possible disruption of on-going activities, which have relied on the previous definition of debris, the Agency will allow the extension to apply to materials meeting either definition through May 8, 1993.

H. Other Issues

1. Applicability of Standards to Contaminated Structures and Equipment

a. *Structures and Equipment Contaminated With Hazardous Waste and Intended for Discard Are Regulated Debris.* As discussed above in section V.B.1.a of the preamble, structures and equipment contaminated with hazardous waste and that are intended for discard are hazardous debris subject to today's treatment standards. Thus, if a contaminated tank or building is decontaminated before demolition, the debris may not be land disposed unless the tank or building was decontaminated in compliance with today's treatment standards. (We note that, as discussed above in section F.2, such treatment is subject to the permit standards unless conducted in a tank, container, or containment building.)

If the contaminated structure or equipment is being decontaminated for subsequent use, however, the structure or equipment is not debris and the decontamination is neither subject to today's debris treatment standards nor the permit standards for hazardous waste management facilities. Thus, cleaning a building that is in use is not treatment of debris.

b. *Treatment Standards for Concrete Pads and Walls Intended for Discard.* The Agency believes that concrete pads and walls are typically decontaminated using "water washing" techniques. These techniques include the following technologies specified in today's rule: Abrasive blasting using water to propel abrasive media, high pressure steam or water sprays, and water washing and spraying.

We note that the performance standards for abrasive blasting and high pressure water sprays require removal of 0.6 cm of the surface because these are physical extraction technologies designed to remove the surface layer of the debris. The performance standards for water washing and spraying limits the thickness of the concrete to 3/8 inch because this technology relies on chemical extraction (i.e., dissolving or removing with surfactants) of contaminants below the concrete surface. If the treater believes that treatment to these performance standards is not necessary to ensure effective treatment to residual levels of hazardous constituents that will not pose a hazard to human health and the environment absent management controls, the treater may: (1) Obtain a waiver of the standards (e.g., the thickness limit for water washing) under an equivalent technology demonstration under § 268.42(b); or (2) demonstrate to the Agency that the debris upon alternative treatment does not contain toxic constituents under the contained-in principle codified in today's rule. See discussion in section V.B.2.b above.

c. *Relation of Debris Standards to Closure Rules.* Existing closure standards for hazardous waste management facilities require "decontamination" of contaminated structures and equipment. See, e.g., §§ 264.114 and 265.114. The precise meaning of decontamination presently is determined on a case-by-case basis through review of the facility's closure plan. However, if such structures or equipment is also debris which is going to be land disposed, which could often be the case, an issue arises regarding the relationship of the "decontamination" standard in the closure rule and the treatment methods adopted in today's rule.

The Agency believes that the treatment methods in today's rule would always satisfy the decontamination standard in the closure provisions. After all, the purpose of these treatment methods is to decontaminate. EPA also interprets the land disposal and closure rules to require that all hazardous debris be treated to meet the debris treatment standards, even if the debris is generated during closure. (Put another way, the debris standards normally would be appropriate for any debris generated as a result of closure.)

If the debris treatment standards appear to be inappropriate for debris (such as contaminated structures or equipment) generated during closure, a site-specific treatability variance pursuant to § 268.44(h) may be available. The Agency believes that such a variance could be processed administratively as part of the closure procedures.

2. Mixing of Hazardous Waste or Contaminated Soil With Debris To Avoid the Waste-Specific Treatment Standards Is Prohibited

Today's rule prohibits the intentional mixing of hazardous waste or contaminated soil with debris to avoid the concentration-based treatment standards for the waste or soil. The Agency is prohibiting such sham mixing to ensure that hazardous waste and contaminated soil are treated to the existing treatment standards given that the waste [48] is amenable to treatment to those levels and that the waste and soil are likely to be much more heavily contaminated with hazardous constituents than debris and, thus, should be subject to such concentration-based treatment levels.

The prohibition on mixing applies to debris treated by any technology: Immobilization as well as extraction or destruction. Although the debris treatment standards require separation of the waste or contaminated soil from debris treated by an extraction or destruction technology and that the residue must meet the waste-specific treatment standards for the waste contaminating the debris, the treatment process itself could enable the residue to meet the concentration-based waste treatment standards by virtue of dilution during treatment. An example is water washing of debris intentionally mixed with a prohibited listed waste. The water residue may easily meet the waste-specific treatment standard by virtue of dilution rather than treatment.

We note that this prohibition on sham mixing does not affect implementation of the principle discussed above in section V.B.1 to classifying mixtures of debris with contaminated soil or waste as debris. That principle says that if debris is the primary material in a mixture by volume based on visual observation, the mixture is subject to regulation as debris. Thus, for example, when debris is initially excavated in a mixture of debris and nondebris materials, and debris is the primary material present, the mixture is appropriately regulated as debris and sham mixing has not occurred. However, if debris is intentionally mixed with contaminated soil or hazardous waste (e.g., after excavation), and the mixture is regulated as debris by the application of the mixture principle and subsequently immobilized, prohibited sham mixing has occurred.

3. Procedures for Demonstrating Equivalency of Alternative Technologies

As discussed at proposal, existing § 268.43(b) provides the generator or treater an opportunity to demonstrate to the Agency than an alternative technology can achieve the equivalent level of performance as that of the specified treatment method. We note that this variance procedure can also be used to demonstrate that one of the technologies specified in today's rule can be designed or operated under conditions other than those established in Table 1, § 268.45, to provide equivalent treatment (i.e., meet the performance standard for the technology) or that a specified technology can treat hazardous contaminants to levels that do not pose a hazard to human health and the environment absent subtitle C control without achieving the performance and design and operating standards established in Table 1.

In addition, the Agency is requiring in the treatment standards of Table 1, § 268.45, that treaters must make an Equivalency Demonstration under § 268.43(b) in order for certain technologies to be considered BDAT. See discussion above for thermal desorption, biodegradation, and chemical destruction.

VI. Capacity Determinations

This section presents the data sources, methodology, and results of EPA's capacity analysis for today's newly listed wastes. Specifically, section VI summarizes the results of the capacity analysis for petroleum refining wastes and other organic wastes; wastes mixed with radioactive contaminants; and debris contaminated with the newly listed wastes. Soil and debris contaminated with newly listed wastes for which standards are finalized today will be addressed in future proposals.

The capacity analysis for the newly listed wastes for which the Agency is today promulgating treatment standards relied on information obtained from several sources. Primary data sources include the National Survey of Hazardous Waste Treatment, Storage, Disposal, and Recycling Facilities (the TSDR Survey), the National Survey of Hazardous Waste Generators (the Generator Survey), data received in response to the proposed rule (57 FR 957), data received in response to the ANPRM for the Newly Identified and

[48] We note that the Agency is concerned that the waste treatment standards may not be appropriate for soil contaminated with the waste and, consequently is considering proposing in summer 1992 treatment standards for contaminated soil.

Listed Wastes (58 FR 24444), data received in voluntary data submissions, and information requests authorized under section 3007 of RCRA.

EPA conducted the TSDR Survey during 1987 and 1988 to obtain comprehensive data on the nation's capacity for managing hazardous waste and on the quantities of hazardous waste being land disposed. For the capacity analysis, EPA used the TSDR Survey information on the quantities of waste streams managed in land-disposal units and requiring alternative treatment/recovery due to the land disposal restrictions and on available capacity of hazardous waste management technologies.

EPA conducted the Generator Survey in 1987. This survey requested information on waste quantities and waste characteristics of hazardous waste generated, and provided capacity information for facilities not included in the TSDR Survey.

A. Capacity Analysis Results Summary

Table VI.A.1 lists each waste code for which EPA is finalizing LDR standards today. For each code, this table indicates whether EPA is granting a national capacity variance for surface-disposed or deepwell disposed wastes. As indicated in this table, the Agency is granting two-year national capacity variances only for petroleum refining wastes generated as a result of cleanouts or closures of surface impoundments, debris contaminated with newly listed wastes, and mixed radioactive wastes. EPA is granting a one-year national capacity variance for routinely-generated petroleum refining wastes. EPA is also granting a 3-month national capacity variance, extending the effective date to November 9, 1992, for compliance with the treatment standards for all newly regulated waste codes, F001–F005 revised treatment standards, converted wastewater standards that had been based on scrubber water, and the HTMR generic exclusion standards. This extension would not apply to wastes with a specified longer national capacity variance. EPA is delaying the effective date for all newly regulated waste codes because the Agency realizes that even where data indicate that sufficient treatment capacity exists, it is not immediately available. Additional time may be required to determine what compliance entails, redesign tracking documents, possibly adjust facility operations, and possibly segregate wastestreams which heretofore had been centrally treated. EPA believes these legitimate delays are encompassable within a short-term capacity variance because part of the notion of available capacity is the ability to get wastes to the treatment capacity in a lawful manner. The Agency is dating this capacity extension from November 9, 1992, rather than date of signature due to unanticipated delays in the publication of this rule in the **Federal Register**.

TABLE VI.A.1.—SUMMARY OF CAPACITY VARIANCE DECISIONS FOR NEWLY LISTED WASTES

Waste code	Variance for surface-disposed wastes?	Variance for deepwell-disposed wastes?
F037—removed from S.I.*	2-year	No.
F038—removed from S.I.*	2-year	No.
F037—managed in S.I.*	2-year	No.
F038—managed in S.I.*	2-year	No.
F037—Routine	1-year	No.
F038—Routine	1-year	No.
K107	No	No.
K108	No	No.
K109	No	No.
K110	No	No.
K111	No	No.
K112	No	No.
K117	No	2-year.
K118	No	2-year.
K123	No	No.
K124	No	No.
K125	No	No.
K126	No	No.
K131	No	2-year.
K132	No	2-year.
K136	No	No.
U328	No	No.
U353	No	No.
U359	No	No.
Mixed Rad. Waste	2-year	No
Hazardous Debris	2-year	No.

* F037 and F038 wastes from cleanout and closure of surface impoundments.
* F037 and F038 managed in surface impoundments.

8. Available Capacity

The analysis of commercial capacity for newly listed wastes is based primarily on data from the TSDR Survey capacity data set, data received in response to previous LDR notices and regulations, and data received in voluntary data submissions. Analysis of data from these sources indicates that sufficient commercial capacity is currently available for newly identified wastes requiring wastewater treatment, stabilization, and combustion of liquids with exception of deepwell injected K117, K118, K131 and K132. However, commercial capacity for combustion of sludges, solids, and debris is limited for some newly identified wastes. The analysis of commercial combustion capacity discussed in this section focuses on F037 and F038 sludges and solids because these wastes represent the majority of the waste volumes affected by today's rule. Specific capacity issues for the newly listed K and U wastes being regulated today are discussed in section VI.C.2 of this preamble. Debris is amenable to some, but not all types of sludge and solid combustion capacity, and is discussed in greater detail in section VI.E. Table VI.B.1 summarizes available commercial treatment capacity for newly listed wastes.

EPA's analysis of commercial combustion capacity for sludges and solids has historically focused on the broad capacity categories of liquids, sludges, and solids. Several commenters felt that these capacity categories do not adequately represent the diversity of combustion systems included in each category. Therefore, to improve the precision of its combustion capacity analysis, EPA has divided sludge/solid combustion capacity into seven categories. EPA's capacity analysis for fixed site commercial hazardous waste incinerators separately addresses capacity from pumpable sludge, nonpumpable sludge, containerized solid, and bulk solid feed systems. EPA's capacity analysis for cement kilns that burn hazardous wastes as fuel separately addresses capacity from sludge, containerized solid, and dry solid feed systems.

EPA recognizes that this type of categorization is increasingly important as the commercial combustion industry matures and firms employ different combustion and fuel substitution technologies (i.e., cement kilns) to accommodate different types of wastes entering the commercial market. EPA also recognizes that individual feed system capacity constraints must also be consistent with overall system capacity constraints, such as heat release from a kiln. The relationship between overall system constraints and individual feed system constraints is complicated by the fact that, within the overall system limits, limits for one type of feed system (e.g., containerized solids) may be raised by reducing the amount of another type of feed (e.g., bulk solids). EPA emphasizes that its capacity analysis is conducted on a national level, and that though the Agency speaks generally about which systems are more likely to be used for newly identified petroleum refining wastes, this rule does not preclude these wastes from going through other systems.

TABLE VI.B.1.—AVAILABLE COMMERCIAL TREATMENT CAPACITY FOR NEWLY LISTED WASTES

Technology	Available capacity (Tons/year)
Biological Treatment	188,000
Chemical Precipitation	813,000
Combustion of Liquids	526,000
Combustion of Sludges and Solids	
Cement Kilns: Sludges	14,000
Cement Kilns: Containerized Solids	83,000
Cement Kilns: Dry Solids	24,000

TABLE VI.B.1.—AVAILABLE COMMERCIAL TREATMENT CAPACITY FOR NEWLY LISTED WASTES—Continued

Technology	Available capacity (Tons/year)
Incineration: Pumpable Sludges	51,000
Incineration: Nonpumpable Sludges	1,000
Incineration: Containerized Solids	41,000
Incineration: Bulk Solids	23,000
Stabilization	1,204,000

This section discusses EPA's assessment of capacity in each of the seven categories, the waste characteristics that affect whether a waste is generally amenable to the category, and pretreatment processing that is generally required. A comparison of available and required capacity for F037 and F038 sludges and solids can be found in section VI.C.

I. Incineration Capacity

In response to the proposed rule, EPA received comments relating to the high demand for incineration capacity and a general shortage of incineration capacity. However, EPA's analysis of detailed data from specific incinerators revealed that there is some commercial incineration capacity available. One commenter remarked that incinerators have less capacity for high BTU wastes. EPA recognizes that the heating value of a waste affects an incinerator's throughput capacity for the waste when the incinerator is constrained by its heat input to the unit (e.g., if an incinerator is limited to 10 million BTU/hr, it could either feed 10,000 lb/hr of waste with a heating value of 1,000 BTU per pound or 5,000 pounds per hour of a waste with a heating value of 2,000 BTU per pound). EPA believes that wastes with heating values above about 5,000 BTU per pound will increasingly be sent to cement kilns for use as fuel. This issue is particularly important for bulk solid systems that are designed for soils, which have very low heating values. To the extent that mass throughput limits are based on the incinerators heat release limits, using mass throughput estimates (e.g., for bulk solids) based on large amounts of soil in the feed mix, could overestimate the mass throughput capacity for wastes with higher heating values than soil, such as F037 and F038. For this reason, EPA has revised its capacity estimate for certain incinerators whose estimates in the proposed rule were based on a waste feed blend with a very low heating value. EPA believes that a significant portion of routinely generated F037 and F038, and an even larger portion of F037 and F038 from surface impoundment cleanouts, will require incineration (as opposed to cement kiln) capacity.

EPA has identified 51,000 tons per year of pumpable sludge capacity available at incinerators. Pumpable sludge systems rely on wastes with sufficient liquid content to facilitate the flow of materials. Pumpable sludge systems use direct injection, sludge lances, positive displacement pumps and cement pumps to feed sludges to the incinerator. EPA is aware of at least one facility processing K048–K052 in this manner. In general, F037 and F038 would have to be reslurried, or would have to bypass dewatering at the point of generation to be handled through pumpable sludge systems. The primary constraints on use of this capacity for F037 and F038 are the viscosity, particle size, ash content, and abrasiveness of the sludges. Therefore, EPA does not believe that pumpable sludge systems will receive a large portion of the nation's F037 and F038 waste streams, because of the problems discussed above. Additional technical developments and operational experience are needed to allow these systems to routinely handle F037 and F038 wastes. Based on EPA's experience observing the progress at commercial combustion facilities, EPA believes obtaining permit modifications and developing the technical and operational experience to routinely handle new wastes will take six to twelve months.

EPA has identified 1,000 tons per year of nonpumpable sludge capacity available at incinerators. Nonpumpable sludge systems use ram feed systems to feed sludges to the incinerator. Wastes fed in this manner are limited by extremely high or low BTU, tramp object size, and the presence of free liquids. The primary constraints are overall availability, aggravated by generally high maintenance requirements. Again, EPA does not believe that nonpumpable sludge systems will receive a large portion of the nation's F037 and F038 waste streams because there are few of them and they will require time to develop the technical and operational experience needed to handle routinely-generated F037 and F038 petroleum refining wastes.

EPA has identified 34,000 tons per year of containerized solids capacity available at incinerators. Containerized solids systems use ram, elevator or drop feed systems to feed metal drums and fiber packs to incinerators. Metal drum systems generally require shredders. Wastes appropriate for this capacity are limited by water content and high or low BTU extremes. Utilization of this

capacity depends on wastes being packaged into drums, which is technically feasible, but systems for packaging petroleum refining wastes for incinerators are not widely available. Containerization capacity could be added at generators, incinerators or intermediate processors. EPA believes obtaining storage and operating permits, as well as construction and startup of packaging units will take six months to one year. Therefore, EPA believes that containerized solids systems will not receive a large portion of the nation's F037 and F038 waste streams because of the time needed to bring these systems on line and operate them routinely on petroleum refining wastes F037 and F038.

EPA has identified 23,000 tons per year of bulk solids capacity available at incinerators. Bulk solids systems generally use clamshell cranes or drop feed systems (possibly with shredders) to feed bulk solids into incinerators. EPA is aware of four incinerators currently burning petroleum refining wastes as bulk solids. The primary constraints on the bulk solids system are extremes of high and low BTU, object size, abrasiveness, the presence of free liquids, high system maintenance and limited number of installed systems. F037 and F038 would have to be dewatered in order to be amenable to this type of capacity. The ability for bulk solids feed systems to process large quantities of wastes directly from roll-off bins makes bulk solids capacity the most suitable for petroleum refining wastes with low to moderate BTU values.

Much of the nation's bulk solids incineration capacity has come on line fairly recently and continues to face some technical and regulatory obstacles. Two of the incinerators that provide bulk solids capacity have entered that market in the past year, and another is still modifying its system to bring its actual throughput capacity closer to its design capacity. Historical experience with new commercial incineration capacity and the unique technical challenges posed by bulk solids feed systems make commissioning and maintaining new commercial bulk solids incineration capacity highly uncertain. Based on the uncertainty of final permit approval, EPA revised its capacity estimates to exclude an incinerator which has not yet received final approval to continue full operation and needs a permit modification for F037 and F038 wastes. EPA estimates it will take six to twelve months for this facility to be fully operational for handling F037 and F038 wastes. EPA also considered the uncertainty in its estimates of current capacity in its variance decision for F037 and F038 wastes.

2. Cement Kiln Capacity

Several commenters were concerned about EPA's intention to consider cement kiln combustion capacity, citing the low BTU content of F037 and F038. Cement kilns generally require that their solid wastes contain more than 5,000 or 6,000 BTU per pound. Based on available information, EPA estimates that roughly half of the routinely generated F037 and F038 sent off site will have a BTU value sufficient for combustion in cement kilns. On the other hand, EPA believes that F037 and F038 generated from the removal of hazardous wastes from surface impoundments will have a lower BTU value and are more likely to be treated in incinerators.

EPA has identified 14,000 tons of sludge capacity available per year at two cement kilns. One commenter reported that no cement kilns are accepting sludges, but EPA is aware of these two. Cement kiln sludge systems rely on slurrying wastes and feeding them through primary fuel ports. F037 and F038 would have to be reslurried, or bypass dewatering. The primary constraint on the use of this capacity for petroleum refining wastes is the difficulty of suspending large amounts of solids in liquid while maintaining high BTU. However, EPA recognizes the limitations of this capacity for petroleum refining sludges, and believes that cement kiln sludge capacity will not receive a large portion of the national F037 and F038 waste streams. Additional technical developments and operational experience are needed to allow these systems to routinely handle F037 and F038 wastes. EPA believes these changes will take six to twelve months.

EPA has identified 83,000 tons of containerized solids capacity, primarily at four cement kilns. Cement kiln containerized solids systems use drop feed systems to feed pails and bags containing hazardous wastes into the "cold" midsection of the kiln (the calcining zone). Wastes packaged into bags must generally be thermally dried to a water content of 5 to 25 percent. As is generally true for cement kilns, wastes are limited by BTU value. The primary constraints on the use of this capacity appear to be dewatering and packaging capacity. One commenter is concerned that the facilities identified by EPA as having containerized solids capacity are close to 100 percent utilized. After further analysis, EPA stands by the estimates prepared for the proposed rule. Three of the facilities included in this estimate routinely accept petroleum refining wastes, and as of September 1991, one was pursuing a permit modification to be able to burn K048–K052 and F037 and F038. EPA believes that containerized solids systems at cement kilns will be the preferred route for most routinely generated petroleum refining wastes, and has relied heavily on these systems in its capacity analysis for F037 and F038.

Cement kilns are continuing to increase their capacity to burn hazardous wastes, and technical advancements in feed systems are producing especially significant increases in capacity for solids. Estimated containerized solids capacity has roughly doubled since the Third Third rule. Because much of the available capacity for F037 and F038 wastes is new capacity, EPA is concerned that additional technical developments and operational experience are needed to allow these systems to handle routinely generated F037 and F038 wastes. Additionally, there is considerable uncertainty whether cement kilns will continue to provide the same capacity as they modify their equipment and operations to meet interim status requirements of the BIF rule (56 FR 7134, February 21, 1991). To comply with BIF rule interim status requirements, cement kilns must meet a 20 ppm hydrocarbon emission limit or establish an alternative limit based on baseline hydrocarbon emission rates when the facility is not burning hazardous wastes. Based on information from the cement industry, EPA believes that some cement kilns will have trouble meeting the 20 ppm limit or establishing a baseline due to variable hydrocarbon levels in their raw materials. If one of the major cement facilities providing containerized solids capacity is forced to cease operations, it would cause a major disruption to the commercial hazardous waste combustion system, by removing as much as 35,000 tons per year of capacity, leaving the net available capacity close to the amount of routinely generated F037 and F038 that are amenable to cement kilns. As discussed in Section VI.C., nearly half the routinely generated F037 and F038 wastestream is not amenable to cement kilns, and there is insufficient bulk solids capacity to handle this quantity. Due to these potential problems, EPA is reluctant to set the LDR effective dates such that large quantities of new wastes would be introduced into the combustion systems immediately.

EPA has identified 24,000 tons of dry solids capacity available primarily at two cement kilns. Dry solids systems use pneumatic systems that convey dried materials to the "hot" end of the kiln. Wastes going through this feed mechanism are generally limited by their BTU value, moisture content, and ability to form freeflowing solid particles. The primary constraint on the use of this capacity for combustion of F037 and F038 is the availability of thermal drying capacity, which is necessary to reduce the moisture content to between 5 and 25 percent water. Commenters on the proposed rule noted that petroleum refining sludges, even if dried, may be too "tacky" for this type of feed system. EPA agrees that some F037 and F038 wastes may not be amenable to dry solids systems, and believes that dry solids systems will not receive a large portion of the nation's F037 and F038 waste streams. EPA is aware of several refineries that are using or planning to use thermal desorption and solvent extraction to meet BDAT standards for F037 and F038 wastes, and has accounted for existing on-site units by decreasing its estimates of demand for commercial treatment technologies. While these technologies are not currently commercially available, EPA is aware of other refineries exploring the possibility of building them on-site. The one-year national capacity variance will allow time for on-site development of these technologies.

C. Petroleum Refining Wastes and Other Organic Wastes

This section presents the capacity analysis for today's newly listed petroleum refining wastes and other organic wastes.

1. Required Capacity for Petroleum Refining Wastes (F037 and F038)

EPA is promulgating concentration levels as the treatment standards for wastewater and nonwastewater forms of F037 and F038. F037 and F038 nonwastewater standards are based on a transfer of the existing performance data for K048–K052 (55 FR 22520, June 1, 1990). Nonwastewater treatment standards for F037 and F038 wastes are based on solvent extraction and incineration for organic constituents, and stabilization for metals. EPA is also promulgating standards for wastewater forms of F037 and F038 based on the standards for multi-source leachate (F039). That is, for F037 and F038 wastewaters, the standards are based on biological treatment; or, wet air or chemical oxidation followed by carbon adsorption for organics; and chemical precipitation for metals.

The capacity analysis for the F037 and F038 petroleum refining wastes was conducted using information collected from a number of data sources. The primary data sources include data submitted voluntarily from refineries, the F037 and F038 Regulatory Impact Analysis (RIA) for the listing of the F037 and F038 wastes, the Petroleum Refinery Data Base (PRDB), the TSDR Survey, the Generator Survey, and the public comments submitted in response to the proposed rule (57 FR 958, January 9, 1992).

The RIA was prepared by EPA in 1990 in support of the listing rule for F037 and F038 wastes (55 FR 46354). The RIA includes an industry overview and profile of facilities affected by the listings, an analysis of baseline waste management practices, and regulatory compliance scenarios. The PRDB is based on a mail survey conducted by EPA in 1983 and has been updated to contain 1985 refining information. The TSDR Survey and Generator Survey were discussed previously (in the introduction to Section VI). Public comments submitted in response to the proposed rule present an overview of how industries would be affected by the land disposal restriction of newly listed F037 and F038 wastes.

EPA also used several supplemental data sources: two reports prepared by Midwest Research Institute (MRI), which support the F037 and F038 listing and the Toxicity Characteristic (TC) rule and which summarize sampling and analysis data collected by EPA for 16 petroleum refining facilities; no-migration petitions submitted by petroleum refineries for land treatment units; and the California Hazardous Petroleum Waste Data Base, which contains information on wastes that fit the F037 and F038 definition.

Using the available data and the Agency's best engineering judgment, EPA estimated F037 and F038 waste quantities based on current management practices and identified options for alternative management due to the LDR requirements. EPA derived demand estimates for two sources of F037 and F038 wastes: (1) Quantities from routine generation of F037 and F038 wastes, and; (2) quantities from the cleanout or closure of remaining surface impoundments. The Agency also developed estimates of available on-site treatment/recovery capacity and evaluated information submitted by refineries and treatment technology vendors on the viability of constructing on-site treatment/recovery capacity and the time that would be required to make such additions.

In the proposed rule (57 FR 958, January 9, 1992), EPA assumed that all F037 and F038 wastes would be removed from surface impoundments prior to May 1992. Wastes that remain in surface impoundments after May 8, 1992 would not be removed, but would be disposed of in place—that is, the surface impoundment would close as a landfill. Commenters on the proposed rule agreed with estimates of routine generation. However, many commenters provided data that surface impoundments would not be cleaned out by May 1992. Additionally, many comments indicated that many surface impoundments would not close as landfills after May 8, 1992, but would be cleaned out. Upon reassessment, EPA agrees with the commenters that F037 and F038 wastes are still being generated from surface impoundment cleanouts and closures. For today's final rule, therefore, EPA conducted separate capacity analyses for F037 and F038 generated routinely and F037 and F038 wastes from surface impoundments.

a. *Routine Generation.* For the purpose of the F037 and F038 capacity analysis, routinely generated F037 and F038 wastes are wastes generated from tanks, including wastes from equalization tanks and oil/water/solids separators (such as CPI separators and IAF units) that are not API separators or DAF units. EPA estimates that approximately 69,000 tons per year of dewatered F037 and F038 wastes (nonwastewaters) from routine treatment of petroleum refinery wastewaters will require alternative treatment due to the LDRs. Based on information from public comments and engineering judgement, EPA estimates that 41,000 tons of per year of this 69,000 tons will be high heat content wastes (i.e., equal to or greater than 5,000 Btu/lb) and would likely be managed at cement kilns as containerized solids, and 28,000 tons per year of low heat content wastes (i.e., less than 5,000 Btu/lb) would be managed in the form of bulk solids at incinerators. For the reasons described in section VI.B., EPA believes that cement kilns and incinerators will not have sufficient capacity to treat the quantity of routinely generated F037 and F038 wastes; therefore, the Agency is granting a one-year national capacity variance to all routinely generated F037 and F038 waste. This variance allows time for cement kilns to comply with interim status requirements of the BIF rule, and for additional bulk solids incineration

capacity and capacity of other treatment and recycling technologies (e.g., solvent extraction and thermal desorption) to come online to meet the demand for treatment from routinely generated F037 and F038.

b. *Generation from Surface Impoundment Cleanouts and Closures.* The Agency also considered the accumulated sludge quantities in surface impoundments. Many of these wastes are generated in unretrofitted impoundments (i.e., impoundments not satisfying the minimum technology requirements specified in sections 3004(o) and 3005(j)(11)), and would thus be land disposed in a prohibited manner. These impoundments can be retrofitted or replaced with tank systems, but according to many commenters, petroleum refineries may not be able to do so by the effective date of this rule, or for some time thereafter. See RCRA section 3005(j)(6), which allows four years from promulgation date of the rule identifying or listing the wastes to retrofit or close impoundments receiving newly identified or listed wastes (and no other hazardous wastes). Since most of these surface impoundments also accumulate organic toxicity characteristic (TC) wastes, identified as hazardous in March 1990, the refineries have to retrofit or close the impoundments by March 1994. Some impoundments may be granted a delay of closure (see 40 CFR 265.113 and 40 CFR 264.113) and thus will be allowed to remain in operation, providing that hazardous wastes (e.g., F037 and F038 wastes) are removed and the impoundment is used for non-hazardous wastes. For surface impoundments that do not close by May 1992, EPA estimates that 173,000 tons of dewatered F037 and F038 wastes will be generated from impoundment closure or cleanout between June 1992 and June 1993, and 99,000 tons between June 1993 and June 1994. These quantities will require alternative treatment to meet the LDR treatment standards.

Commenters indicated that F037 and F038 wastes generated from surface impoundment closures are generally of lower heat content than routinely generated F037 and F038 wastes. EPA agrees with this comment; therefore, a larger proportion of surface impoundment generated wastes would require incineration. Based on a follow-up analysis of public comments and engineering judgement, EPA estimates that of the total 173,000 tons generated between 1992 and 1993, 112,000 tons will be low heat content waste requiring incineration for nonpumpable sludge or bulk solids. Of the 99,000 tons generated between 1993 and 1994, 64,000 tons will be low heat content wastes requiring incineration for bulk solids. Because incineration capacity for bulk solids that could accommodate these wastes before they are land disposed is not adequate, EPA is granting a two-year national capacity variance for F037 and F038 wastes from surface impoundments.

The lack of alternative storage/treatment capacity raises two issues. The first is that during the period of a national capacity variance, restricted wastes disposed in surface impoundments can only be placed in impoundments meeting the minimum technology requirements of section 3004(o). See § 268.5(h), RCRA section 3004(h)(4) and *Mobil Oil* v. *EPA*, 871 F. 2d 149 (D.C. Cir. 1989). The second issue is that section 3005(j)(6) states that impoundments receiving newly identified or listed hazardous wastes have up to four years from the date of promulgation of the rule to retrofit or close the impoundment. As was described in section IV.H. of today's preamble, EPA believes that these provisions are in irreconcilable conflict, and, accordingly, EPA has significant discretion in determining how best to interpret them. The Agency is promulgating that in the case of wastes subject to a national capacity variance, that impoundments managing such wastes (and no other wastes subject to an earlier prohibition) have four years from the date of the identification or listing (i.e., the date identifying or listing of the wastes is promulgated, not the effective date of the rule, see section 3005(j)(11)) to retrofit or close.

Although land disposal in impoundments remains necessary during the four-year period allowed by statute for retrofitting, the Agency proposed that these surface impoundment wastes be removed and sent for the mandated treatment if adequate treatment capacity existed (section 3005(j)(5)). Some comments received in response to this proposal indicate that some refineries may not be able to remove waste from surface impoundments without first removing the impoundment from service, which would interrupt refinery operations and possibly affect oil and solids loading on the wastewater treatment system, potentially exceeding NPDES permit limits. EPA agrees with these comments and is therefore not requiring such annual cleaning of surface impoundments.

In addition, EPA proposed that impoundments must be clean closed. EPA's intent was to mandate removal of prohibited wastes at closure to be consistent with the statutory intent to treat wastes where capacity is available and not to dispose of untreated wastes in surface impoundments. (Where there is available treatment capacity, the strong statutory policy is to treat hazardous wastes rather than allow them to be land disposed. See RCRA sections 1002(7) and 1003 (4), (5), and (6).)

EPA received comments opposing the requirement of clean closure, citing acceptable alternative to clean closure, such as closure in place (40 CFR 265.228(a)(2) and 40 CFR 264.228(a) (2)), delay of closure (40 CFR 265.113(d)(e) and 40 CFR 264.113(d)(e)), and other closure options. EPA has considered these alternative closure practices and is allowing owners and operators of petroleum refineries the same flexibility available to other surface impoundment owners and operators. Therefore, EPA is not requiring that owners and operators of surface impoundments remove wastes when they close. If owners or operators remove wastes from surface impoundments after the expiration of the two-year national capacity variance, and they are unable to identify adequate treatment capacity, they may seek a case-by-case extension to the effective date of the LDR prohibition as stipulated under 40 CFR 268.5.

One commenter disagreed with EPA's proposal to allow owners and operators to generate F037 and F038 in unretrofitted impoundments. This commenter mentioned that their member companies had received a large number of inquiries concerning the closure and replacement of leaking surface impoundments, but that this interest declined as it became clearer that EPA was likely to allow them the maximum amount of time to retrofit. The commenter believes that owners and operators will take as much time as they are given to comply with the minimum technology requirements. The commenter therefore believes that no capacity shortfall exists, just a perceived "difficult" burden exists for closing surface impoundments. EPA disagrees with this comment. As indicated in today's preamble, EPA believes that four years from the date of promulgation of the listing or characteristic is a reasonable period within which owners and operators can come into compliance with the minimum technology requirements.

c. *Capacity Analysis Summary for F037 and F038 Wastes.* As stated earlier in this section, the capacity analysis was conducted separately for F037 and F038 wastes routinely generated and for F037 and F038 wastes from surface impoundments. The estimate for routinely generated F037 and F038 waste generation requiring alternative treatment is 69,000 tons per year (nonwastewaters). EPA has no data indicating that any land-disposed wastewaters will require alternative treatment, and therefore EPA assumed this quantity to be zero. Based on the estimate that 89,000 tons per year of dewatered routinely generated F037 and F038 wastes will require alternative treatment, and the determination that insufficient capacity exists to treat these wastes in the next year, EPA is granting routinely generated F037 and F038 wastes a one-year national capacity variance. This variance expires on June 30, 1993, one year from promulgation of the LDR prohibition for these wastes (RCRA 3004(h) (1) and (2)). (EPA notes that it is dating the national capacity variance for these wastes from the date the prohibition took effect, rather than the date of publication, since the record does not support any longer extension).

EPA has estimated that cleanouts and closures of surface impoundments will generate 100,000 tons of low heat content wastes generated between 1992 and 1993 and 91,000 tons generated between 1993 and 1994. Because existing capacity at bulk solid incineration systems is insufficient to treat F037 and F038 wastes from surface impoundments, EPA is granting a two-year national capacity variance for these wastes. This variance expires on June 30, 1994, two years from promulgation of the LDR prohibition, the maximum extent allowed by law (RCRA 3004(h)(2)).

2. Required Capacity for Other Newly Listed Organic Wastes

This section presents EPA's analysis of required capacity for other newly listed organic wastes (surface disposed) including organic U waste, unsymmetrical dimethylhydrazine (UDMH) wastes, toluene diisocyanate (TDI) wastes, ethylene dibromide (EDB) wastes, ethylenebisdithiocarbamic (EBDC) wastes, and methyl bromide wastes.

a. *Unsymmetrical Dimethylhydrazine (UDMH) Production Wastes (K107, K108, K109, K110).*

K107—Column bottoms from product separation from the production of 1,1-dimethylhydrazine from carboxylic acid hydrazides

K108—Condensed column overheads from product separation and condensed reactor vent gases from the production of UDMH from carboxylic acid hydrazines

K109—Spent filter cartridges from product-purification from the production of UDMH from carboxylic acid hydrazines

K110—Condensed column overheads from intermediate separation from product purification from the production of UDMH for carboxylic acid hydrazines

For UDMH wastes, EPA is promulgating incineration as the method of treatment for nonwastewaters, and incineration, or chemical oxidation or biodegradation followed by carbon adsorption as methods of treatment for the wastewaters.

EPA listed four UDMH wastes (K107, K108, K109, K110) that are generated from the production of UDMH (unsymmetrical dimethylhydrazine, or 1,1-dimethylhydrazine) from carboxylic acid hydrazides. Also, some of these wastes are ignitable or corrosive and as such are currently subject to LDR standards.

Generation and management information concerning the UDMH wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request.

The response to the section 3007 request noted that the only manufacturer who used the proprietary process generating UDMH wastes has ceased UDMH production. Therefore, the Agency assumes that no UDMH will require treatment prior to land disposal.

Based on available data, EPA believes that sufficient capacity exists for treatment of the UDMH wastes; therefore, EPA is not granting a national capacity variance for K107, K108, K109, and K110 wastewaters and nonwastewaters.

b. *2-Ethoxyethanol (U359).* For U359, EPA is promulgating incineration or fuel substitution as methods of treatment standards for the nonwastewaters, and incineration, or chemical oxidation followed by biological treatment, carbon absorption, or biodegradation followed by carbon adsorption for the wastewaters.

Generation and management information concerning the U359 wastes was collected by EPA during 1990 and early 1991 under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request.

The Agency estimates that less than 500 tons of U359 wastewaters are being land disposed and will require further treatment as a result of the LDRs. Most of the U359 waste generated in 1989 was incinerated on-site, and the remainder (less than one percent) was incinerated off-site. In addition, unspecified and variable quantities of untreated wastewater contaminated with U359 are reportedly generated on occasion at one generator's facility; however, this wastewater undergoes biological treatment on site. Because these wastes are rejected products, and the product has a market value, the Agency believes these wastes would be generated in small quantities.

Based on the available data (see Section VI.B), EPA believes that sufficient capacity exists for treatment of U359 wastes; therefore, EPA is not granting a national capacity variance for U359 wastewaters or nonwastewaters.

c. *Dinitrotoluene and Toluenediamine Production Wastes (K111–K112, U328 and U353).*

K111—Product washwaters from the production of dinitrotoluene via nitration of toluene

K112—Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene

U328—Ortho-toluidine

U353—Para-toluidine

For K111 wastewaters and nonwastewaters, EPA is promulgating concentration-based standards based on a transfer of the standards for F039 wastes. EPA is promulgating incineration as the method of treatment for K112 nonwastewaters; and incineration, or chemical oxidation followed by carbon adsorption, or biodegradation followed by carbon adsorption as methods of treatment for K112 wastewaters. For U328 and U353 wastes, EPA is promulgating incineration as the method of treatment for nonwastewaters; and incineration, or chemical oxidation followed by carbon adsorption, or biodegradation followed by carbon adsorption as methods of treatment for wastewaters.

During 1990 and early 1991, EPA collected generation and management information concerning these wastes under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request. In addition, the Agency has contacted other facilities in order to obtain further information concerning K111 and K112 waste generation, management practices, and residuals. Finally, the Agency reviewed information provided in response to the proposed rule (57 FR 957, January 9, 1992).

The Agency has identified approximately 3,500 tons of K111 nonwastewaters and no K112 nonwastewaters and no K111 or K112 wastewaters requiring alternative treatment. The majority of the K111 and K112 wastes generated are currently treated using a variety of alternative treatment or recovery methods and discharged through NPDES. The data

indicate that the residuals from treatment of K111 and K112 were further treated before being land disposed.

The Agency estimates that less than 500 tons of U328 and U353 nonwastewaters are being land disposed and will require further treatment as a result of the LDRs. EPA identified no U328 and U353 wastewaters requiring alternative treatment.

Based on the available data (see section VI.B), EPA believes that sufficient capacity exists for treatment of these wastes. Therefore, EPA is not granting a national capacity variance for K111, K112, U328, and U353 wastewaters or nonwastewaters.

d. *Ethylene Dibromide (EDB) Production Wastes (K117–K118, K136) and Methyl Bromide Production Wastes (K131 and K132).*

K117—Wastewaters from the reactor vent gas scrubber in the production of ethylene dibromide via the bromination of ethylene
K118—Spent adsorbent solids from the purification of EDB produced by bromination of ethylene
K136—Still bottoms from the purification of EDB
K131—Wastewater from the reactor and acid dryer from the production of methyl bromide
K132—Spent adsorbent and wastewater separator solids from the production of methyl bromide

For K117, K118, K136, K131, and K132 wastes, EPA is promulgating concentration-based standards based on a transfer of data used to calculate the U029 (bromomethane), U030 (4-bromophenyl phenyl ether), U066 (1,2-dibromo-3-chloropropane), U067 (ethylene dibromide, EDB), U068 (dibromomethane) and U225 (bromoform) Third Rule standards for nonwastewaters, and multisource leachate (F039) performance for wastewaters. EPA is promulgating standards based on incineration for nonwastewaters; and incineration, or chemical or wet air oxidation followed by carbon adsorption, or biological treatment, or steam or air stripping for wastewaters.

During 1990 and early 1991, EPA collected generation and management information concerning these wastes under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request. In addition, the Agency reviewed information provided in response to the ANPRM (56 FR 24444) and the proposed rule.

Based on new information received in response to the proposed rule, EPA estimates that less than 100 tons of currently land-disposed K118 nonwastewaters will require alternative treatment. EPA has identified no K117 or K136 waste generation and no K118 wastewaters currently being surface disposed.

EPA has identified no K131 or K132 wastes currently being land disposed and requiring alternative treatment or recovery. All identified K131 wastes currently generated are sent off site for acid reclamation.

Based on available data and using incineration as the treatment technology (see Section VI.B), the Agency believes that sufficient treatment capacity exists for treatment of these wastes; therefore, EPA is not granting a national capacity variance for K117, K118, K136, K131 and K132 wastewaters or nonwastewaters. EPA is granting a two-year national capacity variance to underground injected K117, K118, K131, and K132 wastes (see Section VI.F).

e. *Ethylenebisdithiocarbamic (EBDC) Production Wastes (K123, K124, K125, and K126).*

K123—Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid (EBDC) and its salts
K124—Reactor vent scrubber water from the production of EBDC and its salts
K125—Purification solids (including filtration, evaporation, and centrifugation solids) from the production of EBDC and its salts
K126—Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of EBDC and its salts

For EBDC wastes, EPA is promulgating incineration as the method of treatment for nonwastewaters; and incineration, or chemical oxidation followed by biological treatment or carbon absorption as methods of treatment for wastewaters.

During 1990 and early 1991, EPA collected generation and management information concerning the EBDC wastes under the authority of section 3007 in RCRA. This capacity analysis incorporates data from that section 3007 information request.

The Agency has identified less than 100 tons of K125 nonwastewaters that are currently land disposed and will require alternative treatment, and has identified no quantities of K123, K124, or K126 wastes that are currently being land disposed. No generation of K125 wastewaters, K124 wastes, or K126 wastes has been identified.

Based on available data, EPA believes sufficient capacity exists for treatment of the EBDC wastes; therefore, EPA is not granting a national capacity variance for K123, K124, K125, and K126 wastewaters or nonwastewaters.

D. Required and Available Capacity for Newly Listed Wastes Mixed With Radioactive Contaminants

EPA has defined a mixed RCRA/radioactive waste as any matrix containing a RCRA hazardous waste and a radioactive waste subject to the Atomic Energy Act (53 FR 37045, 37046, September 23, 1988). Regardless of the type of radioactive constituents that these wastes contain (e.g., high-level, low-level, or transuranic), they are subject to the RCRA hazardous waste regulations, including the land disposal restrictions.

Radioactive wastes that are mixed with spent solvents, dioxins, California list wastes, or First Third, Second Third, and Third wastes are subject to the land disposal restrictions already promulgated for those hazardous wastes. EPA granted two-year national capacity variances for all of these wastes because of a lack of national treatment capacity. Today's rule addresses the radioactive wastes that contain newly listed hazardous wastes being restricted in today's rulemaking.

The Department of Energy (DOE) is the primary generator of mixed RCRA/radioactive wastes. A variety of non-DOE facilities also generate mixed RCRA/radioactive wastes, including nuclear power plants, academic and medical institutions, and industrial facilities. Based upon a review of the available data, including data submitted by DOE under several rulemakings, the quantities of mixed RCRA/radioactive wastes containing newly listed wastes regulated by this rulemaking appear to be small.

Although DOE is in the process of increasing its capacity to manage mixed RCRA/radioactive wastes, information supplied by DOE under other rulemakings indicates that a significant capacity shortfall currently exists for the treatment of mixed RCRA/radioactive wastes, much of which is in storage facilities awaiting treatment. EPA's review of non-DOE data sources also showed a significant lack of commercial treatment capacity as well.

Any new commercial capacity for mixed RCRA/radioactive wastes that becomes available will be needed for mixed wastes that were regulated in previous land disposal restriction rulemakings and whose variances have already expired (i.e., radioactive wastes mixed with solvents, dioxins, California list wastes, or First Third, Second Third, or Third wastes). In addition, DOE has indicated that it will generally give treatment priority to mixed wastes that are already restricted under previous

LDR rules. Thus, EPA has determined that sufficient alternative treatment capacity is not available and is granting a two-year national capacity variance for mixed RCRA/radioactive wastewaters and nonwastewaters contaminated with newly listed wastes whose standards are being promulgated today.

One commenter on the proposed rule suggested that EPA not rely on DOE to develop the capacity needed to manage the largest quantities of mixed RCRA/radioactive wastes because of DOE's reportedly poor record of handling radioactive materials. EPA disagrees with this comment. DOE is responsible for managing many radioactive wastes and has a Federal statutory obligation to develop needed capacity. In addition, DOE is subject to regulations designed to ensure that its mixed RCRA/radioactive wastes are properly managed. EPA and authorized states regulate the hazardous components of these wastes under RCRA and the Nuclear Regulatory Commission (NRC) and agreement states regulate the radioactive components under the Atomic Energy Act and other statutes. DOE is generally self-regulating with respect to the radioactive component and is generally exempt from NRC regulations, except for DOE facilities that accept commercial high level wastes which are to be licensed by NRC.

The same commenter also suggested that EPA require that all non-DOE mixed RCRA/radioactive wastes be stored and managed under "emergency permits" at known commercial and on-site facilities, rather than allowing them to be generated, managed, and disposed "at an unknown number of unidentified generator sites." This commenter appears to be confused about the RCRA regulatory program. Mixed RCRA/radioactive wastes are not generated, managed, and disposed at "unidentified generator sites." All generators of more than 100 kilograms/month of RCRA hazardous wastes, including mixed wastes, must obtain an EPA identification number. Mixed RCRA/radioactive wastes, like other RCRA wastes, can be stored at the site of generation for greater than 90 days only if the generator has a permitted or interim status storage facility that is specifically allowed to handle mixed wastes. (In the case of generators of 100–1000 kilograms per month, the limit is 180 days, or 270 days in certain cases.) Furthermore, treatment or disposal of mixed RCRA/radioactive wastes is allowed only at permitted or interim status treatment or disposal facilities specifically authorized to handle mixed wastes. EPA believes that the current RCRA regulatory program is adequate to ensure proper management of the hazardous component of mixed waste and that "emergency permits" are unnecessary.

E. Required and Available Capacity for Debris Contaminated With Newly Listed Wastes

This capacity analysis focuses on debris contaminated with wastes whose treatment standards are being promulgated in this rule.[49] An estimated 80 percent of all debris contaminated with previously regulated wastes is presently disposed in hazardous waste landfills without prior treatment.[50] In today's rule, EPA is specifying that hazardous debris be treated prior to land disposal using one or more of the following families of debris treatment: extraction, destruction, or immobilization. (The availability of each of these treatments is discussed in greater detail in another section of this preamble.)

EPA used several data sources to estimate the total quantity of land-disposed hazardous debris. These sources include: comments received in response to the proposed rule (57 FR 958); responses to the ANPRM for the newly listed and identified wastes (56 FR 24444); information provided during a series of roundtable meetings held by the Agency in May and June of 1991 with representatives of companies involved in the management and disposal of hazardous debris; Records of Decision (RODs) of Superfund sites; the National Survey of Treatment, Storage, Disposal and Recycling Facilities (TSDR Survey); and the National Survey of Hazardous Waste Generators (Generator Survey).[51]

In general, EPA found severe limitations in estimating the total quantity of hazardous debris because the available data are incomplete and poorly defined. The reason for this lack of comprehensive data is several-fold: First, the regulated community reported that their data generally are not classified by debris but rather by waste code and waste description; second, the data from the TSDR and Generator Surveys were not collected and categorized specifically for debris; and debris were often mixed with soils,[52] and were frequently contaminated with more than one waste, thereby making the hazardous debris matrix and quantity determinations difficult; third, TSDR and Generator Surveys do not include data on debris contaminated with newly listed and identified wastes because they were not considered hazardous wastes in 1986; and fourth, debris that have been cleaned (decontaminated) are generally not reported as hazardous wastes because they are no longer considered hazardous debris. Commenters to the proposed rule agreed with the Agency's assessment of data limitations.

1. Waste Generation

The capacity analysis in today's rule is based on the data sources described above. For the total of currently land-disposed debris contaminated with RCRA hazardous wastes, EPA estimates that approximately one million tons are generated per year based on the reported percentage of the total of all hazardous waste land disposed. EPA also has estimated lower and upper bounds of 700,000 to 2.8 million tons per year, respectively, based on adjustment factors to the TSDR survey data. Some commenters to the proposed rule suggested that the Agency's estimate of the quantities of debris requiring treatment is low. However, no commenter provided national estimates of land-disposed hazardous debris.

The largest quantity of routinely generated debris contaminated with newly listed wastes is debris contaminated with F037 and F038 petroleum refining wastes. EPA's estimate for this quantity is 8,000 tons per year. In addition, EPA received information indicating that additional quantities of debris contaminated with F037 and F038 wastes may be generated from modernization of petroleum

[49] UDMH (K107–K110), dinitrotoluene (K111), toluene diamine (K112), ortho and para toluidine, ethylene dibromide, methyl bromide, 2-ethoxy ethanol (U359), ethylene bis-dithiocarbamic acid, and F037 and F038 petroleum refining wastes.

[50] Previously regulated wastes include solvents and dioxin wastes, California list wastes, and First Third, Second Third, and Third Third wastes. EPA has granted national capacity variances to soil and debris contaminated with First Third, Second Third, and Third Third wastes. The national capacity variances for debris contaminated with Third Third wastes expired on May 8, 1992. However, the Agency has extended this variance for one year (see section VI. of the preamble).

[51] EPA conducted the surveys during 1987 and 1988 to obtain comprehensive data on the nation's capacity for managing hazardous waste and the volumes of hazardous waste being land disposed as well as data on waste generation, waste characterization, and hazardous waste treatment capacity in units exempt from RCRA permitting.

[52] Data submitted by TSDFs in roundtable meetings sometimes combine hazardous debris with soil. Furthermore, TSDFs have stated that historical waste data are generally not kept by debris classifications.

refinery sewer and wastewater systems. EPA's estimate for debris contaminated with the remainder of wastes covered by today's rulemaking is less than 2,000 tons per year.

One commenter indicated that EPA's estimate of the quantity of debris contaminated with F037 and F038 wastes was low. However, this commenter provided no data that could serve as a basis for updating EPA's estimate. In the proposed rule, EPA acknowledged that decommissioning of large chemical plants and increasing remediation activities can significantly increase the estimated quantity of hazardous debris.

2. Current Management Practices

Waste generators and TSDFs report that most hazardous debris is currently landfilled without prior treatment. Stabilization or incineration are the reported treatment technologies for the small amounts of hazardous debris that are treated prior to landfilling. However, EPA has received information that materials-handling problems may limit the quantity of hazardous debris that currently can be treated by stabilization and incineration. Specifically, the size of many types of debris must be reduced before they can be treated (e.g., by shredding or grinding). Heavy duty equipment such as shredders and grinders are generally not part of the treatment process at hazardous waste treatment facilities and are not generally available. Consequently, the available capacity to treat hazardous debris is currently limited. In addition, large quantities of materials that are currently cleaned (decontaminated) and then managed as nonhazardous wastes may require additional management as hazardous debris. Commenters to the proposed rule agreed with EPA's assessment that there are materials-handling limitations in managing hazardous debris.

3. Available Capacity and Capacity Implications

EPA is promulgating that hazardous debris be treated prior to land disposal using one or more of the following families of debris treatment: Extraction, destruction, or immobilization. While materials-handling problems may limit the available destruction (e.g., incineration) and immobilization (e.g., stabilization) capacities, inadequate capacity exists for many of the promulgated technologies in the extraction family. Much of the capacity of extraction technologies currently used to decontaminate hazardous debris, such as water washing and steam cleaning, is not currently permitted, although EPA is proposing to expedite the permitting of these technologies. In conclusion, EPA believes that the current capacity available to treat hazardous debris is limited.

Therefore, EPA is today granting a two-year national capacity variance for debris contaminated with newly listed wastes covered in this rule. This variance would allow sufficient time for the installation and permitting of the treatment systems necessary to handle the quantities of hazardous debris affected by this rule. Existing commercial capacity and any new commercial capacity for debris that becomes available will be needed for debris contaminated with wastes listed in previous land disposal restriction rulemakings and not granted a capacity variance (i.e., debris contaminated with solvents, dioxins, or California list wastes). Commenters to the proposed rule generally agreed with EPA's analysis and the need for a national capacity variance for debris contaminated with newly listed wastes covered in this rule.

F. Capacity Determination for Underground Injected Wastes

As explained in previous rules concerning land disposal restrictions (see, e.g. 52 FR 32450, August 27, 1987; 53 FR 30912, August 16, 1988; 55 FR 22520, June 1, 1990), EPA is allocating available capacity first to those wastes disposed in surface units, next to wastes resulting from CERCLA and RCRA clean ups, and finally to underground injected wastes. Based on the continued application of this approach, the Agency is promulgating the following effective dates for injected wastes.

1. Newly Listed Wastes With Treatment Standards Which Current Data Indicate Are Not Being Underground Injected

The wastes K107, K108, K109, K110, K123, K124, K125, K126, K136, U328, U353, and U359 are the newly listed wastes for which numerical standards or specified methods are being promulgated, and which current data indicate are not being underground injected. Therefore, EPA is prohibiting these wastes from underground injection upon the effective date of this rule.

2. Newly Listed Wastes With Treatment Standards Which Current Data Indicate Are Being Underground Injected

The wastes F037, F038, K111, K112, K117, K118, K131, and K132 are the newly listed wastes for which current data indicate are being underground injected by Class I hazardous waste injection wells.

For K111 and K112 waste from the production of dinitrotoluene or toluenediamine, pretreatment includes neutralization and filtration. Only a small amount of this waste is being disposed of in a Class I hazardous waste injection well which has received a no-migration petition.

The treatment standards for F037 and F038, petroleum refining wastes, are based upon transfer of the performance of technologies previously established for K048–K052 wastes. Based on the Hazardous Waste Injection Well Inventory data base, EPA believes that a small volume of F037 and F038 wastes are being underground injected annually by permitted injection wells. No new data, indicating that larger injected volumes of these wastes, were received by the Agency during the comment period for the proposed rule. Therefore, as adequate alternative treatment capacity appears to be available, the Agency is not granting a two-year national capacity variance for any injected F037, F038, K111, and K112 waste, and is prohibiting these wastes from underground injection upon the effective date of this rule.

The treatment standards for K117, K118, K131, and K132 wastes are based upon liquid incineration. One comment received from the proposed rule indicated that a large volume of these wastes, which are in a mixed non-segregable waste stream exceeding 300 million gallons annually, were being underground injected. The Agency's current data indicate that there is inadequate available commercial treatment capacity for these wastes. Therefore, EPA is granting a two-year national capacity variance for injected K117, K118, K131, and K132 wastes in today's rule.

G. Revisions to Treatment Standards for K061, F006, and K062

In today's rule, the Agency is removing the low and high zinc subcategories for K061 and establishing the same numeric treatment standards based on HTMR for all K061 nonwastewaters. EPA also is establishing alternative treatment standards based on HTMR for K062 and T006. Today's rule does not preclude the use of any treatment technology that can meet these standards nor does it preclude the use of any technology that can meet the previously promulgated treatment standards for K062 and F006. The Agency received several comments questioning the availability of HTMR capacity to treat these wastes. Although commenters also questioned whether stabilization could meet the treatment

standards, one commenter submitted information that their stabilization process does meet the numeric treatment standards for K061. Since any technology that can meet the numeric standards for K061 can be used to treat those wastes, the Agency believes that there is sufficient treatment capacity for K061. Similarly, since the treatment standards based on HTMR for K062 and F006 are alternative standards and any technology currently used to treat K062 and F006 to the previously promulgated standards may continue to be used, the Agency believes that there is sufficient treatment capacity for K062 and F006.

VII. Implementation

As described in section VIII. of this preamble, State Authority, today's rule is being promulgated under HSWA authority. Therefore, until states receive authorization to implement today's rule, the Federal procedures and standards will be used for its implementation. The following sections describe some of the relevant generator and permitting procedures that apply to waste handlers as they comply with today's rule.

A. Facilities Qualifying for Interim Status Due to Storage of Prohibited Wastes

As discussed elsewhere in today's preamble, EPA has determined that adequate treatment capacity for hazardous debris will not be available following the expiration of the national capacity variance for these wastes on May 8, 1992, and has therefore granted a one-year national case-by-case extension to the LDR effective date for hazardous debris, provided certain recordkeeping and other requirements are met. However, even by May 1993 there will likely be generators who will still have difficulty obtaining treatment for these wastes. To a lesser degree, there may also be situations where generators of the newly listed wastes—for which treatment standards are prescribed in today's rule—are unable to initially arrange for appropriate treatment. Therefore, EPA believes that some generators without permits or interim status will need to accumulate wastes restricted from land disposal by today's rule for more than 90 days in order to acquire treatment required by part 268. Although 90 days is the maximum period allowed for accumulation storage at generator sites, if the wastes must remain on-site longer due to unforeseen, temporary, or uncontrollable circumstances, an extension of up to 30 days may be granted at the Regional Administrator's discretion. (See 40 CFR 262.34.) If, despite the best efforts of the generator, waste accumulation will exceed the 90 day limit (or 120 day limit, if an extension is granted), then the generator must obtain interim status for continued storage.

Section 3005(e) of RCRA establishes the criteria for obtaining interim status, and 40 CFR 270.70(a) codifies that provision. This section provides that facilities "in existence on the effective date of statutory or regulatory changes * * * that render the facility subject to the requirement to have a permit" may qualify for interim status if they make the appropriate application. A generator who is accumulating hazardous wastes in tanks or containers before the effective date of today's rule is "in existence" and may qualify for interim status provided that the continued storage is necessary to comply with the land disposal restrictions. Section 3005(e)(1) allows interim status only where new regulatory requirements subject an existing facility to permitting requirements. It is not intended to provide an opportunity for a facility to newly engage in hazardous waste management.

Generators who need to obtain interim status should submit a part A permit application to the Agency as provided in part 270. (Part A application instructions can be found at § 270.13.) In the part A application, the generator must demonstrate that the additional accumulation time is necessary as a result of the land disposal restrictions of part 268.

The part A must be submitted to the Agency by the deadline specified in § 270.10(e). Note that the § 270.10(e) deadline is the earlier of the following two alternative dates: (1) Six months after publication of regulations which first require the facility to comply with part 265, or (2) thirty days after the date they first become subject to the standards in part 265. It is expected that the deadline for most, if not all, of the large quantity generators will be established by the second alternative. By operation of 40 CFR 270.10(e)(ii), the generator first becomes subject to the permitting requirements when he exceeds the generator accumulation time limit. For example, after the 90-day accumulation period ends, the generator would be required to submit the part A within 30 days. Therefore, it is critical that any generator who will be newly subject to the interim status requirements become familiar with the part 270 requirements and submit the part A application on time.

Generators applying for interim status must comply with the applicable requirements of part 265. These new interim status facilities are also subject to corrective action orders under section 3008(h) of RCRA. Furthermore, if requested by the Administrator, the facility will be required to submit its part B permit application.

EPA anticipates that some of these new interim status facilities managing debris may find containment buildings more suitable for the storage or treatment of their restricted wastes than their existing tanks or containers. These facilities may request certain changes during interim status by following the procedures described below.

B. Containment Buildings at Generator Sites

As explained in section IV.G.3. of this preamble, generators who want to add a containment building for accumulation (including treatment) of waste for less than 90 days, can do so without obtaining a RCRA permit, provided the conditions in § 262.34 are met. These conditions include compliance with the containment building standards in subpart DD of part 265 and certain recordkeeping and reporting requirements. Such containment buildings can be used indefinitely, provided the generator ensures that each volume of waste remains in the unit for 90 days or less. When the generator has no further need to manage hazardous waste in the unit, then the building must be closed in accordance with § 265.1102.

C. Addition of Waste Management Capacity at Permitted and Interim Status Facilities

1. Permitted Facilities

Permitted treatment, storage, and disposal facilities may add new treatment processes and additional capacity pursuant to today's rule by applying for a permit modification under the Federal regulations at § 270.42 (see 53 FR 37912, September 28, 1988, for a full explanation of the permit modification procedures). Although the regulations at § 270.42 were promulgated under pre-HSWA authority, EPA may use these regulations in authorized States when necessary to implement HSWA provisions such as the land disposal restrictions (see 53 FR 37933).

The types of modifications needed to add new capacity or processes would likely require the submittal of a Class 2 or 3 modification. For containment buildings the permit modification type can be determined by consulting new section M in appendix I of § 270.42. The Class 2 modification process requires

Agency action on the request within 120 days. This action would consist of approval or denial, reclassification as a Class 3 modification, or authorization to conduct the activities for up to 180 days pending Agency action. Furthermore, for Class 2 modifications, construction to implement the requested facility change may commence 60 days after submission of the request. There is no deadline for Agency action for Class 3 modifications, which apply to more substantial facility changes.

Permitted facilities may also apply for a temporary authorization to initiate necessary activities while a Class 2 or 3 permit modification request is undergoing review, or to undertake a treatment or storage activity which will be of short duration. EPA may grant a temporary authorization for a term of up to 180 days. Any request for a temporary authorization must demonstrate compliance with the part 264 standards and also meet the criteria of § 270.42(e) for approval. Today's rule amends § 270.42(e)(3)(ii)(B) to allow temporary authorizations for containment buildings where necessary to treat or store restricted waste, including hazardous debris, in accordance with part 268. Interested members of the public (i.e., those that have previously expressed interest in any permitting action for the facility) will receive notice by mail of a facility's request for a temporary authorization, and another mail notice if EPA approves the request. The temporary authorization may be renewed once if the additional procedures of § 270.42(e) are followed, including the submission of appropriate permit modification information and the initiation of public meetings and public comment period. (See 53 FR 37919, September 28, 1988 for additional discussion of temporary authorizations.)

2. Interim Status Facilities

Treatment, storage, and disposal facilities managing hazardous waste under interim status may add new treatment processes or additional treatment or storage capacity by using the existing procedures for changes during interim status in § 270.72. Under these procedures, a facility must submit to EPA a revised part A permit application and justification explaining the need for the change. The change may then be approved by EPA.

In order for the change to be approved by EPA, it must meet one of several criteria, such as being necessary to comply with a Federal, State, or local requirement. Note that changes may not be made if they amount to reconstruction of the facility. This occurs when the capital investment for the changes to facility exceed 50 percent of the capital cost of a comparable entirely new facility. However, § 270.72(b)(6) in today's rule lifts the reconstruction limit for changes to treat or store in containment buildings hazardous waste subject to land disposal restrictions imposed by part 268, provided that the changes are made solely for the purpose of complying with part 268.

D. Conversion of Enclosed Waste Piles to Containment Buildings at Permitted and Interim Status Facilities

EPA expects that many permitted and interim status facilities will make changes to existing enclosed waste piles to meet the technical standards for containment buildings. These facilities may either continue the operation of the containment building under its permit or interim status, or may wish to operate the containment building in accordance with the 90-day generator accumulation provision in § 262.34.

1. Conversion of Enclosed Waste Piles to Interim Status or Permitted Containment Buildings

Permitted facilities may convert their enclosed waste piles to containment buildings by submitting a Class 2 permit modification, as provided in Item I.6. in appendix I to § 270.42. Facilities under interim status may amend their part A permit applications to convert an enclosed waste pile to a containment building under § 270.72(a)(3) as a change in process. Interim status facilities must submit a revised part A permit application and a justification explaining the need for the change to the Agency. The Agency must then approve the change before it can be implemented. After the conversion, the containment building standards of part 265 subpart DD would apply to the unit instead of the waste pile standards of subpart L. Closure of the enclosed waste pile is not triggered by the conversion process since hazardous waste will continue to be managed in the unit and the unit remains fully subject to the requirements of the permit or interim status.

2. Conversion of Permitted or Interim Status Enclosed Waste Piles to Accumulation Units Under Section 262.34

Section 262.34 allows generators to accumulate wastes on-site in certain units for 90 days or less without having a permit or interim status provided that they meet the requirements of that section. Today's rule extends the applicability of § 262.34 to accumulation in containment building units.

Owners and operators of new containment buildings that have not operated under interim status or a permit can accumulate wastes under § 262.34 provided they meet the requirements of that section. Owners and operators of enclosed waste piles that are permitted or operating under interim status can convert those units to generator status and continue accumulating wastes under the provisions of § 262.34 if they first meet the requirements for closure of the unit under § 264.1102 or § 265.1102.

In the case of tanks, the Agency has encountered many owners and operators that have sought conversion from permitted or interim status to generator status but have been unable to satisfy the closure requirements of § 264.197 or 265.197 without ceasing operation of the unit. While the Agency does not seek to require owners and operators to take these units out of operation as part of the conversion to generator status, the Agency does not allow conversion to generator status to serve to exempt permitted and interim status units from the applicable closure and financial responsibility requirements. The Agency seeks to assure that all units that have operated under the requirements of part 264 or 265 satisfy the applicable closure requirements of those parts, and that funds be available to do so. Thus, permitted or interim status tanks that convert to 90-day generator status must undergo full closure before they are released from financial assurance requirements. However, closure requirements are triggered by the final receipt of hazardous waste—not by conversion to 90-day generator status. Therefore, the tank may defer RCRA closure until it is taken out of hazardous waste service.

Similarly, where owners and operators of interim status or permitted containment buildings seek to convert to 90-day generator status but cannot close the unit without taking it out of operation, the owner or operator may accumulate waste as a generator under the provisions of § 262.34 (without a permit requirement) and close the unit at a later date. However, it should be noted that unless the owner or operator satisfies all applicable closure requirements prior to conversion, the unit remains subject to the requirements of subparts G (closure) and H (financial responsibility) until closure of the unit is complete. Furthermore, if the facility is in interim status, it retains interim status until a permit application is denied or interim status is lost. Permitted facilities would retain any corrective action

requirements, but could seek permit amendments to eliminate 40 CFR part 264 standards to which they were no longer subject (e.g., waste analysis plan).

VIII. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility. The standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program in lieu of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in nonauthorized States. EPA is directed to carry out these requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is being promulgated pursuant to sections 3004(d) through (k), and (m), of RCRA (42 U.S.C. 6924(d) through (k), and (m)). It is added to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions in Table 1, as discussed in the following section of this preamble. Table 2 in 40 CFR 271.1(j) is also modified to indicate that this rule is a self-implementing provision of HSWA.

EPA is also finalizing a new management unit, containment buildings, which involves redefinition of the term "pile," pursuant to HSWA. This provision assures an adequate means of implementing the treatment standards, either by providing a means that treatment can occur without constituting impermissible land disposal, or by providing a safe staging area that would not constitute land disposal before best treatment. Cf. 56 FR 41175 (August 19, 1991) (portion of rule assuring availability of capacity adopted pursuant to HSWA). Thus, this portion of the rule is adopted pursuant to HSWA and takes effect immediately in authorized States.

B. Effect on State Authorization

As noted above, EPA is today finalizing a rule that will be implemented in authorized States until their programs are modified to adopt these rules and the modification is approved by EPA. Because the rule is pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that HSWA interim authorization will expire on January 1, 1993 (see 40 CFR 271.24(c)).

Section 271.21(e)(2) requires that States with final authorization must modify their programs to reflect Federal program changes and to subsequently submit the modification to EPA for approval. The deadline by which the State would have to modify its program to adopt these regulations is specified in § 271.21(e). The deadline is July 1, 1993 if this rulemaking is finalized on or before June 30, 1992. This deadline can be extended in certain cases (see § 271.21(e)(3)). Once EPA approves the modification, the State requirements become subtitle C RCRA requirements.

States with authorized RCRA programs may already have requirements similar to those in today's final rule. These State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements in lieu of EPA until the State program modifications are approved. Of course, States with existing standards could continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, EPA will work with States under agreements to minimize duplication of efforts. In many cases, EPA will be able to defer to the States in their efforts to implement their programs rather than take separate actions under Federal authority.

States that submit official applications for final authorization less than 12 months after the effective date of these regulations are not required to include standards equivalent to these regulations in their application. However, the State must modify its program by the deadline set forth in § 271.21(e). States that submit official applications for final authorization 12 months after the effective date of these regulations must include standards equivalent to these regulations in their application. The requirements a state must meet when submitting its final authorization application are set forth in 40 CFR 271.3.

The regulations being finalized today need not affect the State's Underground Injection Control (UIC) primacy status. A State currently authorized to administer the UIC program under the Safe Drinking Water Act (SDWA) could continue to do so without seeking authority to administer the amendments that will be promulgated at a future date. However, a State which wished to implement part 148 and receive authorization to grant exemptions from the land disposal restrictions would have to demonstrate that it had the requisite authority to administer sections 3004 (f) and (g) of RCRA. The conditions under which such an authorization may take place are discussed in a July 15, 1985 final rule (50 FR 28728).

IX. Regulatory Requirements

A. Economic Impact Screening Analysis Pursuant to Executive Order 12291

Executive Order No. 12291 requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis (RIA) be conducted. A major rule is defined as a regulation likely to result in an annual effect to the economy of $100 million or more; a major increase in costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to

compete with foreign-based enterprises in domestic or export markets. An RIA is a quantification of the potential benefits, costs, and economic impacts of a rule.

The Agency estimated the costs of today's rule to determine if it is a major regulation as defined by Executive Order 12291. The Agency expects today's rule to have an incremental annual cost below $100 million. Also, the Agency does not believe the rule will significantly increase costs for consumers, individuals, industries, Federal, State and local government agencies, or geographic regions, or have significant adverse effects on competition, employment, investment, innovation, or international trade.

The Agency has performed an Economic Impact Screening Analysis for this rule. The Agency has not assessed benefits but has rather focused its analyses on the costs and economic impacts attributable to today's rule.

1. Cost Methodology

To assess the cost of today's rule, EPA developed a cost methodology with four major analytical concerns: (a) Petroleum refining wastes, (b) remaining wastes affected by the rule, (c) hazardous debris, and (d) storage and treatment in containment buildings. In this section, the Agency summarizes the methodology it adopted for each of these concerns. In addition, at the end of the cost methodology section, EPA also lists several wastes included in today's rule which are not expected to be associated with any regulatory impacts.

a. *Approach for Petroleum Refining Wastes (F037 and F038).* In the analysis of the compliance costs for the treatment standards being set for petroleum refining wastes, the Agency first reviewed the work completed for the listing of F037 and F038, which EPA promulgated in October 1990 (see 55 FR 46386, subsequently referred to as the Listing Rule or Listing RIA).[53] EPA estimated in the Listing RIA that 470,000 tons of F037 and F038 nonwastewaters (with an average water content of 55 percent) were generated annually. The Agency assessed compliance costs for this volume under a compliance scenario that included LDR treatment before land disposal because it believed that the realistic post-regulatory management practice after listing will include treatment. The LDR treatment scenario consisted of dewatering of the waste followed by either incineration (on-site or off-site) or solvent extraction (on-site).

For today's rule, the Agency updated the F037 and F038 volume estimates used in the Listing RIA based on additional generation information obtained as part of the capacity determination (see section VI.C for the capacity analysis of F037 and F038). Based on this updated information, the Agency estimated that 223,000 tons of F037 and F038 nonwastewaters are generated annually (with an average water content of 30 percent). EPA estimated that 56,000 tons per year of F037 and F038 wastes were treated to meet the treatment standards in the baseline and that the industry will incur incremental costs in treating the remaining 167,000 tons.

Of the 167,000 tons of land disposed F037 and F038 requiring treatment, EPA estimated that roughly 17,000 tons (i.e., 10 percent) is land disposed in California. California has its own LDR program, under which F037 and F038 waste are restricted from land disposal as of May 8, 1992. The California land ban standards are substantively equivalent to those standards in today's rule. Thus, even if the Federal regulations are not promulgated, F037 and F038 waste will be restricted in this State. Therefore, EPA estimated that only 150,000 tons annually of F037 and F038 will require additional treatment prior to land disposal as a result of today's rule. For its cost analysis, EPA is ignoring the effect of the one-year national capacity variance being granted for this volume and rather estimates the expected annualized cost several years after the listing decision.

For the baseline scenario, the Agency estimated that 96,000 tons per year (i.e., 64 percent) of the F037 and F038 waste requiring additional treatment is managed on-site, and the remaining 54,000 tons (i.e., 36 percent) is sent off-site. Of the waste managed on-site, the Agency estimated that 91,000 tons per year (i.e., 95 percent) is managed using land treatment, and 5,000 tons per year (i.e., 5 percent) is landfilled. All wastes disposed off-site were assumed to go to landfills.

For the post-regulatory scenario, the Agency assumed that 130,000 tons (i.e., 87 percent) of the 150,000 tons requiring additional treatment will be treated on-site. Although the Listing RIA did not project any volume of waste going to on-site cokers, information indicates that in the post-regulatory scenario 34,000 tons per year (i.e., 26 percent) of the F037 and F038 volume managed on-site will be disposed of in such a manner, at a cost of $200 per ton. The remainder of the F037 and F038 volume managed on-site was assumed to be split evenly between solvent extraction (48,000 tons per year, or 37 percent, at a cost of $500 per ton) and incineration (48,000 tons per year, or 37 percent, at a cost of $400 per ton). The post-regulatory scenario assumed disposal of residuals in subtitle C landfills.

The Agency assumed that 20,000 tons per year (i.e., 13 percent) of the 150,000 tons requiring additional treatment will be treated off-site. The Agency estimated that 2,000 tons per year (i.e., 10 percent) of this volume will go to incineration, at a cost of $1,600 per ton, and the remaining 18,000 tons per year (i.e., 90 percent) will go to cement kilns, at a cost ranging from $700 per ton to $1,200 per ton. Although the Agency doesn't expect large increases in cement kiln capacity, there is uncertainty about future prices charged by cement kilns for hazardous waste.

b. *Approach for Remaining Wastes.* To determine the cost and economic impacts of the rule for newly listed wastes other than F037 and F038, EPA first identified the industries that will be affected. The Agency analyzed these industries to determine the amounts of the affected wastes that they generate, how these wastes are currently managed, and how these wastes will have to be managed to comply with LDR treatment standards.

The incremental cost of today's rule for each waste was estimated by comparing post-regulatory costs with the costs of current, or baseline, conditions. EPA lacked site-specific waste generation data for this screening analysis. Accordingly, the Agency developed costs for the baseline and post-regulatory scenarios assuming off-site commercial treatment for all wastes included in the cost analysis, even though off-site treatment may not be used by all generators since it generally is more expensive than on-site treatment.

The following paragraphs explain the approach used to evaluate costs for wastes besides F037 and F038 affected by today's rule.

(i) Newly Listed Organic Wastes. All newly listed organic chemical wastes affected by today's rule—unsymmetrical dimethylhydrazine production wastes, 2-ethoxyethanol, dinitrotoluene and toluenediamine production wastes, ethylene dibromide production wastes and methyl bromide production wastes, and ethylenebisdithiocarbamic acid production wastes—are land disposed in relatively small quantities. The baseline for all newly listed wastes was defined as continued land disposal in units meeting minimum technological requirements.

(ii) K061, F006, K062. Today's rule eliminates the low zinc subcategory for K061 wastes and establishes numeric treatment standards for all K061 based on high temperature metals recovery (HTMR). Wastes previously included in the high zinc subcategory of K061 already had to meet treatment standards based on HTMR; they are unaffected by this change. Wastes previously included in the low zinc subcategory of K061 had to meet numeric treatment standards based on stabilization, although in some cases HTMR was being used.

EPA's cost analysis for the regulatory changes to K061 considered only the low zinc subcategory since wastes in the high zinc subcategory are not affected by the rule. The Agency assumed the baseline for wastes previously included in the low zinc subcategory K061 is stabilization. The Agency assumed that in the post-regulatory scenario managers of these wastes will use HTMR.

Today's rule establishes numeric treatment standards based on HTMR as an alternative treatment standard for K062 and F006. The Agency did not quantify the cost impact of the rule for these two wastes; it believed that any operator using HTMR for K062 and F006 will be using the technology only because it is more cost-effective than current management practices.

c. *Approach for Hazardous Debris.* (i) Previously Regulated Hazardous Debris. The majority of hazardous debris is already regulated under the Solvents and Dioxins, California list, and the First Third, Second Third, and Third Third LDR rules due to the waste code-carry-through principle. The waste code-carry-through principle, or mixture rule, states that a solid waste mixed with a listed hazardous waste bears the waste code of the listed hazardous waste.

For this hazardous debris, which is already restricted under the LDR program, the standards in today's rule are expected to be easier to implement and less costly than the previous standards. As one commenter stated, by specifying multiple acceptable BDAT technologies for a given hazardous contaminant category and debris class, EPA has given the generators and treaters a number of options to allow more cost-effective and efficient treatment of hazardous debris. In addition, the Agency is allowing hazardous debris to be treated to meet the existing LDR standards established for the listed wastes if the managers of hazardous debris so desire.

To estimate the incremental annual cost of treating previously regulated hazardous debris, EPA constructed probabilistic distributions of both the volume of previously regulated hazardous debris and the unit costs of treating various subsets of this volume before and after the rule takes effect. EPA relied on the expert judgment of its technical staff to collect the data necessary for this step. EPA considered three sources of generation of previously regulated hazardous debris: routinely generated debris (approximately 20 percent of all previously regulated hazardous debris), debris generated at remedial actions required by Federal and State regulations (approximately 30 percent), and debris generated at demolition and construction sites (approximately 50 percent). The volumes associated with each of these sources were further divided based on other considerations that would determine the type and cost of the technology used to treat the debris.

EPA's approach for previously regulated hazardous debris did not focus on volume and cost estimates for specific wastes or facilities. For this set of debris, estimates of total volume and costs were apportioned to sets of facilities with different debris generation characteristics and different treatment patterns. EPA assumed that in the baseline, incineration would always be used for debris contaminated with organic wastes (estimated to be 20 percent of previously regulated hazardous debris, on average, for all sets of facilities); immobilization always would be used for debris contaminated with organic wastes (estimated to be 20 percent of previously regulated hazardous debris, on average, for all sets of facilities); and incineration followed by immobilization always would be used for debris contaminated with both organic and inorganic wastes (estimated to be 60 percent of previously regulated hazardous debris, on average, for all sets of facilities). In the post-regulatory scenarios, EPA assumed that debris contaminated with organics would be treated using incineration 20 percent of the time and washing the remaining 80 percent of the time, debris contaminated with inorganics always would be treated using immobilization (i.e., no change from the baseline treatment), and debris contaminated with both organics and inorganics would be treated using incineration followed by immobilization 20 percent of the time and washing followed by immobilization 80 percent of the time. Cost information, presented in appendix C of the EIA was gathered for the Phase I analysis based on industry contacts and professional judgment. The ranges used for the costs of incineration and washing reflected that some debris treated with the technologies in the post-regulatory scenario would be exempted from subtitle C management.

(ii) Newly Regulated Hazardous Debris. To gather information for its cost estimate of treating debris contaminated with wastes newly restricted under today's rule, EPA used an approach involving structured interviews with recognized experts in the area of hazardous debris volumes and treatment technologies. An integral part of these interviews was identifying the uncertainties associated with estimates of future hazardous debris generation rates and treatment costs.

EPA first identified individuals with expert knowledge of the industries generating and managing newly regulated hazardous debris. EPA identified nine experts. Four of these experts were senior environmental managers associated with several of the 14 organic chemical facilities that potentially could generate debris contaminated with organic chemical production wastes regulated by today's rule. The remaining five experts were senior environmental managers associated with several of the over 190 petroleum refineries that could potentially generate debris contaminated with F037 and F038.

The Agency then developed protocols for structured interviews with the experts who had been identified. The Agency's protocol was similar in structure to those used by Stanford/SRI [54] and Morgan and Henrion,[55] although it was substantially abbreviated due to time constraints. The protocol involved five basic stages. These stages could be described as: (1) Motivating, (2) structuring, (3) debasing, (4) encoding, and (5) verifying.

Two individuals conducted each interview, one a professional facilitator and the other an engineer with expertise in the industry being regulated. Interviews typically lasted one hour, during which time information on hazardous debris volumes and incremental treatment costs was solicited. Interviewers stressed that ranges should be supplied rather than

[53] Regulatory Impact Analysis for the Listing of Primary and Secondary Oil/Water/Solids Separation Sludges from the Treatment of Petroleum Refinery Wastewaters, prepared for U.S. EPA, Office of Solid Waste, Economic Analysis Staff, by DPRA, October 1990.

[54] See: Spetzler, C.S. and Stael Von Holstein, C.-A.S., "Probability Encoding in Decision Analysis", Management Science, Vol. 22, No. 3, and Stael Von Holstein, C.-A.S. and Matheson, J.E., A Manual for Encoding Probability Distributions, SRI International, Palo Alto, CA., 1979.

[55] Morgan, M.G. and Henrion, M., Uncertainty: A Guide to Dealing with Uncertainty in Quantitative Risk and Policy Analysis, Cambridge: Cambridge University Press, 1990.

point estimates, and they requested that experts provide percentile probabilities for these ranges.

After the Agency had collected information from experts, it aggregated data and generated cost results in terms of ranges that reflected the uncertainty of the analysis. EPA used a probabilistic model to develop volume and cost estimates. The Agency produced overall volume and cost estimates for the newly regulated debris treatment standards based on the medians of data; it also generated ranges of volumes and costs that have a 98 percent likelihood of containing the true values. EPA analyzed volumes and costs separately for the petroleum refining industry, which will generate debris contaminated with F037 and F038, and the organic chemicals industry, which will generate the remainder of debris effected by the rule.

d. *Methodology for Assessing Regulatory Impact Due to Storage and Treatment in Containment Buildings.* As a result of today's rule, containment buildings could be used as a method of waste management. They potentially could provide regulatory relief to the regulated community. Accordingly, the Agency assessed the potential cost implications of using these units. In its assessment, EPA considered industries that will use containment buildings for storage of bulk wastes and treatment of contaminated debris.

(i) Industries and Wastes Potentially Using Containment Buildings for Storage of Bulk Wastes. EPA believes that two primary categories of facilities currently use structures very similar to containment buildings for storage and are likely to convert to use of containment buildings in the future: mineral processing and metal recycling facilities. Within the mineral processing category, the Agency believes that generators of aluminum potliners will be particularly affected by the provision. Within the metal recycling category, the Agency believes that brokers of batteries, battery recyclers (i.e., lead smelters), and generators and recyclers of dust and ash from primary steel producers will be particularly affected. The Agency bases these beliefs on a review of the waste volumes these industries generate and comments that it has received on industrial practices. In addition, the Agency received extensive public comment from representatives of the three industries, thus enabling the Agency to perform a more detailed analysis of these industries than of other industries.

In the case of aluminum potliners, EPA is assuming that aluminum facilities already have Subtitle C storage permits, since potliners are currently being stored on-site in waste piles pending bulk shipment off-site. Because waste piles are a form of land disposal, if there was no containment building provision, in order to comply with the LDRs EPA believes that large facilities will have revert to sending potliners off-site at the time of generation. This change in practices would result in higher transportation and disposal costs, given the increased frequency of shipments. Today's containment building provision will allow large generators of spent aluminum potliners to continue their present management methods even after treatment standards are set for K088.

In the case of the lead acid battery recovery industry, the Agency believes that brokers of lead acid batteries and recyclers of lead acid batteries will be the primary parties affected by the containment building provision. Attempts to handle furnace feed materials differently have proven unsuccessful and to date remain infeasible. Because EPA considers the staging of furnace feed materials in the furnace feed areas as land disposal under the LDRs, bulk storage would be prohibited unless the materials are first treated. Thus, if containment buildings were not excluded from LDR regulation, generators would have to seek treatment alternatives, such as off-site stabilization, that might be more expensive than lead recycling and that do not promote resource recovery. Today's provision will allow brokers and secondary smelting facilities to accumulate sufficient quantities to allow for more efficient shipment and processing.

Lastly, with regard to the primary steel production industry, steel facilities store, and sometimes treat, production dust, primarily K061, in order to lower the cost of waste management through waste accumulation. As in the lead smelting industry, attempts to handle furnace feed materials differently are infeasible. If generators are not able to store waste to facilitate transportation and treatment, they would have to seek management alternatives, such as off-site stabilization, that would remain feasible if waste had to be sent off-site immediately after generation. These alternatives might be more expensive than HTMR. The Agency believes that both generators of K061 and HTMR facilities could take advantage of the containment building provision and continue to store wastes in the present manner.

The Agency recognizes the possibility that small generators and recyclers of bulk hazardous waste may not recognize as significant regulatory relief from the containment buildings provision as larger generators. Small generators are less likely than larger generators to have existing structures which are similar in design to containment buildings, and small generators may not generate enough waste to fully capitalize a containment building. The Agency believes that many small generators and recyclers of all types of bulk hazardous waste presently use concrete storage bins that are regulated under RCRA as tanks (and thus are granted a 90-day storage exclusion from the LDRs). Storage in concrete bins is possible for small generators and recyclers because they do not need the large areas to store and monitor their hazardous waste. For example, a small generator of aluminum smelting waste may store its spent potliners, each weighing about 10 tons, in a tank-like concrete bin. Because of this use of concrete bins, the Agency believes that many small generators already enjoy the exclusion from the LDRs that use of containment buildings would provide.

On the other hand, the industrial practices of large generators and recyclers often necessitate the use of large containment buildings. Large aluminum smelting facilities are likely to generate spent potliners weighing an order of magnitude more than those of small generators (e.g., 150 tons versus 10 tons) and thus they could take advantage of the increased storage capabilities of large containment buildings. Large recyclers often require large areas for proper monitoring and preparation of waste, and also could benefit from the containment building provision. For example, large recyclers of lead smelting require substantial staging areas to achieve time-efficient and proper draining of lead waste from "cracked" batteries. Large facilities are the primary facilities likely to gain economies of scale in the transportation, treatment, and disposal costs from the containment building provision. As a result, the Agency believes that large volume managers of wastes, such as those found in the three industries being analyzed, will realize significant benefits from the provision, while small volume managers will not.

For this reason, as well as the fact that the scarcity of data on smaller facilities does not permit a meaningful analysis, the Agency has focused its analysis on large generators. The Agency acknowledges that other industries besides the three being considered could profit from the containment building provision. The Agency, however, is using the analysis

of these three industries to gain an understanding of the economic implications of containment buildings in use for storage of wastes.

(ii) Facilities Potentially Using Containment Buildings for Treatment of Hazardous Debris. In addition to analyzing the use of containment buildings in the aluminum smelting, secondary lead smelting, and steel production industries, the Agency assessed the effects of the provision on facilities generating hazardous debris. To analyze the potential cost savings associated with treatment in containment buildings, EPA assumed in lieu of the today's rule, that facilities would treat hazardous debris off-site; the Agency assumed that under the containment building provision in today's rule, facilities will treat debris on-site inside containment buildings. The Agency used a weighted average of commercial on-site and off-site extraction and immobilization costs for its cost comparison and took into account the cost of constructing and operating a containment building.

e. *Wastes Not Considered.* The costs associated with two groups of wastes—F001 through F005 spent solvents and 24 K- and U-wastes with wastewater standards based on scrubber waters—were not quantified by the Agency in this screening analysis. The Agency has regulated these wastes previously and is revisiting them in the rule only to modify the basis for concentration standards. The modifications are for the purpose of standardization in testing procedures and in the basis for treatment standards and for the purpose of clarification to ensure appropriate placement in the Code of Federal Regulations. These modifications will not change the required management practices for any of these wastes significantly. Thus, the Agency expects such changes to have no significant cost impacts.

2. Cost Estimates

a. *Total Cost Estimate.* The estimate for the incremental annual cost of the standards promulgated in today's rule is $57 million to $65 million per year.[56] Table IX–1 presents quantities of the wastes affected by today's rule. The estimated cost of compliance with the rule for each waste is presented in Table IX–2. Neither table includes F001 through F005 spent solvents or the 24 K- and U-wastes covered by today's rule because the effect of the rule on these wastes is negligible, as explained in Section IX.1.e.

b. *Waste Code Cost Estimates.* (i) Petroleum Refining Wastes (F037 and F038). The Agency estimates the total incremental annual cost for treatment of F037 and F038 nonwastewaters to range between $40 million and $47 million. This figure is based on an annual F037 and F038 land disposed volume of 130,000 tons per year in States other than California. In the upper bound of the cost range shown for F037 and F038, 35 percent of the post-regulatory cost are from off-site treatment. The high cement kiln price used in this analysis, $1,200 per ton, is expected to be an overestimate of the long-term price for treatment in cement kilns. Presently, cement kilns appear to be charging rates slightly below those charged by incinerators; as more cement kilns are able to handle wastes their prices should decrease. Because of the high prices charged by cement kilns, the Agency has analyzed the costs for F037 and F038 in a range, as shown above.

[56] Wastewaters account for none of the cost of today's rule. No compliance costs are expected for treatment of wastewaters because wastewaters are typically discharged to publicly owned treatment works (POTWs) or to coastal and inland waterways under National Pollution Discharge Elimination System (NPDES) permit provisions. When wastewaters are discharged in this manner, they are not subject to the treatment standards required by the LDRs under RCRA.

TABLE IX–1.—SUMMARY OF ANNUAL QUANTITIES OF WASTES AFFECTED BY THE LDRS

Waste	Annual land disposal rate	Form of waste affected	Generation type	Assumed management method
Petroleum refining sludges (F037 and F038)	130,000 tons of routinely generated waste currently land disposed, excluding waste generated in California.	Dewatered sludge	Routine	Solvent extraction; incineration; cement kilns.
Unsymmetrical dimethylhydrazine production wastes (K107–K110).	No longer produced			
2-Ethoxyethanol (U359)	<500 tons	Nonwastewater	Routine	Incineration or fuel substitution.
Dinitrotoluene and toluenediamine production wastes (K111 and K112, U328 and U353).	3,500 tons—K111, 0 tons—K112, <500 tons of U328 and U353.	Nonwastewater	Routine	Incineration.
Ethylene dibromide (EDB) production wastes (K117, K118, and K136) and methyl bromide production wastes (K131 and K132).	<100 tons—K118, <100 tons—K132.	Nonwastewater	Routine	Incineration.
Ethylenebisdithiocarbamic acid (EBDC) production wastes (K123, K124, K125, and K126).	<100 tons—K125	Nonwastewater	Routine	Incineration.
Electric arc furnace dust (K061)	67,000 tons of low zinc K061 [a].	Solid	Routine	High temperature metals recovery.
Debris contaminated with newly listed wastes [b]	XXX tons	Solid	Routine and intermittent.	Destruction; immobilization; extraction.
Previously regulated debris	1,000,000 tons	Solid	Routine and intermittent.	Destruction; immobilization; extraction.

[a] Of the set of wastes potentially affected by a new BDAT for wastes with high chromium and high nickel content (including K061, K062, and F006), the Agency is considering K061 only. The quantity given for K061 is based on the generation quantity instead of on the quantity that is land disposed.
[b] The quantity presented here for newly regulated debris is an estimate pending completion of the Agency's analysis for hazardous debris.

TABLE IX-2.—SUMMARY OF ANNUAL COSTS OF LDR PHASE I WASTES

[In millions of dollars per year]

Waste	Post regulatory costs	Baseline costs [a]	Incremental costs
Wastes with Positive Incremental Cost:			
Petroleum refining sludges (F037 and F038)	[b] 58 to 66	[b] 18	40 to 47
Unsymmetrical dimethylhydrazine production wastes (K107–K110)	0	0	0
2-Ethoxyethanol (U359)	0.4	0.1	0.3
Dinitrotoluene and toluenediamine production wastes (K111 and K112, U328 and U353)	7	1	6
Ethylene dibromide (EDB) production wastes (K117, K118, and K136) and methyl bromide production wastes (K131 and K132)	0.3	<0.1	0.3
Ethylenebisdithiocarbamic acid (EBDC) production wastes (K123, K124, K125, and K126)	0.2	0.1	0.2
Debris contaminated with newly listed wastes	15	5	10
Total for newly listed wastes	81 to 89	24	57 to 65
Wastes with Negative Incremental Cost:			
Electric arc furnace dust (K061)	19	30	(11)
Previously regulated debris	970	1,600	(560)

[a] Baseline assumes all waste is landfilled, except for previously regulated debris.
[b] The range of costs shown represents a unit price for cement kilns of between $700 per ton and $1200 per ton. This range is reflected in the total costs shown for each column as well.

(ii) Wastes from the Production of Unsymmetrical Dimethylhydrazine (K107–K110). The Agency did not calculate costs of treatment standards for wastes from the production of unsymmetrical dimethylhydrazine (UDMH) (K107, K108, K109, and K110). This decision was made based on information that these wastes are no longer generated.

(iii) 2-Ethoxyethanol Wastes (U359). The Agency estimated an incremental annual cost of $700,000 for the standards developed for these wastes. This cost is based on an upper bound assumption of incineration of 500 tons annually.

(iv) Wastes from Production of Dinitrotoluene and Toluenediamine (K111 and K112, U328 and U353). The Agency estimated an incremental annual cost of $6.1 million for the standards developed for these wastes. This figure is based on an annual land disposal estimate of 3,500 tons of K111 nonwastewater, an upper bound assumption of 100 tons of K112 nonwastewater, and an upper bound assumption of 500 tons of U328 and U353 combined.

(v) Wastes from Production of Ethylene Dibromide (EDB) (K117, K118, and K136). The standards for these wastes have an estimated incremental annual cost of $300,000. This figure is based on upper bound assumptions of 100 tons of K118 nonwastewater and 100 tons of K132 nonwastewater requiring incineration.

(vi) Wastes from Production of Ethylenebisdithiocarbamic Acid (EBDC) (K123–K126). The incremental annual cost estimated for these wastes is $150,000. This figure is based on an upper bound assumption of 100 tons of K125 nonwastewater requiring incineration.

(vii) K061, F006, K062. The only previously regulated wastes revisited in today's rule for which the Agency developed cost estimates are K061 low-zinc wastes. (As discussed above, the standards for F006 and K062 are expected to have no incremental costs associated with them.) The standards for K061 wastes are based on high temperature metals recovery (HTMR). These standards, as applied to K061, could save industry up to approximately $11 million annually (i.e., The standards in today's rule are potentially less costly than the existing standards.). This figure is based on an annual generation estimate of 67,000 tons. The Agency has used a generation estimate rather than a land disposal estimate for this waste because of the high level of uncertainty regarding the quantity of low zinc K061 that is currently treated using HTMR. The effect of using a generation estimate of the K061 volume is that the cost savings presented is likely to be an over-estimate of the true cost savings for these standards.

c. *Results for Hazardous Debris.* There are two groups of hazardous debris in this rule. The first group includes all previously regulated hazardous debris: Debris contaminated with wastes regulated under the previous HSWA land disposal restriction rules (i.e., Solvents and Dioxins, California List, First Third, Second Third, Third Third rules). The second group of hazardous debris includes debris contaminated with wastes newly regulated under today's rule (e.g., F037).

(i) *Previously Regulated Hazardous Debris.* As of May 8, 1992, all of the national capacity variances for the debris regulated in the HSWA land disposal restriction scheduled waste rules will expire. (If the Agency proceeds with the planned national case-by-case variance, this date would be extended to May 8, 1993.) All previously regulated hazardous debris would then be required to meet the existing standards for debris established in the scheduled waste rules. Since the Agency is interested in long-term treatment costs, its analysis does not take into account the effect of the national capacity variance on treatment of hazardous debris.

Standards for debris established in today's rule allow considerably more flexibility in debris treatment than did the standards established in the LDR scheduled waste rules. In addition, today's standards provide for the use of many more extraction technologies for treatment then the HSWA standards; extraction technologies often can be cheaper to use than the destruction and immobilization technologies that are required under current regulations. Furthermore, today's treatment standards allow debris treated by destruction and extraction technologies to be excluded from subtitle C disposal. Therefore, EPA estimates that today's standards for previously regulated debris will result in a potential regulatory relief to industry. The Agency estimates baseline costs, costs of debris treatment and the prior land disposal restrictions rules after all variances are expired to be $1,600 million per year; under this rule the costs would be reduced by $560 million per year to $970 million. It should be noted that if there is a portion of the previously regulated debris volume which would be generated and managed only during the period of the national capacity variance, to the degree that this portion is reflected in the cost savings presented, these savings would be over-estimated.

One issue should be noted, however, regarding the baseline for previously regulated debris. The standard baseline in cost analysis is formulated as the scenario of existing management requirements in the absence of a new rule. In today's rule, the volume of previously regulated debris is currently under a capacity variance. In the absence of today's rule, once the variance expires, treatment according to existing standards is required. Therefore, the baseline used in the cost analysis is the existing standards.[57] However, since most hazardous debris is currently under the national capacity variance, treatment of hazardous debris is not generally occurring. Therefore, the baseline being used does not reflect current debris management practices. Yet, in keeping with standard regulatory analysis procedures, the Agency believes it to be appropriate to analyze costs for the volume of previously regulated debris based on a baseline of compliance with existing standards.

(ii) Newly Regulated Hazardous Debris. The results of EPA's analysis indicate that the volume of hazardous debris newly regulated by today's rule has a 98 percent likelihood of falling between 18,000 and 119,000 tons per year and the corresponding incremental cost of managing this waste has a 98 percent likelihood of falling between $3.8 million and $120 million per year. The median annual incremental cost for treating newly regulated debris was $10 million. For purposes of determining whether today's rule is a major rule as defined by Executive Order 12291, EPA has used the median volume and cost results from its analysis.

The volume of debris contaminated with F037 and F038 has a 98 percent likelihood of falling between 13,000 tons per year and 24 million tons per year in the long term future (i.e., more than five years after promulgation of today's rule). The incremental annual cost of treating this debris has a 98 percent likelihood of falling between $1.2 million and $5.8 million. The median incremental cost of treating F037 and F038-contaminated debris in EPA's analysis was $3.1 million. EPA acknowledges that in the short-term future (i.e., in the first five years after promulgation), the compliance costs of treating debris contaminated with F037 and F038 will be much higher.

The volume of debris contaminated with newly regulated organic chemical wastes has a 98 percent likelihood of falling between 3,400 tons and 98,000 tons per year in the long term future. The incremental annual cost of treating this debris has a 98 percent likelihood of falling between $1.4 million and $120 million. The median incremental cost of treating debris contaminated with newly regulated organic waste was $7.1 million.

d. *Cost Savings From Storage and Treatment in Containment Buildings.* The Agency lacked information with which to infer the typical dimensions of a containment building used to treat contaminated debris; therefore, the same size containment buildings were used for the analysis of treatment containment buildings as were used for the storage containment building analysis. The calculations indicate that use of containment buildings designed to store the typical waste quantities associated with the three industries considered and to treat contaminated debris could result in significant cost savings. Please see the EIA for complete results from the Agency's analysis.

To arrive at the estimates of cost savings, the Agency calculated the annualized costs of containment buildings. All costs were estimated as the present value of the capital and recurring costs incurred by facilities over an assumed 20-year operating life. The present value costs was then annualized over 20 years to arrive at equal annual payments. Implicit in this approach is the assumption that facilities will be able to smooth out anticipated costs with some form of financing over a 20-year period. Three and seven percent social discount rates, assumed constant for 20 years, were used to calculate the annualized costs.

In addition to estimating the overall incremental cost savings of the containment building provision, the Agency addressed three other issues associated with containment buildings: the costs of retaining corrective action authority of the containment buildings, costs of recordkeeping, and costs of engineered barriers required for liquids and dust.

Under today's rule, corrective action authority will be extended to permitted containment buildings; corrective action authority will not be extended to unpermitted containment buildings (i.e., those buildings under the 90-day generator exemption from permitting). The Agency assumes that only facilities that already have RCRA permits will choose to construct permitted containment buildings and that all containment buildings constructed at facilities without existing RCRA permits will be unpermitted (i.e., they will not be affected by the corrective action provisions in today's rule). Based on these assumptions, the Agency does not believe that today's provision will produce any incremental costs or benefits with regard to corrective action authority.

The Agency believes the recordkeeping requirements of today's provision will have little impact on industries choosing to use containment buildings. The Agency assumed that annual recordkeeping costs range from $1100 to $33,000/facility, depending on the volume of waste managed.

In addition to quantitative estimates of recordkeeping costs, the Agency qualitatively assessed the benefits of recordkeeping requirements for containment buildings. The Agency believes the costs are justified given the potential benefits that the public may incur.

Recordkeeping establishes adequate inspection plans to ensure that the unit is operating as designated. This goal is achieved through the establishment of an inspection program that ensures the structural integrity of the unit and prompt detection of any leaks or releases. As discussed in section IV.G, the Agency is requiring an inspection schedule for these units whereby, at least once each week, monitoring and leak detection equipment, the containment building, and the area surrounding the containment building is checked to ensure the unit is being properly operated and that no leaks or releases have occurred.

The Agency believes such controls are key to providing simple, yet adequate, maintenance of facilities to prevent detrimental releases of hazardous waste. In addition, monitoring buildings and wastes releases facilitates the Agency's enforcement actions.

The Agency does not believe that facilities will be significantly affected by these requirements. It is the Agency's understanding that the majority of facilities already have, or could easily, modify their existing operations to add these recordkeeping measures. The Agency notes that large facilities are the most likely to use containment buildings and believes that these facilities will be able to incorporate additional recordkeeping into their present operations with relatively little cost.

The final issue the Agency analyzed with regard to containment buildings was costs associated with engineered

[57] It should be noted that due to the limited data available for the cost analysis for the previous LDR rules, the hazardous debris volumes estimated by the Agency were small in comparison to the previously regulated contaminated debris volume estimated for today's rule. EPA believes that it underestimated compliance costs for hazardous debris treatment under the previous LDR rules due to this lack of data.

barriers and fugitive dust emission controls. The annualized cost (i.e., assuming social discount rate of three percent and cost annualized over 20 years) for secondary containment ranged from $7,000 to $23,000 per year for systems for 50' x 30' containment building and 340' x 200' buildings, respectively. Fugitive dust control ranged from approximately $3,000 for a 50' x 30' building to $30,000 per year for a 340' x 200' structure. (The building dimensions are representative of possible containment structures for all of the three industries.)

Given the results of the analysis presented in this section, the Agency believes that the containment building provision will provide regulatory relief to large facilities, while having little to no impact on small facilities. The Agency believes that facilities in the mineral processing and recycling industries are particularly likely to benefit from this provision.

3. Economic Impacts

A full economic impacts analysis was not performed because of a lack of data in many areas. The Agency, however, qualitatively assessed the economic impacts attributable to today's rule.

a. *Petroleum Refining Wastes (F037 and F038).* The Listing RIA considered the economic impact of the F037 and F038 listing in light of anticipated land disposal restrictions on these wastes. The impacts estimated in the Listing RIA were driven by facility costs and the economic viability of facility owners. The results of the Listing RIA's economic impacts analysis are summarized below.

In the Listing RIA, two to five percent of the refineries (depending on the cost scenario) had cost impacts greater than one percent of sales. (Cost impacts exceeding one percent of sales can be viewed as an indicator of potentially significant economic impact.) Slightly under two percent of the refineries had cost impacts that exceeded two percent of sales under the high-cost scenario, indicating more severe economic impacts. Nine out of ten affected refineries in the high-cost scenario had costs below 0.5 percent of sales, and over three-quarters of the refineries fell below 0.25 percent, indicating no significant impacts.

The analysis of small entities presented in the Listing RIA indicated that there were potentially seven non-integrated refineries (i.e., refineries that did not produce their own crude and market their own products) with cost-to-sales ratios greater than one percent under the high-cost scenario. A further analysis of employment effects and potential closures was not possible because of insufficient financial data for individual refineries.

EPA compared the incremental compliance cost for the F037 and F038 standards in today's rule with that of the Listing Rule. The Agency found that today's rule will have an incremental compliance cost for F037 and F038 waste, including both nonwastewater and hazardous debris, of between $49 million and $58 million, while the Listing RIA estimated an incremental annual compliance cost of $53 million to $102 million. Based on its qualitative analysis, EPA believes that the economic impacts of today's rule will be less than the impacts estimated by the Listing RIA.

b. *Remaining Wastes.* Considering the economic impacts of LDRs for the newly listed organic wastes other than F037 and F038, the Agency estimated the costs associated with all wastes to be insignificant, with the possible exception of dinitrotoluene and toluenediamine production wastes. The Agency, however, did not have the data to examine these economic impacts.

A quantitative assessment of the economic impacts associated with the hazardous debris standards was not possible because of data limitations. The Agency does not have comprehensive site-specific information on the volumes of previously regulated or newly listed hazardous debris.

The Agency expects that the impacts for previously regulated debris will not be significant since the revised standards are likely to be no more costly, and in some cases less costly, than the standards which currently exist. The impacts of the rule on newly regulated hazardous debris are uncertain. The estimated incremental cost for these standards is expected to range between $3.8 million and $120 million annually. If a relatively large number of facilities bear the burden of this cost, it is likely that these standards will not have a significant impact.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., whenever an agency publishes a notice of rulemaking, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the rule is estimated not to have a significant economic effect on a substantial number of small entities.

According to EPA's guidelines for conducting an RFA, if over 20 percent of the population of small entities is likely to experience financial distress based on the costs of the rule, then the Agency considers that the rule will have a significant impact on a substantial number of small entities, and must perform an RFA. The Agency has virtually no data on small entities affected by today's rule. Because of the low incremental costs incurred for the newly listed waste standards, the Agency believes that the only area of potential importance is the hazardous debris treatment standards. The previously regulated debris standards, being potentially a regulatory relief, are, for this analysis, considered to not have an effect on small entities. For the debris contaminated with newly listed wastes, the impacts to small facilities are uncertain, although may be significant. Therefore, although insufficient data was available to make a determination, the Agency estimates that there are not significant impacts on over 20 percent of the population of small entities based on the costs of the rule, so the Agency has not conducted an RFA for today's rule.

C. Paperwork Reduction Act

The information collection requirements for newly listed wastes were promulgated in previous land disposal restriction rulemakings and approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2050–0085. A copy of the Information Collection Request (ICR) document (ICR #1442.03) may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street SW. (PM–223Y), Washington, DC 20460 or by calling (202) 260–2740.

The new information collection requirements and revisions to existing requirements in this rule will be submitted for approval to OMB under the PRA. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Jonathan Gledhill."

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—land, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: June 30, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq.

2. Section 148.17 is added to subpart B of part 148 to read as follows:

§ 148.17 Waste specific prohibitions; newly listed wastes.

(a) Effective November 9, 1992, the wastes specified in 40 CFR part 261 as EPA hazardous waste numbers F037, F038, K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K136, U328, U353, and U359 are prohibited from underground injection.

(b) Effective June 30, 1995, the wastes specified in 40 CFR part 261 as EPA Hazardous waste numbers K117, K118, K131, and K132 are prohibited from underground injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the applicable standards specified in subpart D of part 268; or

(2) If an exemption from a prohibition has been granted in response to a petition under subpart C of this part; or

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

3. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

4. In § 260.10, a definition for "containment building" is added in alphabetical order and the definitions of "miscellaneous unit" and "pile" are revised to read as follows:

§ 260.10 Definitions.

* * * * * *

Containment building means a hazardous waste management unit that is used to store or treat hazardous waste under the provisions of subpart DD of parts 264 or 265 of this chapter.

* * * * * *

Miscellaneous unit means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146, containment building, or unit eligible for a research, development, and demonstration permit under § 270.65 of this chapter.

* * * * * *

Pile means any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

* * * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

5. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

6. In § 261.3 paragraphs (a)(2)(iii) and (c)(2)(ii)(C) are revised and paragraph (f) is added to read as follows:

§ 261.3 Definition of hazardous waste.

(a) * * *

(2) * * *

(iii) It is a mixture of a solid waste and a hazardous waste that is listed in subpart D of this part solely because it exhibits one or more of the characteristics of hazardous waste identified in subpart C of this part, unless the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part, or unless the solid waste is excluded from regulation under § 261.4(b)(7) and the resultant mixture no longer exhibits any characteristic of hazardous waste identified in subpart C of this part for which the hazardous waste listed in subpart D of this part was listed. (However, nonwastewater mixtures are still subject to the requirements of part 268 of this chapter, even if they no longer exhibit a characteristic at the point of land disposal).

* * * * * *

(c) * * *

(2) * * *

(ii) * * *

(C)(*1*) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062 or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in paragraphs (8), (7), and (13) of the definition for "Industrial furnace" in 40 CFR 260.10), that are disposed in subtitle D units, provided that these residues meet the generic exclusion levels

identified in the tables in this paragraph for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements must be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues must be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

Constituent	Maximum for any single composite sample—TCLP (mg/l)
Generic exclusion levels for K061 and K062 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.8
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70
Generic exclusion levels for F006 nonwastewater HTMR residues	
Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total) (mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification must be placed in the facility's files and sent to the EPA region or authorized state for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to subtitle D units. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D unit receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31. The notification must include the following information: The name and address of the subtitle D unit receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification must be signed by an authorized representative and must state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

* * * * *

(f) Notwithstanding paragraphs (a) through (d) of this section and provided the debris as defined in part 268 of this chapter does not exhibit a characteristic identified at subpart C of this part, the following materials are not subject to regulation under 40 CFR parts 260, 261 to 266, 268, or 270:

(1) Hazardous debris as defined in part 268 of this chapter that has been treated using one of the required extraction or destruction technologies specified in Table 1 of § 268.45 of this chapter; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in part 268 of this chapter that the Regional Administrator, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922, 6923, 6924, 6925, and 6937.

9. In § 262.34, paragraph (a)(1)(iii) introductory text is amended by removing the semicolon at the end and replacing it with a colon, paragraph (a)(1)(iii)(B) and the concluding text of paragraph (a)(1) are revised, and paragraph (a)(1)(iv) is added to read as follows:

§ 262.34 Accumulation time.

(a) * * *

(1) * * *

(iii) * * *

(B) Documentation of each waste removal, including the quantity of waste removed from the drip pad and the sump or collection system and the date and time of removal; and/or

(iv) The waste is placed in containment buildings and the generator complies with subpart DD of 40 CFR part 265, has placed its professional engineer certification that the building complies with the design standards specified in 40 CFR 265.1101 in the facility's operating record no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. The owner or operator shall maintain the following records at the facility:

(A) A written description of procedures to ensure that each waste volume remains in the unit for no more than 90 days, a written description of the waste generation and management practices for the facility showing that they are consistent with respecting the 90 day limit, and documentation that the procedures are complied with; or

(B) Documentation that the unit is emptied at least once every 90 days.

In addition, such a generator is exempt from all the requirements in subparts G and H of 40 CFR part 265, except for §§ 265.111 and 265.114.

* * * * *

10. In § 282.34(a), the first paragraph designated (a)(2) and the undesignated paragraph following (a)(2)(ii) are removed.

PART 264—STANDARDS FOR OWNER AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

11. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

12. Section 264.110 is amended by removing the word "and" from the end of paragraph (b)(1), by adding a semicolon in place of the period at the end of paragraph (b)(2), by adding "; and" in place of the period at the end of paragraph (b)(3), and by adding a new paragraph (b)(4) to read as follows:

§ 264.110 Applicability.

* * * * *

(b) * * *

(4) Containment buildings that are required under § 264.1102 to meet the requirement for landfills.

13. Section 264.111 is amended by revising paragraph (c) to read as follows:

§ 264.111 Closure performance standard.

* * * * *

(c) Complies with the closure requirements of this subpart, including, but not limited to, the requirements of §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 through 264.603, and 264.1102.

14. Section 264.112 is amended by revising paragraph (a)(2) to read as follows:

§ 264.112 Closure plan; amendment of plan.

(a) * * *

(2) The Director's approval of the plan must ensure that the approved closure plan is consistent with §§ 264.111 through 264.115 and the applicable requirements of subpart F of this part, §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601, and 264.1102. Until final closure is completed and certified in accordance with § 264.115, a copy of the approved plan and all approved revisions must be furnished to the Director upon request, including requests by mail.

* * * * *

15. Section 264.140 is amended by adding a semicolon in place of ", and" at the end of paragraph (b)(1), by adding a semicolon in place of the period at the end of paragraph (b)(2), by adding "; and" in place of the period at the end of paragraph (b)(3), and by adding a new paragraph (b)(4) to read as follows:

§ 264.140 Applicability.

* * * * *

(b) * * *

(4) Containment buildings that are required under § 264.1102 to meet the requirements for landfills.

* * * * *

16. Section 264.142 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 264.142 Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 264.111 through 264.115 and applicable closure requirements in §§ 264.178, 264.197, 264.228, 264.258, 264.280, 264.310, 264.351, 264.601 through 264.603, and 264.1102.

* * * * *

17. Subpart DD is added to part 264 to read as follows:

Subpart DD—Containment Buildings

Sec.
264.1100 Applicability.
264.1101 Design and operating standards.
264.1102 Closure and post-closure care.
264.1103–264.1110 [Reserved]

Subpart DD—Containment Buildings

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. These provisions will become effective on February 18, 1993, although owner or operator may notify the Regional Administrator of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

(a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(b) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel, wastes, and handling equipment within the unit;

(c) If the unit is used to manage liquids, has:

(1) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(2) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(3) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest practicable time, unless the unit has been granted a variance from the secondary containment system requirements under § 264.1101(b)(4);

(d) Has controls sufficient to prevent fugitive dust emissions to meet the no visible emission standard in § 264.1101(c)(1)(iv); and

(e) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

§ 264.1101 Design and operating standards.

(a) All containment buildings must comply with the following design standards:

(1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system if required under paragraph (b) of this section, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this paragraph. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(i) They provide an effective barrier against fugitive dust emissions under paragraph (c)(1)(iv); and

(ii) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

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(4) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g., a geomembrane covered by a concrete wear surface).

(2) A liquid collection and removal system to minimize the accumulation of liquid on the primary barrier of the containment building:

(i) The primary barrier must be sloped to drain liquids to the associated collection system; and

(ii) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of 1 percent or more; and

(B) Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a transmissivity of 3×10^{-5} m^2/sec or more.

(ii) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A containment building can serve as an external liner system for a tank, provided it meets the requirements of § 264.193(d)(1). In addition, the containment building must meet the requirements of § 264.193(b) and §§ 264.193(c) (1) and (2) to be considered an acceptable secondary containment system for a tank.)

(4) For existing units other than 90-day generator units, the Regional Administrator may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this subpart. In making this demonstration, the owner or operator must:

(i) Provide written notice to the Regional Administrator of their request by November 16, 1992. This notification must describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) Respond to any comments from the Regional Administrator on these plans within 30 days; and

(iii) Fulfill the terms of the revised plans, if such plans are approved by the Regional Administrator.

(c) Owners or operators of all containment buildings must:

(1) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

(i) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(ii) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(iii) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and

(iv) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions (see 40 CFR part 60, appendix A, Method 22—Visual Determination of Fugitive Emissions from Material Sources and Smoke Emissions from Flares). In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices (see 40 CFR part 60 subpart 292 for guidance). This state of no visible emissions must be maintained effectively at all times during routine operating and maintenance conditions, including when vehicles and personnel are entering and exiting the unit.

(2) Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit.

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly, in accordance with the following procedures.

(i) Upon detection of a condition that has lead to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

(A) Enter a record of the discovery in the facility operating record;

(B) Immediately remove the portion of the containment building affected by the condition from service;

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

(D) Within 7 days after the discovery of the condition, notify the Regional Administrator of the condition, and within 14 working days, provide a written notice to the Regional Administrator with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The Regional Administrator will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing all repairs and cleanup the owner or operator must notify the Regional Administrator in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (c)(3)(i)(D) of this section.

(4) Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For containment buildings that contain areas both with and without secondary containment, the owner or operator must:

(1) Design and operate each area in accordance with the requirements enumerated in paragraphs (a) through (c) of this section;

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of this subpart the Regional Administrator may waive requirements for secondary containment for a permitted containment building where the owner operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

§ 264.1102 Closure and post-closure care.

(a) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.,) contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subparts G and H of this part.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 264.310). In addition, for the purposes of closure, post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.

§ 264.1103–264.1110 [Reserved]

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

18. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, 6935, and 6936.

19. Section 265.110 is amended by removing the word "and" from the end of paragraphs (b)(1) and (b)(2), by adding "; and" in place of the period at the end of paragraph (b)(3), and by adding a new paragraph (b)(4) to read as follows:

§ 265.110 Applicability.

* * * * *

(b) * * *

(4) Containment building that are required under § 265.1102 to meet the requirement for landfills.

20. Section 265.111 is amended by revising paragraph (c) to read as follows:

§ 265.111 Closure performance standard.

* * * * *

(c) Complies with the closure requirements of this subpart, including, but not limited to, the requirements of §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 264.1102.

21. In § 265.112 (d)(4), the last two sentences are revised to read as follows:

§ 265.112 Closure plan; amendment of plan.

* * * * *

(d) * * *

(4) * * * The Regional Administrator must assure that the approved plan is consistent with §§ with 265.111 through 265.115 and the applicable requirements of subpart F of this part, §§ 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 264.1102. A copy of the modified plan with a detailed statement of reasons for the modifications must be mailed to the owner or operator.

* * * * *

22. Section 265.140 is amended by revising paragraph (b) to read as follows:

§ 265.140 Applicability.

(b) The requirements of §§ 265.144 and 265.146 apply only to owners and operators of:

(1) Disposal facilities;

(2) Tank systems that are required under § 264.197 of this chapter to meet the requirements for landfills; and

(3) Containment buildings that are required under § 265.1102 to meet the requirements for landfills.

* * * * *

23. Section 265.142 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 265.142 Cost estimate for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of closing the facility in accordance with the requirements in §§ 265.111 through 265.115 and applicable closure requirements in §§ 265.178, 265.197, 265.228, 265.258, 265.280, 265.310, 265.351, 265.381, 265.404, and 265.1102

* * * * *

24. In § 265.221, a new paragraph (h) is added to read as follows:

§ 265.221 Design and operating requirements.

* * * * *

(h) Surface impoundments that are newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics for the identification of hazardous waste must be in compliance with paragraphs (a), (c) and (d) of this section not later than 48 months after the promulgation of the additional listing or characteristic. This compliance period shall not be cut short as the result of the promulgation of land disposal prohibitions under part 268 of this chapter or the granting of an extension to the effective date of a prohibition pursuant to § 268.5 of this chapter, within this 48-month period.

25. Subpart CC is added and reserved and subpart DD is added to part 265 to read as follows:

Subpart DD—Containment Buildings

Sec.

265.1100 Applicability.

265.1101 Design and operating standards.

Sec.
265.1102 Closure and post-closure care.
265.1103 –265.1110 [Reserved]

Subpart DD—Containment Buildings

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. These provisions will become effective on February 18, 1993, although the owner or operator may notify the Regional Administrator of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

(a) Is a completely enclosed, self-supporting structure that is designed and constructed of manmade materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the units, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls;

(b) Has a primary barrier that is designed to be sufficiently durable to withstand the movement of personnel and handling equipment within the unit;

(c) If the unit is used to manage liquids, has:

(1) A primary barrier designed and constructed of materials to prevent migration of hazardous constituents into the barrier;

(2) A liquid collection system designed and constructed of materials to minimize the accumulation of liquid on the primary barrier; and

(3) A secondary containment system designed and constructed of materials to prevent migration of hazardous constituents into the barrier, with a leak detection and liquid collection system capable of detecting, collecting, and removing leaks of hazardous constituents at the earliest possible time, unless the unit has been granted a variance from the secondary containment system requirements under § 265.1101(b)(4);

(d) Has controls as needed to permit fugitive dust emissions; and

(e) Is designed and operated to ensure containment and prevent the tracking of materials from the unit by personnel or equipment.

§ 265.1101 Design and operating standards.

(a) All containment buildings must comply with the following design standards:

(1) The containment building must be completely enclosed with a floor, walls, and a roof to prevent exposure to the elements, (e.g., precipitation, wind, run-on), and to assure containment of managed wastes.

(2) The floor and containment walls of the unit, including the secondary containment system if required under paragraph (b) of this section, must be designed and constructed of materials of sufficient strength and thickness to support themselves, the waste contents, and any personnel and heavy equipment that operate within the unit, and to prevent failure due to pressure gradients, settlement, compression, or uplift, physical contact with the hazardous wastes to which they are exposed; climatic conditions; and the stresses of daily operation, including the movement of heavy equipment within the unit and contact of such equipment with containment walls. The unit must be designed so that it has sufficient structural strength to prevent collapse or other failure. All surfaces to be in contact with hazardous wastes must be chemically compatible with those wastes. EPA will consider standards established by professional organizations generally recognized by the industry such as the American Concrete Institute (ACI) and the American Society of Testing Materials (ASTM) in judging the structural integrity requirements of this paragraph. If appropriate to the nature of the waste management operation to take place in the unit, an exception to the structural strength requirement may be made for light-weight doors and windows that meet these criteria:

(i) They provide an effective barrier against fugitive dust emissions under paragraph (c)(1)(iv); and

(ii) The unit is designed and operated in a fashion that assures that wastes will not actually come in contact with these openings.

(3) Incompatible hazardous wastes or treatment reagents must not be placed in the unit or its secondary containment system if they could cause the unit or secondary containment system to leak, corrode, or otherwise fail.

(4) A containment building must have a primary barrier designed to withstand the movement of personnel, waste, and handling equipment in the unit during the operating life of the unit and appropriate for the physical and chemical characteristics of the waste to be managed.

(b) For a containment building used to manage hazardous wastes containing free liquids or treated with free liquids (the presence of which is determined by the paint filter test, a visual examination, or other appropriate means), the owner or operator must include:

(1) A primary barrier designed and constructed of materials to prevent the migration of hazardous constituents into the barrier (e.g. a geomembrane covered by a concrete wear surface).

(2) A liquid collection and removal system to prevent the accumulation of liquid on the primary barrier of the containment building:

(i) The primary barrier must be sloped to drain liquids to the associated collection system; and

(ii) Liquids and waste must be collected and removed to minimize hydraulic head on the containment system at the earliest practicable time that protects human health and the environment.

(3) A secondary containment system including a secondary barrier designed and constructed to prevent migration of hazardous constituents into the barrier, and a leak detection system that is capable of detecting failure of the primary barrier and collecting accumulated hazardous wastes and liquids at the earliest practicable time.

(i) The requirements of the leak detection component of the secondary containment system are satisfied by installation of a system that is, at a minimum:

(A) Constructed with a bottom slope of 1 percent or more; and

(B) Constructed of a granular drainage material with a hydraulic conductivity of 1×10^{-2} cm/sec or more and a thickness of 12 inches (30.5 cm) or more, or constructed of synthetic or geonet drainage materials with a trasmissivity of 3×10^{-5} m^2 / sec or more.

(ii) If treatment is to be conducted in the building, an area in which such treatment will be conducted must be designed to prevent the release of liquids, wet materials, or liquid aerosols to other portions of the building.

(iii) The secondary containment system must be constructed of materials that are chemically resistant to the waste and liquids managed in the containment building and of sufficient strength and thickness to prevent collapse under the pressure exerted by overlaying materials and by any equipment used in the containment building. (Containment buildings can serve as secondary containment systems for tanks placed within the building under certain conditions. A

containment building can serve as an external liner system for a tank, provided it meets the requirements of § 265.193(d)(1). In addition, the containment building must meet the requirements of § 265.193 (b) and (c) to be considered an acceptable secondary containment system for a tank.)

(4) For existing units other than 90-day generator units, the Regional Administrator may delay the secondary containment requirement for up to two years, based on a demonstration by the owner or operator that the unit substantially meets the standards of this Subpart. In making this demonstration, the owner or operator must:

(i) Provide written notice to the Regional Administrator of their request by February 18, 1993. This notification must describe the unit and its operating practices with specific reference to the performance of existing containment systems, and specific plans for retrofitting the unit with secondary containment;

(ii) Respond to any comments from the Regional Administrator on these plans within 30 days; and

(iii) Fulfill the terms of the revised plans, if such plans are approved by the Regional Administrator.

(c) Owners or operators of all containment buildings must:

(1) Use controls and practices to ensure containment of the hazardous waste within the unit; and, at a minimum:

(i) Maintain the primary barrier to be free of significant cracks, gaps, corrosion, or other deterioration that could cause hazardous waste to be released from the primary barrier;

(ii) Maintain the level of the stored/treated hazardous waste within the containment walls of the unit so that the height of any containment wall is not exceeded;

(iii) Take measures to prevent the tracking of hazardous waste out of the unit by personnel or by equipment used in handling the waste. An area must be designated to decontaminate equipment and any rinsate must be collected and properly managed; and

(iv) Take measures to control fugitive dust emissions such that any openings (doors, windows, vents, cracks, etc.) exhibit no visible emissions. In addition, all associated particulate collection devices (e.g., fabric filter, electrostatic precipitator) must be operated and maintained with sound air pollution control practices. This state of no visible emissions must be maintained effectively at all times during normal operating conditions, including when vehicles and personnel are entering and exiting the unit.

(2) Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit.

(3) Throughout the active life of the containment building, if the owner or operator detects a condition that could lead to or has caused a release of hazardous waste, must repair the condition promptly, in accordance with the following procedures.

(i) Upon detection of a condition that has led to a release of hazardous waste (e.g., upon detection of leakage from the primary barrier) the owner or operator must:

(A) Enter a record of the discovery in the facility operating record;

(B) Immediately remove the portion of the containment building affected by the condition from service;

(C) Determine what steps must be taken to repair the containment building, remove any leakage from the secondary collection system, and establish a schedule for accomplishing the cleanup and repairs; and

(D) Within 7 days after the discovery of the condition, notify the Regional Administrator of the condition, and within 14 working days, provide a written notice to the Regional Administrator with a description of the steps taken to repair the containment building, and the schedule for accomplishing the work.

(ii) The Regional Administrator will review the information submitted, make a determination regarding whether the containment building must be removed from service completely or partially until repairs and cleanup are complete, and notify the owner or operator of the determination and the underlying rationale in writing.

(iii) Upon completing all repairs and cleanup the owner or operator must notify the Regional Administrator in writing and provide a verification, signed by a qualified, registered professional engineer, that the repairs and cleanup have been completed according to the written plan submitted in accordance with paragraph (c)(3)(i)(D) of this section.

(4) Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring equipment and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste.

(d) For containment building that contains both areas with and without secondary containment, the owner or operator must:

(1) Design and operate each area in accordance with the requirements enumerated in paragraphs (a) through (c) of this section;

(2) Take measures to prevent the release of liquids or wet materials into areas without secondary containment; and

(3) Maintain in the facility's operating log a written description of the operating procedures used to maintain the integrity of areas without secondary containment.

(e) Notwithstanding any other provision of this subpart, the Regional Administrator may waive requirements for secondary containment for a permitted containment building where the owner or operator demonstrates that the only free liquids in the unit are limited amounts of dust suppression liquids required to meet occupational health and safety requirements, and where containment of managed wastes and liquids can be assured without a secondary containment system.

§ 265.1102 Closure and post-closure care.

(a) At closure of a containment building, the owner or operator must remove or decontaminate all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate, and manage them as hazardous waste unless § 261.3(d) of this chapter applies. The closure plan, closure activities, cost estimates for closure, and financial responsibility for containment buildings must meet all of the requirements specified in subparts G and H of this part.

(b) If, after removing or decontaminating all residues and making all reasonable efforts to effect removal or decontamination of contaminated components, subsoils, structures, and equipment as required in paragraph (a) of this section, the owner or operator finds that not all contaminated subsoils can be practicably removed or decontaminated, he must close the facility and perform post-closure care in accordance with the closure and post-closure requirements that apply to landfills (§ 265.310). In addition, for the purposes of closure,

post-closure, and financial responsibility, such a containment building is then considered to be a landfill, and the owner or operator must meet all of the requirements for landfills specified in subparts G and H of this part.

§§ 265.1103—265.1110 [Reserved]

PART 268—LAND DISPOSAL RESTRICTIONS

26. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

27. In § 268.2 paragraph (g) is revised and paragraph (h) added to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(g) *Debris* means solid material exceeding a 60 mm particle size that is intended for disposal and that is: A manufactured object; or plant or animal matter; or natural geologic material. However, the following materials are not debris: Any material for which a specific treatment standard is provided in subpart D, part 268; Process residuals such as smelter slag and residues from the treatment of waste, wastewater, sludges, or air emission residues; and Intact containers of hazardous waste that are not ruptured and that retain at least 75% of their original volume. A mixture of debris that has not been treated to the standards provided by § 268.45 and other material is subject to regulation as debris if the mixture is comprised primarily of debris, by volume, based on visual inspection.

(h) *Hazardous debris* means debris that contains a hazardous waste listed in subpart D of part 261 of this chapter, or that exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter.

28. Section 268.5 is amended by adding "; or" in place of the semicolon at the end of paragraph (h)(2)(ii), by redesignating paragraph (h)(2)(v) as paragraph (h)(2)(vi), by revising paragraph (h)(2)(iv) and by adding new paragraph (h)(2)(v) to read as follows:

§ 268.5 Procedures for case-by-case extensions to an effective date.

* * * * *

(h) * * *

(2) * * *

(iv) The surface impoundment, if permitted, is in compliance with the requirements of subpart F of part 264 and § 264.221 (c), (d) and (e) of this chapter; or

(v) The surface impoundment, if newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics for the identification of hazardous waste, is in compliance with the requirements of subpart F of part 265 of this chapter within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of § 265.221 (a), (c) and (d) of this chapter within 48 months after the promulgation of additional listings or characteristics of hazardous waste. If a national capacity variance is granted, during the period the variance is in effect, the surface impoundment, if newly subject to RCRA section 3005(j)(1) due to the promulgation of additional listings or characteristics of hazardous waste, is in compliance with the requirements of subpart F of part 265 of this chapter within 12 months after the promulgation of additional listings or characteristics of hazardous waste, and with the requirements of § 265.221 (a), (c) and (d) of this chapter within 48 months after the promulgation of additional listings or characteristics of hazardous waste; or

* * * * *

29. Section 268.7 is amended by revising paragraphs (a)(1)(iii), (a)(1)(iv), (a)(2) introductory text, (a)(3)(iv), (a)(3)(v), (a)(4) introductory text, (b)(4) introductory text, and (b)(5) introductory text, and by adding paragraphs (a)(1)(v), (a)(3)(vi), and (d) to read as follows:

§ 268.7 Waste analysis and recordkeeping.

(a) * * *

(1) * * *

(iii) The manifest number associated with the shipment of waste;

(iv) For hazardous debris, the contaminants subject to treatment as provided by § 268.45(b) and the following statement: "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45"; and

(v) Waste analysis data, where available.

(2) If a generator determines that he is managing a restricted waste under this Part, and determines that the waste can be land disposed without further treatment, with each shipment of waste he must submit, to the treatment, storage, or land disposal facility, a notice and a certification stating that the waste meets the applicable treatment standards set forth in subpart D of this part and the applicable prohibition levels set forth in § 268.32 or RCRA section 3004(d). Generators of hazardous debris that is excluded from the definition of hazardous waste under § 261.3(e)(2) of this chapter (i.e., debris that the Director has determined does not contain hazardous waste), however, are not subject to these notification and certification requirements.

* * * * *

(3) * * *

(iv) Waste analysis data, where available;

(v) For hazardous debris, the contaminants subject to treatment as provided by § 268.45(b) and the following statement: "This hazardous debris is subject to the alternative treatment standards of 40 CFR 268.45"; and

(vi) The date the waste is subject to the prohibitions.

(4) If a generator is managing prohibited waste in tanks, containers, or containment buildings regulated under 40 CFR 262.34, and is treating such waste in such tanks, containers, or containment buildings to meet applicable treatment standards under subpart D of this part, the generator must develop and follow a written waste analysis plan which describes the procedures the generator will carry out to comply with the treatment standards. (Generators treating hazardous debris under the alternative treatment standards of Table 1, § 268.45, however, are not subject to these waste analysis requirements.) The plan must be kept on site in the generator's records, and the following requirements must be met:

* * * * *

(b) * * *

(4) A notice must be sent with each waste shipment to the land disposal facility which includes the following information, except that debris excluded from the definition of hazardous waste under § 261.3(e) of this chapter (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the Director has determined does not contain hazardous waste) is subject to the notification and certification requirements of paragraph (d) of this section rather than these notification requirements:

* * * * *

(5) The treatment facility must submit a certification with each shipment of waste or treatment residue of a restricted waste to the land disposal facility stating that the waste or treatment residue has been treated in compliance with the applicable performance standards specified in subpart D of this part and the applicable prohibitions set forth in § 268.32 or RCRA section 3004(d). Debris excluded from the definition of hazardous waste under § 261.3(e) of this chapter (i.e., debris treated by an extraction or destruction technology provided by

Table 1, § 268.45, and debris that the Director has determined does not contain hazardous waste), however, is subject to the notification and certification requirements of paragraph (d) of this section rather than the certification requirements of this paragraph (b)(5).

* * * * *

(d) Generators or treaters who first claim that hazardous debris is excluded from the definition of hazardous waste under § 261.3(e) of this chapter (i.e., debris treated by an extraction or destruction technology provided by Table 1, § 268.45, and debris that the Director has determined does not contain hazardous waste) are subject to the following notification and certification requirements:

(1) A one-time notification must be submitted to the Director or authorized State including the following information:

(i) The name and address of the Subtitle D facility receiving the treated debris;

(ii) A description of the hazardous debris as initially generated, including the applicable EPA Hazardous Waste Number(s); and

(iii) For debris excluded under § 261.3(e)(1) of this chapter, the technology from Table 1, § 268.45, used to treat the debris.

(2) The notification must be updated if the debris is shipped to a different facility, and, for debris excluded under § 261.2(e)(1) of this chapter, if a different type of debris is treated or if a different technology is used to treat the debris.

(3) For debris excluded under § 261.3(e)(1) of this chapter, the owner or operator of the treatment facility must document and certify compliance with the treatment standards of Table 1, § 268.45, as follows:

(i) Records must be kept of all inspections, evaluations, and analyses of treated debris that are made to determine compliance with the treatment standards;

(ii) Records must be kept of any data or information the treater obtains during treatment of the debris that identifies key operating parameters of the treatment unit; and

(iii) For each shipment of treated debris, a certification of compliance with the treatment standards must be signed by an authorized representative and placed in the facility's files. The certification must state the following: "I certify under penalty of law that the debris has been treated in accordance with the requirements of 40 CFR 268.45. I am aware that there are significant penalties for making a false certification, including the possibility of fine and imprisonment."

* * * * *

30. In § 268.9, paragraph (d) is revised to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

* * * * *

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generators or treaters files and sent to the EPA region or authorized state. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later that December 31.

(1) The notification must include the following information:

(i) Name and address of the Subtitle D facility receiving the waste shipment;

(ii) A description of the waste as initially generated, including the applicable EPA Hazardous Waste Number(s) and treatability group(s);

(iii) The treatment standards applicable to the waste at the point of generation.

(2) The certification must be signed by an authorized representative and must state the language found in § 268.7(b)(5).

31. Section 268.14 is added to subpart B of part 268 to read as follows:

§ 268.14 Surface impoundment exemptions.

(a) This section defines additional circumstances under which an otherwise prohibited waste may continue to be placed in a surface impoundment.

(b) Wastes which are newly identified or listed under section 3001 after November 8, 1984, and stored in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be stored in the surface impoundment for 48 months after the promulgation of the additional listing or characteristic, not withstanding that the waste is otherwise prohibited from land disposal, provided that the surface impoundment is in compliance with the requirements of subpart F of part 265 of this chapter within 12 months after promulgation of the new listing or characteristic.

(c) Wastes which are newly identified or listed under section 3001 after November 8, 1984, and treated in a surface impoundment that is newly subject to subtitle C of RCRA as a result of the additional identification or listing, may continue to be treated in that surface impoundment, not withstanding that the waste is otherwise prohibited from land disposal, provided that surface impoundment is in compliance with the requirements of subpart F of part 265 of this chapter within 12 months after the promulgation of the new listing or characteristic. In addition, if the surface impoundment continues to treat hazardous waste after 48 months from promulgation of the additional listing or characteristic, it must then be in compliance with § 268.4.

32. Section 268.36 is added to subpart C of part 268 to read as follows:

§ 268.36 Waste specific prohibitions—newly listed wastes.

(a) Effective November 9, 1992, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126, K131, K132, and K136; and the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste numbers U328, U353, and U359 are prohibited from land disposal.

(b) Effective June 30, 1993, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038 that are not generated from surface impoundment cleanouts or closures are prohibited from land disposal.

(c) Effective June 30, 1994, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038 that are generated from surface impoundment cleanouts or closures are prohibited from land disposal.

(d) Effective June 30, 1994, radioactive wastes that are mixed with hazardous wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste Numbers K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126 K131, K132, and K136; or the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U328, U353, and U359 are prohibited from land disposal.

(e) Effective June 30, 1994, debris contaminated with hazardous wastes specified in 40 CFR 261.31 as EPA Hazardous Waste Numbers F037 and F038; the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste

Numbers K107, K108, K109, K110, K111, K112, K117, K118, K123, K124, K125, K126 K131, K132, and K136; or the wastes specified in 40 CFR 261.33(f) as EPA Hazardous Waste Numbers U328, U353, and U359; and which is not contaminated with any other waste already subject to a prohibition are prohibited from land disposal.

(f) Between June 30, 1992 and June 30, 1993, the wastes included in paragraph (b) of this section may be disposed of in a landfill, only if such unit is in compliance with the requirements specified in § 268.5(h)(2), and may be generated in and disposed of in a surface impoundment only if such unit is in compliance with either § 268.5(h)(2) or § 268.14.

(g) Between June 30, 1992 and June 30, 1994, the wastes included in paragraphs (d) and (e) of this section may be disposed of in a landfill only if such unit is in compliance with the requirements specified in § 268.5(h)(2), and may be generated in and disposed of in a surface impoundment only if such unit is in compliance with either § 268.5(h)(2) or § 268.14.

(h) The requirements of paragraphs (a), (b), (c), (d), and (e) of this section do not apply if:

(1) The wastes meet the applicable standards specified in subpart D of this part;

(2) Persons have been granted an exemption from a prohibition pursuant to a petition under § 268.6, with respect to those wastes and units covered by the petition;

(3) The wastes meet the applicable alternate standards established pursuant to a petition granted under § 268.44;

(4) Persons have been granted an extension to the effective date of a prohibition pursuant to § 268.5, with respect to the wastes covered by the extension.

(i) To determine whether a hazardous waste identified in this section exceeds the applicable treatment standards specified in §§ 268.41 and 268.43, the initial generator must test a representative sample of the waste extract or the entire waste, depending on whether the treatment standards are expressed as concentrations in the waste extract or the waste, or the generator may use knowledge of the waste. If the waste contains constituents in excess of the applicable levels in subpart D of this part, the waste is prohibited from land disposal, and all requirements of part 268 are applicable, except as otherwise specified.

33. In § 268.40, paragraph (b) is revised and paragraph (d) is added to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

(b) A restricted waste for which a treatment technology is specified under § 268.42(a) or hazardous debris for which a treatment technology is specified under § 268.45 may be land disposed after it is treated using that specified technology or an equivalent treatment method approved by the Administrator under the procedures set forth in § 268.42(b).

* * * * *

(d) If a treatment standard has been established in §§ 268.41 through 268.43 for a hazardous waste that is itself hazardous debris, the waste is subject to those standards rather than the standards for hazardous debris under § 268.45.

34. In § 268.41, paragraph (a) text preceding table is revised, and Table CCWE is amended by revising the entry for "F001–F005 spent solvents," by removing the entries for "K061 (Low Zinc Subcategory—less than 15% Total Zinc)" and "K061 (High Zinc Subcategory—greater than 15% Total Zinc)—Effective until August 7, 1991, by adding entries for "F037", "F038", and "K061", and by adding paragraph (c) to read as follows:

§ 268.41 Treatment standards expressed as concentrations in waste extract.

(a) Table CCWE identifies the restricted wastes and the concentrations of their associated constituents which may not be exceeded in the extract of a waste or waste treatment residual extracted using the test method in appendix I of this part for the allowable land disposal of such wastes. Compliance with these concentrations is required based upon grab samples.

268.41 TABLE CCWE.—CONSTITUENT CONCENTRATIONS IN WASTE EXTRACT

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Wastewaters Concentration (mg/l)	Wastewaters Notes	Nonwastewaters Concentration (mg/l)	Nonwastewaters Notes
F001–F005 spent solvents	NA	Table CCW in 268.43	Carbon disulfide	75–15–0	NA		4.8	
			Cyclohexanone	108–94–1	NA		0.75	
			Methanol	67–56–1	NA		0.75	
F037	NA	Table CCW in 268.43	Chromium (Total)	7440–47–32	NA		1.7	
			Nickel	7440–02–0	NA		0.20	
F038	NA	Table CCW in 268.43	Chromium (Total)	7440–47–32	NA		1.7	
			Nickel	7440–02–0	NA		0.20	
K061	NA	Table CCW in 268.43	Antimony	7440–36–0	NA		2.1	
			Arsenic	7440–38–2	NA		0.055	
			Barium	7440–39–3	NA		7.6	
			Beryllium	7440–41–7	NA		0.014	
			Cadmium	7440–43–9	NA		0.19	
			Chromium (Total)	7440–47–32	NA		0.33	
			Lead	7439–92–1	NA		0.37	
			Mercury	7439–97–6	NA		0.009	
			Nickel	7440–02–0	NA		5	
			Selenium	7782–49–2	NA		0.16	
			Silver	7440–22–4	NA		0.3	
			Thallium		NA		0.078	
			Zinc	7440–66–6	NA		5.3	

* * * * *

(c) The treatment standards for the constituents in F001–F005 which are listed in Table CCWE only apply to wastes which contain one, two, or all three of these constituents. If the waste contains any of these three constituents along with any of the other 26 constituents found in F001–F005, then only the treatment standards in § 268.43 Table CCW are required.

35–36. In § 268.42, Table 2 of paragraph (a) is amended by adding entries for K107, K108, K109, K110, K112, K123, K124, K125, K126, U328, U353, and U359 in alphanumerical order and paragraphs (b) and (d) are revised to read as follows:

§ 268.42 Treatment standards expressed as specified technologies.

* * * * *

268.42 TABLE 2.—TECHNOLOGY-BASED STANDARDS BY RCRA WASTE CODE

Waste code	See also	Waste descriptions and/or treatment subcategory	CAS No. for regulated hazardous constituents	Technology code Wastewaters	Technology code Nonwastewaters
K107		Column bottoms from product separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN.	INCIN.
K108		Condensed column overheads from product separation and condensed reactor vent gases from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN.	INCIN.
K109		Spent filter cartridges from product purification from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN.	INCIN.
K110		Condensed column overheads from intermediate separation from the production of 1,1-dimethylhydrazine (UDMH) from carboxylic acid hydrazides.	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN.	INCIN.
K112		Reaction by-product water from the drying column in the production of toluenediamine via hydrogenation of dinitrotoluene.	NA	INCIN; or CHOXD fb, CARBN; or BIODG fb CARBN.	INCIN.
K123		Process wastewater (including supernates, filtrates, and washwaters) from the production of ethylenebisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN.
K124		Reactor vent scrubber water from the production of ethylenebisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN.
K125		Filtration, evaporation, and centrifugation solids from the production of ethylenebisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN.
K126		Baghouse dust and floor sweepings in milling and packaging operations from the production or formulation of ethylene bisdithiocarbamic acid and its salts.	NA	INCIN; or CHOXD fb (BIODG or CARBN).	INCIN.
U328		o-toluidine	95–53–4	INCIN; or CHOXD fb, (BIODG or CARBN); or BIODG fb CARBN.	INCIN; or Thermal Destruction.
U353		p-toluidine	106–49–0	INCIN; or CHOXD fb, (BIODG or CARBN); or BIODG fb CARBN.	INCIN; or Thermal Destruction.
U359		2-ethoxy-ethanol	110–80–5	INCIN; or CHOXD fb, (BIODG or CARBN); or BIODG fb CARBN.	INCIN; or FSUBS.

(b) Any person may submit an application to the Administrator demonstrating that an alternative treatment method can achieve a measure of performance equivalent to that achieved by methods specified in paragraphs (a), (c), and (d) of this section for wastes or specified in Table 1 of § 268.45 for hazardous debris. The applicant must submit information demonstrating that his treatment method is in compliance with federal, state, and local requirements and is protective of human health and the environment. On the basis of such information and any other available information, the Administrator may approve the use of the alternative treatment method if he finds that the alternative treatment method provides a measure of performance equivalent to that achieved by methods specified in paragraphs (a), (c), and (d) of this section for wastes or in Table 1 of § 268.45 for hazardous debris. Any approval must be stated in writing and may contain such provisions and conditions as the Administrator deems appropriate. The person to whom such approval is issued must comply with all limitations contained in such a determination.

* * * * *

(d) Radioactive hazardous mixed wastes with treatment standards specified in Table 3 of this section are not subject to any treatment standards specified in §§ 268.41 or 268.43, or Table 2 of this section. Radioactive hazardous mixed wastes not subject to treatment standards in Table 3 of this section remain subject to all applicable treatment standards specified in §§ 268.41, 268.43, and Table 2 of this section. Hazardous debris containing radioactive waste is not subject to the treatment standards specified in Table 3 of this section but is subject to the treatment standards specified in § 268.45.

37. In § 268.43(a) Table CCW is amended by revising the entries for F001–F005 spent solvents, K015, K016, K018, K019, K020, K023, K024, K028, K030, K043, K048, K049, K050, K051, K052, K087, K093, K094, U028, U069, U088, U102, U107, and U190, by removing the entry for U042, and by

adding the entries for F037, F038, K117, K118, K131, K132, and K136 in alphanumerical order to read as follows:

§ 268.43 Treatment standards expressed as waste concentrations.

(a) * * *

268.43.—TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/l)	Notes
F001–F005 spent solvents.	NA		Acetone	67–64–1	0.28		160	
			Benzene	71–43–2	0.070		3.7	(1)
			n-Butyl alcohol	71–36–3	5.6		2.6	
			Carbon tetrachloride	56–23–5	0.057		5.6	
			Chlorobenzene	108–90–7	0.057		5.7	
			Cresol (m- and p-isomers)		0.77		3.2	
			o-cresol		0.11		5.6	
			o-Dichlorobenzene	95–50–1	0.088		6.2	
			Ethyl acetate	141–7–6	0.34		33	
			Ethyl benzene	100–41–4	0.057		6.0	
			Ethyl ether	60–29–7	0.12		160	
			Isobutyl alcohol	78–83–1	5.6		170	
			Methylene chloride	75–9–2	0.069		33	
			Methyl ethyl ketone	78–93–3	0.28		36	
			Methyl isobutyl ketone	108–10–1	0.14		33	
			Nitrobenzene	98–95–3	0.068		14	
			Pyridine	110–86–1	0.014		16	
			Tetrachloroethylene	127–18–4	0.056		5.6	
			Toluene	108–88–3	0.08		28	
			1,1,1-Trichloroethane	71–55–6	0.054		5.6	
			1,1,2-Trichloroethane	79–00–5	0.030		7.6	(1)
			Trichloroethylene	79–01–6	0.054		5.6	
			1,1,2-Trichloro-1,2,2-trifluoromethane.	76–13–1	0.057		28	
			Trichloromonofluoromethane.	75–69–4	0.02		33	
			Xylenes (total)		0.32		28	
F037	NA	Table CCWE in 268.41.	Acenaphthene	208–96–8	0.059	(2)	NA	
			Anthracene	120–12–7	0.059	(2)	28	(1)
			Benzene	71–43–2	0.14	(2)	14	(1)
			Benzo(a)anthracene	50–32–6	0.059	(2)	20	(1)
			Benzo(a)pyrene	117–81–7	0.061	(2)	12	(1)
			Bis(2-ethylhexyl) phthalate	75–15–0	0.28	(2)	7.3	(1)
			Chrysene	218–01–9	0.059	(2)	15	(1)
			Di-n-butyl phthalate	105–67–9	0.057	(2)	3.6	(1)
			Ethylbenzene	100–41–4	0.057	(2)	14	(1)
			Fluorene	86–73–7	0.059	(2)	NA	
			Naphthalene	91–20–3	0.059	(2)	42	(1)
			Phenanthrene	85–01–8	0.059	(2)	34	(1)
			Phenol	108–95–2	0.039	(2)	3.6	(1)
			Pyrene	129–00–0	0.067	(2)	36	(1)
			Toluene	108–88–3	0.08	(2)	14	(1)
			Xylene(s)		0.32	(2)	22	(1)
			Cyanides (Total)	57–12–5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440–47–32	0.2		NA	
			Lead	7439–92–1	0.037		NA	
F038	NA	Table CCWE in 268.41.	Benzene	71–43–2	0.14	(2)	14	(1)
			Benzo(a)pyrene	50–32–8	0.061	(2)	12	(1)
			Bis(2-ethylhexyl) phthalate	117–81–7	0.28	(2)	7.3	(1)
			Chrysene	218–01–9	0.059	(2)	15	(1)
			Di-n-butyl phthalate	84–74–2	0.057	(2)	3.6	(1)
			Ethylbenzene	100–41–4	0.057	(2)	14	(1)
			Fluorene	86–73–7	0.059	(2)	NA	
			Naphthalene	91–20–3	0.059	(2)	42	(1)
			Phenanthrene	85–01–8	0.059	(2)	34	(1)
			Phenol	108–95–2	0.039	(2)	3.6	(1)
			Pyrene	129–00–0	0.067	(2)	36	(1)
			Toluene	108–88–3	0.080	(2)	14	(1)
			Xylene(s)		0.32	(2)	22	(1)
			Cyanides (Total)	57–12–5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440–47–32	0.2		NA	
			Lead	7439–92–1	0.037		NA	
K015	NA	Table CCWE in 268.41.	Anthracene	120–12–7	0.059		3.4	(1)
			Benzal Chloride	98–87–3	0.28		6.2	(1)

268.43.—TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters		Nonwastewaters	
					Concentration (mg/l)	Notes	Concentration (mg/l)	Notes
			Sum of Benzo(b) fluoranthene and Benzo(k) fluoranthene.	207–08–9	0.055		3.4	
			Phenanthrene	85–01–8	0.059		3.4	(1)
			Toluene	108–88–3	0.08		6.0	(1)
			Chromium (Total)	7440–47–32	0.32		NA	
			Nickel	7440–02–0	0.44		NA	
K016	NA		Hexachlorobenzene	118–74–1	0.055		28	(1)
			Hexachlorobutadiene	87–68–3	0.055		5.6	(1)
			Hexachlorocyclopentadiene.	77–47–4	0.057		5.6	(1)
			Hexachloroethane	67–72–1	0.055		28	(1)
			Tetrachloroethene	127–18–4	0.056		6.0	(1)
K016	NA		Chloroethane	76–00–3	0.27		6.0	(1)
			Chloromethane	74–87–3	0.19		NA	
			1,1-Dichloroethane	75–34–3	0.059		6.0	(1)
			1,2-Dichloroethane	107–06–2	0.21		6.0	(1)
			Hexachlorobenzene	118–74–1	0.055		28	(1)
			Hexachlorobutadiene	87–68–3	0.055		5.6	(1)
			Pentachloroethane	76–01–7	NA		5.6	
			1,1,1-Trichloroethane	71–55–6	0.054		6.0	
			Hexachloroethane	67–72–1	0.055		28	(1)
K019	NA		Bis(2-chloroethyl) ether	111–44–4	0.033		5.6	(1)
			Chlorobenzene	108–90–7	0.057		6.0	(1)
			Chloroform	67–66–3	0.046		6.0	(1)
			p-Dichlorobenzene	106–46–7	0.09		NA	
			1,2-Dichloroethane	107–06–2	0.21		6.0	(1)
			Fluorene	86–73–7	0.059		NA	
			Hexachloroethane	67–72–1	0.055		28	(1)
			Naphthalene	91–20–3	0.059		5.6	(1)
			Phenanthrene	85–01–8	0.059		5.6	(1)
			1,2,4,5-Tetrachlorobenzene.	95–94–3	0.055		NA	
			Tetrachloroethene	127–18–4	0.056		6.0	(1)
			1,2,4-Trichlorobenzene	120–82–1	0.055		19	(1)
			1,1,1-Trichloroethane	71–55–6	0.054		6.0	(1)
K020	NA		1,2-Dichloroethane	106–93–4	0.21		6.0	(1)
			1,1,2,2-Tetrachloroethane	79–34–6	0.057		5.6	(1)
			Tetrachloroethene	127–18–4	0.056		6.0	(1)
K023	NA		Phthalic anhydride (measured as Phthalic acid).	85–44–9	0.069		28	(1)
K024	NA		Phthalic anhydride (measured as Phthalic acid).	85–44–9	0.069		28	(1)
K028	NA	Table CCWE in 268.41.	1,1-Dichloroethane trans-1,2-.	75–34–3	0.059		6.0	(1)
			Dichloroethane		0.054		6.0	(1)
			Hexachlorobutadiene	87–68–3	0.055		5.6	(1)
			Hexachloroethane	67–72–1	0.055		28	(1)
			Pentachloroethane	76–01–7	NA		5.6	(1)
			1,1,1,2-Tetrachloroethane	630–20–6	0.057		5.6	(1)
			1,1,2,2-Tetrachloroethane	79–34–6	0.057		5.6	(1)
			1,1,1,-Trichloroethane	71–55–6	0.054		6.0	(1)
			1,1,2-Trichloroethane	79–00–5	0.054		6.0	(1)
			Tetrachloroethylene	127–18–4	0.056		6.0	(1)
			Cadmium	7440–43–9	6.4		NA	
			Chromium (Total)	7440–47–32	0.35		NA	
			Lead	7439–92–1	0.037		NA	
			Nickel	7440–02–0	0.47		NA	
K030	NA		o-Dichlorobenzene	95–50–1	0.088		NA	
			p-Dichlorobenzene	106–46–7	0.09		NA	
			Hexachlorobutadiene	87–68–3	0.055		5.6	(1)
			Hexachloroethane	67–72–1	0.055		28	(1)
			Hexachloropropene	1888–71–7	NA		19	(1)
			Pentachlorobenzene	608–93–5	NA		28	(1)
			Pentachloroethane	76–01–7	NA		5.6	(1)
			1,2,4,5-Tetrachlorobenzene.	95–94–3	0.055		14	(1)
			Tetrachloroethene	127–18–4	0.056		6.0	(1)
			1,2,4-Trichlorobenzene	120–82–1	0.055		19	(1)
K030	NA		2,4-Dichlorophenol	120–83–2	0.044		0.38	(1)
			2,6-Dichlorophenol	187–85–0	0.044		0.34	(1)
			2,4,5-Trichlorophenol	95–95–4	0.18		8.2	(1)
			2,4,6-Trichlorophenol	88–06–2	0.035		7.8	(1)

268.43.—TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters Concentration (mg/l)	Notes	Nonwastewaters Concentration (mg/l)	Notes
			Tetrachlorophenols (Total)		NA		0.68	(1)
			Pentachlorophenol	87-86-5	0.089		1.9	(1)
			Tetrachloroethene	79-01-8	0.056		1.7	(1)
			Hexachlorodibenzo-p-dioxins.		0.000063		0.001	(1)
			Hexachlorodibenzofurans		0.000063		0.001	(1)
			Pentachlorodibenzo-p-dioxins.		0.000063		0.001	(1)
			Pentachlorodibenzo furans		0.000063		0.001	(1)
			Tetrachlorodibenzo-p-dioxins.		0.000063		0.001	(1)
			Tetrachlorodibenzofurans					
K048	NA	Table CCWE in 268.41.	Benzene	71-43-2	0.14	(2)	14	(1)
			Benzo(a)pyrene	50-32-8	0.061	(2)	12	(1)
			Bis(2-ethylhexyl) phthalate	117-81-7	0.28	(2)	7.3	(1)
			Chrysene	218-01-9	0.059	(2)	15	(1)
			Di-n-butyl phthalate	84-74-2	0.057	(2)	3.6	(1)
			Ethylbenzene	100-41-4	0.057	(2)	14	(1)
			Fluorene	86-73-7	0.059	(2)	NA	
			Naphthalene	91-20-3	0.059	(2)	42	(1)
			Phenanthrene	85-01-8	0.059	(2)	34	(1)
			Phenol	108-95-2	0.039	(2)	3.6	(1)
			Pyrene	129-00-0	0.067	(2)	36	(1)
			Toluene	108-88-3	0.080	(2)	14	(1)
			Xylene(s)		0.32	(2)	22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K049	NA	Table CCWE in 268.41.	Anthracene	120-12-7	0.059	(2)	28	(1)
			Benzene	71-43-2	0.14	(2)	14	(1)
			Benzo(a)pyrene	117-81-7	0.061	(2)	12	(1)
			Bis(2-ethylhexyl) phthalate	75-150-0	0.28	(2)	7.3	(1)
			Carbon disulfide	75-15-0	0.014	(2)	NA	
			Chrysene	2218-01-9	0.059	(2)	15	(1)
			2,4-Dimethyl phenol	105-67-9	0.036	(2)	NA	
			Ethylbenzene	100-41-4	0.057	(2)	14	(1)
			Naphthalene	91-20-3	0.059	(2)	42	(1)
			Phenanthrene	85-01-8	0.059	(2)	34	(1)
			Phenol	108-95-2	0.039	(2)	3.6	(1)
			Pyrene	129-00-0	0.067	(2)	36	(1)
			Toluene	108-88-3	0.08	(2)	14	(1)
			Xylene(s)		0.32	(2)	22	(1)
			Cyanides (Total)	56-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K050	NA	Table CCWE in 268.41.	Benzo(a)pyrene	50-32-8	0.061	(2)	12	(1)
			Phenol	108-95-2	0.039	(2)	3.6	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-29-1	0.037		NA	
K051	NA	Table CCWE in 268.41.	Acenaphthene	83-32-9	0.059	(2)	NA	
			Anthracene	120-12-7	0.059	(2)	28	(1)
			Benzene	71-43-2	0.14	(2)	14	(1)
			Benzo(a) anthracene	50-32-8	0.059	(2)	20	(1)
			Benzo(a)pyrene	117-81-7	0.061	(2)	12	(1)
			Bis(2-ethylhexyl) phthalate	75-15-0	0.28	(2)	7.3	(1)
			Chrysene	2218-01-9	0.059	(2)	15	(1)
			Di-n-butyl phthalate	105-67-9	0.057	(2)	3.6	(1)
			Ethylbenzene	100-41-4	0.057	(2)	14	(1)
			Fluorene	86-73-7	0.059	(2)	NA	
			Naphthalene	91-20-3	0.059	(2)	42	(1)
			Phenanthrene	85-01-8	0.059	(2)	34	(1)
			Phenol	108-95-2	0.039	(2)	3.6	(1)
			Pyrene	129-00-0	0.067	(2)	36	(1)
			Toluene	108-88-3	0.08	(2)	14	(1)
			Xylene(s)		0.32	(2)	22	(1)
			Cyanides (Total)	57-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
			Benzene	71-43-2	0.14	(2)	14	(1)
			Benzo(a)pyrene	50-32-8	0.061	(2)	12	(1)

268.43.—TABLE CCW.—CONSTITUENT CONCENTRATIONS IN WASTES—Continued

Waste code	Commercial chemical name	See also	Regulated hazardous constituent	CAS number for regulated hazardous constituent	Wastewaters Concentration (mg/l)	Notes	Nonwastewaters Concentra-tion (mg/l)	Notes
K052	NA	Table CCWE in 268.41.	o-Cresol	95-48-7	0.11	(2)	6.2	(1)
			p-Cresol	106-44-5	0.77	(2)	6.2	(1)
			2,4-Dimethylphenol	105-67-9	0.036	(2)	NA	
			Ethylbenzene	100-41-4	0.057	(2)	14	(1)
			Naphthalene	91-20-3	0.059	(2)	42	(1)
			Phenanthrene	85-01-8	0.059	(2)	34	(1)
			Phenol	108-95-2	0.039	(2)	3.6	(1)
			Toluene	108-88-3	0.08	(2)	14	(1)
			Xylenes		0.32	(2)	22	(1)
			Cyanides (Total)	56-12-5	0.028	(1)	1.8	(1)
			Chromium (Total)	7440-47-32	0.2		NA	
			Lead	7439-92-1	0.037		NA	
K087	NA	Table CCWE in 268.41.	Acenaphthalene	208-96-8	0.059	(2)	3.4	
			Benzene	71-43-2	0.14	(2)	0.071	(1)
			Chrysene	218-01-9	0.059	(2)	3.4	(1)
			Fluoranthene	206-44-0	0.068	(2)	3.4	(1)
			Indeno (1,2,3-cd) pyrene	193-39-5	0.0055	(2)	3.4	(1)
			Naphthalene	91-20-3	0.059	(2)	3.4	(1)
			Phenanthrene	85-01-8	0.059	(2)	3.4	(1)
			Toluene	108-88-3	0.08	(2)	0.65	(1)
			Xylenes		0.32	(2)	0.07	(1)
			Lead	7439-92-1	0.037		NA	
K093	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)
K094	NA		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)
K111	NA		2,4-Dinitrotoluene	121-14-2	0.32		140	(1)
			2,6-Dinitrotoluene	606-20-2	0.55		28	(1)
K117	NA		Ethylene dibromide	106-93-4	0.028		15	(1)
			Methyl bromide	74-83-9	0.11		15	(1)
			Chloroform	67-66-3	0.046		5.6	(1)
K118	NA		Ethylene dibromide	106-93-4	0.028		15	(1)
			Methyl bromide	74-83-9	0.11		15	(1)
			Chloroform	67-66-3	0.046		5.6	(1)
K131	NA		Methyl bromide	74-83-9	0.11		15	(1)
K132	NA		Methyl bromide	74-83-9	0.11		15	(1)
K136	NA		Ethylene dibromide	106-93-4	0.028		15	(1)
			Methyl bromide	74-83-9	0.11		16	(1)
			Chloroform	67-66-3	0.046		5.6	(1)
U028	Bis(2-ethylhexyl) phthalate.		Bis(2-ethylhexyl) phthalate	117-81-7	0.28		28	(1)
U069	Di-n-butyl phthalate.		Di-n-butyl phthalate	84-74-2	0.057		28	(1)
U088	Diethyl phthalate		Diethyl phthalate	84-66-2	0.2		28	(1)
U102	Dimethyl phthalate		Dimethyl phthalate	131-11-3	0.047		28	(1)
U107	Di-n-octyl phthalate.		Di-n-octyl phthalate	117-84-0	0.017		28	(1)
U190	Phthalic anhydride (measured as Phthalic acid).		Phthalic anhydride (measured as Phthalic acid).	85-44-9	0.069		28	(1)

[1] Treatment standards for this organic constituent were established based upon incineration in units operated in accordance with the technical requirements of 40 CFR 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may certify compliance with these treatment standards according to provisions in 40 CFR Section 268.7.

[2] Based on analysis of composite samples.

NOTE: NA means Not Applicable.

38. In subpart D, § 268.45 with Table 1 is added to read as follows:

§268.45 Treatment standards for hazardous debris.

(a) *Treatment standards.* Hazardous debris must be treated prior to land disposal as follows unless EPA determines under § 261.3(e)(2) of this chapter that the debris is no longer contaminated with hazardous waste or

the debris is treated to the waste-specific treatment standard provided in this subpart for the waste contaminating the debris:

(1) *General.* Hazardous debris must be treated for each "contaminant subject to treatment" defined by paragraph (b) of this section using the technology or technologies identified in Table 1 of this section.

(2) *Characteristic debris.* Hazardous debris that exhibits the characteristic of ignitability, corrosivity, or reactivity identified under §§ 261.21, 261.22, and 261.23 of this chapter, respectively, must be deactivated by treatment using one of the technologies identified in Table 1 of this section.

(3) *Mixtures of debris types.* The treatment standards of Table 1 in this section must be achieved for each type of debris contained in a mixture of debris types. If an immobilization technology is used in a treatment train, it must be the last treatment technology used.

(4) *Mixtures of contaminant types.* Debris that is contaminated with two or more contaminants subject to treatment identified under paragraph (b) of this section must be treated for each contaminant using one or more treatment technologies identified in Table 1 of this section. If an immobilization technology is used in a treatment train, it must be the last treatment technology used.

(5) *Waste PCBs.* Hazardous debris that is also a waste PCB under 40 CFR part 761 is subject to the requirements of either 40 CFR part 761 or the requirements of this section, whichever are more stringent.

(b) *Contaminants subject to treatment.* Hazardous debris must be treated for each "contaminant subject to treatment." The contaminants subject to treatment must be determined as follows:

(1) *Toxicity characteristic debris.* The contaminants subject to treatment for debris that exhibits the Toxicity Characteristic (TC) by § 261.24 of this chapter are those EP constituents for which the debris exhibits the TC toxicity characteristic.

(2) *Debris contaminated with listed waste.* The contaminants subject to treatment for debris that is contaminated with a prohibited listed hazardous waste are those constituents for which BDAT standards are established for the waste under §§ 268.41 and 268.43.

(3) *Cyanide reactive debris.* Hazardous debris that is reactive because of cyanide must be treated for cyanide.

(c) *Conditioned exclusion of treated debris.* Hazardous debris that has been treated using one of the specified extraction or destruction technologies in Table 1 of this section and that does not exhibit a characteristic of hazardous waste identified under subpart C, part 261, of this chapter after treatment is not a hazardous waste and need not be managed in a subtitle C facility. Hazardous debris contaminated with a listed waste that is treated by an immobilization technology specified in Table 1 is a hazardous waste and must be managed in a subtitle C facility.

(d) *Treatment residuals*—(1) *General requirements.* Except as provided by paragraphs (d)(2) and (d)(4) of this section:

(i) Residue from the treatment of hazardous debris must be separated from the treated debris using simple physical or mechanical means; and

(ii) Residue from the treatment of hazardous debris is subject to the waste-specific treatment standards provided by subpart D of this part for the waste contaminating the debris.

(2) *Nontoxic debris.* Residue from the deactivation of ignitable, corrosive, or reactive characteristic hazardous debris (other than cyanide-reactive) that is not contaminated with a contaminant subject to treatment defined by paragraph (b) of this section, must be deactivated prior to land disposal and is not subject to the waste-specific treatment standards of subpart D of this part.

(3) *Cyanide-reactive debris.* Residue from the treatment of debris that is reactive because of cyanide must meet the standards for D003 under § 268.43.

(4) *Ignitable nonwastewater residue.* Ignitable nonwastewater residue containing equal to or greater than 10% total organic carbon is subject to the technology-based standards for D001: "Ignitable Liquids based on § 261.21(a)(1)" under § 268.42.

(5) *Residue from spalling.* Layers of debris removed by spalling are hazardous debris that remain subject to the treatment standards of this section.

TABLE 1.—ALTERNATIVE TREATMENT STANDARDS FOR HAZARDOUS DEBRIS [1]

Technology description	Performance and/or design and operating standard	Contaminant restrictions [2]
A. Extraction Technologies:		
1. Physical Extraction		
a. *Abrasive Blasting:* Removal of contaminated debris surface layers using water and/or air pressure to propel a solid media (e.g., steel shot, aluminum oxide grit, plastic beads).	*Glass, Metal, Plastic, Rubber:* Treatment to a clean debris surface.[3] *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Removal of at least 0.6 cm of the surface layer; treatment to a clean debris surface.[3]	*All Debris:* None.
b. *Scarification, Grinding, and Planing:* Process utilizing striking piston heads, saws, or rotating grinding wheels such that contaminated debris surface layers are removed.	Same as above	Same as above.
c. *Spalling:* Drilling or chipping holes at appropriate locations and depth in the contaminated debris surface and applying a tool which exerts a force on the sides of these holes such that the surface layer is removed. The surface layer removed remains hazardous debris subject to the debris treatment standards.	Same as above	Same as above.
d. *Vibratory Finishing:* Process utilizing scrubbing media, flushing fluid, and oscillating energy such that hazardous contaminants or contaminated debris surface layers are removed.[4]	Same as above	Same as above.

TABLE 1.—ALTERNATIVE TREATMENT STANDARDS FOR HAZARDOUS DEBRIS [1]—Continued

Technology description	Performance and/or design and operating standard	Contaminant restrictions [2]
e. *High Pressure Steam and Water Sprays:* Application of water or steam sprays of sufficient temperature, pressure, residence time, agitation, surfactants, and detergents to remove hazardous contaminants from debris surfaces or to remove contaminated debris surface layers.	Same as above	Same as above.
2. Chemical Extraction		
a. *Water Washing and Spraying:* Application of water sprays or water baths of sufficient temperature, pressure, residence time, agitation, surfactants, acids, bases, and detergents to remove hazardous contaminants from debris surfaces and surface pores or to remove contaminated debris surface layers.	*All Debris:* Treatment to a clean debris surface;[3] *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Debris must be no more than 1.2 cm (½ inch) in one dimension (i.e., thickness limit,[5] except that this thickness limit may be waived under an "Equivalent Technology" approval under § 268.42(b);[6] debris surfaces must be in contact with water solution for at least 15 minutes	*Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Contsminant must be soluble to at least 5% by weight in water solution or 5% by weight in emulsion; if debris is contaminated with a dioxin-listed waste,[5] an "Equivalent Technology" approval under § 268.42(b) must be obtained.[6]
b. *Liquid Phase Solvent Extraction:* Removal of hazardous contaminants from debris surfaces and surface pores by applying a nonaqueous liquid or liquid solution which causes the hazardous contaminants to enter the liquid phase and be flushed away from the debris along with the liquid or liquid solution while using appropriate agitation, temperature, and residence time.[4]	Same as above	*Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Same as above, except that contaminant must be soluble to at least 5% by weight in the solvent.
c. *Vapor Phase Solvent Extraction:* Application of an organic vapor using sufficient agitation, residence time, and temperature to cause hazardous contaminants on contaminated debris surfaces and surface pores to enter the vapor phase and be flushed away with the organic vapor.[4]	Same as above, except that brick, cloth, concrete, paper, pavement, rock and wood surfaces must be in contact with the organic vapor for at least 60 minutes.	Same as above.
3. Thermal Extraction		
a. *High Temperature Metals Recovery:* Application of sufficient heat, residence time, mixing, fluxing agents, and/or carbon in a smelting, melting, or refining furnace to separate metals from debris.	For refining furnaces, treated debris must be separated from treatment residuals using simple physical or mechanical means,[6] and, prior to further treatment, such residuals must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris.	*Debris contaminated with a dioxin-listed waste:*[5] Obtain an "Equivalent Technology" approval under § 268.42(b).[6]
b. *Thermal Desorption:* Heating in an enclosed chamber under either oxidizing or nonoxidizing atmospheres at sufficient temperature and residence time to vaporize hazardous contaminants from contaminated surfaces and surface pores and to remove the contaminants from the heating chamber in a gaseous exhaust gas.[7]	*All Debris:* Obtain an "Equivalent Technology" approval under § 268.42(b);[6] treated debris must be separated from treatment residuals using simple physical or mechanical means,[6] and, prior to further treatment, such residue must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris. *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Debris must be no more than 10 cm (4 inches) in one dimension (i.e., thickness limit),[5] except that this thickness limit may be waived under the "Equivalent Technology" approval	*All Debris:* Metals other than mercury.
B. Destruction Technologies:		
1. *Biological Destruction (Biodegradation):* Removal of hazardous contaminants from debris surfaces and surface pores in an aqueous solution and biodegration of organic or nonmetallic inorganic compounds (i.e., inorganics that contain phosphorus, nitrogen, or sulfur) in units operated under either aerobic or anaerobic conditions.	*All Debris:* Obtain an "Equivalent Technology" approval under § 268.42(b);[6] treated debris must be separated from treatment residuals using simple physical or mechanical means,[6] and, prior to further treatment, such residue must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris. *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Debris must be no more than 1.2 cm (½ inch) in one dimension (i.e., thickness limit),[5] except that this thickness limit may be waived under the "Equivalent Technology" approval	*All Debris:* Metal contaminants.
2. Chemical Destruction		
a. *Chemical Oxidation:* Chemical or electolytic oxidation utilizing the following oxidation reagents (or waste reagents) or combination of reagents—(1) hypochlorite (e.g., bleach); (2) chlorine; (3) chlorine dioxide; (4) ozone or UV (ultraviolet light) assisted ozone; (5) peroxides; (6) persulfates; (7) perchlorates; (8) permanganates; and/or (9) other oxidizing reagents of equivalent destruction efficiency.[4] Chemical oxidation specifically includes what is referred to as alkaline chlorination.	*All Debris:* Obtain an "Equivalent Technology" approval under § 268.42(b);[6] treated debris must be separated from treatment residuals using simple physical or mechanical means,[6] and, prior to further treatment, such residue must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris. *Brick, Cloth, Concrete, Paper, Pavement, Rock, Wood:* Debris must be no more than 1.2 cm (½ inch) in one dimension (i.e., thickness limit),[5] except that this thickness limit may be waived under the "Equivalent Technology" approval	*All Debris:* Metal contaminants.

TABLE 1.—ALTERNATIVE TREATMENT STANDARDS FOR HAZARDOUS DEBRIS [1]—Continued

Technology description	Performance and/or design and operating standard	Contaminant restrictions [2]
b. *Chemical Reduction:* Chemical reaction utilizing the following reducing reagents (or waste reagents) or combination of reagents: (1) sulfur dioxide; (2) sodium, potassium, or alkali salts of sulfites, bisulfites, and metabisulfites, and polyethylene glycols (e.g., NaPEG and KPEG); (3) sodium hydrosulfide; (4) ferrous salts; and/or (5) other reducing reagents of equivalent efficiency.[4]	Same as above	Same as above.
3. *Thermal Destruction:* Treatment in an incinerator operating in accordance with Subpart O of Parts 264 or 265 of this chapter; a boiler or industrial furnace operating in accordance with Subpart H of Part 266 of this chapter, or other thermal treatment unit operated in accordance with Subpart X, Part 264 of this chapter, or Subpart P, Part 265 of this chapter, but excluding for purposes of these debris treatment standards Thermal Desorption units.	Treated debris must be separated from treatment residuals using simple physical or mechanical means,[6] and, prior to further treatment, such residue must meet the waste-specific treatment standards for organic compounds in the waste contaminating the debris.	*Brick, Concrete, Glass, Metal, Pavement, Rock, Metal:* Metals other than mercury, except that there are no metal restrictions for vitrification. *Debris contaminated with a dioxin-listed waste.*[8] Obtain an "Equivalent Technology" approval under § 268.42(b),[8] except that this requirement does not apply to vitrification.
C. Immobilization Technologies:		
1. *Macroencapsulation:* Application of surface coating materials such as polymeric organics (e.g., resins and plastics) or use of a jacket of inert inorganic materials to substantially reduce surface exposure to potential leaching media.	Encapsulating material must completely encapsulate debris and be resistant to degradation by the debris and its contaminants and materials into which it may come into contact after placement (leachate, other waste, microbes).	None.
2. *Microencapsulation:* Stabilization of the debris with the following reagents (or waste reagents) such that the leachability of the hazardous contaminants is reduced: (1) Portland cement; or (2) lime/pozzolans (e.g., fly ash and cement kiln dust). Reagents (e.g., iron salts, silicates, and clays) may be added to enhance the set/cure time and/or compressive strength, or to reduce the leachability of the hazardous constituents.[5]	Leachability of the hazardous contaminants must be reduced.	None.
3. *Sealing:* Application of an appropriate material which adheres tightly to the debris surface to avoid exposure of the surface to potential leaching media. When necessary to effectively seal the surface, sealing entails pretreatment of the debris surface to remove foreign matter and to clean and roughen the surface. Sealing materials include epoxy, silicone, and urethane compounds, but paint may not be used as a sealant.	Sealing must avoid exposure of the debris surface to potential leaching media and sealant must be resistent to degradation by the debris and its contaminants and materials into which it may come into contact after placement (leachate, other waste, microbes).	None.

[1] Hazardous debris must be treated by either these standards or the waste-specific treatment standards for the waste contaminating the debris. The treatment standards must be met for each type of debris contained in a mixture of debris types, unless the debris is converted into treatment residue as a result of the treatment process. Debris treatment residuals are subject to the waste-specific treatment standards for the waste contaminating the debris.

[2] Contaminant restriction means that the technology is not BDAT for that contaminant. If debris containing a restricted contaminant is treated by the technology, the contaminant must be subsequently treated by a technology for which it is not restricted in order to be land disposed (and excluded from Subtitle C regulation).

[3] "Clean debris surface" means the surface, when viewed without magnification, shall be free of all visible contaminated soil and hazardous waste except that residual staining from soil and waste consisting of light shadows, slight streaks, or minor discolorations, and soil and waste in cracks, crevices, and pits may be present provided that such staining and waste and soil in cracks, crevices, and pits shall be limited to no more than 5% of each square inch of surface area.

[4] Acids, solvents, and chemical reagents may react with some debris and contaminants to form hazardous compounds. For example, acid washing of cyanide-contaminated debris could result in the formation of hydrogen cyanide. Some acids may also react violently with some debris and contaminants, depending on the concentration of the acid and the type of debris and contaminants. Debris treaters should refer to the safety precautions specified in Material Safety Data Sheets for various acids to avoid applying an incompatible acid to a particular debris/contaminant combination. For example, concentrated sulfuric acid may react violently with certain organic compounds, such as acrylonitrile.

[5] If reducing the particle size of debris to meet the treatment standards results in material that no longer meets the 60 mm minimum particle size limit for debris, such material is subject to the waste-specific treatment standards for the waste contaminating the material, unless the debris has been cleaned and separated from contaminated soil and waste prior to size reduction. At a minimum, simple physical or mechanical means must be used to provide such cleaning and separation of nondebris materials to ensure that the debris surface is free of caked soil, waste, or other nondebris material.

[6] Dioxin-listed wastes are EPA Hazardous Waste numbers FO20, FO21, FO22, FO23, FO26, and FO27.

[7] Thermal desorption is distinguished from Thermal Destruction in that the primary purpose of Thermal Desorption is to volatilize contaminants and to remove them from the treatment chamber for subsequent destruction or other treatment.

[8] The demonstration "Equivalent Technology" under § 268.42(b) must document that the technology treats contaminants subject to treatment to a level equivalent to that required by the performance and design and operating standards for other technologies in this table such that residual levels of hazardous contaminants will not pose a hazard to human health and the environment absent management controls.

[9] Any soil, waste, and other nondebris material that remains on the debris surface (or remains mixed with the debris) after treatment is considered a treatment residual that must be separated from the debris using, at a minimum, simple physical or mechanical means. Examples of simple physical or mechanical means are vibratory or trommel screening or water washing. The debris surface need not be cleaned to a "clean debris surface" as defined in note 3 when separating treated debris from residue; rather, the surface must be free of caked soil, waste, or other nondebris material. Treatment residuals are subject to the waste-specific treatment standards for the waste contaminating the debris.

39. In subpart D, § 268.46 is added to read as follows:

§ 268.46 Alternative treatment standards based on HTMR.

Table 1 identifies alternative treatment standards for F006 and K062 nonwastewaters.

TABLE 1.—ALTERNATIVE TREATMENT STANDARDS

Waste code	See also	Regulated hazardous constituent	CAS No. for regulated hazardous constituent	Non-wastewaters concentration (mg/1) TCLP
F006	Table CCWE in 268.41 and Table CCW in 268.43	Antiomony	7440-36-0	2.1
		Arsenic	7440-38-2	0.055
		Barium	7440-39-3	7.6
		Beryllium	7440-41-7	0.014
		Cadmium	7440-43-9	0.19
		Chromium (total)	7440-47-32	0.33
		Cyanide (mg/kg) (total)	57-12-5	1.8
		Lead	7439-92-1	0.37
		Mercury	7439-97-6	0.009
		Nickel	7440-02-0	5.0
		Selenium	7782-49-2	0.16
		Silver	7440-22-4	0.30
		Thallium		0.078
		Zinc	7440-66-6	5.3
K062	Table CCWE in 268.41 and Table CCW in 268.43	Antimony	7440-36-0	2.1
		Arsenic	7440-38-2	0.055
		Barium	7440-39-3	7.6
		Beryllium	7440-41-7	0.014
		Cadmium	7440-43-9	0.19
		Chromium (total)	7440-47-32	0.33
		Lean	7439-92-1	0.37
		Mercury	7439-97-6	0.009
		Nickel	7440-02-0	5.0
		Selenium	7782-49-2	0.16
		Silver	7440-22-4	0.30
		Thallium		0.078
		Zinc	7440-66-6	5.3

40. In § 268.50, paragraph (a)(1) and the introductory text of paragraph (a)(2) are revised to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

(a) * * *

(1) A generator stores such wastes in tanks, containers, or containment buildings on-site solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and the generator complies with the requirements in § 262.34 and parts 264 and 265 of this chapter.

(2) An owner/operator of a hazardous waste treatment, storage, or disposal facility stores such wastes in tanks, containers, or containment buildings solely for the purpose of the accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal and:

* * * * *

41. In Part 268, appendix II is revised to read as follows:

Appendix II—Treatment Standards (As Concentrations in the Treatment Residual Extract)

Note: The treatment standards for F001–F005 Spent Solvent Wastes appear in §§ 268.41, 268.42, 268.43.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

42. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

43. In § 270.13, paragraph (n) is added to read as follows:

§ 270.13 Contents of Part A of the permit application.

* * * * *

(n) For hazardous debris, a description of the debris category(ies) and contaminant category(ies) to be treated, stored, or disposed of at the facility.

44. In § 270.14, paragraph (b)(2) is revised to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(b) * * *

(2) Chemical and physical analyses of the hazardous waste and hazardous debris to be handled at the facility. At a minimum, these analyses shall contain all the information which must be known to treat, store, or dispose of the wastes properly in accordance with part 264 of this chapter.

* * * * *

45. In § 270.42, paragraph (e)(3)(ii)(B) is revised to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(e) * * *

(ii) * * *

(B) To allow treatment or storage in tanks or containers, or in containment buildings in accordance with 40 CFR part 268;

* * * * *

46. In § 270.42, appendix I is amended by adding entry 6 to section I., and by adding new section M. to read as follows:

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATION

Modifications	Class
* * * * *	
I. Enclosed Waste Piles. * * *	
* * * * *	
6. Conversion of an enclosed waste pile to a containment building unit	2
* * * * *	
M. Containment Buildings.	
1. Modification or addition of containment building units:	
a. Resulting in greater than 25% increase in the facility's containment building storage or treatment capacity	3
b. Resulting in up to 25% increase in the facility's containment building storage or treatment capacity	2
2. Modification of a containment building unit or secondary containment system without increasing the capacity of the unit	2
3. Replacement of a containment building with a containment building that meets the same design standards provided:	
a. The unit capacity is not increased	1

APPENDIX I TO § 270.42—CLASSIFICATION OF PERMIT MODIFICATION—Continued

Modifications	Class
b. The replacement containment building meets the same conditions in the permit	1
4. Modification of a containment building management practice	2
5. Storage or treatment of different wastes in containment buildings:	
a. That require additional or different management practices	3
b. That do not require additional or different management practices	2

47. In § 270.72, paragraph (b)(6) is revised to read as follows:

§ 270.72 Changes during interim status.

* * * * *

(b) * * *

(6) Changes to treat or store, in tanks, containers, or containment buildings, hazardous wastes subject to land disposal restrictions imposed by part 268 of this chapter or RCRA section 3004, provided that such changes are made solely for the purpose of complying with part 268 of this chapter or RCRA section 3004.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

48. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

49. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**; and by adding the following entries to Table 2 in chronological order by effective date to read as follows:

§ 271.1 Purpose and scope.

* * * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
August 18, 1992	Land disposal restrictions for newly listed wastes in § 268.36 (b)–(g).	[Insert **Federal Register** (FR) page number].	June 30, 1992.
Do	Land disposal restrictions for newly listed wastes in § 268.36(a), hazardous debris, and generic exclusion for K062 and F006 non-waste-waters.	Do	November 9, 1992.

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
June 30, 1992	Surface Impoundment Retrofit	[Insert **Federal Register** (FR) page numbers].	August 18, 1992, 57 FR
November 9, 1992	Prohibition on land disposal of hazardous debris and newly listed wastes.	Do	August 18, 1992, 57 FR
February 18, 1993	Containment buildings	Do	August 18, 1992, 57 FR

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Tuesday
August 18, 1992

Part III

Environmental Protection Agency

40 CFR Parts 261 et al.

Identification and Listing of Hazardous Waste; CERCLA Hazardous Designation; Reportable Quality Adjustment; Coke By-Products Waste

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 271, and 302

[FRL-4134-2]

RIN 2050-AC85

Identification and Listing of Hazardous Waste; CERCLA Hazardous Substance Designation; Reportable Quantity Adjustment; Coke By-Products Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency is today amending its regulations under the Resource Conservation and Recovery Act (RCRA) by listing as hazardous seven wastes generated during the production, recovery, and refining of coke by-products produced from coal. EPA is adding seven wastes to the list of hazardous wastes from specific sources. EPA is also amending appendix VII of 40 CFR part 261 to add the constituents for which these wastes are being listed. In addition, the Agency is finalizing the proposed determination not to list as hazardous wastes wastewaters from coking and tar refining operations.

The effect of listing K141 through K145, K147 and K148 will be to subject these materials to the hazardous waste regulations of 40 CFR parts 124, 262 through 266, 268, 270 and 271, the notification requirements of RCRA 3010, and the notification requirements under section 103 of CERCLA.

In addition to the listings, the Agency is today amending and clarifying an exclusion from the definition of solid waste for wastes from the coke by-products process that exhibit the TC and are recycled by being returned to coke ovens or mixed with coal tar (57 FR 27880).

EFFECTIVE DATE: Today's final rule will become effective on February 18, 1993.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F-92-CDPF-FFFFF and is located in the EPA RCRA Docket, room M2427, 401 M Street, SW., Washington, DC 20460. The public must make an appointment in order to review docket materials by calling (202) 260-9327 for the RCRA portion of the docket, or (202) 260-3046 for the CERCLA portion of the docket. Both dockets are available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The public may copy up to 100 pages from the docket at no charge. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: The RCRA/Superfund Hotline toll-free at (800) 424-9346 (voice) or (800) 553-7672 (TDD), or, in the Washington, DC metropolitan area, (703) 920-9810 (voice) or (703) 486-3323 (TDD). For technical information on the RCRA portion of the rule, contact Mr. Ron Josephson of the Office of Solid Waste (OS-333) at (202) 260-4770. For technical information on the CERCLA portion of the rule, contact Ms. Gerain Perry, Office of Emergency and Remedial Response (OS-210) at (202) 260-2190.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
II. Summary of the Regulation
  A. Overview of the Proposed Rule
  B. Overview of the Final Rule
  1. Hazardous waste listings
  2. Recycling exclusion
  C. Industry Overview
  D. Process and Waste Descriptions
  1. The coking process
  2. The tar refining process
  E. Wastes Included in Today's Listing
  F. Basis for Listing
III. Summary of Public Comments and Responses
  A. Hazardous Waste Listings
  B. Recycling Exclusion
IV. Interaction with Other Regulations
  A. Land Disposal Restrictions
V. State Authority
  A. Applicability of Final Rule in Authorized States
  B. Effect on State Authorization
VI. CERCLA Designation and Reportable Quantities
VII. Cost and Economic Analysis
  A. Cost Analysis
  B. Economic Impact Analysis
  1. Coking industry
  2. Tar refining industry
VIII. Regulatory Flexibility Act
  A. Executive Order Requirements
IX. Paperwork Reduction Act
X. Compliance and Implementation
  A. Section 3010 Notification
  B. Compliance Dates for Facilities

I. Background

Section 3001 of Subtitle C of RCRA mandates that EPA make a determination whether to list as hazardous certain wastes generated during the production, recovery, and refining of coke by-products produced from coal. EPA proposed to list a number of these wastes from the coke by-products process as hazardous in a notice published in the **Federal Register** on July 26, 1991 (56 FR 35758). Certain other wastes from the coke by-products industry are already listed as hazardous under RCRA. An overview of past regulatory actions taken by the Agency that affect this industry was provided in the preamble to the proposed rule (see 56 FR 35759).

On July 26, 1991, EPA proposed to add seven wastes from the coke by-products process to the list of wastes from specific sources. Today's notice promulgates these seven "K-listings."

In a separate **Federal Register** notice (57 FR 27880), EPA promulgated an exclusion from the definition of solid waste for Hazardous Waste No. K087, and other wastes from the coke by-products process that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in § 261.24, when they are recycled by being returned to coke ovens as a feedstock to produce coke, added to the tar recovery process to produce coal tar, or mixed with coal tar prior to its sale or refining. This exclusion was conditioned on no land disposal of wastes. Today, the Agency is amending this exclusion to include the wastes being listed in this notice.

II. Summary of the Regulation

A. Overview of the Proposed Rule

The notice published on July 26, 1991 (56 FR 35758) proposed to amend the regulations for hazardous waste listing under RCRA by adding the following seven wastes generated during the production, recovery, and refining of coke by-products produced from coal to the list of hazardous wastes from specific sources under 40 CFR 261.32.

K141—Process residues from the recovery of coal tar, including, but not listed to, tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).

K142—Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.

K143—Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.

K144—Wastewater treatment sludges from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.

K145—Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.

K147—Tar storage tank residues from coal tar refining.

K148—Residues from coal tar distillation, including, but not limited to, still bottoms.

The Agency also proposed to amend appendix VII of 40 CFR part 261 to add the following constituents for which these wastes were proposed for listing: Benzene and polynuclear aromatic hydrocarbons (PAHs), including benz(a)anthracene, benzo(a)pyrene, benzo(b and k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene, and naphthalene.

Lastly, the Agency proposed to amend the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) regulations in 40 CFR part 302 by designating all of the proposed listed wastes as hazardous substances under CERCLA. Pursuant to section 102(b) of CERCLA, the reportable quantities (RQs) applicable to each of these wastes is one pound.

The proposed listings included process residues and storage tank residues other than those residuals already listed as EPA Hazardous Waste Nos. K035, K060, and K087. Several industry commenters requested clarification on the scope of the proposed listings. Details on the scope of the listings finalized in today's rule as well as descriptions of the modifications made to the proposed listings are discussed below under Wastes Included in Today's Listing. The proposed listings did not include wastewaters or wastewater treatment sludges from coke by-products recovery and tar refining.

Because a number of the wastes that were proposed for listing are recycled by members of the coke by-products industry, EPA supported the environmentally beneficial recycling of these wastes by proposing to exclude the listed wastes from the definition of solid waste when they are recycled in certain ways. This exclusion is conditioned on no land disposal of the wastes. These wastes are generally recycled using one of the two following methods: (1) Combining the residue with coal feedstock prior to or just after charging the coal into the coke oven, and (2) mixing the residue with coal tar prior to its being sold as a product. In order to maintain hazardous waste control over the listed wastes in the event of mismanagement, the Agency proposed that the exclusions apply at the point of reinsertion of the wastes into the coke ovens or the point at which they are mixed with coal tar. The exclusions were intended to encourage waste minimization while maintaining RCRA control over the wastes prior to the recycling step (i.e., during interim storage and transportation) and when using management practices other than recycling.

EPA proposed the listings of K141-K145 and K147-K148 in response to the Hazardous and Solid Waste Amendments (HSWA) of 1984. Section 3001(e)(2) of RCRA, added by HSWA, requires EPA to make a listing determination for wastes generated from the coke by-products industry.

B. Overview of the Final Rule

1. Hazardous Waste Listings

Today's rule adds to the list of wastes from specific sources the seven listings proposed on July 26, 1991. These are as follows:

K141—Process residues from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations).

K142—Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.

K143—Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.

K144—Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.

K145—Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.

K147—Tar storage tank residues from coal tar refining.

K148—Residues from coal tar distillation, including, but not limited to, still bottoms.

Today's rule also amends appendix VII of part 261 to include the constituents for which these wastes are listed.

2. Recycling Exclusion

Several recycling exclusions were proposed on July 26, 1991 as 40 CFR 261.4 (a)(10-(12). Public comments on these exclusions were requested separately from comments on the rest of the listing proposal. For a brief summary of these public comments and EPA's response to them, see the Summary of Public Comments and Responses section later in this preamble. The public comments concerning the recycling exclusion are addressed fully in the exclusion rule promulgated on June 22, 1992 (57 FR 27880).

This rule excluded from the definition of solid waste Hazardous Waste No. K087, and any other wastes from the coke by-products process that are hazardous only because they exhibit the TC, when they are recycled to coke ovens as a feedstock to produce coke, to the tar recovery process to produce coal tar, or mixed with coal tar prior to its sale or refining. This exclusion for recycling is conditioned on there being no land disposal for the materials up to the point of recycling (see 40 CFR 261.4(a)(10); 57 FR 27888). Today, EPA is amending this exclusion to include the wastes being listed in this notice within the scope of the exclusion. The extension of the exclusion to the wastes being listed in today's rule is logical given the fact that many, if not all of the wastes listed here qualify for the existing exclusion under § 261.4(a)(10). In addition, all commenters to the proposed rule who commented on recycling issues supported this action.

As indicated in the proposal, the Agency is including the following additional materials in the recycling exclusion under 40 CFR 261.4(a)(10): K060, K087, K141, K142, K143, K144, K145, K147, K148, and wastes from the coke by-products industry that are hazardous only because they exhibit the TC. The exclusion does not apply if other hazardous wastes (*e.g.*, spent solvents, TC hazardous wastes from other industries, etc.) are mixed with the above-mentioned residues or charged to a coke oven. If the "no land disposal" condition of the exclusion is met, the wastes listed above are not solid wastes and, thus, not hazardous wastes, when they are recycled to coke ovens or tar recovery processes, or mixed with coal tar. The effect of this exclusion from the definition of solid waste is to remove these coke by-product wastes from RCRA control when they are recycled within the coking and tar refining industries. In other words, as long as coke by-product wastes are being recycled within the terms of the exclusion at 40 CFR 261.4(a)(10), no permit is needed for the storage or management of these wastes, no manifest is required for transport of these wastes, and so on. It is important to note, however, that certain recordkeeping requirements under the Land Disposal Restrictions program still attach to wastes that have been excluded from RCRA regulation. These requirements are discussed later in this preamble in the section entitled Interaction with Other Regulations.

C. Industry Overview

In the preamble to the proposed rule, EPA presented a description of the coking and tar refining industries, along with descriptions and quantities of

wastes generated and descriptions of waste management practices employed for the wastes. This information remains the most recent and accurate information on the industry available to EPA and was relied upon in developing the final rule. The industry statistics are based on 1987 data which indicate that 21 domestic companies produced approximately 28 million metric tons of coke at 34 plants. Updated information provided by an industry trade association indicates that there are currently 32 active plants which are divided into two segments: Captive coke producers (22 plants) and merchant coke producers (10 plants). The 22 captive coke plants are operated by major iron and steel companies and produce blast furnace coke that is generally used on-sit or within the same company at integrated iron and steel plants to produce steel. The 10 merchant coke plants generally produce blast furnace coke for sale to iron and steel companies, and metallurgical coke for sale to iron and steel foundries and to other metallurgical and chemical industries. A list of active plants is provided in the Background Document for today's rule.

In 1985, about 1,200 million liters of coal tar, 3.7 billion liters of sodium phenolate, 7,000 metric tons of naphthalene, and 580 million liters of light oil were produced as coke by-products. The crude coal tar is sold to independent tar refiners for the production of other coal tar by-products. The 1985 production of these coal tar by-products was approximately 45 million liters of light oil, 500 million liters of creosote oil, 550 million liters of refined tar (excluding tar used as road tar), and 470,000 metric tons of coal tar pitch. More recent data indicate that domestic coke plants produced 256,823,533 gallons of crude coal tar in 1991.

Table 1 presents estimates, based on data collected from 1985 to 1987, of the quantities of waste generated from the production of coke and coke by-products, recovery of coke by-products, and coal tar refining. The assumptions and data used to generate these estimates are provided in the Background Document for this rule. Tables containing the waste management practices used for these wastes and the percentage of facilities employing each waste management practice are also presented in the Background Document. Overall, at least 40 percent of the facilities who reported waste management practices in the 1985 RCRA 3007 questionnaire recycle the wastes and products addressed in today's rule.

TABLE 1.—ESTIMATED NATIONWIDE WASTE QUANTITIES (MT/YR)

Waste	Quantity
K141—Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations)	3,100
K142—Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal	10,000
K143—Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal	4,500
K144—Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal	900
K145—Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal	450
K147—Tar storage tank residues from coal tar refining	2,800
K148—Residues from coal tar distillation, including, but not limited to, still bottoms	270

D. Process and Waste Descriptions

1. The Coking Process

Coke is manufactured by anaerobic carbonization of coal in high temperature (900–1200°C) coke ovens. Coke is the main product and is used as a reductant in the blast furnaces used in iron manufacturing. The coke oven gas (COG) is processed through recovery units to separate other such saleable by-products as coal tar, light oil, and ammonia liquor from the gas stream and the remainder of the gas stream is then used as fuel.

Figure 1 is a general process flow diagram that indicates the sources of by-product residues that are the subject of this rule. During the recovery of coal tar from the coke oven gas, tar residue accumulates in the tar decanter tank (K087), the tar collection sump (K141) and at the bottom of tar storage tanks (K147). The light oil recovery process generates wash and light oil residues (K143) in the scrubber tower, the stripping still, and in a decanter or centrifuge used to separate a polymerized resin referred to as wash oil muck from the recycled wash oil. A wastewater collecting sump, used to separate the oil and water in wastewaters from the light oil recovery area, generates wastewater sump residues (K144). Naphthalene recovery residues (K145) are generated in the final cooling tower, naphthalene separator and collection sumps. Facilities may also use an ammonia still, in which a "lime sludge" accumulates (K060).

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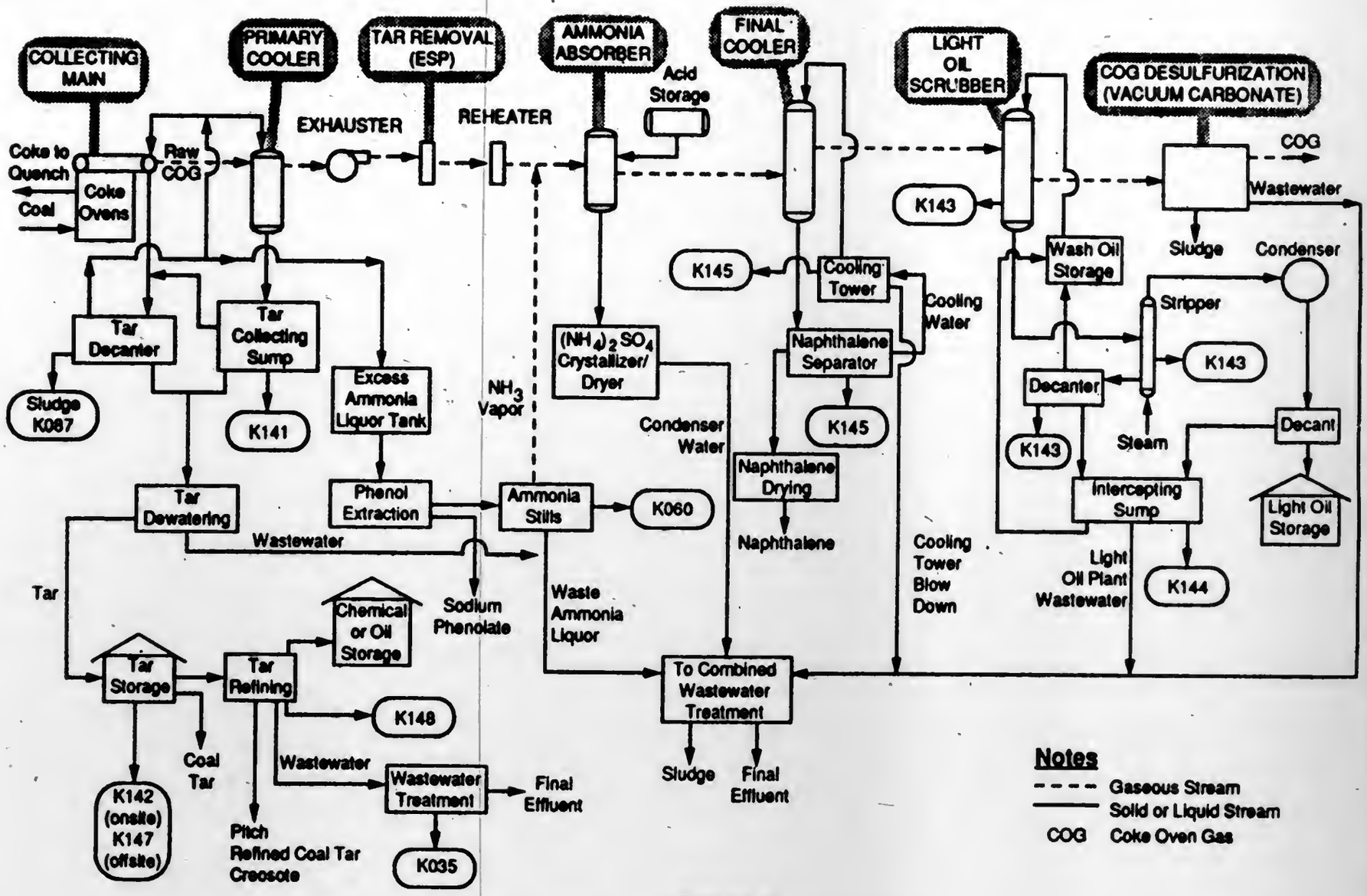


Figure 1
COKE BY-PRODUCTS RECOVERY

2. The Tar Refining Process

Coal tar is typically refined to produce commercial and industrial products including pitch, creosote oil, refined tar, naphthalene, and commercial materials such as bitumen. Coal tar is refined by either batch or continuous distillation. The heavy liquid components such as pitch and creosote are sent to a distillation column for further refining. The pitch, which is generated at the softening point of tar, is discharged from the still, cooled, extruded, and poured into barrels or other containers for storage.

The coal tar refining plant may produce two process residuals that will be added to the list of wastes from specific sources. The first process residual is generated at the bottom of the coal tar storage tanks (K147). Based on the information provided to the Agency during the industry study and public comment periods, this residual is generated infrequently. Large volumes of tar storage tank bottoms were recently generated during the tank clean-outs required for compliance with the benzene NESHAPs rule. However, mechanical mixers or air agitators were installed at several plants to prevent future formation of this residual. The same residual is generated in coal tar storage tanks at coking facilities.

The second process waste from the refining plant, identified as K148, is high boiling-point residue, which accumulates on the fire tubes and at the bottom of the batch still and must be removed periodically. These tar refining residuals are either recycled to coke ovens at the same or adjacent facilities, or sold to other coking facilities as products. Tar distillation residues may also be recycled to the distillation tank along with crude coal tar.

In addition to the above, a sludge is often formed from the treatment of tar refining wastewaters. This sludge carries the K035 listing.

E. Wastes Included in Today's Listing

Today's rule adds seven wastes to the list of hazardous wastes from specific sources (40 CFR 261.32). These listings encompass all of the same materials described and proposed for listing in the proposed rule. The seven wastes added to § 261.32, K141, K142, K143, K144, K145, K147, and K148, retain the same scope as the corresponding proposed listed wastes. The listing descriptions also remain the same as those proposed, with the exception of the description of K144 wastes, which are now more accurately called "wastewater sump residues" rather than "wastewater treatment sludges." (For further explanation, see Footnote 1 to Table 6 below.) This change is based on information and comments received from the coke by-products industry. K144 wastes include the same materials as those originally proposed.

Descriptions of the manufacturing process and sources of the wastes are provided earlier in this preamble and are presented in greater detail in the Background Document for today's rule and in the preamble to the July 1991 proposed rule. EPA also provides data describing the composition of the wastes being listed in each of these documents.

Two commenters requested that more specific language be used to describe the listed wastes. The commenters requested that terms such as "including but not limited to" be deleted from the waste descriptions. These terms, however, are necessary in describing these wastes because the manufacturing processes generating the wastes are not always identical. If the Agency limited the scope of the listings to residues generated only by the specific unit operations shown in the generic process flow diagram, then residues of similar chemical composition that are generated from the same stage of the coke by-product recovery operation may not be encompassed by the listing. For example, wash oil circulation sludge generally has the same chemical composition as residues from wash oil recovery units when used to wash light oil and, therefore, would be listed as K143. However, in certain instances, wash oil may be used to wash other by-products such as naphthalene, and the wash oil circulation sludge would then be listed as K145. This preamble further clarifies the scope of the listings by providing a table that contains each of the coke by-product wastes specified in the proposed Consent Decree which resolves issues raised in *EDF* vs. *Reilly*, Civ. No. 89-0598 (D.D.C.) along with the appropriate hazardous waste listing numbers (see Summary of Public Comments and Responses section).

As proposed, EPA is finalizing the determination not to list wastewaters from coking and tar refining operations. One commenter believed that these wastes should be listed as hazardous wastes because certain hazardous constituents were found at concentrations exceeding the health-based levels by over six orders of magnitude. As stated in the preamble to the proposed rule, EPA has found that these constituents are not typically and frequently found in the wastewaters at quantifiable levels. For example, constituents other than benzene that were identified as concerns by the commenter were either detected below the detection limit or not detected in at least 75% of the coking and tar refining wastewater samples collected by EPA. Since benzene is the only constituent of concern that is typically and frequently present at concentrations of regulatory concern and is a contaminant that is regulated by both the Toxicity Characteristic, EPA believes that wastewaters will be adequately regulated by both the TC rule and Effluent Guidelines for Industrial Point Source Discharges under the Clean Water Act. Any wastewater that exhibits the TC and is land disposed prior to receiving adequate treatment (or release through the Clean Water Act programs) must comply with all RCRA requirements.

Raw wastewater releases are unlikely for several reasons. First, a statutory ban exists on the disposal of liquids in landfills. Also, all facilities in this industry have closed their surface impoundments and lagoons in favor of more modern treatment plants. While problems existed in the past with wastewaters being mixed with other process wastes and causing environmental problems, such releases are less likely to happen, and, if they did, would cause the released materials to be a hazardous waste mixture (as described on page 35780 of the July 26, 1991 proposal). Lastly, the wastewater treatment plants at the coke by-products facilities have been or are being upgraded in compliance with the Clean Water Act and other EPA regulatory programs. Many of the upgraded plants use biological treatment process that may degrade both benzene and PAHs of concern below levels of regulatory concern.

One commenter stated that EPA is required to list a waste as hazardous if it exhibits any of the hazardous waste characteristics and cited 40 CFR 261.11(a) (1). EPA would like to clarify here that when considering a solid waste for listing, the Administrator *may* list a waste on the basis that it exhibits a hazardous waste characteristic but this is not a requirement. Indeed, a policy that required all wastes exhibiting a characteristic to be listed would render subpart C of part 261 meaningless. Section 261.11 reads, "The Administrator shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria: (1) It exhibits any of the characteristics of hazardous waste identified in Subpart C * * * while the Agency has the authority to list a waste based solely on this criterion, the language of this section does not mean that the Agency is required to list upon determining that a waste exhibits a characteristic.

F. Basis for Listing

As stated in the preamble to the proposed rule, the Agency has based today's listing determination on the criteria set forth in 40 CFR 261.11(a)(3). In the preamble to the July 1991 proposed rule, EPA provided a detailed discussion of the basis for listing K141-L145, K147 and K148. The discussion included quantitative data on the concentrations of constituents of concern found in the wastes, summaries of the known health effects of the constituents of concern, data describing the relative persistence and mobility of the constituents of concern, mismanagement case studies, and an analysis of the relative hazards posed by the wastes. In general, the information presented in the preamble to the proposed rule remains the most current available to EPA and serves as the basis for today's listings for K141 through K145, K147, and K148.

In the preamble to the proposed rule, EPA provided a list of constituents found to be present in the wastes that were not selected as constituents of concern at the time of proposal, and stated that additional constituents may be added upon promulgation based upon the consideration of comments and/or additional data (56 FR 35772). After reviewing the analytical data presented in the Background Document to the proposed rule and the current health effects information on the constituents present in the wastes, one additional constituent that appeared on that list, chrysene, has been selected as a constituent of concern. As stated in the preamble to the proposed rule, the addition of chrysene to the list of constituents of concern has no effect on the Agency's ultimate decision to list these wastes as hazardous. Tables 2 and 3 are revised versions of Tables 5, 6, and 7 from the preamble to the proposed rule; they present the selected constituents of concerns in each of the newly listed wastes, and the range of measured concentrations of constituents in coke by-products and tar refining products.

In addition, the health effects information for many of the constituents of concern has been revised. Indeno (1, 2, 3-cd)pyrene has been raised from a possible human carcinogen (Class C) to a probable human carcinogen (Class B), and the qualitative information upon which this change was based is provided on EPA's Integrated Risk Information System (IRIS). Because the health-effects information on IRIS is peer reviewed by inter-Agency workgroups that reach consensus decisions regarding the data, the new carcinogen classification is considered scientifically sound. (More information regarding this change and IRIS is included in the background document to today's rule.)

Also, the health-based limits have been revised slightly for benzo(a)pyrene, benzo(b and k)fluoranthene, Indeno(1, 2, 3-cd)pyrene, benz(a)anthracene, and naphthalene. In all cases, the change is two orders of magnitude or less and does not affect the results of the listing analyses which indicate that the wastes listed in today's rulemaking should be listed as hazardous. The specific changes are as follows:

TABLE 2.—CONSTITUENTS OF CONCERN

Constituents	K141	K142	K143	K144	K145	K147	K148
Benzene	X	X	X	X	X	X	
Benz(a)anthracene	X	X	X	X	X	X	X
Benzo(a)pyrene	X	X	X	X	X	X	X
Benzo(b and k)fluoranthene	X	X	X	X	X	X	X
Chrysene	X	X	X	X	X	X	X
Dibenz(a,h)anthracene	X	X		X	X	X	X
Indeno(1,2,3-cd)pyrene	X	X		X		X	X
Naphthalene	X	X	X	X	X	X	

NOTE: X indicates that the constituent has been found to be present at levels of regulatory concern in the individual waste stream.

TABLE 3.—COKE AND COKE BY-PRODUCT WASTES: CONSTITUENTS OF CONCERN AND RANGE OF MEASURED CONCENTRATIONS

[All Values in PPM]

Constituent	K141	K142		K143		K144		K145	
	Process residues from coal tar recovery[a]	Tar Storage Tank Residues		Residues from light oil processing		Wastewater treatment sludges from light oil refining		Residues from naphthalene collection and recovery	
		Range	Avg.	Range	Avg.	Range	Avg.	Range	Avg.
Benzene	3,850	230–290	260	39–8,500	1,600	200–14,000	3,000	120–3,000	1,000
Benz(a)anthracene	7,850	5,400–7,400	6,600	ND–320	[b]69	<15–140	[b]68	<3–<96	[b]22
Benzo(a)pyrene	8,450	4,500–8,300	6,500	<10–130	[b]34	<20–130	[b]65	ND–22	[b]7
Benzo(b)fluoranthene[c]	5,450	5,200–10,000	7,500	<5–230	[b]59	<15–220	[b]75	2.3–46	[b]26
Benzo (K) fluoranthene [c]									
Chrysene	7,950	4,000–7,400	6,000	<5–250	[b]59	<15–120	[b]66	2.7–<96	[b]22
Dibenz(a,h)anthracene	1,750	720–1,600	1,000	ND–<500	[b]38	7<–<81	[b]15	ND–5	[b]1.3
Indeno (1,2,3-cd)pyrene	6,150	2,000–4,100	2,900	ND–<500	[b]40	<15–77	[b]37	ND–9.9	[b]4
Naphthalene	95,000	32,000–84,000	55,000	1,400–480,000	52,000	360–53,000	27,000	5.7–300,000	140,000

[a] Only one data point exists. However, this residual is presumed to be comparable in composition to tar decanter sludge (listed waste K087).
[b] Arithmetic averages are based on one half the quantitation limit for constituents detected below quantitation limits and zero for constituents no detected (ND).
[c] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results shown are the sum of the two isomers.
Source: Background Document.

Constituent	K147 Tar storage tank residues Range	K147 Avg.	K148 Tar Distillation residuals Range	K148 Avg.
Benzene	230–290	260	NA	NA
Benz(a)anthracene	5,400–7,400	6,600	160–10,000	4,500
Benzo(a)pyrene	4,500–8,300	6,500	330–7,300	3,600
Benzo(b)fluoranthene[a]	5,200–10,000	7,500	150–13,000	6,100
Benzo(k)fluoranthene[a]	4,000–7,400	6,000	240–7,900	3,800
Chrysene	720–1,600	1,000	36–1,400	800
Dibenz(a,h)anthracene	2,000–4,100	2,900	110–3,300	1,700
Indeno(1,2,3-cd)pyrene	32,000–84,000	55,000	17–2,400	850
Naphthalene				

[a] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results shown are the sum of the two isomers.
NA—Constituent not analyzed (volatiles were not anticipated in still bottoms that have been heated to high temperatures).
Source: Background.

On July 17, 1992, (57 FR 31776) the Agency promulgated an MCL of $2x10^{-4}$ mg/L for benzo(a)pyrene. As indicated in the preamble to the proposed rule, EPA uses promulgated Maximum Contamination Limits (MCLs) when available. Therefore, the newly finalized MCL is being used in today's rule.

In addition, in April 1992, the Agency verified a risk specific dose (RSD) of $1.7x10^{-7}$ mg/kg/day for benzo(a)pyrene. This RSD was then used to determine health-based numbers for benzo (b and k) fluoranthene, chrysene, and indeno(1,2,3-cd)pyrene, which are calculated relative to the potency of benzo(a)pyrene. More information regarding these calculations and the reasons for the adjustments to them is provided in the background document to today's rule.

The same study used as the basis for the proposed level of concern for naphthalene is used for the level of concern used in today's rule. However, the revised provisional oral RfD for naphthalene was raised one order of magnitude (from 0.004 to 0.04) when the uncertainty factor was decreased from 10,000 to 1,000 (since the proposal). The revised provisional RfD is listed in the Annual 1992 Health Effects Assessment Summary Tables (HEAST). For more information on the changes in the health-based numbers for naphthalene, see the Background Document to today's rule.

A 1986 reference was the source for the proposed RSD of $3.2x10^{-7}$ mg/kg/day for benz(a)anthracene. However, a new 1988 source was identified which indicates a proposed RSD of $4.7x10^{-8}$ mg/kg/day. All of these new references are included in the docket to today's rule.

The Agency believes that these changes have no effect on the conclusion that the constituents of concern in the wastes being listed today are systemic toxicants and/or carcinogens present in concentrations capable of causing adverse health effects and therefore have no effect on today's ultimate listing decision. The constituents of concern are present at high enough concentrations to exceed both the proposed levels of concern, most of which were higher than the concentrations of concern used in today's rule, and those used in today's rule.

One commenter requested that the Agency base the health-based concentration limits on proposed MCLs, instead of RSDs, when available. Historically, final listing determinations have not been based on proposed health-based numbers. The Agency has recently proposed, in another rulemaking, the use of proposed MCLs to establish jurisdictional boundaries of RCRA subtitle C. (See 57 FR 21450–21522, May 20, 1992.) Since that issue remains unresolved, the Agency chooses not to use proposed MCLs for this rulemaking. Moreover, the adoption of proposed MCLs for the applicable constituents of concerns in today's rule would not change the overall conclusion regarding the hazard posed by the wastes due to the extremely high concentrations of the constituents of concern in the wastes. Thus, as shown in Tables 4–4F and 5, the health-based limits for the constituents of concern continue to rely on Reference Doses (RfDs), Risk-Specific Doses (RSDs), and final MCLs. For more information on the adoption of MCLs for benzo(a)pyrene and not other PAHs, see the Phase V drinking water rule, published July 17, 1992 (57 FR 31776).

Tables 4 through 4F are revised versions of Tables 8 through 8F of the proposed rule. They summarize the Agency's analysis of the hazards posed by the constituents of concern present in the listed wastes and products by presenting the average concentrations of the previous and additional hazardous constituents in the wastes, the updated health-based water concentration limits and updated hypothetical environmental exposure factors. In this analysis, EPA projected ground-water concentrations for the constituents of concern based on average waste concentrations (rather than maximum concentrations) and assuming three dilution and attenuation factors: 100, 1,000, and 10,000. These three levels encompass a broad range of dilution/attenuation factors (DAFs). The drinking water well concentrations calculated for dilution/attenuation levels of 100, 1,000, and 10,000 make the assumption that the concentration of each constituent of concern in the well water would be 1 percent, 0.1 percent, and 0.01 percent, respectively, of its average concentration in the waste. The calculated ratios of estimated drinking water concentration values to health-based water concentration-limit values presented in these tables serve to illustrate that, under the assumptions used here, even if only 0.01 percent of the average constituent levels in the wastes (i.e., HEEF of 10,000) reaches environmental receptors, the exposure concentrations could exceed the health-based levels of concern by up to five orders of magnitude.

TABLE 4.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K141

Hazardous constituent	Average waste conc. detected (ppm)	Health-based water concentration limits (ppm)	Basis[a]	Estimated HEEF 100	Drinking conc.[b] HEEF 1000	Well (ppm) HEEF 10,000	Calculated based limit HEEF 100	Conc. to ratios[c] HEEF 1000	Health— HEEF 10,000
Benzene	3,850	5×10^{-3}	MCL (A)	38.5	3.85	0.385	7,700	770	77
Benz(a)anthracene	7,850	2×10^{-6}	RSD (B_2)	78.5	7.85	0.785	39,000,000	3,900,000	390,000
Benzo(a)pyrene	8,450	2×10^{-4}	MCL (B_2)	84.5	8.45	0.845	420,000	42,000	4,200
Benzo(b)fluoranthene, Benzo(k)fluoranthene[d]	5,450	4×10^{-5}	RSD (B_2)	54.5	5.45	0.545	1,400,000	140,000	14,000
Chrysene	7,950	5×10^{-4}	RSD (B_2)	79.5	7.95	0.795	160,000	16,000	1,600
Dibenz(a,h)anthracene	1,750	7×10^{-7}	RSD (B_2)	17.5	1.75	0.175	25,000,000	2,500,000	250,000
Indeno(1,2,3-cd)pyrene	6,150	4×10^{-4}	RSD (B_2)	61.5	6.15	0.615	150,000	15,000	1,500
Naphthalene	95,000	1	RfD	950	95	9.5	950	95	9.5

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the Background Document to today's rule, as are the classes of carcinogens. Classes A and B carcinogens are based on exposure limits at a 10^{-6} risk level.
[b] Calculated for three hypothetical environmental exposure factors (HEEFs).
[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.
[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.
Source: Background Document.

TABLE 4A.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K142

Hazardous constituent	Average waste conc. detected (ppm)	Health-based water concentration limits (ppm)	Basis[a]	Estimated HEEF 100	Drinking conc.[b] HEEF 1000	Well (ppm) HEEF 10,000	Calculated based limit HEEF 100	Conc. to ratios[c] HEEF 1000	Health— HEEF 10,000
Benzene	260	5×10^{-3}	MCL (A)	2.6	0.26	0.026	520	52	5
Benz(a)anthracene	6,600	2×10^{-6}	RSD (B_2)	66	6.6	0.66	33,000,000	3,300,000	330,000
Benzo(a)pyrene	6,500	2×10^{-4}	MCL (B_2)	65	6.5	0.65	330,000	33,000	3,300
Benzo(b)fluoranthene, Benzo(k)fluoranthene[d]	7,500	4×10^{-5}	RSD (B_2)	75	7.5	0.75	1,900,000	190,000	19,000
Chrysene	6,000	5×10^{-4}	RSD (B_2)	60	6	0.6	120,000	12,000	1,200
Dibenz(a,h)anthracene	1,000	7×10^{-7}	RSD (B_2)	10	1	0.1	14,000,000	1,400,000	140,000
Indenol(1,2,3-cd)pyrene	2,900	4×10^{-4}	RSD (B_2)	29	2.9	0.29	73,000	7,300	730
Naphthalene	55,000	.1	RfD	550	55	5.5	550	55	5.5

a Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the Background Document to today's rule, as are the classes of carcinogens. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level.
b Calculated for three hypothetical environmental exposure factors (HEEFs).
c Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.
d GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.
Source: Background Document.

TABLE 4B.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K143

Hazardous constituent	Average waste conc. detected (ppm)	Health-based water concentration limits (ppm)	Basis[a]	Estimated HEEF 100	Drinking conc.[b] HEEF 1000	Well (ppm) HEEF 10,000	Calculated based limit HEEF 100	Conc. to Ratios[c] HEEF 1000	Health— HEEF 10,000
Benzene	1,600	5×10^{-3}	MCL (A)	16	1.6	0.16	3,200	320	32
Benz(a)anthracene	69	2×10^{-6}	RSD (B_2)	0.69	0.069	0.007	350,000	35,000	3,500
Benzo(a)pyrene	34	2×10^{-4}	MCL(B_2)	0.34	0.034	0.003	1,700	170	17
Benzo(b)fluoranthene, Benzo(k)fluoranthene[d]	59	4×10^{-5}	RSD (B_2)	0.59	0.059	0.006	15,000	1,500	150
Chrysene	59	5×10^{-4}	RSD (B_2)	0.59	0.059	0.006	1,200	120	1.2
Naphthalene	52,000	1	RfD	520	52	5.2	520	52	5.2

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the Background Document to today's rule, as are the classes of carcinogens. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level.
[b] Calculated for three hypothetical environmental exposure factors (HEEFs).
[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.
[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.
Source: Background Document.

TABLE 4C.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K144

Hazardous constituent	Average waste conc. detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated	Drinking conc.[b]	Well (ppm)	Calculated based limit	Conc. to ratios [c]	Health—
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benzene	3,000	5×10^{-3}	MCL (A)	30	3.0	0.30	6,000	600	60
Benz(a)anthracene	68	2×10^{-6}	RSD (B_2)	0.68	0.068	0.007	340,000	34,000	3,500
Benzo(a)pyrene	65	2×10^{-4}	MCL (B_2)	0.65	0.065	0.007	3,300	330	33
Benzo(b)fluoranthene, Benzo(k)fluoranthene [d].	75	4×10^{-6}	RSD (B_2)	0.75	0.075	0.008	19,000	1,900	200
Chrysene	61	5×10^{-4}	RSD (B_2)	0.61	0.061	0.006	1,200	120	12
Dibenz(a,h)anthracene	15	7×10^{-7}	RSD (B_2)	0.15	0.015	0.002	210,000	21,000	2,100
Indeno(1,2,3-cd)pyrene	37	4×10^{-4}	RSD (B_2)	0.37	0.037	0.0037	930	93	9.3
Naphthalene	27,000	1	RfD	270	27	2.7	2,70	27	2.7

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the Background Document to today's rule, as are the classes of carcinogens. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level.
[b] Calculated for three hypothetical environmental exposure factors (HEEFs).
[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.
[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.
Source: Background Document.

TABLE 4D.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K145

Hazardous constituent	Average waste conc. detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated	Drinking conc.[b]	Well (ppm)	Calculated based limit	Conc. to ratios [c]	Health—
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benzene	1,000	5×10^{-3}	MCL (A)	10	1.0	0.10	2,000	200	20
Benz(a)anthracene	22	2×10^{-6}	RSD (B_2)	0.22	0.022	0.002	110,000	11,000	1,000
Benzo(a)pyrene	7	2×10^{-4}	MCL (B_2)	0.07	0.007	0.001	350	350	3.5
Benzo(b)fluoranthene, Benzo(k)fluoranthene [d].	26	4×10^{-5}	RSD (B_2)	0.26	0.026	0.0026	6,500	650	65
Dibenz(a,h)anthracene	15	7×10^{-7}	RSD (B_2)	0.15	0.015	0.002	210,000	21,000	2,100
Naphthalene	140,000	1	RfD	1,400	140	14	1,400	140	14

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the Background Document to today's rule, as are the classes of carcinogens. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level.
[b] Calculated for three hypothetical environmental exposure factors (HEEFs).
[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.
[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.
Source: Background Document.

TABLE 4E.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K147

Hazardous Constituent	Average waste conc. detected (ppm)	Health-based water concentration limits (ppm)	Basis[a]	Estimated	Drinking Conc.[b]	Well (ppm)	Calculated based limit	Conc. to ratios[c]	Health—
				HEEF 100	HEEF 1000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benzene	260	5×10^{-3}	MCL (A)	2.6	0.26	0.026	520	52	5
Benz(a)anthracene	6,600	2×10^{-6}	RSD (B_2)	66	6.6	0.66	33,000,000	3,300,000	330,000
Benzo(a)pyrene	6,500	2×10^{-4}	MCL (B_2)	65	6.5	0.65	330,000	3,300	330
Benzo(b)fluoranthene, Benzo(k)fluoranthene[d].	7,500	4×10^{-5}	RSD (B_2)	75	7.5	0.75	1,900,000	190,000	19,000
Chrysene	6,000	5×10^{-4}	RSD (B_2)	60	6	0.6	120,000	12,000	1,200
Dibenz(a,h)anthracene	1,000	7×10^{-7}	RSD (B_2)	10	1	0.1	14,000,000	1,400,000	140,000
Indeno(1,2,3-cd)pyrene	2,900	4×10^{-4}	RSD (B_2)	29	2.9	0.29	73,000	7,300	730
Naphthalene	55,000	1	RfD	550	55	5.5	550	55	5.5

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the Background Document to today's rule, as are the classes of carcinogens. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level.
[b] Calculated for three hypothetical environmental exposure factors (HEEFs).
[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.
[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.
Source: Background Document.

TABLE 4F.—BASIS FOR LISTING: HEALTH EFFECTS OF THE CONSTITUENTS OF CONCERN IN K148

Hazardous constituent	Averge waste conc. detected (ppm)	Health-based water concentration limits (ppm)	Basis [a]	Estimated	Drinking conc.[b]	Well (ppm)	Calculated based limit	Conc. to ratios [c]	Health—
				HEEF 100	HEEF 1,000	HEEF 10,000	HEEF 100	HEEF 1000	HEEF 10,000
Benz(a)anthracene	4,500	2×10^{-6}	RSD (B_2)	4.5	4.5	0.45	23,000,000	2,300,000	230,00
Benzo(a)pyrene	3,600	2×10^{-4}	MCL (B_2)	3.6	3.6	0.36	180,000	18,000	1,800
Benzo(b)fluoranthene, Benzo(k)fluoranthene [d].	6,100	4×10^{-6}	RSD (B_2)	6.1	6.1	0.61	1,500,000	150,000	15,000
Chrysene	3,800	5×10^{-4}	RSD (B_2)	3.6	3.6	0.36	76,000	7,600	760
Dibenz(a,h)anthracene	800	7×10^{-7}	RSD (B_2)	0.8	0.6	0.08	11,000,000	1,100,000	110,000
Indeno(1,2,3-cd)pyrene	1,700	4×10^{-4}	RSD (C)	1.7	1.7	0.17	43,000	4,300	430

[a] Reference Dose (RfD), Risk-Specific Dose (RSD), and Maximum Contaminant Level (MCL) are explained in the Background Document to today's rule, as are the classes of carcinogens. Class A and B carcinogens are based on exposure limits at a 10^{-6} risk level.
[b] Calculated for three hypothetical environmental exposure factors (HEEFs).
[c] Ratio obtained by dividing values in estimated drinking well concentration column by values in health-based, water concentration limit column for all three HEEFs.
[d] GC peak resolution was not adequate to provide quantitation of the two isomers individually. The results show the sum of the two isomers.
Source: Background Document.

Table 5 is a revised version of Table 9 from the preamble to the proposed rule. It presents updated data on the water solubilities and partition coefficients ($\log K_{ow}$ and $\log K_{oc}$) which, as explained in the proposed rule, provide an indication of the mobility and persistence of the constituents of concern. Several comments were submitted regarding the mobility and persistence of the constituents of concern; these comments are addressed below in the Summary of Public Comments and Responses section of this preamble.

As stated in the preamble to the proposed rule, the Agency considered the use of leachability models and subsurface fate and transport models to estimate concentrations of these constituents in drinking water. Several commenters believed that these models should have been used to determine the potential hazards posed by these wastes and products, while other commenters support the Agency's decision not to use models. This issue is addressed further in the Summary of Public Comments and Responses section of this preamble. However, as stated in the preamble, EPA continues to believe that the limitations of the available models, when applied to wastes or products generated from coking and tar refining processes, underestimate the hazard posed by the wastes.

TABLE 5.—GROUND-WATER MOBILITY AND PERSISTENCE OF CONSTITUENTS OF CONCERN

Constituents of concern	Health-based water concentration limits (ppm)	Water solubility (ppm)	Log K_{ow} [a]	Log K_{oc} [b]	Persistence
Benzene	5×10^{-3}	1.78×10^{3}	2.13	1.92	low
Benzo(a) anthracene	2×10^{-6}	5.7×10^{-3}	5.61	6.14	high
Benzo(a)pyrene	2×10^{-4}	3.8×10^{-3}	6.04	5.60–6.29	high
Benzo(b) flouranthene[c]	4×10^{-6}	1.4×10^{-2}	6.57	5.74	high
Benzo(k)fluoranthene[c]	4×10^{-6}	5.5×10^{-4}	6.85	6.64	high
Chrysene	5×10^{-4}	1.8×10^{-3}	5.60	5.39	high
Dibenz(a,h)anthracene	7×10^{-7}	5.0×10^{-4}	6.50	6.22	high
Indeno(1,2,3-cd)pyrene	4×10^{-4}	5.3×10^{-4}	5.97	7.49	high
Naphthalene	1	3.17×10^{1}	3.30	3.04	high

Source: Montgomery, John H., *Groundwater Chemicals Desk Reference, 1990.*
[a] K_{ow} = Octanol-water partition coefficient.
[b] K_{oc} = Soil sorption coefficient.
[c] The health-based limit for benzo(b)fluoranthene was also applied to benzo(k)fluoranthene because the GC peak resolution was not adequate to provide quantitation of the isomers individually, and therefore, the results are the sum of the two isomers.

III. Summary of Public Comments and Responses

A. Hazardous Waste Listings

Several comments were submitted regarding the technical basis used by the Agency in making the listing determinations on wastes generated from the coking and tar refining industries. Five commenters expressed concerns over leachability and mobility, ground-water fate and transport models, dilution and attenuation assumptions, carcinogenicity risk levels, persistence, and mismanagement case studies. The substance of these comments is explained in more detail below.

As explained in the preamble to the proposed rule, the Agency believes that the use of available leaching and subsurface fate and transport models is not appropriate for evaluating wastes and products generated during the production, recovery, and refining of coke by-products (see FR 35769). Three commenters disagree that these models (*i.e.*, the Toxicity Characteristic Leaching Procedure (TCLP), the EPA Composite Model for Landfills (EPACML), and the Organic Leachate Model (OLM)) would underestimate the migration and transport of hazardous constituents to a drinking water source, as stated by the Agency.

Three commenters believe that the TCLP data should be considered as a basis for listing wastes generated from the coking and tar refining industries. They believe that the leaching procedure results in higher leached concentrations of constituents than would occur in an actual environmental setting due to the method's particle size reduction step. One commenter supports the Agency's decision not to rely on TCLP data as a

basis for listing because of the belief that the TCLP results in lower concentrations of constituents than would occur in the environment.

The Agency notes that the TCLP was developed by evaluating various laboratory methods that use different extraction media, extraction procedures, and liquid: solid ratios, and by determining the method which best obtained the concentrations of inorganic and organic constituents found in leachate from a simulated co-disposal landfill scenario. The simulated leachate was generated from large-scale columns, called lysimeters; packed with municipal waste and using this municipal waste leachate as a leaching fluid in studies on industrial wastes. Particle size reduction is used to simulate both the size reduction caused by the action of heavy landfill equipment and the degradation of structural integrity caused by repeated wet/dry and freeze/thaw cycles. The laboratory conditions selected for the TCLP were those which best simulated the concentrations of inorganic and organic constituents in leachate from wastes co-disposed with municipal wastes in landfills.

The TCLP is a reasonable worst-case mismanagement scenario which the Agency has historically used to determine whether a waste should be classified as hazardous. However, for wastes that clog the glass fiber filter utilized in the TCLP, it has been shown that portions of wastes that are mobile in soil columns are often classified as solids by TCLP standards (RTI, 1988). As stated in July's proposed rule, the tarry samples analyzed in support of today's rulemaking were found to pose problems with sample homogenization, filtration, and dispersion of solids in the leaching medium due to the varying amounts of tar in the wastes. Due to these analytical problems, the Agency maintains its belief that the TCLP results may underestimate the concentrations of constituents in leachates generated from the proposed wastes and should not be used as a basis for listing these wastes.

Three commenters also requested that EPA reconsider the use of the OLM and the EPACML. One commenter stated that the Agency is freely disregarding the TCLP and OLM results for this listing decision and that the models are not serving their mandated purpose. This commenter also stated that even though the EPACML may not account for immiscible flow conditions, the constituent concentrations at drinking water wells would not be underestimated. Another commenter stated that the OLM and EPACML apply more realistic environmental exposure factors (than the HEEFs) and that these models actually overestimate rather than underestimate constituent mobility because they do not account for biodegradation.

As described in the proposed rule, the EPACML estimates the dilution and attenuation of specific constituents during migration from leachate at the bottom of an unlined landfill (see U.S. EPA, "Background Document for EPA's Composite Landfill Model (EPACML)", 1990). If the Agency had applied the EPACML as it has in past rulemakings, leachate would have been diluted by a factor of 135 (at the 85th percentile of the probability distribution). (See 55 FR 11798, March 29, 1990). If hazardous constituent levels were to be reduced by that factor, the calculated constituent levels at the receptor sites would still exceed the health-based numbers by several orders of magnitude. However, the Agency notes that problems still exist in applying this model to these wastes. Due to the physical and chemical nature of the proposed listed wastes, immiscible flow may occur. Migration of constituents in the immiscible layer may be underestimated by a model that considers only homogenous flow. The underestimation occurs because the EPACML model does not account for the increased constituent concentrations that reach the receptor well in spiked patterns. The effect could be pronounced with wastes containing constituents in high concentrations. Because of these concerns, the Agency did not apply the EPACML to the proposed listed wastes.

The OLM is an empirical equation which was developed through application of modeling techniques to a data base of waste constituent concentrations and experimentally measured leachate concentrations (see 51 FR 41082 and 50 FR 48886). The OLM takes into account the concentrations of organic constituents and their aqueous solubility. EPA believes that, with the possible exception of tar distillation residues, the wastes proposed for listing may be subject to significant cosolvency effects. However, the OLM does not consider cosolvency effects and therefore tends to underestimate pollutant mobility in waste matrices where cosolvency may be significant. The Agency's response to the issue of biodegradation is discussed below.

Fate and transport models serve their intended purpose when applied to appropriate situations. Although the Agency prefers to use specific case studies and/or general modeling results to estimate potential risks from the mismanagement of wastes, the Agency is not required to use a particular model in evaluating the hazards posed by certain wastes. In this situation, however, due to the physical and chemical nature of the coke by-product wastes, the Agency selected an alternative approach to evaluate the potential hazard posed by these wastes. The Agency selected the use of Hypothetical Environmental Exposure Factors (HEEFs), applied to average constituent concentrations found in the wastes, as an alternative approach to estimating the mobility of constituents from the waste under a wide range of environmental conditions. Using this approach, the Agency concludes that under a range of possible environmental conditions, these wastes would pose a substantial hazard to human health and the environment if mismanaged.

The Agency recognizes that the basis for listing wastes as hazardous since 1980 has not always explicitly included the use of models to predict concentrations of hazardous constituents at receptor sites. Rather, EPA has relied on a weight-of-evidence approach including such factors as damage incidents and probability of mismanagement. The recently proposed Hazardous Waste Identification Rule (HWIR, 57 FR 21450—21522, May 20, 1992) contains several options that, depending on which is promulgated, may change the Agency's procedure for the identification and listing of hazardous wastes in the future.

Two commenters claimed that the Agency did not consider biodegradation in its risk analysis and therefore, overestimated the concentration of constituents at the receptor well. The commenters provided general examples of successful biodegradation under aerobic conditions but did not provide data to support these claims or examples under anaerobic conditions. As stated in the proposed rule, the Agency believes that benzene and PAHs are not expected to biodegrade in ground water due to the relatively low biological activity present in the ground-water system. In addition, the persistence of the contaminants of concern is demonstrated by their presence in soil, ground water and surface water at the mismanagement sites described in the proposed rule.

One commenter submitted a journal article that describes a testing program of wells serving water-supply systems in California in which benzene is either undetected or detected in small concentrations at the majority of wells. The article suggests that, due to the large number of leaking underground storage tanks existing throughout the state, the absence of benzene near water-supply wells implies that biodegradation is occurring in the ground water.

The Agency agrees with the commenter only in that benzene generally biodegrades in ground waters with environments that are conducive to high biological activity (*i.e.*, with high dissolved oxygen levels or acclimated microorganisms). The Agency notes benzene has been found to be present in the ground water at receptor wells of several contaminated sites described in the preamble of the proposed rule. For example, at a steel manufacturing plant operating in New York from 1920 through 1983 on Lake Erie, benzene was detected at concentrations up to 340 ppm at ground-water monitoring wells installed near two waste management areas, a pit and a landfill, which received coking wastes almost exclusively. Thus, the Agency maintains that benzene is a persistent and mobile constituent of concern and that wastes containing benzene in sufficiently high concentrations may pose a hazard when improperly managed.

Several commenters questioned the Agency's concern over cosolvency effects relative to the use of the OLM in evaluating the proposed wastes. The commenters believed that use of the OLM should be reconsidered because the Land Disposal Restrictions for solvents prevent the disposal of solvents in landfills. Therefore, the commenters believed that cosolvency effects should not be considered and that the proposed wastes should be evaluated using the OLM. The Agency's concern over cosolvency effects is not directed at the commingling of the proposed listed wastes with listed solvents which must be treated prior to land disposal. The mobility of constituents may also be enhanced by the presence of organic phases that behave as solvents, such as benzene, from these and other codisposed hazardous wastes, or carboxylic acids from municipal waste leachates.

Two commenters criticized the use of and values for the Hypothetical Environmental Exposure Factors (HEEFs) because they believed the factor to be unrealistic as compared to the dilution and attenuation that occurs in actual environmental conditions. One commenter compared leaching and mobility factors generated by using the OLM and a dilution and attenuation factor (DAF) of 12 (which was generated by the EPACML) to the HEEFs used to support this listing determination and stated that the OLM factors are more realistic than the HEEFs because they are higher. Another commenter believed that the use of HEEFs is unrealistic because the estimated drinking well concentrations exceed the water solubilities for some constituents in some wastes and therefore, the constituents cannot be present in ground water at these concentrations. The commenters also stated that the Agency did not provide a scientific or sound basis for the HEEFs.

HEEFs are meant to be benchmarks of projected dilution and attenuation, and, as such, allow EPA to project potential exposure scenarios to see if health-based criteria can be exceeded under mismanagement conditions. The Agency believes these comparisons add to the weight-of-evidence approach used to determine whether or not a waste is potentially hazardous. In this case, several constituents exceed health-based criteria by several orders of magnitude at HEEFs used in this rulemaking to project dilution. (See discussion in "Basis for Listing," section II.F. above.) In addition, the Agency believes that the HEEFs should not be compared to values generated by the OLM since, as explained earlier, the OLM may significantly underestimate the constituent concentrations leached from these wastes due to the oily/tarry nature of the wastes and the possibility of immiscible flow of migrating constituents. Although other methodologies (*i.e.*, TCLP) tend to underestimate hazardous constituent concentrations in these wastes, they still may show unacceptably high constituent concentrations.

The Agency selected the use of HEEFs to evaluate the potential hazards associated with mismanagement of the proposed listed wastes because, as explained above, the models generally used to evaluate potential release, and fate and transport of hazardous constituents from landfills may not be appropriate for evaluating wastes from the coking and tar refining industries. As stated in the preamble to the proposed rule (56 *FR* 35789), "(t)he concentrations and toxicities of hazardous constituents in the wastes are of such a magnitude that, even under conservative assumptions regarding the potential for release of the constituents to the environment (use of HEEFs) and their subsequent transport in the subsurface environment, improper management of the wastes poses an unacceptable health risk."

This same range of 1.0 to 0.01 percent of the waste disposed reaching the point of exposure was also used as a basis for listing three categories of wastes from wood preserving operations that use chlorophenolic, creosote, and/or inorganic (arsenical and chromium) preservatives (see 55 FR 50450; December 6, 1990). The Agency has used a Dilution Attenuation Factor (DAF) of 100 for evaluating the mobility of constituents. The TCLP only uses a dilution and attenuation factor of 20. The Agency believes that a HEEF of 20 times 100 (or 2,000) would represent a way of projecting a benchmark of the leachability and mobility of constituents from a waste. Therefore, a HEEF of 10,000, in comparison, could represent a conservative basis for evaluating the hazard posed by a waste considering the uncertainty associated with estimating dilution and attenuation. The Agency notes that each of the constituents of concern have waste concentrations that equal or exceed their health-based limits assuming a HEEF of 10,000.

The Agency relies on information regarding the solubility of a pure substance in water as one of several indicators of the mobility of a constituent in ground water. The Agency does not believe that water solubilities should be quantitatively compared to the solubility of the substance in ground water that has been contaminated by a mismanaged waste because this does not represent a pure substance in water. Solubilities are dependent on many factors, including the presence of an organic or oily phase. The phenomenon of constituents occurring in ground water at concentrations exceeding their water solubilities is not completely understood; however, it has been demonstrated at a number of contaminated sites, as presented in the mismanagement case studies of the proposed rule. In addition, even if the concentrations of these constituents in ground-water systems were limited to the solubility of the pure substance in water, the estimated drinking well concentrations would exceed the health-based water concentration limits by several orders of magnitude. Several commenters supported the Agency's position of evaluating constituent solubilities based on mismanagement cases at a site.

Based on the information in Tables 4–4F of today's rule, the concentrations of hazardous constituents in the proposed listed wastes indicate that the wastes will have an adverse impact on human health and the environment. For example, even with an estimated leaching and mobility factor as high as 10,000, the exposure concentrations for each of the wastes are at least equal to

the health-based level for at least one constituent of concern, and up to five orders of magnitude greater for another constituent of concern. This approach demonstrates that these wastes pose significant hazards to human health and the environment over a wide range of potential mobility and transport scenarios.

One commenter questioned the 10^{-5} and 10^{-6} risk levels used for carcinogens, stating that the National Contingency Plan under CERCLA uses 10^{-4} to 10^{-6} risk levels as a basis for cleanup standards at Superfund sites. When developing its preliminary remediation goals at Superfund sites, EPA uses 10^{-6} as a point of departure, which is considered the most desirable risk level, all things being equal, in establishing remediation goals (55 FR 8717; March 8, 1990). Site-specific factors that determine the overall risk to human health and the environment, remedy-specific factors that are based on the treatment technology, and potential future uses for the site and wastes are all factors used in determining the point within the range of 10^{-4} to 10^{-6} that defines the final cleanup standard. The Listing Program under RCRA, however, must evaluate certain wastes to determine if they are hazardous under all plausible mismanagement scenarios. The Agency does not rely on future use and site-specific information in its evaluation. Therefore, the Agency believes that there is no basis to depart from the more protective risk factor of 10^{-6}. The Agency notes, however, that even if the lower risk factor of 10^{-4} was used, the highly concentrate coke by-product wastes would still exceed the health-based limits (albeit for fewer constituents) and would still be listed today as hazardous wastes.

Another commenter claimed that the RfDs and RSDs used to develop the health-based concentration limits do not have a regulatory basis because they are not promulgated standards. The Agency does not "propose" health-based limits for promulgation as rules when listing wastes, as suggested by the commenter, because unlike Agency rules, these numbers do not prescribe behavior. Comparison of the health-based limits to the waste concentrations is only used in the initial listing process as a tool for demonstrating "(t)he nature of the toxicity presented by the constituent" in the waste, one of the criteria the Agency uses to make the listing determination (See 40 CFR 261.11(a)(3)(i)). These numbers serve as scientific guidance to the Agency in making its listing determinations. The RfDs and RSDs were presented in the proposed rule and made available for comment. The public had the opportunity to comment on the Agency's choice to use specific limits, the soundness of those limits and their underlying assumptions, and, most importantly, the Agency's overall assessment that those wastes possess toxic constituents in levels capable of causing harm to human health and the environment. However, only the waste listings are finalized; the health-based limits are used to support the listing decision. Additional information regarding the health-based limits and assumptions is provided in the background document to this rule.

Several comments were submitted regarding specific proposed listed wastes. Four commenters stated that K148, residues from coal tar distillation, does not exhibit leachability. Two commenters substantiated this claim with TCLP data and two other commenters related the leachability of K148 to that of asphalt because it has a higher melting point and asphalt binders decrease the leachability of arsenic wastes. As explained earlier in this section, the Agency does not believe that the TCLP can be used to determine the leachability of wastes such as K148 that are difficult to filter. In addition, the Agency did not receive any data to substantiate reduced leachability of K148, as compared to asphalt, particularly in the presence of other coking and/or tar refining wastes.

Several commenters questioned the relationship of the mismanagement case histories in the proposed rule (56 FR 35775) to the proposed listed wastes and believed that the Agency has not demonstrated that the wastes are capable of posing human health and environmental damage. One commenter believed that the Agency must cite actual human exposure in order to demonstrate that the wastes are capable of posing substantial harm. The Agency believes that, from the nature of the activities performed at these sites (i.e., primarily coking and tar refining operations), it is reasonable to conclude that the resulting environmental contamination was caused primarily by wastes generated from these operations. Due to the extent of contamination found at these sites relative to the health-based levels, the data are sufficient to demonstrate that potential exposure and harm exist, which is all that is required by 40 CFR 261.11(a)(3).

One commenter submitted detailed analytical concerns on one of the 13 analytical data reports used to support these listings. Overall, many of the comments addressed specific quality assurance/quality control steps in the analytical process. The Agency agrees with some of the quality concerns which address constituents that were not used to support the listing. However, most of the comments were either misinterpretations of the requirements of methods from "Test Methods for Evaluating Solid Waste: Physical/Chemical Methods" (SW–846), or they addressed requirements of the Contract Laboratory Program (CLP) instead of the SW–846 methods. These concerns are each addressed in detail and are available in the background document for today's rule. The Agency further notes that the data presented in the particular analytical data report in question support the listing of only one waste, and in addition, represent the lowest end of the concentration ranges found for the constituents of concern for this waste. EPA does not believe that any of the analytical comments affect the conclusions presented in today's rulemaking.

One commenter requested that the Agency clarify whether the K148 listing includes tar plant wastewater collection sump sludges. The Agency reviewed the specific waste streams that were originally grouped under the heading of tar plant wastewater collection sump sludges from the RCRA 3007 Questionnaires completed in 1985 and determined that these waste streams were incorrectly described as tar plant wastewater collection sludges and are already addressed in today's listings. Specifically, these waste streams were generated during coke by-product recovery operations rather than tar refining operations. Most of these waste streams are actually residues from sumps that collect wastewaters (i.e., from tar dewatering) generated from the tar recovery process and are encompassed by K141, process residues from the recovery of coal tar. One of the waste streams formerly grouped under the tar plant wastewater collection sump sludges heading is actually the tar product stream that is fed directly to the tar dehydrator.

The same commenter also requested that EPA discuss the final listing determination for each of the coke by-product wastes specified in the proposed Consent Decree which resolves issues raised in *EDF* vs. *Reilly*, Civ. No. 89–0598 (D.D.C.). The Agency has reviewed the RCRA 3007 Questionnaires and accompanying process flow diagrams which were the original sources for the waste categories specified in the consent decree and has determined that each of these wastes is addressed fully in today's rule. Table 6 presents the listing determination for each of these wastes:

TABLE 6.—LISTING DETERMINATIONS ON WASTES IN PROPOSED CONSENT DECREE

Waste stream proposed in consent decree	Listing determination
Process residues from coal tar recovery operations including tar collection sump residue.	K141.
Tar storage tank residues	K147.
Residues from light oil plant processing units.	K143.
Wastewater treatment sludges from light oil refining, including interceptor sump sludge.	K144.[1]
Residues from naphthalene collection and recovery.	K145.
Wastewaters from coking and coke by-product operations.	No listing.
Tar storage tank residues, still bottoms, and residues from coal tar distillation.	K148.
Wastewaters from coal tar refining	No listing.
Benzol scrubber sludge	K143.
Oil/water separator effluent	No listing (wastewater).
Tar plant wastewater collection sump sludge.	K141 (see explanation in text above).
Naphthalene skimmer sludge	K145.
Wash oil circulation sludge and still residue.	K143, or K145.[2]
Primary light oil rectifier bottoms	K143.

[1] This waste stream is referred to at some facilities as wastewater sump residues rather than wastewater treatment sludges. To avoid confusion with the wastewater treatment sludges produced after combined wastewater treatment (see Figure 1), the Agency has decided to adopt the former description. The proposed language describing the waste has, therefore, been revised accordingly.

[2] When wash oil is used in light oil recovery, it is classified as K143, whereas when it is used in naphthalene recovery, it is classified as K145.

One commenter believed that the wastewater treatment sludge from coke by-product recovery wastewater should be listed as a hazardous waste. The commenter compared the data generated from tar refinery wastewaters in support of this rulemaking to data from the Best Demonstrated Available Technology (BDAT) Background Document for wastewater treatment sludges generated in the production of creosote, K035. The commenter concluded that the constituents of concern may be present at low or non-detected levels in tar refining wastewaters and still be found at high concentrations in the wastewater treatment sludges due to partitioning from the wastewaters.

The Agency does not believe it has enough information to make a listing determination at this time for these wastewater treatment sludges. As stated in the preamble to the proposed rule, EPA does not have analytical data on the concentrations of constituents of concern in these sludges. The Agency also does not believe that the data presented by the commenter justify investigation of these sludges. The sludge sample referred to by the commenter, which contained high concentrations of PAHs, was from the bottom oil layer of the oil/water separator, which precedes the wastewater treatment unit in the creosote wastewater treatment plant. The other K035 samples presented in the Background Document represent sludges generated following either biological treatment or solar evaporation and contain these constituents at concentrations two to three orders of magnitude lower than the bottom oil layer.

As stated earlier in this section, the constituents of concern were not typically and frequently found at levels of regulatory concern in the coke byproduct wastewaters and therefore, the Agency does not believe that they would be typically and frequently found at levels of regulatory concern in the wastewater treatment sludges. In addition, since a significant number of facilities use biological treatment to treat these wastewaters before discharging them to a POTW or through their NPDEs permitted outfall, even low concentrations of organics would be biologically consumed in the treatment process. Lastly, the PAHSs found in the tar refining wastewaters were generally found at concentrations an order of magnitude lower in the coke by-products wastewaters than in the creosote wastewaters. The Agency expects that concentrations of PAHs would, therefore, be lower in the coke by-products treatment sludges. This probably occurs because the heavier organic layers are removed prior to wastewater treatment in the coke by-products recovery process.

B. Recycling Exclusion

The Agency received comments from several industry groups concerning the recycling exclusions proposed on July 26, 1991 (56 FR 35787) as § 261.4(a)(10)–(12). All the commenters supported the general concept of an exclusion from the definition of solid waste for coke by-product residues that are recycled by being returned to coke ovens as a feedstock to produce coke.

Two commenters made reference to the September 14, 1991 effective date of the benzene by-product NESHAP rule as a major reason for the immediate promulgation of an exclusion at the point of generation. This compliance date forced coke oven operators to either retrofit or replace the storage vessels used for coke by-product residues. This action generated large amounts of residues that would have to be sent off-site for disposal if they were not excluded at the point they were generated. The large amounts generated would cause the facilities to exceed the 90-day accumulation limit and, thus, become subject to permitting standards. In addition to the NESHAP deadline, the effective date of the permitting standards for boilers and industrial furnaces (BIF rule; 56 FR 7134) was August 21, 1991. Absent some regulatory relief by that date, commenters asserted that coke oven operators would be forced to stop recycling coke by-product residues due to the technical infeasibility of meeting the destruction and removal standards imposed by the BIF rule.

In response to commenter concerns over the effective date of the BIF rule, because the Agency did not want to disrupt the legitimate recycling of coke by-product residues, and because large amounts of residues were being generated as a result of the NESHAPs rule, EPA issued an Administrative Stay on September 5, 1991 (56 FR 43874). The effect of this action was to stay the permitting standard of the BIF rule as they apply to coke ovens that process TC hazardous residues in the production of coke. In a later Federal Register notice (57 FR 27880), EPA nullified the stay by promulgating an exclusion from the definition of solid waste for coke by-product residues that exhibit the Toxicity Characteristic when they are recycled by being returned to coke ovens or mixed with coal tar. The Agency also clarified the scope of the exclusion by placing certain conditions on it (*i.e.*, no land disposal).

One commenter (an industry trade association) requested that the exclusion for coke by-product residues be expanded to encompass materials burned as fuel in blast furnaces in iron and steelmaking operations. Because the residues contain the same constituents as the final coke product, the commenter contended that burning of coke by-product residues in blast furnaces along with coke would not have a significant effect on the composition of the steel product. EPA disagrees with the commenter. Blast furnaces normally are charged with coal tar product that contains the coke by-products covered by this rule, as opposed to the actual coke by-product wastes themselves. Due to this distinction, the Agency believes that the introduction of raw by-product wastes into the blast furnace may have an adverse effect on emissions from the blast furnace. In addition, the use of by-product wastes in blast furnaces may cause other engineering problems not posed by the processing of coal tar

product. (Nor have any other interested members of the public had any opportunity to comment on this issue.) The Agency has insufficient information on the use of coke by-product wastes in blast furnaces and may evaluate this practice further in the future. Until such time, this issue is outside the scope of today's rulemaking. See also 50 FR at 49171–72, 49174 (November 29, 1985) (general discussion of use of secondary materials in blast furnaces).

Before publication of the exclusion rule on June 22, 1992, coke by-product residues that exhibited the TC as generated were solid and hazardous wastes, and had to be managed as such. If these residues were stored on-site for a period exceeding 90 days, they had to be stored in accordance with RCRA Subtitle C controls on storage, including permitting standards. If hazardous residues were shipped off-site for recycling or disposal, they were required to be shipped with a manifest. Facilities that received hazardous waste residues for recycling were required to have a RCRA permit if the residues were stored at the facility prior to recycling. Coking industry representatives indicated that this strict regulatory regime for coke by-product residues served as a disincentive for waste minimization and recycling efforts in the coke by-products industry. Over 50 percent of the commenters to the proposed rule stated that coke by-products facilities that currently do not have RCRA permits would not obtain a RCRA permit to manage the residues prior to recycling, due to the corrective action implications of a permit and the associated costs. Consequently, absent some regulatory relief, the residues would be sent off-site for incineration or disposal.

This was not the Agency's intent. As discussed in the Administrative Stay under rules existing at that time, EPA views the required pretreatment steps as part of the recycling process. The Agency recognizes that prior processing of the residues is necessary to obtain a homogeneous material suitable for charging to a coke oven with coal or mixing with coal tar. Therefore, this processing is considered an integral part of the recycling process itself and, as such, is exempt from regulation under 40 CFR 261.6(c)(1). The exemption encompasses all the units associated with the recycling operation, in this case, the process units and ball mills used to process the residues prior to reinsertion to coke ovens.

In any case, this issue is now moot because the materials are excluded from being solid waste. As long as the terms of the exclusion are met (i.e., no land disposal from the point of generation to the time the wastes are recycled and proper documentation is kept), no RCRA regulations apply. However, generators of these wastes must be aware of the prohibition on speculative accumulation of wastes intended for recycling. A material is *not* accumulated speculatively if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material recycled or transferred to a different site for recycling equals at least 75 percent by weight or volume of the amount of that material accumulated at the beginning of the period. (See 40 CFR 261.1(c)(8).) Therefore, the burden of proof rests with the person accumulating materials for recycling. EPA believes that speculative accumulation will not be a problem for most generators of coke by-product residues due to the ongoing use/reuse of these materials in their processes.

Three commenters requested a clarification in the final rule that today's rule does not apply to closing or historic sites. The commenters are incorrect. Since inception of the RCRA program, hazardous waste listings apply to the material being disposed, not when it is disposed of. A listed coke by-product waste disposed in 1970 is still that same listed waste. (*Chem. Waste Management* v. *EPA*, 869 F.2d 1526 (D.C. Cir. 1989)) Hazardous waste listings thus apply retroactively to wastes disposed in units that ceased operation prior to the effective date of the listings. This does not mean that such wastes must be exhumed for proper treatment; they are subject to subtitle C controls only when they are actively managed. EPA has interpreted "active management" as physically disturbing accumulated wastes within a management unit or disposing of additional hazardous wastes in existing units containing previously disposed wastes (September 1, 1989; 54 FR 36597). Therefore, the listings promulgated today do apply to wastes disposed before the effective date of this rule, when such wastes are actively managed. For example, if an abandoned site is being remediated and wastes or contaminated media are being removed from the site, any wastes meeting the listing descriptions finalized today must be managed in accordance with all applicable requirements.

One commenter was concerned about environmental media contaminated with the wastes being listed today. The commenter believed that recycling of such media should be treated the same as the recycling of the listed wastes. EPA clarifies here that the recycling of materials extracted from media that are contaminated with the wastes being listed today will fall within the exclusion for recycling as long as the recycling practice meets the terms of the exclusion (*i.e.*, no land disposal). If extracted material from contaminated media can be safely and effectively recycled, EPA sees no reason to regulate such recycling more stringently than the recycling of the process wastes themselves. Recycling of the listed materials is acceptable as long as they are not land disposed again. Extraction of recyclable materials from contaminated media remains subject to all applicable requirements of RCRA and CERCLA. In addition, the residues from this process (*i.e.*, leftover media that is unrecyclable, or other treatment residues) not only will be hazardous waste but, once EPA prohibits these wastes from land disposal, would have to meet the treatment standard for these wastes before they could be land disposed.

Several commenters made reference to the similarity between the coke by-products recovery process and the recycling practice addressed in the AMC I decision, involving in-process recycled materials in the petroleum refining industry (*AMC* v. *EPA*, 824 F.2d, D.C. Cir. 1987). The commenters believe that the similarities between the two situations provide a sound basis for an exclusion for coke by-product residues, conditioned on no land disposal of materials.

EPA agrees that it is possible to craft a reasonable exclusion that allows these materials to be recycled so as not to become part of the waste management problem. EPA does not agree with the commenters' characterization of the AMC I decision, an opinion now substantially repudiated by the D.C. Circuit.

Upon promulgation of the exclusion, the recycling of coke by-product plant residues, by reinsertion to coke ovens, the tar recovery or refining process, or mixing with coal tar, was excluded from regulation, provided the condition of the exclusion at 40 CFR 261.4(a)(10) is met (*i.e.*, no land disposal up to point of recycling). Consequently, if the terms of the exclusion are satisfied, coke by-product plant residues shipped off-site for recycling need not be accompanied by a manifest because they are not solid wastes and, therefore, not hazardous wastes. Of course, management of coke by-product residues that involves land disposal carries the provision that those residues must be managed in accordance with all applicable RCRA requirements. It is important to note that, although manifesting is not required for coke by-product wastes being shipped for recycling within the terms of the exclusion, generators of theses wastes remain subject to LDR notification requirements under § 268.7(a)(6). This provision requires generators of restricted wastes that have been excluded from the definition of solid or hazardous waste or otherwise exempted from Subtitle C regulation to place a one-time notice in the facility's operating record. The requirements of the LDR program as they relate to this rulemaking are discussed more fully in the section of this preamble entitled Interaction with Other Regulations.

Four commenters objected to EPA's reliance on the "used to produce a fuel" rationale in 40 CFR 261.2(c)(2) for classifying coke by-product residues as solid wastes. Two commenters stated that the recycling of coke by-product residues into coke ovens falls under 40 CFR 261.2(e)(1) and, therefore, an exclusion at § 261.4(a) is unnecessary because the residues are already excluded from the definition of solid waste since they are used as ingredients in an industrial process to make a product (coke). EPA's rationale in classifying coke by-product residues as solid wastes in the July 26, 1991 proposal is also the reasons why 40 CFR 261.2(e)(1) does not exclude coke by-product residues from classification as a solid waste. 40 CFR 261.2(e)(2) provides that materials burned for energy recovery, used to produce a fuel, or otherwise contained in fuels are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in § 261.2(e)(1). The fact that coke has been recognized in the iron and steel industry for a long time not only for its physical and chemical value but also for its heating value in driving the iron reduction process in the blast furnace causes the "fuel" classification for coke.

The regulations classify secondary materials burned for energy recovery, used to produce a fuel, or otherwise contained in a fuel, as solid wastes because EPA believes that Congress intended the Agency to read its authority over waste-derived fuels expansively. EPA believes its authority over recycling is broadest when the recycling practice resembles a classic waste management activity, in this case, incineration. However, in the case involving recycling of coke by-product residues, the process is unlike waste management since the residues are similar to the coke and coal tar products, are amenable to use in the same process, and have no significant effect on the chemical composition of the products.

One commenter requested that the exclusion be expanded to include the recycling of coal tar materials generated by electric utilities during the remediation of historic manufactured gas plant (MGP) sites, specifically, the burning of coal tar wastes as fuels in high efficiency boilers. EPA wishes to clarify that the process of coal gasification is distinct from the coking process, from both a technical and a regulatory standpoint. The wastes from abandoned coal gasification plants are, therefore, not a part of this listing. The process referred to by the commenter is outside the scope of the recycling exclusion promulgated on June 22, 1992. The commenter may petition the Agency under 40 CFR 260.20 for a regulatory determination concerning the recycling activities at remediated MGP sites under a separate rulemaking.

One commenter proposed expanded approaches for dealing with the recycling of coke oven wastes. First, they recommended that EPA exempt these wastes from regulation as a hazardous waste when they are used as part of a CERCLA cleanup or RCRA corrective action. Secondly, the commenter urged the Agency to adopt a generic recycling exemption (i.e., from regulation as a hazardous waste) for recycling of these wastes and MGP wastes by any type of process if a person submits a petition and EPA approves such petition. This petitioning process would be similar to the existing process for delisting petitions.

Regarding the first suggestion, at a CERCLA site, treatment of a waste does not need a RCRA permit as long as the work is being done on-site and as long as Applicable and Relevant and Appropriate Requirements (ARARs) are observed. In these cases, where the wastes are removed from a remediated site, the material extracted can still be recycled to a coke oven if it meets the description of a waste in today's rule and if a coke by-products facility is willing to accept it. (Subsequent land disposal of the material again would void the exclusion.) Further, the issue of a national policy regarding recycling at remedial sites outside the scope of this rulemaking, which deals only with listing determinations regarding coke by-product wastes (RCRA 3001(e)). The Agency has recently raised the issue of cleanups at RCRA or CERCLA sites in the Hazardous Waste Identification Rule proposed on May 20, 1992 (57 FR 21450—21522). The Agency will resolve issues related to recycling at these sites as it decides which option in the HWIR rule to promulgate, in response to public comments.

With regard to the second point, under the exclusion to the definition of solid waste in § 261.4(a)(10), the materials can be excluded if they are returned to an excluded process (e.g., coke oven). The materials in question must have enough coke by-products material to meet the requirements of 261.4(a)(10). Given the demonstrated ability of several recyclers to accomplish extracting, reprocessing, and recycling of these materials without land disposal, the Agency feels that the current regulatory structure is sufficient to encourage not only the recycling of coke by-products wastes at operational facilities but also the remediation of these materials where they have been found in sufficient quantities in the environment (*e.g.*, abandoned sites).

Finally, one commenter requested that a Regulatory Flexibility Analysis be conducted. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that whenever an agency publishes a notice of rulemaking, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the effect of the rule on small entities. An RFA is unnecessary, however, if the Agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities. The commenter contended that the proposed rule would have a significant economic impact on their business because it proposed to exclude only processes that occur subsequent to the company's recycling activities. The Agency reiterates that any processing of coke by-products that occurs prior to recycling is considered part of the recycling process and is, therefore, excluded from regulation, provided that the terms of the exclusion are met. As a result, small entities are not significantly affected and a Regulatory Flexibility Analysis is unnecessary.

Additional detail and responses to additional comments are available in the Background Document to today's rule.

IV. Interaction With Other Regulations

A. Land Disposal Restrictions

The 1984 amendments to RCRA (HSWA) mandate that the Agency promulgate land disposal prohibition determinations under a specific schedule for wastes identified and listed prior to enactment of HSWA (RCRA sections 3004 (d), (e), and (g)(4); 42 U.S.C. 6924 (d), (e), and (g)(4)). If the

Agency failed to promulgate land disposal restrictions by the dates specified in section 3004(g)(4), the wastes were absolutely prohibited from land disposal after May 8, 1990. The statute also requires the Agency to make a land disposal prohibition determination for any hazardous waste that is newly listed or identified after November 8, 1984, within six months of the date of promulgation of the listing or identification (RCRA 3004(g)(4)). However, the statute does not provide for automatic prohibition of the land disposal of such wastes if EPA fails to meet this deadline.

The Agency is in the process of completing treatability and capacity analyses for the wastes covered by today's rule. For this reason, the Agency will address land disposal restrictions for these wastes in the near future. It should be noted that because the statute does not provide for automatic restriction or prohibition of land disposal for newly listed and identified wastes until such restrictions are promulgated, land disposal of these wastes will not be restricted or prohibited until the Agency promulgates land disposal restrictions for these wastes. However, these wastes may exhibit one of the prohibited hazardous characteristics or be subject to other regulatory or statutory restrictions such as the prohibition on disposing liquids in landfills. Wastes that exhibit the Toxicity Characteristic are considered newly identified and are not covered by the LDR, unless they also exhibit the EP Toxicity Characteristic (see the Third Third LDR Rule, June 1, 1990; 55 FR 22520). EPA expects to propose prohibitions and treatment standards for TC wastes, as well as for the wastes newly listed today, during the summer of 1992.

EPA wishes to point out that generators of restricted hazardous wastes that have been excluded or exempted from regulation are subject to a notification requirement under the Land Disposal Restrictions program in accordance with § 268.7(a)(6) (see 55 FR 3878; January 31, 1991). This subparagraph requires generators of restricted wastes that are excluded from the definition of solid or hazardous waste or otherwise exempt from Subtitle C regulation to place a one-time notice in the facility's files. This notice must contain information on the generation, subsequent exclusion or exemption from RCRA regulation, and the disposition of the waste. This recordkeeping requirement is similar to the provision in § 261.2(f) requiring documentation of claims that a material is not a solid waste. The information on the disposition of the waste must indicate that the waste is not land disposed or placed in any type of land-based unit and, therefore, remains eligible for the exclusion. The existing listed wastes covered by the exclusion at § 261.4(a)(10) (i.e., K060 and K087) are already prohibited from land disposal and have BDAT treatment standards associated with them and are therefore already subject to this recordkeeping requirement. The wastes being listed today will be addressed by the Agency in a future LDR rulemaking and will therefore become subject to the notification requirement once the prohibition for these wastes takes effect. As discussed above, these prohibitions and treatment standards for the TC wastes are expected to be proposed this summer.

V. State Authority

A. Applicability of Final Rule in Authorized States

Under Section 3006 of RCRA, EPA may authorize qualified States to administer and enforce RCRA programs within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized States have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final RCRA authorization administered its authorized hazardous waste program entirely in lieu of EPA. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities in the State which the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under section 3006(g) of RCRA (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by the HSWA take effect in authorize States at the same time that they take effect in nonauthorized States. EPA is directed to implement these requirements and prohibitions in authorized States, including the issuance of permits, until the State modifies its program to reflect the Federal standards, and applies for and is granted authorization. While States must still adopt HSWA-related provisions as State law to retain final authorization, HSWA applies in authorized States in the interim.

Today's rule is promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by HSWA. Therefore, the Agency is adding these requirements to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to HSWA and that take effect in all States, regardless of their authorization status. States may apply for either interim or final authorization for the HSWA provisions identified in 40 CFR 271.1(j) Table 1, as discussed in the following section of the preamble.

B. Effect on State Authorization

As noted previously, today's rule is promulgated pursuant to provisions added by HSWA. The addition of K141 through K145 and K147 and K148 to the list of hazardous wastes from specific sources is promulgated pursuant to section 3001(e)(2) of RCRA, a provision added by HSWA.

As noted above, EPA will implement the HSWA portions of today's rule in authorized States until they modify their programs to adopt these rules and such modifications are approved by EPA. Because this rule is promulgated pursuant to HSWA, a State submitting a program modification may apply to receive either interim or final RCRA authorization under section 3006 (g)(2) or 3006(b), respectively, on the basis that State regulations are substantially equivalent or fully equivalent to EPA's regulations. The procedures and schedules for State program modifications for either interim or final authorization are described in 40 CFR 271.21. It should be noted that all HSWA interim authorizations will expire on January 1, 1993 (see 40 CFR 271.24(c)).

It should also be noted that 40 CFR 271.21(e) requires that States having final RCRA authorization must modify their programs to reflect Federal program changes and must subsequently submit the modifications to EPA for approval. The deadline by which States must modify their programs to reflect this rule is July 1, 1994 (or July 1, 1995, if statutory changes are required). Once EPA approves the modification, the State requirements become RCRA subtitle C requirements.

States with authorized RCRA programs may already have regulations similar to those promulgated in today's rule. Such State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement its regulations as RCRA requirements until the State program modification is submitted to EPA and approved. Of course, States with existing regulations may continue to administer and enforce those regulations as a matter of State law. In addition, in implementing the Federal program, EPA will work with the States under cooperative agreements to minimize duplication of efforts; in many cases, EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

States that submit their official applications for final authorization less than 12 months after the effective date of EPA's regulations are not required to include regulations equivalent to the EPA regulations in their application. However, States must modify their programs by the deadlines set forth in 40 CFR 271.21(e)(2). States that submit official applications for final authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their application. The requirements States must meet when submitting final authorization applications are set forth in 40 CFR 271.3.

VI. CERCLA Designation and Reportable Quantities

All hazardous wastes listed in 40 CFR 261.31 through 261.33, as well as any solid waste that exhibits one or more of the hazardous waste characteristics, also are hazardous substances under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. Therefore, the seven wastes being listed today are CERCLA hazardous substances. Hazardous substances are listed in Table 302.4 at 40 CFR 302.4 along with their respective reportable quantities (RQs); thus, EPA is today adding entries for K141, K142, K143, K144, K145, K147, and K148 to Table 302.4.

Under CERCLA 103(a), the person in charge of a vessel or facility from which a hazardous substance has been released in a quantity that equals or exceeds its RQ must immediately notify the National Response Center of the release as soon as that person has knowledge of the release. In addition to this reporting requirement under CERCLA, section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA) requires owners or operators of certain facilities to report the release of a hazardous substance to State and local authorities. EPCRA section 304 notification must be given to the community emergency coordinator of the local emergency planning committee for each area likely to be affected by the release, and to the State emergency planning commission of any State likely to be affected by the release.

Under section 102(b) of CERCLA, all hazardous wastes are assigned a statutory RQ of one pound unless and until adjusted by regulation. The Agency's methodology for adjusting RQs of individual hazardous substances begins with an evaluation of the intrinsic physical, chemical, and toxicological properties of each hazardous substance. The intrinsic properties examined, called "primary criteria," are aquatic toxicity, mammalian toxicity (oral, dermal, and inhalation), ignitability, reactivity, chronic toxicity, and potential carcinogenicity. Generally, for each intrinsic property, the Agency ranks hazardous substances on a scale, associating a specific range of values on each scale with an RQ of 1, 10, 100, 1,000, or 5,000 pounds. The data for each hazardous substance are evaluated using various primary criteria; each hazardous substance may receive several tentative RQ values based on its particular intrinsic properties. The lowest of the tentative RQs becomes the "primary criteria RQ" for that substance.

After the primary criteria RQs are assigned, substances are further evaluated for their susceptibility to certain degradative processes, which are used as secondary adjustment criteria. These natural degradative processes are biodegradation, hydrolysis, and photolysis (BHP). If a hazardous substance, when released into the environment, degrades relatively rapidly to a less hazardous form by one or more of the BHP processes, its RQ, as determined by the primary RQ adjustment criteria, is generally raised one level. This adjustment is made because the relative potential for harm to public health or welfare or the environment posed by the release of such a substance is reduced by these degradative processes. Conversely, if a hazardous substance degrades to a more hazardous form after its release, the original substance is assigned an RQ equal to the RQ for the reaction product. The downward adjustment is appropriate because the hazard posed by the release of the original substance is increased if it degrades to a more hazardous form.

The methodology summarized above is applied to adjust the RQs of individual hazardous substances. An additional process applies to RCRA waste streams that contain individual hazardous substances as constituents. As the Agency has stated (54 FR 33440, August 14, 1989), to assign an RQ to a waste stream, the Agency determines the RQ for each waste stream constituent and then assigns the lowest of these constituent RQs to the waste stream itself.

Waste streams K141, K142, K143, K144, K145, K147, and K148 each contain at least one constituent with an RQ of one pound (the lowest RQ). In order to coordinate RCRA and CERCLA rulemakings, the Agency included regulatory RQs of one pound for each waste stream in the July 26, 1991 proposed rule (56 FR 35758). EPA received no comments on these proposed RQ adjustments. The Agency is, therefore, promulgating these RQ adjustments by including final RQs of one pound for waste streams K141, K142, K143, K144, K145, K147, and K148 in Table 302.4 (40 CFR 302.4).

VII. Cost and Economic Analysis

Executive Order No. 12291 requires that a regulatory agency determine whether a new regulation will be "major" and, if so, that a Regulatory Impact Analysis (RIA) be conducted. An RIA is a quantification of the potential benefits, costs, and economic impacts of the rule. A "major" rule is defined as a regulation likely to: (1) Result in an annual effect on the economy of $100 million or more; (2) increase costs or prices for consumers, individuals, industries, Federal, State, and local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency estimated the costs of today's final rule to determine if it is a major regulation as defined by Executive Order 12291. Today's final rule is not a major rule, having costs below $100 million annually. Additionally, the Agency's cost analysis concluded that these costs would not result in significant price increases or significant adverse effects on competition, trade, employment, or investment. Because impacts of this rule do not meet the criteria set forth by Executive Order 12291, the Agency has determined that today's rule is not a major one. An effect and economic impact analysis has been performed, estimating the costs and economic impact incurred as a result of today's rule. This section of the preamble discusses the results of this analysis.

The full Cost and Economic Impact Analysis document is available in the public docket.

A. Cost Analysis

The Agency developed costs for today's final rule on a facility-specific basis for the coking industry (30 active coke facilities) and the tar refining industry (eight active tar refining facilities). Baseline management practice costs and post-regulatory management practice costs were developed at each facility; the incremental compliance cost of today's rule is determined as the post-regulatory cost minus the baseline cost.

The baseline management options include practices such as recycling to the coke oven or tar decanter, on-site landfilling, off-site reclamation, and burning in a boiler or blast furnace. The compliance management options include recycling to the coke oven or cement kiln for all waste streams, no generation-circulation for tar storage tank residues for coking merchant plants and tar refining plants, and off-site reclamation for K143 wash oil purifier residue and decanter muck.

Tables 7 and 8 summarize the annualized after-tax costs by waste code for baseline, least costly compliance option (recycle to the oven and no generation-circulation for tar storage tank residues from tar refining) and most costly compliance option (cement kiln). Tables 9 and 10 summarize the annualized after-tax costs by facility, including the part 262 costs. The total incremental annual after-tax compliance cost of today's rule is estimated to be between $380,000 (not including a $200,000 estimated savings for the tar refining industry) and $6.8 million. The Economic Impact Screening Analysis, available in the docket, provides a complete description of the cost analysis.

TABLE 7—SUMMARY OF COKING INDUSTRY IMPACTS FOLLOWING COMPLIANCE FOR HAZARDOUS WASTE LISTINGS K141–K145

[After tax private cost]

Waste stream product	Coke production (tons/year)*	Residual (tons/year)	Baseline		Least costly compliance option			Most costly compliance option		
			Current management practice	Annualized cost ($/yr)	Compliance management practice	Annualized cost ($/yr)	Incremental annualized cost ($/yr)	Compliance management practice	Annualized cost ($/yr)	Incremental annualized cost ($/yr)
K141	24,924,631	3,102	Baseline	54,980	Recycle to oven	234,732	149,752	Cement Kiln	952,364	897,334
K142	24,637,897	10,023	Baseline	497,012	Recycle to oven	661,443	175,450	Cement Kiln	3,147,559	2,650,547
K143	22,860,399									
(a) Scrubber residue.		452	Baseline	11,873	Recycle to oven	29,817	18,075	Cement Kiln	150,671	238,025
(b) Wash oil residue.		3,617	Baseline	30,862	Recycle to oven	236,702	207,857	Cement Kiln	1,016,390	985,528
K144	16,297,707	870	Baseline	23,480	Recycle to oven	37,411	33,930	Cement Kiln	343,023	319,542
K145	15,251,593	453	Baseline	14,994	Recycle to oven	29,919	15,207	Cement Kiln	220,580	205,587
Total				633,201		1,220,024	600,279		5,830,594	6,197,393

* 1984 production data from 1985 RCRA 3007 questionnaire.

TABLE 8.—SUMMARY OF TAR INDUSTRY IMPACTS FOLLOWING COMPLIANCE FOR HAZARDOUS WASTE LISTINGS K147–K148

[After Tax Private Cost]

Product	Tar processed gal/year)*	Residual (tons/year)	Baseline		Least costly compliance option			Most costly compliance option		
			Current management practice	Annualized cost ($/yr)	Compliance management practice	Annualized cost ($/yr)	Incremental annualized cost ($/yr)	Compliance management practice	Annualized cost ($/yr)	Incremental annualized cost ($/yr)
K147	178,368,000	2,516	Baseline	153,450	No generation-circ.	2,088	0	Cement Kiln	789,891	636,440
K148	175,928,000	242	Baseline	12,237	Recycle to oven	16,342	4,105	Cement Kiln	105,877	93,640
Total				165,687		18,430	4,105		895,768	730,080

* 1984 production data from RCRA 3007 questionnaire.

B. Economic Impact Analysis

The Agency assessed the economic impacts incurred due to today's final rule for the coke industry and the tar refining industry. The economic impacts for both industries were estimated by calculating the ratio derived from dividing the annual incremental after-tax compliance costs by the value of production on a facility-specific basis. A ratio greater than one percent of sales (value of production) indicates potentially significant adverse effects.

1. Coking Industry

EPA estimated costs for the 30 active coke facilities for which data was available. However, the economic impact analysis was conducted for all 32 coking facilities. Economic impacts for the two facilities for which the Agency did not possess data were estimated using the average production and incremental compliance costs for the 30 active coke facilities. Table 9 summarizes the impacts by facility and industry total for coking. Except for those facilities that claimed confidentiality (CBI facilities), Table 9 shows for each facility in the industry

the estimated annual value of production, least costly and most costly incremental annualized compliance costs, and costs of compliance as a percent of value of production.

Assuming facilities adopt the least costly management options, costs of compliance are insignificant for all facilities. For the least costly management options, the industry aggregate costs of compliance to value of production ratios is estimated at 0.009 percent (compared to the proposed rule industry aggregate of −0.001 percent). There are no adverse economic impacts associated with the least costly option. The increase in the industry aggregate cost to value of production ratio from the proposed rule is attributable to a contract recycler recycling the waste at the coking plant at $100/ton. The price of $100/ton includes capital expenditures for storage and processing equipment, removal of waste, and processing. The proposed rule costs included only facility labor for removal of waste, except for K143 which also included storage tanks.

Assuming that facilities adopt the most costly compliance option, cement kiln in all cases, there are no adverse economic impacts. For the most costly management option, the industry aggregate costs of compliance to value of production ratios is estimated at 0.13 percent (compared to the proposed rule industry aggregate of 0.36 percent).

TABLE 9.—SUMMARY OF COKING FACILITY AND INDUSTRY IMPACTS FOLLOWING COMPLIANCE WITH PROPOSED HAZARDOUS WASTE LISTINGS (K141–K145)

DPRA facility ID No.	Estimated value of production	Least costly options		Most costly options	
		Incremental annualized compliance costs	Costs of compliance as a percent of value of production	Incremental annualized compliance costs	Costs of compliance as a percent of value of production
	($/yr)	($/yr)	(%)	($/yr)	(%)
32	35,452,470	(1,715)	−0.005	36,226	0.10
31	42,237,649	2,180	0.005	32,404	0.08
10	63,842,000	2,932	0.005	81,212	0.13
26	80,094,745	10,557	0.013	122,092	0.15
24	73,820,932	15,111	0.020	125,814	0.17
22	78,427,293	2,358	0.003	43,999	0.06
8	94,202,216	5,788	0.006	125,539	0.13
15	85,064,165	10,266	0.012	122,056	0.14
23	83,800,535	8,718	0.010	109,003	0.13
1	132,008,745	12,316	0.010	142,520	0.11
9	155,552,951	21,812	0.014	225,317	0.14
11	107,763,220	3,503	0.003	28,693	0.03
20	159,286,321	11,318	0.007	127,295	0.08
28	138,573,882	10,645	0.008	122,191	0.09
30	128,027,092	8,923	0.007	185,977	0.15
4	209,541,571	18,395	0.009	178,545	0.09
2	187,411,097	19,117	0.010	213,670	0.11
25	168,991,246	20,841	0.012	232,759	0.14
16	336,478,730	70,182	0.021	752,809	0.22
3	275,262,890	27,028	0.010	291,834	0.11
27	262,956,386	16,782	0.006	353,208	0.13
7	464,034,330	16,457	0.004	385,011	0.08
50	[1] 138,629,820	21,625	0.016	235,075	0.17
52	[1] 172,462,500	31,264	0.018	348,351	0.20
CBI	[2] 474,025,289	(8,794)	−0.002	640,133	0.14
Other [3]	276,596,538	23,894	0.009	350,782	0.13
Total industry	4,425,544,613	382,299	0.009	5,612,515	0.13

[1] The estimated value of production for this firm is based strictly on their production of coke. No information is available on the rest of their production line. Thus, the value of production is likely underestimated and the impacts on these facilities overestimated.
[2] Information for CBI facilities is aggregated to protect the confidentiality of each individual facility.
[3] There are two active coking facilities for which no production or waste generation data are available. The average values for all other coking facilities are used as proxies for these two facilities, so that industry impacts are not underestimated. Thus, the average value of production is assumed for each of these facilities, as is the average incremental annualized compliance costs for both the least costly options and the most costly options.
Source: DPRA Incorporated.

2. Tar Refining Industry

There are 14 active tar refining facilities. Of these 14 facilities, three facilities do not generate K147 and K148. In addition, for three of the facilities no production or waste generation data are available. Incremental compliance costs were estimated for the eight active tar refining facilities for which the Agency has data. However, the Agency conducted an economic impact analysis for 11 tar refining plants (the three facilities that do not generate K147 and K148 were omitted). Economic impact for the three facilities for which there are no data were estimated using the average production and incremental compliance costs for the eight active tar refining facilities. Table 10 summarizes the impacts by industry total for tar refining. Nearly all the tar refiners requested confidentiality on the data they submitted on the RCRA 3007 questionnaire; therefore, Table 10 presents only aggregated information.

Assuming facilities adopt the least costly management options, costs of compliance are insignificant for all facilities. For the least costly management options, the industry aggregate costs of compliance to value of production ratios is estimated to be too small to be measurable as a cost or savings (compared to the proposed rule industry aggregate of −0.04 percent). There are no adverse economic impacts associated with the least costly option.

Assuming the facilities adopt the most costly compliance option, cement kiln in all cases, there are no adverse economic impacts. For the most costly management option, the industry aggregate costs of compliance to value

of production ratios is estimated at 0.26 percent (compared to the proposed rule industry aggregate of 0.97 percent). Under the proposed rule, five tar refining facilities were adversely affected, with costs to sales ratios exceeding one percent.

TABLE 10.— SUMMARY OF TAR REFINING INDUSTRY EFFECTS FOLLOWING COMPLIANCE WITH PROPOSED HAZARDOUS WASTE LISTINGS (K 147 AND K 148)

Facility name [1]	Estimated value of production	Least costly option [2]		Most costly option [3]	
		Incremental annualized compliance costs ($/yr)	Costs of compliance as a percent of value of production (%)	Incremental annualized compliance costs ($/yr)	Costs of compliance as a percent of value of production (%)
Aggregated facilities	$384,801,384	[4]0	0	1,011,248	0.26

[1] Because most tar refining facilities requested confidentiality, individual facility names are not shown. Rather, data from all facilities are presented in aggregate figures.
[2] Least costly option: No generation/circulation for tar storage tank residues (K147). Recycle to oven for still bottoms (K148).
[3] Most costly option: Cement kiln for both K147 and K148.
[4] Incremental annualized compliance costs were determined to be insignificant, either as a cost or a savings.
Source: Prepared for the U.S. EPA by DPRA Incorporated.

VIII. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic effect on a substantial number of small entities.

EPA has examined the rule's potential effects on small entities as required by the Regulatory Flexibility Act. I certify that today's proposed rule will not have a significant economic effect on a substantial number of small entities.

IX. Paperwork Reduction Act

This rule does not contain any new information collection requirements under RCRA that are subject to OMB review under the Paperwork Reduction Act of 1990, 44 U.S.C. 3501 *et seq.* Release reporting required as a result of proposing the listed wastes as hazardous substances under CERCLA and adjusting the reportable quantities (RQs) has been approved under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has been assigned OMB control number 2050–0046.

X. Compliance and Implementation

A. Section 3010 Notification

Generally, when new hazardous wastes are listed, all persons who generate, transport, treat, store, or dispose of the newly listed waste(s) are required to notify either EPA, or a State authorized by EPA to implement the hazardous waste program, of their activities pursuant to Section 3010 of RCRA. However, under the Solid Waste Disposal Amendments of 1980 (Pub. L. 96–482), EPA was given the option of waiving the notification requirements under Section 3010 of RCRA following revision of the Section 3001 regulations, at the discretion of the Administrator. EPA is proposed to waive this notification requirement for persons who handle wastes that are covered by today's rule and have already notified EPA that they manage other hazardous wastes and have received an EPA identification number. EPA is waiving the notification requirement because of the likelihood that persons managing today's newly listed wastes already are managing one or more hazardous wastes that generally are associated with the generation of K141–K145, K147, and K148 and have, therefore, previously notified EPA and received an EPA identification number. In the event that any person who generates, transports, treats, stores, or disposes these wastes has not previously notified and received an identification number, that person must obtain an identification number pursuant to 40 CFR 262.12 before that person can generate, transport, treat, store, or dispose of these wastes.

B. Compliance Dates for Facilities

Today's hazardous wastes listings are promulgated pursuant to HSWA. HSWA requirements are applicable in authorized States at the same time as in unauthorized States. Therefore, EPA will regulate the wastes listed today until States are authorized to regulate these wastes. The Agency will apply these Federal regulations to these wastes and to their management in both authorized and unauthorized States.

Newly regulated facilities (i.e., facilities at which the only hazardous wastes that are managed are today's newly listed wastes in units subject to permit requirements) must qualify for interim status within six months of publication of the rule in order to continue managing these wastes in such units. To retain interim status, a newly-regulated land disposal facility must, within eighteen months after publication of the rule, submit a part B permit application and certify that the facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements (see RCRA section 3005(e)(3)).

Interim status facilities that manage the wastes listed today must file an amended part A permit application within six months of publication of today's rule (the effective date of the rule) if they are to continue managing these wastes in units that require a permit. The facilities must file the necessary amendments by the effective date of the rule, or they will not obtain interim status with respect to these wastes.

Currently permitted facilities that manage today's newly listed wastes must request permit modifications if they are to continue managing these wastes in units that require a permit. Since EPA will initially be responsible for processing these permit modifications, the Federal procedures for permit modifications to add newly listed or identified wastes will be followed. (See § 270.42(g).) This provision generally requires that a permitted facility that is "in existence" for the newly listed or identified waste on the effective date of the waste listing must submit a Class 1 modification by that date. Essentially, this modification notifies the Agency and the public that the facility is handling the waste and identifies the units involved. By submitting this notice, the facility is temporarily allowed to continue management of the newly listed wastes until the Agency can make a final modification to the permit. Next, within 180 days of the effective date the permittees must submit a more detailed permit modification request (i.e., a Class 2 or 3 modification). This information will be used by the Agency to develop a final permit modification.

List of Subjects

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Air pollution control, Chemicals, Hazardous substances, Hazardous materials; Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: July 31, 1992.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In § 261.4, paragraph (a)(10) is revised to read as follows:

§ 261.4 Exclusions.

(a) • • •

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in section 261.24 of this part when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

• • • • • •

3. Section 261.32 is amended by adding the following hazardous waste listings in alphanumeric order to the subgroup Coking to read as follows:

§ 261.32 Hazardous wastes from specific sources.

• • • • • •

Industry and EPA hazardous waste No.	Hazardous waste	hazard code
• • • • • • •		
Coking:		
• • • • • • •		
K141	Process residues from the recovery of coal tar, including, but not limited to, collecting sump residues from the production of coke from coal or the recovery of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludges from coking operations).	(T)
K142	Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal	(T)
K143	Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.	(T)
K144	Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.	(T)
K145	Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal	(T)
K147	Tar storage tank residues from coal tar refining	(T)
K148	Residues from coal tar distillation, including but not limited to, still bottoms	(T)

4. In part 261, Appendix VII is amended to add the following waste streams in alphanumeric order to read as follows:

APPENDIX VII—BASIS FOR LISTING HAZARDOUS WASTE

EPA hazardous waste No.	Hazardous constituents for which listed
• • • • • • •	
K141	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K142	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K143	Benzene, benz(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene.
K144	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene.
K145	Benzene, benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthrancene, naphthalene.
K147	Benzene, benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.
K148	Benz(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(k)fluoranthene, dibenz(a,h)anthracene, indeno(1,2,3-cd)pyrene.

• • • • • • •

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

2. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
August 18, 1992.	The listing of wastes from the production, recovery, and refining of coke by-products produced from coal	[insert FR page numbers]	February 18, 1993.

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

2. Section 302.4 is amended by adding the waste streams K141 through K145, K147, and K148 to Table 302.4 in alphanumeric order. The appropriate footnotes to Table 302.4 are republished without change.

TABLE 302.4.—LIST OF HAZARDOUS SUBSTANCES AND REPORTABLE QUANTITIES

Hazardous substances	CASRN	Regulatory synonyms	Statutory RQ	Statutory Code†	Statutory RCRA waste number	Final RQ Category	Final RQ Pounds (Kg)
K141 Process related from the recovery of coal tar, including, but not limited to, tar collecting sump residues from the production of coke by-products produced from coal. This listing does not include K087 (decanter tank tar sludge from coking operations.)			1*	4	K141	X	1 (0.454)
K142 Tar storage tank residues from the production of coke from coal or from the recovery of coke by-products produced from coal.			1*	4	K142	X	1 (0.454)
K143 Process residues from the recovery of light oil, including, but not limited to, those generated in stills, decanters, and wash oil recovery units from the recovery of coke by-products produced from coal.			1*	4	K143	X	1 (0.454)
K144 Wastewater sump residues from light oil refining, including, but not limited to, intercepting or contamination sump sludges from the recovery of coke by-products produced from coal.			1*	4	K144	X	1 (0.454)
K145 Residues from naphthalene collection and recovery operations from the recovery of coke by-products produced from coal.			1*	4	K145	X	1 (0.454)
K147 Tar storage tank residues from coal tar refining.			1*	4	K147	X	1 (0.454)
K148 Residues from coal tar distillation, including, but not limited to, still bottoms.			1*	4	K148	X	1 (0.454)

†—indicates the statutory source as defined by 1, 2, 3, 4, or 5 below.
4—indicates that the statutory source for designation of this hazardous substance under CERCLA is RCRA Section 3001.
1*—indicates that the 1-pound RQ is a CERCLA statutory RQ.

* * * * *

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federal register

Tuesday
August 18, 1992

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

High Density Traffic Airports; Slot Allocation and Transfer Methods; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 25758; Amdt. No. 93-65]

RIN 2120-AD93

High Density Traffic Airports; Slot Allocation and Transfer Methods

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This action amends the Federal Aviation Regulations governing the allocation and transfer of air carrier and commuter operator slots (*i.e.*, instrument flight rules (IFR) takeoff and landing reservations) at Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, and Washington National Airport. This amendment adds a definition of "limited incumbent carrier" to refer to air carriers and commuter operators holding fewer than 12 slots at a high density airport; provides for allocation of slots by lottery to certain new entrant and limited incumbent carriers; restricts the transfer of newly acquired lottery slots and provides for the recall of those slots upon the sale or merger of the limited incumbent slot holder; amends the minimum slot use requirements; amends the slot use reporting requirements; and removes an obsolete penalty provision. This amendment is designed to promote the availability of slots to new entrant and limited incumbent carriers at the high density airports, and thereby enhance competition.

EFFECTIVE DATE: November 1, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia R. Lane, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267-3491.

SUPPLEMENTARY INFORMATION:

Background

The High Density Traffic Airport Rule, 14 CFR part 93, Subpart K, limits the number of IFR operations during certain hours or half hours at Kennedy International, LaGuardia, O'Hare International, and Washington National Airports. Comprehensive rules for the Allocation and transfer of high density airport slots were adopted in 1985 (14 CFR part 93, subpart S; 50 FR 52195, December 20, 1985). A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operation during a specific period at one of the high density airports. These periods are either 30 or 60 minutes, depending on the airport.

On December 16, 1988, the Department of Transportation issued Notice of Proposed Rulemaking No. 88-18 (53 FR 51628, December 22, 1988). In that notice, the Department denied the petition of America West Airlines to withdraw slots from incumbent carriers at National and LaGuardia Airports and to reallocate those slots to new entrant and smaller incumbent carriers. The Department sought comments on the effects of the slot restrictions on competition and market entry, as required by § 149 of Public Law 100-457.

Notice No. 88-18 also proposed two specific amendments to the current slot rules. The first proposal was to forego withdrawal of slots, for reasons other than non-use, from a carrier with eight or fewer slots if the carrier itself used the slots and did not lease them to other carriers. The second proposal was to increase slot use requirements to 80% or 90% for carriers holding a substantial number of slots.

On August 22, 1989, the Department published Amendment No. 93-57, protecting a carrier holding and operating fewer than eight slots from withdrawal of those slots, and amending the definition of "summer" and "winter" season to conform to current daylight savings times dates under Federal law (54 FR 34904; corrected 54 FR 37303, September 8, 1989). Amendment No. 93-57 also redefined commuter operations as those using turboprop or reciprocating aircraft having fewer than 75 passenger seats. The Department subsequently amended § 93.123(c) to include in the definition of "commuter aircraft" turbojets with a maximum seating capacity of less than 56 passengers (56 FR 41200, August 19, 1991).

In 1990, Congress passed the Omnibus Reconciliation Act of 1990, Public Law 101-508 (104 Stat. 1388). Title IX of the Act, referred to as the "Aviation Safety and Capacity Expansion Act of 1990," (104 Stat. 1388-371) contains in section 9126(a) a provision that the Secretary of Transportation shall, by July 1, 1991, initiate a rulemaking proceeding to consider more efficient methods of allocating existing capacity at high density traffic airports in order to provide improved opportunities for operations by new entrant air carriers. The section also defines the term new entrant air carrier, as used with respect to a high density traffic airport, as an air carrier having less than 12 operating rights at such airport.

The Department determined that the most productive and efficient means of initiating the rulemaking required by Public Law 101-508 was to incorporate it in Docket No. 25758. Continuing and supplementing the rulemaking initiated in December 1988, the agency issued Supplemental Notice of Proposed Rulemaking No. 88-18A (SNPRM) on September 9, 1991 (56 FR 46674, September 13, 1991), modifying the proposal.

The SNPRM proposed to (1) add a new definition for limited incumbent, to mean an air carrier or commuter operator holding fewer than 12 slots, including slots transferred or lost for non-use by a carrier since adoption of the allocation rules in December 1985, at the airport; (2) exclude non-limited incumbents from participating in a lottery of unallocated slots until all new entrant and limited incumbent participants had completed their selections; (3) restrict transfer of the slots obtained by new entrants and limited incumbents for 24 months after selection in a lottery and withdraw the slots upon any sale or merger of the operator if the carrier obtaining the slots would, as a result, hold a combined slot base of more than 12 slots; (4) increase the percentage of slots use required to avoid withdrawal for non-use to 90 percent or, for slots allocated for less than 5 days per week, 65 percent; (5) not apply the use-or-lose provisions to slots held or operated by a carrier in bankruptcy until the expiration of 60 days after the initial bankruptcy filing, 30 days after cessation of operations, or up to 20 days after filing a Hart-Scott-Rodino notice with the Department of Justice; (6) require the reporting of international slot use by U.S. carriers already required to report domestic slot use; (7) disallow counting the use of a domestic slot for a flight for which the carrier has obtained an international slot under § 93.217; and (8) remove obsolete penalty provisions.

Discussion of Comments

The Department received 23 comments covering all of the various issues raised in Notice No. 88-18A. This discussion divides the comments into the following categories: (1) Lottery procedures and restrictions on transfer of lottery slots; (2) notice to new entrants and limited incumbents of pending slot sales; (3) minimum slot use percentage; (4) bankruptcy provisions; (5) reporting the use of international operations; and (6) bimonthly slot use reports. Comments received on Notice 88-18 that were considered but not addressed in the SNPRM are not discussed here because they are no longer germane due to changes in the proposal or do not address issues beyond those covered by the comments to the SNPRM.

Lottery Procedures and Restrictions on Transfer of Lottery Slots

Most of the commenters support the procedures as proposed. The City of Chicago Department of Aviation concurs with the Department's proposed definition of limited incumbent and considers the proposed lottery provisions and restrictions reasonable, fair, and appropriate to ensure that slots are allocated for real service goals. The Port Authority of New York and New Jersey and the Metropolitan Washington Airports Authority (MWAA) view the creation of the limited incumbent carrier as pro-competitive. Midwest Express Airlines supports encouraging the sale of marginally used slots to limited incumbents and new entrants. America West Airlines supports extending the status of limited incumbent to carriers holding up to 12 slots.

Several commenters seek to modify the proposal. Northwest Airlines generally concurs with the proposed amendments governing the lottery process and slot transfer but believes that incumbent carriers should not be precluded from obtaining permanent slot assignments by lottery. United Airlines also believes that the Department should revise the proposed rule to allow permanent allocations to incumbent lottery participants. America West urges permitting intra-airport trades with incumbents of slots obtained in a lottery and reducing the mandatory operating period for lottery slots to one year. The City of New York Department of Business Services, the Port Authority of New York and New Jersey, and other commenters support merging air carrier and commuter slots into a single slot pool. Business Express believes that the proposed rule unfairly penalizes incumbent carriers by denying them equal participation in the lotteries. The Staff of the Bureau of Economics of the Federal Trade Commission (FTC) comments that transfers likely represent an efficient reallocation of resources" and that the proposed transfer restrictions would perpetuate any misallocation of resources for two years; the FTC staff suggests disqualifying from future lotteries a carrier that sells its lottery slots too quickly.

Two commenters seek special treatment for foreign carriers. Air Jamaica Limited wants the FAA to permanently designate slots for foreign carrier operations or recognize foreign carriers' right to slots based on historical use. Similarly, Air Canada urges the Department to reserve a permanent pool of recaptured slots to permit foreign carriers to implement rights their governments obtain under future bilateral agreements.

Two primary purposes of this amendment are to achieve maximum utilization of the high density airports' capacity and to enhance competition by affording new entrant and limited incumbent carriers greater access. Equal participation by and permanent allocation of lottery slots to incumbent carriers would reduce the opportunities for new entrants or limited incumbents to obtain slots. The final rule therefore adopts the restrictions on participation by and allocation of slots to incumbents as proposed. Establishing a single slot pool is not within the scope of the proposed rule and is therefore not addressed here. The suggestion to use commuter slots to increase the availability of air carrier slots is not addressed in this rulemaking action but may be reconsidered in the future.

The final rule relaxes the proposed restrictions by allowing intra-airport trades to accord new entrants and limited incumbents greater scheduling flexibility to avoid the forced perpetuation of any misallocation of resources. The two-year mandatory operating period, however, is retained to assure that slots obtained in a lottery are likely to be used for operations by new entrants and limited incumbents and not sold back to other slotholders.

No lottery slots will be set aside exclusively for foreign carriers because making the slots available for use by both domestic and foreign carriers will enhance their utilization. The current slot rules already provide an effective mechanism at O'Hare and Kennedy for allocating slots to foreign carriers as needed without permanent slot designations or pools. A similar mechanism is not warranted for LaGuardia and National because international carriers can serve the same city destinations through airports without slot restrictions, namely, Newark, Baltimore-Washington International, Dulles International, and, except from 3 p.m. to 8 p.m., Kennedy. Furthermore, the FAA does and continues to recognize historical rights under § 93.217(a)(5).

Notice to New Entrants and Limited Incumbents of Pending Slot Soles

Public agencies in their comments suggest establishing a list of available slots or prospective slot purchasers, but support for mandatory pre-sale notice is mixed. The Michigan Department of Transportation Bureau of Aeronautics (MDOT) supports requiring incumbent carriers to give notice of pending slot sales and leases because such notice could increase competition. The Port Authority of New York and New Jersey supports having large incumbents advise new entrants and limited incumbents of opportunities to purchase or lease slots that come on the market. It proposes that the FAA establish an electronic bulletin board to provide notice of pending slot sales or lease opportunities. The Chicago Department of Aviation supports establishing a formal list of qualified new entrants and limited incumbents planning to take part in any slot lottery, and publishing this list in the **Federal Register**. It also states, however, that incumbents should not be required to notify new entrants and limited incumbents of pending slot sales because this adds a new layer of bureaucracy and could impede the buy/sell system. MWAA does not object to establishing a formal list of interested carriers who qualify as new entrants and limited incumbents or providing simple notice of slot availability.

Most of the airlines oppose the notice proposal. Air Transport Association of America (ATA) considers the notice requirement useless and time-consuming, because any carrier interested in acquiring slots can monitor their availability. By contrast, America West supports this proposal because it says it was unaware of certain past opportunities to purchase slots and believes that the proposal creates more of a market mechanism than now exists.

The Department concludes that a notice requirement will not enhance competition or slot utilization to an extent that warrants adoption of the proposal, which would impose an additional burden on the transfer of slots. The final rule, therefore, does not require incumbents to publish slot sale offerings.

Minimum Slot Use Percentage

The minimum slot use proposal elicited a mixture of suggested modifications. Many commenters support the 90% weekday standard. Among them are the Port Authority of New York and New Jersey, America West Airlines, MDOT, Air Jamaica Limited, MWAA, Air Canada, Senator Charles S. Robb, and the Coles County Airport Authority, Mattoon, IL. The Staff of the Bureau of Economics of the Federal Trade Commission (FTC) submitted a comprehensive analysis showing that most carriers' slot usage met or exceeded the proposed 90% minimum for weekday slots.

ATA carriers propose an 80%, Monday through Friday, slot utilization requirement, with all three-day national

holiday weekends and non-weekend holidays excluded from this standard. Delta Air Lines, USAir, Trans World Airlines, and United Airlines all support the comments submitted by ATA. The Chicago Department of Aviation supports increasing the current usage requirements for existing slots. However, it views the 90% weekday slot use requirement as too rigid for air carriers operating at O'Hare and suggests a standard that adjusts for inclement weather and holiday-related cancellations.

Other commenters urge a minimum use requirement not to exceed 75%, further tempered by factors ranging from weather to the size of a carrier's slot base. Viewing the 90% weekday usage requirement as unrealistic, unreasonable and unfair, Business Express suggests a method that evaluates the usage of a carrier's entire slot pool and asserts that any usage requirement over 75% would unfairly penalize short haul carriers. The Regional Airline Association believes that the maximum slot usage requirement should be 75%. Air Wisconsin asserts that the 90% weekday slot use requirement should only apply to carriers that have at least 100 air carrier slots or 150 commuter slots at an individual airport, or urges a 75% minimum use percentage based upon operations during the five weekdays. Northwest Airlines urges the following modifications to the proposed rule: (1) A minimum use requirement no higher than 75%; (2) exempting a carrier's slots from withdrawal if its overall slot utilization at that airport equals or exceeds 85% for the reporting period; and (3) excusing cancellations due to mechanical, weather, or other conditions beyond a carrier's control. Midwest Express suggests a minimum usage requirement for limited incumbents below that for carriers with a large number of slots.

The Department has determined that the proposed two-tier minimum percentage system (90% use for weekdays for slots held 5 or more days, and 65% for all others) would complicate slot use enforcement and create loopholes for carriers to meet the minimum use requirements without maximizing use of the slots they hold. For example, Carrier A, holding a 7-day slot at 1200, could trade Monday, Tuesday, and Wednesday to Carrier B, also holding a 7-day slot at 1200, in exchange for Carrier B's 1200 slot on Monday, Tuesday, and Wednesday. Both Carriers A and B would then each hold two distinct slots at 1200, one 3-day slot and one 4-day slot. Under the proposed two-tier system, prior to the trade the carriers' use of each slot would have to meet or exceed 90%. As a result of the trade, the less stringent 65% minimum would apply while the two carriers' pre-trade flight schedules remain unaffected.

As another way to fall under the 65% minimum, a carrier could create two holding companies and split each of its slots between them, one holding all the carrier's slots the first half of the week and the other holding the same slots the second half, while the carrier operates the slots all 7 days. A two-tier minimum requirement would also introduce complications where, as other examples, a non-carrier holds a slot all 7 days of a week, but one operator uses it 3 days and a second operator uses it the other 4 days, or where two carriers hold the same slot for different days of the week but have leased it to a third carrier for all 7 days.

Because the Department has decided not to adopt a two-tier system, weekend usage of slots will not be excluded from the minimum use requirements. For the reasons set forth below, the Department adopts an 80% minimum use requirement that applies to all slots all 7 days of the week.

In determining a slot usage minimum, the Department wanted to achieve a balance that would not jeopardize the viability of the smaller carriers while still promoting the efficient use of slots. To that end, it considered the comments raising the potential problems of sporadic cancellations caused by weather, mechanical failure, or schedule reductions on a holiday; the 80% requirement factors in these exigencies and should not subject slots to withdrawal based on these cancellations alone. This higher percentage should encourage carriers to hold no more slots than their markets demand, potentially freeing up underutilized slots for use by other carriers without imposing impractically stringent use requirements.

The 80% requirement also closely equates to the intended overall impact of the two-tier slot usage requirement proposed in the SNPRM. Using 44 weekdays and 17 weekend days as representative of the bimonthly reporting period to which the percentage usage requirement applies, a 90% weekday and 65% weekend formula would require a slot to be operated 39 weekdays and 11 weekend days, or 50 total days, out of 61 days. An overall 80% requirement compels 48 days of use out of a 61-day reporting cycle.

The 80% requirement is also based on an analysis of historical slot use. As the FTC staff comment reports, general slot use by the major slotholders at the high density airports already approaches or exceeds 90%. The closer the use requirement approaches 90%, the more severely it will impact the holders of fewer slots. This historical slot use indicates that a requirement greater than 80% may disproportionately affect the class of carriers for which this amendment seeks to enhance opportunities while providing no further incentive, until it exceeds 90%, for the major slotholders to increase their slot use. The 80% requirement thus accomplishes the twin objectives of improving efficiency and increasing potential access for new entrants without substantially disrupting existing air service.

The Department recognizes that any requirement exceeding 71% for a weekly slot would require flying low-demand weekend periods or turning in the slot permanently for those days. It is not the purpose of this amendment to compel carriers, to avoid slot withdrawal, to fly empty aircraft on weekends when demand does not warrant the operation; in such cases, the carrier may dispose of the slot for those days it does not plan to operate and retain the slot the remaining days of the week.

Bankruptcy Provisions

The proposed bankruptcy provisions drew relatively few comments. USAir suggested a blanket waiver from the minimum slot use requirement for 60 days after closing on the purchase of a bankrupt airline's slots. America West Airlines supports the bankruptcy provisions as proposed. MWAA opposes extending the moratorium on the minimum slot use requirement in a bankruptcy situation, due to the financial and service impact on an airport.

The rule as adopted is merely refined for practicality in implementation and compliance but otherwise remains unchanged from the proposal. It provides for a one-time 60-day exemption from the date the initial bankruptcy petition is filed, a 30-day exemption from the date of submission of information required by Hart-Scott-Rodino or other Federal law regarding a proposed transfer of assets, and a 30-day exemption following total cessation of operations at a slot-controlled airport. The FAA has previously granted start-up waivers for purchasers of slots in bankruptcy but does not deem an automatic 60-day moratorium in every case, as USAir suggests, as favorable for competition or efficient use of airport capacity. The Department recognizes the disruption in service that an airline bankruptcy may engender. But continuing to apply the minimum use requirements and consequently withdrawing the slots will impose time pressures that the bankruptcy proceedings cannot realistically accommodate, and expedited reinstatement of service will not necessarily follow.

Reporting Use of International Operations

The U.S. carriers that operate international routes oppose a requirement to report their international slot usage, as does ATA. Delta Air Lines questions why only U.S. carriers, and not foreign airlines, would be subject to this reporting requirement.

All U.S. carriers holding slots have developed systems for routinely reporting their slot usage. Five out of seven carriers are already reporting their international slot usage along with their domestic usage. The rule as adopted, therefore, has little if any practical impact, and the information provided will greatly assist the FAA's administration of slots. The rule will not require reporting by non-U.S. carriers because the number of slots held by any individual foreign carrier at JFK and O'Hare Airports is limited.

Delta claims that the proposed prohibition against reporting the use of domestic operations in international slots could adversely affect development of its operations at Kennedy International Airport. It seeks flexibility to use domestic slots for international operations that have been assigned international slots. Also opposing the proposed prohibition, TWA similarly argues in favor of scheduling flexibility.

America West Airlines supports the proposed regulations regarding international slots, as does MDOT. MDOT believes that international flights should not be counted toward meeting the minimum slot usage requirement because that practice reduces U.S. communities' access to the national air transportation system.

The Department finds the prohibition against counting international flights toward the minimum use of domestic flights necessary because of the different rules governing withdrawal of international vis-a-vis domestic slots. International slots are not subject to the same withdrawal provisions as domestic slots. Thus, an international flight could be used to fulfill a domestic slot use requirement while the unused international slot escapes withdrawal. Allowing such scheduling flexibility to international carriers not only disadvantages domestic carriers, it also perpetuates underutilization of the airport's capacity at their expense. Scheduling flexibility for Delta and other carriers operating international routes can still be achieved through the trading permitted under 91.217(a)(2).

Bimonthly Slot Use Reports

Although the SNPRM did not propose to change the reporting cycle for slot use reports, several commenters suggest extending it. ATA recommends reporting of slot usage quarterly, if not semiannually. USAir, Northwest Airlines, TWA, and United Airlines all support ATA's recommendation. The Regional Airline Association also urges extending the reporting cycle to quarterly.

The bimonthly reports are one source the FAA uses to determine whether slot usage is meeting the minimum requirement. If the reporting period were extended, that information would come in later, delaying the FAA's withdrawal and temporary reallocation of underutilized slots. Slots that another carrier could make greater use of would remain underutilized that much longer. Extending the reporting period would therefore run counter to enhancing the efficient use of slots, and the Department declines to make that change.

Section by Section Description of the Rule

Section 93.213(a)(5) (definition of "limited incumbent carrier")

The rule will establish a limited incumbent carrier status. Limited incumbents are defined as air carriers or commuter operators with fewer than 12 slots, including slots previously lost for non-use or sold to other carriers since December 16, 1985. This definition comports with the definition of "new entrant air carrier" in Pub. L. 101-508.

The SNPRM's preamble discussed limited incumbents as carriers holding fewer than 12 slots, but the text of the rule as proposed in the SNPRM would qualify a carrier holding fewer than 12 air carrier slots or 12 commuter operator slots as a limited incumbent. Under that definition, a carrier could hold any number of slots in one category and, so long as it held less than 12 slots in the second category, still qualify as a limited incumbent for the purpose of selecting slots in the second category at a lottery. Such a rule would facilitate the entry of new services, but not necessarily the entry of new carriers.

In defining "limited incumbent carrier," the rule as adopted draws no distinction between air carrier and commuter operator slots, but looks to the total number of slots held in both categories in any combination at the particular airport. This definition is consistent with the existing "new entrant carrier" definitions in § 93.213(a) and section 9126 of Public Law 101-508 (104 Stat. 1388-371), neither of which draws any distinction among the types of slots allocated.

Section 93.221(a)(1)

The change to § 93.221(a)(1) merely corrects the address where requests for confirmation of slot transfers are to be sent.

Section 93.221(a)(5) (slot transfer restrictions)

The rule as adopted imposes new restrictions on slots allocated by lottery to new entrant and limited incumbent participants. The restrictions apply only to slots allocated to a new entrant or limited incumbent carrier in a lottery held after June 1, 1991. Slots acquired by other incumbent carriers will not be subject to the same restrictions, because the allocation to the incumbent would expire on the date of the next lottery. The restrictions are intended to make participation in any lottery financially and logistically impractical for a carrier seeking only to profit from the sale of the slots obtained.

Specifically, until a slot has been used continuously for 24 months by the new entrant or limited incumbent holder, the slot can be sold or leased only to another new entrant or limited incumbent carrier, and can be traded only for another slot or slots at the same airport. Previously, lottery slots could be transferred without restriction after 60 days of operation. Many slots allocated to new entrant carriers under that procedure were sold to larger carriers, sometimes immediately after the minimum 60-day period. Also, peak period slots obtained by new entrant carriers were traded to incumbents for less valuable off-peak slots (and, presumably, other consideration), and the less valuable slots were than returned to the FAA.

The SNPRM proposed to restrict trades, as well as sales and leases, to other new entrant or limited incumbent carriers. This narrow restriction on trading, however, would unduly hamper a carrier's scheduling flexibility. Therefore, the rule as adopted allows trades with any carrier at the same airport, subject to the condition that, if the new entrant or limited incumbent carrier trades away a slot it has obtained in a lottery and then fails to use the slot it obtained through the trade, the trade is automatically void.

and the lottery slot shall be returned to the FAA for reallocation at the next lottery. This condition will encumber the value of slots obtained in a lottery, but should not interfere with a more efficient allocation of slots to meet each trading carriers' genuine scheduling needs.

Section 93.223(b), (c)(3), (f) (slot withdrawals)

The amendment of § 93.223(b) is for clarifying purposes only and does not alter the substance of the prior provision. Subparagraphs (1) through (5) have been merged into a single subsection.

The change to § 93.223(c) comports with the revised definition of a limited incumbent. The withdrawal exemption limit is set at 12 or fewer slots, however, to prevent withdrawal from placing a carrier into limited incumbent status, which is defined as holding fewer than 12 slots. The revision also avoids treating differently a carrier that operates slots other than the ones it holds, to the extent that it is not a net lessor of slots.

Similarly, § 93.223(f) uses 12 slots as the limit below which slots will not be withdrawn in the event of a merger but requires surrender of all other slots that were obtained by virtue of new entrant or limited incumbent status. Use for 24 continuous months of any slot obtained by a new entrant or limited incumbent removes the slot's special restrictions, and this provision would then no longer apply.

Section 93.225 (c), (e), (g), (h) (lottery procedures)

The rule as adopted will limit primary participation in slot lotteries conducted under § 93.225 to new entrant and limited incumbent carriers. These primary participants must hold appropriate DOT economic authority and an FAA part 121 or part 135 operating certificate. In the past, carriers that had made only substantial progress toward obtaining an FAA operating certificate often failed to continue or even start operations after selecting slots; the requirements to hold appropriate authority will reduce the likelihood of the recurrence of this undesirable result.

New entrant and limited incumbent carriers will not compete in the lottery with carriers already holding a substantial number of slots at the airport. The prior procedure permitting new entrants to select 4 slots rather than 2 in the first lottery sequence will be retained. Limited incumbents may select 2 slots each turn, as before. Carriers holding 12 or more slots at an airport will be eligible to participate in the lottery only after all participating new entrants and limited incumbents have completed their selections or have reached the 12 slot limit. Slots selected by carriers holding 12 or more slots, or by new entrants or limited incumbents after their slot base reaches 12, will be allocated only until the date of the next lottery at that airport. A carrier that has selected or otherwise obtained 12 or more slots will no longer qualify as a limited incumbent.

Other lottery procedures in § 93.225 remain unchanged.

Section 93.227(a), (b), (d), (g) (minimum slot use; bankruptcy)

Minimum slot use. The minimum percentage of use for slots under § 93.227(a) will increase to 80 percent. This adjustment will reduce the practice of protecting an unused slot by distributing operations across several slots during the reporting cycle. Each day that a slot is held will be counted in calculating the percentage of use, whether weekdays or weekends. Using different bases for calculation depending on whether a slot is held for five weekdays or another period leaves too much room for circumvention of this new provision. A purpose of the amendment, to enhance capacity utilization, would be diminished as a result. It is not the purpose of this amendment, however, to compel carriers to fly empty aircraft, to avoid withdrawal of the slot, on weekends when demand does not warrant the operation; in such cases, the carrier may dispose of the slot for those days it does not plan to operate and retain the slot for the remaining days of the week.

Carriers will more likely exercise their ability to sell or lease underutilized slots rather than return them to the FAA or lose them through non-use. Forcing this choice will place more slots on the market and thereby enhance competitive opportunities for new entrant and limited incumbent carriers.

Reporting use of international operations. Operating a flight in a slot obtained for an international flight under § 93.217 will not count toward the use of any domestic slot. International slots are not subject to the minimum use requirements of § 93.227. The rule as adopted prohibits reporting the use of an underutilized domestic slot for a flight for which the carrier has already been provided an international slot. There is no restriction against using a domestic slot for an international flight, if the carrier has not obtained an additional slot for the flight under § 93.217.

The rule as adopted also amends § 93.227(g) to require reporting the use of international slots by U.S. carriers that must now report the use of domestic slots under § 93.227(i). This requirement imposes a minimal burden on most U.S. carriers, since they already routinely reported use of international slots as part of their bimonthly slot use reports under § 93.227(i). Including international slots in the same report will help the FAA monitor slot use and patterns of airport operations in peak periods. Reporting by non-U.S. carriers is not required at this time.

Bankruptcy provision. The rule as adopted retains a one-time 60-day suspension of the minimum slot use requirement, running from the initial bankruptcy petition. It adds a 30-day period running from the cessation of scheduled operations at a high density airport by a slot operator in bankruptcy. And it creates a 30-day window after the parties to a slot transfer submit additional information in response to a request by a Federal government antitrust or economic oversight agency if the slots involved have not become subject to withdrawal as of the day the information is submitted. The 30-day window will permit the Department of Justice or other Federal agency to conduct reviews of substantial transfers of assets for anticompetitive or economic implications and obtain supplementary information from the carrier without jeopardizing the use-or-lose status of the slots subject to the transfer.

This regulatory structure establishes when unused slots would revert to the FAA, and provides sufficient time for the sale of slots within the bankruptcy process.

Section 93.229 (penalty provision)

As adopted in December 1985, § 93.229 provided for a maximum $1,000 civil penalty for each unlawful takeoff or landing and for each day that a slot is not returned to the FAA when required. In practice, all enforcement actions against violators of the High Density Rule (Part 93, subpart K) and the slot transfer and allocation rules (Part 93, subpart S) have cited violations of § 93.125, which prohibits an operation at a high density traffic airport during restricted hours without an Air Traffic Control reservation. The applicable penalty provisions are contained in § 901 of the Federal Aviation Act of 1958, as amended, and FAR part 13. The separate penalty provision in § 93.229 is unnecessary and, since Congress increased the maximum penalty for carriers to $10,000 in 1987 (Section 204, Pub. L. 100–223), inconsistent with current law. The rule as adopted removes § 93.229 in its entirety.

Regulatory Evaluation Summary

While the final rule does not significantly alter the current operating environment for either air carrier or commuter operations at the high density airports, it does include several substantive measures that will enhance competition and efficient use of capacity at these key airports. It also incorporates a number of relatively straightforward housekeeping measures, *i.e.*, a definition of limited incumbent carrier, a revision of the slot-use reporting requirements for international and domestic flights, a slight modification of the timetable for slot withdrawal in the event of carrier bankruptcy, and elimination of an obsolete penalty provision.

The revised rule does not withdraw existing slots or create new ones. However, the rule does establish a new incentive to use current capacity—the available pool of airport slots—more efficiently. The amendment increasing the minimum slot-use requirements to 80 percent will make it more difficult for incumbent carriers to hold slots off the market by manipulating flight schedules and operations to meet minimum use requirements and is designed to encourage carriers to sell or lease their marginal slots.

The current practice by some carriers of "babysitting" slots for possible future use may have some merit as an individual corporate strategy, but it entails real economic costs for the system; it is an inefficient use of scarce present resources. In effect, the amendment increases the incentives for carriers to use each slot efficiently in the short term, e.g., to use it for part of the week, as market conditions warrant, and sell or lease it for the days the carrier does not plan to operate a flight. The effects on the major carriers' operations are minimal; no carrier risks losing a slot that it is actually using on a regular basis to meet passenger demand. This change will produce a small but important efficiency gain, increasing overall capacity utilization at the high density airports in the near term. Because of the importance of the high density airports within the national air traffic system, even a marginal improvement in current capacity utilization at these airports is economically meaningful.

Moreover, the 80-percent-use requirement has a procompetitive aspect as well. By creating a stronger incentive for carriers to make underutilized slots available on the market, even on a part-time basis, the rule opens up some new competitive opportunities for new entrant and limited incumbent carriers. In economic terms, both the air traffic system and the carriers operating few or no flights to a high density airport can be expected to benefit from a rule that requires more efficient slot use: New entrants and limited incumbents can gain access to the airport or improve their competitive position by taking advantage of some previously underutilized slots; and the national system benefits from capturing more of the real economic value of some scarce resources (slots) that are only minimally used at present. The public is likely to gain as well—both from the improved service and lower fares that additional competition should generate and, more broadly, from an improvement in economic efficiency at these critical airports (fewer wasted slots). While these benefits are not directly quantifiable, the Department finds that the net economic effects of the 80-percent-use requirement are positive. In terms of regulatory burden, this modification is entirely neutral and will require no change in airline reporting.

The second major modification to the rule involves the allocation of slots by lottery to new entrants and limited incumbents, as well as some additional protections for slots held by limited incumbents. In brief, these revised lottery procedures and slot resale provisions are designed to safeguard competition by ensuring that new entrants and limited incumbents receive first opportunity to secure slots in the lottery and, once they have secured them, that the slots are actually used by new entrants or limited incumbent carriers, rather than immediately sold, leased, or traded to larger carriers. The limitations on resale or other disposition of slots obtained under the lottery are not excessive, do not unreasonably interfere with the market mechanism, and are fully consistent with the objectives of the slot system in strengthening effective competitive access to these airports by new entrants and limited incumbent carriers. The economic effects of reduced access to these slots by large airlines are offset, in the Department's judgment, by the competitive benefits of ensuring improved access for new entrants and limited incumbents. Moreover, while the Department will assume some additional administrative burden in implementing and monitoring these provisions, the regulatory burden is negligible; these lottery procedures and resale restrictions impose no new reporting requirements on the industry.

The housekeeping amendments have little economic impact but do serve to clarify and in some cases simplify operation of the slot system at the high density airports. The elimination of the obsolete penalty provision in § 93.299 is consistent with sound regulatory practice and the Administrative Procedures Act. The revised definition of a limited incumbent carrier comports with the definition of a new entrant air carrier in Public Law 101–508, and prevents a potential definitional conflict. The revised timetable for withdrawal of slots in the event of carrier bankruptcy adds a 30-day window for Federal review of slot transfers or following cessation of service, allowing more time for the orderly sale of slots within the bankruptcy process; the modification stems from the Department's recent experience with carrier bankruptcies. And, finally, the revised slot-use reporting requirement with respect to international and domestic flights codifies the standard industry practice of reporting both types of operations; most carriers find it less costly to report both their international and domestic flight operations and already routinely do so. In the Department's judgment, adopting this practice in the revised rule will ensure reporting consistency and impose no undue burden on the industry. This summary represents the regulatory evaluation for this rulemaking, and it is not necessary to place a separate document in the docket.

Regulatory Flexibility Act Determination

The Department has determined that the amendment (1) is not a major rule under Executive Order 12291; and (2) is a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For the reasons discussed above under the Regulatory Evaluation Summary, I certify that under the criteria of the Regulatory Flexibility Act, this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The rule will not affect the sale of foreign aviation products or services in the United States, nor will the rule affect the sale of U.S. products or services in foreign countries. Accordingly, the rule has no international trade impact.

Paperwork Reduction Act

This amendment provides for a minor change in the required reporting of information by air carriers to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget previously has

approved the information collection provision of Subpart S under OMB Approval No. 2120–0524. The reporting requirements of the rule as amended are being submitted to OMB for review and will become effective when the requirements are approved.

Federalism Implications

This amendment will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Alaska, Navigation (air), Reporting and recordkeeping requirements.

The Rule

For the reasons set out above, the Department of Transportation amends 14 CFR Part 93 of the Federal Aviation Regulations as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 et seq.; 49 U.S.C. 106(g).

2. In § 93.213, new paragraph (a)(5) is added to read as follows:

§ 93.213 Definitions and general provisions.

(a) * * *

(5) *Limited incumbent carrier* means an air carrier or commuter operator that holds or operates fewer than 12 air carrier or commuter slots, in any combination, at a particular airport, not including international slots, Essential Air Service Program slots, or slots between the hours of 2200 and 0659 at Washington National Airport or LaGuardia Airport. However, for the purposes of this paragraph (a)(5), the carrier is considered to hold the number of slots at that airport that the carrier has, since December 16, 1985:

(i) Returned to the FAA;

(ii) Had recalled by the FAA under § 93.227(a); or

(iii) Transferred to another party other than by trade for one or more slots at the same airport.

* * * * *

§ 93.221 [Amended]

3. In § 93.221, paragraph (a)(1) is amended by removing the reference "Slot Transfers, Office of the Chief Counsel, Rules Docket, 800 Independence Avenue, SW., AGC–10 and adding in its place "Slot Administration Office, AGC–230, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Ave., SW.".

4. In § 93.221, paragraph (a)(5) is revised to read as follows:

§ 93.221 Transfer of slots.

(a) * * *

(5)(i) Until a slot obtained by a new entrant or limited incumbent carrier in a lottery held under § 93.225 after June 1, 1991, has been used by the carrier that obtained it for a continuous 24-month period after the lottery in accordance with § 93.227(a), that slot may be transferred only by trade for one or more slots at the same airport or to other new entrant or limited incumbent carriers under § 93.221(a)(5)(iii). This transfer restriction shall apply to the same extent to any slot or slots acquired by trading the slot obtained in a lottery. To remove the transfer restriction, documentation of 24 months' continuous use must be submitted to the FAA Office of the Chief Counsel.

(ii) Failure to use a slot acquired by trading a slot obtained in a lottery for a continuous 24-month period after the lottery, shall void all trades involving the lottery slot, which shall be returned to the FAA. All use of the lottery slot shall be counted toward fulfilling the minimum use requirements under § 93.227(a) applicable to the slot or slots for which the lottery slot was traded, including subsequent trades.

(iii) Slots obtained by new entrant or limited incumbent carriers in a lottery may be sold, leased, or otherwise transferred to another entrant or limited incumbent carrier after a minimum of 60 days of use by the obtaining carrier. The transfer restrictions of § 93.221(a)(5)(i) shall continue to apply to the slot until documentation of 24 months' continuous use has been submitted and the transfer restriction removed.

* * * * *

5. In § 93.223, paragraphs (b), (c)(3), and (f) are revised to read as follows:

§ 93.223 Slot withdrawal.

* * * * *

(b) Separate slot pools shall be established for air carriers and commuter operators at each airport. The FAA shall assign, by random lottery, withdrawal priority numbers for the recall priority of slots at each airport. Each additional permanent slot, if any, will be assigned the next higher number for air carrier or commuter slots, as appropriate, at each airport. Each slot shall be assigned a designation consisting of the applicable withdrawal priority number; the airport code; a code indicating whether the slot is an air carrier or commuter operator slot; and the time period of the slot. The designation shall also indicate, as appropriate, if the slot is daily or for certain days of the week only; is limited to arrivals or departures; is allocated for international operations or for EAS purposes; and, at Kennedy International Airport, is a summer or winter slot.

(c) * * *

(3) Except as provided in § 93.227(a), the FAA shall not withdraw slots held at an airport by an air carrier or commuter operator holding and operating 12 or fewer slots at that airport (excluding slots used for operations described in § 93.212(a)(1)), if withdrawal would reduce the number of slots held below the number of slots operated.

* * * * *

(f) For 24 months following a lottery held after June 1, 1991, a slot acquired in that lottery shall be withdrawn by the FAA upon the sale, merger, or acquisition of more than 50 percent ownership or control of the carrier using that slot or one acquired by trade of that slot, if the resulting total of slots held or operated at the airport by the surviving entity would exceed 12 slots.

6. In § 93.225, paragraphs (c), (e), (g), and (h) are revised to read as follows:

§ 93.225 Lottery of available slots.

* * * * *

(c) Slot allocation lotteries shall be held on an airport-by-airport basis with separate lotteries for air carrier and commuter operator slots. The slots to be allocated in each lottery will be each unallocated slot not necessary for international or Essential Air Service Program operations, including any slot created by an increase in the operating limits set forth in § 93.123(a).

* * * * *

(e) Participation in a lottery is open to each U.S. air carrier or commuter operator operating at the airport and providing scheduled passenger service at the airport. Any U.S. carrier that is not operating scheduled service at the airport and has not failed to operate slots obtained in previous lotteries, or slots traded for those obtained by lottery, but wishes to initiate scheduled passenger service at the airport, shall be included in the lottery if that operator notifies, in writing, the Slot Administration Office, AGC–230, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591. The notification must be received 15 days prior to the lottery date and state whether there is any common ownership or control of, by, or with any other air carrier or commuter operator as defined in § 93.213(c). New entrant and limited incumbent carriers will be permitted to complete their selections before participation by other incumbent carriers is initiated.

* * * * *

(g) To select slots during a slot lottery session, a carrier must have appropriate economic authority for scheduled passenger service under Title IV of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1371 et seq.), and must hold FAA operating authority under part 121 or part 135 of this chapter as appropriate for the slots the operator seeks to select.

(h) During the first selection sequence, 25 percent of the slots available but no less than two slots shall be reserved for selection by new entrant carriers. If new entrant carriers do not select all of the slots set aside for new entrant carriers, limited incumbent carriers may select the remaining slots. If every participating new entrant carrier and limited incumbent carrier has ceased selection of available slots or has obtained 12 slots at that airport, other incumbent carriers may participate in selecting the remaining slots; however, slots selected by non-limited incumbent carriers will be allocated only until the date of the next lottery.

* * * * *

7. In § 93.227, paragraphs (a), (b), (d), and (g) are revised to read as follows:

§ 93.227 Slot use and loss.

(a) *Minimum slot use.* (1) Except as provided in paragraphs (b), (c), (d), and (g) of this section, any slot not used for 80 percent of the time over a 2-month period shall be recalled by the FAA.

(2) For the purposes of this paragraph (a), operation of a flight for which an international slot was allocated pursuant to § 93.217 will not be considered as use of any other slot, regardless of how the operation is reported by the carrier.

(b) Paragraph (a) of this section does not apply to slots obtained under § 93.225 of this part during:

(i) The first 90 days after they are allocated to a new entrant carrier; or

(ii) The first 60 days after they are allocated to a limited incumbent or other incumbent carrier.

* * * * *

(d) In the case of a carrier that files for protection under the Federal bankruptcy laws and has not received a Notice of Withdrawal from the FAA for the subject slot or slots, paragraph (a) of this section does not apply:

(1) During a period after the initial petition in bankruptcy, to any slot held or operated by that carrier, for:

(i) 60 days after the carrier files the initial petition in bankruptcy; and

(ii) 30 days after the carrier, in anticipation of transferring slots, submits information to a Federal government agency in connection with a statutory antitrust, economic impact, or similar review of the transfer, provided that the information is submitted more than 30 days after filing the initial petition in bankruptcy, and provided further that any slot to be transferred has not become subject to withdrawal under any other provision of this § 93.227; and

(2) During a period after a carrier ceases operations at an airport, to any slot held or operated by that carrier at that airport, for:

(i) 30 days after the carrier ceases operations at that airport, provided that the slot has not become subject to withdrawal under any other provision of this § 93.227; and

(ii) 30 days after the parties to a proposed transfer of any such slot comply with requests for additional information by a Federal government agency in connection with an antitrust, economic impact, or similar investigation of the transfer, provided that—

(A) The original notice of the transfer is filed with the Federal agency within 30 days after the carrier ceases operation at the airport;

(B) The request for additional information is made within 10 days of the filing of the notice by the carrier;

(C) The carrier submits the additional information to the Federal agency within 15 days of the request by such agency; and

(D) Any slot to be transferred has not become subject to withdrawal under any other provision of this § 93.227.

* * * * *

(g) This section does not apply to slots used for the operations described in § 93.217(a)(1) except that a U.S. air carrier or commuter operator required to file a report under paragraph (i) of this section shall include all slots operated at the airport, including slots described in § 93.217(a)(1).

§ 93.229 [Removed]

8. Section 93.229 is removed.

Issued in Washington, DC, on August 12, 1992.

Thomas C. Richards,

Administrator.

[FR Doc. 92–19585 Filed 8–13–92; 10:00 am]

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Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 520 et al.

New Animal Drugs; Removal of Obsolete Regulations and Recodification; Rule

VOL 57 SS 160 AG 18 9 92 JMI

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520, 522, 524, 526, 529, 536, 539, 540, 544, 546, 548, and 555

[Docket No. 89N-0312]

New Animal Drugs; Removal of Obsolete Regulations and Recodification

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its animal drug regulations by removing the technical provisions in 21 CFR parts 536, 539, 540, 544, 546, 548, and 555 that contain tests and methods of assay for the certification of new animal drugs that are composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, or bacitracin. These sections have become obsolete because the statutory provisions regarding certification of the antibiotic drugs were revoked by the Generic Animal Drug and Patent Term Restoration Act of 1988. At the same time, those paragraphs within the sections being deleted that relate to conditions for marketing new animal drugs, which are still effective, are being recodified into 21 CFR parts 520, 522, 524, 526, and 529.

EFFECTIVE DATE: This revocation and recodification becomes effective on August 18, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert S. Brigham, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8737.

SUPPLEMENTARY INFORMATION: On November 16, 1988, the President signed into law the Generic Animal Drug and Patent Term Restoration Act (GADPTRA) (Pub. L. 100-670, 102 Stat. 3971). GADPTRA amended the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*). The primary thrust of GADPTRA was to establish eligibility for the submission of abbreviated new animal drug applications for drug products first approved in new animal drug applications after the 1962 amendments to the act. GADPTRA also amended 35 U.S.C. 156 and 271 to authorize the extension of patents for animal drug products. GADPTRA removed from the act all provisions for the certification of antibiotic drugs for animal use: Sections 201(w)(3) and 512 (a)(1)(C) and (n) of the act (21 U.S.C. 321(w)(3) and 360b (a)(1)(C) and (n)).

In the Federal Register of May 26, 1989 (54 FR 22741), the agency published a rule which removed the antibiotic certification procedural regulations made obsolete by GADPTRA. This final rule removes the technical regulations that include the requirements for certification and tests and methods of assay contained in 21 CFR parts 536, 539, 540, 544, 546, 548, and 555 concerning specific antibiotic drugs. At the same time, specific provisions concerning conditions of marketing contained in the technical regulations that were established under section 512(i) of the act, which were not affected by GADPTRA, are being recodified within the existing regulations by their route of administration (21 CFR parts 520, 522, 524, 526, and 529). The regulations in part have been editorially revised to reflect current United States Pharmacopeia (U.S.P.) terminology, to be consistent in format to the existing regulations, and to reflect the current labeling of the approved product.

The following table shows the relationship in the CFR section numbers formerly under parts 540 through 555 to this redesignation reflected in parts 520 through 529.

Old section	New section
540.103	520.88
540.103a(c)	520.88a
540.103b(c)	520.88b
540.103c(c)	520.88c
540.103d(c)	520.88d
540.103e(c)	520.88e
540.103f(c)	520.88f
540.103g(c)	520.88g
540.103h(c)	520.88h
540.105(c)	520.90a
540.107	520.90
540.107a(c)	520.90b
540.107b(c)	520.90c
540.107c(c)	520.90d
540.107d(c)	520.90e
540.107e(c)	520.90f
540.119(c)	520.608
540.129	520.1130
540.129a(c)	520.1130c
540.129b(c)	520.1130a
540.129c(c)	520.1130b
540.173a(c)	520.1696c
540.173b(c)	520.1696d
540.174	520.1696
540.174a(c)	520.1696a
540.181b(c)	520.1696b
540.203(c)	522.88
540.207	522.90
540.207a(c)	522.90a
540.207b(c)	522.90b
540.209(c)	522.90c
540.255c(c)	522.1696a
540.274	522.1696
540.274b(c)	522.1696b
540.274c(c)	522.1696c
540.680(c)	529.2464
540.803(c)	526.88
540.814(c)	526.464a
540.814a(c)	526.464b
540.815(c)	526.464c
540.815a(c)	526.464d
540.829(c)	526.1130
540.874	526.1696
540.874a(c)	526.1696a
540.874d(c)	526.1696b
540.874e(c)	526.1696c
540.874f(c)	526.1696d
544.170b(c)	520.2158a
544.173	520.2158
544.173a(c)	520.2158b
544.173b(c)	520.2158c
544.275(c)	522.650
546.110	520.445
546.110c(c)	520.445b
546.110d(c)	520.445c
546.113b(c)	520.445a
546.180	520.2345
546.180a(c)	520.2345a
546.180b(c)	520.2345b
546.180c(c)	520.2345c
546.180d(c)	520.2345d
546.180e(c)	520.2345e
546.180g(c)	520.2345f
546.180h(c)	520.2345g
546.180i(c)	520.2345h
548.112	520.154
548.112a(c)	520.154a
548.112d(c)	520.154b
548.114(c)	520.154c
548.314a(c)	524.154
548.314b(c)	524.155
555.110	520.390
555.110a(c)	520.390a
555.110b(c)	520.390b
555.111(c)	520.390c
555.210(c)	522.390
555.310	524.390
555.310c(c)	524.390a
555.310d(c)	524.390b
555.310e(c)	524.390c
555.310f(c)	524.390d

This rule is being published as a final regulation without prior notice and opportunity for public comment because it reflects new animal drug application approvals codified in the regulations pursuant to section 512(i) of the act (21 U.S.C. 360b(i)) rather than substantive rules of general applicability under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*).

In addition, prior notice and public comment procedures are unnecessary for promulgation of this final rule because the revisions affected merely reflect statutory changes without the exercise of agency discretion, conformance to newer U.S.P. nomenclature, nonsubstantive editorial revisions to reflect current text and format, and current labeling.

List of Subjects

21 CFR Ports 520, 522, 524, 526, and 529

Animal drugs.

21 CFR Ports 536, 539, 540, 544, 546, 548, and 555

Animal drugs, Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Title 21, Chapter I of the Code of Federal Regulations is amended as follows:

PART 520 [AMENDED]

Part 520 is amended as follows:

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. The heading for part 520 is revised to read as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. New §§ 520.88, 520.88a, 520.88b, 520.88c, 520.88d, 520.88e, 520.88f, 520.88g, 520.88h, 520.90, 520.90a, 520.90b, 520.90c, 520.90d, 520.90e, and 520.90f are added to read as follows:

§ 520.88 Amoxicillin oral dosage forms.

§ 520.88a Amoxicillin trihydrate film-coated tablets.

(a) *Specifications.* Each tablet contains amoxicillin trihydrate equivalent to 50, 100, 150, 200, or 400 milligrams of amoxicillin.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 milligrams per pound of body weight, twice a day.

(ii) *Indications for use.* Treatment of infections of the respiratory tract (tonsillitis, tracheobronchitis), genitourinary tract (cystitis), gastrointestinal tract (bacterial gastroenteritis), and soft tissues (abscesses, lacerations, wounds), caused by susceptible strains of *Staphylococcus aureus, Streptococcus* spp., *Escherichia coli, Proteus mirabilis,* and bacterial dermatitis caused by *S. aureus, Streptococcus* spp., and *P. mirabilis.*

(iii) *Limitations.* Administer for 5 to 7 days or 48 hours after all symptoms have subsided. If no improvement is seen in 5 days, review diagnosis and change therapy. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 50 milligrams (5 to 10 milligrams per pound of body weight) once a day.

(ii) *Indications for use.* Treatment of infections caused by susceptible organisms as follows: upper respiratory tract due to *S. aureus, Streptococcus* spp., and *E. coli;* genitourinary tract (cystitis) due to *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis;* gastrointestinal tract due to *E. coli;* and skin and soft tissue (abscesses, lacerations, and wounds) due to *S. aureus, Streptococcus* spp., *E. coli,* and *Pasteurella multocida.*

(iii) *Limitations.* Administer for 5 to 7 days or 48 hours after all symptoms have subsided. If no improvement is seen in 5 days, review diagnosis and change therapy. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.88b Amoxicillin trihydrate for oral suspension.

(a) *Specifications.* When reconstituted, each milliliter contains amoxicillin trihydrate equivalent to 50 milligrams of amoxicillin.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(1) *Conditions of use.*—(i) *Dogs*—(A) *Amount.* 5 milligrams per pound of body weight twice daily.

(B) *Indications for use.* Treatment of infections caused by susceptible strains of organisms as follows: respiratory tract (tonsillitis, tracheobronchitis) caused by *Staphylococcus aureus, Streptococcus* spp., *Escherichia coli,* and *Proteus mirabilis;* genitourinary tract (cystitis) caused by *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis;* gastrointestinal tract (bacterial gastroenteritis) caused by *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis;* bacterial dermatitis caused by *S. aureus, Streptococcus* spp., and *P. mirabilis;* and soft tissues (abscesses, lacerations, and wounds) caused by *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis.*

(C) *Limitations.* Use for 5 to 7 days or 48 hours after all symptoms have subsided. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) *Cats*—(A) *Amount.* 50 milligrams (5 to 10 milligrams per pound) once daily.

(B) *Indications for use.* Treatment of infections caused by susceptible strains of organisms as follows: upper respiratory tract due to *Staphylococcus* spp., *Streptococcus* spp., *Hemophilus* spp., *E. coli, Posteurello* spp., and *P. mirabilis;* genitourinary tract (cystitis) due to *S. aureus, Streptococcus* spp., *E. coli, P. mirabilis,* and *Corynebacterium* spp; gastorintestinal tract due to *E. coli. Proteus* spp., *Staphylococcus* spp., and *Streptococcus* spp.; skin and soft tissue (abscesses, lacerations, and wounds) due to *Staphylococcus* spp., *Streptococcus* spp., *E. coli,* and *Pasteurella multocida.*

(C) *Limitations.* Use for 5 to 7 days or 48 hours after all symptoms have subsided. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(c) *Sponsor.* See Nos. 000031 and 000332 in § 510.600(c) of this chapter.

(1) *Conditions of use. Dogs*—(i) *Amount.* 5 milligrams per pound of body weight twice daily.

(ii) *Indications for use.* Treatment of bacterial dermatitis due to *S. aureus, Streptococcus* spp., *Staphylococcus* spp., and *E. coli,* and soft tissue infections (abscesses, wounds, lacerations) due to *S. aureus, Streptococcus* spp., *E. coli, P. mirabilis* and *Stophylococcus* spp.

(iii) *Limitations.* Use for 5 to 7 days. Continue for 48 hours after all symptoms have subsided. If no improvement is seen in 5 days, review diagnosis and change therapy. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

§ 520.88c Amoxicillin trihydrate oral suspension.

(a) *Specifications.* Each 0.8-milliliter dose contains amoxicillin trihydrate equivalent to 40 milligrams of amoxicillin.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.510 of this chapter.

(d) *Conditions of use. Swine*—(1) *Amount.* 40 milligrams orally, twice a day using a dosing pump.

(2) *Indications for use.* Treatment of baby pigs under 10 pounds for porcine colibacillosis caused by *Escherichia coli* susceptible to amoxicillin.

(3) *Limitations.* Treat animals for 48 hours after all symptoms have subsided but not beyond 5 days. Do not slaughter during treatment or for 15 days after latest treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.88d Amoxicillin trihydrate soluble power.

(a) *Specifications.* Each gram contains amoxicillin trihydrate equivalent to 115.4 milligrams of amoxicillin.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Related tolerances.* "See" § 556.38 of this chapter.

(d) *Conditions of use. Nonruminating calves*—(1) *Amount.* 400 milligrams per 100 pounds of body weight twice daily.

(2) *Indications for use.* Treatment of bacterial enteritis when due to susceptible *Escherichia coli* in nonruminating calves.

(3) *Limitations.* Administer by drench or by mixing in milk. Treatment should be continued for 48 hours after all symptoms have subsided but not to exceed 5 days. For use in nonruminating calves only, not for use in other animals which are raised for food production. Do not slaughter animals during treatment or for 20 days after the latest treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.88e Amoxicillin trihydrate boluses.

(a) *Specifications.* Each bolus contains the equivalent of 400 milligrams of amoxicillin.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.38 of this chapter.

(d) *Conditions of use. Nonruminating calves*—(1) *Amount.* 400 milligrams per 100 pounds of body weight twice daily.

(2) *Indications for use.* Treatment of bacterial enteritis when due to susceptible *Escherichia coli* in nonruminating calves.

(3) *Limitations.* For oral use in nonruminating calves only, not for use in other animals which are raised for food production. Treatment should be continued for 48 hours after all symptoms have subsided but not to exceed 5 days. Do not slaughter animals during treatment or for 20 days after the latest treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.88f Amoxicillin trihydrate tablets.

(a) *Specifications.* Each tablet contains amoxicillin trihydrate equivalent to 50, 100, 200, or 400 milligrams of amoxicillin.

(b) *Sponsor.* See Nos. 000031 or 000332 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 milligrams per pound of body weight twice a day.

(ii) *Indications for use.* Treatment of bacterial dermatitis due to *Staphylococcus aureus, Streptococcus* spp., *Staphylococcus* spp., and *Escherichia coli* and soft tissue infections (abscesses, wounds, lacerations) due to *S. aureus, Streptococcus* spp., *E. coli, Proteus mirabilis,* and *Staphylococcus* spp.

(iii) *Limitations.* Use for 5 to 7 days or 48 hours after all symptoms have subsided. If no improvement is seen in 5 days, review diagnosis and change therapy. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) [Reserved]

§ 520.88g Amoxicillin trihydrate and clavulanate potassium film-coated tablets.

(a) *Specifications.* Each tablet contains amoxicillin trihydrate and clavulanate potassium, equivalent to either 50 milligrams of amoxicillin and 12.5 milligrams clavulanic acid, or 100 milligrams of amoxicillin and 25 milligrams clavulanic acid, or 200 milligrams amoxicillin and 50 milligrams clavulanic acid or 300 milligrams amoxicillin and 75 milligrams clavulanic acid.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 6.25 milligrams (equivalent to 5 milligrams amoxicillin and 1.25 milligrams clavulanic acid) per pound of body weight twice daily.

(ii) *Indications for use.* Treatment of skin and soft tissue infections such as wounds, abscesses, cellulitis, superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) *Staphylococcus aureus,* nonbeta-lactamase *S. aureus, Staphylococcus* spp., *Streptococcus* spp., and *Escherichia coli.*

(iii) *Limitations.* Wounds, abscesses, cellulitis, and superficial/juvenile pyoderma: Treat for 5 to 7 days or for 48 hours after all signs have subsided. If no improvement is seen after 5 days of treatment, discontinue therapy and reevaluate diagnosis. Deep pyoderma may require treatment for 21 days; do not treat for more than 30 days. Not for use in dogs maintained for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 62.5 milligrams (1 milliliter) (50 milligrams amoxicillin and 12.5 milligrams clavulanic acid) twice daily.

(ii) *Indications for use.* Treatment of skin and soft tissue infections, such as wounds, abscesses and cellulitis/dermatitis due to susceptible strains of beta-lactamase (penicillinase) producing *S. aureus,* nonbeta-lactamase producing *S. aureus, Staphylococcus* spp., *Streptococcus* spp., *E. coli,* and *Pasteurella* spp. Also, treatment of urinary tract infections (cystitis) due to susceptible strains of *E. coli.*

(iii) *Limitations.* Skin and soft tissue infections: abscesses, cellulitis/dermatitis should be treated for 5 to 7 days or for 48 hours after all signs have subsided. If no response is seen after 3 days of treatment, therapy should be discontinued and diagnosis reevaluated. Urinary tract infections may require treatment for 10 to 14 days or longer. The maximum duration of treatment should not exceed 30 days. Safety of use in pregnant or breeding animals has not been established. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.88h Amoxicillin trihydrate and clavulanate potassium for oral suspension.

(a) *Specifications.* When reconstituted, each milliliter contains amoxicillin trihydrate equivalent to 50 milligrams of amoxicillin with clavulanate potassium equivalent to 12.5 milligrams of clavulanic acid.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 6.25 milligrams (equivalent to 5 milligrams amoxicillin and 1.25 milligrams clavulanic acid) per pound of body weight twice daily.

(ii) *Indications for use.* Treatment of skin and soft tissue infections such as wounds, abscesses, cellulitis, superficial/juvenile and deep pyoderma due to susceptible strains of beta-lactamase (penicillinase) producing *Staphylococcus aureus,* nonbeta-lactamase *Staphylococcus aureus, Staphylococcus* spp., *Streptococcus* spp., and *Escherichia coli.*

(iii) *Limitations.* Administer for 5 to 7 days or 48 hours after all symptoms subsided. Deep pyoderma may require 21 days, not to exceed 30 days. If no improvement is seen in 5 days, discontinue therapy and reevaluate the case. Not for use in dogs maintained for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 62.5 milligrams (1 milliliter) (50 milligrams of amoxicillin and 12.5 milligrams clavulanic acid) twice daily.

(ii) *Indications for use.* Treatment of feline skin and soft tissue infections, such as wounds, abscesses and cellulitis/dermatitis due to susceptible strains of beta-lactamase (penicillinase) producing *S. aureus,* nonbeta-lactamase *S. aureus, Staphylococcus* spp., *Streptococcus* spp., *E. coli, Pasteurella multocida,* and *Pasteurella* spp.

(iii) *Limitations.* Administer 48 hours after all symptoms have subsided. If no improvement is seen after 3 days of treatment, discontinue therapy and reevaluate diagnosis. Maximum duration of treatment should not exceed 30 days. Not for use in cats maintained for breeding. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.90 Ampicillin oral dosage forms.

§ 520.90a Ampicillin capsules.

(a) *Specifications.* Each capsule contains 125 milligrams or 250 milligrams of ampicillin.

(b) *Sponsor.* See No. 000008 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 to 10 milligrams per pound of body weight, e.g., one 125 mg capsule per 14 to 25 pounds, given 2 to 4 times daily; for animals weighing 6 to 14 pounds, one capsule twice daily.

(ii) *Indications for use.* Treatment of urinary tract infections (cystitis) due to *Proteus* spp., hemolytic and nonhemolytic streptococci, beta hemolytic streptococci, and *Escherichia coli.* In upper respiratory tract infections tracheobronchitis (kennel cough), tonsillitis due to alpha and beta hemolytic streptococci, hemolytic positive staphylococci, *E. coli,* and *Proteus* spp. In infections associated with abscesses, lacerations, and wounds due to *Staphylococcus* spp. and *Streptococcus* spp.

(iii) *Limitations.* Bacteriologic studies to determine the causative organisms and their susceptibility to ampicillin should be performed. Use of the drug is contraindicated in animals with a history of an allergic reaction to any of the penicillins. Ampicillin is contraindicated in infections caused by penicillinase-producing organisms. Not for use in animals which are raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 125 milligrams twice daily; in more acute conditions three times daily.

(ii) *Indications for use.* Treatment of respiratory tract infections (bacterial pneumonia) due to alpha and beta hemolytic streptococci, hemolytic positive staphylococci, *E. coli,* and *Proteus* spp. In infections associated with abscesses, lacerations, and wounds due to *Staphylococcus* spp. and *Streptococcus* spp.

(iii) *Limitations.* Bacteriologic studies to determine the causative organisms and their susceptibility to ampicillin should be performed. Use of the drug is contraindicated in animals with a history of an allergic reaction to any of the penicillins. Ampicillin is contraindicated in infections caused by penicillinase-producing organisms. Not for use in animals which are raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.90b Ampicillin trihydrate tablets.

(a) *Specifications.* Each tablet contains ampicillin trihydrate equivalent to 50 or 100 milligrams of ampicillin.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs*—(1) *Amount.* 5 milligrams per pound of body weight, at 8-hour intervals, 1 to 2 hours prior to feeding, to be continued 36 to 48 hours after all symptoms have subsided. If no improvement is seen within 5 days, stop treatment, reevaluate diagnosis, and change therapy.

(2) *Indications for use.* Oral treatment of infections caused by susceptible organisms as follows: Upper respiratory infections, tonsillitis, and bronchitis due to *Streptococcus* spp., *Staphylococcus* spp., *Escherichia coli, Proteus mirabilis,* and *Pasteurella* spp., urinary tract infections (cystitis) due to *Streptococcus* spp., *Staphylococcus* spp., *E., coli, P. mirabilis,* and *Enterococcus* spp.; gastrointestinal infections due to *Staphylococcus* spp., *Streptococcus* spp., *Enterococcus* spp., and *E. coli.*; infections associated with abscesses, lacerations, and wounds caused by *Staphylococcus* spp., and *Streptococcus* spp.

(3) *Limitations.* Not for use in animals which have shown hypersensitivity to penicillin or for infections caused by penicillinase-producing organisms. Not for use in animals which are raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.90c Ampicillin trihydrate capsules.

(a) *Specifications.* Each capsule contains ampicillin trihydrate equivalent to 125, 250, or 500 milligrams of ampicillin.

(b) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 to 10 milligrams per pound of body weight two or three times daily. In severe or acute conditions, 10 milligrams per pound of body weight, three times daily. Administer 1 to 2 hours prior to feeding.

(ii) *Indications for use.* Treatment against strains of gram-negative and gram-positive organisms sensitive to ampicillin and associated with respiratory tract infections (tracheobronchitis and tonsillitis); urinary tract infections (cystitis); bacterial gastroenteritis; generalized infections (septicemia) associated with abscesses, lacerations, and wounds; and bacterial dermatitis.

(iii) *Limitations.* The drug may be given as an emergency measure; however, in vitro sensitivity tests on samples collected prior to treatment should be made. Ampicillin is contraindicated for use in infections caused by penicillinase-producing organisms and for use in animals known to be allergic to any of the penicillins. Not for use in animals raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 10 to 30 milligrams per pound of body weight or three times daily. Administer 1 to 2 hours prior to feeding.

(ii) *Indications for use.* Treatment against strains of gram-negative and gram-positive organisms sensitive to ampicillin and associated with respiratory tract infections (bacterial pneumonia); urinary tract infections (cystitis); and generalized infections (septicemia) associated with abscesses, lacerations, and wounds.

(iii) *Limitations.* The drug may be given as an emergency measure; however, in vitro sensitivity tests on samples collected prior to treatment should be made. Ampicillin is contraindicated for use in infections caused by penicillinase-producing organisms and for use in animals known to be allergic to any of the penicillins. Not for use in animals raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.90d Ampicillin trihydrate for oral suspension.

(a) *Specifications.* When reconstituted as directed, each milliliter contains ampicillin trihydrate equivalent to 25 milligrams of ampicillin.

(b) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 to 10 milligrams per pound of body weight orally, 2 or 3 times daily, 1 to 2 hours prior to feeding. In severe or acute conditions, 10 milligrams per pound of body weight 3 times daily.

(ii) *Indications for use.* Treatment of respiratory tract infections (tracheobronchitis and tonsillitis) due to *Escherichia coli, Pseudomonas* spp., *Proteus* spp., *Staphylococcus* spp., and *Streptococcus* spp., urinary tract infections (cystitis) due to *E. coli, Staphylococcus* spp., *Streptococcus* spp., and *Proteus* spp.; bacterial gastroenteritis due to *E. coli*; generalized infections (septicemia) associated with abscesses, lacerations, and wounds, due to *Staphylococcus* spp. and *Streptococcus* spp.; bacterial dermatitis due to *Staphylococcus* spp., *Streptococcus* spp., *Proteus* spp., and *Pseudomonas* spp.

(iii) *Limitations.* Duration of treatment is usually 3 to 5 days. Continue treatment 48 hours after the animal's temperature has returned to normal and all other signs of infection have subsided. If no response is obtained within 3 to 5 days, reevaluate diagnosis and treatment. Appropriate laboratory tests should be conducted, including in vitro culturing and susceptibility tests on samples collected prior to treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 10 to 30 milligrams per pound of body weight orally, 2 or 3 times daily, 1 to 2 hours prior to feeding.

(ii) *Indications for use.* Treatment of respiratory tract infections (bacterial pneumonia) due to *Staphylococcus* spp., *Streptococcus* spp., *E. coli*, and *Proteus* spp.; urinary tract infections (cystitis) due to *E. coli*, *Staphylococcus* spp., *Streptococcus* spp., *Proteus* spp., and *Corynebacterium* spp.; generalized infections (septicemia) associated with abscesses, lacerations, and wounds, due to *Staphylococcus* spp., *Streptococcus* spp., *Bocillus* spp., and *Pasteurello* spp.

(iii) *Limitations.* Duration of treatment is usually 3 to 5 days. Continue treatment 48 hours after the animal's temperature has returned to normal and all other signs of infection have subsided. If no response is obtained within 3 to 5 days, reevaluate diagnosis and treatment. Appropriate laboratory tests should be conducted, including in vitro culturing and susceptibility tests on samples collected prior to treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.90e Ampicillin trihydrate soluble powder.

(a) *Specifications.* Each gram contains ampicillin trihydrate equivalent to 88.2 milligrams of ampicillin.

(b) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.40 of this chapter.

(d) *Conditions of use. Swine*—(1) *Amount.* 5 milligrams of ampicillin per pound of body weight twice daily, orally by gavage or in drinking water for up to 5 days.

(2) *Indications for use.* Oral treatment of porcine colibacillosis (*Escherichia coli*) and salmonellosis (*Salmonella* spp.) infections in swine up to 75 pounds of body weight, and bacterial pneumonia caused by *Pasteurella multocida*, *Staphylococcus* spp., *Streptococcus* spp., and *Salmonella* spp.

(3) *Limitations.* For use in swine only. Not for use in other animals which are raised for food production. Treated swine must not be slaughtered for food during treatment and for 24 hours following the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.90f Ampicillin trihydrate boluses.

(a) *Specifications.* Each bolus contains ampicillin trihydrate equivalent to 400 milligrams of ampicillin.

(b) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter for use as in paragraph (d)(1), 053571 for use as in paragraph (d)(2).

(c) *Related tolerances.* See § 556.40 of this chapter.

(d) *Conditions of use. Nonruminating calves*—(1) *Amount.* 5 milligrams per pound of body weight twice daily for up to 5 days.

(i) *Indications for use.* Oral treatment of colibacillosis caused by *Escherichia coli*, bacterial enteritis caused by *Salmonella* spp., and bacterial pneumonia caused by *Pasteurella* spp.

(ii) *Limitations.* Treated calves must not be slaughtered for food during treatment and for 15 days after the last treatment. Not for use in other animals raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Amount.* 5 milligrams per pound of body weight twice daily not to exceed 4 days.

(i) *Indications for use.* Oral treatment of bacterial enteritis (colibacillosis) caused by *E. coli*.

(ii) *Limitations.* Treated calves must not be slaughtered for food during treatment and for 7 days after the last treatment. Not for use in other animals raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

4. New §§ 520.154, 520.154a, 520,154b, and 520.154c are added to read as follows:

§ 520.154 Bacitracin oral dosage forms.

§ 520.154a Soluble bacitracin methylene disalicylate.

(a) *Specifications.* Each pound of soluble powder contains the equivalent of 50 grams of bacitracin activity for use as in paragraph (d)(1) or (d)(2) of this section, or the equivalent of 200 grams of bacitracin activity for use as in paragraph (d)(3) of this section.

(b) *Sponsor.* See No. 046573 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.70 of this chapter.

(d) *Conditions of use*—(1) *Growing turkeys*—(i) *Amount.* 400 milligrams per gallon in drinking water.

(ii) *Indications for use.* Aid in the control of transmissible enteritis complicated by organisms susceptible to bacitracin methylene disalicylate.

(iii) *Limitations.* Prepare a fresh solution daily.

(2) *Broiler chickens*—(i) *Amount.* 100 milligrams per gallon in drinking water.

(A) *Indicotions for use.* Aid in the prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to bacitracin methylene disalicylate.

(B) *Limitations.* Prepare a fresh solution daily.

(ii) *Amount.* 200 to 400 milligrams per gallon in drinking water.

(A) *Indications for use.* Aid in the control of necrotic enteritis caused by *C. perfringens* susceptible to bacitracin methylene disalicylate.

(B) *Limitations.* Prepare a fresh solution daily.

(3) *Swine*—(i) *Amount.* 1 gram per gallon in drinking water.

(ii) *Indications for use.* Treatment of swine dysentery associated with *Treponemo hyodysenteriae*. Administer continuously for 7 days or until signs of dysentery disappear.

(iii) *Limitations.* Prepare a fresh solution daily. Treatment not to exceed 14 days. If symptoms persist after 4 to 5 days consult a veterinarian. Not to be given to swine that weigh more that 250 pounds.

§ 520.154b Soluble bacitracin methylene disalicylate and streptomycin sulfate oral powder.

(a) *Specifications.* Each gram contains 200 units of soluble bacitracin methylene disalicylate, streptomycin sulfate equivalent to 20 milligrams of streptomycin, and 850 milligrams of carob flour.

(b) *Sponsor.* See No. 011716 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs*—(1) *Amount.* 1 level teaspoonful per 10 pounds of body weight three times daily, mixed in a small quantity of liquid or feed.

(2) *Indications for use.* Treatment of bacterial enteritis caused by pathogens susceptible to bacitracin and streptomycin such as *Escherichio coli*, *Proteus* spp., *Staphylococcus* spp., and *Streptococcus* spp., and for the symptomatic treatment of associated diarrhea.

(3) *Limitations.* If no improvement is noted in 2 to 3 days, diagnosis should be reevaluated. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.154c Bacitracin zinc soluble powder.

(a) *Specifications.* Each pound contains the equivalent of not less than 5 grams of bacitracin.

(b) *Sponsor.* See No. 010042 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.70 of this chapter.

(d) *Conditions of use.* (1) *Broiler chickens*—(i) *Amount.* 100 milligrams per gallon in drinking water.

(A) *Indications for use.* Prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to bacitracin zinc.

(B) *Limitations.* Prepare a fresh solution daily.

(ii) *Amount.* 200 to 400 milligrams per gallon in drinking water.

(A) *Indications for use.* Control of necrotic enteritis caused by *Clostridium perfringens* susceptible to bacitracin zinc.

(B) *Limitations.* Prepare a fresh solution daily.

(2) *Growing quail*—(i) *Amount.* 500 milligrams per gallon in drinking water for 5 days followed by 165 milligrams per gallon in drinking water for 10 days.

(ii) *Indications for use.* Control of ulcerative enteritis caused by *Clostridium* spp. susceptible to bacitracin zinc.

(iii) *Limitations.* Prepare a fresh solution daily.

5. New §§ 520.390, 520.390a, 520.390b, and 520.390c are added to read as follows:

§ 520.390 Chloramphenicol oral dosage forms.

§ 520.390a Chloramphenicol tablets.

(a)(1) *Specifications.* Each tablet contains 100, 250, or 500 milligrams, 1 or 2.5 grams of chloramphenicol.

(2) *Sponsor.* In § 510.600(c) of this chapter: No. 000010 for 100-, 250-, and 500-milligram and 1-gram tablets; No. 000856 for 100-, 250-, and 500-milligram tablets; No. 017030 for 100-milligram tablets; No. 054273 for 100-, 250-, and 500-milligram and 1- and 2.5-gram tablets; No. 000069 for 250-milligram tablets.

(3) *Conditions of use. Dogs*—(i) *Amount.* 25 milligrams per pound of body weight every 6 hours.

(ii) *Indications for use.* Oral treatment of bacterial pulmonary infections, bacterial infections of the urinary tract, bacterial enteritis, and bacterial infections associated with canine distemper caused by susceptible organisms.

(iii) *Limitations.* Laboratory tests should be conducted, including in vitro culturing and susceptibility tests on samples collected prior to treatment. If no response to chloramphenicol therapy is obtained in 3 to 5 days, discontinue its use and review diagnosis. Not for animals which are raised for food production. Chloramphenicol products must not be used in meat-, egg-, or milk-producing animals. The length of time that residues persist in milk or tissues has not been determined. Because of potential antagonism, chloramphenicol should not be administered simultaneously with penicillin or streptomycin. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b)(1) *Specifications.* Each tablet contains 50, 100, 250, or 500 milligrams, or 1 gram of chloramphenicol.

(2) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(3) *Conditions of use. Dogs*—(i) *Amount.* 25 milligrams per pound of body weight every 6 hours.

(ii) *Indications for use.* Oral treatment of bacterial gastroenteritis associated with bacterial diarrhea, bacterial pulmonary infections, and bacterial infections of the urinary tract caused by susceptible organisms.

(iii) *Limitations.* Laboratory tests should be conducted, including in vitro culturing and susceptibility tests on samples collected prior to treatment. If no response is obtained in 3 to 5 days, discontinue use and reevaluate diagnosis. Not for animals that are raised for food production. Chloramphenicol products should not be administered in conjunction with or 2 hours prior to the induction of general anesthesia with pentobarbital because of prolonged recovery. Chloramphenicol should not be administered to dogs maintained for breeding purposes. Because of potential antagonism, chloramphenicol should not be administered simultaneously with penicillin or streptomycin. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.390b Chloramphenicol capsules.

(a) *Specifications.* Each capsule contains 50, 100, 250, or 500 milligrams of chloramphenicol.

(b) *Sponsor.* (1) For chloramphenicol capsules containing 50, 100, 250, or 500 milligrams of chloramphenicol see Nos. 000069, 000172, 000185, and 027454 in § 510.600(c) of this chapter.

(2) For chloramphenicol capsules containing 100 or 250 milligrams of chloramphenicol see No. 058034 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs*—(1) *Amount.* 25 milligrams per pound of body weight every 6 hours.

(2) *Indicotions for use.* Oral treatment of bacterial pulmonary infections, bacterial infections of the urinary tract, bacterial enteritis, and bacterial infections associated with canine distemper caused by susceptible organisms.

(3) *Limitations.* Laboratory tests should be conducted including in vitro culturing and susceptibility tests on samples collected prior to treatment. This product must not be used in meat-, egg-, or milk-producing animals. The length of time that residues persist in milk or tissues has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.390c Chloramphenicol palmitate oral suspension.

(a) *Specifications.* Each milliliter contains chloramphenicol palmitate equivalent to 30 milligrams of chloramphenicol.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs*—(1) *Amount.* 25 milligrams per pound of body weight every 6 hours. If no response is obtained in 3 to 4 days, discontinue use and reevaluate diagnosis.

(2) *Indications for use.* Treatment of bacterial pulmonary infections, infections of the urinary tract, enteritis, and infections associated with canine distemper that are caused by organisms susceptible to chloramphenicol.

(3) *Limitations.* Not for use in animals that are raised for food production. Must not be used in meat-, egg-, or milk-producing animals. The length of time that residues persist in milk or tissues has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

6. New §§ 520.445, 520.445a, 520.445b, and 520.445c are added to read as follows:

§ 520.445 Chlortetracycline oral dosage forms.

§ 520.445a Chlortetracycline bisulfate/sulfamethazine bisulfate soluble powder.

(a) *Specifications.* Each pound contains chlortetracycline bisulfate equivalent to 102.4 grams of chlortetracycline hydrochloride with sulfamethazine bisulfate equivalent to 102.4 grams of sulfamethazine.

(b) *Sponsor.* See No. 010042 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.150 and 556.670 of this chapter.

(d) *Conditions of use. Swine*—Used in drinking water as follows:

(1) *Amount.* 250 milligrams of chlortetracycline with 250 milligrams of sulfamethazine per gallon.

(2) *Indications for use.* Prevention and treatment of bacterial enteritis; aid in the reduction of the incidence of cervical

abscesses; aid in the maintenance of weight gains in the presence of bacterial enteritis and atrophic rhinitis.

(3) *Limitations.* Not to be used for more than 28 consecutive days; withdraw 15 days before slaughter; as sole source of chlortetracycline and sulfonamide.

§ 520.445b Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate).

(a) *Specifications.* Chlortetracycline powder contains not less than 15 milligrams per gram chlortetracycline hydrochloride, or chlortetracycline bisulfate equivalent to 25.6 or 102.4 grams per pound (56.4 or 225.6 milligrams per gram) chlortetracycline hydrochloride.

(b) *Sponsor.* See No. 053389 in § 510.600(c) of this chapter for conditions of use as in paragraphs (d)(3) and (d)(4) of this section; No. 010042 for conditions of uses as in paragraphs (d)(1) and (d)(2) of this section; No. 054273 for conditions of use as in paragraph (d)(5) of this section.

(c) *Related tolerances.* See § 556.150 of this chapter.

(d) *Conditions of use.* (1) Use as chlortetracycline hydrochloride or chlortetracycline bisulfate in drinking water as follows:

(i) *Chickens.* (A) *Amount.* 100 milligrams per gallon.

(*1*) *Indications for use.* Prevention of chronic respiratory disease (air-sac infection), bluecomb (nonspecific infectious enteritis).

(*2*) *Limitations.* Not to be used for more than 14 consecutive days; as sole source of chlortetracycline.

(B) *Amount.* 200 milligrams per gallon.

(*1*) *Indications for use.* Treatment of chronic respiratory disease (air-sac infection), bluecomb (nonspecific infectious enteritis); prevention of synovitis.

(*2*) *Limitations.* Not to be used for more than 14 consecutive days; as sole source of chlortetracycline.

(ii) *Growing chickens.* (A) *Amount.* 1,000 milligrams per gallon.

(B) *Indications for use.* Aid in the control of mortality due to fowl cholera.

(C) *Limitations.* Not for laying chickens; not to be used for more than 14 consecutive days; withdraw 24 hours prior to slaughter; as sole source of chlortetracycline.

(iii) *Chickens and turkeys.* (A) *Amount.* 400 milligrams per gallon.

(B) *Indications for use.* Control of synovitis.

(C) *Limitations.* Not for laying chickens; not to be used for more than 14 consecutive days; as sole source of chlortetracycline.

(iv) *Turkeys.* (A) *Amount.* 100 milligram per gallon.

(*1*) *Indications for use.* Prevention of bluecomb (nonspecific infectious enteritis, mud fever), infectious sinusitis, and hexamitiasis.

(*2*) *Limitations.* Not to be used for more than 14 consecutive days; as sole source of chlortetracycline.

(B) *Amount.* 200 milligrams per gallon.

(*1*) *Indications for use.* Treatment of bluecomb (nonspecific infectious enteritis, mud fever), infectious sinusitis, hexamitiasis, and prevention of synovitis.

(*2*) *Limitations.* Not to be used for more than 14 consecutive days; as sole source of chlortetracycline.

(2) Use as chlortetracycline hydrochloride in drinking water as follows:

(i) *Swine.* (A) *Amount.* 100 to 200 milligrams per gallon.

(*1*) *Indications for use.* Aid in prevention of bacterial enteritis.

(*2*) *Limitations.* Administer for not more than 46 days; do not slaughter animals for food within 24 hours of treatment; prepare a fresh solution daily; as sole source of chlortetracycline.

(B) *Amount.* 200 to 400 milligrams per gallon.

(*1*) *Indications for use.* Aid in prevention of bacterial pneumonia; for treatment of bacterial enteritis.

(*2*) *Limitations.* Administer for not more than 46 days; do not slaughter animals for food within 24 hours of treatment; prepare a fresh solution daily; as sole source of chlortetracycline.

(B) *Amount.* 400 to 600 milligrams per gallon.

(*1*) *Indications for use.* Treatment of bacterial pneumonia.

(*2*) *Limitations.* Administer for not more than 24 days; do not slaughter animals for food within 24 hours of treatment; prepare a fresh solution daily; as sole source of chlortetracycline.

(D) *Amount.* 1 gram per gallon (to provide approximately 10 milligrams per pound of body weight daily).

(*1*) *Indications for use.* Aid in the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia associated with *Pasteurella* supp., *Hemophilus* spp.. and *Klebsiella* spp.

(*2*) *Limitations.* Prepare a fresh solution twice daily; as sole source of chlortetracycline; administer for not more than 45 days; do not slaughter animals for food within 5 days of treatment.

(ii) [Reserved]

(3) Use as chlortetracycline hydrochloride in a drench as follows:

(i) *Calves.* (A) *Amount.* 1 level tablespoonful per each 98 pounds of body weight every 12 hours to provide approximately 10 milligrams per pound of body weight daily.

(*1*) *Indications for use.* Aid in the control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia (shipping fever) associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp.

(*2*) *Limitations.* As sole source of chlortetracycline; administer for nor more than 5 days; do not slaughter animals for food within 24 hours of treatment.

(B) *Amount.* Two milligrams per pound of body weight.

(*1*) *Indications for use.* Treatment of bacterial pneumonia, bacterial diarrhea, and shipping fever.

(*2*) *Limitations.* Administer 2 milligrams per pound of body weight per day for not more than 5 days; do not slaughter animals for food within 3 days of treatment; prepare a fresh solution daily; as sole source of chlortetracycline.

(ii) [Reserved]

(4) The following uses of chlortetracycline hydrochloride in drinking water were reviewed by the National Academy of Sciences/National Research Council (NAS/NRC) and found effective; applications for these uses need not include the effectiveness data specified by § 514.111 of this chapter, but may require bioequivalency and safety information:

(i) *Chickens*—(A) *Amount.* 200 to 400 milligrams per gallon.

(*1*) *Indications for use.* Control of infectious synovitis caused by *Mycoplasma synoviae.*

(*2*) *Limitations.* Prepare fresh solution daily; as sole source of chlortetracycline; do not use for more than 14 days; do not slaughter animals for food within 24 hours of treatment; do not use in laying chickens.

(B) *Amount.* 400 to 800 milligrams per gallon.

(*1*) *Indications for use.* Control of chronic respiratory disease and air-sac infections caused by *M. gallisepticum* and *E. coli.*

(*2*) *Limitations.* Prepare fresh solution daily; as sole source of chlortetracycline; do not use for more than 14 days; do not slaughter animals for food within 24 hours of treatment; do not use in laying chickens.

(ii) *Growing turkeys*—(A) *Amount.* 400 milligrams per gallon.

(*1*) *Indications for use.* Control of infectious synovitis caused by *M. synoviae.*

(*2*) *Limitations.* Prepare fresh solution daily; as sole source of chlortetracycline; do not use for more than 14 days; do not slaughter animals for food within 24 hours of treatment.

(B) *Amount.* 25 milligrams per pound of body weight daily.

(*1*) *Indications for use.* Control of complicating bacterial organisms associated with bluecomb (transmissible enteritis, coronaviral enteritis).

(*2*) *Limitations.* Prepare fresh solution daily; as sole source of chlortetracycline; do not use for more than 14 days; do not slaughter animals for food within 24 hours of treatment.

(iii) *Swine*—(A) *Amount.* 10 milligrams per pound body weight daily in divided doses.

(B) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and *Salmonella* spp. and bacterial pneumonia associated with *Pasteurella* spp.. *Hemophilus* spp., and *Klebsiella* spp.

(C) *Limitations.* Prepare fresh solution daily; as sole source of chlortetracycline; do not use for more than 5 days; do not slaughter animals for food within 5 days of treatment.

(iv) *Calves, beef cattle, and nonlactating dairy cattle*—(A) *Amount.* 10 milligrams per pound daily in divided doses.

(B) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and *Salmonella* spp. and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp.

(C) *Limitations.* Prepare fresh solution daily; use as a drench; as sole source of chlortetracycline; do not use for more than 5 days; do not slaughter animals for food within 24 hours of treatment; do not use in lactating cattle.

§ 520.445c Chlortetracycline tablets and boluses.

(a) *Specifications.* Each tablet/bolus contains 25, 250, or 500 milligrams of chlortetracycline hydrochloride.

(b) *Sponsors.* See No. 000010 in § 510.600(c) of this chapter for the 250-milligram chlortetracycline hydrochloride bolus; see No. 010042 for the 25-milligram tablet and the 500 milligram bolus.

(c) *Related tolerances.* See § 556.150 of this chapter.

(d) *National Academy of Sciences/National Research Council NAS/NRC) status.* The conditions of use specified in this section were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified in § 514.111 of this chapter but may require bioequivalency and safety information.

(e) *Conditions of use—Calves*—(1) *Amount.* One 250 milligram bolus per 50 pounds of body weight twice a day for 3 to 5 days.

(i) *Indications for use.* Treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia associated with *Pasteurella* spp., *Klesbsiella* spp., and *Hemophilus* spp.

(ii) *Limitations.* Administer bolus directly by mouth or crush and dissolve in milk or water for drenching or bucket feeding; if no improvement is noted after 3 days of treatment, consult a veterinarian; do not use for more than 5 days; do not administer within 24 hours of slaughter.

(2) *Amount.* One 25 milligram tablet for each 5 pounds of body weight every 12 hours daily for 3 to 5 days.

(i) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and *Salmonella* spp. and bacterial pneumonia associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp., susceptible to chlortetracycline.

(ii) *Limitations.* Administer tablet directly by mouth or crush and dissolve in water for drenching; if no improvement is noted after 3 days of treatment, consult a veterinarian; do not use for more than 5 days; when feeding milk or milk replacer, administration 1 hour before or 2 hours after feeding; do not administer within 24 hours of slaughter.

(3) *Amount.* One 500 milligram bolus per 100 pounds of body weight twice a day for 3 to 5 days.

(i) *Indications for use.* Treatment of bacterial enteritis (scours) caused by *E. coli* and *Salmonella* spp., and bacterial pneumonia associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp., susceptible to chlortetracycline.

(ii) *Limitations.* Administer directly by mouth or crush and dissolve in water for drenching; if no improvement is noted after 3 days of treatment, consult a veterinarian; do not use for more than 5 days; do not administer within 24 hours of slaughter.

7. New § 520.608 is added to read as follows:

§ 520.608 Dicloxacillin sodium monohydrate capsules.

(a) *Specifications.* Each capsule contains dicloxacillin sodium monohydrate equivalent to 50, 100, 200, or 500 milligrams of dicloxacillin.

(b) *Sponsor.* See No. 000856 in § 510.600 (c) of this chapter.

(c) *Conditions of use. Dogs*—(1) *Amount.* 5 to 10 milligrams per pound of body weight, three times daily. In severe cases, up to 25 milligrams per pound of body weight three times daily.

(2) *Indications for use.* Treatment of pyoderma (pyogenic dermatitis) due to penicillinase-producing staphylococci sensitive to the drug.

(3) *Limitations.* For the treatment of dogs only. Continue treatment for 24 to 48 hours after the animal has become afebrile or asymptomatic. Administer 1 to 2 hours before feeding to ensure maximum absorption. Not for use in animals which are raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

8. New §§ 520.1130, 520.1130a, 520.1130b, and 520.1130c are added to read as follows:

§ 520.1130 Hetacillin oral dosage forms.

§ 520.1130a Hetacillin potassium capsules.

(a) *Specifications.* Each capsule contains hetacillin potassium equivalent to 50, 100, or 200 milligrams of ampicillin.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use.* (1) *Dogs*—(i) *Amount.* 5 milligrams per pound of body weight, twice daily. In severe infections, up to three times daily, or up to 10 milligrams per pound of body weight twice daily. For stubborn urinary tract infections, up to 20 milligrams per pound of body weight twice daily.

(ii) *Indications for use.* Treatment against strains of organisms sensitive to hetacillin potassium and associated with respiratory tract infections, urinary tract infections, gastrointestinal infections, skin infections, soft tissue infections, and postsurgical infections.

(iii) *Limitations.* For use in dogs and cats only. Continue treatment for 48 to 72 hours after the animal has become afebrile or asymptomatic. Administer 1 to 2 hours prior to feeding to ensure maximum absorption. In stubborn infections, therapy may be required for several weeks. Not for use in animals raised for food production. Federal law restricts this drug to use only by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* Administer 50 milligrams twice daily.

(ii) *Indications for use.* Treatment against strains of organisms sensitive to hetacillin potassium and associated with respiratory tract infections, urinary tract infections, gastrointestinal infections, skin infections, soft tissue infections, and postsurgical infections.

(3) *Limitations.* For use in dogs and cats only. Continue treatment for 48 to 72 hours after the animal has become afebrile or asymptomatic. Administer in

a fasting state to ensure maximum absorption. In stubborn infections, therapy may be required for several weeks. Not for use in animals raised for food production. Federal law restricts this drug to use only by or on the order of a licensed veterinarian.

§ 520.1130b Hetacillin potassium oral suspension.

(a) *Specifications.* Each milliliter contains hetacillin potassium equivalent to 50 milligrams of ampicillin.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 milligrams per pound of body weight twice daily. In severe infections, up to three times daily, or up to 10 milligrams per pound of body weight twice daily. For stubborn urinary tract infections, up to 20 milligrams per pound of body weight twice daily.

(ii) *Indicotions for use.* Treatment against strains of organisms susceptible to hetacillin potassium and associated with respiratory tract infections, urinary tract infections, gastrointestinal infections, skin infections, soft-tissue infections, and postsurgical infections.

(iii) *Limitations.* For use in dogs only. Not for use in animals raised for food production. Continue treatment 48 to 72 hours after the animal has become afebrile or asymptomatic. Administer 1 to 2 hours prior to feeding to ensure maximum absorption. In stubborn infections, therapy may be required for several weeks. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 50 milligrams twice daily.

(ii) *Indications for use.* Treatment against strains of organisms susceptible to hetacillin potassium and associated with respiratory tract infections, urinary tract infections, gastrointestinal infections, skin infections, soft tissue infections, and postsurgical infections.

(iii) *Limitations.* For use in cats only. Not for use in animals raised for food production. Continue treatment 48 to 72 hours after the animal has become afebrile or asymptomatic. Administer 1 to 2 hours prior to feeding to ensure maximum absorption. In stubborn infections, therapy may be required for several weeks. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.1130c Hetacillin potassium tablets.

(a) *Specifications.* Each tablet contains hetacillin potassium equivalent to 50, 100, or 200 milligrams of ampicillin.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 5 milligrams per pound of body weight twice daily. In severe infections, up to three times daily, or up to 10 milligrams per pound of body weight twice daily. For stubborn urinary tract infections, up to 20 milligrams per pound of body weight twice daily.

(ii) *Indications for use.* Treatment against strains of organisms sensitive to hetacillin potassium and associated with respiratory tract infections, urinary tract infections, gastrointestinal infections, skin infections, soft tissue infections, and postsurgical infections.

(iii) *Limitations.* For use in dogs and cats only. Continue treatment for 48 to 72 hours after the animal has become afebrile or asymptomatic. Administer 1 to 2 hours prior to feeding to ensure maximum absorption. In stubborn infections, therapy may be required for several weeks. Not for use in animals which are raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 50 milligrams twice daily.

(ii) *Indications for use.* Treatment against strains of organisms sensitive to hetacillin potassium and associated with respiratory tract infections, urinary tract infections, gastrointestinal infections, skin infections, soft tissue infections, and postsurgical infections.

(iii) *Limitations.* For use in dogs and cats only. Continue treatment for 48 to 72 hours after the animal has become afebrile or asymptomatic. Administer 1 to 2 hours prior to feeding to ensure maximum absorption. In stubborn infections, therapy may be required for several weeks. Not for use in animals which are raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

9. New § § 520.1696, 520.1696a, 520.1696b, 520.1696c, and 520.1696d are added to read as follows:

§ 520.1696 Penicillin oral dosage forms.

§ 520.1696a Buffered penicillin powder, penicillin powder with buffered aqueous diluent.

(a) *Specifications.* When reconstituted, each milliliter contains penicillin G procaine equivalent to 20,000, 25,000, 40,000, 50,000, 80,000, or 100,000 units of penicillin G.

(b) *Sponsor.* [Reserved]

(c) *Related tolerances.* See § 556.510 of this chapter.

(d) *Conditions of use. Chickens*—It is used in drinking water as follows:

(1) *Amount.* 100,000 units per gallon.

(i) *Indications for use.* Treatment of chronic respiratory disease (air-sac infection) and bluecomb (nonspecific infectious enteritis).

(ii) *Limitations.* As penicillin G procaine; not for use in laying chickens; prepare fresh solution daily; withdraw 1 day before slaughter; as sole source of penicillin.

(2) *Amount.* 50,000 to 100,000 units per gallon.

(i) *Indications for use.* Prevention of chronic respiratory disease (air-sac infection) and bluecomb (nonspecific infectious enteritis).

(ii) *Limitations.* As penicillin G procaine; not for use in laying chickens; prepare fresh solution daily; withdraw 1 day before slaughter; as sole source of penicillin.

§ 520.1696b Penicillin G potassium in drinking water.

(a) *Specifications.* When reconstituted, each milliliter contains penicillin G potassium equivalent to 20,000, 25,000, 40,000, 50,000, 80,000, or 100,000 units of penicillin G.

(b) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter.

(c) *Conditions of use. Turkeys*—(1) *Amount.* 1,500,000 units per gallon drinking water for 5 days.

(2) *Indications for use.* Treatment of erysipelas caused by *Erysipelothrix insidiosa.*

(3) *Limitations.* Prepare concentrated stock solution for use with medication proportioners fresh every 24 hours. Prepare recommended use levels for gravity flow watering system fresh every 12 hours. For best results, treatment should be started at the first sign of infection. Discontinue treatment at least 1 day prior to slaughter. Not for use in turkeys producing eggs for human consumption.

§ 520.1696c Penicillin V Potassium for oral solution.

(a) *Specifications.* When reconstituted, each milliliter contains 25 milligrams (40,000 units) of penicillin V.

(b) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(c) *National Academy of Sciences/ National Research Council (NAS/NRC) status.* The conditions of use were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but many require bioequivalency and safety information.

(d) *Conditions of use. Dogs and cats*—(1) *Amount.* 10 to 15 milligrams per pound of body weight every 6 to 8 hours.

(2) *Indications for use.* Treatment of respiratory, urogenital, skin, and soft tissue infections and septicemia caused by pathogens susceptible to penicillin V potassium.

(3) *Limitations.* Administer orally 1 to 2 hours prior to feeding for maximum absorption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.1696d Penicillin V potassium tablets.

(a) *Specifications.* Each tablet contains penicillin V potassium equivalent to 125 milligrams (200,000 units) or 250 milligrams (400,000 units) of penicillin V.

(b) *Sponsor.* See No. 050604 in § 501.600(c) of this chapter.

(c) *National Academy of Sciences/ National Research Council (NAS/NRC) status.* These conditions of use were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(d) *Conditions of use. Dogs and Cats*—(1) *Amount.* 10 to 15 milligrams per pound of body weight every 6 to 8 hours.

(2) *Indications for use.* Treatment of respiratory, urogenital, skin and soft tissue infections and septicemia caused by pathogens susceptible to penicillin V potassium.

(3) *Limitations.* Administer orally 1 to 2 hours prior to feeding for maximum absorption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

10. New § § 520.2158, 520.2158a, 520.2158b, and 520.2158c are added to read as follows:

§ 520.2158 Streptomycin/ dihydrostreptomycin oral dosage forms.

§ 520.2158a Streptomycin sulfate oral solution.

(a) *Specifications.* Solution containing 25 percent streptomycin sulfate.

(b) *Sponsor.* See No. 033008 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.610 of this chapter.

(d) *Conditions of use.* Use in drinking water as follows:

(1) *Calves*—(i) *Amount.* 0.5 to 1.5 grams per gallon.

(ii) *Indications for use.* Treatment of bacterial diarrhea (scours) of calves.

(iii) *Limitations.* Administer for not more than 5 days; prepare fresh solution daily; withdraw 2 days before slaughter; as sole source of streptomycin.

(2) *Chickens*—(i) *Amount.* 0.5 to 1.5 grams per gallon.

(ii) *Indications for use.* Treatment of chronic respiratory disease (air-sac infection); maintenance of weight gains during periods of stress; treatment of bluecomb (nonspecific infectious enteritis).

(iii) *Limitations.* Administer for not more than 5 days; not for use in laying chickens; prepare fresh solution daily; withdraw 4 days before slaughter; as sole source of streptomycin.

(3) *Swine*—(i) *Amount.* 0.5 to 1.5 grams per gallon.

(ii) *Indications for use.* Treatment of bacterial enteritis (scours) in swine.

(iii) *Limitations.* Administer for not more than 4 days; prepare fresh solution daily; as sole source of streptomycin.

§ 520.2158b Dihydrostreptomycin tablets.

(a) *Specifications.* Each tablet contains 37.5 milligrams dihydrostreptomycin (as the sulfate) with 375 milligrams chlorhexidine dihydrochloride.

(b) *Sponsor.* See No. 000856 in § 510.600(C) of this chapter.

(c) *Related tolerances.* See §§ 556.120 and 556.200 of this chapter.

(d) *Conditions of use. Calves*—(1) *Amount.* 150 milligrams of dihydrostreptomycin and 1.5 grams of chlorhexidine dihydrochloride per 100 pounds of body weight per day.

(2) *Indications for use.* Treatment of bacterial scours in calves.

(3) *Limitations.* Administer orally once a day for 5 days; withdraw 3 days before slaughter.

§ 520.2158c Dihydrostreptomycin oral suspension.

(a) *Specifications.* Each milliliter contains 1.25 milligrams dihydrostreptomycin (as the sulfate) with 12.5 milligrams chlorhexidine dihydrochloride.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.120 and 556.200 of this chapter.

(d) *Conditions of use—Calves*—(1) *Amount.* 150 milligrams of dihydrostreptomycin and 1.5 grams of chlorhexidine dihydrochloride per 100 pounds of body weight per day.

(2) *Indications for use.* Treatment of bacterial scours in calves.

(3) *Limitations.* Administer orally once a day for 5 days; withdraw 3 days before slaughter.

11. New §§ 520.2345, 520.2345a, 520.2345b, 520.2345c, 520.2345d, 520.2345e, 520.2345f, 520.2345g, and 520.2345h are added to read as follows:

§ 520.2345 Tetracycline oral dosage forms.

§ 520.2345a Tetracycline hydrochloride capsules.

(a) *Specifications.* Each capsule contains 50, 100, 125, 250, or 500 milligrams of tetracycline hydrochloride.

(b) *Sponsor.* See § 510.600(c) of this chapter for identification of the sponsors:

(1) To Nos. 000009 and 000693: 250 milligrams per capsule.

(2) To No. 000069: 125, 250, and 500 milligrams per capsule.

(3) To No. 000115: 50, 100, 250, and 500 milligrams per capsule.

(4) To No. 000172: 50, 100, 125, 250, and 500 milligrams per capsule.

(c) *Conditions of use. Dogs*—(1) *Amount.* 25 milligrams per pound of body weight per day in divided doses every 6 hours.

(2) *Indications for use.* Treatment of infections caused by organisms sensitive to tetracycline hydrochloride, such as bacterial gastroenteritis due to *E. coli* and urinary tract infections due to *Staphylococcus* spp. and *E. coli.*

(3) *Limitations.* Administer orally; continue treatment until symptoms of the disease have subsided and the temperature is normal for 48 hours; not for use in animals raised for food production; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.2345b Tetracycline tablets.

(a) *Specifications.* Each tablet contains 100, 250, or 500 milligrams of tetracycline (as the hydrochloride).

(b) *Sponsor.* For 100, 250, or 500 milligrams per tablet, see No. 000069 in § 510.600(c) of this chapter. For 250 milligrams per tablet, see No. 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use—Dogs*—(1) *Amount.* 25 milligrams per pound of body weight per day in divided doses every 6 hours.

(2) *Indications for use.* Treatment of infections caused by organisms sensitive to tetracycline hydrochloride, such as bacterial gastroenteritis due to *E. coli* and urinary tract infections due to *Staphylococcus* spp. and *E. coli.*

(3) *Limitations.* Administer orally; continue treatment until symptoms of the disease have subsided and temperature is normal for 48 hours; not for use in animals raised for food production; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.2345c Tetracycline boluses.

(a) *Specifications.* Each bolus contains 500 milligrams of tetracycline (as the hydrochloride).

(b) *Sponsors.* See No. 010042 in § 510.600(c) of this chapter for use as in paragraph (d)(1) of this section. See No. 000009 in § 510.600(c) of this chapter for use as in paragraph (d)(2) of this section.

(c) *Related tolerances.* See § 556.720 of this chapter.

(d) *Conditions of use—Calves*—(1) *Amount.* 10 milligrams per pound of body weight per day in divided doses.

(i) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and bacterial pneumonia caused by *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp.

(ii) *Limitations.* Administer orally for 3 to 5 days; do not slaughter animals for food within 14 days of treatment; use as sole source of tetracycline.

(iii) *National Academy of Sciences/ National Research Council (NAS/NRC) status.* The conditions of use specified in paragraph (d)(1)(i) of this section were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified in § 514.111 of this chapter, but may require bioequivalency and safety information.

(2) *Amount.* 10 milligrams per pound of body weight per day in two divided doses.

(i) *Indications for use.* Treatment of bacterial pneumonia caused by organisms susceptible to tetracycline, bacterial enteritis caused by *E. coli*, and salmonella organisms susceptible to tetracycline.

(ii) *Limitations.* Administer orally for not more than 5 days; do not slaughter animals for food within 12 days of treatment; use as sole source of tetracycline.

§ 520.2345d Tetracycline soluble powder.

(a) *Specifications.* Each gram of powder contains not less than 15 milligrams of tetracycline as tetracycline hydrochloride.

(b) *Sponsor.* See § 510.600(c) of this chapter for identification of the sponsors as listed in paragraph (e) of this section.

(c) *Related tolerances.* See § 556.720 of this chapter.

(d) *National Academy of Sciences/ National Research Council (NAS/NRC) status.* The conditions of use specified in paragraphs (e)(1)(iii), (e)(3)(iv), and (e)(4)(iii) of this section were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified in § 514.111 of this chapter, but may require bioequivalency and safety information.

(e) *Conditons of use*—(1) Calf drinking water—(i) *Amount.* 100 to 200 milligrams per gallon.

(A) *Indications for use.* Aid in prevention of bacterial diarrhea, bacterial pneumonia, and shipping fever (hemorrahagic septicemia).

(B) *Limitations.* Administer for not more than 5 days; do not slaughter animals for food purposes within 5 days of treatment; prepare a fresh solution daily; as sole source of tetracycline.

(C) *Sponsor.* See Nos. 000009, 000069, and 047864 in § 510.600(c) of this chapter.

(ii) *Amount.* 200 to 400 milligrams per gallon.

(A) *Indications for use.* Treatment of bacterial diarrhea, bacterial pneumonia, and shipping fever (hemorrahgic septicemia).

(B) *Limitations.* Administer for not more than 5 days; do not slaughter animals for food within 5 days of treatment; prepare fresh solution daily; as sole source of tetracycline.

(C) *Sponsor.* See Nos. 000009, 000069, and 047864 in § 510.600(c) of this chapter.

(iii) *Amount.* 10 milligrams per pound body weight daily.

(A) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *Escherichia coli* and bacterial pneumonia (shipping fever complex) associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp., susceptible to tetracycline.

(B) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 5 days of treatment; as sole source of tetracycline.

(C) *Sponsor.* See No. 054273 in § 510.600(c) of this chapter.

(2) *Newborn pigs*—(i) *Amount.* 52 milligrams per day in water or milk.

(ii) *Indications for use.* Treatment of bacterial enteritis and bacterial pneumonia.

(iii) *Limitations.* Administer for not more than 3 days; do not slaughter animals for food within 4 days of treatment; prepare a fresh solution daily; as sole source of tetracycline.

(iv) *Sponsor.* See Nos. 000009, 000069, and 047864 in § 510.600(c) of this chapter.

(3) *Swine drinking water*—(i) *Amount.* 100 to 200 milligrams per gallon.

(A) *Indications for use.* Aid in prevention of bacterial enteritis.

(B) *Limitations.* Do not slaughter animals for food within 4 days of treatment; prepare a fresh solution daily; as sole source of tetracycline.

(C) *Sponsor.* See Nos. 000009, 000069, and 047864 in § 510.600(c) of this chapter.

(ii) *Amount.* 200 to 400 milligrams per gallon.

(A) *Indications for use.* Aid in prevention of bacterial pneumonia; for treatment of bacterial enteritis.

(B) *Limitations.* Do not slaughter animals for food within 4 days of treatment; prepare a fresh solution daily; as sole source of tetracycline.

(C) *Sponsor.* See Nos. 000009, 000069, and 047864 in § 510.600(c) of this chapter.

(iii) *Amount.* 400 milligrams per gallon.

(A) *Indications for use.* Treatment of bacterial pneumonia.

(B) *Limitations.* Do not slaughter animals for food within 4 days of treatment; prepare a fresh solution daily; as sole source of tetracycline.

(C) *Sponsor.* See Nos. 000009, 000069, and 047864 in § 510.600(c) of this chapter.

(iv) *Amount.* 10 milligrams per pound body weight daily.

(A) *Indications for use.* Control and treatment of bacterial enteritis (scours) caused by *E. coli* and bacterial pneumonia associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp., susceptible to tetracycline.

(B) *Limitations.* Administer for 3 to 5 days; do not slaughter animals for food within 4 days of treatment; as sole source of tetracycline.

(C) *Sponsor.* See No. 054273 in § 510.600(c) of this chapter.

(4) *Turkey and chicken drinking water*—(i) *Amount.* 100 to 200 milligrams per gallon.

(A) *Indications for use.* Aid in prevention of chronic respiratory disease (air-sac infection), hexamitiasis, bluecomb (nonspecific enteritis), infectious sinusitis, and synovitis.

(B) *Limitations.* Administer for not more than 21 days; do not slaughter for food within 4 days of treatment; not for use in chickens and turkeys producing eggs for human consumption; prepare fresh solution daily; as sole source of tetracycline.

(C) *Sponsor.* See Nos. 000009, 000069, and 047864 in § 510.600(c) of this chapter.

(ii) *Amount.* 200 to 400 milligrams per gallon.

(A) *Indications for use.* Treatment of chronic respiratory disease (air-sac infection), hexamitiasis, bluecomb (nonspecific enteritis), infectious sinusitis, and synovitis.

(B) *Limitations.* Administer for not more than 21 days; do not slaughter for food within 4 days of treatment; not for use in chickens and turkeys producing eggs for human consumption; prepare a fresh solution daily; as sole source of tetracycline.

(C) *Sponsor.* See Nos. 000009, 000069, and 047864 in § 510.600(c) of this chapter.

(iii) *Amount.* 1,000 milligrams per gallon.

(A) *Indications for use*—(*1*) *Chickens.* Control of chronic respiratory disease and air-sac infection caused by *Mycoplasma gallisepticum* and *Escherichia coli*; infectious synovitis caused by *M synoviae* susceptible to tetracycline.

(*2*) *Turkeys.* Control of infectious synovitis caused by *M. synoviae* and bluecomb (transmissible enteritis, coronaviral enteritis) caused by complicating bacterial organisms susceptible to tetracycline.

(B) *Limitations.* Administer 25 milligrams per pound of body weight daily for not more than 14 consecutive days; do not slaughter for food within 4 days of treatment; not for use in chickens and turkeys producing eggs for human consumption; prepare a fresh solution daily; as sole source of tetracycline.

(C) *Sponsor.* See No. 054273 in § 510.600(c) of this chapter.

(iv) *Amount.* 2,957 milligrams per gallon.

(A) *Indications for use—Chickens.* Control of chronic respiratory disease and air-sac infection caused by *M. gallisepticum* and *E. coli*; infectious synovitis caused by *M. synoviae* susceptible to tetracycline.

(B) *Limitations.* Administer in two divided doses to provide 25 milligrams per pound of body weight daily for 7 to 14 days; do not slaughter for food within 4 days of treatment; not for use in chickens producing eggs for human consumption; prepare a fresh solution daily; as sole source of tetracycline.

(C) *Sponsor.* See No. 058752 in § 510.600(c) of this chapter.

§ 520.2345e Tetracycline oral liquid.

(a) *Specifications.* Each milliliter contains the equivalent of either 25 or 100 milligrams of tetracycline hydrochloride.

(b) *Sponsor.* See No. 000069, in § 510.600(c) of this chapter for use of 25 or 100 milligrams per milliliter liquid in dogs as in paragraph (c)(1) of this section; see No. 000009 in § 510.600(c) of this chapter for use of 100 milligrams per milliliter liquid in dogs and cats as in paragraph (c)(2).

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* 25 milligrams per pound of body weight per day in divided doses every 6 hours.

(ii) *Indications for use.* Treatment of infections caused by organisms sensitive to tetracycline hydrochloride, such as bacterial gastroenteritis due to *Escherichia coli* and urinary tract infections due to *Staphylococcus* spp. and *E. coli.*

(iii) *Limitations.* Administer orally; continue treatment until symptoms have subsided and the temperature is normal for 48 hours; not for use in animals which are raised for food production; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(iv) *National Academy of Sciences/ National Research Council (NAS/NRC) status.* These conditions were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(2) *Dogs and cats*—(i). *Amount.* 25 milligrams per pound of body weight per day in divided doses every 6 hours.

(ii) *Indications for use.* Treatment of infections caused by organisms susceptible to tetracycline hydrochloride, such as bacterial gastroenteritis due to *E. coli* and urinary tract infections due to *Staphylococcus* spp. and *E. coli.*

(iii) *Limitations.* Administer orally; continue treatment until the temperature has been normal for 48 hours; not for use in food-producing animals; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.2345f Tetracycline phosphate complex and sodium novobiocin capsules.

(a) *Specifications.* Each capsule contains the equivalent of 60 milligrams of tetracycline hydrochloride and 60 milligrams of novobiocin.

(b) *Sponsor.* No. 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs*—(1) *Amount.* 10 milligrams of each antibiotic per pound of body weight (1 capsule for each 6 pounds) every 12 hours.

(2) *Indications for use.* Treatment of acute or chronic canine respiratory infections such as tonsillitis, bronchitis, and tracheobronchitis when caused by pathogens susceptible to tetracycline and/or novobiocin, such as *Staphylococcus* spp. and *Escherichia coli.*

(3) *Limitations.* Continue treatment for at least 48 hours after the temperature has returned to normal and all evidence of infection has disappeared. As with all antibiotics, appropriate in vitro culturing and susceptibility tests of samples taken before treatment should be conducted. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.2345g Tetracycline hydrochloride and sodium novobiocin tablets.

(a) *Specifications.* Each tablet contains the equivalent of 60 milligrams of tetracycline hydrochloride and 60 milligrams of novobiocin, or 180 milligrams of tetracycline hydrochloride and 180 milligrams of novobiocin.

(b) *Sponsor.* No. 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs*—(1) *Amount.* 10 milligrams of each antibiotic per pound of body weight (one single-strength tablet for each 6 pounds or one triple-strength tablet for each 18 pounds).

(2) *Indications for use.* Treatment of acute or chronic canine respiratory infections such as tonsillitis, bronchitis, and tracheobronchitis when caused by pathogens susceptible to tetracycline and/or novobiocin, such as *Staphylococcus* spp. and *Escherichia coli.*

(3) *Limitations.* Continue treatment for at least 48 hours after the temperature has returned to normal and all evidence of infection has disappeared. As with all antibiotics, appropriate in vitro culturing and susceptibility tests of samples taken before treatment should be conducted. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 520.2345h Tetracycline hydrochloride, sodium novobiocin, and prednisolone tablets.

(a) *Specifications.* Each tablet contains the equivalent of 60 milligrams of tetracycline hydrochloride, 60 milligrams of novobiocin, and 1.5 milligrams of prednisolone or 180 milligrams of tetracycline hydrochloride, 180 milligrams of novobiocin, and 4.5 milligrams of prednisolone.

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs*—(1) *Amount.* 10 milligrams of each antibiotic and 0.25 milligram of prednisolone per pound of body weight (one single-strength tablet for each 6 pounds or one triple-strength tablet for each 18 pounds) every 12 hours for 48 hours. Treatment is to be continued with novobiocin and tetracycline alone at the same dose schedule for an additional 3 days or longer as needed.

(2) *Indications for use.* Treatment of acute and chronic canine respiratory infections such as tonsillitis, bronchitis, and tracheobronchitis when caused by pathogens susceptible to tetracycline and/or novobiocin, such as *Staphylococcus* spp. and *Escherichia coli*, when it is necessary to initially

reduce the severity of associated clinical signs.

(3) *Limitations.* As with all antibiotics, appropriate in vitro culturing and susceptibility tests of samples taken before treatment should be conducted. Administer for 48 hours only. Continue treatment if needed with tetracycline/novobiocin alone. The product is contraindicated in animals with tuberculosis, hyperadrenocorticalism, or peptic ulcers. Clinical and experimental data have demonstrated that corticosteroids administered orally or parenterally to animals may induce the first stage of parturition when administered during the last trimester of pregnancy and may precipitate premature parturition followed by dystocia, fetal death, retained placenta, and metritis. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 522—[AMENDED]

Part 522 is amended as follows:

12. The authority citation for 21 CFR Part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

13. The heading for part 522 is revised to read as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

14. New §§ 522.88, 522.90, 522.90a, 522.90b, and 522.90c are added to read as follows:

§ 522.88 Sterile amoxicillin trihydrate for suspension.

(a) (1) *Specifications.* Each vial contains 3 grams of amoxicillin as the trihydrate. The powder is reconstituted with sterile water for injection USP to a concentration of 100 or 250 milligrams per milliliter for use as in paragraph (d) of this section.

(2) Each vial contains 25 grams of amoxicillin as the trihydrate. The powder is reconstituted with sterile water for injection USP to a concentration of 250 milligrams per milliliter for use as in paragraph (e).

(b) *Sponsor.* See 053571 in § 510.600(c) of this chapter.

(c) *Related tolerance.* See § 556.38 of this chapter.

(d) *Conditions of use in dogs and cats*—(1) *Amount.* 5 milligrams per pound of body weight daily.

(2) *Indications for use*—(i) *Dogs.* Treatment of infections caused by susceptible strains of organisms as follows: Respiratory infections (tonsillitis, tracheobronchitis) due to *Staphylococcus aureus, Streptococcus* spp., *Escherichia coli,* and *Proteus mirabilis*; genitourinary infections (cystitis) due to *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis*; gastrointestinal infections (bacterial gastroenteritis) due to *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis*; bacterial dermatitis due to *S. aureus, Streptococcus* spp., and *P. mirabilis*; soft tissue infections (abscesses, lacerations, and wounds), due to *S. aureus, Streptococcus* spp., *E. coli,* and *P. mirabilis.*

(ii) *Cats.* Treatment of infections caused by susceptible strains of organisms as follows: Upper respiratory infections due to *S. aureus, Staphylococcus* spp., *Streptococcus* spp., *Hemophilus* spp., *E. coli, Pasteurella* spp., and *P. mirabilis*; genitourinary infections (cystitis) due to *S. aureus, Streptococcus* spp., *E. coli, P. mirabilis,* and *Corynebacterium* spp.; gastrointestinal infections due to *E. coli, Proteus* spp., *Staphylococcus* spp., and *Streptococcus* spp.; skin and soft tissue infections (abscesses, lacerations, and wounds) due to *S. aureus, Staphylococcus* spp., *Streptococcus* spp., *E. coli,* and *Pasteurella multocida.*

(3) *Limitations.* For use in dogs and cats only. Administer once daily for up to 5 days by intramuscular or subcutaneous injection. Continue treatment for 48 hours after the animal has become afebrile or asymptomatic. If no improvement is seen within 5 days, review the diagnosis and change therapy. As with all antibiotics, appropriate in vitro culturing susceptibility testing of samples taken before treatment should be conducted. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(e) *Condition of use. Cattle*—(1) *Amount.* 3 to 5 milligrams per pound of body weight once a day according to the animal being treated, the severity of infection, and the animal's response.

(2) *Indications for use.*—Treatment of diseases due to amoxicillin-susceptible organisms as follows: Respiratory tract infections (shipping fever, pneumonia) due to *P. multocida, P. hemolytica, Hemophilus* spp., *Staphylococcus* spp., and *Streptococcus* spp. and acute necrotic pododermatitis (foot rot) due to *Fusobacterium necrophorum.*

(3) *Limitations.* Administer once daily for up to 5 days by intramuscular or subcutaneous injection. Continue treatment for 48 to 72 hours after the animal has become afebrile or asymptomatic. Do not continue treatment beyond 5 days. Treated animals must not be slaughtered for food during treatment and for 25 days after the last treatment. As with all antibiotics, appropriate in vitro culturing and susceptibility testing of samples taken before treatment should be conducted. Milk from treated cows must not be used for human consumption during treatment or for 96 hours (8 milkings) after last treatment. Maximum volume per injection should not exceed 30 milliliters. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.90 Ampicillin implantation and injectible dosage forms.

§ 522.90a Ampicillin trihydrate sterile suspension.

(a) *Specifications.* Each milliliter contains ampicillin trihydrate equivalent to 200 milligrams of ampicillin.

(1) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter.

(2) *Related tolerances.* See § 556.40 of this chapter.

(3) *Conditions of use*—(i) *Calves.*

(A) *Amount.* For enteritis: 3 milligrams per pound of body weight, intramuscularly, once or twice daily, for up to 3 days. For pneumonia: 3 milligrams per pound of body weight, intramuscularly, twice daily, for up to 3 days.

(B) *Indications for use.* Treatment of bacterial enteritis caused by *Escherichia coli* and bacterial pneumonia caused by *Pasteurella* spp. susceptible to ampicillin.

(C) *Limitations.* Not for use in other animals raised for food production. Treated animals must not be slaughtered for food use during treatment or for 9 days after the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(ii) *Dogs.* (A) *Amount.* 3 to 6 milligrams per pound of body weight intramuscularly, once or twice daily.

(B) *Indications for use.* Treatment of respiratory tract infections due to *E. coli, Pseudomonas* spp., *Proteus* spp., *Staphylococcus* spp., and *Streptococcus* spp.; tonsillitis due to *E. coli, Pseudomonas* spp., *Streptococcus* spp., and *Staphylococcus* spp.; generalized infections (septicemia) associated with abscesses, lacerations, and wounds due to *Staphylococcus* spp. and *Streptococcus* spp.

(C) *Limitations.* Continue treatment at least 48 hours after the animal's temperature has returned to normal and other signs of infection have subsided. Usual treatment is 3 to 5 days. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(iii) *Cats.* (A) *Amount.* 5 to 10 milligrams per pound of body weight intramuscularly or subcutaneously, once or twice daily.

(B) *Indications for use.* Treatment of generalized infections (septicemia) associated with abscesses, lacerations, and wounds due to *Staphylococcus* spp., *Streptococcus* spp., and *Pasteurella* spp.

(C) *Limitations.* Continue treatment at least 48 hours after the animal's temperature has returned to normal and other signs of infection have subsided. Usual treatment is 3 to 5 days. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(iv) *Swine.* (A) *Amount.* 3 milligrams per pound of body weight, intramuscularly, once or twice daily, for up to 3 days.

(B) *Indications for use.* Treatment of bacterial enteritis (colibacillosis) caused by *E. coli* and bacterial pneumonia caused by *Pasteurella* spp. susceptible to ampicillin.

(C) *Limitations.* Treated animals must not be slaughtered for food use during treatment or for 15 days after the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b) *Specifications.* Each milliliter contains ampicillin trihydrate equivalent to 150 milligrams of ampicillin.

(1) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(2) *Related tolerances.* See § 556.40 of this chapter.

(3) *Conditions of use. Dogs*—(i) *Amount.* 3 to 5 milligrams of ampicillin per pound of body weight, once a day for up to 4 days.

(ii) *Indications for use.* Treatment of bacterial infections of the upper respiratory tract (tonsillitis) due to *Streptococcus* spp., *Staphylococcus* spp., *E. coli, Proteus* spp., and *Pasteurella* spp., and soft tissue infections (abscesses, lacerations, and wounds) due to *Staphylococcus* spp., *Streptococcus* spp., and *E. coli,* when caused by susceptible organisms.

(iii) *Limitations.* Administer intramuscularly. If continued treatment is indicated, oral dosage is recommended. As with all antibiotics, appropriate in vitro culturing and susceptibility tests of samples taken before treatment are recommended. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.90b Ampicillin trihydrate for sterile suspension.

(a) *Specifications.* When reconstituted, each milliliter contains ampicillin trihydrate equivalent to 50, 100, or 250 milligrams of ampicillin.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.40 of this chapter.

(d) *Conditions of use.* (1) *Dogs*—(i) *Amount.* 3 milligrams per pound of body weight twice daily.

(ii) *Indications for use.* Treatment against strains of organisms susceptible to ampicillin and associated with respiratory tract infections, urinary tract infections, gastrointestinal infections, skin infections, soft tissue infections, and postsurgical infections.

(iii) *Limitations.* Administer by subcutaneous or intramuscular injection. Treatment should be continued for 48 to 72 hours after the animal has become afebrile or asymptomatic. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 3 milligrams per pound of body weight twice daily.

(B) *Indications for use.* Treatment against strains of organisms susceptible to ampicillin and associated with respiratory tract infections, urinary tract infections, gastrointestinal infections, skin infections, soft tissue infections, and postsurgical infections.

(iii) *Limitations.* Administer by subcutaneous or intramuscular injection. Treatment should be continued for 48 to 72 hours after the animal has become afebrile or asymptomatic. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Cattle*—(i) *Amount.* 2 to 5 milligrams per pound of body weight once daily by intramuscular injection.

(ii) *Indications for use.* Treatment of respiratory tract infections caused by organisms susceptible to ampicillin, bacterial pneumonia (shipping fever, calf penumonia, and bovine pneumonia) caused by *Aerobacter* spp., *Klebsiella* spp., *Staphylococcus* spp., *Streptococcus* spp., *Pasteurella multocida,* and *Escherichia coli.*

(iii) *Limitations.* Do not treat cattle for more than 7 days. Milk from treated cows must not be used for food during treatment and for 48 hours (4 milkings) after the last treatment. Cattle must not be slaughtered for food during treatment and for 144 hours (6 days) after the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 522.90c Ampicillin sodium for aqueous injection.

(a) *Specifications.* When reconstituted, each milliliter contains ampicillin sodium equivalent to 300 milligrams of ampicillin.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Conditions of use. Horses*—(1) *Amount:* 3 milligrams per pound of body weight twice daily.

(2) *Indications for use.* Treatment of respiratory tract infections (pneumonia and strangles) due to *Staphylococcus* spp., *Escherichia coli,* and *Proteus mirabilis,* and skin and soft tissue infections (abscesses and wounds) due to *Staphylococcus* spp., *Streptococcus* spp., *E. coli,* and *P. mirabilis,* when caused by susceptible organisms.

(3) *Limitations.* Administer either intravenously or intramuscularly. Treatment should be continued 48 hours after all symptoms have subsided. If no response is seen in 4 to 5 days, reevaluate diagnosis. Not for use in horses or other animals which are raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

15. New § 522.390 is added to read as follows:

§ 522.390 Chloramphenicol injection.

(a) *Specifications.* Each milliliter contains 100 milligrams of chloramphenicol.

(b) *Sponsor.* See Nos. 000069 and 050604 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs*—(1) *Amount.* 5 to 15 milligrams per pound of body weight, intramuscularly or intravenously, every 6 hours. In severe infections, use 4 to 6 hour treatment intervals the first day. If no response is obtained in 3 to 5 days, discontinue use and reevaluate diagnosis.

(2) *Indications for use.* Treatment of infections of the respiratory tract, the urinary tract, and enteritis and tonsillitis caused by organisms susceptible to chloramphenicol.

(3) *Limitations.* Not for use in animals raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

16. New § 522.650 is added to read as follows:

§ 522.650 Dihydrostreptomycin sulfate injection.

(a) *Specifications.* Each milliliter contains dihydrostreptomycin sulfate equivalent to 500 milligrams of dihydrostreptomycin.

(b) *Sponsor.* See Nos. 000069 and 055529 in § 510.600(c) of this chapter.

(c) *National Academy of Sciences/National Research Council (NAS/NRC) status.* The conditions of use were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter but may require bioequivalency and safety information.

(d) *Conditions of use*—(1) *Amount.* 5 milligrams per pound of body weight every 12 hours.

(2) *Indications for use.* Treatment of leptospirosis in dogs and horses due to *Leptospira canicola, L. icterohemorrhagiae,* and *L. pomona;* in cattle due to *L. pomona;* and in swine due to *L. pomona;* and *L. grippotyphosa.*

(3) *Limitations.* Administer by deep intramuscular injection only. Treatment should be continued for 3 to 5 days or until the urine is free of leptospira for at least 72 hours as measured by darkfield microscopic examination. Treatment with subtherapeutic dosages, excessive duration of therapy, or inappropriate use of this antibiotic may lead to the emergence of streptomycin or dihydrostreptomycin resistant organisms. Discontinue use 30 days before slaughter for food. Not for use in animals producing milk because use of the drug will contaminate the milk. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

17. New §§ 522.1696, 522.1696a, 522.1696b, and 522.1696c, are added to read as follows:

§ 522.1696 Penicillin G procaine implantation and injectable dosage forms.

§ 522.1696a Penicillin G benzathine and penicillin G procaine sterile suspension.

(a) *Specifications.* Each milliliter of aqueous suspension contains penicillin G benzathine and penicillin G procaine, each equivalent to 150,000 units of penicillin G.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for the conditions of use in paragraph (d) of this section as follows:

(1) See Nos. 000008, 000029, 000856, and 010515 for use as in paragraph (d)(1) of this section.

(2) See Nos. 000029 and 000856 for use as in paragraph (d)(2) of this section.

(3) See Nos. 000069 and 010515 for use as in paragraph (d)(3) of this section.

(c) *Related tolerances.* See § 556.510 of this chapter.

(d) *Conditions of use*—(1) *Horses, dogs, and beef cattle.* Treatment of bacterial infections susceptible to penicillin G. Repeat dosage in 48 hours. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(i) *Horses.* 2 milliliters per 150 pounds of body weight intramuscularly. Do not use in horses intended for food purposes.

(ii) *Dogs.* 1 milliliter per 10 to 25 pounds of body weight intramuscularly or subcutaneously.

(iii) *Beef cattle.* 2 milliliters per 150 pounds of body weight intramuscularly or subcutaneously. Treatment should be limited to two doses. Not to be used in beef cattle within 30 days of slaughter.

(iv) *National Academy of Sciences/National Research Council (NAS/NRC) status.* The conditions of use were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter but may require bioequivalency and safety information.

(2) *Beef cattle.* Treatment of bacterial pneumonia (*Streptococcus* spp., *Corynebacterium pyogenes, Staphylococcus aureus);* upper respiratory infections such as rhinitis or pharyngitis (*C. (pyogenes*); blackleg (*Clostridium chauvoei);* and prophylaxis of bovine shipping fever in 300 to 500 pound beef calves.

(i) *Amount.* 2 milliliters per 150 pounds of body weight subcutaneously. Repeat dosage in 48 hours. Limit treatment to two doses. Not for use within 30 days of slaughter.

(ii) *NAS/NRC status.* The conditions of use were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter but may require bioequivalency and safety information.

(3) *Beef cattle.* Treatment of bacterial pneumonia (shipping fever) (*Streptococcus* spp., *C. pyogenes, S. aureus*); upper respiratory infections such as rhinitis or pharyngitis (*C. pyogenes*); and blackleg (*C. chauvoei*).

(i) 2 milliliters per 150 pounds of body weight subcutaneously. Repeat dosage in 48 hours. Limit treatment to two doses. Not for use within 30 days of slaughter.

(ii) [Reserved]

§ 522.1696b Penicillin G procaine aqueous suspension.

(a) *Specifications.* Each milliliter contains penicillin G procaine equivalent to 300,000 units of penicillin G.

(b) *Related tolerances.* See § 556.510 of this chapter.

(c) *National Academy of Sciences/National Research Council (NAS/NRC) status.* The conditions of use were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(d) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter.

(1) *Dogs*—(i) *Amount.* 10,000 units per pound of body weight daily at 24-hour intervals.

(ii) *Indications for use.* Treatment of infections caused by penicillin-sensitive organisms.

(iii) *Limitations.* For intramuscular use only. Continue treatment at least 48 hours after symptoms disappear. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) *Cats*—(i) *Amount.* 10,000 units per pound of body weight daily at 24-hour intervals.

(ii) *Indications for use.* Treatment of infections caused by penicillin-sensitive organisms.

(iii) *Limitations.* For intramuscular use only. Continue treatment at least 48 hours after symptoms disappear. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(3) *Cattle, sheep, swine, and horses*—(i) *Amount.* 3,000 units per pound of body weight (1 milliliter per 100 pounds body weight) daily.

(ii) *Indications for use.* Treatment of cattle and sheep for bacterial pneumonia (shipping fever) caused by *Pasteurella multocida;* swine for erysipelas caused by *Erysipelothrix insidiosa;* and horses for strangles caused by *Streptococcus equi.*

(iii) *Limitations.* Administer by deep intramuscular injection. Continue treatment at least 48 hours after symptoms disappear but do not exceed 7 days of treatment in nonlactating dairy and beef cattle, sheep, and swine, or 5 days in lactating cattle. Milk that has been taken during treatment and for 48 hours (four milkings) after the last treatment must not be used for food. Discontinue treatment for the following number of days before slaughter: Nonruminating cattle (calves)—7; all other cattle—4; sheep—8; and swine—6. Not for use in horses intended for food.

(e) *Sponsor.* See No. 055529 in § 510.600(c) of this chapter.

(1) *Cattle, sheep, swine, and horses*—(i) *Amount.* 3,000 units per pound of body weight (1 milliliter per 100 pounds body weight) daily.

(ii) *Indications for use.* Treatment of cattle and sheep for bacterial pneumonia (shipping fever) caused by *Pasteurella multocida;* swine for erysipelas caused by *Erysipelothrix insidiosa;* and horses for strangles caused by *Streptococcus egui.*

(iii) *Limitations.* For intramuscular use only. Continue treatment at least 1 day after symptoms disappear (usually 2 or 3 days). Treatment should not exceed 4 consecutive days. Do not exceed 10 milliliters per injection site. Milk that has been taken during treatment and for 72 hours (six milkings) after the latest treatment must not be used for food. Discontinue treatment for the following number of days before slaughter:

Cattle—10, sheep—9, and swine—7. Not for use in horses intended for food.

(2) [Reserved]

(f) *Sponsor.* See Nos. 000069 and 010515 in § 510.600(c) of this chapter. See paragraph (d) of this section for conditions of use, except that milk taken during treatment and for 48 hours (four milkings) after the latest treatment shall not be used for food.

§ 522.1696c Penicillin G procaine in oil.

(a) *Specifications.* Each milliliter contains penicillin G procaine equivalent to 300,000 units of penicillin G.

(b) *Sponsor.* See No. 053501 in § 510.600(c) of this chapter.

(c) *National Academy of Sciences/National Research Council (NAS/NRC) status.* The conditions of use were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(d) *Conditions of use.* (1) *Amount.* Dogs and cats—10,000 units per pound of body weight once daily. Horses—3,000 units per pound of body weight once daily.

(2) *Indications for use.* Treatment of infections of dogs, cats, and horses caused by penicillin-susceptible organisms such as Streptococci, Staphylococci, and Corynebacteria.

(3) *Limitations.* Not for use in food-producing animals. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 524—[AMENDED]

Part 524 is amended as follows:

18. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

19. The heading for part 524 is revised to read as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

20. New §§ 524.154 and 524.155 are added to read as follows:

§ 524.154 Bacitracin or bacitracin zinc-neomycin sulfate-polymyxin B sulfate ophthalmic ointment.

(a) *Sponsor.* To firms identified in § 510.600(c) of this chapter as follows:

(1) To 000009; each gram contains 500 units of bacitracin, 3.5 milligrams of neomycin, and 10,000 units of polymyxin B.

(2) To 017220 and 025463; each gram contains 400 units of bacitracin zinc, 3.5 milligrams of neomycin, and 10,000 units of polymyxin B sulfate.

(b) *Conditions of use. Dogs and Cats.* (1) *Amount.* Apply a thin film over the cornea 3 or 4 times daily.

(2) *Indications for use.* Treatment of superficial bacterial infections of the eyelid and conjunctiva of dogs and cats when due to susceptible organisms.

(3) *Limitations.* Laboratory tests should be conducted including in vitro culturing and susceptibility tests on samples collected prior to treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 524.155 Bacitracin zinc-polymyxin B sulfate-neomycin sulfate-hydrocortisone or hydrocortisone acetate ophthalmic ointment.

(a) *Sponsor.* To firms identified in § 510.600(c) of this chapter as follows:

(1) To 017220; each gram of ointment contains 400 units of bacitracin zinc, 10,000 units of polymyxin B sulfate, 5 milligrams of neomycin sulfate (equivalent to 3.5 milligrams of neomycin base), and 10 milligrams of hydrocortisone.

(2) To 025463; each gram of ointment contains 400 units of bacitracin zinc, 10,000 units of polymyxin B sulfate, 5 milligrams of neomycin sulfate (equivalent to 3.5 milligrams of neomycin base), and 10 milligrams of hydrocortisone acetate.

(b) *Conditions of use. Dogs and cats.* (1) *Amount.* Apply a thin film over the cornea three or four times daily.

(2) *Indications for use.* For treating acute or chronic conjunctivitis caused by susceptible organisms.

(3) *Limitations.* All topical ophthalmic preparations containing corticosteroids with or without an antimicrobial agent are contraindicated in the initial treatment of corneal ulcers. They should not be used until the infection is under control and corneal regeneration is well underway. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

21. New §§ 524.390, 524.390a, 524.390b, 524.390c, and 524.390d are added to read as follows:

§ 524.390 Chloramphenicol ophthalmic and topical dosage forms.

§ 524.390a Chloramphenicol ophthalmic ointment.

(a) *Specifications.* Each gram contains 10 milligrams chloramphenicol in a petrolatum base.

(b) *Sponsor.* See Nos. 000856 and 025463 in § 510.600(c) of this chapter for use as in paragraph (c)(1)(i) of this section. See No. 017030 for use as in paragraph (c)(1)(ii) of this section.

(c) *Conditions of use. Dogs and cats.* (1) *Amount.* Apply as follows:

(i) Every 3 hours around the clock for 48 hours after which night instillations may be omitted.

(ii) Four to six times daily to affected eye for the first 72 hours depending upon the severity of the condition. A small amount of ointment should be placed in the lower conjunctival sac.

(2) *Indications for use.* Treatment of bacterial conjunctivitis caused by pathogens susceptible to chloramphenicol.

(3) *Limitations.* Continue treatment for 48 hours (2 days) after eye appears normal. Therapy for cats should not exceed 7 days. Prolonged use in cats may produce blood dyscrasias. If improvement is not noted in a few days a change of therapy should be considered. When infection may be cause of disease, especially in purulent or catarrhal conjunctivitis, attempts should be made to determine through susceptibility testing, which antibiotics will be effective prior to applying ophthalmic preparations. This chloramphenicol product must not be used in animals producing meat, eggs, or milk. The length of time that residues persist in milk or tissues has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 524.390b Chloramphenicol ophthalmic solution.

(a) *Specifications.* Each milliliter contains 5 milligrams of chloramphenicol.

(b) *Sponsor.* See No. 017030 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs and Cats.* (1) *Amount.* Apply one or two drops, 4 to 6 times a day for the first 72 hours, depending upon the severity of the condition. Intervals between applications may be increased after the first 2 days.

(2) *Indications for use.* Treatment of bacterial conjunctivitis caused by organisms susceptible to chloramphenicol. Therapy should be continued for 48 hours after the eye appears normal.

(3) *Limitations.* Therapy for cats should not exceed 7 days. As with other antibiotics, prolonged use may result in overgrowth of nonsusceptible organisms. If superinfection occurs, or if clinical improvement is not noted within a reasonable period, discontinue use, and institute appropriate therapy. Prolonged use in cats may produce blood dyscrasias. Chloramphenicol products must not be used in meat-, egg-, or milk-producing animals. The length of

time that residues persist in milk or tissues has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 524.390c Chloramphenicol-prednisolone-tetracaine-squalane topical suspension.

(a) *Specification.* Each milliliter contains 4.2 milligrams of chloramphenicol, 1.7 milligrams of prednisolone, 4.2 milligrams of tetracaine, and 0.21 milliliter of squalane.

(b) *Sponsor.* See No. 017030 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs and cats.* (1) *Amount.* Apply two or three times daily or as needed for not more than 7 days. Severe infections should be supplemented by systemic therapy.

(2) *Indications for use.* Treatment of acute otitis externa and pyodermas (acute moist dermatitis, vulvar fold dermatitis, lip fold dermatitis, interdigital dermatitis, and juvenile dermatitis) in dogs and cats.

(3) *Limitations.* The drug must not be used in the eyes. Prolonged use in cats may produce blood dyscrasias. Laboratory tests should be conducted, including in vitro culturing and susceptibility tests on samples collected prior to treatment. Chloramphenicol products must not be used in meat-, egg-, or milk-producing animals. The length of time that residues persist in milk or tissues has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 524.390d Chloramphenicol-prednisolone ophthalmic ointment.

(a) *Specifications.* Each gram contains 10 milligrams of chloramphenicol and 2.5 milligrams of prednisolone acetate.

(b) *Sponsor.* See No. 017030 in § 510.600(c) of this chapter.

(c) *Conditions of use. Dogs and cats.* (1) *Amount.* Apply 4 to 6 times daily to the affected eye for the first 72 hours depending upon the severity of the condition. Continue treatment for 48 hours after the eye appears normal.

(2) *Indications for use.* Treatment of bacterial conjunctivitis and ocular inflammation caused by organisms susceptible to chloramphenicol.

(3) *Limitations.* Therapy for cats should not exceed 7 days, prolonged use in cats may produce blood dyscrasia. As with other antibiotics, prolonged use may result in overgrowth of nonsusceptible organisms. If superinfection occurs or if clinical improvement is not noted within a reasonable period, discontinue use and institute appropriate therapy. All topical ophthalmic preparations containing corticosteroids, with or without an antimicrobial agent, are contraindicated in the initial treatment of corneal ulcers. They should not be used until the infection is under control and corneal regeneration is well underway. Chloramphenicol products must not be used in meat-, egg-, or milk-producing animals. The length of time that residues persist in milk or tissues has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PART 526—[AMENDED]

Part 526 is amended as follows:

22. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

23. The heading for part 526 is revised to read as follows:

PART 526—INTRAMAMMARY DOSAGE FORMS

24. New § 526.88 is added to read as follows:

§ 526.88 Amoxicillin trihydrate for intramammary infusion.

(a) *Specifications.* Each single dose syringe contains amoxicillin trihydrate equivalent to 62.5 milligrams of amoxicillin.

(b) *Sponsor.* See No. 05371 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.38 of this chapter.

(d) *Conditions of use—Lactating cows*—(1) *Amount.* One syringe (equivalent to 62.5 milligrams amoxicillin) per quarter.

(2) *Indications for use.* For the treatment of subclinical infectious bovine mastitis due to *Streptococcus agalactiae* and *Straphylococcus aureus* (penicillin sensitive).

(3) *Limitations.* Administer after milking. Clean and disinfect the teat. Use one syringe per infected quarter every 12 hours for a maximum of 3 doses. Do not use milk taken from treated animals for food purposes within 60 hours (5 milkings) after last treatment. Do not slaughter treated animals for food purposes within 12 days after the last treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

25. New §§ 526.464, 526.464a, 526.464b, 526.464c, and 526.464d are added to read as follows:

§ 526.464 Cloxacillin intramammary dosage forms.

§ 526.464a Cloxacillin benzathine for intramammary infusion.

(a) *Specifications.* Each dose contains cloxacillin benzathine equivalent to 500 milligrams of cloxacillin.

(b) *Related tolerances.* See § 556.165 of this chapter.

(c) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter for use in dairy cows.

(1) *Amount.* Administer aseptically into each infected quarter immediately after last milking or early in dry period.

(2) *Indications for use.* Treatment of mastitis is caused by *Staphylococcus aureus* and *Streptococus agalactiae* including penicillin resistant strains in dairy cows during the dry period.

(3) *Limitations.* For use in dry cows only. Not to be used within 30 days of calving. Animals infused with this product must not be slaughtered for food use for 30 days after the latest infusion. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter for use in dairy cows.

(1) *Amount.* Administer one dose in each quarter immediately after last milking.

(2) *Indications for use.* Treatment and prophylaxis of bovine mastitis in nonlactating cows due to *S. agalactiae* and *S. aureus.*

(3) *Limitations.* For use in dry cows only. Not to be used within 4 weeks (28 days) of calving. Animals infused with this product must not be slaughtered for food use for 4 weeks (28 days) after the latest infusion. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 526.464b Cloxacillin benzathine for intramammary infusion, sterile.

(a) *Specifications.* Each 6 milliliter dose contains cloxacillin benzathine equivalent to 500 milligrams of cloxacillin.

(b) *Related tolerances.* See § 556.165 of this chapter.

(c) *Sponsor.* See No. 53501 in § 510.600(c) of this chapter.

(1) *Amount.* 6 milliliters per infected quarter aseptically immediately after last milking at the time of drying-off of the cow.

(2) *Indications for use.* Treatment of mastitis is caused by *Staphylococcus aureus* and *Streptococus agalactiae* in dairy cows at the time of drying-off of the cow.

(3) *Limitations.* For use in dry cows only Not to be used within 30 days of calving. Milk taken from treated cows prior to 72 hours (6 milkings) after calving must not be used for human food. Animals infused with this product must not be slaughtered for food from the time of infusion until 72 hours after calving. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(1) *Amount.* One dose per infected quarter immediately after last milking.

(2) *Indications for use.* Treatment and prophylaxis of bovine mastitis in nonlactating cows due to *Streptococcus agalactiae* and *Stophylococcus aureus.*

(3) *Limitations.* For use in dry cows only. Not to be used within 4 weeks (28 days) of calving. Animals infused with this product must not be slaughtered for food use for 4 weeks (28 days) after the latest infusion. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 526.464c Cloxacillin sodium for intramammary infusion, sterile.

(a) *Specifications.* Each milliliter contains cloxacillin sodium equivalent to 20.0 milligrams of cloxacillin.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.165 of this chapter.

(d) *Conditions of use. Lactating cows*—(1) *Amount.* 10 milliliters (one dose of 200 milligrams) per infected quarter.

(2) *Indications for use.* Treatment of mastitis in lactating cows due to *Streptococcus agalactiae* and *Staphylococcus aureus,* nonpenicillinase-producing strains.

(3) *Limitations.* Administer after milking, cleaning, and disinfecting, and as early as possible after detection. Treatment should be repeated at 12-hour intervals for a total of three doses. Milk taken from treated animals within 48 hours (4 milkings) after the latest treatment should not be used for food. Treated animals should not be slaughtered for food within 10 days after the latest treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

26. New § 526.1130 is added to read as follows:

§ 526.1130 Hetacillin potassium for intramammary infusion.

(a) *Specifications.* Each 10 milliliter syringe contains hetacillin potassium equivalent of 62.5 milligrams of ampicillin.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Conditions of use. Lactating cows*—(1) *Amount.* 10 milliliters of hetacillin potassium equivalent to 62.5 milligrams ampicillin into each infected quarter. Repeat at 24-hour intervals until a maximum of three treatments has been given.

(2) *Indications for use.* Treating acute, chronic, or subclinical bovine mastitis in lactating cows caused by susceptible strains of *Streptococcus agalactiae, Streptococcus dysgalactiae, Staphylococcus aureus,* and *Escherichia coli.*

(3) *Limitations.* If definite improvement is not noted within 48 hours after treatment, the causal organism should be further investigated. Milk that has been taken from animals during treatment and for 72 hours (6 milkings) after the latest treatment must not be used for food. Treated animals must not be slaughtered for food until 10 days after the latest treatment. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

27. New §§ 526.1696, 526.1696a, 526.1696b, 526.1696c, and 526.1696d are added to read as follows:

§ 526.1696 Penicillin intramammary dosage forms.

§ 526.1696a Penicillin G procaine in oil.

(a) *Specifications.* Each milliliter contains penicillin G procaine equivalent to 100,000 units of penicillin G in peanut, sesame, or soybean oils.

(b) *Related tolerances.* See § 556.510 of this chapter.

(c) *Sponsor.* See No. 010515 in § 510.600(c) of this chapter.

(1) *National Academy of Sciences/National Research Council (NAS/NRC) status.* The conditions specified in paragraph (c)(2)(i)(B) of this section were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(2) *Conditions of use.* Treating bovine mastitis caused by *Streptococcus agalactiae, S. dygalactiae,* and *S. uberus* in lactating cows as follows:

(i) *Three-dose regimen.* Administer by intramammary infusion in each infected quarter as follows:

(A) *6-milliliter dose (peanut oil).* Treatment may be repeated at 12-hour intervals. Milk that has been taken from animals during treatment and for 84 hours (7 milkings) after the latest treatment must not be used for food. Animals must not be slaughtered for food during treatment or within 4 days after the latest treatment.

(B) *10-milliliter dose (sesame oil).* Treatment may be repeated at 12-hour intervals. Milk that has been taken from animals during treatment and for 60 hours (5 milkings) after the latest treatment must not be used for food. Animals must not be slaughtered for food during treatment or within 3 days after the latest treatment.

(ii) *Two-dose regimen. 10-milliliter dose (peanut oil).* Administer by intramammary infusion in each infected quarter. Treatment may be repeated at intervals of 12 hours. Milk taken from animals during treatment and for 60 hours (5 milkings) after the latest treatment must not be used for food. Animals must not be slaughtered for food during treatment or within 4 days after latest treatment.

(d) *Sponsor.* See No. 050604 in § 510.600(c) of this chapter.

(1) *10-milliliter dose (peanut oil).* Administer by intramammary infusion in each infected quarter. Treatment may be repeated at 12-hour intervals for not more than three doses, as indicated by clinical response.

(2) *Indications for use.* Treating bovine mastitis caused by *Streptococcus agalactiae, S. dysgalactiae,* and *S. uberus* in lactating cows as follows:

(3) *Limitations.* Milk that has been taken from animals during treatment and for 60 hours after the latest treatment must not be used for food. Animals must not be slaughtered for

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food during treatment or within 3 days after the latest treatment.

(e) *Sponsor.* See No. 010515 (sesame oil) and No. 050604 (peanut oil) in § 510.600(c) of this chapter.

(1) *NAS/NRC status.* The conditions of use were NAS/NRC reviewed and found effective. Applications for these uses need not include effectiveness data as specified by § 514.111 of this chapter, but may require bioequivalency and safety information.

(2) *Single-dose regimen.* One 10-milliliter dose (sesame oil or peanut oil) in each infected quarter at time of drying-off.

(3) *Indications of use.* Treating bovine mastitis caused by *Streptococcus agalactiae* in dry cows.

(4) *Limitations.* Discard all milk for 72 hours (6 milkings) following calving, or later as indicated by the marketable quality of the milk. Animals must not be slaughtered for food within 14 days postinfusion.

(f) *Sponsor.* See 000010 in § 510.600(c) of this chapter.

(1) *Three-dose regimen.* Single 10-milliliter syringe (soybean oil vehicle) in each infected quarter after milking. Repeat procedure at 12-hour intervals for not more than three doses.

(2) *Indications for use.* Aid in the treating of mastitis caused by *Streptococcus agalactiae, S. dysgalactiae,* and *S. uberis* in lactating cows.

(3) *Limitations.* Milk that has been taken from animals during treatment and for 60 hours (5 milkings) after the latest treatment must not be used for food. Animals must not be slaughtered for food during treatment or within 3 days after the latest treatment.

§ 526.1696b Penicillin G procaine-dihydrostreptomycin in soybean oil for intramammary infusion (dry cows).

(a) *Specifications.* Each 10 milliliters of suspension contains penicillin G procaine equivalent to 200,000 units of penicillin G and dihydrostreptomycin sulfate equivalent to 300 milligrams of dihydrostreptomycin.

(b) *Sponsor.* See No. 000010 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.200 and 556.510 of this chapter.

(d) *Conditions of use. Dairy cows*—(1) *Amount.* One syringe into each quarter at the last milking prior to drying off.

(2) *Indications for use.* Intramammary treatment of subclinical mastitis in dairy cows at the time of drying off, specifically against infections caused by *Staphylococcus aureus* and *Streptococcus agalactiae.*

(3) *Limitations.* Not to be used within 6 weeks of calving. For use in dry cows only. Milk taken from cows within 24 hours (2 milkings) after calving must not be used for food. Animals infused with this drug must not be slaughtered for food within 60 days of treatment nor within 24 hours after calving.

§ 526.1696c Penicillin G procaine-dihydrostreptomycin sulfate for intramammary infusion (dry cows).

(a) *Specifications.* Each 10 milliliters of suspension contains penicillin G procaine equivalent to 1 million units of penicillin G and dihydrostreptomycin suflate equivalent to 1 gram of dihydrostreptomycin.

(b) *Sponsor.* See No. 033392 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See §§ 556.200 and 556.510 of this chapter.

(d) *Conditions of use. Dairy cows*—(1) *Amount.* One syringe per quarter at the last milking prior to drying off.

(2) *Indications for use.* Intramammary use to reduce the frequency of existing infection and to prevent new infections with *Staphylococcus aureus* in dry cows.

(3) *Limitations.* Not to be used within 6 weeks of freshening. Not for use in lactating cows. Milk taken from animals within 96 hours (8 milkings) after calving must not be used for feed. Animals infused with this drug must not be slaughtered for food within 60 days from the time of infusion nor within 96 hours after calving. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

§ 526.1696d Penicillin G procaine-novobiocin for intramammary infusion.

(a) *Specifications.* For lactating cattle: each 10-milliliter dose contains 100,000 units of penicillin G procaine and 150 milligrams of novobiocin as novobiocin sodium. For dry cows: 200,000 units of penicillin G procaine and 400 milligrams of novobiocin as novobiocin sodium.

(b) *Sponsor.* See No. 000009 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Lactating cows*—(i) *Amount.* 10 milliliters in each infected quarter after milking. Repeat once after 24 hours.

(ii) *Indications for use.* Treating lactating cows for mastitis caused by susceptible strains of *Staphylococcus aureus, Streptococcus agalactiae, Streptococcus dysgalactiae,* and *Streptococcus uberis.*

(iii) *Limitations.* For udder instillation in lactating cattle only. Do not milk for at least 6 hours after treatment; thereafter, milk at regular intervals. Milk taken from treated animals within 72 hours (6 milkings) after the latest treatment must not be used for food. Treated animals must be slaughtered for food for 15 days following the latest treatment. If redness, swelling, or abnormal milk persists, discontinue use and consult a veterinarian.

(2) *Dry cows*—(i) *Amount.* 10 milliliters in each quarter at time of drying off.

(ii) *Indications for use.* Treatment of subclinical mastitis caused by susceptible strains of *Staphylococcus aureus* and *Streptococcus agalactiae.*

(iii) *Limitations.* For udder instillation in dry cows only. Do not use less than 30 days prior to calving. Milk from treated cows must not be used for food during the first 72 hours after calving. Treated animals must not be slaughtered for food for 30 days following udder infusion.

PART 529—[AMENDED]

Part 529 is amended as follows:

28. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

29. The heading for part 529 is revised to read as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

30. New § 529.2464 is added to read as follows:

§ 529.2464 Ticarcillin powder.

(a) *Specifications.* Each vial contains ticarcillin disodium equivalent to 6 grams of ticarcillin to be reconstituted with 25 milliliters of sterile water for injection or sterile physiological saline.

(b) *Sponsor.* See No. 053571 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 6 grams per day, intrauterine, for 3 consecutive days during estrus.

(2) *Indications for use. Horses.* Intrauterine treatment of endometritis caused by beta-hemolytic streptococci.

(3) *Limitations.* For intrauterine use in horses only. Infuse aseptically. Not for use in horses raised for food production. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

PARTS 536, 539, 540, 544, 546, 548, AND 555—[REMOVED]

31. Parts 536, 539, 540, 544, 546, 548, and 555 are removed.

Dated: August 6, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-19442 Filed 8-17-92; 8:45 am]

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Tuesday
August 18, 1992

Part VI

Department of Education

National Institute on Disability and Rehabilitative Services; Inviting Application for New Awards Under Certain Programs for Fiscal Year 1993; Notice

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133D, 84.133F, 84.133G, and 84.133P]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department general Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by seeking to promote high quality research and its use to improve the lives of individuals with disabilities. The National Education Goals call for: All children in America to start school ready to learn; all students to demonstrate competency in challenging subject matter and to learn to use their minds well; and adult Americans to be literate and to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of the categories in the notice, or to any specific number of awards or funding levels, unless otherwise specified in the statute.

The program regulations in 34 CFR 350.20 provide that an applicant for assistance under parts 355, 357 and 360 shall submit copies of their applications to the appropriate State rehabilitation agency (or agencies) for comment, in accordance with the procedures in EDGAR, 34 CFR 75.155–75.159. This means that organizations applying for the Regional Information Exchange awards under part 355 must submit copies of their applications to each State Vocational Rehabilitation Agency and Rehabilitation Agency for the Blind within the region for which they are applying. Applicants in other programs must send copies of their applications to each State Vocational Rehabilitation Agency within the region for which they are applying.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86; and the following program regulations:

Knowledge Dissemination and Utilization Program (CFDA No. 84.133D) 34 CFR parts 350 and 355.

Rehabilitation Research Fellowships Program (CFDA No. 84.133F) 34 CFR parts 350 and 356.

Field-Initiated Research Program (CFDA No. 84.133G) 34 CFR parts 350 and 357.

Research Training and Career Development Program (CFDA No. 84.133P) 34 CFR parts 350 and 360.

Program Title: Knowledge Dissemination and Utilization Programs.

CFDA Number: 84.133D.

Purpose: The Knowledge Dissemination and Utilization Program is designed to support activities that will ensure that rehabilitation knowledge generated from projects and centers funded by the Institute and other sources is fully utilized to improve the lives of individuals with disabilities.

Organizations applying for the Regional Information Exchange awards must submit copies of their applications to each State Vocational Rehabilitation Agency and Rehabilitation Agency for the Blind within the region for which they are applying.

Under 34 CFR 75.105(c)(3) and 34 CFR 355.32(a) and (b), the Secretary will only consider those applications that meet the following absolute priority:

Absolute Priority—Regional Information Exchange (RIE)

A Regional Information Exchange (RIE) is intended to facilitate the adaption of exemplary program models that were developed within the locality or region of the adapting agency. The RIEs must identify and validate exemplary programs within the established priority areas, "market" the model programs to potential adapting agencies, and provide technical assistance in the adoption or adaptation of the model. Potential applicants considering applying for the Rehabilitation Information Exchange awards should refer to the April 17, 1992 issue of the **Federal Register** (57 FR 13721).

Awards will be made in regions that do not have RIEs. To determine which regions do not have RIEs, potential applicants may call Ellen Blasiotti after September 30, 1992. Mrs. Blasiotti's telephone number is (202) 205–9800; deaf and hearing impaired individuals may call (202) 205–5479 for TDD services.

Selection Criteria. The Secretary, in accordance with 34 CFR 355.31, evaluates applications for Knowledge Dissemination and Utilization Programs according to the following selection criteria in 34 CFR 350.34.

(a) *Potential Impact of Outcomes: Importance of Program* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The proposed activity relates to the announced priority;

(2) The research is likely to produce new and useful information (research activities only);

(3) The need and target population are adequately defined;

(4) The outcomes are likely to benefit the defined target population;

(5) The training needs are clearly defined (training activities only);

(6) The training methods and developed subject matter are likely to meet the defined need (training activities only); and

(7) The need for information exists (utilization activities only).

(b) *Potential Impact of Outcomes: Dissemination/Utilization* (Weight 3.0). The Secretary reviews each application to determine to what degree—

(1) The research results are likely to become available to others working in the field (research activities only);

(2) The means to disseminate and promote utilization by others are defined;

(3) The training methods and content are to be packaged for dissemination and use by others (training activities only); and

(4) The utilization approach is likely to address the defined need (utilization activities only).

(c) *Probability of Achieving Proposed Outcomes: Program/Project Design* (Weight 5.0). The Secretary reviews each application to determine to what degree—

(1) The objectives of the project(s) are clearly stated;

(2) The hypothesis is sound and based on evidence (research activities only);

(3) The project design/methodology is likely to achieve the objectives;

(4) The measurement methodology and analysis is sound (research and development/demonstration activities only);

(5) The conceptual model (if used) is sound (development/demonstration activities only);

(6) The sample populations are correct and significant (research and development/demonstration activities only);

(7) The human subjects are sufficiently protected (research and development/demonstration activities only);

(8) The device(s) or model system is to be developed in an appropriate environment;

(9) The training content is comprehensive and at an appropriate level (training activities only);

(10) The training methods are likely to be effective (training activities only);

(11) The new materials (if developed) are likely to be of high quality and uniqueness (training activities only);

(12) The target populations are linked to the project (utilization activities only); and

(13) The format of the dissemination medium is the best to achieve the desired result (utilization activities only).

(d) *Probability of Achieving Proposed Outcomes: Key Personnel* (Weight 4.0). The Secretary reviews each application to determine to what degree—

(1) The principal investigator and other key staff have adequate training and/or experience and demonstrate appropriate potential to conduct the proposed research, demonstration, training, development, or dissemination activity;

(2) The principal investigator and other key staff are familiar with pertinent literature and/or methods;

(3) All required disciplines are effectively covered;

(4) Commitments of staff time are adequate for the project; and

(5) The applicant, as part of its non-discriminatory employment practices, to encourage applications for employment from persons who are members of groups that traditionally have been underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons; and

(iv) The elderly.

(e) *Probability of Achieving Proposed Outcomes: Evaluation Plan* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) There is a mechanism to evaluate plans, progress and results;

(2) The evaluation methods and objectives are likely to produce data that are quantifiable; and

(3) The evaluation results, where relevant, are likely to be assessed in a service setting.

(f) *Program/Project Management: Plan of Operations* (Weight 2.0). The Secretary reviews each application to determine to what degree—

(1) There is an effective plan of operation that insures proper and efficient administration of the project(s);

(2) The applicant's planned use of its resources and personnel is likely to achieve each objective;

(3) Collaboration between institutions, if proposed, is likely to be effective; and

(4) There is a clear description of how the applicant will include eligible project participants who have been traditionally underrepresented, such as—

(i) Members of racial or ethnic minority groups;

(ii) Women;

(iii) Handicapped persons;

(iv) The elderly.

(g) *Program/Project Management: Adequacy of Resources* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The facilities planned for use are adequate;

(2) The equipment and supplies planned for use are adequate; and

(3) The commitment of the applicant to provide administrative support and adequate facilities is evident.

(h) *Program/Project Management: Budget and Cost Effectiveness* (Weight 1.0). The Secretary reviews each application to determine to what degree—

(1) The budget for the project(s) is adequate to support the activities;

(2) The costs are reasonable in relation to the objectives of the projects(s); and

(3) The budget for subcontracts (if required) is detailed and appropriate.

Eligible Applicants: Parties eligible to apply for grants under this program are State and public agencies or organizations, private agencies or organizations, including institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 761(a), 762(a) and 762(b)(5).

Application Notices for Fiscal Year 1993, Knowledge Dissemination and Utilization, CFDA No. 84.133D

Funding Priority	Deadline for transmittal of applications	Estimated no. of awards	Estimated size of awards (per year)	Project period (months)
Regional Information, Exchange (RIE)	02/23/93	2	$200,000	60

Program Title: Rehabilitation Research Fellowships.

CFDA Number: 84.133F.

Purpose: The purpose of this program is to build research capacity by providing support to highly qualified individuals to perform research on the rehabilitation of disabled persons.

Selection Criteria: The Secretary evaluates applications for a Fellowship according to the following criteria in 34 CFR 356.30.

(a) Quality and level of formal education, previous work experience, and recommendations of present or former supervisors or colleagues that include an indication of the applicant's ability to work creatively in scientific research; and

(b) The quality of a research proposal of no more than 12 pages containing the following information:

(1) The importance of the problem to be investigated to the purpose of the Act and the mission of Institute.

(2) The research hypotheses or related objectives and the methodology and design to be followed.

(3) Assurance of the availability of any necessary data resources, equipment, or institutional support, including technical consultation and support where appropriate, required to carry out the proposed activity.

Eligible Applicants: Only individuals are eligible to apply for research fellowships under this program.

Program Authority: 29 U.S.C. 761a(d).

Application Notices for Fiscal Year 1993

CFDA no.	Program title	Deadline for transmittal of applications	Estimated no. of awards	Estimated size of awards (per year)	Project period (months)
84.133F	Rehabilitation Research Fellowships	10/05/92	10	$40,000	12

Program Title: Field-Initiated Research.

CFDA Number: 84.133G.

Purpose: This program is designed to encourage eligible parties to originate valuable ideas for research and demonstration, development, or knowledge dissemination projects to further the purposes of the Institute; and (b) to support research and demonstration, development, or knowledge dissemination projects, as described in 34 CFR 357.10, that address important activities not supported by Institute-funded research or that complement that research in a promising way.

Invitational Priorities: The Secretary is particularly interested in applications that meet one of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets an invitational priority does not receive competitive or absolute preference over other applications. The invitational priorities are:

(1) Studies of the effects of childhood trauma on maturation and the developmental process and the implications for rehabilitation services;

(2) Development of techniques to evaluate readiness to return to work after acute myocardial infarction or invasive cardiac procedures;

(3) Development of a miniaturized, unabridged electronic Braille dictionary;

(4) Development of miniature electronic device to accommodate severe handwriting deficits;

(5) Studies of applications of Positron Emission Tomography (PET) imaging to increase understanding of the underlying biological basis for certain disabilities;

(6) Studies of the use of lubricant-impregnated composite materials for improving durability and reliability of orthoses and prostheses;

(7) Studies of the value of new engineering coating materials in improving the appearance of prostheses and orthoses;

(8) Development of Computer-Aided Design/Computer-Aided Manufacture (CAD/CAM) programs for designing accessible buildings to meet the requirement of the Americans with Disabilities Act;

(9) Studies of the use of augmentative communication devices and other assistive technology to enhance literacy in individuals with various types of disabilities

(10) Development of new models of rehabilitation counselor education;

(11) Studies of model practices for reasonable accommodation at the workplace for individuals with long-term mental illness;

(12) Development of vocational rehabilitation models for persons with diabetes who are blind;

(13) Development of strategies for Independent Living Centers to attain economic self-reliance;

(14) Studies of the use of technology in exercise interventions for individuals who have had strokes. *Selection Criteria:* The Secretary evaluates applications under the Field-Initiated Research Program in accordance with 34 CFR 357.32.

(a) *Importance of the problem.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The proposed project addresses a problem that is significant to persons with disabilities or to those who provide services to them; and

(2) The proposed project is likely to produce new and useful knowledge, techniques, or devices that will develop or disseminate solutions to problems confronting persons with disabilities.

(b) *Design of the project.* (45 points)

(1) The Secretary reviews each application for a research and demonstration project to determine the extent to which—

(i) The review of the literature is appropriate and indicates familiarity with the relevant current research;

(ii) The research hypotheses are theoretically sound and based on current knowledge;

(iii) The sample populations are adequate and appropriately selected;

(iv) The data collection instruments and methods are appropriate and likely to be successful;

(v) The data analysis measures are appropriate; and

(vi) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses.

(2) The Secretary reviews each application for a knowledge dissemination project to determine the extent to which—

(i) The need for the information has been demonstrated;

(ii) The target populations are appropriately specified;

(iii) The dissemination methods are appropriate to the target population;

(iv) The materials for dissemination are prepared in media accessible to the target population;

(v) There are adequate means of documenting and evaluating the effectiveness of the dissemination activity.

(3) The Secretary reviews each application for a development project to determine the extent to which—

(i) The proposed project will use the most effective and appropriate technology available in developing the new device or technique;

(ii) The proposed development is based on a sound conceptual model that demonstrates an awareness of the state-of-the-art in technology;

(iii) Devices or techniques will be developed and tested in an appropriate environment;

(iv) The applicant considers the cost-effectiveness and usefulness of the device or technique to be developed for persons with disabilities; and

(v) The applicant discusses the potential for commercial or private manufacture, marketing, and distribution of the product.

(c) *Personnel.* (20 points) The Secretary reviews each application to determine the extent to which—

(1) The key personnel have adequate training and experience in the required discipline to conduct the proposed activities;

(2) The allotment of staff time is adequate to accomplish the proposed activities; and

(3) The applicant ensures that personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(d) *Management and evaluation.* (15 points) The Secretary reviews each application to determine the extent to which—

(1) The resources of the applicant are adequate, appropriate, and accessible to individuals with disabilities;

(2) The proposed budget is adequate and appropriate for the activities to be carried out;

(3) There is a plan, appropriate to the type of field-initiated project, to evaluate the effectiveness of the project in accomplishing its goals and objectives;

(4) The applicant provides a plan of operations, appropriate to the type of field-initiated project, indicating that it will achieve the project objectives in a timely and effective manner; and

(5) Appropriate collaboration with other agencies is assured.

Eligible Applicants: Parties eligible to apply for grants under this program are State and public agencies or organizations, private agencies or organizations, institutions of higher education and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 760–762.

APPLICATION NOTICES FOR FISCAL YEAR 1993

CFDA No.	Program title	Deadline for transmittal of applications	Estimated No. of awards	Estimated size of awards (per year)	Project period (months)
84.133G	Field-Initiated Research	10/5/92	20	$125,000	36

Program Title: Research Training and Career Development Program.

CFDA Number: 84.133P.

Purpose: The purpose of this program is to expand capability in the field of rehabilitation research by supporting projects that provide advanced training in rehabilitation research. These projects provide research training and experience at an advanced level to individuals with doctorates or similar advanced degrees who have clinical or other relevant experience, including experience in management or basic science research, in fields pertinent to rehabilitation, in order to quality those individuals to conduct independent research on problems related to disability and rehabilitation.

Priorities: Under 34 CFR 75.105(c)(2)(ii), applications that meet these absolute priorities are selected by the Secretary over applications of comparable merit that do not meet the priorities.

Specific priorities for this program are contained in the program regulations at 34 CFR 360.32. Each year, the Secretary may announce priorities to support research training in the following areas listed in the regulations:

Absolute Priority 1—Rehabilitation Counseling

(1) Miscellaneous clinical or technical fields, such as rehabilitation counseling; social work; law; social and behavioral sciences; gerontology; or demographics.

Absolute Priority 2—Rehabilitation Engineering

Engineering and rehabilitation technology fields, such as prosthetics and orthotics; engineering; design; architecture; computer applications; or biomechanics.

Selection Criteria: The Secretary uses the following criteria in 34 CFR 360.31 to evaluate application under this program.

(a) *Importance and potential contribution.* (20 points) The Secretary reviews each application to determine to what degree—

(1) The applicant is responsive to any priority established under § 360.32;

(2) The applicant proposes to provide training in a rehabilitation discipline or area of study in which there is a shortage of qualified researchers, or to provide training to a trainee population in which there is a need for more qualified researchers, such as clinicians in rural areas, or clinicians who are directly experienced with underserved populations; and

(3) The applicant is likely to make a significant increase in the number of trained rehabilitation researchers.

(b) *Quality of proposed training program.* (40 points) The Secretary reviews each application to determine to what degree—

(1) The applicant's proposed recruitment program is likely to be effective in recruiting highly qualified trainees;

(2) The proposed didactic and classroom training programs emphasize scientific methodology are multidisciplinary, comprehensive, and appropriate to the level of the trainees, and are likely to produce qualified independent researchers;

(3) The quality and extent of the academic mentorship, guidance, and supervision to be provided to each individual trainee are of a high level and are likely to produce highly qualified researchers;

(4) The type, extent, and quality of the proposed clinical and laboratory research experience, including the opportunity to participate in research on meaningful topics at an advanced level, are likely to develop individuals with the capacity to perform independent research; and

(5) The opportunities for collegial and collaborative activities, exposure to outstanding scientists in the field, and opportunities to participate in the preparation of scholarly or scientific publications and presentations are extensive and appropriate.

(c) *Personnel and resources committed to the project.* (30 points) the Secretary evaluates each application to determine to what degree—

(1) The activities of the project will be implemented by sufficient and qualified staff who are outstanding scientists in the field;

(2) The project director and other key staff are experienced in the delivery of advanced research as well as knowledgeable about the methodology and literature of pertinent subject areas;

(3) All required disciplines are effectively included; and

(4) The applicant possesses the appropriate facilities, laboratories, and access to clinical populations and organizations representing persons with disabilities to support the conduct of advanced clinical rehabilitation research.

(d) *Management and operating plans.* (10 points) The Secretary evaluates each application to determine to what degree—

(1) There is an effective plan of operation that ensures proper and efficient administration of the project;

(2) There is an effective plan for collaboration with other institutions of higher education and organizations whose participation is necessary to ensure effective classroom and clinical research training;

(3) The applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected without regard to race, color, national origin, gender, age or handicapping condition;

(4) The applicant has provided an adequate plan for the use of facilities, resources, supplies and equipment;

(5) The budget for the project is reasonable and adequate to support the proposed activities; and

(6) The applicant provides an appropriate plan for the evaluation of all phases of the project.

Eligible Applicants: Institution of higher education are eligible to receive assistance under this program.

Program Authority: 29 U.S.C. 761a(k), 761(i)(l).

APPLICATION NOTICES FOR FISCAL YEAR 1993 RESEARCH TRAINING AND CAREER DEVELOPMENT CFDA No. 84.133P

Funding priority	Deadline for transmittal of applications	Estimated Number of awards	Estimated size of awards (per year)	Project period (months)
Rehabilitation Counseling	10/5/92	2	$175,000	60
Rehabilitation Engineering	10/5/92	1	$175,000	60

FURTHER INFORMATION CONTACT: The National Institute on Disability and Rehabilitation Research, 400 Maryland Avenue, SW., Washington, DC 20202–2601. Telephone: (202) 205–9141; deaf and hearing impaired individuals may call (202) 205–5474 for TDD services.

Program Authority: 29 U.S.C. 760–762.

Dated: August 11, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education, and Rehabilitative Services.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification Regarding Department, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014 and instructions.

Note: ED Form 80–0014 is intended for the use of primary participants and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instruction; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certification must each have an original signature. No grant may be awarded unless a completed application form has been received.

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OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name. | Organizational Unit.

Address (give city, county, state, and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative | b. Title | c. Telephone number

d. Signature of Authorized Representative | e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j – Show the amount of indirect cost.

Line 6k – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

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Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Instructions for Completion of Part III, National Institute on Disability and Rehabilitation Research, Project Narrative for New Applications

The narrative should include the basic information described below and, excluding résumés of key personnel, should be limited to:

- 40 pages for applications under the Knowledge Dissemination and Utilization, Field-Initiated Research and Research Training and Career Development Programs
- 12 pages, which is the regulatory limit, for applications under the Fellowship Program

The narrative for new applications may be organized under the major headings in the regulations governing the specific programs. The applicant must respond to the selection criteria of each regulation part listed below.

Regulations governing Knowledge Dissemination and Utilization are included in 34 CFR part 355.

Regulations governing Rehabilitation Research Fellowships are included in 34 CFR part 358.

Regulations governing Field-Initiated Projects are included in 34 CFR part 357.

Regulations governing the Research Training and Career Development Program are included in 34 CFR part 360.

Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, and 86.

Knowledge Dissemination and Utilization (84.133B)

Research Training Grants (84.133P).

Public Reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20502.

Field Initiated Research (84.133G) Fellowships (84.133F)

Public reporting burden for these collections of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

(Information collection approved under OMB control number 1820–0027. Expiration date: July 31, 1995))

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16.	
Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____

Federal Use Only: Authorized for Local Reproduction Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OM
0348-0046

Reporting Entity: _____ Page _____ of _____

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August 18, 1992

Part VII

Department of Education

Clearinghouses for Individuals With Disabilities; Notice Inviting Applications for Fiscal Year 1993

DEPARTMENT OF EDUCATION

[CFDA No.: 84.030]

Clearinghouses for Individuals With Disabilities; Notice Inviting Applications for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by improving services for infants, toddlers, children, and youth with disabilities and by so doing helping them to reach the high levels of achievement called for in the National Education Goals.

Purpose of Program: The Clearinghouses program provides financial assistance for—

(a) A national clearinghouse on the education of children and youth with disabilities that disseminates information and provides technical assistance to parents, professionals, and other interested parties;

(b) A national clearinghouse on postsecondary education for individuals with disabilities; and

(c) A national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields relating to the education of children and youth with disabilities.

(Authority: 20 U.S.C. 1433)

Eligible Applicants: Parties eligible to apply for assistance under this part are public agencies or nonprofit private organizations or institutions.

(Authority: 20 U.S.C. 1433)

CLEARINGHOUSES FOR INDIVIDUALS WITH DISABILITIES

[Application notice for fiscal year 1993]

Title and CFDA No.	Deadline for transmittal of applications	Deadline for intergovern-mental review	Available funds	Estimated range of awards (per year)	Estimated average size of awards (per year)	Estimated number of awards	Project period in months
National Information Center (84.030A)	1/15/93	3/18/93	$1,026,000	$1,026,000	$1,026,000	1	Up to 60.
Postsecondary Clearinghouse (84.030C)	1/15/93	3/18/93	361,000	361,000	361,000	1	Up to 60.
Special Education Employment Clearinghouse (84.030E)	1/15/93	3/18/93	601,000	601,000	601,000	1	Up to 60.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) as follows in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86; and (b). The regulations for this program in 34 CFR part 320, as amended on October 22, 1991 at 56 FR 54686.

Priorities

Under 34 CFR 75.105(c)(3) and section 633 of the Individuals with Disabilities Education Act, the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary funds under this program only applications that meet these absolute priorities:

Absolute Priority—National Information Center

This priority provides support to establish and operate a national clearinghouse for children and youth with disabilities that will do the following:

(1) Collect and disseminate information (including the development of materials) on characteristics of infants, toddlers, children, and youth with disabilities and on programs, legislation, and services relating to their education under this Act and other Federal laws.

(2) Participate in programs and services related to disability issues for providing outreach, technical assistance, collection, and dissemination of information; and promoting networking of individuals with appropriate national, State, and local agencies and organizations.

(3) Establish a coordinated network and conduct outreach activities with relevant Federal, State, and local organizations and other sources for promoting public awareness of disability issues and the availability of information, programs, and services.

(4) Collect, disseminate, and develop information on current and future national, Federal, regional, and State needs for providing information to parents, professionals, individuals with disabilities, and other interested parties relating to the education and related services of individuals with disabilities.

(5) Provide technical assistance to national, Federal, regional, State and local agencies and organizations seeking to establish information and referral services for individuals with disabilities and their families.

(6) Include strategies to disseminate information to underrepresented groups such as those with limited English proficiency, in carrying out the activities in this section.

Absolute Priority 2—Postsecondary Clearinghouse

This priority provides support to establish and operate a national clearinghouse on postsecondary education for individuals with disabilities that will do the following:

(1) Collect and disseminate information nationally on characteristics of individuals entering and participating in education and training programs after high school; legislation affecting such individuals and such programs; policies, procedures, and support services, as well as adaptations, and other resources available or recommended to facilitate the education of individuals with disabilities; available programs and services that include, or can be adapted to include, individuals with disabilities; and sources of financial aid for the education and training of individuals with disabilities.

(2) Identify areas of need for additional information.

(3) Develop new materials (in both print and nonprint form), especially by synthesizing information from a variety of fields affecting disability issues and the education, rehabilitation, and retraining of individuals with disabilities.

(4) Develop a coordinated network of professionals, related organizations and associations, mass media, other clearinghouses, and governmental agencies at the Federal, regional, State, and local level for the purposes of disseminating information and promoting awareness of issues relevant to the education of individuals with disabilities after high school and referring individuals who request information to local resources.

(5) Respond to requests from individuals with disabilities, their parents, and professionals who work with them, for information that will enable them to make appropriate decisions about postsecondary education and training.

Absolute Priority 3—Special Education Employment Clearinghouse

This priority provides support to establish and operate a national clearinghouse designed to encourage students to seek careers and professional personnel to seek employment in the various fields related to the education of children and youth with disabilities that will do the following:

(1) Collect and disseminate information on current and future national, regional, and State needs for special education and related services personnel.

(2) Disseminate information to high school counselors and others concerning current career opportunities in special education, location of programs, and various forms of financial assistance (such as scholarships, stipends, and allowances).

(3) Identify training programs available around the country.

(4) Establish a network among local and State educational agencies and institutions of higher education concerning the supply of graduates and available openings.

(5) Provide technical assistance to institutions seeking to meet State and professionally recognized standards.

(Authority: 20 U.S.C. 1433)

Selection Criteria

The Secretary uses the criteria in this section to evaluate applications for new grants.

(a) *Plan of operation.* (40 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participant who are members of groups that have been traditionally underrepresented such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows the qualifications of key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (b)(2) (i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Individuals with disabilities; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project. (See 34 CFR 75.590, Evaluation by the grantee.)

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project, and to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *Experience and ability.* (10 points) The Secretary looks for information that shows the applicant's—

(1) National experience relevant to performance of the functions supported by this program;

(2) Ability to conduct the proposed project;

(3) Ability to communicate with intended consumers of information; and

(4) Ability to maintain necessary communication and coordination with other relevant projects, agencies, and organizations.

(g) *Cooperation and coordination with other organizations.* (10 points)

(1) The Secretary reviews each application for information that shows the activities funded under this section will be coordinated with—

(i) Similar activities funded from grants and contracts awarded under this part and under part C of the Act; and

(ii) Other agencies and organizations conducting or eligible to conduct activities essential to the effective implementation of the proposed project.

(2) The Secretary looks for information that shows the nature and extent of, and timeline for, coordination which the applicant has had and proposes to have to facilitate implementation and continuation of the project activities after the termination of Federal funding.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more

than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990 (55 FR 38210 and 38211).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the dates indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.030____, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for transmittal of applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.030____), Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.030____), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a section on common questions and answers, a statement regarding estimated public reporting burden, and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted applications should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

ADDITIONAL MATERIALS:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Max Mueller, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2651. Telephone: (202) 205–9554. Deaf and hard of hearing individuals may call (202) 205–9999 for TDD services.

(Authority: 20 U.S.C. 1433)

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

Appendix

Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this section. Applicants are required to submit an original and two copies of each application as provided in this section.

Common Questions and Answers

While we have always made every effort to make our application materials as clear and complete as possible, a major task of Division of Personnel Preparation staff from the date of the program announcement to the closing date is answering phone and mail requests with further questions. The next several pages list some of the most common issues raised by potential applicants in interpreting our regulations and application instructions.

The following issues are not hypothetical. They represent concerns repeatedly raised, even though in many cases they are answered in the regulations or application instructions. The problem seems to be that the issues are not sufficiently highlighted, or that they are disguised by the formal language of legislative documents. These issues and general responses are listed in approximately the frequency of occurrence.

• Extension of Deadlines

Waivers for individual applications are not granted, regardless of the circumstances. Under very extraordinary circumstances a closing date may be changed. Such changes are announced in the **Federal Register** and apply to *all* applications.

• Copies of the Application

Current Government-wide policy is that only an original and two copies need to be submitted. Division staff duplicate the two additional copies necessary to complete the review process by staff and peer readers. It is not required that applications be bound, though they may be if you wish. However, to facilitate our reproduction, please leave one copy unbound. Also, please do not use colored paper, foldouts, photographs, or other hard to duplicate materials. Some applicants prefer to make their own additional copies. If you do so, there is no need to submit more than two additional copies, as that is all that will be required for the review process.

• Help Preparing Applications

We are happy to provide general program information. Clearly it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about our application requirements and evaluation criteria, or about the announced priority. Applicants should understand that such previous contact is not required, nor does it guarantee the success of an application.

• Notification of Funding

The time required to complete the evaluation of applications is extremely variable. Once applications have been received staff must determine the areas of expertise needed to appropriately evaluate the applications, identify and contact potential reviewers, convene peer review panels, and summarize and review the recommendations of the review panels. You can expect to receive notification within 4 to 6 months of the application closing date. The requested start date should therefore be a minimum of 6 months after the closing date.

• Possibility of Learning the Outcome of Review Panels Prior to Official Notification

Every year we are called by a number of applicants who have really legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, etc. Regardless of the reason, we cannot share information about the review with anyone prior to officially completing the review process for a competition, nor can we tell you when you will be notified. Please do not call us and ask us for this information. You will be notified as quickly as possible either by a grant negotiator (if your application is recommended for funding) or through a letter to the certifying representative (if your application is not successful).

• Length of Application

The Department of Education is making a concerted effort to reduce the volume of paper work in applications to discretionary programs. The following suggestions should assist applicants to prepare applications which will convey the information necessary for the review and selection process, and also save America's forests, professional time and energy. The scope and complexity of projects are too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the importance and impact of the project as well as to make knowledgeable judgments about the methods you propose to use (design, subjects, sampling procedures, measures, instruments, data analysis strategies, etc.). Many applications include voluminous appended material. In most cases this material is not useful in the evaluation process. Very few projects require much supporting material. However, it is often helpful to have:

(1) *Staff Vitae*—when these include each person's title and role in the proposed project and contain only information that is relevant to this proposed project's activities or publications. Vitae for consultants and Advisory Council members should be similarly brief.

(2) *Instruments*—except in the case of generally available and well known instruments.

(3) *Agreements*—when the participation of an agency other than the applicant is critical to the project. This is particularly critical when an intervention will be implemented within an agency, or when subjects will be drawn from particular agencies. Letters of cooperation should be specific, indicating agreement to implement a particular intervention or to provide access to a particular group. General letters of support are not useful. Except for the three items noted above, most appendix material is rarely useful. Typical extraneous materials include:

(1) Related project descriptions completed by applicant
(2) Maps
(3) State plans
(4) Brochures
(5) Copies of publications.

• Use of Person Loading Charts

Program officials and applicants often find person loading charts useful formats for showing project personnel and their time commitments to individual activities. A person loading chart is a tabular representation of major activities by number of days spent by each person involved in each activity, as shown in the following example.

TABLE #.—PERSON LOADING CHART

Activity	Time in day(s) by person [1]			
	Person A	Person B	Person C	Person D
Program development	15	20		
Mentoring				5
Research	5	25		
Information services		2		
Dissemination (manuscripts, etc.)		1	20	10

[1] Note: All figures represent FTE for the academic year.

• Return of Non-Funded Applications

Because of budget restrictions, we are no longer able to return original copies of applications. Thus, applicants should retain at least one copy of the application. Copies of reviewer comments will be mailed to all applicants.

• Delivering/Sending Applications to the Competition Manager

Applications can be mailed or hand delivered, but in either case must go to the Application Control Center at the address listed in the Mailing Instructions in this packet. Delivering or sending the application to the competition manager in the program office may prevent it from being logged in on time to the appropriate competition.

• Format for Applications

Applications are more likely to receive favorable reviews by panels when they are organized according to

the published evaluation criteria. If you prefer to use a different format you may wish to cross- reference the sections of your application to the evaluation criteria to be sure that reviewers are able to find all relevant information.

• Allowed Travel Under These Projects

Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Travel to conferences is the travel item that is most likely to be questioned during negotiations. Such travel is sometimes allowed when it is for purposes of dissemination, when there will be results to be disseminated, and when it is clear that a conference presentation or workshop is an effective way of reaching a particular target group.

• Funding of Approved Applications

It is often the case that the number of applications recommended for approval by the reviewers exceeds the dollars available for funding projects under a particular competition. When the panel reviews are completed for a particular competition, the individual reviewer scores and applications are ranked. The higher ranked, approved applications are funded first, and there are often lower ranked, approved applications that do not receive funding. Sometimes the one or two applications that are approved and fall next in rank order (after the projects selected for funding) are placed on hold. If dollars are freed up during negotiations or if a higher ranked applicant declines the award, the projects on hold may receive funding. If you receive a letter stating that you will not receive funding then your project has neither been selected for funding nor placed on hold.

• Issues Raised During Negotiations

During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff review. Generally, technical issues are minor issues that require clarification. Alternative approaches may be presented for your consideration, or you may be asked to provide additional information or rationale for something you have proposed to do. Sometimes issues are stated as "conditions". These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions are also raised about the proposed budget during the negotiation phase. Generally, budget issues are raised because there is inadequate justification or explanation of the particular budget item, or because the budget item does not seem important to the successful completion of the project. The grants negotiator will present the negotiation questions or issues to you and ask you to respond. If you do not understand the question, you should ask for clarification. In responding to negotiation items you should provide any additional information or clarification requested. You may feel that an issue was addressed in the application. It may not, however, have been explained in enough detail to make it understood by reviewers, and more information should be provided. If you are asked to make changes that you feel could seriously affect the project's success you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the activities you may want to explain why and provide additional justification for the proposed expenses. Your changes, explanations, and alternative suggestions will be carefully evaluated by staff. In some instances additional negotiations or follow-up information may be needed. In such instances you will again be contacted by the grants negotiator. An award cannot be made until all negotiation issues have been resolved.

• Successful Applications and Estimated/Projected Budget Amounts in Subsequent Years

In this era of budget deficits and need for cost containment, a conservative policy toward current and out-year budget expenditures is necessary. Projects will not be funded in excess of the amount listed in the **Federal Register** announcement. Any project approved by the reviewers that exceeds the estimated size of award will be required to be performed within the announced amount. The budget estimates that you provide in your application for out-year costs are critical for planning purposes, but they in no way represent a commitment by the Department to a particular level of funding in subsequent years. Budget modifications during the negotiation process, the findings from the initial year, or needed changes in the research design can affect your budget requirements in subsequent years. However, keep in mind that multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level. Grantees having multi-year projects will be asked to submit a continuation application and a detailed budget request prior to each year of the project.

• Difference Between a Cooperative Agreement and a Grant

A cooperative agreement is similar to a grant in that its principal purpose is to accomplish a public purpose of support or stimulation as authorized by a Federal statute. It differs from a grant in the sense that in a cooperative agreement substantial involvement is anticipated between the executive agency (in this case the Department of Education) and the recipient during the performance of the contemplated activity.

• Obtaining Copies of the **Federal Register**, Program Regulations and Federal Statutes

Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238.

Application Narrative and Instructions

Applications are more likely to receive favorable reviews by panels when they are organized according to the published evaluation criteria found elsewhere in this packet. If you prefer to use a different format you may wish to cross-reference the sections of your application to the evaluation criteria to ensure that reviewers are able to find all relevant information.

The following is a suggested format you may wish to use in preparing your application. This suggested format is advisory only, since the scope and complexity of projects is too variable to establish firm limits on length and format. In your application you may wish to include the following features in the order listed below:

(a) An abstract of the project;
(b) The extent the project meets the purposes of the authorizing statute;
(c) The extent the project meets specific needs recognized in the statute that authorizes the program;
(d) The plan of operation which the applicant proposes to use to administer the project;
(e) The quality of key personnel to be used to achieve each objective;
(f) Budget and cost effectiveness to achieve the proposed activity;
(g) The evaluation plan to evaluate the project; and
(h) The adequacy of resources available and needed to achieve each objective.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ • ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.)

13. PROPOSED PROJECT: Start Date / Ending Date

14. CONGRESSIONAL DISTRICTS OF: a. Applicant / b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION
(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A *(continued)*

Line 7 – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) – Enter the contribution to be made by the applicant.

Column (c) – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) – Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) – Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 – Enter the amount of cash needed by quarter from the grantor agency during the first year.

BILLING CODE 4000-01-C

Line 14 – Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 – Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 – Provide any other explanations or comments deemed necessary.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invited comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 36 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of the information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0028, Washington, DC 20503.

(Information collection approved under OMB Control number 1820–0028. Expiration date: 1/95).

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter ____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier ____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB 0348-0046

Reporting Entity: _____ Page _____ of _____

[FR Doc. 92-19602 Filed 8-17-92; 8:45 am]
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Part VIII

Department of Health and Human Services

Agency for Toxic Substances and Disease Registry

Interim Petitioned Public Health Assessment Response Procedures and Decision Criteria; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR-50]

Interim Petitioned Public Health Assessment Response Procedures and Decision Criteria

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice of interim procedures; request for comments.

SUMMARY: This notice describes the interim procedures ATSDR will use to respond to requests for public health assessments and to determine the priority for action at sites for which public health assessments are indicated. The ATSDR regulation, 42 CFR part 90, describes in general terms how ATSDR is to respond to requests for public health assessments of hazardous waste releases. Comments are requested on these interim procedures to assist ATSDR in addressing requests for public health assessments and for determining priorities for initiating public health assessments when requests are accepted.

DATES: Comments must be received on or before October 19, 1992.

ADDRESSES: Written comments in response to this notice should bear the docket control number ATSDR–50, and should be submitted to: Robert C. Williams, P.E., Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: ATSDR is required under Section 104(i)(6)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9604(i)(6)(A)) to perform public health assessments of sites listed on the U.S. Environmental Protection Agency's (EPA) National Priorities List (NPL). Section 104(i)(6)(B) authorizes the Administrator of ATSDR to perform public health assessments of releases or facilities for which individual persons or licensed physicians provide information that individuals have been exposed to a hazardous substance, and for which the probable source of such exposure is a release, as defined under CERCLA. In addition, section 3019(c) of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6939a(c)) permits any member of the public to submit evidence of releases of or exposure to hazardous constituents in a landfill or surface impoundment, which ATSDR can use as the basis for a public health assessment.

The general administrative functions, practices, and procedures that ATSDR uses in conducting public health assessments are included in the regulation "Health Assessment and Health Effects Studies of Hazardous Substances Releases and Facilities," 42 CFR part 90, published at 55 FR 5136, February 13, 1990. Procedures for requesting a public health assessment and the information that must be provided in such a request are described in 42 CFR 90.3 and 90.4, respectively. Section 90.5 describes in general terms how ATSDR responds to requests. The proposed interim procedures provide additional detail and describe procedures ATSDR will use to accept or deny requests from the public for public health assessments of hazardous substance releases, and describe a ranking scheme ATSDR will use to determine priorities for initiating public health assessments when requests are accepted. The purpose of these procedures is to clarify the decision process that ATSDR has developed for responding to requests. However, as stated in the ATSDR regulations (42 CFR 90.1(a)), the final decision regarding the Agency's response to a request is at the discretion of the Agency.

ATSDR uses the term "petition" to describe a written request from the public for a public health assessment. The use of that term in place of "request" adds clarity and conciseness to the proposed interim procedures. Other definitions used in the following sections are found in appendix I.

To determine if there is a reasonable basis for conducting a public health assessment, § 90.5 directs ATSDR to consider the following factors: Whether individuals have been exposed to hazardous substances; the location, concentration, and toxicity of the hazardous substance or substances; the potential for further human exposure; the recommendations of other governmental agencies; and other ATSDR priorities. Although ATSDR is not required to conduct a public health assessment in response to such petitions, the Agency does have a responsibility to provide a written explanation to the petitioner if a public health assessment is not performed.

The factors described here, which were previously used as guidance for Agency decisions regarding petitions, are incorporated in the proposed decision criteria and ranking scheme. In the proposed decision criteria and ranking scheme, ATSDR incorporates the same factors and describes the procedures it will use. The decision criteria are applied in two phases. The decision elements of the first phase of the decision criteria are procedural and are used to determine: (1) Whether ATSDR has already prepared a public health assessment that addresses the concerns stated in the petition; (2) if there has been a release into the environment; and (3) if a public health assessment is the most appropriate response.

The decision elements of the second phase of the decision criteria are site-specific and health-based. Specifically, the criteria are used to determine if there are community health concerns; the location, concentration, and toxicity of the hazardous substance or substances that may be present; if there is an exposed or potentially exposed population; and if there is a plausible link between exposures and health effects that may exist. ATSDR considers recommendations from other government agencies, available resources, and other ATSDR priorities during the site ranking process.

The site ranking scheme uses available site-specific information on chemical hazards, population size and demographic characteristics, exposure pathways, health outcome data, and community health concerns related to the petition. The ranking scheme is used to assign a relative rank to petitions for which ATSDR has determined there is a reasonable basis for performing a public health assessment. Sites judged to be of greater public health concern will have a higher priority for ATSDR action. A site ranking is not a definitive assessment of the health issues associated with human exposures to hazardous substance releases at a site and does not supersede any other ATSDR document.

The ATSDR site ranking scheme is not intended to duplicate or replace the hazard ranking system promulgated under the National Contingency Plan (40 CFR part 300) and used by EPA to evaluate the relative risks to human health and the environment of uncontrolled hazardous waste sites. There are several important differences between the EPA hazard ranking system and the ATSDR site ranking scheme. The EPA hazard ranking scheme requires extensive environmental sampling to determine if a particular hazardous waste site meets minimum criteria for inclusion on the NPL. It also includes information on the impact of

hazardous waste sites on the environment. Community health concerns information and health outcome data are not considered in the EPA hazard ranking scheme.

The ATSDR site ranking scheme addresses human health and exposure to hazardous substances and does not consider impact on the environment except where related to public health. Although the ATSDR site ranking scheme does consider environmental sampling data, ATSDR frequently receives petitions for public health assessments of hazardous substance releases for which there may be no or very little environmental sampling data. Community health concerns or available health outcome data for some sites may dictate that those sites receive a higher priority for studies or actions. The ATSDR site ranking scheme incorporates available environmental and health outcome data and community concerns information and provides ATSDR with a method for judging the actual or potential health hazard of one accepted petition site relative to other accepted petition sites. It does not establish minimum criteria that must be met before a public health assessment can be prepared.

Receiving and Acknowledging Petitions

Upon receiving a petition, ATSDR will determine if the Agency has performed any health-related activities pertaining to the release noted in the petition and begin collecting available data and information. ATSDR will contact the petitioner(s) and other members of the site community, including site or facility owners or operators, who are knowledgeable about the release or the facility; the ATSDR regional representative assigned to the region from which the petition originated; and persons within ATSDR headquarters, the respective state and local health and environmental agencies, the EPA regional office, or other Federal agencies knowledgeable about the release or facility to collect readily available and appropriate environmental and health outcome data and community health concerns information relevant to the petition.

ATSDR will prepare an acknowledgment letter, within 10 days of receiving the petition, stating that the petition has been received and that ATSDR is evaluating it. The acknowledgment letter also will include a description of ATSDR's health-related authorities under CERCLA or RCRA; the content and purpose of the public health assessment, and a statement that ATSDR will notify the petitioner within 180 calendar days of receiving the petition whether or not a public health assessment will be conducted and the rational for the decision.

If ATSDR receives a letter that does not include the information specified by 42 CFR 90.4 and ATSDR cannot determine if the letter is a petition for a public health assessment, or if the letter is written in a way that ATSDR cannot determine what ATSDR action is being requested, ATSDR will prepare a response letter within 10 days of receiving the letter stating that ATSDR does not have sufficient information to consider the letter a petition for a public health assessment. The response letter will ask the petitioner to provide the needed additional information or to clarify the request.

Applying Phase One Decision Criteria

ATSDR will review readily available and appropriate environmental and health outcome data and community health concerns information relevant to the petition and apply the phase one decision criteria. Those criteria and follow-up actions are as follows:

1. Has ATSDR prepared, or is ATSDR preparing, a public health assessment, or equivalent document that addresses the health concerns stated in the petition?

If Yes, provide a copy of the public health assessment, or equivalent document to the petitioner within 30 days of receiving the petition, or, if being prepared, prepare a response to the petitioner, within 30 days of receiving the petition, providing an estimate of when the public health assessment or equivalent document will be available for public release. ATSDR will provide the petitioner a copy of the public health assessment as soon as it is available for public release.

If No, proceed with revaluating the petition.

2. Has a hazardous substance been released into the environment?

If Yes, proceed with evaluating the petition.

If No, do not proceed with evaluating the petition. Prepare a response to the petitioner, within 30 days of receiving the petition, stating that there must be a hazardous substance release into the environment before ATSDR can perform a public health assessment.

3. Is an ATSDR public health assessment or other ATSDR program activity an appropriate response to the petition?

If Yes, proceed with evaluating the petition.

If No, determine the appropriate response (i.e., a response from another Federal, state, or local health or environmental authority). Prepare a response to the petitioner, within 30 days of receiving the petition, stating that a public health assessment will not be performed and that the petition has been referred to more appropriate authority for response.

If ATSDR decides to continue evaluating the petition, it will conduct a site visit and, when possible, meet with the petitioner(s) and other members of the site community, including site or facility owners or operators; and persons within the respective state and local health and environmental agencies, the EPA regional office, or other Federal agencies knowledgeable about the release or facility to collect any additional available data and information pertaining to the petition

Applying Phase Two Decision Criteria

ATSDR will review data and information collected for each petition during the petition site visit and apply the phase two decision criteria. The phase two decision criteria and follow-up actions are as follows:

1. Are the location, concentration, and toxicity of the hazardous substances related to the petition, site, or release possibly of public health concern?

If Yes, proceed with evaluating the petition.

If No, (as supported by environmental sampling data or toxicologic and health outcome data), do not proceed with evaluating the petition.

2. Is there an exposed or potentially exposed population as indicated in the petition and as determined by evaluating the human exposure pathways for the hazardous substance release(s)?

If Yes, proceed with evaluating the petition.

If No, (as supported by environmental and, if available, biologic monitoring data), do not proceed with evaluating the petition.

3. Is there a plausible relationship between possible human exposure to a release of hazardous substances and community health concerns or adverse health outcomes?

If Yes, proceed with evaluating the petition.

If No (as supported by health outcome data and community health concerns information), do not proceed with evaluating the petition.

If each phase two criterion is answered "yes," ATSDR will make a decision either to conduct a public health assessment or undertake a more appropriate public health action, such as a public health advisory, public health consultation, or health effects study. If ATSDR decides not to proceed with

evaluating the petition, ATSDR will prepare a response to the petitioner, within 180 calendar days of the date ATSDR received the petition, stating why a public health assessment or another public health activity will not be conducted.

For each petition, ATSDR will prepare a decision record describing the basis for each decision (whether or not to perform a public health assessment or other public health action) and prepare a response letter describing its decision.

ATSDR will provide a response letter to the petitioner within 180 calendar days of the date of the ATSDR acknowledgment letter. The letter will notify the petitioner of the decision to conduct a public health assessment or another public health activity. For a petition site for which ATSDR elects to perform a public health assessment, ATSDR will provide an estimate of when the public health assessment will be completed and other information pertaining to ATSDR's evaluation of the petition.

If additional data or information from the petitioner or some other source are needed to determine if a public health assessment or other appropriate public health action is indicated, ATSDR will prepare a letter to the petitioner, within 180 calendar days of the date the acknowledgment letter was mailed, stating that a decision will be deferred until ATSDR has received the additional data or information.

Establishing Priorities for Public Health Assessment Response

At times, ATSDR may be unable to respond immediately following a decision to conduct a public health assessment. In those circumstances where ATSDR resources are committed to previously scheduled public health assessments or other activities, ATSDR will use the proposed site ranking scheme to determine which petition sites are of greatest public health concern and should receive public health assessments first. In addition to the site ranking scheme score, the Administrator will consider the resources available, other ATSDR priorities, and recommendations of other government agencies to determine the order in which public health assessments will be performed. Petition sites receiving higher scores will receive higher priority for conduct of public health assessments.

The site ranking scheme considers site-specific factors that are similar to the information evaluated in public health assessments. The factors include chemical and radiologic hazards; population size and demographic characteristics; exposure pathways; health outcome data; and community health concerns related to the petition. The site ranking scheme scoring sheet and instructions for completing it are presented in appendix II.

On a quarterly basis, ATSDR will publish in the **Federal Register** a list of all petition sites for which ATSDR has decided to conduct public health assessments.

Dated: August 7, 1992.

William L. Roper,

Administrator, Agency for Toxic Substances and Disease Registry.

Appendix I

Definitions

"ATSDR" means the Agency for Toxic Substances and Disease Registry, Public Health Service, U.S. Department of Health and Human Services.

"Administrator" means the Administrator of the Agency for Toxic Substances and Disease Registry or designee.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675.

"Decision Record" is a brief narrative report documenting the Agency's decision regarding its response to a petition and the rationale supporting the decision.

"EPA" means the U.S. Environmental Protection Agency.

"Hazardous Substance" is defined in 42 U.S.C. 9601(14). In addition, the term includes any pollutant or contaminant that the Administrator determines is appropriate for carrying out his or her responsibilities under CERCLA.

"Health Effects Study" means research, investigation, or study performed by ATSDR or other parties pursuant to an agreement with ATSDR to evaluate the health effects of exposure to hazardous substances at specific sites. The term includes, but is not limited to, epidemiologic studies, exposure and disease registries, and health surveillance programs. The term does not include public health assessments.

"Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, Indian tribe, any interstate body, or the United States government.

"Petition" is a request submitted to ATSDR by a licensed physician or other individual (person), under authority of section 104(i)(6)(B) of CERCLA or Section 3019(c) of RCRA, to conduct a public health assessment or to evaluate the health implications of exposures to a hazardous substance release.

"Petition Site" is the site where the hazardous substance release identified in a petition is located.

"Petitioner" is the person submitting a petition to ATSDR. The identity of an individual or individuals submitting a petition is confidential. However, the identity of any individual or individuals submitting a petition on behalf of or in an official capacity for a firm, corporation, association, partnership, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, Indian tribe, any interstate body, or the United States government is not confidential.

"Phase One Decision Criteria" are procedural criteria used to determine if: (1) ATSDR has already completed a public health assessment or other document that addresses the concerns expressed in the petition; (2) there has been a hazardous substance release into the environment; and (3) an ATSDR public health assessment is the most appropriate response to the petition.

"Phase Two Decision Criteria" are health-based criteria used to evaluate the chemical hazard, exposure potential, and plausible health effects identified in a petition.

"Public Health Advisory" is a statement by ATSDR containing a finding that a release poses a significant risk to human health and recommending measures to reduce exposure and eliminate or substantially mitigate the significant risk to human health.

"Public Health Assessment" means the evaluation of data and information on the release of hazardous substances into the environment in order to assess any current or future impact on public health; develop public health advisories or other recommendations; and identify studies or actions needed to evaluate and mitigate or prevent human health effects. The primary components of a public health assessment are environmental and Health Outcome Data and Community Health Concerns information.

"Public Health Consultation" is a written or oral response by ATSDR to a request for information about health risks posed by a specific site, chemical release, or hazardous material.

"RCRA" means the Resource Conservation and Recovery Act, which is codified as the Solid Waste Disposal Act, 42 U.S.C. 6901–6992.

"Release" is defined in 42 U.S.C. 9601(22).

"Site Ranking Scheme" is a ranking scheme used to determine relative priorities for addressing sites for which ATSDR intends to conduct public health assessments.

Appendix II

Site Ranking Scheme Scoring Sheet

(Instructions for completing the scoring sheet are attached)

I. Background

Site Name: _____
Primary Public Health Assessor: _____
EPA Region: _____
State: _____
CERCLIS No.: _____
ATSDR Cost Rec. No.: _____

II. Hazardous Substances

(Maximum Score = 30)

A. Documented Contamination of Environmental Media

(Corresponds to Part A., "Contam. (Y/N)", of Matrix)

If "YES" for any environmental medium (groundwater, soil/sediment, air, surface water, food chain, sludge/wastes), then complete Part B, Chemical or Radiological Hazard, for that medium.

If "NO" for any environmental medium (listed previously), then do not complete Part B for that medium.

B. Chemical or Radiological Hazard

(Corresponds to Part B. of Matrix)

For each environmental medium, determine whether contaminant concentrations represent an acute, chronic, unknown, or no hazard potential. Indicate with the letter P (Past), C (Current), or F (Future) whether the contaminants pose a past, current, or future hazard potential. The maximum score is the sum of scores for all environmental media. If physical hazards are present at the site, indicate type and extent of physical hazards under "VI. General Comments."

	A. Contam.	B. Chemical or Radiological Hazard			
	(Y/N)	Acute	Chronic	Unknown	None
Medium:					
Groundwater	____	(5)____	(3)____	(2)____	(0)____
Soil/Sediment	____	(5)____	(3)____	(2)____	(0)____
Air	____	(5)____	(3)____	(2)____	(0)____
Surface water	____	(5)____	(3)____	(2)____	(0)____
Food Chain	____	(5)____	(3)____	(2)____	(0)____
Sludge/Waste	____	(5)____	(3)____	(2)____	(0)____
Total (Maximum Score = 30)	____				

III. Population

(Maximum Score = 20)

Note: Scoring of items in this section is based on numerical ranges; interpolation of scores within a specified scoring range is permissible.

A. Total Site Population

(Maximum Score = 10)

Refers to total number of persons residing within 1 mile of the site.

None	(0)____
< 50 persons	(1–5)____
> 50 persons	(6–10)____
Total (Maximum Score = 10)	____

B. Demographics: Potentially Sensitive Subpopulations

(Maximum Score = 10)

Score 2 points each if the public areas listed here are within 1 mile of the site. Score 2 points if minority communities are ≥ 15% of the total population.

Day care center	(2)____
Elderly care (nursing) home	(2)____
Hospital or community health-care center	(2)____
School (pre-school—high school)	(2)____
Minority communities (≥ 15% of population)	(2)____
Total (Maximum Score = 10)	____

IV. Exposures

(Maximum Score = 60)

Note: Scoring of items in this section is based on numerical ranges; interpolation of scores within a specified scoring range is permissible.

A. Human Exposure Indicated by Environmental Sampling Data

(Maximum Score = 30)

Indicate as highly probable (6–10), potential or possible (1–5), or no apparent (0) the possibility for human exposure via all possible routes of exposure to human exposure media. "Air" medium includes air particulates or vapors; "Food" indicates food-chain entities. The total score, which cannot exceed 30 points, is the sum of scores for the pathways. The notation "—" is used in the matrix to indicate human exposure routes and exposure media combinations not evaluated and not scored.

Rt of Exposure	Human Exposure Medium					
	Air	GW	Soil/Sed	SW	Food	Sldge/ Waste
Ingestion	—	—	—	—	—	—
Inhalation					—	
Dermal						
Total (Maximum Score = 30)	____					

B. Biological Data

(Maximum Score = 30)

Score Part 1 of this section first. If "Yes" is the answer to Part 1, score Part 2. If "No" is the answer to Part 1, do not score Part 2, but go to section V. The total score is the score for Part 1 if only Part 1 is evaluated; if both parts are evaluated, the total score is the sum of scores for Part 1 and Part 2.

Part 1

Site-related biological data (e.g., blood, urine contaminant analyses) of adequate quality are available for the site population?

If Yes..... (10)____
(Go To section IV B. Part 2)
If No..... (0)____

(Go To section V)

Part 2

Do the biological data indicate that significant human exposures (e.g., above the normal range) are likely to have occurred?

If Yes..... (20)____
If No..... (0)____
Total (Maximum Score=30).. ____

Comments on Biological Data (e.g., quality and quantity of available data):_____

_____

_____

V. Health Outcome Data and Community Health Concerns (Maximum Score=30)

Note: The scoring of Health Outcome Data and Community Health Concerns is based on numerical ranges; interpolation of scores within a specified scoring range is permissible.

This section considers two major components, Health Outcome Data and Community Health Concerns, shown on the horizontal axis of the matrix (see below). The Community Health Concerns component has a multiplier for biological plausibility. Score as High (6–10), Medium (4–5), or Low (0–3) the extent of community health concerns about the site. Multiply the Community Health Concerns score by the appropriate plausibility multiplier—Two (2), One (1), or Zero (0). *Plausibility* is the extent to which biological plausibility can be established between contaminant exposures and the community health concerns. Score as High (6–10), Medium (4–5), or Low (0–3) the extent to which Health Outcome Data are available to evaluate community concerns and plausible toxicological endpoints for site contaminants (see scoring sheet instructions for more detail).

The total score is the sum of the 2 scores; one score is the product of the Community Health Concerns score and the multiplier for Plausibility; the other is the Health Outcome Data score.

Community Health Concerns					
Score (Use one line only)					
High		X	2	= ____	
(6-10)		X	1	= ____	
		X	0	= ____	
Medium		X	2	= ____	
(4-5)		X	1	= ____	
		X	0	= ____	
Low		X	2	= ____	
(0-3)		X	1	= ____	
		X	0	= ____	

Health Outcome Data	
Score (Use one line only)	
High (6-10)	= ____
OR	
Medium (4-5)	= ____
OR	
Low (0-3)	= ____

Total (Maximum Score=30)_____

Comments on Health Outcome Data and Community Health Concerns:

_____

_____

VI. Total Site Score Using SRS—Scoring Sheet (Maximum=140)

Scores	Total
II. Hazardous Substances	(30) ____
III. Population	(20) ____
IV. Exposures	(60) ____
V. Health Outcome Data/Community Health Concerns	(30) ____
Total Site Score	____

General Comments (Indicate any additional information that may be important to consider in scoring the site. Specify the section to which the comment applies):

_____

_____

_____

Site Ranking Scheme (SRS)—Scoring Sheet Instructions for Completion

General Instructions

The site ranking scheme (SRS) scoring sheet is designed to assist in evaluating individual hazardous or radioactive waste sites (or petitions, also referred to as sites) using the site ranking scheme (SRS). The SRS scoring sheet is used to derive a total score (with a maximum of 140 points) for each site. The score is intended to provide a relative basis for comparing individual sites. Hazardous waste sites that score the highest may involve sites or environmental conditions that are of greatest public health concern and, therefore, require immediate health response or followup.

The SRS is not intended to reflect quantitative public health risks, nor is it intended to take the place of any other ATSDR health document, such as the ATSDR public health assessment.

The sampling data and information needed to complete the SRS scoring

sheet should be available from the petition site report prepared by the petition site assessor assigned to the site.

All sections (I. through VI.) of the scoring sheet should be evaluated for each site, unless the data and information necessary to evaluate the section are not available. If the section is not evaluated for those reasons, that fact should be noted on the SRS scoring sheet. The number in parentheses next to the space or in the matrix box represents the maximum possible score for that item.

Specific Instructions

I. Background

Enter the site name (or appropriate petition identifier), EPA region, state, the EPA CERCLIS number (if available), and ATSDR cost recovery number. Enter the names of the person(s) designated as the petition site assessor(s) for the site.

II. Hazardous Substances

The Hazardous Substances section is evaluated in two parts, part A and part B. Part A addresses whether there is documented chemical or radiologic contamination of environmental media—groundwater, soil/sediment, air, surface water, food chain, and sludge/wastes—as determined from environmental sampling data. If there is documented contamination, or strong evidence of a potential for contamination of a particular environmental medium, the medium is evaluated in part B, Chemical or Radiological Hazard. If there is no documented contamination of the environmental medium, the environmental medium is not evaluated in part B.

Part B addresses the intrinsic toxicity of the contaminants detected in environmental media and the concentrations of the contaminants. Adequate environmental sampling data must be available to support a score of "none" (no hazard potential). A chemical or radiologic hazard scored as "unknown" is one for which the available scientific and medical literature is not adequate to determine the hazard potential. The ATSDR Public Health Assessment Guidance Manual is to be used to assist in determining whether the maximum contaminant concentrations at the site represent an acute, chronic, unknown, or no hazard potential.

The letter P (Past), C (Current), or F (Future) is used to designate whether the chemical contaminants may pose a past, current, or future hazard potential. The letter is written on the blank to the right of the score (in parentheses). Although the letter designation has no impact on the site score, it is used to characterize whether the potential chemical or radiologic hazard may have been of concern in the past or whether the hazard may be a current or future condition at the site.

An individual environmental medium may be scored for only one hazard potential category—acute, chronic, unknown, or none. Although a contaminant that poses an acute hazard also could pose a chronic hazard, the distinction is made between the two categories of hazards in order to identify the environmental media representing an acute hazard potential and, therefore, requiring immediate health follow-up activities (e.g., recommendations for emergency response).

Add the individual scores of five (5), three (3), two (2), or zero (0) for each environmental medium to derive a total score for Hazardous Substances section. The maximum score possible is 30.

III. Population

Population is evaluated using two main categories, Total Site Population and Demographics. The scoring of items is based on numerical ranges; interpolation of scores within a specified scoring range is permissible. The scores for the two categories are combined to derive a total score (maximum of 20).

A. Total Site Population

The Total Site Population refers to the human population residing within 1 mile of the site. The total population may be estimated using 1980 and 1990 U.S. Census data for the geographic areas (e.g., zip code, tracts, blocks) defined as 1 mile from the site or using direct field observation during the site visit and initial background data collection for the site.

Direct field observation involves counting homes within a 1-mile radius of the site and multiplying the number of homes by the appropriate number of persons per home as reported in the Federal or state censuses for that geographic area (e.g., zip code, tracts, blocks).

Three scoring categories are defined: zero (0) points when no persons are present, one to five (1–5) points for 50 persons or fewer, and from six to ten (6–10) points for more than 50 persons.

B. Demographics: Potentially Sensitive Subpopulations

The Demographics section is evaluated by identifying public use areas within 1 mile of the site. A score of two (2) is assigned for each of the following types of public use areas within 1 mile of the site: Day care center, elderly care (nursing) home, hospital, or community health-care center, and school (pre-school through high school). An additional two (2) points are assigned if the total population comprises at least 15% minority communities. Minority communities are defined by race and ethnicity using the U.S. Census nomenclature, including American Indian/Eskimo/Aleut, Black, Asian/Pacific Islander, other Persons (race), and persons of Spanish Origin (ethnicity).

The total score is the sum of scores for all categories. The maximum score for Demographics is 10.

IV. Exposures

The potential for human exposure is evaluated using two main categories, Environmental Sampling Data and Biological Data. The scoring of items within each category is based on numerical ranges; interpolation of scores within a specified scoring range is permissible. The scores for the two categories are combined to derive a total score (maximum of 60) for Exposures.

A. Human Exposure Indicated by Environmental Sampling Data

This section is evaluated using a matrix. On the horizontal axis are the human exposure media, including air (Air), groundwater (GW), soil/sediment (Soil/Sed), surface water (SW), food-chain entities (Food), and sludge/waste (Sludge/Waste). On the vertical axis are the routes of human exposure, including ingestion, inhalation, and dermal contact. The notation "---" is used in the matrix for human exposure routes and exposure media not evaluated and not scored.

Available sampling data and information for potentially exposed individuals are used to determine the primary human exposure media and routes of exposure for the site. The exposure media and routes of exposure are scored by entering a score of six to ten (6–10), one to five (1–5), or zero (0) in each matrix box if potential exposures to human populations are highly probable, potential or possible, or not apparent, respectively, for that exposure medium and route of exposure. The total score for the section cannot exceed 30 points; that is, a maximum of 30 points may be distributed among the matrix boxes in the manner that best characterizes the primary human exposure media and routes of exposure for the site.

B. Biological Data

Biological Data refer to human samples of blood, urine, or other biological components that are analyzed to determine biological uptake of environmental chemicals or radiologic materials. The section is scored in a step-wise manner involving two parts, Part 1 and Part 2. Part 1 is scored first. If "Yes" is assigned to Part 1, a score of ten (10) is recorded for Part 1; Part 2 is then evaluated and scored. If "No" is assigned to Part 1, the score for Part 1 is zero (0), and Part 2 is not evaluated and scored. The total score for Biological Data is zero (0) if only Part 1 is evaluated; the total score is the sum of scores for Part 1 and 2 if both parts are evaluated.

Part 1 determines whether site-related biological data of adequate quality are available for the site. The term "site-related" denotes that the biological samples reflect the potential for the site population to be exposed (see IIA). The term "adequate quality" indicates that the biological data were evaluated for quality assurance and quality control procedures and met the appropriate standards.

If the response to Part 1 is "Yes", that is, there are site-related biological data of adequate quality, enter a score of ten (10) on the blank next to the "(10)" and go to Part 2. if no such biological data are available, enter a score of zero (0) in the blank next to "(0)" and to section V.

Part 2 determines whether the biological data (identified in Part 1) indicate that significant human exposures to environmental contaminants or radiologic materials are likely to have occurred. The term "significant" indicates that contaminant concentrations or indicators (metabolites) reported for the biological samples are higher than expected for a "normal" or comparison population. (Note: information on "normal" ranges for specific contaminants, indicators, and metabolites may be obtained from the ATSDR Division of Health Studies).

A Comment field is provided to document any additional information that may be useful to consider in scoring the Biological Data section.

V. Health Outcome Data and Community Health Concerns

Health Outcome Data and Community Health Concerns are evaluated using two major components, Community Health Concerns and Health Outcome Data, which are shown on the horizontal axis of the scoring matrix. The Community Health Concerns component includes a multiplier for plausibility (defined later in these instructions). The Health Outcome Data and Community Health Concerns components are based on numerical ranges; interpolation of scores within a specified range is permissible.

Community Health Concerns refers to reports of adverse health occurrences or adverse health conditions by the site community, which comprises the site population (section III.A.) and all other persons who can provide or disseminate information about the site. (Note: a definition of the site community is provided in the ATSDR Public Health Assessment Guidance Manual). The Community Health Concerns component is scored High (6–10) if there are extensive community health concerns about the site; is scored Medium (4–5) if there are substantial community health concerns; and is scored Low (0–3) if there are few community health concerns.

A certain degree of professional judgment is required to score this component. Information supporting the scoring for Community Health Concerns can be documented under Comments on Health Outcome Data and Community Health Concerns at the end of section V.

Plausibility refers to whether there is biological plausibility for a link between potential human exposures to contaminants at the site and the Community Health Concerns. Plausibility is evaluated by considering the types of health concerns, the types and concentrations of contaminants, and the pathways of human exposure to site contaminants.

Plausibility is used as a multiplier for the Community Health Concerns component. The multiplier is two (2) points if biological plausibility can be established between hazardous substances at the site and the Community Health Concerns. The multiplier is on (1) if biological plausibility is possible or not known; the multiplier is zero (0) if there is no biological plausibility.

The overall score for Community Health Concerns is derived by multiplying the plausibility value (0, 1, or 2) by the score for the extent of Community Health Concerns (6–10; 4–5; 0).

Health Outcome Data refer to various sources of health information for the site population, such as morbidity and mortality data routinely collected by states; information recorded in hospital discharge records; and findings from epidemiologic studies involving the site population. A more inclusive list of Health Outcome Data sources is available from ATSDR.

The Health Outcome Data component is evaluated based on whether Health Outcome Data are available and accessible to evaluate community health concerns and possible toxicologic endpoints for human exposure to site contaminants.

Health Outcome Data are scored High (6–10) if substantial data are available and accessible, and if the data are appropriate to address community health concerns and possible toxicologic endpoints for the site population. Health Outcome Data are scored Medium (4–5) if a limited quantity are available and accessible or if the available data are not applicable to the site population. Health Outcome Data are scored Low (0–3) if minimal or no Health Outcome Data are available to address community health concerns and toxicologic endpoints for the site population.

A total score Health Outcome Data and Community Health Concerns (maximum of 30) is derived by adding the overall score for Community Health Concerns with that for Health Outcome Data. A Comment field is provided at the end of this section to document any additional information that may be relevant in evaluating Community Health Concerns and Health Outcome Data for the site.

VI. Total Site Score and General Comments

A General Comment field is also provided to record any additional information that may be useful for completing the SRS scoring sheet for the site. A total site score is derived by adding the scores for the individual sections II. through V. An individual site can attain a maximum score of 140. ATSDR makes no claim that there is a linear relationship between varying degrees of hazard at a site and the site ranking scheme scores (i.e., a site scoring 70 does not necessarily pose twice the hazard of a site scoring 35). This instrument is solely intended to provide an estimate of the hazard of each site compared with the hazards posed by other sites.

[FR Doc. 92-19541 Filed 8-17-92; 8:45 am]

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federal register

Tuesday
August 18, 1992

Part IX

Department of Transportation

Federal Highway Administration

49 CFR Chapter III

Zero-Base Review of the Federal Motor Carrier Safety Regulations; Public Outreach Sessions; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Chapter III

[FHWA Docket No. MC-92-33]

Zero-Base Review of the Federal Motor Carrier Safety Regulations; Public Outreach Sessions

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public outreach sessions; opening of public docket; request for comments.

SUMMARY: The FHWA announces a series of public outreach sessions to obtain comments and recommendations for improvement of the Federal Motor Carrier Safety Regulations (FMCSRs) as they relate to the commercial motor carrier industry. The first four sessions will begin in September and additional sessions will be held in other regions throughout the country with dates and locations to be announced in a subsequent notice. The outreach sessions are an essential part of FHWA's zero-base regulatory review project. The zero-base review is intended to develop a performance-based regulatory system that will best enhance commercial motor vehicle safety. These sessions will be held to obtain information, views, and opinions from representatives of the motor carrier industry and other interested persons.

DATES: The comment period will remain open until further notification in the **Federal Register**. The outreach sessions will be held from 9:30 a.m. to 3:30 p.m., local time, on each of the following dates:

Session 1: September 14, 1992.
Session 2: September 17, 1992.
Session 3: September 21, 1992.
Session 4: September 24, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket MC-92-33, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. The outreach sessions will be held at the following locations:

Session 1—St. Paul, Minnesota, Bloomington Marriott Hotel, 2020 East 79th Street, Bloomington, Minnesota 55425, Telephone 612/854-7441.

Session 2—Portland, Oregon, Monarch Hotel and Conference Center, 12566 SE. Ninety-Third Avenue, Clackamas, Oregon 97015, Telephone 503/652-1515.

Session 3—San Antonio, Texas, San Antonio Airport Hilton, 611 NW. Loop 410, San Antonio, Texas, 78216, Telephone 512/340/6060.

Session 4—Los Angeles, California, Hyatt at Los Angeles Airport, 6225 West Century Boulevard, Los Angeles, California 90045, Telephone 310/672-1234.

FOR PLANNING PURPOSES AND FURTHER INFORMATION CONTACT: Ms. Paula R. Robinson or Mr. Stan Hamilton, Federal Highway Administration, Office of Motor Carriers, 400 Seventh Street, SW., room 3404, Washington, DC 20590, telephone (202) 366-2984, by September 4, 1992. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays. In advance of each session, all individuals desiring to appear or planning present information should contact Mr. Stan Hamilton, Office of Motor Carriers, telephone (202) 366-0665.

SUPPLEMENTARY INFORMATION: The Federal Motor Carrier Safety Regulations were enacted under the Motor Carrier Act of 1935, Ch. 498, 49 Stat. 546 (codified as amended at 49 U.S.C. 3102 & 3104). The regulations have been incrementally modified ever since. The authority for the current regulations has been vested in the Department of Transportation since 1966 (49 U.S.C. 1655(e)). All private, exempt commodity, common, and contract motor carriers of property and all for-hire carriers of passengers, as defined in the FMCSRs, are currently subject to these regulations. Additionally, the FHWA has proposed making private motor carriers of passengers subject to certain minimum safety requirements (54 FR 7362; notice of proposed rulemaking (1989)).

The FHWA recently completed a review of the FMCSRs in accordance with the President's January 28, 1992, Memorandum to Heads of Certain Executive Departments and Agencies to identify and eliminate any unnecessary regulatory burdens. Having completed that review, the FHWA believes it is appropriate to reconsider the underlying basis for all safety rules and to identify a performance-oriented regulatory structure that would enhance safety while minimizing the burdens placed on industry.

The FHWA believes the motor carrier industry will benefit from a regulatory structure that is more performance-oriented as opposed to prescriptive. Many of the basic provisions of the FMCSRs have remained unchanged for more than 50 years while others have been amended numerous times. The FHWA believes this has led to a set of regulations which can be difficult to understand and enforce. The FHWA plans to use the comments and recommendations gathered from the outreach sessions as the foundation to develop a comprehensive, unified set of performance-oriented safety requirements designed to ensure maximum safety on the Nation's highways. Discussion at the sessions will focus on identifying "who," "what," and "how" the FHWA should regulate commercial motor carriers and drivers to improve highway safety.

The goals and objectives of the zero-base review project are to: (1) Focus on those areas of enforcement and compliance which are most effective in reducing motor carrier accidents; (2) reduce compliance costs; (3) encourage innovation; (4) clearly and succinctly describe what is required; and (5) facilitate enforcement. The resulting regulatory system would apply to all appropriate segments of the motor carrier industry and would be enforceable by Federal, State and local authorities.

The performance-based regulations would be responsive to the needs of the industry and would enhance the safe operation of commercial motor vehicles.

Concurrent with the outreach effort, the FHWA will open a public docket, MC-92-33 to allow commenters and interested parties who might be unable to attend the outreach sessions the opportunity to respond to the zero-base effort.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 10, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-19412 Filed 8-17-92; 8:45 am]

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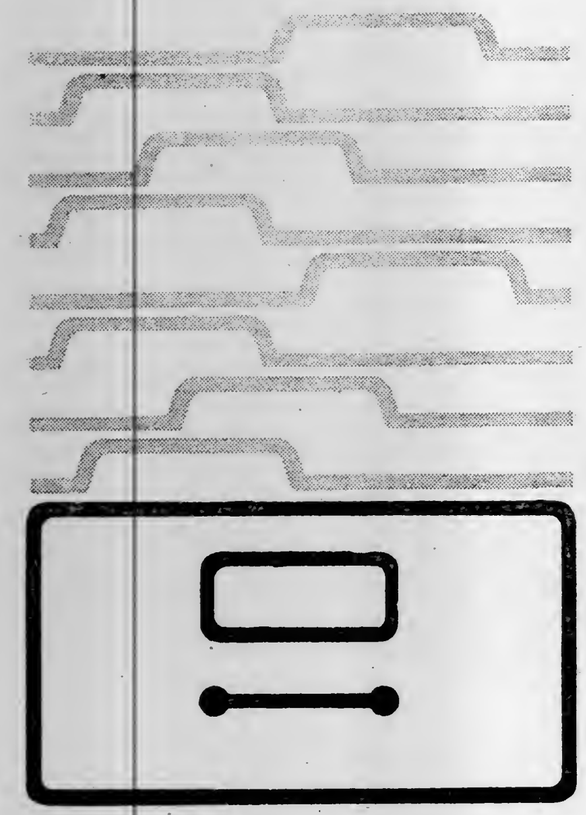
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in the Code of Federal Regulations (CFR)

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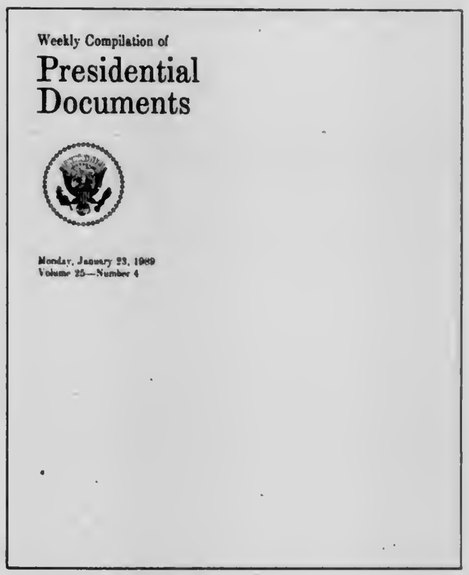
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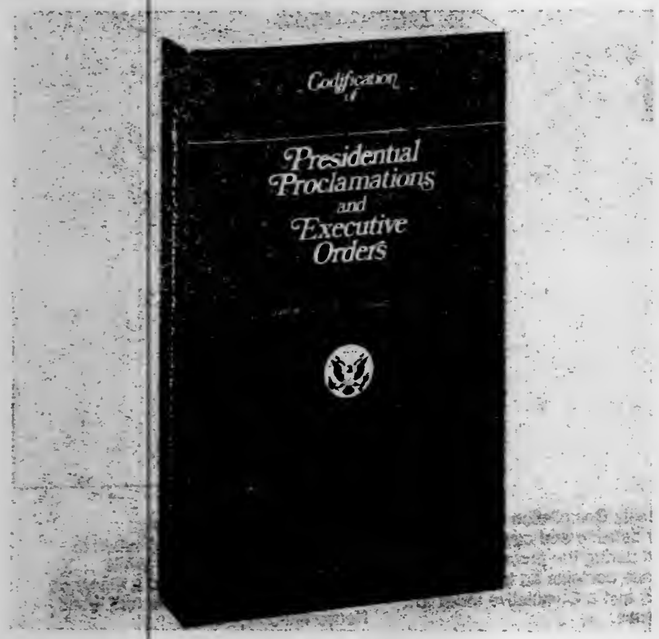
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Wednesday
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August 19, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 531 and 575

RIN 3206-AF10

Pay Under the General Schedule; Supervisory Differentials

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations authorizing agencies to pay supervisory differentials under the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final rule allows the head of an agency to pay a differential to an employee under the General Schedule who has supervisory responsibility for one or more civilian employees not under the General Schedule who, in the absence of such a differential, would be paid more than the supervisory employee.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Belva MacDonald, (202) 606-2858.

SUPPLEMENTARY INFORMATION: Section 211 of FEPCA (Pub. L. 101-509, November 5, 1990) replaces the previous authority, 5 U.S.C. 5333(b), to adjust the pay of a General Schedule (GS) employee who supervises one or more prevailing rate employees. The new authority, 5 U.S.C. 5755, applies to a GS employee who has supervisory responsibility for one or more employees not under the General Schedule.

On May 3, 1991, (56 FR 20336) OPM published interim regulations on supervisory differentials authorized by section 211 of FEPCA. The 60-day comment period ended on July 2, 1991. Comments were received from three agencies and one individual. Comments, as well as certain modifications of the interim regulations, are summarized below.

Supervisory Responsibility

Section 575.402(a)(2) of the interim regulations provides that a supervisor must be responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule in order to be eligible for a supervisory differential. One agency commented that it would like to have the flexibility to pay a supervisory differential to all supervisors in a technical supervisory role above prevailing rate (wage) employees, since, unlike the previous authority, supervisory differentials under 5 U.S.C. 5755 are not part of the basic pay of an employee. OPM has not amended § 575.402(a)(2) in this regard, since most agencies were satisfied with the existing criteria.

Part-time Supervisors

An individual asked whether a part-time GS supervisor could receive a supervisory differential on the basis of a comparison of his or her part-time salary with the full-time salary of a non-GS subordinate. Calculations of the continuing pay of both the supervisor and the subordinate must be made on an annual basis for the purpose of all comparisons required by these regulations, without regard to whether the supervisor and/or subordinate is part-time or full-time. A new paragraph (e) has been added to § 575.405 to clarify this matter.

Time Limit for Adjustment or Termination

Section 575.406(d) of the interim regulations requires that the effective date of a reduction or termination of a supervisory differential be not later than 30 calendar days after the date on which the event that necessitates the reduction or termination occurs. One agency commented that this requirement is impractical, because its data system does not link the pay of the supervisor and subordinate, and suggested that the time period be extended to 60 days.

Under 5 U.S.C. 5755(b)(1), a supervisory differential may not cause the supervisory employee's pay to exceed the pay of the highest paid subordinate employee by more than 3 percent. The effective date of a reduction or termination of a supervisory differential could be established on the same date as the effective date of the event necessitating the reduction or termination—e.g., the effective date of a decrease in a subordinate's pay or of an increase in the supervisor's pay. However, in order to allow the adjustment or termination to be effective on the first day of a pay period, the regulations provide 30 calendar days as a reasonable time period within which to establish an effective date.

OPM cannot justify extending this time period to 60 days. Agencies should adjust their data systems to incorporate this requirement. Should an agency be unable to process such an action within 30 calendar days, an employee receiving an overpayment must reimburse the agency for payment(s) made beyond the effective date. Therefore, if an agency determines that these actions might not be processed within 30 calendar days, it should inform supervisory employees, before paying the differential, that the effective date of any adjustment necessitated by this provision will be within 30 calendar days after the date on which the event that necessitates the reduction or termination occurs and that appropriate repayment by the employee will be required when the reduction or termination is processed.

Appeal Rights

An agency requested clarification of appeal rights concerning the reduction or termination of a supervisory differential. Section 575.406(f) of the interim regulations reflects the statutory provisions that the reduction or termination of a supervisory differential may not be appealed and that this does not extinguish or lessen any right or remedy under subchapter II of chapter 12 of title 5, United States Code, or under any law referred to in 5 U.S.C. 2302(d).

The provisions in subchapter II of chapter 12 of title 5, United States Code, cover the authority of the Office of Special Counsel of the Merit Systems Protection Board regarding prohibited personnel practices, disclosures of violations of law, gross mismanagement, gross waste of funds, abuse of authority, substantial and specific danger to public health or safety, and other matters. The provisions of 5 U.S.C. 2302(d) relate to equal employment opportunity through

affirmative action and to rights of employees or applicants for employment in the civil service regarding prohibition of discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation.

Since the authority to pay a supervisory differential is discretionary, § 575.406(a) of the interim regulations provides that an agency may establish procedures that allow for adjusting or terminating a supervisory differential at any time the agency determines it is appropriate to do so. Although such an adjustment or termination may not in itself be appealed to the Merit Systems Protection Board, an employee exercising his or her appeal rights under subchapter II of chapter 12 or 5 U.S.C. 2302(d) is not barred from claiming that the adjustment or termination of the supervisory differential is linked to the prohibited personnel practice or practices that form the basis for the appeal. The final regulations have not modified § 575.406(f) in this regard.

Miscellaneous

Section 575.402(a)(2) of the interim regulations has been revised to clarify that for purposes of comparing the pay of a supervisor and subordinate, continuing pay should be used. Sections 575.402(b) and 575.405(d)(2) have been revised to include a reference to a special law enforcement adjusted rate of pay under section 404 of FEPCA, since this pay is treated in the same manner as a locality-based comparability payment or an interim geographic adjustment in determining the amount of a supervisory differential. Sections 575.403 and 575.405(c)(2) were revised by the final rule for Special Pay Adjustments for Law Enforcement Officers in Selected Cities published on January 22, 1992, at 57 FR 2431, to include a reference to a special law enforcement adjusted rate of pay. Section 575.402(b) has been revised to clarify that in determining a supervisor's eligibility for payment of a supervisory differential, the maximum dollar amount of the subordinate's continuing pay may not exceed the maximum rate for GS–15 on the pay schedule applicable to the supervisor, regardless of the supervisor's grade level. Finally, a typographical error has been corrected in § 575.406(f).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Parts 531 and 575

Government employees, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM's interim regulations under parts 531 and 575 published on May 3, 1991, at 56 FR 20336, as amended by final rules published on January 22, 1992, at 57 FR 2431, are adopted as final with the following changes:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104 (a) (2), 5753, 5754, and 5755; sec. 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466; E.O. 12748.

2. In § 575.402, paragraphs (a) (2) and (b) are revised to read as follows:

§ 575.402 Delegation of authority.

(a) * * *

(2) Responsible for providing direct, technical supervision over the work of one or more civilian employees whose positions are not under the General Schedule if the continuing pay (as determined under § 575.405(d) of this part) of one or more of the subordinates would, in the absence of such a differential, be more than the continuing pay (as determined under § 575.405(c) of this part) of the supervisor.

(b) A supervisory differential may not be paid on the basis of supervising a civilian employee whose rate of basic pay exceeds the maximum rate of basic pay established for grade GS–15 on the pay schedule applicable to the GS supervisor, including a schedule for any applicable locality-based comparability payment under 5 U.S.C. 5304; an interim geographic adjustment or special law enforcement adjusted rate of pay under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; or a schedule for any applicable special rate of pay under 5 U.S.C. 5305.

3. In § 575.405, paragraph (d)(2) is revised; paragraphs (e) and (f) are redesignated as paragraphs (f) and (g), respectively; and a new paragraph (e) is added to read as follows:

§ 575.405 Calculation and payment of supervisory differential.

* * * * *

(d) * * *

(2) A locality-based comparability payment under 5 U.S.C. 5304; an interim geographic adjustment or special law enforcement adjusted rate of pay under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively; or another locality-based payment under similar authority;

* * * * *

(e) For the purpose of making any of the comparisons required by this subpart, continuing pay shall be calculated on an annual basis for both the supervisor and the subordinate.

* * * * *

4. In § 575.406, the first sentence of paragraph (f) is revised to read as follows:

§ 575.406 Adjustment or termination of supervisory differential.

* * * * *

(f) The reduction or termination of a supervisory differential may not be appealed. * * *

[FR Doc. 92–19616 Filed 8–18–92; 8:45 am]

BILLING CODE 6325–01–M

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5 CFR Part 575

RIN 3206—AE35

Recruitment and Relocation Bonuses and Retention Allowances

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final rules to authorize the payment of recruitment and relocation bonuses and retention allowances under the Federal Employees Pay Comparability Act of 1990 (FEPCA). The final regulations revise the interim regulations by (1) providing an exception to case-by-case determinations to pay relocation bonuses when it is necessary for an agency to promote mobility or when a function is transferred to another commuting area; (2) allowing payment of relocation bonuses and retention allowances to employees on temporary appointments of at least 2 years; (3) requiring an employee to establish a residence in the new commuting area in order to receive a relocation bonus; (4) removing the 1-year break in service

requirement for recruitment bonuses for certain former students; and (5) establishing procedures for requesting authority to pay recruitment and relocation bonuses and retention allowances to employees not otherwise covered by sections 5753 and 5754 of title 5, United States Code, and these regulations.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Bernadette Christie, (202) 606–2858.

SUPPLEMENTARY INFORMATION: On March 28, 1991, the Office of Personnel Management (OPM) published interim regulations to authorize the payment of recruitment and relocation bonuses and retention allowances in the **Federal Register** (56 FR 12833). The 60-day public comment period ended on May 28, 1991. OPM received comments from 14 agencies and 1 labor organization. The comments are summarized below, along with a description of the changes in, or clarifications of, the interim regulations that have been adopted.

General Comment

One agency commented that, although recruitment and relocation bonuses and retention allowances will assist Federal agencies in recruiting and retaining qualified staff, the unique pay comparability problems faced by some agencies that must compete for employees with highly specialized skills that exist in a highly-compensated sector of the labor market will not be eliminated through the implementation of these flexibilities alone. OPM is aware that there always will be some markets in which Federal agencies cannot compete for high quality employees on precisely equal terms with employers in the private sector. Nevertheless, the flexibilities provided by FEPCA, including recruitment and relocation bonuses and retention allowances, provide managers with many new tools to build and maintain a quality work force. OPM plans to issue additional guidance to agencies on using these flexibilities effectively and efficiently.

Documentation and Reporting Requirements

One agency judged the documentation requirements to be so excessive that they reduce the benefits of the authorities. Another agency indicated that the reporting requirements would prevent certain agencies from taking advantage of the authorities because of the requirement to reveal, in some cases, sensitive or classified information. OPM is sensitive to agencies' concerns that unnecessary record-keeping requirements be avoided. However, since the authorities to pay recruitment and relocation bonuses and retention allowances are new, it will not be possible, without adequate documentation, to assess their usefulness and cost or to ensure that they are administered equitably. Nevertheless, OPM will not require agencies to divulge information protected from disclosure by statute or otherwise require agencies to disclose classified information inappropriately. Such agencies will not be prevented from paying recruitment and relocation bonuses or retention allowances.

The labor organization and two agencies suggested that justifying a recruitment and relocation bonus on the basis of difficulty in filling a position with a "high quality" candidate imposes an additional requirement not supported by the statute. The term "high quality" does not impose an additional requirement not contemplated by Congress. Rather, it reinforces Congress' clearly expressed concern about the quality of new candidates for Federal service. The conference report on FEPCA (House Report 101–906, October 20, 1990, page 87) clearly demonstrates this concern by pointing out the greater costs Americans will suffer "when the Federal Government is unable to attract and retain those dedicated workers necessary to the delivery of services to all citizens."

Consistent with the conference report, therefore, OPM has promulgated regulations that protect merit principles and, at the same time, ensure that managers use resources judiciously to recruit and retain candidates of high quality to accomplish the agency's mission. OPM has retained the regulation permitting payment of a bonus only when it would be difficult to fill a position with a high quality candidate.

The interim regulations concerning internal evaluation of recruitment and relocation bonuses and retention allowances require agencies to evaluate the usefulness of bonuses and/or allowances in filling "key positions." One agency pointed out that the term "key position" is not used elsewhere in the regulations and questioned the need for a new, undefined term. The final regulations require agencies to evaluate the usefulness of bonuses and allowances in filling "positions."

Comments on the Requirement for Making Case-By-Case Determinations To Pay Bonuses and Allowances

The interim regulations require that decisions to pay an employee a bonus or an allowance be made and documented on a case-by-case basis. A labor organization suggested that case-by-case determinations could lead to inequitable treatment of employees and agreed with the approach suggested by two agencies that agencies be given the authority to pay similar bonuses to employees in similar situations without making case-by-case determinations. An agency argued that an agency should be allowed to use these authorities based on a manager's perception of need for an individual's services and an organization's budgetary constraints, as opposed to difficulty in filling a position, without higher level approval. OPM believes the requirement for case-by-case determinations, except in unusual circumstances, is necessary to prevent any possibility of abuse. The final regulations, like the interim regulations, allow payment of recruitment bonuses without case-by-case approval at a higher level when it is necessary to make a timely offer of employment. When such offers are made, a higher level agency official may establish criteria in advance based on qualifications typically possessed by high quality candidates for a specific position or other similar positions and authorize the recommending official to offer a recruitment bonus (in an amount within a pre-established range).

Comments on Rules Concerning Relocation Bonuses

Similar concerns about the need for case-by-case determinations to pay relocation bonuses were raised by two agencies. They concluded that this requirement would diminish their ability to promote mobility and build a flexible work force. The agencies suggested establishing a policy to pay a relocation bonus to any employee who must move to a high cost area or move as a result of transfer of function without additional documentation. In response to these concerns, the final regulations provide that an agency may request OPM approval of an exception to the requirement for case-by-case approval for payment of relocation bonuses to enhance the agency's ability to retain high quality employees (1) who are subject to mobility agreements, or (2) whose function is transferred to another commuting area.

Two agencies employing law enforcement officers objected to the provision permitting payment of a relocation bonus only when the position would otherwise be difficult to fill. Citing section 407 of FEPCA, which provides relocation payments of up to $15,000 to law enforcement officers whose annual rates of basic pay are less

than $60,000, one agency indicated that a requirement that the position be difficult to fill was too restrictive and that it was not the intent of Congress to link the payment of relocation bonuses to law enforcement officers to any condition other than the necessity to maintain a flexible and mobile work force. Section 407 of FEPCA provides that a law enforcement officer whose rate of basic pay is less than $60,000 may receive a relocation payment of up to $15,000 under section 5753. Therefore, while section 407 clearly authorizes payment of a more generous relocation bonus for certain law enforcement officers, the requirement that the position be difficult to fill applies to law enforcement officers, as well as other employees covered by 5 U.S.C. 5753 and 5754.

The labor organization suggested that the agency's need for an employee at the full performance level be among the factors used to determine whether to pay a relocation bonus. We have not adopted this suggestion. A decision about the level at which a position should be filled reasonably should be made before the vacancy is posted—far in advance of the need to consider offering a relocation bonus.

An agency noted that although the interim regulations bar payment of relocation bonuses to employees with time-limited appointments, recruitment bonuses can be paid to employees with appointments of at least 2 years. The agency suggested that the same rule should apply in the case of relocation bonuses. The final regulations allow employees with appointments of at least 2 years to be paid relocation bonuses or retention allowances.

An agency asked OPM to clarify the rate of basic pay to use as a basis for calculating a relocation bonus when an employee is on grade or pay retention. The interim regulations provide that an employee may receive a relocation bonus of up to 25 percent of the rate of pay fixed by law or administrative action for the position to which the employee is being relocated. For an employee on grade or pay retention, the amount of the allowance is based on the employee's retained rate of pay. OPM has revised the final regulations on relocation bonuses and retention allowances to clarify the basis for calculating the amount of such a bonus or allowance.

An agency suggested that the interim regulations were unclear about whether a relocation bonus could be paid to an employee who was transferring between agencies to a position in a different commuting area. Since the definition of employee in § 575.201 of the interim regulations is not limited to an employee of the agency paying the bonus, but allows a bonus to be paid to an employee in or under an agency transferring to a position in a different commuting area, OPM does not believe further clarification is necessary.

An agency inquired as to whether a relocation bonus could be paid to an employee as an incentive to remain in a position when the position was relocated out of the commuting area and the employee's commuting distance increased substantially, but the employee chose for personal reasons to commute, rather than relocate to the new commuting area. Payment of a relocation bonus under these conditions would not be consistent with the intent of the law. To receive a relocation bonus, an employee need not physically move his or her family, household goods, etc., from the "old" commuting area; however, the employee must establish a residence (e.g., rent an apartment) in the "new" commuting area. Therefore, the final regulations require that the employee establish a residence before the bonus may be paid. Additional guidance on this topic will be provided through the Federal Personnel Manual system.

Comments on Rules Concerning Recruitment Bonuses

For a variety of reasons, four agencies opposed the restriction on the payment of recruitment bonuses to employees who have not had a break in service of at least 1 year. One agency said the break-in-service restriction should parallel the 90-day break-in-service restriction on making superior qualifications appointments. Three agencies said the 1-year restriction would damage college recruitment programs by (1) preventing recruiters from offering bonuses to students who have had temporary appointments during previous school vacations or law clerk trainees appointed under 5 CFR 213.3102(e) pending admission to the bar, and (2) limiting an agency's ability to convert co-op students appointed under 5 CFR 213.3202 to career-conditional appointments. Another agency objected to the restriction because it bars the payment of bonuses to experts and consultants. Finally, an agency noted that the break-in-service requirement prevents employees serving under temporary appointments—especially those pending completion of the competitive examining process—from receiving bonuses.

OPM has not reduced the length of the break-in-service requirement for eligibility to receive a recruitment bonus, nor are exceptions provided for non-student temporary appointments or experts and consultants. Although a superior qualifications appointment may result in an employee receiving a greater long-term entitlement, its use does not share the same potential for abuse that is possible with the recruitment bonus, where a short break-in-service requirement might encourage an employee to resign for a short period in order to receive a large lump-sum bonus. The required year-long break in service is intended to minimize this possibility. In addition, the fact that a candidate accepts employment at the outset without a bonus indicates that it was not necessary to offer a recruitment incentive. However, we agree that, in some situations, this restriction may interfere with an agency's ability to recruit high quality candidates in whom it has invested substantial resources. Therefore, we have provided exceptions to allow the payment of recruitment bonuses to co-op students, former students with prior Federal summer or vacation employment who are receiving their first permanent appointment, and law clerk trainees.

Comments Concerning Service Agreements and Repayment of Bonuses

A prospective employee may be paid a recruitment bonus before he or she actually enters on duty. An agency commented that it would be difficult to recoup a bonus if, after receiving the bonus, the employee did not enter on duty. Although the agency's concern is a legitimate one, the statute allows this flexibility, and it may be especially useful in attracting entry-level employees. Therefore, agencies should pay a recruitment bonus before an individual actually enters on duty only in rare instances where unusual circumstances warrant accepting the risk that the agency may have difficulty recouping the bonus. Nevertheless, it is possible that an agency also could have difficulty recouping a recruitment bonus if an employee were to remain on board for a very short period before leaving for non-federal employment. OPM believes that, by signing a service agreement before receiving a recruitment bonus, the individual recognizes that a legal obligation has been established. If the individual does not honor the obligation, there are procedures for agencies to collect bona fide debts.

One agency suggested that the period of employment required by a service agreement for a recruitment or relocation bonus should begin after the completion of the period of employment required by a service agreement for any other benefit, such as training. Bonuses are intended to assist agencies in recruiting and relocating employees, while service agreements are intended to ensure that the employee remains in the position for a reasonable period. Consecutive agreements could be a disincentive to an employee, or prospective employee, because of the lengthy period he or she would be required to remain in one location or employed with one agency or organization. Therefore, OPM has not adopted this change.

The labor organization noted that the interim regulations establish a minimum period of employment under a service agreement, but do not establish a maximum period or provide criteria to assist agencies in establishing a maximum period. The labor organization commented that, in order to receive a relatively small bonus, an employee may be required to sign an unreasonably long service agreement and suggested that the length of the service agreement should be linked to the percentage of basic pay used to calculate the amount of the bonus. OPM believes the percentage of the bonus and the length of the service agreement are best resolved by mutual agreement between the employee and the agency involved. Therefore, OPM has not established a maximum period for service agreements.

The labor organization also questioned the need to complete a service agreement with the appointing agency, arguing that if the employee were forced to move to a different agency because of a transfer of function, he or she would be required to repay the bonus. In response to this concern, OPM has revised the final regulations to make clear that repayment of a bonus will not be required under these circumstances.

One agency disagreed with the requirement that an employee receiving a relocation bonus agree to remain at the new duty station for a specified time period. The agency feels that the requirement discourages mobility. OPM believes that the provision in § 575.207(d) of the interim regulations that removes the requirement to repay a bonus when it is necessary to relocate an employee to a position in a different commuting area will allow agencies to foster mobility.

Several agencies have informally raised the issue as to whether, in large organizations, an employee should be required to remain with the "employing activity" for the duration of the agreement. The statute provides that an employee must agree to complete a period of employment with the "agency." OPM does not believe an additional requirement that the employee remain with a subcomponent of an agency would be consistent with the statute.

The labor organization and an agency believe that an employee should be considered involuntarily separated for purposes of repaying a recruitment or relocation bonus if, after becoming subject to a written mobility agreement, the employee accepts one reassignment outside the commuting area, but subsequently declines another such reassignment. OPM did not adopt any change in the final regulations. An employee who accepts a mobility requirement by accepting a reassignment outside the commuting area should be treated like any other employee subject to a mobility agreement. This provision parallels the definition of involuntary separation in the severance pay regulations (5 CFR 550.703).

Typically, recruitment bonuses will be paid to new Federal employees who must serve probationary periods. During the probationary period an employee has no appeal rights to challenge his or her removal from employment. Under these circumstances, the labor organization maintained that requiring an employee to return a bonus would constitute an improper "fine" or "penalty." It is not the intent of FEPCA to extend to probationers any additional due process rights beyond those they already have. In addition, OPM believes that the provision permitting the payment of a recruitment bonus only to a high quality employee in a difficult to fill position will provide an adequate safeguard against the arbitrary termination of an employee during his or her probationary period.

When an employee fails to complete a period of employment established under a service agreement and must repay a recruitment or relocation bonus, the interim regulations require the employee to repay the bonus on a pro rata basis. The employee receives credit for each full month of employment completed under the service agreement. The labor organization objected to this formula, preferring that service be credited by rounding to the nearest full month or that it be credited on a partial month basis. OPM declines to accept this recommendation because of the administrative complexity of crediting less than a full month of service toward the completion of a service agreement. Also, OPM believes the formula is appropriate because it encourages employees to complete more rather than less service under the agreement.

Comments on Retention Allowances

One agency suggested that payment of a retention allowance be permitted when an employee would otherwise move to another Federal agency. OPM declines to make this change because paying a retention allowance to prevent an employee from transferring to another Federal agency would encourage agencies to compete with one another for an employee's services.

Two agencies proposed that, in order to receive a retention allowance, an employee must have a firm offer of employment outside the Federal service. Although a firm offer of employment may be a prime indicator that an employee is likely to leave the Federal service, OPM does not believe that it is necessary or desirable to specify the exact type of documentation necessary to approve the payment of such an allowance.

One agency suggested that OPM establish rules to recoup a retention allowance when the allowance was paid under fraudulent circumstances. Agencies may establish criteria to authenticate offers of employment outside the Federal Government. However, if an employee falsifies such an offer, we believe the existing mechanisms for recouping losses incurred through fraudulent means are adequate to recover any portion of a retention allowance paid under such circumstances.

The labor organization voiced concerns about the potential abuse of the retention allowance authority and about the relationship between retention allowances and the requirement for substantially equal pay for equal work in 5 U.S.C. 5101(1)(A). To ensure that employees are equitably treated and paid, the labor organization recommended that OPM establish objective definitions of the phrases (1) "unusually high or unique qualifications," (2) "special need for an employee's services," and (3) "would be likely to leave in the absence of a retention bonus." OPM believes the criteria for the payment of retention allowances should be clearly defined by each agency, taking into account unique factors such as the agency's mission and organizational characteristics. OPM does not believe that it would be practical or useful to attempt to prescribe such definitions by regulation.

Finally, the regulations have been amended to establish procedures under which the head of an Executive agency may request authority to pay such bonuses and allowances to employees not otherwise covered by sections 5753

and 5754 of title 5, United States Code, and to make certain technical and conforming changes, including the addition of a requirement that agencies track and report on the number of relocation bonuses and retention allowances offered to employees during a fiscal year. Under the interim regulations, agencies were required to report only the number of recruitment bonuses offered each fiscal year.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12991, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal agencies and Federal employees.

List of Subjects in 5 CFR Part 575

Administrative practice and procedure, Government employees, Wages.

U.S. Office of Personnel Management.
Constance Berry Newman,
Director.

Accordingly, the interim rule establishing 5 CFR part 575, which was published at 56 FR 12833 on March 28, 1991, is adopted as final with the following changes:

PART 575—RECRUITMENT AND RELOCATION BONUSES; RETENTION ALLOWANCES; SUPERVISORY DIFFERENTIALS

1. The authority citation for part 575 is revised to read as follows:

Authority: 5 U.S.C. 1104(a)(2), 5753, 5754, and 5755; sec. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509) 104 Stat. 1462 and 1466, respectively; E.O. 12748.

2. In § 575.102, the introductory text of paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 575.102 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a recruitment bonus to an employee who is newly appointed to—

* * * * *

(c) The head of an Executive agency may request that OPM authorize the payment of a recruitment bonus to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.

* * * * *

3. In § 575.103, the definitions of the terms *employee, newly appointed,* and *rate of basic pay* are revised to read as follows:

§ 575.103 Definitions.

* * * * *

Employee means an employee in or under an agency who is newly appointed without time limitation or for a minimum period of at least 2 years or an individual who has received a written offer of employment without time limitation or for a minimum period of at least 2 years.

* * * * *

Newly appointed refers to—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) An appointment following a break in service of at least 1 year; or

(c) A permanent appointment received within 1 year after termination of—

(1) Employment in a cooperative work-study program under a Schedule B appointment made in accordance with § 213.3202 of this chapter;

(2) Employment under the Stay-in-School program, in accordance with § 213.3102(w) of this chapter;

(3) Employment as a law clerk trainee under § 213.3102(e) of this chapter; or

(4) Employment while a student during school vacations under a short-term temporary appointing authority.

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is or will be newly appointed before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

4. In § 575.106, paragraph (a) is revised to read as follows:

§ 575.106 Service agreement.

(a) Before a recruitment bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified number of months of employment with the appointing agency (or successor agency in the event of a transfer of function).

* * * * *

5. In § 575.108, paragraph (b) is revised to read as follows:

§ 575.108 Internal evaluation.

* * * * *

(b) Before January 1st of each year, each agency shall prepare a written report on its use of recruitment bonuses during the previous fiscal year. Each report shall include the number of employees to whom a recruitment bonus was offered during the fiscal year, the percentage of salary offered, the number of employees who accepted the offer of a recruitment bonus during the fiscal year, and an evaluation of the overall effect of the payment of recruitment bonuses on the ability of the agency to fill positions with high quality candidates. Each agency shall make its annual report available for review upon request by OPM.

6. In § 575.202, the introductory text of paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 575.202 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a relocation bonus to an employee appointed to—

* * * * *

(c) The head of an Executive agency may request that OPM authorize the payment of a relocation bonus to one or more categories of employees of his or her agency not otherwise covered by 5 U.S.C. 5753 or this subpart.

* * * * *

7. In § 575.203, the definitions of the terms *employee* and *rate of basic pay* are revised to read as follows:

§ 575.203 Definitions.

* * * * *

Employee means an employee in or under an agency who is appointed without a break in service and without time limitation or for a minimum period of at least 2 years to a position in a different commuting area or an employee who is serving under an appointment without time limitation or for a minimum period of at least 2 years and whose duty station is changed temporarily to a different commuting area.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position to which the employee is being relocated or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

* * * * *

8. In § 575.204, the section heading and paragraphs (b) and (c)(1) are revised, and a new paragraph (d) is added to read as follows:

§ 575.204 Agency relocation bonus plans; higher level review and approval; criteria for payment; and exceptions to case-by-case approval.

* * * * *

(b) *Higher level review and approval.* Except as provided in paragraph (d) of this section, each determination to pay a relocation bonus, including the amount of such bonus, shall be reviewed and approved by an official of an agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency.

(c) *Criteria for payment.* (1) Each bonus paid under this subpart shall be based on a written determination that, in the absence of such a bonus, the agency would encounter difficulty in filling the position with a high quality candidate. Each such determination shall be made before the employee actually enters on duty in the position to which he or she was relocated. In determining which employee may receive a relocation bonus, an agency may target groups of positions that have been difficult to fill in the past or that may be difficult to fill in the future. However, except as provided in paragraph (d) of this section, any determination to pay a bonus shall be made on a case-by-case basis for each employee.

* * * * *

(d) *Exceptions to case-by-cose approvol.* With the prior approval of OPM, the head of an agency may authorize, for a specified period of time, the payment of a relocation bonus to any employee whose rating of record is at least fully successful without the requirement for case-by-case approval when—

(1) The employee is a member of a specified group of employees subject to a mobility agreement, and the head of an agency, in consultation with OPM, determines that relocation bonuses are necessary to ensure the agency's ability to retain high quality employees subject to such an agreement; or

(2) A major organizational unit of an agency is relocated to a different commuting area, and the head of an agency, in consultation with OPM, determines that relocation bonuses are necessary for specified groups of employees to ensure the continued operation of that unit without undue disruption of an activity or function that is deemed essential to the agency's mission and/or without undue disruption of service to the public.

9. In § 575.205, paragraph (c) is added to read as follows:

§ 575.205 Payment of relocation bonus.

* * * * *

(c) Before a relocation bonus may be paid to an employee, the employee must establish a residence in the new commuting area.

10. In § 575.206, paragraph (a) is revised to read as follows:

§ 575.206 Service agreement.

(a) Before a relocation bonus may be paid, an agency shall require that the employee sign a written service agreement to complete a specified number of months of employment with the appointing agency (or the successor agency in the event of a transfer of function) at the new duty station.

11. In § 575.208, paragraph (b) is revised to read as follows:

§ 575.208 Internal evaluation.

* * * * *

(b) Before January 1st of each year, each agency shall prepare a written report on its use of relocation bonuses during the previous fiscal year. Each report shall include the number of employees to whom a relocation bonus was offered during the fiscal year, the percent of salary offered, the number of employees who accepted the offer of a relocation bonus during the fiscal year, and an evaluation of the overall effect of the payment of relocation bonuses on the ability of the agency to fill positions with high quality candidates. Each agency shall make its annual report available for review upon request by OPM.

12. In § 575.302, the introductory text of paragraph (a) is revised, paragraph (c) is redesignated as paragraph (d), a new paragraph (c) is added, and the introductory language of paragraph (d) is revised to read as follows:

§ 575.302 Delegation of authority.

(a) Except as provided in paragraph (b) of this section, the head of an agency (or, with respect to positions not under the General Schedule, the head of an Executive agency) may pay a retention allowance to an employee who holds—

* * * * *

(c) The head of an Executive agency may request that OPM authorize the payment of a retention allowance to an employee of his or her agency not otherwise covered by 5 U.S.C. 5754 or this subpart.

(d) When OPM finds that an agency is not paying retention allowances in conformance with the agency's retention allowance plan and the criteria established under § 575.305 of this part or otherwise determines that the agency is not using this authority selectively and judiciously, it may—

* * * * *

13. In § 575.303, the definitions of the terms *employee* and *rate of basic pay* are revised to read as follows:

§ 575.303 Definitions.

* * * * *

Employee means an employee in or under an agency who is serving under an appointment without time limitation or for a minimum period of at least 2 years.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee or, in the case of an employee who is entitled to grade or pay retention, the employee's retained rate of pay, before deductions and exclusive of additional pay of any kind, such as locality-based comparability payments under 5 U.S.C. 5304 or interim geographic adjustments or special pay adjustments for law enforcement officers under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), respectively.

14. In § 575.308, paragraph (b) is revised to read as follows:

§ 575.308 Internal evaluation.

* * * * *

(b) Before January 1st of each year, each agency shall prepare a written report on its use of retention allowances during the previous fiscal year. Each report shall include the number of employees to whom a retention allowance was offered, the percentage of salary received by each employee, the number of employees who accepted the offer of a retention allowance, and an evaluation of the overall effect of the payment of retention allowances on the ability of the agency to retain high quality employees. Each agency shall

make its annual report available for review upon request by OPM.

[FR Doc. 92-19617 Filed 8-18-92; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1941

Certain Provisions of the Agricultural Credit Act of 1987 and Additional Amendments of Portions of Farmer Programs Regulations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Farmers Home Administration (FmHA) corrects an interim rule published September 14, 1988, in the **Federal Register** (53 FR 35638–35798) on certain provisions of the Agricultural Credit Act of 1987 and additional amendments of portions of the FmHA regulations. Portions of this interim rule were adopted unchanged as a final rule on May 25, 1990, (55 FR 21517–21533). Unfortunately an error in this unchanged portion was not discovered at that time. The intent of this action is to correct that typographical error.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Richard K. Boyles, Farmer Programs Loan Making Division, Farmers Home Administration, U.S. Department of Agriculture, South Agricultural Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 720–1360.

SUPPLEMENTARY INFORMATION:

List of Subjects in 7 CFR Part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

Accordingly, chapter XVIII, title 7, Code of Federal Regulations is corrected by making the following technical amendment:

PART 1941—OPERATING LOANS

1. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

§ 1941.18 [Amended]

2. Section 1941.18(b)(3) is amended by changing the word "rescheduled" to "scheduled."

Dated: July 16, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-19681 Filed 8-18-92; 8:45 am]
BILLING CODE 3410-07-M

RESOLUTION TRUST CORPORATION

Office of Inspector General

12 CFR Part 1680

Privacy Act Regulations

AGENCY: Resolution Trust Corporation.

ACTION: Notice of interim rulemaking with request for comments.

SUMMARY: The Resolution Trust Corporation (RTC or Corporation) Office of Inspector General (OIG) is adopting an interim rule for the processing of requests for access to or amendment of records pursuant to the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act). Also, RTC OIG is exempting a new system of records from certain provisions of the Privacy Act to the extent the system contains investigatory material pertaining to the enforcement of criminal laws or compiled for law enforcement purposes. The system of records, entitled "Office of Inspector General Investigative Files," includes OIG's investigative files. This new system of records appears in an accompanying notice.

DATES: This interim rule is effective August 19, 1992. Comments must be received by October 19, 1992.

ADDRESSES: Comments must be sent to: Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, room 1122, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: David W. Kuhnsman, Senior Assistant Counsel to the Inspector General, at 703–908–7812.

SUPPLEMENTARY INFORMATION:

Discussion of Interim Rule

A. Background

On December 23, 1991, the Board of Directors of the Resolution Trust Corporation adopted a Resolution authorizing the Inspector General to promulgate policies and regulations necessary to administer OIG records pursuant to the Privacy Act of 1974. The Resolution also recognized the authority of the Secretary of the Corporation to authorize release of Corporation documents not developed by OIG which are contained in OIG files. This rule sets forth the procedures to be used in requesting records from RTC OIG, the procedures for contesting the content of records, and the identification of systems of records that are exempt from the access, amendment, and disclosure accounting provisions of the Privacy Act. Also a new Privacy Act system of records is being established. The system, entitled Office of Inspector General Investigative Files, contains investigatory material compiled for law enforcement purposes and investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. A separate regulation implements the Privacy Act for non-OIG RTC systems of records.

B. Requests for Information in Records

The rule provides that all written requests for records under the control of the Inspector General of RTC should be sent to the OIG in Rosslyn, VA. It further permits individuals to appear in person at OIG Headquarters, in Rosslyn, VA, to inspect non-exempt records pertaining to themselves which are covered by the Privacy Act. Requests for records must reasonably describe the record desired. The rule also provides for adequate identification to be submitted for both written and oral requests.

C. Initial and Final Decisions

The rule delegates to the Assistant Inspectors General and Regional Inspectors General for Audit, if the inquiry involves an audit issued in the Region, authority to make initial determinations concerning requests for access to or amendment of records. It should be noted that at the present time there are no audit systems of records subject to the Privacy Act, but regulatory provision is being made should the need for such a system arise in the future. The concurrence of the Secretary is required for initial determinations concerning requests for access to or amendment of records involving Corporation documents not developed by OIG but which are contained in OIG files. Final decisions on an appeal of an initial denial of access or a determination not to amend will be made by the Inspector General or Deputy Inspector General for records under the control of the OIG with the concurrence of the General Counsel with respect to Corporation documents not developed by OIG.

D. Exemption From Disclosure

RTC OIG proposes to exempt the new OIG Investigative Files system of records from specified provisions of the Privacy Act. Subsection (j)(2) of the Privacy Act provides that an agency may promulgate rules to exempt any system of records within the agency from any part of section 552a except subsections (b), (c)(1), and (2), (e)(4) (A) through (F), (e) (6), (7), (9), (10), and (11), and (i), provided that the system of records is maintained by "the agency or component thereof which performs as its principal function any activity pertaining to enforcement of criminal laws" and includes: "(A) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release and parole and probation status; (B) information compiled for the purpose of a criminal investigation, including reports of informants and investigators and associated with an identifiable individual; or (C) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision." Section 552a(k) of the Privacy Act provides that an agency may promulgate rules to exempt any system of records within the agency from sections 552a(c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f) of the Act, pursuant to 5 U.S.C. 552a(k)(2), if the system of records is "investigatory material compiled for law enforcement purposes other than material within the scope of subsection (j)(2)," and also, pursuant to 5 U.S.C. 552a(k)(5), if the system of records consists of "investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, * * * Federal contracts, or access to classified information."

If a system of records is not exempted from these sections, the Privacy Act generally requires the agency to: Make an accounting of disclosures to the individual named in the record at their request; permit individuals access to their records; permit individuals to request amendment to their records; maintain only necessary or relevant information in its system of records; publish certain information in the **Federal Register**; and promulgate rules that establish procedures for notice and disclosure of records. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigations.

Exemptions under subsections 552a(j)(2), (k)(2) and (k)(5) are necessary to maintain the integrity and confidentiality of the investigative files. Disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine the effectiveness of the Inspector General's investigations and put confidential sources at risk. Knowledge of such investigations also could enable suspects to take action to prevent detection of criminal activities, conceal or destroy evidence, or escape prosecution. Disclosure of this information could lead to intimidation of, or harm to, informants, witnesses, investigative personnel and their families. The imposition of certain restrictions on the manner in which information is collected, verified or retained could significantly impede the effectiveness of OIG investigations and could preclude the apprehension and successful prosecution of persons engaged in fraud or criminal activity.

OIG Investigative Files will contain information of the type described in the (j)(2), (k)(2), and (k)(5) exemptions of the Privacy Act. The Inspector General Act, as amended, 5 U.S.C. App. 3, authorizes OIG to conduct investigations to detect fraud and abuse in the programs and operations of the Corporation and to assist in the prosecution of participants in such fraud or abuse. OIG will maintain information in this system of records pursuant to its law enforcement and criminal investigative functions including, background employment, personnel and contractor investigative material which may be necessary for OIG to maintain in order to carry out these functions. Further, the (j)(2), (k)(2) and (k)(5) exemptions will be narrowly applied.

E. Fees

The rule provides that copies of records will be provided at $.20 per page. It also provides that fees may be waived if the total cost of complying with the request for records is less than $25.00.

Request for Public Comment

RTC OIG is seeking comments on all aspects of this interim rule. Comments will be carefully reviewed for the purpose of developing final regulations.

Administrative Procedure Act

The Resolution Trust Corporation is adopting this regulation as an interim final rule effective upon publication in the **Federal Register** without the usual notice-and-comment period or delayed effective date as provided for in the Administrative Procedure Act, 5 U.S.C. 553. These requirements may be waived for "good cause."

The Resolution Trust Corporation was created in August 1989 by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, (Pub. Law No. 101–73, 103 Stat. 183). Since that time it has used regulations adopted by the Federal Deposit Insurance Corporation to process requests it receives under the Privacy Act. Those regulations, drafted before the existence of the OIG, do not adequately address the needs of OIG. With the establishment of OIG, there is a need for it to have its own regulations implementing the Privacy Act.

In addition, the substance of much of the rule, including those portions concerning method and timing of release of records and exemption of records are largely mandated by the Privacy Act or by the Office of Management and Budget regulations promulgated pursuant to statute and already subject to public comment. In the case of these portions of the rule, the need for public comment is reduced since the Resolution Trust Corporation has little discretion in adopting these provisions.

Therefore, the benefits to the public in adopting the interim regulations outweigh any harm from the delay in seeking public comment.

Regulatory Flexibility Act

The undersigned hereby certifies that the interim regulations, and any final regulations that may be adopted following comment on the interim regulations, are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

List of Subjects in 12 CFR Part 1680

Privacy Act.

For the reasons set out in the preamble, the Resolution Trust Corporation amends part 1680 to title 12, chapter XVI of the Code of Federal Regulations as follows:

PART 1680—OFFICE OF INSPECTOR GENERAL DISCLOSURE OF INFORMATION

Subpart A—Freedom of Information Act Regulations

1. The authority citation for part 1680, Subpart A, continues to read as follows:

Authority: 5 U.S.C. 552, 5 U.S.C. App.; 12 U.S.C. 1441(a)(b).

§§ 1680.1–1680.17 [Redesignated as Subpart A]

2. The existing §§ 1680.1 through 1680.17 are redesignated as Subpart A with the heading of Subpart A added as set forth above.

3. Subpart B is added as follows:

SUBPART B—PRIVACY ACT REGULATIONS

Sec.

1680.21 Purpose and scope.
1680.22 Definitions.
1680.23 Procedures for requests pertaining to individual records in a system of records.
1680.24 Times, places and requirements for identification of individuals making requests.
1680.25 Disclosures of requested information to individuals.
1680.26 Special procedures for medical records.
1680.27 Requests for amendment of records.
1680.28 Agency reviews of requests for amendment of records.
1680.29 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.
1680.30 Preservation of records.
1680.31 Disclosures of a record to a person other than the individual to whom the record pertains.
1680.32 Fees.
1680.33 Penalties.
1680.34 Exemptions.

Subpart B—Privacy Act Regulations

Authority: 5 U.S.C. 552a, 5 U.S.C. App., 12 U.S.C. 1441a(b).

§ 1680.21 Purpose and scope.

This regulation sets forth the basic policies of the Resolution Trust Corporation (RTC) that implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) regarding the protection of the privacy of individuals on whom the Corporation's Office of Inspector General (OIG) maintains information which is retrieved by reference to an individual's name or an identifying particular assigned to the individual. This regulation also sets forth the procedures by which an individual may seek access under the Privacy Act to records pertaining to him/her, may request correction or amendment of such records, or may seek an accounting of disclosures of such records maintained by the Office of Inspector General.

§ 1680.22 Definitions.

For the purposes of this part:

(a) *Corporation* means the Resolution Trust Corporation.

(b) *Individual* means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, disseminate, or control.

(d) *Record* means any item, collection or grouping of information about an individual that is maintained by the Office of Inspector General and contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual.

(e) *System of records* means a group of any records under the control of the Office of Inspector General from which information is retrieved by the name of the individual or some identifying number, symbol or other identifying particular assigned to the individual.

(f) *Designated system of records* means a system of records which has been listed and summarized in the **Federal Register** pursuant to the requirements of 5 U.S.C. 552a(e).

(g) *Routine use* means, with respect to disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was created.

(h) *Amend* and *amendment* mean any correction, addition to or deletion from a record.

(i) *System manager* means the agency official responsible for a designated system of records, as denominated in the **Federal Register** publication of "Systems of Records Maintained by the Resolution Trust Corporation."

(j) *Inspector General* means the Inspector General or Deputy Inspector General of the Resolution Trust Corporation.

(k) *Assistant Inspector General* means the Assistant Inspector General for Audit, Assistant Inspector General for Investigation, Assistant Inspector General for Policy, Planning and Resources, or Assistant Inspector General for Oversight and Quality Assurance.

§ 1680.23 Procedures for requests pertaining to individual records in a system of records.

Written requests by individuals for access to records pertaining to them and maintained within an Office of Inspector General's designated system of records should be signed by the requester and submitted in writing to the Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209. Each such request should contain a reasonable description of the record(s) sought, the system or systems in which such record may be contained, and any additional identifying information, as specified in the Corporation's **Federal Register** "Notice of Systems of Records" for that particular system, copies of which are available upon request from the Office of Inspector General and the FOIA/PA Branch, Office of the Secretary.

§ 1680.24 Times, places and requirements for identification of individuals making requests.

(a) Individuals may request access to records pertaining to themselves by submitting a written request by mail as provided in § 1680.23 of this subpart. Before information is given or access to records is granted, the Office of Inspector General may require reasonable identification of the person making the request to ensure that information is given and records are disclosed only to the proper individual.

(b) Individuals submitting written requests seeking access to or amendment of records pertaining to themselves shall include copies of reasonable identification which contain the signatures of the individuals such as driver's licenses, employment identification cards or passports. The identification shall bear the individual's current residence or business address. Except for records that must be publicly disclosed pursuant to the Freedom of Information Act (5 U.S.C. 552), where the Office of Inspector General determines it to be necessary for the individual's protection, a certification of a duly commissioned notary public, of any state or territory, attesting to the requesting individual's identity may be required before a written request seeking access to or amendment of a record will be honored.

(c) Nothing in this section shall preclude the Office of Inspector General from requiring such other proof of identity as it deems satisfactory in the circumstances of a particular request for Office of Inspector General investigative files.

§ 1680.25 Disclosures of requested information to individuals.

(a) Except to the extent that records pertaining to an individual:

(1) Are exempt from disclosure under § 1680.33 of this subpart, or

(2) Were compiled in reasonable anticipation of a civil action or proceeding,

The Office of Inspector General will make such records available upon request for purposes of inspection and copying by the individual (after proper identity verification as provided in § 1680.24) and, upon the individual's request and written authorization, by another person of the individual's own choosing.

(b) The Assistant Inspector General or Regional Inspector General for Audit, where a request involves an audit issued in the region, for those systems of records under the control of the Office of Inspector General, will notify, in writing, the individual making a request, within ten business days following receipt of the request, whether any specified, designated system of records maintained by the Office of Inspector General contains a record pertaining to the individual. Where such a record does exist, the Assistant Inspector General or if appropriate, Regional Inspector General for Audit, for those systems of records under the control of the Office of Inspector General, will inform the individual of the decision whether to grant or deny, in whole or in part, the request for access. The release of any Corporation documents not developed by OIG which are contained in OIG files requires the concurrence of the Secretary of the Corporation (or designee). In the event existing records are determined not to be disclosable, the notification will inform the individual of the reason(s) for which disclosure will not be made and will provide a description of the individual's right to appeal the denial, as more fully set forth in § 1680.28 of this subpart.

(c) Individuals will be granted access to records disclosable under this part 1680, subpart B as soon as is practicable. The Assistant Inspector General, or Regional Inspector General for Audit, if appropriate, for those systems of records under the control of the Office of Inspector General, will give written notification of a reasonable period within which individuals may inspect disclosable records pertaining to themselves at the headquarters of the Office of Inspector General, if appropriate, or the Region in which an audit was issued, during normal business hours. Alternatively, individuals granted access to records under this subpart may request that copies of such records be forwarded to them. Fees for copying such records will be assessed as provided in § 1680.31 of this subpart.

§ 1680.26 Special procedures for medical records.

Medical records shall be disclosed on request to individuals to whom they pertain, except, if in the judgment of the Corporation or the Office of Inspector General, depending on the manner by which the record was generated, the transmission of the medical information directly to the requesting individual could have an adverse affect upon such individual. In the event medical information is withheld from the requesting individual because of any possible adverse affect such information may have upon the individual, the Corporation or the Office of Inspector General shall transmit such information to a licensed medical doctor named by the requesting individual.

§ 1680.27 Requests for amendment of records.

The Office of Inspector General will maintain all records it uses in making any determination about any individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in the determination. An individual may request that the Inspector General amend any portion of a record pertaining to that individual which the Office of Inspector General maintains in a designated system of records. Such a request should be submitted in writing to the Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209, and should contain the individual's reason for requesting the amendment and a description of the record (including the name of the appropriate designated system and category thereof) sufficient to enable the Inspector General to identify the particular record or portion thereof with respect to which amendment is sought. If an individual has a copy of the record he/she wishes to have amended, it should be attached to the request for amendment and the specific portion of the record sought to be amended should be clearly identified. The individual making the request may be required to provide the information specified in § 1680.24 of this subpart to permit verification of the identity of the individual making the request for amendment.

§ 1680.28 Agency reviews of requests for amendment of records.

(a) Requests by individuals for the amendment of records will be acknowledged by the Assistant Inspector General or Regional Inspector General for Audit, if appropriate, within ten business days following receipt of such requests. Promptly thereafter, the Assistant Inspector General or Regional Inspector General for Audit for records contained within a system of records under the control of the Office of Inspector General, will notify the individual of the decision to grant or deny the request to amend. The amendment of any Corporation documents not developed by OIG which are contained in OIG Files requires the concurrence of the Secretary of the Corporation (or designee). If the request to amend is granted, in whole or in part the Assistant Inspector General or Regional Inspector General for Audit will effect the appropriate amendment.

(b) If the Assistant Inspector General or Regional Inspector General for Audit for records contained within a system of records under the control of the Office of Inspector General, denies a request to amend a record, the notification of such denial shall contain the reason(s) for the denial and a description of the individual's right to appeal the denial as more fully set forth in § 1680.28 of this subpart.

§ 1680.29 Appeals of adverse initial agency determinations of access or amendment of records and Statements of Disagreement.

(a) For records contained within a system of records under the control of the Office of Inspector General, the initial denial of an individual's request for access to or amendment of a record pertaining to him/her may be appealed in writing to the Inspector General, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209, within 30 business days following receipt of notification of the denial. Such appeals should contain all the information specified for requests for access in § 1680.23 of this subpart or for initial requests to amend in § 1680.26 of this subpart, as well as any other additional information the individual deems relevant for the consideration by the Inspector General of the appeal. Both the envelope and the appeal letter should have written on them "Privacy Act Appeal." The appeal letter should also enclose a copy of the initial denial letter.

(b) The Inspector General will normally make a final determination with respect to an appeal made under this subpart within 30 business days following receipt of the appeal. The concurrence of the General Counsel of the Corporation (or designee) is required for Corporation documents not developed by OIG which are contained in OIG files. The Inspector General may extend the 30-day time period for good cause. When such an extension is required, the individual making the appeal will be notified of the reason for the extension and the expected date upon which a final decision will be given.

(c) If the Inspector General affirms the initial denial of a request for access or to amend, he or she will inform the individual affected by the decision, the reason(s) therefor, and the right of judicial review of the decision. With respect to a decision to sustain the initial refusal to amend a record the Inspector general will also inform the

individual of the right to submit a "Statement of Disagreement" under paragraph (d) of this section.

(d) Upon receipt of a determination to affirm the initial denial of a request to amend records, the individual may submit to the Inspector General a concise statement ("Statement of Disagreement") setting forth his or her reasons for disagreeing with the Inspector General's determination not to amend. Such a "Statement of Disagreement" will be attached to the record which was the subject of the request to amend. The Inspector General may, if deemed appropriate, prepare a concise statement ("Statement of Explanation") of the reason(s) why the requested amendment or correction was not made. Any Inspector General "Statement of Explanation" will be included in the system of records in the same manner as the "Statement of Disagreement." A copy of the "Statement of Explanation" and of the notation of the dispute as marked on the original record will be provided to the individual who requested correction or amendment of the record.

(e) When a record has been amended or corrected or when a "Statement of Disagreement" has been filed, the Inspector General will advise all prior recipients of the affected record whose identities may be determined pursuant to the disclosure accountings required by the Privacy Act (5 U.S.C. 552a(c)), or any other accounting previously made, of the amendment or correction or the filing of the "Statement of Disagreement." Any disclosure of disputed information occurring after a "Statement of Disagreement" has been filed will clearly identify the specific information disputed and be accompanied by a copy of the "Statement of Disagreement" and a copy of the "Statement of Explanation," if any, as set forth in § 1680.30 of this subpart.

§ 1680.30 Preservation of records.

The Inspector General will preserve all correspondence relating to the written requests it receives under this subpart and all records processed pursuant to such requests, in accordance with the records retention provisions of General Records Schedule 14, Informational Services Records, or General Records Schedule 22 for Office of Inspector General records. Under no circumstances will records be destroyed while they are subject to a pending request for access, amendment, appeal, or lawsuit pursuant to the Privacy Act.

§ 1680.31 Disclosures of a record to a person other than the individual to whom the record pertains.

(a) Except as provided in paragraph (b) of this section, the Inspector General will not disclose any record contained in a designated system of records to any person or agency except without the prior written consent of the individual to whom the record pertains.

(b) The restrictions on disclosure in paragraph (a) of this section do not apply to any disclosures:

(1) To those officers and employees of the Corporation who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552);

(3) For a routine use listed with respect to a designated system of records;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Corporation with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States (or designee) to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Corporation specifying the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of the individual to whom the record pertains;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order of a court of competent jurisdiction; or

(12) To a consumer reporting agency in accordance with section 3711(f) of Title 31 of the United States Code.

(c) Any "Statement of Disagreement" with the Inspector General's determination not to amend a record, filed with the Inspector General by an individual pursuant to § 1680.28(d) of this subpart, will be included in the disclosure of the record under authority of paragraph (b) of this section. The Inspector General may, in his or her discretion, also include a copy of the Inspector General's "Statement of Explanation."

(d) The Inspector General, with respect to each system of records under his or her control shall:

(1) except for disclosures made under paragraphs (b)(1) or (b)(2) of this section, keep an accurate accounting of—

(i) The date, nature, and purpose of each disclosure of a record to any person or to another agency made under paragraph (b) of this section; and

(2) Retain the accounting made under paragraph (d)(1) of this section for at least five years or the life of the record, whichever is longer, after the disclosure for which the accounting is made.

(3) Except for disclosures made under paragraph (b)(7) of this section, make the accounting made under paragraph (d)(1) of this section available to the individual named in the record at his/her request; and

(4) Inform any person or other agency about any correction or Statement of Dispute made by the agency in accordance with paragraph (b) of this section of any record that has been disclosed to the person or agency if an accounting of the disclosure was made.

§ 1680.32 Fees.

The Inspector General, upon a request for records disclosable pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), shall charge a fee of $.20 per page for duplicating, except as follows:

(a) If the Inspector General determines that he or she can grant access to a record only by providing a copy of the record, no fee will be charged for providing the first copy of the record or any portion thereof;

(b) Whenever the aggregate fees computed under this section do not exceed $25.00 for any one request, the fee will be deemed waived by the Inspector General.

§ 1680.33 Penalties.

Subsection (i)(3) of the Privacy Act of 1974 (5 U.S.C. 552a (i)(3)) imposes criminal penalties for obtaining Inspector General or Corporation records on individuals under false pretenses. The subsection provides as follows: "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000."

§ 1680.34 Exemptions.

These provisions authorize the Inspector General to exempt certain OIG Privacy Act systems of records from portions of the requirements of this regulation. For those OIG systems of records that are determined to be exempt, the system notice shall describe the exemption and the reasons. The Inspector General has determined that the following systems of records are exempt to the extent provided hereinafter.

(a) *Office of Inspector General Investigative Files*—(1) *Sections of the Act from which exempted.* (i) The Office of Inspector General Investigative Files system of records is exempt from all sections of the Privacy Act (5 U.S.C. 552a) except the following: (b) relating to conditions of disclosure; (c) (1) and (2) relating to keeping and maintaining a disclosure accounting; (e)(4) (A) through (F) relating to publishing a system notice setting forth name, location, categories of individuals and records, routine uses, and policies regarding storage, retrievability, access controls, retention and disposal of the records; (e)(8), (7), (9), (10), and (11) relating to dissemination and maintenance of records, and (i) relating to criminal penalties. This system of records is also exempt from 12 CFR 1680.23 through 1680.28 and 1680.30(d) (3) and (4). This exemption applies to those records and information contained in the system of records pertaining to the enforcement of criminal laws.

(ii) To the extent that there may exist within this system of records investigative files compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Privacy Act, the Inspector General Investigative Case Files system of records is exempt from the following sections of the Privacy Act (5 U.S.C. 552(a)): (c)(3) relating to access to the disclosure accounting, (d) relating to access to records, (e)(1) relating to the type of information maintained in the records; (e)(4) (G), (H), and (I) relating to publishing the system notice information as to agency procedures for access and amendment and information as to the categories of sources or records, and (f) relating to developing agency rules for gaining access and making corrections. This system of records is also exempt from 12 CFR 1680.23 through 1680.28 and 1680.30(d)(3).

(2) *Reason for exemptions.* (i) The Office of Inspector General is an office of RTC a component of which performs, as its principal function, activity pertaining to the enforcement of criminal laws, within the meaning of 5 U.S.C. 552a(j)(2). This exemption applies only to those records and information contained in the system of records pertaining to criminal investigations. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, investigators, and witnesses.

(C) To protect the identity of Federal employees who furnish a complaint or information to OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(D) To protect the confidentiality of non-Federal employee sources of information.

(E) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement information systems.

(F) To prevent disclosure of law enforcement techniques and procedures.

(G) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(ii) Investigative records within this system of records which are compiled for law enforcement purposes, other than material within the scope of subsection (j)(2), are exempt under the provisions of 5 U.S.C. 552a(k)(2): *Provided, however,* That if any individual is denied any right, privilege, or benefit that they would otherwise be entitled by Federal law, or for which they would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To prevent interference with law enforcement proceedings.

(B) To protect investigatory material compiled for law enforcement purposes.

(C) To avoid unwarranted invasion of personal privacy, by disclosure of information about third parties, including other subjects of investigation, law enforcement personnel, and sources of information.

(D) To fulfill commitments made to protect the confidentiality of sources.

(E) To protect the identity of Federal employees who furnish a complaint or information to OIG, consistent with section 7(b) of the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3.

(F) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement systems.

(G) To prevent disclosure of law enforcement techniques and procedures.

(H) To avoid endangering the life or physical safety of confidential sources and law enforcement personnel.

(iii) Records within this system of records comprised of investigatory material compiled solely for the purpose of determining suitability or eligibility for Federal civilian employment, Federal contractors, or access to classified information, are exempt under the provisions of 5 U.S.C. 552a(k)(5), but only to the extent that disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. This system of records is exempt for one or more of the following reasons:

(A) To fulfill commitments made to protect the confidentiality of sources.

(B) To assure access to sources of confidential information, including those contained in Federal, State, and local criminal law enforcement information systems.

Issued at Washington, DC, this 7th of August, 1992.

Office of Inspector General

John J. Adair,

Inspector General, Resolution Trust Corporation.

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BILLING CODE 6714-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-42; Special Conditions No. 25-ANM-58]

Special Conditions; McDonnell Douglas MD-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued to the Douglas Aircraft Company for the Model MD-11 series airplanes. These airplanes have a novel or unusual design feature associated with the installation of an Autoflight System Windshear Function, for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. The design adds a special function to the existing autothrottle requirements. These special conditions contain the additional safety standards which the Administrator considers necessary, because of the added design feature, to establish a level of safety equivalent to that established by the airworthiness standards of part 25.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Roscoe Van Dyke, FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, Aircraft Certification Service, 3229 East Spring Street, Long Beach, California, 90806-2425; telephone (213) 988-5254.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1985, the Douglas Aircraft Company, 3855 Lakewood Boulevard, Long Beach, California 90846, applied to the FAA for a change in the type design for the MD-11 series airplanes to incorporate an Autoflight System Windshear Function (ASWF).

The autoflight system windshear function installation is designed to assist the flightcrew in the detection, warning, and escape of windshear conditions during the takeoff roll, takeoff, approach, and "go-around" phases of airplane operation. The automatic flight system integrates data from on-board airplane sensors with windshear-detection and control-law logic in the computer to provide a windshear visual annunciation, audible alert, and windshear guidance using the primary flight display for pitch axis guidance. In addition, the computer provides a command to the autothrottle and resets, as appropriate, the engine pressure ratio (EPR) or engine fan rotor speed (N1) bugs to the takeoff go-around (TOGA) setting.

The windshear system is designed in accordance with the criteria defined in Advisory Circular (AC) 25-12, Airworthiness Criteria for the Approval of Airborne Windshear Warning Systems in Transport Category Airplanes. That AC states that the system should: (1) Demonstrate adequate reliability, (2) provide annunciation and checkability, which includes indication of failure/fault of the system and sensors and computers, and (3) follow the identified flight profiles for operation to 1,000 feet above ground level (AGL) for the takeoff case, and from 1,000 feet AGL to 50 feet AGL for the approach to landing case (as defined in the AC).

Section 25.111(c) of the FAR requires that the airplane configuration remain fixed during a critical portion of the takeoff, and no changes in power or thrust that require action by the pilot may be made. This and other regulations (§§ 25.901 and 25.903) did not envision a system that would automatically advance the throttles during takeoff under specific conditions, and they did not identify the required reliability requirements for such a system. These regulations are therefore considered inadequate to provide an acceptable level of safety for the unusual or novel design features of the autoflight system windshear function. The additional requirements presented in these special conditions are for the installation of that part of the autoflight system windshear function that automatically signals the autothrottle to increase engine thrust whenever a windshear condition is detected during takeoff. The system constitutes that portion of the autoflight system windshear function which, for "reduced thrust" takeoff operations, will unclamp the locked autothrottle, upon a signal from the computer, and command the autothrottle to increase engine thrust to the maximum go-around thrust allowed for the ambient conditions. If the takeoff is initiated with the autothrottle "off," the windshear initiated command will activate the autothrottle and increase the thrust to the maximum go-around thrust level. The system involved includes those portions of all devices, both mechanical and electrical, that allow the flightcrew to determine the status of the system that increases the thrust on windshear command.

These special conditions, beyond requiring that the windshear system must meet all applicable requirements of part 25, require that an appropriate level of system reliability be shown. It must be demonstrated that no hazardous airplane or engine characteristics will exist during or from the operation of this system, that manual override provisions be provided, and that suitable operation and system enunciation be provided. Compliance with these special conditions would ensure that the operation of the autoflight system windshear function will achieve a level of safety at least equal to that otherwise required by part 25.

Under the provisions of § 21.101 of the FAR, an applicant for a change to a type certificate must comply with either the regulations incorporated by reference in the type certificate (i.e., the original type certification basis), or with the applicable regulations in effect on the date of the application for change. In addition, if the proposed change consists of a new design or a substantially complete redesign of a component, equipment installation, or system installation, and the regulations incorporated by reference do not provide adequate standards with respect to the proposed change, the applicant must comply with regulations in effect on the date of the application for the change, and special conditions established under the provisions of § 21.16, as necessary to provide a level of safety equivalent to that established by the regulations incorporated by reference.

The type certification basis for the McDonnell Douglas MD-11 series airplanes is part 25 of the FAR effective February 1, 1965, as amended by Amendments 25-1 through 25-61; with certain exceptions and additions which are not pertinent to the subject of these special conditions. These exceptions and additions are identified in the Model MD-11 Type Certificate Data Sheet No. A22WE.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Feature

The type design of the Model MD-11 series airplanes, with the autoflight system windshear function installed, will incorporate a novel or unusual design feature associated with the installation of a windshear detection-initiated autothrottle activation system.

The windshear system will, for a reduced thrust takeoff, provide automatic autothrottle advance to "go-around" thrust on detection of a windshear condition

Since the original type certification basis does not have adequate or appropriate safety standards for this unique and novel design feature, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

The FAA considers the automatic advance of the autothrottle on detection of a windshear condition during takeoff to be a special emergency operation what would enhance safety in windshear conditions during takeoff.

During takeoff, the only options available to the pilot, once windshear is encountered, are to rapidly advance and set engine thrust and trade aircraft kinetic energy, as necessary, to maintain a positive climb gradient. Normally the optimum strategy is to delay reducing airspeed until at least level flight is no longer possible at the existing pitch attitude and airspeed with maximum rated thrust applied. This procedure saves the available kinetic energy as long as possible in the event the windshear becomes more severe.

Automatic advance of the engine throttles by the autothrottle system to increase thrust permits the pilot to concentrate on the critical airplane parameters of airspeed and pitch angle. This is especially essential in reducing the workload in the two-man crew cockpit environment of the MD-11 airplanes. The windshear condition might persist for a relatively long period, and the instensity of this condition would require extensive pilot concentration. With this system (automatic power advancement), the pilot still retains the option to manually override the autothrottle in the event of either its failure to respond, or to an inappropriate autothrottle response.

These special conditions apply only to the takeoff phase of the airplane operation and only to those functions and components that (with an initiated command) would increase engine thrust, using the autothrottle, to the maximum go-around thrust level.

Discussion of comments

Notice No. SC-90-1-NM for the McDonnell Douglas Model DC-11 series airplanes was published in the **Federal Register** on January 28, 1990 (55 FR 2665). Three commenters responded to the notice, offering the following comments:

One commenter expresses concern that the established means of certificating propulsion systems with the relevant FAR is becoming compromised. In the proposed special condition, any reduction in thrust due to a malfunction of the system must be "improbable." The commenter asserts that this requirement is counter to § 25.904 which states that, for an automatic takeoff thrust control system (ATTCS), any significant loss or reduction in thrust or power must be shown to be an "extremely improbable" event. The commenter believes that the propulsion design principle should not be compromised by the automation of propulsion control functions utilizing autothrottle systems.

The FAA does not agree. Section 25.904 deals specifically with an engine failure event. There is no presumption of engine failure associated with this special condition. Throttle "unclamp" only occurs coincident with visual and aural windshear alert warnings, and will only occur if engine thrust has been set at less than the maximum takeoff thrust value. The forewarning of windshear places the pilot in an alerted condition or "in-the-loop" of events to occur during and following the windshear warning. The addition of the requirement to provide a means to indicate the automatic actuation of the power levers is essential in continually keeping the pilot informed that the systems are properly responding to the alert condition. It is for these reasons that the inadvertent retard due to a system malfunction can be made an "improbable" rather than an "extremely improbable" event.

The same commenter further states that indication that a system is performing correctly is counter to flight deck design philosophy.

The FAA is not aware of a flight deck philosophy that does not keep the pilot informed of the correct response of essential and critical systems on the aircraft. Indeed, one of the primary needs for cockpit instrumentation is to keep the pilot informed of correct system operation. If the commenter is referring to the "dark cockpit" philosophy, the windshear warning is an alert annunciation, and the throttle advance is a part of that annunciation sequence.

Another commenter states that the captain of the airplane is in the best position to decide what to do with the throttles. The captain, not the "black box," is aware of meteorological conditions and other factors. It is this commenter's belief that windshear alerting devices should do just that—alert the crew; the pilot then makes a decision based on all of the information available. An automatic system that adds power when the captain has decided to abort only exacerbates the situation. If a pilot is near V_1 and decides to abort the takeoff, he should not have to fight the autothrottles. The commenter asserts that the automatic advance system is unnecessary since pilots are trained to advance power in a windshear encounter in order to escape.

The FAA agrees that the captain is the ultimate commander of the airplane. Any throttle advance or device must assist and not countermand the captain. For those infrequent situations where a takeoff abort may be necessary, the system must be easily and rapidly disengaged in order that the pilot does not have to fight the throttle control in addition to other necessary cockpit duties. In this regard, the system is easily disengaged via standard switches located on the No. 1 and No. 3 thrust levers. Either switch will independently disengage the system. Also, manually moving the throttles to the idle stop during takeoff roll will disable the windshear warning.

One commenter states that the requirement for the powerplant instruments to provide a means to indicate the automatic actuation of the fuel controls is inappropriate as it falls outside the scope of the application.

The FAA agrees, and this requirement has been removed from the final special condition.

Conclusion

This action affects only certain unusual or novel design features on the McDonnell Douglas MD-11 series airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of those features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to Douglas Aircraft Company as part of the type certification basis for the McDonnell Douglas MD-11 series airplanes incorporating a windshear-triggered autothrottle system.

1. All applicable requirements of part 25 and these special conditions must be met with no action by the crew to increase thrust for that portion of the windshear control system that advances engine thrust functioning normally as designed.

2. System Reliability Requirement. When the system is actuated during the takeoff interval between an airspeed of 80 knots during acceleration on the runway and an altitude of 400 feet above ground level (AGL), any reduction in thrust due to a malfunction of the system must be improbable.

3. Thrust Setting/System Operation. There must be no hazardous airplane characteristic or unsafe engine response when the system is actuated at any permissible reduced-thrust level, and with any permissible autothrottle operation to increase thrust, under any likely operating conditions.

4. Powerplant Instruments and Controls. In addition to the requirements of §§ 25.1141 and 25.1305 of the FAR, the System must be designed to:

a. Achieve the target thrust without exceeding engine operation limits and automatically reclamp throttles upon attainment of the target thrust.

b. Comply with the applicable V_{MC} requirements upon attainment of the target thrust.

c. Permit manual decrease or increase in thrust through the use of the power levers.

d. Provide a means to annunciate to the flightcrew, before reaching an airspeed of 80 knots, that the system has failed.

e. Prevent an autothrottle retard action until the airplane has reached an altitude of 400 feet AGL during takeoff, unless the action is pilot initiated.

f. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

g. Provide a means for the flightcrew to deactivate the windshear function by moving the throttles to the idle stop position.

h. Provide a means to indicate the automatic actuation of the throttles or any other means used to increase the thrust on all engines. Issued in Renton, Washington, on July 17, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19727 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-CE-28-AD; Amendment 39-8356; AD 92-16-11]

Airworthiness Directives; Beech Models A36 and B36TC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Beech Models A36 and B36TC airplanes. This action requires sealing the cabin door upper hinge cavity. The Federal Aviation Administration (FAA) has received several reports of water leakage in this cavity on the affected airplanes, which could collect in the electrical wiring and inverted cover of the annunciator print board circuit and short out electrical circuits, including the circuit for operating the landing gear. The actions specified by this AD are intended to prevent failure of the landing gear circuit, which could result in the inability to extend the landing gear.

DATES: Effective October 18, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 18, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4122; Facsimile (316) 936-4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Beech Models A36 and B36TC airplanes was published in the **Federal Register** on May 11, 1992 (57 FR 20063). The action proposed to require sealing the cabin door upper hinge cavity in accordance with the instructions in Beech Service Bulletin No. 2437, dated April 1992.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received from the manufacturer, Beech.

Beech states that there is an error in the serial number applicability of the AD, and that serial number EA-534 should be EA-524. The FAA concurs and has revised the AD accordingly.

In addition, Beech notes that the economic analysis paragraph in the preamble of the AD should mention that warranty credit for both parts and labor will be provided by the manufacturer. The FAA does not take warranty credit for labor into account when determining the cost of an AD upon the operators of the affected airplanes.

After careful review of all available information including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the serial number applicability and minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 711 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts would be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $156,420.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

92-16-11 Beech: Amendment 39-8356; Docket No. 92-CE-28-AD.

Applicability: Model A36 airplanes (serial numbers E-1946, E-2104, and E-2111 through E-2682), and Model B36TC airplanes (serial numbers EA-320, and EA-389 through EA-524), certificated in any category.

Compliance: Required within the next 50 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent failure of the landing gear circuit, which could result in the inability to extend the landing gear, accomplish the following:

(a) Seal the upper door upper hinge cavity in accordance with the Accomplishment Instructions section of Beech Service Bulletin No. 2437, dated April 1992.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) The modification required by this AD shall be done in accordance with Beech Service Bulletin No. 2437, dated April 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, Commercial Service, Department 52, P.O. Box 85, Wichita, Kansas 67201-0085. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-8356) becomes effective on October 18, 1992.

Issued in Kansas City, Missouri, on August 13, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 92-19724 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-1]

Revocation of Transition Area; Lake Geneva, WI; Alteration of Transition Area; Delavan, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the 700 foot transition area established at Lake Geneva, WI, due to the deactivation of Americana Airport, previously named Playboy Airport. This action also revises the Delavan, WI, transition area description by deleting the words "excluding the Lake Geneva, WI, 700 foot transition area." No changes to the dimensions of the existing designated Delavan, WI, transition will result from this action.

EFFECTIVE DATE: 0901 UTC, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas F. Powers, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (312) 694-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, May 12, 1992, the Federal Aviation Administration proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the 700 foot transition area established at Lake Geneva, WI, due to the deactivation of Americana Airport, previously named Playboy Airport, and to revise the published Delavan, WI, transition area description (57 FR 20216).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment objecting to the proposal was received from the City of Lake Geneva. The City of Lake Geneva objected to the revocation of the 700 foot transition area at Lake Geneva, WI, based on the possibility of reopening Americana Airport. The transition area at Lake Geneva, WI, was established to enhance safety for all users of the airspace by ensuring segregation of the aircraft using instrument flight rules (IFR) in instrument conditions from other aircraft operating in visual flight rules (VFR). When the deactivation of American Airport occurred the necessity for segregating IFR aircraft from VFR aircraft no longer existed and the transition area became unnecessary. If the airport was to reopen and the conditions for establishing a transition area were valid, at the appropriate times, the FAA would initiate action to establish a transition area.

Except for editorial changes, this amendment is the same as that proposed in the notice. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The Delavan, WI, transition area listed in this document will be published subsequently in the Handbook. The Lake Geneva, WI, transition area listed in this document will be removed subsequently from the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the 700 foot transition area established at Lake Geneva, WI, due to the deactivation of Americana Airport, previously named Playboy Airport. This action also revises the published Delavan, WI, transition area description by deleting the words "excluding the Lake Delavan, WI, 700 foot transition area." No changes to the dimensions of the existing designated Delavan, WI, transition area will result from this action.

Aeronautical maps and charts will reflect the area returned to a non-controlled status.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

Lake Geneva, WI [Removed]

* * * * *

AGL WI TA Delavan, WI [Revised]
Delavan, Lake Lawn Airport, WI
(lat. 42° 37' 55"N, long. 88° 36' 05"W)
That airspace extending upward from 700 feet above the surface within a 6-mile radius of the Lake Lawn Airport.

* * * * *

Issued in Des Plaines, Illinois on July 21, 1992.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 92–19794 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Hygromycin B, Tylosin, Tylosin/Sulfamethazine—Reinstatement

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the reinstatement of approval of three new animal drug applications (NADA's) held by International Nutrition, Inc. Approval of the NADA's had been withdrawn at the request of the sponsor.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Mohammad I. Sharar, Center For Veterinary Medicine (HFV–216), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8749.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 7, 1991 (56 FR 9622 and 9704), FDA published two documents reflecting its withdrawal of the approval of several NADA's as requested by their sponsors. Included were three NADA's sponsored by International Nutrition, Inc., 6664 L St., Omaha, NE 68117, specifically:
95–551 Tylosin (Tylan),
109–688 Hygromycin B (Hygromycin),
109–816 Tylosin/Sulfamethazine (Tylan Sulfa).
The withdrawal was effective March 18, 1991. By letter of March 13, 1991, the firm informed FDA that the request was in error and requested reinstatement of approval of the NADA's. In response to the firm's request, FDA reinstated its approval of the NADA's.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

§ 558.274 [Amended]

2. Section 558.274 *Hygromycin B* is amended in paragraph (a)(2) by adding after "016968" the phrase "and 043733", in paragraph (a)(4) by adding "043733," after "017790," and in paragraph (c)(1), entries (i) and (ii) in the "Sponsor" column of the table by numerically adding "043733".

3. Section 558.625 is amended by adding paragraph (b)(3) to read as follows:

§ 558.625 Tylosin.

* * * * *

(b) * * *

(3) To 043733: 20 and 40 grams per pound, paragraphs (f)(1)(i) through (vi) of this section.

* * * * *

§ 558.630 [Amended]

4. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (b)(10) by numerically adding "043733".

Dated: August 13, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92–19735 Filed 8–18–92; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

Alaska Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment, with certain exceptions, submitted by the State of Alaska as a modification to its permanent regulatory program (hereinafter referred to as the Alaska program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment was submitted to OSM on February 2, 1990, and addresses the following areas: permit application requirements, environmental resource information requirements, reclamation and operation plan, permit application review procedures, exploration activities, bonding requirements, performance standards, inspection and enforcement requirements, lands unsuitable for mining, and other provisions. The amendment revises the State program to be consistent with corresponding Federal standards required by SMCRA, incorporates the additional flexibility afforded by the revised Federal regulations, and improves the operational efficiency of Alaska's program.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On May 2, 1983, the Secretary of the Interior approved the Alaska program. Information pertinent to the general background, revisions and amendments to the Alaska program submission, as well as the Secretary's findings and the disposition of comments can be found in the March 23, 1983, **Federal Register** (48 FR 12274). Subsequent actions concerning the Alaska program and amendments to the program can be found at 30 CFR 902.15.

II. Submission of Proposed Amendment

By letter dated February 2, 1990, (Administrative Record No. AK–C–01), the State of Alaska submitted to OSM a proposed amendment to its program pursuant to SMCRA. The proposed amendment was submitted in response to letters dated May 7, 1986, June 9, 1987, and December 16, 1988, sent by OSM in accordance with 30 CFR 732.17(d). By notice published in the February 14, 1990, **Federal Register** (55 FR 5226) OSM announced receipt of this proposed amendment and requested public comment on its adequacy (Administrative Record AK–C–05). The public comment period ended March 16, 1990.

By letter dated March 14, 1990, (Administrative Record No. AK–C–15) the Alaska Coal Association notified OSM of its opinion that certain portions of the proposed Alaska program amendment were not made available for adequate public review at the State level and requested that OSM extend the public comment period. On March 30, 1990, OSM published a notice in the **Federal Register** (55 FR 11958) that reopened the comment period for 15 days. The public comment period ended April 16, 1990. Since no requests for a public hearing were received, none was held.

The regulations that Alaska proposes to amend are: Article 3, General Permit Application Information Requirements; Article 4, Environmental Resource Information Requirements; Article 5, Reclamation and Operation Plan; Article 6, Processing of Permit Applications; Article 7, Permitting for Special Categories of Mining; Article 8, Exploration; Article 9, Small Operator Assistance Program; Article 10, Bonding; Article 11, Performance Standards; Article 12, Inspection and Enforcement; Article 13, Process for Identifying Land Unsuitable for Mining; and Article 17, General Provisions.

Alaska also submitted proposed policy statements addressing the following subjects: Policy Statement A, Maintenance of Records; Policy Statement B, Small Operator Assistance; Policy Statement C, Public Notice of Blasting; Policy Statement D, Surface Water Information; Policy Statement E, Scope of the Cumulative Hydrologic Impact Assessment; Policy Statement F, U.S. Fish and Wildlife Service Information Requests; and Policy Statement G, Determining Peak Discharge for Hydrologic Designs.

The amendment package also contains proposed Guidelines for Conducting Premining Vegetation Inventories and Determining Revegetation Success, and revised petition forms for designating lands as unsuitable for mining as well as terminating such designations.

Following a review of Alaska's proposed amendment, OSM notified the State on February 8, 1991, of concerns it had with the proposed regulations (Administrative Record No. AK–C–28). In a letter dated May 7, 1991, (Administrative Record No. AK–C–30) Alaska responded by submitting additional information to address some of the concerns raised by OSM. The additional explanatory information and revisions pertain to permit application requirements, environmental resource information requirements, reclamation and operation plan, permit application review procedures, exploration activities, performance standards, and general provisions. In the same May 7, 1991, document, Alaska stated that issues not addressed in the letter will be the subject of future amendatory proposals.

In a May 30, 1991 **Federal Register** notice (56 FR 24358) OSM announced receipt of the additional information and invited public comment on its adequacy. The public comment period closed on June 14, 1991.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that Alaska's amendment, with certain exceptions, as submitted by Alaska on February 2, 1990, and amended on May 7, 1991, meets the requirements of SMCRA and 30 CFR Chapter VII as discussed below.

1. *Alaska Regulations That are Substantively the Same as Federal Regulations*

Alaska proposes revisions to its rules that are substantively identical or similar to the counterpart Federal regulations, are not substantive in nature, add specificity without adversely affecting other aspects of the program, or adopt by reference an existing Federal regulation. Provisions that are not discussed in this rulemaking contain language that meets the above requirements. These State provisions, with the Federal regulation counterpart rule in brackets, are; General Application Requirements, 11 AAC 90.021(c), [30 CFR 773.15(a)(2)]; Identification of Interests and Compliance Information, 11 AAC 90.023(a)(1); (2) (3), (b)(1), and (2), [30 CFR 778.13]; Authority to Enter and Ownership Information, 11 AAC 90.025(a)(1), (2), (b) and (c), [30 CFR 778.13(e) and (f)]; Cultural and Historic Information, 11 AAC 90.041(a) and (b), [30 CFR 779.12(b)(2) and 30 CFR 783.12(b)(2)]; Hydrology and Geology, 11 AAC.043(b) and (c) [30 CFR 780.22(b)(1) and 30 CFR 784.22(b)(1)]; Geology Description, 11 AAC 90.045(b)(4), [30 CFR 780.22(b)(1) and 784.22(b)(1)]; Fish and Wildlife Information, 11 AAC 90.057, [30 CFR 780.16 and 30 CFR 784.21]; Operation Plan, 11 AAC 90.071(2)(D), [30 CFR 780.11(b)(4) and 30 CFR 784.11(b)(4)]; Operation Maps, Planviews, and Cross Sections, 11 AAC 90.077(b)(5), (b)(11), and (d), [30 CFR 780.14(b)(11), (c) and 30 CFR 784.23(b)(10) and (c)]; Fish and Wildlife Protection Plan, 11 AAC 90.081(a)(1), (2), (3), (b) and (c) [30 CFR 780.16(a), 30 CFR 784.21(a)(1)(i), 30 CFR 772.12(b)(9), 30 CFR 816.97(b) and 30 CFR 817.97]; Plan for the Protection of the Hydrologic Balance, 11 AAC 90.085(a)(1), (2), (3)(A), (B), (C), (D), and (E), (4), (b)(3) and (4), (c)(3), (4), (5)(A), (B), (C) and (D), [30 CFR 780.21 and 30 CFR 784.14]; Plan for Ponds, Impoundments, Dams, and Embankments, 11 AAC 90.089(a) and (c), [30 CFR 780.25(a) and CFR 784.16(a)]; Return of Coal Mine Waste to Abandoned Underground Workings, 11 AAC 90.099(a), [30 CFR 784.25(a)]; Subsidence Control Plan, 11 AAC 90.101(c)(1), (2)[A), (B), (C), (D), (E), (F), (3)(A), (B), (C) (4), (5)(A), (B), and (6), [30 CFR 784.20(h)]; Transfer, Sale or Assignment of Permit Rights, 11 AAC 90.119(d) and (e), [30 CFR 774.17(d)(1) and (e)(2)]; Areas Where Mining May Be Limited, 11 AAC 90.121(c), [30 CFR 761.12(e)(1)]; Commissioner's Findings, 11 AAC 90.125(a)(7), (8), (9), (10), (11), (12), and (13), [30 CFR 773.15(c)(11) and (12)]; Permit Conditions, 11 AAC 90.127(4), (5)(A), (B), (C), and (6), [30 CFR 773.17(e) and (g)]; Permit Revisions and Renewals, 11 AAC 90.129(a)(6), (7) and (8), [30 CFR 780.21(f)(4)]; Mountaintop Removal Mining, 11 AAC 90.141(a)(1), [30 CFR 785.14(c)(1)(i)(ii)]; Exploration that Substantially Disturbs the Natural Land Surface, 11 AAC 90.163(a)(2)(A), (B), (C), (D), (E), (F) (G), (b)(2), (3), and (c)(1), (2), (3)(A), and (B), [30 CFR 772.12(b)(9) and 30 CFR 772.12(a)]; Eligibility for Assistance, 11 AAC 90.173(a)(1), (2), and (3), [30 CFR 795.6(a)(4)]; Filing for Assistance, 11 AAC 90.175(4)(D), [30 CFR 795.7(d)(4)]; Qualified Laboratories, 11 AAC 90.181(a)(5)(A), (B) and (6), [30 CFR 795.10(a)(5)]; Applicant Liability, 11 AAC 90.185(a)(3), (4) and (5), [30 CFR 795.12(a)(4) and (5)]; Requirements for Specific Types of Bonds, 11 AAC 90.207(c)(5)(C), [30 CFR 800.21(c)(3)]; Bond Forfeiture, 11 AAC 90.213(g) and (h), [30 CFR 800.50(d)(1) and (2)]; Water Quality Standards, 11 AAC 90.323(a), (b), (c), and (d), [30 CFR 816.46 and 30 CFR 817.46]; Diversions and Conveyance of Flow, 11 AAC 90.325(b), (c), (d)(1), (2), (3) and (g)(3), [30 CFR 816.43(a)(2) and 30 CFR 817.43(a)(2)]; Stream Channel Diversion, 11 AAC 90.327(b)(2), [30 CFR 816.43(b)(4) and 30 CFR 817.43(b)(4)]; Siltation Structures, 11

AAC 90.331(b)(1), (2), (3), (c) (d)(2), (3), (4), (e), (f), and (g), [30 CFR 816.46(a)(1) and (3)]; Discharge Structures, 11 AAC 90.333, [30 CFR 816.47 and 30 CFR 817.47]; Impoundments, Design and Construction, 11 AAC 90.336(a), (b)(1) and (2), (c)(1), (2), (3), (4), (5), (6), (7), (8), (9), (d)(1), (2), (3), (e) and (f), [30 CFR 816.49(a) and 817.49(a)(5)(i)]; Impoundments, Inspections, 11 AAC 90.337(a), (b), (c)(1), (2), (3), (4), (5), (6), (7), (d), (e) and (g), [30 CFR 816.49(a)(10), (11), and (12)]; and 817.49(a)(10), (11) and (12)]; Permanent Impoundments, Criteria, 11 AAC 90.338(1), (2), (3), (4), (5), (6), (7), [30 CFR 816.49(b) and 30 CFR 817.49(b)]; Protection of Ground Water Recharge Capacity, 11 AAC 90.343, [30 CFR 816.41(b)(2)]; Surface and Ground Water Monitoring, 11 AAC 90.345(a), (b)(1), (2), (3), (4), (5), (c), (d), (2), (3), (4), (5), (6), (f), (g), (h) and (i), [30 CFR 780.21(i) and (j) and CFR 784.14(h) and (i)]; Discharge of Water into a Mine, 11 AAC 90.349(2)(A), [30 CFR 816.42 and 30 CFR 817.42]; Stream Buffer Zones, 11 AAC 90.353(a)(1), (2) and (3), [30 CFR 816.57(a)(1), (2) and 30 CFR 817.57(a)(1) and (2)]; Use of Explosives, 11 AAC 90.371(d)(1), (2), (3), (4), [30 CFR 816.61(d)(i), (d)(3) and (4) and 30 CFR 817.61(d)(i), (d)(3) and (d)(4)]; Preblasting Survey, 11 AAC 90.373(b), (c) and (d), [30 CFR 816.62(c), (d) and (e) and 30 CFR 817.62(c), (d) and (e)]; Public Notice of Blasting, 11 AAC 90.375(b), (e), (f), (g) and (h), [30 CFR 816.64(b)(1) and (2) and 30 CFR 817.64(a)]; Control of Adverse Effects of Blasting, 11 AAC 90.379(b), (c), (e), (f), (g), (h), (i) and (j) [30 CFR 816.67 and 30 CFR 817.67]; Seismographic Measurements, 11 AAC 90.381(a) and (b), [30 CFR 816.67(d)(3)(ii) and 30 CFR 817.67(d)(3)(ii)]; Disposal of Excess Spoil and Coal Mine Waste, 11 AAC 90.391(b), (e), (g), (i), (k), (l), (m)(1), (2), (3), (4), (5), (6), (n), (o), (p)(3), (4), (5), (6), (7), (q) and (r), [30 CFR 816.71(b), (e) and (f), 30 CFR 816.72(a) and (b), 30 CFR 817(b), (e), (f) and 30 CFR 817.72(a) and (b)]; Coal Mine Waste, General Requirements, 11 AAC 90.395(a)(1), (2), (3), (4), (5), and (b), [30 CFR 816.81(a) and 30 CFR 817.81(a)]; Disposal Area Site Inspections, 11 AAC 90.397(a), (b), (c)(1), (2), (3), (4), (5), (d), (e), (f) and (g), [30 CFR 816.71(h) and 30 CFR 817.71(h)]; Hazardous Coal Processing Waste, Water Control Measures, 11 AAC 90.399, [30 CFR 816.71(f) and 30 CFR 817.71(f)]; Coal Mine Waste, Refuse Piles, 11 AAC 90.401(a), (b)(1), (2), (3), (c), (d) and (e), [30 CFR 816.83(a)(2), (c)(3) and (4) and 30 CFR 817.83(a)(2), (c)(3) and (4)]; Coal Mine Waste, Fires, 11 AAC 90.403, [30 CFR 816.87(a) and 30 CFR 817.87(a)]; Burned Waste Removal, 11 AAC 90.405, [30 CFR 816.87(b) and 30 CFR 817.87(b)]; Coal Mine Waste, Dams and Embankments, 11 AAC 90.407(a), (b), (c), (d), (f), (g), (h) and (i), [30 CFR 816.84(a), (b)(1), (2) and 30 CFR 817.84(a), (b)(1) and (2)]; Return to Underground Workings, 11 AAC 90.409, [30 CFR 816.81(f) and 30 CFR 817.81(f)]; Contemporaneous Reclamation, 11 AAC 90.435, [30 CFR 816.100 and 30 CFR 817.100]; Timing Requirements for Backfilling and Grading, 11 AAC 90.441(a), (b) and (c), [30 CFR 816.102 and 30 CFR 817.102]; Backfilling and Grading, 11 AAC 90.443(a), (b), (c)(1)(A), (B), (C), (D), (E), (F), (e)(2), (3) and (4), (f), (g), (h), (i), (j) and (k), [30 CFR 816.102, 30 CFR 816.106, 30 CFR 817.102 and 30 CFR 817.106]; Revegetation, 11 AAC 90.451(b)(1) and (5), [30 CFR 816.111(b) and 30 CFR 817.111(b)]; Revegetation, Mulching, 11 AAC 90.455(1), (2), (3), and (4), [30 CFR 816.114 and 30 CFR 817.114]; Standards for Revegetation Success, 11 AAC 90.457(b) and (c)(5), [30 CFR 816.116(a)(2) and (b)(5) and 30 CFR 817.116(a)(2) and (b)(5)]; Individual Civil Penalties, 11 AAC 90.635(a), (b)(1), (2), (c), (d)(1), (2), (3), (e)(1), (2), (3), (f), (g) and (h), [30 CFR 724]; Initial Processing of Petitions, 11 AAC 90.703(e); [30 CFR 764.17(e)]; Notification and Request for Information, 11 AAC 90.705(a), (b), (c), (d) and (e), [30 CFR 764.15(b)(1)]; General Provisions, Applicability, 11 AAC 90.901(c), 30 CFR 700.11(b)]; Public Participation, 11 AAC 90.907(b) and (i), [30 CFR 773.13(d)(1) and (d)(3)(iii)]; Definitions, 11 AAC 90.911, (18) Coal Mine Waste, [30 CFR 701.5]; (19) Coal Processing Plant, [30 CFR 90.701.5]; (20) Coal Processing Waste, [30 CFR 701.5]; (21) Collateral Bond, [30 CFR 800.5(b)(5)]; (51) Head-of-hollow Fill, [30 CFR 701.5]; (110) Surface Coal Mining Operations, [30 CFR 700.5]; (118) Underground Development Waste, [30 CFR 701.5]; (122) Valley Fill, [30 CFR 701.5], Petition form to designate an area as unsuitable for surface coal mining.

The Director, therefore, finds that these proposed revisions to Alaska's regulations are no less effective than the corresponding Federal regulations and is approving them.

2. *General Application Requirements*

Alaska proposes to amend its rules at 11 AAC 90.021(c) by adding a requirement that a permit application include not only descriptions, designs, maps and cross sections, but "all assumptions and analyses • • • necessary to demonstrate that the proposed operation will" meet all of the applicable requirements of the State regulations concerning special categories of mining and performance standards. The Federal regulations at 30 CFR 777.11 provide requirements for application format and content that are similar to application information requirements at 11 AAC 90.021(c). While the Federal regulation does not specifically include the requirement that "assumptions and analyses" be included in the application, the general nature of 30 CFR 777.11(a)(1) that requires an application to contain current information would not preclude "all assumptions and analyses".

The Director finds that the proposed requirements at 11 AAC 90.021(c) are not in conflict with and are no less effective than the Federal regulations at 30 CFR 777.11(a)(1), and is approving the proposed changes.

3. *Identification of Interests and Compliance Information*

Alaska proposes to amend its regulations at 11 AAC 90.023(f)(3) by making changes to its rule to more specifically identify, as a part of the application process, those entities with which an applicant may be in an ownership or control relationship when listing all notices of violations received. The May 7, 1986, 30 CFR part 732 notification pointed out that the counterpart Federal regulation at 30 CFR 778.14(c) required the applicant to list all notices of violation received by the applicant or any subsidiary, affiliate, or persons controlled by or under common control with the applicant during the 3-year period preceding the application date. The Alaska rule required a list of violations for the applicant only. In this amendment, Alaska proposes to add "for all operations owned or controlled by the applicant". The proposed addition still does not meet the Federal intent in that violations issued to an affiliate or persons under common control with the applicant are not required to be listed. However, this point is moot because the Federal regulation at 30 CFR 778.14(c) was again changed on March 2, 1989, (54 FR 8982) as a result of subsequent litigation. Alaska was notified of this additional regulation change in a May 11, 1989, 30 CFR Part 732 notification. Alaska's February 2, 1990, proposed amendment does not address the relationship consistent with Federal regulations. Alaska proposes to add "for all operations owned or controlled by the applicant". Whereas, the Federal regulations at 30 CFR 778.14(c) specify an "operation owned or controlled by either the applicant or by any person who owns or controls the applicant".

The State was again notified of the requirement in a February 8, 1991, issue letter. In Alaska's May 7, 1991, reply to

OSM's issue letter, Alaska stated that they intended to place this issue on hold pending the outcome of current litigation. This is unacceptable since the Federal regulations at 30 CFR 732.17(e) list the conditions under which a State will be required to amend its program, and under which, by Federal law, OSM is required to notify States when it determines that such amendments are necessary.

The Director is not approving Alaska's proposed amendment at 11 AAC 90.023(f)(3) and is requiring Alaska to amend its program in a manner that satisfies OSM's May 11, 1989, 30 CFR 732 notification.

4. *Geology Description*

Alaska proposes to amend its regulations at 11 AAC 90.045(a) by requiring an application to contain a description of the geology "within the proposed permit and adjacent area down to and including the first aquifer to be affected below the lowest coal seam to be mined". The Federal regulations at 30 CFR 780.22(b)(1) and 30 CFR 784.22(b)(1) require that each application include a description of the geology within the permit and adjacent areas "down to and including the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining".

The Director finds that 11 AAC 90.045(a) is less effective than the Federal regulations at 30 CFR 780.22(b)(1) and 30 CFR 784.22(b)(1), and is not approving Alaska's proposed rule. To be no less effective than the Federal regulations, Alaska is required to amend its rule at 11 AAC 90.045(a) to provide a description of the geology within the permit and adjacent areas to include the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining.

5. *Exploration That Substantially Disturbs the National Land Surface*

Alaska proposes to amend its regulations at 11 AAC 90.163(a), (b) and (c) by adding requirements that must be met by applicants who intend to extract more than 250 tons of coal during exploration outside the permit area or on lands designated as unsuitable for surface mining.

Alaska's proposed rules are substantively the same as the Federal regulation requirements at 30 CFR 772.14 with the following exceptions. At 11 AAC 90.163(b)(1), Alaska proposes to require coal exploration permit applicants to demonstrate that

> coal testing is necessary for the development of a surface coal mining and reclamation operation for which a permit application will be submitted • • •

The corresponding Federal regulation at 30 CFR 772.14(b) provides that an applicant must demonstrate that

> coal testing is necessary for the development of a surface coal mining and reclamation operation for which a • • • "permit application is to be submitted in the near future • • •".

This Federal requirement that a "permit application is to be submitted in the near future" allows valid test burning of coal, while eliminating abusive practices whereby testing is used as a means to circumvent the prohibition of commercial use or sale of coal obtained during exploration by requiring that the operator affirm that a surface coal mining permit application will be submitted within a reasonable time.

Additionally, the Federal regulations at 30 CFR 772.14(b)(3) and (4) require that an application contain evidence that sufficient reserves of coal are available to demonstrate that the amount of coal to be removed for future use or sale is not the total reserve, but is a sampling of a larger reserve. The Federal rules further require that an application contain an explanation as to why the extraction of this amount of coal is necessary, and why other means of exploration are not adequate. The State's proposed rulemaking does not address these issues.

The Director finds that 11 AAC 90.163(a), (b) and (c) are no less effective than the Federal regulations at 30 CFR 772.14(b)(1), (3) and (4), and is approving the changes. However, the Director is requiring Alaska to further amend its rule to provide that an operator affirm that a permit application is to be submitted in the near future, as required at 30 CFR 772.14(b); to include provisions in the application for evidence to be presented that sufficient coal reserves are available for future use or sale; and that an application for an exploration permit to remove more than 250 tons of coal contain a statement of why extraction of more than that amount is necessary.

6. *Qualified Laboratories*

Alaska is proposing to amend its regulations at 11 AAC 90.181(a)(5)(A) by referencing the 17th edition of the Standard Methods for the Examination of Water and Waste Water publication as a standard by which water quality analyses will be performed. The Federal regulations at 30 CFR 780.21(a) et al., reference the 15th edition of the Standard Methods for the Examination of Water and Waste Water. While the State is correct in citing the 17th edition of the publication as the latest edition which may be referenced, that edition is not consistently referenced throughout the proposed regulations.

The Director finds that the proposed amendment at 11 AAC 90.181(a)(5)(A) is no less effective than the Federal rule. However, to be consistent throughout its rules, Alaska must further amend its regulations by including references to the 17th edition of the publication at 11 AAC 90.043, .047, .049, and .089.

7. *Removal of Topsoil*

Alaska proposes to amend its rules at 11 AAC 90.311(g) by withdrawing their intent to repeal subsection (g) which provides the commissioner the discretion to authorize an exemption from the requirements for the removal, stockpiling, and redistribution of topsoil and other materials. The rule allows the material to be handled as part of the backfilling and grading process when specific soils are not suitable for revegetation. The Federal regulations at 30 CFR 816.12 (a)(ii) do not provide the regulatory authority with the discretion to remove topsoil or topsoil and subsoil mixtures for use as backfill material, and specifically requires the removal and segregation of such materials.

By way of a 30 CFR 732 notification dated May 7, 1986, (Administrative Record No. AK–C–02) the State was notified of the deficiency and was asked to delete the provision. In their November 10, 1987, informal response to the 30 CFR 732 notification, the provision was deleted. Subsequently, the State reconsidered the decision to repeal 11 AAC 90.311(g) in response to comments received during public hearings, and requested an opinion from OSM as to whether the same flexibility to handle soils as part of the backfilling and grading process would exist without subsection (g). In a letter dated August 1, 1989, OSM indicated that the same flexibility would exist without subsection (g). As a result, in its formally-proposed program amendment package dated February 2, 1990, (Administrative Record No. AK–C–01) the State appropriately deleted subsection (g) of 11 AAC 90.311. In a March 14, 1990, letter to OSM, (Administrative Record No. AK–C–16) the State again reconsidered the decision to repeal the subsection and determined that it would be better served to retain it since it speaks to Alaska permafrost conditions and

clarifies the handling of soils when specific soils are of poor or undesirable quality and are not suitable for revegetation. OSM's issue letter dated February 8, 1991, (Administrative Record No. AK–C–28) reiterated that the desired flexibility existed elsewhere in the State's regulations addressing topsoil, specifically at 11 AAC 90.311(a) and 11 AAC 90.313(a), and again requested that subsection (g) be deleted. In Alaska's May 13, 1991, response to OSM's February 8, 1991, letter, the State continues to contend that 11 AAC 90.311(g) addresses a condition unique to Alaska, and insists on withdrawing the proposed repeal of the subsection.

The Director finds that 11 AAC 90.311(g) is less effective than the Federal regulation counterpart and, therefore, is not approving Alaska's proposed amendment. To be no less effective than the Federal regulation, Alaska is required to amend its rules at 11 AAC 90.311(g) to delete the subsection.

8. *Siltation Structures*

(a) Alaska proposes to amend its regulations at 11 AAC 90.331(a) by defining siltation structures "as sediment ponds and other chemical or mechanical treatment facilities with a point source discharge". The Federal rules at 30 CFR 816.46(a)(1) and 817.46(a)(1) define siltation structure as "a sedimentation pond, a series of sedimentation ponds, or other treatment facility". The proposed amendment does not restrict chemical and mechanical treatments to those used to prevent additional sediment contributions to stream flow. So, regardless of their specific use, all chemical treatments and mechanical structures with a point source discharge are considered as siltation structures, subject to the performance standards for siltation structures.

Alaska also proposes to amend its regulations at 11 AAC 90.331(b), (c), (d), (e), (f) and (g) by providing for the design, construction, and maintenance of siltation structures and sediment ponds. The State also proposes provisions for siltation structure removal, revegetation, pond removal or retention, operator compliance with applicable State and Federal water quality laws and regulations, and exemptions. Alaska's proposed amendment is substantively similar to the Federal regulation at 30 CFR 816.46.

However, Alaska does not propose a definition of "other treatment facilities" in its program. The Federal rules at 30 CFR 816.46(a)(3) and 817.46(a)(3) define other treatment facilities as "any chemical treatments, such as flocculation, or mechanical structures, such as clarifiers, that have a point-source discharge and that are used to prevent additional contribution of suspended solids to stream flow or runoff outside the permit area". Alaska also uses the term "treatment facility" at 11 AAC 90.325(a) and 11 AAC 90.341(b)(2); "water treatment facilities" at 11 AAC 90.321(d) and 11 AAC 90.327(c); and "erosion control structures" at 11 AAC 90.327(b)(1). These terms are not defined and, therefore, it is not clear whether they refer to treatments and structures that are different from the chemical treatments and mechanical structures as defined by Alaska at 11 AAC 90.331(a) as siltation structures. It is also not clear if these variously named facilities must meet any performance standards.

(b) Additionally, the proposed State rules lack counterpart language to the Federal requirements at 30 CFR 816.46(c)(1)(iii)(C) which require that sedimentation ponds are to be designed, constructed, and maintained to "Contain or treat the 10-year, 24-hour precipitation event ("design event") unless a lesser design event is approved by the regulatory authority based on terrain, climate, other site-specific conditions and on a demonstration by the operator that the effluent limitations of § 816.42 will be met". The State relies solely on sedimentation pond designs that will meet effluent limitations and water quality standards, with no design event or demonstration of a lesser event.

As discussed in the preamble language to the final rules at 30 CFR 816.46(c)(1)(iii)(C) the 10-year, 24-hour design event is a requirement unless demonstrated otherwise. "EPA, in its final effluent limitation rule for coal mining point source category (40 CFR 434), requires that specific settleable solids (SS) limitations be met for discharges caused by any precipitation event up to a 10-year, 24-hour event. (See 40 CFR 434.63 (47 FR 45382, October 13, 1982)). These limitations are based on the performance of properly designed sedimentation ponds capable of containing the runoff from a 10-year, 24-hour precipitation event. Therefore, unless the operator can satisfy the regulatory authority that a pond designed for a lesser event will satisfy EPA effluent limitations, a pond designed for a 10-year, 24-hour event will be required."

"Because the available data indicate that a sedimentation pond designed to contain the 10-year, 24-hour event will meet the EPA's limitations, OSM is using this event for its requirement for design of sedimentation ponds" (See 48 FR 44042, September 26, 1983).

Also, during its review, OSM noted that at 11 AAC 90–331(g), the State's proposed language omitted the word "drainage" from the phrase "disturbed area within the total disturbed area * * *" It should read instead, "disturbed drainage area within the total disturbed areas * * *" as contained at 30 CFR 816.46(e)(1).

Alaska also proposes to amend its regulations at 11 AAC 90.331(b)(1) by requiring that siltation structures be constructed "before beginning any disturbance of the area to be drained into the structure," while the Federal regulations at 30 CFR 816.46(b)(3) require that siltation structures shall be constructed "before beginning any surface mining activities in that area." The language of the State proposal tracks the language of the 1979 Federal regulations, which were revised to the current form in 1983 (see 44 FR 15395, March 13, 1979, and 48 FR 44051, September 26, 1983). Although textual changes occurred, the 1983 revision of the Federal regulations resulted in no substantive change to the effect of the Federal regulations. The State provision, based on the 1979 version of the Federal regulations is, thus, no less effective than the current Federal regulations.

The Director finds that 11 AAC 90.331 is no less effective than the Federal regulations at 30 CFR 816.46 and is approving the changes. However, the Director is requiring Alaska to further amend its rule to define "other treatment facilities"; to clarify the relationship of "treatment facility(ies)", "water treatment facilities", and "erosion control structures", relative to the term "siltation structure"; and to include the Federal requirements for a design event or demonstration of lesser events as contained at 30 CFR 816.46(c)(1)(iii)(C), in a manner that is no less effective than the Federal program requirements.

Also, with this rule notice the Director is notifying the State of the editorial error, and the need to include the word "drainage" at 11 AAC 331(g), as discussed above.

9. *Impoundments, Inspections*

Alaska proposes to amend its rules at 11 AAC 90.337(f) by requiring all impoundments to be examined by a qualified person on a bi-monthly basis during the seasonal period that the impoundment is receiving or discharging runoff. The word "bi-monthly" can mean "once every two months", it can also mean "occurring twice a month". With either meaning, the proposed examination frequency is greater than that required by the Federal regulations at 30 CFR 816.49(a)(11) that require examinations of impoundments not subject to 30 CFR 77.216–3, at least quarterly. However, in the State proposal, examinations are limited to a vaguely defined "seasonal" portion of the year, without adequate justification as to why the limitation on impoundment examinations is warranted.

The Director finds that Alaska's proposed change at 11 AAC 90.337(f) is less effective than the Federal counterpart and is not approving it. Alaska is required to amend its rules at 11 AAC 90.337(f) to require that all impoundments be examined on a basis that is no less effective than the Federal regulation requirements at 30 CFR 816.49(a)(11).

10. *Surface and Ground Water Monitoring*

Alaska proposes to amend its regulations at 11 AAC 90.345 by repealing the section and readopting new language. At subsection (e) the State proposes that, "surface water monitoring must be adequate to measure accurately and record water quantity and quality of the discharges from the permit area. All streams, lakes, and other surface water bodies that may be impacted by the mining operation or which will receive discharges must be monitored". The Federal regulations at 30 CFR 780.21(j)(2)(i) and 30 CFR 784.14(i)(2)(i) specify that monitoring shall take place "at all monitoring locations in the surface-water bodies such as streams, lakes, and impoundments, that are potentially impacted or into which water will be discharged and at upstream monitoring locations * * *". Unlike the Federal regulation, the State does not specify monitoring in upstream locations.

The Director finds that Alaska's proposed rule at 11 AAC 90.345(e) is no less effective than the Federal counterpart, with the exception that the State rule does not require "upstream" locations to be monitored. The Director is approving Alaska's proposed change with the requirement that Alaska further amend the regulations to have the surface-water monitoring plan include both upstream and downstream monitoring locations in all receiving bodies of water.

11. *Disposal of Excess Spoil and Coal Mine Waste*

Alaska proposes to amend its regulations at 11 AAC 90.391(h) by allowing the disposal of coal mine waste in excess spoil fills if the "operator demonstrates" that the placement is consistent with the design stability of the fill. Federal regulations at 30 CFR 816.71(i) provide that coal mine waste may be disposed of in excess spoil fills if "approved by the regulatory authority". While a demonstration by an operator may be construed to mean something requiring approval, it requires an interpretation and lacks the clarity and force of a specific approval by the regulatory authority.

The Director finds that Alaska's proposed rule at 11 AAC 90.391(h) is less effective than the Federal regulation at 30 CFR 816.71(i), and is not approving the proposed change. To be no less effective than the Federal requirement, Alaska is required to amend its regulations by requiring that the actions set forth in subsection (h) of 11 AAC 90.391 be approved by the regulatory authority.

12. *Coal Mine Waste, Dams, and Embankments*

Alaska proposes to amend its regulations at 11 AAC 90.407(e) by requiring that coal mine waste impoundment structures have a combination of principal and emergency spillways that can safely pass a peak 100-year discharge, or larger event if required under Mine Safety and Health Administration (MSHA) rules at 30 CFR 77.216. The Federal regulations at 30 CFR 816.84(b)(20 require that coal mine waste impounding structures meeting the criteria of 30 CFR 77.216(a) have sufficient spillway capacity to safely pass, adequate storage capacity to safely contain, or a combination of storage capacity and spillway capacity to safely control the maximum runoff from the 6-hour probable maximum precipitation (PMP) event, or greater event as specified by the regulatory authority.

Alaska's proposed rule differs from the Federal regulation requirement in that its combination of principal and emergency spillways must be designed and constructed to pass safely, the peak 100-year discharge, whereas, the federal regulations require the spillway to pass a PMP of a 6-hour storm event.

The 6-hour PMP event is, in general, significantly larger than the 100 year event. As discussed in the October 27, 1988, Preamble to the Federal regulations at 30 CFR 816.84 (53 FR 43603):

> The design precipitation event is increased from a 100-year, 6-hour event to the probably maximum precipitation event (PMP) of a 6-hour duration event in order not to conflict with MSHA guidelines. The PMP is the amount of rainfall that has been determined by meteorologists to represent the maximum storm potential that can be expected for any specific area and in every instance in greater than a 100-year 6-hour storm".

The peak 100-year discharge proposed by Alaska does not include both the storm frequency and the duration that is necessary to specify the severity of a precipitation event, and is therefore, not equivalent to or greater than the maximum runoff from the 6-hour PMP event. The October 27, 1988, Preamble continues to state:

> OSMRE does not defer to MSHA in meeting its statutory responsibility. OSMRE has selected the PMP storm for the design of coal mine waste impounding structure spillways to provide protection to society and the environment in line with the mandate of SMCRA. Also, the minimum design storm in MSHA guidelines applies to both water and coal mine waste impounding structures and, thus, the MSHA guidelines address a wider range of design storms.

The Director finds that 11 AAC 90.407(e) is less effective than the Federal regulation at 30 CFR 816.84(b)(2). Therefore, the Director is not approving Alaska's proposed rule. Alaska is required to amend its rules at 11 AAC 90.407(e) to include a precipitation event no less effective than that of the corresponding Federal regulation, and to require the use of at least the 6-hour PMP event for structures meeting the criteria of 30 CFR 77.216(a).

13. *Protection of Fish and Wildlife*

Alaska proposes to amend its regulations at 11 AAC 90.423(b) by requiring consultation with "appropriate government agencies" before the commissioner determines whether and under what conditions an operator may proceed, after reporting the presence of a listed endangered or threatened species. The Federal regulations at 30 CFR 816.97(b) require regulatory authorities to consult with the appropriate State and Federal fish and wildlife agencies prior to making a determination as to whether and under what conditions an operator may continue with mining activities.

The wording of the State's proposed language is vague in that it does not specify that consultation with Federal and State fish and wildlife agencies will occur. While the State may wish to consult with other government agencies, regulatory agencies are required, under 30 CFR 816.97(b), to determine the scope and level of detail of resource information in consultation with State and Federal fish and wildlife agencies.

The Director finds that Alaska's regulation at 11 AAC 90.423(b) is less effective than the Federal counterpart at 30 CFR 816.97(b) and is not approving it. To be no less effective than the Federal

regulation, Alaska is required to amend its rules at 11 AAC 90.423(b), to make consultation with Federal and State fish and wildlife agencies mandatory.

14. *Backfilling and Grading*

Alaska is proposing to amend its regulations at 11 AAC 90.443(d) by adding requirements for the handling and placing of spoil when reclaiming areas disturbed by a mining operation. Specifically, "Spoil shall be returned to the mined-out area, except for excess spoil disposed of in accordance with 11 AAC 90.391, and except for spoil necessary to blend regraded areas into the surrounding terrain". The Federal regulations at 30 CFR 816.102(b) require that, "Spoil, except excess spoil disposed of in accordance with Section 816.71 through 816.74, shall be returned to the mined-out area", as does the proposed Alaska rule. However, 30 CFR 816.102(d) allows that "Spoil may be placed on the area outside the mined-out area in non-steep slope areas to restore the approximate original contour by blending the spoil into the surrounding terrain if the following requirements are met". These requirements include the removal of all vegetative and organic material from the area; the removal, segregation, storage, and redistribution of the topsoil on the area; and the backfilling and grading of the spoil in accordance with requirements.

Alaska's proposed rule does not specify that blending spoil into the surrounding terrain outside the mined-out area is allowed only in non-steep slope areas, and then only if all vegetative and organic material is removed and State performance standards met.

The Director finds that Alaska's regulation at 11 AAC 90.443(d) is less effective than the Federal counterpart at 30 CFR 816.102(d) and is, therefore, not approving it. To be no less effective than the Federal regulation, Alaska is required to amend its rules at 11 AAC 90.443(d) to provide for the blending of spoil into the surrounding terrain in non-steep slope areas only, and to provide for the removal of all vegetative and organic material as a requirement for allowing spoil to be placed on the area outside the mined-out area.

15. *Backfilling and Grading*

Alaska proposes to amend its regulations at 11 AAC 90.443(e)(1) by addressing a requirement for the elimination of highwalls, regrading, and the handling of spoil in areas that have been previously mined. "All spoil generated by the remining operation and other spoil reasonably available in the immediate vicinity must be used to backfill the area". The Federal regulation at 30 CFR 816.106(b)(1) requires that all spoil generated by the remining operation and any other reasonably available spoil be used to backfill the area. It also requires that spoil in the immediate vicinity of the remining operation be included within the permit area as reasonably available spoil.

Alaska's proposed rule does not require that spoil in the immediate vicinity of a remining operation be considered as reasonably available spoil, and be included within the permit area.

The Director finds that the State's proposed rule at 11 AAC 90.443(e)(1) is less effective than the Federal counterpart regulation in that it would not require spoil in the immediate vicinity to be included in the permit area. To be no less effective than the Federal regulation, Alaska is required to further amend its regulations by requiring that spoil in the immediate vicinity of the remining operation be included in the permit area.

16. *Standards for Revegetation Success for Fish and Wildlife Habitat, Recreation, Shelterbelts, or Forest Products*

The State proposes to amend its regulations at 11 AAC 90.457(c)(3) by specifying the conditions that must be met to satisfy the requirements for determining standards for success for fish and wildlife habitat, recreation, shelterbelts, or forest products. The proposed rule is similar to the Federal regulations at 30 CFR 816.116(b)(3)(i) and 30 CFR 817.116(b)(3)(i) that require minimum stocking and planting arrangements for the above land uses. However, the Federal regulations additionally require consultation and approval of the stocking and planting arrangements by the State agencies responsible for the administration of forestry and wildlife programs. In its proposed rule, the State does not address the required consultation and approval provisions.

The Director finds that Alaska's proposed rule at 11 AAC 90.457(c)(3) is less effective than the Federal counterpart regulation, and is not approving it. To be no less effective than the Federal regulations, Alaska is required to further amend its proposed rule at 11 AAC 90.457(c)(3) by adding provisions for consultation with and approval by State forestry and wildlife agencies, of the minimum planting and stocking arrangements as specified by the regulatory authority.

17. *Definition of Previously Mined Area*

Alaska proposes to amend its regulations at 11 AAC 90.911(79) by adding a definition of previously mined area to read, "previously mined area means land previously mined on which there were no surface coal mining operations subject to the standards of the Surface Mining Control and Reclamation Act of 1977". The State's proposed definition of previously mined area is identical to the corresponding Federal definition at (30 CFR 701.5).

However, in the case of *National Wildlife Federation* v. *Lujan*, 21 ERC 1193, 14 ELR 20617 (D.D.C. February 12, 1990), (hereinafter referred to as *National Wildlife Federation*), the court addressed two concerns pertaining to the Federal definition. The first was whether "previously mined" means that mining occurred (1) before the date Congress enacted SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. This issue is important because pursuant to 30 CFR 816.106(b), 817.106(b), and 819.19(b), operators remining previously mined areas do not need to completely eliminate reaffected or enlarged highwalls if there is not enough reasonably available spoil to do so. Rather, in such situations, the operator's responsibility is to eliminate the highwalls only to the "maximum extent technically practical." Given this limited exception to the requirement to completely remove all highwalls, the second related concern was that the current definition might allow an operator to remine an area that had once been fully and satisfactorily reclaimed, and then to leave the area only partially reclaimed by not completely eliminating any remined or reaffected highwalls.

In *National Wildlife Federation*, the court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue". Consequently, the court held that the date of enactment of SMCRA (August 3, 1977) "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured.".

With respect to the second issue, the court held, in *National Wildlife Federation*, that a "definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible". Accordingly, the court remanded "the definition of previously mined area to the Secretary to correct both of the flaws identified above".

Although OSM has not yet actually suspended the above definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Alaska's proposed definition. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the appropriate provisions of SMCRA as interpreted by the court.

Based on the above discussion and the court's remand of the Federal definition of "previously mined area" to "correct both of the flaws identified" in the decision, the Director finds that to the extent Alaska's proposed definition of "previously mined area" at 11 AAC 90.911(79), (1) interprets or contemplates the temporal concept of "previously" as being any other date than August 3, 1977 (the date of enactment of SMCRA), or (2) allows lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed, such definition is less stringent than the general provisions of SMCRA.

The Director will, in the future, and pursuant to 30 CFR 732.17(d) and (e), notify Alaska of regulatory changes needed to amend this definition.

18. *Standards for Revegetation Success*

The Federal regulation at 30 CFR 816.116(a)(1) requires the State to select standards for success and valid sampling techniques for measuring success for inclusion in the State program. The Preamble to this Federal regulation (48 FR 40160, September 2, 1983) advises that the sampling techniques may appear as a rule or as a guideline that is incorporated into the regulatory authority are subject to review and public comment.

Alaska proposes to provide guidance entitled "Guideline for Conducting Premining Vegetation Inventories and Determining Revegetation Success" to assist permit applicants in designing appropriate vegetation sampling programs and in proposing revegetation success standards. OSM's review of the proposed guidelines identified a lack of specificity and consistency in the use of sampling methods as required at 30 CFR 816.116(a)(1). The State needs to specify sampling techniques for each parameter to be measured for revegetation success and, if needed, different techniques within each parameter for differences in vegetative structure (e.g., measuring cover for tundra versus shrubland types). The State may identify as many techniques as desired. However, the conditions under which they will be employed should be identified. Also, some of the mathematical formulas identified in the document were incomplete. Some of the symbols were omitted (e.g. square root, divided by, means, summation, etc.).

Until approved by OSM, Alaska's guidelines cannot be used to supplement or otherwise support the State's revegetation regulations at 11 AAC 90.457. The Director is not approving the proposed guidelines and is requiring Alaska to resubmit proposed guidelines in order to meet the requirements of 30 CFR 816.116(a)(1).

19. *Policy Statements*

By letter dated July 10, 1986, Alaska expressed a preference for dealing with certain issues as policy commitments rather than further expanding their regulations. In an October 7, 1986, correspondence to the State, OSM commented on a limited use of policy statements in lieu of revised regulations to address identified State program deficiencies. Five specific Federal regulation citations were given as candidates for being satisfied by policy statements instead of State regulations. If the State chose to address certain deficiencies through the development of policy statements, then the following requirements were to be met: (1) The requirements being implemented or enforced should be written in very specific terms; (2) Operators must clearly understand their obligations, as well as the repercussions of not complying with the provisions addressed; (3) Each policy statement should contain specific language concerning the State's method for enforcing the requirements being addressed.

Alaska is proposing seven policy statements in this program amendment. Of the five Federal regulations previously identified by OSM in its October 7, 1986, letter, Alaska submitted proposed policy for three. They are Policy Statements: A, Maintenance of Records; B, Small Operator Assistance; and D, Surface Water Information. The remaining four policies proposed by Alaska address: C, Public Notice of Blasting; E, Scope of the Cumulative Hydrologic Impact Assessment; F, United States Fish and Wildlife Service Information Requests; and G, Determining Peak Discharge for Hydrologic Designs. The proposed policy statements that place requirements on an operator do not fulfill the requirement concerning the State's method of enforcement. Instead Alaska provides that, "Since these policy statements do not directly alter the responsibilities of a permit applicant or operator, it is not necessary to define procedures for enforcement of these policies". Alaska further states that, "These policy statements relate only to internal management of the State, and to the interpretation of existing regulatory provisions where the commissioner has discretion".

The proposed policy statements submitted by Alaska would provide the following:

Policy Statement A: Maintenance of Records

Alaska would maintain copies of inspection reports, notices of violation cessation orders, and related records, reports, findings and decisions for at least five years after a performance bond release. The information would be made available to the public for review and copying.

Policy Statement B: Small Operator Assistance

The State proposes that if a direct or indirect relationship exists between an applicant and relatives or family members, the coal produced by operations owned by these relatives will be attributed to the applicant.

Policy Statement C: Public Notice of Blasting

The State would publish notices of blasting schedules in local newspapers and would provide for other alternative methods of notification, such as radio contact, and the posting of notices.

Policy Statement D: Surface Water Information

If there is a potential for acid drainage from a proposed mining operation, Alaska would require data on the baseline alkalinity of surface water bodies. The State does not require the collection of baseline acidity information, nor does it require the collection of baseline information on seasonal flow rates as part of the description of water quantity, as does the Federal regulation.

Policy Statement E: Scope of the Cumulative Hydrologic Impact Assessment

In conducting cumulative hydrologic impact assessments, the Commissioner would consider all areas, including the permit area, where the impacts from the proposed operations may interact with the impacts of all anticipated mining or surface and ground-water systems. Unlike the Federal regulation, Alaska does not require that an application for a permit revision be reviewed to

determine whether a new or updated CHIA is needed.

Policy Statement F: United States Fish and Wildlife Service Information Requests

Alaska would provide to the United States Fish and Wildlife Service, information pertaining to fish and wildlife resources or the fish and wildlife protection plan, for review and comment. The State would respond within ten days of receipt of a request from the Service.

Policy Statement G: Determining Peak Discharge for Hydrologic Designs

The commissioner would determine whether pond spillways, ditches, diversions, and similar structures have been designed to pass the peak discharge with the recurrence interval specified in the applicable regulatory standard. The permit applicant would be required, in the permit application, to affirmatively demonstrate the assumptions or analyses which document that the selected design event will produce a discharge at least equal to the peak discharge as specified in the applicable regulation.

A key requirement for any state that wishes to regulate surface coal mining within its boundaries is to provide the ability to enforce its program. Such enforcement ability is clearly evident when a state enacts statutory and regulatory requirements. The use of other documents, such as policy statements, must also carry a clear ability to enforce requirements, whether they are discretionary or as aids to internal management.

Alaska has not demonstrated such ability with regard to their policy statements. The Director, therefore cannot approve the statements and is requiring that Alaska provide policy statements that satisfy the requirements of OSM's October 7, 1986, letter, or to provide regulations that are no less effective than the counterpart Federal regulations.

20. *Petitions for Lands Unsuitable for Surface Coal Mining*

Alaska proposes two petition forms that may be submitted by any person, organization, or municipality concerning lands unsuitable. The first form is a petition to designate an area as unsuitable for surface coal mining. The second form is a petition to terminate the designation of an area as unsuitable for surface coal mining. The forms are being submitted to meet requirements of Federal regulations at 30 CFR 764.13(b) and (c) concerning the State's process for designating areas unsuitable for surface coal mining operations.

The State's proposed designation petition form includes the criteria to be used for designating lands unsuitable, and requests allegations of fact and supporting evidence that tends to support the allegation for the specific mining operation, if known. It also requests the notarized signature of the petitioner, and provides for the regulatory authority to request supplementary information as needed. The Federal regulations at 30 CFR 764.13(b) require that the petition process contain these same elements, and gives the regulatory authority the latitude to determine what other information if necessary.

Alaska also proposes a termination of designation petition form designed to allow any person, organization or municipality to petition the State to terminate an unsuitability designation. The Federal regulations at 30 CFR 764.13(c) provide for petitions to terminate an unsuitability designation to be received by the regulatory authority.

During OSM's review of the form, several problems were discovered. The first page of the form (page 6 of the petition package) contains an introductory paragraph describing what is required to terminate a designation. A part of the paragraph reads, "For information purposes, the criteria on which a designation may be based and their associated definitions have been composited from the Statute and its related regulations and included on the last page of this form". It should read instead, "* * * the criteria upon which a designation may be terminated * * *". The last page of the form contains unsuitability designation information rather than criteria for terminating a designation.

The Director finds that the proposed petition form for designating lands as unsuitable for all or certain types of surface coal mining meets the intent of the Federal regulation at 30 CFR 764.13(a), and is approving it.

The Director further finds that the proposed petition form to terminate an unsuitability designation does not meet the intent of the Federal regulation at 30 CFR 764.13(c) and is not approving it. Alaska is required to further amend the petition form to address the termination of an unsuitability designation in the areas described above.

IV. Public and Agency Comments

1. *Public Comments*

For a complete history of the opportunity provided to the public to comment on the proposed amendment, please refer to the portion of this notice entitled "Submission of Amendment".

The Alaska Coal Association, in addition to requesting an extension of the comment period, indicated that there was some disagreement as to the actual application to be made of the proposed policy statements. The association provided no position either for or against the policy statements.

Both the Alaska Coal Association (Administrative Record No. AK C–15), and comments from the Usibelli Coal Mine, Inc. (Administrative Record No. AK C–21) noted that the State did not intend to delete 11 AAC 90.311(g) that addresses removal of topsoil from the Alaska program. The provision was reinstated by Alaska in its May 7, 1991, reply to OSM's March 14, 1991, letter that identified concerns it had with the proposed amendment.

The commenter also questioned Alaska's use of policy statements; more from the aspect of being precedent setting, rather than their content, and noted that the State notified the commenter that the policy statements were guidelines only, and would not be applied or administered with the force of regulation or statute. If that is not the case, the commenter advises that OSM will need to remand the policy statements back to the State because they did not go through a formal comment period that proposed regulations or amendments are subject to in Alaska.

The Director notes that the public comment period was reopened for 15 days beginning March 30, 1990, and included additional time for the public to review the policy statements. However, since the policy statements were not approved (see finding III, No. 19, of this notice) Alaska is required to re-evaluate the policy statements. Therefore, an opportunity for further public comment on these statements will be afforded.

The commenter offered several suggestions and editorial changes to the "Guidelline for Conducting Premining Vegetation Inventories and Determining Revegetation Success".

Non-editorial comments included; the Motyka or Sorenson's Index of similarity for use in reference areas lacks an element that addresses the absence of a statistical criterion to determine if a reference area is similar to a native vegetation type, and that an allowance could be made to use a multivariate t-test or equivalent. Use of systematic points for cover (in conjunction with a species list) is adaptable to most vegetation types by changing the length of transect and

distance between points. Line intercept is well-suited for total crown cover of trees and shrubs, but is tedious and cumbersome for use in most multi-layered vegetation in Alaska. Productivity is probably best handled by rectangular-shaped quadrants by varying sizes, depending on the vegetation's scale of pattern, and most double-sampling techniques have too broad a confidence interval to achieve sampling adequacy in Alaska.

The above comments are duly noted. However, since the Director is not approving Alaska's proposed "Guideline for Conducting Premining Vegetation Inventories and Determining Revegetation Success", and is requiring Alaska to resubmit the guideline (see Finding No. 18, of this notice) an opportunity exists for consideration of the above by Alaska in its future rulemaking actions and subsequent OSM review.

2. *Agency Comments*

Pursuant to section 503(b) of SMCRA and 30 CFR 732.27(h)(11)(i), comments were solicited from various Federal and State agencies with an actual or potential interest in the Alaska State program. A discussion of the comment follows.

The Bureau of Mines reviewed and commented upon the proposed amendments. They offered an editorial change, one general comment, and two specific comments (Administrative Record No. AK C–17). The general comment suggested the need for a legal review of the document by a "pro-mining" attorney or legal foundation, since it is a legal instrument. The U.S. Department of the Interior, Office of the Solicitor is required to review and surname all state program amendments, thus ensuring the legal adequacy of State program amendment documents.

The Bureau also inquired as to whether there are any limits which can or should be placed on how far off the proposed permit area an operator is responsible for in protecting the hydrologic balance of a proposed mining operation (11 AAC 90.085(a)(2). OSM notes that boundaries must be established for each permit application area on a case by case basis when determining the impacts of a mining operation on the hydrology of an area because of a number of factors that must be considered, such as the number, size and location of other mines, watershed data, use of aquifers, the geology of an area, and so on. As a part of the permit application process, applicants must furnish information on the probable hydrologic consequences of proposed mining operations on the permit and adjacent areas. The regulatory authority is responsible for determining the adequacy of a plan, and for either approving it or prescribing additional measures.

Additionally, at Alaska rule 11 AAC 90.331(g), the Bureau of Mines found a portion of a subsection to be unclear. It reads, "(g) Exemptions to the requirements of this section may be granted if (1) the disturbed area within the total disturbed area is small; * * *". The Federal regulation at 816.46(e)(1) reads, "Exemptions to the requirements of this section may be granted if (1) The disturbed drainage area within the total disturbed area is small;". OSM agrees with the commenter. Inclusion of the word "drainage" in the phrase, "The disturbed drainage area within the total disturbed area * * *" should eliminate the confusion. By virtue of this Federal Register notice, OSM is bringing this omission to the attention of Alaska for correction.

The National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, reviewed Alaska's proposed amendment and had no specific recommendations to offer (Administrative Record No. AK C–18).

The U.S. Fish and Wildlife Service made one general editorial comment, and four specific comments (Administrative Record No. AK C–19). It was suggested that Alaska consolidate all fish, wildlife, and habitat related information within Article 4, Environmental Resource Information Requirements, to facilitate applicants ability to respond. While the suggestion may have merit, OSM does not have the authority to require the State to reorganize Alaska's Administrative Code to provide for such consolidation, nor do the Federal regulations address fish and wildlife requirements in a consolidated manner.

It was suggested that section 11 AAC 90.057 contain information on how State and Federal resources agencies with mandated fish and wildlife management responsibilities can provide input on the content of fish and wildlife studies. The Federal program does not require that procedural details of this nature be placed in a State's regulations. The Director believes that the regulatory authority and State and Federal agencies should be afforded the flexibility to determine among themselves how best to provide input.

Comments were offered on the requirements of the Fish and Wildlife Protection Plan (11 AAC 90.081(c)). Specifically, it was stated that, "the Plan must trend toward enhancement of fish and wildlife resources at the time of vegetation success. If success will not be accomplished, the Plan should include an explanatory statement". It was suggested that the explanatory statement also include specific measures to ensure compliance with mitigation requirements imposed by the commissioner. Alaska's proposed rule may have been misread by the commenter. It reads, at (b), "The Plan must include protective measures to be used during the active mining phase of the operation, and enhancement measures to be used during the reclamation and postmining phases of the operation to develop aquatic and terrestrial habitats. (c) Where the plan does not include enhancement measures, it must contain a statement explaining why enhancement is not practicable". As written, it appears that the commenter has tied the enhancement of fish, wildlife, and their related environmental values to the success of revegetation, and that if revegetation is not successful, it must be explained in the plan. Alaska's proposed rule, as well as the counterpart Federal regulation at 30 CFR 780.16(3)(ii), are more broadly written to include more than revegetation. They call for protective measures to be used during active surface mining, and enhancement measures to be used during the reclamation and postmining phases of an operation. If, for some reason, enhancement measures are not practical, an explanation must be provided in the Plan.

It was also suggested that specific measures to ensure compliance with mitigation requirements be included in the plan. OSM does not agree, since the plan becomes part of the permit that an operator must comply with in order to mine. If the operator does not follow the approved permit requirements, the operator is in violation. Therefore, compliance with any approved mitigtion measures of the permit must be issued.

The U.S. Fish and Wildlife Service also commented on 11 AAC 90.163, Exploration. It was noted that an applicant must file an exploration and reclamation plan of operations which includes, among other things, important habitat for fish, wildlife, and plants. It was suggested that the section should describe how the "available information requirement" of this subsection relates to the study requirement of 11 AAC 90.057, which deals with fish and wildlife information. The proposed rule at 11 AAC 90.057 requires that site specific resource information be provided for the permit and adjacent areas, and applies to a mining operation. The proposed rule at 11 AAC 90.163

addresses the resource information required from an applicant who proposes to conduct exploration operations. Therefore, the requirements of 11 AAC 90.057 do not apply to exploration activities.

A final comment by the U.S. Fish and Wildlife Service concerns surface and groundwater monitoring requirements at 11 AAC 90.345. It was suggested that in addition to the various factors for which surface and groundwater are monitored, that turbidity also be routinely monitored. The Federal regulations at 30 CFR 780.21(j)(2)(i) and 30 CFR 784.14(i)(1)(i) do not contain a requirement for the monitoring of turbidity in streams, lakes, or impoundments. States cannot be required to provide for more stringent regulations than are required by the Federal program.

The Bureau of Land Management, Washington, D.C. had no comments (Administrative Record No. AK C–25).

The Bureau of Land Management's (BLM) office in Anchorage offered several comments on Alaska's proposed program amendments (Administrative Record No. AK C–24).

One comment expressed concern that the State's regulations do not address the issuance of short-term interim mining permits in order to allow operators to meet contractual requirements of purchase contracts pending issuance, and subject to the terms and conditions of the standard coal mining permit according to State regulations. The issuance of interim mining permits is not allowed under SMCRA. Since a state program must contain laws and regulations as stringent as and no less effective than the Federal regulations in order to receive the Secretary of the Interior's approval to regulate coal mining activities within its boundaries, it cannot allow for interim mining permits as suggested in the comment.

Another comment addressed OSM regulations and the lack of a provision for test burns of coal. The Federal regulations at 30 CFR 772.14(b) provide that with the prior written approval of the regulatory authority no permit to conduct surface coal mining is required during coal exploration operations if the commercial use or sale of the coal is for testing purposes only. The December 29, 1988, Preamble to the Federal regulation at 30 CFR 772.14(b) (53 FR 52947) specifically references test burns. It reads, in part, "OSMRE agrees * * * that test burns are sometimes required for determinations other than the quality of the coal. Testing for purposes of § 772.14(b) is considered by OSMRE to include valid test burns that are required by the end-user, but only in an amount necessary to evaluate the coal's compatibility with boiler or other technical specifications or to determine properties of the coal". Therefore, test burns are allowed as a part of coal exploration activities.

The commenter also questioned why OSM regulations did not contain provisions for emergency permits. Neither SMCRA nor the Federal regulations contain provisions for the issuance of emergency permits. A state program must contain laws and regulations as stringent as SMCRA and no less effective than the Federal regulations to receive the Secretary of the Interior's approval to regulate coal mining operations within the state. Therefore, it cannot allow for emergency permitting as suggested by the commenter.

The BLM suggested that the word "hazardous" at 11 AAC 90.077 should be defined in the context of the EPA definitions for hazardous chemicals, and questioned whether the use of the term implied a specific condition or application of specific parts of the EPA regulations. Alaska proposes to remove the word "hazardous" from its rules to more closely conform to the Federal regulations at 30 CFR 784.25. Therefore, BLM's concern with its usage in relation to EPA regulations is no longer relevant. However, the requirements of SMCRA neither supersede nor replace the requirements of other Federal laws. Accordingly, the treatment of "hazardous" materials as subject to EPA requirements must still be met by the State and the operator, as applicable.

The BLM suggested that some specific time frames for the processing of permit applications be included at 11 AAC 90.111, as well as for permit renewals at 11 AAC 90.129. The periods of time referenced by the BLM can be found at Alaska Statute (AS 27.21.180) Application Approval or Denial, and applies to new applications, revisions and renewals.

The BLM expressed concern with those aspects of Alaska Statute 27.21.260 and 11 AAC 90.701 through 11 AAC 90.715, Process for Identifying Land Unsuitable for Mining, concerning the provisions whereby a person or municipality may petition for the designation of an area as unsuitable for all or certain types of coal mining. Concern was expressed because of potential conflict with Federal land use plans, the Federal mineral and/or coal estate, and Federal Coal leases and their operation. A situation is cited where if, at some point in time, the State's coal mining regulations were used on Federal leases rather than OSM regulations, there could be a legal conflict because of the provision. The BLM registered strong disagreement with the petition provision and suggested removing it and placing it in other State regulations concerning land use planning.

Provisions of 30 CFR 769 of the Federal regulations require that any Federal land subject to a petition of a designation as lands unsuitable must be made to the Secretary of the Interior. Federal lands include both surface and mineral interest. The decision of whether to grant or deny a designation also rests with the Director of OSM and the Secretary. Recommendations must be provided by the appropriate Federal land management agency. Therefore, control over Federal lands is not relinquished to a state.

The Anchorage Office of the National Park Service offered one comment (Administrative Record No. AK C–26). It was suggested that Alaska's 11 AAC 90.041(b), Cultural and Historic Information, and 11 AAC 90.125(a)(7), Commissioner's Findings, should be expanded to reflect compliance with both Federal and State regulations pertaining to cultural/historic resources. They asked that work performed be in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. And, on State land, compliance with the Alaska Historic Preservation Act, Title 41, Chapter 35.

Alaska's proposed rule at 11 AAC 90.125(a)(7) requires that the Commissioner find that operations on properties listed or eligible for listing on the National Register of Historic Places be in compliance with Alaska's rule at 11 AAC 90.121(a). That rule, in turn, requires compliance with the Alaska Statute at AS 27.21.260(d). This statutory language requires the approval by the Federal, state, or local agency having jurisdiction over the park or historic site. Such approval will allow compliance with the appropriate Federal and State regulations pertaining to cultural and historic resources. Additionally, 11 AAC 90.041(a) requires that applications must contain a description of cultural and historic resources and known archaeological features within the permit and adjacent areas. Also, that the description must include data provided by state and local archaeological, historic, and cultural preservation agencies. This requirement additionally assures that appropriate Federal and state regulations, guidelines, etc., will be considered in the review and findings for cultural or historic resource impacts.

The Minerals Management Service in Alaska noted that surface coal mining does not fall within their area of jurisdiction, and had no comments to offer (Administrative Record No. AK C–13.

The Alaska Power Administration of the Department of Energy had no comments to offer (Administrative Record No. AK C–10.

The Washington DC office of the Bureau of Reclamation had not comments to provide (Administrative Record No. AK C–12).

Region 10 of the EPA in Seattle, Washington also reviewed that amendment and had no comments to offer. It was noted that, "The overall requirements of the Alaska Surface Coal Mining Program complement EPA's regulatory activities in Alaska pursuant to the National Environmental Policy Act and the Clean Water Act (National Pollutant Discharge Elimination System permit program)", (Administrative Record No. AK C–14).

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. No comments were received from either organization.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.27(h)(11)(i), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) Concurrence was solicited from the Washington, DC office of the EPA on March 6, 1990, (Administrative Record No. AK C–11). EPA gave a written concurrence on April 18, 1991, (Administrative Record No. AK C–29), but qualified its concurrence by stating that Alaska's rules must be implemented consistent with the requirements of the Clean Water Act and cannot allow instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. The impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water, as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or siltation structures in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States occur by permit as appropriate under either section 402 or 404 of the Clean Water Act.

With specific reference to Alaska, EPA noted that the proposed rule at 11 AAC 90.331(b)(2) would allow the placement of siltation structures in perennial streams if approved by the commissioner, and that Alaska rule 11 AAC 90.336 could allow the creation of impoundments in the waters of the United States.

The Director acknowledges EPA's concerns and Alaska has been notified of these concerns by their inclusion in the administrative record. The Director emphasizes that section 702(a)(3) of SMCRA provides that nothing in the Act shall be construed as superseding, amending, modifying or repealing the Clean Water Act, as amended, State laws enacted pursuant thereto, or other Federal laws relating to the preservation of water quality. The EPA acknowledges that Alaska's rules charge operators with adherence to compliance with all applicable State and Federal water quality laws and regulations, including provisions dealing with impoundments (see the Alaska Administrative Code at 11 AAC 90.321(c).) Therefore, Alaska permit applicants and operators are aware of their responsibilities under the Clean Water Act and the Director is not requiring any further action on the part of Alaska at this time.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Alaska on February 2, 1990, and revised on May 7, 1991, with the exception of those provisions found to be inconsistent with SMCRA or the Federal regulations, and identified in the codified portion of this notice under 30 CFR 902.15(c).

As discussed in findings 3, 4, 5, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, and 20, the Director is not approving 11 AAC 90.023(f)(3), identification of interests and compliance information; 11 AAC 90.045(a), 11AAC 90.163(b)(1), exploration that substantially disturbs the natural land surface; geology description; 11 AAC 90.311(g), removal of topsoil; 11 AAC 90.331(a), and (d)(1), siltation structures; 11 AAC 90.337(f), impoundments, inspections; 11 AAC 90.345(e), surface and ground water monitoring; 11 AAC 90.391(h), disposal of excess spoil and coal mine waste; 11 AAC 90.407(e), coal mine waste, dams and embankments; 11 AAC 90.423(b), protection of fish and wildlife; 11 AAC 90.443(d), backfilling and grading; 11 AAC 90.443(e)(1), backfilling and grading; 11AAC 90.457(c)(3), standards for revegetation success; 11 AAC 90.911 (79) definition of previously mined area; the revegetation guideline, policy statements A through C; and the petition form to terminate the designation of an area as unsuitable for surface coal mining.

Except as noted above, the Director is approving the Alaska rules with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR 902 codifying decisions concerning the Alaska program are amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA establishes that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. The Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to the Director as a program amendment. Thus, any changes to the program are not enforceable by the State until approved by the Director. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Alaska program, the Director will recognize only statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials, and will require the enforcement by Alaska of only such provisions.

VII. Procedural Determinations

National Environmental Policy Act

Pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 902—ALASKA

1. The authority citation for part 902 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 902.15 is amended by adding paragraph (c) to read as follows:

§ 902.15 Approval of regulatory program amendments.

. . . . .

(c) With the exceptions of 11 AAC 90.023(f)(3), identification of interest and compliance information; 11 AAC 90.045(a), geology description; 11 AAC 90.163(b)(1), exploration that substantially disturbs the natural land surface; 11 AAC 90.311(g), removal of topsoil; 11 AAC 90–331(a), and (d)(1), siltation structures; 11 AAC 90.337(f), impoundments inspection; 11 AAC 90.345(e), surface and ground water monitoring; 11 AAC 90.391(h), disposal of excess spoil and coal mine waste; 11 AAC 90.407(e), coal mine waste, dams, and embankments; 11 AAC 90.423(b), protection of fish and wildlife; 11 AAC 90.443(d), backfilling and grading; 11 AAC 90.443(e)(1), backfilling and grading; 11 AAC 90.457(c)(3), standards for revegetation success; 11 AAC 90.911(79), definition of previously mined area; the revegetation guideline; policy statements A through G; and the petition form to terminate the designation of an area as unsuitable for surface coal mining, the following provisions of the Alaska Administrative Code as submitted to OSM on February 2, 1990, and revised on May 7, 1991, are approved effective August 18, 1992:

General Application Requirements, 11 AAC 90.021(c); Identification of Interests and Compliance Information, 11 AAC 90.023(a) (1), (2), (3), (b) (1) and (2); Authority to Enter and Ownership Information, 11 AAC 90.025(a) (1), (2), (b) and (c); Cultural and Historic Information, 11 AAC 90.041 (a) and (b); Hydrology and Geology, 11 AAC 90.043 (b) and (c); Geology Description, 11 AAC 90.045(b)(4); Fish and Wildlife Information, 11 AAC 90.057; Operation Plan, 11 AAC 90.071(2)(D); Operation Maps, Planviews and Cross Sections, 11 AAC 90.077 (b)(5), (b)(11) and (d); Fish and Wildlife Protection Plan, 11 AAC 90.081(a) (1), (2), (3), (b) and (c); Plan for the Protection of the Hydrologic Balance, 11 AAC 90.085(a) (1), (2), (3) (A), (B), (C), (D), and (E), (4), (b) (3) and (4), (c) (3), (4), (5) (A), (B), (C) and (D); Plan for Ponds, Impoundments, Dams and Embankments, 11 AAC 90.089 (a) and (c); Return of Coal Mine Waste to Abandoned Underground Workings, 11 AAC 90.099(a); Subsidence Control Plan, 11 AAC 90.101(c)(1), (2) (A), (B), (C), (D), (E), (F), (3) (A), (B), (C), (4), (5) (A), (B) and (6); Transfer, Sale or Assignment of Permit Rights, 11 AAC 90.119 (d) and (e); Areas Where Mining May Be Limited, 11 AAC 90.121(c); Commissioner's Findings, 11 AAC 90. 125(a) (7), (8), (9), (10), (11), (12) and (13); Permit Conditions, 11 AAC 90.127 (4), (5) (A), (B), (C), and (6); Permit Revisions and Renewals, 11 AAC 90.129(a) (6), (7) and (8); Mountaintop Removal Mining, 11 AAC 90.141(a)(1); Exploration that Substantially Disturbs the Natural Land Surface, 11 AAC 90.163(a)(2) (A), (B), (C), (D), (E), (F), (C), (b) (2), (3) and (c) (1), (2), (3) (A) and (B); Eligibility for Assistance, 11 AAC 90.173(a)(1), (2) and (3); Filing for Assistance, 11 AAC 90.175(4)(D); Qualified Laboratories, 11 AAC 90.181(a)(5) (A), (B), and (6); Applicant Liability, 11 AAC 90.185(a) (3), (4) and (5); Requirements for Specific Types of Bonds, 11 AAC 90.207(c)(5)(C); Bond Forfeiture, 11 AAC 90.213 (g) and (h); Water Quality Standards, 11 AAC 90.323 (a), (b), (c), and (d); Diversions and Conveyance of Flow, 11 AAC 90.325 (b), (c), (d) (1), (2), (3) and (g)(3); Stream Channel Diversion, 11 AAC 90.327(b)(2); Siltation Structures, 11 AAC 90.331(b) (1) and (2), (3), (c), (d) (2), (3), (4), (e), (f), and (g); Discharge Structures, 11 AAC 90.333; Impoundments, Design and Construction, 11 AAC 90.336 (a), (b) (1) and (2), (c) (1), (2), (3), (4), (5), (6), (7), (8), (9), (d) (1), (2), (3) (e) and (f); Impoundments, Inspections, 11 AAC 90.337 (a), (b), (c) (1), (2), (3), (4), (5), (6), (7), (d), (e) and (g); Permanent Impoundments Criteria, 11 AAC 90.338 (1), (2), (3), (4), (5), (6), (7); Protection of Ground Water Recharge Capacity, 11 AAC 90.343; Surface and Ground Water Monitoring, 11 AAC 90.345 (a), (b) (1), (2), (3), (4), (5), (c), (d), (2), (3), (4), (5), (6), (f), (g), (h) and (i); Discharge of Water into a Mine, 11 AAC 90.349(2)(A); Stream Buffer Zones, 11 AAC 90.353(a) (1), (2) and (3); Use of Explosives, 11 AAC 90.371(d) (1), (2), (3), (4);

Preblasting Survey, 11 AAC 90.373 (b), (c) and (d); Public Notice of Blasting, 11 AAC 90.375(b), (e), (f), (g) and (h); Control of Adverse Effects of Blasting, 11 AAC 90.379 (b), (c), (e), (f), (g), (h), (i) and (j); Seismographic Measurements, 11 AAC 90.381 (a) and (b); Disposal of Excess Spoil and Coal Mine Waste, 11 AAC 90.391 (b), (e), (g), (i), (k), (l), (m) (1), (2), (3), (4), (5), (6), (n), (o), (p) (3), (4), (5), (6), (7), (q) and (r); Coal Mine Waste, General Requirements, 11 AAC 90.395(a) (1), (2), (3), (4), (5) and (b); Disposal Area Site, 11 AAC 90.397 (a), (b), (c) (1), (2), (3), (4); (5), (d), (e), (f) and (g); Hazardous Coal Processing Waste, Water Control Measures, 11 AAC 90.399; Coal Mine Waste, Refuse Piles, 11 AAC 90.401 (a), (b) (1), (2), (3), (c), (d), and (e); Coal Mine Waste, Fires, 11 AAC 90.403; Burned Waste Removal, 11 AAC 90.405; Coal Mine Waste, Dams and Embankments, 11 AAC 90.407 (a), (b), (c), (d), (f), (g), (h) and (i); Return to Underground Workings, 11 AAC 90.409; Contemporaneous Reclamation, 11 AAC 90.435; Timing Requirements for Backfilling and Grading, 11 AAC 90.441 (a), (b) and (c); Backfilling and Grading, 11 AAC 90.443 (a), (b), (c)(1) (A), (B), (C), (D), (E), (F), (e) (2), (3), and (4), (f), (g), (h), (i), (j) and (k); Revegetation, 11 AAC 90.451(b) (1) and (5); Revegetation, Mulching 11 AAC 90.455 (1), (2), (3) and (4); Standards for Revegetation Success, 11 AAC 90.457 (b) and (c)(5); Individual Civil Penalties, 11 AAC 90.635 (a), (b)(1), (2), (c), (d) (1), (2), (3), (e) (1), (2), (3), (f), (g) and (h); Initial Processing of Petitions, 11 AAC 90.703(e); Notification and Request for Information, 11 AAC 90.705 (a), (b), (c), (d) and (e); General Provisions, Applicability, 11 AAC 90.901(c); Public Participation, 11 AAC 90.907 (b) and (i); Definitions, 11 AAC 90.911, (18) Coal Mine Waste; (19) Coal Processing Plant; (20) Coal Processing Waste; (21) Collateral Bond; (51) Head-of-hollow Fill; (110) Surface Coal Mining Operations; (118) Underground Development Waste; (112) Valley Fill; Petition form to designate an area as unsuitable for surface coal mining.

3. Section 902.16 is added to read as follows:

§ 902.16 Required program amendments

(a) By October 19, 1992, Alaska shall amend its program as follows:

(1) At 11 AAC 90.023(f)(3) by providing ownership and control regulations to meet the requirements of OSM's May 11, 1989, 30 CFR 732 notification.

(2) At 11 AAC 90.045(a) by requiring a description of the geology within the permit and adjacent areas to include the deeper of either the stratum immediately below the lowest coal seam to be mined or any aquifer below the lowest coal seam to be mined which may be adversely impacted by mining per the Federal regulation requirements at 30 CFR 780.22(b)(1) and 784.22(b)(1).

(3) At 11 AAC 90.163(b)(1) by requiring that the operator affirm that a surface coal mining permit application will be submitted in the near future as required at 30 CFR 772.14(b); and by requiring that provisions in an exploration application provide evidence that sufficient coal reserves are available for future use or sale; and that an application for an exploration permit to remove more than 250 tons of coal contain a statement of why extraction of more than that amount is necessary per the requirements of Federal regulations at 30 CFR 772.14(b) (3) and (4).

(4) At 11 AAC 90.181(5)(A), .043, .047 and .089 to include reference to the 17th edition of the Standard Methods for the Examination of Water and Waste Water.

(5) At 11 AAC 90.311(g) by deleting the subsection that provides the commissioner the discretion to authorize an exemption from the requirements for the removal, stockpiling, and redistribution of topsoil and other materials.

(6) At 11 AAC 90.331(a) by defining "other treatment facilities" and to clarify the relationship of "treatment facility(ies)", "water treatment facilities", and "erosion control structures" relative to the term "siltation structure" in a manner that is not less effective than the Federal program requirements. At 11 AAC 90.331(d)(1) to provide for the 10-year, 24-hour precipitation event per the Federal regulation at 30 CFR 816.46(c)(1)(iii)(C).

(7) At 11 AAC 90.337(f) to require that all impoundments be examined on a basis that is no less effective than the Federal requirements at 30 CFR 816.49(a)(11).

(8) At 11 AAC 90.345(e) to require that the surface-water monitoring plan include both upstream and downstream monitoring locations in all receiving bodies of water per the Federal regulation requirements at 30 CFR 780.21(j)(2)(i) and 784.14(i)(2)(i).

(9) At 11 AAC 90.391(h) to require that the regulatory authority approve the placement of coal mine waste disposal in excess spoil fills per the Federal requirements at 30 CFR 816.71(i).

(10) At 11 AAC 90.407(e) to provide for a precipitation event no less effective than the requirements of the Federal regulations at 30 CFR 816.84(b)(2) and the use of at lease the 6-hour PMP event for structures meeting the criteria of 30 CFR 77.216(a).

(11) At 11 AAC 90.423(b) to require consultation with Federal and State fish and wildlife agencies prior to making a determination as to whether and under what conditions an operator may continue with mining activities after reporting the presence of a listed endangered or threatened species per the Federal regulation requirements at 30 CFR 816.97(b).

(12) At 11 AAC 90.443(d) allow blending the spoil into the surrounding terrain in non-steep slope areas only, and to require the removal of all vegetative and organic material as a requirement for allowing spoil to be placed on the area outside the mined-out area per the Federal regulation requirements at 30 CFR 816.102(d)(2).

(13) At 11 AAC 90.443(e)(1) to require that spoil in the immediate vicinity of a remining operation be included in the permit area as required at 30 CFR 816.106(b)(1).

(14) At 11 AAC 90.457(c)(3) to require consultation with, and approval by the State forestry and wildlife agencies with regard to the minimum planting and stocking arrangements for areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products postmining land use as required at 30 CFR 816.116(b)(3)(i).

(15) To resubmit standards for revegetation success per the requirements at 30 CFR 816.116(a)(1).

(16) To resubmit policy statements and/or provide proposed regulations for those items addressed in proposed policy statements A through G in a manner no less effective than the Federal regulation requirements.

(17) To resubmit the proposed petition form that requests termination of an unsuitability designation or provide proposed regulations in a manner that is no less effective than the Federal regulation requirements at 30 CFR 764.13(b).

(b) [Reserved.]

[FR Doc. 92–19703 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 904

Arkansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Director of OSM is approving a proposed amendment submitted by the State of Arkansas as a

modification to its permanent regulatory program (hereinafter referred to as the Arkansas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Arkansas regulations pertaining to the definition of "mine plan area" and the use of this term in its regulations; existing structures; the definition of "public road;" the definition of "valid existing rights;" the 2-acre exemption allowance and the use of this term regarding requirements for exploration and mining operations; soil surveys; geological descriptions; cross sections, maps, and plans for underground mining permit applications; prime farmland (soil compaction, estimated yields, and target yields); the definition of "irreparable damage to the environment;" bond liability period (revegetation exemption); bond terms and conditions; bond procedures; bond forfeiture; water rights and replacement; blasting; stabilization of surface areas; backfilling and grading; postmining land use (grazing, requirements for a higher use, and letters of commitment); and prime farmland (surface facilities for underground mining operations). The amendment revises Arkansas' regulations to incorporate the additional flexibility afforded by the Federal regulations and to clarify ambiguities.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1980, the Secretary of the Interior conditionally approved the Arkansas program. Information on the general background, modifications and amendments to the proposed permanent program submission, as well as the Secretary of the Interior's findings, the disposition of comments, and detailed explanation of the conditions of approval of the Arkansas program was published in the November 21, 1980, Federal Register (45 FR 77003). Subsequent actions concerning the Arkansas program and program amendments can be found at 30 CFR 904.12 and 904.15.

II. Submission of Program Amendment

On April 11, 1991, Arkansas, at its own initiative, submitted to OSM a proposed amendment to its approved program (administrative record No. AR–447). Arkansas proposed revisions to the regulations of the Arkansas Surface Coal Mining and Reclamation Code (ASCMRC) in response to (1) Pub. L. 100–34 and (2) the affirmative disapprovals that the Secretary placed on the Arkansas program and codified at 30 CFR 904.10(b).

Pub. L. 100–34 preempted the States provisions that exempted from regulation those exploration and mining operations affecting 2 acres or less. In response to this statute, Arkansas proposed in this amendment to delete the 2-acre exemption at ASCMRC 772 and to delete references to this exemption at ASCMRC 707.12, 770.6(b), 770.6(i) [a) and (c), 810.11, 815, 815.2 (b) and (c), 815.11(c), 815.15 (a) through (d), and (f) through (k), and 1000(d)(7). (Note that Arkansas originally submitted proposed revisions at ARCMRC 770.11 (a) and (c), which OSM published in its proposed rule notice. By telephone conversation on June 11, 1992, Arkansas clarified that this was a typographical error in its amendment and that ASCMRC 770.11 (a) and (c) should be listed as ASCMRC 770.6(i) (a) and (c).)

The Secretary placed the affirmative disapprovals on the Arkansas program and codified them at 30 CFR 904.10(b) in response to a court decision that remanded certain Federal regulations for which Arkansas had proposed corresponding regulations in its original State program submittal. Subsequently, Arkansas also codified in its regulations at ASCMRC Part 1000 these affirmative disapprovals. In this amendment, Arkansas proposed revisions to the following ASCMRC regulations that in turn allow it to delete ASCMRC Part 1000. Arkansas intended that these revisions would allow the Director to remove the remaining affirmative disapprovals for the Arkansas program at 30 CFR 904.10(b).

ASCMRC 701.5, 764.15(a)(7), 770.5, 771.23 (e) (1) and (2), 779.11, 779.12 (a) and (b), 779.15(a), 779.16 (a) and (b)(2), 779.17, 779.18(a), 779.20(a), 779.22 (a) and (c), 779.24 (g) and (k), 779.25 (d) through (h) and (j), 779.27 (a), (b)(5), and (d) (1) and (2), 780.11, 780.14 (b) and (b)(2), 780.16(a)(1), 780.23(b), 780.25 (a) and (b), 780.37(e), 786.14(b)(3), 786.19(c), 788.13(b), 816.13, 816.41(a), 816.51–S(b), 816.52(a) (1) and (2), 816.104 (a), (b), and (b)(3), 828.11(e), 828.12(a), and 1000(d) (1), (9), (12) and (14), the definition of "mine plan area" and the use of this term in its regulations;

ASCMRC 701.11(c)(1) (i) and (ii), and 1000(d)(3), existing structures;

ASCMRC 761.5 and 1000(d)(4), the definition of "public road;"

ASCMRC 761.5 and 1000(d)(5), the definition of "valid existing rights;"

ASCMRC 779.21(a) and 1000(d) (11) and (17), soil surveys;

ASCMRC 779.25 and 1000(d)(18), cross sections, maps, and plans for underground mining permit applications concerning coal seam and overburden descriptions, location of existing and previously mined area, and location of waste disposal and impoundments;

ASCMRC 783.14 (a) through (d) and 1000(d)(15), geological descriptions;

ASCMRC 785.17(a) (1) through (4), 785.17(b) (3) and (8), and 823.14(c), and 1000(d) (20), (21), (22), and (49), prime farmland (soil compaction, estimated yields, and target yields);

ASCMRC 786.5(b) and 1000(d)(23), the definition of "irreparable damage to the environment;"

ASCMRC 805.13(d) and 1000(d)(24), bond liability period (revegetation exemption);

ASCMRC 806.12 (e)(6)(iii) and (g)(7)(iii) and 1000(d) (25) and (26), bond terms and conditions;

ASCMRC 808.12(c) and 1000(d) (27) and (28), bond procedures;

ASCMRC 808.14 (a) and (b) and 1000(d)(29), bond forfeiture;

ASCMRC 816.54 and 1000(d)(37), water rights and replacement;

ASCMRC 816.65(f) and 1000(d) (38) and (39), blasting;

ASCMRC 816.95 (a) and (b), 816.106, 780.16(b)(3), 785.16(a), 816.439(e), 816.107, 826.12(b), 827.12(m), and 1000(d)(40), stabilization of surface areas;

ASCMRC 816.101(b)(1), 816.102 (a) and (g), 816.103, and 1000(d) (41) and (42), backfilling and grading;

ASCMRC 816.115, 816.133(c), and 1000(d) (43), (45), and (46), postmining land use (grazing, requirements for a higher use, and letters of commitment); and

ASCMRC 823.1 and 1000(d)(48), prime farmland (surface facilities for underground mining operations).

OSM announced receipt of the proposed amendment in a notice in the May 2, 1991, publication of the Federal Register (56 FR 20165; administative record No. AR–459). In this notice, OSM opened a public comment period and provided an opportunity for a public hearing on the substantive adequacy of the revisions to the proposed amendment. The public comment period closed on June 3, 1991.

On September 25, 1991, Arkansas, again at its own initiative, submitted to OSM proposed revisions to ASCMRC 816.103 regarding backfilling and grading (administrative record No. AR–463). The revisions to ASCMRC 816.103 (a) and (b) proposed on September 25, 1991, included those submitted by Arkansas on April 11, 1991.

OSM announced receipt of the proposed amendment in a notice in the October 10, 1991, publication of the Federal Register (56 FR 51188; administrative record No. AR–475). In this notice, OSM opened a public comment period and provided an opportunity for a public hearing on the substantive adequacy of the revisions to the proposed amendment. The public comment period closed on November 12, 1991.

During its review of the proposed amendment, OSM identified concerns relating to Arkansas' proposed revisions at ASCMRC 816.103 (a) and (b). OSM notified Arkansas of the concerns by letter dated November 18, 1991 (administrative record No. AR–479). In response to OSM's letter, Arkansas revised proposed ASCMRC 816.103 (a) and (b) and resubmitted them to OSM by letter dated November 22, 1991 (administrative record No. AR–478).

OSM announced receipt of the revised amendment in a notice in the December 13, 1991, Federal Register (56 FR 65030; administrative record No. AR–485. In this notice, OSM reopened the public comment period. The reopened public comment period closed on December 30, 1991.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions as discussed below, that the proposed revisions as submitted by Arkansas on April 11 and September 25, 1991, and as revised by it on November 22, 1991, are consistent with the Federal regulations, as modified by court decisions.

1. Revisions to Arkansas' Regulations That the Director Approves

a. Revisions to Arkansas' Regulations That Were Made in Response to 30 CFR 904.10(b)

Arkansas proposed revisions to the regulations discussed below in order to modify, remove, or suspend language affirmatively disapproved by the Secretary at 30 CFR 904.10(b). The affirmative disapprovals were codified by Arkansas in ASCMRC 1000(d) of its program. Arkansas also proposes to remove these affirmative disapprovals. The proposed revisions are based on the language of corresponding Federal regulations (listed in brackets) that have been revised in accordance with court order after the affirmative disapprovals were placed on the Arkansas program. The affirmative disapprovals codified at 30 CFR 904.10(b) and ASCMRC 1000(d) (also listed in brackets), which are associated with the proposed revisions, are discussed in finding No. 3(a) below.

Arkansas proposed to delete the definition of "mine plan area" at ASCMRC 701.5, and to either substitute the term "permit area" for the term "mine plan area" or delete reference to the "mine plan area" at ASCMRC 764.15(a)(7), 770.5, 771.23(e)(1), 779.11, 779.12(b), 779.15(a), 779.16 (a) and (b)(2), 779.18(a), 779.20(a), 779.22 (a) and (c), 779.24 (g) and (k), 779.25 (d) through (h) and (j), 779.27 (a), (b)(5), and (d) (1) and (2), 780.11, 780.14 (b) and (b)(2), 780.23(b), 780.25 (a) and (b), 780.37(e), 786.14(b)(3), 786.19(c), 788.13(b), 816.13, 816.41(a), 816.51–S(b), 816.52(a) (1) and (2), 816.104 (a), (b), and (b)(3), 828.11(e), and 828.12(a) [30 CFR 701.5, 764.15(a)(6), 777.14(a), 779.11, 779.12(b), 780.21(b) (1) and (2), 780.21(e), 779.18(a), 780.16(a)(2), 779.22 (a) and (c), 779.24 (g) and (k), 779.25(a) (4) through (8), and (10), 785.17(b)(3) (i) and (ii), 780.11, 780.14(b)(2), 780.23(b), 780.25 (a) and (b), 780.37(a), 773.13(c)(2)(iii), 773.15(c)(5), 774.15(a), 816.13, 816.41 (a) and (c), 816.104, 828.11(e), and 828.12(a); corresponding affirmative disapprovals at 30 CFR 904.10(b)(1) and ASCMRC 1000(d) (1), (9), (12), and (14)]. (Note that ASCMRC 779.24(i) also uses the term "mine plan area;" however, this regulation was not revised by Arkansas. To correct this inadvertent omission, OSM requests that upon promulgation of this amendment Arkansas revise ASCMRC 779.24(i) to replace "mine plan area" with "permit area.")

During its review of these proposed revisions, OSM found that many provisions in ASCMRC Parts 779 and 783 (§§ 779.13, 779.14, 779.15, 779.16, 779.17, 779.20, 783.13, 783.14, 783.15, 783.16, 783.16, 783.17, and 783.20) are substantively identical to regulations adopted by OSM in 1979.

In 1983, OSM replaced these 1979 regulations with the current Federal regulations at 30 CFR Parts 780 and 784 (48 FR 43956, Septembr 26, 1983). Arkansas in turn adopted counterpart provisions at ASCMRC 780.16, 780.21, 784.14, and 784.21 that are substantively identical to OSM's current Federal regulations.

Thus, Arkansas' regulations at ASCMRC 779.13, 779.15, 779.16, 779.17, 779.20, 783.13, 783.15, 783.16, 783.17, and 783.20 are duplicative of Arkansas' regulations at ASCMRC 780.16, 780.21, 784.14, and 784.21. Therefore, in effect, the earlier State regulations in the cited sections of ASCMRC Parts 779 and 783 have been superseded by the current State regulations at ASCMRC 780.16, 780.21, 784.14, and 784.21.

At 30 CFR 904.10(b), OSM affirmatively disapproved several of the State's superseded regulations (ASCMRC 779.12, 779.15, 779.16, 779.17, and 779.20). Since Arkansas has already replaced the affirmatively disapproved provisions with provisions that are no less effective than their Federal counterparts, OSM is removing the affirmative disapprovals from those provisions in this rulemaking.

However, OSM recommends that Arkansas revise its program to delete unnecessary and potentially confusing repetition of regulatory language. If Arkansas' superseded regulations preclude the implementation of the current regulations, Arkansas must remove the superseded regulations. Removal of superseded provisions that do not preclude implementation of current regulations is a matter left to Arkansas' discretion.

Arkansas proposed to make mandatory, after the appropriate findings are made, the exemption for existing structures at ASCMRC 701.11(c)(1) (i) and (ii) [30 CFR 701.11(c)(1) (i) and (ii); corresponding affirmative disapprovals at 30 CFR 904.10(b)(2) and ASCMRC 1000(d)(3)].

Arkansas proposed to replace the definition of "public road" at ASCMRC 761.5 with language substantively identical to the Federal definition of "public road" [30 CFR 761.5; corresponding affirmative disapprovals at 30 CFR 904.10(b)(3) and ASCMRC 1000(d)(4)].

Arkansas proposed an editorial note at ASCMRC 761.5 suspending paragraph (a)(2)(i) of the definition of "valid existing rights" "insofar as the 'all permits test' in defining 'valid existing rights' does not allow an operator to establish good faith efforts to obtain all permits prior to August 31, 1977 and thereby qualify for a valid prior existing right" [30 CFR 761.5; corresponding affirmative disapprovals at 30 CFR 904.10(b)(4) and ASCMRC 1000(d)(5)].

Arkansas proposed to require at ASCMRC 779.21(a) soil surveys only for land which may be prime farmland as identified by the investigation carried out under ASCMRC 779.27 [30 CFR 785.17(b)(3); corresponding affirmative disapprovals at 30 CFR 904.10(b)(8) and ASCMRC 1000(d)(11) and (17)].

Arkansas proposed an editorial note at ASCMRC 779.25 suspending paragraphs (c), (h), and (i) to the extent that the cross sections, maps, and plans for coal seam and overburden descriptions, location of previously mined areas, and location of existing waste disposal areas and impoundments apply to underground mining permit applications [30 CFR 779.25(a) (3), (8), and (9); corresponding affirmative disapprovals at 30 CFR 904.10(b)(10) and ASCMRC 1000(d)(18)].

Arkansas proposed to replace existing requirements for the geological

description at ASCMRC 783.14(a) through (d) with language substantively identical to the Federal regulations [30 CFR 780.22(a) through (d); corresponding affirmative disapprovals at 30 CFR 904.10(b)(9) and ASCMRC 1000(d)(15)].

Arkansas proposed to replace existing requirements for prime farmland historically used as cropland at ASCMRC 785.17(a)(1) through (4) with language substantively identical to the Federal regulations [30 CFR 785.17(a); corresponding affirmative disapprovals at 30 CFR 904.10(b)(11), and ASCMRC 1000(d)(20)]. (Note that ASCMRC 785.17(a)(4)(iii) includes a typographical error. The first sentence of this subsection refers to "non-contiguous" parcels; the phrase should be "non-continuous.") Arkansas proposed to delete the standard for determining "moist bulk density" at ASCMRC 785.17(b)(3) and 823.14(c) and require the operator to demonstrate that excessive compaction will be avoided in the replacement of prime farmland soils [30 CFR 785.17(c)(3) and 823.14(c) and (d); corresponding affirmative disapprovals at 30 CFR 904.10(12), and ASCMRC 1000(d)(21) and (49)].

Arkansas proposed to require at ASCMRC 785.17(b)(8) that prime farmland reclamation target yields be based on estimated yields under a level of management equivalent to (rather than higher than) that used on prime farmlands in the surrounding area [30 CFR 785.17(c)(3) and (e)(3), and 823.15(b)(4); corresponding affirmative disapprovals at 30 CFR 904.10(13), and ASCMRC 1000(d)(22)].

Arkansas proposed to revise the definition of "irreparable damage to the environment" at ASCMRC 786.5(b) to be substantively identical to the Federal definition [30 CFR 701.5; corresponding affirmative disapprovals at 30 CFR 904.10(b)(14) and ASCMRC 1000(d)(23)].

Arkansas proposed to delete at ASCMRC 805.13(d) the exemption from revegetation requirements at ASCMRC Part 816 [30 CFR 800.13; corresponding affirmative disapprovals at 30 CFR 904.10(b)(15) and ASCMRC 1000(d)(24)].

Arkansas proposed to delete the requirement at ASCMRC 806.12(e)(6)(iii) and (g)(7)(iii) that a permittee, upon the insolvency of a surety, discontinue operations until a new bond is approved, and inserted language allowing a grace period for obtaining new bond coverage that is substantively identical to the Federal regulations [30 CFR 800.16(e)(2); corresponding affirmative disapprovals at 30 CFR 904.10(b)(16) and ASCMRC 1000(d)(25) and (26)].

Arkansas proposed to delete language at ASCMRC 808.12(c) that limited bond liability to the protection of the hydrologic balance [30 CFR 800.50(c); corresponding affirmative disapprovals at 30 CFR 904.10(b)(17) and ASCMRC 1000(d)(27) and (28)].

Arkansas proposed to revise ASCMRC 808.14(a) and (b) to require that the regulatory authority forfeit and keep only the amount of bond necessary to complete reclamation [30 CFR 800.60(d)(2); corresponding affirmative disapprovals at 30 CFR 904.10(b)(18) and ASCMRC 1000(d)(29)].

Arkansas proposed to revise ASCMRC 816.54 so that the requirement to replace water supplies applies only to surface coal mining activities and not underground mining activities [30 CFR 816.41(h); corresponding affirmative disapprovals at 30 CFR 904.10(b)(37) and ASCMRC 1000(d)(37)].

Arkansas proposed to delete at ASCMRC 816.65(f) the absolute restriction of blasting within 300 feet of certain buildings and facilities [30 CFR 816.61(d)(1); corresponding affirmative disapprovals at 30 CFR 904.10(b)(25) and ASCMRC 1000(d)(38)].

Arkansas proposed to (1) delete the existing requirements regarding air resources protection and rills and gullies at ASCMRC 816.95 and 816.106 and replace them with requirements at ASCMRC 816.95(a) and (b) regarding stabilization of surface areas that are substantively identical to the Federal regulations, and (2) revise the following Arkansas regulations to correct the citation reference from "Sections 816.101 through 816.106" to "Sections 816.101 through 816.105:" 780.18(b)(3), 785.16(a), 816.43(e), 816.107, 826.12(b), 827.12(m) [816.95(a) and (b), 780.18(b)(3), 785.16(a), 816.43(a)(3) and (c), 816.106(a), 816.107(a), and 827.12(1); corresponding affirmative disapprovals at 30 CFR 904.10(b)(27) and ASCMRC 1000(d)(40)].

Arkansas proposed to (1) add a regulation for underground mining activities at ASCMRC 816.102(g) allowing flexibility on previously mined lands for backfilling and grading to approximate original contour that is substantively identical to the Federal regulations, and (2) revise ASCMRC 816.101(b)(1) and 816.102(a) to include a reference to the new regulation at ASCMRC 816.102(g) [30 CFR 817.102(1)(1) and (2); corresponding affirmative disapprovals at 30 CFR 904.10(b)(38), and ASCMRC 1000(d)(41)]

Arkansas proposed to revise ASCMRC 816.103 to allow for adequate cover or treatment of exposed coal seams, acid- and toxic-forming materials, and combustible materials exposed, used, or produced during mining [30 CFR 816.102(f) and 817.102(f); corresponding affirmative disapprovals at 30 CFR 904.10(b)(28) and ASCMRC 1000(d)(42)].

In revising ASCMRC 816.103, Arkansas referenced several regulations that correspond to 30 CFR 816.41 and 817.41. Arkansas referenced the appropriate regulations; however, many of these provisions need to be revised to be consistent with the regulatory changes made by OSM to 30 CFR 816.41 and 817.41 on September 28, 1983 (48 FR 43990). Because these referenced rules are not part of this amendment, OSM will address these issues at a future date.

Arkansas proposed to delete the requirement at ASCMRC 816.115, which requires an operator who proposes range or pasture as the postmining land use to actually use the land for grazing during the last 2 years of the bond liability period, that is consistent with the deletion of this requirement from the Federal regulations (48 FR 40140, 40148; September 2, 1983) [30 CFR 816.116(b)(1); corresponding affirmative disapprovals at 30 CFR 904.10(b)(29) and ASCMRC 1000(d)(43)].

Arkansas proposed to delete its existing criteria for approval of alternative postmining land uses at ASCMRC 816.133(c) and replace it with criteria that are substantively identical to those in the Federal regulations [30 CFR 816.133(c); corresponding affirmative disapprovals at 30 CFR 904.10(b)(33) and ASCMRC 1000(d)(46)].

Arkansas proposed an editorial note at ASCMRC 823.1 suspending the requirements in ASCMRC Part 823 insofar as they apply to the surface effects of underground mining and do not provide an exemption for surface facilities actively used over extended periods which affect a minimal amount of land [30 CFR 823.11(a); corresponding affirmative disapprovals at 30 CFR 904.10(b)(39) and ASCMRC 1000(d)(48)].

The Director finds that Arkansas' proposed revisions are consistent with the Federal affirmative disapprovals at 30 CFR 904.10(b), and he approves them.

b. Revisions to Arkansas' Regulations That Were Made in Response to 30 CFR 904.12

Arkansas proposed revisions to its regulations discussed below to remove all references to the 2-acre exemption. In its affirmative disapproval at ASCMRC 1000(d)(7), Arkansas had incorporated OSM's disapproval at 30 CFR 904.12(a) of the 2-acre exemption. Arkansas also proposed to delete ASCMRC 1000(d)(7).

As originally enacted, section 528(2) of SMCRA (30 U.S.C. 1278) exempted from the requirements of SMCRA coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100–34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987). Corresponding State regulations ASCMRC Part 772 exempted from the requirements of the State surface mining law those operations that extract coal for commercial purposes and affect 2 acres or less.

On May 1, 1987, Arkansas proposed revisions to ASCMRC Part 772. The Director disapproved the proposed revisions addressing the 2-acre exemption, and he codified this disapproval at 30 CFR 904.12(a) (finding No. 1, 53 FR 9881, 9883, March 28, 1988; administrative record No. AR–340). In this amendment, Arkansas proposed to delete ASCMRC Part 772 from its regulations. It also proposed to delete from ASCMRC 707.12, 770.6(b), 770.6(i)(a) and (c), 810.11, 815, 815.2 (b) and (c), 815.11(c), and 815.15 (a) through (d), and (f) through (k), all references to operations on 2 acres or less. Arkansas' proposal to remove from its regulations the language preempted by Pub. L. 100–34 is consistent with the Director's disapproval at 30 CFR 904.12(a) and will preclude confusion on the part of the public, which may not be aware of the Federal preemption and the Director's disapproval at 30 CFR 904.12(a). Therefore, the Director approves Arkansas' proposed deletions.

Arkansas also proposed to delete ASCMRC 1000(d)(7) regarding the 2-acre exemption at ASCMRC Part 772. The Director finds the proposed deletion of ASCMRC 1000(d)(7) to be consistent with the proposed deletion of ASCMRC Part 772. Therefore, he approves the proposed deletion.

2. Revisions to Arkansas' Regulations That the Director Does Not Approve

a. Revisions to ASCMRC 771.23(e)(2) and 779.12(a)

As discussed in finding No. 1(a), Arkansas proposed to delete the definition of "mine plan area." Consistent with this deletion, Arkansas proposed at ASCMRC 771.23(e)(2) and 779.12(a) to require permit applicants to describe and identify the proposed mining phases for the "permit area" rather than for the "mine plan area." The corresponding Federal regulations at 30 CFR 777.14(b) and 779.12(a) require applicants to provide the same information for the area of the life of the proposed mining operations ("life of operations area").

Because "life of operations area" could comprise an area larger than the "permit area," the Director finds that proposed ASCMRC 771.23(e)(2) and 779.12(a) are less effective than the Federal regulations at 30 CFR 777.14(b) and 779.12(a). The Director does not approve proposed ASCMRC 771.23(e)(2) and 779.12(a) to the extent that they do not require permit applicants to describe the mining phases for the life of mine operations area rather than for the permit area.

b. Revisions to ASCMRC 780.16(a)(1)

Arkansas proposed at ASCMRC 780.16(a)(1) to require permit applicants to include a fish and wildlife protection and enhancement plan for the "permit area" rather than for "mine plan area." However, the language submitted by Arkansas is not representative of that which exists in its approved program at ASCMRC 780.16(a)(1). The existing language at ASCMRC 780.16 was approved by OSM on November 14, 1989 (54 FR 47355), as being no less effective than the corresponding Federal regulation at 30 CFR 780.16. In this regulation, Arkansas already uses the term "permit area." Therefore, the Director does not approve the proposed revisions to ASCMRC 780.16(a)(1).

3. Removal of the Federal Affirmative Disapprovals at 30 CFR 904.10(b) and Approval of Arkansas' Proposed Deletion of the Corresponding Affirmative Disapprovals at ASCMRC 1000(d)

In the **Federal Register** notice announcing the Secretary's approval of Arkansas' original program, the Secretary at 30 CFR 904.10(b) affirmatively disapproved several provisions of Arkansas' program that incorporated, suspended or remanded Federal regulations (45 FR 77015, November 21, 1980). The affirmative disapprovals were based upon an order of the U.S. District Court for the District of Columbia that the Secretary "affirmatively disapprove * * * those segments of a State program that incorporate a suspended or remanded regulation" (In re: Permanent Surface Mining Regulation Litigation, Civil Action 79–1144, May 18, 1980, Mem. Op. at 49).

On August 15, 1980, however, the court partly stayed its May 18, 1980, order and allowed the Secretary to approve State program provisions similar to remanded or suspended Federal regulations when the State adopted such provisions in a rulemaking or legislative proceeding which occurred before the enactment of SMCRA or after the date of the District Court decision (May 18, 1980), since such State rules clearly were not based solely upon the suspended or remanded Federal regulations. In addition, the court stated that the Secretary need not affirmatively disapprove provisions based upon suspended or remanded Federal regulations if a responsible State official requested the Secretary to approve them.

As discussed below, the Director finds, consistent with the court decisions, that the remaining affirmative disapprovals at 30 CFR 904.10(b) are no longer necessary, and he removes them. The Director also approves Arkansas' proposed deletions at ASCMRC 1000(d), which are the State counterparts to the removed Federal affirmative disapprovals.

The Director's decision to remove the Federal affirmative disapprovals at this time is consistent with the court's August 15, 1980, ruling in that (1) Arkansas' regulations are based on revised Federal regulations, not on the remanded 1979 language, and (2) in submitting the amendment, the head of the Arkansas regulatory authority specifically requested approval of the proposed regulations.

a. 30 CFR 904.10(b) (1), (2), (3), (4), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (27), (28), (29), (33), (37), (38), and (39) and ASCMRC 1000 (d) (1), (3), (4), (5), (9), (11), (12), (14), (15), (17), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (37), (38), (40), (41), (42), (43), (46), (48), and (49).

In this amendment, Arkansas proposes revisions to those regulations listed in finding No. 1(a) above. These proposed revisions incorporate corresponding affirmative disapprovals placed on the Arkansas program at 30 CFR 904.10(b). As discussed in findings Nos. 1(a) and 2, the Director finds that the proposed revisions are consistent with the Federal regulations. In accordance with the court's decisions, the Director removes the corresponding affirmative disapprovals at 30 CFR 904.10(b) (1), (2), (3), (4), (8), (9), (10), (11), (12), (13), (14), (15), (16), (17), (18), (27), (28), (29), (33), (37), (38), and (39).

In this amendment, Arkansas also proposes to delete ASCMRC 1000(d) (1), (3), (4), (5), (9), (11), (12), (14), (15), (17), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (37), (38), (40), (41), (42), (43), (46), (48), and (49), which correspond to the Federal affirmative disapprovals at 30 CFR 904.10(b) listed in the preceding sentence. The Director finds Arkansas' proposed deletions of ASCMRC 1000(d) (1), (3), (4), (5), (9), (11), (12), (14), (15), (17), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (37), (38), (40), (41), (42), (43), (46), (48), and (49) to be consistent with his

removal of the associated Federal affirmative disapprovals. Therefore, he approves these proposed deletions. (Note that the proposed deletion of ASCMRC 1000(7) regarding the 2-acre exemption is discussed and approved in finding No. 1(b) above.)

b. ASCMRC 1000 (d) (39) and (45)

By letter dated May 17, 1987 (administrative record No. AR–318), Arkansas submitted to OSM a proposed amendment revising its regulations at ASCMRC 816.83(a) and ASCMRC 816.113(b)(1), pertaining, respectively, to coal processing waste banks and postmining land use. The Director approved these proposed revisions and codified his approval of them at 30 CFR 904.15(d) (53 FR 9881, 9882, March 28, 1988; administrative record No. AR–340). At that time, the Director did not remove the affirmative disapprovals associated with the proposed revisions found at 30 CFR 904.10(b) (26) and (32). He did so in a subsequent decision on Arkansas' December 18, 1989, proposed amendment (finding No. 3, 55 FR 48835, 48836, November 23, 1990; administrative record No. AR–437).

In this amendment, Arkansas proposes to delete ASCMRC 1000(d) (39) and (45), which are the affirmative disapprovals corresponding to 30 CFR 904.10(b) (26) and (32). The Director finds Arkansas' proposed deletion of ASCMRC 1000(d) (39) and (45) to be consistent with his previous removal of the corresponding Federal affirmative disapprovals. Therefore, he approves the proposed deletions.

c. 30 CFR 904.10(b)(30)

By letter dated December 22, 1988 (administrative record No. AR–346), Arkansas submitted to OSM a proposed amendment revising its regulation at ASCMRC 823.11(c), pertaining to crop production on prime farmland, and deleting ASCMRC 1000(d)(50). The Director approved these proposed revisions and codified his approval of them at 30 CFR 904.15(f) (finding No. 2, 54 FR 47353, 47354, November 14, 1989; administrative record No. AR–374). However, at that time, the Director did not remove the corresponding affirmative disapproval at 30 CFR 904.10(b)(30). He is taking the opportunity to do so at this time.

IV. Public and Agency Comments

1. Public Comments

The Director solicited public comments on the proposed amendment and provided opportunity for a public hearing. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments from various Federal and State agencies with an actual or potential interest in the Arkansas program.

By letter dated May 15, 1991, the U.S. Forest Service responded that it had no comments on the proposed amendment (administrative record No. AR–450).

By letters dated May 17 and December 5, 1991, the Bureau of Indian Affairs responded that it had no comments on the proposed amendment (administrative record Nos. AR–452 and AR–481).

By telephone conversations on May 22 and December 19, 1991, the U.S. National Park Service responded that it had no comments on the proposed amendment (administrative record Nos. AR–454 and AR–483).

By letters dated May 22, October 28, and December 16, 1991, the Bureau of Land Management responded that the proposed amendment would not unduly impact its management responsibilities (administrative record No. AR–455, AR–470, and AR–482).

By letter dated May 28, 1991, the Bureau of Mines responded that it had no comments on the proposed amendment (administrative record No. AR–456).

By letters dated May 29 and October 31, 1991, the Army Corps of Engineers responded that it had no comments on the proposed amendment (administrative record Nos. AR–457 and AR–472).

By letters dated October 22, 1991, and January 23, 1992, the U.S. Soil Conservation Service responded that it had no comments and agreed with the amendment as proposed (administrative record Nos. AR–469 and AR–488).

By telephone conversation on January 2, 1992, the U.S. Fish and Wildlife Service responded that it had no comments on the proposed amendment (administrative record No. AR–486).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM solicited concurrence from EPA for those aspects of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act and the Clean Air Act.

None of the changes that Arkansas proposes to its regulations pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence on the proposed amendment (administrative record Nos. AR–435 and AR–464). EPA did not reply.

4. State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), all amendments that may have an effect on historic properties are to be provided to the SHPO and ACHP for comment. OSM solicited comments from these offices.

By letters dated May 21 and October 15, 1991, SHPO responded that it had no objection to the proposed amendment and that the proposed amendment would have no effect on significant cultural resources (administrative records Nos. AR–453 and AR–467).

By letter dated May 15, 1991, ACHP commented that the proposed amendment does not satisfy OSM's responsibilities pursuant to Section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations, 36 CFR Part 800, and that, as written, the amendment could place OSM in jeopardy of being found in violation of section 106 of NHPA (administrative record No. AR–451). By telephone conversation on May 30, 1991, ACHP clarified its concerns (administrative record No. AR–458). First, ACHP said that its concerns were based upon the absence of cultural resources protection requirements in the proposed amendment and its assumption that such necessary requirements were not included elsewhere in the Arkansas program. Second, ACHP asserted that Arkansas' cultural resources regulations should reflect any revisions to the Federal regulations that could result from ongoing litigation of OSM's cultural resources protection regulations.

With respect to ACHP's first concern, the revisions Arkansas proposes in this amendment concern only a portion of the Arkansas program, and none of these revisions concern the protection of cultural resources. For ACHP's information, the Arkansas regulations concerning cultural resources are found at ASCMRC 761.11(c), 761.12(f)(1), 776.12(a)(3)(i), 786.19(e), 779.12(b), and 780.31. The Director notes that, in accordance with 30 CFR 732.17(d), he notified Arkansas on June 9, 1987, of revisions to these regulations that were needed to make them no less effective than the Federal regulations. In response to this notification, Arkansas proposed regulations which the Director approved in the June 1, 1988, **Federal Register** (53 FR 19903, administrative record No. AR–342).

With respect to ACHP's second concern, the litigation of OSM's regulations concerning cultural resources is outside the scope of this rulemaking and is not pertinent to the Director's decision on these proposed revisions to the Arkansas program. If revisions to the Federal cultural resources regulations result from the litigation, the Director would notify Arkansas in accordance with 30 CFR 732.17(d) of any needed revisions to the Arkansas program. For the reasons stated above, the Director does not require Arkansas to revise its amendment in response to ACHP's comments.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions, the amendments submitted to OSM by Arkansas on April 11 and September 25, 1991, and as revised by Arkansas on November 22, 1991.

The Director does not approve (1) ASCMRC 771.23(3)(2) and 779.12(a) to the extent that they do not require permit applicants to describe the mining phases for the life of mine operations rather than for the permit area (finding No. 2(a)) and (2) ASCMRC 780.16(a)(1) pertaining to fish and wildlife information (finding No. 2(b)).

The Director approves (1) the revisions to numerous regulations that Arkansas made in response to the Federal affirmative disapprovals at 30 CFR 904.10(b) and the corresponding State affirmative disapprovals at ASCMRC 1000(d); (2) the deletion of the 2-acre exemption and revision of related regulations in response to the Director's disapproval at 30 CFR 904.12(a) and the State affirmative disapproval at ASCMRC 1000(d)(7) (finding No. 2(b)); and (3) the removal of the outstanding State affirmative disapprovals (finding Nos. 3(a) and (b)). In conjunction with these approvals, the Director removes the outstanding Federal affirmative disapprovals at 30 CFR 904.10(b).

The Director approves the proposed regulations with the provision that they be fully promulgated, with the exceptions noted above, in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 904 codifying decisions concerning the Arkansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the Arkansas program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Arkansas of only such provisions.

VI. Procedural Requirements

1. Compliance with the National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact of a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 504 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 904.10 is revised to read as follows:

§ 904.10 State regulatory program approval.

The Arkansas permanent program submitted February 18, 1980, as amended May 29, 1980, July 2, 1980 (with clarifications submitted July 29, August 8, August 14, and August 29, 1980), and as further amended September 2, 1980, January 19, 1981, and March 12, 1981, is approved effective January 22, 1982. Copies of the approved program, as amended, are available at:

(a) Arkansas Department of Pollution Control and Ecology, Mining Reclamation Division, 8001 National Drive, Little Rock, Arkansas 72209, telephone (501) 562–7444.

(b) Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 E. Skelly Drive, suite 550, Tulsa, Oklahoma 74135, telephone (918) 581–6430.

3. Section 904.15 is amended by adding paragraph (k) as follows:

§ 904.15 Approval of amendments to State regulatory program.

* * * * *

(k) With the exceptions of ASCMRC 771.23(e)(2) and 779.12(a), to the extent that they do not require permit applicants to describe the mining phases for the life of mine operations area rather than for the permit area, and ASCMRC 780.16(a)(1), pertaining to fish and wildlife information, the revisions to Arkansas' surface coal mining regulations as submitted to OSM on April 11 and September 25, 1991, and as revised by Arkansas on November 22, 1991, are approved effective August 19, 1992. Revisions to the following regulations are approved:

ASCMRC 701.5, 764.15(a)(7), 770.5, 771.23(e)(1) and (2), 779.11, 779.12(a) and (b), 779.15(a), 779.16(a) and (b)(2), 779.17, 779.18(a), 779.20(a), 779.22(a) and (c), 779.24(g) and (k), 779.25(d) through (h) and (j), 779.27(a), (b)(5), and (d)(1) and (2), 780.11, 780.14(b) and (b)(2), 780.23(b), 780.25(a) and (b), 780.37(e), 786.14(b)(3), 786.19(c), 788.13(b), 816.13, 816.41(a), 816.51–S(b), 816.52(a)(1) and (2), 816.104(a), (b), and (b)(3), 828.11(e), and 828.12(a), the definition of "mine plan area" and the use of this term in its regulations;

701.11(c)(1(i) and (ii), existing structures;

761.5, the definition of "public road;"

761.5, the definition of "valid existing rights;"

772, 707.12, 770.6(b), 770.6(i)(a) and (c), 810.11, 815, 815.2(b) and (c), 815.11(c), and 815.15(a) through (d), and (f) through (k), the 2-acre exemption allowance and the use of this term regarding requirements for exploration and mining operations;

779.21(a), soil surveys;

779.25, cross sections, maps, and plans for underground mining permit applications;

783.14(a) through (d), geological descriptions;

785.17(a)(1) through (4), 785.17(b)(3) and (8), and 823.14(c), prime farmland (soil compaction, estimated yields, and target yields);

786.5(b), the definition of "irreparable damage to the environment;"

805.13(d), bond liability period (revegetation exemption);

806.12(e)(6)(iii) and (g)(7)(iii), bond terms and conditions;

808.12(c), bond procedures;

808.14(a) and (b), bond forfeiture;

816.54, water rights and replacement;

816.65(f), blasting;

816.95(a) and (b), and 816.106, 780.18(b)(3), 785.16(a), 816.43(e), 816.107, 826.12(b), and 827.12(m), stabilization of surface areas;

816.101(b)(1), 816.102(a) and (g), and 816.103, backfilling and grading;

816.115, and 816.133(c), postmining land use (grazing, requirements for a higher use, and letters of commitment); and 823.1, prime farmland (surface facilities for underground mining operations);

and the deletion of ASCMRC 1000(d)(1), (3), (4), (5), (7), (9), (11), (12), (14), (15), (17), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), (29), (37), (38), (39), (40), (41), (42), (43), (45), (46), (48), and (49), affirmative disapprovals.

[FR Doc. 92–19704 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 916

Kansas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the Kansas permanent regulatory program (the Kansas program), as administered by the Kansas Department of Health and Environment, Division of Environment, Surface Mining Section (SMS), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to a revegetation guidelines document entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success," and data supporting proposed exemptions from the proposed guidelines. The amendment is intended to revise the Kansas program to be consistent with SMCRA and the Federal regulations and to correct minor editorial and typographical errors.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, Director, Kansas City Field Office; telephone (816) 374–6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Kansas Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Kansas program. General background information on the Kansas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Kansas program can be found in the January 21, 1981, **Federal Register** (46 FR 5892). Subsequent actions concerning the Kansas program and program amendments can be found at 30 CFR 916.12, 916.15, and 916.16.

II. Submission of Amendment

On June 3, 1991 (Administrative Record No. KS–505), Kansas submitted a proposed amendment to its program pursuant to SMCRA. Kansas submitted the proposed amendment in response to an OSM rulemaking action on February 19, 1991 (56 FR 6559). That rulemaking action approved, with certain exceptions, the Kansas program's revegetation guidelines, entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success," as submitted on June 8, 1990 (Administrative Record No. KS–468) (hereinafter, "the earlier version"). The June 3, 1991, amendment is intended to correct the deficiencies identified in the earlier version of the guidelines.

The proposed amendment consists of three letters (all dated June 3, 1991): (1) A letter transmitting a new, revised version of the guidelines ("Version 3," dated "June 1991"), hereinafter the "revised guidelines;" (2) a letter providing narrative in support of the Preface to the revised guidelines, hereinafter the "Preface letter;" and (3) a letter providing data and narrative to support proposed exceptions from the requirement for the use of dry weights for determining sample adequacy, hereinafter the "green weight letter." The proposal is intended to establish the standards and methods for determination of revegetation success prior to Phase II and Phase III bond release, as required by the Federal regulations at 30 CFR 816.116(a) and 817.116(a).

OSM published a notice in the June 14, 1991, **Federal Register** (56 FR 27473) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (Administrative Record No. KS–511). The public comment period ended July 15, 1991.

During its review of the amendment, OSM identified some concerns related to the technical adequacy of the proposed guidelines and the proposed exemptions. OSM notified Kansas of the concerns by letter dated September 4, 1991 (Administrative Record No. KS–512). Kansas chose not to submit any

further revisions or information in response to OSM's letter.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Kansas on June 3, 1991.

1. Parts of Guidelines Not Discussed

As noted above, an earlier version of the guidelines was approved, with certain exceptions, in a February 19, 1991, rulemaking action (56 FR 6559). Kansas has proposed some nonsubstantive revisions to the earlier version to correct editorial errors and improve clarity; the Director finds these revisions do not substantively alter the approved Kansas guidelines. Substantive changes to the guidelines are discussed in the finding below. Except as noted in the subsequent findings, the Director finds the revised guidelines to be substantively the same as the earlier version and consistent with the Federal regulations, and is therefore approving the proposed revision.

2. Preface

Kansas proposes revisions to the Preface that delete the term "grandfather" and remove one permit from the list of permits exempted from possible revision to incorporate the requirements of the revised guidelines. In the "Preface letter," Kansas also clarified that its intent in including these exemptions in the Preface was not to circumvent the State's responsibility to require reasonable revision; further, Kansas believes that the revegetation plans (programs) approved in the specified permits meet the full intent of the Kansas program and SMCRA.

In pertinent part, the revised Preface reads:

> The crop of wheat will be allowed to prove Phase III revegetation requirements as stipulated in the approved cropland test plot programs. Additionally the following specific permit conditions will be valid for bond releases as stipulated: [conditions of two permits listed].

Despite Kansas' stated intention, this provision would continue to exempt certain permits from possible revisions to reflect the success standards and sampling techniques in the revised guidelines.

As noted in the February 19, 1991, rulemaking (56 FR 6559, 6560), the Federal regulations at 30 CFR 774.11(b) provide authority for the regulatory authority, at midterm review or at any other time, to require reasonable permit revisions to ensure compliance with the regulatory program; the counterpart Kansas regulation is at Kansas Administrative Regulations (KAR) 47–6–1. OSM in that rulemaking found that by proposing to exempt, in part, certain permits from the success standards and sampling criteria and methodologies required by the guidelines, the State would give up its authority to require reasonable revision of the permits to bring them into compliance with the proposed revegetation guidelines, and that this was in direct conflict with the above-referenced Federal and State regulations. For this reason the preface of the earlier version was not approved to the extent that the State had given up its authority to require reasonable revision of the permits.

OSM recognizes the need for a transition in incorporating new revegetation requirements into existing permits. In particular, OSM recognizes that existing revegetation data, which meet the revegetation success requirements in effect at the time the data was collected, should not be excluded from consideration in meeting bond release standards. It was for this reason that OSM, in the February 19, 1991, rulemaking (56 FR 6559, 6560), specifically approved the portion of the Preface discussing previously collected vegetation data. But the question of whether to incorporate new requirements to apply to any subsequently collected revegetation success data in these existing permits is a question of whether it would be reasonable to require specific revisions to those existing permits. OSM considers such a determination to be a permitting decision and not an appropriate topic for a program amendment.

Since the revised Preface continues to exempt certain permits from possible revision, the Director finds that it remains less effective than both the Federal and the State regulations cited above, and is not approving the revised Preface to the extent that the State has given up its authority to require reasonable revision of permits.

It should be noted, however, that OSM is not asserting that these permits must be revised to incorporate the revised guidelines; OSM is only finding that that decision should be a permitting decision made at the appropriate time, not a program decision to be made in advance by either SMS or OSM.

3. Green Weight vs. Dry Weight in Determining Sample Adequacy

a. Proposals in "Green Weight Letter" To Allow the Use of Green Weights

In the "Green Weight Letter" (Administrative Record No. KS–505), Kansas has submitted a proposal to allow the use of green (wet) weights for sample adequacy determinations in some specific circumstances; the letter also contains data to support this proposal. The proposal would exempt production measurements, in some specific circumstances, from the requirements in the revised portions of the guidelines (addressed in Finding No. 3(b) below) for the use of dry weights in determining sample adequacy.

Sample adequacy is the method utilized by the guidelines to implement the requirement (KAR 47–9–1(c)(42), 47–9–1(d)(39)) that sampling tecniques for measuring revegetation success use a 90-percent statistical confidence level. The sample adequacy formula determines the number of samples that must be taken to attain a 90-percent statistical confidence interval.

The particular circumstances for which Kansas proposes to allow the use of green weights are: (1) Pastureland forage production, where the species composition falls within certain limits: and (2) cropland forage production, where the species composition falls within certain limits (note that due to mathematical or editorial errors, species composition would have to be exactly 50-percent Fescue and 50-percent Perennial Ryegrass to be exempt). Kansas also proposes that the sample adequacy for production of wheat and grain sorghum be calculated from green weights.

The data submitted in support of this proposal represent 32 crop or forage production measurements, and compare the number of samples required to achieve sample adequacy based on green weights with the number required based on dry weights for each of the 32 measurements.

The data include: Eight wheat production measurements (all data from 1988); five grain sorghum production measurements (four in 1988; one in 1989); nine pasture forage production measurements (distributed from 1986 to 1989), most with species composition within the proposed limits of species composition; and seven cropland forage production measurements, most from 1988, with (due to the error in establishing the limits, as noted above) none within the proposed limits of species composition.

In each case, the number of samples required to achieve sample adequacy for green weights is equal to or greater than the number of samples required for dry weights. Under the sample adequacy formula, this means that the use of green weights would result in attaining the 90-percent statistical confidence level that would be attained by use of the dry weights, or an even greater statistical confidence. Thus, the data as presented do provide support for Kansas' proposal to allow the use of green weights in calculating sample adequacy in the proposed circumstances.

However, Kansas has submitted no information to document the source of the data or the methods under which it was collected (including the methods used to determine green and dry weights of forage samples). In particular, since the data do not appear to have come from a study specifically designed to compare the statistical effectiveness of green weights versus dry weights, it is not clear whether this data is all of the data available, or if other data might exist which would not support the proposal. Without some documentation on the source and collection methodology of the data, OSM has no means to evaluate the accuracy and reliability of the data or its value in verifying the validity of using green weights for sample adequacy determinations. In its letter of September 4, 1991 (Administrative Record No. KS–512), in which OSM identified its concerns about the technical adequacy of the proposed amendment, OSM notified Kansas of the need for documentation on the source and collection methodology of the data. Kansas chose not to submit any documentation in response to this notification.

Since, as noted in the February 19, 1991, rulemaking (56 FR 6559, 6560), the scientific literature does not support the use of green weights for sample adequacy, OSM must have substantial support in order to approve such a proposal. OSM has determined that, without supporting documentation, it cannot accept the data to justify the use of green weights. As OSM noted in the preamble to the rulemaking which relaxed the provisions for State submission of alternatives approaches, "* * * it remains the responsibility of the State seeking approval of an alternative to establish the necessary record" (46 FR 53376, 53377; October 28, 1981).

Thus the Director finds that the proposals in the "green weight letter" to allow the use of green weights, and hence exempt some production measurements from the requirements of the revised guidelines for use of dry weights, to determine sample adequacy, are not consistent with the Federal requirements at 30 CFR 816/817.116(a)(2), and is not approving these proposals. Should Kansas in the future submit documentation on the source and collection methodology of the data as requested by OSM, the Director will then reconsider approval of the use of green weights in determining sample adequacy.

b. Revised Guidelines Regarding Green Weight vs. Dry Weight

i. *Forage and soybeans.* In the earlier version of the guidelines, Kansas proposed to calculate statistical sample adequacy for production determinations on the basis of the green weight of the forage or row crop samples. OSM found that the use of green weights in determining statistical sample adequacy was not consistent with the Federal requirements at 30 CFR 816.116(a)(2) and 817.116(a)(2), and did not approve the use of green weights in determining statistical sample adequacy (February 19, 1991; 56 FR 6559, 6560).

Kansas is now proposing revisions to the guidelines regarding the demonstration of statistical sample adequacy. As noted earlier, the guidelines utilize a sample adequacy formula to ensure that the 90-percent statistical confidence interval is attained. In this amendment, Kansas is proposing revisions to several sections of the guidelines to add a new requirement for a determination of statistical sample adequacy based on dry weights of samples or, in the case of soybean crops, on the basis of sample weights corrected to a standard moisture content.

The revisions would apply to pasture and grazing land forage production, prime farmland soybean production, prime farmland forage production, cropland soybean production, and cropland forage production. These revisions are located at the following sections (page numbers refer to the proposed "Version 3"): II.C. (pp 13–15); IV.E. (pp 54–57); IV.H. (pp 66–68); V.E. (pp 95–97); and V.H. (pp 107–109) (Administrative Record No. KS–505).

For the reasons explained in detail in the preamble to the February 19, 1991, rulemaking (56 FR 6559, 6560), OSM has determined that the use of dry weights for determining the number of samples sufficient to reach the 90-percent confidence interval is consistent with the Federal regulation requirements at 30 CFR 816/817.116(a)(2). The proposed revisions to the sample adequacy determinations for forage would require the use of sample dry weights.

For soybean production measurements, the proposed revisions would require the use of sample weights corrected to a standard moisture content (13-percent) (hereinafter, "corrected weights"). This has the same effect as determining sample adequacy based on sample dry weights after those dry weights are "coded" by multiplying each sample dry weight by a constant factor. In the formula that the guidelines require to be used for the calculation of sample adequacy, coding by a constant factor would result in multiplying both the numerator and the denominator by the same amount, resulting in the same number of samples as would be required for dry weights. Thus the use of corrected weights is equivalent to the use of dry weights for this purpose. See J.H. Zar, *Biostatistical Analysis* (1974), pages 25–26 and 38, on the effects of "coding" statistical data.

In summary, for forage (on both pasture/grazing lands and cropland) and for soybeans, the guidelines have been revised to require the use of dry weights (or equivalent) for the determination of sample adequacy. For the reasons discussed in the preamble to the February 19, 1991, rulemaking (56 FR 6559, 6560), OSM has determined that these requirements are consistent with the Federal requirements at 30 CFR 816/817.116(a)(2). Therefore, the Director is approving these revisions.

ii. *Wheat and grain sorghum.* No revisions were proposed to the sections of the guidelines identifying the requirements for the determination of sample adequacy for the crops of wheat and grain sorghum. At sections IV.E. (pp 47–51) and V.E. (pp 87–92) (Administrative Record KS–505), green weights are to be used to calculate sample adequacy.

As noted in the February 19, 1991, rulemaking, the use of green weights for the demonstration of sample adequacy is not consistent with the Federal requirements for statistical confidence at 30 CFR 816/817.116(a)(2). For the reasons detailed in the preamble to that rulemaking, the Director finds that these sections of the revised guidelines are less effective than the Federal requirements in ensuring a 90-percent statistical confidence level. Therefore, the Director is not approving the revised guidelines, at sections IV.E. (pp 47–51 and V.E. (pp 87–92), to the extent that they allow sample adequacy to be determined, for wheat and grain sorghum production, on the basis of green weights. Should Kansas in the future submit documentation on the source and collection methodology of the data as requested by OSM (see Finding No. 3(a) above), the Director will then reconsider approval of these parts of the guidelines.

4. Use of Representative Forage Samples

Kansas is proposing revisions to the guidelines that would delete the provisions for the determination of dry weight and percent moisture content of forage based on representative subsamples of visually estimated stratified samples. Instead, the proposed revisions would require the entirety of each forage sample to be oven dried, and sample adequacy would be calculated from the sample dry weights. The dry weights would be corrected to a standard moisture before calculating the total production of the stratified sample area. These revisions are located at the following sections (page numbers from the revised "Version 3"): II.C. (pp 13–14), IV.H. (pp 65–66), and V.H. (pp 106–107) (Administrative Record No. KS–505).

In the earlier version of the guidelines, Kansas proposed to use visually estimated representative subsamples for these determinations. OSM found this to be inconsistent with the Federal requirements for statistical confidence at the 90-percent level, because visual estimates are subject to bias and the "representative" subsamples would constitute an unweighted sampling. Therefore, the proposal was not approved.

The Director now finds that the proposed revisions, by requiring the use of dry weights in determining sample adequacy, establish statistical methodologies consistent with the Federal requirements at 30 CFR 816/817.116(a)(2), and is approving these proposed revisions.

5. Blank Areas in Sampling of Prime Farmland and Cropland

Kansas is proposing revisions that delete the provisions, in certain sections of the earlier version of guidelines, to exclude blank areas from sampling. Blank areas are areas that were seeded to row crops but, for unspecified reasons, were subject to crop failure and are devoid of vegetation. The proposed revisions would allow the exclusion from sampling only of those areas that were not planted to crops (e.g., grassed waterways, roads); thus "blank areas" would not be excluded from sampling. These revisions are located in sections IV.E. (page 57) and V.E. (page 98).

In the earlier version, Kansas has proposed at sections IV.E. and V.E. in the subsections entitled "Special Problems in Row Crop Sampling," that when random coordinates for sample plots fall on blank areas, those sample plot locations would not be used. OSM found that this proposal (to not use random coordinates that fall on blank areas) would negate the statistical validity of the use of random coordinates. By not sampling at coordinates that fall on blank areas, the sampling technique would no longer be random, but rather would be selective. Because blank areas represent actual field conditions, on both mined and unmined land, they must be subject to random sampling. Therefore, the proposal was not approved.

OSM has determined that the currently proposed revisions would require all planted areas to be subject to random sampling, and thus establish a statistical sampling methodology consistent with the requirements of 30 CFR 816/817.116(a)(2). The Director therefore finds these revisions to be consistent with the Federal requirements, and is approving the proposed revisions.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No public hearing was held because no one requested an opportunity to provide testimony. One public comment response was received and is addressed below.

The Pittsburg & Midway Coal Mining Company (P&M) provided comments on the proposed amendment that addressed both the "grandfathering" of permits in the proposed Preface, and the use of green weights for determining sample adequacy (Administrative Record No. KS–509).

For three reasons, P&M supported the proposal in the Preface to exempt specific permits from being revised to incorporate the success standards, sampling criteria, and methodologies in the revised guidelines. First, the revegetation plans and success standards for the specific permits have been in implementation for a number of years; in some cases, the mine is no longer in operation and all revegetation activities have been completed. Second, if the permits were revised to incorporate the new guidelines, the new success standards might require the planting of new species or mixtures; the additional disturbance this would require would be counterproductive to the goals of reclamation. Third, vegetation data collected prior to these guidelines would no longer be valid, even though it was valid under previously approved methods.

Regarding the first two points, OSM believes that these factors should be considered in permit reviews, documented by written findings, rather than in program amendments. One reason for this is that OSM disagrees with P&M that all revegetation activities have necessarily been completed. For example, if the revegetation on a specific permit area should fail to meet the success standards currently required by the permit, then it is likely that augmentative seeding, fertilization, etc., would be required. That circumstance might well alter the decision as to whether certain permit revisions would be reasonable. It should be noted, however, as indicated in Finding No. 2 above, that OSM is not asserting that these permits must be revised to incorporate the revised guidelines; OSM is only saying that that decision should be a permitting decision, not a decision approved by OSM in a program amendment.

The third argument above, that existing data would be rendered invalid, has already been addressed in the Preface; both the earlier version (approved in applicable part in the February 19, 1991, rulemaking (56 FR 6559, 6560)) and the currently proposed version (being approved by the Director in Finding No. 1 of this action) indicate that previous data will be accepted if they meet the standards in effect at the time they were collected.

For the reasons presented above, and those presented in Finding No. 2 of this rulemaking action, OSM does not agree with P&M's position regarding the proposed Preface.

P&M also supported the proposal to allow the use of green weights in demonstrating sample adequacy, stating that P&M had reviewed the data submitted by Kansas and found that the data supported the proposal. P&M further stated that its own data on cool season pasture vegetation also indicated little if any variation in the number of samples required to reach sample adequacy between green and dry weight methods; however, P&M did not submit any data for review by OSM.

OSM, as noted in Finding No. 3(a), agrees that Kansas' submitted data, if its origin and reliability were known, would support the proposal. As noted in that finding, without any information on the origin and collection methodology of Kansas' data, the Director cannot approve Kansas' proposal in the face of a large body of scientific literature stating that only dry weight determinations of sample adequacy are

acceptable. For this reason, OSM does not agree with P&M regarding the proposals for the use of green weights in determining sample adequacy.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the Kansas program.

By letter dated June 28, 1991 (Administrative Record No. KS–508), the U.S. Soil Conservation Service (SCS) (State Conservationist) responded that the Labette County Soil Survey has been published, and that the proposed guidelines could make reference to that Soil Survey. OSM notes that when the guidelines were written, this soil survey had not been completed. Therefore, on pages 5, 57–58, and 98, the proposed ("Version 3") guidelines (Administrative Record No. KS–505) state that the SCS SOILS–5 interpretation data sheets will be used to obtain yield standards for Labette County until such time as the Labette County Soil Survey is available. No change to the guidelines is required, since they were written to cover this eventuality. However, the document could be simplified by rewriting the sections cited above to reflect the availability of the soil survey and including the soil survey in appendix (A); OSM will forward the comment to Kansas so that it may consider this action in any future revisions.

Stote Historic Preservotion Officer (SHPO) and the Advisory Council on Historic Preservotion (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. The amendment did not contain any proposed provisions that would affect cultural or historic resources. No response was received from either group.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Kansas did not propose in this amendment any revisions to its program that relate to air or water quality standards. However, EPA's Regional and Headquarters offices were afforded opportunity to comment on this amendment. No response was received from EPA's Headquarters office.

By letter dated June 19, 1991 (Administrative Record No. KS–510), EPA's Region VII responded that it found the proposed procedures and techniques to be laboratory-grade and precise. However, they were concerned about how the procedures would take into consideration other variables affecting vegetation growth and production, such as rainfall, amount of sunlight, fertilization rates, seed varieties, length of growing season, weather conditions, insects, and diseases. Further, they commented that the procedures specified no contingency plans for unforeseen weather events or other obstacles encountered during sampling efforts.

OSM appreciates the review undertaken by the EPA; all of the factors they mentioned can have significant effects on vegetative growth. OSM believes that these factors are all taken into account either in the guidelines themselves or in other parts of the Kansas program. Many of these factors, for example, could be cancelled out if an operator were to choose to utilize the "reference area" method presented in section I of the guidelines; the reference area and the reclaimed area would be subject to the same influences, so a comparison of the two would eliminate the effect of these factors.

The agricultural data which the guidelines use to define technical standards represent data collected over many years across either a county or across one soil type, and hence represent "averages" over several years and over large areas. These averages should flatten out the peaks and valleys resulting from annual weather variations and spatial variability in weather events, insect infestations, etc.

Permittees quantifying the success of their revegetation, on the other hand, are subject to these peaks and valleys. In the case of prime farmland cropland, a given year's yields can be adjusted (by the SCS) to account for the climatic factor, insect damage, etc., that caused the reduced yield (see page 37 in revised version). For other land uses, such adjustment is not possible; however, in these instances the permittee is required to achieve only 90-percent of the technical standard. Preambles to the Federal regulation at 30 CFR 816.116 (44 FR 14902, 15237, March 13, 1979; 48 FR 40140, 40151, September 2, 1983), indicate that one reason for this 90-percent provision was to allow for annual and spatial variations in vegetative growth due to weather, etc.

Fertilization rates are determined by standard soil fertility testing and the target yield for the crop (see, e.g., page 10 of the revised guidelines). Fertilizer application must also be reported to the State (see page 10 and appendix E), providing Kansas an opportunity to review fertilization rates in comparison to fertilization rates common in the local area. Species variety is controlled for crops by the requirement to use one of the five most common varieties planted in the county (see, e.g., page 41 of the revised guidelines). Since the technical standard will represent the most commonly planted varieties, this will assure that the production on the reclaimed area can be fairly compared to the technical standard. For forage crops, the guidelines do not specify which varieties can be planted (although species must be acceptable for the postmining land use). However, the only agricultural database available to Kansas to be used as a technical standard reports forage production only by the large categories of cool season grasses and warm season grasses; hence it would make no sense to limit the varieties planted. Further, the technical standard most represents those species and varieties that are most commonly planted in the area on unmined land; it is to be expected that those will be among the most productive species and varieties available, and in order to meet this standard the mining industry would be expected to use these same varieties.

For fish and wildlife habitat, the success standards are defined by the SMS, the Kansas Department of Wildlife and Parks, the SCS, and the Forestry Extension of Kansas State University based on their experience, which summarizes many different field conditions over long time periods (see, e.g., pages 119 and 130 of the revised guidelines). The primary parameter for measuring success, which is the rate of successful stocking, reflects the total of 3 to 5 years' growing conditions, and hence tends to average out good and bad periods.

OSM also notes that the Kansas program includes, at KAR 47–3–42(a)(24) (referencing 30 CFR 780.18(b)(5)), a requirement to have approved in the permit a revegetation plan to include species planted, planting methods, irrigation and pest control, and soil testing. Therefore, several of the variance factors mentioned by EPA are controlled via permit conditions.

Regarding the concern about unforeseen events during sampling, OSM agrees that some such events can affect the data collected. This is one reason that dry weights are preferred over green weights; green weights could vary greatly over the course of several hours if the vegetation is first damp from dew, then is dried by the sun and wind, then subsequently wet by a rain shower. Beyond this, though, OSM recognizes a need to rely on the professionalism of the biologists/agronomists collecting the data. The Kansas program is small and the Kansas regulatory authority works closely with the industry and with the consultants, and is thus able to closely observe the professional qualifications of the persons collecting the data.

For these reasons, the Director believes that the concerns raised by the EPA are adequately addressed in the Kansas program.

V. Director's Decision

Based on the above findings, the Director approves, with the exceptions noted below, Kansas' proposed program amendment as submitted June 3, 1991 (Administrative Record No. KS–505).

As discussed in Finding No. 2, the Director is not approving the proposed Preface to the extent that it forfeits Kansas' authority to require reasonable permit revisions to incorporate the success standards and sampling criteria and methodologies contained in the guidelines. As discussed in Finding No. 3(a), the Director is not approving the proposals in the June 3, 1991, "green weight letter" which would allow green weights to be used for sample adequacy determinations in some cases. As discussed in Finding No. 3(b)(2), the Director is not approving sections IV.E. (pp 47–51) and V.E. (pp 87–92) of the revised guidelines, to the extent that they allow the use of green weights to be used in determining sample adequacy for the production of wheat and grain sorghum.

The Federal regulations at 30 CFR part 916 codifying decisions concerning the Kansas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to the State program are not enforceable by the State as part of the approved State program until approved by the Director. In the oversight of the Kansas program, the Director will recognize only statutes, regulations, and other materials approved by the Director, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Kansas of only such provisions.

VII. Procedural Determinations

Notional Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.15(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 16, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, of the Code of Federal Regulations is amended as set forth below.

PART 916—KANSAS

1. The authority citation for part 916 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*.

2. § 916.15 is amended by adding paragraph (m) to read as follows:

§ 916.15 Approval of regulatory program amendments.

* * * * *

(m) With the exceptions of: The Preface to the revised guidelines entitled "Revegetation Standards for Success and Statistically Valid Sampling Techniques for Measuring Revegetation Success" ("Version 3," dated June 1991), to the extent that it would forfeit Kansas' authority to require reasonable revisions of permits to incorporate the revegetation guidelines; sections IV.E and V.E. of those revised guidelines to the extent they allow the use of green weights in determining statistical sample adequacy; and the proposals in a June 3, 1991, letter to allow the use of green weights to determine statistical sample adequacy in certain circumstances, Kansas' program amendment as submitted June 3, 1991, is approved effective August 19, 1992.

[FR Doc. 92–19578 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 926

Montana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the Montana permanent regulatory program (hereinafter referred to as the Montana program), as administered by the Montana Department of State Lands (DSL) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the disposal of underground coal mine waste, definitions, permit application requirements, general backfilling & grading requirements, permanent cessation of operations, alluvial valley floors, remining, annual reports, and the Small Operator Assistance Program (SOAP). The amendment is intended to revise the Montana program to: Add rules that provide additional environmental and public safety safeguards; be consistent with SMCRA and the Federal regulations; correct minor editorial and typographical errors; and improve operational efficiency.

OSM is also correcting existing errors in the codification of the Montana program at 30 CFR part 926.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Guy Padgett; telephone (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program as administered by DSL. Information regarding the general background on the Montana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the April 1, 1980 **Federal Register** (45 FR 21560). Actions concerning program amendments taken subsequent to the approval of the Montana program are found at 30 CFR 926.15 and § 926.16.

II. Submission of Proposed Amendment

On June 19, 1990, Montana submitted proposed rules to OSM as an amendment to its approved regulatory program (Administrative Record No. MT-7-01). The proposed rules are intended (1) to add rules to provide additional safeguards for the environment and public safety and (2) to resolve internal rule inconsistencies, resolve ambiguities, and eliminate editorial and typographical errors. The proposed amendment also addresses, in anticipation, some items contained in a subsequent March 29, 1990, letter (Administrative Record No. MT-7-26) sent by the Director to Montana in accordance with the provisions of 30 CFR part 732 that informed Montana of changes necessary to maintain its program in a form no less effective than the Federal regulations that implement SMCRA.

Montana proposes to add seven new rules governing the application requirements and performance standards for the disposal of underground coal mine waste, to be included in the Administrative Rules of Montana (ARM) 26.4 subchapter 9. These rules are: ARM 26.4.920, special application requirements for the placement and disposal of underground development waste; ARM 26.4.924, general performance standards for the disposal of underground development waste; ARM 26.4.925, application requirements and performance standards for the disposal of underground development waste in valley fills; ARM 26.4.926, application requirements and performance standards for the disposal of underground development waste in head of hollow fills; ARM 26.4.927, application requirements and performance standards for the disposal of underground development waste in durable rock fills; ARM 26.4.930, special application requirements for the placement and disposal of coal processing waste in conjunction with underground mines; and ARM 26.4.932, performance standards for the disposal of coal processing waste in conjunction with underground mines. Montana also proposes revisions to existing rules in the following portions of its program: definitions and permit application requirements, ARM 26.4 subchapter 3; backfilling and grading requirements, ARM 26.4 subchapter 5; alluvial valley floors, prime farmlands, alternate reclamation, and auger mining, ARM 26.4 subchapter 8; bonding, insurance, reporting, and special areas, ARM 26.4 subchapter 11; and special departmental procedures and programs, ARM 26.4 subchapter 12.

OSM announced receipt of the proposed amendment in the July 11, 1990, **Federal Register** (55 FR 28414), and in the same notice opened the public comment period and provided for a public hearing on its substantive adequacy (Administrative Record No. MT-7-07). The public comment period closed on August 10, 1990. The public hearing scheduled for August 5, 1990, was not held because no one requested an opportunity to testify.

By letter dated September 7, 1990 (Administrative Record No. MT-7-13), OSM notified Montana of a technical concern it had with design precipitation events for runoff diversions. By letter dated October 29, 1990 (Administrative Record No. MT-7-15), Montana submitted additional information on the subject to provide evidence that its proposed rule is no less effective than the Federal regulation. OSM announced receipt of this material in the November 19, 1990, **Federal Register** (55 FR 48135), and in the same notice reopened the public comment period until December 4, 1990 (Administrative Record No. MT-7-17).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings for the proposed amendment submitted by Montana on June 19, 1990.

1. Provisions Not Discussed

Montana proposes new rules, and revisions to existing rules that either correct editorial errors, improve clarity, or are substantive in nature; some of these proposed new and revised rules contain language substantially identical to the corresponding Federal regulations. The Director, therefore, finds that these proposed rules and rule revisions are no less effective than the corresponding Federal regulations and is approving the proposed additions and revisions. They include [Federal regulation counterparts indicated in brackets]:

Definition, "coal processing waste," ARM 26.4.301(24) [30 CFR 701.5]; Definition, "cumulative hydrologic impact area," ARM 26.4.301(32) [30 CFR 701.5]; Baseline information, environmental resources, ARM 26.4.304(5) [30 CFR 780.21(b)(1)/ § 784.14(b)(1)]; Application requirements, transportation facilities plan, ARM 26.4.321(2) [30 CFR 780.37(a)(5)/§ 784.24(a)(5)]; Alluvial valley floors, ARM 26.4.805(1) [30 CFR 785.19(b)(2), § 822.12(b)(2)]; Application requirements, placement and disposal of underground development waste, ARM 26.4.920 [30 CFR 784.19]; Disposal of underground development waste, general requirements, ARM 26.4.924(2), (5), (6), (9), (10), (15), (17), (18), and (19) [30 CFR 817.81(b), (c)(2), (d), § 817.83(a)(2), (b), (c), (d), (e)]; Disposal of underground development waste, valley fills and head-of-hollow fills, ARM 26.4.925(1), (2), (3)(a, b, c), (4), and 26.4.932(1) [30 CFR 817.83 (a), (c), § 817.81(a)(2), § 817.83(a)(3), § 817.83(c)(2)] Disposal of underground development waste, durable rock fills, ARM 26.4.927 (2)(a, b), (3)(b, c, d), (6), and (7)(a, b) [30 CFR 817.81(c), 817.83 (a)(2, 3), (c)(2)]; Special Application requirements, placement and disposal of coal processing waste, narrative [[ARM 26.4.930(1) [30 CFR 784.11(b)(4), § 784.16(a)(1)(ii), (d), § 784.23(b)(5, 7, 10)]], and plans & designs [[ARM 26.4.930(2)(a), (b) [30 CFR 784.16(a)(1), 784.16(a)(2, 3)]]; and Disposal of Coal Processing Waste, ARM 26.4.932(2, 3, 5(a, c, d), 6, 7, and 9) [30 CFR 817.81(a) and § 817.83(c)(4), (d), (introduction), (a)(3), (c)(4)].

2. Definitions

(a) *"Head-of-Hollow Fill" and "Valley Fill".* At ARM 26.4.301(48) and (128), Montana proposes to revise its definitions of "head-of-hollow fill" and "valley fill" by allowing the fills to "* * * [consist] of any material, other than non-coal organic material * * *." Montana previously defined these fills as consisting of any materials other than coal (processing) waste and organic material. Thus, as amended, the proposed definitions would now allow the inclusion of coal processing waste and coal organic material in these fills.

The Federal definitions of these fills at 30 CFR 701.5 also allow the inclusion of coal processing waste materials in head-of-hollow and valley fills. However, the Federal definitions prohibit the inclusion of all organic materials: fills may only "[consist] of any material, other than organic material * * *".

Montana's proposed revision would exclude non-coal organic materials but not coal organic materials; thus Montana's proposed definition would not exclude all organic material from being placed in head-of-hollow and valley fills, as does the Federal regulation.

Since the proposed Montana rule would allow coal organic materials to be placed in head-of-hollow and valley fills, the Director finds that the proposed definitions are less effective than the Federal definitions, and is not approving them. Specifically, the Director is not approving the limitation to "non-coal organic materials" of the organic materials barred from inclusion in these fills, and is requiring Montana to revise the definitions to eliminate the word "non-coal."

(b) *"Land use".* At ARM 26.4.301(63), Montana defines "land use":

> "Land use" means specific uses or management-related activities, rather than the vegetation or cover of the land. * * *
>
> Changes of land use or uses from one of the following categories to another shall be considered as a change to an alternate land use that is subject to approval by the department.

Montana proposes to revise its definition by deleting the last sentence quoted above ["[c]hanges of land use from one of the following categories to another shall be considered as a change to an alternate land use that is subject to approval by the department"].

Under the Montana program (at ARM 26.4.762 and ARM 26.4.824), all affected lands are normally required to be reclaimed to grazing or wildlife habitat uses, with all other postmining uses being considered "alternative" land uses, no matter what the premining use had been. The Secretary has previously approved these provisions (45 FR 21560, 21565; April 1, 1980).

As a result, removal of the provision defining alternative land uses from the Montana definition of "land use" does not delete the criteria for identifying alternative uses. Therefore the Director finds that the approved Montana program as revised would continue to be no less effective than the Federal regulation requirements and is approving the proposed change.

(c) *"Previously mined area".* Montana proposes to revise the definition of "previously mined area," at ARM 26.4.301(84), to read:

> "Previously mined area" means land on which coal mining operations were previously conducted, except those lands subject to the standards of the Montana Strip and Underground Mine Reclamation Act or of the Surface Mine [sic] Control and Reclamation Act of 1977.

The proposed definition is substantively similar to the corresponding Federal definition at 30 CFR 701.5 (the State definition only adds a reference to the State's regulatory statute). However, in the case of *National Wildlife Fed'n.* v. *Lujan* 733 F. Supp 419 (D.D.C. 1990), the United States District Court for the District of Columbia addressed two concerns about the Federal definition. The first concern was whether "previously mined" means mining that occurred (1) before the enactment date of SMCRA (August 3, 1977), or (2) before the various dates that SMCRA's substantive requirements began to apply to specific mining operations or sites. The second concern was whether the Federal definition would allow an operator to remine an area that had been fully and satisfactorily reclaimed and then leave it only partially reclaimed.

Regarding the first concern, the court found that "a definition using the date of SMCRA's enactment more closely conforms to the Act and the court's previous ruling on the issue" (*National Wildlife Fed'n.*, 733 F. Supp at 438. Consequently, the court held that August 3, 1977, "must be the time from which the temporal concepts of 'preexisting' and 'previous' are measured." (*Id.* at 441-442).

On the second issue, the court held that "[a] definition cannot stand that lets full reclamation be undone for a later partial effort. The definition must be rewritten to make this impossible." (*Id.* at 441). Accordingly, the court remanded the definition to the Secretary to correct both flaws.

Although OSM has not actually suspended this definition, OSM may not, because of the court's remand, use the existing Federal definition of "previously mined area" at 30 CFR 701.5 in evaluating the sufficiency of Montana's proposed definition. Accordingly, OSM evaluated the proposed amendment based upon its consistency with the applicable provisions of SMCRA as interpreted by the court.

Montana had proposed this same revised definition in a previous program amendment [Administrative Record MT-5-1; December 21, 1988]. On May 11, 1990, in accordance with the court's ruling, the Director did not approve the proposed definition to the extent that the definition (1) would interpret or contemplate the temporal concept of "previously" as being any date other than August 3, 1977, or (2) would allow lands which have once been fully and satisfactorily reclaimed to be remined and then only partially reclaimed (55 FR 19727, 19729-19730). In that same rulemaking action, the Director indicated that this issue would be subject to future notification under 30 CFR 732.17(d).

Even though Montana has not received a 30 CFR Part 732 notification from the Director, it is now resubmitting the same proposed definition, based on the State's belief that its definition is consistent with the court's decision. In its disposition of comments appended to its May 7, 1990, rulemaking, Montana clarified that the state statute was effective March 16, 1973, and that any lands mined and reclaimed after that date, whether permitted or not, would not be "previously mined" as defined in this proposal; Montana also indicated that its rules at ARM 26.4.834 do not define "remining" to include the disturbance of old highwalls or redisturbing a mined and reclaimed site to recover a lower coal seam (Administrative Record No. MT-7-01).

OSM has reviewed Montana's rules regarding remining operations, at ARM 26.4.834–26.4.837, and agrees that those rules limit "remining" to "operations which process coal mine waste materials resulting from 'previously mined areas'." Further, ARM 26.4.835(2) requires remining operations to comply with all permitting and performance requirements. Therefore, all remaining operations must be reclaimed to the full extent required by the Montana program; there are no exemptions allowed for partial elimination of highwalls, and there is a requirement that all previously mined areas, whether or not previously reclaimed, be fully reclaimed to the standards of SMCRA.

For these reasons, the Director finds that Montana's definition of "previously mined area" at ARM 26.4.301(84) has no function corresponding to the function of the Federal definition in 30 CFR 701.5, as applied at part 816/§ 817.106. Therefore, the Director is approving the proposed definition.

The Director notes, however, that the statutory definition of "remaining," at 82–4–203(28), is not limited to processing coal mine wastes; if Montana should at some future time revise its regulatory applicability definition at ARM 26.4.834 and also grant remining operations exemption from some permitting and performance standards, then Montana's definition of "previously mined area" would have to be reevaluated.

(d) *"Road"*. Montana is proposing minor editorial revisions to the definition of "road" at ARM 26.4.301(100). The minor revisions do not substantively change the definition. The definition, both currently and as revised, would exclude pioneer and construction roadways from the definition of "road."

The Federal definition at 30 CFR 701.5 was revised on November 8, 1988 (53 FR 45190, 45210), to eliminate the previous exclusion of pioneer/construction roadways, thereby making pioneer/construction roadways subject to those road performance standards at 30 CFR Part 816/§ 817.150–151 which are applicable to road construction.

The Director finds that the proposed minor editorial clarifications have no substantive effect on the definition, and is approving the proposal. However, the Director notes that Montana's existing and proposed definitions of "road," by excluding pioneer and construction roadways, are less effective than the Federal definition. Because this less effective definition adversely affects proposed revisions to the application requirements for transportation facilities at ARM 26.4.321 (see Finding No. 4(c) below), the Director is requiring Montana to further revise the definition to clarify that pioneer and construction roadways are subject to any general performance standard applicable to road construction.

(e) *"Waste"*. Montana is proposing to modify its definition of "waste" at ARM 26.4.301(132) to include "coal processing waste." Thus, as revised, the term "waste" includes coal processing waste, underground development waste, and other materials. The Federal regulations do not define the term "waste," but do define the term "coal mine waste" at 30 CFR 701.5. Under the Federal definition, "coal mine waste" includes "coal processing waste" and "underground development waste." The Montana program contains definitions of these latter two terms, at ARM 26.4.301, which are identical to the Federal definitions. Therefore, the Director finds that the Montana definition of "waste" is no less effective than the Federal definition of "coal mine waste."

Regarding the application of the revised definition, however, OSM notes that "waste" is used to describe materials governed by existing rules ARM 26.4.505 and ARM 26.4.510 (hereinafter, "rules 505 and 510"). Montana in this program amendment is proposing rules to govern the disposal of "waste" in connection with underground mines. But rules 505 and 510 are the only part of the Montana program regulating the disposal of "waste" on surface mining operations; OSM's review found that rules 505 and 510 do not contain requirements corresponding to all of the Federal requirements for the disposal of coal mine waste at, or incorporated by reference in, 30 CFR 816.81 through 816.84 and § 816.102(e).

Thus rules 505 and 510 would be less effective than the Federal regulations cited above in governing the disposal on surface mining operations of "waste," in the revised definition, since "waste" would now include "coal mine waste." Therefore, the Director notes that approving the proposed definition, to the extent that such approval would allow the disposal of coal processing waste on surface mining operations to be governed by rules 505 and 510, would render the Montana program less effective than the Federal requirements at 30 CFR 816.81 through 816.84 and § 816.102(e). Therefore, the Director is not approving the proposed definition of "waste" at ARM 26.4.301(132) to the extent that it includes coal processing waste to be disposed of on surface mining operations. The Director is also requiring Montana to further amend its program, at ARM 26.4.505 and 26.4.510 or elsewhere, to add requirements for the disposal of coal mine waste on surface mining operations that are no less effective than the Federal requirements at, or incorporated by reference in, 30 CFR 816.81 through 816.84 and § 816.102(e).

3. Reclamation Plan: Alternatives to Highwall Reduction

Montana proposes a revision to the permit application requirements for reclamation plans, at ARM 26.4.313(3)(b). The proposal would further revise an earlier proposed revision on which the Director has deferred a decision. The revision would delete ARM 26.4.825 (alternative revegetation) from the proposed standards that allowable alternatives to highwall reduction would be required to meet.

ARM 26.4.313 was one of several rules addressing the topic of allowable alternatives to highwall reduction that were proposed for revision by Montana as part of an amendment package submitted December 21, 1988 (Administrative Record No. MT–5–1#).

In the May 11, 1990, rulemaking action on the December 21, 1988, proposed amendment (55 FR 19727), the Director deferred a decision on the effectiveness of the proposed rules addressing alternatives to highwall reduction, until such time that Montana provided additional clarification as to the conditions under which alternatives to highwall reduction would be allowed. Montana has not yet submitted this information in a formal amendment. Therefore, the Director is continuing the deferral on the earlier proposed revisions, and also on the currently proposed revision to ARM 26.4.313(3)(b); in accordance with 30 CFR 732.17(g), this deferral continues to render these proposals non-enforceable by the State of Montana.

4. Application Information: Transportation Facilities Plan

Montana is proposing several revisions to ARM 26.4.321, which specifies the required permit application materials that address transportation facilities. These revisions include non-substantive, editorial renumbering of the rule and the addition of new requirements, including a requirement for the preparation and certification of plans and drawings for roads by experienced registered professional engineers or registered land surveyors. Other proposed new rule requirements are addressed in Finding No. 1 of this notice.

(a) Certification of Plans and Drawings: Content

At ARM 26.4.321(3), Montana proposes to add the requirement that:

> The plans and drawings for each road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or a registered land surveyor, with experience in the design and construction of roads. The road designs must meet the performance standards outlined in ARM 26.4.601 through 26.4.606.

The counterpart Federal regulations at 30 CFR 780.37(b)/§ 784.24(b) require plans and drawings for primary roads to be prepared by and certified by registered engineers (or registered land surveyors, in states which authorize them to do so). Further, they specify the content of the certification: Plans and drawings must be certified as meeting (1) the requirements of 30 CFR chapter VII; (2) current, prudent engineering practices; and (3) any design criteria established by the regulatory authority. The Federal regulation and its preamble on November 8, 1988, (53 FR 45190 at 45195–6) specify that the plans must be certified as meeting the performance standards and current, prudent engineering practices. At 53 FR 45196, the preamble (in response to a comment asserting that certification was unnecessary because all designs and plans must comply with applicable performance standards) indicates that a certification that the designs meet the requirements of SMCRA is necessary to minimize the potentially major environmental impacts of primary roads.

The Montana proposal places the design and certification requirements on the plans for all roads, not just on plans for primary roads; it therefore assures that the Federal requirements for the plans for primary roads will be met. However, while the Montana proposal requires a certification, the content of that certification is not specified. The Montana proposal does include the requirement that designs must meet the road performance standards, but does not require that the designer certify that this is true; nor is the certification required to address current, prudent engineering practices or any additional design criteria established by DSL.

The Director finds that the failure of the Montana proposal to specify the content of the certification for these plans and designs renders the proposal less effective than the Federal regulations in achieving the purposes of SMCRA. The Director is approving the proposal, but is requiring Montana to further amend the rule to include the required content of the certification, to be no less effective than 30 CFR 780.37(b)/§ 784.24(b).

(b) Professionals Authorized to Certify Plans

In its proposed rule language at ARM 26.4.321(3), Montana would allow the preparation and certification of transportation facilities plans by "registered land surveyor[s]." The Federal regulations at 30 CFR 780.37(b)/§ 784.24(b) allow registered land surveyors to perform these preparation and certification tasks if such tasks are authorized by the registration practices of the individual States. OSM has reviewed the Montana statute governing the registration of engineers and land surveyors and notes that at 37–67–101(7), MCA, the "practice of land surveying" is defined by Montana to mean:

> • • • any service • • • requir[ing] the application of special knowledge of the principles of mathematics, physical sciences, applied sciences, and:
> (a) the principles of property boundary law to the recovery and preservation of evidence pertaining to earlier land surveys [sic]; (b) teaching of land surveying subjects; (c) measurement and allocation of lines, angles, elevations, and coordinate systems; (d) location of natural and manmade features in the air, on the surface of the earth, within underground workings, and on the beds of bodies of water, including • • • the determination of areas and volumes; (e) monumenting of property boundaries; (f) platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein; and (g) preparation and perpetuation of maps, plats, field note records, and property descriptions.

In regard to roads, the Director therefore finds that registered land surveyors are authorized only to perform the "platting and layout of lands and the subdivisions thereof, including the alignment and grades of streets and roads therein • • •". Thus registered land surveyors are not specifically authorized by Montana's statute to perform other road design work, including the development of other road specifications, such as surfacing, drainage controls, stream crossings, etc. Given the absence of direct statutory language, and the absence of sufficient information supporting DSL's interpretation that 37–67, MCA, authorizes land surveyors to prepare and certify transportation facilities plans, OSM cannot conclude that surveyors are authorized to perform such work. Therefore the Director finds Montana's proposed ARM 26.4.321(3) to be less effective than the Federal regulation at 30 CFR 779.37(b) to the extent that it allows registered land surveyors to prepare and certify permit application materials, which they are not specifically authorized to do under Montana state law. The Director is therefore not approving in proposed ARM 26.4.321(3) the phrase ", • • • or a registered land surveyor, • • •," and is requiring Montana to revise the rule to remove that phrase.

Additionally, the Montana program at ARM 26.4.305 specifies requirements for the preparation and certification of certain maps, plans, and cross sections required in permit applications; this rule at revised subsection ARM 26.4.305(2)(b) allows registered land surveyors to prepare and certify all such materials except for those relating to spoil disposal facilities and sedimentation ponds. Registered land surveyors would thus be allowed to prepare and certify plans and cross sections for: mineral storage, cleaning and loading areas; storage areas for soil, spoil, coal waste, and garbage or other debris; water diversions and facilities for collection, conveyance, treatment, storage, and discharge of water; and explosives storage and handling facilities (ARM 26.4.305(1)(l),(m),(o),(s),(t)). The Federal regulations at 30 CFR 780.14(c) allow registered land surveyors to perform such preparation and certification tasks if such tasks are authorized by the registration practices of the individual States.

Montana's statutory definition of the "practice of land surveying" has been noted above. OSM does not find in that definition specific authorization for the preparation of those plans and cross sections allowed under proposed ARM 26.4.305(2)(b). OSM also notes, particularly, that "inspection of construction for the purpose of assuring compliance with drawings and specifications" is reserved for engineers, under the statutory definition of "the practice of engineering" at 37–67–101(6), MCA; further, under this definition "the practice of engineering" is also delegated responsibility for safeguarding life and property, which is one of the primary purposes behind SMCRA's preparation and certification requirements.

Therefore, the Director finds Montana's rule ARM 26.4.305(2)(b) to be less effective than the Federal regulations at 30 CFR 780.14(c) to the extent that it allows registered land surveyors to prepare and certify permit application materials for which they are not authorized under Montana state law. Specifically, the Director is not approving the phrase "• • •, registered land surveyor, • • •" and is requiring

Montana to amend its program to remove this provision.

(c) Plans and Drawings for Stress Fords

Montana's proposed rules do not provide counterparts to the Federal requirements at 30 CFR 780.37(a)(2),(3) / § 784.24(a)(2),(3) that require the submission of:

(1) Drawings and specifications for roads proposed to be located in stream channels; and

(2) Drawings and specifications for proposed temporary fords of perennial and intermittent streams used during road construction.

Existing ARM 26.4.602(2) allows temporary fords of "dry streams," and allows the placement of roads in stream channels except those of "active streams." Montana has clarified that it interprets any stream as "dry" if, at the moment in question, there is no water flowing [correspondingly, any stream is "active" if, at the moment in question, water is flowing] (Administrative Record No. MT–7–25). Thus, perennial streams are always active; but ephemeral and intermittent streams are sometimes "active" and sometimes "dry." Therefore, it is concluded that ARM 26.4.602(2) allows the potential for placement of roads in intermittent stream channels and the potential for temporary fords of intermittent streams.

Based on the above, the Director finds that since the Montana program lacks the permitting requirements for these roadway locations that are required by the Federal regulations at 30 CFR 780.37(a)(2),(3) / § 784.24(a)(2),(3), the Montana program is less effective. Montana is required to amend its program to include requirements no less effective than the Federal requirements.

(d) Reclamation Plans and Schedules

Montana's proposed rule does not include a counterpart to the Federal regulations, at 30 CFR 780.37(a)(6) / § 784.24(a)(6), that require plans and schedules for the reclamation of temporary roads. Even though Montana's program does contain, at ARM 26.4.308(2)(d), a counterpart to 30 CFR 780.11(b)(3) that requires a narrative explaining the construction, maintenance, and removal of transportation facilities, this is general in nature and does not require the specific design plans and schedules of 30 CFR 780.37(a)(6).

Therefore, the Director is requiring Montana to further amend its rule at ARM 26.4.321 to include application requirements, for roads not to be retained for the postmining land use, no less effective than the Federal regulations at 30 CFR 780.37(a)(6) / § 784.24(a)(6).

5. Remining: Bonding

The current ARM 26.4.837 requires:

(1) Bond must be submitted consistent with 82–4–223, MCA and sub-chapter 11, except as noted below. (2) If approval is granted for a remining and reclamation plan that does not adversely affect eligibility for abandoned mine land reclamation funding on the site pursuant to ARM 26.4.836, the performance bond for the area must be the estimated total cost to the department for reclamation of the site in accordance with the approved reclamation plan.

Montana is proposing to revise ARM 26.4.837(2) to read "The performance bond for the area must be the estimated total cost to the department for reclamation of the site in accordance with the approved reclamation plan." Since the deleted language serves to limit this provision to a subset of remining operations (those whose reclamation plan would not adversely affect eligibility for funding under the Abandoned Mine Lands program), the proposed revision would require that the bond for every remining operation be sufficient for DSL to complete the reclamation. The Montana status cited in subsection (1), 82–4–223(2), MCA, requires a minimum $10,000 bond for all operations.

The Federal regulations on remining at 30 CFR 816.106 do not specifically address bond amounts on remining operations. However, 30 CFR 800.14(b) requires that the bond on all operations be sufficient for the regulatory authority to assure completion of the reclamation plan in the event of forfeiture.

The Director finds that Montana's proposed revision to ARM 26.4.837 is consistent with and no less effective than the requirements of the Federal regulation at 30 CFR 800.14 and is approving the revision.

6. Backstowing of Coal Mine Waste

Montana proposes new rules at ARM 26.4.924(1) and ARM 26.4.932(1) that require underground development waste and coal processing waste to be disposed of on underground mines by backstowing in underground workings, unless valid physical, economic, safety, environmental, or other reasons exist for not doing so. "Backstowing" is a term in common use in surface mining and reclamation operations, and in the reclamation of abandoned mined lands, and means that these wastes would be transported back undergound and deposited in mine voids that are no longer needed for the operation.

The Federal regulations at 30 CFR 817.81(f) allow, but do not require, that coal mine waste, including both underground development waste and coal processing waste, be disposed of by backstowing. Montana's proposal thus requires disposal in a manner that is allowed, but not required, under the Federal regulations. Therefore, the Director finds that Montana's proposal is not inconsistent with and no less effective than the Federal program requirements and is approving the proposed provision.

7. Disposal of Underground Development Waste and Coal Processing Waste: Location Relative to Mine Excavations

Proposed ARM 26.4.924(3) and 26.4.932(2) would require underground development waste and coal processing waste, respectively, to be placed within designated disposal areas within a permit area of an underground mine.

In the Federal regulations, disposal of these wastes outside of mine excavations (and in underground workings) is regulated by 30 CFR 817.81–817.84; disposal within surface excavations (e.g., face-up areas) is regulated under 30 CFR 817.102(e). Requirements specified by the two sets of performance standards are the same, except that disposal facilities within mine excavations are allowed to be designed for and achieve a static safety factor of 1.3, as opposed to the required static safety factor of 1.5 for disposal facilities outside mine excavations.

Montana's proposed rules are not specifically directed either to disposal within mine surface excavations (i.e., in face-up areas) or to disposal outside mine excavations; thus it is not clear whether the proposed rules are intended to govern both situations (i.e., to be counterparts to both 30 CFR 817.81–817.84 and 817.102), or only disposal outside mine workings (i.e., to be a counterpart to only 30 CFR 817.81–817.84). Note that disposal in underground workings is regulated by other paragraphs of these rules (see Finding No. 6 above).

This situation is somewhat clarified elsewhere in the proposed rules; regarding underground development waste, ARM 26.4.924(3)(c), through referencing ARM 26.4 subchapter 5, requires disposal areas to meet approximate original contour (AOC) requirements, except for "waste disposal structures," which need not meet AOC requirements. This provision is incorporated for coal processing wastes through a cross reference to ARM 26.4.924(3)(c) at 26.4.932(6). Therefore the proposed rules are intended to regulate waste disposal both where AOC must be achieved and where AOC need not be achieved. However, the proposal does not define what is meant by "waste disposal structures," so it is not clear whether these cases correspond to disposal within mine surface excavations and disposal outside these excavations, respectively.

The Director finds that without some indication as to whether these proposed rules are intended to address waste disposal within mine surface excavation or outside mine surface excavations, or both, and clarification on what constitutes a "waste disposal structure," OSM is unable to evaluate the effectiveness of proposed ARM 26.4.924(3) and 26.4.932(2). Therefore the Director is not approving these proposed provisions, and is requiring Montana to revise ARM 26.4.924 and 26.4.932 to specify whether the waste disposal governed by these rules is within or outside mine surface excavations, and to clarify what constitutes a "waste disposal structure."

8. Disposal of Underground Development Waste (Design Criteria)

(a) Comparison of Regulatory Schemes

In order to more easily identify the similarities and differences between the Federal and proposed State provisions, the following is a brief summary of Montana's proposed regulatory scheme as compared with the Federal regulatory scheme.

Montana's proposed new rule ARM 26.4.924 provides the general performance standards for the disposal of underground development waste. The corresponding Federal regulation requirements are located at 30 CFR 817.81–817.84 and § 817.102(e). These Federal regulations address not only underground development waste, but coal processing waste as well. Montana's proposal addresses coal processing waste in a separate proposed rule (ARM 26.4.932) to be discussed below.

(b) Design Criteria

The Federal regulations at 30 CFR 817.81(c), § 817.83(a), and § 817.84(d) specify certain design criteria that must be included in the designs for coal mine waste disposal facilities, and be certified as being met in the design. In particular, these Federal regulations require that these structures be designed to attain the 1.5 safety factor and that designs for the diversions and underdrains be included [in certain circumstances] in the designs for the structure.

Montana's proposal, at ARM 26.4.924(4), requires:

(4) Each waste disposal structure must be designed using current prudent design standards, certified by a registered professional engineer experienced in the design of similar earth and waste structures, and approved by the department. Coal waste refuse structures must meet the requirements of 30 CFR 77.214 and 77.215.

The attainment of a static safety factor and the construction of diversions and underdrains are addressed in other subsections of the proposed rule. Specifically, proposed ARM 26.4.924(8) requires that:

• • • waste be hauled or conveyed and placed in horizontal lifts • • • concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to • • • ensure a long-term static safety factor of 1.5,

and proposed ARM 26.4.924(12) requires that:

[i]f the disposal area contains springs, • • • watercourses, or • • • seeps, an underdrain system consisting of durable rock must be constructed • • •

Thus in the Montana disposal, the general requirements for static safety factors and underdrain and diversion construction are not required to be included in the designs as design criteria, but rather are required to be achieved as performance standards (it should be noted that for special types of structures, namely valley fills, head-of-hollow fills, and durable rock fills, Montana's proposed rules at ARM 26.4.925(2), 26.4.926(1), and 26.4.927(2) do require the static safety factor to be included in the design). In the Federal regulations, these criteria are required to be part of the design as design criteria for all coal mine waste disposal structures. However, OSM notes that, under ARM 26.4.405(6)(a), DSL cannot approve designs in permit applications unless the designs meet the requirements of the performance standards. Thus any designs for underground development waste disposal structures would have to demonstrate that the designed disposal structure would meet the required safety factor and drainage system requirements; this effectively makes the safety factor and drainage system design criteria.

The same factors are incorporated for coal processing waste by cross referencing proposed ARM 26.4.924 at proposed 26.4.932(6).

Therefore, the Director finds that the Montana proposal at ARM 26.4.924(4) and 26.4.932 is no less effective than the Federal requirements at 30 CFR 817.81(c), § 817.83(a), and § 817.84(d), and is approving the proposed rule.

9. Disposal of Underground Development Waste: Requirements of the Mine Safety and Health Administration (MSHA)

As quoted in Finding No. 8 above, Montana's proposal at ARM 26.4.924(4) requires all underground development waste disposal structures to be designed and certified. The proposal goes on to address MSHA requirements, but requires that only "coal waste refuse structures" meet the requirements of MSHA at 30 CFR 77.214 and § 77.215. Montana has not explicitly defined what constitutes a "coal waste refuse structure," nor has Montana indicated that the disposal facilities not required to meet the MSHA requirements are limited to impounding structures only.

The introductory text to the Federal regulation at 30 CFR 817.83 requires that all refuse piles meet the MSHA requirements at 30 CFR 77.214 and § 77.215. The regulations at 30 CFR 817.102(e), by referencing § 817.83, also require that disposal facilities within the mined-out area meet the MSHA requirements. In short, the Federal regulations require that all disposal facilities other than coal mine waste impoundments meet the MSHA requirements at 30 CFR 77.214 and § 77.215.

Therefore the Director finds that the Montana proposal at ARM 26.4.924(4), by requiring that only some underground waste disposal structures meet the MSHA requirements, without clarifying whether the balance are impounding structures, is less effective than the Federal requirements at 30 CFR 817.83 and § 817.102(e). The Director is approving the first sentence of the proposal, regarding design and certification requirements, but is not approving the second sentence regarding compliance with 30 CFR 77.214 and § 77.215. The Director is requiring Montana to amend the provision to require that all non-impounding underground development waste disposal structures meet the MSHA requirements at 30 CFR 77.214 and § 77.215, and, further, to clarify what constitutes a "coal waste refuse structure."

10. Disposal of Underground Development Waste: Location

Montana's proposal at ARM 26.4.924(7) and (11) specifies requirements for the placement of underground development waste disposal structures. These include additional requirements beyond those

location requirements specified in the Federal regulations at 30 CFR 817.81(a).

Therefore the Director finds that the Montana proposal provides for more stringent regulation of waste disposal structures than do the Federal regulations, and thus in accordance with 30 CFR 730.11(b) is not inconsistent with the Federal regulations, and is approving the proposal.

11. Disposal of Underground Development Waste, General Requirements: Underdrain Systems

(a) Underdrain Construction

Montana's proposed rules ARM 26.4.924(12) and (13) establish the requirements for underdrain systems. Proposed ARM 26.4.924(12) requires that if the disposal area contains seeps, springs, or water courses, an underdrain system consisting of durable rock must be constructed. At ARM 26.4.924(13), Montana proposes specific requirements for underdrain systems. These requirements include durability and non-toxic properties for the rock, location and extent of the underdrains, requirements for filter systems, and minimum underdrain sizes.

The Federal regulations at 30 CFR 817.71(f), referenced by § 817.83(a)(3) and § 817.102(e), impose requirements that are substantively the same, except that the Federal regulations would also allow the use of pipe underdrains in place of durable rock and do not specify minimum size criteria.

The Montana proposal by requiring the use of rock underdrains utilizes the discretion afforded by the Federal regulations to use either pipe or rock underdrains systems; the minimum size criteria provide more specific performance standards to assist in the Montana program. Therefore the Director finds that Montana's proposal is not inconsistent with and is no less effective than the Federal program requirements and is approving the proposal.

(b) Variance From Underdrain Requirements

Montana proposes at ARM 26.4.924(14) a procedure to provide variances from the underdrain requirements that are specified in proposed ARM 26.4.924(12) and (13):

> An alternative subdrainage system may be utilized after approval by the department upon a thorough analytical demonstration that such an alternative will ensure the applicable static safety factor, stability of the fill, and protection of the surface and groundwater in accordance with applicable rules.

The Federal regulations at 30 CFR 817.83(a)(3) and § 817.102(e), referencing § 817.71(f)(3), do not allow for variance from the requirements of that subsection. The Director therefore finds that this variance procedure would render the Montana program less effective than the Federal requirements, and is not approving subsection ARM 26.4.924(14) of the proposed amendment, and is requiring Montana to revise its program to remove this provision.

12. Disposal of Underground Development Waste, General Requirements: Covering With Non-Toxic Material

Montana's new rule at ARM 26.4.924 is proposed to be, in part, a counterpart to the Federal regulation requirements at 30 CFR 817.81 and § 817.83 that provide requirements for coal mine waste to be placed as refuse piles. In this proposal Montana has failed to address the Federal requirement at 30 CFR 817.83(c)(4) regarding covering refuse piles with non-toxic materials; the Federal regulation requires all refuse piles to be covered with a minimum of 4' of the best available non-toxic material; this is required regardless of the degree of toxicity of the material disposal of in the structure (a depth variance, however, is available upon appropriate physical and chemical analyses). The Montana proposal, ARM 26.4.924, contains no equivalent requirement. Proposed ARM 26.4.924(3)(c) does incorporate the requirements of ARM 26.4.505 and 26.4.510; however, these rules impose a coverage requirement only if the material is shown to be toxic or acid-forming. 30 CFR 817.83(c)(4), on the contrary, requires the coverage regardless of toxicity.

Therefore, the Director finds the Montana proposal lacks a counterpart requirement to the Federal regulation at 30 CFR 817.83(c)(4), and is requiring Montana to amend its rule to add a requirement that is no less effective than 30 CFR 817.83(c)(4).

13. Disposal of Underground Development Waste, General Requirements, and Head-of-Hollow and Durable Rock Fills: Design Precipitation Event for Surface Runoff Diversions

At ARM 26.4.924(16), 26.4.925(1), 26.4.926(2), 26.4.927(4) and (6), and 26.4.932(6), Montana proposes rules requiring that surface diversions on underground development waste disposal structures (including valley, head-of-hollow and durable rock fills) and coal processing waste disposal structures be designed to safely pass the runoff from a 100-year, 24-hour precipitation event.

The Federal regulations at 30 CFR 817.83(a)(2) and 817.84(d) require that the diversions on refuse piles and coal mine waste impoundments be designed for a 100-year, 6-hour precipitation event. The Federal requirements were changed from a 100-year, 24-hour event to the current 100-year, 6-hour event on September 26, 1983 (48 FR 44006, 44017). This change was made for consistency with MSHA's design criteria, which OSM found to provide adequate safety (48 FR 32910, 32920; July 19, 1983). In these preamble discussions, OSM indicated that the 24-hour event usually results in a higher peak flow, but that watershed geometry in some cases can produce a greater peak with the 6-hour event.

On October 29, 1990, Montana submitted further information indicating that the 24-hour event produces both larger runoff volumes and greater peak discharges than the 6-hour event (Administrative Record No. MT-7-15). OSM has reviewed this information, and has determined that the 24-hour event produces both greater runoff volumes and greater peak discharges than the 6-hour event, when applied to cases representative of Montana mining site conditions. MSHA commented on the proposed amendment and responded that it found no conflicts with MSHA regulations and found the amendment acceptable (Administrative Record Nos. MT-7-12 and MT-7-24).

Therefore, the Director finds that Montana's requirements for a 100-year, 24-hour design event are no less effective than the Federal requirements at 30 CFR 817.83(a)(2) and § 817.84(d) for a 100-year, 6-hour design event, and is approving these provisions of Montana's proposed rules.

14. Disposal of Underground Development Waste: Valley Fills, Head-of-Hollow Fills, and Durable Rock Fills: Terrace Ditch Design

Montana's proposed ARM 26.4.925(5) [valley fills], 26.4.926(1) [head-of-hollow fills], and 26.4.927(7)(c) [durable rock fills], require that a ditch must be constructed on the inside of any terrace constructed, to intercept runoff and divert it toward the stabilized channels that are required by proposed ARM 26.4.924(16). These provisions do not explicitly require that the ditches along the inside of terrace benches be stabilized and designed for a 100-year, 24-hour precipitation event, as is required by the Federal regulations at 30 CFR 817.83(a)(2) (as discussed in Finding No. 13 above, the Federal regulations require a 6-hour event, but Montana's 24-hour event is no less effective).

However, proposed ARM 26.4.925(1) and 26.4.926(1) require compliance with all of the requirements of proposed rule ARM 26.4.924. ARM 26.4.924(16), in turn, would require these ditches, as diversions of surface runoff, to be stabilized and designed for the 100-year, 24-hour precipitation event. Similarly, proposed ARM 26.4.927(6) would also require the terrace ditches required at 26.4.927(7)(c) to be designed for the 100-year, 24-hour event.

Therefore the Director finds Montana's proposed rules at ARM 26.4.925(5), its reference at 26.4.926(1), and 26.4.927(7)(c) to be no less effective than the Federal requirements at 30 CFR 817.83(a)(2), and is approving the proposals.

15. Disposal of Underground Development Waste: Durable Rock Fills

(a) Allowance for Construction of Durable Rock Fills

At proposed ARM 26.4.927(1), Montana proposes to allow underground development waste to be placed in durable rock fills if the material is appropriate. The material would be required to be transported and placed in a controlled manner, and the method of placement designed to ensure stability. This proposal adds additional detail to the Federal requirements regarding the placement of underground development waste at 30 CFR 817.81(a), (c)(1), and § 817.102(e).

Therefore the Director finds the Montana proposal to be no less effective than the Federal regulation requirements at 30 CFR 817.81(a), (c)(1), and § 817.102(e), and is approving the proposal.

(b) Static Safety Factor

Montana's proposed rule ARM 26.4.927(2)(c) requires that durable rock fills of underground development waste be designed for an "end-of-construction" static safety factor of 1.5. The Federal regulations at 30 CFR 817.81(c)(2) specify a "long-term" static safety factor of 1.5. The Federal regulation thereby places a more stringent requirement, in that a design for an "end-of-construction" static safety factor would not necessarily ensure the achievement of a "long-term" static safety factor of 1.5.

However, ARM 26.4.927(1)(a) incorporates a proposed rule at ARM 26.4.924, that, at subsections (4) and (8), requires that all underground development waste disposal structures be designed to attain a long-term static safety factor of 1.5.

Therefore, while not specifically required at proposed ARM 26.4.927(2)(c), the Montana proposal nonetheless requires durable rock fills of underground development waste to be designed for a long-term static safety factor of 1.5, through its incorporation of ARM 26.4.924(4, 8). The Director therefore finds the proposal to be no less effective than the Federal requirement, and is approving proposed ARM 26.4.927(2)(c).

(c) Internal Drainage Systems

Proposed ARM 26.4.927(3)(a) requires the designs of durable rock fills that are configured as head-of-hollow or valley fills to include designs for internal drainage systems. Thus, if a durable rock fill is constructed on a site containing seeps or watercourses, but is not configured as a head-of-hollow or valley fill, it need not have a drainage system designed and built.

The Federal regulations at 30 CFR 817.83(a)(3), incorporating the requirements of 30 CFR 817.71(f), require that all fills include underdrains if they are constructed on sites containing seeps, watercourses, etc. Thus the Federal requirements apply to more fills that does the proposed Montana provision.

However, proposed ARM 26.4.927(1)(a) incorporates proposed new rule ARM 26.4.924, and subsections (4) and (12) of that rule require that the designs of all underground development waste fills include underdrain systems (if the site contains seeps, watercourses, etc.) whether configured as head-of-hollow or valley fills or not.

Thus, while not explicitly required at proposed ARM 26.4.927(3)(a), the Montana proposal, by incorporation of proposed ARM 26.4.924, contains requirements that are substantially equivalent to the Federal requirements. Therefore, the Director finds the Montana proposal to be no less effective than the Federal regulations, and is approving proposed ARM 26.4.927(3)(a).

(d) Grading of Durable Rock Fills

Proposed ARM 26.4.927(5) requires that the top surfaces of durable rock fills be graded to slopes no steeper than 20%, unless otherwise approved by DSL, to direct runoff from the fill into designed drainage channels.

The Federal regulations at 30 CFR 817.83(a)(2) also require surface runoff to be diverted to stabilized channels, but do not specify a maximum slope of the refuse pile top allowed to accomplish this. The Montana proposal thus provides more specific performance standards to assure greater environmental protection.

OSM notes that the slope of the refuse pile top is also constrained by stability requirements (30 CFR 817.81(c)) and acceptability for the postmining land use (30 CFR 817.83(c)(2)). The Montana proposal contains counterparts to these at ARM 26.4.924(4), (8) and 26.4.924(9), respectively. Therefore, fill designs would have to meet these requirements as well, and thus Montana's specified maximum slope is not inconsistent with these Federal regulations. For the reasons specified above, the Director finds that the Montana proposal is no less effective than the Federal regulation requirements, and is approving the proposal.

16. Underground Mine Application Requirements: Disposal of Coal Processing Waste, Design Requirements

Montana's proposed rule ARM 26.4.930 requires, or incorporates through cross-referencing, the equivalents to most of the application requirements for the disposal of coal processing waste required by the counterpart Federal regulations at 30 CFR 784.11, § 784.16, § 784.23, and § 784.25 (see Finding No. 1 above), with the following exception.

The Montana proposal does not contain counterparts to the requirements of 30 CFR 784.16(e) and (f), that specify detailed application and design requirements for coal processing waste impoundments. The Montana program at ARM 26.4.505(3) (applicable to this proposed rule through ARM 26.4.903(1)) prohibits the construction of embankments from wastes; but impoundments of coal processing wastes behind embankments constructed of other materials is not prohibited.

The more detailed requirements of 30 CFR 784.16(e) and (f) include more detailed geotechnical investigations of the foundations underlying both the embankment and the impoundment basin, compliance with additional MSHA rules, and justifications for engineering designs for "large" waste impoundments (>20 ac.-ft. and/or embankment >20 feet high).

The Director is therefore requiring Montana to amend its rule to add application requirements that are no less effective than those at 30 CFR 784.16(e) and (f).

17. Disposal of Coal Processing Waste: Performance Standards

(a) Disposal of Off-Site-Generated Waste

At ARM 26.4.932(4), Montana proposes to allow on-site disposal of off-site-generated wastes without a specific requirement for prior approval by DSL.

The proposed rule at subsection (6) cross-references proposed rule ARM 26.4.924(2), which includes a requirement for DSL approval for this practice. The Federal regulation at 30 CFR 817.81(b) requires approval of the regulatory authority for the disposal of off-site-generated wastes. Thus, while not specifically required at ARM 26.4.932(4), the Montana proposal does, by incorporating proposed ARM 26.4.924(2), include the same requirement for approval as is included in the Federal regulation. Therefore, the Director finds that the Montana proposal is no less effective than the Federal regulation requirements, and is approving this proposed provision.

(b) Inspection of Coal Waste Disposal Structures

Montana's proposed rule at ARM 26.4.932(5)(b) would allow the termination of engineer's inspections of coal waste disposal structures after the structure has been resoiled, with the provision that DSL may require the inspections to continue for a longer period. The counterpart Federal regulations at 30 CFR 817.83(d) require the inspections to continue through the revegetation of the structure.

However, Montana's proposed rule also incorporates by reference, at subsection (6), the requirements of proposed ARM 26.4.924(18); that rule, in turn, requires the operator to continue inspections through revegetation of the structure. Therefore, in order for proposed ARM 26.4.932(5)(b) to be consistent with proposed 26.4.924(18), DSL will have to always exercise its discretion to require inspections to continue for the longer period.

Thus, while not specifically included at proposed ARM 26.4.932(5)(b), the Montana proposal does, by incorporating proposed ARM 26.4.924(18), require the inspections to continue through revegetation, i.e. for a period coincident with that required by the Federal regulations. Therefore, the Director finds the proposal as effective as the Federal regulation requirement and is approving this proposed provision.

(c) Coal Processing Waste Placement

Montana at ARM 26.4.932(6) proposes to require that when placed in disposal structures, coal processing waste be placed in lifts no higher than 24 inches, and compacted to attain 90 percent of the maximum dry density; variances from these standards would be allowed for dewatered fine coal wastes. The proposed rule at ARM 26.4.932(6) incorporates the requirements of proposed ARM 26.4.924 (4) and (8); those provisions, in turn, require that designs attain a long-term static safety factor of 1.5 (see Finding No. 8(b) above). Therefore, the structures must be designed to achieve the 1.5 safety factor while utilizing these compaction criteria as part of the required criteria.

The counterpart Federal regulations at 30 CFR 817.83(a) do not require specific maximum lift heights or compaction standards; instead, design flexibility is allowed, as long as the design demonstrates a long-term static safety factor of 1.5.

The Director finds that the Montana proposal provides for detailed requirements not found in the Federal regulations but assures that a long term static safety factor of 1.5 is achieved as required by the Federal regulations at 30 CFR 730.11(b). Therefore the Director finds that Montana's proposed changes at ARM 26.4.932(6) are no less effective than the Federal regulation requirements and is approving the proposal.

(d) Plan for Extinguishing Coal Waste Fires

Montana's proposed rule at ARM 26.4.932(10) requires that the plan for extinguishing coal waste fires be in compliance with MSHA requirements, but does not require MSHA approval of the plan. However, existing rule ARM 26.4.903(1) requires compliance with ARM 26.4.523; that rule, in turn, includes the requirement for MSHA approval of the plan. The Federal regulations at 30 CFR 817.87(a) also require compliance with MSHA requirements and approval of the plan by MSHA. Therefore, the Director finds that ARM 26.4.932(10), in conjunction with existing requirements at ARM 26.4.903(1), provides for no less effective than requirements as the Federal regulation, and is approving this provision.

18. Annual Report

Montana proposes a revision to its rule at ARM 26.4.1129(1) to require that the operator, rather than the permittee, submit to DSL an annual report. The report is to contain information on the amounts of area disturbed and reclamation accomplished.

There is no counterpart Federal regulation, and no Federal requirement for the submission of an annual report. However, the Director finds that the Montana proposal will assist in the administration of the program and is not inconsistent with the requirements of the Federal regulations, and is approving the proposed revision.

19. Correction of Previous Errors in the Codification of the Montono Program at 30 CFR 926.16

In a May 14, 1984, rulemaking (49 FR 20286), the Director granted Montana an extension of time in which to submit rules for the training, examination, and certification of blasters and to develop a program to examine and certify blasters; the new submission requirements were codified at 30 CFR 926.16(a) (49 FR 20286, 20287).

On January 3, 1984, September 20, 1984, and August 16, 1984, Montana submitted proposed program materials to address these topics. The Director approved the proposed amendment in a November 16, 1985, rulemaking, codifying the approval at 30 CFR 926.15(e) (50 FR 47386, 47388). Since the approval of this amendment satisfied the required amendments at 30 CFR 926.16(a), those requirements should have been removed at that time; however, this was not done.

The Director now finds, for the reasons specified in the November 18, 1985, rulemaking (50 FR 47386), that Montana has fulfilled the requirements codified at 30 CFR 926.16(a), and is removing those requirements.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the Montana program.

By letters dated July 13, July 18, and November 28, 1990 (Administrative Record Nos. MT–7–08, MT–7–10, and MT–7–21), the Bureau of Indian Affairs responded that it had no comments, that it found the amendment satisfactory, and that it would defer to OSM's judgment regarding design precipitation events.

By letters dated July 17 and November 23, 1990 (Administrative Record Nos. MT–7–09 and MT–7–19), the U.S. Fish & Wildlife Service responded that it had no comments and that the 100-year, 24-hour precipitation design event was adequate for its needs.

By letter dated July 20, 1990 (Administrative Record No. MT–7–11), the Bureau of Land Management responded that the proposed amendment will protect public safety and the environment.

By letters dated July 27, 1990, and January 8, 1991 (Administrative Record Nos. MT–7–12 and MT–7–24), the Mine Safety and Health Administration responded that it found no conflicts with MSHA regulations and found the amendment acceptable.

By letter dated November 21, (Administrative Record No. MT–7–16), the Bureau of Reclamation responded that the use of the 24-hour design event would not have a major impact on its interests. By letter dated November 20, 1990, and telephone conversation dated December 14, 1990 (Administrative Record Nos. MT–7–20 and MT–7–22), the Army Corps of Engineers reported that it had no comments.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment and clarifying information submitted by Montana to the SHPO and the ACHP for comment. The proposal included no provisions that would directly affect historic properties or cultural resources. No response was received from either group.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*)

By letters dated September 26 and December 24, 1990 (Administrative Record Nos. MT–7–14 and MT–7–23), EPA's headquarters commented that the proposed amendment and the clarifying information submitted by Montana was in compliance with the requirements of the Clean Water Act, and concurred with the proposed revisions. EPA has thus granted concurrence with those provisions of the proposed amendment which relate to water quality standards promulgated under the authority of the Clean Water Act.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements noted below, Montana's proposed program amendment as submitted June 19, 1990 and clarified on October 29, 1990.

As discussed in Finding No. 2(a), the Director is not approving, in the proposed definitions of "head-of-hollow fill" and "valley fill" at ARM 26.4.301(48) and (128), the limitation to "non-coal organic materials" of the organic materials barred form inclusion in these fills; as discussed in Finding No. 2(e), the Director is not approving the proposed definition of "waste" at ARM 26.4.301(132) to the extent that it includes coal processing waste to be disposed of on surface mining operations; as discussed in Finding No. 4(b) regarding proposed ARM 26.4.305(2)(b) and ARM 26.4.321(3), the Director is not approving the phrases "* * *, registered land surveyor, * * *" and "* * *, or a registered land surveyor, * * *"; as discussed in Finding No. 7, the Director is not approving proposed ARM 26.4.924(3) and 26.4.932(2) regarding locations of disposal areas; as discussed in Finding No. 9, the Director is not approving the second sentence of proposed ARM 26.4.924(4) regarding the disposal structures required to meet MSHA requirements; and as discussed in Finding No. 11(b), the Director is not approving proposed ARM 26.4.924(14) which establishes a variance procedure for alternative underdrain systems.

The Director is requiring the following program amendments at 30 CFR 926.16(e): As discussed in Finding No. 2(a), revision of ARM 26.4.301(48) and (128) to eliminate the word "non-coal"; as discussed in Finding No. 2(d), revision of the definition of "road" at ARM 26.4.301(100); as discussed in Finding No. 2(e), revision of ARM 26.4.505 and 26.5.510, or other program revision, to incorporate additional requirements for the disposal of "waste" on surface mines; as discussed in Finding 4(a), revision of ARM 26.4.321(3) to add requirements for the content of certifications; as discussed in Finding No. 4(b), revision of ARM 26.4.305(2)(b) to remove the phrase "* * *, registered land surveyor, * * *" and revision of ARM 26.4.321(3) to remove the phrase "* * *, or a registered land surveyor, * * *"; as discussed in Finding No. 4(c), revision of ARM 26.4.321, transportation facilities plan to incorporate requirements no less effective than 30 CFR 780.37(a) (2), (3)/§ 784.24(a) (2), (3); as discussed in Finding No. 4(d) revision of ARM 26.4.321 to incorporate requirements equivalent to 30 CFR 780.37(a)(6)/§ 784.24(a)(6); as discussed in Finding No. 7, revision of ARM 26.4.924(3) and 26.4.932(2) to indicate whether disposal under these rules is within mine surface excavations or outside mine surface excavations, and clarify what constitutes a "waste disposal structure"; as discussed in Finding No. 9, revision of ARM 26.4.924(4) to require all non-impounding underground development waste disposal structures to meet the MSHA requirements at 30 CFR 77.214 and 77.215 and clarify what constitutes a "coal waste refuse structure"; as discussed in Finding No. 11(b), revision of ARM 26.4.924 to remove subsection Arm 26.4.924(14); as discussed in Finding No. 12, revision of ARM 26.4.924 to add a coverage requirement no less effective than 30 CFR 817.83(c)(4); and as discussed in Finding No. 16, revision of ARM 26.4.930 to add application requirements that are no less effective than 30 CFR 784.16(e).

As discussed in Finding No. 3, the Director is deferring action on the proposed revision to ARM 26.4.313(3)(b).

Additionally, as discussed in Finding No. 19, the Director is removing requirements at 30 CFR 926.16(a) which have previously been fulfilled by Montana.

The Federal regulations at 30 CFR part 926 codifying decisions concerning the Montana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to the State program are not enforceable by the State as part of the approved State program until approved by the Director. In the oversight of the Montana program, the Director will recognize only statutes, regulations, and other materials approved by the Director, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Montana of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, § 732.15, and § 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 2, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 926—MONTANA

1. The authority citation for part 296 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.15 is amended by adding paragraph (j) to read as follows:

§ 926.15 Approval of amendments to State regulatory program.

* * * * * * *

(j) The following provisions of the Administrative Rules of Montana (ARM), as submitted on June 19, 1990, and clarified on October 29, 1990, with the exceptions noted below, are approved effective August 19, 1992: ARM 26.4.920, Placement and Disposal of Underground Development Waste (Special Application Requirements); ARM 26.4. 924, Disposal of Underground Development Waste (General Requirements); ARM 26.4.925, Disposal of Underground Development Waste (Valley Fills); ARM 26.4.926, Disposal of Underground Development Waste (Head of Hollow Fills); ARM 26.4.927, Disposal of Underground Development Waste (Durable Rock Fills); ARM 26.4.930, Placement and Disposal of Coal Processing Waste (Special Application Requirements); ARM 26.4.932, Disposal of Coal Processing Waste; definitions and permit application requirements, ARM 26.4 subchapter 3; backfilling and grading requirements, ARM 26.4 subchapter 5; alluvial valley floors, prime farmlands, alternate reclamation, and auger mining, ARM 26.4 subchapter 8; bonding, insurance, reporting, and special areas, ARM 26.4 subchapter 11; and special departmental procedures and programs, ARM 26.4 subchapter 12.

The following provisions of the submittal are not being approved: the limitation to "non-coal organic materials" of the organic materials barred from inclusion, in the proposed definitions of "head-of-hollow fill" and "valley fill" at ARM 26.4.301(48) and (128); the proposed definition of "waste" at ARM 26.4.301(132) to the extent that it includes coal processing waste to be disposed of on surface mining operations; the phrases "* * *, registered land surveyor, * * *" and "* * *, or a registered land surveyor, * * *" in proposed ARM 26.4.305(2)(b) and ARM 26.4.321(3); the proposed revision to ARM 26.4.313(3)(b); proposed ARM 26.4.924(3) and 26.4.932(2); the second sentence of proposed ARM 26.4.924(4); and proposed ARM 26.4.924(14).

3. Section 926.16 is amended by removing and reserving paragraph (a) and by adding new paragraph (e), to read as follows:

§ 926.16 Required program amendments.

(a) [Reserved]

* * * * *

(e) By October 19, 1992, Montana shall:

(1) Submit proposed revisions to ARM 26.4.301(100), or other revision, to include pioneer and construction roadways in the definition of "road";

(2) Submit proposed revisions to ARM 26.4.505 and 26.5.510, or other program revision, to incorporate requirements for the disposal of "waste" on surface mines no less effective than 30 CFR 816.81–816.84 and § 816.102(e);

(3) Submit proposed revisions to ARM 26.4.321(3), or other revisions, to specify certification content requirements no less effective than 30 CFR 780.37(b) and § 784.24(b);

(4) Submit proposed revisions to ARM 26.4.321, or other revisions, to incorporate application requirements no less effective than 30 CFR 780.37(a) (2), (3), (6) and § 784.24(a) (2), (3), (6);

(5) Submit proposed revisions to ARM 26.4.924 and 26.4.932, or other revisions, to specify whether the waste disposal governed by these rules is within or outside mine surface excavations, and to clarify what constitutes a "waste disposal structure";

(6) Submit proposed revisions to ARM 26.4.924(4), or other revisions, to require that all non-impounding underground development waste disposal structures meet the MSHA requirements at 30 CFR 77.214 and § 77.215 and also to clarify what constitutes a "coal waste refuse structure";

(7) Submit proposed revisions to ARM 26.4.924, or other revisions, to incorporate a requirement no less effective than 30 CFR 817.83(c)(4);

(8) Submit proposed revisions to ARM 26.4.930, or other revisions, to add application requirements that are no less effective than 30 CFR 784.16(e); and

(9) Submit proposed revisions to remove the following parts of this State initiative that the Director is not approving but which have been promulgated by Montana:

ARM 26.4.301(48) and (128), the word "non-coal"; ARM 26.4.305(2)(b) and 26.4.321(3), the phrases "* * *, registered land surveyor, * * *" and "* * *, or a registered land surveyor, * * *"; and ARM 26.4.924, subsection ARM 26.4.924(14).

[FR Doc. 92–19705 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–05–M

30 CFR Part 943

Texas Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of proposed amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions and additional requirements, a proposed amendment to the Texas permanent regulatory program (hereinafter, the "Texas program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to Texas' existing regulations pertaining to definitions; general provisions; lands unsuitable for mining; surface coal mining operation permits; coal exploration procedures; bond and insurance requirements for surface coal mining and reclamation operations; permanent program performance standards for coal exploration; and permanent program inspection and enforcement procedures. The proposed amendment also adds to Texas' regulations a new part pertaining to the training, examination, and certification of blasters. The amendment is intended to revise the Texas program to be consistent with the corresponding Federal standards.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, telephone (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. General background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program, can be found in the February 27, 1980, **Federal Register** (45 FR 12998). Subsequent actions concerning the Texas program and program amendments can be found at 30 CFR 943.15 and 943.16.

II. Proposed Amendment

By letter dated September 22, 1989 (Administrative Record No. TX–456), Texas submitted to OSM a proposed amendment to its program pursuant to SMCRA. Texas submitted the proposed amendment in response to letters dated May 20, 1985, June 9, 1987, and October 20, 1988, that OSM sent to Texas in accordance with 30 CFR 732.17(c). Texas also submitted the proposed amendment in response to the required program amendment at 30 CFR 943.16(a). The provisions of Chapter IV of the Texas Coal Mining Regulations (TCMR) that Texas proposed to revise are: Subchapter A, General, parts 700 and 701; subchapter F, Lands Unsuitable for Mining, part 762; subchapter G, Surface Coal Mining and Reclamation Operations Permits and Coal Exploration Procedures System, parts 770, 771, 776, 778, 779, 780, 783, 784, 785, 786, 788, and 795; subchapter J, Bond and Insurance Requirements for Surface Coal Mining and Reclamation Operations, parts 800, 806, 807, and 808; subchapter K, Permanent Program Performance Standards—Coal Exploration, parts 815, 816, 817, and 819; and subchapter L, Permanent Program Inspection and Enforcement Procedures, parts 840, 843, and 845. In addition, Texas proposed to add a new part 850, pertaining to the training, examination, and certification of blasters at subchapter M.

OSM published a notice in the October 6, 1989, **Federal Register** (54 FR 41282) announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment. The public comment period closed November 6, 1989.

During its review of the amendment, OSM identified concerns relating to identification of interests and compliance information at TCMR 778.116(h)(3), geology description at TCMR 779.127(c) and 783.173, terms and conditions for liability insurance at TCMR 806.311(d), procedures for seeking release of performance bond at TCMR 807.312(c), criteria and schedule for release of performance bonds at TCMR 807.313(a), stream buffer zones at TCMR 816.355(a), general requirements for explosives at TCMR 816.357 and 817.526, and general requirements for blaster certification at TCMR 850.702(e). OSM notified Texas of the concerns by letter dated March 16, 1990 (Administrative Record No. TX–474). By letter dated September 11, 1990 (Administrative Record No. TX–484), Texas withdrew from the proposed amendment the deficient regulations listed above.

III. Director's Findings

After a thorough review, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, the Director finds, with certain exceptions and additional requirements, that the proposed amendment as submitted by Texas on September 22, 1989, and as revised by it on September 11, 1990, is no less stringent than SMCRA and no less effective than the corresponding Federal regulations.

1. Substantive Revisions to Texas' Regulations That Are Substantively Identical to the Corresponding Federal Regulations

Texas proposed revisions to the following regulations that are substantive in nature and contain language that is substantively identical to the corresponding Federal regulations (listed in parentheses):

TCMR 700.003(22), 701.008 (56), (81), and (85), 762.074 (1) and (2) (30 CFR 700.5, and 701.5), definitions for "surface coal mining operations," "permanent impoundment," "substantially disturb," "temporary impoundment," "fragile lands," and "historic lands;"

TCMR 770.100(c), 771.107(d), 786.216(p), 788.230(a)(4) through (a)(6), and 788.232(c)(1), (d), and (e) (30 CFR 773.15(a)(2), 773.15(C)(11), 777.13(b), 774.15(c)(1)(iv) through (vi), and 774.17(d)(1) and (e)), permitting; TCMR 776.111(a)(3)(A), (a)(7), and 815.327(a) and (f) (30 CFR 772.12(b)(8)(i) through (iv), (b)(9), (b)(7), and 815.15(a), (e)), coal exploration;

TCMR 779.125(b), 779.126(a), 779.133, 783.171(b) (30 CFR 779.12(b), 780.22(a), 780.16 (a) and (c), and 783.12(b)), environmental resources information; TCMR 780.144(a), 783.179, and 784.195(a) (30 CFR 780.16(b) and 784.21), fish and wildlife plan; TCMR 780.145(b)(4) and 784.187(b)(4) (30 CFR 780.18(b)(4) and 784.13(b)(4)), topsoil;

TCMR 780.151 and 784.191 (30 CFR 780.31 (a) and (b), and 784.17 (a) and (b)), public parks and historic places; TCMR 784.194(a), (e) and (f), 817.562(c), and 817.565(e) (30 CFR 784.20 (a) through (c) and (h), and 817.121 (g) and (e)), subsidence control plan; TCMR 785.200 (a) through (c), and (f) through (i) (30 CFR 785.13(b), (e), (g), and (h)), experimental practices;

TCMR 795.237(b)(5), (c), and (d), 795.238(d)(4), and 795.243(a) (30 CFR 795.6 (a)(2) and (a)(2)(iv), 795.7(d)(4), and 795.12(a)), small operator assistance program; TCMR 808.317 (30 CFR 800.50(d)(1) and (2)), bond forfeiture

criteria: TCMR 816.339(a) and 817.509(a) (30 CFR 816.41(a) and 817.41(a)), hydrologic balance;

TCMR 816.344(a) and 817.514(a) (30 CFR 816.46(c)(1)(ii) and (iii)(A), (B), and (F), 817.46(c)(1)(ii) and (iii)(A), (B), and (F)), sedimentation ponds; TCMR 816.353(d) (30 CFR 816.41(i)(1)(i)), discharge to underground mine; TCMR 816.359, (30 CFR 816.64 (b) and (c)), blasting schedule; TCMR 816.363(j), (l), (o) and (p) and 817.531(l), (o) and (p) (30 CFR 816.71(e)(5) and (h) and 817.71(e)(5), (h)(3)(ii) and (iii)), disposal of excess spoil; TCMR 816.368(c), 816.369(a), 816.371(c)(3) (deleted), and 816.377(b) (30 CFR 816.81(c)(1), 816.83, and 816.84(d)), coal processing waste banks;

TCMR 816.390 (b) and (c), and 817.547 (b) and (c), (30 CFR 816.97 (b) and (c), and 817.97 (b) and (c)), protection of fish and wildlife and related environmental values; TCMR 816.390(a) (30 CFR 816.111(a)(3)), revegetation; TCMR 819.600(c)(1) (30 CFR 819.15(b)(1)), auger mining;

TCMR 840.872(b), 843.680(a), and 843.682(f) (30 CFR 840.14(b), 843.119(a), and 843.13(d)), inspection and enforcement; and TCMR 845.695(b)(2) (30 CFR 845.17(b)(2)), civil penalties.

Because the proposed revisions to these Texas regulations are substantively identical to the corresponding Federal regulations, the Director finds that these proposed Texas regulations are no less effective than the corresponding Federal regulations. Therefore, the Director approves these proposed regulations.

2. TCMR 700.002(b)(2), Authority, Responsibility and Applicability—2 Acre Exemption

Texas proposed to delete existing TCMR 700.002(b)(2), which excluded from regulation under the Texas Surface Coal Mining Control and Reclamation Act coal extraction operations affecting 2 acres or less. As originally enacted, section 528(2) of SMCRA also exempted coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100–34, which repealed this exemption and preempted any corresponding acreage-based exemptions included in State laws or regulations (52 FR 21228, June 4, 1987).

Texas proposed to remove from TCMR 700.002 the language preempted by Public Law 100–34. Removal of the acreage exemption from the Texas regulations will prevent confusion on the part of the public, which may not be aware of the Federal preemption.

The Director finds that the proposed deletion of TCMR 700.002(b)(2) regarding the 2-acre exemption does not render the Texas regulations less stringent than SMCRA, as amended by Public Law 100–34. Therefore, the Director approves this revision.

3. TCMR 701.008(18), Definition of "Coal Processing Plant or Coal Preparation Plant"

Texas proposed at TCMR 701.008(18) to define "coal processing plant or coal preparation plant" as a facility where coal is subjected to chemical or physical processing or cleansing, concentrating, or other processing or preparation. The proposed definition includes a partial list of facilities associated with coal preparation activities that may comprise a coal processing or preparation plant. The definition excludes facilities operated by the final consumer of the coal.

The corresponding Federal regulations at 30 CFR 701.5 define "coal preparation plant" as a facility where coal is subjected to chemical or physical processing or cleaning, concentrating, or other processing or preparation. The Federal definition also includes a partial list of facilities associated with coal preparation activities that may comprise a coal preparation plant, but it does not specifically exclude any facilities.

With the exception of the part of Texas' definition that excludes certain facilities and the part that gives additional examples of facilities which may be associated with coal preparation activities, Texas' proposed definition of "coal processing plant or coal preparation plant" is substantively identical to the Federal definition of "coal preparation plant". Included in Texas' proposed list of facilities associated with coal preparation activities that may comprise a coal processing or preparation plant are "roads, railroads and other transport facilities." These facilities are not included in the Federal definition of coal preparation plant because they are regulated as roads at 30 CFR 701.5, 816.150, 816.151, 817.150, and 817.151 or as support facilities at 30 CFR 816.181 and 817.181 (48 FR 20392, 20395, May 5, 1983). Therefore, Texas' inclusion of roads, railroads, and other transport facilities does not render Texas' proposed definition of "coal processing plant or coal preparation plant" less effective than the corresponding Federal definition.

In addition, Texas proposed to exclude from its definition of "coal processing plant or coal preparation plant" facilities "operated by the final consumer of the coal, such as an electricity generating power plant, when, in the opinion of the Commission, the primary purpose of the facilities is to make the coal ready for conversion into a different energy form and the facilities are located at or near the electricity generating plant or other point of final consumption away from the mine site and outside of the approved mine permit area." Although the Federal definition does not specifically exclude any facilities from regulation, OSM has determined that its jurisdiction under section 701(28)(A) of SMCRA does not extend "to facilities solely operated in connection with the end user of the coal product" (48 FR 20392, 20393, May 5, 1983). In its present definition of "coal preparation plant," OSM reiterated that "coal preparation plants associated with the ultimate use or consumption of coal, are not in connection with a mine, and are not regulated surface coal mining operations" (52 FR 17724, 17726, May 5, 1987). Therefore, Texas' proposed exclusion from regulation as a coal processing plant or coal preparation plant of facilities operated by the final consumer of the coal is not inconsistent with the Federal definition of "coal preparation plant." For the above reasons, the Director finds that Texas' proposed definition of "coal processing plant or coal preparation plant" at TCMR 701.008(18) is no less effective than the Federal definition of "coal preparation plant" at 30 CFR 701.5 and approves the proposed definition.

4. TCMR 770.101, Definition of "Cumulative Impact Area"

Texas proposed to add at TCMR 770.101 a definition for "cumulative impact area." The proposed definition is substantively identical to the corresponding Federal definition at 30 CFR 701.5. However, in promulgating TCMR 770.101, the existing definitions for "applicant," "application," "complete application," "general area," "principal shareholder," "property to be mined," and "violation notice" were omitted. The Federal regulations at 30 CFR 701.5 include definitions for "applicant," "application," "principal shareholder," "property to be mined," and "violation notice," and as explained in the following finding No. 7, the approval of Texas' proposed TCMR 776.111(b)(1) is dependent upon the definition for "complete application."

The Director finds that Texas' proposed definition of "cumulative impact area" is no less effective than the corresponding Federal definition and approves it. However, the Director requires Texas to revise TCMR 770.101 to replace the omitted definitions, or to otherwise demonstrate that those definitions are not necessary for the Texas program to be no less effective than the Federal regulations.

5. TCMR 770.102(c), Coordination With Requirements Under Other Laws

Texas proposed at TCMR 770.102(c) to revise the existing list of Federal statutes with which the processing of permits for coal mining operations must be coordinated. Texas proposed to delete Executive Order 11593, which addresses protection and enhancement of the cultural environment, add the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. 703 *et seq.*), and add the Bald Eagle Protection Act, as amended (16 U.S.C. 668a). With one exception, the proposed revisions would make the list at TCMR 770.102(c) the same as the corresponding list in the Federal regulation at 30 CFR 773.12.

The exception is that the Federal regulation at 30 CFR 773.12 requires that where Federal and Indian lands covered by SMCRA are involved, the processing of permits must be coordinated with the requirements of the Archaeological Resources Protection Act of 1979 (ARPA). Texas' proposed TCMR 770.102(c) does not include an equivalent requirement. Any archaeological excavation or removal of archaeological materials from either Federal or Indian lands is governed by the provisions of ARPA. State and private lands are not covered by ARPA (52 FR 4261, 4256, February 10, 1987). Presently there are no coal mines on Federal or Indian lands within the State of Texas, and Texas does not have a Federal lands cooperative agreement for State regulation of surface coal mining and reclamation operations of Federal lands.

Because Texas currently has mines only on State and private lands and because ARPA applies only to Federal and Indian lands, the Director finds that it is not necessary for the Texas program to require the permitting process to be coordinated with the requirements of ARPA. If, in the future, Texas and the U.S. Department of the Interior enter into a cooperative agreement for State regulation of surface coal mining and reclamation operations on Federal lands in Texas, Texas would have to amend its program to require that the processing of permit applications be coordinated with the requirements of the ARPA.

The Director finds that Texas' proposed TCMR 770.102(c) is no less effective than the corresponding Federal regulation at 30 CFR 773.12, and the Director approves it.

6. TCMR 771.108, Permit Fees

Texas proposed at TCMR 771.108 to revise the schedule of fees required to accompany each application for a permit, permit renewal, or permit revision. The proposed fee schedule consists of an application fee and an annual fee. Proposed application fees are $5,000 for a permit application, $500 for a permit revision application, and $3,000 for a permit renewal application. In addition, each permittee would be required to pay an annual fee of $120 for each acre of land within the permit area from which coal or lignite is actually extracted during each calendar year. The proposed regulation would allow the initial fee to be paid in equal installments over the term of the permit. The annual fee would be due and payable not later than March 15 of the year following the year of extraction.

The corresponding Federal regulation at 30 CFR 777.17 provides for the assessment of permit application fees but leaves the determination of the amount of such fees to the discretion of the regulatory authority. The Director finds that Texas' revised permit fee schedule as proposed at TCMR 771.108 is not inconsistent with the Federal regulations at 30 CFR 777.17 or any other requirement of the Federal regulations or SMCRA. The Director approves this proposed regulation.

7. TCMR 776.111(b)(1), Exploration of More than 250 Tons

Texas proposed to revise TCMR 776.111(b)(1) to require that public notice of a filing with the Commission of a complete application be published in a newspaper of general circulation in the county or counties of the proposed exploration area. The corresponding Federal regulation at 30 CFR 772.12(c)(1) requires the applicant to provide public notice of the filing of an administratively complete application with the regulatory authority in a newspaper of general circulation in the county of the proposed exploration area. With one exception, Texas' proposed TCMR 776.111(b)(1) is substantively identical to the Federal requirements at 30 CFR 772.12(c)(1). The exception is that although under both Texas' proposed regulations at TCMR 776.111(b)(1) and the Federal regulations at 30 CFR 772.12(c)(1) the processing and public review of an application begin upon publication of notice that the application has been filed with the regulatory authority, the proposed Texas regulation requires publication of notice upon filing of a complete application, whereas the Federal regulation requires publication of notice with the filing of an administratively complete application.

The Federal regulations at 30 CFR 701.5 define (1) an "administratively complete application" as an application determined "* * * to contain information addressing each application requirement of the regulatory program and to contain all information necessary to initiate processing and public review," and (2) a "complete and accurate application" as an application determined "* * * to contain all information required under the Act, this subchapter, and the regulatory program that is necessary to make a decision on permit issuance." In defining these terms, OSM noted that:

> [T]he concepts of a 'complete' application and a 'complete and accurate' application are contained in the Act [SMCRA] in section 510(a) and (b)(1) and apply to the standards for permit approval by the regulatory authority after review. A 'complete and accurate application' [or a 'complete' application] is thus a requisite for permit approval, not for the initiation of the review process. Under Section 513(a) of the Act [SMCRA], the public participation process begins with submission of an application.

(48 FR 44344, 44350, September 28, 1983). Thus, the Federal regulations provide for public participation and review to begin upon submission of an administratively complete application. Under this process "a regulatory authority may seek supplemental information from the applicant or a modification of the proposed operation with necessarily requiring that the comment period start anew" (48 FR 44344, 44350, September 28, 1983), until the application contains all the information necessary to make a decision on permit issuance.

The Texas program does not define or use the terms "administratively complete application" and "complete and accurate application." However, Texas' approved regulation at TCMR 051.07.04.101(3) defines a "complete application" as an application which contains "all information required under the Act [Texas Surface Coal Mining and Reclamation Act (TSCMRA)] and this Subchapter." Further, section 21(a) of TSCMRA, like section 510(a) of SMCRA, provides that a "complete" application is the basis for permit approval or denial, and therefore must contain all the information necessary to make a decision on permit issuance.

Because Texas' regulation at TCMR 051.07.04.101(3) and section 21(a) of TSCMRA require a "complete" application to contain all necessary information on which to base permit approval or denial, the Director finds that Texas' definition of a "complete application" is no less effective than the Federal definition of an

"administratively complete application." Therefore, the Director finds that proposed TCMR 776.111(b)(1) is no less effective than the corresponding Federal regulation at 30 CFR 772.12(c)(1) and approves it.

8. TCMR 779.127(a) and (b). Geology Description

Texas proposed to revise TCMR 779.127 to specify in greater detail the geologic information that must be submitted in a permit application. With two exceptions, proposed TCMR 779.127(a) and (b) are substantively identical to the corresponding Federal regulations at 30 CFR 780.22(b)(1) and (b)(2).

The first exception is that Texas' proposed TCMR 779.127(a) does not include the information sources listed by the Federal regulations at 30 CFR 780.22(b)(1)(i) through (iii). However, lack of these information sources does not relieve applicants from providing, or prevent Texas from requiring, a complete and adequate description of the geology of the permit and adjacent areas as specified at proposed TCMR 779.127(a). Therefore, the Director finds that the omission of these information sources does not render the proposed regulations less effective than the Federal regulations at 30 CFR 780.22(b)(1) and (b)(2).

The second exception is that proposed TCMR 779.127 does not require, as the 30 CFR 780.22(b)(2) does, that the geology description include analyses of samples of geologic materials from the permit and adjacent areas. The description is only required to include the items listed at proposed TCMR 779.127(a) (1) through (3). Proposed TCMR 779.127(b) requires that analyses of any samples collected must provide certain specified data, but it does not require that any samples actually be collected and included in the geology description. Because proposed TCMR 779.127(a) and (b) do not require the geology description to be based on samples of geologic materials collected from the permit area, the Director finds that Texas' proposed TCMR 779.127(a) and (b) are less effective than the corresponding Federal regulations at 30 CFR 780.22(b). The Director does not approve the proposed regulations and requires Texas to revise TCMR 779.127 to provide that the geology description must be based, in part, on the analyses of samples collected from the permit area.

9. TCMR 780.142(c). Operation Plan: Maps and Plans

Texas, at TCMR 780.142(c), proposed permit application requirements for maps, plans, and cross sections of mine facilities (hereinafter in this finding referred to as "plans"). Under Texas' proposed rule, either qualified registered professional engineers or professional geologists could certify the plans addressed at TCMR 780.142(b)(4), (5), (6), (10), and (11), although only a qualified registered professional engineer could prepare the sedimentation ponds and spoil disposal plans addressed at TCMR 780.142(b)(4), (5) and (11).

The corresponding Federal regulation at 30 CFR 780.14(c) differs from Texas' proposed TCMR 780.142(c) in several important aspects. With certain exceptions, the Federal regulation at 30 CFR 780.14(c) allows a qualified, registered, professional land surveyor, in any State that authorizes such land surveyors to do so, to prepare and certify plans. Texas has not proposed at TCMR 780.142(c) that land surveyors be granted such authority. This omission of land surveyors from the regulation does not render proposed TCMR 780.142(c) less effective that the corresponding Federal regulation at 30 CFR 780.14(c).

With certain exceptions, the Federal regulation at 30 CFR 780.14(c) allows professional geologists to prepare and certify plans. The exceptions are, as required by 30 CFR 780.14(c) through the citing of other Federal regulations at 30 CFR 780.25(a)(2), 780.25(a)(3), 780.35(a), and 816.81(c), that a qualified registered professional engineer, but not a professional geologist, is authorized to prepare and certify plans for sedimentation ponds, water impoundments, coal processing waste banks, dams, and embankments (30 CFR 780.25(a)(2) and (3)), excess spoil fills (30 CFR 780.35(a), which cites 30 CFR 816.71), durable rock fills (30 CFR 780.35(a), which cites 30 CFR 816.73), and coal mine waste disposal facilities (30 CFR 816.81(c)). Proposed TCMR 780.142(c), through its citing of TCMR 780.142(b)(5), (6), and (11), is not consistent with 30 CFR 780.14(c), because it would allow professional geologists to prepare and certify plans for coal waste storage areas; water treatment, storage, and discharge facilities; and sedimentation ponds, permanent water impoundments, coal processing waste banks, and coal processing waste dams and embankments. In addition, proposed TCMR 780.142(c)(1) and (2) is not consistent with 30 CFR 780.14(c), because it would require that qualified registered professional engineers prepare plans for sedimentation ponds and spoil disposal areas, but it would allow professional geologists to certify them.

For the above reasons, the Director finds that Texas' proposed TCMR 780.142(c) is less effective than the corresponding Federal regulation at 30 CFR 780.14(c). The Director does not approve the proposed regulation to the extent that it would allow professional geologists to prepare and certify cross sections, maps, and plans for sedimentation ponds; water impoundments; coal processing waste banks, dams, and embankments; excess spoil fills; durable rock fills; and coal mine waste disposal facilities. The Director requires Texas to revise TCMR 780.142(c) to only allow qualified registered professional engineers to prepare and certify such cross sections, maps, and plans.

10. TCMR 783.172, General Requirements for Description of Hydrology and Geology

Texas' existing TCMR 783.172 sets forth the general requirements for hydrologic and geologic information that must be included in a permit application. These requirements are not inconsistent with corresponding Federal requirements for hydrologic information and geologic information at 30 CFR 784.22.

Texas proposed to revise TCMR 783.172 by adding the requirement that an application must include geologic information of sufficient detail to assist in determining (1) the probable hydrologic consequences of the operation on the permit and adjacent areas, (2) the existence of all potentially acid- or toxic-forming strata down to and including the stratum immediately below the lowest coal seam to be mined, and (3) whether the required reclamation can be accomplished and whether the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area.

Texas' proposed requirement is substantively identical to the Federal regulations at 30 CFR 784.22(a) (1) through (3), but it does not include, as the Federal regulation at 30 CFR 784.22(a)(4) does, a reference to the subsidence control plan required at Federal regulation 30 CFR 784.20, which has a corresponding State regulation at TCMR 784.194. However, the lack of a reference in TCMR 783.172 to TCMR 784.194 would not prevent Texas from requiring sufficient geologic information with which to prepare the subsidence control plan required at TCMR 784.194. The Texas regulations at TCMR 784.194(a)(3) require a description of the geologic factors that would affect subsidence and subsidence control, and TCMR 784.194(a) allows the Commission to require necessary information to assure that the proposed operation can be conducted in accordance with the performance standards for subsidence control. Therefore, the Director finds that proposed TCMR 783.172 is no less effective than the corresponding Federal regulations at 30 CFR 784.22, and the Director approves this proposed regulation.

11. TCMR 800.301(b), Requirements To File a Bond

Texas proposed to revise TCMR 800.301(b) to provide an applicant the option of posting a bond or bonds to cover the entire permit area, or an identified increment of land within the permit area upon operations will be initiated during the initial permit term. The proposed regulation also includes a provision that the bond cannot "be for a land area that is smaller than the entire area upon which surface coal mining and reclamation operations will be conducted in a given permit term." Except for this provision, proposed TCMR 800.301(b) closely follows the corresponding Federal regulations at 30 CFR 800.11(b)(1) and (b)(2).

The provision to require bonding increments for areas that are not "smaller than the entire area upon which surface coal mining and reclamation operations will be conducted in a given permit term" is no less effective than the Federal regulations at 30 CFR 800.11(b)(1) and (2), which clearly allow bond increments on areas smaller than the entire permit area. However, the proposed restriction seems to contradict the other provisions of TCMR 800.301(b), which would allow the posting of bond for an area that is smaller than the entire permit area. Nonetheless, whether Texas enforces this restriction or not, the remaining requirements of proposed TCMR 800.301(b) would be no less effective than the corresponding Federal regulations at 30 CFR 800.11(b)(1) and (2). The Director finds that the proposed provision to restrict bonding increments to areas that are no smaller than the entire area upon which surface coal mining and reclamation operations will be conducted in a given permit term, although confusing, does not render proposed TCMR 800.301(b) less effective than the corresponding Federal regulations at 30 CFR 800.11(b) (1) and (2). Therefore, the Director approves this proposed regulation.

12. TCMR 816.360, 816.361, 816.362, Use of Explosives

(a) TCMR 816.360, Control of Adverse Effects

With three exceptions, proposed TCMR 816.360 includes all the requirements of, and is no less effective than, the corresponding Federal regulations at 30 CFR 816.64(a), 816.66, and 816.67.

The first exception is at TCMR 816.360(a)(2), which prohibits blasting within 1,000 feet of certain buildings and within 500 feet of certain facilities not including underground mines, unless lesser distances are approved by the Commission. The Federal regulations do not prohibit blasting within specified distances of buildings and facilities. However, the Federal regulations at 30 CFR 816.61(d)(1) do require that a blast design be submitted to the regulatory authority if blasting operations will be conducted within 1,000 feet of any building used as a dwelling, public building, school, church, or community or institutional building outside the permit area, or within 500 feet of an active or abandoned underground mine. The Director finds that Texas' proposed TCMR 816.360(a)(2) is less effective than the corresponding Federal regulations at 30 CFR 816.61(d)(1) because it would allow the Commission to approve blasting operations at lesser distances without submittal of a blast design, and because the proposed regulation does not specifically protect all public buildings, all community or institutional buildings outside the permit area, and active or abandoned underground mines. The Director approves proposed TCMR 816.360(a)(2) regulations but requires Texas to revise it (1) by adding to the list of protected buildings at TCMR 816.360(a)(2)(A) public buildings and community or institutional buildings, (2) by adding to the list of protected facilities at TCMR 816.380(a)(2)(B) active and abandoned underground mines, and (3) by requiring that operators submit to Texas blast designs for all blasting operations within 1,000 feet of the buildings listed in TCMR 816.360(a)(2)(A) and within 500 feet of the facilities listed in TCMR 816.360(a)(2)(B).

The second exception concerns proposed TCMR 816.360, which contains a second paragraph (e) located at the end of the section, after subparagraph (h) (6). This second paragraph (e) identifies locations that are exempt from the "maximum airblast and ground-vibration standards of paragraphs (b) and (d) of this Section." Since TCMR 816.360 already has a paragraph (e) located between paragraphs (d) and (f) which addresses scheduled blasting and required warnings, this second paragraph (e) located after subparagraph (h) (6) is incorrectly codified. In addition to the paragraph being incorrectly codified, its reference to "paragraphs (b) and (d) of this Section" is also incorrect. The corresponding Federal regulation at 30 CFR 816.67(e) refers to paragraphs (b) and (d), which set forth the requirements for control of adverse effects from airblast and ground vibration, respectively. Texas' requirements for control of adverse effects from airblast and ground vibration are found at TCMR 816.360(f) and (h). The Director finds that Texas' proposed TCMR 816.360 is not consistent in its codification and is less effective than the corresponding Federal regulation at 30 CFR 816.67(e) because it references the Texas program requirements for warnings and access control at blasting sites rather than the requirements for control of adverse effects from airblast and ground vibration. The Director approves proposed TCMR 816.360 but requires Texas to revise it by recodifying the second paragraph (e), located after paragraph (h)(6), and in it referencing TCMR 816.360(f) and (h) rather than "paragraphs (b) and (d) of this Section."

The third exception concerns Texas' proposed requirements for control of adverse effects from ground vibration at TCMR 816.360(h). The proposed regulation incorrectly references paragraphs (e) and (d). The corresponding Federal regulation at 30 CFR 816.67(d) references paragraph (e), which identifies locations that are exempt from the maximum airblast and ground-vibration standards, and various subparagraphs of paragraph (d), which set requirements for control of adverse effects from ground vibration. Texas has requirements corresponding to the Federal requirements for identification of locations that are exempt from the maximum airblast and ground-vibration standards at 30 CFR 816.67(e), but as discussed above, these requirements are at an incorrectly codified paragraph (e) located after proposed TCMR 816.360(h)(6). Texas also has, at proposed TCMR 816.360(h) rather than (d), requirements for control of adverse effects from ground vibration corresponding to the Federal requirements at 30 CFR 816.67(d). The Director finds that Texas' proposed TCMR 816.360(h) is less effective than the corresponding Federal regulation at 30 CFR 816.67(d) because it references an incorrectly codified paragraph (e)

and because it incorrectly references subparagraphs of TCMR 816.360(d) rather than (h). The Director approves proposed TCMR 816.360(h), but requires Texas to revise it to reference the recodified paragraph (e), and paragraphs (h)(2)(A), (h)(2), (h)(3), (h)(4), (h)(5), and (h)(2)(A) rather than paragraphs (e), (d)(2)(A), (d)(2), (d)(3), (d)(4), (d)(5), and (d)(2)(A), respectively.

(b) TCMR 816.361, Seismographic Measurements and Modified Scaled-Distance Factor

Existing TCMR 816.361 specifies where seismographic measurements of ground motion velocity and peak particle velocity are required, and when used of a modified equation to determine the maximum weight of explosives per delay would be approved. Texas proposed to delete all requirements from existing TCMR 816.361 and to add at TCMR 816.360 requirements no less effective than the corresponding Federal regulations at 30 CFR 816.67 concerning required seismographic measurements and the use of a modified scaled-distance factor during blasting operations. The Director finds that deletion of the existing requirements at TCMR 816.361 does not render Texas' proposed requirements for the use of explosives less effective than the corresponding Federal regulations at 30 CFR 816.61 through 816.68 and the Director approves the deletion.

(c) TCMR 816.362, Records of Blasting Operations

Texas proposed to revise TCMR 816.362 by requiring additional information to be included in records of blasting operations. With the proposed revisions, TCMR 816.362 is substantively identical to the corresponding Federal regulation at 30 CFR 816.68, except where TCMR 816.362(d) refers to the buildings "described in Section .360(e)." Because, as discussed in finding No. 12(a) above, proposed TCMR 816.360 contains two paragraphs (e), it is not immediately apparent which "Section .360(e)" is referenced.

The corresponding reference at Federal regulation 30 CFR 816.68(d) is to 30 CFR 816.67(e), which paragraph identifies locations that are exempt from the maximum airblast and ground-vibration standards specified at 30 CFR 816.67(b) and (d). Texas identifies locations that are exempt from the maximum airblast and ground-vibration standards at the paragraph located after paragraph (h)(6) of proposed TCMR 816.360. This paragraph (e) follows verbatim the Federal regulation at 30 CFR 816.67(e). Therefore, the Director finds that the context in which this reference is used clearly indicates that the regulation was intended to refer to the last paragraph of proposed TCMR 816.360 which reads "The maximum airblast and ground vibration standards of paragraphs (b) and (d) of this Section shall not apply at the following locations: (1) At structures owned by the permittee and not leased to another person; and (2) At structures owned by the permittee and leased to another person, if a written waiver by the lessee is submitted to the Commission before blasting." With the understanding that Texas will interpret it in this manner, the Director finds that Texas' proposed TCMR 816.362 is no less effective than the corresponding Federal regulation at 30 CFR 816.68, and approves it.

13. TCMR 816.375(d), Disposal for Noncoal Mine Wastes

Texas proposed to revise TCMR 816.375 by adding at paragraph (d) the requirement that any noncoal mine waste defined as "hazardous" undersection 3001 of the Resource Conservation and Recovery Act (RCRA) shall be handled in accordance with the requirements of Subtitle C of RCRA and any implementing regulations. Texas' proposed requirement is identical to that of the corresponding Federal regulation at 30 CFR 816.89(d) which OSM promulgated on September 26, 1983 (48 FR 44006). However, the Federal regulations at 30 CFR 816.89(d) and 817.89(d) were suspended on November 20, 1986 (51 FR 41962), to implement the decision of the U.S. District Court for the District of Columbia in In re: Permanent Surface Mining Regulation Litigation (II), Rounds II and III, No. 79–1144 (D.D.C. Oct. 1, 1984). 21 Env't Rep. Cas. 1724 and 620 F Supp. 1519 (D.D.C. 1985). The court remanded these regulations because OSM failed to comply with the public notice and public comment requirements of the Administrative Procedures Act in promulgating these Federal regulations. No substantive issues were involved (51 FR 41960, 41959).

OSM subsequently deleted 30 CFR 816.89(d) and 817.89(d) (56 FR 65612, December 17, 1991). In deleting these rules, OSM reasoned that Congress had assigned permitting, inspection and enforcement responsibilities under RCRA to the Environmental Protection Agency (EPA) and that SMCRA did not require OSM or the State regulatory authorities to assume such responsibilities. It was further reasoned that Congress would not appropriate funds to OSM or State regulatory authorities for this task. With the deletion of this requirement, OSM agreed to continue "to coordinate its regulatory program with EPA to facilitate the implementation of RCRA regulations" (56 FR 65612, 65624, December 17, 1991). However, OSM's action does not prohibit or prevent a State regulatory authority from choosing to assume such responsibilities in coordination with EPA. Under 30 CFR 730.11(b) States are allowed to enact provisions for which no corresponding provisions are contained in the Federal regulations of SMCRA.

Because there is no Federal counterpart to proposed TCMR 816.375(d), OSM evaluated Texas' amendment based upon its consistency with section 515(b)(14) of SMCRA. Section 515(b)(14) of SMCRA generally states that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are to be treated or buried and compacted or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters. Because Texas' proposed regulation at TCMR 816.375(d) provides for the handling and disposal of "hazardous" noncoal mine wastes in a manner designed to prevent contamination of ground or surface waters, i.e., pursuant to the provision of subtitle C of RCRA, the Director finds that Texas' proposed regulation at TCMR 816.375(d) is not inconsistent with section 515(b)(14) of SMCRA. The Director approves this proposed regulation.

14. TCMR 816.384(b)(2) and 817.551(b)(2), Backfilling and Grading

Texas proposed to revise TCMR 816.384(b)(2) and 817.551(b)(2) to require that backfilled material be placed to minimize erosion, to minimize water pollution both on and off the site, and to support the approved postmining land use. The corresponding Federal regulations at 30 CFR 816.102(a) and 817.102(a) require, in part, that "[d]isturbed areas shall be backfilled and graded to * * * (4) [m]inimize erosion and water pollution both on and off the site; and (5) [s]upport the approved postmining land use."

With two exceptions, proposed TCMR 816.384(b)(2) and 817.551(b)(2) include all the requirements of the corresponding Federal regulations at 30 CFR 816.102(a) (4) and (5) and 817.102(a) (4) and (5).

The first exception is that proposed TCMR 816.384(b)(2) and 817.551(b)(2) do not specifically state that backfilled material must be graded. However, requirements for grading of backfilled material are provided at TCMR 816.384(b)(1) and 817.551(b)(1) which require that "all disturbed areas shall be returned to their approximate original contour [and] [a]ll spoil be transported, backfilled, compacted * * * and graded to eliminate highwalls, spoil piles, and depressions."

The second exception is that proposed TCMR 816.384(b)(2) and 817.551(b)(2) do not specifically state, as 30 CFR 816.102(a)(4) and 817.102(a)(4) do, that erosion must be minimized off the site as well as on the site. Backfilling and grading, as well as other surface or underground mining activities, could cause increased erosion of areas off the sites where these activities are being conducted by causing additional amounts of runoff to be diverted to them. It follows that minimization of off-site erosion would be accomplished by minimizing the amount of additional runoff diverted to these areas.

Proposed TCMR 816.384(b)(2) and 817.551(b)(2) only require that "backfilled material be placed to minimize erosion." The proposed regulations do not state where erosion is to be minimized, and although it is reasonable to assume that at least erosion on the sites where the backfilling and grading are being conducted must be included, it is not clear whether these regulations also require minimization of off-site erosion. However, existing Texas regulations provide for minimization of erosion on off-site areas.

Specifically, existing TCMR 816.343(b) provides that "[s]ediment control methods include, but are not limited to (1) [d]isturbing the smallest practicable area at any one time during the mining operation through progressive backfilling, grading and prompt revegetation as required in Section .390(b), (2) stabilizing the backfilled material to promote a reduction of the rate and volume of runoff in accordance with the requirements of Section .384, and * * * (4) [d]iverting runoff away from disturbed areas." The same requirements are provided for underground mining activities, respectively, at TCMR 817.513 (a), (b), and (d). In addition, TCMR 816.339(a) and 817.509(a), respectively require that surface and underground mining activities shall be planned and conducted to minimize disturbance of the hydrologic balance within the permit and adjacent areas. Erosion is an element of the hydrologic balance.

For the above reasons, the Director finds that Texas' proposed TCMR 816.384(b)(2) and 817.551(b)(2) are no less effective than the corresponding Federal regulations at 30 CFR 816.102(a) (4) and (5) and 817.102(a) (4) and (5), and approves them.

15. TCMR 817.522(f), Water Discharge Into Underground Mines

Texas' proposed underground mining regulations at TCMR 817.522(f) prohibits the discharge of surface water into underground mine workings unless it is demonstrated to the Commission that such discharge will minimize disturbance to the hydrologic balance on the permit area, prevent material damage outside the permit area, and otherwise eliminate public hazards resulting from surface mining activities.

Texas' proposed regulations are substantively identical to the corresponding Federal regulations for underground mining activities at 30 CFR 817.41(h)(1)(i) except that the Federal regulations require a demonstration that the proposed discharge would "otherwise eliminate public hazards resulting from underground mining activities" (emphasis added) instead of surface mining activities as proposed by Texas. In addition, Texas' use of the term "surface mining activities" at proposed TCMR 817.522(f) is not consistent with the introductory paragraph at TCMR 817.522 which addresses underground rather than surface mining activities.

The Director finds that Texas' proposed TCMR 817.522(f) is less effective than the Federal regulations at 30 CFR 817.41(h)(1)(i). The Director does not approve the proposed amendment to the extent that it uses the term "surface mining activities" rather than "underground mining activities," and requires Texas to replace "surface mining activities" with "underground mining activities."

16. TCMR 817.531(j), General Requirements for Disposal of Excess Spoil

The Federal regulations at 30 CFR 817.71(h) allow either a qualified registered professional engineer or a qualified professional specialist under the direction of a professional engineer, both of which must have experience in the construction of earth and rockfill embankments, to inspect and certify the construction of disposal piles for excess spoil and underground development waste produced by underground mining activities. Texas' proposed TCMR 817.531(j) would allow only a qualified registered professional engineer experienced in the construction of earth and rockfill embankments to make such inspections and certifications. The omission of a qualified professional specialist from the regulation does not render proposed 817.531(j) less effective than the corresponding Federal regulations at 30 CFR 817.71(h). Therefore, the Director approves this proposed regulation.

17. TCMR Part 850, Training, Examination, and Certification of Blasters

(a) TCMR Part 850. General

The Federal regulations at 30 CFR 850.12 (a) and (b) require States to develop and adopt a program for examining and certifying persons directly responsible for the use of explosives in surface coal mining operations. To satisfy this requirement and the required program amendment at 30 CFR 943.16(a), Texas proposed to add a new part 850 to chapter IV, Subchapter M of its Texas Coal Mining Regulations.

In addition to the proposed regulations at TCMR Part 850, Texas submitted additional information (referred to in this notice as "Supplemental Information") to clarify various aspects of the program as proposed, including a proposed blaster examination (Administrative Record Nos. TX–450 and TX–451). According to the Supplemental Information, the Commission would provide, through the Oklahoma Mining Training Institute (OMTI) at Wilburton, Oklahoma, the required training and testing of persons seeking to become certified as blasters. The Commission would certify qualified applicants who successfully complete OMTI's training and testing program, and who demonstrate to the satisfaction of the Surface Mining and Reclamation Division (SMRD) the experience and competence necessary for handling and using explosives.

(b) TCMR 850.700, Purpose and Scope

At TCMR 850.700, Texas proposed the purpose and scope of part 850, and set forth a disclaimer from liability for actions of individuals certified as blasters under this program. While the Federal regulations include a scope at 30 CFR 850.1, that scope places no requirements on State programs. The Federal regulations at 30 CFR part 850 have no requirements with regard to a statement of purpose or disclaimers. The Director finds that the purpose and scope provisions at proposed TCMR 850.700 are not inconsistent with the Federal regulations, and their inclusion does not render the Texas program less effective than the Federal regulations at 30 CFR part 850. The Director approves these proposed provisions.

(c) TCMR 850.701, Definitions

Texas proposed (1) at TCMR 850.701(4) to define a "blaster" as "a person who is *directly responsible for*

the use of explosives" (emphasis added), (2) at TCMR 850.701(12) to define a "Certified Blaster" as "a person who has met the qualifications of this Part and who has been issued a 'commission blaster certificate' that is currently valid and not expired, suspended or revoked," and (3) at TCMR 850.701(13) to define "commission blaster certificate" as a certificate issued "to a person qualified under this Part to be *directly responsible for the use explosives* in mining operations regulated by the Commission" (emphasis added). Under the corresponding Federal definition at 30 CFR 850.5, a "blaster" is a person directly responsible for the use of explosives in surface coal mining operations who is certified under the requirements of 30 CFR Part 850.

The Director notes that Texas has proposed to use the term "certified blaster" in TCMR 850.707 and 850.708, which pertain, respectively, to certification and recertification, and to use the term "blaster" in all other sections of Part 850. It is not clear whether Texas intended to make a distinction between blasters and certified blasters with respect to blasting duties and under their responsibility. However, because Texas indicates that both a "blaster" and "certified blaster" are "directly responsible for the use of explosives," the Director interprets the terms to be interchangeable and that the requirements of Texas' regulations at Part 850 apply to both. On this basis, the Director finds that Texas' proposed definitions of "blaster" at TCMR 850.701(4) and "certified blaster" at TCMR 850.701(12) are no less effective than the Federal definition of "blaster" at 30 CFR 850.5. The Director approves the proposed definitions of "blaster" and "certified blaster," and "commission certified blaster."

Texas additionally proposed to define 15 other terms generally pertaining to blaster certification, blasting, and the use of explosives. In the proposed regulation, Texas stated that these definitions apply only to the requirements of part 850. One of the terms, "applicant," is also defined at TCMR 701.008(a). The definition at TCMR 701.008(8) would apply to all parts of chapter IV, except part 850. Of the proposed definitions, "applicant" and "application" are defined in the Federal regulations at 30 CFR 701.5 as they pertain to permits to conduct surface coal mining and reclamation operations. However, there are no corresponding Federal definitions for "applicant" and "application" as they pertain to training, examination and certification of blasters. The Director finds that these 15 other proposed definitions provide additional direction and guidance in the Texas program and are not inconsistent with the blaster training, examination and certification requirements of the Federal regulations. Accordingly, the Director finds that Texas' proposed definitions at TCMR 850.701 are no less effective than the Federal regulations at 30 CFR Part 850. The Director approves these proposed definitions.

(d) TCMR 850.702, General Requirements

Proposed TCMR 850.702 provides administrative requirements for age, knowledge, experience, and training for individuals applying for blaster certification. There are no direct counterparts to these requirements in the Federal regulations. The Director finds that Texas' general requirements at proposed TCMR 850.702 are not inconsistent with the Federal regulations at 30 CFR part 850. The Director approves these proposed requirements.

(e) TCMR 850.703, Training

The Federal regulation at 30 CFR 850.14(a)(2) requires the regulatory authority to ensure that candidates for blaster certification are examined for practical field experience that would qualify the candidate to accept responsibility for blasting operations in surface coal mining operations. Proposed TCMR 850.703(a) requires a blaster candidate (1) to have received on-the-job training, including practical field experience in blasting operations, from a certified blaster during 2 of the 3 years preceding submission of the application and (2) to provide satisfactory evidence of the required on-the-job training.

In addition, the Supplemental Information states that applicants will be screened on the basis of "past work and other blasting experience" prior to acceptance into the blaster certification training and testing program. Criteria for acceptance includes practical field experience necessary to qualify the applicant to accept responsibility for blasting operations in surface coal mining operations. The Director finds that proposed TCMR 850.703(a), as augmented by the Supplemental Information, provides that blaster candidates would be adequately examined for practical field experience as required by the Federal regulations at 30 CFR 850.14(a)(2).

The Federal regulations at 30 CFR 850.13(a)(2) further require the regulatory authority to establish procedures whereby any uncertified persons assigned to a blasting crew or to assist in the use of explosives must receive direction and on-the-job training from a certified blaster. Texas' proposed TCMR 850.703 only requires on-the-job training for uncertified persons who have applied for blaster certification. It has no on-the-job training requirements for persons assigned to a blasting crew or to assist in the use of explosives who are not certified blasters or who have not applied for blaster certification. However, the Supplemental Information states that a blaster "will also have the responsibility of giving directions and on-the-job training to other members of the blasting crew." Therefore, the Director finds that Texas' proposed TCMR 850.703(a), as augmented by the Supplemental Information, is no less effective than the Federal regulation at 30 CFR 850.13(a)(2). The Director approves the proposed regulation.

Proposed TCMR 850.703(b) requires blaster candidates to have received, within 2 years prior to the application, training in the technical aspects of blasting operations and State and Federal laws governing the use of explosives. The corresponding Federal regulations at 30 CFR 850.13(a)(1) require the regulatory authority to establish procedures whereby applicants for blaster certification must receive training in the technical aspects of blasting operations and State and Federal laws governing the storage, transportation, and use of explosives. Proposed TCMR 850.703(b) also provides that applicants for certificate reissuance need only to have received training in areas where significant changes have occurred in the topics listed at TCMR 850.704, and that the applicant provide satisfactory evidence that the required training was completed.

Unlike the Federal regulations at 30 CFR 850.13(a)(1), proposed TCMR 850.703(b) does not specifically require training in State and Federal laws governing storage and transportation of explosives. In promulgating the requirements at 30 CFR 850.13(a)(1), OSM stated that SMCRA requires the use of explosives to be under the direction of a certified blaster, and since the blaster directs the receipt, storage and movement of explosives, it is essential that he be trained in the proper methods of storage and transportation. Accordingly, OSM emphasized the importance of training in the storage and transportation aspects of explosives use by specifically requiring training in storage and transportation, in addition to "use," in its regulation.

It is unclear whether Texas intended "use of explosives" at proposed TCMR 850.703(b) to include the storage and transportation of explosives. There is nothing in proposed TCMR Part 850 or in the Supplemental Information to suggest such interpretation. In addition, the proposed blaster examination includes no questions concerning the storage and transportation of explosives. On this basis, the Director finds that Texas' proposed TCMR 850.703 is less effective than corresponding Federal regulations at 30 CFR 850.13(a)(1). The Director approves Texas' proposed TCMR 850.703 but requires Texas to amend the regulation to require that before being certified a blaster must receive training in State and Federal laws governing storage and transportation of explosives.

(f) TCMR 850.704, Training Courses.

Proposed TCMR 850.704(a) lists the course topics for which the Commission would provide training for blaster certification applicants. The proposed list of courses is the same as the Federal list at 30 CFR 850.13(b). Proposed TCMR 850.704(b) would allow the Commission to recognize training provided by other qualified jurisdictions or by accredited agencies or schools. By definition at TCMR 850.701(16), a "qualified jurisdiction" is a State or Federal regulatory authority that provides a blaster certification program that has been approved by OSM. The Director finds that the training courses proposed at TCMR 850.704(a), or those provided by a qualified jurisdiction, address the same topics as the courses required by the corresponding Federal regulation at 30 CFR 850.13(b). However, proposed TCMR 850.704(b) does not specify that "accredited agencies or schools" must provide and require completion of, at a minimum, all the courses listed at TCMR 850.704(a). The Director finds that Texas' proposed TCMR 850.704 is less effective than the corresponding Federal regulations at 30 CFR 850.13(b). The Director approves the proposed regulation but requires Texas to amend the regulation or otherwise amend its program to clarify that accredited agencies or schools must provide and require completion of the courses listed at TCMR 850.704(a).

(g) 850.705, Application

Proposed TCMR 850.705 provides administrative directions and procedures for processing applications from persons seeking blaster certification. There are no direct counterparts to these procedures in the Federal regulations. The Director finds that these procedures are not inconsistent with the Federal regulations at 30 CFR Part 850. The Director approves these proposed requirements.

(h) 850.706, Examination

Proposed TCMR 850.706(a) requires each applicant for blaster certification to pass a written examination on the technical aspects of blasting operations and on State and Federal laws governing the use of explosives. Proposed TCMR 850.706(a)(1) requires examinations to be periodically scheduled and administered by the Commission, or by persons or agencies contracted to provide such services. The corresponding Federal regulation at 30 CFR 850.14(a)(1) requires the regulatory authority to ensure that candidates for blaster certification must pass a written examination on the technical aspects of blasting and on State and Federal laws governing the storage and transportation of explosives, in addition to those governing the use of explosives. The Federal regulations do not require the regulatory authority to directly administer the examinations. As discussed in finding No. 15(e) above, there is nothing in proposed TCMR Part 850, or in the Supplemental Information,or the proposed blaster examination to indicate that Texas intended the term "use of explosives" to include the storage and transportation of explosives. Therefore, the Director finds that proposed TCMR 850.706(a) is less effective than the Federal regulation at 30 CFR 850.14(a)(1).

The Supplemental Information submitted by Texas states that "All testing will be conducted by OMTI." However, under proposed TCMR 850.706(a)(1), Texas itself would retain the option of administering blaster examinations, and it has proposed a blaster examination for that purpose. The Director finds that it is not inconsistent with the Federal requirements at 30 CFR part 850 for Texas to administer the examination for blaster candidates, either in addition to or in place of any testing conducted by another training agency.

Proposed TCMR 850.706(a)(2) requires that the blaster examination cover, at a minimum, the topics specified at TCMR 850.704. The Federal regulations at 30 CFR 850.14(b) imposes a similar requirement and references a list of topics at 30 CFR 850.13(b) that is substantively identical to that set forth at TCMR 850.704(a).

Proposed TCMR 850.706(b) provides that a person who fails to achieve a satisfactory score on the blaster examination may apply for reexamination by submitting a new application. If the new application is submitted within 2 years of completing the required training, the applicant would not be required to repeat the training. The Federal regulations at 30 CFR Part 850 do not require such provisions for reexamination. The Director finds that proposed TCMR 850.706(b) is not inconsistent with the Federal requirements at 30 CFR part 850.

In accordance with the discussion above, the Director finds that (1) proposed TCMR 850.706(a) is less effective than the corresponding Federal regulations at 30 CFR 850.14(a) (1) and (2) proposed TCMR 850.703(b), as augmented the Supplemental Information, is not inconsistent with 30 CFR part 850. The Director approves Texas' proposed TCMR 850.706(a) but requires Texas to amend TCMR 850.706(a) to require that before being certified a blaster must receive training in State and Federal laws governing storage and handling of explosives. The Director approves Texas' proposed TCMR 850.706(b).

(i) 850.707, Certification

Proposed TCMR 850.707 provides requirements for issuance of certification, certificate conditions, protection of certificates, and suspension and revocation that are either substantively identical to, or no less effective than, the Federal regulations at 30 CFR 850.15 (a), (b), (d) and (e). Proposed TCMR 850.707(b)(2) requires certified blasters to immediately exhibit certifications to any authorized representative of the Commission upon request. The corresponding Federal regulation at 30 CFR 850.15(e)(1) additionally requires a blaster to exhibit his or her certificate to authorized OSM representatives.

Under 30 CFR 842.13(a)(2), OSM has access to, and the authority to copy, any records of a surface coal mining operation. The Director finds that while it would provide clarity in the Texas program to require that the certified blaster exhibit his or her certificate to an authorized representative of OSM, the lack of such provision does not render the program less effective than the Federal regulations, because OSM has such authority under 30 CFR 842.13(a)(2).

Additionally, Texas includes at TCMR 850.707(b) State-specific provisions that do not have Federal counterparts and which require certified blasters to (1) complete a Commission-administered refresher course once every 3 years, and (2) notify the Commission within 30 days of an address change. These additional provisions are not inconsistent with the Federal

requirements at 30 CFR Part 850 or with section 719 of SMCRA.

For the reasons discussed above, the Director finds that proposed TCMR 850.707 is no less effective than corresponding Federal regulations at 30 CFR 850.15 (a), (b), (d) and (e). The Director approves this proposed regulation.

(j) 850.708, Recertification

Proposed TCMR 850.708(a) allows the Commission to require reexamination, training or other demonstration of competency of a certified blaster if it has determined that the certified blaster was involved in a blasting or blasting-related violation. Proposed TCMR 850.708(b) allows the Commission to exchange information with other qualified jurisdictions regarding blaster involvement in such violations. The corresponding Federal regulation at 30 CFR 850.15(c) provides that the regulatory authority may require reexamination, training or other demonstration of competency for continuance of certification, but there are no Federal requirements regarding exchange of information on blaster-related violations with other qualified jurisdictions.

The Director finds that proposed TCMR 850.708(a) is no less effective than the corresponding Federal regulations at 30 CFR 850.15(c). Also, the Director finds that the additional provisions at TCMR 850.708(b) are not inconsistent with the Federal requirements at 30 CFR part 850. The Director approves these proposed regulations.

(k) 850.709, Reciprocity

Proposed TCMR 850.709 allows the Commission to grant a blaster certificate to applicants who hold a current blaster certification from another qualified jurisdiction. It also sets forth conditions for maintaining certification through reciprocity. There are no Federal requirements regarding the granting of a blaster certificate through reciprocity. However, OSM endorses the concept of reciprocity (44 FR 9486, 9488, March 4, 1983) and provides, in its Federal Program States and Indian Lands blaster certification program at 30 CFR 995.16, for the granting of an OSM blaster certificate through reciprocity. The Director finds that proposed TCMR 850.709 is not inconsistent with the Federal regulations at 30 CFR part 850, and the Director approves this proposed regulation.

(l) 850.710, Applicability

Proposed TCMR 850.710 requires persons responsible for the use of explosives in mining operations regulated by the Commission to possess a Commission blaster certificate within 180 days after the effective date of TCMR part 850. Proposed TCMR 850.710 also provides for compilation of a list of persons directly responsible for the use of explosives in mining operations regulated by the Commission, and authorizes the Director of SMRD to make available the services required at TCMR part 850 to other Texas governmental and private entities involved in the use of explosives. The Federal regulations at 30 CFR part 850 do not specify a minimum time after adoption of a State blaster certification program in which persons responsible for the use of explosives in mining operations must become certified, nor do they address the listing of persons responsible for the use of explosives or the use of the blaster certification program by other entities. The Director finds that the provisions of proposed TCMR 850.710 are not inconsistent with the Federal requirements at 30 CFR part 850, and the Director approves this proposed regulation.

18. Recodification

With the exception of TCMR 800.309(j), Texas has recodified its surface coal mining regulations at Subchapters A through L of Chapter IV, from TCMR 051:07.04.001 through 051.07.04.698 to TCMR 700.001 through 845.698. The recodification of the self-bonding regulations at TCMR 800.309(j) was discussed in a previous rulemaking (54 FR 50753, December 11, 1989). In addition, Texas proposed to add regulations at Subchapter M codified as TCMR 850.700 through 850.710. Since the recodification does not alter the content or meaning of the proposed regulations, the Director finds that the revised codification system is not inconsistent with any Federal requirements.

IV. Public and Agency Comments

Public Comments

The Director solicited public comments and provided opportunity for a public hearing on the proposed amendment. No comments were received. Because no one requested an opportunity to testify at a public hearing, no hearing was held.

Agency Comments

Pursuant to section 503(b)(1) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and various other Federal agencies with an actual or potential interest in the Texas program.

The Forest Service responded that it had no suggested changes or comments on the proposed amendment (Administrative Record No. TX–466).

The Bureau of Land Management (BLM) responded that Texas in proposed TCMR part 817 applied surface blasting requirements to underground mining operations. BLM further stated that "[b]ecause of the differences between surface and underground blasting practices, we believe separate requirements for underground blasting are necessary" (Administrative Record No. TX–470).

The Federal regulation at 30 CFR 817.61(a) limits the applicability of the regulations at 30 CFR 817.61 through 817.68, which pertain to the use of explosives for underground mining activities, to "surface blasting activities incident to underground coal mining, including but not limited to, initial rounds of slopes and shafts." Further, the preamble to that regulation states that "OSM only regulates the surface impacts of blasting from underground mines, which [impacts] are derived almost exclusively from surface blasting associated with such mines" (46 FR 9788, 9804, March 8, 1983). This requirement is consistent with the definition of "surface coal mining operations" at 30 CFR 700.5 and with section 516 of SMCRA. Thus, Texas is required by SMCRA and the Federal regulations to regulate the use of explosives relative to underground mining only where such use affects the surface, or surface activities, or structures on the surface. On this basis, the Director does not require Texas to revise its program in response to BLM's comment.

State Historic Preservation Officer (SHPO) and Advisory Council on Historic Preservation (ACHP) Comments

Pursuant to 30 CFR 732.17(h)(4), OSM is required to solicit comments from the SHPO and ACHP for all amendments that may have an effect on historic properties. By letters dated September 29, 1989, the Director solicited comments from these offices (Administrative Record No. TX–461). The SHPO and ACHP did not respond.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) On March 26, 1990, EPA gave its concurrence (Administrative Record No. TX–473) which included the understanding that Texas would implement its regulations consistent with the requirements of the Clean Water Act and that the Texas surface mining regulations do not in themselves provide full authorization for instream treatment of point source discharges.

EPA noted certain situations related to instream treatment which could result in conditions that would not assure compliance with applicable State water quality standards required by the Clean Water Act. By instream treatment, EPA referred to two activities. The first activity is one in which mine wastes are discharged into waters of the United States for the primary purpose of waste disposal but with the effect of fill. The second activity involves instream waste treatment impoundments. These impoundments are built in waters of the United States for the purpose of creating a waste treatment system. Such impoundments may be used for the chemical treatment of mine waste water as well as solids settling.

EPA's definition of "waters of the United States" at 40 CFR 122.2 includes not only perennial, but also intermittent and ephemeral streams. EPA noted that the creation of any impoundments or sediment ponds in waters of the United States does not itself remove those waters from the definition of "waters of the United States" under the Clean Water Act. The Clean Water Act requires that all discharges of pollutants from point sources into waters of the United States occur by permit as appropriate under either section 402 or 404 of the Clean Water Act.

With specific reference to Texas, EPA noted that proposed TCMR 816.344(a) only provides that "sedimentation ponds be designed, constructed and maintained to provide adequate detention time to allow the effluent *from* the ponds to meet State and Federal effluent limitations" and that TCMR 816.344(A)(4) provides that sedimentation ponds shall "be located as near as possible to the disturbed area and out of perennial streams, unless approved by the Commission." EPA further noted that TCMR 816.347(b) provides that "the quality of the impounded water will be suitable on a permanent basis for its intended use and that discharges *from* the impoundment will meet applicable effluent limitations and will not degrade the quality of the receiving water below applicable State and Federal water quality standards."

The Director acknowledges EPA's concerns, and Texas has been notified of these concerns by their inclusion in the administrative record. The Director emphasizes that section 702(a)(3) of SMCRA provides that nothing in the Act shall be construed as superseding, amending, modifying or repealing the Clean Water Act, as amended, State laws enacted pursuant thereto, or other Federal laws relating to the preservation of water quality. It should be noted that Texas' general hydrologic balance rule at TCMR 816.339(c) is consistent with the corresponding Federal regulations at 30 CFR 816.45(a) in that it requires operators to comply with Federal and State water quality statutes, regulations standards and effluent limitations. Therefore, Texas permit applicants and mine operators are aware of their responsibilities under the Clean Water Act, and the Director is not requiring any further action on the part of Texas at this time.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and required amendments, the proposed amendment as submitted by Texas on September 22, 1989, and revised by it on September 11, 1990.

As discussed respectively in finding Nos. 8, 9, and 15, the Director does not approve (1) the geology description requirements at TCMR 779.127(a) and (b), (2) the permit operations maps and plans requirements at TCMR 780.142(c) to the extent that they would allow professional geologists to prepare and certify cross sections, maps, and plans for sedimentation ponds; water impoundments; coal processing waste banks, dams, and embankments; excess spoil fills; durable rockfills; and coal mining waste disposal facilities, and (3) the requirements for discharge into underground mines at TCMR 817.522(f) to the extent that they use the term "surface mining activities" rather than "underground mining activities." Accordingly, the Director requires Texas to revise these regulations. In addition, the Director, as discussed in findings Nos. 4, 12, and 17, requires Texas to revise the definitions at TCMR 770.101, the explosives regulations at TCMR 816.360, and the blaster training, examination and certification regulations at TCMR 850.703, 850.704, and 850.706(a).

In revising a number of the regulations in this amendment, Texas referenced other regulations in its program. Texas referenced the appropriate regulations; however, many of these referenced provisions need revising to be consistent with the corresponding Federal regulations. Because the referenced regulations are not part of this amendment, OSM will address these issues at a future date.

Except as noted, the Director approves the regulations with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 943 codifying decisions concerning the Texas program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Texas program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Texas of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a

substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.10 is revised to read as follows:

§ 943.10 State program approval.

(a) The Texas State program as submitted July 20, 1979, and amended November 13, 1979, and December 20, 1979, is approved, effective February 16, 1980. The Texas State program amendments of March 27, 1980, are approved effective June 18, 1980.

(b) Copies of the approved program as amended are available at:

(1) Texas Railroad Commission, Surface Mining and Reclamation Division, 1701 N. Congress, P.O. Drawer 12967—Capitol Station, Austin Texas 78711–2967.

(2) Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, 2202 Old Henderson Highway, Tyler, Texas 75702.

(3) Texas Railroad Commission, Surface Mining and Reclamation Division, Field Office, 1021 C Street, Floresville, Texas 78114.

(4) Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Drive, suite 550, Tulsa, Oklahoma 74135–6548.

4. Section 943.15 is amended by adding a new paragraph (h) as follows:

§ 943.15 Approval of regulatory program amendments.

* * * * *

(h) With the exception of the geology description requirements at TCMR 779.127(a) and (b), the permit operation maps and plans requirements at TCMR 780.142(c), and the requirements for discharge of water into an underground mine at TCMR 817.522(f) to the extent that it uses the term "surface mining activities" rather than "underground mining activities," the revisions to the Coal Mining Regulations of the Railroad Commission of Texas as submitted on September 22, 1989, and revised on September 11, 1990, are approved effective August 19, 1992. Revisions to the following regulations are approved.

2-acre exemption, 700.002(b)(2).
Definitions, 700.003(22); 700.008(18), (56), (81) and (85); 762.074(1) and (2); and 770.101.
Permitting requirements, 770.100(c) and 770.102(c).
Permit applications and fees, 771.107(d) and 771.108.
Coal exploration, 776.111(a)(3)(A), (a)(7), (b) and (b)(1); and 815.327(a) and (f).
Environmental resources information, 779.125(b); 779.126(a); 779.133; 783.171(b) and 783.172.
Reclamation plan, 780.144(a); 780.145(b)(4); 783.179; 784.187(b)(4) and 784.195(a).
Public parks and historic places, 780.151 and 784.191.
Subsidence control plan, 784.194(a), (e), and (f); 817.562(c) and 817.565(e).
Experimental practices, 785.200(a) through (c) and (f) through (i).
Criteria for permit approval or denial, 786.216(p); 788.230(a)(4) through (a)(6); and 788.232(c)(1), (d), and (e).
Small operators assistance program, 795.237(b)(5), (c) and (d); 795.238(d)(4) and 795.243(a).
Insurance and bonding Hydrologic balance, 800.301(b) and 808.317; 816.339(a); 816.344(a); 816.353(d); 817.509(a); and 817.514(a).
Use of explosives, 816.359; 816.360; 816.361 and 816.362.
Disposal of excess spoil, 816.363(j), (i), (o), (p) and 817.531(j), (i), (o), (p).
Coal processing waste banks, 816.368(c); 816.369(a); 816.371(c)(3) (deleted); 816.375(d) and 816.377(b).
Protection of fish and wildlife, 816.380(b) and (c); and 817.547(b), (c).
Backfilling and grading, 816.384(b)(2) and 817.551(b)(2).
Revegetation, 816.390(a).
Auger mining, 819.600(c)(1).
Inspection and enforcement, 840.672(b); 843.680(a); and 843.682(f).
Civil penalties, 845.695(b)(2).
Training, examination and certification of blasters, 850.700; 850.701; 850.702(a) through (d); 850.703 through 850.710; and Supplemental Information.
Recodification of the Texas Coal Mining Regulations, 700.001 through 845.698.

4. Section 943.16 paragraph (a) is removed and reserved, and paragraphs (k) through (q) are added to read as follows:

§ 943.16 Required program amendments.

* * * * *

(k) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the definitions at TCMR 770.101 to replace the definitions for "applicant," "application," "complete application," "general area," "principal shareholder," "property to be mined," and "violation notice," or otherwise demonstrate that these definitions are not necessary for the Texas program to be no less effective than the Federal regulations.

(l) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the geologic description requirements at TCMR 779.127 (a) and (b) to require that the geologic description must be based, in part, on analyses of samples of geologic materials collected from the proposed permit area.

(m) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the permit operation maps and plans requirements at TCMR 780.143(c) to require that qualified registered professional engineers (not professional geologists) prepare and certify cross sections, maps, and plans for sedimentation ponds, water impoundments; coal processing waste banks, dams, and embankments; excess spoil fills; durable rock fills; and coal mine waste disposal facilities.

(n) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the explosives regulations at TCMR 816.360 to:

(1) Add to the list of protected buildings at TCMR 816.360(a)(2)(A), public buildings and community or institutional buildings;

(2) Add to the list of protected facilities at TCMR 816.360(a)(2)(B), active and abandoned underground mines;

(3) Require that operators submit to Texas blast designs for all blasting operations within 1,000 feet of the buildings listed in TCMR 816.360(a)(2)(A) and within 500 feet of the facilities, listed in TCMR 816.360(a)(2)(b); and

(4) Recodifying the second paragraph (e) after paragraph (h) (6) and in it reference 816.360 (f) and (h) rather than "paragraphs (b) and (d) of this Section."

(5) Revise paragraph (h) to reference the recodified paragraph (e), and paragraphs (h)(2)(A), (h)(2), (h)(3), (h)(4), (h)(5), and (h)(2)(A) rather than paragraphs (e), (d)(2)(A), (d)(2), (d)(3), (d)(4), (d)(5), and (d)(2)(A).

(o) By October 19, 1992 Texas shall submit to OSM a proposed amendment to the requirements for discharging water into an underground mine at TCMR 817.522(f) to replace the term "surface mining activities" with "underground mining activities".

(p) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the training and examination of blasters regulations at TCMR 850.703 and 850.706 to require that before being certified, a blaster must receive training and be examined on State and Federal laws governing storage and transportation of explosives.

(q) By October 19, 1992, Texas shall submit to OSM a proposed amendment for the training course requirements at TCMR 850.704(b) to clarify that accredited agencies or schools must provide and require completion of the courses listed at TCMR 850.704(a).

[FR Doc. 92–19700 Filed 8–18–92; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 943

Texas Abandoned Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Director of OSM concurs with Texas' certification that the State has abated or reclaimed all coal-related abandoned mine land problems. Texas made the certification in accordance with the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101–508). Texas is now authorized to utilize abandoned mine reclamation (AMR) funds for noncoal reclamation purposes.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on Title IV of SMCRA
II. Background on the Texas Plan
III. Submission of Plan Amendment
IV. Director's Findings
V. Summary and Disposition of Comments
VI. Director's Decision
VII. Procedural Determinations

I. Background on Title IV of SMCRA

Title IV of SMCRA established an Abandoned Mine Land Reclamation (AMLR) program for the purposes of reclaiming and restoring lands and waters adversely affected by past mining. The program is funded by a reclamation fee levied on the production of coal. Lands and water eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal law.

Each State having within its border coal-mined lands eligible for reclamation under title IV of SMCRA may submit to the Secretary of the Interior a reclamation plan demonstrating its capability for administering an AMLR program. Upon approval of the State Reclamation Plan by the Secretary, the State may submit to OSM, on an annual basis, an application for funds to be expended in that State on specific reclamation projects that are necessary to implement the approved plan. Such annual requests are reviewed and approved by OSM in accordance with the requirements of 30 CFR part 886.

AMR funds are to be utilized to address the problems caused by past mining in the following order. First, reclamation efforts are to be directed at correcting or mitigating the problems caused by past coal mining in the order of priority set forth in section 403(a) of SMCRA. Section 409 of SMCRA provides that certain noncoal mining-related problems may also be addressed at the same time if they involve direct threats to the public health, safety, and welfare. Second, following the completion of all coal-related impacts and certification of completion of coal reclamation, a State program may then direct its efforts to alleviating the problems caused by noncoal mining in accordance with the priorities set forth in section 411(c) of SMCRA. Finally, when all coal- and noncoal-related impacts have been addressed, section 411(e) of SMCRA provides that AMR funds may be used for construction of specific public facilities in communities impacted by mining development.

II. Background on the Texas Plan

On June 23, 1980, the Secretary of the Interior approved the Texas abandoned mine plan as submitted on April 24, 1980, and amended on May 30, and June 2 and 4, 1980. Information pertaining to the general background, revisions, and amendments to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the June 23, 1980, **Federal Register** (45 FR 41940).

III. Submission of Plan Amendment

Texas, at its own initiative, submitted to OSM a proposed amendment to its approved plan pursuant to SMCRA, as amended. The proposed amendment consists of two letters from the Governor of the State of Texas dated May 11 and 28, 1989, certifying that Texas had satisfied the requirements of SMCRA with regard to abandoned coal mine reclamation (administrative record Nos. TAML–38 and TAML–39). The effect of such certification, if concurred with by OSM, would be to allow Texas to use its AMF funds for noncoal reclamation projects. The Governor also stated that if any unforeseen coal problems arise, Texas would address them as funds become available.

OSM announced receipt of Texas' request for OSM's concurrence with the certification in the September 5, 1989, **Federal Register** (54 FR 36817; administrative record No. TAML–44) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the adequacy of Texas' request. The public comment period closed on October 5, 1989.

By letter dated March 22, 1990, Texas requested that OSM delay publishing a final rule **Federal Register** notice on the certification of completion of coal reclamation to allow the State time to adequately address all its coal priorities in accordance with section 403(a) of SMCRA (administrative record No. TAML–49). On April 22, 1990, OSM granted Texas' request (administrative record No. TAML–50).

By letter dated February 25, 1992 (administrative record No. TAML–51), Texas requested that OSM proceed with its processing of the State's request for certification of the completion of coal reclamation. Upon review of this request, OSM, by letter dated March 30, 1992 (administrative record No. TAML–52), requested Texas to clarify that the State had completed reclamation of all known coal-related problems and had satisfied this provision of the plan. By letter dated April 13, 1992 (administrative record No. TAML–53), Texas responded to OSM's request by submitting additional clarifying information.

OSM announced receipt of Texas' additional clarifying information in the May 21, 1992, **Federal Register** (57 FR 21640) and reopened the comment period on the proposed amendment (administrative record No. TAML–54). The reopened comment period closed on June 5, 1992.

IV. Director's Findings

Since OSM's original approval of the Texas abandoned mine plan, Texas, in accordance with the Texas Surface Coal Mining and Reclamation Act (TSCMRA), has conducted reclamation to correct or mitigate the problems caused by past coal mining. Texas completed this reclamation in the order of priority set forth in Subchapter R, section 051.07.04.804 of the State's Coal Mining Regulations as required by section 7 of TSCMRA (corresponding section 403(a) of SMCRA). Based upon Texas' May 11 and 26, 1989, certification, as clarified on April 13, 1992, and the absence of any known unreclaimed coal-related impacts, the Director concurs with Texas' certification that all coal-related abandoned mine land problems have been abated or reclaimed, and finds that Texas has satisfied the requirements of section 403 of SMCRA.

Furthermore, the Director finds, pursuant to 30 CFR 884.14(a), that (1) the public was given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies; (2) views of other Federal agencies were solicited; (3) Texas has the legal authority, policies, and administrative structure necessary to implement the abandoned mine plan amendment; (4) the plan amendment meets all requirements of OSM's AMLR program provisions; (5) Texas has an approved surface mining regulatory program; and (6) the plan amendment is in compliance with all applicable State and Federal laws and regulations.

Because Texas has, as discussed above, reclaimed all lands adversely impacted by past coal mining, Texas may submit in its annual grants requests for AMR funds to address eligible lands, waters, and facilities impacted by noncoal mining in accordance with the provisions of sections 051.07.04.803 and .804 as required by section 7 of TSCMRA (corresponding 411(b) and (c) of SMCRA). Monies available for all noncoal reclamation projects, regardless of their priority, however, may be derived only from those funds allocated to Texas under section 402(g)(1) of SMCRA.

V. Summary and Disposition of Comments

Following are summaries of all written comments on the proposed amendment that were received by OSM and the Director's responses to them.

1. Public Comments

In accordance with 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.15(a) and 884.14(a)(2), the Director solicited comments from other Federal agencies with an actual or potential interest in the Texas abandoned mine plan.

By memorandum dated June 17, 1992, the U.S. Fish and Wildlife Service acknowledged receipt of the proposed amendment and stated it has no objection to it (administrative record No. TAML–57).

By telephone conversation on June 19, 1992, the U.S. Department of Agriculture, Soil Conservation Service, stated it had no objection to the proposed amendment (administrative record No. TAML–58).

VI. Director's Decision

Based on the above findings, the Director concurs with Texas' certification for completion of abatement or reclamation of all coal-related abandoned mine land problems, as submitted by Texas on May 11 and 26, 1989, and as clarified by it on April 13, 1992.

The Director is codifying this abandoned mine plan decision at 30 CFR part 943. In addition, the Director is taking this opportunity to revise the addresses where copies of the abandoned mine plan originally approved by OSM are available for review. This final rule is being made effective immediately to expedite the State plan amendment process.

VII. Procedural Determinations

1. National Environmental Policy Act

Approval of State AMLR plans and amendments are categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual at 516 DM 6, appendix 8, paragraph 8.4B(30).

Executive Order No. 12291 and the Regulatory Flexibility Act

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to the approval of Abandoned Mine Land Reclamation programs and amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR part 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 943—TEXAS

1. The authority citation for part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.20 is revised to read as follows:

§ 943.20 Approval of Texas abandoned mine plan.

(a) The Texas Abandoned Mine Plan, as submitted on April 24, 1980, and amended on May 30, June 2, and June 4, 1980, is approved effective June 23, 1980.

(b) Copies of the approved program are available at:

(1) The Railroad Commission of Texas, Surface Mining and Reclamation Division, Capitol Station, P.O. Box 12967, Austin, Texas 78711, Telephone: (512) 463–6900.

(2) Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 E. Skelly Dr., suite 550, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430.

3. Section 943.25 is added to read as follows:

§ 943.25 Approval of amendments to Texas abandoned mine plan.

The amendment, as submitted by Texas on May 11 and 26, 1989, and clarified by it on April 13, 1992, certifying completion of coal reclamation, is approved effective August 19, 1992.

[FR Doc. 92–19708 Filed 8–18–92; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 944

Utah Permanent Regulatory Program and Abandoned Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is approving proposed amendments to the Utah permanent regulatory program and abandoned mine plan (hereinafter referred to as the "Utah program" and "Utah plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA), as amended by the Abandoned Mine Reclamation Act of 1990. Utah proposed the following changes to the Utah Coal Mining and Reclamation Act of 1979: (1) Revisions pertaining to activities exempt from the requirements of the Utah program; (2) removal from the Utah program of a section pertaining to rulemaking authority and procedures; (3) revisions to the Utah plan pertaining to the State's Abandoned Mine Reclamation Fund; and (4) addition of a Utah plan section setting forth procedures for certifying the completion of abandoned coal mine land reclamation. The amendment is intended to revise the Utah program and the Utah plan to be consistent with SMCRA, as amended; to incorporate the additional flexibility afforded by the amended SMCRA; and to improve operational efficiency.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, telephone: (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program and Plan
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Utah Program and Plan

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. General background information on Utah program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Subsequent actions concerning Utah's program and program amendments are codified at 30 CFR 944.15, 944.16, and 944.30.

On June 3, 1983, the Secretary of the Interior approved the Utah plan. General background information on the Utah plan, including the Secretary's findings, the disposition of comments, and approval of the Utah plan can be found in the June 3, 1983, **Federal Register** (48 FR 24676). Approval of the Utah plan is codified at 30 CFR 944.20.

II. Submission of Amendment

By letter dated July 26, 1991 (administrative record No. UT–663), Utah submitted proposed amendments to its program and plan pursuant to SMCRA. Utah submitted the proposed amendments at its own initiative. The provisions of the Utah Coal Mining and Reclamation Act of 1979 that Utah proposed to amend are: Revision of the Utah program provisions at Utah Code Annotated (UCA) 40–10–5, activities exempt from the requirements of the Utah Coal Mining and Reclamation Act of 1979; removal of the Utah program provision at UCA 40–10–6.6, rulemaking authority and procedures; revision of the Utah plan provision at UCA 40–10–25, expenditure priorities for eligible lands and water under the Utah plan; addition to the Utah plan at UCA 40–10–25.1, creation, content, and use of monies of the Abandoned Mine Reclamation Fund; addition to the Utah plan at UCA 40–10–25.2, liability limitation for abandoned mine reclamation; and addition to the Utah plan at UCA 40–10–28.1, certification of completion of coal reclamation.

OSM announced receipt of the proposed amendments in the August 20, 1991, **Federal Register** (56 FR 41314; administrative record No. UT–672) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendments. The public comment period closed on September 19, 1991. No substantive comments were received. The public hearing, scheduled for September 16, 1991, was not held because no one requested an opportunity to testify.

During its review of the amendments, OSM identified concerns relating to the Utah Coal Mining and Reclamation Act of 1979 provisions for the Utah plan at UCA 40–10–25, expenditure priorities for eligible lands and water under the Utah plan; UCA 40–10–25.1, creation, content, and use of monies of the Abandoned Mine Reclamation Fund; UCA 40–10–27(10)(b), entry upon land adversely

affected by past coal mining practices; and UCA 40–10–28.1, certification of completion of coal reclamation. OSM notified Utah of these concerns by letter dated October 3, 1991 (administrative record No. UT–688).

By letters dated December 17, 1991, and March 17, 1992 (administrative record Nos. UT–710 and UT–739), Utah responded to OSM's concerns by submitting additional explanatory information and revisions to its proposed plan amendment.

Based upon the additional explanatory information and revisions to the proposed plan amendment submitted by Utah, OSM reopened the public comment period in the April 23, 1992, **Federal Register** (57 FR 14821; administrative record No. UT–757). The public comment period closed on May 8, 1992.

III. Director's Findings

As discussed in finding No. 1 below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds that the proposed Utah program amendment submitted by Utah on July 26, 1991, is no less stringent than SMCRA. Also, as discussed in finding No. 2 below, the Director, in accordance with SMCRA and 30 CFR part 884, finds that the proposed Utah plan amendment submitted by Utah on July 26, 1991, and as revised by it on December 17, 1991, and March 17, 1992, is not inconsistent with SMCRA and is in compliance with the corresponding Federal regulations at 30 CFR 884.13 and 884.14. Thus, the Director approves the proposed amendments.

1. Utah Program

(a) Substantive Revision to Utah's Statute That Is Substantively Identical to the Corresponding Provisions of the Federal Statute

Utah proposed revisions to the following provision of the Utah Coal Mining and Reclamation Act of 1979 that are substantive in nature and contains language that is substantively identical to the corresponding provision of SMCRA (listed in parentheses):

UCA 40–10–5(1) (section 528 of SMCRA), activities exempt from the requirements of the Utah Coal Mining and Reclamation Act of 1979.

Because the proposed Utah program revision to this provision of the Utah Coal Mining and Reclamation Act of 1979 is substantively identical to the corresponding provision of SMCRA, the Director finds that this proposed program provision is no less stringent than SMCRA and approves it.

(b) UCA 40–10–5(1)(b), 2-Acre Exemption

As originally codified, Utah at UCA 40–10–5(1)(b) excluded from regulation those coal extraction operations affecting 2 acres or less. Similarly, as originally enacted, section 528(2) of SMCRA exempted from the requirements of SMCRA all coal extraction operations affecting 2 acres or less. However, on May 7, 1987, the President signed Public Law 100–34, which repealed the section 528(2) exemption and preempted any acreage-based exemptions included in State laws or regulations.

The amendment under consideration in this rulemaking removed the language of UCA 40–10–5(1)(b) preempted by Public Law 100–34. The Director finds that UCA 40–10–5(1)(b), as revised by this amendment, is no less stringent than section 528 of SMCRA and approves it. Removal of the acreage-based exemption from the Utah Coal Mining and Reclamation Act of 1979 will avoid confusion on the part of the public, which may not be aware of the Federal preemption.

(c) UCA 40–10–5(2), Applicability of the Permitting Requirements to Governmental Units

Utah proposed to delete existing UCA 40–10–5(2), which required that "[i]n addition to nongovernmental surface mining operators subject to this chapter [UCA 40–10], any agency, unit, or instrumentality of federal, state, or local government, including any public-owned corporation of federal, state, or local government, which purposes to engage in surface coal mining operations which are subject to the requirements of this chapter shall comply with the provisions of this chapter." Thus, proposed UCA 40–10–5(2) requires both nongovernmental and governmental surface mining operators to comply with UCA chapter 40–10. This provision is substantively identical to section 524 of SMCRA.

Utah's rationale for deleting UCA 40–10–5(2) is that this section was redundant with existing UCA 40–10–3(14) and 40–10–9(1). At existing UCA 40–10–3(14), Utah defines "person" to mean an individual, partnership, association, society, joint stock company, firm, company, corporation, or other governmental or business organization. At existing UCA 40–10–9(1), which pertains to permits for surface coal mining operations, Utah requires that no "person" shall engage in or carry out surface coal mining operations within the state unless that "person" has first obtained a permit issued by Utah pursuant to an approved mining and reclamation program.

Utah's definition of "person" at UCA 40–10–3(14), in conjunction with U.C.A. 40–10–9(1), requires both nongovernmental and governmental agencies to be subject to regulation when engaged in surface coal mining operations. This is the same requirement contained in UCA 40–10–5(2), which Utah proposed for deletion. Because UCA 40–10–5(2) duplicates the existing requirements of UCA 40–10–3(14) and UCA 40–10–9(1), the Director approves Utah's proposed deletion of UCA 40–10–5(2).

(d) UCA 40–10–6.6 (1), (2), and (3), Deadline for Review and Proposal of Revision of Rules, Deadline for Revision of Rules, and Effect of Notice of Violation or Denial of Permit

Utah proposed to delete in their entirety UCA 40–10–6.6(1), deadline for review and proposal of revision of rules; UCA 40–10–6.6(2), deadline for revision of rules; and UCA 40–10–6.6(3), effect of notice of violation or denial of permit.

UCA 40–10–6.6(1) required that (1) within 6 months of Utah's effective date for promulgation of UCA 40–10–6.5 and 40–10–6.6 (April 25, 1988), the Board of Oil, Gas, and Mining (the Board) review and propose revisions to its rules in compliance with the rule stringency standard at UCA 40–10–6.5, and (2) within 12 months of this effective date, the Utah Division of Oil, Gas and Mining (Division) revise its rules in compliance with the rule stringency standard at UCA 40–10–6.5. UCA 40–10–6.5 directs the Board not to adopt rules to the Utah regulatory program that are more stringent than the Federal regulations unless the Board makes a written finding, after public comment and hearing and based upon evidence in the record, that the corresponding Federal regulations are not adequate to protect public safety and the environment of the State.

UCA 40–10–6.6(2) states that all existing rules of the Division would remain in full force and effect after the effective date for promulgation of UCA 40–10–6.5 and 40–10–6.6, pending the Board's review and the Division's revision of the Utah program rules in compliance with UCA 40–10–6.6(1).

Utah has already complied with the self-imposed deadlines in UCA 40–10–6.6 (1) and (2) for reviewing and revising its regulatory program regulations. As such, these provisions are no longer needed in the regulatory program. The Director finds that the deletion of UCA 40–10–6.6 (1) and (2), which have no direct counterparts in SMCRA, is not inconsistent with any of the requirements of Section 503(a) of SMCRA. Also, their deletion does not adversely affect any other aspects of the Utah program. For these reasons, the Director approves the proposed deletions of UCA 40–10–6.6 (1) and (2).

Utah also proposed to delete UCA 40–10–6.6(3), effect of notice of violation or denial of permit, which required that "any person who is issued a notice of violation, or a denial of a permit or other approval, based on a rule of the Division which is more stringent than the corresponding federal regulations, may assert a partial defense to that notice, or a partial challenge to that denial, on the grounds and to the extent that the Division's rule violates this act by imposing requirements more stringent than corresponding federal regulations, unless that more stringent state rule has been adopted in compliance with this act."

On November 13, 1989, Utah (administrative record No. UT–540) submitted UCA 40–10–6.6(3) to OSM as a proposed Utah program amendment. On March 23, 1990, OSM notified Utah that UCA 40–10–6.6(3) was inconsistent with SMCRA and its implementing regulations (administrative record No. UT–561). On May 29, 1990, Utah withdrew the proposed amendment (administrative record No. UT–568). In this proposed amendment, Utah deleted UCA 40–10–6.6(3) from its statute.

Because OSM had previously found this provision to be inconsistent with SMCRA, the Director finds that Utah's proposed deletion of the provision now makes this part of the Utah program consistent with SMCRA. Therefore, the Director approves the proposed deletion of UCA 40–10–6.6(3).

2. Utah Plan

(a) Substantive Revisions to Utah's Statute That Are Substantively Identical to the Corresponding Provisions of the Federal Statute

Utah proposed revisions to the following provisions of the Utah Coal Mining and Reclamation Act of 1979 that are substantive in nature and contain language that is substantively identical to the corresponding provisions of SMCRA, as amended (listed in parentheses):

UCA 40–10–25(2)(c), (e), and (f) (sections 403(a)(1) through (6) of SMCRA), priorities for coal;
UCA 40–10–25(3)(a), (b), and (c) (section 404 of SMCRA), lands and water eligible for reclamation;
UCA 40–10–25.1(1)(a) (section 401(a) of SMCRA), creation of the Abandoned Mine Reclamation Fund;
UCA 40–10–25.1(2)(a) (section 401(b) of SMCRA), content of the Abandoned Mine Reclamation Fund;
UCA 40–10–25.2(1) and (2) (section 405(1) of SMCRA), liability limitation for abandoned mine reclamation; and
UCA 40–10–28.1(1), (2), (3), (4), (5), (6), and (7) (sections 411(a) through (g) of SMCRA), certification of completion of coal reclamation.

Because the proposed Utah plan revisions to these provisions of the Utah Coal Mining and Reclamation Act of 1979 are substantively identical to the corresponding provisions of SMCRA, the Director finds that these proposed plan provisions are not inconsistent with SMCRA and approves them.

(b) UCA 40–10–25(1) and 40–10–25.1, Expenditure Priorities for Lands and Water Eligible for Reclamation; and Creation, Content, and Use of Monies of the Abandoned Mine Reclamation Fund

Utah proposed to delete existing UCA 40–10–25(1) and UCA 40–10–25(4)(a) through (c) and incorporate the substantive requirements of these sections into newly-proposed UCA 40–10–25.1. In addition, Utah proposed a new UCA 40–10–25(1) which would require that grants received by the State under the Utah plan and monies of an existing fund, which Utah now has named the Abandoned Mine Reclamation Fund, be used in accordance with the provisions of UCA 40–10–25 through 40–10–28.1.

Section 401 of SMCRA, as amended, provides for (1) the creation of the Abandoned Mine Reclamation Fund; (2) the sources of monies to be deposited to this Fund; (3) the uses of these monies in implementing the abandoned mine reclamation program; (4) the availability of the funds; and (5) the investment of the unneeded Fund balance to earn interest.

Section 402(g) of SMCRA details provisions for the allocation of funds, including the establishment of a special trust fund of up to 10 percent of the total annual State grants, in order to accomplish the priorities set out in sections 402 and 411 of SMCRA.

The Director finds that Utah's proposed deletion of existing UCA 40–10–25(1) and 40–10–25(4)(a) through (c), incorporation of the substantive requirements of these sections into new UCA 40–10–25.1, and the addition of new UCA 40–10–25(1) are not inconsistent with sections 401 and 402 of SMCRA. The Director approves these changes.

(c) UCA 40–10–25.1(1) (b), Use of Monies in the Abandoned Mine Reclamation Fund

Utah proposed a new UCA 40–10–25.1(1) (b) that would allow "set-aside funds" established by proposed new UCA 40–10–25.1(3)(a) and the interest earned on these monies to be combined in the Abandoned Mine Reclamation Fund with monies from liens, user fees, fines, donations, and earned interest as set forth in proposed new UCA 40–10–25.1(2)(a). The provision required only that the set-aside funds be "segregated" from the other source monies. Section 402(g)(6) of SMCRA allows a State to retain up to 10 percent as "set-aside funds" of the annual State share allocation granted by the Secretary of the Interior in a special trust fund account established under law. Where both types of funding are deposited to the same account and there are no specific provisions to handle them as separate and distinct accounts, there is a potential, through accounting errors or misuse of funds, for set-aside funds to be expended for an inappropriate use or at an inappropriate time. By letter dated March 17, 1992 (administrative record No. UT–739), Utah provided a February 19, 1992, Utah Division of Finance memorandum explaining how the two accounts will be maintained as separate and distinct accounts. The Director finds that UCA 40–10–25.1(1)(b), as augmented by the February 19, 1992, Utah Division of Finance memorandum, is not inconsistent with section 402(g)(6) of SMCRA and approves it.

(d) UCA 40–10–25.1(2)(b) and (c), Investment of and Expenditures of Monies in the Abandoned Mine Reclamation Fund

Utah proposed new UCA 40–10–25.1(2) (b) and (c) that would allow monies received under proposed new UCA 40–10–25.1(2)(a) to be invested and all earned interest over $9,500 to be credited to Utah's general fund. At proposed new UCA 40–10–25.1(2)(c), the Division could at any time spend the monies received under the 40–10–25.1(2)(a) to accomplish the purposes of the abandoned mine reclamation program.

The Director finds that Utah's proposed UCA 40–10–25.1(2)(b) and (c) are consistent with section 401 of SMCRA and approves them.

(e) UCA 40–10–25.1(3)(a) and (b), Set-Aside Monies

In place of existing UCA 40–10–25(4)(a), Utah proposed new UCA 40–10–25.1(3)(a) that would allow the State to set aside funds in a special trust

account. In addition, Utah proposed new UCA 40–10–25.1(3)(b) that would allow Utah to set aside funds to be used after August 3, 1992, for the purposes set forth in UCA 40–10–25 through 40–10–28.1. The Director finds that Utah's proposed UCA 40–10–25.1(3)(a) and (b), which would allow Utah to set aside funds to be used after August 3, 1992, are not inconsistent with title IV of SMCRA and approves them.

(f) UCA 40–10–25.1(3)(c), Availability of Monies in the Abandoned Mine Reclamation Fund

Utah proposed new UCA 40–10–25.1(3)(c) that would allow monies deposited to the Abandoned Mine Reclamation Fund under the provisions of proposed new UCA 40–10–25.1(3) to be appropriated through legislative action. The Director finds that Utah's proposed UCA 40–10–25.1(3)(c), which would allow the legislature to appropriate funds from the Abandoned Mine Reclamation Fund, is not inconsistent with title IV of SMCRA and approves it.

(g) UCA 40–10–25.1(3)(d), Use of State Set-Aside Monies for Emergencies Requiring Immediate Reclamation

Utah proposed at UCA 40–10–25.1(3)(d) that the Division could expend set-aside monies at any time for emergency reclamation. The Director finds that proposed UCA 40–10–25.1(3)(d) is not inconsistent with title IV of SMCRA and approves it.

(h) UCA 40–10–27(10)(b) Lands Adversely Affected By Past Coal Mining Practices

Utah proposed to revise UCA 40–10–27(10)(b), which pertains to lands adversely affected by past coal mining practices, to reference UCA 40–10–25(2) and (3). As discussed in finding No. 2(a), the Director approves UCA 40–10–25(2)(c), (e), and (f) and (3)(a), (b), and (c). Utah, in this proposed plan amendment, proposed no revisions to existing sections 40–10–25(2)(a), (b), and (d). Section 409(c) of SMCRA provides for the funding of certain non-coal projects. The Director finds that the proposed revision to UCA 40–10–27(10)(b) is not inconsistent with section 409(c) of SMCRA and approves it.

IV. Summary and Disposition of Comments

1. Public comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendments. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency comments

Pursuant to 30 CFR 732.17(h)(11)(i), § 884.14(c), and § 884.15(a), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various other Federal agencies with an actual or potential interest in the Utah program and Utah plan.

By letters dated August 23, 1991, and April 9, 1992, the Department of the Army, U.S. Army Corps of Engineers, stated that the proposed amendments were satisfactory (administrative record Nos. UT–670 and UT–750).

By memoranda dated August 23, 1991, and May 4, 1992, the U.S. Fish and Wildlife Service acknowledged receipt of the proposed amendments and stated that it found nothing of significant concern in them (administrative record Nos. UT–674 and UT–761).

By memoranda dated August 28, 1991, and April 21, 1992, the Bureau of Mines stated that the proposed amendments would have no adverse impacts to nonfuel mineral resources (administrative record Nos. UT–675 and UT–756).

By letters dated September 9, 1991 and April 10, 1992, the U.S. Department of Agriculture, Soil Conservation Service acknowledged receipt of the proposed amendments and stated that it had no comments (administrative record Nos. UT–677 and UT–747).

By letters dated September 11, 1991, and April 17, 1992, the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) stated that Utah's proposed amendments did not conflict with any MSHA regulations (administrative record Nos. UT–678 and UT–752).

By memoranda dated April 13 and 16, 1992, the Bureau of Land Management acknowledged receipt of the proposed amendments and stated that it found no conflicts with the amendments (administrative record Nos. UT–748 and UT–751).

By record of telephone conversation dated April 22, 1992, the U.S. Forest Service stated Utah's proposed amendments did not contain materials that concerned its interests (administrative record No. UT–755).

3. Environmental Protection Agency (EPA) Concurrence

Pursuant to 30 CFR 732.17(h)(11)(ii), the Director solicited the written concurrence of the Administrator of the EPA with respect to those provisions of the proposed program and plan amendments which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et. seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Utah proposed to make in its statute pertain to air or water quality standards. Nevertheless, OSM requested EPA's concurrence with the proposed amendments (administrative record No. UT–663.1).

By letter dated February 11, 1992 (administrative record No. UT–735), EPA concurred with the proposed amendments and found they demonstrated that Utah has the legal authority, administrative capability, and the technical conformity with controlling the National Pollutant Discharge Elimination System regulations necessary to maintain water quality standards promulgated under authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendments to the SHPO and ACHP for comment. Neither SHPO nor ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed revisions to the Utah Coal Mining and Reclamation Act of 1979. The Director approves Utah's proposed program amendment as submitted July 26, 1991, and proposed plan amendment, as submitted July 26, 1991, and as revised December 17, 1991, and March 17, 1992.

The Federal regulations at 30 CFR part 944, codifying decisions concerning the Utah program and plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, no environmental impact statement need be prepared for the regulatory program provisions of this rulemaking (finding No. 1).

Pursuant to the Department of the Interior's Manual, 516 DM 6, appendix 8, paragraph 8.4B(30), no environmental impact statement need be prepared for the abandoned mine reclamation plan provisions of this rulemaking (finding No. 2).

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections, 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to the approval of Abandoned Mine Land Reclamation programs and amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

3. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, § 732.15, and § 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

4. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: June 30, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (t) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(t) Revisions to the following sections of the Utah Code Annotated 1953, title 40, as submitted to OSM on July 26, 1991, are approved effective August 19, 1992: 40–10–5(1), activities exempt from the requirements of the Utah Coal Mining and Reclamation Act of 1979; deletion of 40–10–5(1)(b), 2-acre exemption; deletion of 40–10–5(2), applicability of the permitting requirements to governmental units; and deletion of 40–10–6.6(1), (2), and (3), deadline for review and proposal of revision of rules, deadline for revision of rules, and effect of notice of violation or denial of permit.

3. Section 944.20 is revised to read as follows:

§ 944.20 Approval of Utah abandoned mine plan.

(a) The Utah Abandoned Mine Plan, as submitted on February 9, 1983, and as subsequently revised is approved.

(b) Copies of the approved program are available at:

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, suite 350, Salt Lake City, Utah 84180–1203, telephone: (801) 538–5340.

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., suite 310, Albuquerque, New Mexico 87102, telephone: (505) 766–1486.

4. Section 944.25 is added to read as follows:

§ 944.25 Approval of amendments to State abandoned mine plan.

(a) The following sections of the Utah Code Annotated 1953, title 40, pertaining to the Utah abandoned mine plan, as submitted to OSM on July 26, 1991, and revised December 17, 1991, and March 17, 1992, are approved effective August 19, 1992.

40–10–25(1)
Abandoned Mine Reclamation Program.
40–10–25(2) (c), (e), and (f)
Priorities for Coal.
40–10–25(3) (a), (b), and (c)
Lands and Water Eligible for Reclamation.
40–10–25.1(1)(a)
Creation of Abandoned Mine Reclamation Fund.
40–10–25.1(1)(b)
Use of Abandoned Mine Reclamation Fund, as augmented by a February 19, 1992, Utah Division of Finance Memorandum.
40–10–25.1(2) (a), (b), and (c)
Content and Use of Abandoned Mine Reclamation Fund.
40–10–25.1(3) (a), (b), (c), and (d)
Establishment, Availability, and Use of State Set-Aside Monies.
40–10–25.2 (1) and (2)
Liability Limitation for Abandoned Mine Reclamation.
40–10–27(10)(b)
Lands Adversely Affected by Past Coal Mining Practices.
40–10–28.1 (1), (2), (3), (4), (5), (6), and (7)
Certification of Completion of Coal Reclamation.

(b) [Reserved].

[FR Doc. 92–19707 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR20–1–5512; FRL–4149–8]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and Other State Regulations). EPA is approving a revisions to Chapter 340 Division 20 (General) for Excess Emissions of the Oregon Administrative Rules as submitted on January 2, 1991, from the Oregon Department of Environmental Quality. This revision will support Oregon's PM-10 Nonattainment control strategy(s) and was made in response to section 110 and Part D of the CAAA of 1990 and will improve the air quality statewide.

DATES: This action will be effective on October 19, 1992 unless notice is received before September 18, 1992 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460
Environmental Protection Agency, Air and Radiation Branch, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101
State of Oregon, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

Comments Should Be Addressed To: Laurie M. Kral, Environmental Protection Agency, Air & Radiation Branch, Docket No. OR20–1–5512, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

On April 27, 1977, EPA promulgated a final rule for excess emissions during start-up, shutdown and malfunction from the Kennecott Copper Corporation smelter located in Salt Lake City, Utah. Also, EPA indicated that nationally uniform malfunction regulations were desirable and committed to review, and if necessary to revise, State Implementation Plan (SIP) malfunction regulations to ensure that they met the requirements of section 110 of the Clean Air Act and 40 CFR part 51. Based on these actions and the outcome of a Ninth Circuit Court of Appeals Decision (*Marathon Oil Company* v. *EPA* 564 F2d 1253 (9th Cir. 1977), EPA issued guidance on excess emission regulations. Oregon's existing regulations were reviewed and the State and EPA began the process of correcting any deficiencies.

On January 2, 1991, the Director of the State of Oregon Department of Environmental Quality (ODEQ) submitted to EPA revisions to the Oregon Administrative Rules (OAR), Chapter 340, Division 20 addressing EPA's excess emission policy.

II. Technical Evaluation

OAR Chapter 340, Division 20—Oregon's Excess Emissions Rules—OAR Chapter 340, Division 20, sections 350 to 380 were submitted to EPA for approval on January 2, 1991. In this revision, 340–20–350 was renumbered from 340–21–065 (Upset Conditions) and revised, sections 340–21–070 and 075 were repealed, and sections 340–20–355 to 380 were added.

This revision to Division 20 adds criteria which strengthens reporting and documentation procedures for all excess emissions and outlines enforcement action which may be taken for excess emissions which occur during startup, shutdown, maintenance and breakdown. These rules satisfy EPA's requirements for state implementation plan (SIP) rules regarding emissions in excess of SIP limitations.

III. Summary of Action

EPA is approving revisions to the State of Oregon Implementation Plan for OAR 340–20 (General)–350, 355, 360, 365, 370, 375 and 380. These revisions will make the State of Oregon's Excess Emission Rules consistent with the federal policy related to temporary excess emissions of air contaminants and will be acceptable statewide. This action also includes the repealing of section 340–21–070 and 340–21–075 from the State of Oregon's Air Quality Control Plan Volume 2 (The Federal clean Air Act State Implementation Plan and other State Regulations).

IV. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notice will be published before the effective date. One notice will withdraw the final action on those revision and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing is this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 2 and 3 revisions. OMB has agreed to continue to temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by Reference, Intergovernmental relations, Lead, Nitrogen Dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 24, 1992.

Jim McCormick,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of **Federal Register** on July 1, 1982.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart MM—Oregon

2. Secretion 52.1970 is amended by adding paragraph (c)(89) to read as follows:

§ 52.1970 Identification of plan

* * * * *

(c) * * *

(89) on January 2, 1991, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (the Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: OAR chapter 340, Division 20, Sections 350 to 380 (Excess Emissions). The Department of Environmental Quality also repealed OAR 340–21–070 and OAR 340–21–075 from the state of Oregon's Air Quality Control Plan Volume 2.

(i) Incorporation by reference.

(A) January 2, 1991, letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, Chapter 340, Division 20 (General); –350 (Purpose and Applicability); –355 (Definitions); –360 (Planned Startup and Shutdown); –365 (Scheduled Maintenance); –370 (Upsets and Breakdowns); –375 (Reporting Requirements); and –380 (Enforcement Action Criteria) as adopted by the Environmental Quality Commission on may 25, 1990, and were effective on January 2, 1991.

[FR Doc. 92–19320 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[OR17–1–5509; FRL–4150–1]

Approval and Promulgation of Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving revisions to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and Other State Regulations). EPA is approving a revision to chapter 340 Division 25 (Specific Industrial Standards) of the Oregon Administrative Rules as resubmitted to EPA on November 15, 1991. This revision will control particulate matter emissions from Oregon's board products industries and is applicable statewide.

DATES: This action will be effective on October 19, 1992, unless notice is received before September 18, 1992, that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460
Air Programs Branch, Environmental Protection Agency, Dockets No. OR17–1–5509, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101
Oregon Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204.

Comments should be addressed to: Laurie Kral, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Lorinda M. Ramos, Air Programs Branch, AT–082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington, 98101, Telephone: (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1972, the Oregon Department of Environmental Quality (ODEQ) submitted rules for board products industries to EPA for inclusion in the Oregon SIP. These rules were approved by EPA on May 31, 1972. On May 11, 1977, April 11, 1977, and May 30, 1979, ODEQ amended its rules for board products industries and submitted these amended rules to EPA as a revision to the Oregon SIP. EPA subsequently determined that the ODEQ had not provided adequate public notice on these rule amendments and requested that the ODEQ remedy the deficiency and resubmit the amended rules. On July 14, 1985, ODEQ further amended its rules for board products industries and after proper notice and public hearing resubmitted the amended rules to EPA on May 30, 1986. During EPA review, sections 305 and 315 were determined not to be approvable. To address EPA's concerns, ODEQ amended the rules (sections 305 and 315) and resubmitted sections 305 and 315 on November 15, 1991.

II. Technical Evaluation

OAR Chapter 340, Division 25—On May 30, 1986, ODEQ submitted a revision to OAR Chapter 340, Division 25 (Specific Industrial Standards) by revising sections 305 to 325; rules specific to the Board Products Industry. This submittal included revisions to opacity limitations for veneer dryers, required new particulate emission limitations for wood fired veneer dryers, included new requirements for operation and maintenance, new requirements for control of fugitive emissions, and new provisions which allowed ODEQ to require more restrictive emission limitations in certain circumstances. However, at that time, EPA determined that the revision, as submitted, was not approvable due to enforceability issues. Problems with the revision included a lack of compliance dates or schedules, test methods, compliance procedures, and monitoring and reporting requirements. In order to correct these problems, ODEQ revised sections 305 and 315 and submitted this revision to EPA on November 15, 1991. Therefore, EPA is purposing to approve OAR Chapter 340, Division 25, sections 310, 320, and 325 as submitted on May 30, 1986 and sections 305 and 315 as submitted on November 15, 1991.

III. Summary of Action

EPA is today approving revisions to the State of Oregon Implementation Plan for OAR 340–25 (Specific Industrial Standards) –305, –310, –315, –320–, and –325 as submitted by the Oregon State Department of Environmental Quality.

IV. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing is this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to

relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), the Administrator certifies that SIP approvals under section 107,110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities. SIP approvals (or redesignations) do not create any new requirements but simply approve requirements that are already State law. SIP approvals (or redesignations), therefore, do not add any additional requirements for small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis for a SIP approval would constitute Federal inquiry into the economic reasonableness of the State actions. The Clean Air Act forbids EPA to base its action concerning SIPs on such grounds.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 3 revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Air Pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 24, 1992.

Jim McCormick,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1972.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(94) to read as follows:

§ 52.1970 Identification of plan.

* * * * * *

(c) * * *

(94) On May 30, 1986 and on November 15, 1991, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: Division 25—Board Products Industries in OAR Chapter 340 which contains OAR 340–25–305 to 315.

(i) Incorporation by reference.

(A) November 15, 1991 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, Chapter 340, Division 25 (Specific Industrial Standards) section–305 (Definitions); and –315 (Veneer and Plywood Manufacturing Operations) as adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

(C) May 30, 1986 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

[FR Doc. 92–19321 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 52

[OR21–1–5513; FRL–4149–9]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is today approving a revision to the State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and Other State Regulations). In particular, revisions to OAR chapter 340 Division 21 (General Emission Standards for Particulate Matter) as submitted to EPA on November 15, 1991, from the Oregon Department of Environmental Quality. This revision will support Oregon's PM–10 Nonattainment control strategy(s) and was made in response to section 110 and Part D of the CAAA of 1990 and will improve the air quality statewide.

DATES: This action will be effective on October 19, 1992 unless notice is received before September 18, 1992 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Environmental Protection Agency, Air and Radiation Branch, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101.
State of Oregon, Department of Environmental Quality, 811 S.W. Sixth Avenue, Portland, Oregon 97204.

COMMENTS SHOULD BE ADDRESSED TO: Laurie M. Kral, Environmental Protection Agency, Air and Radiation Branch, Docket # OR21–1–5513, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101

FOR FURTHER INFORMATION CONTACT: Rindy Ramos, Environmental Protection Agency, 1200 Sixth Avenue, AT–082, Seattle, Washington 98101, Telephone: (206) 553–6510.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634) the Environmental Protection Agency revised the National Ambient Air Quality Standards (NAAQS) for particulate matter. Total suspended particulate matter of "TSP" was replaced as an indicator for particulate matter for the ambient standard by a new indicator that includes only those particles with an aerodynamic diameter

less than or equal to a nominal 10 micrometers (PM–10).

To implement the revised NAAQS, EPA promulgated revisions to 40 CFR parts 51 and 52 also on July 1, 1987 (52 FR 24672). These actions established requirements for preparation, adoption, and submittal of State Implementation Plans (SIPs) and set forth the Administrator's approval and promulgation of implementation plans.

Congress then revised the Clean Air Act by passage of the Clean Air Act Amendments of 1990 (Pub. L. 101–549, November 15, 1990) resulting in changes to SIP requirements for PM–10 nonattainment areas.

To address section 172(c)(19) of the new Act, ODEQ revised chapter 340 Division 21 by adding sections 200 to 245. This revision affects point sources of PM–10 and addresses the contingency measure(s) requirements for PM–10 nonattainment areas.

II. Technical Evaluation

OAR Chapter 340, Division 21—On November 15, 1991, the Oregon Department of Environmental Quality (ODEQ) submitted a revision to OAR chapter 340, Division 21 by adding sections 200 to 245 (Industrial Contingency Requirements for PM–10 Nonattainment Areas).

These new industrial particulate emission standards, which Oregon has determined to represent Reasonably Available Control Technology (RACT), are applicable to existing industrial sources located in any PM–10 nonattainment area that fails to reach attainment of the PM–10 National Ambient Air Quality Standard (NAAQS) by applicable attainment date in the Clean Air Act. These rules establish contingency emission standards for large wood-fired boilers, particle dryers, hardboard plants, and air handling systems. In actuality, the rules would only activate point source controls for Klamath Falls since sources located in Oregon's other PM–10 nonattainment areas are currently regulated by what Oregon believes represents RACT.

In addition, these rules require a major source located outside of a PM–10 nonattainment area, which potentially may have a significant impact on the nonattainment area, to evaluate the impact. If the impact is determined to be significant, then the appropriate provisions of OAR 340–21–200 to 245 shall apply.

For control of fugitive emissions, any source regulated by these contingency measures must comply with OAR 340–30–043 (Control of Fugitive Emission).

III. Summary of Action

EPA is today approving revisions to the State of Oregon Implementation Plan for OAR 340–21 (General Emission Standards for Particulate Matter) –200, 205, 210, 215, 220, 225, 230, 235, 240, and 245.

IV. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 3 revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1992. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 23, 1990.

Jim McCormick,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1972.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671(q).

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(93) to read as follows:

§ 52.1970 Identification of plan.

* * * * * *

(c) * * *

(93) On November 15, 1991, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: Division 21—General Emission Standards for Particulate Matter in Chapter 340 which contains OAR 340–21–200 to –245.

(i) *Incorporation by reference.* (A) November 15, 1991 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon State implementation plan.

(B) Oregon Administrative Rules, chapter 340, Division 21 (General Emission Standards for Particulate Matter) section Industrial Contingency Requirements for PM–10 Nonattainment Areas; –200 (Purpose); –205 (Relation to Other Rules); –210 (Applicability); –215 (Definitions); –220 (Compliance

Schedule for Existing Sources); -225 (Wood-Waste Boilers); -230 (Wood Particulate Dryers at Particleboard Plants); -235 (Hardboard Manufacturing Plants) -240 (Air Conveying Systems); and -245 (Fugitive Emissions) as adopted by the Environmental Quality Commission on November 8, 1991 and effective on November 13, 1991.

[FR Doc. 92-19319 Filed 8-18-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[OR 18-1-5510; FRL-4150-2]

Approval and Promulgation of Implementation Plans; Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today is approving revision to the State of Oregon Implementation Plan. EPA is approving revisions to chapter 340 Division 27 (Air Pollution Emergencies) of the Oregon Administrative Rules as submitted on May 20, 1988. These revisions are made to support Oregon's PM-10 Nonattainment Area control strategy(ies) and in response to section 110 and part D of the Clean Air Act Amendments of 1990. The revisions to Division 27 will also improve air quality statewide

In addition, EPA is amending 40 CFR part 52 to include an approval of OAR 340-27-035 which requires an "operation and maintenance manual" for administering the provisions of the Emergency Episode Plan which was omitted in the document published in the **Federal Register** April 20, 1984 (49 FR 16778).

DATES: This action will be effective on October 19, 1992, unless notice is received before September 18, 1992 that someone wishes to submit adverse or critical comments. If such notice is received, EPA will open a formal 30-day comment.

ADDRESSES: Documents which are incorporated by reference are available for public inspection at the Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC. Copies of material submitted to EPA may be examined during normal business hours at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Air Programs Branch, Environmental Protection Agency, Docket #OR18-1-5510, 1200 Sixth Avenue, AT-082, Seattle, Washington 98101.
Oregon Department of Environmental Quality, 811 SW. Sixth, Portland, Oregon 97204.

Comments should be addressed to: Laurie Kral, Air Programs Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Lorinda M. Ramos, Air Programs Branch, AT-082, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 553-6510.

SUPPLEMENTARY INFORMATION:

I. Background

On July 1, 1987 (52 FR 24634) the Environmental Protection Agency revised the National Ambient Air Quality Standards (NAAQS) for particulate matter. Total suspended particulate matter or "TSP" was replaced as an indicator for particulate matter for the ambient standard by a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10).

To implement the revised NAAQS, EPA promulgated revisions to 40 CFR parts 51 and 52 also on July 1, 1987 (52 FR 24672). These actions established requirements for preparation, adoption, and submittal of State Implementation Plans (SIPs) and set forth the Administrator's approval and promulgation of implementation Plans.

In response to this action, the Oregon Department of Environmental Quality (ODEQ) revised its rules and submitted to EPA revisions on May 20, 1988.

II. Technical Evaluation

OAR Chapter 340, Division 27—On May 20, 1988, ODEQ submitted a revision to OAR chapter 340, Division 27 (Air Pollution Emergencies) by revising sections -005, -010, and -012. The revision to section -005 revised the significant harm levels in accordance with 40 CFR 51.151. The revision to section -010 revised the air pollution alert levels, the air pollution warning levels, and the air pollution emergency levels. In addition, an editorial change was made to rule -012.

III. Summary of Action

EPA is today soliciting public comment on its proposed approval of revisions to the State of Oregon Implementation Plan for OAR 340-27 (Air Pollution Emergencies) sections -005, -010, and -012. In addition, EPA is making a correction to 40 CFR part 52 (49 FR 16778). The April 28, 1984 **Federal Register** notice should have included approval of OAR 340-27-035 which requires an "operation and maintenance manual" for administering the provisions of the Emergency Episode Plan. This section was approved and unintentionally excluded from the prior notice.

Interested parties are invited to comment on all aspects of this proposed approval. Comments should be submitted in triplicate, to the address listed in the front of this Notice. Public comments postmarked by September 18, 1992 will be considered in the final rulemaking action taken by EPA.

IV. Administrative Review

The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments on any or all of these revisions approved herein, the action on these revisions will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action on those revisions and another will begin a new rulemaking by announcing a proposal of the action on these revisions and establish a comment period.

Nothing is this action would be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan should be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

Under 5 U.S.C. section 605(b), I certify that this revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for permanent waiver for Table 3 revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 1992. Filing a petition for reconsideration by the Administrator of this file rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See 42 U.S.C. 7607(b)(2))

List of Subjects in 40 CFR Part 52

Air Pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and Recordkeeping requirements, Sulfur oxides.

Dated: June 24, 1992.

Jim McCormick,

Acting Regional Administrator.

Note: Incorporation by reference of the Implementation Plan for the State of Oregon was approved by the Director of the Office of Federal Register on July 1, 1972.

Title 40, chapter I of part 52 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671(q).

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c)(95) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(95) On May 20, 1988, the Director of the Department of Environmental Quality submitted revisions to State of Oregon's Air Quality Control Plan Volume 2 (The Federal Clean Air Act State Implementation Plan and other State Regulations) as follows: Chapter 340 Division 27 (Air Pollution Emergencies) section -005, -010, and -012.

(i) *Incorporation by reference.* (A) May 20, 1988 letter from the Director of the Department of Environmental Quality to EPA Region 10 submitting amendments to the Oregon state implementation plan.

(B) Oregon Administrative Rules, chapter 340, Division 27 (Air Pollution Emergencies) section -005 (Introduction); -010 (Episode Stage Criteria for Air Pollution Emergencies) and -012 (Special Conditions) as adopted by the Environmental Quality Commission on April 29, 1988 and effective on May 19, 1988.

3. Section 52.1977 is revised to read as follows:

§ 52.1977 Content of Approved State Submitted Implementation Plan.

The following sections of the State air quality control plan (as amended on the dates indicated) have been approved and are part of the current State Implementation Plan.

State of Oregon

Air Quality Control Program

Volume 2—The Federal Clean Air Act Implementation Plan (and Other State Regulations)

Section

1. Introduction (1-86)

2. General Administration (1-86)

2.1 Agency Organization (1-86)
2.2 Legal Authority (1-86)
2.3 Resources (1-86)
2.4 Intergovernmental Cooperation and Consultation (1-86)
2.5 Miscellaneous Provisions (1-86)

3. Statewide Regulatory Provisions

23.1 Oregon Administrative Rules—Chapter 340 (1-86)

Division 12—Civil Penalties

Sec. 030 Definitions (11-8-84)
Sec. 035 Consolidation of Proceedings (9-25-74)
Sec. 040 Notice of Violation (12-3-85)
Sec. 045 Mitigating and Aggravating Factors (11-8-88)
Sec. 050 Air Quality Schedule of Civil Penalties (11-8-84)
Sec. 070 Written Notice of Assessment of Civil Penalty; When Penalty Payable (11-8-84)
Sec. 075 Compromise or Settlement of Civil Penalty by Director (11-8-84)

Division 14—Procedures for Issuance, Denial, Modification, and Recovation of Permits (4-15-72)

Sec. 005 Purpose (4-15-72)
Sec. 007 Exceptions (6-10-88)
Sec. 010 Definitions (4-15-72), except (3) "Director" (6-10-88)
Sec. 015 Type, Duration, and Termination of Permits (12-16-78)
Sec. 020 Application for a Permit (4-15-72), except (1), (4)(b), (5) (6-10-88)
Sec. 025 Issuance of a Permit (4-15-72), except (2), (3), (4), (5), (8) (6-10-88)
Sec. 030 Renewal of a Permit (4-15-72)
Sec. 035 Denial of a Permit (4-15-72)
Sec. 040 Modification of a Permit (4-15-72)
Sec. 045 Suspension or Revocation of a Permit (4-15-72)
Sec. 050 Special Permits (4-15-72)

Division 20—General

Sec. 001 Highest and Best Practicable Treatment and Control Required (3-1-72)
Sec. 003 Exceptions (3-1-72)

Registration

Sec. 005 Registration in General (9-1-70)
Sec. 010 Registration requirements (9-1-70)
Sec. 015 Re-registration (9-1-70)

Notice of Construction and Approval of Plans

Sec. 020 Requirement (9-1-70)
Sec. 025 Scope (3-1-72)
Sec. 030 Procedure (9-1-72), except (4)(a) Order Prohibiting Construction (4-14-89)
Sec. 032 Compliance Schedules (3-1-72)

Sampling, Testing, and Measurement of Air Contaminant Emissions

Sec. 035 Program (9-1-70)
Sec. 037 Stack Heights & Dispersion Techniques (4-25-86)
Sec. 040 Methods (9-11-70)
Sec. 045 Department Testing (9-1-70)
Sec. 046 Records; Maintaining and Reporting (10-1-72)
Sec. 047 State of Oregon Clean Air Act, Implementation Plan (9-30-85)

Air Contaminant Discharge Permits

Sec. 140 Purpose (1-6-86)
Sec. 145 Definitions (1-6-76)
Sec. 150 Notice Policy (6-10-88)
Sec. 155 Permit Required (5-31-83)
Sec. 160 Multiple-Source Permit (1-6-76)
Sec. 165 Fees (3-14-86)
Sec. 170 Procedures For Obtaining Permits (1-11-74)
Sec. 175 Other Requirements (6-29-79)
Sec. 180 Registration Exemption (6-29-79)
Sec. 185 Permit Program For Regional Air Pollution Authority (1-6-76)

Conflict of Interest

Sec. 200 Purpose (10-13-78)
Sec. 205 Definitions (10-13-78)
Sec. 210 Public Interest Representation (10-13-78)
Sec. 215 Disclosure of Potential Conflicts of Interest (10-13-78)

New Source Review

Sec. 220 Applicability (9-8-81)
Sec. 225 Definitions (10-16-84)
Sec. 230 Procedural Requirements (10-16-84), except (3)(D) (6-10-88)
Sec. 235 Review of New Sources and Modifications for Compliance With Regulations (9-8-81)
Sec. 240 Requirements for Sources in Nonattainment Area (4-18-83)
Sec. 245 Requirements for Sources in Attainment or Unclassified Areas (Prevention of Significant Deterioration) (10-16-85)
Sec. 250 Exemptions (9-8-81)
Sec. 255 Baseline for Determining Credit for Offsets (9-8-81)
Sec. 260 Requirements for Net Air Quality Benefit (4-18-83)
Sec. 265 Emission Reduction Credit Banking (4-18-83)
Sec. 270 Fugitive and Secondary Em ssions (9-8-81)

Sec. 275 Repealed
Sec. 276 Visibility Impact (10-16-85)

Plant Site Emission Limits

Sec. 300 Policy (9-8-81)
Sec. 301 Requirement for Plant Site Emission Limits (9-8-81)
Sec. 305 Definitions (9-8-81)
Sec. 310 Criteria for Establishing Plant Site Emission Limits (9-8-81)
Sec. 315 Alternative Emission Controls (9-8-81)
Sec. 320 Temporary PSD Increment Allocation (9-8-81)

Stack Heights and Dispersion Techniques

Sec. 340 Definitions (4-18-83)
Sec. 345 Limitations (4-18-83)
Sec. 350 Purpose and Applicability (1-2-91)
Sec. 355 Definitions (1-2-91)
Sec. 360 Planned Startup and Shutdown (1-2-91)
Sec. 365 Scheduled Maintenance (1-2-91)
Sec. 370 Upsets and Breakdowns (1-2-91)
Sec. 375 Reporting Requirements (1-2-91)
Sec. 380 Enforcement Action Criteria (1-2-91)

Division 21—Industrial Contingency Requirements for PM-10 Nonattainment Areas

Sec. 200 Purpose (11-13-91)
Sec. 205 Relation to Other Rules (11-13-91)
Sec. 210 Applicability (11-13-91)
Sec. 215 Definitions (11-13-91)
Sec. 220 Compliance Schedule for Existing Sources (11-13-91)
Sec. 225 Wood Waste Boilers (11-13-91)
Sec. 230 Wood Particulate Dryers at Particleboard Plants (11-13-91)
Sec. 235 Hardboard Manufacturing Plants (11-13-91)
Sec. 240 Air Conveying Systems (11-13-91)
Sec. 245 Fugitive Emissions (11-13-91)

Division 22—General Gaseous Emissions Sulfur Content of Fuels

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Sec. 060 Benton, Linn, Marion, Polk, and Yamhill Counties (6-16-84)
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Sec. 315 Veneer and Plywood Manufacturing Operations (11-13-91)
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Laterite Ore Production of Ferronickel

Sec. 405 Statement of Purpose (3-1-72)
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Title 31 Ambient Air Standards

31-005 General (8-2-72)
31-015 Suspended Particulate Matter (8-2-72)
31-025 Sulfur Dioxide (8-2-72)
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31-035 Ozone (7-12-83)
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31-045 Nitrogen Dioxide (8-2-72)

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Title 51 Air Pollution Emergencies

51-005 Introduction (8-2-72)
51-010 Episode Criteria (8-2-72)
51-015 Emission Reduction Plans (8-2-72)
51-020 Preplanned Abatement Strategies (8-2-72)
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51-026 Effective Date (8-72-72)

4. Control Strategies for Nonattainment Areas (1-86)

4.1 Portland-Vancouver AQMA—Total Suspended Particulate (12-19-80)
4.2 Portland-Vancouver AQMA—Carbon Monoxide (7-16-82)
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4.6 Eugene-Springfield AQMA—Total Suspended Particulate (1-30-81)
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5. Control Strategies for Attainment and Nonattainment Areas (1-86)

5.1 Statewide Control Strategies for Lead (1-83)
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6. Ambient Air Quality Monitoring Program

6.1 Air Monitoring Network (1-86)
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7. Emergency Action Plan (1-86)

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9. Plan Revisions and Reporting (1-86)

OAR Chapter 629-43-043 Smoke Management Plan Administrative Rule (12-12-86)
Directive 1-4-1-601 Operational Guidance for the Oregon Smoke Management Program (12-86)

4. Section 52.1970 is amended by revising paragraph (c)(65) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(65) On October 26, 1983 and December 14, 1983, the State of Oregon Department of Environmental Quality submitted four separate revisions to their plan. On October 26, 1983, the State submitted a revised air emergency episode plan (OAR 340-27-005 through 340-27-030 (effective October 7, 1983), revisions to gasoline marketing rules for the Medford-Ashland ozone nonattainment area (OAR 340-22-110(1)(a), effective October 7, 1983, and a revised ozone ambient air quality standard for the Lane Regional Air Pollution Authority (Section 31-035 Ozone, effective July 12, 1983). On December 14, 1983, the State submitted revisions to the automobile inspection and maintenance program for Portland (OAR 340-24-306 through 340-24-350, effective November 18, 1983). EPA is also approving OAR 340-27-035 which requires an "operation and maintenance manual" for administering the provisions of the Emergency Episode Plan (effective October 7, 1983).

* * * * *

[FR Doc. 92-19322 Filed 8-18-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4E3060/R1157; FRL-4079-7]

RIN 2070-AB78

Pesticide Tolerances for 2,4-D

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide 2,4-dichlorophenoxyacetic acid (referred to in this document as 2,4-D) in or on the raw agricultural commodity soybeans. The regulation to establish a maximum permissible level for residues of the herbicide in or on soybeans was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective August 19, 1992.

ADDRESSES: Written objections, identified by the document control number, [PP 4E3060/R1157], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (H-7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 10, 1992 (57 FR 24566), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 4E3060 to EPA on behalf of the Agricultural Experiment Stations of Illinois, Iowa, Ohio, and South Dakota. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), establish a tolerance for residues of the herbicide 2,4-D in or on the raw agricultural commodity soybeans at 0.1 part per million (ppm). The Agency proposed to establish the requested tolerance with an expiration date of December 1995. Conditional registrations will be issued for 2,4-D ester and 2,4-D amine formulations concurrent with the establishment of this tolerance to control susceptible broad-leaf weeds prior to planting soybeans under no-tillage or reduced-tillage production. As a condition of registration, EPA is requiring the submission of certain additional studies described in the proposed rule.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: July 30, 1992.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.142, by adding new paragraph (k), to read as follows:

§ 180.142 2,4-D; tolerances for residues.

* * * * *

(k) A tolerance that expires on December 1995 is established for residues of the herbicide 2,4-D (2,4-dichlorophenoxyacetic acid) resulting from the preplant use of 2,4-D ester or amine in or on the raw agricultural commodity as follows:

Commodity	Parts per million
Soybeans	0.1

[FR Doc. 92-19653 Filed 8-18-92; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5460 and 5470

[WO-230-02-6310-24 1A; Circular No. 2639]

RIN 1004-AB56

Sales Administration; Contract Modification, Extension, Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends provisions of regulations on sales administration and contract modification, extension, and assignment. These regulations are being amended to provide more fairness and flexibility in granting timber sale contract extensions when unusual circumstances beyond the control of a purchaser prevent completion of the contract by its expiration date. The rule provides the contracting officer authority to extend the time for cutting and removal on timber sale contracts without reappraisal in some specific situations. The rule is needed because government actions have prevented some contractors from timely completion of contracts, and requiring such contractors to pay higher, reappraised prices when delays were occasioned by the government itself is unfair.

EFFECTIVE DATE: July 23, 1991.

ADDRESSES: Suggestions or inquiries should be sent to: Director (230), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bob Bierer, (202) 653-8864.

SUPPLEMENTARY INFORMATION: The Department of the Interior has determined that the existing regulations on timber sale contract extensions are not flexible enough to deal with certain situations. The average length of timber sale contracts has decreased and the average size of timber sales has increased. Also, there are many factors outside the control of timber purchasers that limit the operating time on a contract. These include court injunctions, weather conditions, fire closures, and actions taken by the Federal Government to protect cultural and biological resources. Under the current regulations, there are no provisions that extend timber sale contracts without reappraisal, when delays are caused by any of the above factors. This final rule is intended to provide more fairness and flexibility in granting timber sale contract extensions, by providing for granting of extensions without reappraisal in certain circumstances.

The Bureau published a proposed rule on July 3, 1990 (55 FR 27477). After the proposed rule was published the northern spotted owl was listed under the Endangered Species Act. This listing has made it necessary for the BLM to stop or delay operations on many ongoing timber sale contracts while conferences with the Fish and Wildlife Service were held to determine what impact on the spotted owl these sales might have. These delays in some cases may make it impossible for the purchaser to complete the contracts in time for cutting and removal specified in the timber sale contract. Under the existing regulations, the BLM could not extend the time for cutting and removal on these contracts without reappraisal. There has been a rapidly rising market for stumpage in the last two years. Therefore, reappraisal of these timber sale contracts would cause the price for the timber to increase significantly. In effect, the purchaser would be penalized for not completing the contracts on time when completion was prevented by the Government. This is not a fair way to deal with the BLM's timber sale purchasers. To pursue such a course would result in much litigation between the BLM and timber sale purchasers.

Because of the additional delay resulting from the spotted owl listing and public comments received on the proposed rule, the BLM expanded the proposed rule to address other delays caused by actions of the Federal Government. A reproposed rule was issued to allow the public an opportunity to comment on the changes from the original proposed rule. The reproposed rule was published in the **Federal Register** on June 25, 1991 (56 FR 28850). The comment period was limited to 10 days because several timber contracts were scheduled to expire and performance had been impossible through no fault of the timber purchasers. Some comments on the reproposed rule indicated that they believed more time was needed for public review and comment. Because of the need to extend timber contracts that would expire between July 22 and

September 30, 1991, and to prevent penalizing purchasers for circumstances caused by the Federal Government, an interim rule was issued to take effect upon publication but allow an additional 60 days to comment after the effective date.

An interim rule was published on July 23, 1991 (56 FR 33830) with a request for comments. The comment period expired on September 23, 1991. The BLM received two letters containing comments on the interim rule. One letter was from an association and the other was from a law firm. The specific comments contained in these letters and responses to the comments are listed below:

1. A comment suggested that the rule should allow extensions that exceed one year in length. Natural catastrophes and disasters to manufacturing facilities may warrant extensions in excess of one year. The rule does provide for additional extensions upon written request by the purchaser. If, after a one year extension, a purchaser still needs more time, such purchaser may apply for an additional extension. This provision is found in the last sentence of § 5473.4(a).

2. A comment suggested that the final rule should include the possibility of delays occasioned by requests from State or local governments and elected officials. A similar comment suggested that an additional paragraph be added to subsection 5473.4(c) to cover unspecified direct interruptions in operations caused by government entities other than the Federal Government. Another comment suggested that § 5473.4(c)(5) should included closures by local agencies for any reason, in addition to fire, as justification for contract extension without reappraisal. It is unlikely that any delay, other than for fire closures, in harvesting timber from Federal lands would be requested or caused by State or local governments or elected officials. This suggestion was not adopted.

3. A comment suggested that, in cases of delays caused by the Government, the BLM should keep track of the lost time and should automatically award extensions. The mere fact that there is a delay caused by the Government does not necessarily mean that an extension of time is needed. There may be more than one delay caused by the Government in the life of the contract and the length of the delay may be very short. Automatic extensions every time there is a delay would cause unwarranted amounts of administrative work for the BLM. This rule is intended to provide a means for allowing additional time in those cases where there is a compelling need for such additional time. The Purchaser is in the best position to communicate such need to the BLM. This suggestion was not adopted.

4. A comment suggested that purchasers should be allowed extensions to harvest salvage timber from lands under any ownership, not just Federal lands. There is adequate logging capacity—equipment and personnel—operating on State and private lands to meet any need to harvest salvage timber from those ownerships by redirecting logging activities within those ownerships. Such a provision would be difficult for the BLM to administer because it has no control over harvesting activity on State and private lands. The BLM's primary responsibility is for the management of the timber resources on BLM administered lands. This suggestion was not adopted.

5. A comment suggested that the waiver of reappraisal for contract extensions should be extended to cover unusually severe circumstances, including, but not limited to, flood, landslide, or act of God. The comment stated that the interim rule limited remedy for these circumstances to an extension of 30 days and that there are unusual circumstances clearly beyond the purchaser's control that delay operations for periods exceeding 30 days without the fault or negligence of the purchaser. The regulations provide for extensions of up to one year, with provision for additional extension, for all circumstances that are beyond the purchaser's control and without his fault or negligence except market fluctuations. The regulations do require reappraisal at the time of the extension if the delay was not imposed by the United States or any State government agency. The rationale for this provision is that the purchaser should not be entitled to any windfall profits due to a rising market in situations where the Government was not the cause of such delay. The comment also stated that the revenue to the Government would be reduced by requiring the purchaser to consider costs that could result from acts of God at the time of bidding. The risk from acts of God have always been a consideration in bidding on BLM timber sale contracts, and this rule will not make any change in the amount of risk.

6. A comment suggested that the requirement for a showing of a "good faith effort" in § 5473.4(c) is vague. The comment recommended changing the language to "on a showing that the purchaser performed as the average prudent operator would be expected to perform in a like time period". This comment has merit and the suggested language change was adopted in the final rule.

The final rule published today incorporates many changes suggested in responses to the original proposed rule, the reproposed rule, and the interim rule. Editorial changes have been adopted to make the regulations more clear. The rule provides that an extension may be granted for lost time as a result of: (1) Additional requirements incorporated in contract modifications requested by the Government; (2) delays necessitated by requirements for consultation with FWS under the Endangered Species Act; (3) reviews for cultural resources; (4) court injunctions obtained by parties outside the contract; or (5) fire closures imposed by State agencies. The extensions will provide additional time, during the operating season, equal to time lost as a result of these reasons. The extensions referred to above will be granted without reappraisal.

The rule also provides that short extensions of up to 30 days of operating time may be granted without reappraisal, if the cause for delay in cutting and removal was beyond the purchaser's control and without his fault or negligence.

The principal author of this final rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The total value of BLM timber contracts may approach $100 million, but the proportion of these that may be subject to extension under this rule is minuscule, and of those that may be subject to extension, most will have been partially performed before the extension is needed. Therefore, the annual effect on the economy will not remotely approach the threshold specified in the Executive Order. There would be no cost increases imposed on the lumber industry, and there would thus be no increases in consumer costs or prices resulting from the rule, and no substantial effects on government agencies or competition. Further, for the same reasons, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that it will not have a significant economic impact on a substantial number of small entities. The rule does not distinguish between business entities based on their size.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. There will be no private property rights impaired as a result of this rule. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 5470

Forests and forest products, Government contracts, Public lands, Reporting and recordkeeping requirements.

For the reasons stated above, under the authorities stated below, parts 5460 and 5470, Group 5400, subchapter E, chapter II of title 43 of the Code of Federal Regulations are amended as set forth below.

Dated: June 25, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

PART 5460—SALES ADMINISTRATION

1. The authority citation for part 5460 continues to read as follows:

Authority: Sec. 5, 50 Stat. 875, 61 Stat. 681, as amended, 69 Stat. 367; 43 U.S.C. 1181e. 30 U.S.C. 601 *et seq.*

§ 5463.1 and 5463.2 [Amended]

2. The amendment to § 5463.1 and the removal of § 5463.2 made by the interim rule published on July 23, 1991 (56 FR 33830) is confirmed as final.

PART 5470—CONTRACT MODIFICATION—EXTENSION—ASSIGNMENT

3. The authority citation for part 5470 continues to read as follows:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

4. Section 5473.1 is revised to read as follows:

§ 5473.1 Application.

In order to be considered, written requests for extension shall be delivered to the appropriate BLM office prior to the expiration of the time for cutting and removal.

5. Section 5473.4 is revised to read as follows:

§ 5473.4 Approval of request.

(a) If the purchaser shows that his delay in cutting or removal was due to causes beyond his control and without his fault or negligence, the contracting officer may grant an extension of time, upon written request by the purchaser. Such extension will not to exceed one year, and will require an appraisal, if the delay was not imposed by the United States or any State government agency as provided by paragraph (c) of this section. Market fluctuations are not cause for consideration of contract extensions. Additional extensions may be granted upon written request by the purchaser.

(b) Notwithstanding the provisions of paragraph (a) of this section requiring reappraisal if the delay was not imposed by the United States or any State government under paragraph (c) of this section, the contracting officer may grant an extension of time, without reappraisal, not to exceed enough time to provide 30 days of operating time, if the delay was due to causes beyond the purchaser's control and without his fault or negligence. No additional extensions may be granted without reappraisal under the provisions of this paragraph.

(c) On a showing that the purchaser performed as the average prudent operator would be expected to perform in a like time period prior to any delaying event listed in this paragraph, the contracting officer may grant, without reappraisal, an extension of time not to exceed that necessary to provide an additional amount of operating time equal to operating time lost as a result of:

(1) Additional contract requirements incorporated in contract modifications requested by the Government;

(2) Delays necessitated by the requirements for consultation with the U.S. Fish and Wildlife Service under the Endangered Species Act;

(3) Reviews for cultural resource values;

(4) Court injunctions obtained by parties outside the contract; or

(5) Closure of operations by State fire protection agencies due to fire danger.

(d) As used in this section, "operating time" means a period of time during the operating season, and "operating season" means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

(e) Upon written request of the purchaser, the State Director may extend a contract to harvest green timber to allow that purchaser to harvest as salvage from Federal lands timber that has been damaged by fire or other natural or man-made disaster. The duration of the extension shall not exceed the time necessary to meet the salvage objectives. The State Director may also waive reappraisal for such extension.

6. Section 5473.4–1 is amended by revising paragraph (a) to read as follows:

§ 5473.4–1 Reappraisal.

(a) If an extension is granted under § 5473.4(a), reappraisal by the

contracting officer of the material sold will be in accordance with this section.

* * * * *

[FR Doc. 92-19683 Filed 8-18-92; 8:45 am]
BILLING CODE 4310-RG-M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB78

Endangered and Threatened Wildlife and Plants; Grizzly Bear; Removal of the Special Rule Allowing a Limited Special Hunt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; removal.

SUMMARY: The U.S. Fish and Wildlife Service removes 50 CFR 17.40(b)(i)(E), the special rule that allows take of grizzly bears through a special hunt in northwestern Montana in order to respond to a memorandum opinion of the U.S. District Court.

EFFECTIVE DATE: This rule is effective on August 19, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, NS312, University of Montana, Missoula, Montana 59812.

FOR FURTHER INFORMATION CONTACT: Dr. Christopher Servheen, Grizzly Bear Recovery Coordinator (see **ADDRESSES** above) at telephone (406) 329-3223.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) Endangered Species Program. The Service may prepare special rules providing for the conservation of threatened species including taking prohibitions. The Service published a Grizzly Bear Special Rule (50 CFR 17.40) in 1975 dealing with limiting the number of grizzly bears killed from all human-related causes. This special rule included authorization of a limited special hunt of grizzly bears in northwestern Montana. A revision of this special rule was published in the **Federal Register** (51 FR 33753) in 1986.

On April 20, 1992, the Service published in the **Federal Register** (57 FR 14378) a proposed rule to further amend the special rule by removing the authorization of the special hunt in Montana, and a notice of intent to develop a revised special rule consistent with the Memorandum Opinion of the U.S. District Court, District of Columbia, in *The Fund for Animals, Inc.* v. *Turner*, Civil No. 91-2201(MB) dated September 27, 1991. This opinion declared 50 CFR 17.40(b)(1)(i)(E) to be invalid and enjoined the Service from authorizing the grizzly bear hunt.

Summary of Comments and Recommendations

In the April 20, 1992, proposed rule, all interested parties were requested to submit data or comments on the proposed rule. The comment period closed on May 20, 1992. Press releases were sent to 154 media sources in Montana and Wyoming.

A total of 15 letters of comment on the proposed rule were received. Eight letters expressed opposition to removal of the special hunt authorization and seven letters expressed support for removal of the special hunt authorization. The main issue reiterated in the letters in opposition to the proposed removal was that a regulated hunt would prevent or reduce habituation to people by enforcing the bears' natural wariness of humans. The Service has no substantive data to support or refute this assumption. No other substantive comments were received.

The Service hereby removes 50 CFR 17.40(b)(1)(i)(E) that allows a special hunt of grizzly bears in northwestern Montana. This removal of the authorization of the special hunt in Montana in no way changes the remainder of the Grizzly Bear Special Rule in 50 CFR 17.40(b).

There are no significant changes between the proposed rule published in 57 FR 14378 and this final rule.

National Environmental Policy Act

An environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, was prepared for the 1986 revision (51 FR 33753) of the Grizzly Bear Special Rule. The elimination of the sport hunt of grizzly bears, which is the result of the removal of 50 CFR 17.40(b)(1)(i)(E), was covered under Alternative D of this environmental assessment. This environmental assessment is available to the public from Dr. Chris Servheen (see **ADDRESSES** above).

Author

The primary author of this notice is Patricia Worthing, Region 6 Recovery Coordinator, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225, telephone (303) 236-7398.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Removal

For the reasons set out in the preamble, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations is amended as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

§ 17.40 [Amended]

2. § 17.40(b)(1)(i)(E) is removed and reserved.

Dated: July 27, 1992.

Bruce Blanchard,

Acting Director.

[FR Doc. 92-19656 Filed 8-18-92; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 672

[Docket No. 911176-2018]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification of closures.

SUMMARY: NMFS is rescinding the closures to directed fishing for Pacific cod in the Central and Eastern Regulatory Areas of the Gulf of Alaska (GOA). This action is necessary to achieve the total allowable catch (TAC) of Pacific cod in these areas.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), August 17, 1992, through 12 midnight, A.l.t., December 31, 1992. Comments are invited on this action until September 14, 1992.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska, 99802-1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, Resource Management Specialist, Fisheries Management Division, NMFS, 907/586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the exclusive economic zone within the GOA is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The directed fisheries for Pacific cod in the Central and Eastern Regulatory Areas were previously closed April 3, 1992 (57 FR 11433), and April 6, 1992 (57 FR 11916), respectively.

The Director of the Alaska Region, NMFS, has determined that the TAC of Pacific cod in the Central and Eastern Regulatory Areas has not been reached. Therefore, in accordance with § 672.22(a)(2)(ii)(D), NMFS is rescinding the previous closures and is reopening directed fishing for Pacific cod in the Central and Eastern Regulatory Areas, effective 12 noon, A.l.t., August 17, 1992, through 12 midnight, A.l.t., December 31, 1992. The public should consult the applicable regulations and closures for restrictions and requirements in this fishery.

Classification

This action is taken under 50 CFR 672.22(a)(2)(ii)(D) and is in compliance with E.O. 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this notice is impracticable, unnecessary, or contrary to the public interest. Without this opening, the remaining TAC in these two areas would not be available for harvest, resulting in negative economic impacts on the fishing industry. Under § 672.22(b)(2), interested persons are invited to submit written comments on this opening to the above address until September 14, 1992.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 14, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19754 Filed 8-14-92; 2:32 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 161
Wednesday, August 19, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-92-8]

Petition for Rulemaking, Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking, this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The propose of this notice is to improve the public's awareness of, the participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 19, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Angela M. Washington, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-5571.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 13, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Rulemaking

Docket No.: 26563.
Petitioner: John A. Cohan.
Regulations Affected: 14 CFR 91.119.
Description of Petition: The petitioner proposed to amend § 91.119 of the Federal Aviation Regulations (FAR) to establish a minimum altitude for helicopters other than those operated by municipal, county, state, or federal authority for emergency purposes, rescue operations, or police and fire protection.
Petitioner's Reason for the Request: The petitioner states that he is aware of ongoing complaints regarding low flying aircraft over noise-sensitive areas in his locality, and these complaints prompted this petition. The petitioner contends that voluntary avoidance of noise-sensitive areas, as well as cooperative efforts among aviation associations, airport managers, and aircraft operators, have failed to produce satisfactory results.
Disposition: Denied on July 31, 1992.

[FR Doc. 92-19759 Filed 8-18-92; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-ANE-05]

Airworthiness Directives; Teledyne Continental Motors Model O-470, IO-470, IO-520, TSIO-520 and IO-550 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Teledyne Continental Motors (TCM) Model O-470, IO-470, IO-520, TSIO-520 and IO-550 series engines. This proposal would require inspection to ensure installation of the correct oil pick-up tube, and, if necessary, removal and replacement of the oil pick-up tube and oil sump. This proposal is prompted by reports that certain TCM rebuilt and overhauled engines may have been assembled using the incorrect oil pick-up tube. The actions specified by the proposed AD are intended to prevent engine failure.

DATES: Comments must be received by September 18, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-05, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. This service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Propulsion Branch, Atlanta Aircraft Certification Office, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3810; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ANE-05." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-05, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

Discussion: The FAA has determined that certain Teledyne Continental Motors (TCM) rebuilt and overhauled Model O-470, IO-470, IO-520, TSIO-520 and IO-550 series engines have been assembled with the incorrect oil pick-up tube installed. Two cases have been confirmed to date. Both the correct and the incorrect oil pick-up tubes have a screen at the free end while the other end is attached to the intake side of the oil pump. The incorrect tube is slightly longer than the correct tube. The longer length permits the screen at the end of the incorrect tube to contact the bottom of the sump and can "dimple" the sump. Because of this contact, the screen is partially blocked which will result in lower than normal oil flow and oil pressure. An additional problem develops if sludge collects around the pick-up tube thereby further restricting oil flow and pressure. This condition, if uncorrected, could result in an engine failure.

The FAA has reviewed and approved the technical content of TCM Service Bulletin M91-10, Revision 1, dated November 27, 1991, that describes procedures for the inspection for an incorrect oil pick-up tube.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection for the installation of the incorrect oil pick-up tube, and, if necessary, replacement of incorrect oil pick-up tube and oil sump with serviceable parts. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 180 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per engine to accomplish the proposed actions including replacing the tube and sump, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,350 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $272,700.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Teledyne Continental Motors: Docket No. 92-ANE-05

Applicability: Teledyne Continental Motors (TCM) rebuilt and overhauled Model O-470, IO-470, IO-520, TSIO-520, and IO-550 series engines listed by serial number in TCM Service Bulletin (SB) No. M91-10, Revision 1, dated November 27, 1991, installed on but not limited to Cessna, Piper, and Beechcraft aircraft.

Compliance: Required as indicated unless previously accomplished.

To prevent an engine failure, accomplish the following:

(a) Within the next 50 hours time in service after the effective date of this AD, inspect engines for an incorrect oil pick-up tube in accordance with the instructions of TCM SB No. M91-10, Revision 1, dated November 27, 1991.

(b) If an incorrect oil pick-up tube is installed, prior to further flight remove the oil pick-up tube and oil sump, and replace with serviceable parts.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 30, 1992.

Donald F. Perrault,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-19725 Filed 8-18-92; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-ASW-01]

Airworthiness Directives; Boeing Vertol Model 234 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Boeing Vertol Model 234 series helicopters, that currently requires inspection of the

bolted connection of the forward and aft transmission first stage sun and spiral bevel ring gear. This action would require a revision to the inspection intervals and criteria used during these inspections, as well as add a visual inspection of the pinion and spiral bevel ring gear. This proposal is prompted by reports that certain of the affected helicopters have experienced loose nuts on the bolted connection more frequently than was anticipated in the previous AD. The actions specified by the proposed AD are intended to prevent wear of the ring gear flange surface, failure of the bolted connection leading to transmission failure, and subsequent loss of control of the helicopter.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–01, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Helicopters, P.O. Box 16858, Philadelphia, PA 19142. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Reinhardt, Aerospace Engineer, FAA, New York Aircraft Certification Office, Propulsion Branch, ANE–174, New England Region, 181 S. Franklin Avenue, Valley Stream, New York 11581; telephone (516) 791–7421.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–01." The postcard will be date stamped and returned to the commenter.

Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–01, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007.

Discussion: On October 22, 1984, the FAA issued AD 84–22–04, Amendment 39–4943 (49 FR 44093, November 2, 1984), to require an inspection of the forward and aft transmission first stage sun and spiral bevel ring gear bolted joint assembly within 50 hours' time in service, or upon accumulating 500 hours' time in service since new, or since last disassembly, and every 300 hours thereafter. That action was prompted by reports of inadequate torque of the nuts on the assembly bolts, and in one instance, separation of the nut and washer from an assembly bolt. That condition, if not corrected, could result in major damage to the transmission and subsequent loss of the helicopter.

Since the issuance of that AD, the affected helicopters used in logging operations have experienced loose bolts more frequently than previously experienced during normal operations. This condition is due to the increased number of loading cycles per hour during logging operations. Based on the results of the manufacturer's repetitive inspections and analysis of ring gear assemblies on helicopters used in logging operations as well as normal operations, a Spectrometric Oil Analysis Program (SOAP) sample and a visual inspection of the pinion and ring gear teeth for tooth scuffing is proposed prior to each torque check for all helicopter operations. The SOAP sample is also proposed at intervals not to exceed 25 hours' time in service. Inspection intervals specified in the existing AD pertain to all affected helicopters with no reference to landing cycles, ground-air-ground cycles, or external load lifts per hour. It is further proposed that the affected helicopters that accomplish six or more landings, ground-air-ground cycles, or external load lifts per hour, or any combination thereof, will be subject to revised inspection intervals as stated in the compliance section of this proposed rule.

Since this condition described is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 84–22–04, Amendment 39–4943 (49 FR 44093, November 2, 1984) to require more frequent inspection intervals, the addition of a visual inspection of the pinion and ring gear for scuffing, and "SOAP" inspections.

The FAA estimates that 7 helicopters of U.S. registry would be affected by this proposed AD, that it would require 100 SOAP and 100 torque inspections per year per helicopter, that it would take approximately 2 work hours with a crew of 2 per helicopter to accomplish the proposed 50 hour inspection and 1 work hour with 1 person to accomplish the proposed SOAP sampling inspection. The average labor cost is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $192,500 each year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a) 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–4943 (49 FR 44093, November 2, 1984), and by adding the following new airworthiness directive (AD):

Boeing Vertol Company: Docket No. 92–ASW–01. Supersedes AD Number 84–22–04; Amendment 39–4943, Docket Number 84–ASW–46.

Applicability: All Boeing Vertol Model 234 series helicopter, certificated in any category, equipped with forward rotor transmission, part numbers (P/N's) 234D1200–2, –3, and –4, and/or aft rotor transmission, P/N's 234D2200–3 and –4.

Compliance: Required as indicated, unless previously accomplished.

To prevent possible failure of the first stage sun and spiral bevel ring gear installed in either the forward or aft transmission, accomplish the following:

(a) For helicopters that are subject to six of more landings, ground-air-ground cycles, external load lifts per hour, or any combination thereof, conduct the following:

(1) Within the next 10 hours' time in service after the effective date of this AD, or prior to the accumulation of 150 hours' time in service since new or since last disassembly of the spiral bevel ring gear bolted connection, whichever occurs later, accomplish the following:

(i) Conduct a Spectrometric Oil Analysis Program (SOAP) sample inspection in accordance with the Boeing Maintenance Manual.

(ii) Visually inspect the pinion and spiral bevel ring gear for scuffing. If scuffing is found; remove both pinion and sun/bevel gear assemblies, disassemble the gear assemblies, inspect them in accordance with the Boeing 234–5 Overhaul Manual, and replace defective parts.

(iii) Perform a bolt torque check of the bolted connection in accordance with the Boeing Maintenance Manual.

(2) Repeat the inspections and checks of paragraph (a)(1) in intervals not to exceed 50 hours' time in service if no nuts in a bolted connection rotate at a torque between 275 and 300 in-lb. Conduct supplementary SOAP sample inspections in intervals not to exceed 25 hours' time in service after the last SOAP sample inspection.

(3) Repeat the inspection of paragraph (a)(1) in intervals not to exceed 25 hours' time in service if no more than two nuts in a bolted connection rotate at a torque between 275 and 300 in-lb.

(4) Replace the transmission with an airworthy unit prior to further flight if three or more nuts rotate at a torque between 275 and 300 in-lb., or any nuts rotate at a torque at or below 275 in-lb.

(b) For helicopters that are subject to less than six landings, ground-air-ground cycles, external load lifts per hour, or any combination thereof, conduct the following inspections and checks:

(1) Within the next 50 hours' time in service after the effective date of this AD, or prior to the accumulation of 500 hours' time in service since new, or since last disassembly of the spiral bevel ring gear bolted connection, whichever occurs later, accomplish the following:

(i) Conduct a SOAP sample inspection in accordance with the Boeing Maintenance Manual.

(ii) Visually inspect the pinion and spiral bevel ring gear for scuffing. If scuffing is found, remove both pinion and sun/bevel gear assemblies, disassemble the gear assemblies, inspect the gears in accordance with the Boeing 234–5 Overhaul Manual, and replace defective parts.

(iii) Perform a bolt torque check of the bolted connection in accordance with the Boeing Maintenance Manual.

(2) Repeat the inspections of paragraph (b)(1) in intervals not to exceed 300 hours' time in service if no nuts in a bolted connection rotate at a torque between 275 and 300 in-lb.

(3) Repeat the inspections of paragraph (b)(1) in intervals not to exceed 100 hours' time in service if not more than two nuts in a bolted connection rotate at a torque between 275 and 350 in-lb.

(4) Replace the transmission with an airworthy unit prior to further flight if three or more nuts rotate at a torque between 275 and 300 in-lb., or any nuts rotate at a torque at or below 275 in-lb.

(5) Conduct supplementary SOAP sample inspections in intervals not to exceed 50 hours' time in service after the last SOAP sample inspection.

Note: Boeing Helicopters Service Bulletin No. 234–03–1010, Revision 4, dated December 15, 1991, pertains to this AD.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581. The request should be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, New York Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Forth Worth, Texas, on August 4, 1992.

James D. Erickson,

Monoger, Rotorcroft Directorate, Aircroft Certification Service.

[FR Doc. 92–19757 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–ANE–54]

Airworthiness Directives; General Electric Company CF6–45/–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric (GE) CF6–45/–50 series turbofan engines. This proposal would require a one-time inspection for cracking and minimum thickness of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool, and replacement if found cracked or below minimum thickness, or reidentification with a reduced life limit if found with a reduced thickness. This proposal is prompted by reports of fatigue cracking of the stage 12 compressor disk. The actions specified by this AD are intended to prevent engine stall, aborted takeoff, or inflight engine shutdown.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Send comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–54, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Engine Certification Office, ANE–142, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12

New England Executive Park, Burlington, Massachusetts 01803–5299, (617) 272–5047; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each Federal Aviation Administration (FAA)-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–54." The postcard will be date stamped and returned to the commenter.

Discussion

There have been two reports of circumferential cracks in the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spools on General Electric (GE) CF6–45/–50 series turbofan engines. The stage 12 compressor disk web-to-rim transition area is an integral part of the stage 11–13 compressor spool. Only the spool is identified by part number; the disk cannot be independently replaced. The cracked disks resulted in the release of the stage 12 compressor disk blades from the stage 11–13 compressor spool, causing an engine stall and rejected takeoff in each incident. This condition, if not corrected, can result in engine stall, aborted takeoff, or inflight engine shutdown.

This AD would require a one-time inspection for cracking and minimum thickness of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool. Stage 11–13 compressor spools with stage 12 compressor disks found cracked or with a minimum thickness below 0.070 inches must be replaced before further flight. Stage 11–13 compressor spools with stage 12 compressor disks found with a minimum thickness greater than 0.070 inches but less than 0.074 inches must be reidentified with a new part number and given a reduced cycle life limit in accordance with GE CF6–50 Service Bulletin (SB) No. 72–1006, Revision 1, dated November 14, 1991. Stage 11–13 compressor spools with stage 12 compressor disks found with a minimum thickness greater than 0.074 inches would maintain the original cycle life limit.

Those stage 11–13 compressor spools identified by serial number in GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991, would be inspected at the next engine shop visit, or within 3,500 cycles in service after the effective date of this AD, whichever occurs first. All other stage 11–13 compressor spools would be inspected at the next piece-part exposure. The FAA anticipates that all stage 11–13 compressor spools will have completed piece-part exposure by December 31, 1997.

The FAA has reviewed and approved the technical contents of GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991, that describes a one-time inspection of the stage 11–13 compressor spool stage 12 compressor disk web-to-rim transition area, and criteria for new life limits, reidentification, or removal of stage 11–13 compressor spools.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would require a one-time inspection for cracking and minimum thickness of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool, and replacement if found cracked or below minimum thickness, or reidentification with a reduced life limit if found with a reduced thickness. The actions would be required to be accomplished in accordance with the SB described previously.

There are approximately 2,000 GE CF6–45/–50 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines on U.S. registered aircraft would be affected by this AD, that it would take approximately 90 total manhours per engine to accomplish the required actions, and that the average labor cost would be $55 per manhour. Required parts would cost approximately $80,000 per engine. Based on these figures, total cost impact of the proposed AD on U.S. operators is estimated to be $25,485,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVE

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

General Electric Company: Docket No. 91–ANE–54.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines installed on but not limited to McDonnell Douglas DC–10, Airbus A300, and Boeing 747 aircraft.

Compliance Required as indicated, unless accomplished previously.

To prevent engine stall, aborted takeoff, or inflight engine shutdown, accomplish the following:

(a) Perform a visual and fluorescent penetrant inspection (EPI) for cracks, and perform a mechanical gage or ultrasonic

thickness measurement of the stage 12 compressor disk web-to-rim transition area of the stage 11–13 compressor spool in accordance with GE CF6–50 Service bulletin (SB) No. 72–1006, Revision 1, dated November 14, 1991, as follows:

(1) For those stage 11–13 compressor spools listed in Table 1 of GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991, at the next engine shop visit, or within 3,500 cycles in service after the effective date of this AD, whichever occurs first.

(2) For all other stage 11-13 compressor spools, at the next piece-part exposure, or by December 31, 1997, whichever occurs first.

(b) For stage 11–13 compressor spools that have cracked stage 12 compressor disk web-to-rim transition areas, or that have stage 12 compressor disk web-to-rim transition areas measuring less than 0.070 inches thick, remove from service prior to further flight, and replace with a serviceable stage 11–13 compressor spool.

(c) For stage 11–13 compressor spools that have stage 12 compressor disk web-to-rim transition areas with a minimum thickness greater than or equal to 0.070 inches but less than 0.074 inches, reidentify the stage 11–13 compressor spool with a new part number in accordance with GE CF6–50 SB No. 72–1006, Revision 1, dated November 14, 1991. The reidentified stage 11-13 compressor spool has a life limit of 16,000 cycles since new (CSN).

(d) For stage 11–13 compressor spools that have stage 12 compressor disk web-to-rim transition areas with a minimum thickness of 0.074 or more inches, mark "SB 72–1006" next to the part number and serial number on the forward spacer arm in accordance with GE CF6–50 SB No. 72–1006 Revision 1, dated November 14, 1991. The life limit of this stage 11–13 compressor spool remains at 19,000 CSN.

(e) For the purpose of this AD, an engine shop visit is defend as the induction of an engine into a shop for maintenance.

(f) An alternative method of compliance or adjustment of the compliance time, that provides an acceptable level of safety, may be used is approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on June 29, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–19761 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92-ASW-13]

Airworthiness Directives; Bell Helicopter Textron, Inc., Model 212 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc., (BHTI) Model 212 helicopters. This proposal would require repetitive inspections of the main rotor yoke assembly on these helicopters. This proposal is prompted by 12 reports of cracks in the main rotor yoke assembly at the pillow block holes. The actions specified by the proposed AD are intended to prevent and detect corrosion, pitting, and cracks in the pillow block bolt bushing holes of the main rotor yoke assembly, which could result in failure of the main rotor system and subsequent loss of control of the helicopter.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–13, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas 76193–0007. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Rotorcraft Directorate, Rotorcraft Certification Office, ASW–170, FAA, Southwest Region, 4400 Blue Mound Road, Bldg. 3B, Fort Worth, Texas 76193–0170, telephone (817) 624–5168, fax (817) 740–3394.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of comments received.

Comments received are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ASW–13." The postcard will be date stamped and returned to the commenter.

Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ASW–13, 4400 Blue Mound Road, Fort Worth, Texas 76193–0007.

Discussion

There have been 12 reports of cracked main rotor yoke assemblies on certain BHTI Model 212 helicopters. The cracks that originated at the pillow block bolt bushing holes were attributed to corrosion pitting, which led to fatigue cracks with slow crack progression. A daily visual inspection of the yoke is contained in the BHTI Model 212 maintenance manual. In addition to the daily visual inspection, the manufacturer recommends a magnetic particle inspection of the yoke assembly during the main rotor hub overhaul at an interval of 2,400 hours' time in service. Apparently, these bushing hole cracks had gone undetected during the daily inspection but were detected during the overhaul inspection. After reviewing this information, the FAA agrees that more frequent inspections are necessary to maintain the airworthiness of the helicopter.

Since this condition described is likely to exist or develop on other helicopters of the same type design, the proposed AD would require, within 100 hours' time in service for certain yokes, an inspection for corrosion, mechanical damage, and a magnetic particle

inspection for cracks in the yoke assembly. Thereafter these proposed inspections would be required at intervals of 1,200 hours' time in service from the last inspection. The present inspection interval of 2,400 hours' time in service would be reduced by one-half, but the new interval would coincide with the tension-torsion strap removal at 1,200 hours' time in service.

The FAA estimates that 168 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $36,960 each year. This total cost figure assumes that no operator has accomplished the requirements of this AD, but the FAA estimates that half of these inspections will be conducted during normal overhaul of these helicopters.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bell Helicopter Textron, Inc. (BHTI): Docket No. 92–ASW–13.

Applicability: Bell Model 212 helicopters, certificated in any category.

Compliance: Required as indicated, unless already accomplished.

To prevent possible fatigue failure of the main rotor yoke assembly accomplish the following:

(a) For main rotor hub assemblies with main rotor yokes, part number (P/N) 204–011–102 (all dash numbers), having 1,100 or more hours' time in service since new or the last overhaul on the effective date of this AD, perform the following within the next 100 hours' time in service, and thereafter at intervals not to exceed 1,200 hours' time in service:

(1) Remove the main rotor yoke from the hub assembly. Visually inspect the pillow block bushing holes for corrosion and mechanical damage. Inspect the yoke for cracks using the magnetic particle method as specified in BHTI component repair and overhaul manual.

(2) If no cracks are found, or if corrosion or mechanical damage is present which cannot be removed within the rework limits of the BHTI component repair and overhaul manual, replace the main rotor yoke with an airworthy part.

(b) For main rotor hub assemblies with main rotor yokes, P/N 204–011–102 (all dash numbers), having less than 1,100 hours' time in service on the effective date of this AD, comply with paragraphs (a)(1) and (2) of this AD prior to attaining 1,200 hours' time in service, and thereafter at intervals not to exceed 1,200 hours' time in service from the last inspection.

(c) If no cracks are found and the yoke is airworthy, reinstall it accordance with the BHTI component repair and overhaul manual.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, ASW–170, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193–0170. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, Rotorcraft Certification Office.

(e) The visual and magnetic particle inspection specified in Bell Helicopter Textron, Inc., Alert Service Bulletin 212–90–60, Part III dated March 23, 1990, is an equivalent means of compliance with this AD.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on July 17, 1992.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92–19762 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–ANE–53]

Airworthiness Directives; Textron Lycoming ALF502R and ALF502L Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Textron Lycoming ALF502R and ALF502L series turbofan engines. This proposal would require recoating certain third stage compressor disks that had been coated with Sermetal W corrosion protection coating. This proposal is prompted by reports that the protective coating flakes off the disks. The actions specified by this proposed AD are intended to prevent corrosion and cracking of the third stage compressor disks, which would result in engine failure.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–53, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, Stratford Division, 550 Main Street, Stratford, Connecticut 06497–7593. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Engine Certification Office, ANE–142, Engine & Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 273–7087; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91–ANE–53." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91–ANE–53, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion

The FAA has determined that certain third stage compressor disks that were coated with Sermetal W corrosion protective coating may have an adhesion problem due to improper surface preparation during the coating process. This improper surface preparation causes the protective coating to flake, which exposes third stage compressor disks to excessive corrosion and stress cracking. Maintenance inspection has revealed that this condition, if not corrected, could result in corrosion and cracking of the third stage compressor disks, which could result in engine failure.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin No. ALF502R 72–259, dated August 13, 1991, which describes marking, inspecting, recoating or replacing third stage compressor disks; and Textron Lycoming Service Bulletin No. ALF502L 72–259 dated August 13, 1991, which also describes marking, inspecting, recoating or replacing third stage compressor disks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repairing and marking, or replacing either third stage compressor disks or the third stage disk assembly, which includes the third stage compressor disk. The actions would be required to be accomplish in accordance with the service bulletin described previously.

There are approximately 1,030 ALF502R and ALF502L model engines of the affected design in the worldwide fleet. The FAA estimates that 320 engines are installed on aircraft of U.S. registry that would be affected by this AD, that it would take approximately 20 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $352,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3), if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Textron Lycoming: Docket No. 91–ANE–53.

Applicability: Textron Lycoming ALF502R and ALF502L series turbofan engines installed on but not limited to British Aerospace BAe–146 and Canadair Challenger CL–600 aircraft.

Complionce: Required as indicated, unless accomplished previously.

To prevent corrosion and cracking of the third stage compressor disks, that could result in engine failure, accomplish the following:

(a) Repair and mark, or replace, third stage compressor disks, Part Number (P/N) 2–101–263–02, P/N 2–101–263–05, P/N 2–101–263–09, P/N 2–101–263–R10, or third stage disk assemblies P/N 2–101–630–04, P/N 2–101–630–05, P/N 2–101–630–08; at the next part exposure after the effective date of this AD, but no later than 7,500 cycles since new, in accordance with Textron Lycoming Service Bulletin No. ALF502R 72–259, dated August 13, 1991, or Service Bulletin No. ALF502L 72–259, dated August 13, 1991, as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permit may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location v here the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 23, 1992.

Diane S. Romanosky,
Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-19763 Filed 8-18-92; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-ANE-55]

Airworthiness Directives; Textron Lycoming ALF502R and ALF502L Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Textron Lycoming ALF502R and ALF502L series turbofan engines. This proposal would require rework of the third stage turbine disk blade slot, and a reidentification of the third stage turbine rotor shaft assembly to show compliance with this AD. This proposal is prompted by reports of cracks found at the base of the blade retention rivet slot on 48 turbine disks. The actions specified by the proposed AD are intended to prevent third stage turbine disk failure that can result in inflight engine shutdown.

DATES: Comments must be received by September 18, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-55, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, 550 Main Street, Stratford, Connecticut 06497. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, telephone (617) 273-7087; fax (617) 270-2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 91-ANE-55." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 91-ANE-55, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

Discussion

The FAA has received reports of cracks found in the base of the blade retention rivet slot on 48 third stage turbine disks on Textron Lycoming ALF502R and ALF502L turbofan engines. Cracks in the base of the blade retention rivet slot can result in third stage disk failure. Investigation of the 48 cracked disks revealed that cracks initiated within as few as 3000 cycles in service (CIS) since new. In addition, the FAA has determined that the cracks continued to propagate over the next 10,000 cycles at a rate consistent with engine test results. The proposed AD would require rework of the third stage rotor turbine disk blade slot to eliminate stress concentrations in the blade retention rivet slot. This proposed AD would also require the reidentification of the third stage turbine rotor shaft assembly in accordance with Textron Lycoming Service Bulletin Nos. ALF502R 72-270, and ALF502L 72-720, both dated May 21, 1991. The third stage turbine disk is part of the third stage turbine rotor shaft assembly. This condition, if not corrected, could result in third stage turbine disk failure and inflight shutdown.

The FAA has reviewed and approved the technical contents of Textron Lycoming Service Bulletin No. ALF502R 72-270 and Service Bulletin No. ALF502L 72-270, both dated May 20, 1991. Both documents describe rework of the third stage turbine disk blade slot and reidentification of the third stage turbine rotor shaft assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, the proposed AD would require rework of the third stage turbine disk blade slot and reidentification of the third stage turbine rotor shaft assembly, in accordance with the service bulletins previously described.

There are approximately 900 ALF502R and ALF502L turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on aircraft of U.S. registry would be affected by this AD, that it would take approximately 10 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per manhour. Required parts would cost approximately $30 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $174,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 30 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Textron Lycoming: Docket No. 91-ANE-55.

Applicability: Textron Lycoming ALF502R and ALF502L turbofan engines installed on but not limited to British Aerospace BAe-146 and Canadair Challenger CL600 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent third stage turbine disk failure, which could result in engine shutdown, accomplish the following:

(a) For ALF502R series engines with installed third stage turbine rotor shaft assemblies, Part Number (P/N) 2-143-040-12, P/N 2-143-040-15, or P/N 2-143-040-016, rework the third stage turbine disk blade slots and reidentify the third stage turbine assembly with a new part number in accordance with the Accomplishment Instructions of Textron Lycoming Service Bulletin (SB) No. ALF502R 72-270, Revision 1, dated March 31, 1992, or replace with a serviceable part as follows:

(1) For third stage turbine disks with 15,000 or more cycles in service (CIS) on the effective date of this AD, within 1,000 CIS after the effective date of this AD.

(2) For third stage turbine disks with 10,000 or more CIS but less than 15,000 CIS on the effective date of this AD, within 1,000 CIS, after the effective date of this AD, or at the next shop visit, whichever occurs later, but prior to accumulating 16,000 CIS since new.

(3) For third stage turbine disks with less than 10,000 CIS on the effective date of this AD, at the next blade removal, but prior to accumulating 13,000 CIS since new.

(4) For third stage turbine disks not reworked in accordance with the requirements of this AD and installed on Textron ALF502R engines as replacement disks when complying with this paragraph, accomplish the requirements of this paragraph as to that replacement disk.

(b) For ALF502L series engines with installed third stage turbine rotor shaft assemblies, Part Number (P/N) 2-143-040-10, P/N 2-143-040-11, P/N 2-143-040-12, P/N 2-143-040-15, or P/N 2-143-040-16, rework the third stage turbine disk blade slots and reidentify the third stage turbine assembly with a new part number in accordance with the Accomplishment Instructions of Textron Lycoming SB ALF502L 72-270, Revision 1, dated March 31, 1992, or replace with a serviceable part as follows:

(1) For third stage turbine disks with 15,000 or more CIS on the effective date of this AD, within 1,000 CIS after the effective date of this AD.

(2) For third stage turbine disks with 10,000 or more CIS but less than 15,000 CIS on the effective date of this AD, within 1,000 CIS after the effective date of this AD or at the next shop visit, whichever occurs later, but prior to accumulating 16,000 CIS since new.

(3) For third stage turbine disks with less than 10,000 CIS on the effective date of this AD, at the next blade removal, but prior to accumulating 13,000 CIS since new.

(4) For third stage turbine disks not reworked in accordance with the requirements of this AD and installed on Textron ALF502L engines as replacement disks when complying with this paragraph, accomplish the requirements of this paragraph as to that replacement disk.

(c) For the purpose of this AD, a shop visit is defined as the induction of an engine into a shop for maintenance.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manger, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on July 10, 1992.

Jack A. Sain,
Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-19764 Filed 8-18-92; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-AEA-7]

Proposed Alteration of VOR Federal Airway V-106

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airway V-106 by extending the airway from the Johnstown, PA, VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Morgantown, WV, VORTAC. Altering V-106 would enhance the flow of traffic in the Pittsburgh, PA, terminal area.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA-500, Docket No. 92-AEA-7, Federal Aviation Administration, Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC. weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address

listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AEA-7." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V-106 from the Johnstown, PA, VORTAC to the Morgantown, WV, VORTAC. Altering V-106 by extending the airway would allow for a new arrival route in the Pittsburgh, PA, terminal area. This action would enhance the flow of traffic. Domestic VOR Federal airways are published in section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-106 [Revised]
From Morgantown, WV; INT Morgantown 019°T(024°M) and Johnstown, PA, 253°T(259°M) radials; Johnstown; INT Johnstown 068° and Selinsgrove, PA, 259° radials; Selinsgrove; INT Selinsgrove 067° and Wilkes-Barre, PA, 237° radials; Wilkes-Barre; Lake Henry, PA; INT Lake Henry 068° and Pawling, NY, 281° radials; Pawling; Barnes, MA; Gardner, MA; Manchester, NH; to Kennebunk, ME.

* * * * * * *

Issued in Washington, DC, on August 11, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-19728 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ANM-25]

Proposed Alteration of VOR Federal Airway V-595; OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to extend Federal Airway V-595 from Redmond, OR, to Portland, OR. Currently, there is no direct route to Portland from Redmond. Altering V-595 by extending the airway from Redmond to Portland would provide a shorter route and save fuel.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANM-500, Docket No. 91-ANM-25, Federal Aviation Administration, 1601 Lind Avenue, Southwest, Renton, WA 98055-4056.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-ANM-25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to extend V-595 from Redmond, OR, to Portland, OR. Currently, there is no direct instrument flight rules route between these points. This airway extension would save fuel and improve flight planning. Domestic VOR Federal airways are published in section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71. [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-595 [Revised]
From Medford, OR; Redmond, OR; to Portland, OR

* * * * *

Issued in Washington, DC, on August 10, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-19730 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AGL-6]

Proposed Alteration to VOR Federal Airways; MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter Federal Airways V-116 and V-221 by realigning the airways from the Salem, MI, (SVM) VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) to the Jackson, MI, (JXN) VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME). Altering V-116 and V-221 would simplify clearances and routings for airspace users.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AGL-500, Docket No. 92-AGL-6, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AGL-6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter V-116 and V-221. This action is necessary to ensure that the HARWL intersection coincides with the airways. The HARWL intersection serves as a departure fix for Detroit Metro and satellite airports. Realigning these airways between the Salem VORTAC and the Jackson VOR/DME would reduce chart clutter and simplify clearances and routings for airspace users. Domestic VOR Federal airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airways listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V-116 [Revised]

From INT Kansas City, MO, 076° and Napoleon, MO, 005° radials, via Macon, MO; Quincy, IL; Peoria, IL; Pontiac, IL; Joliet, IL. From INT Chicago O'Hare, IL, 092° and Chicago Heights, IL, 013° radials; INT Chicago O'Hare 092° and Keeler, MI, 256° radials; Keeler; Jackson, MI; INT Jackson 890° T (094° M) and Salem, MI, 252° T (255° M) radials; Salem; Windsor, ON, Canada; INT Windsor 092° and Erie, PA, 281° radials; Erie; Bradford, PA; Stonyfork, PA; INT Stonyfork 098° and Wilkes-Barre, PA, 310° radials; Wilkes-Barre; INT Wilkes-Barre 084° and Sparta, NJ, 300° radials; to Sparta. The airspace within Canada is excluded.

* * * * *

V-221 [Revised]

From Bible Grove, IL, via Hoosier, IN; Shelbyville, IN; Muncie, IN; Fort Wayne, IN; Litchfield, MI; Jackson, MI; INT Jackson 089° T (094° M) and Salem, MI, 252° T (225° M) radials; Salem; INT Salem 082° and Aylmer, Canada, 261° radials; INT Aylmer 261° and Erie, PA, 303° radials; Erie. The airspace within Canada is excluded.

* * * * *

Issued in Washington, DC, on August 10, 1992.

Harold W. Becker,

Manager, Airspoce-Rules and Aeronoutical Information Division.

[FR Doc. 92-19732 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 92-AWP-7]

Proposed Alteration of Federal Airways V-105 and V-257; AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to realign Federal Airways V-105 and V-257 located in the State of Arizona. This action is necessary to ensure that aircraft operating along V-105 and V-257 would not conflict with the KARLO FOUR arrival route for Phoenix Sky Harbor International Airport. Modifying these airways would improve operations and the utilization of airspace.

DATES: Comments must be received on or before October 8, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500 Docket No. 92-AWP-7, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-AWP-7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify V-105 and V-257 between the Drake, AZ, (DRK) VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Phoenix, AZ, (PXR) VORTAC. In January 1992, the Phoenix VORTAC was relocated 4 miles west of its previous location. Relocating the Phoenix VORTAC has created an inconsistency in the transmitted signals from the NAVAID on the Phoenix 319° radial when using the published KARLO FOUR arrival route. This problem was averted by moving the KARLO FOUR arrival route to the Phoenix 321° radial. Consequently, the KARLO FOUR arrival route is now too close to V-105 and V-257. Modification to the airways is necessary to improve operations and the utilization of airspace in the Phoenix area. Domestic VOR Federal Airways are published in § 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1 The airways listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 domestic VOR Federal Airways

* * * * *

V-105 [Revised]

From Tucson, AZ, via INT Tucson 300° and Stanfield, AZ, 145° radials; Stanfield; Phoenix, AZ; INT Phoenix 346°T(336°M) and Drake, AZ, 157°T(143°M) radials; Drake; 25 miles, 22 miles 85 MSL; Boulder City, NV; Las Vegas, NV; INT Las Vegas 266° and Beatty, NV, 142° radials; 17 miles, 105 MSL Beatty; 105 MSL Coaldale, NV; 82 miles 110 MSL; to Mustang, NV

* * * * *

V-257 [Revised]

From Phoenix, AZ, via INT Phoenix 348°T(336°M) and Drake, AZ, 157°T(143°M) radials; Drake, INT Drake 003° and Grand Canyon, AZ 211° radials; Grand Canyon; 38 miles 12 AGL, 24 miles 125 MSL, 16 miles 95 MSL, 26 miles 12 AGL, Bryce Canyon, UT; INT Bryce Canyon 338° and Delta, UT, 186° radials, Delta; 39 miles, 105 MSL INT Delta 004° and Malad City, ID, 179° radials; 20 miles, 118 MSL, Malad City; Pocatello, ID; DuBois, ID; Dillon, MT; Coppertown, MT; INT Coppertown 002° and Helena, MT, 272° radials; INT Helena 272° and Great Falls, MT, 222° radials; Great Falls, 73 miles, 56 MSL, Havre, MT. The airspace within Restricted Areas R-6401 and R-6403 is excluded.

* * * * *

Issued in Washington, DC, on August 12, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92-19733 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 73

[Airspace Docket No. 92-AWP-13]

Proposed Establishment of Temporary Restricted Area R-2540; Capay, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a temporary Restricted Area R-2540, within a 1-mile radius of lat. 38°45'22"N., long. 122°01'00"W., in the vicinity of Capay, CA. The Desert Research Institute, University of Nevada, in conjunction with the National Oceanic and Atmospheric Administration (NOAA) and the National Aeronautics and Space Administration (NASA), has requested the establishment of a temporary restricted area to conduct a research project on fog in the Sacramento Valley, CA, area. This project would involve the launching of a moored balloon from the surface to 2,500 feet above ground level (AGL). The moored balloon would be airborne for approximately ten specified days between November 15, 1992, and March 15, 1993. R-2540 would be activated for a duration of 24 to 48 hours on specific days if the required atmospheric conditions exist.

DATES: Comments must be received on or before October 2, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 92-AWP-13, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules

and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWP–13." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to establish a temporary Restricted Area R–2540, within a 1-mile radius of lat. 38°45'22"N., long. 122°01'00"W., in the vicinity of Capay, CA. The restricted area would be used to collect data on fog conditions in the Sacramento Valley, CA, area. The Desert Research Institute, in conjunction with NOAA and NASA, proposes to launch a moored balloon in R–2540. The proposed temporary restricted area would be in effect for approximately ten selected days between November 15, 1992, and March 15, 1993, with time duration of 24 to 48 hours.

The moored balloon is 7.5 cubic meters (21.6 feet long and 5.9 feet in diameter) and would be secured by kevlar line. The balloon is equipped with a rapid deflation device and light weight (7 oz.) strobe lights. Attached to the balloon would be an instrument package weighing 2.5 kilograms.

The balloon and instrument package are expected to reach a height of approximately 100 feet above the fog tops which are typically in the range of 1,200 to 1,500 feet. The balloon would operate below the maximum height of 2,500 feet AGL.

It is necessary to establish a temporary restricted area to contain the moored balloon in protected airspace. Restrictions affecting R–2540 would be applied when fog conditions are present. The proposed temporary restricted area would be used only for this research project and would be released to the Federal Aviation Administration for public use during periods it is not required. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in Handbook 7400.8 dated November 1, 1991.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The proposed temporary restricted area would be in effect for approximately ten selected days between November 15, 1992, and March 15, 1993. This restricted area would be activated for a duration of 24 to 48 hours.

This proposal is considered under DOT/FAA Order 1051.1 to be a "*Categorically Excluded Action*", however, subject to the procedures of part 101 of the Federal Aviation Regulations. It has been determined that this research project would result in no environmental impact.

This temporary restricted area would prohibit the flight of nonparticipating aircraft through the area but would not direct nonparticipating aircraft to operate in any set or established route outside the restricted area. R–2540 would be established with such small lateral and vertical dimensions that it would impose minimal if any impact on nonparticipating aircraft. Because of these factors, no action is required by the FAA to regulate the flow of nonparticipating aircraft outside R–2540.

List of Subjects in 14 CFR Part 73

Aviation safety, Restricted areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. § 73.25 is amended as follows:

R–2540 Capay, CA [New]

Boundaries: Within a 1-mile radius of lat. 38°45'22"N., long. 122°01'00"W.

Designated altitudes. Surface to and including 2,500 feet AGL.

Time of use. As scheduled by NOTAM 24 hours in advance for the period November 15, 1922, to March 15, 1993. Restricted area void after 2359 hours local time on March 15, 1993.

Controlling agency. Travis AFB Approach Control.

Using agency. The Desert Research Institute, University of Nevada.

Issued in Washington, DC, on August 12, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–19731 Filed 8–18–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–159–84]

RIN 1545–AG63

Differential Earnings Rate and Recomputed, Differential Earnings Rate of a Mutual Life Insurance Company; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the differential earnings rate and the recomputed differential earnings rate, which are used in determining the deduction for policyholder dividends of a mutual life insurance company.

DATES: The public hearing will be held on Monday, December 7, 1992, beginning at 1 p.m. Requests to speak and outlines of oral comments must be received by Monday, November 16, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 111 Constitution Avenue N.W., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI–159–84), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 809 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rule of § 601.810(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Monday, November 16, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 12:45 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–19459 Filed 8–18–92; 8:45 am]

BILLING CODE 4830–01–M

26 CFR Part 1

[FI–159–84]

RIN 1545–AG63

Differential Earnings Rate and Recomputed Differential Earnings Rate of a Mutual Life Insurance Company

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the differential earnings rate and the recomputed differential earnings rate, which are used in determining the deduction for policyholder dividends of a mutual life insurance company. The proposed regulations provide that these rates cannot be negative. The applicable law was enacted as part of the Tax Reform Act of 1984. The proposed regulations provide guidance to mutual life insurance companies.

DATES: Written comments and requests to speak (with outlines of oral comments) at a public hearing scheduled for Monday, December 7, 1992, beginning at 1 p.m., must be received by November 16, 1992.

ADDRESSES: Send comments, requests to appear at the public hearing and outlines of oral comments to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (FI–159–84), room 5228, Washington DC 20044. In the alternative, comments may be hand delivered to CC:CORP:T:R, Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. See notice of hearing published elsewhere in this issue of the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Katherine A. Hossofsky (202) 622–3477 (not a toll-free call). Concerning the hearing, Carol Savage of the Regulations Unit, (202) 622–8452 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) to provide guidance relating to the differential earnings rate and the recomputed differential earnings rate under section 809 of the Internal Revenue Code (Code). The proposed regulations reflect the addition of section 809 to the Code by section 211(a) of the Deficit Reduction Act of 1984 (Pub. L. 98–369, 98 Stat. 750).

Rev. Rul. 88–80, 1988–2 C.B. 129 and Notice 88–106, 1988–2 C.B. 444, stated that regulations would be issued under section 809 that would provide that neither the differential earnings rate nor the recomputed differential earnings rate may be negative.

Formula For Reducing Policyholder Dividends

Section 809(a) of the Code provides that, in the case of any mutual life insurance company, the amount of the deduction allowable under section 808 for policyholder dividends is reduced (but not below zero) by the differential earnings amount. The differential earnings amount is the portion of policyholder dividends deemed to be a distribution of a mutual company's profits to policyholders in their capacity as owners of the company. See H.R. Rep. No. 432 (part 2), 98th Cong., 2d Sess., 1422 (1984); S. Prt. No. 169, 98th Cong., 2d Sess., 548–549 (1984). In effect, otherwise deductible policyholder dividends equal in amount to the differential earnings amount are not deductible. Any excess of the differential earnings amount over the policyholder dividends deduction allowable under section 808 is taken into account as an adjustment to reserves under subsections (a) and (b) of section 807.

A mutual life insurance company's differential earnings amount for any taxable year is an amount equal to the product of the company's average equity

base for the year multiplied by the differential earnings rate for the year.

The differential earnings rate is the excess of (a) the imputed earnings rate for the taxable year over (b) the average mutual earnings rate for the second calendar year preceding the calendar year in which the taxable year begins. The imputed earnings rate for any taxable year is an amount which bears the same ratio to 16.5 percent as the current stock earnings rate for the taxable year bears to the base period stock earnings rate.

To correct for the difference between the average mutual earnings rate for the calendar year in which the taxable year begins and the average mutual earnings rate for the second preceding calendar year, section 809(f) of the Code provides a mechanism whereby the differential earnings amount for the taxable year is recomputed in the following taxable year. This amount is known as the recomputed differential earnings amount. The recomputed differential earnings amount for any taxable year is calculated in the same manner as the differential earnings amount for the taxable year, except that the average mutual earnings rate for the calendar year in which the taxable year begins is substituted for the average mutual earnings rate for the second calendar year preceding the ten calendar year in which the taxable year begins. The revised rate is known as the recomputed differential earnings rate. (The term recomputed differential earning rate was initially defined in Announcement 86-36, 1986-12 I.R.B. 27.) If the recomputed differential earnings amount for any taxable year exceeds the differential earnings amount for the taxable year, the excess is included in life insurance gross income for the succeeding taxable year. Conversely, if the differential earnings amount exceeds the recomputed differential earnings amount, the excess is allowed as a life insurance deduction for the succeeding taxable year.

Explanation of Provision

The Internal Revenue Service publishes both the tentative and final differential earnings rate and recomputed differential earnings rate. These rates are used by mutual life insurance companies in calculating their federal income tax liability. The tentative recomputed differential earnings rate for 1986 was a negative rate that was published in Announcement 88-47, 1988-12 I.R.B. 56. Subsequently, the Internal Revenue Service issued Notice 88-106, which stated that regulations under section 809 would provide that the differential earnings rate may not be a negative rate. See also Rev. Rul. 88-80, 1988-2 C.B. 129, Rev. Rul. 89-106, 1989-2 C.B. 108 and Rev. Rul. 91-52, 1991-2 C.B. 331.

Congress added section 809 to limit the deductibility of dividends paid by mutual life insurance companies to their policyholders in recognition of the fact that these dividends are, to some extent, distributions of the companies' earnings to the policyholders as owners. Section 809(a) states that the deduction allowed under section 808 "shall be reduced (but not below zero) by the differential earnings amount." The use of the term "reduce" reflects Congress's intention that the purpose of section 809 is to limit an otherwise deductible amount, not to create a new deduction. A negative differential earnings rate or a negative recomputed differential earnings rate would allow mutual life insurance companies to deduct an amount in excess of dividends paid to policyholders. This would be contrary to the intent of section 809. Accordingly, the proposed regulations provide that neither the differential earnings rate nor the recomputed differential earnings rate may be negative.

The proposed regulations also define the term "recomputed differential earnings rate."

Effective Date

Notice 88-106 set forth guidance that would be contained in forthcoming regulations. The notice stated that regulations would be issued that would provide that neither the differential earnings rate nor the recomputed differential earnings rate may be negative. Rev. Rul. 88-80 stated that the final recomputed differential earnings rate for 1986 was zero even though the calculated rate was negative, and indicated that when the regulations were issued they may be effective prior to the date of issuance. As the proposed regulations involve the application of the guidance provided in Rev. Rul. 88-80, concerning the 1987 taxable year, the proposed regulations provide an effective date of taxable years beginning after December 31, 1986.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before the adoption of these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. A hearing with respect to these proposed regulations will be held on Monday, December 7, 1992, beginning at 1 p.m. Written comments and requests to speak (with outlines of oral comments) must be received by November 16, 1992. See notice of hearing published elsewhere in this issue of the **Federal Register**.

Comments are specifically requested as to the future impact that the disallowance of a negative differential or recomputed differential earnings rate will have on mutual life insurance companies.

All written comments will be available for public inspection and copying in their entirety.

Drafting Information

The principal author of these proposed regulations is Katherine Ann Hossofsky of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.809-1 through 1.812-8

Income taxes, Insurance companies, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.809-9 is added to read as follows:

§ 1.809-9 Computation of differential earnings rate and the recomputed differential earnings rate.

(a) *In general.* Neither the differential earnings rate under section 809(c) nor the recomputed differential earnings rate that is used in computing the recomputed differential earnings amount under section 809(f)(3) may be less than zero.

(b) *Definitions*—(1) *Recomputed differential earnings amount.* The recomputed differential earnings amount, with respect to any taxable year, is the amount equal to the product of the life insurance company's average equity base for the taxable year, multiplied by the recomputed differential earnings rate for that taxable year.

(2) *Recomputed differential earnings rate.* The recomputed differential earnings rate for any taxable year equals the excess of the imputed earnings rate for the taxable year, over the average mutual earning rate for the calendar year in which the taxable year begins.

(c) *Effective date.* The regulations are effective for all taxable years beginning after December 31, 1986.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-19360 Filed 8-18-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Alabama Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the Alabama Plan) submitted by Alabama on June 26, 1992. The amendment would revise the State's procedures for ranking and selecting AMLR projects.

This notice sets forth the times and locations that the Alabama Plan and proposed changes will be available for public inspection, the comment period during which interested persons may submit written comments, and the procedures that will be followed regarding a public hearing.

DATES: Written comments must be received on or before 4 p.m. on September 18, 1992. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on September 14, 1992. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on September 3, 1992.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, at the address listed below. Copies of the Alabama program, the proposed amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendments by contacting OSM's Birmingham Field Office.

Birmingham Field Office, 135 Gemini Circle, suite 215, Birmingham, Alabama 35209, Telephone: (205) 290-7283.

Alabama Surface Mining Commission, First Federal Bank Building, 2nd Floor, 1811 Second Avenue, Jasper, Alabama 35501, Telephone: (205) 221-4130.

FOR FURTHER INFORMATION CONTACT: Mr. Jesse Jackson, Jr., Director, Birmingham Field Office, (205) 290-7283.

SUPPLEMENTARY INFORMATION:

I. Background

Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95-87, 30 U.S.C. 1202 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and waters eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Secretary of the Interior approved the Alabama Plan on May 20, 1982. Information pertinent to the general background, revisions, and amendment to the initial plan submission, as well as the Secretary's findings and the disposition of comments can be found in the May 20, 1982, **Federal Register** (47 FR 22062). Information concerning the previously approved plan and the proposed amendments may be obtained from the agency offices listed under "**ADDRESSES**."

The Secretary has adopted regulations at 30 CFR part 884 that specify the content requirements of a State reclamation plan and the criteria for plan approval. The regulations provide that a State may submit to the Director, proposed amendments or revisions to the approved reclamation plan. If the amendments or revisions change the scope or major policies followed by the State in the conduct of its reclamation program, the Director must follow the procedures set out in 30 CFR 884.13 in approving or disapproving an amendment or revision.

II. Discussion of Amendments

By letter dated June 26, 1992, Alabama submitted a reclamation plan amendment to OSM (Administrative Record NO AL-0484). The proposed amendment consists of revised narratives to replace once section of the approved Alabama Plan as provided for by 30 CFR 884.13. Specifically, the Plan is being revised to modify the procedures utilized by the State for ranking and selecting AMLR projects.

III. Public Comment Procedure

In accordance with the provision of 30 CFR 884.14, OSM is now seeking comments on whether the amendment proposed by Alabama satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alabama program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Birmingham Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Records.

Public Hearings

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. September 3, 1992. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who

wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "**ADDRESSES**". A written summary of each meeting will be made a part of the Administrative Record.

Executive Order No. 12291 and the Regulatory Flexibility Act

On March 30, 1992, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to the approval of Abandoned Mine Land Reclamation programs and amendments. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-19702 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 914

Indiana Permanent Regulatory Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is announcing receipt of proposed changes to two amendments previously submitted by Indiana as modifications to the State's permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments (Program Amendments Number 91–8 and 92–1) consist of proposed changes to the Indiana Surface Mining Rules provisions concerning cultural and historic resources, and OSM Regulatory Reform I and II issues, respectively. The amendments are intended to resolve outstanding issues that remain present in the approved Indiana program resulting from changes to the Federal program. The proposed changes to amendments 91–8 and 92–1 were submitted by Indiana in a letter dated June 15, 1992 (Administrative Record No. IND–1098. The proposed changes are intended to correct previously submitted amendments to three rules: 310 IAC 12–2–2; 310 IAC 12–3–13; and 310 IAC 12–3–112.

This notice sets forth the times and locations that the Indiana program proposed program amendments 91–8 and 92–1, and the proposed changes to the amendments will be available for public inspection, and the comment period during which interested persons may submit written comments on the proposed changes.

DATES: Written comments must be received on or before 4 p.m. on September 3, 1992.

ADDRESSES: Written comments should be directed to Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below.

Copies of the Indiana program, the amendments, the proposed changes to the amendments, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requester may receive, free of charge, one copy of the proposed changes to amendments 91–8 and 92–1 by contacting the OSM Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of the Proposed Amendments

By letter dated June 15, 1992 (Administrative Record No. IND–1098), the Indiana Department of Natural Resources (IDNR) submitted to OSM proposed changes to program amendments 91–8 and 92–1. Program amendment 91–8 was received by OSM on July 10, 1991, (Administrative Record No. IND–0902), and concerns changes to Indiana's cultural and historic resources rules. Program amendment 92–1 was received by OSM on March 30, 1992 (Administrative Record No. IND–1057), and concerns changes to Indiana's rules to address Regulatory Reform I and II changes to the Federal regulations.

OSM published a notice in the **Federal Register** on August 9, 1991 (56 FR 37868), announcing receipt of amendment 91–8 and opening the public comment period. The comment period ended on September 9, 1992.

OSM published a notice in the **Federal Register** on May 21, 1992 (57 FR 21634), announcing receipt of amendment 92–1 and opening the public comment period. The comment period ended on June 22, 1992.

The proposed changes to amendments 91–8 and 92–1 are as follows:

1. 310 IAC 12–2–2 Areas Unsuitable for Mining; Procedures

Rule 310 IAC 12–2–2 which was submitted with amendments 91–8 and 92–1, is removed and replaced by the version of rule 310 IAC 12–2–2 which was submitted on June 15, 1992. Indiana explained that the original submittals of this rule were incorrect and that the submitted change corrects the problem

2. 310 IAC 12–3–13 Exploration of More Than 250 Tons; Special Requirements

Rule 310 IAC 12–3–13, which was submitted with amendment 92–1, is removed and replaced by the version of rule 310 IAC 12–3–13 which was submitted on June 15, 1992. Indiana explained that the original submittal of this rule was incorrect and that the submitted change corrects the problem.

3. 310 IAC 12–3–112 Permit Approval or Denial

Rule 310 IAC 12–3–112, which was submitted with amendments 91–8 and 92–1, is removed and replaced by the version of rule 310 IAC 12–3–112 which was submitted on June 15, 1992. Indiana explained that the original submittals of this rule were incorrect and that the submitted change corrects the problem.

The full texts of the proposed changes to program amendments 91–8 and 92–1 are available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed changes to amendments 91–8 and 92–1 are no less effective than the Federal regulations. If approved, the proposed changes will become part of the Indiana program.

III. Public Comment Procedures

In accordance with provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the proposed changes to amendments 91–8 and 92–1 proposed by Indiana satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If the changes are deemed adequate, they will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "**DATES**" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections 9(a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h) (10), decisions on proposed State regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 10, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-19701 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS-50600; FRL-3999-4]

RIN 2070-Ab27

Dialkyldialkoxysilane; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as dialkyldialkoxysilane, which is the subject of two premanufacture notices (PMNs). This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing or processing activities for a use

designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur.

DATES: Written comments must be submitted to EPA by September 18, 1992.

ADDRESSES: Since some comments may contain confidential business information (CBI), all comments must be sent in triplicate (with additional sanitized copies if confidential business information is involved) to: TSCA Document Receipt Office (TS–790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Room E–105, 401 M St., SW., Washington, DC 20460. Comments should include the docket control number. The docket control number for the chemical substance covered in this SNUR is OPPTS–50600. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Unit VI. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. EB–543–B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of the substance identified generically as dialkyldialkoxysilane for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances. Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354) and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provision which apply to this SNUR. In the **Federal Register** of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR Part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to these documents for further information.

III. Background

On December 13, 1990 EPA received a PMN for dialkyldialkoxysilane. EPA found potential health effects for the substance based on analogy to other alkoxysilanes. The potential health effects were for irritation to the skin and eye and liver and lung toxicity. EPA also found potential environmental effects based on the quantitative structural activity relationship (QSAR) of the substance to other neutral organic compounds. EPA expected toxicity to aquatic organisms at concentrations as low as 30 ppb. Notwithstanding these potential toxic effects, EPA did not make an unreasonable risk finding for human health or the environment for the PMN because exposures and releases were expected to be low. EPA anticipates minimal releases to surface waters which EPA estimated not to exceed 30 ppb. In addition, human health exposures were expected to be low, based on a material safety data sheet (MSDS) that prescribed dermal and respiratory protection in case of exposure and an estimated vapor pressure for the substance of 0.0003 torr based on the boiling point of the substance.

On March 21, 1991, EPA received another PMN for the same chemical substance. Because the submitter of the earlier PMN had not yet submitted a notice of commencement, EPA evaluated the second PMN as a new chemical. The submitter of the second PMN submitted several toxicity tests for the substance. Acute studies showed slight skin and eye irritation and negligible oral toxicity and dermal sensitization. Ames and mouse micronucleus tests were negative for mutagenicity. An acute oral 28–day study showed liver toxicity effects at 1,000 mg/kg/day. Also included in the data was a measured vapor pressure for the substance of 0.2 to 0.3 torr. This is approximately 100 times the previously estimated vapor pressure. It also considerably increases the potential inhalation exposure for workers. For the initial PMN received by the Agency the estimates increased from 3 mg/day to 300 mg/day for 12 workers for 250 days per year during manufacturing. It also increased the estimates of 0.003 mg/day to 0.3 mg/day for six workers for 250 days per year during use.

Based on the new inhalation exposure estimates EPA finds under section 5(e)(1)(A)(i) and (ii)(I) of TSCA that this substance may present an unreasonable risk of injury to health. When presented with EPA's finding, the submitter of the second PMN elected to perform the recommended 90–day subchronic inhalation study (40 CFR 798.2650) to address the potential lung toxicity while suspending the 90–day review period, pursuant to § 720.75(b), for the second PMN.

The submitter of the earlier PMN may at any time commence manufacture or import of the PMN substance allowing both PMN submitters to commercialize the substance. To prevent any unreasonable risk before completion and evaluation of the 90–day inhalation study EPA is proposing this significant new use rule. The rule will establish that it is a significant new use to manufacture, import, or process the substance without establishing a program whereby each worker who may be exposed to the substance by inhalation must wear a category 19C supplied-air respirator. The Administrator has made this determination having considered all relevant factors, including those in TSCA section 5(a)(2)(A) through (D).

Any manufacturer, importer, or processor who proposes to engage in such activity will be required to notify EPA before commencing the activity. The testing being conducted by the second PMN submitter, a 90–day subchronic inhalation study (40 CFR 798.2650), will address the potential health risk. After completion and evaluation of the study EPA will reassess if and what kind of respiratory protection is needed.

IV. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. If uses which had commenced between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after the proposed date of this rule will have to cease any such activity before the effective date of this rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h) (53 FR 28354, July 17, 1988), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substances between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

V. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS–50600).

VI. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50600). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any CBI, is available in the TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE–G004, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be approximately $4,552 to $12,166, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substance involved, there would be few significant new use notices submitted. Furthermore, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 721

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: August 12, 1992.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c)

2. By adding new § 721.9500 to subpart E to read as follows:

§ 721.9500 Dialkyldialkoxysilane.

(a) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance identified generically as dialkyldialkoxysilane is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) Any manner or method of manufacturing, importing, or processing associated with any use of the substance without establishing a program whereby each person who is reasonably likely to be exposed to the substance by inhalation in the work area in the form of a vapor is provided with and required to wear at a minimum a NIOSH-approved category 19C supplied-air respirator operated in pressure demand, other positive pressure, or continuous flow mode and to use the respirator in accordance with 29 CFR 1910.34 and 30 CFR Part 11.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), (c), and (d).

(2) [Reserved]

(Approved by the Office of Management and Budget under OMB control number 2070–0012)

[FR Doc. 92–19749 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52e

RIN 095–AD48

National Heart, Lung, and Blood Institute Grants for Prevention and Control Projects

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Institutes of Health (NIH) proposes to amend the current regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the Public Health Service (PHS) Act, as amended. The NIH proposed to: Correct the authority citation and PHS Act section numbers included in the regulations, add references to several HHS regulations that apply to awards made under the regulations, and make minor language changes.

DATES: Written comments must be received on or before October 19, 1992.

ADDRESSES: Comments should be addressed to John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B–11, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: John J. Migliore, at the address above, or telephone (301) 496–4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Regulations governing grants by the National Heart, Lung, and Blood Institute for prevention and control projects authorized under section 419 of the PHS Act, as amended (42 U.S.C. 285b–1), were last amended on February 25, 1980 (45 FR 12249). Subsequently, on November 20, 1985, the Health Research Extension Act of 1985 (Pub. L. 99–158) was enacted, amending the provisions of the PHS Act that authorize NIH programs. As a result of this statutory amendment, the sections of the PHS Act that authorized various National Heart, Lung, and Blood Institute programs were renumbered. This necessitates changing the section numbers referenced in the regulations. The NIH proposes to amend the current regulations at 42 CFR part 52e to make these changes in the regulations and to add references to several HHS regulations that apply to awards made under this Part. In addition, the NIH proposes to revise the section headings in accordance with Department efforts to simplify the regulatory language in its regulations, and make several minor langauge changes. The NIH announced its intention to make these changes in the Unified Agenda of Federal Regulations most recently published on October 21, 1991 (56 FR 53327). The following statements are provided as public information.

1. Regulatory Impact Statement

This proposed rule has been reviewed in accordance with the requirements of Executive Order No. 12291. The Secretary has determined that it does not constitute a major rule as specified in the Order, and that a Regulatory Impact Analysis is not required.

2. Regulatory Flexibility Analysis

This proposed rule has been reviewed in accordance with the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C chapter 6). The Secretary has determined that compliance with the regulations would not have a significant economic impact on a substantial number of small entities and, therefore, a Regulatory Flexibility Analysis is not required.

3. Paperwork Reduction Act

Section 52e.4 of this proposed rule contains information collection requirements subject to OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). This information collection and its associated burden has been reported to OMB and approved under OMB Approval Number 0925–0001.

4. Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance numbered programs affected by these proposed regulations are:

93.837 Heart and Vascular Diseases Research

93.838 Lung Diseases Research

93.839 Blood Diseases and Resources Research.

5. List of Subjects in 42 CFR Part 52e

Grant programs-health; Health; Medical research.

Accordingly, it is proposed to amend Part 52e of Title 42 of the Code of Federal Regulations to read as set forth below.

Dated: April 2, 1992.

Approved: May 21, 1992.

James O. Mason,

Assistant Secretary for Health.

Louis W. Sullivan,

Secretary.

PART 52e—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE GRANTS FOR PREVENTION AND CONTROL PROJECTS

1. Revise the authority citation to read as follows:

Authority: 42 U.S.C. 216, 285b–1.

2. Revise the Table of Contents to read as follows:

Sec.
52e.1 To what programs do these regulations apply?
52e.2 Definitions.
52e.3 Who is eligible to apply?
52e.4 How to apply.
52e.5 What are the project requirements?
52e.6 How will NIH evaluate applications?
52e.7 What are the terms and conditions of awards?
52e.8 Other HHS regulations that apply.
52e.9 Additional conditions.

3. Revise the headings for §§ 52e.1, and 52e.3 through 52e.7 to read as follows:

52e.1 To what programs do these regulations apply?

* * * * *

52e.3 Who is eligible to apply?
52e.4 How to apply.
52e.5 What are the project requirements?
52e.6 How will NIH evaluate applications?
52e.7 What are the terms and conditions of awards?

* * * * *

4. Amend § 52e.1 by revising paragraph (a) to read as follows:

§ 52e.1 To what programs do these regulations apply?

(a) The regulations of this part apply to grants under section 419 of the Act (42 U.S.C. 285b–1) for projects to: (1) Demonstrate and evaluate the effectiveness of new techniques or procedures for the diagnosis, prevention, and treatment of heart, blood vessel, lung, and blood diseases, appropriately emphasizing the prevention, diagnosis and treatment of these diseases in children; (2) develop and evaluate methods of educating health practitioners concerning the prevention and control of these diseases; and (3) develop and evaluate methods of educating the public concerning the prevention and control of these diseases.

* * * * *

5. Revise § 52e.2 to read as follows:

§ 52e.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.)

Council means the National Heart, Lung, and Blood Advisory Council, established under section 406 of the Act (42 U.S.C. 284a).

Director means the Director of the National Heart, Lung, and Blood Institute and any official to whom the authority involved may be delegated.

Emergency medical services means the services utilized in responding to the perceived individual need for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

HHS means the Department of Health and Human Services.

National Program means the National Heart, Blood Vessel, Lung, and Blood Diseases and Blood Resources Program referred to in section 421 of the Act (42 U.S.C. 285b–3).

Nonprofit as applied to any agency or institution means an agency or institution which is a corporation or an association, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

PHS means the Public Health Service.

§ 52e.4 [Amended]

6. Amend § 52e.4 by removing the acronym and offsetting commas ", NHLBI," in paragraphs (a) and (c) introductory text, and inserting the phrase "[Approved under OMB Control Number 0925–0001]" after paragraph (c)(9).

7. Amend § 52e.6 by revising paragraph (a) introductory text to read as follows:

§ 52e.6 How will NIH evaluate applications?

(a) Within the limits of funds available, after consultation with the Council, the Director may award grants to applicants with proposed projects which in the Director's judgment will best promote the purposes of section 419 of the Act, taking into consideration among other pertinent factors:

* * * * *

8. Revise § 52e.8 to read as follows:

§ 52e.8 Other HHS regulations that apply.

Several other regulations apply to grants under this part. These include but are not necessarily limited to:

42 CFR Part 50, Subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments

45 CFR Part 93—New restrictions on lobbying

51 FR 16958 or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules

"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Prevention from Research Risks, NIH (Revised September 1986), or successor

§§ 52e.5, 5e.7, and 52e.9 [Amended]

9. Remove the acronym "NHLBI" and any offsetting commas each place it appears in the following provisions:

(a) Section 52e.5 (a) introductory text and (b);

(b) Section 52e.7(b); and

(c) Section 52e.9.

[FR Doc. 92–19723 Filed 8–18–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 392 and 395

[FHWA Docket No. MC-92-30]

RIN 2125-AD04

Hours of Service of Drivers; On-Duty Time

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to amend a portion of the hours of service regulations for commercial motor vehicle drivers. This rulemaking, if promulgated, would permit the on-duty time limitation of 60-hours in 7 consecutive days and 70-hours in 8 consecutive days to begin anew after the driver had an off-duty recovery period of 24 consecutive hours or more. The intent of this is to provide the opportunity for improved efficiency in operations consistent with highway safety.

DATES: Comments must be received on or before October 5, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-92-30, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All answers to questions should refer to the appropriate question number and all comments on specific provisions should refer to the appropriate section and paragraph number. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Scapellato, Office of Motor Carrier Standards, (202) 366-2981, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The current hours of service regulations were promulgated by the Interstate Commerce Commission (ICC) in 1937 and became effective March 1, 1939. Under the current provisions of § 395.3(b) (1) and (2) of the Federal Motor Carrier Safety Regulations (FMCSRs), no motor carrier shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after: (1) Having been on duty 60 hours in any period of 7 consecutive days if the employing motor carrier does not operate every day of the week; or (2) having been on duty 70 hours in any period of 8 consecutive days if the motor carrier operates motor vehicles every day of the week.

A driver may accumulate 70 hours on duty in as few as 5 consecutive days. Before the driver may drive a commercial motor vehicle (CMV) again, however, the accumulated total hours on duty must be reduced to an amount less than the regulated maximum of 70 hours over 8 consecutive days. In this situation, the driver must take 3 consecutive days, 72 consecutive hours, off-duty to reduce the total below the regulated maximum in order to drive again, and then may only drive the number of hours that brings the driver back to 70 hours for the previous 8 consecutive days.

A limited exemption to the hours of service regulations was granted in *Qualifications and Maximum Hours of Service of Employees of Motor Carriers and Safety of Operation and Equipment*, 89 M.C.C. 19 (March 29, 1962), at 30. This exemption, codified at 49 CFR 395.3(d), states, In the instance of drivers of motor vehicles used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. This exemption permits drivers engaged in these operations to break their accumulated on-duty hours at any time by going off duty for a period of 24 or more consecutive hours.

Some anomalies in the current hours of service limits have been identified by representatives of the long-haul motor carrier industry as having a detrimental effect on drivers' morale, efficiency, effectiveness, and, ultimately, productivity, as well as the employing motor carriers' economic competitiveness and safety compliance. The most significant complaint is that drivers are often forced to take two to three days off and wait far from home or in unfamiliar surroundings in order to accumulate enough off-duty time to resume driving. The contention is that on-duty time which may have started to accumulate as long as 8 days previously does not have an effect on a driver's ability to drive on any given day. They further maintain that requiring a driver to take up to 3 days of off-duty time, especially when the driver may be within a short distance of the home terminal, is not only unproductive to the motor carrier but reduces driver morale.

Additional concerns have been expressed by motor carriers engaged in other types of operations whose employees' primary, non-driving duties require them to spend limited time behind the wheel of a commercial motor vehicle. They have stated that the current 70-hour rule places artificial constraints on their activity by requiring drivers to take multiple consecutive days off because of an accumulation of hours based on non-driving time.

Both of these situations may indeed have adverse economic impacts. Furthermore, it has been questioned whether drivers utilize the extended off-duty period in a manner that promotes safe resumption of driving duties.

Discussion of Comments to Regulatory Review Docket

On January 28, 1992, the President instructed the Secretary of Transportation and other agencies to work together to streamline the regulatory process and ensure that the regulated community is not subject to duplicative, inconsistent, or unnecessarily burdensome regulations. On February 17, 1992, the Department of Transportation published a request for comments entitled Regulatory Review (see 57 FR 4744, FHWA Docket 92-12). This notice requested public comments on which Departmental regulations substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, or impose needless costs or red tape.

Approximately 400 commenters to this docket suggested that the hours of service regulations be amended. The majority of the commenters suggested permitting the 60/70 hour (in 7 or 8 days) on duty requirement be set to zero if the driver has 24 consecutive hours off duty. In 368 letters, many of which were identical, commenters argued that these hours of service regulations are out of step with today's modern equipment, super highways, and operating practices. Six other commenters claimed that the current limit is out of date, unduly burdensome, impairs operating efficiency, lowers drivers' earning potential, and encourages drivers to violate the regulations. Two commenters recommended eliminating the 70 hour/8 day cap, one recommended raising the maximum driving hours from 10 to 12, and one recommended that drivers be permitted to be on-duty 15 hours before the 8-hour break, regardless of whether the time was spent driving or performing other work.

One commenter expressed the concern that a lack of effective regulation would result in a rise in accidents and other safety hazards, raising the economic and social costs of transportation. Another commenter suggested that certain of the regulations of part 395 should be changed because of the costs and burdens associated with them, as well as the possibility that they may be incompatible with the body's natural circadian rhythms.

Research

Although there have been several studies conducted over the past 20 years on CMV driver fatigue, the FHWA is not aware of results that show a direct relationship between driving hours or total on-duty hours and levels of driver alertness. While it is uniformly accepted that long work hours can adversely affect alertness, other factors, such as the number of consecutive work days, the starting and ending times of those workdays, and the degree of mental and physical effort expended play very important roles.

The FHWA is currently sponsoring several studies of CMV driver fatigue and loss of alertness to provide a technically sound basis for evaluating existing hours of service requirements and to develop countermeasures for reducing fatigue and increasing driver alertness. Two ongoing studies are the Driver Fatigue and Alertness Study, conducted by Essex Corporation and the Trucking Research Institute; and Literature Review and Critique of Past Research on Rest and Recovery Cycles of Commercial Motor Vehicle Drivers, conducted by Work Systems Research. In addition, the FHWA has been directed to perform additional studies to respond to congressional directives to undertake research on the causes of, and potential countermeasures to, the problem of driver fatigue under the Department of Transportation and Related Agencies Appropriations Act, 1992 (see H.R. Rep. No. 156, 102d Cong., 1st Sess. 103 (1991)).

Discussion of Proposal

Drivers subject to the hours of service regulations do not operate in a monolithic industry, loosely referred to as the motor carrier industry. There are many occupations, such as mechanics, construction workers, telephone linemen, utility workers, foresters, custom harvesters, film production workers, etc., whose operation of vehicles falling within the applicable definition "commercial motor vehicle" is only incidental to their principal job functions. They may drive to or from job sites where the bulk of their day's work is performed, so that the driving function occupies only a minor part of their on duty time. Their degree of contact with other vehicles driven on public streets and highways, on lengthy trips and adverse driving conditions, where the effect of fatigue is most critical, is considerably less than that of individuals whose principal function is driving. In this regard, they are similar to the oilfield and pipeline workers for whom the previously mentioned exemption already applies. For these drivers, the 60- and 70-hour rule can create a hardship, without an equivalent safety benefit. There are other job categories, such as retail merchandise and food delivery workers, driver-salesmen, suppliers and other regular route workers, whose driving and non-driving functions are relatively equal. Their degree of contact is greater than that of the previously mentioned category, but there may be other aspects of their operations which reduce the likelihood of adverse impacts from fatigue and the need for close regulation. Their operations may be so regular that their hours are controllable, their reporting times and finishing times are predictable, they can be easily tracked from the start of their work day to the finish, and the amount of time behind the wheel and engaged in other on-duty activities is well known. For these drivers, the 60- and 70-hour rule has little or no relevancy to their work schedule. There may be no strong safety benefit to subject them to such a rule.

Individuals whose principal function is to operate a commercial motor vehicle are also affected by the 60/70 hour rule. These individuals tend to maximize their driving time and may or may not use the 5 additional allowable daily hours on-duty, not driving, prior to taking the mandatory 8 hours off-duty. As a result, they may reach their maximum on-duty time of 70 hours within 5 days. As discussed earlier, the mandatory 3 days off-duty, if taken at a point in the driving schedule unrelated to a driver's proximity to the home terminal, may be counterproductive to these drivers obtaining needed rest. Because their primary task is driving, these drivers' degree of contact with other vehicles on public streets and highways is the highest of all groups discussed.

The 60- and 70-hour rules were originally developed as countermeasures to the potential hazards caused by the operations of large vehicles by long-haul drivers. There is little evidence, however, to support a compulsory extended break in driving time to catch up with the potential accumulation of fatigue. The FHWA believes that a commonsense rule should prevail, provided drivers have the opportunity to decline to drive on the basis of fatigue without fear of retaliation. As discussed earlier, there have been concerns that applications of these rules to many motor carriers' operations have produced anomalies in scheduling. These anomalies are said to be detrimental to both driver morale and motor carrier productivity because they force drivers to take extended off-duty periods when they may be only a short distance from the home terminal.

To date, the FHWA has no evidence that demonstrates that the exemption for certain drivers who transport oilfield equipment impairs their ability to safely operate a commercial motor vehicle. The FHWA is, therefore, proposing to expand that provision to other types of commercial motor vehicle operations.

The proposed revision would permit commercial motor vehicle drivers to begin a new 60/70 hour period (with the resumption of on-duty status) following an off-duty period of 24 or more consecutive hours. To insure that a person who may not be sufficiently alert to operate a motor vehicle at the end of the 24-hour off-duty period does not have to drive, the provisions of § 392.3, Ill or fatigued operator, will be extended to cover such situations. Cross-referencing to the proposed revision in § 395.3(d) will make it clear that any driver may decline to drive with impunity if he or she has accumulated as many as 60 hours on duty in any 7 day period, or 70 hours on duty in any 8 day period. Attempted retaliatory action by a motor carrier against a driver who refuses to drive under these circumstances could easily result in the establishment of a prima facie case under section 405 of the Surface Transportation Assistance Act (49 U.S.C. App. 2305) before the Occupational Safety and Health Administration.

The FHWA recognizes the need to revisit the hours of service regulations. Reducing the on-duty/off-duty cycle may bring the regulations in closer conformity with motor carrier industry needs and practices. Various segments of the motor carrier industry have sought application of the oilfield worker's exemption to all motor carriers for a number of years. Although the proposed rest period would be somewhat condensed, a driver must still comply with the daily hours of service regulations.

The FHWA envisions an enhanced level of compliance with both the 10-hour and 15-hour rules, as well as those resulting from this proposal, because the limitations more closely characterize the actual operations of motor carriers. Furthermore, the FHWA foresees improved enforcement of hours of service violations and better compliance with records of duty status requirements with the elimination of the anomalies of the 60- and 70-hour rules. The FHWA will vigorously pursue the collection of civil penalties against motor carriers who continue to condone such excess hours after these changes.

The FHWA specifically requests comments on the following questions:

1. Under the current regulations, a driver may operate on a cycle consisting of 10 hours of driving, 5 hours on-duty not driving, and 8 hours off-duty. This cycle may be repeated 4 successive times, followed by a final 10 hours on-duty. The driver would reach the maximum 70 hour on-duty time in 102 elapsed hours (4.25 days) and would then be required to take 72 hours off duty (3 days). Under the proposal, the same 70-hour work cycle as described above would be separated by 24 hours off duty (1 day). A driver could be on-duty 100 hours in an 8-day period. Under another scenario employing the proposed 24 hour off-duty period, in which a person drove 10 hours with 8 to 9 hours off in between and a 24-hour off-duty period every sixth day, that driver could accrue 96 hours driving in an 8 day period. These work cycles can be repeated indefinitely. Will the change to the recovery period be adequate to assure a driver has had opportunity to obtain necessary rest? Will this time be sufficient to offset accumulated fatigue?

2. What has been the experience in the oilfield and pipeline industries where the present exemption has been used? Do drivers who have operated under the exemption feel they have had ample opportunity to accumulate rest? Has the exemption affected carrier/driver compliance with the regulation?

3. What have motor carriers done to reduce the need to put drivers on off-duty status for as long as 3 consecutive days (examples might include relay terminals and "pony express" operations, team drivers, shorter daily duty schedules which permit more consecutive days of work, other methods)?

4. Should driving hours and/or on-duty hours be adjusted in conjunction with the rest and recovery hours and to what extent?

For example:

(a) A maximum of 12 hours of on-duty time in a 24-hour period,

(b) The 12 hours of on-duty time in (a) might include an increase in the maximum driving time from 10 hours to 12 hours, with required rest breaks,

(c) Off-duty time increased from 8 hours to 10 hours with no changes to on-duty and driving time,

(d) On-duty time decreased from 15 hours to 13 hours.

(e) Other scenarios?

5. What is the minimum length of time off-duty to allow a driver to adequately recover from a 60- or 70-hour on-duty cycle? How would this time vary according to the number of consecutive long working days (for example, four 15-hour days compared to six 10-hour days)?

6. Should the degree of required recovery time be related to the extent of over-the-road driving exposure? For instance, should the required period of rest and recuperation be longer for those individuals whose primary function is driving? Should it be shorter for operators whose driving duties constitute a limited proportion of their on-duty time (20 percent or less)? Why or why not?

7. Should specific motor carrier operations, such as transportation of hazardous materials or passengers, be excluded from the proposal? Why or why not?

8. Should a reduced rest and recovery period be allowed before one 60/70 hour period, but not before two successive periods with only one 24-hour rest period?

9. What steps does a motor carrier currently follow to assure that a driver is fit, willing, and able to drive safely upon return to duty, before dispatch? What additional steps would be necessary should the proposed rule be adopted?

10. What conditions, if any, should be placed on a driver once the 60- or 70-hour duty cycle is restarted after only 24 hours off duty?

11. Should motor carriers and drivers wishing to take advantage of this proposal be required to install and use automatic on-board recording devices?

Commenters are not limited to responding to the above questions. They are encouraged to submit any facts or views relevant to rest and recovery time as it affects the safe operation of commercial motor vehicles.

Rulemaking Analyses and Notices, Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The action being considered by the FHWA in this document would amend the driver's hours of service requirements for commercial motor vehicle drivers subject to the FMCSRs. The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the DOT. The potential economic impact of this rulemaking is not known at this stage. Therefore, a full regulatory evaluation has not yet been prepared. Comments are specifically requested on the costs and benefits associated with this proposed change.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354), the agency will evaluate the effects of this proposal on small entities. This proposal, if adopted, would increase the number of on-duty hours permitted in 7 and 8 consecutive days to permit the cumulative hours total to be reset after the driver has been off-duty for a period of time of at least 24 consecutive hours. The FHWA believes that the cost of this change will be minimal. Therefore, under the criteria of the Regulatory Flexibility Act, the FHWA certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Nothing in this document preempts any State law or regulation. The proposed rule, if adopted, would not limit the policymaking discretion of the States. States would not be required as part of the Motor Carrier Safety Assistance Program to adopt this rule for intrastate safety regulations, but they would have to adopt this amendment for the enforcement of interstate operations. The issues addressed in this proposal, therefore, have no federalism implications.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 392 and 395

Driver's record of duty status, Highway Safety, Highways and Roads, Hours of service of drivers, Motor carriers, Reporting and recordkeeping requirements.

Issued on: August 13, 1992.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA is proposing to amend title 49, Code of Federal Regulations, parts 392 and 395, as follows:

PART 392—[AMENDED]

1. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; and 49 CFR 1.48.

§ 392.3 [Amended]

2. In § 392.3, the undesignated paragraph is designated as (a) and new paragraph (b) is added as follows:

§ 392.3 Ill or fatigued operator.

* * * * *

(b) A driver who is operating under the provisions of § 395.1.(1) of this chapter, may refuse to drive on the basis of fatigue, if the driver has otherwise accrued the maximum on-duty time allowed under § 395.3(b) (1) or (2).

PART 395—[AMENDED]

3. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. app. 2505; and 49 CFR 1.48.

§ 395.1 [Amended]

4. In § 395.1, new paragraph (1) is added as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(1) *Rest and Recovery.* Any period of 8 consecutive days may end with the beginning of any off-duty period of 24 or more consecutive hours. However, a driver who has otherwise accrued the maximum on-duty time allowed under § 395.3(b) (1) or (2) may refuse to drive on the basis of fatigue, pursuant to § 392.3, and no motor carrier shall use a driver who has refused under these circumstances.

* * * * *

[FR Doc. 92-19770 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Finding on Petition To List the Ferruginous Hawk

AGENCY: Fish and Wildlife Service; Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day petition finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petitioner did not present substantial information to indicate that the petition to list the ferruginous hawk (*Buteo regalis*) may be warranted.

DATES: The finding announced in this notice was made on March 2, 1992.

ADDRESSES: Questions or comments concerning this finding should be submitted to Mr. Steven Anschutz, Nebraska State Supervisor, U.S. Fish and Wildlife Service, 203 West Second Street, Grand Island, Nebraska 68801. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Craig Faanes, see ADDRESSES above, telephone (308) 381-5571.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (Act), as amended in 1982 (16 U.S.C. 1531 et seq.), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register.** If the finding is positive, the Service also is required to promptly commence a review of the status of the involved species.

The Service received and made a 90-day finding on the following petition:

A petition from the Ferruginous Hawk Project was dated June 1, 1991, postmarked May 28, 1991, and received by the Service on May 31, 1991. The petition requested the Service to list the ferruginous hawk (*Buteo regalis*) as an endangered species. Status review for the ferruginous hawk was first initiated by a Notice of Review published December 30, 1982 (47 FR 58454).

The petition stated that the ferruginous hawk is a wide-ranging species in the prairie and intermountain region of the United States during the nesting season. The petition and accompanying documentation indicated that the survival of the species is threatened by a long-term population decline, human disturbance, and past and present habitat destruction and modification.

Upon receipt of the petition, the Service intensified its review of the status of the ferruginous hawk, and determined that the petition did not present substantial information to warrant the requested action. The results of the intensified review are presented below.

Biological Information

The ferruginous hawk has been considered a Category 2 species since 1982 when it first appeared on a Notice of Review. Although the Category 2 listing does not provide any special protection under the Act, the species is protected by the Migratory Bird Treaty Act (16 U.S.C. 703-712).

The Ferruginous hawk is the largest of the North American buteonine hawks, and is often said to be declining in numbers (Woffinden 1975, Powers and Craig 1976, Murphy 1978, Bechard 1981, Evans 1980, Houston and Bechard 1984, Schmutz 1984, Schmutz et al. 1984). Past declines have been exhibited by abandonment of many historical nest sites, although ferruginous hawks are still common in many parts of their breeding range.

The range of this species extends from North Dakota and Texas west to eastern Washington, eastern Oregon and

Nevada, and north into the prairie provinces of Canada (Olendorff and Fish 1985). Ferruginous hawks winter in the southwestern United States (California to Oklahoma and Texas) and Mexico (American Ornithologists Union 1983). Ferruginous hawks are irregularly found in winter in Colorado (Ryder 1969, Johnson and Enderson 1972, Stahlecker and Behlke 1974), the Dakotas (Steenhoff 1984), Nebraska (Mathisen and Mathisen 1968), and Idaho (U.S. Bureau of Land Management 1977, Craig 1979).

Declines in ferruginous hawk numbers have been blamed on urbanization, agricultural development, overgrazing, and both intentional and inadvertent human disturbance (Olendorff and Fish 1985). Detailed analyses of historical populations of ferruginous hawks have not been made for most of the United States (Olendorff and Fish 1985).

Continual direct human disturbance is an overriding negative factor to which ferruginous hawks are poorly adapted (Porter and White 1977). White and Thurow (1985) reported that ferruginous hawks were more sensitive to disturbance when jack rabbit populations were low. If prey habitat can be managed to provide a more stable or alternative food supply when one prey species declines severely, then ferruginous hawks will benefit (Olendorff and Fish 1985). Likewise, if numerous nest sites are made available, the birds have a greater opportunity to avoid disturbance in a given year by selecting more secluded sites. On the other hand, loss of prey habitat and nest sites causes instability and/or decreases in ferruginous hawk populations (Stewart 1975, Bechard 1981, Houston and Bechard 1984, Schmutz 1984).

Unlike many other *Buteo* hawks, ferruginous hawks are rather restrictive in their selection of prey items. In 7 of 13 study areas summarized by Olendorff and Fish (1985), ground squirrels were the most important prey items identified. Further, Woffinden (1975), Woffinden and Murphy (1977), Smith and Murphy (1978, 1979), Thurow et al. (1980), Smith et al. (1981), and White and Thurow (1985), clearly established the correlation between jack rabbit numbers and the percentage of ferruginous hawk territories occupied, eggs laid, and young fledged. The maintenance of high breeding densities, reproductive rates, and recruitment of ferruginous hawks is dependent on high prey populations and the stability of the habitats on which these prey species depend.

Ferruginous hawks have an inherently high breeding potential compared to other large diurnal raptors. This high reproductive potential allows rapid recovery of populations when prey increases after natural or man-caused declines. Woffinden and Murphy (1989), however, indicated that ferruginous hawks did not return to Cedar Valley, Utah, following a severe jack rabbit decline, even though jack rabbit populations had since increased.

Impacts of human activities on ferruginous hawks fall into four broad categories: (1) Increased human disturbance which results in decreased reproductive performance; (2) direct mortality; (3) habitat alteration which decreases prey; and (4) habitat alteration which decreases nest site availability. Blair (1978) established that human activity is avoided by this hawk. He measured the distance from 36 active nest sites and 36 randomly selected points to the nearest human activity. Mean distance from nest sites to disturbance was significantly greater than from random points by about 1 km (0.6 mi) (3.31 versus 2.47 km) (2.0 to 1.5 mi). Blair also found higher clutch sizes and greater hatching success at nests more distant from human disturbance, although the findings were not supported by statistical tests.

Intensive agricultural development renders grasslands, shrublands and pinyon-juniper forests essentially useless as ferruginous hawks nesting habitat, although not necessarily as foraging habitat (Olendorff and Fish 1985). A Habitat Suitability Index model prepared for ferruginous hawks (Jasikoff 1982) assumed that if 10 percent of an area is disturbed, not necessarily developed, then the suitability index for ferruginous hawks would decrease. If 75 percent or more of an area is disturbed, the suitability index would be zero. The point at which the suitability index value is zero may be less than 75 percent if the disturbance is cultivation (Schmutz 1984).

Olendorff and Stoddardt (1974) found only 1 of 71 ferruginous hawks nests in northeastern Colorado in cultivated land. Roth and Marzluff (1989) found only 5 ferruginous hawk nests where cropland was over 50 percent but 59 nests where rangeland prevailed. Cottrell (1981) noted that in eastern Oregon cultivated lands were used as nest areas significantly less than expected on the basis of availability (only 1 of 46 nests in farmland). Gilmer and Stewart (1983) noted very low ferruginous hawk nesting densities in the Drift Plain biotic region of North Dakota which is dominated by cropland, compared to the Missouri Coteau and Coteau Slope regions which are characterized by high proportions of native mixed-grass prairie.

The reason for avoidance of frequently plowed fields by ferruginous hawks involves a combination of lower prey densities in monotypic agriculture, absence of trees for nest placement, and springtime activities of farmers—a time when raptors in general are more susceptible to human disturbance (Olendorff and Fish 1985). As the crops grow, plowed or not, prey becomes increasingly less vulnerable due to the concealment provided by crop height. If no other prey is available and if it is not energetically efficient to feed several young at the nest, reproductive performance is adversely affected (Olendorff and Fish 1985).

Criteria for Listing

Section 4(a)(1) of the Act states that a species may be listed as an endangered or threatened species because of any of the following factors:

(1) The present or threatened destruction, modification, or curtailment of its habitat or range;

(2) Overutilization for commercial, recreational, scientific, or educational purposes;

(3) Disease or predation;

(4) The inadequacy of existing regulatory mechanisms; or

(5) Other natural or manmade factors affecting its continued existence.

Following is the Service's evaluation of each of these five factors.

(1) Present or Threatened Destruction, Modification or Curtailment of its Habitat or Range

Population Status

The factors summarized above describe a highly sensitive, wide-ranging, habitat-specific hawk. Determination of its population status over its extensive range is difficult due to the reasons discussed below.

Monitoring populations in small areas on the breeding grounds is potentially misleading because the abundance of nesting birds may reflect cyclic fluctuations in prey abundance rather than actual hawk population fluctuations (Smith et al. 1981). Woffinden and Murphy (1989) concluded that traditional short-term, fixed boundary studies, as most have been with ferruginous hawks, may not accurately assess the status of the species in some areas. Wiens (1984) argued that long-term studies are critical proper understanding of the structure of populations.

In 1979, Mr. Mayo Call, a consulting wildlife biologist in Afton, Wyoming, surveyed State and Provincial wildlife agencies in the Western United States and Canada. The purpose of Mr. Call's survey was to determine a continental population figure for the ferruginous hawk. In 1991, the petitioner completed a similar survey contacting the same wildlife agencies. Upon receipt of the petition, the Service contacted these same agencies, as well as other individuals, in an attempt to obtain more precise population figures throughout the ferruginous hawk's extensive range. In addition to contacting the State and Provincial resource agencies, the Service also placed a request for information in the Ornithological Newsletter, which is distributed regularly to each member of the American Ornithologist's Union, Cooper Ornithological Society, Society of Field Ornithologists, and the Wilson Ornithological Society. The Service also placed a similar request in the newsletter of the American Birding Association. Federal land management Agencies in each of the States within the species' United States range were also contacted for information.

The results of the 1979 and 1991 surveys are summarized in Table 1. The data indicate that in 1979 the continental population of ferruginous hawks was 2,810 to 3,590 pairs (average of 3,200 pairs) (Call, unpub. data). The petitioner's survey yielded a population figure of 3,293 to 4,291 pairs (average of 3,792 pairs). The population appears to have increased by 483 to 701 pairs (average of 592 pairs) at a minimum. The literature review completed by the Service in addition to survey of additional resource personnel added 1,463–1,713 pairs in North America for a minimum population of 5,220 to 6,004 pairs. This estimate does not include nonbreeding birds ecologically known as "floaters," which are difficult to census.

TABLE 1.—ESTIMATED NUMBER OF NESTING PAIRS OF FERRUGINOUS HAWKS BY LOCATION IN NORTH AMERICA. DATA ARE FROM A 1979 UNPUBLISHED SURVEY BY MR. MAYO CALL, A 1991 SURVEY BY THE PETITIONER, AND A REVIEW OF THE LITERATURE CONDUCTED BY THE SERVICE

State/Province	1979	1991	Review
Arizona	5–10	25	25
California	0	1	1
Colorado	150–175	300–400	300–400
Idaho	200–250	72	100
Kansas	25–50	35–50	50–100
Montana	175–250	190–450	190–450
Nebraska	25	35	35
Nevada	350–450	240	240
New Mexico	10	22	35
North Dakota	350–450	200	200
Oklahoma	10–20	20–33	20–33
Oregon	125–150	200	250
South Dakota	350–375	400	400
Texas	5–10	0	0
Utah	200–225	190–300	190–300
Washington	30–40	63	62
Wyoming	400–600	800	800
Canada	500–700	500–1,000	2,322–2,572
Totals	2,810–3,590	3,293–4,291	5,220–6,004
Mean	3,200	3,792	5,612

A State-by-State and Province-by-Province summary of the species' status follows.

Arizona

The population was estimated at 5–10 pairs in 1979 (Call, unpub. data). The petitioner estimated 25 pairs in 1991.

Historically, the ferruginous hawk was an uncommon but widely distributed summer resident of the grassy plains of northern Arizona, and a local and irregular summer resident in southeastern Arizona (Phillips et al. 1964). Currently, the largest ferruginous hawk nesting population exists in the drainages of the Little Colorado River and Cataract Creek (Coconino Plateau). No population estimates are available for this area, but eight nesting areas are known from the northern part of the State (Hall et al. 1988). Active breeding areas are presently only in northwestern Arizona where two ferruginous hawk nests are known (Rosenberg et al. 1981). The Kingman District of the Bureau of Land Management reported (in litt.) that ferruginous hawks have not been detected since 1986 in their traditional breeding areas in the Hualapai Valley, northeast of Kingman, Arizona, between the Cerbat and Music Mountains. The Bureau of Land Management believes further that if the species is still nesting in the area there may be less than five pairs present. In winter, ferruginous hawks are fairly common in northern and southeastern Arizona, and relatively rare elsewhere in the State (Phillips et al. 1964, Milsap 1981). Other sources indicate recent winter concentrations in agricultural areas near Parker, Arizona; in western Arizona surrounding Phoenix; in Yavapai County in central Arizona; and in the Sulfur Springs Valley in 1984). The winter population appears to be stable (Hall et al. 1988).

California

The population was zero in 1979 (Call, unpub. data). The petitioner listed one pair in 1991. Historic information on the ferruginous hawk in California is scanty. Grinnell and Miller (1944) regarded the species primarily as a winter visitor; however, the authors stated that "a few individuals occur in summer and may nest in the northwestern corner of the state of Modoc County."

Areas of potential nesting habitat in northeastern California were well covered by knowledgeable raptor biologists in the late 1970's and 1980's. Although there were occasional summer sightings, no nesting locations were known until 1987 when Bureau of Land Management personnel found a nest in Lassen County.

Potential nesting habitat appears to be extensive in California, and biologists have long wondered about possible reasons for the virtual absence of the species in that State. Intrusion of junipers and sagebrush on grasslands may have negatively affected potential nesting habitat.

Ferruginous hawks are found in low numbers in grassland and agricultural areas throughout the State in winter and fall. Although it may be undergoing some decline due to agricultural and urban conversions, winter habitat remains extensive.

Colorado

The population was estimated at 150–175 pairs in 1979 (Call, unpub. data). The petitioner estimated 300–400 pairs in 1991.

Olendorff (1976) studied nesting raptors on a 1,072 km² (414 mi²) study area of the Pawnee National Grasslands in northeastern Colorado during 1970–1972. Habitat of the study area was made up of 6.5 percent cultivated land; the remainder was native grassland. Nesting success among ferruginous hawks was 69.8 percent among 53 nests during the study.

Stalmaster et al. (1991) studied nesting ferruginous hawks in a 743 km² (287 mi²) area in northwest Colorado and northeast Utah from 1981 to 1988. Desert cottontails and white-tailed prairie dogs were the principal food items (94 percent of biomass). Prey declined more than 97 percent from 1983 to 1986. In response, hawks occupied fewer territories, produced fewer young, and increased the diversity of their diets. Nest failures increased from 25 percent in 1983 to 74 percent in 1986. Hawk reproduction increased in 1987 and 1988 once prey density increased. Whereas abundant food supplies often attract new individuals to a breeding area (Smith and Murphy 1978), the authors believed that given the nomadic tendency of ferruginous hawks, eruptions of prey populations in one area may buffer the effects of food deprivations in other areas.

Leslie (1990) revisited Olendorff's (1976) study area on the Pawnee National Grasslands and compared 1990 data with that collected by Olendorff in 1972. Although populations of other raptors increased from 109 to 200 percent, ferruginous hawk populations decreased by 38.5 percent, from 26 pairs in 1972 to 16 pairs in 1990.

Idaho

The population in 1979 was estimated at 200–250 pairs (Call, unpub. data). Petitioners estimated 72 pairs in 1991. Dr. Mark Bechard, Raptor Research Center, Boise State University (pers. comm., 1992), stated that the minimum population in Idaho was 100 breeding pairs.

Kochert et al. (1986) studied ferruginous hawk reproduction on a 978 km² (377 mi²) study area of the Snake River Birds of Prey Area from 1976 to 1980, and again in 1985. During the study a maximum of 23 and a minimum of 13 territories were occupied in a single year. The proportion of traditional territories occupied each year ranged from 50 to 82 percent. Prey abundance did not appear to influence occupancy rates or the frequency with which particular nesting territories were occupied. Their data indicated that ferruginous hawks on the study area tended to occupy territories intermittently for short durations. Thurow et al. (1980) reported similar observations for ferruginous hawks in southern Idaho, with 39 percent of their territories being occupied at intermittent intervals for 7 to 9 years.

Howard (1975) studied nesting ferruginous hawks in the Curlew and Raft River Valleys of Idaho and Utah during 1972 to 1973, finding 42 and 54 pairs those years. Northern pocket gophers made up 57.4 percent of the prey items in the crested wheatgrass community. Howard believed that the total number of young ferruginous hawks produced per year may be related to jack rabbit densities.

Kansas

The population was estimated at 25–50 pairs in 1979 (Call, unpub. data). The petitioner estimated 35–50 pairs in 1991. Mr. Stanley Roth, the principal ferruginous hawk researcher in Kansas (Lawrence High School, Lawrence, Kansas), estimates 50–100 pairs in 1992 (pers. comm., 1992).

Roth and Marzluff (1989) studied the ecology of ferruginous hawks in an eight-county area of the upper reaches of the Smokey Hill River in northwestern Kansas from 1979 through 1987. They found 100 nesting areas and 181 different active nests in their study. On the average, 38 nest sites were active each year. Activity declined through 1985, but increased again in 1986 and 1987. Prairie dogs are a major prey item for ferruginous hawks in western Kansas. Prairie dog towns are abundant in western Kansas, and the infrequent occurrence of ferruginous hawk nests further than 8 km (5 mi) from prairie dog towns, which Roth and Marzluff (1989) observed, may reflect a behavioral response to prey abundance by the hawks placing nests near their prey source.

Montana

The population was estimated at 175–250 pairs in 1979 (Call, unpub. data). The petitioner estimated 190–450 pairs in 1991. However, several authors suggest that the population of ferruginous hawks in Montana appears to be stable or declining slowly (Ensign 1983, DuBois and Becker 1987, Harmata 1991).

Myers (1987) evaluated ferruginous hawks nesting on a 417 km² (161 mi²) intensive study area in southwestern Montana during 1985 and 1986. Myers found 316 nests in an estimated 97 nesting territories. Ferruginous hawks in southwestern Montana appear to be more productive than those in eastern Montana, with 1.45 to 1.85 young fledged per occupied nest, compared to 0.3 to 0.38 young fledged per nest in eastern Montana. Ensign (1983) studied ferruginous hawks on 492 km² (190 mi²) of public land in southeastern Montana during 1981 and 1982. Ninety-one nests were located during the study representing an estimated 95 percent of all nests present in the study area. Ensign believed that the present status of breeding populations of ferruginous hawks in Montana is uncertain. Nesting concentrations occur in the extreme southwest (Myers 1987) in Beaverhead County, and in the extreme southeast in Carter County. In addition, scattered nesting has been reported in the northern tier of counties east of Havre.

Nebraska

The population was estimated at 25 pairs in 1979 (Call, unpub. data). The petitioner estimated 35 pairs in 1991.

Nevada

The population was estimated at 350–450 pairs in 1979 (Call, unpub. data). The petitioner estimated 240 pairs in 1991.

Few long-term studies of ferruginous hawks nesting have been conducted in Nevada. Neel et al. (1989) reported that 66 occupied nesting territories were extant on the Egan Resource Area in 1982. Bradley et al. (1991) reported that the number of occupied nests on the Egan Resource Area had declined to 34 in 1991.

New Mexico

The population was estimated at 10 pairs in 1979 (Call, unpub. data). The petitioner estimated 22 pairs in 1991. The literature indicates a minimum population of 35 pairs.

Ligon (1961) reported this species as nesting "sparingly" throughout New Mexico. Ramakka and Woyewodzic (1991) studied ferruginous hawks on a 161,900 ha (400,000 ac) belt about 16 km (10 mi) wide between Farmington and Cuba, New Mexico. Subsequent monitoring and inventory efforts expanded the study area to 550,400 ha (1,359,500 ac). They found 72 ferruginous hawk nests by the end of 1988. Based on their observations of nest use in successive seasons, they believed that the nests represent a minimum of 35 different nesting territories.

North Dakota

The population was estimated at 350–450 pairs in 1979 (Call, unpub. data). The petitioner estimated 200 pairs in 1991.

Gaines (1985) studied birds in 1983 and 1984 in Kidder and Stutsman Counties on a 1,259 km² (486 mi²) study area.

Seventy-five occupied ferruginous hawk nests were located in 1983 and 79 nests in 1984. These numbers were similar to those found by Gilmer and Stewart (1983) during 1977 to 1979. Nesting success for 1983 to 1984 was 62.1 percent, which was lower than 71.1 percent in 1977 to 1979. An average of 1.6 young fledged per occupied nest during the 2 years. Gaines reported that many ferruginous hawks were using his study area and that there is much grassland habitat relative to other biogeographic regions. Not far to the east in the Red River Valley, both ferruginous hawks and grasslands are essentially absent, and the predominant land use is cropland.

Oklahoma

The population was estimated at 10–20 pairs in 1979 (Call, unpub. data). The petitioner estimated 20–33 pairs in 1991.

Oregon

The population was estimated at 125–150 pairs in 1979 (Call, unpub. data). The petitioner estimated 200 pairs in 1991. The literature indicates a minimum population of 250 pairs.

Lardy (1980) located 32 ferruginous hawk pairs on the 312 km² (120 mi²) North Harper Study area. Lardy also surveyed Oregon wildlife biologists and determined that 100 active ferruginous hawk nests had been identified in Oregon. Based on these numbers, Oregon wildlife biologists estimated that there are about 250 pairs in the State. Specifically, the population was estimated at: Gilliam County—2 pairs, Morrow County—10 pairs, Umatilla County—5 pairs, Union County—0 pairs, Wallowa County—25 pairs (55 estimated), Grant County—0 pairs; Baker County—2 pairs, Harney County—13 pairs (100 estimated), and Malheur County—36 pairs (50 estimated). Henjum (1987) inventoried nesting raptor populations in Union and Baker Counties, finding zero ferruginous hawk pairs in Union County, but 33 pairs in Baker County. This is an increase of 31 pairs over Lardy's (1980) count.

South Dakota

The population was estimated at 350–375 pairs in 1979 (Call, unpub. data). The petitioner estimated 400 pairs in 1991.

Few long-term or short-term studies of ferruginous hawks have been conducted in South Dakota. Blair and Schitoskey (1982) studied ferruginous hawks on a 7,000 km² (2,703 mi²) area in northwestern South Dakota, including all of Harding County in 1976 and 1977. They found 24 pairs in 1976 and 17 pairs in 1977. The density of ferruginous hawks on their study area was lower than that found in other areas of the Dakotas.

Texas

The population was estimated at 5–10 pairs in 1979 (Call, unpub. data). The petitioner estimated zero pairs in 1991.

Schmutz (1987a) studied the winter ecology and survival of ferruginous hawks in an 11-county area of northwestern Texas. Ferruginous hawks were the most abundant raptor with an estimated 2,464 individuals present. Based on sightings of 2 banded individuals and 47 unbanded, the total grassland population of individuals and 47 unbanded, the total grassland population of ferruginous hawks east of the Rocky Mountains contained 14,000 individuals. The distribution of ferruginous hawks in the study area in relation to land use suggested that patches of grassland supporting prairie dogs intermixed with extensive cultivation attracted many ferruginous hawks. Schmutz (1987a) reported that the distribution of ferruginous hawks in the study area in relation to land use suggests that agricultural practices and extensive human activity had no negative effect on this hawk during the winter period.

Utah

The population was estimated at 200–225 pairs in 1979 (Call, unpub. data). The petitioner estimated 190–300 pairs in 1991.

Woffinden and Murphy (1989) conducted the most extensive long-term study of ferruginous hawks in the literature. Their study area included 238 km² (92 mi²) of a 932 km² (360 mi²) area in parts of Cedar, Rush, Skull, and Dugway Valleys in west-central Utah. In 1967, 13 nesting pairs fledged 8 young ferruginous hawks. The following year 14 pairs produced 28 young. Production remained high through 1972 when 31 young were fledged from 16 occupied territories. Then ferruginous hawk reproductive effort declined sharply with a drop in prey numbers. Wagner and Stoddardt (1972) suggested that jack rabbit populations were cyclic with peak numbers occurring every 7–10 years. Jack rabbit populations in Woffinden and Murphy's study area declined again prior to the 1984 season when another intensive search was conducted. No hawks were observed in the area during the 1986 nesting season. One prey species, the black-tailed jack rabbit, normally made up about 95 percent of the ferruginous hawk prey biomass (Smith and Murphy 1973). Even though jack rabbit population in Cedar Valley peaked during the 1980 nesting season, an expected increase in ferruginous hawk numbers did not occur. Thus, members of this local population failed to respond positively to increasing prey numbers, and the ferruginous hawk may currently be extirpated from the area as a nesting species. Even though the ferruginous hawk population appeared to be on the increase during the early part of the study, the demise of the population may be explained by the interaction of low production and estimated mortality rates. The authors suspect that extinction was influenced by high mortality rates and habitat alteration. Circumstantial evidence suggests that some individuals may also have left the study area in response to low prey densities.

Washington

The population was estimated at 30–40 pairs in 1979 (Call, unpub. data). The petitioner estimated 63 pairs in 1991. The Washington Department of Wildlife estimated 62 nesting pairs in 1987.

The first comprehensive study of the ferruginous hawk in Washington was conducted by Bowles and Decker (1931), who described nests, clutch sizes, food habits, interspecific relations, and habitat use. Since that time, the lands of eastern Washington have undergone tremendous change, resulting from intensive dryland wheat farming, irrigation, water development, and urban sprawl (Fitzner et al. 1977). Fitzner et al. (1977) studied ferruginous hawks in a 38,848 km² (15,000 mi²) area including 12 counties in southeastern Washington. They found 31 nest sites. In 1974, 23 nest sites were located, of which 9 were active. A survey of the available nesting habitat revealed that no fewer than 15, and perhaps 20 pairs, of adult birds bred in the State. Of these, 12 or 13 pairs will likely produce young each year.

The ferruginous hawk is listed by the State of Washington as a threatened species because its occurrence level is low. However, the margin of the species' normal range only extends into eastern

Washington; therefore, numbers are not expected to be high. The last Statewide survey, conducted in 1987, totaled 62 nesting pairs after searching 103 historic territories. To date, those territories seem to be secure without a major threat of destruction or disturbance. The Washington Department of Wildlife is planning another comprehensive population survey in 1992.

Wyoming

The population was estimated at 400–600 pairs in 1979 (Call, unpub. data). The petitioner estimated 800 pairs in 1991. Quantified information is lacking on the historical population status of ferruginous hawks in Wyoming. McCreary (1939) indicated that the species was common and widespread. The current breeding distribution of the ferruginous hawk is Statewide in Wyoming, excluding the mountainous areas. Raptor surveys and incidental reports have revealed 483 nesting locations in Wyoming (Oakleaf 1986). Estimates by degree of latitude and longitude (latilongs) indicate that the Statewide population certainly exceeds 800 nesting pairs (Oakleaf 1986). The widespread distribution and abundance of the ferruginous hawk tends to place this species at a lower priority for attention from the Wyoming Game and Fish Department's nongame program (Oakleaf 1985).

Canada

Based on evidence of a 50 percent reduction in the breeding range of the ferruginous hawk in Canada, the Committee on the Status of Endangered Wildlife in Canada assigned "threatened" status to this species in 1980 (Schmutz 1989). An attempt is being made in Canada in 1992 to downlist the ferruginous hawk from threatened to rare because of the increasing population size (W. Harris, Saskatchewan Provincial Wildlife Agency, pers. comm., 1992).

The population was estimated at 500–700 pairs in 1979 (Call, unpub. data). The petitioner estimated 500–1,000 pairs in 1991. Schmutz (1989) reported 1,772 pairs in Alberta in 1987. Smith (1987) estimated a minimum population of 170 nesting pairs in Saskatchewan. W. Harris (pers. comm., 1992) stated that the minimum breeding population in Saskatchewan in 1991 was 500 breeding pairs and may be closer to 750 pairs. DeSmet and Conrad (1991) reported an estimated population of 50 pairs in Manitoba. These estimates provide a minimum population of 2,322–2,572 pairs in Canada.

Manitoba

Ferruginous hawks were probably never widely distributed in historic times. In 1984, Ratcliff and Murray (1984) located a ferruginous hawk nest in southwestern Manitoba, the first known nest record in the province in 57 years. During 1987, 11 nests were found in the extreme southwest from Broomhill to Lyleton. Ferruginous hawks were observed in 23 other townships north to St. Lazare and east to Ninga. During 1988, 32 nests were found north to Lenore and Rivers, and east to Shilo, Treesbank, and Hilton. Adults were also observed in 17 other townships during the breeding season north to St. Lazare, and east to Oak Hammock Marsh north of Winnipeg. Whether or not ferruginous hawk populations have expanded in Manitoba during the 1980's is open to speculation (DeSmet and Conrad 1991).

Saskatchewan

Macoun and Macoun (1909) reported that on their westward travel in 1906, they noted ferruginous hawks "regularly and commonly" between Yorkton and Edmonton. Houston and Bechard (1984) provided a detailed account of the breeding distribution and its retraction over time. Currently ferruginous hawks are reasonably abundant in an L-shaped area including 20 percent of their former range, bordering Alberta and Montana. W. Harris (unpubl. data) recorded a steady increase from 13 nests in 1980 to 20 nests in 1988 on a 400 km ^{2} (155 mi ^{2}) area in extreme southwestern Saskatchewan. In Saskatchewan as well as Alberta, the northern areas of the ferruginous hawks' historic range that have been vacated by the species have been invaded by aspen stands from the aspen parkland to the north (Houston and Bechard 1984).

Alberta

Schmutz (1987b) searched for ferruginous hawks on 76 study plots in 1982 and 83 plots in 1987. The number of ferruginous hawks recorded was 45 in 1982 and 78 in 1987; a 69 percent increase. An estimate by Schmutz (1991) suggested that 1,772 pairs of ferruginous hawks nested in the study area in 1987; about 700 more than in 1982. Ninety-five percent confidence intervals were 653–1,511 pairs in 1982; 1,283 to 2,261 pairs in 1987. The results of this work suggest that ferruginous hawks now nest more abundantly and more widely in southeastern Alberta than they did 5 years ago.

Winter Range

Warkentin and James (1988) examined data from the annual Christmas Bird Count to assess changes in the distribution and abundance of the ferruginous hawk across its wintering range from 1952 to 1984. A significant increase in numbers occurred over this period; most pronounced over the last 11 years. By combining all regions to create a yearly mean of hawks per 1,000 miles covered, it was found that over the 33-year period there has been a highly significant increase in the number of ferruginous hawks recorded on Christmas Bird Counts.

Considering only the first 24 years of data, there was no significant change in the population recorded on the counts. Data from 1984 were analyzed to assess the impact of recently added counts on the rapid increase in the number of ferruginous hawks seen, beginning about 1974. The mean number of hawks seen on all counts added since 1974 and included in the 1984 count was not significantly different from the mean of those counts in 1984 from locations which had also been a part of the 1974 count. Much of the increase in numbers can be attributed to changes over the last decade. Of primary interest is the fact that over the last 11 years there has been a dramatic overall increase in ferruginous hawk numbers (Warkentin and James 1988).

The comparison between the mean number of ferruginous hawks seen for the established and more recent counts suggests that this increase is not attributable simply to the inclusion of new areas with disproportionately large numbers of ferruginous hawks. Possible reasons for the increase include: (1) Greater awareness of raptor conservation, (2) greater awareness of researchers concerning sensitivity for ferruginous hawks to disturbance, and (3) the introduction of artificial nest structures in several areas. The result has been an apparent increase in nesting density and reproductive success, which may also have contributed to increased population levels (Schmutz et al. 1984).

(2) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Service found no information to suggest that the ferruginous hawk population has been hampered by any of the criteria in this factor. The Service is not aware of any commercial or recreational activities that would impact this species, because it is a nongame animal and therefore not hunted.

The Service is further not aware of any extensive collection of ferruginous hawk specimens for scientific or educational purposes.

(3) Disease or Predation

The Service is aware of only one instance of ferruginous hawk mortality from disease. Cooper and Pugsley (1984) diagnosed a malignant mesothelioma (tumor) in a 4-year old female ferruginous hawk that had been kept in captivity. Several references cited in Olendorff and Fish (1985) describe predation on nestling ferruginous hawks. However, no widespread problem with predation is known throughout the species' range.

(4) The Inadequacy of Existing Regulatory Mechanisms

The ferruginous hawk currently receives Federal protection through the Migratory Bird Treaty Act (16 U.S.C. 703–712) Treaty Act). The Treaty Act protection extends to the bird, its nest, eggs, or any parts thereof. Further, the Bureau of Land Management has made significant strides in ferruginous hawk management, particularly under the authority of the Federal Land Policy and Management Act of 1976 (Management Act). The principal management responsibility of the Bureau of Land Management, in relation to wildlife, concerns habitat (Olendorff et al. 1989). The Management Act formalizes the principles of multiple use and sustained yield as Bureau of Land Management missions. The Bureau of Land Management has developed and implemented several intensive habitat management efforts for ferruginous hawk with the Management Act as its authority (Olendorff et al. 1989).

(5) Other Natural or Manmade Factors Affecting its Continued Existence

No such factors were identified or recognized at this time.

Summary

The foregoing discussion indicates that the ferruginous hawk is highly variable in its annual population levels. Much of this variability may be due to fluctuations in the prey species on which the hawk feeds. Habitat alteration may also play an important role in short-term date that are available, however, indicate that the continental population of ferruginous hawks, at least at the moment, appears to have increased over the last 13 years. Circumstantial evidence suggests further that the species is currently adapting positively to various management techniques designed to enhance its population, not least of which is the establishment of artificial nest structures. After review of the petition, accompanying documentation, references cited therein, and other information obtained, the Service found that the petition presented information insufficient to conclude that the requested action may be warranted.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Grand Island, Nebraska, Field Office, See **ADDRESSES** above.

Author

This notice was prepared by Mr. Craig A. Faanes (see **ADDRESSES** above).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, and Transportation.

Dated: August 6, 1992.

Richard N. Smith,

Acting Director, Fish and wildlife Service.

[FR Doc. 92–19657 Filed 8–18–92; 8:45 am]

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Findings and Commencement of Status Reviews for Three Petitions to List Four Species as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day findings on pending petitions to add four species to the Lists of Endangered and Threatened Wildlife and Plants. Three petitions to list four species have been found to present substantial information indicating that the requested actions may be warranted.

DATES: The findings announced in this notice were made on November 27, 1991, for the San Francisco lessingia and Mission Delores campion; February 27, 1992, for the Vail Lake ceanothus; and August 7, 1991, for the Mount Hermon June beetle. Comments and materials related to these petition findings may be submitted to the appropriate Field Supervisor at the addresses given below until further notice.

ADDRESSES: Data, information, comments, or questions concerning the status of the petitioned species described below should be submitted to the Field Supervisor at the following addresses: U.S. Fish and Wildlife Service, Ventura Field Office, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (Vail Lake ceanothus and Mount Hermon June beetle); or U.S. Fish Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803 & 1823, Sacramento, California 95825 (San Francisco Lessingia and Mission Delores campion). The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above **ADDRESSES.**

FOR FURTHER INFORMATION CONTACT: Steve Chambers, Office Supervisor, at the above Ventura address (telephone 805/644–1766); or Wayne White, Field Supervisor, at the above Sacramento address (telephone 916/978–4866).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published in the **Federal Register.** If the Service finds that a petition presents substantial information indicating that a requested action may be warranted, then the Service initiates a status review on that species. The Service announces positive 90-day findings on three petitions to list four species as endangered. The Service has, therefore, initiated formal status reviews on three plants: *Lessingia germanorum* var. *germanorum* (San Francisco lessingia), *Silene verecunda* ssp. *verecunda* (Mission Dolores campion), and *Ceanothus ophiochilus* (Vail Lake ceanothus); and the Mount Harmon June beetle (*Polyphylla barbata*). Section 4(b)(3)(B) of the Act requires the Service to make a finding as to whether or not the petitioned actions are warranted, not warranted, or warranted but precluded by higher priority listing actions, within 1 year of the receipt of a petition that presents substantial information.

The Service has determined that the following petitions present substantial information that the requested actions may be warranted.

On May 29, 1991, the Service received a petition to emergency list five candidate plants; the Persidio clarkia (*Clarkia franciscana*), Marin dwarf-flax

(*Hesperolinon congestum*), San Francisco lessingia (*Lessingia germanorum* var. *germanorum*), San Francisco Owl's-clover (*Orthocarpus floribundus*), and Mission Delores campion (*Silene verecunda* ssp. *verecunda*) as endangered. Mr. Brian O'Neill, General Superintendent of the Golden Gate National Recreation Area, submitted the petition dated May 28, 1991.

The petitioner stated that the five plants, which occur on the Presidio of San Francisco, California, are threatened by base closure activities on the Presidio. This "increasing activity" will occur until 1995 when the transition is complete from the Department of Defense, United States Army, to the Department of the Interior, National Park Service. Examples of transition threats cited in the petition were hazardous or toxic waste site studies and clean-up, and increased traffic and recreational activities.

Pursuant to section 12 of the Act, *Clarkia franciscana*, *Hesperolinon congestum*, and *Orthocarpus floribundus* were among 3,187 taxa included in a Smithsonian Institution report of plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document 94–51, was presented to Congress on January 9, 1975. On July 1, 1975 (40 FR 27823), the Service published a notice in the **Federal Register** accepting the House document as a petition within the context of section 4(b)(3) of the Act. As a result of this pending petition, the Service has found annually in October since 1983 that the petitioned listing of *Clarkia franciscana*, *Hesperolinon congestum*, and *Orthocarpus floribundus*, among the other taxa included in the Smithsonian report, is warranted but precluded due to other higher priority listing actions pursuant to section 4(b)(3)(B)(iii) of the Act. Consequently, the Service has evaluated the petitioner's requested action only for the plants not subject to a pending petition: *Lessingia germanorum* var. *germanorum* and *Silene verecunda* ssp. *verecunda*.

Lessingia germanorum var. *germanorum*, an annual plant in the Asteraceae (sunflower) family, historically was restricted to the coastal dune scrub community on the San Francisco Peninsula. Because of the loss of three historic populations in the city of San Francisco, the variety was believed to be restricted to remnant sandy habitats on the Presidio, San Francisco County, California (Smith and Berg 1988). However, Elizabeth McClintock and Paul Reeberg discovered a population west of Reservoir Hill on San Bruno Mountain in San Mateo County in 1989.

A field review of the Presidio population in June 1989 by representatives of the Army and California Department of Fish and Game revealed 4 colonies totalling more than 310 plants growing on remnant dune and other sandy deposits. The Presidio population is threatened by sand quarrying activities, trampling by pedestrians, invasive alien vegetation (i.e., weeds, ornamental groundcovers and trees), and activities associated with maintenance of base landscaping (i.e., lawn moving, fertilizing). According to a 1991 update to the rare plants on San Bruno Mountain (Victoria Harris, Thomas Reid Associates, Palo Alto, California, pers. comm., August 14, 1991), surveyors noted in 1990 that 15 percent of this population has been destroyed by bulldozer activity. The San Bruno Mountain population is threatened by urban development, trampling by pedestrians, and competition from non-native plants.

Silene verecunda ssp. *verecunda*, a perennial herb in the Caryophyllaceae (pink) family, ranges from coastal areas in San Francisco south to Santa Cruz in Santa Cruz County. The subspecies occupies open, generally grassy areas in sandy to rocky soils in coastal strand, coastal prairie, and coastal scrub plant communities (Young 1979). According to California Natural Diversity Data Base records, populations of the campion exist on Mount Davidson and the Presidio in San Francisco County; Edgewood County Park, McNea Ranch, Montara Mountain, San Bruno Mountain in San Mateo County; and Arroyo Las Trancas and Swanton in Santa Cruz County. Though the fate of these populations is not well documented, populations at Lake Merced and Mission Delores are reportedly extinct (Young 1979).

The Presidio population, which occurs on the dunes above Baker Beach, consisted of only seven plants in 1985. The San Bruno Mountain population, which grows in the rocky habitat on the south side of the Southeast Ridge, may be threatened by trampling. Though the distributional and threat data seem to be weak, the range of the campion overlaps a rapidly urbanizing portion of the San Francisco Bay area.

Lessingia germanorum var. *germanorum* is included as a category 1 candidate species in the Service's February 21, 1990, Plant Notice of Review (55 FR 6184); *Silene verecunda* ssp. *verecunda* is included as a category 2 candidate species. A category 1 candidate species is a species for which the Service has enough substantial information on biological vulnerability and threats to list them as endangered or threatened; however, these listing actions are precluded by other proposals of higher priority. A category 2 candidate species is a species for which there is some evidence of vulnerability, but for which there are not enough data to support listing proposals at this time.

On September 16, 1991, the Service received a petition from Steve Boyd of Riverside, California, to list Vail Lake ceanothus (*Ceanothus ophiochilus*) as endangered. The petition was dated September 13, 1991.

Vail Lake ceanothus, a perennial shrub in the Rhamnaceae (buckthorn) family, was first discovered in 1989 and has recently been described as a new species (Boyd *et al.* 1991). The plant belongs to the *Cerastes* section of the genus *Ceanothus*, which is distinguished from the section *Euceanothus* by the following morphological characteristics: persistent leathery leaves with stomata in sunken pits; thick, darkly-colored corky stipules; and flowers arranged in axillary umbels. Vail Lake ceanothus is distinguished from other members of the section *Cerastes* by its leaves, which are smaller and narrower, and which have strongly swollen lower surface. The plant is also distinguished from other members of *Cerastes* in southern California in that the flowers are blue to pinkish-lavender rather than the usual white to cream-white. Specimens of Vail Lake ceanothus currently being grown at Rancho Santa Ana Botanic Garden have retained the distinct morphological characteristics observed in the wild, countering the suggestion that the distinctive morphological characteristics were merely a variation induced by edaphic influences.

The petitioner submitted information indicating that the plant occurs on the eastern flank of Oak Mountain near Vail Lake in southwestern Riverside County, within a chaparral community dominated by Vail Lake ceanothus, chamise (*Adenostema fasciculata*), California buckwheat (*Ericogonum fasciculatum*), and black sage (*Salvia mellifera*). The one known population is represented by approximately 3,000 to 5,000 individuals that cover an area of approximately 20 acres. While the genus *Ceanothus* has historically been collected by botanists frequently and is well represented within herbarium collections, specimens of Vail Lake ceanothus have never been collected from any other locale. This taxon is apparently restricted to a rock outcrop that is characterized by its high pyroxenite content and low levels of calcium and available phosphorus. According to Dr. Douglas Morton of the U.S. Geological Survey, the substrate is so unusual it is unlikely to occur elsewhere (Boyd 1991).

The petition states that the population is threatened with habitat alteration and destruction resulting from proposed urban development. The entire range of the plant occurs on a large (7,000 acre) privately-owned parcel that is owned by Devere Anderson Enterprises. The county of Riverside is currently preparing an Environmental Impact Report to address a change in zoning for the Vail Lake Specified Plan. Most of the habitat is currently undisturbed, though up to 3 percent of the population was recently destroyed by road grading.

The plant is also threatened with habitat alteration resulting from fire suppression, which would change succession within the fire-adapted chaparral community of which the ceanothus is a part. Unlike other ceanothus, Vail Lake ceanothus does not crown sprout, but relies on fire to stimulate germination of the seed bank.

On February 11, 1991, the Service received a petition dated February 5, 1991, from Mr. Stephen McCabe, Conservation Chair, Santa Cruz County Chapter, California Native Plant Society, to emergency list the Mount Hermon June beetle (*Polyphylla barbata*) as an endangered species.

The Mount Hermon June beetle, a category 2 candidate species, has only been found in the immediate vicinity of the community of Mount Hermon in Santa Cruz County, California. The beetles of this genus are associated with inland marine sand deposits known as the sandhills. The limited range of the beetle may be due to a combination of factors that include soil preferences and food sources. The petitioner reported that since members of this genus usually require some moisture in the sandy or otherwise loose soil they inhabit, it may be that the beetle is limited to certain areas within the sandhills habitat. Given the known limited distribution of the Mount Hermon June beetle, the local geology, and the typical habitat preferences, it is believed that the beetle is confined to the sandhills ecosystem.

The petitioner stated that the primary factor that threatens the Mount Hermon June beetle is the continued loss of the sandhills habitat by commercial sand mining operations. The prime remaining intact piece of sandhills habitat (the Quail Hollow Quarry) is being mined. Sand mining activities continue on the sandhill habitat at the nearly Olympia Quarry. The long-term plans of the quarry operators are to mine the entire properties. Previous commercial sand mining activities are reported to have eliminated the other adjacent sandhill habitat.

Based on scientific and commercial information contained in the above petitions, referenced in the petitions, and otherwise available to the Service at this time, the Service has determined that the petitions to list *Lessingia germanorum* var. *germanorum* (San Francisco lessingia); *Silene verecunda* ssp. *verecunda* (Mission Delores campion); *Ceanothus ophiochilus* (Vail Lake ceanothus); and the Mount Hermon June beetle (*Polyphylla barbata*) present substantial information that listing may be warranted for these species.

These findings initiate a status review for each of the above species. The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of all four of the species mentioned above.

References Cited

Boyd, S., Ross, T., and L. Arnseth. 1991. *Ceanothus ophiochilus* (Rhamnaceae): A distinctive, narrowly endemic species from Riverside County, California. Phytologia 70(1):28–41.

Boyd, S. 1991. Letter addressed to Mr. Everett McCracken, Jr., President, California Fish and Game Commission, Sacramento.

Smith, J.P., and K. Berg. 1988. Inventory of rare and endangered vascular plants of California. California Native Plant Society Special Publ. No. 1.

Young, P. 1979. *Silene verecundo* Watson ssp. *verecundo*, Delores Campion. California Native Plant Society. Unpublished report.

Author

This notice was prepared by Jim Bartel, Sacramento Field Office (see **ADDRESSES** section); Dennis Carlson and Connie Rutherford, Ventura Field Office (see **ADDRESSES** section); and Elizabeth Sharpe, Portland Regional Office, 911 N.E. 11th Avenue, Portland, Oregon 97232 (503/231–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: July 13, 1992.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–19658 Filed 8–18–92; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Public Meeting and Extending the Public Comment Period on the Selkirk Mountains Woodland Caribou (Rangifer tarandus caribou) Revised Recovery Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meeting and extending time period for public comment.

SUMMARY: The U.S. Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), gives notice that a public meeting will be held on the Revised Selkirk Mountains Woodland Caribou Recovery Plan, and that the comment period has been extended to October 19, 1992. The public meeting and extension of the comment period will allow all interested parties to submit written comments on the proposal. The notice of document availability for the Selkirk Mountains Woodland Caribou Recovery Plan was published on June 10, 1992 (57 FR 24652).

DATES: The comment period on the recovery plan is reopened and extended until October 19, 1992. The public meeting will be held from 2 to 4 p.m. and from 7 to 9 p.m. on September 3, 1992, in Bonners Ferry, Idaho.

ADDRESSES: Persons wishing to review the draft revised recovery plan may obtain a copy by contacting the Assistant Regional Director, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 or 503/231–6131. The public meeting will be held at the old Bonners Ferry High School auditorium located on Oak Street in Bonners Ferry, Idaho. Written comments and materials concerning the recovery plan should be sent to the above address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Charles H. Lobdell, Boise Field Office, 4696 Overland Road, room 576, Boise, Idaho at 208/334–1931.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service prepares recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act) requires the development of recovery plans for listed species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of such new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The Selkirk Mountains woodland caribou lives in old growth forest types above 4,000 feet elevation in the Selkirk Mountains of northern Idaho and northwestern Washington. The species faces extinction due to human caused mortality and habitat deterioration. The woodland caribou, which weighs 200 to 400 pounds, is not quite 4-feet tall at the shoulder, and is the only member of the deer family able to travel when snow reaches the depth it does in the Selkirks. Large hooves and long dewclaws aid stability where footing is treacherous. These natural snowshoes keep caribou from sinking into all but the loosest snow. To survive, caribou have evolved behaviors, such as staying in dense cedar-hemlock stands during early winter where the forest canopy slows the accumulation of deep snow and some green browse is available. Later in the season, as the snow hardens and supports their weight, caribou leave the lower elevation forests for open ridges above. There they walk on top of the snow to reach arboreal lichen (old men's beard) hanging from tree branches high above the forest floor. They have, over time, come to depend on this mossy-looking plant for food to get through the winter.

The revised recovery plan resulted from a year-long effort by scientists from State and Federal agencies and the University of Idaho. It calls for reducing human-caused mortality by preventing poaching and misidentification by hunters; and maintaining habitat by reducing fire and insect impacts to forest habitat and through better management of timber harvesting. Once finished, the plan will guide the actions of all Federal and State agencies whose actions affect the conservation of this species. The ultimate goal is to restore the species to a secure status in its native ecosystem.

The Service has scheduled a public meeting to present information and receive comments on the revised recovery plan on the Selkirk Mountains woodland caribou on September 3, 1992, from 2 to 4 p.m. and from 7 to 9 p.m. at the old Bonners Ferry High School auditorium located on Oak Street in Bonners Ferry, Idaho. Parties wishing to make a statement should bring a written copy of their statement to the meeting. Oral questions and statements will be accepted, but may be limited in length if the number of parties present at the meeting necessitates such a limitation. There are, however, no limits to the length of written comments which may be presented at the public meeting or mailed to the Service. Written comments should be submitted to the Service on or before October 19, 1992, to the **ADDRESSES** given above.

Author

The primary author of this notice is Mr. Richard P. Howard, U.S. Fish and Wildlife Service, Boise Field Office, 7696 Overland Rd., room 576, Boise, Idaho 83705.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 10, 1992.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 92-19659 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 57, No. 161

Wednesday, August 19, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Region; Exemption From Appeal of the Decision to Control Southern Pine Beetle in Indian Mounds Wilderness

AGENCY: Forsest Service, USDA.

ACTION: Notice: exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the decision to suppress southern pine beetle infestations within Indian Mounds Wilderness, Sabine National Forest, Texas during the current outbreak when they are threatening pine forests on adjacent private lands.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Wesley A. Nettleton, Group Leader, Entomology, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347-2961.

SUPPLEMENTARY INFORMATION: The Forest Stewardship Act of 1990 authorizes the protection of federally-owned forest lands from insects and diseases. The 1964 Wilderness Act in section 4(d)(1), states; "In addition, such measures may be taken as may be necessary in the control of fire, insects, and diseases, subject to such conditions as the Secretary deems desirable." Further, the April 6, 1987, Record of Decision, USDA Forest Service, Suppression of the Southern Pine Beetle (SPB) for Final Environmental Impact Statement stated that control of individual SPB infestation will not be conducted unless site specific analysis, including a biological evaluation of the individual infestation, indicates that the spot(s): "Occur within ¼ mile of susceptible host type on State and private land or high-value Federal forest resources other than commercial timber". The SPB spots will normally be allowed to run their natural course in this wilderness. Before any control action is taken, a site-specific environmental analysis must be completed and affected and interested publics informed about potential control-related activities. If landowners are not taking vigorous control efforts to reasonably protect themselves from SPB infestations occurring on their land, no action would be taken to protect them from infestations in wilderness.

SPB spots have crossed the wilderness boundary this year and others are active within the wilderness and within ¼ mile of susceptible host pine forests on private commercial forests and residential subdivisions. Due to the current major SPB outbreak within Indian Mounds Wilderness, an analysis is currently underway on a proposed action to suppress the SPB infestations that are predicted to cross the wilderness boundary onto private lands where owners show evidence of actively managing their land to suppress SPB infestations, or are maintaining a high degree of forest health. The analysis includes control methods identified in the selected alternative in the Record of Decision for SPB-FEIS, and it will also include the use of behavioral chemicals that have been proven effective in local experimental work by the Texas Forest Service. The environmental document being prepared will disclose the effects of the proposed action on the environment, document public involvement, and address the issues raised by the public. Given the existing rapid expansion of infestations, time for action is critical. Any additional delay will result in further loss to presently undamaged timber resources on private lands.

Dated: August 14, 1992.

Marvin C. Meier,

Deputy Regional Forester.

[FR Doc. 92-19860 Filed 8-17-92; 11:47 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Changes in Hydric Soils of the United States

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of change.

SUMMARY: Pursuant to 7 CFR 12.31(a)(3)(i), the Soil Conservation Service, United States Department of Agriculture gives notice of a change in the Hydric Soils of the United States as listed in the third edition of the Hydric Soils of the United States, Miscellaneous Publication 1491, U.S. Department of Agriculture, Soil Conservation Service, June 1991.

FOR FURTHER INFORMATION CONTACT: Maurice J. Mausbach, National Leader, Technical Soil Services, Soil Survey Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013-2890, telephone (202) 720-1812.

SUPPLEMENTARY INFORMATION: The third edition of the Hydric Soils of the United States was published June 1991, and a notice of change published in the Federal Register, October 11, 1991, vol. 56, no. 198, page 51371. The changes published herein reflect soils added and deleted since the 1991 publication.

The national list of hydric soils changes as additional soil series are recognized and defined and/or properties of existing soil series are updated based on additional data. These changes reflect refinements in knowledge of the soils of the United States. New soil series are recognized as soils are mapped in previously unmapped areas. These new series have always met hydric soil criteria, whether recognized as series or not, and thus represent an insignificant change in acreage of hydric soils. Soils that are removed from the list are mostly dry phases of existing hydric soils. These dry phases would not have met wetland hydrology criteria, thus represent an insignificant change in acreage of wetlands.

The list of hydric soils is computer generated using the hydric soil criteria and a database of properties of each soil series of the United States. The database is also used to generate interpretations of how soils perform for many land uses. Therefore, some changes in the list of hydric soils result from adding phases for a hydric soil to refine another interpretation. This split of addition of a hydric phase causes an increase in the number of hydric soils, but does not affect the acres of the hydric soil. Data for all soil series are in the Soil Interpretations Record and may

be reviewed by contacting a local office of the Soil Conservation Service in the appropriate state.

Dated: August 6, 1992.

Thomas Calhoun,

Acting Director, Soil Survey Division.

Soils on the October 91 Hydric List, But Not on the January 92 Hydric List

[The "Hydric Criteria Number" Column Indicates What Caused the Soil To Be Included in the Hydric List. See the "Criteria for Hydric Soils" To Determine the Meaning of This Column]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Altoona (WI0263) [4]											
Bivans (FL0378) Typic Albaqualfs.	Hyper thermic.	SP	1.01–1.5	Jun-Sep	>6.0	None				0–5%	3W
										5–8%	4W
										8–12%	6W
										All	3W
Boulogne (FL0498) Typic Haplaquods.	Thermic	P	0.5–1.5	Mar-Sep	>6.0	None				All	4W
Chaires (FL0251) Alfic Haplaquods.	Thermic	P	0.5–1.5	Mar-Sep	>=6.0	None					
Flemington (FL0017) Typic Albaqualfs.	Hyper thermic.	SP	1.0–1.5	Jun-Sep	>6.0	None				0–5%	3W
										5–8%	4W
										8–12%	6W
Fredon (NJ0038) Aeric Haplaquepts.	Mesic	SP	0.5–1.5	Oct-Jun	>6.0	None—Occasional.	Brief	Jan-Apr		0–3%	3W
										3–8%	3W
Gansner, Ponded (CA 1438) [4].											
Lynne (FL0009) Ultic Haplaquods.	Hyper thermic.	P	0.5–1.5	Jul-Sep	>=6.0	None				All	3W
Oakhurst (TX0896) Vertic Albaqualfs.	Thermic	MW	6.0		6.0	None				1–3%	3E
										3–5%	4E
										5–8%	6E
										All	3W
Olustee (FL0048) Ultic Haplaquods.	Thermic	P	0.5–1.5	Mar-Sep	>6.0	None					
Pledger (TX0304) Typic Pelluderts.	Thermic	MW	>6.0		>6.0	Rare—Common	Brief	Jan-Dec		Rare	2W
										Freq	5W
										Occa	2W
Prebish, Stony (MN0563) [4].											
Ravendale (CA1027) Entic Chromoxererts.	Mesic	MW	>6.0		>6.0	Rare—Occasional.	Brief—Long.	Jan-Apr		0–2%	6S
										All	4W
Saugatuck (MI0045) Aeric Haplaquods.	Mesic	SP	0.5–2.0	Nov-May	>6.0	None					
										All	4W
Talquin (FL0248) Entic Haplaquods.	Thermic	P	0.5–1.5	Mar-Sep	>=6.0	None					
Waldron, Loamy Substratum (MO0213) Aeric Fluvaquents.	Mesic	SP	1.0–3.0	Nov-May	>6.0	Rare—Occasional.	Brief—Long.	Dec-May		All	2W

[1] Some soil interpretation records representing phases of this series are not hydric.
[2] Some phases of this soil are not frequently flooded of long duration.
[3] Some drainage classes for this soil are not hydric.
[4] This soil record has been removed from the database since it last appeared in the hydric list.

Soils on the January 1992 Hydric List, But Not on the October 1991 Hydric List [The "Hydric Criteria Number" Column Indicates What Caused the Soil To Be Included in the Hydric List. See the "Criteria for Hydric Soils" To Determine the Meaning of This Column]

[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Albaton, Dry (IA0107) Vertic Fluvaquents.	Mesic	VP	+4.–2.0	Nov-Jul	<6.0	Frequent	Brief	Mar-Oct	2B3,3	All	6W
Alvodest, Somewhat Poorly Drained (OR1467) Natric Camborthids [1].	Mesic	SP	+.5–3.0	Dec-Apr	<6.0	Rare			3	All	7W
Anan (AK0362) Typic Cryaquents.	Cryic	VP, P	0.5–1.0	Jan-Dec	<6.0	Frequent	Long	Jul-Nov	2B3,4	0–2%	6W
Auganaush (MN0635) Mollic Ochraqualfs.	Frigid	P	1.0–3.0	Nov-Jun	<6.0	None			2B3	Drained	2W
										Undrained	4W

Soils on the January 1992 Hydric List, But Not on the October 1991 Hydric List [The "Hydric Criteria Number" Column Indicates What Caused the Soil To Be Included in the Hydric List. See the "Criteria for Hydric Soils" To Determine the Meaning of This Column]—Continued

[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Balize, Drained (LA0195) Typic Hydraquents.	Thermic	P	0.5–1.5	Jan-Dec	<6.0	Rare			2B3	All	4W
Bardwell, Winter Flooding (KY0192) Fluventic Hapludolls [2].	Thermic	W	3.0–6.0	Feb-Mar	<6.0	Frequent	Long	Dec-May	4	0–6%	3W
										6–12%	2E
										12–20%	4E
										20–25%	6E
Bayvi, Limestone Substratum (FL0563) Cumulic Haplaquolls.	Thermic	VP	0–1.0	Jan-Dec	<6.0	Frequent	V Brief	Jan-Dec	2B3	All	8W
Bear Lake, Very Poorly Drained (ID1699) Typic Calciaquolls.	Frigid	VP	+2–1.0	Dec-Aug	<6.0	Frequent	V Long	Dec-Sep	2B3,3,4	0–1%	5W
Bellslake (ID6023) Fluvaquentic Humaquepts.	Frigid	VP	+1.–1.5	Oct-Aug	<6.0	Frequent	V Long	Dec-Jun	2B3,4,4	All	5W
Bemis, Stony (ME0139) Aeric Cryaquepts.	Cryic	P	0–1.0	Sep-Jun	<6.0	None			2B3	All	7S
Berner (MN0628) Terric Borosaprists.	Frigid	VP	+1.–2.0	Nov-Jun	<6.0	None			1	Drained	4W
										Undrained	6W
Bigseg (MT1077) Typic Halaquepts.	Frigid	P	1.0–3.0	Dec-Jun	<6.0	Rare-Occasional.	Brief-Long	Mar-May	2B3	Rare	7W
										Occas	7W
Bigsandy, Saline (MT1335) Typic Fluvaquents.	Frigid	P	1.0–2.0	Dec-Jun	<6.0	Occasional	Long	Apr-Jun	2B3	All	7W
Boley (OK0362) Aeric Fluvaquents.	Thermic	P	0–1.0	Nov-Jun	<6.0	Frequent	V Brief-Brief.	Apr-Sep	2B3	All	5W
Borah (ID1639) Aquic Calcixerolls [1].	Frigid	P	1.0–2.0	Apr-Aug	<6.0	Occasional	Brief	Apr-May	2B3	All	5W
Boulder Lake, Poorly Drained (NV2551) Aquic Chromoxererts.	Frigid	P	+.5–1.5	Dec-Jun	<6.0	None			2B3,3	All	6W
Brandsvold (MN0625) Typic Argiaquolls.	Frigid	P	1.0–3.0	Mar-Jun	<6.0	None			2B3	All	2W
Brinnum, Alkali (NV2573) Typic Halaquepts [1].	Mesic	VP	0.5–1.5	Sep-May	<6.0	Occasional	Long	Oct-May	2B3	0–2%	5W
Capitola (WI0423) Mollic Ochraqualfs.	Frigid	P, VP	+1 –1.0	Oct-Jun	<6.0	None			2B3,3	Drained	3W
										Undrained	6W
Cathro, Frequently Flooded (MI0108) Terric Borosaprists.	Frigid	VP	+2–1.0	Jan-Dec	<6.0	Frequent	Brief-V Long.	Mar-May.	1,3	All	6W
Cheniere, Frequently Flooded (LA0202) Typic Udipsamments G5T11,2.	Thermic	SE	>6.0		<6.0	Frequent	Long	Jan-Dec	4	Freq	5W
Chichagof (AK0348) Histic Cryaquepts.	Cryic	VP	0–1.0	Jan-Dec	<6.0	Occasional	V Brief	Oct-Apr	2B3	All	7W
Chunilna (AK0352) Typic Cryaquands.	Cryic	VP	0–1.5	Apr-Sep	<6.0	None			2B3	0–7%	6W
Citypoint (WI0441) Typic Borosaprists.	Frigid	VP	+1–1.0	Nov-Jan	<6.0	None			1	All	7W
Clara (FL0560) Spodic Psammaquents.	Thermic	P	0–1.0	Jan-Dec	>=6.0	None-Common	Brief	Jan-Mar	2B1	None, Rare	4W
										Common	6W
Clara (FL0561) Spodic Psammaquents.	Thermic	VP	+2–0	Jan-Dec	>=6.0	None			2B1, 3	All	6W
Colvin, Occasionally Flooded (ND0417) Typic Calciaquolls.	Frigid	P	0–1.0	Mar-Jun	<6.0	Occasional	Brief	Mar-Jun	2B3	All	3W
Cormant (MN0002) Mollic Psammaquents.	Frigid	P	0.5–2.5	Apr-Jul	>=6.0	None			2B2	All	4W

SOILS ON THE JANUARY 1992 HYDRIC LIST, BUT NOT ON THE OCTOBER 1991 HYDRIC LIST [THE "HYDRIC CRITERIA NUMBER" COLUMN INDICATES WHAT CAUSED THE SOIL TO BE INCLUDED IN THE HYDRIC LIST. SEE THE "CRITERIA FOR HYDRIC SOILS" TO DETERMINE THE MEANING OF THIS COLUMN]—Continued

[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Crestmeade (MO0319) Typic Agrialbolls.	Mesic	P	0.5–1.5	Nov–Apr	<6.0	None			2B3	0–1%	2W
										1–3% Eroded	2E
										1–3% Sev Er	3E
										3–5% Eroded	3E
										3–5% Sev Er	4E
Degarmo, Wet (OR1386) Cumulic Haplaquolls [1].	Frigid	P	1.0–4.0	Mar–Sep	<6.0	Frequent	Brief	Mar–Jun	2B3	All	5W
Dosa (CA2426) Aquic Chromoxererts.	Mesic	SP	+.5–2.5	Dec–Apr	<6.0	None			2A, 3	0–2%	5W
Duckston, Ponded (NC0269) Typic Psammaquents.	Thermic	P	+1.–0	Jan–Dec	>=6.0	None-Common	Brief	Jan–Dec	2B1, 3	All	7W
Edwards, Sandy Substratum (MI0616) Limnic Medisaprists.	Mesic	VP	+1–1.0	Sep–Jun	<6.0	None			1, 3	All	5W
Fredon, Poorly Drained (NJ0138) Aeric Haplaquepts [1].	Mesic	P	0–.5	Oct–Jun	<6.0	None-Occasional.	Brief	Jan–Apr	2B3	0–3% Drained	3W
										Undrained	4W
Frost, Ponded (LA0087) Typic Glossaqualfs.	Thermic	P	+2–0	Jan–Dec	<6.0	Frequent	V Long	Jan–Dec	2B3, 3, 4	All	7W
Granby, Clayey Substratum (MI0623) Typic Haplaquolls.	Mesic	P,VP	+1–1.0	Nov–Jun	>=6.0	None			2B2, 3	Drained	4W
										Undrained	5W
Haslie (MN0629) Limnic Borosaprists.	Frigid	VP	0–1.0	Nov–Jul	<6.0	None			1	Drained	4W
										Undrained	6W
Haslie, Ponded (MN0630) Limnic Borosaprists.	Frigid	VP	+2–0	Jan–Dec	<6.0	None			1,3	All	8W
Herdcamp (SD0498) Typic Haplaquolls.	Mesic	VP	0–1.0	Apr–Oct	<6.0	Frequent	Brief	Mar–Nov.	2B3	All	6W
Hershal, Occasionally Flooded (OR1473) Cumulic Haplaquolls.	Mesic	P	0.5–1.5	Mar–Jun	<6.0	Occasional	Brief	Mar–Jun	2B3	All	3W
Isanti, Depressional (MN0651) Typic Haplaquolls.	Frigid	VP	+1–1.0	Oct–Jun	>=6.0	None			2B2,3	Drained	4W
										Undrained	6W
Jebavy (MI0617) Aeric Haplaquods.	Mesic	P	+–1.0	Oct–Jun	>=6.0	None			2B1,3	Drained	4W
										Undrained	5W
Jebavy, Sandy Surface (MI0633) Aeric Haplaquods.	Mesic	P	+1–1.0	Oct–Jun	>=6.0	None			2B1,3	Drained	5W
										Undrained	5W
Joseph, Occasionally Flooded (WA1926) Aquic Xerofluvents [2]	Mesic	MW	3.0–5.0	Dec–Jun	>=6.0	Frequent	Long	Dec–Jun	4	Freq	6W
Kanona, Poorly Drained (NY0058) Aeric Haplaquepts [1].	Mesic	P	0–0.5	Dec–Jun	<6.0	None			2B3	Undrained	3W
										Drained	3W
Kezan, Overwash (NE0383) Mollic Fluvaquents.	Mesic	P	1.0–3.0	Nov–Jun	<6.0	Common	Brief	Mar–Jul	2B3	Occas	4W
										Channeled, Freq.	5W
Kratka, Stratified Substratum (MN0640) Typic Haplaquolls.	Frigid	P	1.0–5.0	Apr–Jul	<6.0	None			2B3	All	3W
Kratka, Stratified Substratum, Depressional (MN0641) Typic Haplaquolls.	Frigid	VP	+1–1.0	Apr–Jul	<6.0	None			2B3,3	Drained	4W
										Undrained	6W
Lamoose, Calcareous (MT1325) Typic Haplaquolls.	Frigid	P	0.5–2.0	Apr–Jul	<6.0	None–Rare			2B3	0–2%	5W

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[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Lamson, MAAT<50, Mucky Surface (NY0079) Aeric Haplaquepts.	Mesic	P,VP	+1–0.5	Dec–May	<6.0	None			2B3,3	All	5W
Langless (ID1756) Typic Calciaquolls.	Mesic	P	1.0–1.5	Oct–Jun	<6.0	Frequent	V Long	Oct–Jun	2B3,4	0–2%	5W
Leafriver, High PPT (MN0652) Histic Humaquepts.	Frigid	VP	+1–1.0	Nov–Jul	<6.0	None			2B3,3	Undrained	6W
										Drained	4W
Leaksville (NC0118) Typic Albaqualfs.	Thermic	P	0–1.0	Dec–Mar	<6.0	None			2B3	All	3W
Leon, Depressional (FL0501) Aeric Haplaquods.	Thermic	VF	+2–0	Jan–Sep	<6.0	None			2B3,3	All	7W
Leon, Hydric (FL0093) Aeric Haplaquods.	Thermic	P	0–0.5	Feb–Sep	<6.0	None			2B3	All	4W
Leon, Hydric (FL0564) Aeric Haplaquods.	Thermic	P	0–0.5	Jun–Feb	<6.0	None			2B3	All	4W
Limerick, Sandy Substratum (VT0122) Typic Fluvaquents.	Mesic	F	0–1.5	Nov.–May	<6.0	Frequent	Brief	Nov–May	2B3	Drained	3W
										Undrained	4W
Madalin, Gravelly Substratum (NY0518) Mollic Ochraqualfs.	Mesic	P,VP	+.5–0	Nov–Jun	<6.0	None			2B3,3	SICL, SIL, SIC	4W
										MK	5W
Malin, Rarely Flooded (OR1495) Fluvaquentic Haplaquolls.	Mesic	P	+1–4.0	Mar–Jun	<6.0	Rare			2B3,3	All	4W
Marcuse (CA0360) Vertic Haplaquepts.	Thermic	VP,P	1.0–3.0	Dec–Mar	<6.0	None–Rare			2B3	MOD Alkali	4W
										STR Alkali	6W
Marcuse, Sodic Overwash (CA1495) Vertic Haplaquepts.	Thermic	P	1.0–3.0	Dec–Mar	<6.0	None–Rare			2B3	All	4W
Mariel (OR1515) Sapric Borohemists.	Frigid	VP	+2.–0.5	Jan–Dec	<6.0				1,3	All	5W
Markey, Commonly Flooded (MI0635) Terric Borosaprists.	Frigid	VP	+1–1.0	Nov–June	<6.0	Common	Brief	Mar–Nov	1	All	6W
Markey, Frequently Flooded (MI0619) Terric Borosaprists.	Frigid	VP	0–2.0	Nov–Jun	<6.0	Common	Long	Mar–Jun		All	
Markey, MAAT<44 (MI0629) Terric Borosaprists.	Frigid	VP	+1–1.0	Nov–Jun	<6.0	None			1	Undrained	5W
										Drained	4W
Massena, Poorly Drained (NY0020) Aeric Haplaquepts [1].	Mesic	P	0–1.0	Nov–May	<6.0	None			2B3	0–8% Drained	3W
										8–15%	3E
										0–8% Undrained.	4W
Mazie (ID1350) Typic Umbraqualfs.	Frigid	VP	0–1.5	Feb–Jun	<6.0	Frequent	Long	Feb–May	2B3,4	All	5W
Meadowbrook, Limestone Substratum, Flooded (FL0567) Grossarenic Ochraqualfs [1].	Thermic	VP	0–0.5	Jun–Dec	>=6.0	Common	Long	Jul–Nov	2B1,4	All	5W
Misteguay (MI0611) Aeric Haplaquepts.	Mesic	P	0–1.0	Oct–May	<6.0	Rare-Common	Brief-V Long	Oct–Jun	2B3,4	Rare, Drained	3W
										Freq, Drained	3W
										Occas, Drained	3W
										Undrained	5W
Monarda, Rubbly (ME0136) Aeric Haplaquepts.	Frigid	P	0–1.5	Oct–Jun	<6.0	None			2B3	All	7S
Naconiche (TX1236) Cumulic Humaquepts.	Thermic	VP	0–1.0	Jan–Dec	<6.0	Frequent	Long-V Long.	Jan–Dec	2B3,4	All	7W
Newlang (WI0472) Humaqueptic Psammaquents	Mesic	P,VP	+1–1.0	Nov–Jun	<6.0	Occasional	Brief	Apr–Jun	2B3,3	Drained	4W
										Undrained	6W

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[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Niblack (AK0368) Lithic Cryosaprists.	Cryic	VP	0–1.0	Jan–Dec	>=6.0	None			1	0–45%	7W
Niklavar (AK0357) Typic Cryaquents.	Cryic	VP	1.0–2.0	Apr–Oct	<6.0	Occasional	Brief-Long	Apr–Oct	2B3	0–3%	4W
Normal (IL0447) Argiaquic Agialbolls.	Mesic		1.0–3.0	Mar–Jun	<6.0	None			2B3	0–2%	2W
										2–4%	2E
Oaky (FL0108) Mollic Albaqualfs.	Thermic	P	0.5–1.5	Mar–Sep	<6.0	None			2B3	None	4W
Okaw, Nonflooded (IL0445) Typic Albaqualfs.	Mesic	P,VP	+.5–1.0	Mar–Jun	<6.0	None			2B3,3	0–2%	3W
Overcup (AR0131) Vertic Albaqualfs.	Thermic	P	0–1.0	Dec–Apr	<6.0	None			2B3	0–1%	3W
										1–30%	3E
										0–3%	3W
Ozamis, Saline (OR1384) Fluvaquentic Haplaquolls [1].	Mesic	P	1.0–4.0	Mar–Jun	<6.0	Rare			2B3	All	5W
Pamlico, Loamy Substratum, Ponded (NC02700 Terric medisaprists.	Thermic	VP	+2.–0	Jan–Dec	<6.0	Rare			1,3	All	7W
Perrine, Drained (FL0572) Typic Fluvaquents.	Hyper Thermic.	P	0–1.0	Jun–Nov	<6.0	None			2B3	All	3W
Pit, Overwash (CA2440) Chromic Pelloxererts.	Mesic	P	+.5–3.0	Dec–May	<6.0	Rare			2B3,3	All	5W
Pit, Partially Drained (CA2441) Chromic Pelloxererts.	Mesic	P	0.5–4.0	Dec–May	<6.0	Rare			2B3	All	4W
Pit, Rarely Flooded (CA2348) Chromic Pelloxererts.	Mesic	P	+.5–3.0	Dec–May	<6.0	Rare			2B3,3	All	5W
Ponycreek (WI0454) Humaqueptic Psammaquents.	Frigid	P,VP	+1–1.0	Nov–Jun	<6.0	None			2B3,3	Undrained	6W
										Drained	4W
Pople (FL0241) Arenic Ochraqualfs.	Hyper Thermic.	P	0–1.0	Jun–Sep	<6.0	None			2B1	All	3W
Pottsburg, Hydric (FL0098) Grossarenic Haplaquods [1].	Thermic	P	0–0.5	Feb–Ser	>=6.0	None-Occasional	V Brief	Feb–Sep	2B1	All	4W
Racing (OR1512) Typic Cryaquods.	Cryic	P	+1.–1.0	Jan–Dec	<6.0	Occasional	Brief	Nov–Apr	2B3,3	All	6W
Rawhide (FL0110) Typic Argiaquolls.	Thermic	VP	+2–0	Jun–Apr	<6.0	None-Common	Long	Jun–Apr	2B3,3,4	All	7W
Rawhide, Limestone Substratum (FL0113) Typic Argiaquolls.	Thermic	VP	+2–0	Jun–Apr	<6.0	None-Common	Long	Jun–Apr	2B3,3,4	All	7W
Raynham, Calcareous Substratum (VT0121) Aeric Haplaquepts.	Mesic	P,SP	0–2.0	Nov–May	<6.0	None-Rare			2B3	Drained	3W
										Undrained	4W
Reese, None-Rarely Flooded (NV2566) Aeric Halaquepts [1].	Mesic	P	1.0–3.0	Mar–Jul	<6.0	None-Rare			2B3	All	6S
Reese, Ponded (NV2567) Aeric Halaquepts [1].	Mesic	P	+1–2.0	Nov–Aug	<6.0	Rare			2B3,3	All	6W
Samsula, Flooded (FL0112) Terric Medisaprists.	Hyperthermic.	VP	0–0.5	Mar–Sep	>=6.0	Frequent	Brief-Long		1	All	7W
Satilla (GA0067) Thapto-Histic Fluvaquents.	Thermic	VP	0–1.5	Nov–May	<6.0	None-Common	Long	Dec–Apr	2B3,4	None, Rare	4W
										Freq	7W
Settlement, Stratified Substratum (NV5407) Aeric Halaquepts.	Mesic	P	1.0–2.5	Feb–Jun	<6.0	Frequent	Long	Mar–Jun	2B3,4	All	7W

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[REVISED JANUARY 31, 1992]

Series and subgroup	Temperature	Drainage class	High water table		Perm. within 20 inches	Flooding			Hydric criteria number	Capability	
			Depth	Months		Frequency	Duration	Months		Critical phase criteria	Class and subclass
Shigh (OR1484) Aeric Alabaquults.	Isomesic	P	0.5–1.0	Nov–Apr	<6.0	None			2B3	All	6E
Springerton (IL0428) Typic Haplaquolls.	Mesic	P	+.5–2.0	Feb–Jun	<6.0	None-Rare			2B3,3	All	2W
Tennille (FL0064) Lithic Psammaquents.	Thermic	P	0.5–1.5	Mar–Sep	>=6.0	None			2B2	All	4W
Tennille, Hydric (FL0088) Lithic Psammaquents.	Thermic	P	0–0.5	Jun–Mar	<=6.0	None-Common	Brief	Jan–Mar	2B2	None, Rare	5W
										Common	6W
Tughill, Boulderly (NY0431) Histic Humaquepts.	Frigid	VP	+1–0.5	Nov–Jun	<6.0	None			2B3,3	All	7S
Wareham (MA0052) Humaqueptic Psammaquents [2].	Mesic	SP,P	0.5–1.5	Sep–Jun	>=6.0	None			2B2	All	3W
Warman (MN0639) Typic Haplaquolls.	Frigid	P	1.0–2.0	Apr–Jun	<6.0	None			2B3	All	3W
Waucedah, Clayey Substratum (MI0485) Histic Humaquepts.	Frigid	P, VP	+2–1.0	Jan–Dec	<6.0	Frequent	Brief-V Long.	Mar–May.	2B3,3,4	All	5W
Wekoda, Flooded (CA2456) Aquic Chromoxererts [1,2].	Thermic	P	1.5–3.0	Dec–Apr	<6.0	Frequent	Long	Dec–Apr	4	Freq	4W
Welch, Ponded (NV2572) Cumulic Haplaquolls [1].	Frigid	VP	+1–1.5	Nov–Jun	<6.0	None			2B3,3	All	5W
Wickiup (OR0200) Aquic Cryorthents.	Cryic	P	0–2.5	Mar–Oct	>=6.0	None			2B2	All	6W
Wizard (OR1331) Aquic Vitrixerands.	Frigid	SP	0–2.0	Apr–Jun	<6.0	None			2A	All	6E
Zipp, Loamy Substratum, Flooded (IN0550) Typic Haplaquepts.	Mesic	VP	+.5–1.0	Dec–May	<6.0	Frequent	Brief	Dec–May.	2B3,3	All	3W

[1] Some soil interpretation records representing phases of this series are not hydric.
[2] Some phases of this soil are not frequently flooded of long duration.
[3] Some drainage classes for this soil are not hydric.

[FR Doc. 92–19235 Filed 8–18–92; 8:45 am]
BILLING CODE 3410–19–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Current Industrial Reports (Wave II Mandatory).
Form Number(s): Various.
Agency Approval Number: 0607–0395.
Type of Request: Revision of a currently approved collection.
Burden: 22,175 hours.
Number of Respondents: 20,781.
Avg Hours Per Response: 37 minutes.
Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions. Due to the large number of surveys conducted in the CIR program, we have divided them into 3 waves, each cleared for three years. Each wave contains two separate clearance packages—one for mandatory reports and one for voluntary. The waves are staggered so that only one of the three waves is submitted each year.

Affected Public: Businesses or other for–profit organizations, Small businesses or organizations.
Frequency: Monthly, Quarterly, and Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 8, 1992.
Edward Michals,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 92-19197 Filed 8-14-92; 8:45 am]
BILLING CODE 3510-07-F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: Current Industrial Reports (Wave II Voluntary).
Form Number(s): Various.
Agency Approval Number: 0607-0206.
Type of Request: Revision of a currently approved collection.
Burden: 4,272 hours.
Number of Respondents: 2,338.
Avg Hours Per Response: 13 minutes.
Needs and Uses: The Current Industrial Reports (CIR) program is a series of monthly, quarterly, and annual surveys which provide key measures of production, shipments, and/or inventories on a national basis for selected manufactured products. Government agencies, business firms, trade associations, and private research and consulting organizations use these data to make trade policy, production, and investment decisions. Due to the large number of surveys conducted in the CIR program, we have divided them into 3 waves, each cleared for three years. Each wave contains two separate clearance packages—one for mandatory reports and one for voluntary. The waves are staggered so that only one of the three waves is submitted each year.
Affected Public: Businesses or other for-profit organizations, Small businesses or organizations.
Frequency: Monthly, Quarterly, and Annually.
Respondent's Obligation: Voluntary—Monthly, Quarterly, and Annually, Mandatory—Annual counterpart forms.
OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 6, 1992.
Edward Michals,
Departmental Forms Clearance Officer, Office of Management and Organization.
[FR Doc. 92-19198 Filed 8-14-92; 8:45 am]
BILLING CODE 3510-07-F

International Trade Administration

[A-570-815]

Antidumping Duty Order: Sulfanilic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.
EFFECTIVE DATE: August 19, 1992.
FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Brian Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1756 and (202) 377-1766, respectively.
ORDER:

Scope of Order

The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid (sodium sulfanilate).

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24.20 of the Harmonized Tariff Schedule of the United States (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the HTC subheading 2921.42.24.20, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials.

Sodium salt of sulfanilic acid (sodium sulfanilate), classifiable under the HTS subheading 2921.42.70, is a granular or crystalline material containing 75 percent minimum sulfanilic acid, 0.5 percent maximum aniline, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on June 25, 1992, the Department of Commerce (the Department) made its final determination that sulfanilic acid from the People's Republic of China (PRC) is being sold at less than fair value 57 FR 29705 (July 6, 1992). In its final determination, the Department also found that critical circumstances did not exist with respect to exports from the PRC by China National Chemicals Import & Export Corporation, Hebei Branch. On August 10, 1992, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act that, but for the suspension of liquidation of entries of sulfanilic acid from the PRC, the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 736(b)(2) applies. Therefore, all unliquidated entries or warehouse withdrawals, for consumption of sulfanilic acid from the PRC made on or after August 10, 1992, the date on which the ITC issued its final determination of threat of material injury, will be liable for the assessment of antidumping duties. The Department will direct U.S. Customs officers to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before August 10, 1992, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated antidumping duties with respect to these entries.

The Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of sulfanilic acid from the PRC. These antidumping duties will be assessed on all unliquidated entries of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC issued its final affirmative determination of threat of material injury. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as follows:

Manufacturer/producer/exporter	Margin percent
China National Chemicals Import & Export Corporation, Hebei Branch (Sinochem Hebei)	19.14
All others	85.20

This notice constitutes the antidumping duty order with respect to sulfanilic acid from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: August 13, 1992.
Alan M. Dunn,
Assistant Secretary for Import Administration.
[FR Doc. 92-19663 Filed 8-18-92; 8:45 am]
BILLING CODE 3510-DS-M

Columbia University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-156R. *Applicant:* Columbia University, New York, NY 10027. *Instrument:* (2) Micromanipulators, Models WR-90-R and WR-90-L. *Manufacturer:* Narishige Scientific Instruments, Japan. *Intended Use:* See notice at 56 FR 56633, November 6, 1991. *Reasons:* The foreign instrument provides a positioning range of 10 mm with a fine precision of 2μm. *Advice Submitted by:* National Institutes of Health, June 2, 1992.

Docket Number: 91-167R. *Applicant:* The University of Texas Medical Branch, Galveston, TX 77550. *Instrument:* 3-Dimensional Micromanipulators, Models WR-91-R and WR-91-L. *Manufacturer:* Narishige, Japan. *Intended Use:* See notice at 56 FR 64244, December 9, 1991. *Reasons:* The foreign instrument provides a positioning range of 10 mm with a fine precision of 2μm. *Advice Submitted by:* National Institutes of Health, June 2, 1992.

Docket Number: 92-059. *Applicant:* U.S. Geological Survey, Reston, VA 22092. *Instrument:* Field Spectrometer w/Global Positioning System, Model PIMA II. *Manufacturer:* Integrated Spectronics Pty., Ltd., Australia. *Intended Use:* See notice at 57 FR 21395, May 20, 1992. *Reasons:* The foreign instrument provides in situ measurements in the 1.3 to 2.5μm region with acquisition time less than 30s, 200 channels and a built-in light source to avoid atmospheric absorption features. *Advice Received From:* National Aeronautics and Space Administration, June 26, 1992.

Docket Number: 92-066. *Applicant:* University of Miami, Miami, FL 33149-1098. *Instrument:* (2) Electronic Fish Measuring Boards, Model FMB IV. *Manufacturer:* Limnoterra Atlantic Inc., Canada. *Intended Use:* See notice at 57 FR 23573, June 4, 1992. *Reasons:* The foreign instrument provides in situ, digitized logging of fish dimensions with simultaneous entry of ancillary data which can be downloaded to a PC on return from the field.

Advice Received From: National Marine Fisheries Service, July 2, 1992.

The National Institutes of Health, National Aeronautics and Space Administration and National Marine Fisheries Service advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 92-19662 Filed 8-18-92; 8:45 am]
BILLING CODE 3510-DS-M

Hofstra University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 91-186R. *Applicant:* Hofstra University, Hempstead, NY 11550. *Instrument:* Stopped-Flow Kinetics Accessory, Model SFA-12M. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* See notice at 57 FR 1725, January 15, 1992. *Reasons:* The foreign article rapidly mixes and delivers fluid reactants directly to the observation cell of an existing spectrometer or spectrophotometer. *Advice Submitted By:* National Institutes of Health, July 9, 1992.

Docket Number: 92-013. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* Automatic Bubble Reader System, Model BDR-Series II. *Manufacturer:* Bubble Technology, Inc., Canada. *Intended Use:* See notice at 57 FR 7368, March 2, 1992. *Reasons:* The foreign instrument provides a newly developed capability for measuring neutron radiation exposure of personnel wearing bubble-type dosimeters which become clouded by a radiation field. *Advice Received From:* The National Institute of Standards and Technology, July 29, 1992.

Docket Number: 92-043. *Applicant:* Stanford Linear Accelerator Center, Stanford, CA 94309. *Instrument:* Vertex Detector-High Precision Elementary Particle Tracking Detector. *Manufacturer:* Rutherford Appleton Laboratory, United Kingdom. *Intended Use:* See notice at 57 FR 14388, April 20, 1992. *Reasons:* The foreign instrument provides: (1) Two-sided mounting of

CCD arrays on large area, ultra-thin ceramic substrates, (2) stable support structures for precision mounting of the arrays and (3) low noise electronic interconnection and readout. *Advice Submitted By:* National Science Foundation, July 21, 1992.

Docket Number: 92–050. *Applicant:* Stanford University School of Medicine, Stanford, CA 94305–5246. *Instrument:* Flashlamp System, Model JML. *Manufacturer:* Dr. Rapp Optische und Electronische Gerate, Germany. *Intended Use:* See notice at 57 FR 15283, April 27, 1992. *Reasons:* The foreign instrument provides pulse shaping and focusing optics optimized for initiating muscle fiber contraction and pulse power to 240kW. *Advice Submitted By:* National Institutes of Health, July 9, 1992.

The National Institutes of Health, National Institute of Standards and Technology and National Science Foundation advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–19661 Filed 8–18–92; 8:45 am]

BILLING CODE 3510–DS–M

Washington State University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–188R. *Applicant:* Washington State University, Pullman, WA 99164–1020. *Instrument:* Rheometer. *Manufacturer:* Physica Messtechnik GmbH U Co., KG, Germany. *Intended Use:* See notice at 57 FR 1725, January 15, 1992. *Advice Submitted By:* National Institute of Standards and Technology, July 17, 1992.

Comments: No comments have been received with respect to this application. *Decision:* Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered August 22, 1991. *Reasons:* The foreign instrument provides independent direct measurement of both shear stress and shear rate and a low-friction motor instead of air bearings. The National Institute of Standards and Technology advises that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92–19660 Filed 8–18–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Reef Fish Advisory Panel (Panel) on September 10–11, 1992, at the Doubletree Hotel, 300 Canal Street, New Orleans, LA, telephone: 504–581–1300. The meeting will begin on September 10 from 8 a.m. until 5 p.m., and will reconvene on September 11 at 8 a.m. The agenda is as follows:

On September 10 the Panel will discuss red snapper allowable biological catch, which includes a review of the stock assessment, the Reef Fish Stock Assessment Panel Report, and the Socioeconomic Assessment Panel Report.

On September 11 the Panel will review scientific information on longline and stressed areas, including consideration of the Council options paper, Florida Department of Natural Resources analyses, and National Marine Fisheries Service analyses; and to review the proposed mutton snapper closure.

For more information contact Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 14, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19775 Filed 8–18–92; 8:45 am]

BILLING CODE 3510–22–M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Standing and Special Reef Fish Scientific and Statistical Committee (Committee) on September 8–9, 1992, at the Doubletree Hotel, 300 Canal Street, New Orleans, LA., telephone: 504–581–1300. The meeting will begin on September 8 from 3 p.m. until 5 p.m., and will reconvene on September 9 at 8 a.m. The agenda is as follows:

On September 8 the Committee will review scientific information on longline and stressed areas, including consideration of the Council options paper, Florida Department of Natural Resources analyses, and National Marine Fisheries Services analyses; and to review the proposed mutton snapper closure.

On September 9 the Committee will discuss red snapper allowable biological catch, which includes a review of the stock assessment, the Reef Fish Stock Assessment Panel report, and the socioeconomic Assessment Panel report.

For more information contact Steven M. Atran, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 14, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19774 Filed 8–18–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of permit (P129I).

On May 20, 1992, notice was published in the **Federal Register** (57 FR 21397) that an application had been filed by Dr. Bruce R. Mate, Oregon State University, Newport, Oregon 97365–5296 and Dr. Randall Davis, Texas A&M University, Galveston, TX 77551, to inadvertently harass up to 440 sperm whales (*Physeter macrocephalus*) while tagging up to 10 whales per year with satellite-monitored radio tags and during followup monitoring.

Notice is hereby given that on August 10, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that the Permit: (1) Was applied for in good faith; (2) does not operate to the disadvantage of the endangered species which is the subject of this Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Permit was issued in accordance with and is subject to parts 220–222 of title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with this permit are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Hwy., room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141); and

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE. BIN C15700, Seattle, WA 98115 (206/526–6150).

Dated: August 10, 1992.

Charles Karnella,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–19697 Filed 8–18–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

New Textile Export Visa Invoice and Amendment of Export Visa and Exempt Certification Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

August 13, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of a new textile visa invoice and amending visa and exempt certification requirements to require manufacturer's identification.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Coordination Council for North American Affairs (CCNAA) has notified the American Institute in Taiwan (AIT) that beginning on September 1, 1992 a new Textile Export Visa Invoice, replacing the visa document currently in use, will be issued for goods produced or manufactured in Taiwan and exported from Taiwan on and after September 1, 1992.

The existing export visa arrangement and exempt certification system between the CCNAA and AIT is being amended, for goods produced or manufactured in Taiwan and exported from Taiwan on and after September 1, 1992, to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa or certification be provided on the textile visa document.

The name and address of the company should be placed somewhere on the front of the original export visa document, not within the visa or certification stamp. It should be preceded by the label "manufacturer's identification" or "M.I.D." The name is the full name of the company which performs the substantial part of the manufacturing of the product. The address should include the street name or P.O. Box number (if available), and the city and/or province where the manufacturing occurs. In the case of a shipment covered by a single export visa document containing products which are each manufactured by a number of different companies, the name and address of each company involved should be listed on the export visa document. If additional space is needed for listing the name and address of the firms, the back of the export visa document may be used. Responsible officials will make their best efforts to determine the name and address of a firm or firms which best meet the basic criterion of being an actual manufacturer of the product. This information should appear on the export visa document prior to export from Taiwan. However, for goods exported during the period September 1-September 30, 1992, the importer may type this information on the front of the original visa document. For goods exported on or after October 1, 1992 without the M.I.D. on the export visa document, a new visa containing this information must be obtained.

See 56 FR 26656, published on June 10, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 13, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on June 5, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan which were not properly visaed or certified by the Coordination Council for North American Affairs (CCNAA).

Effective on September 1, 1992, the directive dated June 5, 1991 is being amended to provide for the use of a new Textile Export Visa Invoice which will be issued by the Coordination Council for North American Affairs (CCNAA) for goods produced or manufactured in Taiwan and exported from Taiwan on and after September 1, 1992. The

new invoice provides a section to place the name and address of the manufacturer of the textile product covered by the export visa or certification and replaces the invoice currently being used. A facsimile of the new invoice is enclosed with this letter.

Also effective on September 1, 1992, for goods produced or manufactured in Taiwan and exported from Taiwan on and after September 1, 1992, you are directed to require that the complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa or certification be placed on the textile visa document. This information shall appear on the export visa document prior to export from Taiwan. However, for goods exported during the period September 1-September 30, 1992, the importer may type this information on the front of the original visa document.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa which includes the identification of the manufacturer on the visa document shall be denied entry and a new visa containing this information must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

BILLING CODE 3510-DR-F

1. 出口商(名稱及地址) SELLER (NAME & ADDRESS)	2. 出口商統號 EXPORTER NO.	3. 原產國 COUNTRY OF ORIGIN TAIWAN, R.O.C. (583)	4. 出口日期及運輸方式 SHIPPING DATE & MEARS OF TRANSPORT	5. 進口埠 PORT OF ENTRY
		6. 商業發票號碼及日期 COMMERCIAL INVOICE NO. & DATE		7. 接單日期 DATE ORDER ACCEPTED
		8. 交易條件及總金額 TERMS OF SALE & TOTAL VALUE		
9. 收貨人(名稱及地址) CONSIGNEE (NAME & ADDRESS)		10. 買主(名稱及地址) PURCHASER (NAME & ADDRESS)		
11. 貨品名稱及有關資料 MARKS & NUMBERS OF PACKAGES, DESCRIPTION OF GOODS & RELATED INFORMATION		12. 數量 QUANTITY	13. 單價 UNIT PRICE (FOB U.S. DOLLARS)	14. 總金額 TOTAL VALUE (FOB U.S. DOLLARS)
15. 其他費用及備註欄 OTHER COSTS NOT INCLUDED IN FOB TOTAL VALUE & REMARKS		16. 製造商(名稱及地址) MANUFACTURER (NAME & ADDRESS)		工廠登記證號碼 REGISTRATION NO.
17. 本筆交易負責人名稱 NAME OF RESPONSIBLE INDIVIDUAL OF THE EXPORTER				
18. 本證明書一經塗改即告失效，並遵守主管機關依規定處理。 THIS DOCUMENT SHALL BE INVALIDATED IN CASE OF ANY ERASURE, STRIKEOVER, ALTERATION AND INTERPOLATION.				
19. 簽證機構印章 COMPETENT AUTHORITIES' STAMP & SIGNATURE		20. 簽證機構 COMPETENT AUTHORITIES OF THE REPUBLIC OF CHINA		

SPECIMEN

中華民國紡織業外銷拓展會

TW

Visa No. : _____

Category : _____

Quantity : _____

Signature : _____

Date : _____

TAIWAN TEXTILE FEDERATION

中華民國紡織業外銷拓展會
TAIWAN TEXTILE FEDERATION
TTF BUILDING
22, AI KUO EAST ROAD
TAIPEI, TAIWAN
REPUBLIC OF CHINA
TELEX: 23143 TTFROC TAIPEI
CABLE ADDRESS: "TTFROC" TAIPEI
TELEPHONE: (02) 341-7251
TELEFAX: (02) 392-3855

1. 出口商(名稱及地址) SELLER (NAME & ADDRESS)	2. 報關編號 EXPORTER NO.	3. 原產國 COUNTRY OF ORIGIN TAIWAN, R.O.C. (583)	4. 出口日及裝運方式 SHIPPING DATE & MEANS OF TRANSPORT	5. 運口港 PORT OF ENTRY
		6. 商業發票號碼及日期 COMMERCIAL INVOICE NO & DATE		7. 接單日期 DATE ORDER ACCEPTED
		8. 交易條件及總金額 TERMS OF SALE & TOTAL VALUE		
9. 收貨人(名稱及地址) CONSIGNEE (NAME & ADDRESS)		10. 買主(名稱及地址) PURCHASER (NAME & ADDRESS)		
11. 貨品名稱及有關事項 MARKS & NUMBERS OF PACKAGES, DESCRIPTION OF GOODS & RELATED INFORMATION		12. 數量 QUANTITY	13. 單價 UNIT PRICE (FOB U.S. DOLLARS)	14. 總金額 TOTAL VALUE (FOB U.S. DOLLARS)
15. 其他費用及備註 OTHER COSTS NOT INCLUDED IN FOB TOTAL VALUE & REMARKS		16. 製造商(名稱及地址) MANUFACTURER (NAME & ADDRESS)		工廠登記證號碼 REGISTRATION NO.
17. 本單交易負責人姓名 NAME OF RESPONSIBLE INDIVIDUAL OF THE EXPORTER				
18. 本證明書一經塗改即告失效，並追繳主管機關依規定處理。 THIS DOCUMENT SHALL BE INVALIDATED IN CASE OF ANY ERASURE, STRIKEOVER, ALTERATION AND INTERPOLATION.				
19. 簽證機關證章 COMPETENT AUTHORITIES' STAMP & SIGNATURE		20 簽證機關 COMPETENT AUTHORITIES OF THE REPUBLIC OF CHINA		

SPECIMEN

中華民國紡織業外銷拓展會
Certificate № 200008
Exempt Item:
Quantity:
Signature:
Date:
TAIWAN TEXTILE FEDERATION

中華民國紡織業外銷拓展會
TAIWAN TEXTILE FEDERATION
TTF BUILDING
22, AI KUO EAST ROAD
TAIPEI, TAIWAN
REPUBLIC OF CHINA
TELEX: 23143 TTFROC TAIPEI
CABLE ADDRESS: "TTFROC" TAIPEI
TELEPHONE: (02) 341-7251
TELEFAX: (02) 392-3855

[FR Doc. 92-19714 Filed 8-18-92; 8:45 am]
BILLING CODE 3510-DR-C

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD Advisory Panel on Streamlining and Codifying Acquisition Laws

AGENCY: Defense Systems Management College.

ACTION: Notice of meeting.

SUMMARY: Open to the public on September 23 and 24, 1992, starting at 8:30 a.m. at the Defense Systems Management College in Building 184 on Fort Belvoir, VA. The panel will hear presentations and recommendations by the various panel working groups on the statutes they have reviewed to date.

For further information contact Linda Snellings at (703) 355-2665.

Dated: August 13, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-19666 Filed 8-18-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Centers for Independent Living

AGENCY: Department of Education.

ACTION: Notice of public meeting.

SUMMARY: The Secretary of Education announces a public meeting on the Centers for Independent Living program authorized by the Rehabilitation Act of 1973, as amended. The purpose of the meeting is to receive public comments on the proposed independent living evaluation standards and compliance indicators published in the **Federal Register** on Friday, July 10, 1992.

Among the issues to be discussed at the meeting are the following:

(1) To what extent are the proposed evaluation standards and compliance indicators valid, useful, and measurable?

(2) Are there activities, in addition to the proposed six activities, that should be considered in assessing the practice of the independent living philosophy?

(3) Do the proposed severe disability categories adequately reflect the range of disabilities of individuals served by the program?

(4) Could the definitions and measures of actions and outcomes for effecting change in community options for independent living be improved?

(5) How is the achievement of independent living goals currently measured?

(6) How many services should a center for independent living provide in order to comply with the proposed indicator that requires each center to provide a range of services to individuals with severe handicaps?

(7) Are the proposed weights, minimum performance levels, and performance ranges appropriate?

MEETING INFORMATION: The public meeting is scheduled to be held from 5 p.m. to 11 p.m. on August 27, 1992, at the Sheraton City Centre Hotel, 1143 New Hampshire Avenue, NW., Washington, DC.

The Secretary encourages interested parties to attend the public meeting and requests that those parties participating provide a written copy of their comments.

The meeting facilities and proceedings will be accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate or seeking additional information should contact John Nelson, room 3326, Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202-2741. Telephone (202) 205-9362 voice or TDD.

Dated: August 13, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-19690 Filed 8-18-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RS92-27-000]

Alabama Tennessee National Gas Co; Prefiling Conference

August 13, 1992.

Take notice that a prefiling conference will be convened in this proceeding on August 31, 1992, at 1 p.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, continuing through September 1, 1992. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of proposal prepared by Alabama-Tennessee to comply with Order No. 636. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208-1076.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19713 Filed 8-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-56-000]

Black Marlin Pipeline Co.; Prefiling Conference

August 13, 1992.

Take notice that a prefiling conference will be convened in this proceeding on October 1, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of proposal prepared by Black Marlin to comply with Order No. 636. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208-1076.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19712 Filed 8-18-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-102-000]

Kentucky West Virginia Gas Co.; Informal Settlement Conference

August 13, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on September 3, 1992, at 10 a.m., at the offices of the Federal Energy Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Joan Dreskin at (202) 208–0738 or James A. Pederson at (202) 208–2158.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19718 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–82–000]

Superior Offshore Pipeline Co.; Prefiling Conference

August 13, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 22, 1992, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of this conference is to address the summary of proposal prepared by Superior Offshore to comply with Order No. 636. The pipeline was to serve all parties in the proceeding with the summary by July 7, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information please contact Michael D. Cotleur at (202) 208–1076.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19717 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–87–000]

Transwestern Pipeline Co.; Notice Clarifying Procedures

August 13, 1992.

On July 29, 1992, Transwestern Pipeline Company (Transwestern) tendered for filing and acceptance tariff sheets to comply with Order No. 636. On August 12, 1992, Transwestern notified the Commission that, in light of Order No. 636–A, it would file a revised compliance filing by August 19, 1992.

Notice is given that any protest to, or comments on, Transwestern's compliance filing must be filed with the Commission within 21 days of the date the revised filing is submitted.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19721 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2523–002]

Wisconsin Electric Power Co.; Petition for Declaratory Order

August 13, 1992.

Public notice is given that on July 7, 1992, the City of Oconto Falls, Wisconsin (petitioner), filed a petition for declaratory order with the Federal Energy Regulatory Commission regarding the Oconto Falls Hydroelectric Project No. 2523. The petition seeks a determination that the licensing proceeding in Project No. 2523 (where neither the original licensee nor a third-party applicant filed the application for new license under part 16 of the Commission's Regulations) is an original license proceeding to which the municipal preference provisions of section 7(a) of the Federal Power Act apply.

Any person desiring to be heard or to protest the petition should file comments, a protest, or a motion to intervene with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 210, 211, and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.210, 385.211, 385.214 (1992). All such comments, protests, and motions should be filed by September 18, 1992. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Copies of the petition for declaratory order are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19720 Filed 8–18–92; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00337; FRL–4080–8]

Notice of Workshop

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that EPA's Office of Pollution Prevention and Toxics (OPPT) and the National Toxicology Program (NTP) of the National Institute of Environmental Health Sciences (NIEHS) are co-sponsoring a scientific workshop entitled "Feasibility of Using Reduced Protocols for Carcinogenicity Testing of Chemicals." The purpose of this workshop is to (1) Evaluate the technical adequacy of the inter-species and intersex correlation analyses of animal carcinogenicity data bases conducted by EPA/OPPT and several other investigators; and (2) define the implications and impact of the use of reduced testing protocols on the processes of hazard identification and risk assessment.

DATES: The workshop will be held on September 22–23, 1992.

ADDRESSES: The workshop will be held at: Embassy Suites, 1900 Diagonal Rd., Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Mary Henry, Office of Pollution Prevention and Toxics (TS–796), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202)–260–1256.

SUPPLEMENTARY INFORMATION: All sessions are open to the public. Since space is limited, pre-registration is strongly suggested. Seating at each day's session will be on a first come basis.

Dated: August 11, 1992.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–19751 Filed 8–18–92; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66163; FRL 4079–8]

Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by November 17, 1992, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 210, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 73 pesticide products registered under Section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100 LA–89–0002	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 MD–89–0001	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 MO–89–0001	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 MS–89–0001	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 PA–90–0002	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 SC–89–0002	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000100 VA–89–0003	Tilt Fungicide	1-((2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl) methyl)-1*H*-1,2,4-triazole
000239–02492	Ortho Home Pest Insect Killer	2-Methyl-4-oxo-3-(2-propenyl)-2-cyclopenten-1-yl *d*-trans-2,2-dimethyl-*N*-Octyl bicycloheptene dicarboximide *O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000264 OR–79–0003	Amchem Amiben	Ammonium 3-amino-2,5-dichlorobenzoate
000270–00174	Nature's Own Herbal Flea Repellent Collar	Oil of citronella Oil of eucalyptus Cedarwood oil Oil of Pennyroyal
000270–00184	Nature's Own Herbal Flea Repellent Powder II	Oil of citronella Essential oils Oil of eucalyptus Cedarwood oil Oil of Pennyroyal
000270–00185	Nature's Own Herbal Flea Repellent Powder	Oil of citronella Essential oils Oil of eucalyptus Cedarwood oil Oil of Pennyroyal
000270–00220	Farnam Cat-Away Indoor Cat Repellent	Allyl isothiocyanate *p*-Propenylanisole Oil of citronella Essential oils Oil of lemongrass Menthol Thymol
000270–00221	Farnam Dog-Away Indoor Dog Repellent	Allyl isothiocyanate *p*-Propenylanisole Oil of citronella Essential oils Oil of lemongrass Menthol Thymol
000270–00222	Farnam Dog-Away Outdoor Dog Repellent	Allyl isothiocyanate Oil of citronella Essential oils Oil of lemongrass Menthol Thymol
000270–00223	Whitmire's No Chew	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammonium benzoate Essential oils Thymol
000476 MO–84–0006	Ordram 10 G	*S*-Ethyl hexahydro-1*H*-azepine-1-carbothioate
000538–00027	Pro-Turf Brand Broad Spectrum Fungicide	Phenylmercuric acetate Tetramethyl thiuramdisulfide
000538–00036	Proturf 24-5-3 Fertilizer Plus Fungicide	Phenylmercuric acetate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Tetramethyl thiuramdisulfide
000618-00028	Agri-Strep (Streptomycin Sulfate Agricultural) Type-D	Streptomycin sulfate
000618-00072	Agri-Strep 500 (Agricultural Streptomycin, Merck) Bactericide	Streptomycin sulfate
000769-00563	Purge	2-Chloro-4-(ethylamino)-6-(isopropylamino)-*s*-triazine
000869-00159	Green Light Many Purpose Dust	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000869-00177	Green Light Diazinon 2 Granules	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000869-00182	Green Light Fire Ant Control	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
001021 MN-83-0010	Permacide Permethrin Concentrate 80%	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
001022-00465	Permatox 101	Pentachlorophenol, sodium salt Phenylmercuric acetate
003125-00050	Dyrene 50% Wettable Powder	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00054	Dylox 5% Dust	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
003125-00080	Dyrene 50% Wettable Powder Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00107	Dyrene 3% Granular Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00125	Dyrene 5% Granular Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00127	Dyrene Lawn Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00175	Dyrene 80% Dry Concentrate	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00199	Dyrene Technical	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00215	Dyrene Lawn and Garden Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00343	Dyrene 4 Turf Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125-00407	Best 4 Servis Brand Navunex-8 Dust	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
003125-00408	Best 4 Servis Brand Navunex 400 Liquid Spray	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
003125-00409	Navuney Liquid Spray	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
003125-00410	Dyrene 50% Wettable Powder In Water Soluble Packets	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125 CA-77-0066	Dyrene Foliar Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125 IA-91-0002	Dyrene 50% Wettable Powder Foliage Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125 OH-90-0005	Dyrene 50% Wettable Powder Foliage Fungicide	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
003125 OH-91-0003	Dyrene 50% Wp In Water Soluble Packets	2,4-Dichloro-6-(*o*-chloroanilino)-*s*-triazine
004581-00079	Endothal Turf Herbicide	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, disodium salt
004581 NH-83-0001	Endothal Turf Herbicide	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, disodium salt
004581 WA-79-0036	Endothal Turf Herbicide	7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, disodium salt
004818 AZ-88-0021	Permanone 40% EC	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
004816 AZ-88-0022	Permanone Pyrenone Liquid Dust	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
005887-00070	Black Leaf Tomato Fruit Set Spray	beta-Naphthoxyacetic acid
006720-00133	SMCP Chloropicrin Fumigant	Chloropicrin
006720-00230	SMCP Termifume	Methyl bromide Chloropicrin
007276-00001	New RMC Bait Kills Rats/Mice with Prolin	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
007276-00014	RMC Rodent Bait (tid-Bits Form)	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
007276-00016	RMC Rodent Bait Meat (bits Form)	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
007276-00017	RMC Meat Bait	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
011411-00013	Leslie's Algae Out	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
011411-00014	Leslie's Algae Control II	Poly(oxyethylene(dimethyliminio)ethylene(dimethyliminio)ethylene dichloride) 2-Chloro-4,6-bis(ethylamino)-*s*-triazine
019713-00310	Southland Pearson's Tomato Fixer	beta-Naphthoxyecetic acid
033458-00002	CHC Granular Chlorine for Swimming Pools	Calcium hypochlorite
034704-00309	Bovinox Pour on Cattle Insecticide	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
034704-00582	Roberts Pour on Cattle Insecticide	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
034704-00631	Bovinox 80% Soluble Powder	Dimethyl (2,2,2-trichloro-1-hydroxyethyl)phosphonate
036638-00019	Tra-Kill	Menthol
039398-00015	Sumithion 8E	*O,O*-Dimethyl *O*-(4-nitro-*m*-tolyl) phosphorothioate
045002-00009	Mansul	Zinc ion and manganese ethylenebisdithiocarbamate, coordination product

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		Sulfur
045002-00019	Oxy Cop 8 L S	Copper ammonium carbonate Sulfur
045639 CA-80-0185	Botran 75W Fungicide	2,6-Dichloro-4-nitroaniline
045639 NV-89-0002	Botran 75 W	2,6-Dichloro-4-nitroaniline
047231-00001	B-50 National Microbicide	Potassium dimethyldithiocarbamate
055947-00105	Spur 22 EW Insecticide	*N*-(2-Chloro-4-trifluoromethyl)phenyl)-DL-valine (±)-cyano(3-phenoxyphenyl)methyl
064746-00003	Funginex Wettable Powder	*N,N*-(1,4-Piperazinediylbis(2,2,2-trichloroethylidine) bis(formamide)

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90-day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000239	Chevron Chemical Co., Registration & Regulatory Affairs Dept., 940 Hensley Street, Richmond, CA 94804.
000264	Rhone-Poulenc Ag Co., Box 12014, Research Triangle Park, NC 27709.
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85067.
000476	Stauffer Chemical Co., / ICI Americas Inc., Agricultural Products, Concord Pike & New Murphy Rd, Wilmington, DE 19897.
000538	O.M. Scott & Sons Co., 14310 Scottslawn Rd., Marysville, OH 43041.
000618	Merck & Co Inc., Hillsborough Rd, Three Bridges, NJ 08887.
000769	SURECO, Inc., Box 938, Fort Valley, GA 31030.
000869	Green Light Co., Box 17965, San Antonio, TX 78217.
001021	McLaughlin Gormley King Co., 8810 Tenth Ave North, Minneapolis, MN 55427.
001022	Chapman Chemical Co., Box 9158, Memphis, TN 38109.
003125	Miles Inc., 8400 Hawthorn Rd Box 4913, Kansas City, KS 64120.
004581	Agchem Division/Atochem North America, Three Parkway, Room 619, Philadelphia, PA 19102.
004816	Fairfield American Corp., 809 Harrison Street, French Town, NJ 08825.
005887	Wilbur-Ellis Co., Box 9518, Fresno, CA 93792.
006720	Southern Mill Creek Products, 5414 North 56th Street, Tampa, FL 33610.
007276	RMC Prod Co., Box 848, Ft Dodge, IA 50501.
011411	Leslie's Swimming Pool Supplies Inc., Box 2108, Chatsworth, CA 91313.
019713	Drexel Chemical Co., Box 9306, Memphis, TN 38109.
033458	Allied Universal Corp., 8350 N.W. 93 Street, Miami, FL 33166.
034704	Platte Chemical Co., Inc., c/o William M. Mahlburg, Box 667, Greeley, CO 80632.
036638	Scentry Inc., 610 Central Ave, Billings, MT 59102.
039398	Sumitomo Chemical America, Inc., Director of Insect Control & Research Inc., 1330 Dillion Heights Ave, Baltimore, MD 21228.
045002	Cuproquim Corp., Agent For: Cuproquim Sa, 9601 Katy Fwy 350, Houston, TX 77024.
045639	Nor-Am Chemical Co., 3509 Silverside Rd., Wilmington, DE 19803.
047231	National-Oilwell, Box 4638, Houston, TX 77210.
055947	Sandoz Agro, Inc., 1300 E. Touhy Ave., Des Plaines, IL 60018.
064746	Biologic Inc., 11 Lake Ave Extension, Danbury, CT 06811.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before November 17, 1992. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier

cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: August 7, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92-19649 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50743; FRL-4067-1]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

42545-EUP-3. Issuance. Agrolinz, Inc., 1669 Kirby Parkway, Suite 100, Memphis, Tennessee 38120-1303. This experimental use permit allows the use of 1,800 pounds of the herbicide O-(6-chloro-3-phenyl-4-pyridazinyl)-S-octyl-carbonothioate on 2,000 acres of cabbage to evaluate post-emergence control of annual weeds. The program is authorized only in the States of Colorado, Florida, Illinois, Indiana, Michigan, New York, North Carolina, Ohio, Texas, and Wisconsin. The experimental use permit is effective from April 24, 1992 to April 24, 1994. A temporary tolerance for residues of the active ingredient in or on cabbage has been established. (Cynthia L. Giles-Parker, PM 22, Rm. 229, CM #2, (703-305-5540))

241-EUP-123. Issuance. American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400. This experimental use permit allows the use of 280 pounds of the plant growth modifier 1-(3-chlorophthalimido)cyclohexanecarboxamide on various ornamental crops to evaluate growth. The program is authorized only in the States of Alabama, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. The experimental use permit is effective from April 7, 1992 to May 31, 1993. (Cynthia L. Giles-Parker, PM 22, Rm. 229, CM #2, (703-305-5540))

352-EUP-159. Extension. E.I. duPont deNemours & Company, Inc., Agricultural Products, P.O. Box 80038, Wilmington, DE 19880-0038. This experimental use permit allows the use of 40 ounces of the herbicide N[(4,6-dimethoxypyrimidin-2yl)aminocarbonyl)-3-(ethysulfonyl)-2-pyridinesulfonamide on 80 acres of potatoes to evaluate the control of various weeds. The program is authorized only in the States of Idaho, Maine, Michigan, Oregon, Washington, and Wisconsin. The experimental use permit is effective from April 28, 1992 to December 31, 1992. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 241, CM #2, (703-305-6800))

3125-EUP-202. Issuance. Miles, Inc., Agriculture Division, 8400 Hawthorn Road, P.O. Box 4913, Kansas City, MO 64120-0013. This experimental use permit allows the use of 58.85 pounds of the insecticide *O*-[2-(1,1-dimethylethyl)-5-pyrimidinyl])*O*-ethyl *O*-(1-methylethyl)phosphorothioate and 2.95 pounds of the insecticide cyano(4-fluoro-3-phenoxyphenyl)methyl 3-(2,2-dichloroethyl)-2,2-dimethylcyclopropanecarboxylate on 403 acres of corn to conduct a terrestrial field study. The program is authorized only in the State of Iowa. The experimental use permit is effective from May 5, 1992 to December 31, 1992. This permit is issued with the limitation that corn grown in the treated fields will not be used for food or feed and will be withheld from entering commercial channels of trade until such time as the appropriate tolerances have been established. (Robert Forrest, PM 14, Rm. 211, CM #2, (703-305-6600))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: June 15, 1992.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-19654 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[OPP-60041; FRL-4160-3]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308-8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A-110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30-day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308-8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Hysan Corporation	00033400504	Silica Gel	Hysan Hy-Dri Insecticide Spray	7/15/92
Whitmire Research Laboratories, Inc.	00049900223	Silica Gel	Whitmire PT 230 Tri-Die	7/15/92
Sureco, Inc.	00076900569	Silica Gel	Stephenson Chemicals D.P.S. Roach Powder	7/15/92
Tomic Insecticide Company, Inc.	00144000001	Silica Gel	Tomic Micro-Cide Dust	7/15/92
	00144000005	Silica Gel	Hi-Py Super Roach Dust	7/15/92
Happy Jack Inc.	00278100043	Silica Gel	Carpet Flea Powder	7/15/92
D-Con Company Inc.	00328200018	Silica Gel	D-Con Warpath Roach Killer	7/15/92
ABC Compounding Company, Inc.	00386200117	Silica Gel	Tornado Residual Dust	7/15/92
Pet Chemicals	00475800026	Silica Gel	Holiday Aerogel Powder Dries Up Roaches	7/15/92
	00475800032	Silica Gel	Holiday Flea Stop for Dogs	7/15/92
	00475800034	Silica Gel	Holiday Tick Stop	7/15/92

TABLE A.—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Protexall Products Inc.	00497200069	Silica Gel	Protexall's Roach Zapper II	7/15/92
	00497200082	Silica Gel	Protexall Roach Powder	7/15/92
Vasco Chemical Company Inc.	01056200001	Silica Gel	Vasco Formula 100-G	7/15/92
Sungro Chemicals Inc.	01147400064	Silica Gel	Sun-Dust Roach Awey	7/15/92
Speer Products Inc.	01171500193	Silica Gel	Speer Flea and Tick Powder for Carpets	7/15/92
Smithkline Beecham Animal Health	03742500013	Silica Gel	Adams Flea and Tick Dust II	7/15/92
Coulston International Corporation	05040400002	Silica Gel	Cic Residual Insecticide Powder No. 1	7/15/92
RSR Laboratories, Inc.	05179300021	Silica Gel	Elite Extra Strength Flea & Tick Powder II	7/15/92
	05179300033	Silica Gel	Elite Aerosol Seven Month Insect Spray	7/15/92
	05179300043	Silica Gel	6 Month Insect Powder	7/15/92
	05179300049	Silica Gel	Elite Roach & Ant Powder II	7/15/92
	05179300060	Silica Gel	Elite Roach & Ant Powder I	7/15/92
	05179300118	Silica Gel	Elite Flea & Tick Powder II	7/15/92
Wallace C. Tharp	00633000001	Silicon Dioxide	Perma-Guard Household Insecticide D-20.	7/15/92
	00633000003	Silicon Dioxide	Perma-Guard Grain or Seed Storage Insecticide	7/15/92
	00633000009	Silicon Dioxide	Perma Guard Garden & Plant Insecticide D-21	7/15/92
	00633000012	Silicon Dioxide	Perma-Guard Kleen Bin Insecticide D-20	7/15/92
	00633000017	Silicon Dioxide	Perma-Guard Pet Insecticide D-32	7/15/92
	00633000031	Silicon Dioxide	Perma Guard-20 Professional Insecticide	7/15/92
	00633000032	Silicon Dioxide	Perma-Guard Pet and Animal Insecticide D-20	7/15/92
Gretco Inc.	05480600001	Silicon Dioxide	Dicalite Diacide	7/15/92
Dyn-O-Mite International Inc.	05830000002	Silicon Dioxide	Dyanomite and/or Dynomite 2001 Plus	7/15/92
Chemtree Environment Inc.	05991300001	Silicon Dioxide	Insecticide Crawling Insect Killer	7/15/92
Tru Gen	06387200001	Silicon Dioxide	Tru-Gen White Gold	7/15/92

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
Silica Gel	Hysan Corporation	90-Day Response	5/12/92
	Whitmire Research Laboratories, Inc.	90-Day Response	5/11/92
	Sureco, Inc.	90-Day Response	5/11/92
	Tomic Insecticide Company, Inc.	90-Day Response	5/11/92
	Happy Jack Inc.	90-Day Response	5/11/92
	D-Con Company Inc.	90-Day Response	5/13/92
	ABC Compounding Company, Inc.	90-Day Response	5/11/92
	Pet Chemicals	90-Day Response	5/11/92
	Protexall Products Inc.	90-Day Response	5/12/92
	Vasco Chemical Company Inc.	90-Day Response	5/14/92
	Sungro Chemicals Inc.	90-Day Response	5/11/92
	Speer Products Inc.	90-Day Response	5/11/92
	Smithkline Beecham Animal Health	90-Day Response	5/11/92
	Coulston International Corporation	90-Day Response	5/11/92
	RSR Laboratories, Inc.	90-Day Response	5/12/92
Silicon Dioxide	Grereico Inc.	90-Day Response	5/11/92
	Dyn-O-Mite International Inc.	90-Day Response	5/12/92
	Chemtree Environment Inc.	90-Day Response	5/11/92
	Tru Gen	90-Day Response	5/11/92
	Wallace C. Tharp	90-Day Response	5/12/92

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Silica Gel

On February 7, 1992, EPA issued the Phase 5 Reregistration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing silica gel used as an active ingredient to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Silica Gel Phase 5 Reregistration Eligibility Document Data Call-In Notice dated February 7, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. Because the Agency has not received a response from you as a silica gel registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

B. Silicon Dioxide

On February 7, 1992, EPA issued the Phase 5 Reregistration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing silicon dioxide used as an active ingredient to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call-In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Silicon Dioxide Phase 5 Reregistration Eligibility Document Data Call- In Notice dated February 7, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. Because the Agency has not received a response from you as a silicon dioxide registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: August 13, 1992.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 92-19752 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-50748; FRL-4074-7]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

264-EUP-90. Issuance. Rhone-Poulenc Ag Company, P.O. Box 12014, T.W. Alexander Drive, Research Triangle Park, NC 27709. This experimental use permit allows the use of 600 pounds of the herbicides octanoic acid ester and heptanoic acid ester of bromoxynil on 2,400 acres of field corn and small grains to evaluate the control of broadleaf weeds. The program is authorized only in the States of Arizona, Colorado, Idaho, Iowa, Illinois, Indiana, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New York, North Dakota, Ohio, Oregon, South Dakota, Utah, Washington, and Wyoming. The experimental use permit is effective from June 1, 1992 to June 1, 1993. A permanent tolerance for residues of the active ingredients in or on field corn and small grains has been established (40 CFR 180.324). (Robert Taylor, PM 25, rm. 245 CM #2, (703-305-5705))

2724-EUP-52. Issuance. Zoecon Corporation, 1200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 5.61 pounds of the insecticide propetamphos in three apartment buildings to evaluate the control of cockroaches. The program is authorized only in the States of California and Texas. The experimental use permit is effective from July 6, 1992 to July 6, 1993. (Robert Forest, PM 14, rm. 219, CM #2, (703-305-6600))

2724-EUP-53. Issuance. Zoecon Corporation, 1200 Denton Drive, Dallas, TX 75234. This experimental use permit allows the use of 5.53 pounds of the insecticide propetamphos in three apartment buildings to evaluate the control of cockroaches. The program is authorized only in the States of California and Texas. The experimental use permit is effective from July 6, 1992 to July 6, 1993. This permit and the one above will use the same active ingredient but different formulations. (Robert Forest, PM 14, Rm. 219, CM #2, (703-305-6600))

612-EUP-1. Amendment. Unocal Corporation, 3960 Industrial Blvd., Suite 600-B, West Sacramento, CA 95691. In the **Federal Register** of May 28, 1992 (57 FR 22475), EPA issued an EUP pertaining to the renewal of 612-EUP-1 to Unocal Corporation. At the request of the company, the program has been amended to add prunes to the program. All other aspects of the program remain the same. (Cynthia Giles-Parker, PM 22, rm. 229, CM #2, (703-305-5540))

400-EUP-68. Issuance. Uniroyal Chemical Company, 74 Amity Rd., Bethany, CN 06524-3402. This experimental use permit allows the use of 200 pounds of the plant growth regulator maleic hydrazide on 80 acres of rice to evaluate the control of red rice seed setting in white rice. The program is authorized only in the State of Louisiana. The experimental use permit is effective from May 21, 1992 to August 31, 1992. This permit is issued with the limitation that all crops are destroyed or used for research purposes only. (Cynthia Giles-Parker, PM 22, rm. 229, CM #2, (703-305-5540))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquires concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection

purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

Dated: July 30, 1992.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-19655 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-44590; FRL-4160-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on vinyl fluoride (CAS No. 75-02-5), submitted pursuant to a final test rule. Test Data were also submitted on 4-vinyl-1-cyclohexene (CAS No. 100-40-3) submitted pursuant to a testing consent order. All testing was submitted under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for vinyl fluoride were submitted by the Chemical Manufacturers Association on behalf of the test sponsors and pursuant to a test rule 40 CFR 799.1700. They were received by EPA on July 22, 1992. The submission describes an oncogenicity long-term inhalation study in rats and mice. Health effects testing is required by this test rule. Fluoroalkenes are used as precursors in the manufacture of highly specialized polymers and elastomers.

Test data for 4-vinyl-1-cyclohexene were submitted by the Chemical Manufacturers Association butadiene panel on behalf of the test sponsors and pursuant to a testing consent order at 40 CFR 799.5000. They were received by EPA on July 15, 1992. The submission describes the aqueous volatilization of 4-vinyl-1-cyclohexene. Chemical fate testing is required by this consent order. This chemical may be used as an intermediate in the manufacture of 4-vinylcyclohexene mono- and diepoxides, which are used to make epoxy resins, polyesters, coatings, and plastics; and may also be used in the manufacture of flame retardants, insecticides, plasticizers, and antioxidants.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS-44590). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Dated: August 12, 1992.

James B. Willis,

Acting Director, Existing Chemical Assessment Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-19753 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-83002M; FRL-4082-3]

Receipt of Requests for Exclusion and Waiver from Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt of requests for exclusion and waiver from testing.

SUMMARY: EPA requires that specified chemical substances be tested to determine if they are contaminated with halogenated dibenzo-p-dioxins (HDDs) or halogenated dibenzofurans (HDFs), and that results be reported to EPA. However, provisions have been made for exclusion and waiver from these requirements if an appropriate application is submitted to EPA and is approved. EPA has received requests for an exclusion and a waiver from these requirements from Chugai Boyeki (America) Corporation and Great Lakes Chemical Corporation, respectively, and will accept comments on these requests. EPA will publish another **Federal Register** notice announcing its decisions on these requests.

DATES: Submit written comments on or before [insert date 15 days after date of publication in the **Federal Register**].

ADDRESSES: Submit written comments in triplicate, identified with the docket control number OPPTS-83002M, to: TSCA Public Docket Office (TS-793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, (202) 554-1404, TDD: (202) 544-0551.

SUPPLEMENTARY INFORMATION: Under 40 CFR part 766 EPA requires testing of certain chemical substances to determine whether they may be contaminated with HDDs and HDFs.

Under 40 CFR 766.32(a)(1)(i) and (a)(1)(ii), a company may be granted an exclusion from the testing requirements of part 766 if the process and reaction conditions are such that HDDs/HDFs would not be produced, or appropriate testing of the chemical substance has already been done, respectively.

Under 40 CFR 766.32(a)(2)(i), a waiver may be granted if a responsible company official certifies that the chemical substance is produced only in quantities of 100 kilograms or less per year, and only for research and development purposes. Under 40 CFR 766.32(a)(2)(ii), a waiver may be granted if in the judgement of EPA, the cost of testing would drive the chemical substance off the market or prevent resumption of manufacture or import of the chemical substance; or if it is not currently manufactured, and the chemical substance will be produced so that no unreasonable risk will occur due to its manufacture, import, processing, distribution, use, or disposal. Under 40 CFR 766.32 (a)(2)(iii), waivers may be appropriately conditioned with respect to such factors as time and conditions of manufacture and use.

Under the regulation, a request for either an exclusion or a waiver must be made before September 4, 1987, for persons manufacturing, importing, or processing a chemical substance as of June 5, 1987; or 60 days before resumption of manufacture or

importation of a chemical substance not being manufactured, imported, or processed as of June 5, 1987.

Chugai Boyeki (America) Corporation requests an exclusion under 40 CFR 766.32(a)(1)(i) and (a)(1)(ii) for 2,3,5,6-tetrachloro-2,5-cyclohexadiene-1,4-dione (CAS No. 118-75-2, chloranil). Some of their supporting data was submitted as confidential business information (CBI).

Great Lakes Chemical Corporation requests a waiver under 40 CFR 766.32(a)(2). Their supporting data were submitted as CBI.

CBI, while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Public Docket Office, Rm. NE-G004, 401 M St., SW., Washington, DC from 8 a.m. to noon and from 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: August 5, 1992.

Charles M. Auer,

Director, Existing Chemical Assessment Division.

[FR Doc. 92-19750 Filed 8-18-92; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

Dated: August 11, 1992.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 [44 U.S.C. 3507].

Copies of these submissions may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-7513. Persons wishing to comment on these information collections should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-4814.

OMB Number: None.
Title: ARMIS Joint Cost Report.
Report Number: FCC Report 43-03.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: Annually.
Estimated Annual Burden: 150 responses, 115 hours average burden per response; 17,250 hours total annual burden.
Needs and Uses: This submission is made to request extension of the expiration date of FCC Report 43-03, the Joint Cost Report, without any change in its substance or method of collection. The Joint Cost Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analyses of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Currently, OMB control number 3060-0395 is assigned to ARMIS reports, including this one. However, the Commission is requesting that a new OMB control number be assigned exclusively for the Joint Cost Report to facilitate recordkeeping.

OMB Number: None.
Title: ARMIS Quarterly Report.
Report Number: FCC Report 43-01.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: Quarterly.
Estimated Annual Burden: 600 responses; 220 hours average burden per response, 132,000 hours total annual burden.
Needs and Uses: This submission is made to request extension of the expiration date of FCC Report 43-01, the Quarterly Report, without any change in its substance or method of collection. The Quarterly Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analyses of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Currently, OMB control number 3060-0395 is assigned to ARMIS reports, including this one. However, the Commission is requesting that a new OMB control number be assigned exclusively for the Quarterly Report to facilitate recordkeeping.

OMB Number: None.
Title: ARMIS Access Report.
Report Number: FCC Report 43-04.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit.
Frequency of Response: Aannually.
Estimated Annual Burden: 150 responses; 1,150 average burden per response, 172,500 hours total annual burden.
Needs and Uses: This submission is made to request extension of the expiration date of FCC Report 43-04, the Access Report, without any change in its substance or method of collection. The Access Report contains financial and operating data and is used to monitor the local exchange carrier industry and to perform routine analyses of costs and revenues on behalf of the Commission. It is one of ten reports comprising the Automated Reporting Management Information System (ARMIS). ARMIS was implemented to facilitate the timely and efficient analyses of revenue requirements and rate of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy. Currently, OMB control number 3060-0395 is assigned to ARMIS reports, including this one. However, the Commission is requesting that a new OMB control number be assigned exclusively for the Access Report to facilitate recordkeeping.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 92-19786 Filed 8-18-92; 8:45 am]

BILLING CODE 6712-01-M

Executive Resources and Performance Review Board; Appointment of Members

As required by the Civil Service Reform Act of 1978 (Public Law 95-454), Chairman Alfred C. Sikes appointed the following executives to the Executive Resources and Performance Review Board:

Andrew S. Fishel
Ralph A. Haller
Cheryl A. Tritt
Robert L. Pettit
Roy J. Stewart
Robert M. Pepper

Federal Communication Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 92-19789 Filed 8-18-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for review of the information collection system described below.

Type of Review: Revision of a currently approved collection.
Title: Application for Consent to Exercise Trust Powers.
Form Number: FDIC 6200/09.
OMB Number: 3064-0025.
Expiration Date of OMB Clearance: September 30, 1994.
Respondents: Insured nonmember banks.
Frequency of Response: On occasion.
Number of Respondents: 50.
Annual Hours per Respondent: 15.
Total Annual Hours: 750.
OMB Reviewer: Gary Waxman, (202) 395-7340, Office of Management and Budget, Paperwork Reduction Project 3064-0025, Washington, DC 20503.
FDIC Contact: Steven F. Hanft, (202) 898-3907, Office of the Executive Secretary, room F-400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
Comments: Comments on this collection of information are welcome and should be submitted before October 19, 1992.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: The FDIC is requesting OMB approval for a revision to application form FDIC 6200/09. The proposed revision eliminates some of the information requested in the current collection, consolidates other information requests into fewer questions, and requests some new information. The purpose of these changes is to simplify the task of completing the form and provide clearer guidance as to what information is needed to process the application.

Dated: August 13, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92-19682 Filed 8-18-92; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Meeting; FEMA Security Practices Board of Review

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, FEMA announces the following committee meeting, portions of which may be closed:

NAME: FEMA Security Practices Board of Review.

DATES OF MEETING: Tuesday and Wednesday, August 25-26, 1992.

PLACE: Federal Emergency Management Agency, Director's Conference Room (EICC), Mezzanine, 500 C Street SW., Washington, DC 20472.

TIMES: 9 a.m. to 12 p.m. on both days.

PROPOSED AGENDA: Tuesday, August 25: review the transcript and tasks from the last meeting; discuss contract investigative/adjudicative procedures; review and discuss issue papers; review issues to be resolved by the Board in its final report; review and discuss an outline of the final report; make preparations for the next meeting, including assignment of tasks. Wednesday, August 26: compile final report.

FOR FURTHER INFORMATION CONTACT: Dirk J. Vande Beek, Office of the Director, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3923.

SUPPLEMENTARY INFORMATION: The Review Board must complete its review and report by September 11, 1992. In view of this time limit and owing to the complex, sensitive, and urgent nature of FEMA security matters, less than 15 days' notice of the meeting is given, under 41 CFR 101-6.1015(b)-(2).

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Director, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-3923 on or before Friday, August 21, 1992.

The Director has determined that portions of the Board meeting may have to be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, and 5 U.S.C. 552b(c), because discussions may (1) disclose matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense, (2) relate solely to the internal personnel rules and practices of an agency, and (3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy.

Minutes of the meeting (minus those portions of the meeting which may be closed to the public) will be prepared and will be available for public viewing in the Office of the Director, Federal Emergency Management Agency, room 828, 500 C Street SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: August 13, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92-19711 Filed 8-18-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

City of Long Beach et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments in each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title

46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–010808–002.

Title: Long Beach/Maersk Terminal Agreement.

Parties: City of Long Beach ("City"), Maersk, Inc. ("Maersk").

Synopsis: The amendment reflects an adjustment in the rent Maersk will pay to the City for the use of three cranes.

Agreement No.: 224–200165–008.

Title: Maryland Port Administration and Ceres Corporation, Marine Terminal Agreement.

Parties: The Maryland Port Administration, Ceres Corporation.

Synopsis: The Agreement extends the term of the Agreement for sixty days, beginning August 8, 1992.

Dated: August 13, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking

Secretary.

[FR Doc. 92–19674 Filed 8–18–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89–777 (46 U.S.C. 817(e) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Diamond Cruise, Inc., 2875 N.E. 191st Street, #304, North Miami Beach, Florida 33180.

Vessel: RADISSON DIAMOND

Dated: August 13, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–19676 Filed 8–18–92; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Holland America Line—Westours Inc., Wind Surf Limited and HAL Antillen N.V., 300 Elliott Avenue West, Seattle, WA 98119.

Vessel: STATENDAM

Dated: August 13, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92–19675 Filed 8–18–92; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Submitted to OMB

AGENCY: Office of Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to renew expiring information collection 3090–0010, New Item Application (GSA Form 1171). This Information Collection is used to determine whether or not a new product should be introduced into GSA's supply system.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

Annual Reporting Burden:
Respondents: 720; *annual responses:* 720; *hours per response:* .5; *total burden hours:* 360.

FOR FURTHER INFORMATION CONTACT: John T. Hughes, Information Collection Management Branch (202–501–2691).

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F Street NW., Washington, DC 20405, by telephoning (202) 501–2691, or by faxing your request to (202) 501–2727.

Dated: August 12, 1992.

Mary Cunningham,

Acting Director, Information Management Division.

[FR Doc. 92–19743 Filed 8–18–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Family Assistance.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for clearance of a currently approved information collection for the Office of Family Assistance of the Administration for Children and Families. This information collection, the JOBS Program Participant Data Collection (Form No. FSA 108) was approved under OMB control number 0970–0112.

ADDRESSES: Copies of the Information Collection request may be obtained from Steve Smith, Reports Clearance Officer, by calling (202) 401–9235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: JOBS Participant Data Collection.

OMB No.: 0970–0112.

Description: This collection of information is authorized by section 203(b) of the Family Support Act of 1988 which requires ACF to establish uniform reporting requirements under which States must submit information on sampled JOBS program participants. Code of Federal Regulations 45 Public Welfare, § 250.82 requires the State to submit electronically, a sample of un-aggregated case records of JOBS participants on a monthly basis. Information received from the States will be used to create the federal JOBS program database. This information provides detailed service-related data which enables ACF to: Closely monitor State program operations; establish program policy and direction; and prepare responses to the Congress, the Department, GAO, other federal departments, and public and private agencies.

Annual Number of Respondents: 51.
Annual Frequency: 12.
Average Burden Hours Per Response: 2.
Total Burden Hours: 1,224.

Dated: August 5, 1992.

Naomi B. Marr,

Director, Office of Information and Systems Management.

[FR Doc. 92–19679 Filed 8–18–92; 8:45 am]

BILLING CODE 4130–01–M

Administration for Children and Families

U.S. Advisory Board on Child Abuse and Neglect; Meeting

AGENCY: U.S. Advisory Board on Child Abuse and Neglect, Administration for Children and Families, ACF, Department of Health and Human Services.

ACTION: Notice of an Executive Committee meeting of the U.S. Advisory Board on Child Abuse and Neglect, and Board hearing on International Perspectives on a New National Strategy for Child Protection.

SUMMARY: The Executive Committee of the U.S. Advisory Board on Child Abuse and Neglect will hold a meeting in Chicago, Illinois on August 29, 1992. This meeting from 7 p.m. to 11 p.m. is closed to the public due to the need for confidentiality in connection with a discussion about issues relating to future plans of the Board. The Board will also conduct a hearing on International Perspectives on a New National Strategy for Child Protection from 4 p.m. to 7 p.m. on August 29, 1992.

ADDRESSES: This meeting will be held at: Hyatt Regency Hotel 151 East Wacker Drive, Chicago, Illinois 60601.

FOR FURTHER INFORMATION CONTACT: Joan M. Williams, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, room 300E, Humphrey Building, Washington, DC 20201, (202) 690–8178.

SUPPLEMENTARY INFORMATION: During the Executive Committee meeting the Executive Committee of the Board will discuss: The form, content, nature and scope of the 1993 and 1994 annual reports of the Board; progress towards the accomplishment of the FY 1992—FY 1993 Board Program Plan; the special 1993 Board report on child protective services reform; and Board governance and administrative issues.

The U.S. Advisory Board on Child Abuse and Neglect will also conduct a hearing on International Perspectives on a New National Strategy for Child Protection. Coincident with the International Congress on Child Abuse and Neglect, the Board has invited several international experts to share experiences from their nations relevant to the proposed strategy. Separate panels of these experts will present on policy, programs, and community development efforts.

Dated: August 6, 1992.

Byron D. Metrikin-Gold,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 92–19787 Filed 8–18–92; 8:45 am]

BILLING CODE 4130–01–M

Centers for Disease Control

[Announcement Number 307]

Availability of Funds for Fiscal Year 1993; Breast and Cervical Cancer Education for Primary Care Providers; Amendment

A notice announcing the availability of Fiscal year (FY) 1993 funds for cooperative agreements for Breast and Cervical Cancer Education for Primary Care Providers was published in the **Federal Register** on June 25, 1992, [57 FR 28517]. The notice is amended as follows:

On page 28518, first column, under the heading **"AVAILABILITY OF FUNDS,"** the first paragraph should read: "It is anticipated that approximately $400,000 will be available in FY 1993 to fund approximately 2 awards. It is expected that the average award will be $200,000 ranging from $175,000 to $225,000. It is expected the awards will begin on or about January 15, 1993, and are usually made for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of an acceptable application, satisfactory performance, and the availability of funds."

On page 28519, first column, under the heading **"APPLICATION SUBMISSION AND DEADLINE,"** the paragraph should read: "The original and two copies of the application PHS Form 5161–1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, Georgia 30305, on or before October 18, 1992."

All other information and requirements of the June 25, 1992, **Federal Register** notice remain the same.

Dated: August 11, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–19686 Filed 8–18–92; 8:45 am]

BILLING CODE 4160–18–M

[Program Announcement Number 270]

State Demonstration Projects; Comprehensive School Health Programs To Prevent Important Health Problems and Improve Educational Outcomes

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds to establish and/or strengthen comprehensive school health programs to prevent important health-risk behaviors. CDC will award competitive cooperative agreements in three categories:

Part I. Building State Education Agency and State Health Agency infrastructure for Comprehensive School Health Programs.

Part II. Strengthening Comprehensive School Health Education to Prevent Important Health-Risk Behaviors and Problems.

Part III. Establishing National Training and Demonstration Centers for Comprehensive School Health Programs.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This program announcement is related to several priority areas contained under Health Promotion and Disease Prevention with a particular focus on the Educational and Community-Based Program priority area. The PHS also is committed to helping attain the National Education Goals related to the health and educational outcomes of American students. In addition, the PHS is committed to improve the health of adolescents. This announcement is for the purpose of pursing all three of these commitments. (For ordering a copy of Healthy People 2000, the National Education Goals, and Adolescent Health, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)), 311 (b) and (c) (42 U.S.C. 243(b) and (c)), and 317(k) (42 U.S.C.

247b(k)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are the state education agencies of the 5 states with total mortality rates greater than 1000 deaths per 100,000 population as reported for 1989 by CDC's National Center for Health Statistics. These states are the District of Columbia, West Virginia, Florida, Pennsylvania, and Arkansas. For the purpose of this agreement, the term "state" includes the District of Columbia.

Availability of Funds

Approximately $2,300,000 is available in FY 1992 to fund competitive cooperative agreements in the following categories:

Part I: Building State Education Agency (SEA) and State Health Agency Infrastructure for Comprehensive School Health Programs.

Approximately $1 million is available to fund 3–5 awards which will range from $175,000—$300,000 each.

Part II: Strengthening Comprehensive School Health Education to Prevent Important Health-Risk Behaviors and Problems.

Approximately $1 million is available to fund 3–5 awards to strengthen activities in each of the categories A., B., C., D., and E. listed below. It is expected that awards will range from $175,000–$300,000.

A. Tobacco use
B. Dietary patterns
C. Sedentary lifestyles
D. HIV
E. STDs
F. Unintended pregnancy
G. Injuries
H. Alcohol and other drugs
I. Other

CDC anticipates that activities in categories F. through I. above will become integral parts of the comprehensive school health program during subsequent years of the five year project period.

Part III: Establishing National Training and Demonstration Centers for Comprehensive School Health Programs.

Approximately $300,000 is available to provide funding for one award.

Eligible applicants that apply under this Program Announcement must apply for parts I and II. Part III is optional. Funding for part III will be awarded only to an applicant that has received an award for parts I and II.

Awards are expected to begin on or about September 28, 1992, and are usually made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards, within an approved project period, will be made on the basis of satisfactory progress and the availability of funds.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance. Federal funds awarded under this Program Announcement may not be used to supplant state funds.

Purpose

The purpose of this program is to strengthen the capacity of state education agencies to plan, implement, and evaluate effective comprehensive school health programs to prevent important health-risk behaviors among youth including: Tobacco use; dietary patterns that contribute to disease; sedentary lifestyle; sexual behaviors that result in HIV infection; other STDs and unintended pregnancy; alcohol and other drug use; behaviors that result in unintentional and intentional injuries, and other behaviors or conditions that are leading causes of death and disability.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B., below:

A. Recipient Activities

Part I: Building State Education Agency and State Health Agency Infrastructure for Comprehensive School Health Programs

- Provide coordination among state education agency and state health agency programs to establish and/or strengthen comprehensive school health programs.
- Plan, organize, and/or develop statewide policies, personnel, and resources to help schools implement comprehensive school health programs designed to prevent important health-risk behaviors and health problems among youth.

Part II: Strengthening Comprehensive School Health Education to Prevent Important Health-Risk Behaviors and Problems

- Plan, implement, and evaluate specific objectives and activities to: 1) strengthen education to prevent specific health-risk behaviors and health problems for which fiscal assistance is provided (See Availability of Funds, Part II, A–1) and 2) help schools implement such education as part of comprehensive school health education.
- Increase the number and percentage of schools that provide age-appropriate comprehensive school health education at each grade level and other interventions or services designed to prevent important health-risk behaviors and problems.
- Increase the number and percentage of students at each grade level that receive comprehensive school health education and other interventions or services designed to prevent important health-risk behaviors and problems.
- Increase the number of agencies assisted by the recipient that provide comprehensive health education designed to prevent important health-risk behaviors and health problems among minority youth, youth in high health-risk situations, and youth with special education needs.
- Provide guidance, technical assistance, and training to help schools implement policies, guidelines, curricula and standards, and professional development and inservice training.
- Establish systematic procedures to monitor current levels of health-related behaviors among high school students.
- Establish systematic procedures to monitor and number and percentage of schools that provide comprehensive school health education at each grade level and the number and percentage of students that receive comprehensive school health education.
- Provide guidance and assistance to help schools involve parents and appropriate community agencies in planning and implementing comprehensive school health education.
- Establish a management system that provides qualified leadership and coordination within the SEA to strengthen comprehensive school health education, and works meaningfully with state health department personnel to implement effective comprehensive school health education.
- Collaborate with institutions of higher education to: strengthen the preservice and inservice training programs for comprehensive school health education, involve academic departments in improving school health education, and support coalitions to improve comprehensive school health education.

Part III: Establishing National Training and Demonstration Centers for Comprehensive School Health Programs

- Provide training workshops and demonstrations for teams of representatives from other state and local education and health agencies, and others interested in improving comprehensive school health programs in building state infrastructure for comprehensive school health programs, and strengthening comprehensive school health education to prevent important health-risk behaviors and problems.

B. CDC's Activities

- Coordinate with SEAs, Local Education Agencies (LEAs), and national education and health organizations in planning and implementing relevant national strategies to strengthen comprehensive school health programs.
- Provide technical assistance and program guidance for comprehensive school health program planning, implementation, evaluation and assessment.
- Organize and convene meetings of national, state, and local education agencies to address issues and activities related to strengthening comprehensive school health programs.
- Provide program management, curriculum development, teacher training, and other services necessary to carry out the purposes of this program, at the request of the applicant, through the assignment of Federal personnel to a project in lieu of a portion of the financial assistance.

Evaluation Criteria

Applications for parts I, II, and III will be individually reviewed and scored. Each part is allocated up to a total of 125 points according to the following criteria:

1. Need

The extent to which the applicant justifies the program's need to help schools establish and strengthen comprehensive school health programs, or to help other SEAs/LEAs improve comprehensive school health programs (5 points).

2. Capacities

The extent to which the applicant demonstrates sufficient capacity to use the resources requested for their intended purposes (5 points).

3. Coordination

The extent to which the applicant demonstrates sufficient ability to collaborate with and involve other state and local agencies and relevant organizations in the proposed program activities (5 points).

4. Leadership

The extent to which the applicant provides evidence that demonstrates commitment to devoting a full-time senior position with responsibility, authority, professional training and experience to plan and implement activities that are consistent with the purposes of the program (25 points).

5. Objectives/Factors/Activities/Evaluation

a. Objectives

The extent to which the applicant has submitted specific, measurable, and feasible objectives for this budget period. The objectives are to be directly related to the recipient activities of the part for which the applicant is applying, as described in Program Requirements (15 points).

b. Factors

The extent to which the applicant:

(1) Identifies potential factors to be influenced in achieving the stated objectives (5 points).

(2) Selects factors, that if successfully influenced, seem likely to significantly contribute to achieving the stated objectives (5 points).

c. Activities

The extent to which the applicant:

(1) Identifies activities that are likely to influence the selected factors and thus significantly contribute to achieving the stated objectives (15 points).

(2) Provides a substantial plan for implementing the activities by describing who will do what, when, and where (15 points).

d. Evaluation

The extent to which the applicant:

(1) Identifies specific data that will be obtained to evaluate progress in meeting objectives and implementing activities during the budget period (10 points).

(2) Describes how that information will be obtained, prepared in a specific report(s) to be submitted to CDC, and used to improve the program, including who will do what, when, and where (10 points).

6. Evidence of Support

The extent to which the applicant provides written evidence of support and agreement by appropriate officials of organizations that are involved in the program, especially the state health department and education agencies that may be targeted for assistance during the budget period (5 points).

7. Transfer of Technology

The extent to which the applicant provides written agreement to submit program descriptions, curricula, and other materials to the CDC Combined Health Information Database (CHID); share materials developed to promote comprehensive school health programs and prevent important health-risk behaviors with other agencies; participate with CDC and other national organizations in an annual conference and in at least two meetings during the budget period; and identify state or local education representatives as candidates for training at CDC-supported National Training/Demonstration Center(s) (5 points).

8. Budget and Accompanying Justification

The extent to which the applicant provides a detailed budget, with accompanying justification of all operating expenses, that is consistent with the stated objectives and planned activities of the project. The budget justification narrative should include job descriptions for personnel (Not Weighted).

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Mailstop E–14, room 300, Atlanta, GA 30305. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process

recommendations it receives after that date.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

HIV/AIDS Requirements

Recipients must comply with the document entitled: "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs" (June 15, 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a government health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 must be submitted to: Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305, on or before August 26, 1992.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date, or

(b) Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial mail carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in 1.(a) or 1.(b) above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E-14, Atlanta, GA 30305, (404) 842-6803. Programmatic technical assistance may be obtained from Jack T. Jones, Chief, Program Development and Services Branch, Division of Adolescent and School Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road NE., Mailstop K-31, Atlanta, GA 30333, or by calling (404) 488-5356.

Please refer to Announcement Number 270 when requesting information and submitting any application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone: 202-783-3238).

A copy of "The National Education Goals Report" and its Executive Summary (Full Report, Order No. 065-000-00467-4; Executive Summary, Order No. 065-000-0466-6) can be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-1954.

Dated: August 12, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-19699 Filed 8-18-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Gastrointestinal Drugs Advisory Committee

Date, time, and place. September 3 and 4, 1992, 9 a.m., Conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, September 3, 1992, 9 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 5 p.m.; open committee discussion, September 4, 1992, 9 a.m. to 1 p.m.; Joan C. Standaert, Center for Drug Evaluation and Research (HFD-180), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 419-259-6211 or Valerie M. Mealy, Advisors and Consultants Staff, 301-443-4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 24, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 3, 1992, the committee will discuss new drug application 20-007 (S-5), Zofran (ondansetron) injection, Glaxo, Inc., to be indicated for the prevention and treatment of post-operative nausea and vomiting. On September 4, 1992, the committee will hear a presentation regarding FDA inspection and enforcement of institutional review and informed consent.

Food Advisory Committee

Date, time, and place. September 14 and 15, 1992, 8 a.m., Doubletree Hotel, Federal Hall, 300 Army-Navy Dr., Arlington, VA.

Type of meeting and contact person. Open committee discussion, September 14, 1992, 8 a.m. to 5 p.m.; open committee discussion, September 15, 1992, 8 a.m. to 8:15 a.m.; open public hearing, 8:15 a.m. to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 4:15 p.m.; open public hearing, 4:15 p.m. to 4:45 p.m., unless public participation does not last that long; open committee discussion, 4:45 p.m. to 5 p.m.; Lynn A. Larsen, Center for Food Safety and Applied Nutrition (HFF-6), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5140 or Patricia Thompson, Advisory Committee/Communications Group, 202-205-4564.

General function of the committee. The committee provides advice on emerging food safety, food science, and nutrition issues that FDA considers of primary importance in the next decade.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 4, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 14, 1992, the committee will be briefed on topics of major importance to the Center for Food Safety and Applied Nutrition (CFSAN): (1) The food labeling initiative, (2) the CFSAN reorganization, (3) the recommendations of the Advisory Committee on FDA, (4) the role of the FDA Science Advisor and Science Policy Council, and (5) the food safety challenges the agency will be facing in the future. On September 15, 1992, a working session will be held to discuss the agency's food research activities, including the scientific and technical expertise needed to support the agency's regulatory mission.

Veterinary Medicine Advisory Committee

Date, time, and place. September 16 and 17, 1992, 8:30 a.m., Goshen Conference rm., Holiday Inn-Gaithersburg, Two Montgomery Village Ave., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, September 16, 1992, 8:30 a.m. to 10:30 a.m.; open public hearing, 10:30 a.m. to 1 p.m., unless public participation does not last that long; open committee discussion, 1 p.m. to 1:30 p.m.; open public hearing, 1:30 p.m. to 2 p.m., unless public participation does not last that long; open committee discussion, 2 p.m. to 3:30 p.m.; open public hearing, 3:30 p.m. to 4:30 p.m., unless public participation does not last that long; open committee discussion, September 17, 1992, 8:30 a.m. to 9:30 a.m.; open public hearing, 9:30 a.m. to 10:30 a.m., unless public participation does not last that long; open committee discussion, 10:30 a.m. to 11:30 a.m.; Gary E. Stefan, Center for Veterinary Medicine (HFV-244), 7500 Standish Pl., Rockville, MD 20855, 301-295-8769.

General function of the committee. The committee reviews and evaluates available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before August 7, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) A proposed compliance policy guide on producer use of animal drugs, (2) compounding of animal drugs by veterinarians, (3) drug residue methods for milk, (4) aquaculture enforcement policy, and (5) issues from the Center for Veterinary Medicine poultry workshop.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug

Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 14, 1992.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 92–19801 Filed 8–14–92; 4:09 p.m.]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Environmental Policy Act: Proposed Implementing Procedures (516 DM 6, Appendix 8)

AGENCY: Department of the Interior.

ACTION: Notice of a proposed addition to the Department of the Interior's Categorical Exclusions for the Office of Surface Mining Reclamation and Enforcement.

SUMMARY: This notice announces a proposed addition to the categorical exclusions included in the Department Manual 516 DM 6, appendix 8, that lists actions excluded from the National Environmental Policy Act of 1969 (NEPA) procedures for the Office of Surface Mining Reclamation and Enforcement (OSM). The proposed categorical exclusion pertains to certain projects carried out in the Abandoned Mine Lands (AML) program under title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATES: Comments due September 18, 1992.

ADDRESSES: Comments to Jonathan P. Deason, Director, Office of Environmental Affairs, MS 2340–MIB, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Jonathan P. Deason, address above, telephone (202) 208–3891; for OSM, David Hamilton (717) 782–4036.

SUPPLEMENTARY INFORMATION: SMCRA authorizes OSM to collect a fee on each ton of coal produced from mining. The fee collected from coal producers is placed in the AML Reclamation Fund (Fund). States and Tribes with approved coal mining regulatory programs and abandoned mine reclamation plans received grants annually from OSM to reclaim specific abandoned mine land projects. Since 1981, OSM has been awarding grants to 23 States and 3 Tribes for the construction and administration of AML reclamation projects. Through Fiscal Year 1991, approximately 1.2 billion dollars have been awarded from the Fund for reclamation of over sixty thousand acres of eligible abandoned mine lands and waters.

States, Tribes, and Federal reclamation activities reclaim and restore land and water resources damaged by coal mining, including abandoned surface coal mines, abandoned coal processing areas, sealing and filling abandoned deep coal mine entries and voids, revegetation of land adversely affected by past coal mining to prevent erosion and sedimentation, and control of water pollution created by coal and sedimentation, and control of water pollution created by coal mine drainage (section 401(c)(1) of SMCRA). These reclamation projects may also be conducted where the damage was a result of non-coal mining if certain conditions are met (section 409(a) of SMCRA). Projects vary considerably in size, from those affecting only a few square feet to those affecting hundreds of acres, and vary in costs from a few thousand dollars to several million.

AML problems are exhibited in several broad categories including highwalls, surface and underground burning of coal and coal refuse, subsidence, mine openings (shafts and portals), sediment clogged streams, landslides, piles and embankments, structures, impoundments, mine discharges, and barren or poorly vegetated lands. AML sites present public health and safety and environmental hazards. In order to facilitate compliance with the requirements of the NEPA in the AML program, OSM prepared OSM–EIS–2 in March of 1980 and OSM–EIS–11 in November of 1983. These environmental impact statements address programmatic aspects of AML and the impacts of reclamation. However, the preparation of site specific environmental assessments has still been required for each project.

NEPA requires that when a major Federal action may have significant impacts on the quality of the human environment, a detailed statement (EIS) be prepared (section 102(2)(C)). When it is known in advance that a certain category of actions will not have a significant effect on the human environment, that category of actions may be excluded from further NEPA requirements (40 CFR 1508.1). The Department previously reviewed the activities authorized under title IV and excluded certain decisions relative to the approval of grants under the AML program.

Introduction to Proposal

Review of 649 environmental assessments related to AML projects located in 27 States across the country and involving 3 Tribal lands from July 1989 to the present has led OSM to conclude that the majority of project types discussed above, have virtually the same reclamation descriptions, reclamation design techniques, environmental impacts, and mitigating measures. These projects are implemented consistent with State and Federal Laws, and generally have only local, negligible to moderate short or long term impacts which are effectively mitigated through common construction practices.

The Department proposes an additional categorical exclusion as subparagraph 8.4.B(33) in appendix 8 in the Department of the Interior's Manual (516 DM 6). The excluded activities would include a majority of typical AML projects, although the excluded projects would be limited in size and scope, as described below. The proposed exclusion is a category of actions that does not individually or cumulatively have a significant effect on the quality of the human environment. If any proposed AML project involves any of the following, an environmental assessment and/or environmental impact statement will be prepared in accordance with OSM's NEPA Handbook.

1. If the project involves any of the Departmental exceptions to the categorical exclusions listed in Department Manual 516 DM 2, Appendix 2.

2. If the project is more than 100 acres or involves hazardous wastes; explosives; hazardous or explosive gases; dangerous impoundments; mine fires and refuse fires; undisturbed, non-commercial borrow and disposal sites; dangerous slides where abatement has the potential for damaging inhabited property; or subsidences involving the placement of material into underground mine voids through drilled holes.

3. If the project impacts resources requiring specialized mitigation or pose unresolved issues concerning topography, land use, soils, vegetation, hydrology, fish and wildlife, historic and cultural resources, recreation, air quality, noise, or other socioeconomic concerns. Unresolved issues would include general controversy expressed by the public.

Appendix 8 must be interpreted in conjunction with the Department's NEPA procedures (516 DM 1–6) and the Council on Environmental Quality regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Department's procedures were published in the **Federal Register** on April 23, 1980 (45 FR 27541) and revised on May 21, 1984 (49 FR 21437). Appendix 8 for OSM was published on January 23, 1981 (46 FR 7487) and revised on February 28, 1990 (55 FR 7038).

Proposed Categorical Exclusion 33

AML reclamation projects involving: No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, non-commercial borrow and disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. Departmental exceptions in 516 DM 2, Appendix 2 apply to this exclusion. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404, 409 and 411 of SMCRA. Also, projects that have been declared an emergency pursuant to section 410 of SMCRA, may be candidates for this exclusion.

Eligibility for this categorical exclusion would be determined by OSM based on the results of on-site inspection(s), survey(s), and other methods of evaluation and documentation prepared by the States/Tribes or OSM to determine the presence or absence of the criteria. States/Tribes would submit environmental information for a site to OSM. OSM would then determine the applicability of the categorical exclusion. Details of this determination would be added to OSM's NEPA Handbook and the chapter on environmental compliance in the Federal Assistance Manual, which applies to projects funded by grants under title IV. Projects that do not fully meet all of these criteria would not qualify for this categorical exclusion.

Discussion of Criteria

A project involving one of the Departmental exceptions to categorical exclusions will automatically require the preparation of an environmental assessment. Briefly, the list of exceptions contains criteria including adverse effects on public health or safety, parks, recreation or refuge lands, wilderness areas, ecologically sensitive areas, wild and scenic rivers, wetlands, floodplains, properties listed or eligible for listing on the National Register of Historic Places, and species listed or proposed to be listed on the List of Endangered or Threatened Species, or on designated Critical Habitats for these species. Also, included in the Departmental exceptions to categorical exclusions are concerns related to environmental controversy, uncertainty, individually insignificant but cumulatively significant environmental effects, precedent setting decisions about future actions, and compliance with Federal, State, Tribal or local environmental laws, executive orders, and requirements. The complete list of Departmental exceptions should be referred to when applying the categorical exclusion.

OSM's general exceptions from the categorical exclusion include AML projects that incorporate problems or activities which will require the preparation of an environmental assessment. Projects which would be ineligible for the categorical exclusion are those involving the following:

1. AML projects which affect more than 100 acres are ineligible for the categorical exclusion. OSM's sample of environmental assessments included only 24 projects (3.7%) that involved more than 100 acres. These projects were more likely to affect important resources. The Department acknowledges that projects involving large acreage have a higher potential to adversely affect important resources and therefore is limiting the exclusion to projects affecting less than 100 acres.

2. AML projects involving hazardous wastes as defined by the Environmental Protection Agency are ineligible for the categorical exclusion. The potential for significant impacts may be present at sites with materials that may be a danger to the work crew conducting the reclamation or to residents or other citizens. The use of protective clothing, ventilators, or face masks or other special handling techniques are often required for protection from these materials. For example, PCBs, occasionally found at abandoned mine sites in electrical transformers, require not only special handling at the site but also special disposal procedures.

3. AML projects that involve the use of explosives are ineligible for the categorical exclusion. Use of explosives involves a potential for injury to the work crew and/or the general public in the area, and damage to property.

4. AML projects that involve undisturbed non-commercial borrow and disposal sites are ineligible for the categorical exclusion. Because of the required analysis of alternative offsite areas, the transportation of material between the AML project and offsite borrow and disposal areas, and offsite impacts, an environmental assessment shall be required. Projects utilizing rock quarries, landfills, or permitted mine sites and other preexisting sites that are available for other public disposal purposes would be eligible for the categorical exclusion.

5. AML subsidence projects that involve the placement of material into underground mine voids through drilled holes are ineligible for the categorical exclusion. These projects can endanger foundations, sewers, and areas beyond the project boundaries. The sample of environmental assessments included insufficient numbers of large or area-wide subsidence projects (over 1 acre) which are the type usually associated with this reclamation technique. Pothole type subsidence projects which are filled with material such as gravel or other appropriate fill material would be eligible for the categorical exclusion.

6. AML projects that involve dangerous slides where the abatement work can result in damage to inhabited property are ineligible for the categorical exclusion. This type of project includes cases where the toe of the landslide is threatening a home at the base of a slope. The inherent danger of damage to property would require the preparation of an environmental assessment.

7. AML projects that involve mine fires and refuse fires are ineligible for the categorical exclusion. This type of project poses a threat to the health and safety of workers and persons located at nearby residences or businesses. For example, the gases, fumes, and smoke associated with the reclamation of a mine fire may pose a hazard to a nearby resident with existing respiratory problems. Also, OSM's sample of environmental assessments contained few mine fire projects

8. AML projects involving hazardous or explosive gases are ineligible for the categorical exclusion. For instance, a project involving the venting of explosive methane may pose a serious threat to public health and safety. Also, OSM's sample of environmental assessments contained few projects that involved hazardous or explosive gases.

9. AML projects involving the reclamation of dangerous impoundments as defined by OSM Directive AML-1, including both surface and underground dangerous impoundments, are ineligible for the categorical exclusion. This type of project would include draining an underground mine pool. Accessing an underground mine pool or draining a surface impoundment and releasing a large and potentially dangerous volume of water would require an environmental assessment. Few of these types of projects were included in the sample of environmental assessments.

AML projects will not be excluded if the level of impact requires specialized mitigation. Also, AML projects that have unresolved issues with agencies, persons, or groups will not be excluded.

If anticipated project activities may result in impacts that must be mitigated through use of techniques beyond common construction practices an environmental assessment must be prepared. For example, a comparison can be made between the common installation of silt fence and hay bales to control sediment versus a specialized site specific sediment control plan required to protect sensitive offsite areas (such as a high quality trout stream), the common practice of placing brush piles and rock piles to replace wildlife habitat versus developing a specialized plan in response to concerns over adverse impacts on wildlife communities, and the routine placement of barriers that allow continued use of mines by non-endangered bats or other species versus specialized mine closure procedures in response to site specific concerns about bat habitat.

The resources used as criteria for these exceptions are based on those listed in OSM's NEPA Handbook and include—topography, land use, soils, vegetation, hydrology, fish and wildlife, historic and cultural, recreation, air quality, noise, and other values—that may make a project ineligible for this proposed categorical exclusion.

To be considered, any comments on this proposed addition to the list of categorical exclusions in the Department Manual must be received by September 18, 1992 at the location listed under ADDRESSES above. Comments received after that date will be considered only to the extent practicable.

Outline: Chapter 6 (516 DM 6) Managing the NEPA Process, Appendix 8—Office of Surface Mining Reclamation and Enforcement, 8.4 Categorical Exclusions.

Dated: August 12, 1992.

Jonathan P. Deason,

Director, Office of Environmental Affairs.

516 DM 6, Appendix 8

Office of Surface Mining Reclamation and Enforcement

8.4 Categorical Exclusions

* * * * *

B. * * *

(33) AML reclamation projects involving: No more than 100 acres; no hazardous wastes; no explosives; no hazardous or explosive gases; no dangerous impoundments; no mine fires and refuse fires; no undisturbed, non-commercial borrow and disposal sites; no dangerous slides where abatement has the potential for damaging inhabited property; no subsidences involving the placement of material into underground mine voids through drilled holes; and no unresolved issues with agencies, persons, or groups or adverse effects requiring specialized mitigation. Departmental exceptions in 516 DM 2, Appendix 2 apply to this exclusion. All sites considered in this categorical exclusion would have to first meet the eligibility test in sections 404, 409 and 411 of SMCRA. Also, projects that have been declared an emergency pursuant to section 410 of SMCRA, may be candidates for this exclusion.

[FR Doc. 92-19738 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-10-M

Bureau of Land Management

[NV-010-02-4320-01]

Meeting; Elko District Grazing Advisory Board

August 7, 1992.

AGENCY: Bureau of Land Management (BLM) Interior.

ACTION: Notice of meeting of the Elko District Grazing Advisory Board.

SUMMARY: A meeting of the Elko District Grazing Advisory Board will be held on September 17, 1992. The meeting will begin at 9 a.m. in the conference room of the Bureau of Land Management Office at 3900 E. Idaho St., Elko, Nevada 89801.

The Board will review:

1. Range improvement projects for Fiscal Years 1992 and 1993,
2. Proposed Allotment Management Plans, and
3. Allotment evaluations and proposed grazing agreements and decisions, as well as other matters that may come before the Board

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral statements to the Board between 11 a.m. and 11:30 a.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 3900 E. Idaho St., Elko, NV 89801 by September 10, 1992.

Dated: August 5, 1992.

Rodney Harris,

District Manager.

[FR Doc. 92-19678 Filed 8-14-92; 10:56 am]

BILLING CODE 4310-84-M

[MT-060-02-4830-12]

Lewistown District Advisory Council Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: District Advisory Council meeting.

SUMMARY: The Lewistown District Advisory Council will meet on September 17, 1992 at 10 a.m. in the BLM District Office, Airport Road, Lewistown, Montana. The agenda will be:

1. Introductions.
2. Election of Officers.
3. Visitor Center of the Upper Missouri.
4. Zortman Mine expansion application.
5. Sweetgrass Hills mining activity.
6. Laxalt grazing system task force.
7. District's law enforcement position.

LOCATION: Lewistown District BLM Office, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: David L. Mari, District Manager, Bureau of Land Management, Box 1160, Lewistown, Montana 59457.

SUPPLEMENTAL INFORMATION: The meeting will be open to the public and interested persons may make oral comments at the conclusion of the meeting or may file written comments for the council's consideration. Those wishing to make oral comments must notify the District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457. The Lewistown District Advisory Council is authorized under Section 309 of the Federal Land Policy and Management Act of 1976, as amended, 43 U.S.C. 1739.

Dated: August 10, 1992.

David L. Mari,

District Manager.

[FR Doc. 92-19684 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-DN-M

[ID-943-4214-10; IDI-29461]

Proposed Withdrawal and Opportunity for Public Meeting, Idaho

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice.

SUMMARY: The Corps of Engineers, Department of the Army, proposes to withdraw .27 acre of National Forest System land for construction of anadromous fish trapping and related facilities on the Crooked River. This notice closes the land for up to two years from surface entry and mining. The land will remain open to mineral leasing and all other uses which may be made of National Forest System lands.

DATES: Comments and requests for a meeting should be received on or before November 17, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Idaho State Director, BLM, 3380 Americana Terrace, Boise, Idaho 83706.

FOR FURTHER INFORMATION CONTACT: Larry R. Lievsay, BLM, Idaho State Office, (208) 384-3166.

SUPPLEMENTARY INFORMATION: On August 7, 1992, the Corps of Engineers, Department of the Army, filed an application to withdraw the following-described National Forest System lands from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights:

Boise Meridian

A parcel of land located near the west bank of the Crooked River, being westerly of Forest Road No. 233 (County Road No. 121) and easterly of the range line in the projected NW¼ of the unsurveyed sec. 30, T. 28 N., R. 8. E., more particularly described as follows:

Beginning at a point on the existing U.S. Army, Corps of Engineers, Crooked River Fish Hatchery, project boundary line and the East side of Forest Road No. 233 (County Road No. 121). Local grid coordinates of said point being North 16,690.000 feet and East 14,076.132 feet, being South 11°40'25.4" East a distance of 20.422 feet from Corps of Engineers project boundary monument No. 11-R3-13;

Thence North 90°00" West to a point on the unsurveyed West line of Range 8 East;

Thence in a Southerly direction on the West line of Range 8 East to a point of intersection with local grid coordinate North 16,560 feet;

Thence South 90°00" East to a point on the existing Corps of Engineers project boundary line and the East side of Forest Road No. 233, said point being North 8°07'48.4" West, a distance of 77.782 feet from the Corps of Engineers project boundary monument No. 11-R3-15;

Thence North 8°07'48.4" West, a distance of 29.294 feet on the existing Corps of Engineers project boundary line and the East side of Forest Road No. 233 to a point, said point being Corps of Engineers project boundary monument No. 11-R3-14;

Thence North 11°40'25.4" West, a distance of 103.134 feet on the existing Corps of Engineers project boundary line and the East side of Forest Road No. 233 to the point of beginning.

There is excepted therefrom all that part of the above described parcel lying within the right-of-way of said Forest Road No. 233 (County Road No. 122) subject to an installation of a 6" sewer line crossing with the centerline at local grid coordinate North 16,580 feet. The area described contains 0.27 acre in Idaho County.

Notice is hereby given that opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Idaho State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are existing valid and authorized uses.

Dated: August 10, 1992.

Larry R. Lievsay,

Acting Chief, Realty Operations Section.

[FR Doc. 92-19685 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Reclamation

[FES 92-19]

Milltown Hill Project, Douglas County, Oregon

AGENCY: Bureau of Reclamation in cooperation with the Bureau of Land Management (Interior) and the Corps of Engineers (COE).

ACTION: Notice of Availability: final EIS (FEIS) (INT-FES 92-19).

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation), in cooperation with the Bureau of Land Management and the Corps of Engineers, has prepared the final environmental impact statement (FEIS) for the Milltown Hill Project, Douglas County, Oregon.

Under provisions of the Small Reclamation Projects Act (Pub. L. 84-984), as amended), Douglas County has applied for a Federal loan and grants to develop a dam and reservoir at the Milltown Hill site on Elk Creek which would provide for irrigation, municipal and industrial water supply, improved anadromous fish habitat, flood control, and outdoor recreation opportunities.

DATES: A 30-day review period commences with the publication of this notice. Written comments on the FEIS may be submitted to the Regional Director, Bureau of Reclamation, Pacific Northwest Region, at the address provided below on or before September 18, 1992.

ADDRESSES: Copies of the FEIS may be obtained on request from the following: Regional Director, Bureau of Reclamation, Attention: PN-150, P.O. Box 043, 550 West Fort Street, Boise, ID 83724; telephone: (208) 334-9442.

Copies of the FEIS are available for inspection at the following locations:

Douglas County, Department of Water Resources Survey, Justice Building, room 103, Roseburg, OR 97470.

Bureau of Reclamation, Denver Office Library, Denver Federal Center, 6th and Kipling, Building 67, room 167, Denver, CO 80225.

Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street, NW., room 7456, Washington, DC 20240; telephone: (202) 208-4662.

Libraries

Yoncalla Public Library, 281 Front, Yoncalla, Oregon; Umpqua Community College Library, 1140 Umpqua College Road, Roseburg, Oregon; Oakland

Public Library, 637 Locust, Oakland, Oregon; Multnomah County Library, 801 SW 10th, Portland, Oregon; Drain Public Library, 205 West A Avenue, Drain, Oregon; Douglas County Library, Douglas County Courthouse, 1036 SE Douglas, Roseburg, Oregon; Sutherlin Public Library, 210 East Central, Sutherlin, Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Christensen, Chief, Environmental and Biological Compliance Branch, Environmental Management Division, Pacific Northwest Region, Boise, Idaho; telephone: (208) 334-9442.

SUPPLEMENTARY INFORMATION: The FEIS presents the preferred alternative and the no action alternative. The preferred plan consists of a 186-foot-high dam and 24,143 acre-foot reservoir on Elk Creek, which would provide storage and conveyance of water to the communities of Rice Hill, Yoncalla, and Drain, allowing for municipal expansion and industrial diversification; increased water to provide a supplemental or full irrigation supply for up to 4,661 acres of arable lands; provide regulated flows of water for improved anadromous fish habitat; improved water quality in Elk Creek and Yoncalla Creek; and new water-related recreational facilities at the proposed reservoir. The project would also provide limited flood control in and near the city of Drain and would provide drainage facilities on agricultural lands as needed.

No significant changes have been made to the preferred development plan as presented in the DEIS (DES 91-33). The FEIS incorporates updates in impact and economic analyses and presents the results of agency and public review of the DEIS during the 60-day review period. Based on that review, it has been determined that no significant changes are required in the proposed project and that the analyses presented in the DEIS remain valid as updated in the FEIS.

Environmental effects due to implementation of the preferred plan would include a loss of wetland and riparian habitats which would be fully mitigated. The project would provide an opportunity to secure 767 additional acres of habitat for the Columbian white-tailed deer, an endangered species, as a project mitigation measure. Construction of the proposed dam and reservoir would require relocation of local residences, roadways, and utility lines.

Section 404 Permit Application and Public Notice

The Corps of Engineers has received an application for a Department of Army Permit under Section 404 of the Clean Water Act from Douglas County. A Public Notice of the application, including evaluation factors which will be used in the permitting process, will be issued by the COE.

Dated: August 4, 1992.

Donald R. Glaser,

Director, Denver Operations.

[FR Doc. 92-19771 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-09-M

National Park Service

Acadia National Park, Bar Harbor, ME; Acadia National Park Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub.L. 92-463, 86 Stat. 770, 5 U.S.C. Ap. 1, Sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, September 14, 1992.

The Commission was established pursuant to Public Law 99-420, Sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at Acadia National Park Headquarters, McFarland Hill, Rt. 233, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 8, 1992;
2. Report of the Conservation Easement Subcommittee;
3. Report of the Acquisition Subcommittee;
4. Report of the General Management Planning Subcommittee;
5. Superintendent's report;
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288-3338.

Dated: August 11, 1992.

Steven H. Lewis,

Acting Regional Director.

[FR Doc. 92-19695 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-70-M

Cape Cod National Seashore South Wellfleet, MA, Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App 1 s 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday September 11, 1992.

The Commission was reestablished pursuant to Public Law 99-349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 10 a.m. at park headquarters, Marconi Station, South Wellfleet, Massachusetts for a field trip to Hatches Harbor.

The Commission members will then return to headquarters to convene the regular business meeting at 1 p.m. which will be held for the following reasons:

1. Adoption of Agenda;
2. Approval of Minutes of Previous Meeting;
3. Reports of Officers;
4. Superintendent's Report;
5. Reports of Subcommittees;
6. Highland Light Update;
7. Fresh Water Resources Discussion;
8. New Business;
9. Agenda for Next Meeting;
10. Date for Next Meeting;
11. Communications/public comment;
12. Adjournment.

The field trip is open to the members of the public but they must provide their own transportation.

The business meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Further information concerning the above may be obtained from the Superintendent, Cape Cod National Seashore, South Wellfleet, MA 02663.

Dated: August 11, 1992.

Steven H. Lewis,

Acting Regionol Director.

[FR Doc. 92-19696 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-70-M

Civil War Sites Advisory Commission Meeting

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice of meeting of the Civil War Sites Advisory Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that a meeting of the Civil War Sites Advisory Commission will be held on Saturday, September 19, 1992, at the Omni Richmond Hotel, 100 South 12th Street, Richmond, VA 23219 (telephone 804-344-7000). The meeting will begin at 9 a.m. and conclude before 3:30 p.m.

This meeting constitutes the ninth meeting of the Commission. The primary focus of the meeting will be on the subject of evaluating and preserving Civil War sites and preparing the Commission's draft report. The Commission will welcome input from the public on the subject of Civil War site evaluation and preservation, especially as it relates to Civil War sites in Virginia and surrounding states.

Space and facilities to accommodate members of the public may be limited and persons will be accommodated on a first-come, first-served basis. Anyone may file a written statement with the Commission concerning matters to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements may contact Ms. Jan Townsend, Interagency Resources Division, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-343-3936). Draft summary minutes of the meeting will available for public inspection about 8 weeks after the meeting, in Suite 250, 800 N. Capitol St., NW., Washington, DC 20002.

Dated: August 13, 1992.

de Teel Patterson Tiller,

Acting Executive Director and Chief, Interagency Resources Division.

[FR Doc. 92-19665 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-70-M

Acadia National Park, Bar Harbor, ME; Maine Acadian Culture Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App. 1, sec. 10) that the Maine Acadian Culture Preservation Commission will hold a meeting on Thursday, September 24, 1992.

The Commission was established pursuant to Public Law 101-543. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the development and implementation of an interpretive program of Acadian culture in the State of Maine and the selection of sites for interpretation and preservation by means of cooperative agreements.

The meeting will convene at the Van Buren Secondary School, Main Street, U.S. Rt. 1 in Van Buren, Maine, at 7 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held June 25, 1992;
2. Report of the following subcommittees: A. Bylaws, B. Public Involvement Strategies, C. Research Topics;
3. Report of the National Park Service planning team;
4. Public comments;
5. Proposed agenda, place and date of next Commission meeting;
6. Locations and dates of Commission meetings for FY 1993.

The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting.

Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, tel: (207) 288-3338.

Dated: August 11, 1992.

Steven H. Lewis,

Acting Regional Director

[FR Doc. 92-19694 Filed 8-18-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-331]

Certain Microcomputer Memory Controllers, Components Thereof, and Products Containing Same; Commission Decision To Review an Initial Determination; Suspension of Investigation Pending Review

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) on July 9, 1992, suspending the above-captioned investigation. The Commission has determined to suspend the investigation for 30 days while it considers the issue on review.

ADDRESSES: Copies of the ID and all other non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3104. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

SUPPLEMENTARY INFORMATION: On September 12, 1991, Chips and Technologies, Inc. ("Chips") of San Jose, California filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain microcomputer memory controllers covered by claims of four U.S. patents owned by Chips. The Commission instituted an investigation of Chips' complaint on October 17, 1991, 56 FR 52058. Respondents OPTi Computer, Inc. (OPTi) of Santa Clara, California, and Elite Microelectronics, Inc. (Elite) of San Jose, California remain in the investigation.

On June 23, 1992, Chips moved to suspend the investigation in favor of concurrent litigation in the U.S. District Court for the Northern District of California between Chips and OPTi, *Chips and Technologies, Inc.*, versus *OPTi Computer, Inc.*, Civil Action No. C-91-20349-SW (PVT). The Commission's Office of Unfair Import Investigations (OUII) supported Chips' motion. OPTi and Elite opposed the motion. On July 9, 1991, the ALJ granted Chips' motion and issued an ID (Order No. 25) suspending the investigation.

Authority: This action taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.55 of the Commission's Interim Rules of Practice and Procedures (19 CFR 210.55).

Issued: August 10, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-19745 Filed 8-18-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-331]

Certain Microcomputer Memory Controllers, Components Thereof and Products Containing Same, Commission Determination Not To Review an Initial Determination Granting In Part a Motion for Summary Determination of Noninfringement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 24) issued by the presiding administrative law judge (ALJ) granting in part a motion for summary determination of non-infringement of the patents in issue in the above-captioned investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

SUPPLEMENTARY INFORMATION: On June 19, 1992, respondent OPTi Computer, Inc. filed a motion for summary determination of non-infringement of the asserted claims of the four patents in issue in this investigation. The patents in issue are U.S. Letters Patent Nos. 4,899,272, 5,040,153, 4,924,375, and 5,051,899 (the '272, '153, '375, and '899 patents respectively). Complainant Chips and Technologies, Inc. and the Commission investigative attorneys did not oppose the motion for summary determination of non-infringement as to the '272 and '153 patents. On July 9, 1992, the presiding ALJ issued an ID granting the motion for summary determination of non-infringement as to the '272 and '153 patents. No petitions for review or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and 210.53 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. 210.53).

Issued: August 12, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-19742 Filed 8-18-92; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-538 (Final)]

Sulfanilic Acid From the People's Republic of China

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury by reason of imports from the People's Republic of China (China) of sulfanilic acid [3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines, pursuant to 19 U.S.C. 1673d(b))(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

Background

The Commission instituted this investigation effective March 18, 1992, following a preliminary determination by the Department of Commerce that imports of sulfanilic acid from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673d(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 15, 1992 (57 FR 13118). The hearing was held in Washington, DC, on June 30, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 10, 1992. The views of the Commission are contained in USITC Publication 2542 (August 1992), entitled "Sulfanilic Acid from the People's Republic of China: Determination of the Commission in Investigation No. 731-TA-538 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: August 11, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-19744 Filed 8-18-92; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Crawford dissenting and Commissioner Brunsdale not participating.

[3] The products covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid, and the sodium salt of sulfanilic acid (sodium sulfanilate). Sulfanilic acid and sodium sulfanilate are provided for in subheadings 2921.42.24 and 2921.42.75 of the Harmonized Tariff Schedule of the United States.

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9622(d)(2), notice is hereby given that on August 10, 1992, a proposed Consent Decree in *United States* v. *Alcan Aluminum Co., et al.*, Civil Action No. 88-4970, was lodged with the United States District Court for the Eastern District of Pennsylvania. The Consent Decree resolves a complaint filed by the United States against four defendants under section 107(a) of CERCLA, 42 U.S.C 9602(a), for recovery of costs associated with the cleanup of the McAdoo Associates Site in Schuylkill County, Pennsylvania. Defendants are generators and a transporter which did not take part in a 1988 "mixed-funding" settlement for the Site, in which 65 parties agreed to perform the remedy in exchange, generally, for reimbursement of 25% of their costs from the Superfund.

During 1991, defendants placed into a court-supervised, interest-bearing escrow account the sum of $2 million, which includes $1 million covering the past costs and enforcement costs associated with the Site, and $1 million covering the Superfund's 25% share of the costs of the remedy and EPA's oversight costs. The $2 million sum, plus all accrued interest, will be turned over to the United States upon entry of the Decree.

Simultaneously with the lodging of the proposed Consent Decree, the defendants filed an amended third-party complaint against additional generators and part-owners of the Site. The Consent Decree also resolves that third-party action.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Alcan Aluminum Co., et al.*, D.J. No. 90-11-3-142A.

The proposed Consent Decree may be examined at the office of the United States Attorney for the Eastern District of Pennsylvania, 615 Chestnut Street, suite 1300, Philadelphia, Pennsylvania 19106 and the U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue NW., Box 1097, Washington, DC 20004, (202) 347-2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.75 (25 cents per page reproduction costs) payable to the "Consent Decree Library."

Barry M. Hartman,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-19686 Filed 8-18-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; The Frame Relay Forum

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum ("FRF") on July 9, 1992, and July 31, 1992, filed additional written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership.

The additional written notifications were filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On April 10, 1992, FRF failed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537). The additional members of FRF are: Ameritech, Hoffman Estates, IL; Alcatel, Reston, VA; Coral Network Corporation, Marlborough, MA; DSC Communications, Plano, TX; Gandalf Data Ltd., Cherry Hill, NJ; Norwegian Telecom, Oslo, 1 NORWAY; RAD Data Communications, Tel Aviv 69710, ISRAEL; Teleglobe, Montreal, PQ H4T 1N1, CANADA; Transpac, Pleasanton, CA; and Wandel & Goltermann, Research Triangle Park, NC.

The July 31, 1992, notification reflects the deletion of Retix.

No changes have been made in the planning activities of FRF. Membership in FRF remains open, and the members intend to file additional written notifications disclosing all changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-19689 Filed 8-18-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984; Semiconductor Research Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Semiconductor Research Corporation ("SRC"), on July 13, 1992, filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notification was filed for the purpose of maintaining the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following companies have been added to SRC as affiliate members: CVC Products, Rochester, NY; DTX Corporation, Lancaster, PA; Excimer Laser Systems, Inc., Wayland, MA; Ibis Technology Corporation, Danvers, MA; Integrated Electronics Innovations; Inc., Charlotte, NC; Phenix Semicron Corporation, Hurdle Mills, NC; Realtime Performance, Inc., Sunnyvale, CA; Spire Corporation, Bedford, MA; UTI Instruments Company, San Jose, CA; and Verity Instruments, Inc., Carrollton, TX.

The following companies have been deleted from SRC membership: Advanced Technology Applications; Intersonics, Inc.; Jamar Technology Co.; Peak Systems, Inc.; QuanScan, Inc.; Sandia National Laboratories; Sienna Technologies Inc.; and Solid State Equipment Corporation. No other changes have been made in either the membership or planned activities of SRC.

On January 7, 1985, SRC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 30, 1985 (52 FR 4281). The most recent notifications of SRC membership changes published in the **Federal Register** with a then current and complete membership list was filed by SRC on October 25, 1989, and published by the Department on November 29, 1989 (54 FR 49123-24). Subsequent notifications filed on February 20, 1990, May 16, 1990, and July 18, 1990, were published on April 5, 1990 (55 FR 12750), June 13, 1990 (55 FR 23989), and August 15, 1990 (55 FR 33389-390), respectively, disclosing only membership changes. Notifications filed on September 24 and October 17, 1990, February 19, 1991, July 22, 1992, disclosing further membership changes, were published on November 27, 1990 (55 FR 49349), March 15, 1991 (56 FR 11275), September 12, 1991 (56 FR 46444), December 18, 1992 (56 FR 65745), and May 5, 1992 (57 FR 19310-311), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-19688 Filed 8-18-92; 8:45 am]

BILLING CODE 4410-01-M

Pursuant to the National Cooperative Research Act of 1984, "Clean Heavy-Duty Diesel Engine Development"

Notice is hereby given that, on July 1, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), the Southwest Research Institute ("SwRI") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing changes which affect its cooperative research project entitled "Clean Heavy-Duty Diesel Engine Development." The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that the following changes have taken place: (1) The participants agreed to extend the original 12-month period of performance and to revise the project completion date to March 31, 1993; and (2) the disclosure of the participation of Mack Trucks, Inc., Hagerstown, MD (effective June 6, 1991) and Renault Vehicules Industrials, Saint Priest, Cedex, FRANCE (effective June 7, 1991), as original joint participants whose earlier disclosure was inadvertently omitted in

prior notifications, through no fault of either company.

Except for the changes noted herein, no other changes have been made in the membership or the planned research activities.

On November 4, 1991, SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to section 6(b) of the Act on December 9, 1991, at 56 FR 64275–64276. On January 9, 1992, SwRI filed an additional written notification. The Department of Justice published a notice in the Federal Register in response to this additional notification on February 21, 1992, at 57 FR 6248. Additionally, a correction notice to the December 9, 1991, notice was published on February 24, 1992, at 57 FR 6334.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92–19687 Filed 8–18–92; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL COMMISSION ON ACQUIRED IMMUNE DEFICIENCY SYNDROME

Meetings

AGENCY: National Commission on Acquired Immune Deficiency Syndrome.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463 as amended, the National Commission on Acquired Immune Deficiency Syndrome announces a forthcoming meeting of the Commission.

DATES AND TIME: Monday, September 14, 1992 10 a.m.–4 p.m.

PLACE: Pan American Health Organization, 525 23rd Street, NW., Washington, DC.

TYPE OF MEETING: Open.

FOR FURTHER INFORMATION CONTACT: Roy Widdus, Ph.D., Executive Director, National Commission on Acquired Immune Deficiency Syndrome, 1730 K Street, NW., suite 815, Washington, DC 20006 (202) 254–5125. Records shall be kept of all Commission proceedings and shall be available for public inspection at this address.

AGENDA: The agenda for the Commission meeting will include discussions of the Commission's activities in FY 1993.

Dated: August 13, 1992.

Roy Widdus,

Executive Director.

[FR Doc. 92–19680 Filed 8–18–92; 8:45 am]

BILLING CODE 6820-CN-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mechanical & Structural Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: August 25, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, Surface Engineering & Tribology Program, room 1108, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9542.

Date and Time: September 17, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Jerry Sackman or Huseyin Sehitoglu, Program Directors, Mechanics and Materials Program, room 1108, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9542.

Date and Time: September 24, 1992; 8:30 a.m. to 5 p.m.

Place: Room 540–B, 1800 G Street, NW., Washington, DC.

Contact Person: Dr. John Scalzi, Program Director, Large Structural & Building Systems Program, room 1108, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357–9542.

Date and Time: September 28, 1992; 8:30 a.m. to 5 p.m.

Place: Room 543, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Ken Chong, Program Director, Structural Systems & Construction Processes Program, room 1108, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9542.

Date and Time: September 28, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, 1800 G Street NW., Washington, DC.

Contact Person: Dr. Mehmet Tumay, Program Director, Geomechanical, Geotechnical & Geo-Environmental Systems Program, room 1108, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9542.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate SBIR proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: After proposals received, was decided additional panel was needed. August 25 only date available for panelists/program director.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–19716 Filed 8–18–92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 27, 1992 through August 7, 1992. The last biweekly notice was published on August 5, 1992 (57 FR 34578).

Notice of Consideration of Issuance of Amendment To Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this

proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 18, 1992 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear

Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: April 27, 1992

Description of amendment requests: The proposed amendments to the Technical Specifications reduces the Essential Chilled Water System out-of-service time from 7 days to 72 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

Standard 1 -- Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not affect the probability or consequences of an accident previously evaluated because no change is made in the operation of the ECW system. The reduction in the allowable out-of-service time for an ECW loop increases the availability of the ECW system. The 72-hour out-of-service time is consistent with the allowable out-of-service time for the limiting areas served, the ESF pump rooms.

Standard 2 -- Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because neither the design nor the operation of the ECW system is changed. The proposed amendment makes the Technical Specification consistent with the allowable out-of-service time for the limiting areas served, the ESF pump rooms.

Standard 3 -- Involve a significant reduction in a margin of safety.

The proposed Technical Specification change does not reduce the margin of safety. The assumptions used in the safety analyses are not changed because the ECW system design and operations are not changed.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq. Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 19, 1992

Description of amendment request: The proposed amendment would relocate the component lists from Sections 3.8.4 and 3.8.4.1. of the Technical Specifications (TS) pursuant to guidelines set forth in NRC Generic Letter 91-08, "Removal of Component Lists from Technical Specifications." The subject lists will be incorporated into Perry Nuclear Power Plant's (PNPP) Operations Manual and will be subject to the change control provisions for procedures as described in the Administrative Control Section of the TS. Also included are corresponding changes to the Bases section of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes would result in the revision or deletion of specified tables from the TS, as well as modification of TS and Bases wording as recommended by Generic Letter 91-08. The component lists affected are (1) Containment Isolation Valves (Table 3.6.4-1) and (2) Containment Penetration Conductor Overcurrent Protective Devices (Table 3.8.4.1-1). In addition, Tables 3.3.2-1 and 3.3.2-3, along with the wording of a TS Definition, and several LCOs, Surveillance Requirements, and Bases are modified to reflect administrative changes resulting from removal of specific references to the deleted component tables.

Removal of the subject component lists from the TS will not alter the existing TS requirements nor change the components to which they apply. Surveillance and operability requirement are incorporated into the TS to ensure that these components are available to perform their design functions. The restrictions and actions imposed by these requirements are not being relaxed or revised by the proposed changes in any way. The requirements for primary containment integrity and Type B and C testing will remain the same. The only changes made to the language of the TS are those recommended by GL 91-08 to ensure that the scope of each specification is clear and any plant-specific features are retained. Accident analyses which rely on these components are not affected. There will be no modifications to plant equipment nor any physical changes to the licensed facility as a result of the proposed changes. Plant procedures/instructions will be revised only as necessary to reflect relocation of the table information. Any changes to the subject component information moved to the Plant Data Book will be accomplished in accordance with the administrative controls required by TS subsections 6.8 and 6.5.3 for plant procedures. The editorial changes to the TS will not affect the possibility or consequences of an accident in any way. Therefore, the proposed changes do not involve a change in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

The removal of component lists will not alter existing TS requirements or those components to which they apply. The relocation of information from TS tables into the Plant Data Book serves only to consolidate information on affected components outside of the TS for control under appropriate administrative requirements. This is done in accordance with the guidance of GL 91-08. The proposed revisions to the TS do not involve a change in the manner in which these components will be operated, maintained, or monitored. No components or systems are physically added, removed, or modified as a result of the proposed changes. Therefore, no physical changes are being made to the facility as a result of the removal of the component lists. Since the requirements of the components will remain the same, this proposed amendment will not affect the outcome of previously evaluated accidents. Therefore, this proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The removal of the component lists from TS will not alter the existing TS requirements nor result in any changes to the components to which they apply. the proposed changes are consistent with the guidance set forth in GL 91-08. The margin of safety associated with these component lists is unaffected by this proposed change since the operability

and surveillance requirements applicable to these components are not being revised except administratively as recommended by the Generic Letter. The component lists will be incorporated into PNPP's Plant Data Book and will be subject to the change control provisions for plant procedures in the Administrative Controls Section of the TS. Any changes made to the subject component lists will be reviewed in accordance with the controls of TS subsections 6.5.3 and 6.8, which allow no decrease in the margin of safety without prior NRC approval. Since the same components are subject to the same requirements, the margin of safety is not affected. The editorial changes made to refine the TS will not affect the margin of safety. Consequently, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requestinvolves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of amendment request: June 20, 1992

Description of amendment request: The proposed amendment would revise the Perry Nuclear Power Plant (PNPP) Technical Specifications (TS) 3.3.1, "Reactor Protection System Instrumentation" and 6.9.1.9, "Core Operation Limits Report (COLR)" to transfer the specific value of the simulated thermal power time constant from the TS to the COLR. The changes are proposed in accordance with the guidance provided in NRC Generic Letter 88-16, dated October 4, 1988.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

There will be no change in the operation of the facility as a result of this amendment. No safety-related equipment or function will be altered. The proposed amendment merely transfers the specific value of the cycle-specific simulated thermal power time constant from the Technical Specifications and references its inclusion in the Core Operating Limits Report section of the Plant Data Book. The simulated thermal power time constant specified in the COLR will continue to be used for calibration of the APRM Flow Biased Simulated Thermal Power-High trip function within the Technical Specifications. NRC approved analytical methodology will continue to be used as a basis for the generation of the simulated thermal power time constant that will now be contained in the COLR.

The transfer of the specific value of the fuel and cycle-specific simulated thermal power time constant from the PNPP Technical Specifications has no influence or impact on the probability of any transient or accident occurrence. This value, although not in technical specifications, will still be utilized in operating the Perry Nuclear Power Plant. The proposed Technical Specification still requires exactly the same actions to be taken if this value is not met as are required by the current Technical Specification.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

As stated above, no safety-related equipment, safety functions, or plant operations will be altered as a result of this amendment. The requested change does not create any new accident mode. The proposed change is in accordance with the guidance provided in Generic Letter 88-16 for requesting removal of the values of cycle-specific parameters from Technical Specifications. The establishment of the simulated thermal power time constant is in accordance with an NRC approved methodology and the incorporation of this value into the Core Operating Limits Report section of the Plant Data Book in accordance with the PNPP administrative control procedures ensure that proper steps have been taken to establish and maintain the value of this parameter. Furthermore, the submittal of Core Operating Limits Report revisions to the Commission as required by Technical Specification 6.9.1.9 will allow the Staff to continue to trend and review the values.

As stated earlier, the removal of the cycle-specific values has no influence on, nor does it contribute in any way to, the probability or consequences of an accident. The cycle-specific simulated thermal power time constant will continue to be calculated using NRC approved methods. The Technical Specification requirements regarding the simulated thermal power time constant are unchanged.

3. The proposed change does not involve a significant reduction in the margin of safety.

The essential issue, relative to plant safety, is conformance with the appropriate value of the simulated thermal power time constant. Whether the value is located within the Technical Specifications or the COLR is immaterial. The thermal power time constant value is fuel design dependent and is determined in accordance with NRC approved methods. The proposed amendment does not alter the requirement that the plat be operated in accordance with the value established for the simulated thermal power time constant, nor alter the required remedial action that must be taken if this value is not met. The removal of this value from the PNPP Technical Specifications is coincident with its incorporation into the Core Operating Limits Report section of the Plant Data Book, which is submitted to the Commission. The PNPP administrative procedures control revisions of this value. Therefore, the proposed change is administrative in nature and does not impact the operation of the facility in a manner that involves a reduction in the margin of safety.

The margin of safety is not affected by the transfer of the simulated thermal power time constant from the Technical Specifications to the COLR. The margin of safety presently provided by the current Technical Specifications remains unchanged. The proposed amendment still requires operation with the value obtained from NRC approved GE reload design methodologies (currently those described within GESTAR-II) and the actions to be taken if the value is not met remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requestinvolves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon.

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: August 29, 1991, September 30, 1991 and October 2, 1991

Description of amendment request: The proposed amendment dated August 29, 1991, deletes the existing Technical Specification (TS) Section 3.11/4.11, "High Energy Piping Integrity (Outside Containment)." Modifications have been completed which would acceptably mitigate the effects of postulated high energy line breaks outside containment. Thus, the licensee states that TS 3.11/4.11 is no longer needed.

The proposed amendment dated September 30, 1991, deletes the existing TS 3.12/4.12, "Fire Protection Systems," and changes the license conditions regarding fire protection.

The proposed amendment dated October 2, 1991, includes a deletion of the Fire Brigade manning requirements for TS Section 6.1.c. These changes are in accordance with Generic Letters 86-10 and 88-12.

These three submittals were submitted as part of the Quad Cities Technical Specification Upgrade Program. This program was undertaken in response to lessons learned from the Dresden Diagnostic Evaluation Team inspection and the frequent need for TS interpretations. The licensee has verbally informed the staff that most of the Technical Specification Upgrade Program is being revised and will be resubmitted. The only exceptions are the August 29, 1991, and September 30, 1991, submittals and the portion of the October 2, 1991, submittal that deletes the Fire Brigade manning requirements. Thus, these three submittals are the only ones being considered at this time.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Commonwealth Edison has evaluated this proposed amendment [August 29, 1991] and determined that it involves no significant hazards consideration. In accordance with the criteria of 10 CFR 50.92(c) a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility, in accordance with the proposed amendment, would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated, because:

Present Section 3.11/4.11, High Energy Piping Integrity (Outside Containment), was a temporary addition to the Quad Cities Technical Specifications and was intended to be deleted when modifications were made to the affected high energy piping systems. Since required modifications were completed in 1979, the proposed deletion of Section 3.11/4.11 is an administrative removal of requirements that are no longer applicable. Due to the administrative nature of the proposed change, it cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed change deletes temporary requirements that are no longer applicable and are not being used at Quad Cities Nuclear Station. The modifications to the piping systems to address high energy line breaks outside containment were reviewed and approved by the NRC prior to installation and were designed to meet or exceed applicable design codes and standards. Since this change deletes temporary provisions that are no longer applicable, it cannot create the possibility of a new or different kind of accident from any previously evaluated.

3) Involve a significant reduction in the margin of safety because:

The deletion of the temporary provisions of Section 3.11/4.11 upon completion of acceptable modifications, follows NRC guidance in the NRC letter dated March 8, 1976, that authorized issuance of Amendments 24 and 23 to Quad Cities Units 1 and 2, respectively. The piping modifications were approved by the NRC prior to installation and the installation was made in accordance with approved design change documentation. Since the proposed change deletes temporary provisions that are no longer applicable, it cannot involve a significant reduction in any margin of safety.

Commonwealth Edison has also evaluated this proposed amendment [September 30, 1991, and the portion of the October 2, 1991 submittal that removes the Fire Brigade manning requirements] and determined that [they] involve no significant hazards consideration. In accordance with the criteria of 10 CFR 50.92(c) a proposed amendment to an operating license involves no significant hazards consideration if operation of the facility, in accordance with the proposed amendment, would not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated, because:

The proposed change to remove the Fire Protection Technical Specifications does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change does not involve a physical modification to the plant, a change to any safety system or a change to any setpoint. The administrative concept of concurrently removing the fire protection requirements from the Technical Specifications and incorporating these elements into the UFSAR does not affect the safety analysis presented in the Quad Cities UFSAR. The change will not affect the functioning of the fire protection program, which will be maintained pursuant to the operating license. No changes will be made to the program that conflict with the requirements of the operating license.

2) Create the possibility of a new or different kind of accident from any previously evaluated because:

The proposed changes to the Facility Operating License and the Technical Specifications represent an administrative shifting of responsibility for the Fire Protection Program Requirements from the Technical Specifications to the UFSAR. The proposed changes do not affect the accident analysis or the operation or function of any safety-related equipment since the Fire Protection Program requirements will continue to be maintained. No new modes of operation are introduced by these proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3) Involve a significant reduction in the margin of safety because:

The deletion of the Fire Protection Technical Specifications and incorporation of these provisions into the UFSAR does not change the level of fire protection in the plant. Additionally, controls added by the standard license condition and the 10 CFR 50.59 criteria will ensure future changes to the Fire Protection Program are properly evaluated. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: April 20, 1992

Description of amendment request: The proposed amendment deletes from the Technical Specifications the isolation functions and surveillance requirements for the Control Room Ventilation System chlorine and sulfur dioxide analyzers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

In accordance with the criteria of 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility, in accordance with the proposed amendment, would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes involve deletion of the control room air intake chlorine and sulfur dioxide analyzers isolation trip functions. This change does not involve any accident precursors and, therefore, cannot increase the probability of an accident previously evaluated. In order to determine if the chlorine and sulfur dioxide isolation functions are needed, a habitability study of the control room following postulated accidents involving chlorine and sulfur dioxide shipments in the vicinity of Quad Cities Station was performed. The results of this control room habitability study indicate that by combining conservative calculation with reasonable qualitative arguments, the probability of causing uninhabitable control room conditions by accidents involving railroad shipment of chlorine and sulfur dioxide falls within the acceptable limits as defined by Reg. Guide 1.70 and the SRP. Therefore, these potential events should not be considered design basis events, and the chlorine and sulfur dioxide detectors isolation functions could be deleted at the Quad Cities Station without significantly increasing the consequences of an accident previously evaluated.

The correction of the typo "streamline" is an administrative change to the Unit Two Technical Specifications which by its nature cannot involve a significant hazards consideration.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The deletion of the isolation functions of the chlorine and sulfur dioxide analyzers has been evaluated and found to meet the criteria of applicable Regulatory Guides and the SRP. The realistic probability of occurrence of an event involving chlorine or sulfur dioxide that would cause the control room to become uninhabitable has been determined to be low enough such that these events no longer need to be classified as design basis events.

The detector isolation functions that are being deleted are only required to provide a trip function in the event of a very low probability chlorine or sulfur dioxide spill. Therefore, the deletion of these detectors from the plant cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety because:

The installation of the chlorine, ammonia, and sulfur dioxide detectors was based on a survey [sic] performed in 1981 which determined that concentrations of these substances would exceed toxicity levels in the control room in less than 2 minutes after detection. This 1981 survey did not consider whether uninhabitable conditions could be caused in the control room during an actual offsite accident which releases chlorine or sulfur dioxide. This study also did not consider the probability of occurrence of an[d] event where chlorine or sulfur dioxide would be released in sufficient quantities to make the control room uninhabitable.

The recent completed study makes the determination using accepted probability analysis methods, that these events are of sufficiently low probability of occurrence that they should not be classified as design basis events. The study also demonstrates that the 1981 study was overly conservative and as such, should not be used to establish a basis for a determination of a reduction in a margin of safety. If the methodology used in the latest study had been used in the 1981 study, then these chlorine and sulfur dioxide detectors would have probably never been installed in the plant. Since these detectors are not needed in the plant to mitigate a potential chlorine or sulfur dioxide release that would make the control room uninhabitable, then the deletion of these detectors' isolation functions does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Commonwealth Edison Company, Docket No. 50-254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of amendment request: July 6, 1992

Description of amendment request: The proposed amendment reflects a proposed modification to the High Pressure Coolant Injection (HPCI) turbine steam exhaust line. The proposed amendment adds the requirements for the new containment isolation valves which are part of the modification. A similar amendment for Quad Cities 2 was issued February 21, 1992, and noticed in the Federal Register on Merch 18, 1992 (57 FR 9455).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is provided below:

In accordance with the criteria of 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the Facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because:

Table 3.2-1

The addition of the HPCI steam line low pressure isolation setpoint to Technical Specification Table 3.2-1 is a correction of an omission to the original Technical Specification. The HPCI system primary containment isolation feature is part of the original design basis for the system; however, the isolation setpoint has not been included in the Technical Specification. The proposed change corrects this omission by adding the low pressure isolation setpoint and limiting conditions for operations to Technical Specification Table 3.2-1. The calculation which supports the proposed setpoint assures that HPCI is not prematurely isolated. The isolation setpoint does not affect any accident initiators; therefore, it does not represent any increase to the probability of the accident.

The addition of the HPCI steam line low pressure isolation setpoint to Technical Specification Table 3.2-1 will ensure that steam and radioactive gases will not escape from the HPCI turbine shaft seals into the reactor building after steam pressure has decreased below turbine operating pressure. CECo has performed a calculation to confirm the value of the proposed low pressure isolation setpoint (100 psig). The calculation ensures that the isolation does not occur prior to the low pressure assumed in the fuel accident analysis of 150 psig. The lower bounding limit for isolation is based on engineering judgment and is conservative when compared to the anticipated stall pressures for the HPCI turbine. The HPCI low pressure isolation setpoint, therefore, does not increase the consequences of the accident but rather provides further assurances that the isolation function is initiated at an appropriate pressure.

Table 3.7-1

The elimination of the existing vacuum breaker line and the addition of a new vacuum breaker line does not affect any accident initiator and as such does not affect the probability of the accident. Currently, the vacuum breaker relief line, which is located inside the torus, creates a potential flow path from the containment air space through the existing vacuum breakers to the HPCI exhaust line. Containment atmosphere leakage is prevented by the existing turbine exhaust check valves which are periodically tested in accordance with 10 CFR 50, Appendix J.

The proposed modification changes the primary containment boundary. The modification does not affect any accident initiators and therefore does not affect the probability of an accident. The design features of the new vacuum breaker assures that the consequences of an accident are not increased. The new design isolates the torus air space from the HPCI steam exhaust line through the use of motor-operated valves. The new vacuum breaker valves are designed to accommodate 10 CFR 50, Appendix J leak rate testing and will be added to the Station's 10 CFR 50, Appendix J Test Program. As such, the valve leakage will be included in the limits for containment leakage, as defined in the Technical Specifications, to ensure that the resulting doses will not exceed 10 CFR, Part 100 limits.

The consequences of the accident are also unaffected by the closure time of the new motor-operated valves. The valve closure time is based on the ability of the valve to close and does not significantly affect the dose rates. The specified closure time is typical of current motor-operated isolation valves in the HPCI system and is less than the time where significant fuel failure occurs during a design basis loss-of-coolant accident.

Finally, the isolation logic assures that the HPCI system is isolated during conditions in which the HPCI reactor inventory or pressure control function cannot be maintained and there is indication of a large break in the drywell. This isolation logic assures that the consequences of the accident are not significantly increased by providing the

necessary isolation of containment during accident conditions.

2. Create the possibility of a new or different kind of accident from any previously evaluated because:

Table 3.2-1

As indicated previously, the HPCI low reactor pressure isolation function was included as part of the original system design; however, a limiting condition for operation and instrumentation setpoint was not included in Technical Specification Table 3.2-1. As such, the proposed amendment does not introduce the use of new equipment which has a different failure mechanism or whose failure is considerably more probable that the existing equipment. The proposed change to Table 3.2-1, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

Table 3.7-1

The proposed modification to the HPCI system improves the reliability of the isolation system. The proposed design utilizes smaller isolation valves (when compared to the turbine exhaust check valve) and a more effective isolation boundary design (motor-operated gate valve versus check valve). The HPCI isolation sensors and control logic are optimally arranged to provide a high degree of reliability. independence is provide to each isolation valve so that no single failure will prevent the isolation function. Periodic testing of instruments and valves ensures that the isolation function of the valves is maintained within design parameters. Manual operation of the valves (both local and remote) is a backup in the unlikely event of a failure to automatically isolate.

The control logic for the new isolation valves provides reliable operation for HPCI performance. The new valves will be normally open during operation. Therefore, the valves are not required to stroke from their normal position in the case of a HPCI initiation. The valves will automatically isolate on indications of a large break inside containment (drywell pressure greater than 2.5 psig) and when HPCI is no longer capable of providing pressure control and/or reactor water inventory.

A gross failure of the vacuum breaker function and/or new containment isolation valves in the closed position has been evaluated for the potential hazard of collapsing the turbine exhaust line and containment penetration due to a vacuum. Using conservative parameters for the HPCI exhaust piping (length-to-diameter = 50 and diameter-to-thickness = 40) and the methods of ASME Section III NB-3133.3 (cylindrical shells made of low yield carbon steel), the capability of the exhaust piping exceeds a maximum external pressure of 300 psia. Since the maximum theoretical external pressure is less than 15 psia, the collapse of any HPCI turbine exhaust component is not a concern.

Finally, the proposed design for the new vacuum breaker is consistent with the design of newer BWR plants for external vacuum breaker lines (e.g., LaSalle RCIC).

3. Involve a significant reduction in the margin of safety because:

Table 3.2-1

As previously indicated, the original design for the system included the HPCI low reactor pressure isolation function. The existing setpoint for the HPCI isolation is 90 psig which is based on previous operability requirements for HPCI. The new calculated setpoint (100 psig) does not involve a significant reduction in the margin of safety since the calculation inputs; (1) assure that the HPCI function will remain Operable during periods when the HPCI system is required to support the assumptions in the accident analysis; and, (2) assure that the isolation of the HPCI system will occur prior to reaching the stall pressure for the turbine. The lower bound for the calculation is conservative when compared to the anticipated stall steam pressures typical of turbines similar to the Quad Cities design. The margin of safety remains essentially unchanged in that the isolation setpoint has not significantly changed from the current value used to isolate the turbine prior to steam pressure reaching a level where the turbine can no longer operate.

Table 3.7-1

The proposed design for the new vacuum breaker does not involve a significant reduction in the margin of safety. Technical Specifications specify the acceptance criteria for containment integrity determination and also require that the containment undergo testing as specified in 10 CFR 50, Appendix J. Due to the modification of the containment boundary with the new vacuum breaker line, the motor-operated valves will be tested in accordance with 10 CFR 50, Appendix J to ensure TS leakage limits are maintained. The testing will ensure that any potential leakage will result in dose limits well below 10 CFR 50, Part 100 limits. In addition, the existing containment boundary for the HPCI steam exhaust system utilizes the suppression pool inventory (as an effective water seal) and two large check valves. One of the check valves is testable and will continue to be tested according to Section XI of the ASME Code per 10 CFR 50.55(g), to ensure that the HPCI turbine exhaust line does not experience water leaks.

The closure time for the HPCI vacuum breaker isolation valves does not significantly decrease the margin of safety. The closure times are based on reasonable closure time for the motor-operated valves. The specified closure time is typical of current motor-operated isolation valves in the HPCI system and is less than the time where significant fuel failure occurs during a design basis loss-of-coolant accident.

Finally, the isolation logic is designed to assure that HPCI remains in a "standby" operational mode and isolates during conditions which are indicative of a large break in the drywell concurrent with an insufficient steam pressure to support the HPCI system function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: Richard J. Barrett

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 12, 1992

Description of amendment request: The proposed change deletes the qualifying phrase "after the reactor has been made critical" from Technical Specification (TS) 3.7.2. The existing Electrical Systems specification, 3.7.1, is applicable when the primary coolant system is above 325F. The existing associated action statement, 3.7.2, applies only when the reactor is critical. Therefore, strict interpretation of these two specifications would allow required electrical components to be inoperable, for the specified time periods, with the reactor at power, but not when the reactor was shutdown at Hot Shutdown or Hot Standby. This limitation precludes the test loading of the diesel generators when the plant is subcritical above 325F and could require a Limiting Condition for Operation (LCO) 3.0.3 entry, while in Hot Shutdown for a condition which would be allowable while at full power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specifications has no effect when the plant is cooled below 325F or when the reactor is critical. It would allow plant operation, on those occasions when the plant is above 325F with the reactor subcritical, for specifically limited Allowed Outage Times, with less operable electrical equipment operable than is currently required. However, the change would eliminate a requirement to make a plant cooldown from Hot Shutdown due to an equipment inoperability for which Power Operation would be allowed to continue, and would also allow performing required testing of the Diesel Generators during Hot Shutdown.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change to the Technical Specifications would not alter any plant systems, equipment, or operating practices. The change allows conditions which are currently allowed with the reactor critical at any licensed power level, with the reactor subcritical.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

Operation of the facility in accordance with the proposed change to the Technical Specifications would not alter the capacity or settings of any plant equipment. It would not cause or allow the plant to be operated in any conditions which are less conservative than those allowed by existing Technical Specifications.

Therefore, the proposed change to the Technical Specifications would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423

Attorney for licensee: Judd L. Bacon, Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: L. B. Marsh

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: March 4, 1992

Description of amendment request: The proposed amendments would implement changes to the Vogtle Technical Specifications (TS) identified by the NRC's Generic Letter (GL) 89-01, "Implementation of Programmatic Controls for Radiological Effluent Technical Specifications (RETS) in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual (ODCM) or to the Process Control Program (PCP)." Specifically, the changes would: (1) incorporate programmatic controls in the Administrative Controls section of the TS that satisfy the requirements of 10 CFR 20.106, 40 CFR Part 190, 10 CFR 50.36a, and Appendix I to 10 CFR Part 50; (2) relocate the existing procedural details in current TS involving radioactive effluent monitoring instrumentation, the control of liquid and gaseous effluents, equipment requirements for liquid and gaseous effluents, radiological environmental monitoring, and radiological reporting details from the TSs to the ODCM as appropriate; (3) relocate the definition of solidification and existing procedural details in the current TS on solid radioactive wastes to the PCP as appropriate; (4) simplify the associated reporting requirements; (5) simplify the administrative controls for changes to the ODCM and PCP; (6) add record retention requirements for changes to the ODCM and PCP; and (7) update the definitions of the ODCM and PCP consistent with these changes.

The proposes changes would correct a typographical error in TS Table 4.11-1 regarding the radioactive liquid waste sampling and analysis program. The composite lower limit of detection for continuous releases related to Sr-89 and Sr-90 is incorrectly listed in TS Table 4.11-1, Item 2.a, as 1×10^{-5} microcurie/ml and would be changed to 5×10^{-8}. This correction would be made as the table is relocated to the ODCM.

TS Figure 5.1-2, "Effluent Release Points," would be changed to delete the "Radwaste Solidification Building Vent" (which does not exist) and replace it with the "Dry Active Waste Processing Building Vent." This correction to Figure 5.1-2 would be consistent with actual plant design as accepted by the NRC in February 1989 (see Vogtle Supplemental Safety Evaluation Report No. 8, pp 11-4, 11-5, and 11-6).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated for the following reasons:

The proposed changes to the RETS are administrative in nature and alter only the format and location of programmatic controls and procedural details relative to radioactive effluents, solid radioactive waste, radiological environmental monitoring, and associated reporting requirements. Compliance with applicable regulatory requirements will continue to be maintained. In addition, the proposed changes do not alter the conditions or assumptions in any of the accident analyses. Since the accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes.

The proposed change to Table 4.11-1 corrects a typographical error in order to provide consistency regarding the composite lower limit of detection for continuous releases related to Sr-89 and Sr-90. The effectiveness of the radioactive liquid waste sampling and analysis program is not reduced by this proposed change.

The proposed change to Figure 5.1-2 revises the location of effluent release points by correctly designating the dry active waste processing building vent instead of the radwaste solidification building vent. The accident analyses remain bounding and the radiological consequences previously evaluated are not adversely affected by the proposed change.

Therefore, it can be concluded that these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for the following reasons:

The proposed changes to the RETS do not involve any change to the configuration or method of operation of any plant equipment. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting single failure been identified as a result of the proposed changes. Also, there will be no change in types or increase in the amounts of any effluents released offsite.

The proposed change to Table 4.11-1 is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment.

The proposed change to Figure 5.1-2 correctly identifies the effluent release points from the site. No new failure modes or limiting single failures are introduced as a result of this proposed change.

Therefore, it can be concluded that these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety for the following reasons:

The proposed changes to the RETS do not involve any actual change in the methodology used in the control of radioactive effluents, solid radioactive wastes, or radiological environmental monitoring. These changes provide for the relocation of procedural details outside of the TS but add appropriate administrative controls to provide continued assurance of compliance with applicable regulatory requirements. The proposed changes also comply with the guidance contained in Generic Letter 89-01.

The proposed change to Table 4.11-1 is an administrative change that has no safety impact and is consistent with the applicable requirements contained in the Standard Technical Specifications.

The proposed change to Figure 5.1-2 correctly identifies the effluent release points from the site. The programmatic controls which are being proposed as part of the RETS changes and the procedural details that are being relocated to the ODCM and the PCP will provide assurance that there will be no adverse impact on the safe operation of the plant as a result of this change.

Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The Commission's staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30303-1810

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: July 17, 1992, as supplemented July 30, 1992

Description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) for Hatch Units 1 and 2 as follows:

Proposed Change 1:

During the Fall 1992 refueling outage for Plant Hatch Unit 2, the licensee plans to perform preventative maintenance and modifications to emergency diesel generator (DG) 1B for the purpose of increasing its reliability and, in the future, upgrading its rated capacity. DG 1B serves as the "swing" diesel in that it is capable of supplying emergency power to either Unit 1 or 2. During the planned work, Hatch Unit 1 is expected to be in power operation. Pursuant to Unit 1 TSs 3.5.G and 3.9.B.2, one DG may be inoperable for up to 7 days whenever the reactor is in the Start and Hot Standby or Run Mode and the reactor water temperature is greater than 212 degrees F. The planned work on DG 1B is expected to take approximately 12 days to complete. Therefore, in order to account for possible ontingencies, the licensee is requesting the allowable outage time of 7 days be extended to 14 days for performance of this maintenance and modification work. This extension will be used only once and only for this purpose.

Proposed Change 2:

This proposed change will correct two errors in Hatch Unit 1 DG TSs. The original markup of Unit 1 TSs 4.9.B.1 and 4.9.B.2 required performance of "Surveillance Requirement 4.9.A.2.a.1." That change was typed and submitted as "Surveillance Requirement 4.9.A.2.a" which included all parts of that TS. This proposed change will correct these errors and make both TSs read "Surveillance Requirement 4.9.A.2.a.1."

This proposed change supersedes the same proposed change (i.e., proposed Change 3) of the license's submittal dated July 17, 1992.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, are presented below:

Proposed Change 1:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The IPE [Individual Plant Examination] analysis performed for Plant Hatch, shows an extremely small probability of occurrence for any accident involving an LOSP [loss-of-offsite-power] during the proposed seven day extended AOT [allowed outage time] for the 1B DG [emergency diesel generator]. In addition, the reliability of the Hatch DGs has been shown to be very high. The combination of these two factors results in the conclusion that increasing the AOT by seven days for the 1B DG as a one time change will not cause a significant increase in the consequences of an accident previously evaluated. The operability of the 1B DG has no impact on the probability of occurrence of any type of accident. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Extending the AOT for the 1B DG does not create any new modes of operation. Operation of Unit 1 with one inoperable DG has already been considered as evidenced by the existence of the 7 day AOT contained in the Unit 1 TS. This change will extend this AOT to 14 days for one time only. Because of the extremely small probability of occurrence for any accident involving an LOSP during the proposed seven day extended AOT and the high reliability of the Hatch DGs, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The purpose of the DGs is to provide AC power to emergency equipment in the event of a loss of offsite power (LOSP). Analyses were performed for loss of coolant accidents (LOCAs) with various size line breaks in conjunction with various postulated single active failures (including loss of a diesel generator) and an LOSP. The limiting accident was found to be a recirculation suction line break with the failure of a diesel battery. Loss of a diesel battery results in loss of the associated DG as well as loss of control power to the associated 4160V emergency bus. Any event involving the inoperability of DG 1B as the single active failure is bounded by this limiting accident...

The combination of low accident probabilities, low LOSP frequencies and high DG reliabilities results in an extremely low probability of a severe accident due to DG [1B] failure. Therefore, the proposed one time change does not involve a significant reduction in the margin of safety.

Proposed Change 2:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The purpose of the DGs is to provide AC power to equipment necessary for mitigation of accidents involving a loss of offsite power (LOSP). The purpose of Specification 4.9.B.1 and 4.9.B.2 is to ensure availability of sufficient AC power sources when one of the normal or emergency AC power sources is determined to be inoperable. This is done by demonstrating operability of the remaining normal and emergency AC power sources at an increased frequency. Performance of SR [Surveillance Requirement] 4.9.A.2.a.1 adequately demonstrates DG operability. Therefore, this change will not significantly impact the capability of the DGs to perform their required function of mitigating accidents involving an LOSP. The DGs have no impact on the probability of occurrence of any accident. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Since this change only affects surveillance requirements, it will not change the mode of operation of the DGs, and will not introduce any new DG failure modes. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not result in a significant reduction in the margin of safety.

Performance of SR 4.9.A.2.a.1 adequately demonstrates DG operability. Therefore, this proposed change will not impact the ability of the DGs to provide AC power during accidents involving an LOSP. The DGs will still function to ensure that occurrence of the worst credible single failure in conjunction with a design basis LOCA/LOSP would result in acceptable consequences. Therefore, this change does not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library,

301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David B. Matthews

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One,Unit No. 2, Pope County, Arkansas

Date of amendment request: July 22, 1992

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to increase the allowable pressurizer pressure range from between 2225 and 2275 psia to between 2025 and 2275 psia. A lower low pressurizer pressure setpoint for reactor trip, safety injection, and containment cooling is also proposed, along with associated Bases changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

Previously analyzed accidents and anticipated operational occurrences that are affected by this change have been reviewed. This change has no impact on probability of occurrence of these accidents. Pressurizer pressure and low pressurizer pressure setpoints are only used as input parameters to the accident analyses which do not affect probability. No physical changes to the plant are being proposed; therefore there is no impact on the probability of accidents.

One item, "Inadvertent Operation of ECCS [emergency core cooling system] During Power Operation" is considered to be potentially impacted since operation at RCS [reactor coolant system] pressures below 2150 psia may result in undesirable ECCS (SIAS) [safety injection actuation signal] actuation post-trip (not actually at power). This susceptibility is not considered a significant increase in probability since the reduction in pressure does not impact the probability of ECCS initiation signal generation, rather, if a plant trip occurred for any reason and the plant was operating at reduced pressures, the statistical combination of uncertainties shows that the SIAS initiation setpoint may be reached. Since administrative controls will ensure that operation below 2150 psia is limited to very short durations (i.e. less than 24 hours steady state operation) any postulated increase in probability of an inadvertent operation of ECCS is not considered significant.

Previously evaluated accidents and anticipated operational occurrences which were determined to be adversely impacted by the reduced pressurizer pressure have been evaluated with no significant increase in the consequences. As indicated in the discussion, the SAFDLs [specified acceptable fuel design limits] and acceptance criteria were verified to be maintained. Additionally, no fuel cladding damage is predicted for any event and no changes to the radiological doses were calculated. Therefore, no increases in the consequences of any accident are predicted.

Changing the low pressurizer pressure setpoint and allowable values is based on the refinement of the instrument error calculations. No change to the analyzed events is proposed due to the new setpoint and allowable values. These new limits still ensure the analysis assumptions are valid; hence, there is no increase in the consequences of the accidents previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed changes do not involve any physical modifications (i.e. new systems, new components, etc.) to the plant. The normal operating value at which RCS pressure is held remains within the ranges typical of pressurized water reactors and more specifically, CE [Combustion Engineering] designed nuclear steam supply systems. The results of the accident re-analyses suggest no different phenomena or plant behavior than previously considered. The change to the bases for Technical Specification 2.1.1 are for clarification and result in consistency with other CE plants' approved Technical Specifications and bases. The low pressure setpoint change does not create any new or different system actuations or interactions than evaluated previously. The slightly increased potential for SIAS initiation post-trip does not suggest new or different type accidents since inadvertent SIAS (at power) is already assessed in SAR [Safety Analysis Report] Chapter 15 and is bounding for any post-trip SIAS. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in a Margin of Safety.

Any accident or anticipated operational occurrence which was determined to be adversely impacted by the reduced pressurizer pressure was evaluated to ensure acceptable results are maintained. The refined instrument error calculations supporting the lower low pressurizer pressure setpoint and allowable values were verified to ensure the present accident analysis assumption are [sic] still maintained. Based on these evaluations, the proposed changes do not involve any significant reduction in a margin of safety. Rather, an overall increase in the margin of safety is anticipated, as discussed above, by increasing the safety valve reliability and decreasing the exposure to risks of plant shutdown and cooldown for valve replacement or repair.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 22, 1992

Description of amendment request: The proposed amendment would revise the surveillance requirements for steam generator (SG) tubing, Technical Specification (TS) 4.4.5, and associated Bases, to allow the use of Combustion Engineering Nuclear Services (CENS) leak-tight sleeves for tube repair in the SGs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 - Does Not Involve a Significant Increase in the Probability or Consequences of An Accident Previously Evaluated.

The intent of this proposed change is to allow Entergy Operations to use CENS sleeves to repair the ANO-2 [Arkansas Nuclear One, Unit No. 2] SG tubes showing degradation in regions of the tube sheet and the eggcrate support crevice areas that can be sleeved. To support this, changes are being proposed to TS 4.4.5 to reference the CENS report CEN-601-P, "ANO-2 Steam Generator Tube Repair Using Leak Tight Sleeves", Revision 01-P, dated July, 1992.

Report CEN-601-P, "ANO-2 Steam Generator Tube Repair Using Leak Tight Sleeves", Revision 01-P, dated July, 1992, demonstrates that repair of degraded tubes using the CENS sleeves will result in tube bundle integrity consistent with the original design basis.

Per Regulatory Guide 1.83 recommendations, the sleeved tube can be monitored through periodic inspections with present eddy current techniques. Plugging limit criterion [sic] are established in the Technical Specifications for the tubes and sleeves.

The sleeve design, materials, and joints were designed to the applicable ASME Boiler and Pressure Vessel Codes. An extensive analysis and test program was undertaken to prove the adequacy of the CENS welded sleeve. This program determined the effect of normal operating and postulated accident conditions on the sleeve tube assembly, as well as the adequacy of the assembly to perform its intended function. Design criteria were established prior to performing the

analysis and test program which, if met, would prove that the sleeves are an acceptable repair technique. Based upon the results of the analytical and test programs described in detail in CEN-601-P, these sleeves fulfill their intended function as a leak tight structural member and meet or exceed all the established design and operating criteria. Therefore, the probability of an accident is not increased.

The consequences of accidents previously analyzed are not increased as a result of sleeving activities. In the case of a tube rupture, the sleeve may actually result in a slightly reduced leak/flow rate through the broken tube due to the smaller effective flow area. The minor reduction in flow area associated with a tube sleeve has no significant effect on SG performance with respect to heat transfer or system flow resistance and pressure drop. In any case, all analytical impacts are clearly bounded by evaluations which demonstrate the acceptability of tube plugging which totally removes the tube from service. Therefore, in comparison to plugging, tube sleeving is considered a significant improvement with respect to SG performance. The cumulative impact of multiple sleeved tubes has been evaluated to ensure the effects remain within the analytical design bases (both normal and accident).

Corrosion testing has been performed to assess the corrosion resistance of the sleeve and weld, and to assess the effects of sleeve installation on the parent tube. This testing has shown that the sleeve and weld are more resistant to corrosion than the parent tube. In addition, the post-weld heat treatment of the welded region reduces residual stresses and enhances the corrosion resistance of the tube for both primary and secondary side corrosion. Additionally, inservice experience with welded sleeves and the CE rolled plug joint, which is essentially the same as the sleeve rolled joint, has shown no adverse corrosion associated with either the parent tube, sleeve, or sleeve/tube joint.

Therefore, based on extensive analysis and test programs performed and the ability to monitor and remove degraded sleeves from services, this change does not significantly increase the probability or consequences of an accident previously evaluated.

Criterion 2 - Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated.

The installation of the sleeves will be performed in a manner consistent with the applicable standards, will preserve the existing design bases, and will not adversely impact the qualification of any plant systems. This will preclude adverse control/protection systems interactions. The design, installation and inspection of these sleeves will be done in accordance with ASME Code criteria. By adherence to industry standards, the pressure boundary integrity will be preserved.

Therefore, the use of CENS sleeves does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 - Does Not Involve a Significant Reduction in the Margin of Safety.

The applicable margins of safety for heat transfer and flow rate through the steam generator are defined in the ANO-2 TS.

The installation of a sleeve in a steam generator tube increases the flow resistance through the tube. The increased resistance will result in slightly reduced flow through the sleeved tube. To determine the effect of installing one or more of the different sleeve types in the steam generator tubes, an analysis was performed and is summarized in CEN-601-P. A conservative sleeve length was used in evaluating the effects of the sleeves on the heat transfer and hydraulic capabilities of the steam generators. Using the head and flow characteristics of each of the four primary pumps in conjunction with the primary system hydraulic resistances, the flow rate was calculated as a function of the number of sleeved tubes. The TS minimum allowable flow rate was used to determine the maximum number of tubes per steam generator which can be sleeved.

The effect of the change in flow rate on heat transfer between the primary and secondary side of the steam generator was determined to be negligible. The overall resistance to heat transfer between primary and secondary sides consists of the primary side film resistance, the resistance to heat transfer through the tube wall, and the secondary side film resistance. Since the primary side film resistance is only a portion of the total resistance and the change in flow rate is so small, the effect of the calculated maximum change in flow rate on heat transfer is negligible.

The loss in heat transfer area associated with sleeving was also determined to be small. When the sleeve is installed in the steam generator tube, there is an annulus between the sleeve and the tube except in the sleeve tube weld regions. Hence, there is effectively little primary to secondary heat transfer in the region where the sleeve is installed. Keeping the sleeve short minimizes the heat loss. Longer sleeves are used in the tubesheet portion of the tube. However, since negligible heat is transferred in the tubesheet region anyway, the loss in heat transfer area associated with sleeving is also negligible.

SG tube integrity is maintained under the same limits for sleeved tubes as for unsleeved tubes; i.e., ASME [American Society of Mechanical Engineers] Section III and Regulatory Guide 1.121. The degradation limit at which a tube is considered inoperable remains unchanged. A degradation limit at which a sleeve is considered inoperable has been developed. The TSs continue to require monitoring and restriction of primary to secondary system leakage through the SGs, such that there remains reasonable assurance that a significant increase in leakage, due to failure of a sleeved (or unsleeved) tube, will be detected.

The TSs continue to contain reporting requirements for tubes which have had their degradation spanned (regardless whether the tube is plugged or sleeved).

Therefore, this change does not involve a significant reduction in the margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C. 20005-3502

NRC Project Director: John T. Larkins

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: May 2, 1989

Description of amendment request: Proposed changes to the River Bend Station Technical Specifications are being requested to revise the required actions to be taken in the event a diesel generator (DG) becomes inoperable by:

1. adding a provision to allow verification that the cause of a DG being inoperable does not impact the operability of the operable DGs. This will be allowed in lieu of starting and loading the operable DGs in those cases when the cause of the DG inoperability can be verified independently without starting and loading the DG,
2. deleting the word "preventive" to allow performing preplanned corrective maintenance without requiring the operable DGs to be started and loaded,
3. deleting requirements to start and load DGs when one or both offsite circuits becomes inoperable, and
4. adding a provision to Action e to allow declaring the affected equipment inoperable in lieu of always requiring a plant shutdown when a required component becomes or is already inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Testing Requirements with an Inoperable Diesel Generator

a. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The current River Bend Station Technical Specifications require all operable DGs to be started and loaded to offsite power to demonstrate their operability in the event any DG becomes inoperable due to any cause other than preplanned preventive maintenance or testing. The intent of this testing is, in part, to determine if a common mode failure exists and, in part, to provide added assurance that the remaining operable DGs are capable of supplying emergency power. The proposed change will allow verification that the cause of the DG being inoperable does not impact the operability of the operable DGs without subjecting the operable DGs to increased testing when an independent test can be performed. While deleting the requirement to test the operable DGs may result in an increased probability of failure due to an undetected condition, performing unnecessary tests increases engine wear and decreases overall plant safety by decreasing DG reliability. The combined effects will not result in a significant increase in the probability that the operable DGs will be unable to perform their intended safety function. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change will eliminate testing of operable DGs when it can be verified that the cause of an inoperable DG will not impact the operable DGs. By its nature, reduction of DG testing will not create the possibility of a new or different kind of accident previously evaluated.

c. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed change does not alter on-site emergency power requirements and it does not represent a significant increase in the probability that the operable DGs will be unable to perform their intended safety function. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

2. Deleting the word "Preventive" from "Preplanned Preventive Maintenance"

a. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The current Technical Specifications require all operable DGs to be started and loaded to offsite power to demonstrate their operability in the event any DG becomes inoperable due to any cause other than preplanned preventive maintenance testing. The intent of this exclusion is to require additional testing only in those cases where a potential for a common mode failure exists or the reliability of the onsite AC sources is reduced. The proposed change will permit preplanned "corrective" maintenance without the need for testing the remaining DGs. Since the condition requiring corrective maintenance does not prevent the DG from performing its intended safety function, a failure, common mode or otherwise, has not occurred. The proposed change does not involve a significant increase in the probability that the remaining DGs will be unable to perform their intended safety function. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change involves a reduction in diesel generator testing requirements. By its nature, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed change does not alter on-site emergency power requirements and it does not represent a significant increase in the probability that the operable DGs will be unable to perform their intended safety function. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

3. Testing Requirements with an Inoperable Offsite Circuit

a. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The current Technical Specifications require operable DGs to be started and loaded to offsite power to demonstrate their operability in the event an offsite AC source(s) becomes inoperable. The intent of this additional testing is to provide added assurance that the operable DGs are capable of supplying emergency power when the offsite AC sources are abnormally degraded. The normal Technical Specification surveillance testing schedule provides adequate assurance that the DGs will be capable of performing their intended safety functions. The inoperability of an offsite AC source does not affect the reliability of the DGs. Requiring the DGs to be started and loaded to offsite power sources that may be degraded increases the risk of losing all AC power to their safety busses. While deleting the requirement to test the operable DGs may result in an increased probability of failure due to an undetected condition, it reduces the risk of losing a DG and leaving its safety bus without AC power when the offsite sources are abnormally degraded. The combined effects will not result in a significant increase in the probability that the DGs will be unable to perform their intended safety function. Therefore, the proposed change will not result in a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change involves a reduction in diesel generator testing requirements. By its nature, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed change does not alter on-site emergency power requirements and it does not represent a significant increase in the probability that the operable DGs will be unable to perform their intended safety function. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

4. Confirmatory Actions to be Taken with an Inoperable Diesel Generator

a. The proposed change would not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The current Technical Specifications require that, within two hours of a DG becoming inoperable, all required systems, subsystems, trains, components and devices that depend on the remaining operable DG as a source of emergency power be verified as operable. If this condition cannot be met, the plant is required to be shutdown. The intent of this requirement provides assurance that a loss of offsite power, during the period that a DG is inoperable, will not result in a complete loss of safety function of critical systems. The proposed change will 1) remove the requirement to verify operability of equipment which are served by only one DG, and 2) permit use of the Action Statement of the affected equipment if it allows for continued plant operation for more than two hours when both redundant pieces of equipment are out of service. The proposed revision will provide the same degree of safety for those significant critical systems while allowing the operational flexibility intended for less

critical emergency powered systems/components. In addition, it will reduce unnecessary plant shutdowns and potential challenges to safety systems. The proposed change continues to limit plant operation to those periods of time allowed by the current Action Statements for the affected equipment and continues to maintain the same level of safety for those significant critical systems. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed change allows for reliance on the Action Statements of the affected equipment when both pieces of equipment are out of service as opposed to the Action Statement with one DG out of service. By its nature, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. The proposed change would not involve a significant reduction in the margin of safety because:

The proposed revision will provide the same degree of safety for those significant critical systems while allowing the operational flexibility intended for less critical emergency powered systems/components. In addition, it will reduce unnecessary plant shutdowns and thus reduce potential challenges to safety related equipment. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Bishop, Cook, Purcell and Reynolds, 1401 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Suzanne C. Black

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: July 26, 1991 as supplemented June 7, 1991, and February 4 and April 1, 1992.

Description of amendment request: The proposed amendment would change the TS to permit expansion of the spent fuel pool (SFP) storage capacity from 2050 assemblies to 3613 assemblies. The expansion will be accomplished by replacing the existing spent fuel pool storage racks with higher density storage racks and by placing racks in areas of the pool where racks are not currently located.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The analyses performed by Holtec have demonstrated the acceptability of the proposed reracking from a variety of perspectives. For example, the analyses demonstrate that K_{eff} will remain within acceptable limits even if an abnormal event, such as a fuel assembly misloading or assembly drop, should occur. It has also been demonstrated that the spent fuel pool cooling system is adequate to maintain acceptable cooling of the stored assemblies, and that adequate time would exist to take appropriate corrective action should all cooling be inadvertently lost. The racks are designed to seismic Class I requirements. An assembly dropped on the racks would not distort the racks such that they would not perform their function. The radiological consequences of a fuel handling accident remain within previously established limits.

During the reracking effort, all movement of fuel assemblies and racks will be performed in accordance with our commitments to NUREG 0612, entitled "Control of Heavy Loads At Nuclear Power Plants." Thus, the probability of an accident involving assembly damage will not significantly be increased.

Based on these considerations, it is concluded that the probability or consequences of a previously evaluated accident is not significantly increased.

(2) Create the Possibility of a New or Different Kind of Accident From Any Previously Analyzed.

No unproven technology is involved either in the installation process or in the analytical techniques necessary to justify the planned fuel storage expansion. In fact, the basic reracking technology has been developed and demonstrated in over 80 applications for fuel pool capacity increases which have already received NRC approval.

The change to a mixed zone storage in the spent fuel pool requires the performance of additional evaluations to ensure that the criticality criteria is maintained. These include the evaluation for the limiting criticality condition, i.e., misplacement of an unirradiated (fresh) fuel assembly into a burned fuel storage cell. The evaluation for this case shows that when the boron concentration is at least 550 ppm, the criticality criterion is satisfied. We have proposed a T/S change to require 2,400 ppm boron, at all times, in the spent fuel pool. Therefore, protection against inadvertent mispositioning will be ensured.

During installation all movement of spent fuel pool assemblies and racks will be in accordance with our commitments to NUREG 0612, to prevent any damage to fuel assemblies stored in the spent fuel pool.

Based on the foregoing discussion, it is concluded that the reracking does not create the possibility of a new or different accident from any previously evaluated.

(3) Involve a Significant Reduction in a Margin of Safety.

The Holtec report demonstrates the acceptability of the reracking from a variety of perspectives, including criticality, thermal-hydraulic, radiological, seismic and structural considerations. The results of these analyses provide the basis for our conclusion that the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: L. B. Marsh

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: August 5, 1992

Description of amendment request: The amendments would revise Section 4.11.D of the Peach Bottom Atomic Power Station (PBAPS) Technical Specifications (TS) regarding the visual inspection of snubbers. The proposed changes would revise the method of determining visual inspection intervals for snubbers in accordance with the guidance provided in NRC Generic Letter 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementing the recommendations in GL 90-09 will not introduce any new failure mode and will not alter any assumptions previously made in evaluating the consequences of an accident since the same confidence level exists for ensuring snubber operability. The proposed changes do not affect limiting safety system settings or operating parameters, and do not modify or add any accident initiating events or parameters. Therefore, the proposed changes do not cause an increase in the probability or consequences of an accident previously evaluated.

2) The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the PBAPS, Units 2 and 3 TS for implementing the recommendations of GL 90-09 do not involve any physical alterations to plant equipment, changes to setpoints or operating parameters, nor does it involve a potential accident initiating event. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3) The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes maintain the same confidence level as that currently provided by the TS for determining snubber operability. Accordingly, the existing margin of safety will be maintained. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: July 8, 1992

Description of amendment request: This amendment request would change Technical Specifications 6.3.1 and 6.4.1 to delete existing licensed operator qualification and training requirements that are superseded based on 1) INPO accreditation of PSE&G's licensed operator training programs, which are based on a system's approach to training, and 2) promulgation of the revised 10 CFR Part 55.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are administrative changes to clarify the current requirements for licensed operator qualifications and training programs and to conform to the revised 10 CFR [Part] 55 rule. Although licensed operator qualifications and training can have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as licensed operator training programs are accredited and based on a systems approach to training. PSE&G's licensed operator training programs have been accredited by INPO and are based on a systems approach to training. The proposed TS changes take credit for the INPO accreditation of the licensed operator training programs and require continued compliance with the requirements of 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications and training programs remain unchanged. Therefore, the proposed TS changes do not increase the probability or consequences of an accident previously evaluated.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are administrative changes to clarify the current requirements for licensed operator qualifications and training programs and to conform to the revised 10 CFR [Part] 55 rule. The changes do not affect plant design, hardware, system operation, or procedures. Additionally, in promulgating the revised rule, the NRC concluded that the impact of the revised rule on the possibility of creating a new or different kind of accident is acceptable as long as licensed operator training programs are accredited and based on a systems approach to training. As noted previously, PSE&G's licensed operator training programs have been accredited by INPO and are based on a systems approach to training. The proposed TS changes take credit for the INPO accreditation and require continued compliance with the requirements of 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications and training programs remain unchanged. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The proposed TS changes are administrative changes to clarify the current requirements for licensed operator qualifications and training programs and to conform to the revised 10 CFR [Part] 55 rule. Licensed operator qualifications and training can have an indirect impact on a margin of safety; however, the NRC, in promulgating the revised rule, determined that the impact on margin of safety was acceptable when licensees maintain licensed operator training programs that are accredited and based on a systems approach to training. As noted previously, PSE&G's licensed operator training programs have been accredited by INPO and are based on a systems approach to training. The NRC has concluded, as stated in NUREG-1262, that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining INPO accredited, systems based licensed operator training programs is equivalent to maintaining NRC approved licensed operator training programs which conform with applicable NRC regulatory guides or NRC endorsed ANSI/ANS standards. The TS requirements for the qualifications and training programs for all other unit staff remain unchanged. The licensed operator qualifications and training programs will continue to be required to comply with the requirements of 10 CFR [Part] 55. The margin of safety is maintained by virtue of maintaining INPO accredited licensed operator training programs and through continued compliance with the requirements of 10 CFR [Part] 55. Therefore, the proposed TS changes do not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: M. J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Charles L. Miller

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: May 26, 1992

Description of amendment request: Public Service Electric and Gas Company (PSE&G) is proposing to change the Salem 1 and 2 Technical Specifications to reflect: an increase in

the SHUTDOWN MARGIN requirements; a reduction in the containment pressure, high-high setpoint and allowable value; and changes to the containment spray system, containment fan cooler and service water Engineered Safety Features (ESF) RESPONSE TIMES. These changes were necessitated by the discovery of the auxiliary feedwater system flow greater than assumed in the Main Steam Line Break (MSLB) analyses, and the containment fan cooler unit and containment spray system response times greater than originally assumed for the Loss of Coolant Accident or MSLB analyses. Specifically, the SHUTDOWN MARGIN limit will be changed from greater than or equal to 1.6% delta k/k to greater than or equal to 1.85% delta k/k, to be effective during Unit 1, Cycle 11 and Unit 2, Cycle 7. The containment pressure high-high setpoint will be changed from less than or equal to 23.5 psig to less than or equal to 15.0 psig, and the Allowable Value changed from less than or equal to 24.0 psig to less than or equal to 16.0 psig. The ESF RESPONSE TIME for the service water system (containment pressure, high signal with loss of offsite power), will be changed from less than or equal to 48.0 seconds to less than or equal to 45.0 seconds. The ESF RESPONSE TIME for the containment spray system (containment pressure, high-high signal), will be changed from less than or equal to 45.0 seconds to less than or equal to 33 seconds. The containment fan cooler ESF RESPONSE TIME will be changed from the containment high-high signal to the containment high signal with the response time changed for less than or equal to 40.0 seconds to less than or equal to 45.0 seconds.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

These proposed changes:

1) Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes affect Salem Generating Station (SGS) Loss of Coolant Accident (LOCA) and Main Steam Line Break (MSLB) safety analyses assumptions. These changes have been evaluated to demonstrate that the analysis results remain within acceptable limits as defined by the SGS licensing basis. In particular:

a. The calculated peak containment pressure would remain below the SGS design limit of 47 psig.

b. The calculated containment temperature response would not adversely impact the qualification of equipment subject to the SGS Environmental Qualification program.

c. Core response to a postulated MSLB, assessed in terms of Departure From Nucleate Boiling Ratio, would remain within acceptable limits.

d. Calculated offsite radiological doses would remain well within the limits of 10 CFR 100.

2) Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes involve a setpoint change, response time changes and more restrictive SHUTDOWN MARGIN limits. They do not involve any new system configurations with the potential for changing the initiation of an accident, nor do they introduce any previously unconsidered equipment failure modes.

3) Do not involve a significant reduction in a margin of safety.

The SGS licensing basis safety analysis limits define an acceptable margin of safety for plant operation. The analyses affected by the proposed changes (LOCA and MSLB) have been reevaluated to demonstrate the safety analysis limits are not exceeded.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, D.C., 20005-3502

NRC Project Director: Charles L. Miller

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: April 21, 1992

Description of amendment request: The proposed amendment would revise condition 2.C(3) of Facility Operating License No. DPR-18 issued December 10, 1984. The proposed amendment would remove from Appendix A of that license, fire protection Technical Specifications 1.11, 3.14, 4.15 and 6.2.2(f), Tables 3.14-1 and 3.14-2, and the corresponding section Bases for 3.14 and 4.15. The proposed amendment would change and add to Appendix A of that license, administrative controls by Technical Specifications 6.5.1.6(1) and 6.5.1.7a. NRC Generic Letters 86-10, dated April 24, 1986, and 88-12, dated August 2, 1988, provided guidance to licensees to request removal of the fire protection Technical Specifications. The licensee's proposed amendment is in response to these Generic Letters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This evaluation covers the deletions of Technical Specifications 3.14, 4.15, 6.2.2(f), the section Bases for 3.14 and 4.15, the corresponding Definition Section 1.11, Table 3.14-1 Fire Detection Instruments, Table 3.14-2 Fire Service Water Hose Reel Location, and relocation of these requirements to the Updated Final Safety Analysis Report (UFSAR) and plant procedures. The Limiting Conditions for Operation (LCO) for the fire protection system will be incorporated into plant procedures. In addition, a proposed new UFSAR Table 9.5-4, Spray/Sprinkler System Operability, will be added to provide clarity on these systems. The addition of Technical Specification 6.5.1.6(1) and revisions to License Conditions 2.C.(3) have also been proposed. The following discussion addresses these changes and their significant hazard evaluation.

1. Technical Specification 3.14, 4.15, 6.5.1.6(1), 6.5.1.7a. and b., 1.11, Table 3.14-1, Table 3.14-2, and new UFSAR Table 9.5-4.

a. These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The accident analysis assumes that a design basis accident does not occur simultaneously with a fire. The fire hazard analysis does not solely rely on automatic fire suppression systems and/or fire detection systems as fire-rated assemblies; manual fire suppression and redundant safe shutdown trains are also available.

Because no requirements are being changed, there will be no increase in the probability or radiological consequences of an accident previously evaluated.

b. These changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not alter the intent of the requirements; but rather, relocates them from the Technical Specifications to the UFSAR and plant procedures. No modifications are being made to any plant system, structure or component which may be relied upon for safe shutdown. Operational, maintenance, and procedural requirements are not decreased.

c. These changes do not involve a significant reduction in the margin of safety. No change is being proposed for the requirements themselves. Plant procedures continue to provide specific instructions necessary for implementation of the requirements consistent with that currently in place.

2. Technical Specification 6.2.2(f), Site Fire Brigade Requirements, has been deleted from Technical Specifications and transferred to plant procedures and the UFSAR. New Technical Specification 6.5.1.6(1) Plant Operations Review Committee (PORC) Responsibilities, has been proposed as an addition.

a. These changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. No changes to the requirements have been made. These changes simply remove the site fire brigade requirements from the Technical Specifications and places them into plant procedures and the UFSAR without altering them. Review of the Fire Protection Program and its revisions will be the responsibility of PORC. PORC shall be responsible for reviewing changes to fire protection requirements and submitting recommended program changes to the Nuclear Safety Audit and Review Board (NSARB). This will ensure that implementing procedures contain the proper level of administrative control over the Fire Protection Program and that subsequent changes are appropriately evaluated under 10 CFR 50.59.

b. These changes do not create the possibility of a new or different kind of accident from any previously evaluated. The proposed change does not alter the requirements. Plant procedures will continue to provide the specific instructions for implementing the administrative requirements. The number and qualifications of the Fire Brigade members has not changed.

c. These changes do not involve a significant reduction in the margin of safety. No change is being proposed for the requirements. Plant procedures will continue to provide the specific instructions necessary for implementation of the requirements consistent with that currently in place.

3. License conditions 2.C.(3) (a), (b) and (c) Fire Protection, will be revised in accordance with the guidance provided in Section F of Generic Letter 86-10 Implementation of Fire Protection Requirements, and as clarified in Generic Letter 88-12 Removal of Fire Protection Requirements from Technical Specifications.

Specifically, 2.C.(3)(a) will be updated to include Safety Evaluation Reports dated February 27, 1985, and March 21, 1985. Sections 2.C.(3)(b) and (c) will be removed and a new section 2.C.(3)(b) has been proposed which allows changes to be made to the approved Fire Protection Program only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

a. This change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change in license conditions from those previously incorporated into the license to the one presented in Generic Letter 86-10 and 88-12 does not result in any change in technical requirements of the change process.

b. This change does not create the possibility of a new or different kind of accident from any previously evaluated. The proposed standard license conditions do not involve any significant change in requirements and conform to the guidance in Generic Letters 86-10 and 88-12. Any change being made will still require an evaluation pursuant to 10 CFR 50.59 to determine the existence of any unreviewed safety question.

c. This change does not involve a significant reduction in the margin of safety. A standard license condition is implemented. This requires that no change can be made to the fire protection program that will adversely affect the ability to achieve and maintain safe shutdown in the event of a fire without prior Commission approval. Therefore, the license condition does not involve any significant change in requirements and follows the guidance in Generic Letters 86-10 and 88-12.

Fire Protection Program reporting requirements will still be made relative to the criteria of 10 CFR 50.72, 10 CFR 50.73 and 10 CFR 21 on an individual basis, therefore, the proposed change will not result in a reduction of regulatory requirements.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Acting Project Director: Victor Nerses

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: January 9, 1990, as supplemented October 8, 1991, and superseded August 4, 1992

Description of amendment request: The proposed changes would modify Sections 3.0 and 4.0 of the Technical Specifications by incorporating conclusions reached in NRC Generic Letter 87-09. The changes would restrict operating modes while in a limiting condition for operation, allow a 24-hour period to complete a missed surveillance prior to entering the applicable Action Statement, and require that surveillance requirements be completed before entering the applicable operating condition based on the types of exceptions contained in NUREG-0452, Revision 4, "Standard Technical Specifications for Westinghouse Pressurized Water Reactors," issued Fall 1981. Furthermore, words defined in the Technical Specifications are being capitalized throughout consistent with NUREG-0452. The proposed amendments were previously noticed in the **Federal Register** on December 26, 1991 (56 FR 66931). However, due to the fact that the August 4, 1992, submittal supersedes the previous submittals in their entirety, the staff has determined that the proposed action should be renoticed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the modified (T)echnical (S)pecifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.0.3 has been added as a clarification to specifically limit entry into an operational condition when the conditions for the Limiting Condition for Operation are not met and the associated Action Statement requires a shutdown if they are not completed within a specified time interval. For a Limiting Condition for Operation that has Action Statement requirements permitting continued operation for an unlimited period of time or an exception to Technical Specification 3.0.3, entry into an operational mode or other specified condition of operation should be permitted in accordance with those Action Statement requirements. This clarification is consistent with existing NRC regulatory requirements for a Limiting Condition for Operation.

Surveillances provide positive verification of operability. A 24-hour time limit has been included in Technical Specification 4.0.3 allowing a delay of the required actions to permit the performance of a missed surveillance. This change is justified in that it is overly conservative to assume that systems or components are immediately inoperable when a surveillance requirement has not been performed. The NRC concluded in Generic Letter 87-09 that a 24-hour time limit balances the risks associated with an allowance for completing the surveillance within this period against the risks associated with the potential for a plant upset and challenge to safety systems when the alternative is a shutdown to comply with Action Statement requirements before the surveillance can be completed. The NRC concluded that the potential for a plant upset and challenge to safety systems is increased if surveillances are performed during actions to initiate a shutdown to comply with Action Statement requirements.

Technical Specification 4.0.4 has been modified to note that its provisions shall not prevent passage through or to operational conditions as required to comply with Action Statement requirements. This is consistent with the intent of the existing Technical Specifications and only represents a clarification.

No previously analyzed accident scenario is changed by this Technical Specification change request. Initiating conditions and assumptions remain as previously analyzed.

Therefore, we conclude that this change does not increase the probabilities or consequences of an accident.

(2) Operation of the facility in accordance with the modified (T)echnical (S)pecifications would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve changes to the physical plant or operations.

The changes being proposed to achieve consistency with Generic Letter 87-09 are clarifications of existing Technical Specifications with the exception of the 24-hour time limit to perform a missed surveillance. As noted in the generic letter, that change addresses a balance between positive verification of operability and the potential risk of known transients or plant upsets which may occur during activities to initiate a shutdown. This change does not alter any accident scenarios. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

(3) Operation of the facility in accordance with the modified [T]echnical [S]pecifications would not involve a significant reduction in a margin of safety.

For the changes intended to achieve consistency with the recommendation of Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specification (STS) on the Applicability of Limiting Conditions or Operation and Surveillance Requirements," the NRC [s]taff has previously evaluated these changes in the generic letter and determined that the modifications will result in improved [T]echnical [S]pecifications. No other changes are proposed.

Therefore, use of the proposed Technical Specification[s] would not involve a significant reduction in the margin of safety.

In addition, we believe this change request is of the type described in the [FEDERAL REGISTER] [n]otice of March 6, 1986 (51 FR 7744) as an example of amendments that are considered not likely to involve significant hazards considerations. In particular, example (ii) applies to this change request by describing a change that constitutes additional limitations, restrictions, or controls not presently included in the [T]echnical [S]pecifications. Example (vii) also applies to this change by describing a change to conform a license to changes in the regulations (Generic Letter 87-09), where the license change results in very minor changes to facility operations clearly in keeping with the regulations. Example (i) applies to the deletion of expired footnotes, a purely administrative change to [T]echnical [S]pecifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213.

NRC Project Director: Herbert N. Berkow

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: July 16, 1992

Description of amendment request: The proposed change would revise the wording in the NA-1&2 Technical Specifications (TS) for the Reactor Coolant System (RCS) volume in the design features section. The RCS volume in TS 5.4.2 would change from ". . . 9957 [plus or minus] 10 cubic feet at a nominal T_{AVG} of 525°F" to " . . . approximately 10,000 cubic feet at nominal operating conditions." The reference to the RCS volume of 9957 cubic feet in the Bases for Technical Specification 3/4.1.1.3 on boron dilution would be deleted.

NUREG-0452, "Standard Technical Specifications for Westinghouse PWRs," Revision 4 (STS), provides guidance to licensees when preparing TS. One design feature specified in the STS is the RCS volume. A calculated RCS volume was obtained from the reactor vendor and included in the NA-1&2 TS consistent with STS guidance. However, that calculated volume is not used in the accident analyses. Rather, the transient system models used to perform accident analyses divide the RCS into component mass-energy cells for which volumes are specified. The definition and volume of these mass-energy cells vary depending on the model used and the accident being analyzed. Thus, the methodology does not require that a single total RCS volume be specified as an accident analysis basis and revising the current description would have no significant effect on safety. TS 3/4.1.1.3 requires the flow rate of reactor coolant through the RCS to be greater than or equal to 3000 gpm when a reduction in RCS boron concentration is being made. The Bases for TS 3/4.1.1.3 state that the minimum flow rate of at least 3000 gpm provides adequate mixing, prevents stratification and ensures that reactivity change will be gradual during boron concentration reductions in the RCS. It then states that a flow rate of at least 3000 gpm will circulate an equivalent RCS volume of 9957 cubic feet in approximately 30 minutes. It is proposed that the phrase "will circulate an equivalent Reactor Coolant System volume of 9957 cubic feet" be changed to "will circulate the Reactor Coolant System volume." Revising the phrase does not alter the meaning of the Bases and eliminates a potential conflict with the revised design feature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. Revising the description of the RCS volume in the design features of the [TS] has no impact on the probability of any accident previously evaluated because total RCS volume is not used in any accident analysis.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not involve any change to plant design or methods of operation. The proposed changes do not involve operation of any plant equipment in a manner different from that in which it was designed to be operated. Since a new failure mode is not created, a new or different type of accident is not made possible.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes do not involve any changes to safety limits or limiting safety system settings. Neither setpoints nor operating parameters are affected by the proposed changes. Therefore, no significant reductions in a margin of safety occur as a result of the proposed changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, P.O. Box 1535, Richmond, Virginia 23212.

NRC Project Director: Herbert N. Berkow

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: July 8, 1992

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4, "Steam and Power Conversion System," TS 4.8, "Auxiliary Feedwater System," and the respective bases. The changes incorporate a NRC staff recommendation regarding the required minimum condensate storage tank inventory, additional restrictions on the operation of the auxiliary feedwater system, and revisions to the surveillance requirements for the turbine driven auxiliary feedwater pump. In addition, administrative changes have been proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The staff's review is presented below:

The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. The accidents of interest include loss of main feedwater, flooding, loss of offsite power, and a small break loss of coolant accident. The probabilities of occurrence of these accidents are independent of the proposed changes. In addition, the consequences of these accidents are not significantly increased by any of these changes. The condensate storage tank minimum level is being increased and the auxiliary feedwater pump allowed outage time is being decreased, both conservative changes. In addition, the potential for unnecessary plant transients is being reduced. Finally, auxiliary feedwater system redundancy and separation are maintained while operability of the turbine driven auxiliary feedwater pump is demonstrated, consistent with staff guidance.

The proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated, because the changes would not alter the plant configuration, the operational parameters, or plant performance.

The proposed changes would not involve a significant reduction in a margin of safety. The proposed changes in minimum condensate storage tank level and auxiliary feedwater pump allowed outage time are both conservative, enhancing the margin of safety. The potential for unnecessary plant transients is also reduced. In addition, limiting conditions for operation consistent with staff guidance are maintained to ensure the margin of safety is not significantly reduced.

The proposed administrative changes also would not involve a significant increase in the probability or consequences of an accident previously evaluated, would not create the possibility of a new or different kind of accident from any accident previously evaluated, and would not involve a significant reduction in a margin of safety. These changes do not alter the intent or the interpretation of the Technical Specifications.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq., Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: John N. Hannon.

Previously Published Notices of Consideration of Issuance of Amendments To Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity For Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: June 7, 1991, as supplemented by letters dated November 20, 1991, and April 13, 1992.

Brief description of amendments: These amendments respond to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,' Pursuant to 10 CFR 50.54(f)."

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment Nos.: 63, 49, and 36

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 4, 1991 (56 FR 43802) The additional information contained in the supplemental letters was clarifying in nature and thus within the scope of the initial notice and did not affect the NRC staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: November 6, 1987, as supplemented by letters dated February 8, 1991, January 13 and February 6, 1992

Brief description of amendments: The amendments revised Technical Specification (TS) Tables 3.3-6 and 4.3-3 to designate the radiation monitors assigned to each train of control room ventilation (VC) system. Also, Action Statement 27 was revised to allow the option of running an operational VC train when less than the minimum number of monitors in the opposite VC train are inoperable. Additionally, Cycle 1 specific reliefs that are no longer applicable were removed from several pages of the TSs.

Date of isssuance: August 5, 1992

Effective date: August 5, 1992

Amendment Nos.: 48, 48, 37, and 37

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 20, 1991 (56 FR 11775) and March 18, 1992 (57 FR 9439) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 9, 1991; May 7, 1992, as supplemented July 1, 1992

Brief description of amendments: The amendments consist of administrative changes which revise the types of procedures that require review by the Onsite Review and Investigative Function (OnSR&IF), specifies the level of review and approval for procedures governed by the proposed Technical Review and Control process, clarifies the authority assigned to the OnSR&IF, and changes a title related to the Assistant Vice President Quality Programs and Assessment for Dresden Station.

Date of issuance: July 24, 1992

Effective date: July 24, 1992.

Amendment Nos.: 116, 113, 135, and 131

Facility Operating License Nos. DPR-19, DPR-25, DPR-29, and DPR-30. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18171) and June 10, 1992 (57 FR 24668). The submittal dated July 1, 1992, provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450 and Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Commonwealth Edison Company, Docket No. 50-237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of application for amendment: April 24 and May 13, 1992

Brief description of amendment: The amendment clarifies the reporting requirements of Section 2.G of Facility Operating License No. DPR-19 related to Technical Specification reporting requirements.

Date of issuance: July 24, 1992

Effective date: July 24, 1992

Amendment No.: 117

Facility Operating License No. DPR-19. The amendment revised the license.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24667). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 24, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: June 25, 1992

Brief description of amendment: The amendment provides a temporary relaxation of Technical Specification 3.6.1.1, "Containment Integrity," to allow the cleaning of the containment air recirculation (CAR) fan and fan motor heat exchangers while at power.

Date of issuance: August 7, 1992

Effective date: August 7, 1992

Amendment No.: 154

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1992 (57 FR 29905) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 7, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: October 20, 1986, as modified on April 30, 1987 and September 27, 1991.

Brief description of amendment: This amendment corrects an erroneous statement with regards to the amount of cooling water flow to the Containment Air Coolers (CACs). The amendment changes TS Section 5.2.3.a to indicate that three CACs [required to be operable per TS Section 3.4.1.a] with a total cooling water flow of 5580 gpm at an inlet temperature of 85°F will remove 230 million BTU per hour. The Federal Register Notice dated June 10, 1992 (57 FR 24669) incorrectly stated that the September 27, 1991, request superseded in its entirety the request dated October 20, 1986, as modified April 30, 1987. In fact the September 27, 1991, request modified and clarified the earlier request.

Date of issuance: July 28, 1992

Effective date: July 28, 1992

Amendment No.: 151

Facility Operating License No. DPR-20. The amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24669). See also March 21, 1990 (55 FR 10530). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: January 30, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) Tables 3.4.3.2-1 and 3.4.3.2-2 to remove two valves from the listing of Rector Coolant System Pressure Isolation Valves. These valves will remain in TS Table 3.6.3-1, "Primary Containment Isolation Valves."

Date of issuance: July 31, 1992

Effective date: July 31, 1992

Amendment No.: 85

Facility Operating License No. NPF-43. The amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** May 27, 1992 (57 FR 22261) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 31, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: April 21, 1992

Brief description of amendment: This amendment revises Technical Specifications Section 3.5.1, "Safety Injection Tanks," by reducing the minimum nitrogen cover-pressure from 570 psig to 500 psig.

Date of issuance: July 30, 1992

Effective date: July 30, 1992

Amendment No.: 58

Facility Operating License No. NPF-16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 5, 1992 (57 FR 19317) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 17, 1992

Brief description of amendment: The amendment revises Technical Specification (TS) 4.2.E.5 which changes the frequency of surveillance of solution Boron-10 enrichment from each refueling outage to once every 24 months. TS Bases 4.2 is revised to reflect the above changes to the surveillance interval for the solution Boron-10 enrichment.

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment No.: 159

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13131) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: March 13, 1992

Brief description of amendment: The amendment revised the Technical Specifications by removing the Reactor Protection System (RPS) Electrical Protection Assembly (EPA) time delay requirements.

Date of issuance: August 4, 1992

Effective date: August 4, 1992

Amendment No.: 185

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 29, 1992 (57 FR 18174) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: October 22, 1991, as supplemented November 19, 1991.

Brief description of amendment: The amendment revises Technical Specification Table 3.6.2g to establish specific setpoints for the Recirculation Flow Unit Comparator and Recirculation Flow Unit Upscale Control Rod Block functions and to revise the operational condition (Reactor Mode Switch Position) applicability to be consistent with the NRC's Standard Technical Specifications for General Electric Boiling Water Reactors (NUREG-0123). The amendment also revises Technical Specification Table 4.6.2g to make the Instrument Channel Calibration surveillance frequency for the Recirculation Flow Unit Comparator, Flow Unit Inoperative, and Flow Unit Upscale Control Rod Withdrawal Block consistent with NUREG-0123.

Date of issuance: July 23, 1992

Effective date: July 23, 1992

Amendment No.: 130

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64656) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 23, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: May 27, 1992, as supplemented June 22, 1992.

Brief description of amendment: The amendment revises Technical Specification (TS) Figure 2.1.1, TS 3.1.7, and associated Bases to replace cycle-specific limits with requirements that the reactor be operated within the requirements of limits specified in the Core Operating Limits Report (COLR). TS 6.9.1.f is being revised to require that the cycle-specific parameters removed from TS Figure 2.1.1, TS 3.1.7, and associated Bases be included in the COLR. The amendment is in accordance with the guidance provided in NRC Generic Letter 88-16, "Removal of Cycle-Specific Parameter Limits From Technical Specifications," and also corrects two typographical errors on pages 64a and 64c of TS 3.1.7.

Date of issuance: July 27, 1992

Effective date: July 27, 1992

Amendment No.: 131

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28202) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 27, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 11, 1991, as supplemented June 25, 1992

Brief description of amendment: The amendment revised Technical Specification (TS) 2.7, "Electrical Systems," to correct inconsistencies and to provide further guidance on equipment necessary for the 161kV power supply. Additionally, administrative changes are incorporated for TS 2.7 and Table 2-10.

Date of issuance: August 3, 1992

Effective date: August 3, 1992

Amendment No.: 147

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64658) The additional information contained in the supplemental letter dated June 25, 1992, clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 3, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 4, 1992 (Reference LAR 92-02)

Brief description of amendments: The amendments revise the combined Technical Specifications (TS) for the Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2 to remove cycle specific information that is no longer necessary.

Date of issuance: August 6, 1992

Effective date: August 6, 1992

Amendment Nos.: 72 and 71

Facility Operating License Nos. DPR-80 and DPR-82: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992 (57 FR 13136) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 6, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: May 19, 1992

Brief description of amendments: The amendment changes Sections 6.3.1 and 6.4.1 of the Technical Specifications to clarify the current requirements for licensed operator qualifications and training.

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment Nos. 55 and 20

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28204) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 6, 1992

Brief description of amendments: The amendments modify the Technical Specification Section 3/4.3.1 Reactor Trip System Instrumentation, Limiting Conditions for Operation, Action Requirements, and Surveillance Requirements, including associated tables. These changes contain administrative changes, provide consistency between Salem, Units 1 and 2, and ensure technical accuracy.

Date of issuance: July 29, 1992

Effective date: As of the date of issuance and to be implemented within 120 days of the date of issuance.

Amendment Nos. 134 and 113

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1992 (57 FR 24678) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: November 27, 1991 (TS 91-16)

Brief description of amendment: The amendments revise the actions required when certain 6.9kv Shutdown Board Engineered Safety Feature Actuation System and Emergency Diesel Generator loss-of-power instrumentation is inoperable.

Date of issuance: July 24, 1992

Effective date: July 24, 1992

Amendment No.: 160 for Unit 1; 150 for Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:** January 22, 1992 (57 FR 2601) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 24, 1992. No significant hazards consideration comments received:

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 16, 1991, supplemented February 3, 1992.

Brief description of amendment: The amendment revised Technical Specification 3/4.4.5, "Steam Generators," and its bases to allow use of a Babcock & Wilcox steam generator tube sleeving process to effect repairs of defective steam generator tubes.

Date of issuance: July 28, 1992

Effective date: 90 days after issuance

Amendment No. 171

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 4, 1992 (57 FR 7816) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 28, 1992 and an Environmental Assessment dated June 4, 1992 (57 FR 24832, June 11, 1992). No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 14, 1992

Brief description of amendment: The changes to Technical Specifications 3/4.2.1, 4.2.2.2 through 4.2.2.4, 6.9.1.9, Table 2.2-1 and associated Bases allow the implementation of Relaxed Axial Offset Control (RAOC) for Cycle 6.

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment No.: 72

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28207) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: May 1, 1992

Brief description of amendments: The amendments revise the NA-1&2 TS to permit mode changes while in Action Statement 3.7.4.1.a by stating that TS 3.0.4 is not applicable once service water flows to the component cooling heat exchangers are throttled.

Date of issuance: August 4, 1992

Effective date: August 4, 1992

Amendment Nos.: 163, 143

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 24, 1992 (57 FR 28207) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos.1 and 2, Town of Two Creeks, Manitowo County, Wisconsin

Date of application for amendments: March 1, 1991 and supplemented December 6, 1991

Brief description of amendments: The amendments revised TS 15.4.8, Auxiliary Feedwater System, by changing sections 15.4.8.1.a and 15.4.8.1.b to require each auxiliary feedwater (AFW) pump to be started quarterly, and by providing the basis for TS 15.4.8 for this change. In addition Ts 15.3.4, Steam Power Conversion System was revised by changing section 15.3.4.C.2 to clarify the AFW pump out-of-service limitations.

Date of issuance: July 31, 1992

Effective date: July 31, 1992

Amendment Nos.: 133 and 137

Facility Operating License Nos. DPR-24 and DPR-27. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 8, 1992 (57 FR 30264) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 31, 1992. No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 27, 1992

Brief description of amendment: Modifies the facility Operating License to a Possession Only License. This action will permit the licensee to maintain and use the facility but not operate it.

Date of issuance: August 5, 1992

Effective date: August 5, 1992

Amendment No.: 142

Facility Operating License No. DPR-3: Amendment revised the license but not the Technical Specifications.

Date of initial notice in **Federal Register:** April 15, 1992, (57 FR 13140). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1992. No significant hazards consideration comments received: No

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 12th day of August 1992.

For The Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation

[Doc. 92-19629 Filed 8-18-92; 8:45 am]

BILLING CODE 7590-01-F

[Docket Nos. 50-528, 529, and 50-530; (License Nos. NPF-41, NPF-51, and NPF-74)]

Arizona Public Service Co.; Palo Verde Nuclear Generating Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated July 20, 1992, David A. Colapinto, Counsel for the National Whistleblower Center, has requested on behalf of Linda E. Mitchell and Sarah C. Thomas (Petitioners) that the Commission take action with regard to Palo Verde Nuclear Generating Station. In the July 20 letter, Petitioners request that the NRC take "prompt and effective enforcement action against Palo Verdo in the next 30 days" to stop harassment and intimidation of licensee employees who raise safety concerns. Specifically, Petitioners request that the NRC assess severe civil penalties against the licensee and initiate show cause proceedings to revoke, modify, and/or suspend Palo Verde's operating license.

As a basis for this request, Petitioners allege that they have been subjected to continuing and ongoing harassment, intimidation, discrimination and a "hostile work environment" by Palo Verde management, as confirmed by two decisions by Department of Labor (DOL) Administrative Law Judges (ALJs). In this regard, Petitioners assert that if the NRC decides of defer enforcement action pending the Secretary of Labor's final review of these decisions, the results would be contrary to Congress' intent and send the wrong message to Palo Verde's management, and have a "chilling effect" on other employees raising safety concerns.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Enforcement. By letter dated August 11, 1992, Petitioners' request that the NRC take action "in the next 30 days" has been denied. As provided by § 2.206, appropriate action will be taken on Petitioners' additional requests within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 11th day of August, 1992.

For the Nuclear Regulatory Commission.

Chris A. VanDenburgh,

Deputy Director, Office of Enforcement.

[FR Doc. 92-19736 Filed 8-18-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 70-135-DCOM; ASLBP No. 92-667-03-DCOM]

Babcock and Wilcox (Fuel Fabrication Facility—Decommissioning Plan); Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the Federal Register, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the presiding officer to conduct the hearing in the event that an informal adjudicatory hearing is ordered in the following Materials License Amendment proceeding.

In the Matter of Babcock and Wilcox, Apollo, Pennsylvania 15613, Materials License No. SNM-145.

The Presiding Officer is being designated pursuant to 10 CFR 2.1207 of

the Commission's Regulations, "Informal Hearing Procedures for Materials Licensing Adjudications," published in the **Federal Register**, 54 FR 8269 (1989). This action is in response to requests for a hearing submitted by Cynthia Virostek on behalf of Save Apollo's Future Environment (SAFE) and individual petitioners. The petitioners request a hearing on a notice published by the Office of Nuclear Material Safety and Safeguards, dated June 18, 1992, entitled "Environmental Assessment, Finding of no Significant Impact, and Opportunity for Hearing Related to Amendment of Materials License No. SNM–145" (57 FR 28539, June 25, 1992).

The presiding officer in this proceeding is Administrative Judge G. Paul Bollwerk, III.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge Richard F. Cole to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bollwerk and Judge Cole in accordance with 10 CFR 2.701. Their addresses are:

Administrative Judge G. Paul Bollwerk, III, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Richard F. Cole, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 11th day of August 1992.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 92–19692 Filed 8–18–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–08681–MLA; ASLBP No. 92–666–01–MLA]

Umetco Minerals Corp.; (Source Materials License No. SUA–1358); Order and Memorandum (amendment)

August 12, 1992.

The Order issued on August 5, 1992 should have provided for an appeal of the denial of the State of Utah's (State) request for a stay of the Nuclear Regulatory Commission's grant of a license amendment to the Umetco Minerals Corporation. I now amend that Order to provide an opportunity to the State for an appeal of my decision on the stay request. An appeal may be filed within ten (10) days of the service of this Amendment, or such other times as the Commission may direct.

Bethesda, Maryland.

James P. Gleason,

Presiding Officer, Administrative Judge.

[FR Doc. 92–19737 Filed 8–18–92; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Availability

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the Procurement Regulatory Activity Report, Number 7.

SUMMARY: Subsections 25(g)(1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100–679, codified at 41 U.S.C. 421(g), require the Administrator for Federal Procurement Policy to publish a report within six months after the date of enactment and every six months thereafter relating to the development of procurement regulations.

Accordingly, OFPP has prepared the seventh Procurement Regulatory Activity Report. This report is designed to satisfy all aspects of subsections 25(g)(1) and (2) of the OFPP Act, and includes information on: The status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and such other matters as the Administrator determines to be useful.†

ADDRESSES: Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report may contact the Executive Office of the President Publications Service, room 2200, 725 17th Street NW., Washington, DC 20503, or phone (202) 395–7332.

Dated: August 3, 1992.

Allan V. Burman,

Administrator.

[FR Doc. 92–19772 Filed 8–18–92; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: The President's Council of Advisors on Science and Technology will meet on September 10–11, 1992. The meeting will begin with an open session at approximately 9:00 a.m. on Thursday, September 10, 1992, in the Conference Room, Points of Light Foundation, 736 Jackson Place NW., Washington, DC, with one substantive agenda item to be discussed. This open session will end at approximately 10:30 a.m. On Thursday morning, at approximately 11 a.m., the Council will go into closed session with four substantive agenda items to be discussed. This closed session will end at approximately 4 p.m. On Friday, September 11, 1992, the Council will reconvene in open session at approximately 9 a.m. with one substantive agenda item to be discussed. This open session will end at approximately 12 noon on Friday.

TYPE OF MEETING: Open and Closed.

AGENDA: On Thursday, September 10, there will be a presentation on international science and technology agreements administered by the Department of Energy.

During the closed session on Thursday, September 10, the Council will discuss various aspects of the proposed FY 1994 budget for Research and Development, including possible areas for budget cross-cuts, and reports on Megaprojects in the Sciences, Bioscience & Biotechnology, and Mathematics and Science Education. These portions of the meeting will be closed to the public, pursuant to title 5, U.S. Code, section 552b(c)(4), (6) & (9)(B).

On Friday, September 11, the Council will reconvene in open session and will discuss the status of the Council project on U.S. research intensive colleges and universities.

For information regarding time, place and agenda, and for those wishing to attend the open portion of the meeting, please contact Ms. Ann Barnett, (202) 395–4692, prior to 3 p.m. on September 9, 1992. Other questions may be directed to Dr. Alicia K. Dustira, (202) 395–4692.

Dated: August 14, 1992.

Vickie V. Sutton,

Assistant Director, Office of Science and Technology Policy.

[FR Doc. 92–19769 Filed 8–18–92; 8:45 am]

BILLING CODE 3170–01–M

RESOLUTION TRUST CORPORATION

Final Statement of Policy on Lower Income Occupancy Requirements for Bulk Sales in the Multifamily Affordable Housing Disposition

AGENCY: Resolution Trust Corporation.

ACTION: Final Statement of Policy.

SUMMARY: On June 12, 1992, the Resolution Trust Corporation (Corporation) published in the **Federal Register** (57 FR 249937) an interim policy statement concerning properties marketed under the Affordable Housing Disposition Program. Under this interim policy statement, when more than one multifamily property is purchased from the Corporation as part of the same negotiation, the Corporation will require that not less than 15 percent of the dwelling units in each separate property purchased be made available to low-or very-low income individuals. Written comments on the interim policy statement were accepted for 30 days. RTC received one public comment on the interim policy. This commentor was supportive of the policy.

On May 6, 1992 (57 FR 19500) the Corporation published an Interim Final Rule (12 CFR part 1609) concerning the Affordable Housing Disposition Program and has requested public comments.

DATES: This final policy statement affects multifamily property marketed under the Affordable Housing Disposition Program for which the Corporation: (1) Issues a Notice of Marketing Period pursuant to 12 CFR 1609.7(b) on or after June 2, 1992, or (2) issues a Notice of Marketing Period pursuant to RTC Circular 10150.11 on or after June 2, 1992.

FOR FURTHER INFORMATION CONTACT: Stephen S. Allen, Director, Affordable Housing Disposition Program, (202) 416–7348, or Barry R. Wides, Financing Coordinator, Affordable Housing Disposition Program, (202) 416–7138. (These are not toll-free numbers.).

SUPPLEMENTARY INFORMATION:

1. Purpose

To establish a policy concerning the application of RTC's lower-income occupancy requirements for multifamily properties sold in bulk under the Affordable Housing Disposition Program as part of the same negotiation.

2. Scope and Applicability

This policy addresses application of certain procedures established in accordance with the affordable housing provisions of section 21A(c) of the Federal Home Loan Bank Act, as amended by section 501 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 1441a).

3. Background

Under the Affordable Housing Disposition (AHD) Program, as described in 12 CFR part 1609, published in the **Federal Register** on May 6, 1992 (57 FR 19500), not less than 35 percent of all dwelling units purchased by a qualifying multifamily purchaser in a single transaction shall be made available for occupancy by and be maintained affordable for, lower-income families during the remaining useful life of the property in which the units are located, provided not less than 20 percent of all units shall be made available for occupancy by, and be maintained affordable for, very low-income families during the remaining useful life of such property. If an eligible multifamily purchaser, buys more than one eligible multifamily property as part of the same negotiation, the purchaser may meet the lower-income occupancy requirements "in the aggregate." For example, if 1,000 units in 10 properties (each with 100 units) were sold as part of the same negotiation with a single purchaser, the purchaser could place deed restrictions on as few as four of the buildings (350 units), leaving the remaining six buildings free of lower-income occupancy restrictions.

Administration of the "aggregation" provision in this manner has raised questions regarding the consistency of this approach with the statutory mandate that the RTC conduct operations in a manner which "maximizes the preservation of the availability and affordability of residential real property for low- and moderate-income individuals." If only a portion of the properties which are marketed through the AHD Program are actually subject to deed restrictions, then fewer properties are made available at restricted rents to low-income individuals. RTC believes that the goals of the AHD Program are better served by requiring that at least 15 percent of the units in each property marketed under the Program be made available to low- or very low-income individuals consistent with RTC's statutory mandate. Beyond this minimum, bulk purchasers are given maximum flexibility to meet the requirements "in the aggregate."

4. Policy and Guidelines

If a qualifying multifamily purchaser buys more than one Eligible Multifamily Property as part of the same negotiation, the lower-income occupancy requirements established in 12 CFR 1609.2(o)(1) (and the additional lower-income occupancy restrictions committed to pursuant to 12 CFR 1609.7(b)(9)) shall apply in the aggregate to the properties so purchased, provided that not less than 15 percent of the dwelling units in each separate property purchased shall be made available for occupancy by and maintained affordable (at rent levels established in 12 CFR 1609.7(b)(4)) for either very low-income or lower-income families for the remaining useful life of the property in which the units are located.

Dated at Washington, DC, this 11th day of August, 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 92–19677 Filed 8–18–92; 8:45 am]

BILLING CODE 6714–01–M

Privacy Act of 1974; System to Records

AGENCY: Resolution Trust Corporation.

ACTION: Notice of new system of records.

SUMMARY: The Resolution Trust Corporation (RTC) Office of Inspector General (OIG) is establishing a new system of records in accordance with the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act), entitled Office of Inspector General Investigative Files. This notice is intended to inform the public of the existence and character of this system of records. The RTC OIG is also proposing routine uses for this system.

DATES: Effective date of system: August 19, 1992. Comments concerning routine uses must be received on or before September 18, 1992.

ADDRESSES: Comments concerning routine uses should be addressed to: Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street—room 1122, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: David W. Kuhnsman, Senior Assistant Counsel to the Inspector General at 703–908–7812.

SUPPLEMENTARY INFORMATION: In accordance with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA, Pub. L. 101–73, 103 Stat. 393), which amends the Inspector General Act of 1978 (Pub. L. 95–452, as amended, 5 U.S.C. app. 3), the RTC OIG was established in April 1990. The OIG is an independent unit established to promote economy, efficiency, and effectiveness in the

administration of RTC programs and operations and to detect and prevent fraud, waste, and abuse in such programs and operations. In addition, the OIG assists in the prosecution of participants in such fraud or abuse and reports to the Attorney General whenever the Inspector General has grounds to believe there has been a violation of Federal criminal law. The OIG also keeps the RTC's President and Chief Executive Officer, the Thrift Depositor Protection Oversight Board, and Congress fully informed about any problems or deficiencies in the administration of RTC programs and operations and provides recommendations for correction of these problems or deficiencies.

The RTC OIG is establishing a new system of records, pursuant to the Privacy Act, entitled Office of Inspector General Investigative Files. This system of records will be maintained solely by OIG and will remain separate from other RTC records. The system will consist of files and records compiled by the RTC OIG concerning persons who have been part of an investigation of fraud and abuse pertaining to RTC programs or operations and investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information. The proposed system will allow the RTC OIG to carry out its mandate under the Inspector General Act, as amended.

The RTC OIG proposes to exempt certain files within this system of records from disclosure to individuals who are the subject of a record in the system. The exemptions would cover only information compiled for the following purposes:

(1) Identifying criminal offenders and alleged offenders and consisting of identifying data and notations of sentencing, confinement, release, and parole and probation status;

(2) A criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual;

(3) Reports of enforcement of the criminal laws from arrest or indictment through release from supervision;

(4) Investigatory material compiled for law enforcement purposes; and

(5) Investigatory material compiled solely for the purposes of determining suitability, eligibility, or qualifications for Federal employment, Federal contracts, or access to classified information.

The above exemptions are the subject of a companion notice of interim rulemaking that appears elsewhere in today's issue of the Federal Register. A report of the proposal to establish this system of records was filed pursuant to 5 U.S.C. 552a(r) with Congress and the Office of Management and Budget.

Description of system of records

The RTC OIG is establishing the following system of records:

RTC-1

SYSTEM NAME:

Office of Inspector General Investigative Files.

SYSTEM LOCATION:

Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA 22209.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) All documents and correspondence relevant to the investigation;

(2) All internal staff memoranda, copies of all subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation and accompanying exhibits;

(3) Documents and records or copies obtained during the investigation;

(4) Legal briefs, memoranda, and other working papers of the staff and other documents and records relating to the investigation; and

(5) Opening reports, progress reports, and closing reports.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are involved in or are the subject of investigations by the OIG relating to the programs and operations of the RTC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552a, 5 U.S.C. app. 3, 12 U.S.C. 1441a(b).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be used as follows:

(1) In the event that a record from this system of records, by itself or in combination with other information, maintained by the OIG to carry out its functions, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature; whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, then the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, foreign, State, or local, charged with enforcing or implementing the statute, regulation, or order.

(2) Disclosure may be made where necessary to Federal, foreign, State, or local agencies, or non-government parties, in order to obtain records or information in connection with an OIG investigation.

(3) Disclosure may be made to a Federal, State, or local financial regulatory agency where records in this system of records pertain to an applicant for employment, to a current employee of that agency where an agency decision with regard to the hiring or retention of the employee is pending, or to a current or former employee of a financial institution which is or has been operating as an RTC conservatorship or receivership. The information being transferred consists solely of the fact that OIG has conducted an investigation concerning the particular individual.

(4) Disclosure may be made to the Office of Special Counsel of information relevant and necessary to carry out its functions and relevant and necessary to carry out OIG operations to detect and prevent fraud, waste, and abuse.

(5) Disclosure may be made to the Thrift Depositor Protection Oversight Board of information relevant and necessary to carry out its oversight of the RTC and to carry out OIG operations to detect fraud, waste, and abuse.

(6) Disclosure may be made when OIG contracts with private firms for the purpose of maintaining, collating, analyzing, aggregating or otherwise reviewing records. Disclosure will also be made to independent auditors who, by contract, carry out audits on behalf of OIG. Such contractors will be required to maintain Privacy Act safeguards with respect to such records.

(7) In the event OIG deems it desirable or necessary to determine whether particular records are required to be disclosed under the Freedom of Information Act, then disclosure may be made to the Department of Justice for the purpose of obtaining its advice on applying the Freedom of Information Act to the record(s) at issue.

(8) In the event of litigation where one of the parties is:

(i) A component of the RTC, or any employee of the RTC in his or her official capacity,

(ii) The United States where the RTC determines that the litigation is likely to directly affect the operations of the RTC or any of its components or,

(iii) An RTC employee in his or her individual capacity, where the Department of Justice and/or the Legal Division of the RTC has agreed to represent such employee, then the OIG may disclose such records as it deems necessary to the Department of Justice, the RTC Legal Division, other counsel or representative for the RTC, a court, adjudicative body, individual or entity designated by the OIG or the RTC to resolve disputes, and/or a potential witness.

(9) Disclosure of a record of an individual may be made to a Congressional office in response to an inquiry from that office made at the written request of that individual.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) in accordance with Title 31 U.S.C. section 3711(f).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Office of Inspector General Investigative Files consist of automated data and paper records. Paper records are stored in file cabinets and the automated data are maintained in secured offices in OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. The records are kept in limited access areas during duty hours and in locked offices at all other times. Access to automated data is controlled by computer access codes.

RETENTION AND DISPOSAL:

Files containing information or allegations, which are of an investigative nature but do not relate to a specific investigation, are retained for a period of 5 years and then destroyed. All other investigative files are placed in inactive files when the case is closed. From the end of the fiscal year in which the case is closed the files are retained for 10 years and then destroyed unless the record is deemed to have historical significance.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Office of Inspector General, Resolution Trust Corporation, International Place, 1735 North Lynn Street, Rosslyn, VA, 22209.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves, seeking access to records about themselves in this system of records, or contesting the content of records about themselves, should write to the System Manager at the above address. The request should contain the full name, Social Security Number, signature of the individual, and copies of two forms of identification which contain the signature of the individual. An affidavit attesting to the identity of the individual is suggested.

RECORD ACCESS PROCEDURES:

See Notification Procedures above.

CONTESTING RECORD PROCEDURES:

See Notification Procedures above.

RECORD SOURCE CATEGORIES:

Information in these records is obtained from RTC staff and records, and from non-RTC persons and records, to the extent necessary to carry out OIG investigative operations by 5 U.S.C. app. 3. Individuals to be interviewed and records to be examined are selected based on the nature of the allegations being investigated.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(j)(2), this system of records is exempt from 5 U.S.C. 522a except subsections (b), (c)(1), and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent the system of records pertains to the enforcement of criminal laws. Pursuant to 5 U.S.C. 552a(k)(2), this system of records is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) to the extent it consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2), provided, however, that if any individual is denied any right, privilege, or benefit that he would otherwise be entitled to by Federal law, or for which he would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. Pursuant to 5 U.S.C. 552a(k)(5), this system of records is also exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) to the extent the system of records contains investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to January 1, 1975, under an implied promise that the identity of the source would be held in confidence. These exemptions are contained at 12 CFR 1680.33.

Issued at Washington, DC, this 7th day of August 1992.

Office of Inspector General

John J. Adair,

Inspector General, Resolution Trust Corporation.

[FR Doc. 92-19374 Filed 8-18-92; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues

August 12, 1992.

On July 24, 1992, the Philadelphia Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7-8582	SNPX	SynOptics Communications, Common Stock $0.01, Par Value.
7-8583	WTHG	Worthington Industries, Common Stock $0.01, Par Value.
7-8584	QVCN	QVC Network, Common Stock $0.01, Par Value.
7-8585	SPLS	Staples Inc., Common Stock $0.0006, Par Value.
7-8586	SYGN	Synergen Inc., Common Stock $0.01, Par Value.
7-8587	CHRS	Charming Shoppes Inc., Common Stock $0.01, Par Value.
7-8588	NGNA	Neutrogena Corporation, Common Stock $0.001, Par Value.
7-8589	PMTC	Parametric Technology, Common Stock $0.01, Par Value.

File No.	Symbol	Issuer
7-8590	STRY	Stryker Corporation, Common Stock $0.10, Par Value.
7-8591	NDTA	National Data Corporation, Common Stock $0.125, Par Value.
7-8592	AMSWA	American Software, Class A Common Stock $0.10, Par Value.
7-8593	CRFC	Crestar Financial, Common Stock $5, Par Value.
7-8594	INEL	Intelligent Electronics, Common Stock $0.01, Par Value.
7-8595	DELL	Dell Computer, Common Stock $.01, Par Value.
7-8596	HECHA	Hechinger Company, Class A Common Stock $.10, Par Value.
7-8597	XOMA	XOMA Corporation, Common Stock $0.0005, Par Value.
7-8598	SFDS	Smithfield Foods, Common Stock $.25, Par Value.
7-8599	CORD	Cordis Corporation, Common Stock $1.00, Par Value.
7-8600	DSCD	Datascope Corporation, Common Stock $.01, Par Value.
7-8601	TOPP	Topps Company, Common Stock $.01, Par Value.
7-8602	SPCO	Software Publishing, Common Stock $.001, Par Value.
7-8857	TKOS	Tokos Medical, Common Stock $.001, Par Value.

Comments

Interested persons are invited to submit, on or before September 2, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19715 Filed 8-18-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster Loan Area #7675]

Alaska; Declaration of Disaster Loan Area

The areas near Norton Sound, from the Villages of Emmonak and Alakanuk northward to the Village of Wales, in the Unorganized Borough of Alaska constitute an economic injury disaster loan area due to the loss in 1992 of the annual herring fishery resulting from abnormally late sea ice breakup caused by near record March snowfall. Eligible small businesses without credit available elsewhere and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance until the close of business on April 28, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795.

or other locally announced locations. The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

(Catalog of Federal Domestic Assistance Program No: 59002)

Dated: July 28, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-19779 Filed 8-18-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2570; Amendment #1]

Florida; Declaration of Disaster Loan Area

The above-numbered declaration is hereby amended to include Lee County and the contiguous counties of Collier and Hendry in the State of Florida as a disaster area as a result of damages caused by severe storms, heavy rains, and flooding June 25-27, 1992.

All other information remains the same, i.e., the termination date for filing applications for physical damage is September 8, 1992, and for economic injury until the close of business on April 6, 1993.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59006)

Dated: August 3, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-19780 Filed 8-18-92; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Newark, will hold a public meeting at 9:30 a.m. on Tuesday, September 15, 1992, at the U.S. Small Business Administration, Newark District Office, 60 Park Place, 4th floor, Newark, New Jersey, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, (201) 645-3580.

Dated: August 11, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-19778 Filed 8-18-92; 8:45 am]

BILLING CODE 8025-01-M

Investment Advisory Council; Meeting

Time and Date: 8:30 a.m.-5 p.m., Thursday, September 24, 1992.

Place: The meeting will be held in the Administrator's Conference Room on the seventh floor of SBA Central Office at 409 3rd Street, SW., Washington, DC.

Purpose: The meeting is being held to discuss such matters concerning the Small Business Investment Company (SBIC) and Specialized Small Business Investment Company (SSBIC) Programs as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, contact Wm. H. Malloy III, Esq., room 6300, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, telephone (202) 205-6510.

Dated: August 12, 1992.

Wayne S. Foren,

Associate Administrator for Investment.

[FR Doc. 92-19777 Filed 8-18-92; 8:45 am]

BILLING CODE 8025-01-M

Public Meeting

The National Small Business Development Center Advisory Board will hold a public meeting from 9 a.m. on Tuesday, September 15, through noon Wednesday, September 16, 1992, at the Embassy Suites Hotel, 110 West 600 South, Salt Lake City, Utah.

The purpose of the meeting is to discuss such matters as may be presented by Advisory Board members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Judith Dunn, U.S. Small Business Administration, 5th Floor, 409 3d Street, SW., Washington, DC 20416, telephone (202) 205-7301.

Dated: August 10, 1992.

Caroline Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-19776 Filed 8-18-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-92-22]

Petition for Exemption; Summary of Petitions Received; Disposition of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions; Correction.

SUMMARY: This action makes a correction to a Docket number in a notice of petitions for exemption published on July 12, 1992, (57 FR 36118). This action corrects that error.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 1, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of Chief Counsel, attn: Rules Docket (AGC-10), Petition Docket no. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9704.

SUPPLEMENTARY INFORMATION: The document was published July 12, 1992, (57 FR 36118). In the middle column under "petitions for exemption", the docket number "26898", for Boeing Commercial Airplane Group is in error. Please change the docket number to read "26896".

Issued in Washington, DC on August 13, 1992.

Denise Castaldo,

Manager, Program Management Staff.

[FR Doc. 92-19758 Filed 8-18-92; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-92-24]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 8, 1992.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB-10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT: Mr. C. Nick Spithas, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-9704.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on August 10, 1992.

Denise D. Castaldo,

Manager, Program Management Staff.

Petitions for Exemption

Docket No.: 26892.

Petitioner: Mr. Howard A. Aronson.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description of Relief Sought: To allow Mr. Howard A. Aronson to serve as a pilot in part 121 air carrier operations after Mr. Howard A. Aronson's 60th birthday.

Dispositions of Petitions

Docket No.: 24800.

Petitioner: Tennessee Air Cooperative, Inc.

Sections of the FAR Affected: 14 CFR 103.1(e)(1).

Description of Relief Sought/ Disposition: To extend Exemption No. 5001, as amended, which allows Tennessee Air Cooperative, Inc., to operate powered ultralight vehicles at an empty weight of more than 254 pounds to accommodate physically disabled persons. Grant, August 3, 1992, Exemption No. 5001B.

Docket No.: 26245.

Petitioner: Airline Crew Training Corporation.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61.

Description of Relief Sought/ Disposition: To extend and amend Exemption No. 5183 from §§ 61.63(d)(2) and (3), 61.157(d)(1) and (2), and (e)(1) and (2), appendix A of part 61, appendix H of part 121, and unspecified sections of part 63 of the Federal Aviation Regulations (FAR). The requested exemption would permit Airline Crew Training Corporation to use FAA-approved simulators to meet certain training and testing requirements of 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61 of the FAR. Partial Grant, August 7, 1992, Exemption No. 5135A.

Docket No.: 26542.

Petitioner: Sky Shows, Inc.

Sections of the FAR Affected: 14 CFR 105.43(a).

Description of Relief Sought/ Disposition: To allow Sky Shows, Inc., its employees, representatives, and other volunteer experimental parachute test jumpers under its direct supervision and control to make tandem parachute jumps, and to permit pilots in command of aircraft involved in these operations to allow such persons to make parachute jumps wearing a dual harness, dual parachute pack having at least one

main parachute and one approved auxiliary parachute packed in accordance with § 105.43(a). Grant, August 4, 1992, Exemption No.; 5491.

Docket No.: 26681.
Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.356(a).
Description of Relief Sought/ Disposition: To permit Airlift International, Inc., to operate three Fairchild F–27 and one FH–227 aircraft without Traffic Alert and Collision Avoidance System (TCAS) II equipment. Dental, July 30, 1992, Exemption No. 5489.

Docket No.: 26693.
Petitioner: Wright Air Services, Inc.
Sections of the FAR Affected: 14 CFR 135.161(a)(1).
Description of Relief Sought/ Disposition: To permit Wright Air Services, Inc., to operate a single-engine aircraft, the Cessna Caravan I, Model C–208B Grand Caravan (C–208), carrying passengers in instrument flight rule (IFR) conditions. Denial, August 3, 1992, Exemption No. 5490.

Docket No.: 26753.
Petitioner: Regional Airline Association.
Sections of the FAR Affected: 14 CFR 61.49(a).
Description of Relief Sought/ Disposition: To permit an applicant who fails a written or practical test for the second or subsequent time to apply for retesting before 30-days have expired, as would be otherwise required. Grant, August 3, 1992, Exemption No. 5492.

Docket No.: 26802.
Petitioner: Atlantic Coast Airlines d.b.a. United Express.
Sections of the FAR Affected: 14 CFR 135.225(e)(1).
Description of Relief Sought/ Disposition: To allow Atlantic Coast Airlines d.b.a. United Express to make IFR takeoffs at any Canadian airport listed in paragraph C70 of its operation specifications when the visibility is less than 1 mile. Grant, August 3, 1992, Exemption No. 5499.

Docket No.: 25815.
Petitioner: International Aviation Consultants.
Sections of the FAR Affected: 14 CFR 61.55(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61.
Description of Relief Sought/ Disposition: to permit International Aviation Consultants, to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. Grant, August 7, 1992, Exemption No. 5494.

Docket No.: 26819.
Petitioner: Vector Air Services, Inc.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit Vector Air Services, Inc., to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. Grant, August 7, 1992, Exemption No. 5493.

Docket No.: 26825.
Petitioner: Air Transport Association of America.
Sections of the FAR Affected: 14 CFR appendix H, part 121.
Description of Relief Sought/ Disposition: To permit the 1-year employment requirement of Appendix H, Advanced Simulator Training Program for "Air Transportation Pilot Flight Instructors-Simulator only" to be satisfied by applying prior experience acquired with either another Part 121 certificate holder or the military, subject to certain conditions and limitations. Partial Grant, August 3, 1992, Exemption No. 5498.

Docket No.: 26871.
Petitioner: Jet Flight International Airline Training.
Sections of the FAR Affected: 14 CFR 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and appendix A of part 61.
Description of Relief Sought/ Disposition: To permit Jet Flight International Airline Training, to use FAA-approved simulators to meet certain training and testing requirements of part 61 of the FAR. Grant, August 7, 1992, Exemption No. 5496.

[FR Doc. 92–19760 Filed 8–18–92; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Yakima Air Terminal, Yakima, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yakima Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 18, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Bruce Loy, Airport Manager for the City of Yakima and Yakima County at the following address: 2300 West Washington Avenue, Yakima, Washington 98903.

Air carriers and foreign air carriers may submit copies of written comments previously provided to City of Yakima and Yakima County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Paul F. Johnson, Civil Engineer, (206) 227–2655; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250; Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Yakima Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 7, 1992 the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Yakima and Yakima County was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 20, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1992.

Proposed charge expiration date: November 30, 1997.

Total estimated PFC revenue: $502,356.00.

Brief description of proposed project(s): Master plan update; Plan and rehabilitate 9–27 high intensity runway lights (HIRL); Update airfield electrical system; Purchase snow blower/broom; Snow plow equipment; Runway sweeper; Passenger access lift and radio equipment; Modify and install taxiway signs; Design and construct cargo apron; Install security improvements; Install terminal elevator; Improve access road and renovate drive; Install heating, ventilation, air conditioning (HVAC) in terminal building; Modify baggage claim area.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi/ commercial operators other than an air carrier, who conduct operations in air commerce carrying persons for compensation or hire, except, air taxi/ commercial operators operating public or private charters in aircraft with a seating capacity of 60 or more shall be construed in this regulation to be an air carrier, unless the public or private charter is exclusively for government use.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Yakima and Yakima County.

Issued in Renton, Washington on August 7, 1992.

Edward G. Tatum,
Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 92–19726 Filed 8–18–92; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 13, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Special Request: The Internal Revenue Service is requesting OMB approval by September 14, 1992 in order to meet their September 15 print date. Comments must be received by the Internal Revenue Service and the Office of Management and Budget by close of business September 14, 1992 in order to be considered.

Internal Revenue Service

OMB Number: 1545–0976.
Form Number: IRS Forms 990–W and 990–W(FY).
Type of Review: Revision.
Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations (990–W); Fiscal Year Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations (990–W(FY)).
Description: Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated unrelated business income tax liability and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed. Form 990–W(FY) is a fiscal year version of Form 990–W and is to be used by organizations with a fiscal year beginning July 1, 1992 through December 31, 1992.
Respondents: Businesses or other for-profit, Non-profit institutions.
Estimated Number of Respondents/ Recordkeepers: 27,265.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the or the form	Preparing the form
990–W	4 hr., 47 min	3 hr., 41 min	3 hr., 55 min.
990–W, Sch. A (Pt. I)	11 hr., 43 min	18 min	30 min.
990–W, Sch. A (Pt. II)	24 hr., 23 min	12 min	36 min.
990–W, Sch. A (Pt. III)	5 hr., 16 min		5 min.
Tax computation	2 hr., 23 min		2 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeper Burden: 352,621 hours.
Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 92–19839 Filed 8–18–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 13, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0990.
Form Number: IRS Form 8610.
Type of Review: Revision.
Title: Annual Low-Income Housing Credit Agencies Report.
Description: Form 8610 is used by state and local low-income housing credit agencies to transmit copies of Form 8609 to the IRS.
Respondents: State or local governments.
Estimated Number of Respondents/ Recordkeepers: 100

Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—3 hours, 35 minutes
Learning about the law or the form—1 hour
Preparing and sending the form to the IRS—1 hour, 6 minutes
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 568 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 92–19840 Filed 8–18–92; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 13, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to OMB reviewer listed and to the Treasury Department Clearance Officer, Department of Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0083.
Form Number: ATF F 5130.6 (Form 1582–B).
Type of Review: Extension.
Title: Drawback on Beer Exported.
Description: When beer is removed from a brewery and ultimately exported, the business exporting the beer is eligible for drawback (refund) of Federal excise taxes paid. By completing this form and submitting supporting documentation, the exporter may have Federal taxes refunded.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 100.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 5,000 hours.
OMB Number: 1512–0354.
Form Number: ATF REC 5170/3.
Type of Review: Extension.
Title: Retail Liquor Dealers Records and Receipts of Alcoholic Beverages and Commercial Invoices.
Description: Accounting tool; audit trail records show amounts purchased and from whom; completes final audit trail established at distilled spirits plant. Protection of the revenue.
Respondents: State or local governments, Business or other for-profit, Small businesses or organizations.
Estimated Number of Recordkeepers: 360,412.
Estimated Burden Hours Per Recordkeeper: 1 hours.
Frequency of Response: Other.
Estimated Total Recordkeeping Burden: 360,412 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 92–19746 Filed 8–18–92; 8:45 am]
BILLING CODE 4810–31–M

Office of Thrift Supervision

[AC–42; OTS No. 2435]

Cascade Savings Bank, FSB, Everett, Washington Final Action; Approval of Conversion Application

Notice is hereby given that on July 15, 1992, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of Cascade Savings Bank, FSB, Everett, Washington, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Office of Thrift Supervision, Seattle Area Office, 2201 Sixth Avenue, suite 1500, Seattle, Washington 98121–1889.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92–19669 Filed 8–18–92; 8:45 am]
BILLING CODE 6720–01–M

[AC–43: OTS No. 3016]

First Federal Savings Bank, Pineville, Kentucky; Approval of Conversion Application

Notice is hereby given that on August 11, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Federal Savings Bank, Pineville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92–19670 Filed 8–18–92; 8:45 am]
BILLING CODE 6720–01–M

[AC–41: OTS No. 6326]

First Federal Savings Bank of Morris, Morris, Minnesota, Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on July 9, 1992, the Deputy Director for Washington Operations approved the application of First Federal Savings Bank of Morris, Morris, Minnesota, for permission to convert to the stock form of organization, in connection with a holding company voluntary supervisory conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92–19668 Filed 8–18–92; 8:45 am]
BILLING CODE 6720–01–M

[AC–40: OTS No. 3242]

Heartland Federal Savings & Loan Association, Mattoon, Illinois; Final Action; Approval of Voluntary Supervisory Conversion Application

Notice is hereby given that, on June 30, 1992, the Deputy Director for Washington Operations approved the application of Heartland Federal Savings and Loan Association, Mattoon, Illinois, for permission to convert to the stock form of organization, in connection with a holding company voluntary supervisory conversion. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary

[FR Doc. 92–19667 Filed 8–18–92; 8:45 am]
BILLING CODE 6720–01–M

[AC–45: OTS No. 0762]

The Jessamine First Federal Savings & Loan Association of Nicholasville, Nicholasville, KY; Approval of Conversion Application

Notice is hereby given that a August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of The Jessamine First Federal Savings and Loan Association of Nicholasville, Nicholasville, Kentucky for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 E. Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR. Doc. 92–19672 Filed 8–18–92; 8:45 am]
BILLING CODE 6720–01–M

[AC–44: OTS No. 0745]

Mid-Iowa Savings Bank, FSB, Newton, Iowa; Approval of Conversion Application

Notice is hereby given that on August 12, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Mid-Iowa Savings Bank FSB, Newton, Iowa for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 13, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,
Corporate Secretary.

[FR Doc. 92–19671 Filed 8–18–92; 8:45 am]
BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 161
Wednesday, August 19, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

TIME AND DATE: 10:30 a.m., Wednesday, August 26, 1992.

PLACE: Second Floor Board Room, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC: The Board will consider the following:

1. Monthly Reports
   A. District Banks Directorate
   B. Housing Finance Directorate
2. Leverage Ratio—Final Rule

PORTIONS CLOSED TO THE PUBLIC: The Board will consider the following:

1. Approval of the July Board Minutes
2. Office of Strategic Planning
   A. Strategic Plan Update—Consensus Building Vehicle
   B. Leverage Ratio: Transitional and Operational Issues
   C. System Efficiencies Task Force (SETF) Update—Contract Approvals
3. The 2nd Quarter Actual Budget Performance
4. Board Management Issues

The above matters are exempt under one or more of sections 552b(c)(2), (9)(A) and (9)(B) of title 5 of the United States Code. 5 U.S.C. 552(b)(c)(2), (9)(A) and (9)(B).

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,
Deputy Executive Director.

[FR Doc. 92-19976 Filed 8-17-92; 3:58 pm]
BILLING CODE 6725-01-M

Corrections

Federal Register
Vol. 57, No. 161
Wednesday, August 19, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 155

[Docket No. 88P-0373]

Canned Green Beans and Canned Wax Beans; Amendment of the Standard of Identity

Correction

In rule document 92-18389, beginning on page 34244 in the issue of Tuesday, August 4, 1992, make the following correction:

On page 34244, in the first column, in the **DATES** section the first sentence is corrected to read as follows:

Effective October 5, 1992. All products initially introduced or initially delivered for introduction into interstate commerce shall comply on or after this date.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 169

[Docket No. 91P-0149]

Mayonnaise; Amendment of the Standard of Identity

Correction

In rule document 92-18390, beginning on page 34245, in the issue of Tuesday, August 4, 1992, make the following correction:

On page 34245, in the second column, the effective date is corrected to read as follows:

EFFECTIVE DATES: October 5, 1992. All affected products initially introduced or initially delivered for introduction into interstate commerce shall comply on or after this date.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-930-4214-10; AZA 26586]

Proposed Withdrawal and Opportunity for a Public Meeting; Arizona

Correction

In notice document 92-18207 beginning on page 34141 in the issue of August 3, 1992, make the following corrections:

1. On page 34141, in the second column, under **DATES**, in the second line "receive" should read "received".

2. On the same page in the same column, under **FOR FURTHER INFORMATION CONTACT**, in the second line, the telephone number, should read "602-640-5509.

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S-777]

RIN 1218-AB36

Ergonomic Safety and Health Management

Correction

In proposed rule document 92-18312 beginning on page 34192 in the issue of Monday, August 3, 1992, make the following corrections:

1. On page 34192, in the second column, under **DATES**, in the third line, "February 1, 1992" should read "February 1, 1993".

2. On page 34199, in the second column, under *Written Comments and Information*, in the first paragraph, beginning in the fifth line, "[insert 180 days after ANPR is published in the Federal Register]" should read "February 1, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

27 CFR Part 4

[T.D. ATF-328; Re: Notice Nos. 731 and 594]

Winemaking Terminology (91F-015P)

Correction

In rule document 92-17510 beginning on page 33110 in the issue of Monday, July 27, 1992, make the following correction:

§ 4.35a [Corrected]

1. On page 33114, in the third column, in § 4.35a(e), in the third line, "July 27, 1992" should read "July 27, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

RIN 1515-AA84

Proposed Customs Regulations Amendments Relating to the United States-Israel Free Trade Area Agreement

Correction

In proposed rule document 92-17923 beginning on page 33909, in the issue of Friday, July 31, 1992, make the following correction:

1. On page 33909, in the second column, in the last paragraph, in the ninth line from the bottom, "not" should read "now".

§ 10.212 [Corrected]

2. On page 33912, in the third column, in § 10.212(a), in the second line, "agreement" should read "Agreement".

§ 10.213 [Corrected]

3. On page 33913, in the first column, in § 10.213(d), in the third line, "filled" should read "filed".

§ 10.214 [Corrected]

4. On page 33913, in the first column:

a. In § 10.214(b), in the fifth line, after "U.S." insert a comma.

b. In § 10.214(c), in the second line, after "and" insert "the", and in the

fourth line, after "designation" insert ", then".

§ 10.216 [Corrected]

5. On page 33913, in the second column:

a. In § 10.216(b), the second line should read,"*Materials produced in Israel" defined.*".

b. In § 10.216(b)(2), in the eighth line, "the" should read "The".

6. On the same page, in the third column, in § 10.216(b)(4)(A), in the first line, after "for" insert "the".

7. On the same page, in the same column, in § 10.216(c)(1)(i), in the first line, "cost" should read "costs".

8. On page 33914, in the first column, in § 10.216(c)(2)(ii), in the next to last line, "salesman's" should read "salesmen's" and after "salaries" insert a comma.

BILLING CODE 1505-01-D

federal register

Wednesday
August 19, 1992

Part II

Department of State

Office of Protocol

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1991; Notice

DEPARTMENT OF STATE

Office of Protocol

[Public Notice 1676]

Gifts to Federal Employees From Foreign Governments Reported to Employing Agencies in Calendar Year 1991

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1991 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the Federal Register is required by section 7342(f) of title 5, United States Code, as added by section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95–105, August 17, 1977, 91 Stat. 865).

Dated: August 10, 1992.

John F.W. Rogers,

Under Secretary for Management.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Flowers: approx. four (4) dozen long-stemmed red roses. No container. Accepted by other agency/official use. Recd: Dec. 23, 1991. Est. value: $225.	His excellency; (and Mrs.) Abdul Rahman Bin Fares Al-Khalifa, Ambassador of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Gold palm tree. Base of tree is made of 20K gold, approx. 1' high; 29 branches of several small leaves, all are 18K gold. Six clusters of 18K gold wire and several fresh water pearls. Total content of gold in tree is approx. 55 oz. Tree is mounted on a white marble base, approx. 14" in diam, display case is made of white goatskin leather; inside of case is also leather and white satin, depicting the emblem of Bahrain; approx. 34" high, 29" diam. Archives, Foreign. Recd: Oct. 15, 1991. Est. value: $30,500.	His Highness Shaikh Isa Bin Sulman Al-Khalifa, Amir of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Artwork: A set of prints, "Voyage Pittoresque Dans le Bresil," by Joao Rugendas, special edition issue, published 1972 on occasion of the celebration of the 150th anniversary of the independence of Brazil; unabridged French text and its translation into Portuguese and pictorial reproduction of the 1835 French edition, published by Englemann and Cie, Paris; contained in a suede-covered box. Archives, Foreign. Recd: Jun 18, 1991. Est. vaule: $550.	His Excellency and Mrs. Fernando Collor, President of the Federative Republic of Brazil, Brazil.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Crystal vase, approx. 13" x 6", etched portrait of the founder and First President of the Czechoslovak Republic. Crystal goblet with gilt rim and painted crest of Czechoslovakia. Archives, Foreign. Recd: Oct. 22, 1991. Est. value: $1,500.	His Excellency Václav Havel, President of the Czech and Slovak Federal Republic, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Photograph: Two color photographs of Her Majesty Queen Margrethe and His Royal Highness Prince Henrik, autographed; displayed in navy blue leather frames bearing gold-stamped Royal Crest at top; overall: 10" x 13". Residence; for official use/display. Recd: Feb. 20, 1991. Est. value: $300.	Her Majesty Margrethe, II, Queen of Denmark, Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment: (1) Red leather-bound book entitled "America is Lost" (New copy on 100-year-old paper of original document in the hand of King George III, about 1782). (For Pres.). (2) Halcyon days enamel key-wound carriage clock, beveled glass in brass case. (Mrs. Bush). (3) A 1760 porcelain lattice bowl, by Dr. Wall of Worcester, 8½" x 11", (for both). Archives, Foreign. Recd: May 14, 1991. Est. value: $8,100.	Her Majesty Elizabeth (Windsor) II, Queen, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Artwork: Porcelain figurine titled "The Spaniel," made in England by Royal Doulton; 3½" x 8½" x 11½". Archives, Foreign. Recd: Aug. 29, 1991. Est. value: $250.	The Right Honorable John Major M.P., Prime Minister, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Crystal and glass bowl titled "Arizona." No. 78 of limited edition, designed by Hilton McConnico and made by Daum of France; depicts cactus motif; 10" x 10" x 15"; (for Pres.); porcelain bowl, floral pattern on white background, by Sevres; 9" diam. (for Mrs. Bush). Archives, Foreign. Recd: Jul. 14, 1991. Est. value: $4,390.	His Excellency Francois Mitterand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Vase, porcelain, white with overall multicolored floral design on body and removable lid, by Meissen; 10" diam. across center, 18½" high. Archives, Foreign. Recd: Oct. 3, 1991. Est. value: $10,000.	His Excellency Hans-Dietrich Genscher, Minister of Foreign Affairs of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Jewelry: Two quartz wrist watches, dial depicts U.S. and Kuwaiti Flags and "Free Kuwait"; black leather straps; Swiss made; contained in gray cases with card attached to inside lid lettered "A Souvenir of the Liberation of Kuwait 1991, Ali Fahad Al Zaid, Ambassador of the State of Kuwait in Greece. Archives, Foreign. Recd: July 19, 1991. Est. value: $600.	His Excellency Ali Fahad Al Zaid, Ambassador of the State of Kuwait, in Greece, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Silver Copy of a bronze Kylix, (two-handed container), 2nd Half of the 6th century B.C.; 3" H., 10" long (for the President); silver copy of a black-glazed Kantharos (cup), classical period (from Nicholas P. Goulandris Foundation Museum of Cycladic Art); (for Mrs. Bush); 4½" x 7"; contained in velvet-covered cases; Archives, Foreign. Flowers: "Bouquet of Red Roses". Accepted by other agency/official use. Recd: July 18, 1991. Est. value: $275.	His Excellency Constantine Karamanlis, President of the Hellenic Republic, Greece..	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Assortment. (1) Silver box (7" x 10" x 2⅛") inscribed To President Bush. (2) Photo album with embroidered Presidential Seal on cover, (8" x 10"). (3) Pin. 14K Gold flower with pearl center for (Mrs. Bush). Archives, Foreign. Recd: Oct. 2, 1991. Est. Value: $730.	His Excellency Jorge Serrano, President of the Republic of Guatemala, Guatemala.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment: (1) Handcrafted Replica of The Ship St. Geran, made famous by the romantic novel, "Paul et Virginie," written by Bernandin de St. Pierre, made of ebony, and displayed on wood base; 27" High, 37½" long. (for Pres.). (2) Table with cast iron base, glass top etched with Coat-of-Arms of Mauritius. (for Pres.). (3) Handmade cotton tablecloth, beige with red/blue stripes, and four beige napkins; cloth is 56" w., 7 ft., 11" l. (for Mrs. Bush). Archives, Foreign. Recd: June 5, 1991. Est. Value: $1,410.	The Right Honorable; (and Mrs.) Anerood Jugnauth Q.C., Prime Minister of Mauritius, Mauritius.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Flowers: A Large Arrangement of Lilies, Mums, Tulips, etc; accepted by other agency/official use. Container. A navy blue and gold porcelain container, made in China, depicting Chinese motifs on interior and exterior. 14" H., 12" diam; Archives, Foreign. Consumables: Food. An assortment of gourmet delicacies, including English biscuits, premium cocoa, apricots, special coffees, teas, etc; accepted by other agency/official use. Household: Chest. A pine painted chest, black and decorated in red oriental motifs, brass hardware. 22½" long, 11" deep, 11" high. Artwork: Figure. A crystal figure of two Peace Doves by Lalique Crystal of Paris. 8½" high, 6" wide, 5" deep. Archives, Foreign. Recd: Jan. 7, 1991. Est. value: $1,996.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Household: Crystal decanter etched with the Royal Crest; a reproduction of a Williamsburg, Virginia style decanter; 5"×6"×6"; includes stopper; enclosed in a blue vinyl case. Archives, Foreign. Recd: Nov. 8, 1991. Est. value: $220.	Her Majesty Beatrix, Queen of the Netherlands, Netherlands.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Assortment. Ebony sculpture. Traditional maternity doll used in femininity initiation ceremonies. Sculpted by the Fanti and Ashanti of Ghana. 24"×6"×8". (for Pres.); Persian blue embroidered floor-length caftan (for Mrs. Bush). Teal blue silk blanket embroidered in gold; blanket has "Barbara" embroidered on it; (for Mrs. Bush); 98"×106". Archives, Foreign. Recd: Sept. 10, 1991. Est. value: $1,550.	His Excellency Abdou Diouf, President of the Republic of Senegal, Senegal.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	Assortment. (1) Two volume leather book set, "El Palacio Real De Madrid," by Helena Iglesias; published by Lucam, S.A., Madrid, 1990; Spanish and English text with photos of Spain's Royal Palace. (2) Napkins and placemats. Two sets of six each, cream with embroidered gold flower. (3) Commemorative coin set. Twelve silver and gold coins depicting Spain's Royal Family. (4) Gold cuff links. Crown on letter "S" design. Archives, Foreign. Recd: Oct. 5, 1991. Est. Value: $3,660.	His Majesty Juan Carlos I, King of Spain, Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment. (1) Gold Niello Bowl with a matching circular plate. Both are of ornately designed floral patterns, in a blue satin box, inside the lid of the box is an inscribed plaque. (2) Two woven straw handbags. (3) Thai silk pieces. One burgundy and Gold, approx. 3 × 1 yds; one lavender, approx. 3 × 1 yds.; one fringed silk shawl, approx. 4 FT. × 2 FT., and one blue scarf, 39> × 3.> (gifts are produced by the Queen's Foundation for trad. Thai arts.); Books: (1) Book of photographs of the Queen. (2) Book titled "His Majesty King Bhumibhol Adulyadej and his development work. (3) Book title "The King of Thailand in World Focus." (4) Book titled "Thailand: Seven Days in the Kingdom." Archives, Foreign. Recd: Oct. 28, 1991. Est. value: $740.	Her majesty sirikit, Queen of the Kingdom of Thailand, Thailand.	Non-acceptance would cause embarrassment to Donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Assortment: (1) Set of 5 pieces of brown leather luggage by Dese, monogrammed "GB" and "BB" respectively. (2) Two portraits of Pres. Bush, One on silk, one on wool, both handmade and displayed in white wood frame; 26> × 30> and 32> × 37>. (3) Hammered silver metal platter with portrait of Pres. Bush and armament of Desert Storm; 19> diam. (4) Set of 6 old-fashioned glasses and decanter, handblown, gold-decorated, in wood case. (5) Handmade quilt, blue silk w/red, white, and blue ruffles, hand-stitched with Date of visit, July 19, 1991. (6) 4 cotton monogrammed bathrobes by Penta (purple, green, black, and gray stripes for pres.); (blue W/Crown design for Mrs. Bush. (7) 2 China plates; one is handpainted, blue and white design by summerbank; The other depicts portraits of President Bush and Ozal, inscribed. (8) Book, >Turkey in Europe> by T. Ozal.(9) 3 Canes or walking sticks; one bamboo w/gold and jeweled handle; one is wood with silver and Niello, Handle; One is wood inlaid with mother-of-pearl and a silver and Niello handle; all by munteka Celebi; Enclosed in a velvet-covered case. (10) Clothing. Three pairs of shorts; one beige linen monogrammed >G. Bush," one dk. linen monogrammed >G. Bush", One Dk. linen monogrammed "B. Bush". Two hunter green seaters Monogrammed "G. Bush". Three white polo shirts monogrammed "George Bush". Three pairs of navy blue stocks monogrammed "G. Bush". One pair of brown brushed leather shoes, loafer style, One pair of brown brushed leather oxford shoes. HIP length leather zippered jacket (11) Book. "Ataturk," published by Turkish Republic Ministry of culture at Ajans-Turk Publishing and Printing Co., Inc., Ankara 1991; slip case; (12) Clothing, blue leather skirt and jacket with 4 buttons and embroidered pocket flaps and front panels. Matching dertmod blue leather pumps and blue leather handbag with shoulder strap. Purple suede suit with shoulder strap. Purple suede suit with straight skirt, two button jacket with embroidered shoulders and cuffs. Matching dertmod purple suede shoes with gold buckles and shoulder purse. Knit olive green shirt by Beymen monogrammed with a "B". Knit blue shirt by Beymen monogrammed with a "B". Two white penyelux white knit shirts monogrammed "Barbara". Archives, Foreign. Recd: July 22, 1991. Est. value: $9,720.	His Excellency (and Mrs.) Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	Photograph: Photo album. A white leather album containing 192 color photos of President and Mrs. Bush, President and Mrs. Ozal, et al., taken on the occasion of the President and Mrs. Bush's visit to Turkey; each photo is 5> × 7>. Archives, Foreign. Recd: July 23, 1991. Est. value: $1,010.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment. (1) Costume, consisting of a dark blue velvet coat with silver threaded design, a white wool hat with embroidered design, a leather and silver belt with a blue stone on buckle, and a leather whip made with an animal's hoof decorated with silver designs. (2) Chess set consisting of a wooden case designed as a chess board and containing wooden decorated chess pieces. Archives, Foreign, Recd: Oct. 25, 1991. Est. value: $380.	His Excellency Askar Akayev, President of the Republic of Kyrgyzstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large spring arrangement of a palm tree with roses, tulips, anthuriums, orchids, and lilies, in copper container. Accepted by other agency official use. Recd: May 6, 1991. Est. value: $350.	His Highness Shaikh Zayid Bin Sultan Al Nahayyan, President, United Arab Emirates.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: An 18 kt. gold medallion marking the 20th anniversary of the establishment of the Organization of Islamic Conference. Archives, Foreign. Recd: Jan. 22, 1991. Est. value: $445.	His Highness Sheikh Jabir Al-Ahmad Al-Sabah, Amir of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Sculpture of a bronze hand holding a brass Peace Dove, entitled "Hand of Peace," displayed on black base with brass plaque; 5" x 7" x 12"; enclosed in a navy blue case. Archives, Foreign. Recd: May 09, 1991, Est. Value: $220.	His Excellency Dr. Javier Perez De Cuellar, Secretary General of the United Nations.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Woodcarved plaque shaped as a fish and depicting intricate human figures, lettered "President George Bush"; dark brown colored wood; inscribed on reverse; 14" x 14". Archives, Foreign. Recd: July 24, 1991. Est. value: $300.	His Excellency Ngirutkel Etpison, President of the Republic of Palau.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Portrait of a man with a white beard in a red hooded shawl, oil on canvas, by Juri Arrak, signed; image: 19½" x 23½"; framed overall: 23" x 27". Archives, Foreign. Recd: Mar. 29, 1991. Est. value: $450.	His Excellency Arnold Ruutel, Chairman of the Supreme Council of the Republic of Estonia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: Bible, the first to be printed in Armenia, Dated 1666; Consumables: Brandy. 50-year old quantity of Armenian Brandy in a cut crystal bottle, titled "President." Archives, Foreign. Recd: Nov. 14, 1991. Est. value: $2,300.	His Excellency Levon Ter-Petrosian, President of the Republic of Armenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painted and lacquered wooden egg depicting a madonna and cross; 4" high. Item out on temporary loan. Recd: June 20, 1991. Est. value: $800.	His Excellency Boris Yeltsin, President of the Russian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Assortment: (1) Wood statuette of a male warrior carrying a rifle, hatchet, knife, and grenades (all facsimiles); (hatchet broken when rec'd); lettered on base "Nenvika Ilha De Luanda, Aos 12 de Maio 1969, O Escultor, Joao TI Mateo, Marfinaria"; 38" H. 2) Bar of Gold. 18 kt., stamped Mrst—Endiama, Bar 001, 1000 G. 3) pink diamond chip, 3.34 carats. Archives, Foreign. Recd: Sept. 16, 1991. Est. value: $9,650.	His Excellency Jose Eduardo Dos Santos, President of the People's Republic of Angola, Angola.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Bronze sculpture, titled "Rising Victory," by Marta Minujin, 1985, signed; a reproduction in three different positions of the famous "Victory of Samothrace" (C. 306/294 B.C., Louvre Museum, Paris); 7" D., 16" H., 16" L; on black marble base in handcrafted wood case. Painting, oil on canvas, titled "New Beginning," by A. Sarelli; (shows young girl on beach peering at ocean); woodframed; 44" x 58". Archives, Foreign. Recd: Nov. 14, 1991. Est. value: $10,000.	His Excellency Carlos Saul Menem, President of the Argentine Nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Jewelry: 18k gold wristwatch, made by Patek Phillipe, face depicts a striped design with 3 pt. diamonds marking each hour. Three rows of 3 pt. diamonds encircle the outer rim of the face. Pair of 18k gold cufflinks with circular pattern of diamond chips. Both are mounted in a red leather display case lined with white leather, Appx. 12" x 7". Archives, Foreign. Recd: Oct. 15. 1991. Est. value: $21,000.	His Highness Shaikh Isa Bin Suiman Al-Khalifa, Amir of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A bronze enameled medallion depicting the head of a woman and lettered on reverse "Le president de la commission des communautes Euro-peennes: 4¾" diam. Enclosed in a navy blue paper-covered box stamped with a circle of gold stars on Lid. Archives, Foreign. Recd: Apr. 11, 1991. Est. value: $500.	His Excellency Jacques Delors President of the Commission of the Economic Communities, Belgium.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: 1991 gold proof $100 coin struck to commemorate the 10th anniversary of Independance of Belize, in polished wood presentation box. Archives, Foreign. Recd: Sept. 27, 1991. Est. value: $225.	The Right Honorable George Price, Prime Minister of Belize, Belize.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Brass figures on wooden and leather base depicting a royal procession with tribesmen bearing their king, surrounded by other tribesmen carrying flags, fans, baskets, drums, and horns; 10" high, 11½" wide, 25" long. Archives, Foreign. Recd: Nov. 05, 1991. Est. value: $800.	His Excellency Nicephore Soglo, President of the Republic of Benin, Benin.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: (1) Hand-wrought sterling silver tankard gilded with Buddhist emblems; 4" diam., 10" high. (2) Three volumes of new postage stamps from Bhutan. (3) A length of women's dress cloth fabric, multicolored geometric designs, cotton worked in silk; 59" x 92". Archives, Foreign. Recd: Apr. 19, 1991. Est. value: $1,089.	His Majesty Jigme Singye Wangchuck, King of the Kingdom of Bhutan, Bhutan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Bronze sculpture replicating the larger version of the statue of Simon Bolivar on horseback in the City of Pereira (birthplace of Gaviria), by Rodrigo Arenas, signed on brass plate attached to a gray marble base displaying the sculpture; marble is also from Colombia; Sculpture is 9½" high, 12½" long, 2" deep; base is 10" long, 5" high, 6" deep. Archives, Foreign. Recd: Feb. 26, 1991. Est. value: $2,000.	His Excellency Cesar Gaviria Trujillo, President of the Republic of Colombia, Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Bronze statue of coffee plantation workers. Archives, Foreign. Recd: Oct. 10, 1991. Est. value: $3,000.	His Excellency Rafael Angel Calderon, President of the Republic of Costa Rica, Costa Rica.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Weapons: Hand-engraved pistol, model 75, CAL. 9mm, made in Czechoslovakia, numbered D5160; included are two magazines; contained in a fitted woodcarved box. Archives, Foreign. Recd: Apr. 17, 1991. Est. value: $1,625.	His Excellency Jiri Dienstbier, Minister of Foreign Affairs of the Czech and Slovak Federal Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Three color lithographic prints, by Niels Reumert, entitled "Born/Children," "Dra- ma," and "Katten/The Cat," signed; No. 75, No. 75, and No. 79 of limited edition 100; each displayed under glass in gold-toned wood frame; image: 20" x 225½"; overall: 26" x 31½". (gift presented separately from other gifts); Archives, Foreign. Book: "Niels Reumert—En Maler Og Hans Univers," by Jacob Wamberg; published in Denmark. Archives, Foreign. Recd: Feb. 20, 1991. Est. value: $460.	Her Majesty Margrethe II, Queen of Denmark, Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	A traditional ceremonial sword with ivory handle enclosed in a snake-skin scabbard decorated with burnished brass and semi-precious stones and included with a leather belt; displayed in a wood case with brass plaque engraved "Republique De Dji- bouti" attached to removable lid; sword is 24" long overall. Archives, Foreign. Stamps: An album of assorted postage stamps from Djibouti. Archives, Foreign. Recd: Apr. 24, 1991. Est. value: $700.	His Excellency El-Hadj Hassan Gouled Apti- don, President of the Republic of Djibouti, Djibouti.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Painting of a town scene in El Salvador, untitled, by Fausto Perez, 1991; acrylic on masonite, in golden wood frame; image: 16" x 20"; overall: 26½" x 30½"; (gift for the President's birthday). Wooden doll or statuette, "Virgin," an effigy with movable joints, made in Chalchuapa, Santa Ana Province, between 1690–1910; 25" H. (official gift). Archives, Foreign. Recd: June 13, 1991. Est. value: $1,700.	His Excellency Alfredo Cristiani, President of the Republic of El Salvador, El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Athletic equipment: Set of four heavy chrome-plated horseshoes, each engraved "ER II"; enclosed in a fitted wood chest with lock; (key not included). Residence; for official use/display. Recd: May 14, 1991. Est. value: $185.	Her Majesty Elizabeth (Windsor) II, Queen, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Historic Artifacts: Copper plate map of North America, in original outline and hand color, published in Amsterdam c. 1735, by Jean Covens and Corneille Mortier; discovery routes indicated to west of map including that of Sir Francis Drake; matted under glass in goldleaf frame; labeled on reverse "London Economic Summit, July 1991"; map is 9" x 12"; overall: 17" x 19½". Archives, Foreign. Recd: July 14, 1991. Est. value: $585.	The Right Honorable John Major M.P., Prime Minister, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: A leather-bound fine art folio titled ". . . So Few"; commemorating the 50th anniversary of The Battle of Britain, created by Michael Pierce, John Golley, Roy Asser, Bill Gunston, Brian Masterton and Avm Freddie Hurrell; No. 349 of limited edition 401; cover bears RAF Logo. Enclosed in a leather-bound case. Item out on temporary loan. Recd: Aug. 29, 1991. Est. value: $1,500.	The Right Honorable John Major M.P., Prime Minister, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Fishing Lures, assortment in wood box with engraved silver presentation plaque attached to lid; box is 8¾" x 14¼". A sterling silver circular tray with modernistic design, 13½" diam. Enclosed in a dark wood case with engraved silver presentation plaque attached to lid. Archives, Foreign. Recd: May 7, 1991. Est. value: $702.	His Excellency Mauno Koivisto, President of Finland, Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	A light tan colored leather golf bag with zippered compartments; brass locks; by "Hermes" of Paris. Painting entitled "Confidences", by Gustave Alaux, signed; tempera on masonite; depicts a couple sharing a confidence in a grove of trees; displayed in a brown wood frame with goldleaf liner; image 18" x 21", overall: 22" x 25". Book, "Memoires De Martinique et De Guadeloupe". Book, "Caribbean Style". Both books contain bookplates. Archives, Foreign. Recd: Mar. 14, 1991. Est. value: $6,550.	His Excellency Francois Mitterrand, President of the French Republic, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Tray, silverplate, by Christofle, Engraved "To President Bush from the Mayor and the People of Cannes in Appreciation"; 16" x 21". Archives, Foreign. Recd: May 31, 1991. Est. value: $1,350.	Monsieur Michel Mouillot, Mayor, City of Cannes, France, France.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	"Deutschland," by Rudolf Walter Leonhardt and Josef H. Neumann, published by Bucher, Munich, 1991; inscribed by Chancellor Kohl. And a 1990 gold (585) commemorative coin. Archives, Foreign. Recd: May 20, 1991. Est. value: $450.	His Excellency; Dr. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: Wine. 12 bottles of German wine, vintages 1978 through 1989. Pate, 13 cans of German meats, consisting of Bratwurst, Lebenwurst, etc. Accepted by other agency/official use. Recd: Dec. 13, 1991. Est. value: $232.	His Excellency Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Assortment: (1) Two white porcelain figurines of lions on bases by Hutschenreuther; one is 7" x 11" overall; the other is 6" x 8½"; (2) two white porcelain figurines of cherubs on bases, by Nymphenburg; 6½" x 7" high respectively; (3) a set of four classical recordings, including compositions by Mozart, Wagner, et al. Archives, Foreign. Recd: June 26, 1991. Est. value: $1,340.	His Excellency Max Streibl, Minister-President of Bavaria, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Smoking accessories: Cigar box, sterling silver, bears facsimile signature of Constantine Karamanlis and emblem of Greece; 6" x 9" Archives, Foreign. Recd: Oct. 2, 1991. Est. value: $275.	His Excellency Constantine Karamanlis, President of the Hellenic Republic, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Album of 39 color photographs of President, Mrs. Bush, et al., taken on the occasion of the official visit to Greece, aboard the HS Lemnos/USS De Wert at Souda Base Crete, 19 July 1991; each photo is 8" x 10"; contained in a navy blue album. Archives, Foreign. Recd: Oct. 2, 1991. Est. value: $475.	His Excellency Ioannis M. Varvitsiotis, Minister of National Defense of the Hellenic Republic, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: Five pieces of handpainted porcelainware by Herend: Large tray, soap dish, jewel box, candlestick, and a ring holder. Each depicting birds, butterflies, and bees. Pattern is "Rothschild Bird." Archives, Foreign. Recd: May 23, 1991. Est. value: $474.	His Excellency Arpad Goncz, President of the Republic of Hungary, Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A Waterford crystal pedestal bowl, scalloped edge, diamond pattern, lettered "Presented to President George Bush by Mr. Gerard Collins T.D. Minister for Foreign Affairs on St. Patricks Day 1991"; 10½" high, 10½" diam. across top. Archives, Foreign. Recd: Mar. 13, 1991. Est. value: $1,500.	His Excellency Gerard Collins, Minister for Foreign Affairs of Ireland, Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: Rare book, a copy of "Commentaria in M.T. Ciceronis Orationem Pro Prot. "A MILONE," by A. Bladum, published in Rome, 1549. Archives, Foreign. Recd: May 7, 1991. Est. value: $125.	His Excellency Francesco Cossiga, President of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: Medallions. A set of three medallions, gold, silver, and bronze, commemorating the 13th year of the reign of Pope John Paul II; each depicts on one side a profile likenese of Pope John Paul II and the reverse of each depicts a double shield, crown, and crossed keys design; each medallion is 1¾" diam; enclosed in a white leather case bearing the official emblem of the Pope on lid. Archives, Foreign. Recd: Nov. 8, 1991, Est. value: $720.	His Holiness John Paul II, Pope, Italy	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: Gold medallion of profile likenesses of Presidents Bush and Roh on one side and their country's respective flags on reverse; commemorates President Roh's State Visit to the United States; 99.9 percent gold, 70 grams, 40 mm. diam. Archives, Foreign. Recd: July 2, 1991. Est. value: $800.	His Excellency Tae Woo Roh, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Flowers: Large arrangement of mixed flowers (anthurium, snapdragons, greenery, etc.) in a pottery vase with a giraffe motif. Accepted by other agency/official use. Recd: May 7, 1991. Est. value: $250.	His Highness Sheikh Saad Al-Abdullah Al-Salem Al-Sabah, Prime Minister and Crown Prince of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of daisies, snapdragons, roses, etc. in a woven basket. Accepted by other agency/official use. Recd: June 12, 1991. Est. value: $300.	His Excellency Shaikh Saud Nasir Al-Sabah, Ambassador of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Sculpture symbolizing the occupation and liberation of Kuwait; a chain represents the occupation and wings represent the liberation by the allied forces; bears flag emblems of the participating countries; by Wolfers of Brussels; gold-electroplate over sterling silver; 10½" x 13½" x 15". Displayed in a red-velvet covered case. Archives, Foreign. Recd: Oct. 1, 1991. Est. value: $3,750.	His Highness Sheikh Jabir Al-Ahmad Al-Sabah, Amir of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Arrangement of mixed flowers (orchids, daisies, greenery, etc.) in heavy ceramic vase. Accepted by other agency/official use. Recd: May 7, 1991. Est. value: $350.	His Highness Sheikh Jabir Al-Ahmed Al-Sabah, Amir of the State of Kuwait, Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: "The Prophet," by Gibran Kahlil Gibran; published by Sader's Library, 1985, black leather bound; enclosed in a hinged wood case with a personalized brass plaque attached to cover. Archives, Foreign. Recd: Apr. 10, 1991. Est. value: $1,250.	His Excellency Elias Hraoui, President of the Republic of Lebanon, Lebanon.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Book: (1) "Echternacher Sakramentar und Antiphonar," a leather-bound facsimile edition of a sacramentary and antiphonary from the monastery of echternach on the German-Luxembourg border original of which is housed in the State Library in Darmstadt, Germany. (2) A softcover version of the same volume. (3) A cloth covered volume, "Essai Historique et Musicologique Compare," by Paul Utveling, Austria, 1962. All housed in a leather case. Archives, Foreign.	His Excellency Jacques Santer, President of the European Council, Luxembourg.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: (1) Wood coffee table w/ wicker top under glass; 17½" x 24" x 39½". (2) Painting, "Contact and Dialogue," Oil on masonite in gold color wood frame, 33" x 39". (for the President) (3) 3 nested tables, "12" x 15" x 16", 13" x 15" x 17", 14" x 18" x 21". (4) Glazed pottery vase depicting malawi village scene, W/lid (for Mrs. Bush). All gifts contemporary and of good quality materials and craftsmanship. Archives, Foreign. Recd: Sept. 11, 1991. Est. value: $240.	His Excellency; Dr. H. Kamuzu Banda, Life President of the Republic of Malawi, Malawi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Coins: Gold (one ounce 22 karat gold) dodo: coin, 1988, commemorating Prime Minister Jugnauth. Contained in a red box bearing the Bank of Mauritius seal. Archives, Foreign. Recd: June 5, 1991. Est. value: $450.	The Right Honorable; (and Mrs.) Aneroood Jugnauth Q.C., Prime Minister of Mauritius, Mauritius.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Household: A sterling silver piece, designed as a clam shell, used as a glass holder in the Viceroys' dining rooms during the Mexican Viceroyalty period of the 1790's; displayed in a lucite case with black base; engraved presentation plaque attached; shell is 9" x 9"; case is 12" square. Archives, Foreign. Recd: Dec. 14, 1991. Est. value: $250.	His Excellency Carlos Salinas De Gortari, President of the United Mexican States, Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Jewelry: Wristwatch, a chronometer style octagonal watch with brown ostrich band, 18 kt. gold by Jean D'Eve for Wolfers, Swiss made; contained in a blue leather case. Archives, Foreign. Recd: Feb. 20, 1991. Est. value: $2,000.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Consumables: Chocolates, approx. 10 lbs. of assorted by Godiva, contained in a gold-folied covered box. Approx. 8 lbs. of candied dates and figs, each piece wrapped in gold foil contained in a gold-folied covered box; accepted by other agency/offical use. Flowers: Large mixed arragnement of orchids, roses, anthuriums, snapdragons, etc; accepted by other agency/offical use. Reproduction Oriental style jardiniere (sent with flowers). Archives, Foreign. Recd: May 08, 1991. Est. value: $1,030.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: 40 dozen Moroccan fresh cut red roses; accepted by other agency/official use. Consumables: gourmet delicacies contained in a wicker basket designed as a golf cart. Items include barbecue chips, Red River meat sauce, cooking implements, grills, herbs, cookbooks, etc; accepted by other agency/official use. Athletic equipment: Two golf clubs, No. 10 and No. 99 irons, 18.0 and 16.6 weight, 35" and 34½" long, handmade by Kenneth Smith; each bears King Hassan's facsimile insignia. Archives, Foreign. Recd: June 12, 1991. Est. value: $3,000.	His Excellency Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: World Globe, Bohemian crystal with continents in 18 karat brushed gold bordered with blue enamel; Mountains of engraved rockcrystal; Washington and Rabat symbolized by precious stones in colors of their national flags; globe upheld by gold meridian arc topped by rock crystal sphere; base holds drawer with batteries feeding 12-volt bulb activated by switch at base of axle. Displayed in green leather case w/gold monograms "GB" & "HII" and flags of U.S./Morocco. Archives, Foreign. Recd: Sept. 26, 1991 Est. value: $12,000.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Assortment. (1) Adobe clay church, said "To ward off evil spirits", 22¼" x 18" x 18" (2) Inca design tapestry, signed by Julio Montes, 53" x 48." (3) Statuettes of two churches, 2¼" x 1" and 2⅛" x 1". (4) Inca wall-hanging from San Pedro De Cajas signed Julio Montes, 48" x 53"; Archives, Foreign. Artwork: Marble plaque depicting an emblem of scales, U.S. and Peru flags, and a presentation plate in Spanish text; 5⅛" x 8". Archives, Foreign. Recd: Sept. 17, 1991. Est. value: $275.	His Excellency Alberto Kenyo Fujimori, President of the Republic of Peru, Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Household: A set of crystal consisting of 12 glasses, a decanter with stopper, and an ashtray; contained in a red chest. Archives, Foreign. Recd: Mar. 20, 1991. Est. value: $660.	His Excellency Lech Walesa, President of the Council of State of the Republic of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Photograph albums. Two vinyl-covered albums, containing 48 and 60 8" x 10" color photographs of President and Mrs. Bush, Saudi Arabian leaders, American troops, et al, Archives, Foreign. Recd: Jan. 15, 1991. Est. value: $1,160.	His Royal Highness Bandar Bin Sultan Bin Abdulaziz Prince; Ambassador of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of anthuriums, bird of paradise, orchids, etc., in vine basket. Accepted by other agency/official use. Recd: May 06, 1991. Est. value: $450.	Fahd Bin Abd Al-Aziz Saud, Custodian of the two Holy Mosques, King of the Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large arrangement of tulips, hyacinths, lilies, daisies, roses, etc., in white basket. Accepted by other agency/official use. Recd: May 06, 1991. Est. value: $350.	His Royal Highness Sultan Bin Abdulaziz Al-Saud 2D Deputy Prime Minister of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Large spring arrangement of anthuriums, bird of paradise, roses, etc., in a brass container; accepted by other agency/official use. Clothing and accessories: White T-shirt depicting an American Serviceman in a tank referring to Saddam Hussein and Picturing a VT-51 airplane and lettered "LT. Bush (now) C-IN-C"; SZ. LG. Archives, Foreign. Recd: May 06, 1991. Est. value: $310.	His Royal Highness Prince Bandar Bin Sultan, Ambassador of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Flowers: Cut orchid plants in a woven container with bamboo and grass motif. Accepted by other agency/official use. Recd: June 11, 1991. Est. value: $250.	His Royal Highness Prince Bandar Bin Sultan Prince; Ambassador of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: (1) Cedarwood sculpture, "Mother and Child," mounted on wood base with engraved sterling silver presentation plaque; 16" high. (2) Wool rug in geometrical pattern in brown, beige, black, red; Woven by E.L.C. Art and Craft Centre; approx. 5 feet x 8 feet. Archives, Foreign. Recd: June 20, 1991. Est. value: $850.	Chief Mangosuthu Buthelezi, Chief Minister of Kwazulu, South Africa.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: A hand-engraved facsimile of The Declaration of Independence, faithfully reproducing the character and calligraphy of the original document on handmade paper; 31" x 35"; No. 0 (ZERO) of a limited edition of 5,000 copies; enclosed in a blue vinyl case; archives, Foreign. Photograph: Six 5" x 7" color photographs of Mrs. Bush, the Queen of Spain, Robert and Georgette Mosbacher, Millie in a golf cart, et al. Files. Recd: Dec. 12, 1991. Est. value: $318.	His Majesty Juan Carlos, King of Spain, Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Artwork: Pair of sterling silver horses, each decorated with a gold saddle, bits, and semi-precious stones, mounted in a raised position on a black wood stand; 2" x 6" x 7"; housed in fabric-covered boxes. Archives, Foreign. Recd: Sept. 23, 1991. Est. value: $500.	His Royal Highness Norodom Sihanouk, Prince, (exiled in Thailand from Cambodia), Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Variegated Marble sculpture of a Peace Dove, designed as a flame, and depicting the Soviet and American flags and an Olive Branch; 20" high; contained in a vinyl-covered carrying case. Archives, Foreign. Recd: July 30, 1991. Est. value: $950.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Photographs of President, Mrs. Bush, et al., on occasion of their visit to the Soviet Union. There are twenty 9½"x10½" black and white photos, six 8"x10" color photos, and seven 5"x7" black and white photos. Archives, Foreign. Recd: Oct. 8, 1991. Est. Value: $284.	His Excellency Sergei V. Komissarenko Deputy Chairman of the Council of Ministers Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: Leather album of 37 color photographs of President Bush, Dorothy Bush LeBlond, President Aguirre, et al., on occasion of the President's address to the Uruguayan Parliament. Archives, Foreign. Recd: Feb. 27, 1991. Est. value: $545.	His Excellency; Dr. Gonzalo Aguirre Ramirez, Vice President of the Oriental Republic of Uruguay, Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Photograph: 22 color photographs of President Bush, Doro Bush LeBlond, President and Mrs. Perez, et al., during the President and Doro's visit to Caracas on December 7 and 8, 1990; contained in a leather-bound case; each photograph is 7⅜"x9½". Archives, Foreign. Recd: May 03, 1991. Est. value: $505.	His Excellency Carlos Andres Perez, President of the Republic of Venezuela, Venezuela.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Assortment: (1) Briefcase of alligator skin with combination locks; (2) djelaeah robe of black cotton with multicolor embroidery down front; (3) antique necklace of silver and coral beads; (4) Silver and gold belt for 22" waist; (5) silver and gold decorative ornament; (6) jewelry set of necklace, ring, earrings and bracelet made from silver and coral beads in pink leather box. Archives, Foreign. Recd: Aug. 22, 1991. Est. value: $1,145.	His Excellency Ali Abdullah Saleh, President, Republic of Yemen, Yemen.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Artwork: Carved stone figure of monkeys, "Chatting Monkeys," by Henry Munyaradzi. engraved plaque attached; (sculpture is a symbol of wisdom in Zimbabwe); 6" d., 10" w., 18" h. Archives, Foreign. Recd: July 24, 1991. Est. value: $450.	His Excellency Robert Gabriel Mugabe, President of Zimbabwe, Zimbabwe.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Horses. Two pure-bred Argentine stallions. Government transfer pending. Government transfer. Recd: Dec. 5, 1990. Est. value: Indeterminable.	His Excellency Carlos Menem, President of the Argentine nation, Argentina.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: Large arrangement of white peonies in a brown wicker basket. Accepted by other agency/official use. Recd: June 7, 1991. Est. value: $250.	His Royal Highness Prince Bandar Bin Sultan Bin Abdulaziz, Ambassador, Kingdom of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Flowers: A large Arrangement of mixed flowers including tulips, daisies, roses, carnations, etc., in a brass/copper container made in India; accepted by other agency/official use. Consumables: Gourmet basket of chocolates. A woven basket containing an assortment of Godiva chocolates and a box of peanut butter crunch. Tied with a fabric bow. Accepted by other agency/official use. Recd: Jan. 16, 1991. Est. value: $450.	His Majesty Hassan II, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: Sweater. An Australian waratah and wattle cardigan sweater, multicolored wool design, by Jenny Kee. Archives, Foreign. Recd: Dec. 30, 1991. Est. value: $400.	Mrs. Kathryn Greiner (wife of the Premier of New South Wales), Australia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Two strands of pearls with 18K gold rondelles and clasp made with several 3 point diamonds; an oyster shell centerpiece that depicts a pattern of 92 three point diamonds. Total weight of diamonds in the necklace is appx. 3 carats. Archives, Foreign. Recd: Oct. 15, 1991. Est. value: $31,000.	His Highness Shaikh Ise Bin Sulmen Al-Khalifa, Amir of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: Two navy blue short-sleeve straight lined dresses; one is single-breasted, one double-breasted; one has brass buttons w/ lion's head motif; the other has brass buttons each lettered "R." both have epaulets; 100% cotton; sz. 18.; by Roni Blanshay, Montreal. Archives, Foreign. Recd: July 15, 1991. Est. Value: $273.	Mrs. Brian Mulroney (wife of the Prime Minister of Canada), Canada.	Non-acceptance would cause embarrassment to donor and U.S Government.
First Lady	Clothing and accessories: Denim Jacket and slacks by Roni Blanshay of Montreal. Blouse has gold-colored buttons with an "R" and slash pockets trim in red and blue ribbon. Archives, Foreign. Recd: Aug. 29, 1991. Est. value: $238.	Mrs. Brian Mulrooney (wife of the Prime Minister of Canada), Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Necklace and earrings; 24 kt. gold-plated necklace with rock crystal, sodalite, and jade; and a pair of 24 kt. gold-plated earrings. Archives, foreign. Recd: Feb. 26, 1991. Est. value: $450.	Mrs. Cesar Gaviria Trujillo (wife of the President of the Republic of Colombia), Colombia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Small wooden box depicting painting of a bird, appx. 8" x 5". Necklace made of round black onyx stones and 13k gold rondelles depicting a 13k gold charm of a bird; presented in a brown wooden box that is mounted on square of red velvet, with red, white, and blue ribbon, appx. 8" square overall. Archives, Foreign. Recd: Oct. 18, 1991. Est. value: $515.	His excellency and Mrs. Rafael Calderon, President, the Republic of Costa Rica, Costa Rica.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Porcelain covered vegetable bowl; floral and leaf motif, gold-trimmed, Royal Danica by Royal Copenhagen; numbered on underside, 20 3568; 9" diam. Archives, Foreign. Recd: Feb. 20, 1991. Est. value: $3,450.	Her Majesty Margrethe II, Queen of Denmark, Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Coins: Two Coins, gold and silver, proof set, commemorating the XVIII Reunion Annual Assembly of Governors, May/June 1977. Archives, Foreign. Recd: June 13, 1991. Est. value: $375.	His Excellency Alfredo Cristiani, President of the Republic of El Salvador, El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Household: Carriage clock, brass case with beveled glass, floral design and "D" emblem with crown encircled with a floral design on face, keywound, engraved on top "With My Love Diana, 17th July 1991"; 2¾" x 3¼" x 4¾". Archives, Foreign. Recd: July 14, 1991. Est. value: $2,000.	Her Royal Highness Diana (Windsor), the Princess of Wales, England.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: Gold pin (750) decorated with three pearls, designed by Bjorn Weckstrom, from the Lapponia collection. 1¾" diam. Archives, Foreign. Recd: May 7, 1991. Est. value: $325.	His Excellency Mauno Koivisto, President of Finland, Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Household: Five Porcelain dishes; four are small mint or nut dishes; one is a larger dish for holding mints or nuts; each is cobalt blue decorated with gold and a floral design, by Meissen; enclosed in a moire-covered octagonal box. Archives, Foreign. Recd: June 20, 1991. Est. value: $275.	His Excellency; and Mrs. Helmut Kohl, Chancellor of the Federal Republic of Germany, Federal Republic of Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Clothing and accessories: Evening bag; black leather envelope style with removable black tassle shoulder strap and a brass clasp, by Fendi; 6" x 9½". Archives, Foreign. Recd: May 7, 1991. Est. value: $2,600.	His Excellency Francesco Cossiga, President of the Italian Republic, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Consumables: 15 Approx. one-pound boxes of plain macadamia nuts. Accepted by other agency/official use. Recd: Sep. 11, 1991. Est. value: $225.	His Excellency Dr. H. Kamuzu Banda, Life President of the Republic of Malawi, Malawi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Flowers: Gigantic Arrangement of Peonies, Roses, Hybiscus, Leek, etc.; accepted by other agency/official use. Blue and white oriental style porcelain container. Archives, Foreign. Recd: June 7, 1991. Est. value: $400.	His Majesty Hassan II, King of Morocco, Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Consumables: Five bottles of toilet water from Morocco, each spray bottle has a gold-colored top and bears the King's facsimile signature; contained in a compartmentalized leatherette and gold-stamped case, key-locked. Archives, Foreign. Recd: June 10, 1991. Est. value: $700.	His Majesty Hassan II, King of Morocco, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Silver, crescent-shaped filigree pin. Fur blanket in cream and brown hues. 87" x 78". Archives, Foreign. Recd: Sep. 17, 1991. Est. value: $395.	His Excellency Alberto Kenyo Fujimori, President of the Republic of Peru, Peru.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Jewelry: An amber necklace set in sterling silver. Archives, Foreign. Recd: Mar. 20, 1991. Est. value: $400.	His Excellency Lech Walesa, President of the Council of State of the Republic of Poland, Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Box of incense from Saudi Arabia. Small round glass jar of incense. Coin silver incense burner, appx. 10½" high, depicting an embossed floral motif. Archives, Foreign. Recd: Apr. 23, 1991. Est. value: $310.	His Highness Prince Sattam Bin Saud Bin Abdul Aziz Al-Saud, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Artwork: Painting of trees in winter, oil on canvas, by donor/artist; displayed in an elaborate gold wood frame; image: 26" 39", overall: 31" x 44". Archives, Foreign. Recd: June 25, 1991. Est. value: $350.	Mr. Sergei F. Davidovich, Member of the Supreme Soviet of the Belorussian Soviet Socialist Republic, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Tea set, bone china, white with colorful rooster pattern, set of 12, made in the Soviet Union; contained in a wood dometop chest with metal hardware. Wool shawl, varicolored pattern on black background, hand-woven; 58" x 59". Archives, Foreign. Recd: Aug. 1, 1991. Est. value: $575.	Mrs. Mikhail Gorbachev, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Paul W. Bateman, deputy assistant to the President for management and Director of the Office of Administration.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Small sterling silver dish with an engraved pattern; approx. 5" in diameter; Presidential staff to keep personally. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $530.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Susan D. Biddle, White House photographer.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette tape titled "4 Million Mornings, Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of his Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Phillip D. Brady, assistant to the President and staff secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of his Excellency George Bush, President of the United of America 20–22 July 1991" with a colorful Turkish motif; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
D. Allan Bromley, Assistant to President and Director of the Office of Science and Technology Policy.	Purple vase made of chariote, a rare stone; approx. 3½" high. Three small squares of lazurite, nephrite, and chariote. Small aqua-colored lapel pin with lettering in Russian text. Presidential staff; for official use/display. Recd: May 16, 1991. Est. value: $250.	Dr. Nikolai Dobretshov, Acting President of the Siberian Academy of Science, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrashment to donor and U.S. Government.
R. Nicholas Burns, Director of European and Soviet Multilateral Affairs, National Security Council.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency President George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10", in diameter; Presidential staff to keep personally. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Small sterling silver dish with an engraved pattern; approx 5" in diameter; Presidential staff to keep personally. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early Bronze Age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $530.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Michael J. Busch, Assistant Press Secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency President George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10", in diameter; Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Erlinda E. Casey, Executive Assistant to the Chief of Staff.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10", in diameter. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sandra L. Charles, Former Director of Near East/South Asia Affairs, National Security Council.	Jewelry: Stainless steel ladies watch, made by Cupillard Rieme, Paris. GSA. Recd: May 01, 1991. Est. value: $300.	His Highness Shaikh Isa Bin Salman Al-Khalifa, Amir of the State of Bahrain, Bahrain.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Laura Collins, White House Stenographer	Brown Leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the Rim; approx. 10" in diameter; GSA. Assortment of items, Book, "Turkiye". Promotional video cassette, several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Carl Cordes, Audio Visual Lead, White House Television Office.	Brown Leather Briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish litestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit to Turkey of His Excellency George Bush, President of the United States of America, 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Billy R. Dale, Director of the White House Travel and Telegraph Service.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Douglas A. Davidson, Assistant Press Secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus with President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Randy Dawson, Presidential Advance Team, Turkey Trip.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

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Timothy E. Deal, special assistant to the President for national security affairs.	Jewelry: Pair of 18k gold round cuff links depicting Saudi Arabian lettering and symbols. GSA. Recd: Apr. 19, 1991. Est. value: $250.	His Excellency Muhammad Ali Abalkhail, Minister of Finance, Kingdom of Saudi Arabia, Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
David F. Demarest, Jr., assistant to the President for communications.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
George Egolf, White House communications agency.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover. Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette tape titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: Aug. 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
William S. Farish, the President's aide	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyles, art and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

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Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Laurie Green Firestone, social secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyles, art and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Max Marlin Fitzwater, assistant to the President and press secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyles, art and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Multicolored wool tapestry depicting a geometric pattern, approx. 40" x 64"; Presidential staff; for official use/display. Household: Black clay teapot with a beak spout, make in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $280.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Florence E. Gantt, special assistant to the assistant to the President for national security affairs.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus with President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items inside briefcase: Book, "Turkiye" about Turkish lifestyle, art, and geography. Promotional video cassette. Various pamphlets. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Brenda Garcia, White House videographer.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus with President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert M. Gates, former assistant to the President and deputy for national security affairs.	Silver etched dagger with wooden handle, approx. 17" in length, with black shoulder strap. GSA. Recd: Feb. 12, 1991. Est. value: $500.	His Excellency Abdelhak El Kadiri, Chief of the Moroccan General Intel Service.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Spencer E. Geissinger, Former Special Assistant to the President for Presidential Press Advance.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Taddese Ghebarmeschel, White House Transportation Office.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
David C. Gompert, Special Assistant to the President and Senior Director for European and Soviet Affairs.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; Approx. 10" in diameter; GSA. Multicolored wool tapestry depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early Bronze Age. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Kris Goodwin, Trip Coordinator, Office of Presidential Advance.	Brown Leather Briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991", with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Richard N. Haass, Senior Director of Near East/South Asia Affairs, National Security Council.	Jewelry: Gold pin, 18k gold with 18 carat crystal intaglios in the center and matching pair of earrings. GSA. Recd: July 11, 1991. Est. value: $1,350.	His Excellency Nasir Al-Sabah, Ambassador of the State of Kuwait.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John F. Herrick, Special Assistant to the President for advance.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette title "4 Million Mornings, Turkiye", and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish, motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Edward A. Hewitt, special assistant to the President and senior director of Soviet Affairs, National Security Council.	Artwork: Black lacquer wall hanging depicting a dragon, from a Russian fairy tale; approx. 16" x 6". Presidential staff; for official use/display. Recd: July 16, 1991. Est. value: $670.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Brenda I. Hilliard, Special Assistant to the Executive Secretary, National Security Council.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the Visit of His Excellency George Bush, President of the United States 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lt. Comm. Mary Jackson, White House Medical Unit.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the Visit of His Excellency George Bush, President of the United States 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Arnold Kanter, Special Assistant to the President and Senior Director for Defense Policy/Arms Control, National Security Council.	Artwork: Black lacquer wall hanging depicting the Village of Fedoskino, from a Russian fairy tale; approx. 12" × 7". Archives/staff gift special. Recd: July 18, 1991. Est. value: $600.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John Koloszar, White House, Transportation Office.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motiff around the rim; approx. 10" in diameter. GSA. Recd. July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Carol Lavery, White House stenographer.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motiff around the rim; approx. 10" in diameter. Presidential staff to keep personally. Assortment of items. Book, titled "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd. July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Susan Leander, White House Stenographer.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, Lettered "To commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. Value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Dr. Burton J. Lee, physician to the President.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover". Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 million mornings Turkiye," and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Diane C. Lanegham, former staff assistant, Office of the Press Secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette titled "4 million mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Christina M. Martin, Special Assistant to the Deputy Assistant to the President for Communications.	Brown Leather Briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items. Book, titled "Turkiye." Promotional Video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Robert Martinez, Director, Office of National Drug Control Policy.	Rare purple stone known as "Bolivianita," Per Boone and Sons, Jewelers, 40 carats. GSA. Recd: May 28, 1991. Est. value: $350.	His Excellency Paz Zamora, President, Bolivia.	Non-acceptance would cause embarrassment to Donor and U.S. Government.
Lt. Anthony J. Mauro, food service coordinator, White House mess.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geography; video cassette, and promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Lynn McKenzie, former executive assistant to the special assistant to President and deputy press secretary.	Brown leather briefcase with embossed lettering "Turkey": Europe You Don't Know, Asia You'll Discover." Briefcase contains book, "Turkiye" about Turkish lifestyle, art, and geography; promotional video and pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Scott McQueeney, White House Transportation Office.	Brown leather briefcase with embossed lettering "Turkey": Europe You Don't Know, Asia You'll Discover." Briefcase contains book, "Turkiye" about Turkish lifestyle, art, and geography; promotional video cassette and pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Laura M. Melillo, assistant press secretary.	Brown leather briefcase with embossed lettering "Turkey": Europe You Don't Know, Asia You'll Discover." Briefcase contains book, "Turkiye" about Turkish lifestyle, art, and geography; promotional video cassette and promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Elaine E. Mitsler, executive assistant, office of the press secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Know, Asia You'll Discover"; Presidential Staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jay L. Parmer, special assistant to the President and director of presidential advance.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geography; and promotional video cassette and pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To commemorate the Visit of His Excellency George Bush, President of the United States of America 20-22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter. Presidential staff to keep personally. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Roman Popadiuk, deputy assistant to the President and deputy press secretary.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40"x64", GSA. Household: Clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age. Presidential staff to keep personally. Recd: July 19, 1991. Est. Value: $460.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Joseph Thomas Ratchford, Associate Director for Policy and International Affairs, Office of Science and Technology Policy.	Book: Photography book with pictures and information about Leningrad, Titled "Leningrad Art and Architecture"; printed and bound by Globus in Vienna, Austria, published by Aurora Art, Leningrad, 1985. Presidential staff; for official use/display. Recd: May 22, 1991. Est. value: $450.	His Excellency Vladimir V. Ezhkov, Deputy Chairman of the State Committee for Science and Technology, Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Edward M. Rogers, Jr., former deputy assistant to the President and executive assistant to the chief of staff.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette tape titled "4 Million Mornings, Turkiye." and several promotional pamphlets; GSA. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of his Excellency George Bush, President of the United States of America, 20–22 July 1991." with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Recd: July 19, 1991. Est. value: $215.	His Excellency Turgut Ozal, President of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sigmund A. Rogich, assistant to the President for public events and initiatives.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal lettered "To Commemorate the Visit to Turkey of his Excellency George Bush, President of the United States of America, 20–22 July 1991." with a colorful Turkish motif around the rim; approx. 10" in diameter. GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional pamphlets. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gen. Brent Scowcroft, assistant to the President for national security affairs.	Clock with lacquer face that depicts a space program-related motif, approx. 8½" in diameter, covered in clear plastic, on a black lacquer base that depicts a tree. Clock is approx. 15" high and its style is called "Kahouli." Presidential staff; for official use/display. Recd: July 18, 1991. Est. value: $1,000.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gen. Brent Scowcroft, assistant to the President for national security affairs.	Artwork: Hand-hammered sterling silver sculpture depicting a calyx-shaped kylix; a replica from the early cycladic II period (2800–2300 BC.) from the Museum of Cycladic Art, Greece; approx. 5" in diameter, Presidential staff; for official use/display. Recd: July 18, 1991. Est. value: $375.	His Excellency Konstantinos Karamanlis, President of the Hellenic Republic, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Gen. Brent Scowcroft, assistant to the President for national security affairs.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover." Briefcase contains book "Turkiye" about Turkish lifestyle, art, and geographic points of interest; video cassette tape titled "4 Million Mornings, Turkiye," and several promotional pamphlets; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America, 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey. It is a replica of a pot from the early bronze age. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sichan A. Siv, deputy assistant to the President for public liaison.	Artwork: Wooden plaque depicting a jungle scene; approx. 8" x 21". GSA. Recd: Aug. 1, 1991. Est. value: $250.	His Excellency Boun My Manivong, Deputy Governor of Luang Prabang, Laos.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sichan A. Siv, deputy assistant to the President for public liaison.	Expended for food, lodging, and transportation. Presidential staff to keep personally. Recd: Aug. 13, 1991. Est. value: Indeterminable.	The Foreign Ministry of the Kingdom of Thailand, Thailand.	Acceptance is appropriate and consistent with the U.S. and permitted by agency.
Robert A. (Tony) Snow, Deputy Assistant to the President for communications and director of speechwriting.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America, 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est value: $215.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John H. Sununu, chief of staff to the President.	Clock with lacquer face that depicts a space program-related motif, appx. 8½" in diameter, covered on clear plastic, on black lacquer base that depicts a tree. Clock is 15" high. The style of clock is "Kahouli." Archives/staff gift special. Recd: July 18, 1991. Est. value: $1,000.	His Excellency Mikhail Gorbachev, President of the Union of Soviet Socialist Republics.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—EXECUTIVE OFFICE OF THE PRESIDENT—Continued

[Report of Tangible Gifts—All Gifts Received From Foreign Officials Over Minimum Dollars—Jan. 1 thru Dec. 31, 1991]

Name and title of recipient	Gift, date of acceptance, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
John H. Sununu, chief of staff to the President.	Artwork: Hand-hammered sterling silver cup, approx. 4½" high and 2½" in diameter, crafted by the famous Lalaounis family in Greece. This is a premiere piece from this family's collection and was inspired by the cycladic period (2000 B.C.); with a certificate of authenticity. Archives/staff gift special. Recd: July 18, 1991. Est. value: $750.	His Excellency Constantin Mitsotakis, Prime Minister of the Hellenic Republic, Greece.	Non-acceptance would cause embarrassment to donor and U.S. Government.
John H. Sununu, chief of staff to the President.	Brown leather briefcase with embossed lettering "Turkey: Europe You Don't Know, Asia You'll Discover"; Presidential staff to keep personally. Household: Porcelain serving plate depicting Potus and President Ozal, lettered "To Commemorate the Visit to Turkey of His Excellency George Bush, President of the United States of America, 20–22 July 1991," with a colorful Turkish motif around the rim; approx. 10" in diameter; GSA. Household: Multicolored wool tapestry, depicting a geometric pattern, approx. 40" x 64"; GSA. Household: Black clay teapot with a beak spout, made in Turkey, it is a replica of a pot from the early bronze age; Presidential staff to keep personally. Assortment of items. Book, "Turkiye." Promotional video cassette. Several promotional booklets and pamphlets. GSA. Recd: July 19, 1991. Est. value: $490.	His Excellency Turgut Ozal, President of the Republic of Turkey, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
William W. Working, special assistant to the President for national security affairs.	Brown billfold made of crocodile skin, with certificate of authenticity, made by Jacob De Julia, Paris. GSA. Recd: Aug. 8, 1991. Est. value: $295.	His Excellency Maj. Gen. Ayupoon Karnasuta, deputy director of the Thai national intelligence agency, Thailand.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY: WHITE HOUSE OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
D. Allan Bromley, Assistant to the President for Science and Technology Policy.	Purple/Black chariote vase—3.5 inches high; Rec'd—5/16/91; Est. Value=$250.00; Del. to GSA 6/17/91.	Professor Nikolai Dobretshov, Acting President, Siberian Branch, Soviet Academy of Science.	Avoid embarrassment to donor.
J. Thomas Ratchford, Associate Director for Policy and Int'l Development.	Picture Book "Leningrad Art & Architecture"; Rec'd—5/12/91; Est. Value=$450.00; Del. to GSA 9/17/91.	Vladimir V. Ezhkov, Deputy Chairman of the State Committee for Science and Technology.	Avoid embarrassment to donor.

AGENCY—Executive Office of the Vice President

Report of Tangible Gifts—Report Date: 01/23/92—All Gifts Received from Foreign Officials over Minimum Dollars—Jan. 1 thru Dec. 31, 1991

Name and title of recipient	Gift, date of acceptance, est. value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
91–977, Vice President and Mrs. Quayle.	Multiple items: art works, in leather and cloth; archives, foreign; Recd: September 9, 1991; Est. value $425.	His Excellency Augustus Aikhomu, Vice President of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–519, Vice President and Mrs. Quayle.	Multiple items: porcelain vase, set of photographs; residence; for official use/display; Recd: June 4, 1991; Est. value: $1000.	His Excellency Dr. Jozsef Antall, President of the Council of Ministers of the Republic of Hungary, Hungary.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–875, Vice President and Mrs. Quayle.	Art work: 30x40 oil painting; archives, foreign; Recd: August 8, 1991; Est. value: $350.	His Excellency Jean-Bertrand Aristide, President of the Republic of Haiti, Haiti.	Non-acceptance would cause embarrassment to donor and U.S. Government.

AGENCY—Executive Office of the Vice President—Continued

Report of Tangible Gifts—Report Date: 01/23/92—All Gifts Received from Foreign Officials over Minimum Dollars—Jan. 1 thru Dec. 31, 1991

Name and title of recipient	Gift, date of acceptance, est. value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
91–1023C, Vice President and Mrs. Quayle.	Multiple items: sculpture, necklace, linens, books; archives, foreign; Recd: September 9, 1991; Est. value: $400.	Mrs. Maryam I. Babangida, wife of President of the Federal Republic of Nigeria, Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–963, Vice President and Mrs. Quayle.	Multiple items: golden wooden stool, carved wooden figurine, terra cotta figurine, carved wooden mask; archives, foreign; Recd: September 13, 1991; Est. value; $1000.	His Excellency Felix Houphouet-Boigny, President of the Republic of Cote D'Ivoire, Ivory Coast.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–336, Vice President and Mrs. Quayle.	Art work: unframed oil painting; archives, foreign; Recd: April 4, 1991; Est. value: $900.	Her Excellency Violeta Barrios de Chamorro, President of the Republic of Nicaragua, Nicaragua.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–552, 554, Vice President and Mrs. Quayle.	Multiple items: porcelain coffee set, 1 set of handcut crystal tumblers; archives; foreign; residence, for official use/display; Recd: June 8, 1991; Est. value: $325.	His Excellency Vaclav Havel, President of the Czech and Slovak Federal Republic, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–1109, Vice President and Mrs. Quayle.	Household: crystal vase; residence, for official use/display; Recd: October 23, 1991; Est. value: $300.	His Excellency Vaclav Havel, President of the Czech and Slovak Federal Republic, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–528A, Vice President and Mrs. Quayle.	Household: binoculars; residence; for offical use/display; Recd: June 1, 1991; Est. value: $1000.	His Excellency Helmut Kohl, Chancellor of the Federal Republic of Germany, Germany.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–450, Vice President and Mrs. Quayle.	Household: silver bowl w/blue enamel interior; residence, for official use/display; Recd: May 7, 1991; Est. value: $250.	His Excellency Mauno Koivisto, President of Finland, Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–132, Vice President and Mrs. Quayle.	Multiple items: porcelain ginger jar; 2 photographs in leather frames; residence, for official use/display; Recd: February 20, 1991; Est. value: $605.	Margrethe II and Prince Henrik, Denmark, Denmark.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–1353, Vice President and Mrs. Quayle.	Household: silver goblet; residence, for official use/display; Recd: December 13, 1991; Est. value: $600.	His Excellency Constantineitsotakis, Prime Minister of the Hellenic Republic, Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–694, Vice President and Mrs. Quayle.	Art work: cloth of multicolored patchwork; archives, foreign; Recd: June 28, 1991; Est. value: $950.	His Excellency Alassane Ouattara, Prime Minister of the Republic of Cote d'Ivoire, Republic Cote d'Ivoire.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–280, Vice President and Mrs. Quayle.	Art work: silk wall hanging; residence, for official use/display; Recd: March 24, 1991; Est. value: $800.	His Excellency and Mrs. Turgut Ozal, President of the Republic of Turkey, Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–512, Vice President and Mrs. Quayle.	Art work: framed art; OEOB, for official use/display; Recd: May 22, 1991; Est. value: $600.	His Excellency S.H. Sudharmono, Vice President of the Republic of Indonesia, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–718, Vice President and Mrs. Quayle.	Art work: handcarved wooden screen; residence, for official use/display; Recd: July 1, 1991; Est. value: $1800.	His Excellency Nawaz Sharif, Prime Minister of the Islamic Republic of Pakistan, Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–555, Vice President and Mrs. Quayle.	Household: crystal platter; residence, for official use/display; Recd: June 7, 1991; Est. value: $250.	His Excellency Lubomir Skalos, Mayor of Bardejov, Czechoslovakia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–514, Vice President and Mrs. Quayle.	Art work; wooden carving, two Balinese figures; archives, foreign; Recd: May 22, 1991; Est. value: $600.	His Excellency Soeharto, President of the Republic of Indonesia, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–513, Vice President and Mrs. Quayle.	Household: antique silver tray; archives, foreign; Recd: May 22, 1991; Est. value: $300.	Mrs. E.N. Sudharmono, Wife of the Vice President of the Republic of Indonesia, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–1147, Vice President and Mrs. Quayle.	Household: 8 enamel covered cups w/ fruit decoration on lid; residence, for official use/display; Recd: October 29, 1991; Est. value: $1200.	The Honorable Park Tae-Joon, Co-Chairman of the Democratic Liberal Committee of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–511, Vice President and Mrs. Quayle.	Household: 4-piece antique silver tea service; archives, foreign; Recd: May 22, 1991; Est. value: $500.	Mrs. Tien Suharto, wife of President of Republic of Indonesia, Republic of Indonesia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–263, Vice President and Mrs. Quayle.	Household: cut crystal serving plate; residence, for official use/display; Recd: March 20, 1991; Est. value: $1500.	His Excellency Lech Walesa, President of the Council of State, of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
91–723, Vice President and Mrs. Quayle.	Multiple items: black lacquer jewelry box w/mother of pearl inlay, black lacquer box w/ornate mother of pearl; residence, for official use/display; Recd: July 2, 1991; Est. value: $670.	His Excellency Roh Tae Woo, President of the Republic of Korea, Republic of Korea.	Non-acceptance would cause embarrassment to donor and U.S. Government.

UNITED STATES SENATE

Report of Tangible Gifts—Calendar Year 1991

Name and title of persons accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Bill Bradley, U.S. Senator	Sony compact disc player recd—January 15, 1991. Est. value—$150. Deposited with the Secretary of the Senate.	Members of the Japanese Diet	Refusal would likely cause offense or embarrassment.
Thad Cochran, U.S. Senator	Hand painted glass pitcher and bowl set recd—August 23, 1990. Est. value—$800. Disposition: Display in Senator's office.	President Turgut Ozal, Government of Turkey and Foreign Minister Ali Bozer, Government of Turkey.	Refusal would likely cause offense or embarrassment.
Thad Cochran, U.S. Senator	3×4 silk rug recd—August 23, 1990. Est. value—$2,000. Disposition: Display in Senator's office.	President Turgut Ozal, Government of Turkey and Foreign Minister Ali Bozer, Government of Turkey.	Refusal would likely cause offense or embarrassment.
Dave Durenberger, U.S. Senator	Fossilized stone gray box recd—May 28, 1991. Est. value—$150. Disposition: Display in Senator's office.	Ambassador Roble Olhaye, Embassy of Djibouti.	Refusal would likely cause offense or embarrassment.
John Glenn, U.S. Senator	Man's watch from Riviera collection recd—October 24, 1991. Est. value—$3,100. Deposited with the Secretary of the Senate.	Government of Bahrain	Refusal would likely cause offense or embarrassment.
Patrick J. Leahy, U.S. Senator	Painting of a street scene recd—September 26, 1991. Est. value—$150. Deposited with the Secretary of the Senate.	President Rafael Callejas, Government of Honduras.	Refusal would likely cause offense or embarrassment.
John McCain, U.S. Senator, and Cindy H. McCain, Spouse of U.S. Senator.	Floral arrangement recd—April 11, 1991. Est. value—$220. Disposition: Display in Phoenix office.	H.E. Saud Nasir Al-Sabah, Ambassador of Kuwait.	Refusal would likely cause offense or embarrassment.
Cindy H. McCain, Spouse of Senator McCain.	Silver and gold plated plate recd—April 25, 1991. Est. value—$200. Deposited with the Secretary of the Senate..	H.E. Abd al-Wahab Sulayman al-Fawzan, Minister of Health, Government of Kuwait.	Refusal would likely cause offense or embarrassment.
Cindy H. McCain, Spouse of Senator McCain.	1 pair 24 karat gold earrings. Est. value—$350. 1 24 karat ring, est. value—$250. 1 gold ingot with chain, est. value—$300 recd—April 8, 1991. Deposited with the Secretary of the Senate.	H.E. Saud Nasir Al-Sabah, Ambassador of Kuwait.	Refusal would likely cause offense or embarrassment.
George J. Mitchell, U.S. Senator	Two photographs of Queen Elizabeth and Prince Phillip in blue leather frames recd—July 11, 1991. Est. value—$316. Deposited with the Secretary of the Senate.	Queen Elizabeth and Prince Phillip of England.	Refusal would likely cause offense or embarrassment.
George J. Mitchell, U.S. Senator	10×7 wooden framed handdrawn picture of Vilnius recd—May 7, 1991. Est. value—$200. Deposited with the Secretary of the Senate.	President Vytautas Landsbergis, Government of Lithuania.	Refusal would likely cause offense or embarrassment.

UNITED STATES SENATE

Report of Travel or Expenses of Travel—Calendar Year 1991

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Richard Arenberg, Professional Staff Member, Office of Majority Leader.	Food and lodging in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Max Baucus, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Daniel Bob, Special Assistant to Senator Roth.	Lodging and meals in country, Aug. 24–26, 1991.	Government of Japan	Nonacceptance would cause donor embarrassment.
Daniel Bob, Special Assistant to Senator Roth.	Meals from Dec. 8–11, 1991 and lodging on Dec. 8, 1991.	Government of Australia	Nonacceptance would cause donor embarrassment.
Daniel Bob, Special Assistant to Senator Roth.	Meals in country from Dec. 12–15, 1991.	Government of New Zealand	Nonacceptance would cause donor embarrassment.
Hank Brown, U.S. Senator	Food, lodging and transportation in country, including air transportation between Beijing and Shanghai, Aug. 11–17, 1991.	Republic of China, Chinese People's Institute of Foreign Affairs.	Nonacceptance would cause donor embarrassment.
Nan Brown, Spouse of Senator Brown	Food, lodging and transportation in country, including air transportation between Beijing and Shanghai, Aug. 11–17, 1991.	Republic of China, Chinese People's Institute of Foreign Affairs.	Nonacceptance would cause donor embarrassment.
Les Brownlee, Professional Staff Member, Committee on Armed Services.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1991

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Betty F. Bumpers, Spouse of Senator Bumpers.	Transportation, lodging and meals in country May 15–21, 1991.	Republic of China, All-China Women's Federation.	Nonacceptance would cause donor embarrassment.
Conrad Burns, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Conrad Burns, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia, and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
John H. Chafee, U.S. Senator	Lodging and meals in country, Mar. 15–18, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Dan Coats, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
William S. Cohen, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Alan Cranston, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Alfonse M. D'Amato, U.S. Senator	Transportation within Saudi Arabia, to and from Kuwait and Bahrain, Mar. 1–5, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Dennis DeConcini, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Christopher J. Dodd, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2, & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Dave Durenberger, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Wendell H. Ford, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John Glenn, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
John Glenn, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Scott Harris, Professional Staff Member, Democratic Policy Committee.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John Heinz, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Howell Heflin, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Jesse Helms, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabi and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
John F. Kerry, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
John F. Kerry, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John F. Kerry, U.S. Senator	Lunch and air transportation from Phnom Penh to Siemreab Province on Aug. 22, 1991.	Government of Cambodia	Nonacceptance would cause donor embarrassment.
Michael T. Kinsella, Administrative Assistant, Office of Senator D'Amato.	Transportation within Saudi Arabia, to and from Kuwait and to and from Bahrain, March 1–5, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Frank R. Lautenberg, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Carl Levin, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Joseph I. Lieberman, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1991

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Craig Lovitt, Executive Assistant to Senator Dixon, Springfield Office.	Food, lodging and transportation in country, Aug. 11–17, 1991.	Republic of China, Chinese People's Institute of Foreign Affairs.	Nonacceptance would cause donor embarrassment.
John McCain, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Mitch McConnell, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Tom McMahan, Delegation Press Secretary, Office of Senator Heflin.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Kathleen Merrigan, Professional Staff Member, Committee on Agriculture, Nutrition and Forestry.	Meals in country, May 31, 1991	Government of Norway, Norwegian Research Council for Science and the Humanities.	Nonacceptance would cause donor embarrassment.
Daniel Patrick Moynihan, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Daniel Nelson, Legislative Assistant, Office of Senator Pressler.	Transportation from Riga to Vilnius, Aug. 30, 1991.	Government of Latvia	Nonacceptance would cause donor embarrassment.
Daniel Nelson, Legislative Assistant, Office of Senator Pressler.	Transportation within country on Nov. 28–Dec. 2, 1991.	Government of Cuba	Nonacceptance would cause donor embarrassment.
Don Nickles, U.S. Senator	Lodging and meals in country, Mar. 15–18, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Sam Nunn, U.S. Senator	One night lodging and meals in country, Feb. 17, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Sam Nunn, U.S. Senator	One night lodging in country, Feb. 18, 1991.	Government of Bahrain	Nonacceptance would cause donor embarrassment.
Claiborne Pell, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Larry Pressler, U.S. Senator	Transportation from Riga to Vilnius, Aug. 30, 1991.	Government of Latvia	Nonacceptance would cause donor embarrassment.
Larry Pressler, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
Larry Pressler, U.S. Senator	Transportation within country from on Nov. 28–Dec. 2, 1991.	Government of Cuba	Nonacceptance would cause donor embarrassment.
Arnold Punaro, Staff Director, Senate Armed Services Committee.	One night lodging and meal in country, Feb. 17, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Arnold Punaro, Staff Director, Senate Armed Services Committee.	One night lodging in country, Feb. 18, 1991.	Government of Bahrain	Nonacceptance would casue donor embarrassment.
William V. Roth, Jr., U.S. Senator	Lodging and meals in country, Aug. 24–26, 1991.	Government of Japan	Nonacceptance would cause donor embarrassment.
William V. Roth, Jr., U.S. Senator	Meals from Dec. 8–11, 1991 and lodging on Dec. 8, 1991.	Government of Australia	Nonacceptance would cause donor embarrassment.
William V. Roth, Jr., U.S. Senator	Meals in country on Dec. 12–15, 1991	Government of New Zealand	Nonacceptance would cause donor embarrassment.
Paul S. Sarbanes, U.S. Senator	Transportation, lodging and meals in Bahrain, Saudi Arabia and United Arab Emirates on Sept. 1, 2 & 3, 1990, respectively.	Governments of Bahrain, Saudi Arabia, and United Arab Emirates.	Nonacceptance would cause donor embarrassment.
R.J. Short, Chief of Staff, Office of Senator Thurmond.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Gerald Sinclair, State Director, Office of Senator Simon.	Transportation and lodging within country, Oct. 12–19, 1991.	Government of Germany	Nonacceptance would cause donor embarrassment.
Anne Smith, Legislative Assistant, Foreign Relations Committee.	Transportation from Riga to Vilnius, Aug. 30, 1991.	Government of Latvia	Nonacceptance would cause donor embarrassment.
Nancy Stetson, Professional Staff Member, Foreign Relations Committee.	Lunch and air transportation from Phnom Penh to Siemreab Province, Aug. 22, 1991.	Government of Cambodia	Nonacceptance would cause donor embarrassment.
Walter J. Stewart, Secretary of the Senate.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Strom Thurmond, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Patrick Tucker, Staff Director and Counsel for the Minority, Senate Armed Services Committee.	One night lodging and meals in country, Feb. 17, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Patrick Tucker, Staff Director and Counsel for the Minority, Senate Armed Services Committee.	One night lodging in country, Feb. 18, 1991.	Government of Bahrain	Nonacceptance would cause donor embarrassment.
Trina Y. Vargo, Office of Senator Kennedy.	Transportation, lodging and meals in country, Jun. 1–6, 1991.	Government of Ireland	Nonacceptance would cause donor embarrassment.
Malcolm Wallop, U.S. Senator	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.

UNITED STATES SENATE—Continued

Report of Travel or Expenses of Travel—Calendar Year 1991

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Sally Walsh, Deputy Director, Office of Interparliamentary Services.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John W. Warner, U.S. Senator	Lodging and meal in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John W. Warner, U.S. Senator	One night lodging and meals in country, Feb. 17, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John W. Warner, U.S. Senator	One night lodging in country, Feb. 18, 1991.	Government of Bahrain	Nonacceptance would cause donor embarrassment.
Lt. Col. Grayson Winterling, U.S. Army (Ret.), Office of Senator Warner.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
John Ziolkowski, Professional Staff Member, Committee on Agriculture, Nutrition and Forestry.	Lodging and meals in country, Mar. 15–16, 1991.	Government of Saudi Arabia	Nonacceptance would cause donor embarrassment.
Frances Zwenig, Administrative Assistant, Office of Senator Kerry.	Lunch and air transportation from Phnom Penh to Siemreab Promvince, Aug. 22, 1991.	Government of Cambodia	Nonacceptance would cause donor embarrassment.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
James H. Bilbray, Member of Congress	Food, lodging and transportation in People's Republic of China, from August 11–16, 1991 to participate in meetings with Government Officials.	People's Republic of China	Travel authorized by the Foreign Gifts and Decoration Act.
Philip Crane, Member of Congress	Food, lodging and transportation from Beijing to Shanghai to Hong Kong for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Eliot L. Engel, Member of Congress	Food, lodging and transportation from Beijing to Shanghai for 5 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Jaime Fuster, Member of Congress	Food, lodging and transportation from Hong Kong to Beijing to Shanghai for 4 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
William Goodling, Member of Congress	Food, lodging and transportation from Beijing to Shanghai for 6 days.	The Chinese People's International Friendship Association.	Fact-finding.
Ben Lewis Jones, Member of Congress.	Ground transportation, food and lodging within the People's Republic of China for 4 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Michael R. McNulty, Member of Congress.	Food, lodging and transportation from Beijing to Shanghai for 6 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Arthur Ravenel, Jr., Member of Congress.	Meals, lodging and transportation from Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Floyd Spence, Member of Congress	Meals, lodging and ground transportation from Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Barbara Vucanovich, Member of Congress.	Meals, lodging and travel from Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Glenda C. Booth, Rep. Peter Hoagland	Travel within Germany with officials of the German Parliament; travel to Czechoslovakia with member of German Parliament from April 6 to 21, 1991.	German Bundestag	Staff exchange program.
Glenda Burr, Rep. Andy Ireland	Transportation from Moscow to Blogorod from April 15–April 24, 1991.	Soviet Union	Attendance at conference.
Joseph J. Eule, Rep. Robert Dornan	Lodging, meals and transportation from Hong Kong to Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Scott Feeney, Rep. Dan Burton	Lodging, meals and transportation from Hong Kong to Beijing to Shanghai for 7 days.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.
Wendy Herzog, Rep. Ben Jones	Ground transportation, food and lodging within the People's Republic of China from Sept. 2–5, 1991.	The Chinese People's International Friendship Assn.	Fact-finding.
Wendy Herzog, Rep. Ben Jones	Food and lodging in Israel from Feb. 1–9, 1991 to participate in a volunteer program.	Israeli Defense Forces	Program participant.

AGENCY: U.S. HOUSE OF REPRESENTATIVES—Continued

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Charles M. Segal, Rep. Michael McNulty.	Food, lodging and transportation from Beijing to Shanghai from Aug. 11–17, 1991.	The Chinese People's Institute of Foreign Affairs.	Fact-finding.

AGENCY: U.S. HOUSE OF REPRESENTATIVES

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Thomas S. Foley, Speaker	Painting entitled "Spirit of Tenderness" by Antonio Sarelli: Recd: December 10, 1991. Est. Value: $2,000. Approved for official display.	Carlos Ortiz de Rozas, Ambassador of the Argentine Republic for Dr. Carlos Saul Menem, President of Argentina.	Non-acceptance would have caused embarrassment to donor.
Thomas S. Foley, Speaker	Portrait of Thomas G. Masaryk: Recd: October 23, 1991. Est. Value: $15,000. Approved for official display.	President Vaclav Havel of the Czech and Slovak Republic.	Non-Acceptance would have caused embarrassment to donor.

AGENCY: AGENCY FOR INTERNATIONAL DEVELOPMENT REPORT OF TANGIBLE GIFTS

Name and title of person accepting gifts on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
R. Ray Randlett, Assistant Administrator, Legislative Affairs.	Twentieth Century Impressions of Ceylon. Recd—August 27, 1991. Approx. Value—19,000 rupees or U.S. Dollars $475.00. Approve for official use. Displayed in Dept of State, Rm 2895.	Ven. Galboda Gnanissara Thero the Chief Priest of the Gangarama Temple, Colombo Sri Lanka.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY REPORT OF TANGIBLE GIFTS

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Richard J. Kerr, Deputy Director, Central Intelligence	Tunisian hand woven rug 8.3 × 5.9. Horizontal field woven with stylized rosettes, leaves, and animals and blue-to-rose-to-ivory ground, and palmette guard border on ivory ground. Recd—October 28, 1991. Est. value—$250.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Richard J. Kerr, Deputy Director, Central Intelligence	Cultured pearl and diamond pendant necklace. The 14 karat yellow gold scroll contemporary mount with chain attached, and set with a cultured pearl measuring approximately 9½mm, and four melee faceted diamonds. Recd—November 20, 1991. Est. value—$250.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William H. Webster, Director, Central Intelligence.	Herend tea set, numbered G13/MHG. Consisting of coffee pot, covered sugar, creamer, six cups, six saucers, in a fitted case. Recd—March 7, 1991. Est. value—$350.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: CENTRAL INTELLIGENCE AGENCY REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William H. Webster, Director, Central Intelligence.	Saudia Arabian silver incense burner. Maker: Fitaihi. With 800-standard mark. Pedestal-form with applied floral decoration alternating with engraved palm trees, crossed swords and Arabic inscription. H: 12 inches, Wt: 41 oz. In green velvet carrying case. Recd—March 10, 1991. Est. value—$750.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Korean yellow gold figure of a tortoise. Stamped 99%. L: 3½" Weight approximately 1 oz. Recd—April 1, 1991. Est. Value—$350.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Ruby and diamond dinner ring. The 18 karat yellow gold mount, set with an oval faceted cushion cut ruby, measuring approximately 5.8 × 4.6 × 1.8. Estimated carat weight 1.20 carats, & surrounded by two tiers of melee round faceted diamonds. Recd—November 20, 1989. Est. value—$350.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Rolex Oyster Perpetual Date-Adjustable gentleman's wristwatch w/stainless steel case and band. Recd—December 15, 1991. Est. value—$500.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Tunisian hand woven rug 7.2 × 4.8. Red ground with floral medallion and rose lattice spandrels, and palmette and trellising vine guard border, on light blue ground. Recd—October 30, 1991. Est. value—$250.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Agency Employee	Sako Deluxe Grade All 308 Winc. Cal. rifle. Serial number 36347. Having a 23½ inch round blue steel barrel with a five-shot-magazine, mounted on a French checkered European walnut stock with Monte Carlo cheekpiece, with rosewood grip cap and forend tip, and semi-beavertail forend; together with a plastic carrying case. Recd—Approximately August 1986. Est. Value—$600.00. To be retained for official display.	5 USC 7342 (f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEFENSE MAPPING AGENCY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William K. James, Director	20 reproductions of historic maps of Spanish speaking countries. Recd—20 June 1991. Est. Value—$300.00. Will be used for display purposes in Headquarters building.	Mr. Antonio Flos Bassols, Technical General Secretary, Ministry of Defense, Spain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: UNITED STATES DEPARTMENT OF AGRICULTURE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Edward Madigan, Secretary, U.S. Department of Agriculture.	Etched sterling silver and gilt gravy boat and ladle. The gravy boat in form of stylized bird. The bowl raised on animal legs and feet, approximately 7". The ladle, with etched handle and gilt bowl, made by Tane Brothers. Recd: September 10, 1991 Est. value: $1,200. On display in Secretary's office.	Carlos Hank Gonzalez, Secretary of Agriculture, Mexico.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lieutenant General Joseph W. Ashy, Commander, Air Training Command, Randolph AFB, Texas.	Swiss-made Robert Weil wristwatch. Recd—November 1, 1991. Est. Value—$350. On official display within Headquarters Air Training Command.	Air Vice Marshall Talib, Chief of Staff of Air Force of Oman.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Colonel David A. Benson, Commander, 27 Combat Support Group, Cannon AFB, New Mexico.	Mounted silver dagger and sheath, enclosed in a wooden box with a glass door for access. Recd—March 31, 1991. Est. Value—$200 to $300. On official display at the Headquarters Building, 27 Combat Support Group.	Brigadier General Abdul Rahmán Al-Fahad Al-Faisal, Commander of King Fahad Royal Air Base, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ms. Elizabeth J. Keefer, Deputy Under Secretary of the Air Force/International Affairs.	Rug, Cotton Rabat, hand woven, 6' x 9' with a floral medallion and a floral border. Recd—December 23, 1991. Est. Value—$400. On official display within the office of Deputy Under Secretary of the Air Force International Affairs.	Ambassador Jaidi, Counsel General to the Kingdom of Morocco.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	A signed and numbered print done by Ecuadorian artist E. Kingman, Print #17 of 100 and signature of the artist is an original. Recd—June 6, 1991. Est. Value—$500. On official display at the Office of the Chief of Staff, USAF, Room 4E925, Pentagon, Washington, DC.	Brigadier General William Birkett, Commander, Ecuadorian Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	Lalique Crystal Broceliande Vase; approximately 14 inches high. Recd—July 25, 1991. Est. Value—$845. On official display at the Air House, the official residence of the Chief of Staff.	General Jean Fleury, Chief of Staff, French Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Merrill A. McPeak, Chief of Staff, United States Air Force.	Baccarat Crystal Decanter, with French Air Force Seal on side. Recd—July 25, 1991. Est. Value—$405. On official display at the Air House, the official residence of the Chief of Staff.	General Jean Fleury, Chief of Staff, French Air Force.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Colonel Stephen M. Peterson, Commander, 1704 Photo Reconnaissance Squadron, Beale AFB, California.	Mounted silver dagger and sheath, enclosed in a wooden box with a glass door for access. Recd—March 11, 1991. Est. Value—$200 to $300. On official display at 1704 Photo Reconnaissance Squadron.	Brigadier General Abdul Rahman Al-Fahad Al-Faisal, Commander of King Fahad Royal Air Base, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Major General William A. Studer, Commander, 13 Air Force, Andersen Air Force Base, Guam.	Silver tea set consisting of tray, sugar bowl, tongs, and creamer. Recd—October 29, 1991. Est. Value—$300. On official display within Headquarters 13 Air Force, Andersen Air Force, Base Guam.	Air Chief Marshall Kaset Rochananil, Commander-in-Chief, Government of Thailand.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF THE AIR FORCE—Continued

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Major General William A. Studer, Commander, 13 Air Force, Andersen Air Force Base, Guam.	Silver fruit bowl. Recd—October 29, 1991. Est. Value—$225. On official display within Headquarters 13 Air Force, Andersen Air Force Base, Guam.	Air Chief Marshall Kaset Rochananil, Commander-in-Chief, Government of Thailand.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY—DEPARTMENT OF DEFENSE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency.	18K gold cuff links and tie tack set, with pearls: Recd: May 6, 1991. Est. value: $750. Delivered to GSA Dec. 11, 1991.	Yukihiko Ikeda, Minister of State for Defense, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency, and Mrs. Allen.	Large blue vase, approx. 15" x 7½" diameter, with wooden stand; and embroidered tablecloth and napkins (5) set: Recd: May 7, 1991. Est. value: $275. Stored in vault pending disposition.	General and Mrs. Chen Hsing-Ling, Chief of the General Staff, Ministry of National Defense, Republic of China.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency, and Mrs. Allen.	Celadon tea service set for two (2); and 14K gold amethyst pendant: Recd: May 7, 1991. Est. value: $315. Delivered to GSA Dec. 11, 1991.	Park Woong, Second Assistant Minister, Ministry of National Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Lt. Gen. Teddy G. Allen, USA, Director, Defense Security Assistance Agency.	Two (2) silver chalices, replicas of the "Byzantine chalice of the 14th Century, from the epoch of Konstantinos Paleologos," approx. 6¼" tall x 3¼" diameter: Recd: June 3, 1991. Est. value: $350. Reported to GSA July 18, 1991; pending transfer to GSA.	Lt. Gen Athanasios Stathias, Chief of the Hellenic Air Force, Greece.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	Six (6) brandy glasses, and small brass tank: Recd: July 14, 1991. Est. value: $247. Approved for official display.	Polish Minister of Industry Zawislak, Republic of Poland.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	Tank T54 model and tank-shaped whiskey dispenser: Recd: July 18, 1991. Est. value: $245. Approved for official display.	Jan Segla, General Director, Martin Plant, Czechoslovakia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	Men's Chopard watch, gold and stainless steel with small diamonds around the dial, date window, with matching cuff links, in red case: Recd: Oct. 15, 1991. Est. value: $4,650. Reported to GSA Dec. 9, 1991; pending transfer to GSA.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Donald J. Atwood, Deputy Secretary of Defense.	Chopard "Luna D'Oro" table clock, round gold and brass case, with three (3) inner dials showing the month, day and date, red emblem at top of dial, Quartz, approx. 5½" diameter, in navy blue case: Recd: Oct. 15, 1991. Est. value: $295. Reported to GSA Dec. 9, 1991; purchased from GSA Feb. 14, 1991.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Donald J. Atwood, wife of Deputy Secretary of Defense.	Ladies' Chopard watch, gold and stainless steel with small diamonds around the dial, in red case: Recd: Oct. 15, 1991. Est. value: $2,795. Reported to GSA Dec. 13, 1991; pending transfer to GSA.	The Amir of the State of Bahrain	Non-acceptance would have caused embarrassment to donor and U.S. Government.
LTC Mark L. Brophy, USMC, ISA Country Director for the Persian Gulf States.	Men's Baume and Mercier watch, gold and stainless steel, in gray box: Recd: Oct. 11, 1991. Est. value: $500. Stored in vault pending transfer to GSA.	Shaikh Khalifa bin Ahmad al-Khalifa, Minister of Defense, State o Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense and Mrs. Cheney.	Silver coffee/tea server; and book: "Macedonia," 4000 years of Greek History and Civilization: Recd: Apr. 22, 1991, Est. value: $300. Stored in vault pending transfer to GSA.	Ioannis Varvitsiotis, Minister of National Defense, Greece, and Mrs. Varvitsiotis.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY—DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	18K gold pin/pendant, with nine (9) pearls, in shape of grapes: Recd: Apr. 30, 1991. Est. value: $500. Delivered to GSA Dec. 11, 1991.	Yukihiko Ikedo, Minister of State for Defense, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense and Mrs. Cheney.	Small black iron pot with three (3) legs, approx. 8½" tall; and double strand of coral beads, approx. 18" long, in blue velour case: Recd: May 7, 1991. Est. value: $315. Reported to GSA Sept. 16, 1991; pending transfer to GSA.	General Chen Hsing-Ling, Chief of General Staff, Republic of China, and Mrs. Chen Hsing-Ling.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Silver dagger with silver and red velvet case; and silver-plated tea/coffee server set with tray and incense burner: Recd: May 7, 1991. Est. value: $550. Approved for official display.	Khalifa bin Hamad Al Thani, Amir of the State of Qatar.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense and Mrs. Cheney.	Double strand of pearls with gold clasp; Men's 18K gold Rolex watch, Oyster Perpetual, President model, in brown leather case, with leather-covered memo pad; and 22 K gold dagger with gold case: Recd: May 8, 1991. Est. value: $15,600. Pearls and watch were delivered to GSA Dec. 11, 1991; dagger was approved for official display.	Isa bin Salman Al Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	22K gold bracelet with alternate links of cartouches and scarabs: Recd: June 1, 1991. Est. value: $500. Delivered to GSA Dec. 11, 1991.	Arab Republic of Egypt	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	18K gold link bracelet with Egyptian symbols: Recd: June 2, 1991. Est. value: $1200. Stored in vault pending transfer to GSA.	Mrs. Wagida Tantawi, wife of Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ms. Liz Cheney, daughter of the Secretary of Defense.	18K gold necklace with beetle pendant: Recd: June 2, 1991. Est. value: $250. Stored in vault pending transfer to GSA.	Mrs. Wagida Tantawi, wife of Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ms. Mary Cheney, daughter of the Secretary of Defense.	18K gold necklace with Cleopatra pendant: Recd: June 2, 1991. Est. value: $250. Stored in vault pending transfer to GSA.	Mrs. Wagida Tantawi, wife of Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	18K gold cuff links and key chain set with cartouche design: Recd: June 3, 1991. Est. value: $500. Stored in vault pending transfer to GSA.	General Mohamed Hussein Tantawi, Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Partial shell of the one of the bombs used in Desert storm, painted with Egyptian symbols and signs; Recd: June 3, 1991. Est. value: Indeterminable. Stored in vault pending transfer to GSA.	General Mohamed Hussein Tantawi, Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Steel sword with bone/steel handle, gold tassel and strap, in burgundy case: Recd: June 12, 1991. Est. value: $300. Approved for official display.	Lubos Dobrovsky, Minister of Defense, Czechoslovakia (CSFR).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Bohemian glass vase and platter: Recd: June 12, 1991. Est. value: $150. Approved for official display.	Lubos Dobrovsky, Minister of Defense, Czechoslovakia (CSFR).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Garnet and gold necklace and earrings set: Recd: June 12, 1991. Est. value: $80. Stored in vault pending transfer to GSA.	Mrs. Dobrovsky, wife of the Minister of Defense, Czechoslovakia (CSFR).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Antique musket in long wooden case: Recd: June 13, 1991. Est. value: $560. Stored in vault pending transfer to GSA.	Zine El Abidine Ben Ali, President of the Republic of Tunisia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Tan leather attache case, embossed cowhide: Recd: June 27, 1991. Est. value: $395. Delivered to GSA December 11, 1991.	Erman Gonzales, Minister of Defense, Argentina.	Non-acceptance would have caused embarrassment to donor and U.S Government.

AGENCY—DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Dick Cheney, Secretary of Defense	Wooden table with eight (8) sides, cut-out design with brass inlay, approx. 36" diameter, with separate folding wooden stand: Recd: July 9, 1991. Est. value: $300. Approved for official display in office of Assistant Secretary of Defense (Special Operations/Low Intensity Conflict), room 2E258, Pentagon.	Mohammad Nawaz Sharif, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Silver and gold dagger in red velour case; Recd: Oct. 9, 1991. Est. value: $250. Approved for official display.	Major General Khalifa bin Ahmed Al-Khalifa, Minister of Defence and Deputy Commander-in-Chief, Bahrain Defence Force, State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Lynne V. Cheney, wife of the Secretary of Defense.	Mikimoto evening bag of gold and cream-colored fabric, with gold clasp with three (3) pearls on it, and gold-tone chain: Recd: Nov. 22, 1991. Est. value: $600. Stored in vault pending transfer to GSA.	Mrs. Yukihiko Ikeda, member of the House of Representatives, Tokyo, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense and Mrs. Cheney.	Pewter bottle set with shot glasses and tray; sterling silver bowl; and small round bronze plaque: Recd: Nov. 1991. Est. value: $410. Stored in vault pending transfer to GSA.	Elisabeth Rehn, Minister of Defense, Republic of Finland.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Dick Cheney, Secretary of Defense	Multi-colored glassware set, with eighteen (18) glasses of six (6) each of shot, wine and cocktail glasses; and six (6) glass coasters; in large red case: Recd: Dec. 11, 1991. Est. value: $350. Stored in vault pending transfer to GSA.	Vaclav Havel, President of Czechoslovakia (CSFR).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Carl W. Ford, Jr., Acting Assistant Secretary of Defense (International Security Affairs).	Men's Baume & Mercier watch, gold and stainless steel: Recd: Oct. 10, 1991. Est. value: $500. Stored in vault pending transfer to GSA.	Isa Bin Salman Al Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Admiral David E. Jeremiah, USN, Vice Chairman, Joint Chiefs of Staff.	Sterling silver box, with engraving on top and embossed design, wooden interior with three compartments, approx. 11" × 4": Recd: Sept. 25, 1991. Est. value: $350. Approved for official display.	Gen. Tan Sri Dato' Yaacob, Acting Chief of Defence Force, Malaysia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Commander James Kudla, USN, Military Assistant to the Assistant Secretary of Defense (Public Affairs).	Men's Roamer watch, gold and stainless steel, Quartz, with Roman numerals: Recd: May 9, 1991. Est. value: $225. Delivered to GSA Dec. 11, 1991.	Isa Bin Salman Al Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Rear Admiral T. Joseph Lopez, USN, Senior Military Assistant to the Secretary of Defense.	18K gold cuff links and tie tack set with pearls: Recd: May 8, 1991. Est. value: $295. Delivered to GSA Dec. 11, 1991.	Yukihiko Ikeda, Minister of State for Defense, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Alma J. Powell, wife of General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Sterling silver framed mirror, with embossed design and chain for hanging, oval-shaped, approx. 12" long, in black velour box: Recd: May 30, 1991. Est. value: $300. Delivered to GSA Dec. 11, 1991.	Turgut Ozal, President, Republic of Turkey, with the compliments of his wife, Mrs. Semra Ozal.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Colin L. Powell Chairman, Joint Chiefs of Staff.	Painting, "What Doesn't Change/Is The Will To Change," by noted Australian artist, Mr. Tim Storrier: Was accepted on behalf of the Men and Women of the Armed Forces, Sept. 11, 1991. Approved for official display in the Chairman's office.	Rear Admiral A. M. Carwardine, Head Australian Defence Staff, Embassy of Australia, on behalf of General Gration, Chief of the Australian Defence Force, Australia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Model of a Turtle Ship in a glass case with presentation plaque, approx. 7" long, case is approx. 11"×9½"×7" Recd: Nov. 22, 1991. Est. value: $250. Stored in vault pending transfer to GSA.	Lee Jong Koo, Minister of National Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Glenn A. Rudd, Deputy Director, Defense Security Assistance Agency, and Mrs. Rudd.	Large blue Oriental vase, with wooden stand, approx. 10" tall; and tablecloth and napkins (12) set: Recd: May 7, 1991. Est. value: $345. Stored in value pending transfer to GSA.	General Chen Hsing-Ling, Chief of the General Staff, Ministry of National Defense, Republic of China, and Mrs. Chen Hsing-Ling.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY—DEPARTMENT OF DEFENSE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Sterling silver dagger in large red case: Recd: Oct. 9, 1991. Est. value: $250. Delivered to GSA Dec. 11, 1991.	Major General Khalifa Bin Ahmed Al-Khalifa, Minister of Defence and Deputy Commander-in-Chief, Bahrain Defence Force, State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Alma J. Powell, wife of General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Gold bracelet with links of scarabs: Recd: Oct. 31, 1991. Est. value: $300. Delivered to GSA Dec. 11, 1991.	Mrs. Tantawi, wife of General Mohamed Hussein Tantawi, Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Colin L. Powell, Chairman, Joint Chiefs of Staff.	Statue of a Samurai Warrior on a horse, heavy metal with presentation plaque on metal stand, approx. 13½" tall, 9½" long: Recd: Nov. 18, 1991. Est. value: $400. Approved for official display.	Admiral Makoto Sakuma, Chairman, Joint Staff Council, Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Frederick C. Smith, Acting Deputy Assistant Secretary of Defense for Near East and South Asian Affairs, and Mrs. Smith.	Men's Baume & Mercier watch, gold and stainless steel; and single strand pearl necklace with graduated pearls and sterling silver clasp: Recd: Oct. 11, 1991. Est. value: $1000. Stored in vault pending transfer to GSA.	Shaikh Khalifa bin Ahmad al-Khalifa, Minister of Defence, and Deputy Commander-in-Chief, Bahrain Defence Force, State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Frederick C. Smith, Acting Deputy Assistant Secretary of Defense for Near East and South Asian Affairs.	Men's Baume & Mercier watch, gold and stainless steel: Recd: Oct. 18, 1991. Est. value: $500. Stored in vault pending transfer to GSA..	Isa bin Salman al-Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Pete Williams, Assistant Secretary of Defense for Public Affairs.	Small silver box, engraved with Egyptian figures, lined with blue velour, approx. 7"×4": Recd: June 3, 1991. Est. value: $225. Reported to GSA July 15, 1991; pending transfer to GSA.	General Mohamed Hussein Tantawi, Minister of Defense, Arab Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul Wolfowitz, Under Secretary of Defense for Policy.	Silver model of a Korean turtle boat in a glass display case: Recd: May 11, 1991. Est. value: $262. Stored in vault pending transfer to GSA..	Lee Jong Koo, Minister of National Defense, Republic of Korea.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Paul Wolfowitz, Under Secretary of Defense for Policy.	Men's Baume Mercier watch, gold, and stainless steel: Recd: Oct. 17, 1991. Est. value: $550. Stored in vault pending transfer to GSA.	Isa bin Salman Al Khalifa, the Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF HEALTH AND HUMAN SERVICES

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. Louis W. Sullivan, wife of the Secretary of Health and Human Services.	Gold necklace and bracelet. Recd—January 7, 1991. Est. value—$2,000. Returned to donor through Embassy of Cote d'Ivoire, Washington.	Felix Houphouet-Boigny, President of the Cote d'Ivoire.	Gift delivered following meeting with the President. Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Leah G. Levy, Office of the Secretary.....	Two, Indian paintings depicting methologic events. Recd: September 25, 1991. Estb Value: $250.00. Approved for Official use.	Mr. Murli S. Deora, Member of Indian Parliament.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: DEPARTMENT OF JUSTICE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
William P. Barr, Attorney General	Gold and silver cufflinks. Recd—August 4, 1991. Est. Value—$225. Pending disposition to GSA.	Ignacio Morales, Attorney General, Mexico.	Non-acceptance would have have caused embarrassment to donor and U.S. Government.
William P. Barr, Attorney General	Mexican print. Recd—August 4, 1991. Est. Value—$300. Pending disposition to GSA.	Ignacio Morales, Attorney General, Mexico.	Non-acceptance would have have caused embarrassment to donor and U.S. Government.
William B. Sessions, Director, Federal Bureau of Investigation.	Pistol, bolt action. Recd—June 19, 1991. Est. Value—$400. Approved for official use.	Dr. Romeu Tuma, Sr., Director General of Federal Police, Brasilia, Brazil.	Non-acceptance would have have caused embarrassment to donor and U.S. Government.
George J. Terwilliger, III, Principal Associate Deputy Attorney General.	Mexican print. Recd—August 4, 1991. Est. Value—$300. Pending disposition to GSA.	Ignacio Morales, Attorney General, Mexico.	Non-acceptance would have have caused embarrassment to donor and U.S. Government.
Richard Thornburgh, Former Attorney General.	Gucci briefcase. Recd—February 5, 1991. Est. Value—$835. Pending disposition to GSA.	Hon. Vincenzo Scotti, Interior Minister, Rome, Italy.	Christmas present sent after attendance at the Dec. 1990 meeting.

AGENCY: DEPARTMENT OF THE NAVY

Report of Tangible Gifts

Name and title of person accepting gifts on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Colonel Robert R. Blackman, Jr., Executive Officer, U.S. Central Command.	Rolex Oyster Perpetual Watch. Recd—October 1, 1991. Est. Value—$1,860. Being retained at Headquarters, U.S. Central Command.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Honorable H. Lawrence Garrett, III, Secretary of the Navy.	Oriental Rug 6'4"×4'4". Recd—December 1991. Est. Value—$200. Being held in Office of the Secretary of the Navy pending transfer to GSA for disposition.	General Mohammed H. Tantawi, Minister of Defense, Republic of Egypt.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Rolex Oyster Perpetual Watch. Recd—October 1, 1991. Est. Value—$9,995. Being retained at Headquarters, U.S. Central Command.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Ceremonial Sword with Scabbard. Recd—September 26, 1991. Est. Value—$375. Being retained at Headquarters, U.S. Central Command.	Brigadier General Mohammed Bin Abdullah Al-Attiya, Deputy Commander in Chief, Qatari Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
General Joseph P. Hoar, USMC, Commander in Chief, U.S. Central Command.	Rolex Oyster Perpetual Watch. Recd—October 1, 1991. Est. Value—$7,250. Being retained at Headquarters, U.S. Central Command.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
J. Daniel Howard, Under Secretary of the Navy.	Sterling Silver Bedwin Teapot. Recd—May 7, 1990. Est. Value—$1,500. Being held in Office of the General Counsel pending transfer to GSA for disposition.	His Highness Sayyid Faisal, Minister of National Heritage and Culture, Oman.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain Frederick E. Ludwig, II, USNR, Officer in Charge, Host Nation Detachment, Salmaniya Hospital, Bahrain.	Rolex Oyster Perpetual Watch. Recd—April 22, 1991. Est. Value—$4,350. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Isa Bin Salman Al Khalifa, the Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Captain R.C. Williamson, USN, Commanding Officer, USS NIMITZ (CVN 68).	AK-47 gun in brown case. Recd—April 20; 1991. Est. Value—$750. Being held in Chief of Naval Operations (OP-09B33) pending transfer to GSA for disposition.	Air Vice Marshall Ian D. Mac Fadyen, Commander, British Forces Middle East.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY—DEPARTMENT OF STATE

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker III, Secretary of State	(1) Danish Royal Ginger Jar; (2) Blue Leather Picture Frame. Recd: February 20, 1991. Est. value: $465. In Office of Protocol pending transfer to GSA.	Queen Margrethe II & Prince Henrik, Queen & Prince, Denmark.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Piaget four-time zone watch. Recd: March 10, 1991. Est. value: $1,000. In Office of Protocol pending transfer to GSA.	King Fahd, King, Saudi Arabia	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Book: The Prophet (in wood case). Recd: April 8, 1991. Est. value: $300. In Office of Protocol pending transfer to GSA.	Ilyas Harawi, President, Lebanon	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Rug with blue, maroon, yellow, and green design. Recd: April 8, 1991. Est. value: $350. In Office of Protocol pending transfer to GSA.	Sahabettin Harput, Governor: Hakkari Province, Turkey.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	(1) Book: Muzeul National de Arta al Romaniei; (2) Frosted glass vase with green and brown leaves. Recd: April 18, 1991. Est. value: $235. In Office of Protocol pending transfer to GSA.	Petre Roman, Prime Minister, Romania	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Painting by Luis Alvarado entitled "Granada Colonial". Recd: April 17, 1991. Est. value: $300. In Office of Protocol pending transfer to GSA.	Violeta Chamarro, President, Nicaragua	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Large knife in matching sheath with leather strap in large wooden box. Recd: April 24, 1991. Est. value: $275. In Office of Protocol pending transfer to GSA.	Hassan Gouled Aptidon, President, Djibouti.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Large ornate mirror. Recd: June 5, 1991. Est. value: $400. In Office of Protocol pending transfer to GSA.	Anerood Jugnauth, Prime Minister, Mauritius.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	(1) Large framed black & white lithograph of "Haendel"; (2) Silver box with wooden insert. Recd: June 18, 1991 Est. value: $725. In Office of Protocol pending transfer to GSA.	Mr. and Mrs. Hans-Dietrich Genscher, Foreign Minister, Federal Republic of Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Silver statue of Scanderbeg sitting on a horse; mounted on wood with plaque. Recd: June 21, 1991. Est. value: $225. In Office of Protocol pending transfer to GSA.	Mr. & Mrs. Muhamet Ismail Kapllani, Foreign Minister, Albania.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Puchong ware vase in refined style of Koryo Kingdom: Birds/flowers signed by Pres. Roh. Recd: July 2, 1991. Est. value: $275. In Office of Protocol pending transfer to GSA.	Roh Tae Woo, President, Republic of Korea.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Large ornate wooden screen with inlays. Recd: July 1, 1991. Est. value: $600. In Office of Protocol pending transfer to GSA.	Mohamm Nawaz Sharif, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Sterling silver Elizabethan alms dish. Recd: July 15, 1991. Est. value: $220. In Office of Protocol pending transfer to GSA.	John Major, Prime Minister, United Kingdom.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	(1) Canon Sure Zoom Camera; (2) Framed commemorative mirror with applied Malaysian kite. Recd: July 23, 1991. Est. value: $270. In Office of Protocol pending transfer to GSA.	Abdullah Bin Haji Ahmad Badawi, Foreign Minister, Malaysia.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Laquer box w/scene of St. Basil's Cathedral. Recd: July 31, 1991. Est. value: $550. Transferred to GSA.	Mikhail Gorbachev, President, USSR	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Silver Dove of Peace mounted on marble base. Recd: August 4, 1991. Est. value: $275. In Office of Protocol pending transfer to GSA.	Zine El Abidine Ben Ali, President, Tunisia.	Non-acceptance would have caused embarrassment to donor & U.S. Government

AGENCY—DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
James A. Baker III, Secretary of State	(1) Large piece of Amber mounted on piece of wood. In Office of Protocol pending transfer to GSA. Est. value: $400.. (2) Lithuanian Flag. Retained. Est. value: $40. Recd: September 14, 1991.	Vytautas Landsbergis, President, Lithuania.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Traditional Kazakh robe of blue velvet with gold embroidery matching velvet hat trimmed with fur. Recd: September 15, 1991. Est. value: $300. In Office of Protocol pending transfer to GSA.	Nursultan Nazarbayev, President, Kazakhstan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	(1) Crane Ena Graphite Driver. In Office of Protocol pending transfer to GSA. Est. value: $350. (2) Int-Est Graphite Iron. Retained. Est. value: $165. Recd: November 12, 1991.	Taro Nakayama, Member of the Diet, Japan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Gold & Amethyst cufflinks and tie clasp. Recd: November 13, 1991. Est. value: $250. In Office of Protocol pending transfer to GSA.	Lee San Ock, Foreign Minister, Korea	Non-acceptance would have caused embarrassment to donor & U.S. Government
James A. Baker III, Secretary of State	Large oil painting. Recd: December 15, 1991. Est. value: $225. In Office of Protocol pending transfer to GSA.	Eduard Shevardnadze, Foreign Minister, USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Black leather briefcase; (2) 3 lengths of silk: red/black, blue/white, white/yellow/pink floral; (3) Gold jewelry set: bangle bracelet, earrings, necklace. Recd: March 9, 1991. Est. value: $650. In Office of Protocol pending transfer to GSA.	Jaber Al Ahmed Al Sabah, Amir, Kuwait.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Wooden box w/mother of pearl and wood inlay; (2) Swath of silk with gold thread and vibrant colors. Recd: March 13, 1991. Est. value: $250. In Office of Protocol pending transfer to GSA.	Amal Shara, wife, Foreign Minister, Syria.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	Landscape oil painting w/gold frame. Recd: March 15, 1991. Est. value: $250. In Office of Protocol pending transfer to GSA.	Marina Bessmertnykh, wife, Foreign Minister, USSR.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	Jewelry box made of hand painted horn decorated w/flowers and birds. Recd: July 2, 1991. Est. value: $300. In Office of Protocol pending transfer to GSA.	Kim Ock Sook, wife, President, Korea	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Hand-woven wool rug; green/blue/purple w/fringe; (2) 5 pillow covers in assorted shapes in green/blue/purple. Recd: July 21, 1991. Est. value: $550. In Office of Protocol pending transfer to GSA.	Queen Noor, wife, King, Jordan	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Basket of flowers w/stones pin; (2) Large, square silk scarf; (3) 4 yards of floral silk. Recd: July 23, 1991. Est. value: $395. In Office of Protocol pending transfer to GSA.	Endon Datin, wife, Foreign Minister, Malaysia.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	(1) Long maroon vest with gold trim. Retained; (2) Maroon velvet hat with fur trim. In Office of Protocol pending transfer to GSA; (3) Framed painting of vase with flowers. In Office of Protocol pending transfer to GSA. Recd: September 15, 1991. Est. value: $350.	Sara Nazarbayeva, wife, President, Kazakhstan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	Gold and pearl brooch. Recd: November 12, 1991. Est. value: $225. In Office of Protocol pending transfer to GSA.	Hanako Nakayama, wife, Foreign Minister, Japan.	Non-acceptance would have caused embarrassment to donor & U.S. Government
Mrs. James A. Baker III, wife of Secretary of State.	Covered silver dish w/horse drawn chariot from tetradrachm coin of Acragas on lid. Recd: December 12, 1991. Est. value: $220. In Office of Protocol pending transfer to GSA.	Constantinos Mitsotakis, Prime Minister, Greece.	Non-acceptance would have caused embarrassment to donor & U.S. Government

AGENCY—DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Mrs. James A. Baker III, wife of Secretary of State.	(1) White linen tablecloth with 6 napkins; (2) Embroidered cat on screen, on wooden stand. Recd: November 16, 1991. Est. value: $210. In Office of Protocol pending transfer to GSA.	Wu Yi, Vice Minister, Foreign Economic Relations & Trade, China.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Angeline Biegler, Economic Officer, Muscat, Oman.	Silver coffee pot. Recd: August 1991. Est. value: $494. Approved for official use.	Khamis Kiyumi, Ministry of Commerce & Industry, Oman.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard A. Clarke, Assistant Secretary of State, Bureau of Politico-Military Affairs.	Silver incense burner. Recd: December 18, 1991. Est. value: $650 Approved for official use.	Commander, Royal Air Force, Oman	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard A. Clarke, Assistant Secretary of State, Bureau of Politico-Military Affairs.	Sterling silver tea pot. Recd: June 18, 1991. Est. value: $200+. Approved for official use.	Khalifa bin Hamad Al Thani, Amir, Qatar.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard A. Clarke, Assistant Secretary of State, Bureau of Politico-Military Affairs.	Jade ram. Recd: August 14, 1991. Est. value: $250. In Office of Protocol pending transfer to GSA.	Chen Hsing-Ling, Defense Minister, China.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Christine B. Crocker, wife of Ambassador to Lebanon.	Gold ring with pearl. Recd: August 10, 1991. Est. value: $250. Transferred to GSA.	Mrs. Hraoui, wife of the President, Lebanon.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Charles Dunbar, Ambassador, Yemen	Folkloric handicrafts. Recd: 1991. Est. value: $200+. Approved for official use.	Ali Abdullah Saleh, President, Yemen	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lawrence Eagleburger, Deputy Secretary of State.	1) Man's Chopard watch with matching cufflinks;. 2) Lady's Chopard watch. Recd: October 15, 1991. Est. value: $4,000. In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Charles W. Hostler, Ambassador Bahrain.	Universal. Tredex—large black motorized treadmill exerciser. Recd: May 13, 1991. Est. value: $7,800. Approved for official use.	Shaikh Khalifa bin Sulman Al-Khalifa, Prime Minister, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Arnold Kanter, Under Secretary of State for Political Affairs.	Baume & Mercier "Riviera" men's wrist watch. Recd: October 18, 1991. Est. value: $2,900. In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Robert M. Kimmitt, Under Secretary of State for Political Affairs.	Large wooden chest measuring 17.75×24×14 with in-laid brass designs and handles. Recd: July 1, 1991. Est. value: $225. In Office of Protocol pending transfer to GSA.	Mohammed Nawaz Sharif, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
David Lamberton, Ambassador, Thailand.	Longines wrist watch. Recd: November 14, 1991. Est. value: $800. In Office of Protocol pending transfer to GSA.	Charoen Pokphand Group, Thailand	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard T. McCormack, Under Secretary of State for Economic and Agricultural Affairs.	Brass clock commemorating the French Bicentennial. Recd: July 1989. Est. Value: $400. In Office of Protocol pending transfer to GSA.	Government of France	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Richard McKee, Director, NEA/ARP	Baume & Mercier wrist watch. Recd: October 19, 1991. Est. value: $2,000. In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Sinclair S. Martel, Deputy Assistant Secretary, Bureau of Politico-Military Affairs.	Watch. Recd: May 9, 1991. Est. value: $300 in Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Thomas J. Miller, Director NEA/AFN	Moroccan Rug (7'×10'). Recd: November 7, 1991. Est. value: $200+. Approved for official use.	Abdeslam Jaidi, Ambassador, Morocco	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Phyllis E. Oakley, wife of the Ambassador to Pakistan.	Pendant with small cut stones on gold chain. Recd: May 23, 1991. Est. value: $450. In Office of Protocol pending transfer to GSA.	Mrs. Nawaz Sharif, wife of Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Phyllis E. Oakley, wife of the Ambassador to Pakistan.	Gold bracelet with enameled filagree. Recd: May 23, 1991. Est. Value: $565. In Office of Protocol pending transfer to GSA.	Mrs. Shabaz Sharif, wife of brother of Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY—DEPARTMENT OF STATE—Continued

[Report of Tangible Gifts]

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ambassador Joseph Verner Reed, Chief of Protocol.	3'x5' silk carpet in beige and rose tones. Recd: June 6, 1989. Est. value: $800. Approved for official use.	Benazir Bhutto, Prime Minister, Pakistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ambassador Joseph Verner Reed, Chief of Protocol.	Leopard skin rug. Recd: January 17, 1990. Est. value: $200+. In office of Protocol pending transfer to GSA.	Moumouni Adamou Djermakoye, Ambassador, Niger.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Nancy C. Rolph, Special Agent, DS	Gold and diamond broach in design of a winged insect. Recd: November 1991. Est. value: $6,000. In Office of Protocol pending transfer to GSA.	Queen Sirikit, Queen, Thailand	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Michael M. Skol, Ambassador to Venezuela.	Iron sculpture entitled "Designio" by J.J. Moros Manzo. Recd: May 16, 1991. Est. value: $500. Approved for official use.	Carlos Tablante, Governor, State of Aragua, Venezuela.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Steven Slatin, Consular Officer, Rangoon, Burma.	Mounted set of Asiatic wild buffalo horns. Recd: August, 1991. Est. value: $200+. Approved for official use.	Government Official, Burma	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Joseph Stafford, Deputy Director NEA/AFN.	Moroccan Rug (240cm x 170cm). Recd: November 7, 1991. Est. value: $200+. Approved for official use.	Abdeslam Jaidi, Ambassador, Morocco	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Patrick N. Theros, Political Advisor, U.S. CENTCOM.	Rolex Watch. Recd: September 1991. Est. value: $3,000. In Office of Protocol pending transfer to GSA.	Isa Bin Salman Al Khalifa, Amir, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Vernon A. Walters, Ambassador, Germany.	Brass ship's compass set into a wooden box. Recd: October 11, 1990, Est. value: $812. Approved for official use.	Klaus Wedemeir, Lord Mayor, Bremen, Germany.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Edwin D. Williamson, Legal Adviser	Iranian carpet. Recd: July 30, 1991. Est. value: $200+. Approved for official use.	Dr. Goudarz Eftekhar, Presidential Legal Adviser, Iran.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

AGENCY: DEPARTMENT OF STATE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Edmund De Jarnette, Ambassador: Tanzania.	Recd—November 10, 1991. Est. Value—$235. Expended for airfare and hotel.	People's Defense Force; Tanzania	Guest speaker at Defense Force Academy in Arusha.
Roger McGuire, Consul, Porto Alegre, Brazil.	Recd—December 3, 1991. Est. Value—$857.14. Expended for airfare and hotel.	State of Santa Catarina; Brazil	Attend State's legislative assembly.
Richard and Margaret Melton, Ambassador and Mrs.: Brazil.	Recd—December 3, 1991. Est. Value—$242.80. Expended for airfare and hotel.	State of Santa Catarina; Brazil	Attend and speak at State's legislative assembly.
Richard Schifter, Assistant Secretary of State.	Recd—May 15, 1991. Est. Value—$1,200. Expended for hotel and car transportation.	Regional Assembly of Sicily; Italy	Attendance at European Commission of Democracy through Law.
Thomas Shannon, Special Assistant, Brasilia.	Recd—December 3, 1991. Est. Value—$364.20. Expended for airfare and hotel.	State of Santa Catarina; Brazil	Attend State's legislative assembly.

AGENCY: DEPARTMENT OF THE TREASURY

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Hollis McLoughlin, Assistant Secretary, Policy Management.	Gold coin cuff links. Recd: April 20, 1991. Est. value: $250. Pending approval for official use.	Saudi Arabian Government, Saudi Arabia.	Non-acceptance embarrasses donor and U.S. Government.
Joseph Eichenberger, International Economist.	Gold coin cuff links. Recd: April 20, 1991. Est. value: $250. Pending approval for official use.	Saudi Arabian Government, Saudi Arabia.	Non-acceptance embarrasses donor and U.S. Government.
David Mulford, Under Secretary, International Affairs.	Gold coin cuff links. Recd: April 20, 1991. Est. value: $250. Pending approval for official use.	Saudi Arabian Government, Saudi Arabia.	Non-acceptance embarrasses donor and U.S. Government.
Meredith Oliver, Deputy Assistant Secretary, Policy Management.	Gold coin cuff links. Recd: April 20, 1991. Est. value: $250. Pending approval for official use.	Saudi Arabian Government, Saudi Arabia.	Non-acceptance embarrasses donor and U.S. Government.
Nicholas Brady, Secretary	Framed 1696 North America map. Recd: July 17, 1991. Est. value: $1,670. Pending approval for official use.	Jacques Attalli, President, European Bank for Reconstruction and Development, London, United Kingdom.	Non-acceptance embarrasses donor and U.S. Government.
Nicholas Brady, Secretary	Russian hanging carpet. Recd: September 19, 1991. Est. value: $1,200. Retained by Treasury for official Treasury use.	Konstantin Borovoy, CEO, JT. Stock Society, Russian, Moscow, U.S.S.R.	Non-acceptance embarrasses donor and U.S. Government.
Nicholas Brady, Secretary	Woolen wall hanging. Recd: September 30, 1991. Est. value: $2,200. Pending Approval for official use.	Famara Ibrahima Sagna, Minister of Finance, Senegal.	Non-acceptance embarrasses donor and U.S. Government.

AGENCY: GENERAL ACCOUNTING OFFICE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Charles Bowsher, Comptroller General of the United States.	Silver/silver-plated set of 2 gamecocks and a mirror, Recd—October 9, 1991. Est. Value—$225. Currently at GAO's Office of Property Management pending transfer to GSA.	Dr. Luz Arna Saenz, the Auditor General of Peru.	Non-acceptance would have caused embarrassment to donor & U.S. Government

AGENCY: GENERAL ACCOUNTING OFFICE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Harry S. Havens, Assistant Comptroller General.	Recd: September 28, 1991. Est. value: $1,487. Expended for airfare, hotel and meals.	Supreme Soviet of the Russian Federation, Russia.	To provide technical assistance on government financial management and the establishment of a democratic, federal form of government and a market based economy.
Allan I. Mendelowitz, Group Director	Recd: December 1, 1991. Est. value: $375. Expended for hotel.	Annual Federal and State Comptroller Conference of the Government of Mexico, Mexico.	Guest speaker at conference.
J. Dexter Peach, Assistant Comptroller General; Victor Rezendes, Group Director; Duane Fitzgerald, Assistant Group Director.	Recd: May 17, 1991. Est. value: $789 total for three GAO staff. Expended for airfare and hotel.	Cogema (a private industrial group owned by the French Atomic Energy Commission of the French Government), France.	Guest observers of French handling of spent nuclear fuel reprocessing and preparation of high-level radioactive waste for final disposal.
Lawrence H. Thompson, Assistant Comptroller General.	Recd: April 9, 1991. Est. value: $255. Expended for hotel and meals.	The Federal Ministry of Labour and Social Affairs of Czechoslovakia, Czechoslovakia.	Guest speaker for conference on complementary pensions schemes.

AGENCY: THE LIBRARY OF CONGRESS

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Gillian Anderson, music specialist	Two round-trip airline tickets, Paris, France, to Venice, Italy, to Paris, France on Air France—October 1991: $347 each.	Cine-Memoire, Paris, France; Pordenone Silent Film Festival, Pordenone, Italy.	Ms. Anderson was on annual leave. She was hired through the Colonial Singers and Players, a non-profit tax-exempt American corporation, to conduct the original orchestrations for the silent films, Wings (1927) and Carmen (1915, DeMille). She received no fee: she was reimbursed for her expenses only.

AGENCY: NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
John-David Bartoe, Deputy Director, Space Station Operations and Utilization.	Recd: April 6, 1991. Est. value: $1,060. Expended for airfare, hotel and meals.	Association of Space Explorers, U.S.S.R.	Attend the 30th Anniversary Celebration of Yuri Gagarin's First Flight.
Donna Bartoe, Law Clerk	Recd: April 8, 1991. Est. value: $1,060. Expended for airfare, hotel and meals.	Association of Space Explorers, U.S.S.R.	Attend the 30th Anniversary Celebration of Yuri Gagarin's First Flight.

AGENCY: NATIONAL COUNCIL ON DISABILITY

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Ethel D. Briggs, Executive Director	Recd: July 12, 1991. Est. value: $2,500. Expended for hotel and some meals.	China; Disabled Persons Federation	To review disability programs in China and make recommendations to the Federation.
Sandra S. Parrino, Chairperson	Recd: July 12, 1991. Est. value: $2,500. Expended for hotel and some meals.	China; Disabled Persons Federation	To review disability programs in China and make recommendations to the Federation

AGENCY: NATIONAL SPACE COUNCIL

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Simon P. Worden, Director for Advanced Concepts, Science, and Technology (outgoing).	Recd: August 22, 1991. Est. value: $237.00. Expended for accommodations.	"Ettore Majorana", International Centre For Scientific Culture, Office of the President, Italy.	To attend international seminar on Satellite Monitoring of the Global Environment.
Steven D. Harrison, Director for Advanced Concepts, Science, and Technology (incoming).	Recd: August 22, 1991. Est. value: $237.00. Expended for accommodations.	"Ettore Majorana", International Centre For Scientific Culture, Office of the President, Italy.	To attend international seminar on Satellite Monitoring of the Global Environment.

AGENCY: UNITED STATES POSTAL SERVICE

Report of Travel or Expenses of Travel

Name and title of person accepting travel or travel expenses consistent with the interests of the U.S. Government	Brief description and estimated value of travel or travel expenses accepted as consistent with the interests of the U.S. Government and occurring outside the United States	Identity of foreign donor and government	Circumstances justifying acceptance
Anthony Frank, Postmaster General	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $600. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Edward Horgan, Associate Postmaster General.	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $600. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Thomas Leavey, Assistant Postmaster General International Postal Affairs.	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $600. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Joseph Caraveo, Regional Postmaster General, Western Region.	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $600. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
William P. Harris, Sen. Int'l Agreements and Studies Specialist.	Engraved sterling silver tray. Recd: January 10, 1991. Est. value: $250. Approved for official use.	Gonzalo Alarcon Osorio, Director General, Mexican Postal Service.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

AGENCY: EXECUTIVE OFFICE OF THE PRESIDENT, UNITED STATES TRADE REPRESENTATIVE

Report of Tangible Gifts

Name and title of person accepting gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ambassador Carla A. Hills, U.S. Trade Representative.	Baccarat Crystal Vase, 10 inches high. Recd: April 29, 1991. Est. value: $450. On display in USTR's outer office.	Given by Jean-Marie Rausch, French Trade Minister.	Presented at the end of a meeting in Washington, DC. to discuss trade issues between the countries; accepted to avoid cultural misunderstanding

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Wednesday
August 19, 1992

Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

NOFA for Fair Housing Initiatives Program; Special Competitive Solicitation; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket Nos. N-92-3480; FR-3296-N-01]

NOFA for Fair Housing Initiatives Program; Special Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Funding Availability (NOFA) for FY 1992.

SUMMARY: This NOFA announces the availability of $300,000 to fund activities related to the case of *Young* v. *Kemp* (Civil Action No. P–80–8–CA, U.S.D.C., E.D. Tex.) in the 36 East Texas counties involved in this class action suit. Of this amount, $200,000 is made available from the Fair Housing Initiatives Program (FHIP). An additional $100,000 reserved from the Housing Counseling Program is also made available through this notice for activities related to *Young* v. *Kemp*. In the body of this document is information concerning the purpose of the NOFA eligibility for funding, available amounts, selection criteria and application processing.

DATES: No applications will be accepted after 4 p.m. on September 18, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

ADDRESSES: To obtain a copy of the application kit, please write to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, or call on telephone number (202) 708–3214.

FOR FURTHER INFORMATION CONTACT: Marcella Brown, Director, Funded Programs Division, Office of the Assistant Secretary for Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–2000. Telephone number (202) 708–3214. This number also has TDD capabilities. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

Application requirements associated with this program have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3054(h)), and assigned OMB control number 2529–0033.

I. Purpose and Substantive Description

(a) Authority

Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. 3601–19 (The Fair Housing Act), charges the Secretary of Housing and Urban Development with responsibility to accept and investigate complaints alleging discrimination based on race, color, religion, sex, handicap, familial status or national origin in the sale, rental, or financing of most housing. In addition, the Fair Housing Act directs the Secretary to coordinate with State and local agencies administering fair housing laws and to cooperate with and render technical assistance to public or private entities carrying out programs to prevent and eliminate discriminatory housing practices.

Section 561 of the Housing and Community Development Act of 1987, 42 U.S.C. 3616 note, established the Fair Housing Initiatives Program (FHIP) to strengthen the Department's enforcement of the Fair Housing Act and to further fair housing. This program assists projects and activities designed to enhance compliance with the Fair Housing Act and substantially equivalent State and local fair housing laws. Implementing regulations are found at 24 CFR part 125.

The FHIP has three funding categories: the Administrative Enforcement Initiative, the Education and Outreach Initiative, and the Private Enforcement Initiative. This Notice announces the availability of funding under the Education and Outreach Initiative.

Funds are also available under this NOFA from the appropriation for the Housing Counseling Program. The Housing Counseling Program, established in accordance with section 106 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701x, funds housing counseling for homebuyers, homeowners, and tenants under HUD programs.

(b) Allocation Amounts

A total of $300,000, of which $200,000 is from the fund for regional, State, or local projects under the Education and Outreach Initiative of FHIP ($100,000 carried over from FY 1991 funds and $100,000 of FY 1992 funds), and $100,000 is funded from the Housing Counseling Program, is reserved in FY 1992 for activities related to the case of *Young* v. *Kemp* (Civil Action No. P–80–8–CA, U.S.D.C., E.D. Tex). HUD retains the right to shift funds to other eligible Education and Outreach activities if an insufficient number of acceptable applications for this activity is received.

(c) Eligibility

(1) *Eligible activities.* The $300,000, to be awarded on the basis of FHIP criteria, is to be used to further fair housing in the 36 East Texas counties included in the *Young* v. *Kemp* class action through:

(i) Providing counseling as to fair housing opportunities to the actual and potential consumers of this housing; and

(ii) Encouraging and assisting the development of desegregated housing opportunities.

(2) *Eligible applicants.* The following types of organizations, which do not have to be from the area where the activities will be conducted, are eligible to receive funding:

(i) State or local governments;

(ii) Public or private non-profit organizations or institutions and other public or private entities that are formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(iii) Fair Housing Assistance Program (FHAP) Agencies—State and local agencies funded by the Fair Housing Assistance Program (FHAP); and,

(iv) Community Housing Resource Boards (CHRBs).

(d) Selection Criteria/Ranking Factors

(1) General Selection Criteria for Ranking Applications for Assistance.

All projects proposed in applications will be ranked on the basis of the following criteria for selection:

(i) The anticipated impact of the project proposed on the concerns identified in the application (25 points);

(ii) The extent to which the applicant's professional and organizational experience will further the achievement of project goals (25 points);

(iii) The extent to which the project will provide benefits in support of fair housing after funded activities have been completed (20 points);

(iv) The extent to which the project utilizes other public or private resources that may be available (20 points); and

(v) The extent to which the project will provide the maximum impact on the concerns identified in a cost-effective manner (15 points).

(2) Further Clarification of General Selection Criteria.

(i) In determining the anticipated impact of the proposed project, HUD will consider the degree to which a proposed project addresses problems and issues that are significant fair housing problems and issues, as explained in the application, or based upon other information available to HUD. (The clarity and thoroughness of the project description can be considered in this determination.)

(ii) In determining the extent to which the applicant's professional and organizational experience will further the achievement of the project's goals, HUD will consider the applicant's management of past and current FHIP or other grant programs, the experience and qualifications of existing personnel identified for key positions, or a description of the process and qualifications to be used for selection of key personnel, including subcontractors/consultants. This experience should include both fair housing experience and experience in implementing education, outreach or public information programs.

(iii) In determining the extent to which the project will provide benefits after funded activities have been completed, HUD will consider the degree to which the project will be of continuing use in dealing with housing discrimination after funded activities have been completed.

(iv) In determining the extent to which other public or private resources are available, HUD will consider both monetary and in-kind resources identified in the application.

(v) In determining the extent to which the project will provide the maximum impact on the concerns identified in a cost effective manner, HUD will consider the reasonableness of the proposed timetable for implementation and completion of the project, as well as the adequacy and clarity of proposed procedures to be used by the agency for monitoring progress of the project and ensuring its timely completion. The applicant must have demonstrated administrative capability so as to assure consistency with HUD procurement requirements, and have an accounting component to assure accurate reporting on the use of all funds. The applicant's capability in handling financial resources (e.g., adequate financial control procedures, accounting procedures) demonstrated through previous FHIP or other grant funding will be taken into account as part of the assessment. HUD will also consider the degree to which the applicant proposes to use funds for program costs, as opposed to administrative costs. (Applicants that have high administrative costs will receive a lower score on this factor.)

(3) Selection Process.

Each application for funding will be evaluated competitively, and awarded points based on the General Selection Criteria identified in section I.(d)(1) of this NOFA. The final decision rests with the Assistant Secretary or designee. After eligible applications are evaluated against the factors for award and assigned a score, HUD will fund in rank order.

(4) Cost Factors.

If two or more complete and eligible applications, after evaluation against the Selection Criteria, are considered equal in technical merit, the project's relative evaluated cost will become the deciding factor. Furthermore, an applicant's proposal will not be funded when costs are determined to be unrealistically low or unreasonably high.

(5) Reduction of Requested Grant Amounts and Special Conditions.

HUD may approve an application for an amount lower than the amount requested, withhold funds after approval, and/or the grantee will be required to comply with special conditions added to the grant agreement, in accordance with 24 CFR part 85.12, the requirements of this NOFA, or where:

(i) HUD determines the amount requested for one or more eligible activities is unreasonable or unnecessary;

(ii) The application does not otherwise meet applicable cost limitations established for the program;

(iii) The applicant has requested an ineligible activity;

(iv) Insufficient amounts remain in that funding round to fund the full amount requested in the application and HUD determines that partial funding is a viable option;

(v) The applicant has demonstrated an inability to manage HUD grants, particularly Fair Housing Initiatives Program grants; or

(vi) For any other reason where good cause exists.

(e) Applicant Notification and Award Procedures

(1) *Notification.* No information concerning the selection process will be available to applicants during the period of HUD evaluation, except for notification in writing to those applicants that are determined to be ineligible or that have technical deficiencies in their applications that may be corrected. Selectees will be announced by HUD upon completion of the evaluation process.

(2) *Negotiations.* The duty to use grant funds in accordance with the requirements of this NOFA will be incorporated in a grant agreement negotiated and executed by HUD and each selected applicant. After an application has been approved and accepted, HUD and the grantee (selected applicant) shall enter into a grant agreement setting forth the amount of the grant and applicable terms, conditions, financial controls, payment schedule, and special conditions, including sanctions for violation of the agreement.

(3) *Funding instrument.* HUD expects to award a cost reimbursable or fixed-price cooperative agreement to the successful applicant. HUD reserves the right, however, to use the form of assistance agreement determined to be most appropriate after negotiation with the applicant.

(4) *Performance sanctions.* A recipient failing to comply with the requirements or the procedures set forth in its application for funding will be liable for such sanctions as may be authorized by law, including repayment of improperly used funds, termination of further participation in the initiative, reduction or limitation of further funding for education and outreach activities, and denial of further participation in programs of the Department or of any Federal agency.

II. Application Process

An application kit is required as the formal submission to apply for funding. The kit includes information on the Statement of Work (SOW) and Budget for activities proposed by the applicant. An application may be obtained by writing the Fair Housing Information Clearinghouse, Post Office Box 6091, Rockville, MD 20850, or by calling the toll free number 1–800–343–3442. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

Completed applications are to be submitted to Aztec Jacobs, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Applications are due before 4 p.m. on September 18, 1992. The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid

any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

Applicants who desire confirmation of receipt of their application are encouraged to submit the application by certified mail, return receipt requested or similar delivery method. Applicants must submit all information required in the application kit and must include sufficient information to establish that the application meets the criteria set forth in section I.(d), above, of this NOFA.

III. Checklist of Application Submission Requirements

(a) General requirements. The application kit will contain a checklist of application submission requirements to complete the application process. Each application for funding under the Fair Housing Initiatives Program must contain the items set forth below:

(1) A description of the practice or practices at the community, regional or national level which have affected adversely the achievement of the goal of fair housing. This description must include a discussion and analysis of the housing practices identified, including available information and studies relating to discriminatory housing practices and their historical background, and relevant demographic data indicating the nature and extent of the impact of the described practices on persons seeking dwellings or services related to the sale, rental or financing of dwellings, in the general location where the applicant proposes to undertake activities;

(2) A description of the specific activities to be conducted with the requested funds, including the final products and any reports to be produced, the cost of each activity proposed and a schedule for completion of the activities;

(3) A description of the applicant's experience in formulating or carrying out programs to prevent or eliminate discriminatory housing practices;

(4) A statement indicating the need for Federal funding in support of the proposed project and an estimate of other public or private resources that may be available to assist the proposed activities;

(5) A description of the procedures to be used by the applicant for monitoring the progress and for assessing the result of the proposed activities;

(6) A description of the benefits that successful completion of the project will produce to enhance fair housing and the concerns identified, and the indicators by which these benefits are to be measured; and;

(7) A description of the long-term usefulness of project results.

(8) HUD Form 2880, Applicant Disclosures.

(9) The applicant must submit a certification and disclosure in accordance with the requirements of section 319 of the Department of the Interior Appropriations Act (Pub. L. 101–121, approved October 23, 1989), as implemented in HUD's interim final rule at 24 CFR part 67, published in the **Federal Register** on February 26, 1990 (55 FR 6736). This statute generally prohibits recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. If warranted, the applicant should include the Disclosure of Lobbying Activities form (SF-LLL).

(b) Additional Education and Outreach Initiative requirements.

(1) In addition to meeting the application requirements contained in section III.(a) of this NOFA, all applications for funding must describe how the activities or the final products of the projects can be used by other agencies and organizations and what modifications, if any, would be necessary for that purpose.

(2) Coordination of activities. Each non-governmental applicant for funding that is located within the jurisdiction of a State or local enforcement agency or agencies administering a fair housing law that has been certified by the Department under 24 CFR part 115 as being a substantially equivalent fair housing law must provide, with its application, evidence that it has consulted with the agency or agencies to coordinate activities to be funded under this NOFA. This coordination will ensure that the activities of one group will minimize duplication and fragmentation of activities of the other.

IV. Corrections to Deficient Applications

Applicants will not be initially disqualified from being considered for funding because of technical deficiencies in their application submission, e.g., an omission of information such as regulatory/program certifications, or incomplete signatory requirements for application submission.

HUD will notify an applicant in writing of any technical deficiencies in the application. The applicant must submit corrections within 14 calendar days from the date of HUD's letter notifying the applicant of any technical deficiency.

Applicants will not have an opportunity to submit information omitted from the Application Kit that directly relates to the evaluation factors contained in the "Factors for Award" of this NOFA so as to enhance the merits of the application.

V. Other Matters

Section 504 Requirements

Recipients will be expected to comply with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and 24 CFR part 8. Section 504 prohibits discrimination based on handicap in federally assigned programs.

Lobbying Requirements

On February 26, 1990, at 55 FR 6736, the Department joined in the issuance of a government-wide interim rule advising recipients and subrecipients of Federal contracts, grants, cooperative agreements and loans exceeding $100,000 of a new prohibition against use of appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. In general, this rule prohibits the awarding of contracts, grants, cooperative agreements, or loans unless the recipient had made an acceptable certification regarding lobbying. In addition, the recipient must file a disclosure if it has made or has agreed to make any payment with nonappropriated funds that would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

Environmental Impact

A finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20401.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families except indirectly to the extent of the social and other benefits expected from this program of assistance.

Executive Order 12612, Federalism

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the policies contained in this Notice will not have federalism implications and, thus, are not subject to review under the Order. The promotion of fair housing policies is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

Drug-Free Workplace Certification

The Drug-Free Workplace Act of 1988 requires grantees of Federal agencies to certify that they will provide drug-free workplaces. Thus, each applicant must certify that it will comply with drug-free workplace requirements in accordance with 24 CFR part 24, subpart F.

Section 102 HUD Reform Act Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosures requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule.

Authority: Section 561 of the Housing and Community Development Act of 1987 (42 U.S.C. 3616 note); Title VIII, Civil Rights Act of 1968, as amended (42 U.S.C. 3601–3619); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 13, 1992.

Leonora L. Guarrala,

Acting Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92–19673 Filed 8–18–92; 8:45 am]

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Wednesday
August 19, 1992

Part IV

Department of Education

34 CFR Parts 300 and 303
Assistance to States for Education of Handicapped Children and Early Intervention Program for Infants and Toddlers With Handicaps; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 300 and 303

RIN 1820 AA71

Assistance to States for Education of Handicapped Children and Early Intervention Program for Infants and Toddlers With Handicaps

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations at 34 CFR part 300, implementing the Assistance to States for the Education of Handicapped Children program authorized by Part B of the Individuals with Disabilities Education Act (Part B), and the regulations at 34 CFR part 303, implementing the Early Intervention Program for Infants and Toddlers with Disabilities authorized by Part H of the Individuals with Disabilities Education Act (Part H), by removing from their nonsupplanting regulations the provisions that prohibit the use of funds awarded under those programs to displace State and local funds for any "particular cost".

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact persons. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Thomas B. Irvin or JoLeta Reynolds, U.S. Department of Education, 400 Maryland Avenue, SW., rooms 3092 and 3082, Switzer Building, respectively, Washington, DC 20202–2732. Telephone: (202) 205–8825 and (202) 205–8152, respectively. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–887–8339 (in the Washington, DC, 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Part B authorizes formula grants to States, and through them to local educational agencies, to help provide special education and related services to children with disabilities. To receive these funds from the State, each local educational agency (LEA) is required to submit an application that contains specified assurances regarding use of those funds, including an assurance that the funds will be used to supplement and, to the extent practicable, increase the level of State and local funds expended for the education of children with disabilities, and in no case to supplant those State and local funds. The statutory requirement prohibiting LEAs from supplanting State and local funds is implemented by 34 CFR 300.230 of the Part B regulations.

Part H authorizes assistance to States to help them plan, develop, and implement a State-wide system of early intervention programs for infants and toddlers with disabilities and their families. Each participating State must make an application to the Secretary for its award. The statute requires this application to contain specified assurances regarding the use of the funds, including an assurance, similar to the assurance in Part B, that Part H funds will be used to supplement, and not supplant, State and local funds expended for early intervention services for infants and toddlers with disabilities. The statutory requirement prohibiting States from supplanting State and local funds is implemented by 34 CFR 303.124 of the Part H regulations.

During the Education Summit held in September 1989, President Bush made a commitment to the State Governors that the Federal Government would give States more flexibility in the use of Federal education program funds while ensuring accountability in the use of those funds by recipients. These regulatory changes, which continue to require that States maintain or increase the total amount of funds spent to meet Part B and Part H requirements, are being made consistent with this commitment. These regulatory changes also are supportive of the goals of the AMERICA 2000 Education Strategy, because they will increase the ability of States and LEAs to develop and implement innovative strategies to meet the needs of children with disabilities more effectively.

The Parts B and H nonsupplanting provisions, which are virtually identical, currently include the following two-pronged test for determining compliance with the nonsupplanting requirements for these programs:

Aggregate Test: The total amount of State and local funds budgeted for expenditures in the current fiscal year for the education of children with disabilities under Part B or for early intervention services for infants and toddlers with disabilities and their families under Part H must be at least equal to the amount of those funds actually expended in the most recent preceding fiscal year for which information is available.

Particular Cost Test: Funds awarded under Parts B and H may not be used to displace State or local funds for any "particular cost."

The particular cost test was included in the Part B regulations, first published in 1977, to assist in ensuring that these funds would be used to increase State and local efforts for the education of children with disabilities. Because the Secretary sought to coordinate the fiscal requirements in Part H with those of Part B as closely as possible, the nonsupplanting provisions in the Part H regulations published in 1989 were modeled after those in the Part B regulations. However, the particular cost test could penalize the agencies to which it applied, even though expenditures of State and local funds for special education or early intervention services increased. For example, if an LEA spends Part B funds to pay for a teacher's salary that was previously paid for with State or local funds, a supplanting violation would occur, even though the total amount of State and local funds spent on special education is greater than the amount spent the previous year.

The Secretary believes that the particular cost test is unnecessary to ensure compliance with the statutory requirements that Federal funds be used to supplement or increase the level of State and local funds expended to meet the special educational needs of children with disabilities and the early intervention needs of infants and toddlers with disabilities and their families. The Secretary also believes that the particular cost provision limits the ability of State and local agencies to make financial adjustments that could assist in improving the quality of services for children with disabilities and for infants and toddlers with disabilities and their families.

Therefore, to give States and LEAs more flexibility in the use of Part B and Part H funds, while still requiring that they maintain or increase the total amount of State and local funds expended to meet Part B and Part H requirements, the Secretary amends the Part B regulations at 34 CFR 300.230 by deleting the particular cost provision at § 300.230(b)(2) and amends the Part H regulations at 34 CFR 303.124 by deleting the particular cost provision at § 303.124(b)(2). Also, the Secretary deletes the comment following § 300.230 of the Part B regulations and the note following § 303.124 of the Part H regulations since this comment and note were intended primarily to distinguish between the aggregate and particular cost tests.

The Secretary believes that these regulatory changes will serve to enhance State and local efforts to meet the special educational needs of children with disabilities and the early intervention needs of infants and toddlers with disabilities and their families and will in no way serve to diminish the rights and protections guaranteed to children with disabilities and their parents by Part B of the Act and the rights and protections guaranteed to infants and toddlers with disabilities and their families by Part H of the Act.

On December 30, 1991, the Secretary published a notice of proposed rulemaking for these amendments in the **Federal Register** (56 FR 67420). There are no differences between the NPRM and these final regulations.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, a total of 75 parties submitted comments on the proposed regulations. Seventy (70) of the commenters addressed the proposed change in the nonsupplanting regulations for Part B, and 68 commenters responded to the proposed change in Part H. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows. Technical and minor changes—and suggested changes the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comments: The majority of commenters supported the proposed deletion of the particular cost requirement from § 300.230(b)(2), and § 303.124(b)(2) because the change would provide necessary flexibility and financial relief to States and LEAs.

The commenters who opposed the deletion for both the Part B and Part H programs expressed the following concerns: One commenter felt that the proposed change would permit Part B and Part H funds to be treated as a block grant and diverted away from use for children with disabilities, thereby lessening substantive protections under these programs. Some commenters opposed deletion of the requirement on the ground that it has been helpful in maintaining certain levels of services in the face of rising costs and increasing budget constraints at the State and local levels. One commenter requested that the particular cost test be maintained in its current form or in a modified form tied to certain categories of expenditures.

One commenter was concerned that removal of the requirement would eliminate the only auditing mechanism that establishes a link between Federal, State, and local funds expended for special education. Another commenter was concerned that, without the particular cost test, funds under Parts B and H would be commingled with funds that are used for purposes other than special education. One commenter asked for guidelines to implement the new system.

Discussion: In the December 30, 1991 NPRM, the Secretary emphasized his commitment to giving States and LEAs more flexibility in the use of funds under Parts B and H while ensuring that the level of total State and local expenditures for requirements under these Parts would not be reduced. The Secretary believes that removal of the particular cost requirement is consistent with this commitment. The aggregate cost provision, which remains, ensures that the total amount of State and local funds budgeted by an LEA for the education of children with disabilities and by a State for early intervention services in the current fiscal year will be at least equal to the amount of these funds actually expended in the most recent fiscal year for which the information is available, even if the LEA or State uses Federal funds under this part to pay for a service that was previously supported with State or local funds.

In addition to the aggregate cost test of the nonsupplanting regulations, several related requirements will continue to ensure that funds available under Parts B and H will be expended for proper program purposes. Those provisions under Part B include (1) the prohibition of commingling (§ 300.145), (2) the excess cost requirement (§§ 300.182–300.186), (3) the provision on comparable services (§ 300.231), and (4) the priorities in the use of funds (§§ 300.321 and 300.323). The requirements remaining in effect under Part H include (1) the prohibition against commingling (§ 303.123), (2) the "payor of last resort" regulation (§ 303.126), and (3) the assurance regarding use of funds (§ 303.127).

With regard to the financial accountability issues raised by the commenters, States and LEAs must follow the financial administration requirements of 34 CFR part 80, including the requirement in § 80.20(a) that "fiscal control and accounting procedures of the State * * * must be sufficient to * * * permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of [Part B and Part H]."

Because the amendments to the nonsupplanting regulations simply remove the particular cost provision and do not add a new requirement, the Secretary does not believe that further guidance is needed.

Based on these considerations and the largely positive response to the proposed changes in these regulations, the Secretary concludes that removal of the particular cost test (1) will not reduce the total amount of State and local funds budgeted for the education of children with disabilities or for the provision of early intervention services for infants and toddlers with disabilities, (2) will not impede the Secretary's ability to identify misuse of Part B and Part H funds, and (3) will enable LEAs to make financial adjustments that could assist in improving the quality of services provided to these children. The Secretary also concludes that these changes will in no way diminish any of the rights and protections guaranteed to infants and toddlers and their families under Part H, or to children with disabilities and their parents under Part B.

Changes: None.

Comments: Two commenters expressed support for deleting the particular cost requirement from the Part B regulations, but opposed its deletion from the regulations for Part H, because the Part H program is still in its formative stage and is not yet in full operation in all States. One of these commenters stated that the Part H program depended heavily on complex interagency involvement, and that the "payor of last resort" requirement under Part H would not be able to be met without some type of particular cost test.

Discussion: The Secretary sees no difference in the applicability of the particular cost provision under Parts B and H and does not believe that it is necessary to delay the implementation of the proposed rule change until Part H is in full operation in all States.

Deletion of the particular cost requirement in 34 CFR § 303.124(b)(2) would not impede implementation of the "payor of last resort" requirements (20 U.S.C. 1481 and 34 CFR § 303.527(a)). The "payor of last resort" provision concerns programs and services an individual child is currently entitled to receive under another program, whether funded from a Federal, State, local, or private source. In contrast, the particular cost requirement compares the source of funding used by the Part H program to fund a particular activity in the previous year with the funding source used for the same activity in the current year. In order to implement the "payor of last resort" provision there is no need to identify whether a particular activity

was paid for by Part H or State and local funds in the prior year.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in this order.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for these programs.

List of Subjects

34 CFR Part 300

Administrative practice and procedures, Education, Education of individuals with disabilities, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

34 CFR Part 303

Education, Education of the handicapped, Grant programs—education, Medical personnel, State educational agencies.

(Catalog of Federal Domestic Assistance Number 84.027; Assistance to States for Education of Handicapped Children and 84.181; Early Intervention program for Infants and Toddlers with Handicaps)

Dated: August 6, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by amending parts 300 and 303 as follows:

PART 300—ASSISTANCE TO STATES FOR EDUCATION OF HANDICAPPED CHILDREN

1. The authority citation for part 300 continues to read as follows:

Authority: 20 U.S.C. 1411–1420, unless otherwise noted.

§ 300.230 [AMENDED]

2. Section 300.230 is amended by removing the colon after the word "section" in paragraph (b) introductory text; removing "(1) The" in paragraph (b)(1) introductory text and adding in its place ", the "; removing paragraph (b)(2), and redesignating paragraphs (b)(1)(i) and (ii) as (b)(1) and (2), respectively; removing "; and " at the end of redesignated paragraph (b)(2), and adding a period in its place; and removing the Comment following the section.

PART 303—EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH HANDICAPS

1. The authority citation for part 303 continues to read as follows:

Authority: 20 U.S.C. 1471–1485, unless otherwise noted.

§ 303.124 [Amended]

2. Section 303.124 is amended by removing the dash after the word "section" in paragraph (b) introducing text; removing "(1) The" in paragraph (b)(1) introductory text and adding in its place ", the"; removing paragraph (b)(2) and redesignating paragraphs (b)(1)(i) and (ii) as (b)(1) and (2), respectively; removing "; and" at the end of redesignated paragraph (b)(2), and adding a period in its place; and removing the Note following the section.

[FR Doc. 92–19691 Filed 8–18–92; 8:45 am]

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Part V

National Indian Gaming Commission

25 CFR Parts 531 et al.

Management Contract Requirements and Procedures Under the Indian Gaming Regulatory Act; Proposed Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Parts 531, 533, 535, 537 and 539

Management Contract Requirements and Procedures Under the Indian Gaming Regulatory Act

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: The National Indian Gaming Commission is proposing regulations to implement the management contract provisions of the Indian Gaming Regulatory Act of 1988. The proposed rule would establish requirements and procedures for the approval of management contracts concerning Indian gaming operations and the conduct of related background investigations.

DATES: Comments must be received by September 30, 1992.

ADDRESSES: Commenters may submit their comments by mail, facsimile, or delivery to: Management Contract Rule Comments, National Indian Gaming Commission, suite 250, 1850 M Street NW., Washington, DC 20036–5803. Fax number: 202–632–7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Fred W. Stuckwisch at 202–632–7003, or by facsimile at 202–632–7066 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Indian Gaming Regulatory Act (IGRA, or the Act), 25 U.S.C. 2701 et seq., was signed into law on October 17, 1988. The Act established the National Indian Gaming Commission (the Commission). Under the IGRA, the Commission is charged with regulating class II gaming, and certain aspects of class III gaming.

On August 15, 1991, the Commission published final rules (56 FR 40702) requiring class II gaming operations to compute and pay to the Commission the annual fees required by section 2717 of the Act. On April 9, 1992 (57 FR 12382), the Commission published a final rule that defines key statutory terms, notably clarifying the distinctions between class II gaming (regulated by tribes and the Commission) and class III gaming (regulated primarily under negotiated tribal-state compacts).

The Commission also has proposed rules regarding its review and approval of tribal gaming ordinances and resolutions under Sections 2710 and 2712 of the Act (57 FR 30346, July 8, 1992), and compliance and enforcement procedures under section 2705 and 2706 of the Act (57 FR 30584, July 9, 1992). The regulations proposed today would implement the Commission's authority to review and approve management contracts and to require related background investigations.

Statutory Authority

Section 2711(h) of the IGRA transferred to the Commission the authority of the Secretary of the Interior (Secretary) under 25 U.S.C. 81 to review and approve management contracts concerning Indian gaming. This transfer will become effective upon the promulgation of proposed parts 531, 533, 535, 537 and 539. Sections 2710(d)(9) and 2711 of the IGRA require tribes to submit new management contracts to the Chairman for his or her review and approval, and provide standards for approval. Section 2712 contains standards and procedures for the Chairman's review of existing contracts. Section 2706(b)(10) authorizes the Commission to promulgate such regulations as it deems appropriate to implement the provisions of the IGRA.

Regulatory Definitions

Several of the regulatory definitions that the Commission has adopted have a direct bearing on the rule proposed today. They are included here for ease of reference:

Gaming operation means each economic entity that is licensed by a tribe, operates the games, receives the revenues, issues the prizes, and pays the expenses. A gaming operation may be operated by a tribe directly; by a management contractor; or, under certain conditions, by another person or other entity (25 CFR 502.10).

Management contract means any contract, subcontract, or collateral agreement between an Indian tribe and a contractor or between a contractor and a subcontractor if such contract or agreement provides for the management of all or part of a gaming operation (25 CFR 502.15).

Person having a direct or indirect financial interest in a management contract means—

(a) When a person is a party to a management contract, any person having a direct financial interest in such management contract;

(b) When a trust is a party to a management contract, any beneficiary or trustee;

(c) When a partnership is a party to a management contract, any partner;

(d) When a corporation is a party to a management contract, any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling; or

(e) When an entity other than a natural person has an interest in a trust, partnership or corporation that has an interest in a management contract, all parties of that entity are deemed to be persons having a direct financial interest in a management contract (25 CFR 502.17).

Person having management responsibility for a management contract means the person designated by the management contract as having management responsibility for the gaming operation, or a portion thereof (25 CFR 502.18).

Primary management official means—

(a) The person having management responsibility for a management contract;

(b) Any person who has authority:

(1) To hire and fire employees; or

(2) To set up working policy for the gaming operation; or

(c) The chief financial officer or other person who has financial management responsibility (25 CFR 502.19).

Collateral agreement means any contract, whether or not in writing, that is related, either directly or indirectly, to a management contract, or to any rights, duties or obligations created between a tribe (or any of its members, entities, or organizations) and a management contractor or subcontractor (or any person or entity related to a management contractor or subcontractor) (25 CFR 502.5).

Net revenues means gross gaming revenues of an Indian gaming operation less—

(a) Amounts paid out as, or paid for, prizes; and

(b) Total gaming-related operating expenses, excluding management fees (25 CFR 502.16).

Contents of Management Contracts

Part 531 would implement Section 2711(b) of the Act by setting forth the requirements for an approvable management contract. This part identifies required and prohibited provisions and imposes certain technical requirements. The contract terms themselves will be the result of negotiations between the tribe and the management contractor.

Under proposed § 531.1(a), a management contract must provide that all gaming will be conducted in accordance with the governing tribal ordinance. The management contract also should state how any changes to the ordinance that affect contract terms will be handled.

Section 531.1(b) would require that the contract assign responsibility for each identifiable function of the gaming operation. The requirements included here and in § 531.1(c) (discussed below) are matters that the parties should discuss and resolve before executing the contract. This will enable the parties to minimize later disagreements. Moreover, under the Act the Chairman must be satisfied that the tribe is adequately protected under the contract. The Commission believes that these requirements are necessary to ensure that protection.

Section 531.1(c) requires that the management contract provide for the establishment and maintenance of adequate accounting systems and procedures. Such requirements include, among other things, maintaining an adequate system of internal accounting controls, audit trails, and sufficiently detailed supporting data to permit both the preparation of financial statements, and the performance of any computations required under the regulations, the governing ordinance, or the contract itself. For class II operations, for example, 25 CFR 514.1(c) (the Commission's fee regulations) requires tribes to file quarterly statements with the Commission that "show the amounts derived from each class II type of game, the amounts deducted for prizes, and the amounts deducted for the amortization of structures."

Section 531.1(f) requires that the contract provide for a minimum monthly payment to the tribe, in accordance with Section 2711(b)(3) of the IGRA. This payment must be stated in dollar terms, rather than as a percentage of some unknown figure. This requirement is for a minimum only, an additional amount could be provided for and could be stated as a percentage.

Section 531.1(g) would implement Section 2711(b)(4) of the IGRA by requiring that a management contract provide a maximum total dollar amount that the management contractor may receive as recoupment for development and construction costs.

Proposed § 531.1(l) requires that the contract state whether and to what extent assignments and subcontracting are permitted. If they are, any such assignments and subcontracts will require the approval of the Chairman.

Review and Approval of Management Contracts

Proposed part 533 deals with the management contract submission, review, and approval process. The requirement that management contracts be reviewed and approved by the Chairman is contained in sections 2710)(d)(9), 2711, and 2712 of the IGRA and in 25 U.S.C. 81 (the responsibility for which, as previously discussed, was transferred from the secretary to the Commission by Section 2711(h) of the IGRA, effective upon promulgation of proposed parts 531, 533, 535, 537 and 539).

Proposed § 533.2 would require contracts approved by the Secretary to be submitted to the Chairman within 60 days after a request by the Chairman. Contracts that have not been approved by either the Secretary or the Chairman are required to be submitted to the Chairman upon execution, and are not effective until the Chairman has approved them.

Proposed § 533.3 sets forth the items a tribe must submit to the Chairman as part of any request for approval of a management contract. Among the items to be included are: The contract itself; proof of authority to execute; a list of persons for whom background investigations are required; financial statements or a business plan; and a justification for any extraordinary provisions.

The business plan should set forth the parties' goals, objectives, budgets, financial plans, and related matters for at least the first three years of operations. The Chairman will rely on the business plan, among other things, to ensure that there is a meeting of the minds between the parties regarding key terms of the contract, that those terms are reasonable, and that the tribe is the primary beneficiary of the gaming operation.

Proposed § 533.6 implements the Act's standards for the Chairman's review of management contracts. As discussed below, those standards also apply to proposed modifications to approved management contracts. In addition to the specific requirements for approval in parts 531 and 533, proposed § 533.6(e) would implement the general standard of section 2711(e)(4) of the IGRA by providing that the Chairman may disapprove a management contract if a trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

Modifications

Proposed part 535 provides procedures to address postapproval contract modifications and noncompliance with the standards contained in parts 531 and 533. Although the Act does not, *per se*, address contract modifications proposed by the parties to the contracts, the Chairman will apply the IGRA's standards for approval of management contracts to his or her review of proposed modifications.

Section 535.3 requires the Chairman to notify a tribe and its management contractor if the Chairman intends to exercise his or her authority under section 2711(f) of the IGRA. Under section 2711(f), the Chairman may require modification of, or void, an approved management contract if he or she determines that any of the provisions of section 2711 (or corresponding parts) have been violated.

Approval of Persons With a Financial Interest in, or Management Responsibility for, a Management Contract

Proposed part 537 would implement section 2711(a) of the Act by setting forth the requirements for background investigations of persons with a financial interest in, or having management responsibility for, a management contract.

Under sections 2711 and 2712 of the IGRA, an Indian tribe may enter into a contract for the management of a class II or class III gaming operation subject to the approval of the Chairman. The Chairman's review and approval of a management contract for a class II operation is governed by the standards contained in section 2711 of the IGRA. Under section 2710(d)(9), the Chairman's review and approval of a management contract for a class III operation is governed by the provisions of section 2711 (b), (c), (d), (f), (g), and (h) (but not (a), (e), or (i)). The omitted subsections deal with suitability determinations and background investigations of persons having a direct financial interest in, or management responsibility for, a management contract.

These omissions notwithstanding, the Commission believes that the IGRA authorizes the Chairman to conduct background investigations and otherwise determine the suitability of persons having a financial interest in or management responsibility for a management contract concerning both class II and class III gaming. First, section 2712(b)(1) of the IGRA provides that the Chairman shall subject existing class II and class III management contracts (that is, contracts that have been approved by the Secretary) to the requirements of section 2711 (including

subsections (a), (e), and (i)). Second, section 2711(h) of the IGRA transferred to the Commission the Secretary's authority under 25 U.S.C. 81 to review and approve management contracts concerning Indian gaming. This authority also applies to both class II and class III management contracts. In reviewing management contracts pursuant to section 81, the Chairman is required to act in the best interests of the tribes. See *United States ex rel. Shakopee Mdewakanton Sioux Community* v. *Pan American Management Co.*, 616 F. Supp. 1200 (D. Minn. 1985). In order to fulfill its statutory responsibility, the Commission has determined that management contracts for class II and class III gaming should be subject to the same requirements.

The Commission recognizes that many tribal-state compacts provide for background investigations of persons having a financial interest in or management responsibility for a contract. Accordingly, the Chairman, in reviewing class III management contracts, will rely to the maximum extent possible on background investigations conducted by a tribe or state pursuant to a tribal-state compact. The Chairman also will determine the suitability of persons having a financial interest in or management responsibility for a class III management contract. The Commission invites comments on its determination that management contracts concerning class III gaming are subject to the same background investigation requirements as class II under the IGRA.

Proposed § 537.1(b) requires that a management contractor submit to the Chairman certain information regarding persons subject to background investigations. This information is necessary to ensure accurate identification when, for example, data bases maintained for investigative purposes include different individuals who have the same or very similar names.

Related to background investigations under the IGRA are procedures under the Privacy Act, 5 U.S.C. 552a. Management contractors are not subject to that Act in their recordkeeping; the Commission is, however, due to its status as a federal agency. Because management contractors are required to provide the Commission with certain records, those records become subject to the Privacy Act. Therefore, management contractors must follow certain procedures under that Act. The Commission has proposed regulations under the Privacy Act (57 FR 30353, July 8, 1992), and is establishing a system of records under that Act. The Commission will be amending its system of records to include the information collected.

Proposed § 537.1(b)(4) requires that a management contractor submit a statement containing a privacy notice signed by each person subject to a background investigation. This notice lets individuals know that information about them may be used by the Commission when it undertakes a background investigation under section 2711 of the IGRA. It also lets them know that information contained in the application and subsequent background investigation may be disclosed not only to the Commission but to tribes and appropriate federal, tribal, state, local, or foreign law enforcement agencies in connection with the issuance or revocation of an Indian gaming license, or investigations of Indian gaming under section 2716(b) of the IGRA. That section directs the Commission to provide information indicating a violation of federal, State, or tribal statutes, ordinances or resolutions to appropriate law enforcement officials. Without such a privacy notice, the Commission could not maintain information on individuals and therefore would be unable to perform its duties under the IGRA.

Section 537.1(b)(5) warns persons subject to a background investigation to be accurate in supplying the information requested by the Commission. Federal law provides penalties for making false statements to an entity regulated by the federal government. The federal statute states: "Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both." 18 U.S.C. 1001.

Appeals

Part 539 provides a right to an appeal from the Chairman's decision on a management contract and the results of a background investigation. Appeals from the Chairman's intent to require modification of, or to void, a management contract that has already been approved by the Chairman under proposed section 535.3 (implementing section 2711(f) of the IGRA) are subject to the more formal appeal process of proposed 25 CFR part 577 (57 FR 30584, July 9, 1992). The contract involved in such a case has already been subjected to the IGRA's standards for approval of management contracts, and it is the Chairman (rather than the parties) who is proposing to require modification of or to void the contract. Under these circumstances, the Commission believes that the contract rights at stake warrant more careful scrutiny of the Chairman's intent to affect those rights. All other actions of the Chairman under proposed parts 531, 533, 535 and 537 will be subject to the less formal appeal process of part 539. Regardless of which process the Commission employs to hear appeals, however, parties will have a right to appeal any final actions of the Commission to the appropriate federal district court under section 2714 of the Act.

Regulatory Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Commission has tentatively determined that this document is not a major rule under Executive Order 12291. The Commission believes that the rule will not have any significant effects on the economy or result in major increases in costs or prices for consumers, individual industries, federal, state or local governments, agencies, or geographical regions. The Commission also believes that the rule will not have any adverse effects on competition, employment, investment, productivity, innovation, or the export/import market.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Commission has tentatively determined that this rule will not have a significant economic impact on a substantial number of small entities. The Commission solicits comment on these preliminary determinations under the Executive Order and the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq.* The collection of this information will not be required until it has been approved by OMB.

National Environmental Policy Act

The Commission has determined that this proposed rulemaking does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

Executive Order 12778

The Chairman of the National Indian Gaming Commission has certified to OMB that this rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of the Executive Order 12278, "Civil Justice Reform," 56 FR 55195, October 25, 1991.

Dated: August 13, 1992.

Anthony J. Hope,

Chairman, National Indian Gaming Commission.

List of Subjects in 25 CFR Parts 531, 533, 535, 537 and 539

Gaming, Indian lands.

For the reasons set forth in the preamble, chapter III, title 25 of the Code of Federal Regulations is proposed to be amended by adding new parts 531, 533, 535, 537 and 539.

PART 531—CONTENT OF MANAGEMENT CONTRACTS

Sec.

531.1 Required provisions.
531.2 Prohibited provisions.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 531.1 Required provisions.

A management contract shall address the following provisions in the manner indicated:

(a) *Governmental authority.* Provide that all gaming covered by the contract will be conducted in accordance with the governing tribal ordinance(s);

(b) *Assignment of responsibilities.* Enumerate the responsibilities of each of the parties for each identifiable function, including:

(1) Maintaining and improving the gaming facility;

(2) Providing operating capital;

(3) Establishing operating days and hours;

(4) Hiring, firing, training and promoting employees;

(5) Maintaining the gaming operation's books and records;

(6) Preparing the operation's financial statements and reports;

(7) Hiring and scheduling the auditors;

(8) Hiring and supervising security personnel;

(9) Providing fire protection services;

(10) Setting advertising budget and placing advertising;

(11) Paying bills and expenses;

(12) Establishing and administering employment practices;

(13) Obtaining and maintaining insurance coverage, including coverage of public liability and property loss or damage; and

(14) Complying with all applicable provisions of the Internal Revenue Code;

(c) *Accounting.* Provide for the establishment and maintenance of satisfactory accounting systems and procedures that shall, at a minimum:

(1) Include an adequate system of internal accounting controls;

(2) Permit the preparation of financial statements in accordance with generally accepted accounting principles;

(3) Be susceptible to audit;

(4) Allow a class II gaming operation, the tribe, and the Commission to calculate the annual fee under § 514.1 of this chapter;

(5) Permit the calculation and payment of the manager's fee; and

(6) Provide for the allocation of operating expenses or overhead expenses among the tribe, the tribal gaming operation, the contractor, and any other user of shared facilities and services;

(d) *Reporting.* Require the management contractor to provide the tribal governing body on a monthly basis with verifiable financial reports or all information necessary to prepare such reports;

(e) *Access.* Require the management contractor to provide immediate access to the gaming operation, including its books and records, by appropriate tribal officials, who shall have:

(1) The right to verify the daily gross revenues and income from the gaming operation; and

(2) Access to any other gaming-related information the tribe deems appropriate;

(f) *Guaranteed payment to tribe.* Provide for a minimum guaranteed monthly payment in a sum certain to the tribe that has preference over the retirement of development and construction costs;

(g) *Development and construction costs.* Provide an agreed upon maximum dollar amount for the recoupment of development and construction costs;

(h) *Term limits.* Be for a term not to exceed five (5) years, except that upon the request of a tribe, the Chairman may authorize a contract term that does not exceed seven (7) years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming operation require the additional time;

(i) *Compensation.* Detail the method of compensating and reimbursing the management contractor. If a management contract provides for a percentage fee, such fee shall be either:

(1) not more than thirty (30) percent of the net revenues of the gaming operation if the Chairman determines that such percentage is reasonable considering the circumstances; or

(2) not more than forty (40) percent of the net revenues if the Chairman is satisfied that the capital investment required and income projections for the gaming operation require the additional fee;

(j) *Termination provisions.* Provide the grounds and mechanisms for modifying or terminating the contract (termination of the contract shall not require the approval of the Chairman);

(k) *Dispute provisions.* Contain a mechanism to resolve disputes between:

(1) The management contractor and customers, consistent with the procedures in a tribal ordinance;

(2) the management contractor and the tribe; and

(3) the management contractor and the gaming operation employees;

(l) *Assignments and subcontracting.* Indicate whether and to what extent contract assignments and subcontracting are permissible; and

(m) *Ownership interests.* Indicate whether and to what extent changes in the ownership interest in the management contract require advance approval by the tribe.

§ 531.2 Prohibited provisions.

A management contract shall not transfer or, in any other manner, convey any interest in land or other real property, unless specific statutory authority exists and unless clearly specified in writing in the contract.

PART 533—APPROVAL OF MANAGEMENT CONTRACTS

Sec.

533.1 Requirement for review and approval.
533.2 Time for submitting management contracts.
533.3 Submission of management contract for approval.
533.4 Action by the Chairman.
533.5 Notice of noncompliance.
533.6 Approval.
533.7 Void agreements.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 533.1 Requirement for review and approval.

Subject to the Chairman's approval, an Indian tribe may enter into a management contract for the operation of a class II or class III gaming activity Such contract shall become effective upon approval by the Chairman.

§ 533.2. Time for submitting management contracts.

A tribe shall submit a management contract to the Chairman for review as follows:

(a) Contracts approved by the Secretary, within sixty (60) days after a request by the Chairman.

(b) All other contracts, upon execution.

§ 533.3 Submission of management contract for approval.

A tribe shall include in any request for approval of a management contract under this part:

(a) A contract containing:

(1) Original signatures of an authorized official of the tribe and the management contractor;

(2) A representation that the contract as submitted to the Chairman is the entirety of the agreement among the parties; and

(3) Terms that meet the requirements of part 531 of this chapter;

(b) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the management contract;

(c) Copies of documents evidencing the authority under paragraph (b) of this section;

(d) A list of all persons having a direct or indirect financial interest in the management contract or having management responsibility for the management contract; and either:

(1) The information and documents required under § 537.1 of this chapter; or

(2) The dates on which the information was previously submitted;

(e) (1) For new contracts, a three (3)-year business plan; or

(2) For existing contracts, income statements and sources and uses of funds statements for the previous three (3) years, to the extent that such data exist;

(f) If applicable, a justification, consistent with the provisions of § 531.1(h), for a term limit in excess of five (5) years; and

(g) If applicable, a justification, consistent with the provisions of § 531.1(i), for a fee in excess of thirty (30) percent.

533.4 Action by the Chairman.

(a) The Chairman shall provide notice of noncompliance under § 533.5 of this part, or shall approve or disapprove a management contract applying the standards contained in § 533.6 of this part, within 180 days after the date on which the Chairman receives a complete submission under § 533.3 of this part, unless the Chairman notifies the tribe and management contractor in writing of the need for an extension of up to ninety (90) days.

(b) A tribe may bring an action in a U.S. district court to compel action by the Chairman:

(1) After 180 days following the date on which the Chairman receives a complete submission if the Chairman does not provide notice of noncompliance or approve or disapprove the contract under this part; or

(2) After 270 days following the Chairman's receipt of a complete submission if the Chairman has told the tribe and management contractor in writing of the need for an extension and has not provided notice of noncompliance of approved or disapproved the contract under this part.

§ 533.5 Notice of noncompliance.

(a) If a management contract previously approved by the Secretary fails to meet the requirements of this part, the Chairman shall notify the tribe and management contractor, in writing, of the specific areas of noncompliance.

(1) The Chairman shall allow the tribe and the management contractor 120 days from receipt of such notice to modify the contract.

(2) If the Secretary approved a management contract before October 17, 1988, the Chairman shall allow the tribe and the management contractor 180 days from receipt of such notice to modify the contract.

(b) If a tribe and a management contractor fail to modify a management contract within the time provided by the Chairman, the contract shall be deemed disapproved and void.

§ 533.6 Approval.

The Chairman may approve a management contract unless:

(a) It fails to meet the standards of part 531 of this chapter and § 533.3 of this part.

(b) *Individual disqualifiers.* The Chairman determines that any person with a direct or indirect financial interest in, or having management responsibility for, a management contract:

(1) Is an elected member of the governing body of the tribe that is party to the management contract;

(2) Has been convicted of any felony or gaming offense;

(3) Has knowingly and willfully provided materially false statements or information to the Commission or to a tribe;

(4) Has refused to respond to questions asked by the Chairman in accordance with his responsibilities under this part; or

(5) Is determined by the Chairman to be a person whose prior activities, criminal record, if any, or reputation, habits, and associations pose a threat to the public interest or to the effective regulation and control of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of gaming or the carrying on of related business and financial arrangements;

(c) *Undue influence.* The management contractor or its agents have unduly interfered with or influenced for advantage, or have tried to unduly interfere with or influence for advantage, any decision or process of tribal government relating to the gaming operation; or

(d) *Noncompliance.* In the case of a management contract previously approved by the Secretary, the management contractor or its agents has deliberately or substantially failed to follow the terms of the management contract or the tribal gaming ordinance or resolution.

(e) *Trust responsibility.* A trustee, exercising the skill and diligence to which a trustee is commonly held, would not approve the contract.

§ 533.7 Void agreements.

Management contracts and changes in persons with a financial interest in or management responsibility for a management contract, that have not been approved by the Chairman in accordance with the requirements of this part, are void.

PART 535—POST-APPROVAL PROCEDURES

Sec.
535.1 Modifications.
535.2 Assignments.
535.3 Post-approval noncompliance.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 535.1 Modifications.

(a) Subject to the Chairman's approval, a tribe may enter into a modification of a management contract for the operation of a class II or class III gaming activity.

(b) A tribe shall submit a modification to the Chairman upon its execution.

(c) A tribe shall include in any request for approval of a modification under this part:

(1) A modification containing original signatures of an authorized official of the tribe and the management contractor and terms that meet the requirements of part 531 of this chapter;

(2) A letter, signed by the tribal chairman, setting out the authority of an authorized tribal official to act for the tribe concerning the modification;

(3) Copies of documents evidencing the authority under paragraph (c)(2) of this section;

(4) If the modification involves a change in person(s) having a direct or indirect financial interest in the management contract or having management responsibility for the management contract, a list of such person(s) along with the information required under § 537.1 or the date on which such information was previously submitted;

(5) If applicable, a justification, consistent with the provisions of § 531.1(h), for a term limit in excess of five (5) years; and

(6) If applicable, a justification, consistent with the provisions of § 531.1(i), for a management fee in excess of thirty (30) days.

(d) The Chairman shall have thirty (30) days from receipt to approve or disapprove a modification, or to notify the parties that an additional thirty (30) days is required to reach a decision, except that when a modification requires a background investigation under part 537, the Chairman shall approve or disapprove such modification as soon as practicable but in no event later than 180 days after the Chairman receives it. If the Chairman does not approve or disapprove, he shall respond in writing noting that no action has been taken on the proposed modification. The request shall therefore be deemed disapproved and the parties shall have thirty (30) days to appeal the decision under part 539 of this chapter.

(e) The Chairman may approve a modification of a management contract unless:

(1) The request for approval of the modification fails to meet the submission requirements of paragraph (c) of this section; or

(2) The Chairman determines that the modification fails to meet the standards contained in § 533.6 of this chapter.

(f) Modifications that have not been approved by the Chairman in accordance with the requirements of this part are void.

§ 535.2 Assignments.

Subject to the approval of the Chairman, a management contractor may assign its rights under a management contract to the extent permitted by the contract. A tribe or a management contractor shall submit such assignment to the Chairman upon execution. The Chairman shall approve or disapprove an assignment applying the standards of, and within the time provided by paragraphs § 535.1 (d) and (e) of this section.

§ 535.3 Post-approval noncompliance.

If the Chairman learns of any action or condition that violates the standards contained in this chapter, the Chairman may require modification of, or may void, a management contract approved by the Chairman under this chapter, after providing the parties an opportunity for an appeal to the Commission as set forth elsewhere in this chapter.

PART 537—BACKGROUND INVESTIGATIONS FOR PERSONS OR ENTITIES WITH A FINANCIAL INTEREST IN, OR HAVING MANAGEMENT RESPONSIBILITY FOR, A MANAGEMENT CONTRACT

Sec.
537.1 Applications for approval.
537.2 Submission of background information.
537.3 Fees for background investigations.
537.4 Determinations.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 537.1 Applications for approval.

(a) The Chairman shall conduct a background investigation of:

(1) Each person with management responsibility for a management contract;

(2) Each person who is a director of a corporation that is a party to a management contract;

(3) The ten (10) persons who have the greatest direct or indirect financial interests in an entity that is a party to a management contract;

(4) Any entity with a financial interest in a management contract; and

(5) Any other person with a direct or indirect financial interest in a management contract otherwise designated by the Commission.

(b) For each person identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) *Required information.* (i) full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, and all languages (spoken or written);

(ii) A current photograph;

(iii) Currently and for the previous five (5) years: business and employment positions held, business and residence addresses, and driver's license numbers;

(iv) The names and current addresses of at least three (3) personal references, including one personal reference who was acquainted with the person during each period of residence listed under paragraph (b)(1)(iii) of this section;

(v) Current business and residence telephone numbers;

(vi) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(vii) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(viii) The name and address of any licensing or regulatory agency with which the person has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(ix) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition;

(x) For each misdemeanor conviction or ongoing misdemeanor prosecution (excluding minor traffic violations) within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition; and

(xi) A complete financial statement showing all sources of income for the previous three (3) years, as assets, liabilities, and net worth as of the date of the submission.

(2) *Fingerprints.* The management contractor shall arrange with an appropriate federal, state, or tribal law enforcement authority to supply the Commission with a completed form FD-258, Applicant Fingerprint Card, for each person for whom background information is provided under this section.

(3) *Responses to questions.* Each person with a direct or indirect financial interest in a management contract or management responsibility for a management contract shall respond within thirty (30) days to written or oral questions that the Chairman may ask.

(4) *Privacy notice.* In compliance with the Privacy Act of 1974, each person required to submit information under this section shall sign and submit the following statement:

Solicitation of the information in this section is authorized by 25 U.S.C. 2701 *et seq.* The purpose of the requested information is to determine the suitability of individuals for Indian gaming. The information will be used by the National Indian Gaming Commission members and staff and Indian tribal officials who have need for the information in the performance of their official duties. The information may be disclosed to appropriate federal, tribal, state, or foreign law enforcement and regulatory agencies in connection with a background investigation

or when relevant to civil, criminal or regulatory investigations or prosecutions or investigations of activities while associated with a gaming operation. Failure to consent to the disclosures indicated in this statement will mean that the Chairman of the National Indian Gaming Commission will be unable to approve the contract in which the person has a financial interest or management responsibility.

The disclosure of a person's Social Security Number (SSN) is voluntary. However, failure to supply a SSN may result in errors in processing the information provided.

(5) *Notice regarding false statements.* Each person required to submit information under this section shall sign and submit the following statement:

A false statement contained in any of the information provided pursuant to this section may be grounds for not approving the contract in which I have a financial interest or management responsibility, or for disapproving or voiding such contract after it is approved by the Chairman of the National Indian Gaming Commission. Also, I may be punished by fine or imprisonment (U.S. Code, title 18, section 1001).

(c) For each entity identified in paragraph (a) of this section, the management contractor shall provide to the Commission the following information:

(1) *Required information.* (i) a listing of all persons identified in paragraphs (c)(1)(i)(A) through (c)(1)(i)(C) of this section showing for each their full name, other names used (oral or written), social security number(s), birth date, place of birth, citizenship, gender, and all languages (spoken or written):

(A) When a trust is a party to a management contract, for each beneficiary or trustee;

(B) When a partnership is a party to a management contract, for each partner; and

(C) When a corporation is a party to a management contract, for any person who is a director or who holds at least 10% of the issued and outstanding stock alone or in combination with another stockholder who is a spouse, parent, child or sibling;

(ii) Copies of documents establishing the existence of the entity, such as the partnership agreement, the trust agreement, or the articles of incorporation;

(iii) Copies of documents designating the person who is charged with acting on behalf of the entity;

(iv) Copies of bylaws or other documents that provide the day-to-day operating rules for the organization;

(v) A description of any previous business relationships with Indian tribes, including ownership interests in those businesses;

(vi) A description of any previous business relationships with the gaming industry generally, including ownership interests in those businesses;

(vii) The name and address of any licensing or regulatory agency with which the entity has filed an application for a license or permit relating to gaming, whether or not such license or permit was granted;

(viii) For each felony for which there is an ongoing prosecution or a conviction, the charge, the name and address of the court involved, and the date and disposition;

(ix) For each misdemeanor conviction or ongoing misdemeanor prosecution within ten (10) years of the date of the application, the name and address of the court involved, and the date and disposition; and

(x) Complete financial statements for the previous three (3) fiscal years.

§ 537.2 Submission of background information.

A management contractor shall submit the background information required in § 537.1 of this part:

(a) in sufficient time to permit the Commission to complete its background investigation by the time the individual is to assume management responsibility for, or the management contractor is to begin managing, the gaming operation; and

(b) within ten (10) days of any proposed change in financial interest.

§ 537.3 Fees for background investigations.

(a) A management contractor shall pay to the Commission or the contractor(s) designated by the Commission the cost of all background investigations conducted under this part.

(b) The management contractor shall post a bond, letter of credit, or deposit with the Commission to cover the cost of the background investigations as follows:

(1) Management contractor—$10,000
(2) Each individual—5,000

(c) The management contractor shall be billed for the costs of the investigation as it proceeds; the investigation shall be stopped if the unpaid costs exceed the amount of the bond, letter of credit, or deposit available.

§ 537.4 Determinations.

The Chairman shall determine whether the results of a background investigation preclude the Chairman from approving a management contract because of the individual disqualifiers contained in § 533.6(b)(1) of this chapter. The Chairman shall promptly notify the tribe and management contractor if any findings preclude the Chairman from approving a management contract or change in financial interest.

PART 539—APPEALS

Sec.
539.1 Scope of this part.
539.2 Appeals.

Authority: 25 U.S.C. 81, 2706(b)(10), 2710(d)(9), 2711.

§ 539.1 Scope of this part.

This part applies to appeals from the Chairman's decision to approve or disapprove a management contract under this chapter, except that appeals from the Chairman's decision to require modification of or to void a management contract subsequent to his or her initial approval are addressed elsewhere in this chapter.

§ 539.2 Appeals.

Any person with an interest that is or may be adversely affected by the Chairman's approval or disapproval of a management contract or modification may appeal the Chairman's determination to the Commission. Such an appeal shall be filed with the Commission within thirty (30) days after receipt of the Chairman's determination, or within forty-five (45) days after the date of the Chairman's determination, whichever is earlier. Failure to file an appeal within the time provided by this section shall result in a waiver of the opportunity for an appeal. An appeal under this section shall specify the reasons why the person believes the Chairman's determination to be erroneous, and shall include supporting documentation, if any. Within forty-five (45) days after receipt of the appeal, the Commission shall render a decision, unless the Commission notifies the person requesting the appeal that it requires additional time to render a decision.

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Wednesday
August 19, 1992

Part VI

Department of Justice

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions; Notice

DEPARTMENT OF JUSTICE

Bureau of Prisons

Modification to List of Bureau of Prisons Institutions

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: In this document, the Bureau of Prisons is publishing a consolidated listing of its institutions. New Federal Correctional Institutions are being designated at Estill, South Carolina; Florence, Colorado; and Manchester, Kentucky. A new Federal Prison Camp is being designated at Florence, Colorado. A new Low Security Correctional Institution is being designated at Allenwood, Pennsylvania. A new Metropolitan Detention Center is being designated at Guaynabo, Puerto Rico.

ADDRESSES: Office of General Counsel, Bureau of Prisons, 320 First Street NW., HOLC Room 754, Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, (202) 307-3062.

SUPPLEMENTARY INFORMATION: Attorney General Order No. 646-76 (41 FR 14805), as amended, classifies and lists the various Bureau of Prisons institutions. Attorney General Order No. 960-81, Reorganization Regulations, published in the **Federal Register** October 27, 1981 (at 46 FR 52339 et seq.) delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(r), the authority to establish and designate Bureau of Prisons institutions. The last listing of the Bureau's institutions was published in the **Federal Register** on December 10, 1991 (56 FR 64525).

This notice is not a rule within the meaning of the Administrative Procedure Act, 5 U.S.C. 551(4), the Regulatory Flexibility Act, 5 U.S.C. 601(2), or Executive Order No. 12291, Sec. 1(a).

By virtue of the authority vested in the Attorney General in 18 U.S.C. 3621, 4001, 4003, 4042, 4081, and 4082 (repealed in part October 12, 1984) and delegated to the Director, Bureau of Prisons by 28 CFR 0.96(r), it is hereby ordered as follows:

The following institutions are established and designated as places of confinement for the detention of persons held under authority of any Act of Congress, and for persons charged with or convicted of offenses against the United States or otherwise placed in the custody of the Attorney General of the United States.

A. The Bureau of Prisons institutions at the following locations are designated as U.S. Penitentiaries:

(1) Atlanta, Georgia;
(2) Leavenworth, Kansas;
(3) Lewisburg, Pennsylvania;
(4) Lompoc, California;
(5) Marion, Illinois; and
(6) Terre Haute, Indiana.

B. The Bureau of Prisons institutions at the following locations are designated as Federal Correctional Institutions:

(1) Ashland, Kentucky;
(2) Bastrop, Texas;
(3) Big Spring, Texas;
(4) Butner, North Carolina;
(5) Danbury, Connecticut
(6) El Reno, Oklahoma;
(7) Englewood, Colorado;
(8) Estill, South Carolina;
(9) Fairton, New Jersey;
(10) Florence, Colorado;
(11) Fort Worth, Texas;
(12) Jesup, Georgia;
(13) La Tuna, Texas;
(14) Loretto, Pennsylvania;
(15) Lompoc, California;
(16) Manchester, Kentucky;
(17) Marianna, Florida;
(18) McKean, Pennsylvania;
(19) Memphis, Tennessee;
(20) Milan, Michigan;
(21) Morgantown, West Virginia;
(22) Oakdale, Louisiana (formerly Oakdale I);
(23) Otisville, New York;
(24) Oxford, Wisconsin;
(25) Petersburg, Virginia;
(26) Phoenix, Arizona;
(27) Pleasanton, California;
(28) Ray Brook, New York;
(29) Safford, Arizona;
(30) Sandstone, Minnesota;
(31) Schuylkill, Pennsylvania;
(32) Seagoville, Texas;
(33) Sheridan, Oregon;
(34) Talladega, Alabama;
(35) Tallahassee, Florida;
(36) Terminal Island, California;
(37) Texarkana, Texas;
(38) Three Rivers, Texas; and
(39) Tucson, Arizona.

C. The Bureau of Prisons institution at Allenwood, Pennsylvania is designated as a Low Security Correctional Institution.

D. The Bureau of Prisons institutions at the following locations are designated as Federal Prison Camps:

(1) Alderson, West Virginia;
(2) Allenwood, Pennsylvania;
(3) Boron, California;
(4) Bryan, Texas;
(5) Duluth, Minnesota;
(6) Eglin Air Force Base, Florida;
(7) Florence, Colorado;
(8) Ft. Bliss, El Paso, Texas;
(9) Homestead Air Force Base, Homestead, Florida;
(10) Maxwell Air Force Base/Gunter Air Force Station, Montgomery, Alabama;
(11) Millington, Tennessee;
(12) Nellis Air Force Base, Las Vegas, Nevada;
(13) Saufley Field, Pensacola, Florida;
(14) Seymour-Johnson Air Force Base, North Carolina;
(15) Tyndall Air Force Base, Panama City, Florida; and
(16) Yankton, South Dakota.

E. The Bureau of Prisons institutions at the following locations are designated as Metropolitan Correctional Centers:

(1) Chicago, Illinois;
(2) Miami, Florida;
(3) New York, New York; and
(4) San Diego, California.

F. The Bureau of Prisons institution at Springfield, Missouri is designated as the U.S. Medical Center for Federal Prisoners.

G. The Bureau of Prisons institutions at the following locations are designated as Federal Medical Centers:

(1) Carville, Louisiana;
(2) Lexington, Kentucky; and
(3) Rochester, Minnesota.

H. The Bureau of Prisons institution at Oakdale, Louisiana (formerly Oakdale II) is designated as a Federal Detention Center.

I. The Bureau of Prisons institution at the following locations are designated as Metropolitan Detention Centers.

(1) Guaynbo, Puerto Rico; and
(2) Los Angeles, California.

Dated: July 29, 1992.

Thomas R. Kane,

Acting Director, Federal Bureau of Prisons.

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Part VII

Department of Labor

Employment Standards Administration; Wage and Hour Division

29 CFR Part 541

Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act; Public Sector Employers; Rule and Proposed Rule

DEPARTMENT OF LABOR

Employment Standards Administration
Wage and Hour Division

29 CFR Part 541

RIN 1215-AA77

Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act; Public Sector Employers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides revised final Regulations, 29 CFR part 541, governing the criteria for exemption from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act ("FLSA" or "Act") for public sector employees employed in *bona fide* executive, administrative, and professional capacities. A special, limited exception from the exemption's requirement for payment "on a salary basis" is provided for certain public sector pay systems that reduce the pay of otherwise-exempt employees for partial-day absences when paid leave is not used to cover such absences, and for deductions due to budget-required furloughs.

EFFECTIVE DATE: September 18, 1992.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523-8412 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This regulation contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

II. Background

A. Summary of Statutory and Regulatory Provisions

The FLSA (29 U.S.C. 201, *et seq.*) requires that covered, non-exempt employees receive not less than the Federal minimum wage for all hours worked and overtime premium pay (at one-and-one-half times the regular rate of pay) for all hours worked over 40 in a workweek. Section 13(a)(1) of the Act (29 U.S.C. 213(a)(1)) provides a statutory exemption from these requirements for employees employed in a *bona fide* executive, administrative, or professional capacity, as follows:

> Section 13. (a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 shall not apply with respect to—
>
> (1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as much terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *).

The scope of the exemption provided by Section 13(a)(1) of the FLSA is defined and explained in Department of Labor regulations, codified at 29 CFR part 541. The regulations generally require that, to be exempt, employees must meet specified regulatory standards with respect to their job duties and responsibilities, and be compensated "on a salary basis" at a level that is not less than the stated amounts.[1]

Employees whose terms and conditions of employment meet the stated exemption requirements need not be paid the FLSA minimum wage or overtime premium pay for hours worked over 40 per week.

The regulations defining "salary basis" (at § 541.118) provide that an employee will be considered to be paid "on a salary basis" if the employee regularly receives each pay period a predetermined amount constituting all or part of the employee's compensation and the predetermined amount is not subject to reduction because of variations in the quality or quantity of work performed. Subject to specified exceptions, the employee must receive the full salary for any week in which any work is performed without regard to the number of days or hours worked, subject also to the general rule that an employee need not be paid for any workweek in which no work is performed.

Deductions may not be made "* * * for absences occasioned by the employer or by the operating requirements of the business," such as "deductions * * * for time when work is not available" (§ 541.118(a)(1)). Deductions also may not be made for activities such as jury duty, attendance as a witness, or temporary military leave (§ 541.118(a)(4)).

Deductions may be made from an employee's predetermined compensation without invalidating the employee's salaried status when an employee is absent from work for a full day or more for personal reasons, other than sickness or accident, as provided in § 541.118(a)(2). Deductions are also permitted for absences of a day or more because of sickness or disability if the employer has a *bona fide* plan, policy or practice that provides compensation for loss of salary due to sickness and disability (§ 541.118(a)(3)). Deductions imposed "in good faith for infractions of safety rules of major significance" also will not affect an employee's salaried status (§ 541.118(a)(5)).

The regulations also state that the effect on the salaried status of an employee, and thus eligibility for exemption, when an impermissible deduction is made will depend upon the facts in each case. This provision permits an employer who makes impermissible deductions from the predetermined compensation of an otherwise salaried employee to reimburse the employee for the deductions in certain circumstances, thereby restoring the exempt status of the employee. In particular, § 541.118(a)(6) provides:

> (6) The effect of making a deduction which is not permitted under these interpretations will depend upon the facts in the particular case. Where deductions are generally made when there is no work available, it indicates that there was no intention to pay the employee on a salary basis. In such a case the exemption would not be applicable * * * during the entire period when such deductions were being made. On the other hand, where a deduction not permitted by these interpretations is inadvertent, or is made for reasons other than lack of work, the exemption will not be considered to have been lost if the employer reimburses the employee for such deductions and promises to comply in the future.

The salary requirement has been an integral part of the 541 regulations since 1940. The existing regulatory interpretation of "salary basis" dates back to 1954 (19 FR 4405; July 17, 1954). These provisions were developed from extensive hearings and record evidence showing that executive, administrative, and professional employees employed in industries then-subject to the FLSA, which excluded governmental employers, were nearly universally paid on a salary basis. Employers not compensating on a salary basis have had ample opportunity to conform their pay practices to the requirements if they chose to claim exemption for their employees, or pay overtime premium pay. In contrast, the public sector pay policies at issue in this rulemaking evolved over the years subject to constraints in statutes, ordinances or policies based on public accountability principles that preclude paying public employees for hours not worked, under systems that regarded management employees as being exempt from overtime.

[1] The existing exemption criteria include specified duties and responsibilities tests, in addition to a salary requirement. To qualify, an employee must be paid a weekly salary of a least $155 as an executive or administrative employee, and $170 as a professional, and must meet all the other tests (the "long tests" for exemption). If such employees receive $250 (or more) in salary, a shorter, less-stringent duties test applies (the "short test" or "upset salary test"). Consideration of these compensation levels will be undertaken in connection with any further rulemaking.

B. Legislative History of the FLSA in the Public Sector

Since FLSA was enacted in 1938, the Congress and the U.S. Supreme Court have periodically acknowledged the special circumstances of, and different treatment to be accorded to, governmental employers and employees under the FLSA, as distinguished from the private sector. Originally, the FLSA did not apply to employees of States or political subdivisions. Congress extended coverage in 1966 to employees of State and public entities operating transit companies, hospitals, schools and related institutions. The U.S. Supreme Court upheld the constitutionality of applying the Act to such entities in *Maryland* v. *Wirtz*, 392 U.S. 183 (1968).

In 1974, Congress extended coverage to all public sector employees, exempting only elected officials and their immediate staffs. It did so with the stated intent to cover virtually all public sector employees who were not within the scope of the section 13(a)(1) exemption. The committee report accompanying the bill that became the 1974 Amendments described the provisions affecting Federal, State and local government employees in the following manner:

> Section 6 of the bill extends minimum wage and overtime coverage to about 5 million *non-supervisory* employees in the public sector not * * * [then] covered by the Act. * * * The bill will provide that virtually all *non-supervisory* government employees will be covered. * * * By the same token, the committee intends to cover all employees *(except professional, executive, and administrative personnel who are exempted under section 13 of the law)* in all civilian branches of the Federal Government." (H.R. Rep. No. 93-313, p. 27 (1974); emphasis added.)

In 1976, however, the U.S. Supreme Court considered the special nature of State and local governments under the FLSA and ruled that the FLSA's minimum wage and overtime pay provisions could not constitutionally be applied to State and local government employees engaged in traditional governmental activities. *(National League of Cities* v. *Usery*, 426 U.S. 833 (1976).) The Court expressly overruled *Maryland* v. *Wirtz* with regard to the Act's application to public school and hospital employees, but National League did not alter the continued application of FLSA to employees engaged in activities that are not "traditional" functions of government.

In 1985, the Supreme Court reversed National League in *Garcia* v. *San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985). The Court reasoned that sufficient authority existed to apply the FLSA to State and local governments under the commerce clause of the Constitution and found that applying Federal regulation based on the distinction between "traditional" and "nontraditional" governmental functions was unsound and unworkable. In response to Garcia, Congress amended the FLSA in November 1985 to address particular concerns of State and local governments and to provide relief from liability during a temporary adjustment period after the Garcia decision. New provisions were added to allow the use of compensatory timeoff in lieu of cash wages for overtime in the public sector, with a higher maximum limit on the number of hours that can be accumulated by public safety and certain other employees; to include overtime exemptions for certain employment situations in which employees work dual jobs; and to provide special rules for public agency volunteers. The 1985 Amendments did not, however, affect section 13(a)(1) of the Act or specifically address the application of the executive, administrative, or professional employee exemption to State and local government employees. Neither the statutory changes nor the legislative history of the 1985 Amendments contain any significant references to section 13(a)(1) or 29 CFR part 541.

C. Public Sector Pay Systems and the FLSA

Some State and local government jurisdictions operate pay policies based on constitutional or statutory provisions while others are derived from regulations or policies that have evolved over the years. The rules and procedures of many of these pay systems were in place long before FLSA coverage of the public sector brought on by the 1985 Garcia decision. Such pay systems are generally premised on a concept derived from principles of public accountability that governmental employees should not be paid for time not worked due to the need to be accountable to the taxpayers for the expenditure of public funds.

At the time of Garcia, therefore, most public employers had in place compensation systems requiring all employees, regardless of how paid, to use accrued leave time or incur a reduction in pay for any absences from work. Such Governmental payroll systems prohibited paying employees for time not actually worked that was not covered by accrued leave, regardless of whether the time not worked was greater or less than one full work-day. Thus all public employees under such systems, including highly-compensated managers who otherwise would clearly be exempt from the overtime requirements, could be classified as non-salaried and thus non-exempt. As a consequence, few public employers compensated employees in a manner that would satisfy the "on a salary basis" provision required by the regulations.

The Department first observed this anomaly when responding to written inquiries from public sector employers following the Supreme Court's Garcia decision in 1985. It was also raised in public comments received on the Department's Advance Notice of Proposed Rulemaking (ANPR) on Part 541 published in the **Federal Register** on November 19, 1985 (see 50 FR 47696), before the 1985 FLSA Amendments went into effect. One issue raised in the ANPR was whether the salary tests for exemption should be increased or eliminated.

During this same time frame, the Office of Personnel Management (OPM) issued regulations on the 541 exemption for executive, administrative, and professional employees of the federal government. Under OPM's regulations, exempt status was determined according to grade level and the position classification system rather than salary, and did not include a "salary basis" requirement.[2] With this background, the ANPR also raised the question "[s]hould the Department recognize individual State and local government civil service systems for classifying [executive, administrative, and professional] EAP employees in applying the exemption to employees of such governments?"

[2] Section 4(f) of the FLSA provides that the Department of Labor will administer the Act for employees employed in the Library of Congress, the United States Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority. OPM administers FLSA with respect to all other employees of the Federal Government except certain Congressional employees. See 29 U.S.C. section 204(f), Reorganization Plan No. 2 of 1978 (92 stat. 3783), and section 8 of the Fair Labor Standards Amendments of 1989 (Pub. L. 101-157).

Two commenters responding to the ANPR pointed to the conflict between State and local laws and § 541.118 by noting that State or local laws frequently prohibit employees from being paid for time not actually worked, or not covered by annual, sick, or other types of paid leave. These commenters cited the example of an otherwise exempt public employee who is absent from work for personal reasons, or is unable to work because of illness or accident, where the employee has not accrued, or has exhausted, paid leave time, being paid only for the hours actually worked in accordance with applicable State or local law. Consequently, a public employer that makes deductions from pay for absence(s) computed on an hourly basis would not be in compliance with the "salary basis" requirements in § 541.118 that allow for deductions to be made in such cases only for absence(s) of a full day or longer.

The Department also received comments expressing concerns about the "salary basis" requirement for exemption for public sector employers in response to proposed regulations issued to implement the 1985 FLSA Amendments (51 FR 13402; April 18, 1986). These comments were noted in the preamble to the final rule as follows:

> Finally, several commenters requested various forms of special treatment for State and local governments with respect to the section 13(a)(1) exemption for bona fide executive, administrative, and professional employees, particularly with respect to the requirement in 29 CFR Part 541 that such employees be paid on a salary basis. The commenters argued that State and local governments should be permitted to make deductions from an exempt employee's salary for absences of less than a day. They argued that this change is necessary to recognize current payroll practices, as well as State and local government laws which preclude the payment of wages for hours not worked (except for earned leave).

On November 19, 1985, the Department of Labor published in the **Federal Register** (50 FR 47696) an advance notice of proposed rulemaking requesting the views of the public on any changes they felt were necessary in 29 CFR part 541. The comment period ended on March 22, 1986. However, the Department expects to publish a notice of proposed rulemaking concerning Part 541 during 1987. Interested parties will have an opportunity to offer comments on the subject matter of that regulation at that time.

In light of the separate rulemaking process with respect to part 541, it would not be appropriate for the Department to address this issue in developing a final rule for part 553.

* * *

And:

Several commenters, including various cities, the National League of Cities (NLOC) and the National Public Employer Labor Relations Association (NPELRA), stated that 29 CFR part 541 should be revised to eliminate the requirement that an exempt employee be paid on a salary basis.

As discussed earlier under § 553.32, there is a separate rulemaking process with respect to part 541.

Therefore, it would not be appropriate for the Department to address this issue in developing a final rule for part 553.

This discussion of comments received on proposed 29 CFR § § 553.32 (at 52 FR 2019) and 553.216 (at 52 FR 2023) was published in the **Federal Register** January 16, 1987.

D. The Department's 1987 Enforcement Policy

The Department initially attempted to address the special circumstances of the public sector by means of an enforcement policy issued by the Wage and Hour Administrator on January 9, 1987, as follows:

> It has come to our attention that some State and local government jurisdictions have statutory provisions which prohibit any employee from being paid for time not actually worked, or not covered by annual, sick, or other type of paid leave. Such statutory provisions conflict with the salary basis of payment described in § 541.118 of 29 CFR Part 541. For example, where an otherwise exempt public employee is absent from work for personal reasons, or is unable to work because of illness or accident, and the employee has not accrued, or has exhausted, paid leave time, such employee is paid only for hours actually worked in accordance with applicable State or local law. This practice is similar to the practice applicable to Federal employees. Consequently, a public employer may make deductions from pay absence(s) on an hourly basis which is contrary to the position in § 541.118 that deductions may be made only for absence(s) of a day or longer.
>
> Revisions to the provisions of 29 CFR part 541, including the salary tests, have been under consideration as indicated in the Advance Notice of Proposed Rulemaking (ANPR) published in the **Federal Register** on November 19, 1985 (50 FR 47696). The ANPR was published in order to obtain the views of the public on needed changes in the regulations. A commenter representing public employers has pointed out the problem described above and has proposed changes in § 541.118 that would allow deductions to be made for absence(s) of less than a day, or to eliminate the salary test entirely.
>
> While consideration is being given to proposed changes in the regulations, a nonenforcement policy is being adopted with regard to the salary basis of payment for otherwise exempt public employees. Wage-Hour will not deny an exemption under section 13(a)(1) to an otherwise exempt public employee whose pay is reduced by deductions for absence(s) of less than a day for personal reasons, or because of illness or accident, because the employee does not have, or has exhausted available paid leave for such absence(s).
>
> This nonenforcement policy will be followed only where the public employer can show that a provision contained in applicable State or local law in effect prior to April 15, 1986, prohibits payments to an employee for absence(s) of the type described above which are not covered by available paid leave. This nonenforcement policy is not intended to affect any employee's rights under section 16(b) of FLSA.
>
> If you have any questions concerning the above policy, please contact the Wage and Hour Division's Office of Program Operations, Branch of FLSA Enforcement, at FTS 523-7043.

This announced enforcement policy was routinely communicated to the public in response to inquiries and widely disseminated to State and local governments (see, e.g., Fair Labor Standards Handbook For States, Local Governments and Schools, app. III, pp. 148–149 (Thompson Publishing Group, Inc., 1987)).

E. Developments in Private Lawsuits

The Wage and Hour Division's 1987 enforcement policy expressly stated that it was not intended to affect the rights of public employees to file private lawsuits under section 16(b) of the FLSA.[3] Since the Supreme Court's *Garcia* decision in 1985, numerous lawsuits have been filed by public employees seeking to recover overtime premium pay from their employers, and in many of these cases the resolution of the exempt status of employees turned solely on the court's reading of the "salary basis" requirement in the regulations. The courts have interpreted the construction of the regulations in different ways, reaching different results.

[3] Under section 10 of the Portal-to-Portal Act of 1947, Public Law No. 49, 80th Cong., ch. 52, 1st Sess. (29 U.S.C. 251 *et seq.*), an employer has a defense against liability for failure to pay minimum wages or overtime compensation under the FLSA if the employer pleads and proves that "* * * the act or omission complained of was in good faith in conformity with and in reliance on any written administrative regulation, order, ruling, approval, or interpretation, * * * or any administrative practice or enforcement policy of [the Wage and Hour Administrator] with respect to the class of employers to which he belonged. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that after such act or omission, such administrative regulation, order, ruling, approval, interpretation, practice, or enforcement policy is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect." (*See also* 29 CFR 790.13 & .18.)

In circumstances where the public entity's pay practices called for the docking of pay for partial-day absences when leave was not available, some courts concluded that a salary was not "subject to" deduction where there was no evidence that the employee's pay was ever reduced; that only actual and not "theoretical" deductions could invalidate the salary basis of compenstion; [4] and that rare instances of docking pay for absences of less than a day did not defeat eligibility for the exemption except in the workweek in which a deduction was made.[5] Other courts have allowed public employers to utilize the "remediation" provisions at 29 CFR 541.118(a)(6) to preserve the exempt status of employees in cases where inadvertent deductions were made from pay for absences of less than a day when leave was exhausted, the affected employees were reimbursed for such deductions, and the employer promised to comply in the future.[6]

In contrast, other courts determined that the exemption was inapplicable under the "salary basis" requirement solely because a public entity's pay system required docking of pay when leave was not available. Some courts held that employees under such a pay system calling for deductions to be made when the employee is absent and has no leave are not paid "on a salary basis" even if no such deductions have in fact occurred.[7]

Such judicial interpretations and accompanying confusion were exposing governmental employers to potentially enormous and generally unexpected back wage liabilities for many employees who would clearly be exempt but for the treatment of leave and the docking of pay for partial-day absences when leave was unavailable. Following the denial of certiorari (January 1991) and petition for rehearing (March 1991) in Abshire, representatives of State and local governments, including the National League of Cities, the United States Conference of Mayors, and the League of California Cities, presented their ugent concerns to the Department arising from the flood of lawsuits being filed by public employees and requested prompt action by the Department to address the matter in light of the anticipated effects of post-Abshire litigation.

These State and local government representatives indicated that, without immediate action by the Department of Labor to revise the regulations for State and local governments, the potential liabilities for affected governmental entities would become devastating. They expressed concern over the fundamental inequity of courts granting windfall awards of across-the-board retroactive overtime payments to public employees who never had any actual deductions made in their salaries, along with employees who rarely had such deductions, but all of whom would be entitled to substantial back pay under Abshire simply because their salaries were theoretically "subject to" the possibility of docking.[8] They asserted that this resultant windfall was not required by, and that Abshire was an extreme interpretation of, DOL's regulations. They stated their belief that § 541.118(a)(6) allows public employers to make occasional deductions in the salary of individual employees without defeating the salary basis for all employees, so long as the deductions are not significant in relation to the total compensation paid all similarly classified exempt employees; moreover, that the exemption would be lost for an individual employee if the deductions in pay are regular and recurring vis-a-vis that individual employee; that in the event of occasional deductions, a public employer should be permitted to pay overtime to the affected employees who have been docked for the specific work periods in which the deductions were made without losing the exemption for employees whose pay was not docked or for the docked employees in pay periods in which no docking took place; and, that in the event of regular and recurring deductions, the exemption should be denied to the affected employee only, in all workweeks it is claimed, including those weeks when no deductions are made. They supported their views by noting prior Wage and Hour opinion letters which they asserted stated that occasional docking of salary by a public employer, after exhaustion of available leave, would only result in a loss of the exemption for the employee whose pay was docked, and only then for the period (i.e., workweek) in which the deduction occurred (citing opinion letters of the Wage and Hour Administrator dated January 15, 1986 ((reprinted in Fair Labor Standards Handbook For States, Local Governments & Schools, supra, p. 69)); January 17, 1986 ((unpublished)) ((which states that "[w]here an occasional deduction that is not permitted by § 541.118 is made from the salary of an otherwise exempt employee, the exemption would be lost in that workweek when the deduction was made.")); and July 17, 1987 ((reprinted in Fair Labor Standards Handbook For States, Local Governments & Schools, supra, p. 159)) ((discussing "losing the exemption for that week" and noting "[i]t is our opinion that, although the employee would be considered a nonexempt employee during those weeks when paid on an hourly rate basis, it would not affect the employee's exempt status in other weeks when the employee is paid on a salary basis.")).) Some courts, they observed, had adopted positions consistent with their interpretations and, in fact, had relied upon the cited opinion letters in deciding that the exemption was still available to public employers operating such leave "systems" that reduced the pay of employees for absences of less than a day.[9]

F. The Department's September 1991 Rulemaking

Because of concerns that the unexpected liabilities threatened to seriously impair the fiscal integrity of many State and local governmental agencies, and would disrupt widespread, long-standing pay practices that had been designed to serve the public trust, the Department undertook separate rulemaking on the specific issue of application of the "salary basis"

[4] See, e.g., *Atlanta Professional Firefighters Union* v. *Atlanta*, 920 F. 2d 800 (11th Cir. 1991); *Harris* v. *District of Columbia*, 709 F. Supp. 238 (D.D.C. 1989).

[5] See, *D.C. Nurses Assn.* v. *District of Columbia*, 29 WH Cases 868 (D.D.C. 1988).

[6] See, e.g., *Hortman* v. *Arlington County, Va.*, 720 F. Supp. 1227 (E.D. Va. 1989), aff'd, 903 F. 2d 290 (4th Cir. 1990); *Fire Fighters Local 2141* v. *City of Alexandria, Va.*, 720 F. Supp. 1230 (E.D. Va. 1989), aff'd, 912 F. 2d 463 (4th Cir. 1990); *Harkins* v. *City of Chesapeake*, 29 WH Cases 1399 (E.D. Va. 1988); *Chodwick* v. *City of Norfolk, Va.*, 29 WH Cases 1407 (E.D. Va. 1988); and *Sarver* v. *City of Roanoke, Va.*, 29 WH Cases 1442 (W.D. Va. 1989).

[7] See, e.g., *Abshire* v. *County of Kern*, 906 F. 2d 483 (9th Cir. 1990), cert. denied, 111 S.Ct. 785 (1991), rehearing denied, 111 S.Ct. 1341 (1991); *Banks* v. *City of North Little Rock*, 706 F. Supp. 1023 (E.D. Ark. 1988); *D'Camera* v. *District of Columbia*, 693 F. Supp. 1208 (D.D.C. 1988); *Hawks* v. *City of Newport News, Va.*, 707 F. Supp. 212 (E.D. Va. 1988); *Harrison* v. *District of Columbia*, 30 WH Cases 557 (D.D.C. 1991).

[8] Mayor David Dinkins of New York City described the situation in an August 14, 1991 letter to Secretary of Labor Lynn Martin as follows:

> The City of New York, along with many other jurisdictions, faces serious fiscal problems. To meet those problems we have already cut services and laid off thousands of employees. The layoff of State and local government employees has been cited by the staff of the Federal Reserve Board as a reason for the continuing weakness in the economy. To exacerbate those fiscal problems and those layoffs to pay overtime to management employees because of the application to the public sector of a regulation designed for the private sector would be contrary to the public interest.

[9] See, e.g., *DC Nurses Assn.* v. *District of Columbia, supra*, 29 W.H. Cases at 869 n. 1; *Fire Fighters Local 2141* v. *City of Alexandria, VA., supra*, 720 F. Supp. at 1232; *Harris* v. *District of Columbia, supra*, 709 F. Supp. at 241.

rule to public sector employees, while continuing its overall review of the full range of issues under 29 CFR part 541 raised by the public comments submitted on its ANPR of November 19, 1985 (50 FR 47696). Recognizing the special circumstances of public sector employment, under which employees are paid pursuant to pay systems established according to principles of public accountability, and in light of the potentially enormous, unforeseen liability which could threaten the governments' fiscal integrity as a result of retroactive overtime payments to public employees considered exempt by their employers, the Department proceeded with rulemaking on an expedited basis, finding good cause to waive the normal requirement for prior notice and comment.

The Department published an Interim Final Rule (IFR) on September 6, 1991 (56 FR 45824), inviting public comments for 30 days, modifying the "salary basis" rules affecting eligibility for exemption under section 13(a)(1) of FLSA for employees in the public sector only. The Department issued the IFR to allow State and local governments to continue their public-accountability pay systems without incurring liability for overtime pay under FLSA to employees who would otherwise be exempt from the overtime pay requirements. A new § 541.5d was added to the regulations to provide that an otherwise exempt public sector employee who is paid according to a pay system that requires the use of paid leave for partial-day absences for personal reasons or due to illness or injury and, when leave is not used or is exhausted, reduces the employee's pay for such absences of less than one full work-day, will not be disqualified from exemption due to such pay system. The rule also provided that the exemption would not be defeated by deductions from salary caused by budget-required furloughs that are not regular and recurring, except in the workweek in which a deduction occurs. The Department left all other aspects of the salary test unchanged, as well as the duties and responsibilities tests of the exemption, as applied to employees in the public sector.

The Department also published a Notice of Proposed Rulemaking (NPRM) on the same day (56 FR 45828; September 6, 1991), inviting public comment for 30 days on a separate proposal at 29 CFR 541.118(a)(6)(ii) to allow public sector employers with pay systems as specified in the IFR, under which past deductions were made in the pay of otherwise exempt public employees for absences of less than one work-day for personal reasons or due to sickness or injury, to reimburse the employees for those deductions that occurred before the IFR went into effect and thereby restore the employees' eligibility for exemption. The regulatory proposal also provided that the "salary basis" component of the exemption would not be disallowed under such pay systems where no actual deductions were made before the IFR went into effect. Upon review of the comments submitted on the NPRM, the Department is withdrawing the proposal from further consideration and it will not be implemented as a final rule. See, published elsewhere in today's Federal Register, a document that withdraws this NPRM. The Department will be proposing a legislative remedy to address such retroactive liability.

In response to a request from representatives of labor organizations affiliated with the AFL–CIO and its Public Employee Department, on October 4, 1991, the Department extended the public comment period for an additional 30 days on both the IFR and the NPRM (see 56 FR 50256; 56 FR 50302), and the period for public comment closed on November 6, 1991.

The Department received a total of 398 comments during the comment period, generally as follows:

—229 in favor, from governmental entities, associations or individuals (23 States or State agencies and other entities (e.g., university, etc.); 124 cities (or agencies thereof); 46 counties (or agencies thereof); 29 associations of governments (e.g., National League of Cities, U.S. Conference of Mayors, National Association of Counties, etc.); and 7 others including law firms;

—169 opposed, from employees, unions and associations, law firms, or individuals (137 employees, including 114 individuals who are employee-plaintiffs in a lawsuit pending against the City of New York); 25 employee associations/unions; and 7 others, including law firms.

In addition, in response to the President's directive to Federal agencies to involve the public and other interested parties in evaluating existing regulations and programs to identify initiatives that would eliminate unnecessary regulatory burdens or otherwise promote economic growth, the Department published a Request for Information in the Federal Register on February 24, 1992 (57 FR 6301), requesting public input on the Department's current regulations and those under consideration in terms of identifying burdens placed on the economy, inhibitions to growth, and the benefits achieved by the regulations. Representatives of the governments of thirty States, the District of Columbia, Salt Lake City, Utah, Personnel Administrators of Texas Senior Colleges and Universities, the International Personnel Management Association, and the National Association of State Personnel Executives responded to this Notice offering views on the effect of Regulations, 29 CFR part 541, on the public sector, stating that lawsuits were resulting in windfall back wage payments as a result of technical violations of the "salary basis" test, and suggesting other areas of difficulty under the duties and responsibilities tests for exemption as an "administrative" employee under § 541.2. Several comments were also received suggesting revisions or review of other aspects of Regulations, 29 CFR part 541, including its application to the private sector. Some private sector commenters have suggested that modern compensation practices, especially those adopted to provide increased flexibility in the workplace and to reduce artificial distinctions among classes of employees, have made the salary basis test anachronistic. The Department is currently reviewing these comments, as well as those received in response to the 1985 ANPR, in order to determine what further rulemaking proceedings may be appropriate with regard to these and the other issues raised.

With regard to the public sector, which is the subject of this rulemaking, it is clear to the Department, after review of all of the comments, that certain aspects of the "salary basis" test for distinguishing exempt from nonexempt employees did not serve their intended purpose when applied to the public sector, as aspects of the "salary basis" requirement are unduly restrictive when applied in the public sector. In the Department's view, these aspects are not valid indicators of the *bona fides* of a claimed exemption under section 13(a)(1) in the public sector where every employee may theoretically be subject to potential docking for partial-day absences. State and local governments were thus being inappropriately deprived of the opportunity to apply the section 13(a)(1) exemption to their employees who would otherwise be properly exempt. For these reasons, the Department is of the view that public sector pay systems have to be analyzed differently from private sector pay systems.

The major comments received on the current rulemaking are summarized below, together with a discussion of the

significant changes that have been made in the final regulatory text in response to the comments received. A number of comments were submitted that focused on issues in the regulations on which the Department had not proposed changes or invited public comment, which the Department will not be addressing at this time. However, to the extent appropriate, the Department will consider these views in the context of its overall review of the full range of issues being considered in connection with the Department's November 1985 ANPR and February 1992 Request for Information.

III. Summary of Major Comments

As a preliminary matter, one law firm (Fisher & Phillips) commented that the narrative discussion in the preamble to the IFR (at p. 45824 of the September 6, 1991, Federal Register) incorrectly stated the requirements of the salary test in the exemptions discussed in part 541 when it suggested that "[c]ompensation must be greater than the amount specified in the regulations, and must be 'on a salary basis.' " The comment is correct. Under the regulations, compensation must be ". . . at a rate of not less than . . ." the amounts specified in the regulations.

Comment: Clarify the applicability of the remaining elements of the "salary basis" test.

Several commenters (American Federation of Teachers (AFT); International Association of Fire Fighters (IAFF); United Auto Workers (UAW)) commented that it was not clear that public employers continued to remain subject to all other aspects of the "salary basis" test in the regulations, stating that some public employers have attempted to argue in pending lawsuits that the Department's interim final rule completely eliminated all aspects of the "salary basis" test in the public sector.

The Department's interim final rule did not eliminate altogether the "salary basis" test in the public sector. A public sector employer must still be able to demonstrate that a claimed exempt employee satisfies all other aspects of the "salary basis" requirements for exemption. The interim final rule states specifically that to be exempt under the new exception an employee must be one "* * * who otherwise meets the requirements of § 541.118 * * *," the regulation which defines payment on a salary basis. The new § 541.5d added to the regulations provides that an otherwise exempt public sector employee would not be disqualified from exemption "* * * on the basis that * * *" the employee is paid according to public pay systems that require the use of paid leave and, when leave is not used or is exhausted, reduce employees' pay for absences of less than one full work-day for personal reasons or due to illness or injury. The rule also provided that eligibility for exemption would not be defeated by deductions from salary caused by budget-required furloughs that are not regular and recurring, except in the workweek in which a deduction occurs. Only partial-day deductions from pay when leave was not used or was exhausted and furlough-required deductions were addressed by the interim final rule. All other aspects of the salary test were left unchanged for the public sector, as these commenters pointed out.

Comment: The method used by the Department of Labor to consider and issue the rules was unfair and improper.

A number of commenters affiliated with the AFL–CIO (American Federation of State, County and Municipal Employees (AFSCME); AFT; American Postal Workers Union (APWU); IAFF; Laborer's International Union of North America (LIUNA); Los Angeles County Professional Peace Officers Association; and Service Employees International Union (SEIU)) suggested that the Department of Labor had issued the rules after sudden extensive involvement with employer groups and with no advance notice to representatives of employees who might be affected. Several objected to what they perceived as the Department of Labor acting at the request of a select group of employers without independent investigation or consultation with other affected parties, and without prior notice and comment pursuant to normal rulemaking procedures.

During the spring and early summer of 1991, following the decision of the Ninth Circuit in *Abshire* and the Supreme Court's January 1991 denial of *certiorari* and March 1991 denial of petition for rehearing, the Department received numerous communications requesting immediate attention to and resolution of the public sector issues relating to the "salary basis" test. The Department met and consulted with public employers and their representatives concerning these matters. The Department also met with representatives of the AFL–CIO and affiliated unions concerning these issues, both before the regulations were published in the Federal Register and after the regulations were published, but before the close of the initial public comment period. Furthermore, in response to a specific request made by the AFL–CIO and affiliated unions during the latter meeting, the Department agreed to extend the public comment period to allow additional time for the submission of views from the public. The implication that the Department has been one-sided or purposely excluded important interests in its efforts to try to resolve this matter with its regulations is, in the Department's view, unfounded.

As stated in the preamble to the interim final rule (56 FR 45825), the Secretary found good cause to implement the interim final rule without prior notice and comment, on the basis that delay in implementing a corrective rule pending comment would be contrary to the public interest. The Department had determined, in the aftermath of *Abshire* and the diverging judicial interpretations and confusion that developed, that it was necessary and appropriate to proceed to immediate rulemaking and simultaneously invite comments for consideration in the preparation of any final rule which would be determined to be appropriate based on the public comment received.

It had become apparent to the Department, as a result of court decisions in private litigation and the communications it received, that the previously existing rules and enforcement policy were inadequate for effectuating the statutory exemption in the public sector. The availability of the exemption to public employers was increasingly sharply limited, contrary to the expressed intent of Congress in the 1974 Amendments. Public sector employers were accordingly being confronted with unexpected liabilities in very substantial amounts for employees considered exempt by their employers, and who assertedly would have been exempt but for the public accountability pay systems established well before extension of the Act to public sector employees. Because such awards could threaten State and local governments' fiscal integrity, the Department determined it was appropriate to change the "salary basis" rule on an *interim* basis so as to forestall additional liability while comments were received and considered in the process of developing and promulgating any final rule.

The Department is aware that district courts in California, in private actions to which the Department was not a party, have found the interim final rule to be invalid on the basis that the Department failed to comply with the notice and comment procedures of the Administrative Procedure Act.[10] These

[10] *SEIU* v. *County of San Diego*, 784 F. Supp. 1503 (S.C. Cal. 1992); *Alex* v. *State of California*, 30 WH Cases 1353 (E.D. Cal. 1992); *Morsch* v. *City of Los Angeles*, No. CV 91–0401 jGD (C.D. Cal., May 4, 1992).

courts reached their decisions without the benefit of evidence from or briefing by the Department, and apparently without full consideration of the facts underlying the Secretary's determination that the situation was so serious as to require interim action while comments were sought thereon. The Department continues to believe that good cause existed for issuing an interim regulation without prior notice and comment. In any event, the Department has given full, fair and open-minded attention to all of the comments it received, treating the interim final rule for these purposes as a proposal, and has fully complied with the requirements of the Administrative Procedure Act in the promulgation of this final rule.

Comment: It is inappropriate to apply the section 13(a)(1) exemption for public sector employers differently than for private sector employers.

A number of commenters (AFT; Carrol, Burdick & McDonough on behalf of the California Department of Forestry Employees Association (Local 2881 IAFF); Brenda J. Carter, Esq.; Davis, Reno & Courtney on behalf of the Engineers and Architects Association, Los Angeles, CA; IAFF; International Union of Police Associations; LIUNA; National Association of Police Organizations; SEIU; and Zwerdling, Paul, Leibig, Kahn & Thompson) suggested that there is no basis for the Department to distinguish between the private and public sectors under the section 13(a)(1) exemption. Some of these commenters pointed to the 1985 FLSA Amendments as clear evidence that the lack of attention to this issue by Congress in those Amendments reflected a specific Congressional intent not to distinguish between these two types of employment for purposes of applying section 13(a)(1) of the Act. Another commenter (Council of Engineers and Scientists Organizations) stated that the 1974 FLSA Amendments demonstrate that Congress intended to extend the same, equal protection to employees in the public and private sectors. One other commenter (AFSCME) suggested that the Department could have encouraged public employers to alter their policies concerning deductions of less than a day or that less drastic remedial measures could have been taken, such as altering the regulations to require that an actual deduction of pay occur before the exemption is lost.

The regulations defining the section 13(a)(1) exemption, largely in their present form, were adopted long before Congress extended the rights and protections of the FLSA to employees in the public sector.[11] Thus, the practice of docking public employees' pay for partial-day absences when paid leave was not available was not initially a concern in the administration of section 13(a)(1) of the FLSA.

Significantly, the existing regulatory requirements were adopted following public hearings in the 1940's and 1950's, which included evidence from witnesses showing that *bona fide* executive, administrative, and professional employees in the industries at that time subject to the FLSA were almost universally paid on a salary basis. These fact-based inquiries, conducted before the public sector became subject to the FLSA, did not include an examination of prevailing governmental pay practices. The historical record based on contemporaneous evidence also indicated that employees who did not meet the salary test generally also did not meet the other requirements of the exemption.[12] The opposite is true with respect to the Department's current rulemaking, which was intended to address prevailing public sector pay systems operating under statute, ordinance, regulation, or other established public policy requiring all employees, including otherwise-exempt managers and executives, to use accrued leave time or incur a reduction in pay for any absences from work.

When FLSA coverage was extended to include public sector employees, separate provisions were not added to the regulations to define the section 13(a)(1) exemption in a manner that would distinguish public from private sector employment.

However, it is clear from a plain reading of FLSA's legislative history in 1974 (quoted in section II.B. above) that Congress intended for the section 13(a)(1) exemption to be available for public sector employees. Congress presumably was unaware that, because many public sector compensation systems preclude payment for hours not worked, these systems would, solely for that reason, be found to fail to meet the regulatory "salary basis" component of the exemption. In light of the public accountability principles prevalent in public sector pay systems, the regulatory requirements adopted before Congress extended FLSA coverage to State and local governments simply could not operate in a manner that effectively distinguished exempt from non-exempt public employees. The regulations were thus out of harmony with the intent of the statute because State and local governments could not practically avail themselves of the exemption intended by Congress, and thus were inappropriate as applied in the public sector.

The fact that public sector employers had pay systems that prevent them from paying employees for part-day absences when paid leave is not available, and thus could invalidate the exemption for all employees "subject to" such pay systems under the principles set forth in *Abshire*, was not generally recognized to be the problem it is today when the 1985 Amendments were enacted. The 1985 legislation's silence on this issue is not indicative, in the Department's view, of an intent to make the section 13(a)(1) exemption unavailable to public sector employers because of the nature of their pay systems.

Congress expressly authorized the Secretary of Labor to prescribe the requirements for exemption under section 13(a)(1) of the Act when it provided that "* * * such terms are defined and delimited from time to time by regulations of the Secretary * * *." Had Congress felt that the Department should not be free to revisit and revise its regulations in the future based on its enforcement experiences, it would have amended the statute to remove the Secretary's discretion to "* * * define[] and delimit[] from time to time by regulations * * *." The Congress has not made such a change throughout the history of the Act despite the numerous opportunities by the Congress over the years to amend section 13(a)(1).

Furthermore, the regulations promulgated immediately after enactment of the FLSA to implement section 13(a)(1) of the Act contained a section entitled "Petition for amendment of regulations" which provided, in part, that:

> [I]n determining * * * future regulations, separate treatment for different industries and for different classes of employees may be given consideration.

This provision has remained a part of the regulations throughout their history. See 29 CFR 541.6 (1991). The Department has always had authority under these regulations to consider separate treatment of the public sector.

In light of the court decisions and representations by affected parties, the Department has determined that strictly

[11] The general requirement that an exempt employee be paid "on a salary basis" has been an integral part of the regulations since 1940, and 29 CFR 541.118 ("salary basis") has remained essentially unchanged since revisions were last made in 1954.

[12] See, e.g., Proposed revision of Regulations, Part 541, under the Fair Labor Standards Act, Report and Recommendations (U.S. Department of Labor, Wage and Hour and Public Contracts Divisions, Washington, D.C., March 3, 1958), p.2.

applying all aspects of the salary basis rule to the public sector under section 13(a)(1) has produced results that do not effectuate the intended purposes of the Act. The Department considers it inconsistent with Congressional intent and inappropriate that the exemption be denied in the public sector to virtually all employees solely because their pay is subject to deduction for partial day absences where paid leave is not used, pursuant to pay systems that were established according to principles of public accountability, and, in some cases, imposed by law, ordinance or regulation, even before Congress extended the Act's coverage to the public sector. As a result, the Department has determined that these specific elements of the "salary basis" test are not valid indicators in the public sector of the bona fides of a claimed exemption under section 13(a)(1), and the revisions herein are necessary in order to give effect to the staturtory exemption in the public sector as intended by Congress under the 1974 Amendments.

It is important to note that public pay systems, in many cases, are the result of requirements in State constitutions and statutes, civil service systems, city charters and ordinances, or regulations. Even if it were procedurally possible to change personnel policies through amendments to constitutions and charters and the repeal of all applicable laws and ordinances, it appears to the Department that the changes in public policy and tradition required for governments to conform to the Department's salary basis requirements, as interpreted by the Abshire court, are not consistent with the public accountability principles supported and required by the public. Thus, with respect to AFSCME's suggestion that the regulations could have been revised to require an actual deduction in pay for the exemption to be lost, principles of public accountability embodied in the need to be accountable to the taxpayers for the expenditure of public funds only for hours actually worked require that the exemption criteria for the public sector take into account the fact that the pay systems at issue reduce pay for partial-day absences when leave is exhausted. As initially expressed in the preamble of the IFR, the Department's understanding that public sector employers necessarily must be held to a higher standard of accountability regarding the use of public funds in paying public employees was confirmed by the comments received during the rulemaking process. Consequently, to limit the rule to disallowing exemption in those workweeks that pay is reduced for absences not covered by available paid leave, as suggested, would simply not be responsive and would result in a rule that remains inadequate for appropriately distinguishing exempt from non-exempt employees in the public sector.

Comment: Rules should address additional compensation paid by public employers, not just deductions from compensation.

Three commenters (City of Fort Worth, TX; Law Department, Salt Lake City, UT; and Spencer Fane Britt & Browne) noted that some courts have viewed additional pay and benefits computed on an hourly basis as evidence that an hourly rate was paid in lieu of a salary—i.e., compensation at straight-time hourly rates for overtime hours worked; compensatory time-off of one hour of each overtime hour worked (i.e., hour-for-hour). These commenters stated that an exempt employee should be able to receive such additional compensation, including compensatory time, without defeating the salary basis test of the exemption.

Exempt employees may receive additional compensation in addition to a guaranteed salary without defeating the salary basis in accord with § 541.116(b), entitled "Minimum guarantee plus extras," which was not open for comment during the present rulemaking affecting the public sector.

The Department expects to address this issue as appropriate in proposed revisions of Part 541 at a later date.

The new § 541.5d modifies the "salary basis" test only by providing that an otherwise-exempt public sector employee under certain circumstances would not be disqualified from exemption where a deduction is taken from the employee's pay for part-day absences. The change was proposed because of public sector employers' inability, because of principles of public accountability, to avoid not paying their employees for hours not worked, thereby necessitating deductions for such part-day absences. Principles of public accountability do not provide a basis for making a special public sector rule for additional compensation paid.

Comment: The "salary basis" test should be deleted for public sector employees.

Four commenters (City of Bellingham, WA; County of Fairfax, VA; Florida League of Cities; and Law Department, Salt Lake City, UT) suggested that the "salary basis" test should be deleted altogether, or made inapplicable as in Senate Bill S. 1670 (Seymour, CA), 102nd Cong., 1st Sess., or replaced with a minimum salary level, increased from present levels, above which the "salary basis" test would not apply.

The Department's IFR was narrowly drafted in response to a demonstrated need to specifically address the particular fact that the existing "salary basis" test in the regulations produced inappropriate results when applied to public sector compensation systems which, based on principles of public accountability, reduce pay for partial-day absences for personal reasons or due to sickness or injury when leave is not used. All other requirements of the salary test were left unchanged as applied to employees in the public sector. Sufficient justification has not been shown in the comments to warrant eliminating altogether the "salary basis" requirement or making it inapplicable to public sector employees paid above some minimum "upset" salary level.

Comment: Revise the regulations to reflect differences in the nature of public sector jobs.

Several commenters (CA Department of Personnel Administration; International Personnel Management Association; National Association of State Personnel Executives; and University of California) suggested that the concept that public sector employment differs significantly from that of the private sector should be expanded to the duties and responsibilities tests, noting in particular the "administrative" employee exemption in § 541.2 and perceived difficulties in applying "production work" concepts to the modern work place typical of today's government employees. One commenter (Human Relations Department, Chatham County, GA) suggested the Department pursue an entirely separate set of regulations for the public sector. These comments do not address the "salary basis" subject matter of the current rulemaking and will have to be dealt with at a later date when revisions to § 541.2 are considered and proposed for public comment.

Comment: Permit more deference to be given to collective bargaining agreements under the FLSA.

Two commenters (Florida League of Cities; Law Department, Salt Lake City, UT) suggested that the Department of Labor should defer to the agreement of the parties to collective bargaining agreements in addressing situations that are covered by such agreements, for example: in areas such as the treatment of court appearance time (as overtime); a negotiated non-compensable 15-minute line-up time; and use of beepers, take-home vehicles, and "K-9" dogs. The suggestions are not within the

purview of the subject matter of the current rulemaking. They would also be inconsistent with the long-standing principle under the FLSA that employees cannot waive their rights to statutory benefits enacted to effectuate a legislative policy.[13]

Comment: § 541.118(a)(5) regarding deductions for penalties imposed for infractions of safety rules of major significance should be broadened to include disciplinary suspensions of public sector employees.

Several commenters (Arnstein & Lehr on behalf of the City of Naperville, IL; County Attorney, Fulton County, GA; Fisher & Phillips) stated that disciplinary situations are unique in the public sector, particularly in organizations like police departments, or different from those of the private sector because public employers have less freedom to terminate employees absent extraordinary circumstances and thus must use disciplinary suspensions without pay to rehabilitate or control behavior; that public employers have virtually no other penalty options; and that suspension for a full week, which can be done without jeopardizing exempt status, is rarely imposed because of its severity. One commenter (County Attorney, Dade County, FL) suggested that disciplinary systems promulgated by statute, ordinance, administrative order, standard procedure, or collective bargaining should be treated in the same manner as the new regulation treats deductions for partial-day absences. One commenter (Fisher & Phillips) noted that such disciplinary systems were in place at the time of the Garcia decision and are premised on the concept that public employers should be accountable to the taxpayers for the conduct of public employees. Another commenter (City of Norfolk, VA) stated that failure to allow disciplinary deductions in the case of exempt employees could result in inconsistent application of discipline among exempt and non-exempt employees.

In the Department's judgment, the comments have not suggested a sufficient basis for distinguishing between the public and private sectors with respect to any recommended change in the rule. Although contrary assertions were made, the comments failed to demonstrate that public employers are significantly more restricted in the availability of options with respect to employee discipline than private employers. Although public employee terminations may require compliance with procedures designed to protect employee rights, termination for disciplinary reasons is not generally unavailable. In addition, other remedies for disciplinary infractions, such as official reprimands, demotions, and reassignment or restriction of duties, are generally available and used in the public sector.

Section 541.118(a)(5) was not open for comment during the present rulemaking. However, the Department expects to consider this issue as appropriate in proposed revisions of Part 541 at a later date.

Comment: Clarify or delete the terms "regular and recurring" in § 541.5d(b) concerning deductions due to budget-required furloughs.

Two commenters (County Attorney, Fulton County, GA; University of California) urged that the phrase "regular and recurring" be deleted to make clear that deductions due to any budget-required furloughs not affect exempt status, or that the phrase be defined in a manner that permits monthly furlough days to be considered not "regular and recurring." Another (AFT) questioned whether "regular and recurring" would mean annually; or, every six months?

The intent of this provision was to permit State and local governments facing severe financial difficulties which may require laying off employees to make decisions concerning how best to address such situations, including through use of furloughs, without having to also anticipate additional adverse financial consequences which would only aggravate their financial distress from a later determination under the Department's regulations that the furloughed employees became non-exempt and entitled to additional retroactive overtime pay simply because of deductions made due to the budget-required furloughs. We have determined from our reexamination of the regulatory language in light of the comments received that the reference to "regular and recurring" should be deleted as suggested. A public sector employer should not be penalized by the decision to spread individual furlough days out over an extended period so as to lessen the severity of the adverse financial impact on employees, in contrast to the potentially harsher result of being required to impose a single longer-term furlough of at least one week at one time. Appropriate modifications have accordingly been made in the final rule.

Comment: The term "budget-required furlough" in § 541.5d(b) should be defined.

Two commenters suggested clarification of the term "budget-required furlough." One (AFT) questioned whether the term envisioned deductions in circumstances where a legislature passes a budget but the chief executive, at odds with the legislature, vetoes the budget and lays off or furloughs employees. Another (IAFF) recommended that the term pertain only to a budget crisis in which all employees suffer pay reductions because of across-the-board furloughs.

The Washington, DC, Office of the Governor of the State of California considered the term problematic because it implies that an employer must justify that a furlough is indeed "required," and suggested instead use of the term "budget-related."

It is possible that in the absence of a rule allowing for otherwise-exempt public sector employees to be furloughed without losing their exempt status in other, non-furlough workweeks, the burdens of any budget-required furloughs could fall disproportionately on non-exempt employees of the governmental entity facing the budget shortfall because exempt employees could not be furloughed without invalidating their salaried basis of pay under § 541.118(a)(1). The intent of the rule was to permit public sector employers facing financial difficulties from budget shortfalls so severe that they must furlough employees in order to avoid lay-offs and/or an illegal deficit to be empowered to make appropriate decisions on how best to implement furloughs without risking additional retroactive overtime liabilities and even higher potential deficits because of the furloughs. If insufficient funds exist to pay even base salaries, there would certainly be no funds available to pay additional unanticipated, retroactive, across-the-board overtime payments to otherwise-exempt employees.

Thus, in response to the comments received, furloughs resulting from the chief executive vetoing the budget passed by the legislature would be considered within the intended scope of the term "budget-required." Moreover, the Department does not intend to limit the rule solely to across-the-board furloughs or place other unwarranted restrictions on the decisionmaking authority of public employers in operating furloughs. For example, if the furlough provision was limited only to furloughs generally affecting all employees, a State or local government would be precluded from designating certain employees as exempt from all or part of the furlough and required to report for duty during the furlough period, on grounds they are essential to the continued operation of the government's functions or the orderly suspension of these functions.

The Department did not intend that the term "budget-required" would necessitate a factual determination in each case that there were no other means available other than a furlough to avoid a budgetary deficit. On the other hand, the Department does not intend for the provisions of § 541.5d(b) to permit a public employer to make deductions from exempt employees' pay for any reasons other than an official furlough of employees and, therefore, does not believe it is appropriate to use the term "budget-related" as suggested. Accordingly, the Department does not believe, after carefully considering the comments received, that further substantive changes are required in the rule in this regard.

Comment: Clarify the meaning of the phrase "workweek in which such deductions occurred" in § 541.5d(b).

One commenter questioned during which workweek a furloughed employee was to be treated as non-exempt—the week the furlough day was taken, the week the reduced pay check is received, or one of the weeks for which the pay check represents the employee's compensation? The exemption is lost in the workweek in which the furlough day is taken and for which the employee's pay is accordingly reduced. The language has been clarified in the final rule.

Comment: Clarify that all improper deductions result in loss of the exemption only for the particular employee docked and only in the workweek of the improper deductions.

One commenter (City of Chicago) suggested, in effect, that the new rule relating to furloughs be extended to any and all improper deductions so that the exemption would be lost only in the week(s) in which deduction(s) occur. Depending on the circumstances surrounding the impermissible deductions actually made, the suggested clarification would not be consistent with the existing provisions at § 541.118(a)(6) which hold that the effect of making a deduction which is not permitted will depend upon the facts in the particular case. The Department considers the suggested change to be a significant departure from long-standing policy that is not substantiated by comment. Nor has any basis been presented to give special treatment in this regard to the public sector. It has, therefore, not been adopted in the final rule.

Comment: Include situations where the employee does not have permission to use available leave credits.

One commenter (Director of the Budget, State of New York) made the observation that negotiated agreements often require employees to obtain the employer's approval to be absent from work and be eligible to apply leave credit to be paid for the absence. Apparently, if the absence is unauthorized under such agreements, the employee is denied the use of leave credits and pay is reduced.

If advance approval of an absence is required under the terms of the employer's leave policy and is not sought or is sought and denied in a particular instance, leave availability for such employee is no different than when leave has been "exhausted." The commenter's recommendation that language be added to address this condition has been adopted, and the final regulation has been clarified in this regard.

Comment: The reference to "Federal, State or local government employee" should be replaced by "public agency employee."

One commenter suggested that use of the term "public agency employee" would be more consistent with the statutory language used by Congress when coverage was extended to the public sector (29 U.S.C. 203 (d) and (e)(2)). The Department agrees that use of a uniform term is appropriate, and the suggestion has been adopted in the final rule.

Comment: Allow deductions for periods of illness or injury of one or more workdays regardless of whether there is a leave plan.

One commenter expressed concern that some small public employers have no sick-leave plans, and, thus, would not be able to deduct for absences of one or more days for illness or injury under § 541.118(a)(3) without losing eligibility for the exemption, or would have to adopt a minimal plan to satisfy the test for *bona fide* plan, policy or practice in order to permit such deductions without losing such eligibility. This problem arises for the public employer whose pay system requires deductions for any time not worked, but which does not have any kind of plan for compensating employees for lost time due to sickness or injury and which is located in a State that does not require a disability insurance plan. According to opinions issued over the years by the Wage and Hour Administrator, the plan that an employer would have to adopt to preserve exempt status for its employees can be simple and need not be particularly generous, so long as it is impartially allocated to the affected employees. In this regard, there is no requirement in § 541.118(a)(3) for any specific amount of leave to be stated under such plans, thus allowing considerable flexibility under the regulations.

Comment: The phrase "• • • established by statute, ordinance, regulation or public policy • • •" should be deleted or clarified.

Several commenters (Epstein Becker & Green; New York City Housing Authority; San Francisco Redevelopment Agency; Washington, DC, Office of the Governor of the State of California) questioned the intended meaning of this phrase and recommended that it be either clarified or deleted. One of these commenters suggested that many State and local governments may not have pay systems established by statute, etc., and that the courts may narrowly interpret the term "public policy." Other commenters (AFT; IAFF) expressed a belief that the undefined term will be applied too broadly and generate litigation. One commenter suggested that the regulation incorporate the explanation of "public policy" contained in the preamble to the IFR, i.e., that it encompasses any practice or policy derived from principles of public accountability. The National League of Cities suggested that the addition of the term "or practice" would more fully reflect public pay systems. One comment expressed concern that the phraseology would be under-inclusive, e.g., potentially might not include a negotiated memorandum of understanding or written internal operating procedures. This commenter suggested replacing the clause with "• • • pay system established in writing or by public policy evidenced by past practice • • •" Other comments suggested that there was no need to identify the particular source of the "policy," or that there was no justifiable reason for distinguishing among the methods by which governmental entities establish their policies or practices.

The purpose of the phrase in question was to enable public sector employers to operate pay systems based on principles of public accountability without incurring unanticipated overtime liabilities to employees who would otherwise be exempt but for the practice of docking pay for partial-day absences when leave was not used. However, it is the Department's view that the relief contemplated by the rule should only be available where the policy or practice of docking pay when leave is not used is based on principles of publi : accountability, as the record

[13] See, e.g., *Brooklyn Savings Bank* v. *O'Neil*, 324 U.S. 697 (1945); *Barrentine* v. *Arkansas Best Freight Systems, Inc.*, 450 U.S. 728 (1981).

demonstrates is generally the case. Public accountability is a broad concept that forms the foundation for many governmental administrative practices, including most public sector pay systems, and is derived from the desires of taxpayers that their government be accountable to them for expenditures from the public treasuries. Public accountability embodies the concept that elected officials and public agencies are held to a higher level of responsibility under the public trust that demands effective and efficient use of public funds in order to serve the public interest. It includes the notion that the use of public funds should always be in the public interest and not for individual or private gain, including the view that public employees should not be paid for time they do not work that is not otherwise guaranteed to them under the pertinent civil service employment agreement (such as personal or sick leave), and the public interest does not tolerate wasteful and abusive excesses such as padded payrolls or "phantom" employees. In response to the comments received, the Department is clarifying in the final rule what was intended by "public policy" by substituting the phrase "policy or practice established pursuant to principles of public accountability."

Comment: Delete the phrase "* * * (because the leave has been exhausted or by the employee's choice) * * *"

One commenter stated that this phrase is under-inclusive in that it does not take into account the practice of docking an employee's pay for being absent without leave (AWOL) for less than a day. The commenter suggested deleting the phrase. This concern has been addressed in the final rule with respect to the change made regarding systems that require employees to obtain advance permission to be eligible to utilize leave to be paid for absences.

Comment: Clarify the phrase "* * * requires the employee's pay to be reduced * * *"

One commenter observed that this phrase may be interpreted to exclude a public pay system where the practice of docking pay is, to any degree, *discretionary* with the public employer. This commenter suggested that the regulations be revised to read "* * * the public employee's pay can be reduced * * *"

The regulation protects public sector employers from a finding of non-exempt status solely because their pay system requires deductions from pay when leave is not used for the reasons stated in the regulations. If a deduction from pay (or the decision not to deduct) is based purely on the employer's discretionary choice, compensation would be "subject to deduction" for a reason other than that specified in the IFR. The change suggested by the commenter would broaden the exemption to include all deduction practices, whether or not required by the pay system, and whether or not mandatory or discretionary. We do not believe that this suggestion is consistent with the underlying justification for initiating the rulemaking, i.e., that principles of public accountability require that public sector employees not be paid for hours not worked that are not otherwise covered by an entitlement under an employment agreement, such as paid leave.

Comment: Delete the clause "* * * for personal reasons or because of illness or injury * * *".

One commenter proposed that this clause be deleted because it, too, would narrow the permissible reasons for docking pay for AWOL absences of less than a day. As previously discussed, AWOL absences have been addressed in the final rule, which treats unauthorized absences in the same manner as instances where leave is not available because it has been exhausted.

Comment: Clarify the status of leave deductions.

Several commenters (AFT; the cities of Alhambra and San Jose, CA, and Norfolk, VA; SEIU; UAW) observed that the rule referred to pay deductions only and was silent on the issue of whether deductions from paid leave accounts for partial-day absences can affect the determination of salaried status. Under the terms of this regulation, deductions from either accrued leave or pay when leave is not used for the reasons stated, will not disqualify an employee from being paid "on a salary basis." It is the Department's position that an employer can require an employee to substitute paid leave for absences of less than a day without losing the exemption for that week because, in such circumstances, the employee does not experience a deduction from pay.

Executive Order 12291

This rule is not considered to be a "major rule" within the meaning of Executive Order 12291, in that, under the status quo pre-*Abshire*, most of the employees materially affected by the rule change were considered by their employers to be exempt, notwithstanding public sector pay systems under which their pay is subject to deductions for absences of less than one day. Furthermore, under the Department of Labor's enforcement policy established in January 1987, the exempt status of affected employees was not denied by the Department for such partial-day absences affecting otherwise-exempt employees. Therefore, the rule is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, no regulatory impact analysis has been prepared.

Regulatory Flexibility Analysis

The Department has determined that this rulemaking will not have a significant economic impact on a substantial number of small entities. This conclusion is based on the fact that under the status quo pre-*Abshire*, most public employers consider otherwise-exempt employees to be exempt, notwithstanding public sector pay systems under which employees' pay is subject to potential deductions for absences of less than one day. Furthermore, under the Department of Labor's enforcement policy established January 1987, the exemption would generally not be denied by the Department to such employees.

Document Preparation

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 541

Labor, Minimum wages, Overtime pay, Salaries, Teachers, Wages.

Accordingly, part 541 of title 29 of the Code of Federal Regulations is amended as set forth below.

Signed at Washington, DC, on this 14th day of August 1992.

Lynn Martin,

Secretary of Labor.

Cari M. Dominguez,

Assistant Secretary for Employment Standards.

Karen R. Keesling,

Acting Administrator, Wage and Hour Division.

PART 541—DEFINING AND DELIMITING THE TERMS "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESMAN"

1. The authority citation for part 541 is revised to read as follows:

Authority: 29 U.S.C. 213; Pub. L. 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR, 1945–53 Comp., p. 1004); Secretary's Order No. 13–71 (36 FR 8755).

2 Section 541.5d of subpart A of part 541 is revised to read as follows:

§ 541.5d Special provisions applicable to employees of public agencies.

(a) An employee of a public agency who otherwise meets the requirements of § 541.118 shall not be disqualified from exemption under §§ 541.1, 541.2, or 541.3 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because—

(1) permission for its use has not been sought or has been sought and denied;

(2) accrued leave has been exhausted; or

(3) the employee chooses to use leave without pay.

(b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid "on a salary basis" *except* in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

[FR Doc. 92–19876 Filed 8–18–92; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration
Wage and Hour Division

29 CFR Part 541

Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act; Public Sector Employers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice of withdrawal of regulatory proposal.

SUMMARY: This is to advise the public that the U.S. Department of Labor is withdrawing its notice of proposed rulemaking published in the **Federal Register** on September 6, 1991 (56 FR 45828). This proposal would have allowed governmental entities to restore eligibility for exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and the rules governing payment "on a salary basis" at 29 CFR part 541, § 541.118(a)(6), for otherwise-exempt public employees subject to pay systems that provide for the use of paid leave and, when accrued leave is not used, result in deductions from pay for absences of less than one work-day. In the light of public comments and the decision of the Supreme Court in *Bowen* v. *Georgetown University Hospital*, 488 U.S. 204 (1988), the Department has decided to withdraw the proposal and not implement it as a final rule.

DATES: This withdrawal is effective August 19, 1992.

FOR FURTHER INFORMATION CONTACT: J. Dean Speer, Director, Division of Policy and Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 523–8412 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under the FLSA, 29 U.S.C. 201 *et seq.*, unless an exemption otherwise applies, employees must be compensated at a rate not less than one and one-half times their regular rate of pay for all hours worked over 40 per week. Section 13(a)(1) of the Act, 29 U.S.C. 213(a)(1), provides a statutory exemption from this requirement, and from the requirement to pay at least the minimum wage, as well, for employees employed in a *bona fide* executive, administrative, or professional capacity, as follows:

Section 13. (a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *)

The scope of the exemptions provided by section 13(a)(1) of the FLSA is defined and explained in Department of Labor regulations codified at 29 CFR part 541.

In the **Federal Register** of September 6, 1991 (56 FR 45828), the Department issued a proposed rule to provide that eligibility for the exemption under the regulatory requirement that employees be paid "on a salary basis" would not be defeated in the case of governmental entities that either: (1) Made no deductions from the pay of otherwise exempt employees for absences of less that one work-day before the effective date of new regulations promulgated at 29 CFR 541.5d, or (2) reimbursed otherwise-exempt employees for deductions from pay made for absences, for personal reasons or because of illness or injury, of less than one work-day that occurred before the effective date of § 541.5d. The proposal was intended to operate in conjunction with the Department's newly-published interim final rule applying the salary basis requirement in the public sector, published separately on September 6, 1991, 56 FR 45824, at 29 CFR 541.5d. The public comment period on both the interim final rule and the proposal closed November 6, 1991.

A total of 398 comments were received during the comment period on the interim final and the proposal from cities, counties, states, governmental associations, employees, employee unions and associations and law firms. A number of commenters suggested that the proposal was inconsistent with the decision of the Supreme Court in *Bowen*.

Upon reconsideration of the proposal in the context of the *Bowen* and subsequent case law, the Solicitor of Labor has concluded that the proposal, if promulgated as a final rule, would constitute invalid "retroactive" rulemaking. As a consequence, it is necessary to withdraw the proposal from further consideration and it will not be implemented as a final rule. Instead the Department intends to support legislative action to address this issue.

Document Preparation

This document was prepared under the direction and control of Karen R. Keesling, Acting Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed at Washington, DC, on this 14th day of August 1992.

Lynn Martin,
Secretary of Labor.
Carl M. Dominguez,
Assistant Secretary for Employment Standards.
Karen R. Keesling,
Acting Administrator, Wage and Hour Division.

[FR Doc. 92–19879 Filed 8–18–92; 8:45 am]
BILLING CODE 4510–27–M

federal register

Wednesday
August 19, 1992

Part VIII

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research; Advisory Committee Meeting and Proposed Actions Under the Guidelines; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on September 14–15, 1992. The meeting will be held at the Marriott Hotel of Bethesda, 5151 Pooks Hill Road, Bethesda, Maryland 20814, starting at approximately 9 a.m. on September 14, 1992, to adjournment at approximately 5 p.m. on September 15, 1992. The meeting will be open to the public to discuss the following proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958):

Proposed Major Actions to the NIH Guidelines;

Additions to Appendix D of the NIH Guidelines Regarding Nine Human Gene Therapy/Gene Transfer Protolcols, a new expression vector system derived from Semliki Forest Virus, and Introduction of a Gene Coding for Tetracycline Resistance into Porphyromonas gingivalis;

Other Matters To Be Considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, Phone (301) 496–9838, FAX (301) 496–9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 11, 1992.

Susan K. Feldman,

Committee Monogement Officer, NIH.

[FR Doc. 92–19928 Filed 8–18–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Recombinant DNA Research; Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules (51 FR 16958).

SUMMARY: This notice sets forth proposed actions to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning these proposals. These proposals will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on September 14–15, 1992. After consideration of these proposals and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the NIH Guidelines.

DATES: Comments received by August 25, 1992, will be reproduced and distributed to the RAC for consideration at its September 14–15, 1992, meeting.

ADDRESSES: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by FAX to 301–496–9839

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, 301–496–9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following actions under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

I. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Bank

In a letter dated May 14, 1992, Dr. Arthur Bank, Columbia University, New York, New York, indicated his intention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Use of Human MDR Gene in Patients with Advanced Cancer.

II. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Roth

In a letter dated March 19, 1992, Dr. Jack A. Roth, MD, Anderson Cancer Center, University of Texas, Houston, Texas, indicated his intention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Clinical Protocol for Modification of Oncogene and Tumor Suppressor Gene Expression in Non-Small Cell Lung Cancer (NSCLC).

III. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Therapy Protocol/Dr. Lotze

In a letter dated May 1, 1992, Dr. Michael T. Lotze, University of Pittsburgh, Pittsburgh, Pennsylvania, indicated his intention to submit a human gene therapy protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Gene Therapy of Cancer: A Pilot Study of IL–4 Gene Modified Antitumor vaccines.

IV. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Deisseroth

In a letter dated June 8, 1992, Dr. Albert D. Deisseroth, MD, Anderson Cancer Center, University of Texas, Houston, Texas, indicated his intention to submit a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: Use of Retroviral Markers to Evaluate the Efficacy of Purging and to Discriminate Between Relapse which Arises from Systemic Disease Remaining after Preparative Therapy Versus Relapse due to Residual Neoplastic Cells in Autologous Marrow Following Purging in Patients with Chronic Lymphocytic Leukemia (CLL).

V. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Walker and Blaese

In a letter dated July 20, 1992, Drs. Robert Walker and R. Michael Blaese, National Institutes of Health, Bethesda, Maryland, submitted a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Study of the Safety and Survival of the Adoptive Transfer of Genetically Marked Syngeneic Lymphocytes in HIV Infected Identical Twins.

VI. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Dr. Schuening

In a letter dated July 17, 1992, Dr. Friedrich G. Schuening, Fred Hutchinson Cancer Research Center, Seattle, Washington, submitted three human gene transfer protocols to the Recombinant DNA Advisory Committee for formal review and approval. The titles of these protocols are: (1) Phase I/II Study of the Use of Recombinant Human Interleukin 3 (rhIL3) Stimulated Peripherial Blood Progenitor Cell Supplementation in Autologous Bone Marrow Transplanation in Patients with Breast Carcinoma or Hodgkin's Disease; (2) Evaluation of the Use of Recombinant Human G–CSF Stimulated Peripheral Blood Progenitor Cell Supplementation in Autologous Bone Marrow Transplanation in Patients with Lymphoid Malignancies, and (3) A Trial of G–CFS Stimulated Peripheral Blood Stem Cells for Engraftment in Identical Twins.

VII. Addition to Appendix D of the NIH Guidelines Regarding a Human Gene Transfer Protocol/Drs. Brenner and Mills

In a letter dated June 5, 1992, Dr. Malcolm K. Brenner of St. Jude Children's Research Hospital, Memphis, Tennessee, and Dr. Bonnie J. Mills of Baxter Healthcare Corporation, Santa Ana, California, indicated their intention to submit a human gene transfer protocol to the Recombinant DNA Advisory Committee for formal review and approval. The title of this protocol is: A Phase II Trial of the Baxter Neuroblastoma Bone Marrow Purging System using Gene Marking to Assess Efficacy.

VIII. Addition to Appendix D of the NIH Guidelines Regarding Semliki Forest Virus/Dr. Temple

In a letter dated July 20, 1992, Dr. Gary F. Temple, Life Technologies, Inc., Gaithersburg, Maryland, is requesting permission to conduct experiments with a Semliki Forest Virus (SFV)–SQL helper expression system at Biosafety Level 2.

IX. Addition to Appendix D of the NIH Guidelines Regarding the Introduction of a Gene Coding for Tetracycline Resistance into Porphyromonas gingivalis/Dr. Progulske—Fox

In a letter dated July 1, 1992, Drs. Carolyn Keierleber and Ann Progulske-Fox of the University of Florida, Gainesville, Florida, are requesting permission to conduct experiments which involve the introduction of a gene coding for tetracycline resistance into Porphyromonas gingivalis at Biosafety Level 2.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: August 6, 1992.

Daryl A. Chamblee,

Acting Associate Director for Science Policy and Legislation, NIH

[FR Doc. 92–19929 Filed 8–18–92; 8:45 am]

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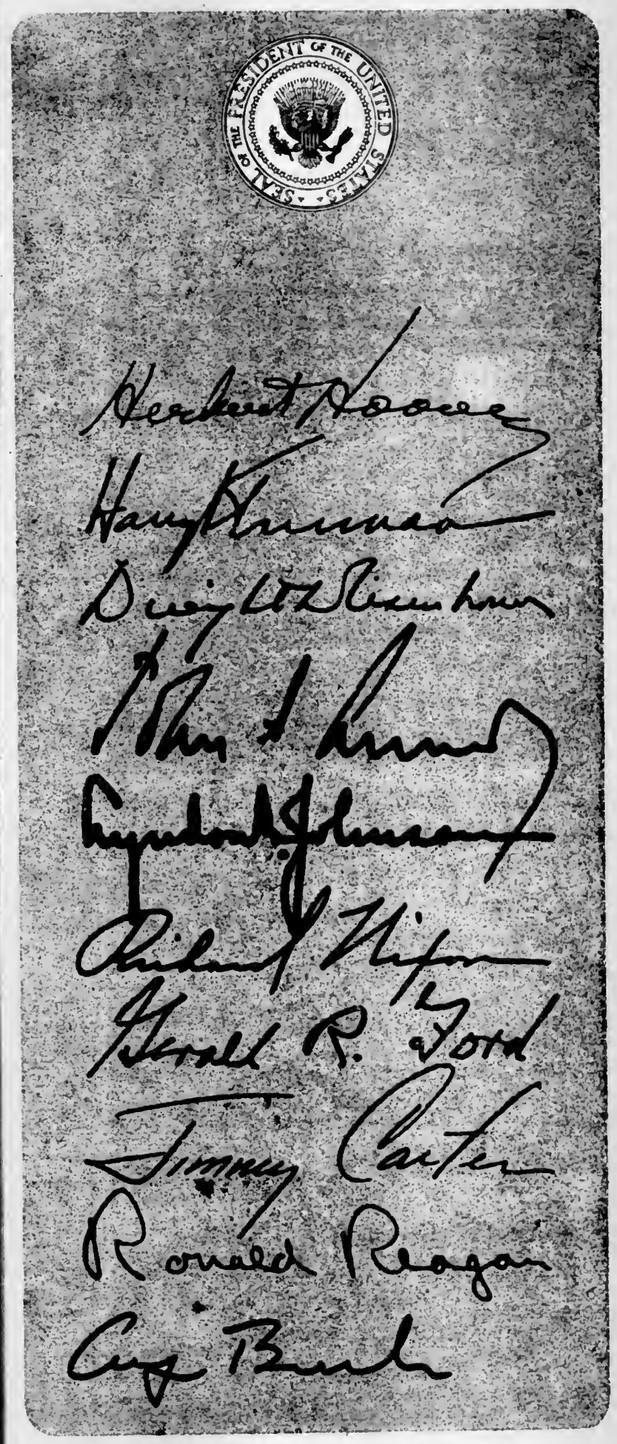
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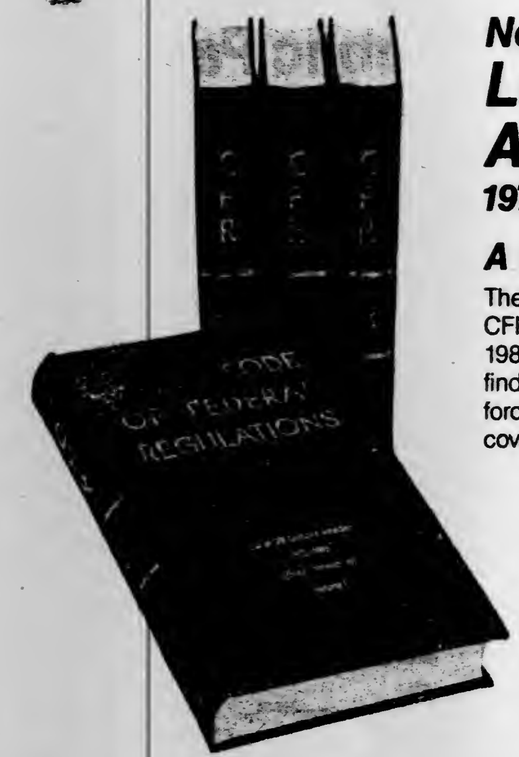
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Thursday, August 20, 1992

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 91-174-2]

Mexican Fruit Fly; Addition of Regulated Area in Los Angeles, CA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the Mexican fruit fly regulations. The interim rule quarantined the State of California and designated a portion of Los Angeles County as a regulated area, and listed American Samoa, the Northern Mariana Islands, and the parts of Louisiana not previously listed, as areas into or through which the movement of regulated articles is restricted. The action was necessary to prevent the spread of the Mexican fruit fly to noninfested areas of the United States and to impose certain restrictions on the movement of regulated articles from regulated areas in California and Texas, into or through American Samoa, the Northern Mariana Islands, and the parts of Louisiana not previously listed.

The interim rule also amended the Mexican fruit fly regulations by adding two alternative treatments to the list of approved treatments that may be used to qualify regulated articles for interstate movement with a certificate.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Mike B. Stefan, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective December 31, 1991, and published in the **Federal Register** on January 7, 1992 (57 FR 519-522, Docket No. 91-174), we amended the Mexican fruit fly regulations in 7 CFR 301.64 by (1) quarantining the State of California and designating as a regulated area a portion of Los Angeles County; (2) listing American Samoa, the Northern Mariana Islands, and the portion of the State of Louisiana not previously listed, as areas into or through which the movement of regulated articles is restricted; and (3) adding two alternative treatments, one for premises and one for grapefruit and oranges, to the list of approved treatments that may be used to qualify regulated articles for interstate movement with a certificate.

Comments on the interim rule were required to be received on or before March 9, 1992. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of the Management and Budget has waived the review process required by Executive Order 12291.

The rule restricts the interstate movement of regulated articles from a portion of Los Angeles County in California. Within the regulated area there are approximately 376 small entities that may be affected by this rule. These include 150 fruit/produce markets, 38 nurseries, 180 mobile vendors, 6 flea markets, and 2 processors. There are no growers in the regulated area who would be affected. These 376 entities comprise less than one percent of the total number of similar entities operating in the State of California. Most of the sales for these entities involve local intrastate movements. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of the rule on these entities appears to be minimal. The effect on those few entities that do move regulated articles interstate will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost.

The rule added American Samoa, the Northern Mariana Islands, and additional parts of Louisiana not previously listed to the list of areas into or through which the movement of regulated articles is restricted.

Based on a review of available records, there appears to be very little movement of regulated articles from regulated areas in California and Texas directly to American Samoa and the Northern Mariana Islands. We have determined that American Samoa and the Northern Mariana Islands do not provide a substantial market for regulated articles from regulated areas in California and Texas.

Available records also indicate that most shipments of citrus fruit or other regulated articles from regulated areas in Texas, into the portion of Louisiana previously not listed, are channeled there by brokers in New Orleans, Louisiana. New Orleans is within the area of Louisiana that has been listed as an area into or through which the movement of regulated articles is restricted. Therefore, all regulated articles shipped from regulated areas in Texas into this city have been accompanied by a certificate. The certificate indicates that the regulated articles have been inspected by an Animal and Plant Health Inspection Service (APHIS) inspector and determined to be free of Mexican fruit fly, or have been treated under the direction of an APHIS inspector in accordance with § 301.64-10 of the regulations.

Further, the rule allows entities to continue shipping regulated articles from regulated areas in California and Texas to American Samoa, all parts of

Louisiana, and the Northern Mariana Islands provided certain conditions—ranging from inspection to treatment—are met.

The addition of two alternative treatments to the list of approved treatments is unlikely to affect the amount of regulated articles that are moved to restricted areas from regulated areas in Texas, since most citrus and other regulated articles moved interstate by these entities are certified for such movement without the need for treatment. (The regulations in § 301.64–5 state, in part, that a regulated article may be moved interstate, with a certificate, if an inspector determines that the regulated article is free from the Mexican fruit fly, or if the inspector determines that the premises of origin is free from the Mexican fruit fly and the regulated article has not been exposed to the Mexican fruit fly. Treatment, therefore, becomes necessary only if the above conditions cannot be met.)

A cold treatment is currently available for regulated articles. Two additional treatments simply provide more treatment options during these instances in which treatment is required.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are in conflict with this rule;

(2) Has not retroactive effect; and

(3) Does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Mexican fruit fly, Plant diseases, Plant pests, Plant (agriculture), Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule amending 7 CFR 301.64 *et seq.*, that was published at 57 FR 519–522 on January 7, 1992.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 17th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19915 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

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7 CFR Part 354

[Docket No. 92–004]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding commuted traveltime allowances for travel between various locations in Maine and Texas. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: George H. McFadden, Jr., Director, Resource Management Support, PPQ, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances for travel between various locations in Maine and Texas. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for

recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule concerns the overtime services provided by employees of PPQ and the traveltime allowances for travel between various locations in Maine and Texas. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding in the table, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served form	Metropolitan area	
		Within	Outside
Add:			
Maine:			
Portland	Manchester, NH.		6
Texas:			
Columbia	Laredo		2

Done in Washington, DC, this 17th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19916 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

Commodity Credit Corporation

7 CFR Part 1435

RIN 0560–AC88

Sugar

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On April 10, 1992, the Commodity Credit Corporation (CCC) issued an interim rule to the regulations with respect to the Sugar Price Support Program which is conducted by the CCC in accordance with section 206 of the Agricultural Act of 1949, as amended (the 1949 Act). The interim rule implemented changes made by section 111 of the Food, Agriculture, Conservation, and Trade Act Amendments of 1991 (the 1991 Act). The interim rule amended the provisions that provide for changes with respect to security interests obtained by CCC and that sugarcane shall also be available for supplementary nonrecourse loans as required by the 1991 Act. This rule adopts as final the interim rule published on April 10, 1992.

EFFECTIVE DATES: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: David Wolf, Program Specialist, Cotton, Grain, and Rice Price Support Division (CGRD), Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–4704.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1 and it has been determined to be "nonmajor" because these program provisions will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program, as found in the catalogue of Federal Domestic Assistance, to which this final rule applies are Commodity Loans and Purchases–10.051.

It has been determined that the Regulatory Flexibility Act is not applicable because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that the program will have no significant impact on the quality of the human environment.

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, and 48 FR 29115 (June 24, 1983).

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule are not retroactive and preempt State laws. Before any judicial action may be brought regarding the provisions of this final rule all administrative appeal remedies at 7 CFR part 780 must be exhausted.

Public reporting burden for the information collections contained in this regulation with respect to the sugar price support program is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collections have previously been cleared by OMB, and

assigned number 0560–0087 and 0560–0093.

Background

An interim rule was published in the **Federal Register** on April 10, 1992, at 57 FR 12410 which amended 7 CFR part 1435 to provide for administering CCC sugar price support programs.

The interim rule amended § 1435.6(e)(1) to include sugarcane by providing that notwithstanding any other provision of this part, in areas where CCC determines that sugar beets and sugarcane normally are harvested during July, August, and September, processors may obtain a loan with respect to sugar from such production and if such loan is repaid by September 30, request a supplemental loan in accordance with § 1435.6(e)(2). Formerly, sugarcane was not included in the above provision.

The interim rule amended § 1435.9(c) to provide that security interests obtained by CCC as a result of the execution of security agreements by the processors of sugarcane and sugar beets shall be superior to all statutory and common law liens on raw cane sugar and refined beet sugar in favor of the producers of sugarcane and sugar beets and all prior recorded and unrecorded liens on crops of sugarcane and sugar beets from which the sugar was derived. Formerly, in accordance with § 1435.9(c)(2)(i), processors were required to obtain lien waivers unless an opinion was obtained from the State's Attorney General in accordance with § 1435.9(c)(2)(ii).

The rule amended § 1435.12(d) to clarify that if there are any liens or encumbrances on sugar pledged as collateral for a price support loan, waivers that fully protect the interests of CCC must still be obtained even though the liens or encumbrances are satisfied from the loan proceeds.

The interim rule provided for a 30-day public comment period which ended on May 11, 1992. No comments were received during the comment period.

Accordingly, under the authority of 7 U.S.C. 1421, 1423, 1446g; 15 U.S.C. 714b and 714c, the interim rule amending 7 CFR part 1435 which was published at 57 FR 12410 on April 10, 1992, is adopted as a final rule without change.

Signed August 14, 1992, in Washington, DC.

John A. Stevenson,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92–19797 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–05–M

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 92–101–1]

Tuberculosis in Cattle and Bison; State Designations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by lowering the designation of Pennsylvania from an accredited-free State to a modified accredited State. We have determined that Pennsylvania no longer meets the criteria for designation as an accredited-free State but meets the criteria for designation as a modified accredited State. This change is necessary to prevent the spread of tuberculosis in cattle and bison.

DATES: Interim rule effective August 20, 1992. Consideration will be given only to comments received on or before October 19, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782. Please state that your comments refer to Docket No. 92–101–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–8715.

SUPPLEMENTARY INFORMATION:

Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations contained in 9 CFR part 77 (referred to below as the regulations) regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in a document captioned "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which has been made part of the regulations via incorporation by reference.

An accredited-free State, as defined in § 77.1 of the regulations, is a State that has had no findings of tuberculosis in any cattle or bison in the State for at least 5 years. The State must also comply with all the provisions of the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" regarding accredited-free States. If tuberculosis is detected in any cattle or bison in the State, the State's accredited-free status is suspended; detection of tuberculosis in two or more herds in the State within 48 months will result in the revocation of the State's accredited-free status.

Before publication of this interim rule, Pennsylvania was designated in § 77.1 of the regulations as an accredited-free State. However, because tuberculosis has recently been confirmed in two herds within the State, the Administrator has determined that Pennsylvania no longer meets the criteria for designation as an accredited-free State, but instead meets the criteria for designation as a modified accredited State. Therefore, we are amending the regulations by removing Pennsylvania from the list of accredited-free States in § 77.1 and adding it to the list of modified accredited States in that section.

Immediate Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. It is necessary to change the regulations so that they accurately reflect the current tuberculosis status of Pennsylvania as a modified accredited State. This will provide prospective cattle and bison buyers with accurate and up-to-date information.

Because prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Pennsylvania has approximately 38,000 herds containing 1.86 million cattle and bison. The marketability of cattle and bison from Pennsylvania may be affected by this change in the State's status because some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. However, it has been our experience that lowering a State's designation from accredited-free to modified accredited status does not significantly affect interstate sales of cattle and bison. Consequently, we have determined that this action will not have a significant effect on marketing patterns in Pennsylvania and will therefore not have a significant effect on those persons affected by this action.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are in conflict with this rule;

(2) Has no retroactive effect; and

(3) Does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 77

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, we are amending 9 CFR part 77 as follows:

PART 77—TUBERCULOSIS

1. The authority citation for part 77 continues to read as follows:

Authority: 21 U.S.C. 11, 114, 114a, 115–117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 77.1 [Amended]

2. In § 77.1, the definition for "Accredited-free state," paragraph (2) is amended by removing "Pennsylvania,".

3. In § 77.1, the definition for "Modified accredited state," paragraph (2) is amended by adding "Pennsylvania," immediately after "Oklahoma,".

Done in Washington, DC, this 12th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19767 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 78

[Docket No. 92–105–1]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Illinois and Indiana from Class A to Class Free. We have determined that Illinois and Indiana now meet the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from both States.

DATES: Interim rule effective August 20, 1992. Consideration will be given only to comments received on or before October 19, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–105–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Gilsdorf, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4918.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining:

(1) A cattle herd infection rate not to exceed a stated level during 12 consecutive months;

(2) A rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughter establishments) not to exceed a stated level;

(3) A surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and

(4) Minimum procedural standards for administering the program.

Before the effective date of this interim rule, Illinois and Indiana were classified as Class A States because of their herd infection rates and their MCI rector prevalence rates.

To attain and maintain Class Free status, a State or area must:

(1) Remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer;

(2) Maintain for 12 consecutive months an MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050 percent); and

(3) Have an approved individual herd plan in effect within 25 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for these States, we have concluded that the States of Illinois and Indiana meet the standards for Class Free status. Therefore, we are removing Illinois and Indiana from the list of Class A States in § 74.41(b) and adding them to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from these States.

Immediate Action

Robert Melland, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this interim rule without prior opportunity or public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Illinois and Indiana.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Illinois and Indiana from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from these States. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Illinois and Indiana, as well as buyers and importers of cattle from these States.

There are an estimated 66,000 herds in Illinois and Indiana that could potentially be affected by this rule change. We estimate that 98 percent of these herds are owned by small entities. If the total cost of testing were distributed equally among all herds in Illinois and Indiana, this change in classification would save less than $13 per herd. Therefore, we believe that changing the brucellosis status for Illinois and Indiana would not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are in conflict with this rule;

(2) Has no retroactive effect; and

(3) Does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Paragraph (a) of § 78.41 is amended by adding "Illinois, Indiana," immediately after "Idaho,".

3. Paragraph (b) of § 78.41 is amended by removing "Illinois, Indiana,".

Done in Washington, DC, this 17th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19917 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 91

[Docket No. 92–035–2]

Ports Designated for Exportation of Animals; Minneapolis/St. Paul, MN

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by adding the Cannon Export Center to the list of export inspection facilities for the Minneapolis/St. Paul International Airport. We have determined that the Cannon Export Center meets the requirements of the regulations for inclusion in the list of export inspection facilities. This action adds an inspection facility through which animals may be processed for export.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. In § 91.14(a) of the regulations is a list of ports that have export inspection facilities that meet the requirements of § 91.14(c). Those requirements include specified standards concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

In a document published in the **Federal Register** on June 1, 1992 (57 FR 23066–23067, Docket No. 92–035), we proposed to amend § 91.14(a) of the regulations by adding the Cannon Export Center to the list of export inspection facilities for the Minneapolis/St. Paul International Airport.

We solicited comments on the proposed rule for a 30-day period ending July 1, 1992. We did not receive any comments. Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule adds the Cannon Export Center to the list of animal export inspection facilities for the Minneapolis/St. Paul International Airport, which will facilitate the export of animals from this part of the United States. We believe that the addition of the facility will have little or no economic impact on animal exporters, the majority of which are small businesses, because it will not increase or significantly decrease the cost of doing business. The primary impact on these animal exporters will be the increased convenience of having two animal export inspection facilities from which to choose.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule:

(1) Preempts all State and local laws and regulations that are in conflict with this rule;

(2) Has no retroactive effect; and

(3) Does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

Accordingly, 9 CFR Part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 91.14, a new paragraph (a)(7)(i)(B) is added to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(7) * * *

(i) * * *

(B) Cannon Export Center, 2870 Rochester Blvd., Cannon Falls, MN 55009, (507) 263–3064.

* * * * *

Done in Washington, DC, this 12th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19766 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 92

[Docket No. 92–036–2]

Ports Designated for the Importation of Horses; Santa Teresa, NM

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations by adding Santa Teresa, NM, to the list of Mexican border ports of entry for horses. This action will facilitate the importation of horses from Mexico by making an additional port of entry available.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Karen A. James, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 765, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 92 and referred to below as the regulations), among other things, list ports that have inspection and quarantine facilities for animals and animal products offered for entry into the United States.

On May 22, 1992, we published in the **Federal Register** (57 FR 21754–21755, Docket No. 92–036) a proposal to amend § 92.303 of the regulations by adding Santa Teresa, NM, to the list of Mexican border ports of entry for horses. Sections 92.323 and 92.324 of the regulations provide that all horses offered for entry from Mexico shall be imported through ports that are equipped with facilities necessary for proper inspection and quarantine. We have determined that Santa Teresa, NM, has the facilities required for designation as a port of entry for horses.

Our proposal invited the submission of written comments, which were required to be received on or before June 22, 1992. We received no comments. Therefore, based on the rationale set forth in the proposal, we are adopting the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

El Paso, TX, is the only Mexican border port of entry for horses between the approved ports at Columbus, NM, and Presidio, TX. The inspection facilities at El Paso are not adequate for large numbers of horses. The U.S. and Mexican horse industries and the Mexican Ministry of Agriculture have expressed the need for an alternative port of entry to more easily accommodate large shipments of horses. Santa Teresa, NM, which is less than 10 miles from El Paso, TX, is already operating as a border port of entry for ruminants and has the inspection facilities necessary to operate as a border port of entry for horses. Therefore, the opening of Santa Teresa, NM, as a border port for horses will be easily implemented and will benefit the U.S. and Mexican horse industries by providing additional facilities for the importation of horses from Mexico. This action is necessary for the purposes of convenience only, and it is not expected to result in an increased number of horses being imported from Mexico.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) Has no retroactive effect; and (3) Does not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR part 92

Animal diseases, Animal welfare, Imports, Humane animal handling, Livestock and livestock products, Mexico, Transportation.

Accordingly, 9 CFR part 92 is amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 134a, 134b, 134c, 134d, 134f and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.303 [Amended]

2. In § 92.303, paragraph (c) is amended by removing the word "and" immediately before "Columbus" and by adding "and Santa Teresa," immediately before the words "New Mexico".

Done in Washington, DC, this 12th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19765 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations; Size Policy Board

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) hereby amends its regulation governing the composition and responsibilities of its Size Policy Board. This final rule reorganizes the membership of the Size Policy Board and places the Board under direct authority of the Administrator and Deputy Administrator. Further, the rule establishes a Technical Size Advisory Board to address technical issues related to size policy.

DATES: This rule is effective August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Gary M. Jackson, Director, Size Standards Staff, (202) 205–6618.

SUPPLEMENTARY INFORMATION: The SBA Size Policy Board considers and makes recommendations relating to improvements in SBA regulations, procedures and directives concerning size matters. Most importantly, the SBA Size Policy Board is responsible for reviewing and approving final determinations to increase the size standard for a particular industry. As such, SBA believes that this Board should be comprised of the senior policy makers within the Agency. This reorganization is meant to achieve this goal by reorganizing the membership of the Board to include the Administrator; Deputy Administrator; Chief of Staff; and each of the three Associate Deputy Administrators. Further, this regulation establishes a Size Technical Advisory Board to analyze and discuss technical issues related to size policy and make recommendations to the SBA Size Policy Board.

Due to the fact that this final rule governs matters of Agency organization, management, and personnel and makes no substantive change to the current regulation, SBA is not required to determine if this rule constitutes a major rule for purposes of Executive Order 12291, to determine if it has a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, or to do a Federalism Assessment pursuant to Executive Order 12612. For purposes of the Paperwork Reduction Act, 44 U.S.C. ch. 35, SBA certifies that this rule will not impose any new reporting or recordkeeping requirements. Finally, for purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

SBA is publishing this rule governing Agency organization, procedure, and practice without prior notice and opportunity for public comment pursuant to authority contained in the Administrative Procedure Act, 5 U.S.C. 553(b)(A)

List of Subjects in 13 CFR Part 121

Administrative practice and procedure, Government procurement, Grant programs—business, Loan programs—business, Small Business.

For the reasons set forth above, subpart A of part 121 of title 13, Code of Federal Regulations, is amended as follows:

PART 121—[AMENDED]

1. The Authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c).

2. Section 121.303, *The Size Policy Board*, is revised to read as follows:

§ 121.303 The Size Policy Board.

(a)(1) The SBA Size Policy Board considers and makes recommendations relating to improvements in SBA regulations, procedures, and policy concerning size matters, including size standards. Further, the SBA Size Policy Board is responsible for providing policy direction to the Technical Size Advisory Board and the Size Standards Staff.

(2) The members of the SBA Size Policy Board are:

(i) Administrator, Chair;

(ii) Deputy Administrator, Vice Chair;

(iii) Chief of Staff;

(iv) Associate Deputy Administrator for Business Development;

(v) Associate Deputy Administrator for Management and Administration;

(vi) Associate Deputy Administrator for Finance, Investment, and Procurement;

(vii) Assistant Administrator for Congressional and Legislative Affairs, non-voting; and

(viii) Assistant Administrator for Public Communications, non-voting.

(b)(1) The SBA Technical Size Advisory Board analyzes and discusses technical issues related to size considerations and finalizes recommendations relating to size matters for the SBA Size Policy Board.

(2) The members of the SBA Technical Size Advisory Board are:

(i) Deputy Administrator, Chair;

(ii) Deputy Associate Deputy Administrator for Business Development;

(iii) Deputy Associate Deputy Administrator for Finance, Investment, and Procurement;

(iv) Associate Administrator for Procurement Assistance;

(v) Associate Administrator for Minority Small Business and Capital Ownership Development;

(vi) Assistant Administrator for Financial Assistance;

(vii) Director, Size Standards Staff, non-voting; and

(viii) General Counsel, non-voting.

Dated: August 14, 1992.

Patricia Saiki,

Administrator,

[FR Doc. 92–19949 Filed 8–19–92; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87–ANE–05; Amendment 39–8241, AD 92–10–07]

Airworthiness Directives; Rolls-Royce plc Viper Mk. 521, Mk. 522, and Mk. 601 Model Turbojet Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Rolls-Royce (R–R) Viper turbojet engines, that establishes reduced low cycle fatigue (LCF) retirement lives for stage 5 and 6 high pressure compressor (HPC) rotor disks. This amendment is prompted by field reports of small cracks in the root radii of the stage 5 and 6 HPC rotor disks. The actions specified by this AD are intended to prevent LCF HPC rotor disk failure, and subsequent engine failure.

EFFECTIVE DATE: September 21, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, Technical Publications Department, P.O. Box 17, Parkside, Coventry, England CV1 2LZ. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 273–7082; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Rolls-Royce plc (R–R) Viper turbojet engines was published in the **Federal Register** on August 22, 1989 (54 FR 34786). That action proposed to establish reduced low cycle fatigue (LCF) retirement lives for stage 5 and 6 high pressure compressor (HPC) rotor disks.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal. However, since publication of the proposal, the FAA has determined that additional engines will be affected by this AD. Therefore, the economic paragraph has been changed to reflect the increase in the number of affected engines. After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

There are approximately 152 engines installed on aircraft of U.S. registry that will be affected by this AD. The FAA estimates that the cost of reducing the life limit on the stage 5 and 6 HPC rotor disk will be approximately $2,300 per disk. This estimate is based on prorating the cost of a new disk over the reduced life limit as compared to the current life limit. There are two disks per engine. No additional labor costs are included in this economic evaluation as the labor cost incurred at the reduced life limit would be incurred at the original life limit. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $699,200.

The regulations adopted herein will not have substantial direct effects on the

States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket.

A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 92-10-07 Rolls-Royce plc:

Amendment 39-8241. Docket No. 87-ANE-05.

Applicability: Rolls-Royce plc (R-R) Viper Mk. 521, Mk. 522, and Mk. 601 turbojet engines installed on but not limited to Hawker-Siddeley HS125 and HS125-600 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of high pressure compressor (HPC) rotor disks, and subsequent engine failure, accomplish the following:

(a) Remove from service HPC stage 5 and 6 rotor disks with the following part numbers: Viper MK. 521:V.20492, V.20494, V.27430, V.27433, V.39638, V.39639, V.39642, V.39643, V.39677, V.39678, V.39681, V.39682, V.42057, V.42059, V.46180, V.46181, V.46182, V.46204, V.46205, and V.46206; Viper Mk. 522: V.20492, V.20494, V.27430, V.27433, V.39638, V.39639, V.39642, V.39643, V.39677, V.39678, V.39681, V.39682, V.42057, V.42059, V.46180, V.46181, V.46182, V.46204, V.46205, and V.46206; Viper Mk 601: V.42057, V.42059, V.44768, V.44769, V.44780, V.44781, V.46182, and V.46206, and replace with a serviceable part as follows:

(1) HPC stage 5 and 6 rotor disks that have accumulated 12,500 or more cycles since new on the effective date of this AD, within the next 100 cycles in service.

(2) HPC stage 5 and 6 rotor disks that have accumulated less than 12,500 cycles since new on the effective date of this AD, at or prior to accumulating 12,600 cycles since new.

Note: Further information pertaining to disk life limits can be obtained in the following: Chapter 5 of the R-R Viper Mk. 521, Mk. 522, and Mk. 601 Maintenance and Shop Manuals, R-R plc Service Bulletin (SB) No. 72-A154 for Viper Mk. 601, and No. 72-A372 for Viper Mk. 521 and Viper Mk. 522 engines.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, FAA, Engine and Propeller Directorate. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on September 21, 1992.

Issued in Burlington, Massachusetts, on July 23, 1992.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-19843 Filed 8-19-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 19, 113, and 144

[T.D. 92-81]

RIN 1515-AA22

Duty-Free Stores

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to designate duty-free stores as a new class of Customs bonded warehouse, to establish procedures for the administration of these facilities, and to incorporate duty-free store operating procedures into the regulations. These changes are necessary to implement section 1908 of the Omnibus Trade and Competitiveness Act of 1988.

EFFECTIVE DATE: October 19, 1992.

FOR FURTHER INFORMATION CONTACT: Mike Brengle, Office of Cargo Enforcement and Facilitation, (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

Duty-free stores are Customs bonded warehouses operating under special procedures whereby merchandise is offered for sale to departing travelers without payment of Customs duties and taxes, on condition that the merchandise will be exported by and with them from the United States. The stores were first established in the late 1950's at airports in the United States and on land borders with Mexico and Canada. At present, there are approximately 125 duty-free stores operating throughout the United States, 43 of which are on the Canadian border, 33 at the Mexican border, and 49 at U.S. international airports.

Duty-free stores have been administered since their inception through U.S. Customs administrative directives, rather than through any specific law or regulation. Customs drafted regulations for the administration of duty-free stores in 1984. However, the draft regulations were never published as a notice of proposed rulemaking, because Congress inserted a provision in Public Law 98-473 (Continuing Appropriations for Fiscal year 1985) prohibiting the use of Customs funds made available by that Act or any other Act to propose or promulgate any rules or regulations relating to duty-free stores until Congress legislated in the matter. This provision was deemed by Customs to constitute a continuing prohibition in subsequent Customs appropriations until it was specifically terminated. 51 FR 24535.

Congress did not legislate concerning duty-free stores until enactment of section 1908 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100-418; August 23, 1988). Section 1908 amended section 555(b) of the Tariff Act of 1930 (19 U.S.C. 1555(b)) to authorize the establishment and operation of duty-free stores in accordance with the provisions of that law and such regulations as the Secretary of the Treasury may prescribe.

Accordingly, to carry out the provisions of 19 U.S.C. 1555(b) and to regulate seaport duty-free stores which are included within the meaning of "border stores" under section 1555(b)(8)(B), Customs published a notice in the **Federal Register** (56 FR 22833) on May 17, 1991, soliciting public comment on proposed amendments to the Customs Regulations, which would designate duty-free stores as a new class of Customs bonded warehouse, and establish procedures for the administration and operation of these facilities. By notice published in the **Federal Register** on July 23, 1991 (56 FR 33733) a number of typographical errors appearing in the original notice were corrected, and the public comment period was extended to August 15, 1991.

Thirteen commenters responded to the notice of proposed rulemaking. A description, together with Customs analysis, of the comments they made is set forth below.

Analysis of Comments

Comment: Four commenters expressed concern that there was no age requirement for the purchase of duty-free alcoholic beverages. These commenters believed that language should be added to the proposed regulations expressly prohibiting sales to persons under the age of twenty-one, since the potential is there for possible reimportation into the United States.

Response: Customs already enforces State age requirements regarding alcoholic beverages upon importation into the United States. Customs believes that this is sufficient to prevent minors from reimporting alcoholic beverages that may have been purchased in a duty-free store, which is the essential concern of the commenters. State age requirements do not extend to alcohol sales in the duty-free store itself, which are intended for export only. Customs observes, though, that duty-free store owners seem generally willing to voluntarily adopt age limits in conjunction with localities where that issue is of significant concern.

Comment: One commenter noted that there were no procedures to protect the duty-free store owner from possible penalties or from being closed down. They asked that language be added to the proposed regulations making Customs subject to the Administrative Procedure Act (APA), as concerns duty-free stores.

Response: Customs is already subject to the requirements of the APA in this connection. Specifically, § 19.3 (e) and (f), Customs Regulations (19 CFR 19.3 (e) and (f)), contain procedures to be followed for suspending or terminating operations of a duty-free store. Duty-free store owners are, of course, not immune from assessment of appropriate penalties for violations of the law.

Comment: A number of commenters stated, with respect to proposed § 19.6(d)(2), that the requirement for withdrawals under blanket permit having to be filed on Customs Form (CF) 7506 or 7505 was time-consuming and paper intensive. Another concern expressed was that the Blanket Permit Summary required that all goods be accounted for by their HTSUS (Harmonized Tariff Schedule of the United States) number. These commenters generally felt that identification in the summary of the product together with its quantity would be adequate for Customs purposes.

Response: Customs does not believe that any change is necessary. The regulations require that an application for approval for a Blanket Permit to Withdraw be done on a CF 7506 and CF 7505. Sections 19.6(d)(3) and 144.37(h)(2) state that withdrawals under a Blanket Permit to Withdraw shall be made on the sales ticket, and that sales tickets shall serve as the equivalent of the supplementary withdrawal. The CF 7506 or CF 7505 is only required for posting the final disposition of all merchandise covered by the permit. The Summary Blanket Permit is usually overprinted on a copy of the approved Application for Blanket permit to Withdraw, with no requirement to re-list the HTSUS number.

Comment: Two commenters suggested that the blanket permit for destruction in proposed § 19.11(h) be changed from $100 per entry to 5 percent of the value of the entry up to a ceiling of $1,000.

Response: Since blanket permits are intended to cover small quantities of merchandise, Customs finds a limit of $100 per entry sufficient.

Comment: Three commenters stated that proposed § 19.12(a)(2) should be changed to require the filing of documents two days after close of sales ticket reconciliation, provided reconciliation occurs once a week.

Response: Requiring that permit file folders be kept up to date by filing all pertinent receipts, reports, requests, withdrawals, and blanket permit summaries within two business days after the event occurs is an existing and longstanding policy for bonded warehouses, which Customs believes should not be changed.

Comment: Three commenters disagreed with proposed § 19.12(a)(3), regarding thefts, shortages and overages, which required that duties be paid within 10 working days after discovery. These commenters advocated a 30-day payment period due to the large number of items that are in inventories, as well as the length of time needed to reconcile and prepare entry documents for any shortages or overages discovered.

Response: Section 19.12(a)(3) states that the district director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment, which effectively gives the district director the authority to extend this period. Customs thus does not believe that the proposed change is needed.

Comment: It was also recommended in connection with the proposed revision of § 19.12 that the warehouse proprietor should have a brief period within which to verify minor (nonextraordinary) discrepancies, before having to report them to Customs.

Response: As currently required under § 19.12(a)(3), nonextraordinary shortages (less than 1% of the value of the merchandise in an entry) do not have to be reported to the district director; however, any detected overage must be immediately brought to the attention of the district director. Customs has concluded that no change to this existing portion of § 19.12(a)(3) is warranted.

Comment: It was urged, with respect to proposed § 19.35(b), that delivery to an adjacent port of entry be allowed, if it were within 25 statute miles from a subject port.

Response: Customs does not believe any change is needed. Section 19.35(b) provides for the establishment of a duty-free store within the same port of entry from which a purchaser departs, or within 25 statute miles from the exit point through which the purchaser departs the Customs territory. Therefore, provided the district director approves the delivery procedures, the delivery could be made to an adjacent port of entry.

Comment: A number of commenters asked, with regard to proposed § 19.36(a), whether commercial sales were allowed when merchandise approached the five-year statutory limit for storage.

Response: Section 19.36(a) states that withdrawals, other than for delivery to persons for export, may be made provided they are through separate withdrawals, and are approved by the district director.

Comment: One commenter proposed that a procedure be included in proposed § 19.36(b), whereby Customs would render prompt, nonbinding guidance on changes in the proprietor's warehouse procedures. It was thought

that such informal guidance would not require action by the district director, and would not constitute approval of the procedure, but that it would alert the operator to any special Customs concerns, and permit appropriate modifications.

Response: Customs believes that this would cause an unnecessary duplication of review. Further, although the commenter asserted that changes were required on short notice, it is questionable that changes would be needed without advance planning.

Comment: It was requested that mitigating guidelines be established in proposed § 19.36(b) for relief from penalties when a change in procedure had been submitted to Customs, and Customs failed to respond within a reasonable period, or when Customs affirmatively accepted the new procedure.

Response: A duty-free store is required to follow written procedures which will reasonably assure exportation of conditionally duty-free merchandise purchased therein, and liquidated damages under bond may be assessed for failing to do so. The mitigation of such damages would be handled under the general provisions of part 172, Customs Regulations (19 CFR part 172), and determined based on the particular circumstances of each case. Customs does not believe that special mitigation guidelines for duty-free stores in this specific context are necessary or practical.

Comment: Some commenters voiced opposition to proposed § 19.36(d), insofar as it required that items or types of merchandise that were noted in a "pattern" of reimportation be inconspicuously marked. These commenters recommended that if the failure to assure export in such cases could be traced to one proprietor, only that proprietor should be required to mark the subject merchandise.

Response: This procedure is not intended to require that all warehouse proprietors mark the "patterned merchandise", but rather to require the store identified as having the problem to mark the subject merchandise. Section 19.36(d) is changed to reflect this.

Comment: It was also asserted that the marking requirement of proposed § 19.36(e) dealing with duty-paid and domestic merchandise was burdensome and contrary to law.

Response: Section 1555(b)(3)(D) (19 U.S.C. 1555(b)(3)(D)) generally prohibits a requirement for marking of individual items of merchandise in order "to indicate that the items were sold by a duty-free sales enterprise." Section 19.36(e), however, does not require marking for the purpose of indicating that items are sold by a duty-free store; rather, it requires marking of domestic and duty-paid merchandise. In keeping with the intent of 19 U.S.C. 1555(b)(5), Customs finds that this marking requirement will ensure compliance with recordkeeping responsibilities and permit Customs to audit such compliance.

Comment: Several commenters believed the requirement in proposed § 19.36(e) that duty-paid and domestic goods cannot be fungible with conditionally duty-free goods in a bonded sales area exceeded Customs statutory authority. These commenters argued that this proposed section would restrict the ability of a duty-free store to sell domestic and duty-paid merchandise, and found no basis for this restriction in the statute.

Response: Customs is sympathetic to the concerns expressed by these commenters. The law clearly allows duty-free store operators to store duty-paid and domestic merchandise at a duty-free store, even if the merchandise is fungible with conditionally duty-free merchandise. Storage of such merchandise, duty-paid or domestic, at a bonded warehouse facility, other than a duty-free store, is, however, prohibited.

To remedy the concerns expressed, the second sentence of § 19.36(e) is changed by deleting the phrase "and which are not fungible with conditionally duty-free merchandise".

Comment: One commenter indicated that there was a conflict between proposed §§ 19.36(f) and 19.39(c), in that the former required that duty-free goods be delivered only to purchasers with tickets for departure, and the latter stated that delivery was allowed to scheduled, chartered or "for-hire" airlines. It was understood that some chartered and for-hire airlines do not issue tickets to passengers.

Response: Customs agrees that a change in language is warranted here, for purposes of clarification. As a result, § 19.36(f) is changed in pertinent part to provide that other proof of impending departure may be used for passengers on chartered or for-hire flights where no tickets are issued.

Comment: A unique situation was also said to exist, in relation to proposed § 19.36(f), with respect to private nonchartered aircraft, in that no departure documents are presented to Customs. The duty-free enterprise must rely on either affirmative statements by the purchaser, or delivering goods directly to the aircraft and witnessing the take-off. The commenters noting this situation questioned whether this constituted "reasonable assurance" of exportation, as noted in proposed § 19.36(b). If not, they suggested that only purchases over a specified dollar amount of $200 be backed up with proof of export by the proprietor.

Response: Customs believes no change is necessary here. Although the law does not define what types of aircraft are included, the intent of the law is to ensure that the goods are exported. Therefore, by providing that merchandise may only be sold and delivered to purchasers displaying valid tickets or other proof of impending departure in the case of chartered or for-hire flights where no tickets are issued, § 19.36(f) effectively excludes private aircraft operations.

Comment: Certain commenters viewed as unduly restrictive the requirement in proposed § 19.37(a) that goods in a crib be limited to a two-week supply, these commenters asserting that an inventory item may not be depleted in the course of two weeks.

Response: Section 19.37(a) is intended to provide that the quantity of goods in the crib at any given time be limited to an amount estimated to be a two-week supply. The district director, upon request, may, of course, permit a lesser or greater quantity. To clarify this matter, § 19.37(a) is changed accordingly.

Comment: Another area of concern voiced with respect to crib operations was the requirement that storage in the crib be by entry number instead of by brand.

Response: Section 19.37(b) provides that conditionally duty-free merchandise shall be delivered to or removed from a crib for return to the storage area under the provisions of § 144.34(a), Customs Regulations (19 CFR 144.34(a)), or under a local control system approved by the district director. A system may be approved by the district director in his discretion, which does not require storage by entry number.

Comment: One commenter requested that proposed § 19.37(d) be changed to allow proprietors to maintain records at a central administrative office as part of an automated tracking system, instead of at the duty-free store.

Response: Customs agrees that maintaining records for a five-year period at the duty-free store could become cumbersome. To remedy this, § 19.36(g) is changed to allow for record retention at the duty-free store or at another location approved by the district director, provided that the proprietor assures that Customs has ready access to those records and that they are stored in such a manner as to keep transactions of multiple facilities

separated. Sections 19.37(d) and 19.39(d) are appropriately amended to conform with this.

Comment: One commenter recommended, with respect to proposed § 19.38, that spot checks be avoided during peak sales periods; that the proprietor be afforded the opportunity to resolve discrepancies before a spot check is conducted; that demands for stock status reports be made in advance so that activity could be frozen before counts were conducted; and that audits take into account the retail nature of duty-free operations.

Response: Customs officers are responsible for conducting unannounced spot checks of storage areas, cribs, and other secure areas where duty-free store merchandise is deposited, and of selected duty-free store transactions. Customs tries to make such spot checks as nondisruptive as possible. Unlike audits, for which advance notice is provided, unannounced spot checks are needed for enforcement. Amending this provision along the lines recommended would thus be contrary to this purpose.

Comment: One commenter asked that the language in proposed § 19.39(a) be changed to be consistent with that in proposed § 19.35(d), which referred to the "exit point".

Response: Customs believes it is unnecessary to repeat the definition of an "exit point" in § 19.39(a). However, a cross reference to § 19.35(d) in this regard is added to § 19.39(a) for the sake of clarity.

Comment: A number of commenters opposed the reference to "an authorized representative of the supervising independent party", appearing in proposed § 19.39 (a)(2) and (b)(2), stating that Customs had no authority to delegate supervision of delivery of merchandise for export to a private, third party.

Response: Customs concurs that this wording is incorrect and it is deleted from § 19.39 (a)(2) and (b)(2).

Comment: It was suggested that proposed § 19.39(b)(1) be changed to read that "for purposes of this section, beyond the exit point includes the actual gangway of a ship, in the sole discretion of the district director."

Response: Customs is unable to adopt this suggestion. The gangway of a ship is not a Customs-secured area. However, for additional clarity, a cross reference to § 19.35(d) defining an "exit point" is added to § 19.39(b)(1).

Comment: One commenter suggested that the language appearing in proposed § 19.39(c)(2) regarding the delivery of export merchandise to the passenger might properly belong in proposed § 19.39(c)(3) which concerned delivery to the aircraft. Specifically in this connection, two commenters viewed the requirements for certificates of lading in proposed § 19.39(c)(2) as impractical, overly detailed and time-consuming.

Response: Although § 19.39(c)(2) deals with delivery to the passenger, rather than the aircraft, Customs finds that the requirement for a certificate of lading executed by an authorized airline official is essential to reasonably ensure that the passenger has taken the merchandise aboard the aircraft for export.

Comment: Four commenters recommended that Customs include a specific definition for "reasonable assurance of export", as the concept is employed in proposed § 19.39(c)(2). It was urged that the definition exclude any failure to export that resulted from the purchaser's negligence, misstatements or fraud, provided that the proprietor had followed proper procedures.

Response: Customs does not believe that it is necessary to specifically define this term because § 19.39(c)(2) in effect allows a duty-free store operator and the district director to work our, on a case-by-case basis, the particular location where the merchandise may be turned over to the passenger, so as to reasonably assure export in a given circumstance.

Comment: Various commenters requested that the language in proposed § 19.39(c)(3) which provides for aircraft delivery by a licensed cartman for lading "directly on the aircraft", be changed to "within the aircraft on which the purchaser will depart for carriage as passenger baggage", as stated in 19 U.S.C. 1555(b)(3)(F)(i)(III).

Response: Section 19.39(c)(3) is one of five procedures established for the method of delivery to airport locations. The intent of these provisions is to ensure that merchandise from duty-free stores is exported, and Customs has concluded that the provision in question adequately accomplishes this goal, and that it is within the definition of the statute. Specifically in this connection, Customs interprets the phrase "on the aircraft" to mean the same as "within the aircraft".

Comment: These commenters also regarded as practically impossible the requirement in proposed § 19.39(c)(3) that a lading manifest be prepared, which would include entry numbers or unique identifiers, in some cases hundreds of them. They suggested that only the sales receipt number be required.

Response: Section 19.39(c)(3) deals with merchandise sold to passengers, which is delivered by a licensed cartman for lading directly on the aircraft, where the aircraft is departing directly for foreign. Customs concludes that a lading manifest would not be necessary in such circumstances, inasmuch as the merchandise is not placed in containers sealed with Customs seals. Therefore, § 19.39(c)(3) is changed by removing the requirement for a lading manifest.

Comment: Two commenters advocated use of the motor vehicle license plate, instead of the purchaser's name and address, in proposed § 144.37(h)(2)(v), so that the purchaser could be more readily identified by U.S. or Canadian Customs, in the event a problem were to arise.

Response: Customs believes that the use of the license plate, instead of the name and address of the purchaser appearing on the sales receipt, would not be a more efficient means of identifying purchasers of duty-free store merchandise. The license plate would identify the vehicle, not necessarily the purchaser.

Comment: One commenter requested, with respect to proposed § 144.37(h)(2), that the total number of items of the same type be listed together, rather than be listed separately. This commenter was of the understanding that, of two bottles of bourbon, for example, each would have to be listed separately.

Response: Section 144.37(h)(2)(iii) calls for reporting the aggregate quantity of goods of a particular type which are sold, and does not require the same type item to be listed separately.

Comment: Several commenters wanted relief from the perceived requirement in proposed § 144.37(h)(3) for separating each individual item from the sales ticket register and filing it separately against the withdrawal and entry. They expressly asked in this regard for permit filing in any manner determined by the proprietor, as long as the underlying documents could be produced for Customs on request.

Response: Section 144.37(h)(3)(v) does not require separate listing of the same item; it only requires that the total quantity of a given item sold be reported. These commenters appear to be under the impression that there is a separate register for each item rather than a sales register for each entry covering merchandise entering the duty-free store. The sales ticket register or similar accounting record is an inventory control for monitoring balances.

Comment: A recommendation was made, in relation to proposed § 144.37(h)(3), to save the sales ticket register for five years, and not the sales

tickets. An alternative suggestion was to retain the sales tickets and file them by date and invoice number sequence. To this latter end, it was thought that filing the sales tickets by warehouse entry number would be very difficult and time-consuming, especially in the case of multiple sales, which would mean copying each sales ticket numerous times.

Response: Section 144.37(h)(3) calls for a "sales ticket register or similar accounting record", provided the required information is shown on the document. The proprietor is given the leeway to keep all sales tickets in a separate file in lieu of placing a copy of the sales tickets in each permit file folder, which, additionally, is the purpose of maintaining a sales register for each entry.

Conclusion

After careful consideration of the comments received and further review of the matter, it has been determined that the amendments with the modifications discussed above should be adopted. In addition, the following editorial changes are made: changing the heading for § 19.39 to "Delivery for exportation"; changing the second sentence of § 19.35(d) to read in part, "by passing through a U.S. Customs inspection facility"; adding "with no intermediate stops in the U.S.", at the end of § 19.36(f); deleting § 19.39(c)(6); changing the second sentence of § 19.39(a)(2), (b)(2), and (c)(2), respectively, to read in part, "in accordance with established guidelines as required by § 19.36(b)"; adding in § 19.39(c)(4)(i), after "stopover privileges", the words "in the United States"; and deleting the last two sentences of § 19.39(f) as repetitious of the requirements in § 19.36(b); rephrasing § 113.63(c)(5) to make it parallel with § 113.63(c)(1–4).

Regulatory Flexibility Act

For the reasons set forth in the preamble, and pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Paperwork Reduction Act

The collection of information contained in this final regulation has been approved by the Office of Management and Budget (OMB) under 1515–0121, Establishment of Bonded Warehouses. Duty-free stores have long existed as a type of Customs bonded warehouse under established administrative practice. This final regulation will specifically include duty-free stores in the Customs Regulations as a separate class of bonded warehouse, and does not change the information collection burden with respect thereto.

The collection of information in this final regulation is in §§ 19.2, 19.6, 19.11, 19.12, 19.36, 19.37, 19.38, 19.39 and 144.37. This information is necessary to assure the exportation of merchandise from duty-free stores, and to otherwise implement the requirements of law and protect the revenue. Comments concerning the accuracy of the existing burden estimate and suggestions for reducing this burden should be directed to the Office of Management and Budget, Attention: Desk officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the U.S. Customs Service at the address previously specified.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 19

Customs duties and inspection, Imports, Exports, Warehouses.

19 CFR Part 113

Customs bonds.

19 CFR Part 144

Custom duties and inspection, Imports, Warehouses.

Amendments to the Regulations

For the reasons set forth in the preamble, parts 19, 113, and 144, Customs Regulations (19 CFR parts 19, 113, and 144) are amended as set forth below.

PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS AND CONTROL OF MERCHANDISE THEREIN

1. The authority citation for part 19 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624;

Section 19.1 also issued under 19 U.S.C. 1311, 1312, 1555, 1556, 1557, 1560, 1561, 1562;

Section 19.6 also issued under 19 U.S.C. 1555;

Section 19.7 also issued under 19 U.S.C. 1555, 1556;

Section 19.11 also issued under 19 U.S.C. 1556, 1562;

Section 19.15 also issued under 19 U.S.C. 1311;

Sections 19.17–19.25 also issued under 19 U.S.C. 1312;

Sections 19.35–19.39 also issued under 19 U.S.C. 1555;

Section 19.40(a) also issued under 19 U.S.C. 1450, 1499, 1623;

Sections 19.41–19.43 also issued under 19 U.S.C. 1499;

Section 19.44 also issued under 19 U.S.C. 1448;

Section 19.45 also issued under 19 U.S.C. 1551, 1565;

Section 19.48 also issued under 19 U.S.C. 1499, 1623;

Section 19.49 also issued under 19 U.S.C. 1484.

2. Section 19.1 is amended by adding a new paragraph (a)(9) to read as follows:

§ 19.1 Classes of customs warehouses.

(a) * * *

(9) *Class 9.* Bonded warehouse, known as "duty-free stores", used for selling, for use outside the Customs territory, conditionally duty-free merchandise owned or sold by the proprietor and delivered from the Class 9 warehouse to an airport or other exit point for exportation by, or on behalf of, individuals departing from the Customs territory for destinations other than foreign trade zones. Pursuant to 19 U.S.C. 1555(b)(8)(C), "Customs territory", for purposes of duty-free stores, means the Customs territory of the U.S. as defined in § 101.1(e) of this chapter, and foreign trade zones (see part 146 of this chapter).

* * * * *

3. Section 19.2 is amended by removing the paragraph designations for paragraphs (b)(1), (2), and (3); by adding a phrase at the end of the introductory text of paragraph (b) and adding new paragraphs (1), (2), (3), and (4); by revising paragraph (c), and by removing and reserving paragraph (d), as follows:

§ 19.2 Applications to bond; annual fee.

* * * * *

(b) * * * If the application is for a Class 9 warehouse (duty-free store), the applicant shall furnish the following documents:

(1) A map showing the location of the facilities to be bonded in respect to the port of entry and distances to all exit points of purchasers of conditionally duty-free merchandise;

(2) A description of the store's procedures to provide reasonable assurance that conditionally duty-free merchandise sold therein will be exported;

(3) If an airport duty-free store, a description of the store's procedures for restricting sales of conditionally duty-free merchandise to personal-use quantities; and

(4) A statement by an authorized official of the appropriate state, local or other governmental authority administering the exit point facility that the applicant duty-free store is authorized to deliver conditionally duty-free merchandise to purchasers at or through that exit point facility. A separate statement shall be required for each governments authority having jurisdiction over exit point facilities through which the duty-free store intends to deliver merchandise to purchasers. If the merchandise will be delivered through an exit point which is not under the jurisdiction of a governmental authority, the applicant will provide a statement to that effect.

(c) On approval of the application to bond a warehouse of any class, except class 1, a bond shall be executed on Customs Form 301, containing the bond conditions set forth in § 113.63 of this chapter.

(d) [Reserved]

* * * * *

4. Section 19.3 is amended by adding a new paragraph (e)(9) as follows:

§ 19.3 Bonded warehouse; alterations; relocations; suspensions; discontinuance.

* * * * *

(e) * * *

(9) The proprietor of a Class 9 warehouse is or has been unable to provide reasonable assurance that conditionally duty-free merchandise is or was exported in compliance with the regulations of this part.

* * * * *

§ 19.5 [Removed]

5. Section 19.5 is removed and reserved.

6. Section 19.6 is amended by revising the section heading and paragraph (d) to read as follows:

§ 19.6 Deposits, withdrawals, blanket permits to withdraw and sealing requirements.

* * * * *

(d) *Blanket permits to withdraw*—(1) *General.* Blanket permits may be used to withdraw merchandise in small quantities from bonded warehouses for:

(i) Delivery to individuals departing directly from the Customs territory for exportation under the sales ticket procedure of § 144.37(h) of this chapter (Class 9 warehouses only);

(ii) Aircraft or vessel supplies under section 309 or 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317); or

(iii) The personal or official use of personnel of foreign governments and international organizations set forth in subpart I, part 148 of this chapter; or

(iv) A combination of the foregoing. Blanket permits to withdraw may be used only for delivery at the port where withdrawn and not for transportation in bond to another port. Blanket permits to withdraw may not be used for delivery to a location for retention or splitting of shipments under the provisions of § 18.24 of this chapter. A withdrawer who desires a blanket permit shall state in capital letters on the warehouse entry, or on the warehouse entry/entry summary when used as an entry, that "Some or all of the merchandise will be withdrawn under blanket permit per section 19.6(d), C.R." Customs acceptance of the entry will constitute approval of the blanket permit. A copy of the entry will be delivered to the proprietor, whereupon merchandise may be withdrawn under the terms of the blanket permit. The permit may be revoked by the district director in favor of individual applications and permits if the permit is found to be used for other purposes, or if necessary to protect the revenue or properly enforce any law or regulation Customs is charged with administering. Merchandise covered by an entry for which a blanket permit was issued may be withdrawn for purposes other than those specified in this paragraph if a withdrawal is properly filed as required in subpart D, part 144, of this chapter.

(2) *Withdrawals under blanket permit.* Withdrawals may be made under blanket permit without any further Customs approval, and shall be documented by placing a copy of the withdrawal document in the proprietor's permit file folder. Each withdrawal shall be filed on Customs Form 7506 or 7505, as appropriate, and shall be consecutively numbered, prefixed with the letter "B". The withdrawal shall specify the quantity and value of each type of merchandise to be withdrawn. Each copy shall bear the summary statement described in § 144.32(a) of this chapter, reflecting the balance of merchandise covered by the warehouse entry. Any joint discrepancy report of the proprietor and the bonded carrier, licensed cartman or lighterman, or weigher, gauger, or measurer for a supplementary withdrawal shall be made on the copy and reported to the district director as provided in paragraph (b)(1) of this section. A copy of the withdrawal shall be retained in the records of the proprietor as provided in § 19.12(a)(2) of this part. Merchandise shall not be removed from the warehouse prior to the preparation of the supplementary withdrawal. If merchandise is so removed, the proprietor shall be subject to liquidated damages as if it were removed without Customs permit.

(3) *Withdrawals under blanket permit from duty-free stores.* Withdrawals under blanket permit from duty-free stores shall be made on the sales ticket described in § 144.37(h) of this chapter. The sales ticket need not contain the summary statement described in § 144.32(a) of this chapter, since the information required is included in the sales ticket register. The sales ticket shall be serially numbered as provided in § 144.37(h)(2) of this chapter.

(4) *Blanket permit summary.* When all of the merchandise covered by an entry on which a blanket permit to withdraw was issued has been withdrawn, including withdrawals made for purposes other than duty-free store delivery, vessel or aircraft supply, or diplomatic use, the proprietor shall prepare a report on a copy of Customs Form 7506, or a form on the letterhead of the proprietor, which provides an account of the disposition of the merchandise covered by the blanket permit. The form shall bear the words "BLANKET PERMIT SUMMARY" in capital letters conspicuously printed or stamped in the top margin. On the form, the proprietor shall certify that the merchandise listed thereunder was withdrawn in compliance with § 19.6(d), and shall account for all of the merchandise withdrawn under blanket permit by HTSUS (Harmonized Tariff Schedule of the United States) number, HTSUS quantity (where applicable) and value. If applicable, the account shall separately list and identify merchandise withdrawn for

(i) Duty-free store exportation,

(ii) Vessel or aircraft supply use, and

(iii) Personal or official use of persons and organizations set forth in subpart I, part 148, of this chapter. If all of the merchandise was withdrawn under the sales ticket procedure of § 144.37(h) of this chapter, the sales ticket register may be substituted for the blanket permit summary. The form will be placed in the permit file folder and treated as provided in § 19.12(a) of this part.

* * * * *

7. Section 19.11 is amended by revising the first sentence of paragraph (c), revising paragraph (d), and by adding a new paragraph (h), to read as follows:

§ 19.11 Manipulation in bonded warehouses and elsewhere.

* * * * *

(c) Warehouse proprietors shall not allow manipulation of any merchandise without a prior permit issued by the district director, except as provided in paragraph (h) of this section. * * *

(d) The application to manipulate, which shall be filed on Customs Form 3499 with the district director having jurisdiction of the warehouse or other designated place of manipulation, shall describe the contemplated manipulation in sufficient detail to enable the district director to determine whether the imported merchandise is to be cleaned, sorted, repacked, or otherwise changed in condition, but not manufactured, within the meaning of section 562, Tariff Act of 1930, as amended. If the district director is satisfied that the merchandise is to be so manipulated, he may issue a permit on Customs Form 3499, making any necessary modification in such form. The district director may approve a blanket application to manipulate on Customs Form 3499, for a period of up to one year, for a continuous or a repetitive manipulation. The warehouse proprietor must maintain a running record of manipulations performed under a blanket application, indicating the quantities before and after each manipulation. The record must show what took place at each manipulation describing marks and numbers of packages, location within the facility, quantities, and description of goods before and after manipulation. The district director is authorized to revoke a blanket approval to manipulate and require the proprietor to file individual applications if necessary to protect the revenue, administer any law or regulation, or both. Manipulation resulting in a change in condition of the merchandise, which will make it subject to a lower rate of duty or free of duty upon withdrawal for consumption, is not precluded by the provisions of such section 562.

* * * * *

(h) Merchandise which has been entered for warehouse and placed in Class 9 warehouse (duty-free store) may be unpacked into saleable units without a prior permit issued by the district director. The district director may issue a blanket permit to a duty-free store for up to one year permitting the destruction of merchandise covered by any entry and found upon receipt to be nonsaleable if the merchandise to be destroyed is valued at less than $100 per entry, in its undamaged condition. Such permit may be revoked in favor of a permit for each entry whenever necessary to assure proper destruction and protection of the revenue. The proprietor shall maintain a record of unpacking merchandise into saleable units and destruction of nonsaleable merchandise in its inventory and accounting records.

8. Section 19.12 is amended by revising paragraph (a)(2), adding two sentences to the end of paragraph (a)(3), by revising paragraph (a)(4), and by adding a new paragraph (a)(8), to read as follows:

§ 19.12 Warehouse recordkeeping, storage and security requirements.

(a) * * *

(2) *Maintain permit file folders.* Permit file folders shall be maintained and kept up to date by filing all receipts, damage or shortage reports, manipulation requests, withdrawals, removals, and blanket permit summaries within two business days after the event occurs.

(3) *Theft, shortage, overage or damage.* * * * The applicable duties and taxes on thefts and shortages so reported shall be paid by the responsible party to Customs within 10 working days after discovery. The district director may allow the consolidation of duties and taxes applicable to multiple shortages into one payment.

(4) *Review of permit file folder.* When the final withdrawal of merchandise relating to a specific warehouse entry, general order or seizure occurs, the warehouse proprietor shall:

(i) Review the permit file folder to ensure that all necessary documentation is in the file folder accounting for the merchandise covered by the entry,

(ii) Notify Customs of any merchandise covered by the warehouse entry, general order or seizure which has not been withdrawn or removed, and

(iii) File the permit file folder with Customs within 30 business days after final withdrawal.

* * * * *

(8) *Automated operating and inventory control systems.* The district director may authorize the implementation by a proprietor of automated data processing systems for operating and inventory control purposes if they are in support of Customs procedural requirements and do not adversely affect Customs supervision and control of warehouse activities and transactions.

* * * * *

9. Part 19, Customs Regulations, is amended by adding after § 19.34, a new undesignated centerhead entitled "Duty-Free Stores", and new §§ 19.35, 19.36, 19.37, 19.38, and 19.39, to read as follows:

Duty-Free Stores

§ 19.35 Establishment of duty-free stores (Class 9 warehouses).

(a) *General.* A class 9 warehouse (duty-free store) may be established for exportation of conditionally duty-free merchandise by individuals departing the Customs territory, inclusive of foreign trade zones, by aircraft, vessel, or departing directly by vehicle or on foot to a contiguous country. Such articles must accompany the individual on his person or in the same aircraft, vessel, or vehicle in which the individual departs. "Conditionally duty-free merchandise" means merchandise sold by a duty-free store on which duties and/or internal revenue taxes (where applicable) have not been paid. Except insofar as the provisions of this section and §§ 19.36–19.39 are more specific, the procedures for bonded warehouses apply to duty-free stores (Class 9 warehouses).

(b) *Location.* A class 9 warehouse may be established or located only (1) within the same port of entry from which a purchaser of duty-free store merchandise departs the Customs territory, or (2) within 25 statute miles from the exit point through which the purchaser of duty-free store merchandise departs the Customs territory.

(c) *Integrated locations.* A Class 9 warehouse with multiple noncontiguous sales and crib locations (see § 19.37(a) of this part) containing conditionally duty-free merchandise will be treated by Customs as one location if:

(1) The proprietor can provide Customs upon demand with the proper on-hand balance of each inventory item in each storage location, sales room, crib, mobile crib, delivery cart, or other conveyance or noncontiguous location; and

(2) The recordkeeping system is centralized up to the point where a sale is made so as to automatically reduce the sale quantity by location from centralized inventory.

(d) *Exit point.* The exit point referred to in paragraph (b) of this section means an area in close proximity to an actual exit for departing from the Customs territory, including the gate holding area

in the case of an airport, but only if there is reasonable assurance that conditionally duty-free merchandise delivered in the gate holding area will be exported from the Customs territory. The exit point in the case of a land border or seaport duty-free store is the point at which a departing individual has no practical alternative to continuing on to a foreign country or to returning to Customs territory by passing through a U.S. Customs inspection facility. The district director's decision as to what constitutes the exit point or reasonable assurance of exportation in a given situation is final.

(e) *Notice to customers.* Class 9 warehouse proprietors shall display in prominent places where they will be noticed and read by customers signs which state clearly that any conditionally duty-free merchandise purchased from the store:

(1) Has not been subjected to any U.S. Federal duty or tax;

(2) If brought back to the United States must be declared and is subject to U.S. Federal duty and tax without personal exemption; and

(3) Is subject to the customs laws and regulations, including possible duties and taxes, of any foreign country to which it is taken.

(f) *Security of sales rooms and cribs.* The physical and procedural security requirements of § 19.12(b)(3) of this part shall be applied by the district director so as to accommodate the movement of purchasers and prospective purchasers of conditionally duty-free merchandise contained in duty-free sales rooms and cribs.

(g) *Approval of governmental authority.* If a state or local or other governmental authority, incident to its jurisdiction over any airport, seaport, or other exit point facility, requires that a concession or other form of approval be obtained from that authority with respect to the operation of a duty-free store under which merchandise is delivered to or through such facility for exportation, merchandise incident to such operation may not be withdrawn for exportation and transferred to or through such facility unless the operator of the duty-free store demonstrates to the district director that the concession or approval required for the enterprise has been obtained.

§ 19.36 Requirements for duty-free store operations.

(a) *Withdrawals.* Merchandise withdrawn under the sales ticket procedure in § 144.37(h) of this chapter may be delivered only to individuals departing from the Customs territory for exportation or to persons and organizations for use as specified in subpart I, part 148, of this chapter. Withdrawals of other kinds may be made from Class 9 warehouses, but only through separate withdrawals (or withdrawals under blanket permit for vessel or aircraft supplies) under an approved permit of the district director as provided in § 144.39 of this chapter.

(b) *Procedures required.* Each duty-free store shall establish, maintain, and follow written procedures to provide reasonable assurance to the district director that conditionally duty-free merchandise purchased therein will be exported from the Customs territory. A copy of any change in the procedure will be provided to the district director before it is implemented. However, receipt by Customs of the procedures of any change thereto shall not be construed as approval by Customs of the procedures. The district director is responsible for ensuring that each enterprise has established guidelines with Customs and is complying with those guidelines, giving assurance that proper supervision exists when delivery is made to the purchaser at or before the exit point. The district director may at any time require any change in the procedures deemed necessary for assurance of exportation.

(c) *Personal-use restrictions.* Any duty-free store which delivers conditionally duty-free merchandise to purchasers at an airport exit point shall establish, maintain, and enforce written restrictions on the sale of conditionally duty-free merchandise to any one individual to personal-use quantities. Personal-use quantities means quantities that are only suitable for uses other than resale, and includes reasonable quantities for household or family consumption as well as for gifts to others. Proprietors will not knowingly sell or deliver conditionally duty-free merchandise in any quantity to any individual for the purpose of resale. A copy of the restrictions and of any change thereto shall be provided to the district director prior to implementation. However, receipt of the written restrictions by Customs shall not be construed as approval by Customs of the restrictions. The district director may require any change in the restrictions deemed necessary to conform to the personal-use quantity restriction of this section.

(d) *Reimported merchandise.* Merchandise purchased in a duty-free store is not eligible for exemption from duty, or tax where applicable, under chapter 98, subchapter IV, Harmonized Tariff Schedule, if it is brought back to the United States after exportation. To enforce this restriction, the district director may require the proprietor to mark or otherwise place a distinguishing identifier on individual items of merchandise to indicate the items were sold in a U.S. duty-free store, if a pattern is disclosed in which such items are being brought back to the United States without declaration. A pattern of undeclared reimportations means a number of instances over a period of time and not isolated instances of unrelated violations. Any such marking required by the district director will be inconspicuous to the purchaser and will not detract from the value of the merchandise. The marking requirement will be limited to the items or types of merchandise noted in the pattern, and will not be extended to all merchandise of the responsible store proprietor unless all or most items are part of the pattern.

(e) *Merchandise eligible for warehousing.* Only conditionally duty-free merchandise may be placed in a bonded storage area of a Class 9 warehouse. However, domestic merchandise and merchandise which was previously entered or withdrawn for consumption, may be brought into the bonded sales or crib area of a Class 9 warehouse for display and sale, and in the case of a crib, for delivery to purchasers. However, such merchandise must be marked "DUTY-PAID" or "U.S. ORIGIN", or with similar markings, as applicable, for easy distinction by Customs officers and purchasers of conditionally duty-free merchandise from other merchandise in the sales or crib area.

(f) *Sale of merchandise.* Conditionally duty-free merchandise for exportation at airport or seaport exit points may be sold and delivered only to purchasers who display valid tickets, or in the case of chartered or for-hire flights that have not issued tickets, other proof of impending departure from the Customs territory, and to crewmembers who have been engaged for a flight or voyage departing directly from the Customs territory with no intermediate stops in the U.S.

(g) *Inventory procedure.* Duty-free store proprietors shall maintain, at the duty-free store or at another location approved by the district director, a current inventory separately for each storage area, crib, and sales area containing conditionally duty-free merchandise by warehouse entry, or by unique identifier where permitted by the district director. Proprietors shall assure that Customs has ready access to those records, and that the records are stored in such a way as to keep transactions of multiple facilities separated. The

inventory shall be reconcilable with the accounting and inventory records and the permit file folder requirements of § 19.12(a) (1) and (2), of this part. Proprietors are subject also to the recordkeeping requirements of other paragraphs of § 19.12, as well as those of §§ 19.6(d), 19.37(d), 19.39(d) of this part, and 144.37(h)(3) of this chapter.

§ 19.37 Crib operations.

(a) *Crib.* A *crib* means a bonded area, separate from the storage area of a Class 9 warehouse, for the retention of a small supply of articles for delivery to persons departing from the United States. It shall be located beyond the exit point, unless exception has been made under § 19.39 (a) and (b) of this part. The crib may be a permanent location or a mobile facility which is periodically moved to a location beyond the exit point. The quantity of goods in the crib shall be limited to an amount estimated to be a two weeks' supply. However, the district director may, upon request, permit a lesser or greater quantity as he deems necessary for the protection of the revenue and proper administration of U.S. laws and regulations, or he may order the return to the storage area of goods remaining unsold.

(b) *Delivery and removal of merchandise.* Conditionally duty-free merchandise shall be delivered to the crib, or removed from the crib for return to the storage area, under the procedures in subpart D, part 125, and § 144.34(a), of this chapter, or under a local control system approved by the district director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse. If delivery is made by licensed cartman, cartage vehicles shall be conspicuously marked as provided in § 112.27 of this chapter.

(c) *Delivery vehicles.* Vehicles, including mobile cribs, containing conditionally duty-free merchandise for delivery to or from a crib shall carry a listing of the articles contained therein. The proprietor shall provide, upon request by Customs, a transfer document sufficient to account for each movement of inventory among its locations. The merchandise in the vehicles shall be subject to inspection by Customs.

(d) *Retention of records.* Class 9 warehouse proprietors shall maintain records of conditionally duty-free merchandise transported beyond the exit point and returned therefrom, and Customs permits for such movements, for not less than 5 years after exportation of the articles. Such records need not be placed in permit file folders but must be filed by date of movement, destination site and warehouse entry number or by unique identifier where permitted by the district director (see § 19.36(g)).

§ 19.38 Supervision of exportation.

(a) *Sales ticket withdrawals.* Conditionally duty-free merchandise withdrawn under the sales ticket procedure for exportation shall be exported only under Customs supervision as provided in this section and § 19.39 of this part. General Customs supervision shall be exercised as provided in § 19.4 of this part and § 161.1 of this chapter, and may consist of spot checks of exportation transactions, examination of articles being exported, and audits of the proprietor's records.

(b) *Supervision of ATF bonded exports.* Customs officers may conduct general supervision of exportations of cigarettes and cigars from ATF export bonded warehouses (see 27 CFR part 290) in conjunction with exportation from duty-free stores.

§ 19.39 Delivery for exportation.

(a) *Delivery to land border locations—(1) Land border locations. Land border location* means an exit point (see § 19.35(d)) from which individuals depart to a contiguous country by vehicle or on foot by bridge, tunnel, highway, walkway, or by ferry across a boundary lake or river, but not including departure to a contiguous country by air or sea. Deliveries from a duty-free store for exportation from such locations shall be made to the purchaser only beyond the exit point, except as specified in paragraph (a)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point of any location approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as required by § 19.36(b) of this part. The officer shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The district director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(b) *Delivery to seaport locations—(1) Seaport location. Seaport location* means an exit point (see § 19.35(d)) from which conditionally duty-free merchandise is delivered to departing individuals for exportation by vessel of more than 5 net tons which is departing directly from the Customs territory to touch and trade in a foreign country. Deliveries for exportation from such locations may be made only beyond the exit point, except as specified in paragraph (b)(2) of this section.

(2) *Delivery at or before exit point.* Delivery of such merchandise may be made at or before the exit point in the case of any locations approved by Customs as of August 23, 1988. In such cases, delivery shall be done under the physical supervision of a Customs officer, or in accordance with established guidelines as required by § 19.36(b) of this part. The officer shall sign the sales ticket certifying exportation and return it to the proprietor for retention in the files. The district director may also require that the warehouse proprietor have the person receiving the article sign the same copy to certify receipt.

(c) *Delivery to airport locations. Airport location* means an exit point from which conditionally duty-free merchandise is delivered to departing individuals for exportation on a scheduled, chartered, or "for-hire" airline. Delivery of conditionally duty-free merchandise to be exported from such locations may be made by one of the following five procedures:

(1) *Delivery in sterile area.* A sterile area is an area that is within the airport and to which access is restricted to those passengers departing from Customs territory. In such cases, delivery will be made directly to the purchaser (or a family member or companion travelling with the purchaser) for carrying aboard the aircraft. This method of delivery is not authorized if there is any mixture in the sterile area of individuals arriving from a foreign country, or individuals arriving or departing on a domestic flight, with individuals departing for foreign;

(2) *Passenger delivery.* Merchandise may be delivered by the cartman or duty-free store operator to the purchaser (or a family member or companion travelling with the purchaser) at or beyond the exit point for the flight. The district director may require the exit point to be delimited by marking of its boundaries, or require proper supervision in accordance with established guidelines as required by § 19.36(b) of this part, if needed for reasonable assurance that conditionally duty-free merchandise will be exported with the purchaser or a family member or companion. A certificate of lading shall be prepared by the proprietor for each shipment of conditionally duty-free merchandise and executed by an authorized airline official, certifying that the merchandise has been laden on a particular aircraft for exportation. After execution, the certificate will be returned to the duty-free store proprietor for filing. The certificate shall include the following information: Warehouse entry number (or unique identifier, if permitted by the district director); aircraft departure date; airline flight number; and total quantity delivered to the flight;

(3) *Aircraft delivery.* The merchandise will be delivered by a licensed cartman for lading directly on the aircraft. The airline will release the merchandise to the purchaser when the aircraft has departed for its foreign destination;

(4) *Unit-load delivery.* Merchandise may be sold to passengers departing from the United States at a prior port of boarding on flights proceeding to a foreign destination which are required to clear with intermediate stops in the United States, provided that all of the following conditions are met:

(i) Sales may be made only to passengers holding a through ticket on the same flight, with no stopover privileges in the United States, to a foreign destination;

(ii) Merchandise shall be placed in a container sealed with Customs seals. The sealed container(s) may be placed in the baggage compartment or on the passenger deck of the aircraft. Containers stowed in baggage compartments may, with Customs permission, be transferred to the passenger deck at an intermediate or final stop in the United States. The seal numbers shall be placed on the face of the aircraft general declaration;

(iii) A lading manifest list, in duplicate, of conditionally duty-free merchandise sold to passengers aboard the particular flight will be prepared by the proprietor. An authorized airline representative will sign for receipt, with one copy to be retained by the airline for presentation to Customs as requested at the intermediate or final port, and the duplicate copy to be returned to and retained by the proprietor for record purposes;

(iv) The seals shall not be broken nor shall any of the purchases be delivered until the aircraft is secured for departure to its foreign destination at the last port. In the event that the seals are broken before that time, or the merchandise is not exported for any reason and not returned to Customs custody, demand shall be made against the importation and entry bond of the importer of record;

(5) *Cancelled or aborted flights or "no show" purchasers.* If the proprietor has made a good faith effort to effect delivery for exportation through one of the methods specified in paragraphs (c)(1) through (4) of this section, but is unable to do so for reasons beyond the proprietor's control, the proprietor may deliver the conditionally duty-free merchandise by any other method deemed reasonable by the district director. Written procedures for delivery for exportation, specifying responsibilities for any discrepancies which might occur, shall be established by the proprietor and provided to the district director. The district director may require any change in procedure deemed necessary to assure exportation under specific circumstances.

(d) *Lading manifest lists; certificate of exportation.* The proprietor shall retain copies of lading manifest lists and certificates of lading for exportation in its files for not less than 5 years after exportation by warehouse entry number or by unique identifier where permitted by the district director (see § 19.36(g)).

(e) *Delivery method.* Delivery of conditionally duty-free merchandise to persons for exportation will be made by licensed cartmen under the procedures in subpart D, part 125, and § 144.34(a), of this chapter, or under a local control system approved by the district director wherein any discrepancy found in the merchandise will be treated as if it occurred in the bonded warehouse.

(f) *Return of merchandise to stock.* Whenever merchandise is withdrawn under the sales ticket procedure of § 144.37(h) of this chapter, but is undeliverable or is rejected by the purchaser, the merchandise may be returned to the duty-free store and the records, including the sales ticket and sales ticket register, amended to reflect the quantity returned to stock.

PART 113—CUSTOMS BONDS

1. The authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624. Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. Section 113.63 is amended by adding a new paragraph (c)(5) as follows:

§ 113.63 Basic custodial bond conditions.

* * * * *

(c) *Disposition of merchandise.* * * *

(5) In the case of Class 9 warehouses, to provide reasonable assurance of exportation of merchandise withdrawn under the sales ticket procedure of § 144.37(h) of this chapter.

* * * * *

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The authority citation for part 144 continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

Section 144.3 also issued under 19 U.S.C. 1563;

Section 144.33 also issued under 19 U.S.C. 1562;

Section 144.37 also issued under 19 U.S.C. 1555, 1562.

2. Section 144.37 is amended by adding a new paragraph (h) to read as follows:

§ 144.37 Withdrawal for exporation.

* * * * *

(h) *Class 9 warehouse withdrawals for exportation—(1) Applicability of sales ticket procedure.* Merchandise in a Class 9 warehouse (duty-free store) may be withdrawn for any of the purposes set forth in this subpart. However, only conditionally duty-free merchandise in a Class 9 warehouse intended for exportation or for delivery to persons and organizations set forth in subpart I, part 148, of this chapter, will be eligible for withdrawal under the sales ticket procedure specified in this paragraph.

(2) *Sales ticket content and handling.* Sales ticket withdrawals shall be made only under a blanket permit to withdraw (see § 19.6(d) of this chapter) and the sales ticket shall serve as the equivalent of the supplementary withdrawal. A sales ticket is an invoice of the proprietor's design which will include:

(i) Serial number and date of preparation of each ticket;

(ii) Warehouse entry number or specific identifier, if approved by the district director;

(iii) Quantity of goods sold;

(iv) Brief description of the articles including the size of bottles;

(v) The full name, address, and signature of the purchaser. However, the district director may waive the address and signature requirement (but not the name requirement) for alcoholic beverages in quantities of 4 liters or less and cigarettes in quantities of 3 cartons or less; and

(vi) A statement on the original copy (purchaser's copy) of the effect that goods purchased in a duty-free store will be subject to duty and/or tax without personal exemption if returned to the United States. At the time of purchase, the sales ticket, in triplicate, shall be made out in the name of the purchaser. One copy shall be retained by the proprietor. A permit file copy will be attached to the parcel containing the articles, and the original given to the

purchaser. Additional copies may be retained by the proprietor.

(3) *Sales ticket register.* In addition to the records required in § 19.12(a) of this chapter, Class 8 warehouse proprietors shall maintain a sales ticket register or similar accounting record for each warehouse entry. The sales ticket register of the proprietor shall include the following information:

(i) Warehouse entry number;
(ii) Specific identifier, if applicable;
(iii) Sales ticket date and number;
(iv) Description;
(v) Quantity; and
(vi) Current balance.

As each warehouse entry is closed out, the warehouse proprietor shall verify the sales ticket register total with the amount withdrawn so as to account for all merchandise so withdrawal and certify on the register that all the goods have been exported or sold to qualifying persons and organizations under part 148 of this chapter. The sales ticket register shall be included in the permit file folder with or in lieu of the blanket permit summary, as provided in § 19.6(d)(4) of this chapter. A copy of all sales tickets shall be retained by the proprietor for not less than 5 years after the date of the last sales ticket in the entry. In lieu of placing a copy of sales tickets in each permit file folder, the warehouse proprietor may keep all sales tickets in a separate file in numerical sequence by warehouse entry number.

Carol Hallett,
Commissioner of Customs.
Approved: August 13, 1992.
Peter K. Nunez,
Assistant Secretary of the Treasury.
[FR Doc. 92-19831 Filed 8-19-92; 8:45 am]
BILLING CODE 4820-02-M

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19 CFR Part 145

[T.D. 92-80]

Importation of Lottery Material From Canada

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect a provision of the United States-Canada Free-Trade Agreement Implementation Act of 1988 to allow for the importation of certain lottery matter printed in Canada for use in connection with a lottery conducted in the U.S.

EFFECTIVE DATE: January 1, 1992.

FOR FURTHER INFORMATION CONTACT: William Wagner, Office of Trade Operations (202) 566-7090.

SUPPLEMENTARY INFORMATION:

Background

Section 305 of the Tariff Act of 1930, as amended (19 U.S.C. 1305), generally provides that the importation into the United States of certain articles deemed to be immoral, including lottery material from all countries, is prohibited. This statutory exclusion provision is reflected in section 145.51(a)(5) of the Customs Regulations (19 CFR 145.51(a)(5)), which broadly described this subject matter as "Lottery matter."

On January 2, 1988, the United States and Canada entered into a bilateral reciprocal free trade area agreement called the United States-Canada Free-Trade Agreement (CFTA). The CFTA became law on September 28, 1988, pursuant to the United States-Canada Free-Trade Agreement Implementation Act of 1988 (the "Act"), Public Law 100-449, 102 Stat. 1851. Section 206 of the Act provides that, effective January 1, 1993, section 305(a) of the Tariff Act of 1930 (19 U.S.C. 1305(a)) is amended to provide that this section shall not apply to any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the U.S.

This document amends 19 CFR 145.51 to conform to 19 U.S.C. 1305, so that, effective January 1, 1993, this section will not prohibit the importation of certain lottery matter printed in Canada for use in connection with a lottery conducted in the United States.

Inapplicability of Public Notice and Comment Requirements, The Regulatory Flexibility Act, and Executive Order 12291

Because this amendment merely reflects a statutory requirement that confers a benefit upon the public and implements the CFTA, pursuant to 5 U.S.C. 553(a)(1) and (b)(B), notice and public procedure thereon are not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this amendment implements a foreign affairs function of the United States, it is not subject to E.O. 12291; therefore, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Gregory R. Vilders, Regulations and Disclosure Law Branch.

List of Subjects in 19 CFR Part 145

Customs duties and inspection, Imports, Postal service.

Amendment to the Regulations

Accordingly, for the reason stated above, part 145, Customs Regulations (19 CFR part 145), is amended as set forth below.

PART 145—MAIL IMPORTATIONS

1. The authority citation for part 145 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Section 145.51 also issued under 19 U.S.C. 1305;

* * * * *

2. In § 145.51, paragraph (a)(5) is revised to read as follows:

§ 145.51 Articles prohibited by section 305, Tariff Act of 1930.

(a) * * *

* * * * *

(5) Lottery matter, except any lottery ticket, printed paper that may be used as a lottery ticket, or advertisement of any lottery, that is printed in Canada for use in connection with a lottery conducted in the United States.

* * * * *

Dated: July 24, 1992.
Carol Hallett,
Commissioner of Customs.
Approved: August 13, 1992.
Nancy L. Worthington,
Acting Assistant Secretary of the Treasury.
[FR Doc. 92-19830 Filed 8-19-92; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve, with certain exceptions, a proposed amendment to the North Dakota permanent regulatory program (hereinafter referred to as the North Dakota program), as administered by the Public Service Commission (PSC)

and Industrial Commission (IC) of North Dakota, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Amendment XV) pertains to coal exploration, the extraction of coal incidental to the extraction of other minerals, termination of jurisdiction, blasting schedules, and the duties of registered land surveyors. The amendment is intended to revise the North Dakota program to incorporate additional flexibility afforded by revised Federal regulations and to be consistent with SMCRA and the Federal regulations.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Director, Casper Field Office, Telephone (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by PSC and IC. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the December 15, 1980, **Federal Register** (45 FR 82246). Actions concerning program amendments taken subsequent to the approval of the North Dakota program are found at 30 CFR 934.12, 934.13, 934.15, 934.16, and 934.30.

II. Submission of Proposed Amendment

By letter dated June 12, 1991 (Administrative Record No. ND-M-01), North Dakota submitted a proposed amendment to its regulatory program pursuant to SMCRA. The proposed amendment consists of revisions to the North Dakota Century Code (NDCC) and to the North Dakota Administrative Code (NDAC). North Dakota submitted the proposed amendment to provide additional flexibility to its program and to respond to OSM's 30 CFR 732.17(c) notifications of November 17, 1989, and February 7, 1990 (Administrative Record Nos. ND-J-1 and ND-K-1, respectively), that informed North Dakota of changes necessary to maintain its program in a form as stringent as SMCRA and no less effective than the Federal regulations that implement SMCRA.

The sections of the program that North Dakota proposes for substantive addition or emendation are: NDCC 38-12.1 (Exploration data); NDAC 43-02-01 (Coal exploration); NDCC 38-14.1 (Surface mining and reclamation operations); NDAC 69-05.2 (Termination of jurisdiction).

The Director announced receipt of the proposed amendment in the June 28, 1991, **Federal Register** (56 FR 29606), and in the same notice opened the public comment period and provided for a public hearing on its substantive adequacy (Administrative Record No. ND-M-10). The public comment period closed on July 29, 1991. Following a review of the North Dakota amendment, OSM notified the State on August 30, 1991, of concerns it had with two provisions in the proposed amendment (Administrative Record No. ND-M-12). In a letter dated September 11, 1991, (Administrative Record No. ND-M-13) North Dakota responded by submitting new language for the proposed amendment to address the concerns raised by OSM. OSM published a notice in the September 23, 1991, **Federal Register** (56 FR 47929) announcing receipt of new language for the proposed amendment and invited public comment on its adequacy (Administrative Record No. ND-M-14). The public comment period ended October 8, 1991.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and § 732.17, are the Director's findings for the proposed amendment submitted by North Dakota on June 12, 1990.

1. Provisions Not Discussed

North Dakota has proposed revisions to its code that contain language substantively the same as corresponding Federal program or concern nonsubstantive wording changes.

The Director, therefore, finds that these proposed revisions are no less stringent than the Federal program requirements and is approving the proposed revisions. These revisions are as follows: NDCC 38-14.1-24.13.a, blasting schedule notice provisions [section 515(b)(15) of SMCRA] and NDCC 38-14.1-30.3, administrative review of commission rulings—formal hearings [section 518 of SMCRA].

2. NDCC 38-12.1-03-2.b., Definition of "Coal Exploration" and NDCC 38-12.1-05-2.d., Exploration Data

North Dakota proposes at NDCC 38-12.1-03-2.b to delete the phrase "which substantially disturb the natural land surface and which are", as it relates to environmental data gathering activities, from the definition of "coal exploration." North Dakota also proposes to add a requirement to the definition that environmental data gathering activities located on lands designated unsuitable for mining must meet the provisions of sections 38-12.1-04 and 38-12.1-05.

At NDCC 38-12.1-05-2, North Dakota proposes to add paragraph "d" that states that a permit is not required "for environmental data gathering activities that do not substantially disturb the land, unless the environmental data gathering activities are located on land designated unsuitable for mining under section 38-14.1-05."

On July 15, 1985, (*In Re: Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519 (D.D.C. 1985)) the District Court of the District of Columbia remanded 30 CFR 772.11(a), notice requirements for exploration removing 250 tons of coal or less, because it required a notice of intention to explore only for those operations which may substantially disturb the natural land surface. In response to this court decision, OSM revised its rules to require that prior notice of all intended coal exploration activities be provided to the regulatory authority regardless of the extent of disturbance planned (53 FR 52949, December 29, 1988).

OSM notified North Dakota in a 732 notification dated November 17, 1989, (Administrative Record No. ND-J-1) of the State's need to amend its rules so that the State regulatory authority, and not the operator, would be in the position of determining what constituted substantial disturbance to the natural land surface. In addition, OSM informed North Dakota that it lacked a counterpart rule to the Federal regulation at 30 CFR 772.12(a) that requires an exploration permit for all exploration activities conducted on lands designated as unsuitable for mining. OSM informed the State that it would need to require an exploration permit for lands designated unsuitable for mining to be no less effective than the Federal regulation. These proposed provisions accomplish both needs. Therefore, the Director finds NDCC 38-12.1-03-2.b and NDCC 38-12.1-05-2.d to be no less effective than the Federal regulations at 30 CFR 701.5, 772.11 and 772.12(a) and is approving them.

3. NDCC 38-14.1-02-33, Definition of "Surface Coal Mining Operations"

North Dakota proposes to amend NDCC 38-14.1-02-33 by omitting the exemption for coal extraction incidental to the extraction of other minerals from the definition of "surface coal mining operations." Specifically, the phrase "the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two thirds per centum of the tonnage of minerals

removed for purposes of commercial use or sale" is proposed to be deleted.

On December 20, 1989 (54 FR 52092), OSM promulgated Federal regulations at 30 CFR part 702 concerning the exemption for coal extraction incidental to the extraction of other minerals removed for purposes of commercial use or sale, as set forth in the definition of "surface coal mining operations" at section 701(28) of SMCRA. These new rules established criteria and procedures for use in determining whether an operation qualified initially and on a continuing basis for the exemption. OSM notified North Dakota in the February 7, 1990, 732 notification (Administrative Record No. ND–K–1) that the State was required to modify its program to include, among other things, exemption criteria, application and reporting requirements.

North Dakota has responded by deleting the exemption entirely. The option to allow for an exemption for incidental coal extraction is discretionary with the State regulatory authority. The option not to allow for incidental coal extraction renders the North Dakota program more stringent than the Federal program. Pursuant to section 505(b) of SMCRA, any provision of State law or regulation which provides for more stringent land use and environmental controls and regulations of surface coal mining and reclamation operations than the Federal provisions shall not be construed as inconsistent with the Act. Therefore, the Director finds that the proposed deletion of the incidental coal exemption is not inconsistent with SMCRA and he is approving the proposed revision to NDCC 38–14.1–02–33.

4. NDAC 43–02–01–18.1, Notice of Environmental Data Gathering Activities

North Dakota proposes to add NDAC 43–02–01–18.1 which states that a notice of all planned environmental data gathering activities must be provided to the state geologist. This proposed rule outlines what information the notice must include. This proposed rule continues by stating that notice is not required for fish and wildlife surveys, premine land use determinations, vegetation surveys, collection of climatological data, topographical surveys, and walk-through cultural resource surveys. Notice is also not required for environmental data gathering activities on lands designated as unsuitable for mining, however, an exploration permit from the state geologist is required on such lands.

The Federal regulation at 30 CFR 772.11(a) requires that any person who intends to conduct coal exploration provide a written notice of intent to explore. 30 CFR 772.11(b) outlines what the notice shall include. 30 CFR 772.11(a) also states that exploration which will take place on lands designated as unsuitable for surface coal mining operations shall be subject to the permitting requirements under 30 CFR 772.12.

OSM, on September 8, 1983, amended its coal exploration rules at 30 CFR 772.11 to delete the requirement that notices of intent be filed in situations where no substantial disturbance is planned (48 FR 40622, 40625–40626). On July 15, 1985, the U.S. District Court for the District of Columbia remanded this rule to the Secretary for failing to adequately explain the departure from the previous rule and address concerns raised by commenters [*In re: Permanent Surface Mining Regulation Litigation*, 620 F. Supp. 1519, 1579–1580 (D.D.C. 1985)]. In promulgating a revised rule on December 29, 1988, OSM noted that it had "considered the practical problems raised by the remanded rule, namely, that for the regulatory authority to determine which proposed coal exploration operations may substantially disturb the natural land surface, it must be informed of all proposed exploration" (53 FR 52942, 52943). Accordingly, the revised Federal rule requires that all parties intending to conduct coal exploration first notify the regulatory authority regardless of the extent of disturbance planned. Subsequently, OSM sent a 732 notification to all appropriate State regulatory authorities requiring compliance with the revised Federal regulation.

North Dakota proposes this new rule in response to OSM's 732 notification dated November 17, 1989 (Administrative Record No. ND–J–1,) which required that North Dakota require prior notice of all intended coal exploration activities regardless of the extent of disturbance planned. North Dakota was also instructed to require an exploration permit for all exploration activities on lands designated unsuitable for mining in order to protect the values for which they were designated. Although the North Dakota proposal is slightly less inclusive than the Federal regulations, OSM recognizes that the type of environmental data gathering activities that North Dakota proposes to exempt from the notice requirements (i.e. fish and wildlife surveys, premine land use determinations, vegetation surveys, collection of climatological data, topographical surveys, and walk-through cultural resource survey) are activities that don't create any disturbance to the natural land surface and/or can be conducted by contacting other Federal and State agencies. OSM believes that North Dakota adequately addresses the concerns of the commenters referenced in the court decision and is based on the same rationale as that used by OSM to develop its revised rules. That is, that the regulatory authority, and not the operator, should be in the position of making a determination of whether an operation substantially disturbs the natural land surface. Under the proposal all environmental data gathering activities that may cause any disturbance (not just substantial disturbance) of the natural land surface would be subject to the State exploration notice requirements. The proposal thus requires that the regulatory authority, not the operator, determine whether any planned disturbance is likely to be substantial and hence subject to the performance standards at 43–02–01–20.

North Dakota has met the conditions of the 732 notification regarding notice and permit requirements. The Director finds the proposed rule at NDAC 43–02–01–18.1 to be no less effective than the Federal regulations at 30 CFR 772.11 and is approving it.

5. NDAC 43–02–01–20, Performance Standards for Coal Exploration

North Dakota proposes to revise NDAC 43–02–01–20 to include the requirement that lands designated unsuitable for mining are subject to all coal exploration performance standards. Specifically, North Dakota adds the phrase "and on lands designated unsuitable for mining under North Dakota Century Code section 38–14.1–05" to the introductory paragraph of this section that outlines the performance standards. The Federal regulation 30 CFR 772.12(d)(2)(i) requires that exploration and reclamation on lands designated as unsuitable for surface mining shall be conducted in accordance with 30 CFR part 815, permanent program performance standards—coal exploration.

North Dakota also proposes to revise NDAC 43–02–01–20(3)(c)(2) by providing a cross-refernce to the performance standards for roads in NDAC Chapter 69–05.2–24. Therefore, any new or existing road built or used for exploration will be required to comply with those performance standards. The counterpart Federal regulation at 30 CFR 815.15(b) states that all roads used for coal exploration shall comply with the applicable provisions of 30 CFR 816.150 (b) through (f), § 816.180, and § 816.181, the performance standards for roads, utility installations, and support facilities, respectively.

North Dakota proposes these revisions in response to OSM's 732.17 notification dated November 17, 1989 (Administrative Record No. ND–J–1), which required that North Dakota apply their coal exploration performance standards to lands designated as unsuitable for surface mining and that all existing roads significantly disturbed by exploration activities (not just newly constructed roads) meet the requirements of NDAC 69–05.2–24.

North Dakota has met the conditions of the 732 notification regarding lands designated as unsuitable for mining and roads used for exploration. The Director finds the proposed rules at NDAC 43–02–01–20 and NDAC 43–02–01–20(3)(c)(2) to be no less effective than the Federal regulations at 30 CFR 772.12(d)(2)(i) and 30 CFR 815.15(b) and is approving them.

6. NDAC 69–05.2–01–01.3 and .4, Termination of Jurisdiction

North Dakota proposes to add NDAC 69–05.2–01–01.3 and .4 regarding termination of jurisdiction that is substantively identical to the corresponding Federal regulations at 30 CFR 700.11(d). The U.S. District Court for the District of Columbia found that the Federal regulations at 30 CFR 700.11(d) were contrary to sections 521(a)(1) and (a)(2) of SMCRA [*National Wildlife Federation* v. *Lujan*, 31 ERC 2034 (D.D.C. 1990). More specifically, the court interpreted sections 521(a)(1) and (a)(2) as imposing an on-going duty upon the Secretary of the Interior to correct violations of SMCRA. Accordingly, the court remanded the Federal regulations at 30 CFR 700.11(d) to the Secretary to be withdrawn or revised.

In response to the court's decision, OSM suspended the above Federal regulation on June 3, 1991 (56 FR 25036). This decision was appealed and the suspended rule was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *National Wildlife Federation* v. *Lujan*, 950 F.2d 765 (D.C. Cir. 1991). The reinstatement of this rule was published in the **Federal Register** on April 10, 1992, and was effective on May 11, 1992 (57 FR 12461, 12463).

North Dakota's rules at NDAC 69–05.2–01–01.3 and .4, as proposed, are substantively the same as the reinstated Federal rule. The Director therefore finds North Dakota's proposed rules to be no less effective than the Federal rule at 30 CFR 700.11(d) and is approving them.

7. NDAC 69–05.2–09–06.2., Permit applications—Operation Plans—Transportation Facilities, and NDAC 69–05.2–24–03.1, Performonce Standards—Roads—Design and Construction of Primary Roads

North Dakota proposes at NDAC 69–05.2–09–06.2 to allow qualified registered land surveyors who satisfy NDCC section 43–19.1–29(5), are certified, and have experience in the design and construction of roads, to prepare the plans and drawings of each primary road. North Dakota also proposes at NDAC 69–05.2–24–03.1 to allow land surveyors as qualified above to also certify reports regarding the construction or reconstruction of primary roads.

The Federal regulations at 30 CFR 780.37 and 30 CFR 816.151 allow registered land surveyors to perform these preparation and certification tasks if such tasks are authorized by the registration practices of the individual States.

OSM has reviewed the North Dakota statute governing the registration of engineers and land surveyors and notes that at chapter 43–19.1–02.7, "land surveying" is defined by North Dakota to mean:

> * * * any service comprising the determination of the location of land boundaries and land boundary corners; incidental topography; the preparation of maps showing the shape and area of tracts of land and their subdivision into smaller tracts; the preparation of maps showing the layouts of roads, streets, and rights of way of same to give access to smaller tracts; and the preparation of official plats or maps of said land thereof within this state.

In regard to roads, registered land surveyors are authorized to perform "the preparation of maps showing the layouts of roads, streets, and rights of way of same to give access to smaller tracts" North Dakota's statute does not specifically authorize registered land surveyors to perform other road design work.

North Dakota proposes that the exemption clause at NDCC section 43–19.1–29(5) provides the proper authority for land surveyors to perform engineering services. That clause states:

> This chapter shall not be construed to prevent or affect:
>
> 5. The practice of engineering and land surveying by any person regularly employed to perform engineering services solely for his employer or for a subsidiary or affiliated corporation of his employer, providing the engineering performed is in connection with the property, products or services of his employer.

It is not clear if the phrase "* * * perform engineering services solely for his employer * * *" would allow the certification of plans to be accepted by the regulatory authority since such certification is a requirement of the regulatory authority and not the employer.

Therefore, given the absence of direct statutory language, and the absence of sufficient information in the record supporting the State's interpretation that the statute governing registration of land surveyors (NDCC 43–19.1) authorizes land surveyors to prepare the plans and drawings of primary roads and to certify reports regarding the construction or reconstruction of primary roads, the Director finds North Dakota's proposed NDAC 69–05.2–09–06.2 and NDAC 69–05.2–24–03.1 to be less effective than the Federal regulation at 30 CFR 779.37(b) and 30 CFR 816.151(a) to the extent that they allow registered land surveyors to prepare and certify permit application materials that they are not specifically authorized to do under North Dakota state law. The Director is therefore not approving in proposed NDAC 69–05.2–24–03.1 and NDAC 69–05.2–24–03.1 the phrase ", * * * or a qualified registered land surveyor who satisfies NDCC section 43–19.1–29(5), * * *," and is requiring North Dakota to revise the rules to remove that phrase.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the North Dakota program.

By letter dated July 9, 1991 (Administrative Record No. ND–M–7), the North Dakota State University Extension Service responded that it had no comment.

By letter dated July 19, 1991 (Administrative Record No. ND–M–8), the Bureau of Mines responded that it had no comment.

By letter dated July 23, 1991 (Administrative Record No. ND–M–9), the Fish and Wildlife Service responded that it had no substantive comments.

By letter dated July 30, 1991 (Administrative Record No. ND–M–11),

the Mine Safety and Health Administration responded that it had no comment.

By letter dated August 1, 1991 (Administrative Record No. ND–M–16), the U.S. Army Corps of Engineers responded that it found the proposed amendment to be satisfactory.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. No response was received from either agency.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

North Dakota did not propose in this amendment any revisions to its program that relate to air or water quality standards. However, EPA's Regional and Headquarters offices were afforded opportunity to comment on this amendment. By letter dated January 21, 1992, EPA's Headquarters office responded that it concurred with the proposed revision (Administrative Record No. ND–M–17).

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by North Dakota on June 12, 1991, with subsequent resubmittal on September 11, 1991, with the exception of NDAC 69–05.2–09–06.2, Permit applications—operation plans—transportation facilities, and NDAC 69–05.2–24–03.1, Performance standards—roads—design and construction of primary roads, as discussed in finding No. 7. This approval is given with the provision that the rules be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR part 934 which codify all decisions concerning the North Dakota program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary of the Interior. Federal regulations at 30 CFR 732.17(a) require that any alteration of an approved State program must be submitted to OSM for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. Thus, any changes to the State program are not enforceable by the State as part of the approved State program until approved by the Director. In the oversight of the North Dakota program, the Director will recognize only statutes, regulations, and other materials approved by the Director, together with any consistent implementing policies, directives and other materials, and will require the enforcement by North Dakota of only such provisions.

VI. Procedural Determinations

National Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, § 732.15, and § 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the State must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 934—NORTH DAKOTA

1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 934.10 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

* * * * *

(b) Office of Surface Mining, 100 East "B" Street, Casper, Wyoming 82601–1918, telephone: (307) 261–5824.

3. Section 934.15 is amended by adding paragraph (o) as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(o) With the exceptions of the North Dakota Administrative Code (NDAC) 69–05.2–09–06.2 and NDAC 69–05.2–24–03.1 regarding the authorization of land surveyors, the following provisions of the North Dakota Century Code (NDCC) and NDAC, as submitted on June 12, 1991 are approved effective August 20, 1992.

NDCC 38–12.1–03–2.b., Definition of "Coal Exploration;" NDCC 38–12.1–05–2.d., Exploration data; NDCC 38–14.1–02–33.a., Definition of "Surface coal mining operations; NDCC 38.14.1–24.13.a., Blasting schedule notice; NDCC 38–14.1–30.3.c., d., e., f., g(1). and g(2), Administrative review of commission rulings—formal hearings; NDAC 43–02–01–18.1, Notice of environmental data gathering activities; NDAC 43–02–01–20, Performance standards for coal exploration; NDAC 69–05.2–01–01–3, Termination of jurisdiction.

[FR Doc. 92–19706 Filed 8–19–92; 8:45 am]
BILLING CODE 4310–05–M

30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is announcing its decision to approve a proposed amendment to the North Dakota permanent regulatory program (hereinafter referred to as the North Dakota program), as administered by the Public Service Commission (PSC) and Industrial Commission (IC) of North Dakota, under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to improvidently issued permits, permit term, permit application requirements, soil resources information, permit revisions, protection of fish and wildlife resources, and topsoil removal; the proposed amendment also contains numerous minor editorial revisions. The amendment is intended to revise the North Dakota program to be consistent with SMCRA and corresponding Federal standards and to improve operational efficiency.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by PSC and IC. Information regarding the general background on the North Dakota program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval, can be found in the December 15, 1980, **Federal Register** (45 FR 82246). Actions concerning program amendments taken subsequent to the approval of the North Dakota program are found at 30 CFR 934.12, §§ 934.13, 934.15, 934.16, and 934.30.

II. Submission of Proposed Amendment

By letter dated November 19, 1991 (Administrative Record No. ND–O–01), North Dakota submitted a proposed amendment to its regulatory program pursuant to SMCRA. North Dakota submitted the proposed amendment to the North Dakota Administrative Code (NDAC) in part in response to OSM's 30 CFR Part 732.17 notification of May 11, 1989 (Administrative Record No. ND–O–02), and in part on its own initiative to improve its program.

The NDAC Chapters/sections North Dakota proposes for substantive revision are NDAC 69–05.2–05–08–10 (Permit area—soil resources information), NDAC 69–05.2–11–01 (Review of approved permits), and NDAC 69–05.2–15–02 (Removal of suitable plant growth material). In addition, North Dakota proposes to add a new chapter at NDAC 69–05.2–32 to govern improvidently issued permits. Minor editorial changes are also proposed in these and additional sections.

The Director announced receipt of the proposed amendment in the December 13, 1991, **Federal Register** (56 FR 65034), and in the same notice opened the public comment period and provided opportunity for a public hearing on its substantive adequacy (Administrative Record No. ND–O–08). The public comment period closed on January 13, 1992. No public hearing was held since none was requested. Following a review of the North Dakota amendment, OSM notified the State on February 21, 1992, of a suggested modification to one provision in the proposed amendment (Administrative Record No. ND–O–12). In a letter dated March 3, 1992, (Administrative Record No. ND–O–14) North Dakota responded by requesting further information regarding OSM's February 21, 1992, notification. OSM responded to North Dakota's request in a letter dated March 25, 1992, (Administrative Record No. ND–O–15). In a letter dated April 16, 1992, (Administrative Record No. ND–O–16), North Dakota responded to OSM's March 25, 1992, letter stating that it elected not to revise the language in the proposed amendment.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and § 732.17, are the Director's findings on the proposed amendment submitted by North Dakota on November 19, 1991.

1. Provisions Not Discussed

North Dakota has proposed revisions to its code that contain minor editorial changes. The Director finds that these editorial changes do not render North Dakota's regulations to be less effective than the corresponding Federal regulations and is approving them. These proposed changes are located at: NDAC 69–05.2–05–08, Permit applications—permit term; NDAC 69–05.2–08–01, Permit applications—permit area—environmental resources information; NDAC 69–05.2–08–02, Permit applications—permit area—general map requirements; NDAC 69–05.2–08–08, Permit applications—permit area—vegetation and land use information; NDAC 69–05.2–08–12, Permit applications—permit area—topographic data requirements; NDAC 69–05.2–09–04, Permit applications—operation plans—blasting; NDAC 69–05.2–09–09, Permit applications—operation plans—surface water management—ponds, impoundments, banks, dams, embankments, and diversions; NDAC 69–05.2–09–10, Permit applications—operation plans—surface mining near underground mining; NDAC 69–05.2–09–11, Permit applications—reclamation plans—general requirements; NDAC 69–05.2–09–14, Permit applications—reclamation plans—disposal of initial pit spoil and other excess spoil; NDAC 69–05.2–09–17, Permit applications—operation and reclamation plans—fish and wildlife resources; NDAC 69–05.2–10–02, Permit applications—informal conferences; NDAC 69–05.2–11–02, permit revisions; NDAC 69–05.2–12–01, Performance bond—general requirements; NDAC 69–05.2–12–05, Performance bond—self bond of permit applicant; NDAC 69–05.2–12–06, Performance bond—replacement of bonds; NDAC 69–05.2–12–07, Performance bond—determination of bond amount; NDAC 69–05.2–12–08, Performance bond—adjustment of amount; NDAC 69–05.2–12–11, Release of performance bond—criteria for bond release; NDAC 69–05.2–12–12, Release of performance bond—bond release application; NDAC 69–05.2–12–14, Release of performance bond—commission inspection—time of release rules; NDAC 69–05.2–12–16, Forfeiture of performance bond—

procedures; NDAC 69-05.2-13-06, Performance standards—general requirements—avoidance of underground mine areas; NDAC 69-05.2-13-08, Performance standards—general requirements—protection of fish, wildlife, and related environmental values; NDAC 69-05.2-14-01, Performance standards—casing and sealing of drilled holes—temporary rules; NDAC 69-05.2-16-06, Performance standards—hydrologic balance—diversion of overland flow; NDAC 69-05.2-16-12, Performance standards—hydrologic balance—permanent and temporary impoundments; NDAC 69-05.2-16-04, Performance standards—hydrologic balance—water quality standards and effluent limitations; NDAC 69-05.2-22-07, Performance standards—revegation—standards for success; NDAC 69-05.2-25-03, Performance standards—alluvial valley floors—monitoring and NDAC 69-05.2-25-04, Performance standards—alluvial valley floors—protection of farming and water supplies.

2. NDAC 69-05.2-08-10.1.a., Soils Resource Information

North Dakota proposes to amend its regulation by eliminating from its definition of suitable plant growth material for topdressing (topsoil) the standard for a free lime percentage and by reducing the standard for organic matter percentage from "one and one-half or more" to "one or more." Specifically, North Dakota currently requires:

1. The map must be at 1:4,800 scale and show:

a. The location and the vertical and lateral (areal) extent of the suitable plant growth material (topsoil) within the permit area that is considered best for topdressing the area to be reclaimed. Suitable plant growth material considered best for topdressing is based upon an electrical conductivity of less than two millimhos per centimeter (EC $\times 10^3$), a sodium absorption ratio of less than four (exchangeable sodium percentage of less than five), a free lime percentage (calcium carbonate equivalent) of less than ten on medium to fine textured soil, and an organic matter percentage of one and one-half or more (unless this organic matter percentage is not available within the permit area). The topsoil is normally made up of the dark colored surface horizon materials.

North Dakota proposes to delete the second and third sentences and replace them with the following sentence:

Suitable plant growth material considered best for topdressing is the non-calcareous surface horizon material that is dark-colored due to organic staining, has an electrical conductivity of less than two millimhos per centimeter (EC $\times 10^3$), a sodium absorption ratio of less than four (exchangeable sodium percentage of less than five) and an organic matter percentage of one or more.

The Federal regulations at 30 CFR 779.20 that require soil resource information and 30 CFR 816.22 that provide performance standards for topsoil and subsoil do not require the specific information as required by North Dakota above. However, OSM approved North Dakota's definition for suitable plant growth material in the original program approval notice published December 15, 1980 (45 FR 82214).

North Dakota proposes to change the standard for free lime (calcium carbonate) percentage from a specific value (less than ten percent on medium to fine textured soil) to a more general phrase, "noncalcareous surface horizon material that is dark-colored due to organic staining." While North Dakota has not defined what is meant by the term "noncalcareous", the SCS defines "calcareous" as material "containing sufficient free calcium carbonate or calcium-magnesium carbonate to effervesce visibly when treated with cold 0.1 N HCL." Noncalcareous material, therefore, would not effervesce visibly when treated with cold 0.1 N HCL. The SCS, in classifying the soils in North Dakota, describe soils with greater than 5 percent calcium carbonate as calcareous. This would appear to make North Dakota's proposed rule no less effective than what currently exists. North Dakota stated in its amendment package that it wanted to simplify field identification. The test for noncalcareous/calcareous material as defined by the SCS is a simple field test. Therefore, OSM approves of North Dakota adopting the term "noncalcareous" as it is defined by the SCS.

Research on North Dakota soils has shown that the advantages of organic matter (increased flocculation, good structure, etc.) are found in soils with an organic matter percentage of one percent. Therefore, lowering the organic matter percentage from 1.5 percent or more to 1.0 percent or more will potentially allow more material to be salvaged as suitable plant growth material without adversely affecting revegetation success.

Therefore, the Director finds that the changes proposed at NDAC 69-05.2-08-10.1.a are no less effective than the Federal program requirements and is approving them.

3. NDAC 69-05.2-11-01.5, Review of Approved Permits

North Dakota proposes to amend its rules by adding a subsection 5. that would require "The commission will review under chapter 69-05.2-32 any permit it has reason to believe was improvidently issued." This proposed language cross-references the proposed new chapter NDAC 69-05.2-32 that set forth requirements for the review of improvidently issued permits. The Federal regulation counterpart to the North Dakota rules at 69-0.2-11-01 can be found at 30 CFR 774.11; regulatory authority review of permits. However, the specific requirement to review a permit that the regulatory authority has reason to believe was improvidently issued is found at 30 CFR 773.20.

North Dakota's proposed cross-reference ensures that all permits believed to be improvidently issued will be reviewed appropriately. Therefore, the Director finds the proposed amendment at NDAC 69-05.2-11-01.5 to be no less effective than the Federal regulations at 30 CFR 773.20 and is approving it.

4. NDAC 69-05.2-15-02, Performance Standards—Suitable Plont Growth Materiol—Removal

North Dakota proposed to amend its rule at NDAC 69-05.2-15-02 that specify the suitable plant growth materials to be removed and saved by removing the language "[t]he removal and segregation of subsoil from an area must not begin until the topsoil removal operation for that area has been completed and approved by the commission" and replacing the removed language with "The topsoil removal operation for an area must be completed and approved by the commission before subsoil removal begins or before any other disturbances occur in that area." The Federal counterpart regulation at 30 CFR 816.22(a)(1) simply states that "All topsoil shall be removed as a separate layer from the area to be disturbed, and segregated."

North Dakota proposes this change to clearly show that all mining-related activities must not begin in the topsoil removal area until the commission has approved the topsoil removal operation. The existing language was limited to subsoil removal and segregation and did not cover "other disturbances." The Director finds that the North Dakota proposed rule at NDAC 69-05.2-12-02 will provide for more efficient administration of its program and will not render it any less effective than the Federal regulation requirements at 30 CFR 816.22(a)(1). Therefore, the Director is approving this proposed amendment.

5. NDAC 69-05.2-32, Improvidently Issued Permits

North Dakota proposes to add a new chapter NDAC 69-05.2-32 that provides general procedures for the review of improvidently issued permits. This amendment is in response to item C of OSM's 30 CFR 732.17 notification of May 11, 1989 (Administrative Record No. ND-O-02), and provides North Dakota with rules that are counterpart to 30 CFR 773.20 and 773.21. The proposed language at NDAC 69-05.2-32-01, NDAC 69-05.2-32-02, and NDAC 69-05.2-32-3 is substantively the same as the language found at 30 CFR 773.20 and 773.21. Therefore, the Director finds the proposed rules in Chapter NDAC 69-05.2-32, with the exception of NDAC 69-05.2-32-01.1.b discussed below, to be no less effective than the Federal regulations at 30 CFR 773.20 and 773.21 and is approving them.

(a) Presumption That a Notice of Violation is Being Abated

The proposed language at NDAC 69-05.2-32.01.1.b is substantively similar to the Federal provisions at 30 CFR 773.20(b)(ii). However, the Secretary of the Interior, in the matter of *National Wildlife Federation* v. *Lujan*, Civ. Nos. 88-3117, et seq. (Consolidated) (D.D.C. filed October 27, 1988), has expressed his intention to reconsider the issue of whether, in the absence of a failure-to abate cessation order, the regulatory authority may presume that a notice of violation has been or is being corrected, as set forth in the Federal rule (Memorandum of Points and Authorities In Support of the Federal Defendants' Cross-Motion For Summary Judgment and In Opposition to Plantiffs' Motions For Summary Judgment, pp. 89-90). Therefore, pending final resolution of the reconsideration currently being pursued by the Secretary regarding the Federal rule at 30 CFR 773.20(b)(ii), the Director defers action on proposed NDAC 69-05.2-32-01.1.b and North Dakota cannot invoke this portion of its proposed amendment.

(b) Violation Review Criteria

The proposed language at NDAC 69-05.2-32.01.1 through 32.01.3 is substantively similar to the corresponding Federal regulation requirements at 30 CFR 773.20(b)(1) through (b)(3). In an issue letter dated February 21, 1992, OSM suggested that the State resubmit this proposed rule change to include specific violations review criteria. These violations review criteria govern how specific unabated violations, delinquent penalties and fees and ownership and control relationships will be used in determining whether an improvidently issued permit exists. The preamble to the April 28, 1989, Federal rulemaking action (54 FR 18438, 18440-18441) noted that the Federal regulations are written in general terms and suggested that the State regulatory programs include state-specific violations review criteria. In its March 3, 1992, and April 16, 1992, letters, (Administrative Record Nos. ND-0-14 and ND-0-16), North Dakota responded that there was no Federal requirement for the State to submit these violations review criteria and that it did not foresee the need for developing such criteria. OSM acknowledges this situation and will approve the amendment. However, OSM will review, in oversight, North Dakota's activity under this rule to insure that determinations as to whether permits were improvidently issued are made consistent with North Dakota's standards in effect at the time of permit issuance. Accordingly, the Director finds the proposed rules at NDAC 69-05.2-32.01.1 through 32.01.3 are no less effective than the Federal regulations at 30 CFR 773.20(b)(1) through (b)(3).

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comment on the proposed amendment and provided opportunity for a public hearing. No comments were received, and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to Section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSM solicited comments from various Federal agencies with an actual or potential interest in the North Dakota program.

By letter dated January 2, 1992, (Administrative Record No. ND-0-09) the U.S. Army Corps of Engineers responded that it had no comment.

By letter dated January 8, 1992, (Administrative Record No. ND-0-13) the Fish and Wildlife Service responded that it had no comment.

By letter dated January 17, 1992, (Administrative Record No. ND-0-10) the Soil Conservation Service responded that it had no comment.

By letter dated February 6, 1992 (Administrative Record No. ND-0-11), the Mine Safety and Health Administration (MSHA) responded that the amendment did not appear to conflict with any current MSHA regulations.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) Comments

As required by 30 CFR 732.17(h)(4), OSM provided the proposed amendment to the SHPO and the ACHP for comment. No response was received from either agency.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et. seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

North Dakota did not propose in this amendment any revisions to its program that relate to air or water quality standards. However, EPA's Regional and Headquarters offices were afforded opportunity to comment on this amendment. No response was received from either EPA's Region VIII or Headquarters office.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by North Dakota on November 19, 1991, with the exception of NDAC 69-05.2-32-01.1.6 on which the Director is deferring action as discussed in Finding 5. This approval is given with the provision that the rules be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR 934 which codify all decisions concerning the North Dakota program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency between State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Notional Environmental Policy Act

Pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs. Therefore, preparation of a regulatory impact analysis and OMB regulatory review is not required.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumption for the counterpart Federal regulations.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under section 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, § 732.15, and § 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the State must be solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal Regulations and whether the requirements of 30 CFR Parts 730, 731, and 732 have been met.

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 1, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T, the Code of Federal Regulations is amended as set forth below.

1. The authority citation for part 934 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

PART 934—NORTH DAKOTA

2. Section 934.15 is amended by adding paragraph (p) as follows:

§ 934.15 Approval of regulatory program amendments.

* * * * *

(p) The following amendments to the North Dakota permanent regulatory program, as submitted on November 19, 1991, with the exception noted below, are approved effective August 20, 1992.

NDAC 69–05.2–05–08, Permit applicaitons—permit term; NDAC 69–05.2–08–01, Permit applicaitons—permit area; NDAC 69–05.2–08–02, Permit applications—permit area—general map requirements; NDAC 69–05.2–08, Permit applications—permit area—vegetation and land use information; NDAC 69–05.2–08–10.1a, Soils resource information; NDAC 69–05.2–08–12, Permit applications—permit area—topographic data requirements; NDAC 69–05.2–09–04, Permit applications—operation plans—blasting; NDAC 69–05.2–09–09, Permit applications—operation plans—surface water management—ponds, impoundments, banks, dams, embankments, and diversions; NDAC 69–05.2–09–10, Permit applications—operation plans—surface mining near underground mining; NDAC 69–05.2–09–11, Permit applications—reclamation plans—general requirements; NDAC 69–05.2–09–14, Permit applications—reclamation plans—disposal of initial pit spoil and other excess spoil; NDAC 69–05.2–09–17, Permit applications—operation and reclamation plans—fish and wildlife resources; NDAC 69–05.2–10–02, Permit applications—informal conferences; NDAC 69–05.2–11–01.5, Review of approved permits; NDAC 69–05.2–11–02, Permit revisions; NDAC 69–05.2–12–01, Performance bond—general requirements; NDAC 69–05.2–12–05, Performance bond—self-bond of permit applicant; NDAC 69–05.2–12–06, Performance bond—replacement of bonds; NDAC 69–05.2–12–07, Performance bond—determination of bond amount; NDAC 69–05.2–12–08, Performance bond—adjustment of amount; NDAC 69–05.2–12–11, Release of performance bond—criteria for bond release; NDAC 69–05.2–12–12, Release of performance bond—bond release application; NDAC 69–05.2–12–14, Release of performance bond—commission inspection—time of release; NDAC 69–05.2–12–16, Forfeiture of performance bond—procedures; NDAC 69–05.2–13–06, Performance standards—general requirements—avoidance of underground mine areas; NDAC 69–05.2–13–08, Performance standards—general requirements—protection of fish, wildlife, and related environmental values; NDAC 69–05.2–14–01, Performance standards—casing and sealing of drilled holes—temporary; NDAC 69–05.2–15–02, Performance standards—suitable plant growth material—removal; NDAC 69–05.2–16–04, Performance standards—hydrologic balance—water quality standards and effluent limitations; NDAC 69–05.2–16–06, Performance standards—hydrologic balance—diversion of overland flow; and NDAC 69–05.2–16–12, Performance standards—hydrologic balance—permanent and temporary impoundments; NDAC 69–05.2–22–07, Performance standards—revegetation—standards for success; NDAC 69–05.2–25–03, Performance standards—alluvial valley floors—monitoring; NDAC 69–05.2–25–04, Performance standards—alluvial valley floors—protection of farming and water supplies; and Chapter 69–05.2–32, Improvidently issued permits; except the Director is deferring a decision on NDAC 69–05.2–32–01.1.b that allows for the presumption that a notice of violation is being abated.

[FR Doc. 92–19709 Filed 8–19–92; 8:45 am]

BILLING CODE 4510–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD8–92–22]

Special Local Regulations: Morgan City, LA Blessing of the Fleet and Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Gulf Intracoastal Waterway Morgan City to Port Allen Alternate Route (Berwick Bay on the Lower Atchafalaya River) between the Southern Pacific Railroad Bridge, MM 0.3 ICW MC/PA Alternate Route and Conrad's Point, MM 1.5 ICW MC/PA Alternate Route. The regulations are needed to protect participating and observing vessels during the Blessing of the Fleet Ceremony and fireworks display. The regulations are needed to provide for safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective at 9 a.m. on September 6, 1992 and terminate at 11 p.m. on September 6, 1992 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Pittman at (504) 385–2936 Ext 120.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed.

Drafting Information

The drafters of this regulation are LT W.M. Pittman, project officer and LT J.A. Wilson, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

On September 6, 1992 between 9 a.m. and 12:30 p.m., a parade of vessels will be held in conjunction with the annual Blessing of the Fleet in Morgan City. The parade will take place within a small section of the Gulf Intracoastal Waterway Morgan City to Port Allen Alternate Route (Berwick Bay on the Lower Atchafalaya River) from the Southern Pacific Railroad vertical lift bridge, Mile Marker 0.3 ICW MC/PA Alternate Route to Conrad's Point, Mile Marker 1.5 ICW MC/PA Alternate Route. There will also be a fireworks display at the same location on September 6, 1992 between 9 p.m. and 11 p.m. Due to the large number of vessels expected to participate, normal commercial traffic through this area will be suspended during the parade and the fireworks display. Traffic flow will be controlled by the Coast Guard Patrol Commander and designated patrol vessels.

Federalism

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulation

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T0822 is added to read as follows:

§ 100.35–T0822 Morgan City, LA Blessing of the Fleet and Fireworks.

(a) *Regulated Area.* Gulf Intracoastal Waterway Morgan City to Port Allen Alternate Route (Lower Atchafalaya River), extending from the Southern Pacific Railroad Bridge, Mile Marker 0.3 to Conrad's Point, Mile Marker 1.5.

(b) *Special Local Regulations.* (1) Between the hours of 9 a.m. and 12:30 p.m., and again between the hours of 9 p.m. and 11 p.m. on September 6, 1992, the regulated area will be closed to all commercial traffic except participants and those vessels authorized by the Coast Guard Patrol Commander. Coast Guard vessels will be present to direct marine traffic and to establish spectator boundaries.

(c) *Effective date:* These regulations become effective at 9 a.m. on September 6, 1992 and terminate at 11 p.m. on September 6, 1992.

Dated: August 17, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92–19933 Filed 8–19–92; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD13 92–02]

Drawbridge Operation Regulations; Columbia River, Washington

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing specific regulations to govern operation of the Union Pacific railroad bridge (Kalan Bridge) across the Columbia River, mile 323.4, near Kennewick, Washington. Currently the bridge is operated under provisions of title 33 Code of Federal Regulations, part 117, General Requirements, which require that drawbridges open promptly and fully for the passage of vessels when a request to open is given. In actual practice, the drawspan of the Kalan Bridge is maintained in the open to navigation position without a drawtender in attendance and is closed only for the passage of trains or for maintenance. This change establishes specific operating regulations to relieve the present confusion that exists among bridge operators and waterway users regarding proper operation of the bridge.

EFFECTIVE DATE: This rule is effective on September 21, 1992.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (telephone: (206) 553–5864).

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Regulatory History

On April 17, 1992, the Coast Guard published a Proposed Rule in the **Federal Register** (57 FR 13686) concerning operation of the Kalan Bridge. The Commander, Thirteenth Coast Guard District also published the proposal as a Public Notice dated April 30, 1992. Interested parties were given until June 1, 1992, to submit comments on the proposed rule. No comments were received.

Background and Purpose

In 1985, at the request of the Union Pacific Railroad Company, the Coast Guard allowed Union Pacific to operate the Kalan Bridge in a semi-automated mode. It was agreed that a regulation change was not necessary, provided the bridge would open promptly and fully for the passage of vessels when a request to open was given. Experience has shown that the interests of navigation and of the bridge owner would be better served by establishing a regulation to formalize operating procedures.

The drawspan of the Kalan Bridge is maintained in the fully open to navigation position with no drawtender in attendance. The drawspan is lowered only for the passage of trains or for maintenance. In the semi-automated mode, the draw is remotely operated from operating stations located at either end of the bridge. The bridge is equipped with a radar beacon (RACON) located at the center of the drawspan, which responds only when the span is in the fully open position. The bridge is also equipped with an audible alarm system, directional display panels and strobe warning lights.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusions based on the fact that these regulations would not significantly change the current operation of the bridge, but would provide an increased level of safety, in-

that detailed operating procedures would be published. They are not expected to have any substantial effect on commercial navigation or on any business that depends on waterborne transportation for successful operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because this final rule imposes no new requirements on small businesses and will result in economic benefit to the owner of the bridge, the Coast guard does not expect that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed and determined by the Coast Guard to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of Commandant Instruction M16475.1B. A copy of the Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

Collection of Information

This rule contains no collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*).

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.1035 is revised to read as follows:

§ 117.1035 Columbia River.

(a) The term *drawtender*, as used in this section means the operator of the drawspan, whether that person may be a train crew member, maintenance person, or an officially designated drawtender.

(b) The draw of the semi-automated Union Pacific railroad bridge (Kalan Bridge), mile 323.4, near Kennewick, Washington, is normally maintained in the fully open position with no drawtender in attendance. A radar beacon (RACON) is located at the center of the drawspan. The RACON operates only when the drawspan is fully open, by responding with the Morse letter "K" to X-band radar signals. When necessary to close the drawspan for the passage of a train or for maintenance, a drawtender shall be dispatched to operate the draw from either of the remote control stations located at the ends of the bridge. Operation of the bridge shall be as follows:

(1) The drawtender shall broadcast a radio message over Channel 16–VHF to all vessels in the vicinity that the Kalan Bridge will be closing in two minutes. If after two minutes no response is received, the drawtender shall broadcast a message over Channel 13–VHF that the Kalan Bridge is closing. Both messages shall be broadcast twice.

(2) Prior to activating the closing sequence the drawtender shall visually inspect the waterway for marine traffic approaching the bridge. The closing sequence shall not be activated until after marine traffic has cleared the bridge.

(3) When the closing sequence is activated, the following functions occur automatically: The RACON is deactivated, red strobe lights on the lift towers and on the channel piers start flashing, a downward pointing arrow consisting of amber colored lights is displayed from the center of the drawspan and a recorded message is broadcast over Channel 13–VHF advising that the Kalan Bridge is closed to river traffic. The radio message is repeated every five minutes, the red lights continue to flash and the downward pointing arrow is displayed, until the lift span returns to the up and locked position. At the end of the ten minutes, a horn sounds for 30 seconds, the span begins closing and the centerspan navigation lights turn from green to red. The horn sounds for 30 seconds at 10 minute intervals, until the lift span returns to the up and locked position.

(4) If for any reason during the closing sequence a danger is posed to marine traffic, the closing sequence shall be stopped and the bridge reopened until the threat of danger has passed.

(5) If the bridge is to be temporarily closed for maintenance or for purposes other than the passage of a train, the drawtender shall continually monitor Channels 13 and 16 for calls from approaching vessels, and respond to inquiries from vessels about the closure.

(6) After a train has cleared the bridge, the following functions occur automatically: The drawspan returns to the fully open and locked position, the RACON is reactivated, the arrow display and the red strobe lights are extinguished, the red centerspan navigation lights return to green and a recorded message is broadcast over Channel 13–VHF that the Kalan Bridge is open for marine traffic.

(7) Bridge status information may be obtained by calling the commercial telephone number posted at the drawspan of the bridge.

(c) The draw of the Burlington Northern railroad bridge at mile 328.0, between Pasco and Kennewick, shall open on signal from 8 a.m. to 4 p.m. At all other times the draw shall open on signal if at least 2 hour's notice is given through the General Yardmaster, Pasco, Washington.

Dated: August 7, 1992.

J.E. Vorbach,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 92–19932 Filed 8–19–92; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: August 12, 1992.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (264), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3042.

SUPPLEMENTARY INFORMATION: The Secretary is required by section 3712(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he/she finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 3703(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 **Federal Register**, (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.118, 64.114, and 64.119)

These regulations are adopted under the authority granted to the Secretary by sections 510(c), 3703(c)(1), 3711(d)(1) and 3712 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured Homes, Veterans.

Approved: August 12, 1992.

Anthony J. Principi,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

PART 36—LOAN GUARANTY

1. The authority citation for §§ 36.4201 through 36.4287 is revised to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 510, 1812.

§ 36.4212 [Amended]

2. In § 36.4212, remove the date "July 6, 1992", wherever it appears, and add, in its place, the date "August 12, 1992".

3. In § 36.4212, paragraph (a)(1), remove the number "10½", wherever it appears, and add, in its place, the number "10"; in paragraphs (a)(2) and (a)(3), remove the number "10", wherever it appears, and add, in its place, the number "9½".

4. The authority citation for §§ 36.4300 through 36.4375 is revised to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 510.

§ 36.4311 [Amended]

5. In § 36.4311, remove the date "July 6, 1992", wherever it appears, and add, in its place, the date "August 12, 1992".

6. In § 36.4311, paragraph (a), remove the number "6", wherever it appears, and add, in its place, the number "7½"; in paragraph (b), remove the number "6¼", wherever it appears, and add, in its place, the number "7¾"; in paragraph (c), remove the number "9½", wherever it appears, and add, in its place, the number "9".

7. The authority citation for §§ 36.4500 through 36.4600 is revised to read as follows:

Authority: Sections 36.4500 to 36.4600 issued under 38 U.S.C. 510.

§ 36.4503 [Amended]

8. In § 36.4503, paragraph (a), remove the number "8" and "9½", wherever they appear, and add in their place, the numbers "7½" and "9", respectively.

[FR Doc. 92–19845 Filed 8–19–92; 8:45 am]

BILLING CODE 6320–01–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–14

[FPMR Amendment C–7]

Removal of Regulations Pertaining to the National Defense Stockpile Program

AGENCY: General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: General Services Administration is removing from its

regulations certain provisions relating to strategic and critical or other raw and basic materials required for the National Defense Stockpile. These provisions have been superseded by a revision to the Defense Federal Acquisition Regulations (DFAR) effective December 1, 1991.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Marvin L. Steffen, Controller, Federal Property Resources Service, GSA (202) 501–0204.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purpose of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–14

Government property management, National Defense Stockpile, Strategic and critical materials.

[PART 101–14—REMOVED AND RESERVED]

Accordingly, under the authority of Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), Part 101–14 is removed and reserved.

Dated: July 29, 1992.

Richard G. Austin,

Administrator of General Services.

[FR Doc. 92–19747 Filed 8–19–92; 8:45 am]

BILLING CODE 6820–96–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7546]

Suspension of Community Eligibility

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the Federal Register.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the fourth column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP serving contractor.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–2717.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*, unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the fourth column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the Federal Register.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et. seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp. p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Regular Conversions				
Region I:				
Maine; Buckfield, town of, Oxford County	230090	Aug. 5, 1975, Emerg.; Nov. 1, 1985, Reg.; Sept. 3, 1992, Susp.	Sept. 3, 1992	Sept. 3, 1992.
Region II:				
New York; Pittsford, town of, Monroe County	360429	May 4, 1973, Emerg.; Sept. 29, 1978, Reg.; Sept. 3, 1992, Susp.	do	Do.
Region III:				
Pennsylvania; Mercersburg, borough of, Franklin County.	420471	Aug. 6, 1975, Emerg.; Mar. 1, 1986, Reg.; Sept. 3, 1992, Susp.	do	Do.
Region IV:				
Florida; Sarasota County, unincorporated areas	125144	July 10, 1970, Emerg.; July 30, 1971, Reg.; Sept. 3, 1992, Susp.	do	Do.
Tennessee:				
Tennessee; White Pine, town of, Jefferson County.	470332	Jan. 13, 1978, Emerg.; Sept. 1, 1987, Reg.; Sept. 3, 1992, Susp.	do	Do.
Region V:				
Wisconsin; Sheboygan County, unincorporated areas.	550424	Apr. 4, 1973, Emerg.; July 17, 1978, Reg.; Sept. 3, 1992, Susp.	do	Do.
Region III:				
Pennsylvania; Butler, township of, Schuylkill County.	421999	Sept. 15, 1975, Emerg.; Nov. 16, 1990, Reg.; Aug. 3, 1992 Susp.	Aug. 3, 1992	Sept. 17, 1992.
Region VI:				
Texas; Corpus Christi, city of, Nueces County	485464	June 19, 1970, Emerg.; July 23, 1971, Reg.; Sept. 17, 1992,	Susp	Sept. 17, 1992.
Louisiana; St. Charles Parish, unincorporated areas.	220160	Feb. 8, 1974, Emerg.; May 2, 1983, Reg.; Sept. 17, 1992, Susp.	June 16, 1992	Do.
Minimal Conversions				
Region VII:				
Nebraska; Rogers, village of, Colfax County	315497	Nov. 30, 1990, Emerg.; Sept. 17, 1992, Reg.; Sept. 17, 1992, Susp.	Sept. 17, 1992	Do.

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: August 17, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92–19902 Filed 8–19–92; 8:45 am]

BILLING CODE 6718–21–M

44 CFR Part 65

[Docket No. FEMA–7049]

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Administrator reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule.

However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California: San Bernardino	City of Loma Linda	Aug. 20, 1992, Aug. 27, 1992, *San Bernardino County Sun.*	The Honorable Robert Christman, Mayor, City of Loma Linda, 25541 Barton Road, Loma Linda, California 92354.	July 16, 1992	065042
Florida: Pinellas	City of Gulfport	Aug. 6, 1992, Aug. 13, 1992, *St. Petersburg Times.*	Mr. Robert E. Lee, manager of the city of Gulfport, Pinellas County, 2401 53rd Street South, Gulfport, Florida 33707.	July 27, 1992	125108 C
Georgia: Chatham	Unincorporated areas	July 24, 1992, July 31, 1992, *Savannah Morning News.*	Mr. Robert L. McCorkle, chairman of the board of Chatham County Commissioners, P.O. Box 8161, Savannah, Georgia 31412.	July 17, 1992	130030 C
Kansas: Johnson	City of Shawnee	July 8, 1992, July 15, 1992, *Journal Herald.*	The Honorable Robert Best, mayor, city of Shawnee, 11110 Johnson Drive, Shawnee, Kansas 66203.	July 10, 1992	200177
Maine: Hancock	Town of Southwest Harbor.	July 2, 1992, July 9, 1992	Mr. Kenneth Minier, manager of the town of Southwest Harbor, P.O. Box 745, Southwest Harbor, Maine 04679.	June 17, 1992	230293 B
Pennsylvania: York	Township of Dover	Aug. 12, 1992, Aug. 19, 1992, *York Dispatch.*	Mr. James Euclide, chairman of the township of Dover Board of Supervisors, York County, 2480 West Canal Road, Dover, Pennsylvania 17315.	July 27, 1992	420920 B
Pennsylvania Lycoming	Township of Fairfield	Aug. 5, 1992, Aug. 12, 1992, *Williamsport Sun-Gazette.*	Mr. Robert A. Wein, chairman of the Fairfield township of supervisors, Lycoming County, R.D. No. 1, Box 464, Montoursville, Pennsylvania 17754.	July 27, 1992	420972 B
Texas: Tarrant	City of Arlington	July 29, 1992, Aug. 5, 1992, *Fort Worth Star Telegram.*	The Honorable Richard Greene, mayor, city of Arlington, P.O. Box 231, Arlington, Texas 76004-0231.	June 26, 1992	485454
Dallas	City of Irving	July 16, 1992, July 23, 1992, *Irving News.*	The Honorable Roy F. Brown, mayor, city of Irving, City Hall, P.O. Box 152288, Irving, Texas 75015.	June 24, 1992	480180

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: August 5, 1992.

C.M. "Bud" Schauerte,
Administrator, Federal Insurance Administration.

[FR Doc. 92-19901 Filed 8-19-92; 8:45 am]
BILLING CODE 6718-03-M

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA

ACTION: Final rule.

SUMMARY: Modified base (100-year) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Administrator has resolved any appeals resulting from this notification.

The modified base (100-year) flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements.

The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alaska: Anchorage Division	Municipality of Anchorage (Docket No. 7041).	Feb. 21, 1992, Feb. 28, 1992, *Anchorage Daily News.*	The Honorable Tom Fink, mayor, municipality of Anchorage, P.O. Box 196650, Anchorage, Alaska 99519.	Jan. 31, 1992	020005
California: Larimer	City of Fort Collins (Docket No. 7043).	May 1, 1992, May 8, 1992, *The Coloradoan.*	The Honorable Susan Kirkpatrick, mayor, city of Fort Collins, P.O. Box 580, Fort Collins, Colorado 80522.	Apr. 20, 1992	080102
Placer	City of Rocklin (Docket No. 7043).	Apr. 10, 1992, Apr. 17, 1992, *Press-Tribune.*	The Honorable Peter Hill, mayor, city of Rocklin, City Hall, 3970 Rocklin Road, Rocklin, California 95677.	Mar. 26, 1992	060242
San Joaquin	Unincorporated areas (Docket No. 7043).	Apr. 23, 1992, Apr. 30, 1992 *The Stockton Record.*	The Honorable Edward Simas, chairman, San Joaquin County, Board of Supervisors, 222 East Weber Avenue, Room 701, Stockton, California 95202.	Apr. 23, 1992	060299

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois: DuPage and Cook (FEMA docket No. 7043).	Village of Burr Ridge	Mar. 6, 1992, Mar. 13, 1992, *Burr Ridge Doings.*	The Honorable William Zucek, president of the village of Burr Ridge, 7660 County Line Road, Burr Ridge, Illinois 60521.	Feb. 27, 1992	170071 B
Massachusetts: Essex (FEMA docket No. 7041).	Town of Rockport	Jan. 15, 1992, Jan. 22, 1992, *Gloucester Daily Times.*	Ms. Priscilla Garlick, chairperson of the town of Rockport Board of Selectmen, Essex County, Town Office Building, P.O. Box 329, Rockport, Massachusetts 01966.	Jan. 8, 1992	250100 B
Michigan: Macomb (FEMA docket No. 7043).	Township of Macomb	Mar. 13, 1992, Mar. 20, 1992, *The Macomb Daily.*	Mr. John D. Brennan, Macomb Township Supervisor, 19925 23 Mile Road, Mount Clemens, Michigan 48044.	Mar. 2, 1992	260445 B
Nevada: Clark	City of Boulder City (Docket No. 7043).	May 7, 1992, May 14, 1992, *Boulder City News.*	The Honorable Eric Lundgaard, mayor, city of Boulder City, 401 California Avenue, Boulder City, Nevada 89005.	Apr. 20, 1992	320004
North Carolina: Durham (FEMA docket No. 7043).	City of Durham	Mar. 30, 1992, Apr. 6, 1992, *Durham Morning Herald.*	The Honorable Harry E. Rodenheizer, Jr., mayor of the city of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.	Mar. 23, 1992	370086 D
Pennsylvania: Centre (FEMA docket No. 7043).	Township of Ferguson	Apr. 16, 1992, Apr. 23, 1992, *Centre Daily Times.*	Mr. Mark Kunkle, manager for the township of Ferguson, 3147 Research Drive, State College, Pennsylvania 16801.	Mar. 20, 1992	420260 C
Texas: Travis (FEMA docket No. 7038).	City of Austin	*Austin American-Statesman,* Oct. 25, 1991, Nov. 1, 1991.	The Honorable Bruce Todd, mayor of the city of Austin Travis County, P.O. Box 1088, Austin, Texas 78767.	Oct. 18, 1991	480624 C
El Paso (FEMA docket No. 7041).	City of El Paso	Jan. 21, 1992, Jan. 28, 1992, *El Paso Times.*	The Honorable William S. Tilney, mayor of the city of El Paso, El Paso County, Two Civic Center Plaza, El Paso, Texas 79961–1196.	Jan. 8, 1992	480214 B
Harris (FEMA docket No. 7041).	Unincorporated areas	Jan. 10, 1992, Jan. 17, 1992, *Houston Chronicle.*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Suite 911, Houston, Texas 77002.	Dec. 26, 1991	480287 G
Harris (FEMA docket No. 7041).	Unincorporated areas	Feb. 5, 1992, Feb. 12, 1992, *Houston Chronicle.*	The Honorable Jon Lindsay, Harris County Judge, Harris County Administration Building, 1001 Preston, Suite 911, Houston, Texas 77002.	Jan. 28, 1992	480287 G
Wisconsin: St. Croix (docket No. FEMA–7044).	Village of Baldwin	Apr. 22, 1992, Apr. 29, 1992, *Baldwin Bulletin.*	The Honorable Rollie Rieck, village president, Village of Baldwin, 1090 10th Avenue, Baldwin, Wisconsin 54002.	Apr. 6, 1992	550380

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: August 5, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92–19906 Filed 8–19–92; 8:45 am]

BILLING CODE 6718–08–M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington DC. 20472, (202) 646–2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612 , Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read.

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Anniston (City), Calhoun County (FEMA Docket No. 7042)	
Cave Creek:	
At mouth	*655
Just downstream of Tar and Gravel Road	*671
Cane Creek:	
About 3,900 feet downstream of Norfolk Southern railway	*655
Just upstream of State Highway 21	*692
Golden Springs Branch:	
Just upstream of Norfolk Southern railway	*629
About 2,650 feet upstream of Shamrock Road	*958
Boiling Springs Branch:	
About 1,500 feet downstream of Golden Springs Road	*659
Just downstream of Spring Valley Road	*696
Snow Creek:	
About 650 feet downstream of confluence of Hobson Creek	*630
Just downstream of Duncan Avenue	*724
DeArmanville Branch:	
About 500 feet downstream of Highway 78	*628
About 400 feet upstream of Choccolocco Road	*833
Hobson Creek:	
At mouth	*632
About 1,600 feet upstream of McPherson Street	*700
Maps available for inspection at the City of Anniston, Anniston, Alabama.	
Calhoun County (Unincorporated Areas) (FEMA Docket No. 7042)	
Cane Creek:	
Just downstream of Unnamed Road	*587
Just downstream of 15th Street	*737
Just upstream of 15th Street	*742
About 1400 feet upstream of Rock Hollow Road	*822
Lenlock Branch:	
At mouth	*645
Just downstream of 49th Street	*698
Remount Creek:	
At mouth	*707
Just downstream of unnamed road	*817
South Branch (Cane Creek):	
At mouth	*728
Just downstream of 21st Street	*757
Just upstream of 21st Street	*762
Just downstream of Rock Hollow Road	*848
Ingram Creek:	
At mouth	*785
Just downstream of Rock Hollow Road	*812
Coldwater Creek:	
At county boundary	*582
About 3650 feet upstream of Lynne Drive	*691
Choccolocco Creek:	
About 3600 feet downstream of U.S. Highway 21	*595
About 2000 feet upstream of Downings Mill Road	*656
Snow Creek:	
About 1300 feet downstream of U.S. Highway 431 (downstream crossing)	*619
About 400 feet upstream of U.S. Highway 431 (upstream crossing)	*630
Golden Springs Branch:	
Just upstream of U.S. Highway 78	*622
About 3250 feet upstream of Greenbriar Drive	*690
Boiling Springs Branch:	
Just upstream of Norfolk Southern Railway	*642
About 770 feet upstream of Miller Lane	*659
DeArmanville Branch:	
About 450 feet downstream of Interstate 20	*623
About 375 feet upstream of Choccolocco Road	*832
Maps available for inspection at the Calhoun County EMA, 25 West 11th Street, Anniston, Alabama.	
Oxford (City), Calhoun and Talladega Counties (FEMA Docket No. 7042)	
Choccolocco Creek:	
Just downstream of State Highway 21	*598
About 1.0 mile upstream of Boiling Springs Road	*623
Boiling Springs Branch:	
At mouth	*617
Just downstream of Private Drive	*622
Just upstream of U.S. Highway 78	*632
DeArmanville Branch:	
At mouth	*621
Just upstream of Interstate 20	*627
Park Creek:	
Just upstream of mouth	*651
Just upstream of McPherson Street	*662
Snow Creek:	
At mouth	*608
Just downstream of confluence of Hobson Creek	*632
Golden Springs Branch:	
At mouth	*609
Just downstream of Norfolk Southern railway	*523
Just upstream of Norfolk Southern railway	*631
Coldwater Creek:	
Just upstream of county boundary	*582
Just upstream of Abandoned Railroad	*590
Maps available for inspection at the City of Oxford, Oxford, Alabama.	
ARIZONA	
Navajo County (unincorporated areas) (FEMA Docket No. 7042)	
Little Colorado River:	
At the north section line of Sections 4 and 5 in Township 19 north	*4,828
At Prosperity Avenue extended	*4,850
Just downstream of Interstate Highway 40	*4,856
Just downstream of of U.S. Highway 66	*4,858
Approximately 50 feet downstream of Atchison Topeka & Santa Fe Railroad, at the extreme south corporation limits of the City of Winslow	*4,859
Ruby Wash:	
Approximately 4,200 feet downstream of McHood Road	*4,828
Approximately 100 feet upstream of North Park Drive	*4,831
Approximately 320 feet downstream of North Park Drive just north of Winslow	*4,834
Show Low Creek:	
Approximately 1.57 miles upstream of U.S. Highway 60 bridge	*6,347
Just upstream of Jaques Dam	*6,577
Approximately 10,800 feet upstream of Jaques Dam	*6,607
Oklahoma Flat Draw:	
Approximately 8,400 feet downstream of Zane Grey Boulevard	*6,489
At northern most loop of Zane Grey Boulevard	*6,545
Just upstream of State Route 260	*6,596
Approximately 220 feet upstream of Crooks Trail	*6,602
Maps are available for review at the Navajo County Engineering Department, County Complex, South Highway 77, Holbrook, Arizona.	
Pima County (Unincorporated Areas), (FEMA Docket No. 7042)	
Santa Cruz River:	
Approximately 4,400 feet downstream of Pinal-Pima County Line	*1,866
At Pinal-Pima County Line	*1,875
Just upstream of Trico Road	*1,909
Approximately 100 feet upstream of Trico-Marana Road	*1,937
Approximately 6,400 feet downstream of Sanders Road	*1,964
Approximately 2,800 feet upstream of Sanders Road	*1,985
Approximately 11,000 feet upstream of Sanders Road	*2,012
Approximately 10,000 feet downstream of Avra Valley Road	*2,037
At Avra Valley Road	*2,069
Approximately 100 feet upstream of Cortaro Road (relocated)	*2,143
At Ina Road	*2,168
At the confluence of Canada Del Oro	*2,190
Approximately 2,100 feet upstream of Sunset Road	*2,221
Approximately 3,300 feet upstream of Valencia Road	*2,470

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 4,500 feet upstream of Valencia Road	*2,472
Approximately 5,700 feet downstream of San Xavier Road	*2,475
Just upstream of Interstate 19 Northbound	*2,501
Canada Del Oro:	
Approximately 175 feet downstream of Magee Road	*2,292
Approximately 1,000 feet upstream of Magee Road	*2,302
Approximately 2,100 feet downstream of La Cholla Boulevard	*2,346
Approximately 375 feet downstream of La Cholla Boulevard	*2,360
Approximately 375 feet upstream of La Cholla Boulevard	*2,369
Approximately 50 feet downstream of Overton Road	*2,386
Pima Wash:	
Approximately 2,800 feet upstream of Ina Road	*2,743
Approximately 4,600 feet upstream of Ina Road	*2,913
Approximately 6,400 feet upstream of Ina Road	*2,883
Approximately 8,200 feet upstream of Ina Road (at Coronado National Forest Boundary)	*2,969
Rillito Creek:	
At La Cholla Boulevard	*2,257
Just downstream of Flowing Wells Road	*2,278
Approximately 1,100 feet downstream of North Oracle Road (U.S. Highway 80, 89)	*2,294
Approximately 2,600 feet upstream of North First Avenue	*2,327
Approximately 250 feet upstream of Dodge Boulevard	*2,383
Just downstream of Swan Road	*2,406
At the confluence with Pantano Wash and Tanque Verde Creek	*2,431
Sabino Creek:	
At the confluence with Tanque Verde Creek	*2,492
Approximately 0.82 mile above the confluence with Tanque Verde Creek	*2,510
Approximately 1.57 miles above the confluence with Tanque Verde Creek	*2,525
Tanque Verde Creek:	
At the confluence with Rillito Creek and Pantano Wash	*2,431
Approximately 50 feet upstream of North Craycroft Road	*2,433
Approximately 0.8 mile (3,175 feet) upstream of North Craycroft Road	*2,444
Approximately 0.36 mile (1,900 feet) downstream of the confluence with Ventana Canyon Wash	*2,457

Maps are available for review at the Pima County Department of Transportation and Flood Control District, Public Works Building, 201 North Stone Avenue, Tucson, Arizona.

Winslow (City), Navajo County (FEMA Docket No. 7042)

Little Colorado River:	
In line with a projection of Maple Street and Oak Road past the levees	*4,852
Approximately 400 feet upstream of Highway 66	*4,859
Ruby Wash:	
Approximately 500 feet downstream of North Park Drive	*4,834
Just downstream of North Drive	*4,839
Just downstream of Interstate 40 westbound	*4,843
At the intersection of Cherry Street and Colorado Avenue	#1

Maps are available for review at City Hall, 21 Williamson Avenue, Winslow, Arizona.

CALIFORNIA

Modoc County (Unincorporated Areas) (FEMA Docket No. 7042)

Ash Creek:	
Approximately 750 feet downstream of Ash Street	*4,198
At Ash Street	*4,199
Approximately 1,100 feet upstream of Main Street	*4,203
Butte Creek:	
Approximately 1,500 feet downstream of Main Street	*4,199
Just upstream of Main Street	*4,204
Approximately 680 feet upstream of Main Street	*4,206
Dry Creek:	
Just downstream of McDowell Street	*4,199
At Main Street	*4,200
Approximately 500 feet upstream of Adin Street	*4,204

Maps are available for review at the Modoc County Department of Public Works, 202 West Fourth Street, Alturas, California.

Shasta County (Unincorporated Areas) (FEMA Docket No. 7042)

Cottonwood Creek:	
Approximately 300 feet downstream of Main Street	*407
Just upstream of Interstate Highway 5	*410
At the confluence of South Fork Cottonwood Creek	*435
Approximately 6,400 feet upstream of the confluence of South Fork Cottonwood Creek	*444

Maps are available for review at the Department of Public Works, 1855 Placer Street, Redding, California.

Tehama County (Unincorporated Areas) (FEMA Docket No. 7042)

Dibble Creek:	
Just upstream of McCoy Road	*327
At Westgate Road extended	*403
Just upstream of State Highway 36	*452
Approximately 800 feet upstream of the road leading to Brickyard Creek	*467
Cottonwood Creek:	
Approximately 300 feet downstream of Main Street	*407
Just upstream of Interstate Highway 5	*410
Just upstream of Southern Pacific Railroad	*411
Approximately 6,400 feet upstream of the confluence of South Fork Cottonwood Creek	*444
South Fork Cottonwood Creek:	
At the confluence with Cottonwood Creek	*435
Just upstream of Evergreen Road	*446
Approximately 7,430 feet upstream of Evergreen Road	*460
Hooker Creek:	
At the confluence with Cottonwood Creek	*422
At Draper Road	*429
Approximately 100 feet downstream of Bowman Road	*443
Approximately 800 feet upstream of Bowman Road	*447

Maps are available for review at the Building Department Office, County Courthouse Annex, 633 Washington Street, Red Bluff, California.

CONNECTICUT

Madison (Town), New Haven County (FEMA Docket No. 7040)

Hammonasset River (upper reach):	
Upstream side of State Route 80	*214
Approximately 2,000 feet upstream of State Route 79	*315
Neck River:	
Upstream side of Goulds Pond Dam	*77
Approximately 1,450 feet upstream of Bradley Corners Road	*230
Iron Stream:	
At State Route 80	*97
At Race Hill Road	*217

Maps available for inspection at the Madison Town Clerk's Office, 8 Meetinghouse Lane, Madison, Connecticut.

FLORIDA

Clay County (Unincorporated Areas) (FEMA Docket No. 7039)

Black Creek:	
At mouth	*5
At confluence with North Fork and South Fork Black Creek	*15
Grog Creek:	
At mouth	*14
About 2750 feet upstream of Blanding Boulevard	*22
Bradley Creek:	
At mouth	*6
About 400 feet downstream of trail road	*45
Just upstream of trail road	*52
Just downstream of State Road 216	*74
Just upstream of State Road 218	*80
Dilaberry Branch:	
At mouth	*17
Just downstream of State route 218	*79
Polander Branch:	
At mouth	*16
Just downstream of County Highway 218	*25
About 350 feet upstream of County Highway 216	*32
Big Branch:	
At mouth	*24
Just downstream of County Highway 216	*75
Just upstream of County Highway 218	*84
Duckwater Branch:	
At mouth	*48
Just downstream of County Highway 216	*74
Just upstream of County Highway 218	*80
Mill Creek:	
At mouth	*22
Just upstream of Calendula Avenue	*48
Peters Creek:	
At mouth	*5
Just downstream of Farm Road	*8
Ortega River:	
Just upstream of Interstate 295	*7
About 2000 feet upstream of confluence of Tributary No. 1	*11
Governors Creek:	
At mouth	*5
About 1300 feet downstream of State Road 16	*6
Clarkes Creek:	
At mouth	*5
About 2650 feet downstream of County Highway 209	*6
Double Branch:	
At mouth	*14
About 4000 feet upstream of mouth	*14
Bull Creek:	
At mouth	*22
About 4550 feet upstream of County Highway 215	*50
South Prong Double Branch:	
At mouth	*32
About 1.1 miles upstream of Branan Field road	*60
North Fork Black Creek:	
At mouth	*15
Just downstream of North Road	*91
North Fork Black Creek Tributary No. 2:	
At mouth	*17
Just downstream of Long Bay Road	*57
North Fork Black Creek Tributary No. 1:	
At mouth	*16
About 600 feet upstream of County Highway 220	*16
Swimming Pen Creek:	
Entire reach	*5
St. Johns River:	
Within community	*5
St. Johns River Tributary No. 1:	
At mouth	*5
Just upstream of U.S. Route 17	*7
St. Johns River Tributary No. 2:	
At mouth	*5
Just downstream of County Highway 209	*8
St. Johns River Tributary No. 3:	
Entire reach	*5
South Fork Black Creek:	
At mouth	*15
About 2500 feet upstream of State Road 218	*15
Peters Branch:	
At mouth	*5
Just downstream of U.S. Route 17	*10
Little Black Creek:	
At mouth	*9
About 1900 feet downstream of Cheswick Oak Avenue	*34
Little Black Creek Tributary No. 1:	
At mouth	*14
About 7000 feet upstream of Branan Field Road	*41
Little Black Creek Tributary No. 2:	
At mouth	*14
About 3000 feet above mouth	*14
Lake Opal:	
Along shoreline	*124
Loch Lomond:	
Along shoreline	*108
North Lake Asbury:	
Along shoreline	*28
South Lake Ashbury:	
Along shoreline	*48
Lake Lark:	
Along shoreline	*41
Lake Ryan:	
Along shoreline	*52
Crystal Lake:	
Along shoreline	*114
Blue Pond:	
Along shoreline	*176
Little Lake Geneva:	
Along shoreline	*100
Deer Springs Lake:	
Along shoreline	*111
Lake Lure:	
Along shoreline	*100
Lake Hutchinson:	
Along shoreline	*109
Silver Sand Lake:	
Along shoreline	*96
Allen Pond:	
Along shoreline	*95
Oldfield Pond:	
Along shoreline	*103
Bundy Lake:	
Along shoreline	*83
Pebble Lake:	
Along shoreline	*109
Lake Lily:	
Along shoreline	*113

Maps available for inspection at the Clay County Building and Zoning Department, Green Cove Springs, Florida.

GEORGIA

Cobb County (Unincorporated Areas) (FEMA Docket No. 7042)

Butler Creek:	
About 0.7 mile downstream of Pine Mountain Road	*971
Just downstream of Pine Mountain Road	*994

Maps available for inspection at the Cobb County Development and Inspection Department, 100 Cherokee Street, Marietta, Georgia.

College Park (City), Fulton and Clayton Counties (FEMA Docket No. 7042)

Sullivan Creek:	
Just downstream of West Fayetteville Road	*920
Just upstream of West Fayetteville Road	*930
Just downstream of Sullivan Road	*931
Just upstream of Sullivan Road	*943
About 400 feet downstream of Interstate 85	*943
About 400 feet upstream of Interstate 85	*955
Just upstream of Best Road	*966
Just downstream of downstream crossing of Embassy Drive	*971
Just upstream of downstream crossing of Embassy Drive	*984
Just upstream of crossing of Embassy Drive	*991
Just upstream of Edison Road	*994

Maps available for inspection at the City of College Park, Inspection and Engineering Department, 3667 Main Street, College Park, Georgia.

Kennesaw (City), Cobb County (FEMA Docket No. 7042)

Butler Creek:	
About 0.6 mile downstream of Pine Mountain Road	*974
Just downstream of Pine Mountain Road	*994
Just upstream of Pine Mountain Road	*997

Maps available for inspection at the City Hall, Building Inspector's Office, 2529 J.O. Stephenson Avenue, Kennesaw, Georgia.

McCaysville (City), Fannin County (FEMA Docket No. 7040)

Toccoa River:	
About 630 feet downstream of Grand Street	*1460
About 625 feet upstream of CSX railroad	*1468
Fightingtown Creek:	
About 1690 feet downstream of West Tennessee Avenue	*1459
About 900 feet upstream of West Tennessee Avenue	*1463

Maps available for inspection at the City Hall, Tennessee Avenue, Highway 5, McCaysville, Georgia.

ILLINOIS

Aroma Park (Village), Kankakee County (FEMA Docket No. 7042)

Kankakee River:	
Within community	*613
Iroquois River:	
Within community	*613

Maps available for inspection at the Village Hall, 116 West Front Street, Aroma Park, Illinois.

Kankakee (City), Kankakee County (FEMA Docket No. 7042)

Kankakee River:	
About 1.6 miles downstream of Conrail	*597
About 1.0 mile upstream of confluence of Baker Creek	*612
Soldier Creek:	
About 650 feet downstream of Brookmont Boulevard	*627
About 0.82 mile upstream of Kinzie Avenue	*631

Maps available for inspection at the City Hall, Indiana Avenue at Oak, Kankakee, Illinois.

Kankakee Country (Unincorporated Areas) (FEMA Docket No. 7042)

Kankakee River:	
At County Route 20	*555
At State boundary	*631
Iroquois River:	
At mouth	*613
About 3.60 miles upstream of mouth	*613
Soldier Creek:	
About 3,000 feet downstream of Interstate 57	*629
About 2,100 feet upstream of footbridge	*637

Maps available for inspection at the Kankakee County Planning Department, Room 200, Kankakee, Illinois.

Momence (City), Kankakee County (FEMA Docket No. 7042)

Kankakee River:	
About 0.52 mile downstream of Dixie Highway	*620
About 400 feet upstream of Union Pacific Railroad	*623
North Channel:	
Just upstream of spillway	*620
About 650 feet upstream of Union Pacific Railroad	*623

Maps available for inspection at the City Hall, 123 West River Street, Momence, Illinois.

Sun River Terrace (Village), Kankakee County (FEMA Docket No. 7042)

Kankakee River:	
Within community	*617

Maps available for inspection at the Village Hall, Route 6, P.O. St. Anne, Illinois.

INDIANA

Warrick County (Unincorporated Areas) (FEMA Docket No. 7042)

Bluegrass Creek:	
Just upstream of Hecket Road	*385
About 3,000 feet upstream of North 800 Road	*410
Pigeon Creek:	
Just upstream of Interstate 164	*385
About 1.6 miles downstream of West 1025 Road	*366

Maps available for inspection at the Warrick County Planning Commission, Boonville, Indiana.

MICHIGAN

Alpena (Township), Alpena County (FEMA Docket No. 7042)

Shallowing flooding from Lake Huron (Thunder Bay):	
About 3,400 feet north of intersection of Cranberry Creek Road and U.S. 23, and 100 feet east of U.S. 23	#1
About 230 feet east of intersection of Cranberry Creek Road and U.S. 23	#2
Lake Huron (Thunder Bay):	
Along Thunder Bay shoreline from about 6,800 feet north of intersection of Cranberry Creek Road and U.S. 23, down to southernmost township limit	*586
About 2,000 feet east of intersection of Island Drive and U.S. 23, on Island Drive	*584

Maps available for inspection at the Township Hall, Building Inspector's Office, Alpena, Michigan.

Greenbush (Township), Alcona County (FEMA Docket No. 7042)

Lake Huron:	
Along entire shoreline from northernmost township limit down to southernmost township limit	*585
Shallow flooding (from Lake Huron):	
Between 100 feet and 150 feet east of U.S. Highway 23, about 4,000 feet south of intersection of Huron-Cedar Road and U.S. Highway 23	#1

Maps available for inspection at the Township of Greenbush, 3731 South U.S. 23, Greenbush, Michigan.

Pinconning (Township), Bay County (FEMA Docket No. 7042)

Pinconning River:	
At mouth	*586
About 2,100 feet downstream of Pinconning Road	*586
Saginaw Bay:	
Along shoreline of Lapan Road	*586
Along shoreline just north of Town Line Road	*588

Maps available for inspection at the Township Hall, 1751 East Cody-Espey Road, Pinconning, Michigan.

Sims (Township), Arenac County (FEMA Docket No. 7042)

Lake Huron Saginaw Bay:	
About 270 feet due east of intersection of Michigan Avenue and Tonkey Road	*588
Along Saginaw Bay shoreline from intersection of Michigan Avenue and Tonkey Road, to about 500 feet southwest of mouth of Dewitt Drain at Saginaw Bay	*585
Shallow Flooding from Lake Huron/Saginaw Bay:	
About 300 feet south of intersection of Nancy Street and Michigan Avenue	#2

Maps available for inspection at the Township of Sims, 650 Tonkey Road, Au Gres, Michigan.

MISSISSIPPI

Fulton (City), Itawamba County (FEMA Docket No. 7042)

Tennessee-Tombigbee Waterway:	
About 3,500 feet downstream of U.S. Highway 78	*252
Just downstream of Lock C	*253
Just upstream of Lock C	*270
About 1.6 miles upstream of Main Street	*271

Maps available for inspection at the City Hall, 213 West Wiygul Street, Fulton, Mississippi.

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Terry (Town), Hinds County (FEMA Docket No. 7042)	
Rhodes Creek:	
Just downstream of Illinois Central Railroad	*265
Just downstream of East Frontage Road	*275
Maps available for inspection at the Town Hall, Terry, Mississippi.	
MISSOURI	
Cottleville (Village), St. Charles County (FEMA Docket No. 7042)	
Crooked Creek:	
At mouth	*476
About 2,800 feet upstream of mouth	*479
Dardenne Creek:	
About 900 feet downstream of St. Peters Cottleville Road	*469
About 1.85 miles upstream of 4th Street	*481
Maps available for inspection at the Village Hall, 5339 5th Street, St. Charles, Missouri.	
Dardenne Prairie (village), St. Charles County (FEMA Docket No. 7042)	
Tributary No. 15:	
Just upstream of Post Road	*560
Schote Creek:	
About 0.5 mile downstream of County Highway K	*484
Just downstream of U.S. Highway 40	*527
Tributary No. 13:	
At mouth	*485
About 800 feet upstream of McCluer Road	*509
West Branch Tributary B:	
About 0.75 mile upstream of County Highway K	*511
About 1.63 miles upstream of County Highway K	*548
Dardenne Creek:	
About 1,800 feet upstream of County Highway K	*484
Just downstream of Hanley Road	*491
Maps available for inspection at the Village Hall, 2140 Bates Road, O'Fallon, Missouri.	
O'Fallon (city), St. Charles County (FEMA Docket No. 7042)	
East Branch Tributary B:	
About 0.84 mile upstream of mouth	*483
Just Downstream of County Highway N	*487
Tributary No. 15:	
At mouth	*496
Just downstream of Post Road	*552
Schote Creek:	
About 350 feet upstream of mouth	*482
Just downstream of U.S. Highway 40	*527
Tributary No. 13:	
About 500 feet upstream of McCluer Road	*508
About 1,700 feet upstream of McCluer Road	*516
West Branch Tributary B:	
Just downstream of County Highway K	*495
About 1.42 miles above County Highway K	*539
Belleau Creek:	
Just upstream from State Highway 79	*454
Just downstream of Norfolk Southern Railway	*463
Just upstream of Norfolk Southern Railway	*469
About 0.82 mile above Plackmeier Drive	*550
Peruque Creek:	
About 1,250 feet downstream of State Highway 79	*444
Just downstream of Interstate 70	*491
Mississippi River:	
Within community	*444
Dardenne Creek:	
About 1.1 miles upstream of County Highway K	*480
Just upstream of U.S. Highway 40	*502
Maps available for inspection at the City Hall, 138 South Main Street, O'Fallon, Missouri.	
St. Charles County (unincorporated areas) (FEMA Docket No. 7042)	
Missouri River:	
At mouth	*436
At upstream county boundary	*486
Femme Osage Creek:	
At mouth	*473
At County Highway T	*660
Little Dardenne Creek:	
At mouth	*553
Just downstream of Morrison Lane	*694
Sams Creek:	
About 0.37 mile downstream of Point Prairie Road	582
At county boundary	*740
McCoy Creek Tributary:	
About 700 feet upstream of mouth	*500
Just upstream of Point Prairie Road	*548
McCoy Creek:	
Just upstream of Point Prairie Road	*507
Dry Branch:	
About 0.43 mile downstream of U.S. Highway 61	*468
Just downstream of U.S. Highway 61	*473
Just upstream of U.S. Highway 61	*482
Just downstream of Point Prairie Road	*588
Just upstream of Point Prairie Road	*592
Cunningham Branch:	
At mouth	*538
About 1.87 miles upstream of Schwede Road	*622
Kraut Run:	
At mouth	*505
Just downstream of dam	*505
Just upstream of dam	*518
Just downstream of County Highway DD	*566
Peruque Creek:	
About 1,500 feet downstream of State Highway 79	*444
Just downstream of Church Street	*535
Big Creek:	
At mouth	*456
At upstream county boundary	*479
Culvre Creek:	
At mouth	*445
Just downstream of confluence of Big Creek	*456
Schote Creek:	
At mouth	*482
Just downstream of U.S. Highway 40	*525
Tributary No. 15:	
About 0.4 mile upstream of mouth	*496
About 0.8 mile upstream of mouth	*503
Tributary No. 13:	
At mouth	*485
About 1,250 feet downstream of McCluer Road	*498
West Branch Tributary B:	
At mouth	*490
About 1.05 miles upstream of County Highway K	*524
Belleau Creek:	
Just upstream of State Highway 79	*454
Just downstream of Norfolk Southern Railway	*463
Just upstream of Norfolk Southern Railway	*469
about 0.54 mile upstream of Plackmeier Drive	539
St. Paul Tributary:	
At mouth	*444
About 1,000 feet downstream of St. Paul Road	482
Tributary No. 7:	
At mouth	*482
About 2,450 feet upstream of mouth	*489
Baltic Creek:	
Just upstream of mouth	*472
About 1,000 feet upstream of Private Road	*494
Tributary No. 9:	
At mouth	*479
About 1,900 feet upstream of Gutermuth Road	*495
Crooked Creek:	
About 1,200 feet upstream of mouth	*477
About 2,000 feet upstream of O'Fallon Road	*492
East Branch Tributary B:	
At mouth	*481
Just upstream of County Highway K	*516
Tributary A:	
Just upstream of mouth	*470
About 300 feet upstream of Starlight Drive	*533
Tributary No. 4:	
At mouth	*470
About 550 feet upstream of Woodstream Drive	*505
Tributary No. 3:	
At mouth	*470
About 0.73 mile upstream of St. Peters Road	*503
Tributary No. 2:	
At mouth	*465
About 1,750 feet upstream of Private Drive	*474
Tributary No. 1:	
At mouth	*481
Above 0.74 mile above mouth	*461
Whites Branch Tributary:	
At mouth	*481
About 1.36 miles upstream of mouth	*476
Whites Branch:	
At mouth	*452
Just downstream of County Highway Y	*505
Just upstream of County Highway Y	*510
Spencer Creek:	
At mouth	*443
About 950 feet upstream of Mill Wood Drive	*526
Duckett Creek:	
At mouth	*481
Just upstream of Brightwood Drive	*478
Cole Creek:	
At mouth	*443
About 1,400 feet downstream of Graystone Drive (downstream crossing)	*504
Sandfort Creek:	
At mouth	*443
Just downstream of West Clay Road	*471
Taylor Branch:	
At mouth	*458
About 0.60 mile upstream of South River Road	*458
Crystal Spring Creek:	
At mouth	*456
About 0.39 mile upstream of mouth	*464
Mississippi River:	
Just downstream of confluence of Missouri River	*436
At upstream county boundary	*445
Dardenne Creek:	
Just upstream of Norfolk Southern Railway	*447
At western county boundary	*755
Maps available for inspection at the County Administrative Building, 205 North Second Street, Room 305, St. Charles, Missouri.	
St. Charles (city), St. Charles County (FEMA Docket No. 7042)	
Sandfort Creek:	
About 2,600 feet downstream of Ehlman Road	*443
Just downstream of Interstate 70	*472
West Sandfort Creek:	
At mouth	*451
About 1,400 feet upstream of Harry S. Truman Road	*467
Cole Creek:	
Just upstream of Interstate 70	*488
Just downstream of Muegge Road	*529
Maps available for inspection at the City Hall, 200 North Second Street, St. Charles, Missouri.	
St. Paul (village), St. Charles County (FEMA Docket No. 7042)	
Peruque Creek:	
About 1,000 feet downstream of Bunker Drive	*460
About 1.1 miles upstream of Hoff Road	*474
St. Paul Tributary:	
Just upstream of Old Highway 79	*451
Just downstream of St. Paul Road	*491
Mississippi River:	
within community	*444
Maps available for inspection at the Village Hall, St. Paul, Missouri.	
St. Peters (city), St. Charles County (FEMA Docket No. 7042)	
Baltic Creek:	
Just upstream of Central School Road	*473
Just downstream of State Highway 94	*477
At confluence of Tributary No. 7	*483
East Branch Dardenne Creek:	
At mouth	*462
Just downstream of Oakhill Lane	*489
Just upstream of Oakhill Lane	*495
Just downstream of Jane Drive	*495
Just upstream of Jane Drive	*502
Just downstream of Willott Road	*505
Tributary A:	
Just upstream of Central School Road	*476
Just upstream of State Highway 94	*483
Tributary No. 4:	

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
About 550 feet upstream of Woodstream Drive	*505
About 850 feet upstream of Woodstream Drive	*505#
Tributary No. 7:	
About 1,100 feet upstream of mouth	*483
About 2,100 feet upstream of mouth	*488
Belleau Creek:	
About 1,400 feet upstream of Interstate 70	*478
About 1,200 feet downstream of Belleau Creek Road	*478
Dardenne Creek:	
Just downstream of Mexico Road	*461
About 2,900 feet upstream of St. Peters Cottleville Road	*469
Maps available for inspection at the City Hall, One St. Peters Center Boulevard, St. Peters, Missouri.	
Weldon Spring (city), St. Charles County (FEMA Docket No. 7042)	
Crooked Creek:	
About 2,000 feet upstream of O'Fallon Fork Road	*481
About 2,700 feet upstream of O'Fallon Fork Road	*493
Tributary No. 9:	
About 1,900 feet upstream of Gutermuth Road	*495
About 2,900 feet upstream of Gutermuth Road	*498
Missouri River:	
About 1.9 miles downstream of U.S. Highways 61 and 40	*466
Just downstream of U.S. Highway 40	*467
Maps available for inspection at the City Hall, 5863 Lafayette Drive, Weldon Spring, Missouri.	
Wentzville (city), St. Charles County (FEMA Docket No. 7042)	
Sams Creek:	
About 0.37 mile downstream of Point Prairie Road	*582
About 0.3 mile downstream of Point Prairie Road	*586
Dry Branch:	
About 1,950 feet upstream of U.S. Highway 61	*482
About 1,800 feet upstream of U.S. Highway 61	*576
Maps available for inspection at the City Hall, 310 West Pearce, Wentzville, Missouri.	
NEVADA	
Douglas County (unincorporated areas) (FEMA Docket No. 7042)	
Airport Wash:	
Approximately 5,000 feet upstream of East Valley Road	*4,950
At the divergence of Airport Wash overflow	*4,970
Approximately 10,000 feet upstream of East Valley Road	*5,022
Airport Wash Overflow:	
Approximately 3,500 feet upstream of Allerman Canal Reservoir	*4,878
Approximately 7,700 feet upstream of Allerman Canal Reservoir, at an unnamed road	*4,944
Approximately 8,800 feet upstream of Allerman Canal Reservoir	*4,958
Bobwhite Wash:	
At the confluence with Juniper Road Wash	*5,117
At Bobwhite Road	*5,132
Buckeye Creek:	
Approximately 1,900 feet upstream of Lower Old Virginia Canal Road	*4,760
At Orchard Road	*4,805
At Allerman Canal	*4,853
At Stockyard Road	*4,917
Approximately 8,500 feet upstream of Stockyard Road	*4,995
Calle Hermosa Wash:	
At the confluence with Juniper Road Wash	*4,877
At Coyote Road	*4,911
Approximately 1,000 feet upstream of Coyote Road Crossing	*4,925
Aproximately 250 feet upstream of Calle Hermosa	*5,065
Cody Wash:	
At Mert Lane	#1
Approximately 1,400 feet downstream of Homestead Lane	*5,140
Approximately 4,600 feet upstream of Homestead Lane	*5,242
Fish Springs Creek:	
At the confluence with Pine Nut Creek Tributary	#3
Approximately 1,500 feet upstream of confluence with Pine Nut Creek Tributary	#2
Approximately 2,000 feet upstream of confluence with Pine Nut Creek Tributary	*5,162
Approximately 200 feet east of unnamed north-south road ¼ mile east of Windmill Road	*5,216
Genoa Canyon Creek:	
At the intersection of Genoa Street and Carson Street	#1
Juniper Road Wash:	
At the confluence with Buckeye Creek	*4,876
At Juniper Road	*4,938
At the confluence of Bobwhite Wash	*5,117
Just upstream of Carlson Drive	*5,141
Approximately 3,400 feet upstream of Carlson Drive	*5,189
Mott Canyon Creek:	
At State Highway 19	#1
Pine Nut Creek:	
Approximately 1,200 feet downstream of Mel Drive	*5,030
At Mel Drive	*5,060
Just upstream of Creek Drive	*5,122
Approximately 3,600 feet upstream of Jacobsen Lane, at an unnamed road	*5,193
Approximately 10,200 feet upstream of Jacobsen Lane	*5,306
Pine Nut Creek Tributary:	
At the confluence with Pine Nut Creek	*5,070
Just upstream of Creek Drive	*5,123
Just upstream of Windmill Road	*5,155
At Shena Terrace	*5,165
Approximately 1,900 feet upstream of Shena Terrace	*5,215
Pine Nut Road Wash:	
At East Valley Road	*4,916
At the confluence of Heiman Drive Wash	*4,952
Approximately 7,000 feet upstream of Pine Nut Drive	*5,068
Schoolhouse Canyon Creek:	
Approximately 1,000 feet upstream of Jacks Valley Road	#1
Shena Terrace Wash:	
At the confluence with Pine Nut Creek Tributary	*5,176
Approximately 1,500 feet upstream of the confluence with Pine Nut Creek Tributary	*5,196
Sierra Canyon Creek:	
At Centennial Drive	#1
Smelter Creek:	
At U.S. Highway 395	*4,909
Approximately 2,400 feet upstream of U.S. Highway 395, at an unnamed road	*4,926
Approximately 3,200 feet downstream of Mustang Lane, at an unnamed road	*4,944
At Mustang Lane	*4,973
Approximately 5,400 feet upstream of Mustang Lane	*5,051
Studer Canyon Creek:	
Approximately 1,000 feet downstream of the canyon mouth, at an unnamed road	#1
Sunrise Pass Wash:	
Approximately 1,150 feet upstream of Fremont Street at an unnamed road	*4,896
Approximately 350 feet upstream of Pole Line Road	*4,985
Maps are available for review at the Douglas County Public Works Department, 1616 Eighth Street, Minden, Nevada.	
Lyon County (unincorporated areas) (FEMA Docket No. 7042)	
Carson River:	
Approximately 3,900 feet west of the intersection of Route 2B and Section Line 35/36 in Township 17 North, Range 22 East	*4,261
Approximately 1,000 feet south and 700 feet east of the intersection of River Boat Road and Route 79	*4,296
Approximately 900 feet north of the intersection of Section Line 12/7 and Section Line 12/13 in Township 16 North, Range 21 East	*4,314
Approximately 5,700 feet south of the intersection of U.S. Highway 50 and Section Line 12/13 in Township 16 North, Range 21 East	*4,332
Just downstream of Main Street	*4,354
Eldorado Canyon:	
At Ricci Lane	*4,360
Just upstream of the Randall Ditch crossing	*4,378
Approximately 2,250 feet upstream of the Randall Ditch crossing	*4,396
Approximately 3,750 feet upstream of the Randall Ditch crossing	*4,447
Approximately 6,160 feet upstream of the Randall Ditch crossing	*4,487
Unnamed Wash at Silver Springs:	
Just upstream of the South Pacific Railroad	*4,166
At Tonopah Street	*4,170
Just upstream of U.S. Alternate Highway 95	*4,184
Approximately 6,000 feet upstream of U.S. Alternate Highway 95	*4,219
Bybee Lane Basin:	
At the intersection of Bybee Lane and Tamagni Road	#1
At the intersection of Bybee Lane and Ogden Lane	#1
Approximately 2,000 feet east of the intersection of Bonanza Street and Prospect Street	#3
Carson Hill Basin:	
Approximately 1,000 feet north of the intersection of Section Lines 16/19 and 13/18 in Township 14 North, Range 25 East	#1
Mason Pass Basin:	
At the intersection of Sunset Hills Drive and Arden Drive	#1
Approximately 5,000 feet north of the intersection of Sunset Hills Drive and Arden Drive	#1
Approximately 2,500 feet west and 600 feet north of the intersection of Sunset Hills Drive and Arden Drive	#2
Stamile Canyon Basin:	
At intersection of River Boat Road and U.S. Route 50	#1
Approximately 4,500 feet west of the intersection of Route 79 and River Boat Road	#2
Approximately 1 mile west of the intersection of Route 79 and River Boat Road	#3
Maps are available for review at the Planning and Zoning Department, 31 South Main Street, Yerington, Nevada.	
Storey County (unincorporated areas) (FEMA Docket No. 7042)	
Truckee River:	
Approximately 1,100 feet downstream of Mustang Ranch Road No. 1	*4,326
At State Highway 46	*4,357
Approximately 3,100 feet upstream of State Highway 46	*4,362
Long Valley Creek:	
At confluence with Truckee River	*4,352
Just upstream of Peri Ranch Road	*4,368
Just upstream of Lockwood Disposal Area Road	*4,476
At State Highway 45	*4,550
Maps are available for review at the Building Official's Office, 110 Toll Road, Gold Hill, Virginia City, Nevada.	
NEW JERSEY	
Stow Creek (township), Cumberland County (FEMA docket No. 7042)	
Delaware Bay: Stow Creek and adjoining estuaries	*9
Maps available for inspection at the home of Mr. Bill Jess, Stow Creek Housing and Zoning Officer, R.D. 3, Bridgeton, New Jersey.	

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
NEW YORK	
Busti (town), Chautauqua County (FEMA docket No. 7042)	
Goose Creek:	
Approximately .5 mile downstream of State Route 322	*1,329
Approximately 700 feet upstream of State Route 322	*1,334
Snake Creek:	
Approximately .3 mile downstream of County Route 32 (Hunt Road)	*1,332
Approximately 40 feet upstream of County Route 45 (Southwestern Road)	*1,450
Tributary to Chautauqua Lake:	
At State Route 474	*1,311
Approximately 20 feet upstream Gleason Road	*1,343
Tributary to Stillwater Creek:	
Approximately 40 feet downstream of South Main Street extension	*1,314
Approximately 20 feet upstream of Forest Avenue extension	*1,358
Maps available for inspection at the Busti Town Hall, 121 Chautauqua Avenue, Lakewood, New York.	
Colesville (town), Broome County (FEMA docket No. 7042)	
Susquenhanna River:	
Approximately 1,200 feet downstream of the Ouaguaga Bridge	*931
Approximately 0.4 mile upstream of Nineveh Bridge	*964
Maps available for inspection at the Colesville Town Hall, Walton, Street Harpersville, New York.	
Elizabethtown (town), Essex County (FEMA docket No. 7042)	
Barton Brook:	
At confluence with Bouquet River	*533
Approximately 400 feet upstream of U.S. Route 9	*549
The Branch:	
At confluence with Barton Brook	*549
Approximately 0.5 miles upstream of State Route 9N	*617
Bouquet River:	
At Lee Bridge Road	*409
Approximately 0.65 mile upstream of Simonds Hill Road	*593
Maps available for inspection at the Elizabethtown Town Hall, Court Street, Elizabethtown, New York.	
Wurtsboro (village), Sullivan County (FEMA Docket No. 7042)	
Basherkill:	
Approximately 1 mile downstream of the confluence of Willsey Brook	*514
Approximately 0.7 mile upstream of State Route 17	*522
Willsey Brook:	
At corporate limits	*518
Approximately 800 feet upstream of Willsey Valley Loop	*716
Willsey Brook Tributary 1:	
At confluence with Willsey Brook	*598
Approximately 520 feet upstream of County Route 172	*705
Maps available for inspection at the Wurtsboro Village Hall, Pennsylvania Avenue and Sullivan Street, Wurtsboro, New York.	
NORTH CAROLINA	
Mecklenburg County (unincorporated areas) (FEMA docket No. 7042)	
Six Mile Creek:	
At county boundary	*570
About 3,100 feet upstream of Tilley Morris Road	*668
Flat Branch:	
At mouth	*564
About 2,800 feet upstream of Tom Short Road	*628
Clems Branch:	
At county boundary	*564
Just downstream of Lancaster Highway	*584
Stowe Branch:	
About 400 feet upstream of mouth	*571
About 0.7 mile upstream of mouth	*588
Beaverdam Creek:	
Just upstream of mouth	*589
About 1.36 miles upstream of Dixie River Road	*620
Beaverdam Creek Tributary:	
At mouth	*579
About 1.09 miles upstream of mouth	*605
Little Paw Creek:	
About 3,000 feet upstream of mouth	*573
Just downstream of Mount Olive Church Road	*587
Just upstream of Mount Olive Church Road	*593
Above 2,300 feet upstream of Mount Olive Church Road	*613
Catawba River Tributary No. 1:	
About 1,100 feet upstream of mouth	*569
Just downstream of Moores Chapel Road	*573
Just upstream of Moores Chapel Road	*580
About 0.6 mile upstream of Moores Chapel Road	*592
Long Creek:	
About 2,200 feet downstream of State Road 16	*645
Just downstream of Interstate 77	*727
Just upstream of Interstate 77	*736
Just downstream of Lakeview Drive	*738
Just upstream of Lakeview Drive	*743
About 2,550 feet upstream of U.S. Route 21	*758
Gutter Branch:	
At mouth	*653
About 0.85 mile upstream of Oakdale Road	*720
McIntyre Creek:	
At mouth	*683
About 750 feet upstream of Lawn Meadow Drive	*746
Dixon Branch:	
At mouth	*711
About 1,850 feet upstream of confluence of Dixon Branch Tributary	*734
Dixon Branch Tributary:	
At mouth	*727
Just downstream of Interstate 77	*735
Just upstream of Interstate 77	*747
About 1,200 feet upstream of U.S. Route 21	*751
Catawba River Tributary No. 2:	
About 2,250 feet upstream of mouth	*576
Just downstream of Harwood Drive	*602
Just upstream of Harwood Drive	*610
About 0.74 mile upstream of Harwood Drive	*636
Gar Creek:	
About 1.38 miles downstream of Beattes Ford Road	*652
Just downstream of Beattes Ford Road	*670
Just upstream of Beattes Ford Road	*676
About 1,150 feet upstream of Kearns Road	*712
McDowell Creek:	
About 1.04 miles upstream of mouth	*657
Just downstream of Westmorland Road	*723
Just upstream of Westmorland Road	*733
Just upstream of Interstate 77	*743
McDowell Creek Tributary No. 1:	
At mouth	*663
About 0.79 mile upstream of mouth	*675
McDowell Creek Tributary No. 2:	
At mouth	*663
About 2,700 feet upstream of mouth	*669
Torrence Creek:	
At mouth	*671
Just downstream of Mount Holly-Huntersville Road	*718
Just upstream of Mount Holly-Huntersville Road	*726
About 2,500 feet upstream of Interstate 77	*730
Torrence Creek Tributary No. 1:	
At mouth	*675
About 800 feet upstream of U.S. Route 21	*725
Torrence Creek Tributary No. 2:	
At mouth	*679
Just downstream of Mount Gilead Road	*685
Just upstream of Mount Gilead Road	*692
Just downstream of Interstate 77	*708
Caldwell Station Creek:	
About 1,350 feet upstream of mouth	*703
Just downstream of Interstate 77	*709
Just upstream of Interstate 77	*722
Catawba River Tributary No. 3:	
About 0.83 mile upstream of mouth	*653
Just downstream of Cashion Road	*668
Stevens Creek:	
About 450 feet upstream of mouth	*625
About 1.23 miles upstream of Thompson Road	*660
Goose Creek:	
About 250 feet upstream of county boundary	*625
Just downstream of Country Woods Lane	*633
Just upstream of Country Woods Lane	*638
Just downstream of Lawyers Road	*639
Just upstream of Lawyers Road	*649
About 1.16 miles upstream of Lawyers Road	*676
Stevens Creek Tributary:	
At mouth	*643
Just downstream of Thompson Road	*648
Just upstream of Thompson Road	*654
About 2,370 feet upstream of Thompson Road	*663
Duck Creek:	
At county boundary	*574
About 7.31 miles upstream of mouth	*606
Clear Creek:	
At county boundary	*536
About 0.62 miles upstream of Bartlett Road	*646
Sherman Branch:	
At mouth	*673
Just downstream of Cabarrus Road	*581
Just upstream of Cabarrus Road	*598
About 2,800 feet upstream of Cabarrus Road	*612
Clear Creek Tributary:	
At mouth	*621
Just downstream of Truelight Church Road	*667
Just upstream of Truelight Church Road	*672
About 2,050 feet upstream of Truelight Church Road	*691
Caldwell Creek:	
About 7.62 miles upstream of mouth	*625
About 8.43 miles upstream of mouth	*663
McKee Creek:	
At county boundary	*603
Just downstream of Cedarbrook Drive	*664
Reedy Creek:	
At county boundary	*603
About 2,800 feet downstream of Hood Road	*625
Reedy Creek Tributary No. 1:	
At county boundary	*625
About 1,600 feet upstream of county boundary	*631
Back Creek:	
At county boundary	*615
Just downstream of Back Creek Church Road	*652
Just upstream of Back Creek Church Road	*657
Just downstream of W.T. Harris Boulevard	*694
Just upstream of W.T. Harris Boulevard	*701
About 2,450 feet upstream of W.T. Harris Boulevard	*709
Back Creek Tributary:	
At mouth	*617
About 2.1 miles upstream of mouth	*693
Rocky River Tributary:	
At county boundary	*605
Just downstream of Interstate 85	*608
Just upstream of Interstate 85	*620
Clarke Creek:	
About 1,400 feet downstream of confluence of Ramah Creek	*624
About 4,450 feet downstream of Asbury Chapel Road	*637
North Prong Clarke Creek:	
About 4,450 feet downstream of Asbury Chapel Road	*637
Just downstream of Asbury Chapel Road	*650
Just upstream of Asbury Chapel Road	*658
About 2,900 feet upstream of Ramah Church Road	*692
South Prong Clarke Creek:	
At mouth	*637
About 1.50 miles upstream of Asbury Chapel Road	*684
Cane Creek:	
At mouth	*651
About 2.0 miles upstream of mouth	702
Clarke Creek Tributary:	
At county boundary	*631
Just downstream of Street Avenue	*680
Just upstream of Street Avenue	*689
About 3,400 feet upstream of Street Avenue	*700
Ramah Creek:	

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
At mouth	*624
About 1.0 miles upstream of Black Belt Road	*706
Fernelltown Creek:	
At mouth	*636
About 1.36 miles upstream of mouth	*670
Rocky River:	
About 1.25 miles downstream of East Rocky River Road	*649
About 2.20 miles upstream of East Rocky River Road	*683
West Branch Rocky River:	
At mouth	*649
About 900 feet upstream of Grey Road	*666
South Prong West Branch Rocky River:	
At mouth	*655
About 1.69 miles upstream of Davidson Concord Road	*703
South Prong West Branch Tributary:	
At mouth	*677
About 0.81 mile upstream of mouth	*702
West Branch Rocky River Tributary:	
At mouth	*676
About 1.15 miles upstream of mouth	*703
Maps available for inspection at the Mecklenburg County Engineering Department, Charlotte, North Carolina.	
Wilkesboro (Town), Wilkes County (FEMA Docket No. 7042)	
Yadkin River:	
At confluence of Cub Creek	*962
About 1.3 miles upstream of U.S. Highway 421	*972
Maps available for inspection at the City Hall, Wilkesboro, North Carolina.	
NORTH DAKOTA	
Emerado (City), Grand Forks County (FEMA Docket No. 7040)	
Hazen Brook Overflow:	
At the eastern corporate limits, approximately 100 feet upstream of County Highway No. 3	*901
Just upstream of East Hancock Avenue	*903
Just upstream of West Court Drive	*907
Hazen Brook:	
At the Burlington Northern Railroad Crossing of Hazen Brook	*901
Maps are available for review at City Hall, 101 Old Ham Street, City of Emerado, North Dakota.	
OHIO	
Avon (City), Lorain County (FEMA Docket No. 7042)	
Mills Creek:	
At mouth	*691
Just downstream of Mills Road	*703
Schwartz Ditch:	
At mouth	*689
About 2450 feet upstream of Williams Court	*896
French Creek:	
Just downstream of State Route 83	*686
Just downstream of Mills Road	*695
Maps available for inspection at the City Hall, 36774 Detroit Road, Avon, Ohio.	
SOUTH CAROLINA	
Rock Hill (City), York County (FEMA Docket No. 7042)	
Little Dutchman Creek:	
About 500 feet upstream of confluence of Big Dutchman Creek	*523
About 1400 feet upstream of Indie Hook Road	*540
Little Dutchman Creek Tributary 1:	
At mouth	*526
Just downstream of Celanese Road	*530
Manchester Creek:	
At mouth	*502
At confluence of Manchester Creek Tributary 3	*571
Manchester Creek Tributary 1:	
At confluence of Manchester Creek	*516
About 950 feet upstream of Dave Lyle Boulevard	*530
Manchester Creek Tributary 2:	
Just upstream of U.S. Route 21 Bypass	*569
Just downstream of Norfolk Southern Railway	*583
Just upstream of Norfolk Southern Railway	*610
About 1400 feet upstream of Ivy Street	*610
Manchester Creek Tributary 3:	
At confluence of Manchester Creek	*571
About 0.49 mile upstream of Lakeshore Parkway	*605
Big Dutchman Creek:	
Just upstream of Mt. Gallant Road	*516
About 0.59 mile upstream of Mt. Gallant Road	*523
Tools Fork Creek:	
About 2.42 miles upstream of mouth	*558
About 2.99 miles upstream of mouth	*563
Wildcat Creek:	
About 700 feet downstream of Ogden Road	*533
About 0.79 miles upstream of Ogden Road	*537
Maps available for inspection at the City Hall, Rock Hill, South Carolina.	
York County (Unincorporated Areas) (FEMA Docket No. 7042)	
Steele Creek:	
At mouth	*515
At state boundary	*571
Blankmanship Branch:	
At mouth	*552
Just downstream of Interstate 77	*554
Just upstream of Interstate 77	*588
Just downstream of Gravel Road	*609
Just upstream of Gravel Road	*616
At state boundary	*617
Jackson Branch:	
At mouth	*543
About 1000 feet upstream of mouth	*543
Manchester Creek:	
At mouth	*502
About 1700 feet upstream of Garrison Road	*568
Manchester Creek Tributary 1:	
About 1000 feet downstream of Wildwood Drive	*530
About 1450 feet upstream of Evelyn Street	*548
Manchester Creek Tributary 2:	
At confluence with Manchester Creek	*566
About 1250 feet upstream of confluence of Manchester Creek	*588
Big Dutchman Creek:	
Just downstream of Mt. Gallant Road	*516
Just downstream of Museum Road	*572
Little Dutchman Creek:	
At confluence of Big Dutchman Creek	*523
Just downstream of State Route 161	*555
Little Dutchman Creek Tributary 4:	
At confluence of Little Dutchman Creek	*555
Just downstream of private drive (about 1000 feet downstream of Twin Lakes Road)	*559
Just upstream of private drive (about 1000 feet downstream of Twin Lakes Road)	*565
Just downstream of Twin Lakes Road	*565
Maps available for inspection at the York County Planning Department, 1070 Heckle Boulevard, Rock Hill, South Carolina.	
TENNESSEE	
Copperhill (City), Polk County (FEMA Docket No. 7042)	
Ocoee River:	
About 2700 feet downstream of concrete weir	*1455
About 3100 feet upstream of wooden weir	*1462
Fightingtown Creek:	
At mouth	*1457
About 1950 feet upstream of mouth	*1460
Maps available for inspection at the City Hall, Copperhill, Tennessee.	
Decherd (Town), Franklin County (FEMA Docket No. 7040)	
Dry Creek:	
At mouth	*898
Just downstream of U.S. Highway 41A	*946
Maps available for inspection at the Town Hall, Decherd, Tennessee.	
Dyersburg (City), Dyer County (FEMA Docket No. 7042)	
North Fork Forked Deer River:	
About 1.4 miles downstream of U.S. Highway 51 Bypass	*271
Just upstream of Illinois Central Railroad	*276
Maps available for inspection at the City of Dyersburg, Building Department, Dyersburg, Tennessee.	
Jellico (City), Campbell County (FEMA Docket No. 7042)	
Elk Creek:	
Approximately .38 mile upstream of Southern Railway	*972
Approximately 1.7 miles upstream of corporate limits	*976
Maps available for inspection at the City Hall, Jellico, Tennessee.	
Lebanon (City), Wilson County (FEMA Docket No. 7042)	
Cedar Creek:	
Just upstream of North Posey Hill Road	*542
At confluence of South Creek	*571
South Fork:	
Just downstream of Interstate 40	*577
Sinking Creek:	
At mouth	*514
Just downstream of Ragland Depot Bridges	*536
Just upstream of Ragland Depot Bridges	*543
Just downstream of Interstate 40	*571
Maps available for inspection at the City Engineer's Office, Lebanon, Tennessee.	
TEXAS	
Arlington (city), Tarrant County (FEMA Docket No. 7027)	
Rush Creek: Approximately 150 feet west of Loch Chalet Court	*491
Hurricane Creek:	
At confluence with West Fork Trinity River	*474
Approximately 100 feet downstream of Missouri-Kansas-Texas Railroad	*479
Walnut Creek 3:	
At Holland-Watson-Britton Road	*544
Approximately 2,700 feet downstream of Holland-Watson-Britton Road	*539
Johnson Creek:	
Approximately 800 feet downstream of Mayfield Road	*638
Approximately 70 feet upstream of High Point Road	*657
North Fork Fish Creek:	
At Arlington Webb Britton Road	*566
Approximately 100 feet downstream of South Collins Street	*615
Village Creek:	
Approximately 20 feet upstream of Randol Mill Road	*486
Approximately 500 feet upstream of Randol Mill Road	*486
Stream FC-1:	
Approximately 250 feet downstream of New York Avenue	*557
Approximately 1.0 mile upstream of New York Avenue	*564
Stream BB-1:	
Approximately 0.80 mile upstream of the confluence with Bowman Branch	*600
Approximately 0.85 mile upstream of the confluence with Bowman Branch	*602
Rush Creek:	
Approximately 2,200 feet downstream of Green Oaks Boulevard	*580
Approximately 4,100 feet downstream of Green Oaks Boulevard	*582
Maps available for inspection at the City Hall, 101 West Abram Street, Arlington, Texas.	
Bedford (city), Tarrant County (FEMA Docket No. 7027)	
Stream SB-1:	
Approximately 175 feet upstream of confluence with Sulphur Branch	*520

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 50 feet downstream of Circle Lane	*551
Maps available for inspection at the City Hall, 2000 Forest Ridge, Bedford, Texas.	
Benbrook (city), Tarrant County (FEMA Docket No. 7027)	
Clear Fork Trinity River:	
Approximately 0.47 mile upstream of Southwest Boulevard	*610
Approximately 0.66 mile upstream of Interstate Route 20	*614
Walnut Creek 2:	
Approximately 1,200 feet downstream of Union Pacific Railroad	*649
Approximately 500 feet downstream of confluence of Boaz Creek	*662
Benbrook Lake: For the entire shoreline within the community	*715
Willow Bend Creek:	
Approximately 240 feet downstream of Meadow Side Drive	*638
At upstream side of Chapin Road	*716
Maps available for inspection at the Department of Community Development, 911 Winscott Road, Benbrook, Texas.	
Blue Mound (city), Tarrant County (FEMA Docket No. 7027)	
Little Fossil Creek:	
At downstream corporate limits	*651
At upstream corporate limits	*665
Maps available for inspection at the City Hall, 1600 Bell Avenue, Blue Mound, Texas.	
Cleburne (city), Johnson County (FEMA Docket No. 7040)	
Unnamed Stream:	
Approximately 600 feet upstream of confluence with east Branch Buffalo Creek	*718
Approximately 110 feet downstream of West Henderson Street	*813
Maps available for inspection at the Cleburne City Hall, 302 West Henderson, Cleburne, Texas.	
Dalworthington Gardens (city), Tarrant County (FEMA Docket No. 7027)	
Rush Creek:	
Approximately 450 feet downstream of Indian Trail	*541
At upstream corporate limits	*556
Ryan's Branch:	
At confluence with Rush Creek	*546
Approximately 480 feet upstream of confluence with Rush Creek	*546
Maps available for inspection at the City Hall, 2600 Roosevelt Drive, Arlington, Texas.	
Edgecliff Village (town), Tarrant County (FEMA Docket No. 7027)	
Edgecliff Branch:	
Approximately 500 feet downstream of Atchison Topeka and Santa Fe Railway	*706
Approximately 60 feet upstream of Atchison Topeka and Santa Fe Railway	*710
Stream EB-1:	
Approximately 600 feet downstream of Crowley Road	*700
Approximately 400 feet upstream of Crowley Road	*706
Maps available for inspection at the City Hall, 1605 Edgecliff Road, Edgecliff Village, Texas.	
Euless (city), Tarrant County (FEMA Docket No. 7027)	
West Branch Hurricane Creek:	
Approximately 400 feet upstream of confluence with Hurricane Creek	*522
Approximately 1,700 feet upstream of West Parkway Road	*536
Hurricane Creek:	
At Tibbets Drive	*536
At upstream corporate limits	*536
Maps available for inspection at the City Hall, 201 N. Ector Drive, Euless, Texas.	
Everman (city), Tarrant County (FEMA Docket No. 7027)	
Chambers Creek:	
Approximately 0.6 mile downstream of downstream crossing of Enon Avenue	*609
Approximately 1,780 feet downstream of the downstream crossing of Enon Avenue	*614
Maps available for inspection at the City Hall, 212 North Race, Everman, Texas.	
Forest Hill (city), Tarrant County (FEMA Docket No. 7027)	
South Creek:	
Approximately 2,000 feet upstream of the confluence with Village Creek	*579
Approximately 200 feet downstream of Stonewall Drive	*634
North Fork of South Creek:	
At confluence with South Creek	*621
Approximately 80 feet upstream of Wichita Street	*652
North Branch of North Fork of South Creek:	
At confluence with North Fork of South Creek	*636
Approximately 90 feet upstream of Wichita Street	*651
North Branch of North Fork of South Creek Split Flow:	
At confluence with North Fork of South Creek	*624
At divergence from North Branch of North Fork of South Creek	*645
Maps available for inspection at the City Hall, 6800 Forest Hill Drive, Forest Hill, Texas.	
Forth Worth (city), Tarrant County (FEMA Docket No. 7027)	
West Fork Cement Creek:	
Approximately 0.5 mile downstream of Longhorn Road	*699
At Longhorn Road	*718
Stream MSC-1A:	
At downstream side of Bankhead Highway	*729
Approximately 425 feet upstream of Chamita Lane	*754
South Marys Creek:	
Approximately 2,450 feet upstream of Diamond Bar Trail	*741
Approximately 1,025 feet upstream of Lost Creek Boulevard	*771
North Fork Chambers Creek:	
Approximately 200 feet upstream of Wichita Street	*655
Approximately 1,825 feet upstream of Oak Grove Road	*687
Farmers Branch:	
At downstream corporate limits	*600
At the intersection of the westernmost runway on Carswell Air Force Base and the southern corporate limits	*634
Stream SC-7:	
Upstream side of McCart Avenue Bridge	*779
Approximately 280 feet upstream of Risinger Road	*802
Stream SC-7A:	
At confluence with Stream SC-7	*788
At Columbus Trail	*804
Sump No. 14W: At intersection of Shamrock Avenue and Foch Street	*539
Sump No. 15W: At intersection of Rupert Street and Shamrock Avenue	*539
Sump No. 16W: Approximately 600 feet northeast of intersection of State Route 199 and St. Louis Southwestern Railroad	*536
Sump No. 25C: Approximately 400 feet north of intersection of Woodnard Avenue and White Settlement Road	*538
Big Bear Creek:	
Approximately 280 feet downstream of the County boundary	*478
Approximately 850 feet upstream of the County boundary	*484
Sycamore Creek:	
Approximately 450 feet upstream of Union Pacific Railroad	*620
Approximately 1,650 feet upstream of Oak Grove Road	634
Stream VC-4:	
At the downstream corporate limits	*613
At the upstream corporate limits	*614
Little Fossil Creek:	
Approximately 200 feet downstream of the upstream corporate limits	*650
At the upstream corporate limits	*651
Live Oak Creek:	
Approximately 0.5 mile downstream of the upstream corporate limits	*655
At the upstream corporate limits	*670
Whites Branch:	
At downstream corporate limits	*584
Approximately 0.7 mile upstream of the confluence of Stream WB-1	*665
Stream WB-1	
Approximately 50 feet upstream of confluence with Whites Branch	*650
Approximately 550 feet upstream of the confluence	*652
Stream VC(A)-1:	
At the confluence with Village Creek	*478
At Wilma Lane	*478
South Fork Chambers Creek:	
Approximately 500 feet downstream of Christopher Street	*861
Approximately 1,000 feet upstream of Oak Grove Road	*684
Village Creek:	
Approximately 20 feet upstream of Randol Mill Road	*486
Approximately 50 feet upstream of Randol Mill Road	*486
At North Service Road of Interstate 820	*564
At South Service Road of Interstate 820	*564
Approximately 1,360 feet downstream of confluence of Elm Branch	*594
Approximately 800 feet downstream of confluence of Elm Branch	*595
Approximately 0.88 mile upstream of County Route 1064	*659
Approximately 2.2 miles upstream of County Route 1064	*671
Steam WF-11:	
At downstream side of Shoreview Drive	*602
Approximately 550 feet upstream of Shoreview Drive	*614
South Creek:	
Approximately 1,950 feet upstream of confluence with Village Creek	*579
At the Fort Worth/Forest Hill corporate limits	*585
Edgecliff Branch:	
Approximately 1,900 feet upstream of Missouri-Kansas-Texas Railroad	*669
Approximately 860 feet downstream of confluence of Stream EB-1	*675
Little Fossil Creek:	
At confluence with Big Fossil Creek	*502
Downstream side of Missouri-Kansas-Texas Railroad	*504
Stream HEN-1:	
At confluence with Henrietta Creek	*664
Approximately 1,350 feet upstream of confluence	*666
Henrietta Creek:	
Approximately 350 feet downstream of Interstate Route 35W northbound	*646
At Harmon Road	*663
Old Buffalo Creek:	
Approximately 100 feet downstream of Keller Haslet Road	*646
Approximately 400 feet upstream of Interstate Route 35W	*647
Buffalo Creek:	
At confluence with Henrietta Creek	*652
At Keller Haslet Road	*652
West Fork Trinity River:	
Approximately 0.9 mile upstream of County boundary	*456
At Great Southwest Railroad Spur	*481
Big Fossil Creek:	
At its confluence with West Fork Trinity River	*500

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 600 feet downstream of confluence of Stream BFC-3	*632
Stream BFC-1:	
At its confluence with Big Fossil Creek	*579
Approximately 50 feet downstream of North Beach Street	*579
Stream VC-4A:	
Approximately 280 feet upstream of Kennedale-Newhope Road	*624
Approximately 560 feet upstream of Kennedale-Newhope Road	*625
Lake Worth: Within Carswell Air Force Base	*600
West Fork Trinity on Carswell AFB:	
At Fort Worth/Westworth Village corporate limits	*558
Upstream side of Meandering Road	*561
South Fork of North Branch of Deer Creek:	
Approximately 100 feet downstream of the downstream corporate limits	*773
Approximately 300 feet upstream of the upstream corporate limits	*778
Willow Bend Creek:	
At upstream side of Chapin Road	*716
Approximately 1,500 feet upstream of Chapin Road	*731
Boyd Branch:	
Approximately 1,300 feet downstream of Trinity Boulevard	*497
At upstream side of Pipeline Road	*514
Stream HB-1:	
Approximately 165 feet upstream of the confluence with Howards Branch	*564
Approximately 100 feet upstream of North Bellaire Drive	*605
Clear Fork Trinity River:	
Approximately 2,400 feet upstream of Southwest Boulevard	*609
Approximately 0.8 mile downstream of confluence of Stream CF-6	*611
Stream VC-2A:	
Approximately 200 feet upstream of the confluence with Stream VC-2	*581
At a point approximately 120 feet upstream of Martin Street (north)	*603
Maps available for inspection at the Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, Texas.	
Grapevine (city), Tarrant County (FEMA Docket No. 7027)	
West Jones Branch:	
Approximately 900 feet downstream of Roanoke Dove Drive	*564
At upstream corporate limits	*564
Grapevine Lake: Entire shoreline within the community	*564
Tributary Little Bear 1:	
At Grapevine/Colleyville corporate limits	*572
Approximately 100 feet upstream of the Grapevine/Colleyville corporate limits	*573
Farris Branch:	
Approximately 0.4 mile downstream of Dove Loop Road	*564
Approximately 700 feet upstream of Wall Street	*639
Farris Branch East:	
At confluence with Farris Branch	*586
Approximately 1,150 feet upstream of Wall Street	*622
Tributary BB-5:	
Approximately 100 feet upstream of Creekwood Drive	*564
Approximately 0.8 mile upstream of Creekwood Drive	*583
Big Bear Creek:	
At downstream side of State Route 121 West Frontage Road	*548
Approximately 0.7 mile upstream of State Route 121 West Frontage Road	*552
Maps available for inspection at the Department of Public Works, 307 West Dallas Road, Grapevine, Texas.	
Haltom City (city), Tarrant County (FEMA Docket No. 7027)	
Big Fossil Creek:	
Downstream side of Missouri-Kansas-Texas Railroad	*506
Approximately 250 feet downstream of upstream corporate limits	*575
Stream BFC-6:	
At Haltom City/North Richland Hills corporate limits	*549
Approximately 1,000 feet upstream of Diamond Oaks Drive	*568
Tributary C:	
At confluence with Little Fossil Creek	*556
Approximately 400 feet upstream of St. Louis Southwestern Railway	*604
Mackey Creek Diversion South:	
At confluence with Big Fossil Creek	*512
Approximately 30 feet upstream of Broadway Avenue	*517
Little Fossil Creek:	
Approximately 1,450 feet upstream of confluence with Big Fossil Creek	*502
At upstream corporate limits	*560
Little Fossil Creek Split Flow:	
Approximately 150 feet upstream of confluence with Big Fossil Creek	*506
At divergence from little Fossil Creek	*511
Mackey Creek:	
At confluence with Big Fossil Creek	*510
Approximately 175 feet downstream of Drebeen Drive	*519
Tributary B:	
At confluence with Big Fossil Creek	*548
Approximately 1,500 feet upstream of Union Pacific Railroad	*603
Whites Branch:	
At confluence with Big Fossil Creek	*565
At upstream corporate limits	*577
Singing Hills Creek:	
At confluence with Big Fossil Creek	*548
Approximately 400 feet downstream of Interstate Route 820	*548
East Branch Tributary C:	
At confluence with Tributary C	*590
Approximately 450 feet upstream of the confluence	*591
Stream BFC-7:	
At confluence with Big Fossil Creek	*537
Approximately 380 feet upstream of confluence with Big Fossil Creek	*537
Maps available for inspection at the City Hall, 5024 Broadway Avenue, Haltom City, Texas.	
Haslet (city), Tarrant County (FEMA Docket No. 7027)	
Henrietta Creek:	
Approximately 1,000 feet upstream of Heritage Parkway	*652
Approximately 750 feet downstream of confluence of Stream HEN-2	*682
Stream HEN-1:	
At confluence with Henrietta Creek	*664
Approximately 1,350 feet upstream of confluence	*666
Old Buffalo Creek:	
Approximately 400 feet upstream of I35W	*647
At diversion from Buffalo Creek	*656
Buffalo Creek:	
At Keller-Haslet Road	*652
Approximately 250 feet upstream of diversion of Old Buffalo Creek	*657
Maps available for inspection at the City Hall, 105 Main Street, Haslet, Texas.	
Hurst (city), Tarrant County (FEMA Docket No. 7027)	
Calloway Branch:	
Approximately 525 feet downstream of Arcadia Street	*533
At Hurst/Richland Hills corporate limits	*548
Shallow Flooding Area: Near Valley View Branch downstream Area of State Route 121	#2
Walker Branch:	
At downstream corporate limits	*512
Approximately 100 feet upstream of downstream corporate limits	*513
Mesquite Branch:	
At confluence with Lorean Branch	*592
At Precinct Line Road	*595
Lorean Branch:	
Approximately 450 feet downstream of State Route 26	*585
Approximately 950 feet upstream of confluence of Mesquite Branch	*595
Maps available for inspection at the City Hall, 1505 Precinct Line Road, Hurst, Texas.	
Kennedale (city), Tarrant County (FEMA Docket No. 7027)	
Kee Branch:	
At upstream side of Kennedale-Sublett Road	*639
Approximately 50 feet upstream of Swiney Hiett Road	*655
Maps available for inspection at the City Hall, 209 North New Hope Road, Kennedale, Texas.	
Mansfield (city), Tarrant, Johnson, and Ellis Counties (FEMA Docket No. 7027)	
Stream BB-1:	
Downstream corporate limits (approximately .85 mile upstream of the confluence with Bowman Branch)	*602
Approximately 500 feet upstream of downstream corporate limits (approximately .94 mile upstream of the confluence with Bowman Branch)	*605
Low Branch:	
Approximately 2,000 feet downstream of Holland-Watson-Britton-Road	*538
At confluence with Lake Joe Pool	*538
Lake Joe Pool: Shoreline within the City of Mansfield	*538
Maps available for inspection at the Department of Zoning and Planning, City Hall, 1305 East Broad Street, Mansfield, Texas.	
Midland (city), Midland County (FEMA Docket No. 7042)	
Jal Draw:	
Approximately 100 feet south of the intersection of Neely Avenue and North A Street	*2,780
Approximately 700 feet northeast of the intersection of Winfield Road and North L Street	*2,786
In the vicinity of Hill Park between North F and North G Streets	*2,786
At Marinor Court	*2,802
In the vicinity of Cowden Park between Maberry and Ward Streets	*2,806
Maps available for inspection at the Midland City Hall, 300 North Loraine, Midland, Texas.	
Midland County (unincorporated areas) (FEMA Docket No. 7042)	
Midland Draw:	
Approximately 4.73 miles upstream of Mockingbird Lane	*2,831
Approximately 5.08 miles upstream of Mockingbird Lane	*2,833
Maps available for inspection at the Midland County Engineer's Office, 2145 East Highway 80, Midland, Texas.	
North Richland Hills (city), Tarrant County (FEMA Docket No. 7027)	
Big Fossil Creek:	
Upstream side of Broadway Avenue	*514
Downstream side of St. Louis Southwestern Railroad	*541
Mackey Creek Diversion North:	
At confluence with Big Fossil Creek	*515
Approximately 70 feet upstream of Richland Plaza Drive	*517
Stream BFC-7:	
Approximately 40 feet upstream of confluence with Big Fossil Creek	*537
Approximately 1,130 feet upstream of confluence with Big Fossil Creek	*537
Stream WKB-1:	
Approximately 800 feet downstream of Cardinal Lane	*616

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Approximately 500 feet upstream of Cardinal Lane	^826
Stream CB-K:	
At confluence with Calloway Branch	^602
Approximately 50 feet upstream of the confluence	^602
Mesquite Branch:	
At Precinct Line Road	^595
Upstream side of Precinct Line Road	^596
Singing Hills Creek:	
Approximately 1,200 feet downstream of Interstate Route 820	^548
Approximately 100 feet downstream of Interstate Route 820	^548
Stream CB-Z:	
Approximately 720 feet downstream of Hightower Drive	^636
Approximately 298 feet upstream of Starnes Road	^680
Maps available for inspection at the City Hall, 7301 N.E. Loop 820, North Richland Hills, Texas.	
Port Aransas (city), Nueces County (FEMA Docket No. 7042)	
Gulf of Mexico:	
At Dolphin Lane	^11
Entire Shoreline	^13
Corpus Christi Bay:	
At intersection of Seventh Street and Avenue I	^9
Approximately 400 feet east of intersection of Access Road No. 1 and State Route 53	^10
Maps available for inspection at the Port Aransas City Hall, 710 West Avenue Way, Port Aransas, Texas.	
Richland Hills (city), Tarrant County (FEMA Docket No. 7027)	
Big Fossil Creek:	
Approximately 250 feet downstream of State Route 121	^506
At downstream side of State Route 183	^517
Stream BFC-5:	
At confluence with Big Fossil Creek	^507
Approximately 180 feet upstream of Latham Drive	^533
Calloway Branch:	
At Hurst/Richland Hills corporate limits	^548
Approximately 550 feet upstream of Hurst/Richland Hills corporate limits	^550
Little Fossil Creek Split Flow:	
At confluence with Big Fossil Creek	^506
Approximately 150 feet upstream of confluence	^506
Maps available for inspection at the City Hall, 3200 Diana Drive, Richland Hills, Texas.	
River Oaks (city), Tarrant County (FEMA Docket No. 7027)	
Stream WF-5:	
Approximately 40 feet downstream of Long Avenue	^585
Approximately 40 feet upstream of Long Avenue	^588
Maps available for inspection at the City Hall, 4900 River Oaks Boulevard, Fort Worth, Texas.	
Saginaw (city), Tarrant County (FEMA Docket No. 7027)	
Little Fossil Creek:	
At Blue Mound Road	^671
Approximately 1,000 feet upstream of Atchison Topeka and Santa Fe Railway	^729
Maps available for inspection at the City Hall, 333 W. McLaroy, Saginaw, Texas.	
Southlake (city), Tarrant County (FEMA Docket No. 7027)	
Dove Creek:	
Approximately 80 feet upstream of Meadowmere Park Road	^564
Approximately 1,650 feet downstream of East Dove Street	^564
Tributary BB-9:	
At Union Church Road	^622
Approximately 1,700 feet upstream of Union Church Road	^629
Grapevine Lake: Flooding affecting community	^564
West Jones Branch:	
At Roanoke Dove Drive	^564
Approximately 150 feet downstream of Shady Lane	^572
Kirkwood Branch:	
At the most downstream corporate limits	^564
Approximately 100 feet downstream of the northbound lane of State Route 114	^580
South Fork Kirkwood Branch:	
At the confluence with Kirkwood Branch	^564
Approximately 50 feet downstream of Dove Street	^606
Maps available for inspection at the Southlake Public Works Department, 667 North Carroll Avenue, Southlake, Texas.	
Tarrant County (unincorporated areas) (FEMA Docket No. 7027)	
Live Oak Creek:	
At Fort Worth-Tarrant County boundary	^670
At upstream side of unnamed road approximately 0.6 mile downstream of White Settlement Road	^725
Cement Creek Reservoir: Within county	^691
Bowman Branch:	
At Arlington-Webb-Britton Road	^538
At Arlington corporate limits	^541
West Jones Branch:	
Approximately 480 feet upstream of Roanoke Dove Drive	^564
Approximately 30 feet downstream of Shady Lane	^573
Boyd Branch:	
Approximately 2,000 feet downstream of Missouri-Kansas-Texas Railroad	^474
Approximately 100 feet downstream of Missouri-Kansas-Texas Railroad	^486
Village Creek:	
Approximately 0.88 mile upstream of County Route 1064	^859
Approximately 2.17 miles upstream of County Route 1064	^871
West Fork Cement Creek: At the Tarrant County/City of Fort Worth boundary	^699
Old Buffalo Creek:	
Approximately 600 feet upstream of confluence with Henrietta Creek	^643
Approximately 100 feet downstream of Keller Haslet Road	^646
Buffalo Creek:	
Approximately 250 feet upstream of diversion of Old Buffalo Creek	^657
Approximately 350 feet upstream of diversion of Old Buffalo Creek	^657
Chambers Creek:	
Approximately 100 feet upstream of confluence with Village Creek	^581
Approximately 0.5 mile upstream of confluence with Village Creek	^585
Whites Branch: Approximately 2,080 feet upstream of Watauga-Smithfield Road	^587
Lake Joe Pool: Entire shoreline within community	^538
Stream VC-5:	
Approximately 950 feet upstream of confluence with Village Creek	^604
Approximately 0.58 mile upstream of confluence with Village Creek	^605
Henrietta Creek:	
Approximately 600 feet upstream of confluence of Old Buffalo Creek	^644
Approximately 750 feet downstream of confluence of Stream HEN-2	^682
South Marys Creek:	
Approximately 0.54 mile upstream of Diamond Bar Trail	^745
Approximately 0.58 mile upstream of Diamond Bar Trail	^748
Maps available for inspection at the Tarrant County Administrative Building, 100 East Weatherford Street, Public Works Department, Fort Worth, Texas.	
Watauga (city), Tarrant County (FEMA Docket No. 7027)	
Whites Branch:	
At downstream corporate limits	^577
Approximately 1,200 feet upstream of upstream corporate limits	^588
Maps available for inspection at the City Hall, Public Works Department, 7101 Whitley Road, Watauga, Texas.	
WASHINGTON	
Lind (town), Adams County (FEMA Docket No. 7042)	
Lind Coulee:	
Western Corporate Limit of Lind	^1,342
Just upstream of Nelson Avenue	^1,353
Just upstream of Van Morter Avenue	^1,363
Approximately 1,800 feet downstream of the eastern corporate limit along the Burlington Northern Railroad	^1,371
Wahl Road Drainage:	
At the Burlington Northern Railroad	^1,369
Just upstream of Third Street	^1,370
Approximately 800 feet upstream of Third Street	^1,384
Maps are available for review at City Hall, Main Street, Lind, Washington.	
Snohomish County (unincorporated areas) (FEMA Docket No. 7042)	
Scriber Creek:	
Approximately 1,900 feet upstream of Poplar Way	^317
Approximately 3,100 feet upstream of Poplar Way	^323
At 44th Avenue West	^325
Swamp Creek:	
Approximately 100 feet downstream of Lockwood Road	^85
Just upstream of Locust Way, County Bridge No. 504	145
Just downstream of Larch Way	^244
Just upstream of Filbert Road	^306
Approximately 300 feet downstream of Interstate Highway 5 eastbound	^342
Maps are available for review at the County Administration Building, Planning Department, 3000 Rockefeller, Everett, Washington.	
Spokane County (unincorporated areas) (FEMA Docket No. 7040)	
Spokane River:	
At the eastern corporate limit of the City of Spokane and approximately 1.5 miles downstream of Argonne Road	^1,913
Just upstream of Trent Road	^1,930
At Sullivan Road	^1,955
At Barker Road	^1,991
Just upstream of Harvard Road	^2,012
Approximately 700 feet downstream of Interstate Highway 90	^2,037
Forker Draw:	
Approximately 400 feet north of Progress Road	^2,070
At Forker Road Bridge	^2,103
Approximately 900 feet downstream of Bigelow Gulch Road	^2,310
Chester Creek:	
At the intersection of Dishman Road and Second Avenue	^1,984
At 24th Avenue	^1,994
At the intersection of 28th Avenue and Raymond Avenue	^1,999
Just downstream of Bowdish Road	^2,005
At the intersection of Madison Road and 43rd Avenue	^2,009
Just upstream of Mohawk Road	^2,042
Just downstream of the most southern Farm Road	^2,061
Liberty Lake:	
At the intersection of Liberty Lake Road and Sprague Avenue	^2,051
Approximately 2,000 feet south of the intersection of Sprague Avenue and Clubhouse	^2,053

Source of flooding and location	#Depth in feet above ground. ^Elevation in feet (NGVD)
Maps are available for review at the Spokane County Board of Commissioners, West 1116 Broadway Avenue, Spokane, Washington.	
WEST VIRGINIA	
Ranson (city), Jefferson County (FEMA Docket No. 7042)	
Evitts Run:	
At confluence of Tributary 1	^495
At the upstream corporate limits	^498
Tributary 1:	
At confluence with Evitts Run	^495
At downstream side of culvert of Norfolk and Western Railway	^497
Maps available for inspection at the Ranson City Hall, 312 South Mildred Street, Ranson, West Virginia 25438.	
WYOMING	
Sundance (town), Crook County (FEMA Docket No. 7042)	
Sundance Creek:	
Approximately 450 feet upstream of Washington Memorial Park Reservoir	^4,711
At North Sixth Street	^4,730
Just upstream of Third Street	^4,758
South Fork Sundance Creek:	
At the confluence with North Fork Sundance Creek	^4,758
Just upstream of North West Street	^4,771
Approximately 300 feet upstream of Boxelder Street	^4,791
North Fork Sundance Creek:	
At the confluence with South Fork Sundance Creek	^4,758
Approximately 700 feet upstream of North West Street	^4,804
Maps are available for review at City Hall, 213 Main Street, Sundance, Wyoming.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: August 5, 1992

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-19907 Filed 8-19-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket Nos. 89-79, 87-313, FCC 92-325]

Creation of Access Charge Subelements for Open Network Architecture and Policy and Rules Concerning Rates for Dominant Carriers

AGENCY: Federal Communications Commission [FCC].

ACTION: Final rule.

SUMMARY: This order addresses petitions seeking reconsideration of those portions of the Part 69/ONA Order concerning the new services test of the local exchange carrier (LEC) price cap rules. The Commission clarifies and modifies the cost support required to tariff new services offered by price cap LECs. First, in cases where a LEC develops a lower-cost version of an existing service, the Commission clarifies that the LEC may price that new service at any level below the price of the existing service. Second, the Commission modifies its rules so that they no longer require LECs to satisfy the net revenue test as part of the cost showing for new services. The Commission also denies, in all other respects, the petitions for reconsideration of the Part 69/ONA Order to the extent that they address the price cap new services test generally.

EFFECTIVE DATE: November 18, 1992.

FOR FURTHER INFORMATION CONTACT: Mark S. Nadel, Common Carrier Bureau (202) 632-6363.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Public reporting burden for the collections of information is estimated to average 258.11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden, to the Federal Communications Commission, Information Resources Branch, room 416, Paperwork Reduction Project (3060-0298), Washington, DC 20554 and to the Office of Management and Budget, Paperwork Reduction Project (3060-0298), Washington, DC 20503.

Background

CC Docket 89-79: Notice of Proposed Rulemaking, Amendments of part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket 89-79. *Adopted:* March 30, 1989. *Released:* May 9, 1989. 54 FR 20873 (May 15, 1989). By the Commission. Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, Amendment of part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture; Policy and Rules Concerning Rates for Dominant Carriers, CC Docket Nos. 89-79 and 87-313; FCC 91-186. *Adopted:* June 13, 1991. *Released:* July 11, 1991. 56 FR 33879 (July 24, 1991). By the Commission.

CC Docket No. 87-313: Notice of Proposed Rulemaking. Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313. *Adopted:* August 4, 1987. *Released:* August 21, 1987. 52 FR 33962 (Sept. 9, 1987). By the Commission. Further Notice of Proposed Rulemaking, CC Docket No. 87-313. *Adopted:* May 12, 1988. *Released:* May 23, 1988. 53 FR 22356 (June 15, 1988). By the Commission. Supplemental Notice of Proposed Rulemaking, CC Docket No. 87-313. *Adopted:* March 8, 1990. *Released:* March 12, 1990. 55 FR 12526 (Apr. 4, 1990). By the Commission. Second Report and Order, CC Docket No. 87-313. *Adopted:* September 19, 1990. *Released:* October 4, 1990. 55 FR 42375 (Oct. 19, 1990. By the Commission. Commissioner Duggan concurring in part and dissenting in part and issuing a separate statement. Order on Reconsideration, CC Docket No. 87-313, *Adopted:* April 9, 1991. *Released:* April 17, 1991. 56 FR 21812 (May 10, 1991). By the Commission. Report and Order & Order on Further Reconsideration & Supplemental Notice of Proposed Rulemaking, Amendment of part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture; Policy and Rules Concerning Rates for Dominant Carriers, CC Docket Nos. 89-79 and 87-313; FCC 91-186. *Adopted:* June 13, 1991. *Released:* July 11, 1991. 56 FR 33879 (July 24, 1991). By the Commission. Memorandum Opinion and Order, Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313; FCC 91-344. *Adopted:* October 29, 1991. *Released:* December 20, 1991. 57 FR 3133 (Jan. 28, 1992). By the Commission.

Summary of Memorandum Opinion & Order on Second Further Reconsideration

This is a summary of the Commission's Memorandum Opinion & Order on Second Further Reconsideration in Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, CC Docket No. 89-79 and Order on Further Reconsideration in Policy and Rules Concerning Rates for Dominant Carriers, CC Docket No. 87-313; FCC 92-325, *Adopted:* July 16, 1992 and *Released:* August 6 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy

contractor, Downtown Copy Center, (202) 452–1422, 1114 21st St., NW., Washington, DC 20036.

The Commission has clarified and modified the cost support required to tariff new services offered by price cap local exchange carriers (LECs) in order to encourage LECs to develop improved versions of existing services.

First, in cases where a LEC develops a lower-cost version of an existing service, the Commission clarified that the LEC may price the new service at any level below the price of the existing service. Second, the Commission modified the rules so that LECs are no longer required to satisfy the net revenue test as part of the cost showing for new services.

The order grants, in part, requests by various petitioners for reconsideration of those portions of the Part 69/Open network Architecture (ONA) Order concerning the new services test of the LEC price cap rules.

The price cap rules established a special set of requirements for the introduction of "new services." The LEC Price Cap Order defined new services as services that add to the range of options already available to customers. A new service may include a new technology or functional capability. Initially, the primary constraint placed on the price of a new service was that it satisfy net revenue test. The test, adopted in the AT&T price cap decision, was designed to establish a lower bound on new service prices, thus ensuring that AT&T did not set predatory prices. On reconsideration, the Commission recognized that LECs generally enjoy greater market power than AT&T or other interexchange carriers and added an upper bound to the new services test. The interim rule, adopted in the LEC Price Cap Reconsideration Order, limited LECs to prices justified by the pre-price cap cost support rules—a fully distributed cost showing.

The Part 69/ONA Order retained an upper bound on the prices of new services but liberalized the new services test. Granting partial reconsideration of the Order, the Commission concluded that its LEC price cap new services test provided an adequate check on both unreasonably high and predatorily low prices, and encouraged vigorous development of new and innovative services. The Commission concluded that flexible pricing of new services with lower direct costs than the services they displace will further strengthen LEC incentives to innovate. Also, the Commission concluded its decision to eliminate the net revenue test requirement from the new services test will make the new services test less burdensome for LECs. The Commission denied, in all other respects, the petitions for reconsideration in this proceeding to the extent that they address the price caps new services test.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

Amendments to the Code of Federal Regulations

Title 47 of the CFR, part 61 is amended as follows:

PART 61—TARIFFS

1. The authority citation for part 61 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply sec. 203, 48 Stat. 1070; 47 U.S.C. 203.

2. Section 61.49 is amended by revising paragraph (g)(1) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

(g)(1) Each tariff filing by a dominant interexchange carrier, as specified by Commission order, that introduces a new service that will later be included in a basket must be accompanied by cost data sufficient to establish that the new service, and each unbundled element thereof, will generate a net revenue increase—measured against revenues generated from all services subject to price cap regulation, and calculated based upon present value—within the lesser of a 24-month period after an annual price cap tariff including the new service takes effect, or 36 months from the date the new service becomes effective. Each carrier making such a tariff filing must, at the time the new service is incorporated into the price cap index, submit data sufficient to make the API and PCI calculations required by §§ 61.46(b) and 61.44(c) of this part, and, as necessary, to make the SBI calculations provided in § 61.47 (b) or (c) of this part.

* * * * *

[FR Doc. 92–19782 Filed 8–19–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 92–17; FCC 92–342]

Loading Requirements for 900 MHz Trunked Stations in the Specialized Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order granting Specialized Mobile Radio licensees in the 896–901/935–940 MHz band limited relief from the loading requirements imposed upon them. The deadline for loading such systems is extended by granting all qualified licensees that have not met applicable loading deadlines within the five years permitted for this purpose a two-year license renewal at the end of their initial license period.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Myra G. Kovey, (202) 632–6497, Private Radio Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 92–17, FCC 92–342, adopted July 22, 1992, and released August 4, 1992. The full text of this Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M Street, NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, Downtown Copy Center, 1990 M Street, NW., Washington, DC 20036, telephone (202) 452–1422.

Summary of Report and Order

1. When the Commission began licensing trunked Specialized Mobile Radio stations in the 900 MHz band, it accepted applications only within 46 designated filing areas encompassing the 50 top markets in the country. In a Notice of Proposed Rule Making released February 18, 1992, (57 FR 6570, February 26, 1992) the Commission questioned whether this multi-phase licensing scheme had placed 900 MHz licensees at a competitive disadvantage to Specialized Mobile Radio licensees in the 800 MHz band, by making it difficult to develop the types of wide-area and regional systems characteristics of current 800 MHz offerings. The Commission proposed the limited relief of granting 900 MHz Specialized Mobile Radio licensees that did not meet applicable loading requirements within the five years allocated for this purpose a two-year renewal at the end of their initial license period. Licensees would be relieved from loading requirements until the expiration of this period.

2. The Report and Order adopted this proposal with one change. Where the proposal limited relief to systems licensed on or before June 30, 1989, the Report and Order extended relief to all 900 MHz Specialized Mobile radio licensees. The Commission declined to extend relief to licensees in the 900 MHz Industrial/Land Transportation pool, finding that they had not been subject to the unique licensing scheme adopted for 900 MHz Specialized Mobile Radio Service licensees. the Commission also found a request for intercategory sharing of 900 MHz between the Specialized Mobile Radio and Business and Industrial/Transportation pools beyond the scope of the proceeding.

Final Regulatory Flexibility Analysis

Need and Purpose of This Action

This Report and Order provides limited relief for 900 MHz SMR licensees who have been disadvantaged by our multi-phase licensing scheme for their frequencies. This scheme has limited the licensees' ability to design and market systems competitive with other SMR offerings. This action provides additional time to load the systems, in recognition of these difficulties.

Summary of the Issues Raised

No comments addressed our Initial Regulatory Flexibility Analysis.

Significant Alternatives Considered

There were no significant alternatives considered.

List of Subjects in 47 CFR Part 90

Private land mobile radio services, Radio.

Amendatory Text

PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 332, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, and 332, unless otherwise noted.

2. Section 90.631 is amended by revising paragraph (b), and by adding a new paragraph (i), to read as follows:

§ 90.631 Trunked systems loading, construction, and authorization requirements.

* * * * *

(b) Each applicant for a trunked system shall certify that a minimum of 70 mobiles for each channel authorized will be placed in operation within five years of the initial license grant. Except as provided in paragraph (i) of this section, if at the end of five years a trunked system is not loaded to the prescribed levels and all channels in the licensee's category are assigned in the system's geographic area, authorization for channels not loaded to 100 mobiles per channel cancels automatically. If a trunked system has channels for more than one category, General Category channels are the first channels considered to cancel automatically. All licensees who are authorized initially before June 1, 1993, and are within their original license term or are within the term of a two-year authorization granted in accordance with paragraph (i) of this section are subject to this condition. A licensee that has authorized channels cancelled due to failure to meet the above loading requirements will not be authorized to obtain additional channels to expand that same system for a period of six months from the date of cancellation.

* * * * *

(i) For SMRS category trunked systems licensed in the 896–901/935–940 MHz band, if at the end of the initial five-year license term the licensee of such a trunked system has not satisfied the loading requirements of paragraph (b) of this section, the licensee requesting renewal of its license will be granted a renewal for only a two-year period. Regardless of the date of grant of the two-year renewal, the licensee will be required to comply fully with the minimum requirements set forth in paragraph (b) of this section at the end of the two-year renewal term.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 92–19784 Filed 8–19–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 675

[Docket No. 911172–2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of retention.

SUMMARY: NMFS is prohibiting retention of pollock by the offshore component in the Bearing Sea subarea (BS) of the Bearing Sea and Aleutian Islands Management Area (BSAI) and is requiring that incidental catches of pollock be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the apportionment of total allowable catch (TAC) for pollock assigned to the offshore component in the BS has been reached.

EFFECTIVE DATE: Effective 12 noon, Alaska local time (A.l.t.), August 17, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907/586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The current allowance of pollock TAC to the offshore component in the BS is 433,892 metric tons (57 FR 32925, July 24, 1992).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.20(a)(9), that the offshore allowance of the TAC for pollock in the BS has been reached. Therefore, NMFS is requiring that the offshore component treat pollock as a prohibited species. In accordance with § 675.20(c), NMFS is prohibiting retention of pollock by the offshore component in the BS effective from 12 noon, A.l.t., August 17, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 1992.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–19969 Filed 8–17–92; 3:55 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 162
Thursday, August 20, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 91-160-1]

Importation of Cherimoyas From Chile

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the fruits and vegetables regulations to allow the importation of cherimoyas from certain provinces of Chile, subject to APHIS inspection and completion of either an APHIS prescribed methyl bromide treatment or an APHIS prescribed soapy water and wax treatment. We believe this action is warranted because there appears to be no significant pest risk associated with the importation of cherimoyas from Chile under these circumstances. This action would relieve restrictions on the importation of cherimoyas from Chile without presenting a significant risk of introducing injurious insects into the United States.

DATES: Consideration will be given only to comments received on or before September 21, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 91-160-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Peter M. Grosser, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 632, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6799.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations, contained in 7 CFR 319.56 *et seq.* (referred to below as the regulations), prohibit or restrict the importation of fruits and vegetables into the United States to prevent the introduction and dissemination of injurious insects that are new to or not widely distributed within and throughout the United States.

Currently, the regulations do not provide for the importation of cherimoyas from Chile. Larger than a grapefruit and thin-skinned, the cherimoya (*Annona cherimola*) tastes like a blend of papaya, pineapple, and banana. Both the Chile false red mite of grapes (*Brevipalpus chilensis*) and the Mediterranean fruit fly (Medfly) are known to attack cherimoyas in Chile. These are considered potentially destructive pests by the Animal and Plant Health Inspection Service (APHIS), and neither pest is present in the United States. These pests would not be readily detectable by inspection. The plant protection service of Chile (Servicio Agricola Y Ganadero (SAG)) has requested that we consider allowing the importation of cherimoyas from Chile. We are proposing to allow cherimoyas from Chile to be imported into the United States only if certain conditions are met to prevent the introduction of these pests. These conditions are discussed below.

Treatment

We propose to require treatment, under the supervision of an APHIS inspector, either in Chile or in the United States, of cherimoyas from Chile for the Chile false red mite of grapes in accordance with one of the following two approved treatments:

(1) Fumigation With Methyl Bromide

Research done by the Chileans and evaluated by APHIS demonstrates that fumigation with methyl bromide is effective on cherimoyas against the Chile false red mite of grapes. Fumigation of cherimoyas with methyl bromide in accordance with the procedures described below has been approved by the Environmental Protection Agency.

The required treatment would be fumigation with methyl bromide at normal atmospheric pressure in an APHIS-approved fumigation chamber or under a tarpaulin in accordance with the following schedule. The required treatment period would be 2 hours.

Temperature (°F.)	Dosage—pounds of methyl bromide per 1,000 cu. ft.
80–89 (inclusive)	1½
70–79 (inclusive)	2
60–69 (inclusive)	2½
50–59 (inclusive)	3

(2) Treatment With Soapy Water and Wax

Research done by the Chileans and evaluated by the Agricultural Research Service (ARS) of USDA and APHIS demonstrates that a soapy water and wax treatment is also effective on cherimoyas against the Chile false red mite of grapes. Procedures for a soapy water and wax treatment for cherimoyas from Chile have been approved by ARS and APHIS. The required treatment would be immersion of the fruit in a soapy water bath consisting of one part soap solution (such as Deterfrut) to 3,000 parts water for a minimum of 20 seconds, followed by a pressure shower rinse to remove soapy excess, and then followed by immersion for a minimum of 20 seconds in an undiluted wax coating (such as Johnson Was Primafresh 31 Kosher fruit coating).

Medfly-Free Provinces

There is currently no approved treatment for Medfly that can be used on cherimoyas. Therefore, we propose to limit importation of cherimoyas from Chile to cherimoyas grown in provinces of Chile that are free from the Mediterranean fruit fly. These provinces include all provinces in Chile except Arica, Iquique, and Parinacota (see § 319.56-2(j) of the regulations).

Ports of Entry

We propose to allow importation of cherimoyas from Chile only through ports staffed by an APHIS inspector.

APHIS Inspection

Pest risk analyses conducted by APHIS have determined that any other injurious insects that might be carried by the cherimoyas would be readily detectable by an inspector. Cherimoyas from Chile would be subject to inspection under the direction of an APHIS inspector, either in Chile or at the port of arrival in the United States. Imported cherimoyas inspected in Chile may be subject to reinspection at the port of arrival as provided for in § 319.56-6 of the regulations.

Trust Fund Agreement

We propose that the importation of cherimoyas that are treated or inspected in Chile be contingent upon the plant protection service of chile (Servicio Agricola Y Ganadero (SAG)) entering into a trust fund agreement with APHIS. This agreement would require SAG to pay in advance of each shipping season all costs that APHIS estimates it will incur in providing inspection services in Chile during that shipping season. These costs would include administrative expenses and all other salaries (including overtime and the federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by the inspectors in performing these services. The agreement would require SAG to deposit a certified or cashier's check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement would further require SAG to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more cherimoyas would be treated or inspected in Chile. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to SAG or held on account until needed, at SAG's option.

Requiring the payment of costs in advance is necessary to help defray the costs to APHIS of providing inspection services in Chile.

Department not Responsible for Damage

The proposed regulations would explain that the Department of Agriculture is not responsible for any damage that might be sustained by the cherimoyas as a result of the prescribed treatment.

PPQ Treatment Manual

We propose to add the fumigation and the soapy water and wax treatments for cherimoyas from Chile to the Plant Protection and Quarantine Treatment Manual, which is incorporated into the regulations by reference at 7 CFR 300.1.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule, if adopted, would allow the importation into the United States of cherimoyas from certain provinces of Chile, subject to APHIS inspection and completion of either an APHIS prescribed methyl bromide treatment or an APHIS prescribed soapy water and wax treatment. We estimate that approximately 200,000 10-lb flats valued at $6 million could be exported from Chile to the United States during the initial season.

In the United States, cherimoyas are grown almost entirely in southern California. About 100 cherimoya producers, half of whom market their fruits and half of whom produce a small quantity for home consumption, produce approximately 1.5 million lbs of fruit per year on about 300 acres. Producers receive approximately $2.00 to $2.50 per lb for the marketed fruits, which weigh between 4 oz and 2.5 lb. In 1990, only 179 acres were harvested, due to a freeze, for a total income for producers of approximately $2 million.

Besides southern California, Hawaii produces and consumes a small quantity of the fruits. There are no official statistics regarding the amount of Hawaii's production or its value.

The season for cherimoyas grown in the United States begins in mid-November and ends in May or June. The growing/shipping season for cherimoyas in Chile is September through November. The mature fruits are picked as they become ripe and must reach consumers within 2 weeks of harvest as they are perishable. If cherimoyas were allowed to be imported from Chile, they would be marketed in the United States shortly before and at the very beginning of the California cherimoya season.

The short-term impact on U.S. producers and consumers would depend on the marketing strategy pursued by the Chilean importers. If large quantities of fruits were imported at once, prices could fall slightly for domestic growers, packers, and consumers. If importers were to test the U.S. market by first shipping moderate quantities, then the impact on prices would be even less severe. In any event, the decline in prices would not be long-lasting, because:

(1) The supply of imports would overlap by a month at most with domestically-produced fruits; and

(2) Cherimoyas cannot be stored for an extended length of time.

The longer term impact for U.S. producers and packers would be beneficial. Imports would bring cherimoyas on the U.S. market 2 months ahead of the domestic season, thereby engendering increased demand. This increased demand could result in increased prices for the producers when the U.S. crop reaches the market.

Another consideration is the impact that cherimoya imports might have for other U.S. crops. Substitute fruits whose markets might be affected by the importation of cherimoya would likely be other exotic species, such as sugar apples and atemoyas (a cherimoya-sugar apple hybrid). Sugar apples and atemoyas, grown in Florida and Hawaii, are in season from August to November, which would coincide with the period of cherimoya importation from Chile. However, the sugar apple and atemoya markets are small, and consumption is almost entirely within the two States. In Florida, for example, areas planted in sugar apples and atemoyas are less than 1,200 acres for each crop. The combined production of the two fruits in 1990 was under 100,000 lb, with an average price paid growers in 1991 of $2.00 to $2.50 per lb.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule would allow cherimoyas to be imported into the United States from certain provinces of Chile. If this proposed rule is adopted, State and local laws, regulations, and policies regarding cherimoyas imported under this rule would be preempted while the fruit is in foreign commerce. Fresh cherimoyas are generally imported for immediate distribution and sale to the consuming public, and would remain in foreign commerce until sold to the ultimate consumer. If this proposed rule is adopted, no retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant pests and diseases, Quarantine.

7 CFR Part 319

Agricultural commodities, Fruit, Imports, Plant pests and diseases, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR parts 300 and 319 would be amended as follows:

PART 300—INCORPORATION BY REFERENCE

1. The authority citation for part 300 would continue to read as follows:

Authority: 7 U.S.C. 150ee, 161.

2. In § 300.1, paragraph (a) would be revised to read as follows:

§ 300.1 Materials incorporated by reference.

(a) The Plant Protection and Quarantine Treatment Manual, which was reprinted May 1985, and includes all revisions through _____, has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

3. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

4. In Subpart—Fruits and Vegetables, a new § 319.56–2x would be added to read as follows:

§ 319.56–2x Administrative instructions governing the entry of cherimoyas from Chile.

Cherimoyas may be imported into the United States from Chile only under the following conditions:

(a) *Treatment.* The cherimoyas must be treated, under the supervision of an inspector, either in Chile or in the United States, for the Chile false red mite of grapes (*Brevipolpus chilensis*) in accordance with one of the following procedures:

(1) *Fumigation.* The cherimoyas must be fumigated with methyl bromide at normal atmospheric pressure. The fumigation must be done in a fumigation chamber that has been approved for that purpose by the Animal and Plant Health Inspection Service, or under tarpaulins, according to the schedule below. The treatment period must be 2 hours.

Temperature (° F.)	Dosage—pounds of methyl bromide per 1,000 cu. ft.
60–89 (inclusive)	1½
70–79 (inclusive)	2
60–69 (inclusive)	2½
50–59 (inclusive)	3

(2) *Soapy water and wax.* The cherimoyas must be immersed in a soapy water bath consisting of 1 part soap solution (such as Deterfrut) to 3,000 parts water for a minimum of 20 seconds, followed by a pressure shower rinse to remove soapy excess, and then followed by immersion for a minimum of 20 seconds in an undiluted wax coating (such as Johnson Wax Primafresh 31 Kosher fruit coating).

(b) *APHIS inspection.* Cherimoyas from Chile are subject to inspection under the direction of an inspector, either in Chile or at the port of arrival in the United States. Imported cherimoyas inspected in Chile may be subject to reinspection at the port of arrival as provided for in § 319.56–6.

(c) *Trust fund agreement.* Cherimoyas that are treated or inspected in Chile may be imported into the United States only if the plant protection service of Chile (Servicio Agricola Y Ganadero, referred to in this section as SAG) has entered into a trust fund agreement with APHIS. This agreement requires SAG to pay in advance of each shipping season all costs that APHIS estimates it will incur in providing inspection services in Chile during that shipping season. These costs include administrative expenses and all salaries (including overtime and the Federal share of employee benefits), travel expenses (including per diem expenses), and other incidental expenses incurred by APHIS in performing these services. The agreement requires SAG to deposit a certified or cashier's check with APHIS for the amount of these costs, as estimated by APHIS. If the deposit is not sufficient to meet all costs incurred by APHIS, the agreement further requires SAG to deposit with APHIS a certified or cashier's check for the amount of the remaining costs, as determined by APHIS, before any more cherimoyas will be treated or inspected in Chile. After a final audit at the conclusion of each shipping season, any overpayment of funds would be returned to SAG, or held on account until needed, at SAG's option.

(d) *Costs for services in the United States.* All costs of treatment and required safeguards and supervision, other than the services of the supervising inspector during regularly assigned hours of duty and at the usual place of duty, shall be borne by the owner of the fruits of a representative of the owner.

(e) *Limitation of origin.* The cherimoyas must have been grown in a province of Chile that is free from the Mediterranean fruit fly (see § 319.56–2(j)).

(f) *Ports of entry.* Cherimoyas from Chile may be imported through all ports staffed by an inspector.[1]

(g) *Department not responsible for damage.* The treatments prescribed in paragraph (a) of this section are judged from experimental tests to be safe for use with cherimoyas from Chile. However, the Department assumes no responsibility for any damage sustained through or in the course of such treatment or by compliance with requirements under paragraph (a) of this section.

Done in Washington, DC, this 17th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19914 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

[1] Information concerning ports staffed by inspectors may be obtained by contacting the Administrator, c/o Port Operations, PPQ, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

7 CFR Part 319

[Docket No. 92–096–1]

Ports of Entry for Certain Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning foreign quarantine notices by allowing certain plants and plant products to be imported through a plant inspection station at the Orlando International Airport in Orlando, Florida. Currently, the only designated plant inspection station in Florida is located in Miami. The addition of the Orlando plant inspection station would ease the workload borne by the existing station and facilitate the importation of certain plants and plant products.

DATES: Consideration will be given only to comments received on or before September 21, 1992.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 92–096–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fons, Senior Operations Officer, Port Operations, PPQ, APHIS, USDA, room 637, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8295.

SUPPLEMENTARY INFORMATION:

Background

The restrictions contained in "Foreign Quarantine Notices, Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products" (7 CFR 319.37 through 319.37–14), referred to below as "the regulations," prevent certain tree, plant, and fruit diseases, injurious insect pests, and other plant pests from being introduced into the United States by prohibiting or restricting the importation of certain articles from foreign countries or localities. These prohibited and restricted articles are listed in § 319.37–2 and § 319.37–3 of the regulations.

Before some restricted articles may be imported into the United States, a written permit must be issued by the Plant Protection and Quarantine Programs of the Animal and Plant Health Inspection Service (APHIS). Other restricted articles do not require a permit. Permits are required for some restricted articles because the articles appear to present a substantial risk of carrying plant pests or diseases at the time of importation. Section 319.37–3(a) of the regulations lists the categories of restricted articles that require a written permit for importation.

Section 319.37–14(b) of the regulations contains a list of the approved ports of entry through which restricted articles may be imported into the United States. Restricted articles that do not require a permit may be imported through any of the approved ports of entry; restricted articles that do require a permit, because of their greater plant pest and disease risk, may be imported only through ports equipped with special inspection and treatment facilities. These ports, known as plant inspection stations, are indicated on the list by an asterisk.

We are proposing to amend the regulations by adding Orlando, Florida, to the list of ports of entry in § 319.37–14(b). Because the port possesses the special inspection and treatment facilities needed to process restricted articles that are imported under a written permit, the Orlando site, located at the Orlando International Airport, would also be designated a plant inspection station. Florida currently has 10 ports of entry, but only one of those ports—Miami—is a plant inspection station. Allowing certain plants and plant products to be imported through a plant inspection station at the Orlando International Airport would ease the workload borne by the Miami plant inspection station and facilitate the importation of those plants and plant products. Additionally, the Orlando facility would be more convenient than the Miami facility for importers in northern Florida.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule, if adopted, would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The addition of a plant inspection station in Orlando, Florida, would facilitate the importation of certain plants and plant products into the United States. We believe the addition of this facility would have a positive, albeit limited, economic impact. The volume of traffic currently handled by the plant inspection station in Miami indicates that a second plant inspection station in Florida would be utilized by importers. We have no way of knowing exactly how many of them would use the Orlando facility, but we estimate that it would be 20 or more commercial importers, with many of them being small entities. Those commercial importers based in the northern Florida area would realize at least a small savings in transportation costs as a result of the opening of the Orlando facility. The primary impact on the importers, however, would be the increased convenience of having a second plant inspection station in Florida.

Under these circumstances, the Administrator of APHIS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws, regulations, or policies that are inconsistent with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) It will not require administrative proceedings before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 319

Agricultural commodities, Imports, Nursery stock, Plant diseases and pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would continue to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

2. In § 391.37–14(b), the entry for Florida would be amended by adding, immediately after the entry for Miami, and entry to read as follows:

§ 319.37–14 Ports of entry.

* * * * *

(b) * * *

List of Ports of Entry

* * * * *

Florida

* * * * *

Orlando

Orlando Plant Inspection Station, 9317 Tradeport Drive, Orlando, FL 32827.

* * * * *

Done in Washington, DC, this 12th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–18788 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

Farmers Home Administration

7 CFR Part 1942

Community Facility Loans; Correction

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a proposed rule published July 16, 1992 (57 FR 31462). In the proposed rule, a Catalog of Federal Domestic Assistance number for the Water and Waste Disposal program was inadvertently omitted in the section of the preamble which discusses the programs affected by the proposed rule. This action is taken to correct this oversight. The intended effect is to make the proposed rule read as intended.

DATES: Comments on the proposed rule must be received on or before August 17, 1992.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Joyce Brooks, Program Management Branch, Community Facilities Division, RDA, USDA, room 6304–S, Washington, DC 20250, telephone (202) 720–1490.

SUPPLEMENTARY INFORMATION: In the proposed rule a Catalog of Federal Domestic Assistance number for the Water and Waste Disposal program was inadvertently omitted in the section of the preamble which discusses the programs affected by the proposed rule.

Accordingly, the proposed rule published July 16, 1992 (57 FR 31462) is corrected as follows:

On page 31462, in the third column under PROGRAM AFFECTED, the first sentence should be hanged to read "The Community Facility and Water and Waste Disposal programs are listed in the Catalog of Federal Domestic Assistance as Community Facilities Loans and Water and Waste Disposal Systems for Rural Communities under 10.423 and 10.418 respectively."

La Verne Ausman,

Administrator, Farmers Home Adiminstration.

Dated: August 10, 1992.

Mary Ann Baron,

Acting Administrator, Rural Development Administration.

[FR Doc. 92–19773 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–07–M

Animal and Plant Health Inspection Service

9 CFR Part 51

[Docket No. 87–100–2]

Federal Indemnity Payments for Brucellosis Reactor Cattle and Bison

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; withdrawal.

SUMMARY: We are withdrawing a proposed rule concerning the phasing out of Federal indemnity payments to the owners of brucellosis reactor cattle and bison. We are taking this action after considering the comments we received following the proposed rule's publication. Those comments led us to conclude that reducing indemnity payments would have a detrimental effect on our efforts to eradicate brucellosis in the United States. By withdrawing the proposed rule, we leave in effect the current rates of indemnity for reactor cattle and bison destroyed because of brucellosis.

DATES: Withdrawal of proposed rule effective August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–6188.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 51, "Animals Destroyed Because of Brucellosis" (referred to below as "the regulations"), provide, in part, for the payment of Federal indemnity to the owners of cattle or bison that are destroyed as brucellosis reactors.

On February 1, 1988, we published a proposed rule in the **Federal Register** (53 FR 2758–2760, Docket No. 87–100) to end the payment of Federal indemnity after Fiscal Year 1989. We proposed to end the payments after a 20 percent reduction in indemnity amounts in Fiscal Year 1988 and another 20 percent reduction in Fiscal Year 1989. We considered the indemnity payments, which originated as an incentive to encourage participation in our brucellosis eradication efforts, to no longer be necessary in light of market conditions that placed only slaughter value on brucellosis reactors. We felt that because the owners of brucellosis reactors were likely to have the animals destroyed anyway, there was no reason to offer them an incentive to do so. The Federal funds used to pay indemnity for brucellosis reactors could then be directed to other aspects of the brucellosis eradication program.

Our proposal was supported by statistics available at the time that showed that the number of animals destroyed because they were brucellosis reactors had dropped each year since 1981, with the rate of decline fluctuating between 11 and 20 percent. This decline had been the case in all States, including those that had discontinued Federal indemnity payments, which gave us reason to believe that the success of the national brucellosis eradication program did not depend on compensating owners who destroyed brucellosis reactor cattle or bison.

We solicited comments on the proposed rule for a 60-day period ending on April 1, 1988, and received 20 letters of comment by the closing date. The letters came from 7 livestock/dairy industry groups, 6 State and national farm groups, 4 State departments of agriculture, a veterinary medical association, a private citizen, and a member of the U.S. House of Representatives. The commenters unanimously disapproved of the proposed rule. Fourteen of the commenters expressly requested that we discard the proposal and continue paying indemnity. Most of the commenters were of the opinion that the national brucellosis eradication program's demonstrated success would be negated if the payment of indemnity were to be prematurely terminated. Each of the four State departments of agriculture, along with one of the national farm groups, made it known that the withdrawal of Federal funds would make it difficult, if not impossible, for States to continue their own brucellosis indemnity programs. Other commenters mentioned the financial strain that the loss of indemnity payments would put on the dairy and beef industries.

After considering all the comments, we concluded that our proposal to phase out indemnity payments for brucellosis reactor cattle and bison would have a detrimental effect on our efforts to eradicate brucellosis in the United States. Therefore, we are withdrawing the proposed rule.

The current rates of indemnity for brucellosis reactor cattle and bison contained in 9 CFR 51.3(a)(1) remain in effect.

Authority: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, 134b; 7 CFR 2.17, 2.51, and 3.71.2(d).

Done in Washington, DC, this 17th day of August 1992.

Robert Melland

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19913 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 92

[Docket No. 86–101–2]

Importation of Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Withdrawal of proposed rule.

SUMMARY: We are withdrawing a proposed rule that would have allowed birds originating in the United States, and the offspring of those birds, to be imported from an approved breeding facility without quarantine in the United States. We believe that adoption of the proposal would create an unacceptable risk of the introduction of communicable diseases of poultry into the United States.

FOR FURTHER INFORMATION CONTACT: Dr. Keith Hand, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, Room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–5097.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR part 92 (referred to below as the regulations) include provisions concerning the importation of birds into the United States. Section 92.106 requires, with certain exceptions, that each lot of pet birds, commercial birds, zoological birds, and research birds imported from any part of the world be entered at certain ports and be quarantined either at a United States Department of Agriculture quarantine facility or at a privately operated quarantine facility approved by the Administrator of the Animal and Plant Health Inspection Service. The quarantine requirements were established to help ensure that birds imported into the United States are free from exotic Newcastle disease, forms of avian influenza lethal to poultry, and other communicable diseases of poultry. In a document published in the **Federal Register** December 6, 1988 (53 FR 49185–49193, Docket No. 86–101), we proposed to amend the regulations by establishing provisions to allow birds originating in the United States from an approved closed breeding facility, without quarantine in the United States. In this document we are withdrawing that proposal.

In the proposal, we invited written comments on its provisions, to be postmarked or received on or before February 6, 1989. We received approximately 700 comments. Two commenters supported the proposed rule as written. One commenter supported it with changes. The remainder of the commenters either opposed the proposal or expressed reservations concerning it.

The comments in opposition to the proposal raised many issues, including that of the supervision that would be provided at a closed breeding facility. It was intended that APHIS personnel would make periodic visits to the closed breeding facility. Additionally, the proposed rule provided for a salaried veterinarian of the national veterinary services of the country in which the facility is located to perform certain functions as needed, and otherwise to inspect the facility at least once each calendar week. Many of the commenters stated that potential difficulties in carrying out adequate monitoring would create an unacceptable risk of the introduction of disease into the facility. A number of commenters also stated that it would be difficult or impossible to enforce the proposed provision that employees in the facility have no contact with birds outside the facility for at least 3 days before entering the facility.

We have determined that these concerns have merit and that they provide a basis for withdrawing the proposal.

Authority: 7 U.S.C. 1622; 19 U.S.C. 102–105, 111, 134a,134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington DC, this 17th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–19912 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the second quarter, April through June, of 1992. This agenda provides the public with information about NRC's rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with Section 610 of the Regulatory Flexibility Act.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 11, No. 2, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2303 or (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 492–7758, toll-free number (800) 368–5642.

Dated at Bethesda, Maryland, this 5th day of August 1992.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 92–19680 Filed 8–19–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–CE–14–AD]

Airworthiness Directives; SOCATA Groupe AEROSPATIALE TBM 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have been applicable to certain SOCATA Groupe AEROSPATIALE TBM 700 airplanes. The proposed action would have required the installation of a static discharger on the left hand anti-ice windshield. Since issuance of the NPRM, the Federal Aviation Administration (FAA) has determined that electrostatic discharge will not lead to a cracked or broken windshield and, therefore will not result in cabin decompression. The outer layer of the windshield is not load carrying and it is possible to repair any holes formed as a result of electrostatic discharge. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond A. Stoer, Program Officer, Brussels Aircraft Certification Office, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B–1000 Brussels, Belgium; Telephone (322) 513.38.30; Facsimile (322) 230.68.99; or Mr. William J. Timberlake, Project Officer, Small Airplane Directorate, Airplane Certification Service, FAA, 601 E. 12th Street, Kansas City, Missouri 64106; Telephone (816) 426–6932; Facsimile (816) 426–2169.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that would be applicable to SOCATA Groupe AEROSPATIALE TBM 700 airplanes was published in the **Federal Register** on March 3, 1992 (57 FR 7562). The action proposed to require the installation of a static discharger on the left hand anti-ice windshield in accordance with the instructions in Socata Technical Instruction OPT 70K004, dated November 1991.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received on the proposed rule from the manufacturer, SOCATA.

SOCATA states that the proposed rule is not necessary because the outer layer of the windshield is not load carrying and it is possible to repair any holes formed as a result of electrostatic discharge. The FAA concurs and has determined that electrostatic discharge will not lead to a cracked or broken windshield and, therefore will not result in cabin decompression. Accordingly, the proposed rule is withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12291, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. 92–CE–14–AD, published in the **Federal Register** on March 3, 1992 (57 FR 7562), is withdrawn.

Issued in Kansas City, Missouri, on August 14, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–19663 Filed 8–19–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 182 and 184

[Docket No. 80N–0218]

Citric Acid and Certain Citrate Derivatives; Affirmation of GRAS Status as Direct Human Food Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule.

SUMMARY: The Food and Drug Administration (FDA) is tentatively affirming citric acid, dibasic ammonium citrate, calcium citrate, potassium citrate, sodium citrate, isopropyl citrate, stearyl citrate, and triethyl citrate as generally recognized as safe (GRAS) for use as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

DATES: Written comments by October 19, 1992.

ADDRESSES: Submit written comments to the Dockets Management (HFA–305), Branch Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFF–333), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 7, 1983 (48 FR 834), FDA published a proposal to affirm that citric acid, dibasic ammonium citrate, calcium citrate, potassium citrate, sodium citrate, isopropyl citrate, stearyl citrate, and triethyl citrate are GRAS for use as direct human food ingredients. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on citric acid and these citrate derivatives have been made available for public review in the Dockets Management Branch (address above). Copies of these documents are also available for purchase from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161.

In addition to proposing to affirm the GRAS status of citric acid and these particular citrate derivatives, FDA gave public notice that it was unaware of any prior-sanctioned food ingredient uses for these substances other than for the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions so that the safety of any such prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of these ingredients recognized by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR part 181) or affirmed as GRAS under part 184 or 186 (21 CFR part 184 or 186), as appropriate. FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for citric acid, dibasic ammonium citrate, calcium citrate, potassium citrate, sodium citrate, isopropyl citrate, stearyl citrate, or triethyl citrate were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of these ingredients under conditions different from those set forth in this rule or in part 181 has been waived.

The agency is publishing a tentative final rule before proceeding to final action because a significant period of time has elapsed since the publication of the proposal. In addition, this will allow for comment on several provisions that were not part of the proposal.

I. Response to Comments

Four letters, each containing one or more comments, were received in response to the agency's proposal on citric acid and the above citrates. A summary of the comments and the agency's responses are as follows:

1. One comment suggested changes in the description of the methods of manufacture for ammonium citrate (dibasic), calcium citrate, potassium citrate, and sodium citrate. The comment indicated that citric acid is only partially neutralized with ammonia in the manufacture of ammonium citrate (dibasic) and that calcium carbonate, potassium carbonate, and sodium carbonate, as well as their respective hydroxides, are used in the production of calcium, potassium, and sodium citrates.

The agency has reviewed this comment and agrees that the requested changes in the methods of manufacture for these ingredients are appropriate. Therefore, the agency is tentatively revising § 184.1140(a) (ammonium citrate (dibasic)), § 184.1195(a) (calcium citrate), § 184.1625(a) (potassium citrate), and § 184.1751(a) (sodium citrate) to incorporate the suggested changes.

2. Three comments reported additional direct food uses or potential food uses for ammonium citrate (dibasic), isopropyl citrate, stearyl citrate, and triethyl citrate and requested inclusion of these uses in the final rule.

One comment reported the additional use of triethyl citrate as a flavoring agent in breakfast cereals, confections and frostings, and in gravies and sauces. Another comment indicated the potential use in soft drinks of: Ammonium citrate (dibasic) as a pH control agent and as a flavor enhancer; isopropyl citrate as a solvent (vehicle) for flavors and as a sequestrant; and stearyl citrate as an antioxidant, emulsifier, and surface-active agent. Yet another comment reported the use of isopropyl citrate and stearyl citrate as sequestrants in margarine and requested that the regulations for these ingredients be expanded to affirm these citrates as GRAS for this use in all fats and oils (including margarine).

In its safety review, the Select Committee had concluded that no evidence in the available information on these citrate derivatives demonstrates, or suggests reasonable grounds to suspect, a hazard to the public at levels that are now current or might reasonably be expected in the future. In the proposal, the agency stated that it had undertaken its own review of the available information on these citrate derivatives and concurred with the conclusion of the Select Committee. The agency has considered the requested additional uses of these ingredients and finds that the additional amounts consumed would not be large enough to change that conclusion and that sufficient safety data exist to affirm the uses as GRAS when the ingredients are used in accordance with current good manufacturing practice. The agency also concludes that the ingredients will perform the technical effects specified.

Therefore, the agency is tentatively revising § 184.1140(c)(1) (ammonium citrate (dibasic)), § 184.1386(c)(1) (isopropyl citrate), and § 184.1851(c)(1) (stearyl citrate) to include the requested uses of these ingredients. With respect to the requested additional uses of triethyl citrate, the agency advises that while such use is appropriate, it is no longer including in § 184.1911(c)(2) a list of all the food categories in which it is used or its use was requested. The agency finds that inclusion of all of these food categories would result in a regulation for triethyl citrate that would be unnecessarily long regarding its description of food applications. The agency also concludes that a large margin of safety exists for current and reasonably expected future uses of this ingredient in food. The agency is retaining, however, the technical effects that were evaluated to provide some information on the scope of the safety review of this ingredient.

3. One comment noted a discrepancy in the proposed regulation for ammonium citrate (dibasic) in § 184.1140(b) (21 CFR 184.1140(b)) where it was indicated that specifications are being developed for isopropyl citrate. The comment noted that reference should be made to the development of specifications for ammonium citrate (dibasic) in this case.

The agency agrees that an error was made in the proposed regulation for ammonium citrate (dibasic). The inadvertent reference to developing food-grade specifications for isopropyl citrate is incorrect. Therefore, the agency is tentatively modifying § 184.1140(b) to reflect the correct term, ammonium citrate (dibasic).

4. One comment suggested that the technical effect listed in the proposal for stearyl citrate should be changed from antioxidant to sequestrant. The comment stated that stearyl citrate does not function directly as an antioxidant but it sequesters metal ions that otherwise would catalyze the oxidation of fats and oils.

The agency agrees that stearyl citrate prevents the oxidation of fats and oils (including margarine) by sequestering metal ions. Therefore, the agency is tentatively revising § 184.1851(c)(1) by adding sequestrant, as defined in § 170.3(o)(26) (21 CFR 170.3(o)(26)), to the list of technical effects for stearyl citrate. The agency is incorporating a similar change in § 184.1386(c)(1) for isopropyl citrate because both ingredients are used for the same technical effect in margarine and because it is contemplated that they will be used for the same technical functions in other fats and oils.

5. One comment noted that although the preamble to the proposal mentioned the prior-sanctioned uses of monoisopropyl citrate, triethyl citrate, and mono-, di-, and tristearyl citrate as plasticizers for food packaging in

§ 181.27 (21 CFR 181.27), the preamble did not mention acetyl tributyl citrate or acetyl triethyl citrate, which are also listed as prior-sanctioned plasticizers in the same regulation. The comment asked if this omission was intentional, and, if so, objected to this omission and requested that acetyl tributyl citrate and acetyl triethyl citrate be affirmed as prior-sanctioned plasticizers for food-contact materials under § 181.27.

Acetyl tributyl citrate and acetyl triethyl citrate were not mentioned in the proposal because the agency was not proposing to affirm these particular citrate derivatives as GRAS for direct use in human food. The use of monoisopropyl citrate, triethyl citrate, and mono-, di-, and tristearyl citrate as prior-sanctioned plasticizers was mentioned as background information in the preamble to the proposal only because these citrates were among those whose GRAS status for direct food use had been under evaluation and was being affirmed. Accordingly, the agency is not making the requested modification because it is outside the scope of this rulemaking proceeding.

II. Other Actions

In the proposal, FDA had defined isopropyl citrate as "The mono-, di-, and triisopropyl esters of citric acid or any mixture of these esters." Stearyl citrate was defined similarly. However, the agency has found no evidence that mono-, di-, or triisopropyl citrate is commercially available as the single chemical entity; rather, isopropyl citrate is a mixture of the mono-, di-, and triisopropyl esters of citric acid. Similarly, the commercially available form of stearyl citrate is a mixture of the mono-, di-, and tristearyl esters of citric acid. These commercially available mixtures were the substances evaluated in the safety reviews by both the Select Committee and FDA. Therefore, the agency is tentatively revising the definition of isopropyl citrate in § 184.1388(a) to read: "Isopropyl citrate is a mixture of the mono-, di-, and triisopropyl esters of citric acid." The agency is also tentatively revising the definition of stearyl citrate in § 184.1851(a) to read: "Stearyl citrate is a mixture of the mono-, di-, and tristearyl esters of citric acid." Because the wording of the definitions of these two citric acid derivatives in this tentative final rule is different from that which was set forth in the proposal, the agency is inviting comments on this specific modification. Although the definition of isopropyl citrate has been modified, the agency is still not proposing a separate GRAS affirmation regulation for monoisopropyl citrate and is proposing to remove the listing for this ingredient in § 182.6511 (21 CFR 182.6511). Again, this is because the agency has found no evidence that monoisopropyl citrate is commercially available as the single chemical entity, or that it is currently used directly in human food. The regulatory changes for monoisopropyl citrate in this tentative final rule correspond to those in the original proposal, although the underlying reasoning is slightly different.

In the proposal, the agency required that citric acid meet the specifications of the Food Chemicals Codex, 3d ed. (1981). Since the publication of the proposal, the Committee on Food Chemicals Codex of the National Academy of Sciences (the NAS Committee) has amended its specifications for citric acid. These changes have been published in the third supplement to the Food Chemicals Codex, 3d ed. (1991), p. 107. Among the nonsubstantive changes in the third supplement is a change in the units associated with the limits on metal levels from parts per million (ppm) to milligrams per kilogram (mg/kg). The substantive changes include: Reductions in the maximum allowable levels for arsenic and heavy metals (as lead), from 3 ppm to 1 mg/kg (1 ppm) and from 10 ppm to 5 mg/kg (5 ppm), respectively; a modification of the test for arsenic; and inclusion of a maximum allowable lead level of 0.5 mg/kg (0.5 ppm), accompanied by a test method for lead (p. 168), neither of which was included in the previous specification monograph. The agency is tentatively incorporating these changes in the specifications for citric acid in § 184.1033(b). Because the specifications for citric acid in this tentative final rule (arsenic/heavy metals/lead limits and relevant test methods) are different from those set forth in the proposal, the agency is inviting comments on this specific modification.

The agency announced in the **Federal Register** of November 22, 1991 (56 FR 58910), an opportunity for public comment on a proposed revision of the Food Chemicals Codex specifications for triethyl citrate (refractive index) to be published in the fourth edition. The agency is not considering that proposed revision of triethyl citrate specifications with this rule. The adoption of revised specifications from the proposed fourth edition of the Food Chemicals Codex would be the subject of a separate notice of proposed rulemaking, with opportunity for public comment.

In the proposal, FDA stated that it would work with the NAS Committee to develop acceptable specifications for ammonium citrate (dibasic), isopropyl citrate, and stearyl citrate used as direct human food ingredients and would incorporate those specifications into the regulation when they are developed. To date, however, work on the specifications is still incomplete. Therefore, the agency advises that until the specifications are developed, ammonium citrate (dibasic), isopropyl citrate, and stearyl citrate for direct food uses must comply with the descriptions in §§ 184.1140(b), 184.1386(b), and 184.1851(b), respectively, and be of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

Other minor editorial changes have been made to clarify further the intent of the regulations set forth below.

III. Scope of the Tentative Final Rule

FDA is amending the current regulations by removing 21 CFR 182.1033, 182.1195, 182.1625, 182.1751, 182.1911, 182.6033, 182.6195, 182.6386, 182.6511, 182.6625, 182.6751, 182.6851, and 182.8195. The agency is adding 21 CFR 184.1033, 184.1140, 184.1195, 184.1386, 184.1625, 184.1751, 184.1851, and 184.1911.

IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule and published in the **Federal Register** of January 7, 1983 (48 FR 834). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Economic Impact

FDA has examined the economic implications of this rule affirming the GRAS status of citric acid and certain citrate derivatives as food ingredients, as required by Executive Orders 12291 and the Regulatory Flexibility Act (Pub. L. 96-354). The agency finds that this tentative final rule is not a major rule as defined by Executive Order 12291. Because no current activity is prohibited by this rule, the agency finds that the compliance cost to firms is zero. Because no increase in the health risks faced by consumers will result from this rule, the total costs are also zero. Potential benefits include the wider use of citric acid and the stipulated citrate derivatives because of reduced uncertainty regarding their GRAS status and the preservation of resources by eliminating the need to prepare further petitions to affirm the GRAS status of these substances. In accordance with the Regulatory Flexibility Act, FDA has also determined that this rule will not have a significant adverse impact on a substantial number of small businesses. There is no substantial federalism issue which would require an analysis under Executive Order 12612.

VI. Comments

Interested persons may, on or before October 19, 1992, submit to the Dockets Management Branch (address above) written comments regarding the following aspects of this tentative final rule:

(1) The inclusion of the changes published in the third supplement to the Food Chemicals Codex, 3d ed., to the specifications for citric acid in § 184.1033(b); and (2) the revised description of isopropyl citrate in § 184.1388(a) and of stearyl citrate in § 184.1851(a).

Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR part 182

Food ingredients, Food packaging, Spices and flavorings.

21 CFR part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, it is proposed that 21 CFR parts 182 and 184 be amended as follows:

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR part 182 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

2. Section 182.1033 *Citric acid*, § 182.1195 *Calcium citrate*, § 182.1625 *Potassium citrate*, § 182.1751 *Sodium citrate*, § 182.1911 *Triethyl citrate*, § 182.6033 *Citric acid*, § 182.6195 *Calcium citrate*, § 182.6386 *Isopropyl citrate*, § 182.6511 *Monoisopropyl citrate*, § 182.6625 *Potassium citrate*, § 182.6751 *Sodium citrate*, § 182.6851 *Stearyl citrate*, and § 182.8195 *Calcium citrate* are removed.

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. The authority citation for 21 CFR part 184 continues to read as follows:

Authority: Secs. 201, 402, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 371).

4. New § 184.1033 is added to subpart B to read as follows:

§ 184.1033 Citric acid.

(a) Citric acid ($C_6H_8O_7$, CAS Reg. No. 77-92-9) is the compound 2-hydroxy-1,2,3-propanetricarboxylic acid. It is a naturally occurring constituent of plant and animal tissues. It occurs as colorless crystals or a white powder and may be anhydrous or contain one mole of water per mole of citric acid. Citric acid may be produced by recovery from sources such as lemon or pineapple juice; by mycological fermentation using *Candida* spp., described in §§ 173.160 and 173.165 of this chapter; and by the solvent extraction process described in § 173.280 of this chapter for the recovery of citric acid from *Aspergillus niger* fermentation liquor.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d ed. (1981), pp. 86-87, and its third supplement (publication date: March 1992), p. 107, which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitations other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

5. New § 184.1140 is added to subpart B to read as follows:

§ 184.1140 Ammonium citrate, dibasic.

(a) Ammonium citrate, dibasic ($(NH_4)_2HC_6H_5O_7$, CAS Reg. No. 3012-65-5) is the diammonium salt of citric acid. It is prepared by partially neutralizing citric acid with ammonia.

(b) The Food and Drug Administration, in cooperation with the National Academy of Sciences, is developing food-grade specifications for ammonium citrate (dibasic). In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavor enhancer as defined in § 170.3(o)(11) of this chapter and as a pH control agent as defined in § 170.3(o)(23) of this chapter.

(2) The ingredient is used in nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter and in cheeses as defined in § 170.3(n)(5) of this chapter at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from those uses established in this section, or different from those set forth in part 181 of this chapter, do not exist or have been waived.

6. New § 184.1195 is added to subpart B to read as follows:

§ 184.1195 Calcium citrate.

(a) Calcium citrate ($Ca_3(C_6H_5O_7)_2 \cdot 4H_2O$, CAS Reg. No. 813-94-5) is the calcium salt of citric acid. It is prepared by neutralizing citric acid with calcium hydroxide or calcium carbonate. It occurs as a fine white, odorless powder and usually contains four moles of water per mole of calcium citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d ed. (1981), pp. 49-50, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an emulsifier and emulsifier salt as defined in § 170.3(o)(8) of this chapter; a firming agent as defined in § 170.3(o)(10) of this chapter; and a nutrient supplement as defined in § 170.3(o)(20) of this chapter.

(2) The ingredient is used in the following foods at levels not to exceed current good manufacturing practice: Cheeses as defined in § 170.3(n)(5) of

this chapter; fats and oils as defined in § 170.3(n)(12) of this chapter; gelatins and puddings as defined in § 170.3(n)(22) of this chapter; jams and jellies as defined in § 170.3(n)(28) of this chapter; and processed vegetables and vegetable juices as defined in § 170.3(n)(36) of this chapter. Calcium citrate may also be used in infant formula in accordance with section 412(g) of the Federal Food, Drug, and Cosmetic Act (the act) or with regulations promulgated under section 412(a)(2) of the act.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

7. New § 184.1386 is added to subpart B to read as follows:

§ 184.1386 Isopropyl citrate.

(a) Isopropyl citrate is a mixture of the mono-, di-, and triisopropyl esters of citric acid. It is prepared by esterifying citric acid with isopropanol.

(b) The Food and Drug Administration, in cooperation with the National Academy of Sciences, is developing food-grade specifications for isopropyl citrate. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an antioxidant as defined in § 170.3(o)(3) of this chapter; a sequestrant as defined in § 170.3(o)(28) of this chapter; and a solvent and vehicle as defined in § 170.3(o)(27) of this chapter.

(2) The ingredient is used in margarine in accordance with § 166.110 of this chapter; in nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter; and in fats and oils as defined in § 170.3(n)(12) of this chapter at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section, or different from those set forth in part 181 of this chapter, do not exist or have been waived.

8. New § 184.1625 is added to subpart B to read as follows:

§ 184.1625 Potassium citrate.

(a) Potassium citrate ($C_6H_5K_3O_7.H_2O$, CAS Reg. No. 006100–05–6) is the potassium salt of citric acid. It is prepared by neutralizing citric acid with potassium hydroxide or potassium carbonate. It occurs as transparent crystals or a white granular powder, is odorless and deliquescent, and contains one mole of water per mole of potassium citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d ed. (1981), p. 242, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section, or different from those set forth in part 181 of this chapter, do not exist or have been waived.

9. New § 184.1751 is added to subpart B to read as follows:

§ 184.1751 Sodium citrate.

(a) Sodium citrate ($C_6H_5Na_3O_7.2H_2O$, CAS Reg. No. 68–04–2) is the sodium salt of citric acid. It is prepared by neutralizing citric acid with sodium hydroxide or sodium carbonate. The product occurs as colorless crystals or a white crystalline powder. It may be prepared in an anhydrous state or may contain two moles of water per mole of sodium citrate.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d ed. (1981), pp. 283–284, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section, or different from those set forth in part 181 of this chapter, do not exist or have been waived.

10. New § 184.1851 is added to subpart B to read as follows:

§ 184.1851 Stearyl citrate.

(a) Stearyl citrate is a mixture of the mono-, di-, and tristearyl esters of citric acid. It is prepared by esterifying citric acid with stearyl alcohol.

(b) The Food and Drug Administration, in cooperation with the National Academy of Sciences, is developing food-grade specifications for stearyl citrate. In the interim, this ingredient must be of a purity suitable for its intended use.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as an antioxidant as defined in § 170.3(o)(3) of this chapter; an emulsifier and emulsifier salt as defined in § 170.3(o)(8) of this chapter; a sequestrant as defined in § 170.3(o)(28) of this chapter; and a surface-active agent as defined in § 170.3(o)(29) of this chapter.

(2) The ingredient is used in margarine in accordance with § 166.110 of this chapter; in nonalcoholic beverages as defined in § 170.3(n)(3) of this chapter; and in fats and oils as defined in § 170.3(n)(12) of this chapter at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section, or different from those set forth in part 181 of this chapter, do not exist or have been waived.

11. New § 184.1911 is added to subpart B to read as follows:

§ 184.1911 Triethyl citrate.

(a) Triethyl citrate ($C_{12}H_{20}O_7$, CAS Reg. No. 77–93–0) is the triethyl ester of citric acid. It is prepared by esterifying citric acid with ethyl alcohol and occurs as an odorless, practically colorless, oily liquid.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 3d ed. (1981), p. 339, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies are available from the National Academy Press, 2101 Constitution Ave. NW., Washington, DC 20418, or available for inspection at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(c) In accordance with § 184.1(b)(1), the ingredient is used in food with no limitation other than current good manufacturing practice. The affirmation of this ingredient as generally recognized as safe (GRAS) as a direct human food ingredient is based upon the following current good manufacturing practice conditions of use:

(1) The ingredient is used as a flavoring agent as defined in § 170.3(o)(12) of this chapter; a solvent and vehicle as defined in § 170.3(o)(27) of this chapter; and a surface-active agent as defined in § 170.3(o)(29) of this chapter.

(2) The ingredient is used in foods at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section, or different from those set forth in part 181 of this chapter, do not exist or have been waived.

Dated: August 3, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–19804 Filed 8–19–92; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OAQPS No. CA–12–16–5546; FRL–4196–8]

Approval and Promulgation of Implementation Plans, California State Implementation Plan Revision; Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the Santa Barbara County Air Pollution Control District (SBCAPCD) on November 13, 1990. The California Air Resources Board submitted these revisions to EPA on April 5, 1991. The revisions concern SBCAPCD's Rule 330, Surface Coating of Metal Parts and Products, which regulates metal surface coating operations. EPA has evaluated this rule and is proposing to approve it under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Comments may be mailed to: Daniel Meer, Southern California, Arizona Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation, 1219 K Street, Sacramento, CA 95814.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Southern California, Arizona Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1195, Fax: (415) 744–1076.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA), that includes Santa Barbara County. 43 FR 8964; 40 CFR 81.305. Because the Santa Barbara area was unable to meet the statutory attainment date of December 31,1982, California requested, and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California that the above district's portion of the California State Implementation Plan (SIP) was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pubic Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amended guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Santa Barbara County is classified as moderate.[2] Therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on April 5, 1991, including the rule being acted on in this notice. This notice addresses EPA's proposed action for SBCAPCD's Rule 330, Surface Coating of Metal Parts and Products. This submitted rule was found to be complete on May 21, 1991 pursuant to EPA's completeness criteria adopted on February 16, 1990 (55 FR 5830) and set forth in 40 CFR part 51 appendix V[3] and is being proposed for approval into the SIP.

Rule 330 regulates the emission of volatile organic compounds (VOCs) from metal surface coating operations. VOCs contributed to the production of ground level ozone and smog. The rule was adopted as part of SBCAPCD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for this rule.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988), and the existing control technique guidelines (CTGs).

[2] Santa Barbara County Air Pollution Control District was redesignated nonattainment and classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[3] EPA has since adopted completeness criteria pursuant to section 110(k)(1)(A) of the CAA. See 56 FR 42216 (August 26, 1991).

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SBCAPCD's Rule 330 is entitled, "Control of Volatile Organic Emissions from Existing Stationary Sources (Volume VI: Surface Coating of Miscellaneous Metal Parts and Products)", EPA–450/2–78–015. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SBCAPCD's Rule 330, Surface Coating of Metal Parts and Products, includes the following significant changes from the current SIP approved rule:

- An applicability statement was added for clarity;
- Several new definitions were added to clarify and strengthen the Rule;
- Revision of application equipment requirements to specify application methods and to allow other methods capable of achieving at least 65% transfer efficiency;
- Addition of an add-on control equipment provision to aid in compliance;
- Addition of closed container requirements to minimize pollutant emissions;
- Addition of labeling requirements to improve the enforceability of the Rule;
- Specification of recordkeeping requirements for coatings and solvents;
- Specification of test methods for determining the VOC, water and exempt solvent content of coatings;
- Addition of new Exemptions for coating operations covered by other Rules;
- Revision of compliance schedule to allow sources previously exempt time to become compliant;
- Language modifications and rule reorganization that improve clarity.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SBCAPCD's Rule 330 is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and Part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state actions. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 7, 1992.

John Wise,

Acting Regional Administrator.

[FR Doc. 92–19741 Filed 8–19–92; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 80

[AMS–FRL–4196–5]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: This notice announces the time and place for a public workshop intended to help develop EPA's complex emissions model for reformulated gasoline.

DATES: The public workshop will be held on August 25, 1992. It will start at 9 a.m. and will continue as long as necessary to complete the agenda.

ADDRESSES: The public workshop will be held at the Ramada Inn near the Detroit Metropolitan Airport. The address of the hotel is 8270 Wickham Road, Romulus, Michigan and the telephone number is (313) 729–6300. Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–12, at: Air Docket Section (LE–131), U.S. Environmental Protection Agency, Attention: Docket No. A–92–12, First Floor, Waterside Mall, rm. M–1500, 401 M Street, SW, Washington, DC 20460.

Materials related to this rulemaking, including documents distributed at earlier workshops, have been placed in Dockets A–91–02 and A–92–12 by EPA. These dockets are located at the above address and may be inspected between 8:30 a.m. and noon and between 1:30 p.m. and 3:30 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Ms. Joann Jackson Stephens, Fuel Studies and Standards Branch, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4276.

SUPPLEMENTARY INFORMATION:

Background

Section 211(k) of the Clean Air Act, as amended, requires that EPA promulgate regulations establishing the requirements for a reformulated gasoline program. The reformulated gasoline program has been developed in part through a process known as negotiated rulemaking. The agreement provided refiners with two modeling options for determining whether fuels meet the reformulated gasoline requirements. The first modeling option is the simple model which would be used to certify reformulated gasoline during 1995 and 1996. (See 57 FR 13416 (April 16, 1992) for a comprehensive review). Under the terms of the agreement, EPA is to develop a more sophisticated model (the complex model) which can be used in 1995 and will be required for use beginning in 1997 through a rulemaking to be completed by March 1, 1993. EPA is holding a series of workshops to expedite the development and promulgation of a rule establishing a complex emission model for the reformulated gasoline program.

All workshops in the series will be open to the public. The first such workshop was held in Ann Arbor, Michigan, on Wednesday, January 22 and Thursday, January 23; the second such workshop was held in Ann Arbor, Michigan, on Tuesday, February 18. The third such workshop was held in Ann Arbor, Michigan, on Tuesday, April 28. The purpose of the workshops and supplementary information regarding the workshops can be found in 57 FR 2068 (January 17, 1992), 57 FR 5409 (February 14, 1992) and 57 FR 10323 (March 25, 1992).

Public Workshop

The August workshop is the fourth in this series of public workshops. It will include the following topics:

—*Review of complex model iteration:* EPA will review the latest iteration of its complex model for exhaust emissions. The agency will present for public review and comment the equations and analysis methodology used. In addition, EPA will describe the next steps in the analysis process for complex model exhaust emissions.

—*Review of complex model for non-exhaust emissions:* The agency will present its latest complex model equations and analysis methodology for non-exhaust emissions.

Other presentations regarding complex model exhaust emissions models, analysis methodology and proposed next steps are encouraged. Those interested in making such presentations should notify Joann Jackson Stephens at (313) 668–4276 of such intent at least three days before the workshop. Interested speakers should also provide an estimate of the time required for the presentation of the testimony and any need for audio/visual equipment. Questions will be taken after each presentation.

Public Participation

EPA strongly encourages full public participation in the development and assessment of information that will be used in developing the proposed complex model. This workshop will help determine the methods used by the Agency in developing the proposed complex model and the content of the proposed complex model itself, and EPA welcomes public input regarding the proposed rule and the methods most appropriate for use in developing the model.

EPA suggests that enough copies of the material for presentation be brought to the workshop for distribution to the audience. EPA anticipates attendance of 70 to 100 people. In addition, it will be helpful for EPA to receive an advance copy of any material for presentation before the scheduled workshop date so as to allow EPA staff to give such material full consideration.

Mr. Richard Rykowski, Chief for the Fuel Studies and Standards Branch in the Regulation and Support Division of EPA's Office of Mobile Sources will chair the workshop. The workshop will be conducted informally, and technical rules of evidence will not apply.

Dated: August 12, 1992.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–19740 Filed 8–19–92; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52c

RIN 0905–AD47

Minority Biomedical Research Support Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed regulations would revise the existing regulations which govern the administration of Minority Biomedical Research Support Program (grants), to update the authority citation and other applicable HHS regulations and policies currently cited, change the title of a regulatory part to match the current name of the program, and make several minor language changes.

DATES: Comments on the proposed regulations must be received in writing on or before October 19, 1992.

ADDRESSES: Comments should be sent in writing to: Mr. John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B11, 9000 Rockville Pike, Bethesda, Maryland, 20892.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Migliore, telephone (301) 496–4606 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The current regulations in 42 CFR part 52c entitled Minority Biomedical Support Program govern the administration of grants awarded pursuant to section 301(a)(3) of the Public Health Service (PHS) Act (42 U.S.C. 241(a)(3)) to increase the numbers of ethnic minority faculty, students, and investigators engaged in biomedical research, and to broaden the opportunities for participation in biomedical research of ethnic minority faculty, students, and investigators, by providing general support for biomedical research at eligible institutions. The proposed rule would revise these regulations to incorporate required changes in the authority citation and other HHS regulations and policies currently cited, change the title of part 52c to match the name of the program, and revise the definition of "ethnic minorities" in § 52c.2 to correspond to the current operational definition used in administering the program.

Regulatory Impact and Regulatory Flexibility Analyses

Executive Order No. 12291

The Secretary has reviewed the proposed rule under the requirements of Executive Order No. 12291 (Federal Regulation) and has determined that it is not a major rule as defined in section 1(b) of the Executive Order and, therefore, does not require a regulatory impact analysis.

Regulatory Flexibility Act

The Secretary has reviewed the proposed rule under the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6) and has determined that it would not have a significant economic impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

Section 52c.4 of this proposed rule contains information collection requirements which are subject to OMB approval under the Paperwork

Reduction Act of 1980 (44 U.S.C. chapter 35). The information collection requirements were approved by OMB in September 1991 under OMB Approval No. 0925-0001, which expires in June 1994. The applications (Form PHS 398 Application for Public Health Service Grant and PHS 2590 Application for Continuation of Public Health Service Grant) used in the information collections specified in § 52c.4 and the burden hours associated with the application requirements in these regulations are included in the approval of the applications under OMB Approval No. 0925-0001.

Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance numbered program affected by the proposed regulations is: 93.375.

List of Subjects in 42 CFR Part 52c

Biomedical research, Grant programs—health, Minority biomedical research support.

It is proposed to amend subchapter D of chapter 1 of title 42 of the Code of Federal Regulations by amending part 52c as set forth below.

Dated: March 17, 1992.

James O. Mason,

Assistant Secretary for Health.

Approved: May 22, 1992.

Louis W. Sullivan,

Secretary.

PART 52c—MINORITY BIOMEDICAL RESEARCH SUPPORT PROGRAM

1. The authority citation for part 52c would be revised to read as follows:

Authority: 42 U.S.C. 216, 241(a)(3).

2. The title of part 52c would be revised to read as set forth above.

3. Section 52c.1 would be revised to read as follows:

§ 52c.1 Applicability.

The regulations in this part apply to grants (under the Minority Biomedical Research Support Program) awarded in accordance with section 301(a)(3) of the Public Health Service (PHS) Act (42 U.S.C. 241(a)(3)) to increase the numbers of ethnic minority faculty, students, and investigators engaged in biomedical research, and to broaden the opportunities for participation in biomedical research of ethnic minority faculty, students, and investigators, by providing general support of biomedical research programs at eligible institutions.

4. Section 52c.2 would be revised to read as follows:

§ 52c.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 et seq.).

Ethnic minorities includes but is not limited to such groups as Black Americans, Hispanic Americans, Asian/Pacific Islanders, and American Indians/Native Alaskans (Native Americans).

HHS means the Department of Health and Human Services.

Nonprofit as applied to any institution means an institution which is a corporation or association no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

Program director means a single individual, designated in the grant application, who is scientifically trained and has research experience, and who is responsible for the overall execution of the program supported under this part at the grantee institution.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

5. Paragraph (b) of § 52c.3 would be revised to read as follows:

§ 52c.3 Eligibility.

* * * * *

(b) Located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor States of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

6. Section 52c.4 would be amended by revising paragraph (c) and adding a phrase following paragraph (d) to read as follows:

§ 52c.4 Application.

* * * * *

(c) Each application shall contain a narrative description of the institution's biomedical research and biomedical research training capability; the nature and purpose of the proposed biomedical research program; the manner in which the institution intends to conduct the program in conformity with this part; and the value of the program to the overall mission and objectives of the institution. The application shall also set forth the proposed project period (not to exceed five years), a detailed budget for the first budget period and the anticipated total needs for each of the succeeding budget periods of the requested project period, a justification for the amount of grant funds requested, the names and qualifications of the program director and the directors of the individual projects or elements within the program, the total facilities and resources that will be available (including where necessary collaborative arrangements with other institutions), and such other pertinent information as the Secretary may require.

(d) * * *

(Approved under OMB Control Number 0925-0001)

7. Paragraph (a)(1) of § 52c.5 would be revised to read as follows:

§ 52c.5 Grant awards.

(a) * * *

(1) The benefits that can be expected to accrue to the national effort in biomedical research and in increasing the pool of biomedical researchers;

* * * * *

8. Section 52c.7 would be revised to read as follows:

§ 52c.7 Other HHS regulations that apply.

Several other regulations and policies apply to grants under this part. These include, but are not necessarily limited to:

37 CFR part 401—Rights to inventions made by nonprofit organizations and small business firms under government grants, contracts, and cooperative agreements.

42 CFR part 50, subpart A—Responsibilities of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science.

42 CFR part 50, Subpart D—Public Health Service grant appeals procedures.

45 CFR part 16—Procedures of the Departmental Grant Appeals Board.

45 CFR part 46—Protection of human subjects.

45 CFR part 74—Administration of grants.

45 CFR part 75—Informal grant appeals procedures.

45 CFR part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants).

45 CFR part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of title VI of the Civil Rights Act of 1964.

45 CFR part 81—Practice and procedure for hearings under part 80 of this title.

45 CFR part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

45 CFR part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance.

45 CFR part 91—Nondiscrimination on the basis of age in HHS programs and activities receiving Federal financial assistance.

45 CFR part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments.

45 CFR part 93—New restrictions on lobbying.

51 FR 16958, or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules.

Public Health Service Policy on Humane Care and Use of Laboratory Animals. Office for Protection from Research Risks, NIH (Revised September 1986), or successor.

[FR Doc. 92-19722 Filed 8-19-92; 8:45 am]

BILLING CODE 4140-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-7048]

Proposed Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base flood elevation modifications for the communities listed below. The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the proposed determinations of base (100-year) flood elevations and modified base flood elevations for each community listed, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents.

National Environmental Policy Act.

This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. Section 67.4 is proposed to be amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
MAINE	
Perry (Town), Washington County	
Boyden Lake: Entire shoreline within community	*79
Atlantic Ocean	
Sipp Bay: At Burby Road extended	*15
Passamaquoddy Bay: At northern corporate limits	*25
Maps available for inspection at the Perry Town Office, Municipal Building, Route 1, Perry, Maine.	
Send comments to Mr. Richard Gove, First Selectman for the Town of Perry, Washington County, Box 190, Old Eastport Road, Perry, Maine 04667.	
NEW HAMPSHIRE	
Atkinson (Town), Rockingham County	
Hog Hill Brook:	
Just upstream of Haverhill Road	*137
Just upstream of Island Pond Road	*189
Byrant Brook:	
Approximately 620 feet upstream of the confluence with Little River	*47
Approximately 30 feet upstream of East Road	*82
Island Pond: Entire shoreline within community	*207
Maps available for inspection at the Atkinson Town Hall, 21 Academy Avenue, Atkinson, New Hampshire.	
Send comments to Mr. Robert Morse, Chairman of the Town of Atkinson Board of Selectmen, Rockingham County, Atkinson Town Hall, 21 Academy Avenue, Atkinson, New Hampshire 03811.	

§ 67.4 [Amended]

3. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Auburn, Lee County.	Moore's Mill Creek	Just upstream of Ogletree Road	*503	*512
			Just downstream of Lake Wilmore Dam	*507	*513
			Just upstream of Lake Wilmore Dam	*529	*527
			Just downstream of Moore's Mill Road	None	*559

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Planning Department, 171 North Ross Street, Auburn, Alabama.					
Send comments to The Honorable Doug Watson, City Manager, City of Auburn, P.O. Box 511, Auburn, Alabama 36831-0511.					
Alabama	Muscle Shoals, City Colbert County.	Sinkhole 4	Approximately 3,200 feet northeast of the intersection of Avalon Avenue and Wilson Dam Highway.	*510	*505
		Sinkhole 4A	On east side of Wilson Dam Highway, approximately 350 feet north of Carr Avenue.	None	*516
		Sinkhole 4B	On west side of Wilson Dam Highway, approximately 350 feet north of Carr Avenue.	None	*511
		Sinkhole 5	Area surrounded by 4th Avenue, Edwards Avenue, Firestone Avenue, and Popular Street.	*508	*506
		Sinkhole 6	Area surrounded by Moss Avenue, Broadway, Ford Avenue, and John R. Street.	*507	*506
		Sinkhole 7	Area bounded by Woodward Avenue, Pasadena Avenue, Gusmus Avenue, and Highland Avenue.	*499	*497
			Area bounded by Michigan Avenue, Avalon Avenue, and Woodward Avenue on the north, south, and east, respectively.	*499	*497
		Sinkhole 9	Area approximately 500 feet southwest of intersection of Lenz Street and Sixth Street.	*512	*510
		Sinkhole 12	Area surrounded by Brighton Avenue, Woodward Avenue, Hill Avenue.	None	*498
		Sinkhole 14	Area extending from the western corporate limits to the vicinity of George Wallace Road southeast along the southwest side of the Southern Railroad to a point approximately 200 feet Southeast of Mason Street.	*489	*491
Maps available for inspection at the City of Muscle Shoals Building Department, 1000 East Avalon Avenue, Muscle Shoals, Alabama.					
Send comments to The Honorable Charles D. Lawler, Mayor of the City of Muscle Shoals, Colbert County, P.O. Box 2624, Muscle Shoals, Alabama 35662.					
Arkansas	City of Paris, Logan County.	Short Mountain Creek Tributary.	Approximately 1,600 feet upstream of the confluence with Short Mountain Creek.	None	*380
			Just upstream of Walnut Street	None	*400
			At Maple Street	None	*408
			At Cherry Street	None	*424
			Approximately 2,000 feet upstream of Cherry Street.	None	*431
Maps are available for review at City Hall, 100 North Express, Paris, Arkansas.					
Send comments to The Honorable Charles Ford, Mayor, City of Paris, P.O. Box 271, Paris, Arkansas 78225.					
California	City of Marina, Monterey County.	Infiltration Pond	Just east of the intersection of Dunes Drive and Dunes Court.	*None	*16
			Approximately 500 feet northeast of the intersection of Abdy Way and Cardoza Avenue.	*None	*11
			Approximately 900 feet northeast of the intersection of Abdy Way and Cardoza Avenue, just east of Abdy Way.	*None	*20
			Approximately 1,000 feet northeast of the intersection of Abdy Way and Cardoza Avenue, just east of Abdy Way.	*None	*25
			Approximately 500 feet southeast of the intersection of Del Monte Boulevard and Cosky Drive.	*None	*60
			Approximately 300 feet northeast of the intersection of Cosky Drive and Michael Drive.	*None	*26
			Approximately 1,000 feet south of the intersection of State Highway 1 and Reservation Road, just east of State Highway 1.	*None	*8
			Just west of the intersection of Beach Road and Reservation Road.	*None	*9
			Just north of the intersection of Beach Road and Reservation Road.	*None	*7
			Just east of the intersection of Beach Road and Reservation Road.	*None	*7
			Approximately 800 feet southwest of the intersection of Beach Road and DeForest Road, along the DeForest Road.	*None	*54
			At the intersection of Lake Road and Seaside Avenue.	*None	*13
			Just southeast of the intersection of Beach Road and Seaside Avenue.	*None	*8
			Approximately 1,000 feet northwest of Lake Road and Messinger Drive.	*None	*5
			At the northwest corner of the intersection of Lake Road and Messinger Drive.	*None	*8

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
			Just east of the intersection of Hillcrest Avenue and Berney Drive.	*None	*73
			Approximately 500 feet southwest of the intersection of Reindollar Avenue and King Circle, just west of King Circle.	*None	*90
			Approximately 1,000 feet southwest of the intersection of Reindollar Avenue and Ellen Court.	*None	*73
			At the intersection of Sunset Avenue and Cypress Avenue.	*None	*30
		Natural Depression	Approximately 500 feet north of the intersection of Del Monte Boulevard and Cosky Drive, just west of Del Monte Boulevard.	*None	*37
			Approximately 1,000 feet southwest of the intersection of Marina Drive and Palm Avenue, along Marina Drive.	*None	*25
			Just east of the intersection of Reindollar Avenue and Del Monte Boulevard.	*None	*34
Maps are available for review at City Hall, 211 Hillcrest Avenue, Marina, California.					
Send comments to The Honorable Edith Johnsen, Mayor, City of Marina, 211 Hillcrest Avenue, Marina, California 93933.					
California	City of Moreno Valley, Riverside County.	Heacock Street Channel and Perris Valley Storm Drain.	Perris Valley Storm Drain Lateral "B", approximately 1,700 feet upstream of the confluence with Perris Valley Storm Drain.	None	*1,458
			The intersection of Indian Street and Nandina Avenue.	None	*1,473
			The Indian Street crossing with Perris Valley Storm Drain.	None	*1,478
			The intersection of Iris Avenue and Heacock Street.	None	*1,502
			Approximately 1,800 feet upstream of Iris Avenue.	None	*1,509
Maps are available for review at City Hall, 23119 Cottonwood Avenue, Building "B", Moreno Valley, California.					
Send comments to The Honorable Richard Stewart, Mayor, City of Moreno Valley, P.O. Box 1440, Moreno Valley, California 92556.					
California	City of San Marcos, San Diego County.	San Marcos Creek	Just upstream of Discovery Street	*516	*515
			Approximately 1,020 feet upstream of Discovery Street.	*516	*516
			Just downstream of Via Vera Cruz	*534	*530
			Just downstream of Echo Lane	*553	*548
			Just upstream of State Highway 78	*562	*561
			Approximately 1,240 feet upstream of Twin Oaks Valley Road.	*574	*571
			Approximately 280 feet upstream of Valpreda Road.	*589	*585
			Approximately 240 feet upstream of the Atchison, Topeka, and Santa Fe Railroad.	*596	*592
			Just downstream of the Woodland Parkway box culvert.	*627	*621
		San Marcos Creek, Highway 78 Split Flow.	At the convergence with San Marcos Creek	*537	*534
			Approximately 400 feet downstream of State Highway 78.	*551	*549
			At the divergence from San Marcos Creek	*562	*561
			Along via Vera Cruz, approximately 500 feet north of the intersection with San Marcos Boulevard.	*None	#1
		Twin Oaks Valley Creek	At the confluence with San Marcos Creek	*565	*566
			Approximately 1,100 feet upstream of Mission Road.	*582	*580
			Approximately 3,300 feet upstream of Mission Road.	*602	*596
			At the unnamed road south of Delray Drive	*640	*637
			Approximately 50 feet downstream of La Cienagro Road.	*675	*670
			Just downstream of Olive Drive	*697	*697
			Just downstream of the Walnut Creek Park entrance.	None	*702
			At Mulberry Drive	None	*715
		Las Posas Creek	500 feet upstream of Linda Vista Drive	None	#1
			750 feet downstream of Grand Avenue	None	*#3
			Just upstream of Grand Avenue	None	*543
			Approximately 60 feet downstream of Descanso Avenue.	None	*550
			Approximately 850 feet upstream of Mission Road.	None	*569

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for review at the Department of Developmental Service, 570 Rancheros Drive, Suite 101, San Marcos, California.					
Send comments to The Honorable Lee b. Thibadeau, Mayor, City of San Marcos, City Hall, 105 West Richmar Avenue, San Marcos, California 92069-1699.					
Connecticut	Berlin, town Harford County.	Hatchery Brook	Approximately 700 feet downstream of Four Rod Road.	None	*47
			Upstream side of Orchard Road	*None	*158
		Crooked Brook	At confluence with Belcher Brook	*54	*50
			Approximately 50 feet upstream of CONRAIL bridge.	None	*81
		Belcher Brook	Approximately 900 feet downstream of Norton Road.	*47	*48
			At upstream corporate limits	None	*152
		Spruce Brook	Approximately 1,900 feet upstream of the confluence with Mattabesset River.	*30	*31
			Approximately 100 feet upstream of Spruce Brook Road.	None	*124
		Willow Brook	Approximately 50 feet downstream of Demino Road.	*43	*44
			At the upstream corporate limits	*74	*75
		Stocking Brook	Approximately 50 feet upstream of confluence with Mattabessett River.	None	*168
			Upstream side of Percival Park Road	None	*398
		John Hall Brook	At confluence with Stocking Brook	None	182
			Approximately 0.5 mile upstream of the most upstream crossing of Edgewood Road.	None	*335
Maps available for inspection at the Engineering Department, Berlin Town Hall, 240 Kensington Road, Berlin, Connecticut.					
Send comments to The Honorable Robert J. Peters, Mayor of the Town of Berlin, Hartford County, 240 Kensington Road, Berlin, Connecticut 06037.					
Georgia	City of Manchester, Meriwether and Talbot Counties.	Unnamed tributary to Pigeon Creek.	About 720 feet upstream of mouth	None	*744
		Pigeon Creek	Just upstream of Hill Street	None	*793
			About 1,700 feet downstream of Unnamed Tributary to Pigeon Creek.	None	*741
			Just downstream of Pigeon Creek Road	None	*764
			Just upstream of Pigeon Creek Road	None	*769
			About 2,900 feet upstream of Goody's Road	None	*812
Maps available for inspection at the City Hall, Building Inspection & Codes Enforcement Office, Manchester, Georgia.					
Send comments to The Honorable Philip T. Rudderman, Mayor, City of Manchester, City Hall, P.O. Box 366, Manchester, Georgia 31816.					
Idaho	City of Boise, Ada County.	Stuart	At the interaction of Hill Road and Stuart Gulch Road.	#4	#1
			At the northermost intersection of Shasta Street and North 36th Street.	#1	#1
		Crane Gulch	At the intersection of Dora Street and North 18th Street.	#2	#1
			At the intersection of Good Street and North 17th Street.	#2	#1
		Hulls Gulch	At the intersection of Heron Street and North 9th Street.	#3	#1
		Cottonwood Creek	Approximately 1,200 feet north of the intersection of Mountain Cove Road and Reserve Street.	#5	#1
			Approximately 500 feet north of the intersection of Reserve Street and Avenue H.	None	#1
			At the intersection of Krall Street and Avenue C.	#2	#1
Maps are available for review at the Public Works Department, City of Boise, City Hall, 150 North Capitol Boulevard, 4th Floor, Boise, Idaho.					
Send comments to The Honorable Dirk A. Kempthorne, Mayor, city of Boise, City Hall, 150 North Capitol Boulevard, Boise, Idaho 83701.					
Kansas	City of Pittsburg, Crawford County.	East Pork Taylor Branch	About 1,820 feet downstream of 4th Street	None	*899
			Just downstream of Southeast Kansas Railroad, about 750 feet downstream of 27th Street.	None	*919
			Just upstream of Southeast Kansas Railroad, about 750 feet downstream of 27th Street.	None	*925
			Just downstream of Atkinson Road	None	*930
Maps are available for inspection at the City Hall, 201 West 4th Street, Pittsburg, Kansas.					
Send comments to The Honorable John O'Connor, Mayor, City of Pittsburg, City Hall, 201 West 4th Street, Pittsburg, Kansas 66762.					
Kentucky	Unincorporated Areas of Jefferson County.	Ohio River	Just upstream of confluence of Salt River	*443	*443
			About 3.3 miles upstream of Harroos Creek	*453	*453
		Upper Mill Creek	About 400 feet downstream of Wilkie Road	*439	*437
			Just downstream of Rockford Lane	*442	*443

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		Big Run Diversion	At mouth	*446	*437
			Just upstream of St. Andrews Church Road	*482	*487
		Slate Run	At confluence with Pond Creek	None	*454
			Just downstream of St. Anthonys Church Road	None	*469
		Pond Creek	Just upstream of levee	*444	*441
			About 1,700 feet upstream of New Cut Road	*457	*457
		Ponder Creek	At mouth	*444	*442
			Just downstream of Stonestreet Road	*468	*469
			Just upstream of Stonestreet Road	*473	*475
			Just downstream of Paralee Lane	None	*487
		Stephan Ditch	At mouth	*444	*443
			About 400 feet upstream of Maryman Road	*447	*449
		Valley Creek	At mouth	*444	*433
			Just downstream of Greenwood Road	None	*448
		Lower Mill Creek	Just upstream of Lower River Road	*444	*430
			Just downstream of Terry Road	*448	*437
		Upper Garrison Ditch	At mouth	*445	*437
			About 200 feet upstream of Cane Run Road	*446	*442
		Lower Garrison Ditch	At mouth	*448	*436
			About 200 feet up ream of Illinois Central Railroad.	*448	*442
		Big Run Creek	At mouth	*442	*443
			About 1150 feet upstream of Lower Hunters Trace.	*442	*450
		Bee Lick Creek	At mouth	*456	*456
			Just downstream of Mitchell Hill Road	None	*479
		Little Bee Lick Creek	At mouth	None	*464
			About 350 feet upstream of Charlene Drive	None	*490
		Wilson Creek	At mouth	*458	*458
			About 3500 feet upstream of Farmers Lane	None	*479
		Northern Ditch	At mouth	*457	*457
			Just downstream of Old Shepherdsville Road	*475	*478
		Southern Ditch	At mouth	*457	*457
			Just downstream of Michael Ray Drive	None	*562
			Just upstream of Michael Ray Drive	None	*570
			About 1200 feet upstream of Michael Ray Drive.	None	*584
		Roberson Run	At mouth	*474	*474
			About 1300 feet upstream of Judge Boulevard	None	*520
		Fern Creek	At mouth	*479	*478
			Just downstream of Fegenbush Lane	*491	*497
		Filson Fork	At mouth	None	*471
			About 200 feet downstream of Preston Highway.	None	*488
			Just upstream of Preston Highway	None	*496
			Just downstream of Sheperdsville Road	None	*546
		Fishpool Creek	At mouth	*463	*464
			Just downstream of Charleswood Road	None	*557
			Just upstream of Charleswood Road	None	*562
			Just downstream of Cooper Chapel Road	None	*579
		Cooper Chapel Brook	At mouth	None	*490
			Just downstream of Chapel Hill Road	None	*525
			Just upstream of Chapel Hill Road	None	*535
			About 4000 feet upstream of Chapel Hill Road	None	*570
		Manslick Branch	At mouth	None	*482
			About 1400 feet upstream of Glen Rose Road	None	*538
		Mud Creek	At mouth	*461	*461
			About 1400 feet upstream of Blue Lick Road	None	*492
		Greasy Ditch	At mouth	*459	*460
			Just upstream of Poplar Level Road	*466	*468
		South Fork Beargrass Creek	Just upstream of Bashford Manor Lane	*473	*474
			About 3200 feet upstream of Huntsinger Lane	*537	*534
		Beuchel Branch	At mouth	*475	*475
			About 1500 feet upstream of Buechel Bank Road.	*499	*498
		East Branch Boxwood Ditch	At mouth	*440	*440
			Just downstream of Cane Run Road	*444	*443
		Cane Run Ditch	About 1000 feet downstream of Teaneck Lane	*440	*439
			Just downstream of Camp Ground Road	*444	*440
		Lynnview Ditch	Just upstream of Martin Avenue	*441	*440
			About 2000 feet upstream of Hartlage Road	*449	*449
		Black Pond Creek	At mouth	*444	*443
			Just upstream of Lower Hunters Trace	None	*447
Maps available for inspection at the Metropolitan Sewer District Office, 400 South 8th Street, Louisville, Kentucky.					
Send comments to The Honorable David L. Armstrong, Judge Executive, Jefferson County, Jefferson County Courthouse, Louisville, Kentucky 40202.					
Kentucky	City of Louisville, Jefferson County.	Greasy Ditch	About 275 feet downstream of Fern Valley Road.	*461	*460

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
		South Fork Beargrass Creek	About 1000 feet upstream of Fern Valley Road	*462	*461
			At mouth	*447	*448
			About 1375 feet upstream of Breckenridge Lane.	*516	*513

Maps available for inspection at the Metropolitan Sewer District Office, 400 South 6th Street, Louisville, Kentucky.
Send comments to the Honorable Jerry Abramson, Mayor, City of Louisville, 601 West Jefferson Street, Louisville, Kentucky 40202.

Kentucky	City of Shively, Jefferson County.	Upper Mill Creek	About 640 feet upstream of Wilkie Road	*439	*439
			About 1300 feet upstream of Memorial Gardens Road.	None	*453
		Lynnview Ditch	At mouth	*440	*440
			Just upstream of Farnsley Road	None	*449
		Boxwood Ditch	At mouth	*440	*439
			Just downstream of Rockford Lane	*440	*440
		City Park Ditch	At mouth	*446	*452
			About 800 feet upstream of Hardesty Avenue	None	*452
		Heatherwood Ditch	Just downstream of Interstate 264	*448	*448
			About 1000 feet upstream of Crums Lane	*449	*448

Maps available for inspection at the Metropolitan Sewer District Office, 400 South 6th Street, Louisville, Kentucky.
Send comments to The Honorable William O'Daniel, Mayor, City of Shively, P.O. Box 16007, Shively, Kentucky 40256.

Maine	Dover-Foxcroft, Town Piscataquis County.	Piscataquis River	Approximately 3,000 feet downstream of corporate limits.	*299	*301
			At upstream corporate limits	*364	*367
		Fox Brook	At confluence with Piscataquis River	None	*318
			Approximately 50 feet upstream of upstream side of State Route 7.	None	*391
		Dunham Brook	Approximately 200 feet upstream from confluence with Piscataquis River.	*345	*346
			Approximately 25 feet upstream of upstream side of Forest Street.	*370	*370
		Davee Brook	Approximately 160 feet upstream from confluence with Dunham Brook.	*349	*348
		East Branch Davee Brook	Approximately 190 feet upstream of upstream side of State Route 153.	*375	*374
		Brann's Mill Pond Outlet	At upstream side of Brann's Mill Pond Dam	*443	*440
			At confluence of Brann's Mill Pond	*444	*443
		Sebec Lake	Entire shoreline within community	None	*329
		Garland Pond	Entire shoreline within community	None	*567
		Brann's Mill	Entire shoreline within community	*444	*443

Maps available for inspection at Dover-Foxcroft Town Office, 34 E. Main Street, Dover-Foxcroft, Maine.
Send comments to Ms. Elaine Heath, First Selectwoman for the Town of Dover-Foxcroft, Piscataquis County, 34 E. Main Street, Dover-Foxcroft, Maine 04426.

Maine	Sangerville, Town Piscataquis County.	Piscataquis River	At downstream corporate limits	*358	360
			At upstream corporate limits	*388	*391
		Black Stream	At confluence with Piscataquis River	None	*378
			Approximately 200 feet upstream of Black Stream Road.	None	*400
		Carlton Stream	At confluence with Piscataquis River	*383	*386
			At upstream side of Manhanock Pond Dam	*449	*450
		French Mills Brook	Just downstream of Frenchs Mill Road	None	*402
			At upstream side of Center Pond Dam	None	*505
		Hanson Brook	At downstream corporate limits	None	*482
			Upstream side of Fire Lane 2	None	*544
		Alder Brook	Downstream side of Frenchs Mill Road	None	*436
			Upstream side of South Sangerville Road	None	*511
		Manhanock Pond	Entire shoreline within community	*449	*450
		Center Pond	Entire shoreline within community	*508	*505

Maps available for inspection at the Sangerville Town Office, P.O. Box 188, Sangerville, Maine.
Send comments to Mr. Jim Catlin, Sangerville Town Manager, Piscataquis County, P.O. Box 188, Sangerville, Maine 04479.

Maine	Sebec, Town Piscataquis County.	Piscataquis River	At downstream corporate limits (confluence with Meadow Brook).	None	*294
			Approximately 2.1 miles upstream of upstream corporate limits.	None	*307
		Sebec River	At downstream corporate limits	None	*293
			Just upstream of Sebec Lake Dam at Sebec Lake.	None	*329
		Meadow Brook	Confluence with Piscataquis River	None	*294
			About 90 feet upstream of culvert at State Routes 8 and 16.	*468	*474
		Garland Pond	Entire shoreline within community	None	*567
		Sebec Lake	Entire shoreline within community	None	*329

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified

Maps available for inspection at Sebec Town Hall, Sebec Village, Maine.
Send comments to Mrs. Ruth Nason, First Selectwoman for the Town of Sebec, Piscataquis County, Sebec Town Hall, Sebec Village, Maine 04481.

Michigan	City of Evart, Osceola County.	Twin Creek	At mouth	None	*992
			About 1,950 feet upstream of Fifth Street	None	*1,012
		Muskegon River	At Main Street	None	*992
			About 2,000 feet upstream of Main Street	None	*993

Maps available for inspection at the City Manager's Office, City Hall, 101 North Main Street, Evart, Michigan.
Send comments to The Honorable Frederick "Bud" Fleming, Mayor, City of Evart, City Hall, 101 North Main Street, Evart, Michigan 49631.

Michigan	City of Novi, Oakland County.	Walled Lake Branch	About 800 feet upstream of CSX railroad	None	*812
			Just downstream of Flint Street	*899	*900
			Just upstream of Flint Street	*901	*908
			About 1.44 miles upstream of Twelve Mile Road.	*933	*933
		Thornton Creek	At mouth	None	*826
			Just downstream of Nine Mile Road	*903	*902
			Just upstream of Nine Mile Road	*907	*907
			Just downstream of Ten Mile Road	*960	*961
		Chapman Creek	At mouth	*857	*858
			Just downstream of Novi Road	*887	*888
			Just upstream of Novi Road	*893	*893
		Ingersol Creek	At mouth	*838	*839
			Just downstream of Grand River Avenue	*853	*853
			Just upstream of Grand River Avenue	*858	*858
			Just downstream of Interstate 96 ramp	*860	*861
		Munro Creek	At mouth	*888	*889
			Just downstream of Taft Road	*929	*929
		Shaw Creek	At mouth	*932	*932
			About 1.1 miles upstream of mouth	None	*943
		Leavenworth Creek	At mouth	*897	*898
			About 2,300 feet upstream of mouth	*908	*907
		Bishop Creek	At mouth	*842	*842
			Just downstream of dam	None	*897
		Tributary C	At mouth	None	*953
			About 2,000 feet upstream of mouth	*955	*955
		Novi-Lyon Drain	Just upstream of Napier Road	None	*949
			About 3,500 feet upstream of Napier Road	*953	*953
		Thornton Creek Diversion	At mouth	*822	*823
			At divergence from Thornton Creek	*831	*830

Maps available for inspection at the Building Department, Civic Center, 45175 West Ten Mile Road, Novi, Michigan.
Send comments to The Honorable Mathew Quinn, Mayor, City of Novi, Civic Center, 45175 West Ten Mile Road, Novi, Michigan 48375-3024.

Mississippi	City of Flowood, Rankin County.	Pearl River	Just upstream of Highway 80	*273	*274
			About 3.05 miles upstream of State Highway 25.	*281	*284
		Hog Creek	At mouth	*281	*282
			Just upstream of Cooper Road	None	*308
		Pearl River Tributary [1]	Within community	*281	*282
		Hog Creek Tributary	At mouth	None	*312
			About 900 feet upstream of Unnamed Road	None	*327

Maps available for inspection at the City Hall, 1st and Oak Street, Flowood, Mississippi.
Send comments to The Honorable Gary L. Rhoads, Mayor, City of Flowood, City Hall, P.O. Box 5536, Flowood, Mississippi 39208.

Missouri	City of Berkeley, St. Louis County.	Maline Creek	Just upstream of North Hanley Road	*516	515
			Just upstream of Interstate 70	*526	520
			About 1320 feet upstream of Rolling Drive	*528	527

Maps available for inspection at the City Manager's Office, 6140 N. Hanley Road, Berkeley, Missouri.
Send comments to the Honorable William Miller, Mayor, City of Berkeley, 6140 N. Hanley Road, Berkeley, Missouri 63134.

Missouri	City of Cool Valley, St. Louis County.	Ball Creek	About 450 feet downstream of Florissant Road	*501	*500
			Just downstream of Florissant Road	*502	502

Maps available for inspection at the City Clerk's Office, City Hall, 100 Signal Hill Drive, Cool Valley, Missouri.
Send comments to the Honorable Hershell Brooks, Mayor, City of Cool Valley, City Hall, 100 Signal Hill Drive, Cool Valley, Missouri 63121.

New York	Bainbridge, Village Chenango County.	Susquehanna River	At downstream corporate limits	None	*980
			At upstream corporate limits	None	*982

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
Maps available for inspection at the Bainbridge Village Offices, 33 West Main Street, Bainbridge, New York.					
Send comments to the Honorable John L. Hyzer, Mayor, City of the Village of Bainbridge, Chenango County, Village Offices, 33 West Main Street, Bainbridge, New York 13733.					
New York	Clarence, Town Erie County.	Ransom Creek	Downstream corporate limits at Transit Road	*584	*585
			Downstream of Conner Road	*602	*603
		Tonawanda Creek	Downstream corporate limits at State Route 78	None	*584
			Upstream corporate limits	None	*594
		Black Creek	Downstream corporate limits	None	*585
			At Goodrich Road	None	*591
		Gott Creek	At downstream corporate limits at Transit Road	None	*591
			Just downstream of Clarence Center Road	*591	*592
				*595	*594
Maps available for inspection at the Clarence Town Building Department, 6185 Goodrich Road, Clarence Center, New York.					
Send comments to Mr. Irving W. Grenzebach, Jr., Clarence Town Supervisor, Erie County, Town Hall, 1 Town Place, Clarence, New York 14031.					
New York	Greece, Town Monroe County.	Round Pond Creek	Approximately 475 feet downstream of Doe Run Drive.	*429	*428
			At upstream side of Straub Road	*446	*443
		East Branch Larkin Creek	At confluence with Larkin Creek	*376	*377
			Approximately 90 feet downstream of U.S. Route 104 (Ridge Road).	*417	*418
Maps available for inspection at the Town Hall, Town Engineer's Office, 2505 West Ridge Road, Rochester, New York.					
Send comments to Mr. Roger Boily, Supervisor of the town of Greece, 2505 West Ridge Road, Rochester, New York 14626.					
New York	Southold, Town	Atlantic Ocean Block Island Sound.	Approximately .6 mile east northeast of Plum Gut Harbor.	None	*9
		Long Island Sound	Northern shoreline of Plum Island	None	*15
Maps available for inspection at the Southold Town Hall, Building Department, 53095 Main Road, Southold, New York.					
Send comments to Mr. Scott L. Harris, Supervisor of the Town of Southold, Suffolk County, P.O. Box 1179, Southold, New York.					
North Carolina	Town of Fair Bluff, Columbus County.	Lumber River	About 1.7 miles downstream of State Road 904.	None	*63
			About 2.1 miles upstream of State Road 904	None	*67
		Barden Bay	Along entire shoreline	None	*65
Maps available for inspection at the Town Hall, Fair Bluff, North Carolina.					
Send comments to The honorable James G. McNeil, Mayor, Town of Fair Bluff, Town Hall, P.O. Box 157, Fair Bluff, North Carolina 28439.					
Pennsylvania	Muncy, Borough Lycoming County.	West Branch Susquehanna River.	Approximately 550 feet upstream of State Route 405.	*505	*504
			Approximately 100 feet upstream of State Route 405.	*505	*504
		Glade Run	At confluence with W. Branch Susquehanna River.	*505	*504
			At downstream side of Penn Street	*506	*505
Maps available for inspection at the Muncy Town Office, 14 North Washington Street, Muncy, Pennsylvania.					
Send comments to Mr. Ralph F. Dunn, President, Muncy Borough Council, Lycoming County, 14 North Washington Street, Muncy, Pennsylvania 17756.					
Texas	Carrollton, City Dallas, Denton, and Collin Counties.	Stream 6D-5	Approximately 300 feet upstream of the confluence with Hutton Branch.	*495	*494
			Approximately 50 feet downstream of Carmel Drive.	*518	*519
		Elm Fork of Trinity River	Just downstream of Beltline Road	*441	*440
			Approximately 200 feet upstream of the confluence of Denton Creek.	*445	*446
Maps available for inspection at the City Engineering Department, 1945 Jackson Road, Carrollton, Texas.					
Send comments to The Honorable Milburn R. Gravely, Mayor of the City of Carrollton, Dallas, Denton, and Collin Counties, 1945 Jackson Road, Carrollton, Texas 75011-0535.					
Texas	San Angelo, City Tom Green County	Concho River	At State Route 306	*1,794	*1,796
			Approximately 700 feet downstream of Bell Street.	*1,803	*1,802
		East Angelo Draw	At confluence with Concho River At 50th Street.	*1,800	*1,801
		South Concho River	Approximately .4 mile upstream of confluence with Concho and North Concho Rivers.	*1,806	*1,805
			At upstream corporate limits	None	*1,880
		Stream RA-2	At confluence with Red Arroyo	None	*1,898
			At FM 2288	None	*1,950
		Red Arroyo	Approximately 200 feet upstream of the confluence with South Concho River.	*1,808	*1,807

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Existing	Modified
		South Fork Red Arroyo	Approximately 100 feet upstream of FM 2288	None	*1,947
			Approximately 800 feet upstream of College Hills Boulevard.	*1,871	*1,870
			Approximately 1,600 feet upstream Oak Grove	None	*1,909
		West branch South Fork Red Arroyo.	At confluence with South Fork Red Arroyo	*1,890	*1,891
			Approximately 600 feet upstream of Southland Boulevard.	None	*1,915
		Red Arroyo Diversion	Approximately 280 feet downstream of E. Avenue L.	*1,814	*1,815
			At the divergence from Red Arroyo (approximately 80 feet upstream of E. Avenue L).	*1,815	*1,816
		Goodfellow Draw	At confluence with Concho River	*1,796	*1,798
			Approximately 80 feet upstream of Paint Rock Road (west bound).	None	*1,839
		Middle Concho River	At confluence with South Concho River	None	*1,873
			At corporate limits	None	*1,880
		North Concho River	Approximately 1,500 feet upstream of confluence with South Concho and Concho Rivers.	*1,805	*1,804
			Approximately .75 mile upstream of 29th Street	*1,854	*1,853
		Sulfur Draw	Approximately 560 feet upstream of confluence with North Concho River.	None	*1,822
			Approximately 90 feet upstream of S. Madison Street.	None	*1,850
		Brentwood Park	At confluence with North Concho River#	None	*1,838
			Approximately 50 feet upstream of North Howard Street.	None	*1,872
		Lake Creek	Approximately .3 mile downstream of Cactus Lane.	None	*1,918
			Approximately 600 feet upstream of Cactus Lane.	None	*1,920
Maps available for inspection at the San Angelo City Hall, 72 College Street, San Angelo, Texas.					
Send comments to The Honorable Don Butts, Major of the City of San Angelo, P.O. Box 1751, 72 College Street, San Angelo, Texas 76903.					
Virginia	Augusta County Unincorporated Areas.	Folly Mills Creek	Approximately 550 feet downstream of the most downstream crossing of State Route 693.	None	*1,560
			Approximately 1,000 feet upstream of the most upstream crossing of State Route 693.	None	*1,590
Maps available for inspection at the Augusta County Government Center, Community Development Office, Lee Highway, Verona, Virginia.					
Send comments to Mr. Patrick Coffield, Augusta County Administrator, P.O. Box 590, Verona, Virginia 24482.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: August 5, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-19908 Filed 8-19-92; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[GEN Docket No. 90-413; FCC 92-289]

Authorization of Central Processing Units and Power Supplies Used in Personal Computers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This further proposal responds to petitions for reconsideration of the first report and order in GEN Docket No. 87-389, 54 FR 17710 (April 25, 1989), filed by the International Business Machines Corporation and the Computer and Business Equipment Manufacturers Association, requesting the Commission to require circuit boards containing the central processing unit (CPU) used in personal computers and other digital devices to comply with the Commission's standards and equipment authorization procedures. Based on the responses to the notice of proposed rule making issued earlier in this proceeding, 55 FR 39663, September 28, 1990, the Commission is revising its initial proposal for addressing this matter. This action will facilitate the introduction of modular personal computer designs, allowing major components, such as the CPU board and power supply, to be selected by the purchaser.

DATES: Comments must be submitted on or before October 21, and reply comments on or before November 13, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 653-7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's further notice of proposed rule making in GEN Docket No. 90-413, adopted July 1, 1992.

The complete test of this further notice of proposed rule making is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Paperwork Reduction

The following collection of information contained in this proposed

rule has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3504(h)). Copies of this submission may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036. Persons wishing to comment on this collection of information should direct their comments to Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Office of Managing Director, Paperwork Reduction Project, Washington, DC 20554. For further information contact Judy Boley, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0057.

Title: Application for Equipment Authorization.

Form Number: FCC Form 731.

Action: Revised collection.

Respondents: Businesses or other for-profit.

Frequency of Responses: On occasion reporting.

Estimated annual burden: 6,900 responses; 24 hour average burden per response; 213,600 hours total annual burden.

Needs and uses: Present Commission rules require approval of equipment regulated under certain part 15 and 18 rules sections (see item 27 of SF–83) prior to marketing, based on a showing of compliance to technical standards established in the Rules for each device operated under the applicable Rule part. Rules governing certain equipment operating in the licensed services also require equipment authorization as established in the procedural Rules in part 2. Such a showing of compliance aids in controlling potential interference to radio communications, and the data gathered, as is necessary, may be used for investigating complaints of harmful interference. Revision of this collection is required in order to incorporate proposed amendments to parts 2 and 15 of the Rules that would require that equipment authorization regulations, including demonstration of compliance with technical standards, apply to all CPU boards and power supplies used in personal computers. The information gathered will be used by the Commission to determine compliance of the proposed equipment with the Commission's Rules. Following authorization of the equipment for marketing, the information may be used to determine that the operation of the equipment is consistent with the information supplied at the time of grant, and that the equipment marketed complies with the terms of the equipment authorization. The information collected is essential to controlling potential interference to radio communications.

OMB Number: 3060–0329.

Title: Equipment Authorization—Verification.

Form Number: N/A.

Action: Revised collection.

Respondents: Businesses or other for-profit.

Frequency of Responses: On occasion reporting.

Estimated annual burden: 85,825 recordkeepers; 18 hours average burden per recordkeeper; 104,850 hours total annual burden.

Needs and uses: Commission rules require verification of compliance to established technical standards for certain part 15 and part 18 devices. Technical data is gathered and retained by the equipment manufacturer in order to verify compliance for each device operated under the applicable Rule part. Testing and required verification aids in controlling potential interference to radio communications. The data gathered as is necessary, may be used for investigating complaints of harmful interference, or for verifying the manufacturer's compliance with the Rules. Revision of this collection is required in order to incorporate proposed amendments to parts 2 and 15 of the Rules to better accommodate the introduction of modular personal computer designs. Specifically, the new rules would require verification of proposed combinations of certified central processing unit (CPU) boards and power supplies used in computer systems for which a manufacturer has obtained previous certification. The information may be used to determine that the equipment marketed complies with the applicable Commission Rules, and that the operation of the equipment is consistent with the initially documented test results. The information collected is essential to controlling potential interference to radio communications.

Summary of the Further Notice of Proposed Rule Making

1. In the further notice of proposed rule making in this proceeding, the Commission proposes to amend parts 2 and 15 of its rules to reduce the number of certification applications that a manufacturer must submit for its line of modular computer systems. The rules would require that all central processing unit (CPU) boards and power supplies designed to be used in personal computers and marketed to the general public to be authorized under its certification procedure. Under this proposal, manufacturers of modular computer systems would be allowed to interchange CPU boards and power supplies within computer systems without having to obtain a separate grant of certification for every combination of components provided: the CPU boards and power supplies are separately certified; the CPU boards and power supplies are used in computer systems for which the manufacturer has obtained certification; and, the manufacturer verifies that the resulting combinations continue to comply with the standards. The party manufacturing the computer systems would continue to be responsible for ensuring that the resulting systems comply with the standards.

2. Proposed definition of a CPU board: A circuit board that contains a microprocessor, or frequency determining circuitry for the microprocessor, the primary function of which is to execute user-provided programming, but not including: (1) a circuit board that contains only a microprocessor intended to operate under the primary control or instruction of a microprocessor external to such a circuit board; or, (2) a circuit board that is a dedicated controller for a storage or input/output device. We also propose to change the definition of a peripheral device to delete the reference to control cards from the list of examples.

3. Marking and importation of non-certified CPU boards and power supplies: We propose to continue our policy of permitting non-certified digital devices, including CPU boards and power supplies, to be sold to other manufacturers for further fabrication, under which the final manufacturer is responsible for testing and obtaining certification. We also propose to restrict the sale of non-certified CPU boards and power supplies to manufacturers that have been issued a grant of certification for a personal computer that uses the CPU board or power supply being marketed; however, limited quantities of non-certified CPU boards and power supplies may be sold to computer system manufacturers for testing, evaluation or product development before system certification is obtained. Further, we propose to require that when non-certified CPU boards and power supplies are imported the consignee must be the holder of the grant of certification for the personal computer into which these components are to be installed.

4. Labelling: Certified CPU boards and power supplies must be labelled with an FCC Identifier consistent with the normal certification requirements. In order to facilitate identification of installed components without opening the enclosure, we also propose that these products be supplied with a separate, stick-on label containing the FCC Identifier and identifying the type of product. This separate label would be placed on the computer's enclosure after installation of the CPU board or power supply.

5. Transition provisions: We propose that all digital devices manufactured, imported or marketed on or after six months from the date final regulations are published in the Federal Register must comply with the rules adopted in this proceeding. However, we also propose to grandfather computers that have already been certified by the Commission as well as to permit computers to continue to be certified as a system based on the specific combination of CPU board, power supply and enclosure used in their construction.

6. Changes in the microprocessor or frequency determining circuitry: We propose to amend part 2 of the rules to permit changes to the basic frequency-determining circuitry in digital devices as a Class II permissive change. This would allow a grantee to replace the frequency-determining circuitry in a CPU board or any other digital device without having to obtain a new grant of certification.

7. Alternative proposal: The Commission recognizes that the above proposal does not provide complete freedom to mix components currently provided for peripheral devices. Thus, comments are also sought on an alternative proposal whereby CPU boards would be tested both in a typical configuration and without an enclosure. When testing without an enclosure, only radiated emissions would be measured and the CPU board would be connected only to the power supply without the addition of peripheral devices. If the oscillator and microprocessor circuits are contained on separate circuit boards, both boards, typical of the combinations that would normally be employed, would be used in the tests. The power supply would be tested in a typical configuration. In order to avoid problems identifying the responsible party for a computer system assembled from a certified CPU board and power supply under this alternative proposal, we also propose that the assembler obtain a grant of notification for each specific combination of CPU board, power supply and enclosure, but we would eliminate the requirement under notification to test the resulting personal computer system.

Initial Regulatory Flexibility Analysis

8. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the further notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. section 601 *et seq.* (1981).

Reason for Action

This rule making proceeding is initiated to obtain comment regarding whether and how the Commission should regulate subassemblies to personal computers.

Objectives

The Commission seeks to determine the standards, test procedures, and equipment authorization requirements that should be applied to CPU boards and power supplies used in personal computers in order:

(1) To reduce the potential for interference to radio services by improving our ability to ensure that personal computers comply with our standards;

(2) To reduce regulatory burdens on computer manufacturers; and

(3) To remove impediments to flexible system design and construction techniques for personal computers.

Legal Basis

The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

Reporting, Recordkeeping and Other Compliance Requirements

CPU boards and power supplies designed for use in personal computers, which were not previously subject to our rules, are proposed to be included under our standards and authorization requirements. In addition, we propose to permit a manufacturer with a product line of certified personal computers to interchange CPU boards and power supplies provided it has obtained certification for those CPU boards and power supplies and verifies the resulting equipment combination. The impact of the requirements on CPU boards and power supplies will be substantially reduced by permitting use of the verification procedure for computers that are assembled by manufacturers from their previously-authorized CPU boards and power supplies. Thus, we do not expect any significant increase or decrease in the overall recordkeeping requirements.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact and Number of Small Entities Involved

The actions proposed in this proceeding will increase the number and type of digital components subject to our standards, testing and equipment authorization requirements. On this basis alone, the workload and filing requirements may increase, both to large and small entities. However, as these changes to the rules will obviate the need for some manufacturers to obtain certification for every possible configuration of personal computer systems produced in its product line, it is possible that the overall workload will remain unchanged. Still, some small entities that manufacture only CPU boards or power supplies may find that they are now subject to our standards whereas under the current rules their devices were not regulated. We estimate there are 50–75 manufacturers of CPU boards and a similar number of manufacturers of power supplies.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

As an alternative to requiring all personal computers to be certified or verified, we propose to apply a more specific testing procedure to CPU boards. Further, if a personal computer is constructed from certified components and is marketed, the assembler would be required to obtain a grant of notification from the Commission for that specific product configuration. However, no additional testing would be required to obtain the grant of notification, resulting in a significant

decrease in the overall workload required for manufacturers and system assemblers.

List of Subjects

47 CFR Part 2

Imports, Reporting and recordkeeping requirements.

47 CFR Part 15

Computer technology, Labeling, Reporting and recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

[FR Doc. 92-19783 Filed 8-19-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 92-167; FCC 92-346]

Special Temporary Licensing Procedure for Visiting Foreign Amateur Operators

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to amend the amateur service rules to provide a convenient licensing procedure for foreign amateur operators visiting in the United States for a short time. The proposed rules are necessary so that foreign amateur operators from countries that do not have a reciprocal license agreement with the United States, or who do not have time to obtain a Commission-issued license, would have an alternative procedure to obtain authority for operation of their amateur stations while in the United States. The proposed rules would benefit foreign tourists and meeting attendees, and enhance international goodwill.

DATES: Comments are due on or before October 26, 1992. Reply comments are due on or before November 30, 1992.

FOR FURTHER INFORMATION CONTACT: Maurice J. DuPont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, adopted July 24, 1992, and released August 6, 1992. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 239), 1919 M Street, NW., Washington, DC. The complete text of this notice of proposed rule making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, Downtown Copy Center (DCC), (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036. DCC's FAX number is (202) 296-3780.

Summary of Notice of Proposed Rule Making.

1. Currently, a foreign amateur operator can operate an amateur station in the United States by obtaining an FCC-issued license or a reciprocal permit. Many foreign amateur operators are ineligible for a reciprocal permit because there is no reciprocal agreement between our government and theirs. Further, time constraints often prevent them from obtaining an FCC license.

2. The objective of this proposal is to devise a convenient and efficient procedure whereby a foreign amateur operator on a brief visit to the United States can operate an amateur station. A single, consecutive 60-day period of authorization should meet the needs of most visitors. The most efficient means of authorizing operation by foreign visitors is found in the volunteer-examiner coordinator (VEC) system.

3. Volunteer examiners (VEs) would examine the foreign operator's amateur service license, review identification credentials, and determine the extent of the operating privileges. The VEs would also administer a twenty-question examination on Commission rules. If the foreign operator qualifies, the VEs would make certain record entries and issue a Certificate of Successful Completion of Examination (CSCE). The CSCE would be proof of the foreign operator's conditional license authorizing operation in the United States. The operating privileges in the United States for foreign visitors would be the same as those authorized by their own governments. They could not, however, exceed the privileges for the Amateur Extra Class. If the temporary visiting foreign amateur operator also holds an FCC-issued operator/primary station license, only the privileges of that license apply.

4. General comments on the proposal are invited. Also, government agencies and the amateur community are invited to submit specific comments concerning potential national security implications.

5. The proposed rules are set forth at the end of this document.

6. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

7. In accordance with Section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the amateur stations of temporary visiting foreign amateur operators would not be authorized to transmit any communications the purpose of which is to facilitate the business or commercial affairs of any party. See 47 CFR 97.113(a).

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

9. This notice of proposed rule making and the proposed rule amendments are issued under the authority of sections 4(f)(4)(J), 301, 303(1)(1), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(f)(4)(J), 301, 303(l)(1) and (r).

10. A copy of this notice of proposed rule making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Aliens, Examinations, Radio, Volunteers.

Federal Communications Commission.

William F. Caton,

Assistant Secretary.

Proposed Rules

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for part 97 continues to read as follows:

Authority citation: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, unless otherwise noted.

2. Section 97.5 is amended by adding a new paragraph (f) to read as follows:

§ 97.5 Station license required.

* * * * *

(f) The amateur station of a person licensed as a temporary visiting foreign amateur operator is authorized to transmit from a geographic location within 50 km of the Earth's surface where the amateur service is regulated by the FCC.

3. Section 97.7 is amended by adding a new paragraph (d) to read as follows:

§ 97.7 Control operator required.

* * * * *

(d) A CSCE indicating the holder passed examination Element 5 within the previous 365 days and is licensed as a temporary visiting foreign amateur operator.

4. Section 97.107 is amended by revising paragraph (c), redesignating it as paragraph (d), and by adding a new paragraph (c) to read as follows:

§ 97.107 Alien control operator privileges.

* * * * *

(c) The privileges available to a control operator licensed as a temporary visiting foreign amateur operator are:

(1) The operating terms and conditions of the amateur service license issued by the operator's government;

(2) The applicable provisions of the FCC Rules, but not to exceed the control operator privileges of an FCC-issued Amateur Extra Class operator license; or

(3) None, if the temporary visiting foreign amateur operator also holds an FCC-issued operator/primary station license, in which case the privileges of the FCC-issued license apply.

(d) At any time, the FCC may, in its discretion, modify, suspend, or cancel the amateur service privileges within or over any area where radio services are regulated by the FCC of any Canadian amateur service licensee, alien reciprocal permittee, or temporary visiting foreign amateur operator.

5. Section 97.119 is amended by revising paragraph (f) to read as follows:

§ 97.119 Station identification

* * * * *

(f) When the station is transmitting under the authority of a reciprocal permit for alien amateur licensee, or under the authority of § 97.5(f) pertaining to a temporary visiting foreign amateur operator, an indicator consisting of the appropriate letter-numeral designating the station location must be included before the call sign is issued to the station by the licensing country. When the station is transmitting under the authority of an amateur service license issued by the Government of Canada, a station location indicator must be included after the call sign. At least once during each intercommunication, the identification announcement must include the geographical location as nearly as possible by city and state, commonwealth or possession.

6. Section 97.503 is amended by adding a new paragraph (b)(6) to read as follows:

§ 97.503 Element standards.

* * * * *

(b) * * *

(6) Element 5: 20 questions concerning the FCC rules for the amateur radio services as related to the privileges of a temporary visiting foreign amateur operator. The minimum passing score is 18 questions answered correctly.

* * * * *

7. Section 97.527 is amended by revising paragraph (a) to read as follows:

§ 97.527 Reimbursement for expenses.

(a) VEs and VECs may be reimbursed by examinees for out-of-pocket expenses incurred in preparing, processing, administering, or coordinating an examination for a Technician, General, Advanced, or Amateur Extra Class operator license, and for an examination for licensing as a temporary visiting foreign amateur operator.

* * * * *

8. A new § 97.529 is added to read as follows:

§ 97.529 Licensing of a temporary visiting foreign amateur operator.

A person may be licensed as a temporary foreign amateur operator for a single, consecutive period, not to exceed 60 days, under the following procedure:

(a) The person must pass an Element 5 examination administered at an examination session coordinated by a VEC.

(b) Element 5 must be administered by 3 administering VEs, each of whom must hold an Amateur Extra Class operator license.

(c) The administering VEs must issue a CSCE for a single, consecutive period, showing the starting and ending dates during the 365 days following its issuance, to an examinee who scores a passing grade on examination Element 5 and who:

(1) Is not a citizen of the United States;

(2) Holds an amateur service license issued to the examinee by a foreign country other than Canada;

(3) Does not hold an amateur service license issued by any United States Government agency;

(4) Is a citizen of the same country that issued the amateur service license.

(d) Within 10 days of the administration of a successful Element 5 examination, the administering VEs must submit to the coordinating VEC:

(1) The examinee's name;

(2) The examinee's station call sign;

(3) The control operator privileges authorized to the examinee by the foreign license held;

(4) The addresses in the United States where the examinee may be contracted during the period as a licensed temporary visiting foreign amateur operator; and

(5) The starting and ending dates for the examinee's single, consecutive period as a licensed temporary visiting foreign amateur operator.

(e) Upon request, the coordinating VEC must periodically submit the information received from the administering VEs to the FCC.

[FR Doc. 92-19788 Filed 8-19-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 803 and 852

RIN-2900-AF68

VA Acquisition Regulation: Improper Business Practices and Personal Conflicts of Interest

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs is amending the VA Acquisition Regulation (VAAR) to establish a requirement for the posting of the VA Inspector General (IG) Waste, Fraud, and Abuse Hotline poster in contractor facilities. This amendment will establish a mechanism for contractor employees to report instances of waste, fraud, or mismanagement to the Government. Additionally, the requirements pertaining to the Procurement Integrity Act are being deleted to eliminate coverage that is redundant or in conflict with coverage contained in the Federal Acquisition Regulation.

DATES: Comments must be received by September 21, 1992. All comments received will be available for public inspection until September 29, 1992. This amendment is proposed to be effective on the date of publication of the final rule.

ADDRESSES: Comments should be sent to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit, room 170 of the above address.

between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until September 29, 1992.

FOR FURTHER INFORMATION CONTACT: Sherry Patton, Acquisition Policy Division (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–5001.

SUPPLEMENTARY INFORMATION:

I. Background

In an effort to stimulate contractors to establish internal reporting mechanisms or programs that will encourage their employees to report instances of fraud or mismanagement, VA is adding a contract requirement for contractors to display the VA Inspector General (IG) Hotline Poster. The poster will provide a telephone number for contractor employees to report instances of waste, fraud, or mismanagement to VA. The requirement will apply to contractors who do not have a system already established for reporting improper business practices.

As a result of the changes enacted in the Office of Federal Procurement Policy Act (41 U.S.C. 423), as amended by section 814 of the FY 90/91 National Defense Authorization Act, Public Law 101–189, VA's regulatory coverage pertaining to Procurement Integrity Act is redundant and in conflict with the coverage contained in the Federal Acquisition Regulation. To eliminate the contradictory and redundant guidance, VA's coverage is being deleted.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this rule is exempt from sections 3 and 4 of Executive Order 12291, Federal Regulation.

III. Regulatory Flexibility Act (RFA)

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601(2). Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected VA Acquisition Regulation subpart will also be considered in accordance with section 610 of the Act.

IV. Paperwork Reduction Act

This amendment does not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et. seq.

List of Subjects in 48 CFR Parts 803 and 852

Government procurement.

Approved: August 11, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, it is proposed that 48 CFR parts 803 and 852 be amended as set forth below:

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

1. The authority citation for part 803 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

Subpart 803.1—Safeguards

803.104 [Removed]

2. Section 803.104 is removed.

3. Subpart 803.70, consisting of sections 803.7000, 803,7001, and 803.70002, is added to read as follows:

Subpart 803.70—Contractor Responsibility to Avoid Improper Business Practices

803.7000 Policy.

It is the Department of Veterans Affairs (VA) policy to contract with companies that conduct business with the highest degree of integrity and honesty. To demonstrate this commitment to integrity and honesty, contractors should have standards of conduct and internal control systems that are designed to promote such standards, to facilitate the timely discovery and disclosure of improper conduct in connection with Government contracts, and to assure that corrective measures are promptly instituted and carried out. For example, a contractor's system of management controls should provide for—

(a) A written code of business ethics and standards of conduct and an ethics training program for all employees;

(b) A mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports;

(c) Disciplinary action for improper conduct;

(d) Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with standards of conduct and the special requirements of Government contracting;

(e) Internal and/or external audits as appropriate;

(f) Timely reporting to appropriate Government officials of any suspected or possible violations of law in connection with Government contracts or any other irregularities in connection with such contracts; and

(g) Full cooperation with any Government agencies responsible for either investigation or corrective actions.

803.7001 Display of VA Hotline Poster.

Contractors who are awarded a VA contract of—

(a) $500,000 or more for supplies or services, or

(b) $3 million or more for construction, and who have not established an internal reporting mechanism and program, as described in 803.7000(b), shall be required to display prominently in common work areas within business segments performing work under VA contracts, the VA Hotline poster prepared by the VA Office of Inspector General.

803.7002 Contract Clause.

The contracting officer shall insert the clause at 852.203–71, Display of VA Hotline Poster, in solicitations and contracts expected to equal or exceed the dollar thresholds established in 803.7001.

PART 852—[AMENDED]

4. The authority citation for part 852 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

5. Section 852.203–71 is added to read as follows:

Subpart 852.2—Texts of Provisions and Clauses

852.203–71 Display of VA Hotline Poster.

As prescribed in 803.7002, insert the following clause:

Display of VA Hotline Poster

(a) Except as provided in paragraph (c) below, the Contractor shall display prominently in common work areas within business segments performing work under VA contracts, VA Hotline posters prepared by the VA Office of the Inspector General.

(b) VA Hotline posters may be obtained from the VA Office of Inspector General (53E), P.O. Box 34647, Washington, DC 20043–4647.

(c) The Contractor need not comply with paragraph (a) above, if the Contractor has established a mechanism, such as a hotline, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.

(End of Clause)

[FR Doc. 92–19844 Filed 8–19–92; 8:45 am]

BILLING CODE 8320–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1160, 1162, and 1166

[Ex Parte No. 55 (Sub-No. 86)]

Revision of Licensing Application Forms and Corresponding Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to revise its standard licensing application form and corresponding regulations concerning application procedures. The proposal is to replace the comprehensive licensing application form (Form OP–1) currently in use with a series of six transportation mode-specific forms.

The proposal is an effort to simplify further the licensing application process, drawing upon the agency's recent experience under the comprehensive licensing form and corresponding regulations adopted 2 years ago. The proposed Form OP–1 Series also incorporates the recent revisions to the Commission's safety fitness policy adopted in Safety Fitness Policy, 8 I.C.C.2d 123 (1991), petition to reopen denied (not printed), served December 26, 1991, 58 FR 67002 (December 27, 1991).

DATES: Comments are due September 21, 1992.

ADDRESSES: Send comments (an original and 10 copies), referring to Ex Parte No. 55 (Sub-No. 86), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley (202) 927–5610 or Richard B. Felder (202) 927–5610. (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from the Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC. Telephone: (202) 927–7428. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Environmental and Energy Considerations

We preliminary conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources. We specifically invite parties to comment on these issues.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, the Commission is required to examine specifically the impact of a proposed action on small business and small organizations. We preliminarily conclude that this proposal will have a positive impact on such entities.

The proposed replacement forms and corresponding revised regulations will reduce significantly the time required of applicants and their representatives in reviewing filing instructions and preparing licensing requests. At the same time, the Form OP–1 Series proposed here will ensure that all information essential to the application review process continues to be captured on the application forms—indeed in a more efficient and useful manner.

The benefits of streamlining the Commission's application review process will flow directly to small applicants for motor and water carrier, property broker, and household goods freight forwarder authority in the form of expedited action on licensing requests. With simplified application forms and accompanying instructions, licensing requests should be properly formulated initially. This will substantially reduce the need for revision by Commission staff or corrective assistance through informal contacts with applicants. It is likely that small applicants increasingly will be able to prepare and oversee the processing of their own applications. This will permit all applicants to commit a greater proportion of their resources to developing their operations and enhancing service once authority is granted.

The proposal to substitute separate forms for the comprehensive Form OP-1 now in use may result in incremental increases in the burden hours associated with application filings and higher filing fees for those applicants that simultaneously seek multiple types of operating authority. We emphasize, however, that such potential increases will affect only the distinct minority of small entities that compound their licensing requests and that previously would have been able to procure such authority by filing a single application and fee.[1] In any event, for those few small entities that will confront multiple application filings under the proposed licensing approach, we further emphasize that any increased burden in time or financial commitment will be incremental and will be greatly outweighed by the overall savings that reasonably can be ascribed to this proposal.

We, therefore, conclude that the proposed rules will have a positive impact upon a substantial number of small carrier applicants, as well as upon applicants generally. This proposal will not impose additional reporting, recordkeeping, or compliance requirements upon small entities; nor will the rules proposed here duplicate, overlap, or conflict with any existing Federal Rule.

Because the overall simplification goals of this proposal speak directly to the potential impact on small businesses, we particularly invite the comments of interested parties on this matter.

Initial Paperwork Reduction Analysis

This notice of proposed rulemaking will be submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The estimated 2 to 3 burden hours required to complete the forms in the proposed OP–1 Series [2] represent a significant reduction over the 4 burden hours estimate applicable to the current Form OP–1. The reduced time period required to complete the form is attributable primarily to the simplified response format proposed and to the increasingly self-contained nature of the application and instruction packages.

The annual reporting burden ascribed to Form OP–1 in the current OMB inventory is 64,000 hours, based on an estimate of 4 burden hours per filing and an estimated 16,000 OP–1 filings per year. Under the revised licensing approach proposed here we estimate that the composite annual reporting burden associated with application filings in the OP–1 Series could be

[1] As noted subsequently in the "Initial Paperwork Reduction Analysis," the vast majority of composite licensing requests involve joint filings of motor property contract and common carrier authority. The proposed revisions to the licensing process would not in any way alter the composite approach permitted for such filings, as the Form OP-1 (T) embraces both contract and common motor property carrier authority.

[2] We have estimated that 3 burden hours will be required to complete each OP–1(T), OP–1(P), and OP–1(W) form and 2 burden hours to complete each of the remaining forms in the proposed OP–1 Series.

reduced significantly to approximately 46,000 hours. This estimate is based on our expectation that licensing application filings will remain at levels relatively constant with those recorded in fiscal year 1991, and that the filing categories associated with the service modes of the various proposed OP–1 Series forms (and their respective burden hours) will be as follows:

Type of form (burden hours per filing)	Number of annual filings	Total burden hours
Form OP–1(T) (3 burden hours).	12,000 filings	36,000 hours.
Form OP–1(TF) (2 burden hours).	68 filings	136 hours.
Form OP–1(P) (3 burden hours).	822 filings	2,466 hours.
Form OP–1(B) (2 burden hours).	3,300 filings	6,600 hours.
Form OP–1(FF) (2 burden hours).	130 filings	260 hours.
Form OP–1(W) (3 burden hours).	16 filings	48 hours.
Total	16,336 filings	45,510 hours.

The burden hours currently noted in the OMB inventory for Form OP–1 are not discounted by any amount to reflect those filings that embrace more than one type of authority. The Commission, moreover, does not maintain statistics that would permit such a determination. Accordingly, it is not possible to project accurately what effect, if any, the proposed change from the unified OP–1 form will have on the total burden hours registered by those applicants who seek multiple types of authority in a single filing. We are confident, however, that the proposed approach that would require multiple licensing forms from such applicants will in no way result in more than incremental increases in their burden hours—certainly not sufficient in number to detract from the overall savings computed above.

The vast majority of composite licensing filings are submitted by applicants seeking to obtain motor property contract and common carrier authority. Under the revised licensing approach proposed here, such service requests can continue to be filed together on Form OP–1(T) and, thus, applicants in this category will reap full advantage of the burden hour savings expected from that revised form. To the extent that other multiple service filings will require submission of separate application forms under the revised licensing scheme proposed here (for example, motor property carrier and property broker authority), we nonetheless expect that the cumulative burden hours represented by such filings will not exceed the 4 burden hours currently ascribed to Form OP–1 filings. That is, applicants completing multiple forms in the proposed OP–1 Series will respond more easily to similar information requests appearing on additional forms. This should produce at most an incremental burden hours increase over that associated with the first form completed. In any event, as previously noted, we do not anticipate that applicants for multiple service modes will be burdened by duplicative or overlapping information requests on the proposed forms to an extent that will detract from the overall efficiencies associated with the proposed licensing revisions.

The estimated burden hours include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information collection requirements contained in this proposal will be submitted to OMB for review under the Paperwork Reduction Act of 1980 and 5 CFR Part 1320. Comments concerning the paperwork burden and burden hour estimates in this proposal may be directed to OMB and the Commission, respectively, by addressing them to:

Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Ed Clark, Desk Officer, (Forms–3120–0047) Washington, DC 20503, and
Interstate Commerce Commission, Forms Clearance Officer, Room 1312, Washington, DC 20423.

List of Subjects

49 CFR Part 1003

Brokers, Freight forwarders, Insurance, Motor carriers, Securities, Surety bonds.

49 CFR Part 1160

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers.

49 CFR Part 1162

Administrative practice and procedure, Motor carriers.

49 CFR Part 1166

Administrative practice and procedure.

Decided: August 11, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Emmett commented with a separate expression.

Sidney L. Strickland, Jr.

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1003, 1160, 1162, and 1166 of the Code of Federal Regulations are proposed to be amended as follows:

PART 1003—LIST OF FORMS

1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 551(a), 5 U.S.C. 553(1)(c), 49 U.S.C. 10321.

2. In § 1003.2 the entry for OP–1 (Effective 6/1/90) is proposed to be removed and entries for OP–1(T), OP–1(TF), OP–1(P), OP–1(B), OP–1(FF), and OP–1(W) are added in its place to read as follows:

§ 1003.2 Motor and water carrier, broker, and household goods freight forwarder forms.

* * * * *

OP–1(T) (Effective_____).
Interstate Commerce Commission
Application for Motor Property Carrier Authority.
Cross Reference: 49 CFR parts 1160 and 1162.

OP–1(TF) (Effective_____).
Interstate Commerce Commission
Application for Motor Property Carrier "Fitness Only" Authority.
Cross Reference: 49 CFR part 1160.

OP–1(P) (Effective_____).
Interstate Commerce Commission
Application for Motor Passenger Carrier Authority.
Cross Reference: 49 CFR parts 1160 and 1162.

OP–1(B) (Effective_____).
Interstate Commerce Commission
Application for Motor Property Broker Authority.
Cross Reference: 49 CFR part 1160.

OP–1(FF) (Effective_____).
Interstate Commerce Commission
Application for Household Goods Freight Forwarder Authority.
Cross Reference: 49 CFR part 1160.

OP–1(W) (Effective_____).
Interstate Commerce Commission
Application for Water Carrier Authority.
Cross Reference: 49 CFR part 1160, 1162, and 1166.

* * * * *

PART 1160—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

3. The authority citation for part 1160 continues to read as follows:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, 10928, and 11102; 5 U.S.C. 553 and 559; 16 U.S.C. 1456.

4. The "Note" at the conclusion of § 1160.1 is proposed to be revised to read as follows:

§ 1160.1 Applications governed by these rules.

* * * * *

Note: Applications for emergency temporary and temporary motor carrier and water carrier authority are filed on Forms OP–1(T) or OP–1(P) and OP–1(W), respectively. Rules governing these applications are set forth at 49 CFR part 1162 and 49 CFR part 1163.

5. Section 1160.3 is proposed to be revised to read as follows:

§ 1160.3 Starting the application process: Form OP–1.

(a) All applicants for operating authority shall use the appropriate licensing application form from the Form OP–1 Series as follows:

OP–1(T)—Motor Property Carrier Authority.
OP–1(TF)—Motor Property Carrier "Fitness Only" Authority.
OP–1(P)—Motor Passenger Carrier Authority.
OP–1(B)—Motor Property Broker Authority.
OP–1(FF)—Household Goods Freight Forwarder Authority.
OP–1(W)—Water Carrier Authority.

(b) Obtain the forms at Commission regional and field offices or call the Office of the Secretary at (202) 927–7428. Additional information concerning the application process and required submissions is available from the Office of Public Assistance at (202) 927–7597.

§ 1160.9 [Amended]

6. In § 1160.9, the telephone number "(202) 275–1721" is proposed to be revised to read "(202) 927–5721".

§§ 1160.14–1160.18 [Removed]

7. Sections 1160.14 through 1160.18 are proposed to be removed and all references to those sections are also proposed to be removed.

8. In § 1160.65 paragraphs (b) through (d) are redesignated as paragraphs (c) through (e), the heading of the section and paragraph (a) are revised and a new paragraph (b) is added to read as follows:

§ 1160.65 Concurrent filings and consolidation of applications.

(a) Requests for licensing authority by a single applicant on any number of forms in the OP–1 Series, filed concurrently (and submitted in the same envelope), to the extent feasible, will be processed by the Commission in a coordinated manner. Filing fees as set forth at 49 CFR part 1002 must accompany each application. If an applicant files as part of the same application package multiple requests for permanent authority on various forms in the OP–1 Series, the applicant may submit a single payment for the *sum of the applicable fees.*

(b) Applicants may request consolidation of applications not concurrently filed under the terms of paragraph (a) of this section. The request shall be made upon filing the applications sought to be consolidated. Requests for consolidation shall be made in writing to the Office of the Secretary, Legal Unit, and shall reference the filing date and, if known, docket numbers of the proceedings.

* * * * *

PART 1162—TEMPORARY AUTHORITY (TA) AND EMERGENCY TEMPORARY AUTHORITY (ETA) PROCEDURES UNDER 49 U.S.C. 10928

9. The authority citation for part 1162 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10928; 5 U.S.C. 559.

10. In § 1162.2, paragraph (b)(1), the "Note" at the conclusion of paragraph (b)(2), and paragraphs (c) and (d) are proposed to be revised to read as follows:

§ 1162.2 Filing of applications.

* * * * *

(b) * * *

(1) Applicants for TA and/or ETA shall file the appropriate licensing application form in the OP–1 Series in accordance with the instructions accompanying that form. The envelope containing the form shall be clearly marked "ETA Application" and/or "TA Application."

(2) * * *

Note: Applicants for TA and/or ETA who simultaneously have filed for corresponding permanent authority on the same form in the OP–1 Series must submit the original and one copy of the form to Commission Headquarters for processing the permanent licensing request and must submit two (2) copies of the form to the appropriate Regional Office for processing the temporary authority request.

* * * * *

(c) *Filing fees.* A filing fee as designated at 49 CFR 1002.2 shall accompany each TA and ETA application. Method of payment options are set forth on the fees schedule that accompanies the appropriate form in the OP–1 Series.

Note: TA and ETA applicants who concurrently have filed for corresponding permanent operating authority on the same form in the OP–1 Series must submit the TA and/or ETA filing fee(s) to the Regional Office processing such applications.

(d) **Supporting statements.** Each application shall be accompanied by "Certificate(s) of Support" designed to establish an immediate need for service which cannot be met by existing carriers. Such supporting evidence should follow the format and contain all the information prescribed on the "Certificate of Support" portion of the appropriate form in the OP–1 Series.

* * * * *

§ 1162.2 [Amended]

11. In § 1162.2(e)(4)(ii) remove the words "form OCCA–95" and add in their place the words "the appropriate form in the OP–1 Series".

PART 1166—EXTENSION OF OPERATIONS BY WATER COMMON CARRIER

12. The authority citation for part 1166 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10922; 5 U.S.C. 559.

§ 1166.3 [Amended]

13. In § 1166.3(c) remove the words "form OP–1" and add in their place the words "Form OP–1(W)".

[FR Doc. 92–19924 Filed 8–19–92; 8:45 am]
BILLING CODE 7035–01–M

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49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 27)]

Rail General Exemption Authority; Transportation Equipment

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; narrowing of scope of proposed exemption; change of comment due date.

SUMMARY: By decision served July 9, 1992 (57 FR 30709, July 10, 1992), the Commission sought public comment by August 10, 1992, on whether to exempt from regulation the rail transportation of transportation equipment. By notice served August 4, 1992 (57 FR 34890, August 7, 1992), the comment due date was extended to November 9, 1992. The Commission is now vacating and setting aside the notice served August 4, 1992, and is changing the comment due date to September 21, 1992. The Commission is also narrowing the scope of the proposed exemption from the rail transportation of transportation equipment (STCC 37) to the rail transportation of motor vehicles (STCC 37 11) and motor vehicle parts or accessories (STCC 37 14).

DATES: Comments must be submitted by September 21, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 27) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927-5660 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. (Assistance for the hearing impaired is available through TDD services (202) 927-5721.)

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads,

Decided: August 13, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-19923 Filed 8-19-92; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register

Vol. 57, No. 162

Thursday, August 20, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 14, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested;
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404-W Admin. Bldg., Washington, DC 20250, (202) 690-2116.

Revision

• *Agricultural Stabilization and Conservation Service*

7 CFR 1421—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans and Seed
CCC-20, 24, 25, 26, and associated forms.
Recordkeeping; Annually
Business or other for-profit; 19,634 responses; 848,375 hours
Lynn Howe (202) 720-5785

Extension

• *Food and Nutrition Service*

Integrated Quality Control Review Schedule
FNS-380-1
Recordkeeping; On occasion
Individuals or households; State or local governments; 63,419 responses; 64,916 hours
Karen Peko (703) 305-2471

• *Forest Service*

Disposal of Mineral Materials (36 CFR 228 subpart C)
FS-2800-9, R1-FS-2850-1
On occasion; Annually
Individuals or households; State or local governments; Businesses or other for-profit; Small businesses or organizations; 3,510 responses; 8,850 hours
Steve Marshall (202) 205-1246

Reinstatement

• *Animal and Plant Health Inspection Service*

Field Investigation (READI)
VS Form 12-27 and A, B
On occasion
Farms; Businesses or other for-profit; Small business or organizations; 300 responses; 300 hours
Dr. Maurice A. Mixson (301) 436-8073

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92-19841 Filed 8-19-92; 8:45 am]

BILLING CODE 3410-01-M

Food and Nutrition Service

WIC Farmers' Market Nutrition Program (FMNP)

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of Departmental intent to implement the new WIC Farmers' Market Nutrition Program (FMNP).

SUMMARY: In accordance with the mandates of Public Law 102-314 enacted July 2, 1992, the Department announces the establishment of the Farmers' Market Nutrition Program (FMNP). The FMNP is designed to provide resources to women, infants and children who are nutritionally at risk, in the form of fresh nutritious unprepared foods (such as fruits and vegetables) from farmers' market, to expand the awareness and use of farmers' markets, and to increase sales at such markets. To facilitate the implementation of this new program, information packages will make available to State agencies and other interested parties upon request from the Supplemental Food Programs Division of the Food and Nutrition Service (FNS) Headquarters. Questions regarding the FMNP also should be directed to FNS Headquarters; however, State plans should be submitted to the appropriate FNS Regional Office for approval. Regulations for the FMNP will be codified in the Code of Federal Regulations as 7 CFR part 248.

DATES: State plans describing in detail how the State intends to operate and administer the FMNP in Fiscal Year 1993 must be submitted to the appropriate FNS Regional Office no later than October 15, 1992.

ADDRESSES: States interested in implementing a Farmers' Market Nutrition Program should write to Barbara Hallman, Acting Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305-2746 to request an information package. Such requests should be clearly labeled "WIC Farmers' Market Nutrition Program.".

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 542, Alexandria, Virginia 22302, (703) 305-2730.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This Notice has been reviewed and has been classified not major. This Notice will not have an annual effect on the economy of $100 million or more, nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions.

Executive Order 12372

The Special Supplemental Food Program for Women, Infants and Children (WIC) is listed in the Catalog of Federal Domestic Assistance

Programs under 10.557. For the reasons set forth in the Final rule related Notice to 7 CFR part 3015, subpart V (48 FR 29114, June 24, 1983), this Program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Paperwork Reduction Act

The Notice imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Demonstration Projects

Section 501 of the Hunger Prevention Act of 1988 (Pub. L. 100–435, enacted on September 19, 1988), added a new subsection (m) to section 17 of the Child Nutrition Act (CNA) (42 U.S.C. 1786(m)) which authorized up to 10 Farmers' Market Coupon Demonstration Projects for a 3-year period. The purpose of the projects was twofold: (1) To provide fresh nutritious unprepared foods (such as fruits and vegetables from farmers' markets to persons at nutritional risk, and (2) to expand the awareness and use of farmers' markets.

Under the authority of Public Law 100–435, participants in the Special Supplemental Food Program for Women, Infants and Children (WIC) in certain areas of Connecticut, Iowa, Maryland, Massachusetts, Michigan, New York, Pennsylvania, Texas, Vermont, and Washington were provided with coupons that could be redeemed at authorized farmers' markets for fresh, nutritious, unprepared foods. The 10 sites were selected through a competitive grant application process which was based primarily on criteria set forth in the law as well as additional criteria developed by the Department to ensure accountability and to maximize benefits for farmers and recipients.

Basic features of the initial demonstration projects included:

(1) Only persons currently participating in the WIC Program (excluding infants 4 months of age or younger) were eligible for Federal benefits under the projects.

(2) The annual value of the Federal share of the benefit could not be less than $10 or more than $20.

(3) The State grantee was required to provide matching funds for the demonstration project in an amount equal to not less than 30 percent of the total cost of the demonstration project. The match could be satisfied by contributions to similar projects operating in the State.

(4) State grantees were allowed to use up to 12 percent of project funds for administration.

Public Law 100–435 (section 17(m)(9)(A) of the CNA) also mandated an evaluation of the Farmers' Market Coupon Demonstration Project, which was conducted in two phases. Phase One examined the general management and accountability of the projects during their first season in 1989, and indicated that the projects were generally well-run, particularly in the areas of accountability, benefit delivery, and overall project management. Phase Two of the evaluation process assessed the impact of the projects and their effectiveness in accomplishing the legislative goals. Surveys were also completed to measure the food consumption and purchasing patterns of WIC farmers' market coupon recipients and sales and food purchases at participating farmers' markets as compared to appropriate control groups. Findings from Phase Two indicated that the project had a modest positive effect on farmers' incomes, and on the consumption of fruits and vegetables by women participating in the WIC Program. The results of both phases of the evaluation were submitted in a report to Congress in April 1991.

Establishment of the WIC Farmers' Market Nutrition Program

Based largely on the success of the Farmers' Market Coupon Demonstration Projects, Public Law 102–314 has now authorized the WIC Farmers' Market Nutrition Program (FMNP) as an independent program by amending section 17(m) of the CNA. Amended section 17(m)(1) instructs the Secretary to award grants to States that submit State plans that are approved for the establishment or maintenance of programs designed to provide recipients of assistance through the WIC Program, or those who are on a waiting list to receive WIC benefits, with coupons that may be exchanged for fresh, nutritious, unprepared foods at farmers' markets. Pursuant to section 17(m)(2), the chief executive officer of the State or Indian Tribal Organization (i.e., the Governor or Principal Chief) shall designate the appropriate State agency or agencies to administer the program in conjunction with the appropriate nonprofit organizations, and shall ensure coordination of the program among the appropriate agencies and organizations.

Basic Provisions of the New Program

The newly created Farmers' Market Nutrition Program is very similar to the Demonstration Projects which have now been in operation for 4 years. For example, the annual Federal value of the coupons issued to FMNP participants is still restricted to not less than $10 and not more than $20 per participant, and each State agency administering the FMNP must provide matching funds in an amount equal to not less than 30 percent of the total cost of the program's operation and administration. However, four significant differences are also included in the authorizing legislation:

(1) Persons who are on a waiting list for WIC Program participation, as well as current WIC participants, may receive FMNP coupons;

(2) The State agency cap for administrative funds to operate the FMNP has been increased to 15 percent of the total amount of Program funds;

(3) During the first year for which a State receives assistance under the FMNP, a State shall be permitted to use not more than 2 percent of the total program funds for administration of the FMNP in addition to the 15 percent already established; the Secretary may permit a State to use not more than an additional 2 percent during subsequent years upon a showing by the State of financial need; and

(4) A State agency may use not more than 5 percent of its current year funds during a subsequent fiscal year or to cover expenses incurred during the prior fiscal year.

Finally, section 17(m)(6)(A) effectively grandfathers in the State agencies that have operated Farmers' Market Coupon Demonstration Projects, by stipulating that each State which received Federal funding in a fiscal year ending before October 1, 1991 (i.e. before Fiscal Year 1992) shall receive benefits under the new FMNP, provided that the State continues to comply with the requirements established by Public Law 102–314, as determined by the Secretary. Section 17(m)(6)(B) mandates that, if sufficient funds are appropriated by Congress, no State shall receive less Federal funds than it did in the most recent fiscal year in which it received assistance, as long as the State continues to provide the requisite matching funds. Once funds have been set aside to satisfy this requirement, section 17(m)(6)(G) requires the balance that remains shall be allocated as follows:

(1) An amount equal to 45 to 55 percent shall be made available to States participating in the Program that wish to serve additional participants, and whose State plan to do so is approved by the Department. If this amount is greater than that necessary to satisfy approved expansion requests from current State agencies, the unallocated amount shall be made available to State agencies that have not participated in the Program in the prior fiscal year, and whose State plans have been approved by the Department.

(2) An amount equal to 45 to 55 percent shall be made available to States that have not participated in the Program in the prior fiscal year, and whose State plans have been approved by the Department. If this amount is greater than that necessary to satisfy the approved State plans for new State agencies, the unallocated amount shall be applied toward satisfying any unmet need of States that desire to serve additional recipients, and whose State plans have been approved by the Department.

(3) In any fiscal year, any funds that remain unallocated after satisfying the requirements of (1) and (2) shall be reallocated in the following fiscal year in accordance with procedures established in section 17(m)(10)(B)(ii). Subject to requirements of section 17(m)(6) described above, the Secretary is instructed in section 17(m)(4) to establish a formula for determining amounts to be awarded to each State with an approved plan according to the number of recipients proposed to participate as specified in the State plan. In determining the amount to be awarded to new States, the Secretary is further instructed to rank the State plans using the criteria set forth in section 17(m)(6)(F). The legislation clearly states that the Department must take into consideration the minimum amount needed to fund each approved State plan, and need not award grants to each State that submits an approved State plan.

State Plan Provisions

Section 17(m)(6)(D)(i) requires each State that desires to receive a FMNP grant to submit a State plan for each fiscal year in order to be approved by the Department. Section (m)(6)(D)(ii) requires each State plan submitted to an FNS Regional Office to contain the following:

(1) The estimated cost of the Program;

(2) The estimated number of individuals to be served by the Program;

(3) A description of the State's plan for complying with the requirements of section 17(m)(5);

(4) The criteria developed by the State with respect to authorization of producers (i.e., farmers) to participate in the Program. Such criteria shall require any authorized producer to sell fresh nutritious unprepared foods (such as fruits and vegetables) to participants, in exchange for coupons distributed under the Program;

State Plan Evaluation Criteria

As noted in the DATES section of this Notice, all State plans for the Fiscal Year 1993 FMNP must be submitted by October 15, 1992. Plans must be submitted by all States wishing to participate in the Fiscal Year 1993 FMNP, including those States which have previously participated in the Farmers' Market Coupon Demonstration Project. Once all of the State plans submitted by October 15, 1992, and approved by the appropriate FNS Regional Offices have been received by FNS Headquarters, the Department will rank them in order of priority.

Section 17(m)(6)(E) requires the Secretary to establish objective criteria for the approval and ranking of State plans. In addition, certain criteria and considerations for approving and ranking State plans are set forth in the law itself. Because of the short timeframe between enactment of the law and the due date for Fiscal Year 1993 State plans, the Department has decided not to add any additional ranking criteria for Fiscal Year 1993. Applicants will only be required to address the legislatively-mandated State plan criteria for Fiscal Year 1993. Therefore, as specified in section 17(m)(6)(F), in ranking approved Fiscal Year 1993 State plans for the FMNP, the Department will:

(1) Favorably consider a State's proper experience with the FMNP, the Farmers' Market Coupon Demonstration Project, or similar programs;

(2) Favorably consider a State's operation of a similar program with State or local funds that can present data concerning the value of the program;

(3) Require that if a State receiving funds under the FMNP applies the Federal grant to a similar program operated in the previous fiscal year with State or local funds, the State shall not reduce the amount of such State or local funds previously made available after receiving Federal funds under the FMNP;

(4) Give precedence to State plans that would serve areas in the State having—

(a) The highest concentration of eligible persons;

(b) The greatest access to farmers' markets;

(c) A broad geographical area;

(d) The greatest number of recipients in the broadest geographical area within the State; and

(5) Take into consideration the amount of funds available and the minimum amount needed by each applicant State to operate the FMNP successfully.

Timeframes for Announcing New FMNP Sites

As indicated above, State plans for Fiscal Year 1993 must be submitted to the appropriate FNS Regional Office no later than October 15, 1992. The FNS Regional Office will review the plans and advise each State agency of its approval within 30 days of receipt. Technical assistance shall be provided by the appropriate FNS Regional Office to any State whose plan is not approvable upon receipt, within this 30-day period.

All approved State plans will then be forwarded to the Supplemental Food Programs Division of FNS in Alexandria, Virginia, where they will be evaluated against the specified criteria and ranked in order of excellence. The Department anticipates announcing any new FMNP State agencies no later than January 1, 1993. Contingent upon the availability of funds and after awarding grants to States that participated in the Farmers' Market Coupon Demonstration Project, the Department will award grants to new States, starting with the State agency at the top of the list and working downward until all available funds have been allocated.

Priority ranking will not be carried over from previous years, i.e., an unfunded State at the top of the list when all available funds are allocated in a given fiscal year does not automatically stay at the top of the list for the next year.

Beginning with the Fiscal Year 1994 FMNP, participating State agencies will only be required to submit amendments to their State plans as systems or procedures are modified.

Training

The Department anticipates providing training for all participating State agencies as soon as possible after the new State agencies are announced. Technical assistance will be available on the ongoing, as-needed basis from the Supplemental Food Programs Division as well as the FNS Regional Offices. As indicated previously in this Notice, questions regarding the FMNP should be directed to Barbara Hallman or Debra Whitford in the Supplemental Food Programs Division, FNS, at (703) 305–2730.

FNS Regional Offices

State agencies and other interested parties should contact the appropriate FNS Regional Office as listed below:

Northeast Region. Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont. U.S. Department of Agriculture, FNS, Northeast Region, 10 Causeway Street, Boston, Massachusetts 02222–1068.

Mid-Atlantic Region. Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Puerto Rico, Virginia, Virgin Islands, West Virginia. U.S. Department of Agriculture, FNS, Mid-Atlantic Region, Mercer Corporate Park, CN–02150, Trenton, New Jersey 08650.

Southeast Region. Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee. U.S. Department of Agriculture, FNS, Southeast Region, 77 Forsyth Street, SW., suite 112, Atlanta, Georgia 30303.

Midwest Region. Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin. U.S. Department of Agriculture, FNS, Midwest Region, 77 West Jackson Boulevard, 20th floor, Chicago, Illinois 60604–3507.

Southwest Region. Arkansas, Louisiana, New Mexico, Oklahoma, Texas. U.S. Department of Agriculture, FNS, Southwest Region, 1100 Commerce Street, room 5–C–30, Dallas, Texas 75242.

Mountain Plains Region. Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, Wyoming. U.S. Department of Agriculture, FNS, Mountain Plains Region, 1244 Speer Boulevard, suite 903, Denver, Colorado 80204.

Western Region. Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Trust Territory of the Pacific Islands, the Northern Mariana Islands, Washington. U.S. Department of Agriculture, FNS, Western Region, 550 Kearny Street, room 400, San Francisco, California 94108.

Interested Indian Tribal Organizations and other Indian State agencies should contact the Regional Office responsible for the geographic State agency where they are located, as listed above, except that the Navajo Nation in its entirety is covered by the Western Regional Office.

Dated: August 13, 1992.

Betty Jo Nelsen,

Administrator.

[FR Doc. 92–19605 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Williams Fork Gravity Water System Proposal

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: Pursuant to 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR parts 1500–1508, and Forest Service Manual 1950.3(3), notice is hereby given that the Record of Decision for the Williams Fork Gravity Water System Proposal is available.

EFFECTIVE DATE: This decision was effective June 19, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about the decision should be addressed to Mike Retzlaff, Routt National Forest, 29587 West U.S. 40, suite 20, Steamboat Springs, CO 80487, (303) 879–1722.

SUPPLEMENTARY INFORMATION: The proposed Williams Fork Gravity Water System is located in Grand County, Colorado within the Routt National Forest. The Denver Board of Water Commissioners has developed extensive water collection system facilities to transport water from the headwaters of the Colorado, the Eagle, and the Arkansas Rivers systems into the South Platte River system to provide for the growing industrial and domestic use demands within the Denver Metropolitan Area. As a small part of this collection system, a gravity-flow trans-mountain water diversion system was built in the upper basin of the Williams Fork River drainage in the late 1930's.

During the 1970's, Forest Service environmental analyses confirmed high quality environmental values in the Williams Fork River drainage. Forest Service personnel also determined that approximately 2 miles of road work had been added to the gravity system. This addition had been constructed between Steelman Creek and Webb Creek off the 1924 right-of-way. A lengthy lawsuit confirmed that trespass and revealed others, but determined that although the right-of-way was then part of the National Forest System, the Bureau of Land Management in the Department of Interior was the agency with jurisdiction to amend the right-of-way.

In April 1986, the Denver Board of Water Commissioners asked the Bureau of Land Management to amend the right-of-way and asked the Forest Service for permission to occupy such lands as would be necessary to construct the extension. In addition, the Board asked for authorization to complete construction of its system. Such authorization would allow the Board to extend its gravity system onto additional National Forest System lands. The Board had also applied for an authorization to construct the Two Forks Dam and Reservoir. The environmental analyses of the effects of several future water diversion projects, including the Two Forks Dam proposal and the expansion of the Williams Fork gravity system, was documented in the Metropolitan Denver Water Supply Final Environmental Impact Statement, which was released in March 1988.

The Record of Decision pertains only to the Williams Fork portion of the proposals from the Denver Board of Water Commissioners and is in response only to the Board's request for an extension of the gravity water diversion facility already located in the upper basin of the Williams Fork River. With this decision, the Denver Board of Water Commissioners, and others, may begin the process of developing a more efficient water collection system in the Williams Fork area without significantly impacting the environment.

Dated: August 11, 1992.

John Morrison, Jr.,

Acting Regional Forester.

[FR Doc. 92–19858 Filed 8–19–92; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Idaho Advisory Committee

Notice if hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Idaho Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 4 p.m. on September 10, 1992, at the Guadalupe Center, 630 Falls Avenue, Twin Falls, Idaho 83303. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Advisory Committee Chairperson, Gladys Esquibel or Philip Montez, Director of the Western Regional Office (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the regional office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 13, 1992.

Carol-Lee Hurley,

Chief, Regional Coordination Unit.

[FR Doc. 92–19857 Filed 8–19–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronics Technical Advisory Committee; Closed Meeting

A meeting of the Electronics Technical Advisory Committee will be held September 3, 1992 at 9 a.m., in the Herbert C. Hoover Building, room 1617M–2, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics and related equipment or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 5, 1991, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information, call 202–377–4959.

Dated: August 13, 1992.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of the Deputy Assistant Secretary for Export Administration.

[FR Doc. 92–19853 Filed 8–19–92; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 592]

Resolution and Order Approving the Application of the Community Development Foundation, Findlay, OH

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Community Development Foundation, Findlay, Ohio, grantee of Foreign-Trade Zone 151, filed with the Foreign-Trade Zones Board (the Board) on May 28, 1991, requesting special-purpose subzone status at the freezer manufacturing plant of W.C. Wood Company, Inc., in Ottawa (Putnam County), Ohio, adjacent to the Toledo Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status—W.C. Wood Company, Inc., Ottawa (Putnam County), Ohio

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Community Development Foundation, Findlay, Ohio, Grantee of Foreign-Trade Zone No. 151, has made application (filed 5–28–91, FTZ Docket 31–91, 56 FR 26795, 6–11–91) to the Board for authority to establish a special-purpose subzone at the freezer manufacturing plant of W.C. Wood Company, Inc., in Ottawa (Putnam County), Ohio;

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 151B) at the W.C. Wood Company, Inc., plant in Ottawa (Putnam County), Ohio, adjacent to the Toledo Customs port of entry, at the location described in the application, subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 10th day of August, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92–19827 Filed 8–19–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 591]

Resolution and Order Approving the Application of the South Carolina State Ports Authority for Special-Purpose Subzone Status at the Haarmann and Reimer Corp. Plant (Flavor and Fragrance Chemicals Processing Plant) Goose Creek, SC

Proceedings of the Foreign-Trade Zones Board, Washington, DC

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the South Carolina State Ports Authority, grantee of FTZ 21, filed with the Foreign-Trade Zones Board (the Board) on August 14, 1990, requesting special-purpose subzone status at the flavor and fragrance chemicals plant of Haarmann & Reimer Corporation in Goose Creek, South Carolina (Charleston area), the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the FTZ Board's regulations would be satisfied, and that the proposal would be in the public interest if approval is limited to activity relating to the manufacture of the products specifically listed in the **Federal Register** notice announcing the filing of the application and inviting public comment (55 FR 35160, 8/28/90), approves the application, subject to the foregoing condition.

Approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790-50808, 10/8/91), including Section 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority for Subzone Status; Haarmann and Reimer Corp.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the South Carolina State Ports Authority, grantee of FTZ 21, has made application (filed 8–14–90, FTZ Docket 34–90, 55 FR 35160, 8–28–90) to the Board for authority to establish a subzone at the flavor and fragrance chemicals processing plant of Haarmann and Reimer Corporation, Goose Creek, South Carolina within the Charleston port of entry area;

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were limited to the specific activity announced in the **Federal Register** notice on the application (55 FR 35160, 8/28/90);

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 21B) at the Haarmann and Reimer Corporation plant in Goose Creek, South Carolina, at the location described in the application, for manufacture of the products specifically listed in the application and announced in the **Federal Register** notice referred to above, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including Section 400.28.

Signed at Washington, DC, this 10th day of August, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92–19826 Filed 8–19–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–507–502]

In-Shell Pistachios From Iran; Determination Not To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty order on In-Shell Pistachios from Iran.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377–5253.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping duty order, pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation or requests an administrative review by the last day of the fifth annual anniversary month (19 CFR 353.25(d)(4) (1992)). We had not received a request to conduct an administrative review of the antidumping duty order on in-shell pistachios from Iran (51 FR 25922, July 17, 1986) for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on July 2, 1992, we published in the **Federal Register** a notice of intent to revoke the antidumping duty order (57 FR 29470) and served written notice of the intent to revoke to each interested party on the Department's service list.

On July 22, 1992, the California Pistachio Commission and the Western Pistachio Association (originally the California Pistachio Association), the petitioners in the original action, objected to our intent to revoke this order. Therefore, because an interested party objects to the revocation, we no longer intend to revoke this antidumping duty order.

Dated: August 12, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–19939 Filed 8–19–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–818]

Antidumping Duty Order: Personal Word Processors From Japan; Amendment

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377–5055.

Background

On July 9, 1991, the Department of Commerce ("the Department") published a notice in the **Federal Register** of its final determination of sales at less than fair value with respect to personal word processors from Japan (56 FR 31101, July 9, 1991). In this notice, the Department stated that the imported merchandise under investigation constituted a single class or kind of merchandise.

In its final injury determination of August 19, 1991, the International Trade Commission ("ITC") found that the merchandise produced in the United States which is like the imported merchandise under investigation constitutes two like products: (1) Personal word processors and (2) office typing systems. The ITC determined that there was material injury to the United States industry which produces personal word processors, but did not find material injury with respect to office typing systems.

On August 18, 1991, the Department published an antidumping duty order on personal word processors from Japan (56 FR 42593). As a result of the ITC's final determination, the Department excluded imports of office typing systems from the scope of the order.

Subsequently, the Department determined that it was appropriate to clarify this portion of the scope of the order. In consideration of pending litigation concerning its less than fair value determination, the Department sought permission of the Court of International Trade ("CIT") to amend the order. On February 3, 1992, the CIT granted this request. On March 13, 1992, the Department forwarded a draft amendment to the order to all interested parties. See the "Interested Party Comments" section of this notice.

Amendment of Order

In the "Scope of Order" section of the August 28, 1991 antidumping duty order, following the sentence "Office typing systems are specifically excluded from the scope of the investigation by virtue of the ITC determining that there is no injury with respect to that like product", the following language should be added.

Office typing systems are defined as personal word processors and major finished units thereof (as defined in this antidumping duty order) that also: (1) have a print speed of 20 characters per second or more; (2) have a print line width of 11.5 inches or more; and (3) offer the user proportionally spaced printing as a standard option.

As identified by the ITC, examples of currently-produced office typing systems include the following: IBM Wheelwriter Model 50 and Model 70; Xerox 62 Series Model 6225 and Model 6240; Canon AP830, AP830–II, AP830–III, AP850, AP850–II, and AP850–III; Swintec 2000 Typing System; Brother 2050/D and 2050/DS; Matsushita KX–E4500 and KX–E7500. See appendix D at pp. B–30 through B–31 to the ITC's Final Report in this investigation (Personal Word Processors from Japan, Inv. No. 731–TA–483 (Final), USITC Pub. No. 2411 (August 1991) ("ITC Final Determination")).

The ITC's definition of office typing systems included a criterion for weight in addition to the three criteria listed above. We have determined not to include weight in our definition of office typing systems because we do not find that it provides a consistent or clearly distinguishable criterion in all cases for determining whether a personal word processor is an office typing system. Information on the record indicates that the weights for office typing systems very substantially. Moreover, based on our experience in administering the antidumping duty order on portable electric typewriters ("PETS") from Japan, where we were called upon to distinguish office typewriters from PETs, weight is not always a useful criterion. As was the case in PETS, improvements in technology are likely to make office typing increasing lighter. Therefore, a criterion based on weight could easily become outdated.

Interested Party Comments

Comment 1

According to Smith Corona Corporation ("Smith Corona"), the Department's criteria for defining an office typing system are unduly broad. Smith Corona suggests using scope language which states that the factors used to describe an office typing system should only create a presumption that a given machine is outside the order, rebuttable by evidence of use, customer expectations, channels of distribution and advertising of the model.

DOC Position

We do not agree with Smith Corona that the definition of office typing systems is unduly broad or that it should specifically incorporate the criteria enunciated in the Department's regulations. Contrary to Smith Corona's assertion, our definition neither diminishes nor supersedes the Department's criteria but, rather, is an embodiment of them. See 19 CFR 353.29. It isolates three discrete and identifiable characteristics for distinguishing office typing systems from personal word processors designed for home or consumer use. These distinguishing characteristics are among the very factors which would be accorded significant weight in an analysis under the statute.

The Department's definition, moreover, provides the clearest and most practicable means of consistently distinguishing between personal word processors and office typing systems. With this definition, U.S. Customs can readily identify shipments of office typing systems and properly exclude them from the order. Were Smith Corona's proposed language to be included, U.S. Customs would be seriously hindered from making this determination at the border.

Comment 2

Smith Corona recommends that the Department use weight (*i.e.*, 35 pounds) as a criterion for defining an office typing system. Smith Corona maintains that weight is an important indicator distinguishing consumer personal word processors from the heavier office typing systems. According to Smith Corona, most of the word processors now marketed weigh less than 35 pounds, with some weighing under 30 pounds. Furthermore, Smith Corona argues that it is not likely that, in the future, office typing systems will become lighter as they are, by definition, heavy-duty machines with features that add greater weight to the machine.

Finally, Smith Corona argues that weight has traditionally been treated as an essential physical characteristic in establishing portability for purposes of determining the class or kind of merchandise encompassed by a related product, PETs (see Portable Electric Typewriters From Japan, (52 FR 1504, January 14, 1987). Smith Corona maintains that, although portability *per se* is not essential to determining whether merchandise falls within the class or kind of personal word processors, weight is nonetheless relevant for assessing durability and end use. Therefore, according to Smith Corona, weight is a meaningful criterion for distinguishing covered personal word processors from the excluded office typing systems.

Kyushu Matsushita Electric Co., Ltd., Matsushita Electric Industrial Co., Ltd, and Matsushita Electric Corporation of America (collectively, "Matsushita"), as well as Nakajima All Co., Ltd., argue that weight should not be included as a criterion for determining whether a particular machine is an office typing system. According to Matsushita, technological developments clearly point towards the use of stronger, lighter-weight plastic or other alloy frames as a replacement for the heavier steel frames now used in producing office typing systems. Furthermore, Matsushita states that the Department has recognized that the weight of office typing systems varies significantly and, hence, is far less important than other factors in determining whether a model is an office typing system. Matsushita contends that establishing a "weight" criterion could in fact result in the inclusion of models which really are office typing systems within the scope of the antidumping duty order.

DOC Position

We disagree with Smith Corona's assertion that weight should be included as a criterion. As noted above, we do not consider weight to be a consistently valid indicator for distinguishing personal word processors from office typing systems. We do not dispute that office typing systems, by design, are more durable and "heavy duty" than other personal word processors. The criteria included in the Department's definition, which focus on the machines' printing capacity, reflect this fact. As stated by the ITC in its final determination, "[t]he primary physical differences between office typing machines and other word processors are found in the printer mechanism." ITC Final Determination at A–9. By isolating specific physical characteristics that only a more rugged office typing system would be expected to include, the Department's definition delineates precisely between the uses of a personal word processor intended primarily for home use and those of a machine intended for use in the office.

Unlike the criteria listed in the Department's definition, however, weight has less of a direct effect on the functions, capacity and ultimate use of the machine or, consequently, on the expectations of the consumer. Smith Corona correctly notes in its comments

that the Department does not consider "portability" to be a defining characteristic for personal word processors, whether designed for home or office use. See 56 FR at 42594; ITC Final Determination at 8–11. We do not agree with Smith Corona that weight is necessarily relevant to durability and end use. Although at present the weight of most if not all office typing systems may exceed 35 pounds, current technological trends and the Department's past experience with PETs clearly indicate that this is not likely to remain the case in the future. Matsushita is correct in stressing that, as the industry incorporates lighter-weight materials and other innovations into their manufacturing process, the actual weight of office typing systems should decrease, while the durability and workload capacity of the machines can reasonably be expected to remain constant. Thus, as technology advances, the respective weights of personal word processors designed for home and office uses will converge, while the actual functions and intended uses probably will not.

Comment 3

Smith Corona and Brother Industries, Ltd., Brother International Corporation, and Brother Industries (USA) (collectively, "Brother") argue that print speed is not an appropriate criterion because, with technological development, it can easily become outdated. Both parties argue that personal word processors already exceed the limit of 20 characters per second ("cps"). Smith Corona is concerned that by slightly increasing print speed from common word processor speeds of 12–18 cps, a foreign manufacturer or importer could remove a personal word processor from the antidumping duty order.

Matsushita contends that the printer referred to by Smith Corona as having a print speed exceeding 20 cps is a dot matrix printer. Matsushita argues that the dot matrix printer is not acceptable as a printer for an office typing system because it does not produce fully formed characters (which are required in an office environment), as does a daisy wheel printer. According to Matsushita, the 20 cps print speed criterion is a bright-line criterion for the fully formed character printer that is necessarily used with office typing systems.

DOC Position

We have continued to include print speed of 20 cps or more as one criterion. As with the other criteria in the Department's definition, the greater print speed offered by office typing systems provides a consistent indicator for distinguishing them from other personal word processors. The stronger, more durable frames required for the high speed printing of fully formed characters is currently only available on machines designed for heavier, more versatile office use. All of the office typing systems investigated by the ITC included printers with print speeds in excess of 20 cps, whereas none of the consumer personal word processor printers did so. See ITC Final Determination at appendix D. Unlike the situation with weight, moreover, it has not yet been demonstrated that technological developments will bring the print speed of personal word processors closer to that of office typing systems within the near future. We agree with Matsushita that Smith Corona exaggerates the extent to which consumer personal word processors have already approached this limit. The single example offered by Smith Corona—its own personal word processor model 220 with an optional print speed of 48 cps—actually uses a dot matrix printer.

Comment 4

According to Smith Corona, most office typing systems currently use a 9 inch diagonal cathode ray tube ("CRT") display monitor, whereas many personal word processors use a liquid crystal display ("LCD") monitor. Thus, Smith Corona maintains, the type and size of display is a useful guideline for defining an office typing system.

DOC Position

We have not included the size or type of the video display monitor as a necessary characteristic for an office typing system. We determine that whether most office typing systems presently use a particular size and type of display monitor is not a sufficiently important distinction to justify including display size and type in the definition. Throughout the investigation, neither the Department nor the ITC specified a particular display type or exact size in order for a machine to qualify as a personal word processor, either for consumer or office use. See 56 FR at 42594; ITC Final Determination at 13–16. Nor did the petitioner or the other parties do so. Instead, for purposes of distinguishing *all* personal word processors from PETs, both agencies did include the existence of some type of display monitor of between 8–24 lines as a necessary criterion. ITC Final Determination at 8–16; 56 FR at 42594. Smith Corona has submitted no new information to alter our conclusion in this respect.

Comment 5

Brother argues that proportionally-spaced printing should not be used as a criterion for defining office typing systems. According to Brother, similar to print speed, the use of proportionally-spaced printing as a criterion could easily become outdated. Furthermore, Brother contends that numerous models currently being marketed as office typewriters have no proportionally-spaced printing.

DOC Position

We have continued to include proportionally-spaced printing as a criterion for defining an office typing system. As with print speed, the proportionally-spaced printing featured on office typing systems, along with the other criteria listed by the Department, provides clear and consistent guidelines for distinguishing office typing systems from other personal word processors. Proportionally-spaced printing is a feature characteristic of all of the office typing systems examined by the ITC and, unlike weight, does not vary substantially. See ITC Final Determination at appendix D. Furthermore, although Brother states that proportionally-spaced printing is currently not offered on some office typewriters, Brother offers no evidence that use of proportionally-spaced printing as a criterion will blur the distinction between personal word processors and office typing systems.

This notice constitutes an amended antidumping duty order with respect to personal word processors from Japan, pursuant to section 736(a) of the Tariff Act of 1930, as amended. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

Dated: August 13, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–19938 Filed 8–19–92; 8:45 am]

BILLING CODE 3510-DS-M

[C–614–503]

Lamb Meat From New Zealand; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 19, 1992, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand (57 FR 27437). We have now completed that review and determine the total bounty or grant to be 0.20 percent *ad valorem* for all firms during the period April 1, 1990 through March 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 27435) the preliminary results of its administrative review of the countervailing duty order on lamb meat from New Zealand (50 FR 37708; September 17, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of lamb meat, other than prepared, preserved or processed, from New Zealand. This merchandise is currently classifiable under items 0204.10.0000, 0204.22.2000, 0204.23.2000, 0204.30.0000, 0204.42.2000 and 0204.43.2000 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period April 1, 1990 through March 31, 1991 and two programs: (1) Export Market Development Taxation Incentive (EMDTI) and (2) Livestock Incentive Scheme (LIS).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 0.20 percent *ad valorem* for all firms during the period April 1, 1990 through March 31, 1991. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

Therefore, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after April 1, 1990 and on or before March 31, 1991.

The Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties of zero percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 13, 1992.

Alan M. Dunn,

Assistant Secretary, for Import Administration.

[FR Doc. 92–19940 Filed 8–19–92; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications: Orlando, FL

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the U.S. Department of Commerce's Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance, and the availability of funds. The cost of performance for the first budget period (12 months) is $169,125 in Federal funds and a minimum of $29,846 in non-Federal (cost-sharing) contributions. This federal amount includes $4,125 for an annual audit. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The period of performance will be from January 1, 1993 to December 31, 1993. The MBDC will operate in the Orlando, Florida geographic service area.

The award number for this MBDC will be 04–10–93002–01.

The funding instrument for MBDC will be a cooperative agreement.

Competition is open to individuals, non-profit and for-profit organizations, State and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority businesses.

Applications will be evaluated initially by regional staff on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist them in this effort, MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, MBDCs will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000. False information on the application can be grounds for denying or terminating funding.

MBDCs performing satisfactorily may continue to operate after the initial

competitive year for up to 2 additional budget periods. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance with OMB Circular A-129 "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements, satisfactory to the Department of Commerce, are made to pay the debt.

Applicants are subject to Governmental Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26.

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

Notification must be provided that all non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or is presently facing, criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a pre-condition for receiving Federal grant or cooperative agreement awards.

15 CFR, part 28, is applicable and prohibits recipients of Federal contracts, grants, and cooperative agreements from using appropriated funds for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a specific contract, grant or cooperative agreement. Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" and, when applicable, the SF-LLL, "Disclosure of Lobbying Activities," are required.

CLOSING DATE: The closing date for submitting an application is September 22, 1992. Applications must be postmarked on or before September 22, 1992. Proposals will be reviewed by the Atlanta Regional Office. The mailing address for submission of RFA responses is: U.S. Department of Commerce, Atlanta Regional Office, Minority Business Development Agency, 401 West Peachtree Street NW., suite 1715, Atlanta, Georgia 30308-3516.

A pre-application conference to assist all interested applicants will be held on September 3, 1992, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., room 1715, Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION:

Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. To order a Request for Application (RFA) and to receive additional information, contact: Carlton L. Eccles, Regional Director of the Atlanta Regional Office on (404) 730-3300 or U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street NW., room 1715, Atlanta, Georgia 30308.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: August 14, 1992.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 92-19892 Filed 8-19-92; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Coral and Coral Reef Resources of Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of scoping meetings and notice of intent to prepare an environmental impact statement (EIS) and request for comments.

SUMMARY: NMFS announces its intention to prepare, in cooperation with the Caribbean Fishery Management Council (CFMC), an EIS to assess the potential effects of activities, that may impact coral and coral reef resources in waters around Puerto Rico and the U.S. Virgin Islands. The CFMC is considering developing a fishery management plan to protect corals and associated invertebrates from overexploitation and damage from pollution and physical abuse.

In addition, the CFMC announces a public process for determining the scope of issues to be addressed and for identifying the significant issues related to instituting management of coral and coral reef resources. The intent of this notice is to alert the interested public of scoping meetings, the beginning of a scoping process, and to provide an opportunity for public participation. This action is necessary to comply with Federal environmental documentation requirements.

DATES: Scoping comments are invited through September 30, 1992. The CFMC will accept testimony at the meeting that will be held September 23-25, 1992, in Christianstead, St. Croix, U.S. Virgin Islands, and the opportunity will also be provided for testimony at the following scheduled meetings:

Puerto Rico

August 17, 1992—7 p.m., El Arrecife Rest., G St., No. 4 Bo. Playa, Salinas, P.R.

August 18, 1992—7 p.m., Travelodge Hotel, Road 187, Isla Verde, San Juan, P.R.

August 19, 1992—7 p.m., El Mesón Criollo, Road 937, Las Croabas, Fajardo, P.R.

August 20, 1992—7 p.m., Acra de Oro Rest., Playa Húcares Naguabo, P.R.

August 24, 1992—7 p.m., Centro Comunal, La Parguera, Lajas, P.R.

August 25, 1992—10:30 a.m., Asociación Pescadores Villa del Ojo, Aguadilla, P.R.

U.S. Virgin Islands

September 1, 1992—7 p.m., Conference Room, Legislature Building, St. Thomas

September 2, 1992—7 p.m., Conference Room, Legislature Bldg., St. Croix

ADDRESSES: Scoping comments and requests for additional information on meeting times and locations should be addressed to Mr. Miguel Rolón, Executive Director, Caribbean Fishery Management Council, suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918-2577; Phone (809) 766-5928.

FOR FURTHER INFORMATION CONTACT: Mr. Miguel Rolón (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

At a meeting on June 27-28, 1991, the CFMC agreed that a fishery management plan was needed to protect and conserve dwindling coral and coral reef resources. Information was presented to the CFMC at this meeting, as well as succeeding meetings, that indicated extensive damage to coral reefs from anchoring, diving activities, collecting of live rock, corals and associated invertebrates for the marine aquarium trade, from sedimentation from upland runoff, pollution from the discharge of sewage and petroleum products into coastal waters, and the use of chemicals and drugs to harvest reef-inhabiting organisms. Harvesting of coral and coral reef organisms has recently intensified as a result of increased restrictions in other countries, improved air transportation facilities for exporting the products, and increased demand for tropical aquarium species.

Actions and Possible Alternatives Under Consideration

The CFMC is considering the development of a management plan to regulate the uncontrolled harvest of corals, live rock, and associated invertebrates; to reduce the discharge of marine pollutants; and to prevent physical damage to coral and coral reef resources. Some of the major management options being considered would:

(1) Prohibit the harvest of sea fans/gorgonians, octocorals, and live rock;

(2) Reduce terrigenous sediment input from upland sources into coastal waters;

(3) Prohibit the harvest of and restore damaged stony corals;

(4) Eliminate the discharge of untreated sewage and petroleum products into coastal waters;

(5) Prohibit the use of chemicals and explosives to harvest corals and associated invertebrates;

(6) Limit harvest of marine aquarium invertebrates to hand-held dip nets and slurp guns;

(7) Reduce coral damage caused by anchoring;

(8) Require a permit to collect organisms in the coral management unit; and

(9) Require records and reports from collectors, dealers, and exporters.

Some of these proposed actions would require multi-agency cooperation.

Scoping Process

All persons that may be affected or that are otherwise interested in the proposed actions are invited to participate in determining the scope and significant issues to be analyzed in the EIS by submitting written comments (see **ADDRESSES**). Scoping consists of the range of actions, alternatives, and impacts to be considered in the EIS. Actions include those that may be closely related, cumulative, or similar. Alternatives include the "no-action" alternative and other reasonable courses of action. Impacts may be direct, indirect, or cumulative. The scoping process also will identify and eliminate from detailed study issues that are not significant or that have been covered in prior environmental review.

Timing of the Analysis and Tentative Decisionmaking Schedule

After receiving public comment at their September meeting, the CFMC is scheduled to identify alternatives for analysis and to develop a timetable for preparing the fishery management plan and EIS. The exact time schedule will depend on the range of the identified alternatives.

Dated: August 17, 1992.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19970 Filed 8-17-92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Permit; NMFS, Southwest Fisheries Science Center (P772#61).

On June 11, 1992, notice was published in the **Federal Register** (57 FR 24779) that an application had been filed by the Southwest Fisheries Science Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038-0271 for a permit to import skin samples taken from ten Amazon River dolphins, *Inia geoffrensis*, in Venezuela for purposes of scientific research. These samples will be used in genetic analyses with the objective of obtaining information on the genetic variability in natural *Inia* populations in the Orinoco River and its tributaries.

Notice is hereby given that on August 11, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and NMFS regulations at 50 CFR part 216, the National Marine Fisheries Service issued a permit for the above importation subject to certain conditions set forth therein.

Issuance of this permit is based on a finding that the proposed importation is consistent with the purposes and policy of the Marine Mammal Protection Act. The Service has determined that this research satisfies the issuance criteria for scientific research permits. The importation is required to further a *bona fide* scientific purpose and does not involve unnecessary duplication of research. No lethal taking is authorized.

The Permit, application and supplementary materials are available for review in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, room 7324, Silver Spring, MD 20910, (301/713-2289); and

Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980-4016).

Dated: August 11, 1992.

Charles Karnella,

Deputy Director, Office of Protected Resources.

[FR Doc. 92-19867 Filed 8-19-92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Notice of Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center

for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151 or by telephoning (703) 487–4732. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

Department of Health and Human Services

7–315,911—(U.S. 5,124,351) Method for the Treatment of Cancer by Use of the Cooper Complex of S-(Methylthio)-DL-Homocysteine.

7–373,863—(U.S. 5,116,867) D-Propranolol as a Selective Adenosine Antagonist.

7–398,564—(U.S. 5,123,378) Grooming and/or Foraging Apparatus for Reduction of Stress in Caged Animals.

7–435,022—rRNA Specific Oligonucleotides.

7–585,792—(U.S. 5,120,720) Preparation of Lipophile: Hydroxypropylcyclodextrin Complexes By a Methods Using Co-Solubilizers.

7–749,240—(U.S. 5,117,854) Stopcock Holder.

Department of Interior

7–555,211—(U.S. 5,119,877) Explosion Suppression System.

7–637,580—(U.S. 5,121,829) Method and Apparatus for Reducing Cleaning Blade Wear.

7–645,430—(U.S. 5,121,365) Cutting Sound Enhancement System for Mining Machines.

7–657,627—(U.S. 5,121,344) Method of Locating Underground Mine Fires.

7–685,115—(U.S. 5,123,710) Impact Assisted Segmented Cutterhead.

Department of Agriculture

7–308,219—(U.S. 5,122,471) Cloned Genes Coding for Avian Coccidiosis Antigens Which Induce a Cell-Mediated Immune Response and Method of Producing the Same.

7–519,197—(U.S. 5,122,188) Vegetable Oil-Based Printing Ink.

7–670,602—Diagnostic Assay for Bacteria Based on Fragment Amplification Using Insertion Sequence Location.

7–843,333—Starch and Poly (Ethylene-Co-Acrylic Acid) Pastes and Gels, and Method for Their Making.

7–877,507—A Biological Pesticide Derived from Nicotiana Plants.

[FR Doc. 92–19856 Filed 8–19–92; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

August 14, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 2712, published on January 23, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 14, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 14, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 21, 1992, you are directed to amend further the directive dated January 14, 1992, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	1,181,252 dozen.
338/339	1,516,210 dozen.
340/640	784,459 dozen of which not more than 431,452 dozen shall be in Categories 340–Y/640–Y [2].
341/641	694,261 dozen.
347/348	1,378,373 dozen.
638/639	1,557,561 dozen.
645/646	555,063 dozen.
647/648	831,898 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–19854 Filed 8–19–92; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Proposed Futures and Options Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The Chicago Mercantile Exchange (CME) has applied for designation as a contract market in CME Russell 2000 Stock Price Index futures and options on that futures contract. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CME Russell 2000 Stock Price Index futures and option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contracts, or with respect to other materials submitted by the CME in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 14, 1992.

Gerald D. Gay,

Director.

[FR Doc. 92–19919 Filed 8–19–92; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Request for Extension of Approval of Information Collection Requirements—Procedures for Export of Noncomplying Products

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through August 31, 1995, of information collection requirements in regulations codified at 16 CFR part 1019, which establish procedures for export of noncomplying products. These regulations implement provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act which require persons and firms to notify the Commission before exporting any product which fails to comply with an applicable standard or regulation enforced under provisions of those laws. The Commission is required by law to transmit the information relating to the proposed exportation to the government of the country of intended destination.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207

Title of information collection: Procedures for export of noncomplying products.

Type of request: Extension of approval.

Frequency of collection: Varies depending upon volume of noncomplying goods exported.

General description of respondents: Exporters of products which fail to comply with standards or regulations enforced under provisions of the Consumer Product Safety Act, the Federal Hazardous Substances Act, or the Flammable Fabrics Act.

Estimated number of respondents: 150.

Estimated average number of responses per respondent: 1.33 per year.

Estimated number of responses for all respondents: 200 per year.

Estimated number of hours per response: 1.

Estimated number of hours for all respondents: 200 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Shawn Canter, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: August 17, 1992.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–19936 Filed 8–19–92; 8:45 am]

BILLING CODE 6355–01–M

[CPSC Docket No. 92–C0004]

Figgie International, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Figgie International, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 4, 1992.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 92–C0002, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Eric Stone, Trial Attorney, Office of

Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (attached)

Dated: August 14, 1992.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. Figgie International, Inc., a corporation (hereinafter "Figgie" or "Respondent"), enters into this Settlement Agreement and Order (hereinafter "Agreement") with the staff of the Consumer Product Safety Commission (hereinafter "staff") and agrees to the entry of the Order described herein. The purpose of this Agreement and Order is to settle the staff's allegations that Figgie violated the reporting requirements of section 15(b) of the Consumer Product Safety Act, as amended (hereinafter (CPSA"), 15 U.S.C. 2064(b).

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States of America (hereinafter, "Commission") established by Congress pursuant to section 4 of the Consumer Product Safety Act, 15 U.S.C. 2053.

3. Respondent Figgie is a corporation organized and existing under the laws of the State of Delaware, with its principal corporate offices located at 4420 Sherwin Rd., Willoughby, Ohio 44094.

4. Figgie's Badger-Powhatan Division, located in Charlottesville, Virginia, manufactured certain model P–250 MA and P–275 RA "American La France" fire extinguishers, for sale to, or use by, consumers in or around a permanent or temporary household or residence. These fire extinguishers are "consumer products" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

5. Figgie manufactured these fire extinguishers and sold them throughout the United States. Figgie, is, therefore, a "manufacturer" of a "consumer product" for "distribution in commerce," as those terms are defined in sections 3(a)(1), and (4) and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4) and (11).

II. The Product

6. Between May 1985 and December 1985, Figgie manufactured and distributed in commerce approximately 84,000 model P–250 MA and P–275 RA fire extinguishers with metal cylinders and plastic valve assemblies that are the subject of this Agreement.

III. Staff Allegations

7. Prior to July 1990, Figgie obtained at least 72 complaints from retailers, consumers and fire safety officials alleging that the valve assemblies had blown off the top of the metal cylinders in model P–250 MA or P–275 RA fire extinguishers. Some of these valve assemblies allegedly had blown off with sufficient force to go through drywall or cause other significant property damage. Three of these complaints alleged that injuries had occurred.

8. By May 1990, officials at Respondent's Badger-Powhatan division were aware of the complaints described in paragraph 7 and had determined that 1985 production was affected. The firm did not notify the Commission of these facts.

9. On July 10, 1990, the Commission staff inspected Badger-Powhatan to investigate complaints of failures. The staff collected evidence including copies of failure reports, engineering records, and internal memoranda of Badger-Powhatan. Prior to the inspection of July 10, 1990, Figgie did not notify the Commission about any defect in these fire extinguishers.

10. No later than May 1990, Respondent had obtained information which the Commission staff determined reasonably supported the conclusion that the fire extinguishers described in paragraph 6 contained a defect which could create a substantial product hazard but failed to notify the Commission in accordance with section 15(b) of the CPSA, 15 U.S.C. 2064(b).

V. Agreement of the Parties

11. The Consumer Product Safety Commission has jurisdiction over Figgie and the subject matter of this Settlement Agreement and Order pursuant to 15 U.S.C. 2064(b), 2068, and 2069.

12. Figgie agrees to settle the Commission's claim in accordance with the attached Order, by paying a civil penalty in the amount of $175,000. Payment shall be made in five installments at a rate of interest of 8% per year. Respondent shall make the first payment of $36,167 within 10 days of service of the Final Order in this matter upon Respondent. The second through fifth payments of $37,800, $37,100, $36,400, and $35,700 respectively, shall be made within 100, 190, 280, and 370 days respectively after service of the Order. If all payments are made in a timely manner, the total amount due shall be $183,167. If any payment is not made in a timely manner, Respondent shall pay a late payment penalty of $200 per day for each day that the payment is delayed.

13. This Settlement Agreement constitutes a settlement of any violations of the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b) that may be alleged on the basis of the information that the Commission staff currently possesses concerning the subject fire extinguishers.

14. Upon final acceptance of this Settlement Agreement by the Commission, Figgie knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission whether a violation has occurred, and (4) to a statement of findings of fact and conclusions of law. By making this waiver, Figgie does not concede that its fire extinguishers contain a defect which creates or could create a substantial product hazard within the meaning of section (15(a) of the CPSA, 15 U.S.C. 2064(a).

15. The Commission may publicize the terms of the Settlement Agreement and Order.

16. The Commission does not make any determination that these fire extinguishers contain a defect which could create a substantial product hazard. This Agreement shall not constitute evidence or an admission with respect to any allegation of the staff, or of any wrongdoing, misconduct, or violation of any statute or rule on the part of Figgie. The Commission and Figgie agree that this Agreement is entered into for the purposes of settlement only.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and the provisional acceptance of the Agreement shall be announced in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission receives no written requests not to accept the Agreement within 15 days after publication in the **Federal Register**, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

18. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will be subject Figgie to appropriate legal action.

19. The provisions of the Settlement Agreement and Order shall apply to Figgie and to each of its successors and assigns.

20. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

21. Nothing in this Agreement should be construed as limiting Figgie's obligation to report pursuant to section 15(b) of the CPSA.

By agreement of the parties.

L.A. Harthum,

Figgie International, Inc.

Consumer Product Safety Commission Staff

Dated: July 13, 1992.

Eric L. Stone,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Alan H. Schoem,

Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement of the parties, it is hereby

Ordered, That Figgie pay a civil penalty in the amount of $175,000. Payment shall be made in five installments at a rate of interest of 8% per year. Respondent shall make the first payment of $36,167 within 10 days of service of the Final Order in this matter upon Respondent. The second through fifth payments of $37,800, $37,100, $36,400 and $35,700 respectively, shall be made within 100, 190, 280, and 370 days respectively after service of the Order. If all payments are made in a timely manner, the total amount due shall be $183,167. If any payment is not made in a timely manner, Respondent shall pay a late payment penalty of $200 per day for each day that the payment is delayed.

Provisionally accepted on the 13th day of August, 1992.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 92–19937 Filed 8–19–92; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; Amend Systems of Records

AGENCY: Department of the Air Force, (DoD).

ACTION: Amend systems of records.

SUMMARY: The Department of the Air Force proposes to amend eight existing systems of records in its inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The amended systems will be effective September 21, 1992, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Ms. Anne Turner, Air Force Access Programs Manager, SAF/AAIA, The Pentagon, Washington, DC 20330–1000.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Gibson at (703) 697–3491 or DSN: 227–3491.

SUPPLEMENTARY INFORMATION: The Department of the Air Force record systems notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** as follows:

50 FR 22332, May 29, 1985 (DoD Compilation, changes follow)
50 FR 24672, June 12, 1985
50 FR 25737, June 21, 1985
50 FR 46477, November 8, 1985
50 FR 50337, December 10, 1985
51 FR 4531, February 5, 1986
51 FR 7317, March 5, 1986
51 FR 16735, May 6, 1986
51 FR 18927, May 23, 1986
51 FR 41382, November 14, 1986
51 FR 44332, December 9, 1986
52 FR 11845, April 13, 1987
53 FR 24354, June 28, 1988
53 FR 45800, November 14, 1988
53 FR 50072, December 13, 1988
53 FR 51301, December 21, 1988
54 FR 10034, March 9, 1989
54 FR 43450, October 25, 1989
54 FR 47550, November 15, 1989
55 FR 21770, May 29, 1990
55 FR 21900, May 30, 1990 (Updated Mailing Addresses)
55 FR 27868, July 6, 1990
55 FR 28427, July 11, 1990
55 FR 34310, August 22, 1990
55 FR 38126, September 17, 1990
55 FR 42625, October 22, 1990
55 FR 52072, December 19, 1990
56 FR 1990, January 16, 1991
56 FR 5804, February 13, 1991
56 FR 12713, March 27, 1991
56 FR 23054, May 20, 1991
56 FR 23878, May 24, 1991
56 FR 26800, June 11, 1991
56 FR 31394, July 10, 1991 (Updated Index Guide)
56 FR 32181, July 15, 1991
56 FR 63718, December 5, 1991
57 FR 1907, January 16, 1992
57 FR 24600, June 10, 1992
57 FR 27742, June 22, 1992
57 FR 30473, July 9, 1992
57 FR 30474, July 9, 1992
57 FR 30961, July 13, 1992
57 FR 33174, July 27, 1992

The amended systems are not within the purview of subsection (r) of the Privacy Act, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report. The specific changes to the systems of records being amended are set forth below, followed by the systems of records notices published in their entirety.

Dated: August 14, 1992.

L. M. Bynum,

Alternate OSD Federal Register Liaison Office, Department of Defense.

F030 AF MP D

SYSTEM NAME:

Contingency Operations System, (COMPES) (50 FR 22360, May 29, 1985).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Headquarters of major commands and headquarters of unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8032, General duties; implemented by Air Force Manual (AFM) 28–626, Functional User Support Manual for the Contingency Operation/ Mobility Planning and Execution System (COMPES) MAJCOM Level Manpower/ Personnel (MANPER) Module, Users Manual; AFM 28–740, Vol 6, Contingency Operations/Mobility Planning and Execution System (COMPES) Operation Planning Module, Users Manual; AFM 28–740, Vol 3, Contingency Operations/Mobility Planning and Execution System (COMPES) Logistics Module -- Major Command (LOGMOD-M) Logistics Force packaging (LOGFOR) Sub-System: A200/ZG, Users Manual; and AFM 28–740, Vol 4, Contingency Operations/ Mobility Planning and Execution System (COMPES) Logistics Module -- Logistics Planning (LOGPLAN) Sub-System: A200/ZR, Users Manual.

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Add to end of entry "Computer output records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Overwriting."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Deputy Chief of Staff for Personnel, Headquarters United States Air Force, Washington, DC 20330–5060. Director of Personnel Data Systems and Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, Randolph Air Force Base, TX, 78150–6001, or Director of Personnel Data Systems at each major command headquarters and headquarters of unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Deputy Chief of Staff for Personnel, Headquarters United States Air Force, Washington, DC 20330–5060. Director of Personnel Data Systems and Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, Randolph Air Force Base, TX, 78150–6001, or Director of Personnel Data Systems at each major command headquarters and headquarters of unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Chief of Staff for Personnel, Headquarters United States Air Force, Washington, DC 20330–5060. Director of Personnel Data Systems and Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, Randolph Air Force Base, TX, 78150–6001, or Director of Personnel Data Systems at each major command headquarters and headquarters of unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F030 AF MP D

SYSTEM NAME:

Contingency Operations System (COMPES).

SYSTEM LOCATION:

Headquarters of major commands and headquarters of unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on officer and enlisted personnel that are projected or departed on Temporary Duty (TDY) in support of contingency deployment or manning assistance projects.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data maintained by individual Plan Identification (PID) consisting of data elements required to properly select and deploy members: Includes Plan Identification (PID); Force Requirement Line number (FRNLN); Air Force Specialty Code (AFSC); Required In-Place Date; Number of Days; Attached Consolidated Base Personnel Office; Duty Location Code (DLOC). Information is related to a specific PID that could be implemented in time of war, current on-going contingencies, or yearly exercises. When plans are implemented, the Personnel Data System (PDS) is updated and a TDY mini-record is generated and transmitted via AUTODIN. The system update is applied against the file at base level.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8032, General duties; implemented by Air Force Manual (AFM) 28–626, Functional User Support Manual for the Contingency Operation/Mobility Planning and Execution System (COMPES) MAJCOM Level Manpower/Personnel (MANPER) Module, Users Manual; AFM 28–740, Vol 6, Contingency Operations/Mobility Planning and Execution System (COMPES) Operation Planning Module, Users Manual; AFM 28–740, Vol 3, Contingency Operations/Mobility Planning and Execution System (COMPES) Logistics Module -- Major Command (LOGMOD-M) Logistics Force packaging (LOGFOR) Sub-System: A200/ZG, Users Manual; and AFM 28–740, Vol 4, Contingency Operations/Mobility Planning and Execution System (COMPES) Logistics Module – Logistics Planning (LOGPLAN) Sub-System: A200/ZR, Users Manual.

PURPOSE(S):

COMPES records provide information regarding manpower requirements necessary to deploy personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Individual data records are not accessed nor displayed reflecting name or Social Security Number by standard CPSC programs. Retrieval programs available to major command personnel managers may be used to access individual data.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records pertaining to a wartime plan are maintained until an updated plan is received. Records are maintained only for the duration of the TDY period then are programmatically deleted by computer. Computer output records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters United States Air Force, Washington, DC 20330–5060. Director of Personnel Data Systems and Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, Randolph Air Force Base, TX, 78150–6001, or Director of Personnel Data Systems at each major command headquarters and headquarters of unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Deputy Chief of Staff for Personnel, Headquarters United States Air Force, Washington, DC 20330–5060. Director of Personnel Data Systems and Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, Randolph Air Force Base, TX, 78150–6001, and Director of Personnel Data Systems at each major command headquarters or headquarters of unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Chief of Staff for Personnel, Headquarters United States Air Force, Washington, DC 20330–5060. Director of Personnel Data Systems and Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, Randolph Air Force Base, TX, 78150–6001, or Director of Personnel Data Systems at each major command headquarters and headquarters of unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF DP A

SYSTEM NAME:

Family Support Center Case Files, (53 FR 45804, November 14, 1988).

CHANGES:

SYSTEM NAME:

Change system name to "Family Support Center (FSC) Accountability and Data Collection System."

SYSTEM LOCATION:

Delete entry and replace with "At servicing Family Support Centers on Air Force installations. Portions of the system will be maintained at Headquarters, United States Air Force/DPPH and by Family Program Managers at headquarters of major commands. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Active duty Air Force personnel and family members; DOD civilian employees and their family members in overseas areas or when authorized by local commander, and Air National Guard and Reserve Forces and their family members when on active duty."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Intake data on client contact and time expended; client interview and assessment, referrals to other agencies, and compiled data on these two categories."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Regulation 30–7, Family Support Center (FSC) Program; and Executive Order 9397."

PURPOSE(S):

Delete entry and replace with "To compile information on client's visits to enable the Center to refer clients to the appropriate support activity, i.e., Mental Health Clinic, Chaplain, Air Force Aid, etc. Information is compiled for statistical reporting to base, major commands, Headquarters United States Air Force, Department of Defense, and Congress. Reports and for program planning and evaluation."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "Individual files are retrieved by name or Social Security Number. Mass retrieval may be made by grade, type service received, a specific time period, etc."

SAFEGUARDS:

Add to end of entry "Those in computer storage devices are protected by computer system software."

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed 1 year from date of last visit to FSC, unless needed as background for case files supporting a separation or other action in which case disposition will be the same as the file which they support. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Add to end of entry "Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief Air Force Family Matters Branch, Human Resources Development Division, Directorate of Personnel Plans, HQ USAF; Directorate of Personnel Programs at major command headquarters; or Director, Family Support Center at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Proof of identity such as an Armed Forces Identification Card will be required for personal visits."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Chief Air Force Family Matters Branch, Human Resources Development Division, Directorate of Personnel Plans, HQ USAF; Directorate of Personnel Programs at major command headquarters; or Director, Family Support Center at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Proof of identity such as an Armed Forces Identification Card will be required for personal visits."

* * * * *

F035 AF DP A

SYSTEM NAME:

Family Support Center (FSC) Accountability and Data Collection System.

SYSTEM LOCATION:

At servicing Family Support Centers on Air Force installations. Portions of the system will be maintained at Headquarters, United States Air Force/DPPH and by Family Program Managers at headquarters of major commands. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Air Force personnel and family members; DOD civilian employees and their family members in overseas areas or when authorized by local commander, and Air National Guard and Reserve Forces and their family members when on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Intake data on client contact and time expended; client interview and assessment, referrals to other agencies, and compiled data on these two categories.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Regulation 30–7, Family Support Center (FSC) Program; and Executive Order 9397.

PURPOSE(S):

To compile information on client's visits to enable the Center to refer clients to the appropriate support activity, i.e., Mental Health Clinic, Chaplain, Air Force Aid, etc. Information is compiled for statistical reporting to base, major commands, Headquarters United States Air Force, Department of Defense, and Congress. Reports and for program planning and evaluation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper form, in computers and on computer output products.

RETRIEVABILITY:

Individual files are retrieved by name or Social Security Number. Mass retrieval may be made by grade, type service received, a specific time period, etc.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are destroyed 1 year from date of last visit to FSC, unless needed as background for case files supporting a separation or other action in which case disposition will be the same as the file which they support. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Air Force Family Matters Branch, Human Resources Development Division, Directorate of Personnel Plans, HQ USAF; Directorate of Personnel Programs at major command headquarters; and Director, Family Support Center at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief Air Force Family Matters Branch, Human Resources Development Division, Directorate of Personnel Plans, HQ USAF; Directorate of Personnel Programs at major command headquarters; or Director, Family Support Center at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Proof of identity such as an Armed Forces Identification Card will be required for personal visits.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief Air Force Family Matters Branch, Human Resources Development Division, Directorate of Personnel Plans, HQ USAF; Directorate of Personnel Programs at major command headquarters; or Director, Family Support Center at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Proof of identity such as an Armed Forces Identification Card will be required for personal visits.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individual, medical institutions, and personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 MAC B

SYSTEM NAME:

Training Progress (Permanent Student Record), (50 FR 22455, May 29, 1985).

CHANGES:

SYSTEM IDENTIFICATION NUMBER:

Change system identification number to "F050 AMC B"

SYSTEM LOCATION:

Delete entry and replace with "1380th School Squadron, Air Mobility Command Noncommissioned Officer Academy-West, Norton Air Force Base, CA 92409–5446 and 1381st School Squadron, Air Mobility Command Noncommissioned Officer Academy-East, McGuire Air Force Base, NJ 08641–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "10 USC 8012" to "10 U.S.C. 8013."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the 1380th School Squadron, Air Mobility Command Noncommissioned Officer Academy-West, Norton Air Force Base, CA 92409–5446 or 1381st School Squadron, Air Mobility Command Noncommissioned Officer Academy-East, McGuire Air Force Base, NJ 08641–5000."

RECORD ACCESS PROCEDURES:

Delete entry or replace with "Individuals seeking to access records about themselves contained in this system should address requests to the 1380th School Squadron, Air Mobility Command Noncommissioned Officer Academy-West, Norton Air Force Base, CA 92409–5446 and 1381st School Squadron, Air Mobility Command Noncommissioned Officer Academy-East, McGuire Air Force Base, NJ 08641–5000."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F050 AMC B

SYSTEM NAME:

Training Progress (Permanent Student Record).

SYSTEM LOCATION:

1380th School Squadron, Air Mobility Command Noncommissioned Officer Academy-West, Norton Air Force Base, CA 92409–5446 and 1381st School Squadron, Air Mobility Command Noncommissioned Officer Academy-East, McGuire Air Force Base, NJ 08641–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted personnel who are graduates of the Academy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, grade, Social Security Number, duty title, security clearance, marital status, organization assigned, education level, photograph, date of birth, Airman Qualification Examination, evaluation of academic progress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

To record student achievement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in card files.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Destroy ten years after individual completes or discontinues a training course by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

1380th School Squadron, Air Mobility Command Noncommissioned Officer Academy-West, Norton Air Force Base, CA 92409–5446 and 1381st School Squadron, Air Mobility Command Noncommissioned Officer Academy-East, McGuire Air Force Base, NJ 08641–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the 1380th School Squadron, Air Mobility Command Noncommissioned Officer Academy-West, Norton Air Force Base, CA 92409–5446 or 1381st School Squadron, Air Mobility Command Noncommissioned Officer Academy-East, McGuire Air Force Base, NJ 08641–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the 1380th School Squadron, Air Mobility Command Noncommissioned Officer Academy-West, Norton Air Force Base, CA 92409–5446 or 1381st School Squadron, Air Mobility Command Noncommissioned Officer Academy-East, McGuire Air Force Base, NJ 08641–5000.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Consolidated Base Personnel Offices and from evaluation of student progress.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 MAC C

SYSTEM NAME:

Training Systems Research and Development Materials, (50 FR 22455, May 29, 1985).

CHANGES:

SYSTEM IDENTIFICATION NUMBER:

Change system identification number to "F050 AMC C"

SYSTEM LOCATION:

Delete entry and replace with "1550th Combat Crew Training Wing, Deputy

Commander for Operations, Director of Training, Kirtland Air Force Base, NM 87117–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to end of entry "and Executive Order 9397."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with "The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Chief, Evaluation and Analysis, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Evaluation and Analysis, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Evaluation and Analysis, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000.

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F050 AMC C

SYSTEM NAME:

Training Systems Research and Development Materials.

SYSTEM LOCATION:

1550th Combat Crew Training Wing, Deputy Commander for Operations, Director of Training, Kirtland Air Force Base, NM 87117–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students who have completed training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Training and effectiveness questionnaires for supervisors and graduates, flying instructor and academic instructor improvement and evaluation, evaluation coordination sheet.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397.

PURPOSE(S):

To evaluate and analyze training effectiveness.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name, rank, Social Security Number and class number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Evaluation and Analysis, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Evaluation and Analysis, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Evaluation and Analysis, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from assigned personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F051 MAC A

SYSTEM NAME:

Air Crew Instruction Records, (50 FR 22462, May 29, 1985).

CHANGES:

SYSTEM IDENTIFICATION NUMBER:

Change system identification number to "F051 AMC A."

SYSTEM LOCATION:

Delete entry and replace with, "1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000 and 34th Technical Training Squadron, Student Administration Branch, Little Rock Air Force Base, AR 72076–5000."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "10 U.S.C. 8012" to "10 U.S.C. 8013."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with, "The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with, "Deputy Commander for Operations, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000 and School Registrar, 34th Technical Training Squadron, Little Rock Air Force Base, AR 72076–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with, "Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Deputy Commander for Operations, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000 or School Registrar, 34th Technical Training Squadron, Little Rock Air Force Base, AR 72076–5000."

RECORD ACCESS PROCEDURES:

Delete entry and replace with, "Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Commander for Operations, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000 or School Registrar, 34th Technical Training Squadron, Little Rock Air Force Base, AR 72076–5000."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with, "The Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F051 AMC A

SYSTEM NAME:

Air Crew Instruction Records.

SYSTEM LOCATION:

1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000 and 34th Technical Training Squadron, Student Administration Branch, Little Rock Air Force Base, AR 72076–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Students and instructors undergoing training; students who completed academic training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Academic completion records, flying training records, training aids usage records and simulator student training records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

To report student performance and completion of academic training.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name and date of completion of training.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Training summaries are destroyed after one year. Training aids activity case files are destroyed when purpose has been served or after three years, whichever is sooner. Training system research and development material is destroyed when superseded, obsolete, or no longer needed, whichever is sooner. Training aids usage documents are destroyed three months after completion of training phase, provided required flying time is posted on individual flight records. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Commander for Operations, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000 and School Registrar, 34th Technical Training Squadron, Little Rock Air Force Base, AR 72076–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to the Deputy Commander for Operations, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000 or School Registrar, 34th Technical Training Squadron, Little Rock Air Force Base, AR 72076–5000.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Deputy Commander for Operations, 1550th Combat Crew Training Wing, Kirtland Air Force Base, NM 87117–5000 or School Registrar, 34th Technical Training Squadron, Little Rock Air Force Base, AR 72076–5000.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individuals, from instructors, instructor supervisors, and personnel involved in the evaluation and analysis of training effectiveness, and from special orders and messages.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F060 AF B

SYSTEM NAME:

Contractor Flight Operations, (53 FR 51301, December 21, 1988).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "All Air Force activities that approve contractor aircraft flight and ground operations procedures or utilize contractor personnel who operate aircraft for the government."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "All contractor personnel who operate aircraft for the Air Force, for which the government assumes some risk of loss or damage. It covers both flight crew member and non-crew member personnel designated by a contractor to conduct flights, perform functions while the aircraft is in flight, or perform ground operations in support of such flights."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; AFR 55–22,

Contractor's Flight Operations; and Executive Order 9397."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are maintained in the system until contract termination, at which time they will be destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Headquarters, Air Force Systems Command/TEO, Andrews AFB, DC 20334–5000."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Headquarters, Air Force Systems Command/TEO, Andrews AFB, DC 20334–5000 or to the system location where the flight certification is recorded. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. For personal visits, the individual may be asked to show a valid identification card or a driver's license as proof of identity."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to access records about themselves contained in this system should address requests to the Headquarters, Air Force Systems Command/TEO, Andrews AFB, DC 20334–5000 or to the system location where the flight certification is recorded. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. For personal visits, the individual may be asked to show a valid identification card or a driver's license as proof of identity."

CONTESTING RECORDS PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F060 AF B

SYSTEM NAME:

Contractor Flight Operations.

SYSTEM LOCATION:

All Air Force activities that approve contractor aircraft flight and ground operations procedures or utilize contractor personnel who operate aircraft for the government.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All contractor personnel who operate aircraft for the Air Force, for which the government assumes some risk of loss or damage. It covers both flight crew member and non-crew member personnel designated by a contractor to conduct flights, perform functions while the aircraft is in flight, or perform ground operations in support of such flights.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; home address and telephone number; date of birth; security clearance data; education; military service data; flight qualification, proficiency, training, and experience records; standardization and evaluation data; safety and mishap records; medical and physiological data; and, similar data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; AFR 55–22, Contractor's Flight Operations; and Executive Order 9397.

PURPOSE(S):

Used to monitor and manage individual contractor flight and ground personnel records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEMS:

Storage:

Maintained in file folders, notebooks, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are maintained in the system until contract termination, at which time they will be destroyed when no longer needed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters, Air Force Systems Command/TEO, Andrews AFB, DC 20334–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Headquarters, Air Force Systems Command/TEO, Andrews AFB, DC 20334–5000 or to the system location where the flight certification is recorded. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. For personal visits, the individual may be asked to show a valid identification card or a driver's license as proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Headquarters, Air Force Systems Command/TEO, Andrews AFB, DC 20334–5000 or to the system location where the flight certification is recorded. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. For personal visits, the individual may be asked to show a valid identification card or a driver's license as proof of identity.

CONTESTING RECORDS PROCEDURES:

The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided by the individual or from training, evaluation, and examination records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F076 MAC A

SYSTEM NAME:

Passenger Reservation and Movement System, (50 FR 22474, May 29, 1985).

CHANGES:

SYSTEM IDENTIFICATION NUMBER:

Change system identification number to "F076 AMC A."

SYSTEM NAME:

Delete the word "Movement" and insert the word "Management"

SYSTEM LOCATION:

Delete entry and replace with "Headquarters, Air Mobility Command, Scott AFB, IL 62225–5001; Aerial Ports of Embarkation and Debarkation, military airfields or installations (all Services), certified air carriers at civil (commercial) airports, and any activity or agency responsible for initiating or receiving a request for the movement of personnel and their baggage; manifesting, tracing and billing actions; and statistical data collection. Official mailing addresses are published in the current United States Government Manual. Commercial air carrier addresses are listed in the Official Airlines Guide."

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with, "10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete entry and replace with, "The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system. Records from the system are routinely disclosed to other Federal agencies and offices providing transportation, and to civilian airlines and airports for transportation services, developing billing data, manifesting passengers, and for forecasting future transportation requirements."

* * * * *

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director of Passenger and Traffic Management, Deputy Chief of Staff, Air Transportation, Headquarters, Air Mobility Command, Scott AFB, IL 62225–5001."

NOTIFICATION PROCEDURE:

Delete entry and replace with, "Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Passenger and Traffic Management, Deputy Chief of Staff, Air Transportation, Headquarters, Air Mobility Command, Scott AFB, IL 62225–5001.

Full name, reservation identification code, and movement channel are required for inquiries."

RECORD ACCESS PROCEDURES:

Delete entry and replace with, "Individuals seeking to access records about themselves contained in this system should address requests to the Director of Passenger and Traffic Management, Deputy Chief of Staff, Air Transportation, Headquarters, Air Mobility Command, Scott AFB, IL 62225–5001.

Full name, reservation identification code, and movement channel are required for inquiries."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F076 AMC A

SYSTEM NAME:

Passenger Reservation and Management System.

SYSTEM LOCATION:

Headquarters, Air Mobility Command, Scott AFB, IL 62225–5001; Aerial Ports of Embarkation and Debarkation, military airfields or installations (all Services), certified air carriers at civil (commercial) airports, and any activity or agency responsible for initiating or receiving a request for the movement of personnel and their baggage; manifesting, tracing and billing actions; and statistical data collection. Official mailing addresses are published in the current United States Government Manual. Commercial air carrier addresses are listed in the Official Airlines Guide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military, civilian, statutory, congressional and others sponsored by the Secretary of Defense or Military Service Secretaries. The Executive Office, Executive Departments, independent agencies, Legislative Branch and the Judicial Branch.

CATEGORIES OF RECORDS IN THE SYSTEM:

Travel order, transportation authorizations, and passenger name records. Categories of information in the passenger name record include, but are not limited to: Name, grade, seats required; reservation identification code, which is assigned by a requesting activity or individual passengers and is the Social Security Number or other unique identifier; origin; destination; requested travel dates, routing indicator (identifies the activity/installation requesting the reservation); cancellation and type standby codes (identifies the reason the passenger did not depart as scheduled); flight number; departure date and reporting time, and other administrative coding as determined by a Service activity or HQ AMC to facilitate the completion of travel to include baggage tracer and billing actions. The passenger name record is a complete listing of all transportation related administrative actions related to individual passengers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and Executive Order 9397.

PURPOSE(S):

Passenger name records are used to prepare aircraft manifests for passenger identification processing and movement on military aircraft, commercial contract (charter) aircraft, and on seats reserved (blocked) on regularly scheduled commercial aircraft at military and civilian airports. Records in this system are also used to:

(a) Develop billing data to the user Military Services or other organizations;
(b) Determine passenger movement trends;
(c) Forecast future travel requirements; and
(d) Identify, research, and resolve transportation related problems. In addition, records may also be used as the basis of disciplinary action initiated by the requesting activity, and the conduct of official investigations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Records from the system are routinely disclosed to other Federal agencies and offices providing transportation, and to civilian airlines and airports for transportation services, developing billing data, manifesting passengers, and for forecasting future transportation requirements.

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, card files, computers, computer output products, paper printouts, computer magnetic tapes, disks, microfiche or rolled microfilm.

RETRIEVABILITY:

Records on this system may be retrieved by any of the following means: Name; Reservation Identification Code; Social Security Number; flight number; movement channel; type transaction; type travel; special passenger category; type standby code, or passenger cancellation reason code.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Transportation authorizations and orders are retained in office files for two years after the annual cutoff, then destroyed. Other records in the system are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. These records are destroyed by one of the following means: Tearing into pieces, shredding, pulping, macerating, burning, or degaussing in the case of magnetic computer media.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Passenger and Traffic Management and Deputy Chief of Staff, Air Transportation, Headquarters, Air Mobility Command, Scott AFB, IL 62225–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Director of Passenger and Traffic Management, Deputy Chief of Staff, Air Transportation, Headquarters, Air Mobility Command, Scott AFB, IL 62225–5001.

Full name, reservation identification code, and movement channel are required for inquiries.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Director of Passenger and Traffic Management Deputy Chief of Staff, Air Transportation, Headquarters, Air Mobility Command, Scott AFB, IL 62225–5001.

Full name, reservation identification code, and movement channel are required for inquiries.

CONTESTING RECORD PROCEDURES:

The Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from military transportation and personnel activities, individuals requesting air travel or from other agencies designated to arrange air passenger reservations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F205 AF A

SYSTEM NAME:

Personnel Security Access Records, (51 FR 41401, November 14, 1986).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Offices of installation Chiefs of Security Police where individual is assigned or employed or at headquarters of unified or specified commands for which Air Force is Executive Agent. For non-immigrant aliens at headquarters of major commands and major subordinate commands. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Also at the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO, 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO, 63118–2001."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Air Force active duty military and civilian personnel, Air Force Reserve and Air National Guard personnel, Air Force Academy cadets, American Red Cross Personnel, Exchange Officers, and Foreign Nationals. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of unified commands for which Air Force is Executive Agent."

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Change "10 USC 8012," to "10 U.S.C. 8013."

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SAFEGUARDS:

Place a period after the word "rooms," and delete remainder of sentence.

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief of Security Police, Headquarters United States Air Force; Commanders of organization units; Director National Personnel Records Center Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–2001.

Personal visits require positive identification. Provide full name, SSN, and military rank or civilian rating."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager."

* * * * *

F205 AF A

SYSTEM NAME:

Personnel Security Access Records.

SYSTEM LOCATION:

Offices of installation Chiefs of Security Police where individual is assigned or employed or at headquarters of unified or specified commands for which Air Force is Executive Agent. For non-immigrant aliens at headquarters of major commands and major subordinate commands. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Also at the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO, 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO, 63118–2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military and civilian personnel, Air Force Reserve and Air National Guard personnel, Air Force Academy cadets, American Red Cross Personnel, Exchange Officers, and Foreign Nationals. Army, Navy, Air Force and Marine Corps active duty military and civilian personnel assigned to headquarters of unified commands for which Air Force is Executive Agent.

CATEGORIES OF RECORDS IN THE SYSTEM:

System includes documentation requesting, granting and terminating access to classified information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and Executive Order 9397.

PURPOSE(S):

Records are used to record level of security clearance and level of access to classified information that has been authorized. Information is used by commanders, supervisors, and security managers to insure that individuals who receive classified information have been properly investigated, cleared, have a definite need-to-know, and have been properly debriefed.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The Department of the Air Force "Blanket Routine Uses" published at the beginning of the agency's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks/binders, visible file binders/cabinets or card files.

RETRIEVABILITY:

Retrieved by Name and/or Social Security Number (SSN).

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets, safes or vaults, or in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. (Exception: Records on non-immigrant aliens are retained for two years after termination of access or employment, then destroyed, as above). Security Termination Statements are retired one year after termination of service or employment to the Director, National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO, 63118–2001. Records indicating that access to classified information has been withdrawn for cause are forwarded to installation Chief of Security Police for disposition.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Security Police, Headquarters United States Air Force, Commanders of organization units and the Director, National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–2001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief of Security Police, Headquarters United States Air Force; Commanders of organization units; Director, National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–2001.

Personal visits require positive identification. Provide full name, SSN, and military rank or civilian rating.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief of Security Police, Headquarters United States Air Force; Commanders of organization units; Director, National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001, or Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–2001.

Personal visits require positive identification. Provide full name, SSN, and military rank or civilian rating.

CONTESTING RECORD PROCEDURES:

The Department of the Air Force rules for access to records and for contesting contents and appealing initial agency determinations by the individual concerned are published in Air Force Regulation 12–35, Air Force Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions, from police and investigating officers, or from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92–19811 Filed 8–19–92; 8:45 am]

BILLING CODE 3810–01–F

Department of the Army

Draft Environmental Impact Statement (DEIS) for Proposed Family Housing Development at Fort McCoy, Wisconsin

AGENCY: United States Army, Department of Defense.

ACTION: Notice of intent.

SUMMARY: Fort McCoy is proposing the construction of family housing on the installation. Approximately 60 units are proposed for construction in fiscal year 1994. Additional units would be constructed as required, with the total constructed not to exceed 374 units as described in the Installation Master Plan. The facilities are needed to replace existing substandard family housing available on-post and an inadequate supply of rental units in the surrounding communities.

Alternatives: a. Designate a 262 acre area along State Highway 21 on the west side of the installation to develop as the Family Housing Area.

b. Select alternate sites.

c. Develop third party, off-post, rental units.

d. No action.

As the Army evaluates impacts and reviews public comment, other alternatives may arise. These will be considered.

Scoping: A public scoping meeting was held to solicit input on significant environmental issues associated with the proposed construction on Tuesday, January 28, 1992, in the Monroe County Courthouse, Sparta, Wisconsin. Notice of the meeting was published in local area newspapers. In addition to this meeting, public input is being solicited as the scoping process continues.

ADDRESSEE: Written comments may be forwarded to: Commander, Fort McCoy, Attention: AFZR-DE-E, Sparta, Wisconsin 54656-5000.

FOR FURTHER INFORMATION CONTACT: Questions regarding this proposal may be directed to Mr. Dennis Stone, (608) 388-2160.

SUPPLEMENTARY INFORMATION: Written comments and suggestions should be received on or before October 5, 1992, to be considered in the DEIS.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 92-19812 Filed 8-19-92; 8:45 am]

BILLING CODE 3710-08-M

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning An Excito-Repellency Test System

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent No. 4,794,549 entitled "Excito-Repellency Test System" issued December 27, 1988 for licensing. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Maryland 21702-5012, telephone (301) 619-2065.

SUPPLEMENTARY INFORMATION: The invention represents a system for measuring the activity of mosquitoes according to their reaction to an insecticide. It includes a chamber which can hold the insects to be tested, a sample holder which holds a sample of the insecticide to be tested at a constant position in the chamber, and an exit in one wall of the chamber to provide an escape path for the insects to leave the chamber. A photosensitive detector is located so that escaping insects will produce an electrical impulse which can be sensed and used to measure the number of insects existing the chamber. Using a computer means, the impulses can be related to each other and to other insecticides as a function of time and concentration so as to measure the relative effectiveness of various insecticides. The data being analyzed can be related to a standard number of insects per given time unit or compared to other tests.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 92-19894 Filed 8-19-92; 8:45 am]

BILLING CODE 3710-08-M

Availability of Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning an Insect Containing Test Apparatus

AGENCY: U.S. Army Medical Research and Development Command, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability of U.S. Patent No. 5,074,247 entitled "Insect Containing Test Apparatus" issued December 24, 1991 for licensing. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Moran, Patent Attorney, Office of the Command Judge Advocate, U.S. Army Medical Research and Development Command, Fort Detrick, Frederick, Maryland 21702-5012, telephone (301) 619-2065.

SUPPLEMENTARY INFORMATION: The invention relates to an insect containing test apparatus for testing repellents on human volunteers and, more particularly, to an improved test apparatus which is inexpensive, easy to make, and autoclavable. The apparatus consists of a cage for containing test insects and which contains test holes which are selectively covered and uncovered by the movement of a slide, thus allowing the insects access to the test skin area which may or may not be treated with a test insect repellent or insecticide.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-19895 Filed 8-19-92; 8:45 am]

BILLING CODE 3710-08-M

Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Yuba River Basin Study, California

AGENCY: U.S. Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The action being taken is a feasibility investigation to identify and evaluate potential measures to provide additional flood protection in the Yuba River basin. The study area includes the Yuba River basin plus that part of the Feather River basin between the City of Oroville and the Natomas Cross Canal. Measures to be investigated include levee raising along the Feather and Yuba Rivers.

FOR FURTHER INFORMATION CONTACT: Questions regarding this DEIS should be addressed to Mr. Bob Koenings, Planning Division, Corps of Engineers, 1325 J Street, Sacramento, California 95814-2922, telephone (916) 557-6712.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The Corps of Engineers, together with the non-Federal sponsors (Yuba County Water Agency and The State Reclamation Board) is conducting a feasibility investigation to identify and assess alternative measures of providing additional flood protection in the Yuba River basin. Major flooding occurred on the Yuba and Feather Rivers in 1950, 1955, and 1964 and caused millions of dollars in damages and loss of life. Despite existing flood protection, the area is still subject to catastrophic flooding; as demonstrated by the February 1986 flood. During that flood, the south levee on the Yuba River faile inundating the towns of Linda and Oliverhurst to about 10 feet in depth and causing damages in excess of $95 million. The results of the investigation will be presented in a feasibility report submitted to Congress for authorization of a project.

2. Alternatives

The feasibility report and EIS will address the full range of alternatives discussed in the 1990 reconnaissance report on the basin including levee raising, re-regulation of Englebright Reservoir, and construction of a multipurpose reservoir at the Parks Bar or Narrown dam sites. However, the feasibility study will concentrate on the levee-raising alternatives. The study will also explore opportunities for restoring fish and wildlife resources adversely affected by previously completed Corps of Engineers projects within the study area. Alternatives to solve the identified flood problems in the study area are discussed in the following paragraphs.

a. No Action. There will be no Federal participation in flood control improvements in the study area.

b. Levee Raising. Alternatives to provide 150-year and 200-year levels of protection along the Yuba River and 200-year protection along the feather River will be examined.

3. Scoping Process

a. A notice of initiation on the Yuba River investigation and proposed alternatives was sent to public agencies, organizations, and individuals in the study area in July 1989. The notice provided an opportunity for the public to identify the significant flood control problems and natural resources in the area. Responses to the notice, were used in preparing the reconnaissance report and accompanying environmental inventory.

b. The reconnaissance report and environmental inventory were circulated for public comment in March 1990. Numerous comments were received from the public concerning the flood control alternatives and potential environmental impacts. Several public workshops and coordination meetings were held on the study. In addition, coordination is being maintained with Federal, State and local agencies, and concerned individuals and groups. Through this notice of intent, all affected publics and agencies are invited to participate in the feasibility investigation process. A DEIS scoping meeting will be held in late 1992 or early 1993.

c. Significant topics that will be discussed in the DEIS include the level of flood protection offered by the alternatives; hydrology of the basin; planning objectives; alternatives analysis; impacts on fish and wildlife resources, recreation, endangered species, vegetation, esthetics, cultural resources, and cumulative impacts of related projects in the study area.

d. The U.S. Fish and Wildlife Service will provide a Fish and Wildlife Coordination Act Report to accompany the DEIS.

e. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the DEIS. All interested persons are encouraged to respond to this notice and provide a current address if they wish to be contacted about the DEIS.

4. Availability

The DEIS is scheduled to be available for public review and comment in late 1993.

Kenneth L. Denton,

Army Federal Register, Liaison Officer.

[FR Doc. 92-19893 Filed 8-19-92; 8:45 am]

BILLING CODE 5000-BF-M

Department of the Navy

Privacy Act of 1974; Add a Record System

AGENCY: Department of the Navy, DOD.

ACTION: Add a record system.

SUMMARY: The Department of the Navy proposes to add one system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The addition will be effective on September 21, 1992, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (OP-09B30), Department of the Navy, The Pentagon, Washington, DC 20350-2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614-2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy systems of records notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, were published in the **Federal Register** as follows:

51 FR 12908, April 16, 1986
51 FR 18086, May 16, 1986 (DON Compilation changes follow)
51 FR 19884, June 3, 1986

51 FR 30377, August 26, 1986
51 FR 30393, August 26, 1986
51 FR 45931, December 23, 1986
52 FR 2147, January 20, 1987
52 FR 2149, January 20, 1987
52 FR 8500, March 18, 1987
52 FR 15530, April 29, 1987
52 FR 22671, June 15, 1987
52 FR 45846, December 2, 1987
53 FR 17240, May 16, 1988
53 FR 21512, June 8, 1988
53 FR 25363, July 6, 1988
53 FR 39499, October 7, 1988
53 FR 41224, October 20, 1988
54 FR 8322, February 28, 1989
54 FR 14378, April 11, 1989
54 FR 32682, August 9, 1989
54 FR 40160, September 29, 1989
54 FR 41495, October 10, 1989
54 FR 43453, October 25, 1989
54 FR 45781, October 31, 1989
54 FR 48131, November 21, 1989
54 FR 51784, December 18, 1989
54 FR 52976, December 26, 1989
55 FR 21910, May 30, 1990 (Updated Mailing Addresses)
55 FR 37930, September 14, 1990
55 FR 42758, October 23, 1990
55 FR 47508, November 14, 1990
55 FR 48678, November 21, 1990
55 FR 53167, December 27, 1991
56 FR 424, January 4, 1991
56 FR 12721, March 27, 1991
56 FR 27503, June 14, 1991
55 FR 28144, June 19, 1991
56 FR 31394, July 10, 1991 (Updated Index)
56 FR 40877, August 16, 1991
56 FR 46167, September 10, 1991
56 FR 59217, November 25, 1991
56 FR 63503, December 4, 1991
57 FR 2719, January 23, 1992
57 FR 2726, January 23, 1992
57 FR 2898, January 24, 1992
57 FR 5430, February 14, 1992
57 FR 9246, March 17, 1992
57 FR 12914, April 14, 1992
57 FR 14698, April 22, 1992
57 FR 18472, April 30, 1992
57 FR 26422, June 10, 1992
57 FR 26821, June 16, 1992
57 FR 28499, June 25, 1992
57 FR 28502, June 25, 1992
57 FR 31700, July 6, 1992

The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on August 3, 1992, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, December 24, 1985).

Dated: August 7, 1992.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070-15

SYSTEM NAME:

Nuclear-Trained Naval Officers.

SYSTEM LOCATION:

Office of the Chief of Naval Operations (Code OP-OON), Washington, DC 20350-2000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Nuclear-trained Naval officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records concerning education, specialized nuclear training and qualifications, and past and current assignments of nuclear-trained Naval officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, Executive Order 9397, and Public Law 98-525 (Oct. 19, 1984).

PURPOSE(S):

To assist Navy officials in approving assignments to nuclear powered ships and shore billets requiring nuclear qualification.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" that appear at the beginning of the Department of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tape and on magnetic discs. Some hardcopy records are filed in paper file folders.

RETRIEVABILITY:

Name/Social Security Number and dates of service.

SAFEGUARDS:

Computer processing facilities and terminals are located in restricted areas accessible only to authorized persons who are properly screened. Only a small number of computer users have access to the records, through use of multiple passwords. The computer and terminals are kept in secure areas. Hardcopy records and computer printouts are kept in locked file cabinets in a restricted area.

RETENTION AND DISPOSAL:

Permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Naval Nuclear Propulsion, Office of the Chief of Naval Operations (OP-OON), Washington, DC 20350-2000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director, Naval Nuclear Propulsion, Office of the Chief of Naval Operations (OP-OON), Washington, DC 20350-2000. The requester should provide full name, Social Security Number, and dates of service.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Director, Naval Nuclear Propulsion, Office of the Chief of Naval Operations (OP-OON), Washington, DC 20350-2000.

The requester should provide full name, Social Security Number, and dates of service.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for accessing records and contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; U.S. Naval Academy, current and/or previous commands; Director, Naval Nuclear Propulsion; Bureau of Naval Personnel promotion results and orders; Commander, Navy Recruiting Command; and Commander, Naval Education and Training.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 92-19810 Filed 8-19-92; 8:45 am]
BILLING CODE 3810-01-F

DEPARTMENT OF ENERGY

Bonneville Power Administration

Review of and Amendment to Policy for Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Proposed Amendment of Agency Policy; Request for comments.

SUMMARY: In November 1986, the BPA and the Northwest Power Planning Council (Council) adopted separate but related policies to ensure that all major resource acquisitions on the BPA system would be consistent with the Council's Northwest Conservation and Electric Power Plan (Plan). These policies address section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 389 d(c). BPA's Policy for section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act, section B.1.c. (Policy), provides for public review at least once every five years "to evaluate evolving understandings of resource acquisitions and to assess the need for changes in this Policy." Moreover, the Policy does not address proposals to grant billing credits or services involving a major resource, or to pay or reimburse investigation or preconstruction costs of a sponsor of a major resource. Decision Document Supporting Policy at 2, November 12, 1986 (Decision Document).

In December of 1990 and January of 1991, BPA and the Council exchanged letters of understanding regarding the applicability of section 6(c) to BPA's Billing Credit Solicitation. BPA believes it is appropriate at this time to incorporate that understanding into its Policy. Consequently, BPA is reviewing its policy and proposes to amend it to incorporate a provision relating to proposals to grant billing credits. BPA also proposes to incorporate provision for payment of investigation or preconstruction costs of a sponsor of a major resource. Finally, BPA proposes to incorporate a provision for expedited hearings procedures for section 6(c) review. BPA is seeking public comment on the proposed amendments as described below in section II.

Responsible Official: Charles E. Meyer, Director, Division of Resource Planning, Office of Energy Resources, is the official responsible for this Policy.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, P.O. Box 12999, Portland, Oregon 97212 on or before September 21, 1992. For questions or to submit oral comments, call 503-230-3478 in Portland; or toll-free 800-622-4519. To request documents, call 800-622-4520.

FOR FURTHER INFORMATION CONTACT: Julie Pipher, Public Involvement Office, P.O. Box 12999, Portland, Oregon 97212, 503-230-3478. Information may also be obtained from:

Mr. Terrence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109-1030, 206-553-4130.
Mr. George Bell, Lower Columbia Area Manager, 1500 NE. Irving Street, room 243, Portland, Oregon 97208, 503-230-4551.
Mr. Robert Laffel, Eugene District Manager, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503-687-6952.
Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509-353-2518.
Mr. Ronald K. Rodewald, Wenatchee District Manager, 301 Yakima Street, room 307, Wenatchee, Washington 98801, 509-662-4379.
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406-329-3060.
Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509-522-6226.
Mr. Richard Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208-523-2706.
Mr. Jim Normandeau, Boise District Manager, 304 North 8th Street, Room 450, Boise, Idaho 83702, 208-334-9137.

SUPPLEMENTARY INFORMATION:

1. Background and Relevant Statutory Provisions

Section 6(c) of the Northwest Power Act, 16 U.S.C. 839d(c), requires the Administrator to conduct public hearings on any BPA proposal to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource, and to determine whether the proposed major resource acquisition is consistent with the Council's Plan. 16 U.S.C. 839d(c)(2). In addition, the Act also permits the Council to determine subsequently whether the proposal to acquire the major resource or conservation measure is consistent with the Council's Plan. If either BPA or the Council determines that the proposed major resource acquisition is inconsistent with the Plan, BPA can acquire the major resource only after receiving authorization from Congress. 16 U.S.C. 839d(c)(3). In general, a major resource is a 50 aMW resource acquired over a period of more than 5 years.

In November of 1986, BPA adopted its Policy addressing the type of resource acquisition proposals subject to section 6(c) review, the procedures for section 6(c) hearings, and the criteria for a BPA finding of consistency with the Council's Plan. The Policy does not address proposals to grant billing credits or services involving a major resource under subsection (h) [16 U.S.C. 839d(h)]. Decision Document at 2. Moreover, the Policy (at section B.1.c.) requires that the Policy itself be reviewed publicly at least once every five years. BPA is therefore reviewing the Policy and seeking public comment on amendments proposed in section II.

To date, the Policy has been implemented only once. In early 1987, BPA's Conservation/Modernization Program for Aluminum Smelters was reviewed pursuant to the policy and was found to be consistent with the Plan. Administrator's Record of Decision, In the Matter of the Proposed Implementation of a Conservation Program Designed to Modernize Aluminum Smelters in the Pacific Northwest, February 1987.

In July 1990, BPA issued a Billing Credit Solicitation. In a letter to the Council dated December 15, 1990, BPA proposed that billing credit proposals be subject to the process outlined in the Policy. In a response dated January 29, 1991, the Council agreed.

BPA's 1990 Resource Program called for acquisition of options on 800 aMW of resources. BPA anticipates that investigation and preconstruction costs may be incurred in the course of purchasing these options. The Council and BPA agree that it is appropriate to incorporate provisions relating to the payment of investigation and preconstruction costs into the Policy.

BPA and the Council also agree that it is appropriate to incorporate into the Appendix to the Policy a provision for expedited hearings. The proposed procedures will provide an alternative to achieve substantial savings of both time and expense, without risk to the public process.

II. Proposed Amendment to Agency Policy

BPA therefore proposes to amend its Policy for Section 6(c) as follows (changes to the Policy are noted by italicized text):

I.C. Scope of Policy. This Policy addresses proposals under subsections (a), (b), *(f), (h),* and (1) *of Section 6 to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource.*

II.*A.6. Billing Credits. Billing credits are an adjustment to a customer's power bill or equivalent cash payment intended to compensate the customer for electric power resources which are developed or acquired and used to reduce the customer's net requirements for electric power or reserves purchased from BPA. Billing Credits Policy, as Amended August 30, 1984.*

A.7. Investigation and/or preconstruction expenses. These expenses are costs incurred by or on behalf of sponsors of resources in obtaining required regulatory approval, including but not limited to licenses and permits; environmental analysis/impact statements; land options; easements and right-of-way acquisition; siting and licensing; geotechnical surveys; and architectural and engineering fees. These costs do not include the procurement of capitol equipment or construction material.

B.2.a. A proposal to acquire *or to grant billing credits for* a generating resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired *or granted billing credits* at any one generating resource project constitute more than 50 average megawatts and are acquired *or granted billing credits* for a period of more than 5 years.

b. A proposal to acquire *or grant billing credits for* a generating resource through a utility system sale shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired *or granted billing credits* from the utility for that sale constitute more than 50 average megawatts and are acquired *or granted billing credits* for a period of more than 5 years.

c. The aggregate megawatts proposed to be acquired *or granted billing credits* shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the contract for acquisition *or for application of billing credits.*

3. Generation programs. a. A generation program shall be subject to section 6(c) review if the Administrator proposes to one or more entities binding contract offers to acquire *or to grant billing credits for* more than 50 average megawatts of electric power for a period of more than 5 years:

(1) from a single generating resource technology, and

(2) at a fixed price or a fixed price formula.

b. The electric power proposed to be acquired *or granted billing credits* shall be measured by the Administrator upon consideration of factors including, but not limited to, planned capability measured with generally accepted planning criteria, and the term of the

contract for acquisition *or application of billing credits.*

c. An individual contract resulting from a generation program which has been reviewed under section 6(c), *for purposes other than that provided for in section 9 of this Policy,* shall not be subject to further review under section 6(c).

4. Conservation Resources. a. A proposal to acquire *or grant billing credits for* a conservation resource shall be subject to section 6(c) review if the aggregate megawatts proposed to be acquired *or granted billing credits* under a single contract constitute more than 50 average megawatts and are acquired *or granted billing credits* for a period of more than 5 years.

b. The aggregate megawatts proposed to be acquired *or granted billing credits* shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, and the term of the contract for acquisition *or for application of billing credits.*

5. *Conservation Programs.* a. A conservation program shall be subject to section 6(c) review if the Administrator proposes to one or more entities generic contracts which consist of a set of logically related activities proposed by the Administrator to capture more than 50 average megawatts of energy savings in a recognized planning sector or subsector for a period of more than 5 years, and which either:

(1) do not specify particular measures to be installed or implemented, but require an actual delivery of savings for payment; or

(2) are provided by a single mode of program delivery and consist of a well-defined set of measures, but do not require actual delivery of savings for payment.

b. The energy savings proposed to be acquired *or granted billing credits* shall be measured by the Administrator upon consideration of factors including, but not limited to, the planned savings based upon a reasonably expected penetration of the activities, and the term of the contract for acquisition *or for application of billing credits.*

c. An individual contract resulting from a conservation program which has been reviewed under section 6(c), *for purposes other than that provided for in section 9 of this Policy,* shall not be subject to further review under section 6(c).

6. Requests for Proposals. a. A request for proposals (RFP) issued by the Administrator, which the Administrator has determined does not constitute a binding contract offer, shall not be subject to section 6(c) review.

b. In response to an RFP, the Administrator retains the discretion to acquire *or to grant billing credits* for the electric power or the energy savings through an acquisition *or application of billing credits* under sections 2–5, above. In the event of an acquisition *or the grant of billing credits* under section 3 or 5, the Administrator may choose to expand the program to entities which did not participate in or respond to the RFP.

9. Payment of Investigation and/or Preconstruction Expenses. A proposal in the biennial BPA Resource Program to authorize payment for investigation and/or preconstruction expenses of those major resources identified in that Resource Program shall be subject to review under section 6(c). Payment of investigation and/or preconstruction expenses of any other major resources will be reviewed under section 6(c) on a case-by-case basis.

Appendix Section 6(c) Hearings Procedures

4. Initiation of Section 6(c) Process

(a)(5) set forth a statement and short explanation of each of the issues to be addressed in the hearing;

(6) state whether the hearing will be conducted pursuant to the provision for expedited hearings procedures, section 16; and

(7) provide other information which the Administrator determines to be pertinent to the hearing.

16. Expedited Hearings Procedures. (a) General Rule. The record of decision in a section 6(c) hearing, conducted under this section, shall be issued within 90 days after hearings have been completed, except as provided in paragraph (b) of this section. Consistent with fairness to the parties, the hearing officer shall establish the procedures or special rules necessary to satisfy the Administrator's expedited schedule.

(b) Extensions. Any party to the 6(c) hearing may request that the hearing officer petition the Administrator for an extension of the 90-day hearing limit. The party must show that the request is for good cause and is not dilatory. Upon such a showing, the hearing officer shall submit a written request to the Administrator. Submission of a request shall not have the effect of staying the proceedings. The Administrator shall notify the hearing officer and the parties of his determination within four days after receipt of the hearing officer's request.

(c) Special Procedure. Oral argument will not be heard in expedited 6(c) proceedings, unless all parties agree to substitute oral argument for a brief on exceptions.

Due to the limited experience with the Policy, BPA proposes to leave the Policy otherwise unchanged. BPA will accept public comment on the proposed amendments through September 21, 1992. While the Policy that results from this public review will become a final action for purposes of judicial review under the Northwest Power Act, BPA commits to consider revising the Policy whenever experience demonstrates a need for change.

Issued in Portland, Oregon, on August 6, 1992.

Randall W. Hardy,

Administrator.

[FR Doc. 92–19637 Filed 8–19–92; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before September 21, 1992. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 995–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503.(Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.

2. EIA–800–804, 807, 810–814, 816–818, 819M, 819A, 820, 822A/D, and 825.

3. 1905–0165.

4. Petroleum Supply Reporting System Surveys.

5. Revision.

6. On occasion, Weekly, Monthly, Annually, and Triennially.

7. Mandatory.

8. Businesses or other for-profit.

9. 5,350 respondents.

10. 10.305 responses per respondent.

11. 1.145 hours per response.

12. 63,134 hours.

13. The Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude petroleum, petroleum products, and natural gas liquids. These data are published by the EIA. Respondents are producers of oxygenates, operators of petroleum refining facilities, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tanker and barge operators, and oil importers.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC August 12, 1992.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 92–19636 Filed 8–19–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ES92–51–000, et al.]

Pennsylvania Power & Light Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 13, 1992.

Take notice that the following filings have been made with the Commission:

1. Pennsylvania Power & Light Co.

[Docket No. ES92–51–000]

Take notice that on August 11, 1992, Pennsylvania Power & Light Company filed an application with the Federal Energy Regulatory Commission under § 204 of the Federal Power Act requesting authorization to issue not more than $500 million of unsecured promissory notes and other evidences of unsecured indebtedness on or before September 30, 1994, with a final maturity date no later than September 30, 1995.

Comment date: September 10, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Pasco Cogen, Ltd.

[Docket No. QF92–156–000]

On August 11, 1992, Pasco Cogen, Ltd. tendered for filing a supplement to its filing in this docket.

The supplement provides additional information pertaining to the ownership structure of the facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. American Bituminous Power Partners, L.P.

[Docket No. QF87–494–005]

On August 7, 1992, American Bituminous Power Partners, L.P. of 18101 Von Karman Avenue, suite 1700, Irvine, California 92715–1007, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located near Grant Town, in Marion County, West Virginia. The Commission previously certified the facility as a qualifying small power production facility, *American Bituminous Power Partners, L.P.*, 40 FERC ¶ 62,286 (1987), and recertified the facility as a qualifying cogeneration facility, *American Bituminous Power Partners, L.P.*, 43 ¶ 62,040 (1988), and recertified the facility again based on the change of the ownership, *American Bituminous Power Partners, L.P.*, 49 FERC ¶ 62,289 (1989). The commission recertified the facility again as a qualifying small power production facility under the Solar, Wind, Waste, and Geothermal Power Production Incentives Act of 1990, *American Bituminous Power Partners, L.P.*, 56 FERC ¶ 62,110 (1991). The instant request for recertification is due to change in ownership of the facility.

Comment date: September 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.215). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19943 Filed 8–19–92; 8:45 am]

BILLING CODE 6717–01–M

[P–10567–001]

Application Filed With the Commission

August 14, 1992.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. *Type of Application:* License.

b. *Project No.:* 10567–001.

c. *Date filed:* July 31, 1992.

d. *Applicant:* Barrish and Sorenson Hydroelectric Company.
e. *Name of Project:* Cispus River #4.
f. *Location:* On the Cispus River, in Lewis County, Washington.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Steve Barrish, 1004 S.E. 97th Avenue, Vancouver WA 98664.
i. *FERC Contact:* Michael Spencer at (202) 219–2846.
j. *Description of Project:* The proposed project would consist of: (1) A 22-foot-high concrete and earth-filled dam; (2) a reservoir with a 108 acre-foot storage capacity; (3) a 14,140-foot-long, 37-foot-wide earthen canal; (4) a 1,944-foot-long, 37-foot-wide flume; (5) a 3,023-foot-long, 12.5-foot-diameter penstock; (6) a powerhouse containing 3 generating units with a combined capacity of 22.3 MW and an estimated annual average generation of 86.2 GWh; and (7) an 11,541-foot-long transmission line; and (8) appurtenant facilities.
k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than September 29, 1992, and must serve a copy of the request on the applicant.

Lois D. Cashell,
Secretary.

[FR Doc. 92–19818 Filed 8–19–92; 8:45 am]
BILLING CODE 6717-01-M

[Project Nos. 733–005, et al.]

Hydroelectric Applications [Colorado-Ute Electric Association, Inc., et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Transfer of License.
b. *Project No.:* 733–005.
c. *Date Filed:* July 22, 1992.
d. *Applicant:* Colorado-Ute Electric Association, Inc. (Transferor) and Eric R. Jacobson (Transferee).
e. *Name of Project:* Ouray Project.
f. *Location:* On the Uncompahgre River in Ouray County, Colorado.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Eric R. Jacobson, P.O. Box 745, Telluride. CO 81435.
i. *FERC Contact:* Michael Spencer at (202) 219–2846.
j. *Comment Date:* August 28, 1992.
k. *Description of the Project:* Colorado-Ute Electric Association, Inc., proposes to transfer the license for the Ouray Project to the Eric R. Jacobson. The requested transfer is part of a larger transaction in which Eric R. Jacobson and others are acquiring the assets of Colorado-Ute pursuant to a plan approved by the United States Bankruptcy Court for Colorado. The proposed transfer will not result in any changes to the existing development. The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though he were the original licensee.
l. *This notice also consists of the following standard paragraphs:* B and C.

2 a. *Type of Application:* Amendment of License.
b. *Project No.:* 2219–005.
c. *Date Filed:* July 1, 1992.
d. *Applicant:* Garkane Power Association, Inc.
e. *Name of Project:* Boulder Project.
f. *Location:* On the East and West Forks of Boulder Creek, a tributary of the Escalante River, in Garfield County, Utah. The project affects lands of the United States in the Dixie National Forest.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Glen P. Willardson, General Manager, Garkane Power Association, Inc., P.O. Box 790, Richfield, UT 84701, (801) 896–5403.
i. *FERC Contact:* Paul Shannon, (202) 219–2866.
j. *Comment Date:* October 2, 1992.
k. *Description of Amendment:* Garkane Power Association, Inc. requests authorization to replace an existing pressure reducing valve used for irrigation purposes, with a 100–kW generating unit. The licensee will operate the unit only during the summer irrigation season. The unit will utilize 1.25 cubic feet per second of water taken from the project's existing 30-inch-diameter penstock and will not effect flows to irrigation water right-holders. The licensee proposes to replace the pressure reducing valve house with a 20-foot-long by 17-foot-wide powerhouse and install a 2-mile-long transmission line from the powerhouse to the project's existing substation.
l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3 a. *Type of Application:* Non-Project Use of Project Lands.
b. *Project No:* 2413–021.
c. *Date Filed:* 06/19/92.
d. *Applicant:* Georgia Power Company.
e. *Name of Project:* Wallace Dam Project.
f. *Location:* Lake Oconee Reservoir in Putnam, Morgan, Oconee, Oglethorpe, Greene, and Hancock Counties, Georgia.
g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act.
h. *Applicant Contact:* Mr. M.H. Thompson, Georgia Power Company, 333 Piedmont Avenue—16th Floor, Atlanta, GA 30308, (404) 526–7140.
i. *FERC Contact:* H. Steve Hocking, (202) 219–2656.
j. *Comment Date:* September 22, 1992.
k. *Description of Project:* The licensee is seeking authorization to a waterfowl impoundment in the upper reaches of Lake Oconee. Construction necessitates lowering the lake water level by 5 feet between November 2, 1992, and December 23, 1992.
l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

4 a. *Type of Application:* Subsequent License.
b. *Project No:* 2476–001.
c. *Date Filed:* December 19, 1991.
d. *Applicant:* Wisconsin Public Service Corporation.
e. *Name of Project:* Jersey Hydro Project.
f. *Location:* On the Tomahawk River in Lincoln County, Wisconsin.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Richard A. Krueger, Senior Vice President, Wisconsin Public Service Corporation, 700 North Adams, P.O. Box 19002, Green Bay, WI 54307, (414) 433–1598.
i. *FERC Contact:* Mike Dees (202) 219–2807.
j. *Comment Date:* October 15, 1992.
k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.
l. *Description of Project:* The project as licensed consists of the following: (1) two existing earthen dikes, 330 feet long and 261 feet long; (2) an existing concrete sluiceway and Tainter gate section about 34 feet high and 148 feet long, containing (a) a 9 foot by 5.5 foot sluice gate, and (b) four steel Tainter gates, 30 feet by 12 feet; (3) an existing reservoir with a surface area of 709 acres and a total volume of 1,794 acre-feet at the normal maximum surface elevation of 1,450.00 NGVD; (4) an existing concrete powerhouse, 62 feet long, 26 feet wide and 16 feet high, containing (a) three vertical Francis turbines with a combined hydraulic capacity of 568 cfs, manufactured by S. Morgan Smith and rated at 180 hp, 250 hp and 262 hp, and (b) three generators rated at 120 kW, 192 kW and 200 kW for a total of 512 kW; (5) and existing appurtenant facilities. No changes are being proposed for this subsequent license. The applicant estimates the average annual generation for this project would be 2,868 MWH. The dam and existing project facilities are owned by the applicant.
m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.
n. *This notice also consists of the following standard paragraphs:* B1 and E1.
o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Wisconsin Public Service Corporation, 700 North Adams, Green Bay, WI or calling (414) 433–1268.

5 a. *Type of Application:* Subsequent License.
b. *Project No.:* 2489–001.
c. *Date Filed:* December 31, 1991.
d. *Applicant:* Central Vermont Public Service Corporation.
e. *Name of Project:* Cavendish Project.
f. *Location:* On the Black River in Windsor County, Vermont.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public, Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773–2711.
i. *FERC Contact:* Mike Dees (202) 219–2807.
j. *Comment Date:* October 9, 1992.
k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.
l. *Description of Project:* The existing Cavendish Project's principal features consist of a dam structure, a powerhouse, an intake structure with a power tunnel and a penstock, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 1.44 megawatts (MW), a hydraulic capacity range of 19 to 226 cubic feet per second (cfs), and an average annual generation of about 6,108 megawatt-hours (MWH).
The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain within the bypass reach a year-round leakage flow of 3–5 cfs. The consulting agencies requested a year-round minimum flow of 20 cfs.
In detail, the project is described as follows:
(1) A concrete gravity dam consisting of two spillway sections: (a) The North section, 90 feet long by 25 feet high, with a crest elevation of 878.13 feet mean sea level (msl), topped with 6.0-foot-high flashboards; and (b) the South section, 21 feet long by 6 feet high, with a crest elevation of 881.63 feet msl, topped with 2.5-foot-high flashboards;
(2) An intake structure consisting of (a) a 160-foot-long power tunnel; and (b) a 6-foot-diameter steel penstock;
(3) A powerhouse, 64 feet long by 34 feet wide, equipped with three horizontal Francis hydroelectric generating units: (a) two of which are rated at 520 kilowatts (KW), each, and one rated at 400 KW; (b) a hydraulic capacity range of 19 to 226 cubic feet per second (cfs); (c) an average annual generation of 6,108 megawatt-hours (MWH); and (d) a gross head of 119.53 feet;
(4) An impoundment having (a) a surface area of 10 acres (AC); (b) a useable storage capacity of 18.4 acre-feet (AF); and (c) a normal headwater elevation of 884.13 feet msl and tailwater elevation of 764.6 feet msl;
(5) A transmission line; and
(6) Appurtenant facilities.
m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.
n. *This notice also consists of the following standard paragraphs:* B1 and E1.
o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC, 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

6 a. *Type of Application:* Subsequent License.
b. *Project No.:* 2490–001.
c. *Date Filed:* December 31, 1991.
d. *Applicant:* Central Vermont Public Service Corporation.
e. *Name of Project:* Taftsville Project.
f. *Location:* On the Ottauquechee River in Windsor County, Vermont.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773–2711.
i. *FERC Contact:* Mike Dees (202) 219–2807.
j. *Comment Date:* October 9, 1992.
k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached standard paragraph E1.
l. *Description of Project:* The existing Taftsville Project's principal features consist of a dam structure, a powerhouse, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 500 kilowatts (KW), a hydraulic capacity range of 95 to 370 cubic feet per second (cfs), and an average annual generation of about 1,691 magawatt-hours (MWH).
The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain 0.5- to 1-inch-high of water passing over the spillway and into two bypass reaches. This amount of water is equivalent to flows of 5 to 15 cfs. The bypass reaches are 100 feet long and 135 feet long.
In detail, the project is described as follows:
(1) A concrete gravity dam consisting of a spillway section, 194 feet long by 18 feet high, with a crest elevation of 637.12 feet mean sea level (msl), topped with 1.5-foot-high flashboards;
(2) A powerhouse, equipped with one vertical Kaplan hydroelectric generating unit with (a) a rated capacity of 500 kilowatts (KW); (b) a hydraulic capacity range of 95 to 370 cubic feet per second (cfs); (c) an average annual generation of 1,691 megawatthours (MWH); and (d) a gross head of 20 feet;
(3) An impoundment having (a) a surface area of 20.5 acres (AC); (b) a useable storage capacity of 30 acre-feet (AF); and (c) a normal headwater elevation of 638.6 feet msl and tailwater elevation of 618.6 feet msl;
(4) Three 46-kilovolt (kV), transmission lines; and
(5) Appurtenant facilities.
m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.
n. *This notice also consists of the following standard paragraphs:* B1 and E1.
o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104,

Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

a. *Type of Application:* Major License.
b. *Project No.:* 5797–002.
c. *Date filed:* December 16, 1991.
d. *Applicant:* B & C Energy, Inc.
e. *Name of Project:* Star Falls Hydroelectric Project.
f. *Location:* Partially on lands administered by the Bureau of Reclamation on the Snake River in Twin Falls and Jerome Counties, Idaho. T10S, R20E; T11S, R20E.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) — 825(r).
h. *Applicant Contact:* John G. Lincoln, P.E., CH2M HILL, P.O. Box 8748, Boise, Idaho 83707, (208) 345–5310.
i. *FERC Contact:* Michael Strzelecki at (202) 219–2827.
j. *Comment Date:* October 19, 1992.
k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D3.
l. *Description of Project:* The run-of-river project would consist of: (1) A 20-foot-high, 400-foot-long gravity concrete dam; (2) a 135-acre impoundment; (3) a 1,220-foot-long, 24-foot-diameter main steel penstock; (4) a main powerhouse containing two generating units with a total installed capacity of 26.8 MW; (5) a 300-foot-long, 10-foot-diameter bypass penstock; (6) a bypass powerhouse containing one generating unit with a total installed capacity of 0.5 MW; (7) a 120-foot-long tailrace; (8) a gravel access road; (9) a short buried transmission line leading from the bypass powerhouse to the main powerhouse; (10) a 4.75-mile-long transmission line from the main powerhouse interconnecting with an existing Idaho Power Company transmission line; and (11) appurtenant facilities.

The Applicant estimates the average annual generation from the main powerhouse and the bypass powerhouse to be 104,400 MWh and 3,000 MWh, respectively.

m. *Purpose of Project:* All project energy generated would be sold to a utility.

n. *This notice also consists of the following standard paragraphs:* A2, A9, B1, and D3.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of CH2M HILL referenced above.

8 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11287–000.
c. *Date filed:* May 1, 1992.
d. *Applicant:* Lace River Hydro.
e. *Name of Project:* Lace River Hydro Project.
f. *Location:* On an unnamed Lake and Creek in the First Judicial District on Prince of Wales Island, Alaska, near the town of Haines. The project will be located on lands within the Tongass National Forest. T.34S., R63E, sections 33, 34, 35, 36; T.35S., R.63E., sections 1, 2, 3, 4; T.35S., R63E. sections 4, 8, 9, 17, 18, & 19; T.35S., R62E., sections 24, 23, 22, 21, 16, 17, 8, & 5.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* Earle V. Ausman & Associates, 1503 W. 33rd Ave., Anchorage, AK 99503, (907) 258–2420.
i. *FERC Contact:* Ms. Deborah Frazier-Stutely (202) 219–2842.
j. *Comment Date:* October 22, 1992.
k. *Description of Project:* The applicant proposes to investigate two development alternatives at this site. Alternative No. 1 would consist of: (1) An existing 384-acre unnamed lake reservoir with a storage capacity of 7,600 acre-feet at elevation 3,168 feet msl; (2) a submerged siphon intake; (3) a 21-inch-diameter, 7,600-foot-long penstock; (4) a powerhouse containing a single generating unit with a rated capacity of 4,900 kW; (5) a tailrace; (6) a 5-mile-long, 14.4/24.9–kV submerged cable; and (7) 6 miles of overhead transmission line tying into an existing line.

Alternative No. 2 would consist of: (1) A 20-foot-high, 15-foot-long buttress dam at an elevation of 3,180 feet msl; (2) an intake structure with a trashrack and fish screens; (3) an existing 420-acre unnamed lake reservoir with a storage capacity of 8,400 acre-feet at elevation 3,180 feet; (4) a 21-inch-diameter, 7,600-foot-long penstock; (5) a powerhouse containing a single generating unit with a rated capacity of 4,900 kW; (5) a tailrace; (6) a 5-mile-long, 14.4/24.9–kV submerged cable; and (7) 6 miles of overhead transmission line tying into an existing line.

The applicant estimates the cost of the studies to be conducted under the preliminary permit would be $50,000. No new roads will be needed for the purpose of conducting these studies.

l. *Purpose of Project:* Project power would be sold to Kennsington Mines and other utilities.

m. *This notice also consists of the following standard paragraphs:* A5, A7. A9, A10, B, C, D2.

9 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11302–000.
c. *Date Filed:* June 15, 1992.
d. *Applicant:* Shelby Electric Cooperative, Inc.
e. *Name of Project:* Shelbyville Dam.
f. *Location:* At the U.S. Corps of Engineers Dam forming Lake Shelbyville on the Kaskaskia River near Shelbyville in Shelby County, Illinois.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. James E. Coleman, Route 128 and North 6th St., P.O. Box 560, Shelbyville, IL 62565, (217) 774–3986.
i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.
j. *Comment Date:* October 9, 1992.
k. *Description of Project:* The proposed project would consist of: (1) Four 8-foot-diameter, 530-foot-long penstocks; (2) a powerhouse containing eight generating units each with a rated capacity of 850 kW; and, (3) a 200-foot-long transmission line. The estimated average annual energy production of the project is 25,971,022 kWh and the cost of the studies performed under the permit would be $35,000.
l. *Purpose of Project:* The power produced would be sold to members of the electric cooperative.
m. *This notice also consists of the following standard paragraphs:* A3, A7, A9, A10, B, C, and D2.

10 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11306–000.
c. *Date Filed:* June 29, 1992.
d. *Applicant:* City of North Adams, Massachusetts.
e. *Name of Project:* Eclipse Dam.
f. *Location:* On the North Branch of the Hoosic River In the City of North Adams, Berkshire County, Massachusetts.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mrs. Arlene D. Schiff, City Hall, room 221, 10 Main Street, North Adams, MA 01247, (413) 662–3025.
i. *FERC Contact:* Charles T. Raabe (dt) (202) 219–2811.
j. *Comment Date:* October 15, 1992.
k. *Competing Application:* Project No. 11263–000.
Date Filed: March 6, 1992.
Due Date: July 9, 1992.
l. *Description of Project:* The proposed project would consist of: (1) The existing 51.5-foot-high, 260-foot-long concrete Eclipse Dam having a 113-foot-long ogee type spillway; (2) a reservior having a 3.6 acre surface area and a 22 acre-foot storage capacity at spillway crest elevation 818.17 feet msl; (3) an intake structure having trash racks; (4) a 72-inch-diameter penstock through the dam's left abutment; (5) a new powerhouse containing a turbine-generator unit rated at 600-kW operated at a flow of 170 cfs and at a 45-foot net head; (6) a short tailrace; and (7) appurtenant facilities.

Applicant estimates that the annual average energy production would be 1,900,000 kWh and that the cost of the studies under the terms of the permit would be $152,000. The dam is owned by the City of North Adams.

m. *This notice also consists of the following standard paragraphs:* A8, A10, B, C, and D2.

11 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 11308–000.
c. *Date filed:* July 9, 1992.
d. *Applicant:* James A. Riendeau.
e. *Name of Project:* Norton Hydroelectric Project.
f. *Location:* On the Coaticook River, near Norton, Essex County, Vermont.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. James A. Riendeau, 8 Gordon Ave. Cascade, Gorham, NH 03581, (603) 752–4874.
i. *FERC Contact:* Ed Lee (202) 219–2809.
j. *Comment Date:* October 9, 1992.
k. *Description of Project:* The proposed project would consist of: (1) An existing 12-foot-high and 120-foot-long concrete dam; (2) a 4-acre reservoir; (3) a new 550-foot-long, 4.5-foot-diameter steel penstock; (4) a new powerhouse containing one 115-kw generating units; (5) a proposed 1/2-mile, 200-kV transmission line; and (6) appurtenant facilities. The project would have an average annual generation of 700 MWh. The applicant estimates that the cost of the studies will be approximately $10,000. The applicant intends to sell the project generation to a local utility or power company. The project dam and related structures are owned by the applicant.
l. *This notice also consist of the following standard paragraphs:* A5, A7, A10, B, C, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. Initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received

on or before the specified deadline date for the particular application.

D1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (October 12, 1992 for Project No. 5797-002). All reply comments must be filed with the Commission within 105 days from the date of this notice. (December 4, 1992 for Project No. 5797-002).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST" "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. An additional copy must be sent to Director, Division, of Project Review, Office of Hydropower licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 14, 1992 Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19941 Filed 8-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-632-000, et al.]

Colorado Interstate Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Colorado Interstate Gas Co.

[Docket No. CP92-632-000]

August 10, 1992.

Take notice that on August 5, 1992, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP92-632-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to abandon by sale to Public Service Company of Colorado (PSCo) approximately 18.4 miles of 24-inch sales lateral pipeline facilities located in Douglas County, Colorado, and to construct a new meter station at the interconnection of the lateral and CIG's main line, under CIG's blanket certificate issued in Docket No. CP83-21-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG states that PSCo has requested, by letter dated July 1, 1992, to purchase and CIG has agreed to sell the Littleton Sales Lateral. The lateral and delivery points for the lateral were constructed and operated pursuant to the certificates of public convenience and necessity issued in Docket Nos. CP67-366, CP84-289, CP69-330, and CP74-73, it is stated. CIG asserts that the proposed abandonment involves only the sale of facilities and that no service obligation to PSCo is either reduced or terminated as a result of the proposed abandonment. CIG also requests authority to construct a new meter station at the interconnection of the Littleton Sales Lateral and CIG's main line to continue deliveries to PSCo.

Comment date: September 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP92-629-000]

August 10, 1992.

Take notice that on August 3, 1992, Arkla Energy Resources, a division of Arkla, Inc. (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP92-629-000 a request pursuant to § 157.205 of the Commission's Regulations to: (1) Construct and operate a new sales tap and related facilities for delivery of natural gas to Arkansas Louisiana Gas Company (ALG) for resale to domestic customers in Franklin County, Arkansas; (2) operate two existing taps for delivery of natural gas to ALG for sale to consumers other than a right-of-way grantor for whom the taps were originally installed in Cleburne County, Arkansas and Pontotoc County, Oklahoma; (3) upgrade one existing meter station for increased deliveries tb ALG for resale customers in Hempstead County, Arkansas; (4) relocate one domestic sales tap and abandon in place a market lateral designated as Line KM-3 in Union County, Arkansas; and (5) abandon two domestic sales taps in Camp County, Texas and Ouachita County, Arkansas under AER's blanket certificate issued in Do. CP82-384-001, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

AER proposes to: (a) Construct and operate a 1-inch tap on AER's Line FT-14 in Franklin County, Arkansas for initial service to ALG's domestic customers, R. E. Mathews and J. M. Gray, using approximately 170 Mcf of natural gas per year and 1 Mcf of natural per peak day at an estimated cost of $1,389; (b) operate an existing 1-inch tap on AER's Line BM-21 in Cleburne County, Arkansas for initial service to ALG's domestic customer, Opal Rowlett, using approximately 85 Mcf of natural gas per year and 1 Mcf of natural gas per peak day with no new construction; (c) operate an existing tap on AER's Line AD-East in Pontotoc County, Oklahoma for initial service to ALG's domestic customer, George H. Scoggin, using approximately 85 Mcf of natural gas per year and 1 Mcf of natural gas per peak day with no new construction; (d) upgrade existing metering facilities on AER's Line A in Hempstead County, Arkansas in order to increase deliveries to domestic and commercial customers served by ALG's Hope Town Border Station in Hope, Arkansas to meet projected requirements of 660,000 Mcf of natural gas per year and 3,300 Mcf of natural gas per peak day at an estimated cost of $64,790; (e) relocate an existing sales tap and to abandon, in place, approximately 1,129 feet of 6-inch pipeline on AER's Line KM-3 in Union County, Arkansas with an estimated abandonment cost of $1,975 and to continue to provide service of approximately 85 Mcf of natural gas per year and 1 Mcf of natural gas per peak day to ALG's customer, Hodges Tank Cleaning, by installing a 1-inch tap on AER's Line HM-1 in Union County, Arkansas, which is the point of interconnection between Line HM-1 and KM-3, at an estimated cost of $1,389; (f) abandon an existing sales tap that is no longer needed on AER's Line AM-53 in Camp County, Texas since ALG's Lineberger Private Line Master Meter has been connected to ALG's town system with an estimated abandonment cost of $125; (g) abandon a 2-inch meter station on AER's Line KM-8 in Ouachita County, Arkansas which is no longer needed with an estimated abandonment cost of $1,200. AER states that the natural gas required for the sales services would be delivered from AER's general system supply, which is adequate to provide the service. AER states that its deliveries of natural gas to ALG are intercompany transfers that are not conducted pursuant to a FERC jurisdictional tariff and that natural gas sold would be billed at ALG's applicable retail rates as filed and effective with the appropriate state regulatory authority from time to time.

Comment date: September 24, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Co.; Trunkline Gas Company

[Docket No. CP92-630-000]

August 12, 1992.

Take notice that on August 4, 1992, Panhandle Eastern Pipe Line Company and Trunkline Gas Company jointly referred to as "Applicants", P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-630-000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon transportation service provided to Western Resources, Inc. (successor by merger to Kansas Power and Light Company (KPL), all as more fully set forth in the application which is on file with the commission and open to public inspection.

Panhandle, Trunkline and KPL, by letter dated July 24, 1992, mutually agreed to terminate the transportation service, effective October 31, 1992, because KPL indicates that it no longer requires the service. As a result, Applicants filed the instant request in order for the Commission to grant authorization to abandon the transportation service to KPL effective October 31, 1992. No facilities are proposed to be abandoned herein.

Comment date: September 2, 1992, in accordance with Standard Paragraph F at the end of the notice.

4. Kern River Gas Transmission Co.

[Docket No. CP92-631-000]

August 12, 1992.

Take notice that on August 5, 1992, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92-631-000, a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations for authorization to operate as delivery points certain receipt points constructed under Kern River's part 157, subpart F blanket certificate issued in Docket No. CP89-2048-000, as more fully set forth in the request that is on file with the Commission and open to public inspection.

Kern River states that the six receipt points which are the subject of its filing are located in Lincoln and Unita Counties in the State of Wyoming. Kern River requests authorization to operate the receipt points as delivery points for its firm shippers under its open-access Rate Schedules KRF-1, CH-1, MO-1, SH-1, and VP-1 and for its interruptible shippers under open-access Rate Schedule KRI-1. Kern River states that the availability of the receipt points as delivery points would provide Kern River's shippers with added flexibility for transportation service under Kern River's Part 284 blanket certificate. Kern River also states that use of the receipt points as delivery points would be permitted in accordance with the applicable provisions of Kern River's tariff.

Comment date: September 28, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Williams Natural Gas Co.

[Docket No. CP92-637-000]

August 13, 1992.

Take notice that on August 7, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-637-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations

under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install an additional tap and appurtenant facilities for Kansas Public Service (KPS) in Douglas County, Kansas, under WNG's blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to install an additional 6-inch tap on the Kansas University 6-inch pipeline (EK–5) in order for KPS to shift load from an existing town border location to supply the low pressure distribution system serving this area. WNG states that the projected volume of delivery through the new facilities is not expected to exceed the volume currently attributable to the existing Haskell Bottoms town border setting of 2,566 dekatherms equivalent of gas on a peak day and 312,764 dekatherms annually. WNG explains that the ultimate goal is to abandon the Haskell Bottoms setting. It is stated that KPS would reimburse WNG for the construction cost, estimated to be $5,914.

Comment date: September 28, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP92–644–000]

August 13, 1992.

Take notice that on August 11, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP92–644–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to relocate twelve 2-inch sales taps to serve farm tap customers of Entex, Inc. (Entex), a jurisdictional sales customer under United's Rate Schedule DG, under the certificate issued to United in Docket No. CP82–430–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United states that it currently makes natural gas sales to Entex to serve its Aransas Pass billing area distribution systems and rural taps pursuant to an October 1, 1991, service agreement. United requests authorization to relocate twelve 2-inch farm taps serving Entex customers from various locations on United's 16-inch Refugio to Edna line to United's 30-inch Agua Dulce-Perryville Line. It is stated that United plans to remove from service the 16-inch Refugio to Edna line. It is also stated that in order to maintain service to the farm taps, United proposes the relocation of these taps to United's 30-inch line which parallels the 16-inch line. United states that the volumes proposed to be delivered to Entex at these taps will be within Entex's currently effective entitlements of 10,332 MMBtu per day for that billing area. United further states that Entex and its customers have consented to the proposed relocation of tap facilities.

It is stated that the estimated cost for relocating the sales taps is $98,270. United maintains that Entex will not be required to reimburse United for any of these costs.

Comment date: September 28, 1992, in accordance with Standard Paragraph G at the end of this notice.

7. Paiute Pipeline Co.

[Docket No. CP92–642–000]

August 13, 1992.

Take notice that on August 10, 1992, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP92–642–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new delivery point for service to Southwest Gas Corporation—Northern Nevada (Southwest), and to Newmont Gold Company (Newmont) in Elko County, Nevada, under Paiute's blanket certificate issued in Docket No. CP84–739–000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Paiute proposes to construct and operate the delivery point, for the delivery during the third year of operation of up to 6,700 Mcf of natural gas on a peak day and 1,277,500 Mcf on an annual basis, to Newmont, an end-user. It is stated that Paiute would add the new delivery point to its firm transportation agreement with Southwest, an existing local distribution customer, which would resell the gas to Newmont, and that Paiute would also provide interruptible transportation service to Newmont. Paiute asserts that the volumes proposed for delivery would be within Southwest's existing entitlements from Paiute. It is explained that the facilities are required by Newmont for use in its mining operations. It is estimated that the cost of installing the facilities would be $173,505, for which Paiute would be reimbursed by Newmont.

Comment date: September 28, 1992, in accordance with Standard Paragraph G at the end of this notice.

8. CNG Transmission Corp.

[Docket No. CP92–638–000]

August 13, 1992.

Take notice that on August 7, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP92–638–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act to abandon certain sales taps and associated gas supply facilities, related right of ways and all other associated equipment, pipe and appliances connected therewith to Jackson Resources Company (Jackson Resources), all as more fully set forth in the application on file with the Commission and open to public inspection.

CNG states that the gas supply facilities services wells under CNG's gas purchase contracts with Jackson Resources. It is further stated that the gas related to the facilities has been removed from jurisdiction under the Natural Gas Act by virtue of the Wellhead Decontrol Act of 1989.

CNG further states that CNG currently makes sales of gas to Hope Gas, Inc. for resale for utility residential sales on the facilities at eleven sales taps. It is stated that Hope has agreed to the discontinuance of service by CNG and will make arrangements to obtain transportation service or gas supplies from Jackson Resources to maintain service to its utility customers.

Comment date: September 28, 1992, in accordance with Standard Paragraph G at the end of this notice.

9. Natural Gas Pipeline Company of America

[Docket No. CP92–635–000]

August 14, 1992.

Take notice that on August 6, 1992, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP92–635–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation service authorized in Docket No. CP66–422 performed by Natural under its Rate Schedule X–14 for Northern Indiana Public Service Company (NIPSCO), the Peoples Gas Light and Coke Company (Peoples) and Northern Illinois Gas Company (NI–Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural states that it entered into a transportation agreement with NIPSCO, Peoples and NI–Gas dated November 1, 1966 (agreement) in order to provide for the transportation for NIPSCO, Peoples and NI–Gas of the natural gas sold to these three companies by Midwestern Gas Transmission Company (Midwestern). Natural further states that the agreement provided for a term ending October 31, 1986. According to Natural, NIPSCO, Peoples, NI–Gas and Natural have negotiated and implemented new and more flexible part 284, Subparts B and G firm transportation agreements (pursuant to Natural's Rate Schedule FTS) which supersede the service provided under the agreement and Natural's Rate Schedule X–14. Therefore, Natural proposes in the present application to abandon the transportation service authorized in Docket No. CP66–422 performed by Natural for NIPSCO, Peoples and NI–Gas under Natural's Rate Schedule X–14.

Comment date: September 4, 1992, in accordance with Standard Paragraph F at the end of this notice.

10. Williams Natural Gas Co.

[Docket No. CP92–646–000]

August 14, 1992.

Take notice that on August 11, 1992, Williams Natural Gas Company (Williams), Post Office Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92–646–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon the transportation of natural gas and related measuring facilities for direct sale to Dean E. Eyler Oil Company (Eyler) located in Pawnee County, Oklahoma, under Williams blanket certificate issued in Docket No. CP82–479–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williams states that Eyler has requested abandonment of the sale and facilities.

Comment date: September 26, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to be proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19942 Filed 8–19–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. G–17350–012]

Pacific Gas Transmission Corporation; Request for Abandonment Authorization

August 14, 1992.

Take notice that on July 21, 1992, Northwest Pipeline Corporation (Northwest) and Pacific Gas Transmission Corporation (PGT) filed a settlement in Docket No. RP91–166–011 in which they, among other things, request the Commission, pursuant to section 7(b) of the Natural Gas Act, to authorize PGT to abandon the transportation service it currently provides Northwest under PGT's Rate Schedule T–1, as of November 1, 1992, conditioned upon the capacity being assigned to designated customers of Northwest. The Commission is attaching the above captioned certificate docket to this request.

Any person desiring to be heard or to protest said request for abandonment authorization should on or before August 24, 1992, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene and protest in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

[Docket No. RS92–21–000]

National Fuel Gas Supply Corp.; Prefiling Conference

August 14, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 9, 1992, at 10 a.m., in Washington, DC at the office of the Federal Energy Regulatory Commission, in the Commission Meeting Room, at 825 North Capitol Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state the new location.

The purpose of this prefiling conference is to discuss further National Fuel Gas Supply Corporation's summary of its proposal to comply with Order No. 636, as a follow-up to the initial prefiling conference that was held on July 20, 1992.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call Donald Williams at (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 92–19945 Filed 8–19–92; 8:45 am]

BILLING CODE 6717–01–M

Commission and are available for public inspection in the public reference room.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no protest is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a protest is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for PGT to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19817 Filed 8-19-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-41-000]

Paiute Pipeline Co.; Change in Annual Charge Adjustment

August 14, 1992.

Take notice that on August 10, 1992, Paiute Pipeline Company (Paiute) tendered for filing and acceptance the following tariff sheet to be a part of its FERC Gas Tariff:

First Revised Volume No. 1-A

Second Revised Sheet No. 10

Paiute states that the purpose of said filing is to revise its annual charge adjustment surcharge in order to recover the Commission's annual charges for the 1992 fiscal year.

Paiute has requested that the Commission accept its tariff sheet to become effective on October 1, 1992.

Paiute states that copies of this filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before August 21, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-19815 Filed 8-19-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Special Research Grant Program Notice 92-20; High Performance Computing and Communications

AGENCY: Office of Energy Research, Department of Energy.

ACTION: Notice inviting grant applications.

SUMMARY: The Scientific Computing Staff of the Office of Energy Research (ER), U.S. Department of Energy (DOE) hereby announces its interest in receiving applications for Special Research Grants supporting DOE's role in the President's High Performance Computing and Communications (HPCC) Initiative. The 5-year Federal HPCC Program was announced by Dr. D. Allan Bromley, Director, Office of Science and Technology Policy in February 1991. In December, the 102nd Congress passed the "High-Performance Computing Act of 1991" which provides for a coordinated Federal program to ensure continued United States leadership in high-performance computing. The DOE has an integral and broad program within the eight-agency HPCC Initiative. The primary goals of the DOE HPCC Program are: (1) To extend U.S. Technological leadership in high performance computing and computer communications; (2) to improve U.S. productivity and industrial competitiveness by making high performance computing and network technologies an integral part of the design and production process; and (3) to provide wide dissemination and application of the advances in these technologies to both speed the pace of innovation and serve the national economy, security, and education. The DOE program will approach these goals by (1) supporting research and development to solve important scientific and technical challenges; (2) reducing the uncertainties in industrial research and development through increased cooperation between government, industry, and universities and by continued use of government and government-funded facilities as a prototype user of early commercial HPCC products; (3) supporting the underlying research, network, and computational infrastructures on which U.S. high performance computing technology is based; and (4) supporting the U.S. human resource base to meet the needs of industry, universities, and government.

This notice requests applications for grants to support research in the major components of the HPCC Program. They are:

I. High Performance Computing Systems—Research to advance the capabilities of future generations of computing systems and to evaluate advanced prototype systems;

II. Advanced Software Technology and Algorithms—Software support for the computational grand challenges by research and development of software tools, components and computational techniques, and by the establishment of High Performance Computing Research Centers;

III. National Research and Education Network (NREN)—Research and development on very high speed digital communications (gigabits) and participation in the Interagency Interim NREN; and

IV. Basic Research and Human Resources—Research participation and training, educational infrastructure, education, and curriculum development.

Collaborative research among investigators at universities, industrial firms and DOE National Laboratories is encouraged. Advanced software technology and algorithms in support of the DOE energy-related computational grand challenges will be emphasized.

DATES: The DOE HPCC initiative is a 5-year program. To permit timely consideration of awards in Fiscal Year 1993, formal applications submitted in response to this notice must be received by November 4, 1992. Earlier submission is encouraged.

ADDRESSES: Formal applications referencing Program Notice 92-20 sent by U.S. Mail should be forwarded to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64, Washington, DC 20585, Attn: Program Notice 92-20. The following address must be used when submitting applications by U.S. Postal Service Express or any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER-64/GTN, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: The Scientific Computing Staff, Office of Energy Research, ER-7/GTN, U.S. Department of Energy, Washington, DC 20585, (301) 903-5800.

SUPPLEMENTARY INFORMATION: The DOE HPCC Program is described in a report, "The DOE Program Component of the Federal High Performance Computing and Communications Program," dated June 1991 (DOE/ER-0489P). The FY 1993 Federal program is summarized in "Grand Challenges 1993: High Performance Computing and Communications—a Supplement to the President's FY 1993 Budget." These reports can be requested by calling (301) 903-5800.

DOE participates in all four major components of the Federal High Performance Computing and Communications Program, as described below.

I. High Performance Computing Systems (HPCS)

In the area of HPCS, DOE will be an early customer of small versions of systems with advanced architectures and will evaluate these systems on energy-related applications. It should be noted that the primary technology development for HPCS of the HPCC Program will be managed and funded by the Defense Advanced Research Projects Agency (DARPA). DOE will consider cooperative development projects of advanced systems involving its national laboratories, universities, and vendors. DOE will support research and development associated with evaluating the effectiveness of new parallel computing systems.

II. Advanced Software Technology and Algorithms (ASTA)

The ASTA component is strongly emphasized in the DOE HPCC Program. The effort will provide support for (A) grand challenge and other computational collaborations pertinent to the DOE missions, (B) software components and tools for high performance systems and prototype computational science programming environments that conform to standards or de facto standards and are portable, and (C) high performance computing research centers to facilitate research on parallel machines to enhance the effectiveness of applications and programming environments. In addition to these three elements, described in detail below, the HPCC Program will support research and evaluation aimed at improving the integration of advanced

DOE research in computational science into commercial products and processes with significant economic impact for the country. Support is also available for pertinent research on the needs of the computational community.

(A) The grand challenge and computational projects subcomponent is directed at enabling major advances in science and engineering of critical importance to the DOE by providing computational resources, both time on high performance computing systems and advanced effective software. These projects will be focussed on the science/engineering application and are expected to involve multidisciplinary teams of scientists and engineers along with computational researchers and computer scientists from academia, governmental institutions, and industry. Goals for the HPCC Initiative include accelerating the pace of innovation and enhancing U.S. competitiveness in the marketplace: these provide the emphasis in this subcomponent. To insure the purposes of the Initiative are fulfilled, applications for grants in this subcomponent should address the following questions:

- *Fundamental Significance:* What fundamental science or engineering problem is addressed? What is the expected economic, societal, and scientific impact?
- *International Competitiveness:* What contribution to the Nation's productivity/economy and international competitiveness will the proposed project have? Industrial involvement is the most evident contribution: partnerships with industrial users of HPCC is strongly encouraged.
- *DOE Mission:* What is the contribution of the proposed project to the missions of the DOE? If a project pertains to a particular DOE science office or a technology office, then the goals of the project should be appropriate to the missions of that office, as well as the office of Scientific Computing Staff missions.
- *Enabling Technologies:* Will the expected progress in software/hardware technologies enable a substantial advance in the project in the next year or two?
- *Interdisciplinary Approach:* Is an interdisciplinary approach involving scientists, engineers, mathematicians and computer/computational scientists appropriate? Only under rare circumstances would an HPCC computational project not incorporate an interdisciplinary approach.
- *Support Leverage:* What is the support for the project from present and pending sponsoring partners—DOE Program Offices, other Federal agencies, private/non-profit institutions and industrial firms?
- *Technology Leverage:* What probable advances in enabling software or hardware technologies developed in this project will benefit other computational projects?

(B) The software technology subcomponent of the DOE program is focused on improving the effectiveness of computational scientists and engineers who are working on grand challenge class problems of critical importance to the DOE and the Nation. This technology falls into three general categories:

(1) Technology to assist in constructing, maintaining, and monitoring scientific software in high performance computing environments;

(2) Technology for understanding and managing the output of scientific software;

(3) Software infrastructure, including compilers, libraries, and computational techniques.

Also, applications should include the following additional information:

- Their potential, relative to other efforts supported by the DOE and other HPCC agencies, for producing technology which is needed and desired by computational scientists and engineers;
- Their potential for producing technology which can interoperate with other technologies through the use of standards and open, clear, rich interface definitions;
- Their potential for producing technology which has a clear path leading to commercial products either through demonstrated prior success or partnership with commercial concerns;
- The quality and level of involvement of computational scientists from government, industry, and academia who are working on grand challenge class problems who are involved as users/evaluators or advisors for the software technology being proposed.

(C) Because of the intricate nature of High Performance Computing Research Center (HPCRC) applications and uncertainties in the budget and, therefore, scope of the DOE HPCC Program in FY 1993, please contact the Scientific Computing Staff before compiling such an application.

Following is a description of the characteristics the DOE expects a HPCRC to have.

The Department of Energy's High Performance Computing Research Centers (HPCRCs) are to serve as intellectual homes for leading-edge research that will enable the solution of

Grant Challenge problems. The activities at the HPCRCs are designed to support interdisciplinary and inter-institutional collaborations. The HPCRCs will house interdisciplinary teams of researchers, drawn from science and engineering applications disciplines, computational mathematics and computer science. These teams focus on application development to harness the power of advanced architecture computers for the solution of computational-intensive, large-scale scientific and engineering problems. Multidisciplinary research also will be emphasized. Computational science and engineering should transcend traditional disciplinary boundaries and present opportunities for novel interactions and synergies. The HPCRCs are expected to exploit these opportunities. The HPCRCs provide a natural setting for a variety of supporting research activities, such as: Computer performance evaluation, visualization, software environments for computational science and engineering, gigabit networking research, high-speed data storage and archiving, and the development of new solvers and better software libraries. The HPCRCs are expected to play an active role in maintaining a dialogue with industry, universities, and other laboratories and centers in order to maximize the dissemination of information, promote and support technology commercialization, and avoid unnecessary duplication of effort.

The HPCRCs are designed to play an important role in computational science education. This aspect of their mission is expected to go well beyond the usual training courses in computing and to embrace such issues as computational science curriculum design at the university level and introductory and motivational programs and material for precollege students and teachers. These activities require strong collaboration with the academic community.

While they are not production computing centers, the HPCRCs house and vigorously exploit full-scale versions of prototype advanced architecture computers. In order for remotely located collaborators to fully participate in the research activities of the HPCRCs, each Center will become a major node on a National Research and Education Network backbone.

As high performance computing and its applications are expected to grow rapidly and experience rapid changes in technology, DOE's commitment to any particular HPCRC will be of limited duration. However, new HPCRCs may be created to exploit new computing technologies and future Grand Challenges applications.

III. The National Research and Education Network (NREN)

The DOE will participate in the cooperative interagency NREN. The Energy Sciences Network (ESNet) will be incorporated into the NREN to provide quality network access to the energy research facilities by research and education communities. It should be noted, however, that broad community access to the NREN will be supported by the National Science Foundation (NSF) through the NREN component of the Federal HPCC Program. ESNet will maintain compatibility and will be upgraded in concert with NREN. Applications are invited to develop gigabit network support technology for DOE projects distributed across multiple energy research centers at the national laboratories and universities. Primary coordination and funding for gigabit research in the Federal HPCC Program will be done by DARPA.

IV. Basic Research and Human Resources (BRHR)

The DOE's BRHR activities will include:

(A) Stimulating research and education in computational science;

(B) Expanding training programs for high school teachers and college students in computing techniques;

(C) Initiation of high school supercomputer programs; and

(D) Provision of fellowships in computational science with internship at national laboratories.

Application and Award Information

Information about submission of applications, eligibility, limitations, evaluation and selection processes, and other policies and procedures, may be found in the Application and Guide for the Special Research Grant Program and in 10 CFR part 605. The application kit and guide and copies of 10 CFR part 605 are available from the Office of Energy Research, Scientific Computing Staff, ER-7, Washington, DC 20585. Instructions for preparation of an application are included in the application kit. However, the project description should not exceed 25 double-spaced pages. Lengthy appendices are discouraged. Telephone requests may be made by calling (301) 903-5800. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Subject to availability of appropriated FY 1993 funds, approximately $3,000,000 will be available for award. The allocation of funds will depend upon the number and quality of applications received. Grant awards will generally be for a 3-year period, funded one year at a time, and may range from $50,000 to $850,000.

Issued in Washington, DC, on August 13, 1992.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92-19833 Filed 8-19-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of July 20 Through July 24, 1992

During the week of July 20 through July 24, 1992 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Apeals

John R. Brodeur, 07/20/92, LFA-0217

The Government Accountability Project filed an Appeal on behalf of John R. Brodeur from a Freedom of Information Act (FOIA)/Privacy Act determination issued by the DOE's Richland Field Office DOE-RL. In that determination DOE-RL withheld records stating that they were not agency records under the FOIA. In considering the Appeal, the DOE found that responsive agency records may exist. Accordingly, the Appeal was remanded in part and denied in all other respects.

Jon Berg, 07/22/92, LFA-0214

Jon Berg filed an Appeal from a partial denial by the DOE's Office of Inspector General (IG) of a request for information which he had submitted under the Freedom of Information Act (FOIA). Berg sought investigative materials concerning himself and another individual. The IG released to Berg documents pertaining to two investigations conducted by the IG, but withheld portions of the material pursuant to FOIA Exemptions 6 and 7(C). In his Appeal, Berg contended that the Privacy Act entitled him to all information withheld that concerned him, objected to the withholding of material under the FOIA exemptions, and requested a Vaughn index of all documents reviewed by the IG in response to his request. In considering the Appeal, the DOE found that: (i) The Privacy Act was not applicable to the documents which were the subject of the Appeal; (ii) the IG properly withheld the names and other identifying information of the IG investigators, witnesses, sources, subjects, and private individuals mentioned in the investigative file, as well as the IG employee who entered indexing data regarding the investigation into the IG's information management system; (iii) regarding certain verbs, pronouns, paragraphs, and entire memoranda withheld from the requester, the matter should be remanded to the IG for release of the material or a precise description of how its release could reasonably be expected to disclose the identity of an individual such that it would constitute an unwarranted invasion of privacy; and (iv) the agency need not provide a Vaughn index to the requester at the administrative stages of a FOIA request. Accordingly, the matter was remanded in part as described above and denied in all other respects.

Refund Application

Shell Oil Company/West Side Plaza Car Wash, 07/21/92, RF315-8908, RF315-10216

The DOE issued a Decision and Order concerning the Applications for Refund filed separately in the Shell Oil Company special refund proceeding by Tom Weinzapfel and Ronald Schutz, the two partners of the West Side Plaza Car Wash. The DOE has previously held that partners who owned equal shares of an enterprise during the refund period should divide the refund equally because these partners would have equally borne the alleged overcharges and any accompanying injury. Therefore, Tom Weinzapfel and Ronald Schutz each were entitled to fifty percent of the refund based on West Side Plaza Car Wash's purchases of Shell product. Accordingly, Tom Weinzapfel and Ronald Schutz were each granted a refund of $585 ($405 principal and $180 interest). The total refund granted in this Decision and Order was $1,170 (comprised of $810 in principal and $360 in interest).

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Bickley's Logging *et al.*	RF272-89016	07/21/92
Gulf Oil Corporation/ Allen's Gulf Center *et al.*	RF300-16518	07/22/92
Gulf Oil Corporaton/ Arkansas Dept. of Highways.	RF300-18189	07/21/92
Gulf Oil Corporation/ Culotta Gulf.	RF300-20369	07/22/92
Gulf Oil Corporation/ Sevier Ave. Gulf *et al.*	RF300-18301	07/22/92
Gulf Oil Corporation/ Taylor County *et al.*	RF300-12335	07/22/92
Gulf Oil Corporation/ Woodford Oil Company.	RR300-57	07/22/92
Franco Distributors, Inc.	RR300-63	
Joe Lee Smith Distributors.	RR300-86	
Hagood Oil Company, Inc.	RR300-165	
Lovette Egg Co. *et al* ...	RF272-89064	07/21/92
Quantum Chemical Corporation/ Adams Resources & Energy, Inc.	RF330-49	07/24/92
Texaco, Inc./Don Wolfe's Texaco *et al.*	RF321-1615	07/22/92
Texaco, Inc./Oak Grove Texaco *et al.*	RF321-9903	07/23/92
Texaco, Inc./Virginia Fibre Corporation *et al.*	RF321-15100	07/22/92

Dismissals

The following submissions were dismissed:

Name	Case No.
Alf's Texaco	RF321-12794
Big John Texaco	RF321-12789
Bob Graham's Texaco	RF321-12676
Bulson Texaco	RF321-12665
C & W Texaco Service Station	RF321-12349
Casey's Texaco	RF321-12691
Citizen Action	LFA-0220
Cornwall Oil Co., Inc	RF321-12683
Cross Uptown Texaxo	RF321-12672
Fred's Texaco & Car Care Center	RF321-18561
Garrett's Service Center	RF321-12686
Glenn Ratliff Texaco	RF321-12735
Herkimer Texaco	RF321-12791
Hilleary Texaco	RF321-12680
Hutt Oil Company	RF321-12681
Kock's Texaco Service Station	RF321-12684
Main & Eastwood Texaco	RF321-12677
Memorial Texaco	RF321-12685
Mortland Gas Texaco	RF321-12790
Paul Carter's Texaco	RF321-12667
Petro Vend, Inc	RF321-12664
Randall's Memorial Texaco	RF321-12796
Tony Otero's Texaco	RF321-12793

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: August 13, 1992.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 92-19835 Filed 8-19-92; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-952-DR]

Florida; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 14, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA-952-DR), dated August 14, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Gregory S. Jones, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3668.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 14, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Florida, resulting from severe storms and flooding on June 23-30, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Florida.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Individual Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of

the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Melvin J. Schneider of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

The counties of Charlotte, DeSoto, Manatee, and Sarasota for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director.

[FR Doc. 92-19905 Filed 8-19-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-951-DR]

OHIO: Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-951-DR), dated August 4, 1992, and related determinations.

EFFECTIVE DATE: August 14, 1992.

FOR FURTHER INFORMATION CONTACT: Gregory S. Jones, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3668.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, dated August 4, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 4, 1992:

The counties of Auglaize, Belmont, Columbiana, Cuyahoga, Erie, Fairfield, Franklin, Fulton, Geauga, Jefferson, Logan, Lorain, Lucas, Mahoning, Medina, Mercer, Ottawa, Portage, Ross, Shelby, Summit, Trumbull, Van Wert, and Wood for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Robert G. Chappell,

Assistant Associate Director, Disaster Assistance Programs.

[FR Doc. 92-19903 Filed 8-19-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-951-DR]

Ohio; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA-951-DR), dated August 4, 1992, and related determinations.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio, dated August 4, 1992, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 4, 1992:

The counties of Cuyahoga, Mahoning, Medina, Mercer, Summit, Trumbull, and Van Wert for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-19904 Filed 8-19-92; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL RESERVE SYSTEM

Verle and Jo Ann Burgason, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 9, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Verle and Jo Ann Burgason; to acquire an additional 7.075 percent, for a total of 30.89 percent, of the voting shares of Elcho Bancorporation, Inc., Venice, Florida, and thereby indirectly acquire State Bank of Elcho, Elcho, Wisconsin.

2. John Sapiente, Inverness, Illinois; to acquire 100 percent of the voting shares of Elgin Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire Union National Bank & Trust Company, Elgin, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Gladden A. Redding Revocable Trust, Windom, Minnesota; to acquire an additional 2.34 percent, for a total of 25.27 percent, of the voting shares of Windom State Investment Company, Windom, Minnesota, and thereby indirectly acquire Southwest State Bank, Windom, Minnesota.

2. Mary Jane Redding Revocable Trust, Windom, Minnesota; to acquire an additional 2.34 percent, for a total of 25.27 percent, of the voting shares of Windom State Investment Company, Windom, Minnesota, and thereby indirectly acquire Southwest State Bank, Windom, Minnesota.

C. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Kjell H. Qvale, San Francisco, California; to acquire 54.9 percent of the voting shares of Marin National Bancorp, San Rafael, California, and thereby indirectly acquire First National Bank of Marin, San Rafael, California.

Board of Governors of the Federal Reserve System, August 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19891 Filed 8-19-92; 8:45 am]

BILLING CODE 6210-01-F

Centura Banks, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 14, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to acquire Orange Federal Savings and Loan Association, Chapel Hill, North Carolina, and thereby engage in deposit and lending activities of a savings and loan association, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Pinnacle Banc Group, Inc., Oak Brook, Illinois; to acquire Batavia Financial Corp., Batavia, Illinois, and thereby indirectly acquire Batavia Savings Bank, Batavia, Illinois, a thrift institution, pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19890 Filed 8-19-92; 8:45 am]

BILLING CODE 6210-01-F

Centura Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 14, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Centura Banks, Inc., Rocky Mount, North Carolina; to acquire 100 percent of the voting shares of Orange Interim Bank (in organization), Chapel Hill, North Carolina, a *de novo* bank.

2. Key Centurion Bancshares, Inc., Charleston, West Virginia; to acquire 100 percent of the voting shares of Peoples Bank of Charles Town, Charles Town, West Virginia.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Button Gwinnett Bancorp, Inc., Snellville, Georgia; to merge with The Gwinnett Financial Corporation, Lawrenceville, Georgia, and thereby indirectly acquire The Bank of Gwinnett County, Lawrenceville, Georgia.

2. HNB Holding Company, Inc., Headland, Alabama; to become a bank holding company by acquiring 80 percent of the voting shares of The Headland National Bank, Headland, Alabama.

3. Synovus Financial Corp., Columbus, Georgia, and TB&C Bancshares, Inc., Columbus, Georgia; to acquire 100 percent of the voting shares of Interim CB&T Bank of Russell County, Phenix City, Alabama, a *de novo* bank.

4. Synovus Financial Corp., Columbus, Georgia, TB&C Bancshares, Inc., Columbus, Georgia, and Fort Rucker Bancshares, Inc., Fort Rucker, Alabama; to merge with First Commercial Bancshares, Inc., Jasper, Alabama, and thereby indirectly acquire First Commercial Bank of Birmingham, Birmingham, Alabama, Sterling Bank, Montgomery, Alabama, First National Bank of Jasper, Jasper, Alabama, The Bank of Tuscaloosa, Tuscaloosa, Alabama, and First Commercial Bank of Huntsville, Huntsville, Alabama.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. BOI Financial Corp., Normal, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Illinois in Normal, Normal, Illinois.

2. Comerica Incorporated, Detroit, Michigan; to acquire 100 percent of the voting shares of Hibernia National Bank in Texas, Dallas, Texas.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. H & H Holding Company, Alton, Illinois; to become a bank holding company by acquiring at least 86.9 percent of the voting shares of Greene County National Bank in Carrollton, Carrollton, Illinois, and thereby indirectly acquire Godfrey State Bank, Godfrey, Illinois.

2. Mercantile Acquisition Corporation of Kansas I, St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Johnson County Bankshares, Inc., Prairie Village, Kansas, and thereby indirectly acquire Johnson County Bank, N.A., Prairie Village, Kansas.

3. Mercantile Bancorporation Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Crown Bancshares II, Inc., Shawnee Mission, Kansas, and thereby indirectly acquire Johnson County Bankshares, Inc., Prairie Village, Kansas, and Johnson County Bank, N.A., Prairie Village, Kansas.

4. Mercantile Bancorporation Inc., St. Louis, Missouri; to acquire 100

percent of the voting shares of Johnson County Bankshares, Inc., Prairie Village, Kansas, and thereby indirectly acquire Johnson County Bank, N.A., Prairie Village, Kansas.

5. Sun Financial Corporation, Earth City, Missouri; to acquire 97.35 percent of the voting shares of The Security Bank of Mountain Grove, Mountain Grove, Missouri.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Colorado National Bankshares, Inc., Denver, Colorado; to acquire 100 percent of the voting shares of Regency Bancorporation, Inc., Pueblo, Colorado, and thereby indirectly acquire Pueblo Boulevard Bank, Pueblo, Colorado. **Comments on this application must be received by September 10, 1992.**

2. FirstBank Holding Company Employee Stock Ownership Plan, Lakewood, Colorado; to acquire an additional 1.91 percent, for a total of 27.1 percent, of the voting shares of FirstBank Holding Company of Colorado, Lakewood, Colorado, and thereby indirectly acquire FirstBank of West Arvada, N.A., Arvada, Colorado; FirstBank of Aurora, N.A., Aurora, Colorado; FirstBank of Avon, Avon, Colorado; FirstBank of South Boulder, N.A., Boulder, Colorado; FirstBank of Boulder, N.A., Boulder, Colorado; Breckenridge FirstBank, N.A., Breckenridge, Colorado; FirstBank of Castle Rock, N.A., Castle Rock, Colorado; FirstBank of Denver, N.A., Denver, Colorado; FirstBank of Cherry Creek, N.A., Denver, Colorado; FirstBank of Republic Plaza, N.A., Denver, Colorado; FirstBank of Erie, Erie, Colorado; FirstBank of Tech Center, N.A., Englewood, Colorado; FirstBank of Colorado, N.A., Jefferson County, Colorado; FirstBank of Lakewood, N.A., Lakewood, Colorado; FirstBank of Westland, N.A., Lakewood, Colorado; FirstBank of Academy Park, Lakewood, Colorado; FirstBank of Villa Italia, N.A., Lakewood, Colorado; FirstBank of Littleton, N.A., Littleton, Colorado; FirstBank Wadsworth/Coal Mine, N.A., Littleton, Colorado; FirstBank of Arapahoe County, N.A., Littleton, Colorado; FirstBank of Longmont, N.A., Longmont, Colorado; FirstBank at Arapahoe/Yosemite, N.A., Englewood, Colorado; FirstBank of Silverthorne, N.A., Silverthorne, Colorado; FirstBank of Vail, Vail, Colorado; FirstBank at 88th/Wadsworth, N.A., Westminster, Colorado; and FirstBank of Wheat Ridge, N.A., Wheat Ridge, Colorado.

3. Mohler Bancshares, Inc., Harveyville, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Harveyville, Harveyville, Kansas.

Board of Governors of the Federal Reserve System, August 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19889 Filed 8-19-92; 8:45 am]

BILLING CODE 6210-01-F

Mercantile Bancorporation Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1992.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of MidAmerican Corporation, Shawnee Mission, Kansas, and thereby indirectly acquire MidAmerican Bank and Trust Company, Shawnee Mission, Kansas, Merchants National Bank of Topeka, Topeka, Kansas, First National Bank of Lawrence, Lawrence, Kansas, and Lawrence National Bank and Trust Company, Lawrence, Kansas.

In connection with this application, Applicant also proposes to acquire MidAmerican Insurance Agency, Inc., Shawnee Mission, Kansas, and thereby engage in the sale, as agent, of the following types of insurance: automobile, homeowners (including flood and theft insurance), accident and health, fire and casualty, outboard, yacht, builder's risk, term and ordinary (or whole) life insurance products, liability, surety bonds and compensation, in addition to packages specified as umbrella, personal and commercial, pursuant to § 225.25(b)(8)(iv) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19888 Filed 8-19-92; 8:45 am]

BILLING CODE 6210-01-F

Middle Georgia Bankshares, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 14, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Middle Georgia Bankshares, Inc., Unadilla, Georgia; to engage *de novo* in real estate and personal property appraising, pursuant to § 225.25(b)(13) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Wishek Bancorporation, Inc., Wishek, North Dakota; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Great Western Securities, Inc., Omaha, Nebraska, parent of Bank of Belleview, Belleview, Nebraska; to engage *de novo* in making and servicing loans, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 14, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-19887 Filed 8-19-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities

AGENCY: Office of Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to renew expiring information collection 3090-0246, 48 CFR 552.210-79, Packing List. This Information Collection is used to administer schedule contracts authorizing oral orders paid by Government commercial credit card.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

Annual Reporting Burden: Respondents: 3,331; *annual responses:* 115,516; *hours per response:* .0167; *total burden hours:* 1929.

FOR FURTHER INFORMATION CONTACT: Betty Moran, GSA Office of Acquisition Policy (202-501-4764).

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: August 13, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92-19859 Filed 8-19-92; 8:45 am]

BILLING CODE 6820-61-M

Agency Information Collection Activities

AGENCY: Office of Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to renew expiring information collection 3090-0245, Performance and Payment Bonds. This Information Collection is used to establish performance and/or payment bonds when such bonds are essential to protect the Government's interest.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

Annual Reporting Burden: Respondents: 2,130; *annual responses:* 2,130; *hours per response:* .25; *total burden hours:* 533.

FOR FURTHER INFORMATION CONTACT: Betty Moran, GSA Office of Acquisition Policy (202-501-4764).

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th & F St. NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: August 13, 1992.

Emily C. Karam,

Director, Information Management Division.

[FR Doc. 92-19898 Filed 8-19-92; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority; Assistant Secretary for Management and Budget

Part A, Office of the Secretary, Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is being amended as follows: Chapter AM, "HHS Management and Budget Office" as last amended, 57 FR 8334-8340, 3/09/92, to reflect the realignment of functional responsibilities in the Office of Management and Budget; and to indicate the transfer of the Payment Management System to the Public health Service.

I. Make the following changes to Chapter AM

A. Section AM.00 Mission. Delete in its entirety and replace with the following:

AM.00 Mission. The mission of the HHS Management and Budget Office is to provide advice and guidance to the Secretary on administrative and financial management, and to provide for the direction and coordination of these activities throughout the Department on a day-to-day basis.

B. Section AM.10 Organization. Delete in its entirety and replace with the following:

AM.10 Organization. The HHS Management and Budget Office is

headed by the Assistant Secretary for Management and Budget (ASMB) who is also the Departmental Chief Financial Officer (CFO). The ASMB/CFO reports to the Secretary. The office consists of the following organizations:

Immediate Office (AM)
Office of Grants and Acquisition Management (AMG)
Office of Budget (AML)
Office of Information Resources Management (AMM)
Office of Finance (AMN)
Administrative Services Center (ASC)

C. Section AM.20 Functions. Delete in its entirety and replace with the following:

AM.20 Functions.

A. The Immediate Office of the Assistant Secretary for Management and Budget/Chief Financial Officer (AM) provides executive direction to ASMB components. It establishes and monitors the implementation of the quality improvement program in the Department. The ASMB/CFO is the principal adviser to the Secretary on all aspects of administrative and financial management. By delegation from the Secretary, the ASMB/CFO exercises full Department-wide authority of the Secretary in the assigned areas of responsibility to include all responsibilities provided by the Chief Financial Officers Act of 1990. This includes the approval of the job descriptions and skill requirements, and the selection of OPDIV CFOs as well as participation with the OPDIV Head in the annual performance plan/evaluation of the OPDIV CFO. In addition, the ASMB/CFO provides Department-wide policy guidance on the qualifications, recruitment, performance, training, and retention of all financial management personnel.

B. The Office of Grants and Acquisition Management (AMG) advises and supports the Secretary and the Assistant Secretary for Management and Budget/CFO and provides functional management direction in the areas of mandatory and discretionary grants management, acquisition and logistics; provides Department-wide leadership in these areas through policy development, oversight and training. Formulates cost principles and Department-wide cost policies and procedures affecting grants and contracts; and resolves cross-cutting audit findings. Awards and administers contracts in support of the program needs of the Office of the Secretary, and manages the Small and Disadvantaged Business Utilization Program for the Department. Represents the Department in dealings with OMB, GSA and other Federal agencies and Congress in the areas of mandatory and discretionary grants, cost principles, audit resolution, procurement and logistics. Fosters creativity and innovation in the administration of these functions throughout the Department. Oversees the Department's grants and procurement systems to ensure compliance with legislation, regulations and policies. Provides support for the Department's Competition Advocate in fostering competition in contracting. Manages the Department's procurement planning system to avoid excessive and unnecessary year-end spending. Develops, participates in and evaluates grants, procurement, logistics and audit resolution training programs for Department staff. Reviews audit reports containing monetary findings or findings involving deficiencies in the management systems of grantee or contractor organizations which affect the programs of more than one Operating or Staff Division or Federal agency and resolves the findings. Has responsibility within the Department for policy plans and oversight of the functions under Sections 8 and 15 of the Small Business Act, as amended, and Executive Orders 12073 and 12138, relating to preference programs for small business, disadvantaged businesses, labor surplus area concerns, and women-owned businesses. Manages the Department's Small Business Innovation Research Program (SBIR). Plans, directs and carries out the centralized contracting program for the Office of the Secretary, the Office of Consumer Affairs, all small purchasing for the Administration for Children and Families and Administration on Aging and (in the case of certain consolidated and centralized commodities and services) for components of the Department located in Southwest Washington, DC. Assists the Director of the Office of Acquisition Management in providing procurement functional management to the regional contracting offices. Researches, analyzes and tests innovative ideas, techniques and policies in the areas of grants and acquisition. Fosters creativity throughout the Office of Grants and Acquisition Management and the Department in the administration of grants, procurement and logistics.

C. The Office of Budget (AML) advises and supports the Secretary and the Assistant Secretary for Management and Budget/CFO and oversees the preparation of the Departmental Budget estimates and forecasts resources required to support programs and activities of the Department; analyzes budgetary and financial management implications of new or proposed legislation, programs or activities; appraises program activities and operations in terms of policies, goals and objectives of the Department; operates HHS integrated funding system; recommends and administers policies and procedures for allocation and control of employment ceilings; establishes and monitors audit resolution management policy for the Department and prepares reports to Congress on audit resolution management. Through studies, organizational analysis, and other survey methods, assesses the management processes and structures of the Department to ensure cost-effective and efficient practices. Develops and executes Department-wide procedures relating to implementation and management of internal controls under the Federal Managers' Financial Integrity Act (FMFIA). Responsible for reorganizations and delegations of authority in the Department and for the Office of the Secretary activities under the Paperwork Reduction Act. With particular reference to the Office of the Secretary (OS), is responsible for the overall formulation and execution of the OS budget; serves as the focal point for OS budget operations, providing assistance for the development of budget policy and management of positions and financial resources for the OS; manages audit follow-up and resolves issues relating to audit resolution management in the OS; and ensures that all Office of the Secretary employment policies and actions are in accordance with the Equal Employment Opportunity Act.

D. The Office of Information Resources Management (AMM) advises and supports the Secretary and the Assistant Secretary for Management and Budget/CFO on issues and policies pertaining to the utilization of information resources and establishes the IRM control mechanisms and administers the Department's IRM strategic plan; guides and oversees the development of information systems and communications networks; approves the acquisition of major administrative and program systems and is responsible for their subsequent periodic review; develops strategies and frameworks for regional information systems; formulates and coordinates the Department's policies on the creation, handling, storage, dissemination and disposition of information; guides and oversees the Department's printing and reproduction management programs; provides and supports automated data processing and communications equipment and administrative application systems for the Office of the Secretary; and develops and supports decision support systems for top-level managers.

E. The Office of Finance (AMN) advises and supports the Secretary and the Assistant Secretary for Management and Budget/CFO on all aspects of financial activities across the Department and is headed by the Deputy Assistant Secretary, Finance, who is also the Deputy Chief Financial Officer. Oversees, monitors, and evaluates the design, development, operation, and enhancement of Department-wide and component accounting systems. Coordinates CFO activities and reports throughout HHS including the preparation of audited financial statements and the preparation of the annual CFO report for submission to the ASMB/CFO. In coordination with other ASMB components, participates in the clearance/approval process for program information systems that provide financial and/or program performance data which are used in financial statements. Provides advice to the ASMB/CFO on approval of the job descriptions and skill requirements for OPDIV CFOs and on the approval of the selection of OPDIV CFOs. Provides advice to the ASMB/CFO who participates with the OPDIV Head in the annual performance plan/evaluation of the OPDIV CFO. Provides advice to the ASMB/CFO on the qualifications recruitment, performance, training and retention of all financial management personnel. Serves as the Departmental liaison with GAO, OMB, Treasury, and other Federal agencies on financial matters. Maintains Departmental finance and accounting standards. Resolves monetary findings involving management systems. Directs regional review and negotiation of cost allocation plans and indirect cost rates. In coordination with the Office of Budget, recommends and implements Departmental Budget execution policies and procedures. Serves as the focal point dealing with OMB on these matters. Manages the day-to-day finance and accounting activities of the Office of the Secretary and other Departmental components as determined by the ASMB/CFO.

F. The Administrative Services Center (ASC) provides Department-wide policy leadership and advises the ASMB/CFO and the Secretary on management issues related to postal management, real property, space management, occupational safety and health, emergency preparedness, records management; managers and operates the HHS Health and Wellness Center; provides administrative and facilities management services to HHS components in the Southwest Washington, D.C. area complex which include mail, property management, supplies, facilities maintenance, physical security, and other office services; serves as the liaison with GSA on all applicable policy issues.

II. Make the Following Changes to Chapter AMS

Delete in its entirety. Add Chapter AMG by inserting:

A. Section AMG.00 Mission. Add the following:

AMG.00 Mission. The Office of Grants and Acquisition Management (OGAM) provides functional management direction in the areas of grants management, acquisition and logistics. Formulates cost principles and grant and contract cost reimbursement policy. Resolves cross-cutting audit findings. Provides Department-wide leadership in these areas through policy development, oversight and training. Also reviews biennially the fees, royalties, rents and services and things of value provided by the Department to assure that costs of these services are being properly recovered. Awards and administers contracts in support of the program needs of the Office of the Secretary, and manages the Small and Disadvantaged Business Utilization Program for the Department. Represents the Department in dealings with OMB, GSA and other Federal agencies and Congress in the areas of mandatory and discretionary grants, procurement and logistics. Fosters creativity and innovation in the administration of these functions throughout the Department.

B. Section AMG.10 Organization. Insert the following:

AMG.10 Organization. The Office of Grants and Acquisition Management (OGAM), headed by a Deputy Assistant Secretary for Grants and Acquisition Management who reports to the Assistant Secretary for Management and Budget, consists of the following components:

Immediate Office
Office of Acquisition Management
Special Acquisition Initiatives Staff
Division of Acquisition Policy and Oversight
Division of Contract Operations
Office of Small and Disadvantaged Business Utilization
Office of Grants Management
Special Grant Initiatives Staff
Division of Grants Policy and Oversight
Division of Cost Policy and Oversight
Division of Audit Resolution

C. Section AMG.20 Functions. Insert the following:

AMG.20 Functions. The Office of Grants and Acquisition Management provides the following functions:

A. Office of the Deputy Assistant Secretary. The Office of the Deputy Assistant Secretary provides leadership, policy, guidance and supervision, as well as coordinating long and short-range planning to constituent organizations.

B. Office of Acquisition Management. The Office of Acquisition Management provides leadership in the area of acquisition through policy development, oversight and training. The Office awards and administers contracts in support of the program needs of the Office of the Secretary. In addition, the Office manages the Small and Disadvantaged Business Utilization Program for the Department. The Office is composed of the following:

1. Special Acquisition Initiatives.

a. Researches, analyzes and tests innovative ideas, techniques and policies in the area of acquisitions. Establishes and directs ad hoc teams to work on special projects to develop creative approaches to problems in the dynamic areas of acquisition and logistics. Fosters creativity throughout the Office of Acquisition Management and the Department in the administration of procurement and logistics.

b. Serves as the Department's liaison in the areas of acquisitions and logistics and maintains working relationships with OMB, GAS, OPM, and other Federal agencies to coordinate and assist in the development of policy and to participate in government-wide tests of procurement innovations.

c. Services as the Office of the Secretary Competition Advocate.

d. Conducts special projects to develop improved mechanisms for Department-wide management of procurement and logistics. For example, establishes and manages improved procurement information and monitoring systems.

e. Serves as the Department's focal point and liaison with the Operating and Staff divisions for policy development, technical assistance, oversight and training in the area of logistics.

2. Division of Acquisition Policy and Oversight

a. Formulates Department-wide acquisition policies governing the award and administration of procurement activities. Publishes these in regulations and manuals. Recommends and

participates in development of government-wide acquisition policy.

b. Provides advice and technical assistance on procurement activities and policy matters to the Department's Operating and Staff Divisions.

c. Develops, participates in and evaluates procurement training programs for Department staff; develops and participates in training activities for the Department's program staff who act as project officers on the Department's contracts.

d. Monitors the adoption of acquisition polices by the Department's Operating and Staff Divisions to ensure consistent policy interpretation and application.

e. Oversees the Department's procurement system to ensure compliance with procurement laws and polices and efficient acquisition of the Department's program needs.

f. Makes studies of problems requiring creation of new policies or revision of current policies, including the application of Departmental management controls and reports related to the Department's procurement activities; resolves issues arising from implementation of those policies; maintains similar relationships with associations of public and private contractor organizations.

g. Provides support for the Department's Competition Advocate in fostering competition in contracting. Develops the annual report to Congress on the Department's actions and accomplishments in promoting competition.

h. Manages the Department's procurement planning system to avoid excessive and unnecessary year-end spending.

3. Division of Contract Operations.

a. Plans, directs, and carries out the centralized contracting program for the Office of the Secretary, the Office of Consumer Affairs, all small purchasing for the Administration for Children and Families and the Administration on Aging, and (in the case of certain consolidated and centralized commodities and services) for the components of the Department located in Southwest Washington, DC.

b. Administers and manages performance of the contracts of the Office of the Secretary to ensure that it receives the timely and quality performance and the products for which it has contracted.

c. Is responsible for (i) award and administration of procurements up to $25,000 on the "open market", (ii) placing delivery orders for any amount against federal supply schedule contracts, (iii) processing cash orders, oral orders, and training orders and delivery orders, (iv) award of Blanket Purchase Agreements, and (v) closeout of purchase orders from date of award to final archiving.

d. Assists the director of the Office of Acquisition Management in providing procurement functional management to the regional contracting offices.

4. Office of Small and Disadvantaged Business Utilization.

a. Has responsibility within the Department for policy, plans, and oversight of execution of the functions under section 8 and 15 of the Small Business Act as amended and Executive Orders 12073 and 12138, relating to preference programs for small businesses, disadvantaged businesses, labor surplus area concerns, and women-owned businesses. Under provision of Public Law 95–507, the Director reports directly to the Deputy Secretary pursuant to Deputy Secretarial direction, the day-to-day operational review will be provided by the Director of the Office of Acquisition Management to ensure effective departmental coordination and execution of these programs.

b. Acts as the advocate for the Secretary and Deputy Secretary within the Department for matters relating to sections 8 and 15 of Small Business Act and Executive Orders 12073 and 12138 and represents the Department in dealing with other Federal agencies on those matters.

c. Acts as focal point and advocate for the small business, disadvantaged business, labor surplus area and women-owned business firms in their dealings with the Department.

d. Formulates, recommends and monitors implementation of policies for the Department's small business, Small Business Innovation Research, disadvantaged business, labor surplus area, and women-owned business programs.

e. Coordinates and prepares the Department's goals for assigned programs, recommends Secretarial approval of such goals and subsequent to Secretarial approval, negotiates, establishes and reports on goals for the assigned programs with the cognizant Federal agencies.

f. Encourages the awarding of contracts and subcontracts to small business, disadvantaged business, labor surplus area, and women-owned business firms by providing information and assistance to all of the Department's organizational units.

g. Prepares documentation and reports to the Executive Office of the President, the Congress, Office of Management and Budget, the Small Business Administration, and other agencies, as required.

h. Ensures effective implementation by the Department of mandatory plans and/or contract clauses as required by Public Law 95–507 for small business and disadvantaged business firms and monitors the activities relating to such plans.

i. Provides input for coordinated Departmental positions on proposed legislation and Government regulations on matters affecting cognizant socioeconomic programs and maintain liaison with Congress through established Departmental channels.

j. Manages the Department's Small Business Innovation Research Program (SBIR) established under Public Law 97–219 and provides liaison between the Department and the Small Business Administration on SBIR matters.

k. Oversees and monitors the Departmental review and screening of planned procurement by programs and procurement offices to ensure that preference programs are given thorough consideration throughout the decision-making process.

C. Office of Grants Management.

The Office of Grants management provides leadership in the area of mandatory and discretionary grants through policy development, oversight and training. The Office has functional responsibility for the cost principles and Department-wide cost policies and procedures affecting grants and contracts. In addition, the Office is responsible for resolving cross-cutting audit findings. The Office is composed of the following:

1. Special Grant Initiatives Staff.

a. Develops, analyzes and tests innovative ideas, techniques and policies in grants management. Establishes and directs ad hoc teams to work on special projects or initiatives to develop dynamic approaches to problems. Fosters creativity in the administration of grants.

b. Conducts special studies of grants management issues to identify and implement improvements in the way the Department awards and administers grants and other forms of Federal financial assistance; designs and assists in execution of demonstrations, experimentation and tests of innovative approaches to grants management.

c. Establishes and manages improved grants management information and monitoring systems.

d. Serves as project officer for training and certification of grants management professionals throughout the Department.

2. Division of Grants Policy and Oversight

a. Manages oversight of the award and administration of mandatory and discretionary grants and other forms of Federal financial assistance throughout the Department.

b. Formulates Department-wide grant policies governing the award and administration of grant activities. Publishes these in regulations and manuals.

c. Monitors the adoption of grant policies and procedures by the Department's Operating and Staff Divisions to ensure consistent policy interpretation and application.

d. Provides advice and technical assistance to the Department's Operating and Staff Divisions and to the general public on matters relating to the administration of grants and other forms of Federal financial assistance.

e. Develops, participates in and evaluates grants management training programs for Department staff.

f. Serves as the Department's liaison in grants and maintains working relationships with OMB and other Federal agencies to coordinate and assist in the development of government-wide grant policies.

g. Conducts special studies of grants management issues to identify and implement improvements in the way the Department awards and administers grants and other forms of Federal financial assistance; designs and assists in execution of demonstrations, experimentation and tests of innovative approaches to grants management.

3. Division of Cost Policy and Oversight.

a. Formulates cost principles and Department-wide cost policies and procedures affecting grants and contracts.

b. Formulates Department-wide cost policy for resolving audit findings on grantee and contractor organizations.

c. Serves as the Departmental liaison and maintains working relationships with OMB and other Federal agencies in the development of government-wide cost principles and audit resolution policies; maintains similar relationships with associations of States, universities and other grantee and contractor organizations.

d. Provides advice and technical assistance to the Operating and Staff Divisions, grantee and contractor organizations, and other Federal agencies on the financial or cost management of grants and contracts.

e. Develops and presents training programs for Departmental staff and grantee and contractor organizations on cost principles, indirect costs and other areas related to the financial management of grants and contracts.

f. Reviews at least on a biennial basis, the fees, royalties, rents, and other charges imposed by the Department for services and things of value, and makes recommendations on revising these charges to reflect costs incurred in providing these services and things of value.

4. Division of Audit Resolution

A. Reviews audit reports containing monetary findings or findings involving deficiencies in the management systems of grantee and contractor organizations which affect the programs of more than one Operating or Staff Division or Federal agency and resolves the findings. Conducts or arranges for additional reviews or acquires additional information to the extent necessary to determine the actions required to resolve the findings and correct the deficiencies.

b. Coordinates where necessary with other affected Federal agencies to establish a uniform Federal position on the actions needed to be taken to resolve the findings and correct the deficiencies.

c. Negotiates and determines the settlement of the findings and the actions needed to correct the deficiencies with grantee and contractor organizations. As designated by OMB, performs these functions on behalf of all Federal Departments and Agencies.

d. When deemed necessary to protect the interests of the Department, makes recommendations to the Secretary, the ASMB/CFO and other officials on safeguards or other actions against a grantee or contractor, where the organization is unwilling to correct serious deficiencies in a timely manner or fails to comply with previous agreements on corrective actions.

e. Provides and arranges for technical assistance to grantees and contractors on the correction of deficiencies and on other matters related to the financial management of grants and contracts.

f. Upon request, reviews and approves accounting or other systems developed by grantees and contractors to comply with Federal cost principles and policies.

g. Provides advice and technical assistance to Operating and Staff Divisions' audit resolution staffs on the resolution of audit reports assigned to them and on other matters related to the financial management of grants and contracts.

h. Develops and presents training programs for Department staff and grantee and contractor organizations on audit resolution, and other areas related to the financial management of grants and contracts.

III. Make the Following Changes to Chapter AML

Delete in its entirety Chapter AML and replace with the following:

A. Section AML.00 Mission. Delete in its entirety and replace with the following:

AML.00 Mission. The Office of the Budget provides advice and support to the Secretary and the Assistant Secretary for Management and Budget on matters pertaining to: formulation analysis, and presentation of budgets; staff resource allocations and analysis; budget policy; reprogramming (transfer of funds from one program area to another) within an appropriation; integrity issues; organizational analysis; Departmental audit follow-up systems; office of the Secretary paperwork reduction program; management and policy for the Working Capital Fund. Finally, the Office ensures that all Office of the Secretary employment policies and actions are in accordance with Equal Employment Opportunity (EEO) rules and regulations.

B. AML.10 Organization. Delete in its entirety and replace with the following:

Section AML.10 Organization. The Office of Budget is headed by the Deputy Assistant Secretary for Budget who reports to the Assistant Secretary for Management and Budget and includes the following: Immediate Office, Office of Equal Employment Opportunity, Division of Public Health and Social Services Budget Analysis, Division of Health Benefits and Income Security Budget Analysis, Division of Budget Policy and Management, Division of Budget Analysis, Division of Integrity and Organizational Review.

C. Section AML.20 Functions. Delete in its entirety and replace with the following:

AML.20 Functions.

A. The Office of the Budget recommends and issues Department-wide budgetary policies.

B. Develops budget, policy and management options for achieving Secretarial objectives.

C. Provides budget and financial management services for the Office of the Secretary.

D. Evaluates budgetary proposals and formulates alternative budgetary strategies. Coordinates the development of the annual budget and other budgetary and financial documents.

E. Presents the HHS budget and other appropriations matters to the Office of

Management and Budget, Committees of Congress, and other interested parties.

F. Participates in the Department's planning and evaluation process, particularly in the establishment of long-range staffing and funding requirements, and the identification and resolution of policy issues. Comments on draft legislation, regulations, and reorganization proposals.

G. Encourages sound budgetary and program management practices throughout the Department by providing technical guidance for OPDIV staffs.

H. Administers a Department-wide system of employment ceilings. Promotes the development and use of standards for the efficient use of staff resources. Provides technical assistance to agencies to help them maximize the utilization of authorized manpower.

I. Reviews and approves requests for reprogramming, transfer of funds, and other mechanisms relating to the funding of approved programs.

J. Conducts special studies and analyses and develops options for improving management and productivity of program operations.

K. Coordinates the development of policies and procedures for joint funding for integrated research and services projects.

L. Provides policy, management, and financial integrity for the Working Capital Fund.

M. Establishes Department Policy in the management of Inspector General Reports and audits, and GAO reports; prepares the Secretary's semi-annual report to Congress on IG report management; and monitors the Department-wide IG report tracking system.

N. Conducts special studies and organizational analyses; develops options for improving management and quality of program operations within the Department; and develops and executes Department-wide procedures relating to implementation and management of internal controls under the Federal Managers' Financial Integrity Act (FMFIA).

O. Provides policy and financial support to the Assistant Secretary for Management and Budget and other senior officials within the Office of the Assistant Secretary for Management and Budget on regional functions.

P. Assists the ASMB in carrying out the delegated authority to establish and maintain equal employment opportunity programs within the office of the Secretary. The functions of the office also include program efforts which focus on the Federal Women's Program, the Hispanic Employment Program, and the Handicapped Employment Program. The OS Office of Equal Employment Opportunity (EEO) receives program direction from the Assistant Secretary for Management and Budget and supervision and administrative support from the office of the Deputy Assistant Secretary for Budget.

1. Division of Public Health and Social Services Budget Analysis. The Division:

a. Provides staff assistance to the Secretary, the Assistant Secretary of Management and Budget and the OPDIV heads in the budgetary management of Departmental public health and social services programs.

b. Reviews budget and related requests for resources and management and productivity improvement plans and proposals or reports; analyses plans and proposals for new or alternative legislation, regulations, programs, or activities, to determine their resource, management and policy implications; appraises program activities and operations in terms of their contributions to the policies, goals, and objectives of the Department as a basis for evaluating resource requirements and program effectiveness; proposes recommendations for the Office of Budget on draft regulations, proposed legislation and reorganization proposals.

c. Assists the Secretary, the Deputy Secretary, the Assistant Secretary for Management and Budget and the OPDIV heads in evaluating programs and budgetary proposals by developing reliable cost projections for legislative and planning proposals and ensuring that proposals are consistent with approved plans and policies.

d. Coordinates the preparation of budget estimates and forecasts of resources required to support the programs and operations of the Department.

e. Provides guidance in budget formulation of the appropriate OPDIVs.

f. Conducts special management reviews and analyzes and develops management options to insure efficient and effective program operations and to encourage management improvements.

g. Proposes budget options and policy initiatives as necessary to achieve program objectives established by the Secretary.

h. Assists in the planning and presentation of the Budget of the Office of Management and Budget and the Congress and develops materials for key Department officials who testify at hearings before these bodies.

2. Division of Health Benefits and Income Security Budget Analysis.

a. Provides staff assistance to the Secretary, the Assistant Secretary for Management and Budget, and the Department OPDIV heads in the budgetary management of departmental health care financing, social security, and related programs.

b. Reviews budget and related requests for resources and management productivity improvement plans and proposals or reports; analyzes plans and proposals for new or alternative legislation, regulations, programs, or activities to determine their resource, policy, and management implications; appraises program activities and operations in terms of their contributions to the goals and objectives of the Department as a basis for evaluating resource requirements and programs effectiveness; proposes recommendations for the Office of Budget on draft regulations, proposed legislations, and reorganizations proposals.

c. Assists the Secretary, the Deputy Secretary, the Assistant Secretary for Management and Budget and the OPDIV heads in evaluating programs and budgetary proposals by developing reliable cost projections for legislative and planning proposals, and ensuring that proposals are consistent with approved plans and policies.

d. Coordinates the preparation of budget estimates and forecasts of resources required to support the programs and operations of the Department.

e. Reviews reprogramming requests and recommends appropriate action to the Office of Budget.

f. Provides guidance in budget formulation for the appropriate OPDIV.

g. Conducts special management reviews and analyses, and develops management options to ensure efficient and effective program operations and to encourage management improvements.

h. Proposes budget options and policy initiatives as necessary to achieve program objectives established by the Secretary.

i. Assists in the planning and presentation of the budget to the Office of Management and Budget and the Congress and develops materials for key Department officials who testify at hearings before these bodies.

3. Division of Budget Policy and Management. The Division:

a. Directs the formulation and presentation of the HHS budget.

b. The Division is the liaison with OMB and Congressional Committee staffs in defining specifications and schedules for preparing budget submissions.

c. Develops and promulgates to the OPDIV's and others the policies, procedures, guidance, and schedules for preparing budget submissions.

d. Monitors and provides technical assistance to the OPDIVs throughout the budget formulation and presentation process; and reviews and integrates OPDIV budget submissions prior to presentation to OMB or Congress.

e. Manages a computerized budget information system reflecting data on an HHS-wide basis and coordinates OPDIV input into this system.

f. Responsible for preparing summaries of budget submissions and for reconciliation of estimates to Department-wide control amounts.

g. Provides direct staff support to the Secretary in preparation for appropriation hearings and other budget related presentations and briefings.

h. Monitors the Budget and Appropriations Committee in the Congress and provides intelligence and analyses of budget decisions.

i. Participates in the development of guidelines for funding under continuing resolutions; establishes guidelines for, and reviews and processes reprogramming, and provides recommendations and other staff support as required in processing other cross-cutting funding proposals.

j. Promotes the development of standards for the efficient use of staff resources and administers the Departmental employment ceilings.

4. Division of OS Budget Analysis. The Director, Division of OS Budget Analysis serves as budget officer and financial management adviser for the Office of the Secretary. The Division:

a. Provides staff assistance to the Secretary, the Assistant Secretary for Management and Budget, OPDIV Budget Officers and STAFFDIV heads in the budgetary management of the Office of the Secretary and the Working Capital Fund.

b. Provides for the policy management, and financial integrity of Department-wide common services through the WCF.

c. Monitors and reports on Inspector General Reports to Office of Secretary offices at headquarters and the regions, including cross-cutting reports on grantees as well as reports issued to a particular Staff Division.

d. Identifies productivity and management improvements for implementation.

e. Provides budget policy and technical support to the Deputy Assistant Secretaries and the Assistant Secretary for Management and Budget on regional functions.

f. Participates in planning, directing, and coordinating financial and budgetary programs of the Office of the Secretary.

g. Directs and Provides technical guidance to administrative officers in preparing budgets. Assists in the planning and preparation of the Office of Secretary budget for presentation to top HHS management officials, the Office of Management and Budget, and Congress.

h. Develops materials for key members of the Office of the Secretary who testify at hearings before the Office of Management and Budget and the Congress.

i. Prepares requests for an apportionment of appropriated funds. Maintains and monitors subsidiary expenditure controls appropriations in the Office of the Secretary.

j. Develops financial operating procedures and manuals. Maintains budgetary controls to ensure observance of established ceilings both on funds and personnel. Assures implementation within the Office of the Secretary of Departmental and Federal fiscal policies and procedures.

5. Division of Integrity and Organizational Review. The responsibilities of the division include:

a. Leadership of the Management Oversight Council.

b. Implementation and management of internal controls under the Federal Managers' Financial Integrity Act (FMFIA).

c. Exercises operational and oversight responsibility for Department-wide internal control activities.

d. Represents the Department in government-wide activities related to the FMFIA.

e. Establishes Department Policy in the management of Inspector General Reports and audits, and GAO reports; prepares the Secretary's semi-annual report to Congress on IG report management; and monitors the Department-wide IG report tracking system.

f. Serves as the principal source of advice to the Secretary on all aspects of Department-wide organizational analysis including: (i) Planning for new organizational elements; (ii) evaluating current organizational structures for effectiveness; (iii) conducting the review process for reorganization proposals; (iv) maintaining documentation of the entire HHS organization to the prescribed level.

g. Administers the Department's system for the review, approval and documentation of delegations of authority.

h. Analyzes and makes recommendations related to legislative proposals with potential impact upon the Department's organizational structure or managerial procedures.

i. Manages, in accordance with the Paperwork Reduction Act of 1980, the OS activities related to the review and approval of all public use reports and recordkeeping requirements which impose paperwork burden on the public.

j. Develops policies for and manages the OS Information Collection Budget and the Information Collection Budget process.

k. Develops policies and procedure for the OS and carries out analytical and oversight activities related to the Department's paperwork burden reduction efforts.

l. Establishes Departmental statistical policies.

m. Maintains the Departmental Standards Administrative Code (SAC) system, including the SAC Officer, providing oversight, advice, and assistance Department-wide to assure codes are in accord with the current approved organization.

n. Monitors a central tracking system for cleared OIG and GAO audits and serves as the Department's liaison on follow-up action's between OPDIVs, OIG and GAO.

6. The OS Office of Equal Employment Opportunity assists the ASMB in carrying out the delegated authority to establish and maintain equal employment opportunity programs within the Office of the Secretary. The Office is responsible for ensuring that all OS employment policies and actions are based on merit, without regard to race, color, religion, national origin, sex, age, or physical/mental handicap. Major functions include: pre-complaint counseling; formal complaint processing; affirmative employment planning and implementation; technical guidance and policy development. The functions of the office also include program efforts which focus on the Federal Women's Program, the Hispanic Employment Program, and the Handicapped Employment Program.

IV. Make the Following Changes to Chapter AMM

A. Section AMM.00 Mission. Delete in its entirety and replace with the following:

AMM.00 Mission. The Office of Information Resources Management advises the Secretary and the Assistant Secretary for Management and Budget on issues and policies pertaining to the utilization of information resources. The Office of Information Management establishes information resources management (IRM) control mechanisms and administers the Department's IRM strategic plan, guides and oversees the Department's implementation of the

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requirements of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and the Paperwork Reduction Reauthorization Act of 1986 (Pub. L. 99–500), the Computer Security Act of 1987 (Pub. L. 100–235), and the Computer Matching and Privacy Act of 1988 (Pub. L. 100–503), and provides and supports automated data processing and communications equipment and applications systems for general office automation and mission critical administrative systems for the Office of the Secretary. The Office also develops and supports an executive information system for senior Departmental managers, and guides and oversees the development of information systems and communications networks throughout the Department.

Further, the Office exercises functional management over strategies for regional information and data communications systems, formulates and coordinates the Department's policies on the creation, processing, handling, storage, dissemination, and disposition of systems of records and other collection of information within the Department. The Office guides and oversees the Department's printing and reproduction management program while providing state-of-the-art telecommunications management including voice and data equipment analysis.

B. Section AMM.10 Organization. Delete in its entirety and replace with the following:

AMM.10 Organization. The Office of Information Resources Management under the supervision of the Deputy Assistant Secretary for Information Resources Management, who reports to the Assistant Secretary for Management and Budget consists of the following components.

Immediate Office
Office of Information Policy and Review
  Division of Applications Systems and Telecommunications
  Division of Policy and Evaluation
  Division of IRM Approvals
Office of Information Technology
  Division of Network Management
  Division of Systems Architecture and Engineering
  Division of Support Services

C. Section AMM.20 Functions. Delete in its entirety and replace with the following:

AMM.20 Functions. The Office of Information Resources Management is responsible for the following:

A. The Immediate Office of the Office of Information Resources Management is responsible for setting strategic plans, formulating and executing the budget, administering acquisitions, directing and coordinating projects, and conducting personnel management activities of the Office of Information Resources Management.

B. The Office of Information Policy and Review is responsible for:

a. Managing the Department's information resources management program in accordance with the Paperwork Reduction Act of 1980 (Pub. L. (96–511), the Paperwork Reduction Reauthorization Act of 1986 (Pub. L. 99–500), the Computer Security Act of 1987, (Pub. L. 100–235), and the Computer Matching and Privacy Protection Act of 1988, (Pub. L. 100–503).

b. Developing, recommending, implementing, and overseeing the policies, procedures, and guidance by which the Department plans, acquires, and manages information resources.

c. Representing the Department in interactions with the Office of Management and Budget, the General Services Administration, the General Accounting Office, and other external entities, regarding the management of the Department's information resources.

1. The Division of Applications Systems and Telecommunications is responsible for:

a. Developing policies, procedures and guidelines for monitoring and evaluating major information systems and telecommunications (voice, image, and data) activities throughout the Department for adherence to approved strategies and plans, and compliance with Federal and Departmental standards.

b. Reviewing and approving Departmental requests to acquire telecommunications equipment and services and managing participation in the FTS 2000 network.

c. Conducting reviews of the Department's major information systems to assess system functionality and reliability, software engineering practices, and cost-effectiveness.

d. Promoting and coordinating standards for the Department's applications systems.

e. Leading efforts to plan and implement electronic connectivity and interoperability among the major telecommunications networks within the Department.

f. Promoting and coordinating the development of data standards for information integration across applications systems.

g. Supporting development of data definitions and data access standards throughout the Department, including standards for the executive information system.

h. Representing the Department and leading Departmental participation in activities of the National Communications System for maintaining telecommunications during national emergencies and disasters.

i. Providing telecommunications and applications systems expertise for on-site reviews of the Department's IRM programs and activities.

2. The Division of Policy and Evaluation is responsible for:

a. Leading and coordinating annually the strategic planning and budgeting processes to produce the Department's Five-Year Information Resources Management Plan and Information Technology Systems Budget.

b. Developing, issuing, and revising the Departmental Information Resources Manual of policies, procedures, and guidelines for information resources management.

c. Conducting and reporting on-site reviews of information resources management programs throughout the Department to determine effectiveness and compliance with Federal and Departmental policies.

d. Coordinating and supporting the Departmental Information Resources Management Advisory Council, which is the representational body of senior information resources management officials from each Operating Division.

e. Planning, coordinating, and evaluating the Department's automated information systems security program, including providing training requirements and planning guidance for systems designated as sensitive.

3. The Division of IRM Approvals is responsible for:

a. Monitoring, evaluating and guiding Department-wide automated data processing activities for adherence to approved IRM strategies, plans, and Federal and Departmental policies and procedures.

b. Evaluating the quality of acquisition management strategies reflected in the Five-Year Information Resources Management Plan.

c. Reviewing and approving procurement requests from agencies throughout the Department seeking to acquire computing resources and services, to determine compliance with Federal and Departmental policies, procedures, and guidelines.

d. Defining and overseeing the Department's records management programs, including directives, forms, files, reports, micrographics, electronic records, and records disposition, by developing policies and guidelines for the handling, printing, disseminating, storing, archiving, destroying, and sharing of systems of records and other collections of information within the Department.

e. Overseeing the Department's electronic dissemination, printing, and copying activities.

f. Administering the information collection process and budget for information collections for the Department.

g. Coordinating and supporting the Departmental Data Integrity Board, which approves and reports on computer matching activities in compliance with the Computer Matching and Privacy Act of 1988.

h. Providing expertise for on-site reviews of the Department's IRM programs and activities in the areas of automated data processing acquisition, information collection, computer matching, and records, forms, and printing management.

i. Establishing and maintaining standards for the Department's inventory of automated data processing equipment.

D. Office of Information Technology. The Office of Information Technology provides Department-wide leadership by example in the acquisition, application, and management of appropriate information technology. The Office is responsible for:

a. Promoting the use of standardized automated information systems throughout the Office of the Secretary, including the Immediate Office of the Secretary, the Staff Divisions, and the Regional Offices.

b. Developing architectural models for automated information systems which are based upon Federal Information Processing Standards and industry standards, permit applications portability and scalability across computer hardware and operating system environments, enable interoperability among systems, and reduce reliance on proprietary solutions.

c. Conducting applied research, development, and testing in the areas of workstation and communications hardware and software.

d. Coordinating annually the development of the Office of the Secretary Five-Year Information Resources Management Strategic Plan and Information Technology Systems Budget, including formulating, justifying, and administering plans for the Office of the Assistant Secretary for Management and Budget.

e. Coordinating and overseeing automated data processing and telecommunications activities throughout the Office of the Secretary, including efforts in the Regional Offices.

f. Assisting OS managers in the design and implementation of applications systems software which operates within the Office of the Secretary network environment.

g. Overseeing the development, implementation, and operation of specific Department-wide application systems; developing policies and standards related to these systems; and acquiring related resources and support services for the OS Staff Divisions.

h. Chairing and supporting the Office of the Secretary Information Resources Management Policy and Planning Board, which is the advisory body of senior information resources management officials from the OS Staff Divisions.

i. Providing project officer services for contracts used to acquire automated data processing equipment and services.

j. Providing the design, layout, and illustration or other related services in connection with the printing of an organization publication, periodicals, briefing charts, and other information or reference materials. Also, provides for in-house reproduction services.

k. Providing state-of-the-art telecommunications management including voice and data equipment analysis, selections, installation, alterations, and maintenance for the Office of the Secretary. Monitoring telecommunications billings and plans and administering telecommunications budgets for the Office of the Secretary headquarters and Regional Offices.

l. The Division of Network Management supports the development and maintenance of an information management infrastructure to support the total automated information processing needs of the Office of the Secretary, including the Immediate Office of the Secretary, Staff Divisions, and Regional Offices. Specifically the Division is responsible for:

a. Expanding, operating, and maintaining a computer network throughout the Office of the Secretary, consisting of interconnected local area networks with wide area network access for connections to Departmental data centers and commercial information services.

b. Establishing and enforcing network policies and procedures, and developing plans and budgets for network support services.

c. Working with external organizations to implement electronic links between the OS computer network and other networks in conjunction with changing user needs and technological advancements.

d. Managing the acquisition, installation, and warranty support for standard configurations of personal computers, local area networks, and software within the Office of the Secretary.

e. Reviewing and approving requests to acquire computing resources and services for the Office of the Secretary.

f. Providing on-site support for users of personal computers, local area networks, and telephone voice messaging through development of a Federal support staff, contracting for technical support services, and training end users within the Office of the Secretary.

g. Implementing and maintaining standard office automation application running on the Office of the Secretary network, such as electronic mail, scheduling, and bulletin board services.

h. Coordinating annually the development of the Office of the Secretary Five-Year information Resources Management Strategic Plan and Information Technology Systems Budget, including formulating, justifying, and administering plans for the Office of the Assistant Secretary for Management and Budget.

i. Coordinating the Office of the Secretary IRM oversight program, including the IRM review program, acquisition plan approvals, information systems security and execution of IRM regulatory mandates.

j. Establishing and maintaining the inventory of automated data processing equipment for the Office of the Secretary.

2. The Division of Systems Architecture and Engineering is responsible for developing standards and prototypes for systems architectures and information engineering which serve as the basis for implementation of systems enhancements in the operational network environment. The Division is responsible for:

a. Designing and testing configurations of advanced desktop computers and networking products to develop systems architectures which comply with Federal Information Processing Standards and industry standards for applications portability and interoperability.

b. Assisting systems managers to develop migration plans by which existing information systems throughout the Department will be managed toward orderly implementation of open systems standards.

c. Providing technical support to applications development efforts with emphasis on using formal software engineering methodologies.

d. Conducting proof-of-concept and initial demonstrations of emerging standards such as messaging, directory

services, and electronic data interchange with an open systems architecture.

e. Conducting applied research, development and testing in the areas of workstation and communications hardware and software.

f. Initiating and directing special and continuing studies to test, adjust, and improve the existing infrastructure of the Office of the Secretary in conjunction with changing user needs and technological advancements.

g. Identifying and pilot testing new or additional standard office automation applications for implementation within the OS network.

h. Developing guidelines for systems administration and network operations in the Office of the Secretary which conform with Departmental policies regarding electronic connectivity and interoperability.

i. Evaluating and piloting new methods of providing electronic interchange between the Office of the Secretary, the Operating Divisions of the Department, including the Regional Offices, and other public private agencies/ organizations that interact with the Department.

j. Maintaining a collection of technical literature about information technology.

3. Division of Support Services provides the design, layout, and illustration or other related services in connection with printing or publications. Also, provides telecommunications management. Specifically, the Division is responsible for:

a. Providing the design, layout, and illustration or other related services in connection with the printing of organization publications, periodicals, briefing charts, and other information or reference materials.

b. Providing in-house reproduction services.

c. Providing state-of-the-art telecommunications management including voice and data equipment analysis, selections, installation, alterations, and maintenance for the Office of the Secretary.

d. Monitoring telecommunications billings and plans and administering telecommunications budgets for the Office of the Secretary headquarters and Regional Offices.

V. Make the Following Changes to Chapter AMN

A. Section AMN.00 Mission. Delete in its entirety and replace with the following:

AMN.00 Mission: The Office of Finance provides guidance on budget execution, accounting systems, financial and accounting policy, cost and other financial management reporting, financial management activities, cash management, credit and debt management and travel management. The Office is responsible for the coordination of CFO activities and reports throughout HHS, under the guidance of the ASMB/CFO and in conjunction with the CFO officials of the Operating Divisions. The office also oversees, monitors, and evaluates the design, development, implementation, operation, and enhancement of Department-wide and component accounting and financial management systems. This responsibility includes overseeing the preparation of the annual CFO Report.

The Office is also responsible for operating of Departmental automated financial systems and for operating the accounting system and providing fiscal services to the Office of the Secretary and other components as mutually agreed by the ASMB/CFO and the OPDIV Head. The Office of Finance also manages the process for approval of cost allocation plans and indirect cost rates. Serves as the adviser to the Assistant Secretary for Management Budget.

B. Section AMN. 10 Organization. Delete in its entirety and replace with the following:

AMN.10 Organization. The Office of Finance is headed by the Deputy Assistant Secretary, Finance, who is also the Deputy Chief Financial Officer and reports to the Assistant Secretary for Management and Budget/Chief Financial Officer. The organization is composed of the following:

Immediate Office
Office of Financial Operations
  Division of Accounting Operations
  Division of Financial Systems Operations
Office of Financial Policy
  Division of Financial Management Policy
  Division of Accounting and Fiscal Policy
  Division of Cost Allocation and Liaison
  Division of ADP Review
Office of Financial Systems
  Division of Financial Systems Integrity
  Division of Financial Systems Design and Analysis
Budget Execution Staff

C. Section AMN.20 Functions. Delete in its entirety and replace with the following:

AMN.20 Functions. The Office of Finance is responsible for the following functions:

A. Develops and executes, in coordination with the Office of the Budget, spending policies and procedures for continuing resolutions and appropriations.

B. Makes specific studies and appraisals of the financial aspects of program operations including systems designs and data requirements to ensure compliance with CFO objectives in areas assigned by the Assistant Secretary for Management and Budget/ Chief Financial Officer (ASMB/CFO).

C. Establishes and maintains a Departmental system of financial operating plans.

D. Establishes a financial management planning process for providing guidance and performance measurement indicators that enable the ASMB/CFO to evaluate the Operating Divisions.

E. Develops and manages a Department-wide system for estimating and controlling outlays. Assists the Office of Budget in the presentation of budget outlay estimates to the Office of Management and Budget and the Congress.

F. Recommends and issues Department-wide policies and procedures relating to the expenditure and collection of funds administered by the Department.

G. Establishes uniform standards, policies, classifications, and terminologies to be used throughout the Department in budget execution, and financial and cost reporting.

H. Develops and maintains financial management data collection and reporting systems on programs, activities and operations of the Department.

I. Oversees, monitors, and evaluates the design, development, implementation, operation and enhancement of Department-wide and component accounting and financial management systems.

J. Ensures that financial systems provide for timely and accurate reporting of grantee and/or contractor costs and performance of data.

K. In coordination with other ASMB components, participates in the clearance/approval process for program information systems that provide financial and/or program performance data which are used in financial statements.

L. Develops and executes policies and procedures relating to the evaluation of accounting and related systems for conformance with the Comptroller General's principles and standards.

M. Develops and executes policies and procedure relating to cash management and financing of recipient organizations that receive funding from HHS.

N. Develops, coordinates and issues ADP policy related to the development, implementation, and maintenance of Department-wide financial systems.

O. In its area of responsibility represents the Department in its relationship with the Office of Management and Budget, General Accounting Office, General Services Administration, Treasury, and other Federal Agencies. Oversees Departmental implementation of central agency directives relating to budget execution, fiscal policy, accounting, debt and credit management.

P. Operates and maintains some of the Department-wide financial systems.

Q. Provides fiscal, accounting, and financial reporting services for the Office of the Secretary, and other Department components as determined by the ASMB/CFO.

R. Provides advice to the ASMB/CFO on the approval of the job descriptions and skill requirements for OPDIV CFOs and on the approval of the selection of OPDIV CFOs. Provides advice to the ASMB/CFO who participates with the OPDIV Head in the annual performance plan/evaluation of the OPDIV CFO.

S. Provides advice to the ASMB/CFO on the qualifications, recruitment, performance, training, and retention of all financial management personnel.

T. Prepares the annual HHS report on CFO activities as guided by the ASMB/CFO.

U. Conducts cost allocation activities including the review, negotiations and approval of indirect cost rates and cost allocation plans for grantees and contractors located in the United States.

V. Supervises the administrative office for the Office of Finance, providing personnel, budget, management, and general administrative functions.

1. The Office of Financial Operations. The Office is composed of the following:

A. Division of Accounting Operations

a. Develops and maintains the accounting manual for the Office of the Secretary in conformance with the Departmental Accounting Manual.

b. Maintains the official accounting records and documents for the Office of the Secretary and other Department components as determined by the Assistant Secretary for Management and Budget.

c. Operates the computerized accounting system including responsibility for the automated data processing (ADP) support and maintenance of the system which provides for the computerized obligation records and accounts and financial and cost reports of the activities of the Office of the Secretary and other Departmental components as determined by the Assistant Secretary for Management and Budget.

d. Establishes and maintains financial controls over cash, accounts receivable, property, and other assets.

e. Examines and pays vendors' invoices, transportation and other bills.

f. Examines and pays travel vouchers for employees.

g. Provides Cashier services, including the issuance of Third Party Drafts.

h. Provides billing services for reimbursable activities (other than the Departmental Working Capital Fund).

B. Division of Financial Systems Operations

a. Operates and provides the automated data processing (ADP) and maintenance of the Regional Accounting System (RAS) and ensures the proper exchange of data with other automated systems; provides technical assistance to regional personnel for operating the system.

b. Provides financial oversight and direction to the Regional Finance Offices related to their accounting and fiscal activities.

c. Operates and provides the automated data processing (ADP) support and maintenance of the Central Registry System (CRS) used throughout the Department in other data systems as a source of recipient identity, address, and related information.

2. Office of Financial Policy. The Office of Financial Policy is composed of the following:

A. Division of Financial Management Policy (DFMP). The Division of Financial Management Policy (DFMP) as one of four components within the Office of Financial Policy, Office of Finance, is responsible for all Department-wide policies, procedures, and standards relating to cash management, credit management, debt management, payment management, including disbursement activities and functions. The Division has the following responsibilities:

a. Develops Department-wide policies, procedures, and standards for financial management areas including cash management, credit management, debt management, travel management, payment and disbursement activities and functions, and promulgates these and related government-wide financial management requirements through the Department Staff Manual System.

b. Provides advice and assistance to OPDIVs and STAFFDIVs on financial management area.

c. Serves as principal staff adviser to the Office of Finance on financial management matters.

d. Reviews and drafts Departmental reports on Congressional bills affecting financial management of the Department's programs.

e. Maintains liaison with the Office of Management and Budget (OMB), the Treasury Department, the General Accounting Office (GAO), the General Services Administration (GSA) and other agencies on all financial management matters.

f. Recommends policy and maintains a system for tracking and improving cash and credit management and debt collection performance throughout the Department.

g. Develops and maintains travel voucher examination policies, payment, and disbursing policies and procedures for Department-wide applications and publishes them through the Departmental Staff Manual System.

h. Performs studies and analyses in any of these subject areas singularly or with outside organizations. Maintains continuous contact with GAO, OMB, Treasury, GSA, and other agencies.

i. Establishes a financial management planning process for providing guidance and financial management indicators that enable the ASMB/CFO to evaluate the financial management programs and activities of the Department.

j. Makes specific studies and appraisals of the financial aspects of program operations to ensure compliance with CFO objectives in area assigned by the Deputy CFO.

B. The Division of Accounting and Fiscal Policy (DAFP) functions as one of four components within the Office of Financial Policy, Office of Finance, and is responsible for matters relating to accounting policy, fiscal policy, financial statements presentation, publications, legislative and other special initiatives. The Division has the following responsibilities:

a. Develops policies, procedures, and standards for Department-wide accounting and fiscal areas including legislative or special accounting initiatives such as the Standard General Ledger (SGL) and promulgates these policies, procedures, and standards as well as other government-wide accounting and fiscal procedures through the Departmental Staff Manual System and Maintains appropriate reference material.

b. Provides advice and assistance to OPDIVs and STAFFDIVs on accounting and related fiscal matters.

c. Serves as principal advisor of the Office of Finance on accounting and related fiscal matters.

d. Reviews and drafts Departmental reports on Congressional bills affecting accounting and fiscal matters.

e. Maintains liaison with the Office of Management and Budget (OMB), the General Accounting Office (GAO), Treasury Department, and other agencies on matters involving accounting and related fiscal matters.

f. Develops and maintains financial statements presentation policies, procedures, and standards for Department-wide applications and oversees the preparation of audited financial statements.

g. Performs studies and analyses of any of these or related subjects independently or in conjunction with outside organizations. Maintains continuous contact with OMB, GAO, Treasury, GSA and other agencies.

h. Makes specific studies and appraisals of the financial aspects of program operations to ensure compliance with CFO objectives in areas assigned by the Deputy CFO.

i. Prepares the annual HHS report on CFO activities as guided by the DASF/Deputy CFO.

C. Division of Cost Allocation and Liaison

a. Serves as the liaison between regional cost allocation staff and federal agencies in the Washington, DC area on operational matters involving the review and negotiation of indirect cost rates and cost allocation plans. Reviews, negotiates and approves indirect cost rates, state and local government cost allocation plans, research plans, research patient care rates and amounts, fringe benefit rates and other special rates for grantees and contractors located in the District of Columbia and the following states: Alabama, Delaware, Florida, Georgia, Kentucky, Maryland, Mississippi, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia and West Virginia.

b. Resolves audit findings on cost allocation plans, indirect cost rates, etc., for grantees and contractors under the division's cognizance. Also provides technical assistance on cost allocation matters in these guidelines to these grantees and contractors.

c. Carries out the functions described in paragraphs a and b above on behalf of all Federal agencies when HHS is designated the cognizant agency by OMB.

D. Division of ADP Review

a. Evaluates a wide range of sophisticated ADP facilities operated by State and Local governments, colleges and universities, and other types of grantee/contractor organizations to determine whether charges for ADP services to Federal programs are reasonable, proper and allowable under Federal cost principles. These reviews cover the propriety of cost accounting methods and billing algorithms, operations efficiency, hardware configurations and need, software, hardware and software compatibility, internal controls, etc.

b. Recommends and participates in the negotiation of ADP cost recoveries and charges to costing/billing methods and internal controls where reviews disclose unreasonable, inequitable or unallowable charges to Federal programs. Recommends modifications to grantee and contractor ADP systems to improve operational efficiency based on state-of-the-art and advances in techniques.

c. Develops guidelines and analysis techniques for the regional Divisions of Cost Allocation (DCAs) in their evaluation of grantee/contractor ADP costs and costing/billing methods. Provides technical assistance and training to DCAs in ADP operations and techniques.

d. Develops and assists in the implementation of ADP systems and techniques in support of DCA and OFP operations.

3. Office of Financial Systems. Provides leadership and coordination in the development of HHS financial systems. Responsible for the establishment of Department-wide financial definitions and data structures. Responsible for the administration of a data integrity and quality control program to ensure compliance with applicable Federal directives. Departmental financial systems policy and automated financial data exchange requirements. Also provides advice on financial systems and serves as the focal point with Federal control agencies on financial systems matters. The office consists of the following:

A. Division of Financial Systems Integrity

a. Oversees, monitors, evaluates, and recommends approval for the design, implementation, operation, and enhancement of Department-wide and component accounting and financial management systems.

b. Establishes and maintains a Department-wide quality assurance program that ensures the auditability of financial and performance data and functions as a data administrator for financial systems.

c. Develops financial systems requirements and policy regarding data structure and interface techniques necessary to communicate between HHS financial systems and with Departmental systems.

d. Makes specific studies and appraisals of the financial aspects of program operations including systems designs and data requirements to ensure compliance with CFO objectives in areas assigned by the Deputy CFO.

e. Serves as principal staff adviser to the Office of Finance on all financial systems related matters.

f. Maintain liaison with the Office of Management and Budget, the Treasury Department, the General Accounting Office, and other agencies on matters involving financial systems.

g. Develops and issues policies and procedures relating to the evaluation of accounting and related systems for conformance with Comptroller General principles and standards under Section 4 of the Federal Managers' Financial Integrity Act and with related systems review guidelines of the Office of Management and Budget, the Treasury Department and the General Accounting Office.

B. Division of Financial Systems Design and Analysis

a. Provides ADP expertise and guidance to the Office of Finance.

b. Performs systems analysis and design in the development of the Office of Finance financial systems to include systems interfaces, distributed processing requirements and reporting capabilities.

c. Participates in the evaluation and selection of vendors and equipment. Serves as the project officer and monitors performance of vendors supplying software to the Office of Finance.

d. Provides technical assistance in the development of hardware, software, telecommunications and ADP service acquisitions for Office of Finance systems. This assistance includes the areas such as cost benefit analyses, requirements statements and performance criteria.

e. Utilizes the financial systems quality assurance program to review and analyze on-going Departmental operations (including the Office of Finance) for compliance with directives and to determine possible problem areas and resolutions thereto.

f. Makes specific studies and appraisals of the financial aspects of

program operations including systems designs and date requirements to ensure compliance with CFO objectives in areas assigned by the Deputy CFO.

4. Budget Execution Staff

a. Establishes and maintains a Departmental budget execution system based on uniform standards, classification and procedures, in order to apply resources consistent with Departmental policy and budget. Resolves questions regarding financial issues and proper authority and application of funds.

b. Establishes and maintains a Department-wide system of outlay estimates in support of formulation and execution of the budget, including a tracking process for identifying variances and preparing reports.

c. In cooperation with the Office of Budget and other staff offices recommends policy for activities and services to continue in the absence of appropriations and for continuing Departmental operations during periods of Continuing Resolutions (CR).

d. Reviews agency Treasury warrant requests and apportionment requests and develops recommendations in cooperation with the Office of the Budget before submission to the Treasury Department and the Office of Management and Budget.

e. Maintains the Catalog of Federal Domestic Assistance and develops State tables of projected obligations for selected programs.

VI. Insert Chapter AMQ as Follows

A. AMQ.00 Mission. The Administrative Services Center (ASC) provides leadership and direction for administrative and management operations, and provides Department-wide policy support for real property, occupational safety and health, and environmental and historic preservation responsibilities. Provides administrative services and facilities management services to all HHS components in the Southwest Washington, D.C. area complex. Plans and administers emergency preparedness activities for the OS. Advises senior Departmental officials on management issues related to the effective and efficient operation of the applicable programs and components. Acts as the Department's focal point with other Federal agencies and HHS Operating Divisions (OPDIVs) on policy and regulatory issues involving postal management, record management, real property, space management, occupational safety and health, and emergency preparedness activities for the Office of the Secretary (OS). Provides administrative services and facilities management functions for the Southwest Complex for the Office of the Secretary and the OPDIVS. Directs, plans, obtains, and coordinates building management, space management and design, systems furniture procurement and installation, safety and health, and support services in the Baltimore-Washington area. Serves as the focal point for advice and guidance on a variety of administrative support activities for the Department, which include Staff Divisions in the OS, OPDIVs located at headquarters, and the Regional Offices. Develops Department-wide policy regarding postal management. The Postal Management Branch makes request to the U.S. Postal Service to carry out a "mail cover". Maintains liaison with the General Services Administration and the U.S. Postal Service regarding postal management. Represents the Department in government-wide activities related to postal management and Cooperative Administrative Support Unit (CASU).

B. AMQ.20 Organization. The Administrative Services center is headed by a Director who reports to the Assistant Secretary for Management and Budget. The Center consists of the following entities:

Immediate Office
  Administrative Staff
  Technological Initiative Staff
Division of Special Programs Coordination
Division of Building Operations
  Buildings Branch
  Materiels Management Branch
Health and Wellness Center

c. Section AMQ.20 Functions. The Administrative Services Center is responsible for the following functions:

A. The Office of the Director provides leadership, policy, guidance, and supervision, as well as coordinating long- and short-range planning to constituent organizations.

1. Administrative Staff

a Provides guidance and direction in formulating and overseeing the execution of ASC's budget and use of its personnel resources, conferring with other organization units within OS as required.

b. Plans, directs, and coordinates financial and budgetary programs for GDM, RENT, WCF, and GSA accounts and the Health and Wellness Center. Maintains commitment records against allowances, and certifies funds availability for these funding activities.

c. Consolidates and presents budget estimates and forecasts of ASC resources. Develops and maintains an overall system of budgetary controls to ensure observance of established ceilings on both funds and personnel.

d. Coordinates the development of ASC's annual work plan and long-range strategies for budget and personnel resources.

e. Coordinates the development of ASC administrative policy and procedures in accoradance with HHS Staff Manual and Personnel Manual Systems. With cooperation and input from other ASC organizational units plans, organizes, and conducts study and management reviews of administrative processes and functions in OSM.

2. Technological Initiative Staff

a. Identifies/develops the creative application of automated systems in ASC to enhance service delivery.

b. Provides comprehensive PC maintenance.

c. Coordinates/develops in-house applications training seminars.

d. Coordinates development of IRM plan.

B. The Division of Special Programs Coordination. The Division of Special Programs Coordination advises senior Departmental officials on management issues related to the effective and efficient operation of applicable programs and components. It also acts as the Department's focal point with other Federal agencies and HHS OPDIVs on policy and regulatory issues involving real property, space management, occupational safety and health, environmental affairs, energy management, and physical security. It serves as the focal point for emergency preparedness activities for the OS and provides advice and guidance on a variety of administrative support activities for the OS.

a. Establishes, maintains, and promulgates HHS policy for the HHS real property program. Establishes guidelines and procedures to monitor effectively the real property owned or leased by HHS.

b. Establishes guidelines to monitor the utilization of all space assigned to the Department by GSA.

c. Prepares initial guidance to the OPDIVs on technical and facilities aspects of the HHS annual RENT budget. Provides oversight of OPDIV performance for this function and provides technical assistance on a Department-wide basis as required. Coordinates preparation among OPDIVs on facilities and space aspects, and collaborates with the Office of Budget on final Department-wide RENT budget.

consistent with OMB and GSA guidance.

d. Establishes, maintains and promulgates HHS policy for the Departmental employee safety and occupational health program. Provides oversight of OPDIV performance of the function and provides technical assistance on a Department-wide basis as required.

e. Provides necessary leadership and coordination activities for emergency preparedness matters internal to the elements of the OS.

f. Establishes, maintains, and promulgates HHS policy for the Departmental physical suecurity programs function an provides technical assistance on a Department-wide basis as required.

g. Establishes, maintains, and promulgates HHS policy for the Departmental historic preservation program. Provides oversight of OPDIV performance for this function and provides technical assistance on a Department-wide basis as required.

h. Interprets Department of Energy policy on energy management issues and oversees implementation of energy-related legislation within HHS.

i. Establishes information and reporting standards for all above listed programs. Collects, assembles, and analyzes required information for mandated reports to Congress, OMB, GSA, and other Federal agencies.

C. Division of Buildings Operations. This Office directs, plans, and coordinates the facilities management services function. It also serves as the focal point for advice and guidance on a variety of centralized common and general administrative services and staff support. This office provides these services to the OS. OPDIVs located in the Southwest Couples and HHS Regional Offices.

a. Is responsible for the acquisition, disposition, allocation, and budgeting of space for the OS in Washington, D.C. and OPDIVs in the Southwest Complex. Monitors and reconciles centralized RENT billings and distributes charges to responsible Offices.

b. Fosters and enforces compliance with Federal space utilization principles in the southwest Washington, D.C. Complex by the preparation of high-quality space management plans and drawings, and the arrangement of quality and timely renovation work. Provides engineering and architectural services as well as oversight in support of Southwest Complex facilities both through in-house staff and contractors.

c. Procures systems furniture, including related design, installation and maintenance services for the Southwest Complex. Conducts major renovation and system furniture installation projects, moves, and space consolidations.

d. Under delegation from GSA, is responsible for the physical plant operation and maintenance of the Hubert H. Humphrey Building including procurement and administration of related contracts.

e. Oversees the OS and Southwest Complex occupational safety and health programs, including procurement and administration of related contracts.

f. Provides the OS and Regional Offices all aspects of mail services, including receipt, routing, dispatch and control of packages, mail and all other forms of written or printed communications.

g. Provides physical security for employees and facility protection in the Southwest Complex through the procurement and administration of guard services and equipment.

h. Provides a variety of support services to the OS, including the management of conference and parking facilities, the processing of employee identification badge applications, and special events support.

i. Issues, controls, and schedules employees for photographing and issuance or replacement of identification card.

j. Records changes to organizational forms, periodicals, and publications.

k. Manages the HHS administrative directives system, with emphasis upon ensuring that the system is up-to-date.

l. Provides for the management of property through maintenance of records, by conducting periodic inventories, maintenance of depreciation accounts and repair cost analyses, disposal of excess property, and obtaining releases from accountability for lost or stolen property.

m. Receives, stores, issues, and maintains stock levels for a wide variety of supplies and forms, and for office furniture, office machines, and other nonexpendable materials obtained through the appropriate supply organization.

n. Maintains a fleet of motor vehicles for deliveries, messenger, and shuttle services. Plans and schedules drivers to accommodate senior OS officials and agency needs.

o. Provides for the purchase, storage, and issuance, of office forms and unique supplies.

p. Provides guidance, advice, and assistance in all areas of records management including forms management for the OS and upon request OS regional components. Serves as OS liaison with the National Archives and Records Service. Assists the OS in scheduling their records for disposition or for obtaining approval of the Archivist of the United States for new or revised schedules.

D. The Health and Wellness Center. The office operates and manages the HHS Health and Wellness Center including the collection of and accounting for funds from employees and other participating Government agencies.

Dated: August 7, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-19799 Filed 8-19-92; 8:45 am]

BILLING CODE 4110-60-M

Agency for Health Care Policy and Research

National Advisory Council for Health Care Policy, Research, and Evaluation; Meeting

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation.

DATES: The meeting will be open to the public on Monday, September 14, from 9 a.m. to 5:30 p.m., and on Tuesday, September 15, from 8:30 a.m. to 10:30 a.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, a meeting closed to the public will be held on September 15, 1992, from 10:30 a.m. to 2 p.m. to review, discuss, and evaluate grant applications. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

ADDRESS: The meeting will be at the Hyatt Regency, 7400 Wisconsin Avenue, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Deborah L. Gueenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, suite 603, Rockville, Maryland 20852, (301) 227-8459.

In addition, if sign language interpretation or other reasonable accommodation for a disability is needed, please contact Linda Reeves, the Assistant Administrator for Equal Opportunity, AHCPR, on (301) 227-8662 no later than August 28, 1992.

SUPPLEMENTARY INFORMATION:

I. Purpose

Section 921 of the Public Health Service Act (42 U.S.C. 299c) establishes the National Advisory Council for Health Care Policy, Research, and Evaluation. The Council provides advice to the Secretary and the Administrator, Agency for Health Care Policy and Research (AHCPR), on matters related to the actions of AHCPR to enhance the quality, appropriateness, and effectiveness of health care services and access to such services through scientific research and the promotion of improvements in clinical practice and the organization, financing, and delivery of health care services.

The Council is composed of members appointed by the Secretary. These members are:

Linda H. Aiken, Ph.D.; Mr. Edward C. Bessey; Marion F. Bishop, Ph.D.; Linda Burnes-Bolton, Dr. P.H.; Joseph T. Curti, M.D.; John W. Danaher, M.D.; David E. Hayes-Bautista, Ph.D.; William S. Kiser, M.D.; Kermit B. Knudsen, M.D.; Norma M. Lang, Ph.D.; Barbara J. McNeil, M.D.; Mr. Walter J. McNerney; Lawrence H. Meskin, D.D.S., Ph.D.; Theodore J. Phillips, M.D.; Louis F. Rossiter, Ph.D.; Barbara Starfield, M.D.; and Donald E. Wilson, M.D.

There also are Federal ex officio Members. These members are:

Administrator, Alcohol, Drug Abuse and Mental Health Administration; Director, National Institutes of Health; Director, Centers for Disease Control; Administrator, Health Care Financing Administration; Commissioner, Food and Drug Administration; Assistant Secretary of Defense (Health Affairs); and Chief Medical Director, Department of Veterans Affairs.

II. Agenda

On Monday, September 14, 1992, the open portion of the meeting will begin at 9 a.m. with the call to order by the Council Chairman. The Administrator will introduce new and reappointed members to the Council followed by an update on AHCPR activities. The AHCPR Legislative Officer will conclude the morning meeting with an update on health care reform. In the afternoon AHCPR staff and council members will discuss market forces and health care costs, followed by a discussion on fostering quality of care research. The Council will recess at 5:30 p.m.

On Tuesday, September 15, 1992, the Council will resume at 8:30 a.m. with a discussion on primary care. The open meeting will adjourn at 10:30 a.m. The Council will begin the closed portion of the meeting to review grant applications from 10:30 a.m. to 2 p.m. The meeting will then adjourn at 2 p.m.

Agenda items are subject to change as priorities dictate.

Dated: August 13, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92-19855 Filed 8-19-92; 8:45 am]

BILLING CODE 4160-90-M

Food and Drug Administration

[Docket No. 92F-0317]

Nordion International, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Nordion International, Inc., has filed a petition proposing that the feed irradiation regulations be amended to provide for the safe use of gamma radiation from cobalt-60, not to exceed 25 kiloGrays, to pasteurize complete poultry (chickens, turkeys, ducks, geese, cornish hens, pheasant, quail, and fowl) feeds or feed ingredients.

DATES: Written comments by October 19, 1992.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Woodrow M. Knight, Center for Veterinary Medicine (HFV-226), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8731.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2216) has been filed by Nordion International, Inc., 447 March Rd., P.O. Box 13500, Kanata, Ontario, Canada, K2K 1X8. The petition proposes to amend the food additive regulations to provide for the safe use of gamma radiation from cobalt-60, not to exceed 25 kiloGrays, to pasteurize complete poultry (chickens, turkeys, ducks, geese, cornish hens, pheasant, quail, and fowl) feeds or feed ingredients.

The potential environmental impact of this action is being reviewed. The environmental assessment prepared by the petitioner may be seen at the Dockets Management Branch (address above). Comments from the public are invited. Those comments received by October 19, 1992, will be considered. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 13, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-19806 Filed 8-19-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1992:

Name: Advisory Council on Nurses Education.

Date and Time: November 13, 1992, 8:30 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (Pub. L. 99-92). The Council also performs final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The meeting will cover reports on the Health Resources and Services Administration, the Bureau of Health Professions and Division of Nursing, an update on the legislation, a presentation on issues facing Hispanics, particularly Hispanic nurses, a summary of the follow up on the Minority Congress, and the Council will continue discussion of the grant review process and other issues of interest and concern.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, Advisory Council on Nurses Education, room 9-36, Parklawn Building, 5600 Fishers Lane, Rockville,

Maryland 20857, Telephone (301) 443–6193.

Agenda items are subject to change as priorities dictate.

Dated: August 14, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–19819 Filed 8–19–92; 8:45 am]

BILLING CODE 4160–15–M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; AIDS Liaison Subcommittee of the AIDS Research Advisory Committee, NIAID; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the AIDS Liaison Subcommittee of the AIDS Research Advisory Committee, National Institute of Allergy and Infectious Diseases, on September 22, 1992, in Building 31C, Conference Room 6, at the National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8 a.m. until adjournment on September 22. The subcommittee will discuss the mission and directions of the Division of AIDS (DAIDS) providing input and broad programmatic advice on the DAIDS extramural program with respect to basic and clinical research. Attendance by the public will be limited to space available.

Ms. Patricia Randall, Office of Communications, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–496–5717, will provide a summary of the meeting and a roster of the committee members upon request.

Jean S. Noe, Executive Secretary, AIDS Research Advisory Committee, DAIDS, NIAID, NIH, Solar Building, room 2A22, 6003 Executive Boulevard, Rockville, Maryland 20892, telephone 301–496–0545, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.855, Immunologic, Allergic and Immunologic Diseases Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health).

Dated: August 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–19925 Filed 8–19–92; 8:45 am]

BILLING CODE 4140–01–M

Amended Notice of Meeting

Notice is hereby given of a change in the notice of meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, September 14 and 15, 1992, in Building 31C, Conference Room 6, National Institutes of Health, which was published in the **Federal Register** on July 27, (57 FR 33204.

The meeting was to have been open to the public from 8:30 a.m. to 11 a.m., on September 14, but now will be open to the public on September 14, from 1:30 p.m. to 2:30 p.m., and on September 15, from 8:30 a.m. to 10 a.m., for opening remarks; report of the Director, NIGMS; and other business of the Council.

Dated: August 13, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–19926 Filed 8–19–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Naphthalene

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of naphthalene, used in the manufacture of phthalic and anthranilic acids, naphthylamines, and synthetic resins. Naphthalene is used as an insecticide, antiseptic, and vermicide. It is also an ingredient in various commercial moth repellents and toilet bowl cleaners.

Toxicology and carcinogenesis studies of naphthalene were conducted by exposing groups of 75 mice of each sex to naphthalene at target concentrations of 0, 10, or 30 ppm in air. Two additional groups of 75 male mice and 75 female mice were exposed to 30 ppm. Twice as many animals received the high dose because of the lack of information on the long-term toxicity of inhaled naphthalene and to ensure that a sufficient number of animals lived to study termination. Exposures were for 6 hours daily, 5 days per week, for 104 weeks.

Under the conditions of these 2-year inhalation studies, there was no evidence of carcinogenic activity [1] of naphthalene in male B6C3F1 mice exposed to 10 or 30 ppm. There was some evidence of carcinogenic activity of naphthalene in female B6C3F1 mice, based on increased incidences of pulmonary alveolar/bronchiolar adenomas.

In both male and female mice, naphthalene caused increased incidences and severity of chronic inflamation, metaplasia of the olfactory epithelium, and hyperplasia of the respiratory epithelium in the nose and chronic inflammation in the lungs.

The study scientist for this bioassay is Dr. Kamal Abdo. Questions or comments about the contents of this Technical Report should be directed to Dr. Abdo at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–7819.

Copies of Toxicology and Carcinogenesis Studies of Naphthalene in B6C3F1 Mice (Inhalation Studies) (TR 410) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone: (919) 541–3419 or (919) 541–0977.

Dated: August 14, 1992.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 92–19927 Filed 8–19–92; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the evidence observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–967–4230–15; AA–8447–A2]

Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Eyak Corporation for 1,061.46 acres. The lands involved are in the vicinity of Cordova, Alaska.

Copper River Meridian, Alaska

T. 16 S., R. 1 W.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Cordova Times. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until September 21, 1992, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file and appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of KCS Adjudication.

[FR Doc. 92–19798 Filed 8–19–92; 8:45 am]

BILLING CODE 4310–JA–M

[CO–010–02–4320–02]

Craig Colorado Advisory Council; Meeting

Time and Date: 10:30 a.m., September 9, 1992.

Place: BLM—Kremmling Resource Area, 1116 Park Avenue, Kremmling, Colorado 80459.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be Considered: 1. Upper Colorado Alliance. 2. Field trip to see the Upper Colorado River from Pumphouse to Radium.

Contact Person for More Information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: July 30, 1992.

[FR Doc. 92–19911 Filed 8–19–92; 8:45 am]

BILLING CODE 4310–JB–M

Susanville District Advisory Council Meeting

AGENCY: Bureau of Land Management, Susanville District Advisory Council, Susanville, Ca.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Bureau of Land Management's Susanville District Advisory Council will meet on Wednesday, September 16, and Thursday, September 17, 1992, at the Bureau of Land Management's Susanville District Office, 705 Hall Street, Susanville, California 96130.

On September 16, the board will hold a business meeting in the Susanville District Office beginning at 10 a.m. Items for discussion will include the status of the East Lassen Integrated Vegetation Management Plan, and an update on the BLM 2015 reorganization proposal. Council members will discuss and take public input on the Susanville District's FY 93 plans to use helicopters for gathering wild horses and burros, and also will hear reports from the District Manager and Resource Area Managers. A Susanville businessman will address the council on the subject of mineral material sales.

On September 17, the Council will meet at the Susanville District office at 8 a.m., then depart for a field trip to areas that will be affected by development of the East Lassen Integrated Vegetation Management Plan.

The meeting is open to the public and time will be provided on the agenda for public comment.

Summary minutes of the board meeting will be maintained in the Susanville District Office, and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Robert J. Sherve,

Associate District Manager.

[FR Doc. 92–19896 Filed 8–19–92; 8:45 am]

BILLING CODE 4310–40–M

[WY–920–41–5700; WYW103253]

Proposed Reinstatement of Terminated Oil and Gas Lease

August 12, 1992.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW103253 for lands in Crook County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of the **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW103253 effective February 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 92–19886 Filed 8–19–92; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW107670]

Proposed Reinstatement of Terminated Oil and Gas Lease

August 12, 1992.

Pursuant to the provisions of 30 U.S.C. 188(d), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW107670 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW107670 effective April 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 92–19885 Filed 8–19–92; 8:45 am]

BILLING CODE 4310–22–M

[CA–940–4212–13; CACA 14636]

Issurance of Land Exchange Conveyance Document; Exchange of Federal and Non-Federal Lands in Inyo and Los Angeles Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Act of October 30, 1984 (98 Stat. 2946) amended section 507(c)(2) of the National Parks and Recreation Act of 1978 (92 Stat. 3501) to authorize the exchange of certain lands between the Bureau of Land Management and the city of Los Angeles, California, for purposes of the Santa Monica Mountains National Recreation Area. Upon acceptance of title, the land

acquired by the United States became a part of the Santa Monica Mountains National Recreation Area subject to all the laws and regulations applicable thereto as provided by section 3 of the Federal Land Exchange Facilitation Act of 1988. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, 916–978–4820.

The United States issued an exchange conveyance document to the city of Los Angeles on July 29, 1992, under section 507(c)(2) of the National Parks and Recreation Act of 1978 (92 Stat. 3501), as amended by the Act of October 30, 1984 (98 Stat. 2946), for the following described lands:

Mount Diablo Meridian

T. 19 S., R. 37 E.,
Sec. 34, SW¼.
T. 20 S., R. 37 E.,
Sec. 3, lot 5;
Sec. 4, E½SE¼;
Sec. 10, W½SW¼;
Sec. 15, SE¼NW¼, E½SW½, SW¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 22, NW¼NE¼, W½W½, and SE¼SW¼;
Sec. 26, lots 6, 7, AND 8, SW¼NW¼, S½SW¼, and SW¼SE¼.
Sec. 27, NE¼NW¼, and W½W½;
Sec. 34, SW¼NE¼, NE¼SW¼, and W½SE¼;
Sec. 35, W½NE¼ and NW¼.
T. 21 S., R. 37 E.,
Sec. 1, lot 1, SW¼NW¼, and W½SW¼;
Sec. 2, lot 3, lots 7 to 12, inclusive, lot 15, SE¼NE¼, N½SE¼SW¼, AND SE¼SE¼;
Sec. 11, lots 4 to 7, inclusive, lots 12 and 13, NE¼NE¼, E½NW¼NE¼, E½W½NW¼NE¼, SW¼SW¼NW¼NE¼, E½SE¼SW¼, and S½SE¼;
Sec. 14, lot 11 and E½NE¼NW¼.

The areas described aggregate 2,734.62 acres of Federal Land in Inyo County.

In exchange for these lands, the United States acquired the following described lands from the city of Los Angeles:

Those portions of lots 5, 8, 11, and 12 of the SW¼ of sec. 36, T. 1 N., R. 15 W., and lot 4 of the NW¼NW¼ of sec. 1, T. 1 S., R. 15 W., San Bernardino Meridian, in the city of Los Angeles, County of Los Angeles, State of California, in particular described in Book 4931, Page 85 of Deeds; Book 1717, Page 41 of Deeds; Book 6091, Page 330 of Deeds, and Instrument No. 88–529369, of the Official Records of said county.

The areas described aggregate 16.23 acres of non-Federal land in Los Angeles County.

A specific description of these acquired lands, including exceptions and reservations too numerous to list in this notice, is available in the above listed case file which is located in the California State office.

The values of the Federal land and the non-Federal land in the exchange were appraised at $324,000 and $303,000, respectively. An equalization payment in the amount of $21,000 was paid to the city of Los Angeles by the United States.

Dated: August 12, 1992.

Nancy J. Alex,
Chief, Lands Section.

[FR Doc. 92–19900 Filed 8–19–92; 8:45 am]
BILLING CODE 4310–40–M

[OR120–6350–02 GPO 2–364]

Coos Bay District, Oregon Draft Resource Management Plan; Availability

ACTION: Notice of availability of draft resource management plan/environmental impact statement for the Coos Bay District, Oregon.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, section 202(f) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, a draft resource management plan/environmental impact statement (RMP/EIS) for the Coos Bay District, Oregon, has been prepared and is available for review and comment. The Draft RMP/EIS describes and analyzes future options for managing approximately 329,600 acres of mostly forested public land and 12,150 acres of non-federal surface ownership with federal mineral estate administered by the Bureau of Land Management in Coos, Curry, Douglas, and Lane counties in southwestern Oregon.

Decisions generated during this planning process will supersede land use planning guidance presented in the South Coast-Curry Management Framework Plan (MFP) including the 1984 North Spit Plan Amendment, and the decision record for the 1981 Coos Bay District Oil and Gas Environmental Assessment.

Copies of the Draft RMP/EIS and a summary of it may be obtained from the Coos Bay District Office. Public reading copies will be available for review at the public libraries in Brookings, Gold Beach, Bandon, Myrtle Point, Coquille, Coos Bay, North Bend, Reedsport; all government document depository libraries; and at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC.
Public Room, Oregon State Office, 1300 N.E. 44th Avenue, Portland, Oregon 97213.
Public Room, Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459.
All other BLM offices in western Oregon.

Background information and maps used in developing the Draft RMP/EIS are available at the Coos Bay District Office.

Open houses with opportunity to discuss the Draft RMP/EIS will be held at the Coos Bay District Office (at the above address). The dates, times, and locations of all open house meetings will be announced in a separate mailer as well as in the local media.

DATES: Written comments on the Draft RMP/EIS must be submitted or postmarked no later than December 21, 1992.

ADDRESSES: Written comments should be addressed to: District Manager, Coos Bay District, Bureau of Land Management, 1300 Airport Lane, North Bend, Oregon 97459.

FOR FURTHER INFORMATION CONTACT: Bob Gunther, RMP Team Leader, Coos Bay District Office; Phone (503) 756–0100.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS describes and analyzes seven alternatives to resolve the following issues:

(1) Timber production practices;
(2) Old-growth forests and habitat diversity;
(3) Threatened and endangered and other special status species habitat (including habitat for the northern spotted owl);
(4) Special areas;
(5) Visual resources;
(6) Stream/riparian/water quality;
(7) Recreation resources;
(8) Wild and scenic rivers;
(9) Land tenure; and
(10) Rural interface areas. The issues are analyzed in seven distinct alternatives.

In BLM's preferred alternative, water quality would be maintained or improved primarily by a combination of best management practices and exclusion of selected ares from planned timber harvest. Particularly important exclusion areas would be the riparian zones of perennial streams and other streams that support fish.

Some 82,900 acres would be managed to maintain and strengthen a system of old-growth emphasis areas, which is expected to increase the amount of old-growth stands in the planning area from 51,100 acres to 56,300 acres over the next 100 years.

Some 244,300 acres would be managed for timber production, including 103,300 acres managed under substantial restrictions to protect or enhance other resource values. The annual allowable timber sale quantity would be 20.1 million cubic feet (124 million board feet). To contribute to biological diversity, standing trees, snags, and down, dead woody material would be retained.

In addition to protecting listed or proposed threatened and endangered species as required by the Endangered Species Act, BLM would manage habitats of federal candidate, state listed, and Bureau sensitive species to maintain their populations at a level that would avoid listing the species.

Management would provide for a wide variety of recreation opportunities, with particular emphasis on enhancement of opportunities for dispersed recreational use.

Approximately 184 miles of river found eligible for designation and studied by BLM would be found not suitable for designation.

Most BLM-administered lands would remain available for mineral leasing and location of mining claims, but 1,600 acres would be closed to leasing for oil and gas and geothermal resources, and 6,800 acres would be closed to location of claims.

The RMP/EIS proposes continuation of designation of one Area of Critical Environmental Concern (ACEC), one Research Natural Area (RNA), and designation of nine new ACECs. The preferred alternative would designate or redesignate the following ACECs and RNA with the noted restrictions.

Area Name	Acres	Veg. harv.	ORV use	Mining loc.	Min. lease	R/W
Cherry Creek RNA	570	NC	NC	NC	NC	NC
New River ACEC	660	NA	R	P	P	P
Wassen Creek ACEC	3,440	R	P	R	R	P
North Spit ACEC	580	NA	R	R	R	P
North Fork Coquille River ACEC	290	P	R	R	R	P
Tioga Creek ACEC	40	P	P	R	R	P
China Wall ACEC	240	P	R	R	R	P
North Fork Hunter Creek ACEC	1,730	R	R	R	R	P
Hunter Creek Bog ACEC	570	P	P	R	R	P
North Fork Chetco River ACEC	600	P	P	R	R	P
Upper Rock Creek ACEC	460	P	P	R	R	P

NC = No Change from existing situation
P = Use is prohibited
R = Use is allowed but with restrictions
NA = Use is not applicable to this area

There were no potential ACEC areas identified that met the Bureau ACEC criteria of relevance and importance that are not included in whole or in part in the preferred alternative described above.

This Notice meets the requirements of 43 CFR 1610.7–2 for designation of ACECs and the requirements of the final revised Department of the Interior—Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (FR Vol. 47, No. 173, pg. 39454).

Dated: August 12, 1992.

Mel Chase,
District Manager.

[FR Doc. 92–19864 Filed 8–19–92; 8:45 am]
BILLING CODE 4310–33–M

[OR–93–02–6350–08: GP2–398]

Roseburg District, Oregon Draft Resource Management Plan; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft resource management plan/environmental impact statement for the Roseburg District, Oregon.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(f) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, a draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) for the Roseburg District, Oregon, has been prepared and is available for review and comment. The draft RMP/EIS describes and analyzes future options for managing approximately 423,928 acres of mostly forested public land and 1,717 acres of unrelated Federal mineral estate administered by the Bureau of Land Management in Douglas County in western Oregon.

Decisions generated during this planning process will supersede land use planning guidance presented in the 1983 Management Framework Plans (MFP) for the Dillard, North Umpqua, South Umpqua and Drain Resource Areas, and the Roseburg Timber Management Environmental Impact Statement, 1983 for the Douglas and South Umpqua sustained yield units.

Copies of the Draft RMP/EIS and a summary of it may be obtained from the Roseburg District Office. Public reading copies will be available for review at the public libraries in Roseburg and Douglas County, all government document depository libraries, and at the following BLM locations:

Office of External Affairs, Main Interior Building, Room 5600, 18th and C Streets NW., Washington, DC.
Public Room, Oregon State Office, 1300 NE. 44th Avenue, Portland, Oregon 97213.
Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, OR 97470.
All other BLM offices in western Oregon.

Open houses with opportunities to discuss the Draft RMP/EIS will be held at the Roseburg District Office and other locations within the district. Times and locations will be announced at a later date through the local media and in a separate mailer.

DATES: Written comments on the Draft RMP/EIS must be submitted or postmarked no later than December 21, 1992.

ADDRESSES: Written comments should be addressed to James Moorhouse, District Manager, Roseburg District, Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT: Philip J. Hall, RMP Team Leader, Roseburg District Office, Phone (503) 440–4930.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS describes and analyses seven alternatives to resolve the following issues:

(1) Timber production practices;
(2/3) Old-growth forests and habitat diversity;
(4) Threatened and endangered and other special status species habitat;
(5) Special areas;
(6) Visual resources;
(7/6) Stream/riparian/water quality;

(9a) Recreation resources;
(9b) Wild and scenic rivers;
(10) Land tenure; and
(11) Rural Interface Areas. The issues are analyzed in seven distinct alternatives.

In BLM's preferred alternative, water quality would be maintained or improved primarily by combination of Best Management Practices and exclusion of selected areas from planned timber harvest. Particularly important exclusion areas would be the riparian zones of perennial streams and other streams that carry fish.

About 121,900 acres would be managed to maintain and strengthen a system of old-grown ecosystem areas. The amount of old-growth stands in the planning area are expected to decrease from about 114,700 acres to about 99,500 acres over the next 100 years.

About 144,300 acres would be allocated as a general forest management area (primarily for timber production). Some 63,000 acres would be managed under substantial restrictions to protect or enhance other resource values. The annual allowable timber sale quantity would be 16.3 million cubic feet. To contribute to biological diversity, standing trees, snags, and down, dead woody material would be retained.

In addition to protecting listed or proposed threatened and endangered species as required by the Endangered Species Act, BLM would manage habitats of Federal candidate, State Listed, and Bureau Sensitive species to maintain their populations at a level that would avoid contributing to the listing of the species.

Management would provide for a wide variety of recreation opportunities with particular emphasis on developed recreation sites and trails.

No river segments would be recommended as suitable for designation by Congress under the Wild and Scenic River Act. A 17.5 mile segment of Smith River and a 10.7 mile segment of Canton Creek which were found eligible for designation and studied by BLM would be found not suitable for designation.

All BLM administered lands would remain available to leasing for oil and gas and geothermal resources and location of mining claims, but a variety of allocations such as areas of critical environmental concern, restrict exploration and development.

The RMP/EIS proposes continuation of designation or expansion of six existing Areas of Critical Environmental Concern (ACEC) and designation of two new ACECs. The preferred alternative would designate or redesignate the following ACECs with the noted restrictions.

Area name	Acres	Vegetation harvest	ORV use	Mining location	Mineral leasing	Rights-of-way
Bear Gulch ACEC/RNA	330	P	P	P	R	P
Beatty Creek ACEC/RNA	331	P	P	P	R	P
Myrtle Island ACEC/RNA	30	P	P	P	R	P
North Myrtle Creek ACEC/RNA	472	P	P	P	R	P
North Umpqua River ACEC	1620	P	P	P	R	P
Red Pond ACEC/RNA	134	P	P	P	R	P
Tater Hill ACEC/RNA	280	P	P	P	R	P
Umpqua River Wildlife Area ACEC	947	P	P	P	R	P

P=Use is prohibited.
R=Use is allowed by with restrictions.

The Bushnell-Irwin Rocks potential ACEC area was also identified, which meets the Bureau ACEC criteria of relevance and importance, that is not included in the preferred alternative. The primary value of this area would not be protected by other allocations.

This Notice meets the requirements of 43 CFR 1610.7–2 for designation of ACECs and the requirements of the final revised Department of the Interior-Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (FR Vol. 47, No. 173, pg. 39454).

Dated: August 14, 1992.

James A. Moorhouse,

District Manager.

[FR Doc. 92–19862 Filed 8–19–92; 8:45 am]

BILLING CODE 4310–33–M

[CO–942–92–4730–12]

Colorado; Filing of Plats of Survey

Dated: August 11, 1992.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., August 11, 1992.

The plat (in sixteen sheets) representing the corrective dependent resurvey of the subdivisional line between sections 21 and 22, the dependent resurvey of the subdivisional line between sections 21 and 28, and of mineral claims in section 21, T. 3 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 679, was accepted June 11, 1992.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the completion survey of a portion of the north boundary of section 9, and the subdivision of certain sections, T. 49 N., R. 19 W., New Mexico Principal Meridian, Colorado, Group No. 915, was accepted May 19, 1992.

The plat representing the dependent resurvey of a portion of the east half mile between sections 24 and 25, the south half mile of the north and south center line, and a metes-and-bounds survey in section 24, T. 13 S., R. 79 W., Sixth Principal Meridian, Colorado, Group No. 993, was accepted May 18, 1992.

The plat representing the dependent resurvey of portions of the subdivisional lines, the subdivision, and the meander lines of the right bank of the Gunnison River and the subdivision of section 5, T. 2 S., R. 1 E., Ute Meridian, Colorado, Group No. 1010, was accepted June 12, 1992.

The supplemental plat showing the protracted line between lots 2 and 4 in section 14 and the location of lots 12 and 13 in section 23, T. 9 S, R. 86 W., Sixth Principal Meridian, Colorado, was accepted June 26, 1992.

These surveys were executed to meet certain administrative needs of this Bureau.

The plat (in two sheets) representing the dependent resurvey of portions of the Ninth Guide Meridian West (west boundary) and subdivisional lines and the subdivision of sections 18, 19, and 20, T. 12 S., R. 72 W., Sixth Principal Meridian, Colorado, Group No. 912, was accepted June 24, 1992.

The plat representing the dependent resurvey of a portion of the subdivisional lines and Homestead Entry No. 233 and the subdivision of sections 12 and 13, T. 12 S., R. 73 W., Sixth Principal Meridian, Colorado, Group No. 912, was accepted June 24, 1992.

The plat representing the dependent resurvey of portions of the east boundary and subdivisional lines and the subdivision of sections 24 and 25, T. 22 S., R. 69 W., Sixth Principal Meridian, Colorado, Group No. 925, was accepted May 28, 1992.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

The plat (in six sheets) representing the dependent resurvey of certain mineral claims, T. 4 S., R. 75 W., Sixth Principal Meridian, Colorado, Group No. 689, was accepted May 11, 1992.

This survey was executed to meet certain administrative needs of this Bureau and certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2859 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 92–19868 Filed 8–19–92; 8:45 am]

BILLING CODE 4310–JB–M

[CA–940–4214–10; CACA 30534]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: To allow the State of California and the public adequate time to fully evaluate the State's proposal to site a low-level nuclear waste facility at Ward Valley, California, the Bureau of Land Management proposes to withdraw 1,000 acres of public land in San Bernardino County to preserve their current status pending a final decision by the State on this project. This notice closes the land for up to 2 years from entry under the agricultural land laws and the general U.S. mining laws. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting on this withdrawal proposal to maintain the status quo pending a final decision by the State must be received by November 18, 1992.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Douglas Romoli, BLM California Desert District Office, 714 697–5237.

SUPPLEMENTARY INFORMATION: On August 13, 1992, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from operation of the agricultural land laws and the mining laws, subject to valid existing rights:

San Bernardino Meridian

T. 9 N., R. 19 E.,
Sec. 26, SW¼SW¼;
Sec. 27, S½S½;
Sec. 34, all;
Sec. 35, W½W½.

The area described contains approximately 1,000 acres in San Bernardino County.

The purpose of the proposed withdrawal is to allow adequate time for the State of California and the public to fully evaluate the State's proposal to license and locate a low-level nuclear waste facility in Ward Valley, California.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land is segregated from entry under the agricultural land laws and the general U.S. mining laws unless the application is denied or canceled or the withdrawal is approved prior to that date. Upon approval by the authorized officer, the temporary uses which may be permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 92–19861 Filed 8–19–92; 8:45 am]

BILLING CODE 4310–40–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for Geocarpon for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for geocarpon (*Geocarpon minimum*). Populations occur on Federal, State, and private lands on sandstone glades in Missouri and on saline soil prairies in Arkansas and Louisiana. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before October 15, 1992, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Jackson Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Cary Norquist at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the

recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The species considered in this draft recovery plan is geocarpon (*Geocarpon minimum*). This plant, which is an annual, occurs in shallow depressions on sandstone glades in Missouri and in barren patches on saline soil prairies of Louisiana and Arkansas. This species was listed as threatened in 1987 due to its limited distribution and habitat destruction or modification from pasturing and off-road vehicle use. Geocarpon is an early successional species and several population appear to have declined due to competition from invading vascular plants and mosses and lichens.

The recovery objective of the proposed plan is to delist geocarpon. Delisting will be accomplished through:

(1) Protection and management of extant populations through landowner cooperation and regulatory means;

(2) monitoring of extant sites and searching for additional populations;

(3) evaluating habitat needs and conducting species' biology studies; and

(4) preserving genetic stock.

This Plan is being submitted for agency review. After consideration of comments received during the review period, it will be submitted for final approval.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 17, 1992.

Robert Bowker,

Complex Field Supervisor.

[FR Doc. 92-19950 Filed 8-19-92; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Leonard Cacioppo, Brooksville, FL, PRT-769846.

The applicant requests a permit to import a sport-hunted trophy of a male bontebok (*Damaliscus dorcas dorcas*) from the captive herd of the Ciskei Government, Tsolwana Game Reserve, Queenstown, South Africa (concessionaire: Frontier Safaris) for the purpose of enhancement of survival of the species.

Applicant: Theodore J. Pawlias, Macomb, IL, PRT-770553.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*), culled from the captive herd maintained by the Ciskei Government, Tsolwana Game Reserve, Queenstown, South Africa, (concessionaire: Frontier Safaris) for the purpose of enhancement of propagation of the species.

Applicant: Thad A. Howard, Olathe, KS, PRT-769945.

The applicant requests a permit to purchase in interstate commerce one pair of captive-hatched Eastern indigo snakes (*Drymarchon corais couperi*) from Shay P. Hamper, Columbus, OH, for the purpose of enhancement of propagation or survival of the species through breeding.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during business hours (7:45-4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (1-800/358-2104); FAX: (703/358-2281).

Dated: August 14, 1992.

Margaret Tieger,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92-19834 Filed 8-19-92; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the One Hundred and Twelfth Meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on September 10, 1992 from 8:30 a.m. to 5 p.m.

The purposes of the meeting are: (1) To consider the charter of the new Joint Committee on Research and Development (JCORD); (2) to review the program activities of the University Center including the Higher Education and Development Project; (3) to hear reports from the Joint Committee on Agricultural Research and Development and the Budget Panel; (4) to discuss reports on Management Improvement in A.I.D. and (5) to receive a report on the new American Council on Education Liaison office for the University Center.

This meeting will be held in Pan American Health Organization Building located at 525 23rd Street (between 23rd and Virginia Avenue), Washington, DC 20037. At this address it will be held in Conference Room C. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time available for the meeting permits.

C. Stuart Callison, Deputy Executive Director, Agency Center for University Cooperation in Development, Bureau for Research and Development, Agency for International Development, will be the A.I.D. Advisory Committee Representative at this Meeting. Those desiring further information may write to Dr. Callison, in care of the Agency for International Development, room 900 SA-38, Washington, DC 20523-3801 or telephone him on (703) 816-0258.

Dated: August 11, 1992.

Ralph H. Smuckler,

Executive Director, Agency Center for University Cooperation in Development.

[FR Doc. 92-19813 Filed 8-19-92; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-32 (Sub-No. 48X)]

Boston & Maine Corp. and Springfield Terminal Co.—Discontinuance of Trackage Rights—Hartford County, CT; Exemption

Applicant has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to discontinue its overhead trackage rights on approximately 4.0-miles of rail line as follows: (1) The Wethersfield Secondary between milepost 0.0 and milepost 3.0; (2) the West Leg of the Wye between Hartford Yard and "Hart" Interlocking; and (3) the New Britain Secondary between the Waterbury Switch and the Griffins Switch, all in Hartford, CT. The rail line belongs to Consolidated Rail Corporation (Conrail). Conrail will continue to operate the line.

Applicant has certified that: (1) It has handled no local traffic on the line for at least 2 years; (2) overhead traffic, if any, which previously moved over the line has been rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to the use of this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this conduction adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 21, 1992 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] must be filed by August 31, 1992. Petitions to reopen must be filed by September 9, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John R. Nadolny, Boston and Maine Corporation, Springfield Terminal Railway Company, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information use of the exemption is void *ab initio*.

Decided: August 10, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr., Secretary.

[FR Doc. 92-19922 Filed 8-19-92; 8:45 am]

BILLING CODE 7035-01-M

[1] Ordinarily a stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Because trackage rights discontinuances are exempt from the Commission's environmental and historic reporting requirements, a stay would not be issued here for these reasons.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at One Park Avenue, New York, New York, on September 21, 1992, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exception to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: August 12, 1992.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 92-19909 Filed 8-19-92; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

(1) Directory of Criminal Justice Information Source Survey Form.
(2) National Institute of Justice.
(3) Biennially.
(4) State or local governments, Federal agencies or employees and Non-profit

institutions. The information is used to collect information for a publication, the Directory of Criminal Justice Information Sources. The publication provides criminal justice professionals, researchers, librarians and law enforcements with a single source for information sources and services.

(5) 8,000 annual responses at .1 hours per response.

(6) 800 annual burden hours.

(7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: August 14, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-19807 Filed 8-19-92; 8:45 am]

BILLING CODE 4410-18-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7430 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

This notice contains a collection for which an expedited review has been requested from the Office of Management and Budget (INS Form I-833). In an effort to fully inform the reporting public, this entry is printed in full, including instructions, at the end of this notice. Written comments concerning this form should be sent to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street NW., room 2001D, Washington, DC 20536, Attention: Form I-833, within 15 days after the date of publication (September 11, 1992) of this notice in the **Federal Register**.

New Collection

An expedited review has been requested for this entry.

(1) INSPASS Application Form

(2) Form I-833. Immigration and Naturalization Service

(3) On occasion

(4) Individuals or households. Form I-833 information will be the basis for establishing identity, admissibility and participation in the INSPASS program, which uses automated inspections processing to facilitate entry into the U.S. by frequent business travelers

(5) 250,000 annual responses at .166 hours per response

(6) 41,500 annual burden hours

(7) Not applicable under 3504(h).

Public comments on these items is encouraged.

Dated: August 17, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

BILLING CODE 4410-10-M

INSPASS

For Frequent Business Travelers

The *INSPASS* system has been developed by the United States Immigration and Naturalization Service to be used by frequent business travelers to facilitate their entry into the United States at designated air ports of entry. The system is currently being tested for a six-month period at Newark International Airport and JFK International Airport in New York.

Participation in the test is voluntary and is open to citizens of any of the following countries who travel to the United States on business three or more times a year:

Andorra	Finland	Liechtenstein	San Marino
Austria	France	Luxembourg	Spain
Belgium	Germany	Monaco	Sweden
Bermuda	Iceland	Netherlands	Switzerland
Canada	Italy	New Zealand	United Kingdom
Denmark	Japan	Norway	United States

Applications for the *INSPASS* must be made at designated United States Immigration and Naturalization Service sites. Applicants will be interviewed and biometric technology will be used to capture identification data. The *INSPASS* will be issued at the conclusion of the application process.

At the time of arrival at one of the designated air ports of entry, the *INSPASS* holder will proceed to an automated inspectional booth for accelerated inspection processing. The captured biometrics (encoded in the *INSPASS*) will be used to establish identity.

The *INSPASS* does not relieve the holder of compliance with documentary requirements. The traveler must still be in possession of a valid passport and visa if required. The Immigration and Naturalization Service reserves the right to conduct an in-depth inspection of any *INSPASS* holder at the time of application for admission to the United States.

The *INSPASS* may not be available to a traveler if any of the following conditions apply:

a. communicable disease; physical or mental disorder; or drug abuse or addiction.

b. arrest or conviction for: an offense or crime involving moral turpitude or a violation related to a controlled substance; two or more offenses for which the aggregate sentence to confinement was five years or more; controlled substance trafficking; seeking entry to engage in criminal or immoral activities.

c. involvement in espionage or sabotage, terrorist activities, or genocide; or involvement, in any way, between 1933 and 1945 in persecutions associated with Nazi Germany or its allies.

d. seeking to work in the United States without authorization; exclusion, deportation or previous removal from the United States; or procurement or attempt to procure a visa or entry into the United States by fraud or misrepresentation.

e. detention, retention, or withholding of custody of a child from a United States citizen granted custody of the child.

f. cancellation or denial of a United States visa or entry into the United States.

g. assertion of immunity from prosecution.

The *INSPASS* remains the property of the U.S. Immigration and Naturalization Service and may be revoked or cancelled at any time without notice.

Form I-833

DRAFT

U.S. Department of Justice OMB #

U.S. IMMIGRATION AND NATURALIZATION SERVICE

INSPASS APPLICATION

Please type or print in ink

ALL APPLICANTS

1. _____ *Family Name*
2. _____ *First (Given) Name*
3. _____ *Date of Birth (day/month/year)*
4. _____ *Sex (male/female)*
5. _____ *Country of Citizenship*
6. _____ *Passport number & Expiration Date*
7. _____ *Permanent Address (number & street)*
8. _____ *Permanent Address (city, state & country)*
9. _____ *Company Name*
10. _____ *Position with Company*
11. _____ *Number of trips to or from the United States per year*
12. _____ *Average length of trip*

I understand that presentation of the INSPASS does not relieve me of complying with documentary requirements and that the captured biometrics data will be encoded in the INSPASS and used to verify identity upon entering the United States.

_____ *(Signature)* *(Date)*

NON UNITED STATES CITIZENS

13. _____ *Visa Class (if applicable)*
14. _____ *Date & Place of Visa Issuance*
15. _____ *Country of Residence*
16. _____ *"A" File Number (if applicable)*
17. _____ *Contact Address in the United States (number & street)*
18. _____ *Contact Address in the United States (city, state, & Zip code)*

Form I-833

DRAFT

NON UNITED STATES CITIZENS

DO ANY OF THE FOLLOWING APPLY TO YOU?

A. *Do you have a communicable disease; physical or mental disorder; or are you a drug abuser or addict?* [] Yes [] No

B. *Have you ever been arrested or convicted for an offense or crime involving moral turpitude or a violation related to a controlled substance; or been arrested or convicted for two or more offenses for which the aggregate sentence to confinement was five years or more; or been a controlled substance trafficker; or are you seeking entry to engage in criminal or immoral activities?* [] Yes [] No

C. *Have you ever been or are you now involved in espionage or sabotage; or in terrorist activities; or genocide; or were you involved, in any way, between 1933 and 1945 in persecutions associated with Nazi Germany or its allies?* [] Yes [] No

D. *Are you seeking to work in the United States; or have you ever been excluded and deported or previously removed from the United States; or have you ever procured or attempted to procure a visa or entry into the United States by fraud or misrepresentation?* [] Yes [] No

E. *Have you ever detained, retained, or withheld custody of a child from a United States citizen granted custody of the child?* [] Yes [] No

F. *Have you ever been denied a United States visa or entry into the United States or had a United States visa cancelled?* [] Yes [] No
*If yes, When?*_____ *Where?*_____

G. *Have you ever asserted immunity from prosecution?* [] Yes [] No

Certification: *I certify that I have read and understood all the questions and statements on this form. The answers I have furnished are true and correct to the best of my knowledge and belief.*

_____ *(Signature)* *(Date)*

APPLICANTS FOR ADMISSION TO THE UNITED STATES UNDER THE VISA WAIVER PILOT PROGRAM

I understand that I am not entitled to any review or appeal of an immigration officer's determination as to my admissibility, nor am I entitled to contest any determination of deportability other than on the basis of an application for asylum.

_____ *(Signature)* *(Date)*

Warning: You may not accept unauthorized employment; or attend school; or represent the foreign information media during your visit under this program. You are authorized to stay in the U.S. for 90 days or less. You may not apply for: 1) a change of nonimmigrant status; 2) adjustment of status to temporary or permanent resident, unless eligible under section 201(b) of the INA; or 3) an extension of stay. Violation of these terms will subject you to deportation.

Form I-833

[FR Doc. 92-19977 Filed 8-19-92; 8:45 am]
BILLING CODE 4410-10-C

DRAFT

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(d)(2), and Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Deere & Company, et al.*, Civil Action No. 4–92–CV80529, was lodged on August 11, 1992 with the United States District Court for the Central Division of the Southern District of Iowa. Under the Consent Decree, Defendants John Deere & Company and State of Iowa, by and through the Iowa Department of Transportation, will file deed restrictions limiting the use of the John Deere-Ottumwa Works Superfund Site ("Site"), which is located in the city of Ottumwa, Wapello County, Iowa; and the Defendants will continue to conduct ground water and surface water monitoring at the Site. Defendants also will reimburse the United States for costs it has incurred in responding to a release or threatened release of hazardous substances at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Deere & Company, et al.*, DOJ Ref. #90–11–3–890.

The proposed consent decree may be examined at the Office of the United States Attorney, 115 U.S. Courthouse, East First and Walnut Streets, Des Moines, Iowa; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66106; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $46.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–19874 Filed 8–19–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, and with section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(d)(2), notice is given that a proposed consent decree in *United States* v. *City of Dover, et al.*, Civil Action No. 92–407–D, was lodged on August 7, 1992 with the United States District Court for the District of New Hampshire. The action, filed simultaneously with the lodging of the consent decree, and the proposed consent decree involve the cleanup and reimbursement of response costs in connection with the Dover Municipal Landfill Superfund Site in Dover, New Hampshire ("Site"). This settlement is between the United States and State of New Hampshire and twenty-four responsible parties at the Site.

The agreement requires the settling defendants to undertake the source control and groundwater monitoring portions of the work set forth in EPA's September 1991 Record of Decision for the Site. The settlement requires defendants to pay $200,000 of EPA's past response costs, all future response costs incurred by the United States in obtaining access, implementing institutional controls, undertaking emergency response activities, and performing any work required of the settling defendants, and up to $370,000 of any other future response costs incurred by the United States. The agreement also requires defendants to pay $6,500 in past costs to the State and to reimburse up to $75,000 in future response costs of the State.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Dover, et al.*, DOJ Ref. #90–11–2–735.

The proposed consent decree may be examined at the Office of the United States Attorney, 55 Pleasant Street, Room 439, Concord, New Hampshire; the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, MA; and at the Consent Decree Library, 601 Pennsylvania Avenue, NW., Washington, DC 20044, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $28.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–19875 Filed 8–19–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 30, 1992, a proposed Consent Decree in *United States* v. *J. B. Stringfellow, Jr. et al.*, Civil Action No. 83–2501 (JMI), was lodged with the United States District Court for the Central District of California. The proposed Consent Decree is the subject of a separate Notice. The Complaint in this action was brought pursuant to, *inter alia*, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.*, to recover costs incurred in connection with remedial activities at the Stringfellow Superfund Site in Riverside, California, and to obtain injunctive relief requiring the defendants to take further remedial actions at the Site.

Pursuant to the proposed Consent Decree that is the subject of this Notice, one defendant in this action, Alcan Aluminum Corporation, will, for four years, pay all direct and indirect costs incurred by the United States in connection with the operation of the Mid-Canyon Pretreatment Plant at the Site. This pretreatment plant is used to treat groundwater extracted from the Site prior to its disposal. The United States will continue to operate the pretreatment plant and will bill Alcan for the costs incurred. This proposed Consent Decree is only a partial settlement and does not effect any release from liability.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. Comments should refer to *United States* v. *J. B. Stringfellow, Jr. et al.*, Civil Action No. 83–2501 (JMI), D.J. Ref. No. 90–11–2–24.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Central District of California, Federal Building, room 7516, 300 North Los Angeles Street, Los Angeles, California; Office of Regional Counsel, Environmental Protection Agency, 75 Hawthorn St., San Francisco, California; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, phone number (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library.

In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the "consent Decree Library."

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–19873 Filed 8–19–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 30, 1992, a proposed Consent Decree in *United States* v. *J.B. Stringfellow, Jr. et al.*, Civil Action No. 83–2501 (JMI), was lodged with the United States District Court for the Central District of California. The proposed Consent Decree is one of two proposed Consent Decrees in this action lodged simultaneously. Each proposed Consent Decree is the subject of a separate Notice. The Complaint in this action was brought pursuant to, *inter alia*, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, to recover costs incurred in connection with remedial activities at the Stringfellow Superfund Site in Riverside, California, and to obtain injunctive relief requireing the defendants to take further remedial action at the Site.

Pursuant to the proposed Consent Decree that is the subject of this Notice, certain defendants will: (1) Reimburse the United States for in excess of $80,000,000 in costs that the United States expended in connection with the Site; (2) design, construct, and demonstrate the effectiveness of remedial actions selected in the most recent Record of Decision for the Site; (3) provide certain routine maintenance and monitoring functions at the Site for a defined period; (4) reimburse the United States for certain future response costs that will be incurred in connection with the Site; and (5) provide support and funding for community relations activities in connection with the Site. This proposed Consent Decree is only a partial settlement and does not effect any release from liability.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. Comments should refer to *United States* v. *J.B. Stringfellow, Jr. et al.*, Civil Action No. 83–2501 (JMI), D.J. Ref. No. 90–11–2–24.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Central District of California, Federal Building, room 7516, 300 North Los Angeles Street, Los Angeles, California; Office of Regional Counsel, Environmental Protection Agency, 75 Hawthorn, St., San Francisco, California; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20004, phone number (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library.

In requesting a copy, please enclose a check in the amount of $49.50 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Vicki A. O'Meara,

Acting Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 92–19872 Filed 8–19–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

Notice is hereby given that a proposed Settlement Agreement and Stipulated Order ("Agreement") in *In re U.E. Systems, Inc., et al.*, No. 91–32791–HCD (Bankr. N.D. Ind.), among the United States, the States of Wisconsin and Indiana, and Debtors Polycast Technology Corp., Uniroyal Adhesives and Sealants Company, Inc., Uniroyal Engineered Products, Inc., and Ensolite, Inc. ("Debtors") was lodged on August 10, 1992 with the United States Bankruptcy Court for the Northern District of Indiana. Under the Agreement, the Debtors agree to an allowed general unsecured claim of $27,775,409 in the Debtors' bankruptcy proceeding for response costs, and, to the extent indicated in the Agreement, natural resource damages, under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, at the following twenty (20) sites: The Alburn Incinerator/American Chemical Services Site in Chicago, Illinois; the American Chemical Service Site in Griffith, Indiana; the Calumet Container Site in Hammond, Indiana; the Douglass Road Landfill Site in Mishawaka, Indiana; the Dunn Landfill/City Disposal Sanitary Landfill Site in Dunn, Wisconsin; the Envirochem Site in Zionsville, Indiana; the Gallups Quarry Site in Plainfield, Connecticut; the Hagen Farm Site in Stoughton, Wisconsin; the I. Jones Site in Ft. Wayne, Indiana, the Midco I and Midco II Sites in Gary, Indiana; the Nascolite Site in Millville, New Jersey; the Ninth Avenue Site in Gary, Indiana; the Northside Sanitary Landfill Site in Zionsville, Indiana; the Solvents Recovery Site in Southington, Connecticut; the Stoughton City Landfill Site in Stoughton, Wisconsin; the Thermo-Chem Site in Muskegon, Michigan; the Verona Wellfield/Thomas Solvent Site in Battle Creek, Michigan; the Wayne Waste Oil/Wayne Reclamation Site in Columbia City, Indiana; and the Cam-Or/Westville Oil Site in Westville, Indiana. The Settlement Agreement also provides that the Debtors' obligations and liabilities arising from prepetition acts, omissions, or conduct of the Debtors or their predecessors at any Additional Sites not owned by the debtors will be discharged under the bankruptcy laws but will be liquidated and satisifed as general unsecured claims if and when the United States undertakes enforcement activities in the ordinary course. Finally, the Settlement Agreement resolves the United States' civil penalty claim under the Clean Air Act against debtor Uniroyal Engineered Products, Inc. for alleged violations of section 113(b) of the Clean Air Act, 42 U.S.C. 7413(b), for alleged emissions of volatile organic compounds from vinyl printers at a facility near Mishawaka, Indiana for an allowed general unsecured claim of $170,000.

The Department of Justice will receive comments relating to the proposed Settlement Agreement and Stipulated Order for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment

and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *In re U.E. Systems, Inc., et al.*, No. 91-32791-HCD (Bankr. N.D. Ind.), D.J. Ref. No. 90-11-2-784. The proposed Settlement Agreement and Stipulated Order may be examined at the Office of the United States Attorney for the Northern District of Indiana, 507 State Street, Hammond, Indiana 46320; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Environmental Enforcement Section Consent Decree Library, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004 (202-347-2072). A copy of the proposed Settlement Agreement and Stipulated Order may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $11.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Vicki A. O'Meara,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92-19871 Filed 8-19-92; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984—Automotive Emissions Cooperative Research Program

Notice is hereby given that, on July 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et al.* ("the Act"), the Automotive Emissions Cooperative Research Program (known as the Auto/Oil Air Quality Improvement Research Program) filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing a change in the membership of the Auto/Oil Air Quality Improvement Research Program. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notifications stated that the following additional party has become an associate member of the Auto/Oil Air Quality Improvement Research Program: Nissan Research & Development Corporation, Ann Arbor, MI.

No other changes have been made in either the membership or the planned activities of the Auto/Oil Air Quality Improvement Research Program.

On October 16, 1989, the Auto/Oil Air Quality Improvement Research Program filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 29, 1989, 54 FR 49122. On June 28, 1990, May 17, 1991, and November 27, 1991, the Auto/Air Quality Improvement Research Program filed additional notifications. The Department published notices in the **Federal Register** in response to these additional notifications on August 8, 1990, 55 FR 32321, June 14, 1991, 56 FR 27539, and January 14, 1992, 57 FR 1492.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-19876 Filed 8-19-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on July 24, 1992, filed a written notification on behalf of Bellcore and Metro Traffic Control Inc. ("Metro Traffic") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objective of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the venture, and its general areas of planned activities are given below.

Bellcore is a Delaware corporation with its principal place of business in Livingston, New Jersey.

Metro Traffic is a Maryland corporation with its principal place of business in Houston, Texas.

Effective on June 15, 1992, Bellcore and Metro Traffic entered into an agreement to engage in cooperative research to explore the technology for personal traffic information services to better understand the application of this technology for the support of such services through exchange and exchange access services, including operation of prototypes for experimental demonstration of such technology.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-19870 Filed 8-19-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984; Hydrocyclone Development Consortium

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Michigan State University, on behalf of the Hydrocyclone Development Consortium (HDC), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on July 14, 1992, disclosing the identities of additional members of the HDC. The written notifications were filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The following are additional parties which have become members of the HDC: Monosep Corporation, Broussard, LA; and the Department of the Navy, Represented by Naval Surface Warfare Center, Carderock Division Annapolis Detachment, Annapolis Laboratory, Annapolis, MD.

No other changes have been made in either the membership or planned activity of the HDC.

On January 17, 1991, the HDC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 14, 1991, 56 FR 6035. The HDC filed additional notifications on May 15, 1991 and May 31, 1991, notice of which the Department published in the **Federal Register** on June 13, 1991, 56 FR 27272, and on July 19, 1991, 56 FR 33307.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-19877 Filed 8-19-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant To the National Cooperative Research Act of 1984; Petrotechnical Open Software Corp.

Notice is hereby given that, on July 20, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional parties have become new, non-voting members of POSC: Stanford University, Department of Geophysics, Stanford, CA; Petrospec Computer Corporation, Richardson, TX; Amoco Production Company, Houston, TX; Dwight's Energydata, Inc., Richardson, TX; The Petroleum Science and Technology Institute, Edinburgh, Scotland; KAPPA Engineering, S.A., Paris, France; and Telesoft, CUI Division, San Diego, CA.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991, 56 FR 5021. On April 12, 1991, July 19, 1991, October 21, 1991, January 21, 1992, and April 14, 1992, POSC filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on May 7, 1991, 56 FR 21176, August 13, 1991, 56 FR 38465, November 14, 1991, 56 FR 57902, March 25, 1992, 57 FR 10383, and May 7, 1992, 57 FR 19646, respectively.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-19869 Filed 8-19-92; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting

ACTION: Notice of meeting.

SUMMARY: The National Commission on Migrant Education will hold its 21st meeting on Monday, August 24, 1992, during a conference call between Commission members and staff. The Commission was established by Public Law 100-297, April 28, 1988.

DATE, TIME, AND PLACE: Monday, August 24, 1992, beginning at 4:30 p.m., 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

STATUS: Open to the public. Audio equipment provided for public attendance. Limited seating available.

AGENDA: Discussion of draft chapter.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Skiles (301) 492-5336, National Commission on Migrant Education, 8120 Woodmont Avenue, Fifth Floor, Bethesda, Maryland 20814.

Note: In order to meet the deadlines required for finalizing the Commission's final report, scheduling of this meeting to allow for the 15-day publication of the notice was not possible.

Linda Chavez,

Chairman.

[FR Doc. 92-19930 Filed 8-19-92; 8:45 am]

BILLING CODE 6820-DE-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506:

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone 202/786-0322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on 202/786-0282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated September 9, 1991, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of title 5, United States Code.

1. *Date:* September 9, 1992.
Time: 9 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review NEH/Reader's Digest Teacher/Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1993.

2. *Date:* September 15, 1992.
Time: 9 a.m. to 5 p.m.
Room: M-14.
Program: This meeting will review applications for NEH/Reader's Digest Teacher/Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1993.

3. *Date:* September 18, 1992.
Time: 9 a.m. to 5 p.m.
Room: M-14.
Program: This meeting will review applications for NEH/Reader's Digest Teacher/Scholar Program for Elementary and Secondary School Teachers, submitted to the Division of Education Programs, for projects beginning after September 1, 1993.

4. *Date:* September 18, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1993.

5. *Date:* September 21, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1993.

6. *Date:* September 22, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for United States Newspaper Projects, submitted to the Division of Preservation and Access, for projects beginning after January 1, 1993.

7. *Date:* September 24-25, 1992.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications in Preservation and Access Projects, submitted to the Division of

Preservation and Access, for projects beginning after January 1, 1993.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 92-19829 Filed 8-19-92; 8:45 am]

BILLING CODE 7536-01-M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Astronomical Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: September 14, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G St. NW., Washington, DC.

Contact Person: Dr. Benjamin B. Snavely, Program Director, Division of Astronomical Sciences, rm. 615, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone (202) 357-7622.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Date and Time: September 21, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1242, National Science Foundation, 1800 G St. NW., Washington, DC.

Contact Person: Dr. Benjamin B. Snavely, Program Director, Division of Astronomical Sciences, rm. 615, National Science Foundation, 1800 G St., NW., Washington, DC 20550. Telephone: (202) 357-7622.

Agenda: To review and evaluate SBIR proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19852 Filed 8-19-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Computer and Computation Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 9, 1992; 8:30 a.m. to 5 p.m.

Place: Rooms 500 A-D, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Bruce H. Barnes, Deputy Division Director, Computer and Computation Research, Rm. 304, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9747.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19848 Filed 8-19-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Design and Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design and Manufacturing Systems.

Date and Time: September 10, 1992, 8:30 a.m. to 5 p.m. Room 500-D, 1110 Vermont Ave., NW. Washington, DC.

Type of Meeting: Closed.

Contact Person: Drs. Louis A. Martin-Vega and F. Hank Grant, Program Directors, 1800 G St., NW., room 1128, Washington, DC 20550. Telephone: (202) 357-7676.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Small Business Innovation Research Program Solicitation for the Engineering Design, Computer-Integrated Engineering, Production Systems and Operations Research Programs.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19851 Filed 8-19-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Date and Time: September 22, 1992; 8:30 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Drs. Brian J. Clifton and Linton G. Salmon, Program Directors, Division of Electrical and Communications Systems, room 1151, National Science Foundation, 1800 G Street, NW., Washington, DC 20550. Telephone: (202) 357-9618.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Small Business Innovation Research (SBIR) Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19846 Filed 8-19-92; 8:45 am]

BILLING CODE 7555-01-M

Interagency Arctic Research Policy Committee; Meeting; Correction

Federal Register/Vol. 57, No. 153/ Friday, August 7, 1992/Notices/Page 34984/Column 3/*Type of Meeting:* The reason the meeting is closed is corrected to read: Because of the internationally sensitive topic this meeting is closed to the public.

Public Participation: Corrected to read: This committee meeting is not a public hearing and will not receive verbal comments from the public.

Peter E. Wilkniss,

Director, Division of Polar Programs.

[FR Doc. 92-19828 Filed 8-19-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Materials Research; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463 as amended), the National Science Foundation announces the following meetings:

Where and When:

The Conference and Training Center, 1100 Vermont Avenue, NW., Washington, DC 20550.

September 22, 1992 8:30 a.m. to 5 p.m. Rooms 500 A,B,D

September 23, 1992 8:30 a.m. to 5 p.m. Rooms 500 A,B,C,D

September 24, 1992 8:30 a.m. to 5 p.m. Rooms 500 C&D

National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

September 29, 1992 8:30 a.m. to 5 p.m. Room 411

September 30, 1992 8:30 a.m. to 5 p.m. Room 411

Type of Meeting: Closed.

Contact Person: Dr. Robert J. Reynik, Head, Office of Special Programs in Materials, Division of Materials Research, room 408, National Science Foundation, Washington, DC 20550. Telephone (202) 357-9791.

Purpose of Meeting: To provide advice and recommendations concerning support for Small Business Innovation Research (SBIR) Phase I proposals.

Agenda: Evaluate proposals and make award recommendations.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19850 Filed 8-19-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 24-25, 1992; 8:30 a.m., to 5 p.m.

Place: Room 500A, National Science Foundation, 1110 Vermont Ave., NW., Washington DC.

Type of Meeting: Closed.

Contact Person: Drs. Rouben Rostamian, Deborah Lockart and Keith Crank, Division of Mathematical Sciences, rm. 339, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-3686.

Purpose of Meeting: to provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19847 Filed 8-19-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Networking and Communications Research and Infrastructure; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research and Infrastructure.

Date and Time: September 15, 1992; 8:30 a.m. to 5 p.m.

Place: Room 416, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Mr. David A. Staudt, NSFNET Program, National Science Foundation, room 416, Washington, DC 20550 (202 357-9717).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the SBIR Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552(b).(c)(4) and (6) of the Government in the Sunshine Act.

Dated: August 17, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-19849 Filed 8-19-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication Emergency Response Data System Test Program

AGENCY: United States Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a Generic Letter. A generic letter is an NRC document that: (1) Transmits information to and requests that analyses or descriptions of proposed corrective actions or both be submitted by the addressees regarding matters of safety, safeguards, or environmental significance; (2) informs addressees of changes in NRC policy and requirements approved by the Committee to Review Generic Requirements (CRGR), the issuance of a topical report evaluation of a NUREG type of document of interest to them, or changes in NRC administrative procedures; or (3) requests the addressees to submit revised technical specifications or other technical or administrative information which does not involve any physical changes to the facility, but which NRC needs to properly perform its function.

This draft generic letter recommends a schedule to addresses for efficiently accomplishing the presently required quarterly testing of the Emergency Response Data System (ERDS), using available telephone lines.

The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter presented under the Supplementary Information heading. The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. Should this generic letter be issued by the NRC, it will become available for public inspection in the Public Document Rooms.

DATES: Comment period expires September 21, 1992. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Submit written comments to Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 am to 4:14 pm, Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John B. Hickman (301) 504-3017.

SUPPLEMENTARY INFORMATION: The proposed generic letter text is given below:

Emergency Response Data System Test Program

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to recommend a schedule to addressees for efficiently accomplishing the presently required quarterly testing of the Emergency Response Data System (ERDS), using available telephone lines. The NRC is also issuing this generic letter to recommend an acceptable testing program to addressees, based on experience of both the industry and the NRC in setting up ERDS.

The Code of Federal Regulations requires each addressee to provide onsite hardware and software for each unit to interface with the NRC ERDS receiving system and to use them in the event of an emergency. Further the Code of Federal Regulations requires testing of the system for each licensed plant; the schedule for testing is quarterly unless otherwise set by the NRC. However, suggestions contained in this generic letter do not constitute NRC requirements.

Background

On August 21, 1989, the NRC issued Generic Letter 89-15, "Emergency Response Data System," to inform licensees and applicants about the voluntary efforts that certain licensees were taking to implement the ERDS and to solicit the participation of all applicable licensees and applicants in the ERDS program. ERDS is a direct near real-time electronic data link between computer data systems used by licensees of operating reactors and the NRC Operations Center upon declaring an emergency classified as an alert or higher.

On October 9, 1990, the NRC published a proposed rule in the **Federal Register** (55 FR 41095) that would require licensees and applicants to participate in the ERDS program and to establish a schedule for its implementation.

On August 13, 1991, after considering public comments on the proposed rule, the NRC published the final rule in the **Federal Register** (56 FR 40178). This final rule amended part 50 of title 10 of the Code of Federal Regulations (10 CFR part 50) to require licensees to provide hardware and software with specific characteristics to interface with the NRC receiving system (10 CFR part 50, appendix E, section VI, paragraph 2). The amended part 50 also requires licensees to test, maintain, and implement the ERDS (10 CFR part 50, appendix E, section VI, paragraphs 1, 3, and 4, respectively). Finally, the amended part 50 requires licensees to activate the ERDS in the event of an emergency, classified as an alert or higher (10 CFR 50.72(a)(4)).

The program that has been followed by industry for the past several years in setting up the ERDS system is documented in "Emergency Response Data System (ERDS) Implementation," NUREG-1394, Revision 1, June 1991. This document is referenced in a footnote of 10 CFR part 50, appendix E, section VI. The staff's recommendations in this generic letter are based on this experience.

Requested Actions

This generic letter is addressed to all the facilities for which the final rule applies. This includes all licensed nuclear power reactor facilities, except Big Rock Point (which is exempt because its computer system does not have a sufficient number of parameters available for effective participation in the ERDS program) and those that are permanently or indefinitely shut down (10 CFR part 50, appendix E, section VI, paragraph 2).

Because the NRC can connect up to three plants simultaneously for testing ERDS, the NRC staff has developed a schedule (Enclosure 1) to test efficiently. The NRC recommends, but does not require, that each addressee follow this schedule. The addressee should arrange ERDS testing with the NRC Operations Center at (301) 492-4102. A test monitor person will be available between 8 a.m. and 4 p.m. eastern time on days scheduled for testing. The schedule is arranged by weeks of a calendar quarter, with the first week of a quarter taken to be the first entire work week (Monday to Friday) of the quarter. Scheduled test days that fall on Federal holidays will be rescheduled to Friday of the same week.

Based on experience of both the industry and the NRC, the NRC staff has developed a testing program that would demonstrate acceptable operation of ERDS. The NRC recommends, but does not require, that each addressee use this testing program. The program consists of demonstrating the ability to (1) establish a link with ERDS, (2) transmit all parameters in the plant's ERDS database for 2 hours while meeting the requirements of the final rule, (3) reconnect with ERDS upon a loss of telephone connection, and (4) terminate the ERDS link.

If an addressee chooses to test the ERDS in a different manner, the addressee should document and retain in appropriate plant records a justification that the alternative program satisfies the final rule.

Reporting Requirements

The NRC will record the results of each test in the NRC Operations Center. Following each test, the NRC will review the transmitted data and inform the licensee of any testing anomalies noted. The NRC does not expect applicable licensees and applicants to submit any report after a test. No written reply is required in response to this generic letter.

Backfit Discussion

The final rule requires each licensee and applicant to test the ERDS each quarter. In this generic letter, the staff recommends but does not require (or seek to impose) an ERDS testing schedule and procedure to implement the testing required by the rule. Because the staff recommendations are voluntary in nature, this action is not considered to be a backfit under NRC procedures. The recommended test schedule is designed to efficiently use limited facilities at the NRC Operations Center. The recommended elements of the testing program are based on the experience of both industry and the NRC in setting up the ERDS system during the past several years, as documented in NUREG-1394, Revision 1. The recommended program will enable the licensee or applicant to successfully test the ERDS with a minimum of inconvenience and yet with sufficient detail to ensure satisfactory performance of ERDS.

* * * * *

Dated at Rockville, Maryland, this 13th day of August 1992.

For the Nuclear Regulatory Commission.

Richard J. Barrett,

Director, Project Directorate III-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-19684 Filed 8-11-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published July 24, 1992 (57 FR 33024). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the September 1992 ACRS and ACNW full Committee meetings can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committees (telephone: 301/492-4600 (recording) or 301/492-7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 a.m., Eastern Time.

ACRS Subcommittee Meetings

Computers in Nuclear Power Plant Operations

August 20-21, 1992, Bethesda, MD. The Subcommittee will continue its review of hardware and software issues for digital Instrumentation and Control (I&C) systems. National experts will discuss software design concepts including safety, reliability, fault-tolerance, formal methods, and verification and validation.

Plant Operations

September 9, 1992, Bethesda, MD. The Subcommittee will continue its review of the NRC staff and industry programs to address the issue of risk from low power/shutdown operations at U.S. nuclear power plants.

Planning and Procedures

September 9, 1992, Bethesda, MD (3 p.m.-5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Joint Thermal Hydraulic Phenomena/ Core Performance

September 15, 1992, Bethesda, MD. The Subcommittees will continue their review of the issues pertaining to BWR core power stability, including the NRC staff's proposed resolution approach for this matter.

Joint Plan License Renewal/Reliability and Quality

September 16, 1992 (8:30 a.m.-12 Noon), Bethesda, MD. The Subcommittee will review the proposed Branch Technical Position on Equipment Qualification for Plant License Renewal.

Computers in Nuclear Power Plant Operations

September 22, 1992, Bethesda, MD. The Subcommittee will host a special international meeting to hear directly from manufacturers in Germany, France, Japan, U.K., Sweden, and Canada about advanced developments in digital I&C systems.

Advanced Boiling Water Reactors

September 23-24, 1992, Bethesda, MD. The Subcommittee will begin its review of the Final Safety Evaluation Report (FSER) for the GE ABWR design, certain other GE and staff licensing documents, and the remainder of the Standard Safety Analysis Report (SSAR) submittals.

Maintenance Practices and Procedures

October 6, 1992, Bethesda, MD. The Subcommittee will discuss the Nuclear Management and Resources Council (NUMARC) maintenance guidance document and the NRC regulatory analysis.

Advanced Pressurized Water Reactors

October 7, 1992, Bethesda, MD. The Subcommittee will continue its review of the ABB CE System 80+ Design Certification. Topics being proposed for discussion include: Engineered Safety Feature Systems; and incorporation of the requirements resulting from the resolution of USIs and GSIs into the System 80+ design.

Planning and Procedures

October 7, 1992, Bethesda, MD. (3 p.m.-5:30 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors

October 21-22, 1992, Bethesda, MD. The Subcommittee will continue its review of the Final Safety Evaluation Report (FSER) for the GE ABWR design and the remainder of the SSAR submittals.

Planning and Procedures

November 4, 1992, Bethesda, MD (1 p.m.-4 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors

November 18, 1992, Bethesda, MD. The Subcommittee will review Supplement 1 to the Final Safety Evaluation Report (FSER) for the ABWR design and any residual issues.

Planning and Procedures

December 9, 1992, Bethesda, MD (1 p.m.–4 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed. Portions of this meeting will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

ACRS Full Committee Meetings

389th ACRS Meeting

September 10–12, 1992, Bethesda, MD. Items are tentatively scheduled.

A. Pilgrim Nuclear Station, Emergency Planning/Response

Briefing by representatives of the NRC staff regarding results of the emergency response plan demonstration at this facility. Representatives of the licensee and cognizant state and federal agencies will participate as appropriate.

B. Meeting with Director, NRC Office of Nuclear Reactor Regulation (NRR)

Briefing by and discussion with the Director, Office Nuclear Reactor Regulation, regarding items of current interest, including the basis for NRR staff action regarding the FitzPatrick nuclear plant individual plant examination (IPE), scheduling and conduct of team inspections taking into account findings of the NRC Regulatory Impact Survey, the NRC staff's planned use of PRA in the formulation and implementation of the maintenance rules, and the policy implications of the NRC staff decision on use of Bayseian statistical methodology in evaluation of the Watts Bar nuclear plant quality assurance records.

C. Insights from Common Mode Failure Events

Briefing by representatives of the NRC staff (Office for Analysis & Evaluation of Operational Data) on insights obtained from selected common mode failure events. Representatives of the nuclear industry will participate as appropriate.

D. Prioritization of Generic Safety Issues

Briefing by and discussion with representatives of the NRC staff regarding prioritization of generic safety issues. Representatives of the nuclear industry will participate as appropriate.

E. Environmental Qualification of Safety-Grade Digital Computerized Safety and Control System

Briefing by and discussion with representatives of the NRC staff regarding the status of research on environmental qualification of safety-grade digital computerized safety and control systems. Representatives of the nuclear industry will participate as appropriate.

F. Use of PRA in the Regulatory Process

Briefing by representatives of the NRC staff regarding use of PRA in the regulatory process.

G. Evaluation of Shutdown and Low-Power Operations Risk Issues

Review and report on NRC staff evaluation of nuclear power plant risk during shutdown and low-power operations. Representatives of the nuclear industry will participate as appropriate.

H. Regulatory Impact on Nuclear Power Plant Safety

Briefing by and discussion with Nuclear Management and Resources Council (NUMARC) representatives regarding the impact of regulatory activities on the safety of nuclear power plant operations.

I. Meeting with NRC Commissioners

Meeting with NRC Commissioners to discuss matters of mutual interest, including the status of ACRS reviews on advanced reactor designs, use of design acceptance criteria (DAC) and inspections, tests, analyses and acceptance criteria (ITTAC) in the certification process, safety goal policy implementation, and the impact of the regulatory process on reactor safety.

**J. GE Nuclear Energy's Generic Power Uprate Program/Enrico Fermi Nuclear Power Plant, Unit 2 Proposed Power Increase*

Review and comment on GE Nuclear Energy's generic program in support of power level increases for GE BWRs and on the request for a power level increase for this nuclear plant. Representatives of the NRC staff, GE Nuclear Energy, and the licensee will participate as appropriate. Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

K. Policy Issues for Certification of Evolutionary and Passive LWR Nuclear Plants

Review and report on policy issues identified by the NRC staff which are applicable to the certification of evolutionary and passive LWR nuclear power plants. Representatives of the NRC staff and the nuclear industry will participate as appropriate.

L. Implementation of the NRC Safety Goal Policy

Discuss the ACRS plans for regulatory use of the NRC Safety Goal Policy.

M. Future Activities

Discuss topics proposed for consideration by the full Committee.

**N. Appointment of New Members*

Discuss the status of appointment of new members and qualifications of candidates nominated for consideration. Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

**O. ACRS Practices and Procedures*

Discuss procedures for the conduct of Committee business and its impact on the activities of members. Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

P. Miscellaneous

Discuss administrative matters related to Committee activities and items that were not completed at previous meetings as time and availability of information permit.

390th ACRS Meeting

October 8–10, 1992, Bethesda, MD. Agenda to be announced.

391st ACRS Meeting

November 5–7, 1992, Bethesda, MD. Agenda to be announced.

392nd ACRS Meeting

December 10–12, 1992, Bethesda, MD. Agenda to be announced.

ACNW Full Committee and Working Group Meetings

46th ACNW Meeting

August 13–14, 1992, Bethesda, MD—Deferred until September 23–25, 1992.

46th ACNW Meeting

September 23 (1 p.m.), 24–25 (8:30 a.m.), 1992, Bethesda, MD—Items are tentatively scheduled.

A. Discussion with Dr. David Brown, Connecticut Department of Health Services. Role and perspectives of a state department of health regarding the siting of a LLW disposal facility.

B. Prepare the next four-month plan of ACNW activities.

C. Discuss with EPA representatives results of the EPA's Science Advisory Board's recent consideration of C–14 release limits from a high-level waste repository.

D. Continue to prepare a response to a supplemental request from Chairman Selin made on April 24, 1992, on a systems analysis approach to reviewing the overall high-level waste program.

E. Discussion with and progress report by the NRC's Division of Low-Level Waste Management on the Site Decommissioning Management Plan (SDMP) list. Generic objectives and examples will be considered.

F. Hear a briefing on plans for an enhanced participatory rulemaking process on the radiological criteria for decommissioning (tentative).

G. Review a proposed regulatory guide on 10 CFR part 20, ALARA criteria for material licensees.

H. Discuss anticipated and proposed Committee activities, future meeting agenda, administrative, and organizational matters, as appropriate. Also, discuss matters and specific issues that were not completed during previous meetings as time and availability of information permit.

ACNW Working Group on Potential for Presence of Natural Resources at a High-Level Waste Repository Site

October 20, 1992, St. Tropez Hotel, Las Vegas, NV. The Working Group will discuss methodologies for the assessment of the potential for the presence of significant natural resources at the proposed high-level waste repository site at Yucca Mountain. The relationship between future exploration for such resources and the potential for human intrusion will be emphasized.

47th ACNW Meeting

October 21, 1992, St. Tropez Hotel, Las Vegas, NV—Agenda to be announced.

48th ACNW Meeting

November 16–17, 1992, Bethesda, MD—Agenda to be announced.

ACNW Working Group on the Impact of Long-Range Climate Change in the Area of the Southern Basin and Range

November 18, 1992, Bethesda, MD. The Working Group will discuss the historical evidence and the potential for climate changes in the Southern Basin and Range and the impact of climate change on natural processes affecting the performance of the proposed high-level waste repository at Yucca Mountain.

ACNW Working Group on Performance Assessment

December 16, 1992, Bethesda, MD. The Working Group will hear a briefing by DOE representatives regarding the status of the DOE's Total System Performance Assessment. Also, this Group will discuss the progress of Phase 2 of the HLW Iterative Performance Assessment effort by NRC.

49th ACNW Meeting

December 17–18, 1992, Bethesda, MD—Agenda to be announced.

Dated: August 14, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92–19886 Filed 8–19–92; 8:45 am]

BILLING CODE 7590–01–M

All Light Water Reactors; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received a letter to NRC Chairman Ivan Selin, dated July 21, 1992, from Ernest C. Hadley, on behalf of We The People, Inc., and Mr. Paul Blanch (Petitioners). The Petitioners request "immediate shutdown of any reactor (boiling water reactor (BWR) and pressurized water reactor (PWR)) that cannot affirmatively demonstrate that it has operable condensate pots or has in place an adequate backup system that will accurately measure the water level in the reactor core in the event of a mishap." The Commission is treating the letter as a Petition requesting action under 10 CFR 2.206.

The Petitioners allege that many reactor licensees rely on condensate pots as part of reactor vessel instrumentation to monitor core coolant level; that many of these licensees have no alternative means to monitor coolant level; that gases in the condensate pot will be absorbed in the reference leg over time; that when pressure is rapidly released during an accident, a large amount of liquid is pushed out of the reference leg, causing a significant decrease in reference leg level and a false high coolant level indication; that for most boiling water reactors (BWRs), the false indication would effectively defeat many safety systems and emergency core cooling systems; that operators have not been trained to deal with the false indications; and that, in an accident, operators would be unable to accurately assess core coolant level because of the above. Moreover, the Petitioners assert that Rosemount transmitters, which are commonly relied on as part of coolant level monitoring systems, are highly unreliable, and that their interaction with "the condensate pot problem" greatly increases the risk of a serious accident.

On the basis of these allegations, the Petitioners request that the NRC order the immediate shutdown of any reactor whose licensee cannot affirmatively demonstrate that it has operable condensate pots or has in place an adequate backup system that will accurately measure the water level in the core in case of a mishap.

The Petition was referred to the Director of the Office of Nuclear Reactor Regulation for the preparation of a response. By letter dated August 11, 1992, the Petitioners' request for immediate action regarding BWR and PWR shutdown was denied. As provided by 10 CFR 2.206, appropriate action with regard to the specific issues raised in the Petition will be taken within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 11th day of August 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92–19883 Filed 8–19–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–528, 50–529 and 50–530]

Arizona Public Service Co. et al., Palo Verde Nuclear Generating Station; Issuance of Director's Decision (DD–92–4) Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Final Director's Decision concerning a Petition dated May 22, 1990, filed by Mr. David K. Colapinto, Esq., on behalf of Mrs. Linda E. Mitchell. The Petition alleged safety violations regarding fire protection at the Palo Verde Nuclear Generating Station (Palo Verde) of the Arizona Public Service Company (APS). The Petition also presented numerous allegations that APS and U.S. Nuclear Regulatory Commission (NRC) personnel were involved in wrongdoing regarding possible violations of NRC requirements for fire protection and emergency lighting at Palo Verde. Based on the allegations, Petitioner requested a variety of relief including institution of a proceeding pursuant to 10 CFR 2.202 to

modify, suspend, or revoke the licenses issued by the NRC to Palo Verde; issuance of citations to the Licensee for violations deleted from an NRC inspection report; issuance of fines to APS and named employees of the Licensee for impeding an NRC inspection; disciplinary action against NRC employees allegedly involved in retaliation against an NRC inspector; and such other relief as the NRC may deem appropriate.

On June 21, 1990, the Director, Office of Nuclear Reactor Regulation (NRR) acknowledged receiving the Petition. The Director informed Mr. Colapinto that the Petition would be treated under 10 CFR 2.206 and that appropriate action would be taken in a reasonable time.

On October 31, 1990, the Director of NRR issued a Partial Director's Decision on the technical aspects of the Petitioner's concerns regarding fire protection and emergency lighting. For the reasons set forth in the Partial Director's Decision, Petitioner's request to institute a proceeding pursuant to 10 CFR 2.202 with respect to the safety issues raised in the Petition regarding fire protection and emergency lighting was denied.

The Director of NRR has now determined that the portion of Petitioner's request dealing with wrongdoing by Licensee personnel should be denied for the reasons set forth in the "Final Director's Decision Under 10 CFR 2.206 (DD-92-4). This document is available for inspection and copying in the Commission's Public Document Room, Gelman Building, 2121 L Street, NW., Washington, DC 20555 and at the local public document room located in the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

A copy of the Final Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided in 10 CFR 2.206(c), the Final Director's Decision will become the final action of the Commission 25 days after issuance unless the Commission on its own motion institutes review of the Decision within that time.

Dated at Rockville, Maryland this 12th day of August, 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-19882 Filed 8-19-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443]

North Atlantic Energy Service Corp.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-86, issued to the North Atlantic Energy Service Corporation (the licensee), for operation of the Seabrook Station located in Rockingham County, New Hampshire.

The proposed amendment would change the provisions of Seabrook Station Technical specification Surveillance Requirement 4.3.1.1. to delay the performance of one aspect of the trip actuating device operational test (TADOT) for the manual reactor trip function until no later than startup from the first planned or unplanned shutdown, to MODE 3 or lower, occurring after July 30, 1992. The licensee feels that it would be imprudent to conduct a complex surveillance test procedure with its attendant trip potential while operational. It is proposed to issue this amendment on an exigent basis under 10 CFR 50.91(a)(6). The proposed Technical Specification change eliminates the need to initiate a plant shutdown to Mode 3 to perform the one aspect of surveillance testing. The licensee plans to perform the entire surveillance test during its next refueling outage now scheduled to begin in September 1992.

The licensee's independent safety engineering group identified a potential testing inadequacy for the reactor trip breakers and reactor trip bypass breakers on July 28, 1992. Seabrook's management was apprised of this and on July 29, 1992, concluded that Seabrook's trip breaker testing had not been performed in compliance with all aspects of Seabrook's Technical Specifications. This determination was immediately discussed with NRC staff via a conference call, and on July 30, 1992, a temporary waiver of compliance (TWOC) was granted. On July 31, 1992, the NRC requested the licensee to submit a request for a Technical Specification amendment to support the TWOC, and the licensee's request was filed on August 3, 1992.

Accordingly, the Commission finds that exigent circumstances exist, and that the licensee did not act to create the exigency. Any comments on the proposed action are due within fifteen (15) days after the date of publication of this notice.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards considerations. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed temporary waiver of compliance does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Although the surveillance test did not adequately test one aspect of the manual reactor trip function, there is no reason to believe that based on the preoperational and surveillance testing performed, that any element of the manual trip function is not functional. If for some reason manual actuation of the shunt trip failed to operate, the diversity and redundancy of the reactor protection system would still enable it to perform its design function. Therefore, since the response of the plant to an accident is unchanged there is no significant increase in either the probability or consequences of an accident previously evaluated as a result of this temporary waiver of compliance.

2. The proposed temporary waiver of compliance will not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed temporary waiver of compliance does not affect the operation or response of any plant equipment or introduce any new failure mechanisms. Therefore, the previous accident analyses are unchanged and bound all expected plant transients and there are no new or different accident scenarios introduced.

3. The proposed temporary waiver of compliance will not involve a significant reduction in a margin of safety.

The proposed temporary waiver of compliance will not reduce the margin of safety defined in the BASES of any Technical Specification. The BASES of Technical Specification 3.3[.]1, Reactor Trip System Instrumentation states in part that operability of the reactor trip system ensures that a reactor trip will occur when needed. The reactor trip system possesses several diverse and independent features which enable it to shutdown the reactor on demand. The operation of any of these features demonstrates that the reactor protection system in capable of performing its safety function. Therefore, the assumptions in the BASES of Technical Specifications are not affected and the proposed temporary waiver of compliance will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of the **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 21, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a part in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, 20555 and at the local public document room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner is aware on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30 days, the Commission will make a final determination on the issue of no significant hazards considerations. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards considerations, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards considerations. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC

20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Victor Nerses: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston, Massachusetts 02110–2624, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment, dated July 30, 1992, as supplemented August 3, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 13th day of August 1992.

For the Nuclear Regulatory Commission.

Gordon Edison,

Senior Project Manager.

Project Directorate I–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–19885 Filed 8–19–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–77]

Catholic University of America; Proposed Issuance of Orders Approving Decommissioning Plan, Authorizing Decommissioning and Terminating Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of Orders authorizing the Catholic University of America (CUA or the licensee) to dismantle the CUA AGN–201 reactor facility, dispose of the component parts, and to terminate Possession Only License No. R–31, in accordance with the licensee's application dated February 6, 1992.

The first of these Orders would be issued following the Commission's review and approval of the licensee's plan for decontamination of the facility and disposal of the radioactive components, or some alternate disposition plan for the facility. This Order would authorize implementation of the approved plan. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue a second Order terminating the facility license and any further NRC jurisdiction over the facility. Prior to issuance of each Order, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 21, 1992, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such as amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matter within the scope of the orders under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to a least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; Catholic University of America; and publication date and page of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Dr. Warren E. Keene, Reactor Administrator, Department of Nuclear Science and Engineering, The Catholic University of America, 620 Michigan Avenue, NE., Washington, DC 20064.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated February 6, 1992. This document is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 14th day of August 1992.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–19881 Filed 8–19–92; 8:45 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: Valerie Settles, Management Services, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; Telephone (202) 336–8554.

OMB Reviewer: Lin Lui, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7340.

Summary of Form Under Review

Type of Request: Extension.

Title: Project Information Report.

Form Number: OPIC–71 (OMB No. 3420–0004).

Frequency of Use: On Occasion—a function of the sampling criteria.

Type of Respondent: Business or other instructions (except farms).

Standard Industrial Classification Codes: All.

Description of Affected Public: Business and other institutions.

Number of Responses: 25 per year.

Reporting Hours: 5 hours per application.

Authority for Information Collection: Section 231(k)(2) [Title 22 U.S.C. 2191(k)(2)] and 239(h) [Title 22 U.S.C. 2199(h)] of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Project Information Report is necessary to elicit and record the information on the developmental, environmental, and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects and reporting the results, as required by Congress, in aggregate form.

Dated: August 14, 1992.

James R. Offutt,

Office of the General Counsel.

[FR Doc. 92–19899 Filed 8–19–92; 8:45 am]

BILLING CODE 3210–01–M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, September 15–16, 1992, at the Madison Hotel, 15th & M Streets, NW., Washington, DC.

The full Commission will convene on Tuesday at 9 a.m. until 5 p.m., and on Wednesday from 9 a.m. to 12 noon, in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 92–19910 Filed 8–19–92; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31039; File No. SR–AMEX–92–18]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Portfolio Depositary Receipts

August 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 22, 1992,[1] the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to adopt new Rules 1000 *et seq.* relating to Exchange listing and trading of Portfolio Depository Receipts ("PDRs"), which are

[1] The AMEX originally submitted its filing on June 5, 1992. On July 22, 1992, the AMEX submitted an amendment to its filing. These amendments are incorporated in this notice.

securities based on a unit investment trust operating on an open-end basis and holding a portfolio of securities.

The text of the proposed rule change is available at the Office of the Secretary, AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Portfolio depository receipts. The Exchange proposes to add new Rules 1000 *et seq.* to accommodate trading on the Exchange of PDRs, securities which are interests in a unit investment trust ("Trust") operating on an open-end basis and that holds a portfolio of securities. The Trust sponsor ("Sponsor") will be PDR Services Corporation, a wholly-owned subsidiary of the AMEX.[2] Each Trust will provide investors with an instrument that closely tracks the underlying securities portfolio, that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the Trust prospectus. The Exchange expects that the first Trust to be formed in connection with the issuance of PDRs will be based on the Standard & Poor's ("S&P") 500 Composite Stock Price Index ("S&P 500 Index") and will be known as S&P Depository Receipts ("SPDRs").[3] The terms of the SPDR Trust will be 25 years from the date of initial issuance, and will terminate at the end of that period.[4]

The Sponsor will enter into a trust agreement with a trustee in accordance with section 26 of the Investment Company Act of 1940 ("40 Act"). PDR Distributors, Inc. ("Distributor") will act as the underwriter of SPDRs on an agency basis. All orders to create SPDRs in Creation Unit [5] size aggregations must be placed with the Distributor, and it will be the responsibility of the Distributor to transmit such orders to the Trustee. The Distributor is a corporation organized in 1991 under the laws of the State of Delaware and is located at 6 St. James Avenue, Boston, MA 02116. The Distributor is a registered broker-dealer, a member of the National Association of Securities Dealers, Inc. ("NASD"), and a wholly-owned subsidiary of Signature Financial Group, Inc.

Payment with respect to creation orders placed through the Distributor will be made by (1) the "in-kind" deposit with the Trustee of a specified portfolio of securities that is formulated to mirror, to the extent practicable, the component securities of the underlying index or portfolio, and (2) a cash payment sufficient to enable the Trustee to make a distribution to the holders of beneficial interests in the Trust on the next dividend payment date as if all the securities had been held for the entire accumulation period for the distribution ("Dividend Equivalent Payment"), subject to the certain specified adjustments (*see* "Distributions" below). The securities and cash accepted by the Trustee are referred to, in the aggregate, as a "Portfolio Deposit."

Issuance of portfolio depositary receipts. Upon receipt of a Portfolio Deposit, in payment for a creation order placed through the Distributor as described above, the Trustee will issue a specified number of PDRs, which in the aggregate is referred to as a "Creation Unit." The Exchange anticipates that, with respect to SPDRs, a Creation Unit will consist of 50,000 SPDRs.[6] Individual PDRs can then be traded in the secondary market like any other equity security.[7] It is expected that Portfolio Deposits will be made by institutional investors and by institutional arbitrageurs.

To maintain the correlation between the portfolio of securities held in the Trust and that of the underlying index, it is anticipated that the composition of the Portfolio Deposits will be adjusted by the Trustee from time to time to conform to changes to the index made by the organization that compiles and maintains such index (in the case of the S&P 500 Index, for example, S&P Corporation). The Trustee will aggregate certain of these adjustments and make periodic conforming changes to the Trust securities.

It is expected that the Trustee or Sponsor will make available (a) on a daily basis a list of the names and required number of shares for each of the securities in the current Portfolio Deposit; (b) on a minute-by-minute basis throughout the day a number representing the value (on a per PDR basis) of the securities portion of a Portfolio Deposit; and (c) on a daily basis, the accumulated dividends, less expenses, per outstanding PDR.

Transactions in PDRs may be effected on the Exchange until 4:15 p.m. New York time each business day.

Redemption. PDRs in Creation Unit size aggregations will be redeemable in kind by tendering them to the Trustee. While holders may sell PDRs in the secondary market at any time, they must accumulate a specific minimum number of PDRs (*i.e.*, for the SPDR Trust, 50,000 SPDRs, or multiples thereof) in order to redeem through the Trust. PDRs will remain outstanding until redeemed or until the termination of the Trust. Creation Units will be redeemable on any business day in exchange for a portfolio of the securities held by the Trust identical in weighting and composition to the securities portion of a Portfolio Deposit in effect on the date request is made for redemption, together with a "Cash Component" (as defined in the Trust prospectus), including accumulated dividends, less expenses, through the date of redemption. The number of shares of each of the securities transferred to the redeeming holder will be the number of shares of each of the component stocks in a Portfolio Deposit on the day the redemption notice is received by the Trustee, multiplied by the number of Creation Units being redeemed. Nominal service fees will be charged in connection with the creation and redemption of Creation Units. The Trustee will cancel all tendered Creation Units upon redemption.

Distributions. The PDR Trusts will pay dividends periodically (*e.g.*, quarterly) and, with respect to the SPDR Trust, it is expected that the regular quarterly ex-dividend date for PDRs will be the third Friday in March, June, September and December, unless such day is a New York Stock Exchange, Inc. ("NYSE") holiday, in which case the ex-dividend date will be the preceding Thursday ("ex-dividend date"). Holders of PDRs on the business day preceding the ex-dividend date will be entitled to receive an amount representing dividends accumulated through the quarterly dividend period preceding such ex-dividend date net of fees and expenses for such period. The payment of dividend will be made on the last Exchange business day in the calendar month following the ex-dividend date ("Dividend Payment Date"). On the Dividend Payment Date, dividends payable for those securities with ex-dividend dates falling within the period from the ex-dividend date most recently preceding the current ex-dividend date through the business day preceding the current ex-dividend date will be distributed.[8] The Trustee will compute on a daily basis the dividends accumulated within each quarterly dividend period. Dividend payments will be made through DTC and its participants to all such holders with funds received from the Trustee. The PDRs will be registered in book entry form only, which records will be kept by DTC.

Criteria for initial and continued listing. Because of the open-end nature of the Trust upon which a series of PDRs is based, the Exchange believes it is necessary to maintain appropriate flexibility in connection with listing a specific Trust. In connection with initial listing, the Exchange proposes that, for each Trust, the Exchange will establish a minimum number of PDRs required to be outstanding at the time of commencement of Exchange trading, and such minimum number will be filed with the Commission in connection with any required submission under Rule 19b–4 for each Trust. For SPDRs, it is anticipated that a minimum of 150,000 SPDRs (*i.e.*, three Creation Units of 50,000 SPDRs each) will be required to be outstanding when trading begins.

Because the Trust operates on an open-end basis, and because the number of holders is subject to substantial fluctuations depending on market conditions, the Exchange believes it would be inappropriate and burdensome on PDR holders to consider suspending trading in or delisting a series of PDRs, with the consequent termination of the Trust, unless the number of holders remains severely depressed during an extended time period. Therefore, following twelve months from the formation of a Trust and commencement of Exchange trading, the Exchange will consider suspension of trading in, or removal from listing of, a Trust when, it its opinion, further dealing in such securities appears unwarranted under the following circumstances:

(a) If the Trust on which the PDRs are based has more than 60 days remaining until termination and there have been fewer than 50 record and/or beneficial holders of the PDRs for 30 or more consecutive trading days; or

(b) If the index on which the Trust is based is no longer calculated; or

(c) If such other event shall occur or condition exists which, in the opinion of the Exchange, makes further dealings on the Exchange inadvisable.

A Trust shall terminate upon removal from Exchange listing and its PDRs redeemed in accordance with provisions of the Trust prospectus. A Trust may also terminate under such other conditions as may be set forth in the Trust prospectus. For example, the Sponsor, following notice to PDR holders, shall have discretion to direct that the Trust be terminated if the value of securities in such Trust falls below a specified amount. The SPDR Trust will also terminate if the license agreement with S&P Corporation terminates.[9]

Trading halts. Prior to commencement of trading in PDRs, the Exchange will issue a circular to members informing them of Exchange policies regarding trading halts in such securities. The circular will make clear that, in addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Exchange Rule 918C(b) in exercising its discretion to halt or suspend trading. For a Trust based on an index, these factors would include whether trading has been halted or suspended in the primary market(s) for any combination of underlying stocks accounting for 20% or more of the applicable current index group value; or whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

According to AMEX, SPDR trading would be halted (along with other securities on the Exchange) if the circuit breaker parameters under AMEX Rule 117 have been reached. The triggering of futures price limits for the S&P 500, S&P 100 or Major Market Index ("MMI") futures contracts will not, in itself, result in a halt in SPDR trading or a delayed opening. Such an event, however, could be considered by the Exchange, along with other factors, such as a halt in S&P 100 Index Option ("OEX"), S&P 500 Index Option ("SPX"), or the Major Market Index Option ("XMI"), in deciding whether to halt trading in SPDRs or other index-based derivative securities.[10]

Terms and characteristics. The Exchange proposes to require that members and member organizations provide to all purchasers of each series of PDRs a written description of the terms and characteristics of such securities, in a form prepared by the Exchange, not later than the time a confirmation of the first transaction in each series is delivered to such purchaser. The Exchange also proposes to require that such description be included with any sales material on that series of PDRs that is provided to customers or the public. In addition, the

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[2] Portfolio Depository Receipts and PDRs are service marks of PDR Services Corp.

[3] "S&P 500 Composite Stock Price Index," "S&P 500 Index," "Standard & Poor's Depository Receipts" and "SPDRs" are service marks of the Standard & Poor's Corporation. PDRs offered on different indexes will require a Rule 19b–4 filing with the Commission.

[4] The Trust however may be terminated at an earlier time under the following circumstances: (1) Delisting of SPDRs from the AMEX; (2) if the license agreement with S&P is terminated; or (3) if the Trustee, Sponsor, Distributor, Depository Trust Company ("DTC") or the National Securities Clearing Corporation ("NSCC") are unable to perform their respective functions or duties with respect to operation of the Trust and a suitable successor entity is unavailable. In addition, the Sponsor may also terminate the Trust if the Trust net asset value, after six months from inception, falls below $150 million, and after three years from inception, the Trust net asset value falls below $350 million, as adjusted annually for inflation. SPDRs cannot be traded after the termination of the underlying Trust, however, on termination the Trust will be liquidated, and SPDR holders at that time will receive a distribution of their pro rata share of the assets of the Trust, net of certain fees and expenses.

[5] An aggregation of 50,000 SPDRs is referred to as a Creation Unit. SPDRs may be created only in a Creation Unit size aggregation, or multiples thereof.

[6] As of May 1, 1992, the value of an individual SPDR was estimated to be approximately $41.25.

[7] The SPDR Trust, Series I, has filed with the Commission an application seeking, among other things, an order: (1) Permitting secondary market transactions in SPDRs at negotiated prices, rather than at a current public offering price described in the prospectus as required by section 22(d) of the Investment Company Act of 1940 ("'40 Act") and Rule 22c-1;'(2) permitting the sale of SPDRs to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by section 4(3) of the Securities Act of 1933 but may be required according to section 24(d) of the '40 Act for redeemable securities issued by a Unit Investment Trust. These exemptions, if granted, will permit individual SPDRs to be traded in secondary market transactions similar to a closed-end investment company.

[8] Because the Trust intends to qualify for and elect tax treatment as a regulated investment company under the Internal Revenue Code, the Trustee will also be required to make additional distributions to the minimum extent necessary (i) to distribute the entire annual taxable income of the Trust, including any net capital gains (from sales of securities in connection with adjustments to the portfolio of securities held by the Trust, or to generate cash for distributions), and (ii) to avoid imposition of the excise tax imposed by section 4982 of the Internal Revenue Code

[9] *See supra* note 4.

[10] *See* letter from James F. Duffy, Senior Vice President and General Counsel, Legal & Regulatory Policy Division, AMEX, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated July 23, 1992.

Exchange proposes to require that any other written materials provided by a member or member organization to customers or the public making specific reference to a series of PDRs as an investment vehicle must include a statement in substantially the following form: "A circular describing the terms and characteristics of [the series of PDRs] has been prepared by the AMEX and is available from your broker or the Exchange. It is recommended that you obtain and review such circular before purchasing [the series of PDRs]. In addition, upon request you may obtain from your broker a prospectus for [the series of PDRs]." Finally, as noted above, the Exchange requires that members and member organizations provide customers the prospectus for a series of PDRs upon request.

A member or member organization carrying an omnibus account for a non-member broker-dealer is required to inform such non-member that execution of an order to purchase PDRs for such omnibus account will be deemed to constitute an agreement by the non-member to make such written description available to its customers on the same terms as are directly applicable to member and member organizations.

(2) Basis

The AMEX believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest. The Exchange believes that PDRs have the potential to benefit the markets by providing an alternative trading instrument, such as those encouraged by the Division of Market Regulation in its report, "The October 1987 Market Break," that may help temper market volatility and reduce stress on individual index component stocks during unusual market conditions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 10, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19821 Filed 8-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31037; File No. SR-BSE-92-08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by Boston Stock Exchange, Inc. Relating to Specialist Concentration Policy Pilot Program

August 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 7, 1992, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is granting accelerated approval and is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to obtain accelerated effectiveness of a one-year extension of the pilot program concerning the BSE's Specialist Concentration Policy,[3] which will continue to permit the Executive Committee to review proposed specialist combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the BSE's specialist concentration pilot program, which establishes certain standards for reviewing proposed mergers, acquisitions and other combinations between or among specialist units. The pilot program authorizes the Executive Committee of the Board of Governors to review proposed combinations that, in the Exchange's view, may lead to undue concentration within the specialist community.

The Executive Committee ("Committee") reviews any arrangement where previously separate specialist organizations would be operating under common control and would comprise:

(a) 15% or more of the 100 most actively traded Consolidated Tape Association ("CTA") stocks; or,

(b) 15% or more of the second 100 most actively traded CTA stocks; or,

(c) 20% or more of the third 100 most actively traded CTA stocks; or,

(d) 15% or more of all the CTA stocks eligible for trading on the BSE where the Free List contains fewer than 100 issues.[4]

The Executive Committee approves or disapproves the proposed combination based on its assessment of the following considerations:

(a) Specialist performance and market quality in the stocks subject to the proposed combination;

(b) The effects of the proposed combination in terms of the following criteria:

(i) Strengthening the capital base of the resulting specialist organization;

(ii) Minimizing both the potential for financial failure and the negative consequences of any such failure on the specialist system as a whole; and

(iii) Maintaining or increasing operational efficiencies;

(c) Commitment to the Exchange market, focusing on whether the constituent specialist organizations engage in business activities that might detract from the regulating specialist organization's willingness or ability to act to strengthen the Exchange agency/auction market and its competitiveness in relation to other markets; and

(d) The effect of the proposed combination on overall concentration of specialist organizations.

With respect to the criteria relating to the "commitment to the Exchange market," the Executive Committee looks to a variety of factors that extend beyond compliance with the Exchange's requirements for providing sufficient capital, talent and order handling services. For example, the Committee reviews and assesses each constituent unit's past performance on the Exchange relating to such matters as:

—Acceptance and cooperation in the development, implementation and enhancement to the BSE Automated Communications Network ("BEACON");

—Efforts at resolving problems concerning customer orders;

—Willingness to facilitate early openings in order to compete effectively with other exchanges; and

—Willingness to voluntarily provide Execution Guarantees beyond the minimum required under BSE Rule 2039A.

2. Statutory Basis

The basis under the Act for the proposed policy is section 6(b)(5) in that the policy enables the Exchange to monitor the tendencies toward concentration in the specialist community and to intervene to prevent undue concentration, and as such is designed to protect investor and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed policy will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rules Change Received from Members, Participants or Others

Comments have neither been solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-92-08 and should be submitted by September 10, 1992.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the BSE's proposal to extend its pilot program regarding specialist concentration for an additional one-year period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, specifically, section 6 of the Act.[5] The Commission believes it is necessary to extend the pilot program's operation in order to afford both the Exchange and the Commission a further opportunity to evaluate the pilot's operation during the Commission's consideration of permanent approval of the concentration rules. Although the pilot has been in effect since February, 1990, only one proposed combination has triggered a Committee review. Consequently, the Commission believes that the Exchange, in conjunction with the SEC, needs additional time to fully evaluate the operation of the concentration policy and to determine whether the concentration rules are enhancing the quality of markets and improving specialist performance on the BSE. The Commission believes that allowing the Exchange an additional one-year period in which to implement the pilot will enable the Exchange and the Commission to adequately address the effectiveness of the pilot program.

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[1] 15 U.S.C. 78s (b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] On February 7, 1990, the Commission approved, on a six-month pilot basis ending August 7, 1990, a proposed rule change by the BSE to establish procedures for reviewing proposed combinations among specialist units on the Exchange. *See* Securities Exchange Act Release No. 27684 (February 7, 1990), 55 FR 5527 (approving File No. SR-BSE-89-05). The Commission later approved the renewal of the pilot program for an additional one-year period ending August 1, 1991, and a one-year extension ending August 13, 1992. *See* Securities Exchange Act Release Nos. 28327 (August 10, 1990), 55 FR 33794 (File No. SR-BSE-90-11) and 29551 (August 13, 1991), 56 FR 41380 (File No. SR-BSE-91-06).

[4] The Free List is made up of securities which are not registered to certain specialists and can be traded by any specialist.

[5] 15 U.S.C. 78f (1988).

In its prior orders renewing and extending the pilot program,[6] the Commission requested that the BSE develop criteria to evaluate the effects of its concentration rules on the activities of specialists and to determine, for example, whether implementation of these rules is increasing the performance and effectiveness of specialists and aiding in the prevention of undue concentration. Specifically, the Commission requested that the BSE submit a report to the Commission addressing, among other things, the following issues: The number of proposed specialist combinations that have triggered a Committee review since the inception of the pilot program and the circumstances surrounding these reviews; whether the existence of more firms has increased competition among specialists for new stock allocations; whether the concentration rules have increased incentives for quality markets and higher standards for performance; and the impact that the specialist combination rules have had upon the competitive environment necessary to maintain an orderly market.

In response to the Commission's request, the BSE submitted a letter which stated that, as a result of the concentration policy, the Exchange has experienced increased order flow and enhanced competition among specialists and specialist firms for new stock allocations.[7] In its letter, the Exchange also stated that this in turn has resulted in increased incentives for quality markets and higher standards of performance. The BSE letter also states that since the inception of the pilot program, there has been one proposed specialist combination that has triggered Committee review.[8]

During the extended pilot period, as was requested during the prior one-year pilot period, the Commission expects the Exchange to continue to develop criteria to evaluate the effects of its concentration rules on the activities of specialists. In this regard, the Commission expects the BSE to report to the Commission by May 1, 1993, the number of proposed specialist combinations that have triggered a Committee review since the extension of the pilot program and the circumstances surrounding these reviews; whether competition among specialists for new stock allocations has increased, as evidenced by the number of new stock allocations as well as specialists and specialist firms applying for those allocations since the inception of the pilot program; and whether any of the specialist firms that have undergone Executive Committee review have demonstrated an improvement in specialist evaluation results or displayed a higher quality of markets. In addition, the Commission remains interested in whether the BSE believes that the concentration rules have assisted the Exchange in increasing order flow and if so, the reasons for this conclusion, as well as the impact that the specialist combination rules have had upon the competitive environment necessary to maintain an orderly market.[9]

The Commission finds good cause for approving the proposed extension of the specialist concentration pilot program prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the extension of this pilot program furthers the protection of investors and the public interest because it allows the Exchange additional time to evaluate the effectiveness of the pilot program on an uninterrupted basis during the Commission's consideration of the Exchange's request for permanent approval and because the BSE's concentration policy may result in higher quality markets and improved standards for specialist performance. Further, the substance of the proposed rule change has been noticed previously in the **Federal Register** for the full statutory period and the Commission did not receive any comments.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act [10] that the proposed rule change (SR–BSE–92–08) be, and is hereby approved for a period ending August 13, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19822 Filed 8–19–92; 8:45 am]

BILLING CODE 8010–01–M

[6] *See supra*, note 3.

[7] *See* letter from Karen A. Aluise, Staff Attorney, BSE to Mary Revell, Branch Chief, SEC, dated June 1, 1992. The letter did not specify the reasons for these conclusions. *See infra* note. 9.

[8] For a discussion of this proposed combinations, *see* Securities Exchange Act Release No. 29551 (August 13, 1991), 56 FR 41380 (File No. SR–BSE–91–06).

[9] In evaluating the effects of the pilot, the Commission expects the BSE to provide specific data to support its conclusions. For example, the Commission is interested in examining the number of specialists applying for new allocations both before and during the pilot program.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–31038; File No. SR–MSE–92–09]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change of the Midwest Stock Exchange, Incorporated Requesting a Six-Month Extension of the SuperMAX and Enhanced SuperMax Pilot Programs

August 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on August 3, 1992, the Midwest Stock Exchange, Incorporated ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and simultaneously publishing an order granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to extend its SuperMAX and Enhanced SuperMAX pilot programs for an additional six-month period. The SuperMAX program guarantees the execution price of small agency market orders received over the Midwest Automated Execution System ("MAX") at an automatically improved price over the consolidated best bid or offer according to certain pre-defined criteria. The Commission first approved the pilot program for SuperMAX on May 14, 1990.[1] Subsequent extensions were requested and approved. The current extension of the pilot program expires on August 14, 1992.

The enhanced version of SuperMAX ("Enhanced SuperMAX") operates as a separate system and is available to MSE specialists as an addition, or as an alternative, to SuperMAX. The pilot program for the Enhanced version of SuperMAX was first approved on December 10, 1991.[2] One extension was requested and approved. The current extension of the pilot program is set to expire on August 14, 1992.

The MSE proposes to extend the pilot programs for the SuperMAX and the Enhanced SuperMAX systems until February 14, 1993.

[1] See Securities Exchange Act Release No. 28014 (May 14, 1990), 55 FR 20990 (order approving SR–MSE–90–05).

[2] See Securities Exchange Act Release No. 30058 (December 10, 1991), 56 FR 65765 (order approving SR–MSE–92–12).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The six-month extension of the pilot period is sought to allow the Exchange to forward the results of its analysis regarding the effectiveness of both SuperMAX and Enhanced SuperMAX to the Commission. The Exchange will supply the Commission with requested trading data regarding both systems and also will seek to implement the Enhanced version of SuperMAX on a permanent basis in a separate 19b–4 filing.

The proposed rule change is consistent with section 6 of the Securities Exchange Act of 1934 in that it will promote just and equitable principles of trade and will help to perfect the mechanism of free and open markets and a national market system and will foster competition among markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Stock Exchange, Incorporated believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The MSE requests that the Commission find good cause for approving the proposed rule change extending its pilot programs until February 14, 1993, prior to the thirtieth day after publication of the notice in the **Federal Register**. The proposed rule change implementing the pilot programs has been published for comment in the **Federal Register** previously, and there have been no adverse comments on it. The MSE believes it appropriate to approve the extension of the pilot programs so that the Exchange may have additional time to analyze the effectiveness of SuperMAX and Enhanced SuperMAX without any break in operation.

The Commission finds that the proposed rule change extending the pilot programs is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSE and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission finds good cause for extending the pilot programs prior to the thirtieth day after the date of publication of the notice of filing thereof, in that accelerated approval is appropriate to extend the pilot programs until February 14, 1993, without interruption, so that it may consider the results of MSE's evaluation of both programs when the MSE makes it available to the Commission, and may fully consider the MSE's request to make Enhanced SuperMAX permanent.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 10, 1992.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change extending the pilot program for the SuperMAX and Enhanced SuperMAX systems until February 14, 1993, be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19824 Filed 8–19–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues

July 31, 1992.

On July 9, 1992, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–8738	NTRS	Northern Trust Corp., Common Stock, $1.66 2/3 par value.
7–8739	NSBI	N.S. Bancorp, Inc., Common Stock, $.01 par value.
7–8740	CRGN	Cragin Financial Corp., Common Stock, $.01 par value.
7–8741	CDIC	Cardinal Distribution, Inc., Common Stock, no par value.
7–8742	CUSA	Compusa Inc., Common Stock, no par value.
7–8743	IJIN	International Jensen Inc., Common Stock, $.01 par value.
7–8744	SPBC	St. Paul Bancorp, Inc. Common Stock, $.01 par value.
7–8745	SSAX	System Softward Associates, Inc., Common Stock, $.0033 par value.
7–8746	STRY	Stryker Corp., Common Stock, $.10 par value.
7–8747	SBUX	Starbuck's Corp., Common Stock, no par value.
7–8748	BELL	Bell Bancorp, Inc., Common Stock, $.01 Common Stock, par value.

The above-referenced issues are being applied for as an expansion of the exchange's program in which OTC securities are being traded pursuant to a grant of UTP.

Comments

Interested persons are invited to submit, on or before August 31, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20036 Filed 8-18-92; 1:49 pm]

BILLING CODE 8010-10-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues

July 31, 1992.

On July 14, 1992, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under section 12(b) of the Act:

File No.	Symbol	Issuer
7-8774	APCC	American Power Conversion Corp., Common Stock, $.01 par value.
7-8775	BOAT	Boatmen's Bancshares Inc., Common Stock, $1.00 par value.
7-8776	BSMT	Filene's Basement Corp., Common Stock, $.01 par value.
7-8777	CHKR	Checkers Drive-In Restaurants, Inc., Common Stock, $.001 par value.
7-8778	DBRL	Dibrell Brothers, Inc., Common Stock, $1.00 par value.
7-8779	IFMX	Informix Corp., Common Stock, $.01 par value.
7-8780	IRIC	Information Resources, Inc., Common Stock, $.01 par value.
7-8781	PCTL	Picturetel Corp., Common Stock, $.01 par value.
7-8782	PMTC	Parametric Technology Corp., Common Stock, $.01 par value.
7-8783	RTRSY	Reuters Holdings PLC, American Depositary Receipts, Representing Three Ordinary Shares, 10 pence par value.
7-8784	SCIXF	Scitex Corp. LTD., Ordinary Shares, $.0012 N.I.S. par value.
7-8785	SOCI	Society Corporation, Common Stock, $1.00 par value.
7-8786	SYMC	Symantec Corp., Common Stock, $.01 par value.
7-8787	TSQM	T2 Medical, Inc., Common Stock, $.01 par value.
7-8788	WFLT	Wellfleet Communications, Inc., Common Stock, $.01 par value.

The above-referenced issues are being applied for as an expansion of the exchange's program in which OTC securities are being traded pursuant to a grant of UTP.

Comments

Interested persons are invited to submit, on or before August 31, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grants of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20037 Filed 8-18-92; 1:50 pm]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

July 31, 1992.

On June 23, 1992, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP" pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7-8654	GNSA	Gensia Pharmaceuticals, Inc., Common Stock, $.01 per value.

The above-referenced issue is being applied for as a replacement for the following security which forms a portion of the exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

File No.	Symbol	Issuer
7-8655	ICOS	ICOS Corp., Common Stock, $.01 per value.

In the case of ICOS Corp., a replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before August 31, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such activity, and the desirability of removing

impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20038 Filed 8-18-92; 1:50 pm]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues and Application to Withdraw Unlisted Trading Privileges in Over-the-Counter Issues

July 31, 1992.

On July 9, 1992, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to Section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under Section 12(b) of the Act.

File No.	Symbol	Issuer
7-8734	HCCC	Healthcare Compare Corp., Common Stock, $.01 par value.
7-8735	MIDL	Midlantic Corp., Common Stock, $3.00 par value.

The above-referenced issues are being applied for as replacements for the following securities which form a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act on the following issues:

File No.	Symbol	Issuer
7-8736	MIPS	MIPS Computer Systems, Inc., Common Stock, No par value.
7-8737	MEDC	Medical Care International Inc., Common Stock, $.01 per value.

A replacement issue is being requested for MIPS Computer Systems, Inc. due to its merger with and into Silicon Graphics, Inc. A replacement issue for Medical Care International Inc. is being requested due to its listing on the New York Stock Exchange which renders the issue ineligible for continued inclusion in the program.

Comments

Interested persons are invited to submit, on or before August 31, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20039 Filed 8-18-92; 1:51 pm]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

July 31, 1992.

On June 24, 1992, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7-8656	MAFB	MAF Bancorp, Inc., Common Stock, $.01 par value.

The above-referenced issue is being applied for as a replacement for the following security which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The MSE also applied to withdraw UTP pursuant to Section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7-8657	WHOO	Waterhouse Investor Services Inc., Common Stock, $.01 par value.

A replacement issue is being requested for the common stock Waterhouse Investor Services Inc., due to its listing on the American Stock Exchange, rendering it ineligible for the OTC/UTP program.

Comments

Interested persons are invited to submit, on or before August 31, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20040 Filed 8-18-92; 1:51 pm]

BILLING CODE 8010-01-M

[Release No. 34-31032; File No. SR-NYSE-92-14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to the Specialist Performance Evaluation Questionnaire

August 13, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 18, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared

by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Exchange's Specialist Performance Evaluation Questionnaire ("SPEQ").[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The SPEQ is an important tool in the Exchange's continuing effort to improve specialist performance and the stock allocation process. Exemplary specialist performance may be rewarded with an improved chance to receive a stock allocation. The Exchange reviews the SPEQ process periodically in order to ensure that the instrument maintains its vitality and effectiveness. The following proposed amendments are the result of the Exchange's latest study of the SPEQ process.

The Exchange proposes to restructure the questionnaire so that each of the five functions considered, which include the dealer, service, competitiveness, communications and administrative functions, will be weighted equally.[2] Currently, the first three functions are weighted at 30% each, and the last two functions are weighted at 5% each. The Exchange believes that an equal distribution of weight would be more appropriate to the importance of the functions and would lead to more objective evaluations of specialists as the weight given to a particular question or function would not be considered by brokers when evaluating a unit's performance.

The Exchange proposes to use two versions of the questionnaire during each quarter's administration of the process and continue the practice of dispersing positively and negatively worded questions throughout the instrument.

In order to avoid any conflict of interests, the Exchange proposes to preclude brokers from rating specialist units which maintain Exchange Rule 325(e) financial responsibility guarantees for them or have lease agreements with them.

The Exchange proposes to amend the SPEQ to provide space on the questionnaire for voluntary signing by rating brokers. Specialists would not be informed which brokers signed the questionnaires. The signing would indicate the broker's willingness to discuss an evaluation with a Floor Governor. The Exchange is proposing to use Floor Governors as liaisons to facilitate communication between specialists and the brokers who rate them. In conjunction with this proposal, the Exchange proposes to provide specialists with an alphabetized list of brokers that rated their unit.

The Exchange proposes to amend the SPEQ to provide that a rating broker may indicate the percentage of the business he conducts (*e.g.*, retail or institutional) in the unit's stock. This information would not be used in connection with the calculation of a unit's score, but would accompany the broker's comments to assist specialists in their performance improvement efforts.

In order to ensure that each specialist unit's pool of selected evaluators is roughly comparable and that most qualified brokers, in terms of activity (*i.e.*, trades, share volume and days), are assigned to evaluate each unit, the Exchange proposes to implement a guideline which would enable eligible brokers from order-generating firms to rate the same unit(s) in consecutive quarters and eligible two-dollar brokers to rate the same unit(s) in three out of every four quarters. The Exchange proposes to require that at least 40% of every unit's assigned evaluators must be brokers from order-generating firms and, if necessary to meet the 40% minimum, assign such brokers as many as four units to evaluate each quarter.

Finally, the Exchange proposes to amend the SPEQ to provide a space for comments on specialist performance by the head of a member organization's upstairs trading desk. The input of these individuals may be useful as a communications tool and as an additional perspective on specialist performance.

The Exchange is not proposing any change to the rating scale used on the SPEQ, or to the performance standards applicable to the SPEQ specified in Rule 103A.[3]

(2) Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general, to protect investors and the public interest. The proposed amendments are consistent with these objectives in that they set forth new initiatives to improve the evaluation of specialist performance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-92-14 and should be submitted by September 10, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-19823 Filed 8-19-92; 8:45 am]

BILLING CODE 8010-01-M

[1] The SPEQ is a quarterly survey on specialist performance completed by eligible floor brokers (*i.e.*, any floor broker with at least one year of experience). The SPEQ consists of 21 questions and requires floor brokers to rate, and provide written comments on, the performance of specialist units with whom they deal frequently. The Exchange last revised the SPEQ process in February, 1990 when the Commission approved the Exchange's proposal to provide specialists with their overall rank among all specialist units as well as a range of ranks, which shows their comparability to other units. The current SPEQ also provides specific, minimum relative performance standards so that specialists who are regularly among the lowest ranked units on a relative basis would be subject to performance improvement actions.

[2] The five functions themselves will remain the same.

[3] For information relating to the rating scale used on the SPEQ, and the performance standards applicable to the SPEQ, *see generally* Securities Exchange Act Release No. 28923 (February 27, 1990), 56 FR 9993, and note 1, *supra*.

Issuer Delisting; Application to Withdraw From Listing and Registration, (First Republic Bancorp, Inc., Common Stock, $.01 Par Value) File No. 1-9837

August 14, 1992.

First Republic Bancorp, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on July 28, 1992 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not believe that trading of its common stock on both national exchanges is in the best interests of the Company or its stockholders and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before September 4, 1992 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-19921 Filed 8-19-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18894; 812-7763]

Keene Corporation; Notice of Application

August 12, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Keene Corporation ("Keene").

RELEVANT ACT SECTIONS: Exemption requested pursuant to sections 6(c) and 6(e).

SUMMARY OF APPLICATION: Applicant seeks an order that would exempt it from all provisions of the Act except sections 9(a), 17(a), 17(d), 17(e), 17(f), and 36-53 as if it were a registered investment company, until the earlier of one year from the date of the requested order, or until applicant would no longer be considered an investment company.

FILING DATE: The application was filed on July 29, 1991, and amended on January 21, 1992, and June 15, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 8, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 200 Park Avenue, New York, New York 19166.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Nancy M. Rappa, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Keene, a Delaware corporation, is a custom manufacturer of heat-absorbing composite materials, sheet molding compounds and structural composite components for a variety of aerospace, defense, and commercial applications.

2. From 1967 to 1987, Keene acquired the stock or assets of various operating companies, three of which were operated as subsidiaries, the remainder as divisions. In January 1981, Keene formed a holding corporation, Bairnco Corporation ("Bairnco"), to facilitate a corporate restructuring. As a result of such restructuring, Keene became a wholly-owned subsidiary of Bairnco. In early 1990, the board of directors of Bairnco approved a distribution to the holders of Bairnco's common stock of 100% of the outstanding common stock of Keene, representing all of Bairnco's interest in Keene. Keene is now a public company with its principal office in New York City. Its common stock, par value $.0001 per share, is quoted on the

National Association of Securities Dealers Automated Quotation System.

3. During the period from 1968 through 1974, Keene acquired and operated a small manufacturer of acoustical ceilings, ventilation systems, and thermal insulation products. Until 1972, some of the thermal insulation products contained asbestos. As a result of these operations, Keene is currently one of multiple defendants in thousands of asbestos-related claims.

4. In June 1990, Keene evaluated the potential costs of both defense and settlement of the various claims, and set internal guidelines for settlements. At that time, the estimated aggregate settlements, together with estimated costs of defense, amounted to approximately $190 million and Keene established the goal of disposing of all current and future asbestos-related claims for up to this amount. At March 31, 1992, up to $103 million of the original $190 million remained available in Keene's asbestos compensation/defense program ("Asbestos Compensation Program") and approximately 85,000 cases were pending against Keene.

5. As of March 31, 1992, 253 plaintiff verdicts were outstanding against Keene as defendant. Keene's share of these verdicts totalled approximately $61 million. Depending on the court's treatment of the shares of the other defendants who have settled or are bankrupt or insolvent, Keene's share may increase or decrease.

6. As of March 31, 1992, Keene held approximately $112 million in cash, cash equivalents, and marketable securities. Of that amount, approximately $50 million is subject to collateralization or escrow arrangements to secure appeal bonds. Keene accumulated the amounts now comprising its investment portfolio primarily as a result of the sale of certain operating divisions and subsidiaries.

7. Keene maintains a substantial part of its assets in highly liquid investments to cover its potential contingent liabilities arising out of the asbestos litigation (including the collateralization of appeal bonds) and to fund its acquisitions of additional businesses and capital equipment.

Applicant's Legal Analysis

1. Following the spin-off from Bairnco, Keene relied on the safe harbor provided by rule 3a–2 under the Act. Keene represents that it complied with the requirements of rule 3a–2, as evidenced by a resolution of the board of directors, and that the one year safe harbor of rule 3a–2 commenced on August 6, 1990, the date Keene was spun off from Bairnco.

2. Rule 3a–2 generally provides that, for purposes of section 3(a)(3) of the Act, an issuer will not be deemed to be engaged in the business of investing, reinvesting, owning, holding, or trading in securities for a period not exceeding one year if the issuer has a bona fide intent to be engaged in a non-investment company business. Section 3(a)(3) defines the term "investment company" to include any issuer that "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and case items) on an unconsolidated basis."

3. Rule 3a–1 exempts from the definition of investment company those companies with respect to which no more than 45% of the value of total assets (exclusive of government securities and cash items) consists of, and no more than 45% of net income after taxes (for the last four fiscal quarters combined) is derived from, securities, other than government securities and certain other specified categories of securities. As of March 31, 1992, Keene had total assets of $154.8 million which includes assets attributable to Reinhold Industries, Inc., a wholly-owned subsidiary. Of this amount, investment securities accounted for $17.5 million or 29.3% of Keene's total assets exclusive of $95.0 million in government securities and cash items. Although, during the 12 months ended March 31, 1992, the percentage of Keene's assets consisting of securities other than government securities ranged from 29% to 64%, thus qualifying Keene, from time to time, for exemption under the asset test of rule 3a–1, Keene received 72% of its income after taxes for the last four fiscal quarters ending March 31, 1992 from securities other than government securities, and thus did not meet the 45% income test of rule 3a–1. Due to fluctuations in the percentage of Keene's assets consisting of investment securities, as well as the proportionate income produced by such securities (relative to Keene's operating income), from time to time, Keene would be deemed an investment company pursuant to section 3(a)(3). Thus, Keene would be unable to qualify for the self-executing exemption provided by rule 3a–1.

4. Subsequent to the spin-off of Keene from Bairnco, Keene held substantially all of its investments in United States Treasury Bills and Treasury Notes in an effort to meet the requirements of the rule 3a–1 exemption. In September 1990, New York State and New York City revised certain tax regulations governing investment capital and the taxation of investment income for years beginning on or after January 1, 1990. The effect of the revised regulations would have been to subject substantially all of Keene's previously tax-sheltered income from United States government securities to state and city taxation unless Keene's investment strategy was modified to increase its investment in investment securities. Keene states that if it were willing to forfeit $800,000 of tax savings, it could structure its investment portfolio so that it would not fall within the section 3(a)(3) definition of investment company. Keene does not believe that such changes in its investment policy would protect the public or its shareholders, or further the purposes of the Act.

5. Through March 31, 1992, a substantial portion of the costs to defend and indemnify Keene has been paid by Keene's insurers. At March 31, 1992, approximately $58 million of insurance coverage remains; however, Keene has recorded a receivable of $22 million due from insurers which, when paid, will reduce the insurance coverage available to Keene to $36 million. Keene believes that the remaining insurance coverage and settlement proceeds could be sufficient to cover settlement of currently pending cases involving bodily injury as a result of occupational exposure to asbestos ("Bodily Injury Cases") only if Keene is able to adhere to the provisions of its Asbestos Compensation Program. However, certain recent verdicts adverse to Keene have been higher than expected, several appeals courts recently have refused to review verdicts which Keene believed had meritorious appeal issues and new cases continue to be filed. These factors require Keene to continue to incur substantial defense costs for currently pending and potential future Bodily Injury Cases, as well as encourage some lawyers to refuse settlements within the provisions of the Asbestos Compensation Program. The costs of the asbestos-related litigation will exceed the remaining insurance coverage and settlement proceeds to be received by Keene if settlements are at amounts higher than the Asbestos Compensation Program guidelines and defense costs do not substantially decline in the near future. Such excess costs will be paid by Keene and taken as a charge to earnings.

8. Although a large number of the Bodily Injury Cases have been resolved on Keene's behalf, Keene believes the number of future potential Bodily Injury Cases and the rate and cost of future dispositions cannot accurately be determined. Accordingly, Keene believes that the possible loss or range of loss resulting from the asbestos-related litigation cannot reasonably be estimated.[1] Due to the inability to reasonably estimate the possible loss of range of loss resulting from the asbestos-related litigation, Keene cannot determine the effects of the ultimate asbestos-related liability upon Keene's financial position.

7. The portion of Keene's portfolio that is collateralized or in escrow cannot be used by Keene for other purposes, hence Keene believes it should not be viewed as highly liquid investments. Keene's bonding capacity to prevent the execution of potential future judgments against Keene's assets is limited to those assets not currently pledge to collateralize appeals. Given the volume of cases pending against Keene and Keene's related need to collateralize appeals, Keene does not believe that its pool of liquid investments is excessively high.

8. Assuming that the current rate of expenditure continues in the future, Keene estimates that most likely it would take three to four years before Keene would fall consistently outside the section 3(a)(3) definition of an investment company. Keene states that it is also difficult to estimate when Keene would satisfy the rule 3a–1 exemption on a continuous basis. Keene states that it may submit one or more additional applications seeking a reasonable extension or extensions of the period of exemption afforded by the requested order, as may be necessary to enable Keene to attain a financial position so that it would no longer be considered an investment company.

9. Keene believes that the issuance of an order exempting it until the earlier of one year from the date of the requested order, or such time as applicant would no longer be considered an investment company is in the public interest and consistent with the protection of investors and purposes fairly intended by the policy and provisions of this title.

10. In determining whether to grant exemptive relief beyond the one-year period prescribed by rule 3a–2, and whether a period longer than one year would be considered "temporary" in the context of an inadvertent investment company, the Commission has examined factors such as: (a) Whether the failure of the company to become primarily engaged in a non-investment company business or liquidate within one year was due to factors beyond its control, (b) whether the company's officers and employees during that period tried, in good faith, to invest the company assets in a non-investment company business or to cause the liquidation of the company, and (c) whether the company invested in securities solely to preserve the value of its assets.

a. As to the first factor, Keene states that the lack of resolution of Keene's contingent liabilities, which is the primary impediment to its ability to employ a significant portion of its assets in the expansion of its business, is, to a large extent, beyond Keene's control. Keene states that it is not within its power to control the duration of asbestos lawsuits or the future filing of lawsuits. In addition, Keene states that it must maintain substantial amounts of liquid investments as collateral for appeal bonds.

b. Second, Keene states its officers and employees are trying, in good faith, to expand Keene's operations. In March 1992, Keene's operating subsidiary, Reinhold Industries, Inc., purchased 100% of the outstanding common stock of Reynolds & Taylor, Inc., a composite component manufacturer. Keene states its acquisition program remains active and will require funds to implement.

c. Third, Keene states it is investing in securities solely to preserve the value of its assets. Keene states that its investment securities are overnight demand notes and corporate bonds. The corporate bonds are investment grade and held as part of the investment strategy to minimize New York State and New York City taxes.

Applicant's Conditions

Applicant agrees that the following conditions may be imposed in any order of the Commission granting the requested relief:

1. During the period of time Keene is exempted from registration under the Act, Keene will not purchase or otherwise acquire any additional securities other than securities that are rated investment grade or higher by a nationally recognized statistical rating organization or, if unrated, deemed to be of comparable quality under guidelines approved by Keene's board of directors, except that Keene may make equity investments in issuers that are not investment companies, as defined in section 3(a) of the Act (unless such issuer is covered by a specific exclusion from the definition of investment company under section 3(c) other than section 3(c)(1)), in the following circumstances: (a) in connection with the consideration of the possible acquisition of an operating business as evidenced by a resolution approved by Keene's board of directors, and (b) in connection with the acquisition of majority-owned subsidiaries.

2. Keene will utilize its accumulated cash and securities for the purpose of funding cash requirements for its existing businesses, acquiring one or more new businesses, and/or the settlement of asbestos-related claims.

3. While any exemptive order is in effect, Keene will disclose in its reports on Forms 10–K and 10–Q and its annual reports to shareholders that such an exemptive order has been granted pursuant to sections 6(c) and 6(e) and that Keene and certain other persons, in their transactions and relations with Keene, are subject to sections 9, 17(a), 17(d), 17(e), and 17(f), and 36–53 as if Keene were a registered investment company.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–19820 Filed 8–19–92; 8:45 am]

BILLING CODE 8010–01–M

[1] The current rate of expenditure for resolution of asbestos litigation is approximately $50 million per year.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Clark County, Nevada

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent..

SUMMARY: The FHWA is issuing this Notice to advise the public that a Tier 1 environmental impact statement will be prepared for a proposed highway project in Clark County, Nevada.

FOR FURTHER INFORMATION CONTACT:

Daryl N. James, P.E., Supervisor, Environmental Services Division, Nevada Department of Transportation, 1263 South Stewart Street, Carson City, NV 89712, Telephone: 702–687–5680

or

Frederick G., Wright, Jr., Division Administrator, Federal Highway Administration, Nevada Division, 1535 Hot Springs Rd., No. 100, Carson City, NV 89706–0602, Telephone: 702–687–5302.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Nevada

Department of Transportation (NDOT), will prepare a Tier 1 environmental impact statement (EIS) on a proposal to adopt a route corridor location for a future transportation facility along the western and northern fringes of the Las Vegas Valley. This proposed project is a collaborative effort with the Regional Transportation Commission (RTC) of Clark County.

The project to be studied will provide the western and northern segments of a beltway around the southern, western, and northern perimeter of the Las Vegas Valley. The complete beltway will connect with US 95 on the southeast and with I-15 on the northeast. The southern segment was described and analyzed in a previously-prepared EIS.

Rapid growth has occurred in the Las Vegas Valley over the past several years. The growth has added to the existing heavy demand on the regional transportation system. Substantial growth is expected to continue, with a major portion of the new development occurring in the western and northern portions of the area. A need exists for the early identification and preservation of transportation corridors that will serve the increasing transportation demand that will result from the new growth and development.

The Tier 1 EIS will address the purpose and need for the project, evaluate alternatives to satisfy the needs, describe the affected environment, and provide for agency coordination and public involvement. The scope and level of analysis will be sufficient to satisfy FHWA requirements for location approval and corridor preservation. A more detailed Tier 2 EIS will be prepared at a latter date. The Tier 2 document will address project specific issues and describe in greater detail the project environmental consequences, design alternatives and project mitigation. Approval of the Tier 2 EIS will provide the basis for environmental clearance for project construction.

Alternatives to be considered will be based on the results of a preliminary study prepared for the RTC in August, 1991. In addition to the no-build option, several other alternatives will be studied. Along the western segment, the study corridors include: (1) An alignment one mile west of Hualapai Way; and (2) a curvilinear alignment approximately one and one-quarter miles west of Hualapai Way. Both of these alignments connect to either Alternative E of Alternative C of the southern segment of the Las Vegas Beltway and extend in a northerly direction to connect to US 95 in the northwest corner of the Valley. Along the northern segment, the study corridors include: (1) An alignment one-quarter mile north of Iron Mountain Road; (2) the Elkhorn Road alignment; and (3) the Centennial Parkway alignment. Each of these alignments extends from US 95 to I-15 via Lamb Boulevard.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A scoping meeting will be held in the near future and a series of public meetings is proposed. A public hearing will also be held. Public notice will be given of the time and place of the meetings and hearing. Public meetings will be held throughout the planning process and prior to the circulation of the draft Tier 1 EIS. The public hearing will be held after the draft EIS is available for review.

To ensure that the full range of issues related to this proposed action is addressed and any significant impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Tier 1 EIS should be directed to the FHWA or the NDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 11, 1992.

Frederick G. Wright, Jr.,

Division Administrator, Federal Highway Administration, Carson City, Nevada.

[FR Doc. 92-19948 Filed 8-19-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 14, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0022.
Form Number: ATF F 5320.20.
Type of Review: Extension.
Title: Application to Transport or to Temporarily Export Certain National Firearms Act (NFA) Firearms.
Description: When approved, this form satisfies requirements that the Secretary of the Treasury give prior approval to the movement of certain NFA firearms in interstate or foreign commerce.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 710.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 355 hours.
OMB Number: 1512-0027.
Form Number: ATF F 4 (ATF F 5320.4).
Type of Review: Extension.
Title: Application for Tax Paid Transfer and Registration of Firearms.
Description: This form must be submitted to ATF to obtain approval for tax paid transfers of NFA firearms. Approval of a transfer and registration of a firearm to a new owner are accomplished with the information supplied on this document.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 4,778.
Estimated Burden Hours Per Respondent: 4 hours and 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 20,068 hours.
OMB Number: 1512-0028.
Form Number: ATF F 5 (ATF F 5320.5).
Type of Review: Extension.
Title: Application for Tax-Exempt Transfer and Registration of a Firearm.
Description: The National Firearms Act (NFA) requires that the information contained on this form be submitted to the Secretary of the Treasury for a tax-exempt transfer of an NFA firearm. Approval of the form amends the record in the National Firearms Registration and Transfer Record to show the current owner of the firearm.
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 1,997.
Estimated Burden Hours Per Respondent: 3 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 11,982 hours.
OMB Number: 1512-0029.
Form Number: ATF F 10 (ATF F 5320.10).
Type of Review: Extension.
Title: Application for Registration of Firearms Acquired by Certain Governmental Entities.
Description: This form provides a method for certain government entities to register, for official use only firearms; otherwise unregisterable, such as those unregistered weapons seized by or abandoned to local law enforcement agencies.
Respondents: State or local governments.
Estimated Number of Respondents: 300.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 300 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-19920 Filed 8-19-92; 8:45 am]

BILLING CODE 4810-31-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Jusepe de Ribera: Spanish Realist in Baroque Italy" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about September 18, 1992, to on or about November 29, 1992, is in the national interest.

Public notice of this determination is ordered to be published in the Federal Register.

Dated: August 18, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-20094 Filed 8-19-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 162
Thursday, August 20, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, August 25, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, August 27, 1992, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes
Title 26 Certification Matters
Advisory Opinion 1992-29: Kornman/ Holtzman Senate Campaign
Advisory Opinion 1992-34: Anthony G. Flynn on behalf of Castle for Congress Fund
Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219-4155.

Delores Harris,
Administrative Assistant.

[FR Doc. 92-20086 Filed 8-18-92; 3:10 pm]
BILLING CODE 6715-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 26, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 18, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-20098 Filed 8-18-92; 3:47 pm]
BILLING CODE 6210-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, August 31, 1992, and at 8:30 a.m. on Tuesday, September 1, 1992, in Washington, D.C. The August 31 meeting, at which the Board will consider: (1) A filing with the Postal Rate Commission to Establish a Bulk Small Parcel Service; (2) a filing with the Postal Rate Commission for a Mail Classification Change Regarding Delivery Point Barcoding, and (3) the July 17, 1992, Postal Rate Commission Opinion and Recommended Decision in Docket No. MC91-3, Second-Class Pallet Discount, 1991, is closed to the public. (See 57 FR 35003, August 7, 1992)

The September 1 meeting is open to the public and will be held in the Benjamin Franklin Room on the 11th floor of U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Monday Session

August 31-1:00 p.m. (*Closed*)

1. Consideration of a Filing with the Postal Rate Commission to Establish a Bulk Small Parcel Service. (Frank R. Heselton, Assistant Postmaster General, Rates and Classification Department.)
2. Consideration of a Filing with the Postal Rate Commission for a Mail Classification Change Regarding Delivery Point Barcoding. (Frank R. Heselton, Assistant Postmaster General, Rates and Classification Department.)
3. Consideration of the Postal Rate Commission Opinion and Recommended Decision in Docket No. MC91-3, Second-Class Pallet Discount, 1991. (John L. DeWeerdt, Associate General Counsel, Office Postal Rates and Mailing Rules.)

Tuesday Session

September 1-8:30 a.m. (*Open*)

1. Minutes of the Previous Meeting, August 3-4, 1992.
2. Remarks of the Postmaster General. (Marvin Runyon.)
3. Postal Rate Commission Fiscal Year 1993 Budget Request. (Norma Pace, Chairman.)
4. Quarterly Report on Service Performance. (Ann McK. Robinson, Consumer Advocate.)
5. Fiscal Year 1993 Change in Third-Class Nonprofit Mail Rates. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group.)
6. Tentative FY 1994 Budget Request to Congress. (Comer S. Coppie, Senior Assistant Postmaster General, Finance Group.)
7. Tentative Agenda for October 5-6, 1992, meeting in Washington, D.C.

David F. Harris,
Secretary.

[FR Doc. 92-20013 Filed 8-18-92; 2:50 pm]
BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 57, No. 162
Thursday, August 20, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

[FIFRA Docket Nos. 646, et al.; FRL-4125-8]

Pesticide Products Containing Ethylene Bisdithiocarbamates (EBDCs)

Correction

In notice document 92-9386, appearing on page 14715, in the issue of Wednesday, April 22, 1992, make the following correction:

On page 14715, in the third column, the file line at the end of the document was omitted and should appear as follows:

[FR Doc. 92-9386 Filed: 4-21-92; 8:45 am]
BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 88F-0113]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 92-18856 beginning on page 35462 in the issue of Monday, August 10, 1992, make the following correction:

On page 35463, in the first column, under *G. Calcium Chloride*, in the first paragraph, in the fourth line, "21 CFR 184.1192" should read "21 CFR 184.1193".

BILLING CODE 1505-01-D

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Reader Aids

Federal Register
Vol. 57, No. 162
Thursday, August 20, 1992

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Agriculture, Rural Development, Food and Drug Administration, and Related

Agencies Appropriations Act, 1993. (Aug. 14, 1992; 106 Stat. 873; 38 pages) Price: $1.25

S. 2759/P.L. 102-342

Child Nutrition Amendments of 1992. (Aug. 14, 1992; 106 Stat. 911; 4 pages) Price: $1.00

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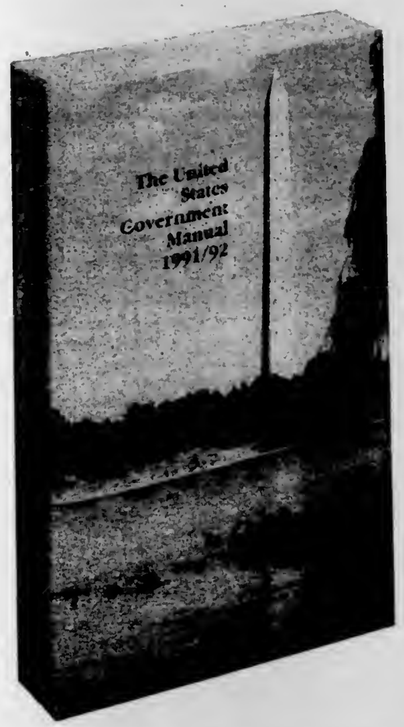
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Friday
August 21, 1992

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For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 92-008-2]

Tuberculosis in Cattle and Bison; State Designation

AGENCY: Animal and Plant Health Inspection Service, USDA.
ACTION: Affirmation of interim rule.

SUMMARY: We are affirming without change an interim rule that amended the regulations concerning the interstate movement of cattle and bison because of tuberculosis by raising the designation of Tennessee from a modified accredited State to an accredited-free State. We have determined that Tennessee meets the criteria for designation as an accredited free State.

EFFECTIVE DATE: September 21, 1992.
FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8715.
SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on May 12, 1992 (57 20193-20194, Docket No. 92-008), we amended the tuberculosis regulations in 9 CFR part 77 by removing Tennessee from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

Comments on the interim rule were required to be received on or before July 13, 1992. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12291, 12372, and 12778, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

List of **Subjects in 9 CFR Part 77**

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

PART 77—TUBERCULOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 77.1 and that was published at 57 FR 20193-20194 on May 12, 1992.

Authority: 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done in Washington, DC, this 17th day of August 1992.

Lonnie J. King,
Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-20023 Filed 8-20-92; 8:45 am]
BILLING CODE 3410-34-M

Food Safety and Inspection Service

9 CFR Parts 318 and 381

[Docket No. 86-033F]

RIN 0583-AA95

Finished Product Inspection

AGENCY: Food Safety and Inspection Service, USDA.
ACTION: Final rule.

SUMMARY: Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to allow canning establishments more flexibility in complying with the regulatory requirements concerning finished product inspection of thermally-processed, shelf stable canned product. The existing regulations allow establishments to use quality control programs to ensure compliance with the regulations; however, establishments must comply with all of the specific regulatory provisions regarding finished product inspection. In response to two petitions for specific changes to the finished product inspection regulations, the Agency has determined that establishments will be allowed to develop quality control programs containing performance standards that are different from, but equally effective as, the specific regulatory provisions for finished product inspection.

DATES: This rule is effective September 21, 1992.
FOR FURTHER INFORMATION CONTACT: Mr. William C. Smith, Director, Processed Products Inspection Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 720-3840.
SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency had determined that this final rule is not a "major rule" within the scope of E.O. 12291. It will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. State and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any requirements with respect to operations of any establishment at which inspection is provided under the FMIA or PPIA, or any packaging or ingredient requirements on federally inspected meat or poultry products that are in addition to, or different than, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of

preventing the distribution of meat or poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and the PPIA, States that maintain meat and poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA or PPIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule will not have retroactive effect. Prior to any judicial challenge to the provision of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. Under the Federal Meat Inspection Act and the Poultry Products Inspection Act, the administrative procedures are set forth in §§ 306.5 and 318.4(g)) of the Federal meat inspection regulations (9 CFR 306.5 and 318.4(g)), and §§ 381.31 and 381.145(g) of the poultry products inspection regulations (9 CFR 381.31 and 381.145(g)).

Effect on Small Entities

The Administrator has made a determination that this final rule will not have a significant economic impact upon a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Finished product inspections are conducted in accordance with §§ 318.309 and 381.309 of the Federal meat and poultry products inspection regulations. All canners of thermally-processed, shelf stable meat and poultry products, therefore, have operating costs related to the requirements of these sections of the regulations. The final rule will provide establishments with increased flexibility in developing performance standards different from, but equally effective as, the standards found in §§ 318.309(d) and 381.309(d).

Establishments choosing to continue complying with the existing regulations will not be affected by this final rule. Establishments voluntarily choosing to create different quality control programs would have to provide for at least the same level of assurance as that of the requirements in §§ 318.309(d) and 381.309(d) of the meat and poultry products inspection regulations. However, it is expected that such a voluntary quality control program would not be considered unless the establishment determines it is a more cost-effective procedure than previously existed.

Paperwork Requirements

Under this final rule, quality control programs may contain provisions that differ from the specific regulatory requirements if they are determined to offer the same level of assurance as those requirements which provide for the safety and stability of canned products. Currently, quality control programs must comply with the requirements of §§ 318.309 and 381.309 of the Federal meat and poultry products inspection regulations. The final rule requires establishments voluntarily choosing to develop a quality control program containing performance standards that are different from, but equally effective as, the requirements for finished product inspection, to submit quality control program plans to the Administrator for approval in accordance with §§ 318.4(c) and (d) and 381.145(c) and (d) of the regulations. Establishments may develop a quality control program to address all or some of the requirements of §§ 318.309 and 381.309 of the current finished product inspection regulations. All of the above-referenced reporting requirements have been approved by the Office of Management and Budget under control number 0583–0015.

Background

Current Regulations

The examination of finished thermally-processed, shelf stable canned product is conducted in accordance with § 318.309 of the Federal meat inspection regulations and § 381.309 of the Federal poultry product inspection regulations (9 CFR 318.309 and 381.309). These two sections are intended to increase the level of assurance that canned products are safe and unadulterated. As such, they include provisions covering incubation test procedures, monitoring container condition, and shipping.

The regulations allow establishments to address many of the requirements found in §§ 318.309 and 381.309 by the application of an Agency-approved quality control program. In lieu of a quality control program, however, establishments must comply with all of the provisions contained in §§ 318.309 and 381.309.

Moreover, an establishment, whether or not it has a quality control program, must comply with all of the following specific requirements: (1) From each load of product processed in a batch-type thermal processing system, an establishment must select at least ona container for incubation. In continuous-type thermal processing systems, the sampling rate for incubation testing is at least one container per 1,000; (2) Sample containers must be incubated for not less than 10 days (240 hours) at 95±5 F (35±2.8 C). The finding of abnormal containers (as defined in paragraph (a) of §§ 318.300 and 381.300) among incubation samples is cause to officially retain at least the code lot (as defined in paragraph (f) of §§ 318.300 and 381.300) involved; (3) When abnormal containers are detected by means other than incubation, the affected code lots cannot be shipped until the Agency has determined that the product is safe and stable, meaning that the product was not contaminated or adulterated during processing and the product remains wholesome; (4) Establishments cannot ship canned product before the end of the required 10-day incubation period unless they have approval, in writing, from the area supervisor of an establishment's procedures for preventing the shipped product from reaching the retail level of distribution before sample incubation is completed. The procedures must assure, also, that the product could be returned to the establishment promptly should such action be deemed necessary due to the incubation test results.

NFPA Petitions

In May of 1988, the Agency received two petitions from the National Food Processors Association (NFPA) to amend the Federal meat and poultry products inspection regulations to allow canning establishments more latitude in complying with the specific requirements contained in §§ 318.309 and 381.309 (9 CFR 318.309, 381.309) of the Federal meat and poultry products inspection regulations.

One of two petitions from the NFPA requested revisions to the regulations that would permit establishments to ship product to retail outlets before the completion of incubation, provided that they operate under an approved quality control program that exceeds certain elements of existing regulations. As an example, it suggested an augmented incubation program and development of a program for evaluating process deviations and the significance of abnormal containers found during incubation.

The second petition from the NFPA requested that §§ 318.309(d)(1)(iv)(*b*) and 381.309(d)(1)(iv)(*b*) of the meat and poultry products inspection regulations (incubation sampling frequency for continuous-type thermal processing systems) be revised "* * * to provide greater equality with the required minimum sampling rates for batch-type processing systems." The petitioner

suggested that at least one container be drawn for incubation sampling at time intervals not to exceed the process time for the product. For example, if a particular product/container has a process schedule of 25 minutes at 250 F, then at least one incubation sample would be selected every 25 minutes. However, because some systems operate at a very high volume (e.g., several hundred containers/minute), the NFPA suggested a minimum sampling rate of at least one container for every 20,000 processed.

Proposed Rule

FSIS determined that the NFPA presented a logical argument for allowing establishments to ship finished product to the retail level before the end of the 10-day incubation period. In addition, the Agency viewed the NFPA petition concerning a modification of the incubation sampling frequency for containers processed in continuous-type thermal processing systems to be reasonable and practical.

Accordingly, on September 24, 1991, FSIS published a proposed rule in the **Federal Register** (56 FR 48131) to amend §§ 318.309 and 381.309 of the Federal meat and poultry products inspection regulations. Both NFPA petitions were addressed in the published proposal. However, rather than proposing to revise the current requirements for incubation sampling frequency and developing quality control requirements specifically for shipment of product before the end of the 10-day incubation period as requested by the petitioner, the Agency proposed to provide establishments the option to develop quality control programs containing performance standards that are different, but no less effective, than current requirements. The proposed rulemaking would allow the use of FSIS-approved quality control programs that vary from the specific requirements in §§ 318.309(d) and 381.309(d) of the regulations. However, a quality control program would have to provide for at least the same level of assurance as the existing requirements of §§ 318.309 and 381.309 which are designed to ensure that thermally-processed, shelf stable canned product is wholesome and unadulterated.

Moreover, a quality control program would have to contain a provision that would invoke tightened criteria compared to those regularly employed in the establishment's quality control program in cases where unwholesome product, abnormal containers, or other irregularities, which may compromise product wholesomeness, occur. Such tightened criteria could include, for example, increasing the incubation sampling rate, lengthening the incubation period, delaying product shipment until after the incubation period has ended, intensifying container condition examinations prior to shipment, or other actions depending upon the quality control program. An establishment would use these tightened criteria until the cause of the irregularities is identified and resolved, and the Agency has determined that the corrective action taken by the establishment is sufficient to produce wholesome and unadulterated product with the routine provisions contained in the approved quality control program.

The regulations in paragraph (d) of §§ 318.309 and 381.309 would still be applicable in the absence of an approved quality control program.

Interested persons were given until November 25, 1991, to comment on the proposed rule. Near the end of the comment period, the Agency received a request from the petitioner to extend the comment period to allow more time to review the proposal and submit comments. Because the Agency was interested in obtaining information pertaining to the proposed rule, it was determined that the request be granted, and the comment period was reopened until January 27, 1992.

Discussion of Comments

The Agency received three comments in response to the September 24, 1991, proposal. Two comments were from trade associations and one was received from a processing establishment. All commenters expressed strong support for the Agency's proposal to provide canning establishments with the option to develop alternative means to comply with §§ 318.309 and 381.309 of the Federal meat and poultry products inspection regulations.

Additionally, all comments received discussed the value of a Hazard Analysis—Critical Control Point (HACCP) system (which involves the identification of critical points in a processing operation, the monitoring and control of those critical points, and the keeping of records and data relative to their control) in assuring the safety of canned products. Two of the three stated that many companies have HACCP-based control procedures in place that exceed the requirements found in the Agency's canning regulations. They added that the incorporation of such controls into a quality control program should be sufficient to assure FSIS of finished product safety.

The Agency shares the view of the commenters on the value of the HACCP concept as an effective and rational approach to the assurance of food safety. Moreover, FSIS believes that the incorporation of HACCP-based control procedures in a quality control program will undoubtedly increase the likelihood that the Agency will approve such a program.

One commenter stated that the proposal did not explicitly describe what variations from the current regulations would meet FSIS requirements. Another commenter requested that, either in this preamble or by some other suitable mechanism, the Agency would assure approval of a quality control program that contained specific elements. A summary of the suggested elements includes: An augmented incubation program; enhanced finished product container examinations; procedures for handling process deviations and abnormal containers; and a description of the circumstances under which a product recall or withdrawal would be initiated.

The Agency, by design, did not include specific requirements in the proposal, and does not agree with suggestions that such specifics be included in this preamble. The thrust of this rulemaking action is to allow processors wide latitude in voluntarily developing quality control programs that contain variations from the specific requirements in §§ 318.309 and 381.309. A processor would be free to propose a quality control program addressing any or all of the requirements of §§ 318.309(d) or 381.309(d). How a proposal would be developed would depend in large part on a processor's objectives.

For example, a processor who desires to place product at retail sooner than the regulations now permit might propose to incubate product samples for only five days and then immediately ship the finished lots. In this example, the processor could incorporate an augmented incubation sampling procedure into the quality control program. The Agency would likely expect the program to include details on the temperature range of the incubator during the five-day sample incubation period. Such incubation conditions would have to be deemed scientifically equivalent to the current requirements of 10 days at 95 F (35 C).

FSIS has not accepted the suggestion to list in this preamble specific elements or requirements that would assure Agency approval of quality control programs that differ from the specific requirements of §§ 318.309 and 381.309. However, guidelines to assist interested persons in preparing proposals will be

available when this rule becomes effective. Such guidelines will only contain advice on the type and amount of information that would constitute an approvable program and will not have any regulatory compliance requirements.

Final Rule

For the reasons discussed in the preamble, FSIS is amending parts 318 and 381 of the Federal meat and poultry products inspection regulations as set forth below.

List of Subjects

9 CFR Part 318

Canned products; Meat inspection; Quality control.

9 CFR Part 381

Canned product; Packaging and containers; Poultry products inspection; Quality control.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 318.309 is amended by revising paragraphs (b), (c), and (d)(1)(viii) to read as follows:

§ 318.309 Finished product inspection.

* * * * *

(b) Any partial quality control program for finished product inspection shall be prepared and submitted to the Administrator for approval in accordance with § 318.4 of this part.

(c) That portion of a total quality control system for finished product inspection shall be prepared and submitted to the Administrator for approval in accordance with § 318.4 of this part.

(d) * * *

(1) * * *

(viii) *Shipping.* No product shall be shipped from the establishment before the end of the required incubation period except as provided in this paragraph or paragraph (b) or (c) of this section.

* * * * *

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

2. Section 381.309 is amended by revising paragraphs (b), (c), and (d)(1)(viii) to read as follows:

§ 381.309 Finished product inspection.

* * * * *

(b) Any partial quality control program for finished product inspection shall be prepared and submitted to the Administrator for approval in accordance with § 381.145 of this part.

(c) That portion of a total quality control system for finished product inspection shall be prepared and submitted to the Administrator for approval in accordance with § 381.145 of this part.

(d) * * *

(1) * * *

(viii) *Shipping.* No product shall be shipped from the establishment before the end of the required incubation period except as provided in this paragraph or paragraph (b) or (c) of this section.

* * * * *

Done at Washington, DC, on: July 15, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92–19918 Filed 8–20–92; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–60–AD; Amendment 39–8281; AD 92–13–11]

Airworthiness Directives; de Havilland, Inc., Model DHC–8–100 and Model DHC–8–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8–100 and Model DHC–8–300 series airplanes. This action requires an inspection to detect discrepancies and damage of the low fuel pressure switch adapter/snubber (located on each engine fuel heater), and replacement, if necessary. It also requires an inspection to detect gaps or openings in each nacelle and engine-mounted firewall area, and in certain weather seals in the nacelles, and correction of discrepancies, if necessary. This amendment is prompted by an incident in which an airplane experienced an in-flight nacelle explosion and fire. The actions specified in this AD are intended to prevent an in-flight explosion and fire with the nacelle zones.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–60–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. R.P. Fiesel or Mr. Pat Perrotta, New York Aircraft Certification Office, Propulsion Branch, ANE–174, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–7422; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–100 and Model DHC–8–300 series airplanes. Transport Canada Aviation advises that a Model DHC–8–100 airplane recently experienced an in-flight nacelle explosion and fire. The fire was apparently the result of fatigue failure of the fuel low pressure switch adaptor (snubber), de Havilland part number 82820191–001, due to maintenance-induced plastic deformation. The improper seating of the adapter allowed the adapter and switch assembly to vibrate during engine operation, resulting in the failure of the adapter in the male thread run-out area. The failure of the switch/adapter assembly allowed fuel to leak within zone 2 of the nacelle, where it was atomized by the normal airflow within this zone. This fuel-air mixture reached a source of ignition, leading to an explosion and fire in zones 1, 2, and 3 of the nacelle. It was observed that gaps and openings in the engine firewall may have allowed the fuel/air mixture inside zone 2 to reach hot surfaces in zone 1. This condition, if not corrected, could result in an explosion and fire within the nacelle zones.

De Havilland, Inc., has issued Alert Service Bulletin A8–73–14, Revision B, dated April 24, 1992, that describes procedures for an inspection of the low fuel pressure switch adapter/snubber to detect damage to the threads, indication of over-torque, and proper seating, and replacement of the adapter/snubber assembly, if necessary.

De Havilland has also issued Service Bulletin 8–28–15, Revision A, dated April 17, 1992, that describes procedures for installing Modification 8/1208. This modification involves the installation of a new pressure fuel warning switch. Once this modification is installed, the need for inspections of the low fuel pressure switch adapter/snubber is eliminated.

Transport Canada Aviation recently issued a Canadian Airworthiness Directive addressing the fuel leakage problem in order to assure the continued airworthiness of these airplanes in Canada.

The airplane model is manufactured in Canada and is type certificated for operation of the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to the bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent an in-flight explosion and fire within the nacelle zones. This AD requires repetitive inspections to detect discrepancies of the low fuel pressure switch adapter/snubber (location on each engine fuel heater), and replacement of discrepant parts, if necessary. The installation of Modification 8/1208 is provided as an option terminating action for these repetitive inspections. The actions are required to be accomplished in accordance with the service bulletins described previously.

This AD also requires inspection for gaps and openings in each nacelle vertical firewall section, firewall extension, and engine-mounted firewall; and the weather seals around the access panels over the top rear section of each nacelle; and correction of discrepancies, if necessary. These actions are required to be accomplished in accordance with procedures in the applicable section of the de Havilland Model DHC–8 Maintenance Manual. The FAA considers that, due to the incidents of fuel and oil leaks entering the zone 1 area of the nacelle that have led to explosion-type fires, it is necessary that all gaps and openings that may exist in the engine nacelle firewall be sealed as soon as possible. This inspection will ensure that this is accomplished in a timely manner.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to address specified under the caption "**ADDRESSES**." All communications receive on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports that commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–60–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policy and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-13-11. De Havilland, Inc.: Amendment 39-8281. Docket 92-NM-80-AD.

Applicability: Models DHC-8-102, -103, -301, and -311 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an in-flight explosion and fire within the nacelle zones, accomplish the following:

(a) For Model DHC-8-100 and -300 series airplanes, serial numbers 3 through 248, on which Modification No. 8/1208 has not yet been accomplished:

(1) Within 30 days after the effective date of this AD, remove and inspect the low fuel pressure switch adapter/snubber located on each engine fuel heater for damage to threads, indication of over-torque, and for proper seating, in accordance with the accomplishment instructions of de Havilland Alert Service Bulletin A8-73-14, Revision B, dated April 24, 1992. If the adapter/snubber is damaged or if evidence of over-torque is present, prior to further flight, replace the adapter/snubber with a serviceable part, in accordance with that service bulletin.

(2) Thereafter, at any time in which the low fuel pressure switch adapter/snubber assembly is removed, accomplish the inspection of the assembly as described in paragraph (a)(1) of this AD.

(3) Installation of Modification 8/1208, in accordance with de Havilland Service Bulletin 8-28-15, Revision A, dated April 17, 1992, constitutes terminating action for the inspections specified in paragraph (a)(1) and (a)(2) of this AD.

(b) For all Model DHC-8-100 and -300 series airplanes: Within 30 days after the effective date of this AD accomplish the procedures specified in paragraphs (b)(1) and (b)(2) of this AD:

(1) Inspect each nacelle vertical firewall section, firewall extension, and engine-mounted firewall (reference: Maintenance Manual section 71-30-00) for gaps and openings that could permit flammable fluid to pass through. Gaps and openings may be found at lap joints, between bolts, and at carry-through fittings and grommets. If gaps are found, prior to further flight, seal the gaps using PR812, Pro-Seal 700, or other approved firewall sealants. (Reference Maintenance Manual section 20-21-20.) Allow sealant to cure for at least 4 hours prior to further flight.

(2) Within 30 days after the effective date of this AD, inspect access panels 419AT and 429AT as specified in DHC-8 Maintenance Manual (section 6-40-10, pages 12 and 14 (Reference Illustrated Parts Catalog 54-30-00, Figure 5, Items 410 and 420) for the presence and condition of the weather seal in the gap between the panels and the adjacent structure. If the gap is not sealed, prior to further flight, seal the panels using PR1422, PR1435, or other sealant specified in the DHC-8 Maintenance Manual, section 20-21-16. A release agent, applied prior to sealing, also may be used as specified in DHC-8 Maintenance Manual, section 20-21-19. Allow the sealant or release agent to cure for at least 4 hours, prior to further flight.

(c) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York, ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections and replacement of the low fuel pressure switch adapter/snubber assembly shall be done in accordance with de Havilland Alert Service Bulletin A8-73-14, Revision B, dated April 24, 1992. The modification of the assembly shall be done in accordance with de Havilland Service Bulletin 8-28-15, Revision A, dated April 17, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(f) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20028 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-127-AD; Amendment 39-8312; AD 92-16-03]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10 series airplanes. This action requires an inspection to detect cracking of the right- and left-hand spoiler mixer brackets, and replacement, if necessary. This amendment is prompted by reports of failure and several instances of cracking of the spoiler mixer brackets. The actions specified in this AD are intended to prevent inadvertent asymmetric spoiler deployment, which could cause reduced controllability of the airplane.

DATES: Effective September 8, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-127-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5238; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: The FAA has received reports of failure and cracking of the spoiler mixer brackets on McDonnell Douglas Model DC-10 series airplanes. Failure of a bracket occurred on one airplane during taxi as the flight crew was performing the roll out check of the flight control system. Subsequent investigation revealed that the mount legs of the left-hand spoiler mixer bracket had failed. That failure was attributed to fatigue cracking. The mixer then moved aft and down, thus inputting an extend command to the right-hand spoilers 1, 4, and 5; this subsequently led to deployment of the spoilers on the right wing. The airplane involved had accumulated 49,440 flight hours and 20,446 landings prior to failure of the spoiler mixer bracket.

In addition to the one report of a failed bracket, the FAA has received reports of nine cracked brackets that were detected on several airplanes that had accumulated between 8,914 and 24,824 landings. The cracking has been attributed to fatigue.

Failure of the spoiler mixer brackets, if not corrected, could result in inadvertent spoiler deployment, which could result in reduced controllability of the airplane.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992, that describes procedures for inspection of the right- and left-hand spoiler mixer brackets to detect cracking, and replacement of the brackets, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model DC-10 series airplanes of the same type design, this AD is being issued to prevent failure of the spoiler mixer brackets. This AD requires repetitive inspections to detect fatigue cracking of the right- and left-hand spoiler mixer brackets, and replacement, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-127-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-03. McDonnell Douglas: Amendment 39-8312. Docket 92-NM-127-AD.

Applicability: Model DC-10-10, -15, -30, -40, and KC-10A (Military) series airplanes on which spoiler mixer brackets, part number APH7275-1, APH7275-501, APH7275-503, APH7275-505, APH7275-507, or APH7275-509, have been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spoiler mixer brackets, which could lead to reduced controllability of the airplane, accomplish the following:

(a) Unless accomplished within the last 1,500 landings, conduct an eddy current inspection of the right- and left-hand spoiler mixer brackets in accordance with McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992, at the later of times specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Prior to the accumulation of 100 landings or within 60 days after the effective date of this AD, whichever occurs first; or

(2) Prior to the accumulation of 8,000 landings on the currently installed brackets.

(b) If no cracking is detected, repeat the eddy current inspection at intervals not to exceed 1,500 landings.

(c) If cracking is detected, accomplish the procedures specified in paragraphs (c)(1) and (c)(2) of this AD:

(1) Prior to further flight, replace the spoiler mixer bracket with one having the same part number; or with a spoiler mixer bracket having part number APH7275-507 or APH7275-509, as applicable; in accordance with McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992.

(2) Prior to the accumulation of 8,000 landings on the spoiler mixer bracket installed in accordance with paragraph (c)(1) of this AD, conduct an eddy current inspection of the right- and left-hand spoiler mixer brackets in accordance with McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992. Thereafter, repeat the eddy current inspection at intervals not to exceed 1,500 landings.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin A27-220, dated May 29, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publication—Technical Administrative Support, C1-L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(g) This amendment becomes effective on September 8, 1992.

Issued in Renton, Washington, on July 8, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20027 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 21 and 23

[Docket No. 098CE, Special Conditions 23-ACE-66]

Special Conditions; Grob Model G520T Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Special Conditions.

SUMMARY: This final special condition is being issued for the Grob Model G520T Series airplane. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. This novel and unusual design feature includes the use of composite materials for primary flight structure for which the applicable regulations do not contain adequate or appropriate airworthiness standards. This final special condition contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: J. Lowell Foster, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, room 1544, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1991, Burkhart Grob Luft und Raumfahrt GmbH, Postfach 1257, D-8948, Mindelheim, Germany, made application for a type certificate through the Luftfahrt Bundesamt (LBA) to the FAA Brussels Office for the Model G520T airplane. The Grob Model G520T Series airplane is a two seat, trainer version of the G520, which is a single-seat, high aspect ratio, pressurized, mid-wing monoplane with tricycle landing gear. The Grob Model G520T Series airplane utilizes composite material for its structure, powered by a turbopropeller engine. The maximum gross weight is unchanged from the Grob Model G520 Series airplane at 9,950 pounds.

Type Certification Basis

The type certification basis for the Grob Model G520T Series airplane is as follows: Part 21 of the FAR, §§ 21.29, 21.183(c) and part 23 of the FAR, effective February 11, 1965, including amendment 23-1 through 23-34; and amendment 23-42, § 23.631; and part 36 of the FAR, effective November 18, 1969, including amendments 36-1 through amendment 36-18; and SFAR 27, effective February 1, 1974, including amendments 27-1 through 27-5; and special conditions pursuant to part 21 of the FAR, § 21.16 issued to the Egrett model, and published on November 14, 1990, (55 FR 47455); and Equivalent Safety Finding No. ACE-91-01, dated June 25, 1991; and Section 611(b) of the FAA Act of 1958, and Exemption No. 5223 granted by the FAA (§ 11.27) on September 13, 1990.

Discussion

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis, in accordance with § 21.17(a)(2).

The proposed type design of the Grob Model G520T Series airplane contains a number of novel or unusual design features not envisaged by the applicable part 23 airworthiness standards. A special condition is considered necessary because the airworthiness requirements of part 23 do not contain adequate or appropriate safety standards for the novel and unusual design features of the airplane.

The Grob Model G520T airframe is made of advanced composite material and is assembled by the extensive use of bonding. Composite materials as used in airplane airframes at this time are typically more susceptible, than commonly used aluminum structure, to damage from intrinsic and discrete sources that might adversely influence strength properties. Because of this and other factors, it is generally agreed that damage tolerance criteria should be used to show that composite material structure can withstand the repeated loads of variable magnitude expected in service. Furthermore, because of the lack of a service experience base for these new materials and their mechanical properties characteristics, there is a need to apply special requirements such as (a) residual strength load with large area manufacturing defects (e.g., understrength bonds) and impact damage from discrete sources, and (b) ability to carry ultimate load with realistic impact damage below the threshold of detectability and material environmental exposure effects.

Discussion of Comments

Notice of Proposed Special Condition, Docket No. 098CE, Notice No. 23-ACE-66 (57 FR 9513, March 19, 1992) proposed a special condition for the Grob Model G520T Series airplane. The comment period closed July 17, 1992.

No comments pertaining to the notice were received. The special condition, as proposed by Notice No. 23-ACE-66, is issued without change.

Conclusion

In view of the design feature discussed above, the following special condition is issued for the Grob Model G520T Series airplane, under the provisions of § 21.16, provide a level of safety equivalent to that intended by the applicable regulations. This action is not a rule of general applicability and affects only the model/series of airplane identified in the special condition.

List of Subjects in 14 CFR Parts 21 and 23

Aircraft, Air transportation, Aviation safety, and Safety.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49(b).

Adoption of the Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Grob Model G520T Series airplane:

1. Evaluation of Composite Structure

Instead of complying with §§ 23.571 and 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in a catastrophic loss of the airplane, the wing, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structure, fuselage, vertical stabilizer and attaching structure, wing flaps, and all movable control surfaces and attaching structure must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (k) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (h) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; for example, bond defects, or damage from discrete sources under repeated loads expected in service; that is, between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations, must be documented in test proposals.

(f) The structure of the pressurized cabin and fuselage must be shown by residual strength tests, or by analysis supported by residual strength tests, to be able to withstand critical limit flight loads listed in subparagraphs (1) and (2) below, considered as ultimate loads, with damage consistent with the results of the damage tolerance evaluations.

(1) Critical limit flight loads with the combined effects of normal operating pressures and expected external aerodynamic pressures; and

(2) The expected external aerodynamic pressure in lg flight combined with a cabin differential pressure equal to 1.1 times the normal operating differential pressure without consideration of any other load.

(g) The wing, wing carry-through, wing attaching structure, horizontal stabilizer, stabilizer carry-through and attaching structure, vertical stabilizer and attaching structure, and all movable control surfaces and their attaching structure, must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(h) Instead of a non-destructive inspection technique that ensures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint, consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition, must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof-testing must be conducted on each production article that will apply the critical limit design load to each critical bonded joint.

(i) The effects of material variability and environmental conditions; for example, exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials, must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(j) The airplane must be shown by analysis to be free from flutter to V_D with the extent of damage for which residual strength is demonstrated.

(k) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Sufficient component, subcomponent, element, or coupon tests must be performed to establish the fatigue scatter and environmental effects. Impact damage in composite material components that may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

Issued in Kansas City, Missouri, on August 13, 1992.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19992 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 91-ASO-19]

Alternation of VOR Federal Airway; FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the description of VOR Federal Airway V-539 located in the vicinity of Key West, FL. The realignment of the airway improves air traffic separation and increases safety for the traffic flow in the area.

EFFECTIVE DATE: 0901 u.t.c., October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800

Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

History

On November 29, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the description of Federal Airway V–539 located in the vicinity of Key West, FL (56 FR 60948). The realignment of the airway would improve air traffic separation and increase safety for the traffic flow in that area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. VOR Federal airways are published in section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations improves the flow of traffic in the Key West, FL, terminal area and increases air safety by having divergence minima between V–225 and V–539 airway segments.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–539 [Revised]

From Key West, FL; INT Key West 018° and Lee County, FL, 167° radials; to Lee County.

* * * * *

Issued in Washington, DC, on August 12, 1992.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 92–19991 Filed 8–20–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92-ANM-18]

Romoval of VOR Federal Airway V–349; WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment removes Federal Airway V–349 located in the vicinity of Bellingham, WA. The Bellingham VHF Omnidirectional Range (VOR) navigational signal has deteriorated to the point where the minimum en route altitude has been raised from 5,400 feet mean sea level (MSL) to 10,000 feet MSL over the JAWBN intersection. This action will aid flight planning and enhnace safety.

EFFECTIVE DATE: 0901 w.t.c, October 15, 1992.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9250.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) removes V–349 located in the vicinity of Bellingham, WA. The performance of the Bellingham VOR has deteriorated to the point that the FAA was required to raise the minimum en route altitude along that airway from 5,400 feet MSL to 10,000 feet MSL in order to navigate along V–349. The deterioration of the Bellingham VOR navigational signal has created a hardship on general aviation pilots and has become an air safety hazard. Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to remove V–349. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Domestic VOR Federal airways are published in Section 71.123 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The airway listed in this document will be removed subsequently from the Handbook.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routing amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Domestic VOR Federal airways, Incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g) 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7 Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.123 Domestic VOR Federal Airways

* * * * *

V–349 [Removed]

* * * * *

Issued in Washington, DC, on August 14, 1992.

Harold W. Becker,

Manager Airspoce-Rules and Aeronautical Information Division.

[FR Doc. 92–19990 Filed 8–20–92; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 117

[CGD 92–015]

Drawbridge Operation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard regulations prescribe operating requirements for specific drawbridges. The drawbridges are listed by the State(s) in which they are located and by the waterway they cross. The Coast Guard is amending these drawbridge regulations to eliminate duplicate entries and insert cross-references in their places, in cases where a bridge is located in two States. This decreases the likelihood of incomplete, inconsistent, or conflicting provisions for drawbridges located in two States.

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Marcia L. Edwards, Chief, Alternations, Drawbridges and Systems Branch (G–NBR–1), at (202) 267–0375.

SUPPLEMENTARY INFORMATION:

Regulatory History

There have been no prior publications in the Federal Register in connection with this rulemaking.

Drafting Information

The principal persons involved in drafting this document are Ms. Marcia L. Edwards, Project Manager, and Donald W. Faleris, Project Counsel, Office of Chief Counsel.

Background and purpose

In part 117, subpart B, bridges are listed by State and, within each State, by waterway. For bridges that span a waterway which is a border between two States, operating requirements are currently listed under both States. Sometimes operating requirements will pertain to a series of bridges—interstate, intrastate, or both. Throughout subpart B, identical operating requirements are reprinted under different state headings, in separate sections of the Code of Federal Regulations. When operating requirement provisions for these bridges are amended or new bridges are regulated, the possibility exists that a particular listing may be overlooked, since listings currently do not make reference to each other at this time. The purpose of this administrative change is to ensure that accurate information is available to the mariner at all times and that information is cross-referenced where individuals are likely to look.

The specific regulations in subpart B should be read together with the general requirements in subpart A, which pertain to all drawbridges across the navigable waters of the United States.

Discussion of Amendments

These amendments make no substantive changes to drawbridge regulations. A cross-reference will replace the current information for one State listing, for each drawbridge located in two States.

In § 117.937, a technical amendment is being made. Both § 117.371 and § 117.937 refer to the same bridge, at Clyo, Georgia, under two different state listings. When § 117.371, under Georgia, was amended in 1991 (56 FR 16008), the dual listing, § 117.937, under South Carolina, inadvertantly was not amended. By replacing the current wording of § 117.937 with a cross-reference to § 117.371, the inconsistency between the sections will be eliminated.

This regulatory change is effective upon publication. There has been no notice of proposed rulemaking with a comment period, nor will there be a 30-day period between publication and the effective date. Both of these are usually required by the Admintstrative Procedures Act (APA). However, the APA makes an exception where good cause can be shown (5 U.S.C. 553(b) and (d)(3)). This rulemaking is a technical amendment to existing regulations, an administrative change for purposes of clarity and consistency. For this reason, the Coast Guard finds that neither a notice of proposed rulemaking with a comment period nor a delayed effective date are necessary or in the public interest.

Regulatory Evaluation

This rulemaking is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The change is editorial only and will have no economic impact. A Regulatory Evaluation is not necessary since there will be no cost to the general public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking was required. This rule did not require a general notice of proposed rulemaking and is, therefore, exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

This change is editorial only. Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rulemaking contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this editorial change in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this change does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under federal law, the authority to regulate the opening of drawbridges for the passage of vessels is vested in the Secretary of Transportation and delegated to the Coast Guard. The Coast Guard intends this rule to preempt State action addressing this subject matter.

Environment

The Coast Guard has considered the environmental impact of this amendment and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this action is categorically excluded from further environmental documentation, since it is only editorial. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection or copying at the Office of the Marine Safety Council, room 3406, U.S. Coast Guard Headquarters, 2100 Second Street, SW.,

Washington, DC 20593–0001, between 8:00 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

Subpart B—Specific Requirements

2. Section 117.359 is revised to read as follows:

§ 117.359 Chattahoochee River.

See § 117.107, Chattahoochee River, listed under Alabama.

3. Section 117.373 is revised to read as follows:

§ 117.373 St. Marys River.

See § 117.329, St. Marys River, listed under Florida.

4. Section 117.403 is revised to read as follows:

§ 117.403 Wabash River.

See § 117.397, Wabash River, listed under Illinois.

5. Section 117.407 is revised to read as follows:

§ 117.407 Missouri River.

See § 117.411, Missouri River, listed under Kansas.

6. Section 117.491 is revised to read as follows:

§ 117.491 Red River.

See § 117.135, Red River, listed under Arkansas.

7. Section 117.684 is revised to read as follows:

§ 117.684 Pearl River.

See § 117.488, Pearl River, listed under Louisiana.

8. Section 117.700 is revised to read as follows:

§ 117.700 Piscataqua River.

See § 117.531, Piscataqua River, listed under Maine.

9. Section 117.904 is revised to read as follows:

§ 117.904 Delaware River.

See § 117.716, Delaware River, listed under New Jersey.

10. Section 117.937 is revised to read as follows:

§ 117.937 Savannah River.

See § 117.371, Savannah River, listed under Georgia.

11. Section 117.981 is revised to read as follows:

§ 117.981 Sabine River.

See § 117.493, Sabine River, listed under Louisiana.

12. Section 117.1099 is revised to read as follows:

§ 117.1099 St. Croix River.

See § 117.667, St. Croix River, listed under Minnesota.

13. Section 117.1103 is revised to read as follows:

§ 117.1103 Upper Mississippi River.

See § 117.671, Upper Mississippi River, listed under Minnesota.

Dated: August 4, 1992.

W.J. Ecker,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 92–19931 Filed 8–20–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13 92–05]

Drawbridge Operation Regulations; Lake Washington, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: At the request of the Washington State Department of Transportation (WADOT), the Coast Guard is establishing temporary regulations governing operation of the Evergreen Point Bridge (SR–520) across Lake Washington between Seattle and Bellevue, Washington. The temporary regulation is effective through summer of 1993.

This change insures the safe operation of the drawspan while malfunctions of the operating mechanism are being diagnosed and repaired.

This action provides for the reasonable needs of navigation by allowing the bridge owner to provide limited openings for navigation during periods of reduced vehicular traffic.

Also, it provides the time needed to return the draw to the closed position before the next period of peak vehicular traffic.

EFFECTIVE DATE: September 21, 1992, and terminates on September 1, 1993.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 553–5864).

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Regulatory History

On June 12, 1992, the Coast Guard published a proposed temporary rule in the **Federal Register** (57 FR 25002). The Commander, Thirteenth Coast Guard District also published the proposal as a Public Notice dated June 23, 1992. In each notice interested parties were given until July 13, 1992 to submit comments. The Coast Guard received no objections to the proposed temporary rule.

Discussion of Temporary Rule

The operating mechanism for drawspan of the Evergreen Point Bridge has been plagued with serious electrical malfunctions. In the interest of safety, the Coast Guard granted WADOT an emergency departure from the operating regulations. WADOT has asked and the Coast Guard has approved an extension of the temporary regulations until the problem has been diagnosed and the necessary repairs are made. The temporary regulations require that the draw of the Evergreen Point Bridge open on signal from 11 p.m. to 2 a.m. Sunday through Friday and from 11 p.m. to 5 a.m. Friday through Sunday, if at least 12 hours advance notice is given. This mode of operation allows WADOT to provide limited openings for navigation during periods of reduced vehicular traffic. Also, it provides the time necessary to diagnose and repair any operational problems that might arise and to then return the draw to the closed position before the next period of peak vehicular traffic. It is anticipated that this temporary regulation would be in effect through summer of 1993, after which time the former regulation would be reinstated or a less restrictive regulation would be proposed.

Regulatory Evaluation

This temporary rule is considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The Evergreen Point Bridge has averaged 29.5 openings per year for vessels over the last five years. This level of activity is expected to remain fairly constant for the foreseeable future. Although some vessel operators may be inconvenienced during the span of temporary regulation, openings will still be provided on a daily basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because this temporary rule imposes no new requirements on small business and will result in partial relief from a regulatory burden on the owner or operator of the bridge, the Coast Guard does not expect this temporary rule to have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed and determined by the Coast Guard to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determine statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.1049 paragraph (d) is removed and paragraphs (a) and (c) are temporarily revised to read as follows:

§ 117.1049 Lake Washington.

* * * * *

(a) The draw shall open on signal for the passage of vessels from 11 p.m. to 2 a.m. Sunday through Friday and from 11 p.m. to 5 a.m. Friday through Sunday if at least 12 hours notice is given. At all other times the draw need not open.

(b) * * *

(c) All non-self-propelled vessels, rafts, and other watercraft navigating this waterway which require an opening of the draw shall be towed by a suitable self-propelled vessel while passing through the draw.

Dated: August 7, 1992.

J. E. Vorbach,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 92–19935 Filed 8–20–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7 91–84]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of Palm Beach County, the Coast Guard is changing the regulations governing the Donald Ross Road Bridge, mile 1009.3 at Jupiter by permitting the number of openings to be limited during certain periods. This change is being made because of reports of vehicular traffic congestion. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Aids to Navigation Branch (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Walt Paskowsky, Project Manager, and LT Jacqueline Losego, Project Counsel.

Regulatory History

On December 5, 1991, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations, Atlantic Intracoastal Waterway, FL in the **Federal Register** (56 FR 63701). The Coast Guard received 13 letters commenting on the proposal. A public hearing was not requested and one was not held.

Background and Purpose

The bridge presently opens on signal. This rule will provide for seasonal openings on the hour, quarter-hour, half-hour, and three-quarter hour during weekday morning and evening commuter traffic periods from 1 October to 31 May. This will eliminate back-to-back openings and allow sufficient time for dispersal of increased seasonal vehicular traffic before the next opening. The holding areas near the bridge are considered adequate to accommodate the expected accumulation of vessels during the closure periods. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property will upon proper signal continue to be passed through the draw at any time.

Discussion of Comments

Thirteen letters were received. Eleven supported the proposal, or suggested alternate schedules such as opening every 20 to 30 minutes. Two letters requested that action be taken against vessels that do not lower appurtenances to pass beneath the bridge without opening it. This matter is addressed in 33 CFR 117.11 which prohibits signalling a drawbridge to open for any non-structural vessel appurtenace which is not essential to navigation or which is easily lowered. One letter suggested the opening times be posted on roadway signs. This has been brought to the attention of the bridgeowner. Two letters objected to the proposal, citing holding difficulties for waiting boats. An onsite investigation did not reveal the presence of unsafe holding areas near the bridge. In addition, openings are scheduled at sufficient intervals to prevent vessels from being required to wait an extended period for an opening. At the suggestion of the Town of Juno Beach, the proposed regulations were implemented on a trial basis from March 9 through April 6, 1992. During this period, which is the busiest month of the year for bridge openings, only 40% of the authorized openings actually occurred. The Coast Guard has carefully considered all the comments. Since the bridge logs indicate that less than half of the authorized openings would normally occur, the 15 minute schedule is considered reasonable for both cars and boats. No additional information was presented to justify further change to the proposed rule. The final rule is, therefore, unchanged from the proposed rule published on December 5, 1991.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast

Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The Coast Guard expects the impact will be minimal on all "small entities" because commercial tugs with tows are exempt from the rule. Therefore the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act. (44 U.S.C. 3501 et seq.)

Federalism: The action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment: The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B., this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261(r) is added to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Mary's River to Key Largo.

* * * * *

(r) The draw of the Donald Ross Road Bridge, mile 1009.3 shall open on signal, except that from 1 October to 31 May, Monday through Friday, except federal holidays, from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

* * * * *

Dated: August 7, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard; Commander, Seventh Coast Guard District.

[FR Doc. 92–20001 Filed 8–20–92; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service hereby describes the numerous miscellaneous revisions consolidated in the Transmittal Letter for issue 43 of the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations, see 39 CFR 111.1. Most of the revisions are minor, editorial, or clarifying. Substantive changes have previously been published in the **Federal Register.**

EFFECTIVE DATE: June 21, 1992.

FOR FURTHER INFORMATION CONTACT: Neva Watson, (202) 268–2963.

SUPPLEMENTARY INFORMATION: The Domestic Mail Manual has been amended by the publication of a transmittal letter for issue 43, dated June 21, 1992. The text of all published changes is filed with the Director of the Federal Register. Subscribers to the Domestic Mail Manual receive these amendments automatically from the Government Printing Office. The following excerpt from the Summary of Changes section of the transmittal for issue 43 covers the minor changes not previously described in interim or final rules published in the **Federal Register.**

Summary of Changes

Exhibits 122.17, 122.18, 122.21, 144.743a, 367.322b(5), 369.1, 641.411b(5), 642.31, 768.1, and 932.2 are labeled with the corresponding section numbers to facilitate reference. No notice of these changes was published.

Exhibits 122.63d–t, sections 441.315b, 441.316b, 641.135e(2), and 641.135f(2) are revised to reflect changes in mail processing operations and APO/FPO labeling information. (*Postal Bulletin* 21811, 3–19–92; *Postal Bulletin* 21813, 4–16–92).

Sections 122.72, 124.63, 127, 128, 136.75, 136.83, 136.84, 136.91, 136.953, 137.242, 141.28, 141.29, 143.17, 144.342, 144.962, 152.81, 152.84, 159.213, 164.22, 164.23, 164.53, 164.71, 164.74, 164.75, and 164.83 are revised to correct codification. Internal citations are revised accordingly. No notice of these revisions was published.

Section 122.81 is revised to reflect the standardized addressing of overseas military mail implemented by the Postal Service on July 15, 1991. The new standardized addresses must be used beginning July 15, 1992. Address standardization changes the last two lines of military addresses to conform to addressing practices for other U.S. mail. Military APO/FPO ZIP Codes now have three new state abbreviations: AA, AE, and AP, which replace the previous designations of New York, Miami, and San Francisco and Seattle, respectively. (*Postal Bulletin* 21816, 5–28–92.)

Section 126.221 is updated to show the current ZIP Code 20521 that must be used for most mail authorized for transmission by the U.S. Department of State. Mail addressed through the Agency for International Development (AID) uses the ZIP Code 20523. (*Postal Bulletin* 21816, 5–28–92.)

Part 132 is revised to reflect administrative changes in Postal Service divisions and management sectional centers. (*Postal Bulletin* 21812, 4–2–92.)

Sections 137.2, 137.3, 137.4, and 137.5 are revised to clarify certain operational procedures for the processing of and accounting for official mail used by U.S. Government agencies. Part 138 is added to separate regulations for absentee balloting materials from regulations on official mail in part 137. (*Postal Bulletin* 21812, 4–2–92.)

Exhibit 137.251a adds to the list of federal agency authorization codes four federal agencies: Competitiveness Policy Council; National Commission on Judicial Discipline and Removal; National and Community Service, Commission on; and Preservation of America's Heritage Abroad, U.S. Commission for the Four agencies are deleted from this exhibit, and the Tennessee Valley Authority is now a commercial mailer. This amended list reflects other additions, revisions, and deletions of several business reply mail permits, as well as changes to the sampling numbers (RPW) for some agencies. Boldface type indicates these revisions. No notice of these revisions was published.

Section 144.13 is revised to show a change in name of Rockaway Corporation to Ascom Hasler Mailing Systems, Inc. and a new mailing address for Pitney Bowes, Inc. The names of the manufacturers authorized to lease postage meters are arranged in alphabetical order. No notice of these changes was published.

Exhibit 145.7 is corrected to show the increase from 4½ inches to 4¾ inches for the space reserved for barcoding. No notice of this correction was published.

Section 147.42 is revised to allow value added refunds for some third-class mailings, increase the maximum weight from 2 to 3 ounces in a ZIP + 4 Barcoded rate mailing for which a value added refund is claimed, and clarify that preparation under Chapter 5 is permitted. All pieces in the mailing must meet the applicable requirements for the rates claimed. This section clarifies that pieces bearing precanceled stamps are not eligible for a value added refund; the request for authorization must be processed through the local postmaster and field division general manager/postmaster; participating mailers must implement an internal quality assurance program prior to authorization; and First-Class mailings may not be combined with bulk third-class mailings, and third-class regular bulk rate mail may not be combined with third-class special bulk rate (nonprofit) mail. Pieces in the mailings must meet the following conditions: they must be First-Class or bulk third-class; they must be letter-size and not exceed 3 ounces; if metered, they must be metered by the presenter or the presenter's customer at the eligible rates; and they must be ZIP + 4 barcoded by the presenter. (*Postal Bulletin* 21814, 4–30–92.)

Section 152.6 is revised to clarify procedures for mailers requesting the Postal Service to withdraw and dispose of mail not delivered by a scheduled delivery date. Mailers may request this service by submitting a written authorization or attaching facing slips with instructions. (*Postal Bulletin* 21817, 6–11–92)

Exhibit 159.151a, 291.1, and 391 are amended to clarify the handling of address correction information for First-Class Mail, Priority Mail, and Express Mail. For the first 12 months from the requested effective date of the change of address order, such mail is forwarded (with some restrictions as outlined in 159.151). During months 13 through 18, such mail is returned to the sender with an on-piece address correction. (*Postal Bulletin* 21813, 4–16–92)

Section 325.12, 364.13, 367.1, 367.2, 369.3, and 447.32 are revised to require the preparation of 3-digit packages and trays regardless of whether the destination is one of the unique 3-digit cities listed in Exhibit 122.63b. Exhibit 367.111 is also revised to show the packaging and traying requirements for presorted First-Class Mail. The applicable First-Class Mail packaging steps call for sequential preparation of packages of 10 or more pieces to 5-digit destinations, packages of 50 or more pieces to unique 3-digit city destinations, and packages of 50 or more pieces to other 3-digit destinations. Remaining pieces fall to the residual portion. These packages must then be presorted together and placed in trays sequentially to 5-digit, unique 3-digit city, SCF, optional ADC, and mixed ADC destinations. (*Postal Bulletin* 21811, 3–19–92)

Sections 442.1, 426.74 and 444.31 are revised to clarify and reorganize the requirements for the preparation of bedloaded bundles. No notice of these revisions was published.

Sections 424.72, 424.742, 424.744, 424.751, 424.782, 624.82, 624.843, 624.845, 624.851, 624.882 and 641.425 are revised to clarify the eligibility for the second- and third-class 125-piece walk-sequence discounts is based on the number of pieces for a route and not the number of delivery stops to which the pieces are addressed. The exception to section 641.425 is added to allow mailers to prepare third-class carrier route sacks containing fewer than 125 pieces or 15 pounds of mail for those carrier routes that do not have a sufficient number of delivery stops to meet the 125-piece or 15-pound minimum at the saturation levels required in section 624.844. (*Postal Bulletin* 21815, 5–14–92)

* * * * *

Section 521.42 is revised to clarify the types of exterior closure devices prohibited on mail submitted for automation-based rates (ZIP+4 and ZIP+4 Barcoded). Certain closures cannot be processed by the automated equipment the Postal Service uses for sorting mail. Inflexible or protruding closures can damage the equipment or other mail during processing. This revision specifies that claps, string, and buttons are prohibited as well as other materials that can hinder mail processing. This revision also establishes the acceptability of staples affixed to booklet-type mailpieces submitted for automation-based rates when properly placed and securely fastened.(*Postal Bulletin* 21816, 5–28–92)

Section 531.12d is added to indicate that the Delivery Sequence File (DSF) process is an approved method that customers may use for obtaining ZIP+4 codes for their address lists to qualify their mailings for automation-based ZIP+4 or ZIP+4 Barcoded rates. No notice of this revision was published.

Sections 545.2a and 551.721b are corrected to show the required barcode clear zone boundaries and window specifications that took effect January 1, 1992. No notice of these corrections was published.

Exhibit 551.121 is revised to clarify instructions for the derivation of the delivery point barcode (DPBC). Several more examples are added to illustrate exceptions to the general rule that uses the last two digits of the primary street number (or post office box number, rural route box number, or highway contract route number) for the information of the DPBC extension. No notice of this revision was published.

Sections 629.43, 629.523, 629.63, 644.173, 644.175, 644.186, 645.34, 661.21 and parts 692, 693, 695, and 696 are revised with minor changes to codification and punctuation. No notice of these revisions was published.

Sections 645.2, 645.3, 767.42, and 767.43 are revised to clarify and reorganize the requirements for the preparation of bedloaded bundles. No notice of these revisions was published.

Sections 7212.2, 724.24, 762.11, 764.21, 767.23, 767.33, 767.823, and parts 792, 793, 794, and 795 are revised with minor changes to codification and punctuation. No notice of these revisions was published.

Exhibits 767.533c(1) and 767.623c(1) are enclosed within rules lines to prevent the misreading of information with surrounding text. No notice of these changes was published.

Sections 911.31, 914.72, 914.74, 931.52, and 933.4 are recodified. No notice of this recodification was published.

Sections 914.31, 914.32, and 914.33 are reorganized and recodified to clarify the requirements for privately printed COD tags. No notice of these revisions was published.

Sections 914.51 and 919.14 are recodified to facilitate reference. No notice of these revisions was published.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—INFORMATION ON POSTAL SERVICE

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. In consideration of the foregoing, the table at the end of § 111.3(e) is amended by adding at the end thereof the following:

§ 111.3 Amendments to the Domestic Mail Manual.

* * * * *

Transmittal letter for issue 43
Dated June 21, 1992,
Federal Register publication 57 FR
[insert FR page number.]

Stanley F. Mires,
Assistant General Counsel, Legislative Division.

[FR Doc. 92–20056 Filed 8–20–92; 8:45 am]
BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–4197–5]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the list of hazardous wastes contained in EPA regulations for certain solid wastes generated at Care Free Aluminum Products, Inc., (Care Free), Charlotte, Michigan. This action responds to a delisting petition submitted under those regulations, which allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 21, 1992.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., (room M2427), Washington, DC 20460, and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The reference number for this docket is "F–92–CFEP–FFFFF." The Public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 920–9810. For technical information concerning this notice, contact Chichang Chen, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7392.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under §§ 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at §§ 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

Care Free Aluminum Products, Inc., located in Charlotte, Michigan, petitioned the Agency to exclude from hazardous waste control its F019 wastewater treatment sludge filter cake resulting from the treatment of wastewater originating from the chemical conversion coating of aluminum. After evaluating the petition, EPA proposed, on March 19, 1992 to exclude Care Free's waste from the lists of hazardous waste under 40 CFR §§ 261.31 and 261.32 (see 57 FR 9518)

The Agency did not receive any public comments regarding the proposal and this rulemaking finalizes the proposed decision to grant Care Free's petition.

II. Disposition of petition

A. Care Free Aluminum Products, Inc., Charlotte, Michigan

1. Proposed Exclusion

Care Free Aluminum Products, Inc. (Care Free), located in Charlotte, Michigan, petitioned the Agency to exclude from hazardous waste control its wastewater treatment sludge filter cake resulting from the treatment of wastewater originating from the chemical conversion coating of aluminum, presently listed as EPA Hazardous Waste No. F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." The listed constituents of concern for F019 wastes are hexavalent chromium and cyanide (complexed). (See 40 CFR 261, Appendix VII.)

In support of its petition, Care Free submitted: (1) Detailed descriptions and schematics of its manufacturing and waste treatment processes; (2) a list of all raw materials and Material Safety Data Sheets (MSDS) for all trade name products used in the manufacturing and treatment processes; (3) results from total constituents analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24 [1] nickel, cyanide (total and reactive), and reactive sulfide; (4) results from EP leachate procedure for the eight TC metals, nickel, and cyanide; (5) results from the Oily Waste Extraction Procedure (OWEP; SW–846 Method 1330) for the eight TC metals and nickel; (6) results from the Toxicity Characteristic Leaching Procedure for TC constituents, fluoride, and nickel; (7) results from total oil and grease analyses; and (8) results from characteristics testing for ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by Care Free in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA's Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in Care Free's petitioned waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 57 FR 9518, March 19, 1992, for a detailed explanation of why EPA proposed to grant Care Free's petition for its wastewater treatment sludge filter cake.

2. Agency Response to Public Comments

The Agency did not receive any public comments regarding the proposal.

[1] EPA has adopted the Toxicity Characteristic Leaching Procedure (TCLP) in the Toxicity Characteristic (TC) rulemaking (55 FR 11798, March 29, 1990) as a replacement to the EP for the establishment of the TC regulatory levels and these eight metals are now referred to as the TC metals.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that Care Free's wastewater treatment sludge filter cake should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to Care Free Aluminum Products, Inc., located in Charlotte, Michigan, for its wastewater treatment sludge filter cake, described in its petition as EPA Hazardous Waste No. F019.

This exclusion only applies to the processes and waste volume (a maximum of 100 cubic yards generated annually) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (*e.g.*, significantly higher levels of hazardous constituents) or increase in waste volume might occur. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 100 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective August 21, 1992. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 5, 1992.

Jeffery D. Denit,
Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Care Free Aluminum Products, Inc	Charlotte, Michigan	Wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum (generated at a maximum annual rate of 100 cubic yards), after August 21, 1992. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in § 261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to § 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Michigan. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

[FR Doc. 92-20029 Filed 8-20-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-4197-4]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in EPA regulations for certain solid wastes generated at MAHLE, Incorporated, Morristown, Tennessee. This action responds to a delisting petition submitted under those regulations, which allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: August 21, 1992.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing (room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260-9327 for appointments. The reference number for this docket is "F-92-MIEP-FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (703) 920-9810. For technical information concerning this notice, contact Narendra K. Chaudhari, Office of Solid Waste (OS-333), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-4787.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that: (1) The waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) no other hazardous constituents or factors that could cause the waste to be hazardous are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

MAHLE, Incorporated, located in Morristown, Tennessee, petitioned the Agency to exclude from hazardous waste control its F019 wastewater treatment sludge filter cake resulting from the treatment of wastewater originating from the chemical conversion coating of aluminum. After evaluating the petition, EPA proposed, on March 27, 1992 to exclude MAHLE's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32 (see 57 FR 10629).

The Agency did not receive any public comments on the proposal and this rulemaking finalizes the proposed decision to grant MAHLE's petition.

II. Disposition of Petition

A. MAHLE, Incorporated, Morristown, Tennessee

1. Proposed Exclusion

MAHLE, Incorporated, located in Morristown, Tennessee, petitioned the Agency to exclude from hazardous waste control its wastewater treatment sludge filter cake resulting from the treatment of wastewater originating from the chemical conversion coating of aluminum, presently listed as EPA Hazardous Waste No. F019—"Wastewater treatment sludges from the chemical conversion coating of aluminum except from zirconium phosphating in aluminum can washing when such phosphating is an exclusive conversion coating process." The listed constituents of concern for F019 wastes are hexavalent chromium and cyanide (complexed). (See 40 CFR Part 261, appendix VII.)

In support of its petition, MAHLE submitted: (1) Detailed descriptions of its manufacturing and waste treatment processes, including schematic diagrams; (2) a list of the raw materials and Material Safety Data Sheets (MSDS) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24, nickel, sulfide, cyanide, formaldehyde, and toluene; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP; as described in 40 CFR 261, appendix II) analyses for the TC constituents (except for the herbicides 2, 4-D, and 2, 4, 5-TP), nickel, cyanide, formaldehyde, and methylene chloride; (5) results from analyses for total oil and grease; (6) results from the Oily Wastes Extraction Procedure (OWEP; SW-846 Method 1330) analyses for the TC metals, nickel, and cyanide; and (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity.

The Agency evaluated the information and analytical data provided by MAHLE in support of its petition and determined that the hazardous constituents found in the petitioned waste would not pose a threat to human health and the environment. Specifically, the Agency used the modified EPA's Composite Model for Landfills (EPACML) to predict the potential mobility of the hazardous constituents found in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in MAHLE's petitioned waste would not leach and migrate at concentrations above the Agency's health-based levels used in delisting decision-making. See 57 FR 10629, March 27, 1992, for a detailed explanation of why EPA proposed to grant MAHLE's petition for its wastewater treatment sludge filter cake.

2. Response to Public Comments

The Agency did not receive any public comments on the proposal.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that MAHLE's wastewater treatment sludge filter cake should be excluded from hazardous waste control. The Agency, therefore, is granting a final exclusion to MAHLE, Incorporated, located in Morristown, Tennessee, for its wastewater treatment sludge filter cake, described in its petition as EPA Hazardous Waste No. F019.

This exclusion only applies to the processes and waste volume (a maximum of 33 cubic yards generated annually) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (e.g., if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated either in excess of 33 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to Section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective August 21, 1992. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule. This rule is not a major regulation, therefore, no Regulatory Impact Analysis is required.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping Requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 5, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
. . .	. . .	. . .
MAHLE, Inc.	Morristown, Tennessee	Wastewater treatment sludge filter cake (EPA Hazardous Waste No. F019) generated from the chemical conversion coating of aluminum (generated at a maximum annual rate of 33 cubic yards), after August 21, 1992. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis sample and test for the constituents listed in 40 CFR 261.24 using the method specified therein. The annual analytical results (including quality control information) must be compiled, certified according to 40 CFR 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by representatives of EPA or the State of Tennessee. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.
. . .	. . .	. . .

[FR Doc. 92-20033 Filed 8-20-92; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 372

[OPPTS-400070; FRL-4159-5]

Copper Phthalocyanine Pigments; Toxic Chemical Release Reporting; Community Right-to-Know; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: This document corrects an error published in the **Federal Register** of May 23, 1991, concerning a petition from the Dry Color Manufacturers' Association to exempt three phthalocyanine pigments from the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). The three pigments (C.I. Pigment Blue 15, CAS No. 14714-8; C.I. Pigment Green 7, CAS No. 1328-53-6; and C.I. Pigment Green 36, CAS No. 14302-13-7) were deleted from the list of toxic chemicals category "copper compounds." The Water Quality Criteria for copper was incorrectly listed.

EFFECTIVE DATE: June 24, 1991.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail stop TS-779, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 23, 1991 (57 FR 23650), EPA issued a final rule granting a petition to delete C.I. Pigment Blue 15, C.I. Pigment Green 7, and C.I. Pigment Green 36 from the copper compounds category of the EPCRA section 313 toxic chemical list. In the preamble on page 23651, third column, third full paragraph, line six, the Water Quality Criteria for copper was incorrectly listed as acute criteria for freshwater is 22 micrograms/liter (ug/L), chronic criteria in freshwater is 5.2 ug/L, and in salt water both the acute and chronic criteria are 1 ug/L. The correct Water Quality Criteria for copper are 9.2 ug/L acute fresh water, 6.5 ug/L chronic fresh water, and 2.9 ug/L acute salt water. There is no chronic Water Quality Criteria for copper in salt water.

List of Subjects in 40 CFR Part 372

Chemicals, Community right-to-know, Environmental protection, Reporting and recordkeeping requirements.

Dated: August 14, 1992.

Joseph S. Carra,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92-20025 Filed 8-20-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-140, FCC 92-351]

Revision of Radio Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; Deferring effective date of rules.

SUMMARY: This order delays the effective date of rules adopted in *Report and Order* in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), 57 FR 18089 (April 29, 1992), pending reconsideration.

EFFECTIVE DATE: July 30, 1992.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: July 30, 1992;
Released: July 30, 1992.

By the Commission:

1. On April 10, 1992, the Commission released a *Report and Order* in the above captioned proceeding. Various parties, including Nashville Partners, L.P., National Association of Black Owned Broadcasters, National Black Media Coalition, Telecommunications Research and Action Center, and KVEN Broadcasting Corporation have requested that the effective date of the rule changes adopted in that *Report and Order* be deferred or stayed for 60 days or pending action on petitions for reconsideration.

2. We agree with the parties' contention that it could be disruptive to the industry and the public for the new rules to take effect before reconsideration has been completed. Good cause accordingly exists for delaying the effective date of the new rules and the filing of applications for the acquisition of stations that could be granted only under the new rules. To achieve the earliest possible benefits from the new rules, we intend to act promptly on the petitions for reconsideration.

3. Accordingly, *It is ordered* That the August 1, 1992, effective date of the rules adopted in the *Report and Order* in MM Docket No. 91-140, 7 FCC Rcd 2755 (1992), is deferred pending action of the petitions for reconsideration of that *Report and Order*.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-19958 Filed 8-20-92; 8:45 am]
BILLING CODE 6712-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 503, 505, 519, 532, 552 and 570

[APD 2800.12A, CHGE 41]

General Services Administration Acquisition Regulation; Real Property Leasing Clauses

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: This change to the General Services Administration Acquisition Regulation (GSAR) (APD 2800.12A), chapter 5, makes miscellaneous changes in regulatory requirements for the acquisition of leasehold interests in real property contained in parts 501, 503, 505, 519, 532 and 570 in order to simplify and improve the leasing program. This change also makes a number of revisions to the text of provisions and clauses in part 552 that are used in contracts for the acquisition of leasehold interests in real property. The matrix at 552.370 is updated to reflect changes made in the provisions and clauses. Part 553 is revised to delete the Standard Form 2B; add illustrations of the new GSA Forms 3517A, 3517B, 3518A, and 3626; and to illustrate the revised GSA Forms 3516, 3517, and 3518. These forms contain the solicitation provisions and contract clauses revised by this change. The matrixes and GSA forms are not published in this document and do not appear in the Code of Federal Regulations. Copies may be obtained from the Director of the Office of GSA Acquisition Policy (VP), 18th and F Streets, NW, Washington, DC 20405.

DATES: Effective October 1, 1992. Solicitation issued on or after October 1, 1992, shall include the revised solicitation provisions and contract clauses.

FOR FURTHER INFORMATION CONTACT: Ida M. Ustad, Office of GSA Acquisition Policy (202) 501-1224.

SUPPLEMENTARY INFORMATION:

A. Public Comments

A notice of proposed rulemaking was published on June 28, 1991 (56 FR 29201). No comments were received from the public. Comments from GSA contracting activities have been considered in formulating the final rule.

B. Executive Order 12291

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The exemption applies to this rule.

C. Regulatory Flexibility Act

General Services Administration certifies the revisions of the regulation regarding the procedures for the acquisition of leasehold interests in real property and in the text and prescriptions for use of various clauses will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act. The rule simplifies the leasing process for small blocks of space (10,000 square feet or less) and temporary leases (6 months or less) and makes the terms and provisions of GSA leases more closely parallel commercial leases.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not require any reporting requirements or collection of information from offerors, contractors, or members of the public that require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Parts 501, 503, 505, 519, 532, 552 and 570

Government procurement.

Accordingly, parts 501, 503, 505, 519, 532, 552 and 570 are amended to read as follows:

1. The authority citation for 48 CFR parts 501, 503, 505, 532, 552 and 570 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

2. Section 501.103 is amended by revising paragraph (b) to read as follows:

501.103 Applicability.

. . . . . .

(b) Parts 501, 502, 503, 505, 506, 517, 530, 533, 552, 553, 570 and Subparts 504.2, 504.9, 507.1, 509.4, 515.1, 519.3, 519.6, 519.7, 522.8, 522.13, 522.14, 532.1, 532.4, 532.6, 532.8, and 532.9 apply to leases of real property. Other provisions of the GSAR do not apply to leases of real property unless a specific cross-reference is made in Part 570.

. . . . . .

PART 503—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 503.104-10 is amended by revising paragraphs (a) and (b) to read as follows:

503.104-10 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.203-71, Prohibited Conduct, in solicitations for the acquisition of leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months.

(b) The contracting officer shall insert the provision at 552.203-72, Requirement for Certificate of Procurement Integrity, in solicitations for the acquisition of leasehold interests in real property expected to exceed $100,000, unless:

(1) Pursuant to FAR 3.104-9(f) a certification is not required.

(2) A waiver has been granted, or

(3) Expedited leasing procedures are being used (see 570.304-5).

. . . . . .

4. Section 503.404 is amended by revising paragraph (a) to read as follows:

503.404 Solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 552.203-4, Contingent Fee Representation and Agreement, in solicitations for the acquisition of leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months.

. . . . . .

PART 505—PUBLICIZING CONTRACT ACTIONS

5. Section 505.101 is amended by revising paragraph (c)(2) to read as follows:

505.101 Methods of disseminating information.

. . . . . .

(c) . . .

(2) Leasehold interests in real property involving blocks of space of both more than 10,000 square feet and terms which exceed 6 months. Proposed leases of 10,000 square feet or less or for terms of 6 months or less may be publicized when the contracting officer determines such advertising will serve to promote competition.

6. Section 505.203 is amended by revising paragraph (b) to read as follows:

505.203 Publicizing and response time.

* * * * *

(b) The publicizing and response times in paragraph (a) above do not apply to proposed acquisitions of leasehold interests in real property involving 10,000 square feet of space or less. In such cases, the contracting officer shall establish response times appropriate for the individual acquisition involved.

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

7. Section 519.202–5 is revised to read as follows:

519.202–5 Data collection and reporting requirements.

Contracting officers shall submit a GSA Form 2677, Minority Contract Fact Sheet, to the SBTA when an 8(a) contract is awarded or modified.

8. Section 519.304 is revised to read as follows:

519.304 Solicitation provisions.

The contracting officer shall insert a provision substantially the same as that at 552.219–1, Small Business Concern Representation, in all solicitations instead of the provision at FAR 52.219–1. When using small purchase procedures the information required by the provision at 552.219–1 may be obtained through other means.

9. Section 519.708 is amended by revising paragraph (a) to read as follows:

519.708 Solicitation provisions and contract clauses.

* * * * *

(a) The contracting officer shall insert the provision at 552.219–72, Notice to Offerors of Subcontracting Plan Requirements, on the cover page of the solicitation if the contract amount is expected to exceed $500,000 ($1 million for construction) except for:

(1) Leases of real property,

(2) Negotiated prospectus level solicitations for construction or repair and alteration,

(3) Acquisitions set aside for small business,

(4) Solicitations for personal services, and

(5) Solicitations for work to be performed outside any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. This provision must not be used when the provision at 552.219–73, Preparation and Submission of Subcontracting Plans, prescribed in (b), below, is included in the solicitation.

* * * * *

PART 532—CONTRACT FINANCING

10. Section 532.908 is amended by revising paragraph (c) to read as follows:

532.908 Contract clause.

* * * * *

(c) The contracting officer shall insert the clause at 552.232–73, Electronic Funds Transfer Payment, in solicitations and contracts for acquisitions of leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months, if payment may be made by electronic funds transfer.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Section 552.232–73 is revised to read as follows:

552.232–73 Electronic funds transfer payment.

As prescribed in 532.908(c), insert the following clause:

ELECTRONIC FUNDS TRANSFER PAYMENT (AUG 1992)

(a) Payments under this lease will be made by the Government either by check or electronic funds transfer (EFT). If the Lessor elects to receive payment by EFT, after award, but no later than 30 days before the first payment, the Lessor shall designate a financial institution for receipt of EFT payments, and shall submit this designation to the Contracting Officer or other Government official, as directed.

(b) For payment by EFT, the Lessor shall provide the following information:

(1) The American Bankers Association 9-digit identifying number for wire transfers of the financing institution receiving payment if the institution has access to the Federal Reserve Communications System.

(2) Number of account to which funds are to be deposited.

(3) Type of depositor account ("C" for checking, "S" for savings).

(4) If the Lessor is a new enrollee to the EFT system, a "Payment Information Form," SF 3881, must be completed before payment can be processed.

(c) In the event the Lessor, during the performance of this contract, elects to designate a different financial institution for the receipt of any payment made using EFT procedures, notification of such change and the required information specified above must be received by the appropriate Government official no later than 30 days prior to the date such change is to become effective.

(d) The documents furnishing the information required in this clause must be dated and contain the signature, title, and telephone number of the Lessor or an authorized representative designated by the Lessor, as well as the Lessor's name and lease number.

(e) Lessor failure to properly designate a financial institution or to provide appropriate payee bank account information may delay payments of amounts otherwise properly due.

(End of Clause)

12. Section 552.270–6 is revised to read as follows:

552.270–6 Parties to execute lease.

As prescribed in 570.701–6, insert the following provision:

PARTIES TO EXECUTE LEASE (AUG 1992)

(a) If the lease is executed by an attorney, agent, or trustee on behalf of the Lessor, an authenticated copy of his power of attorney, or other evidence to act on behalf of the Lessor, shall accompany the lease.

(b) If the Lessor is a partnership, the lease shall be signed with the partnership name, followed by the name of the legally authorized partner signing the same, and, if required by the Government, a copy of either the partnership agreement or current Certificate of Limited Partnership shall accompany the lease.

(c) If the Lessor is a corporation, the lease shall be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease on its behalf, duly attested, and, if requested by the Government, evidence of this authority to so act shall be furnished.

(End of Provision)

13. Section 552.270–10 is revised to read as follows:

552.270–10 Definitions.

As prescribed in 570.702–1, insert the following clause:

DEFINITIONS (AUG 1992)

The following terms and phrases (except as otherwise expressly provided or unless the context otherwise requires) for all purposes of this lease shall have the respective meanings hereinafter specified:

(a) *Commencement Date* means the first day of the term.

(b) *Contract* and *Contractor* means *Lease* and *Lessor*, respectively.

(c) *Contracting Officer* means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.

(d) *Delivery Date* means the date specified in or determined pursuant to the provisions of this lease for delivery of the premises to the Government, improved in accordance with the provisions of this lease and substantially complete, as such date may be modified in accordance with the provisions of this lease.

(e) *Delivery Time* means the number of days provided by this lease for delivery of the premises to the Government, as such

number may be modified in accordance with the provisions of this lease.

(f) *Excusable Delays* means delays arising without the fault or negligence of Lessor and Lessor's subcontractors and suppliers at any tier, and shall include, without limitation.

(1) Acts of God or of the public enemy,

(2) Acts of the United States of America in either its sovereign or contractual capacity,

(3) Acts of another contractor in the performance of a contract with the Government,

(4) Fires,

(5) Floods,

(6) Epidemics,

(7) Quarantine restrictions,

(8) Strikes,

(9) Freight embargoes,

(10) Unusually severe weather, or

(11) Delays of subcontractors or suppliers at any tier arising from unforeseeable causes beyond the control and without the fault or negligence of both the Lessor and any such subcontractor or supplier.

(g) *Lessor* means the sub-lessor if this lease is a sublease.

(h) *Lessor shall provide* means the Lessor shall furnish and install at Lessor's expense.

(i) *Notice* means written notice sent by certified or registered mail, Express Mail or comparable service, or delivered by hand. Notice shall be effective on the date delivery is accepted or refused.

(j) *Premises* means the space described in this lease.

(k) *Substantially complete* and *substantial completion* means that the work, the common and other areas of the building, and all other things necessary for the Government's access to the premises and occupancy, possession, use and enjoyment thereof, as provided in this lease, have been completed or obtained, excepting only such minor matters as do not interfere with or materially diminish such access, occupancy, possession, use or enjoyment.

(l) *Work* means all alterations, improvements, modifications, and other things required for the preparation or continued occupancy of the premises by the Government as specified in this lease.

(End of Clause)

14. Section 552.270–11 is revised to read as follows:

552.270–11 Subletting and assignment.

As prescribed in 570.702–2, insert the following clause:

SUBLETTING AND ASSIGNMENT (AUG 1992)

The Government may sublet any part of the premises but shall not be relieved from any obligations under this lease by reason of any such subletting. The Government may at any time assign this lease, and be relieved from all obligations to Lessor under this lease excepting only unpaid rent and other liabilities, if any, that have accrued to the date of said assignment. Any assignment shall be subject to prior written consent of lessor, which shall not be unreasonably withheld.

(End of Clause)

15. Section 552.270–12 is revised to read as follows:

552.270–12 Maintenance of building and premises—Right of entry.

As prescribed in 570.702–3, insert the following clause:

MAINTENANCE OF BUILDING AND PREMISES—RIGHT OF ENTRY (AUG 1992)

Except in case of damage arising out of the willful act or negligence of a Government employee, Lessor shall maintain the premises, including the building and all equipment, fixtures, and appurtenances furnished by the Lessor under this lease, in good repair and condition so that they are suitable in appearance and capable of supplying such heat, air conditioning, light, ventilation, access and other things to the premises, without reasonably preventable or recurring disruption, as is required for the Government's access to, occupancy, possession, use and enjoyment of the premises as provided in this lease. For the purpose of so maintaining the premises, the Lessor may at reasonable times enter the premises with the approval of the authorized Government representative in charge.

(End of Clause)

16. Section 552.270–13 is revised to read as follows:

552.270–13 Fire and casualty damage.

As prescribed in 570.702–4, insert the following clause:

FIRE AND CASUALTY DAMAGE (AUG 1992)

If the entire premises are destroyed by fire or other casualty, this lease will immediately terminate. In case of partial destruction or damage, so as to render the premises untenantable, as determined by the Government, the Government may terminate the lease by giving written notice to the Lessor within 15 calendar days of the fire or other casualty; if so terminated, no rent will accrue to the Lessor after such partial destruction or damage; and if not so terminated, the rent will be reduced proportionately by supplemental agreement hereto effective from the date of such partial destruction or damage. Nothing in this lease shall be construed as relieving Lessor from liability for damage to or destruction of property of the United States of America caused by the willful or negligent act or omission of Lessor.

(End of Clause)

552.270–14 [Reserved]

17. Section 552.270–14 is removed and reserved.

18. Section 552.270–15 is revised to read as follows:

552.270–15 Compliance with applicable law.

As prescribed in 570.702–6, insert the following clause:

COMPLIANCE WITH APPLICABLE LAW (AUG 1992)

Lessor shall comply with all Federal, state and local laws applicable to the Lessor as owner or lessor, or both, of the building or premises, including, without limitation, laws applicable to the construction, ownership, alteration or operation of both or either thereof, and will obtain all necessary permits, licenses and similar items at Lessor's expense. The Government will comply with all Federal, state and local laws applicable to and enforceable against it as a tenant under this lease; provided that nothing in this lease shall be construed as a waiver of any sovereign immunity of the Government. This lease shall be governed by Federal law.

(End of Clause)

19. Section 552.270–16 is revised to read as follows:

552.270–16 Inspection—Right of entry.

As prescribed in 570.702–7, insert the following clause:

INSPECTION—RIGHT OF ENTRY (AUG 1992)

(a) At any time and from time to time after receipt of an offer (until the same has been duly withdrawn or rejected), after acceptance thereof and during the term, the agents, employees and contractors of the Government may, upon reasonable prior notice to Offeror or Lessor, enter upon the offered premises or the premises, and all other areas of the building access to which is necessary to accomplish the purposes of entry, to determine the potential or actual compliance by the Offeror or Lessor with the requirements of the solicitation or this lease, which purposes shall include, but not be limited to:

(1) Inspecting, sampling and analyzing suspected asbestos-containing materials and air monitoring for asbestos fibers;

(2) Inspecting the heating, ventilation and air conditioning system, maintenance records, and mechanical rooms for the offered premises or the premises;

(3) Inspecting for any leaks, spills, or other potentially hazardous conditions which may involve tenant exposure to hazardous or toxic substances; and

(4) Inspecting for any current or past hazardous waste operations, to ensure that appropriate mitigative actions were taken to alleviate any environmentally unsound activities in accordance with Federal, State, and local law.

(b) Nothing in this clause shall be construed to create a Government duty to inspect for toxic materials or to impose a higher standard of care on the Government than on other leases. The purpose of this clause is to promote the ease with which the Government may inspect the building. Nothing in this clause shall act to relieve the Lessor of any duty to inspect or liability which might arise as a result of Lessor's failure to inspect for or correct a hazardous condition.

(End of Clause)

20. Section 552.270–17 is revised to read as follows:

552.270–17 Failure in performance.

As prescribed in 570.702–8, insert the following clause:

FAILURE IN PERFORMANCE (AUG 1992)

The covenant to pay rent and the covenant to provide any service, utility, maintenance, or repair required under this lease are interdependent. In the event of any failure by the Lessor to provide any service, utility, maintenance, repair or replacement required under this lease the Government may, by contract or otherwise, perform the requirement and deduct from any payment or payments under this lease, then or thereafter due, the resulting cost to the Government, including all administrative costs. If the Government elects to perform any such requirement, the Government and each of its contractors shall be entitled to access to any and all areas of the building, access to which is necessary to perform any such requirement, and the Lessor shall afford and facilitate such access. Alternatively, the Government may deduct from any payment or payments under this lease, then or thereafter due, an amount which reflects the reduced value of the contract requirement not performed. No deduction from rent pursuant to this clause shall constitute a default by the Government under this lease. These remedies are not exclusive and are in addition to any other remedies which may be available under this lease or at law.

(End of Clause)

21. Section 552.270–18 is revised to read as follows:

552.270–18 Successors bound.

As prescribed in 570.702–9, insert the following clause:

SUCCESSORS BOUND (AUG 1992)

This lease shall bind, and inure to the benefit of, the parties and their respective heirs, executors, administrators, successors and assigns.

(End of Clause)

22. Section 552.270–20 ie revised to read as follows:

552.270–20 Proposals for adjustment.

As prescribed in 570.702–11, insert the following clause:

PROPOSALS FOR ADJUSTMENT (AUG 1992)

(a) The Contracting Officer may, from time to time during the term of this lease, require changes to be made in the work or services to be performed and in the terms or conditions of this lease. Such changes will be required under the Changes clause.

(b) If the Contracting Officer makes a change within the general scope of the lease, the Lessor shall submit, in a timely manner, an itemized cost proposal for the work to be accomplished or services to be performed when the cost exceeds $25,000. The proposal, including all subcontractor work, will contain at least the following details—

(1) Material quantities and unit costs;

(2) Labor costs (identified with specific item or material to be placed or operation to be performed);

(3) Equipment costs;

(4) Worker's compensation and public liability insurance;

(5) Overhead;

(6) Profit; and

(7) Employment taxes under FICA and FUTA.

(c) The following Federal Acquisition Regulation (FAR) provisions also apply to all proposals exceeding $100,000 in cost—

(1) The Lessor shall provide cost or pricing data including subcontractor cost or pricing data (48 CFR 15.804–2);

(2) The Lessor's representative, all Contractors, and subcontractors whose portion of the work exceeds $100,000 must sign and return the "Certificate of Current Cost or Pricing Data" (48 CFR 15.804–4); and

(3) The agreement for "Price Reduction for Defective Cost or Pricing Data" must be signed and returned (48 CFR 15.804–8).

(d) Lessors shall also refer to 48 CFR Part 31, Contract Cost Principles, for information on which costs are allowable, reasonable, and allocable in Government work.

(End of Clause)

23. Section 552.270–21 is revised to read as follows:

552.270–21 Changes.

As prescribed in 570.702–12, insert the following clause:

CHANGES (AUG 1992)

(a) The Contracting Officer may at any time, by written order, make changes within the general scope of this lease in any one or more of the following:

(1) Specifications (including drawings and designs);

(2) Work or services; or

(3) Facilities or space layout.

(b) If any such change causes an increase or decrease in Lessor's cost of or the time required for performance under this lease, whether or not changed by the order, the Contracting Officer shall modify this lease to provide for one or more of the following:

(1) A modification of the delivery date;

(2) An equitable adjustment in the rental rate;

(3) A lump sum equitable adjustment; or

(4) An equitable adjustment of the annual operating costs per square foot specified in this lease.

(c) The Lessor shall assert its right to an adjustment under this clause within 30 days from the date of receipt of the change order and shall submit a proposal for adjustment. Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the lessor from proceeding with the change as directed.

(d) Absent such written change order, the Government shall not be liable to Lessor under this clause.

(End of Clause)

24. Section 552.270–22 is revised to read as follows:

552.270–22 Liquidated damages.

As prescribed in 570.702–13, insert the following clause:

LIQUIDATED DAMAGES (AUG 1992)

In case of failure on the part of the Lessor to complete the work within the time fixed in the lease contract or letter of award, the Lessor shall pay the Government as fixed and agreed liquidated damages, pursuant to this clause, the sum of $_____ for each and every calendar day that the delivery is delayed beyond the date specified for delivery of all of the space ready for occupancy by the Government. This remedy is not exclusive and is in addition to any other remedies which may be available under this lease or at law.

(End of Clause)

25. Section 552.270–24 is revised to read as follows:

552.270–24 Tax adjustment.

As prescribed in 570.702–15, insert the following clause:

TAX ADJUSTMENT (AUG 1992)

(a) The Government shall make annual lump sum payments to cover its share of increases in real estate taxes over taxes paid for the calendar year in which its lease commences (base year). The amount of payment shall be based upon the submission of a proper invoice, including paid tax receipts/statements/bills, from the Lessor to the Contracting Officer. The due date for making payment shall be the 30th day after receipt of the invoice by the Contracting Officer or the 30th day after the anniversary date of the lease, whichever is later. If the invoice submitted does not meet the requirements of a proper invoice, it will be returned to the Lessor within 7 days of receipt. The Government will be responsible for payment only if the receipts are submitted within 60 calendar days of the date the tax payment is due. If no full tax assessment is made during the calendar year in which the Government lease commences, the base year will be the first year of a full assessment.

(b) The Government's share for the tax increase will be based on the ratio of the rentable square feet occupied by the Government to the total rentable square feet in the building. If the Government's lease terminates before the end of a calendar year, payment will be based on the percentage of the year in which the Government occupied space. The payment will not include penalties for nonpayment or delay in payment. If there is any variance between the assessed value of the Government's space and other space in the building, the Government may adjust the basis for determining its share of the tax increase.

(c) The Government may contest the tax assessment by initiating legal proceedings on behalf of the Government and the Lessor or the Government alone. If the Government is precluded from taking legal action, the Lessor shall contest the assessment upon reasonable notice by the Government. The Government shall reimburse the Lessor for all costs and shall execute all documents required for the legal proceedings. The Lessor shall agree with the accuracy of the documents. The Government shall receive its share of any tax refund. If the Government elects to contest the tax assessment, payment under paragraph (a) of this clause shall become due on the first workday of the second month following conclusion of the appeal proceedings.

(d) In the event of any decreases in real estate taxes occurring during the term of occupancy under the lease to a rate below the base year, payment for taxes will be reduced accordingly. The amount of any such reductions will be determined in the same manner as increases provided under paragraph (a) of this clause.

552.270–26 [Reserved]

26. Section 552.270–26 is removed and reserved.

27. Section 552.270–27 is revised to read as follows:

552.270–27 Delivery and condition.

As prescribed in 570.702–18, insert the following clause:

DELIVERY AND CONDITION (AUG 1992)

(a) Unless the Government elects to have the space occupied in increments, the space must be delivered ready for occupancy as a complete unit. The Government reserves the right to determine when the space is substantially complete.

(b) If the premises do not in every respect comply with the provisions of this lease the Contracting Officer may, in accordance with the Failure in Performance clause of this lease, elect to reduce the rent payments.

(End of Clause)

28. Section 552.270–28 is revised to read as follows:

552.270–28 Default in delivery—Time Extensions.

As prescribed in 570.702–19, insert the following clause:

DEFAULT IN DELIVERY—TIME EXTENSIONS (AUG 1992)

(a) With respect to Lessor's obligation to deliver the premises substantially complete by the delivery date (as such date may be modified pursuant to this lease), time is of the essence. If the Lessor fails to persecute the work with the diligence that will ensure its substantial completion by the delivery date or fails to substantially complete the work by such date, the Government may by notice to the Lessor terminate this lease, which termination shall be effective when received by Lessor. The Lessor and the Lessor's sureties, if any, shall be jointly and severally liable for any damages to the Government resulting from such termination, as provided in this clause. The Government shall be entitled to the following damages:

(1) The Government's aggregate rent and estimated real estate tax and operating cost adjustments for the firm term and all option terms of its replacement lease or leases, in excess of the aggregate rent and estimated real estate tax and operating cost adjustments for the term; provided, if the Government procures replacement premises for a term (including all option terms) in excess of the term, the Lessor shall not be liable for excess Government rent or adjustments during such excess part of such term;

(2) All administrative and other costs borne by the Government in procuring a replacement lease or leases;

(3) Such other, additional relief as may be provided for in this lease, at law or in equity.

(4) Damages to which the Government may be entitled under this clause shall be due and payable thirty (30) days next following the date Lessor receives notice from the Contracting Officer specifying such damages.

(b) Delivery by Lessor of less than the minimum square footage required by this lease shall in no event be construed as substantial completion, except as permitted by the Contracting Officer.

(c) Notwithstanding in paragraph (a) of this clause, this lease shall not be terminated under this clause nor the Lessor charged with damages under this clause, if;

(1) The delay in substantially completing the work arises from excusable delays and

(2) The Lessor within 10 days from the beginning of any such delay (unless extended in writing by the Contracting Officer) provides notice to the Contracting Officer of the causes of delay. The Contracting Office shall ascertain the facts and the extent of delay. If the facts warrant such action, the delivery date shall be extended, by the Contracting Office, to the extent of such delay at no additional costs to the Government. A time extension is the sole remedy of the Lessor.

(End of Clause)

552.270–29 [Reserved]

29. Section 552.270–29 is removed and reserved.

30. Section 552.270–30 is revised to read as follows:

552.270–30 Progressive occupancy.

As prescribed in 570.702–21, insert the following clause:

PROGRESSIVE OCCUPANCY (Aug 1992)

The Government shall have the right to elect to occupy the space in partial increments prior to the substantial completion of the entire leased premises, and the Lessor agrees to schedule its work so as to deliver the space incrementally as elected by the Government. The Government shall pay rent commencing with the first business day following substantial completion of the entire leased premise unless the Government has elected to occupy the leased premises incrementally. In case of incremental occupancy, the Government shall pay rent pro rata upon the first business day following substantial completion of each incremental unit. Rental payments shall become due on the first workday of the month following the month in which an increment of space is substantially complete, except that should an increment of space be substantially completed after the fifteenth day of the month, the payment due date will be the first workday of the second month following the month in which it was substantially complete. The commencement date of the firm lease term will be a composite determined from all rent commencement dates.

(End of Clause)

31. Section 552.270–31 is added to read as follows:

552.270–31 Measurement for payment.

As prescribed in 570.702–22, insert the following clause:

MEASUREMENT FOR PAYMENT (AUG 1992)

When space is offered and accepted, the space will be mutually measured upon substantial completion. Payment will be made on the basis of actual measurement; however, payment will not be made for substantially completed space which is in excess of the maximum square footage solicited. The annual rent will be calculated by multiplying the annual square foot rate times square footage.

(End of Clause)

32. Section 552.270–32 is added to read as follows:

552.270–32 Effect of acceptance and occupancy.

As prescribed in 570.702–23, insert the following clause:

EFFECT OF ACCEPTANCE AND OCCUPANCY (AUG 1992)

Neither the Government's acceptance of the premises for occupancy, nor the Government's occupancy thereof, shall be construed as a waiver of any requirement of or right of the Government under this Lease, or as otherwise prejudicing the Government with respect to any such requirement or right.

(End of Clause)

33. Section 552.270–33 is added to read as follows:

552.270–33 Default by lessor during the term.

As prescribed in 570.702–24, insert the following clause:

DEFAULT BY LESSOR DURING THE TERM (AUG 1992)

(a) Each of the following shall constitute a default by Lessor under this lease:

(1) Failure to maintain, repair, operate or service the premises as and when specified in this lease, or failure to perform any other requirement of this lease as and when required provided any such failure shall remain uncured for a period of thirty (30) days next following Lessor's receipt of notice thereof from the Contracting Officer or an authorized representative.

(2) Repeated and unexcused failure by Lessor to comply with one or more requirements of this lease shall constitute a default notwithstanding that one or all such failures shall have been timely cured pursuant to this clause.

(b) If a default occurs, the Government may, by notice to Lessor, terminate this lease for default and if so terminated, the Government shall be entitled to the damages specified in the Default in Delivery-Time Extensions Clause.

(End of Clause)

34. Section 552.270–34 is added to read as follows:

552.270-34 Subordination, nondisturbance and attornment.

As prescribed in 570.702-25, insert the following clause:

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT (AUG 1992)

(a) Lessor warrants that it holds such title to or other interest in the premises and other property as is necessary to the Government's access to the premises and full use and enjoyment thereof in accordance with the provisions of this lease. Government agrees, in consideration of the warranties and conditions set forth in this clause, that this lease is subject and subordinate to any and all recorded mortgages, deeds of trust and other liens now or hereafter existing or imposed upon the premises, and to any renewal, modification or extension thereof. It is the intention of the parties that this provision shall be self-operative and that no further instrument shall be required to effect the present or subsequent subordination of this lease. Government agrees, however, within twenty (20) business days next following the Contracting Officer's receipt of a written demand, to execute such instruments as Lessor may reasonably request to evidence further the subordination of this lease to any existing or future mortgage, deed of trust or other security interest pertaining to the premises, and to any water, sewer or access easement necessary or desirable to serve the premises or adjoining property owned in whole or in part by Lessor if such easement does not interfere with the full enjoyment of any right granted the Government under this lease.

(b) No such subordination, to either existing or future mortgages, deeds of trust or other lien or security instrument shall operate to affect adversely any right of the Government under this lease so long as the Government is not in default under this lease. Lessor will include in any future mortgage, deed of trust or other security instrument to which this lease becomes subordinate, or in a separate nondisturbance agreement, a provision to the foregoing effect. Lessor warrants that the holders of all notes or other obligations secured by existing mortgages, deeds of trust or other security instruments have consented to the provisions of this clause, and agrees to provide true copies of all such consents to the Contracting Officer promptly upon demand.

(c) In the event of any sale of the premises or any portion thereof by foreclosure of the lien of any such mortgage, deed of trust or other security instrument, or the giving of a deed in lieu of foreclosure, the Government will be deemed to have attorned to any purchaser, purchasers, transferee or transferees of the premises or any portion thereof and its or their successors and assigns, and any such purchasers and transferees will be deemed to have assumed all obligations of the Lessor under this lease, so as to establish direct privity of estate and contract between Government and such purchasers or transferees, with the same force, effect and relative priority in time and right as if the lease had initially been entered into between such purchasers or transferees and the Government; provided, further, that the Contracting Officer and such purchasers or transferees shall, with reasonable promptness following any such sale or deed delivery in lieu of foreclosure, execute all such revisions to this lease, or other writings, as shall be necessary to document the foregoing relationship.

(d) None of the foregoing provisions may be deemed or construed to imply a waiver of the Government's rights as a sovereign.

(End of Clause)

35. Section 552.270-35 is added to read as follows:

552.270-35 Statement of lease.

As prescribed in 570.702-26, insert the following clause:

STATEMENT OF LEASE (AUG 1992)

(a) The Contracting Officer will, within thirty (30) days next following the Contracting Officer's receipt of a joint written request from Lessor and a prospective lender or purchaser of the building, execute and deliver to Lessor a letter stating that the same is issued subject to the conditions stated in this clause and, if such is the case, that:

(1) the lease is in full force and effect;

(2) the date to which the rent and other charges have been paid in advance, if any; and

(3) whether any notice of default has been issued.

(b) Letters issued pursuant to this clause are subject to the following conditions:

(1) That they are based solely upon a reasonably diligent review of the Contracting Officer's lease file as of the date of issuance;

(2) That the Government shall not be held liable because of any defect in or condition of the premises or building;

(3) That the Contracting Officer does not warrant or represent that the premises or building comply with applicable Federal, State and local law; and

(4) That the Lessor, and each prospective lender and purchaser are deemed to have constructive notice of such facts as would be ascertainable by reasonable prepurchase and precommitment inspection of the Premises and Building and by inquiry to appropriate Federal, State and local Government officials.

(End of Clause)

36. Section 552.270-36 is added to read as follows:

552.270-36 Substitution of tenant agency.

As prescribed in 570.702-27, insert the following clause:

SUBSTITUTION OF TENANT AGENCY (AUG 1992)

The Government may, at any time and from time to time, substitute any Government agency or agencies for the Government agency or agencies, if any, named in the lease.

(End of Clause)

37. Section 552.270-37 is added to read as follows:

552.270-37 No waiver.

As prescribed in 570.702-28, insert the following clause:

NO WAIVER (AUG 1992)

No failure by either party to insist upon the strict performance of any provision of this lease or to exercise any right or remedy consequent upon a breach thereof, and on acceptance of full or partial rent or other performance by either party during the continuance of any such breach shall constitute a waiver of any such breach of such provision.

(End of Clause)

38. Section 552.270-38 is added to read as follows:

552.270-38 Integrated agreement.

As prescribed in 570.702-29, insert the following clause:

INTEGRATED AGREEMENT (AUG 1992)

This Lease, upon execution, contains the entire agreement of the parties and no prior written or oral agreement, express or implied, shall be admissible to contradict the provisions of the Lease.

(End of Clause)

39. Section 552.270-39 is added to read as follows:

552.270-39 Mutuality of obligation.

As prescribed in 570.702-30, insert the following clause:

MUTUALITY OF OBLIGATION (AUG 1992)

The obligations and covenants of the Lessor, and the Government's obligation to pay rent and other Government obligations and covenants, arising under or related to this Lease, are interdependent. The Government may, upon issuance of and delivery to Lessor of a final decision asserting a claim against Lessor, set off such claim, in whole or in part, as against any payment or payments then or thereafter due the Lessor under this lease. No setoff pursuant to this clause shall constitute a breach by the Government of this lease.

(End of Clause)

40. Section 552.270-40 is added to read as follows:

552.270-40 Asbestos and hazardous waste management.

As prescribed in 570.702-31, insert the following clause:

ASBESTOS AND HAZARDOUS WASTE MANAGEMENT (AUG 1992)

The certifications made by the Offeror regarding asbestos and hazardous waste management contained in the representation and certification provisions of this lease are material representations of fact upon which the Government relies when making award. If it is later determined that the presence or management of asbestos and/or hazardous waste has been misrepresented, the Government reserves the right to require the Lessor, at no cost to the Government, to abate (remove, encapsulate, enclose, or repair) such asbestos and/or mitigate hazardous waste conditions, with such work performed in accordance with Federal (e.g., EPA, OSHA, and DOT), State, and local regulations and guidance, or, alternatively, the Government may terminate the lease. This is in addition to other remedies available to the Government.

(End of Clause)

PART 570—ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY

41. The heading for subpart 570.2 is revised to read as follows:

Subpart 570.2—Procedures for Contracting for Leasehold Interests in Real Property

42. Section 570.202 is amended by revising paragraph (a) to read as follows:

570.202 Advertising.

(a) Requirements for blocks of space of more than 10,000 square feet must be publicized in local newspapers and/or periodicals unless exempt under FAR 5.202 or 505.202.

* * * * *

43. Section 570.203 is amended by revising paragraphs (a)(5), (a)(8), and (a)(9) and by adding paragraph (a)(10) to read as follows:

570.203 Solicitation for Offers (SFO).

(a) * * *

(5) Indicate that offers will be evaluated based on the full term (initial term plus options).

* * * * *

(8) In addition to including the solicitation provisions and contract clauses prescribed in the GSAR, provisions and/or clauses substantially the same as the FAR provisions/clauses listed, must be included in the circumstances indicated.

(i) All solicitations and contracts regardless of the dollar value must include the following provisions/clauses:

FAR Cite	Title
52.203-1	Officials Not to Benefit.
52.203-7	Anti-Kickback Procedures.
52.204-3	Taxpayer Identification.
52.223-5	Certification Regarding a Drug-Free Workplace.
52.233-1	Disputes.

(ii) All solicitations and contracts which exceed $2,500 must include FAR Clause 52.222-36, Affirmative Action for Handicapped Workers.

(iii) All solicitations and contracts which exceed $10,000 must include the following provisions/clauses:

FAR Cite	Title
52.215-1	Examination of Records by Comptroller General.
52.222-21	Certification of Nonsegregated Facilities.
52.222-22	Previous Contracts and Compliance Reports.
52.222-25	Affirmative Action Compliance.
52.222-26	Equal Opportunity.
52.222-35	Affirmative Action for Special Disabled and Vietnam Era Veterans.
52.222-37	Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era.

(iv) All solicitations and contracts which exceed $25,000 must include FAR clauses 52.219-8, Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, and 52.222-18, Notification of Employee Rights Concerning Payment of Union Dues or Fees.

(v) All solicitations and contracts which exceed $100,000 must include FAR provision 52.203-11, Certificate and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(vi) All solicitations and contracts which exceed $500,000 must include FAR clauses 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, and 52.219-16, Liquidated Damages—Small Business Subcontracting Plan.

(vii) Solicitations and contracts which involve both more than 10,000 square feet of space and terms which exceed 6 months must include the following provisions/clauses:

FAR Cite	Title
52.203-2	Certificate of Independent Price Determination.
52.209-5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.
52.209-6	Protecting the Governor's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
52.215-12	Restriction on Disclosure and Use of Data (Solicitations only).
52.219-2	Small Disadvantaged Business Concern Representation.
52.219-3	Women-Owned Small Business Representation.
52.219-13	Utilization of Women-Owned Small Businesses.
52.232-23	Assignment of Claims.
52.233-2	Service of Protest (Solicitations only).

(viii) Solicitations and contracts which exceed $100,000 and involve both more than 10,000 square feet of space and terms which exceed 6 months must include FAR clauses 52.203-9, Requirement for Certification of Procurement Integrity—Modification.

(ix) Solicitations which exceed $1 million and involve both more than 10,000 square feet of space and terms which exceed 6 months must include FAR provision 52.222-24, Preaward On-Site Equal Opportunity Compliance Review.

(x) When cost or pricing data is required for work or service exceeding $100,000, FAR clause 52.215-22, Price Reduction for Defective Cost or Pricing Data, and 52.215-24, Subcontractor Cost or Pricing Data, must be included in solicitations and contracts.

(xi) When the contracting officer determines that it is desirable to authorize the submission of facsimile proposals the solicitation must include FAR provision 52.215-18, Facsimile Proposals.

(9) The omission of any provision or clause when its prescription requires it use constitutes a deviation which must be approved under subpart 501.4. Approval may be granted to deviate from provisions or clauses that are mandated by statute (e.g., GSAR 552.203-5, Covenant Against Contingent Fees, FAR 52.203-1, Officials Not to Benefit, FAR 52.215-1, Examination of Records by the Comptroller General, etc.) in order to modify the language of the provision or clause. However, the statutory provisions and clauses may not be omitted from the SFO unless the statute provides for waiving the requirements of the provision or clause.

(10) Include appropriate forms as prescribed in subpart 570.8.

* * * * *

44. Section 570.204 is amended by revising paragraph (c)(3) to read as follows:

570.204 Changes to SFO's.

* * * * *

(c) * * *

(3) If a modification is so substantial that it requires a complete revision of the solicitation, the solicitation should be canceled and a new solicitation issued. The new solicitation must be advertised if required by 580.202 and be issued to all concerns solicited originally, any concerns added to the original SFO mailing list, and any other interested concerns.

45. Section 570.206 is amended to revise paragraph (b) to read as follows:

570.206 Evaluating offers.

* * * * *

(b) Offers will be evaluated on the basis of the annual price per square foot cost to the Government and other award factors as stated in the SFO.

46. Section 570.208-1 is amended by revising paragraph (b) to read as follows:

570.206-1 General.

* * * * *

(b) Applicable certifications must be reviewed for compliance with regulations.

* * * * *

47. Section 570.206-3 is amended by adding paragraph (b)(5) to read as follows:

570.206-3 Appraisal.

* * * * *

(b) * * *

(5) A lease entered into using expedited procedures in 570.3.

* * * * *

48. Section 570.206-5 is revised to read as follows:

570.206-5 Responsibility determinations.

(a) The contracting officer shall make a determination that the prospective offeror is responsible with respect to the lease being considered. The contracting officer's signature on the contract is deemed to be an affirmative determination. When an offeror is found to be nonresponsible, the contracting officer shall make, sign and place in the contract file a determination of nonresponsibility which shall state the basis for the determination.

(b) In cases where the contracting officer has reason to question the offeror's financial ability to perform, a financial responsibility check may be requested from the Accounts Receivable Branch, Credit and Finance Section, Region 6.

(c) If a small business concern is found to be nonresponsible, the procedures at FAR 19.6 and GSAR 519.6 must be followed. All documents and reports supporting a determination of responsibility or nonresponsibility must be placed in the permanent lease file.

49. The heading for subpart 570.3 is revised to read as follows:

Subpart 570.3—Expedited Procedures for Small Leases and Temporary Leases

50. Sections 570.301, 570.302 and 570.303 are revised to read as follows:

570.301 Definitions.

Small lease means a lease for a block of space of 10,000 square feet or less that is awarded using the expedited procedures prescribed in this subpart.

Expedited procedure means the procedures prescribed in this subpart for making small leases and temporary leases using a simplified process and a short form lease contract.

Temporary lease means a lease for a period of 6 months or less that is awarded using the expedited procedures in this subpart.

570.302 Purpose.

The purpose of this subpart is to prescribe expedited procedures for small leases and temporary leases in order to reduce administrative costs while providing for the efficient and economical acquisition of leasehold interests in real property.

570.303 Policy.

Expedited procedures should be used to the maximum extent practicable for acquiring leasehold interests in real property involving blocks of space of 10,000 square feet or less when existing office or warehouse space will meet the Government's needs with minimum build-out and space preparation. Expedited procedures shall not be used for buildings to be constructed. Generally, the procedures are not suitable for space requiring extensive build-out, alterations, or renovations (e.g. space being converted from one use to another). However, contracting officers may, on a case-by-case basis, use the procedures for leases in existing buildings for space requiring a lesser degree of build-out, alterations, or renovations. Additionally, expedited procedures should be used, regardless of the square footage, when the need for the space is temporary (6 months or less) such as when space is needed by an agency in order to provide support during domestic or national emergency.

51. Section 570.304 is revised to read as follows:

570.304 Procedures.

The procedures in this Subpart 570.3 shall be used instead of the procedures in 570.2 if a small or temporary lease is involved and the use of expedited procedures is appropriate.

52. Section 570.304-1 is amended by revising paragraph (b) to read as follows:

570.304-1 General.

* * * * *

(b) A lease executed using expedited procedures and forms is not subject to pre-award contract clearance or legal review if the lease would normally be subject to such requirements based on the size and value.

53. Section 570.304-2, 570.304-3, 570.304-4 and 570.304-5 are revised to read as follows:

570.304-2 Market survey.

A market survey must be conducted in accordance with 570.201. The market survey is a crucial aspect of the expedited procedure.

570.304-3 Advertising.

Small lease requirements may be publicized in local newspapers and/or periodicals when the contracting officer determines such advertising will serve to promote competition. For temporary leases and other advertising requirements, refer to 570.202, part 505 and FAR part 5.

570.304-4 Soliciting offers.

(a) If circumstances exist that support the use of other than competitive procedures, a justification must be prepared and approved if the lease will exceed $25,000. For actions of $25,000 or less the file must be documented with an explanation for the lack of competition. (See FAR Part 6 and GSAR 506).

(b) When the lease is not expected to exceed $25,000, the solicitation of at least three sources may be considered to promote competition to the maximum extent practical. When repeated requirements for space occur in the same market, and if practicable, two sources not included in the most recent solicitation should be invited to submit offers.

(c) Offers will be solicited by presenting each prospective offeror with a proposed short form lease which identifies all factors, including price or cost, and any significant subfactors that will be considered in awarding the lease and which states the relative importance the Government places on the evaluation factors or subfactors.

(d) The proposed lease must describe the Government's requirements and include, either in full text or by reference, applicable FAR provisions and contract clauses required by 570.203(a)(8) and applicable GSAR provisions and clauses.

(e) As a minimum, the following items should be reviewed with prospective offerors:

(1) Measurement of space by net usable method and the amount of space offered;

(2) Alterations or modifications, if any, to be made by the offeror as part of the rent;

(3) Overtime rate (if needed);

(4) Level and frequency of service and maintenance;

(5) Rental;

(6) Rates for utility and service operating cost, if applicable;

(7) Percentage of occupancy of the building, if a tax adjustment clause is included; and

(8) Unit priced items (e.g., electrical and telephone outlets) if included in the lease.

(f) Following review, prospective offerors should be instructed to complete the appropriate sections of the lease and submit the proposed lease to the Government by a designated time established for receipt of offers.

570.304-5 Negotiation and award.

Offers shall be evaluated in accordance with the solicitation. The contracting officer shall evaluate the price using cost or price analysis and document the lease file to demonstrate that the proposed rental represents a fair market price. In cases where the total cost exceeds $100,000, cost and pricing data must be obtained unless one of the exemptions at FAR 15.804-2 applies. The contracting officer may obtain an appraisal to support an exemption. An acceptable small business subcontracting plan must be provided if the lease will exceed $500,000, unless the lease will be awarded to a small business concern. Negotiations, if applicable, shall be conducted in accordance with 570.205. For leases expected to exceed $100,000, a Certificate of Procurement Integrity shall be provided to the proposed successful offeror for completion and submission before award. The contracting officer shall review the List of Parties Excluded from Procurement or Nonprocurement Programs, to ensure the proposed awardee is eligible to receive the award and is otherwise responsible before awarding the lease.

54. Section 570.502 is amended by revising paragraphs (a), (b)(1) and (b)(3)(i) to read as follows:

570.502 Succeeding leases.

(a) *General.* Succeeding leases for the continued occupancy of space in a building may be entered into when a cost-benefit analysis has been conducted and the results indicate that an award to an offeror other than the present lessor would result in substantial relocation and duplication costs to the Government that are not expected to be recovered through competition. Succeeding leases may not be used to replace temporary leases awarded using expedited procedures in 570.3.

(b) * * *

(1) *Advertising.* The contracting officer shall publish a notice in local newspapers and/or periodicals when blocks of space of more than 10,000 square feet are involved. The notice should normally:

(i) Indicate the Government's lease is expiring,

(ii) Describe the agency's needs in terms of type and quantity of space,

(iii) Indicate the Government is interested in considering alternative space if economically advantageous,

(iv) Advise prospective offerors that the Government will consider the cost of moving, alterations, etc., when deciding whether it should relocate, and

(v) Provide a contact person for those interested in providing space to the Government.

* * * * *

(3) *Competition determination.* (i) If no potential acceptable locations are identified through the advertisement or the market survey, the contracting officer may prepare a justification to negotiate directly with the present lessor. The justification must be prepared and approved in accordance with FAR subpart 6.3 and subpart 506.3, and should fully document the efforts to locate alternative sources.

* * * * *

55. Section 570.503 is amended by revising paragraphs (b) and (c) to read as follows:

570.503 Expansion requests.

* * * * *

(b) When the expansion space needed is outside the general scope of the lease, the contracting officer must determine whether it is more prudent to provide the expansion space by supplemental agreement to the existing lease or to satisfy the requirement by relocation. A market survey must be conducted to determine whether suitable alternative locations are available. If the market survey reveals alternate locations that can satisfy the total requirement, a cost benefit analysis must be performed to determine whether it is in the Government's best interest to relocate. This analysis may include—

(1) The cost of the alternate space compared to the cost of expanding at the existing location;

(2) The cost of moving;

(3) The cost of duplicating existing improvements;

(4) The cost of the unexpired portion of the firm lease term (unless a termination is possible, in which case the actual cost of such an action should be used); and

(5) The cost of disruption to the agency's operation.

(c) Unless competitive procedures are used to acquire the expansion space, a justification must be prepared for approval in accordance with FAR subpart 6.3 and subpart 506.3. When the cost is $25,000 or less, the contracting officer must prepare the justification for inclusion in the file.

56. Section 570.504 is amended by revising paragraph (a) to read as follows:

570.504 Superseding leases.

(a) Consideration should be given to the execution of a superseding lease that would replace the existing lease (unless the existing lease is a temporary lease) when the changes or modification to the space contemplated are so numerous or detailed as to cause complications, or they would substantially change the present lease.

* * * * *

57. Section 570.602-2 is amended by revising paragraph (f)(3) to read as follows:

570.602-2 Procedures.

* * * * *

(f) *Price Negotiations.* * * *

(3) Negotiations must be documented by a price negotiation memorandum prepared in accordance with FAR 15.808(a).

* * * * *

58. Sections 570.701-1, 570.701-2, 570.701-3, 570.701-4, 570.701-5, 570.701-6, 570.702-1, 570.702-2, 570.702-3, 570.702-4, 570.702-6, 570.702-7, 570.702-8, 570.702-9, 570.702-10, 570.702-11, 570.702-12 are revised and section 570.702-5 is removed and reserved to read as follows:

570.701-1 Preparation of offers.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-1, Preparation of Offers, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.701-2 Explanation to prospective offerors.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-2, Explanation to Prospective Offerors, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.701-3 Late submissions, modifications, and withdrawals of offers.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-3, Late Submissions, Modifications, and Withdrawals of Offers, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of

space or for terms of 6 months or less regardless of the square footage.

570.701-4 Historic preference.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-4, Historic Preference, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months, when the market survey indicates that space is available in both historic and non-historic buildings. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.701-5 Lease award.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-5, Lease Award, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.701-6 Parties to execute lease.

The contracting officer shall insert a provision substantially the same as the provision at 552.270-6, Parties to Execute Lease, in solicitations for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the provision is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-1 Definitions.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-10, Definitions, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage unless the clause at 552.270-28 is included in the lease, in which case, the definitions clause is mandatory.

570.702-2 Subletting and assignment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-11, Subletting and Assignment, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-3 Maintenance of building and premises—right of entry.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-12, Maintenance of Building and Premises—Right of Entry, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-4 Fire and casualty damage.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-13, Fire and Casualty Damage, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-5 [Reserved]

570.702-6 Compliance with applicable law.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-15, Compliance with Applicable Law, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-7 Inspection—right of entry.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-16, Inspection—Right of Entry, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-8 Failure in performance.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-17, Failure in Performance, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-9 Successors bound.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-18, Successors Bound, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-10 Alterations.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-19, Alterations, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-11 Proposals for adjustment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-20, Proposals for Adjustment, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-12 Changes.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-2, Changes, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

59. Section 570.702-14 is revised to read as follows:

570.702-14 Operating costs.

If operating cost escalation is necessary, the contracting officer may use the clause at 552.270-23, Operating Costs, or develop a different clause for solicitations and contracts for acquisitions of leasehold interests in real property. Because of the variations in circumstances and need to modify clause wording that may arise, no standard clause is prescribed. However, any clause developed by the contracting officer must provide for a base to be established, provide for upward and downward adjustment, and specify the timeframe for and method of payment. Any clause developed by the contracting officer should be reviewed by assigned legal counsel.

60. Section 570.702-15 is revised to read as follows:

570.702-15 Tax adjustment.

If tax escalation is necessary the contracting officer may use the clause at 552.270-24, Tax Adjustment, or develop a different clause for solicitations and contracts for acquisitions of leasehold interests in real property. Because of the variations in circumstances and need to modify clause wording that may arise, no standard clause is prescribed. However, any clause developed by the contracting officer must provide for a base to be established, provide for upward and downward adjustment, and specify the timeframes for and method of payment. Any clause developed by the Contracting officer should be reviewed by assigned legal counsel.

61. Sections 570.702-16, 570.702-18, 570.702-19, and 570.702-21 are revised, and sections 570.702-17 and 570.702-20 are removed and reserved to read as follows:

570.702-16 Adjustment for vacant premises.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-25, Adjustment for Vacant Premises, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-17 [Reserved.]

570.702-18 Delivery and condition.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-27, Delivery and Condition, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-19 Default in delivery—time extensions.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-28, Default in Delivery—Time Extensions, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-20 [Reserved.]

570.702-21 Progressive occupancy.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-30, Progressive Occupancy, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

62. Sections 570.702-22, 570.702-23, 570.702-24, 570.702-25, 570.702-26, 570.702-27, 570.702-28, 570.702-29, 570.702-30, and 570.702-31 are added to read as follows:

570.702-22 Measurement for payment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-31, Measurement for Payment, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-23 Effect of acceptance and occupancy.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-32, Effect of Acceptance and Occupancy, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-24 Default by lessor during the term.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-33, Default by Lessor During the Term, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months when the contracting officer determines that the clause would not substantially affect the marketability of the lease or the lessor's ability to obtain financing. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-25 Subordination, nondisturbance and attornment.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-34, Subordination, Nondisturbance and Attornment, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-26 Statement of lease.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-35, Statement of Lease, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-27 Substitution of tenant agency.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-36, Substitution of Tenant Agency, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-28 No waiver.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-37, No Waiver, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-29 Integrated agreement.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-38, Integrated Agreement, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet

or less of space or for terms of 6 months or less regardless of the square footage.

570.702-30 Mutuality of obligations.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-39, Mutuality of Obligation, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

570.702-31 Asbestos and hazardous waste management.

The contracting officer shall insert a clause substantially the same as the clause at 552.270-40, Asbestos and Hazardous Waste Management, in solicitations and contracts for leasehold interests in real property which involve both more than 10,000 square feet of space and terms which exceed 6 months. Use of the clause is optional for 10,000 square feet or less of space or for terms of 6 months or less regardless of the square footage.

63. Section 570.801 is revised to read as follows:

570.801 Standard forms.

Standard Form 2, U.S. Government Lease for Real Property, should be used to award leases unless expedited procedures in 570.3 are used. The reference to the Standard Form 2-A in paragraph 7 should be deleted.

64. Section 570.802 is revised to read as follows:

570.802 GSA forms.

(a) The GSA Form 3626, U.S. Government Lease for Real Property (Short Form), should be used to award leases when expedited leasing procedures in 570.3 are used.

(b) GSA Form 276, Supplemental Lease Agreement, should be used to amend existing leases that involve the acquisition of additional space or partial release of space, revisions in the terms of a lease, restoration settlements, and alterations.

(c) GSA Form 367, Analysis of Values Statement, should be completed whenever an appraisal is provided by in-house or contract appraiser.

(d) GSA Form 1364, Proposal To Lease Space To The United States of America, may be used to obtain offers from prospective offerors except when expedited leasing procedures in 570.3 are used.

(e) GSA Form 3516, Solicitation Provisions, may be included as a part of all solicitations for the acquisition of leasehold interests in real property except for solicitations issued under the expedited leasing procedures in 570.3.

(f) GSA Form 3517, General Clauses, may be included as a part of all solicitations and contracts for the acquisition of leasehold interests in real property. The GSA Form 3517A, General Clauses (Acquisition of Leasehold Interests in Real Property Not to Exceed $25,000) or the GSA Form 3517B, General Clauses (Acquisition of Leasehold Interests in Real Property over $25,000 and 10,000 square feet or less or any lease not to exceed 6 months) may be included instead when using expedited leasing procedures.

(g) GSA Form 3518, Representations and Certifications, may be included as a part of all solicitations and contracts for the acquisition of leasehold interests in real property. The GSA Form 3518A, Representations and Certifications (Temporary and Small Acquisitions of Leasehold Interests in Real Property) may be included instead when using expedited leasing procedures.

Dated: August 12, 1992.

Richard H. Hopt III,

Associate Administrator for Acquisition Policy.

[FR Doc. 92-19796 Filed 8-20-92; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107 and 171

[Docket HM-208]

RIN 2137-AB43

Hazardous Materials Transportation Registration and Fee Assessment Program; Editorial Revisions and Response to Petitions for Reconsideration

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; editorial revisions and response to petitions for reconsideration.

SUMMARY: On July 9, 1992, a final rule was published which established a national registration program for persons engaged in the offering for transportation and transportation of certain categories and quantities of hazardous materials in intrastate, interstate, or foreign commerce. This document corrects errors in the final rule and responds to petitions for reconsideration, providing regulatory relief.

EFFECTIVE DATE: August 31, 1992. However, immediate compliance is authorized.

FOR FURTHER INFORMATION CONTACT: Joseph S. Nalevanko, Office of Hazardous Materials Planning and Analysis (202) 366-4109, or Beth Romo, Office of Hazardous Materials Standards (202) 366-4488, Hazardous Materials Safety, 400 Seventh Street SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: A final rule was published July 9, 1992, under Docket HM-208 (57 FR 30620), to establish a national registration program, as mandated by Congress in the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), for persons engaged in the offering for transportation and transportation of certain categories and quantities of hazardous materials in intrastate, interstate, and foreign commerce. Persons subject to the registration program are required to annually file a registration statement with RSPA and pay an annual fee of $300, $250 of which is to fund a nationwide emergency response training and planning grant program for States, local governments, and Indian tribes and $50 of which is to offset DOT processing costs. An initial filing deadline of August 31, 1992 was imposed for filing the registration statement and paying the fee.

In a clarification document published in the **Federal Register** on July 28, 1992 (57 FR 33416), RSPA corrected errors in a nationally-distributed instructional brochure, entitled "Hazardous Materials Registration Program—What you Need to Know." RSPA also provided a narrative discussion of who is subject to the new registration requirements.

RSPA has received a petition for reconsideration from the American Trucking Associations (ATA) requesting delays in implementation and enforcement dates. North American Transportation Consultants, Inc. (NATC) requested clarification on the requirement for motor carriers to carry a copy of the Certificate of Registration or another document bearing the registration number on board all transport vehicles. NATC inquired whether this meant the document should be carried on both the tractor and the trailer of a truck tractor transporting any hazardous material. NATC also suggested that RSPA allow the registration number to be displayed on the side of the truck or truck tractor door, similar to the display of the U.S. DOT ID number. RSPA's response is discussed in the following section-by-section review.

With regard to payment of the registration fee, registrants should be aware that late payment of the registration fee may result in the assessment of interest and administrative charges, which would accrue from the date when the fee was due and payable. In addition, a late-payment penalty of six percent may be charged on any fee which is more than 90 days past due when paid.

Section-by-Section Review

Section 107.601

As stated in the July 28, 1992 clarification document, RSPA has received hundreds of telephone calls from persons who are confused about paragraphs (d) and (e). In this document, RSPA is editorially revising paragraphs (d) and (e) for clarity.

In paragraph (d), RSPA is adding a reference to the § 171.8 definition of "bulk packaging". The phrases "for liquids or gases" and "for solids" are added to clarify that capacities indicated in liters and gallons are for packagings intended for liquids and gases, and capacities indicated in cubic meters and cubic feet are for packagings intended for solid materials. Also, in paragraph (d), the wording "container, or tank" is removed. The final rule mirrored the HMTUSA statutory language, which contained the wording "bulk package, container, or tank". However, this wording has prompted inquiries as to whether "bulk" applies to "container, or tank" as well as "packaging". RSPA is removing the wording "container, or tank" to alleviate confusion, but interprets "bulk packaging" to include those vehicles, containers and tanks which have been modified to function as bulk packagings.

As stated in the July 28, 1992 clarification document, paragraphs (d) and (e) of § 107.601 are separate provisions. This amendment clarifies that paragraph (e) applies only to non-bulk shipments until July 1, 1993. A correction is made in the first sentence of paragraph (e) to describe 2268 kg as the metric equivalent of 5,000 pounds. The last sentence of paragraph (e) is revised to clarify the meaning of the term "shipment".

Revised paragraph (e) also places more emphasis on consistency with the placarding requirements in subpart F of 49 CFR part 172. For purposes of registration, those placarding requirements prevail over any intrastate placarding exemptions provided by State or local law. Therefore, if an intrastate offeror or transporter engages in any of the activities described in § 107.601(e), that person must register, even if not subject to placarding requirements under State or local law.

Section 107.620

In order to meet the Congressionally-mandated October 1, 1992, deadline for funding the public sector grant program for emergency response planning and training, RSPA is not delaying the August 31, 1992 initial filing deadline beyond the special circumstances recognized in the final rule. However, to reduce any potential burden on the trucking industry, RSPA is delaying until January 1, 1993, the requirement for motor carriers to carry proof of registration on their vehicles. This delay does not affect the August 31, 1992, compliance date for motor carriers to register and maintain a copy of the Certificate of Registration at their principal place of business.

RSPA is replacing the wording "all transport vehicles" with "each truck and truck tractor (not including trailers and semi-trailers)" to clarify that carrying proof of registration is not necessary on full and semi-trailers. In addition, paragraph (b) is revised by removing the wording "or shipments of hazardous materials" in the first sentence to clarify that only those categories or quantities of hazardous materials subject to the registration requirements are subject to the requirements of this paragraph. However, RSPA is not expanding the provisions of § 107.620(b) to allow the display of the registration identification number on the sides of trucks and truck tractors. The display of the registration identification number on the side of the vehicle would create potential confusion with the U.S. DOT identification number prescribed in section 390.21 of the Federal Motor Carrier Safety Regulations. RSPA intends to issue each registrant a different registration identification number each year, which could result in additional confusion if the registration identification number was displayed on the side of the vehicle.

Section 171.2

Paragraph (b) is editorially revised to remove the wording "for transportation" because it is redundant.

Rulemaking Analyses and Notices

A. Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. Although the underlying rule was considered to be "significant" under the regulatory procedures of the Department of Transportation, this document is considered to be "non-significant" because it clarifies and corrects provisions of the final rule and provides consistency. This final rule does not impose additional requirements and, in fact, grants relief to some persons subject to the rule. The net result is that costs imposed under the final rule published in the **Federal Register** on July 9, 1992 are reduced, but without a reduction in safety (57 FR 30620). The original regulatory evaluation of the final rule was reexamined but was not modified because the changes made under this rule provide limited relief and thus will result in minimal economic impact on industry.

B. Executive Order 12612

This action has been analyzed in accordance with Executive Order 12612 ("Federalism"). States and local governments are "persons" under the HMTA, but are specifically exempted from the requirement to file a registration statement. The regulations herein have no substantial effects on the States, on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various levels of government. This registration regulation has no preemptive effect. It does not impair the ability of States, local governments or Indian tribes to impose their own fees or registration or permit requirements on intrastate, interstate or foreign offerors or carriers of hazardous materials. Therefore, preparation of a Federalism Assessment is not warranted.

C. Impact on Small Entities

Based on limited information concerning size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The rule will have no direct impact on small units of government.

D. Paperwork Reduction Act

Under 49 App. U.S.C. 1805, the information management requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) do not apply to this rule.

E. Regulation Identification Number (RIN)

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number

contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

F. National Environmental Policy Act

This final rule has been reviewed under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and does not require an environmental impact statement.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR parts 107 and 171 are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 is revised to read as follows:

Authority: 49 App. U.S.C. 1421(c), 1802, 1804, 1805, 1806, 1808–1811, 1815; Public Law 89–670, 80 Stat. 933 (49 App. U.S.C. 1653(d), 1655); 49 CFR 1.45 and 1.53 and app. A of 49 CFR part 1.

2. In § 107.601, paragraphs (d) and (e) are revised to read as follows:

§ 107.601 Applicability.

* * * * *

(d) A hazardous material in a bulk packaging (see § 171.8 of this chapter) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids; or

(e) A shipment of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required for that class, under the provisions of subpart F of part 172 of this chapter. Prior to July 1, 1993, this paragraph (e) provision applies only to hazardous materials in non-bulk packagings. For applicability of this subpart, the term "shipment" means, and is further limited to, the hazardous material being offered or loaded at one loading facility.

§ 107.601 [Amended]

3. In addition, in § 107.601, in the introductory text, the word "transport" is revised to read "transports".

4. In § 107.620, paragraph (b) is revised to read as follows:

§ 107.620 Recordkeeping requirements.

* * * * *

(b) After January 1, 1993, each motor carrier subject to the requirements of this subpart must carry a copy of its current Certificate of Registration issued by RSPA or another document bearing the registration number identified as the "U.S. DOT Hazmat Reg. No." on board each truck and truck tractor (not including trailers and semi-trailers) used to transport hazardous materials subject to the requirements of this subpart. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel.

* * * * *

PART 171—GENERAL INFORMATION REGULATIONS, AND DEFINITIONS

5. The authority citation for part 171 is revised to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808, 1815, 1818; 49 CFR part 1.

§ 171.2 [Amended]

6. In § 171.2, in paragraph (b), the words "for transportation" are removed.

Issued in Washington, DC, on August 14, 1992, under the authority delegated in 49 CFR part 1.

Douglas B. Ham,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 92–19808 Filed 8–20–92; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–07; Notice 7]

RIN 2127–AD27

Federal Motor Vehicle Safety Standards; Air Brake Systems Control Line Pressure Balance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends the pneumatic timing requirements of Standard No. 121, Air Brake Systems, with respect to the control line pressure balance. Specifically, the agency is adopting a new dynamic test procedure for determining the control signal pressure differential. These amendments are part of a more general rulemaking to improve the brake timing balance of combination vehicles and partially implement the mandate in section 4012 of the Intermodal Surface Transportation Efficiency Act (ISTEA) regarding rulemaking for "improving brake compatibility [and] effectiveness of brake timing."

DATES: *Effective Date:* The amendments become effective on August 23, 1993. Vehicles manufactured before the effective date may comply with this rule's amendments, effective September 21, 1992.

Petitions for Reconsideration: Any petitions for reconsideration of this rule must be received by NHTSA no later than September 21, 1992.

ADDRESSES: Petitions for reconsideration of this rule should refer to Docket 85–07; Notice 7 and should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Richard C. Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5274).

SUPPLEMENTARY INFORMATION:

Background

Pneumatic timing is an important factor in air brake system performance. The time required for a vehicle's service brake chambers to reach a relatively high pressure level after actuation of the brake control by the driver is referred to as "pneumatic application time." Since the generation of braking force is directly related to the air pressure available in the brake chambers, pneumatic application time affects vehicle stopping distance. As a general matter, the shorter the pneumatic application time, the shorter the vehicle's stopping distance.

The pneumatic application timing can affect the stability of combination vehicles. If a trailer's brakes apply more slowly than the towing vehicle's brakes, the trailer can bump the towing vehicle, applying an excessive compressive force on the kingpin connecting the trailer to the towing vehicle. If the brakes are applied during a turn, this force may reduce the stability of the combination and contribute to a jackknife accident.

Braking performance is also affected by "pneumatic release timing" (i.e., the time required for the pressure in the brake chambers to fall from a relatively high pressure to a relatively low pressure after the driver releases the brake control.) If a vehicle's wheels lock as the driver is attempting to stop, the vehicle will skid. The driver must be able to release the brakes immediately to regain control of the vehicle in this situation.

For combination vehicles, pneumatic release timing can affect stability. If a towing vehicle's brakes release more slowly than the trailer's, destabilizing forces may increase at the kingpin.

Standard No. 121, *Air Brake Systems*, currently specifies certain requirements for pneumatic timing. Section S5.3.3 specifies time periods within which brake actuation for trucks, buses, and trailers must occur. Similarly, section S5.3.4 specifies time periods within which brake release for these vehicles must occur.

The timing tests for trailers, including trailer converter dollies, are conducted with the trailer connected to a test rig rather than an actual tractor. The test rig delivers air to, and releases air from, the trailer during the timing test. The timing tests for vehicles designed to tow trailers are conducted with a 50-cubic-inch reservoir connected to the rear control line coupling. This reservoir represents the control line volume of the towed trailer.

Regulatory Background

On May 3, 1989, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 121, *Air Brake Systems*, to improve the timing balance of combination vehicles (54 FR 13890).

SNPRM I

On that same day, NHTSA published a Supplemental Notice of Proposed Rulemaking (SNPRM) proposing two further amendments concerning pneumatic timing (54 FR 18912). The first proposal would have required the actuation time at the gladhand to be at least as fast as the timing at the brake chambers. However, after reviewing the comments on this issue, NHTSA decided to terminate this portion of the rulemaking because the proposed requirement would have reduced flexibility in product manufacturing by requiring more custom design of vehicles. In addition, the costs resulting from such a requirement would not have been justified in view of the relatively limited safety benefits associated with such a requirement.

The second proposal would have required that the relay booster valves used on towing trailers not upset the brake balance of combination vehicles. The second proposal was intended to allay NHTSA's concern about excessive control line pressure differentials in multiple trailer combinations. Another concern was that pressure differentials, which could be caused by relay booster valves with overly high crack pressures (i.e., the pressure at which a booster relay valve opens), could create situations in which the brakes of only the towing trailer were actuated. For example, if the crack pressure were too high, the relay booster valve would not open during mild braking, and the brakes of the towed trailer would not be actuated.

NHTSA proposed to require that, in all situations in which the pressure at the input coupling is steady (or is increasing or decreasing at a rate of 10 psi per minute or less), the pressure differential between the control line gladhand at the front of a towing trailer and the control line gladhand at the rear of the trailer not exceed 1.0 psi at input pressures between 5.0 and 20.0 psi, and not exceed 2.0 psi at input pressures above 20.0 psi. The agency believed that the requirement would ensure that the brakes of both the towing trailer and the towed trailer would receive the same signal.

SNPRM II

After reviewing the comments to the first SNPRM, the agency published a second supplemental notice of proposed rulemaking (SNPRM) on March 15, 1991. (56 FR 11150). As mentioned above, the agency decided to terminate the portion of the rulemaking about gladhand actuation timing. As for the proposal about control line pressure differential, NHTSA decided to propose modified requirements.

The commenters generally agreed in theory that control line pressure differential should be controlled. However, commenters stated that the proposed requirements were inappropriate. Bendix Heavy Vehicle Systems Group (Bendix) stated that the proposed 10 psi per minute rate of pressure change was extremely slow and would be difficult to maintain over a wide pressure range. Bendix also stated that the proposed rate was not representative of normal pressure changes that occur during braking.

Bendix suggested an alternative test procedure using two specific test orifices with fixed diameters and thickness to control flow rates. Bendix recommended that the test orifice sizes be set at 0.0180 inches diameter for application timing and 0.0292 inches diameter for release timing. Bendix believed that these diameters would produce brake pressure rates that are consistent with lower limit applications, such as those required for maintaining vehicle speed on a five percent grade. Bendix recommended four psi per second for application and release testing, a rate substantially faster than the one proposed by NHTSA in the first SNPRM, but closer to rates seen in actual service applications. Bendix also suggested that the testing procedure for determining the control signal pressure differential on towing trailers and dollies use either of the current Standard No. 121 trailer test rigs and an orifice fixture, coupled between the control line gladhand of the trailer test rig and the control line input coupling of the vehicle to be tested.

After reviewing Bendix's suggested pressure differential test, NHTSA decided to propose a simplified test procedure that would use only one metering orifice, i.e., the smaller of the two orifices suggested by Bendix. While Bendix claimed that the use of two orifices would result in the same pressure change rate for both apply and release, NHTSA did not believe that monitoring the same pressure change rate was necessary. The agency believed that using one rather than two orifices would avoid the very fast or very slow pressure rate rises that could be problematic. NHTSA anticipated that the apply rate would approximate four psi per second, but the release rate would be somewhat slower.

The second SNPRM explained that the proposed pressure differential test slowly "sweeps" the pressure across the full range of operating pressures, thus enabling the person conducting the test to check the differential level. The orifice restricts the flow from the trailer test rig and slows the pressure rise and decay rate. The ability to "sweep" the pressure slowly makes it unnecessary to stop and hold the pressure constant. If the pressure is changed too rapidly, the steady state case (i.e., when brake pressure is being held steady after application of the brakes) is not evaluated and pressure differentials caused by air flow through the control lines, instead of valve characteristics, are introduced.

NHTSA tentatively concluded that the proposal concerning control line pressure differential was necessary to meet the need for motor vehicle safety. NHTSA believed that some trailer manufacturers would install relay valves at the rear of the trailers in the control lines upstream of the towing gladhands to "boost" the control signal. This would result in a significant margin of compliance with the new brake timing requirements for towing trailers established by NHTSA in the May 3, 1989 final rule.

In response to the second SNPRM, the agency received four comments. They were submitted by Midland-Grau, Bendix Heavy Vehicle Systems, the

Truck Trailer Manufacturers Association (TTMA), and Mr. Robert Crail, a consultant. The agency has considered the points raised in the comments in developing this final rule. The commenters' significant points are addressed below, along with the agency's response to the comments.

Agency's Determination

1. Safety Need

Midland-Grau questioned the safety need for the proposal, stating that "Since there is no identified relationship between the control line pressure and brake force exerted, there appears to be no justification for the great efforts needed to achieve tightly tracking control line pressures."

NHTSA agrees with Midland-Grau that there is no absolute relationship between control line pressure and brake force. Nevertheless, by ensuring that the pressures will be constant as they are passed to other vehicles in combinations, this rulemaking will alleviate one significant source of combination vehicle brake imbalance. Therefore, the commenter's concern about the nonexistence of such a relationship has no bearing on the imbalance problem.

NHTSA notes that this rulemaking action to add requirements for control line pressure balance was intended to be a small but important part of the general rulemaking package regarding timing changes. (See, docket No. 85-07; Notice 3.) Therefore, in determining the safety benefits derived from the control line pressure amendment, the safety benefits obtained from the more general timing amendments should be considered to some extent. The agency continues to believe that the amendment about control line pressure should be adopted because, without this provision, an imbalance problem could exist if a manufacturer installed relay booster valves which speeded up the timing to meet the new timing requirements.

The amendment is designed to ensure that the control signal "passes" through a towing trailer or dolly without being altered along the way. Because the control signal passes through unaltered, each vehicle in the combination unit receives the same brake control signal (i.e., by keeping the control signal at the same level, each vehicle in a combination has a comparable braking performance. The agency acknowledges that Standard No. 121 does no specifically address brake force as a function of control pressure. Nevertheless, the Society of Automotive Engineers (SAE) developed SAE Recommended Practice J1854 and Test Procedure J1505 to allay concerns about incompatibility. The agency believes that this rulemaking will act in conjunction with SAE J1854 to improve compatibility between vehicles.

2. Test Procedure

The second SNPRM proposed a dynamic test procedure in which pressure differential is evaluated using a single metering orifice. TTMA and Mr. Crail favored a test procedure measuring static conditions. TTMA believed that such a test procedure would be more similar to actual braking and would be less costly.

Notwithstanding these comments, the agency favors a dynamic test procedure which slowly sweeps across the full range of pressures. The agency notes that NHTSA's Vehicle Research and Test Center (VRTC) conducted tests which indicated that the proposed dynamic test appropriately evaluated control pressure differential. These tests were designed to measure the control line pressure valve's influence on the control line pressure to ensure that the pressure is not amplified. When such pressure is amplified, the pressure may not properly "bleed" back to the stable level, and thus adversely affect the timing among vehicles in a combination. The testing compared the pressure between the gladhand at the front of a towing trailer and the gladhand at the rear. The agency does not believe that the pressure differential problem which may arise through increased use of relay booster valves can be controlled with a static pressure test. Performing the necessary testing is technologically sensitive because the pressure between the gladhand in front of a towing trailer must be compared with the pressure at the rear gladhand. Given that the test sequence of events between the front gladhand and the rear gladhand occurs very rapidly and at pressure differentials too small for human observers to record the event accurately, the devices recommended by some commenters would be incapable of measuring such an intricate situation.

Mr. Crail commented that tolerances are needed in the test requirements, claiming that it is impossible to measure pressure exactly. He indicated that pressure accuracy within a range of ±0.25 psi would be appropriate.

NHTSA notes that the agency generally does not specify tolerances in a requirement since a minimum or maximum value does not need a tolerance. The test values specified in the changes, as adopted, are one-sided maximum specifications in that the pressure differential from 5 to 20 psi cannot exceed 1 psi and at pressures over 20 psi cannot exceed 2 psi. Accordingly, the agency has determined that tolerances in the specified pressures are not necessary.

3. Cost

TTMA and Mr. Crail believed that the amendment's costs would be excessive. TTMA was concerned that the proposed test procedure would require trailer manufacturers to purchase expensive equipment such as transducers and recording equipment costing as much as $6,000. In contrast, it claimed that the equipment necessary for the static test procedure it favors would cost about $300 per manufacturer. Mr. Crail stated that the total cost of the static test would be less than $900, as compared to approximately $6,000 to conduct the test proposed by the agency. Similarly, Midland-Grau stated that the proposed requirements were impractical and unjustifiable.

After conducting its own review, NHTSA believes that the costs associated with the test equipment are reasonable and well below the costs estimated by the commenters. The agency notes that most trailer manufacturers already own the most expensive portion of this test equipment for conducting timing tests (i.e., the data recorder/power supply/signal conditioning apparatus), and that the mini-tractor test rigs that are currently used in compliance testing with Standard No. 121 could be readily upgraded to check for pressure differentials for an additional cost of $300. Of this cost figure, $100 would cover the hose, gladhands, and air flow restrictor and $200 would cover the cost of upgrading the software of the test rig. NHTSA notes that the practical effects of these requirements are limited to only those trailer manufacturers who build towing trailers (i.e., trailers used in doubles or triples operations.) Such towing trailers currently constitute a very small percentage of the trailer market.

4. Effective Date

The NPRM proposed an effective date of one year after the final rule's publication. Bendix requested that the rule become effective as soon as possible, claiming that this would limit the number of vehicles designed to comply with Notice 3 that would have an undesirable control pressure differential.

After reviewing the comments, the agency believes that optional compliance with the control pressure differential amendments should be permitted beginning 30 days after the final rule's publication. The agency believes that allowing earlier optional compliance will reduce the number of vehicles that may be built with excessive pressure differentials. Mandatory compliance will still be effective one year after publication of the final rule.

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The agency has considered the costs and other impacts of this rulemaking and determined that the rulemaking is neither major within the meaning of Executive Order 12291 nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. As discussed above, the requirements necessitate only minor additional changes to vehicles beyond those required by the final rule published on May 3, 1989. Manufacturers may have to use higher quality (tighter tolerance) relay valves to meet the requirements. However, these tighter tolerance valves are not significantly more expensive. Manufacturers may have to modify existing valve designs to control pressure differential and also change diaphragm ratios. However, these modified valves are not significantly more expensive and are estimated to cost approximately $3–4 more per vehicle. In addition, the requirements could add approximately five minutes to the timing test, which could increase the cost as much as $4.00 per vehicle. NHTSA believes that most, if not all, manufacturers routinely test each vehicle for compliance with pneumatic requirements. The agency estimates that approximately 21,400 towing trailers are manufactured each year. If all towing trailers required modification and testing the cost of meeting these new requirements could approach $170,000. However, the agency believes that the actual costs will be lower because many of the units built already comply with the requirements. NHTSA estimates additional costs associated with this rule will be less than the May 3, 1989 final rule, which was neither major nor significant. The final regulatory evaluation for that final rule is available in the docket for that rulemaking.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation and the discussion above, I certify that the amendment will not have a significant economic impact on a substantial number of small entities. The effect of this rulemaking on any small manufacturers of vehicles or brake systems will be minor. Only minor additional changes to vehicles beyond those necessitated by the final rule published on May 3, 1989 will be needed. Other small businesses, small organizations, and small governmental units will be affected by the amendments only to the extent that they purchase motor vehicles. The amendments will not have any significant effect on the price of those vehicles. Accordingly, no regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612. NHTSA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

Finally, the agency has also analyzed this rulemaking for the purposes of the National Environmental Policy Act. NHTSA has determined that the rule will not have any significant impact on the quality of the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. S5.3.5 is added to § 571.121 to read as follows:

* * * * *

S5.3.5 Control signal pressure differential—converter dollies and trailers designed to tow another vehicle equipped with air brakes.

(a) For a trailer manufactured on or after August 23, 1993, and designed to tow another vehicle equipped with air brakes, the pressure differential between the control line input coupling and a 50 cubic inch test reservoir attached to the control line output coupling shall not exceed the values specified in S5.3.5(a)(1) and (2) under the conditions specified in S5.3.5(b)(1) through (4)—

(1) 1 p.s.i. at all input pressures equal to or greater than 5 p.s.i., but not greater than 20 p.s.i.; and

(2) 2 p.s.i. at all input pressures greater than 20 p.s.i.

(b) The requirements in S5.3.5(a) shall be met—

(1) When the pressure at the input coupling is steady, increasing or decreasing;

(2) When air is applied to or released from the control line input coupling using the trailer test rig shown in Figure 1;

(3) With a fixed orifice consisting of a 0.0180 inch diameter hole (no. 77 drill bit) in a 0.032 inch thick disc installed in the control line between the trailer test rig coupling and the vehicle's control line input coupling; and

(4) Operating the trailer test rig in the same manner and under the same conditions as it is operated during testing to measure brake actuation and release times, as specified in S5.3.3 and S5.3.4, except for the installation of the orifice in the control line to restrict airflow rate.

* * * * *

Issued on August 18, 1992.

Howard M. Smolkin,

Executive Director.

[FR Doc. 92-19988 Filed 8-20-92; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412-2112]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Inseason adjustments and closure.

SUMMARY: NMFS announces that the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, will open for what is expected to be the final fishing period, for 3 days on August 12–14, 1992, with a possession and landing limit of 44 coho salmon. The Director, Northwest Region, NMFS (Regional Director), has determined that, following this fishery's fourth open period on August 6–8, 1992, a sufficient number of coho salmon remain in the harvest guideline to allow a final 3-day open period. These adjustments are intended to provide sufficient time to catch the remainder of the coho harvest guideline without exceeding the ocean share allocated to the commercial fishery in this subarea. The closure is necessary to conform to the preseason announcement of the 1992 management measures and is intended to ensure conservation of coho salmon.

DATES: The opening and the possession and landing limits for coho salmon are effective at 0001 hours local time, August 12, 1992, through 2400 hours local time, August 14, 1992. Closure is effective 2400 hours local time, August 14, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through September 8, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way N.E., BIN C15700—Bldg. 1, Seattle, WA 98115-0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526-6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 6, 1992), NMFS announced that the 1992 commercial fishery between the U.S.-Canada border and Cape Falcon, Oregon, would open July 20 and continue through the earliest of August 31 or attainment of harvest guidelines of either 18,100 coho salmon or 4,400 chinook salmon. These harvest guidelines have since been revised to be 17,600 coho salmon and 9,700 chinook salmon.

Preseason restrictions for the July/August commercial fishery included a cycle of 2 days open and 3 days closed, a possession and landing limit of 30 coho salmon per opening, and gear limited to 6-inch plugs or larger and no more than 4 spreads per line. Inseason actions were taken such that this fishery's second, third, and fourth open periods were for 3 days each.

Based on the best available information on August 10, the commercial catch in the subarea from the U.S.-Canada border to Cape Falcon during the four open periods totaled about 13,800 coho salmon and about 7,500 chinook salmon, and the remainder of the coho salmon harvest guideline is projected to be harvested during a final 3-day fishing period with an appropriate adjustment to the possession and landing limit. Therefore, the commercial fishery in the subarea from the U.S.-Canada border to Cape Falcon will open for 3 days, effective 0001 hours local time, August 12 through 2400 hours local time, August 14, 1992. Each vessel may possess, land and deliver not more that 44 coho salmon for this open period. Modifications of fishing seasons and limited retention regulations are authorized by regulations at 50 CFR 661.21(b)(1) (i) and (ii).

Announcements to affected fishermen stated that following this 3-day open period, the commercial fishery in this subarea would close for 5 days on August 15–19, 1992, for further evaluation. However, it is anticipated that the harvest guideline for coho salmon will be fully harveated during this opening, and that an insufficient number of fish will be available for another opening. Unlike fisheries managed under quotas that require closure upon the projected attainment of the quota, fisheries managed under harvest guidelines do not require closure upon the projected attainment of the guideline. However, it was determined that the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, would be managed to keep catches near the guideline levels. Therefore, the commercial fishery in this subarea is closed effective 2400 hours local time, August 14, 1992. Closure of this fishery as authorized by regulations at 50 CFR 661.21(b)(1)(i).

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time, August 12, 1992, by telephone hotline number (206) 526-6667 or (800) 662-9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding these adjustments affecting the commercial fishery between the U.S.-Canada border and Cape Falcon. The states of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. However, public comments on this notice will be accepted through September 8, 1992.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-19971 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-22-M

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50 CFR Parts 672 and 675

[Docket No. 910783-2025]

RIN 0648-AD45

Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule that prohibits use of longline pot gear in the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI), except the Aleutian Islands subarea, and all groundfish fisheries of the Gulf of Alaska (GOA). This action is necessary to prevent gear conflicts and ground preemptions that would otherwise occur between longline pots and other gear types, especially as the use of pots increases in the groundfish fisheries. It is intended to promote the goals and objectives of the North Pacific Fishery Management Council (Council) with respect to groundfish management off Alaska.

DATES: Effective September 21, 1992.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the GOA and BSAI area are managed by the Secretary of Commerce (Secretary) under the Fishery Management Plans for Groundfish of the Gulf of Alaska (GOA FMP) and the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI FMP). The FMPs were prepared by the Council under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and are implemented by regulations for the foreign fisheries appearing at 50 CFR 611.92 and 611.93 and for the U.S. fisheries at 50 CFR parts 672 and 675.

At times, amendments to the FMPs and/or their implementing regulations are necessary to resolve problems pertaining to management of the groundfish fisheries. The structure of both groundfish FMPs provides for changes to gear restrictions by amending regulations (regulatory amendments) without accompanying amendments to the FMPs (sections 14.5.1 in the GOA FMP and 14.4.4 in the BSAI FMP).

NMFS published a proposed rule in the **Federal Register** (56 FR 51669; October 15, 1991), which described in detail the basis for the action. The final rule prohibits the use of longline pot gear in the groundfish fisheries of the BSAI, except the Aleutian Islands subarea, and all groundfish fisheries of the GOA. Also, regulations at § 672.24(c)(2) are simplified by removing the reference to restrictions after 1988, because they serve no purpose. An incorrect citation in § 672.24(c)(1) is changed from (b)(3)(ii) to (c)(3)(ii). The final rule does not differ substantially from the proposed rule.

Response to Comments

Four letters of comments were received during the comment period. Comments are summarized and responded to as follows:

Comment 1: The use of longline pot gear preempts fishing grounds and causes gear conflicts with hook-and-line gear and trawl gear. These problems are reduced when single line pot gear is used, because hook-and-line gear and trawl gear can be deployed between pots.

Response: NMFS concurs. Based on testimony to the Council by fishermen already using pot gear, groundfish harvests with single line pots will continue and will replace harvests that might otherwise have resulted from the use of longline pot gear. Prohibiting longline pot gear will reduce ground preemptions and gear conflicts without significant economic loss to the fishing industry.

Comment 2: The use of longline pot gear should not be singled out to be prohibited; single line pot gear also should be prohibited.

Response: NMFS recognizes that while any stationary gear type might result in ground preemptions and gear conflicts with itself and other authorized gear types, expanding the scope of this rule is not appropriate. This rule, and its supporting analysis, are directed only at the use of longline pot gear. If future management problems arise with other gear types, including single line pots, the Council or NMFS could initiate regulatory action to address the problem.

Comment 3: Prohibiting longline pot gear while the groundfish fisheries are still developing is myopic. The use of longline pot gear would provide future solutions to economic problems, including those related to bycatch management, and environmental problems.

Response: The decision to prohibit longline pot gear is intended to resolve problems related to ground preemptions and gear conflicts that would otherwise be expected if the use of longline pot gear were to increase. Most of the testimony presented to the Council came from participants in the industry, including some fishermen who use pot gear, who were concerned with future problems stemming from expanded use of longline pot gear. NMFS believes that prohibiting the growing use of pot gear is a reasonable solution to the problems.

Comment 4: The use of the term pot-and-longline gear that was used in proposed rulemaking is confusing to the industry. The term longline pot gear should be used instead.

Response: NMFS concurs. Definitions of pot-and-longline gear in 50 CFR 672.2 and 675.2 are rescinded and new definitions of longline pot gear are added using the same meaning as pot-and-longline gear.

Changes From the Proposed Rule

Definitions of "pot-and-longline" at 50 CFR 672.2 and 675.2 are removed and new definitions of "longline pot" are added using the same meanings as for "pot-and-longline."

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson Act and other applicable law.

The Alaska Region, NMFS, prepared an environmental assessment (EA) for this rule and the Assistant Administrator concluded that no significant impact on the environment will result from its implementation. The public may obtain a copy of the EA from the Regional Director (see **ADDRESSES**).

The final regulatory flexibility analysis prepared as part of the EA/RIR/FRFA concluded that this rule would have significant effects on small entities. A summary of this analysis is contained in the Classification section of the proposed rulemaking (56 FR 51669; October 15, 1991).

The Assistant Administrator determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This determination is based on the socioeconomic impacts discussed in the EA/RIR/FRFA prepared by the Alaska Region, NMFS.

This rule does not include a collection of information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act. The responsible State agencies did not reply within the statutory time period;

therefore, consistency is automatically inferred.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping.

Dated: August 14, 1992.

Michael F. Tillman,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 672.2, the definition of "pot-and-longline" is removed and a new definition of "longline pot" gear is added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Longline pot means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

* * * * *

3. In § 672.24, paragraphs (c)(1) and (c)(2) are revised and (c)(4) is added to read as follows:

§ 672.24 Gear limitations.

(c) * * *

(1) *Eastern Area.* No person may use any gear other than hook-and-line and trawl gear when fishing for sablefish in the Eastern Area. No person may use any gear other than hook-and-line gear to engage in directed fishing for sablefish. When operators of vessels using trawl gear have harvested 5 percent of the TAC for sablefish during any year, further trawl catches of sablefish must be treated as prohibited species as provided by paragraph (c)(3)(ii) of this section. Operators of vessels using gear types other than those specified above in the Eastern Regulatory Area must treat any catch of sablefish as a prohibited species.

(2) *Central and Western Areas.* Hook-and-line gear may be used to take up to 80 percent of the sablefish TAC in each of the Central and Western areas, and trawl gear may be used to take up to 20 percent of the sablefish TACs in these areas. Operators of vessels using gear types other than hook-and-line and trawl gear in the Central and Western areas must treat any catch of sablefish in these areas as a prohibited species.

* * * * *

(4) Any person using longline pot gear must treat any catch of groundfish as a prohibited species.

* * * * *

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

5. In § 675.2, the definition of "pot-and-longline" is removed and a new definition of "longline pot" gear is added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Longline pot means a stationary, buoyed, and anchored line with two or more pots attached, or the taking of fish by means of such a device.

* * * * *

6. In § 675.24, paragraph (c)(3) is added to read as follows:

§ 675.24 Gear limitations.

(c) * * *

(3) Any person using longline pot gear must treat any catch of groundfish as a prohibited species, except in the Aleutian Islands subarea.

* * * * *

[FR Doc. 92-19975 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 57, No. 163

Friday, August 21, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

Certificate of Competency (COC) Program

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: This proposed regulation sets forth a complete revision of the Small Business Administration (SBA) COC Regulations, adding eligibility and appeals criteria as well as clarifying other administrative provisions. This action is necessary to reflect a number of changes in procurement law that have occurred since the last revision to the OCC regulations, including an amendment to the Small Business Act which incorporates prime contractor performance requirements (limitations of subcontracting). This proposed regulation would provide definitive guidelines for COC program eligibility and COC program procedures. This proposed regulation would also provide the contracting agency with definitive guidelines for appealing affirmative recommendations to issue a COC made by SBA Regional Offices. In addition, this proposed regulation would provide guidelines to be used in resolving differences between the SBA and the contracting agency. The regulation as proposed, presents SBA's current position on this matter. However, SBA may revise these procedures in light of comments received.

DATES: Written comments must be submitted on or before October 20, 1992.

ADDRESSES: Comments should be addressed to: Gene VanArsdale, Acting Director, Office of Industrial Assistance, Office of Procurement Assistance, Small Business Administration, 409 3d Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mr. Dean Koppel, Program Manager, Certificate of Competency Program, Office of Industrial Assistance, 202/205-6475.

SUPPLEMENTARY INFORMATION: Proposed Section 125.5(a), "COC Eligibility", has been revised for greater clarity. Proposed § 125.5(a) incorporates the provisions currently found at § 125.5 (a), (b) and (c), without making any substantive changes.

Under § 125.5(a)(ii), with the exception of solicitations requiring services or construction outside the United States, its trust territories, possessions or the Commonwealth of Puerto Rico, to be eligible for a COC a small business concern would be precluded from performing a significant portion of the contract and/or a majority of its subcontracting on a solicitation for supplies outside the United States, its trust territories, possessions or the Commonwealth of Puerto Rico. This condition would be imposed on solicitations for supplies due to the Agency's determination that award of the contract to a small business concern which would not perform the majority of its contract in the United States would not further the purposes of the Small Business Act.

13 CFR 125.5(a)(2) and § 125(a)(3) would give effort to debarments and suspensions under subpart 9.4 of the FAR, 48 CFR 9.4. Pursuant to paragraph (a)(2), if a small business concern, or any of its principals, is on the debarred or suspended bidders list (published monthly pursuant to the Office of Federal Procurement Policy Letter 82-1, dated June 24, 1982), it would be ineligible for purposes of a Certificate of Competency.

Procedural provisions currently found at § 125.5(b)-(g) would be revised and clarified in § 125.5(b). While the substance of all current provisions would be retained, other changes to the regulations would be made to incorporate new provisions of the language currently found at subpart 9.4 of the Federal Acquisition Regulation (FAR) (Debarment, Suspension and Ineligibility). These changes would give effect to the "Guidelines for Nonprocurement Debarment and Suspension" issued by the Office of Management and Budget, 52 FR 20360 (May 29, 1987), and to delineate what has been and is current practice in administering the COC program.

13 CFR 125.5(b)(5) affirms that the COC program extends to all elements of responsibility and eligibility and is not necessarily limited to a consideration of the deficiencies found by the contracting officer.

Under § 125.5(b)(6), the Agency would presume a firm to be non-responsible in two cases. First, if the small business concern or any of its principles has either has been convicted of an offense(s) and its case is still under the jurisdiction of a court or suffered a civil judgment within the past three years which would be grounds for debarment or suspension, the Agency would presume that the concern is non-responsible for lack of integrity. Convictions or civil judgments older than three years would be considered as evidence relevant to responsibility on a case-by-case basis, but would not give rise to the presumption. Second, a concern that is six months, or more, delinquent on a debt to the Federal Government would be presumed non-responsible for lack of financial capacity. This would recognize the underlying principal of the Non-Procurement Debarment and Suspension Guidelines and Executive Order 12549 upon which they are based, to exclude from participation in its programs individuals and entities who do not satisfy their financial obligation to the Federal Government.

13 CFR 125.5(b)(8) would make clear that SBA's Regional Offices have the authority to deny a COC regardless of the dollar value of the contract involved. It would also make clear that the decision to deny a COC at the Regional Office level is the final Agency action and there is no administrative appeal of that decision within SBA.

The proposed regulation would also include for the first time, procedures for appeal by contracting agencies of an initial determination by an SBA Regional Office to issue a COC. Appeal procedures are currently described in part 19 of the FAR (48 CFR 19.6). The proposed provisions would be included in § 125.5(b)(9). Under these proposed provisions, a contracting agency may appeal an SBA Regional Office's intended affirmative action to issue a COC. The intent of the appeal procedure would be to allow a Department or Agency an opportunity to provide new and additional information. Contract actions processed utilizing small purchase procedures would not be subject to the COC appeal process. In addition, COC's issued by the Associate Administrator for Procurement

Assistance would not be subject to the COC appeal process.

13 CFR 125.5(b)(15) is a new provision that identifies two circumstances where SBA would reserve the right to reconsider its determination to issue a COC where: (1) It acquires or develops new and materially adverse information regarding the responsibility of a small business concern after a COC has been issued, but prior to award of a contract which had been based on such COC, and (2) where the contracting agency had not awarded the contract within 60 days of issuance of the COC. In the first case, SBA believes it is its duty to reconsider a COC if, prior to award, it has acquired evidence that the company is not responsible, notwithstanding its original determination. In the second case, SBA is concerned that its COC would become stale due to the changed circumstances of the small business concern. In cases where this may be of concern, SBA would retain the right to reconsider its decision to issue a COC to assure itself that the company remains responsible. This provision does not grant the right to a small business concern denied a COC to request reconsideration of that decision.

13 CFR 125.5(c) adds new provisions to reflect the effect of amendments to section 15 of the Small Business Act, 15 U.S.C. 644. Under this new provision, a small business concern, to be responsible for award of a contract on a small business set-aside, would be required to perform with its own facilities and personnel, that portion of the contract now required by section 15 of the Small Business Act, as amended by section 921(c)(2) of the Defense Reauthorization Act of 1987, Pub. L. 99–661 1100 Stat. 3816, 15 U.S.C. 644(o). SBA is proposing these regulations with the intent of seeking public input in formulating its procedures in reference to Prime Contractor Performance Requirements. Prime Contractor Performance Requirements would now be considered responsibility issues and would not be considered as a small business size determination issue.

13 CFR 125.5(d) would incorporate the provisions currently found at § 125.5(i), relating to determinations under the Walsh-Healey Public Contracts Act, 41 U.S.C. 35. Further, the provision would be amended to incorporate by reference the processing procedures now found in part 50–201.101(b) of title 41, Code of Federal Regulations, as promulgated by the Department of Labor, regarding contracting officer initiated and protest initiated (both before and after award) Walsh-Healey eligibility determinations.

13 CFR 125.5(e) would incorporate the provisions currently found at § 125.5(j). This provision would implement the language found at section 8(b)(7)(c) of the Small Business Act, 15 U.S.C. 637(b)(7)(C), which requires procuring agencies and their contracting officers to award contracts to those companies to which SBA has issued a COC without requiring them to satisfy any other requirement with respect to responsibility or eligibility

13 CFR 125.5(f) states that the contracting officer is not precluded from awarding a contract to a firm which has been denied a COC by the SBA.

Compliance With Executive Orders 12291, 12612 and 12778, the Regulatory Flexibility Act (55 U.S.C. 601, et seq.) and the Paperwork Reduction Act (45 U.S.C. 601 Ch. 35)

SBA certifies that this proposed rule will not, if promulgated in final form, have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 55 U.S.C. 601 *et seq.* SBA does not anticipate that a substantial number of small businesses will be excluded from a COC under these amended regulations, if adopted in final form. These amended regulations only reflect administrative changes.

For purposes of E.O. 12291, SBA certifies that this proposed rule, if promulgated in final, would not be a major rule because it is procedural in nature and is not likely to result in an annual economic effect of $100 million or more, major increase in costs or a significant adverse effect on any segment of the economy.

This proposed regulation, if promulgated in final, would impose no new record keeping requirements and no new reporting requirements subject to the Paperwork Reduction Act 45 U.S.C. 601 Ch. 35.

For purposes of E.O. 12612, SBA certifies that this proposed rule, if promulgated in final, would not have federalism implications warranting the preparation of Federalism Assessment.

For purposes of E.O. 12778, SBA certifies that this proposed rule, if promulgated in final, would be drafted, to the extent practicable, in accordance with standards set forth in section 2 of that Order.

List of Subjects in 13 CFR Part 125

Certificate of competency; Government contracts; Government procurement; Small business; Procurement assistance.

PART 125—[AMENDED]

Accordingly, it is proposed that part 125 of Title 13, Code of Federal Regulations, be amended as follows:

1. The authority citation for part 125 is revised to read as follows:

Authority: Section 5(b)(6), 6 and 15 of the Small Business Act, 15 U.S.C. §§ 634(b)(6), 637, and 644, 31 U.S.C. 9701, 9702.

2. Section 125.5 is revised to read as follows:

§ 125.5 Certificate of competency program.

The Certificate of Competency (COC) Program is authorized under section 8 (b)(7) of the Small Business Act, as amended. A COC is a written instrument issued by SBA to a Government contracting officer, certifying that a small business concern (or a group of such concerns) named therein possesses the responsibility and/or Walsh-Healey eligibility to perform a specific Government procurement (or sale) contract.

(a) *COC eligibility.* (1) The contractor has the burden of proof to demonstrate eligibility. To be eligible for the COC program, a firm must meet the following criteria:

(i) It must qualify as a "small business concern" under the applicable size standard as set forth in part 121 of this title, for the SIC Code contained in the solicitation or supplied by SBA in accordance with § 121.902(d) of this title, or be a "group of such concerns" in the form of a small business Defense Production Pool and/or Research and Development Pool approved under the Small Business Act; see §§ 125.7 and 125.4(d)(2) of this title. For purposes of the Small Business Set Aside Program or Department of Defense Small Disadvantaged Business Program, size is determined as of the date of the concern's self certification submitted as part of its initial offer which includes price. For purposes of an unrestricted procurement or procurement for the sale of Government property, size is determined as of the date of the application for a COC.

(ii) Unless performance on a proposed contract is to be required outside the United States, or its trust territories, possessions, or the Commonwealth of Puerto Rico, the small business concern must perform a significant portion of a proposed contract for supplies (regardless of end item delivery destination), or a proposed contract for services or construction, within the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico with its own facilities and personnel. Where performance is required outside the United States, or its territories, possessions, or the Commonwealth of Puerto Rico, for services or construction, in order to be eligible for a COC, the small business concern must demonstrate that it will perform a significant portion, as determined by SBA in its sole discretion, of the proposed contract with its own facilities and personnel.

(iii) If a small business non-manufacturer submits a bid or offer on a small business set-aside contract for supplies, it must furnish end items under the proposed contract which have been manufactured by a small business concern in the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico, unless a non-manufacturing waiver has been granted under the provisions of § 121.906(b) of this title for either the type of product to be supplied generally or in connection with the specific requirement at issue. Any certification shall apply to the responsibility of the small non-manufacturer, not to that of the manufacturer.

(iv) If a small business non-manufacturer submits a bid or offer on an unrestricted procurement or a procurement utilizing small purchase procedures, it must furnish end items manufactured in the United States, or its trust territories, possessions, or the Commonwealth of Puerto Rico. Any certification shall apply to the responsibility of the small non-manufacturer, not to that of the manufacturer.

(v) If the small business concern intends to provide a kit consisting of finished components or other components provided for a special purpose, the concern is eligible if:

(A) It meets the Size Standard for the Standard Industrial Classification Code of the product acquired;

(B) More than 50% of the total dollar value of the components of the kit were manufactured by small business concerns under the size standard applicable to the component(s) provided. The offeror need not itself be the manufacturer of any of the components of the kit. Except for an insignificant portion from an overseas source, each component comprising the kit must be produced or manufactured in the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico. Where the Government has specified an item(s) for the kit which is (are) not manufactured by a small business concern, then such item(s) shall be excluded from the determination of total value for the purposes of this subsection.

(2) A small business concern will not be eligible for a COC if the concern, or any of its principals, i.e. director, owner, partner, officer, key employee, or principal stockholder as defined in 13 CFR 121.401(e), appears in the "Parties Excluded From Federal Procurement Programs" section found in the U.S. General Services Administration Office of Acquisition Policy Publication: List of Parties Excluded From Federal Procurement of Nonprocurement Programs. If a principal is unable to presently control the applicant concern, and appears in the Procurement Section of the list due to matters not directly related to the concern itself, responsibility will be determined in accordance with § 125.5(b)(6) of this subsection.

(3) An eligibility determination will be made on a case by case basis, where a concern or any of its principals appears in the Nonprocurement Section of the publication referred to in § 125.5(a)(2) above.

(b) *Procedures.* (1) Government contracting officers engaged in procurement and/or the sale and disposal of Federal property, after completion of all negotiations, upon determining and documenting that a responsive small business concern which is the apparently successful bidder/offeror, in line for contract award lacks certain elements of responsibility, including but not limited to competency, capability, capacity, credit, integrity, or perseverance and tenacity, shall provide written notification of such determination and refer the matter to the SBA Regional Office in the geographic area where the principal office of the concern is located. The referral from the contracting agency shall include 3 copies of the following: Solicitation (one of which will be a copy of the bid/offer tendered by the firm), Abstract of Bids (where applicable), the preaward survey, the contracting officer's written determination of non-responsibility, and any other justification and documentation used to arrive at the non-responsibility determination. Only one copy of the technical data package (drawings, specifications, Statement of Work, etc.) need be submitted by the contracting officer.

(2) Contract award will be withheld by the contracting officer for a period of 15 working days (or longer if agreed to by the SBA and the contracting officer) following receipt by the appropriate SBA Regional Office of a referral made by the contracting officer which includes all required documents.

(3) Upon receipt of the contracting officer's referral, the SBA Regional Office will contact the small business concern to inform it of the contracting officer's negative responsibility determination, and to offer it the opportunity to appeal the determination by applying to SBA for a COC by a specified date. The COC application should include all information and documentation which the firm believes will demonstrate its ability to perform on the proposed contract. The application will be furnished as soon as possible, but no later than the date specified by SBA. Upon receipt of an acceptable application and documentation, SBA personnel may be sent to the applicant's facility to review its responsibility. Where a service or construction contract will be performed outside the United States or its trust territories, possessions, or the Commonwealth of Puerto Rico, SBA will rely solely on documentation and other relevant information obtained within the United States. SBA personnel may obtain clarification or confirmation of information provided by the applicant by directly contacting suppliers, financial institutions and other third parties upon whom the applicant's responsibility depends.

(4) If the application and/or supporting documentation is materially incomplete or is not submitted by the date specified by SBA, the contracting officer will be notified that the case has been closed and the SBA has declined to issue a COC. The basis for such determination will be specified in a declination letter sent to both the concern and the contracting officer.

(5) The COC review process is not limited to the deficiencies cited by the contracting officer. SBA will, at its discretion, independently evaluate the COC applicant for all elements of responsibility, but it may presume responsibility exists as to elements other than those cited as deficient. SBA may deny a COC for issues of responsibility not originally supplied by the contracting officer.

(6) A small business concern will be presumed non-responsible, unless it can rebut the presumption with information deemed sufficient by SBA, if any of the following circumstances are shown to exist:

(i) Within three years prior to the application for a COC the concern, or any of its principals, has been convicted of an offense or offenses that would constitute grounds for debarment or suspension under FAR 9.4, and the matter is still under the jurisdiction of a court, i.e., the principals of a concern are incarcerated, on probation, or under a suspended sentence; or

(ii) Within said 3 years the concern, or any of its principals, has had a civil judgment entered against them or it for any reason that would constitute grounds for debarment or suspension; or

(iii) The concern is six months or more delinquent on a debt due the Federal Government, unless a repayment plan has been submitted by the concern and accepted by the Government.

(7) Following review of the information submitted by the applicant small business concern and the information gathered by SBA personnel, the SBA Regional COC review Committee will make its recommendation on the application for the COC to the Regional Official with delegated authority to approve, recommend approval or deny COC applications.

(8) The Regional Office may deny a COC, regardless of the dollar value of the contract involved. Where the Regional Office denies the COC, it will notify in writing both the applicant and the contracting agency. The Regional Office's decision to deny a COC is the final Agency decision. There is no administrative appeal of that decision.

(9) The Regional Office may make an initial decision to determine a COC applicant to be responsible, in which case it will notify the contracting officer of its intention to issue a COC. At the time of notification, prior to issuance of a COC, the contracting officer will be given the following options:

(i) Accept the Regional Office's initial decision to issue the COC and award the contract to the company. The letter of issuance will include as an attachment a detailed rationale of the Regional Office's decision in each case; or

(ii) Ask SBA to place the case in suspense for a specified period of time and to forward a detailed rationale to the contracting officer outlining the reasons for SBA's initial decision; or

(iii) Ask SBA to place the case in suspense to afford the contracting officer the opportunity to meet with the Regional Office to review all documentation contained in the case file; or

(iv) Submit new information for the Regional Office's consideration. At that time, SBA will establish a new suspense date mutually agreeable to the contracting officer and SBA; or

(v) Ask SBA to place the case in suspense pending resolution of a possible formal appeal by the contracting agency to the SBA Central Office, unless the contract involved is a small purchase action as defined by section 4 (11) of the Office of Federal Procurement Policy Act, 41 U.S.C. 403(11).

(10) Where the contract involved is such a small purchase action, following completion of any discussions pursuant to § 125.5(b)(9) above, the Regional Office will render a final decision. The decision of a Regional Office to issue or deny a COC for a small purchase action constitutes the final SBA decision in such cases.

(11) In the case of contracts other than such small purchases, and within the Regional Office's delegated authority, the Regional Office will render a final COC decision following completion of any discussions pursuant to § 125.5(b)(9) above, unless the contracting officer asks that the case be placed in suspense pending resolution of an intended formal appeal.

(12) Notices of intended appeals shall be filed by contracting officers with the Regional Office processing the COC application. The Regional Office shall accept the appeal, *Provided* the contracting officer agrees to withhold award until the formal appeal process is concluded. Without such an agreement from the contracting agency, the Regional Office shall issue the COC. When such an agreement has been obtained, the Regional Office shall immediately forward the case file to the SBA Central Office.

(i) The intent of the appeal procedure is to allow contracting agencies the opportunity to submit new documentation not previously available.

(ii) The SBA Central Office shall furnish written notice to the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) at the secretariat level of the procuring agency, with a copy to the contracting officer, that the case file has been received and that a formal appeal decision may be requested by the contracting agency at the secretariat level or agency equivalent. If the contracting agency decides to seek such an appeal, it shall so notify the SBA Central Office through the Director, OSDBU within 10 working days (or a time period acceptable to both agencies) of its receipt of the notice under § 125.5(b)(9), above. Any materials or argument in support of the appeal must be filed within 10 working days (or a period of time agreed upon by both agencies) after SBA receives the request for a formal appeal. The SBA Associate Administrator for Procurement Assistance (AA/PA) will make a final determination in writing, issuing or denying the COC.

(13) For procurements in excess of the Regional Office's delegated authority to issue a COC, as specified in part 101.3–2 of these regulations, the Regional Office shall refer its recommendation for issuance of the COC to the AA/PA, SBA Central Office. Prior to forwarding the case to the SBA Central Office, the Regional Office shall inform the contracting officer of its affirmative recommendation and supply the contracting officer with a detailed rationale outlining the reasons for the affirmative recommendation.

(i) Prior to taking final action, the SBA Central Office will contact the contracting agency at the secretariat level or agency equivalent and afford it the following options:

(A) Ask the SBA Central Office to place the case in suspense to afford it the opportunity to review all documentation contained in the case file which has been forwarded to the Central Office or;

(B) Submit new information for the SBA Central Office's consideration.

(ii) In either §§ 125.5(b)(13)(i)(A) or (ii)(B) above, the SBA Central Office will establish a new suspense date mutually agreeable to both agencies.

(iii) After reviewing all available information, the AA/PA will either issue or deny the COC. If the AA/PA's decision is to deny the COC, the applicant and contracting agency will be so informed in writing by the Regional Office. If the decision is to issue the COC, a letter certifying the responsibility of the firm (the COC) is sent to the contracting agency by the Central Office and the applicant is informed of such issuance by the Regional Office. Except as set forth in § 125.5(b)(15) below, there shall be no agency appeal from or reconsideration of the decision of the Associate Administrator for Procurement Assistance.

(14) The notification to an unsuccessful applicant following either a Regional Office or a Central Office denial will briefly state the reason(s) for denial and inform the applicant that a meeting may be requested with the appropriate SBA regional personnel to discuss the reasons for the denial. Upon receipt of a request for such a meeting, the appropriate regional personnel will confer with the applicant and explain fully the reasons for SBA's action. The meeting does not constitute an opportunity to rebut the merits of the Agency's decision to deny the COC. Such meeting will be for the sole purpose of giving the applicant the opportunity to correct deficiencies so as to improve its ability to obtain future COC's.

(15) The decision to issue a COC may be reconsidered, at the discretion of SBA, in the following circumstances:

(i) SBA discovers after issuance of a COC, but before award of any contract in reliance upon such COC, that the COC applicant submitted materially false information, or omitted materially adverse information, or new materially adverse information is discovered relating to the current responsibility of the applicant concern. SBA may request that the contracting agency return the matter for reevaluation of the original decision for purposes of affirming or rescinding the COC. The procedures under § 125.5(b)(9) and (b)(12) do not apply.

(ii) Where the contract for which a COC has been issued has not been awarded within 60 days, SBA may request that the contracting agency provide the reason for the delay. SBA shall determine from the contracting officer when the contract will be awarded. Once the contracting officer advises that an award is intended to be made, SBA may request that it be allowed to reevaluate its earlier decision in light of the firm's current circumstances. SBA may investigate the firm's current circumstances as it deems appropriate. It may affirm or rescind the existing COC. The procedures under §§ 125.5 (b)(9) and (b)(12) above do not apply. This provision shall not be used by the contracting officer to delay or withhold contract award and is for the purpose of allowing SBA the opportunity of reaffirming or rescinding its COC based upon circumstances then existing.

(c) *Prime contractor performance requirements.* (1) In the case of a small business set-aside, as defined in FAR 19.502–2(a), a small business concern may not be issued a COC or awarded a contract for a Government procurement (under this subpart), unless the concern agrees that:

(i) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(ii) In the case of a contract for supplies or products (other than procurement from a regular dealer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials).

(iii) In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials).

(iv) In the case of a contract for construction by special trade contractors, as defined in 13 CFR 121.601, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the costs of materials).

(2) The Prime Contractor Performance Requirements shall be considered an element of responsibility and not a component of size eligibility.

(3) The base contract period (excluding any options) will be used to determine compliance with the Prime Contractor Performance Requirements.

(4) *Definitions.* The following definitions apply to this section:

(i) *Cost of the contract.* The cost of the contract is all allowable direct and indirect costs allocable to the contract, excluding profit or fees.

(ii) *Cost of contract performance incurred for personnel.* The cost of contract performance incurred for personnel includes direct labor costs and any overhead which has only direct labor as its base, plus the concern's General and Administration rate multiplied by the labor cost.

(iii) *Cost of manufacturing.* Cost of manufacturing means those costs incurred by the firm in the production of the end item being acquired under the subject solicitation. These are costs associated with the manufacturing process including the direct costs of fabrication, assembly or other production activities, and allocable and allowable indirect costs (e.g., inspection, testing and project management). Costs of materials, as well as the profit or fee from the contract, are excluded from the cost of manufacturing.

(iv) *Cost of materials.* The cost of materials includes the cost of purchasing, handling, and associated shipping cost for the purchased items which include raw materials, "off the shelf" parts, supplies, components and subassemblies, and similar proportionately high-cost common supply items requiring additional manufacturing or incorporation to become end items. Materials may also include special tooling or special testing equipment and, in the case of construction, construction equipment purchased for, and required to perform on the contract.

(v) *Personnel* has the same meaning as the term "employees" in § 121.404 of this title.

(vi) *Subcontracting.* Subcontracting, as used in this subparagraph, means that portion of the contract performed by a firm, other than the concern awarded the contract, under a second contract, purchase order, or agreement for any parts, supplies, components, or subassemblies which are not available as "off the shelf", and which are manufactured in accordance with drawings, specifications, or designs furnished by the contractor, or by the government as a portion of the solicitation. Raw castings, forgings and moldings will be considered as materials. Where the prime contractor has been directed by the Government to utilize a specific source(s) for parts, supplies, components or subassemblies, the costs associated with those purchases will be considered as the cost of materials.

(5) *Time of compliance.* For COC purposes, time of compliance with this performance of work requirement, shall occur at the time the offeror submits its application to SBA for COC consideration.

(6) *Procedure.* The procedures of paragraph 125.5(b) apply where the contracting officer determines non-compliance with the Prime Contractor Performance Requirements applicable to a small business set-aside and refers the matter to SBA for a COC determination.

(d) *Walsh-Healey referrals.* A contracting officer, after conducting a review and documenting that a small business concern is not eligible for award due 41 U.S.C 35(a) (the Walsh-Healey Public Contracts Act), must notify SBA of such determination.

(1) SBA shall either certify that the concern is eligible under the Walsh-Healey Act for the specific contract, or concur with the finding of ineligibility and refer the matter to the Secretary of Labor for final disposition. If, however, a small business concern has been denied award of a proposed contract by SBA for issues relating to responsibility, the issue of ineligibility under Walsh-Healey becomes moot and the case will not be processed further.

(2) The contracting officer must comply with 41 CFR 201.101(b)(4), in making a determination of ineligibility before referring the matter to SBA.

(3) In the event of either a third party protest or a protest received after contract award, but before final completion of the contract, the contracting officer shall follow the procedures in 41 CFR 201.201(b)(5) or section 50–201.101(b)(7), as appropriate, in making a Walsh-Healey Act determination.

(4) *Procedure.* With the exception for ineligibility cited in § 125.5(d)(1) above, the procedures of § 125.5 (a) and (b) apply where a small business concern is determined to be in non-compliance with the provisions of the Walsh-Healey Act.

(e) *Effect of COC certification.* By the terms of the Small Business Act, as amended, 15 U.S.C. 631, *et seq.*, the COC is conclusive as to responsibility. Where SBA issues a COC on behalf of a small business with respect to a particular

contract, contracting officers are directed to award the contract without requiring the firm to meet any other requirement with respect to responsibility and or eligibility.

(f) *Non-certification.* Denial of a COC by SBA does not preclude a contracting officer from awarding a contract to the referred firm.

Dated: July 6, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-19781 Filed 8-20-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ASW-03]

Airworthiness Directives; Costruzioni Aeronautiche Giovanni Agusta S.p.A. Model A109A and A109AII Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes the supersedure of an existing airworthiness directive (AD), applicable to Agusta Model A109A and A109AII helicopters, that currently imposes a calendar life limit of 10 years and 6 months on the main rotor retention strap assemblies (strap assemblies). This action would require reducing the AD calendar life to 8 years. This proposal is prompted by additional service experience and analyses, that shows the life limit needs to be reduced from 10 years and 8 months as required by the current AD to 8 years to prevent failure. The actions specified by the proposed AD are intended to prevent failure of the straps and loss of control of the helicopter.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-03, 4400 Blue Mound Road, Forth Worth, Texas 76193-0007. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Agusta Aviation Corporation, NE. Service Center, Norcom and Red Lion Roads, Philadelphia, Pennsylvania 19154. This information may be examined by the FAA, Rules Docket, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, Regulations Group, ASW-111, FAA Rotorcraft Directorate, Aircraft Certification Service, 4400 Blue Mound Road, Forth Worth, Texas 76193-0111, telephone number (817) 624-5123, fax number (817) 740-3376.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-ASW-03." The postcard will be date stamped and returned to the commenter.

Availability of Notice of Proposed Rulemaking (NPRM)

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ASW-03, 4400 Blue Mound Road, Fort Worth, Texas 76193-0007.

Discussion: On July 10, 1987, the FAA issued AD 87-15-10, Amendment 39-5681, (52 FR 27787, July 1987) to require replacement of the strap assemblies at either a calendar life of 10 years and 8 months or 5,000 hours' time in service, whichever comes first. That action was prompted by data that showed the straps deteriorated with calendar time as well as time in service. That condition, if not corrected, could result in loss of the strap assembly and subsequent loss of the helicopter.

Since the issuance of that AD, based on additional service experience and analyses, the manufacturer has reduced the calendar life of the retention straps in the maintenance manual from 10 years and 6 months to 8 years. The FAA agrees that the 8 year calendar life contained in the maintenance manual is required. Therefore, the previous AD is being superseded and a new AD issued to provide the required replacement times and to prevent confusion about the mandatory retirement life of the straps assemblies that could lead to failure by owners and operators to replace the strap assembly at the appropriate time interval, and that could result in failure of the strap assemblies and loss of control of the helicopter.

Since this condition described is likely to exist on other rotorcraft of this same type design, the proposed AD would supersede AD 87-15-10, Amendment 39-5681 (52 FR 27787, July 24, 1987), and require an 8 year calendar life instead of 10 years and 6 months on the strap assemblies.

The FAA estimates that approximately 46 Agusta Model A109A and A109AII helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per helicopter per year to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,931 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $98,946 for the fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the Caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39-5681, (52 FR 27787, July 24, 1987), and by adding a new airworthiness directive (AD), to read as follows:

Construzioni Aeronautiche Giovanni Agusta S.p.A.

Docket No. 92-ASW-03. Supersedes AD 87-15-10, Amendment 39-5681, Docket No. 87-ASW-28.

Applicability: Model A109A and A109AII helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible failure of the main rotor retention strap assemblies (strap assemblies), accomplish the following:

(a) Replace the strap assemblies, part numbers (P/N) 2601521 and 109-0101-95-1, -3, and -105, with airworthy parts in accordance with the following schedule:

(1) For strap assemblies which have more than 7½ calendar years' time in service on the effective date of this AD, replace the strap assemblies within the next 6 months' calendar time from the effective date of this AD or before accumulating 5,000 hours' time in service on the strap assembly, whichever occurs first.

(2) For strap assemblies that have less than 7½ calendar years' time in service on the effective date of this AD, replace the strap assemblies before accumulating 8 calendar years' time in service since installation or before accumulating 5,000 hours' time in service on the strap assembly, whichever occurs first.

(b) An alternative method of compliance or adjustment of the compliance time, which provide an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Standards Staff, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas 76193-0110, or by the Manger, Brussels Aircraft Certification Office, AEU-100, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, Brussels, Belgium. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, Rotorcraft Standards Staff or the Manager, Brussels Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the rotorcraft to a location where the requirements of this AD can be accomplished.

Issued in Forth Worth, Texas, on July 16, 1992.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 92-19996 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-114-AD]

Airworthiness Directives; General Dynamics Convair Model 240, 340, 440, and C-131 (Military) Series Airplanes, Including Those Modified for Turbopropeller Power

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Convair Model 240, 340, 440, and C-131 (military) series airplanes. This proposal would require the implementation of a corrosion prevention and control program, either by the accomplishment of specific inspection procedures or by a change to the approved maintenance inspection program. This proposal is prompted by an in-depth review that revealed the need for additional inspections of corrosion-prone areas and components. The actions specified by the proposed AD are intended to prevent the degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Comments must be received by October 6, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Dynamics/Convair Division, Lindbergh Field Plant, P.O. Box 85377, San Diego, California 92138. This information may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Brent Bandley, Aerospace Engineer, Airframe Branch, ANM-123L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5237; fax (310) 988-5120.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-114-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-114-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion: Service experience in the transport category airplane fleet has revealed that an aging airplane needs more care and special attention during maintenance processes and, at times, requires more frequent inspection of structural components for damage due to environmental deterioration, accidental damage, and fatigue. Airplane structural materials have finite lives, and the extent of these is affected by age, operational environment, and operational experience that the material endures in day-to-day usage of the airplane. FAA Advisory Circular (AC) 91-60, "The Continued Airworthiness of Older Airplanes," contains guidelines for developing, implementing, and updating thorough maintenance procedures to ensure increasing vigilance as an airplane ages.

In accordance with the guidelines provided by AC 91-60, General Dynamics, Convair Division, conducted an in-depth review of Model 240, 340, 440, and C-131 (military) series airplanes, including those modified for turbo-propeller power (commonly known as Model 580, 600, and 640 airplanes). As a result of this review, General Dynamics has developed an inspection program, the intent of which is to control corrosion problems that may jeopardize the continued airworthiness of the Convair fleet. This inspection program is described in General Dynamics, Convair Division, Document Number ZS-340-2000, "Supplemental Corrosion Inspection Document," dated February 1992, which the FAA has reviewed and approved.

This Document defines corrosion-susceptible areas and items peculiar to Convair aircraft that, if corroded, would adversely affect the integrity of the airframe. The areas/components addressed in the Document include:

a. Galley and lavatory areas;
b. Landing gear assemblies;
c. Doors and their latching assemblies;
d. Fuselage exterior and interior;
e. Nacelles and engine mount fittings and struts;
f. Empennage items, including elevators, tabs, the horizontal and vertical stabilizers, and rudders;
g. Windows; and
h. Wing skin, trailing/leading edges, splice plates, attach fittings, ailerons, and flaps.

The Document recommends various inspections of these corrosion-prone components and surfaces that will ensure the detection of corrosion in a timely manner. A schedule for initial and repetitive inspections is included in the Document: The recommended intervals for initial inspections range from 3 months to 48 months, depending upon the area and type of inspection; the recommended intervals for repetitive inspections range from 12 months to 60 months. Although the Document does not provide detailed procedures for inspection, cleaning, or repair of each area, it contains illustrations of the inspection areas, descriptions of the typical types of corrosion found in the area, and a recommendation of the general type of inspection necessary.

Corrosion, if not detected and corrected in a timely manner, can degrade the structural capabilities of the airplane.

Since corrosion is likely to exist or develop on airplanes of this type design, and AD is proposed which would require that operators either (1) accomplish a schedule of specific inspections for corrosion as outlined in the General Dynamics Document described previously; or (2) revise their FAA-approved maintenance inspection program to include a corrosion inspection program as described in the General Dynamics Document. Any corrosion detected would have to be repaired in accordance with the applicable Structural Repair Manual (SRM) or in accordance with a method approved by the FAA.

There are approximately 320 Model 240, 340, 440, and C-131 (military) series airplanes (including those modified for turbo-propeller power) of the affected design in the worldwide fleet. The FAA estimates that 25 U.S. operators and 240 airplanes of U.S. registry would be affected by this proposed AD.

For operators who elect to accomplish the schedule of inspections (the "task-by-task" method), the proposed inspections would require a total of approximately 240 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed inspection requirements on U.S. operators who elect this procedure is estimated to be $3,168,000, or $13,200 per airplane, for one inspection cycle.

For operators who elect to revise the FAA-approved maintenance inspection program, the FAA estimates that it would require approximately 100 work hours per operator to accomplish the revision. At an average labor rate of $55 per work hour, the total cost impact of this proposed requirement on U.S. operators who elect this procedure would be $137,500, or $5,500 per operator.

The total cost figures discussed above assume that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Dynamics, Convair Division

Docket 92-NM-114-AD.

Applicability: Model 240, 340, 440, and C-131 (military) airplanes, all serial numbers, including those modified for turbo-propeller power (commonly referred to as Model 580, 600, and 640 series airplanes); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of the structural capabilities of the airplane due to problems associated with corrosion, accomplish the following:

(a) Except as provided by paragraph (b) of this AD, conduct the initial inspection for each area/component within a period of time, measured from a date one year after the effective date of this AD, not to exceed the applicable interval specified in the "Initial" column of the schedule on pages 5-10-1 through 5-10-6 of Chapter 5 of General Dynamics, Convair Division, Document Number ZS-340-2000, "Supplemental Corrosion Inspection Document," dated February 1992 (hereafter referred to as "the Document"). Thereafter, repeat the inspections at intervals not to exceed the applicable interval specified in the "Follow-on" column of the schedule on pages 5-10-1 through 5-10-6 of the Document.

(b) As an alternative to the requirements of paragraph (a) of this AD:

(1) Within one year after the effective date of this AD, revise the FAA-approved maintenance inspection program to include the inspections of the areas and components defined in the Document; or incorporate an equivalent program that is approved by the FAA.

(2) After accomplishing the requirements of paragraph (b)(1) of this AD, conduct the initial inspection for each area/component at an interval not to exceed the applicable interval specified in the "Initial" column of the schedule on pages 5-10-1 through 5-10-6 of Chapter 5 of the Document. Thereafter, repeat the inspections at intervals not to exceed the applicable interval specified in the "Follow-on" column of the schedule on pages 5-10-1 through 5-10-6 of Chapter 5 of the Document.

(c) If corrosion is detected as a result of any inspection required by this AD, prior to further flight, repair in accordance with the General Dynamics/Convair Structural Repair Manual (SRM) for the pertinent airplane model; or, if an applicable repair method is not contained in the SRM, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 6, 1992.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-19995 Filed 8-20-92; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 151

Examination of Wool and Hair

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to remove references to estimation of clean yield of wool or hair by non-laboratory method and to eliminate Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair. The proposed amendments are intended to conform the regulations to current Customs procedures which no longer include informally estimating the clean yield of wool or hair and notifying the importer of that estimate. Determination of the clean yield of wool or hair would thus be made on a case-by-case basis only through analysis performed in a Customs or commercial laboratory.

DATES: Comments must be received on or before October 20, 1992.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, room 2119, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Ira Reese, Office of Laboratories and Scientific Services (202-927-1060).

SUPPLEMENTARY INFORMATION:

Background

Subpart E within part 151, Customs Regulations (19 CFR part 151), covers examination and testing procedures applicable to imported wool and hair for tariff purposes. Sections 151.61 through 151.75 have reference to wool and hair subject to duty at a rate per clean kilogram under the Harmonized Tariff Schedule of the United States (HTSUS), and §151.76 covers wool for which classification under the HTSUS is also controlled by the grade of the wool.

As regards the determination of clean yield, §§ 151.61 through 151.75 refer to two procedures performed by Customs: (1) Estimation of clean yield content by a non-laboratory method involving an examination by the appropriate Customs officer and with notice of the results of the examination provided to the importer on Customs Form 6451, Notice of Percentage Clean Yield and Grade of Wool or Hair, and (2) testing for clean yield content in a Customs laboratory with the results provided to the importer on Customs Form 6415, Laboratory Report. With regard to determination of the grade of wool, § 151.76 simply refers to an examination for grade and provides for notification to the importer by mail if the determination of grade through that examination will result in the assessment of duty at a higher rate than that claimed by the importer; although the regulation does not specify the form to be used for such notice to the importer, Customs has traditionally used either Customs Form 6451 or Customs Form 29, Notice of Action, for this purpose.

When the regulatory provisions relating to estimation of clean yield content were adopted, they reflected a then-current administrative procedure whereby specially trained Customs inspectors (referred to in some ports as "Wool Administrators") informally examined crude wool shipments and provided an estimate of the clean yield content of the wool to both the importer of record and the Customs inspector (appraiser) on Customs Form 6451. However, the position of "Wool Administrator" was eliminated a number of years ago, Customs no longer estimates the clean yield of wool or hair, and, consequently, Customs Form 6451 is no longer used by Customs to provide notice of clean yield to the importer. Under current procedures, if a clean yield content report is needed for Customs purposes, Customs will sample and analyze the crude wool for clean yield content in a Customs laboratory specializing in wool analysis, and when a Laboratory Report is issued on Customs Form 6415, a copy thereof is sent by Customs to the importer of record. (The only circumstances in which an estimate of clean yield might still be used is when the importer independently chooses to include in the entry documentation an estimate obtained from a public estimator; however, an estimate by such a private sector party is not provided for in the regulations and Customs is not required to accept the estimate for entry purposes.)

In order to ensure that the regulations reflect current requirements and procedures regarding the determination of clean yield, Customs is proposing in this document (1) to remove § 151.72 which provides for estimation of clean yield by non-laboratory method and

specifies use of Customs Form 6451 as the means of notification to the importer, and (2) to make conforming changes to other sections of the regulations involving removal of all references: To Customs Form 6451; section 151.72; an examination or estimation procedure (which in the regulatory texts has reference only to a non-=laboratory procedure); and importer notification of the results of an examination or estimation procedure. The present regulatory provisions regarding laboratory sampling and analysis (which also provide for analysis by a commercial laboratory under certain circumstances) would thus constitute the sole means under the regulations for determination of clean yield content and would remain unchanged. Finally, no changes to § 151.76 are proposed in this document because the references therein to examination and notification regarding the grade of wool are sufficiently general as to cover current procedures.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, Customs Service Headquarters, room 2119, 1301 Constitution Avenue, NW., Washington, DC.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed regulations amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments merely conform the regulations to present administrative practice and thus would not result in any increased economic impact. Accordingly, these proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in Executive Order 12291. Accordingly, no regulatory impact analysis has been prepared.

Drafting Information

The principal author of this document was Francis W. Foote, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 151

Customs duties and inspection, Imports, Examination, sampling and testing, Wool.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend part 151, Customs Regulations (19 CFR part 151), as set forth below:

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The authority citation for part 151 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 8 and 9, Harmonized Tariff Schedule of the United States), 1624. * * * Subpart E also issued under Additional U.S. Note 2(f) to Chapter 51, HTSUS. * * *

* * * * *

2. Section 151.64 is revised to read as follows:

§ 151.64 Extra copy of entry summary.

One extra copy of the entry summary covering wool or hair subject to duty at a rate per clean kilogram shall be filed in addition to the copies otherwise required.

§ 151.70 [Amended]

3. Section 151.70, first sentence, is amended by removing at the end the words ", in which case the clean yield of the wool or hair in such sampling unit shall be estimated as provided for in § 151.72".

4. Section 151.71 is amended by revising paragraphs (a) and (b) to read as follows:

§ 151.71 Laboratory testing for clean yield.

(a) *Test and report by Customs laboratory.* The clean yield of all general samples taken in accordance with § 151.70 shall be determined by test in a Customs laboratory, unless it is found that it is not feasible to test such a sample and obtain a proper finding of percentage clean yield. A report of the percentage clean yield of each general sample as established by the test, or a statement of the reason for not testing a general sample, shall be forwarded to the district director.

(b) *Notification to importer.* Where samples of wool or hair have been tested in a Customs laboratory and the district director has received a copy of the Laboratory Report, Customs Form 6415, the district director shall promptly provide notice of the test results by mailing a copy of that report to the importer.

* * * * *

§ 151.72 [Removed]

5. Section 151.72 is removed.

§ 151.73 [Amended]

6. Section 151.73 is amended by removing from paragraph (a) the words "or a reestimation of clean yield made in accordance with § 151.72(c),".

7. Section 151.73 is further amended by removing from paragraph (b) the words "or reexamination".

§ 151.75 [Amended]

8. Section 151.75 is amended by removing the words "and examinations".

Approved: August 10, 1992.

Peter K. Nunez,
Assistant Secretary of the Treasury.

Michael H. Lane,
Acting Commissioner of Customs.

[FR Doc. 92-19962 Filed 8-20-92; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-92-82]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Little River to Savannah River, South Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the State of South Carolina, the Coast Guard proposes to change the regulations governing the operation of the Wappoo Creek Drawbridge, mile 470, at Charleston, South Carolina, by permitting the draw to be closed an additional one-half hour at the beginning of the morning regulated period. This change is being made as a result of complaints about early morning highway traffic congestion caused by bridge openings during the semiannual (seasonal) migration of recreational vessels on the Atlantic Intracoastal Waterway. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

DATES: Comments must be received on or before October 5, 1992.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami Florida 33131-3050, or may be delivered to room 406 at the above address between 7:30 a.m. and 4 p.m., Monday through Friday, except federal holidays. For information concerning comments the telephone number is (305) 536-4103. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt, Project Manager, Bridge Section, (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD7-92-82) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Gary Pruitt at the address under **"ADDRESSES"**. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Mr. Gary D. Pruitt, Project Manager, and LT. J.M. Losego, Project Counsel.

Background and Purpose

The purpose of this change is help avoid highway traffic delays caused by early morning bridge openings during the seasonal migration of recreational vessels on the Atlantic Intracoastal Waterway. The draw presently opens on signal except that the draw need not open from 6:30 a.m. to 9 a.m., Monday through Friday except federal holidays. From April 1 to November 30 from 9 a.m. to 4 p.m., Monday through Friday, except federal holidays, the draw need not open except on the hour and the half-hour. From April 1 to November 30, from 9 a.m. to 7 p.m., Saturday, Sundays and federal holidays, the draw need not open except on the hour and the half-hour.

The early morning vehicular commuter traffic originating on James Island and Johns Island is often delayed by bridge openings caused by the seasonal migration of vessel traffic on the Atlantic Intracoastal Waterway. Based upon a Coast Guard review of the waterway traffic requiring openings, a determination was made that draw openings for seasonal pleasure craft between the hours of 6 a.m. and 6:30 a.m., just prior to the existing rush hour closures, adversely impact movement of land transportation. During the last two years the Coast Guard has issued temporary regulations that extended the existing morning closed periods by one-half hour during the months of April, May, October and November. These temporary regulations would become permanent during the seasonal migration periods under this proposed change.

Discussion of Proposed Amendments

The Coast Guard's analysis determined that the elimination of the bridge openings during the months of April, May, October and November from 6 a.m. to 6:30 a.m. on weekdays would improve the morning traffic flow with minimum impact on navigation. This rule changes only the morning regulated period on weekdays and only applies to non-exempt vessels. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall be passed through the draw at any time.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this proposal, the economic impact is expected to be minimal on all entities. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.b.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117 DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.911, paragraph (d) is revised to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

* * * * *

(d) *SR 171/700 bridge across Wappoo Creek Mile 470.8 at Charleston.* The draw shall open on signal, except that from April 1 to November 30 from 9 a.m. to 4 p.m. Monday through Friday, except federal holidays, and from 9 a.m. to 7 p.m., on Saturdays, Sundays and federal holidays, the bridge need not open

except on the hour and half-hour. From June 1 to September 30 and from December 1 to March 30 the draw need not open from 6:30 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m. Monday through Friday, except federal holidays, and from April 1 to May 31 and from 1 October to November 30 Monday through Friday, except federal holidays, the draw need not open from 6 a.m. to 9 a.m. and from 4 p.m. to 6:30 p.m.

* * * * *

Dated: August 7, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 92-20003 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD2-91-05]

Drawbridge Operation Regulations; Red River, LA

AGENCY: Coast Guard, DOT.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing a proposed rule to change the regulations governing the requirements for opening the Red River drawbridges at Mile 275.9 and Mile 277.1 at Shreveport, Louisiana. The Coast Guard was considering a change that would have allowed the drawspans not to open for the passage of vessels, provided the drawspans were returned to operable condition within six months after notification by the District Commander to do so. The proposal was made because no requests for opening the draws had been made in the past 20 years. The proposed change is being withdrawn because public comments indicated that the change would not serve the needs of existing and prospective navigation.

DATES: This rule is withdrawn on August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 314-539-3724.

SUPPLEMENTARY INFORMATION: On April 16, 1991, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** at 56 FR 15313. The Commander, Second Coast Guard District also published the proposal in a Public Notice dated April 23, 1991. In each notice, interested parties were invited to participate in the rulemaking by submitting written views, comments, data, or arguments no later than May 31, 1991. A number of comments were received.

Drafting Information

The drafters of this notice are Wanda G. Renshaw, Project Officer, and Lieutenant Michael A. Suire, Project Attorney.

Discussion of Comments

A member of the U.S. House of Representatives, two waterway associations, a local business firm and three waterway users objected to the proposal. They all recommended that any revision to the regulation exempting these bridges from opening be delayed until after Red River Navigation Lock 5, Mile 250.0, had been constructed. The comments further discussed the possibility of additional navigational development and related construction above Shreveport, Mile 275.0, which would require the passage of materials and equipment past the bridges. The Corps of Engineers confirmed that completion of the Red River Navigation project may result in alteration or relocation of these bridges to ensure the draws adequately span the navigation channel. The sum of the comments indicates that there appears to be a genuine continuing need for the bridges to remain capable of opening upon reasonable notice. Accordingly, the Coast Guard has decided not to pursue its proposal to revise the operation regulation for the Red River bridges at Mile 275.9 and Mile 277.1.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing and under the authority of 33 U.S.C. 449, the Notice of Proposed Rulemaking published on April 16, 1991 at 56 FR 15313 [Docket No. CGD2-91-05] is withdrawn.

Dated: July 30, 1992.

J.J. Lantry,

Captain, U.S. Coast Guard, Acting Commander, Second Coast Guard District.

[FR Doc. 92-19934 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-14-M

Office of the Secretary

33 CFR Part 154

Status of Development of Response Plans Under the Oil Pollution Act of 1990 (OPA 90)

AGENCY: Office of the Secretary, DOT.

ACTION: Status of development of response plans.

SUMMARY: The Secretary of the Department of Transportation is reporting on the status of response plans required by section 311(j)(5) of the Federal Water Pollution Control Act, as amended by section 4202 of the Oil Pollution Control Act, as amended by section 4202 of the Oil Pollution Act of 1990 for transportation-related facilities. This includes the status of several rulemaking efforts within the Department and necessary regulatory information or guidance to assist the regulated community in meeting statutory dates in OPA 90 for preparation and submission of response plans.

FOR FURTHER INFORMATION CONTACT: Steve Farbman of Gwyneth Radloff, Office of the Assistant General Counsel for Regulation and Enforcement, Office of the Secretary (C-50), (202) 366-4723, Department of Transportation, 400 Seventh Street, SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: In recent years several catastrophic oil spills have threatened the marine environment of the United States. Among these were the EXXON VALDEZ in Prince William Sound, Alaska, the AMERICAN TRADER in California's coastal waters, the MEGA BORG in the Gulf of Mexico, the Ozark pipeline spill in Missouri, which entered into the Missouri and Mississippi Rivers, and the major discharge from the Ashland Oil Terminal into the Monongahela River at Floreffe, Pennsylvania. These spills had extensive impact on the marine environment, including the loss of fish and wildlife.

In response to these disasters and others, Congress passed the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101-380). Section 4202(a) of OPA 90 amended section 311(j) of the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1321(j)). It set out the requirements for tank vessel and facility response plans and periodic inspections of discharge-removal equipment in sections 311(j)(5) and (j)(6), respectively. Section 4202(b)(4) of OPA 90 established an implementation schedule for these provisions.

Section 311(j) of the FWPCA requires by a specified date the preparation and submission of response plans by all tank vessels as defined in 46 U.S.C. 2101, offshore facilities, and onshore facilities that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone. This includes the substantial threat of such a discharge. Response plans must be submitted to the appropriate agency by February 18, 1993. Tank vessels, offshore facilities, and affected onshore facilities must be operating in compliance with their plans by August 18, 1993. Tank vessels, offshore facilities, and affected onshore facilities not complying with these dates are prohibited from handling, storing, or transporting oil after the applicable dates.

OPA 90 provided that the regulations to implement response plan requirements were to be published by August 18, 1992. Because of the statutory deadline for submission of response plans and the uncertainty over the publication date of final rules for these regulatory projects, the Department of Transportation expects to provide either interim final rules or guidance to assist the regulated community in preparing response plans in the very near future.

Background

Vessel Response Plans

On August 30, 1991, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) on this project in the **Federal Register** (56 FR 43534). The ANPRM discussed the background, statutory requirements of section 311(j)(5) of the FWPCA, and the general regulatory approach. The ANPRM posed 59 questions for public comment. The Coast Guard received 172 comments. In addition, the Coast Guard received 172 comments. In addition, the Coast Guard held a public workshop on vessel response plans on November 14, 1991, in Washington, DC. Nearly 200 persons participated in this workshop. Because of the contentious nature of the issues and a wide variation in the public comments to the ANPRM, the Coast Guard proceeded with a negotiated rulemaking process. The Oil Spill Response Plan Negotiated Rulemaking (Reg-Neg) Committee was chartered in December 1991 and began meeting on January 8, 1992. The Committee was composed of representatives of twenty-six organizations representing Federal and state governments, environmental and citizens groups, oil handling facilities, vessel owners and operators, spill cleanup contractors, and labor unions.

The Coast Guard published a notice of proposed rulemaking (NPRM) in the June 19, 1992, **Federal Register** (57 FR 27514). The NPRM was drafted using the comments received on the ANPRM and from the Reg-Neg Committee recommendations. This NPRM detailed proposed requirements for vessel response plan format, training, drills, submission and revision procedures, methods for determining the resources required for response to a vessel's worst case discharge to the maximum extent practicable, and guidelines for evaluating and rating response equipment performance. The comment period closed on the NPRM on August 3, 1992.

The Reg-Neg Committee will reconvene on August 18, 1992 to discuss comments received that relate to the recommendations of the Committee. Any additional recommendations from the Committee will be considered along with the public comments received in drafting the final rule.

Marine Transportation-Related (MTR) Facilities

On March 11, 1992 the Coast Guard published an advance notice of proposed rulemaking on response plans for MTR facilities in the **Federal Register** (57 FR 8708). The ANPRM discussed the background, statutory requirements of section 311(j)(5) of the FWPCA, and general regulatory approach. The ANPRM also posed 50 questions. The responses to those questions were used in drafting the proposed rule. The Coast Guard intends to adopt appropriate planning concepts from the vessel response plan regulations and to apply them to the marine facility response plan regulation. The Coast Guard continues to refine the notice of proposed rulemaking (NPRM) on MTR facilities and is preparing its for final clearance and publication in the **Federal Register.**

Non-Marine Transportation-Related Facilities Including Pipelines, Railrood, and Motor Carriers

The Department of Transportation is currently drafting proposed regulations for pipelines, railroads, and motor carriers. These regulations will use relevant concepts developed in the vessel and marine facility response plan regulations.

Status of Regulatory Projects

For vessel response plans, the Coast Guard intends to publish a final rule in the **Federal Register** as soon after the conclusion of the Reg-Neg Committee meeting as possible. The Coast Guard is also preparing a notice of proposed rulemaking (NPRM) for response plans for marine-related facilities and is considering making that NPRM an interim final rule with request for comments so as to be able to provide definitive guidance to the industry in a timely manner. The Coast Guard anticipates that the final rule and any interim final rule for vessels and marine facilities will be published in the **Federal Register** not later than mid-September 1992. However, should unforeseen delays occur, the Coast Guard is preparing guidance documents to be supplied to the regulated community by mid-September 1992 to assist in the preparation of response plans.

The Department also is preparing an NPRM and considering an interim rule for response plans for pipelines, railroads, and motor carriers. The Department intends to provide a guidance document to the regulated community should any interim final rule not be published by mid-September 1992.

Dated: August 17, 1992.

Walter B. McCormick, Jr.,

General Counsel.

[FR Doc. 92-19987 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-62-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-4197-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by POP Fasteners (POP), a division of Black and Decker Corporation, of Shelton, Connecticut, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in EPA regulations. This action responds to a delisting petition submitted under those regulations which allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of a fate and transport model to evaluate the potential impact of the petitioned waste on human health and the environment, based on the waste-specific information provided by the petitioner. This model has been used in evaluating the petition to predict the

concentration of hazardous constituents that may be released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the fate and transport model used to evaluate the petition. Comments will be accepted until October 5, 1992. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by September 8, 1992. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–92–PFEP–FFFFF"

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (OS–330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 920–9810. For technical information concerning this notice, contact Shen-yi Yang, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–1436.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in §§ 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, § 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for a listed hazardous waste. In making the initial delisting determination, the Agency evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the waste is non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA then evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considered whether the waste is acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The Agency determined that disposal in a landfill is the most reasonable, worst-case disposal scenario for POP's petitioned waste, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the Agency is proposing to use a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of POP's petitioned waste on human health and the environment. Specifically, the Agency used the maximum estimated waste volume and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-cause scenario for disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because POP sends the petitioned waste to an off-site commercial disposal facility (Stablex, Canada) that receives wastes from numerous other generators, the ground-water monitoring data collected at the commercial facility would not be meaningful for an evaluation of this specific effect of the petitioned waste on the aquifer underlying the disposal facility. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at public hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

POP Fasteners, Shelton, Connecticut

A. Petition for Exclusion

POP Fasteners' facility, located in Shelton, Connecticut, is involved in the manufacture of hand and pneumatic riveting tools as well as assorted rivets. POP petitioned the Agency to exclude its wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum". The listed constituents of concern for EPA Hazardous Waste No. F006 waste are: cadmium, hexavalent chromium, nickel and cyanide (complexed) (see 40 CFR part 261, Appendix VII).

POP petitioned the Agency to exclude its waste filter cake because it does not believe that the waste meets the criteria of the listing. POP claims that its treatment process generates a non-hazardous waste because the constituents of concern in the waste are in an essentially immobile form. POP also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional (HSWA) of 1984. See Section 222 of HSWA, 42 USC § 6921(f), and § 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of POP's petition.

B. Background

On March 5, 1990, POP petitioned the Agency to exclude its metal hydroxide filter cake from the lists of hazardous wastes contained in §§ 261.31 and 261.32, and subsequently provided additional information to complete its petition. In support of its petition, POP submitted: (1) Detailed descriptions of its manufacturing and waste treatment processes, including schematic diagrams; [1] (2) a list of all raw materials and Material Safety Data Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in § 261.24 and nickel; (4) results from the Toxicity Characteristics Leaching Procedure (TCLP; as described in 40 CFR part 261, appendix II) analyses for the eight TC metals and nickel; (5) results from total constituent analyses for total and reactive sulfide and cyanide for representative samples of the petitioned waste; (6) results from total oil and grease analyses on representative samples of the petitioned waste; and (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity.

POP manufactures hand and pneumatic hydraulic riveting tools as well as assorted rivets at this facility. The rivets are used in the automotive, commercial, industrial and consumer industries. Rivets manufactured at this facility are made out of carbon steel, stainless steel and aluminum. The manufacturing processes which contribute to the petitioned waste include chromate conversion coatings, black oxide coatings, and tumbling for general cleaning of aluminum, steel and stainless steel parts.

Zinc chloride acid plating rinses; tumbling wastes from tumbling barrels, parts cleaning, washers, and general tumbling; acid/alkaline rinses from the rivet cleaning in tumbling barrels; and filtrate from the plate-and-frame filter press are sent to an equalization tank. In addition, yellow and clear chrome rinses from both automatic and manual lines are segregated, treated with scrap iron and sulfuric acid to reduce hexavalent chromium at a low pH, and sent to the equalization tank. Oil and grease from the tumbling barrel operations are skimmed off the top of the equalization tank and pumped into drums that are periodically sent for oil reclamation. Aluminum sulfate and calcium chloride are added as preflocculants to break down emulsified oils, complex cleaners, and chelates in the resulting waste stream.

The waste stream is then neutralized with sodium hydroxide and routed to a tank where an anionic polyelectrolyte is added to promote flocculation. The resultant mixture is directed to two clarifier-settlers operating in parallel where a silicon-based defoamer is added to minimize foaming before the effluent is discharged to the Housatonic River. The underflow sludge, collected in a sludge containment tank separating

[1] POP has claimed portions of their manufacturing and treatment process descriptions as confidential business information (CBI). This information, therefore is not available in the RCRA public docket for today's notice.

the two clarifiers, is pumped into a sludge conditioning tank where it is mixed and homogenized and ultimately pumped into a plate-and-frame filter press. The dewatered sludge is discharged to a 1.5 cubic yard hopper, which is emptied twice a day into a 30 cubic yard roll-off container. The dewatered sludge is currently sent to a permitted hazardous waste treatment facility.

To collect representative samples from filter presses like POP's petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over a period of time (*e.g.*, grab samples collected every hour and composited by shift) or a greater number of samples sufficient to represent the variability or uniformity of the waste. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste (EPA/530-SW-85-003), April 1985.

Originally, POP submitted analytical results of four grab samples and four composite samples collected from the self-dumping hopper during a five-month period from November 1988 to April 1989. Based on a review of the sampling and analysis information provided in the petition, the Agency requested that POP resample the waste because no laboratory quality assurance and quality control information were provided with the sample results.

Subsequently, POP collected eight additional composite samples of the filter cake during a one-month period between November 19, 1990 and December 15, 1990. Grab samples were collected 2 or 3 times daily during each drop of the filter press into the mobile hopper. Two composite samples were formed from two sets of grab samples collected over each 4 to 6-day period to give a total of eight composite samples.

Seven composite samples were analyzed for total constituent concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the TC metals, nickel, cyanide, and sulfide and TCLP concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the TC metals and nickel. One composite sample was saved, as planned, for confirmatory analysis only. The seven composite samples were also analyzed for total oil and grease content, ignitability, reactivity, and corrosivity.

C. Agency Analysis

POP used SW-486 Methods 7061 through 7760 to quantify the total constituent concentrations of the TC metals and nickel in the petitioned waste. POP used SW-846 Methods 9010 and 9030 to quantify the total constituent concentrations of cyanide and sulfide, respectively, in the petitioned waste.

Using SW-846 Method 9071, POP determined that its filter cake had a maximum oil and grease content of 0.97 percent on a wet basis. On a dry basis, the filter cake would have a maximum oil and grease content exceeding one percent; therefore, POP chose to follow more stringent extraction procedures and modify the TC procedure in accordance with the Oily Waste EP (OWEP) methodology. Wastes having more than one percent total oil and grease may either have significant concentrations of the constituents of concern in the oil phase, which may not be assessed using the standard TCLP procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample. Specifically, POP modified the OWEP (SW-846 Method 1330) by substituting the TCLP for the extraction procedure in Step 7.10 of the OWEP. POP used this modified method, in combination with SW-846 Methods 7061 through 7760, to quantify the leachable concentrations of the TC metals and nickel in the petitioned waste. (Analysis for TC leachable concentrations of sulfide, reactive sulfide, or reactive cyanide are not necessary because the Agency's level of regulatory concern is based on the total concentration of reactive sulfide and reactive cyanide.) Table 1 presents the maximum total constituent and leachable concentrations of the TC toxic metals, nickel, cyanide, and sulfide (total only). Table 1 also presents the maximum concentrations of reactive cyanide and sulfide.

TABLE.—MAXIMUM TOTAL CONSTITUENT AND LEACHABLE CONCENTRATIONS (PPM) FILTER CAKE

Constituents	Total constituent concentrations	OWEP leachable concentrations
Arsenic	0.071	<0.10
Barium	30.0	1.2
Cadmium	1.0	0.03
Chromium	1,800	3.0
Lead	4.5	0.07
Mercury	0.05	<0.01
Nickel	155	2.9
Selenium	<0.250	<0.050
Silver	3.0	0.03
Cyanide	8.2	[1] 0.41
Cyanide (reactive)	<5	
Sulfide	48.0	
Sulfide (reactive)	<20	

< Denotes that the constituents was not detected at the detection limit specified in the table.

[1] Calculated by assuming a dilution factor of 20 (see "Dilution from Oily Waste EP," July 29, 1984, Internal Agency Memorandum in the RCRA public docket, for details regarding the estimation of this dilution factor).

The detection limits presented in Table 1 represent the lowest concentrations quantifiable by POP when using the appropriate SW-846 analytical methods to analyze its waste. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness' of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits).

As part of its original petition, POP submitted analytical data results from four composite samples collected during November 1988 to April 1989, including total constituent analyses for volatile and semi-volatile organic compounds and polychlorinated biphenyls. Only a few organic compounds were detected at trace levels, and include common laboratory contaminants. One of the volatile organic compounds, acetone was found in the third and fourth composites, and was quantified at 0.10, and 0.05 ppm respectively. Methylene chloride was found at a level of 0.03 ppm in the fourth composite. Trichloroethylene was quantified at 0.03 ppm in the third composite. The only semi-volatile compound was Bis(2-ethyhexyl) phthalate, which was quantified at 18 ppm in the first composite and 22 ppm in the second composite. While the trace levels of organic constituents detected do not appear to be of concern, as noted previously, the Agency found that the laboratory quality assurance and quality control information were not provided. However, based on their list of raw materials, their supplier's data, and MSDSs, POP demonstrated that the waste would not contain any organic toxicants at hazardous levels. Therefore, the Agency did not request additional analyses of the petitioned waste for the organic constituents, because the Agency believe that POP adequately demonstrated that their waste was not hazardous, and the existing analytical data was consistent with POP's demonstration. POP provided test data indicating that the pH of the waste, when suspended in deionized water, was between 7.5 and 8.1 and, therefore, was not corrosive (see § 261.22). Based on analytical results provided by the petitioner, pursuant to § 260.22, the filter cake also was determined not to be ignitable or reactive (see § 261.21 and 261.23, respectively).

POP submitted a signed certification stating that, based on current annual waste generation, its maximum annual generation rate of wastewater treatment filter cake is 300 tons (approximately 300 cubic yards). The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste generation rate. EPA accepts POP's certified estimate of 300 cubic yards per year of wastewater treatment filter cake.

EPA does not generally verify submitted test data before proposing delisting decisions, and has not verified the data upon which it proposes to grant POP's exclusion. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted portions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting a final exclusion.

D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for POP's filter cake and decided, based on review of information provided in the petition, that disposal in a landfill is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency, therefore, evaluated POP's petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground-water contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML model, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (*i.e.*, a receptor well serving as a drinking-water supply). Specifically, the model estimated the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The Agency requests comments on the use of the EPACML as applied to the evaluation of POP's waste.

For the evaluation of POP's petitioned waste, the Agency used the EPACML to evaluate the mobility of the hazardous inorganic constituents detected in the extract of POP's filter cake. The Agency's evaluation, using a maximum annual waste volume estimate of 300 cubic yards and the maximum reported leachate concentrations (see Table 1), yielded compliance-point concentrations (see Table 2) that are below the health-based levels used in delisting decision-making.

TABLE 2.—EPACML: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (PPM) FILTER CAKE

Constituents	Compliance-point concentrations	Levels of regulatory concern [1]
Barium	0.012	2.0
Cadmium	0.0009	0.005
Chromium	0.03	0.1
Lead	0.0007	0.015
Nickel	0.029	0.1
Silver	0.0003	0.2
Cyanide	0.0041	0.2

[1] See "Docket Report on Health-based Levels and Solubilities Used in the Evaluation of Delisting Petitions," July 1992, located in the RCRA public docket for today's notice.

As shown in Table 2, the maximum reported leachate concentrations of barium, cadmium, chromium, lead, nickel, silver, and cyanide in the filter cake yielded compliance point concentrations for these constituents below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, mercury, and selenium) from POP's waste because they were not detected in the extract using the appropriate SW-846 analytical test methods (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

As also reported in Table 1, the maximum concentrations of reactive cyanide and sulfide in POP's waste are less than 5 and 20 ppm, respectively. These concentrations are below the Agency's interim standards of 250 and 500 ppm, respectively. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Therefore, reactive cyanide and sulfide levels are not of concern.

As noted previously, process information submitted by POP demonstrates that organic constituents are unlikely to be present in the waste. Furthermore, the organic analyses submitted showed only trace levels of several constituents (primarily common laboratory contaminants). However, the Agency does not believe that evaluation due to the uncertainty in the quality of the data. In any case, the Agency notes that if the total levels of these trace constituents were evaluated using the EPACML (and the Organic Leaching Model to convert total levels to leachable concentrations; see November 13, 1986, 51 FR 41084, for a detailed description), the compliance point levels would be well below health-based levels. (See the docket for today's rule for details of this evaluation).

The Agency concluded, after reviewing POP's processes and raw materials list, that no other hazardous constituents of concern, other than those tested for, are being used by POP and that no other constituents of concern are likely to be present or formed as reaction products or by-products in POP's waste. In addition, on the basis of test results and explanations provided by POP, pursuant to § 260.22, the Agency concludes that the waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23, respectively.

E. Conclusion

The Agency believes that POP has successfully demonstrated that the filter cake generated from its electroplating operations is non-hazardous. The Agency believes that the samples collected by POP from the filter press were non-biased and adequately represent the filter cake. The Agency, therefore, is proposing that POP's waste be considered non-hazardous, as it should not present a hazard to either human health or the environment based

on the above evaluation. The Agency proposes to grant an exclusion to POP Fasteners, located in Shelton, Connecticut, for its filter cake described in its petition as EPA Hazardous Waste No. F006. If the proposed rule become effective, the filter cake would no longer be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

F. Annual Testing

If a final exclusion is granted, the petitioner will be required to demonstrate, on an annual basis, that the characteristics of the petitioned waste remain as originally described. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in § 261.24 using the method specified therein. The annual analytical results (including quality control information) must be compiled, certified according to § 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee of representative of EPA or the State of Connecticut. Failure to maintain the required records on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

The purpose of this testing requirement is to ensure that the quality of the petitioned waste remains as originally described by the petitioner. The Agency believes that the data obtained from the annual recharacterization of the petitioned waste will assist EPA (*e.g.*, RCRA facility inspectors) in determining whether the petitioner's manufacturing or waste treatment processes have been significantly altered, or if the waste is more variable than originally described by the petitioner. The Agency also believes that the annual recharacterization of the petitioned waste is not overly burdensome to the petitioner and notes that these data will assist the petitioner in complying with § 262.11(c) which requires generators to determine whether their wastes are hazardous, as defined by the Toxicity Characteristic (see 40 CFR 261.24).

If made final, the exclusion will apply only to the processes and waste volume (a maximum of 300 cubic yards generated annually covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (*e.g.*, if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must create waste generated either in excess of 300 cubic yards per year or from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition would be relieved from Subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately, upon final promulgation, under the Administrative Procedure Act, 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its waste as non-hazardous. There is no additional impact, therefore, due to today's rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC §§ 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: August 10, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
POP Fasteners	Shelton, Connecticut	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations (at a maximum annual rate of 300 cubic yards) after August 21, 1992. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, analyze a representative composite sample for the constituents listed in § 261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to § 260.22(i)(12), maintained on site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Connecticut. Failure to maintain the required records on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

[FR Doc. 92–20030 Filed 8–20–92; 8:45 am]
BILLING CODE 6560–50–M

40 CFR Part 261

[SW–FRL–4197–7]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to grant a petition submitted by Ampex Recording Media Corporation (Ampex), Opelika, Alabama, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in EPA regulations.This action responds to a delisting petition submitted under those regulations, which allows any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model to evaluate the potential impact of the petitioned wastes on human health and the environment, based on the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents that may be released from the petitioned wastes, once they are disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate model and fate and transport model used to evaluate the petition. Comments will be accepted until October 5, 1992. Comments postmarked after the close of the comment period will be stamped "late".

Any person may request a hearing on this proposed decision by filing a request with the Director, Characterization and Assessment Division, Office of Solid Waste, whose address appears below, by September 8, 1992. The request must contain the information prescribed in § 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS–305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Delisting Section, Waste Identification Branch, CAD/OSW (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F–92–AMEP–FFFFF".

Requests for a hearing should be addressed to the Director, Characterization and Assessment Division, Office of Solid Waste (OS–330), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing (room M2427) from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (202) 260–9327 for appointments. The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424–9346, or at (703) 920–9810. For technical information concerning this notice, contact Narendra Chaudhari, Office of Solid Waste (OS–333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–4787.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in §§ 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in subpart C of part 261 (*i.e.*, ignitability, corrosivity, reactivity, and toxicity) or meet the criteria for listing contained in §§ 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual

facility meeting the listing description may not be. For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See § 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Wastes Amendments (HSWA) OF 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See § 260.22(a), 42 U.S.C. 6921(f), and the background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated under RCRA to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

B. Approach Used to Evaluate This Petition

This petition requests a delisting for listed hazardous wastes. In making the initial delisting determination, the Agency evaluated the petitioned wastes against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the Agency agreed with the petitioner that the wastes are non-hazardous with respect to the original listing criteria. (If the Agency had found, based on this review, that the wastes remained hazardous based on the factors for which the wastes were originally listed, EPA would have proposed to deny the petition). EPA then evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. The Agency considered whether the wastes are acutely toxic, and considered the toxicity of the constituents, the concentration of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the wastes, plausible and specific types of management of the petitioned wastes, the quantities of wastes generated, and variability of the wastes.

For this delisting determination, the Agency used such information to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned wastes. The Agency determined that disposal in a landfill is the most reasonable worst-case disposal scenario for Ampex's petitioned wastes, and that the major exposure route of concern would be ingestion of contaminated ground water. Therefore, the Agency is proposing the use of an organic leachate model and a particular fate and transport model to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned wastes after disposal and to determine the potential impact of the unregulated disposal of Ampex's petitioned wastes on human health and the environment. Specifically, the Agency used the maximum estimated waste volumes and the maximum reported leachate concentrations as inputs to estimate the constituent concentrations in the ground water at a hypothetical receptor well downgradient from the disposal site. The calculated receptor well concentrations (referred to as compliance-point concentrations) were then compared directly to the health-based levels used in delisting decision-making for the hazardous constituents of concern.

EPA believes that this fate and transport model represents a reasonable worst-case scenario for disposal of the petitioned wastes in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA subtitle C. The use of a reasonable worst-case scenario results in conservative values for the compliance-point concentrations and ensures that the waste, once removed from hazardous waste regulation, will not pose a threat to human health or the environment. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data during the evaluation of delisting petitions. In this case, the Agency determined that, because Ampex sends the petitioned waste (in pellet form) to an off-site, commercial disposal facility (Chemical Waste Management, Emelle, Alabama) that receives wastes from numerous other generators, the ground-water monitoring data would not be meaningful for an evaluation of the specific effect of the petitioned waste on ground water. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at hearing, if any) on today's proposal are addressed.

II. Disposition of Petition

Ampex Recording Media Corporation, Opelika, Alabama.

A. Petition for Exclusion

Ampex Recording Media Corporation, located in Opelika, Alabama, manufactures magnetic recording tape for the professional audio, video, and data storage markets. Ampex is a wholly owned subsidiary of Ampex Corporation. Ampex petitioned the Agency to exclude its solvent recovery residue (powder and pellet form) presently listed as EPA Hazardous Waste No. F003—"The following spent non-halogenated solvents: Xylene, acetone, ethyl acetate, ethyl benzene, ethyl ether, methyl isobutyl ketone, n-butyl alcohol, cyclohexanone, and

methanol; all spent solvent mixtures/blends containing, before use, only the above spent non-halogenated solvents; and all spent solvent mixtures/blends containing, before use, one or more of the above non-halogenated solvents, and, a total of ten percent or more (by volume) of one or more of those solvents listed in F001, F002, F004, and F005; and still bottoms from the recovery of these spent solvents and spent solvent mixtures," and EPA Hazardous Waste No. F005—"The following spent non-halogenated solvents: Toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, benzene, 2-ethoxyethanol, and 2-nitropropane; all spent solvent mixtures/blends containing, before use, a total of ten percent or more (by volume) of one or more of the above non-halogenated solvents or those solvents listed in F001, F002, or F004; and still bottoms from the recovery of these spent solvents and spent solvent mixtures". Wastes classified as EPA Hazardous Waste No. F003 are listed as hazardous wastes solely because of the characteristic of ignitability (see § 261.31). The listed constituents of concern for EPA Hazardous Waste No. F005 are toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, 2-ethoxyethanol, benzene, and 2-nitropropane (see 40 CFR Part 261, appendix VII).

Ampex petitioned the Agency to exclude its wastes because it does not believe that the wastes meet the listing criteria. Ampex claims that its solvent recovery system and pelletizer generate non-hazardous wastes (powder and pellet form, respectively) because the constituents of concern in the wastes are present at low concentrations. Ampex also believes that the wastes do not contain any other constituents that would render the wastes hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. See section 222 of HSWA, 42 U.S.C. 6921(f), and § 260.22(d)(2)–(4). Today's proposal to grant this petition for delisting is the result of the Agency's evaluation of Ampex's petition.

B. Background

On February 27, 1989, Ampex petitioned the Agency to exclude its solvent recovery residue (SRR) powder and SRR pellets from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32, and subsequently provided additional information to complete its petition. In support of its petition, Ampex submitted: (1) Detailed descriptions and schematics of its manufacturing and waste treatment processes; [1] (2) a list of raw materials and Material Safety Data Sheets (MSDS) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for the eight Toxicity Characteristic (TC) metals listed in 40 CFR 261.24, nickel, antimony, cyanide, and sulfide; (4) results from total constituent analyses for 32 volatile organic and semivolatile organic consultants; (5) results from the Toxicity Characteristic Leaching Procedure (TCLP; as described in 40 CFR part 261, appendix II) analysis for the TC constituents (except for the herbicides, 2, 4–D, and 2, 4, 5–TP), antimony, and nickel; (6) results from total oil and grease analyses; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

Ampex manufactures audio and video recording tapes. Magnetic recording tapes consist of a layer of powdered magnetic material held together by a plastic binder and coated onto polyester film which provides support and mechanical strength. Coating mixes are formulated with combinations of magnetic pigments (generally iron oxides), conductive agents (carbon), head cleaning agents (alumina), binders and resins (polyurethanes, vinyl chloride/acetate), surfactants (lecithin), lubricants (silicone, stearamide), solvents (tetrahydrofuran, methyl ethyl ketone, toluene, and cyclohexanone), and catalysts and curing agents. These materials, once combined and mixed, are milled using pebble mills, ball mills, or sand mills. Coating mixes are then combined with catalyzing agents just prior to coating onto polyester film. The coated tape is then dried in multipass ovens to evaporate the solvents. These solvents are captured in Ampex's solvent recovery system. The coated film is finally calendered (pressed into thin sheets) and then slit into smaller widths. Cassette, cartridge, and reeled tapes are then fabricated using a variety of aluminum and plastic parts which are also manufactured on-site.

In addition to the solvents recovered from the drying operation noted above, Ampex uses solvents to flush and clean product pipelines, sand mills, and mix vessels. Spent solvents from these sources (expected to contain tetrahydrofuran, methyl ethyl ketone, toluene, and cyclohexanone) are then recovered in Ampex's liquid phase solvent recovery system. Spent solvent is collected and held in two 5,000-gallon waste tanks (north and south waste tanks). Spent solvent is then fed into a mixing tank and combined with an inert material (clay). The inert material is added to act as a solvent carrier for the processing in the thin film evaporator. The solids content of the mixture is near 20 percent. The solvent/clay mixture is fed to Ampex's thin film evaporator. Solvent is recovered from the thin film evaporator vapor stream in a condenser and is recycled for reuse in the tape manufacturing process. The remaining powder residue leaves the thin film evaporator and falls onto a conveyor which transports it to a pelletizer. In the pelletizer the solid residues are mixed with city water to form small pellets which fall into a 20-cubic yard roll-off container for storage prior to disposal in an off-site landfill.

To collect representative samples from treatment processes like Ampex's, petitioners are normally requested to collect a minimum of four composite samples comprised of independent grab samples collected over a period of time (*e.g.*, grab samples collected every hour and composited by shift) or a greater number of samples sufficient to represent the variability or uniformity of the waste. See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW–846 (third edition), November 1986, and "Petitions to Delist Hazardous Wastes—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530–SW–85–003), April 1985.

Ampex initially collected a total of four composite samples of its SRR powder on four different days between March 16, 1987 and September 10, 1988. These composite samples were comprised of grab samples collected every 2 to 4 hours during a 12-hour or 24-hour period from four different drums containing waste generated over each period. A 40-inch grain sampler was used to collect each grab sample. All four composite samples of SRR powder were analyzed for the total concentrations (*i.e.*, mass of a particular constituent per mass of waste) of the eight metals listed in Table 1 of § 261.24, nickel, cyanide, total oil and grease content, and the characteristics of hazardous wastes (*i.e.*, ignitability, corrosivity, and reactivity). The four composite samples of SRR powder were also analyzed for the EP leachate concentrations (*i.e.*, mass of a particular constituent per unit volume of extract) of the eight metals listed in Table 1 of

[1] Ampex has claimed portions of their manufacturing and treatment process descriptions and MSDSs as confidential business information (CBI). This information, therefore, is not available in the RCRA public docket for today's notice.

§ 261.24 and nickel. In addition, these composites were analyzed for total constituent concentrations of eight organic constituents.

The Agency determined that this sampling effort was inadequate for several reasons. The Agency believes that Ampex used a sampling strategy that employed excessive compositing. In particular, one sample (*i.e.*, AMP-LUWA-01) was comprised of 40 grab samples collected over a period of 42 days. The Agency determined that this type of sampling may mask some of the day-to-day variations that may be found in the SRR powder. Therefore, although the data from the analysis of this sample would pass delisting evaluation, the Agency has not used this data in support of today's proposed decision. Ampex also did not perform analyses of all constituents likely to be present in the waste. For example, Ampex did not analyze for several polynuclear aromatic hydrocarbons (PAHs) that may potentially be present in the SRR powder, nor did it analyze for sulfide to determine if the waste was potentially reactive. In addition, Ampex only sampled the waste in the powdered form, assuming that analytical data from SRR powder samples could be used to support its petition for SRR pellets. The Agency prefers that wastes petitioned for exclusion be sampled in the "as disposed" form, subsequent to all treatment steps (chemical and physical), and thus believes that Ampex should have also provided analytical results for the SRR pellets.

For these reasons, the Agency requested that Ampex submit additional information to supplement the analytical results for the SRR powder samples considered representative (*i.e.*, those samples not overcomposited) and to complete its petition. Ampex desired to have the flexibility of disposing of the petitioned waste in either the powdered or pelletized form. Therefore, the Agency requested that Ampex collect and analyze additional samples of the waste in both powder and pellet form. In addition, at the time the Agency was requesting additional information from Ampex, it was in the process of finalizing the Toxicity Characteristic rule. This rule (see 55 FR 11798, March 29, 1990) ultimately replaced the EP toxicity test with the TCLP. Thus, the Agency requested that Ampex use the TCLP procedure to quantify the mobile levels of the metals of concern.

On April 24, 1990, Amplex submitted a revised petition which included results from four composite samples of SRR powder and four composites of SRR pellets. These samples were collected during the period of March 1, 1990 through March 22, 1990. Using a 40-inch grain sampler, Ampex collected grab samples of the SRR powder as it existed the thin film evaporator. Each SRR powder composite sample was comprised of 5 grab samples collected over a period of 24 hours. Once all grab samples of the SRR powder were collected, these samples were combined to form a homogenous composite sample. The SRR pellet grab samples were collected as the pellets fell from the pelletizer to the conveyor transferring the waste to the waste hopper. Pellet grab samples were collected using a ½ gallon sampling cup. The pellet grab samples were then combined to form a homogenous composite sample. Each pellet sample was comprised of 5 grab samples collected over a period of 24 hours.

All eight composite samples were analyzed for the total concentrations of the TC metals, antimony, nickel, cyanide, sulfide, and total oil and grease content. These eight composite samples were also analyzed for the TCLP leachate concentrations of the TC metals, antimony, and nickel, and total constituent concentrations of 32 volatile organic and semivolatile organic constituents. In addition, five grab samples of the SRR powder were analyzed for total concentrations of cyclohexanone and tetrahydrofuran.

On May 8, 1990, staff under contract to EPA conducted a site visit to Ampex as part of the Agency's spot-check sampling and analysis program. Two samples of Ampex's SRR powder were collected as the waste exited the thin film evaporator. Two samples of the SRR pellets were collected as the pellets fell from the pelletizer to the conveyor to the roll-off box. (See below for a further discussion of the spot-check sampling and analysis effort.)

Based on its review of data in Ampex's revised petition and the spot-check visit analytical results, the Agency requested that Ampex perform some additional analyses to confirm the leachable concentrations of lead and antimony in the petitioned wastes. In addition, the Agency requested that Ampex include TCLP analyses for all organic constituents (except for the herbicides, 2,4-D, and 2,4,5-TP) listed in 40 CFR 261.24.

On January 17, 1992, Ampex submitted additional sampling and analysis information requested by the Agency. This included results from eight composite samples of SRR powder and eight composites of SRR pellets. These sixteen composite samples were collected over a period of four weeks in September and October of 1991. The sampling techniques used by Ampex were identical to those discussed above. All sixteen composite samples were analyzed for total concentrations of oil and grease and TCLP leachate concentrations of lead and antimony. In addition, eight (four powder and four pellet) of these composites were analyzed for TCLP leachate concentrations of all the TC organic constituents (except for the herbicides, 2,4-D, and 2,4,5-TP).

Ampex claims that due to consistent manufacturing and waste treatment processes, the analytical data obtained from the three sampling events are representative of any variation in the SRR powder/pellets constituent concentrations. In addition, Ampex claims that, while magnetic tape production process mix formulations vary depending on the final product specifications, the same raw materials are used in most mix formulations.

C. Agency Analysis

Ampex used SW-846 Methods 7040 through 7760 to quantify the total constituent concentrations of the TC metals, antimony, and nickel; and SW-846 Methods 1310 (EP) and 1311 (TCLP; as described in 40 CFR part 261, appendix II) to quantify the leachable concentrations of the TC metals, antimony, and nickel in the petitioned wastes. Ampex used "Methods for Chemical Analysis of Water and Wastes" Method 335.2 to quantify the total concentration of cyanide. Ampex used SW-846 Methods 9070 (1991 samples and 9071 (1990 samples) to quantify the total oil and grease (TOG) content of the wastes and Method 9030 to quantify the total constituent concentration of sulfide. (Analysis for the leachable concentrations of sulfide, reactive sulfide, or reactive cyanide are not necessary because the Agency's level of regulatory concern is based on the total concentration of reactive sulfide and reactive cyanide.)

Table 1 presents the maximum total concentrations of the TC metals, antimony, nickel, cyanide, and sulfide in Ampex's petitioned wastes. Table 2 presents the maximum leachate (EP or TCLP) concentrations of each of the TC metals, antimony, nickel, and cyanide.

TABLE 1.—MAXIMUM TOTAL CONCENTRATIONS—INORGANIC CONSTITUENTS (mg/kg)

[Solvent recovery residues]

Constituents	Powder concentrations	Pellet concentrations
Antimony	<20	<20
Arsenic	1.9	1.4
Barium	13	<20
Cadmium	8	<1
Chromium	100	64
Lead	358	230
Mercury	0.13	<0.25
Nickel	178	109
Selenium	0.3	<0.5
Silver	<3	<1
Cyanide	<2	<2
Sulfide	<50	<50

< Denotes that the constituent was not detected at the detection limit specified in the table.

TABLE 2.—MAXIMUM LEACHABLE CONCENTRATIONS—INORGANIC CONSTITUENTS (ppm)

[Solvent recovery residues]

Constituents	Powder concentrations	Pellet concentrations
Antimony	<0.2	0.3
Arsenic	<0.1	<0.01
Barium	0.3	0.3
Cadmium	0.014	<0.01
Chromium	<0.02	<0.02
Lead	0.2	0.2
Mercury	<0.001	<0.0005
Nickel	0.23	0.13
Selenium	<0.02	<0.005
Silver	<0.01	<0.01
Cyanide	[1] <0.10	[1] <0.10

< Denotes that the constituent was not detected at the detection limit specified in the table.

[1] Calculated by assuming a dilution factor of twenty (based on 100 grams of sample and dilution with 2 liters of water) and a theoretical worst-case leaching of 100 percent.

The detection limits presented in Tables 1 and 2 represent the lowest concentrations quantifiable by Ampex when using the appropriate SW-846 analytical methods to analyze its waste. Detection limits may vary according to the waste and waste matrix being analyzed, *i.e.*, the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.

Ampex used SW-846 Methods 8240 and 8270 to quantify the total constituent concentrations of the volatile and semivolatile organic constituent potentially present in the petitioned wastes. Table 3 presents the maximum total concentrations of all hazardous organic constituents (*i.e.*, those listed in 40 CFR part 261, appendix VIII or 40 CFR part 264, appendix IX) detected in Ampex's petitioned wastes. Table 4 presents the maximum leachable concentrations of detected TC organic constituents in Ampex's petitioned wastes. Using the appropriate SW-846 test methods and adequate detection limits, none of the TC organic constituents, except for pyridine, methyl ethyl ketone, and o-cresol were detected in the sample extracts.

TABLE 3.—MAXIMUM TOTAL CONCENTRATIONS—ORGANIC CONSTITUENTS (mg/kg)

[Solvent recovery residues]

Constituents	Powder concentrations	Pellet concentrations
Cyclohexanone	14,600	7,500
Formaldehyde	12	6.7
Methyl ethyl ketone	62	16
Phenol	26	16
Toluene	8.1	3.4

TABLE 4.—MAXIMUM TCLP LEACHABLE CONCENTRATIONS—ORGANIC CONSTITUENTS (ppm)

[Solvent recovery residues]

Constituents	Powder concentrations	Pellet concentrations
o-Cresol	0.066	0.066
Methyl ethyl ketone	2.36	0.969
Pyridine	0.772	0.26

Ampex's petition, submitted with a signed certification, stated that its maximum annual waste generation rate is 550 cubic yards in the powder form or 733 cubic yards in the pellet form. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimated waste generation rate. Based on a recent re-evaluation of its annual waste generation rate, Ampex submitted a separate signed certification stating that its maximum annual waste generation rate would be 1,000 cubic yards in the powder or pellet form. EPA accepts Ampex's certified estimate of 1,000 cubic yards/year of either powder or pellets.

EPA does not generally verify submitted test data before proposing delisting decisions. The sworn affidavit submitted with this petition binds the petitioner to present truthful and accurate results. The Agency, however, has maintained a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of the submitted petitions. A spot-check visit to a selected facility may be initiated before finalizing a delisting petition or after granting an exclusion. As noted above, the Agency conducted a spot-check sampling visit at Ampex's facility. The results of this visit, including chemical analyses of waste samples from Ampex, are discussed later in this notice.

D. Agency Evaluation

The Agency considered the appropriateness of alternative waste management scenarios for Ampex's SRR powder and pellets and decided, based on review of information provided in the petition, that disposal in a landfill is the most reasonable worst-case scenario for these wastes. In addition, Ampex currently disposes of this material in a RCRA subtitle C landfill, and if excluded, Ampex plans to dispose of the waste in a subtitle D landfill. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water.

The Agency, therefore, evaluated the petitioned waste using the modified EPA Composite Model for Landfills (EPACML) which predicts the potential for ground-water contamination from wastes that are landfilled. See 56 FR 32993 (July 18, 1991), 56 FR 67197 (December 30, 1991), and the RCRA public docket for these notices for a detailed description of the EPACML, the disposal assumptions, and the modifications made for delisting. This model, which includes both unsaturated and saturated zone transport modules, was used to predict reasonable worst-case contaminant levels in ground water at a compliance point (*i.e.*, a receptor well serving as a drinking-water supply). Specifically, the model estimates the dilution/attenuation factor (DAF) resulting from subsurface processes such as three-dimensional dispersion and dilution from ground-water recharge for a specific volume of waste. The Agency requests comments on the use of the EPACML as applied to the evaluation of Ampex's petitioned wastes.

In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitioned wastes. See 50 FR 48953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the EPACML to estimate the potential impact of the organic constituents on the underlying aquifer. The Agency requests comments on the use of the OLM as applied to the evaluation of Ampex's petitioned wastes.

For the evaluation of Ampex's petitioned wastes, the Agency used the EPACML to evaluate the mobility of antimony, barium, cadmium, lead, nickel, and cyanide from Ampex's SRR powder and pellets. The Agency's evaluation, using the maximum annual waste volume of 1,000 cubic yards for either powder or pellets and the maximum reported leachate (EP/TCLP) concentrations (see Table 2) yielded compliance-point concentrations for these constituents (see Table 5) that are below the health-based levels used in delisting decision-making. The Agency did not evaluate the mobility of the remaining inorganic constituents (*i.e.*, arsenic, chromium, mercury, selenium, and silver) from Apex's petitioned wastes because they were not detected in the EP/TCLP extract using the appropriate SW–846 analytical methods (see Table 2). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method with an adequate detection limit) the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 5.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) INORGANIC CONSTITUENTS

[Solvent recovery residues]

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern[1]
Antimony	ND	.003	.006
Barium	.003	.003	2
Cadmium	.00014	ND	.005
Lead	.002	.002	.015
Nickel	.0023	.0013	.1
Cyanide	.001	.001	.2

[1] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and § 260.22", July 1992, located in the RCRA public docket.
ND Constituent was not detected in the leachate.

The concentrations of antimony, barium, cadmium, lead, nickel, and cyanide in the SRR powder and pellets yielded compliance point concentrations for these constituents below the health-based levels used in delisting decision-making.

As reported in Table 1, the maximum concentration of total cyanide in Ampex's waste is <2 ppm. Because reactive cyanide is a specific subcategory of the general class of cyanide compounds, the maximum level of reactive cyanide will not exceed 2 ppm. Thus, the Agency concludes that the concentration of reactive cyanide will be below the Agency's interim standard of 250 ppm. Similarly, because the maximum reported total constituent concentration of sulfide in the waste is <50 ppm (see Table 1), the concentration of reactive sulfide will be below the Agency's interim standard of 500 ppm. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, internal Agency memorandum in the RCRA public docket.

The Agency also evaluated the mobility of the hazardous organic constituents detected in Ampex's petitioned wastes using the EPACML. Because TCLP extract data were available for o-cresol, methyl ethyl ketone, and pyridine, the maximum reported TCLP extract value for these organic constituents were used as inputs in the EPACML. The Agency used the OLM to predict the leachable concentrations of other organic constituents (cyclohexanone, formaldehyde, phenol, and toluene) in the petitioned wastes for which only total constituent concentrations were available. The resulting leachable concentrations (reported and estimated) were then used as inputs in the EPACML in order to assess the potential impact of the constituents upon the ground water. The calculated compliance-point concentrations for the seven detected organic constituents are presented in Table 6. The Agency did not evaluate the mobility of the remaining hazardous organic constituents from Ampex's petitioned wastes because they were not detected in the wastes using the appropriate analytical methods. As stated previously, the Agency will not evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method.

TABLE 6.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) ORGANIC CONSTITUENTS

[Solvent Recovery Residues]

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern[1]
Cyclohexanone	.6	.38	200
o-Cresol	.00066	.00066	2
Formaldehyde	.014	.0094	7
Methyl ethyl ketone	.024	.0097	2
Phenol	.014	.0099	20
Pyridine	.0077	.0026	0.04

TABLE 6.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) ORGANIC CONSTITUENTS—Continued

[Solvent Recovery Residues]

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern[1]
Toluene	.0009	.0005	1

[1] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.222", July 1992, located in the RCRA public docket.

On the basis of test results submitted by the petitioner, pursuant to § 260.22, the Agency concludes that the wastes do not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. See §§ 261.21, 261.22, and 261.23.

On May 8, 1990, staff under contract to EPA conducted a site visit to Ampex as part of the Agency's spot-check sampling and analysis program. A total of four representative samples of Ampex's petitioned wastes were collected. Two samples of Ampex's SRR powder were collected as the waste exited the thin film evaporator. Two samples of the SRR pellets were collected as the pellets fell from the pelletizer to the conveyor to the roll-off box. All of the spot-check samples were analyzed according to EPA test methods by a laboratory under contract to EPA. TCLP analyses of the four composite samples for the TC metals, antimony, and nickel were conducted using SWE–846 Method 1311 in combination with SW–846 Methods 6010 through 7740. The composite samples were also analyzed for total constituent concentrations of the volatile and semivolatile priority pollutants using SW–846 Methods 8240 and 8270.

The maximum reported TCLP leachate concentrations for each of the TC metals, antimony, and nickel are presented in Table 7. Table 8 presents the maximum total constituent concentrations of volatile and semivolatile organic constituent detected in Ampex's petitioned wastes. Toluene and methylene chloride were detected in blanks for the spot-check analyses.

TABLE 7.—MAXIMUM TCLP LEACHATE CONCENTRATIONS (ppm) INORGANIC CONSTITUENTS AGENCY SPOT-CHECK VISIT SAMPLES

Constituents	Powder concentrations	Pellet concentrations
Antimony	0.01	0.0028
Arsenic	0.0085	0.0041
Barium	0.242	0.302
Cadmium	0.033	0.021
Chromium	0.316	0.098
Lead	2.750	0.836
Mercury	<0.41	<0.010
Nickel	2.44	0.202
Selenium	0.013	0.0032
Silver	<0.008	0.019

< Denotes that the constituent was not detected at the detection limit specified in the table.

TABLE 8.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (mg/Kg) ORGANIC CONSTITUENTS, AGENCY SPOT-CHECK VISIT SAMPLES

Constituents	Powder concentrations	Pellet concentrations
Acetone	4.7	0.15
Benzyl alcohol	2.5	<20
Bis(2-ethylhexyl)phthalate	14.0	1.1

TABLE 8.—MAXIMUM TOTAL CONSTITUENT CONCENTRATIONS (mg/Kg) ORGANIC CONSTITUENTS, AGENCY SPOT-CHECK VISIT SAMPLES—Continued

Constituents	Powder concentrations	Pellet concentrations
4-Methylphenol	0.47	0.82
Ethyl benzene	0.041	<0.92
Methyl ethyl ketone	27.0	15
Methylene chloride	0.67	1.3
Phenol	29.0	31
Toluene	3.8	1.3
Xylene	0.35	<0.92

< Denotes that the constituent was not detected at the detection limit specified in the table.

For the evaluation of spot-check results for Ampex's petitioned wastes, the Agency used the EPACML model to evaluate the mobility of the TC metals (except for mercury, as it was not detected), antimony, and nickel from Ampex's petitioned wastes. The Agency's evaluation, using the maximum annual waste volume of 1,000 cubic yards for either powder or pellets and the maximum reported TCLP leachate concentrations, generated the compliance-point concentrations shown in Table 9. The Agency did not evaluate the mobility of mercury from Ampex's wastes because mercury was not detected in the TCLP extract of the spot-check samples using the appropriate SW-846 analytical methods (see Table 7).

TABLE 9.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) INORGANIC CONSTITUENTS, AGENCY SPOT-CHECK VISIT SAMPLES

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern[1]
Antimony	.0001	.000028	.006
Arsenic	.000085	.000041	.05
Barium	.0024	.0030	.2
Cadmium	.00033	.00021	.005
Chromium	.0032	.00098	.1
Lead	.028	.0084	.015
Nickel	.024	.0020	.1
Selenium	.00013	.00003	.05
Silver	ND	.00019	.2

[1] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22", July 1992, located in the RCRA public docket.
ND Constituent was not detected in the leachate.

The powder and pellets exhibited antimony, arsenic, barium, cadmium, chromium, nickel selenium, and silver levels at the compliance point below the health-based levels used in delisting decision-making. The Agency's evaluation of the spot-check analyses indicated that one sample of SRR powder contained leachable concentrations of lead at the compliance point above the health-based level used in delisting decision-making. As a result of this finding, the Agency requested that Ampex explain the high concentration of lead in the SRR powder and gave Ampex the opportunity to provide additional analyses to confirm the quantity of leachable lead in the SRR powder. The Agency provided Ampex the remaining material from the problematic SRR powder sample and Ampex reanalyzed the sample. The results from Ampex's reanalysis indicated a much lower level of leachable lead (0.13 ppm) versus the Agency's contracted lab (2.75 ppm). However, the holding time of the problematic sample (7.5 months) had exceeded the holding time suggested in SW–846 (6 months). To resolve this discrepancy, Ampex submitted the results of eight additional analyses for leachable lead on the SRR powder taken over a period of four weeks. Table 10 presents a summary of all the leachable lead data for SRR powder, including Ampex's 1987–1990 submitted data, EPA's spot-check visit data, and Ampex's additional data submitted to verify the results for leachable lead. Ampex's additional data for samples AMP–09 through AMP–16 (as well as its reanalysis of the problematic EPA sample) show that the waste does not contain leachable lead levels that exceed the maximum allowable level for delisting. The Agency believes that the single data point that exceeded the maximum allowable concentration was an anomaly, and that this data point can be considered a statistical outlier. Furthermore, the Agency acknowledges that it did encounter some interference during the analysis of the spot-check samples and believes that the Flame AA method may have been more appropriate than the ICP method for lead in this waste matrix.

Finally, the Agency calculated a mean value for all of the lead data in Table 10 of 0.257 ppm (using value specified for the detection limit for samples with no detected lead). Using the same data, the Agency notes that the concentration of lead at the 95th percent upper confidence limit (0.512 ppm) would yield a compliance point concentration for lead (0.00512 ppm) far below the level of concern.

TABLE 10.—SUMMARY OF LEACHABLE LEAD CONCENTRATIONS (ppm) (SSR POWDER)

Sample number	Leachable lead concentration	Extraction method	Analytical method
AMP-01	<0.05	EP	Furnace AA.
AMP-02	<0.05	EP	Furnace AA.
AMP-03	<0.05	EP	Furnace AA.
AMP-04	<0.05	EP	Furnace AA.
AMP-05	<0.2	TCLP	Flame AA.
AMP-06	<0.2	TCLP	Flame AA.
AMP-07	<0.2	TCLP	Flame AA.
AMP-08	<0.2	TCLP	Flame AA.
EPA-01	0.943	TCLP	ICP.
EPA-02	2.750	TCLP	ICP.
EPA-02 A [1]	0.13	TCLP	Furnace AA.
AMP-09	<0.008	TCLP	Furnace AA.
AMP-10	<0.008	TCLP	Furnace AA.
AMP-11	<0.008	TCLP	Furnace AA.
AMP-12	<0.008	TCLP	Furnace AA.
AMP-13	<0.008	TCLP	Furnace AA.
AMP-14	<0.007	TCLP	Furnace AA.
AMP-15	<0.007	TCLP	Furnace AA.
AMP-16	<0.007	TCLP	Furnace AA.

< Denotes that the constituent was not detected at the detection limit specified in the table.
[1] Ampex reanalysis of EPA–02 sample; holding time (7.5 months) exceeded recommended holding time (6 months).

The Agency also evaluated the mobility of the hazardous organic constituents detected in Ampex's waste from the spotcheck analyses using the EPACML. The Agency used the OLM to predict the leachable concentrations in the petitioned wastes in the EPACML in order to assess the potential impact of the constituents upon the ground water. The calculated compliance-point concentrations for the toxic constituents are presented in Table 11.

TABLE 11.—EPACML MODEL: CALCULATED COMPLIANCE-POINT CONCENTRATIONS (ppm) ORGANIC CONSTITUENTS, AGENCY SPOT-CHECK VISIT SAMPLES

Constituents	Powder compliance-point concentrations	Pellet compliance-point concentrations	Levels of regulatory concern [1]
Acetone	.0104	.001	4.0
Benzyl alcohol	.002	ND	10.0
Bis(2-ethylhexyl)phthalate	.00009	.000016	0.006
4-Methylphenol	.00059	.00087	2
Ethyl benzene	.000018	ND	0.7
Methyl ethyl ketone	.021	.014	2.0
Methylene chloride	.00065	.0010	0.005
Phenol	.015	.0154	20
Toluene	.00054	.00026	1.0
Xylene	.00007	ND	10.0

[1] See "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions, Submitted Under 40 CFR 260.20 and 260.22", July 1992, located in the RCRA public docket.
ND Constituent was not detected.

The SRR powder and pellets exhibited all organic constituent levels at the compliance point below the health-based levels used in delisting decision-making. Furthermore, a comparison of Ampex's sampling data with the Agency's organic constituent spot-check data revealed relatively minor variations in the analytical data;

therefore, these spot-check visit data support the Agency's conclusion that Ampex's waste is not hazardous.

During its evaluation of Ampex's petition, the Agency also considered the potential impact of the petitioned SRR powder via non-ground water routes, specifically, with regard to airborne dispersal of waste contaminants. Since the SRR powder has a fine particle size, the Agency believes that some exposure to airborne contaminants from the waste (land-disposed) may be possible. The Agency evaluated the potential hazards resulting from airborne exposure to waste contaminants from the petitioned SRR powder using a simple air dispersion model for releases from a landfill. The results of this conservative, worst-case evaluation indicated that there is no substantial present or potential hazard to human health from airborne exposure to constituents from Ampex's SRR powder. A complete description of the Agency's assessment of the potential impact of Ampex's waste, with regard to airborne dispersal of waste contaminants, is presented in the docket for today's proposed rule.

The Agency also considered the potential impact of the petitioned wastes via a surface water route. While some contamination of surface water is possible through runoff from the waste disposal area, the Agency believes that the concentrations of any hazardous constituents in the runoff will tend to be lower than the extraction procedure test results reported in today's notice because of the aggressive acidic medium used for extraction in the TCLP. In addition, any transported contaminants would be further diluted in the receiving surface water body. Finally, the Agency believes that, in general, leachate derived from the waste will not directly enter a surface water body without first traveling through the saturated subsurface where dilution of hazardous constituents may occur.

E. Conclusion

The Agency believes that Ampex's solvent recovery residues are non-hazardous. The Agency believes that the sampling procedures used by Ampex were adequate, and that the samples are representative of the day-to-day variations in constituent concentrations found in both the SRR powder and SRR pellets.

The Agency, therefore, considers Ampex's SRR powder and pellets as non-hazardous wastes, as they should not present a hazard to either human health or the environment based on the above evaluation. The Agency proposes to grant an exclusion to Ampex Recording Media Corporation, located in Opelika, Alabama, for its F003/F005 solvent recovery residues. If the proposed rule becomes effective, the SRR powder and SRR pellets would no longer be subject to regulation under 40 CFR parts 262 through 268 and the permitting standards of 40 CFR part 270.

F. Annual Testing

If a final exclusion is granted, the petitioner will be required to demonstrate, on an annual basis, that the characteristics of the petitioned wastes remain as originally described. In order to confirm that the characteristics of the wastes do not change significantly, the facility must, on an annual basis, sample and test representative composite samples for the constituents listed in § 261.24 using the method specified therein. The annual analytical results (including quality control information) must be compiled, certified according to § 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Alabama. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

The purpose of this testing requirement is to ensure that the quality of the petitioned wastes remains as originally described by the petitioner. The Agency believes that the data obtained from the annual re-characterization of the petitioned wastes will assist EPA (*e.g.*, RCRA facility inspectors) in determining whether the petitioner's manufacturing or waste treatment processes have been significantly altered, or if the wastes are more variable than originally described by the petitioner. The Agency also believes that the annual recharacterization of the petitioned wastes is not overly burdensome to the petitioner, and notes that these data will assist the petitioner in complying with § 262.11(c) which requires generators to determine whether their wastes are hazardous, as defined by the Toxicity Characteristic (See § 261.24).

If made final, the proposed exclusion will only apply to the processes and waste volume (maximum annual volume of 1,000 cubic yards in the powder or pellet form) covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition (*e.g.*, if levels of hazardous constituents increased significantly) or increase in waste volume occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated in excess of 1,000 cubic years per year of either powder or pellets or from changed processes as hazardous until a new exclusion is granted.

Although management of the wastes covered by this petition would be relieved from subtitle C jurisdiction upon final promulgation of an exclusion, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation.

III. Effective Date

This rule, if finally promulgated, will become effective immediately upon such final promulgation. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this exclusion should be effective immediately upon final promulgation. These reasons also provide a basis for making this rule effective immediately upon promulgation under the Administrative Procedure Act, 5 U.S.C. 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposal to grant an exclusion is not major, since its effect, if promulgated, would be to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction would be

achieved by excluding wastes generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling this facility to treat its wastes as non-hazardous. There is no additional impact, therefore, due to today's proposed rule. This proposal is not a major regulation; therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator or delegated representative may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, and Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA. 42 U.S.C. 6921(f).

Dated: August 10, 1992.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR part 261 is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of appendix IX of part 261, add the following wastestream in alphabetical order by facility to read as follows:

Appendix XI—Wastes Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Ampex Recording Media Corporation.	Opelika, Alabama..	Solvent recovery residues in the powder or pellet form (EPA Hazardous Waste Nos. F003 and F004) generated from the recovery of spent solvents from the manufacture of tape recording media (generated at a maximum annual rate of 1,000 cubic yards in the powder or pellet form) after August 21, 1992. In order to confirm that the characteristics of the wastes do not change significantly, the facility must, on an annual basis, analyze a representative composite sample of the waste (in its final form) for the constituents listed in § 261.24 using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to § 260.22(i)(12), maintained on-site for a minimum of five years, and made available for inspection upon request by any employee or representative of EPA or the State of Alabama. Failure to maintain the required records on-site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA.

[FR Doc. 92–20031 Filed 8–20–92; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400, 5460, and 5470

[WO–230–6310–02–24 1A]

RIN 1004–AC03

Sales of Forest Products, Contract Administration; Contract Modification, Extension, Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the forest product regulations to provide for more flexibility in setting due dates for periodic payments when circumstances beyond the control of the purchaser prevent contract performance for a substantial period of time during the operating season. The rule will provide the flexibility needed by removing the specified dates for payment of periodic payments. These provisions would relieve a purchaser from the unnecessary burden of a large payment becoming due when such purchaser was prevented from generating any cash flow from a contract by certain circumstances beyond its control. This provision would not diminish the periodic payment provision's intended effect of encouraging prompt performance on timber sale contracts. The rule would also provide for reduction to 5 percent of the full amount and partial refund of the first installment during the period when the contracting officer requests interruption or delay of operations for a period in excess of 60 days during the operating season.

DATES: Comments must be received on or before September 21, 1992.

ADDRESSES: Comments may be mailed to: Director (140) Bureau of Land Management, room 5555, Main Interior Building, 1849 C Street, NW., Washington, DC 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Richard Bird, (202) 653–8864.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management (BLM) has determined that the regulations governing periodic payments and payment of the first installment on timber sale contracts could cause an unnecessary burden on entities holding those contracts. Many BLM timber sales are delayed by injunctions or administrative stays because of court actions, appeals, and consultations with the United States Fish and Wildlife Service involving endangered species and old growth. These kinds of delays were not anticipated when the existing regulations were written. Therefore, the regulations provide no mechanism for relief to timber sale purchasers that are subject to unnecessary financial hardships due to these delays. This rule is intended to provide some flexibility for the BLM to provide relief in such situations where a purchaser is delayed from operating a timber sale contract by circumstances beyond its control.

Periodic Payments

On July 23, 1991 (56 FR 33830), the Bureau of Land Management published an interim final rule providing for an extension of timber sale contracts without reappraisal in certain situations. The rule was intended to provide more fairness and flexibility in granting timber sale contract extensions. Some of the comments on that rule pointed out that there was a need to provide for deferment of the periodic payments due on the first and second anniversary of some timber sale contracts. The circumstances which justify a time sale contract extension are the type that might also provide adequate justification for adjustment of the due dates for periodic payments.

Regulations were published on May 14, 1990 (55 FR 19886), requiring payment of 20 percent of the total contract price by the first anniversary of the contract for all timber sale contracts with a term 19 months or longer and payment of 40 percent of the total contract price by the second anniversary of the contract for all contracts with a term 27 months or longer. The regulations allow credit toward the payments for the value of road construction completed by the purchaser. The reason for those regulations was to encourage prompt performance on timber sale contracts and to discourage speculation. However, when the purchaser is prevented from operating the contract due to certain circumstances beyond his control, the incentives for prompt performance cannot function as intended and a financial hardship is imposed on the purchaser.

Under the terms of many timber sale contracts there are periods during the year when certain operations on the contract are not permitted, such as building roads during the winter rainy season, harvest operations during the winter in winter range areas for wildlife, thinning operations during the spring sap flows, harvest operations during the nesting period near bald eagle nests, and so forth. There are also seasons of the year when harvesting operations are not feasible due to normal adverse weather conditions, such as snow in high elevations during the winter. These seasonal restrictions tend to shorten the time when a purchaser can actually accomplish the work required to harvest a timber sale. When a purchaser is delayed for a substantial period during the normal operating season, it may mean that operations are delayed for a whole year. During a short operating season, any delay may well mean that a purchaser has to wait until the next season to complete an operation and generate some cash flow from a timber sale contract, or qualify for a credit toward the periodic payment due from the value of road construction completed.

A periodic payment obligation on a timber sale contract could amount to a considerable financial hardship on a purchaser, if conditions beyond the control of such purchaser prevent the purchaser from completing road construction or harvesting timber from a timber sale contract for a substantial period of time. In this situation, the proposed rulemaking would allow the purchaser to request adjustment of periodic payment due dates in writing. The Contracting Officer would be required to issue a decision on such requests within 30 days of receipt of the request.

The rule will allow the necessary flexibility to defer periodic payments under certain circumstances. This rule would allow adjustment of the periodic payment due dates when a purchaser's operations are delayed for more than 60 days during an operating season by factors beyond the control of the purchaser, other than market fluctuations. Periodic payment due dates would be adjusted to provide a period of operating time equal to that time that would have been available to the purchaser, prior to the periodic payment due date, without such a delay. The rule will provide the flexibility needed by removing the specified dates for payment of periodic payments in § 5461.2(a)(3) of the existing regulations. The due dates for periodic payments will be set out in the contract.

Payment of First Installment

From time to time operations are delayed for substantial periods due to injunctions, or consultation and other requirements under the Endangered Species Act. Where a purchaser has large sums of money tied up in the first installment on such contracts, delays may cause financial hardship, especially on smaller companies with limited capital, who may be prevented from participating in other contracts during such extended delays.

The rule would provide for a reduction of the first installment held by the BLM during such periods of delay. The purchaser may request and the Contracting Officer may grant a reduction to 5 percent of the full installment specified in the timber sale contract when the contracting officer requests interruption or delay of operations on a contract for period of time in excess of 60 days during the operating season. Upon notice from the contracting officer that operations may proceed, the purchaser would have 15 days to restore the first installment to the full amount. No timber could be cut or removed from the contract area before the first installment is restored to the full amount specified in the timber sale contract.

Definitions

This rule will also include a definition of "operating time" and "operating season" in the definitions section of the regulations, 43 CFR 5400.0–5. "Operating time" is defined as a period of time during the operating season. "Operating season" is that time of the year during which operations required to complete a timber sale contract are normally conducted in the location which encompasses the timber sale contract, or when such operations are permitted by the timber sale contract.

The definition of "operating time" and "operating season" in § 5473.4(d) of the current rule will be removed since those definitions are being added to the list of definitions in § 5400.0–5.

The comment period is being limited to 30 days on this rule in order to have a rule in place in time to provide relief to a number of purchasers in Oregon who are holding contracts that cannot be operated because of an injunction and are likely to be delayed for more than a year. The current regulations on the first installment and periodic payments may cause a considerable hardship to those purchasers. The timber industry in Oregon is in financial difficulty at this time, due in part to supply shortages caused by concern over the spotted owl and old growth timber, and any additional financial strain may cause failure of some companies and result in additional unemployment in this region.

The principal author of this proposed rule is Richard Bird of the Division of Forestry, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

This rule is consistent with the policy set out in the President's memorandum of January 28, 1992, and will relieve an unnecessary burden of the timber industry in the West. This rule will help to maintain a healthy forest products

industry which can provide jobs to the people in timber dependent communities of the West.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), chapter 2, appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The total economic effects of this rule have not been quantified, but are believed to be minimal, well below $100 million annually. By deferring some periodic payments, the Government would lose some interest on that money, but the amount would not be significant because there would not be many contracts affected by this rule. Costs to the Government would be offset by the benefit to the industry occasioned by relieving timber sale purchasers of unnecessary financial hardship when they are delayed in performing their contract obligations due to circumstances beyond their control. This rule would make timber sale purchasers affected more competitive and possibly prevent failure of some companies by easing such hardships. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. The number of individuals or companies affected by the rule is expected to be low, and the economic effects are expected to be positive because it would reduce financial burden and improve cash flow status.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule would not authorize the taking of any property, and would not interfere with any contractual or other property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects

43 CFR Part 5400

Administrative practice and procedure, Forest and forest products, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 5470

Forests and forest products, Government contracts, Public lands.

For the reasons stated above, and under the authorities cited below, parts 5400, 5460, and 5470 of group 5400, subchapter E, chapter II of the Code of Federal Regulations are amended as set forth below:

PART 5400—[AMENDED]

1. The authority citation continues to read:

Authority: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11; 30 Stat. 414, as amended; sec. 5, 50 Stat. 875; 30 U.S.C. 601 *et seq.*; 43 U.S.C. 315, 1181a; 16 U.S.C. 607a; 43 U.S.C. 1701 *et seq.*

§ 5400.0-5 [Amended]

2. Section 5400.0-5 is amended by adding the following paragraphs in alphabetical order, to read as follows:

Operating season means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

Operating time means a period of time during the operating season.

PART 5460—[AMENDED]

3. The authority citation continues to read:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*

4. Section 5461.2 is amended by removing the introductory paragraph and revising paragraph (a) to read as follows:

§ 5461.2 Required payment schedule.

(a)(1) For sales of less than $500,000, installment payments shall be not less than 10 percent of the total purchase price. For sales of $500,000 or more, installment payments shall be $50,000.

(2) The first installment shall be paid prior to or at the time the authorized officer signs the contract. A purchaser cannot apply any portion of the first installment to cover other payments due on the contract until either 60 percent of the total purchase price has been paid or road construction required by the contract, the value of which when combined with contract payments is equal to 60 percent of the total purchase price, has been completed. When either of these 60-percent levels has been reached, one-half of the first installment may be applied to other payments due on the contract.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section, when the contracting officer requests the purchaser to interrupt or delay operations for more than 60 days during the operating season the contracting officer may reduce the amount of the first installment to 5 percent of the installment listed in the timber sale contract. The purchaser shall request such reduction in writing from the contracting officer. The contracting officer will answer such requests within 30 days. The funds released may be refunded or credited to other contacts. When the contracting officer notifies the purchaser that operations may proceed, the purchaser shall have 15 days after such notification to return the first installment to the full amount specified in the timber sale contract. Failure to pay the full first installment amount within the specified time will be considered a material breach of contract, and the contracting officer may cancel the contract. No timber may be cut or removed from the contract area until the first installment is restored to the full amount required by the contract.

(4) The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of material cut or removed equals the sum of all payments made up to that point, not including the first installment, or one-half of the first installment after the other one-half of the first installment has been released as provided in paragraph (a)(2) of this section.

(5) Timber sales contracts shall contain provisions requiring periodic payments for all sales with a contract term of 19 months or longer. For sales with a contract term of 19–26 months, one periodic payment of 20 percent of the total purchase price will be required. For all sales with a contract term of 27 months or longer, two periodic payments will be required. The first payment shall be 20 percent of the total purchase price and the second payment shall be 40 percent of the total contract price. The value of satisfactory completed road construction required by the contract may be used as a credit against the amount due for periodic payments. The due dates for the periodic payments will be specified in the timber sale contract.

(6) For the purpose of this section, the value of completed road construction shall be based on the Bureau of Land Management's appraisal allowance. Satisfactory completion of portions of the required road construction, to reasonable points that can be easily identified in the road construction appraisal, shall be considered as completed road construction for purposes of this section.

* * * * *

PART 5470—[AMENDED]

5. The authority citation continues to read:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

§ 5473.4 [Amended]

6. Section 5473.4 is amended by removing paragraph (d) and by redesignating paragraph (e) as paragraph (d).

Dated: July 22, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92-19944 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-84-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 92-165; FCC 92-340]

Expansion of the Restricted Bands of Operation Applicable to Low Powered Transmitters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the rules to restrict low power, non-licensed transmitters from operating in several of the frequency bands implemented for the Global Maritime Distress and Safety System (GMDSS). The GMDSS is used for worldwide alerting, coordinated search and rescue operations and the dissemination of maritime safety information. This action will reduce the probability that such devices could cause harmful interference to GMDSS operations employed for safety-of-life.

DATES: Comments must be submitted on or before November 2, 1992, and reply comments on or before December 3, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: John A. Reed, Office of Engineering and Technology, (202) 653-7313.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in ET Docket No. 92-165, adopted July 22, 1992 and released August 12, 1992.

The complete text of this Notice of Proposed Rule Making is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington DC, and also may be purchased from the Commission's copy contractor, Downtown Copy Center, at (202) 452-1422 1990 M Street, NW., suite 640, Washington DC 20036.

Paperwork Reduction

The proposed amendments will not modify the information collection requirements contained in the current regulations.

Summary of the Notice of Proposed Rule Making

1. In the Notice of Proposed Rule Making in this proceeding, the Commission proposes to amend part 15 of the rules to restrict the operation of low power, non-licensed transmitters within the frequency bands that were recently authorized for the Global Maritime Distress and Safety System (GMDSS).

2. The Commission has established frequency bands within which part 15 transmitters, or international radiators, are prohibited from operating. These restricted bands were established to protect against interference to services involving safety-of-life and services that use very low received signal levels.

3. The GMDSS is an automated ship-to-shore distress alerting system that relies on satellite and advanced terrestrial systems. The GMDSS is used for worldwide alerting, coordinated search and rescue operations and the dissemination of maritime safety information. The GMDSS represents more than a decade of work by the International Maritime Organization (IMO) and the International Telecommunication Union (ITU).

4. The frequency bands employed for GMDSS are used for safety-of-life purposes and, therefore, meet the criteria for protection as restricted frequency bands under part 15. International radio regulations require that the GMDSS bands be protected from other interfering sources. Accordingly, we are proposing that the list of restricted frequency bands in part 15 be expanded to contain the GMDSS bands. We have limited our proposal to include only those frequencies requiring special protection based on the ITU Radio Regulations, RRN38-11, section 44, N 3067 Mob-87, 1990. Although the U.S. implementation of the GMDSS includes several other frequencies, we are not proposing to include these because the ITU Radio Regulations do not specify the same protection requirements. Further, we have purposely specified these bands to be as narrow as possible, basing them on the allocated channel bandwidth without guardbands, in order to reduce the impact on part 15 equipment. We believe the proposed changes will have a minimal impact on the design and operation of part 15 devices, yet will provide essential protection to GMDSS operations.

5. Nine of the GMDSS frequencies contained in N 3067 Mob-87 of the ITU Radio Regulations are already covered by the existing restricted bands. The 17

GMDSS frequency bands proposed for addition to the list of restricted frequency bands in 47 CFR 15.205 are:

4123.5–4126.5 kHz
4177.25–4177.75 kHz
4207.25–4207.75 kHz
6213.5–6216.5 kHz
6267.75–6268.25 kHz
6311.75–6312.25 kHz
8289.5–8292.5 kHz
8376.25–8386.75 kHz
8414.25–8414.75 kHz
12.2885–12.2915 kHz
12.51975–12.52025 MHz
12.57675–12.57725 MHz
16.4185–16.4215 MHz
16.69475–16.69525 MHz
16.80425–16.80475 MHz
156.52475–156.52525 MHz
1645.5–1646–5 MHz

6. Transition provisions: The GMDSS is being phased in between 1992 and 1999. Because ships can start using GMDSS equipment today, we believe that the new restricted bands should become effective as soon as possible. Accordingly, we propose that any part 15 intentional radiator that is verified, or for which an application for a grant of equipment authorization is submitted, on or after 90 days from the effective date of a Report and Order in this proceeding must comply with the requirements associated with the new restricted bands of operation. Similarly, any part 15 intentional radiator that is manufactured or imported on or after 15 months from this effective date must comply with the new restricted band requirements.

7. We also propose to reduce the width of the existing restricted frequency band of 490–510 kHz to 505 kHz, effective February 1, 1999. This restricted band provides interference protection to the maritime distress frequency 500 kHz. The guardbands for the frequency are scheduled to be reduced when the GMDSS is fully implemented on February 1, 1999.

Initial Regulatory Flexibility Analysis

8. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq* (1981).

Reason for Action

This rule making proceeding is initiated to obtain comment regarding the addition of new restricted bands of operation, representing frequency bands employed by the Global Maritime Distress and Safety System (GMDSS) under part 80 of our rules, for part 15 intentional radiators.

Objectives

The Commission seeks to add these new restricted bands of operation to provide additional protection against harmful interference to the GMDSS.

Legal Basis

The proposed action is authorized under sections 4(i), 301, 302, 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), and 303(r).

Reporting, Recordkeeping and Other Compliance Requirements

Manufacturers of part 15 transmitters are already required to measure emissions from their products. An increase in the number of restricted frequency bands will not impact the requirement for making and reporting these measurements to the Commission. Accordingly, we do not expect any significant increase or decrease in the overall recordkeeping requirements.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description Potential Impact and Number of Small Entities Involved

Part 15 transmitters are not permitted to operate within the restricted frequency bands. Further, spurious emissions from part 15 transmitters that fall within these bands must be reduced to the general radiated emission limits in 47 CFR § 15.209. Conceivably, the addition of new restricted bands could require manufacturers to redesign their products to operate on other frequencies or to further reduce spurious emissions. However, we believe that there are few, if any, part 15 devices currently operating within these frequency bands. In addition, the majority of the proposed new restricted bands are at lower frequencies where spurious emissions from part 15 transmitters must already comply with the general limits in 47 CFR § 15.209. Thus, we expect any impact from this proposal to be minimal.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

None.

9. For further information regarding this Notice of Proposed Rule Making, contact John Reed, Office of Engineering and Technology, (202) 653–6288.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92–19957 Filed 8–20–92; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 25

Below 1 GHz LEO Negotiated Rulemaking Committee

August 14, 1992.

AGENCY: Federal Communications Commission.

ACTION: Public meetings of negotiated rulemaking committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this document advises interested persons of the fourth meeting of the Below 1 GHz LEO Negotiated Rulemaking Committee (Committee), which will be held at the Federal Communications Commission in Washington, DC.

DATES: September 1, 1992 at 9:30 a.m.

ADDRESSES: Federal Communications Commission, rm. 856, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Federal Communications Commission, at (202) 634–1860.

SUPPLEMENTARY INFORMATION: The agenda for the fourth meeting of the Committee will be to approve the minutes of the prior meeting, identify any new record information, report on the progress of the informal working group, discuss any reports of that group, and to update the agenda for the Committee meeting scheduled for September 8.

A more detailed agenda for this meeting will be available at the Federal Communications Commission in CC Docket 92–76 following the Committee's meeting on August 24, 1992.

Members of the general public may attend this meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. There will be no public oral participation, but the public may submit written comments to Thomas S. Tycz, the Committee's designated Federal Officer, before the meeting.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92–19963 Filed 8–20–92; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL COMMUNICATION COMMISSION

47 CFR Part 25

Below 1 GHz LEO Negotiated Rulemaking Committee

August 14, 1992.

AGENCY: Federal Communications Commission.

ACTION: Meetings of Negotiated Rulemaking Committee.

SUMMARY: The Federal Communications Commission has established the Below 1 GHz LEO Negotiated Rulemaking Committee to provide recommendations on technical matters related to the establishment and regulation of a low-Earth orbiting satellite service operating in the frequency bands below 1 GHz. This document advises interested persons of upcoming meetings of an informal working group of that Committee.

DATES: August 13—10:00 a.m.–12:00 p.m., August 14—1:00 p.m.–4:00 p.m., August 17—9:30 a.m.–12:00 p.m., August 19—9:30 a.m.–12:00 p.m., August 20—9:30 a.m.–12:00 p.m., August 21—9:30 a.m.–12:00 p.m., August 24—1:00 p.m.–4:00 p.m., September 2—2:00 p.m.–4:00 p.m., September 3—9:30 a.m.–12:00 p.m., September 4—9:30 a.m.–12:00 p.m.

ADDRESSES: Federal Communications Commission, 2000 L Street, NW., rm. 258, Washington, DC (Aug. 13 & 14), and Leventhal, Senter & Lerman, 2000 K Street, NW., suite 600, Washington, DC (Aug. 17). All other meetings will be held at the Federal Communications Commission, 1919 M Street, NW., rm. 856, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau at (202) 634–1860.

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-No. 26B)]

Industrial Development Activities Exemption; Non-Exempt Agricultural Shippers

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; notice of discontinuance of proceeding.

SUMMARY: On April 8, 1992, the Commission published a notice of proposed rulemaking in Ex Parte No. 346 (Sub-No. 26B) further investigating whether an exemption for certain market development activities from the anti-rebating provisions of the Interstate Commerce Act should be revoked or modified for activities related to movement of agricultural commodities not exempt from the Commission's regulations. On evaluation of the comments received in response to this notice, we will not revoke or modify the aforementioned exemption, and we are discontinuing this investigation.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 926–5660 [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In a separate proceeding, Ex Parte No. 346 (Sub-No. 26), *Association of American Railroads—Pet. To Exempt,* 6 I.C.C.2d 365 (1992), we adopted a final rule exempting as a class certain market development activities from the anti-rebating provisions of the Interstate Commerce Act in order to permit railroads to engage in pre-movement, non-transportation development activities without fear of prosecution. In Ex Parte No. 346 (Sub-No. 26B) (57 FR 11929), we began an investigation of whether the aforementioned exemption should be revoked or modified by the adoption of special disclosure and/or documentation requirements for activities related to movement of agricultural commodities not exempt from the Commission's regulations. From the comments filed in Ex Parte No. 346 (Sub-No. 26B), it is clear that no party opposes the current exemption as it applies to agricultural shippers, although one party, National Grain and Feed Association, reserves the right to file a petition seeking revocation of the exemption "if abuses occur in the future".

We find that resumption of regulation is not necessary to carry out the transportation policy of 49 U.S.C. 10101a. See 49 U.S.C. 10505. In particular, we find that the exemption is unlikely to create opportunities for abuse of market power or unlawful discrimination against shippers of non-exempt agricultural commodities. The intent of Congress was to have the Commission be liberal in using its exemption authority and to correct abuses after they occur. H. Conf. Rept. No. 96–1430, 96th Cong., 2d Sess. 105 (1980). We see no reason why we should not pursue this policy here. Thus, we are discontinuing this proceeding.

List of Subjects in 49 CFR Part 1039

Agricultural commodities, Intermodal transportation, Manufactured commodities, Railroads.

Authority: 49 U.S.C. 10505; 5 U.S.C. 553.

Decided: August 13, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett. Commissioner Simmons dissented with a separate expression.

Sidney L. Strickland, Jr.,
Secretary.
[FR Doc. 92–20045 Filed 8–20–92; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB83

Endangered and Threatened Wildlife and Plants; Proposed Rule to Delist the Plant Tumamoca Macdougalii

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to remove the plant

Tumamoca macdougalii (Tumamoc globeberry) from the Federal List of Endangered and Threatened Plants (50 CFR 17.12). The range of this species includes south-central Arizona and extends southward into southern Sonora, Mexico. Given the large range of the species, its non-specific habitat requirements, the number of known populations, the remove nature of much of the habitat, and the ability of the species to withstand some habitat degradation, the Service believes Tumamoc globeberry is not in danger of extinction throughout all or a significant portion of its range. The service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 20, 1992. Public hearing requests must be received by October 5, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, Suite 6, Phoenix, Arizona 85019. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, at the above address (602/379-4720).

SUPPLEMENTARY INFORMATION:

Background

Tumamoca macdougalii was first collected on Tumamoc Hill, west of Tucson, Arizona, on July 31, 1908, by D.J. Macdougal, a scientist at the Carnegie Desert Laboratory. The specimen was sent to J.N. Rose, a botanist at the U.S. National Herbarium, who described it as a new genus and species in honor of the type locality and collector (Rose 1912). *Tumamoca macdougalii* remains the only species in its genus.

Tumamoca is a delicate perennial vine in the gourd family (Cucurbitaceae). The plants are found under trees or shrubs, which act as nurse plants and provide physical support for the vines. The stems arise from a large underground tuber, begin growth during the late summer in response to summer rains, and continue growing until the onset of cool weather and short days in November. The thin leaves have three main lobes, each divided into narrow segments. The flowers are small and pale greenish-yellow, with both male and female flowers occurring on a plant. The majority of flowers are produced in August. Mature fruits are spherical to ovoid, succulent, and bright red (Reichenbacher 1985a, Reichenbacher 1990).

When the species was listed as endangered in 1986, thirty isolated populations of *Tumamoca* had been located in Pima County, Arizona and five were known from Sonora, Mexico. The total number of known individuals was 2,300 in the United States and 60 in Mexico (51 FR 15906). All populations were found in the Arizona Upland Subdivision of the Sonoran Desertscrub Biotic Community. The eastern and western limits of the United States range of the species were known to include the Tucson area and extend west about 193 km (120 miles) to the vicinity of Organ Pipe Cactus National Monument. The exact northern and southern range boundaries were unknown but extended about 400 km (250 miles) south of the U.S./Mexico border to the vicinity of Guaymas, Sonora.

Surveys and studies completed after the May, 1985, publication of the proposed rule to list *Tumamoca* have improved our understanding of the range and ecology of this species (Reichenbacher 1985a, Reichenbacher 1985b, Tierra Madre Consultants and Cornett & Associates 1985, Reichenbacher 1987, Biosystems Analysis 1988). Numerous surveys have been conducted on smaller tracts of land. The locations of most populations are contained in the Non-Game Data Management System of the Arizona Game and Fish Department.

Our understanding of *Tumamoca* was greatly increased by a survey and study in the U.S. and Mexico contracted by the Bureau of Reclamation (Reichenbacher 1990). The study was required by a June 30, 1986, jeopardy biological opinion under Section 7 of the Endangered Species Act on the Central Arizona Project (pipeline and canal) and was conducted during the summers of 1988 and 1989. The report summarized the current range, distribution, and ecological information on *Tumamoca*.

The U.S./Mexico survey extended the northern and southern boundaries of the known range of *Tumamoca* (Reichenbacher 1990), although the eastern and western boundaries were essentially unchanged. The southern boundary, while not yet fully defined, was extended south to within 80 kilometers (50 miles) of the northern border of Sinaloa, Mexico. The northern boundary was extended north to include southern Pinal and Maricopa Counties, Arizona. The distance between the northern and southern boundaries is more than 643 km (400 miles). Reichenbacher (1990) estimated the potential habitat of *Tumamoca* in the U.S. and Mexico to be 72,862 square kilometers (27,959 square miles).

Tumamoca is less habitat specific than was believed at the time it was listed. The species occurs below 900 meters (3,000 feet) elevation in a variety of desert habitats and vegetation types, including the Arizona Upland, Lower Colorado Valley, Plains of Sonora, and Central Gulf Coast Subdivisions of the Sonoran Desertscrub Biotic Community and the Sinaloan Thornscrub Biotic Community (biotic communities defined by Turner and Brown 1982). It is found associated with a variety of nurse plants and in soil types ranging from sandy soils of valley bottoms to rocky soils of upper bajada slopes (Reichenbacher 1990). In the United States, *Tumamoca* occurs in isolated, discrete populations separated by large areas of apparently suitable but unoccupied habitat (Reichenbacher 1985a, Reichenbacher 1990). In Mexico, the species is widely scattered at a relatively low frequency throughout suitable habitat, with some areas of higher density (Reichenbacher 1990). Depending on the site, habitat conditions range from excellent or good to severely degraded or modified.

Surveys of potential habitat in the U.S. and Mexico showed the species to be more common than known at the time it was listed. Less than one percent of the potential habitat in the U.S. and Mexico was searched in 1988 and 1,242 plants were located (Reichenbacher 1990). This search involved 444 quadrats in Sonora and 261 in Arizona. All quadrats were approximately 8 hectare (20 acre) rectangles. *Tumamoca* was found in 6 Arizona quadrats (2 percent) and 89 Sonora quadrats (20 percent). The new *Tumamoca* localities in Mexico were scattered fairly evenly throughout a 52,600 square kilometer (20,300 square mile) region. A statistically reliable extrapolation of the U.S.-Mexico survey data cannot be made due to sampling constraints; however, many more plants and populations almost certainly exist. When *Tumamoca* was listed, only five populations were known in Mexico.

Reichenbacher (1990) estimates that only 2–3 percent of *Tumamoca* habitat has been lost to agriculture and urban expansion. This estimate does not include desertscrub habitat in Mexico converted to livestock pasture. A substantial number of quadrats in Mexico had to be relocated from their originally intended sites because of unmapped, presumably recently developed, livestock pasture. Nevertheless, the large range of *Tumamoca* and the extreme remoteness of much of the habitat in both the U.S. and Mexico strongly suggests that

significant portions of the range are secure for the foreseeable future.

Javelina (*Dicotyles tajuca*) dig up the moisture-rich tubers of *Tumamoca* and are an important source of mortality. Although this may produce local population declines, it is unlikely javelina can seriously impact a species with such a broad range and widely scattered populations.

Federal government actions on this species began on December 15, 1980, when the Service published in the Federal Register (45 FR 82480) a notice of review covering plants being considered for classification as endangered or threatened. In that notice, *Tumamoca macdougalii* was included in Category 1. Category 1 species are those for which the Service presently has on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered species.

Section 4(b)(3)(B) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the Secretary to make certain findings on petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the species included in the December 15, 1980, notice of review were considered under petition, all the taxa contained in the notice, including *Tumamoca macdougalii* were treated as being newly petitioned on October 13, 1982. In 1983 and 1984, the Service found that the listing of *Tumamoca macdougalii* was warranted but precluded by other listing actions of higher priority and that additional data on vulnerability and threats were still being gathered. A proposed rule published May 20, 1985 (50 FR 20606), constituted the next required finding that the petitioned action was warranted in accordance with section 4(b)(3)(B)(ii) of the Act. The final rule listing *Tumamoca macdougalii* as endangered was published in the Federal Register on April 29, 1986 (51 FR 15906). No critical habitat was designated.

Federal involvement with *Tumamoca* subsequent to listing has included population surveys, life history and biology studies, a transplanting project, and monitoring. These projects mostly resulted from Federal activities requiring either informal or formal consultation with the Service under section 7 of the Act. Bureau of Reclamation (BR) construction of the Central Arizona Project, Tucson Aqueduct, Phase B has been the most significant Federal activity involving *Tumamoca*. To comply with reasonable and prudent alternatives of a jeopardy biological opinion for this project issued by the Service June 30, 1986, BR purchased a 32 hectare (80 acre) preserve for *Tumamoca*, transplanted plants in the path of the aqueduct into the preserve, and monitored the success of the transplants for five years (Reichenbacher and Perrill 1991). After initial high mortality in the transplanted population, the rate of mature plant deaths declined to a number similar to the control population. Additionally, recruitment is occurring in the transplanted population and a prediction matrix analysis indicates the population should continue to rebound through the year 2000 when it will be 125 percent of the original 403 transplanted plants.

Surveys for *Tumamoca*, most often to comply with section 7 requirements, have been conducted throughout the predicted range of the species in the U.S. and Mexico. These surveys have shown *Tumamoca* to be more common and much more evenly distributed across its range than previously supposed.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. The same procedures apply to reclassifying a species or removing it from the lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Tumamoca macdougalii* J.N. Rose (Tumamoc globeberry) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Tumamoca* populations are scattered throughout an estimated 72,862 square kilometers (27,959 square miles) of habitat in five different vegetation types. As might be expected, some habitat loss and degradation is occurring within this area. However, Reichenbacher (1990) estimated less than three percent of *Tumamoca* habitat has been lost to agriculture and urban expansion. These losses tend to be concentrated along major watercourses or drainages, and urban centers such as Hermosillo, Sonora, and Tucson, Arizona.

Habitat loss from the Central Arizona Project was mitigated by the purchase of preserves, their fencing, and the transplanting and monitoring of plants that would have been lost to canal construction. The transplanting effort and subsequent monitoring have yielded valuable information on *Tumamoca* biology.

The Service has no information to indicate *Tumamoca* is negatively affected when habitat is destabilized and erosion is accelerated. In fact, *Tumamoca* populations are apparently stable (C. Button, Bureau of Land Management, pers. comm., 1991) in the Avra and Vekol valleys where habitat conditions are poor and erosion is a serious problem.

Some areas in southern Arizona and Sonora are being converted from desertscrub to monotypic stands of buffelgrass (*Cenchrus ciliarus*) to provide livestock forage. Buffelgrass outcompetes native plant species, including *Tumamoca*. Conversely, natural grassy areas, especially savanna grasslands in central Sonora, have been denuded and replaced by desertscrub that may actually provide better habitat for *Tumamoca* than do grasslands (Reichenbacher 1990). This pattern of shrub encroachment due to overgrazing and conversion of desertscrub to pasture is expected to continue. Despite this habitat alteration, the future of *Tumamoca* should be secure in the large areas of undisturbed habitat that remain.

Recreation, which occurs mostly near large urban areas, has probably caused a small amount of habitat loss or degradation, most of this form off-road vehicles. A popular picnic area in the Coronado National Forest contains a population of *Tumamoca*. Despite heavy recreational use of this area, the population appears to be stable (Reichenbacher 1989).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The final rule to list this species identified scientific collecting as a potentially significant threat due to the rarity of the species and the small size of many populations. *Tumamoca* is now more common than previously believed, and the amount of damage that could be caused to the species from possible scientific collecting is, therefore, proportionately less. No commercial, recreational, scientific or educational overuse of any populations of this species is known to have occurred.

C. *Disease or predation.* Javelina uproot *Tumamoca* tubers to eat the succulent tissues, which either kills the plant or reduces its vigor and reproductive output. Significant damage is also done by rabbits and/or rodents. Many plants are found with their stems clipped at or above ground level. This is likely seldom fatal, but undoubtedly

affects the ability of the plant to store photosynthate and moisture for the next growing season (Reichenbacher 1985a). These predators are all native species and *Tumamoca* has undoubtedly evolved to cope with the level of damage inflicted. Perhaps the scattered populations and absence of plants in apparently suitable habitat is, in part, a response to pressure from predators.

D. *The inadequacy of existing regulatory mechanisms. Tumamoca* currently receives the protection of the Arizona Native Plant Law and the Endangered Species Act. It is considered a Sensitive Species by the U.S. Forest Service and the Bureau of Land Management (BLM), a provision which offers some management protection. If *Tumamoca* is removed from the Endangered Species List, the Forest Service and BLM have indicated the species will remain on their Sensitive Species lists.

E. *Other natural or manmade factors affecting its continued existence.* When *Tumamoca* was listed, low numbers and limited range were thought to make it vulnerable to natural stresses such as prolonged drought. With our present knowledge of distribution and abundance it seems doubtful any natural stresses would affect *Tumamoca* in more than a portion of its range.

The regulations at 50 CFR 424.11(d) state that a species may be delisted if (1) it becomes extinct, (2) it recovers, or (3) the original classification data were in error. The Service believes that the data supporting the original classification were incomplete. After conducting a review of the status of the species, the Service believes the best scientific and commercial data available at present show that removing *Tumamoca macdougalii* from the List of Endangered and Threatened Plants is warranted.

The Service believes the species is not in danger of extinction throughout all or a significant portion of its range, nor is it likely to become an endangered or threatened species within the foreseeable future throughout all or significant portion of its range. Given the large range, number of known populations, remote habitat, ability to withstand some habitat degradation, and non-specific habitat needs, the Service believes *Tumamoca macdougalii* does not warrant the protection of the Act.

Effect of Rules

The proposed action would result in removal of this species from the List of Endangered and Threatened Plants. Federal agencies would no longer be required to consult with the Service to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *Tumamoca*. Federal prohibitions under section 9 of the Act would no longer apply.

To fulfill the requirement to monitor the species for five years following delisting, a Service contractor would visit selected sites with known Tumamoc globeberry populations throughout the U.S. and Mexico. At each site, the contractor would note whether or not the population is still extant, take photographs of the surrounding landscape, and note whether or not any significant land use changes have occurred in the area during the monitoring period. The sites would be chosen to represent a variety of habitat types and be spread across the range of the species. A form for use by field workers would be prepared by the contractor, in cooperation with the Service. Visits would occur during years one, three, and five of the monitoring period. Aerial photographs would be used to evaluate land use changes and their effects on Tumamoc globeberry habitat.

The BLM has established permanent plots to monitor Tumamoc globeberry and is committed to continuing this monitoring effort during the five-year post-delisting period. These plots are located on BLM-managed lands in the Avra and Vekol Valleys. The Coronado National Forest will continue to collect demographic data for the population in the Santa Catalina Mountains, which is the only population on National Forest lands.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. The Service particularly requests any information that would support retaining this species as an endangered species. Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (See **ADDRESSES**).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Author

The primary author of this proposed rule is Susan Rutman (See **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.12 [Amended]

2. It is proposed to amend § 17.12(h) by removing the entry "*Tumamoca macdougalii*" under CUCURBITACEAE, from the List of Endangered and Threatened Plants.

Dated: August 7, 1992.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–19897 Filed 8–20–92; 8:45 am]

BILLING CODE 4310–55–M

VOL 57 SS 163 AG 21 992 UMI

Notices

Federal Register
Vol. 57, No. 163
Friday, August 21, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Plant Variety Protection Advisory Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), this notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Plant Variety Protection Advisory Board.

DATES: Wednesday, September 23, 1992, 8 a.m. to 4 p.m., open to the public.

ADDRESSES: The meeting will be held at the Bioscience Building, Building 011A, Conference Room 119, at the Beltsville Agricultural Research Center, Beltsville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth H. Evans, Executive Secretary, Plant Variety Protection Advisory Board, room 500, National Agricultural Library Building, Beltsville, Maryland 20705 (301/504-5518).

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include discussions of: (1) The proposed amendment of the Plant Variety Protection Act to conform to the International Convention for the Protection of New Varieties of Plants as revised on March 19, 1991, (2) plant variety protection fees, and (3) other topics.

Dated: August 17, 1992.

Kenneth C. Clayton,

Deputy Administrator for Marketing Programs.

[FR Doc. 92-20022 Filed 8-20-92; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Revised Land and Resource Management Plan for the National Forests in Florida; Baker, Columbia, Franklin, Lake, Leon, Liberty, Marion, Okaloosa, Putnam, Wakulla, and Walton Counties, FL

AGENCY: Forest Service, USDA.

ACTION: Revised Notice; extension of time for submitting scoping comments.

SUMMARY: The Forest Service is extending the time for submitting scoping comments concerning the environmental analysis for the revision of the National Forests in Florida Land and Resource Management Plan. The comments will be considered in the preparation of the environmental impact statement and decisionmaking process.

DATE: Comments concerning the analysis should be received by September 30, 1992, to ensure timely consideration.

FOR FURTHER INFORMATION CONTACT: Mark Warren, Planning Staff Officer, National Forests in Florida, suite 4061, 227 N. Bronough St., Tallahassee, Florida 32301; (904) 681-7265.

SUPPLEMENTARY INFORMATION: The Notice of Intent to prepare a draft and final environmental impact statement for a proposed action to revise the National Forests in Florida Land and Resource Management Plan was published in the **Federal Register** July 14, 1992 (57 FR 31171-33172). The notice stated comments concerning the analysis should be received by August 28, 1992. To respond to requests from the public to allow additional time for submitting scoping comments, the agency is extending the date from August 28 to September 30, 1992.

Dated: August 17, 1992.

R. Gary Pierson,

Acting Regional Forester.

[FR Doc. 92-19989 Filed 8-20-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Friday, September 18, 1992, at the University Place Hotel, 850 West Michigan Street, Indianapolis, Indiana. The purpose of this meeting is to discuss current issues, orient members, and plan future activities.

Persons desiring additional information should contact Hollis E. Hughes, Committee Chairperson, at (219) 233-9305 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 18, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-20057 Filed 8-20-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Missouri Advisory Committee to the U.S. Commission on Civil Rights will meet on September 17, 1992, from 6 p.m. until 9 p.m. and September 18, 1992, from 9 a.m. until 4 p.m. at the Hayti Heights Community Center, 100 North Martin Luther King, Jr. Street in Hayti Heights, Missouri. The purpose of the meeting is to conduct a community forum regarding information on concerns of civil rights issues in rural southeast Missouri.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Division (816) 426-5253 (TTY 816—426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 18, 1992.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-20058 Filed 8-20-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of Final Affirmative Countervailing Duty Determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Pure Magnesium and Alloy Magnesium from Canada, filed by the Government of Quebec with the United States Section of the Binational Secretariat on August 10, 1992.

SUMMARY: On August 10, 1992 the Government of Quebec filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Affirmative Countervailing Duty Determination respecting Pure Magnesium and Alloy Magnesium from Canada made by the International Trade Administration, Import Administration, Import Administration File Number C-122-815, which was published in the **Federal Register** on July 13, 1992 (57 FR 30946). In addition, Norsk Hydro Canada, Inc. filed a Request for Panel Review in this matter. The Binational Secretariat has assigned Case Number USA-92-1904-03 to these Requests.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A First Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on August 10, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 9, 1992);

(b) A Party, an investigating authority or other interested person that does not file a complaint may participate in the panel review by filing a Notice of Appearance in accordance with rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 24, 1992); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 13, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-20000 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Public Meetings To Solicit Comments of Draft Management Plan and Environmental Assessment for the Hudson River National Estuarine Research Reserve

AGENCY: Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given that the Sanctuaries and Reserves Division, of the Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, and the New York State Department of Environmental Conservation have made available the Draft Management Plan (DMP) and Environmental Assessment (EA) prepared for the Hudson River National Estuarine Research Reserve (HRNERR). This DMP sets forth the program missions, goals and objectives of the HRNERR, and establishes policies that will protect the natural resources and ecological integrity of the HRNERR.

The Office of Ocean and Coastal Resource Management and New York State Department of Environmental Conservation will hold public meetings at the following times and places:

September 22, 1992 at 7 p.m. at the Bear Mountain Inn, East Dining Room, Route 9W, Bear Mountain, NY.

September 23, 1992 at 7 p.m. at the Columbia Green Community College, room 209, Main Building, Route 23, Hudson, NY.

The views of interested persons and organizations on the adequacy of the DMP and EA are solicited, and may be expressed orally and/or in written statements. Presentations will be scheduled on a first-come, first-heard basis, and may be limited to a maximum of five (5) minutes. The time allotment may be extended before the meeting when the number of the speakers can be determined. All comments received at the meeting will be considered in the

preparation of the Final Management Plan.

The public comment period for the DMP and EA will end on Monday, October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Patmarie S. Maher, (202) 606-4122, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1825 Connecticut Avenue, NW., suite 714, Washington, DC 20235. Copies of the draft management plan and environmental assessment are available upon request to the Sanctuaries and Reserves Division.

Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Sanctuaries.

Dated: August 14, 1992.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 92-19999 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-08-M

National Institute of Standard and Technology

[Docket No. 920535-2135]

RIN 0693-AA99

Proposed Federal Information Processing Standard for Standard Security Label for the Government Open Systems Interconnection Profile

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to announce the proposed Federal Information Processing Standard (FIPS) for Standard Security Label for the Government Open Systems Interconnection Profile. This proposed standard specifies a security label for the U.S. Government Open Systems Interconnection Profile (GOSIP). Security Labels indicate sensitivity and the possible damage which may occur due to accidental or intentional disclosure, modification, or destruction of data. Labels are used to make access control decisions, to specify protective measures, and to indicate handling restrictions required by a communications security policy.

Prior to the submission of this proposed standard to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section. Only the annoncement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications from the Standards Processing, Coordinator (ADP), National Institute of Standards and Technology, Technology Building, Room B64, Gaithersburg, MD 20899, telephone (301) 975-2816.

DATES: Comments on this proposed standard must be received on or before November 19, 1992.

ADDRESSES: Written comments concerning the proposed standard should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for Standard Security Label, Technology Building, room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Noel Nazario, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2837.

Dated: August 17, 1992.

John W. Lyons,

Director.

Draft

Federal Information Processing Standard Publication XXX

DRAFT 1992 July 15 DRAFT

Announcing A Standard Security Label for the Government Open Systems Interconnection Profile

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100-235.

Name of Standard: Standard Security Label for the Government Open Systems Interconnection Profile.

Category of Standard: ADP Operations, Computer Security.

Explanation: This Standard gives an implementation independent specification of a security label for the U.S. Government Open Systems Interconnection Profile (GOSIP). Security labels indicate sensitivity and the possible damage which may occur due to accidental or intentional disclosure, modification, or destruction of data. Labels are used to make access control decisions, to specify protective measures, and to indicate handling restrictions required by a communications security policy. The Standard Security Label is intended for use on U.S. Government OSI networks that exchange unclassified but sensitive data.

The label presented here defines security tags that may be combined into tag sets to carry security-related information. Five basic security tag types allow the representation of bit maps, attribute enumerations, attribute range selections, security level indication, and of generic information in a free form field.

A Computer Security Objects Register (CSOR), established by NIST, will provide the semantics for labels represented using this standard. Documents referencing this labeling standard shall either point to a CSOR and its procedures for registration of labels, or provide all the pertinent information regarding the label(s) to be supported.

Approving Authority: Secretary of Commerce.

Maintenance Agency: Computer Systems Laboratory, National Institute of Standards and Technology.

Cross Index: Federal Information Resources Management Regulations, subpart 201-20.303, Standards, and subpart 201-39.1002, Federal Standards.

"Procedures for Registration of Computer Security Objects", NIST 1992.

"U.S. Government Open Systems Interconnection Profile" (GOSIP), FIPS PUB 146-1, April 1991.

Scope: This standard specifies, in abstract notation, a security label for GOSIP-compliant implementations. Following this implementation independent specification, security labels may be encoded for use within various Open Systems Interconnection (OSI) protocols. The Abstract Syntax Notation 1 (ASN.1) label description provided here shall be used for security labels in Application Layer protocols. A normative Appendix to this standard provides the label encoding for the Network and Transport Layers. Other encodings of this Standard Label may be produced for use at the remaining layers if necessary. The specification given here is limited to the syntactic aspect of the label. The semantics of security labels, as defined for different security domains, are given by a Computer Security Objects Register.

Applicability: The specified Standard Security Label (SSL) applies to OSI communications systems handling U.S. government unclassified but sensitive data. This security label type shall be used by OSI systems required to label data as indicated in the security chapter of GOSIP.

The SSL shall be used by OSI protocols to control access, specify protective measures, and indicate handling restrictions required by a network security policy as registered in a Computer Security Objects Register.

Complying implementations shall be capable of transmitting, receiving, and handling security labels based on the high level specification in this document.

Specifications: Federal Information Processing Standard (FIPS xxx) Standard Security Label for the Government Open Systems Interconnection Profile (affixed).

Implementation Schedule: This standard becomes effective six months after publication of a notice in the Federal Register of its approval by the Secretary of Commerce.

Waiver Procedure: Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Waiver shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system; or

b. Compliance with a standard would cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B-154, Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the Federal Register.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any accompanying documents, with such deletions as the agency is authorized and decides to make under 5 United States Code Section 552(b), shall be part of the procurement documentation and retained by the agency.

Special Information: References to this standard will appear in the security chapter of the U.S. Government Open Systems Interconnection Profile (GOSIP) in a planned version 3 and future versions. Modifications to the planned version 3 will maintain backwards compatibility with the labeling options defined for the Connectionless Network Protocol (CLNP) in the first two versions. NIST plans that security protocols added to GOSIP in the future that require security labels will only use the Standard Security Label described in this document.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication XX (FIPS PUB XX), and identify the title. When microfiche is desired, this should be specified. Prices are published by NTIS in current catalogs and other issuances. Payment may be made by check, money order, deposit account or charged to a credit card accepted by NTIS.

[FR Doc. 92-20015 Filed 8-20-92; 8:45 am]

BILLING CODE 3510-CN-M

National Institute of Standards and Technology

[Docket No. 920533-2133]

RIN 0693-AB04

Approval of Three Federal Information Processing Standards (FIPS 174-176) for Telecommunications Wiring

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the Secretary of Commerce (Secretary) has approved three (3) new standards, which will be published as FIPS Publications 174 through 176. These newly approved standards adopt ANSI/EIA/TIA-568-1991, ANSI/EIA/TIA-569-1990, and ANSI/EIA/TIA-570-1991.

On May 6, 1991 (56 FR 20627), January 4, 1991 (56 FR 451), May 6, 1991 (56 FR 20628) notices were published in the Federal Register that three telecommunications wiring standards were being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to these standards were reviewed by NIST and the National Communications System (NCS). On the basis of this review, NIST recommended that the Secretary approve the standards as Federal Information Processing Standards (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

Each approved standard contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of each standard is provided in this notice.

EFFECTIVE DATE: These standards are effective March 1, 1993.

ADDRESSES: Interested parties may purchase copies of these new standards, including the technical specifications

sections, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out in the Where to Obtain Copies Section of the announcement section of each standards.

FOR FURTHER INFORMATION CONTACT: Shirley M. Radack, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2833.

Dated: August 17, 1992.

John W. Lyons,

Director.

Draft Federal Information Processing Standards Publication 174

(Date)

Announcing the Standard for Federal Building Telecommunications Wiring Standard

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Federal Building Telecommunications Wiring Standard (FIPS PUB 174) (Former Draft Federal Standard 1090).

2. Category of Standard. Telecommunications Standard.

3. Explanation. This standard, by adoption of ANSI/EIA/TIA–568–1991, Commercial Building Telecommunications Wiring Standard, specifies minimum requirements for telecommunications wiring within a building and between buildings in a campus environment. It specifies a writing system with a recommended topology and recommended distances. It specifies copper and optical-fiber transmission media by parameters that determine performance, and specifies connectors and their pin assignments to ensure interconnectability. This standard recognizes a background precept of fundamental importance: to have a building successfully designed and provisioned for telecommunications, it is imperative that the telecommunications wiring design be incorporated during the preliminary architectural design phase.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. National Communications System, Office of Technology and Standards.

6. Related Documents.

a. Federal Information Resources Management Regulations subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

b. Federal Standard 1037B, Glossary of Telecommunications Terms.

c. Federal Information Processing Standards Publication (FIPS PUB) 175, Federal Building Standard for Telecommunications Pathways and Spaces (Former Draft Federal Standard 1091).

d. Federal Information Processing Standards Publication (FIPS PUB) 176, Residential and Light Commercial Telecommunications Wiring Standard (Former Draft Federal Standard 1092).

e. Future Federal Information Processing Standards Publication (FIPS PUB), Grounding and Bonding Requirements for Telecommunications in Federal Buildings (Draft Federal Standard 1093).

f. Future Federal Information Processing Standards Publication (FIP PUB), Administration Standard for the Telecommunications Infrastructure of Federal Buildings (Draft Federal Standard 1094).

At the time of publication of this standard, the editions indicated above were valid. All publications are subject to revision, and parties to agreements based on this standard are encouraged to investigate the possibility of applying the most recent editions of these publications.

7. Objectives. The purpose of this standard is to facilitate interoperability and transportability among telecommunication facilities and systems of the Federal Government and compatibility of this facilities and systems at the computer-communications interface with data processing equipment (systems) of the Federal Government by specifying standard characteristics for building telecommunications wiring. This standard defines a generic, functional telecommunications wiring system for Federal buildings that will support a multiproduct, multivendor environment. The further purpose of this standard is to enable the planning and installation of building wiring with little knowledge of the telecommunications products that subsequently will be installed. Installation of wiring systems during building construction or major renovation is significantly less expensive and less disruptive than after the building is occupied. This standard establishes performance and technical criteria for various wiring system configurations for interfacing and connecting their respective elements. To attain a multiproduct wiring system, a review of the performance requirements for most telecommunications services was conducted during preparation of the American National Standard. The diversity of telecommunications services currently available, coupled with the continual addition of new services, means that there may be cases where limitations to desired performance occur. To understand any such limitations, the user is advised to consult standards associated with the desired services.

8. Applicability. American National Standard/EIA/TIA–568–1991 shall be used (with the deletion of the optional specification as noted in Section 9) by all departments and agencies of the Federal Government in the planning and design of all office buildings, when FIPS 176 is not selected. This includes both the wiring of new buildings and the upgrading of existing plant. Building telecommunications wiring defined by this standard is intended to support a wide range of different Federal building sites. This includes sites with a geographical extent up to 3,000 m (9,840 ft), up to 1,000,000 square meters (approximately 10,000,000 square feet) of office space, and with a population of up to 50,000 individual users. Telecommunications wiring systems defined by this standard are intended to have a useful life in excess of 10 years. This standard applies to the telecommunications wiring for Federal buildings that are office oriented. (The term "commercial enterprises" is used in ANSI/EIA/TIA–568–1991 to differentiate between office buildings and buildings designed for industrial enterprises.) This standard is not intended to hasten the obsolescence of building wiring currently existing in the Federal inventory; nor is it intended to provide systems engineering or applications guidelines.

9. Specifications. This FIPS adopts ANSI/EIA/TIA–568–1991 with one important change to the industry standard: in the interest of optimizing transportability, the ANSI/EIA/TIA–568 optional eight-position jack pin/pair assignments for the 100-ohm UTP telecommunications work-area outlet specified in Figure 11–2 (and referenced in paragraph 2 of Section 11.2.1) shall not be used.

10. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding for the acquisition of new equipment and services, effective March 1, 1993, except as noted in Section 8.

Adherence to a standard that specifies standardized building wiring contributes to the economic and efficient use of resources by avoiding proliferation of local or vendor-unique standards, and is necessary to facilitate development of interoperable inter- and intrabuilding telecommunications systems. Specification of *minimum* acceptable values for basic performance parameters provides assistance to the user in multivendor procurement. For the user requiring state-of-the-art systems performance, these values may serve as benchmarks for use in cost/performance analyses when evaluating alternate transmission media whose specifications exceed those of this standard.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system or related telecommunications system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after the notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Special Information. This standard has been reviewed by the Metrication Operating Committee of the Interagency Committee on Metric Practice, for consistency with accepted metric practice only, and is designated in *accepted metric standard*. Use of this standard in its area of applicability complies with the provision of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 5164) that requires Federal agencies, with certain limitations and exceptions, to use the metric system of measurement in procurements, grants, and other business-related activities. (See also 15 CFR Part 19 as amended February 1, 1991).

Metric Data. Where this standard contains dual dimensions, the metric data shall be controlling, and the inch-pound data shall be understood to be for information only. Nothing in this standard shall be interpreted, however, as requiring any departure from standard trade sizes, as for conduit and electrical conductors, in common use in the United States.

Exception. The following is substituted for section 10.2.1.1.5, Breaking Strength, of the industry standard:

The ultimate breaking strength of the completed cable, measured in accordance with ASTM D 4565 (Ref. B1.35), shall be 400 newtons (41 kgf).

Note: The maximum pulling tension should not exceed 110 newtons (10.3 kgf) to avoid stretching the conductor.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 174 (FIPSPUB174), and the title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Appendix

By adoption of ANSI/EIA/TIA–568–1991 (with the modification noted below), this document provides Federal departments and agencies with a generic, standardized wiring system for office buildings and building complexes. This standardization, in conjunction with Federal Information Processing Standard 175 (Former Draft FED–STD–1091), which provides architectural specification of telecommunications pathways and spaces, will facilitate systems compatibility and transportability of terminals for Federal users. The use of these two standards will assure a quality of performance consistent with existing industry capabilities and will provide a cost-effective basis for competitive procurement.

The industry standard adopted by this Federal Information Processing Standard (Former Draft FED–STD–1090) is ANSI/EIA/TIA–568–1991, Commercial Building Telecommunications Wiring Standard, and is the result of an effort by the Telecommunications Industry Association (TIA),[1] in response to concern expressed by the Computer and Communications Industry Association (CCIA) over the lack of a standard on building telecommunications wiring.

This Federal Information Processing Standard adopts ANSI/EIA/TIA–568–1991 with one important change to the industry standard: in the interest of optimizing transportability, the ANSI/EIA/TIA–568–1991 vendor-specific optional eight-position jack pin/pair assignments for the 100-ohm UTP telecommunications work-area outlet connector specified in Figure 11–2 (and referenced in paragraph 2 of Section 11.2.1) of the industry standard shall *not* be used. The pin-pair assignments (and color coding) of the primary wiring scheme, illustrated in Figure 11–1, are fully compatible with terminal equipment manufactured by a majority of North American manufacturers. These assignments are fully compatible also with the single specification of eight-position outlet connector pin/pair assignments of the parallel building-wiring standard developed by the Canadian Standards Association, CSA–529. Tracking the ANSI/EIA/TIA–568 standard, the U.S. connector industry has adopted a connector designation of "T–568A" for this primary wiring scheme.

[1] In 1988, the Telecommunications sector (specifically, the TR- and FO-Technical Committees, Subcommittees, and Working Groups) of the Electronic Industries Association (EIA) became a part of the Telecommunications Industry Association (TIA). TIA conducts the standard-developing activities, and EIA continues to publish the resultant standards, which bear the prefix "EIA/TIA", as well as "ANSI" for those documents adopted by the American National Standards Institute. Beginning in 1992, the prefix reads "TIA/EIA."

The use of the optional pin/pair assignments of Figure 11–2 in wiring a building would result in equipment inoperability when transporting any terminal equipment from this building to any building wired to the primary specification of Figure 11.1 above.

The inverse is also true; only equipment of proprietary design (of a single manufacturer) will be operable in a building wired to the optional specification. This resultant problem of interoperability when transporting equipment could be addressed only by (a) providing adapters for all relocated terminal equipment, or (b) rewiring of the destination building (at the main distribution frame or elsewhere).

Paragraph 3, section 11.2.1 of the industry standard states: "These jack and pin-pair assignments [referring to both the primary and optional wiring schemes] are compatible with the requirements described in ISDN BRI (ISO 8877)." This is true but misleading; ISO 8877 describes which pins are to be paired, but does *not* specify assignment of pin/pair circuits or color coding. Thus, ISO 8877 compliance assures only mechanical compatibility.

The Federal Information Processing Standard has a special relationship to the ANSI/EIA/TIA–569–1991, Commercial Building Standard for Telecommunications Pathways and Spaces, (adopted as Federal Information Processing Standard 175, Former Draft FED–STD–1091). This latter standard addresses the reality that building wiring cannot be standardized without standardizing also the architecture of the building itself into which building wiring systems are to be installed.

Another companion standard, ANSI/EIA/TIA–570–1991, Residential and Light Commercial Telecommunications Wiring Standard, is adopted as Federal Information Processing Standard 176 (Former Draft FED–STD–1092).

During the development of this family of building telecommunications standards, significant concern was expressed, by both Government and industry, about the need for specification of electronic system grounding. This concern resulted in proposed ANSI/TIA/EIA–607, Grounding and Bonding Requirements for Telecommunications in Commercial Buildings (to be adopted as a future Federal Information Processing Standard, Draft FED–STD–1093).

The complex telecommunications building infrastructure addressed by this family of standards requires continuing documentation of all building wiring and the related pathways and spaces that contain that wiring. Recognizing the need for a standardized method of telecommunications administration, TIA is developing ANSI/TIA/EIA–606, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings, to expedite collecting and updating of such information. This standard is to be adopted as a future Federal Information Processing Standard (Draft FED–STD–1094).

Draft Federal Information Processing Standards Publication 175

(Date)

Announcing the Standard for Federal Building Standard for Telecommunications Pathways and Spaces

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Federal Building Standard for Telecommunications Pathways and Spaces (FIPS PUB 175) (Former Draft Federal Standard 1091).

2. Category of Standard. Telecommunications Standard.

3. Explanation. This standard, by adoption of ANSI/EIA/TIA–569–1990, Commercial Building Telecommunications Pathways and Spaces, specifies minimum requirements for telecommunications pathways and spaces within a Federal office building and between office buildings in a campus environment. This standard recognizes a background precept of fundamental importance: to have a building successfully designed, constructed, and provisioned for telecommunications, it is imperative that the telecommunications design be incorporated during the preliminary architectural design phase.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. National Communications System, Office of Technology and Standards.

6. Related Documents.

a. Federal Information Resources Management Regulations subpart 201–20.303, Standards and subpart 201–39.1002, Federal Standards.

b. Federal Standard 1037B, Glossary of Telecommunications Terms.

c. Federal Information Processing Standards Publication (FIPS PUB) 174, Federal Building Telecommunications Wiring Standard (Former Draft Federal Standard 1090).

d. Federal Information Processing Standards Publication (FIPS PUB) 176, Residential and Light Commercial Telecommunications Wiring Standard (Former Draft Federal Standard 1092).

e. Future Federal Information Processing Standards Publication (FIPS PUB), Grounding and Bonding Requirements for Telecommunications in Federal Buildings (Draft Federal Standard 1093).

f. Future Federal Information Processing Standards Publication (FIPS PUB), Administration Standard for the Telecommunications Infrastructure of Federal Buildings (Draft Federal Standard 1094).

At the time of publication of this standard, the editions indicated above were valid. All publications are subject to revision, and parties to agreements based on this standard are encouraged to investigate the possibility of applying the most recent editions of these publications.

7. Objectives. The purpose of this standard is to specify design and construction practices for pathways and spaces, which are in support of telecommunications media and equipment, within and between Federal office buildings. Standards are given for rooms, areas, and pathways into and through which telecommunications equipment and media are to be installed.

8. Applicability. American National Standard/EIA/TIA569–1990 shall be used by all departments and agencies of the Federal Government in the planning and design of all office buildings.

9. Specifications. This FIPS adopts ANSI/EIA/TIA–569–1990, Commercial Building Telecommunications Pathways and Spaces.

10. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding for the acquisition of new equipment and services, effective March 1, 1993.

Adherence to a standard that specifies standardized building architectural design for the accommodation of telecommunications system wiring contributes to the economic and efficient use of resources. Such design is necessary to facilitate development of interoperable inter- and intrabuilding telecommunications systems.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to Section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system or related telecommunications system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written request containing the information detailed above. Agency head may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after the notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Special Information. This standard has been reviewed by the Metrication Operating Committee of the Interagency Committee on Metric Practice, for consistency with accepted metric practice only, and is designated an accepted metric standard. Use of this standard in its area of applicability complies with the provision of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 5164) that requires Federal agencies, with certain limitations and exceptions, to use the metric system of measurement in procurements, grants, and other business-related activities. (See also 15 CFR part 19 as amended February 1, 1991.)

Metric Data. Where this standard contains dual dimensions, the metric data shall be controlling, and the inch-pound data shall be understood to be for information only. Nothing in this standard shall be interpreted, however, as requiring any departure from standard trade sizes, as for conduit and electrical conductors, in common use in the United States.

Exception. The following is substituted for Section 8.2.1.2, *Floor Loading*, of the industry standard:

Floor loading capacity in the equipment room shall be sufficient to bear both the distributed and concentrated load of the installed equipment. The capacity for distributed loading shall be greater than 1220 kilograms per square meter. The capacity for a concentrated load shall be greater than 450 kg.

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 175 (FIPSPUB175), and the title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Appendix

By adoption of ANSI/EIA/TIA–569–1990, this document provides Federal departments and agencies with an architecture for the pathways and spaces in Federal office buildings for the accommodation of the building wiring recommended in Federal Information Processing Standard 174 (Former Draft FED–STD–1990). This standardization will facilitate the use of the telecommunications wiring infrastructure specified in FIPS 174, thus enhancing the interoperability and transportability of terminals for Federal users.

The industry standard adopted by this Federal Information Processing Standard (Former Draft FED–STD–1091), ANSI/EIA/TIA–569–1990, Commercial Building Standard for Telecommunications Pathways and Spaces, is the result of a joint Canadian and United States effort by the Canadian Standards Association (CSA) and the Telecommunications Industry Association (TIA) [1].

This standard has a special relationship to the ANSI/EIA/TIA–568–1991, Commercial Building Telecommunications Wiring Standard (adopted as Federal Information Processing Standard 174, Former Draft FED–STD–1090). This latter standard recognizes that building wiring cannot be standardized without standardizing also the architecture of the building itself into which building wiring systems are to be installed—the purpose of this document.

Another companion standard, ANSI/EIA/TIA–570–1991, Residential and Light Commercial Telecommunications Wiring Standard, is adopted as Federal Information Processing Standard 176 (Former Draft FED–STD–1092).

During the development of this family of building telecommunications standards, significant concern was raised, by both Government and industry, about the need to specify electronic system grounding. This concern resulted in proposed ANSI/TIA/EIA–607, Grounding and Bonding Requirements for Telecommunications in Commercial Buildings (to be adopted as a future Federal Information Processing Standard—Draft FED–STD–10930.

The complex telecommunications building infrastructure addressed by this family of standards required continuing documentation of all building wiring and the related pathways and spaces containing that wiring. Recognizing the need for a standardized method of telecommunications administration, TIA has developed proposed ANSI/TIA/EIA–606, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings, to expedite collection and updating of such information. This standard is to be adopted as a future Federal Information Processing Standard (Draft FED–STD–1094).

Draft Federal Information Processing Standards Publication 176

(Date)

Announcing the Standard for Residential and Light Commercial Telecommunications Wiring Standard

Federal Information Processing Standards Publications (FIPS PUBS) are

[1] In 1988, the Telecommunications sector (specifically, the TR- and FO-Technical Committees, Subcommittees, and Working Groups) of the Electronic Industries Association (EIA) became a part of the Telecommunications Industry Association (TIA). TIA conducts the standard-developing activities, and EIA continues to publish the resultant standards, which bear the prefix "EIA/TIA", as well as "ANSI" for those documents adopted by the American National Standards Institute. Beginning in 1992, the prefix reads "TIA/EIA."

issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Residential and Light Commercial Telecommunications Wiring Standard (FIPS PUB 176) (Former Draft Federal Standard 1092).

2. Category of Standard. Telecommunications Standard.

3. Explanation. This standard, by adoption of ANSI/EIA/TIA–570–1991, Residential and Light Commercial Building Telecommunications Wiring Standard, gives an overview of premises wiring, and specifies installation requirements and component technical requirements. Appendices to the industry standard provide information on line assignments in selected network interface jacks, wiring installation guidelines, component description, and references to related standards and other documents.

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. National Communications System, Office of Technology and Standards.

6. Related Documents.

a. Federal Information Resources Management Regulations subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

b. Federal Standard 1037B, Glossary of Telecommunications Terms.

c. Federal Information Processing Standards Publication (FIPS PUB) 174, Federal Building Telecommunications Wiring Standard (Former Draft Federal Standard 1090).

d. Federal Information Processing Standards Publication (FIPS PUB) 175, Federal Building Standard for Telecommunications Pathways and Spaces (Former Draft Federal Standard 1091).

e. Future Federal Information Processing Standards Publication (FIPS PUB), Grounding and Bonding Requirements for Telecommunications in Federal Buildings (Draft Federal Standard 1093).

f. Future Federal Information Processing Standards Publication (FIPS PUB), Administration Standard for the Telecommunications Infrastructure of Federal Buildings (Draft Federal Standard 1094).

At the time of publication of this standard, the editions indicated above were valid. All publications are subject to revision, and parties to agreements based on this standard are encouraged to investigate the possibility of applying the most recent editions of these publications.

7. Objectives. The purpose of this standard is to facilitate interoperability and transportability among telecommunication facilities and systems of the Federal Government and compatibility of these facilities and systems at the computer-communications interface with data processing equipment (systems) of the Federal Government by specifying standard characteristics for telecommunications wiring for small buildings. This standard describes a premises-wiring system intended for connecting one to four exchange access lines to various types of customer-premises equipment. This standard defines a generic, functional telecommunications wiring system for Federal buildings that will support a multiproduct, multivendor environment. Installation of wiring systems during building construction or major renovation is significantly less expensive and less disruptive than after the building is occupied.

8. Applicability. American National Standard/EIA/TIA–570–1991 shall be used by all departments and agencies of the Federal Government in the planning and design of premises-wiring systems intended for connecting one to four exchange access lines to various types of customer-premises equipment when FIPS 174 is not selected. Applications include both the wiring of new buildings and the upgrading of existing plant. This standard is not intended to hasten the obsolescence of building wiring currently existing in the Federal inventory; nor is it intended to provide systems engineering or applications guidelines.

9. Specifications. This FIPS adopts ANSI/EIA/TIA–570–1991, Residential and Light Commercial Building Telecommunications Wiring Standard.

10. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding for the acquisition of new equipment and services, effective March 1, 1993.

Adherence to a standard that specifies standardized building wiring contributes to the economic and efficient use of resources by avoiding proliferation of local or vendor-unique standards, and is necessary to facilitate development of interoperable inter- and intrabuilding telecommunications systems.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to Section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system or related telecommunications system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after the notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Special Information. This standard has been reviewed by the Metrication Operating Committee of the Interagency Committee on Metric Practice, for consistency with accepted metric practice only, and is designated an accepted metric standard. Use of this standard in its area of applicability complies with the provision of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, section 5164) that requires Federal agencies, with certain limitations and exceptions, to use the metric system of measurement in procurements, grants, and other business-related activities. (See also 15 CFR Part 19 as amended February 1, 1991).

Metric Data. Where this standard contains dual dimensions, the metric data shall be controlling, and the inch-pound data shall be understood to be for information only. Nothing in this standard shall be interpreted, however, as requiring any departure from standard trade sizes, as for conduit and electrical conductors, in common use in the United States.

Exception. The following is substituted for the similar clause in lines 4 and 5 of section 6.2.1.1, Physical Requirements, of the industry standard:

> When measured in accordance with ASTM D 4565 (Ref. 19), the ultimate breaking strength of the completed cable shall be 400 newtons (41 kgf) minimum. • • •

13. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the American National Standards Institute.) When ordering, refer to Federal Information Processing Standards Publication 176 (FIPSPUB176), and the title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

Appendix

By adoption of ANSI/EIA/TIA–570–1991, this document provides Federal departments and agencies with a generic, standardized premises-wiring system intended for connecting one to four exchange access lines to various types of customer-premises equipment. This standard may be considered complementary to Federal Information Processing Standard 174 (Former Draft FED–STD–1090), Federal Building Telecommunications Wiring Standard, which addresses building sites with a geographical extent up to 3,000 m (9,840 ft), up to 1,000,000 square meters (approximately 10,000,000 square feet) of office space, and with a population of as many as 50,000 individual users.

This standard has also a special relationship to ANSI/EIA/TIA–569–1990, Commercial Building Standard for Telecommunications Pathways and Spaces (adopted as Federal Information Processing Standard 175 (Former Draft FED–STD–1091)), the result of a joint Canadian and United States effort by the Canadian Standards Association (CSA) and the Telecommunications Industry Association (TIA) [1]. This latter standard addresses the reality that building wiring cannot be standardized without standardizing also the architecture of the building itself into which building wiring systems are to be installed.

During the development of this family of building telecommunications standards, significant concern was raised, by both Government and industry, about the need for specification of electronic system grounding. This concern resulted in proposed ANSI/TIA/EIA–607, Grounding and Bonding Requirements for Telecommunications in Commercial Buildings (to be adopted as a future Federal Information Processing Standard, Draft FED–STD–1093).

The complex telecommunications building infrastructure addressed by this family of standards requires continuing documentation of all building wiring and the related pathways and spaces containing that wiring. Recognizing the need for a standardized method of telecommunications administration, TIA has developed proposed ANSI/TIA/EIA–606, Administration Standard for the Telecommunications Infrastructure of Commercial Buildings, to expedite collection and updating of such information. This standard is to be adopted as a future Federal Information Processing Standard (Draft FED–STD–1094).

[FR Doc. 92–20014 Filed 8–20–92; 8:45 am]

BILLING CODE 3510–CN–M

[1] In 1988, the Telecommunications sector (specifically, the TR-and FO-Technical Committees, Subcommittees, and Working Groups) of the Electronic Industries Association (EIA) become a part of the Telecommunications Industry Association (TIA). TIA conducts the standard-developing activities, and EIA continues to publish the resultant standards, which bear the prefix "EIA/TIA", as well as "ANSI" for those documents adopted by the American National Standards Institute. Beginning in 1992, the prefix reads "TIA/EIA."

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council (Council) and its Committees will meet on September 14–17, 1992, at the Doubletree Hotel, 300 Canal Street, New Orleans, LA, telephone: 504–581–1300. The agenda is as follows:

Council

The Council will convene on September 16 at 8:30 a.m. and recess at 5 p.m. Council agenda items and the times allocated for discussion are as follows:

From 8:45 a.m. to 1 p.m.: Hear public testimony on the Red Snapper 1993 total allowable catch, quota, and bag limits, the proposed mutton snapper closure, and Amendment #6 to the shrimp Fishery Management Plan.

Note: Testimony cards must be turned in to staff before the start of public testimony; and

From 2:30 p.m. to 5 p.m.: Receive the Reef Fish Management Committee report.

The Council will reconvene at 8:30 a.m. on September 17 and continue with its agenda until adjournment at 4:30 p.m. as follows:

From 8:30 a.m. to 9:30 a.m.: Continue the Reef Fish Management Committee report;

From 9:30 a.m. to 3:30 p.m.: Receive reports from the following Committees:

1. Shrimp Management Committee (9:30 a.m. to 12:30 p.m.);
2. Habitat Protection Committee (2 p.m. to 2:30 p.m.);
3. Artificial Reef Committee (2:30 p.m. to 2:45 p.m.);
4. Mackerel Management Committee (2:45 p.m. to 3:15 p.m.);
5. Spiny Lobster Management Committee (3:15 p.m. to 3:30 p.m.);

followed by Enforcement reports and Director's reports; and the Election of Chairman and Vice Chairman.

Committees

The Artificial Reef Committee, the Shrimp Management Committee and the Spiny Lobster Committee will meet on September 14 at 10 a.m. until 5:30 p.m. Committee meetings will reconvene on September 15 at 8 a.m. with meetings of the Habitat Protection Committee and the Reef Fish Management Committee. Committee meetings will adjourn at 5 p.m.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 17, 1992.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–20020 Filed 8–20–92; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's newly appointed Individual Quota Industry Committee will hold a public meeting on August 26–27, 1992 in the Pacific States Marine Fisheries Commission Conference Room, 2501 SW. First Avenue, Suite 200, Portland, OR. The meeting will begin at 8:30 a.m. on August 26, and adjourn at approximately 3:30 p.m. on August 27.

The purpose of this meeting is to work on developing an individual transferable quota program for the West Coast halibut and non-trawl sablefish fisheries.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: August 17, 1992.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–20021 Filed 8–20–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in China

August 17, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 614 is being increased by carryforward. As a result, the limit, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 24, 1992, you are directed to amend the November 22, 1991 directive to increase the limit for Category 614 to 11,179,896 square meters [1], as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,.

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–19974 Filed 8–20–92; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

Adjustment of Import Limits and Sublimits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

August 17, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6717. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits and sublimits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58559, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 17, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 24, 1992, you are directed to amend the directive dated November 15, 1991 to reduce the limits and sublimits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Thailand:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
313/314/315	66,780,000 square meters of which not more than 14,840,000 square meters shall be in Category 313, not more than 33,017,832 square meters shall be in Category 314 and not more than 21,200,000 square meters shall be in Category 315.
613/614/615	29,150,000 square meters of which not more than 16,960,000 square meters shall be in Categories 613/615 and not more than 16,860,057 square meters shall be in Category 614.
Sublevels in Group II	
338/339	1,372,000 dozen.
638/639	1,617,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–19973 Filed 8–20–92; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 21, 1992.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 17, May 8, 22, June 12 and 26, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 13715, 19888, 21768, 25023 and 28658) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities or services.

3. The action will result in authorizing small entities to furnish the commodities or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities or services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Aerosol Paint, Lacquer, 8010–00–958–8150.
Apron, Laboratory, 8415–00–715–0450.

Services

Grounds Maintenance

U.S. Army Reserve Center, 2997 N. 2nd Street, Harrisburg, Pennsylvania.

Janitorial/Custodial (except annual carpet cleaning, annual floor care requirements and window washing)

Naval Surface Weapons Center, Carderock Division, Buildings 8, 121, 191, 192, 193, Complex "L", Complex "M", Complex "N", Enclosed Walkways—Buildings 17 to 191 and 191 to 192, Bethesda, Maryland.

Janitorial/Custodial

Offutt Air Force Base, Nebraska (excluding Hospital, Commissary, Buildings 500 and 501 and all AAFES facilities).

Janitorial/Custodial

IRS Service Center, 11630 Caroline Road, Philadelphia, Pennsylvania.

Laundry Service

U.S. Army Aviation Support Command, CMPSC Commissary, Granite City, Illinois.

Warehousing

U.S. Army Corps of Engineers, 2600 East Carson Street, Pittsburgh, Pennsylvania.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92–20062 Filed 8–20–92; 8:45 am]

BILLING CODE 6820–33–M

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 21, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to

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procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. It is proposed to add the following commodity and services to the Procurement List:

Commodity

Towel, Machinery, Wiping, 7920–01–177–3633 (Requirements for the Palmetto, GA depot only).
Nonprofit Agency: East Texas Lighthouse for the Blind, Tyler, Texas.

Services

Janitorial/Custodial
Airway Facilities Sector Field Office and Air Traffic Control Tower, Standiford Field, Louisville, Kentucky.
Nonprofit Agency: Custom Manufacturing Service, Inc., Louisville, Kentucky.

Janitorial/Custodial
Little Mountain, Little Mountain, Utah.
Nonprofit Agency: Pioneer Adult Rehabilitation Center, Clearfield, Utah.

Deletion

It is proposed to delete the following commodity from the Procurement List:

Button, Insignia, 8455–00–530–3700.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92–20064 Filed 8–20–92; 8:45 am]

BILLING CODE 6820–33–M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval of Information Collection Requirements—Mattress Flammability Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval through September 30, 1995, of information collection requirements in the Standard for the Flammability of Mattresses and Mattress Pads (16 CFR part 1632). The standard is intended to reduce unreasonable risks of burn injuries and deaths from fires associated with mattresses and mattress pads. The standard prescribes a test to assure that a mattress or mattress pad will resist ignition from a smoldering cigarette. The standard requires manufacturers to perform prototype tests of each combination of materials and construction methods used to produce mattresses or mattress pads with acceptable results. Sale or distribution of mattresses without successful completion of the testing required by the standard violates section 3 of the Flammable Fabrics Act (15 U.S.C. 1192). An enforcement rule implementing the standard requires manufacturers to maintain records of testing performed in accordance with the standard and other information about the mattresses or mattress pads which they produce.

Additional Details About the Request for Extension of Approval of Information Collection Requirements

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR 1632.

Type of request: Extention of approval.

Frequency of collection: Varies depending upon the number of individual combinations of materials and methods of construction used to produce mattresses.

General description of respondents: Manufacturers and importers of mattresses and mattress pads.

Estimated number of respondents: 800.

Estimated average number of hours per respondent: 26 per year.

Estimated number of hours for all respondents: 20,800 per year.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Shawn Canter Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395–7340. Copies of the request for extension of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: August 17, 1992.

Sadye E. Dunn, Secretary,

Consumer Product Safety Commission.

[FR Doc. 92–20054 Filed 8–20–92; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the Joint Advisory Committee on Nuclear Weapons Surety

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Joint Advisory Committee on Nuclear Weapons Surety is being established.

The Joint Advisory Committee on Nuclear Weapons Surety will provide advice to the Secretary of Defense, Secretary of Energy, and the Joint Nuclear Weapons Council on matters involving the surety of nuclear weapons systems, particularly as they relate to protecting against inadvertent nuclear detonation or plutonium dispersal. The Advisory Committee will undertake studies and prepare reports regarding recommendations on national policies and procedures to ensure the safe handling, stockpiling, maintenance, and risk reduction methodology of nuclear weapons.

Careful efforts will be made to ensure that the membership of the Committee will be diverse and well-balanced in terms of the functions to be performed and the interest groups represented. There will be approximately five members, to include both government and non-government individuals, who

are experts in nuclear weapons surety measures and techniques, safety precautions, and other aspects of the management and control of nuclear weapons.

For additional information regarding the Joint Advisory Committee on Nuclear Weapons Surety, please contact Stanley Keel, telephone: 703–695–7936.

Dated: August 17, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19994 Filed 8–20–92; 8:45 am]

BILLING CODE 3810–01–M

Renewal of the Strategic Defense Initiative Advisory Committee

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Strategic Defense Initiative Advisory Committee has been renewed, effective August 17, 1992.

The Strategic Defense Initiative Advisory Committee provides expert advice to the Secretary of Defense and the Director, Strategic Defense Initiative (SDI) Organization on all matters pertaining to SDI research and technology. The Advisory Committee: evaluates reviews of technical plans relating to SDI programs; provides recommendations concerning the emphasis, schedule and content of the programs; and, examines and evaluates technologies associated with concepts of defense against ballistic missiles.

The Strategic Defense Initiative Advisory Committee will continue to be composed of approximately 12 to 14 members who are acclaimed leaders and experts in technical areas relating to the SDI program. The members will be a well-balanced composite of individuals drawn from universities, national laboratories, industry, and other segments of the public sector, to ensure that affected interest groups will be represented and that assigned functions will be performed.

For additional information regarding the Strategic Defense Initiative Advisory Committee, please contact Ms. Gail Gallant, telephone: 703–693–1532.

Dated: August 18, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–19993 Filed 8–20–92; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Workshops

AGENCY: Department of Education.

ACTION: Notice of application preparation workshops.

SUMMARY: The Department of Education will conduct an application preparation workshop to assist prospective applicants in developing applications for the Drug-Free Schools and Communities discretionary grants programs for fiscal year 1993.

MEETING INFORMATION: The two-day workshops will commence on October 13, 1992, and will run from 8 a.m.–5:30 p.m. (including workshop registration). There is no registration fee. Since space is limited and the number may vary with each site, pre-registration is strongly recommended. To pre-register and obtain specific information, contact the appropriate regional center workshop coordinator no later than September 11, 1992. Applicants are encouraged to attend the workshop in their region. The regional meetings are scheduled to be held as follows:

October 13–14: Philadelphia, Pennsylvania, at a hotel to be announced. Those who are interested in attending the workshop and who reside in one of the following States are encouraged to attend the Northeast Regional Workshop: CT, DE, ME, MD, MA, NH, NJ, NY, OH, PA, RI, VT. Interested persons should contact Larry McCullough, Northeast Regional Center for Drug-Free Schools and Communities, 12 Overton Avenue, Sayville, NY 11782. Telephone: (516) 589–7022.

October 19–20: Washington, DC, at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008. Those who are interested in attending the workship and who reside in one of the following States are encouraged to attend the Southeast Regional Workship: AL, DC, FL, GA, KY, NC, PR, SC, TN, VA, VI, WV. Interested persons should contact Paula Flannery, Southeast Regional Center for Drug-Free Schools and Communities, Spencerian Office Plaza, University of Louisville, Louisville, KY 40292. Telephone: (502) 588–0052.

October 22–23: Dallas, Texas, at the Harvey Hotel DFW, 4545 West John Carpenter Freeway, Irving, Texas 75063. Those who are interested in attending the workshop and who reside in one of the following States are encouraged to attend the Southwest Regional Workshop: AZ, AR, CO, KS, LA, MS, NM, OK, TX, UT. Interested persons should contact Debbie Blasiar, Southwest Regional Center for Drug-Free Schools and Communities, The University of Oklahoma, 555 Constitution, Suite 138, Norman, OK 73037–0005. Telphone: (800) 234–7972.

October 28–27: St. Louis, Missouri, at the Henry VIII Hotel, 4690 N. Lindberg, St. Louis, Missoui 63044. Those who are interested in attending the workshop and who reside in one of the following States are encouraged to attend the Midwest Regional Workship: IN, IL, IA, MI, MN, MO, NE, ND, SD, WI. Interested persons should contact Donna Wagner, Midwest Regional Center for Drug-Free Schools and Communites, 1900 Spring Road, Oak Brook, IL 60521. Telphone: (708) 571–4710.

October 29–30: San Francisco, California, at the San Francisco Airport Marriott Hotel, 1800 Old Bayshore Highway, Burlingame, California 94010. Those who are interested in attending the workshop and who reside in one of the following States are encouraged to attend the Western Regional Workshop: AK, American Samoa, CA, Guam, HI, ID, MT, NV, CM, OR, Republic of Palau, WA, WY. Interested persons should contact Evelyn Lockhart, Western Regional Center for Drug-Free Schools and Communities, 101 S.W. Main Street, Suite 500, Portland, OR 97204. Telephone: (503) 275–9475.

FOR FURTHER INFORMATION CONTACT: Carol Chelemer, Division of Drug-Free Schools and Communities, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202–6439. Telephone: (202) 401–1599. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800–877–8339 (in the Washington, DC area (202) 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Dated: August 14, 1992.

John MacDonald,

Assistant Secretary, Elementary and Secondary Education

[FR Doc. 92–20024 Filed 8–20–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Prepare the Hanford Remedial Action Environmental Impact Statement, Richland, WA

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement and to conduct public scoping meetings.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare the Hanford Remedial Action Environmental Impact Statement (HRA-

EIS) to assess the potential environmental consequences of the alternatives for conducting a remedial action program at the Hanford Site near Richland, Washington, and to conduct a series of public scoping meetings pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*).

The purpose of the Hanford Remedial Action Program is to achieve remediation of inactive hazardous, low-level and high-level radioactive, transuranic (TRU), and mixed (hazardous and radioactive) waste sites, according to a schedule agreed upon by DOE, the U.S. Environmental Protection Agency (EPA), and the Washington State Department of Ecology (Ecology) in the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement or TPA). The HRA-EIS will be prepared to evaluate alternatives for conducting this remedial action program. The HRA-EIS will include discussions regarding treatment, storage, and disposal options, including the location and approximate sizes and types of facilities required for managing the hazardous, radioactive, and mixed wastes from sites requiring remediation and various future site use/cleanup strategies. The HRA-EIS will evaluate a range of remediation approaches and technologies and their application to various site conditions to estimate the potential cumulative impacts associated with the different alternatives for environmental remediation, including those relevant impacts from other past, present, and reasonably foreseeable activities at the site. Actual site-by-site remediation decisions will be made through the process defined in the TPA. DOE intends its estimates to bound the impacts associated with those decisions in the HRA-EIS so that such future decisions can be made within the framework established by the HRA-EIS Record of Decision (ROD). Pollution prevention and waste minimization measures will be factored into the alternatives to be analyzed.

It is DOE policy, under DOE Order 5400.4, to integrate the values of NEPA with the procedural and documentation requirements of CERCLA, whenever practicable. However, nothing in this Notice, or in other documents to be prepared, is intended to represent a statement on the legal applicability of NEPA to remedial actions under CERCLA.

DATES: The public is invited to submit written comments on the scope of the HRA-EIS. Public scoping meetings for oral comments will begin in September 1992. Dates, times, and locations of the public scoping meetings are provided in the section entitled Locations of Public Scoping Meetings of this Notice. The public comment period will continue until November 25, 1992. To ensure consideration in preparation of the EIS, written comments should be postmarked by November 25, 1992. Comments received after this date will be considered to the extent practicable

ADDRESSES: Written comments on the scope of the HRA-EIS, requests to speak at the scoping meetings, questions concerning the HRA program, and requests for copies of the draft HRA-EIS should be directed to: Mr. Roger D. Freeberg, Chief, G6-75, Environmental Programs Branch, U.S. Department of Energy, P.O. Box 550, Richland, WA 99352, (800) 786-2018, Fax comments to: (509) 943-6812.

For information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION:

Background

The Hanford Site is a major DOE site, established in 1943 for the production of nuclear materials for national defense. Operations at the Hanford Site have generated a variety of hazardous, low-level and high-level radioactive, TRU, and mixed wastes. Past waste management practices have led to environmental problems that now require remediation under applicable Federal and State of Washington requirements and guidelines. More recently, programs at Hanford have become increasingly diverse, involving research and development for advanced reactors and renewable energy technologies. DOE has phased out defense production at Hanford and is focusing on environmental restoration, remediation technology demonstration, and waste management.

DOE established the Office of Environmental Restoration and Waste Management (EM) to consolidate the Department's environmental restoration and waste management activities. DOE is preparing a Programmatic Environmental Impact Statement (EM-PEIS) on the integrated environmental restoration and waste management program proposed for virtually all DOE facilities. The EM-PEIS will provide the primary basis for waste management and environmental restoration decision making at DOE facilities, including the Hanford Site. The EM-PEIS will not provide site-specific remedial action alternatives or analysis of impacts related to those alternatives. The HRA-EIS will tier from the EM-PEIS to facilitate site-specific decision making and to ensure Hanford's consistency with overall DOE environmental restoration objectives based on the EM-PEIS. Because of the close timing between the HRA-EIS and the EM-PEIS, preparation of the two documents will be coordinated.

The Regulatory Framework

The TPA is an interagency agreement among DOE, EPA and Ecology that sets milestones to achieve coordinated cleanup of the Hanford Site over a 30-year period. The TPA provides a legal and procedural framework for site cleanup and regulatory compliance during the cleanup process. The HRA-EIS will evaluate alternatives and environmental impacts for accomplishing a remediation program of past-practice sites at Hanford that is based on the TPA.

There are a number of Federal and State laws of major importance to environmental restoration and waste management activities at Hanford. These include, among others, the Atomic Energy Act of 1954, as amended; the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended; and the Resource Conservation and Recovery Act of 1976 (RCRA), as amended. The Atomic Energy Act requires the management, processing, and utilization of radioactive materials in a manner that protects public health and the environment. CERCLA requires responses to releases or threatened releases of hazardous substances into the environment, and establishes a process to clean up hazardous substances at sites that may present an imminent and substantial endangerment to public health or welfare or the environment. RCRA regulates the management of hazardous waste currently being generated, including the treatment, storage, disposal, and transportation of waste from the cleanup of releases from past and present operations that pose a threat to human health and to the environment. The TPA requires that cleanup programs at Hanford Site integrate the requirements of the CERCLA and RCRA programs.

Wastes are categorized in accordance with Federal statutes and regulations and DOE Orders. Low-level, high-level, transuranic, and mixed wastes are defined in DOE Order 5820.2A (Radioactive Waste Management). Hazardous substances under CERCLA include any substances designated by EPA in 40 CFR part 302, including RCRA hazardous wastes. Hazardous wastes are those wastes that are defined as hazardous by the EPA regulations implementing RCRA (40 CFR part 261), and by applicable State regulations. The EPA has authorized the State of Washington Dangerous Waste Program to operate the base RCRA program in lieu of EPA, but EPA has retained authority for RCRA Corrective Action activities and certain other matters.

Current Practices for Environmental Restoration

A schedule and process for characterization and remediation of environmental contamination was agreed upon by DOE, EPA, and Ecology through the signing of the TPA on May 15, 1989.

Preliminary site characterization has resulted in the cataloging of over 1,100 past-practice waste sites located in four National Priority List (NPL) sites on the Hanford Site. These NPL sites were designated by the EPA and have been named the 100, 200, 300, and 1100 Area sites, respectively. These include the operating areas and the adjacent undeveloped portions of the Hanford Site. The past-practice waste sites have been grouped into 78 CERCLA or RCRA operable units, which vary widely in character. The HRA-EIS will address proposed remedial actions and the implementation of corrective measures at these past-practice waste sites, which are categorized into 74 source and 4 groundwater operable units. Site remediation will be conducted over a period of about 30 years, according to the TPA schedule. The scope of remediation activities will depend, in part, upon continuing negotiations between DOE, EPA, and Ecology, as set forth in the TPA.

The scope of the TPA includes CERCLA Remedial Investigation/Feasibility Study (RI/FS) and RCRA Facility Investigation/Corrective Measures Study (RFI/CMS) processes. The RI phase of CERCLA remediation decision making process includes activities performed to characterize the site and to determine the nature and extent of contamination. This phase also identifies the applicable or relevant and appropriate requirements (ARARs), and includes a baseline risk assessment for the proposed action. Data collected during the RI phase influence the development of the remedial action alternatives in the FS phase.

The FS includes the screening of remediation technologies, identification and screening of response alternatives, development of general performance criteria for each alternative, and detailed evaluation and comparison of alternatives consistent with both CERCLA and NEPA. Under DOE's integration policy, the CERCLA process will incorporate the values of NEPA.

The RCRA RFI/CMS process is within the scope of the TPA because some of the operable units include RCRA treatment, storage, and disposal (TSD) facilities. The TPA integrates activities related to both RCRA corrective actions and RCRA TSD activities. The RFI/CMS is a site characterization study, analogous to the CERCLA RI/FS, that is conducted prior to taking corrective action under RCRA.

The TPA requires that cleanup programs at the Hanford Site integrate both CERLA and RCRA requirements. The on-going investigations will provide the data needed to determine appropriate remediation methods. Future site use/cleanup strategy issues and available remediation technology will help determine appropriate levels of cleanup.

An additional strategy for addressing site cleanup, called the Hanford Past Practice Investigation strategy, has been proposed. Under this strategy, operable units would be grouped into aggregate areas. Based on site characterization using existing data, the need for early remedial action to reduce risks would be determined. Additional limited site characterization would be conducted under the limited field investigation process if uncertainties involving data or its interpretation could be reduced by the studies. This strategy contains a "bias for action," whereby sites exhibiting the highest risk potential are remediated first, while remedial action is delayed at other contaminated sites as additional studies are conducted.

Early remedial actions will be conducted where data indicate such activities are warranted.

Expedited Response Actions (ERAs) will be conducted where appropriate to reduce a short-term risk due to an actual or threatened release from a past-practice unit. ERAs are on-site response actions, either removal actions or interim corrective measures, performed to prevent suspected, existing, or potential unacceptable risks to human health or the environment. To the extent possible, ERAs will be consistent with the final HRA-EIS alternatives selected for remedial action.

Interim Remedial Measures (IRMs) are on-site responses conducted pursuant to CERCLA involving interim remedial actions instituted before initiation of final remedial action. The decision to perform IRMs may be made where extensive site characterization is not necessary. A limited feasibility study may be required to aid in the selection of an appropriate remediation technique. DOE may need to conduct IRMs before completing the HRA-EIS.

Preliminary Description of Alternatives

Proposed Action. The proposed action is to accomplish an integrated remedial action cleanup program for inactive past-practice waste sites at the Hanford Site. The HRA-EIS will evaluate and document the potential cumulative environmental impacts associated with alternative remedial action strategies for the Environmental Restoration program at Hanford. The HRA-EIS will tier from, and be coordinated with the EM-PEIS, as appropriate. Additional NEPA reviews for individual cleanup projects will tier from the HRA-EIS and be integrated with the CERCLA process.

A CERCLA RI/FS or a RCRA RFI/CMS will be prepared for each operable unit. This process will characterize the waste types contained in each waste unit and evaluate remediation methods for each operable unit. Remedial action alternatives to be considered will depend in part on the waste type (low-level, high-level, TRU, mixed or hazardous).

The HRA-EIS will evaluate a range of reasonable remedial action alternatives to accomplish the scope of the TPA within the framework of potential future site use/cleanup strategies. The strategies will be relevant to determining both the applicable cleanup criteria for each operable unit and the degree of institutional control required to protect human health and the environment. Remedial actions will be determined on a site-by-site basis in order to comply with applicable requirements. A preliminary range of remedial action alternatives has been identified for consideration of the HRA-EIS. The range includes the following:

Engineering and Institutional Controls. Institutional and engineering control alternatives would be used to minimize exposure to contaminants. In the analysis of risk, active institutional controls will be assumed to become ineffective after 100 years. After that time period, DOE assumes that physical controls alone determine the potential exposure of humans, wildlife, and habitat to contaminants. This alternative would not involve transportation of waste for off-site treatment and disposal. The use of land and water resources would be restricted as necessary.

Engineering controls will include measures such as earthen control structures and vegetation, and large

highly-engineered barriers of concrete, stone, and steel. Available and new in-place treatment technologies will also be considered for control of contaminants.

Institutional controls include measure that limit access to contaminated areas, such as fences or land use restrictions. Pumping to serve as hydraulic barriers to groundwater migration and monitoring will also be considered institutional control activities.

Full Removal and Treatment. These alternatives will be based on remediating sites and facilities using available or new technologies to treat contaminants after removal. Treatment could be performed on-site or off-site in permitted facilities.

Pumping ground water and excavating soil are often required under these alternatives. In addition, transporting contaminated materials by road and rail is envisioned. Constructing and operating on-site or off-site treatment, storage, and disposal (TSD) facilities are also elements of these alternatives.

Although engineering controls may be used as temporary or supplemental measures to allow or enhance treatment or removal of contaminated material, institutional and engineering controls will not be considered in this alternative where effective removal and treatment methods are available.

Combination of Treatment and Controls. These alternatives include the use of treatment, engineering controls, institutional controls, innovative technologies, or a combination of these methods to accomplish remediation. It is anticipated that these alternatives will result in some transportation and off-site disposal of specific contaminated materials, while other materials will be left in place with varying degrees of control, depending on the risks they pose.

No Action. The no-action alternative will consist of an assessment of the environmental impacts if remedial action activities are not conducted. This alternative will be used to establish a baseline against which the cumulative effects of the other alternatives for remedial action may be evaluated. Implementation of the no-action alternative could result in migration of contaminants into previously uncontaminated areas. The potential risk to human health and the environment is minimal under current control and management of the Site. However, changes to the control and management of the Hanford Site in the future could result in significantly greater risks. The implementation of this alternative at some sites would be contrary to the mandates of some applicable requirements and the TPA. Analysis of the no-action alternative is required by the Council on Environmental Quality regulations implementing NEPA. Analysis of the no-action alternative is also required on an operable unit basis by EPA's CERCLA regulations/guidelines for Feasibility Studies.

Identification of Environmental Issues

DOE has identified the issues listed below as topics to be addressed in the HRA–EIS. The scoping process may identify additional issues.

1. Suitable waste disposal facilities will be required for the waste that will be generated during environmental remediation. Final disposition of waste will be considered in conjunction with future site use/cleanup strategy issues.
2. Waste treatment technologies need to be developed in support of the environmental remediation program. The potential impacts, both beneficial and adverse, of implementing existing and developing technologies for waste treatment and environmental remediation need to be evaluated.
3. Analysis of the remedial action alternatives to achieve environmental remediation must include the consideration of beneficial and adverse health impacts to both workers and the public. Potential impacts to the environment, both beneficial and adverse, from remediation activities need to be evaluated.
4. Cumulative impacts associated with the remedial action alternatives for the Hanford Site need to be evaluated. The EIS will analyze the impacts from ongoing and proposed environmental restoration activities and will evaluate alternatives for such activities. The potential cumulative impacts associated with the different alternatives for environmental restoration, including those relevant impacts from other past, present, and reasonably foreseeable activities at the Hanford Site, will be included in the EIS.
5. The commitment of natural and other resources, and the socioeconomic impacts related to the implementation of a remedial action program at the Hanford Site, need to be evaluated.
6. Potential issues relative to mitigative measures and monitoring will be considered. These issues may include, but are not limited to, the establishment or restoration of habitat, potential disturbance of cultural resources, a phased approach to remediation that considers the seasonal nature of wildlife and habitat, wetlands preservation, and the effects on threatened and endangered species.
7. Potential future land use issues will be considered, such as institutional controls and project-specific cleanup criteria that will also be analyzed during the RI/FS remedial response selection process. At this time, DOE intends to maintain control of the Hanford Site.
8. Pollution prevention and waste minimization measures will be factored into the remedial action alternatives to be analyzed.

Public Scoping Meetings and Invitation to Comment

DOE is committed to providing opportunities for involvement by individuals and organizations in this and other DOE planning activities. To ensure that a full range of issues related to this proposal are addressed, DOE invites oral and written comments on the scope of the HRA–EIS from all interested parties. Written comments should be submitted according to the instructions provided above under **DATES** and **ADDRESSES.** Individuals and organizations may present oral comments at the public scoping meetings to be held in the region, as described below. Written and oral comments will be given equal weight in defining the scope of the HRA–EIS and the issues to be addressed.

The scoping meetings will begin with a welcome and introduction, followed by short presentations by DOE officials on the EIS process and the Environmental Restoration Program at Hanford and informal small group discussions on topics of concern. Individuals and organization spokespersons will then have an opportunity to present oral comments to DOE representatives. The agenda will be exercised twice a day at each location, in afternoon and evening sessions.

The informal small group discussions may cover different topics at each session. DOE representatives will present summaries of comments for each topic to all meeting participants at the conclusion of the small group discussions. These summaries will be recorded by a court reporter and will be included in the scoping meeting record.

The meetings will be chaired by a presiding officer. DOE will not conduct the scoping meetings as evidentiary hearings and will not cross-examine the speakers. However, the presiding officer and DOE representatives may ask clarifying questions. Individuals requesting to speak on behalf of an organization must identify the organization. To ensure that all who wish to speak have an opportunity, a 5-minute limit will be imposed on each individual speaker and a 10-minute limit on speakers representing organizations. As with the summaries of comments presented in the small group discussions, these comments will be recorded by a court reporter and will become part of the scoping meeting record. Speakers are encouraged to provide a written copy of their oral comments for the record during the meeting. Written comments will also be accepted at the meeting.

After the public scoping process, an HRA–EIS Implementation Plan will be prepared, announced in the **Federal Register**, and made available to the public. The Implementation Plan will record the results of the scoping process and describe the alternatives and issues to be evaluated in the HRA–EIS. DOE intends to complete the draft HRA–EIS in mid-1994. Availability of the draft HRA–EIS will be announced in the **Federal Register**, and public comments will be solicited. Comments on the draft HRA–EIS will be considered in identifying and evaluating issues and alternatives and in preparing the final HRA–EIS. DOE expects to issue the final EIS, including responses to public comments received on the draft EIS, by mid-1995. DOE will select a remedial action alternative for the Hanford Site in the ROD to be issued no sooner than 30 days after the final EIS is issued. Following completion of the EIS and ROD, a Mitigation Action Plan (MAP) that addresses any mitigation commitments expressed in the ROD will be prepared. No action directed by the ROD that is the subject of a mitigation commitment will take place before the MAP is prepared.

Locations of Public Scoping Meetings

Public scoping meetings will be held beginning in September 1992 at the locations, dates, and times listed below. The meetings will also be announced in local public media, approximately 15 days in advance.

Spokane, Washington—September 29, 1992, 12:30–5 pm and 6:30–10:30 pm, West Coast Ridpath Hotel, West 515 Sprague Avenue.

Pasco, Washington—October 1, 1992, 12:30–5 pm and 6:30–10:30 pm, Red Lion Inn/Pasco, 2525 North 20th Avenue.

Seattle, Washington—October 5, 1992, 12:30–5 pm and 6:30–10:30 pm, Sheraton Seattle Hotel & Towers, 1400 Sixth Avenue.

Portland, Oregon—October 8, 1992, 12:30–5 pm and 6:30–10:30 pm, Red Lion Hotel/Lloyd Center, 1000 North East Multnomah Street.

Other Related NEPA Documentation

A number of NEPA documents may be relevant to environmental restoration issues at the Hanford Site and be of interest to the public. These documents have been planned by (or prepared in consultation with) DOE, and are in various stages of preparation or have been completed. These documents include, but are not limited to:

1. Final Environmental Impact Statement, Disposal of Hanford Defense High-Level, Transuranic and Tank Wastes, Hanford Site, Richland, Washington

DOE/EIS–0113, December 1987, U.S. Department of Energy, Washington, DC. The Hanford Defense Waste Environmental Impact Statement (HDW–EIS) was prepared to develop a waste disposal alternative for the high-level, transuranic, and tank waste generated by defense production activities at the Hanford Site. In the ROD, issued in April 1988, DOE identified the preferred alternative based on the Final HDW–EIS. This alternative consists of proceeding with disposal actions for double-shell tank waste and retrievably-stored and newly generated TRU-contaminated solid waste, but deferring disposal decisions on single-shell tank waste, pre-1970 buried suspect TRU-contaminated solid waste, and TRU-contaminated soil sites. This alternative includes such actions as construction and operation of the Hanford Waste Vitrification Plant (HWVP), a pretreatment facility, a group facility for disposal of the double-shell tank waste, and construction and operation of a waste receiving and packaging facility to prepare TRU-contaminated solid wastes for shipment to an off-site TRU waste repository for disposal (projected to be the Waste Isolation Pilot Plant near Carlsbad, NM). DOE plans to announce shortly its intention to prepare an EIS to address tank safety issues and to assess the impacts of disposal alternatives for single-shell tank waste generated by defense production activities at the Hanford Site.

2. Final Environmental Impact Statement, Decommissioning of Eight Surplus Production Reactors at the Hanford Site, Richland, Washington

DOE/EIS–0119. U.S. Department of Energy, Washington, DC. The Surplus Production Reactor Decontamination and Decommissioning Environmental Impact Statement (SPRD–EIS) was prepared to analyze the potential impacts of decommissioning the eight surplus production reactors at the Hanford Site. DOE plans to issue the final EIS in 1992.

3. The Hanford Reach Study (P.L. 100–605) Comprehensive River Conservation Study Environmental Impact Statement—Hanford Reach of the Columbia River

The Hanford Reach EIS is being prepared by the National Park Service (in consultation with DOE) to determine the preferred alternative to protect the natural qualities of the Hanford Reach of the Columbia River. Decisions reached in this document may affect future site use/cleanup strategy issues on areas of the Hanford Site immediately adjacent to, and north of, the Columbia River. The DEIS was issued for public comment on July 10, 1992. The comment period will close on October 9, 1992.

4. Programmatic Environmental Impact Statement for Environmental Restoration and Waste Management (EM–PEIS)

The EM–PEIS is being prepared to analyze DOE's proposed integrated environmental restoration and waste management program and alternatives. It will provide a basis for waste management practices and remediation strategies at all DOE facilities, but it will not discuss site-specific remedial action alternatives or their impacts. The HRA–EIS will be coordinated with and tier from the EM–PEIS to assess site-specific issues, alternatives, and impacts of environmental restoration.

5. Programmatic Environmental Impact Statement for Reconfiguration of the Nuclear Weapons Complex (NWC–PEIS)

The NWC–PEIS is being prepared to analyze long-term reconfiguration strategies and evaluate those strategies against the consequences of maintaining the existing facilities. Implementation of a reconfiguration strategy could change Hanford's missions, and thereby change waste management requirements. DOE recently announced its decision to incorporate analysis of proposed new tritium production capacity in the NWC–PEIS.

These documents and other related information are or will be available at the DOE Public Reading Room, 825 Jadwin Avenue, Federal Building, room 157, Richland, WA 99352, Monday through Friday, during business hours (8 am–12 pm, 1–4:30 pm). When completed, copies of the scoping meeting transcripts, the implementation plan, and major references used in preparing the HRA–EIS will also be available

during normal business hours at the DOE Public Reading Room. The transcript of each scoping meeting will be retained by DOE, and a copy of each scoping meeting transcript will be made available for inspection at the Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, during business hours (9 am–4 pm). In addition, anyone may make arrangements to purchase a copy.

Those persons who do not wish to submit comments or suggestions during the scoping period but who would like to receive a copy of the draft EIS for review and comment may notify Roger Freeberg at the address listed above.

Issued in Washington, DC, this 14th day of August 1992.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 92–20048 Filed 8–20–92; 8:45 am]

BILLING CODE 6450–01–M

Hydrogen Technical Advisory Board; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, as amended), notice is hereby given of the following advisory committee meeting:

NOTICE: Hydrogen Technical Advisory Panel (HTAP).

DATES AND TIMES: Monday, September 14, 1992, 1 p.m.–5:30 p.m. Tuesday, September 15, 1992, 8:30 a.m.–4:30 p.m.

PLACE: Doubletree Hotel Crystal City, Potomac View Room, 300 Army Navy Drive, Arlington, VA 22202.

CONTACT: Russell Eaton, Designated Federal Official, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–1506.

PURPOSE: The Hydrogen Technical Advisory Panel will advise the Secretary of Energy who has the overall management responsibility for carrying out the programs under the Matsunaga Hydrogen Research, Development, and Demonstration Program Act of 1990, Public Law 101–566. The Panel will review and make any necessary recommendations to the Secretary on the following items: (1) The implementation and conduct of programs required by the Act, (2) the economic, technological, and environmental consequences of the deployment of hydrogen production and use systems, and (3) the contents of the comprehensive 5-year program required by the Act.

Tentative Agenda

Monday, September 14, 1992

1 p.m. Introductions—All
1:15 p.m. Opening Remarks/Agenda—Chm. J. Birk, EPRI
1:45 p.m. DOE Report—R. Eaton/Other
5 Year Plan
Response to HTAP's Guidance
Funding
New Business
2:30 p.m. Break
3 p.m. Vision I: Long-Term Strategic Outlook—DOE
3:30 p.m. Vision II: Canadian Perspective—HIC
4 p.m. Vision III: Hydrogen/Electricity: Complementary Energy Carriers NHA
4:30 p.m. Public Comments: Vision/Strategy for Hydrogen—Public
5:30 p.m. Adjourn

Tuesday, September 15, 1992

8:30 a.m. Continental Breakfast
9 a.m. Plans and Next Meeting—Chm. J. Birk
9:15 a.m. R&D Review—NASA—A. Bain
9:45 a.m. Discussion of NASA Program—All
10:15 a.m. Break
10:45 a.m. Discussion of Visions/Develop Consensus—All
12:15 p.m. Consensus Vision/Analyses Needs—Chm. J. Birk
12:30 p.m. Lunch—All
1:30 p.m. R&D Review-Biofuels from Solid Wastes—D. Walter, DOE
2 p.m. R&D Review-Biomass Gasification for Liquid Fuels—R. Moorer, DOE
2:30 p.m. Break
3 p.m. Concluding Discussion—All
4:30 p.m. Adjourn

Public Participation

The meeting is open to the public. The Chairman of the HTAP is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business.

Any member of the public who wishes to make an oral statement (10 minutes or less) pertaining to agenda items should contact the Designated Federal Officer at the address or telephone number listed above. Requests must be received before 3 pm (e.d.t.) Monday, September 7, 1992, and reasonable provision will be made to include the presentation during the public comment period. It is requested that oral presenters provide 15 copies of their statements at the time of their presentations.

Written testimony pertaining to agenda items may be submitted prior to the meeting. Written testimony must be received by the Designated Federal Officer at the address shown above before 5 p.m. (e.d.t.) Monday, September 7, 1992, to assure it is considered by Task Force members during the meeting.

Minutes

A transcript of the open, public meeting will be available for public review and copying approximately 30 days following the meeting at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays.

Issued: Washington, DC, on: August 17, 1992.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 92–20049 Filed 8–20–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ST92–4200–000 through ST92–4617–000]

Transok Gas Transmission Co.; Self-Implementing Transactions

July 30, 1992.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA) and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST92–4200	Transok Gas Transmission Co.	Natural Gas P/L Co. of America.	06–01–92	C	20,000	N	I	03–1–91	Indef.
ST92–4201	Williston Basin Inter. P/L Co.	Amerada Hess Corp	06–01–92	G–S	25,000	N	I	05–01–92	06–30–92
ST92–4202	United Gas Pipe Line Co	Polaris Pipeline Corp	06–01–92	G–S	20,960	N	I	05–12–92	09–09–92
ST92–4203	United Gas Pipe Line Co	Graham Energy Marketing Corp.	06–01–92	G–S	125,760	N	I	05–18–92	09–15–92
ST92–4204	Florida Gas Transmission Co.	Florida Public Utilities Co	06–01–92	G–S	5,500	N	I	05–01–92	05–31–92
ST92–4205	Midwestern Gas Transmission Co.	Peoples Gas Light & Coke Co.	06–01–92	B	20,000	N	I	05–01–92	Indef.
ST92–4206	Tennessee Gas Pipeline Co.	Chautauga Energy Marketing, Inc.	06–01–92	G–S	500	N	I	05–11–92	Indef.
ST92–4207	Tennessee Gas Pipeline Co.	Capital Gas Distribution Co., Inc.	06–01–92	B	2,000 000	N	I	05–02–92	Indef
ST92–4208	Natural Gas P/L Co. of America.	Entex, Div. of Arkla, Inc	06–01–92	B	10,000	N	F	05–01–92	11–30–94
ST92–4209	Natural Gas P/L Co. of America.	Iowa Electric Light and Power Co.	06–01–92	B	50,000	N	I	05–01–92	Indef
ST92–4210	United Gas Pipe Line Co	Fina Natural Gas Co	06–01–92	G–S	104,800	N	I	05–20–92	09–17–92
ST92–4211	United Gas Pipe Line Co	Endevco Oil & Gas Co	06–01–92	G–S	26,200	N	I	05–21–92	09–18–92
ST92–4212	United Gas Pipe Line Co	Exxon Corp	06–01–92	G–S	104,800	N	I	05–01–92	08–29–92
ST92–4213	United Gas Pipe Line Co	BG Exploration America, Inc.	06–01–92	G–S	52,400	N	I	05–13–92	09–10–92
ST92–4214	United Gas Pipe Line Co	Chevron U.S.A. Inc	06–01–92	G–S	104,800	N	I	05–12–92	09–09–92
ST92–4215	United Gas Pipe Line Co	Cowboy Pipeline Service Co.	06–01–92	G–S	5,240	N	I	05–18–92	09–15–92
ST92–4216	United Gas Pipe Line Co	Texaco Gas Marketing Inc.	06–01–92	G–S	209,600	N	I	05–21–92	09–18–92
ST92–4217	United Gas Pipe Line Co	Shell Gas Trading Co	06–01–92	G–S	209,800	N	I	05–20–92	09–17–92
ST92–4218	Gateway Pipeline Co	Mobil Natural Gas Inc	06–01–92	G–S	400,000	N	I	05–13–92	09–10–92
ST92–4219	United Gas Pipe Line Co	Rally Pipeline Corp	06–01–92	G–S	59,736	N	I	05–14–92	09–11–92
ST92–4220	United Gas Pipe Line Co	Phibro Energy USA Inc	06–01–92	G–S	314,400	N	I	05–21–92	09–18–92
ST92–4221	United Gas Pipe Line Co	Scana Hydrocarbons, Inc	06–01–92	G–S	100,000	N	I	05–12–92	09–09–92
ST92–4222	Mississippi River Trans. Corp.	Exxon Co., U.S.A	06–01–92	G–S	45,000	N	I	05–21–92	Indef.
ST92–4223	Texas Gas Transmission Corp.	Polaris Pipeline Corp	06–01–92	G–S	445,000	Y	I	05–16–92	Indef
ST92–4224	Texas Gas Transmission Corp.	Access Energy Corp	06–01–92	G–S	100,000	N	I	05–20–92	Indef.
ST92–4225	Texas Gas Transmission Corp.	Access Energy Corp	06–01–92	G–S	100,000	N	I	05–21–92	Indef.
ST92–4226	Gas Co. of New Mexico	El Paso Natural Gas Co	06–02–92	G–HT	10,000	N	I	05–01–92	04–30–93
ST92–4227	Tennessee Gas Pipeline Co.	Equitrans Inc	06–02–92	G	5,000	N	F	05–23–92	Indef.
ST92–4228	Tennessee Gas Pipeline Co.	North Canadian Marketing Corp.	06–02–92	G–S	150,000	N	I	05–24–92	Indef.
ST92–4229	Tenessee Gas Pipeline Co.	Equitable Resources Marketing Co.	06–02–92	G–S	307,000	N	I	05–03–92	Indef.
ST92–4230	ONG Transmission Co	Phillips Gas Pipeline Co	06–02–92	C	20,000	N	I	005–06–92	Indef.
ST92–4231	Texas Eastern Transmission Corp.	Energy Consultants, Inc	06–03–92	G–S	50,000	N	I	04–01–92	Indef.
ST92–4232	Texas Eastern Transmission Corp.	Tenngasco Marketing Corp.	06–03–92	G–S	400,000	N	I	04–01–92	Indef.
ST92–4233	Texas Eastern Transmission Corp.	Channel Industries Gas Co.	06–03–92	B	15,000	N	I	04–01–92	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST92-4234	Texas Eastern Transmission Corp.	Phillips Gas Marketing Co..	06-03-92	G-S	90,000	N	I	05-21-92	Indef.
ST92-4235	Exxon Gas System, Inc.....	Sabine Pipeline Co	06-03-92	C	3,000	N	I	04-18-92	Indef.
ST92-4236	Exxon Gas System, Inc.....	Neches Gas Distribution Co.	06-03-92	C	5,000	N	I	05-01-92	Indef.
ST92-4237	Tennessee Gas Pipeline Co.	Pontchartrain Natural Gas System.	06-03-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4238	Kern River Gas Transmission Co.	Shell Western E&P Inc.....	06-03-92	G-S	100,000	N	I	05-06-92	Indef.
ST92-4239	Tennessee Gas Pipeline Co.	Pontchartrain Natural Gas System.	06-03-92	G-S	80,000	N	I	06-01-92	Indef.
ST92-4240	CNG Transmission Corp....	West Ohio Gas Co.....	06-03-92	B	20,000	N	I	05-06-92	Indef.
ST92-4241	CNG Transmission Corp....	Stand Energy Corp	06-03-92	G-S	120	N	I	05-16-92	Indef.
ST92-4242	AWR Pipelie Co.....	Clinton Gas Marketing, Inc.	06-03-92	G-S	10,000	N	I	05-12-92	Indef.
ST92-4243	AWR Pipeline Co	American Exploration Gas Systems.	06-03-92	G-S	300	N	I	05-08-92	Indef.
ST92-4244	AWR Pipeline Co	Howard Energy Co., Inc.....	06-03-92	G-S	100,000	N	I	05-11-92	Indef.
ST92-4245	AWR Pipeline Co	Access Energy Corp.....	06-03-92	G-S	50,000	N	I	05-09-92	Indef.
ST92-4246	AWR Pipeline Co	Northern Indiana Public Service Co.	06-03-92	G-S	100,000	N	I	05-05-92	Indef.
ST92-4247	Gulf Coast Natural Gas Co.	Phillips Gas Marketing Co..	06-04-92	C	50,000	N	I	05-23-92	Indef.
ST92-4248	Gulf Coast Natural Gas Co.	GC Marketing Co	06-04-92	C	50,000	N	I	05-08-92	Indef.
ST92-4249	Five Flags Pipe Line Co.....	Florida Gas Transmission Co.	06-04-92	C	1,000	N	I	12-01-91	12-30-91
ST92-4250	Five Flags Pipe Line Co.....	Florida Gas Transmission Co.	06-04-92	C	1,500	N	I	03-01-91	03-21-91
ST92-4251	Ong Transmission Co.....	Panhandle Eastern Pipeline Co.	06-04-92	C	20,000	N	I	05-06-92	Indef.
ST92-4252	Williston Basin Inter. P/L Co.	Western Gas Resources, Inc.	06-04-92	G-S	262,625	A	I	05-15-92	08-31-93
ST92-4253	K N Energy, Inc.....	Union Pacific Fuels, Inc.....	06-04-92	G-S	50,000	N	I	05-01-92	Indef.
ST92-4254	Columbia Gas Transmission Corp.	Krupp & Associates.....	06-05-92	G-S	194	Y	F	06-01-92	Indef.
ST92-4255	National Fuel Gas Supply Corp.	Three Rivers Pipeline Co...	06-05-92	G-S	10,000	N	I	05-05-92	09-02-92
ST92-4256	Tarpon Transmission Co....	Entrade Crop	06-05-92	G-S	50,000	N	I	04-01-92	G-S
ST92-4257	Tarpon Transmission Co....	Coast Energy Group, Inc....	06-05-92	G-S	30,000	N	I	05-01-92	Indef.
ST92-4258	Stingray Pipeline Co	Energy Marketing Exchange.	06-05-92	K-S	30,000	N	I	05-01-92	Indef.
ST92-4259	Lone Star Gas Co.....	Natural Gas P/L Co. of America.	06-08-92	C	50,000	N	I	05-01-92	Indef.
ST92-4260	Lone Star Gas Co.....	Tennessee Gas Pipeline Co.	06-08-92	C	50,000	N	I	05-01-92	Indef.
ST92-4261	East Tennessee Natural Gas Co.	Citizens Gas Supply Corp..	06-08-92	G-S	512,500	N	I	05-08-92	Indef.
ST92-4262	East Tennessee Natural Gas Co.	Transok Gas Co.....	06-08-92	G-S	25,000	N	I	05-18-92	Indef.
ST92-4263	East Tennessee Natural Gas Co.	Florida Steel Corp.....	06-08-92	G-S	5,000	N	I	05-12-92	Indef.
ST92-4264	Natural Gas P/L Co. of America.	Coastal Gas Marketing Co.	06-08-92	G-S	100,000	N	I	05-13-92	Indef.
ST92-4265	Natural Gas P/L Co. of America.	Eastex Gas Storage & Exchange, Inc.	06-08-92	G-S	500,000	N	I	05-11-92	Indef.
ST92-4266	Natural Gas P/L Co. of America.	Enron Gas Marketing, Inc..	06-08-92	G-S	150,000	N	I	05-14-92	Indef.
ST92-4267	Kern River Gas Transmission Co.	Southwest Gas Corp	06-08-92	G-S	250,000	N	I	05-07-92	Indef.
ST92-4268	Louisiana Resources Pipeline Co.	Texas Gas Trasmission Corp.	06-08-92	C	20,000	N	I	06-01-92	Indef.
ST92-4269	Louisiana Resources Pipeline Co.	Sea Robin Pipeline Co.....	06-08-92	C	50,000	N	I	06-01-92	Indef.
ST92-4270	Panhandle Eastern Pipe Line Co.	Citizens Gas and Coke Utility.	06-08-92	G-S	10,000	N	I	05-06-92	Indef.
ST92-4271	Panhandle Eastern Pipe Line Co.	Citizens Gas and Coke Utility.	06-08-92	G-S	19,736	N	I	05-06-92	Indef.
ST92-4272	Panhandle Eastern Pipe Line Co.	Citizens Gas and Coke Utility.	06-08-92	G-S	34,825	N	I	05-06-92	Indef.
ST92-4273	Gulf Energy Pipeline Co.....	Tennessee Gas Pipeline Co.	06-09-92	C	5,000	N	I	02-02-92	02-01-94
ST92-4274	Gulf Energy Pipeline Co.....	Natural Gas P/L Co. of America.	06-09-92	C	30,000	N	I	06-01-92	Indef.
ST92-4275	United Gas Pipe Line Co...	Shell Gas Trading Co.....	06-09-92	G-S	209,600	N	I	05-29-92	09-26-92
ST92-4276	United Gas Pipe Line Co...	Sigco Marketing, Inc.....	06-09-92	G-S	4,978	N	I	05-27-92	09-24-92
ST92-4277	Gateway Pipeline Co.....	Shell Gas Trading Co.....	06-09-92	G-S	200,000	N	I	06-01-92	09-29-92
ST92-4278	Panhandle Eastern Pipe Line Co.	Columbia Gas of Kentucky.	06-09-92	G-S	10,000	N	I	05-13-92	Indef.
ST92-4279	Stingray Pipeline Co.....	Exxon Corp	06-10-92	K-S	20,000	N	I	06-01-92	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST92-4280	Channel Industries	Anr Pipeline Co	06-10-92	C	70,000	N	I	06-01-92	Indef.
ST92-4281	Tennessee Gas Pipeline Co.	Aluminum Co. of America..	06-10-92	G-S	2,625	N	I	06-01-92	Indef.
ST92-4282	Kern River Gas Transmission Co.	National Energy Systems Co.	06-10-92	G-S	100,000	Y	I	05-13-92	Indef.
ST92-4283	Kern River Gas Transmission Co.	Southern California Gas Co.	06-10-92	G-S	200,000	N	I	05-16-92	Indef.
ST92-4284	Kern River Gas Transmission Co.	Sunrise Energy Co.....	06-10-92	G-S	100,000	N	I	05-13-92	Indef.
ST92-4285	Mississippi River Trans. Corp.	Associated Natural Gas, Inc.	06-10-92	G-S	15,000	A	I	06-01-92	Indef.
ST92-4286	Arkla Energy Resources	Kerr McGee Corp.....	06-10-92	G-S	100,000	N	I	03-01-92	Indef.
ST92-4287	Arkla Energy Resources	Premier Gas Co.....	06-10-92	G-S	50,000	N	I	03-01-92	Indef.
ST92-4288	Arkla Energy Resources	Gas Energy Development..	06-10-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-4289	Arkla Energy Resources	Exxon Corp	06-10-92	G-S	75,000	N	I	04-01-92	Indef.
ST92-4290	Arkla Energy Resources	Nimron Natural Gas Corp..	06-10-92	G-S	20,000	N	I	03-01-92	Indef.
ST92-4291	Arkla Energy Resources	Pacific Enterprises Oil Co..	06-10-92	G-S	25,000	N	I	03-01-92	Indef.
ST92-4292	Columbia Gas Transmission Corp.	Endevco Oil & Gas Co.....	06-10-92	G-S	680	Y	F	06-01-92	10-31-93
ST92-4293	Enogex Inc.....	Arkla Energy Resources	06-10-92	C	50,000	N	I	05-01-92	Indef.
ST92-4294	Enogex Inc.....	Panhandle Eastern Pipeline Co.	06-10-92	C	10,000	N	I	05-05-92	Indef.
ST92-4295	Colorado Interstate Gas Co.	Mountain Gas Resources, Inc.	06-10-92	G-S	50,000	N	I	04-10-92	Indef.
ST92-4296	Northern Natural Gas Co...	El Paso Natural Gas Co.....	06-10-92	G-S	400,000	N	F/I	04-24-92	Indef.
ST92-4297	Northern Natural Gas Co...	Howard Energy Co., Inc.....	06-10-92	G-S	100,000	N	F/I	05-02-92	Indef.
ST92-4298	Northern Natural Gas Co...	NGC Transportation, Inc....	06-10-92	G-S	200,000	N	F/I	05-01-92	Indef.
ST92-4299	Northern Natural Gas Co...	Michael Gas Marketing Co.	06-10-92	G-S	20,000	N	F/I	05-20-92	Indef.
ST92-4300	Northern Natural Gas Co...	Lone Star Gas Co	06-10-92	B	25,000	N	F/I	05-01-92	Indef.
ST92-4301	Northern Natural Gas Co...	Progas U.S.A., Inc.....	06-10-92	G-S	75,000	N	F/I	05-08-92	Indef.
ST92-4302	Northern Natural Gas Co...	Mobil Natural Gas Inc.....	06-10-92	G-S	100,000	N	F/I	05-15-92	Indef.
ST92-4303	Florida Gas Transmission Co.	Shell Gas Trading Co.....	06-11-92	G-S	30,000	N	F	05-15-92	05-14-93
ST92-4304	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc.....	06-11-92	G-S	10,000	N	F	05-01-92	10-31-92
ST92-4305	Colorado Interstate Gas Co.	Bridgegas U.S.A., Inc.....	06-11-92	G-S	50,000	N	I	05-04-92	Indef.
ST92-4306	Williston Basin Inter. P/L Co.	Koch Hydrocarbon Co.....	06-11-92	G-S	188,565	A	I	05-13-92	09-30-92
ST92-4307	Williston Basin Inter. P/L Co.	Koch Hydrocarbon Co.....	06-11-92	G-S	170,100	A	I	05-13-92	05-01-93
ST92-4308	Transok, Inc.....	Northern Natural Gas Co...	06-11-92	C	50,000	N	I	05-07-92	Indef.
ST92-4309	Transok, Inc.....	Black Marlin Pipeline Co....	06-11-92	C	150,000	N	I	03-01-92	Indef.
ST92-4310	Transok, Inc.....	Northern Natural Gas Co...	06-11-92	C	50,000	N	I	05-01-92	Indef.
ST92-4311	Transok, Inc.....	Arkla Energy Resources	06-11-92	C	500	N	I	05-14-92	Indef.
ST92-4312	Transok, Inc.....	Arkla Energy Resources	06-11-92	C	25,000	N	I	03-01-92	Indef.
ST92-4313	Tennessee Gas Pipeline Co.	Texas Power Corp	06-11-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4314	Tennessee Gas Pipeline Co.	Gasmark, Inc	06-11-92	G-S	30,000	N	I	06-01-92	Indef.
ST92-4315	Tennessee Gas Pipeline Co.	Entrade Corp	06-11-92	G-S	1,310,000	N	I	05-16-92	Indef.
ST92-4316	Tennessee Gas Pipeline Co.	Cornerstone Production Corp.	06-11-92	G-S	150,000	N	I	06-01-92	Indef.
ST92-4317	Tennessee Gas Pipeline Co.	Valley Gas Co.....	06-11-92	B	60,000	N	I	06-10-92	Indef.
ST92-4318	Tennessee Gas Pipeline Co.	Vigas Corp	06-11-92	G-S	110,000	N	I	05-31-92	Indef.
ST92-4319	South Georgia Natural Gas Co.	City of Colquitt.....	06-11-92	G-S	200	N	I	05-12-92	02-28-97
ST92-4320	Southern Natural Gas Co...	City of Tifton	06-11-92	G-S	664	N	I	04-01-92	03-01-97
ST92-4321	Southern Natural Gas Co...	City of Tallahassee	06-11-92	G-S	5,592	N	I	04-01-92	09-30-96
ST92-4322	Kern River Gas Transmission Co.	Westford Development, Inc.	06-11-92	G-S	15,000	N	I	05-13-92	Indef.
ST92-4323	Kern River Transmission Co.	National Gas Resources L.P.	06-11-92	G-S	50,000	N	I	05-16-92	Indef.
ST92-4324	Kern River Gas Transmission Co.	POCO Petroleums Ltd.....	06-11-92	G-S	100,000	N	I	05-15-92	Indef.
ST92-4325	Northern Natural Gas Co...	Louis Dreyfus Energy Corp.	06-12-92	G-S	100,000	N	I	06-02-92	Indef.
ST92-4326	Northern Natural Gas Co...	Mountain Front Pipeline Co., Inc.	06-12-92	G-S	25,000	N	I	05-20-92	Indef.
ST92-4327	Northern Natural Gas Co...	MG Natural Gas Corp.....	06-12-92	G-S	100,000	N	F/I	06-01-92	Indef.
ST92-4328	Northern Natural Gas Co...	Enron Oil & Gas Co	06-12-92	G-S	50,000	N	F/I	05-27-92	Indef.
ST92-4329	Questar Pipeline Co.....	Williams Gas Marketing.....	06-12-92	G-S	84,000	N	I	05-14-92	Indef.
ST92-4330	Questar Pipeline Co.....	Questar Energy Co	06-12-92	G-S	350,000	Y	I	05-26-92	Indef.
ST92-4331	Tennessee Gas Pipeline Co.	CNG Trading Co.....	06-12-92	G-S	650,000	N	I	05-20-92	Indef.
ST92-4332	Midwestern Gas Transmission Co.	Gasmark, Ltd	06-12-92	G-S	25,000	N	I	06-01-92	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST92-4333	Northwest Pipeline Corp	PWG Partnership	06-12-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4334	Texas Eastern Transmission Corp.	CMS Gas Marketing Co	06-12-92	G-S	500	N	I	05-29-92	Indef.
ST92-4335	Colorado Interstate Gas Co.	Continential Energy Co	06-12-92	G-S	380	N	I	05-12-92	Indef.
ST92-4336	Colorado Interstate Gas Co.	Texaco Gas Marketing Inc.	06-12-92	G-S	10,000	N	I	05-01-92	Indef
ST92-4337	Colorado Interstate Gas Co.	Enron Gas Marketing, Inc	06-12-92	G-S	75,000	N	I	05-01-92	Indef
ST92-4338	Consumers Power Co	Shell Western E&P	06-15-92	G-HI	20,000	N	I	05-15-92	Indef.
ST92-4339	Michigan Gas Storage Co	Shell Western E&P	06-15-92	B	20,000	N	I	05-15-92	Indef.
ST92-4340	Florida Gas Transmission Co.	Rinker Materials Corp	06-15-92	G-S	2,590	N	I	05-15-92	Indef.
ST92-4341	Florida Gas Transmission Co.	Southern Natural Gas Co	06-15-92	G-S	50,000	N	I	05-14-92	Indef.
ST92-4342	Louisiana Resources Pipeline Co.	Louisiana Gas Pipeline Co.	06-15-92	C	410,000	N	I	05-21-92	Indef.
ST92-4343	Transcontinental Gas P/L Corp.	Acadiana Natural Gas Co	06-15-92	B	125,000	N	I	07-16-91	Indef.
ST92-4344	Transcontinetal Gas P/L Corp.	Texas-Ohio Gas, Inc	06-15-92	B	17,000	N	I	06-22-90	Indef.
ST92-4345	Transcontinental Gas P/L Corp.	MG Natural Gas Corp	06-15-92	B	15,000	N	I	10-26-88	Indef.
ST92-4346	Transcontinental Gas P/L Corp.	Access Energy Corp	06-15-92	B	180,000	N	I	02-12-90	Indef.
ST92-4347	Tennessee Gas Pipeline Co.	Quivira Gas Co	06-15-92	G-S	240,000	N	I	06-01-92	Indef.
ST92-4348	Tennessee Gas Pipeline Co.	Oryx Gas Marketing L.P	06-15-92	G-S	31,500	N	I	06-04-92	Indef.
ST92-4349	Tennessee Gas Pipeline Co.	Texas Gas Transmission Corp.	06-15-92	G-S	50,000	N	I	06-03-92	Indef.
ST92-4350	Tennessee Gas Pipeline Co.	Louisiana Land and Exploration Co.	06-15-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4351	Tennessee Gas Pipeline Co.	Enermax	06-15-92	G-S	29,000	N	I	06-01-92	Indef.
ST92-4352	Tennessee Gas Pipeline Co.	Superior Natural Gas Corp.	06-15-92	G-S	50,000	N	I	06-04-92	Indef.
ST92-4353	Tennessee Gas Pipeline Co.	Catex Energy, Inc	06-15-92	G-S	102,600	N	I	06-02-92	Indef.
ST92-4354	Colorado Interstate Gas Co.	North Canadian Marketing Corp.	06-16-92	G-S	50,000	N	I	05-12-92	Indef.
ST92-4355	Michigan Gas Storage Co.	Citizens Gas & Coke Utility.	06-16-92	B	35,000	N	I	05-06-92	Indef.
ST92-4356	Northern Natural Gas Co	Interstate Power Co	06-16-92	B	1,000	N	I	06-01-92	05-31-93
ST92-4357	Northern Natural Gas Co	Michigan Gas Co	06-16-92	B	7,000	N	I	06-01-92	05-31-93
ST92-4358	Northern Natural Gas Co	Northern States Power Co.	06-16-92	B	55,000	N	F	06-01-92	05-31-93
ST92-4359	Northern Natural Gas Co	Wisconsin Gas Co	06-16-92	B	4,421	N	F	06-01-92	05-31-93
ST92-4360	Michigan Gas Storage Co	Consumers Power Co	06-16-92	B	50,000	Y	I	06-10-92	Indef.
ST92-4361	Consumers Power Co	CMS Gas Marketing Co	06-16-92	G-HT	50,000	N	I	06-10-91	Indef.
ST92-4362	Sabine Pipe Line Co	Premier Gas Co	06-16-92	G-S	50,000	N	I	05-01-91	Indef.
ST92-4363	Sabine Pipe Line Co	Olympic Fuels Co	06-16-92	G-S	50,000	N	I	05-01-91	Indef.
ST92-4364	Sabine Pipe Line Co	Olympic Fuels Co	06-16-92	G-S	50,000	N	I	04-21-91	Indef.
ST92-4365	United Gas Pipe Line Co	Texaco Gas Marketing Inc.	06-16-92	G-S	52,400	N	I	06-01-92	09-29-92
ST92-4366	United Gas Pipe Line Co	Texaco Gas Marketing Inc.	06-16-92	G-S	41,920	N	I	06-01-92	09-29-92
ST92-4367	United Gas Pipe Line Co	Entex	06-16-92	G-S	20,000	N	I	06-01-92	09-29-92
ST92-4368	United Gas Pipe Line Co	Arco Oil and Gas Co	06-16-92	G-S	15,720	N	I	05-27-92	09-24-92
ST92-4369	United Gas Pipe Line Co	Equitable Resources Marketing Co.	06-16-92	G-S	262,000	N	I	05-22-92	09-19-92
ST92-4370	United Gas Pipe Line Co	Enermax, Div. Of Nukem, Inc.	06-16-92	G-S	104,800	N	I	05-27-92	09-24-92
ST92-4371	United Gas Pipe Line Co	Arkla Energy Marketing Co.	06-16-92	G-S	209,600	N	I	06-01-92	09-29-92
ST92-4372	United Gas Pipe Line Co	Coastal Gas Marketing Co.	06-16-92	G-S	262,000	N	I	05-27-92	09-24-92
ST92-4373	United Gas Pipe Line Co	Access Energy Corp	06-16-92	G-S	41,920	N	I	05-22-92	09-19-92
ST92-4374	United Gas Pipe Line Co	Amoco Energy Trading Co.	06-16-92	G-S	60,000	N	I	06-01-92	09-29-92
ST92-4375	United Gas Pipe Line Co	Ames Financial, Inc	06-16-92	G-S	50,000	N	I	06-01-92	09-29-92
ST92-4376	United Gas Pipe Line Co	NGC Transportation, Inc	06-16-92	G-S	157,200	N	I	06-01-92	09-29-92
ST92-4377	United Gas Pipe Line Co	Tejas Hydrocarbons Co	06-16-92	G-S	157,200	N	I	06-03-92	10-01-92
ST92-4378	El Paso Natural Gas Co	Braod Street Oil & Gas Co.	06-17-92	G-S	10,527	A	I	05-28-92	Indef.
ST92-4379	El Paso Natural Gas Co	Kerr-McGhee Corp	06-17-92	G-S	10,300	A	I	06-03-92	Indef.
ST92-4380	Tennessee Gas Pipeline Co.	Energy Consultants, Inc	06-17-92	G-S	2,000	N	I	04-10-92	Indef.
ST92-4381	Kern River Gas Transmission Co.	Wes Cana Energy Marketing (U.S.).	06-17-92	G-S	50,000	N	I	05-23-92	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST92-4382	East Texas Gas Systems	Texas Gas Transmission Co.	06-17-92	C	100,000	N	I	11-01-92	Indef.
ST92-4383	Florida Gas Transmission Co.	Florida Public Utilities Co	06-17-92	G-S	8,164	N	F	06-01-92	Indef.
ST92-4384	Florida Gas Transmission Co.	City of Gainesville	06-17-92	G-S	8,800	N	F	06-01-92	Indef.
ST92-4385	Northern Natural Gas Co	Iowa Electric Light and Power Co.	06-17-92	B	20,000	N	F	06-01-92	Indef.
ST92-4386	Northern Natural Gas Co	Owatonna Public Utilities	06-17-92	B	1,669	N	F	06-01-92	05-31-93
ST92-4387	Northern Natural Gas Co	Metropolitan Utilities District.	06-17-92	B	10,000	N	F	06-01-92	05-31-93
ST92-4388	Texas Eastern Transmission Corp.	Ward Gas Marketing, Inc	06-17-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4389	Texas Eastern Transmission Corp.	Southern Connecticut Gas Co.	06-17-92	G-S	225,000	N	I	06-06-92	Indef.
ST92-4390	Texas Eastern Transmission Corp.	Tenngasco Marketing Corp.	06-17-92	G-S	400,000	N	I	06-01-92	Indef.
ST92-4391	Texas Eastern Transmission Corp.	Arkla Energy Marketing Co.	06-17-92	G-S	700,000	N	I	06-01-92	Indef.
ST92-4392	Texas Eastern Transmission Corp.	Howell Gas Management Co.	06-17-92	G-S	150,000	N	I	05-30-92	Indef.
ST92-4393	Natural Gas P/L Co. of America.	Northern Indiana Pub. Service Co.	06-17-92	B	18,000	N	I	07-01-92	Indef.
ST92-4394	Columbia Gas Transmission Corp.	Bradco Oil Co	06-17-92	G-S	358	N	I	06-10-92	Indef.
ST92-4395	Lone Star Gas Co	Phillips Texas Border Pipeline.	06-18-92	C	10,000	N	I	05-13-92	Indef.
ST92-4396	ONG Transmission Co	ANR Pipeline Co	06-18-92	C	30,000	N	I	05-22-92	Indef.
ST92-4397	Tennessee Gas Pipeline Co.	Amoco Energy Trading Corp.	06-18-92	G-S	200,000	N	I	06-01-92	Indef.
ST92-4398	United Gas Pipe Line Co	Chevron U.S.A., Inc	06-18-92	G-S	104,800	N	I	06-08-92	10-06-92
ST92-4399	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp.	06-18-92	G-S	250,000	N	I	06-01-92	Indef.
ST92-4400	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co	06-18-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4401	Panhandle Eastern Pipe Line Co.	Amoco Energy Trading Corp.	06-18-92	G-S	100,000	N	I	05-28-92	Indef.
ST92-4402	Panhandle Eastern Pipe Line Co.	Amgas, Inc	06-18-92	G-S	50	N	I	06-07-92	Indef.
ST92-4403	Transcontinental Gas P/L Corp.	Bridgeline Gas Distribution Co.	06-18-92	G-S	150,000	N	I	05-22-92	Indef.
ST92-4404	Stingray Pipeline Co	Tejas Power Corp	06-18-92	K-S	100,000	N	I	10-01-90	Indef.
ST92-4405	Texas Gas Transmission Corp.	CMS Gas Marketing	06-18-92	G-S	100,000	Y	I	06-01-92	Indef.
ST92-4406	Texas Gas Transmission Corp.	Total Minatome Corp	06-18-92	G-S	75,000	Y	I	06-02-92	Indef.
ST92-4407	Westar Transmission Co	El Paso Natural Gas Co	06-19-92	C	20,000	N	I	05-20-92	Indef.
ST92-4408	El Paso Natural Gas	Midcon Marketing Corp	06-19-92	G-S	200,000	A	I	06-06-92	Indef.
ST92-4409	El Paso Natural Gas	Grand Valley Gas Co	06-19-92	G-S	126,750	A	I	06-02-92	Indef.
ST92-4410	El Paso Natural Gas	Jal Gas Co., Inc	06-19-92	G-S	3,937	A	F	06-03-92	Indef.
ST92-4411	El Paso Natural Gas	Hadson Gas Systems, Inc.	06-19-92	G-S	30,900	A	I	06-06-92	Indef.
ST92-4412	Exxon Gas System, Inc	Neches Gas Distribution Co.	06-19-92	C	10,000	N	I	06-01-92	Indef.
ST92-4413	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-02-92	Indef.
ST92-4414	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-03-92	Indef.
ST92-4415	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	05-26-92	Indef.
ST92-4416	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-30-92	Indef.
ST92-4417	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-14-92	Indef.
ST92-4418	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-01-92	Indef.
ST92-4419	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	06-09-92	Indef.
ST92-4420	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	05-26-92	Indef.
ST92-4421	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-01-92	Indef.
ST92-4422	Algonquin Gas Transmission Co.	Distrigas of Massachusetts Corp.	06-19-92	B	52,412	N	I	04-02-92	Indef.
ST92-4423	Questar Pipeline Co	Amoco Production Co	06-19-92	G-S	16,000	N	I	06-01-92	Indef.
ST92-4424	Questar Pipeline Co	Northwest Pipeline Co	06-19-92	G	100,000	N	I	06-10-92	Indef.
ST92-4425	Webb/Duval Gatherers	Texas Eastern Transmission Co.	06-19-92	C	50,000	N	I	06-19-92	Indef.
ST92-4426	Pelican Interstate Gas System.	Anadarko Trading Co	06-19-92	K-S	50,000	N	I	06-01-92	Indef.

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ST92-4427	Northern Natural Gas Co	Equitable Resources Marketing Co.	06-19-92	G-S	100,000	N	I	05-28-92	Indef.
ST92-4428	Northern Natural Gas Co	Peoples Natural Gas Co	06-19-92	B	111,600	N	F	06-01-92	05-31-93
ST92-4429	Transwestern Pipeline Co	Richardson Products Co	06-19-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4430	Transwestern Pipeline Co	Pacific Gas and Electric Co.	06-19-92	B	100,000	N	I	05-24-92	Indef.
ST92-4431	Delhi Gas Pipeline Corp	Arkla Energy Resources	06-22-92	C	4,000	N	I	06-01-92	Indef.
ST92-4432	Texas Gas Transmission Corp.	Highland Energy Co	06-19-92	G-S	10,000	N	I	06-12-92	Indef.
ST92-4433	Texas Gas Transmission Corp.	Centran Corp	06-19-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4434	Texas Gas Transmission Corp.	Endevco Oil and Gas Co	06-19-92	G-S	30,000	N	I	06-13-92	35Indef.
ST92-4435	Texas Gas Transmission Corp.	Equitable Resources Marketing Co.	06-19-92	G-S	20,000	Y	I	06-01-92	Indef.
ST92-4436	Southern Natural Gas Co	Petro Source Gas Ventures.	06-19-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4437	Southern Natural Gas Co	Energy Development Corp.	06-19-92	G-S	200,000	N	I	05-21-92	Indef.
ST92-4438	Sea Robin Pipeline Co	Cockrell Resources, Inc	06-19-92	G-S	3,000	N	I	06-01-92	Indef.
ST92-4439	South Georgia Natural Gas Co.	City of Cuthbert	06-19-92	G-S	500	N	I	06-04-92	10-04-97
ST92-4440	South Georgia Natural Gas Co.	City of Tallahassee	06-19-92	G-S	5,564	N	I	06-01-92	09-30-96
ST92-4441	Sea Robin Pipeline Co	Centran Corp	06-19-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4442	South Georgia Natural Gas Co.	Merck & Co., Inc	06-19-92	G-S	2,500	N	I	05-29-92	Indef.
ST92-4443	Southern Natural Gas Co	Albany Water, Gas & Light Comm.	06-19-92	G-S	882	N	I	05-23-92	Indef.
ST92-4444	South Georgia Natural Gas Co.	City of Pelham	06-19-92	G-S	500	N	I	06-04-92	10-04-97
ST92-4445	Southern Natural Gas Co	Merck & Co., Inc	06-19-92	G-S	2,500	N	I	05-29-92	Indef.
ST92-4446	Southern Natural Gas Co	Neste OY	06-19-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4447	Southern Natural Gas Co	City of Douglas	06-19-92	G-S	518	N	I	06-01-92	03-01-97
ST92-4448	Northern Natural Gas Co	Western Gas Utilities, Inc	06-19-92	B	550	N	I	06-01-92	05-31-93
ST92-4449	Gateway Pipeline Co	Texaco Gas Marketing Inc.	06-22-92	G-S	100,000	N	I	05-14-92	09-14-92
ST92-4450	Gateway Pipeline Co	Prior Intrastate Corp	06-22-92	G-S	300,000	N	I	05-27-92	09-24-92
ST92-4451	United Pipe Line Co	Oryx Gas Marketing Ltd. Part.	06-22-92	G-S	62,880	N	I	06-09-92	10-09-92
ST92-4452	Northwest Pipeline Corp	Pacific Gas Transmission Co.	06-19-92	G	10,000	N	I	03-27-92	Indef.
ST92-4453	Transcontinental Gas P/L Corp.	Elizabethtown Gas Co	06-19-92	B	1,050,000	N	I	09-19-87	10-09-90
ST92-4454	Equitrans, Inc	Marco Energy Corp	06-19-92	G-S	94,900	N	I	06-02-92	Indef.
ST92-4455	Tennessee Gas Pipeline Co.	Seagull Marketing Services Inc.	06-19-92	G-S	250,000	N	I	06-04-92	Indef.
ST92-4456	Transwestern Pipeline Co	Signal Fuels Trading Corp.	06-19-92	B	10,000	N	I	06-01-92	Indef.
ST92-4457	Transwestern Pipeline Co	Pacific Gas and Electric Co.	06-19-92	B	200,000	N	I	06-01-92	Indef.
ST92-4458	Transwestern Pipeline Co	Southern California Gas Co.	06-19-92	B	100,000	N	I	06-09-92	Indef.
ST92-4459	Transwestern Pipeline Co	Mitchell Marketing, Inc	06-19-92	G-S	50,000	N	I	06-03-92	Indef.
ST92-4460	Kern River Gas Transmission Co.	Grand Valley Gas Canada Ltd.	06-19-92	G-S	300,000	N	I	05-30-92	Indef.
ST92-4461	Kern River Gas Transmission Co.	United States Gypsum Co.	06-19-92	G-S	3,000	N	I	05-21-92	Indef.
ST92-4462	Kern River Gas Transmission Co.	Tanaska Marketing Ventures.	06-19-92	G-S	75,000	N	I	05-27-92	Indef.
ST92-4463	Kern River Gas Transmission Co.	Coast Energy Group, Inc	06-19-92	G-S	43,000	N	I	05-23-92	Indef.
ST92-4464	Kern River Gas Transmission Co.	Grand Valley Gas Services Co.	06-19-92	G-S	300,000	N	I	05-30-92	Indef.
ST92-4465	Kern River Gas Transmission Co.	United States Gypsum Co.	06-19-92	G-S	18,000	N	I	05-21-92	Indef.
ST92-4466	Kern River Gas Transmission Co.	Centennial Natural Gas Corp.	06-19-92	G-S	300,000	N	I	05-30-92	Indef.
ST92-4467	Kern River Gas Transmission Co.	NephiCity Corp	06-19-92	G-S	2,000	N	I	05-30-92	Indef.
ST92-4468	Kern River Gas Transmission Co.	Equitable Resources Marketing Co.	06-19-92	G-S	100,000	N	I	05-21-92	Indef.
ST92-4469	Kern River Gas Transmission Co.	Willamette Industries, Inc	06-19-92	G-S	10,000	N	I	05-27-92	Indef.
ST92-4470	Kern River Gas Transmission Co.	Watson Cogeneration Co	06-19-92	G-S	100,000	N	I	05-23-92	Indef.
ST92-4471	Kern River Gas Transmission Co.	City of Glendale	06-19-92	G-S	20,000	N	I	05-26-92	Indef.
ST92-4472	Trunkline Gas Co	Gasmark, Ltd	06-22-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4473	Trunkline Gas Co	Tejas Power Corp	06-22-92	G-S	100,000	N	I	06-06-92	Indef.

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ST92-4474	Trunkline Gas Co	Entrade Corp	06-22-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4475	Trunkline Gas Co	Aquila Energy Marketing Corp.	06-22-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4476	Trunkline Gas Co	Conoco, Inc	06-22-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4477	Trunkline Gas Co	Eagle Natural Gas Co	06-22-92	G-S	20,000	N	I	06-01-92	Indef.
ST92-4478	Trunkline Gas Co	O & R Energy, Inc	06-22-92	G-S	25,000	N	I	06-01-92	Indef.
ST92-4479	Trunkline Gas Co	CMS Gas Marketing Co	06-22-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4480	Trunkline Gas Co	Citrus Marketing, Inc	06-22-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4481	Channel Industries Gas Co.	Transcontinental Gas P/L Corp.	06-22-92	C	75,000	N	I	06-12-92	Indef.
ST92-4482	Channel Industries Gas Co.	Trunkline Gas Co	06-22-92	C	75,000	N	I	06-05-92	Indef.
ST92-4483	Transok, Inc	Arkla Energy Resources	06-22-92	C	50,000	N	I	05-19-92	Indef.
ST92-4484	Transok, Inc	Arkla Energy Resources	06-22-92	C	50,000	N	I	05-16-92	Indef.
ST92-4485	Transok, Inc	Northern Natural Gas Co	06-22-92	C	25,000	N	I	05-23-92	Indef.
ST92-4486	Delhi Gas Pipeline Corp	Arkla Energy Resources	06-22-92	C	20,000	N	I	06-12-92	Indef.
ST92-4487	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	06-22-92	C	7,000	N	I	06-01-92	04-30-96
ST92-4488	East Texas Gas Systems	United Gas Pipe Line Co	06-22-92	C	30,000	N	I	05-19-92	Indef.
ST92-4489	East Texas Gas Systems	Tennessee Gas Pipeline Co.	06-22-92	C	20,000	N	I	05-21-92	Indef.
ST92-4490	Valero Transmission, L.P	Arkla Energy Resources	06-22-92	C	5,000	N	I	06-01-92	Indef.
ST92-4491	Valero Transmission, L.P	Transcontinental Gas P/L Corp.	06-22-92	C	1,500	N	I	06-01-92	Indef.
ST92-4492	Valero Transmission, L.P	Texas Gas Transmission Co.	06-22-92	C	12,500	N	I	06-01-92	Indef.
ST92-4493	Columbia Gulf Transmission Co.	NGC Transportation, Inc	06-22-92	G-S	200,000	N	I	06-01-92	Indef.
ST92-4494	Columbia Gulf Transmission Co.	Stellar Gas Co	06-22-92	G-S	50,000	N	I	06-05-92	Indef.
ST92-4495	Columbia Gulf Transmission Co.	Tejas Power Corp	06-22-92	G-S	150,000	N	I	06-01-92	Indef.
ST92-4496	Columbia Gulf Transmission Co.	Texaco Gas Marketing, Inc.	06-22-92	G-S	100,000	N	I	06-02-92	Indef.
ST92-4497	Columbia Gulf Transmission Co.	Texas Gas Transmission Corp.	06-22-92	G-S	100,000	N	I	06-03-92	Indef.
ST92-4498	Columbia Gulf Transmission Co.	Williams Gas Marketing Co.	06-22-92	G-S	15,000	N	I	06-01-92	Indef.
ST92-4499	Columbia Gulf Transmission Co.	Yuma Gas Corp	06-22-92	G-S	70,000	N	I	06-01-92	Indef.
ST92-4500	Arkla Energy Resources	Arkla Energy Marketing Co.	06-23-92	G-S	3,000	A	F	05-01-92	Indef.
ST92-4501	United Gas Pipe Line Co	Southern Natural Gas Co	06-23-92	G-S	3,000	N	F	06-01-92	09-29-92
ST92-4502	Kern River Gas Transmission Co.	Southwest Gas Corp	06-23-92	G-S	14,000	N	F	06-01-92	Indef.
ST92-4503	Questar Pipeline Co	Aquila Energy Marketing Corp.	06-23-92	G-S	200,000	N	I	06-01-92	01-31-93
ST92-4504	Questar Pipeline Co	CNG Producing Co	06-23-92	G-S	10,000	N	I	06-01-92	05-31-07
ST92-4505	CNG Transmission Corp	Equitable Resources Marketing.	06-23-92	G-S	25,000	N	I	05-28-92	Indef.
ST92-4506	CNG Transmission Corp	Potomac Electric & Power Co.	06-23-92	G-S	300,000	N	I	05-07-92	Indef.
ST92-4507	Questar Pipeline Co	Mountain Fuel Supply Co	06-23-92	B	7,500	N	I	06-01-92	09-15-92
ST92-4508	Tennessee Gas Pipeline Co.	Natural Gas Clearinghouse, Inc.	06-24-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4509	Questar Pipeline Co	Colorado Interstate Gas Co.	06-24-92	G	9,000	N	I	06-15-92	Indef.
ST92-4510	ONG Transmission Co	Ozark Gas Pipeline Co	06-24-92	C	30,000	N	I	06-01-92	Indef.
ST92-4511	ONG Transmission Co	Arkla Energy Resources	06-24-92	C	30,000	N	I	06-01-92	Indef.
ST92-4512	ONG Transmission Co	Phillips Gas Pipeline Co	06-24-92	C	20,000	N	I	06-01-92	Indef.
ST92-4513	ONG Transmission Co	Panhandle Eastern Pipe Line Co.	06-24-92	C	50,000	N	I	06-01-92	Indef.
ST92-4514	Natural Gas P/L Co. of America.	NGC Transportation, Inc	06-24-92	G-S	500,000	N	I	04-11-92	Indef.
ST92-4515	Natural Gas P/L Co. of America.	CNG Trading Co	06-24-92	G-S	20,000	N	I	05-23-92	Indef.
ST92-4516	Natural Gas P/L Co. of America.	Neste Oy	06-24-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4517	Natural Gas P/L Co. of America.	Phillips 66 Natural Gas Co.	06-24-92	G-S	5,000	N	I	06-01-92	Indef.
ST92-4518	Natural Gas P/L Co. of America.	Bridgegas U.S.A., Inc	06-24-92	G-S	200,000	N	I	05-16-92	Indef.
ST92-4519	Natural Gas P/L Co. of America.	Torch Energy Marketing, Inc.	06-24-92	G-S	10,000	N	I	03-01-92	Indef.
ST92-4520	Natural Gas P/L Co. of America.	Yuma Gas Corp	06-24-92	G-S	5,000	N	I	06-01-92	Indef
ST92-4521	Trailblazer Pipeline Co	Williams Gas Marketing Co.	06-24-92	G-S	50,000	N	I	04-06-92	Indef.
ST92-4522	Columbia Gas Transmission Corp.	Atlas Gas Marketing, Inc	06-24-92	G-S	550	N	I	06-01-92	Indef.
ST92-4526	Valero Transmission, L.P.	Northern Natural Gas Co	06-25-92	C	30,000	N	I	05-28-92	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST92-4527	United Gas Pipe Line Co	Amoco Energy Trading Corp.	06-25-92	G-S	60,000	N	I	06-16-92	10-14-92
ST92-4528	Gateway Pipeline Co	Amoco Energy Trading Corp.	06-25-92	G-S	60,000	N	I	05-29-92	09-26-92
ST92-4529	Kern River Gas Transmission Co.	Entrade Corp	06-25-92	G-S	500,000	N	I	06-01-92	Indef.
ST92-4530	Kern River Gas Transmission Co.	Access Energy Corp	06-25-92	G-S	150,000	N	I	06-06-92	Indef.
ST92-4531	Kern River Gas Transmission Co.	Brymore Energy Ltd.	06-25-92	G-S	200,000	N	I	06-05-92	Indef.
ST92-4532	Kern River Gas Transmission Co.	Unigas Corp	06-25-92	G-S	50,000	N	I	06-05-92	Indef.
ST92-4533	Kern River Gas Transmission Co.	City of Pasadena	06-25-92	G-S	20,000	N	I	06-09-92	Indef.
ST92-4534	United Gas Pipe Line Co	Midcon Marketing Corp	06-25-92	G-S	74,198	N	I	06-20-92	10-18-92
ST92-4535	United Gas Pipe Line Co	Endevco Oil & Gas Co	06-25-92	G-S	26,200	N	I	06-09-92	10-07-92
ST92-4536	Algonquin Gas Transmission Co.	Yuma Gas Corp	06-25-92	G-S	71,000	N	I	04-01-92	Indef.
ST92-4537	Algonquin Gas Transmission Co.	O & R Energy, Inc	06-25-92	G-S	50,000	N	I	03-18-92	Indef.
ST92-4538	Algonquin Gas Transmission Co.	Providence Gas Co	06-25-92	G-S	40,000	N	I	03-26-92	Indef.
ST92-4539	Algonquin Gas Transmission Co.	Texas-Ohio Gas, Inc	06-25-92	G-S	120,000	N	I	02-04-92	Indef.
ST92-4540	Algonquin Gas Transmission Co.	Coastal Gas Marketing	06-25-92	G-S	7,900,000	N	I	04-01-92	Indef.
ST92-4541	Algonquin Gas Transmission Co.	Tenngasco Corp	06-25-92	G-S	960,000	N	I	04-01-92	Indef.
ST92-4542	Algonquin Gas Transmission Co.	Vesta Energy Co	06-25-92	G-S	130,000	N	I	05-01-92	Indef.
ST92-4543	Algonquin Gas Transmission Co.	Yuma Gas Corp	06-25-92	G-S	71,000	N	I	04-04-92	Indef.
ST92-5444	Algonquin Gas Transmission Co.	Yuma Gas Corp	06-25-92	G-S	71,000	N	I	04-01-92	Indef.
ST92-4545	Phillips Gas Pipeline Co	Phillips Texas Border Pipeline Co.	06-25-92	B	50,000	Y	I	05-01-92	Indef.
ST92-4546	Algonquin Gas Transmission Co.	Yuma Gas Corp	06-25-92	G-S	71,000	N	I	04-01-92	Indef.
ST92-4547	Algonquin Gas Transmission Co.	Coastal Gas Marketing Co.	06-25-92	G-S	350,000	N	I	04-04-92	Indef.
ST92-4548	Algonquin Gas Transmission Co.	O & R Energy, Inc	06-25-92	G-S	50,000	N	I	04-01-92	Indef.
ST92-4549	Algonquin Gas Transmission Co.	City of Middleborough	06-25-92	G-S	3,500	N	I	04-22-92	Indef.
ST92-4550	Algonquin Gas Transmission Co.	Access Energy Corp	06-25-92	G-S	100,000	N	I	04-23-92	Indef.
ST92-4551	Algonquin Gas Transmission Co.	Centran Corp	06-25-92	G-S	30,000	N	I	04-01-92	Indef.
ST92-4552	Natural Gas P/L Co. of America.	Amoco Energy Trading Corp.	06-25-92	G-S	100,000	N	I	12-01-91	05-01-00
ST92-4553	Columbia Gulf Transmission Co.	Tejas Hydrocarbons Co	06-25-92	G-S	100,000	N	I	06-11-91	Indef.
ST92-4554	Columbia Gulf Transmission Co.	Superior Natural Gas Corp.	06-25-92	G-S	60,000	N	I	06-11-91	Indef.
ST92-4555	Columbia Gulf Transmission Co.	Mobil Natural Gas, Inc	06-25-92	G-S	60,000	N	I	06-10-92	Indef.
ST92-4556	Northwest Pipeline Corp	Intermountain Gas Co	06-25-92	G-S	150,000	N	I	06-01-92	Indef.
ST92-4557	Transok, Inc	Natural Gas P/L Co. of America.	06-26-92	C	270,000	N	I	05-03-92	Indef.
ST92-4558	Transok, Inc	Black Marlin Pipeline Co	06-26-92	C	200,000	N	I	06-02-92	Indef.
ST92-4559	K N Energy, Inc	Interenergy Corp	06-26-92	G-S	6,000	N	I	06-01-92	08-31-92
ST92-4560	Lone Star Gas Co	Northern Natural Gas Co	06-26-92	C	20,000	N	I	06-01-92	Indef.
ST92-4561	East Tennessee Natural Gas Co.	Enermax, Div. of Nukem, Inc.	06-26-92	G-S	30,000	N	I	05-28-92	Indef.
ST92-4562	East Tennessee Natural Gas Co.	Kaztex Energy Management, Inc.	06-26-92	G-S	25,000	N	I	05-29-92	Indef.
ST92-4563	Natural Gas P/L Co. of America.	Centran Corp	06-26-92	G-S	75,000	N	I	05-07-92	Indef.
ST92-4564	Natural Gas P/L Co. of America.	El Paso Natural Gas Co	06-26-92	G	200,000	N	I	05-14-92	Indef.
ST92-4565	Natural Gas P/L Co. of America.	Premier Gas Co	06-26-92	G-S	10,000	N	F	06-01-92	06-30-92
ST92-4566	Natural Gas P/L Co. of America.	Green Valley Chemical Corp.	06-26-92	G-S	3,600	N	F	06-01-92	05-31-93
ST92-4568	Channel Industries Gas Co.	Public Service Electric & Gas Co.	06-26-92	C	20,000	N	I	06-01-92	Indef.
ST92-4569	Kern River Gas Transmission Co.	Chevron U.S.A., Inc	06-26-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4570	Kern River Gas Transmission Co.	Nevada Cogeneration Associates #2.	06-26-92	G-S	13,000	N	I	03-01-92	Indef.

Docket number [1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Estimate max. daily quantity [2]	Aff. Y/A/N [3]	Rate sch.	Date commenced	Projected termination date
ST92-4571	Trunkline Gas Co	O & R Energy, Inc	06-26-92	G-S	100,000	N	I	05-01-92	Indef.
ST92-4572	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co	06-26-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4573	Panhandle Eastern Pipe Line Co.	NGC Transportation Inc	06-26-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4574	Panhandle Eastern Pipe Line Co.	Amarillo Natural Gas, Inc	06-26-92	G-S	100	N	I	05-28-92	Indef
ST92-4575	Panhandle Eastern Pipe Line Co.	Cibola Corp	06-26-92	G-S	25,000	N	I	06-01-92	Indef.
ST92-4576	Panhandle Eastern Pipe Line Co.	Aquila Energy Marketing Corp.	06-26-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4577	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc	06-26-92	G-S	30,000	N	I	06-01-92	Indef.
ST92-4578	ANR Pipeline Co	Kentucky Pipeline & Storage Co.	06-26-92	B	50,000	N	I	05-29-92	Indef.
ST92-4579	ANR Pipeline Co	Transco Energy Marketing Co.	06-26-92	G-S	10,000	N	I	06-01-92	Indef.
ST92-4580	ANR Pipeline Co	Dayton Power & Light Co	06-26-92	B	2,000	N	I	06-01-92	Indef.
ST92-4581	ANR Pipeline Co	Wisconsin Gas Co	06-26-92	G-S	339,415	N	I	05-29-92	Indef.
ST92-4582	Northern Natural Gas Co	Iowa Public Service Co	06-26-92	B	50,000	N	I	06-01-92	05-31-93
ST92-4583	Northern Natural Gas Co	Northwestern Public Service Co.	06-26-92	B	5,000	N	F	06-01-92	05-31-93
ST92-4584	Northern Natural Gas Co	Minnegasco, Inc	06-26-92	B	34,375	N	F	06-01-92	05-31-93
ST92-4585	Northern Natural Gas Co	Northern States Power Co.	06-26-92	B	8,000	N	F	06-01-92	05-31-93
ST92-4586	Northern Natural Gas Co	American Warrior, Inc	06-26-92	G-S	1,000	N	F/I	05-28-92	Indef.
ST92-4587	Columbia Gas Transmission Corp.	Gaslantic Corp	06-26-92	G-S	100,000	N	I	06-01-92	Indef.
ST92-4588	El Paso Natural Gas Co	NGC Transportation, Inc	06-26-92	G-S	30,000	A	I	06-11-92	Indef.
ST92-4589	Tejas Gas Corp	Texas Eastern Transmission Co.	06-26-92	C	2,613	N	I	05-01-92	Indef.
ST92-4590	Texas Gas Transmission Corp.	CNG Producing Co	06-26-92	G-S	100,000	N	I	06-10-92	Indef.
ST92-4591	Texas Gas Transmission Corp.	Eastex Hydrocarbons, Inc	06-26-92	G-S	50,000	N	I	06-10-92	Indef.
ST92-4592	Tennessee Gas Pipeline Co.	CNG Trading Co	06-29-92	G-S	650,000	N	I	06-13-92	Indef.
ST92-4593	Pacific Gas Transmission Co.	Pacific Gas Transmission Co.	06-29-92	G-S	150,000	N	I	05-30-92	Indef.
ST92-4594	Pacific Gas Transmission Co.	Pacific Gas & Electric Co	06-29-92	B	14,646	N	I	06-16-92	Indef.
ST92-4595	ANR Pipeline Co	Kentucky Pipeline & Storage Co.	06-29-92	B	20,000	N	F	06-01-92	Indef.
ST92-4596	ANR Pipeline Co	Conoco, Inc	06-29-92	G-S	25,000	N	I	06-01-92	Indef.
ST92-4597	ANR Pipeline Co	Stand Energy Corp	06-29-92	G-S	5,000	N	I	06-01-92	Indef.
ST92-4598	ANR Pipeline Co	Trident Gas Marketing, Inc.	06-29-92	G-S	150,000	N	I	06-01-92	Indef.
ST92-4599	Northern Natural Gas Co	Northern States Power Co.	06-29-92	B	200,000	N	F/I	06-01-92	Indef.
ST92-4600	Northern Natural Gas Co	Natgas Inc	06-29-92	B	1,000	N	F/I	06-01-92	Indef.
ST92-4601	Northern Natural Gas Co	Chevron U.S.A. Production Co.	06-29-92	G-S	50,000	N	F/I	06-01-92	Indef.
ST92-4602	Northern Natural Gas Co	Westar Transmission Co	06-29-92	B	1,000	N	F	06-11-92	09-30-92
ST92-4603	Black Marlin Pipeline Co	Houston Pipe Line Co	06-29-92	B	30,000	A	I	06-01-92	Indef.
ST92-4604	Stingray Pipeline Co	Louisiana Dreyfus Energy Corp.	06-29-92	K-S	100,000	N	I	03-16-92	Indef.
ST92-4605	Louisiana Resources Pipeline Co.	Williams Gas Marketing Co.	06-29-92	C	200,000	N	I	05-26-92	Indef.
ST92-4606	Natural Gas P/L Co. of America.	Midcon Marketing Corp	06-29-92	G-S	60,000	N	I	06-01-92	06-30-92
ST92-4607	Natural Gas P/L Co. of America.	Mobil Natural Gas, Inc	06-29-92	G-S	50,000	N	I	06-01-92	Indef.
ST92-4608	Panhandle Eastern Pipe Line Co.	Amgas, Inc	06-29-92	G-S	150	N	I	06-12-92	Indef.
ST92-4609	Panhandle Eastern Pipe Line Co.	Amgas, Inc	06-29-92	G-S	60	N	I	06-12-92	Indef.
ST92-4610	Panhandle Eastern Pipe Line Co.	Amgas, Inc	06-29-92	G-S	130	N	I	06-12-92	Indef.
ST92-4611	Mid Louisiana Gas Co	Coast Energy Group, Inc	06-30-92	G-S	200,000	N	I	06-01-92	03-31-93
ST92-4612	Texas Eastern Transmission Corp.	Southern Connecticut Gas Co.	06-30-92	B	100,000	N	I	06-01-92	Indef.
ST92-4613	Transcontinental Gas P/L Corp.	Anadarko Trading Co	06-30-92	G-S	300,000	N	I	06-02-92	Indef.
ST92-4614	Northern Natural Gas Co	City of Two Harbors	06-30-92	B	370	N	F	06-01-92	05-31-93
ST92-4615	Mid Louisiana Gas Co	Shell Gas Trading Co	06-30-92	G-S	12,000	N	I	06-19-92	03-31-92
ST92-4616	Northern Natural Gas Co	Fremont Department of Utilities.	06-30-92	B	4,410	N	F	06-01-92	05-31-93
ST92-4617	Panhandle Eastern Pipe Line Co.	Quantum Chemical Corp	06-30-92	G-S	12,212	N	F	06-01-92	Indef.

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with Order No. 436 (Final rule and notice requesting supplemental comments, 50 FR 42,372, 10/10/85).
[2] Estimated Maximum Daily Volumes includes volumes reported by the Filing Company in MMBTU, MCF and DT.
[3] Affiliation of Reporting Company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 92-19818 Filed 8-20-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RS92-15-000]

Kentucky West Virginia Gas Co.; Rescheduling of Prefiling Conference

August 17, 1992.

Take notice that the prefiling conference previously scheduled in this proceeding for September 2, 1992, has been rescheduled. A prefiling conference will be convened on September 22, 1992, at 10 a.m., at the Offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If it becomes necessary to change the location of the conference, a future notice will state a new location.

The purpose of the conference is to address Kentucky West Virginia Gas Company's summary of its proposal to comply with Order No. 636.

All interested parties are invited to attend. However, attendance at the conference will not confer party status. For additional information, interested parties may call Carmen Gastilo at (202) 208-2182.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 92-19978 Filed 8-20-92; 8:45 am]
BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 92-101-NG]

Aluminum Company of America; Application for Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.
ACTION: Notice of Application.

SUMMARY: The Office of Fossil Energy of the Department of Energy (DOE) gives notice of receipt on July 31 and August 5, 1992, of applications by Aluminum company of America (ALCOA) requesting blanket authorization to import a combined total of up to 5.05 Bcf of natural gas from Canada over a two-year period beginning on the date of first delivery. Because of their similarity, DOE is consolidating these two filings into one application. ALCOA states that it would use existing facilities to import the natural gas from Canada.

The application is filed under section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. Protests, motions to intervene, notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time, September 21, 1992.

ADDRESS: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION:

Yvonne Gabbay, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-4587.

Lot Cooke, Office of Assistant General Counsel for Fossil Energy, U.S. Department of Energy, Forrestal Building, room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-0503.

SUPPLEMENTARY INFORMATION: ALCOA is a Pennsylvania corporation with its principal place of business in Pittsburgh, Pennsylvania. ALCOA plans to use the imported gas to operate its two aluminum smelting plants in Wenatchee, Washington and Massena, New York. The gas would enter the United States at Sumas, Washington and Cornwall, Ontario through the pipeline facilities of Northwest Pipeline Corporation and St. Lawrence Gas Company. All of ALCOA's transactions under the requested authorization would be conducted pursuant to market-responsive contract terms.

ALCOA further requests an emergency interim order authorizing it to import the natural gas in the event DOE does not issue a final order before October 1, 1992. ALCOA explains that its current contracts for natural gas to supply its smelting plants are due to expire September 30, 1992 (Wenatchee) and November 1, 1992 (Massena). If necessary to avoid shut-down of these two plants, DOE may issue an emergency interim order allowing deliveries until a final determination is made on ALCOA's application.

The decision on the request for import authority will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties, especially those that may oppose this application, should comment on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts imports made under the proposed arrangements will be competitive and otherwise consistent with DOE import policy. Parties opposing these arrangements bear the burden of overcoming this assertion.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have their written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request

that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of ALCOA's consolidated application is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, at the above address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 17, 1992.

Clifford Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-20051 Filed 8-20-92; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4197-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Availability of Environmental Impact Statements Filed August 10, 1992 Through August 14, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920324, Draft EIS, AFS, CA, Last Chance Helicopter Timber Sale, Harvesting Timber and Road Construction/Reconstruction, Plumas National Forest, Greenville Ranger District, Plumas County, CA, Due: October 5, 1992, Contact: Michael R. Williams (916) 284-7126.

EIS No. 920325, Draft EIS, DOD, Defense Evaluation Support Activity Testing and Evaluation Program for Advanced Weapons Systems, Implementation, Due: October 5, 1992, Contact: Charles Albright (505) 262-4542.

EIS No. 920326, Final EIS, AFS, OR, Canyon Integrated Resource Project, Resource Management Plan, Implementation, Siskiyou National Forest, Illinois Valley Ranger District, Josephine County, OR, Due: October 5, 1992, Contact: William J. Gasow (503) 479-5301.

EIS No. 920327, Draft EIS, FHW, UT, West Valley Highway Transportation Improvement, 9000 South to 126000 South, Funding and Right-of-Way Acquisition, Salt Lake County, UT, Due: October 10, 1992, Contact: Roy O. Nelson (801) 524-5141.

EIS No. 920328, Final EIS, FAA, NY, Stewart International Airport Properties Improvement, Orange County, NY, Due: October 21, 1992, Contact: Frank Squeglia (718) 553-0902.

EIS No. 920329, Final EIS, AFS, CA, South Fork of the Trinity Wild and Scenic River Management Plan, National Wild and Scenic Rivers, Implementation, Trinity River, Six Rivers and Shasta-Trinity National Forests, Trinity and Humboldt Counties, CA, Due: September 21, 1992, Contact: Roger Jaegel (916) 628-5227.

EIS No. 920330, Draft EIS, UAF, ID, NV, Space Nuclear Thermal Propulsion Program, Construction and Operation, Particle Bed Reactor (PBR) Validation Test Facility, Federal Permits, Licenses and Site Selection, Saddle Mountain Test Station, NV or Contain Test Facility, ID, Due: October 5, 1992, Contact: Cpt. Scott Hartford (512) 536-3806.

EIS No. 920331, Final EIS, BLM, WY, Mulligan Draw Gas Field Project, Natural Gas Field Drilling, Operation, Abandonment and Reclamation, Approval, Right-of-Way Grants, COE Section 404 Permits and EPA RCRA Permits, Sweetwater County, WY, Due: September 21, 1992, Contact: Bob Tigner (307) 324-7171.

EIS No. 920332, Final EIS, AFS, WA, Breezin Timber Sales Management Plan, Implementation, Olympic National Forest, Quilcene Ranger District, Clallam and Jefferson Counties, WA, Due: September 21, 1992, Contact: Jim Rodeheaver (206) 956-2373.

EIS No. 920333, Final EIS, IBR, OR, Milltown Hill Project, Dam and Reservoir Construction and Operation, Funding and Implementation, Elk Creek Subbasin, Umpqua River Basin, Douglas County, OR, Due: September 21, 1992, Contact: Darrell Cauley (303) 236-0511.

EIS No. 920334, Draft Supplement, AFS, NC, 1986, 2000 Nantahala and Pisgah National Forests Land and Resource Management Plan, Additional Information, Amendment 5, Several Counties, NC, Due: December 16, 1992, Contact: Bjorn M. Dahl (704) 257-4200.

EIS No. 920335, Final Supplement, NOA, WA, OR, CA, Pacific Coast Groundfish Fishery Management Plan (FMP), Updated Information to License Limitation Program, Approval and Implementation of Amendment No. 6., OR, WA and CA, Due: September 21, 1992, Contact: William W. Fox (301) 713-2239.

Amended Notices

EIS No. 920286, Final EIS, BLM, WA, Spokane District Resource Management Plan Amendment (RMP), Fluid Mineral Leasing, Approval, Yakima River Canyon and Upper Crab Creek Management Areas, Several Counties, WA, Due, August 24, 1992, Contact: Joseph Buesing (509) 353-2570. Published FR 07-24-92—Due Date Correction.

EIS No. 920311, Final EIS, AFS, NM, Felipito Timber Sale, Implementation, Carson National Forest, Rio Arriba County, NM, Due: September 8, 1992, Contact: Graciela Terrazas (505) 581-4554. Published FR 08-07-92—Due Date Correction.

EIS No. 920312, Final EIS, COE, MS, Hickahala-Senatobia Creeks Watershed, Channel Modification Project and Demonstration Erosion Control, Implemenation, Arkabutla Lake, Yazoo Basin, Tate County, MS, Due: September 8, 1992, Contact: Mr. Wendell King (601) 631-5967. Published FR 08-07-92—Due Date Correction.

EIS No. 920313, Final EIS, FHW, AS, Territorial Route 50 in Pago Pago Park, Construction, Funding U.S. Coast Guard Bridge Permit, and COE Section 10 and 404 Permits, Island of Tutuila, AS, Due: September 8, 1992, Contact: William R. Lake (808) 541-2700. Published FR 08-07-92—Due Date Correction.

EIS No. 920315, Final EIS, BLM, CA, Eagle Mountain Class III Nonhazardous Solid Waste Landfill Project and Specific Plan, Federal Land Exchange, Right-of-Way Approval, Section 404 Permit, Riverside County, CA, Due: September 8, 1992, Contact: Steve

Nagle (619) 323–4421. Published FR 08–07–92—Due Date Correction.

EIS No. 920323, Draft EIS, USN, CA, AZ, US Naval Observatory Optical Interferometer Project, Construction, Operation and Site Selection, Anderson Peak and Chews Ridge in Los Padres National Forest, Monterey County, CA or US Naval Observatory Station in Flagstaff County, AZ, Due: October 13, 1992, Contact: Patricia Duff (415) 244–3715. Published FR 08–14–92—Due Date Correction.

Dated: August 18, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–20059 Filed 8–20–92; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4197–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 03, 1992 Through August 07, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D–AFS–J65193–MT Rating E02, Beaver-Dry Timber Sales, Harvest Timber and Road Construction, Implementation, Helena National Forest, Lincoln Ranger District, Lewis and Clark and Powell Counties, MT.

Summary: EPA had environmental objections to the proposed project based on impacts to water quality, wildlife, and visual quality. The final EIS should include a water quality monitoring plan, an evaluation of wetlands, and an assessment of cumulative impacts.

ERP No. D–AFS–L65168–AK Rating EC2, North and East Kuiu Timber Harvest, Availability of Timber to the Alaska Pulp Long-Term Timber Sale Contract, Timber Sale and Road Construction, Implementation, Tongass National Forest, Kuiu Island, AK.

Summary: EPA had environmental concerns based on the sale's impact on water quality and that the implementation of best management practices may not ensure that the Alaska Water Quality Standards (WQS) are being met. Additional information is needed on effectiveness monitoring from the water quality effects of timber harvest and road construction.

ERP No. D–AFS–L65171–WA Rating EC2, Easton Ridge Timber Sale and Road Construction, Implementation, Wenatchee National Forest, Cle Elum Ranger District, Kittitas County, WA.

Summary: EPA had environmental concerns based on the effect of the action alternatives on water quality, fisheries, and air quality. Additional information is needed on watershed monitoring, water quality and fishery effects, air quality effects, endangered species, and noise effects.

ERP No. D–COE–E36170–MS Rating EC2, Hickahala-Senatobia Creeks Watershed, Channel Modification Project and Demonstration Erosion Control, Implementation, Arkabutla Lake, Yazoo Basin, Tate County, MS.

Summary: EPA raised concerns regarding whether the mitigation for the unavoidable losses associated with this project is sufficient and/or will be successful. EPA noted that additional information will need to be collected during the forthcoming monitoring to determine efficacy of the plan and its sufficiency. Any shortcomings noted by these observations will need to be rectified.

ERP No. D–COE–K32046–CA Rating 3, Los Angeles and Long Beach Harbors Navigation Improvements and Landfill Development Project, Construction and Approval of Master Plan Amendment, San Pedro Bay, Los Angeles County, CA.

Summary: EPA identified several serious inadequacies in the draft EIS and recommended that the Corps prepare a supplemental EIS to address these issues. The proposed project has potential adverse air quality impacts for all criteria air pollutants under the Clean Air Act and the DEIS failed to demonstrate Clean Air Act conformity. Other deficiencies in the DEIS included the adequacy of mitigation to compensate for the unavoidable loss of waters of the US due to dredging and filling activities and other requirements of section 404 of the Clean Water Act. EPA's letter noted that if these issues were not satisfactorily resolved by the Corps, that the project may be a candidate for referral to the President's Council on Environmental Quality.

ERP No. D–FHW–E40132–FL Rating E02, North Suncoast Corridor, Transportation Improvement and Construction, Northwest Expressway Zone 1 in Hillsborough Co., to U.S. 98 in Hernando Co., to Zone 2 FL–52 in Pasco Co., Funding and section 404 Permit, Hillsborough, Hernando and Pasco Counties, FL.

Summary: EPA expressed objections to the amounts and types of impacts to wetland and upland habitat. Additional information on wetland mitigation is needed.

ERP No. D–FHW–G40131–LA Rating EC2, I–49 Connector, Evangeline Thruway, U.S.–90/US–167, Funding, Right-of-Way Acquisition and COE section 10 and 404 Permits, Lafayette County, LA.

Summary: EPA is concerned about the lack of analysis of and mitigation for noise impacts. Additionally, there is insufficient information to fully evaluate impacts to and mitigation for wetlands, water wells and groundwater.

ERP No. D–NPS–B61018–VT Rating E01, Appalachian National Scenic Trail Protection, from Deer Leap Mountain to the Mendon-Shrewsbury Town Line, Pico/Killington Section, Implementation, Rutland County, VT.

Summary: EPA expressed environmental objections based on the impacts to water resources. Further information is needed on cumulative, ski development, and water resource impacts.

ERP No. DS–AFS–J61074–MT Rating EC1, White Stallion Timber Sale Management, Implementation, Additional Analysis, Darby Ranger District, Bitterroot National Forest, Ravalli County, MT.

Summary: EPA had environmental concern based on water quality issues.

ERP No. DS–AFS–L65147–AK Rating EC2, Bohemia Mountain Timber Sales, Implementation, Updated Information to Limit Alternatives to those that would not Impact Potential Recommendation of Duncan Salt Chuck Creek from Inclusion in the National Wild and Scenic River System and COE Permit Issuance, Tongass National Forest, Petersburg Ranger District, Stikine, AK.

Summary: EPA had environmental concerns with the project based on the possible effect of the action alternatives on water quality and fisheries. Additional information is needed on monitoring.

ERP No. D1–BLM–L70001–WA Rating EC–2, Spokane District Resource Management Plan Amendment (RMP), Fluid Mineral Leasing, Implementation, Yakima River Canyon and Upper Crab Creek Management Areas, Several Counties, WA.

Summary: EPA expressed environmental concerns based on the lack of a clear policy statement requiring a NEPA evaluation of site specific impacts associated with exploration and development/production drilling. The final EIS should clarify how site specific impacts will be evaluated.

FINAL EISs

ERP No. F–AFS–J65133–UT. Roundy Reservoir Area Timber Sale and Road Construction, Implementation, Dixie National Forest, Aquarius Plateau, Escalante Ranger District, Garfield County, UT.

Summary: EPA had no objection to the proposed project.

ERP No. F–BLM–J02018–MT. Blackleaf Unit Oil and Gas Exploration and Development, Implementation, Great Falls Resource Area, Rocky Mountain Front, Teton County, Mt.

Summary: EPA believed that most issues had been addressed in the final EIS. EPA had environmental concerns relating to potential escape of toxic gases from the associated gas conditioning plant.

ERP No. F–BLM–J67013–WY. West Rocky Butte (WRB) Tract Coal Lease Application (WYW122586) combined with the existing Rocky Butte Tract (WYW78633) Logical Mining Unit (LMU) Mine Leasing and Land Acquisition, Powder River Basin, Campbell Country, WY.

Summary: EPA had no objections to the proposed project.

ERP No. F–BOP–E81032–FL. Coleman Federal Correctional Complex (FCC), Construction and Operation, North of County Road 470 between Oakhumpka and Sumterville, Sumter County, FL.

Summary: EPA expressed concern about minor unresolved noise issues related to construction.

ERP No. F–COE–K36104–CA. Sacramento River Flood Control System and Flood Protection, Phases II–V, Implementation, Red Bluff to Collinsville, CA.

Summary: EPA commended the Corps for its efforts to avoid and minimize potential environmental impacts. EPA urged the Corps to provide evaluations or plans in the site-specific environmental documentation for each phase including analysis of the: Feasibility of an integrated floodway management approach; potential impacts to water quality, hydrology, air quality and noise; contingency planning for unexpected additional reconstruction requirements; downstream hydrologic impacts of levee repair and mitigation for these impacts; detailed description of mitigation and post-project monitoring plan; wetland water sources and the potential increase in downstream flood stages.

ERP No. F–FHW–K40185–NV. Las Vegas Beltway Southern Segment Construction, U.S. 93/Boulder Highway in the City of Henderson to the intersection of Durango Drive and Tropicana Avenue on the West, Funding, section 10 and 404 Permits Clark County, NV.

Summary: EPA felt that the final EIS addressed in part the concerns EPA raised on the draft EIS. EPA requested that the Record of Decision contain commitments to reduce the project's air quality impacts (carbon monoxide and particulate matter less then 10 microns in diameter) and to maintain and protect water quality in the project area.

ERP No. FS–AFS–J65095–00. Rocky Mountain Regional Guide/Plan, Silviculture Standards and Guidelines for Land and Resource Management Planning, CO, SD, WY, NB, and KS.

Summary: EPA had no objections to the proposed project.

Dated: August 18, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92–20060 Filed 8–20–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4195–1]

Public Water System Supervision Program: Program Revision for the State of Missouri

AGENCY: Environmental Protection Agency.

ACTION: Notice.

Notice is hereby given that the State of Missouri is revising its approved State Public Water System Supervision (PWSS) Program. Missouri has adopted regulations for (1) filtration, disinfection, turbidity, *Giardia lamblia*, viruses, Legionella, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria published by EPA on June 29, 1989 (54 27486); (2) total coliforms (including fecal coliforms and *E. coli*) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and *E. coli*) published by EPA on June 29, 1989 (54 FR 27544); (3) public notification requirements that correspond to the National Primary Drinking Water Regulations for public notification published by EPA on October 28, 1987 (52 FR 41534); and (4) synthetic organic chemicals (Phase I VOCs) that correspond to the National Primary Drinking Water Regulations for synthetic organic chemicals, and monitoring for unregulated contaminants published by EPA on July 8, 1987 (52 FR 25690) and corrections, published on July 1, 1988 (53 FR 25108).

EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. This determination was based upon a thorough evaluation of Missouri's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted to the Regional Administrator, within thirty (30) days of the date of this notice, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this notice date.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief, Drinking Water Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Missouri. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Missouri. The hearing notice will include a statement of purpose, information regarding time and location, and the

address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

A copy of the primacy application relating to this determination are available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Missouri Department of Natural Resources, Public Drinking Water Program, 101 Jefferson Street, Jefferson City, Missouri 65102.

FOR FURTHER INFORMATION CONTACT: M. Stan Calow, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551-7410.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: July 20, 1992.

Morris Kay,

Regional Administrator, EPA, Region VII.

[FR Doc. 92-19537 Filed 8-20-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL TRADE COMMISSION

[Dkt. C-3389]

Circuit City Stores, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Virginia-based national chain of consumer electronics and appliance stores to comply with the Magnuson-Moss Warranty Act and the Pre-Sale Availability of Written Warranty Terms Rule, which requires retailers to make manufacturers' warranty information available to consumers, either (1) by displaying the text of the warranty near the warranted product, or (2) by furnishing the text of the warranty to customers upon request prior to sale, and prominently displaying signs advising customers of the availability of such warranties.

DATES: Complaint and order issued August 3, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, suite 570, San Francisco, CA 94103, (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Wednesday, May 27, 1992, there was published in the **Federal Register**, 57 FR 22241, a proposed consent agreement with analysis In the Matter of Circuit City Stores, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

Donald S. Clark,

Secretary.

[FR Doc. 92-20011 Filed 8-20-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3388]

The Good Guys, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a California-based chain of consumer electronics stores to comply with the Magnuson-Moss Warranty Act and the Pre-Sale Availability of Written Warranty Terms Rule, which require retailers to make manufacturers' warranty information available to consumers, either (1) by displaying the text of the warranty near the warranted product, or (2) by furnishing the text of the warranty to customers upon request prior to sale, and prominently displaying signs advising customers of the availability of such warranties.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

DATES: Complaint and order issued July 31, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, suite 570, San Francisco, CA. 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Wednesday, May 27, 1992, there was published in the **Federal Register**, 57 FR 22243, a proposed consent agreement with analysis In the Matter of The Good Guys, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the compliant in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46; interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 110(b), 88 Stat. 2190; 15 U.S.C. 2310)

Donald S. Clark,

Secretary.

[FR Doc. 92-20010 Filed 8-20-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3387]

Rohm & Haas Co., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order permits, among other things, Rohm and Haas, a Pennsylvania-based company, to acquire the Union Oil Company's emulsion polymer assets, as long as it divests Union Oil's straight acrylics business to Union Carbide, or another FTC-approved buyer, within 180 days. If divestiture is not effected within that period, Rohm and Haas is required to consent to the appointment of a trustee. In addition, the consent agreement requires the respondents to assist the buyer in making the transition to full production and, for 10 years, requires the respondents to obtain FTC approval before acquiring any entity

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

that produces straight acrylics for exterior house paint.

DATES: Complaint and Order issued July 31, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Marc Schildkraut, FTC/S-3302, Washington, DC 20580. (202) 326-2622.

SUPPLEMENTARY INFORMATION: On Wednesday, May 27, 1992, there was published in the **Federal Register**, 57 FR 22245, a proposed consent agreement with analysis In the Matter of Rohm and Haas Company, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 92-20009 Filed 8-20-92; 8:45 am]

BILLING CODE 6750-01-M

[Docket 9245]

Viral Response Systems, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Connecticut based corporation and its president from making false and unsubstantiated claims regarding the efficacy of their "Viralizer System", a hand-held device for treating colds and allergies, and also prohibits respondents from misrepresenting the existence, content, validity, results, conclusions, or interpretations of any test or study.

DATES: Complaint issued February 4, 1991. Order issued July 31, 1992.[1]

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103, (415) 744-7920.

SUPPLEMENTARY INFORMATION: On Tuesday, February 4, 1992, there was published in the **Federal Register**, 57 FR 4207, a proposed consent agreement with analysis In the Matter of Viral Response Systems, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 92-20008 Filed 8-20-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Mental Health Services

ACTION: Notice of Request for Comments.

SUMMARY: The Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) is soliciting input from the public for definitions of two populations: (1) Adults with Serious Mental Illness, and (2) Children With a Serious Emotional Disturbance.

Public Law 102-321, The ADAMHA Reorganization Act, enacted July 10, creates a new Substance Abuse and Mental Health Services Administration (SAMHSA). A new Center for Mental Health Services is established within SAMHSA to provide national leadership in the prevention and treatment of mental disorders.

Title II of the Act establishes a separate Block Grant for Mental Health Services in the Center. The Block Grant will be used to provide community mental health services to adults with serious mental illness and children with a serious emotional disturbance. Under Title II of the Act, the Secretary of Health and Human Services is required, within 90 days of enactment, to establish and disseminate to the States definitions of adults with serious mental illness and children with serious emotional disturbances and to establish standard methods for making required estimates of incidence and prevalence which the States will use as a condition for receiving the grant. This responsibility has been assigned by the Secretary to ADAMHA in preparation for the creation of the new SAMHSA.

Preliminary to publication of definitions in the **Federal Register** in early October, ADAMHA is soliciting comments from the public concerning definitions both of "adults with serious mental illness" and "children with a serious emotional disturbance" which meet the needs of the States and constituency groups.

ADDRESS: Interested organizations and/or individuals should send comments by September 4 to: Irene S. Levine, Ph.D., ADAMHA, 12-95 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: August 19, 1992.

Joseph R. Leone,

Associate Administrator for Monagement, ADAMHA.

[FR Doc. 92-20199 Filed 8-20-92; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 92D-0039]

Animal Drug Manufacturing; Guidelines for Submission of Manufacturing Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a series of four Center for Veterinary Medicine (CVM) guidelines entitled "Animal Drug Manufacturing Guidelines, 1992." The guidelines describe the data and information for the manufacturing portions of an application for a pharmaceutical dosage form new animal drug product.

DATES: Written comments on these guidelines may be submitted at any time.

ADDRESSES: Submit written comments on "Animal Drug Manufacturing Guidelines, 1992," to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Submit written requests for single

copies of "Animal Drug Manufacturing Guidelines, 1992," to the Communications and Education Branch (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. "Animal Drug Manufacturing Guidelines, 1992," and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William G. Marnane, Center for Veterinary Medicine (HFV-143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8678.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a series of four guidelines concerning data and information for specific manufacturing portions of applications (original, abbreviated, and supplemental) for pharmaceutical dosage form products. The guidelines, entitled "Animal Drug Manufacturing Guidelines, 1992," cover pilot batch manufacture, tentative expiration dates, manufacturing sites, and new animal drug substance sources. The sponsor of a new animal drug application (NADA), an abbreviated new animal drug application (ANADA), or a supplemental NADA or ANADA is required to furnish to FDA manufacturing information as part of the application. This information is generally described in 21 CFR 514.1 for NADA's, 21 CFR 514.8 for supplements to approved NADA's, and 21 CFR parts 210 and 211 for the manufacturing process to meet current good manufacturing practice (CGMP) requirements for pharmaceutical dosage forms.

CVM believes that the data and information contained in chemistry/manufacturing submissions in ANADA's for evaluation of generic pharmaceutical dosage forms should be consistent with the information being used by the Center for Drug Evaluation and Research (CDER) for the evaluation of abbreviated new drug applications (ANDA's). This consistency will help ensure that marketed generic veterinary pharmaceutical dosage forms meet the same criteria of quality, strength, and purity as similar human dosage forms, that FDA can harmonize the review process for veterinary and human pharmaceutical dosage forms, and that FDA district offices can apply the same interpretation of CGMP's to both veterinary and human pharmaceutical dosage form drug products.

There are a number of differences in the type and extent of data necessary for ANADA's and NADA's. For this reason, and to provide consistent recommendations for the different types of submissions, the guidelines describe not only the manufacturing data and information necessary for ANADA's and supplemental ANADA's, but also data and information to support the manufacturing and chemistry sections of NADA's and supplemental NADA's.

These "Animal Drug Manufacturing Guidelines, 1992," are not intended to be individual stand-alone documents. Much of the information presented in one guideline may be equally important to the correct interpretation of the other guidelines. Therefore, all four guidelines are being issued concurrently.

These guidelines state procedures or practices that may be useful to the persons to whom they are directed but are not legal requirements. A person may follow the guidelines or may choose to follow alternate procedures. If a person chooses to use alternate procedures, that person may wish to discuss the matter further with the agency to prevent an expenditure of time, money, and effort on activities that may later be determined to be unacceptable to FDA. The guidelines do not bind the agency, nor do they create or confer any rights, privileges, or benefits for or on any person. Where the guideline states that a requirement is imposed by statute or regulation, the requirement is law and its force and effect cannot be changed in any way by virtue of its inclusion in the guideline.

Interested persons may submit written comments on "Animal Drug Manufacturing Guidelines, 1992," to the Dockets Management Branch (address above). Comments will be considered in evaluating the need to amend the guidelines. Two copies of comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidelines and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 14, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-19997 Filed 8-20-92; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

[BPD-751-N]

Medicare Program; HHS' Recognition of NAIC Model Standards for Regulation of Medigap Policies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice contains a list of the ten standardized Medicare supplemental insurance benefit packages that may be offered to Medicare beneficiaries consistent with the requirements of section 1882 of the Social Security Act (the Act), as amended by sections 4351 through 4358 of the Omnibus Budget Reconciliation Act of 1990. This list is included in section 9 of the Model Regulation adopted by the National Association of Insurance Commissioners (NAIC) on July 30, 1991, which is reprinted at the end of the notice. Until the publication of this list, certain provisions of section 1882 of the Act relating to this type of insurance were inapplicable to sellers who are not also the issuers of health insurance policies being sold to Medicare beneficiaries.

DATES: With limited exceptions explained in section II.A of this notice, section 1882(a) of the Act provides that Medicare supplemental insurance policies that do not conform to the revised NAIC Model Standards may not be issued to Medicare beneficiaries. This provision is effective July 30, 1992, or on an earlier date on which the State adopts the revised standards.

The amended provisions of sections 1882(d)(3) of the Act (relating to the sale of duplicative health insurance coverage, as explained in section III of this notice) may be applied to persons who sell health insurance policies as of the date of this notice. These amended provisions were effective with respect to issuers of such policies as of November 5, 1991.

In States that have already adopted the revised NAIC Standards, the provisions of sections 1882(p)(8) (relating to the sale of non-standardized Medicare supplemental policies) and 1882(p)(9) of the Act (relating to selling a Medicare supplemental policy without first making available a core benefit plan and giving the beneficiary an outline of coverage) are applicable to sellers as of the date of this notice. In those States, sections 1882(p)(8) and 1882(p)(9) were applicable to issuers as of the effective date of the standards in the State of issuance. In States that have not yet adopted the revised standards, these statutory provisions are applicable to both issuers and sellers as of July 30, 1992, or on an earlier date on which the State adopts the revised standards.

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FOR FURTHER INFORMATION CONTACT: Julie Walton, (410) 966-4622.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Medicare Program

The Medicare program was established by Congress in 1965 with the enactment of title XVIII of the Social Security Act (the Act). The program provides payment for certain medical services for persons 65 years of age or older, disabled beneficiaries, and other persons with end-stage renal disease. The program currently covers approximately 32.1 million aged and 3.4 million disabled individuals.

The Medicare program consists of two separate but complementary insurance programs, a hospital insurance program (part A) and a supplementary medical insurance program (part B). Although part A is called hospital insurance, it also covers services furnished by other entities, including skilled nursing facilities, home health agencies, and hospices.

Part B covers a wide range of medical services and supplies, including those furnished by physicians or others in connection with physician services, outpatient hospital services, outpatient physical and occupational therapy services, and home health services. Physician services covered under part B include visits to patients in the home, office, hospital, and other institutions. Part B also covers certain drugs and biologicals that cannot be self-administered, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment, ambulance services, prosthetic devices, and certain medical supplies.

While the Medicare program provides extensive hospital insurance benefits and supplementary medical insurance, it was not designed to cover the total cost of providing medical care for Medicare beneficiaries. Amounts payable under both parts A and B are reduced by certain deductibles and coinsurance amounts, for which the beneficiary is responsible.

In 1992, the part A inpatient hospital deductible is $652 for each "benefit period" (the period beginning on the first day of hospitalization and extending until the beneficiary is no longer an inpatient of a hospital or skilled nursing facility for 60 consecutive days).

The part B deductible is $100 for the calendar year. Beneficiaries are also responsible for paying certain coinsurance amounts for covered items and services. For example, the coinsurance applicable to physicians' services under part B is generally 20 percent of the Medicare-approved amount for the service. When beneficiaries receive covered services from physicians who do not accept assignment of their Medicare claims, the beneficiaries may also be required to pay amounts in excess of the Medicare approved amount ("excess charges"), up to a limit established under the Act. (In 1992, physicians who do not accept assignment of the Medicare claim may charge up to 20 percent more than the Medicare-approved amount.)

Also, there are a number of items and services that are not covered under either part A or part B. For example, custodial nursing home care, most dental care, eyeglasses, and most prescription drugs are not covered by Medicare. Beneficiaries must pay the full cost of these services out-of-pocket or may purchase additional private insurance to help pay the costs.

Because Medicare does not cover the total cost of providing medical care, approximately 75 percent of aged Medicare beneficiaries purchase (or have provided to them) some type of private health insurance coverage to help pay for medical expenses. This coverage includes Medicare supplemental insurance, employer group health plans, hospital indemnity insurance, nursing home or long-term care insurance, specified disease insurance, and coordinated care plans that may or may not contract with Medicare (these include plans offered by health maintenance organizations (HMOs) and competitive medical plans (CMPs)).

B. Medicare Supplemental Insurance

Medicare supplemental insurance policies, also known as "Medigap" policies, are designed to fill specific gaps in the Medicare benefit structure. They typically provide coverage for some or all of the deductible and coinsurance amounts applicable to Medicare-covered services, and sometimes cover items or services that are not covered by Medicare at all.

Specific standards for Medicare supplemental policies were incorporated into the Social Security Act by section 902(a) of the Social Security Disability Amendments of 1980 (Pub. L. 96-265), known as the Baucus Amendments, in an effort to address certain abuses associated with the sale of health insurance to the elderly. Section 902(a) added section 1882 to the Act, which established a voluntary certification program under which a Medicare supplemental policy could be certified by a Federal panel as meeting certain minimum standards, including the standards contained in the "NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act," adopted by the NAIC on June 6, 1979. The standards contained in this model regulation are known as the "NAIC Model Standards". In addition, section 1882 of the Act provided that Medigap policies issued in a State would be deemed to meet the certification requirements if the State's program regulating Medicare supplemental policies provided for the application of standards at least as stringent as those contained in the NAIC Model Regulation and in section 1882 of the Act.

Regulations implementing these provisions are contained in 42 CFR part 403, subpart B. Since the publication of these regulations, Congress has amended section 1882 of the Act a number of times, and corresponding amendments have been made in the NAIC Model Standards. We anticipate publishing a proposed rule that would update our part 403 regulations to incorporate all the changes in the law that have occurred over the past five years, including amendments made by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203, enacted on December 22, 1987), the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360, enacted on July 1, 1988), the Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101-234, enacted on December 13, 1989), and the Omnibus Budget Reconciliation Act of 1990 (Pub.

L. 101–508, enacted on November 5, 1990).

Section 1882 of the Act and our implementing regulations at 42 CFR part 403, subpart B, address only Medicare supplemental policies, as defined in section 1882(g)(1) of the Act. This definition excludes policies offered by an employer to employees or former employees and policies or plans offered by a labor organization to members or former members. Since enactment of Public Law 101–508, HMO plans that contract with Medicare under sections 1833 and 1876 of the Act or under a demonstration authority are also excluded from the definition of a Medicare supplemental or Medigap policy. The current statutory definition does, however, include "Medicare wrap around" products sold by HMOs to individuals and nonemployment-related groups.

II. The Omnibus Budget Reconciliation Act of 1990

A. Standardization of Benefit Packages

The changes made to section 1882 of the Act by sections 4351 through 4358 of Public Law 101–508 with respect to Medicare supplemental insurance are extensive. They require, first of all, simplification and standardization of Medicare supplemental policies by providing that, with limited exceptions, no more than ten different benefit packages may be offered in all States and by all issuers. Of these ten benefit packages, one must cover only a "core" group of basic benefits and all others must include the core benefits. All insurers offering any of the other Medigap policies for sale must also make the core plan available. Furthermore, the provisions in Public Law 101–508 require uniform language, definitions, and format to be used in the policies.

The 1990 amendments provided that if, within nine months of enactment, NAIC adopted revised model standards delineating these ten authorized benefit packages, uniform language, definitions, and format, and other requirements consistent with the provisions of Public Law 101–508, then the references in section 1882 of the Act to the NAIC's 1979 Model Regulation would include the revised NAIC Standards. The NAIC developed the required revisions to its "Medicare Supplement Insurance Minimum Standards Model Act" and "Model Regulation" within the nine month time frame provided by Congress in section 1882(p)(1)(A) of the Act. The NAIC adopted the revised standards on July 30, 1991.

Section 1882(a)(2) of the Act provides that no Medicare supplemental policy may be issued in a State after the effective date of the revised NAIC Standards unless the State's regulatory program has been approved by HCFA as providing for the application and enforcement of the revised standards, or (if the State's program has not been approved) the policy has been certified by HCFA as meeting the standards. Section 1882(p)(1)(C) of the Act provides that the effective date of the revised standards is the date the State adopts the standards or one year after the NAIC's adoption of the standards, whichever is earlier, except in States that HCFA identifies as requiring new legislation to implement the standards but whose legislatures are not scheduled to meet in 1992 in a session at which these matters may be acted upon.

For policies issued in these "grace period" States, section 1882(p)(1)(C) of the Act provides that the effective date of the revised standards will be extended until the first day of the first quarter following the end of the first legislative session that begins on or after January 1, 1992. Since the enactment of Public Law 101–508 and the NAIC's adoption of the revised Model Standards, HCFA has contacted each State to apprise them of these new requirements. Based on these contacts and consultation with the NAIC, we have identified two States that may need an extension under the grace period provisions of the statute—Montana and Oregon.

The standards contained in the revised NAIC Model Regulation (including the description of the ten benefit packages that may be offered, except in "waiver" States, as explained in section II.B of this notice) accordingly apply to Medicare supplemental policies issued in a State on or after July 30, 1992, or an earlier date on which a State adopts the standards, unless the State of issuance qualifies for a "grace period."

Because of these requirements for total standardization of benefit plans, States, in amending their regulatory programs to implement these new requirements, must adopt the benefit packages precisely as they have been devised by the NAIC with only limited exceptions permitted by statute. These exceptions are as follows. First, States that have received a waiver under section 1882(p)(6) may authorize the sale of policies that contain different benefits than the ten standardized benefit packages, as explained in section II.B. Second, section 1882(p)(4)(B) of the Act allows States to approve the addition of new or innovative benefits to an otherwise approved standardized plan. Third, under section 1882(p)(5) of the Act, while a State must approve the core plan A for sale in the State, it does not have to permit any or all of the other nine plans to be sold in the State. That is, the State may reduce the number of standardized plans that are permitted to be sold in the State from ten to some smaller number so long as the core plan is offered. Aside from these three exceptions, the State must adopt standardization requirements identical to those in the NAIC Model in order for the State's regulatory program to be approved.

B. States with Alternative Simplification Programs

Section 1882(p)(6) of the Act permits the Secretary to waive the application of standards regarding the limitation of benefits in those States that, on the date of enactment of Public Law 101–508 (November 5, 1990), had in place an alternative simplification program. The Conference Report accompanying Public Law 101–508 (H.R. Conf. Rep. No. 964, 101st Cong., 2nd Sess. 783 (1990)), in its discussion of the then current law, notes that "The States of Massachusetts, Minnesota, and Wisconsin have implemented their own standardized benefit options."

These three States with pre-existing alternative benefit standardization or simplification programs applied to HCFA for a waiver of the standardization requirements. All three were granted waivers. Therefore, policies sold in those States must conform to those States' unique requirements for benefit packages rather than to the ten standardized benefit packages adopted by the NAIC in the Model Standards.

C. Other Amendments Applicable to Medicare Supplemental Insurance

The way in which the Federal Medicare supplemental policy standards are enforced was also changed completely by Public Law 101–508. The Supplemental Health Insurance Panel, which formerly monitored States' voluntary compliance with certain minimum standards, was abolished and replaced with a Federal process under which we must directly review and approve States' regulatory programs. The formerly voluntary certification program has been made mandatory in States that either do not receive our approval of their programs regulating Medicare supplemental policies or lose approved status at some future time.

Public Law 101–508 included a variety of penalty provisions, some of which relate to the sale of nonstandardized policies and policies that duplicate other health benefits. These nonstandardization and nonduplication penalty provisions are discussed separately in section III of this notice.

Public Law 101–508 also added a number of other new standards for Medigap policies in addition to the standardization and anti-duplication requirements. These requirements are not the subject of this notice but will be dealt with in future rulemaking. They include the following:

- All new Medicare supplemental policies must be guaranteed renewable.
- Medicare supplemental policies must provide for the suspension of premiums and benefits under the policy when a policyholder is eligible for Medicaid and requests the suspension within 90 days of gaining Medicaid eligibility. This suspension may last for up to 24 months. If, at any time during the 24 months, the individual loses Medicaid eligibility, the insurer must reinstate coverage (effective as of the date of loss of Medicaid eligibility) if the policyholder requests the reinstatement of the policy within 90 days of the loss of Medicaid eligibility (and resumes payment of the premiums).
- Individual Medicare supplemental policies must meet a minimum loss ratio standard of 65 percent instead of the previous 60 percent requirement. Group policies continue to be required to meet a minimum 75 percent loss ratio standard. A loss ratio expresses the relationship between the aggregate amount of premiums collected under a policy to the aggregate amount of benefits paid out under it.
- Policies must provide refunds or premium credits if they fail to achieve the required loss ratio beginning with the third year of the policy's life.
- The issuer of a replacement policy must waive any time periods applicable to pre-existing conditions, waiting periods, or other similar elimination or probationary periods to the extent the time was spent under the original policy for similar benefits. These time periods may never be longer than 6 months.
- Medicare supplemental policies must provide a 6-month open enrollment period to Medicare beneficiaries who are 65 or older when they first enroll in Medicare Part B. During the open enrollment period, the issuer of the policy may not condition to policy's issuance or effectiveness or discriminate in pricing based on the health status, claims experience, or medical condition of the applicant. An insurer may restrict payment under a policy (which otherwise contains a pre-existing conditions clause) for a period of up to 6 months on claims relating to a pre-existing condition. A pre-existing condition is defined as a condition for which medical advice was given or treatment was recommended by or received from a physician within 6 months before the effective date of the policy.
- Finally, Public Law 101–508 authorized a new type of policy, known as Medicare SELECT, which permits differential payment of benefits depending on whether the beneficiary receives services through a preferred provider organization (PPO) or specified network of providers. That is, Medicare SELECT policies may restrict or eliminate payment of deductibles and coinsurance that the policy would otherwise cover if the plan participant uses non-network providers. These policies should be available in 15 States during 1992, 1993, and 1994. As noted above, prepaid plans that offer Medicare supplemental products outside of Federal contracts under section 1833(a)(1)(A) of the Act (providing for reasonable cost reimbursement to health care prepayment plans (HCPPs)), section 1876 of the Act (providing for payments based on a predetermined capitation rate or reasonable cost to contracting HMOs and CMPs), or under a demonstration authority are also subject to regulation as Medicare supplemental policies under section 1882 of the Act and these model standards. A notice announcing the 15 States in which these policies may be sold was published in the Federal Register on September 20, 1991 (56 FR 47763). Minimum standards for Medicare SELECT policies are also included in the July 30, 1991 NAIC Model Regulation.

The requirements from Public Law 101–508 are all reflected in the revised NAIC Standards. In order to be approved under section 1882 of the Act, the State regulatory programs must provide for the application and enforcement of requirements equal to or more stringent than these revised standards.

III. Publication of List for Standardized Benefit Packages

Public Law 101–508 also included certain penalty provisions relating to the sale of nonstandardized policies and policies that duplicate other health benefits, which may not be applied to a seller who is not the issuer of the policy until we publish a list of the standardized Medicare supplemental benefit packages that may be offered in a State when the requirements of the revised model standards become effective. Issuers of health insurance policies generally include insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and similar entities (see section 4.D of the NAIC Model Regulation) A seller who is not the issuer of the policy would include any other individual or entity that sells a health insurance policy to a Medicare beneficiary, including insurance agents, brokers, solicitors, and producers.

The publication of this list is required by sections 1882(d)(3)(A) and 1882(p)(10) of the Act, as amended by sections 4354(a)(1)(F) and 4351(a)(3) of Public Law 101–508, respectively. This list of standardized Medicare supplemental benefit packages is contained in section 9.E of the revised Model Regulation adopted by the NAIC on July 30, 1991, which is reprinted at the end of this notice. A description of each standardized "core" benefit, which must be included in all of the ten benefit packages, is contained in section 8.B of the NAIC Model Regulation, and section 8.C describes each of the other standardized benefits. Section 16 of the Model Regulation includes a chart that outlines the benefits covered in each of the ten standardized plans A though J.

Because it is necessary to refer to more than one section of the NAIC Model Regulation to determine the content of each standardized benefit package, we are providing the following summary of the ten packages.

Plan A (Core Benefit Plan) (NAIC Model Section 9.E.(1))

—Part A coinsurance for hospitalization (which begins with the 61st day of hospitalization in Medicare benefit period), plus coverage for 365 additional days after Medicare benefits end (NAIC Model Section 8.B(1)–(3)];
—Part B coinsurance (generally 20 percent of Medicare-approved expenses) (NAIC Model Section 8.B(5)]; and
—First three pints of blood each year (NAIC Model Section 8.B(4)).

(Note that Plan A provides no coverage for benefits described in paragraphs (1) through (11) of NAIC Model Section 8.C.: the Part A inpatient hospital deductible (currently $652 for each Medicare benefit period); the Part B deductible ($100 each year); Part A coinsurance for post-hospital skilled nursing facility care; Part B charges in excess of Medicare-approved amounts; non-Medicare-covered prescription drugs, preventive services, at-home recovery services, or services received in a foreign country; or new or innovative benefits approved by the

State insurance commissioner or by HCFA.)

Plan B (NAIC Model Section 9.E.(2))

—The core benefits (NAIC Model Section 8.B(1)–(5)); and
—The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1)).

Plan C (NAIC Model Section 9.E.(3))

—The core benefits (NAIC Model Section 8.B.(1)–(5));
—The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
—The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
—The Part B annual deductible (NAIC Model Section 8.C.(3)); and
—Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000 (NAIC Model Section 8.C.(8)).

Plan C (NAIC Model Section 9.E.(4))

—The core benefits (NAIC Model Section 8.B.(1)–(5));
—The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
—The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
—Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000 (NAIC Model Section 8.C.(8)); and
—Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in Section 8.C.(10) of the NAIC Model.

Plan E (NAIC Model Section 9.E.(5))

—The core benefits (NAIC Model Section 8.B.(1)–(5));
—The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
—The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
—Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000 (NAIC Model Section 8.C.(8)); and
—Preventive health services not covered by Medicare, subject to a $120 maximum annual benefit (NAIC Model Section 8.C.(9)).

Plan F (NAIC Model Section 9.E.(6))

—The core benefits (NAIC Model Section 8.B.(1)–(5));
—The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
—The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
—The Part B annual deductible (NAIC Model Section 8.C.(3));
—One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge) (NAIC Model Section 8.C.(5)); and
—Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000 (NAIC Model Section 8.C.(8)).

Plan G (NAIC Model Section 9.E.(7))

—The core benefits (NAIC Model Section 8.B.(1)–(3));
—The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
—The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
—Eighty percent of Part B excess charges (80 percent of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge) (NAIC Model Section 8.C.(4));
—Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000 (NAIC Model Section 8.C.(8)); and
—Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in section 8.C.(10) of the NAIC Model Regulation.

Plan H (NAIC Model Section 9.E.(8))

—The core benefits (NAIC Model Section 8.B.(1)–(3));
—The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
—The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
—Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000 (NAIC Model Section 8.C.(8)); and
—Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a $250 calendar year deductible and a maximum $1,250 in benefits per calendar year (NAIC Model Section 8.C.(6)).

Plan I (NAIC Model Section 9.E.(9))

—The core benefits (NAIC Model Section 8.B.(1)–(3));
—The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
—The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
—One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge) (NAIC Model Section 8.C.(5));
—Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum benefit of $50,000 (NAIC Model Section 8.C.(8)); and
—Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a $250 calendar year deductible and a maximum $1,250 in benefits per calendar year (NAIC Model Section 8.C.(6)).

Plan J (NAIC Model Section 9.E.(10))

—The core benefits (NAIC Model Section 8.B.(1)–(3));
—The Part A coinsurance for post-hospital skilled nursing facility care through the 100th day in a Medicare benefit period (NAIC Model Section 8.C.(2));
—The Part A inpatient hospital deductible (NAIC Model Section 8.C.(1));
—The Part B annual deductible (NAIC Model Section 8.C.(3));
—One hundred percent of Part B excess charges (the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or State law, and the Medicare-approved Part B charge) (NAIC Model Section 8.C.(5));
—Eighty percent of charges for emergency care received in a foreign country during the first sixty days of a trip outside the U.S., subject to a $250 calendar year deductible and a lifetime maximum of $50,000 (NAIC Model Section 8.C.(8));
—Services that are not covered by Medicare to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery, subject to limitations described in section 9.C.(10) of the NAIC Model Regulation;
—Fifty percent of outpatient prescription drug charges not covered by Medicare, subject to a $250 calendar year deductible and a maximum $3,000 in benefits per calendar year (NAIC Model Section 8.C.(7)); and
—Preventive health services not covered by Medicare, subject to a $120 maximum annual benefit (NAIC Model Section 8.C.(9)).

Sellers who are not issuers are accordingly on notice, through the publication of this list, that the criminal and civil penalties applicable for violations of the provisions of sections 1882(d)(3)(A), 1882(p)(8), and 1882(p)(9) of the Act may be applied to them as well as to issuers.

Section 1882(d)(3)(A) prohibits a person from issuing or selling a health insurance policy (other than an employer group health plan) to a Medicare beneficiary if the person has knowledge that the policy duplicates Medicare, Medicaid, or other health benefits to which the beneficiary is entitled (other than benefits mandated under a State or Federal law, e.g., workers' compensation or Veterans' benefits). If a seller (who is not the issuer of a policy) obtains a written statement from the beneficiary, on a form prescribed in the NAIC Standards, that lists the beneficiary's other health insurance and indicates on its face that the sale of the new policy will not duplicate other health benefits to which the beneficiary is entitled, the seller will not be considered to violate these provisions. Violations of section 1882(d)(3)(A) are subject to criminal penalties of up to $250,000 in fines and five years imprisonment, and civil penalties of up to $25,000 for issuers and up to $15,000 for sellers who are not issuers.

Section 1882(p)(8) of the Act provides that any person who sells or issues a Medicare supplemental policy that does not conform to the standardization requirements after the effective date of the revised standards in the State is subject to a civil penalty of up to $25,000 (for issuers) or $15,000 (for sellers who are not issuers). Section 1882(p)(9) of the Act provides these same civil penalties for selling a Medicare supplemental policy without first making a "core" package of benefits available to the beneficiary and giving the beneficiary an outline of coverage on a form prescribed in the NAIC Standards.

IV. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5. U.S.C. 601 through 612) unless the Secretary certifies that a notice will not have a significant economic impact on a substantial number of small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This notice includes information concerning insurance policies and health benefit plans that supplement the Medicare program's coverage.

The NAIC developed a revision of its Model Regulation and officially adopted the model on July 30, 1991. It includes a list and description of the ten standardized Medigap benefits packages that may be issued in a State when the revised standards become effective. This notice fulfills the requirements in sections 1882(d)(3)(A) and 1882(p)(10) of the Act, which require the publication of this list before the amended provisions of section 1882(d)(3), 1882(p)(8) or 1882(p)(9) may be applied to sellers who are not issuers.

The cost of this notice does not exceed $100 million. Therefore, we are not required to prepare a regulatory impact analysis pursuant to E.O. 12291.

Further, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Authority: Sections 1882(d)(3)(A), (p)(1), (p)(8), (p)(9), and (p)(10) of the Social Security Act (42 U.S.C. 1395ss(d)(3)(A), (p)(1), (p)(8), (p)(9), and (p)(10))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 9, 1992.

William Toby,

Acting Administrator, Health Care Financing Administration.

Medicare Supplement Insurance Minimum Standards Model Act

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Section 1. Definitions

A. "Applicant" means:

(1) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare supplement policy, the proposed certificateholder.

B. "Certificate" means, for the purposes of this Act, any certificate delivered or issued for delivery in this State under a group Medicare supplement policy.

C. "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.

D. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this State Medicare supplement policies or certificates.

Drafting Note: It is intended that nonprofit hospital and medical service associations be subject to this model act. In those states where such associations are prohibited from issuing subscriber contracts that include all of the benefits required by section 3 of this Act, they shall include so much of those benefits as are permitted and they shall be issued in conjunction with another contract including at least the remainder of the minimum benefits required. In such event, the combination of contracts will be considered to have been issued in compliance with section 3 of this Act.

E. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

F. "Medicare Supplement Policy" means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or health maintenance organizations], other than a policy issued pursuant to a contract under section 1876 or section 1833 of the federal Social Security Act (42 U.S.C. 1395 et seq.), or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

G. "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

Section 2. Applicability and Scope

A. Except as otherwise specifically provided in Section 4, this Act shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this State on or after the effective date hereof, and

(2) All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this State.

B. This Act shall not apply to a policy of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

C. The provisions of this Act are not intended to prohibit or apply to insurance policies or health care benefit plans, including group conversion policies, provided to Medicare eligible persons which policies are not marketed or held to be Medicare supplement policies or benefit plans.

Section 3. Standards for Policy Provisions and Authority to Promulgate Regulations

A. No Medicare supplement policy or certificate in force in the State shall contain benefits that duplicate benefits provided by Medicare.

B. Notwithstanding any other provision of law of this State, a Medicare supplement policy or certificate shall not exclude or limit benefits for loss incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

c. The commissioner shall adopt reasonable regulations to establish specific standards for policy provisions of Medicare supplement policies and certificates. Such standards shall be in addition to and in accordance with applicable laws of this State, including Sections [insert the applicable statutory reference, if any, to the NAIC Uniform Accident and Sickness Policy Provision Law]. No requirement of the Insurance Code relating to minimum required policy benefits, other than the minimum standards contained in this Act, shall apply to Medicare supplement policies and certificates. The standards may cover, but not be limited to:

Editor's Note: Wherever the term "commissioner" appears, the title of the chief insurance regulatory official of the state should be inserted.

(1) Terms of renewability;

(2) Initial and subsequent conditions of eligibility;

(3) Nonduplication of coverage;

(4) Probationary periods;

(5) Benefit limitations, exceptions and reductions;

(6) Elimination periods;

(7) Requirements for replacement;

(8) Recurrent conditions; and

(9) Definitions of terms.

D. The commissioner shall adopt reasonable regulations to establish minimum standards for benefits, claims payment, marketing practices and compensation arrangements and reporting practices, for Medicare supplement policies and certificates.

E. The commissioner may adopt from time to time, such reasonable regulations as are necessary to conform Medicare supplement policies and certificates to the requirements of federal law and regulations promulgated thereunder, including but not limited to:

(1) Requiring refunds or credit if the policies or certificates do not meet loss ratio requirements;

(2) Establishing a uniform methodology for calculating and reporting loss ratios;

(3) Assuring public access to policies, premiums and loss ratio information of issuers of Medicare supplement insurance;

(4) Establishing a process for approving or disapproving policy forms and certificate forms and proposed premium increases;

(5) Establishing a policy for holding public hearing prior to approval of premium increases; and

(6) Establishing standards for Medicare Select policies and certificates.

F. The commissioner may adopt reasonable regulations that specify prohibited policy provisions not otherwise specifically authorized by statute which, in the opinion of the commissioner, are unjust, unfair or unfairly discriminatory to any person insured or proposed to be insured under a Medicare supplement policy or certificate.

Drafting Note: Each state should examine its statutory authority to promulgate regulations and revise this section accordingly so that sufficient rulemaking authority is present and that unnecessary duplication of unfair practice provisions does not occur.

Section 4. Loss Ratio standards

Medicare supplement policies shall return to policyholders benefits which

are reasonable in relation to the premium charged. The commissioner shall issue reasonable regulations to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims experience, or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis, and earned premiums in accordance with accepted actuarial principles and practices.

Section 5. Disclosure Standards

A. In order to provide for full and fair disclosure in the sale of Medicare supplement policies, no Medicare, supplement policy or certificate shall be delivered in this State unless an outline of coverage is delivered to the applicant at the time application is made.

B. The commissioner shall prescribe the format and content of the outline of coverage required by Subsection A. For purposes of this section, "format" means style, arrangements and overall appearance, including such items as the size, color and prominence of type and arrangement of text and captions. Such outline of coverage shall include:

(1) A description of the principal benefits and coverage provided in the policy;

(2) A statement of the renewal provisions, including any reservation by the issuer of a right to change premiums; and disclosure of the existence of any automatic renewal premium increases based on the policyholder's age.

(3) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.

C. The commissioner may prescribe by regulation a standard form and the contents of an informational brochure for persons eligible for Medicare, which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the commissioner may require by regulation that the informational brochure be provided to any prospective insureds eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the commissioner may require by regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.

D. The commissioner may adopt regulations for captions or notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for Medicare by reason of age, other than:

(1) Medicare supplement policies;

(2) Disability income policies;

(3) Basic, catastrophic or major medical expense policies; or

(4) Single premium, nonrenewable policies.

E. The commissioner may adopt reasonable regulations to govern the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts or certificates by persons eligible for Medicare.

Section 6. Notice of Free Examination

Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Any refund made pursuant to this section shall be paid directly to the applicant by the issuer in a timely manner.

Section 7. Filing Requirements for Advertising

Every issuer of Medicare supplement insurance policies or certificates in this State shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio or television medium to the Commissioner of Insurance of this State for review or approval by the commissioner to the extent it may be required under State law.

Drafting Note: States should examine their existing laws regarding the filing of advertisements to determine the extent to which review or approval is required.

Section 8. Administrative Procedures

Regulations adopted pursuant to this Act shall be subject to the provisions of [cite section of State insurance code relating to the adoption and promulgation of rules and regulations or cite the State's administrative procedures act, if applicable].

Section 9. Penalties

In addition to any other applicable penalties for violations of the Insurance Code, the commissioner may require issuers violating any provision of this Act or regulations promulgated pursuant to this Act to cease marketing any Medicare supplement policy or certificate in this State which is related directly or indirectly to a violation or may require such issuer to take such actions as are necessary to comply with the provisions of this Act, or both.

Section 10. Separability

If any provision of this Act or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 11. Effective Date

The Act shall be effective on [insert date].

Note: States should make amendments as soon as possible.

Legislative History (all references are to the *Proceedings of the NAIC*).

1980 Proc. II 22, 26, 586, 591, 593, 603–605 (adopted).

1981 Proc. I 47, 51, 420, 424, 446, 453–456 (amended and reprinted).

1988 Proc. I 9, 20–21, 629–630, 652–654, 665–668 (amended and reprinted).

1988 Proc. II 5, 13, 568, 601, 604, 624–626 (amended and reprinted).

1989 Proc. I 14, 813–814, 836.1–836.4 (amended at special plenary session September 1988).

1990 Proc. I 6, 27–28, 477, 574–575, 577–580 (amended and reprinted).

1992 Proc. I (amended at special plenary in July 1991).

Model Regulation to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act

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Section 1. Purpose

The purpose of this regulation is to provide for the reasonable standardization of coverage and simplification of terms and benefits of Medicare supplement policies; to facilitate public understanding and comparison of such policies; to eliminate provisions contained in such policies which may be misleading or confusing in connection with the purchase of such policies or with the settlement of claims; and to provide for full disclosures in the sale of accident and sickness insurance coverages to persons eligible for Medicare.

Section 2. Authority

This regulation is issued pursuant to the authority vested in the commissioner under [cite appropriate section of state law providing authority for minimum benefit standards regulations or the NAIC Medicare Supplement Insurance Minimum Standards Model Act].

Editor's Note: Wherever the term "commissioner" appears, the title of the chief insurance regulatory official of the state should be inserted.

Section 3. Applicability and Scope

A. Except as otherwise specifically provided in Sections 7, 12, 13, and 21, this regulation shall apply to:

(1) All Medicare supplement policies delivered or issued for delivery in this State on or after the effective date hereof, and

(2) All certificates issued under group Medicare supplement policies which certificates have been delivered or issued for delivery in this State.

B. This regulation shall not apply to a policy or contract of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organizations.

Section 4. Definitions

For purposes of this regulation:

A. "Applicant" means:

(1) In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits, and

(2) In the case of a group Medicare supplement policy, the proposed certificateholder.

B. "Certificate" means any certificate delivered or issued for delivery in this State under a group Medicare supplement policy.

C. "Certificate Form" means the form on which the certificate is delivered or issued for delivery by the issuer.

D. "Issuer" includes insurance companies, fraternal benefit societies, health care service plans, health maintenance organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates.

E. "Medicare" means the "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended.

F. "Medicare Supplement Policy" means a group or individual policy of [accident and sickness] insurance or a subscriber contract [of hospital and medical service associations or health maintenance organizations], other than a policy issued pursuant to a contract under section 1876 or section 1833 of the federal Social Security Act (42 U.S.C. Section 1395 et. seq.) or an issued policy under a demonstration project authorized pursuant to amendments to the federal Social Security Act, which is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.

G. "Policy Form" means the form on which the policy is delivered or issued for delivery by the issuer.

Section 5. Policy Definitions and Terms

No policy or certificate may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy or certificate unless such policy or certificate contains definitions or terms which conform to the requirements of this section.

A. "Accident," "Accidental Injury," or "Accidental Means" shall be defined to employ "result" language and shall not include words which establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization.

(1) The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force."

(2) Such definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law.

B. "Benefit Period" or "Medicare Benefit Period" shall not be defined more restrictively than as defined in the Medicare program.

C. "Convalescent Nursing Home," "Extended Care Facility," or "Skilled Nursing Facility" shall not be defined more restrictively than as defined in the Medicare program.

D. "Health Care Expenses" means expenses of health maintenance organizations associated with the delivery of health care services, which expenses are analogous to incurred losses or insurers.

Such expenses shall not include:

(1) Home office and overhead costs;

(2) Advertising costs;

(3) Commissions and other acquisition costs;

(4) Taxes;

(5) Capital costs;

(6) Administrative costs; and

(7) Claims processing costs.

E. "Hospital" may be defined in relation to its status, facilities and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program.

F. "Medicare" shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of the Public Law 8997, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments of substitutes thereof," or words of similar import.

G. "Medicare Eligible Expenses" shall mean expenses of the kinds covered by Medicare, to the extent recognized as reasonable and medically necessary by Medicare.

H. "Physician" shall not be defined more restrictively than as defined in the Medicare program.

I. "Sickness" shall not be defined to be more restrictive than the following:

"Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force."

The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability or similar law.

Section 6. Policy Provisions

A. Except for permitted preexisting condition clauses as described in Section 7A(1) and Section 8A(1) of this regulation, no policy or certificate may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy if such policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare.

B. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions.

C. No Medicare supplement policy or certificate in force in the State shall contain benefits which duplicate benefits provided by Medicare.

Section 7. Minimum Benefit Standards for Policies or Certificates Issued for Delivery Prior to [insert effective dote adopted by state]

No policy or certificate may be advertised, solicited or issued for delivery in this State as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards.

Drafting Note: This section has been retained for transitional purposes. The purpose of this section is to govern all policies issued prior to the date a state makes its revisions to conform to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508). Pursuant to OBRA 1990, states are required to revise and make effective their regulatory program for Medicare supplement insurance within one year after the NAIC adopts amendments to the model act and regulation. States that require statutory changes to implement the new standards and do not have legislatures scheduled to meet in 1992 in a legislative session in which such legislation may be considered are allowed additional time in which to make revisions.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

Drafting Note: States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

Drafting Note: This provision was prepared so that premium changes can be made based upon the changes in policy that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision so as to coincide with their particular authority.

(4) A "noncancellable," "guaranteed renewable," or "noncancellable and guaranteed renewable" Medicare supplement policy shall not:

(a) Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or

(b) Be cancelled or nonrenewed by the issuer solely on the grounds of deterioration of health.

(5) (a) Except as authorized by the commissioner of this State, an issuer shall neither cancel nor nonrenew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation.

(b) If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in Paragraph (5)(d), the issuer shall offer certificateholders an individual Medicare supplement policy. The issuer shall offer the certificateholder at least the following choices:

(i) An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and

(ii) An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Section 8B of this regulation.

Drafting Note: Group contracts in force prior to the effective date of the Omnibus Budget Reconciliation Act (OBRA) of 1990 may have existing contractual obligations to continue benefits contained in the group contract. This section is not intended to impair such obligations.

(c) If membership in a group is terminated, the issuer shall:

(i) Offer the certificateholder such conversion opportunities as are described in Subparagraph (b); or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(d) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

Drafting Note: Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits.

B. Minimum Benefit Standards.

(1) Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount;

(3) Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days;

(4) Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional 365 days;

(5) Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B;

(6) Coverage for the coinsurance amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible [$100];

(7) Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount.

Drafting Note: States are reminded that effective January 1, 1990, coverage for the coinsurance amount [20 percent] of Medicare eligible expenses for covered outpatient drugs used in immunosuppressive therapy subject to the Medicare deductible amount is included within the provisions of Paragraph (6).

Section 8. Benefit Standards for Policies or Certificates Issued or Delivered on or After [insert effective date adopted by state]

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this State on or after [insert effective date]. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this State as a Medicare supplement policy or certificate unless it complies with these benefit standards.

A. General Standards. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation.

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage.

Drafting Note: States that have adopted the NAIC Individual Accident and Sickness Insurance Minimum Standards Model Act should recognize a conflict between Section 6B of that Act and this subsection. It may be necessary to include additional language in the Minimum Standards Model Act that recognizes the applicability of this preexisting condition rule to Medicare supplement policies and certificates.

(2) A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents.

(3) A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible amount and copayment percentage factors. Premiums may be modified to correspond with such changes.

Drafting Note: This provision was prepared so that premium changes can be made based on the changes in policy benefits that will be necessary because of changes in Medicare benefits. States may wish to redraft this provision to conform with their particular authority.

(4) No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium.

(5) Each Medicare supplement policy shall be guaranteed renewable and

(a) The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual; and

(b) The issuer shall not cancel or nonrenew the policy for any reason other than nonpayment of premium or material misrepresentation.

(c) If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Section 8A(5)(e), the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder)

(i) Provides for continuation of the benefits contained in the group policy, or

(ii) Provides for such benefits as otherwise meets the requirements of this subsection.

(d) If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall

(i) Offer the certificateholder the conversion opportunity described in Section 8A(5)(c), or

(ii) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy.

(e) If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the succeeding issuer shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced.

Drafting Note: Rate increases otherwise authorized by law are not prohibited by this Paragraph (5).

(6) Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits.

(7) (a) A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of such policy or certificate within ninety (90) days after the date the individual becomes entitled to such assistance. Upon receipt of timely notice, the issuer shall return to the policyholder or certificateholder that portion of the premium attributable to the period of Medicaid eligibility, subject to adjustment for paid claims.

(b) If such suspension occurs and if the policyholder or certificateholder loses entitlement to such medical assistance, such policy or certificate shall be automatically reinstituted (effective as of the date of termination of such entitlement) as of the termination of such entitlement if the policyholder or certificateholder provides notice of loss of such entitlement within ninety (90) days after the date of such loss and pays the premium attributable to the period, effective as of the date of termination of such entitlement.

(c) Reinstitution of such coverages:

(i) Shall not provide for any waiting period with respect to treatment of preexisting conditions;

(ii) Shall provide for coverage which is substantially equivalent to coverage in effect before the date of such suspension; and

(iii) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended.

B. Standards for Basic ("Core") Benefits Common to All Benefit Plans. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic "core" package, but not in lieu thereof.

(1) Coverage of Part A Medicare Eligible Expenses for hospitalization to the extent not covered by Medicare from the 61st day through the 90th day in any Medicare benefit period;

(2) Coverage of Part A Medicare Eligible Expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used;

(3) Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of the Medicare Part A eligible expenses for hospitalization paid at the Diagnostic Related Group (DRG) day outlier per diem or other appropriate standard of payment, subject to a lifetime maximum benefit of an additional 365 days;

(4) Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations;

(5) Coverage for the coinsurance amount of Medicare Eligible Expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible;

C. Standards for Additional Benefits. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 9 of this regulation.

(1) Medicare Part A Deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period.

(2) Skilled Nursing Facility Care: Coverage for the actual billed charges up to the coinsurance amount from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A.

(3) Medicare Part B Deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement.

(4) Eighty Percent (80%) of the Medicare Part B Excess Charges: Coverage for eighty percent (80%) of the differences between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(5) One Hundred Percent (100%) of the Medicare Part B Excess Charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge.

(6) Basic Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars ($1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(7) Extended Outpatient Prescription Drug Benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollar ($250) calendar year deductible, to a maximum of three thousand dollars ($3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare.

(8) Medically Necessary Emergency Care in a Foreign Country: Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars ($250), and a lifetime maximum benefit of fifty thousand dollars ($50,000). For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset.

(9) Preventive Medical Care Benefit: Coverage for the following preventive health services:

(a) An annual clinical preventive medical history and physical examination that may include tests and services from Subparagraph (b) and patient education to address preventive health care measures.

(b) Any one or a combination of the following preventive screening tests or preventive services, the frequency of which is considered medically appropriate:

(1) Fecal occult blood test and/or digital rectal examination;

(2) Mammogram;

(3) Dipstick urinalysis for hematuria, bacteriuria and proteinauria;

(4) Pure tone (air only) hearing screening test, administered or ordered by a physician;

(5) Serum cholesterol screening (every five (5) years);

(6) Thyroid function test;

(7) Diabetes screening.

(c) Influenza vaccine administered at any appropriate time during the year and Tetanus and Diphtheria booster (every ten (10) years).

(d) Any other tests or preventive measures determined appropriate by the attending physician.

Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars ($120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare.

(10) At-Home Recovery Benefit: Coverage for services to provide short term, at-home assistance with activities of daily living for those recovering from an illness, injury or surgery.

(a) For purposes of this benefit, the following definitions shall apply:

(i) "Activities of daily living" include, but are not limited to bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings.

(ii) "Care provider" means a duly qualified or licensed home health aide/

homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses registry.

(iii) "Home" shall mean any place used by the insured as a place of residence, provided that such place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence.

(iv) "At-home recovery visit" means the period of a visit required to provide at home recovery care, without limit on the duration of the visit, except each consecutive 4 hours in a 24-hour period of services provided by a care provider is one visit.

(b) Coverage Requirements and Limitations

(i) At-home recovery services provided must be primarily services which assist in activities of daily living.

(ii) The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare.

(iii) Coverage is limited to:

(I) No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment;

(II) The actual charges for each visit up to a maximum reimbursement of forty dollars ($40) per visit;

(III) One thousand six hundred dollars ($1,600) per calendar year;

(IV) Seven (7) visits in any one week;

(V) Care furnished on a visiting basis in the insured's home;

(VI) Services provided by a care provider as defined in this section;

(VII) At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded;

(VIII) At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit.

(c) Coverage is excluded for:

(i) Home care visits paid for by Medicare or other government programs; and

(ii) Care provided by family members, unpaid volunteers or providers who are not care providers.

(11) New or Innovative Benefits: An issuer may, with the prior approval of the commissioner, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. Such new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goal of simplification of Medicare supplement policies.

Drafting Note: The Omnibus Budget Reconciliation Act 1990, 42 U.S.C.—1395ss(p)(7), does not prohibit the issuers of Medicare supplement policies, through an arrangement with a vendor for discounts from the vendor, from making available discounts from the vendor to the policyholder or certificateholder for the purchase of items or services not covered under its Medicare supplement policies (for example: discounts on hearing aids or eyeglasses).

Drafting Note: Use of new or innovative benefits may be appropriate to add coverage or access to such benefits as prescription drugs, at-home recovery services and preventive medical care. Any such innovative benefit, however, should offer uniquely different or significantly expanded coverage.

Drafting Note: The NAIC discussed including inflation protection for prescription drugs, at-home recovery benefits, and preventive care benefits. However, because of the lack of an appropriate mechanism for indexing these benefits, NAIC has not included indexing at this point in time. However, NAIC is committed to evaluating the effectiveness of these benefits without inflation protection, and will revisit the issue. NAIC has determined that OBRA does not authorize NAIC to delegate the authority for indexing these benefits to a federal agency without an amendment to federal law.

Section 9. Standard Medicare Supplement Benefit Plans

A. An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic "core" benefits, as defined in Section 8B of this regulation.

B. No groups, packages or combinations of Medicare supplement benefits other than those listed in this section shall be offered for sale in this state, except as may be permitted in Section 8C(11) and in Section 10 of this regulation.

C. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "J" listed in this subsection and conform to the definitions in Section 4 of this regulation. Each benefit shall be structured in accordance with the format provided in Sections 8B and 8C and list the benefits in the order shown in this subsection. For purposes of this section, "structure, language, and format" means style, arrangement and overall content of a benefit.

D. An issuer may use, in addition to the benefit plan designations required in subsection C, other designations to the extent permitted by law.

Drafting Note: It is anticipated that if a state determines that it will authorize the sale of only some of these benefit plans, the letter codes used in this regulation will be preserved. The "Buyer's Guide" published jointly by the NAIC and the Health Care Financing Administration will contain a chart comparing the ten possible combinations. In order for consumers to compare specific policy choices, it will be important that a uniform "naming" system be used. Thus, if only plans "A," "B," "D," "F" and "H" (for example) are authorized in a state, these plans should retain these alphabetical designations. However, an issuer may use, in addition to these alphabetical designations, other designations as provided in Section 9D of this regulation.

E. Make-up of benefit plans:

(1) Standardized Medicare supplement benefit plan "A" shall be limited to the Basic ("Core") Benefits Common to All Benefit Plans, as defined in Section 8B of this regulation.

(2) Standardized Medicare supplement benefit plan "B" shall include only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicate Part A Deductible as defined in Section 8C(1).

(3) Standardized Medicare supplement benefit plan "C" shall include only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible and Medically Necessary Emergency Care in a Foreign Country as defined in Sections 8C(1), (2), (3) and (8) respectively.

(4) Standardized Medicare supplement benefit plan "D" shall include only the following: The Core Benefit (as defined in Section 8B of this regulation), plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in an Foreign Country and the At-Home Recovery Benefit as defined in Sections 8C(1), (2), (8) and (10) respectively.

(5) Standardized Medicare supplement benefit plan "E" shall include on the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medically Necessary Emergency Care in a Foreign Country and Preventive Medical Care as defined in Sections 8C(1), (2), (8) and (9) respectively.

(6) Standardized Medicare supplement benefit plan "F" shall include only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, the Skilled Nursing Facility Care, the Part B Deductible, One Hundred Percent (100%) of the Medicare Part B Excess Charges, and Medically Necessary Emergency Care in a Foreign Country as defined in Sections 8C(1), (2), (3), (5) and (8) respectively.

(7) Standardized Medicare supplement benefit plan "G" shall include only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Eighty Percent (80%) of the Medicare Part B Excess Charges, Medically Necessary Emergency Care in a Foreign Country, and the At-Home Recovery Benefit as defined in Sections 8C(1), (2), (4), (8) and (10) respectively.

(8) Standardized Medicare supplement benefit plan "H" shall consist of only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Basic Prescription Drug Benefit and Medically Necessary Emergency Care in a Foreign Country as defined in Sections 8C(1), (2), (8) and (8) respectively.

(9) Standardized Medicare supplement benefit plan "I" shall consist of only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, One Hundred Percent (100%) of the Medicare Part B Excess Charges, Basic Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country and At-Home Recovery Benefit as defined in Sections 8C(1), (2), (5), (6), (8) and (10) respectively.

(10) Standardized Medicare supplement benefit plan "J" shall consist of only the following: The Core Benefit as defined in Section 8B of this regulation, plus the Medicare Part A Deductible, Skilled Nursing Facility Care, Medicare Part B Deductible, One Hundred Percent (100%) of the Medicare Part B Excess Charges, Extended Prescription Drug Benefit, Medically Necessary Emergency Care in a Foreign Country, Preventive Medical Care and At-Home Recovery Benefit as defined in Sections 8C(1), (2), (3), (5), (7), (8), (9) and (10) respectively.

Drafting Note: A state may determine by statute or regulation which of the above benefit plans may be sold in that state. The "core" benefit plan must be made available by all issuers. Therefore, the core benefit plan must be one of the authorized benefit plans adopted by a State. In no event, however, may a State authorize the sale of more than ten (10) standardized Medicare supplement benefit plans (that is, nine (9) plus the "core" policy) at the same time.

Drafting Note: The Omnibus Budget Reconciliation Act of 1990 preempts state mandated benefits in Medicare supplement policies or certificates.

Section 10. Medicare Select Policies and Certificates

A. (1) This section shall apply to Medicare Select policies and certificates, as defined in this section.

Drafting Note: This section shall be adopted by states designated by the Secretary of Health and Human Services to participate in the Medicare Select Program. Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (section 1882(t) of Title XVIII of the Social Security Act) authorized a three-year, fifteen-state program with states to be designated by the Secretary. Additional states may be authorized by future change to federal law to apply the Medicare Select Program requirements to existing preferred provider arrangements.

(2) No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section.

B. For the purposes of this section:

(1) "Complaint" means any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers.

(2) "Grievance" means dissatisfaction expressed in writing by an individual insured under a Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers.

(3)"Medicare Select Issuer" means an issuer offering, or seeking to offer, a Medicare Select policy or certificate.

(4) "Medicare Select Policy" or "Medicare Select Certificate" mean respectively a Medicare supplement policy or certificate that contains restricted network provisions.

(5) "Network Provider" means a provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy.

(6) "Restricted Network Provision" means any provision which conditions the payment of benefits, in whole or in part, on the use of network providers.

(7) "Service Area" means the geographic area approved by the commissioner within which an issuer is authorized to offer a Medicare Select policy.

C. The commissioner may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to this section and section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the commissioner finds that the issuer has satisfied all of the requirements of this regulation.

D. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this State until its plan of operation has been approved by the commissioner.

E. A Medicare Select issuer shall file a proposed plan of operation with the commissioner in a format prescribed by the commissioner. The plan of operation shall contain at least the following information.

(1) Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that:

(a) Such services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community.

(b) The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either:

(i) To deliver adequately all services that are subject to a restricted network provision; or

(ii) To make appropriate referrals.

(c) There are written agreements with network providers describing specific responsibilities.

(d) Emergency care I available twenty-four (24) hours per days and seven (7) days per week.

(e) In the case of covered services that are subject to restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting such providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy of certificate. This paragraph shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate.

(2) A statement or map providing a clear description of the service area.

(3) A description of the grievance procedure to be utilized.

(4) A description of the quality assurance program, including:

(a) The formal organizational structure;

(b) The written criteria for selection, retention and removal of network providers; and

(c) The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted.

(5) A list and description, by specialty, of the network providers.

(6) Copies of the written information proposed to be used by the issuer to comply with Subsection I.

(7) Any other information requested by the commissioner.

F. (1) A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the commissioner prior to implementing such changes. Such changes shall be considered approved by the commissioner after thirty (30) days unless specifically disapproved.

(2) An updated list of network providers shall be filed with the commissioner at least quarterly.

G. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if:

(1) The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and

(2) It is not reasonable to obtain such services through a network provider.

H. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through network providers.

I. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions, and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following:

(1) An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with:

(a) Other Medicare supplement policies or certificates offered by the issuer; and

(b) Other Medicare Select policies or certificates.

(2) A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers.

(3) A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized.

(4) A description of coverage for emergency and urgently needed care and other out-of-service area coverage.

(5) A description of limitations on referrals to restricted network providers and to other providers.

(6) A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer.

(7) A description of the Medicare Select issuer's quality assurance program and grievance procedure.

J. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection I of this section and that the applicant understands the restrictions of the Medicare Select policy or certificate.

K. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. Such procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures.

(1) The grievance procedure shall be described in the policy and certificates and in the outline of coverage.

(2) At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer.

(3) Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action.

(4) If a grievance is found to be valid, corrective action shall be taken promptly.

(5) All concerned parties shall be notified about the results of a grievance.

(6) The issuer shall report no later than each March 31st to the commissioner regarding its grievance procedure. The report shall be in a format prescribed by the commissioner and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances.

L. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer.

M. (1) At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

N. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this section should be discontinued due to either the failure of the Medicare Select Program to be reauthorized under law or its substantial amendment.

(1) Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make such policies and certificates available without requiring evidence of insurability.

(2) For the purposes of this subsection, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of this paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for prescription drugs, coverage for at-home recovery services or coverage for Part B excess charges.

O. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purposes of evaluating the Medicare Select Program.

Section 11. Open Enrollment

A. No issuer shall deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this State, nor discriminate in the pricing of such a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant where an application for such policy or certificate is submitted during the six (6) month period beginning with the first month in which an individual (who is 65 years of age or older) first enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an insurer shall be made available to all applicants who qualify under this subsection without regard to age.

B. Subsection A shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificateholder received treatment or was otherwise diagnosed during the six (6) months before it became effective.

Section 12. Standards for Claims Payment

A. An issuer shall comply with section 1882(c)(3) of the Social Security Act (as enacted by section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Public Law No. 100-203) by:

(1) Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice;

(2) Notifying the participating physician or supplier and the beneficiary of the payment determination;

(3) Paying the participating physician or supplier directly;

(4) Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent;

(5) Paying user fees for claim notices that are transmitted electronically or otherwise; and

(6) Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers.

B. Compliance with the requirements set forth in Subsection A above shall be certified on the Medicare supplement insurance experience reporting form.

Section 13. Loss Ratio Standards and Refund or Credit of Premium

A. Loss Ratio Standards

(1) A Medicare Supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire policy for which rates are computed to provide coverage, to return to policyholders and certificate holders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form:

(a) At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies, or

(b) At least seventy-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies, calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a health maintenance organization on a service rather than reimbursement basis and earned premiums for such period and in accordance with accepted actuarial principles and practices.

(2) All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss ratio standards.

(3) For purposes of applying Subsection A(1) of this section and Subsection C(3) of Section 14 only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

Drafting Note: Subsection A(3) replicates language contained in the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508). It allows direct mail group policies sold on an individual basis to meet the minimum loss ratio required of individual business (65%) rather than that required of group business (75%). The NAIC eliminated this concept from this regulation in 1987 (I NAIC Proceeding, pp. 651, 673 (1988)). At that time, NAIC required direct mail group business to meet the same loss ratio requirement as other group business, regardless of whether the business was sold on an individual basis. The NAIC encourages states to apply the 75% loss ration to all group business. Although NAIC is restricted from making revisions to its models that are not in conformance with OBRA 1990, states are free to impose more stringent requirements than OBRA.

B. Refund or Credit Calculation

(1) An issuer shall collect and file with the commissioner by May 31 of each year the data contained in the reporting form contained in appendix A for each type in a standard Medicare supplement benefit plan.

(2) If on the basis of the experience as reporting the benchmark ratio since inception (ration 1) exceeds the adjusted experience ratio since inception (ration 3), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded.

(3) A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credited exceeds a de minimis level. Such refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for 13-week Treasury notes. A refund or credit against premiums due shall be made by a September 30 following the experience year upon which the refund or credit is based.

C. Annual Filing of Premium Rates

An issuer of Medicare supplement policies and certificates issued before or after the effective date of [insert citation to state's regulation] in this State shall file annually its rates, rating schedule and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratios standards can be expected to be met over the entire period for which rates are computed. Such demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years.

As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this State shall file with the commissioner, in accordance with the applicable filing procedures of this State:

(1) (a) Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. Such supporting documents as necessary to justify the adjustment shall accompany the filing.

(b) An issuer shall make such premium adjustments as are necessary to produce an expected loss ratio under such policy or certificate as will conform with minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for such Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date.

(c) If an issuer fails to make premium adjustments acceptable to the commissioner, the commissioner may order premium adjustments, refunds or premium credits deemed necessary to achieve the loss ratio required by this section.

(2) Any appropriate riders, endorsements or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. Such riders, endorsements or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate.

D. Public Hearings

The commissioner may conduct a public hearing to gather information concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of [insert citation to state's regulation] if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for such reporting period. Public notice of such hearing shall be furnished in a manner deemed appropriate by the commissioner.

Drafting Note: This section does not in any way restrict a commissioner's statutory authority, elsewhere granted, to approve or disapprove rates.

Section 14. Filing and Approval of Policies and Certificates and Premium Rates

A. An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this State unless the policy form or certificate form has been filed with and approved by the commissioner in accordance with filing requirements and procedures prescribed by the commissioner.

B. An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule and supporting documentation have been filed with and approved by the commissioner in accordance with the filing requirements and procedures prescribed by the commissioner.

C. (1) Except as provided in Paragraph (2) of this subsection, an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan.

(2) An issuer may offer, with the approval of the commissioner, up to four (4) additional policy forms or certificate forms of the same type of the same standard Medicare supplement benefit plan, one for each of the following cases:

(a) The inclusion of new or innovative benefits;

(b) The addition of either direct response or agent marketing methods;

(c) The addition of either guaranteed issue or underwritten coverage;

(d) The offering of coverage to individuals eligible for Medicare by reason of disability.

(3) For the purpose of this section, a "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.

D. (1) Except as provided in Paragraph (1)(a), an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of this regulation that has been approved by the commissioner. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.

(a) An issuer may discontinue the availability of policy form or certificate form if the issuer provides to the commissioner in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of the notice by the commissioner, the issuer shall no longer offer for sale the policy form or certificate form in this State.

(b) An issuer that discontinues the availability of a policy form or certificate form pursuant to Subparagraph (a) shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the commissioner of the discontinuance. The period of discontinuance may be reduced if the commissioner determines that a shorter period is appropriate.

(2) The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of this subsection.

(3) A change in the rating structure or methodology shall be considered a discontinuance under Paragraph (1) unless the issuer complies with the following requirements:

(a) The issuer provides an actuarial memorandum, in a form and manner prescribed by the commissioner, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates.

(b) The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The commissioner may approve a change to the differential which is in the public interest.

E. (1) Except as provided in Paragraph (2), the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in [insert citation to Section 13 of NAIC Medicare Supplement Insurance Model Regulation].

(2) Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation.

Section 15. Permitted Compensation Arrangements

A. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first year commission or other first year compensation is no more than two hundred percent (200%) of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period.

B. The commission or other compensation provided in subsequent (renewal) years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years.

C. No issuer or other entity shall provide compensation to its agents or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy.

Drafting Note: The NAIC is restricted by OBRA 1990 from eliminating the phrase "unless benefits of the new policy or certificate are clearly and substantially greater than the benefits under the replaced policy." However, NAIC encourages states to remove this phrase because allowing the first-year commissions in a replacement sale is no longer prudent. A purchaser will now replace an existing policy with the core or another authorized plan based on his or her financial circumstances and his or her perceptions of what coverage is needed. It is not appropriate that a first-year commission is awarded for replacement sales in this standardized market. If this phrase is removed, the payment of first year commissions will not be allowed in any replacement sale. States will not jeopardize their approval by HCFA if they remove this language.

D. For purposes of this section, "compensation" includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate including but not limited to bonuses, gifts, prizes, awards and finders fees.

Section 16. Required Disclosure Provisions

A. General Rules

(1) Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of such provision shall be consistent with the type of contract issued. Such provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums and any automatic renewal premium increases based on the policyholder's age.

(2) Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy.

(3) Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import.

(4) If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations."

(5) Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto stating in substance that the policyholder or certificateholder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason.

(6) Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis, other than incidentally, to a person(s) eligible for Medicare by reason of age shall provide to such applicants a Medicare Supplement Buyer's Guide in the form developed jointly by the National Association of Insurance Commissioners and the Health Care Financing Administration and in a type size no smaller than 12 point type. Delivery of the Buyer's Guide shall be made whether or not such policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this regulation. Except in the case of direct response issuers, delivery of the Buyer's Guide shall be made to the applicant at the time of application and acknowledgement of receipt of the Buyer's Guide shall be obtained by the issuer. Direct response issuers shall deliver the Buyer's Guide to the applicant upon request but not later than at the time the policy is delivered.

Drafting Note: In those states where the commissioner decides to prescribe the standard form and contents of an informational brochure for persons eligible for Medicare, the foregoing language is suggested. The phrase "other than incidentally" contained in this subsection is intended to exempt policies such as those which provide accidental death benefits for travel or other accidents and where the medical expense or indemnity, if any, only accompanies such other benefits.

B. Notice Requirements

(1) As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the commissioner. Such notice shall:

(a) Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and

(b) Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare.

(2) The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension.

(3) Such notices shall not contain or be accompanied by any solicitation.

C. Outline of Coverage Requirements for Medicare Supplement Policies

(1) Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgement of receipt of such outline from the applicant; and

(2) If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany such policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

"Notice: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."

(3) The outline of coverage provided to applicants pursuant to this section consists of four parts: A cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans A-J shall be shown on the cover page, and the plan(s) that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated.

(4) The following items shall be included in the outline of coverage in the order prescribed below.

BILLING CODE 4120-03-M

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page:
Benefit Plan(s) _____[insert letter(s) of plan(s) being offered]

Medicare supplement insurance can be sold in only ten standard plans. This chart shows the benefits included in each plan. Every company must make available Plan "A". Some plans may not be available in your state.

Basic Benefits: Included in All Plans.
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses).
Blood: First three pints of blood each year.

A	B	C	D	E	F	G	H	I	J
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits
		Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance	Skilled Nursing Co-Insurance
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible
		Part B Deductible			Part B Deductible				Part B Deductible
					Part B Excess (100%)	Part B Excess (100%)		Part B Excess (100%)	Part B Excess (100%)
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency
			At-Home Recovery			At-Home Recovery		At-Home Recovery	At-Home Recovery
							Basic Drugs ($1,250 Limit)	Basic Drugs ($1,250 Limit)	Extended Drugs ($3,000 Limit)
				Preventive Care					Preventive Care

BILLING CODE 4120-03-C

Premium Information

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

Disclosures

Use this outline to compare benefits and premiums among policies.

Read Your Policy Very Carefully

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

Right to Return Policy

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

Policy Replacement

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

Notice

This policy may not fully cover all of your medical costs.

[for agents:]
Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]
[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult "The Medicare Handbook" for more details.

Complete Answers are Very Important

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to Section 9D of this regulation.]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the commissioner.]

BILLING CODE 4120-03-M

PLAN A

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[652]	$0	$[652] (Part A deductible)
61st thru 90th day	All but $[163] a day	$[163] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[326] a day	$[326] a day	$0
---Once lifetime reserve days are used:		100% of Medicare eligible expenses	
---Additional 365 days	$0		$0
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but [$81.50]/day	$0	Up to $[81.50] a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN A

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$0 •	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	$0	$0
---Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0

PLAN B

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

*A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[652]	$[652](Part A deductible)	$0
61st thru 90th day	All but $[163] a day	$[163] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[326] a day	$[326] a day	$0
---Once lifetime reserve days are used:		100% of Medicare eligible expenses	
---Additional 365 days	$0		$0
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but [$81.50]/day	$0	Up to $[81.50] a day
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN B

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	$0	$0
---Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0

PLAN C

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[652]	$[652] (Part A deductible)	$0
61st thru 90th day	All but $[163] a day	$[163] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[326] a day	$[326] a day	$0
---Once lifetime reserve days are used:		100% of Medicare eligible expenses	
---Additional 365 days	$0		$0
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but [$81.50]/day	Up to $[81.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN C

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	$0	$0
---Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0

PLAN C (continued)

OTHER BENEFITS - COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
		80% to a lifetime maximum benefit	20% and amounts over the $50,000 life-time maximum
Remainder of charges	$0	of $50,000	

PLAN D

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[652]	$[652] (Part A deductible)	$0
61st thru 90th day	All but $[163] a day	$[163] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[326] a day	$[326] a day $0	$0
---Once lifetime reserve days are used:		100% of Medicare eligible expenses	
---Additional 365 days	$0		$0
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but [$81.50]/day	Up to $[81.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN D

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	0	$0

(continued)

PLAN D (continued)

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES ---Medically necessary skilled care services and medical supplies ---Durable medical equipment First $100 of Medicare approved amounts* Remainder of Medicare approved amounts	100% $0 80%	$0 $0 20%	$0 $100 (Part B deductible) $0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan ---Benefit for each visit ---Number of visits covered (must be received within 8 weeks of last Medicare approved visit) ---Calendar year maximum	$0 $0 $0	Actual charges to $40 a visit Up to the number of Medicare approved visits, not to exceed 7 each week $1,600	Balance

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year Remainder of charges	$0 $0	$0 80% to a lifetime maximum benefit of $50,000	$250 20% and amounts over the $50,000 lifetime maximum

PLAN E

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies First 60 days 61st thru 90th day 91st day and after: ---While using 60 lifetime reserve days ---Once lifetime reserve days are used: ---Additional 365 days ---Beyond the additional 365 days	 All but $[652] All but $[163] a day All but $[326] a day $0 $0	$[652] (Part A deductible) $[163] a day $[326] a day 100% of Medicare eligible expenses $0	 $0 $0 $0 $0 All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital First 20 days 21st thru 100th day 101st day and after	 All approved amounts All but [$81.50]/day $0	 $0 Up to $[81.50] a day $0	 $0 $0 All costs
BLOOD First 3 pints Additional amounts	$0 100%	3 pints $0	$0 $0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN E

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	$0	$0
---Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0

(continued)

PLAN E (continued)

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
PREVENTIVE MEDICARE CARE BENEFIT-NOT COVERED BY MEDICARE Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam, mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

PLAN F

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[652]	$[652] (Part A deductible)	$0
61st thru 90th day	All but $[163] a day	$[163] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[326] a day	$[326] a day	$0
---Once lifetime reserve days are used:		100% of Medicare eligible expenses	
---Additional 365 days	$0		$0
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but [$81.50]/day	Up to $[81.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for out-patient drugs and inpatient respite care	$0	Balance

PLAN F

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible	$0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$100 (Part B deductible	$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	$0	$0
---Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible	$0
Remainder of Medicare approved amounts	80%	20%	$0

PLAN F (continued)

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
		80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
Remainder of charges	$0		

PLAN G

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[652]	$[652] (Part A deductible)	$0
61st thru 90th day	All but $[163] a day	$[163] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[326] a day	$[326] a day	$0
---Once lifetime reserve days are used:		100% of Medicare eligible expenses	$0
---Additional 365 days	$0		
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but [$81.50]/day	Up to $[81.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN G

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	80%	20%
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

PLAN G (continued)

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	$0	$0
---Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a home care treatment plan			
---Benefit for each visit	$0	Actual charges to $40 a visit	Balance
---Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
----Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN H

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[652]	$[652] (Part A deductible)	$0
61st thru 90th day	All but $[163] a day	$[163] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[326] a day	$[326] a day	$0
---Once lifetime reserve days are used:		100% of Medicare eligible expenses	
---Additional 365 days	$0		$0
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but [$81.50]/day	Up to $[81.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN H

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	$0	All costs
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

PARTS A & B

HOME HEALTH CARE MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	$0	$0
---Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible
Remainder of Medicare approved amounts	80%	20%	$0

(continued)

PLAN H (continued)

OTHER BENEFITS - NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
		80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum
Remainder of charges	$0		
BASIC OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% - $1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All costs

PLAN I

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[652]	$[652] (Part A deductible)	$0
61st thru 90th day	All but $[163] a day	$[163] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[326] a day	$[326] a day	$0
---Once lifetime reserve days are used:		100% of Medicare eligible expenses	
---Additional 365 days	$0		$0
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but [$81.50]/day	Up to $[81.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN I

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

PLAN I (continued)

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	$0	$0
---Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$0	$100 (Part B deductible)
Remainder of Medicare approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
---Benefit for each visit	$0	Actual charges to $40 a visit	Balance
---Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
---Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
Remainder of charges*	$0	80% to a lifetime maximum benefit of $50,000	20% and amounts over the $50,000 lifetime maximum

PLAN I

OTHER BENEFITS - NOT COVERED BY MEDICARE (continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
BASIC OUTPATIENT PRESCRIPTION DRUGS - NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $2,500 each calendar year	$0	50% - $1,250 calendar year maximum benefit	50%
Over $2,500 each calendar year	$0	$0	All costs

PLAN J

MEDICARE (PART A) - HOSPITAL SERVICES - PER BENEFIT PERIOD

* A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION*			
Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[652]	$[652] (Part A deductible)	$0
61st thru 90th day	All but $[163] a day	$[163] a day	$0
91st day and after:			
---While using 60 lifetime reserve days	All but $[326] a day	$[326] a day	$0
---Once lifetime reserve days are used:			
---Additional 365 days	$0	100% of Medicare eligible expenses	$0
---Beyond the additional 365 days	$0	$0	All costs
SKILLED NURSING FACILITY CARE*			
You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$0	$0
21st thru 100th day	All but [$81.50]/day	Up to $[81.50] a day	$0
101st day and after	$0	$0	All costs
BLOOD			
First 3 pints	$0	3 pints	$0
Additional amounts	100%	$0	$0
HOSPICE CARE			
Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited coinsurance for outpatient drugs and inpatient respite care	$0	Balance

PLAN J

MEDICARE (PART B) - MEDICAL SERVICES - PER CALENDAR YEAR

*Once you have been billed $100 of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES - IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	Generally 80%	Generally 20%	$0
Part B excess charges (Above Medicare approved amounts)	$0	100%	$0
BLOOD			
First 3 pints	$0	All costs	$0
Next $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0
CLINICAL LABORATORY SERVICES--BLOOD TESTS FOR DIAGNOSTIC SERVICES	100%	$0	$0

(continued)

PLAN J (continued)

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
---Medically necessary skilled care services and medical supplies	100%	$0	$0
---Durable medical equipment			
First $100 of Medicare approved amounts*	$0	$100 (Part B deductible)	$0
Remainder of Medicare approved amounts	80%	20%	$0
AT-HOME RECOVERY SERVICES-NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved a Home Care Treatment Plan			
---Benefit for each visit	$0	Actual charges to $40 a visit	Balance
---Number of visits covered (must be received within 8 weeks of last Medicare approved visit)	$0	Up to the number of Medicare approved visits, not to exceed 7 each week	
---Calendar year maximum	$0	$1,600	

OTHER BENEFITS - NOT COVERED BY MEDICARE

FOREIGN TRAVEL - NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$0	$0	$250
		80% to a lifetime maximum benefit	20% and amounts over the
Remainder of charges	$0	of $50,000	$50,000 lifetime maximum

(continued)

PLAN J

OTHER BENEFITS - NOT COVERED BY MEDICARE (continued)

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
EXTENDED OUTPATIENT PRE-SCRIPTION DRUGS - NOT COVERED BY MEDICARE			
First $250 each calendar year	$0	$0	$250
Next $6,000 each calendar year	$0	50% - $3,000 calendar year maximum benefit	50%
Over $6,000 each calendar year	$0	$0	All costs
PREVENTIVE MEDICAL CARE BENEFIT - NOT COVERED BY MEDICARE			
Annual physical and preventive tests and services such as: fecal occult blood test, digital rectal exam mammogram, hearing screening, dipstick urinalysis, diabetes screening, thyroid function test, influenza shot, tetanus and diphtheria booster and education, administered or ordered by your doctor when not covered by Medicare			
First $120 each calendar year	$0	$120	$0
Additional charges	$0	$0	All costs

BILLING CODE 4120-03-C

Drafting Note: The term "certificate" should be substituted for the word "policy" throughout the outline of coverage where appropriate.

D. Notice Regarding Policies or Certificates Which Are Not Medicare Supplement Policies

Any accident and sickness insurance policy or certificate, other than a Medicare supplement policy; or a policy issued pursuant to a contract under section 1876 or section 1833 of the Federal Social Security Act (42 U.S.C. ___ 1395 *et seq.*), disability income policy; basic, catastrophic, or major medical expense policy; single premium nonrenewable policy or other policy identified in Section 3.B of this regulation, issued for delivery in this State to persons eligible for Medicare by reason of age shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. Such notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. Such notice shall be in no less than twelve (12) point type and shall contain the following language:

"This [Policy or Certificate] Is Not a Medicare Supplement [Policy or Contract]. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the company."

Section 17. Requirements for Application Forms and Replacement Coverage

A. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant has another Medicare supplement or other health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used.

[Statements]

(1) You do not need more than one Medicare supplement policy.

(2) If you are 65 or older, you may be eligible for benefits under Medicaid and may not need a Medicare supplement policy.

(3) The benefits and premiums under your Medicare supplement policy will be suspended during your entitlement to benefits under Medicaid for 24 months. You must request this suspension within 90 days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your policy will be reinstituted if requested within 90 days of losing Medicaid eligibility.

(4) Counseling services may be available in your state to provide advice concerning your purchase of Medicare supplement insurance and concerning Medicaid.

[Questions]

To the best of your knowledge,

(1) Do you have another Medicare supplement policy or certificate in force (including health care service contract, health maintenance organization contract)?

(a) If so, with which company?

(2) Do you have any other health insurance policies that provide benefits which this Medicare supplement policy would duplicate?

(a) If so, with which company?

(b) What kind of policy?

(3) If the answer to question 1 or 2 is yes, do you intend to replace these medical or health policies with this policy [certificate]?

(4) Are you covered by Medicaid?

B. Agents shall list any other health insurance policies they have sold to the applicant.

(1) List policies sold which are still in force.

(2) List policies sold in the past five (5) years which are no longer in force.

C. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy.

D. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage.

E. The notice required by Subsection D above for an issuer shall be provided in substantially the following form in no less than ten (10) point type:

Notice to Applicant Regarding Replacement of Medicare Supplement Insurance

[Insurance company's name and address]

Save This Notice! It May Be Important to You in The Future.

According to [your application] [information you have furnished], you intend to terminate existing Medicare supplement insurance and replace it with policy to be issued by [Company Name] Insurance Company. Your new policy will provide thirty (30) days within which you may decide without cost whether you desire to keep the policy.

You should review this new coverage carefully. Compare it with all accident and sickness coverage you now have. Terminate your present policy only if, after due consideration, you find that purchase of this Medicare supplement coverage is a wise decision.

Statement to Applicant by Issuer, Agent [Broker or Other Representative]:

I have reviewed your current medical or health insurance coverage. The replacement of insurance involved in this transaction does not duplicate coverage, to the best of my knowledge. The replacement policy is being purchased for the following reason(s) (check one):

_____ Additional benefits.

_____ No change in benefits, but lower premiums.

_____ Fewer benefits and lower premiums.

_____ Other. (please specify)

_____

_____

_____

1. Health conditions which you may presently have (preexisting conditions) may not be immediately or fully covered under the new policy. This could result in denial or delay of a claim for benefits under the new policy, whereas a similar claim might have been payable under your present policy.

2. State law provides that your replacement policy or certificate may not contain new preexisting conditions, waiting periods, elimination periods or probationary periods. The insurer will waive any time periods applicable to preexisting conditions, waiting periods, elimination periods, or probationary periods in the new policy (or coverage) for similar benefits to the extent such time was spent (depleted) under the original policy.

3. If you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your medical and health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, review it carefully to be certain that all information has been properly recorded.

[If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Do not cancel your present policy until you have received your new policy and are sure that you want to keep it.

(Signature of Agent, Broker or Other Representative)*

[Typed Name and Address of Issuer, Agent or Broker]

(Applicant's Signature)

(Date)

F. Paragraphs 1 and 2 of the replacement notice (applicable to preexisting conditions) may be deleted by an issuer if the replacement does not involve application of a new preexisting condition limitation.

Section 18. Filing Requirements for Advertising

An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this State whether through written, radio or television medium to the Commissioner of Insurance of this State for review or approval by the Commissioner to the extent it may be required under state law.

Drafting Note: States should examine their existing laws regarding the filing of advertisements to determine the extent to which review or approval is required.

Section 19. Standards for Marketing

A. An issuer, directly or through its producers, shall:

(1) Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate.

(2) Establish marketing procedures to assure excessive insurance is not sold or issued.

(3) Establish marketing procedures which set forth a mechanism or formula for determining whether a replacement policy or certificate contains benefits clearly and substantially greater than the benefits under the replaced policy for purposes of triggering first year commissions as authorized in Section 12 of this regulation.

Editor's Note: If a state deletes the replacement policy language in Section 15, the agents' compensation section, as suggested in the drafting note to that section, this Paragraph (3) should also be deleted.

(4) Display prominently by type, stamp or other appropriate means, on the first page of the policy the following: "Notice to buyer: This policy may not cover all of your medical expenses."

(5) Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance.

(6) Establish auditable procedures for verifying compliance with this Subsection A.

B. In addition to the practices prohibited in [insert citation to state unfair trade practices act], the following acts and practices are prohibited:

(1) Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer.

(2) High pressure tactics. Employing any method of marketing having the effect of or trading to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance.

(3) Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company.

C. The terms "Medicare Supplement," "Medigap," "Medicare Wrap-Around" and words of similar import shall not be used unless the policy is issued in compliance with this regulation.

Drafting Note: Remember that the Unfair Trade Practice Act in your state applies to Medicare supplement insurance policies and certificates.

Section 20. Appropriateness of Recommended Purchase and Excessive Insurance

A. In recommending the purchase or replacement of any Medicare supplement policy or certificate an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement.

B. Any sale of Medicare supplement coverage that will provide an individual more than one Medicare supplement policy or certificate is prohibited.

Seciton 21. Reporting of Multiple Policies

A. On or before March 1 of each year, an issuer shall report the following information for every individual resident of this State for which the issuer has in force more than one Medicare supplement policy or certificate:

(1) Policy and certificate number, and

(2) Date of issuance.

B. The items set forth above must be grouped by individual policyholder.

Editor's Note: Appendix B contains a reporting form for compliance with this section.

Section 22. Prohibition Against Preexisting Conditions, Waiting Periods, Elimination Periods and Probationary Periods in Replacement Policies or Certificates

A. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy.

B. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods and probationary periods for benefits similar to those contained in the original policy or certificate.

Drafting Note: Although NAIC is restricted from making revisions to its models that do not conform to the Omnibus Budget Reconciliation Act of 1990, states are encouraged to consider deletion of the words "for similar benefits" in Subsection A and the words "for benefits similar to those contained in the original policy or certificate" in Subsection B. States should eliminate paragraphs (1) and (2) (applicable to preexisting conditions) of the replacement notice required by Section 16E.

Section 23. Separability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 24. Effective Date

This regulation shall be effective on [insert date].

Legislative History (all references are to the *Proceedings of the NAIC*).

1980 Proc. II 22, 26, 588, 591, 593, 595–603 (adopted).

1981 Proc. I 47, 51, 420, 422, 424, 446–447, 470–481 (amended and reprinted).

1988 Proc. I 9, 20–21, 629–630, 652–654, 668–677 (amended and reprinted).

1988 Proc. II 5, 13, 568, 601, 604, 615–624 (amended and reprinted).

1989 Proc. I 14, 813–814, 836.4–836.26 (amended at special plenary session September 1988).

1989 Proc. I 9, 25, 703, 753–754, 757–760 (appendices amended at regular plenary session).

1990 Proc. I 6, 27–28, 477, 574–576, 580–599 (amended and reprinted).

1990 Proc. II 7, 16, 599, 656, 657 (adopted reporting form).

1992 Proc. I 12, 16–75, 1084–1085 (amended at special plenary session in July 1991).

Appendix A

Medicare Supplement Refund Calculation Form for Calendar Year_____

TYPE _____
SMSBP (w) _____
For the State of _____
Company Name _____
NAIC Group Code _____
NAIC Company Code _____
Address _____
Person Completing This Exhibit _____
Title _____
Telephone Number _____

Line	(a) Earned premium (x)	(b) Incurred claims (y)
1. Current Year's Experience		
a. Total (all policy years)		
b. Current year's issues (z)		
C. Net (for reporting purposes = 1a − 1b).	_____	_____
2. Past Years' Experience (All Policy Years).	_____	_____
3. Total Experience (Net Current Year + Past Year's Experience).	_____	_____

4. Refunds Last Year (Excluding Interest)

5. Previous Since Inception (Excluding Interest)

6. Refunds Since Inception (Excluding Interest)

7. Benchmark Ratio Since Inception (See Worksheet for Ratio 1)

8. Experienced Ratio Since Inception [Total Actual Incurred Claims (line 3, col. b)]/[Total Earned Prem. (line 3, col. a) − Refunds Since Inception (line 6)] = Ratio 2

9. Life Years Exposed Since Inception ____

If the Experienced Ratio is less than the Benchmark Ratio, and there are more than 500 life years exposure, then proceed to calculation of refund.

Medicare Supplement Refund Calculation Form for Calendar Year_____

TYPE _____
SMSBP (w) _____
For the State of _____
Company Name _____
NAIC Group Code _____
NAIC Company Code _____
Address _____
Person Completing This Exhibit _____
Title _____
Telephone Number _____

10. Tolerance Permitted (obtained from credibility table) _____

11. Adjustment to Incurred Claims for Credibility Ratio 3 = Ratio 2 + Tolerance

If Ratio 3 is more than Benchmark Ratio (Ratio (Ratio 1), a refund or credit to premium is not required.

If Ratio 3 is less than the Benchmark Ratio, then proceed.

12. Adjusted Incurred Claims = [Total Earned Premiums (line 3, col. a) − Refunds Since Inception (line 6)] × Ratio 3 (line 11)

13. Refund = Total Earned Premiums (line 3, col. a) − Refunds Since Inception (line 6) − [Adjusted Incurred Claims (line 12)]/[Benchmark Ratio (Ratio 1)]

If the amount on line 13 is less than .005 times the annualized premium in force as of December 31 of the reporting year, then no refund is made. Otherwise, the amount on line 13 is to be refunded or credited, and a description of the refund and/or credit against premiums to be used must be attached to this form.

MEDICARE SUPPLEMENT CREDIBILITY TABLE

Life years exposed since inception	Tolerance (percent)
10,000	0.0
5,000–9,999	5.0
2,500–4,999	7.5
1,000–2,499	10.0
500–999	15.0

If less than 500, no credibility.

Medicare Supplement Refund Calculation Form for Calendar Year_____

TYPE _____
SMSBP (w) _____
For the State of _____
Company Name _____
NAIC Group Code _____
NAIC Company Code _____
Address _____
Person Completing This Exhibit _____
Title _____
Telephone Number _____

(w) "SMSBP" = Standardized Medicare Supplement Benefit Plan

(x) Includes Modal Loadings and Fees Charged

(y) Excludes Active Life Reserves

(z) This is to be used as "Issue Year Earned Premium" for Year 1 of next year's "Worksheet for Calculation of Benchmark Ratios".

I certify that the above information and calculations are true and accurate to the best of my knowledge and belief.

Signature

Name—Please Type

Title

Date

BILLING CODE 4120-03-M

* Signature not required for direct response sales.

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR GROUP POLICIES FOR CALENDAR YEAR_____

TYPE_____ SMSBP (p)_____

FOR THE STATE OF_____

Company Name_____

NAIC Group Code_____ NAIC Company Code_____

Address_____

Person Completing This Exhibit_____

Title_____ Telephone Number_____

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)
	Earned			Cumulative				Cumulative		Policy Year
Year	Premium	Factor	(b)x(c)	Loss Ratio	(d)x(e)	Factor	(b)x(g)	Loss Ratio	(h)x(i)	Loss Ratio
1		2.770		0.507		0.000		0.000		0.46
2		4.175		0.567		0.000		0.000		0.63
3		4.175		0.567		1.194		0.759		0.75
4		4.175		0.567		2.245		0.771		0.77
5		4.175		0.567		3.170		0.782		0.80
6		4.175		0.567		3.998		0.792		0.82
7		4.175		0.567		4.754		0.802		0.84
8		4.175		0.567		5.445		0.811		0.87
9		4.175		0.567		6.075		0.818		0.88
10		4.175		0.567		6.650		0.824		0.88
11		4.175		0.567		7.176		0.828		0.88
12		4.175		0.567		7.655		0.831		0.88
13		4.175		0.567		8.093		0.834		0.89
14		4.175		0.567		8.493		0.837		0.89
15		4.175		0.567		8.684		0.838		0.89
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m):

(a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2 (etc.)
(Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan

REPORTING FORM FOR THE CALCULATION OF BENCHMARK RATIO SINCE INCEPTION FOR INDIVIDUAL POLICIES FOR CALENDAR YEAR_____

TYPE_____ SMSBP (p)_____

FOR THE STATE OF_____

Company Name_____

NAIC Group Code_____ NAIC Company Code_____

Address_____

Person Completing This Exhibit_____

Title_____ Telephone Number_____

(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(o)
	Earned			Cumulative				Cumulative		Policy Year
Year	Premium	Factor	(b)x(c)	Loss Ratio	(d)x(e)	Factor	(b)x(g)	Loss Ratio	(h)x(i)	Loss Ratio
1		2.770		0.442		0.000		0.000		0.40
2		4.175		0.493		0.000		0.000		0.55
3		4.175		0.493		1.194		0.659		0.65
4		4.175		0.493		2.245		0.669		0.67
5		4.175		0.493		3.170		0.678		0.69
6		4.175		0.493		3.998		0.686		0.71
7		4.175		0.493		4.754		0.695		0.73
8		4.175		0.493		5.445		0.702		0.75
9		4.175		0.493		6.075		0.708		0.76
10		4.175		0.493		6.650		0.713		0.76
11		4.175		0.493		7.176		0.717		0.76
12		4.175		0.493		7.655		0.720		0.77
13		4.175		0.493		8.093		0.723		0.77
14		4.175		0.493		8.493		0.725		0.77
15		4.175		0.493		8.684		0.725		0.77
Total:			(k):		(l):		(m):		(n):	

Benchmark Ratio Since Inception: (l + n)/(k + m):

(a): Year 1 is the current calendar year - 1
Year 2 is the current calendar year - 2 (etc.)
(Example: If the current year is 1991, then: Year 1 is 1990; Year 2 is 1989, etc.)

(b): For the calendar year on the appropriate line in column (a), the premium earned during that year for policies issued in that year.

(o): These loss ratios are not explicitly used in computing the benchmark loss ratios. They are the loss ratios, on a policy year basis, which result in the cumulative loss ratios displayed on this worksheet. They are shown here for informational purposes only.

(p): "SMSBP" = Standardized Medicare Supplement Benefit Plan

APPENDIX B

FORM FOR REPORTING
MEDICARE SUPPLEMENT POLICIES

Company Name: _____

Address: _____

_____

Phone Number: _____

Due March 1, annually

The purpose of this form is to report the following information on each resident of this state who has in force more than one Medicare supplement policy or certificate. The information is to be grouped by individual policyholder.

Policy and Certificate #	Date of Issuance

Signature

Name and Title (please type)

Date

[FR Doc. 92-19506 Filed 8-20-92; 8:45 am]
BILLING CODE 4120-03-C

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of September 1992.

Nome: Scientific Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Date and Time: September 16, 1992, 3 p.m.–5 p.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: This Subcommittee will review statistics from all sources (the Compensation System, Vaccine Adverse Events Reporting System (VAERS), the U.S. Claims Court, etc.) that can give any reason for any alterations (additions, subtractions, or revisions) in the Vaccine Injury Table. The Subcommittee will consider any applications for inclusion of additional vaccines and associated events to the table and make recommendations on these to the Commission. All recommendations by the Subcommittee will be considered by the full Commission and, if accepted, will be forwarded to the Secretary. This Subcommittee will also be the first line of study for all outside and literature reports with subjects affecting the Vaccine Injury Table.

Agenda: This subcommittee will receive an update on the statistics from VAERS and an update on the section 313 study.

Name: Financial Review Subcommittee of the Advisory Commission on Childhood Vaccines.

Date and Time: September 16, 1992, 3 p.m.–5 p.m.

Place: Conference Room H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Subcommittee reviews quarterly with the administrative staff, the financing of the Vaccine Injury Compensation Trust Fund, the output of funds resulting from each vaccine and each adverse event, and the relationship of each vaccine and each adverse event to the rate of depletion of the Trust Fund. If these studies justify any increase or any decrease of surtax for each vaccine, these recommendations can be made to the full commission and if accepted, can be forwarded to the Secretary.

Agenda: The Subcommittee will discuss and review Trust Fund finances, and status of spending for pre-1988 awards.

Name: Advisory Commission on Childhood Vaccines.

Date and Time: September 16, 1992, 9 a.m.–2:45 p.m. September 17, 1992, 9 a.m.–12 p.m.

Place: Conference Rooms G & H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Purpose: The Commission: (1) Advises the Secretary on the implementation of the Program, (2) on its own initiative or as the result of the filing of a petition, recommends changes in the Vaccine Injury Table, (3) advises the Secretary in implementing the Secretary's responsibilities under section 2127 regarding the need for childhood vaccination products that result in fewer or no significant adverse reactions, (4) surveys Federal, State, and local programs and activities relating to the gathering of information on injuries associated with the administration of childhood vaccines, including the adverse reaction reporting requirements of section 2125(b), and advises the Secretary on means to obtain, compile, publish, and use credible data related to the frequency and severity of adverse reactions associated with childhood vaccines, and (5) recommends to the Director of the National Vaccine Program research related to vaccine injuries which should be conducted to carry out the National Vaccine Injury Compensation Program.

Agenda: Agenda items for the full commission will include, but not be limited to: the routine Program reports, reports from the National Vaccine Program and the National Vaccine Advisory Committee (NVAC), reports from the ACCV Subcommittees, and presentations from the American Academy of Pediatrics and the Department of Health and Human Services' Office of the Inspector General.

Public comment will be permitted at the respective subcommittee meetings on September 16 before they adjourn in the evening; the end of the full Commission meeting on September 16; and also before noon of the second day September 17. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to Mr. Matthew Barry, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for presentation, but desire to make an oral statement, may sign up in Conference Rooms G & H before 10 a.m., September 16 and 17. These persons will be allocated time as time permits.

Anyone requiring information regarding the subject Commission should contact Mr. Matthew Barry, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, room 7–02, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301) 443–6593.

Agenda items are subject to change as priorities dictate.

Dated: August 17, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–19998 Filed 8–20–92; 8:45 am]
BILLING CODE 4160–15–M

National Institutes of Health

National Cancer Institute, Meeting of the Cancer Biology-Immunology Contracts Review Committee, Subcommittees A, B, and D

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Biology-Immunology Contracts Review Committee, Subcommittees A, B, and D, National Cancer Institute, National Institutes of Health, August 28, 1992, at the National Institutes of Health, Building 31 (C-Wing, Sixth Floor), Conference Room 6, Bethesda, Maryland 20892.

This meeting will be open to the public on August 28 from 8:30 a.m. to 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in secs. 552b(c)(4) and 552(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on August 28 from 9:30 a.m. to adjournment for the review, discussion, and evaluation of individual contract propoals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Building 31, room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Lalita D. Palekar, Scientific Review Administrator, Cancer Biology-Immunology Contracts Review Committee, 5333 Westbard Avenue, Room 805, Bethesda, Maryland 20892

(301/496-7575) will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: August 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-20095 Filed 8-20-92; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; Meeting: National Advisory Council for Nursing Research and its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of teleconference meetings of the National Advisory Council for Nursing Research, and its Subcommittees, August 31-September 2, 1992, Building 31C, Conference Room 6, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Meetings of the full Council and its Subcommittees will be held at times and places listed below. Attendance by the public will be limited to space available.

The full Council will meet in open session on September 2, from 2 p.m. to 3 p.m. in Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland, 20892. Agenda items will include the NCNR Director's Report, NIH Strategic Planning Report; Low Birthweight Infancy Report, and other items of interest.

The Planning Subcommittee will meet in open session on August 31, in Building 31, Conference Room 5B03, from 10 a.m. to 11 a.m. to discuss long-term and strategic planning and policy issues.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S. Code and section 10(d)) of Public Law 92-463, the meeting of the Research Subcommittee will be closed to the public on September 1, from 2 p.m. to 3 p.m., and the meeting of the full Council on September 2, from 3 p.m. to adjournment for the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Vicki Maurer, Council Assistant, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, room 5B23, Bethesda, Maryland 20892, 496-2439, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.361, Nursing Research, National Institutes of Health)

Dated: August 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-20096 Filed 8-20-92; 8:45 am]

BILLING CODE 4140-01-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on July 31, 1992.

(Call Reports Clearance Officer on (410) 965-4149 for copies of package)

1. Benefit Formula Questionnaire—0960-0477. The information on form SSA-50 is used by the Social Security Administration to determine if a modified formula should be used to compute a claimant's benefit. This is appropriate when that claimant is first eligible after 1985 to both Social Security benefits and to a pension or annuity based on noncovered employment. The respondents are claimants who allege the above.

Number of Respondents: 30,000.
Frequency of Response: 1.
Average Burden Per Response: 20 minutes.
Estimated Annual Burden: 10,000 hours.

2. Application for Supplemental Security Income—0960-0229. The information on form SSA-8000 is used by the Social Security Administration to determine eligibility and the amount payable in claims for Supplemental Security Income (SSI). The respondents consist of applicants for SSI.

Number of Respondents: 1,855,000.
Frequency of Response: 1.
Average Burden Per Response: 34 minutes.
Estimated Annual Burden: 1,015,167 hours.

3. Agreement to Sell Properly—0960-0127. The information on form SSA-8060 is used by the Social Security Administration when individuals who are otherwise eligible for Supplemental Security Income (SSI) payments can receive conditional SSI payments if they agree to dispose of the excess resources. The respondents are individuals and spouses with excess resources who are receiving or applying for SSI payments.

Number of Respondents: 20,000.
Frequency of Response: 1.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 3,333 hours.
OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 17, 1992.

Judy Hasche,

Acting Reports Clearance Officer, Social Security Administration.

[FR Doc. 92-20012 Filed 8-20-92; 8:45 am]

BILLING CODE 4190-29-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-N-92]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landhold agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Ronald Rice, Federal Property Resources Services, GSA, 18th and F Streets NW., Washington, DC 20405; (202) 501-0067; Dept. of Energy: Tom Knox, Realty Specialist, AD223.1, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586-1191; Corps of Engineers: Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE-MM, room 4224, 20 Massachusetts Ave. NW., Washington, DC 20314-1000; (202) 272-1750; Dept. of Transportation: Ronald D. Keefer, Director, Administrative Services & Property Management, DOT, 400 Seventh St., SW., room 10319, Washington, DC 20590; (202) 366-4246; HHS: Judy Breitman, Chief, Real Property Branch, Dept. of HHS, Div. of Health Facilities Planning, rm. 17A10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265; (These are not toll-free numbers).

Dated: August 14, 1992.

Randall H. Erben,

Acting Assistant Secretory.

Title V, Federal Surplus Property Program Federal Register Report for 08/21/92

Suitable/Available Properties

Buildings (by State)

Alabama

Bldg. TU-43
Millers Ferry Lock and Dam
Route 1, Box 102
Camden Co: Wilcox AL 36726-
Landholding Agency: COE
Property Number: 319011549
Status: Unutilized
Comment: 1000 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-22
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776-
Landholding Agency: COE
Property Number: 319011551
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-21
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776-
Landholding Agency: COE
Property Number: 319011552
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-23
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776-
Landholding Agency: COE
Property Number: 319011553
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-24
Selden Lock and Dam
Route 1
Sawyerville Co: Hale AL 36776-
Landholding Agency: COE
Property Number: 319011554
Status: Unutilized
Comment: 1080 sq. ft.; 1 story frame residence; needs minor repair; most recent use—lock tender's dwelling.

Bldg. TU-15
Coffeeville Lock and Dam
Star Route Box 77
Blandon Springs Co: Choctaw AL 36919-
Landholding Agency: COE
Property Number: 319011556
Status: Unutilized
Comment: 1547 sq. ft.; 1 story frame residence; most recent use—lock tender's dwelling.

California

Santa Fe Flood Control Basin
Irwindale Co: Los Angeles CA 91706-
Landholding Agency: COE
Property Number: 319011296
Status: Unutilized
Comment: 1400 sq. ft.; 1 story stucco; needs rehab; termite damage; secured area with alternate access.

Florida

Bldg. CN-3
1651 S. Franklin Lock Road
Alva Co: Lee FL 33920-
Landholding Agency: COE
Property Number: 319130006
Status: Unutilized
Comment: 1500 sq. ft., 1 story concrete block residence, off-site use only.

Bldg. CN-43

Port Mayaca Lock and Spillway
Okeechobee Waterway
Port Mayaca Co: Martin FL 33438–
Location: Located approx. 9 mi n/o Canal Pt. at the intersection of US 441 and SR 76
Landholding Agency: COE
Property Number: 319210004
Status: Unutilized
Comment: 1700 sq. ft., 1 story concrete block/stucco structure, possible asbestos, off-site use only.

Idaho

Bldg.
Albeni Falls Dam
U.S. Highway 2, Priest River
Bonner Co: Bonner ID 83856–
Location: 3½ miles west of Priest River
Landholding Agency: COE
Property Number: 319110028
Status: Unutilized
Comment: 2989 sq. ft., 3 story log construction with wood frame; off-site removal only; needs rehab.

Indiana

Bldg. 01, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140002
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Bldg. 02, Monroe Lake
Monroe Cty. Rd. 37 North to Monroe Dam Rd.
Bloomington Co: Monroe IN 47401–8772
Landholding Agency: COE
Property Number: 319140003
Status: Unutilized
Comment: 1312 sq. ft., 1 story brick residence, off-site use only.

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 319010022
Status: Unutilized
Comment: 980 sq. ft., 2 story wood frame; two story residence; potential utilities; needs major rehab.

New Mexico

Bldg. 814, Kirtland AFB
Adjacent to Sandia Natl. Labs
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 419220002
Status: Unutilized
Comment: 6900 sq. ft., one story wood frame, needs rehab, presence of asbestos, off-site use only, most recent use—office, secured area w/alternate access.

Bldg. 815, Kirtland AFB
Adjacent to Sandia Natl. Labs
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 419220003
Status: Unutilized
Comment: 3440 sq. ft., one story wood frame, needs rehab, presence of asbestos, off-site use only, most recent use—auditorium, secured area w/alternate access.

North Carolina

Dwelling 1
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120083
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Dwelling 2
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120084
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Dwelling 3
USCG Coinjock Housing
Coinjock Co: Currituck NC 27923–
Landholding Agency: DOT
Property Number: 879120085
Status: Unutilized
Comment: one story wood residence, periodic flooding in garage and utility room occurs in heavy rainfall.

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 319120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab; on Natl Register of Historic Places, no utilities, off-site use only.

Oregon

Former Resource Area Hdqts.
6615 Officers Row
Tillamook Co: Tillamook OR 97141–
Landholding Agency: GSA
Property Number: 549220001
Status: Surplus
Comment: 4400 sq. ft., 3-story wood bldg., needs repair, on 5.51 acres.
GSA Number: 9–I–OR–515F

126 Duplexes
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034–
Landholding Agency: GSA
Property Number: 549220014
Status: Surplus
Base closure; Number of Units: 126
Comment: 1064 to 2204 sq. ft., wood frame, 1 story, 2 & 3 bedrooms, needs rehab, sewer treatment plant unable to accommodate fully operational fac., possible asbestos, 38 acres of land.
GSA Number: 9–D–OR–434I

38 Single Family Residences
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034–
Landholding Agency: GSA
Property Number: 549220015
Status: Surplus
Base closure; Number of Units: 38
Comment: 1064 to 2204 sq. ft., wood frame, 1 story, 3 & 4 bedrooms, needs rehab, sewer treatment plant unable to accommodate fully operational fac., possible asbestos, 38 acres of land.
GSA Number: 9–D–OR–434I

10 Miscellaneous Buildings
Kingsley Field Family Housing Annex
Midland Road
Klamath Falls Co: Klamath OR 97034–
Landholding Agency: GSA
Property Number: 549220016
Status: Surplus
Base closure; Number of Units: 10
Comment: 1 story, most recent use—fire station, storage sheds, quonset hut, well housings.
GSA Number: 9–D–OR–434I

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 319210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only.

South Carolina

Bldg. 1
J.S. Thurmond Dam and Reservoir
Clarks Hill CO: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011544
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 2
J.S. Thurmond Dam and Reservoir
Clarks Hill CO: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011545
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 3
J.S. Thurmond Dam and Reservoir
Clarks Hill CO: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011546
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 4
J.S. Thurmond Dam and Reservoir
Clarks Hill CO: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011547
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Bldg. 5
J.S. Thurmond Dam and Reservoir
Clarks Hill CO: McCormick SC 29821–
Location: ½ mile east of Resource Managers Office.
Landholding Agency: COE
Property Number: 319011548
Status: Excess
Comment: 1900 sq. ft.; 1 story masonry frame; possible asbestos; most recent use—storage.

Virginia

Housing
Rt. 637—Gwynnville Road
Gwynn Island Co: Mathews VA 23066–
Landholding Agency: DOT
Property Number: 879120082
Status: Unutilized
Comment: 929 sq. ft., one story residence.

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 319011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 319011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31911531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road.
Landholding Agency: COE
Property Number: 319011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab.

Former Lockmaster's Dwelling
Little Kaukauna Lock
Little Kaukauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street.
Landholding Agency: COE
Property Number: 319011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab.

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 319011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access.

Wyoming

Glendale Microwave Bldg.
Section 1
Cody Co: Park WY 82414–
Landholding Agency: Energy
Property Number: 419220001
Status: Excess
Comment: 223 sq. ft., metal frame, communication equipment bldg., limited utilities, off-site removal only.

LAND (by State)

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010071
Status: Unutilized
Comment: 77.6 acres.

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010072
Status: Unutilized
Comment: 198.5 acres.

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010073
Status: Unutilized
Comment: 50.46 acres.

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010074
Status: Unutilized
Comment: 236.37 acres.

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010075
Status: Unutilized
Comment: 167.30 acres.

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010076
Status: Unutilized
Comment: 13.0 acres.

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010077
Status: Unutilized
Comment: 0.27 acres.

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 319010078
Status: Unutilized
Comment: 14.6 acres.

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010079
Status: Unutilized
Comment: 6.60 acres.

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010080
Status: Unutilized
Comment: 4.5 acres.

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 319010081
Status: Unutilized
Comment: 19.50 acres.

Lake Greeson
Section 7, 6 and 18
Murfreesboro Co: Pike AR 71958–9720
Landholding Agency: COE
Property Number: 319010083
Status: Unutilized
Comment: 46 acres.

California

Lake Mendocino
1160 Lake Mendocino Drive
Ukiah Co: Mendocino CA 95482–9404
Landholding Agency: COE
Property Number: 319011015
Status: Unutilized
Comment: 20 acres; steep, dense brush; potential utilities.

New Hogan Lake
2713 Hogan Dam Road
Valley Springs Co: Calaveras CA 95252–0128
Landholding Agency: COE
Property Number: 319011017
Status: Unutilized
Comment: 3.08 acres; potential utilities; brush covered.

Receiver Site
Delano Relay Station
Route 1, Box 1350
Delano Co: Tulare CA 93215–

Location: 5 miles west of Pixley, 17 miles north of Delano.
Landholding Agency: GSA
Property Number: 549010044
Status: Excess
Comment: 81 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, potential utilities.
GSA Number: 9-2-CA-1308

Colorado

Portion/Curecanti Substation
Cimarron Co: Montrose CO 81220-
Location: 2 miles east of Cimarron on Highway 50
Landholding Agency: GSA
Property Number: 419030009
Status: Excess
Comment: 36.39 acres, easement restrictions.
GSA Number: 7-B-CO-624

Railroad Spur and Right-of-Way
Denver Federal Center
Lakewood Co: Jefferson CO 80215-
Landholding Agency: GSA
Property Number: 549120007
Status: Excess
Comment: 1.5 miles long (width varies 35 to 200 ft.), limited access, right-of-way restrictions.
GSA Number: 7-G-CO-441-Q

Lamar Communications Annex
12 miles south of Lamar on Hwys. 287/385
Lamar Co: Prowers CO 81052-
Landholding Agency: GSA
Property Number: 549220010
Status: Excess
Comment: 3.67 acres fee land/36.20 acres easement, 3 bldgs. on property—2332 sq. ft. communications, 336 sq. ft. generator 96 sq. ft. storage, concrete block.
GSA Number: 7-D-CO-625

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 319010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation.

Portion of VA Hospital Reserv.
2111 Southwest Randolph Street
Topeka Co: Shawnee KS 66603-
Landholding Agency: GSA
Property Number: 549220006
Status: Excess
Comment: 0.806 acre, utility easements, most recent use—recreation.
GSA Number: 7-GR-KS-419-I

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211-
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010025
Status: Excess
Comment: 2.57 acres; rolling and wooded.

Tract 2709-10 and 2710-2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211-
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010026
Status: Excess
Comment: 2.00 acres; steep and wooded.

Tract 2708-1 and 2709-1
Barkley Lake, Kentucky and Tennessee
Cardiz Co: Trigg KY 42211-
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities.

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211-
Location: 4½ miles in a southeasterly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010028
Status: Excess
Comment: 5.44 acres; steep and wooded.

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211-
Location: 6½ miles west of Cadiz.
Landholding Agency: COE
Property Number: 319010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities.

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211-
Location: 1 miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 319010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: Trigg Co. adjoining the city of Canton, KY. on the waters of Hopson Creek.
Landholding Agency: COE
Property Number: 319010032
Status: Excess
Comment: 8.24 acres; steep and wooded.

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 3½ miles in a southerly direction from Canton, KY.
Landholding Agency: COE
Property Number: 319010033
Status: Excess
Comment: 4.26 acres; steep and wooded.

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 5 miles south of Canton, KY.
Landholding Agency: COE
Property Number: 319010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities.

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities.

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 6½ miles south of Canton KY.
Landholding Agency: COE
Property Number: 319010036
Status: Excess
Comment: 1.75 acres; wooded.

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: On the north side of the Illinois Central Railroad.
Landholding Agency: COE
Property Number: 319010042
Status: Excess
Comment: 5.80 acres; steep and wooded.

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities.

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038-
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities.

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities.

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 4½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities.

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: Approximately 5½ miles east of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities.

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-

Location: Approximately 7½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities.

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: 7 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities.

Tract 2504
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: 9 miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities.

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 319010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities.

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 5 miles southwest of Kuttawa.
Landholding Agency: COE
Property Number: 319010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities.

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010054
Status: Excess
Comment: 1.26 acres; steep wooded; no utilities.

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 2.5 miles southwest of Kuttawa, KY on the waters of Cypress Creek.
Landholding Agency: COE
Property Number: 319010055
Status: Excess
Comment: 38.77 acres; steep wooded; no utilities.

Tracts 2305, 2306, and 2400-1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030-
Location: 6½ miles southeasterly of Eddyville, KY.
Landholding Agency: COE
Property Number: 319010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities.

Tract 500-2
Barkley Lake, Kentucky and Tennessee
Kuttawa Co: Lyon KY 42055-
Location: Situated on the waters of Poplar Creek; approximately 1 mile southwest of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319010057
Status: Excess
Comment: 3.58 acres; hillside ridgeland and wooded; no utilities.

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg 42212-
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 319010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities.

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212-
Location: 1 mile northwest of Linton, KY.
Landholding Agency: COE
Property Number: 319010059
Status: Excess
Comment: 2.28 acres; steep and wooded; no utilities.

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements.

Tract 4619-B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212-
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 319011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements.

Tract 2403-B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038-
Location: 7 miles southeasterly from Eddyville, KY.
Landholding Agency: COE
Property Number: 319011623
Status: Unutilized
Comment: 0.170 acres, wooded; subject to utility easements.

Tract 241-B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements.

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY.
Landholding Agency: COE
Property Number: 319011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements.

Tract 215-B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 5 miles southwest of Kuttawa.
Landholding Agency: COE
Property Number: 319011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045-
Location: 5 miles southwest of Kuttawa.
Landholding Agency: COE
Property Number: 319011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements.

Tract N-819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601-
Landholding Agency: COE
Property Number: 319140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements.

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103-
Landholding Agency: COE
Property Number: 319011009
Status: Unutilized
Comment: 11 acres; wildlife/forestry; no utilities.

Bayon Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037-9707
Location: 35 miles Northeast of Shreveport, LA.
Landholding Agency: COE
Property Number: 319011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities.

Minnesota

Parcel D
Pine River
Cross Lake Co: Crow Wing MN 56442-
Location: 3 miles from city of Cross Lake, between highways 6 and 371.
Landholding Agency: COE
Property Number: 319011038
Status: Excess
Comment: 17 acres; no utilities.

Tract 92
Sandy Lake
McGregor Co: Aitkins MN 55760-
Location: 4 miles west of highway 65, 15 miles from city of McGregor.
Landholding Agency: COE
Property Number: 319011040
Status: Excess
Comment: 4 acres; no utilities.

Tract 98
Leech Lake
Benedict Co: Hubbard MN 56641-
Location: 1 mile from city of Federal Dam, MN.
Landholding Agency: COE
Property Number: 319011041

Status: Excess
Comment: 7.3 acres; no utilities.

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011019
Status: Underutilized
Comment: 100 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011020
Status: Underutilized
Comment: 20 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011021
Status: Underutilized
Comment: 23 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 10
Grenada Lake
Sections 16, 17, 18, T24N R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 319011022
Status: Underutilized
Comment: 490 acres; no utilities, intermittently used under lease—expires 1994.

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011023
Status: Underutilized
Comment: 60 acres; no utilities, most recent use—wildlife and forestry management.

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011024
Status: Underutilized
Comment: 120 acres; no utilities, most recent use—wildlife and forestry management; (13.5 acres/agriculture lease).

Parcel 4
Grenada Lake
Section 2 and 3, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011025
Status: Underutilized
Comment: 60 acres; no utilities, most recent use—wildlife and forestry management.

Parcel 5
Grenada Lake
Section 7, T24N, R8E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease).

Parcel 6
Grenada Lake
Section 9, T24N, R8E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 11
Grenada Lake
Sections 20, T24N, R8E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–10903
Landholding Agency: COE
Property Number: 319011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 319011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease).

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 319011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 319011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 319011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management.

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 319011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management.

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Track 150.
Landholding Agency: COE
Property Number: 319030014
Status: Underutilized
Comment: 1.7 acres; potential utilities.

Montana

0.01 acre
Fort Peck Lake Project Co: Valley MT
Location: Twp. 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220002
Status: Excess
Comment: 0.01 acre, small triangular parcel, rough/steep terrain.

0.05 acre
Fort Peck Lake Project Co: Valley MT
Location: Twp. 27 north, RNG 41 east, Section 33, E/2SE/4NW/4NE/4
Landholding Agency: COE
Property Number: 319220003
Status: Excess
Comment: 0.05 acre, small strip next to highway, steep/rough terrain.

122.60 acres
Fort Peck Lake Project Co: McCone MT
Location: Twp. 26 north, RNG 42 east, Section 4, Lot 3, SW/4NE/4SE/4NW/4
Landholding Agency: COE
Property Number: 319220004
Status: Excess
Comment: 122.60 acres, rough & rugged terrain, grazing allotment administered by Bureau of Land Management.

120 acres, Fort Peck Lake Proj Co: McCone MT
Location: Twp 21 north, RNG 43 east, Section 34, N/2NE/4, Section 35, NW/4NW/4
Landholding Agency: COE
Property Number: 319220005
Status: Unutilized
Comment: 120.00 acres, rough & rugged terrain.

North Carolina

USCG Station—Land

Oregon Inlet Coast Guard Station
Rodanthe Co: Dare NC 27968–
Landholding Agency: DOT
Property Number: 879120087
Status: Unutilized
Comment: 10 acres, potential utilities.

Ohio

Hannibal Locks and Dam
Ohio River
P.O. Box 8
Hannibal Co: Monroe OH 43931–0008
Location: Adjacent to the new Martinsville Bridge.
Landholding Agency: COE
Property Number: 319010015
Status: Underutilized
Comment: 22 acres; river bank.

Oklahoma

Parcel No. 18
Fort Gibson Lake
Section 12
Wagoner Co. Co: Wagoner OK
Landholding Agency: GSA
Property Number: 219013808
Status: Excess
Comment: 8.77 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0004

Parcel 7
Fort Gibson Lake
Section 6 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010869
Status: Excess
Comment: 16.31 acres; potential utilities; most recent use—recreational and development.
GSA Number: 7–D–OK–0442E–0001

Parcel 14
Fort Gibson Lake
Section 20 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010870
Status: Excess
Comment: 52.09 acres; potential utilities; subject to haying/grazing leases; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0002

Parcel 15
Fort Gibson Lake
Section 22 Co: Cherokee OK 74434
Landholding Agency: GSA
Property Number: 319010871
Status: Excess
Comment: 7.51 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0003

Parcel 28
Fort Gibson Lake
Section 35 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010877
Status: Excess
Comment: 36.59 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0005

Parcel 75
Fort Gibson Lake
Section 16 Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319010887
Status: Excess
Comment: 45 acres; potential utilities; subject to haying lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0009

Parcel 88
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010899
Status: Excess
Comment: 14 acres; potential utilities; subject to grazing lease; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0010

Parcel 89
Fort Gibson Lake
Section 7 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010900
Status: Excess
Comment: 16 acres; potential utilities; subject to grazing lease and flowage easement; most recent use—recreational.
GSA Number: 7–D–OK–0442E–011

Parcel 95
Fort Gibson Lake
Section 33 Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319010906
Status: Excess
Comment: 8 acres; potential utilities; most recent use—recreational.
GSA Number: 7–D–OK–0442E–0012

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 319010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3.

Parcel No. 43
Fort Gibson Lake
Section 11
Co: Mayes OK 74434.
Landholding Agency: GSA
Property Number: 319011371
Status: Excess
Comment: 125 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0006

Parcel No. 49
Fort Gibson Lake
Section 15
Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011377
Status: Excess
Comment: 28.94 acres; potential utilities; portion subject to grazing lease and flowage easements.
GSA Number: 7–D–OK–0442E–0007

Parcel No. 61
Fort Gibson Lake
Section 13
Co: Mayes OK 74434
Landholding Agency: GSA
Property Number: 319011389
Status: Excess
Comment: 54 acres; potential utilities; subject to flowage easement; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0008

Parcel No. 99
Fort Gibson Lake
Section 21
Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011400
Status: Excess
Comment: 5 acres; small creek on land; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0013

Parcel No. 102
Fort Gibson Lake
Section 33
Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011403
Status: Excess
Comment: 7 acres; subject to grazing lease; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0014

Parcel No. 105
Fort Gibson Lake
Sections 14, 22 and 23
Co: Wagoner OK 74434
Landholding Agency: GSA
Property Number: 319011406
Status: Excess
Comment: 375 acres; portion is environmentally protected; most recent use—recreation.
GSA Number: 7–D–OK–0442E–0015

Oregon

Tonque Point Job Corps Center (Portion of)
Astoria Co: Clotsop OR 97103–
Location: North of Highway 30; on the west by city of Astoria's sewage treatment plant.
Landholding Agency: GSA
Property Number: 549010027
Status: Excess
Comment: 18.17 acres, land slopes, some soil erosion, potential utilities, no vehicular access to property.
GSA Number: 9–L–OR–506M

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location: Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded.

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon. R18 North 4 miles, left on R518, right on Mercer Avenue.
Landholding Agency: COE
Property Number: 319011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement.

Tracts L24, L26
Crooked Creek Lake
(See County) Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 319011011
Status: Unutilized
Comment: 7.89 acres; potential for utilities.

6.98 acres—Army Rsv Center
Edgemont Military Reservation
Delchester-Gradyville Road

Willistown Township Co: Chester PA 19013–
Landholding Agency: GSA
Property Number: 549220004
Status: Surplus
Comment: 6.98 acres with dilapidated building.
GSA Number: 4–GR–PA–632A

5.19 acres—Army Rsv Center
Edgemont Military Reservation
Delchester-Gradyville Road
Willistown Township Co: Chester PA 19013–
Landholding Agency: GSA
Property Number: 549220005
Status: Surplus
Comment: 5.19 acres with dilapidated building.
GSA Number: 4–GR–PA–632B

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN.
Landholding Agency: COE
Property Number: 319010927
Status: Excess
Comment: .57 acres; subject to existing easements

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport.
Landholding Agency: COE
Property Number: 319010928
Status: Excess
Comment: 100.86 acres; subject to existing easements.

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 319010929
Status: Excess
Comment: 26.25 acres; subject to existing easements.

Tract 2319
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 319010930
Status: Excess
Comment: 14.48 acres; subject to existing easements.

Tract 2227
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010931
Status: Excess
Comment: 2.27 acres; subject to existing easements.

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area.
Landholding Agency: COE
Property Number: 319010932
Status: Excess
Comment: 14.85 acres; subject to existing easements.

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creed
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 319010933
Status: Unutilized
Comment: 11 acres; subject to existing easements.

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 319010934
Status: Excess
Comment: 15.31 acres; subject to existing easements.

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 319010935
Status: Excess
Comment: 12 acres; subject to existing easements.

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010936
Status: Excess
Comment: 10.15 acres; subject to existing easements.

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City.
Landholding Agency: DOE
Property Number: 319010937
Status: Excess
Comment: 96 acres; subject to existing easements.

Tract 8911
Barkley Lake
Cumberland City, Co: Montgomery, TN 37050–
Location: 4 miles east of Cumberland City.
Landholding Agency: COE
Property Number: 319010938
Status: Excess
Comment: 7.7 acres; subject to existing easements.

Tract 11503
Barkley Lake
Ashland City, Co: Cheatham, TN 37015–
Location: 2 miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010939
Status: Excess
Comment: 1.1 acres; subject to existing easements.

Tracts 11523, 11524
Barkley Lake
Ashland City, Co: Cheatham, TN 37015–
Location: 2½ miles downstream from Cheatham Dam.
Landholding Agency: COE
Property Number: 319010940
Status: Excess
Comment: 19.5 acres; subject to existing easements.

Tract 6410
Barkley Lake
Bumpus Mills, Co: Stewart, TN 37028–
Location: 4½ miles SW. of Bumpus Mills.
Landholding Agency: COE
Property Number: 319010941
Status: Excess
Comment: 17 acres; subject to existing easements.

Tract 9707
Barkley Lake
Palmyer, Co: Montgomery, TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 319010943
Status: Excess
Comment: 6.6 acres; subject to existing easements.

Tract 6949
Barkley Lake
Dover, Co: Stewart, TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 319010944
Status: Excess
Comment: 29.67 acres; subject to existing easements.

Tracts 6005 and 6017
Barkley Lake
Dover, Co: Stewart, TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 319011173
Status: Excess
Comment: 5 acres; subject to existing easements.

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville, Co: Trousdale, TN 37074–
Landholding Agency: COE
Property Number: 319130007
Status: Underutilized
Comment: 92 acres (38 acres in floodway), most recent use–recreation.

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina, Co: Clay, TN 38551–
Landholding Agency: COE
Property Number: 319140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements.

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina, Co: Clay, TN 38551–
Landholding Agency: COE
Property Number: 319140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Tracts A–20, A–21
Dale Hollow Lake & Dam Project
Red Oak Ridge, State Hwy No. 53
Celina, Co: Clay, TN 38551–
Landholding Agency: COE
Property Number: 319140008
Status: Underutilized

Comment: 821 acres, most recent use—recreation, subject to existing easements.

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston, Co: Clay, TN 38570–
Landholding Agency: COE
Property Number: 319140010
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements.

Texas

Parcel #222
Lake Texoma
(See County), Co: Grayson, TX
Location: C. Meyerheim survey A–829 J. Hamilton survey A–529
Landholding Agency: COE
Property Number: 319010421
Status: Excess
Comment: 52.80 acres; most recent use—recreation.

Parts of Tracts
B–143, B–144, B–146, B–148, B–179
Downstream of Lewisville Dam embankment
Lewisville Co: Denton TX 75067–
Location: Along State Hwy 121
Landholding Agency: COE
Property Number: 319140015
Status: Underutilized
Comment: Approx. 92.61 acres in 3 parcels, most recent use—wildlife and low density recreation.

Washington

Land
Goodnoe Hills Substation & Wind Study Site,
Co: Klickitat, WA 98620–
Location: 15 mi SE of Goldendale on S side of St. Hwy. 122
Landholding Agency: GSA
Property Number: 549210005
Status: Excess
Comment: 123 acres w/ a 20'×20' visitors center and a 6'×6' substation bldg. which has secured areas.
GSA Number: 9–B–WA–1017.

Wyoming

Wind Site A
Medicine Bow, Co: Carbon, WY 82329–
Location: 3 miles south and 2 miles west of Medicine Bow
Landholding Agency: GSA
Property Number: 419030010
Status: Excess
Comment: 46.75 acres, limitation-easement restrictions.

Suitable/Unavailable Properties

Buildings (by State)

Florida

Bldg. CN7
Ortona Lock Reservation, Okeechobee Waterway
Ortona, Co: Glades, FL 33471–
Location: Located off Highway 78 approximately 7 miles west of intersection with Highway 27.
Landholding Agency: COE
Property Number: 319010012
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence; secured with alternate access.

Bldg. CN8
Ortona Lock Reservation, Okeechobee Waterway
Ortona, Co: Glades, FL 33471–
Location: Located off Highway 78 approximately 7 miles west of interesection with Highway 27.
Landholding Agency: COE
Property Number: 319010013
Status: Unutilized
Comment: 1468 sq. ft.; one floor wood frame; most recent use—residence, secured with alternate access.

Bldg. CN–19
Moore Haven Lock
Okeechobee Waterway
Moore Haven, Co: Glades, FL 33471–
Location: 1 mile east of highway 27
Landholding Agency: COE
Property Number: 319011688
Status: Unutilized
Comment: 1281 sq. ft.; 1 story frame residence; secured area with alternate access.

(P) Jacksonville Job Corps
236 W. 4th Street
Jacksonville, Co: Duval, FL 32206–
Landholding Agency: GSA
Property Number: 549140007
Status: Excess
Comment: 1250 sq. ft., 2 story residence, needs major rehab, subject to compliance with federal and local historic preservation laws
GSA Number: 4–L–FL–967.

Georgia

Lot 3
Lake Forrest Subdivision
Woodframe House
Hartwell, Co: Hartwell, GA
Landholding Agency: COE
Property Number: 319110026
Status: Excess
Comment: 896 sq. ft.; 2 story wood frame residence; off-site removal only.

Guam

Bldg. 99, Loran Station-C
Barrigada, GU 96913–
Landholding Agency: DOT
Property Number: 879220002
Status: Excess
Comment: 3960 sq. ft. concrete block transmitting station with tower.

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain, Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence.

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain, Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain, Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain, Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain, Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame.

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain, Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain, Co: Pulaski, IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 319010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence.

Indiana

Cagles Mill Lake
Cagles Mill Lake Dam
Poland, Co: Putman, IN 47868–
Location: Midway between Indianapolis and Terre Haute, 5 miles west of Poland on SR42.
Landholding Agency: COE
Property Number: 319011046
Status: Unutilized
Comment: 1066 sq. ft.; wood frame residence; minor rehab.

Dwelling #2
Cagles Mill Lake
Poland, Co: Putman, IN 47868–
Location: 5 miles west of Polano on SR 42
Landholding Agency: COE
Property Number: 319011686
Status: Unutilized
Comment: 872 sq. ft.; 1 story wood frame residence; fair condition.

Kentucky

Kentucky River Lock and Dam 3

Pleasureville, Co: Henry, KY 40057–
Location: SR 421 North from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010060
Status: Unutilized
Comment: 897 sq. ft.; 2 story wood frame; structural deficiencies.
Kentucky River Lock and Dam 3
Pleasureville, Co: Henry, KY 40057–
Location: SR 421 north from Frankfort, KY. to highway 561, right on 561 approximately 3 miles to site.
Landholding Agency: COE
Property Number: 319010061
Status: Unutilized
Comment: 1060 sq. ft.; 2 story wood frame; needs rehab.
Bldg. 1
Kentucky River Lock and Dam
Carrolton, Co: Carroll, KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to Highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011628
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.
Bldg. 2
Kentucky River Lock and Dam
Carrolton, Co: Carroll, KY 41008–
Location: Take I–71 to Carrolton, KY exit, go east on SR #227 to highway 320, then left for about 1.5 miles to site.
Landholding Agency: COE
Property Number: 319011629
Status: Unutilized
Comment: 1530 sq. ft.; 2 story wood frame house; subject to periodic flooding; needs rehab.

Maryland

Chesapeake Bay Hydraulic Model
Matapeake, Co: Queen Annes, MD 21666–
Landholding Agency: GSA
Property Number: 549040007
Status: Excess
Comment: 617280 sq. ft., 1 story metal bldg., ceiling height over 40 ft., lease restriction, Corps will maintain an antenna on property
GSA Number: 4–D–MD–578.

Missouri

Bldg. 208–C
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120047
Status: Excess
Comment: 2210 sq. ft., most recent use—general storage, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 208–D
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120048
Status: Excess
Comment: 750 sq. ft., most recent use—general storage, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 222
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120049
Status: Excess
Comment: 16150 sq. ft., most recent use—medical/dental, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 223–A
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120050
Status: Excess
Comment: 77340 sq. ft., most recent use—dormitory, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 223–B
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120051
Status: Excess
Comment: 21380 sq. ft., most recent use—education bldg., permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 230
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120052
Status: Excess
Comment: 1840 sq. ft., most recent use—facility maintenance, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 230–A
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120053
Status: Excess
Comment: 1840 sq. ft., most recent use—facility maintenance, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 232–A–H
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120054
Status: Excess
Comment: 29280 sq. ft., most recent use—vocational training shop, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 234
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120055
Status: Excess
Comment: 44620 sq. ft., most recent use—admin/food service, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 237
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120056
Status: Excess
Comment: 300 sq. ft., most recent use—storage, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 244
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120—
Landholding Agency: GSA
Property Number: 549120057
Status: Excess
Comment: 7480 sq. ft., most recent use—weld/automotive shop, permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 223C
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120058
Status: Excess
Comment: 123 sq. ft., permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 224B
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120059
Status: Excess
Comment: 100 sq. ft., permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 233A
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120060
Status: Excess
Comment: 837 sq. ft., permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.
Bldg. 233F
6400 Stratford Avenue
Portion U.S. Army Reserve Center No. 4
St. Louis, Co: St. Louis, MO 63120–
Landholding Agency: GSA
Property Number: 549120061
Status: Excess
Comment: 837 sq. ft., permitted to Dept. of Labor
GSA Number: 7–D–MO–460–F.

New Mexico

Indian School of Prac. Nursing
1015 Indian School Road, NW
Albuquerque, NM 87104–
Landholding Agency: GSA
Property Number: 549140004
Status: Excess
Comment: 21,635 sq. ft., 2 story plus basement, brick & masonry frame on 1.68 acres of improved land.
GSA Number: 7–F–NM–509B.
Bldg. 1 and 4

U.S. Navy Reserve Center
512 N 12th Street
Carlsbad Co: Eddy NM 88220–3046
Landholding Agency: GSA
Property Number: 779040001
Status: Excess
Comment: 2,460 sq. ft., one story, frame/concrete block bldg., most recent use—office, presence of asbestos, and 152 sq. ft. mental storage shed on 1.03 acres.
GSA Number: 7–N–NM–0555.

New York

Bldg. 1
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120008
Status: Excess
Comment: 31,519 sq. ft., 7 story brick frame, presence of asbestos on pipe insulation, scheduled to be vacated Oct. 1992
GSA Number: 7–N–NY–797.
Bldg. 2
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency GSA
Property Number: 549120009
Status: Excess
Comment: 35,537 sq. ft., 3 story bay brick frame, presence of asbestos on pipe insulation, most recent use—office, storage, auto shop, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. 3
Naval Station New York
207 Flushing Avenue
Brooklyn Co: Kings NY 11251–
Landholding Agency: GSA
Property Number: 549120010
Status: Excess
Comment: 2,700 sq. ft., 2 story brick frame, most recent use—office, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797.
Bldg. 5
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120012
Status: Excess
Comment: 3,330 sq. ft., 2 story brick frame, most recent use—office, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797.
Bldg. 10
Naval Station New York
207 Flushing Avenue
Brookly, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120015
Status: Excess
Comment: 3,100 sq. ft., 1 story, concrete & fiberglass frame, no utilities, most recent use—storage, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797.
Bldg. 306
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency GSA
Property Number: 549120016
Status: Excess
Comment: 8,364 sq. ft., 1 story brick frame, presence of asbestos on pipe insulation, most recent use—storage, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797.
Bldg. 311
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120017
Status: Excess
Comment: 9720 sq. ft., 2 story brick frame, needs heating system repairs, needs rehab, presence of asbestos on pipe insulat., most recent use—of c/storage, sched. to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. 316
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120019
Status: Excess
Comment: 3952 sq. ft., 1 story brick frame, needs heating system repairs, potential utils., pres. of asbestos on pipe insula, most recent use—storage, sched. to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. 353
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120020
Status: Excess
Comment: 670 sq. ft., 1 story brick fame, limited utilities, needs rehab, most recent use—storage, needs heating system repairs, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. 670
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120021
Status: Excess
Comment: Concrete block gasoline station, no sanitary or heating facilities, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. 672
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120023
Status: Excess
Comment: 400 sq. ft., 1 story wood frame, most recent use—pool house, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. R1
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120025
Status: Excess
Comment: 5274 sq. ft., 2 story single family housing, brick veneer/wood frame, presence of asbestos on pipe insulation, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. R2
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120026
Status: Excess
Comment: 2400 sq. ft., 2 story single family hsg., cement asbestos/wood frame, needs heating system repairs, presence of asbestos on pipe insulation, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. R3
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120027
Status: Excess
Comment: 2400 sq. ft., 2 story single family housing, cement asbestos/wood frame, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. R4
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120028
Status: Excess
Comment: 2517 sq. ft., 3 story four-family housing, brick asbestos/tile frame, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. R5
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120029
Status: Excess
Comment: 2140 sq. ft., 1 story single family residence, brick frame, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. R6
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120030
Status: Excess
Comment: 2140 sq. ft., 1 story single family residence, brick frame, needs rehab, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. R7
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120031
Status: Excess
Comment: 2140 sq. ft., 1 story single family housing, brick frame, needs rehab, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.
Bldg. R103

Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120032
Status: Excess
Comment: 1650 sq. ft., 2 story brick frame, needs heating system repairs, limited utils., most recent use—storage, presence of asbestos on pipe ins., scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. R103A
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120033
Status: Excess
Comment: 2620 sq. ft., 1 story concrete block frame, limited utils., most recent use—garage, presence of asbestos on pipe insulation, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. R104
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120034
Status: Excess
Comment: 712 sq. ft., 2 story brick frame, most recent use—bachelor officers quarters, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. R109
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120035
Status: Excess
Comment: 2 story brick frame, limited utilities, needs heating syst. repairs, most recent use—storage & garage, presence of asbestos on pipe insul., scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. R426
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120036
Status: Excess
Comment: 2409 sq. ft., 1 story brick frame, needs heating system repairs, most recent use—storage, presence of asbestos on pipe ins., limited utils., scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. R448
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120037
Status: Excess
Comment: 969 sq. ft., 1 story concrete & glass frame, limited utilites, needs major rehab, most recent use—greenhouse, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. R475
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120039
Status: Excess
Comment: 1789 sq. ft., 1 story concrete block frame, most recent use—auto hobby shop, presence of asbestos on pipe insulation scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. R476
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120040
Status: Excess
Comment: 36 sq. ft., 1 story metal frame, most recent use—security gate house, needs heating system repairs, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. RG
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120041
Status: Excess
Comment: 15,490 sq. ft., 3 story brick & stucco frame, needs heating system repairs, needs major rehab, presence of asbestos on pipe ins., scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. R8R9
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120042
Status: Excess
Comment: 2800 sq. ft., 2 story brick frame, most recent use—residential duplex, scheduled to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. R95
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 779010256
Status: Excess
Comment: 41,800 sq. ft., 2 story stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab, NYS Historical Landmark, sched. to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. RD
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 779010257
Status: Excess
Comment: 14,120 sq. ft., 2 story brick and stone frame, needs heating system repairs, pres. of asbestos on pipe ins., needs major rehab, sched. to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

Bldg. 305
Naval Station
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 779010258
Status: Excess
Comment: 18920 sq. ft., 2 story brick frame, limited util., needs major rehab, presence of asbestos on pipe insultation, needs heating system repairs, schedules to be vacated Oct. 1992
GSA Number: 2–N–NY–797.

North Dakota

Calhoon Radio Relay Tower Site
5 miles north and 1 mile west of Hannover, North Dakota, Co: Oliver, ND 58563–
Landholding Agency: GSA
Property Number: 549130015
Status: Excess
Comment: One story 12' x 10'8" communication tower on concrete slab w/ 5.74 acres and 0.66 acre easement, potential utilities, needs rehab
GSA Number: 7–B–ND–489.

Ohio

Parcel 2
Lock and Dam #16
Washington, Co: Washington, OH
Location: On the Ohio River; 4 miles downstream from New MataMoras, Grandview Township.
Landholding Agency: GSA
Property Number: 549110010
Status: Excess
Comment: Two story brick frame, subject to periodic flooding, possible asbestos on pipes, most recent use—office space
GSA Number: 2–GR(1)–OH–730.

Parcel 1
Lock and Dam #16
Washington, Co: Washington, OH
Location: On the Ohio River, 4 miles downstream from New MataMorus, Grandview Township.
Landholding Agency: GSA
Property Number: 549110011
Status: Excess
Comment: 2.5 story brick frame, subject to periodic flooding, possible asbestos on pipes, most recent use—storage
GSA Number: 2–GR(1)–OH–730.

Pennsylvania

Conemaugh River Lake
Road #1, Box 702
Saltsbury, Co: Indiana PA, 15681–
Landholding Agency: COE
Property Number: 319010019
Status: Unutilized
Comment: 2642 sq. ft.; one unit of brick/frame duplex; most recent use—residence.

Tennessee

Transient Quarters
Dale Hollow Lake and Dam Project
Dale Hollow Resource Mgr Office, Rt 1, Box 64
Celina, Co: Clay, TN 38551–
Landholding Agency: COE
Property Number: 319140005
Status: Unutilized
Comment: 1400 sq. ft., concrete block, possible security restrictions, subject to existing easements.

Federal Building
216 North Jackson Street
Athens, Co: McMinn, TN 37303–
Landholding Agency: GSA
Property Number: 549210003
Status: Excess
Comment: 2069 sq. ft., 3 story brick and concrete frame, presence of asbestos on pipes and air ducts in mechanical areas, most recent use—offices.
GSA Number: 4–G–TN–632.

Texas

Bldg. 6–B
Brazos River Floodgates
Freeport, Co: Brazoria, TX 77541–
Location: 5 miles south of Freeport.
Landholding Agency: COE
Property Number: 319110030
Status: Unutilized
Comment: 1100 sq. ft.; 2 story wood frame; needs major rehab; possible asbestos; off-site use only.

Bldg. 6–C
Colorado River Locks
109 Colorado River Locks
Matagorda, Co: Matagorda, TX 77547–
Landholding Agency: COE
Property Number: 319110031
Status: Unutilized
Comment: 1100 sq. ft.; 1 story wood frame; needs rehab; off-site use only.

Peary Place #1
Naval Air Station
Corpus Christi, Co: Nueces, TX 78419–5000
Landholding Agency: GSA
Property Number: 779030002
Status: Excess
Comment: 9160 sq. ft., 1 story, possible asbestos, most recent use—remote transmitter site.
GSA Number: 7–N–TX–402–V.

Brownsville Urban System, (Grantee)
700 South Iowa Avenue
Brownsville, Co: Cameron, TX 78520–
Landholding Agency: DOT
Property Number: 879010003
Status: Unutilized
Comment: 3500 sq. ft., 1 story concrete block, (2nd floor of Admin. Bldg.) on 10750 sq. ft. land, contains underground diesel fuel tanks.

Virginia

Tract HH 3331–E
John H. Kerr Reservoir
Woodframe House
South Boston, Co: Halifax, VA
Landholding Agency: COE
Property Number: 319110027
Status: Excess
Comment: 1040 sq. ft.; 1 story wood frame residence; off-site removal only.

Washington

Mica Peak Radio Station
Approx. 15 miles SE of Spokane
Spokane, Co: Spokane, WA 99210–
Landholding Agency: GSA
Property Number: 549120065
Status: Excess
Comment: 25X48 ft. 0.4 acres 1 story concrete block, most recent use—radio communications, only accessible from late June to October
GSA Number: 9–B–WA–895.

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere, Co: Brown, WI 54115–
Landholding Agency: COE
Property Number: 319011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Land (by State)

Alaska

Portion, Dyke Range
Old Richardson Hwy.
North Pole, Co: Fairbanks, AK 00805–
Landholding Agency: GSA
Property Number: 549130018
Status: Excess
Comment: 0.73 acre—75% of land encroached upon by private residence
GSA Number: 9–D–AK–727

Former Ft. Wainwright Annex
Corner of 12th Ave. and Alasdom Rd.
Fairbanks, AK 99707–
Landholding Agency: GSA
Property Number: 549220013
Status: Surplus
Comment: 1.89 acres, easement restrictions
GSA Number: 9–D–AK–0537R.

California

Receiver Site
Dixon Relay Station
7514 Radio Station Road
Dixon, CA 95620–9653
Location: Approximately .16 miles southeast of Dixon, CA.
Property Number: 549010042
Status: Excess
Comment: 60 acres, 1560 sq. ft. radio receiver bldg. on site, subject to grazing lease, limited utilities.
GSA Number: 9–2–CA–1162–A.

Remote Transmitter
Section 35
Red Bluff, Co: Tehema, CA 96080–
Landholding Agency: DOT
Property Number: 879010010
Status: Unutilized
Comment: 4 acres, paved road, current use—storage.

Florida

Parcel A & B
U.S. Coast Guard Light Station
Lots 1, 8 & 11, Section 31
Jupiter Inlet Co: Palm Beach FL 33420–
Location: Township 40 south, range 43 east.
Landholding Agency: DOT
Property Number: 879010009
Status: Unutilized
Comment: 56.61 acres, area is uncleared, vegetation growth is heavy, no utilities.

Georgia

E.O. Tract A
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia, GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011516
Status: Unutilized
Comment: 17 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract B
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia, GA
Location: 3 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011517
Status: Unutilized
Comment: 68 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract F
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia, GA
Location: Approximately 2 miles east of GA 104 and Key Creek Road intersection.
Landholding Agency: COE
Property Number: 319011519
Status: Unutilized
Comment: 29 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract E
J. Strom Thurmond Dam and Reservoir
(See County) Co: Columbia, GA
Location: Approximately 1½ miles east of GA 104 and Key Creek Road intersection.
Landholding Agency: COE
Property Number: 319011520
Status: Unutilized
Comment: 12 acres; potential utilities; most recent use—forest reserve and wildlife management.

E.O. Tract G
J. Strom Thurmond Dam and Reservoir
(See County), Co: Columbia, GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011521
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

E.O. Tract I
J. Strom Thurmond Dam and Reservoir
(See County), Co: Columbia, GA
Location: 4 miles east of GA 104 and Ridge Road intersection.
Landholding Agency: COE
Property Number: 319011523
Status: Unutilized
Comment: 8 acres; potential utilities; most recent use—forest and wildlife reserve.

Guam

Portion, Former Marbo Base Command "B"–4
Andersen Air Force Base (Admin Annex)
Yigo, GU
Landholding Agency: GSA
Property Number: 549220007
Status: Surplus
Comment: 80 acres, land/water use restriction, former housing area, paved roads on property are buried u/moss and encroaching jungle, potential utilities.
GSA Number: 9–D–GU–411A.

Kansas

Dragoon Access Area
Pomona Lake
Vassar, Co: Osage, KS 66543–
Location: Upper reaches of north shore of the Pomona Lake, approximately 10.5 miles north and east of Lundon.
Landholding Agency: COE
Property Number: 319011543
Status: Underutilized

Comment: 110 acres; portion in floodway/ reservoir flood control area.
Titan II Missile S–17
McConnell Air Force Base Co: Kingman KS 67068–
Location: 4 miles east on US Hwy 54 and 3 miles north on FAS 361
Landholding Agency: GSA
Property Number: 549210001
Status: Excess
Comment: 10.26 acres fee and 2/43 acres easement (paved), potential utilities, PCB's underground on 1 acre, most recent use—missile site.
GSA Number: 7–D–KS–477–Q.
Titan II Missile S–12
McConnell Air Force Base, Co: Sumner, KS 67221–
Location: 1.5 miles south of Conway Springs, KS on State Hwy 49
Landholding Agency: GSA
Property Number: 549210002
Status: Excess
Comment: 16.75 acres fee and 3.79 acres easement (paved), potential utilities, PCB's underground on 1 acre, most recent use—missile site.
GSA Number: 7–D–KS–477–R.

Massachusetts

Por. of Former Navy Ammo. Plt.
Fort Hill Street
Hingham, Co: Plymouth, MA 02043–
Location: Across from Bus Company Parking Garage.
Landholding Agency: GSA
Property Number: 549030017
Status: Excess
Comment: 1.129 acres, gravel pavement, most recent use—parking lot.
GSA Number: 2–GR–MA–501B.

New York

Land 671
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120022
Status: Excess
Comment: 50 ft. by 25 ft., most recent use—swimming pool concrete frame, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797.
Playing Field-675
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120024
Status: Excess
Comment: 67974 sq. ft., limited utilities, most recent use—baseball field, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797.
Land R464/R474
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120043
Status: Excess
Comment: 90' x 45' each, concrete over gravel, most recent use—tennis courts, scheduled to be vacated Oct. 1992.
GSA Number: 2–N–NY–797.

North Dakota

Valley City Radio Tower Site
1 mile south and 1 mile east of Valley City, North Dakota
Valley City, Co: Barnes, ND 58072–
Landholding Agency: GSA
Property Number: 549130018
Status: Excess
Comment: 5.74 acres w/one story metal equipment storage bldg. 12' x 10.8", potential utilities.
GSA Number: 7–B–ND–490.
Tappen Radio Relay Tower Site
2 miles east and 1.5 miles north of Tappen
Tappen, Co: Kidder, ND 58487–
Landholding Agency: GSA
Property Number: 549130017
Status: Excess
Comment: 5.74 fee acres and 0.59 acre easement w/100' guyed communication tower, potential utilities.
GSA Number: 7–B–ND–491.

Oklahoma

45 acre parcel, Sardis Lake
SE¼ NE¼ Section 4, T 2 N, R 16 E Co: Pushmataha, OK 74521–
Landholding Agency: COE
Property Number: 319140004
Status: Excess
Comment: approx. 45 acres, most recent use—fish and wildlife conservation.
Parcel No. 54/GSA No. 6
Lake Texoma, Co: Marshall, OK 73439–
Location: Section 17, 3½ miles north of Little City, OK
Landholding Agency: GSA
Property Number: 549210007
Status: Excess
Comment: 5.05 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H.
Parcel No. 63/GSA No. 8
Lake Texoma, Co: Marshall, OK 73439–
Location: Section 19, 3½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210008
Status: Excess
Comment: 40.32 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H.
Parcel No. 66/GSA No. 9
Lake Texoma, Co: Marshall, OK 73439–
Location: Sections 12 and 13, 2½ miles southwest of Cumberland, OK
Landholding Agency: GSA
Property Number: 549210009
Status: Excess
Comment: 14.05 acres, potential utilities, most recent use—low density recreation/natural gas well and pipelines.
GSA Number: 7–D–OK–0507–H.
Parcel No. 78/GSA No. 11
Lake Texoma, Co: Marshall, OK 73439–
Location: Section 24, 1 mile east of McBride, OK
Landholding Agency: GSA
Property Number: 549210010
Status: Excess
Comment: 30.28 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H.
Parcel No. 86/GSA No. 12
Lake Texoma, Co: Marshall, OK 73439–
Location: Section 1834, 3½ miles south of Kingston, OK
Landholding Agency: GSA
Property Number: 549210011
Status: Excess
Comment: 13 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H.
Parcel No. 125/GSA No. 14
Lake Texoma, Co: Marshall, OK 73439–
Location: Section 17
Landholding Agency: GSA
Property Number: 549210012
Status: Excess
Comment: 11.24 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H.
Parcel No. 150/GSA No. 15
Lake Texoma, Co: Marshall, OK 73439–
Location: Section 6
Landholding Agency: GSA
Property Number: 549210013
Status: Excess
Comment: 12.64 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H.
Parcel No. 164/GSA No. 16
Lake Texoma, Co: Love, OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210014
Status: Excess
Comment: 40.20 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H.
Parcel No. 165/GSA No. 17
Lake Texoma, Co: Love, OK 73441–
Location: Section 3
Landholding Agency: GSA
Property Number: 549210015
Status: Excess
Comment: 32.62 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H.
Parcel No. 166/GSA No. 18
Lake Texoma, Co: Love, OK 73441–
Location: Section 10
Landholding Agency: GSA
Property Number: 549210016
Status: Excess
Comment: 62.61 acres, potential utilities, most recent use—low density recreation.
GSA Number: 7–D–OK–0507–H.

Pennsylvania

East Branch Clarion River Lake
Wilcox, Co: Elk, PA
Location: Free camping area on the right bank off entrance roadway.
Landholding Agency: COE
Property Number: 319011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground.

South Carolina

E. O. Tract J
J. Strom Thurmond Dam and Reservoir
(See County), Co: McCormick, SC
Location: 4 miles southwest of Plum Branch SC on road to Clarks Mill Marina.
Landholding Agency: COE
Property Number: 319011514
Status: Unutilized

Comment: 57 acres; potential utilities; most recent use—forest and wildlife reserve.
E. O. Tract C
J. Strom Thurmond Dam and Reservoir
(See County), Co: McCormick, SC
Location: Approximately 1 mile north of US 221 and SC 28 intersection.
Landholding Agency: COE
Property Number: 319011515
Status: Unutilized
Comment: 70 acres; potential utilities; most recent use—forest and wildlife reserve.

South Dakota

Por. of Pactola Dist. Ad. Site
803 Soo San Drive
Rapid City, Co: Pennington, SD 57702–
Landholding Agency: GSA
Property Number: 159130003
Status: Excess
Comment: 5.58 acres; potential utilities
GSA Number: 7–A–SD–511.

Tennessee

Cates Casting Field
Mississippi River and Tributaries Project
Hwy. 22
Tiptonville, Co: Lake, TN 38079–
Landholding Agency: GSA
Property Number: 319210010
Status: Excess
Comment: 57.0 acres, remote area, subject to periodic flooding
GSA Number: 4–D–TN–633.
Loading Site
Cates Casting Field
Mississippi River and Tributaries Project
Tiptonville, Co: Lake, TN 38079–
Landholding Agency: GSA
Property Number: 319210011
Status: Excess
Comment: 8.3 acres, remote area, subject to periodic flooding
GSA Number: 4–D–TN–634.

Texas

Part of Tract A–10
(See County), Co: Tarrant, TX
Location: Off FM 2499 at north end of dam embankment
Landholding Agency: COE
Property Number: 319010390
Status: Excess
Comment: 0.29 acres; most recent use—parking lot.
Part of Tract 340
Joe Pool Lake
(See County), Co: Dallas, TX
Landholding Agency: COE
Property Number: 319010400
Status: Unutilized
Comment: 1 acre; future use—recreation.
Test Tract—Formerly Jet Ind.
Burleson Road
Austin, Co: Travis, TX 78741–
Location: Approx. 7 mi NW of U.S. Hwy 183 and approx. 3.5 mi SE of Ben White Blvd.
Landholding Agency: GSA
Property Number: 549140008
Status: Excess
Comment: 75.81 acres, most recent use—one mile asphalt test track for electric cars, approx. 15 acres in floodplain
GSA Number: 7–B–TX–970.

Virginia

St. Helena Annex, (former portion)
Treadwell and South Main Streets
Norfolk, Co: Norfolk, VA 23523–
Landholding Agency: GSA
Property Number: 549120005
Status: Excess
Comment: 7.69 acres, most recent use—paved parking lot
GSA Number: 4–GR(2)–VA525AA.

Suitable/To Be Excessed

Buildings (by State)

Kentucky

Bldg.—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, Co: Gallatin, KY 41095–
Landholding Agency: COE
Property Number: 319130004
Status: Unitilized
Comment: 64 sq. ft., 1 story wood frame, most recent use—utility, off-site use only.

Michigan

Former C. G. Lightkeeper Sta.
Little Rapids Channel Project
St. Marys River
Sault Ste. Marie, Co: Chippewa, MI 49783–
Location: 3 miles east of downtown Sault Ste. Marie.
Landholding Agency: COE
Property Number: 319011573
Status: Excess
Comment: 1411 sq. ft.; 2 story; wood frame on .62 acres; needs rehab; secured area with alternate access.

New Mexico

Bldg. 234, LPN Service Bldg.
1015 Indian School Road
Albuquerque, Co: Bernalillo, NM 87102–
Landholding Agency: HHS
Property Number: 579220001
Status: Unutilized
Comment: 3500 sq. ft., 1 story, limited utilities, most recent use—maintenance shop; and .114 acre parking lot (unpaved), secured area with alternate access.

New York

Former Damtender's House
East Sidney Lake
Franklin, Co: Delaware, NY 13775–
Location: Located on the corner of Triverfold Rd. and County Rd. 44
Landholding Agency: COE
Property Number: 319210007
Status: Excess
Comment: 1605 sq. ft., 2 story wood frame residence with 1 acre of land, asbestos shingle siding.

South Carolina

Bldg. #1 U.S. Coast Guard
Folly Island Loran Station
Folly Island, Co: Charleston, SC 29401–
Landholding Agency: DOT
Property Number: 879120096
Status: Unutilized
Comment: 2340 sq. ft., 1 story concrete block, most recent use—communications station.
Bldg. #2 U.S. Coast Guard
Folly Island Loran Station
Folly Island, Co: Charleston, SC 29401–
Landholding Agency: DOT
Property Number: 879120097
Status: Unutilized
Comment: 2050 sq. ft., 1 story concrete block, most recent use—communications station.

Land (by State)

Indiana

Cecil M. Harden Lake Project
Rockville, Co: Parke, IN 47872–
Location: Route 57 at intersection w/county road 910E.
Landholding Agency: COE
Property Number: 319011689
Status: Excess
Comment: 2.68 acres; narrow triangular shaped area of land.
Tracts 903, 905, 905–C
Patoka Lake Project
Taswell, Co: Crawford, IN 47527–
Location: From French Lick, IN, take SR 145S for 10 miles, to intersection with SR 164, property lies east and adjacent to highway 145.
Landholding Agency: COE
Property Number: 319030003
Status: Excess
Comment: 22.35 acres; limited utilities.
Tracts 142–A, 143
Patoka Lake Project
Dubois, Co: Dubois, IN 47527–9661
Location: From French Lick, IN take SR 145 S. for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then right for ¼ mile to property.
Landholding Agency: COE
Property Number: 319030004
Status: Excess
Comment: 21.30 acres; limited utilities; subject to periodic flooding.
Tract 142–B
Patoka Lake Project
Dubois, Co: Dubois, IN 47527–9661
Location: From French Lick, IN take SR 145 S for 20 miles to SR 164, go west on 164 for 7 miles to Celestine Road, go North on Celestine for 5 miles to Dubois Co. Road 475, then righ for ¼ miles to property.
Landholding Agency: COE
Property Number: 319030005
Status: Excess
Comment: 4.74 acres; limited utilities; subject to periodic flooding.
Tract 601
Patoka Lake Project
French Lick, Co: Orange, IN 47527–
Location: IN. State Highway 145 south to Jordan Branch Road, Property abuts east right-of-way for Jordan Road.
Landholding Agency: COE
Property Number: 319030006
Status: Excess
Comment: 0.41 acre; limited utilities.

Kansas

Parcel #1
Fall River Lake
Section 26
(See County), Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010065
Status: Unutilized
Comment: 155 acres; most recent use—recreation and leased cottage sites.

Parcel #2
Fall River Lake
Section 25 and 26
(See County), Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010066
Status: Excess
Comment: 38.62 acres; most recent use—recreation.

Parcel #3
Fall River Lake
Section 26
(See County), Co: Greenwood, KS
Landholding Agency: COE
Property Number: 319010067
Status: Excess
Comment: 22.44 acres; most recent use—recreation.

Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado,
Co: Butler, KS
Landholding Agency: COE
Property Number: 319210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area.

Kentucky

Tract B—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, Co: Gallatin, KY 41095–
Landholding Agency: COE
Property Number: 319130002
Status: Unutilized
Comment: 10 acres, most recent use—recreational, possible periodic flooding.

Tract A—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, Co: Gallatin, KY 41095–
Landholding Agency: COE
Property Number: 319130003
Status: Unutilized
Comment: 8 acres, most recent use—recreational, possible periodic flooding.

Tract C—Markland Locks & Dam
Hwy 42, 3.5 miles downstream of Warsaw
Warsaw, Co: Gallatin, KY 41095–
Landholding Agency: COE
Property Number: 319130005
Status: Unutilized
Comment: 4 acres, most recent use—recreational, possible periodic flooding.

Massachusetts

Buffumville Dam
Flood Control Project
Gale Road
Carlton, Co: Worcester, MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 319010018
Status: Excess
Comment: 1.45 acres.

Conant Brook Dam
Flood Control Dam
Wales Road
Monson, Co: Hampden, MA 01057–
Location: Portion of Tract 211
Landholding Agency: COE
Property Number: 319010017
Status: Excess
Comment: 5.27 acres.

Hodges Village
Dam Flood Control Project
Old Howarth Road
Oxford, Co: Worcester, MA 01540–0500
Location: Portion of Tract A–108, See Project Manager at Hodges Village Dam, Oxford, MA (508) 987–2600.
Landholding Agency: COE
Property Number: 319011006
Status: Excess
Comment: 6.02 acres; 3 acres paved road, subject to utility easement.

Michigan

U.S. Coast Guard—Air Station
Traverse City, Co: Grand Traverse, MI 49684–
Landholding Agency: DOT
Property Number: 879120099
Status: Underutilized
Comment: 21.7 acres, most recent use—helo landings.

Oklahoma

Parcel No. 100
Lake Texoma
Section 25, T7S, R5E
Enos, Co: Marshall, OK
Location: 1 mile northeast of Enos
Landholding Agency: COE
Property Number: 319010440
Status: Unutilized
Comment: 11.77 acres; most recent use—recreation.

Parcel No. 7
Kaw Lake
Section 27
(See County), Co: Kay, OK
Landholding Agency: COE
Property Number: 319010842
Status: Excess
Comment: 21 acres; potential utilities; most recent use—recreation

Parecel No. 3
Sardis Lake
Section 21
(See County), Co: Latimer, OK
Landholding Agency: COE
Property Number: 319010843
Status: Excess
Comment: 2.5 acres; potential utilities; most recent use—wildlife management.

Parcel No. 4
Sardis Lake
Section 21
(See County), Co: Latimer, OK
Landholding Agency: COE
Property Number: 319010844
Status: Excess
Comment: 4.5 acres; potential utilities; most recent use—wildlife management.

Oregon

Tract 108 (Portion of)
Willow Creek Lake Project
Heppner, Co: Morrow, OR 77836–
Location: Located up hill from the left abutment of the dam structure.
Landholding Agency: COE
Property Number: 319011687
Status: Unutilized
Comment: 2.25 acres; unimproved land; secured area with alternate access.

Pennsylvania

Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp., Co: Allegheny, PA 15046–0475
Landholding Agency: COE
Property Number: 319210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field.

South Carolina

Land—U.S. Coast Guard
Folly Island Loran Station
Folly Island, Co: Charleston, SC 29401–
Landholding Agency: DOT
Property Number: 879120098
Status: Unutilized
Comment: 55 acres (88 acres submerged) tidal marshland, potential utilities.

Tennessee

Tract D–456
Cheatham Lock and Dam
Ashland, Co: Cheatham, TN 37015–
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 319010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.

Texas

Tract J–957
Whitney Lake
Bosque, Co: Bosque, TX
Location: Via Avenue B within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110029
Status: Unutilized
Comment: .18 acres; potential utilities; encroachments on large portion of property.

Tract J–936
Whitney Lake
Bosque, Co: Bosque, TX
Location: Off F. M. Highway 56 within the community of Kopperl.
Landholding Agency: COE
Property Number: 319110032
Status: Unutilized
Comment: 5.4 acres; potential utilities.

Tract F–516 O.C. Fisher Lake
Parallel with Grape Creek Road
San Angelo, Co: Tom Green, TX 76902–3085
Landholding Agency: COE
Property Number: 319120002
Status: Unutilized
Comment: 2.13 acres, potential limited utilities.

Part of Tract 102, Segment 1
Bardwell Dam Road
Ennis, Co: Ellis, TX 75119–
Landholding Agency: COE
Property Number: 319140014
Status: Unutilized
Comment: Approx. 4.5 acres.

Unsuitable Properties

Buildings (by State)

Alabama

Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, Co: Baldwin, AL 36542–
Landholding Agency: DOT
Property Number: 879120001
Status: Excess

Reason: Floodway.

Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, Co: Baldwin, AL 36542–
Landholding Agency: DOT
Property Number: 879120002
Status: Excess
Reason: Floodway.

Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, Co: Baldwin, AL 36542–
Landholding Agency: DOT
Property Number: 879120003
Status: Excess
Reason: Floodway

Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, Co: Baldwin, AL 36542–
Landholding Agency: DOT
Property Number: 879120004
Status: Excess
Reason: Floodway

Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores, Co: Baldwin, AL 36542–
Landholding Agency: DOT
Property Number: 879120005
Status: Excess
Reason: Floodway.

Alaska

Bldg. 28
USCG Support Center
Kodiak, Co: Kodiak Island, AK 99619–5000
Landholding Agency: DOT
Property Number: 879210126
Status: Excess
Reason: Within airport runway clear zone, secured area.

Bldg. 24
USCG Support Center
Kodiak, Co: Kodiak Island, AK 99619–5000
Landholding Agency: DOT
Property Number: 879210127
Status: Excess
Reason: Within airport runway clear zone, secured area, within 2000 ft. of flammable or explosive material.

Bldg. 19
USCG Support Center
Kodiak, Co: Kodiak Island, AK 99619–5000
Landholding Agency: DOT
Property Number: 879210128
Status: Excess
Reason: Within airport runway clear zone, secured area, other
Comment: Extensive deterioration.

Bldg. 94
USCG Support Center
Kodiak, Co: Kodiak Island, AK 99619–5000
Landholding Agency: DOT
Property Number: 879210129
Status: Excess
Reason: secured area, other
Comment: Extensive deterioration.

Bldg. 85
USCG Support Center
Kodiak, Co: Kodiak Island, AK 99619–5000
Landholding Agency: DOT
Property Number: 879210130
Status: Excess
Reason: secured area, other
Comment: Extensive deterioration.

Bldg. 18
USCG Support Center
Kodiak, Co: Kodiak Island, AK 99619–5000
Landholding Agency: DOT
Property Number: 879210132
Status: Excess
Reason: secured area, within airport runway clear zone
GSA Number: U–ALAS–655A.

Bldg. A512
USCG Support Center
Kodiak, Co: Kodiak Island, AK 99619–5000
Landholding Agency: DOT
Property Number: 879210133
Status: Excess
Reason: secured area, within airport runway clear zone, within 2000 ft. of flammable or explosive material.

California

Naval Reserve Cntr.—#N62117
3100 Monte Diablo Avenue
Stockton, Co: San Joaquin, CA 95203–
Landholding Agency: GSA
Property Number: 549210021
Status: Excess
Reason: Within airport runway clear zone, other
Comment: Extensive deterioration
GSA Number: 9–N–CA–1305.

Bldg. 10, USCG Support Center
Coast Guard Island
Alameda, Co: Alameda, CA 94501–5100
Landholding Agency: DOT
Property Number: 879210134
Status: Excess
Reason: Secured area.

Colorado

Alemeda Facility
350 S. Santa Fe Drive
Denver, Co: Denver, CO 80223–
Landholding Agency: DOT
Property Number: 879010014
Status: Unutilized
Reason: Other environmental
Comment: Contamination.

Florida

Bldg. #3, Recreation Cottage
USCG Station
Marathon, Co: Monroe, FL 33050–
Landholding Agency: DOT
Property Number: 879210008
Status: Unutilized
Reason: Secured area, floodway.

Bldg. 103, Trumbo Point
Key West, Co: Monroe, FL 33040–
Landholding Agency: DOT
Property Number: 879230001
Status: Unutilized
Reason: Floodway, secured area.

LORAN "A" Station
Radio Beacon Hobe Sound
Jupiter Island, Co: Martin, FL
Landholding Agency: DOT
Property Number: 879230003
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Georgia

Chapel Bldg. #319
Northwest Regional Hospital
1305 Redmond Road
Rome, Co: Floyd, GA 30165–
Landholding Agency: GSA
Property Number: 549220002
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 4–D–GA–0007A.

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton, Co: Carroll, KY 41008–
Landholding Agency: COE
Property Number: 219040416
Status: Unutilized
Reason: Other
Comment: Spring house.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort, Co: Franklin, KY 40601–9999
Landholding Agency: COE
Property Number: 219040417
Status: Unutilized
Reason: Other
Comment: Coal storage.

Building
Kentucky River Lock and Dam No. 4
1021 Kentucky Avenue
Frankfort, Co: Franklin, KY 40601–9999
Landholding Agency: COE
Property Number: 219040418
Status: Unutilized
Reason: Other
Comment: Coal storage.

Barn
Kentucky River Lock and Dam No. 3
Highway 561
Pleasureville, Co: Henry, KY 40057–
Landholding Agency: COE
Property Number: 219040419
Status: Underutilized
Reason: Other
Comment: 110 year old barn with crumbled foundation.

Tract 111—Building
Martins Fork Lake
Smith, Co: Harlan, KY 40867–
Location: 13 miles southeast of Harlan on Highway 987.
Landholding Agency: COE
Property Number: 319010062
Status: Unutilized
Reason: Floodway.

Latrine
Kentucky River Lock and Dam Number 3
Highway 561
Pleasureville, Co: Henry, KY 40057–
Landholding Agency: COE
Property Number: 319040009
Status: Unutilized
Reason: Other
Comment: Detached latrine.

6–Room Dwelling
Green River Lock and Dam No. 3
Rochester, Co: Butler, KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120010
Status: Unutilized
Reason: Floodway.

2-Car Garage
Green River Lock and Dam No. 3
Rochester, Co: Butler, KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120011
Status: Unutilized
Reason: Floodway.

Office and Warehouse
Green River Lock and Dam No. 3
Rochester, Co: Butler, KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 319120012
Status: Unutilized
Reason: Floodway.

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester, Co: Butler, KY 42273–
Landholding Agency: COE
Property Number: 319120013
Status: Unutilized
Reason: Floodway.

Michigan

Bldg. 402, U.S. Air Station
Traverse City, Co: Grand Traverse, MI 49684–3586
Landholding Agency: DOT
Property Number: 879220001
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Missouri

Building-Stockton Lake Project
Old Mill Area
(See County), Co: Cedar, MO 65785–
Landholding Agency: COE
Property Number: 319040414
Status: Unutilized
Reason: Floodway.

Bldg. 67, Storage Bunker
2000 East 95th Street
Kansas City, Co: Jackson, MO 64131–
Landholding Agency: Energy
Property Number: 419220004
Status: Unutilized
Reason: Floodway.

New Mexico

Cochiti Lake Project Office
Pena Blanca, Co: Sandoval, NM 87041–
Location: 30 miles from Santa Fe, 45 miles from Albuquerque
Landholding Agency: COE
Property Number: 319011505
Status: Underutilized
Reason: Secured area.

New York

Bldg. 8
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120013
Status: Excess
Reason: Other
Comment: Electrical substation
GSA Number: 2–N–NY–797.

Bldg. 7
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120014
Status: Excess
Reason: Other
Comment: Electrical substation
GSA Number: 2–N–NY–797.

Bldg. R450
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120038
Status: Excess
Reason: Other
Comment: Electrical substation
GSA Number: 2–N–NY–797.

Hospital Area Steam Tunnel
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120045
Status: Excess
Reason: Other
Comment: Structurally unsound
GSA Number: 2–N–NY–797

North Street Steam Tunnel
Naval Station New York
207 Flushing Avenue
Brooklyn, Co: Kings, NY 11251–
Landholding Agency: GSA
Property Number: 549120046
Status: Excess
Reason: Other
Comment: Structurally unsound
GSA Number: 2–N–NY–797

Puerto Rico

Mona Island
Punta Este, Co: Mona Island, PR
Landholding Agency: GSA
Property Number: 879010004
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 2NPR0490

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project.
Defeated Creek Recreation Area
Carthage, Co: Smith, TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011499
Status: Unutilized
Reason Floodway

Track 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainsboro, Co: Jackson, TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 319011503
Status: Underutilized
Reason: Floodway.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston, Co: Clay, TN 38351–
Landholding Agency: COE
Property Number: 319140011
Status: Excess
Reason: Other
Comment: Water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Lillydale Recreation Area, State Hwy 53
Livingston, Co: Clay, TN 38351–
Landholding Agency: COE
Property Number: 319140012
Status: Excess
Reason: Other
Comment: Water treatment plant.

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreation Area, Hwy No. 53
Livingston, Co: Clay, TN 38351–
Landholding Agency: COE
Property Number: 319140013
Status: Excess
Reason: Other
Comment: Water treatment plant.

Texas

Bldg. 18
Fort Point
Galveston Harbor and Channel Project
Galveston, Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110033
Status: Unutilized
Reason: Secured area.

Bldg. 19
Fort Point
Galveston Harbor and Channel Project
Galveston, Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110034
Status: Unutilized
Reason: Secured area.

Bldg. 20
Fort Point
Galveston Harbor and Channel Project
Galveston, Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110035
Status: Unutilized
Reason: Secured area.

Bldg. 21
Fort Point
Galveston Harbor and Channel Project
Galveston, Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110036
Status: Unutilized
Reason: Secured area.

Bldg. 22
Fort Point
Galveston Harbor and Channel Project
Galveston, Co: Galveston, TX 77550–
Landholding Agency: COE
Property Number: 319110037
Status: Unutilized
Reason: Secured area.

Vermont

Depot Street
Downtown at the Waterfront
Burlington, Co: Chittenden, VT 05401–5228
Landholding Agency: DOT
Property Number: 879220003
Status: Excess
Reason: Floodway.

Virginia

Bldg.—Group Eastern Shores
South Main Street
Chincoteague, Co: Accomack, VA 23336–1510
Landholding Agency: DOT
Property Number: 879230002
Status: Unutilized
Reason: Secured area.

Land (by State)

Alaska

Nike Site, Tract 104
Jig Battery "D"
Eielson Defense Area
Fairbanks, Co: Fairbanks, AK 99701–
Landholding Agency: GSA
Property Number: 549120001
Status: Excess
Reason: Other
Comment: Property is landlocked
GSA Number: 9–D–AK–506–AD.

Portion—Gibson Cove
1211 Gibson Cove Road
Kodiak, Co: Kodiak Island, AK 99615–
Landholding Agency: GSA
Property Number: 549220011
Status: Excess
Reason: Other
Comment: Inaccessible
GSA Number: 9–C–AK–573.

Arizona

11.217 Acre Site
Davis-Monthan AFB
Tucson, Co: Pima, AZ 85707–5000
Landholding Agency: GSA
Property Number: 549210020
Status: Excess
Reason: Floodway
GSA Number: 9–GR1–AZ–437HHH, 9–GR2–AZ–437Y.

California

Portion, Travis AFB
6 miles southeast of Vacaville
Travia AFB Co: Solano CA 94535–
Landholding Agency: GSA
Property Number: 549220012
Status: Surplus
Reason: Floodway
GSA Number: 9–D–CA–499L.

Colorado

Sunset Canyon Field Station
Boulder, Co: Boulder, CO 80302–
Location: 5 miles west of Wall Street on County Road 118
Landholding Agency: GSA
Property Number: 549030019
Status: Excess
Reason: Floodway
GSA Number: 8–C–CO–602

Georgia

(P) Dobbins AFB/(P) NAS Atlanta
N.E. Qadrant of Intersection between Fairground & South Cobb Drive
Marietta, Co: Cobb, GA 30060–
Landholding Agency: GSA
Property Number: 549140001
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–GR–GA–557 & 4–GR–GA–587A.

Kentucky

Tract 4626
Barkley, Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz, Co: Trigg, KY 42211–
Location: 14 miles from US Highway 68.
Landholding Agency: COE
Property Number: 319010030
Status: Underutilized
Reason: Floodway.

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US Hwy. 27 to Blue John Road
Burnside, Co: Pulaski, KY 42519–
Landholding Agency: COE
Property Number: 319010038
Status: Underutilized
Reason: Floodway.

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY Hwy. 80 to Route 769
Burnside, Co: Pulaski, KY 42519–
Landholding Agency: COE
Property Number: 319010039
Status: Underutilized
Reason: Floodway.

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville, Co: Lyon, KY 42038–
Location: US Highway 62 to state Highway 93
Landholding Agency: COE
Property Number: 319010043
Status: Excess
Reason: Floodway.

Red River Lake Project
Stanton Co: Powell, KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 319011684
Status: Unutilized
Reason: Floodway.

Barren River Lock & Dam No. 1
Richardsville Co: Warren, KY 42270–
Landholding Agency: COE
Property Number: 319120008
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 3
Rochester Co: Butler, KY 42273–
Location: Off State Hwy. 369, which runs off of Western Kentucky Parkway
Landholding Agency: COE
Property Number: 319120009
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 4
Woodbury Co: Butler, KY 42288–
Location: Off State Hwy. 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 319120014
Status: Underutilized
Reason: Floodway.

Green River Lock & Dam No. 5
Readville Co: Butler, KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 319120015
Status: Unutilized
Reason: Floodway.

Green River Lock & Dam No. 6
Brownville Co: Edmonson, KY 42210–
Location: Off State Highway 259
Landholding Agency: COE
Property Number: 319120016
Status: Underutilized
Reason: Floodway.

Vacant land west of locksite
Greenup Locks & Dam
5121 New Dam Road
Rural Co: Greenup, KY 41144–
Landholding Agency: COE
Property Number: 319120017
Status: Unutilized
Reason: Floodway.

E.C. Clements Job Corps Cntr.
1 Mile East of Morganfield, KY.
Morganfield, Co: Union, KY 42437–
Landholding Agency: GSA
Property Number: 549120002
Status: Excess
Reason: Within 2,000 ft. of flammable or explosive material within airport runway clear zone
GSA Number: 4–L–KY–432–E.

Louisiana

Land
Louisiana Army Ammunition Plant
Doyline Co: Webster, LA
Landholding Agency: GSA
Property Number: 219013923
Status: Excess
Reason: Other
Comment: Barrow pit, predominately under water
GSA Number: 7–D–LA–0435D.

Michigan

Middle Marker Facility
Ypsilanti Co: Washtenaw, MI 48198—
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on east side of street
Landholding Agency: DOT
Property Number: 879120006
Status: Unutilized
Reason: Within airport runway clear zone.

Minnesota

Parcel G
Pine River
Cross Lake Co: Crow Wing, MN 56442–
Location: 3 miles from city of Cross Lake between Highways 6 and 371.
Landholding Agency: COE
Property Number: 319011037
Status: Excess
Reason: Other
Comment: Highway right of way.

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenda, MS 38901–0903
Landholding Agency: COE
Property Number: 319011018
Status: Underutilized
Reason: Within airport runway clear zone.

Missouri

Stockton Public Use Area
Stockton Lake
Stockton Co: Cedar, MO 65785–0632
Location: Adjacent to and east of Stockton, MO.
Landholding Agency: COE

Property Number: 319011471
Status: Underutilized
Reason: Floodway.

Smith's Fork Park
Smithville Lake
Smithville, Co: Clay, MO 64089–
Location: Within Smithville Lake water resource project downstream from dam, adjoins Smithville.
Landholding Agency: COE
Property Number: 319011473
Status: Underutilized
Reason: Floodway.

Old Mill Area
Stockton Lake
Stockton, Co: Cedar, MO 65785–0632
Location: Below Stockton Lake Dam on right bank of Outlet Channel/SAC River. Approximately 2 miles from Stockton.
Landholding Agency: COE
Property Number: 319011477
Status: Underutilized
Reason: Floodway.

Ditch 19, Item 2, Track No. 230
St. Francis Basin Project
2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 319130001
Status: Underutilized
Reason: Floodway.

North Carolina

Land
Atlantic Intracoastal Waterway
(See County), Co: Corrituck, NC
Location: Near old Coinjack Bridge.
Landholding Agency: COE
Property Number: 319011537
Status: Underutilized
Reason: Floodway.

Ohio

Ohio River
New Cumberland Lock and Dam
Glasgow, Co: Beaver, OH
Landholding Agency: COE
Property Number: 319011560
Status: Underutilized
Reason: Floodway.

Ohio River
Pike Island Lock and Dam
RD #1, Box 33
Tiltonsville, Co: Jefferson, OH
Landholding Agency: COE
Property Number: 319011561
Status: Underutilized
Reason: Floodway.

Pennsylvania

Land
Raystown Lake
Huntingdon, Co: Huntingdon, PA
Location: Downstream of Raystown Lake.
Landholding Agency: COE
Property Number: 219040420
Status: Excess
Reason: Other
Comment: Property landlocked.

Lock and Dam #7
Monongahela River
Greensboro, Co: Greene, PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 319011564
Status: Underutilized
Reason: Floodway.

Land—Tioga-Hammond Lakes
Mansfield, Co: Tioga, PA 16933–
Location: 2 miles northeast of Mansfield on State Route 58044
Landholding Agency: GSA
Property Number: 319120001
Status: Excess
Reason: Floodway.
GSA Number: 4–D–PA–0699G.

Tennessee

McClure Bend
Cordell Hull Dam and Reservoir
Carthage, Co: Smith, TN 37030–
Location: Highway 85 to McClure Bend Road.
Landholding Agency: COE
Property Number: 219040412
Status: Underutilized
Reason: Floodway.

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro, Co: Jackson, TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–10003, 1025
Landholding Agency: COE
Property Number: 219040413
Status: Underutilized
Reason: Floodway.

Cheatham Lock and Dam
Highway 12
Ashland City, Co: Cheatham, TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 219040415
Status: Underutilized
Reason: Floodway.

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover, Co: Stewart, TN 37058–
Location: U.S. Highway 70/TN Highway 761
Landholding Agency: COE
Property Number: 319011478
Status: Underutilized
Reason: Floodway.

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro, Co: Jackson, TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011479
Status: Excess
Reason: Floodway.

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina, Co: Clay, TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 319011480
Status: Unutilized
Reason: Floodway.

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina, Co: Clay, TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011481
Status: Unutilized
Reason: Floodway.

Tracts 606, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage, Co: Smith, TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011482
Status: Underutilized
Reason: Floodway.

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville, Co: Smith, TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011483
Status: Underutilized
Reason: Floodway.

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro, Co: Jackson, TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 319011484
Status: Underutilized
Reason: Floodway.

Tract 1810
Wartrace Creek Launching Area
Cordell Hull Lake and Dam Project
Gainesboro, Co: Jackson, TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011485
Status: Underutilized
Reason: Floodway.

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro, Co: Jackson, TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011486
Status: Unutilized
Reason: Floodway.

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro, Co: Jackson, TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011487
Status: Unutilized
Reason: Floodway.

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro, Co: Jackson, TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 319011488
Status: Underutilized
Reason: Within airport runway clear zone, floodway.

Tracts 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage, Co: Smith, TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011489
Status: Unutilized
Reason: Floodway.

Tract 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro, Co: Jackson, TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 319011490
Status: Unutilized
Reason: Floodway.

Tracts 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro, Co: Jackson, TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 319011491
Status: Unutilized
Reason: Floodway.

Tracts 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage, Co: Smith, TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 319011492
Status: Unutilized
Reason: Floodway.

Tract 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville, Co: Davidson, TN 37214–
Location: Interstate 40 to S. Mount Juliet Road
Landholding Agency: COE
Property Number: 319011493
Status: Underutilized
Reason: Floodway.

Tract 1811
West Fork Launching Area
Smyrna, Co: Rutherfore, TN 37167–
Location: Florence Road near Enon Springs Road
Landholding Agency: COE
Property Number: 319011494
Status: Underutilized
Reason: Floodway.

Tract 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna, Co: Rutherford, TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 319011495
Status: Underutilized
Reason: Floodway.

Tract 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna, Co: Rutherford, TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 319011496
Status: Underutilized
Reason: Floodway.

Tracts 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville, Co: Davidson, TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 319011497
Status: Underutilized
Reason: Floodway.

Tracts 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage, Co: Smith, TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 319011498
Status: Unutilized
Reason: Floodway.

Tracts 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro, Co: Jackson, TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 319011500
Status: Unutilized
Reason: Floodway.

Tracts 1218 and 1204
Cordell Hull Lake and Dam Project
Granville-Alvin Yourk Road
Gainesboro, Co: Jackson, TN 38564–
Landholding Agency: COE
Property Number: 319011501
Status: Unutilized
Reason: Floodway.

Tract 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro, Co: Jackson, TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 319011502
Status: Unutilized
Reason: Floodway.

Tract 104 et. al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage, Co: Smith, TN 37030–
Location: Highway 70N
Landholding Agency: COE
Property Number: 319011504
Status: Underutilized
Reason: Floodway.

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon, Co: Wilson, TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 319120007
Status: Underutilized
Reason: Floodway.

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory, Co: Davidson, TN 37138–
Landholding Agency: COE
Property Number: 319130008
Status: Underutilized
Reason: Floodway.

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake
(See County), Co: Dallas, TX
Landholding Agency: COE
Property Number: 319010397
Status: Underutilized
Reason: Floodway.

Part of Tract 201–3
Joe Pool Lake
(See County), Co: Dallas, TX
Landholding Agency: COE
Property Number: 319010398
Status: Underutilized
Reason: Floodway.

Part of Tract 323
Joe Pool Lake
(See County), Co: Dallas, TX
Landholding Agency: COE
Property Number: 319010399
Status: Underutilized
Reason: Floodway.

Tract 702–3
Granger Lake
Route 1, Box 172
Granger, Co: Williamson, TX 76530–9801
Landholding Agency: COE
Property Number: 319010401
Status: Unutilized
Reason: Floodway.

Tract 706
Granger Lake
Route 1, Box 172
Granger, Co: Williamson, TX 76530–9801
Landholding Agency: COE
Property Number: 319010402
Status: Unutilized
Reason: Floodway.

Virginia

0.07 Acre, Dismal Swamp Canal
West of U.S. Rt. 17
Chesapeake, VA
Landholding Agency: COE
Property Number: 319210012
Status: Unutilized
Reason: Other,
Comment: Inaccessible.

(P) Defense General Supply Ctr
Falling Creek Reservoir
Richmond, Co: Chesterfield, VA 23297–5000
Landholding Agency: GSA
Property Number: 549220009
Status: Excess
Reason: Floodway
GSA Number: 4–D–VA–565–C.

West Virginia

Ohio River
Pike Island Locks and Dam
Buffalo Creek
Wellsburg, Co: Brooke, WV
Landholding Agency: COE
Property Number: 319011529
Status: Unutilized
Reason: Floodway.

Morgantown Lock and Dam
Box 3 RD #2
Morgantown, Co: Monongahelia, WV 26505–
Landholding Agency: COE
Property Number: 319011530
Status: Unutilized
Reason: Floodway.

London Lock and Dam
Route 60 East
Rural, Co: Kanawha, WV 25126–
Location: 20 miles east of Charleston, W. Virginia
Landholding Agency: COE
Property Number: 319011690
Status: Unutilized
Reason: Other
Comment: .03 acres; very narrow strip of land located too close to busy highway.

[FR Doc. 92–19832 Filed 8–20–92; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-930-4214-11; MTM 79374]

Opening of National Forest System Lands in a Proposed Withdrawal; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 220 acres of National Forest System land for the Crystal Park Recreational Mineral Collection Area expired August 1, 1992, and the land opened to mining. It has been and remains open to surface entry and mineral leasing.

EFFECTIVE DATE: August 1, 1992.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406-255-2935.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the Federal Register, 55 FR 31451-52, August 2, 1990, which segregated the land described therein for up to 2 years from location and entry under the mining laws, subject to valid existing rights, but not from other forms of disposition which may by law be made of National Forest System land. The 2-year segregation expired August 1, 1992. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

Principal Meridian, Montana

Beaverhead National Forest

T. 4 S., R. 12 W.,
Sec. 16, W½SW¼NW¼, SE¼SW¼NW¼, NW¼SW¼, and N½SW¼SW¼;
Sec. 17, SE¼SW¼NE¼, SE¼NE¼, NE¼SE¼, E½NW¼SE¼, and N½SE¼SE¼.

The area described contains 220 acres in Beaverhead County.

At 9 a.m. on August 1, 1992, the land was opened to location and entry under the United States mining laws, subject to valid existing rights, the provision of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 6, 1992.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 92-19956 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-DN-M

[CA-050-282-3110-10-B008; CACA 26604]

Realty Action; Public Lands in Tehama County, CA

AGENCY: Bureau of land Management, Interior.

ACTION: Notice of realty action; Disposal of public lands in Tehama County, California through exchange.

SUMMARY: The following described public lands are being considered for exchange to American Land Conservancy, under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Note: Not all lands identified below may be involved in the exchange. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be made to achieve comparable values between the offered and selected lands.

M.D.M., T. 28 N., R. 8 W.,
Sec. 22, W½NW¼, SE¼NW¼;
Sec. 31, Lots 3, 4; E½SW¼;
Sec. 34, NW¼, N½S½.

Containing 600 acres, more or less.

SUPPLEMENTARY INFORMATION: This notice deals exclusively with the public lands listed above. Notice of Realty Action dated June 20, 1991, published in Volume 56, No. 119, addressed the offered (private) lands to be acquired by the Bureau of Land Management in the exchange. The purpose of disposing of the lands listed above is to enhance the Bureau's management of public land by providing recreation opportunities, and wildlife and riparian habitat at the mouth of the Mattole River, Humboldt County, California; and by simplifying management efforts in the Tehama County area by disposing of scattered tracts of public land. This exchange meets Bureau land use planning goals as outlined in the Redding Resource Management Plan. Value of the public lands disposed in Tehama Country in excess of the value of the private lands acquired in the Mattole Estuary will be used to acquire lands in the Sacramento River Management Area.

Lands to be transferred from the United States will be evaluated in accordance with the National Environmental Protection Act, and will be subject to the following reservations, terms and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

(2) Any authorized land uses, such as rights-of-ways, will be identified as prior existing rights.

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange. These lands were previously segregated for exchange by CA 22703; this notice supersedes that action. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location, and entry under the public lands and minerals laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the Federal Register of a termination of the segregation, or two years from the date of this notice, whichever occurs first.

EFFECTIVE DATE: On or before October 5, 1992, the public is invited to comment on the proposed exchange. Comments may be sent to the Area manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. Any comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this action will become the final determination.

FOR FURTHER INFORMATION CONTACT: Mike Truden, Realty Specialist, at the address above.

Michael Truden,

Acting Area Manager.

[FR Doc. 92-19985 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-40-M

[OR-930-6332-10; GP2-388]

Overnight Camping Restriction Order Established; Molalla River, Clackamas Resource Area, Salem District

AGENCY: Bureau of Land Management (BLM), Department of the Interior.

ACTION: Overnight camping restriction order established; Molalla River, Clackamas Resource Area, Salem District.

SUMMARY: Establish an overnight camping restriction order for areas on BLM-administered lands along the Molalla River, Clackamas County, Oregon. Overnight camping will be prohibited within ¼ mile of the river's average high water mark except in designated camping areas or camp ground.

Under special circumstances, the area manager may authorize camping within closed areas. However, the authorization of camping within closed areas is a discretionary matter and must be granted prior to the overnight camping activity. Requests for camping within closed areas must be submitted in writing 2 weeks prior to the proposed activity and will be considered on a case-by-case basis.

A copy of this restriction order is conspicuously posted at the Salem District Office, 1717 Fabry Road S.E., Salem, OR., and at Bureau of Land Management sites where other such notices are posted.

This restriction order does not apply to any Federal, State, or local officer, or any member of an organized rescue or fire fighting force actively involved in the performance of an official duty. It does not apply to recreation uses or activities other than overnight camping. It is an interim restriction pending the completion of the Molalla River Management Plan.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Area Manager, Clackamas Resource Area, Salem District Office, Bureau of Land Management, (503) 375-5646.

SUPPLEMENTARY INFORMATION: This restriction order is necessary to:

(1) Preclude any individual or group from camping along the banks of the Molalla River outside of designated camping areas or campgrounds designed for such use.

(2) Prevent or reduce unacceptable sanitary and solid waste disposal problems; reduce nonpoint source pollution to the Molalla River, a municipal water source.

(3) Prevent or reduce unacceptable riparian vegetation damage or bank erosion along the river.

(4) Preserve and protect the natural, cultural, and scenic resource values of the river corridor.

(5) Reduce the incidence of human-caused fires, littering, vandalism, and illegal dumping.

Authority for implementing this restriction order is contained in the Code of Federal Regulations, title 43, chapter II part 8360, subparts 8364 and 8365. Any person failing to comply with the overnight camping restriction described in this notice may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as specified in the Code of Federal Regulations, title 43, chapter II, part 8360 and 8360.0-7.

This restriction order is effective September 1, 1992, and shall remain in effect unless revised, revoked, or amended.

Mark Lawrence,

Acting Salem District Manager.

[FR Doc. 92-19986 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-33-M

[ID-942-02-4730-12]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., August 13, 1992.

The supplemental plat prepared to show the subdivision of original lots 3 and 4 in section 3, T. 19 N., R. 6 E., Boise Meridian, Idaho, was accepted August 13, 1992.

The supplemental plat prepared to show a subdivision of certain lots in sections 25, 26, 34, and 35, T. 20 N., R. 6 E., Boise Meridian, Idaho, was accepted August 13, 1992.

These plats were prepared to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Dated: August 13, 1992.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 92-19984 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-GG-M

National Park Service

Intent To Prepare a Draft Environmental Impact Statement (DEIS); White-Tailed Deer Management Program, Gettysburg National Military Park, Pennsylvania

AGENCY: Gettysburg National Military Park, National Park Service, U.S. Department of the Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

1. Description of Proposed Action

The preparation of this DEIS follows the completion of a three-year study of the park's deer population by Pennsylvania State University. The study concluded that extensive resource damage has resulted from an overpopulation of deer. The study identified the following possible management alternatives for reducing and maintaining satisfactory population levels: trap and transfer, fertility control, reintroduction of predators, fencing, forage manipulation, repellents, public hunting, professional marksman and harvesting by park rangers. The National Park Service is interested in identifying and analyzing the impact and cost of other feasible options for deer management prior to deciding on a specific plan of action. The DEIS will provide this analysis and also respond to all major issues of concern which are identified by the public.

2. Scoping Process

a. Public Involvement. A series of public meetings will be held with time and location to be announced. The public is encouraged to attend and submit their verbal and/or written comments on the proposed EIS. Comments concerning deer management at Gettysburg National Military Park should be received within 30 days of Scoping Meetings. The draft and final EIS will be distributed for comment to all known interested parties and appropriate agencies.

b. Appropriate concerned agencies. The environmental review will also include close consultation with all agencies having jurisdiction under law and they will be asked to participate as cooperating entities. The Pennsylvania Game Commission shares responsibility with the National Park Service for deer management within the area of concern.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph W. Gorrell, Acting Regional Director, Mid-Atlantic Region, National Park Service, 143 S. Third Street, Philadelphia, PA 19106, Telephone (215) 597-7013

or

Joseph Cisneros, Superintendent, Gettysburg National Military Park, Gettysburg, PA 17325, Telephone (717) 334-1124.

Charles P. Clapper, Jr.,

Acting Regional Director.

[FR Doc. 92-20053 Filed 8-20-92; 8:45 am]

BILLING CODE 4310-70-M

Petroglyph National Monument Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92-463, that a meeting of the Petroglyph National Monument

Advisory Commission will be held 2 p.m.–5 p.m., on Friday, September 11, 1992, in the Theater Conference Room at the Catholic Center, St. Joseph's Church on the Rio Grande, 4000 St. Joseph's Place, NW., Albuquerque, New Mexico (I–40 west, right (north) Coors Road, right (east) at third light on St. Joseph's Place).

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101–313, establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

The matters to be discussed at this meeting include:

—Introduction of advisory commission members and guests
—Approval of minutes from May 29, 1992 meeting
—Discussion of Boundary Study—Westland Corporation
—Discussion of General Management Plan
—Discussion of Volunteer Program
—Update on Land Protection Program
—Discussion of City Council Update of Northwest Mesa Area Plan
—Superintendent's Report
—New Business
—Public Comments

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the commission meeting with the Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contact Stephen Whitesell, Superintendent, Petroglyph National Monument, P.O. Box 1293, Albuquerque, New Mexico 87103, telephone 505/768–3316.

Minutes of the commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

Dated: August 13, 1992.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 92–20052 Filed 8–20–92; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 8, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 8, 1992.

Beth L. Savage,

Acting Chief of Registration, National Register.

ARKANSAS

Boone County

Bergman High School (Public Schools in the Ozarks MPS), Co. Rd. 48, Bergman, 92001203
Everton School (Public Schools in the Ozarks MPS), Main St., Everton, 92001205
Valley Springs School (Public Schools in the Ozarks MPS), 1 School St., Valley Springs, 92001204

Carroll County

Berryville Agriculture Building (Public Schools in the Ozarks MPS), S of Freeman Ave., E of Linda St., N of W. College Ave. and W of Ferguson St., Berryville, 92001214
Berryville Gymnasium (Public Schools in the Ozarks MPS), S. of Freeman Ave., E of Linda St., N of W. College Ave. and W of Ferguson St., Berryville, 92001215
Dog Branch School, S of US 412, approximately 3 mi. E of Osage, Osage vicinity, 92001177

Chicot County

Epstein, Sam, House (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), 488 Lake Shore Dr., Lake Village, 92001226
New Hope Missionary Baptist Church Cemetery, Historic Section (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), St. Marys St., Lake Village, 92001227
Tushek, John, Building (Ethnic and Racial Minority Settlement of the Arkansas Delta MPS), 108 Main St., Lake Village, 92001225

Celburne County

King, Hugh L., House, 110 W. Spring St., Heber Springs, 92001224

Conway County

Cafeteria Building—Cleveland School (Public Schools in the Ozarks MPS), Co. Rd. 511, Cleveland vicinity, 92001194
Plumerville School Building (Public Schools in the Ozarks MPS), Arnold St., Plumerville, 92001193

Crawford County

Cedarville School Building (Public Schools in the Ozarks MPS), Co. Rd. 523, Cedarville, 92001217
Mountainburg High School (Public Schools in the Ozarks MPS), AR 71, Mountainburg, 92001216
Mulberry Home Economics Building (Public Schools in the Ozarks MPS), Church St., Mulberry, 92001218

Faulkner County

Guy High School Gymnasium (Public Schools in the Ozarks MPS), Ar 25, Guy, 92001196
Guy Home Economics Building (Public Schools in the Ozarks MPS), AR 25, Guy, 92001197
Liberty School Cafeteria (Public Schools in the Ozarks MPS), AR 36 N of jct. with US 64, Hamlet, 92001195

Izard County

Boswell School (Public Schools in the Ozarks MPS), End of Co. Rd. 196, Boswell, 92001178
Calico Rock Home Economics Building (Public Schools in the Ozarks MPS), 2nd St., Calico Rock, 92001200
Melbourne Home Economics Building (Public Schools in the Ozarks MPS), School Dr., Melburne, 92001201
Smith, Sylvester, Farmstead, S of Co. Rd. 10, approximately 3/4 mi. NE of jct. with Co. Rd. 13, Boswell vicinity, 92001222

Johnson County

Clarksville High School Building No. 1 (Public Schools in the Ozarks MPS), Main St., Clarksville, 92001202

Lawrence County

Smithville Public School Building (Public Schools in the Ozarks MPS), AR 117, Smithville, 92001219

Logan County

New Liberty School (Public Schools in the Ozarks MPS), S of AR 22, Liberty, 92001220

Madison County

Enterprise School (Public Schools in the Ozarks MPS), SE of jct. of Co. Rds. 8 and 192, Thorney vicinity, 92001192

Pope County

Caraway Hall—Arkansas Tech University (Public Schools in the Ozarks MPS), N. Arkansas St., Russellville, 92001213
Center Valley Well House (Public Schools in the Ozarks MPS), AR 124, Center Valley, 92001206
Girls' Domestic Science and Arts Building—Arkansas Tech University (Public Schools in the Ozarks MPS), E of N. El Paso St., Russellville, 92001212
Hughes Hall—Arkansas Tech University (Public Schools in the Ozarks MPS), W. M. St., Russellville, 92001210
Mountain View School (Public Schools in the Ozarks MPS), AR 326, Russellville, 92001207
Physical Education Building—Arkansas Tech University (Public Schools in the Ozarks MPS), Jct. of N. El Paso and W. O Sts., SE corner, Russellville, 92001211
Williamson Hall—Arkansas Tech University (Public Schools in the Ozarks MPS), N. El Paso St., Russellville, 92001208
Wilson Hall—Arkansas Tech University (Public Schools in the Ozarks MPS), N. El Paso St., Russellville, 92001209

Pulaski County

Kahn—Jennings House, 5300 Sherwood St., Little Rock, 92001223

Sharp County

Maxville School Building (Public Schools in the Ozarks MPS), US 167 N of Cave City, Cave City vicinity, 92001199
Poughkeepsie School Building (Public Schools in the Ozarks MPS), AR 58 S of Co. Rd. 137, Poughkeepsie, 92001198

Yell County

Yell County Courthouse, 209 Union St., Dardanelle, 92001176

COLORADO

Mesa County

Denver and Rio Grande Western Railroad Depot, 119 Pitkin Ave., Grand Junction, 92001190

KANSAS

Dickinson County

Abilene Union Pacific Railroad Passenger Depot, Jct. of N. Second St. and Broadway, Abilene, 92001175

NEVADA

Elko County

Gold Creek Ranger Station, E of Mountain City, Humboldt NF, Mountain City vicinity, 92001187

NEW JERSEY

Atlantic County

Church of the Redeemer, Jct. of 20th and Atlantic Aves., Longport, 92001179

NEW MEXICO

Sandoval County

Holiday Mesa Logging Camp (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North-Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001181
Virgin Canyon Logging Camp No. 1 (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North-Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001180
Virgin Mesa Logging Camp No. 1 (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North—Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001182
Virgin Mesa Logging Camp No. 2 (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North-Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001183
Virgin Mesa Logging Camp No. 3 (Railroad Logging Era Resources of the Canon de San Diego Land Grant in North-Central New Mexico MPS), Address Restricted, Jemez Springs vicinity, 92001184

NORTH CAROLINA

Stanly County

Randle House, S side of NC 1802 at jct. with NC 1743, Norwood vicinity, 92001172

OKLAHOMA

Wagoner County

Rio Grande Ranch Headquarters Historic District, OK 251A, 3 mi. E of Okay, Okay vicinity, 92001191

VERMONT

Chittenden County

West Milton Bridge (Metal Truss, Masonry and Concrete Bridges in Vermont MPS), Town Hwy. 40 over the Lamoille R., Milton, 92001173

Windham County

South Newfane Bridge (Metal Truss, Masonry and Concrete Bridges in Vermont MPS), Town Hwy. 26 (Pariah Rd.) over the Rock R., Newfane, 92001174

VIRGINIA

Alexandria Independent City

Town of Potomac, Roughly bounded by Commonwealth Ave., US 1, E. Bellefonte Ave. and Ashby Ave., Alexandria (Independent City), 92001186

Norfolk Independent City

Center Theater, Jct. of Virginia Beach Blvd. and Llewellyn Ave., Norfolk (Independent City), 92001171

WISCONSIN

Columbia County

Holsten Family Farmstead, W1391 Weiner Rd., Columbia, 92001189

Wood County

Purdy, Willard D., Junior High and Vocational School, 110 W. Third St., Marshfield, 92001188.

[FR Doc. 92–20061 Filed 8–20–92; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–527 (Final)]

Extruded Rubber Thread From Malaysia; Commission Determination To Conduct a Portion of the Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of respondents in the above-captioned final investigation, the Commission has unanimously determined to conduct a portion of its hearing scheduled for August 18, 1992, *in camera*. See Commission rules 207.23(a), 201.13, and 201.35 through 201.39 (19 CFR 207.23(a), 201.13, and 201.35 through 201.39). The remainder of the hearing will be open to the public. The Commission unanimously has determined that the 10-day advance notice of the change to a meeting was not possible. See Commission rules 201.35(c)(1) and 201.37(b) (19 CFR 201.35(c)(1) and 201.37(b)).

FOR FURTHER INFORMATION CONTACT: Lyle B. Vander Schaaf, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3107. Hearing impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that good cause exists in this investigation to hold a short portion of the hearing *in camera*. The *in camera* portion of the hearing will be for the purpose of addressing business proprietary information (BPI) as part of respondents' presentation-in-chief, and therefore properly the subject of an *in camera* hearing pursuant to Commission rule 201.36(b)(4) (19 CFR 201.36(b)(4)). In making this decision, the Commission nevertheless reaffirms its belief that wherever possible its business should be conducted in public.

The hearing will include public presentations by petitioner and respondents, with questions from the Commission. After respondents' public presentation, the Commission will hold an *in camera* session, during which time respondents will continue their presentation to the Commission and cover business proprietary information, followed by questioning by the Commissioners and time for rebuttal by petitioners regarding such information. For the *in camera* portion of the hearing, the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO), and who are included on the Commission's APO service list in this investigation. See Commission rule 201.35(b) (19 CFR 201.35(b)). All those planning to attend the *in camera* portion of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Extruded Rubber Thread from Malaysia*, Inv. No. 731–TA–527 (Final), may be closed to the public to prevent the disclosure of business proprietary information.

Issued: August 17, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92–19965 Filed 8–20–92; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 701-TA-319 through 354 and 731-TA-573 through 620 (Preliminary)]

Certain Flat-Rolled Carbon Steel Products

Determinations

On the basis of the record [1] developed in the subject countervailing duty investigations, the Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products [2] that are alleged to be subsidized by the Governments of the specified countries:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Austria			701-TA-336 [1]	
Belgium	701-TA-319	701-TA-329 [2]	701-TA-337 [1]	
Brazil	701-TA-320	701-TA-330 [3]	701-TA-338	701-TA-347 [3]
France	701-TA-321 [1]	701-TA-331	701-TA-339	701-TA-348
Germany	701-TA-322	701-TA-332	701-TA-340	701-TA-349
Italy	701-TA-323 [4]		701-TA-341 [5]	
Korea	701-TA-324 [6]	701-TA-334	701-TA-342	701-TA-350
Mexico	701-TA-325			701-TA-351
New Zealand				701-TA-352 [7]
Spain	701-TA-326		701-TA-344 [3]	
Sweden	701-TA-327			701-TA-353 [7]
United Kingdom	701-TA-328			

[1] Commissioner Brunsdale dissenting.
[2] Commissioners Rohr, Brunsdale, and Crawford dissenting.
[3] Commissioners Brunsdale and Crawford dissenting.
[4] Commissioner Brunsdale dissenting, Vice Chairman Watson not participating.
[5] Commissioners Rohr and Brunsdale dissenting, Vice Chairman Watson not participating.
[6] Vice Chairman Watson and Commissioners Brunsdale and Crawford dissenting.
[7] Chairman Newquist and Commissioner Brunsdale dissenting.

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of allegedly subsidized imports of the following flat-rolled carbon steel products:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Italy		701-TA-333 [1]		
New Zealand		701-TA-335	791-TA-343	
Taiwan			791-TA-345 [2]	701-TA-354 [3]
United Kingdom			791-TA-346 [4]	

[1] Chairman Newquist and Commissioner Nuzum dissenting, Vice Chairman Watson not participating.
[2] Chairman Newquist dissenting, Commissioner Crawford not participating.
[3] Commissioner Crawford not participating.
[4] Chairman Newquist dissenting.

On the basis of the record developed in the subject antidumping investigations, the Commission determines, pursuant to section 733(d) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of the following flat-rolled carbon steel products that are alleged to be sold in the United States at less than fair value (LTFV):

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Argentina			731-TA-597 [1]	
Australia				731-TA-612
Austria			731-TA-599 [1]	
Belgium	731-TA-573	731-TA-588 [2]	731-TA-600 [1]	
Brazil	731-TA-574	731-TA-589 [3]	731-TA-601	731-TA-613 [4]
Canada	731-TA-575	731-TA-590	731-TA-602	731-TA-614
Finland	731-TA-576			
France	731-TA-577 [4]	731-TA-591	731-TA-603	731-TA-615
Germany	731-TA-578	731-TA-592	731-TA-604	731-TA-616
Italy	731-TA-579 [3]		731-TA-605 [5]	

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] The products covered by the subject investigations are provided for in headings/subheadings 7208, 7209, 7210.31, 7210.39, 7210.41, 7210.49, 7210.60, 7210.70, 7210.90, 7211, 7212.21, 7212.29, 7212.30, 7212.40, 7212.50, and 7212.60 of the Harmonized Tariff Schedule of the United States. For a complete description of the products, see the Department of Commerce's initiation notices (57 FR 32970, July 24, 1992, and 57 FR 33488, July 29, 1992).

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Japan		731-TA-594 [1]	731-TA-606	731-TA-617
Korea	731-TA-581 [1]	731-TA-595	731-TA-607	731-TA-618
Mexico	731-TA-582			731-TA-619
Netherlands		731-TA-596 [1]	731-TA-608	
Poland	731-TA-583			
Romania	731-TA-584			
Spain	731-TA-585		731-TA-609 [2]	
Sweden	731-TA-586			
United Kingdom	731-TA-587			

[1] Commissioner Brunsdale dissenting.
[2] Commissioners Rohr, Brunsdale, and Crawford dissenting.
[3] Commissioners Brunsdale and Crawford dissenting.
[4] Chairman Newquist and Commissioners Brunsdale and Crawford dissenting.
[5] Commissioner Brunsdale dissenting, Vice Chairman Watson not participating.
[6] Commissioners Rohr and Brunsdale dissenting, Vice Chairman Watson not participating.
[7] Vice Chairman Watson and Commissioners Brunsdale and Crawford dissenting.

The Commission determines that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of allegedly LTFV imports of the following flat-rolled carbon steel products:

Country	Plate	Hot-rolled products	Cold-rolled products	Corrosion-resistant products
Australia			731-TA-598	
Italy		731-TA-593 [1]		
Japan	731-TA-580		731-TA-610 [4]	731-TA-620 [3]
Taiwan			731-TA-611 [4]	
United Kingdom				

[1] Chairman Newquist and Commissioner Nuzum dissenting, Vice Chairman Watson not participating.
[2] Chairman Newquist dissenting, Commissioner Crawford not participating.
[3] Commissioner Crawford not participating.
[4] Chairman Newquist dissenting.

Background

On June 30, 1992, petitions were filed with the Commission and the Department of Commerce by Armco Steel Company, L.P.; Bethlehem Steel Corporation; Geneva Steel; Gulf States Steel, Inc. of Alabama; Inland Steel Industries, Inc.; Laclede Steel Company; LTV Steel Company, Inc.; Lukens Steel Company; National Steel Corporation; Sharon Steel Corporation; USX Corporation/U.S. Steel Group; and WCI Steel, Inc., alleging that industries in the United States are materially injured or threatened with material injury by reason of the above-specified imports. Accordingly, effective June 30, 1992, the Commission instituted the specified countervailing duty and antidumping investigations.

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 8, 1992 (57 FR 30230). The conference was held in Washington, DC, on July 21, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 14, 1992. The views of the Commission are contained in USITC Publication 2552 (August 1992), entitled "Certain Flat-rolled Carbon Steel Products from Argentina, Australia, Austria, Belgium, Brazil, Canada, Finland, France, Germany, Italy, Japan, Korea, Mexico, the Netherlands, New Zealand, Poland, Romania, Spain, Sweden, Taiwan, and the United Kingdom: Determinations of the Commission in Investigations Nos. 701-TA-319-354 and 731-TA-573-620 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: August 17, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-19964 Filed 8-20-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation is Jack Cooper Transport Co., Inc. a Delaware corporation. Its address is 3501 Manchester Trafficway, Kansas City, MO 64129.

2. Wholly owned subsidiaries which will participate in the operations are Equipment Refurbishers, Inc. ("ERI"), a Missouri corporation and Pacific Motor Trucking, a Missouri corporation.

B. 1. Parent corporation and address of principal office: New Process Steel Corporation, P.O. Box 55205, Houston, Texas 77255-5205.

2. Wholly owned subsidiaries which will participate in the operations: New Process Steel International, Inc., d/b/a Maverick Metals. State of incorporation: Texas.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-20047 Filed 8-20-92; 8:45 am]

BILLING CODE 7035-01-M

Exemption; CSX Transportation, Inc.—Abandonment Exemption—in Allegheny County, PA

[Docket No. AB-55 (Sub-No. 430X)]

CSX Transportation, Inc., has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonment* to abandon a line of railroad between milepost BF-324.95, at Laughlin Junction, and milepost BF-327.85, at Grant Street, a distance of approximately 2.9 miles, in Pittsburgh, Allegheny County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) There is no overhead traffic on the line; (3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91(1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on September 20, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by August 31, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 10, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Charles M. Rosenberger, 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by August 26, 1992. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 14, 1992.

By the Commission, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-20046 Filed 8-20-92; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB-33 (Sub-No. 76X)]

Exemption; Union Pacific Railroad Company—Abandonment Exemption—in Sweetwater County, WY (South Pass Branch)

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—Exempt Abandonment to abandon and discontinue service over a portion of the South Pass Branch from milepost 6.50 near Reliance to the end of the line at railroad milepost 9.47 near Winton, a distance of approximately 2.97 miles in Sweetwater County, WY.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) There is no overhead traffic on the line; (3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on September 21, 1992, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 [3] must be filed by August 31, 1992. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 10, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, General Attorney, Jeanna L. Regier, Registered ICC Practitioner, 1416 Dodge Street, room 830, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

UP has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEE will issue an environmental assessment (EA) by August 26, 1992. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: August 7, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-20044 Filed 8-20-92; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be issued routinely where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment (SEE), cannot be made before the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental grounds is encouraged to file promptly so that the Commission may act on the request before the effective date.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984—Microelectronics & Computer Technology Corporation

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Microelectronics and Computer Technology Corporation ("MCC") on June 25, 1992 filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain information. The additional written notification was filed for the purpose of extending the protections of section 4 of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

On December 21, 1984, MCC and its shareholders filed their original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633). MCC and its shareholders filed additional notifications on March 29, 1985, July 30, 1986, November 7, 1986, December 23, 1986, February 25, 1987, December 23, 1987, March 4, 1988, August 16, 1988, September 19, 1989, January 16, 1990, March 7, 1990, April 11, 1990, July 30, 1991, November 12, 1991, February 11, 1992, March 13, 1992, May 21, 1992, and June 2, 1992.

The Department published notices in the **Federal Register** in response to these additional notifications on April 23, 1985 (50 FR 15989), September 10, 1986 (51 FR 32263), December 8, 1986 (51 FR 44132), February 3, 1987 (52 FR 3356), March 19, 1987 (52 FR 8661), January 22, 1988 (53 FR 1859), March 29, 1988 (53 FR 10159), September 22, 1988 (53 FR 36910), October 26, 1989 (54 FR 43631), March 8, 1990 (55 FR 8612), April 9, 1990 (55 FR 13200), May 8, 1990 (55 FR 19114), October 24, 1990 (55 FR 42916), December 28, 1990 (55 FR 53367), February 11, 1991 (56 FR 5424), July 1, 1991 (56 FR 29976), August 29, 1991 (56 FR 42757), January 15, 1992 (57 FR 1760), March 24, 1992 (57 FR 10190), June 30, 1992 (57 FR 29100), and July 9, 1992 (57 FR 30510), respectively. A **Federal Register** notice has not yet been published for the MCC notification filed on May 21, 1992. On October 21, 1985, MCC filed an additional notification for which a **Federal Register** notice was not required.

The purpose of this notification is to disclose that National Starch and Chemical Company, Abelstik Laboratories, located in Rancho Dominguez, California, has become an Associate Member of MCC and a participant of the RwoH Project within MCC's Packaging/Interconnect Technology Program.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-19953 Filed 8-20-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Petroleum Environmental Research Forum

Notice is hereby given that, on July 7, 1992, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 91-05, titled "Basic Principles and Control of Refinery Emulsion Formation—Part 2", have filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing changes in the parties participating in PERF Project No. 91-05. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the notification stated that the following additional parties have become Participants in PERF Project No. 91-05: Phillips Petroleum Company Bartlesville, Oklahoma; and Shell Development Company Houston, Texas.

No other changes have been made in either membership or the planned activities of the group research project.

On March 16, 1992, the Participants in Project No. 91-05 filed the original notification pursuant to section 6(a) of the Act. The Department of Justice published in the **Federal Register** pursuant to section 6(b) of the Act on April 30, 1992 (57 FR 18528).

Information regarding participation in this Project may be obtained form Dr. Kenneth R. Graziani, Mobil Research and Development Corporation, P.O. Box 480, 600 Billingsport Road, Paulsboro, NJ 08066-0480.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 92-19954 Filed 8-20-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 3201 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on July 6, 1992, disclosing that there have been changes in the membership of PCA. The notification

was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Cadence Chemical Resources, Inc., Michigan City, IN, has become a Participating Associate, and Baker-Dolomite, York, PA, is now known as Dolomite Brick Corporation.

No other changes have been made in either the membership or planned activities of PCA.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, April 17, 1987, June 3, 1987, July 29, 1987, August 6, 1987, October 9, 1987, February 18, 1988, March 9, 1988, March 11, 1988, July 7, 1988, August 9, 1988, August 23, 1988, January 23, 1989, February 24, 1989, March 13, 1989, May 25, 1989, July 20, 1989, August 24, 1989, September 25, 1989, December 14, 1989, January 31, 1990, May 29, 1990, July 15, 1990, December 18, 1990, January 31, 1991, May 28, 1991, October 15, 1991, and January 31, 1992, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), November 15, 1985 (50 FR 47292), December 24, 1985 (50 FR 52568), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), July 10, 1987 (52 FR 26103), August 28, 1987 (52 FR 32185), November 17, 1987 (52 FR 43953), March 28, 1988 (53 FR 9999), August 4, 1988 (53 FR 29397), September 15, 1988 (53 FR 35935), September 28, 1988 (53 FR 37883), February 23, 1989 (54 FR 7894), March 20, 1989 (54 FR 11455), April 25, 1989 (54 FR 17835), June 28, 1989 (54 FR 27220), August 23, 1989 (54 FR 35092), September 11, 1989 (54 FR 37513), October 20, 1989 (54 FR 43146), February 1, 1990 (55 FR 3497), March 7, 1990 (55 FR 8204), July 3, 1990 (55 FR 27518), July 19, 1990 (55 FR 29432), January 25, 1991 (56 FR 2950), March 15, 1991 (56 FR 11274), July 1, 1991 (56 FR 29977), November 14, 1991 (56 FR 57903), and April 2, 1992 (57 FR 11338), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-19955 Filed 8-20-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume I

South Carolina:
SC91-24 (Aug. 21, 1992) ..... p. All.
SC91-25 (Aug. 21, 1992) ..... p. All.
SC91-26 (Aug. 21, 1992) ..... p. All.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the

Federal Register are in parentheses following the decisions being modified.

Volume I

New York:
NY91-18 (Feb. 22, 1991) ..... p. 931, pp. 934-935.
NY91-22 (Feb. 22, 1991) ..... p. 952i, pp. 952j, 9521.

South Carolina:
SC91-10 (Feb. 22, 1991) ..... p. All.

Volume II

Illinois:
IL91-1 (Feb. 22, 1991) ..... p. 69, pp. 71, 79-80.
IL91-3 (Feb. 22, 1991) ..... p. 115, p. 117.
IL91-4 (Feb. 22, 1991) ..... p. 121, pp. 123-124.
IL91-5 (Feb. 22, 1991) ..... p. 127, pp. 128-129.
IL91-7 (Feb. 22, 1991) ..... p. 137, pp. 138, 140, 142.
IL91-8 (Feb. 22, 1991) ..... p. 145, pp. 146-147.
IL91-9 (Feb. 22, 1991) ..... p. 153, p. 154.
IL91-11 (Feb. 22, 1991) ..... p. 163, pp. 168-170.
IL91-12 (Feb. 22, 1991) ..... p. 171, p. 173.
IL91-13 (Feb. 22, 1991) ..... p. 183, pp. 184, 186.
IL91-16 (Feb. 22, 1991) ..... p. 215, p. 216.

Indiana:
IN91-2 (Feb. 22, 1991) ..... p. 259, pp. 262, 264.
IN91-4 (Feb. 22, 1991) ..... p. 2921, pp. 292-304.

Michigan:
MI91-1 (Feb. 22, 1991) ..... p. 441, pp. 447, 456.
MI91-3 (Feb. 22, 1991) ..... p. 477, p. 481.
MI91-5 (Feb. 22, 1991) ..... p. 499, p. 502.

New Mexico:
NM91-1 (Feb. 91-1 (Feb. 22, 1991). ..... p. 779, pp. 787, 794a, 794d.

Texas:
TX91-69 (Feb. 22, 1991) ..... p. All.

Wisconsin:
WI91-1 (Feb. 22, 1991) ..... p. All.
WI91-19 (Feb. 22, 1991) ..... p. 1285, pp. 1290-1293, p. 1300.

Volume III

California:
CA91-1 (Feb. 22, 1991) ..... p. All.
CA91-2 (Feb. 22, 1991) ..... p. All.
CA91-4 (Feb. 22, 1991) ..... p. All.

Utah:
UT91-1 (Feb. 22, 1991) ..... p. All.
UT91-3 (Feb. 22, 1991) ..... p. 409, p. 410.
UT91-4 (Feb. 22, 1991) ..... p. 419, p. 420.
UT91-5 (Feb. 22, 1991) ..... p. 421, p. 422.
UT91-6 (Feb. 22, 1991) ..... p. 423, p. 424.
UT91-7 (Feb. 22, 1991) ..... p. 425, p. 426.
UT91-8 (Feb. 22, 1991) ..... p. All.
UT91-11 (Feb. 22, 1991) ..... p. 437, p. 438.
UT91-12 (Feb. 22, 1991) ..... p. 439, p. 440.
UT91-13 (Feb. 22, 1991) ..... p. All.
UT91-15 (Feb. 22, 1991) ..... p. All.

Wyoming:
WY91-8 (Feb. 22, 1991) ..... p. All.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 14th day of August 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-19755 Filed 8-20-92; 8:45 am]

BILLING CODE 4510-27-M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 87-7E]

Cable Compulsory License; Specialty Station Determination

AGENCY: Copyright Office, Library of Congress.

ACTION: Withdrawal of broadcast stations from 1991 Finalspecialty station list.

SUMMARY: The Copyright Office of the Library of Congressissues this notice regarding certain broadcast stations publishedas specialty stations on the revised list (55 FR 40,021, October 1,1990) that have requested removal from the list. Three stationsare removed from the list, which is hereby revised.

EFFECTIVE DATE: AUGUST 21, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader,General Counsel, Copyright Office, Library of Congress, Washington,DC 20559. Telephone (202)707-8380.

SUPPLEMENTARY INFORMATION:

Background

In response to petitions to make certain determinationsconcerning administration of the cable compulsory license of the1976 Copyright Act, 17 U.S.C. 111, the Copyright Office initiatedproceedings to update the list of specialty broadcast stationsoriginally developed by the Federal Communications Commission(FCC). (53 FR 5,592, Feb. 25, 1988). In order to be considered aspecialty station, a station must meet the terms of former FederalCommunications Commission rules at 47 CFR 76.5(kk), in effect onJune 24, 1981.

Affidavits were submitted by stations claiming specialtystation status. A revised list was compiled, made available forpublic comment, and then published October 1, 1990. Due toprocedural concerns, an addition to that list was published June 6,1991.

Three stations that originally requested specialty stationstatus, and were made part of the October 1, 1990 revised list,have requested removal from the list. The stations in question arenoncommercial broadcast stations and the FCC's former specialitystation regulation applied to commercial broadcast stations. TheCopyright Office hereby notifies the public that the followingstations will not be considered specialty stations for the purposesof calculating royalties under 17 U.S.C. 111.

KETH, Houston, TX
KITU, Beaumont, TX
KLUJ, Harlingen, TX

For noncommercial stations, the base rate applies in any eventto their carriage by cable systems, but the distant signalequivalent value is one-quarter rather than one.

Dated: August 12, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92-19966 Filed: 8-20-92; 8:45 am]

Billing Code: 1410-08-F

NATIONAL ADVISORY COUNCIL ON THE PUBLIC SERVICE

Meeting

AGENCY: National Advisory Council on the Public Service (NACPS).

ACTION: Notice of meeting.

DATE AND TIME: September 10, 1992, 8:45 a.m. to 1 p.m.

PLACE: Riggs National Bank, 3d Floor, 1503 Pennsylvania Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

Chairman Raymond Shafer's welcome and remarks,
NAPA Study on Succession Planning
Senior Executive Association Perspective
Public Service Priority Issues
Executive Director's Report
NACPS Work Plan Proposal
Public Comment

FOR FURTHER INFORMATION CONTACT: Jane Riddleberger, NACPS, suite 420, National Press Building, 529 14th Street, NW., Washington, DC 20045 (202–724–0796).

Dated: August 18, 1992.

Jean M. Curtis,

Executive Director.

[FR Doc. 92–20026 Filed 8–20–92; 8:45 am]

BILLING CODE 7525–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: Office of Records Administration, NARA.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before October 5, 1992. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Commerce, International Trade Administration (N1–151–92–4). Records of the Office of Canada.

2. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–90–3). Comprehensive records schedule for the National Marine Fisheries Service.

3. Department of Defense, Office of the Secretary (N1–330–92–5). Recoupment Records of the Office of the Civilian Health and Medical Program for the Uniformed Services.

4. Department of the Navy, Naval Facilities Engineering Command (N1–385–92–1). Routine administrative records relating to real estate, legal matters, and weight handling equipment.

5. Department of the Navy, Bureau of Naval Personnel (N1–NU–92–12). Individual case files for treatment of alcoholism, drug dependency, and obesity.

6. Department of State (N1–59–92–20). Duplicative records accumulated by Graham Martin as Special Assistant to the Secretary of State, 1975–77.

7. Department of Transportation, Federal Highway Administration (N1–406–90–2). Federal-Aid Project supporting documentation.

8. Consumer Product Safety Commission, Directorate for Compliance and Administrative Litigation (N1–424–92–1). Intermediate compliance reports and evaluations.

9. National Archives and Records Administration (N1–64–92–2). Procurement subject file relating to release of the decennial census.

10. National Archives and Records Administration (N1–64–92–4). Facilitative records of the National Archives Federal Women's Program Committee.

Dated: August 13, 1992.

Claudine J. Weiher,

Acting Archivist of the United States.

[FR Doc. 92–19962 Filed 8–20–92; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Establishment; Mathematical and Physical Sciences Advisory Committee

The Assistant Director for Mathematical and Physical Sciences has determined that the establishment of the Advisory Committee for Mathematical and Physical Sciences is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Advisory Committee for Mathematical and Physical Sciences.

Purpose: To provide advice, recommendation, and oversight concerning NSF's Mathematical, Physics, Astronomy, Materials and Chemistry programs; advice on policies and directions MPS programs in science and education should follow; provide advice on effective and efficient strategies for achieving overall program excellence, the appropriateness of current disciplinary boundaries; help to define the most effective investment strategies; judge the success of the programs, and other appropriate aspects of program performance.

Balanced Membership Plans. The Advisory Committee for Mathematical and Physical Sciences will be composed of up to 12 individuals with national stature in science, technology and education. Attention will be given to geographical distribution and the participation of individuals from underrepresented groups. Representatives of the Divisional Advisory Committees will serve as ex officio members.

Responsible NSF Officials: Dr. William C. Harris or Dr. Judith Sunley, 202/357–9742.

Dated: August 18, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–19963 Filed 8–20–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–371]

Finding of No Significant Impact Consideration of Amendment to UNC, Inc.; License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering an amendment of Special Nuclear Material License No. SNM–368 to permit UNC, Inc. (UNC) to leave low-levels of residual high-enriched uranium contamination onsite in their septic leach fields after decommissioning.

The Commission's Division of Low-Level Waste Management and Decommissioning has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM–368. On the basis of this assessment, the Commission has concluded that the environmental impact created by the proposed licensing action would not be significant and does not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment is available for public inspection and copying at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC. Copies of the Environmental Assessment may be obtained by calling (301) 504–2565 or by writing to the Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of the Commission's Rules of Practice for Domestic Licensing Proceedings in 10 CFR part 2. Pursuant to § 2.1205(a) any person whose interests may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In addition to meeting applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

(1) The interest of the requestor in the proceedings;

(2) How that interest may be affected by the results of the proceeding including the reasons why the requestor should submit a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, UNC, Inc. to the attention of Mr. George H. Waugh, General Manager, UNC Naval Products, 67 Sandy Desert Road, P.O. Box 981, Uncasville, Connecticut 06382–0022; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any hearing that is requested and granted will be held in accordance with the Commission's Informal Hearing Procedures for Adjudications in Material Licensing Proceedings in 10 CFR part 2, subpart L.

For further details with respect to the proposed action, see the licensee's request for license amendment dated May 22, 1992, which is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Dated at Rockville, Maryland, this 14th day of August, 1992.

For the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, NMSS.

[FR Doc. 92–20018 Filed 8–20–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Advanced Boiling Water Reactors; Revised Notice of Meeting

A portion of the ACRS Subcommittee meeting on Advanced Boiling Water Reactors scheduled for August 19, 1992 will be closed as necessary to discuss Proprietary Information (5 U.S.C. 552.b(c)(4)). All other items pertaining to this meeting remain the same as published previously in the **Federal Register** on Tuesday, August 4, 1992 (57 FR 34321).

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Elpidio Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (E.s.t.). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any

changes in schedule, etc., that may have occurred.

Dated: August 17, 1992.

M. Dean Houston, Acting Chief,

Nuclear Reactors Branch.

[FR Doc. 92-20019 Filed 8-20-92; 8:45 am]

BILLING CODE 7590-01-M

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

[Docket No. 50-344]

Portland General Electric Co., et al., (Trojan Nuclear Plant); Exemption

I.

Portland General Electric Company, et al. (PGE or the licensee) is the holder of Facility Operating License No. NPF-1, which authorizes operation of the Trojan Nuclear Plant. The license provides, among other things, that the licensee is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site located in Columbia County, Oregon, on the Columbia River.

II.

Title 10, Code of Federal Regulations, part 50 (10 CFR part 50), "Domestic Licensing of Production and Utilization Facilities," provides appendix E, "Emergency Planning and Preparedness for Production and Utilization facilities." Specifically, 10 CFR part 50, appendix E, paragraph VI.4.d states in part, "Each licensee shall complete implementation of the ERDS (Emergency Response Data System) by February 13, 1993, or before initial escalation to full power, whichever comes later."

III.

By letter dated June 24, 1992, Portland General Electric Company, et al., requested a schedular exemption from title 10, Code of Federal Regulations, part 50, appendix E, paragraph VI.4.d concerning implementation of the Emergency Response Data System (ERDS).

ERDS is a direct near real-time electronic data link between the licensee's onsite computer system and the NRC Operations Center that provides transmission of a limited data set of selected parameters related to plant conditions (e.g. reactor core and coolant system parameters, steam generator level and pressure, safety injection flows, etc.). The ERDS supplements the existing voice transmission over the Emergency Notification System (ENS) by providing the NRC Operations Center with timely and accurate updates of a limited set of parameters from the licensee's installed onsite computer system in the event of an emergency. Onsite hardware would be provided at the site by the licensee to interface with the NRC receiving system, the software for which will be provided by the NRC.

By letter dated October 24, 1991, PGE provided an acceptable ERDS implementation plan. The licensee had planned to implement ERDS during the 1992 refueling outage. ERDS implementation would be in conjunction with a new process computer that would be installed simultaneously and is necessary for ERDS, increasing the efficacy of the plant computer system and ERDS implementation. However, due to the extensive refueling outage in 1991, lasting approximately one year, the licensee decided not to have 1992 refueling outage, but instead opted for a short economy outage in Spring 1992 due to the abundance of hydro-electric power. The 1992 economy outage was not of sufficient duration to implement ERDS. The licensee has chosen to implement ERDS during the 1993 refueling outage, which is currently scheduled to begin on March 3, 1993. The 1993 refueling outage is the only outage of sufficient duration to install, test, and implement ERDS.

In accordance with 10 CFR 50.12, the licensee requested a schedular exemption to 10 CFR part 50, appendix E, paragraph VI.4.d to delay ERDS implementation from February 13, 1993, until June 4, 1993. The purpose of the exemption would be to permit the implementation of a cost-effective ERDS at Trojan on a schedule that is compatible with the schedule for installation of the new process computer system. The licensee states that special circumstances are present such that 10 CFR 50.12(a)(2)(iii) and 10 CFR 50.12(a)(2)(v) are met. The licensee states that compliance with the present schedule would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, meeting the special circumstance of 10 CFR 50.12(a)(2)(iii). It would be imprudent to force a premature shutdown of the facility to install the ERDS system to meet the February 13, 1993, deadline. Indeed, for those plants requiring additional hardware modifications such as Trojan, this was considered in the Statements of Consideration (50-SC-101, dated August 30, 1991, Comment 16), and it was noted that an extension to the due date may be warranted. Additionally, the licensee states that the exemption would provide only temporary relief from the applicable regulation and that they have made good faith efforts to comply with the regulation, meeting the special circumstance of 10 CFR 50.12(a)(2)(v). The exemption would last less than four (4) months and many of the preliminary steps have been completed, with the licensee investing significant resources to this effort. The staff agrees with the licensee that special circumstances are present in regard to the requested exemption.

IV.

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a)(1), that an exemption as described in section III above is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has determined, pursuant to 10 CFR 50.12(a)(2) that special circumstances exist, as noted in section III above. Therefore, the Commission hereby grants Portland General Electric Company, et al., a schedular exemption from the requirements of 10 CFR part 50, appendix E, paragraph VI.4.d.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant impact on the quality of the human environment (57 FR 35606).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 14th day of August 1992.

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-20017 Filed 8-20-92; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40-8027]; [License No. SUB-1010]

Sequoyah Fuels Corp., Gore, Oklahoma; Amendment Receipt and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering the amendment of Materials License No. SUB-1010 to revise the organization and grant an exemption from the experience requirements for the position of Vice President, Regulatory Affairs, for Sequoyah Fuels Corporation (SFC) located in Gore, Oklahoma.

Proposed Action

By amendment request dated June 19, 1992 (earlier requests are superseded), SFC requested a license amendment to make organizational changes. SFC has added new positions of Manager, Waste Management, and Manager, Human Resources, combined the position of Maintenance and Engineering, and made other minor organizational changes. By amendment request dated June 3, 1992, SFC requested an exemption to the experience requirements for the position of Vice President, Regulatory Affairs. Current requirements include 5 years experience in a chemical or nuclear process plant. The documents related to these proposed actions are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC, and the Local Public Document Room at the Stanley Tubbs Memorial Library, 101 E. Cherokee Street, Sallisaw, Oklahoma.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of these amendments may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma 74435); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 10th day of August 1992.

For the Nuclear Regulatory Commission.

Michael Tokar,

Acting Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 92-20018 Filed 8-20-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Sequestration Update Report

AGENCY: Office of Management and Budget.

ACTION: Notice of Transmittal of Sequestration Update Report to the President and Congress.

SUMMARY: Pursuant to section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Arthur W. Stigile, Budget Analysis Branch—202/395-3945.

Dated: August 14, 1992.

James C. Murr,

Associate Director for Legislative Reference and Administration.

[FR Doc. 92-19842 Filed 8-20-92; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash (202) 272-2141

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, 450 5th Street, NW., Washington, DC 20549.

Approval: File Nos. 270-372, 270-373, Proposed Rules 22e-3 and 23c-3

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed rules 22e-3 and 23c-3 under the Investment Company Act of 1940.

Proposed rule 22d-3 would permit certain registered open-end investment companies (other than money market funds) or registered separate accounts to redeem shares following deadlines at periodic intervals, or on a rolling basis while taking longer than seven days to pay. The rule would require the boards of directors of limited redemption funds to adopt written procedures designed to ensure that the company's portfolio assets are sufficiently liquid; directors would be required to review those procedures annually, or on other occasions when necessary as a result of market developments. It is estimated that each of 10 respondents would incur an annual estimated 28 burden hours initially to establish a liquidity policy and 8 burden hours subsequently for the annual review of liquidity policies.

Rule 23c-3 would permit closed-end management investment companies to make periodic repurchase offers to shareholders at net asset value. These repurchases would exempt from disclosure and filing requirements of the tender offers rules under the Securities Exchange Act of 1934. Rule 23c-3 would require closed-end funds making repurchase offers under the rule to provide a notification to shareholders containing certain specified information, and to file three copies of the notification with the Commission. We estimate that 10 respondents together would incur an annual estimated 80 burden hours to comply with this requirement. Rule 23c-3 also would require closed-end funds relying on the rule to file copies of advertisements and other sales literature with the Commission unless already filed with the National Association of Securities Dealers (NASD). Respondents should not incur any additional burden hours to comply with this requirement to the extent that their principal underwriter already is required to, and does, file such materials with the NASD.

The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from comprehensive or even representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 5th Street, NW., Washington, DC 20549, and Gary

Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 6, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20034 Filed 8-20-92; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth Fogash (202) 272-2142.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension: Rule 17a-5(c), File No. 270-199.
Rule 17f-1(g), File No. 270-30.

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), that the Securities and Exchange Commission has submitted for extension of OMB approval the following rules under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*):

Rule 17A-5(c) [17 CFR 240.17a-5(c)), requires broker-dealers to provide statements of financial condition to their customers. It is estimated that approximately 1500 broker-dealer respondents incur an average burden of 33.33 hours per year to comply with this rule.

Rule 17f-1(g) [17 CFR 240.17f-1(g)), sets out recordkeeping requirement for participants in the Lost and Stolen Securities Program. It is estimated that 23,403 incur an average burden of 33 minutes per year to comply with this rule.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 12, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20035 Filed 8-20-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31044; File No. SR-AMEX-92-22]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc., Relating to Buy-Write Options Unitary Derivatives ("BOUNDs")

August 14, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1992, the American Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b-4 under the Act, proposes to add new Exchange Rules 900G-907G to permit training in "BOUNDs" ("Buy-Write Options Unitary Derivatives"). As described in more detail below, BOUNDs are long term options with a duration of up to 60 months which have the same economic characteristics as covered calls.[1] BOUND holders will be able to participate in a stock's price appreciation up to but not exceeding a specified strike price while receiving payments equivalent to any cash dividends declared on the underlying stock. The Exchange also proposes to amend Commentary .03 to AMEX Rule 903 to permit the listing of long term equity options ("LEAPs") with a duration of up to 60 months.

The text of the proposed rule change is attached as Exhibit A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background. In 1986, the Exchange began listing 26 unit investment trusts ("UITs"), each of which held shares of a single "blue-chip" equity security. Investors were offered an opportunity to separate their ownership interests in these UITs into two distinct trading components representing different economic characteristics of the individual stocks held in the UITs. These separate trading components are known as PRIMEs and SCOREs.

PRIMEs are the enhanced income/limited capital gain component. The holder of a PRIME retains the dividends on the stock held by the trust and participates in the underlying stock's appreciation up to a fixed dollar amount. SCOREs are the capital appreciation component. The holder of a SCORE has the right to all capital appreciation above a fixed dollar amount, but does not receive the dividends on the underlying stock.

PRIMEs and SCOREs have been extremely popular with investors, but the UITs from which they are derived are now reaching their five-year termination dates. Certain Internal Revenue Service regulations, moreover, effectively preclude the creation of new PRIMEs and SCOREs through the original trust mechanism.

Discussion. The Exchange, for some time, has sought a replacement for the expiring PRIMEs and SCOREs. During this process, the Exchange and other options exchanges began to list and trade LEAPs. Like SCOREs, LEAPs enable investors to receive the benefits of a stock's price appreciation above a fixed dollar amount over a long period of time. Currently, however, there is no generally available replacement for PRIMEs.

The Exchange, accordingly, proposes to list BOUNDs as a replacement for PRIMEs. The Options Clearing Corporation ("OCC") will be the issuer of all BOUNDs traded on the Exchange.

[1] Covered call writing is a strategy by which an investor sells a call option while simultaneously owning the number of shares of the stock underlying the call.

As with all OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed.[2] The execution of such orders will increase the open interest in BOUNDs. Except as described herein, BOUNDs will be subject to the rules governing standardized options.

The Exchange anticipates listing BOUNDs with respect to those underlying securities that have listed LEAPs. The criteria for stocks underlying BOUNDs will be the same as the criteria for stocks underlying LEAPs.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration will closely approximate the market price for the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying common stock, there will be an arbitrage opportunity which, when executed, will tend to bring the price relationships back into line.

BOUNDs will have the same strike prices and expiration dates as their respective LEAPs. The Exchange anticipates that it will list new complementary LEAPs and BOUNDs on the same underlying securities annually, or at more frequent intervals, depending on market demand. While it has the current authority to list LEAPs with up to 39 months until expiration, the Exchange is proposing: (i) to amend Commentary .03 to Exchange Rule 903 to permit the listing of LEAPs with up to 60 months (five years) until expiration, and (ii) to introduce BOUNDs with up to the same five year duration.

Like PRIMEs, BOUNDs will offer essentially the same economic characteristics as covered calls with the added benefits that BOUNDs can be traded in a single transaction and are not subject to early exercise. BOUND holders will profit from appreciation in the underlying stock's price up to the strike price and will receive payments equivalent to any cash dividends declared on the underlying stock. On the ex-dividend date for the underlying stock, OCC will debit all accounts with short positions in BOUNDs and credit all accounts with long positions in BOUNDs with an amount equal to the cash dividend on the underlying stock.

At expiration, BOUND holders will receive 100 shares of the underlying stock for each BOUND held if, on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND holder will receive a payment equal to 100 times the BOUND's strike price for each BOUND held. BOUND writers will be required to deliver either 100 shares of the underlying stock or the strike price multiplied by 100 at expiration. This settlement design is similar to the economic result that accrues to an investor who has sold a covered call and held that position to the expiration of the call option.

For example, if the XYZ BOUND has a strike price of $50 and XYZ stock closes at $50 or less at expiration, the holder of the XYZ BOUND will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy-write position had expired out of the money; *i.e.*, the option would expire worthless and the writer would retain the underlying stock. If XYZ closes above $50 per share, then the holder of an XYZ BOUND will receive $5,000 in cash (100 times the $50 strike price). This mimics the economic result to the covered call writer when the call expires in the money, *i.e.*, the writer would receive an amount equal to 100 shares times the strike price and would forfeit any appreciation above that price because the stock would be delivered to satisfy the settlement obligations created upon the exercise of the call option.

The settlement mechanism for the BOUND's will operate in conjunction with that of LEAP calls. For example, if at expiration the underlying stock closes at or below the strike price, the LEAP call will expire worthless, and the holder of a BOUND will receive 100 shares of stock from the short BOUND. If, on the other hand, the LEAP call is in the money at expiration, the holder of the LEAP call is entitled to 100 shares of stock from a short LEAP upon payment of the strike price, and the holder of a BOUND is entitled to the cash equivalent of the strike price times 100 from the short BOUND. An investor long both a LEAP and a BOUND, where XYZ closes above the $50 strike price at expiration, would be entitled to receive $5,000 in cash from the short BOUND and, upon exercise of the LEAP, would be obligated to pay $5,000 to receive 100 shares of XYZ stock.

An investor long the underlying stock, and who writes both a LEAP and a BOUND, will be obligated to deliver the stock to the long LEAP call if the underlying stock closes above the strike price, and will receive in return payment of the strike price times 100, which amount will then be delivered to the long BOUND. A covered writer's position, therefore, effectively is closed upon the delivery of the underlying stock. If a writer of both instruments has deposited cash or securities other than the underlying stock as margin for a short LEAP call and BOUND, then the writer delivers 100 shares of stock (purchased on the open market) to the long LEAP call upon payment of the strike price times 100. The writer of the BOUND then delivers the cash value of 100 times the strike price to the holder of the long BOUND.

It should be noted that LEAP's are "American" style options whereas BOUND's are "European" style. The Exchange believes that a European style B will have greater acceptance among investors than an American style product since a European style BOUND will permit purchasers to receive for a definite period of time the dividend yield provided by the BOUND.

Sales practices. BOUND's will be subject to the Exchange's sales practice and suitability rules applicable to standardized options.

Adjustments. The terms of a BOUND will not be adjusted because of cash distributions to the shareholders of the underlying security. As noted above, OCC will debit all accounts with short BOUND positions and credit all accounts with long BOUND positions on the underlying stock's ex-dividend date with an amount equal to any cash dividend declared with respect to the underlying stock. Any cash distributions payable with respect to an underlying security by virtue of a regular, special, liquidating or any other dividend or distribution will be debited to the accounts of persons that have sold BOUND's and credited to the accounts of persons that have bought BOUND's.

If the issuer of an underlying security has a stock split, stock dividend or otherwise makes a non-cash distribution to its shareholders, the terms of the outstanding BOUND's with respect that issuer will be adjusted as of the ex-date for the distribution so that the sellers of such BOUND's will be obligated to deliver the additional securities to the BOUND purchasers at the expiration of the then outstanding BOUND's. It is the intention of the Exchange to list new series of complementary BOUND's and LEAP's with respect to any underlying security making a non-cash distribution, provided the underlying security meets the established criteria required for listing LEAP's and BOUND's. In addition, should an underlying security terminate prior to the expiration date due to some extraordinary event, *e.g.*, a

[2] This is not to say, however, that an opening BOUND order cannot be executed against a closing BOUND order. Although a BOUNDs position may be established by executing an opening BOUND order against a closing BOUND order, this transaction would not increase the net open interest in the particular BOUND series so long as the opening and closing orders covered the same number of BOUND contracts.

takeover of the issuer, the BOUNDs will terminate prior to their expiration date, and holders will receive either the stock (and possibly other securities) or the stated strike price from sellers according to the settlement protocol described above.

Position limits. BOUND's will be subject to the position limits for equity options set forth in Exchange Rule 904. In addition, BOUND's will be aggregated with other equity options on the same strike price for purposes of calculating position limits. However, since a BOUND, from the perspective of the holder, is the equivalent of a long stock/short call position, long BOUND's will be aggregated with short call and long put positions. Similarly, since the BOUND, from the perspective of the seller, is the equivalent of a long call/short stock position, short BOUND's will be aggregated with long call and short put positions. In addition, since BOUND's are the equivalent to either a long stock/short call or a short stock/long call position, investors in BOUND's may be eligible for larger positions pursuant to the Exchange's hedged position limit pilot program. Thus, the largest BOUND position that any one person, or group of persons acting in concert, may establish would be 16,000 BOUND's, *i.e.* two times the maximum regular position limit of 8,000 option contracts.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consent, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies to the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

American Stock Exchange, Inc.

Proposed Rule Changes

Italicizing indicates material proposed to be added. [Brackets] indicate material proposed to be deleted. Proposed Section 15 to the Exchange's "Rules Exchange's "Rules Principality Applicable to Trading of Option Contracts" (Rules 900G through 907G) regarding Buy-Write Option Unitary Derivatives ("BOUNDs℠") is entirely new.

Rule 903. Series of Options Open for Trading

(a) Through (d) No change. Commentaries .01 and .02 No change.

Commentary .03 The Exchange may list, with respect to any class of stock options, series of options having up to [thirty-nine] *sixty* months from the time they are listed until expiration. There may be up to [six] *ten* additional expiration months. Strike price interval, bid/ask differential shall continuity rules shall not apply to such options until the time to expiration is less than nine months. Further, such option series will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations need to be posted for such options series until they are opened for trading.

* * * * *

Section 15: Buy-Write Option Unitary Derivatives ("BOUNDs℠") Applicability; Definitions

Rule 900G. (a) Applicability. The Rules in this Section are applicable only to Buy-Write Option Unitary Derivatives ("BOUNDs"). Except to the extent that specific rules in this Section govern, or unless the context otherwise requires, the provisions of the Constitution and all other rules and policies of the Board of Governors shall be applicable to the trading of BOUNDs on the Exchange. In addition, the following Options Rules shall be specifically applicable to such trading: 900(b), 909, 915, 916, 918, 920, 921, 922, 923, 924, 925, 926, 927, 928, 930, 932, 950 (except that 950(e)(ii) and 950(e)(iii) shall not apply), 951(a), 951(b), 951(c), 952(a), 953, 954, 955, 956, 957, 958, 958A, 960, 961, 962, 963, 964, 965, 966, 967, 970, 971, 972, and 991. Pursuant to the provisions of Article 1, Section 3(i) of the Constitution, BOUNDs are included within the definition of "security" or "securities" as such terms are used in the Constitution and Rules of the Exchange.

Compliance with Rules 904, 905 and 906 shall be determined as set forth in Rules 904G, 905G and 906G.

(b) *Definitions.* The following terms as used in the Rules, shall unless the context otherwise indicates, have the meanings herein specified.

(1) *Buy-Write Option Unitary Derivative ("BOUND")*—The term "BOUND" means a derivative instrument issued, or subject to issuance, by the Options Clearing Corporation pursuant to the rules of the Options Clearing Corporation with a specific expiration date and strike price which: (1) pays holders an amount equal to the dividend or other cash distribution declared on the underlying security, and (2) pays holders an amount equal to the strike price if the closing price of the underlying security on the specified expiration date is higher than the strike price, or delivers to holders the underlying security without further payment other than processing fees if the closing price of the underlying security on the specified expiration date is equal to or lower than the strike price. The reference to "the closing price of the underlying security on the specified expiration date" means the last transaction effected in the primary market for such underlying security during regular trading session and reported by such market in accordance with the provisions of SEC Rule 11Aa3-1.

(2) *Underlying Security*—The term "underlying security" in respect of a BOUND contract means the security or securities which the Options Clearing Corporation shall be obligated to deliver to the holder if the closing price of the security on the specified expiration date is less than, or equal to, the strike price and whose dividends or other cash distributions shall be used to determine the amount and timing of the payments which the Options Clearing Corporation shall be obligated to pay BOUND holders during the life of the contract.

(3) *Strike Price*—The term "strike price" in respect of a BOUND contract means a stated price per share for the underlying security which price shall be the basis for determining the manner of settlement for each BOUND contract at the specified expiration date. Any reference to the term "exercise price" in the Exchange's Rules Principally Applicable to the Trading of Options Contracts shall, when applied to BOUNDs, refer to the strike price of a BOUND.

(4) *LEAP*—The term "LEAP" shall mean a long term option listed on the Exchange pursuant to Rule 903, Commentary .03.

BOUND Contracts to be Traded

Rule 901G. The Exchange may from time to time approve for listing and trading on the Exchange BOUND contracts in respect of underlying securities which have been selected in accordance with Rule 915. Only BOUND contracts approved by the Exchange and currently open for trading on the Exchange may be purchased or sold on the Exchange. All such BOUND contracts shall be designated as to expiration month, expiration year, strike price and underlying stock.

Rights and Obligations of Holders and Sellers

Rule 902G. Subject to the provisions of Rules 905 and 909, the rights and obligations of holders and sellers of BOUNDs dealt in on the Exchange shall be as set forth in the rules of the Options Clearing Corporation.

BOUND Expiration Schedule, Series of BOUNDs Open for Trading, Strike Prices

Rule 903G. (a) After the Exchange has approved for listing and trading BOUND contracts relating to a specific underlying security, the Exchange shall from time to time open for trading additional BOUND contracts in respect of such underlying securities. Prior to opening of trading in such BOUNDs, the Exchange shall fix the expiration month, expiration year, and strike price of such BOUND contracts. The Exchange may list BOUND contracts having up to 60 months from the time they are listed until expiration. There may be up to ten additional expiration months.

(b) Strike price interval, bid/ask differential and continuity rules applicable to transactions in put and call options shall not apply to transactions in BOUNDs until the time to expiration is less than nine months. Further, BOUNDs will open for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations need to be posted for such BOUNDs until they are opened for trading.

(c) The unit of trading and strike price initially established for BOUND contracts of a particular series are subject to adjustment in accordance with the rules of the Options Clearing Corporation. When such adjustment or adjustments have been determined, announcement thereof shall be made by the Exchange and, effective as of the time specified in such announcement, the adjusted unit of trading and the adjusted strike price shall be applicable with respect to all subsequent transactions in such BOUNDS.

(d) BOUND contracts are subject to adjustments in accordance with the rules of the Options Clearing Corporation.

Position Limits

904G. Position limits relating to BOUNDS shall be governed by the provisions of Rule 904 except that, for purposes of determining BOUND position limits, the holder of a long BOUND shall be considered to be long the underlying security and short and call of the underlying security; the seller of a BOUND that is not covered with the underlying security shall be considered to be short the underlying security and long a call on the underlying security; and a seller of a BOUND that is covered with the underlying security shall be considered to be long a call on the underlying security. In determining compliance with position limits, positions in BOUNDs and put and call options shall be aggregated.

Exercise of BOUND Contracts

Rule 905G. BOUND contracts may not be exercised prior to the specified expiration date of the contract.

Reporting of BOUNDS Positions

Rule 906G. Positions in BOUNDs shall be reported pursuant to Rule 906 with the minimum position in an account to be reported being 200 BOUNDs. In computing and reporting reportable positions under Rule 906 and this Rule, positions in BOUNDs and put and call options on the same underlying security shall be aggregated on the basis of one BOUND equaling one call option.

Delivery and Payment

Rule 907G. (a) Delivery of the strike price or shares of the underlying stock upon the expiration of a BOUND contract shall be affected in accordance with the rules of the Options Clearing Corporation. If the closing price of the underlying security on the specified expiration date is at or below the strike price for the contract, the member organization shall require the customer to deposit as promptly as possible after the expiration of the contract the underlying security if it is not already carried in the customer's account. If the closing price of the underlying security on the specified expiration date is above the strike price, the member organization shall require the customer to make full cash payment of the aggregate strike price as promptly as possible after expiration of the contract.

(b) Delivery of the payments equal to the dividend or other cash distribution declared on the underlying security shall be affected in accordance with the rules of the Options Clearing Corporation.

[FR Doc. 92-20042 Filed 8-20-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31045; File No. SR-CSE-92-06]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Cincinnati Stock Exchange, Inc., Amending Its By-Laws to Permit Simultaneous Service as Chairman and President

August 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 17, 1992, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicif comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend its Code of Regulations ("By-Laws") to permit the same individual to serve simultaneously as Exchange President and Chairman of the Board of Trustees ("Board").

The following is the text of the proposed change to Article VII of the Exchange By-Laws (deletions are bracketed):

Article VII Officers and Employees

Section 1. Composition of Officers

The officers of the Exchange shall be a Chairman of the Board of Trustees, President, Secretary, Treasurer and such other officers as may be appointed by the Board of Trustees. Any person may hold more than one office, except that [the same person may not hold the office of both President and Chairman of the Board and] the Secretary may not hold either the office of President or Chairman of the Board.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

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and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, as set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the same individual to serve as Exchange Chairman and President. Article VII, section 1 of the CSE's By-Laws currently prohibits this, but it does not appear that the resulting burden on Exchange administration is justified by any advantage to Exchange governance.[1] Apart from customary distinctions, the principal distinction between the powers of the President and the Chairman specified in the Exchange By-Laws is that only the Chairman is given authority to appoint committee members (with Board of Trustees approval), fill committee vacancies and remove committee members.[2] The CSE sees little potential problem in conferring these committee-related powers to the individual serving as President, because even under the proposed amendment no individual could fill both posts without the consent of the Board of Trustees.[3]

The proposed changes are consistent with section 6(b) of the Act, and in particular with section 6(b)(5), in that they are designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed changes should have no adverse impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was approved by membership vote on July 10, 1992.[4]

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR-CSE-92-06 and should be submitted by September 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20043 Filed 8-20-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31043; File No. SR-PSE-92-12]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc.; Relating to the Listing and Trading of Index Options on the Wilshire Small Cap Index

August 14, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 21, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to list and trade index options on the Wilshire Small Cap Index ("Wilshire Index" or "Index"), a broad-based, market-weighted index composed of 250 domestic stocks designed to reflect the characteristics and market performance of small stocks generally. In addition, the Exchange is proposing to amend PSE Rule 7.6, relating to position limits for index options to accommodate the trading of Wilshire Index Options. The text of the proposed rule change is available at the Office of the Secretary, PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Introduction

The Exchange is proposing to list and trade options on the Wilshire Index, which was developed by Wilshire Associates, Inc., a leading provider of analytical and consulting services to the investment management and retirement fund industries. This market-weighted index is designed to reflect the characteristics and market performance of small stocks generally. It is composed of 250 domestic stocks with a median market capitalization of $404 million. Options on the Index will have European-style exercise and will be cash-settled.

The Index is derived from the Wilshire Next 1750 ("Next 1750"), which is widely viewed by institutional investors as the benchmark for the small capitalization universe. The Next 1750 is derived from the Wilshire Top 2500 ("Top 2500"), an Index comprised of the largest 2500 securities in the all-inclusive Wilshire 5000. (Nearly 98 percent of the Wilshire 5000's market value is included in the Top 2500). The Next 1750 consists of the bottom 1750 stocks of the Top 2500 and provides a substantially different performance profile than the large company portion of that universe (the Wilshire Top 750).

The Index is designed to capture the essential return profile and fundamental characteristics of the Wilshire Next 1750, but also to produce greater liquidity and a lower turnover rate in component stocks. The PSE believes that options on the Index could provide an effective means for hedging the risks of small capitalization stocks and a low-cost means of altering the composition of an equity portfolio.

(2) Index Composition

The Index is composed of 250 stocks selected by Wilshire based on a process using a stratified sampling of the small company universe. It is broad-based and is comprised of stocks in the following nine economic sectors: Capital Goods (6.9%), Consumer Durables (3.7%), Consumer Non-Durables (27%), Energy (4.9%), Financials (17.7%), Material & Services (20.2%), Technology (11.1%), Transportation (2.0%), and Utilities (6.4%). The Index has a high degree of correlation with well-known benchmarks of the small-cap sector, including the Wilshire Next 1750 Index (99.7%) and the Russell 2000 Index (99.05%).

The 250 component stocks are listed for trading on the New York Stock Exchange (138 stocks), the American Stock Exchange (13 stocks) and National Association of Securities Dealers NASDAQ system (99 stocks). Currently, all of the NASDAQ issues included in the Index are National Market System ("NMS") securities. If an NMS issue becomes a non-NMS security, it will not be replaced. As of July 1, 1992, 115 securities, amounting to 52 percent of the market capitalization of the Index, meet the Exchange's initial options listing standards set forth in PSE Rule 3.6. The Exchange anticipates that no less than forty-five percent of the market capitalization of the Index will meet such listing standards at any given time as a result of any annual restructuring of the Index composition.

The 250 stocks comprising the Index have a total market value of $104 billion. As of July 1, 1992, the capitalization of the component stocks ranged from $81 million to $726 million, with a median capitalization of $404 million. The highest-capitalized stock, Universal Foods Corporation, accounts for .70 percent of the Index. In addition, the ten highest capitalized stocks account for 6.87 percent of the Index and the ten lowest capitalized stocks account for 1.05 percent of the Index.

The Exchange proposes to adopt the following minimum standards with respect to the Index composition. First, no more than seven percent of the total market capitalization of the Index may consist of stocks with an average trading volume of less than 10,000 shares per day. Second, no stock may be added to the Index if it has a six-month average daily trading volume of less than 5,000 shares. Third, no more than five percent of the total market capitalization of the Index may consist of stocks with a market capitalization of less than $150 million. Fourth, no stock may be added to the Index if it has a stock price less than $1 or a market capitalization less than $80 million. Fifth, at no time will more than four percent of the Index consist of non-NMS securities.

Wilshire will update the Index annually at the end of June, when the Wilshire 5000, the Wilshire Top 2500, the Wilshire Next 1750 and the Wilshire Top 750 Indexes are updated. Changes made to the composition of the Wilshire Next 1750 during its annual recapitalization may result in corresponding changes to the Index. If a stock ceases to trade during the year as a result of a merger, acquisition or other event whereby the company ceases to exist as a going concern, it will be removed from the Index and replaced in the subsequent annual recapitalization. No interim replacements will be made. Replacement stocks will be selected on the basis of a stratified sampling of the small company universe.

(3) Index Calculation

The Index is calculated using the last sale prices of the stocks comprising the Index. However, if a component stock is not open for trading, the most recently traded price will be used in the Index calculation. The Index will be calculated every 15 seconds throughout the trading day by Bridge Data Services and will be disseminated by the Options Price Reporting Authority to wire services, quote vendors and the financial media.

The Index value will be calculated by adding the market values of the component stocks, which are derived by multiplying the price of the stock by its shares outstanding, to arrive at total market capitalization changes. The Index multiplier will be $100 times the Index value.

(4) Index Option Trading

The proposed index options will be cash-settled and feature European-style exercise. Trading in the Index options will be governed by PSE Rule 7 (Index Options). The Index options will trade from 6:30 a.m. to 1:15 p.m. Pacific Time. The Exchange intends to list put and call options having up to four consecutive near-term expiration months plus five additional further-term expiration months in the March cycle, extending into successive years.

The Exchange intends to introduce Index option series with up to one year in duration at five-point strike price intervals and, for longer-term options, strike prices with as wide as twenty-five or fifty point intervals. Position limits for Index options will be set at no more than 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month. In all other respects, Exchange policies and rules applicable to the Index options will be the same as current rules applicable to other index options that trade on the Exchange. For customer orders up to 100 contracts, the Exchange will use the Auto-Ex feature of POETS, the PSE's automated order routing and execution system, for certain near-term series in order to afford customers deep and liquid markets and prompt executions.

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[1] As a clarification, the CSE added that the actual burden to the Exchange of a particular, qualified individual not being able to hold both positions outweighs any potential advantages of separating the offices. Conversation between Kevin S. Fogarty, General Counsel, CSE, and Edith Hallahan, Attorney, SEC, on July 29, 1992.

[2] See CSE By-Law Article VI, section 1.2.

[3] Pursuant to CSE By-Law Article VII, section 1, the Chairman and the President are both appointed by the Board of Trustees.

[4] The CSE adds that the proposed rule change was approved by the Exchange's Executive Committee on June 17, 1992 and ratified by the Board on July 22, 1992. Conversation between Kevin S. Fogarty, General Counsel, CSE, and Edith Hallahan, Attorney, SEC, on July 29, 1992. This completes the required approval necessary for a CSE by-law change. See CSE By-Law Article IX, section 1.

(5) Settlement of Index Options

The Index value for purposes of settling Index options ("Settlement Value") will be calculated on the basis of opening market prices on the business day prior to the expiration date of the options ("Settlement Day"). Settlement Day is normally the Friday preceding "Expiration Saturday." For exchange-listed stocks, their opening value will be based on the price of the stock on its primary market. For securities trading on NASDAQ, the opening value will be based on the first reported trade of the day. However, if a component security does not trade on Settlement Day, the closing price from the previous trading day will be used to calculate the Settlement Value. Thus, trading in expiring Index options will cease at the close of trading two business days before expiration Saturday (normally the Thursday preceding Expiration Saturday).

(6) Basis

The proposed rule change is consistent with section 6(b) of the Act in general, and section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade; to protect investors and the public interest; and to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 11, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20041 Filed 8-20-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1675]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: On July 27, 1992, the Department of State requested emergency approval from OMB for the following public information collection requirement, under the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

SUMMARY: On May 13, 1992, the Government of the United States of America and the Government of the Federal Republic of Germany signed an agreement concerning the settlement of certain property claims. The information collected will be used by the Departments of State and Treasury and the Foreign Claims Settlement Commission (FCSC) to determine whether eligible claimants elect to receive a portion of the settlement amount under the agreement signed May 13 or whether they instead elect to pursue their property claims under German law and also to prevent dual recovery from the Federal Republic of Germany. The following summarizes the information collection proposals submitted to OMB:

Type of request—New.

Originating office—Department of State (L/CID) and the Department of Treasury.

Title of information collection—German Democratic Republic Claims Program Election Form.

Frequency—One time.

Respondents—Claimants with favorable awards issued by the Foreign Claims Settlement Commission in its German Democratic Republic Claims Program.

Estimated number of respondents—2,500.

Average hours per response—3 hours.

Total estimated burden hours—7,500.

Section 3504(h) of Public Law 96-511 does not apply.

DATES: The Department requested OMB approval by July 29, 1992.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Mia Abeya (202) 874-8740 or Gail J. Cook (202) 647-3538. Comments and questions should be directed to (OMB) Lin Liu (202) 395-7340.

Dated: August 7, 1992.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 92-19952 Filed 8-20-92; 8:45 am]

BILLING CODE 4710-43-M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Sections 3 and 9 Grant Obligations

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, signed into law by President George Bush on October 28, 1991, contained a provision requiring the Federal Transit Administration (FTA) to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to Sections 3 and 9 of the Federal Transit Act, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant.

This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Janet Lynn Sahaj, Chief, Resource Management and State Programs Division, Office of Capital and Formula Assistance, Department of Transportation, Federal Transit Administration, Office of Grants Management, 400 Seventh Street, SW., room 9305, Washington, DC 20590, (202) 366-2053.

SUPPLEMENTARY INFORMATION: The Section 3 program provides capital assistance to eligible recipients in three categories: Fixed guideway modernization, construction of new fixed guideway systems and extensions, and bus purchases and construction of bus related facilities. The Section 9 program apportions funds on a formula basis to provide capital and operating assistance in urbanized areas. Section 9 grants reported may include flexible funds transferred from the Federal Highway Administration to the FTA for use in transit projects in urbanized areas. These flexible funds are authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to be used for highway or transit purposes. Pursuant to the statute FTA reports the following grant information.

SECTION 3 GRANTS

Transit property	Grant number	Grant amount	Obligation date
Long Beach Public Transportation Company, Los Angeles, CA	CA-03-0368-00	$13,875,000	07/06/92
Greater Hartford Transit District, Hartford-Middletown, CT	CT-03-0078-00	99,350	07/17/92
Washington Metropolitan Area Transit Authority (WMATA), Washington, DC-MD-VA	DC-03-0023-00	4,900,000	07/20/92
Metropolitan Atlanta Rapid Transit Authority, Atlanta, GA	GA-03-0039-00	2,555,028	07/28/92
Suburban Bus Division—RTA, Chicago, IL—Northwestern IN	IL-03-0164-00	2,300,000	07/17/92
Ann Arbor Transportation Authority, Ann Arbor, MI	MI-03-0127-00	1,500,000	07/17/92
City of Charlotte, Charlotte, NC	NC-03-0027-00	125,000	07/17/92
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA-NJ	PA-03-0207-01	2,880,000	07/17/92
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA-NJ	PA-03-0220-00	10,125,000	07/17/92
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA-NJ	PA-03-0229-00	40,000,000	07/17/92
Berks Area Reading Transportation Authority, Reading, PA	PA-03-0231-00	2,500,000	07/27/92

SECTION 9 GRANTS

Transit property	Grant number	Grant amount	Obligation date
Regional Transportation District, Denver, CO	CO-90-X065-00	$14,409,104	07/06/92
Northern Indiana Commuter Transportation District, Northwestern IN—Chicago, IL	IN-90-X168-00	2,545,206	07/07/92
City of Greensboro, NC Greensboro	NC-90-X140-00	1,218,331	07/06/92
City of Las Cruces, Las Cruces, NM	NM-90-X034-00	572,321	07/27/92
Oneida County, Utica-Rome, NY	NY-90-X232-00	235,948	07/15/92
Jackson Transit Authority, Jackson, TN	TN-90-X101-00	499,200	07/15/92
Fort Worth Transportation Authority, Dallas-Ft. Worth, TX	TX-90-X233-00	5,256,264	07/14/92
Chittenden County Transportation Authority, Burlington, VT	VT-90-X013-00	190,000	07/06/92
Spokane Transit Authority, Spokane, WA	WA-90-X133-00	3,632,392	07/15/92

Issued On: August 17, 1992.

Brian W. Clymer,

Adminstrator.

[FR Doc. 92-19967 Filed 8-20-92; 8:45 am]

BILLING CODE 4910-57-M

Research and Special Programs Administration

[Docket No. PDA-6(R)]

Nalco Chemical Co. Application for a Preemption Determination on California Requirements Applicable to Cargo Tanks Transporting Flammable and Combustible Liquids

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: Nalco Chemical Company (Nalco) of Napierville, Illinois, has applied for an administrative determination whether California Vehicle Code, Division 14.7 (sections 34000-34102), and California Administrative Code, title 13, article 3 (sections 1160.1-1165) and article 6 (sections 1190-1197) (collectively "cargo tank requirements"), are preempted by the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations issued under the HMTA.

DATES: Comments received on or before October 5, 1992, and rebuttal comments received on or before November 19, 1992, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: This application, Nalco's prior application for an inconsistency ruling and comments thereon in Docket No. IRA-53, and any comments submitted on the present application may be reviewed in the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590-0001 (Tel. No. 202-336-4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA-6(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to (1) Lawrence W. Bierlein, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for Nalco Chemical Co., and (2) Mr. Paul Horgan, Engineer, Department of California Highway Patrol, Hazardous Materials Section, 2555 First Avenue, Sacramento, CA 95818. A certification that a copy has been sent to these persons must also be included

with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Bierlein and Horgan at the addresses specified in the **Federal Register.**")

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

I. Background and Preemption Under the HMTA

The Hazardous Materials Transportation Act (HMTA) was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 app. U.S.C. 1801. It replaced a patchwork of state and local laws.

"[U]niformity was the linchpin in the design of" the HMTA. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). As enacted in 1975, the HMTA preempted "any requirement, of a State or political subdivision thereof, which is inconsistent with any requirement set forth in)the HMTA), or in a regulation issued under (the HMTA)." HMTA, Public Law 93–633 section 112(a), 88 Stat. 2161 (1975) (amended 1990, see 49 app. U.S.C. 1811(a)). This provision was intended by Congress "to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation." S. Rep. No. 1192, 93d Cong., 2d Sess. 37 (1974), as quoted in IR–2 (State or Rhode Island Rules and Regulations Governing the Transportation of Liquefied Natural Gas and Liquefied Propane Gas, etc.), 44 FR 75566, 75567 (Dec. 20, 1979).

The HMTA also authorized the Secretary of Transportation to determine that a State or local requirement was not preempted by the HMTA and the HMR, upon finding "that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of this chapter or of regulations issued under this chapter and (2) does not unreasonably burden commerce." HMTA, Public Law 93–633 section 112(b), 88 Stat. 2161 (1975) (amended 1990, see 49 app. U.S.C. 1811(d)).

In 49 CFR part 107, subpart C, the Materials Transportation Board (RSPA's predecessor agency) "published procedures that implement the preemption language of the HMTA by providing for the issuance of inconsistency rulings." IR–2, 44 FR at 75567. Such inconsistency rulings, while advisory in nature, were "an alternative to litigation for a determination of the relationship of Federal and State or local relationships," and also a possible "basis for an application * * * (for) a waiver of preemption pursuant to section 112(b) of the HMTA." *Id.* RSPA's procedures for issuing inconsistency rulings incorporated the following criteria for determining whether a State of local requirement was consistent with, and thus not preempted by, the HMTA:

(1) Whether compliance with both the State or political subdivision requirement and the Act or the regulations issued under the Act is possible; and

(2) The extent to which the State or political subdivision requirement is an obstacle to the accomplishment and execution of the Act and the regulations issued under the Act.

41 FR 38187, 38171 (Sept. 9, 1976), 49 CFR 107.209(c) (Oct. 1, 1990 ed.) These "dual compliance" and "obstacle" criteria, respectively, are based on U.S. Supreme Court decisions on preemption *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

In June 1990, in accordance with RSPA's procedural regulations then in effect, Nalco applied for an inconsistency ruling regarding California's cargo tank requirements. This application was assigned Docket No. IRA–53, and on September 6, 1990, RSPA published a Public Notice and Invitation to Comment, which (1) summarized Nalco's application, (2) advised that the application (including attachments) were available for review in RSPA's Docket Unit, and (3) invited interested parties to comment on the application. 55 FR 36732.

Comments in Docket No. IRA–53 were submitted by the California Highway Patrol (CHP), National Tank Truck Carriers, Inc., Hazardous Materials Advisory Council, Chemical Waste Transportation Institute, and Union Pacific Railroad Company. Rebuttal comments were submitted by California's Department of Health Services. Nalco deferred submitting rebuttal comments based on its understanding that the comment period would be reopened to consider the effect of the changes to the HMTA's preemption provisions by the enactment of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101–615 (November 16, 1990). CHP subsequently advised that enforcement of certain of the cargo tank requirements was being "withheld" because, after reviewing Nalco's application, CHP "has determined that certain regulations and enforcement policies may in fact be inconsistent with the HMTA." (In its earlier comments, CHP advised of "CHP rulemaking to repeal [a part of the cargo tank] requirement[s].")

The 1990 HMTUSA amendments adopted the "dual compliance" and "obstacle" criteria and added two further tests for finding preemption: Whether non-Federal requirements in five "covered areas" are substantially the same as Federal ones and whether non-Federal highway routing requirements satisfy Federal standards to be used by DOT. Section 1811(a) of 49 app. U.S.C. provides that, unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, "any requirement of a State or political subdivision or Indian tribe is preempted" when:

(1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,

(2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or

(3) It is preempted under section 1804(a)(4) * * * [describing five "covered subject" areas] or section 1804(b) * * * dealing with highway routing requirements].

With two exceptions, section 1804(a)(4) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as a provision in the HMTA or regulations under the HMTA. The two exceptions are State and Indian tribe hazardous materials highway routing requirements governed by 49 app. U.S.C. 1804(b) and requirements "otherwise authorized by Federal law." The "covered subjects" defined in section 1804(a)(4) are:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "conforms in every significant respect * * *" 49 CFR 107.202(d).

The 1990 amendments to the HMTA also authorized any directly affected person to apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA, 49 app. U.S.C. 1811(c)(1), which had the effect of replacing RSPA's process for issuing inconsistency rulings. Notice of the application for a determination of preemption must be published in the **Federal Register**, and the applicant is precluded from seeking judicial relief on the "same or substantially the same issue" of preemption for 180 days after the application, or until the Secretary takes final action on the application, whichever occurs first. *Id.* A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. 49 app. U.S.C. 1811(e).

Because RSPA's prior process for issuing inconsistency rulings had effectively been replaced by the authorization in HMTUSA for DOT to issue administrative determinations of preemption, RSPA wrote to Nalco that it should either withdraw its application in Docket No. IRA–53 or reapply for a binding determination after RSPA had promulgated regulations to implement HMTUSA's amendments to the HMTA's preemption provisions. See RSPA's April 2 and May 14, 1991 letters in Docket No. IRA–53. See also RSPA's Proposed Rule on Amendments to the Hazardous Materials Program Procedures, 56 FR 36992, 36994 (August 1, 1991).

The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). RSPA's regulations concerning preemption determinations are set forth at 49 CFR 107.201—107.211, 107.227 (including amendments of February 28, 1991 (56 FR 8616), April 17, 1991 (56 FR 15510), and May 13, 1992 (57 FR 20424)). Under these regulations, RSPA's Associate Administrator for Hazardous Materials Safety issues preemption determinations. "Any person aggrieved" by RSPA's decision on an application for a preemption determination may file a petition for reconsideration within 20 days of service of that decision. 49 CFR 107.211(a).

The decision by RSPA's Associate Administrator for Hazardous Materials Safety becomes RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time; the filing of a petition for reconsideration is not a prerequisite to seeking judicial review under 49 U.S.C. 1811(e). If a petition for reconsideration is filed, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration is RSPA's final agency action. 49 CFR 107.211(d).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law." A State, local or Indian tribe requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making decisions on applications for waiver of preemption, RSPA is guided by the principles and policy set forth in Executive Order No. 12,612, entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express provisions, which RSPA has implemented through its regulations.

II. Nalco's Application for a Preemption Determination

In a July 27, 1992 letter from its counsel, Nalco has applied for an administrative determination whether the California cargo tank requirements are preempted by the HMTA. The text of Nalco's application is set forth in full in appendix A to this notice. Copies of the attachments to Nalco's June 1990 application for an inconsistency ruling are incorporated by reference in Nalco's July 27, 1992 application. Those attachments are available for examination at, and copies may be obtained at no cost from, RSPA's Dockets Unit at the address and telephone number set forth in "Addressees" above:

1. California Vehicle Code, Division 14.7 (sections 34000–34102)
2. California Administrative Code, title 13, article 3 (sections 1160.1–1165) and article 6 (sections 1190–1197)
3. Form CHP 408A (Rev. 10–85), Application for Cargo Tank Registration
4. Form CHP 408B (Rev. 1–84), Cargo Tank Registration/Vapor Recovery System Certificate
5. Affidavit of Carla L. Minardi, Material Control Supervisor at Nalco's Carson, California facility, dated June 25, 1990.

III. Further Comments

Nalco's application and all comments submitted in Docket No. IRA–53 have been placed in the docket of Nalco's present application for a preemption determination, No. PDA–6(R), and will be considered to the extent relevant and appropriate under the revised preemption provisions in the HMTUSA amendments to the HMTA. All further comments should be limited to the issue of whether the California cargo tank requirements are preempted by the HMTA. Comments should specifically address: (1) The "substantively the same," "dual compliance," and "obstacle" tests described in Part I, above, (2) whether the cargo tank requirements are "otherwise authorized by Federal law," and (3) any changes to the cargo tank requirements,and the enforcement of those requirements, in the time period since Nalco's application in Docket No. IRA–53, including but not limited to CHP's statements that certain requirements would be repealed and, until repealed, not enforced.

Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on August 12, 1992.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Appendix A

July 27, 1992.

Mr. Alan I. Roberts, Associate Administrator for Hazardous Materials Safety Research & Special Programs Administration, Department of Transportation, Washington, D.C. 20590

Re: Docket No. IRA–53; Refiling of Nalco Application for Preemption Determination; State of California

Dear Mr. Roberts: On behalf of the Nalco Chemical Company of Naperville, Illinois, I hereby re-file the company's application for a preemption determination with regard to restrictions imposed by the State of

California that seriously impair the operations of the company. We note for the record that the company continues to be subject to the California requirements, with all of the unnecessary delay, expense, and inconvenience that represents. Your earliest response to this application, therefore, is greatly appreciated.

The original application prompted a Federal Register request for comments in Docket No. IRA–53. Upon passage of amendments to the Hazardous Materials Transportation Act involving certain revisions to the concepts of preemption, the application was returned to the company on April 2, 1991 with a request that it be re-filed to reflect the new statute, or withdrawn.

It was refiled at that time, and the re-filing addressed the effect of amendments in the Hazardous Materials Transportation Uniform Safety Act of 1991 (HMTUSA), Public Law 101–615, and also offered Nalco's rebuttal to certain comments that had been filed in response to the original Federal Register notice in IRA–53.

The application is once again re-filed, consistent with the latest procedural rules governing such applications, and once again we urge you to conclude this process expeditiously. The California requirements of which we complain are not "substantively the same" as the federal rules but, instead, add to them or very them. In the words of the final rule in Docket No. HM–207A, the California provisions in the so-called covered areas for exclusive federal regulation do not conform in every significant respect to the federal requirements.

Because no significant changes are involved between this application and the one originally filed and subjected to public comment in Docket No. IRA–53, we urge you not to reopen this re-filing for additional public comment. By the certification that is attached to this re-filing, the State of California is advised of it and of their 45-day period to respond. In addition, we also are serving all parties who commented on IRA–53 with a copy of this re-filing. If any of them sense a further need to comment they may do so but, because of the extreme delay that has taken place during RSPA processing, we pray for a speedy ruling without an additional comment or rebuttal period.

Introduction. Original Section 112(a) of the Hazardous Materials Transportation Act, 49 U.S.C. 1811(a), read as follows:

1811, Relationship to other laws.—(a) General.—Except as provided in subsection (b) of this section, any requirement of a State or political subdivision thereof, which is inconsistent with any requirement set forth in this title, or in a regulation issued under this title, is preempted.

Under the implementing regulations adopted by the agency in 49 CFR part 107, the determination that governed inconsistency determinations was whether the laws and regulations administered and enforced by the State either were in conflict with the agency's regulations, or stood as an obstacle to the accomplishment and execution of the purposes of Congress in enacting, the Hazardous Materials Transportation Act and of DOT in promulgating regulations under the Act. *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941), cited in DOT rule making Docket No. HM–138, adopting preemption procedures in 49 CFR part 107, Sept. 9, 1976, 41 Fed. Reg. 38167.

As amended by HMTUSA, section 112(a) now reads:

(a) In General.—Except as provided in subsection (d) and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or Indian tribe is preempted if—

(1) compliance with both the State and political subdivision or Indian tribe requirement and any requirement of this title or of a regulation issued under this title is not possible,

(2) the State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of this title or the regulations issued under this title, or

(3) it is preempted under section 105(a)(4) or section 105(b).

The new law in subsections (1) and (2) incorporates the traditional conflict and obstacle tests found in 49 CFR part 107. Based upon the legislative history of the HMTUSA, it is Nalco's belief that nothing in subsections (1) and (2) quoted above was intended to do anything other than to incorporate into the statute the administrative standards that had been utilized by the agency and courts for the past 15 years. With respect to the so-called "conflict" and "obstacle" tests, nothing has changed.

That is not the case with new subsection (3), which references new sections 105(a)(4) and 105(b). Subsection 105(b) is not pertinent to this application and is not addressed further. Subsection 105(a)(4) now declares—

(a) General.—

* * * *

(A) General rule.—* * * (U)nless otherwise authorized by Federal law, any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe, which is not substantively the same as any provisions of this Act or any regulation under such provision which concerns such subject, is preempted.

(B) Covered subjects.—The subjects referred to in subparagraph (A) are the following:

(i) The destination, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

As discussed below, the specific California provisions which are the subject of this application are not substantively the same as the Federal rules. In addition, insofar as the California rules pertain to package markings, packaging markings, documentation, and container design, they are explicitly preempted by the clarifying provisions of section 105(a)(4). Here, too, these exclusively Federal subject matters has been defined by earlier administrative inconsistency rulings and parallel court decisions, many of which had been cited in Nalco's original application. Now, however, the statutory amendments provide Congressional affirmation of those decisions and elevate them beyond the level of non-binding administrative rulings. They also are elevated beyond any discussion of conflicts or obstacles, but unquestionably are preempted. Nothing in the recent procedural rule making on preemption determinations affects this application.

In addition, insofar as some of the California provisions are in conflict with, or pose an obstacle to the execution of the purposes of Congress in enacting such legislation, they are preempted, as noted further below. This is especially true with regard to the unnecessary transportation delays inherent in the California regulatory program. We do note that substantial improvements have been made in the paperwork management of California's program, particularly in Sacramento, but extensive and unnecessary delays continue to be encountered in the field.

The law under which the hazardous materials regulations are administered was a Congressional call for a single, national, uniform and consolidated fabric of hazardous materials transportation regulations. Nothing in the recent revisions nullifies this fact. In *Kappelmann* v. *Delta Air Lines, Inc.*, 539 F.2d 165, 169–170 (D.C. Cir. 1976), the court of Appeals said:

* * * (That the HMTA) was intended to vest in the Secretary or his delegate primary authority to regulate "any safety aspects of the transportation of hazardous materials" is evident from the plain language of the statute, *supra*, and the legislative history. The Senate Commerce Committee, in reporting out its version of the bill, made the following observation:

The prime difficulty, discussed by almost all of the witnesses in the June 12, 1974, hearing is that the fragmentation of regulatory power among the agencies dealing with the different modes of transportation blocks a coherent approach to the problem and creates a mass of conflicts of jurisdiction and regulation. The problem is heightened by the fact that most shipments involve more than one mode of transportation and thus are faced with differing regulations and enforcement authorities at different stages of a trip.

S. Rep. 93–1192, 93d Cong., 2d Sess. 8 (1974). Section 112 of the Senate bill, later incorporated into the Act by the conference committee, specifically preempted any state or local requirement inconsistent with any requirement of the act unless "the secretary determines . . . that such requirement affords an equal or greater level of protection to the public than is afforded by the requirements of this Act or regulations issued under this Act and does not burden interstate commerce." S. 4057, 93d Cong. 2d Sess., Sec. 112(a), (b) (1974). In reporting out that particular section, the Senate committee stated:

S. Rep. 93–1192, *supra* at 37. The conclusion to be drawn from these expressions of congressional intent is that the Hazardous Materials Transportation Act was aimed at a problem created at least in part by the existence of numerous regulatory bodies, and that it seeks to remedy the situation by consolidating the authority to regulate into one agency and thus promoting *uniformity of regulation.* (Emphasis added.)

Against this statutory, judicial and administrative background, reinforced by the recent amendments, it is appropriate to examine the particular California and Federal regulations involved.

California State provisions. Division 14.7 of the California Motor Vehicle code, entitled "Flammable and combustible Liquids," established a cargo tank inspection and identification system implemented by the California Highway Patrol for tanks containing these materials. Commenters on IRA–53 pointed out that parallel California requirements are applied to shipments of hazardous wastes, and we recommend that the principles expressed in this ruling be sufficiently general to answer questions regarding those similar requirements. Nalco does not ship hazardous wastes in its tanks and, accordingly, did not include the hazardous waste provisions in the original application, but the constraints or transportation and the impediments to a uniform regulatory system seem the same.

Section 34002 describes the California legislative policy recognizing the value of uniformity of controls within the State, but gives no consideration to the greater benefit of national uniformity.

Section 34003 for that code defines "cargo tank" to mean "any container having a volumetric capacity in excess of 120 gallons that is used for the transportation of flammable liquids or combustible liquids. This term includes pumps, meters, valves, fittings, piping, and other appurtenances attached to a tank vehicle and used in connection with the flammable liquids or combustible liquids being transported in the cargo tank."

Section 34019 of the Code purports to vest authority in the State to "adopt reasonable regulations with respect to the design and construction of cargo tanks and fire auxiliary equipment." The DOT regulations are mentioned in Section 34022 as "evidence of generally accepted safety standards," but the commissioner's design discretion clearly goes beyond the DOT tank specifications in 49 CFR. In comments, the State has said that it has elected to enforce only the federal requirements, yet the authority granted to the commissioner of the highway patrol certainly authorizes specifications in addition to the federal rules. In addition, one must recognize that the federal rules do not prescribe packaging requirements for combustible liquids, and yet the California inspectors are applying some unknown standard to determine the adequacy of these tanks. One might also note the metal identification plate required of nonspecification tanks (see the California comments of October 18, 1990, at page 3).

Section 34040 describes the required application for original or renewal registration of cargo tanks and notes that, in addition to the name and address of the applicant, the application shall contain "such other information as the commissioner shall require."

Registration may be refused, suspended or revoked by the State under Sections 34042 and 34061 for (1) failure to pay the registration fee, (2) misrepresentation on the application, (3) failure of the cargo tank to comply with California regulations, or (4) failure or refusal by the applicant to make the cargo tank available for inspection by a duly authorized employee of the department upon reasonable notice. Renewal applications must be filed at least 60 days prior to expiration of the annual registration.

A key provision that highlights the inconsistency of this law with the federal regulatory program is Section 34044:

Certificate of compliance:

At the time the original or renewal registration is issued, the department shall issue a sticker, label, or other suitable device constituting a certificate of compliance to identify cargo tanks which are currently registered. The certificate of compliance shall be plainly affixed to the cargo tank. The size, shape, color, and design of the certificate of compliance and the positioning of such on the cargo tank shall be determined by the commissioner by regulation.

Section 34060 indicates the commissioner shall provide for the establishment, operation, and enforcement of an inspection service for cargo tanks, and shall designate duly authorized employees of the department who may inspect cargo tanks to determine whether the cargo tanks are designed, constructed, and maintained in accordance with the regulations adopted by the commissioner.

The certificate of compliance may be revoked or suspended under Section 34062 and if, upon inspection of any currently registered cargo tank, a tank is found to be in noncompliance with the regulations of the commissioner or DOT, or any other provision of Division 14.7 of the California Highway Code, the inspector may immediately remove the certificate of compliance from the cargo tank under Section 34063.

Section 34100 demands that no one drive, move or leave standing a cargo tank that requires registration. Under Section 34101, no tank vehicle shall be operated in California unless there is affixed to the cargo tank a valid certificate of compliance label. This is pictured in Section 1193 of Article 6 of Title 13 of the California Administrative Code, which implements this state statute. Paragraph (b) of this regulation states, "On portable tanks, the certificate shall be placed in a weatherproof holder permanently attached to the tank."

Regulatory section 1194 of Article 6 further says that each tank, in addition to the compliance certificate sticker, shall be issued a cargo tank or "CT" number. "The assigned CT number shall be displayed in characters not less than 2.54 cm (1 in.) in height on a contrasting background in one of the following locations," and then gives the sites. In lieu of this marking, "the CT number may be die-stamped on the manufacturer's plate. . ." Thus, the California program requires three additions to the tank—the certificate sticker, the weatherproof pouch in which the paper certificate (which is not the seme as the sticker) is retained, and a "CT" marking. The sticker is serially numbered and the CT marking is a number, but the two numbers do not appear to correlate with each other or anything else. See the attachments to Nalco's original application for copies of the statute, regulations illustrating the sticker, application form, and an example of the paper certificates to be placed in the pouch.

DOT Regulations. The regulations in 49 CFR include provisions on all types of packaging for use in transporting h hazardous materials, which include in Section 173.115 (re-numbered 173.120 in Docket No. HM–181). definitions for flammable and combustible liquids. DOT packaging include cargo tanks, portable tanks, intermodal tanks, and other bulk packaging. They also encompass a variety of intermediate bulk containers (IBCs) authorized under exemptions issued pursuant to 49 CFR part 107.

The DOT regulations, by specific discussion in Docket Nos. HM–42 and HM–102 establishing and defining the combustible liquid classification, affirmatively determined that federal packaging specifications were unnecessary, and federal regulations are limited to hazard communication (see 49 CFR 173.118a; renumbered 173.150(f) in Docket No. HM–181).

The applicant makes extensive use of an intermediate bulk container called the Nalco Porta-Feed Advanced Chemical Handling System in delivering a variety of products to customers. It is a complete distribution system including the return, cleaning and refilling of tanks. These products include flammable and combustible liquids as defined under the DOT regulations and California code. The tanks are constructed and marked in accordance with DOT Specification 57, 49 U.S.C. 178.253. They have a volumetric capacity in excess of the threshold level expressed in the California legislation and, therefore, they are within the California regulatory program described above.

Specification 57 tanks must also meet the general requirements of DOT Specification 51, prescribed in 49 CFR 178.251. Section 178.251–1(c) in turn requires compliance with 49 CFR 173.24, 173.24b and 173.32.

These several sections prescribe, in detail, the methods of design, construction, testing, operating and maintenance of this packaging. Section 178.251–7, entitled "Identification and marking," describes a metal certification place that must be affixed permanently to each tank, with letters and numerals marked into the metal of the plate identifying the manufacturer, the specification, the design pressure for Specification 57, the serial number, original test date, tare weight, rated gross weight, capacity, and materials of construction. Other DOT specifications include similar metal plate or marking requirements.

Section 173.24 prescribes operational requirements for all hazardous materials packaging, including that packaging registered by California. Section 173.24(c)(1) prescribes DOT specification marking

requirements and also cross references and requires compliance with parts 178 and 179 insofar as construction specifications are concerned.

Section 173.32 sets forth DOT requirements on qualification maintenance and use of portable tanks other than Specification IM portable tanks. IM tanks are covered by Section 173.32a, b, c, and d. DOT-required qualification, maintenance and use of cargo tanks is described in Section 173.33. All of these tanks are subject to the California rules cited above.

Section 171.2(c), a general introductory section to the DOT hazardous materials regulations, declares that no person may represent, mark, certify, sell or offer a packaging as meeting the requirements of the regulations governing its use unless it is manufactured, fabricated, marked, maintained, reconditioned, repaired, or retested, as appropriate, under the DOT regulations. Paragraph (d) confirms that the initials "DOT" or "UN" as well as DOT exemption numbers are included within the representational markings encompassed by paragraph (c).

Section 178.0–2(b), among other things, notes that marking the DOT specification identification on a packaging "shall be understood to certify compliance by the manufacturer, that the functions performed by the manufacturer, as prescribed in this part, have been performed in compliance with this part."

The other general provisions relating to shippers and packaging are Section 173.22, entitled "Shipper's responsibility," and Section 173.22a, pertaining to use of packaging authorized under exemptions.

A shipper offering a hazardous material for transportation also completes a certification shipping documents, described and required under Section 172.203, in which materials are identified as being properly packaged and in proper condition for transportation.

Section 177.853(a) of the motor carrier section of the DOT regulations demands that every shipment of hazardous materials by motor vehicle shall be transported without unnecessary delay, from and including the time of commencement of the loading of the cargo until its final discharge at destination. See also Section 174.14 in the rail mode with regard to timely handling of shipments.

- *Reasons for preemption of California requirements.* Applicant requests a preemption determination both because of the impossibility of meeting the California and the federal rules, primarily through the delays proscribed in Section 177.853, and because the California rules pose an obstacle to the accomplishment of the purposes of Congress in establishing a nationally uniform regulatory system, particularly with regard to hazard communication and packaging. In addition, the applicant notes that amendments adopted in the HMTUSA clearly delineate certain subject matters such as those involving communications and packaging, that unquestionably are federal provinces, without regard to their status under the conflict and obstacle tests.

The California provisions on marking of the packaging and the package, paperwork, and packaging specifications are in addition to the federal rules and are not "substantively the same as" the federal rules. To the extent the rules are the same, the applicant makes no complaint, but when for example the federal rules require compliance certifications in the form of a tank specification plate and a shipping document, and California wants those certifications as well as several others, the California provisions are not substantively the same. They are unnecessarily redundant, excessive and statutorily preempted.

Delay. The California rules constitute a prior restraint on the movement of hazardous materials otherwise authorized and presumed safe for transportation under the federal regulations. In California, no tank may move until it is inspected and separately marked by a duly authorized representative of the California Highway Patrol, despite the fact that the tank bears a specification plate marking which is the certification of the marker of that tank, and is offered in accordance with rules on the maintenance and retesting of that tank, with the shipper's documentary certification of compliance. Despite full compliance with all of these federal certifications the shipment must be held until the administrative office in Sacramento at which the company's application is filed transmits its instructions to the California Highway Patrol office in the area. Then the applicant must wait further until it is convenient for the California State inspector to get there, conduct his own inspection, and apply his own marking to the tank and issue his certificate of compliance. The paper record of his inspection in the form of a card must be inserted in a plastic holder on the tank. Then the CT number issued by Sacramento then must be marked by painting or stenciling on the tank.

As shown from the affidavit attached to the original application, provided by Nalco's California representative managing compliance with this State program, tanks often had to wait as much as two weeks before being inspected. These tanks often were full as they awaited arrival of the inspector. Processing improvements and pre-payment options have speeded the issuance of instructions to the field from the time Nalco's application originally was filed, but unnecessary delays still are encountered in the field with both flammable and combustible liquids, and the delays have been compounded by inspector's schedules, vacations, and sick leave. Please note the supportive comments supplied by other industries, confirming their experience with unnecessary delays under a variety of circumstances. The situation has improved, but still remains unnecessary and in conflict with Section 177.853.

Also as reflected in the affidavit attached to the original application, delays caused repackaging, diversion of traffic to locations more convenient to inspectors, and increased inventories at California distribution centers.

California, in its comments on the original application, attempted to declare that the delays were Nalco's fault, because the company filed too many applications at once. The company has gone to great lengths to cope with what is an illegal State system, filing in advance by Federal Express and repeatedly phoning to minimize delays in preparing for the anticipated arrival of out-of-State tanks. Due to processing improvements since the original filing of Nalco's petition, filings in Sacramento by facsimile now are accepted and delays have diminished from their original extent, but they have not been eliminated. Once again, please note the comments of other parties who experienced delays, and note the acknowledgement in the State's comments that delays did occur. This is not a problem of Nalco's making.

Perhaps some companies experienced less frustration with the system because the marking applied by the California inspector is described as an annual permit. Nalco, however, cleans its Porta-Feed tanks after each use. The cleaning is thorough, and inevitably removes the California sticker, CT marking, and weatherproof pouch which cannot be reapplied by the company but must await another visit from an inspector before that tank may be used again. Other commenters noted the same experience with loss of stickers and other State-required markings. California, in its comments, suggested that attaching a metal plate is the answer, but we declare that a metal plate already is attached to the tank under the DOT tank specifications, and that no need is served by additional paper, paint, plastic or metal markings the State is requiring.

California officials have noted that intermodal tank traffic alone was expected to increase in numbers from approximately 15,000 to 60,000 by the end of 1990. This type of shipping practice is increasing in popularity. Regardless of the specific numbers, unquestionably the use of portable tanks is growing faster than the State's ability to manage it, and all projections are that delays will become more pronounced in the future.

We stress that we do not object to State enforcement of federal regulations, or the inspection of tanks where they are moving in commerce to assure compliance with federal regulations. We strongly object, however, to having to hold the tanks until California inspectors can get there, or to send them to destinations not otherwise contemplated in commerce. These delays have been discussed in numerous inconsistency rulings, notably in IR–28, City of San Jose, California, 55 FR 8884, March 8, 1990.

Container specifications. We also object strongly to the implications in the California statute that the California tank regulations and specifications may vary from the federal rules. We understand California's informal claim that, in practice, this does not occur frequently, but Sections 34019 and 34023 of the statute certainly vest that discretion in the California commissioner. Section 34022, although citing the DOT rules, gives equal weight to those of the National Fire Protection Association. Under the State statute, the DOT rules are given weight only as evidence of generally accepted safety standards.

Despite the specific DOT avoidance of federal packaging specifications for combustible liquids, these materials are subject to California packaging standards and are part of the inspector's review, although we are unaware of the measure by which an inspector assesses such tanks.

Hazardous material packaging, including any tank container, is an exclusively federal province, and this has been noted repeatedly in inconsistency rulings and court decisions, from IR–2 (Rhode Island) through IR–8 (San Jose, CA) issued on March 8, 1990. Please note the explicit congressional concurrence in Section 105(a)(4)(B)(ii) and (v) as adopted by HMTUSA. We also draw specific attention to IR–22, in which the following discussion of cargo tank specifications appears:

Since as early as IR–2, in 1979, it has been clear that hazardous materials transportation cargo containment systems, packaging, accessories, construction, tests, equipment and hazard warning systems are areas of exclusive Federal jurisdiction because of the total occupancy of those field by the Hazardous Materials Regulations:

There are also certain areas where the need for national uniformity is so crucial and the scope of Federal regulations is so pervasive that it is difficult to envision any situation where State or local regulation would not present an obstacle to the accomplishment and execution of the HMTA and the Hazardous Materials Regulations Cargo containment systems is one area where (DOT) believes this to be true. The Hazardous Materials Regulations contain extensive requirements for the packaging necessary for the safe transportation of hazardous materials. The (DOT) has looked at specific commodities and determined what types of container must be used to move them, including, where appropriate, what types of accessories are required, what types of construction tests must be satisfactorily performed, etc. Uniform standards in this area ensure safe efficient interstate transportation. State and local governments may not issue requirements that differ from or add to Federal ones with regard to packaging design, construction and equipment for hazardous materials shipments subject to the Hazardous Materials Regulations. (Citing IR–2, *supra*, at 75568.)

To the extent the California requirements for tanks vary at all from the federal rules, they are statutorily preempted. See also IR–7 through IR–15.

Communications. A unique California marking indicating the location of the emergency shut off valve is a precondition to obtaining a California certificate of compliance. It is unclear at this time whether such a marking is subject to enforcement in the State. If such a marking is appropriate, California should petition to have it added to the federal rules, and should not maintain its own unique requirements. To quote again from IR–2:

Hazard warning systems are another area where (DOT) perceives the Federal role to be exclusive. The (DOT) has thoroughly considered this subject and has issued regulations on marking and labeling of packages and placarding of vehicles in order to communicate the hazards of the materials contained therein. The effectiveness of these systems depends to a large degree on educating the public, especially emergency response personnel. In order to widely disseminate information of its systems, the (DOT), among other things, conducts and supports educational programs and distributes informational literature. Additional, different requirements imposed by States and localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information.

California also requires three additions to the tank to communicate information with regard to State registration—the compliance sticker, the compliance certificate in a weatherproof pouch, and the CT number, all of which must be on or near the DOT specification plate.

We also object to the paperwork involved. The original Application for Cargo Tank Registration, CHP 408A (Rev. 10–86), was attached to the original Nalco application in IRA–53. The detail required in this application in many respects is redundant, unnecessarily duplicating the provisions prescribed in 49 CFR for the specification plate, record-keeping by the manufacturer for the specification plate, record-keeping by the manufacturer of the tanks, record-keeping by those who retest or repair the tanks, and shipping documents prepared by the shipper. Some of this information is gathered by the applicant, and some by the inspector. None of it appears necessary. Although the State has made some improvements in the years this application has been pending, the application process still remains unduly burdensome.

Permit. In response to a positive inspection, the California Highway Patrol issues a Cargo Tank Registration/Vapor Recovery System Certificate. This is a piece of paper, example attached. In addition, the inspector applies a color-coded certificate of compliance sticker to the tank itself. The tank may not be moved in California without this sticker. As noted in IR–22, because the local containment system and equipment requirements are intimately tied to a permitting system, that permitting system also is inconsistent. Quoting from IR–19:

Thus, the effect of that regulation is to require a PSC permit for hazardous materials transportation activities even if those activities are in full compliance with the HMTA and HMR. Activities in compliance with HMTA and HMR are presumptively safe, and permitting requirements relating to them cause confusion and delay and thus are inconsistent with the HMTA and the HMR under the "obstacle" test.

IR–19, 52 Fed. Reg. 24404, June 30, 1987.

Conclusion. The State of California, in its comments and in a Management Memorandum sent to Nalco's counsel on March 25, 1991, has acknowledged certain inconsistencies and announced the curtailment of enforcement of certain provisions pending rule making to eliminate those provisions. Nonetheless, the majority of the requirements of which Nalco complained still apply, namely the obligation to apply for inspection and for inspection to occur as a prior condition to transport within the State of a package authorized and certified as appropriate for national distribution by the Department of Transportation regulations. These remaining difficulties pose the most serious problems, for which a ruling is requested.

Therefore, the applicant seeks a ruling finding the California cargo tank inspection program preempted insofar as it:

(1) Vests or appears to vest discretion in California officials to establish tank specifications that differ in any respect from the federal rules;

(2) Requires any additional markings on hazardous materials tanks (or pouches in which to insert California paperwork), either with regard to shut-off valves or indications of the tank having been registered or inspected;

(3) Requires any permit, including the application for a permit or a certificate of compliance issued by a State official, as a precondition to movement of a tank otherwise marked as being in full compliance with the provisions of 49 CFR;

(4) Requires inspection by a California official as a precondition to transportation;

(5) Involves enforcement of preempted provisions;

(6) Diverts traffic from otherwise permissible distribution patterns; or

(7) Unnecessarily delays transportation in any mode.

In accordance with 49 CFR 107.205, I hereby certify that I have sent a copy of this application, with an invitation to comment for a period of 45 days, to the California official in charge of this program: Mr. Paul Horgan, Engineer, Department of California Highway Patrol, Hazardous Material Section, 2555 First Avenue, Sacramento, CA 95818.

I also have sent copies of the re-filing to all those who commented on the original notice in IRA–53. To repeat, we do not believe these matters would benefit from further publication in the Federal Register with a request for public comment. We believe the delay and consequent continuing costs to all those subject to the California restrictions outweigh the potential for any new party to raise an argument that has not already been made.

Please contact me directly if there are any questions on this application or its attachments.

Sincerely, Lawrence W. Bierlein, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, (202) 663–9245.

(The attachments for this application are identical to those filed with the original application and are not duplicated here.)

cc: Willmore Hastings, Esq. Law Department, Nalco Chemical Co.
David Deines, Hazardous Materials Transportation Administrator, Nalco Chemical Co.

[FR Doc. 92–19980 Filed 8–20–92; 8:45 am]
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OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Generalized System of Preferences (GSP); Review of Product and Country Practices Petitions, Public Hearings, and List of Articles to be Sent to the United States International Trade Commission (USITC) for Review

AGENCY: Office of the United States Trade Representative.

ACTION: Announcement of product and country practices petitions accepted for consideration in the 1992 Annual GSP Review; announcement of timetable for public hearings to consider petitions accepted for review; announcement of list of articles to be sent to the USITC for review.

SUMMARY: The purpose of this notice on the 1992 Annual GSP Review is (1) to announce the acceptance for review of petitions to modify the list of articles eligible for duty-free treatment under the GSP and to modify the status of countries as GSP beneficiary countries in regard to their practices as specified in 15 CFR 2007.0(a) and (b); (2) to anounce the timetable for public hearings to consider petitions accepted for review; and (3) to announce that the list of articles herein will be sent by the United States Trade Representative to the USITC to seek advice with respect to modification of the list of eligible articles for GSP.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents relating to this review will be available for review by appointment with the USTR public reading room shortly following filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION:

I. Acceptance of Petitions for Review

Notice is hereby given of acceptance for review of petitions requesting modification of the list of articles eligible to receive duty-free treatment under the GSP, as provided for in title V of the Trade Act of 1974 (the 1974 Act) (19 U.S.C 2461–2465), as amended. These petitions were submitted, and will be reviewed, pursuant to regulations codified at 15 CFR part 2007.

A. Requests to Modify Product and Country Eligibility

Petitions have been submitted by interested parties or foreign governments (1) to designate articles as eligible for the GSP; or (2) to withdraw, suspend or limit GSP duty-free treatment accorded either to eligible articles under the GSP or to individual beneficiary countries with respect to specific GSP eligible articles; or (3) to waive competitive need limits; or (4) to otherwise modify GSP coverage. In addition, petitions have been received requesting that the GSP status of certain beneficiary developing countries be reviewed with respect to the relevant criteria listed in subsection 502(b) or 502(c) of the 1974 Act.

As in previous reviews, petitions to add or remove products from the list of articles eligible for GSP duty-free treatment will be evaluated in accordance with the "graduation" policy. In considering GSP eligibility for products, limitations on GSP benefits will be considered for the more economically advanced beneficiary developing countries in specific products where it is determined that they have demonstrated sufficient competitiveness. Four criteria will be taken into account when any such graduation action is considered: The development level of individual beneficiary countries; their competitive position in the product concerned; the countries' practices relating to trade, investment, and worker rights; and the overall economic interests of the United States.

Product designations announced at the conclusion of the review process, therefore, may be made on a differential basis. This means that certain beneficiary developing countries may not be designated for GSP benefits on certain products even though those countries are not excluded under the competitive need provisions set forth in section 504(c)(1) of the 1974 Act. It is also possible to withdraw GSP treatment on a product from certain beneficiary developing countries, or to reduce the competitive need limit applicable to the countries and product in question, rather than remove the product entirely from GSP coverage.

As required under section 504(a) of the 1974 Act, the eligibility factors set forth in sections 501 and 502(c) will be considered with respect to decisions to withdraw, suspend or limit duty-free treatment with respect to any article or with respect to any country.

B. Information Subject to Public Inspection

All submissions should be submitted in fourteen (14) copies, in English, to the Chairman of the GSP Subcommittee of the Trade Policy Staff Committee, 600 17th Street, NW., room 517, Washington, DC 20506. Information submitted in connection with the hearings will be subject to public inspection by appointment with the staff of the USTR public reading room, except for information granted "business confidential" status pursuant to 15 CFR 2203.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and fourteen (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the document. The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of every page (either "public version" or "non-confidential").

C. Communications

All communications with regard to these hearings should be addressed to: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Questions may be directed to any member of the staff of the GSP Information Center.

Acceptance for review of the petitions listed herein does not indicate any opinion with respect to disposition on the merits of the petitions. Acceptance indicates only that the listed petitions have been found to be eligible for review by the GSP Subcommittee and the TPSC, and that such review will take place.

II. Deadline for Receipt of Requests to participate in the Public Hearings

The GSP Subcommittee of the TPSC invites submissions in support of or in opposition to any petition contained in this notice. All such submissions should conform to 15 CFR 2007, particularly §§ 2007.0, 2007.1(a)(1), 2007.1(a)(2), and 2007.1(a)(3).

All submissions should identify the subject article(s) in terms of the current Harmonized Tariff Schedule of the United States (HTS) nomenclature.

Hearings will be held on October 14–16, 1992 beginning at 10 a.m. at a location in Washington, DC to be announced. The hearings will be open to the public and a transcript of the hearings will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

All interested parties wishing to make an oral presentation at the hearings must submit the name, address, and telephone number of the witness(es) representing their organization to the Chairman of the GSP Subcommittee by 5 p.m. September 23, 1992. Requests to present oral testimony in connection with the public hearings should be accompanied by fourteen (14) copies, in English, of all written briefs or statements, and should also be received by 5 p.m. on September 23. Oral testimony before the GSP Subcommittee will be limited to five minute presentations that summarize or supplement information contained in briefs or statements submitted for the record. Post-hearing briefs or statements will be accepted if they conform with the regulations cited above and are submitted in fourteen (14) copies, in English, no later than 5 p.m. November 5, 1992. Parties not wishing to appear at the public hearings may submit post-hearing written briefs or statements also by November 5. Rebuttal briefs should be submitted in fourteen (14) copies, in English, by 5 p.m. November 19, 1992.

During 1992 and/or January 1993, an opportunity will be provided for the public to comment on nonconfidential USITC analysis. Notice of the availability of this analysis and the timetable for comment will be published in the **Federal Register**.

III. List of Articles Which May be Considered for Designation as Eligible Articles for Purposes of the GSP or for Waiver of the Competitive Need Limit and On Which the USITC Will be Asked to Provide Advice

In conformity with sections 503(a) and 131(a) of the 1974 Act (19 U.S.C. 2463(a) and 2151(a)), notice is hereby given that the articles listed herein may be considered for designation as eligible articles for purposes of the GSP, or for modification of their current GSP status.

An article which is determined to be import sensitive in the context of the GSP cannot be designated as an eligible article. Recommendations with respect to the eligibility of any listed article will be made after public hearings have been held and advice has been received from the USITC on the probable effects of the requested modification in the GSP on industries producing like or directly competitive articles and on consumers.

On behalf of the President and in accordance with sections 503(a) and 131(a) of the 1974 Act, the USITC is being furnished with the list of articles published herein for the purpose of securing from the USITC its advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the modification of the list of articles eligible for GSP. Also, on behalf of the President and in accordance with section 504(c)(3)(A)(i) of the 1974 Act, the USITC is being asked to furnish economic advice on the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the granting of a waiver of the competitive need limits for the products identified in section C of the lists which follow.

IV. Cases Accepted for Review Regarding Country Practices, Pursuant to 15 CFR 2007.0(b)

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review petitions to review the status of Bahrain, Fiji, Guatemala, Indonesia, Malawi, and Oman as GSP beneficiary countries in relation to their practices regarding worker rights. Interested parties can participate in the review process as described in section II.

The decision whether to accept or reject a petition to review the GSP status of Haiti in relation to its worker rights practices has been deferred indefinitely.

Because review of the 1991 worker rights cases of El Salvador, Mauritania, Panama and Thailand has been extended, comments on the worker rights practices of these four countries will also be welcomed during the public hearing and comment process described in section II.

Also continued from the 1991 GSP Annual Review is a review of the GSP status of Peru relating to Peru's alleged expropriation of certain U.S. owned property without compensation. The review is being conducted pursuant to a petition filed by the American Insurance Group (AIG) as part of the 1989 GSP Annual Review. Comments on this review will also be welcomed during the public hearing and comment process described in section II.

Pursuant to 15 CFR 2007.0(b), the TPSC has accepted for review requests to review the GSP status of the Dominican Republic and Honduras concerning the alleged failure of each to provide adequate and effective protection for intellectual property rights.

Finally, pursuant to 15 CFR 2007.0(a), the TPSC has decided to defer a decision on whether to accept for formal review a petition alleging Jamaica's failure to provide for "equitable and reasonable" access to Jamaican markets until November 1, 1992. This petition relates to the recent imposition of a common external tariff on imports of rice.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

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Annex

Case No.	HTS Subheading	Article	Petitioner
		[The bracketed language in this list has been included only to clarify the scope of the numbered subheadings which are being considered, and such language is not itself intended to describe articles which are under consideration.]	
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences.	
		Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:	
		Mucilages and thickeners, whether or not modified, derived from vegetable products:	
		[Agar-agar; Mucilages and thickeners, whether or not modified, derived from locust beans, locust bean seeds or guar seeds]	
		Other:	
92-1	1302.39.00(pt.)	Carrageenan	Algas Marinas S.A., Chile
		Prepared or preserved fish; caviar and caviar substitutes prepared from fish eggs:	
		Fish, whole or in pieces, but not minced:	
		Sardines, sardinella and brisling or sprats:	
		In oil, in airtight containers:	
92-2	1604.13.10	Smoked sardines, neither skinned nor boned, valued $1 or more per kg in tin-plate containers, or $1.10 or more per kg in other containers	Government of Thailand
		Fruit juices (including grape must) and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter:	
		Pineapple juice:	
		[Not concentrated, or having a degree of concentration of not more than 3.5 (as determined before correction to the nearest 0.5 degree)]	
92-3	2009.40.40 1/	Other	Dole Packaged Foods Company, San Francisco, CA
		Cyclic hydrocarbons:	
92-4	2902.60.00	Ethylbenzene	Petroflex Indrustia E Comercio S.A., Brazil
		Cyclic alcohols and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Cyclanic, cyclenic or cycloterpenic:	
92-5	2906.12.00	Cyclohexanol, methylcyclohexanols and dimethylcyclohexanols	Rhodia, S.A., Brazil
		New pneumatic tires, of rubber:	
92-6	4011.50.00	Of a kind used on bicycles	Government of Thailand
		Leather of other animals, without hair on, other than leather of heading 4108 or 4109:	
92-7	4107.10.00	Of swine	Government of Slovenia
		Hats and other headgear, knitted or crocheted, or made up from lace, felt or other textile fabric, in the piece (but not in strips), whether or not lined or trimmed; hair-nets of any material, whether or not lined or trimmed:	
		[Hair-nets]	
		Other:	
		Of man-made fibers:	
		[Knitted or crocheted or made up from knitted or crocheted fabric]	
		Other:	
		Not in part of braid:	
92-8	6505.90.8015	Nonwoven disposable headgear without peaks or visors	Boundary Healthcare Products Corporation, Columbus, MS
		Ferroalloys:	
92-9	7202.50.00 2/	Ferrosilicon chromium	Minerals Marketing Corporation of Zimbabwe, Zimbabwe

1/ The TPSC requests advice on a waiver of competitive need for Thailand on the articles provided for in HTS subheading 2009.40.40.
2/ The TPSC requests advice on a waiver of competitive need for Zimbabwe on the articles provided for in HTS subheading 7202.50.00.

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Case No.	HTS Subheading	Article	Petitioner
A.		Petitions to add products to the list of eligible articles for the Generalized System of Preferences. (con.)	
		Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock (con.):	
		[Articles provided for in subheadings 8527.11.11 through 8527.29.00, inclusive]	
		Other radiobroadcast receivers, including apparatus capable of receiving also radiotelephony or radiotelegraphy:	
		Combined with sound recording or reproducing apparatus:	
		[Articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks]	
		Other:	
		[Combinations incorporating tape players which are incapable of recording]	
92-10	8527.31.50 1/	Other combinations incorporating tape recorders	Thomson Consumer Electronics, Inc., Indianapolis, IN
B.		Petitions to remove products from the list of eligible articles for the Generalized System of Preferences.	
		Builders' joinery and carpentry of wood, including cellular wood panels and assembled parquet panels; shingles and shakes:	
		Doors and their frames and thresholds:	
92-11	4418.20.00(pt.)	French doors	McPhillips Manufacturing Company, Inc., Mobile, AL
C.		Petitions to remove duty-free status from beneficiery developing country/countries for a product on the list of eligible articles for Generalized System of Preferences. 3/	
		Polycarboxylic acids, their anhydrides, halides, peroxides and peroxyacids; their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Aromatic polycarboxylic acids, their anhydrides, halides, peroxides, peroxyacids and their derivatives:	
92-12	2917.35.00 (Mexico)	Phthalic anhydride	Aristech Chemical Corporation, Neville Island, PA
	and/or		
92-13	2917.35.00 (Venezuela)	Phthalic anhydride	do.
D		Petitions for waiver of competitive need limit for a product on the list of eligible products for the Generalized System of Preferences.	
		Ethers, ether-alcohols, ether-phenols, ether-alcohol-phenols, alcohol peroxides, ether peroxides, ketone peroxides (whether or not chemically defined), and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		Acyclic ethers and their halogenated, sulfonated, nitrated or nitrosated derivatives:	
		[Diethyl ether]	
		Other:	
		Ethers of monohydric alcohols:	
92-14	2909.19.10(pt.) (Venezuela)	Methyl tertiary butyl ether	Ecofuel S.p.A., Italy

1/ The petitioner also requests a waiver of competitive need for Malaysia on the articles provided for in HTS subheading 8527.31.50.
2/ The countries named are the beneficiary developing countries specified by the petitioner. While the Trade Policy Staff Committee (TPSC) review will focus on that country, the TPSC reserves the right to address removal of GSP status for countries other than those specified by the petitioner as well the GSP status of the entire article.

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Case No.	HTS Subheading	Article	Petitioner
		Leather of bovine or equine animals, without hair on, other than leather of heading 4108 or 4109: [Whole bovine skin leather, of a unit surface area not exceeding 28 square feet (2.6 m^2); Other bovine leather and equine leather, pretanned, tanned or retanned but not further prepared, whether or not split]	
		Other bovine leather and equine leather, parchment-dressed or prepared after tanning:	
		Full grains and grain splits:	
92-15	4104.31.20 (Thailand)	Buffalo	Lackawanna Leather Company, Conover, NC
		Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum, not electrically insulated: [With steel core]	
		Other:	
		Not fitted with fittings and not made up into articles:	
92-16	7614.90.20 (Venezuela)	Electrical conductors	Penn Central Corporation, Cincinnati, OH; Capital Wire & Cable Corporation, Plano, TX
		Spark-ignition reciprocating or rotary internal combustion piston engines:	
		Reciprocating piston engines of a kind used for the propulsion of vehicles of chapter 87:	
		Of a cylinder capacity exceeding 1,000 cc:	
		To be installed in vehicles of subheading 8701.20, or heading 8702, 8703 or 8704:	
92-17	8407.34.2060 (Brazil)	[Used or rebuilt] Other	General Motors Corporation, Detroit, MI
		Video recording or reproducing apparatus:	
		Magnetic tape-type:	
		Color, cartridge or cassette type:	
92-18	8521.10.0020 (Malaysia)	[Not capable of recording] Other	Government of Malaysia
		Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:	
		Radiobroadcast receivers capable of operating without an external source of power, including apparatus capable of receiving also radiotelephony or radiotelegraphy:	
		Combined with sound recording or reproducing apparatus:	
		[Combinations incorporating tape players which are incapable of recording]	
		Other:	
		[Radio-tape recorder combinations; Radio-phonograph combinations]	
92-19	8527.11.60 (Malaysia)	Other	Government of Malaysia; Samtronics (M) SDN, BHD. Malaysia; Sanyo Fisher (USA) Corporation, Chatsworth, CA
		Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:	
		Combined with sound recording or reproducing apparatus:	
92-20	8527.21.10 (Brazil)	Radio-tape player combinations	Ford Motor Company, Dearborn, MI

[FR Doc. 92-20004 Filed 8-20-92; 8:45 am]
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DEPARTMENT OF VETERANS AFFAIRS

Commercial Activities, Performance; Cost Comparison Schedules (OMB A-76 Implementation)

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice.

SUMMARY: In order to apprise the public of cost comparison studies which the Department of Veterans Affairs will conduct for the purposes of OMB Circular No. A-76, the Department of Veterans Affairs serves notice to the public that the schedule of A-76 cost comparisons within the veterans health Administration (VHA) published on pages 43626-43628 of the **Federal Register** of October 28, 1985, has been changed. A number of cost comparison studies scheduled to begin earlier have been rescheduled to begin in Fiscal Year 1992, due to extensive construction, replacement initiatives, and other management requirements. The following comprehensive list of the Department of Veterans affairs A-76 cost comparison studies scheduled includes rescheduled start dates for some of the previously published VHA cost comparisons and approved schedules to re-study activities.

EFFECTIVE DATE: March 10, 1992.

FOR FURTHER INFORMATION CONTACT: Brodie C. Covington, Office of Policy and Planning, Management Analysis and Reports Service (008B3), Department of Veterans affairs Central Office, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2487. Questions relating to specific A-76 cost comparisons or local "service-contracting" should be referred to the Director of the VA facility concerned.

OMB Circular No. A-76 Cost Comparison Schedules

Field Facility/Activity	FTE	Schedule Date (fiscal year)
VA Medical Centers (VAMC)		
Laundry and Dry Cleaning services:		
Syracuse, NY (GOCO-COCO).	12.0	1992
St. Louis, MO (GOCO)	19.0	1992
Tuskegee, AL. (GOCO-COCO).	19.0	1992
Portland, OR (GOCO)	12.0	1992
Phoenix, AZ (GOCO)	14.0	1992
Denver, CO (GOCO)	14.0	1992
Warehouse Services:		
Boston, MA	7.0	1992
East Orange, NJ	15.0	1992
Pittsburgh (UD), PA	11.0	1992
San Juan, PR	18.0	1992
Long Beach, CA	5.0	1992
West Los Angeles, CA	21.0	1992
San Francisco, CA	17.0	1992
Switchboard Services:		
Bronx, NY	9.0	1992
East Orange, NJ	11.0	1992
Brooklyn, NY	8.0	1992
Hines, IL	10.0	1992
Minneapolis, MN	8.0	1992
West Los Angeles, CA	11.0	1992
Transcription Services:		
Pittsburgh (UD), PA	13.0	1992
Allen Park, MI	13.0	1992
Salisbury, NC	9.0	1992
West Los Angeles, CA	5.0	1992
Portland, OR	11.0	1992
Chauffeur Services:		
East Orange, NJ	10.0	1992
Pittsburgh (UD), PA	11.0	1992
West Los Angeles, CA	39.0	1992
Fire Protection Services:		
Coatesville, PA	15.0	1992
Northampton, MA	15.0	1992
Mail/Messenger Services:		
West Los Angeles, CA	13.0	1992
Grounds Maintenance Services:		
Coatesville, PA	12.0	1992
St. Louis, MO	8.0	1992
Biloxi, MS	9.0	1992
West Los Angeles, CA	25.0	1992
Design Drafting Services:		
West Los Angeles, CA	6.0	1992
VA Supply Depots		
Warehouse Services		
Hines, IL	Re-study	1994
Somerville, NJ	Re-study	1994
Bell, CA	Re-study	1994

Dated: August 14, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

[FR Doc. 92-20055 Filed 8-20-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 163
Friday, August 21, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:34 a.m. on Tuesday, August 18, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to probable failure of a certain insurance bank.

Recommendations concerning administrative enforcement proceedings.

Request for exemption from the cross-guaranty provisions of the Federal Deposit Insurance Act and issuance of notice of assessment of liability pursuant to those provisions.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), and concurred in by Director Stephen R. Steinbrink (Acting Comptroller of the Currency) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: August 18, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–20142 Filed 8–19–92; 3:16 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., August 26, 1992.

PLACE: 9th Floor Conference Room, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573–0001.

STATUS: Closed.

MATTER(S) TO BE CONSIDERED:

1. Agreement No 202–011375: Trans-Atlantic Agreement.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Josehp C. Polking,

Secretary.

[FR Doc. 92–20192 Filed 8–19–92; 3:18 pm]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, September 16, 1992.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

STATUS: OPEN.

MATTER TO BE CONSIDERED:

Consideration of possible amendments to the Mail-Order Merchandise TRR.

CONTACT PERSON FOR MORE INFORMATION: Bonnie Jansen, Office of Public Affairs: (202) 326–2178, Recorded Message: (202) 326–2711.

Donald S. Clark,

Secretary.

[FR Doc. 92–20200 Filed 8–19–92; 3:19 pm]

BILLING CODE 6750–01–M

Corrections

Federal Register
Vol. 57, No. 163
Friday, August 21, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–433–804, et al.]

Initiation of Countervailing Duty Investigations and Postponement of Preliminary Determinations: Certain Steel Products From Austria, Belgium, Brazil, France, Germany, Italy, Korea, Mexico, New Zealand, Spain, Sweden, Taiwan, and the United Kingdom

Correction

In notice document 92–17567 beginning on page 32970 in the issue of Friday, July 24, 1992, make the following corrections:

1. On page 32973, in the first column, in the last full paragraph, in the next to last line, after "7211.90.0000" insert "7212.40.1000".

2. On the same page, in the second column, in the last paragraph, in the fourth line from the end, after "7210.70.3000" insert "7210.90.9000".

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER92–720–000, et al.]

Century Power Corp., et al. Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 92–17701 beginning on page 33335 in the issue of Tuesday, July 28, 1992, in the second column, under 4. Wisconsin Electric Power Co. "[Docket No. ER92–72–000]" should read "[Docket No. ER92–722–000]".

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 131

[Docket No. 91P–0090/CP]

Evaporated Milk; Proposed Amendment of the Standard of Identity

Correction

1. In proposed rule document 92–17182 beginning on page 32470 in the issue of Wednesday, July 22, 1992, make the following corrections:

2. On page 32471, in the first column, in the fourteenth line, "or" should read "so".

3. On the same page, in the same column, in the first full paragraph, in the first line, "ADPT" should read "ADBI".

4. On page 32472, in the first column, in the first full paragraph, in the twelfth line, "in" should read "is".

5. On the same page, in the same column, in the same paragraph, in the thirteenth line, "identify" should read "identity".

6. On the same page, in the same column, in the second full paragraph, in the second line, insert "be" after "not".

7. On the same page, in the same column, in the same paragraph, in the fifth line, "identify" should read "identity".

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–02–4212–14;AZA 25294]

Arizona: La Paz County Realty Action for the Noncompetitive Sale of Public Lands

Correction

In notice document 92–18205 appearing on page 34142, in the issue of Monday, August 3, 1992, make the following correction:

In the second column, under **DATES**, in the last line "April 30, 1992," should read "April 30, 1993,".

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AF84

Direct Service Connection (Post-Traumatic Stress Disorder)

Correction

In proposed rule document 92–18503 beginning on page 34536 in the issue of Wednesday, August 5, 1992, make the following correction:

§ 3.304 [Corrected]

On page 34537, in the first column, in § 3.304(f), in the fourth line, "eperienced" should read "experience".

BILLING CODE 1505–01–D

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Part II

Department of Education

Intent To Repay to the Louisiana State Department of Education Funds Recovered as a Result of a Final Audit Determination; Notice

DEPARTMENT OF EDUCATION

Intent To Repay to the Louisiana State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Notice of intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), 20 U.S.C. 1234e (1982), the Secretary of Education intends to repay to the Louisiana State Department of Education, State Educational Agency (SEA), an amount equal to 75 percent of the principal amount of funds recovered by the U.S. Department of Education as a result of a final audit determination. This notice describes the SEA's plan for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATES: All comments must be received on or before September 21, 1992.

ADDRESSES: Comments concerning the grantback should be addressed to William D. Tyrrell, Sr., U.S. Department of Education, 400 Maryland Avenue SW., room 3611, Switzer Building, Washington, DC 20202-6132

FOR FURTHER INFORMATION CONTACT: William D. Tyrrell, Sr. Telephone: (202) 205-8825. Individuals who are hearing impaired may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC, 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered $756,605 from the SEA for claims arising from the audit conducted by the Region VI Office of Inspector General covering fiscal years 1982 through 1985.

The claims involved the SEA's administration of the Assistance to States for Education of Children with Disabilities program, authorized under Part B of the Individuals with Disabilities Education Act, a program that addresses the special education needs of children with disabilities aged 3 through 21 in local educational agencies (LEA).

The August 11, 1987, final audit determination of the Assistant Secretary for Special Education and Rehabilitative Services found that the SEA was required to refund $912,678 to the Department because it did not use program funds appropriately during fiscal years 1982 through 1985. In particular, the SEA failed to design programs to benefit children with disabilities exclusively, used support service funds to fund a position that was not related to the needs of these children, displaced local funds, and failed to maintain appropriate records while funding projects that were not designed to meet the priority needs of children with disabilities. The SEA appealed the determination of the Assistant Secretary to the Education Appeal Board (EAB). On March 10, 1988, the U.S. Department of Education reduced the original claim by $156,073 to $756,605 after a determination was made that insufficient evidence was available to justify the disallowances in two specific areas of the audit. The EAB issued its decision in the matter on August 8, 1988, sustaining the determination of the Assistant Secretary and affirming the claim for return of $756,605 from the SEA. This decision became the final agency action of the U.S. Department of Education on October 18, 1988. The SEA appealed to the U.S. Court of Appeals for the Fifth Circuit. The Court of Appeals decided the case on August 8, 1989, in favor of the U.S. Department of Education. *Louisiana State Board of Elementary and Secondary Education* v. *U.S. Department of Education*, No. 88-4802 (5th Cir. 1989). The SEA has submitted payment of the amount in full settlement of all claims arising from the audit.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(a) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(b) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(c) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback totaling $567,454, which is 75 percent of the principal amount of the recovered funds, and has submitted a plan for use of the grantback funds to meet the special education needs of children with disabilities. The State's plan is to purchase the technological resources to facilitate Louisiana's five-year plan to improve integrated educational services for students with disabilities. The purpose of the five-year plan is to—

(a) Provide increased integrated educational opportunities for students with low incidence and severe disabilities;

(b) Provide increased regular education opportunities for students with mild disabilities; and

(c) Increase and improve transition services.

The grantback funds will be used for—

(a) Completing a project, already underway, to provide assistive devices to children with low-incidence and severe disabilities who need equipment or materials, or both, to increase their ability to communicate and access additional educational opportunities in integrated settings;

(b) Providing technological and curriculum materials for students with mild and moderate disabilities to improve their ability to communicate and participate in additional educational opportunities in regular education settings; and

(c) Providing the technological equipment needed for training in the area of transition services. The purchase of the equipment and materials included in the grantback request will follow all State bid laws and requirements.

The SEA has established a series of Learning Resource Centers (LRCs) that provide materials and equipment to local parishes on a loan basis. These already established centers will be used to house and distribute the curriculum and materials which are reflected in the grantback budget. These technological resources, when used, will improve integrated educational services for students with disabilities. These technological resources will enhance transition services and increase the

educational opportunities for integrated education for children with disabilities.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under section 456(a) of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456(a) of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent to Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the **Federal Register** a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Louisiana SEA under a grantback arrangement. The grantback award would be in the amount of $567,454, which is 75 percent—the maximum percentage authorized by statute—of the principal amount recovered as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(a) The funds awarded under the grantback must be spent in accordance with—

(1) All applicable statutory and regulatory requirements;

(2) The plan that the SEA submitted and any amendments to the plan that are approved in advance by the Secretary; and

(3) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(b) All funds received under the grantback arrangement must be obligated by September 30, 1992, in accordance with section 456(c) of GEPA.

(c) The SEA will, not later than January 1, 1993, submit a report to the Secretary that—

(1) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and any amendments that have been approved in advance by the Secretary; and

(2) Describes the results and effectiveness of the project for which the funds were spent.

(d) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(e) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department any debts that become overdue, or enter into a repayment agreement for those debts.

Dated: August 17, 1992.

(Catalog of Federal Domestic Assistance Number 84.027, Handicapped State Grants)

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-19972 Filed 8-20-92; 8:45 am]

BILLING CODE 4000-01-M

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Part III

Environmental Protection Agency

40 CFR Parts 156 and 170

Worker Protection Standard, Hazard Information, Hand Labor Tasks on Cut Flowers and Ferns Exception; Final Rule, and Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 156 and 170

[OPP-300164A; FRL-3774-6]

RIN 2070-AA49

Worker Protection Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing final revisions to its regulations governing the protection of workers from agricultural pesticides. These revised regulations expand the scope of the standard to include not only workers performing hand labor operations in fields treated with pesticides, but employees in forests, nurseries, and greenhouses, and employees who handle (mix, load, apply, etc.) pesticides for use in these locations. The regulations expand requirements for warnings about applications, use of personal protective equipment, and restrictions on entry to treated areas, and add new provisions for decontamination, emergency assistance, contact with handlers of highly toxic pesticides, and pesticide safety training. Pesticide registrants are required to add appropriate labeling statements referencing these regulations and specifying application restrictions, restricted-entry intervals (REIs), personal protective equipment (PPE), and notification to workers of pesticide applications. EPA has determined that its present regulations are inadequate to protect agricultural workers and pesticide handlers who are occupationally exposed to pesticides. The revised regulations are intended to reduce the risk of pesticide poisonings and injuries among agricultural workers and pesticide handlers through implementation of appropriate exposure reduction measures.

EFFECTIVE DATE: This rule will become effective October 20, 1992.

ADDRESSES: Comments should be submitted in triplicate and addressed to the Document Control Officer (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All comments should bear the document control number OPP-300164A and will be available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, at the Office of Pesticides Program's Document Control Office, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: By mail: James J. Boland, Acting Chief, Occupational Safety Branch (H7506C), Field Operations Division, Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and room number: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7666.

SUPPLEMENTARY INFORMATION: This **Federal Register** notice discusses the background and events leading to this final rule revising the Worker Protection Standard; summarizes the public's comments on the provisions of the proposed rule (53 FR 25970, July 8, 1988); provides EPA's response to comments and final determination with respect to provisions of the revised standard; discusses implementation of the revised standard by registrants, the Agency, the States, and pesticide users; and provides information on the applicable statutory and regulatory review requirements. More detailed discussion of the public comments and the Agency's response are found in the Response to Public Comments in the docket. The Agency is interested in receiving additional comments, data, and other evidence concerning both the general prohibition of routine hand labor tasks during a restricted-entry interval and the mechanism for granting exceptions to that prohibition. Written comments, data, or other evidence concerning these topics should be submitted on or before October 20, 1992. Upon review of these comments, EPA may modify this final rule's restrictions upon entering an area that remains under a restricted-entry interval or the process by which the exception requests are considered. As an aid to the reader, the following is an outline of the contents of this document:

I. Background
A. Legal Authority
B. History of the Worker Protection Standard
II. Organization and Summary of the Final Rule
A. Organization of the Final Rule
B. Summary of the Worker Protection Standard
C. Summary of Risk-Benefit Analysis
D. Minor Crop Statement
E. Compliance Dates
III. Provisions of the Final Rule
A. Restrictions Associated with Applications
B. Entry Restrictions
C. Notice of Applications
D. Personal Protective Equipment (PPE)
E. Decontamination
F. Emergency Assistance
G. Pesticide Safety Training and Information
H. Knowledge of Labeling Information
I. Other
IV. Labeling Statements
A. Background of Proposal
B. Reference Statement
C. Other Statements
V. Statutory Re
A. U.S. Department of Agriculture
B. Congressional Committees
C. FIFRA Scientific Advisory Panel
VI. Implementation
A. Agency Implementation Strategy
B. Registrant Compliance
C. EPA Communication and Training Efforts
D. National Compliance Monitoring Strategy
VII. Public Docket
VIII. Regulatory Requirements
A. Executive Order 12291
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Background

A. Legal Authority

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 135) was enacted in 1947. Since then, pesticide products have been subject to Federal regulation under FIFRA. Today, they are required to be registered with EPA.

In 1972, FIFRA was amended by the Federal Environmental Pesticide Control Act (7 U.S.C. 136). The amendments broadened Federal pesticide regulatory authority by making it "unlawful for any person to use any registered pesticide in a manner inconsistent with its labeling" (7 U.S.C. section 136j(a)(2)(G)), and they provided civil and criminal penalties for violations of FIFRA (7 U.S.C. 136l). The amendments also authorized EPA to provide regulations to carry out FIFRA (7 U.S.C. 136w(a)). These new or revised provisions augmented EPA's authority to protect humans and the environment from unreasonable adverse effects of pesticides.

During the congressional consideration of FIFRA amendments in 1972, it was emphasized that FIFRA was to be implemented by EPA to protect employees who might be exposed to pesticides or their residues. The legislative history of the 1972 amendments indicates an express intent of Congress that farmers, farmworkers, and others be afforded such protection under FIFRA. The Senate Committee on Agriculture and Forestry rejected the need to include a specific provision in FIFRA to protect farmworkers. However, the Committee found "protection of man and the environment" to be a broad term encompassing farmers, farmworkers, and others who come into contact with pesticides, and stated that:

> The Committee believes there can be no question. . .but. . .that the bill [The Federal Environmental Pesticide Control Act of 1972 (FEPCA)] requires the Administrator to require that the labeling and classification of pesticides be such as to protect farmers, farm workers, and others coming in contact with pesticides or pesticide residues. (S. Rep. No. 92-883, (Part II), 92nd Congress, 2nd Session at 43-46 (1972) (Agriculture and Forestry), U.S. Code Congressional and Administrative News 1972, p. 4063).

B. History of the Worker Protection Standard

In 1974, EPA promulgated the regulations found at 40 CFR part 170 pursuant to its authority under FIFRA (39 FR 16888; May 10, 1974). That part, entitled "Worker Protection Standards for Agricultural Pesticides," dealt only with the pesticide-related occupational safety and health of "farm workers performing hand labor operations in fields after ground (other than those incorporated into the soil), aerial, or other type of application of pesticides" (40 CFR 170.1). Part 170 consisted of four basic requirements: (1) A prohibition against spraying workers and other persons; (2) a general reentry interval for all agricultural pesticides prohibiting reentry into treated fields until the sprays had dried or dusts had settled and longer reentry intervals for 12 specific pesticides; (3) a requirement for protective clothing for any worker who had to reenter treated fields before the specific reentry period had expired; and (4) a requirement for "appropriate and timely" warnings. Soil-incorporated pesticides, mosquito abatement treatments and related public pest control programs, greenhouse treatments, livestock and other animal treatments, and treatments of golf courses and similar nonagricultural areas were exempted from coverage.

EPA's authority to promulgate such requirements, including reentry interval standards designed to limit workers' occupational exposure to pesticides and pesticide residues (such as those in part 170) is established, not only in the legislative history but in the courts. See, e.g., *Organized Migrants in Community Action v. Brennan (OMICA)* 520 F.2d 1161 (D.C. Cir. 1975) and *Public Citizen Health Research Group, et al. v. Auchter* 702 F.2d 1150 (D.C. Cir. 1983).

> In OMICA the Court of Appeals stated: Our own analysis of the statute [FIFRA] and its legislative history confirms EPA's ample statutory authority to issue field reentry standards to protect farm workers. (520 F.2d at 1165) . . . Even before FEPCA's enactment, EPA and predecessor agencies construed the labeling provisions of FIFRA to require field reentry limitations for many pesticides. See 39 Fed. Reg. 16888 (1974). However, these were merely informational until FEPCA made them enforceable. See id. at 16889. It is clear from an examination of the explanatory statement accompanying EPA's proposed and final rules that these standards (part 170) were promulgated and implemented under the labeling authority given EPA by FEPCA. (520 F.2d at 1168).

In June 1980, EPA announced a Label Improvement Program (LIP) under which labels of pesticide products are upgraded, improved, or revised to meet current labeling standards. On March 29, 1983, EPA issued a Farm Worker Safety LIP (PR Notice 83-2) calling for certain information to be placed on labels of "all outdoor agricultural use products which are applied to crops whose culture requires hand labor." In effect, PR 83-2 implemented 40 CFR part 170, promulgated 9 years before. PR 83-2 did not include mixing, loading, flagging, or equipment operation because part 170 was limited to farmworkers engaged in hand labor. Greenhouse treatments and forestry uses were excluded for the same reason. PR 83-2 defined the term "hand labor tasks" to mean crop production activities such as harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, summer pruning, moving irrigation equipment, and other tasks performed in the field by farmworkers who could have substantial contact with pesticide-treated surfaces such as plants and plant parts.

An Agency review of 40 CFR part 170, conducted in 1983, concluded that the regulations were inadequate to protect agricultural workers. The review revealed concerns about enforceability and coverage and cited continuing reports of worker poisonings. In 1984, EPA published an Advance Notice of Proposed Rulemaking that announced its decision to revise part 170 and solicited public comment (49 FR 32605; August 15, 1984). Most comments favored revising part 170, but they expressed wide differences in opinion about the revisions needed.

EPA subsequently initiated a process of public participation known as regulatory negotiation. An Advisory Committee consisting of 25 representatives of farmworker unions, health care providers, agricultural trade associations, commercial pesticide applicators, pesticide registrants, State health and agriculture agencies, EPA, and other Federal agencies was constituted under the Federal Advisory Committee Act (Pub. L. 92-463). Negotiations began in November 1985. In early 1986, after several meetings, the representatives of the farmworker unions ended their participation. As a result, regulatory negotiation consensus was not possible.

EPA issued a notice of proposed rulemaking (NPRM) in the July 8, 1988, **Federal Register**. The proposed revisions expanded the scope of part 170 to include all employees performing tasks related to the production of agricultural plants on farms, in forests, nurseries, and greenhouses, and handlers of pesticides intended for use on agricultural plants in these locations. The NPRM also expanded requirements for notification to workers about applications, use of personal protective equipment (PPE), and restrictions on entry to treated areas, and proposed to add new provisions for decontamination, emergency medical assistance, maintaining contact with handlers of highly toxic pesticides, cholinesterase monitoring, and training. EPA also proposed to promulgate labeling regulations to require statements pertaining to general worker protection, entry intervals, personal protective equipment, and posting of treated areas.

The proposed revisions were based on five major concerns. First, the Agency believed that data developed after 1974 on pesticide poisonings of workers revealed the inadequacies and shortcomings in the scope and requirements of part 170. Many of these data were placed into the record by EPA and other parties to this rulemaking. Second, the Agency stated that the enforcement experiences of EPA and the States over the years had led the Agency to conclude that a clearer exposition of liability and responsibility provisions would lead to improved worker protection. Third, the Agency had determined that since the reregistration program would not be completed for some pesticides for several years, measures were necessary to protect workers in the interim. Fourth, because EPA believed that protection should be provided to other workers, it proposed expanding coverage to workers not covered by the present part 170. Finally, the Agency noted the increased use of organophosphate and carbamate pesticides since 1974. These pesticides tend to be more acutely toxic to humans than pesticides commonly used in agriculture in the past.

During July and August of 1988, EPA held more than 15 public meetings, mostly in agricultural areas of the country, to explain the proposed rules and to answer questions (see 53 FR 25970; July 8, 1988). The major meetings were held in: Washington, DC; Casa Grande, AZ; Fresno, CA; Greeley, CO; Orlando, FL; Forest Park, GA; Caldwell, ID; Des Moines, IA; Augusta, ME; Hagerstown, MD; Salisbury, MD; Holyoke, MA; New Paltz, NY; Maumee, OH; McAllen, TX; and Yakima, WA.

In response to the notice of proposed rulemaking, the Agency received 380 comments totaling more than 2,000 pages.

After a careful review and analysis of the comments and data in the record, the Agency is promulgating this final rule revising 40 CFR part 170 (Worker Protection Standard) and adding part 156, subpart K (Labeling Requirements for Pesticides and Devices).

II. Organization and Summary of the Final Rule

A. Organization of the Final Rule

Many comments stressed that the proposal was confusing. EPA believes that some of the confusion stemmed from the format of the proposed revisions. The proposed revisions included requirements for workers at four different use sites and addressed many differing activities including hand-labor activities, non-hand-labor activities, early-entry activities, and handling activities.

EPA has changed the format of the final rule. The revisions to part 170 are now in the form of two separate, more self-contained standards—one for pesticide handlers and one for workers on all covered sites: Farms, forests, greenhouses, and nurseries. This organization will reduce confusion and will make it easier for employers and their employees to understand the requirements, to comply with the provisions, and to propose amendments if data so warrant in the future.

B. Summary of the Worker Protection Standard

The provisions in the revised Worker Protection Standard are directed toward the working conditions of two types of employees: those who handle agricultural pesticides (mix, load, apply, clean or repair equipment, act as flaggers, etc.) and those who perform tasks related to the cultivation and harvesting of plants on farms or in greenhouses, nurseries, or forests. There are three types of provisions intended to: (1) Eliminate or reduce exposure to pesticides; (2) mitigate exposures that occur; and (3) inform employees about the hazards of pesticides. A summary of these provisions is given here. Discussions of these provisions and summaries of the public's comments on these provisions are contained in Unit III of this preamble. More detailed discussion of the public's comments can be found in a document entitled "Summary of the Public Comments and the Agency's Response, Worker Protection Standard" in the docket.

1. *Provisions to eliminate or reduce pesticide exposures.* Exposure to pesticides can be reduced by excluding workers from areas treated with pesticides, prohibiting handlers from applying a pesticide in a way that will expose workers or other persons, and protecting handlers during handling activities. Hence, the final rule contains several provisions to achieve this purpose such as application restrictions, entry restrictions, use of personal protective equipment, and notification to workers of treated areas so they can avoid inadvertent exposures.

a. *Application restrictions.* Three types of restrictions apply during applications:

i. No pesticide may be applied in a manner that will cause it to contact any person except an appropriately trained and equipped handler.

ii. No person, except an appropriately trained and equipped handler, may be in an area or, in some cases, near an area being treated with pesticides.

iii. The employer must make sure that any handler who is handling a pesticide with a skull and crossbones symbol on the label is monitored visually or by voice at least every 2 hours. Handlers using fumigants in greenhouses must be in continuous visual or voice contact with another handler.

b. *Use of personal protective equipment (PPE).* Additional provisions to minimize exposure are directed toward the use of PPE. The appropriate PPE based on the product's acute toxicity by route of exposure (dermal, ocular, or respiratory) will be specified in the product labeling for the work activity (handling or early entry).

i. Persons handling the pesticide must wear the PPE specified for handlers on the labeling of the pesticide being used.

ii. Persons entering a treated area before the expiration of a restricted-entry interval (REI) who will contact anything that has been treated must wear PPE specified in the labeling for early entry.

iii. When PPE is required by the product labeling for the activity to be performed, the employer must: (1) Provide the PPE to each worker or pesticide handler; (2) clean and maintain the PPE correctly; (3) make sure that each handler or worker wears and uses the PPE correctly; (4) prevent workers or handlers from wearing home or taking home contaminated PPE; and (5) take action to prevent heat stress, if the work and the PPE might cause heat stress.

c. *Entry restrictions.* Access to pesticide-treated areas is limited after an application while the pesticide may still present a hazard. EPA's current practice is to set entry intervals (REIs) based on data collected and evaluated for this purpose, but many older pesticides in agricultural use today may not have been evaluated for entry hazards. The collection and evaluation of such data may take several years. The final rule establishes REIs for all pesticide products which are used in the production of agricultural plants and for which REIs have not been set according to current standards. Previously established entry intervals will be retained if they are based on entry data that meet Agency guidelines. Any other previously established entry interval is considered to be "interim" and will be retained only if it is longer than the REI established by part 170.

In general, a 48–hour REI is established for any product containing an active ingredient that is in toxicity category I (most acutely toxic category) because of dermal toxicity or skin or eye irritation. The REI is extended to 72 hours in arid areas if any such active ingredient is an organophosphate and the product is applied outdoors. A 24–hour REI is established for any product containing an active ingredient that is in toxicity category II (moderately toxic) because of dermal toxicity or skin or eye irritation. A 12–hour interval is established for all other products.

Workers are restricted from entering a pesticide-treated area for the REI specified on the product labeling. With narrow exceptions, the time a worker may be in areas under an REI is limited and other safety measures are required. The activities that may take place in an area under an REI are limited to tasks that do not require contact with treated surfaces, short-term tasks that do not require hand labor and tasks that may be necessary in an emergency to save a crop. In addition, affected persons or organizations may request that the Agency grant case-by-case exceptions to the entry restrictions if they believe their industries, crops, or crop practices would bear an unreasonable economic burden under such restrictions.

d. *Notification of applications.* To help workers avoid inadvertent exposures to pesticide-treated areas, the Agency is requiring employers to inform workers of where pesticides have been applied on the agricultural establishment. This notification may take one or more forms:

i. All agricultural employees who may come near a treated area must be notified, either orally or by posting treated areas with warning signs, of pesticide applications and areas under an REI on agricultural establishments.

ii. For selected pesticide products for which inadvertent early entry could be especially hazardous, treated areas must be posted with warning signs, and oral warnings must be given to workers.

iii. For outdoor uses, there are no notification requirements if workers will not be within 1/4 mile of the treated area during the application or before the expiration of the REI.

iv. Treated areas must be posted for all pesticide applications in greenhouses if workers will be in the greenhouse during the application or before the expiration of the REI.

2. *Provisions to mitigate exposure —* a. *Decontamination.* Employees handling pesticides must be provided an ample supply of water for washing splashed or spilled pesticides off themselves and for washing after the pesticide-handling activity is complete.

Workers entering treated areas where, within the last 30 days, a pesticide has been applied or an REI has been in effect, must be provided facilities for washing.

b. *Emergency assistance.* Although the Agency believes the precautions such as observing application restrictions and entry restrictions, using PPE, and notifying workers of applications will decrease the frequency of acute pesticide poisoning or injury incidents, medical emergencies involving agricultural workers and handlers may still arise. In such cases, prompt medical treatment is necessary to mitigate the extent of the injury or poisoning. Hence, the rule contains several duties related to emergency care:

i. The name and location of the nearest medical facility must be posted at a central location.

ii. If an agricultural worker or handler may have been poisoned or injured by a pesticide, the employer must make available transportation to a medical care facility.

iii. The employer must provide to the employee, or to medical personnel treating the employee, information about the pesticide(s) to which the worker or handler may have been exposed.

3. *Provisions to inform employees about pesticide hazards.* Since training and information are essential components of a successful occupational risk-reduction strategy, the final rule contains several requirements relating to providing pesticide safety training and information to employees. These are requirements for: (1) Pesticide safety training for all workers and handlers, (2) use of a pesticide safety poster, (3) access to labeling information, and (4) access to information about what pesticides have been used on the establishment.

a. *Training.* All agricultural workers must have basic pesticide safety training. All handlers must have basic pesticide safety training, training on the handling of pesticides, and training on the use of PPE.

A poster summarizing the elements of basic pesticide safety must be posted at a central location on the agricultural establishment to reinforce the safety training.

b. *Access to product-specific information.* Pesticide handlers must have knowledge of and access to the information on the labeling of the product they are using; early-entry workers must have knowledge of the information on the labeling. Employees must have access for 30 days after the application and any REI to a centrally located listing of information about any product used on any area on the establishment.

C. Summary of Risk-Benefit Analysis

EPA estimates that at least tens of thousands of acute illnesses and injuries and a less certain number of delayed onset illnesses occur annually to agricultural employees as the result of occupational exposures to pesticides used in the production of agricultural plants. These injuries and illnesses continue to occur despite the protections offered by the existing part 170 and by product-specific regulation of pesticides. Therefore, the Agency has determined that occupational exposures of agricultural employees to pesticides and pesticide residues continue to cause adverse effects in a broad range of agricultural sectors and that it needs to provide additional regulatory protection for such workers.

EPA could, as an alternative to issuing the pesticide product-specific aspects of this regulation, delay action until the development of additional product-specific data and analyses permit a product-specific solution. These data and analyses, in large part, will be generated through the ongoing reregistration process, but, under the present conditions, will not be completed until the year 2002 at the earliest.

EPA has chosen to issue a rule at this time, because EPA cannot, through a product-by-product review, quickly or adequately reduce the incidence of pesticide-related injuries and illnesses. The Agency's workload precludes rapid reevaluation of large numbers of products, even if the needed data were available now. Moreover, many of the protections of this rule are not product-specific. Instead, they establish general protections, such as training, notification, and decontamination, that are also vital in protecting agricultural employees from risks associated with pesticide use.

The Agency believes that this rule will reduce substantially the current illness and injury incidents at modest cost to agricultural employers, pesticide handler employers, and registrants. The rule requires: (1) Restrictions on entry by agricultural employees into pesticide-treated areas for, depending on pesticide toxicity, 12 to 48 hours (72 hours in certain limited circumstances) after application, (2) the use of PPE for persons handling agricultural pesticides and for persons who must enter pesticide-treated areas before the expiration of the REI, (3) training for agricultural employees about hazards from exposures to pesticides, (4) that information be provided to pesticide handlers and early-entry workers, and be available to other agricultural employees, about the specific pesticides to which they will be exposed, (5) that water, soap, and towels be made available to agricultural employees to enable them to wash off pesticides and pesticide residues routinely and after emergency exposures, (6) that emergency assistance be made available to agricultural employees if a pesticide-related illness or injury occurs or is suspected, (7) that agricultural employees, other than pesticide handlers, be prohibited in areas being treated with pesticides, and (8) that agricultural employees be notified of areas that are being treated or that remain under an REI through oral warnings or through warning signs posted at the treated area, or, in the case of some particularly hazardous pesticides, through both oral and posted warnings.

EPA, drawing on its expertise in regulating pesticides, has determined that these simple measures are likely to reduce substantially the number of pesticide-related illnesses and injuries to agricultural employees. Both the frequency of illness and injury incidents under existing conditions and the expected reduction in the number and severity of these incidents due to promulgation of this rule are difficult to quantify. However, the Agency believes that the reductions will be significant. In its Regulatory Impact Analysis (RIA), EPA has calculated an incremental first year compliance cost of $94.3 million for this rule and an annual incremental compliance cost of $49.4 million in subsequent years. The continuing annual incremental cost of this rule represents only one tenth of one percent

of the total 1987 value of production for all agricultural sectors subject to this final rule. Assuming that the majority of the current acute illness and injury incidents in agricultural employees caused by occupational exposures to pesticides are prevented through compliance with this new rule, there will be significant benefits to agricultural workers and pesticide handlers at a modest cost. Furthermore, the Agency is convinced that a substantial number of additional incidents caused by delayed-onset illnesses can be prevented through compliance with this new rule. Such expected avoidance of delayed-onset illnesses in workers and handlers would also reduce the costs attributable to acute incidents avoided.

The Agency believes that, due to this new agricultural worker protection rule, the benefits in decreasing the number and severity of pesticide-related illnesses and injuries to agricultural employees exceed the costs of the rule to agricultural employers, pesticide handler employers, and registrants. Therefore, EPA hereby promulgates this rule in the conviction that this mechanism is the best means of reducing the unreasonable adverse effects from pesticide-related illnesses and injuries to agricultural employees in the near term.

Some persons who commented on the proposed worker protection rule questioned the necessity for the rule in specific sectors of agriculture and requested exemptions for those sectors. However, EPA believes that the record of illness and injury incidents resulting from occupational exposures of agricultural employees to pesticides used in the production of agricultural plants and the undisputed inherent acute and delayed-onset toxicity of those agricultural pesticides supports the Agency's conclusion that such agricultural employees are subject to unreasonable adverse effects from pesticide use across the broad range of agricultural sectors covered by this final rule. Furthermore, no persuasive evidence has been brought to the Agency's attention which demonstrates that any individual sector of agriculture is not subject to unreasonable risks of employee illness and injury. EPA is not persuaded to delay promulgation of this rule until data and analyses specific to each agricultural sector and to each pesticide are generated.

Under FIFRA, EPA is authorized to promulgate regulations to mitigate unreasonable adverse effects that may result from exposures to pesticides. The Occupational Safety and Health Act (OSH Act) is similar in that the Occupational Safety and Health Administration (OSHA) is granted authority to promulgate regulations to mitigate "a significant risk." A recent court decision that upheld the issuance of OSHA's hazard communication rule (29 CFR 1910.1200) was based solely on a finding of generalized risk; the United States Court of Appeals for the Third Circuit stated:

> This rulemaking proceeding produced a performance-oriented information disclosure standard covering thousands of chemical substances used in numerous industries. For such a standard the significant risk requirement must of necessity be satisfied by a general finding concerning all potentially covered industries. A requirement that the Secretary assess risk to workers and need for disclosure with respect to each substance in each industry would effectively cripple OSHA's performance of the duty imposed on it . . . to protect all employees to the maximum extent feasible . . . [Associated Builders and Contractors, Inc. v. Brock, 862 F.2d 63 at 68 (3d Cir. 1988)].

For the same reasons, EPA is convinced that it is not required to make a detailed risk finding with regard to every pesticide product or to every sector of agriculture before taking action to protect all agricultural employees.

D. Minor Crop Statement

According to the Council for Agricultural Science and Technology's June 1982 report, *PESTICIDES, Minor Uses/Major Issues:*

> Vegetables, fruits, nuts, herbs, ornamentals, trees, and turfgrass are often referred to as minor crops because the acreage and volume of production of any one of the many crops in these groups are much below that of corn, soybean, wheat, or any of the other major field crops. Minor crops, as well as major crops, must be protected from insects, weeds, and diseases so as to be economically produced. Specialized pest control needs also exist for major crops in certain situations. Pesticides developed for use on minor crops and to meet the specialized needs for major crops are referred to as minor use pesticides.

The minor use crops are the ones this Worker Protection Standard will impact the most. Much of agricultural labor is used on minor crops, and it is in the production of these crops where the greatest chance of pesticide exposure to agricultural workers occurs.

E. Compliance Dates

To ensure that pesticide product labeling bearing requirements of the new standard does not find its way to users before information on compliance can be disseminated, the new labeling may not be used until April 21, 1993. At that time, specified selected provisions of the regulation will become enforceable to support new instructions to users on the labeling. After April 21, 1994, all agricultural pesticide products sold or distributed by registrants must bear the new labeling. After April 15, 1994, all provisions of the regulations are enforceable when pesticides with the revised labeling are used. After October 23, 1995, all agricultural pesticide products sold or distributed by anyone must bear the new labeling.

III. Provisions of the Final Rule

A. Restrictions Associated With Applications

Present part 170 prohibits the application of any pesticide in a way that directly or through drift will contact workers or other persons who are not involved in the pesticide application. It also requires unprotected persons to vacate the area. The Agency proposed to continue this provision with some changes.

1. *General restriction.* The NPRM proposed changes to the existing general prohibition: "No owner or lessee shall permit the application of a pesticide in such a manner as to directly or through drift expose workers or other persons except those knowingly involved in the application. The area must be vacated by unprotected persons." The Agency proposed to substitute the word "contact" for the less precise term "expose" and to clarify the requirement that unprotected workers must vacate the treated area during application by modifying the language to: "No worker shall be allowed or directed to enter or remain in an area during the application of any pesticide to the area, unless the worker is a handler involved in the application of the pesticide." Since these regulations apply only to workers, all references to "other persons" were deleted in the proposal.

There were few comments on these application restrictions. One comment stated that workers should be permitted to remain in the treated area during application under some conditions. For example, planting crews may need to be in a field with the planter during an application of a granular pesticide; field crews may need to be in the same field but may be distant from the area under treatment; and workers should be able to remain in a treated area if they are upwind from the treatment or if an "adequate barrier" or buffer zone separates them from the application. Some comments expressed concern for protecting the public from agricultural pesticide uses such as in retail greenhouses, at "you-pick" farms, in parks and recreational areas, along roads and rights-of-way, and in schools.

In the final rule, the language from the NPRM has been modified. Section 170.110 states that "during the application of any pesticide . . . the agricultural employer shall not allow or direct any person . . . to enter or to remain in the treated area." The exception found in the proposal for a "worker [who] is a handler involved in the application" has been changed to an exception for "an appropriately trained and equipped handler." These changes were made to make it clear that only handlers trained and equipped as required by this rule can be in an area during application. Other workers, even if protected, are not permitted to be in the area.

The Agency has been persuaded by the comments to reinsert the clause "and other persons" into the section prohibiting application in a way that will contact workers (§ 170.210). Pesticide applicators must refrain from applying pesticides in areas where any person is likely to be touched by the chemical—either directly or from the drift or fallout of the application. This responsibility is irrespective of the relationship of the handler to the person in or near the treated area. This provision is intended to protect workers or other persons on agricultural establishments in or near the treated area even if those persons have no reason or privilege to be in that location. The prohibition is consistent with present part 170, which declares that applying pesticides directly on anyone, whether a worker or any other person, is a misuse and is subject to penalty.

2. *Application restrictions in nurseries and greenhouses.* EPA proposed more stringent application restrictions for nurseries and greenhouses than the general application restriction in present part 170 or those proposed for farms and forests. In greenhouses and nurseries, production areas are often close together. Plants requiring differing pesticide treatments and hand labor schedules may occupy the same bench or bed. In the NPRM, the application restrictions were discussed under the heading of reentry restrictions, but several comments requested clarification of the proposed language. Therefore, in the final rule, EPA is separating the requirements into two parts, restrictions associated with applications and post-application entry restrictions.

In greenhouses, employees often do diverse tasks, including the application of pesticides, close to other activities. EPA recognized that exposure could occur to workers in areas adjacent to the treated area during some pesticide applications and with some pesticide formulations.

The Agency proposed specific requirements for four different types of applications in greenhouses:

a. The entire enclosed area of the greenhouse must be vacated during the application of a pesticide applied as a fumigant, smoke, mist, aerosol, or fog, or whose label requires a respiratory protection device for applicators.

b. The pesticide-treated area plus 25 feet in all directions must be vacated for any application other than those in paragraph (a) above if there is no ventilation in the enclosed area during the application and the pesticide is applied from a height of more than 12 inches from the planting medium, or is applied using fine spray droplets or a spray pressure greater than 40 psi.

c. The entire enclosed treated area in the greenhouse must be vacated during application if ventilation occurs in the enclosed treated area during the types of application described in paragraph (b) above.

d. Only the pesticide-treated area must be vacated during application of pesticides applied from a height of 12 inches or less and applied as a dry formulation, or applied using coarse spray droplets and spray pressure less than 40 psi.

Nursery exposure situations are similar to those in greenhouses, except that nurseries: (1) Have lower inhalation hazards, because they are not enclosed structures, (2) do not have ventilation systems that can be turned on and off at will, but are constrained by the direction and speed of the wind, and (3) sometimes use aerial applications, upward-directed, and very high pressure (greater than 150 psi) sprays. The areas with restricted worker entry during applications in nurseries were defined by the types of applications:

i. For soil-directed applications, the restricted area is the treated area,

ii. For downward-directed applications, the restricted area is the treated area plus 25 feet downwind and 10 feet in other directions.

iii. For applications by aerial, upward-directed, or high-pressure sprays, the restricted area is the treated area plus any moistened or dusted area.

Most comments concurred with the proposed definitions of areas restricted during applications for greenhouses and nurseries. One comment stated that the 25-foot "barrier" zone was too small to be protective. Another requested that the 25-foot area restricted during applications not apply to pesticides in toxicity categories III and IV. One comment requested that "soil-directed" be redefined as pressure up to 60 psi if water breakers are used.

A few comments requested clarification of whether the specified 25-foot area restricted during application extended to areas beyond the greenhouse or, in nurseries, extended off the property.

The Agency agrees with the recommendations that greenhouse and nursery restrictions be clarified. The restrictions in greenhouses have been summarized in a table containing the restrictions during applications and the entry restrictions after application (§ 170.110(c)). A similar table has been prepared for applications in nurseries (§ 170.110(b)).

To provide a more useful description of the area restricted during application for employees in nurseries, the Agency specifies that an area of 100 feet in each direction around the treated area must be vacated during applications using aerial, upward-directed, or high-pressure sprays instead of "the area dusted or misted"; EPA modified the area restricted during application to 100 feet beyond the treated area in nurseries during fumigant, smoke, mist, fog, and aerosol applications.

The prohibition against applying pesticides in a way that will allow contact with workers or other persons is absolute. If an applicator has reason to believe that workers (or other persons) may be contacted by a pesticide during a pesticide application in a greenhouse or nursery, even if those workers (or other persons) are in compliance with the minimum distance requirements, the application may not take place until those workers (or other persons) leave the area.

The Agency is not persuaded to exempt pesticides in toxicity categories III and IV from these provisions. The intent is to reduce occupational exposure to pesticides, regardless of their acute toxicity. The Agency is concerned also about possible subacute, chronic, and reproductive or developmental effects from pesticide exposure.

The Agency concurs that, except for fumigation when the entire greenhouse and any adjacent structures that cannot be sealed off from the treated area must be vacated, subenclosures in the greenhouse are permissible and these subenclosures constitute the area that must be vacated during application. If the treated area is enclosed, the 100- or 25-foot zones are not required. The Agency's interpretation is that the 25-foot or 100-foot areas restricted during application do not extend beyond the greenhouse, or beyond the property line

of the nursery. However, the prohibition against contacting workers or other persons does extend beyond such boundaries.

A few comments requested clarification of "downwind" in a nursery where wind currents tend to be multidirectional over time. The Agency concurs with this observation and has determined that requiring a 25-foot area beyond the treated area in all directions will be more protective for workers.

3. *Restrictions with fumigants.* Although some comments suggested that the entry restrictions for fumigants were adequate, some stated that the restricted-entry area for a fumigant should be defined as the "entire enclosed structure" rather than the "enclosed area" to differentiate between an area enclosed by a temporary barrier and the greenhouse itself.

Some comments requested that "fumigant" be defined to distinguish it from a mist or an aerosol. One comment recommended prohibiting any early entry into a greenhouse following fumigation except to determine fumigant concentration or to facilitate ventilation. A comment requested that the ventilation criteria for defining dispersed vapors specify the minimum number of required air exchanges needed. Other comments stated that the proposed ventilation criteria may not be adequate for large production areas if only small windows or fans are used and recommended that replicated tests be conducted using available ventilation to determine the time necessary to achieve the permissible exposure level for a specific site.

In the final rule, the Agency defines a fumigant as "any pesticide product that is a vapor or gas, or forms a vapor or gas on application, and whose method of pesticidal action is through the gaseous state." Final part 156 requires pesticide registrants to identify fumigants on the front panel of the label.

The Agency has determined that a fumigant application is complete only when (1) any exposure level listed on the product labeling is reached, or (2) if there is no labeling specified exposure level, when one of the ventilation criteria has been met. The fumigant continues to disperse throughout the treated area after its release. Persons are exposed to the fumigant when they enter fumigated areas to measure ambient concentrations of fumigant or to facilitate ventilation by manipulating ventilation systems in greenhouses or by removing tarpaulins or other coverings from outdoor fumigation sites. These persons, therefore, are handlers of the fumigants. The Agency has changed the definition of handlers to include such persons and has extended the application prohibition for fumigants in greenhouses to include the time needed to reach the exposure level listed in the labeling or to meet one of the ventilation criteria. During this time, only handlers who have the protections mandated on the labeling and who meet the other requirements in part 170 may enter the treated area. These handlers may enter the treated area only to measure the fumigant level, remove coverings, or operate the ventilation system.

The gaseous nature of fumigants requires that the entire structure, including any adjacent structure that cannot be sealed off from the treated area, be vacated during application. Temporary barriers such as curtains or shields are not designed to be air-tight and therefore would not prevent exposure to persons in areas adjacent to those barriers. EPA has reworded the application restrictions for fumigant applications in greenhouses to specify that the entire greenhouse plus any adjacent structure that cannot be sealed off from the treated area, not just the "entire enclosed area," is the treated area and therefore is restricted.

The Agency concurs that a specific number of complete air exchanges should be specified as constituting sufficient ventilation following a fumigant application (or other airborne application) in a greenhouse. The Agency has concluded that 10 is the minimum number of air exchanges needed. (If each air exchange removed only 50 percent of the pesticide, 10 exchanges should leave approximately 1/1,024 of the original volume of pesticide.) In proposing the ventilation criteria for "vapors dispersed," EPA used the limited data available and consulted with authorities in greenhouse pesticide application processes to establish appropriate and reasonably conservative criteria for protecting workers from inhalation exposure following fumigation in greenhouses.

Several comments noted that many greenhouses are acres large and that workers should be allowed to work in one end of the greenhouse while a spraying application is conducted in the other end of the greenhouse as long as any mechanical ventilation draws the drift away from the workers.

The restriction on ventilation was intended to protect workers from airborne vapors, spray, and dusts. Without ventilation, the transport of the pesticide off-site would be minimal and presumably would move in all directions equally. With ventilation (passive or active), air movement in any direction is possible. The amount of drift is dependent on such factors as the size and weight of droplets or particles, the pressure of spray, the distance from application equipment to treated surface, and the force and direction of the ventilation. Even "passive" ventilation involves factors such as size of vents, the location of vents, and the outdoor wind currents. The Agency is not persuaded that it is possible to predict the direction or distance that sprays or dusts might drift for all ventilation systems used by the greenhouse industry; therefore, it will continue to prohibit workers from remaining in an area surrounding the application. The dimensions of the area depend upon the type of formulation and the type of application. EPA agrees that after application is completed, the sprays and dusts will settle out of the air and no longer pose an exposure hazard to adjacent workers. Workers may enter the greenhouse after application to work anywhere except in the treated area as defined by Table 2 in § 170.110(c)(4).

In the NPRM, EPA listed criteria for determining when vapors have dispersed after the application of a fumigant. Some comments requested clarification and guidance on when vapors are considered dispersed following application of nonfumigant pesticides that require the use of a respirator during application or that are applied as smoke, mist, fog, or aerosol.

The Agency has modified the application restrictions for pesticides that are applied as fumigants, smokes, mists, aerosols, or fogs, and for applications that require the use of a respiratory protection device, to include ventilation criteria that must be met before workers are allowed to return to work anywhere in the enclosed area, or, in the case of fumigant applications, anywhere in the entire greenhouse plus any adjacent structure that cannot be sealed off from the treated area.

B. Entry Restrictions

The Agency long has recognized the value of limiting agricultural workers' exposure to pesticides through the use of REIs. Present part 170 established that no worker without the prescribed protective clothing should be allowed to enter a treated area to perform a hand labor task until the expiration of an REI. In the NPRM, EPA did not change this basic requirement, but did extend the scope of this proscription to include any farm, forest, nursery, or greenhouse workers who contact pesticide residues on treated surfaces or in soil, water, or air, not just those who are performing hand labor tasks. The NPRM required that other protections, such as PPE, training, and decontamination facilities, be provided to early-entry workers.

1. *Restricted-entry intervals.* Present part 170 established a generic "minimum" REI for pesticides used on agricultural sites covered by that part, and it set specific REIs of either 24 or 48 hours for 12 pesticides. Other REIs have been established during the registration, reregistration, and special review processes. Some of these intervals are "permanent" (based on adequate entry data as required by 40 CFR part 158 or a waiver of data submission); others are interim intervals (not based on part 158 entry data) pending the generation of adequate data.

Under existing Agency policy, the establishment of REIs has been limited to pesticides used on agricultural crops where workers perform "hand labor operations," involving "substantial contact with treated surfaces." Workers may have contact with treated surfaces from activities such as moving irrigation pipes and scouting, tasks usually not considered as "hand labor" tasks. The shift from routine preventive pesticide applications to the increasing use of pest control on an as-needed basis has resulted in the need for more frequent post-application entry by crop advisors, such as integrated pest management (IPM) scouts, professional pest management consultants, and growers, to determine the status of insect, mite, disease, and weed pests at each stage of crop development. The amount of contact with treated surfaces in these activities depends on variables such as the height and density of the crop, the nature of the activity, the surface that contains the pesticide residue, and whether residues are dry or wet.

Adverse effects on workers may result from a combination of the toxicity of the pesticide and the amount of exposure. Even small amounts of highly toxic pesticides can cause poisoning.

For these reasons, the Agency decided that any activity that results in contact with anything that has been treated with the pesticide to which the REI applies may be harmful to workers. Thus, the Agency proposed that REIs apply to all pesticide products used on agricultural plants as defined by this part, regardless of type of worker activities associated with particular agricultural plants.

In proposing to revise part 170, the Agency did not contemplate a change to the part 158 process for establishing permanent REIs. Rather, the proposed revision to part 170 represents a change in current Agency policy of setting interim REIs which apply until permanent REIs are established on the basis of part 158 entry data.

Therefore, part 156 retains all permanent REIs set by EPA on the basis of adequate data. It also retains all previously established interim intervals that are longer than those that would be established pursuant to this rulemaking in part 156. These longer REIs have been based, in general, on either delayed (chronic) effects or other exposure hazards such as persistence, post-application chemical transformations, or potential for severe skin sensitization.

2. *Length of restricted-entry intervals.* In the NPRM, the Agency proposed to retain the existing minimum REI of "until sprays have dried, and dusts have settled" for most pesticide applications and to modify it by adding the phrase "or vapors have dispersed" to protect workers immediately after applications of fumigants, mists, fogs, aerosols, or smokes. It also proposed specific REIs of 48 hours for pesticides that contain organophosphates or *N*-methyl carbamates in toxicity category I, and 24 hours for pesticides that contain organophosphates or *N*-methyl carbamates in toxicity category II and for other active ingredients in toxicity category I. The Agency considered other options that reflect varying acute toxicities.

The comments on this issue focused on the length of the proposed intervals and the bases for selecting the REIs.

a. *Minimum restricted-entry intervals.* Several comments endorsed the concept of "sprays dried, dusts settled, vapors dispersed" as a minimum REI. Some comments requested the Agency to establish a minimum REI of 24 hours for all pesticides; others explicitly opposed a 24-hour minimum REI for all pesticides. Another comment suggested that there be no restricted-entry period less than 12 hours.

One comment stated that enforcement of "sprays have dried, dusts have settled, or vapors have dispersed" would be difficult. Others stated that determining when "sprays have dried, dusts have settled, or vapors have dispersed" is not feasible in some greenhouses because in propagation and misting situations it is difficult to ascertain if sprays have dried because foliage is kept constantly wet.

The Agency agrees that in some circumstances it is difficult to determine when the sprays have dried, the dusts have settled, or the vapors have dispersed; judgment is required to assess when such an REI has expired. The rates at which sprays dry, dusts settle, or vapors disperse depend on factors such as temperature, humidity, rainfall, irrigation, dew deposition, wind, crop density, height, leaf configuration, amount of sunshine, and type of pesticide formulation used. Parts of a treated area may be dry while others are not dry. In dense crops, such as mature corn, the foliage in the center of the stand may be wet while the foliage in the outer areas, where a supervisor is most likely to check, may be dry. Rewetting of foliage because of rain, irrigation, or dew may cause confusion and uncertainty about whether the sprays have dried. Wind may make it difficult to determine whether dusts have settled.

Many comments requested the Agency to establish minimum REIs to protect against possible unknown chronic or delayed health effects. These comments expressed concern that because product-specific health-effect evaluations take the Agency a long time to conduct, agricultural workers continue to be exposed to chemicals whose potential for causing birth defects, cancer, genetic mutations, and other systemic damage has not been tested. They recommended that the Agency consider the potential chronic and other delayed health effects and establish longer REIs.

The Agency has decided to establish a minimum REI of 12 hours for all pesticide applications to replace the "sprays have dried, dusts have settled, vapors have dispersed" requirement. This will provide a margin of safety against occupational exposure to all pesticides and eliminate the need for pesticide users to judge how long workers should be kept out of an area. The disruption to agriculture, and thus the cost, should be minimal; pesticides could be applied in the evening, and worker entry would be allowed the following morning. This REI of 12 hours could be modified through the reregistration (or registration) process on a case-by-case basis most often involving submission of full entry data (part 158).

The Agency will continue to establish REIs on a case-by-case basis for products where nonacute health effects are a concern.

b. *Specific restricted-entry intervals.* Although most comments supported the REIs proposed and many stated that in most circumstances agriculture would be able to comply, one comment stated that REIs longer than the minimum should be reserved for compounds whose toxicity characteristics or exposure history indicated a need for longer intervals.

Some comments supported a 48-hour REI for all active ingredients in toxicity category I and a 24-hour REI for all those in toxicity category II. Other comments requested that REIs not

exceed days-to-harvest intervals or noted that 48 hours is the maximum feasible REI under current crop production methods. Many comments supported 72–, 48–, and 24–hour REIs for pesticides in toxicity categories I, II, and III, respectively. Others specifically opposed a 72/48/24–hour scheme or stated that the REIs proposed should be determined on a case-by-case basis when data indicate a need.

The Agency's proposal was based on California data showing that, from 1976 to 1985, 90 percent of the systemic poisonings caused by active ingredients in toxicity category I and 70 percent caused by active ingredients in toxicity category II involved either organophosphates or *N*-methyl carbamates. These data suggest a relationship between the classes of chemicals used and poisonings. However, a few comments stated that the apparent relationship between chemical class and poisoning in the data is not unexpected; because of the types of crops grown in California, it is likely that 90 percent of the products in toxicity category I and 70 percent of the products in toxicity category II applied were anticholinesterase compounds.

Many respondents objected to the distinction made between organophosphate and *N*-methyl carbamate pesticides and other pesticides in the same toxicity category, stating that the subdivision of toxicity categories I and II by chemical family is not defensible scientifically. These comments asserted that it would be more appropriate to use acute toxicity data as the basis for generic REIs, and to include all compounds in a toxicity category. In contrast, some comments requested that only organophosphate and *N*-methyl carbamate pesticides have REIs.

After reevaluating this issue, the Agency agrees that chemical class should not be a criterion for establishing REIs. The Agency expects that chemicals in the same toxicity category will pose similar risks of adverse effects from acute toxicity; thus, no distinction should be made among the chemical classes within a toxicity category. The Agency has changed the specific REIs. In the final rule, all pesticides in toxicity category II have REIs of 24 hours, and all pesticides in toxicity category I have REIs of 48 hours. All other pesticides (those in toxicity categories III and IV) are subject to the 12–hour minimum REI.

Studies have shown that some organophosphates transform into more toxic products in arid conditions. The Agency has been persuaded that, in areas receiving rainfall of less than 25 inches per annum, organophosphates that are in toxicity category I and that are used outdoors should have an REI of 72 hours. Acceptable sources of statistics on average annual rainfall for an area are nearby weather bureaus, such as one located at a local airport or one affiliated with the National Oceanographic and Atmospheric Administration (NOAA).

The Agency proposed that REIs be based on the acute toxicity of the technical grade of the active ingredient. Some comments requested that inert ingredients be considered in setting REIs.

The Agency believes that the inert ingredients in pesticide products generally are not of a nature, or do not remain in treated areas long enough, to present hazards for reentering workers. Accordingly, REIs will be based on the possible hazards of residues of active ingredients. The Agency is reexamining the hazards of inert ingredients through a separate process.

The Agency proposed setting intervals based on the highest toxicity category indicated by available data on acute dermal toxicity or skin and eye irritation potential, determined by the criteria of 40 CFR 158.10(h)(1) of this chapter. If no dermal toxicity data are available, oral toxicity data would be used to set REIs.

Workers may have dermal, oral, and respiratory exposure to pesticides; for workers entering treated fields, the predominant route of exposure is dermal. The Agency considered using only dermal toxicity to establish REIs, but the potential for eye and skin irritation and for respiratory exposure may be significantly large in some entry situations. Cases of eye or skin irritation are four times as common as those of systemic poisonings among reentering workers.

Inhalation exposure is a hazard in enclosed areas, such as greenhouses, especially after applications of fumigants or pesticides with high vapor pressure; it is less important as a hazard for entry into treated areas outdoors, except during removal of barriers, such as tarpaulins, after application of a fumigant. Oral toxicity data are the most widely available data on pesticides, but oral exposure in agriculture is related to the worker's personal habits, such as not washing hands and face before eating, drinking, or smoking.

The Agency has determined that entering areas while inhalation exposure remains a hazard is not safe or practical for persons other than appropriately trained and equipped pesticide handlers. Therefore, EPA has modified the entry restrictions in greenhouses to permit only handlers to enter greenhouses until air concentration levels or ventilation criteria have been met following applications of airborne pesticides or pesticides that require a respirator during application. The Agency also has modified the definition of "handler" to include persons who must enter areas treated with soil fumigants to adjust or remove soil coverings, such as tarpaulins.

A few comments recommended that use patterns and mode of action be considered in setting REIs. Another recommended that the persistence of the residues should be considered in setting REIs since some injuries, such as eye injuries or birth defects, are unrelated to the acute toxicity of the chemical.

Basing REIs on particular use patterns, on the mode of action, or on a particular use's potential for exposure is not feasible because of variations in potential exposure related to crop, cultural practices, and application techniques. These considerations are appropriate for establishing permanent REIs on a case-by-case basis such as through the reregistration process.

c. *Establishing entry restrictions in the future.* The REIs established through this final rule are intended to remain in effect until the reregistration process or other comprehensive EPA review process makes definitive REI determinations. In most circumstances, the Agency expects that any REI established as the result of the later Agency review would prohibit early entry to perform routine hand labor tasks. However, such REIs would be based on a risk-benefit judgment that takes into account the prohibition against routine early entry to perform hand labor tasks.

The Agency expects to establish appropriate entry restrictions on the basis of several types of data. These may include, as applicable, data on how the residue degradation rate and dislodgeability (amount readily transferable from a surface to persons contacting that surface) are influenced by pesticide formulation type; temperature; humidity; soil type; rainfall, dew, and irrigation practices; sunlight; crop type, height, and density; specific production practices, or worker activity and length of exposure. When feasible, the Agency may establish product-specific REIs that vary depending on one or more of these parameters. For example, the Agency may establish longer REIs for timed-release formulations, which are designed to release the active ingredient over an extended time period. The Agency may determine that, for some tasks, shorter REIs are warranted for "low crops" than

for tree crops and other "high crops," such as corn, because workers' exposure levels would be expected to be lower. The Agency may also determine that in areas with characteristically hot, arid conditions and certain soil types, longer REIs are warranted for certain active ingredients because of slower degradation, higher transferability, and transformation of the active into more toxic forms. The Agency may also impose longer REIs for some active ingredients in areas with heavy dew or frequent light rain because those actives are either activated by moisture or transformed by moisture into more toxic forms. On the other hand, if adequate data exist, the Agency may decide that it is feasible to allow a reduction in REIs when a specified amount of rain has fallen or over-the-top irrigation has been applied to the treated area.

Another type of product-specific restricted-entry determination might include situations where data indicate that worker contact with the treated surfaces could be acceptably reduced through the use of minimal PPE or mechanical devices that physically separate the worker from the treated surfaces. Such determinations might, for example, allow early entry following soil-directed applications if the worker is wearing chemical-resistant footwear and is performing tasks that do not involve skin contact with the soil surface. Another possible restricted entry adjustment would be to prohibit all routine hand labor tasks for a specified time period, such as 1 or 2 days, and then to allow certain hand labor tasks during the remaining restricted-entry period if certain (perhaps minimal) PPE is worn and other precautions are taken. Still another possible restricted-entry adjustment might allow early entry (with or without minimal PPE) if devices, such as mechanical detasselers or roguers, are used that minimize worker exposure to treated surfaces. The final rule does contain an exception that allows early entry for activities that involve no contact with anything that has been treated with the pesticide to which the REI applies, including, but not limited to, soil, water, air, or surfaces of plants in the treated area.

Unfortunately, it is unlikely that such product-specific decisions will be routine, because of their complexity. Conveying such exceptions and restrictions to users in a simple, intelligible manner is difficult. The necessary labeling would be unduly complex. The Agency projects that such adjustments will be most likely in those situations where data indicate that a relatively lengthy REI is necessary under average conditions to adequately reduce risk, but where such a lengthy REI may make the pesticide's use infeasible for certain crops for which hand labor is necessary within tight timeframes after application. Under these circumstances, the Agency will consider alternatives to the prohibition of routine hand labor tasks throughout the REI. In any such deliberations, however, EPA will also consider whether workers can be adequately protected under a more complex set of entry requirements.

For the longer run, because of the many factors that affect worker exposure to pesticide residues, the Agency is exploring alternative methods of establishing REIs and alternatives to REIs. One possible approach involves on-site determination as to whether residues have degraded (or are otherwise unavailable) to a degree deemed acceptable for workers to safely enter to perform hand labor tasks involving contact with treated surfaces. One promising technique involves immunoassay-based detection. Immunoassay techniques could provide rapid, simple, and cost-effective methods for determining actual foliar or soil residue levels under field conditions. It is expected that inexpensive kits can be developed that will yield results in a short period of time, thus enabling site-specific determination as to whether residues have decreased to an Agency-established acceptable level for worker entry. This technology would also provide an effective means of signaling to the agricultural employer when residues remain sufficiently high so as to make worker entry unreasonably risky, even if the REI had expired.

EPA has determined that more research is required to develop immunoassay and other site-specific monitoring systems for field residues. However, the research data to date indicate that an immunoassay-based system probably could be developed. Immunoassay devices use antibodies as receptors to sample the environment of the exposed surface (persons, foliage, soil, etc). Specific antibodies to many pesticides of concern already have been developed and evaluated, but specific antibodies for other priority compounds need to be identified.

The Agency strongly encourages the rapid development of practical and reliable techniques of this kind and welcomes further information on ongoing research and the opportunity to cooperate with developers on the necessary research. To support the goal of improving such technology, the Agency also intends to consider requiring the development of such detection methods for the registration or continued registration of selected pesticides. Furthermore, as product-specific reentry data are generated and analyzed, EPA will investigate the feasibility of adding information on the pesticide labeling that indicates the acceptable residue levels on the specific surfaces of concern for that product. Such information might encourage more rapid development and marketing of site-specific test kits.

3. *Entry before a restricted-entry interval expires*—a. *Entry for other than hand labor tasks.* Present part 170 allows workers to enter a treated area without PPE before the expiration of the REI if they are not performing hand labor tasks. The Agency proposed to modify this requirement by allowing entry into pesticide-treated areas before the expiration of the REI without protective measures only when there is no contact with pesticide residues on treated surfaces or in soil, water, or air. Pesticides would be considered to be in the air, for example, in a greenhouse or other enclosed area before the exposure level listed on the labeling has been reached or one of the ventilation criteria established by § 170.110(c)(3) or in the labeling has been met. Examples of "no contact" activities listed in the proposal included:

i. Operating a closed vehicle equipped with a properly functioning positive-pressure filtration system.

ii. Performing tasks that do not involve contact with the soil subsurface after a soil-incorporated or soil-injected pesticide application.

iii. Performing tasks that do not involve hand contact with the soil, planting media, or plants after a soil-directed or basal-directed application while wearing chemical-resistant footwear.

iv. Operating an open vehicle when the crop is not tall enough to brush against the worker or when pesticide residues could not drop from trees and other plants onto the worker.

v. Walking or riding through a pesticide-treated area on an aisle, a road, or a path, if the pesticide is applied or is directed in a way that would not cause residues to drop on the worker and if the worker cannot brush against treated plants or trees.

Many comments opposed any early-entry activities. It is not clear whether some were against early entry in situations where there would be no contact with pesticide residues.

The Agency recognizes the need to allow workers access to adjacent benches or adjacent plants in greenhouses and nurseries to carry out other plant production tasks. In the proposed regulation, the Agency intended to allow workers to pass through treated areas (walk around benches, down aisles, etc.) after the sprays and dusts had settled from the air, if no contact with the treated surface would result. The Agency considered that walking down an aisle would result in "no contact" after sprays and dusts have settled if the worker was wearing shoes with chemical-resistant soles, even if the spray or dust has been applied over a large area and the aisle has received some deposit. Although the "sprays and dusts have settled" provision has been deleted, the Agency believes that walking through a pesticide-treated area on an aisle or path would constitute "no contact" as long as residues cannot drop on the worker or the worker does not brush against treated surfaces.

The Agency does not intend that workers wearing PPE would be considered to have "no contact." Therefore, the example listed in the NPRM: "Performing tasks that do not involve hand contact with the soil, planting media, or plants after a soil-directed or basal-directed application while wearing chemical-resistant footwear" is not applicable to the final rule. The following are examples of situations that may be considered no contact after sprays, dusts, and vapors have settled out of the air:

(a) The worker is wearing footwear and is walking in aisles or on roads, footpaths, or other pathways through the treated areas where the plants or other treated surfaces cannot brush against the worker and cannot drop or drip pesticides onto the worker.

(b) The worker is in an open-cab vehicle in a treated area where the plants or other treated surfaces cannot brush against the worker and cannot drop or drip pesticides onto the worker.

(c) After a pesticide is correctly incorporated or injected into the soil, the worker is performing tasks that do not involve touching or disrupting the soil subsurface.

(d) The worker is in an enclosed cab on a truck, tractor, or other vehicle.

The Agency will permit entry to a treated area when the worker will have "no contact" with the treated surfaces.

b. *Entry for short-term tasks.* EPA proposed to allow worker entry into treated areas after sprays have dried or dusts have settled, but before the REI has expired, to perform any activity, if the workers are provided appropriate PPE, training, and decontamination facilities. The Agency anticipated that agricultural producers seldom would require workers to enter treated areas before the REI has expired because of the increased risk to the workers, the cost of providing PPE, and the problems of heat-related illnesses. It is expected that most agricultural management practices can be carried out after the REI expires; thus, few workers would need these protective measures.

A few comments supported the proposal that early entry be permitted with the use of PPE or stated that routine hand labor should be allowed if the worker is wearing the PPE required by EPA. Many comments opposed early entry even with the use of PPE. One comment noted that a requirement for the use of PPE by field workers is not practical and is not likely to be adhered to in many situations. A comment stated that the REI should be sufficiently long so that at its expiration there are no further concerns or restrictions on either the field activities or the clothing worn into the field.

Information gathered by the Agency during the process that led to the NPRM and comments that the Agency received in response to the NPRM have convinced EPA that entry during an REI to perform routine hand labor tasks is rarely necessary, especially when the REI is 72 hours or less. The Agency noted in the NPRM that:

> The Agency anticipates that agricultural producers will seldom require workers to reenter treated areas before the reentry interval has expired, because of the increased risk to the workers; the cost of providing PPE, decontamination water, and training; and the problems related to heat-induced illnesses. Since most agricultural management practices can be carried out after the reentry interval expires, few workers will need these protective measures.

Furthermore, comments received in response to the NPRM questioned the feasibility of workers wearing PPE while performing hand labor tasks under normal agricultural field conditions. The Agency has studied the issue of PPE for agricultural field workers who are performing routine hand labor tasks and has concluded that routine use of PPE, such as chemical-resistant gloves, footwear, and headgear, two layers of clothing, and protective eyewear, for such field workers is, in general, not only impractical, but also may be risk-inducing due to heat stress concerns. The Agency has determined that hired agricultural workers, especially harvesters, have a disincentive to wear PPE; because they frequently are paid at a piece rate, they have little tolerance for anything that hinders their speed and efficiency. The Agency concludes that it is likely that the PPE would be removed or would be worn incorrectly if it were required routingly in most hand labor situations. Many comments also observed that routine early entry during the REI was rarely necessary.

After consideration of the comments and the available data, the Agency has concluded that, under most circumstances, allowing routine entry for unlimited time to areas under an REI, even with PPE, decontamination, and training, will not reduce adequately the risk of agricultural workers' exposure to pesticides, and that the economic benefits associated with such routine early entry do not justify the risks associated with such early entry. Consequently, the Agency is convinced that routine hand labor tasks should not be allowed before the expiration of the REI, except in rare circumstances based on case-by-case consideration.

In this final rule, the Agency has therefore prohibited most entry during the REI to perform routine hand labor tasks. The Agency will allow necessary short-term activities, such as operating irrigation equipment, in areas remaining under an REI if: (1) There is no entry for the first 4 hours after application and thereafter until any exposure level listed on the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling has been met; (2) no hand labor tasks are performed; (3) the time in treated areas does not exceed 1 hour in any 24-hour period for a worker; (4) the required PPE is provided, cleaned, and maintained for the worker; (5) the required decontamination and change areas are provided; and (6) the required safety training and labeling-specific safety information have been furnished.

As stated in the NPRM, the Agency considers the risk of exposure for early-entry workers to be comparable, in some situations, to the risk for pesticide handlers. Sometimes, early-entry workers may receive greater exposure than that encountered by an applicator of the pesticide. The Agency believes that there should be no entry to freshly treated areas for any reason until the dusts or sprays have settled and some drying or volatilization of the formulation has taken place; thus it has prohibited entry to treated areas for the first 4 hours after application. After 4 hours have elapsed, 1 hour should be sufficient time to do necessary "short-term" tasks, which the Agency is aware must be done, and should minimize worker exposure.

c. *Exceptions to the prohibition on routine early entry.* Although the

Agency has determined, in general, not to allow routine early entry even with the use of PPE, the Agency did receive information during the comment period from the cut flower and cut fern industry about the economic hardships that would result in that particular industry if routine hand labor activities were prohibited during REIs. In that industry, it appears that the risk-benefit balance might militate in favor of allowing some hand labor activity during the REI. While no information was submitted during the comment period demonstrating that other industries might suffer a significant adverse economic effect if routine early entry during REIs were disallowed, it is certainly possible that other industries, crops, or crop practices may be significantly affected by the prohibition of such routine early entry.

The Agency has, therefore, adopted an exception process that would allow interested persons to demonstrate to the Agency that, in a particular industry, crop, or crop practice, an exception should be granted to the general prohibition on routine early entry. Persons wishing to obtain an exception to the early-entry restrictions would submit a request for such an exception to the Agency.

The Agency encourages persons who wish to submit such requests to submit the requests as a group or association of affected parties, rather than as individuals. EPA expects that the most efficient and effective request process would ensue when a group or association of growers and/or workers with common interests present a single, consolidated request for an exception. Such a group request would both permit a more efficient review process and lend weight to the case that the exception was necessary to alleviate typical conditions in the commodity or crop-practice situation for which the exception is being requested and was not a highly-specific localized situation. Requests for exceptions that are limited to a narrow geographic area, such as a single agricultural establishment, must be accompanied by persuasive evidence that such a narrow geographic scope is appropriate.

The Agency also notes that all of the information pertinent to the specific exception must be submitted with the exception request. The rule states what types of crops and crop production practices might qualify for such an exception and what information must be supplied to the Agency in order for an exception to be considered. If a request for an exception is submitted to the Agency without all of the required information, the Agency shall return the request to the submitter. When a request for an exception that contains all of the required information is submitted to EPA, the Agency will publish a notice in the **Federal Register** stating that an exception is being considered, describing the nature of the exception, and allowing at least 30 days for interested parties to comment. The Agency will also send a copy of such exception requests to USDA at that time. EPA expects to cooperate with USDA in obtaining information necessary for analysis of the exception requests.

If such an exception is approved, the Agency will publish a notice describing the exception and the reasons for it in the **Federal Register**. The final rule also provides a means for the Agency to withdraw exceptions if the Agency receives poisoning information or other data that indicate that the health risks imposed by the early-entry exception are unacceptable or if the Agency receives other information that indicates that the exception is no longer necessary or prudent.

EPA will endeavor to review any requests for exceptions expeditiously. As stated above, requests from registrants or groups/organizations are likely to yield the most efficient review process. Also, the more specific the request, the more readily the Agency can evaluate the full range of impacts. The Agency will consider the economic urgency of the request and the timing of the pest concern, crop, or production practice for which the exception is being requested. To expedite the exception process, EPA intends to establish a formal exception-review procedure that remains outside of the usual registration and reregistration processes. A special organizational unit would be designated as responsible for receiving and processing exception requests, including establishing a mechanism for receiving comments, reviewing all submitted information, and facilitating the decision-making process among the Agency technical experts. EPA believes that this unique strategy will greatly expedite the exception process and allow the Agency to address exceptions in a timely manner. With this process, EPA will endeavor to respond in a timely manner when receiving requests for exceptions that contain all of the required information and will attempt to respond with special urgency to exception requests that are particularly crucial due to unexpected pest problems or crop-season timing.

The final rule provides that persons requesting an exception may assume that the exception has been denied if EPA has not published its decision whether to grant the exception within 9 months from the comment-closure date specified in the **Federal Register** notice in which the Agency announced that it would consider the exception, unless the Agency has taken action to extend its review period for a specified time interval due to the complexity of the exception request or to the number of exception requests concurrently under Agency review.

While exception requests may be filed immediately, the Agency is also interested in receiving additional comments and information on both the general prohibition of routine early entry for the performance of hand labor tasks during REIs and the mechanism and criteria for granting exceptions to that general prohibition. EPA is therefore providing an additional 60-day period during which written comments, data, and other evidence concerning these specific topics may be submitted to the Agency for consideration. Upon review of these comments, EPA may modify this final rule where appropriate. This additional comment period should allow for possible refinement of this rule without delaying its implementation and without delaying the consideration of exceptions that may prove to be necessary.

Comments that EPA has already received from the cut flower and cut fern industry have convinced EPA that this industry, at least, probably warrants such an exception. The decision that such an exception is probably warranted is based on a balance of the risks and benefits that would result from such an exception (see proposed exception to rule published elsewhere in this issue of the **Federal Register**). The Agency is unaware of any specific information indicating that crops or industries other than the cut flower and cut fern industry would qualify for such an exception, but the exception process adopted in this final rule provides interested persons an opportunity to submit relevant information to the Agency if they believe additional exceptions are warranted.

d. *Entry for agricultural emergencies.* Several comments suggested that early entry be allowed for emergencies on a case-by-case basis. If there are situations in which workers need to enter an area before the expiration of an REI, growers should be able to obtain permission, in advance, from the EPA or the State lead agency.

The Agency recognizes there may be a need for workers to enter a treated area

before the expiration of an REI to perform tasks, including hand labor tasks, in agricultural emergencies. The Agency regards an agricultural emergency as a sudden occurrence or set of circumstances that the employer could not have anticipated and over which the employer has no control, requiring entry into a treated area, when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected on the basis of experience and fluctuations of crop yields in previous years. Only losses caused by the emergency conditions specific to the affected site and geographic area are considered. The contribution of mismanagement cannot be considered in determining the loss. Such emergencies might consist of unexpected and severe adverse weather, such as frost, high winds, tornado, or hurricane, or an unexpected and severe pest outbreak immediately before harvest on a time-sensitive crop such as the soft fruits, soft vegetables, or floral crops. If an emergency is anticipated through a weather forecast, pest outbreak bulletin, or other means, it is not acceptable to proceed with a pesticide application after becoming aware of an impending emergency and then require workers, due to the emergency, to enter the treated area before the REI has expired.

The Agency has modified the early-entry restrictions to permit entry to areas under REIs in agricultural emergencies if a State, Tribal, or Federal agency having jurisdiction declares that the circumstances for an agricultural emergency exist and the employer determines that the agricultural establishment is subject to the emergency. Entry is permitted if: (1) There is no entry for the first 4 hours after application and no entry thereafter until any exposure level listed on the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling has been met, (2) the required PPE is provided, cleaned, and maintained for the worker, (3) the required decontamination and change areas are provided, (4) the required general training and label-specific information has been furnished, and (5) only tasks related to mitigating the emergency are performed.

C. Notice of Applications

The Agency proposed that workers on an agricultural establishment be notified of pesticide applications and areas remaining under an REI. An exception was proposed for farms, forests, and nurseries—no notification would be necessary if, from the start of application until the end of the REI, the worker would not enter, work in, remain in, or pass through, on foot or in an open vehicle, the pesticide-treated area or any neighboring areas, including growing areas and labor camps that are contiguous or separated only by a roadway from the treated area. A similar exception proposed for greenhouses stated that no notification would be required if, from the start of application until the end of the REI, the worker would not enter, work in, remain in, or pass through the greenhouse. These exceptions were designed to limit the notification requirement to those occasions where the most potential for accidental worker exposure exists and where notification would prove most useful. Notification would not be required when pesticides are applied at times when no workers are employed by the establishment or when pesticides are applied to (or an REI is in effect at) distant areas of the establishment where no work activities are occurring.

Some comments supported these exceptions; some requested that the exceptions be dropped and that workers be notified of any pesticide-treated area on the property, because crews may enter treated areas by mistake. One comment wanted to have information provided to workers about pesticides used in areas contiguous to the area where they will be working. Another noted that since only a small percentage of farms require hand labor for cultivation or harvesting, it seems impractical to post fields when the only one who would be entering is the farmer who caused the field to be treated.

A few comments requested a definition of the word "neighboring," and some stated that "neighboring areas" should be defined as property controlled and/or owned by the employer.

After careful consideration, the Agency has decided to retain but reword the exception to notification on farms and in nurseries and forests. The term "neighboring area" has been deleted; the final rule requires notification if workers may be within 1/4 mile of the treated area's perimeter. This distance was chosen for several reasons. First, data from studies show that residue drift from a treated area is negligible beyond 1/4 mile. Second, the Agency believes that 1/4 mile is the farthest distance that workers would be likely to digress from their path or work site for rest or meal breaks. Although the Agency believes that a prudent owner/operator of an agricultural establishment will inform adjacent property owners/operators of pesticide applications at their mutual borders, EPA has determined that such a requirement is beyond the scope of this rule. The exception to notification in greenhouses has not been changed.

The Agency has added an additional notification exception that applies to all agricultural establishments. Notice (oral or treated area posting) need not be given to a worker if the worker (1) applied or supervised the application of the pesticide for which the notice would be given and (2) the worker is already aware of the information that would be otherwise conveyed in an oral warning. This exception exempts establishments from having to orally warn or post warning signs at treated areas for an already-informed applicator of the pesticide. This exception would be especially important if the pesticide applicator is the only worker on the establishment for whom notification would otherwise be required.

1. *Oral notification.* The Agency proposed that workers be given daily oral warnings about pesticide-treated areas on farms and in forests, except as noted above. The warnings would consist of: (1) The location and description of the treated area, (2) the time during which entry is restricted, and (3) instructions not to enter the treated area until the REI has expired. The warnings would be required to be given in a manner the worker can understand.

Several comments supported the requirement for mandatory oral warnings on farms and forests because large numbers of agricultural workers would not be able to read material printed in English.

Some respondents felt that oral warnings should be required only on the first work day for any worker or when there is a change in the spraying schedules because daily warnings may cause workers to ignore the repetitive message. Some comments stated that oral warnings would be unworkable in some agricultural operations because employees may report to work from different locations at different times of the day, e.g., coming from on-farm camps or local housing or being bused from cities or other farms.

Other comments objected to mandatory oral warnings and requested that employers be given a choice of using oral warnings or posting warning signs. One respondent suggested issuing cards containing information about spraying to workers in lieu of oral warnings.

Some comments stated that oral warnings are more effective if they include information such as the name of the product or active ingredient, the location of labeling, and/or safety information for the product and the REI.

Most comments supported a requirement that oral warnings be communicated in a language the worker can understand. However, a few noted that it would be difficult for growers to find persons who could provide translations into all the languages that might be needed.

The Agency has been persuaded that farm and forestry operations should have the choice of notifying workers orally or by posting signs at the treated area. EPA is convinced that for highly diversified farms where different crops would be grown close together or for large agricultural operations where many workers are employed, oral warnings may be impractical and may not be as protective as posting signs at the treated area. However, the Agency believes that most farm and forestry employers will opt to warn employees orally. Signs that employers post must meet the same criteria as the signs for the mandatory treated-area posting.

The Agency also has been persuaded to eliminate the requirement that oral notification be given daily. Instead, employers are required to notify workers before the worker's first opportunity for exposure to any treated area. Regardless of whether the employer uses oral notification or posting, the Agency is requiring that application-specific and restricted-entry-specific information be posted at a central location accessible to all workers. This information will remind workers of areas where pesticides are being applied or where an REI is in effect. EPA is convinced that additional information about the pesticide application can be conveyed more effectively through these centrally located notice areas than through oral notification. Providing information about applications on printed cards is not a practical alternative to oral notification because of language problems and the cost of duplicating the information.

2. *Posting pesticide-treated areas.* Besides oral warnings, the Agency proposed to require the posting of warning signs in areas of farms and forests treated with pesticides having REIs greater than 48 hours, except when no workers would be in the area, as discussed above. The Agency also considered other posting options, such as for pesticides with REIs more than 24 hours.

Some comments supported the proposed posting requirements, but some stated that posting must be supplemented with oral notification, particularly on large farms and in forests where posting may be difficult.

Many comments advocated daily oral notification supplemented with mandatory posting so that persons working near the area or moving through the area are aware of the application and can avoid contact.

Some comments stated that areas treated with pesticides having REIs exceeding 24 hours should be posted because posting is an unequivocal way of communicating to workers their right and duty not to enter a treated field.

Some comments said that posting for all pesticides with an REI of greater than 24 hours would be more consistent with the purpose of the proposed rule than posting only for intervals greater than 48 hours. The latter, they said, would exempt nearly all pesticide applications from posting. They stated that oral warnings alone are inadequate for warning workers of the hazards of entry from products in toxicity categories I and II and suggested the requirement might be met by posting a map showing treated areas.

Other comments opposed any mandatory field posting requirement. One stated that workers could be notified by a centrally located information board.

The Agency has reviewed the comments on mandatory field posting and has decided to modify these requirements. The Agency has defined at least two objectives for posting of treated areas: (1) Warning of areas treated with pesticides that are so toxic that incidental exposure, i.e., contact from brushing against the treated surfaces, could cause an acute illness or injury and (2) warning of areas treated with pesticides for which a short exposure could have the potential for a delayed effect, such as developmental toxicity. The final rule requires posting for all pesticides that contain active ingredients that are classified as toxicity category I because of acute dermal toxicity or skin irritation potential. On a case-by-case basis, the Agency also may require posting for other pesticides that the Agency deems may produce adverse health effects from a short-term exposure.

The Agency will require that oral notification also be given to workers when posting is required so that a second tier of warning is provided for these pesticides. Pesticides meeting these criteria will have a statement in their labeling that the treated area must be posted and workers must be notified orally.

The Agency proposed that "When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted." This would allow posting of a larger area than the treated area when a continuous spraying operation treats alternative rows or areas, rather than the entire area, on a sequential basis. Since posting of individual rows in this case would be difficult and expensive, the Agency would allow the entire area to be posted. However, no part of this entire area may be entered while signs are posted, except under the conditions specified in the regulation for early entry. The Agency has retained this provision in the final rule.

3. *Warning sign.* The Agency proposed a standard warning sign containing a stern-faced person with an upheld hand containing the words "DANGER - PESTICIDES - KEEP OUT."

Although the sign proposed by the Agency received some support, many comments requested modifications to the symbol or the wording. There were suggestions that the sign should contain the skull and crossbones or should use some international symbol.

After consideration of the comments, EPA remains opposed to the use of the skull and crossbones symbol for the reasons stated in the NPRM and because posting may be required by the Agency not only for the most acutely toxic pesticides but also for some pesticides in other toxicity categories. Acute toxicity is only one factor in determining what areas should be posted; posting will be required by the Agency on a case-by-case basis during registration, reregistration, or special review for pesticides presenting other types of risks. Furthermore, farm, forest, and nursery establishments may choose to post all pesticide applications, and greenhouse establishments must post all pesticide applications.

The Agency did not find an appropriate international symbol that it believed conveyed the desired message.

The Agency has not been persuaded that the basic design of the sign should be changed. The Agency is convinced that mandatory worker training will promote worker recognition and understanding of the sign proposed in the NPRM.

Some comments expressed concern that the words "Pesticides" and/or "Danger" make the sign too negative; others recommended that pesticide signal words such as "DANGER" or "CAUTION" be reserved for use with specific materials that carry relevant toxicity classifications. Some suggested that to use the word "DANGER" or the

skull and crossbones symbol on posting signs would be misleading and weaken the meaning of these signals where materials in toxicity categories III or IV might be involved.

Some comments requested that the signs be in as many languages as necessary to reflect the composition of the work force; others requested that additional information be required on the signs, such as the name of the pesticide, the date and time applied, and where toxicity information may be obtained.

The Agency is persuaded to change the wording of the treated area warning sign. The words "DANGER/PELIGRO," "PESTICIDES/ PESTICIDAS " and "KEEP OUT/NO ENTRE" will be required. The Agency realizes that Spanish/English signs cannot be read by all workers, but it is impractical to require printing in all the languages used by workers.

The Agency believes that removal of the words "Pesticides" and "Danger" from the signs would defeat the purpose of the signs. Changing the wording to reflect the signal word for the pesticide used would require the employer to have several sets of signs, which would be burdensome. The objective of posting is to keep workers out of an area under treatment, not to inform them of the type or degree of hazard.

Because the Agency believes that a generic treated-area sign is the most practical, economical, and reasonable choice, it will not require application-specific information to be listed on the sign. Such information may be added to the sign if the information does not interfere with the other components of the sign. Application-specific information will be required at the centrally located notification area.

The Agency proposed that warning signs be visible from all usual points of worker entry to the pesticide-treated areas, including each access road, each border with any labor camp adjacent to the pesticide-treated area, and each foot path and other walking route that enters the pesticide-treated area. When there were no usual points of worker entry, signs were to be posted in the corners of the pesticide-treated area or in any other location affording maximum visibility.

Several comments requested that posting also be used to protect other persons, such as persons who live in houses or labor camps adjacent to the fields and persons who may be passing by fields. Some comments advocated posting at specified distances along the perimeter of treated areas in addition to the usual points of access; others noted the difficulty in posting all entries to forested areas.

The Agency believes that "at the usual points of entry" is the most reasonable requirement for placement of the signs. Posting at specified intervals along the perimeter is unnecessary and burdensome. Labor camps within or adjacent to treated areas must be posted when posting is required for the treated area. Posting a warning sign at a central location is an inadequate replacement for the posting of treated areas. Although posting may be difficult for forestry operations, the Agency believes it is feasible to post at locations that may be considered usual points of access, such as at the place where logging roads enter a treated area.

The Agency also recognizes the concerns expressed about warning persons other than workers. While the intent of the rule is to protect agricultural workers, the requirement for posting treated areas will provide warning to other people who might enter the treated area inadvertently. The Agency intends to consider additional actions to deal with exposures not covered by these regulations. These include non-agricultural exposures, agricultural exposures excluded from these regulations, and exposures to the public.

4. *Notice of applications in greenhouses and nurseries.* In greenhouses and nurseries, the Agency proposed mandatory posting of all entry-restricted areas instead of oral notification, unless there are no workers in the area.

Some comments supported the requirement as proposed, stating that the requirement to post pesticide-treated areas seems fair in lieu of oral warnings. Others objected to the requirement because nurseries were singled out for more restrictive posting requirements than forests or farms.

The Agency has considered the various comments and has decided to retain the mandatory posting requirement for pesticide applications in greenhouses, but to change the requirement for nurseries. Although some nurseries are much like greenhouses with many crops grown in small areas, others more closely resemble farms. Therefore, the Agency is persuaded that nursery employers, like farm employers, should be permitted to choose between oral notification and posting pesticide-treated areas except when mandatory posting and oral notification are required by the labeling.

D. Personal Protective Equipment (PPE)

The predominant route of pesticide exposure in outdoor agricultural work is through the skin. Therefore, any barrier that can be placed between the employee and the chemical to reduce contact with the skin reduces the risk of pesticide poisoning. EPA concluded, in the proposal, that except for enclosed cockpits and enclosed cabs with positive-pressure filtration systems, the only other practical barrier available to pesticide applicators is PPE. For mixers and loaders, closed systems and technological advances in containers and packaging, such as water-soluble bags, have potential, but work is needed to perfect these approaches. The NPRM stated that PPE was the most practicable approach to reducing occupational exposure to agricultural pesticides.

The proposal required the use of PPE appropriate to the pesticide and the work activity. The proposal also required employers to provide, clean, and maintain such equipment.

Several comments stated that PPE should be the last resort for protection and that engineering controls should be explored first. Some studies of desirable methods of protection have concluded that PPE ranks below removal of employees from areas where they may be exposed, system design, and mechanical protection. Some comments stated that the proposed rule dismisses mechanical techniques of reducing or eliminating exposure as being unavailable or of limited utility and that this is in sharp contrast with other regulatory proposals developed by EPA and other Federal agencies which "force technology" by providing a lead time for nonmechanical solutions and then requiring the application of the "best available technology."

Unlike industrial environments, which are more controlled and confined, agricultural settings do not lend themselves as easily to engineering controls. The Agency is aware of the emergence of engineering controls suitable for agricultural situations and is considering the adoption of such controls on a product-specific basis during the registration, reregistration, and Special Review processes. Until adequate engineering controls are developed and tested, PPE will remain the primary means of mitigating exposure for agricultural pesticide handlers. The elimination of routine early entry for hand labor activities may "force" the development of engineering controls, such as mechanical harvesters,

weeders, and pruners, in crops where the timing of such tasks is critical.

Some comments requested that closed system mixing and loading and enclosed cab application be required for all toxicity category I pesticides to reduce employee injuries.

Some comments agreed with the proposed reduction of PPE requirements during use of closed mixing/loading systems. However, another comment requested that EPA not reduce PPE requirements for closed system mixing/loading. It stated that pesticides are highly corrosive and that the Agency has no program to inspect and certify such systems. The comment asserted that the efficacy of closed systems has been impaired by the failure of the Agency or the manufacturers to establish uniform specifications for container openings.

One comment stated that the regulation should contain incentives to develop low-risk transfer and cleaning options. Requiring the use of chemical-resistant gloves and aprons to transfer granules in a closed system will cause applicators to stay with more dangerous, but cheaper, conventional systems. Similarly, if self-cleaning mechanisms are provided for pesticide equipment, PPE requirements should be reduced.

Several comments requested that engineering controls such as wiper wands, low-pressure nozzles, and stream emitters be rewarded with reduced PPE requirements.

EPA considered requiring closed systems for mixing and loading all highly toxic pesticide concentrates. The Agency has decided to encourage the use of such systems by reducing the amount of PPE required when closed systems or enclosed cabs are used for mixing, loading, applying, or other handling activities, but it will not require the use of such systems. The Agency agrees that for closed systems to be most effective in reducing exposure, the kinds and types of equipment used in such systems and the maintenance of such equipment must be standardized. Such a program is beyond the scope of part 170 as proposed; the Agency is investigating several types of engineering controls and may require the use of such controls in the future. The Agency also agrees that "rewards" such as a reduction of PPE requirements are incentives for handlers to use engineering controls, but eliminating all PPE requirements during the use of closed systems does not seem to be prudent. A number of accidents are reported despite the use of closed systems.

One respondent requested that EPA require state-of-the art protective clothing for employees where appropriate; another was concerned that the Agency not establish excessively rigid requirements that would discourage use of improved knowledge or technology.

EPA intends to remain attentive to the development of innovative PPE and to adjust the PPE requirements as appropriate.

1. *Personal protective equipment (PPE) for early-entry workers.* The Agency proposed minimum PPE requirements, based on the acute toxicity of the active ingredient, for the protection of workers who enter treated areas before the expiration of an REI.

Several comments stated that early-entry PPE should be the same as the PPE required for handlers, presumably including respiratory protection. Another stated the Agency should have a better rationale for excluding inhalation toxicity as a hazard for workers entering fields after dusts have settled, sprays have dried, or vapors have dispersed.

The Agency intends to eliminate workers' respiratory exposure during application (which is defined as continuing until the pesticide is no longer being dispersed) by prohibiting workers from being in or near the treated area. The Agency has concluded that respiratory protection is not needed during the permitted entry after application.

Many comments recommended that no early entry be allowed, because workers will not use the PPE if the weather is too hot or will risk heat stress if they do wear the equipment. A few comments objected to PPE other than normal work attire for early-entry workers by expressing the belief that, in most cases, long-sleeved work shirts and long work pants provide adequate protection.

Several comments expressed dismay that no minimum PPE was established for early-entry workers in areas treated with pesticides in toxicity categories III and IV and recommended that early-entry PPE for these pesticides should be normal work attire plus chemical-resistant gloves because many of these chemicals are skin irritants. Others requested that coveralls and chemical-resistant gloves be the minimum PPE for early entry after all pesticide applications.

In the NPRM, there was a generic REI for pesticides in toxicity categories III and IV of "until sprays have dried, dusts have settled, or vapors have dispersed." Since the proposal contained a complete ban on hand labor activities during that period, there was no need to specify PPE for early entry for pesticides in toxicity categories III and IV.

In the final rule, the Agency has established a 12-hour REI in lieu of the generic "until sprays have dried, dusts have settled, or vapors have dispersed" and specifies minimum PPE for early entry for all pesticides.

The prohibition on most early-entry activities in the final version of part 170 has eliminated the need for most uses of early-entry PPE. For those exceptional circumstances when early entry is permitted, the Agency has decided to require early-entry workers to wear the PPE required for an applicator of the pesticide (with the exception of respiratory protection) for pesticides in toxicity categories I and II. The Agency has specified that the minimum attire for early entry for pesticides in toxicity categories III and IV will be coveralls, waterproof or chemical-resistant gloves, socks, and shoes. This minimum attire is based on the Agency's desire to have the body protection (coveralls) provided, cleaned, and maintained for the worker and on the Agency's belief that some early-entry workers may receive greater exposure to pesticides through residues in the treated area than handlers may receive during application. The Agency reserves the right to establish different PPE requirements for early-entry activities on a case-by-case basis if evidence supports such action.

The Agency does not believe that requiring PPE or "normal work attire" after the expiration of the REI is warranted. Where data indicate that such protection is needed, the Agency will establish such a requirement; however, it is more likely that the REI would be extended until the PPE would no longer be needed.

2. *Personal protective equipment (PPE) for pesticide handlers.* Ideally, each pesticide product labeling should list specific PPE reflecting the formulation, anticipated exposure level, and toxicity of the product. These determinations are made or are refined as products are registered or reregistered. However, the Agency acknowledges that many pesticide labels require PPE for handlers that is inadequate by the Agency's present standards. The Agency proposed to establish PPE requirements until appropriate product-specific requirements can be established. Registrants would be required to list the requirements on the labeling for each pesticide product. In this final rule, the Agency is establishing, through parts 156 and 170, minimum requirements for PPE for handlers of all agricultural pesticides in various exposure situations.

Handlers, such as those mixing, loading, and applying pesticides and those involved in flagging, repairing, adjusting, changing, or cleaning equipment face potentially dangerous levels of exposure to pesticides unless adequate protection is used. The risk of exposure is especially high for handlers who perform all these tasks and for persons, such as commercial pesticide handlers, who perform these tasks frequently.

Results of numerous studies indicate that more than 97 percent of the pesticide to which the body is exposed during handling (especially during spray applications) is deposited on the skin. The hands and forearms account for the highest percentage of total dermal exposure. For ground applicators, mixers, and loaders, respiratory exposure constitutes a small percentage of total exposure in outdoor handling operations unless highly volatile formulations are involved. Respiratory exposure cannot be ignored in outdoor applications, however, since nearly 100 percent of any pesticide that enters through the lungs and gastrointestinal tract is absorbed. When pesticides are used in enclosed structures, the risk of respiratory exposure is greater than when pesticides are used outdoors.

a. *Basis for the requirements.* The Agency considered whether the toxicity category of the formulated product was the appropriate basis for the PPE requirements for pesticide handlers. When the formulated pesticide product is diluted by the user, the resulting solution may be less toxic than the concentrated formulated product. When EPA establishes product-specific PPE requirements during registration or reregistration, it uses any available registrant-supplied data on the acute toxicity of the diluted product to determine the appropriate PPE for exposure to the diluted product. The Agency proposed to base the requirements on the toxicology of the formulated product. By submitting data on the toxicity of the diluted pesticide product, however, registrants could reduce the PPE requirements for handlers, except for mixers and loaders who would be exposed to concentrates.

The Agency proposed that handlers of pesticides that are in toxicity category III or IV because of acute dermal or skin irritation potential be required to wear "normal work attire" (long-sleeved shirt, long pants, shoes, and socks). For pesticides that are in toxicity category III because of dermal toxicity or skin irritation potential, handlers also would be required to wear chemical-resistant gloves. For pesticides that are in toxicity category III or IV because of inhalation toxicity or eye irritation potential, the Agency proposed no minimum PPE requirements, but reserved the option of requiring PPE for those hazards on a product-specific basis as warranted by evidence.

Most comments supported the Agency's proposal to base PPE requirements on the toxicity of the formulated product and the Agency's use of a table to determine the appropriate attire for a pesticide product.

Some comments recommended that PPE for applicators be based on the toxicity of the dilute product; another requested that PPE be based on the type of formulation as well as the acute toxicity. One comment stated that toxicity should not be the sole determinant of PPE and that use pattern and mode of action must be considered.

This regulation allows registrants that have data on the toxicity of the dilute product to use that data in establishing the PPE requirements for handlers exposed to the diluted product. However, basing PPE on the type of formulation, the use pattern, or the mode of action is best accomplished on a product-specific basis during the case-by-case review of a product. Therefore, the Agency will not consider these factors in establishing the generic PPE requirements for pesticide handlers in part 156.

b. *Types of personal protective equipment (PPE) required—*i. *Body protection.* In the current regulations, "protective clothing" is defined as "at least a hat or other suitable head covering, a long-sleeved shirt and long-legged trousers or a coverall-type garment (all of closely woven fabric covering the body, including arms and legs), shoes and socks." The Agency now deems this clothing inadequate to protect either handlers or workers entering treated areas before the expiration of the REI.

In the NPRM, the Agency proposed minimum PPE requirements that would vary according to: (1) The acute toxicity of the pesticide, (2) the type of employee activity, (3) route of exposure, and (4) the presence of engineering controls. Under the proposal, all handlers and early-entry workers exposed to pesticides in toxicity category I or II because of either dermal toxicity or skin irritation potential would be required to wear a protective suit over normal work attire.

Some comments requested that chemical-resistant protective suits be required for handling all pesticides in toxicity categories I and II, especially for airblast applications. One comment requested a change in the definition of "protective suit" to include suits made of nonwoven materials.

The Agency has changed the term "protective suit" to "coverall" and changed the definition. "Coverall" means any loose-fitting one- or two-piece garment that covers, at a minimum, the entire body except the feet, hands, and head.

The Agency considered requiring the use of a chemical-resistant protective suit when handling pesticides in toxicity category I (acute dermal), but was persuaded that two layers of clothing provide adequate protection. To minimize dermal exposure to pesticides, protective garments must be worn to cover any body area(s) of concern. Cotton or cotton and polyester, i.e., woven fabrics, are preferred for work clothing because they are more comfortable to wear, and they can be washed. Appropriate protective coverings, such as coveralls, can reduce the exposure to pesticide users' trunk area, arms, and legs by 99 percent. One study concluded that the use of rubberized clothing did not provide more protection than the regular work clothing (consisting of cotton shirts and trousers worn under long-sleeved coveralls). The final rule, however, allows users to wear a chemical-resistant protective suit as an alternative to the two layers of clothing. The development of various types of disposable chemical-resistant garments made of nonwoven materials, such as Tyvek (spunbonded olefinic fibers), gives pesticide users a wide choice of protective materials.

Most comments on the requirement to wear a protective coverall over another layer of clothing asked the Agency to reconsider; objections centered on the problems of heat-related illness and discomfort associated with wearing two layers of clothing in the summer months. One comment stated that if a protective suit is worn and becomes contaminated, it can be discarded and replaced with a clean suit on site, whereas if the normal work attire becomes contaminated, the worker may have to return home in contaminated clothing.

Numerous comments stated that the more uncomfortable protective clothing becomes, the more likely it is that employees will avoid wearing the protective clothing or the more likely they will not complain to the appropriate authority about the lack of protective clothing in the event the employer fails to furnish such clothing. Another comment stated that, in an emergency, stripping the coverall off

quickly, washing, and putting on the extra coverall that is required to be kept at the decontamination site would be more protective than a false sense of security brought by two layers of clothing.

Some comments stated that convincing handlers to wear a coverall and chemical-resistant gloves would be a major breakthrough in PPE and that a requirement for two layers of protection might discourage any compliance.

The Agency considered the comments on the requirement for handlers and early-entry workers to wear a long-sleeved shirt and long pants under a coverall in activities involving pesticides that are in toxicity category I or II because of dermal toxicity or skin irritation potential. A review of the literature revealed several studies supporting the concept of layering as an effective protective system; the protection afforded by protective clothing is proportional to the thickness and the closeness of the weave.

The Agency recognizes that the use of PPE in hot, humid working conditions may lead to heat stress and discomfort. But the alternative of requiring the use of a single-layered chemical-resistant suit would not solve these problems. The Agency does not consider a coverall without an additional layer of clothing to be protective for pesticides with an acute dermal toxicity value in toxicity category I or II. The Agency does recognize, however, that pesticides in toxicity category I present a greater hazard and risk than those in toxicity category II. Therefore, the Agency will require either a chemical-resistant protective suit or a coverall worn over a long-sleeved shirt and long pants when handling pesticides classified as toxicity category I for dermal toxicity or skin irritation. For handling pesticides classified in toxicity category II for dermal toxicity or skin irritation, a chemical-resistant protective suit or coveralls worn over a layer of clothing that covers the trunk area (e.g., T-shirts and shorts) is specified.

Many comments agreed with the proposed PPE requirements for "normal work attire," which was defined as long pants, a long-sleeved shirt, shoes, and socks, for handlers of pesticides in toxicity categories III and IV. But several other comments requested that more than "normal work attire" be required for handlers of pesticides in toxicity categories III and IV.

The Agency has considered the comments regarding the PPE required for handling pesticides in toxicity categories III and IV and has determined that the PPE proposed is adequate to protect handlers of these pesticides. The Agency has written the PPE requirements to create an incentive for users to choose less acutely toxic pesticides whenever possible.

Several comments requested EPA to clarify that its intent was to establish "normal work attire" for pesticide-handling activities and not for all work on agricultural establishments.

To eliminate the confusion, the phrase "normal work attire" is not used in the final rule. PPE and other clothing required for handling the pesticide will be specified on pesticide labeling.

ii. *Hand protection.* Dermal exposure of the hands and forearms is the most significant route of pesticide exposure for hand laborers, applicators, mixers, loaders, and other persons who are exposed occupationally to agricultural pesticides and their residues. It has been estimated that chemical-resistant gloves can reduce hand exposure by as much as 98 percent.

The Agency proposed to require chemical-resistant gloves for all early-entry and pesticide handling situations involving pesticides that are in toxicity categories I, II, or III because of dermal toxicity or skin irritation potential. (No gloves were required for early-entry or pesticide handling situations for pesticides in toxicity category IV). Leather gloves, uncoated cloth gloves, and fingerless gloves are not acceptable, because liquid and particulate pesticides can penetrate them. The Agency considered an exception for early-entry workers handling roses, because sturdy, flexible glove materials such as leather will withstand the wear and tear from thorns while providing sufficient dexterity.

Few comments discussed glove materials. The greenhouse industry asked to be permitted to wear leather gloves while working with roses and other thorny plants.

The Agency has determined that multiple-use cotton gloves and cotton-lined gloves are not acceptable for use in pesticide handling or early entry because they are difficult to decontaminate after use. If suitable puncture-resistant and chemical-resistant gloves are not obtainable, the Agency will allow the use of leather gloves for working in thorny plants, with two restrictions: (1) Chemical-resistant glove liners must be worn, and (2) leather gloves that have been worn once for protection from pesticide exposure shall thereafter be worn only with chemical-resistant liners.

A few comments stated that either the pesticide registrant or EPA should give more specific guidance on how to determine which glove materials are chemical-resistant to specific pesticide formulations.

The Agency concurs and has developed a guidance package for pesticide users on the selection, use, and maintenance of chemical-resistant gloves. The final rule requires registrants to specify in the product labeling the appropriate type of gloves to be used with the product. EPA will continue to cooperate with the American Society for Testing and Materials to develop testing criteria for chemical resistance in gloves and to sponsor research into the chemical resistance of various glove materials.

iii. *Foot protection.* The feet may be exposed to pesticides from spills, splashes, or downward sprays, and from walking through vegetation after application while sprays are still wet. The Agency proposed to require chemical-resistant footgear for handlers and workers entering areas treated with pesticides in toxicity category I or II (dermal/skin irritation).

A few comments stated that wearing chemical-resistant footwear can be uncomfortable and may cause a foot disease similar to trench foot. Many comments urged the Agency to reconsider the requirement for chemical-resistant footwear in forests, stating that leather boots are worn for traction on rocks and debris, protection from pests and snakes, and for durability. The comments stated that the safety hazards of working in this environment increase if chemical-resistant boots or boot covers are required.

Because of the problems inherent in decontaminating non-chemical-resistant footwear, the Agency will continue to require the use of chemical-resistant footwear for pesticides in toxicity categories I and II (dermal toxicity or skin irritation). However, the Agency is persuaded by the comments that for physical safety, pesticide handlers and early-entry workers in rough terrain should be permitted to wear leather boots if chemical-resistant boots of sufficient traction and durability are not obtainable.

iv. *Eye protection.* The eyes and face may be exposed whenever there is a chemical splash or a high level of mists, vapors, or dusts during mixing, loading, and applying pesticides or whenever residues are dislodged from foliar surfaces above the head of the worker. The Agency proposed to require the use of goggles or a face shield by all handlers and early-entry workers exposed to pesticides with toxicity category I or II eye irritation potential. Goggles or a face shield also would be required during mixing and loading

using pressurized closed systems because of the high risk of exposure and serious eye injury if the system ruptured.

Many comments pointed out that goggles and face shields are uncomfortable during prolonged use in hot weather and that there should be some provision for employees who wear eyeglasses. Others commented that for most pesticides and use circumstances, several styles of eye protection provide near goggle-level protection at greatly increased levels of wearer comfort and with less tendency to fog.

The Agency is persuaded that safety glasses with protective shields at the eyebrows and temples provide adequate eye protection in most pesticide handling and early-entry situations. Because they are more acceptable than goggles to employees, they would be more likely to be used. The regulation, therefore, has been modified to require the use of "protective eyewear" in handler and early-entry situations involving pesticides in toxicity categories I and II for eye irritation. When "protective eyewear" is required, the employer shall provide goggles, a face shield, or safety glasses with side shields and brow guards.

For products in toxicity category I for eye irritation, the Agency may, on a case-by-case basis, require the labeling to include a requirement for the use of goggles or a face shield.

v. *Respiratory protection.* The Agency proposed to require handlers and other workers who enter treated areas before vapors have dispersed to wear respiratory protection devices approved by the National Institute for Occupational Safety and Health (NIOSH) and the Mine Safety and Health Administration (MSHA), if the pesticide is in toxicity category I or II for inhalation toxicity. The Agency did not propose to require respiratory protection for handlers of pesticides with inhalation toxicity classified in toxicity category III or IV or for workers entering treated areas after pesticide vapors have dispersed.

Several comments pointed out that although several types of respirators have NIOSH/MSHA approval for protection against pesticides, NIOSH does not test respirators for individual pesticides. Therefore, requiring "a NIOSH- or MSHA-approved respirator" does not assure the use of the most appropriate respirator for a specific pesticide. The comments also noted that the NIOSH instructions that accompany air-purifying respirators refer the user to the pesticide label for limitations of use. Some comments urged the Agency to require pesticide manufacturers to provide respirator instructions in the product labeling.

Most comments urged the Agency to require respirator fit-testing before a respirator is used and a physician's approval that the handler's physical condition will permit him/her to use a respirator safely. One comment stated that the use of forced air respirators would eliminate some of the fitness and fit testing problems.

Several comments suggested that the selection, use and maintenance of respirators be consistent with the program described in the OSHA standards (29 CFR 1910.134) and/or that the specific recommendations be provided in the Agency's rule.

The Agency agrees with the comments regarding the need for a comprehensive respirator use program encompassing selection, correct use, and appropriate maintenance of respirators. EPA has developed a guidance document on the use of respirators in agriculture. The language in the final rule offers some guidance on changing filters, cartridges and canisters in the absence of direction from the manufacturer; part 156 requires the registrant to specify what type of respirator should be used with a product that requires respiratory protection for handling.

c. *Exceptions to personal protective equipment (PPE) requirements.* The Agency has retained the requirements proposed for aerial applicators. Pilots in enclosed cockpits will not be required to wear PPE. Pilots in open cockpits must wear the PPE required for a ground applicator of the product in use, except that chemical-resistant footwear is not required, and a helmet with visor may be used in lieu of a hat and protective eyewear. Pilots in both types of equipment must wear the protective gloves required by the labeling when entering or exiting a plane whose exterior is contaminated by pesticide residues.

The Agency proposed that pesticide handlers in the enclosed cabs of ground vehicles should be exempt from PPE requirements. If the enclosed cab did not contain a properly functioning gas- or vapor-removing ventilation system, any labeling requirement for a respirator would be in effect, but all other PPE would be waived. Fully enclosed cabs without air filtration have been shown to reduce dermal (but not respiratory) exposure substantially for airblast applicators. The Agency was concerned, however, that heat buildup in unventilated enclosed cabs might lead applicators to open windows for comfort, which would negate the benefit of the enclosed cab. The Agency specifically sought comment on this issue. The Agency also was concerned about the possibility of handlers leaving the enclosed cab in the treated area, becoming contaminated, and then returning to the enclosed cab. Therefore, EPA proposed that all PPE required for a ground applicator of the pesticide must be available for use any time the handler leaves the cab in the treated area.

Most comments expressed concern that applicators in cabs without ventilation will open the window on a warm day, thus negating the cab's protection.

Many suggested that full PPE should be required for operators in an enclosed cab without ventilation. One comment noted that there is no way to eliminate the need for handlers to leave the cab in the treated area; since protective clothing must be worn, employers will use this as an excuse for not providing protective cabs. An equipment manufacturer commented that their studies have shown that contaminated clothing (gloves on the steering wheel or dash, etc.) is a major source of chemical contamination inside cab enclosures.

The Agency acknowledges the potential for defeat of the enclosed cab's protection by opening windows or by contaminating the interior of the cab with clothing or equipment containing pesticide residues. However, EPA supports the use of engineering controls in lieu of PPE where feasible; an enclosed cab used correctly is protective. The Agency is aware that pesticide applications in many regions of the country take place where discomfort from heat is not a factor, even in enclosed cabs. The Agency is aware also of many situations where the applicator is not the mixer or loader or the person who repairs or adjusts the application equipment, and therefore would not be required to change into or out of PPE for these activities. Under these conditions, it would be inappropriate to require PPE in the enclosed cabs. Therefore, the Agency continues to waive the PPE requirements, with the exception of any respirator requirement, for applicators in enclosed cabs. If the windows of the cab are opened at any time during the application or the enclosure is otherwise breached, the cab is no longer considered enclosed, and applicators would be required to wear the PPE required on the pesticide labeling for applicators of the product.

Users must wear PPE when leaving the cab only if they will contact pesticide-treated surfaces in the treated area. They may leave the cab for a rest stop or other reason (other than handling pesticides) without wearing PPE if they will not be in contact with pesticide-treated surfaces in the treated area. The applicator may leave the cab and walk away from the just-treated area without PPE.

The Agency is concerned that the interior of the enclosed cab may be contaminated from pesticide-contaminated clothing worn or taken into the cab. Therefore, the Agency changed the language of the rule to prohibit such an action. Once PPE is worn in the treated area, it may not be worn into or taken into the cab.

A few comments concurred with the Agency's proposal to waive the use of all PPE, including respirator, if the enclosed cab has a properly functioning, positive-pressure ventilation system that removes vapors from the air. The Agency based its proposal on studies indicating that positive-pressure, charcoal- filtered ventilation systems on enclosed cabs can remove more than 99 percent of pesticide vapors and sprays during air intake. Other comments stated that enclosed cabs were unproven as protection for airborne hazards and that data are needed that demonstrate the effectiveness of the protection offered by an enclosed cab.

The Agency believes that incentives should be used to encourage the use of engineering controls instead of PPE when such technology exists. In the final rule, persons occupying an enclosed cab that has a properly functioning ventilation system, which is used and maintained in accordance with that manufacturer's written operating instructions and which is declared in writing by the manufacturer or by a government agency to provide respiratory protection equivalent to or greater than the respirator required by the pesticide labeling, may substitute a long-sleeved shirt, long pants, shoes and socks for labeling-specified PPE.

d. *Duties relating to personal protective equipment (PPE).* The Agency proposed that all PPE required by the pesticide product labeling for a particular work activity be provided to handlers and early-entry workers and that the employer clean and maintain such equipment.

In the final rule, EPA has modified the language to clarify who is responsible for fulfilling the various requirements and provisions. This section now specifically states that the employer shall provide the appropriate PPE in clean and operating condition. This provision does not prohibit handlers who own PPE, such as a respirator, from using that equipment. The employer, however, would be required to assure that such equipment is cleaned and maintained. The employees would not be allowed to wear home or to take home the equipment unless it had been cleaned first.

A few comments indicated uncertainty about who would provide "normal work attire" (long-sleeved shirts, long pants, shoes, and socks) when it is required by the labeling and whether it is considered to be PPE. The Agency does not include normal work attire in the definition of PPE; therefore, it is not part of the employer's responsibility to provide or maintain this attire.

The Agency perceives the appropriate decontamination of PPE as a major area of concern. Significant levels of some pesticides can remain in clothing or equipment if it is not laundered correctly or if prescribed decontamination procedures are not followed. Surveys of pesticide users, especially agricultural workers, indicate that a large percentage do not follow any precautionary procedures when cleaning contaminated clothing and equipment. If PPE is reused without cleaning or laundering, the protective effect may be reduced or eliminated. Therefore, the Agency has determined that it is appropriate for the employer to assure that PPE is cleaned and maintained properly before it is reused.

The proposal required that after each use all PPE be washed thoroughly with detergent and hot water or be cleaned according to the manufacturer's instructions and that it either be dried thoroughly before being stored or be placed in a well-ventilated place to dry. The Agency also proposed that PPE be stored away from pesticide-contaminated places and be stored separately from personal clothing to avoid contamination of either clean PPE or clean personal clothing.

A few readers interpreted the proposal as requiring laundry facilities on-site (on the farm, forest, or nursery, or in the greenhouse). It does not.

Several comments said EPA did not provide sufficient guidance for the implementation of the proposed cleaning and maintenance provisions. Two comments questioned appropriate decontamination for chemical-resistant protective clothing and equipment; fabric clothing can be laundered daily, but chemical-resistant suits are expensive and are damaged by constant laundering in hot water. One was concerned that conventional washing of chemical-resistant suits may result in low-level contamination of the inside surfaces that might not occur otherwise. It suggested modifying the language to state that chemical-resistant suits, hats, boots, and gloves need not be washed or cleaned daily, but must be kept in a condition of cleanliness consistent with employee safety.

Several comments questioned the conditions under which the employee may be permitted to wear or to take home "normal work attire" that has become contaminated. To prevent these situations, some comments advocated that the employer should be responsible for cleaning and maintaining "normal work attire," i.e., long-sleeved shirts, long pants, shoes, and socks worn during handling or early-entry activities when it is specified on the labeling.

Several comments from the forestry industry asserted that it was awkward to clean and maintain PPE in typical forestry situations. Some of these requested that PPE and laundry requirements be eliminated for pesticides in toxicity categories III and IV and for diluted pesticides in toxicity categories I and II.

The Agency has studied the comments on this issue. As stated above, normal work attire is not considered to be PPE; thus, the employer has no responsibility to provide it. However, EPA is concerned about employees' wearing or taking home pesticide-contaminated clothing or equipment, regardless of whether the clothing is provided by the employer or by the employee. The Agency, therefore, is inclined to require that employers clean and maintain any attire an employee wears while handling pesticides or performing early-entry tasks. However, such an option was not discussed in the NPRM, and the economic impact of such a requirement has not been assessed. The Agency must study the costs and logistics involved in such a requirement and may publish a proposal on this issue for public comment at a later time. Although it would be prudent for employers to clean and to maintain pesticide-contaminated work clothing for their employees, it is not a requirement of this final rule.

If a pesticide used in forestry requires the use of PPE, such equipment must be cleaned and maintained by the employer. This cleaning and maintenance need not be done on the employer's premises or immediately following use. EPA left flexibility in the requirement to allow for employers to collect contaminated PPE and to clean it at their convenience at a location of choice. Therefore, forestry employers could provide their handlers (and early-entry workers) with a clean set of PPE for each day of handling activities and provide a chemical-resistant container that could be securely fastened, such es

a sturdy plastic bag, for storing the contaminated PPE until it is cleaned.

EPA's directive to wash PPE in hot water and detergent is the alternative when there are no directions from the manufacturer on how to clean and maintain equipment. The goal is to remove pesticide residues as completely as possible so that the equipment is clean the next time it is used. Evidence indicates that non-chemical-resistant clothing and equipment, as well as many chemical-resistant items, should be cleaned in hot water and a heavy-duty detergent to remove pesticide residues most efficiently. If manufacturers of chemical-resistant gloves, boots, or protective suits indicate another method of cleaning and maintaining the equipment, it must be followed.

EPA proposed that persons responsible for cleaning the PPE would be informed that the equipment might be contaminated with pesticides. Only a few comments were received on this issue. One comment requested that any person cleaning the PPE be required to provide written verification that he has been warned of the hazards.

EPA concurs with the sense of the comment and has rewritten the rule to require the employer to inform persons who clean or launder PPE or other pesticide-contaminated items of the possibility that such items may be contaminated with pesticides and of the potentially harmful effects from exposure to pesticides. The employer must also inform these persons of the appropriate procedure(s) for handling and cleaning such items.

Some comments requested more specific guidance as to who would be responsible for inspecting the PPE before each day of use. A few suggested that the inspector be a certified applicator; others suggested that training on the appropriate inspection of PPE would be beneficial.

It is the employer's responsibility to assure that the PPE is maintained properly, and this includes inspecting the PPE for damage and other defects. This may be done by the employer, by a designated supervisor, or by the employees if they have been instructed in the care and cleaning of PPE. The Agency believes that it is not practical in many agricultural situations to require a certified applicator to inspect all PPE before each day of use.

EPA concurs that information on procedures for inspecting PPE would be useful. The Agency has developed a guidance brochure on the maintenance and inspection of PPE such as protective eyewear, gloves, protective footwear, chemical-resistant protective suits, hats or hoods, and coveralls.

e. *Heat-related illness (heat stress).* Although chemical-resistant suits are not part of the minimum PPE proposed by this regulation, they are required by the labeling for a few pesticides. The NPRM prohibited tasks requiring chemical-resistant suits where a combination of temperature, humidity, and time required to complete a task might be expected to cause heat-induced illness. The onset of these illnesses depends on a variety of factors, and EPA expressed the belief in the NPRM that users could be expected to anticipate when work activities might result in heat stress.

Many comments expressed concern about the risk of heat stress in agriculture with respect to the use of PPE when handling pesticides in warm climates, stating that guidance and training were central to enabling employers and employees to prevent heat-related disorders. Nearly every comment disagreed with EPA's assumption that the employer could ascertain when heat-related illness was a risk and asked EPA to give guidance about the conditions that would warrant limiting work due to heat stress concerns.

Some comments stated that it is inappropriate and unfair to ask employers to make decisions about heat-induced illness, a complicated and potentially life-threatening condition; farmers and ranchers have no training in health care. The comments stated that the employee should be trained to recognize the early signs and symptoms of heat-induced illness and be permitted to take work breaks, remove chemical-resistant suits (in a clean area), seek medical attention, or take other reasonable measures to alleviate those symptoms.

A few comments requested that PPE not be used or that the protective suit be permitted to be unzipped during applications when the applicator was upwind of the spray. Some comments stated that environmental conditions in some States or regions make wearing any PPE a problem because of extreme heat or humidity.

A few comments requested that specific temperature and humidity guidelines be established.

The National Institute for Occupational Safety and Health offered some recommendations for reducing heat stress when PPE is required.

EPA has determined that heat-related illness is a potential problem with the use of many types of PPE. Therefore, the Agency has modified the language in the rule to state that the employer should use appropriate precautions to prevent heat-related illness (§ 170.240(g)). EPA has developed a guidance document that addresses recognition, prevention, and treatment of heat stress under agricultural working conditions. This document can be used by employers to determine suitable measures for preventing heat-related illness, as required by the rule.

EPA also believes that training handlers and early-entry workers to recognize the early warning signs and symptoms and to implement appropriate first-aid measures for heat-related illness will help to minimize the risk of such illnesses. Thus, EPA has modified the requirements for the training programs for handlers and the instructions for early-entry workers to include information about heat-related illness.

The establishment of specific temperature and humidity limits was determined to be inappropriate, because they are only two of several factors that contribute to the onset of heat-related illness. The Agency is persuaded that employers may be able to complete necessary pesticide handling activities, even in very warm weather, by acclimating handlers and early-entry workers, providing plenty of drinking water, modifying work schedules and work/rest cycles, and using portable cooling devices.

E. Decontamination

The Agency proposed that water, soap, and single-use towels be available during any work activity where there is potential employee contact with concentrated or diluted pesticides or with surfaces that have been treated with pesticides.

For pesticide handlers and early-entry workers, decontamination facilities would be required at all times since these activities have the greatest risk of exposure. For persons working in treated areas after the REI has expired, the Agency proposed to limit the requirement to activities in areas that have been treated during the current growing season.

Many comments questioned the need for decontamination facilities during an entire crop cycle, stating that a time should be specified.

The Agency believes that there is a need for decontamination facilities after the end of the REI. The Agency recognizes, however, that some pesticides may have been applied long before workers enter the area. EPA agrees with the comments that suggested that the proposed requirement might be excessive, and it sought to determine what might be a reasonable

time during which decontamination facilities should be available.

Knaak, Iwata, and Maddy, in a 1989 investigation of a series of pesticide poisoning incidents that occurred after the expiration of an REI, found that the median time from application in these incidents was 29 days. The Agency has studied more recent data regarding the incidence of multiple-case systemic illnesses of agricultural field workers from exposure to residues of organophosphates in California. Among the 44 incidents for which data were provided, the mean length of time from application to poisoning was 20 days, with a median of 16 days. The range was from less than 1 day to 66 days, although this latter figure was an outlier and did not appear to be well substantiated. Excluding parathion (no longer registered for most crops) and this outlier, the longest period between application and reentry poisoning was 39 days. The Agency believes that poisoning incidents that occur more than 30 days beyond the REI probably stem from a miscalculation in establishing the REI that is listed on the labeling.

As part of the Pesticide Hazard Assessment Project funded by EPA in 1985, a computer model was developed to estimate how long hazardous residues might persist. For one of the pesticides studied the hazard was predicted to remain for 30 days after the REI had expired. The Agency is seeking to corroborate and refine this model. In the meantime, the Agency believes it should institute a safety factor in the Worker Protection Standard to compensate for this potential variability.

In response to the comments, the Agency has modified the language in the final rule to require decontamination facilities for workers entering a treated area for which an REI is in effect and for workers entering a treated area within 30 days after the expiration of the REI.

The NPRM also stated that the water shall be potable, in adequate supply, at a temperature that will not injure the eyes, and reasonably accessible to each worker's place of work.

There were many comments about the proposed rule's reference to potable water. Those supporting the requirement for potable water said that OSHA requirements for field sanitation already require potable water in the fields. Comments from representatives of the forestry industry pointed out that potable water might not be available to forestry workers working in areas with no vehicular access.

Those opposing the requirement for potable water stated that farm wells are not required to meet the Safe Drinking Water Act requirements, so it is unreasonable to expect water supplied from a farm to meet this standard for quality. In their comments on the draft final rule, under FIFRA section 25(a), the U.S. Department of Agriculture (USDA) stated that the decontamination provisions of the draft final rule would be unreasonably burdensome to employers because of the requirement for potable water for handwashing purposes. They stated that the standard for potable water is higher than necessary for washing purposes and that clean water should be sufficient. Clean water, they suggested, would be readily available from farm and irrigation wells, whereas potable water may not be. USDA believes that changing the decontamination provisions to permit the use of clean water would greatly reduce the burden and expense to farm employers without significantly reducing worker protection. They suggested that an appropriate standard might be the regional or local standard for water safe for swimming.

As stated in the NPRM, the Agency proposed the standard of "potable" for the quality of water for two primary reasons:

(1) "OSHA's Field Sanitation Standard (29 CFR 1928.110) requires potable water in the fields for hand laborers, intended not only for washing but also for drinking purposes. Even though EPA's proposed requirement was intended to provide water only for washing, in practice the water may be used by workers for drinking as well."

(2) "[O]nly 'potable' water can be defined in such a way that noncompliance can be clearly ascertained."

At the time of the proposal, EPA believed that since OSHA uses the potable water standard for its Field Sanitation Standard, it would be easier for employers to comply with one water standard than with two. However, EPA was reminded by commenters that approximately 89 percent of agricultural establishments are not currently covered by OSHA's Field Sanitation Standard and that EPA should be responsive to the burden to employers on those establishments.

EPA has been persuaded by the comments that a standard of "potable" may impose a substantial burden to agricultural employers, without a concomitant benefit to workers. EPA believes the goal of this requirement should be to ensure that workers and handlers will be provided with water that will not cause illness or injury when it contacts their skin or eyes and will not cause illness or injury if they should happen to swallow it. Thus, the Agency has been persuaded to eliminate the requirement for "potable" water and instead has required the provision of water that meets the stated performance standards. This will permit employers to equip decontamination sites with water which is used for drinking on the agricultural establishment, but which may not meet the standard of potability in the Notice of Proposed Rulemaking.

In reexamining the options, EPA considered establishing the quality standard of "clean" water defined as water safe for swimming. However, the Agency was unable to ascertain how agricultural employers would be able to apply such a standard. In adopting a standard of water quality different from a potability standard, EPA remains concerned that in practice, some workers may drink the water, especially if no alternative source of drinking water were available in the field. Moreover, the Agency has concluded that water must be of a quality safe for drinking because (1) workers and handlers may accidentally swallow water in the process of washing/flushing their faces or eyes, and (2) workers and handlers may mistake wash water for drinking water. EPA believes that placarding water to indicate that it is not for drinking purposes would be a difficult and unwieldy requirement given the range of languages and degree of illiteracy among workers. EPA concurs with OSHA's stance in the preamble to the Field Sanitation Standard that they "would like to eliminate the use of signs in several languages to identify different classes of water quality in the same workplace and the errors that occur when water supplies are confused."

The Agency believes that defining decontamination/eyeflush water, in part, as water that "will not cause illness or injury if swallowed" will allow enforcement officials to ascertain noncompliance. EPA expects that the water used for drinking purposes on the agricultural or handler establishment will usually be the source of water for washing and eyeflushing. EPA notes that those establishments currently complying with the requirement for providing potable handwashing water to workers under OSHA's Field Sanitation Standard would also be in compliance with the EPA requirement for decontamination water if the same water were used. It is important to note, however, that EPA is not exercising any statutory authority in this rulemaking to address the general sanitation hazards addressed by the OSHA Field Sanitation Standard.

The Agency recognizes the difficulty in providing decontamination sites for employees working in areas with no vehicular access and is modifying the decontamination requirements for

activities performed more than 1/4 mile from the nearest place of vehicular access. For these remote work sites, the required decontamination site may be located at the nearest place of vehicular access, instead of within 1/4 mile of each worker or handler. Workers and handlers may use clean water from springs, streams, lakes, or other sources for routine and emergency decontamination at the remote work site, if such water is more accessible than the decontamination water located at the nearest place of vehicular access. The Agency has concluded that, in such circumstances, the risks from the use of water of uncertain quality are likely to be less than the risks from delay in removing pesticides or pesticide residues from the skin or eyes.

Some comments stated that "reasonably accessible" needs definition. Numerous comments suggested that decontamination sites should be no greater than 1/4 mile from employees. Others noted that the restricted-entry area is where contamination may occur, that decontamination sites should be made available there, and that water in a tank is protected in a treatment area.

The Agency believes that the language of this requirement should be consistent with the language of the OSHA Field Sanitation Standard requiring that the decontamination site must be reasonably accessible, not to exceed 1/4 mile or approximately a 5-minute walk from each worker's place of work. As a result, the rule has been revised to include a specific distance requirement of 1/4 mile. For agricultural workers, the decontamination site must not be in an area under an REI. For early-entry activities, the decontamination site may be in the area where the employees are working. For application activities, the decontamination site may be in the area being treated if the soap, single-use towels, and clean change of clothing are in enclosed containers and the water is running tap water or is enclosed in a container.

The Agency proposed that an eyeflush dispenser be provided during handling and early-entry situations involving a product that is a severe eye irritant, i.e., toxicity category I or II for eye irritation, signified to the user by a requirement for protective eyewear on the labeling. The dispenser would be immediately available for emergency use, e.g., it would be carried by the handler or on the handler's vehicle. The Agency solicited comment on whether the dispenser needs to be available during all activities or only certain ones, whether each employee should carry a dispenser, and whether carrying a 1-pint dispenser on one's person represents undue weight burden.

The comments supported the requirement for requiring eyeflush dispensers for mixers and loaders. Several comments stated that eyeflush equipment should be available for all employees, but that not all workers need to carry eyeflush dispensers; only handlers have such a need. Again, language such as "otherwise immediately accessible" was thought to be vague. One comment included a copy of an OSHA Field Directive that cautions about the possibility of contamination of eyeflush water by *acanthomoebae*. Some comments suggested that if a pesticide is a hazard to eyes, it is best if each person carries a dispenser, but if that is not possible, a full pint for each 2 or 3 persons should be made available. Several comments noted that eyeflush containers carried by employees may be contaminated by pesticides.

The Agency is concerned that the language of the proposed rule may have led to some misconception about what water may be used for flushing the eyes in case of emergency. The decontamination water that must be provided for routine washing and emergency whole-body cleansing must not cause illness or injury when it contacts the eyes. Therefore, the Agency has added "emergency eyeflushing" as one of the basic functions to be met by that water. EPA wants to make clear that while special eyeflush dispensers may be used, any source of water that meets the standards for decontamination in the final rulemaking is acceptable for flushing the eyes. In appropriate instances, the language of the rule has been altered to change the requirement from "eyeflush dispenser" to "eyeflush water." In addition, these requirements have been combined in this final rulemaking to avoid confusion.

In response to comments about workers and handlers who need more immediate access to eyeflush equipment, the Agency requires that the emergency eyeflush water shall be carried by the handler or early-entry worker, or shall be on the vehicle or aircraft which the handler or early-entry worker is using, or shall be otherwise immediately accessible. Again, EPA wants to make clear that this water does not necessarily have to be in a dispenser. Any nearby source of adequate amounts of water meeting the definition of decontamination water satisfies this requirement.

The Agency is persuaded of the importance of protecting against bacterial and other types of contamination of the water used for washing and eyeflushing. Therefore, the final rule will require employers to assure that "at all times when the water is available" to workers and handlers, it will remain of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed. The agricultural employer and handler employer will be responsible for making sure that the water is replaced and the container is cleaned often enough to prevent bacterial or other contamination that could cause illness or injury to employees using the water for washing or eyeflushing. In most circumstances this would mean replacing water in containers at least daily and regular cleaning of those containers.

F. Emergency Assistance

EPA proposed that all employees be informed of the name, address, and telephone number of the nearest physician, clinic, or hospital equipped to provide medical care in a pesticide poisoning or injury emergency. This information was to be displayed in a prominent location on the agricultural establishment at all times.

In pesticide poisonings or injury emergencies, the victims may be unable to transport themselves to the nearest medical facility. Therefore, EPA proposed that prompt transportation to an appropriate medical facility be made available when there is reason to believe that a worker or a handler has been poisoned or injured by a pesticide. In a possible pesticide poisoning or injury, the most effective medical care can be provided only through a correct diagnosis and prompt administration of the appropriate antidote or treatment. A doctor must know the name of the product or active ingredient to which the worker or handler has been exposed to ascertain the appropriate treatment. Thus, EPA proposed that in an emergency, workers and handlers be provided, if available, the product name, registration number, active ingredient(s), and first aid or antidote information and other information about the use of the pesticide and possible exposure to the worker or the handler. This information is available to pesticide users from the labeling of the product or from their knowledge of the product; the requirement to provide information did not require that the user maintain records or keep pesticide labels or containers.

In their comments on the draft final rule, under FIFRA section 25(a), the USDA stated that EPA needed to clarify when the employer is responsible for making available to the worker prompt transportation to an appropriate emergency facility. USDA stated that they interpret this provision to be applicable only while the employee is on the employer's property. EPA agrees and has clarified in the rule that the agricultural employer must provide such transportation when a worker is on the employer's establishment, including in any labor camp located on the establishment. The Agency has similarly clarified in the final rule that the handler employer must provide emergency transportation when a handler is at the place of employment or at the handling site.

The Agency found no other information among the few comments on this requirement to cause it to reconsider other aspects of the requirement; they remain in the final rule essentially as proposed.

G. Pesticide Safety Training and Information

Based on the conviction that training and information are essential components of a successful risk-reduction strategy, the NPRM proposed several requirements related to providing pesticide safety training to handlers and information to workers: (1) General pesticide safety information for workers through a poster to be displayed in the work place, (2) pesticide safety training for handlers and early-entry workers, (3) labeling-specific information to handlers, and (4) labeling-specific information to workers on request.

1. *General pesticide safety information*—a. *Poster.* The Agency proposed to require that general pesticide safety information be displayed on a poster in a prominent location on each agricultural establishment during the growing season. The poster would contain statements concerning pesticide hazards and recommended safety practices, the location of emergency medical care facilities, a sample of the warning signs used for posting treated areas, and statements concerning the rights and duties of employers, supervisors, and workers. All information would appear in English; if some workers read only another language, the poster either would be translated into that language or contain a statement in that language recommending that the workers have someone explain the information to them. Workers would be informed of the location of the information and would be allowed reasonable access to it.

The Agency considered whether other methods of communicating this information to workers, such as oral instructions or a training program given either by employers or by other providers, would be more effective than a poster, and asked for comment on this issue.

Most comments favored a requirement for a pesticide safety poster. There were specific criticisms focused on the proposed content of the poster. Some comments stated that the language was too forceful; others criticized the language for not being emphatic enough. Some comments requested that the poster have definitions of the signal words used on labeling.

There were several comments concerning the location of the poster. One suggested that more than one poster be displayed per establishment; another recommended that pesticide users distribute information sheets to their workers to avoid intimidation and retaliation should workers attempt to study the information presented on a poster.

Some comments pointed to the difficulty of posting information at forest work sites and requested flexibility to post at the crew headquarters or assignment area.

The final rule maintains the requirement for agricultural employers and handler employers (other than employers on commercial pesticide handling establishments) to display pesticide safety information in a poster format at a central location, with some modification of the proposed requirement. Although the final rule also requires that workers and handlers receive oral or audiovisual training in pesticide safety, the Agency believes that, at least for workers who are literate, a pesticide safety poster will serve as an important reinforcement and reminder of the information learned in the training program. A poster also will provide a convenient place in the workplace to make note of specific emergency medical information, i.e. telephone numbers and addresses.

The Agency concurs with many of the comments concerning linguistic complexity, emphasis, and other aspects of the proposed pesticide safety poster. It has decided that the exact wording and format do not belong in part 170 because changes may be needed as EPA and others gain new information about pesticide safety. In lieu of requiring the employer to display specified items of information, EPA is requiring that general topics be covered in simple, emphatic language. EPA intends to publish a poster designed to address many of the concerns raised in the comments and intended to meet the part 170 requirement. Employers may use the EPA poster or a poster of similar content that meets the requirements of part 170. The Agency will make such a poster available through numerous distribution sources and will encourage other organizations to produce similar posters.

The final rule permits employers of forestry workers or handlers to display the poster at a place other than the forest work site, as long as it is reasonably convenient for workers or handlers and they are informed of the location. EPA does not believe that it is necessary for employers to distribute this information to workers or handlers in written form. EPA believes that the requirement as worded makes it clear that only one poster need be displayed per agricultural establishment, even if there are several work sites, e.g., more than one greenhouse or field, as long as each employee has access to it. EPA has made no changes to the employer's duties to maintain the poster in legible condition and update the emergency medical care information as necessary.

EPA has been convinced by comments that requiring the items of information on the poster to be translated is impractical. Since the purpose of the poster in the final rule is to reinforce worker or handler training, which must be given in a manner the worker or handler can understand, the requirement for translation has been dropped.

b. *Training for agricultural workers.* The Agency's request for comment on the most appropriate method for conveying basic pesticide safety information to workers stimulated many responses. The comments strongly supported some combination of oral, audiovisual, and written training in pesticide safety for all agricultural workers who may be exposed to pesticides or pesticide residues. Comments favoring training for all workers came not only from worker advocates such as unions and legal and health service providers, but also from universities, chemical companies, State lead agencies and other State agencies, growers, and grower organizations. A Farm Bureau chapter stated that it supported a one-time instruction given for employees, i.e. at harvest or at time of employment.

The comments stated that employers need to convey safety information to all workers orally because workers cannot or will not read written materials; oral instruction and training are the most

effective means to communicate information.

The few comments opposing training for workers were concerned about the logistics of doing the training, but did not oppose the concept of such training. In their comments on the draft final rule, under FIFRA section 25(a), the United States Department of Agriculture stated a concern about requiring training for agricultural workers before their first work period. They state: "In effect, the training provision will require that an employer provide training at the beginning of the season, and then, each time an additional worker or replacement worker is hired. . . . Given the extremely high variability and turnover within labor intensive agricultural work groups (1,000 percent is not uncommon), this procedure . . . would frequently result in virtually continuous training of small groups of new hires by each employer."

The Agency believes that providing information about ways to avoid or to mitigate occupational exposure to pesticides will reduce pesticide-related illnesses and injuries among agricultural workers significantly, and it has been convinced by the public comments that training as well as displaying a poster will better convey this information. A poster may be effective in conveying a simple message, but training more effectively conveys larger amounts of information. Reliance on a poster also presents problems relating to language literacy, and accessibility. Many agricultural workers go directly to the work site, rather than to a central location; these workers would have neither the opportunity nor the incentive to examine a poster. For workers not literate either in English or their native language, adding a paragraph to the poster in any language advising them to have the poster explained to them would do little good. From the comments, EPA has concluded that an oral or audiovisual training program is an essential complement to a poster in communicating pesticide safety information to workers, and therefore such a requirement is a necessary component of worker protection standards.

Although training each worker involves more employer effort than displaying a poster, the Agency has determined that the burden will not be significant. In their comments, many employers noted that they train their workers in pesticide safety, either because they feel it is important, or because they believe they are subject to the OSHA Hazard Communication regulations.

EPA has developed videotape and slide-tape training programs in English and in Spanish. The Agency intends to update these materials to correspond to the requirements of the final rule. These updated materials may be used by employers, the Cooperative Extension Service, State agencies, health care providers, and others; employers may obtain and use the training materials themselves or make arrangements to have workers trained by others.

The final rule has been modified to include a training requirement for workers. The modified rule requires agricultural employers to assure that before the 6th day that any worker enters any areas on the agricultural establishment where, within the last 30 days, a pesticide has been applied or an REI has been in effect, the worker receives pesticide safety training. For the first 5 years after the effective date of the rule, however, the rule allows employers up to the 16th day that any worker enters any areas on the agricultural establishment where, within the last 30 days, a pesticide has been applied or an REI has been in effect, to assure that the worker receives pesticide safety training. The Agency's intent is that workers receive training as soon as is practicable in each work situation, but not necessarily before their first exposure. In most instances, the Agency believes that whenever permanent employees and crews of employees are hired, the training could take place before the new-hires' first exposure period.

The longer time period (approximately 3 work-weeks for the first 5 years and approximately 1 work-week thereafter) allows agricultural employers more flexibility in arranging for training of workers they employ. Such flexibility will be most useful for establishments where there is frequent turnover in the workforce, such as with large crews of seasonal labor, or where one or more of the workers do not understand either English or Spanish and a person who can translate the training to such workers must be located. After the 5-year period, most of the existing agricultural workforce already should be trained and only workers new to agriculture will need to be trained. In addition, by the end of the 5-year period, agricultural employers should have access to training materials and translators in the necessary languages. Therefore, beginning 5 years from the effective date of the revised final WPS, workers must be trained before their sixth day of entrance to areas where, within the last 30 days, a pesticide has been applied or an REI has been in effect.

The 6th (or 16th, as applicable) day of entry is not limited to a growing season or calendar year. It is the 6th (or 16th) day of exposure beginning when a worker enters areas on the agricultural establishment following a treatment with a pesticide to which the Worker Protection Standard applies. To avoid keeping track of such workers' days of exposure, two options are available to the agricultural employers. First, they can make sure that all workers are trained before their first exposure in such areas. Second, they can hire only those workers who have already received training and who possess a valid training certificate.

The Agency is also attempting to mitigate repetitive training by establishing a relatively lengthy (about 20 months) lead time before the training provisions of the final rule are enforceable. This lead time will allow a substantial number of workers to be trained in the interim. Once a large percentage of workers have been trained, the concern about repetitive training diminishes, because many new hires already will have received training.

The risks from pesticide residues decrease as the time increases between application and entry into treated areas The Agency recognizes that in some circumstances or under some conditions residues might remain as long as 30 days after the end of an REI. Workers who enter the areas after that time have little to gain from the use of exposure-mitigation techniques. As a result, a grower who applies a preplant herbicide in March and uses no other pesticide treatments during the growing season would not be obliged to train workers who are hired to harvest the crop in October. Therefore, the Agency has chosen to require training for workers who enter an area where, within the last 30 days, a pesticide has been applied or an REI has been in effect.

All early-entry workers must be trained before they are allowed to enter an area before the REI has expired. Workers must receive training before they are allowed to enter treated areas before the expiration of an REI to perform tasks permitted under § 170.112 and involving contact with anything that has been treated with the pesticide, including, but not limited to, soil, water, or surfaces of plants, because EPA believes that their risk of exposure is higher than that for workers entering after the expiration of the REI.

Workers and early-entry workers must be given the specified training in

pesticide safety, unless they: (1) Satisfy the training requirement for pesticide handlers under this regulation, (2) satisfy the training requirement under part 171 of this chapter, or (3) are currently certified private or commercial pesticide applicators.

The training program must be presented in a manner the worker can understand, using nontechnical terms. The general pesticide information must be presented either orally using written materials, or audiovisually. As a minimum, the person conducting the training must have been trained as a pesticide handler under part 170.

The training may be presented using a translator or through sign language, if the employer assures that the worker can understand the information being presented. The fact that an employer does not normally provide training in the particular language of a job applicant, or that translation services are not readily available, does not absolve an employer of his training responsibilities under the WPS. Employers who provide training under the WPS should be cognizant that a refusal to hire an applicant who is unable to understand the language or languages in which the employer usually provides training may constitute discrimination on the basis of national origin. Discrimination on the basis of national origin is actionable under Title VII of the Civil Rights Act of 1964 or under the Immigration Reform and Control Act of 1986 (IRCA). There is also a possibility that the failure of an employer to provide training in any language and, instead to consistently require current training certificates from applicants for those jobs whose activities require WPS training, could thereby be causing a disparate impact which could, under some circumstances, be interpreted as constituting discrimination based on national origin. Employers desiring information regarding their responsibilities under Title VII of the Civil Rights Act of 1964 or the anti-discrimination provisions of the IRCA may contact the Equal Employment Opportunity Commission or the Special Counsel for Immigration Related Unfair Employment Practices of the U.S. Department of Justice, respectively.

The training programs for workers must include the same basic information as those for handlers, except for topics that are relevant only to handlers. For example, worker training need not include information related to the format and meaning of pesticide labeling or to transportation, storage, and disposal of pesticides. Worker training must include information about the worker protection requirements of part 170 such as application and entry restrictions, the posting of warning signs and the design of the warning sign, oral warnings, the availability of specific information on applications, and protection against retaliatory acts. This will ensure that workers know what protection they should be receiving so they can encourage compliance with part 170.

The final rule requires that workers be retrained at 5-year intervals, measured from the end of the month in which the training is completed. The Agency believes that such renewal of WPS worker training will be adequate to convey the basic pesticide safety precepts to workers and to provide timely updates and reinforcement, without undue burden. The presence of the required pesticide safety poster in the workplace will serve as a reminder of pesticide safety practices for workers whose training may have occurred some time in the past.

In their comments on the draft final rule, under FIFRA section 25(a), USDA expressed concern about the absence of a formal mechanism to avoid repetitive training of each new hire on each agricultural establishment and welcomed the opportunity to work with EPA to develop such a verification program. A change to the rule was made. The rule now states that if the agricultural employer determines that a worker possesses an EPA-approved WPS training certificate and has no reason to believe it is invalid, that determination shall meet the requirements of assuring that the worker has been trained. The revised final rule requires trainers to assure that appropriate WPS training has been given to a worker before the training certificate is issued.

EPA expects that a wide variety of groups would be qualified to conduct WPS training and issue EPA-approved training certificates, including grower or commodity organizations, pesticide dealers, worker advocacy or interest groups, or others.

The use of an EPA-approved WPS training certificate is optional. The Agency encourages those trainers who, voluntarily, would like to maintain records or issue cards to workers to do so.

EPA and USDA intend to establish a joint task force to develop and implement a mechanism for verification of training. The task force would seek to reduce the amount of duplication in training and to establish a voluntary system of training verification. Once the mechanism for verification of training has been determined, the Agency will issue guidance regarding the specific nature of the verification system. Such guidance is expected to include the following topics: (1) Criteria that the Agency will use for determining which persons or agencies will distribute the training certificates to prospective trainers; (2) description, format, and content of the training certificate; (3) mechanism for ascertaining the expiration of the training certificate; (4) content of the certification statement that prospective trainers would have to sign in order to receive the training certificates.

2. *Training for handlers.* The Agency proposed that general pesticide safety training would be required for all persons who are employed to handle pesticides intended for use on agricultural crops on farms or in forests, nurseries, or greenhouses. This requirement would be waived if the handler were certified as a private or commercial applicator. Each handler was to be instructed by a trainer who met certain minimum qualifications. The training program also had to meet minimum standards.

Many comments noted that EPA's handler training was similar to the training in chemical hazards required by OSHA's Hazard Communication Standard and questioned whether both requirements were necessary. There was concern that the apparent duplication of OSHA's Hazard Communication Standard may cause confusion for the growers and regulatory agencies.

EPA acknowledges that there may be some confusion regarding the relationship between the training required by the OSHA Hazard Communication Standard and by this standard and is working with OSHA to define more clearly the roles of the two agencies in hazard communication for pesticides users. For additional information on this topic, see EPA's proposed amendment to 40 CFR part 170 published elsewhere in this issue of the **Federal Register.**

Most comments on the training requirements for handlers supported the concept of such training. However, a few comments opposed any training requirement for pesticide handlers because they thought private applicator certification for all persons who handle agricultural pesticides would be burdensome and impractical.

EPA does not intend to require private applicator certification for all who handle agricultural pesticides, but the Agency does believe it is important that all persons who handle agricultural

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pesticides have training in basic pesticide safety.

Some comments that strongly supported the concept of handler training had reservations or criticisms regarding specific provisions of the training requirements.

A few comments stated that being certified should not exempt handlers from being trained under part 170, noting that the proposed handler training requirements exceed the private applicator certification requirements in some States.

The Agency acknowledges that there may be variation among the States in the content and effectiveness of certification programs. EPA is revising the certification regulations (40 CFR part 171) to upgrade the national "core" requirements for certification of private and commercial applicators. When the revisions to part 171 are promulgated, all State certification programs for pesticide applicators will be required to contain the components of the upgraded national "core" requirements. The Agency is confident that all State certification programs then will meet or exceed the minimum requirements for training of pesticide handlers contained in part 170.

Several comments said that training should be specific to the task being performed, not general pesticide safety training and that, like labeling, training should fit the toxicity of the substance.

EPA is not persuaded that job- or product-specific instruction by supervisors is an effective substitute for basic pesticide safety training. The Agency is convinced that pesticide handlers will be more willing to observe job specific safety instructions and to cooperate in hazard reduction provisions, such as using PPE, if they are informed of the reasons for such provisions. Therefore, this final rule retains the requirement for general pesticide safety training for all pesticide handlers.

Some respondents questioned where to find information required for the training program, especially regarding spill cleanup and chronic health effects.

EPA intends that the training programs for pesticide handlers stress basic principles of safe pesticide handling. Pesticide-specific information is required to be furnished to each handler before each handling task. EPA intended that the information on health effects should focus on types of possible health effects, such as acute and chronic effects, delayed effects, and sensitization (allergic effects), that may be associated with pesticide exposure, not on product-specific effects. Information in the training program regarding pesticide spill cleanup would be limited to the generally accepted three-step procedure of containment, removal, and disposal. Information on how to dispose of a specific spilled material will not be included in the general training program. Any handler assigned to clean up a spill would need to have any information on the pesticide labeling regarding spill cleanup procedures, precautions, or requirements specific to that product. If no specific information is listed on the pesticide labeling, the employer has no requirement under this part to seek out additional spill-specific information or instructions.

The Agency is supportive of those who want to train handlers beyond the minimum requirements in part 170 and encourages such initiatives. EPA is developing a new regulation regarding the appropriate procedures for disposal of pesticides and pesticide containers. When the rule is promulgated, the information is expected to be incorporated into pesticide labeling and can be conveyed to the handler on a product-specific basis.

The handler also must be informed of any pesticide-specific warnings or information regarding any health effects listed on the labeling of the pesticide being handled.

One comment questioned the relevancy of environmental information in worker protection training. The Agency believes such training is relevant to worker protection. Many environmental concerns are applicable not only to the organisms in the environment, but also to workers and other persons who may be in that environment. Ground and surface water warnings, for example, are designed to protect not only aquatic organisms, but also workers and other persons who may be using the water for drinking, cooking, bathing, etc. The Agency notes that FIFRA defines "environment" as including "water, air, land, and all plants and man and other animals living therein, and the interrelationships which exist among these."

A number of comments suggested that handlers receive instruction concerning the part 170 handler protection requirements so they can assist in protecting themselves and be aware of noncompliance. One comment said that the training should cover the anti-retaliation provisions of the regulation and employees's rights to file complaints.

EPA agrees with these comments and has added such a subsection to the training requirements.

In § 170.230, EPA has made some modifications to the content of the training program in addition to those discussed above. The topics have been reordered, and some have been combined. Several subsections have been rewritten to improve their clarity. A subsection has been added requiring instruction in the recognition and avoidance of heat-related illness associated with the use of PPE.

The Agency's proposal to require a trainer to be a certified private or commercial applicator or to be designated by a State or Federal agency as a trainer of certified applicators received considerable attention.

Some comments objected to permitting certified applicators, especially private applicators, to run training programs. Being certified has no bearing on competency to train others in pesticide safety, they maintained, and this provision may lead to unqualified persons providing training. Comments also said that trainers should be required to attend a continuing education course on how to instruct pesticide handlers.

A number of comments requested that other people who meet EPA requirements be permitted to run training programs for handlers or that the trainer should not be required to be a certified applicator. They pointed out that many agricultural professionals could do such training, such as county cooperative extension agents, university professors, consultants, and properly trained supervisory personnel.

Several respondents stated that a trainer was not necessary at all; employees handling pesticides could be given written information on pesticides to meet training requirements, if the handler is able to read. Another comment said that States should determine how training will be done.

The Agency continues to believe that the physical presence of a person to run the program and to respond to the questions of participants is critical to the success of the training. EPA will require the presence of a trainer since many of those needing training may have little formal education and may not be able to read and comprehend written materials without help. The Agency is aware that some States have developed successful training programs for certified applicators that do not require the presence of a trainer. EPA will allow States to adopt training programs that are more comprehensive than the Federal program. If any State wishes to establish an autotutorial program accompanied by some measurement of understanding, EPA will review the program to determine whether it is as comprehensive as the program required by this regulation.

After considering these comments, the Agency has decided that the most relevant trainer qualification is previous training in pesticide use and safety. Certified applicators, whether private or commercial, would have some knowledge and experience in pesticide handling; with the assistance of written and audiovisual materials they should be able to respond to most questions on this topic. The Agency believes that most agricultural establishments either employ a certified applicator or contract for the services of a certified applicator in the course of business. Therefore, the Agency does not expect that a large number of people will need to obtain certification to act as trainers under this part. The Agency also does not envision or promote the idea that agricultural employers will use the certification system as an alternative to this handler training requirement.

A person designated as a qualified trainer of certified applicators or pesticide handlers by a State, Tribal, or Federal agency having jurisdiction is eligible to be a trainer under part 170. EPA is also persuaded by the comments that stated that a trainer could be a person who has completed a train-the-trainer or continuing education course. In the final rule, the Agency has modified the trainer qualification requirement to specify that a person who has completed a pesticide safety train-the-trainer course is eligible to be a trainer of handlers under this part.

EPA did not propose to require verification of training, because it was concerned that this could be considered a requirement for private certified applicator recordkeeping—a requirement specifically prohibited by FIFRA section 11.

Some comments expressed the view that section 11 of FIFRA prohibits the Agency from issuing regulations requiring recordkeeping by private applicators.

A number of comments urged some type of training verification with mandatory recordkeeping. Some suggested cards be issued to trained handlers; others suggested that the trainer be required to maintain records of training program participants. Many comments were concerned about the lack of recordkeeping requirements. They stated that without verification of training, violations will occur, enforcement will be difficult, and employees will be trained more than once.

Some comments argued that requirements to keep records of worker training would not be prohibited by FIFRA section 11, claiming that a requirement for persons acting as trainers to keep records of trainees would not be the imposition of a recordkeeping requirement on a private applicator who voluntarily chose to act as a trainer.

Several comments suggested eliminating private applicators as trainers since they cannot be required to keep records and suggested that only certified commercial applicators should be eligible to conduct this training because they could be required to keep records.

EPA did not propose recordkeeping requirements in the proposed rule because of possible concerns that such recordkeeping might be inconsistent with section 11 of FIFRA. The Agency has concluded that section 11 does not prohibit the Agency from requiring trainers, including trainers who happen to be private applicators, to keep records verifying any training they give under part 170. Because the Agency did not propose a recordkeeping requirement for trainers in the proposed rule, however, EPA is not adopting any such requirements in the final rule. If experience under the final rule indicates that recordkeeping would be warranted, EPA will revisit this issue.

Although the training provision may be difficult to enforce in some cases without written verification, the Agency will seek enforcement of the provision and expects that the compliance rate will be high enough that significant risk reduction will be accomplished.

In their comments on the draft final rule, under FIFRA section 25(a), USDA expressed concern about the absence of a formal mechanism to avoid repetitive training of each new hire on each agricultural establishment and welcomed the opportunity to work with EPA to develop such a verification program. A change to the rule was made. The rule now states that if the handler employer determines that a handler possesses an EPA-approved WPS training certificate and has no reason to believe it is invalid, that determination shall meet the requirements of assuring that the handler has been trained. The revised final rule requires trainers to assure that appropriate Worker Protection Standard training has been given to a handler before the training certificate is issued. As described under the section about worker training, EPA and USDA intend to establish a joint task force to develop and implement a mechanism for verification of training. The task force would seek to reduce the amount of duplication in training and to establish a voluntary system of training verification.

The use of an EPA-approved WPS training certificate is optional. The Agency encourages those trainers who, voluntarily, would like to maintain records or issue cards to handlers to do so.

Some respondents misinterpreted the proposed rule's silence on the issue of frequency of handler training to indicate that retraining before each handling episode was necessary; others assumed that training was required either annually or upon initial employment each year.

Numerous comments raised questions such as when and how often training should be done. Some suggested it should be a one-time instruction conducted at the beginning of the growing season or at the time of employment; others wanted to see training required annually or more often.

The Agency did not specify in the NPRM how often pesticide safety training must be conducted. However, the final rule requires training for handlers to be renewed at least once every 5 years, measured from the end of the month in which the training is completed. The Agency believes that such renewal of WPS handler training will be adequate to convey the basic pesticide safety precepts to handlers and to provide timely updates and reinforcement, without undue burden. Mandatory annual retraining of the same employees presenting general information that typically does not change over the course of a year would be a burden on employers.

EPA intends to develop model training programs that will facilitate compliance with part 170. The Agency's plans in this respect are discussed in more detail in Unit VI of this preamble. Although the Agency expects that most pesticide safety training will be conducted using materials developed by EPA, it does not believe that this must be the only source of training materials. On the other hand, some assurance of the adequacy of privately developed materials is desirable. The final rule specifies the minimum content for such materials (§ 170.230).

H. Knowledge of Labeling Information

1. *Access to labeling.* The Agency proposed that any information from the labeling of any pesticide that is being used be provided upon request to the handler. This requirement was intended to provide handlers with product-specific pesticide safety information that will increase their ability to protect themselves and others.

Some comments stated that product-specific information is important but

that handlers may be too intimidated to request the information from the supervisor or employers.

Some comments suggested that the Agency delete the access-to-labeling provisions because the OSHA Hazard Communication Standard has been expanded to include agricultural employees. One recommended that the rule be changed to allow growers to retain either the pesticide label or the Material Safety Data Sheet (MSDS).

EPA has amended this section (§ 170.232) to address these concerns. Handlers must read or must be informed of, in a manner that they can understand, all labeling requirements related to the safe use of the pesticide such as signal words, human hazard precautions, PPE requirements, first aid instructions, and any additional precautions relating to the handling activity. In addition, the handler must have access to the labeling at all times during the handling activity in case a question arises about the use requirements. This does not mean that multiple copies must be made and carried with each handler, but that the product container itself or a copy of the labeling must be available in a place where it may be consulted if necessary.

The Agency believes that almost all respondents supported its intended goal, which was to assure that all handlers, including those working in an assisting or nonsupervisory capacity, are aware of the product-specific instructions for the pesticide being handled. If handlers are not aware of labeling requirements, it is more likely the product will not be used in accordance with labeling, a violation of FIFRA. In this regard, a MSDS is not an adequate substitute for product labeling. Although an MSDS may contain useful information about the safe handling and storage of the material and the risks associated with exposure to the material, it will not address all the enforceable use requirements on the pesticide labeling. The Agency considers that giving instructions in the relevant labeling requirements would assure this awareness and that reading the labeling also would be adequate. EPA agrees that handlers may be intimidated from requesting the labeling, and that even if a request is made, the labeling may not be read or understood.

2. *Labeling information for early-entry workers.* The Agency did not propose that early-entry workers have access to labeling information.

Some comments noted that early-entry workers would need product-specific information to have knowledge of the specific hazards associated with their early-entry assignment and that it would be appropriate for early entry workers to have access to the labeling.

EPA agrees that it is essential for workers who enter a treated area before the expiration of an REI to have job and product-specific instructions in pesticide safety. Therefore, the Agency has added language under the entry restrictions in the subpart on agricultural workers. This language provides that before being allowed to enter a treated area during the REI, the workers either must read the product labeling or must be informed in a manner that they can understand of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, PPE specified for early-entry, and any other labeling requirements related to safe use.

3. *Product-specific information for workers.* The Agency proposed to require that product-specific information be provided to workers, on request, for all treated areas subject to notification, beginning on the day the pesticide is to be applied and continuing at least until the expiration of the REI. The required information included: (1) The specific location and description of the area treated or to be treated, (2) the brand name, active ingredients, and EPA registration number of the pesticide used, and (3) the restricted-entry interval. In the NPRM, the Agency stated that it considered requiring this information to be displayed at a central location, such as a notice board, or to be written on warning signs.

Few comments were opposed to providing this information. Most were critical of the requirement as written, however, and recommended posting the information at a central location. Numerous comments were opposed to any requirement that compels workers to request information, because workers are too intimidated to request information from the employer, fearing that such a request could jeopardize their jobs.

The Agency is convinced that workers must have unhampered access to product-specific information about the pesticides to which they are exposed occupationally. The Agency was persuaded by the comments that some agricultural workers may be intimidated and that oral communication of this information may be complex and inconvenient. The Agency has amended this section to require employers to list the product-specific information in a central place on the agricultural establishment and to allow workers unimpeded access to this information. The information must include: (1) The location and description of the treated area, (2) the product name, (3) the EPA registration number, (4) the active ingredient(s) of the pesticide, (5) the time and date the pesticide was applied, and (6) the REI for the pesticide.

While the Agency acknowledges the similarity between this requirement and requirements of OSHA's Hazard Communication Standard, EPA will not require that an MSDS or similar fact sheet be made available, because such a requirement was not proposed in the NPRM. EPA and OSHA are committed to cooperating, within the constraints of their respective statutes, to minimize confusion and to avoid duplication of the requirements of the two agencies.

EPA has prepared a notice of proposed rulemaking to amend the WPS that requests comments on the feasibility and utility of requiring that MSDSs or fact sheets be made available to agricultural employees. This NPRM is being published in this issue of the **Federal Register**.

I. Other

1. *Cholinesterase monitoring.* EPA proposed that commercial pesticide handlers exposed to toxicity category I or II organophosphate pesticides for 3 consecutive days or for any 5 days in a 21-day period be monitored for cholinesterase inhibition. The Agency solicited and received comments on: (1) The types of employees to be monitored and, in particular, whether the requirement should be extended to private handlers, (2) the length of exposure (whether a more sensitive "trigger" with fewer days exposure would be more appropriate), and (3) the difficulties, costs, and advantages of day-based and symptom-based triggers.

Although some comments stated that only commercial handlers had sufficient exposure to warrant monitoring, many comments stated that private pesticide handlers also may have sufficient exposures to warrant cholinesterase monitoring and that this requirement should apply to all handlers. Some comments stated that applying the requirement only to commercial handlers creates a double standard for protection that is not supportable. Several comments supported the inclusion of all agricultural employees in a medical monitoring requirement because the cholinesterase monitoring requirement of the proposal afforded no protection for early-entry workers or other workers. Other comments stated that a medical monitoring program for all employees would be unnecessary and impractical.

A few comments stated that cholinesterase monitoring was unnecessary because of all the other

170. Some suggested that cholinesterase monitoring be an option rather than a requirement; voluntarily implemented programs probably would be more successful than imposed programs.

Most respondents supported the Agency's proposed "trigger" of 3 consecutive days or any 6 days of exposure in a 21-day period. Some, however, stated that while a day-based trigger may be of use in detecting adverse health effects over time, it is of limited use in addressing accident situations or brief overexposure; a symptom-based trigger is too ill defined for use as a regulatory tool and could be confusing to both the employer and the supervising physician as to its applicability. One comment stated that a trigger based on hours (rather than days) of exposure would be a more rational way of including the highly exposed. Some comments suggested alternative triggers. A few reviewers stated that the Agency had given no rationale for the trigger chosen and asked how it had been determined. One suggested that determining the ideal trigger would have to wait until more data were available. Some comments suggested eliminating a trigger and requiring the testing on a preset schedule.

Many comments, both those for and those against a cholinesterase monitoring requirement, expressed concern about the recordkeeping that would be necessary to implement a monitoring program and to follow migratory and seasonal workers.

Some comments opposed monitoring because of the cost. Two comments included estimates that monitoring would cost $70 per test or $200 to $400 per employee over the growing season, exclusive of the costs of recordkeeping and additional physician fees. Others noted that lost work time and cost of transporting handlers to a physician's office where the test could be performed would be a burden to employers. In some remote rural areas, the testing would necessitate long-distance travel to the nearest qualified physician. One comment warned that the expense of the test and the time off work probably would result in this regulation being ignored. In contrast, another comment stated that the reduced medical disability costs among handlers would easily outweigh the costs of implementing a monitoring program.

Numerous comments expressed concerns regarding the validity and the reliability of cholinesterase testing methods, the availability of qualified laboratories to support a cholinesterase monitoring program, and the sufficiency of most physicians' knowledge about the toxicity of pesticides and ability to interpret the results of cholinesterase tests properly.

The Agency is concerned about many of the problems of cholinesterase monitoring, including the difficulty in finding knowledgeable physicians to set up monitoring programs and qualified laboratories to perform the analyses. The comments noted that a quality control program for laboratories would be needed nationwide if a monitoring program were to be successful. EPA is not prepared to establish such a program nationwide at this time.

The Agency believes that despite the practical difficulties associated with a nationwide program, the monitoring of employee exposure is a prudent occupational health practice and encourages employers wishing to operate such programs. To facilitate voluntary programs, the Agency has required that pesticides that contain cholinesterase-inhibiting compounds be identified as such in the labeling of the product. The Agency also is interested in cooperating in research or evaluations that might be done on new or existing exposure monitoring programs.

The Agency is concerned, however, that even reliable blood-level cholinesterase monitoring often would not prevent pesticide poisoning incidents. Blood samples are taken at intervals—weekly, biweekly, or monthly—during the exposure season; the handler may accumulate enough exposure between samples to become ill. In addition, the delay between sampling and the evaluation of the test results is such that most handlers will receive more exposure before the test results are known. Before such a monitoring system can indicate that handlers should be removed from further exposure to cholinesterase-inhibiting pesticides because their blood cholinesterase levels are dangerously low, the handlers may have received enough additional exposure to precipitate acute poisoning.

EPA is troubled by the reactive nature of available cholinesterase monitoring methods. The Agency would prefer to explore methods of monitoring exposures to cholinesterase-inhibiting pesticides, and perhaps to other pesticides, which are more likely to be preventive. One promising approach involves immunoassay-based detection. Immunoassay techniques could provide rapid, simple, and cost-effective monitoring methods for exposure monitoring systems under field conditions. It is expected that inexpensive kits can be developed that will yield quantitative results in less than 30 minutes, thus enabling more frequent monitoring and rapid response if unacceptable exposure is indicated. This technology could provide an effective means of signaling to the pesticide handler when exposure is unacceptably high.

EPA has determined that more research is required to develop immunoassay monitoring systems for pesticide handlers. However, the research data to date indicate that an immunoassay-based personal monitoring exposure system probably could be developed. Immunoassay devices use antibodies as receptors to sample the environment of the exposed persons. Specific antibodies to many pesticides of concern already have been developed and evaluated, but specific antibodies for other priority compounds need to be identified. Ideally, a sampling system would be developed to incorporate all of the compounds of concern. The Agency strongly encourages the rapid development of practical and reliable techniques of this kind and welcomes further information on ongoing research and the opportunity to cooperate with developers on the necessary research. To support the goal of improving exposure monitoring technology, the Agency also intends to consider requiring the development of such detection methods for the registration or continued registration of selected pesticides.

In conclusion, although a blood-level cholinesterase monitoring program may be prudent for some handlers, EPA has determined that imposing a nationwide requirement for such monitoring is not justified at this time. The Agency is not convinced that such a program would provide benefits commensurate with the costs entailed. The Agency intends to pursue the development of more effective exposure monitoring systems, such as the immunoassay-based system discussed above.

EPA intends to reconsider the need for and the appropriate form of exposure monitoring for pesticide handlers after this final Worker Protection Standard has been implemented. This will give the Agency the opportunity to evaluate more thoroughly the ongoing research in this area and the results of new or existing exposure monitoring programs. The Agency expects to issue a proposed rule in this area in about 3 years.

2. *Relationship between OSHA's Hazard Communication Standard and EPA's Worker Protection Standard.* The proposed revisions to the Worker Protection Standard (WPS) were published July 8, 1988; the following month, August 6, 1988, the Occupational

Safety and Health Administration (OSHA) published a notice of proposed rulemaking which would modify its Hazard Communication Standard (HCS). In the preamble to these proposed modifications, OSHA states that the HCS would apply to workers who are exposed to pesticide residues after application.

EPA received numerous comments that pointed to the potential overlap of some requirements of the WPS with those of the HCS. Those who wrote were concerned that the requirements of the two standards might duplicate each other or might be conflicting. A few were concerned about possible conflicts with similar State laws. All want to see EPA and OSHA resolve any potential conflict before their respective regulations are made final.

Some respondents felt that OSHA should have responsibility for defining hazard communication in agriculture; more felt that EPA should have the responsibility where pesticides are used. Some asked that the access-to-labeling provisions of the WPS be deleted because of the OSHA regulation calling for access to MSDSs.

Some growers claimed they should be exempt from the WPS because they are covered by OSHA. Worker representatives want EPA to require training for all workers, as the HCS does.

EPA has made a commitment to work with OSHA within the constraints of each Agency's statutes to minimize confusion and to avoid duplication between the requirements of each Agency. Section 4(b)(1) of the Occupational Safety and Health Act precludes OSHA from regulating working conditions or hazards with respect to which other Federal agencies exercise statutory authority to prescribe or to enforce standards or regulations affecting occupational safety or health (29 U.S.C. 653(4)(b)(1)). In part 170, however, EPA has exercised statutory authority only with regard to agricultural working conditions or hazards that are related to pesticides. The Occupational Safety and Health Act and its regulations may apply to other agricultural working conditions or hazards and to nonagricultural working conditions (e.g., office work) that may take place on agricultural establishments. Among the regulations that may be applicable to nonpesticide working conditions in agriculture are the Hazard Communication Standard (29 CFR 1928.21) and the Field Sanitation Standard (29 CFR 1928.110). Since the OSHA Field Sanitation Standard addresses general sanitary hazards, rather than pesticide hazards, EPA believes its applicability is not affected by part 170.

IV. Labeling Statements

A. Background of Proposal

The Agency noted in the NPRM that for part 170 to be enforceable under the misuse provision of FIFRA section 12(a)(2)(G), its requirements must be incorporated onto pesticide labels or labeling. Rather than require that the regulations be printed in their entirety on each product, EPA proposed that part 170 be incorporated by means of a reference statement. In addition to the reference statement, those requirements of part 170 that were product specific, such as personal protective equipment and restricted-entry intervals, and product-specific information necessary for compliance with part 170, such as whether the product is a fumigant, would appear as statements on labeling. Requirements applicable to all products, such as providing decontamination water, would not appear as statements on labeling.

The NPRM proposed that the required worker protection labeling statements be consolidated for the convenience of registrants in a new subpart K of part 156, "Labeling Requirements for Pesticides and Devices." The Agency proposed specific regulatory text and labeling statements for part 156, and solicited comment on the labeling aspects of the Worker Protection Standard. The Agency also discussed how it would implement these labeling changes as part of its pesticide registration program.

B. Reference Statement

The comments were divided evenly in opposing or supporting the proposal to reference part 170 on the label rather than including the full text of all requirements in labeling. Comments that opposed the proposal to reference part 170 gave reasons such as: (1) The problem of availability of the specific requirements of the regulation should it not be incorporated in pesticide labeling in its entirety, (2) the need for information at the use site, and (3) the undermining of the "read the label" and the "label is the law" message that users have been trained to follow. They suggested that noncompliance is more likely for requirements that are not on the label. Several comments stressed the need for wide dissemination of the requisite information. Two comments suggested that users should not be referred to part 170 but to Agency-generated guides, instructional materials, or popularized versions of the regulations.

The Agency acknowledges the need for pesticide users to have access to full information about the legal requirements for use of a pesticide. It also notes that in many cases the quantity of information on pesticide labeling is considerable. Confusion in understanding labeling statements may result in noncompliance as surely as difficulty in obtaining the information may result in noncompliance. The Agency intends to develop and to make available, through its outreach activities and with the assistance of the Cooperative Extension Service, State pesticide-regulating agencies, and the traditional networks of communication with the agricultural community such as commodity organizations and industry associations, information to assist users in understanding and complying with part 170. EPA believes that such information will minimize the need for users to seek out the Code of Federal Regulations (CFR) to understand their duties. The Agency intends to complete the development of basic training materials prior to implementing part 170. The Agency considered requiring registrants to distribute a copy of part 170 with each sale of agricultural pesticides, but concluded that such requirement would result in waste through duplication. However, the Agency encourages any efforts registrants choose to make to communicate part 170 requirements to users. The Agency has retained its approach in the final rule of referencing part 170 on the label, but has changed the language in the reference statement for the purposes of brevity and clarity.

C. Other Statements

Other changes have been made to part 156 in response to comments. The proposed wording of the labeling statements for restricted-entry intervals, notification, and personal protective equipment have been shortened.

One comment suggested that the signal word be required to appear in Spanish for products in toxicity categories III and IV as well as on products in toxicity categories I and II.

The Agency believes that for the most toxic products, where there is a significant risk of serious injury by accidental exposure, it is reasonable to require translation of a limited amount of critical information, such as the signal word, into Spanish because it is the primary language for many agricultural workers in the United States. Extending this translation requirement to additional products, information, or languages would add verbiage to already crowded product labels without increasing the likelihood of avoiding additional pesticide poisonings. EPA permits a product to bear labeling in languages other than English, but it will not require translation as part of the final rule.

A number of changes to worker protection statements have been made in the final rule in response to comments. These changes have focused on risk mitigation measures such as the entry restrictions, notification about treated areas, and use of personal protective equipment by handlers and other workers entering treated areas prior to the expiration of a restricted-entry interval. The restricted-entry statements are to be placed in the "Directions For Use" section of the pesticide labeling under the subheading of "Agricultural Use Requirements" to consolidate most worker protection statements in one place.

No comments were received in reference to the proposed notification statements. Several changes to the notification section have been made in the final rule. The wording of the statement was changed to "notify workers of the application by warning them orally and posting warning signs at entrances to treated areas" rather than merely "subject to posting" to distinguish the statement from other general requirements of part 170 which involve the display of written materials. The subsection related to location of the statement on the labeling has been modified to require that the notification requirement be in the Agricultural Use Requirements section of the labeling with the other required worker protection statements.

No comments were received on the proposed personal protective equipment statements. In the final rule the Agency has made a number of administrative and technical changes to these sections. These are reflected in changes in the terminology used in the table for the protective equipment requirements for handling activities in 40 CFR 156.212(e). For example, the term "coveralls" has been used instead of "protective suit" and "protective eyewear" has been used instead of "goggles or face shield."

Two differences between the proposed and the final rule relate to PPE labeling statements. Wherever possible throughout the PPE section, the Agency has taken the approach of specifying the exact wording of PPE labeling statements and specifying which products are subject to the statement. The goals of this approach are to reduce the burden on registrants in interpreting part 156 in the process of revising product labeling and to reduce the need for registrants to consult with EPA about PPE labeling language.

Another difference between the proposed and the final rule is the way in which information about acceptable types of PPE is conveyed to users. Specific types of glove materials will be recommended on the labeling, and specific types of respirators will be required on the pesticide labeling. Where protection of a certain body area is called for, e.g., eye protection, the labeling will not list all acceptable kinds of protective eyewear. Instead, the labeling statement will list "protective eyewear," and users will refer to the standardized definition of acceptable kinds of PPE for eye protection in 40 CFR 170.240 (the section of the pesticide-handling subpart which covers PPE), in the EPA-prepared guidance brochure on protective eyewear, or in other new EPA training materials dealing with PPE. Through these definitions and through handler training programs, users should become accustomed to the criteria for acceptable types of PPE, and EPA believes this will reduce labeling verbiage related to PPE.

EPA has made every effort to minimize the additional labeling language necessitated by the revisions to part 170 and to eliminate excess verbiage. At the same time, EPA recognizes that use restrictions can ordinarily be enforced only through labeling statements. EPA's approach, therefore, has been to put users on notice, via the labeling, of the regulations with which they must comply.

One comment suggested requiring the identification of the toxicity category on product labels. Signal words are intended to convey the relative acute toxicity of products in a manner users can understand easily. Since users may not be aware of the criteria on which toxicity categories are based, the Agency believes that the toxicity category would not be useful on labeling and that the signal word is sufficient.

In the final rule, EPA has specified the location, or alternative locations, for all required statements. The final rule allows that statements be consolidated, to the extent possible, for the convenience of the reader and that statements be at the beginning of the directions for use to emphasize their importance.

V. Statutory Review

A. U.S. Department of Agriculture

As required by FIFRA section 25(a), a copy of this final rule was provided to the Secretary of Agriculture on June 7, 1991. On March 27, 1992, the Secretary provided written comments on this final rule. The Secretary offered many comments that led EPA to revise the final rule, its cost estimates, and its approach to implementation of the final rule. Following is a summary of the principal comments by the Secretary, together with the Agency's responses. The full texts of the Secretary's comments and EPA's responses are contained in the docket for this rule.

Comment #1: USDA expressed concern about the impact of restricted-entry intervals (REIs) that exceed 72 hours.

Response: USDA's concern is due to two aspects of the draft final rule: (a) A requirement that registrants must retain existing REIs that are longer than those that would be established through the Worker Protection Standard, and (b) a redefinition of "restricted-entry interval" — instead of allowing early entry if minimal protective clothing is worn, the rule now prohibits all early entry to perform hand labor tasks, except for a few narrow exceptions. Therefore, this rule might subject users to considerable costs that were not contemplated when these longer REIs were set. EPA believes that USDA has a valid concern regarding longer REIs established before the promulgation of this rule.

EPA has ascertained that REIs exceed 72 hours for only a few currently registered active ingredients—usually for only a few uses of each. EPA is reviewing such uses for each of the few active ingredients in light of current information. The review is based on the availability of reentry data, poisoning incidents, or other evidence that could help determine: (a) Whether routine early entry to perform hand labor tasks must be prohibited for the entire REI to mitigate risk to hand laborers, or (b) whether early entry for hand laborers with personal protective equipment (PPE) and other protections could be permitted on pesticide labeling as an appropriate temporary mechanism to respond to USDA's concerns about disruptions and costs to growers who are using pesticides with REIs longer than 72 hours, or (c) whether another product-specific strategy should be adopted.

EPA will notify registrants of this review process and will request that registrants notify EPA of longer REIs that may have been overlooked in the Agency's search. With cooperation from affected registrants, EPA expects to complete the review process in time for those registrants to alter their labeling within the time allotted in this rule.

Comment #2: Activities that entail only slight contact with treated surfaces should be subject to a reduced standard, and provision should be made to permit necessary agricultural worker activities with the use of PPE, particularly when REIs exceed 72 hours.

Response: The final rule contains an exception that allows early entry for activities that involve no contact with anything that has been treated with the pesticide to which the REI applies, including, but not limited to, soil, water, air, or surfaces of plants in the treated area. However, when contact with treated surfaces will occur, EPA is unable to predict on a generic basis which activities, crops, and situations will involve only "slight" contact. This can be determined only through data review, usually as part of the registration or reregistration process. See preamble discussion in Unit III—establishing entry restrictions in the future.

During the formal comment period for this rulemaking, EPA received many comments from the cut flower and cut fern industry about the economic hardship that prohibiting routine hand labor during REIs would cause their industry. The Agency did not receive comments from other industries or commodity organizations that indicated that they would sustain such a hardship and the Agency has no information indicating that any crops or industries other than the cut flower and cut fern industry would be significantly affected by the entry restrictions imposed by this final rule. However, there may be other industries, crops, or crop practices that would bear an unreasonable economic burden under such restrictions. Therefore, the final rule allows the Agency to grant exceptions to the entry restrictions on a case-by-case basis.

Comment #3: USDA believes it is imperative that EPA clarify whether the prohibition on early entry to perform hand labor tasks applies to State-established REIs.

Response: States determine the restrictions that apply to State-established REIs. The final rule's restrictions on entry apply solely to REIs that appear on federally approved pesticide product labeling. On some occasions, registrants request the addition of a State-established REI to their federally approved product labeling. If EPA approves such an addition, a decision will be made on a case-by-case basis as to whether to prohibit routine early entry to perform hand labor tasks during the entire State-established REI. EPA may chose to create an exception on individual product labeling to allow, after the expiration of the EPA-mandated REI, early entry to perform routine hand labor tasks with certain limited PPE and work clothing.

Comment #4: USDA supports the concept of providing training to workers who may be exposed to potentially dangerous pesticides.

Response: None required.

Comment #5: USDA expressed concern that the manner in which training is required is unreasonably burdensome.

Response: USDA's concern is that if EPA requires training before each worker is potentially exposed, then training one or more times daily could be required of employers with frequent employee turnover, as is common in some hand labor crews. Such training might have to be conducted on the spot, such as at the side of the field, and would likely be less beneficial to the worker and onerous to the employer.

EPA will continue to require that early entry workers must be trained before entering areas and contacting treated surfaces while an REI is in effect, because their risks are expected to be higher. EPA has made a change, however, in the training requirement for non-early-entry workers. The modified rule continues to require training for all agricultural workers. However, in general, the modified rule requires agricultural employers to assure that when any worker enters any areas on the agricultural establishment where, within the last 30 days, a pesticide has been applied or an REI has been in effect, the worker receives pesticide safety training before their 6th day of entry into such treated areas on any particular agricultural establishment. However, for the first 5 years after the effective date of the rule, workers must be trained before their 16th day of entry into such treated areas on any particular agricultural establishment.

Finally, it should be noted that EPA deliberately established a relatively lengthy (about 20 months) lead time before the training provisions of the final rule would be enforceable. This lead time was established, in part, so that a substantial number of workers could be trained in the interim. Once a large percentage of workers have been trained, the concern about repetitive training diminishes, because many new hires already will have received training.

This issue does not pertain to handlers' for whom risks are expected to be higher—the rule requires that handlers receive training before they handle pesticides.

Comment #6: USDA expressed concern about the absence of a formal mechanism to avoid repetitive training of each new hire on each agricultural establishment. USDA welcomes the opportunity to work with EPA to develop such a verification program.

Response: Two changes to the final rule were made. The rule now requires training for workers or handlers to be renewed at least once every 5 years. In addition, the rule now states that if the agricultural employer determines that a worker possesses an EPA-approved Worker Protection Standard training certificate that the employer has no reason to believe is invalid, that determination shall meet the requirements of assuring that the worker has been trained. The revised final rule requires trainers to assure that appropriate Worker Protection Standard training has been given to a worker before the training certificate is issued.

Comment #7: Additional funding will be required if EPA anticipates that USDA will meet some of the training requirements of this rule.

Response: EPA has not assumed that USDA will be the vehicle to meet the training requirements. The Agency believes that employers will train most workers and handlers. In addition, EPA will promote training by other interested persons and organizations by conducting train-the-trainer courses and by developing suitable training materials and making them available for trainers' use. However, EPA seeks to work closely with USDA in the development of Worker Protection Standard training materials, including materials designed to train workers and pesticide handlers and materials targeted at aiding growers in learning how to comply with the revised rule. EPA also seeks to cooperate with USDA in the development and implementation of the training verification system and other projects designed to inform the regulated audience about the revised rule and how to comply with it.

Comment #8: Making agricultural producers responsible for employees' own safety actions is unrealistic.

Response: While compliance is primarily a duty of employers under the final rule, enforcement officials have authority to consider the facts of the case before making a determination of whether a violation has occurred. The Agency agrees, for example, that it would be unfair for employers who expend considerable efforts to assure compliance to be treated in the same manner as less conscientious employers who tolerate or encourage noncompliance. However, the Agency believes that it is more appropriate not to intrude by regulation into this area. Enforcement officials have traditionally based their compliance decisions on the facts of an individual case.

Comment #9: USDA questions the requirement that a listing of all pesticides applied must be displayed in a central location until 30 days after the REI has expired.

Response: The NPRM, which proposed that the information be provided to workers upon request, generated many comments. The majority of the commenters, including worker organizations, State agencies, and a land-grant university, recommended that the information be provided to workers through posting. The National Agricultural Chemicals Association recommended a requirement that the information be provided with each oral warning. Some commenters cited worker intimidation as the reason for opposing the proposal that information be supplied upon request. Others cited the potential difficulties that employers would have in complying with individual oral requests for such information. EPA was persuaded by the comments to require the posting of this information at a central place. On that basis, in turn, EPA was persuaded to drop the proposed daily oral warnings and require one-time oral warnings instead. EPA believes that most employers would find daily oral warnings more onerous than a one-time posting in a central location.

Comment #10: The rule needs to clarify when the employer is responsible for making available to the worker prompt transportation to an appropriate emergency facility. USDA interprets this to be applicable only while the employee is on the employer's property.

Response: EPA has clarified in the final rule that the agricultural employer must provide such transportation when a worker is on the employer's property, including in any labor camp located on the property. The Agency has similarly clarified in the final rule that the handler employer must provide emergency transportation when a handler is at the place of employment or at the handling site.

Comment #11: The decontamination provisions are unreasonably burdensome to employers because of the requirement for potable water for handwashing purposes.

Response: A change to the final rule was made. EPA replaced the requirement for potable water with a requirement for water that is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

Evidence indicates that the drinking water on many agricultural establishments has not been test for potability. EPA continues to require water of such quality that, if accidently swallowed, would not cause illness or injury, because it is concerned that workers will accidently use decontamination water for drinking purposes. In addition, the Agency recognizes that water used to wash the face may accidently enter the mouth. EPA believes that this is a simple standard that will be easy for employers to understand and comply with.

Comment #12: The cost for eyeflush dispensers should be accounted for.

Response: USDA's comments on the cost analysis of eyeflush dispensers led, in part, to EPA's reexamination of the requirement. The language of the rule has been altered to change the requirement from "eyeflush dispenser" to "eyeflush water," and the requirements for decontamination water and eyeflush water have been combined in the rule to avoid confusion. In addition, the requirement for weekly replacement of nonsterile eyeflush water has been deleted and a performance standard has been added that requires employers to ensure that the decontamination and eyeflush water remains "of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed."

Eyeflush dispensers are no longer specifically required at decontamination sites; instead, eyeflush water is required. For example, eyeflush water may be the water in a carboy containing the decontamination water or may be running water from a tap. While special eyeflush dispensers may be used, any source of water that meets the standards for decontamination in the final rulemaking is acceptable for flushing the eyes. Eyeflush dispensers would be required only when handlers or early-entry workers must carry eyeflush water. This would occur only when handlers or early-entry workers are required by the pesticide labeling to wear protective eyewear and when they do not have decontamination water otherwise immediately accessible to them, such as running water nearby or a carboy on a vehicle they are using.

Comment #13: USDA questions whether it is reasonable to require decontamination facilities and training for a period of 30 days after the expiration of the REI.

Response: EPA reconsidered the 30-day time period due to comments from both USDA and Congress, and remains convinced that pesticide safety training and access to decontamination water are necessary for a considerable time after the REI expires. (Congress requested a time period longer than 30 days.) The final rule continues to require that worker training and decontamination water be provided for 30 days after the expiration of the REI.

The 30-day period was an attempt to limit and better define the sometimes open-ended time period in the NPRM that was "any surface that has been treated with a pesticide during the agricultural crop production cycle in which the task occurs." (NPRM § 170.38(a)) In addition, it is important to note that this final rule is establishing minimum REIs. These REIs are intended as temporary safeguards until product-specific reviews are conducted. At that time, the Agency anticipates that longer REIs will be established on some of the products, based on restricted-entry-related incidents or on entry data.

On the other hand, even permanent product-specific REIs are based on "average" conditions. They do not and cannot take into account differences due to temperature and humidity; rainfall, dew, and irrigation practices; degree of sunlight; crop type, height, and density; region-specific production practices; or worker activity and length of exposure.

Evidence indicates the importance of washing pesticides off as soon as possible after an exposure to mitigate adverse effects. Retaining decontamination requirements for a period of 30 days after the expiration of an REI minimizes the chances that workers will be harmed by residues, decreases their chronic exposures to pesticides, and lessens the risk of delayed effects that may be unrecognized at present. Studies also indicate the value of training in any program to reduce risk and increase safety.

EPA has concluded that providing workers with pesticide safety training and supplying them with water, soap, and towels for routine washing for a period of 30 days after the expiration of an REI is a prudent and inexpensive measure to protect them from a variety of opportunities for exposure to pesticides.

Comment #14: EPA should establish regional climate-based restricted-entry intervals, and the need for decontamination provisions and safety training should be based on the pesticide persistence expected in a particular region.

Response: When EPA establishes product-specific REIs all available data for the product are considered. All such REIs must be set on a case-by-case basis, after detailed review of the properties and uses of the pesticide. Such a detailed review is not possible in

a regulation of the scope of the Worker Protection Standard. Part 170 establishes only "interim" REIs to strengthen deficient existing protections until a more thorough review can be performed.

As discussed in response to Comment #13, restricted-entry intervals will, for the most part, be based on "average" conditions. Even in the ideal situation, where entry is based on on-site field tests, situations will arise where workers will be exposed to unacceptable levels of residues. These situations include being contacted by drift from nearby applications, mistakes in warnings about areas not yet safe to enter, "hot spots" within treated areas from spills, or application mistakes, etc. In addition, the establishment of a residue level that is "safe" for entry involves, at this time, only an analysis of exposure to a specific product on a specific occasion, and is often based only upon acute toxicity data. The Agency is also concerned about acute and delayed health effect risks from the cumulative effect of multiple exposures to a single product and multiple exposures to multiple products. Since the opportunities for exposure are so variable, training employees once every 5 years and providing decontamination facilities for a period of 30 days after the restricted-entry interval seem to be prudent, low-cost measures that can reduce the pesticide-related illnesses and injuries that may stem from such exposures.

Comment #15: USDA takes exception to the term "decontamination facilities" after the expiration of the REI when the risk of pesticide exposure is negligible and suggests "personal hygiene facilities" or simply "handwashing facilities."

Response: EPA will continue to call the provision "decontamination facilities," because the term best describes the purpose of providing soap, towels, and water to pesticide handlers, early-entry workers, and agricultural workers working in areas that have recently been treated with pesticides. The Agency does not consider the risk of pesticide exposure to be negligible for these employees.

Comment #16: USDA is concerned that regulation beyond the harvest interval could be misinterpreted in a manner that would generate unwarranted food safety concerns.

Response: Preharvest intervals and entry restrictions are based on different criteria. Entry restrictions are based on the expected skin or eye exposure that workers might receive during an entire workday from exposure to residues on foliage, fruit, other plant parts, and in or on the soil, water, or air. Preharvest intervals are based on the expected dietary intake of the edible portion of the crop based on amounts consumed. The Agency has concluded that field workers often will have a far greater opportunity for exposure than the consumers of the crop they pick. Finally, the uncertainties associated with any REI have already been discussed. This uncertainty has led EPA to require prudent, but economical, worker protections after the REI has expired.

Comment #17: In informal discussions between EPA and USDA about this final rule, USDA expressed concern about limiting the access of crop consultants and IPM scouts to treated areas immediately following pesticide applications and during REIs.

Response: EPA has changed the final rule to allow persons who are performing duties as crop advisors to have access to treated areas without a time limitation. A crop advisor is defined as any person who is assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants. The term does not include any person who is performing hand labor tasks. EPA was unwilling to exempt crop advisors from all of the protections provided by this rule, but has defined them as pesticide handlers if they enter an area during a pesticide application or REI. As pesticide handlers, they must receive such protections as handler training (unless already certified applicators), PPE and the availability of decontamination facilities. However, since crop advisors who are employed by commercial establishments (rather than directly for the agricultural establishment) are not workers covered by part 170 protections, their presence in a treated area after the expiration of the REI will not trigger notification requirements, such as oral warnings, treated area posting, or posting of application-specific information, and the operator of the establishment need not supply them with decontamination sites. The Agency bases this change on its conclusion that crop advisors are likely to be particularly well-informed about pesticide risks and how to protect themselves.

Comment #18: USDA raised concerns about the Regulatory Impact Analysis.

Response: In light of USDA's concerns, EPA reexamined the Regulatory Impact Analysis for this final rule. The Agency used USDA-provided data and data from other sources to update and refine the analyses for the various requirements of the rule. The full text of EPA's responses to USDA's concerns is contained in the docket and in EPA's revised Regulatory Impact Analysis for this rule.

B. Congressional Committees

As required by FIFRA section 25(a), a copy of this final rule was provided to the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate and the Committee on Agriculture of the U.S. House of Representatives. Comments were provided by Senator Patrick Leahy and Representative Charlie Rose. Following is a summary of each comment by Senator Leahy and Representative Rose, together with the Agency's response.

Comment #1: Supports covering greenhouse, nursery, and forestry workers.

Response: None required.

Comment #2: Supports prohibiting routine hand labor activities prior to the expiration of the applicable restricted-entry interval.

Response: None required.

Comment #3: Supports covering all farms regardless of size.

Response: None required.

Comment #4: Supports training for workers as well as handlers.

Response: None required.

Comment #5: All field workers should be given crop sheets.

Response: The Agency agrees that workers should have access to information about the hazards of the specific pesticides to which they may be exposed during their work activities. Crop sheets provide workers with hazard information for all the pesticides that may be applied to the crops they are working with. The Agency is establishing a system whereby information on the specific pesticide(s) actually used on a crop will be posted at a central location to which workers will have access. The Agency is also proposing to make MSDSs or comparable pesticide-specific fact sheets available to workers. The information posted at the central location, coupled with MSDS-type information, will allow workers to determine the hazards of the specific pesticides they may be exposed to during their work activities.

Comment #6: The training for workers and handlers should include information on the workers' rights and the growers' responsibilities.

Response: The Agency agrees that workers and handlers should be aware of the protections they are entitled to under the Worker Protection Standard. The Agency has incorporated such a provision into the training requirements for workers and handlers.

Comment #7: All worker and handler training should be ongoing and updated as needed.

Response: The Agency supports the concept of ongoing training and the updating of information as needed. A change to the final rule was made. The final rule now requires training for workers or handlers to be renewed at least once every 5 years, measured from the end of the month in which the training is completed. The Agency believes that such renewal of WPS training will be adequate to convey the basic pesticide safety precepts to handlers and to provide timely updates and reinforcement, without undue burden.

This final rule requires the continual presence of a pesticide safety poster to serve as ongoing reinforcement of training for workers and handlers on agricultural establishments. The final rule also requires employers to update as necessary the information about the location of the nearest emergency medical facility. In addition, updated information about specific pesticides to which the workers may be exposed will be provided to workers as specified under the notification provisions.

Comment #8: Supports establishing a minimum restricted-entry interval (REI) for all pesticides and setting REIs for toxicity category I and II pesticides without distinguishing those of a specific chemical class.

Response: None required.

Comment #9: In all dry areas, all toxicity category I pesticides should have a 72-hour restricted-entry interval.

Response: During the ongoing reregistration of pesticides, the Agency is requiring registrants to supply data about foliar and soil dissipation rates on products for which this information is relevant. When the Agency has the necessary data, it will establish product-specific REIs based on the product, and, as applicable, on the crops or sites where it is used, cultural practices, varying climatic conditions, and application techniques. At present, the Agency has data to indicate that some organophosphates transform into more toxic products in arid conditions. There are no data to indicate that other chemical classes of pesticides undergo similar transformations. Without data to support a longer REI for chemical families other than organophosphates, the Agency has extended the REI to 72 hours for organophosphate pesticides only. The transformation of organophosphates into more toxic products is related to the lack of moisture in the soil and conditions of very low humidity. These conditions are generally found only in areas where rainfall is consistently below 25 inches a year. The Agency believes that defining arid-like conditions, such as a combination of percent humidity, days without measurable dew or rainfall, and percent soil moisture, is unsuitable for establishing these "interim" REIs.

Comment #10: Generic REIs should be established on the basis of the highest acute toxicity rating, whether dermal or oral. (Methomyl poisoning incidents in California cited as basis.)

Response: Studies of fieldworker exposures indicate that the predominant exposures in outdoor situations are to the skin and eyes. Except in those few situations where fieldworkers have eaten fruits or vegetables before the preharvest interval has expired, the Agency is unaware of validated fieldworker poisoning incidents where the primary route of exposure was oral. The worker training materials being developed by the Agency include specific warnings not to eat fruits and vegetables unless a supervisor indicates that it is safe to do so. In this final rule, the Agency intends to establish REIs based on three parameters: dermal toxicity, skin irritation potential, and eye irritation potential. If dermal toxicity data are unavailable, the oral toxicity data will be used. For example, under this strategy, methomyl would be assigned a 48-hour REI because it is a toxicity category I eye irritant.

With respect to the methomyl incidents cited by Congress, preliminary reports indicate that, under special environmental conditions, methomyl dissipation is not following the predicted pattern and rate. EPA will adjust REIs for methomyl to reflect these special environmental conditions, if there are indications that the incidents were not unique. The Agency is unaware of data or conclusions by experts that the oral LD_{50} is a more accurate assessment of the actual hazard to workers than dermal LD_{50}, either in these methomyl incidents or in other fieldworker poisoning incidents.

Comment #11: Continue protections for workers for a minimum of 60 days after the expiration of the restricted-entry interval.

Response: EPA reconsidered the 30-day time period due to comments from both USDA and Congress. The Agency has studied more recent data regarding the incidence of multiple-case systemic illnesses of agricultural field workers from exposure to residues of organophosphates in California. Among the 44 incidents for which data were provided, the mean length of time from application to poisoning was 20 days, with a median of 16 days. The range was from less than 1 day to 66 days, although this latter figure was an outlier and did not appear to be well substantiated. Excluding parathion (no longer registered for most crops) and this outlier, the longest period between application and reentry poisoning was 39 days. The Agency believes that poisoning incidents that occur more than 30 days beyond the REI probably stem from a miscalculation in establishing the REI that is listed on the labeling. Therefore, EPA decided to continue to require that decontamination water be provided for 30 days after the expiration of the REI. See EPA's response to USDA's Comment #13 for a more complete discussion.

Comment #12: Moving or repair of irrigation equipment should be designated as a hand labor task, since workers performing such tasks are likely to come in contact with treated surfaces.

Response: EPA concurs that moving and repairing irrigation equipment may cause workers to contact treated surfaces. However, the Agency believes that this contact will be short-term and mostly nonsubstantial. The Agency realizes that moving, adjusting, or repairing irrigation equipment may be necessary while an area remains under a REI. The Agency has, however, placed strict limitations on early entry to perform such tasks. These include: (1) No entry for the first 4 hours after an application, (2) a limit of 1 hour per worker per day for performing such early entry tasks, (3) PPE provided, cleaned, and maintained for the workers, (4) special instructions provided, including information about the hazards of the pesticide(s) to which the workers will be exposed, and (5) special decontamination and change area provisions.

Comment #13: A responsible agency should determine whether or not an emergency actually exists before early entry due to an agricultural emergency is permitted.

Response: The Agency intends that early entry due to an agricultural emergency be an extremely rare circumstance. Therefore, this final rule requires two separate determinations that an emergency exists: (1) A responsible agency must declare that circumstances exist that might cause an agricultural emergency on an establishment. For example, a State, Tribal, or Federal agency having jurisdiction over the establishment would have to declare that a potentially crop-damaging drought, hail storm, high winds, hurricane, tornado, freeze, or frost has occurred (or is predicted to occur) in the area where the agricultural establishment is located. (2) In addition,

the agricultural employers must declare: (a) That they could not have anticipated the circumstances that led to the emergency when they applied the pesticide, (b) that they had no control over the circumstances that led to the emergency, (c) that no practices other than early entry will prevent or mitigate a substantial economic loss involving the crop in that treated area, and (d) that the loss of profit without early entry will be greater than that which would be expected on the basis of experience and the fluctuations of crop yields in previous years. EPA believes that these rigorous determinations will preclude widespread or improper use of the emergency provisions.

Comment #14: Strongly object to the exemption for cut flower and cut fern workers for early entry. Congress notes that California prohibits early entry for hand labor without apparent deleterious effect on the cut flower industry.

Response: A change to the final rule has been made. The Agency has adopted an exception process that would allow interested persons to demonstrate to the Agency that, in a particular industry, an exception should be granted to the general prohibition on routine early entry. Persons wishing to obtain an exception to the early-entry restrictions would submit a request for such an exception to the Agency. Comments that EPA has already received from the cut flower and cut fern industry have convinced EPA that this industry, at least, probably warrants such an exception. The decision that such an exception is probably warranted is based on a balancing of the risks and benefits that would result from such an exception (see proposed exception to rule published elsewhere in this issue of the **Federal Register**). However, the Agency is interested in a full range of comments and information on this proposed exception and has provided 30 days for interested parties to comment. The Agency particularly welcomes comments supported by information, such as evidence demonstrating whether the risks to workers would be acceptable, whether the use of personal protective equipment in these circumstances would be feasible, and whether there are feasible alternative practices that would make routine early entry unnecessary. The Agency also would welcome any additional information concerning the likely economic impact on this industry of a prohibition of routine hand labor tasks during the restricted-entry intervals.

While EPA has concluded that it would be difficult to ensure worker safety during widespread and routine early entry, narrow exceptions, such as this one, can receive adequate management attention to help ensure compliance when such early entry is critical to a crop.

The Agency notes that although California law prohibits all early entry work involving hand labor, California does not currently impose REIs beyond "sprays have dried/dusts have settled" for many of the pesticides used by the cut flower and cut fern industry. In addition, California has established only a 24–hour REI for toxicity category I pesticides, with longer REIs for specific organophosphate and *N*-methyl carbamate pesticides. This final rule is establishing a minimum 12–hour REI for all pesticides plus a 24–hour REI for all toxicity category II (dermal and ocular routes) pesticides and a 48–hour REI for all toxicity category I (dermal and ocular routes) pesticides. Thus, while California prohibits early entry, its entry standards for this industry are generally less stringent than those of EPA's final rule. The economic impact of complying with EPA's REIs is likely to be higher than compliance with California's entry limitations, unless an exception is provided.

Comment #15: Urge a requirement for cholinesterase monitoring of all commercial and private pesticide handlers who may handle organophosphate or *N*-methyl carbamate pesticides.

Response: The Agency believes that monitoring of employee exposure is a prudent occupational health practice. However, as explained in the preamble (Unit III.I), EPA is concerned about many of the problems of cholinesterase monitoring.

EPA intends to reconsider the need for and the appropriate form of exposure monitoring for pesticide handlers after this final rule is implemented. This will give the Agency the opportunity to evaluate more thoroughly the ongoing research in this area and the results of new or existing exposure monitoring programs. The Agency expects to issue a proposed rule in this area in about 3 years.

Comment #16: Cholinesterase testing of field workers should be required in poisoning incidents involving organophosphate or *N*-methyl carbamate pesticides.

Response: EPA presumes that treating medical personnel would prescribe such testing when appropriate and that prudent employers would encourage such diagnostic tests. However, the focus of this rule is prevention of poisoning incidents for persons occupationally exposed to agricultural pesticides. It does not address diagnosis or treatment of pesticide illnesses or injuries. Diagnostic testing was not proposed in the NPRM and the Agency deems such a requirement beyond the scope of this rule.

Comment #17: Supports evacuation of greenhouse workers during fumigation application and restricted-entry periods.

Response: None required.

Comment #18: Supports mandatory posting of treated areas in greenhouses.

Response: None required.

Comment #19: Unrealistic to expect that unprotected workers could reenter treated areas in greenhouses and nurseries without exposure to pesticide-treated surfaces.

Response: The Agency is convinced that there are situations in which workers may reenter many areas in nurseries and greenhouses without contacting treated surfaces, and has chosen to permit such entry. An example of such entry is when workers are wearing footwear and are walking through the aisles of treated areas where the plants or other treated surfaces cannot brush against the worker and cannot drop or drip pesticides onto the worker. Under the final rule, worker entry into treated areas is prohibited when contact would take place.

Comment #20: Concerned about the adequacy of the ventilation and buffer zone criteria established for greenhouses and nurseries and urge further study of the effectiveness of the standards in practice.

Response: The Agency is interested in cooperating in research or evaluations that might be done on this aspect of the regulation and has held some preliminary discussions as to the best design of such a research project.

Comment #21: Not requiring notification for workers who are not expected to come within 1/4 mile of a treated area is inappropriate.

Response: EPA acknowledges that workers frequently are required to move throughout the field or nursery to accomplish their assigned tasks. This final rule requires employers to notify workers of any pesticide application on the establishment unless the employer makes sure that the worker will not be in the treated area and will not walk within 1/4 mile of the treated area. As a practical matter, if workers move throughout an establishment, their employer must notify them of all treated areas on the establishment remaining under an REI. The exception to the notification requirement is intended to be in effect only when pesticides are applied at times when workers are not present on the property or when pesticides are applied to distant areas of the establishment where no work activities are occurring. Some farms, nurseries, and forests are vast or noncontiguous; requiring workers to be notified of areas greatly distant from their place of work would be pointless and counterproductive.

Comment #22: Concern about EPA's rejection of the skull and crossbones symbol for the restricted-entry sign.

Response: The Agency acknowledges that the skull and crossbones is a far more recognized symbol for "highly toxic" or "very poisonous" than any other pictorial representation. For precisely that reason, FIFRA requires the skull and crossbones symbol on the labels of pesticides that are highly toxic orally, dermally, or through inhalation. EPA prohibits the use of the skull and crossbones symbol on any other pesticide label. The Agency has consistently taught pesticide users that the skull and crossbones is the symbol for the most highly toxic pesticides, i.e. those where only a few drops by mouth could be fatal.

For this reason, the Agency is convinced that the skull and crossbones is not appropriate for notifying workers of areas remaining under an REI. While some of these areas may have been treated with highly toxic pesticides, other areas may have been treated with moderately or slightly toxic pesticides. Rather than diluting the impact of the skull and crossbones symbol, EPA has chosen to create a new symbol for restricted entry.

The Agency is taking several steps to assure recognition and acceptance of the new symbol: (1) The symbol is mandatory nationwide. States and industries currently using other signs and symbols must use the EPA-mandated sign. (2) Mandatory worker training programs must explain the symbol to workers. (3) The EPA-mandated pesticide safety poster will serve as a reminder to workers by depicting the restricted-entry sign and its meaning.

Comment #23: The implementation time frames are too long. All regulations should be mandatory within 8 months.

Response: Implementation and enforcement of the revised Rule depends on the misuse provision of FIFRA section 12(a)(2)(G) that states it is unlawful "to use any registered pesticide in a manner inconsistent with its labeling." Thus, the provisions of the Worker Protection Standard must be in the labeling or must be linked to pesticide product labeling as directions for use before they can be implemented or enforced. Although the Agency strongly believes that the protective measures of this final rule should become effective as soon as practicable, it has concluded that a phased and orderly schedule of relabeling, information dissemination and training, and enforcement is needed to facilitate both registrant compliance with the new labeling requirements and user understanding and compliance with the worker protection standard.

Therefore, the Agency will require that no revised labels appear in the marketplace for approximately the first 8 months after promulgation so the Agency will have an opportunity to explain the requirements to users. Thereafter, product-specific requirements will be enforceable when they appear on labeling. Twenty months is the latest time that labeling may be revised by the registrants. EPA expects many labeling revisions will occur earlier than the 20–month deadline.

Comment #24: The regulatory protections ignore chronic health risks.

Response: The Agency is concerned about minimizing both acute and chronic health risks. Several provisions of this final rule are designed, at least in part, to reduce chronic health risks. These include: (1) Incorporating information about chronic risks and how to avoid them into the mandatory worker and handler training programs, (2) providing decontamination sites for 30 days beyond the expiration of the REI, (3) establishing a minimum REI of 12 hours for all pesticides, and (4) establishing for all handlers and early-entry workers minimum PPE and work clothing requirements designed to minimize dermal exposure to all pesticides, regardless of their acute toxicity. EPA believes that these protections against acute risks, if adhered to consistently over time, will protect against chronic risks as well, by reducing exposures that may give rise to chronic effects. On the other hand, the Agency has concluded that more stringent pesticide-specific protections (such as REIs or PPE) based on chronic health risks should more appropriately be set after case-by-case review.

Comment #25: No buffer zones are required to protect workers in the field from drift.

Response: The Agency recognizes that drift from nearby applications is a common cause of exposure for agricultural workers. This final rule specifically requires that both the pesticide handler and the handler's employer must make sure that the pesticide is not applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler. EPA considers this protection so crucial that it is the one situation where a generic requirement from the Standard is listed on each pesticide product label.

Comment #26: Toxicological concerns about inert ingredients are ignored.

Response: The Agency is concerned about minimizing risks to workers and handlers of any chemicals of toxicological concern, whether they are active or inert ingredients. In establishing PPE requirements for handlers and early-entry workers in the final rule, the Agency considers the toxicity of the formulated pesticide product. The toxicity of the formulated product encompasses the toxicological characteristics of both the active ingredient(s) and the inert ingredient(s).

In establishing REIs, however, the Agency has determined that the properties of the active ingredient(s) are the main toxicological concern. Many of the inert ingredients that might otherwise pose a toxicological hazard are volatile and will not remain on the treated surface beyond the first few hours. Similarly, EPA has chosen to consider only the toxicity of the active ingredient(s) in establishing REIs and in determining which products must contain a requirement for both oral warnings and treated area posting.

In a process separate from this rule, EPA is evaluating and, where appropriate, reducing the risks posed by inert ingredients. In addition, the Agency will evaluate the risks of all formulations, including their inert ingredients, during its accelerated reregistration program, now underway. The Agency has concluded that further attention to inert ingredients in the final rule is unnecessary.

C. FIFRA Scientific Advisory Panel

Pursuant to FIFRA section 25(d), a copy of this final rule was provided to the FIFRA Scientific Advisory Panel (SAP). The SAP waived review of the final rule.

VI. Implementation

A. Agency Implementation Strategy

1. *Phased implementation.* The Agency is establishing different implementation dates for the requirements in part 170 and the changes required in pesticide labeling found in part 156.

The first amended labeling under part 156 would be available to users no sooner than April 21, 1993. As pesticide products with amended labeling are used, EPA will begin to enforce the

provisions of part 170 that are related to the new specific requirements on pesticide product labeling for restricted-entry intervals, personal protective equipment, and notification about treated areas.

After April 21, 1994, all products covered by this rule must have amended labeling when they are distributed or sold by registrants.

After April 15, 1994, EPA will begin to enforce the remaining provisions of part 170.

Implementation and enforcement of the revised Worker Protection Standard depend upon the misuse provision of FIFRA section 12(a)(2)(G) that states it is unlawful "to use any registered pesticide in a manner inconsistent with its labeling." Thus, the provisions of this revised standard must be in the labeling or must be linked to pesticide product labeling by reference before they can be implemented or enforced.

Currently, changes in directions for use ordinarily are incorporated in their entirety into the labeling of each affected pesticide product. Implementation and enforcement of new directions for use occur when a pesticide product with the changed labeling is used. The Agency has determined that implementation of the Worker Protection Standard through this mechanism would be difficult. Only worker protection requirements that vary from product to product will be placed on the pesticide product labeling as specific directions for use. Part 170 requirements that do not vary among affected products will not be repeated in each product's labeling; the Agency will reference these standards on pesticide product labeling.

Placing requirements related to the directions for use in documents that are referenced on the pesticide product labeling, but which do not accompany the product in commerce, is unusual. Although the Agency believes the protective measures of the revised part 170 should become effective as soon as possible, it has concluded that a phased and orderly schedule of relabeling, information dissemination, and enforcement is needed to facilitate both registrant compliance with the new labeling requirements and user understanding and compliance with the Worker Protection Standard.

The requirements of the revised Worker Protection Standard related to a product's potential hazard to users and other persons will be on the label or in the product labeling. A registrant of an affected pesticide product will be required to specify: (1) A prohibition from applying the pesticide in a manner that contacts anyone except appropriately trained and equipped handlers, (2) PPE for handling and early-entry activities, (3) a restricted-entry interval, and (4) when appropriate, that workers be notified orally and by posting of signs at the treated areas.

Although the concepts of not applying pesticides when workers or other people may be contacted, of using PPE to handle pesticides, of restricting entry to treated areas, and of notification about pesticide-treated areas are familiar to agricultural pesticide users, this rulemaking modifies these requirements in significant ways. Since these product-specific provisions are essential to the safe use of a pesticide, the Agency is unwilling to delay their implementation. Consequently, all product-specific requirements will be effective as soon as they appear on pesticide product labeling. However, the Agency will require that no such labeling changes appear in the marketplace until there has been an opportunity to explain them to users.

Other new requirements apply to all pesticide products used in the production of agricultural plants. These include the requirements for training handlers and agricultural workers, for providing pesticide-specific information to employees, and for providing decontamination water and emergency assistance for handlers and workers. It is not practical to describe these requirements fully in the product labeling. Therefore, it will take time to communicate these requirements to the agricultural community and for that community to implement them. As a result, enforcement of the general requirements will be delayed as described below. (Unit VI.A.2.)

2. *Implementation of part 170.* EPA will implement part 170 in two phases:

a. *Accelerated implementation of provisions supporting product-specific labeling.* Specific requirements related to restricted-entry intervals and notification about treated areas are being added or changed through this revision of part 170.

To implement the requirements that will be found on some product labeling for restricted-entry intervals, and the instructions to both orally warn and post treated areas, sections of part 170 that concern these requirements and the exceptions to these requirements must be implemented quickly to prevent unintended burden on the user during the phase-in period of compliance with this regulation. The sections of part 170 that will have accelerated implementation, i.e. that will be enforced as the associated statements appear in pesticide labeling are:

i. *Sections of part 170 related to entry restriction.* Section 170.112(a)(1) through (a)(4) states the general restrictions on worker entry to treated areas prior to the expiration of an REI. Section 170.112(b) describes an exception to the general restrictions and permits entry if the worker will have no contact with anything that has been treated with the pesticide to which the REI applies. Sections 170.112(c)(1) through (3) describe the exemption for early entry to perform short-term tasks and describe the requirements for that exemption which will be implemented on an accelerated schedule. Sections 170.112(d)(1) through (2)(ii) plus 170.112(c)(3) that is referenced in (d)(2)(iii) describe the exemption for early entry due to an agricultural emergency and describe the requirements for that exemption which will be implemented on an accelerated schedule.

ii. *Sections of part 170 related to requirements about oral warnings and posting of treated areas.* Implementation of the requirements to both orally warn and post treated areas in the labeling requires implementation of § 170.120(a)(3) and (b)(3), which tell the employer the exceptions to the oral warning and treated-area posting requirements.

b. *Implementation of part 170 provisions that are generic to all pesticide uses.* The enforcement of the remaining or "generic" provisions (i.e. those that apply to all pesticides uses) in the final rule will begin April 15, 1994.

The phased implementation dates for part 170 are intended to allow time for EPA and cooperating organizations to develop, reproduce, and distribute the training and instructional materials necessary to encourage compliance. If part 170 implementation were to be triggered solely by the appearance of revised labeling, some users would have to comply with part 170 before instructional materials were available to assist them in doing so.

3. *Implementation of part 156.* The Agency is establishing two separate sale/distribution dates for registrants. The first date regulates the earliest date that a registrant is allowed to sell or distribute a pesticide product with labeling amended to include part 156 statements. This date is the effective date of part 170 (which is 60 days after publication of the final rule) plus 6 months. During this time the Agency will execute an implementation outreach program. The second date, 18 months after the effective date of part 170, is the time by which all affected pesticide products sold or distributed by registrants would be required to contain the appropriate part 156 statements in their labeling.

In the past, EPA has not placed constraints on registrants as to how soon pesticide products bearing Agency-required changes to labeling could be sold or distributed; the emphasis has been on the maximum time registrants would be allowed for changing labeling. However, in the implementation of the Worker Protection Standard, registrants will not be allowed to sell or distribute pesticide products with labeling amended to include part 156 label-specific requirements or the generic part 170 reference statement prior to an established date. This constraint is to prevent pesticide labeling with the new worker protection statements pursuant to this final rule from becoming available to users before EPA and cooperating organizations can disseminate the information necessary to tell users how to comply with the requirements. Otherwise, users could face the dilemma of being required to comply with provisions without the necessary information on how to do so.

A summary of the implementation schedule is given in the following Table 1:

Table 1.—Implementation Time Table

Time	Part 156 Activities	Part 170 Activities
Publication in the Federal Register of part 170 and part 156 (notice to registrants of mandatory labeling changes).	Inform registrants of required label changes (LIP or PR notice).	Initiate outreach to regulated community to inform affected parties about the rule, particularly the accelerated provisions, i.e. the requirements in the labeling for restricted-entry intervals, treated area posting and oral notification to workers, and use of personal protective equipment.
60 days after publication.	Effective date.	Effective date, including the process for requesting exceptions to restricted-entry intervals.
6 months after effective date of part 156 and part 170.	Earliest date that products with amended labeling may be sold or distributed by registrants.	Start compliance efforts on new product-specific requirements on labeling (accelerated provisions of part 170).
April 15, 1994.		Start enforcement of part 170 "generic" provisions whenever a pesticide product with amended labeling is used.
18 months after part 156 and part 170 effective date (12 months after earliest sale or distribution date for registrants).	All pesticide products sold or distributed by registrants must bear labeling referencing part 170 and other part 156 labeling statements.	
36 months after part 156 and part 170 effective date.	Pesticide products sold/ distributed by any person must bear amended labeling.	

B. Registrant Compliance

A large number of products will be affected by the new requirements, and an orderly relabeling process is necessary to avoid confusion, to ensure clear and appropriate labeling to guide users, and to facilitate registrant compliance. Thus, the Agency has included in this preamble instructions to registrants and compliance deadlines for changes to pesticide labeling required by the new subpart K, part 156 ("Worker Protection Statements"). The Agency has tried to make the new labeling requirements as self-explanatory as possible to reduce the need for registrant inquiries.

1. *Applicability of part 156, subpart K statements.* This section provides guidance to registrants in determining which of their products may be affected by the new part 156 subpart K, whether existing worker protection statements should be retained, and how new part 156 subpart K labeling statements should be determined.

a. *Scope.* Products affected by part 156 subpart K are, with some exceptions, those products registered for use in the production of agricultural plants (40 CFR 156.200(b)). The scope of agricultural pesticides for purposes of subpart K is broad and refers to any product registered for use in the production of agricultural plants on farms, or in forests, nurseries, or greenhouses; these terms are defined in 40 CFR 170.3. Part 156, subpart K applies to products that may be applied directly to agricultural plants or to growing areas. Any such product must bear the subpart K statements, except as noted below.

Several types of products that may be registered for application on farms, or in forests, nurseries, or greenhouses need not bear the subpart K statements. These are defined by the exceptions to the handler applicability section of part 170 (40 CFR 170.202(b)). If a product has both exempted uses and covered uses, the subpart K statements must appear on labeling.

Under subpart K, a reference statement on the label will direct users to part 170, which contains more specific requirements than those listed in the labeling.

b. *Existing statements.* Various types of worker protection statements currently appear in the labeling of many agricultural products. Most of these statements will be modified or will be replaced by the new subpart K requirements. Several comments on the proposed rule requested clarification of the relationship between subpart K and PR Notice 83-2, which called for certain worker protection statements, based on part 170, to be placed on agricultural product labels. EPA is revoking PR Notice 83-2 effective as of April 21, 1993, and registrants of products subject to PR Notice 83-2 must modify their labeling according to subpart K requirements. Some products within the scope of subpart K were not subject to PR Notice 83-2, including products registered for uses in forests and in greenhouses, for use on nursery ornamentals, and for use on crops whose culture does not involve commonly recognized hand labor tasks.

In addition to PR Notice 83-2 statements, some products currently bear statements pertaining to REIs and PPE that were required through registration or a Registration Standard or Special Review decision on an active ingredient contained in the product. The status of existing REI and PPE statements will be governed by the relevant subpart K sections on these topics (40 CFR 156.208 and 156.212). The Agency will issue a PR Notice to registrants with detailed guidelines on

how to evaluate existing labeling statements and on what new labeling statements to adopt.

c. *New statements.* Four types of worker protection statements may apply to products covered by the new subpart K: General statements, REI statements, worker notification statements, and PPE statements.

i. *General.* All products must carry a standard reference statement alerting the user that the product must be used according to part 170 (40 CFR 156.206(b)). A standard statement prohibiting users from allowing a pesticide to contact nonhandlers directly or through drift also must appear on all products (40 CFR 156.206(a)). A different version of this statement was required by PR Notice 83-2; that version must be replaced by the revised version. Products required to use either DANGER or WARNING as signal words (toxicity category I or II products) also must use the Spanish signal word PELIGRO or AVISO on the label, and a phrase in Spanish instructing the reader to have the label explained before using the product (40 CFR 156.206(e)).

If the product contains an active ingredient that is an organophosphate or an *N*-methyl carbamate, this information must be in the labeling either as part of the product name or in the Statement of Practical Treatment (First Aid) section of the labeling (40 CFR 156.206(c)(1)). This information is required in the labeling to aid employers who want to provide cholinesterase monitoring programs for their employees.

If the product is a fumigant, its status as a fumigant must be conveyed as part of the product-name or product-type information, placed close to the product name (40 CFR 156.206(c)(2)).

ii. *Restricted entry.* Products covered by subpart K must have a standard REI statement. Fumigants will retain their current entry restrictions, but the statements must be converted to the format of the subpart K restricted-entry statements (40 CFR 156.208(d)). The standard restricted-entry statement (40 CFR 156.208(a)) includes the restricted-entry interval (determined by 40 CFR 156.208(c),(d),(e), or (f)).

Some existing labeling bears entry-restriction statements. In determining the appropriate subpart K restricted-entry interval (REI), three situations are possible:

First, a product that has a product-specific REI based on foliar or soil dissipation data for the product (or for each active ingredient in the product) that have been submitted to and accepted by EPA, must retain this REI (40 CFR 156.208(e)).

The second situation involves products that have an REI that is not product-specific. Here the existing REI must be compared to the REI that would apply using the criteria in 40 CFR 156.208(c); the longer of the two REIs would be the restricted-entry interval.

Third, a product that has no REI (this would include products prohibiting entry "until sprays have dried or dusts have settled" and other products) must use the criteria of 40 CFR 156.208(c) to determine the appropriate REI unless all data required to set a product-specific interval are submitted to and accepted by EPA and a specific REI is approved.

Under the criteria of 40 CFR 156.208(c), REIs are determined by comparing available acute toxicity data for the active ingredients in a product. Registrants must use any obtainable results of toxicity testing (i.e., toxicity category) for the three relevant routes of exposure (dermal toxicity, skin irritation effects, and eye irritation effects) for each active ingredient in the product. If necessary, formulators should seek verification of toxicity category information from their suppliers. In some circumstances, acute oral toxicity or the toxicity of a registered technical product may be used. Among the acute toxicity data used in the comparison, the most toxic toxicity category determines the REI: 48 hours for toxicity category I, 24 hours for toxicity category II, or 12 hours for toxicity category III and toxicity category IV (40 CFR 156.208(c)). When no acute toxicity data are available for one or more of the active ingredients, registrants must use the toxicity category of the formulated product indicated by the signal word in the comparison.

When the REI has been determined, the appropriate number of hours is inserted into the restricted-entry statement of 40 CFR 156.208(b), unless the REI varies crop by crop.

If a product contains a toxicity category I active ingredient that is a cholinesterase-inhibiting organophosphate ester, a statement must be added requiring a 72-hour REI when the product is applied outdoors in an area where the average annual rainfall is less than 25 inches a year (40 CFR 156.208(c)(2)(i)).

EPA reserves the right to modify any subpart K restricted-entry interval for a product in the future. For example, this may occur either at the beginning or end of a Special Review for an active ingredient in the product (40 CFR 156.204(a)) or on evaluation of foliar or soil dissipation data, or other relevant data, showing that a different REI is warranted (40 CFR 156.204(b)). Registrants, or others, may undertake to develop, at their discretion, foliar dissipation or other exposure data that would lead to the establishment of a product-specific REI; until that time, an interim REI will apply to the product.

iii. *Notification to workers.* Each product in toxicity category I for acute dermal toxicity or skin irritation potential, other products designated by EPA, and each fumigant that may be used in greenhouses must carry a standard statement indicating that workers must be given notification of the application both orally and by posting of treated areas (40 CFR 156.210). A definition of a fumigant appears in 40 CFR 156.203.

iv. *Personal protective equipment (PPE) and work clothing.* All products must bear statements specifying minimum PPE or work clothing as determined by subpart K. Appropriate PPE or work clothing is required by subpart K for all handling activities (40 CFR 156.212) and activities in treated areas before the expiration of an REI.

If a product has PPE or work clothing statements on the labeling, the registrant must compare these existing statements with the requirements of subpart K, and use the more protective or more specific item of PPE or work clothing for each area of the body to be protected. If product labeling prohibits the wearing of gloves or boots, such a prohibition must be retained on labeling as it is worded. The format of all PPE and work clothing statements should be that described in subpart K, even if a more protective or more specific item is being retained. The following are examples of comparisons of degree of protection or specificity between PPE items in subpart K and PPE items now on product labeling:

(1) A coverall is more protective than a long-sleeved shirt and long pants.

(2) A chemical-resistant (or liquidproof, waterproof, rubber, etc.) suit, rain gear or rain suit is more protective than a coverall or long-sleeved shirt and long pants.

(3) Chemical-resistant gloves are more protective than cotton, cloth, paper, or leather gloves.

(4) Chemical-resistant footwear is more protective than shoes and socks.

(5) Air-supplied or self-contained respirators are more protective than other classes or types of respirators.

(6) A cartridge or canister respirator is more protective than a dust/mist mask or dust/mist respirator.

As indicated below, certain words and phrases on existing labeling must be replaced by terms described in subpart K.

Unless the registrant has data that indicate a particular type of material(s) is more chemically resistant to a particular pesticide product or a particular type of pesticide products, the labeling statements for the use of gloves in subpart K must be followed. "Chemical resistant" must be used instead of such terms as "liquidproof," "rubber," "natural rubber," "vinyl," "synthetic rubber," "impervious," "neoprene," "plastic," "impermeable," or "nonporous." The term "waterproof" must be used in place of "water-resistant" or other terms if the pesticide is used dry or as an aqueous solution.

Unless the registrant has data indicating that the NIOSH/MSHA approval number prefix listed in subpart K is inappropriate for a particular pesticide product or a particular type of pesticide product, NIOSH/MSHA approval number prefixes indicated in subpart K shall be substituted for the general phrase "NIOSH/MSHA approved" in respirator statements on existing labeling. For a dust/mist mask, the NIOSH/MSHA approval number prefix is "TC-21C." For a cartridge respirator, the NIOSH/MSHA approval number prefix is "TC-23C." For a canister respirator, the NIOSH/MSHA approval number is prefix "TC-14G." For a supplied-air respirator, the NIOSH/MSHA approval number prefix is "TC-19C." For a self-contained breathing apparatus (SCBA), the NIOSH/MSHA approval number prefix is TC-13F."

To determine the appropriate PPE requirements for handling activities, the table in 40 CFR 156.212(e) is used in conjunction with the acute toxicity data on the formulated product for each route of exposure listed in the table. Registrants must determine the toxicity category of the formulated product for acute dermal toxicity, skin irritation potential, eye irritation potential, and acute inhalation toxicity. If the acute toxicity data for dermal or inhalation exposure are not available, the acute oral toxicity may be used as a surrogate. (If acute toxicity data for any of these routes of exposure are not available, the toxicity category of the formulated product as a whole must be used as a substitute for each such route of exposure.) Given the toxicity category for each route of exposure, the table gives the appropriate item or items of PPE or work clothing necessary to protect that part of the body. All such items taken together comprise the basic "outfit" to be worn by the handler. This "outfit," in the form of a list of PPE and work clothing items, is inserted into a standardized handler PPE statement (40 CFR 156.212(d)(3)).

In addition to the basic handler outfit statement, statements related to exposure pattern are required for products in toxicity categories I and II (40 CFR 156.212(i)). For products that must be mixed or loaded, there must be a statement requiring the use of a chemical-resistant apron unless there is a requirement for a chemical-resistant suit (40 CFR 156.212(i)(1)). If overhead exposure is possible during handling, there must be a statement requiring the use of a wide-brimmed hat or a chemical-resistant hood (40 CFR 156.212(i)(2)). If equipment is used to mix, load, or apply the product, there must be a statement requiring the use of a chemical-resistant apron for persons who clean or repair equipment unless there is a requirement for a chemical-resistant suit (40 CFR 156.212(i)(3)).

If a product is sold as a concentrate and diluted for application, registrants may submit to the Agency or cite additional acute toxicity data on the diluted product. The PPE requirements for all handlers except mixer/loaders would then be based upon the data on the product as diluted for application.

The appropriate PPE and work clothing requirements for early-entry activities are the same as for applicators, except no respiratory protection device would be needed for early entry to pesticide-treated areas. In addition, the minimum PPE for early-entry activities consists of coveralls, chemical-resistant (or waterproof) gloves, shoes, and socks.

The Agency reserves the right to modify the subpart K requirements for PPE and work clothing for a product at some future time. This might occur at the beginning or end of a Special Review, or on review of data showing that different requirements are warranted.

d. *Labeling format*—i. *Language and location of labeling.* Specific language for worker protection labeling statements has been employed in subpart K to facilitate registrant compliance and to eliminate unnecessary variation among agricultural product labeling.

Each section of subpart K describing a required worker protection statement specifies a location on labeling for that statement. Most worker protection statements are required to be grouped near the beginning of the Directions for Use section of the product labeling under the heading Agricultural Use Requirements. General statements such as the reference to part 170 would appear first. The only statements required to appear elsewhere on labeling are the Spanish signal word and explanatory statement, which must appear close to the English signal word; the identification of the type of product (organophosphate or *N*-methyl carbamate), which must be associated with the product name or in the Statement of Practical Treatment (First Aid) section; identification of a fumigant, which must appear as part of or close to the product name; and the PPE statements, which must appear in the Hazards to Humans (and Domestic Animals) section of the labeling. At the discretion of the registrant, any existing worker protection statements that are not superseded or modified by subpart K may be relocated under this overall worker protection heading, unless this would reduce existing protection associated with nonagricultural uses.

ii. *New or amended product labeling.* As of April 21, 1993, labeling submitted with applications for new or amended registration must comply with subpart K. The Agency will review and approve labeling for new products under normal Agency procedures.

iii. *Existing products.* Registrants of products that are registered as of the effective date of subpart K and that fall within the scope of subpart K must revise their product labeling to comply with the new requirements in one of the following ways:

(1) *Subpart K labeling followed exactly.* The Agency is specifying precise wording and exact requirements for worker protection labeling so that registrants of existing products will be able to revise product labeling more easily within the timeframes established. If a registrant certifies that the Worker Protection Standard PR Notice wording is followed exactly for a specific product, no Agency approval is required. The registrant must submit the following:

(A) An Application for Amended Registration (EPA Form 8570-1). Under "Subject of Amendment" in section II of the application, the registrant must identify the subject of the amendment as "WORKER PROTECTION CERTIFICATION" and include a certification statement such as, "All products being sold or distributed after April 21, 1994, will be in compliance with the labeling requirements of 40 CFR part 156, subpart K."

(B) A copy of the product's revised labeling (draft or final) with the changes highlighted, preferably with a felt-tipped marker. The Agency may choose to review this labeling as a check on the correctness of the registrant's compliance with subpart K.

(2) *Subpart K labeling not followed exactly.* If a registrant wishes to use wording different from that required by the Worker Protection Standard PR Notice, an amended registration must be

approved. The registrant must submit the following:

(A) An Application for Amended Registration (EPA Form 8570-1). Under "Subject of Amendment" in section II of the application, the registrant must identify the subject of the amendment as "WORKER PROTECTION LABELING AMENDMENT" and include a statement such as, "The applicant requests the Agency to review proposed revised labeling text that differs from 40 CFR part 156, subpart K."

(B) Five copies of the product's proposed draft labeling with the changes highlighted, preferably with a felt-tipped marker.

EPA encourages registrants seeking amendments under section 3(b) to submit their applications as soon as possible after the effective date of this regulation. EPA cannot assure that these amendments to registration will be approved in time to incorporate the revised language on the labeling by the deadlines. As stated above, the Agency intends that the standard and implementing labeling statements be put in place as quickly as possible. Thus, it is unlikely that EPA will grant an extension of time merely because a special labeling amendment has been proposed. This policy does not preclude registrants from requesting special amendments to registration; registrants, however, are required to meet applicable deadlines for labeling changes regardless of the status of any special amendment to registration.

iv. *Where to send amended application.* Applications for amended registration and other labeling must be submitted to the address listed in the Worker Protection Standard PR Notice and must be received on or before April 21, 1994. After this date, no product may be distributed or sold by the registrant (or a supplemental registrant) unless it is in compliance with the new subpart K. After October 23, 1995, all products distributed or sold by any person must bear labeling statements in compliance with the new subpart K.

v. *Earliest distribution or sale.* Finally, it should be noted that no product with the subpart K labeling statements may be distributed or sold by a registrant prior to April 21, 1993, even though the registrant may submit certification and EPA may approve new or amended products with subpart K labeling prior to that date.

vi. *Failure to comply.* If the items listed above, such as a certification statement, and, if applicable, the final printed labeling are not submitted on or before the date specified above, the Agency may issue a "Notice of Intent to Cancel" under FIFRA section 6(b). If, after a certification is reviewed, the Agency determines that the registrant has incorrectly labeled the product, the product may be deemed to be misbranded in violation of FIFRA section 12(a)(1)(E) or the Agency may issue a "Notice of Intent to Cancel" under FIFRA section 6(b).

C. EPA Communication and Training Efforts

EPA has been engaged in the promotion of pesticide safety in agriculture for many years. In the course of this program, the Agency has developed working relationships with other Federal, State, and private organizations with similar objectives. It has sponsored the production and distribution of many types of pesticide safety materials. With the promulgation of the revised Worker Protection Standard, the Agency intends to develop appropriate materials to inform pesticide users and agricultural workers of the new requirements and to facilitate compliance.

1. *Product labeling.* The labeling of each agricultural pesticide product subject to part 170 will indicate, by means of a reference statement, that the product must be used according to these regulations. Requirements that vary from product to product, such as restricted-entry intervals and personal protective equipment, will appear as specific labeling statements, while requirements that do not vary among products, such as provision of decontamination sites, will not be repeated in each product's labeling.

2. *Development of materials.* To assist agricultural employers and pesticide users in complying with the revised Worker Protection Standard, the Agency intends to develop or to cooperate in the development of new educational materials and to revise some existing educational materials. These materials may be used by agricultural employers, migrant health clinics, Cooperative Extension offices, unions, commodity organizations, and similar groups.

a. *Compliance materials.* In addition to the promulgation of part 170 standard, the Agency intends to develop compliance guides and audiovisual compliance programs for agricultural employers and handler employers. These guides and programs will summarize and explain the regulations and will assist agricultural employers and handler employers to understand their responsibilities under part 170.

b. *Training programs for handlers and workers.* Existing written and audiovisual training programs on pesticide safety are expected to be revised as one source of assistance to agricultural employers and handler employers in training their employees in pesticide safety. The training programs also may be used by others such as migrant health clinics, State agencies, and worker organizations to train agricultural workers and handlers. The training programs that are planned are handbooks, slides/tapes and videos in English and Spanish. They will be designed to meet the pesticide safety training requirements of the new part 170.

c. *Pesticide safety poster.* A bilingual pesticide safety poster for agricultural workers, entitled "Be Safe With Pesticides/Use Pesticidas Con Cuidado," has been developped by the Agency and has been distributed widely with the assistance of cooperating organizations. EPA plans to revise the poster and intends that display of this revised poster will fulfill the pesticide safety poster requirement of part 170.

d. *Guidelines on the selection and use of personal protective equipment (PPE).* Numerous comments from the public addressed the need for more information and guidance on the selection, use, and maintenance of PPE, including the avoidance of heat stress. The Agency has developed informational materials to provide guidance to pesticide users on these topics. The Agency also intends to develop guidance documents on cholinesterase monitoring to assist employers who have or want to have such a program.

3. *Liaison with other agencies and organizations.* In the past, EPA has had the assistance of a number of governmental agencies, farmworker service organizations, and trade associations in communicating with the agricultural community. The Agency will continue to work with these groups to inform affected persons of their rights and responsibilities under the revised standard, to assist in the reproduction and distribution of educational materials developed by the Agency and to encourage compliance on the part of their members and clients.

D. National Compliance Monitoring Strategy

The Agency's approach to enforcement of the Worker Protection Standard will be based on development of a National Compliance Monitoring Strategy for worker protection.

Pesticide use enforcement under FIFRA is dependent upon two broad authorities, the authority to regulate the distribution and sale of pesticides and the authority to require that registered pesticides be used according to their labeling. In most States, enforcement is by State regulatory agencies through Cooperative Enforcement Agreements with EPA. EPA intends to assure enforcement of part 170 primarily through these agreements. The National Compliance Monitoring Strategy will be developed in partnership with the State regulatory agencies and will guide all enforcement activities related to this regulation.

To achieve maximum compliance, the Agency plans a major communication effort to inform the regulated community of the new requirements. The registrant of a pesticide product subject to part 170 will be governed by the timeframes for product relabeling laid out above. Once a relabeled product is used, it must be used in accordance with its labeling or the user will be in violation of FIFRA section 12(a)(2)(G). The product will bear a reference statement notifying the user that the product must be used in accordance with part 170.

The relationship between State and Federal entities in the enforcement of pesticide use regulations is governed by FIFRA section 26(a). With the exception of Nebraska, Wyoming, and (in part) Colorado, all States have primary use enforcement authority and have entered into Cooperative Enforcement Agreements with EPA. EPA regional offices annually negotiate the terms of these agreements with State regulatory agencies. Starting in fiscal year 1990, these agreements have included a specific section on worker protection enforcement activities. EPA expects that individual State compliance monitoring strategies will be developed once the National Compliance Monitoring Strategy is completed. These strategies will describe inspection and complaint response schemes and compliance communication activities to be conducted in each State. Development of interagency coordination agreements among various State agencies concerned with pesticide use and worker safety may be part of each State's strategy. EPA also anticipates that registrant compliance with worker-protection-related registration requirements will be monitored through activities agreed upon under Cooperative Enforcement Agreements.

Toward the accomplishment of these goals, money has been allocated to the States in EPA's budget for fiscal years 1990, 1991, and 1992 for the development of worker protection programs and related compliance activities. In States where Cooperative Enforcement Agreements are not in place, EPA regional inspectors will conduct compliance monitoring programs based on the National Compliance Monitoring Strategy for this regulation.

VII. Public Docket

Documents relied upon by the Agency in the development of this final rule, including public comments submitted on the proposed rule, have been given the document control number OPP-300164A and are available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Office of Pesticide Programs' Document Control Office, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

VIII. Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, a Regulatory Impact Analysis (RIA) has been developed and has been submitted to the Office of Management and Budget (OMB). This document is available for public inspection at the address given at the beginning of this Notice. A summary of the document follows.

EPA believes that the benefits that will accrue to agricultural workers and handlers from implementation of the WPS include the reduction in lost time from the workforce, reduced medical expenses, and increased well-being and productivity through being less affected by pesticide poisoning. These and any related benefits cannot be adequately quantified with available data. The Agency is convinced that the benefits to society from avoided incidents of acute, allergic, and delayed adverse effects from occupational exposures to agricultural-plant pesticides exceed the costs attributable to this final rule.

The final rule would serve to protect a labor force of 3.9 million exposed either directly or indirectly to pesticides as a result of their occupations on farms, in forests, in nurseries, in greenhouses, or in commercial pesticide-handling operations. This work force includes 1.4 million hired workers and handlers on farms, 92,000 hired workers and handlers in nurseries and greenhouses, and 10,000 hired workers and handlers in forests. There are also 38,000 commercial handlers who handle agricultural-plant pesticides. In addition, 2.36 million agricultural-establishment operators and unpaid workers (presumably family members) handle agricultural-plant pesticides or perform tasks related to the production of agricultural plants on farms, nurseries, and greenhouses.

EPA estimates that the incremental costs of this final rule will be about $95 million in the first year and about $50 million annually thereafter. To facilitate comparison with other regulations, EPA has also calculated the incremental costs by annualizing them over 10 years at several illustrative interest rates. Using 3% and 10%, the annualized costs of this final rule would be about $54 and $56 million per year respectively. The annual cost of the rule is therefore expected to be $50 to $60 million dollars, while the estimated annual benefits of this final rule include avoiding 8,000 to 16,000 physician-diagnosed (nonhospitalized) acute and allergic pesticide poisoning incidents, avoiding about 300 hospitalized acute and allergic pesticide poisoning incidents, and avoiding potentially important numbers of cancer cases, serious developmental defects, stillbirths, persistent neurotoxic effects, and nondiagnosed acute and allergic poisoning incidents.

B. Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164; 5 U.S.C. 601-612) for its impact on small businesses. The results of that review have been incorporated into the Regulatory Impact Analysis and are discussed in more detail in that document (available for public inspection at the address listed at the beginning of this Notice). A summary follows.

The revised final rule exempts owners of agricultural establishments and members of their immediate family from the provisions pertaining to safety training and information, decontamination facilities, notification of pesticide treatments, and emergency assistance. EPA presumes that owners and family members will provide themselves and each other with these protections, and has chosen not to regulate such behavior. This decision represents a significant exemption for small entities, since about 45 percent (251,000 of 560,000) of the agricultural establishments within the scope of the WPS do not hire labor and are, therefore, exempt from all but a few of the final rule's requirements.

As a result, the analysis reveals that agricultural establishments without hired labor will bear a low cost-burden as compared to agricultural establishments with hired labor. The incremental continuing annual costs averaged across all establishments without hired labor are about $15 per establishment, whereas the costs averaged across all hired-labor agricultural establishments are about $140 per establishment per year. Non-hired-labor feed and grain farms, which make up the largest crop segment, will incur incremental continuing annual

costs averaging about $10 per farm. Hired-labor feed and grain farms will incur incremental continuing annual costs averaging about $55 per farm.

None of the provisions of the regulation provide a direct efficiency of size to establishments with many employees. Most of the provisions are totally or mostly variable (per worker) costs. However, two provisions that contain some fixed (per establishment) cost elements are training and notification. Even these provisions are not directly efficiency-of-size cost factors, due to: (1) The diverse and sporadic nature of pesticide-use and labor-use practices, and (2) the exceptions and options in the rule that allow employers to select the most cost-effective option for their particular circumstance.

The variability in the cost-factors due to these exceptions and options is difficult to quantify. Therefore, the analysis of the impact on 1-worker agricultural establishments versus the impact on 10-worker agricultural establishments is a "worst-case" analysis that assumes that all costs of training and notification are fixed rather than variable. This results in an overestimate of the impact of this rule to 1-worker agricultural establishments. However, even with the overestimate, results indicate that the burden is not unreasonably higher for such small establishments. The average incremental continuing annual cost due to all provisions for a feed and grain farm with one hired employee is about $25 (or $25 per employee). For a feed and grain farm with 10 hired employees, it is about $115 per year (or $10 per employee). For vegetable/fruit/nut establishments with one hired employee, the average incremental continuing annual cost for all provisions is about $95 per establishment (or $95 per employee). The cost is about $650 (or $65 per employee) for a vegetable/fruit/nut establishment with 10 hired employees.

The Agency has determined that the burden on small agricultural businesses does not outweigh the risk to handlers and workers employed in those businesses, and that further exemptions from the regulation for small businesses would not be warranted.

C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB Control Number 2070-0060.

The reporting burden for registrants is estimated to average 5.9 hours per product, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects in 40 CFR Parts 156 and 170

Environmental protection, Labeling, Pesticides and pests, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements.

Dated: August 13, 1992.

William K. Reilly,

Administrator.

Therefore, chapter I of Title 40 is amended in subchapter E, to read as follows:

PART 156—LABELING REQUIREMENTS FOR PESTICIDES AND DEVICES

1. In part 156:

a. The authority citation for part 156 continues to read as follows:

Authority: 7 U.S.C. 136-136y.

b. Section 156.10 is designated as subpart A, and the subpart heading is added, § 156.10 is amended by revising paragraph (i)(2)(viii), and subparts B through J are added and reserved, to read as follows:

Subpart A—General Provisions

§ 156.10 Labeling requirements.

* * * * *

(i) * * *

(2) * * *

(viii) Worker protection statements meeting the requirements of subpart K of this part.

* * * * *

c. New subpart K, consisting of §§ 156.200, 156.203, 156.204, 156.206, 156.208, 156.210, and 156.212, is added, to read as follows:

Subpart K—Worker Protection Statements

Sec.

156.200 Scope and applicability.
156.203 Definitions.
156.204 Modification and waiver of requirements.
156.206 General statements.
156.208 Restricted-entry statements.
156.210 Notification-to-workers statements.
156.212 Personal protective equipment statements.

Subpart K—Worker Protection Statements

§ 156.200 Scope and applicability.

(a) *Scope.* (1) This subpart prescribes statements that must be placed on the pesticide label and in pesticide labeling. These statements incorporate by reference the Worker Protection Standard, part 170 of this chapter. The requirements addressed in these statements are designed to reduce the risk of illness or injury resulting from workers' and pesticide handlers' occupational exposures to pesticides used in the production of agricultural plants on agricultural establishments as defined in § 170.3 of this chapter. These statements refer to specific workplace practices designed to reduce or eliminate exposure and to respond to emergencies that may arise from the exposures that may occur.

(2) This subpart prescribes interim requirements that must be placed on the pesticide label and in pesticide labeling. These interim requirements pertain to restricted-entry intervals, personal protective equipment, and notification. On a case-by-case basis, these interim requirements will be reviewed and may be revised during reregistration or other agency review processes.

(b) *Applicability.* (1) The requirements of this subpart apply to each pesticide product that bears directions for use in the production of any agricultural plant on any agricultural establishment as defined in § 170.3 of this chapter, or whose labeling reasonably permits such use.

(2) The requirements of this subpart do not apply to a product that bears directions solely for uses excepted by § 170.202(b) of this chapter.

(c) *Effective dates.* (1) The effective date of this subpart is October 20, 1992.

(2) No pesticide product bearing labeling amended and revised as required by this subpart shall be distributed or sold by a registrant prior to April 21, 1993.

(3) No product to which this subpart applies shall be distributed or sold without amended labeling by any registrant after April 21, 1994.

(4) No product to which this subpart applies shall be distributed or sold without amended labeling by any person after October 23, 1995.

§ 156.203 Definitions.

Terms in this subpart have the same meanings as they do in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, as used in this subpart, shall have the meanings stated below:

Fumigant means any pesticide product that is a vapor or gas or forms a vapor or gas on application and whose method of pesticidal action is through the gaseous state.

Restricted-entry interval means the time after the end of a pesticide application during which entry to the treated area is restricted.

§ 156.204 Modification and waiver of requirements.

(a) *Modification on Special Review.* If the Agency concludes in accordance with § 154.25(c) of this chapter that a pesticide should be placed in Special Review because the pesticide meets or exceeds the criteria for human health effects of § 154.7(a)(1)(2) or (6) of this chapter, the Agency may modify the personal protective equipment required for handlers or early-entry workers or both, the restricted-entry intervals, or the notification to workers requirements.

(b) *Other modifications.* The Agency, pursuant to this subpart and authorities granted in FIFRA sections 3, 6, and 12, may, on its initiative or based on data submitted by any person, modify or waive the requirements of this subpart, or permit or require alternative labeling statements. Supporting data may be either data required by Subdivisions U or K of the Pesticide Assessment Guidelines or data from medical, epidemiological, or health effects studies. The Pesticide Assessment Guidelines contain the standards for conducting acceptable tests, guidance on evaluation and reporting of data, definition of terms, further guidance on when data are required, and examples of acceptable protocols. They are available through the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. A registrant who wishes to modify any of the statements required in § § 156.206, 156.208, 156.210, or 156.212 must submit an application for amended registration unless specifically directed otherwise by the Agency.

§ 156.206 General statements.

(a) *Application restrictions.* Each product shall bear the statement: "Do not apply this product in a way that will contact workers or other persons, either directly or through drift. Only protected handlers may be in the area during application." This statement shall be near the beginning of the DIRECTIONS FOR USE section of the labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(b) *40 CFR Part 170 reference statement.* (1) Each product shall bear the reference statement: "Use this product only in accordance with its labeling and with the Worker Protection Standard, 40 CFR part 170." This statement shall be placed on the product label under the heading AGRICULTURAL USE REQUIREMENTS.

(2) Each product shall bear the statement: "This standard contains requirements for the protection of agricultural workers on farms, forests, nurseries, and greenhouses, and handlers of agricultural pesticides. It contains requirements for training, decontamination, notification, and emergency assistance. It also contains specific instructions and exceptions pertaining to the statements on this label [in this labeling] about [use any of the following that are applicable] personal protective equipment, restricted-entry interval, and notification to workers." These statements shall be placed immediately following the reference statement required by paragraph (b)(1) of this section, or they shall be placed in the supplemental product labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(3) If the statements in paragraph (b)(2) of this section are included in supplemental labeling rather than on the label of the pesticide container, the container label must contain this statement immediately following the statement required in paragraph (b)(1) of this section: "Refer to supplemental labeling entitled AGRICULTURAL USE REQUIREMENTS in the DIRECTIONS FOR USE section of the labeling for information about this standard."

(4) If the statements in paragraph (b)(2) of this section are included in supplemental labeling, they must be preceded immediately by the statement in paragraph (b)(1) of this section under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(c) *Product-type identification.* (1) If the product contains an organophosphate (i.e., an organophosphorus ester that inhibits cholinesterase) or an *N*-methyl carbamate (i.e., an *N*-methyl carbamic acid ester that inhibits cholinesterase), the label shall so state. The statement shall be associated with the product name or product-type identification or shall be in the STATEMENT OF PRACTICAL TREATMENT or FIRST AID section of the label.

(2) If the product is a fumigant, the label shall so state. The identification shall appear:

(i) As part of the product name; or

(ii) Close to the product name, as part of the product-type identification or as a separate phrase or sentence.

(d) *State restrictions.* Each product shall bear the statement: "For any requirements specific to your State, consult the agency in your State responsible for pesticide regulation." This statement shall be under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(e) *Spanish warning statements.* If the product is classified as toxicity category I or toxicity category II according to the criteria in § 156.10(h)(1), the signal word shall appear in Spanish in addition to English followed by the statement, "Si Usted no entiende la etiqueta, busque a alguien para que se la explique a Usted en detalle. (If you do not understand the label, find some one to explain it to you in detail.)" The Spanish signal word "PELIGRO" shall be used for products in toxicity category I, and the Spanish signal word "AVISO" shall be used for products in toxicity category II. These statements shall appear on the label close to the English signal word.

(Approved by the Office of Management and Budget under control number 2070-0060.)

§ 156.208 Restricted-entry statements.

(a) *Requirement.* Each product with a restricted-entry interval shall bear the following statement: "Do not enter or allow worker entry into treated areas during the restricted-entry interval (REI)." This statement shall be under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(b) *Location of specific restricted-entry interval statements.* (1) If a product has one specific restricted-entry interval applicable to all registered uses of the product on agricultural plants, the restricted-entry interval for the product shall appear as a continuation of the statement required in paragraph (a) of this section and shall appear as follows: "of X hours" or "of X days" or "until the acceptable exposure level of X ppm or mg/m^3 is reached."

(2) If different restricted-entry intervals have been established for some crops or some uses of a product, the restricted-entry statement in paragraph (b)(1) of this section shall be associated on the labeling of the product with the directions for use for each crop each use to which it applies, immediately preceded or immediately followed by the words "Restricted-entry interval" (or the letters "REI").

(c) *Restricted-entry interval based on toxicity of active ingredient*—(1) *Determination of toxicity category.* A restricted-entry interval shall be established based on the acute toxicity of the active ingredients in the product. For the purpose of setting the restricted-entry interval, the toxicity category of each active ingredient in the product shall be determined by comparing the obtainable data on the acute dermal toxicity, eye irritation effects, and skin irritation effects of the ingredient to the criteria of § 156.10(h)(1). The most toxic of the applicable toxicity categories that are obtainable for each active ingredient shall be used to determine the restricted-entry interval for that product. If no acute dermal toxicity data are obtainable, data on acute oral toxicity also shall be considered in this comparison. If no applicable acute toxicity data are obtainable on the active ingredient, the toxicity category corresponding to the signal word of any registered manufacturing-use product that is the source of the active ingredient in the end-use product shall be used. If no acute toxicity data are obtainable on the active ingredients and no toxicity category of a registered manufacturing-use product is obtainable, the toxicity category of the end-use product (corresponding to the signal word on its labeling) shall be used.

(2) *Restricted-entry interval for sole active ingredient products.* (i) If the product contains only one active ingredient and it is in toxicity category I by the criteria in paragraph (c)(1) of this section, the restricted-entry interval shall be 48 hours. If, in addition, the active ingredient is an organophosphorus ester that inhibits cholinesterase and that may be applied outdoors in an area where the average annual rainfall for the application site is less than 25 inches per year, the following statement shall be added to the restricted-entry interval statement: "(72 hours in outdoor areas where average annual rainfall is less than 25 inches a year)."

(ii) If the product contains only one active ingredient and it is in toxicity category II by the criteria in paragraph (c)(1) of this section, the restricted-entry interval shall be 24 hours.

(iii) If the product contains only active ingredients that are in toxicity category III or IV by the criteria in paragraph (c)(1) of this section, the restricted-entry interval shall be 12 hours.

(3) *Restricted-entry interval for multiple active ingredient products.* If the product contains more than one active ingredient, the restricted-entry interval (including any associated statement concerning use in arid areas under paragraph (c)(2)(i) of this section) shall be based on the active ingredient that requires the longest restricted-entry interval as determined by the criteria in this section.

(d) *Exception for fumigants.* The criteria for determining restricted-entry intervals in paragraph (c) of this section shall not apply to any product that is a fumigant. For fumigants, any existing restricted-entry interval (hours, days, or acceptable exposure level) shall be retained. Entry restrictions for fumigants have been or shall be established on a case-by-case basis at the time of registration, reregistration, or other Agency review process.

(e) *Existing product-specific restricted-entry intervals.* (1) A product-specific restricted-entry interval, based on data collected in accordance with § 158.390 of this chapter and Subdivision K of the Pesticide Assessment Guidelines, shall supersede any restricted-entry interval applicable to the product under paragraph (c) of this section.

(2) Product-specific restricted-entry intervals established for pesticide products or pesticide uses that are not covered by part 170 of this chapter shall remain in effect and shall not be placed under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(f) *Existing interim restricted-entry intervals.* (1) An interim restricted-entry interval established by the Agency before the effective date of this subpart will continue to apply unless a longer restricted-entry interval is required by paragraph (c) of this section.

(2) Existing interim restricted-entry intervals established by the Agency for pesticide products or pesticide uses not covered by part 170 of this chapter shall remain in effect and shall not be placed under the heading AGRICULTURAL USE REQUIREMENTS in the labeling.

(Approved by the Office of Management and Budget under control number 2070-0060.)

§ 156.210 Notification-to-workers statements.

(a) *Requirement.* Each product that meets the requirements of paragraph (b) of this section shall bear the posting and oral notification statements prescribed below. The statements shall be in the DIRECTIONS FOR USE section of the labeling under the heading AGRICULTURAL USE REQUIREMENTS.

(b) *Notification to workers of pesticide application.* (1) Each product that contains any active ingredient classified as toxicity category I for either acute dermal toxicity or skin irritation potential under the criteria in § 156.10(h)(1) shall bear the statement: "Notify workers of the application by warning them orally and by posting warning signs at entrances to treated areas." If no acute dermal toxicity data are obtainable, data on acute oral toxicity of the active ingredient shall be considered instead. If no data on acute dermal toxicity, skin irritation potential, or acute oral toxicity are obtainable on the active ingredient, the toxicity category corresponding to the signal word of any registered manufacturing-use product that is the source of the active ingredient in the end-use product shall be used. If none of the applicable acute toxicity data are obtainable on the active ingredient and no toxicity category of the registered manufacturing-use product is obtainable, the toxicity category of the end-use product corresponding to the product's signal word shall be used.

(2) Each product that is a fumigant and is registered for use in a greenhouse (or whose labeling allows use in a greenhouse) shall bear the statement: "For greenhouse applications, notify workers of the application by warning them orally and by posting warning signs outside all entrances to the greenhouse."

(Approved by the Office of Management and Budget under control number 2070-0060.)

§ 156.212 Personal protective equipment statements.

(a) *Requirement.* Each product shall bear the personal protective equipment statements prescribed in paragraphs (d) through (j) of this section.

(b) *Exceptions.* (1) If personal protective equipment were required for a product before the effective date of this subpart, the existing requirements shall be retained on the labeling wherever they are more specific or more protective (as specified in EPA guidance materials) than the requirements in the table in paragraph (e) of this section.

(2) Any existing labeling statement that prohibits the use of gloves or boots overrides the corresponding requirement in paragraph (e) of this section and must be retained on the labeling.

(3) If the product labeling contains uses that are not covered by part 170 of this chapter, the registrant may adopt the personal protective equipment required in this section for those uses. However, if the personal protective equipment required in this section would not be sufficiently protective or would be onerously overprotective for uses not covered by part 170 of this chapter, the registrant must continue to apply the existing personal protective equipment requirements to those uses. The labeling must indicate which personal protective equipment requirements apply to uses covered by part 170 of this chapter and which personal protective equipment requirements apply to other uses.

(c) *Location of personal protective equipment statements*—(1) *Personal protective equipment statements for pesticide handlers.* Personal protective equipment statements for pesticide handlers shall be in the HAZARDS TO HUMANS (AND DOMESTIC ANIMALS) section of the labeling. The required statements may be combined to avoid redundancy as long as the requirements and conditions under which they apply are identified.

(2) Personal protective equipment statements for early-entry workers. Personal protective equipment statements for early-entry workers shall be placed in the DIRECTIONS FOR USE section of the labeling under the heading AGRICULTURAL USE REQUIREMENTS and immediately after the restricted-entry statement required in § 156.208(a).

(d) *Personal protective equipment statements for pesticide handlers.* (1) The table in paragraph (e) of this section specifies minimum requirements for personal protective equipment (as defined in § 170.240 of this chapter) and work clothing for pesticide handlers. This personal protective equipment requirement applies to any product that presents a hazard through any route of exposure identified in the table (acute dermal toxicity, skin irritation potential, acute inhalation toxicity, and eye irritation potential).

(2) The requirement for personal protective equipment is based on the acute toxicity category of the end-use product for each route of exposure as defined by § 156.10(h)(1). If data to determine the acute dermal toxicity or the acute inhalation toxicity are not obtainable, the acute oral toxicity shall be used as a surrogate to determine the personal protective equipment requirements for that route of exposure. If data to determine the acute toxicity of the product by a specific route of exposure (including acute oral toxicity in lieu of acute dermal or acute inhalation toxicity) are not obtainable, the toxicity category corresponding to the signal word of the end-use product shall be used to determine personal protective equipment requirements for that route of exposure. If the signal word is "CAUTION," toxicity category III will be used.

(3) The minimum personal protective equipment and work clothing requirements specified in this section shall be included in a statement such as the following: "Applicators and other handlers must wear: (body protection statement); (glove statement, if applicable); (footwear statement, if applicable); (protective eyewear statement, if applicable); (respirator statement, if applicable)." The format of statements given in this paragraph is optional, but it is recommended for clarity.

(e) *Summary of personal protective equipment requirements.* The following Table 1 summarizes the personal protective equipment requirements by route of exposure and toxicity category:

TABLE 1.—MINIMUM PERSONAL PROTECTIVE EQUIPMENT (PPE) AND WORK CLOTHING FOR HANDLING ACTIVITIES

Route of Exposure	Toxicity Category of End-Use Product			
	I	II	III	IV
Dermal Toxicity or Skin Irritation Potential[1]	Coveralls worn over long-sleeved shirt and long pants	Coveralls worn over short-sleeved shirt and short pants	Long-sleeved shirt and long pants	Long-sleeved shirt and long pants
	Socks	Socks	Socks	Socks
	Chemical-resistant footwear	Chemical-resistant footwear	Shoes	Shoes
	Chemical-resistant gloves[2]	Chemical-resistant gloves[2]	Chemical-resistant gloves[2]	No minimum[4]
Inhalation Toxicity	Respiratory protection device[3]	Respiratory protection device[3]	No minimum[4]	No minimum[4]
Eye Irritation Potential	Protective eyewear	Protective eyewear	No minimum[4]	No minimum[4]

[1] If dermal toxicity and skin irritation potential are in different toxicity categories, protection shall be based on the more toxic (lower numbered) category.
[2] For labeling language for chemical-resistant gloves, see paragraph (f) of this section.
[3] For labeling language for respiratory protection device, see paragraphs (g) and (h) of this section.
[4] Although no minimum PPE is required by this section for this toxicity category and route of exposure, the Agency may require PPE on a product-specific basis.

(f) *Chemical-resistant gloves labeling statements for pesticide handlers.* If the table in paragraph (e) of this section indicates that chemical-resistant gloves are required, the glove statement shall be as specified in paragraph (f)(2), (3), (4), or (5) of this section.

(1) *Exception.* The registrant shall specify a glove type other than that selected through the criteria in paragraphs (f)(2) through (5) of this section if information available to the registrant indicates that such a glove type is more appropriate or more protective than the glove type specified in this section. The statement must specify the particular types of chemical-resistant glove (such as nitrile, butyl, neoprene, and/or barrier-laminate).

(2) *Solid formulations.* For products formulated and applied as solids or formulated as solids and diluted solely with water for application, the glove statement shall specify: "waterproof gloves."

(3) *Aqueous-based formulations.* For products formulated and applied as a water-based liquid or formulated as a water-based liquid and diluted solely with water for application, the glove statement may specify: "waterproof gloves" instead of the statement in paragraph (f)(4) of this section.

(4) *Other liquid formulations.* For products formulated or diluted with liquids other than water, the glove statement shall specify: "chemical-resistant (such as nitrile or butyl) gloves."

(5) *Gaseous formulations and applications.* For products formulated or applied as gases, any existing glove statement established before the effective date of this subpart, including any glove prohibition statement, will continue to apply. If no glove statement or glove prohibition now exists, the glove statement shall specify "chemical-resistant (such as nitrile or butyl) gloves."

(g) *Existing respirator requirement for pesticide handlers on product labeling*—(1) *General requirement.* If a statement placed on a product's labeling before the effective date of this subpart indicates

that respiratory protection is required, that requirement for protection shall be retained. The statement must specify, or be amended to specify, one of the following respirator types and the appropriate MSHA/NIOSH approval number prefix:

(i) Dust/mist filtering respirator with MSHA/NIOSH/ approval number prefix TC-21C; or

(ii) Respirator with an organic-vapor-removing cartridge and a prefilter approved for pesticides with MSHA/NIOSH approval number prefix TC-23C or with a canister approved for pesticides with MSHA/NIOSH approval number prefix TC-14G; or

(iii) Supplied-air respirator with MSHA/NIOSH approval number prefix TC-19C or self-contained breathing apparatus (SCBA) with MSHA/NIOSH approval number TC-13F.

(2) *Respirator type already specified on labeling.* If the existing respiratory protection requirement specifies a respirator type, it shall be retained. The respirator statement must be revised, if necessary, to conform to the wording in paragraph (g)(1) of this section.

(3) *Respirator type not already specified on labeling.* If the existing respiratory protection requirement on product labeling does not specify a respirator type as listed in paragraph (g)(1) of this section, the specific respirator type shall be that required in the criteria in paragraphs (g)(3)(ii) through (vi) of this section.

(i) *Exception.* The registrant shall specify a different type of respiratory protection device if information, such as vapor pressure value, is available to the registrant to indicate that the type of respiratory protection device selected through the criteria in paragraphs (g)(3)(ii) through (vi) of this section would not be adequately protective, or might increase risks to the user unnecessarily.

(ii) *Gases applied outdoors.* For products that are formulated or applied as a gas (space and soil fumigants) and that may be used outdoors, the respiratory protection statement shall be: "For handling activities outdoors, use either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix TC-14G)."

(iii) *Gases used in enclosed areas.* For products that are formulated or applied as a gas (space and soil fumigants) and that may be used in greenhouses or other enclosed areas, the respiratory protection statement shall specify: "For handling activities in enclosed areas, use either a supplied-air respirator with MSHA/NIOSH approval number prefix TC-19C, or a self-contained breathing apparatus (SCBA) with MSHA/NIOSH approval number TC-13F."

(iv) *Solids.* For products that are formulated and applied as solids, the respiratory protection statement shall specify: "dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(v) *Liquids in toxicity category I.* For products that are formulated or applied as liquids, and, as formulated, have an acute inhalation toxicity (or its surrogate as specified in paragraph (d)(2) of this section) in category I, the respiratory protection statement shall specify: "either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix 14G)."

(vi) *Liquids in toxicity category II.* For products that are formulated or applied as liquids, and, as formulated, have an acute inhalation toxicity (or its surrogate as specified in paragraph (d)(2) of this section) in category II, the respiratory protection statement shall specify: "For handling activities during (select uses applicable to the product: airblast, mistblower, pressure greater than 40 p.s.i. with fine droplets, smoke, mist, fog, aerosol or direct overhead) exposures, wear either a respirator with an organic-vapor-removing cartridge with a prefilter approved for pesticides (MSHA/NIOSH approval number prefix TC-23C), or a canister approved for pesticides (MSHA/NIOSH approval number prefix 14G). For all other exposures, wear a dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(h) *New respirator requirement established for pesticide handlers in this part*—(1) *General requirement.* If the table in paragraph (e) of this section indicates a respiratory protection device is required, and existing product labeling has no respiratory protection requirement, the registrant shall add a respiratory protection statement that specifies a: "dust/mist filtering respirator (MSHA/NIOSH approval number prefix TC-21C)."

(2) *Exception.* The registrant shall specify a different type of respiratory protection device if information, such as vapor pressure value, is available to the registrant to indicate that the type of respiratory protection device required in paragraph (h)(1) of this section would not be adequately protective or might increase risks to the user unnecessarily.

(i) *Additional personal protective equipment requirements for pesticide handlers.* In addition to the minimum personal protective equipment and work clothing requirements given in the table in paragraph (e) of this section, the labeling statement for any product in toxicity category I or II on the basis of dermal toxicity or skin irritation potential (or their surrogate as specified in paragraph (d)(2) of this section), shall include the following personal protective equipment instructions, additions, or substitutions as applicable:

(1) If the product is not ready-to-use and there is no existing requirement for a chemical-resistant suit, the following statement shall be included: "Mixers/Loaders: add a chemical-resistant apron."

(2) If the application of the product may result in overhead exposure to any handler (for example, applicator exposure during airblast spraying of orchards or flagger exposure during aerial application), the following statement shall be included: "Overhead Exposure: wear chemical-resistant headgear."

(3) If any type of equipment other than the product container may be used to mix, load, or apply the product, and there is no requirement for a chemical-resistant protective suit, the following statement shall be included: "For Cleaning Equipment: add a chemical-resistant apron."

(j) *Personal protective equipment for early-entry workers.* This paragraph specifies minimum requirements for personal protective equipment (as defined in § 170.240 of this chapter) and work clothing for early-entry workers.

(1) For all pesticide products, add the statement: "For early entry to treated areas that is permitted under the Worker Protection Standard and that involves contact with anything that has been treated, such as plants, soil, or water, wear: (list the body protection, glove, footwear, protective eyewear, and protective headgear, if applicable, statements specified for applicators and other handlers, but omit any respiratory protection statement)."

(2) If the body protection statement in the personal protective equipment requirement for handlers specifies a long-sleeved shirt and long pants, "coveralls" must be specified in the statement of personal protective equipment for early-entry workers.

(3) If there is no statement requiring gloves and no prohibition against gloves for applicators and other handlers under the heading HAZARDS TO HUMANS (AND DOMESTIC ANIMALS) in the labeling, add a requirement for "waterproof gloves" in the statement of personal protective equipment for early-entry workers.

(Approved by the Office of Management and Budget under control number 2070-0060.)

2. By revising part 170 to read as follows:

PART 170—WORKER PROTECTION STANDARD

Subpart A—General Provisions

Sec.
170.1 Scope and purpose.
170.3 Definitions.
170.5 Effective date and compliance dates.
170.7 General duties and prohibited actions.
170.9 Violations of this part.

Subpart B—Standard for Workers

Sec.
170.102 Applicability of this subpart.
170.110 Restrictions associated with pesticide applications.
170.112 Entry restrictions.
170.120 Notice of applications.
170.122 Providing specific information about applications.
170.124 Notice of applications to handler employers.
170.130 Pesticide safety training.
170.135 Posted pesticide safety information.
170.150 Decontamination.
170.160 Emergency assistance.

Subpart C—Standard for Pesticide Handlers

Sec.
170.202 Applicability of this subpart.
170.210 Restrictions during applications.
170.222 Providing specific information about applications.
170.224 Notice of applications to agricultural employers.
170.230 Pesticide safety training.
170.232 Knowledge of labeling and site-specific information.
170.234 Safe operation of equipment.
170.235 Posted pesticide safety information.
170.240 Personal protective equipment.
170.250 Decontamination.
170.260 Emergency assistance.

Authority: 7 U.S.C. 136w.

Subpart A—General Provisions

§ 170.1 Scope and purpose.

This part contains a standard designed to reduce the risks of illness or injury resulting from workers' and handlers' occupational exposures to pesticides used in the production of agricultural plants on farms or in nurseries, greenhouses, and forests and also from the accidental exposure of workers and other persons to such pesticides. It requires workplace practices designed to reduce or eliminate exposure to pesticides and establishes procedures for responding to exposure-related emergencies.

§ 170.3 Definitions.

Terms used in this part have the same meanings they have in the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. In addition, the following terms, when used in this part, shall have the following meanings:

Agricultural employer means any person who hires or contracts for the services of workers, for any type of compensation, to perform activities related to the production of agricultural plants, or any person who is an owner of or is responsible for the management or condition of an agricultural establishment that uses such workers.

Agricultural establishment means any farm, forest, nursery, or greenhouse.

Agricultural plant means any plant grown or maintained for commercial or research purposes and includes, but is not limited to, food, feed, and fiber plants; trees; turfgrass; flowers, shrubs; ornamentals; and seedlings.

Chemigation means the application of pesticides through irrigation systems.

Commercial pesticide handling establishment means any establishment, other than an agricultural establishment, that:

(1) Employs any person, including a self-employed person, to apply on an agricultural establishment, pesticides used in the production of agricultural plants.

(2) Employs any person, including a self-employed person, to perform on an agricultural establishment, tasks as a crop advisor.

Crop advisor means any person who is assessing pest numbers or damage, pesticide distribution, or the status or requirements of agricultural plants. The term does not include any person who is performing hand labor tasks.

Early entry means entry by a worker into a treated area on the agricultural establishment after a pesticide application is complete, but before any restricted-entry interval for the pesticide has expired.

Farm means any operation, other than a nursery or forest, engaged in the outdoor production of agricultural plants.

Forest means any operation engaged in the outdoor production of any agricultural plant to produce wood fiber or timber products.

Fumigant means any pesticide product that is a vapor or gas, or forms a vapor or gas on application, and whose method of pesticidal action is through the gaseous state.

Greenhouse means any operation engaged in the production of agricultural plants inside any structure or space that is enclosed with nonporous covering and that is of sufficient size to permit worker entry. This term includes, but is not limited to, polyhouses, mushroom houses, rhubarb houses, and similar structures. It does not include such structures as malls, atriums, conservatories, arboretums, or office buildings where agricultural plants are present primarily for aesthetic or climatic modification.

Hand labor means any agricultural activity performed by hand or with hand tools that causes a worker to have substantial contact with surfaces (such as plants, plant parts, or soil) that may contain pesticide residues. These activities include, but are not limited to, harvesting, detasseling, thinning, weeding, topping, planting, sucker removal, pruning, disbudding, roguing, and packing produce into containers in the field. Hand labor does not include operating, moving, or repairing irrigation or watering equipment or performing the tasks of crop advisors.

Handler means any person, including a self-employed person:

(1) Who is employed for any type of compensation by an agricultural establishment or commercial pesticide handling establishment to which subpart C of this part applies and who is:

(i) Mixing, loading, transferring, or applying pesticides.

(ii) Disposing of pesticides or pesticide containers.

(iii) Handling opened containers of pesticides.

(iv) Acting as a flagger.

(v) Cleaning, adjusting, handling, or repairing the parts of mixing, loading, or application equipment that may contain pesticide residues.

(vi) Assisting with the application of pesticides.

(vii) Entering a greenhouse or other enclosed area after the application and before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by this part (§ 170.110(c)(3)) or in the labeling has been met:

(A) To operate ventilation equipment.

(B) To adjust or remove coverings used in fumigation.

(C) To monitor air levels.

(viii) Entering a treated area outdoors after application of any soil fumigant to adjust or remove soil coverings such as tarpaulins.

(ix) Performing tasks as a crop advisor:

(A) During any pesticide application.

(B) Before the inhalation exposure level listed in the labeling has been reached or one of the ventilation criteria established by this part (§ 170.110(c)(3)) or in the labeling has been met.

(C) During any restricted-entry interval.

(2) The term does not include any person who is only handling pesticide containers that have been emptied or cleaned according to pesticide product labeling instructions or, in the absence of such instructions, have been subjected to triple-rinsing or its equivalent.

Handler employer means any person who is self-employed as a handler or who employs any handler, for any type of compensation.

Immediate family includes only spouse, children, stepchildren, foster children, parents, stepparents, foster parents, brothers, and sisters.

Nursery means any operation engaged in the outdoor production of any agricultural plant to produce cut flowers and ferns or plants that will be used in their entirety in another location. Such plants include, but are not limited to, flowering and foliage plants or trees; tree seedlings; live Christmas trees; vegetable, fruit, and ornamental transplants; and turfgrass produced for sod.

Owner means any person who has a present possessory interest (fee, leasehold, rental, or other) in an agricultural establishment covered by this part. A person who has both leased such agricultural establishment to another person and granted that same person the right and full authority to manage and govern the use of such agricultural establishment is not an owner for purposes of this part.

Restricted-entry interval means the time after the end of a pesticide application during which entry into the treated area is restricted.

Treated area means any area to which a pesticide is being directed or has been directed.

Worker means any person, including a self-employed person, who is employed for any type of compensation and who is performing activities relating to the production of agricultural plants on an agricultural establishment to which subpart B of this part applies. While persons employed by a commercial pesticide handling establishment are performing tasks as crop advisors, they are not workers covered by the requirements of subpart B of this part.

§ 170.5 Effective date and compliance dates.

(a) *Effective date.* The effective date for this part, including § 170.112(e), shall be October 20, 1992.

(b) *Accelerated provisions.* The compliance date shall be April 21, 1993, for:

(1) Section 170.112(a) through (c)(3);

(2) Section 170.112(d)(1) through (d)(2)(ii);

(3) The requirement of § 170.112(c)(3) as referenced in § 170.112(d)(2)(iii);

(4) The requirement of § 170.112(c)(3) as referenced in § 170.112(e)(5);

(5) Section 170.120(a)(3); and

(6) Section 170.120(b)(3).

(c) *All other provisions.* The compliance date for all other provisions of this part shall be April 15, 1994.

§ 170.7 General duties and prohibited actions.

(a) *General duties.* The agricultural employer or the handler employer, as appropriate, shall:

(1) Assure that each worker subject to subpart B of this part or each handler subject to subpart C of this part receives the protections required by this part.

(2) Assure that any pesticide to which subpart C of this part applies is used in a manner consistent with the labeling of the pesticide, including the requirements of this part.

(3) Provide, to each person who supervises any worker or handler, information and directions sufficient to assure that each worker or handler receives the protections required by this part. Such information and directions shall specify which persons are responsible for actions required to comply with this part.

(4) Require each person who supervises any worker or handler to assure compliance by the worker or handler with the provisions of this part and to assure that the worker or handler receives the protections required by this part.

(b) *Prohibited actions.* The agricultural employer or the handler employer shall not take any retaliatory action for attempts to comply with this part or any action having the effect of preventing or discouraging any worker or handler from complying or attempting to comply with any requirement of this part.

§ 170.9 Violations of this part.

(a) Under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*) (FIFRA) section 12(a)(2)(G) it is unlawful for any person "to use any registered pesticide in a manner inconsistent with its labeling." When this part is referenced on a label, users must comply with all of its requirements except those that are inconsistent with product-specific instructions on the labeling. For the purposes of this part, EPA interprets the term "use" to include:

(1) Preapplication activities, including, but not limited to:

(i) Arranging for the application of the pesticide;

(ii) Mixing and loading the pesticide; and

(iii) Making necessary preparations for the application of the pesticide, including responsibilities related to worker notification, training of handlers, decontamination, use and care of personal protective equipment, emergency information, and heat stress management.

(2) Application of the pesticide.

(3) Post-application activities necessary to reduce the risks of illness and injury resulting from handlers' and workers' occupational exposures to pesticide residues during the restricted-entry interval plus 30 days. These activities include, but are not limited to, responsibilities related to worker training, notification, and decontamination.

(4) Other pesticide-related activities, including, but not limited to, providing emergency assistance, transporting or storing pesticides that have been opened, and disposing of excess pesticides, spray mix, equipment wash waters, pesticide containers, and other pesticide-containing materials.

(b) A person who has a duty under this part, as referenced on the pesticide product label, and who fails to perform that duty, violates FIFRA section 12(a)(2)(G) and is subject to a civil penalty under section 14. A person who knowingly violates section 12(a)(2)(G) is subject to section 14 criminal sanctions.

(c) FIFRA section 14(b)(4) provides that a person is liable for a penalty under FIFRA if another person employed by or acting for that person violates any provision of FIFRA. The term "acting for" includes both employment and contractual relationships.

(d) The requirements of this part, including the decontamination requirements, shall not, for the purposes of section 653(b)(1) of Title 29 of the U.S. Code, be deemed to be the exercise of statutory authority to prescribe or enforce standards or regulations affecting the general sanitary hazards addressed by the OSHA Field Sanitation Standard, 29 CFR 1928.110, or other agricultural, nonpesticide hazards.

Subpart B—Standard for Workers

§ 170.102 Applicability of this subpart.

(a) *Requirement.* Except as provided by paragraph (b) of this section, this subpart applies when any pesticide product is used on an agricultural establishment in the production of agricultural plants.

(b) *Exceptions.* This subpart does not apply when any pesticide is applied on an agricultural establishment in the following circumstances:

(1) For mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public pest control programs sponsored by governmental entities.

(2) On livestock or other animals, or in or about animal premises.

(3) On plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit and vegetable gardens, and home greenhouses.

(4) On plants that are in ornamental gardens, parks, and public or private lawns and grounds that are intended only for aesthetic purposes or climatic modification.

(5) By injection directly into agricultural plants. Direct injection does not include "hack and squirt," "frill and spray," chemigation, soil-incorporation, or soil-injection.

(6) In a manner not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, and pasture and rangeland use.

(7) For control of vertebrate pests.

(8) As attractants or repellents in traps.

(9) On the harvested portions of agricultural plants or on harvested timber.

(10) For research uses of unregistered pesticides.

(c) *Exemptions.* For the purposes of this subpart, the owners of agricultural establishments need not assure that the protections in § 170.112(c)(5) through (9); § 170.112(c)(5) through (9) as referenced in §§ 170.112(d)(2)(iii) and 170.112(e); and §§ 170.120, 170.122, 170.130, 170.135, 170.150, and 170.160 are provided to themselves and members of their immediate family while they are performing tasks related to the production of agricultural plants on their own agricultural establishment. However, they must provide any protections required by these sections to other workers and other persons who are not members of their immediate family and are encouraged to provide the protections to themselves and members of their families.

§ 170.110 Restrictions associated with pesticide applications.

(a) *Farms and forests.* During the application of any pesticide on a farm or in a forest, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the treated area.

(b) *Nurseries.* In a nursery, during any pesticide application described in column A of Table 1 of this paragraph, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the area specified in column B of Table 1 of this paragraph. After the application is completed, until the end of any restricted-entry interval, the entry-restricted area is the treated area.

Table 1.—Entry-Restricted Areas in Nurseries During Pesticide Applications

A. During Application of a Pesticide:	B. Workers are Prohibited in:
(1) (a) Applied: (i) Aerially, or (ii) In an upward direction, or (iii) Using a spray pressure greater than 150 psi, or (b) Applied as a: (i) Fumigant, or (ii) Smoke, or (iii) Mist, or (iv) Fog, or (v) Aerosol.	Treated area plus 100 feet in all directions on the nursery
(2)(a) Applied downward using: (i) A height of greater than 12 inches from the planting medium, or (ii) A fine spray, or (iii) A spray pressure greater than 40 psi and less than 150 psi.	Treated are plus 25 feet in all directions on the nursery
(b) Not as in 1 or 2(a) above but for which a respiratory protection device is required for application by the product labeling.	
(3) Applied otherwise.	Treated area

(c) *Greenhouses.* (1) When a pesticide application described in column A of Table 2 under paragraph (c)(4) of this section takes place in a greenhouse, the agricultural employer shall not allow or direct any person, other than an appropriately trained and equipped handler, to enter or to remain in the area specified in column B of Table 2 until the time specified in column C of Table 2 has expired.

(2) After the time specified in column C of Table 2 under paragraph (c)(4) of this section has expired, until the expiration of any restricted-entry interval, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area as specified in column D of Table 2 under paragraph (c)(4) of this section, except as provided in § 170.112.

(3) When column C of Table 2 under paragraph (c)(4) of this section specifies that ventilation criteria must be met, ventilation shall continue until the air concentration is measured to be equal to or less than the inhalation exposure level the labeling requires to be achieved. If no inhalation exposure level is listed on the labeling, ventilation shall continue until after:

(i) Ten air exchanges are completed; or

(ii) Two hours of ventilation using fans or other mechanical ventilating systems; or

(iii) Four hours of ventilation using vents, windows or other passive ventilation; or

(iv) Eleven hours with no ventilation followed by 1 hour of mechanical ventilation; or

(v) Eleven hours with no ventilation followed by 2 hours of passive ventilation; or

(vi) Twenty-four hours with no ventilation.

(4) The following Table 2 applies to paragraphs (c)(1), (2), and (3) of this section.

Table 2.—Greenhouse Entry Restrictions Associated With Pesticide Applications

A. When a Pesticide is Applied:	B. Workers are Prohibited in:	C. Until:	D. After the Expiration of Time in Column C Until the Restricted-Entry Interval Expires, the Entry-Restricted Area is:
(1) As a fumigant	Entire greenhouse plus any adjacent structure that cannot be sealed off from the treated area	The ventilation criteria of paragraph (c)(3) of this section are met	No entry restrictions after criteria in column C are met
(2) As a (i) Smoke, or (ii) Mist, or (iii) Fog, or (iv) Aerosol	Entire enclosed area	The ventilation criteria of paragraph (c)(3) of this section are met	Entire enclosed area is the treated area
(3) Not in 1 or 2 above, and for which a respiratory protection device is required for application by the product labeling	Entire enclosed area	The ventilation criteria of paragraph (c)(3) of this section are met	Treated area
(4) Not in 1, 2, or 3 above, and: (i) From a height of greater than 12 in. from the planting medium, or (ii) As a fine spray, or (iii) Using a spray pressure greater than 40 psi	Treated area plus 25 feet in all directions in the enclosed area	Application is complete	Treated area
(5) Otherwise	Treated area	Application is complete	Treated area

§ 170.112 Entry restrictions.

(a) *General restrictions.* (1) After the application of any pesticide on an agricultural establishment, the agricultural employer shall not allow or direct any worker to enter or to remain in the treated area before the restricted-entry interval specified on the pesticide labeling has expired, except as provided in this section.

(2) Entry-restricted areas in greenhouses are specified in column D in Table 2 under § 170.110(c)(4).

(3) When two or more pesticides are applied at the same time, the restricted-entry interval shall be the longest of the applicable intervals.

(4) The agricultural employer shall assure that any worker who enters a treated area under a restricted-entry interval as permitted by paragraphs (c), (d), and (e) of this section uses the personal protective equipment specified in the product labeling for early-entry workers and follows any other requirements on the pesticide labeling regarding early entry.

(b) *Exception for activities with no contact.* A worker may enter a treated area during a restricted-entry interval if the agricultural employer assures that both of the following are met:

(1) The worker will have no contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants; and

(2) No such entry is allowed until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling have been met.

(c) *Exception for short-term activities.* A worker may enter a treated area during a restricted-entry interval for short-term activities if the agricultural employer assures that the following requirements are met:

(1) No hand labor activity is performed.

(2) The time in treated areas under a restricted-entry interval for any worker does not exceed 1 hour in any 24-hour period.

(3) No such entry is allowed for the first 4 hours following the end of the application, and no such entry is allowed thereafter until any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling have been met.

(4) The personal protective equipment specified on the product labeling for early entry is provided to the worker. Such personal protective equipment shall conform to the following standards:

(i) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(ii) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(iii) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(iv) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(v) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one- or two-piece, chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(vi) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one- or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over a layer of clothing. If a chemical-resistant suit is substituted for coveralls, it need not be worn over a layer of clothing.

(vii) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent materials must not be worn for early-entry activities unless these materials are listed on the product labeling as acceptable for such use. If chemical-resistant gloves with sufficient durability and suppleness are not obtainable for tasks with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant liners. However, once leather gloves have been worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(viii) When "chemical-resistant footwear" is specified by the product labeling, it shall be one of the following types of footwear: chemical-resistant shoes, chemical-resistant boots, or chemical-resistant shoe coverings worn over shoes or boots. If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable for workers, then leather boots may be worn in such terrain.

(ix) When "protective eyewear" is specified by the product labeling, it shall be one of the following types of eyewear: goggles; face shield; safety glasses with front, brow, and temple protection; or a full-face respirator.

(x) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical-resistant hood or a chemical-resistant hat with a wide brim.

(5) The agricultural employer shall assure that the worker, before entering the treated area, either has read the product labeling or has been informed, in a manner that the worker can understand, of all labeling requirements related to human hazards or precautions, first aid, symptoms of poisoning, personal protective equipment specified for early entry, and any other labeling requirements related to safe use.

(6) The agricultural employer shall assure that:

(i) Workers wear the personal protective equipment correctly for its intended purpose and use personal protective equipment according to manufacturer's instructions.

(ii) Before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(iii) Personal protective equipment that cannot be cleaned properly is disposed of in accordance with any applicable Federal, State, and local regulations.

(iv) All personal protective equipment is cleaned according to manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(v) Before being stored, all clean personal protective equipment is dried thoroughly or is put in a well-ventilated place to dry.

(vi) Personal protective equipment contaminated with pesticides is kept separately and washed separately from any other clothing or laundry.

(vii) Any person who cleans or launders personal protective equipment is informed that such equipment may be contaminated with pesticides, of the potentially harmful effects of exposure to pesticides, and of the correct way(s) to handle and clean personal protective equipment and to protect themselves when handling equipment contaminated with pesticides.

(viii) All clean personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(ix) Each worker is instructed how to put on, use, and remove the personal protective equipment and is informed about the importance of washing thoroughly after removing personal protective equipment.

(x) Each worker is instructed in the prevention, recognition, and first aid treatment of heat-related illness.

(xi) Workers have a clean place(s) away from pesticide-storage and pesticide-use areas for storing personal clothing not in use; putting on personal protective equipment at the start of any exposure period; and removing personal protective equipment at the end of any exposure period.

(7) When personal protective equipment is required by the labeling of any pesticide for early entry, the agricultural employer shall assure that no worker is allowed or directed to perform the early-entry activity without implementing, when appropriate, measures to prevent heat-related illness.

(8) During any early-entry activity, the agricultural employer shall provide a decontamination site in accordance with § 170.150.

(9) The agricultural employer shall not allow or direct any worker to wear home or to take home personal protective equipment contaminated with pesticides.

(d) *Exception for an agriculturol emergency.* (1) An "agricultural emergency" means a sudden occurrence or set of circumstances which the agricultural employer could not have anticipated and over which the agricultural employer has no control, and which requires entry into a treated area during a restricted-entry interval, when no alternative practices would prevent or mitigate a substantial economic loss. A substantial economic loss means a loss in profitability greater than that which would be expected based on the experience and fluctuations of crop yields in previous years. Only losses caused by the agricultural emergency specific to the affected site and geographic area are considered. The contribution of mismanagement cannot be considered in determining the loss.

(2) A worker may enter a treated area under a restricted-entry interval in an agricultural emergency to perform tasks, including hand labor tasks, necessary to mitigate the effects of the agricultural emergency, if the agricultural employer assures that all the following criteria are met:

(i) A State, Tribal, or Federal Agency having jurisdiction declares the existence of circumstances that could cause an agricultural emergency on that agricultural establishment.

(ii) The agricultural employer determines the agricultural establishment is subject to the circumstances declared under paragraph (d)(2)(i) of this section that result in an agricultural emergency meeting the criteria of paragraph (d)(1) of this section.

(iii) The requirements of paragraphs (c)(3) through (9) of this section are met.

(e) *Exception requiring Agency approval.* The Agency may, in accordance with paragraphs (e)(1) through (3) of this section, grant an exception from the requirements of this section. An exception may be withdrawn in accordance with paragraph (e)(6) of this section.

(1) *Requesting an exception.* A request for an exception must be submitted to the Director, Office of Pesticide Programs (H-7501C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and must be accompanied by two copies of the following information:

(i) The name, address, and telephone number of the submitter.

(ii) The time period for which the exception is requested.

(iii) A description of the crop(s) and specific crop production task(s) for which the exception is requested. Such a description must include an explanation as to the necessity of applying pesticides of a type and at a frequency such that the restricted-entry interval would interfere with necessary and

time-sensitive hand labor tasks for the period for which the exception is sought.

(iv) A description of the geographic area for which the exception is requested. If the exception request is for a limited geographic area, the explanation must include a description as to why the circumstances of exposure or economic impact resulting from the prohibition of routine hand labor tasks during the restricted-entry interval are unique to the geographic area named in the exception.

(v) An explanation as to why, for each requested crop-task combination, alternative practices would not be technically or financially viable. Such alternative practices might include: rescheduling the pesticide application or hand labor activity; using a non-chemical pest control alternative; using an alternative to the hand labor tasks, such as machine cultivation; or substituting a pesticide with a shorter restricted-entry interval. This information should include estimates or data on per acre revenue and cost of production for the crop and area for which the exception is requested. These estimates or data should include: the situation prior to implementation of this final rule, the situation after implementation of this final rule if the exception is not granted, the situation after implementation of this final rule if the exception is granted, and specific information on individual factors which cause differences in revenues and costs among the three situations.

(vi) A description or documentation of the safety and feasibility of such an exception, including, but not limited to, the feasibility of performing the necessary hand labor activity while wearing the personal protective equipment required for early entry for the pesticide(s) expected to be applied, the means of mitigating heat-related illness concerns, the period of time required daily per worker to perform the hand labor activity, any suggested methods of reducing the worker's exposure, and any other mitigating factors, such as the availability of running water for routine and emergency decontamination and mechanical devices that would reduce the workers' contact with the treated surfaces. The information should include the costs associated with early-entry, such as decontamination facilities, special information and training for the workers, heat stress avoidance procedures, and provision, inspection, cleaning, and maintenance of personal protective equipment. EPA will not grant exceptions where the costs of early entry equal or exceed the expected loss in value of crop yield or quality.

(2) *Notice of receipt.* (i) When a request for an exception is submitted to the Agency along with all of the information required in paragraph (e)(1) of this section, the Agency shall issue a notice in the **Federal Register** stating that an exception is being considered, describing the nature of the exception, and allowing at least 30 days for interested parties to comment.

(ii) If a request for an exception is submitted to the Agency without all of the information required in paragraph (e)(1) of this section, the Agency shall return the request to the submitter.

(3) *Exception decision.* EPA will publish in the **Federal Register** its decision whether to grant the request for exception. EPA will base its decision on whether the benefits of the exception outweigh the costs, including the value of the health risks attributable to the exception. If the exception is granted, the notice will state the nature of and reasons for the exception.

(4) *Presumptive denial.* (i) Except as provided in paragraph (e)(4)(ii) of this section, persons requesting an exception may assume that the exception has been denied if EPA has not issued its decision whether to grant the exception within 9 months from the comment-closure date specified in the **Federal Register** notice in which the Agency announced, in accordance with paragraph (e)(2) of this section, that it would consider the exception.

(ii) Persons requesting an exception may not assume that the request has been denied as provided by paragraph (e)(4)(i) of this section if the Agency has taken action to extend its review period for a specified time interval due to the complexity of the exception request or to the number of exception requests concurrently under Agency review. EPA shall state the reason(s) for the delay in issuing a decision on the exception request. A notice of such an action may be published in the **Federal Register** or persons who requested the exception may be directly notified of the action.

(5) *Agricultural employer duties.* When a worker enters a treated area during a restricted-entry interval under an exception granted under paragraph (e) of this section, the agricultural employer shall assure that the requirements of paragraphs (c)(3) through (9) of this section are met, unless the notice granting the exception specifically indicates otherwise.

(6) *Withdrawing an exception.* An exception may be withdrawn by the Agency at any time if the Agency receives poisoning information or other data that indicate that the health risks imposed by this early-entry exception are unacceptable or if the Agency receives other information that indicates that the exception is no longer necessary or prudent. If the Agency determines that an exception should be withdrawn, it will publish a notice in the **Federal Register**, stating the basis for its determination. Affected parties would then have 30 days to request a hearing on the Agency's determination. The exception, however, would be discontinued as of the date specified by EPA in the notice, which may include any of the 30-day period and the time required for any subsequent hearing process. Thereafter the Agency will decide whether to withdraw the exception and will publish a notice in the **Federal Register** stating its decision.

§ 170.120 Notice of applications.

(a) *Notification to workers of pesticide applications in greenhouses.* The agricultural employer shall notify workers of any pesticide application in the greenhouse in accordance with this paragraph.

(1) All pesticide applications shall be posted in accordance with paragraph (c) of this section.

(2) If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer shall also provide oral notification of the application to the worker in accordance with paragraph (d) of this section.

(3) Notice need not be given to a worker if the agricultural employer can assure that one of the following is met:

(i) From the start of the application until the end of the application and during any restricted-entry interval, the worker will not enter, work in, remain in, or pass through the greenhouse; or

(ii) The worker applied (or supervised the application of) the pesticide for which the notice is intended and is aware of all information required by paragraphs (d)(1) through (3) of this section.

(b) *Notification to workers on farms, in nurseries, or in forests of pesticide applications.* The agricultural employer shall notify workers of any pesticide application on the farm or in the nursery or forest in accordance with this paragraph.

(1) If the pesticide product labeling has a statement requiring both the posting of treated areas and oral notification to workers, the agricultural employer shall post signs in accordance with paragraph (c) of this section and shall provide oral notification of the application to the worker in accordance with paragraph (d) of this section.

(2) For any pesticide other than those for which the labeling requires both posting and oral notification of applications, the agricultural employer shall give notice of the application to the worker either by the posting of warning signs in accordance with paragraph (c) of this section or orally in accordance with paragraph (d) of this section, and shall inform the workers as to which method of notification is in effect.

(3) Notice need not be given to a worker if the agricultural employer can assure that one of the following is met:

(i) From the start of the application until the end of the application and during any restricted-entry interval, the worker will not enter, work in, remain in, or pass through on foot the treated area or any area within 1/4 mile of the treated area; or

(ii) The worker applied (or supervised the application of) the pesticide for which the notice is intended and is aware of all information required by (d)(1) through (3) of this section.

(c) *Posted warning signs.* The agricultural employer shall post warning signs in accordance with the following criteria:

(1) The warning sign shall have a background color that contrasts with red. The words "DANGER" and "PELIGRO," plus "PESTICIDES" and "PESTICIDAS," shall be at the top of the sign, and the words "KEEP OUT" and "NO ENTRE" shall be at the bottom of the sign. Letters for all words must be clearly legible. A circle containing an upraised hand on the left and a stern face on the right must be near the center of the sign. The inside of the circle must be red, except that the hand and a large portion of the face must be in a shade that contrasts with red. The length of the hand must be at least twice the height of the smallest letters. The length of the face must be only slightly smaller than the hand. Additional information such as the name of the pesticide and the date of application may appear on the warning sign if it does not detract from the appearance of the sign or change the meaning of the required information. A black-and-white example of a warning sign meeting these requirements, other than the size requirements, follows:

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BILLING CODE 6560-50-C

(2) The sign shall be at least 14 inches by 16 inches in size, and the letters shall be at least 1 inch in height unless a smaller sign and smaller letters are necessary because the treated area is too small to accommodate a sign of this size. If a smaller sign is used, it must meet the proportions and other requirements described in paragraph (c)(1) of this section.

(3) On farms and in forests and nurseries, the signs shall be visible from all usual points of worker entry to the treated area, including at least each access road, each border with any labor camp adjacent to the treated area, and each footpath and other walking route that enters the treated area. When there are no usual points of worker entry, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility.

(4) In greenhouses, the signs shall be posted so they are visible from all usual points of worker entry to the treated area including each aisle or other walking route that enters the treated area. When there are no usual points of worker entry to the treated area, signs shall be posted in the corners of the treated area or in any other location affording maximum visibility.

(5) The signs shall:

(i) Be posted no sooner than 24 hours before the scheduled application of the pesticide.

(ii) Remain posted throughout the application and any restricted-entry interval.

(iii) Be removed within 3 days after the end of the application and any restricted-entry interval and before agricultural-worker entry is permitted, other than entry permitted by § 170.112.

(6) The signs shall remain visible and legible during the time they are posted.

(7) When several contiguous areas are to be treated with pesticides on a rotating or sequential basis, the entire area may be posted. Worker entry, other than entry permitted by § 170.112, is prohibited for the entire area while the signs are posted.

(d) *Oral warnings.* The agricultural employer shall provide oral warnings to workers in a manner that the worker can understand. If a worker will be on the premises during the application, the warning shall be given before the application takes place. Otherwise, the warning shall be given at the beginning of the worker's first work period during which the application is taking place or the restricted-entry interval for the pesticide is in effect. The warning shall consist of:

(1) The location and description of the treated area.

(2) The time during which entry is restricted.

(3) Instructions not to enter the treated area until the restricted-entry interval has expired.

§ 170.122 Providing specific information about applications.

When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, specific information about the pesticide.

(a) *Location, accessibility, and legibility.* The information shall be displayed in the location specified for the pesticide safety poster in § 170.135(d) and shall be accessible and legible, as specified in § 170.135(e) and (f).

(b) *Timing.* (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if workers will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any worker's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until workers are no longer on the establishment, whichever is earlier.

(c) *Required information.* The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

§ 170.124 Notice of applications to handler employers.

Whenever handlers who are employed by a commercial pesticide handling establishment will be performing pesticide handling tasks on an agricultural establishment, the agricultural employer shall provide to the handler employer, or assure that the handler employer is aware of, the following information concerning any areas on the agricultural establishment that the handler may be in (or may walk within 1/4 mile of) and that may be treated with a pesticide or that may be under a restricted-entry interval while the handler will be on the agricultural establishment:

(a) Specific location and description of any such areas; and

(b) Restrictions on entering those areas.

§ 170.130 Pesticide safety training.

(a) *General requirement—(1) Agricultural employer assurance.* The agricultural employer shall assure that each worker, required by this section to be trained, has been trained according to this section during the last 5 years, counting from the end of the month in which the training was completed.

(2) *Requirement for workers performing early-entry activities.* Before a worker enters a treated area on the agricultural establishment during a restricted-entry interval to perform early-entry activities permitted by § 170.112 and contacts anything that has been treated with the pesticide to which the restricted-entry interval applies, including but not limited to, soil, water, or surfaces of plants, the agricultural employer shall assure that the worker has been trained.

(3) *Requirement for other agricultural workers*—(i) *Training before the 6th day of entry.* Except as provided in paragraph (a)(2) of this section, before the 6th day that a worker enters any areas on the agricultural establishment where, within the last 30 days a pesticide to which this subpart applies has been applied or a restricted-entry interval for such pesticide has been in effect, the agricultural employer shall assure that the worker has been trained.

(ii) *Exception for first 5-year period.* Until October 20, 1997, and except as provided in paragraph (a)(2) of this section, before the 16th day that a worker enters any areas on the agricultural establishment where, within the last 30 days a pesticide to which this subpart applies has been applied or a restricted-entry interval for such pesticide has been in effect, the agricultural employer shall assure that the worker has been trained. After October 20, 1997, this exception no longer applies.

(b) *Exception.* A worker who is a currently certified as an applicator of restricted-use pesticides under part 171 of this chapter or who satisfies the training requirements of part 171 of this chapter or who satisfies the handler training requirements under § 170.230(c) need not be trained under this section.

(c) *Training programs.* (1) General pesticide safety information shall be

presented to workers either orally from written materials or audiovisually. The information must be presented in a manner that the workers can understand (such as through a translator) using nontechnical terms. The presenter also shall respond to workers' questions.

(2) The person who conducts the training shall meet at least one of the following criteria:

(i) Be currently certified as an applicator of restricted-use pesticides under part 171 of this chapter; or

(ii) Be currently designated as a trainer of certified applicators or pesticide handlers by a State, Federal, or Tribal agency having jurisdiction; or

(iii) Have completed a pesticide safety train-the-trainer program approved by a State, Federal, or Tribal agency having jurisdiction; or

(iv) Satisfy the training requirements in part 171 of this chapter or in § 170.230(c).

(3) Any person who issues an EPA-approved Worker Protection Standard worker training certificate must assure that the worker who receives the training certificate has been trained in accordance with (c)(4) of this section.

(4) The training materials shall convey, at a minimum, the following information:

(i) Where and in what form pesticides may be encountered during work activities.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes through which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures, including emergency eyeflushing techniques.

(viii) Hazards from chemigation and drift.

(ix) Hazards from pesticide residues on clothing.

(x) Warnings about taking pesticides or pesticide containers home.

(xi) Requirements of this subpart designed to reduce the risks of illness or injury resulting from workers' occupational exposure to pesticides, including application and entry restrictions, the design of the warning sign, posting of warning signs, oral warnings, the availability of specific information about applications, and the protection against retaliatory acts.

(d) *Verification of training.* (1) Except as provided in paragraph (d)(2) of this section, if the agricultural employer assures that a worker possesses an EPA-approved Worker Protection Standard worker training certificate, then the requirements of paragraph (a) of this section will have been met.

(2) If the agricultural employer is aware or has reason to know that an EPA-approved Worker Protection Standard worker training certificate has not been issued in accordance with this section, or has not been issued to the worker bearing the certificate, or the training was completed more than 5 years before the beginning of the current month, a worker's possession of that certificate does not meet the requirements of paragraph (a) of this section.

§ 170.135 Posted pesticide safety information.

(a) *Requirement.* When workers are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the agricultural employer shall display, in accordance with this section, pesticide safety information.

(b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the following basic pesticide safety concepts:

(1) Help keep pesticides from entering your body. At a minimum, the following points shall be conveyed:

(i) Avoid getting on your skin or into your body any pesticides that may be on plants and soil, in irrigation water, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash/shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

(vii) Follow directions about keeping out of treated or restricted areas.

(2) There are Federal rules to protect workers and handlers, including a requirement for safety training.

(c) *Emergency medical care information.* (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

(2) The agricultural employer shall inform workers promptly of any change to the information on emergency medical care facilities.

(d) *Location.* (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by workers.

(2) The information shall be displayed in a location in or near the forest in a place where it can be readily seen and read by workers and where workers are likely to congregate or pass by, such as at a decontamination site or an equipment storage site.

(e) *Accessibility.* Workers shall be informed of the location of the information and shall be allowed access to it.

(f) *Legibility.* The information shall remain legible during the time it is posted.

§ 170.150 Decontamination.

(a) *Requirement.* If any worker on an agricultural establishment performs any activity in an area where, within the last 30 days, a pesticide has been applied or a restricted-entry interval has been in effect and contacts anything that has been treated with the pesticide, including, but not limited to, soil, water, or surfaces of plants, the agricultural employer shall provide, in accordance with this section, a decontamination site for washing off pesticide residues.

(b) *General conditions.* (1) The agricultural employer shall provide workers with enough water for routine washing and emergency eyeflushing. At all times when the water is available to workers, the employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

(2) When water stored in a tank is to be used for mixing pesticides, it shall not be used for decontamination or eyeflushing, unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of pesticides into the tank.

(3) The agricultural employer shall provide soap and single-use towels at each decontamination site in quantities sufficient to meet workers' needs.

(4) To provide for emergency eyeflushing, the agricultural employer shall assure that at least 1 pint of water is immediately available to each worker who is performing early-entry activities permitted by § 170.112 and for which the pesticide labeling requires protective eyewear. The eyeflush water shall be carried by the early-entry worker, or shall be on the vehicle the early-entry worker is using, or shall be otherwise immediately accessible.

(c) *Location.* (1) The decontamination site shall be reasonably accessible to and not more than 1/4 mile from where workers are working.

(2) For worker activities performed more than 1/4 mile from the nearest place of vehicular access:

(i) The soap, single-use towels, and water may be at the nearest place of vehicular access.

(ii) The agricultural employer may permit workers to use clean water from springs, streams, lakes, or other sources for decontamination at the remote work site, if such water is more accessible than the water at the decontamination site located at the nearest place of vehicular access.

(3) The decontamination site shall not be in an area being treated with pesticides.

(4) The decontamination site shall not be in an area that is under a restricted-entry interval, unless the workers for whom the site is provided are performing early-entry activities permitted by § 170.112 and involving contact with treated surfaces and the decontamination site would otherwise not be reasonably accessible to those workers.

(d) *Decontamination after early-entry activities.* At the end of any exposure period for workers engaged in early-entry activities permitted by § 170.112 and involving contact with anything that has been treated with the pesticide to which the restricted-entry interval applies, including, but not limited to, soil, water, air, or surfaces of plants, the agricultural employer shall provide, at the site where the workers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the workers may wash thoroughly.

§ 170.160 Emergency assistance.

If there is reason to believe that a person who is or has been employed on an agricultural establishment to perform tasks related to the production of agricultural plants has been poisoned or injured by exposure to pesticides used on the agricultural establishment, including, but not limited to, exposures from application, splash, spill, drift, or pesticide residues, the agricultural employer shall:

(a) Make available to that person prompt transportation from the agricultural establishment, including any labor camp on the agricultural establishment, to an appropriate emergency medical facility.

(b) Provide to that person or to treating medical personnel, promptly upon request, any obtainable information on:

(1) Product name, EPA registration number, and active ingredients of any product to which that person might have been exposed.

(2) Antidote, first aid, and other medical information from the product labeling.

(3) The circumstances of application or use of the pesticide on the agricultural establishment.

(4) The circumstances of exposure of that person to the pesticide.

Subpart C—Standard for Pesticide Handlers

§ 170.202 Applicability of this subpart.

(a) *Requirement.* Except as provided by paragraph (b) of this section, this subpart applies when any pesticide is handled for use on an agricultural establishment.

(b) *Exceptions.* This subpart does not apply when any pesticide is handled for use on an agricultural establishment in the following circumstances:

(1) For mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public pest control programs sponsored by governmental entities.

(2) On livestock or other animals, or in or about animal premises.

(3) On plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit and vegetable gardens, and home greenhouses.

(4) On plants that are in ornamental gardens, parks, and public or private lawns and grounds and that are intended only for aesthetic purposes or climatic modification.

(5) In a manner not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, and pasture and rangeland use.

(6) For control of vertebrate pests.

(7) As attractants or repellents in traps.

(8) On the harvested portions of agricultural plants or on harvested timber.

(9) For research uses of unregistered pesticides.

(c) *Exemptions.* For the purposes of this subpart, owners of agricultural establishments need not assure that the protections in §§ 170.210(b) and (c), 170.222, 170.230, 170.232, 170.234, 170.235, 170.240(e) through (g), 170.250, and 170.260 are provided to themselves or to members of their immediate family who are performing handling tasks on their own agricultural establishments. However, they must provide any protections required by these sections to other handlers and other persons who are not members of their immediate family, and are encouraged to provide the protections to themselves and members of their families.

§ 170.210 Restrictions during applications.

(a) *Contact with workers and other persons.* The handler employer and the handler shall assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handler.

(b) *Handlers handling highly toxic pesticides.* The handler employer shall assure that any handler who is performing any handling activity with a product that has the skull and crossbones symbol on the front panel of the label is monitored visually or by voice communication at least every 2 hours.

(c) *Fumigant applications in greenhouses.* The handler employer shall assure:

(1) That any handler who handles a fumigant in a greenhouse, including a handler who enters the greenhouse before the acceptable inhalation exposure level or ventilation criteria have been met to monitor air levels or to initiate ventilation, maintains continuous visual or voice contact with another handler.

(2) That the other handler has immediate access to the personal protective equipment required by the fumigant labeling for handlers in the event entry into the fumigated greenhouse becomes necessary for rescue.

§ 170.222 Providing specific information about applications.

When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, specific information about the pesticide.

(a) *Location, accessibility, and legibility.* The information shall be displayed in the same location specified for the pesticide safety poster in § 170.235(d) of this part and shall be accessible and legible, as specified in § 170.235(e) and (f) of this part.

(b) *Timing.* (1) If warning signs are posted for the treated area before an application, the specific application information for that application shall be posted at the same time or earlier.

(2) The information shall be posted before the application takes place, if handlers (except those employed by a commercial pesticide handling establishment) will be on the establishment during application. Otherwise, the information shall be posted at the beginning of any such handler's first work period.

(3) The information shall continue to be displayed for at least 30 days after the end of the restricted-entry interval (or, if there is no restricted-entry interval, for at least 30 days after the end of the application) or at least until the handlers are no longer on the establishment, whichever is earlier.

(c) *Required information.* The information shall include:

(1) The location and description of the treated area.

(2) The product name, EPA registration number, and active ingredient(s) of the pesticide.

(3) The time and date the pesticide is to be applied.

(4) The restricted-entry interval for the pesticide.

§ 170.224 Notice of applications to agricultural employers.

Before the application of any pesticide on or in an agricultural establishment, the handler employer shall provide the following information to any agricultural employer for the establishment or shall assure that any agricultural employer is aware of:

(a) Specific location and description of the treated area.

(b) Time and date of application.

(c) Product name, EPA registration number, and active ingredient(s).

(d) Restricted-entry interval.

(e) Whether posting and oral notification are required.

(f) Any other product-specific requirements on the product labeling concerning protection of workers or other persons during or after application.

§ 170.230 Pesticide safety training.

(a) *Requirement.* Before any handler performs any handling task, the handler employer shall assure that the handler has been trained in accordance with this section during the last 5 years, counting from the end of the month in which the training was completed.

(b) *Exception.* A handler who is currently certified as an applicator of restricted-use pesticides under part 171 of this chapter or who satisfies the training requirements of part 171 of this chapter need not be trained under this section.

(c) *Training programs.* (1) General pesticide safety information shall be presented to handlers either orally from written materials or audiovisually. The information must be presented in a manner that the handlers can understand (such as through a translator). The presenter also shall respond to handlers' questions.

(2) The person who conducts the training shall meet at least one of the following criteria:

(i) Be currently certified as an applicator of restricted-use pesticides under part 171 of this chapter; or

(ii) Be currently designated as a trainer of certified applicators or pesticide handlers by a State, Federal, or Tribal agency having jurisdiction; or

(iii) Have completed a pesticide safety train-the-trainer program approved by a State, Federal, or Tribal agency having jurisdiction.

(3) Any person who issues an EPA-approved Worker Protection Standard handler training certificate must assure that the handler who receives the training certificate has been trained in accordance with paragraph (c)(4) of this section.

(4) The pesticide safety training materials must convey, at a minimum, the following information:

(i) Format and meaning of information contained on pesticide labels and in labeling, including safety information such as precautionary statements about human health hazards.

(ii) Hazards of pesticides resulting from toxicity and exposure, including acute and chronic effects, delayed effects, and sensitization.

(iii) Routes by which pesticides can enter the body.

(iv) Signs and symptoms of common types of pesticide poisoning.

(v) Emergency first aid for pesticide injuries or poisonings.

(vi) How to obtain emergency medical care.

(vii) Routine and emergency decontamination procedures.

(viii) Need for and appropriate use of personal protective equipment.

(ix) Prevention, recognition, and first aid treatment of heat-related illness.

(x) Safety requirements for handling, transporting, storing, and disposing of pesticides, including general procedures for spill cleanup.

(xi) Environmental concerns such as drift, runoff, and wildlife hazards.

(xii) Warnings about taking pesticides or pesticide containers home.

(xiii) Requirements of this subpart that must be followed by handler employers for the protection of handlers and other persons, including the prohibition against applying pesticides in a manner that will cause contact with workers or other persons, the requirement to use personal protective equipment, the provisions for training and decontamination, and the protection against retaliatory acts.

(d) *Verification of training.* (1) Except as provided in paragraph (d)(2) of this section, if the handler employer assures that a handler possesses an EPA-approved Worker Protection Standard handler training certificate, then the requirements of paragraph (a) of this section will have been met.

(2) If the handler employer is aware or has reason to know that an EPA-approved Worker Protection Standard handler training certificate has not been issued in accordance with this section, or has not been issued to the handler bearing the certificate, or the handler training was completed more than 5 years before the beginning of the current month, a handler's possession of that certificate does not meet the requirements of paragraph (a) of this section.

§ 170.232 Knowledge of labeling and site-specific information.

(a) *Knowledge of labeling information.* (1) The handler employer shall assure that before the handler performs any handling activity, the handler either has read the product labeling or has been informed in a manner the handler can understand of all labeling requirements related to safe use of the pesticide, such as signal words, human hazard precautions, personal protective equipment requirements, first aid instructions, environmental precautions, and any additional precautions pertaining to the handling activity to be performed.

(2) The handler employer shall assure that the handler has access to the product labeling information during handling activities.

(b) *Knowledge of site-specific information.* Whenever a handler who is employed by a commercial pesticide handling establishment will be performing pesticide handling tasks on an agricultural establishment, the handler employer shall assure that the handler is aware of the following information concerning any areas on the agricultural establishment that the handler may be in (or may walk within 1/4 mile of) and that may be treated with a pesticide or that may be under a restricted-entry interval while the handler will be on the agricultural establishment:

(1) Specific location and description of any such areas; and

(2) Restrictions on entering those areas.

§ 170.234 Safe operation of equipment.

(a) The handler employer shall assure that before the handler uses any equipment for mixing, loading, transferring, or applying pesticides, the handler is instructed in the safe operation of such equipment, including, when relevant, chemigation safety requirements and drift avoidance.

(b) The handler employer shall assure that, before each day of use, equipment used for mixing, loading, transferring, or applying pesticides is inspected for leaks, clogging, and worn or damaged parts, and any damaged equipment is repaired or is replaced.

(c) Before allowing any person to repair, clean, or adjust equipment that has been used to mix, load, transfer, or apply pesticides, the handler employer shall assure that pesticide residues have been removed from the equipment, unless the person doing the cleaning, repairing, or adjusting is a handler employed by the agricultural or commercial pesticide handling establishment. If pesticide residue removal is not feasible, the handler employer shall assure that the person who repairs, cleans, or adjusts such equipment is informed:

(1) That such equipment may be contaminated with pesticides.

(2) Of the potentially harmful effects of exposure to pesticides.

(3) Of the correct way to handle such equipment.

§ 170.235 Posted pesticide safety information.

(a) *Requirement.* When handlers (except those employed by a commercial pesticide handling establishment) are on an agricultural establishment and, within the last 30 days, a pesticide covered by this subpart has been applied on the establishment or a restricted-entry interval has been in effect, the handler employer shall display, in accordance with this section, pesticide safety information.

(b) *Pesticide safety poster.* A safety poster must be displayed that conveys, at a minimum, the following basic pesticide safety concepts:

(1) Help keep pesticides from entering your body. At a minimum, the following points shall be conveyed:

(i) Avoid getting on your skin or into your body any pesticides that may be on plants and soil, in irrigation water, or drifting from nearby applications.

(ii) Wash before eating, drinking, using chewing gum or tobacco, or using the toilet.

(iii) Wear work clothing that protects the body from pesticide residues (long-sleeved shirts, long pants, shoes and socks, and a hat or scarf).

(iv) Wash/shower with soap and water, shampoo hair, and put on clean clothes after work.

(v) Wash work clothes separately from other clothes before wearing them again.

(vi) Wash immediately in the nearest clean water if pesticides are spilled or sprayed on the body. As soon as possible, shower, shampoo, and change into clean clothes.

(vii) Follow directions about keeping out of treated or restricted areas.

(2) There are Federal rules to protect workers and handlers including a requirement for safety training.

(c) *Emergency medical care information.* (1) The name, address, and telephone number of the nearest emergency medical care facility shall be on the safety poster or displayed close to the safety poster.

(2) The handler employer shall inform handlers promptly of any change to the information on emergency medical care facilities.

(d) *Location.* (1) The information shall be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by handlers.

(2) The information shall be displayed in a location in or near the forest in a place where it can be readily seen and read by handlers and where handlers are likely to congregate or pass by, such as at a decontamination site or an equipment storage site.

(e) *Accessibility.* Handlers shall be informed of the location of the information and shall be allowed access to it.

(f) *Legibility.* The information shall remain legible during the time it is posted.

§ 170.240 Personal protective equipment.

(a) *Requirement.* Any person who performs tasks as a pesticide handler shall use the clothing and personal protective equipment specified on the labeling for use of the product.

(b) *Definition.* (1) Personal protective equipment (PPE) means devices and apparel that are worn to protect the body from contact with pesticides or pesticide residues, including, but not limited to, coveralls, chemical-resistant suits, chemical-resistant gloves, chemical-resistant footwear, respiratory protection devices, chemical-resistant aprons, chemical-resistant headgear, and protective eyewear.

(2) Long-sleeved shirts, short-sleeved shirts, long pants, short pants, shoes, socks, and other items of work clothing are not considered personal protective equipment for the purposes of this section and are not subject to the requirements of this section, although pesticide labeling may require that such work clothing be worn during some activities.

(c) *Provision.* When personal protective equipment is specified by the labeling of any pesticide for any handling activity, the handler employer shall provide the appropriate personal protective equipment in clean and operating condition to the handler.

(1) When "chemical-resistant" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of the pesticide being used through the material during use.

(2) When "waterproof" personal protective equipment is specified by the product labeling, it shall be made of material that allows no measurable movement of water or aqueous solutions through the material during use.

(3) When a "chemical-resistant suit" is specified by the product labeling, it shall be a loose-fitting, one- or two-piece chemical-resistant garment that covers, at a minimum, the entire body except head, hands, and feet.

(4) When "coveralls" are specified by the product labeling, they shall be a loose-fitting, one- or two-piece garment, such as a cotton or cotton and polyester coverall, that covers, at a minimum, the entire body except head, hands, and feet. The pesticide product labeling may specify that the coveralls be worn over another layer of clothing.

(5) Gloves shall be of the type specified by the product labeling. Gloves or glove linings made of leather, cotton, or other absorbent material shall not be worn for handling activities unless such materials are listed on the product labeling as acceptable for such use.

(6) When "chemical-resistant footwear" is specified by the product labeling, one of the following types of footwear must be worn:

(i) Chemical-resistant shoes.

(ii) Chemical-resistant boots.

(iii) Chemical-resistant shoe coverings worn over shoes or boots.

(7) When "protective eyewear" is specified by the product labeling, one of the following types of eyewear must be worn:

(i) Goggles.

(ii) Face shield.

(iii) Safety glasses with front, brow, and temple protection.

(iv) Full-face respirator.

(8) When a "chemical-resistant apron" is specified by the product labeling, an apron that covers the front of the body from mid-chest to the knees shall be worn.

(9) When a respirator is specified by the product labeling, it shall be appropriate for the pesticide product used and for the activity to be performed. The handler employer shall assure that the respirator fits correctly.

(10) When "chemical-resistant headgear" is specified by the product labeling, it shall be either a chemical resistant hood or a chemical-resistant hat with a wide brim.

(d) *Exceptions to personal protective equipment specified on product labeling*—(1) *Body protection.* (i) A chemical-resistant suit may be substituted for "coveralls," and any requirement for an additional layer of clothing beneath is waived.

(ii) A chemical-resistant suit may be substituted for "coveralls" and a chemical-resistant apron.

(2) *Boots.* If chemical-resistant footwear with sufficient durability and a tread appropriate for wear in rough terrain is not obtainable, then leather boots may be worn in such terrain.

(3) *Gloves.* If chemical-resistant gloves with sufficient durability and suppleness are not obtainable, then during handling activities with roses or other plants with sharp thorns, leather gloves may be worn over chemical-resistant glove liners. However, once leather gloves are worn for this use, thereafter they shall be worn only with chemical-resistant liners and they shall not be worn for any other use.

(4) *Closed systems.* If handling tasks are performed using properly functioning systems that enclose the pesticide to prevent it from contacting handlers or other persons, and if such systems are used and are maintained in accordance with that manufacturer's written operating instructions, exceptions to labeling-specified personal protective equipment for the handling activity are permitted as provided in paragraphs (d)(4)(i) and (ii) of this section.

(i) Persons using a closed system to mix or load pesticides with a signal word of DANGER or WARNING may substitute a long-sleeved shirt, long pants, shoes, socks, chemical-resistant apron, and any protective gloves specified on the labeling for handlers for the labeling-specified personal protective equipment.

(ii) Persons using a closed system to mix or load pesticides other than those in paragraph (d)(4)(i) of this section or to perform other handling tasks may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment.

(iii) Persons using a closed system that operates under pressure shall wear protective eyewear.

(iv) Persons using a closed system shall have all labeling-specified personal protective equipment immediately available for use in an emergency.

(5) *Enclosed cabs.* If handling tasks are performed from inside a cab that has a nonporous barrier which totally surrounds the occupants of the cab and prevents contact with pesticides outside of the cab, exceptions to personal protective equipment specified on the product labeling for that handling activity are permitted as provided in paragraphs (d)(5)(i) through (iv) of this section.

(i) Persons occupying an enclosed cab may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device is specified on the pesticide product labeling for the handling activity, it must be worn.

(ii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer or by a governmental agency to provide respiratory protection equivalent to or greater than a dust/mist filtering respirator may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If a respiratory protection device other than a dust/mist-filtering respirator is specified on the pesticide product labeling, it must be worn.

(iii) Persons occupying an enclosed cab that has a properly functioning ventilation system which is used and maintained in accordance with the manufacturer's written operating instructions and which is declared in writing by the manufacturer or by a governmental agency to provide respiratory protection equivalent to or greater than the vapor- or gas-removing respirator specified on pesticide product labeling may substitute a long-sleeved shirt, long pants, shoes, and socks for the labeling-specified personal protective equipment. If an air-supplying respirator or a self-contained breathing apparatus (SCBA) is specified on the pesticide product labeling, it must be worn.

(iv) Persons occupying an enclosed cab shall have all labeling-specified personal protective equipment immediately available and stored in a chemical-resistant container, such as a plastic bag. They shall wear such personal protective equipment if it is necessary to exit the cab and contact pesticide-treated surfaces in the treated area. Once personal protective equipment is worn in the treated area, it must be removed before reentering the cab.

(6) *Aerial applications*—(i) *Use of gloves.* Chemical-resistant gloves shall be worn when entering or leaving an aircraft contaminated by pesticide residues. In the cockpit, the gloves shall be kept in an enclosed container to prevent contamination of the inside of the cockpit.

(ii) *Open cockpit.* Persons occupying an open cockpit shall use the personal protective equipment specified in the product labeling for use during application, except that chemical-resistant footwear need not be worn. A helmet may be substituted for chemical-resistant headgear. A visor may be substituted for protective eyewear.

(iii) *Enclosed cockpit.* Persons occupying an enclosed cockpit may substitute a long-sleeved shirt, long pants, shoes, and socks for labeling-specified personal protective equipment.

(7) *Crop advisors.* Crop advisors entering treated areas while a restricted-entry interval is in effect may wear the personal protective equipment specified on the pesticide labeling for early-entry activities instead of the personal protective equipment specified on the pesticide labeling for handling activities, provided:

(i) Application has been completed for at least 4 hours.

(ii) Any inhalation exposure level listed in the labeling has been reached or any ventilation criteria established by § 170.110(c)(3) or in the labeling have been met.

(e) *Use of personal protective equipment.* (1) The handler employer shall assure that personal protective equipment is used correctly for its intended purpose and is used according to the manufacturer's instructions.

(2) The handler employer shall assure that, before each day of use, all personal protective equipment is inspected for leaks, holes, tears, or worn places, and any damaged equipment is repaired or discarded.

(f) *Cleaning and maintenance.* (1) The handler employer shall assure that all personal protective equipment is cleaned according to the manufacturer's instructions or pesticide product labeling instructions before each day of reuse. In the absence of any such instructions, it shall be washed thoroughly in detergent and hot water.

(2) If any personal protective equipment cannot be cleaned properly, the handler employer shall dispose of the personal protective equipment in accordance with any applicable Federal, State, and local regulations. Coveralls or other absorbent materials that have been drenched or heavily contaminated with an undiluted pesticide that has the signal word DANGER or WARNING on the label shall be not be reused.

(3) The handler employer shall assure that contaminated personal protective equipment is kept separately and washed separately from any other clothing or laundry.

(4) The handler employer shall assure that all clean personal protective equipment shall be either dried thoroughly before being stored or shall be put in a well ventilated place to dry.

(5) The handler employer shall assure that all personal protective equipment is stored separately from personal clothing and apart from pesticide-contaminated areas.

(6) The handler employer shall assure that when dust/mist filtering respirators are used, the filters shall be replaced:

(i) When breathing resistance becomes excessive.

(ii) When the filter element has physical damage or tears.

(iii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iv) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(7) The handler employer shall assure that when gas- or vapor-removing respirators are used, the gas- or vapor-removing canisters or cartridges shall be replaced:

(i) At the first indication of odor, taste, or irritation.

(ii) According to manufacturer's recommendations or pesticide product labeling, whichever is more frequent.

(iii) In the absence of any other instructions or indications of service life, at the end of each day's work period.

(8) The handler employer shall inform any person who cleans or launders personal protective equipment:

(i) That such equipment may be contaminated with pesticides.

(ii) Of the potentially harmful effects of exposure to pesticides.

(iii) Of the correct way(s) to clean personal protective equipment and to protect themselves when handling such equipment.

(9) The handler employer shall assure that handlers have a clean place(s) away from pesticide storage and pesticide use areas where they may:

(i) Store personal clothing not in use.

(ii) Put on personal protective equipment at the start of any exposure period.

(iii) Remove personal protective equipment at the end of any exposure period.

(10) The handler employer shall not allow or direct any handler to wear home or to take home personal protective equipment contaminated with pesticides.

(g) *Heat-related illness.* When the use of personal protective equipment is specified by the labeling of any pesticide for the handling activity, the handler employer shall assure that no handler is allowed or directed to perform the handling activity unless appropriate measures are taken, if necessary, to prevent heat-related illness.

§ 170.250 Decontamination.

(a) *Requirement.* During any handling activity, the handler employer shall provide for handlers, in accordance with this section, a decontamination site for washing off pesticides and pesticide residues.

(b) *General conditions.* (1) The handler employer shall provide handlers with enough water for routine washing, for emergency eyeflushing, and for washing the entire body in case of an emergency. At all times when the water is available to handlers, the handler employer shall assure that it is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

(2) When water stored in a tank is to be used for mixing pesticides, it shall not be used for decontamination or eye flushing, unless the tank is equipped with properly functioning valves or other mechanisms that prevent movement of pesticides into the tank.

(3) The handler employer shall provide soap and single-use towels at each decontamination site in quantities sufficient to meet handlers' needs.

(4) The handler employer shall provide one clean change of clothing, such as coveralls, at each decontamination site for use in an emergency.

(c) *Location.* The decontamination site shall be reasonably accessible to and not more than 1/4 mile from each handler during the handling activity.

(1) *Exception for mixing sites.* For mixing activities, the decontamination site shall be at the mixing site.

(2) *Exception for pilots.* The decontamination site for a pilot who is applying pesticides aerially shall be in the airplane or at the aircraft's loading site.

(3) *Exception for handling pesticides in remote areas.* When handling activities are performed more than 1/4 mile from the nearest place of vehicular access:

(i) The soap, single-use towels, clean change of clothing, and water may be at the nearest place of vehicular access.

(ii) The handler employer may permit handlers to use clean water from springs, streams, lakes, or other sources for decontamination at the remote work site, if such water is more accessible than the water at the decontamination site located at the nearest place of vehicular access.

(4) *Decontamination site in treated areas.* The decontamination site shall not be in an area being treated with pesticides or in an area under a restricted-entry interval, unless:

(i) The decontamination site is in the area where the handler is performing handling activities;

(ii) The soap, single-use towels, and clean change of clothing are in enclosed containers; and

(iii) The water is running tap water or is enclosed in a container.

(d) *Emergency eyeflushing.* To provide for emergency eyeflushing, the handler employer shall assure that at least 1 pint of water is immediately available to each handler who is performing tasks for which the pesticide labeling requires protective eyewear. The eyeflush water shall be carried by the handler, or shall be on the vehicle or aircraft the handler is using, or shall be otherwise immediately accessible.

(e) *Decontamination after handling activities.* At the end of any exposure period, the handler employer shall provide at the site where handlers remove personal protective equipment, soap, clean towels, and a sufficient amount of water so that the handlers may wash thoroughly.

§ 170.260 Emergency assistance.

If there is reason to believe that a person who is or has been employed by an agricultural establishment or commercial pesticide handling establishment to perform pesticide handling tasks has been poisoned or injured by exposure to pesticides as a result of that employment, including, but not limited to, exposures from handling tasks or from application, splash, spill, drift, or pesticide residues, the handler employer shall:

(a) Make available to that person prompt transportation from the place of employment or the handling site to an appropriate emergency medical facility.

(b) Provide to that person or to treating medical personnel, promptly upon request, any obtainable information on:

(1) Product name, EPA registration number, and active ingredients of any product to which that person might have been exposed.

(2) Antidote, first aid, and other medical information from the product labeling.

(3) The circumstances of handling of the pesticide.

(4) The circumstances of exposure of that person to the pesticide.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 170

[OPP-300164C; FRL-3793-1]

RIN 2070-AA49

Worker Protection Standard; Hazard Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule is a companion to a final rule, published elsewhere in this issue of the **Federal Register**, which revises regulations governing worker protection from agricultural pesticides and their residues. As a result of comments received during this rulemaking, EPA is proposing an additional modification to its Worker Protection Standard to provide information to covered workers that is substantially equivalent to that required under the Hazard Communication Standard promulgated by the Occupational Safety and Health Administration (OSHA). This proposal would add a requirement that specific hazard information be made available to agricultural workers and pesticide handlers concerning the pesticides to which they are exposed. This information would be in the form of fact sheets or Material Safety Data Sheets. EPA believes this modification would provide information to agricultural workers equivalent to that provided to other workers and would do much to avoid confusion among pesticide users as to their obligation for communicating pesticide hazard information to workers.

DATES: Written comments, data, and other evidence concerning the proposal should be submitted on or before October 20, 1992.

ADDRESSES: Comments should be submitted in triplicate and addressed to the Document Control Officer (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. All comments should bear the document control number, OPP-300164C, and will be available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday excluding legal holidays, at the OPP Document Control Office, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: James J. Boland, Acting Chief, Occupational Safety Branch (H7506C), Office of Prevention, Pesticides, and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and phone number: Rm. 1114, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-305-7666.

SUPPLEMENTARY INFORMATION: In 1974, EPA promulgated the regulations found at 40 CFR part 170, which dealt with pesticide-related occupational safety and health of workers performing hand labor operations in fields during or after application of pesticides. As the result of changing conditions and an awareness of the shortcomings of part 170, EPA proposed to revise its worker protection regulations in 1988 (53 FR 25970; July 8, 1988) ("the NPRM"). A substantial number of comments were received as the result of this proposal, and the Agency is issuing the final rule elsewhere in this issue of the **Federal Register**. These revisions expand the scope of part 170 beyond coverage of workers performing hand labor operations in fields treated with pesticides to include a wider range of occupational exposures to agricultural pesticides. The regulations cover workers in or on farms, forests, nurseries, and greenhouses, as well as workers who handle (mix, load, and apply) pesticides at these locations. The revisions expand requirements for safety and health warnings about applications, use of personal protective equipment, and observation of entry restrictions, and add new provisions for training, decontamination, and emergency medical assistance.

As a result of the rulemaking revising part 170, EPA received many comments expressing concern about possible overlap or conflict between part 170 requirements and any requirements that might also be placed upon the regulated community by OSHA. Some comments expressed the opinion that part 170 should provide agricultural employees information about the chemicals to which they are exposed equivalent to the requirements of the OSHA Hazard Communication Standard. The Agency has reviewed the record underlying this rulemaking and believes that the revised part 170 provides protection at least the equivalent of the Hazard Communication Standard, with one exception. OSHA requires that hazard-specific information be made available to workers in the form of Material Safety Data Sheets (MSDSs). Based on the comments in the record, EPA agrees with the need for providing hazard specific information to workers exposed to those hazards. EPA proposes to require that employees be given access to pesticide-specific information in the form of fact sheets approved by EPA or State agencies concerning specific pesticides; alternatively, this requirement would be met if employees were given access to MSDSs for the pesticides to which they are exposed.

I. Relationship Between EPA's Worker Protection Standard and OSHA's Hazard Communication Standard

OSHA's Hazard Communication Standard (HCS) (29 CFR 1910.1200) requires employers to train employees in the nature, detection, and avoidance of chemical hazards in the workplace; maintain MSDSs for all hazardous chemicals and provide them on request; and label chemical containers. The HCS was promulgated in 1983 to cover manufacturing workers; in 1987, it was extended to cover all workers, including agricultural workers (52 FR 31852; August 24, 1987) (29 CFR 1928.21).

Although the NPRM for EPA's Worker Protection Standard (WPS) discussed the relationship between the proposed decontamination requirements and OSHA's Field Sanitation Standard (29 CFR 1928.110), it did not address the relationship between part 170 and the HCS. Nevertheless, the Agency received a considerable number of public comments on this issue in response to the NPRM. Comments came primarily from grower groups, the Cooperative Extension Service, worker representatives, and State lead agencies. Comments noted that the HCS recently had become applicable to agricultural employers and contained requirements, such as training and notification, that appeared to be similar to measures in EPA's proposal. Comments claimed either that the two regulations were duplicative or they were inconsistent. One comment pointed to inconsistencies between some MSDSs and the corresponding pesticide labels in the hazard information they provide. Many growers believed that there could be confusion in dealing with more than one "oversight agency," unnecessary compliance costs, and extra paperwork burdens. One comment stated that, by including agriculture in its HCS, OSHA was "interfering" with EPA's pesticide program.

The comments proposed varying solutions to the perceived inconsistencies. The majority stated that EPA and OSHA should hold discussions to clarify the "regulatory boundaries" between the two agencies, noting that confusion among the public, enforcement difficulties, and litigation are likely if the relationship is not clarified. One comment suggested a Memorandum of Understanding between EPA and OSHA. Two comments requested that EPA delay

implementation of part 170 until an agreement with OSHA was reached. Many comments stated that OSHA should "stay out," and that only EPA should regulate hazard communication in agriculture. In support of this view, comments stated that the Cooperative Extension Service "traditionally works well" with EPA; that EPA has a history of putting resources and priority in its pesticide program; that the revised part 170 would include adequate hazard communication for agricultural workers; that the HCS is primarily a standard for manufacturing while part 170 is "specifically designed" for the agricultural setting; that OSHA enforcement is limited to larger farms because of a current appropriations rider; that Congress intended FIFRA to regulate pesticide-hazardous materials; that OSHA has no Indian reservation enforcement policy; and that labels are a "better source of information" than the MSDS. One comment stated that only one agency should regulate, without stating which one. Another suggested that OSHA adopt EPA's proposed regulations as hazard communication requirements for the agricultural sector. One comment stated that EPA should "yield" to the HCS and "fill in elsewhere" as necessary, while another felt that OSHA should cover all aspects of worker safety. Several comments proposed a specific division of regulatory authority between the agencies, under which the EPA would cover workers at agricultural pesticide use sites, including both handlers and workers who are exposed to residues, while OSHA would cover "downstream" nonagricultural workers, those exposures to residues other than at agricultural use sites.

While pesticide users anticipated confusion over which rules they should follow, some State agencies were concerned about the division of responsibility for programs and enforcement at the State government level. The situation would be complicated because a given State could be participating in an EPA State Plan, an OSHA State Plan, both, or neither. One State agency asked for either a formal jurisdictional division at the Federal level which each State would be required to implement, or an alternative "flexible approach" allowing cooperation among pesticide lead agencies and occupational safety and health agencies in each State. One comment stated that regardless of which agency issued regulations, enforcement would be "complaint-driven" rather than based on inspections, and was concerned that EPA did not have an OSHA-type complainant protection system.

Comments from the Texas Department of Agriculture (TDA), the lead agency in that State for pesticides, identified the difficulty that a given situation may present. In 1988, the State passed an Agricultural Worker Hazard Communication Act pursuant to which TDA developed training programs and promulgated implementing regulations, actions consistent with the Federal-State relationship set forth by FIFRA section 24. Because Texas does not have an approved OSHA State Plan, under the OSHAct the Federal HCS is applicable in that State, and any similar State regulations are preempted. Because of the similarity between the new Texas law and the Federal HCS, some persons in that State have suggested that the Texas law and regulations may be preempted by the HCS. TDA has urged both OSHA and EPA to clarify their jurisdictional relationship in a manner that would permit TDA to implement its programs and enforce its regulations without the present ambiguity.

During the public comment period on EPA's NPRM for the Worker Protection Standard, OSHA held a public hearing and requested public comment on several issues associated with the HCS (53 FR 29822; August 8, 1988), including the question of possible preemption of the HCS by EPA's pesticide regulations. EPA has reviewed the relevant comments in OSHA's HCS rulemaking docket and was represented at the hearing. Substantially the same concerns were raised in comments on the two rulemakings, and similar solutions were proposed. A number of organizations submitted written comments to both agencies.

EPA submitted its written comments to the OSHA Hazard Communication Standard docket. The Agency acknowledged that both agencies had attempted to regulate occupational pesticide exposure under their respective statutes, and pointed out that significant public concern existed over the recent actions of both agencies in this area. EPA identified problems with the view of jurisdictional issues expressed by OSHA in its **Federal Register** notice, as related to some aspects of EPA's pesticide program, the implications of the proposed revisions to part 170, the question of preemption, and possible alternative approaches. EPA concluded that "[g]iven the shared regulatory purpose, the similarity of the proposed requirements, and the justifiable public concern over regulatory duplication, EPA believes that the time is ripe for the two agencies to address, in as concrete a fashion as possible, the issues raised by their mutual jurisdiction" (OPP Docket 300164–C373).

In late 1988, the two agencies formed a working group to address these issues. The United States Department of Agriculture requested and was granted permission to participate because of its close involvement in matters related to the use of agricultural pesticides. The working group met several times. After reviewing drafts of the final Worker Protection Standard and this NPRM, OSHA's view is that EPA's final rule, when promulgated and enforced, will address essentially the same information transmittal issues covered by the HCS. OSHA also concluded that when this NPRM is promulgated, EPA will have approximately the same requirements as the HCS. In view of this similarity, OSHA will defer to EPA and will not enforce the HCS with regard to employees exposed to pesticides who are covered by the Worker Protection Standard. However, OSHA will continue to enforce the HCS for other hazardous chemicals to which employees are exposed in agriculture.

EPA fully supports OSHA's efforts to assure that persons exposed to chemical hazards are provided with information about those hazards; EPA pursues similar goals in its pesticide program. At the same time, EPA acknowledges the various public concerns expressed by growers, workers, States and others regarding the relationship between the revised part 170 and OSHA's HCS. EPA does not intend to require actions on the part of the regulated public that either duplicate or conflict with another agency's requirements intended to accomplish essentially the same purpose. FIFRA encourages cooperation between EPA and other Federal agencies and flexibility between Federal and State levels in the implementation of pesticide programs, as long as the overall goal of protection is met. EPA also supports such flexibility and cooperation among various agencies in a given State. In light of the differences among State pesticide and occupational health and safety programs, a single approach at the Federal level may not fit particular cases at the State level.

EPA has elected to proceed with the final Worker Protection Standard published elsewhere in this issue of the **Federal Register**, believing it is unreasonable to delay issuance of all part 170 protective measures, including those unrelated to hazard communication. The Agency is proposing in this document to amend part 170, as soon as practicable following public notice and comment, to provide pesticide hazard communication for agricultural workers and pesticide handlers on agricultural sites that is at least the equivalent of OSHA's hazard communication provisions. EPA believes that its newly revised Worker Protection Standard, with modifications, would provide an appropriate vehicle for ensuring the communication of pesticide hazard information in the agricultural workplace, for a number of reasons.

First, EPA's final rule already includes a number of provisions that appear to accomplish a similar purpose as some of OSHA's hazard communication requirements. These include pesticide safety training for handlers and workers (§§ 170.130 and 170.230); display of a pesticide safety poster (§ 170.135); notification of the presence of pesticides in the workplace, including posted or oral warnings and the pesticide name and location of treated areas displayed at a central location (§§ 170.120, 170.122, 170.222); and access to and knowledge of pesticide labeling information by handlers (§ 170.232). The principal difference between OSHA's hazard communication program and EPA's current worker protection program is the right to written information about the specific hazards of pesticides present in the workplace, in the form of MSDSs.

Second, EPA's hazard communication requirements would be tailored to fit the context of agricultural-pesticide use, rather than being generic standards for all occupational sectors as is the case with OSHA's Hazard Communication Standard.

Third, incorporation of a full agricultural hazard communication program into part 170 would do much to alleviate confusion and concern in the regulated community over possible conflicts and duplication between the agencies.

Fourth, direct EPA involvement in agricultural pesticide hazard communication could assist States such as Texas that desire to implement their own State-specific hazard communication program in agriculture. Under FIFRA, more stringent State regulations are permissible. Under the OSHAct, however, more stringent State regulations may be permitted, but in States without approved OSHA State plans, State regulations are preempted.

EPA does not propose to incorporate OSHA's hazard communication program word for word, primarily because the Agency believes that its part 170 requirements are more suited to the agricultural workplace.

Therefore, EPA proposes to modify part 170 in only one respect to meet the objectives of OSHA's HCS. Specifically, EPA proposes to include a requirement to make available written pesticide-specific hazard information on request to pesticide handlers and to workers potentially exposed to pesticide residues. The Agency proposes to add new §§ 170.133 and 170.233, entitled "Hazard Information," to subpart B, Standard for Agricultural Workers, and subpart C, Standard for Pesticide Handlers, respectively. The proposed pesticide-specific hazard information requirement has been adapted from OSHA's MSDS requirement (29 CFR 1910.1200(g)) and specifies the type and form of written information (MSDS or fact sheet) and the obligation to obtain, to maintain, and to make available the information to handlers and workers.

Some commenters stated that the typical MSDS is not written with the agricultural workplace in mind and contains information that is either difficult to understand or irrelevant to agricultural workers. In response, the Agency has proposed that an alternative form of hazard information also be acceptable, i.e., a fact sheet that contains specific types of relevant information. These fact sheets would be either prepared by or approved by a Federal or State agency. One advantage of fact sheets is that they might be designed to communicate product-specific risk and hazard-reduction information to agricultural workers and pesticide handlers through the use of nontechnical and often comparative terms. The proposed fact sheets allow the development of one fact sheet for a pesticide, i.e., malathion or 2,4-D. The Agency welcomes comments as to whether the fact sheets should be narrower in focus, such as requiring different fact sheets for different formulations of the same active ingredient.

The Agency is considering a range of options concerning the format and content of the fact sheets. One option is to require all the information currently required in an MSDS. Another option is to require that the fact sheet contain only the MSDS information that would be most useful to agricultural workers and pesticide handlers, allowing them to obtain other information from an MSDS, which also would be made accessible. Still another option is to refer users to the pesticide product labeling for certain information, such as personal protective equipment requirements and restricted-entry intervals and to require that both the labeling and the fact sheet be made accessible to agricultural workers and pesticide handlers. The Agency seeks comment as to the appropriate format and content of the fact sheets.

The content being proposed for the fact sheets would encourage the use of nontechnical language and eliminate the requirement for some highly technical data that might be of little use to agricultural workers and pesticide handlers. The Agency is inclined to minimize the technical specificity of the information in favor of language more easily interpreted by agricultural workers and pesticide handlers. Specifically, the Agency is considering requiring that technical information be expressed through the use of comparative terms. The Agency seeks information and assistance from interested parties as to how this might best be accomplished and seeks specific comments as to what range of numeric values for each quantitative property of the pesticide would be appropriate for each comparative term. In the case of vapor pressure, for example, what ranges of vapor pressure values should be characterized as highly volatile, moderately volatile, slightly volatile, or relatively nonvolatile?

Other physical characteristics that might be best expressed in comparative terms include flammability, explosivity, solubility, stability (or shelf life), and, in some instances, compatibility. However, this latter characteristic could be specifically described either by listing products the pesticide is known to be compatible with or by listing products the pesticide is known to be incompatible with.

At least two possible chart-style presentations might be appropriate for fact sheets. One is the National Fire Protection Association Hazard Rating chart, which could be used to describe the fire hazards. These ratings are keyed to a numeric scale from 0 to 4 as follows: 0 = least, 1 = slight, 2 = moderate, 3 = high, and 4 = severe hazard. Health hazard, fire hazard, and reactivity hazard are rated. Another chart that might be appropriate for adaptation is the SARA Title III Hazard Classification chart, which uses a "yes/no" key to indicate whether the chemical presents an immediate (acute) health, delayed (chronic) health, fire, sudden release of pressure, or reactivity hazard. The Agency solicits comment on chart-style presentations in general and on the utility of these two specific examples.

The Agency is inclined to require simple, standardized phrases to describe the toxicological characteristics of the chemicals. The usual technical terminology, for example: "Toxicology: Acute Exposure: Skin - Rabbit, 2.0 mg/kg" may not communicate interpretable information to most people, including most agricultural workers and pesticide

handlers. The Agency believes that standard descriptive phrases should be limited to three or four per adverse effect, such as: (1) Skin or eye irritants could be classified as: severe irritant, moderate irritant, slight irritant, or relatively non-irritating; (2) Systemic toxicity through swallowing, through inhaling, or through absorption through the skin could be classified as: highly toxic, moderately toxic, slightly toxic, or relatively nontoxic; (3) Sensitization potential could be classified as: severe sensitizer, moderate sensitizer, slight sensitizer, or relatively nonsensitizing. These simple terms could be easily learned by agricultural workers and pesticide handlers who are occupationally exposed to pesticides. The Agency is also considering whether to associate a "signal word," i.e., danger, warning, caution, with each of these routes of entry in addition to the comparative phrase. For example: "Warning—moderately toxic if swallowed; Caution—slightly irritating to the eyes," etc. The LD_{50} or LC_{50} or other quantitative values could also appear on the fact sheet, but standard descriptive terms would be mandatory.

The Agency is also inclined to require that fact sheets express delayed-onset toxicity concerns in a comparative manner and to require that the fact sheet simply state whether any government agency or recognized medical organization has listed the pesticide or any of its ingredients as a potential carcinogen, rather than list each agency or organization separately. In any case, EPA is inclined to require that fact sheets incorporate simplified language for these effects, such as: tumor-causing in lieu of oncogenic; birth-defect-causing in lieu of teratogenic; injury to fetus in lieu of embryotoxic or fetotoxic; injury to pregnant females in lieu of maternally toxic; injury to genes or chromosomes in lieu of genotoxic or mutagenic; injury to brain and nervous system in lieu of neurotoxic; immune system injury in lieu of immunosuppression; and heart/lung injury in lieu of cardiopulmonary impairment.

Information on the fact sheet that is directed specifically to medical personnel, such as antidotes or appropriate medical amelioration procedures, could retain the precise medical terminology. However, for the sections on symptoms of overexposure, medical conditions aggravated by exposure, and emergency and first aid procedures for each applicable route of exposure, the Agency is inclined to require the use of simplified language. For example, the following terms might be substituted for the more precise medical terminology: tears in lieu of lacrimation; rash or reddening in lieu of erythema; cracking in lieu of fissuring; peeling or scaling in lieu of desquamation; unconsciousness or stupor in lieu of narcosis; swelling in lieu of edema; tissue damage in lieu of necrosis; giddiness, headache, dizziness, and blurred vision in lieu of central nervous system depression; slow heart rate in lieu of bradycardia; rapid heart rate in lieu of tachycardia; high blood pressure in lieu of hypertension; low blood pressure in lieu of hypotension; low body temperature in lieu of hypothermia; cramps, diarrhea, nausea or vomiting in lieu of gastrointestinal irritation; loss of appetite in lieu of anorexia; muscle pains in lieu of myalgia; bluish skin color in lieu of cyanosis; yellowish skin color in lieu of jaundice; lack of coordination in lieu of ataxia; shortness of breath or difficulty breathing in lieu of dyspnea; rapid breathing in lieu of tachypnea; muscle spasms in lieu of tetany or myotonia; pinpoint pupil in lieu of miosis; runny nose in lieu of rhinorrhea; blood in feces in lieu of melena; blood in urine in lieu of hematuria; irritated stomach in lieu of gastritis; drooling or excess saliva in lieu of salivation; abnormality or irregularity in lieu of anomaly; poisoning in lieu of toxification; and plenty or large in lieu of copious. The Agency solicits comments on this approach and suggestions as to possible changes in these proposed substitutes as well as suggestions as to similar terms that might be simplified.

The Agency is considering allowing the fact sheets to indicate which exposure-reduction measures have been established for the product, without specifying the details of those measures. The fact sheet would then indicate how the pesticide handlers or agricultural workers should assess whether those exposure-reduction measures have been met. For example, the fact sheet would indicate that a restricted-entry interval has been set for the product and that workers should not enter the area immediately after application and until the supervisor indicates that the restricted-entry period has expired. If another type of exposure limitation has been established for the product, such as an OSHA Permissible Exposure Limit (PEL), the fact sheet might state that a standard had been established for exposures to the product through inhalation and direct that enclosed treatment areas should be tested before workers reenter those areas. If ventilation criteria or other criteria have been established for such enclosed treatment areas, these should be listed in the fact sheet. For example, the fact sheet might state: "Stay out of enclosed treatment areas until they have been mechanically ventilated for at least 2 hours or until a test indicates that the levels of pesticide product in the air are no longer hazardous."

The Agency is also inclined to require that any environmental effects listed on the fact sheets be expressed in simple, standardized comparative phrases. The existing terminology on some MSDSs, for example: "48–hr EC_{50} Daphnia Magna: 22 mg/l," may not communicate interpretable information to the audience targeted by the fact sheet. As an alternative, EPA suggests the use of the same language as for systemic toxicity to humans, i.e., highly toxic, moderately toxic, slightly toxic, or relatively nontoxic. The environmental categories could include, as appropriate, an indication of the relative toxicity of the pesticide to fish, other aquatic organisms, birds, mammals, bees, reptiles and amphibians, and invertebrate organisms.

If personal protective equipment, engineering controls, and other special workplace practices are actually listed on the fact sheet rather than referenced by the fact sheet to the labeling or MSDS, the Agency is inclined to require standardization of terminology in describing such requirements and practices. This requirement would be designed to reduce confusion that may be caused by fact sheets that appear to be inconsistent with the requirements on pesticide labeling. For example, the following terms might be required: (1) Personal protective equipment in lieu of protective clothing or protective clothing and equipment; (2) coverall in lieu of full body suit or protective clothing; (3) chemical-resistant in lieu of chemical-impervious or impermeable; (4) specifying one or more protective types of chemical-resistant materials, such as neoprene, natural rubber, butyl rubber, PVC, nitrile, plastic laminate, etc; (5) specifying "waterproof" only when any plastic or rubber is resistant to the chemical; (6) protective eyewear, such as goggles, face shield or safety glasses in lieu of other eyewear terms; (8) protective footwear, such as boots, shoe covers or shoes in lieu of other footwear terms; (8) dust/mist respirator in lieu of dust respirator or mask; and (9) specifying a type of respirator—either dust/mist, vapor-removing, or supplied air—in lieu of respirator, organic-vapor respirator, air-purifying respirator, or pesticide respirator.

In addition, the Agency is inclined to require a standardized format for the presentation of such requirements and

practices, such as: (1) Body: [specify: "coverall" or "chemical-resistant protective suit" or "long-sleeved shirt and long pants" and/or "chemical-resistant apron" as applicable]; (2) Hands: [specify type of glove material or use "waterproof" to indicate any plastic or rubber will suffice]; (3) Feet: [specify type of footwear material or use "waterproof" to indicate that any plastic or rubber material will suffice]; (4) Eyes: [specify "protective eyewear" or a particular type of eyewear, such as goggles]; (5) Lungs: [specify "dust/mist respirator" or "vapor-removing respirator approved for pesticides or organic vapors" or "air-supplied respirator"].

The Agency seeks comment as to appropriate standardized language for describing various engineering controls, such as closed systems, enclosed cabs, and enclosed cockpits and for describing various workplace practice recommendations or requirements, such as cleaning and maintenance of personal protective equipment, washing hands and face frequently, etc.

The Agency solicits comment as to the appropriate means of conveying information about spill cleanup procedures and about disposal methods for excess pesticide and for pesticide containers. Such technical, product-specific information might be more appropriate for pesticide labeling or MSDSs than for fact sheets. On the other hand, unless pesticide labeling or MSDSs were also accessible to pesticide handlers and agricultural workers, at least some of this information would seem appropriate for fact sheets to avoid unacceptable risk of exposure in an emergency.

The Agency also solicits comment as to whether providing the pesticide product labeling should be an acceptable alternative or supplement to providing an MSDS or fact sheet. The Agency has several concerns about such an option. The pesticide product labeling may be unavailable to most agricultural workers. The labeling is often affixed to the product container and thus located in a pesticide storage area. The labeling may be contaminated or rendered partially unreadable during use of the container under normal field conditions. Furthermore, the Agency is concerned about information that is routinely included in MSDSs but that is not on the pesticide product labeling, such as information about delayed-onset adverse health effects and spill or leak cleanup procedures. However, the pesticide product labeling is a logical source of hazard information about the product and could be produced separately from the container, which would make it more accessible. Another option is to require that both the labeling or MSDS and a fact sheet be made available. The Agency seeks comment as to whether pesticide labeling should be an acceptable alternative to MSDSs or fact sheets in the agricultural workplace or whether a fact sheet plus the pesticide labeling or MSDS should be required.

The Agency is also considering requiring or allowing the use of pictogram symbols on fact sheets to graphically convey crucial health and safety information to workers occupationally exposed to pesticides. The use of pictograms is a widely accepted and efficient means of conveying information to people. Workers/handlers exposed occupationally to agricultural pesticides have a wide range of language skills. Many workers/handlers speak and read a language other than English; others speak English, but cannot read it; still others speak and read English, but are unable to interpret the technical data being presented to them in the fact sheets. While some workers/handlers may have little difficulty deciphering highly technical terms, the Agency believes they constitute a small fraction of the workforce currently encompassed by the Worker Protection Standard.

Considerable study has been given to the use of easily understood international symbols for traffic control. While less study has been undertaken to develop such symbols for hazard communication such an approach could prove beneficial. For example, a pictogram could depict a drop of chemical on the skin of a hand or forearm with the words (or an additional symbol) in the upper corner of the pictogram indicating whether the chemical is slightly toxic, moderately toxic, or highly toxic by the dermal route. Some of these pictograms have already been developed or proposed; others would have to be created. The Agency solicits comments on the option of requiring or allowing pictograms on fact sheets and solicits examples of pictograms that might be appropriate.

The Agency is concerned that State or Federal agencies choosing to produce or to approve fact sheets should develop and employ specific standards for content and completeness under the general criteria in the rule. The Agency invites comment on the option of requiring that authority to approve fact sheets be contingent upon EPA approval and periodic reapproval of a plan by the organization proposing to operate such a process. Such a plan would describe the criteria for approval, including topics to be covered, method of presentation, acceptable sources of information, and requirements for updating of fact sheets as new information becomes available.

The Agency believes that the economic impact of this proposal on agricultural entities will be negligible. Agricultural employers already are subject to OSHA's Hazard Communication Standard and must provide MSDSs on request. The fact sheet alternative may reduce this existing burden by creating a regulatory option that may be easier for employers to meet and that may benefit handlers and workers by providing hazard information in a more understandable form. Agricultural employers also will derive benefits from the consolidation of certain Federal hazard communication requirements under one agency, which will facilitate understanding and compliance.

The Agency believes that its proposal, when implemented, would address the public's concern about the relationship between OSHA's Hazard Communication Standard and EPA's Worker Protection Standard in a way that could be anticipated to reduce confusion among agricultural employers and ensure adequate communication of pesticide hazards to agricultural handlers and workers. EPA solicits comment on any aspect of the matters discussed in this proposal.

II. Statutory Review

A. U.S. Department of Agriculture

As required by FIFRA section 25(a), a copy of this Notice of Proposed Rulemaking and the final rule (40 CFR Part 170) were provided to the Secretary of Agriculture on June 7, 1991. On March 27, 1992, the Secretary provided written comments. The Secretary had comments concerning hazard communication in connection with provisions in the Worker Protection Standard; however, none of those comments applied specifically to this NPRM.

B. Congressionol Committees

As required by FIFRA section 25(a), a copy of the final rule was provided to the committee on Agriculture, Nutrition, and Forestry of the U.S. Senate and the Committee on Agriculture of the U.S. House of Representatives. Comments were provided by Senator Patrick Leahy and Representative Charlie Rose. Following is a summary of each comment by Senator Leahy and Representative Rose, together with the Agency's response.

Comment #1: Farmworkers, like all other workers, should have access to MSDSs as well as the product label.

Response: EPA agrees that workers should have access to MSDSs or fact sheets containing similar information about the hazards of specific pesticides. The Agency also notes that the Worker Protection Standard requires employers to provide information from pesticide labels to workers assigned to perform early entry activities and to persons assigned to handle pesticides. In addition, label-specific information must be provided to workers and handlers in the event of an occupationally caused pesticide-related illness or injury.

Comment #2: EPA should also require growers to provide their workers with crop sheets.

Response: The Agency agrees that workers should have access to information about the hazards of the specific pesticides they may be exposed to during their work activities. The purpose of this Notice of Proposed Rulemaking is to establish a mechanism for effectively and efficiently conveying information about pesticide hazards to workers and handlers. The Agency anticipates diverse suggestions and views during the comment period as to the best means of conveying product-specific information to agricultural employees.

C. Scientific Advisory Panel

Pursuant to FIFRA section 25(d), a copy of this proposed rule was provided to the FIFRA Scientific Advisory Panel (SAP). A waiver of review was requested; the waiver was granted.

III. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA is required to judge whether a rule should be classified as major or non-major for purposes of review by the Office of Management and Budget (OMB). According to E.O. 12291, major rules are rules that are likely to result in:

(1) An annual effect on the economy of $100 million or more; or

(2) A major increase in the costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or,

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule would not be a major rule because it does not meet any of the above criteria. This proposed rule has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

B. Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164; 5 U.S.C. 601-612) for its impact on small businesses.

The Agency has determined that the burden on small agricultural businesses does not outweigh the risk to handlers and workers employed in those businesses, and an exemption from the requirements in this rule amendment for small businesses would not be warranted. The burden to employers is that of holding for 30 days and making available to their employees upon request informational documents that are available to the employers at no charge.

C. Paperwork Reduction Act

The Agency has determined that there are no information collection burdens under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., associated with the requirements of this proposed rule.

List of Subjects in 40 CFR Part 170

Environmental protection, Pesticides and pests, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements.

Dated: August 13, 1992.

William K. Reilly,

Administrator.

Therefore, it is proposed that part 170 as revised elsewhere in this issue of the Federal Register, be amended as follows:

PART 170—[AMENDED]

1. The authority citation for part 170 continues to read as follows:

Authority: 7 U.S.C. 136w.

2. By amending § 170.3 by adding and alphabetically inserting the following definition to read as follows:

§ 170.3 Definitions.

* * * * *

Material Safety Data Sheet means an information document as defined by 29 CFR 1910.1200(g).

* * * * *

3. By adding new § 170.133 to subpart B, to read as follows:

§ 170.133 Hazard information.

(a) *Requirement.* The agricultural employer shall make available hazard information concerning a pesticide, in accordance with this section, to any worker who enters a pesticide treated area on an agricultural establishment where, within the last 30 days a pesticide has been applied or a restricted-entry interval has been in effect, or to any worker who may be exposed to the pesticide during its normal conditions of use or in a foreseeable emergency.

(b) *Format of information.* Hazard information shall be in one of the following forms:

(1) A Material Safety Data Sheet for the product, or for each active and inert ingredient listed on the label of the product.

(2) A fact sheet that has been prepared or approved by a State or Federal agency for the pesticide. If the chemical ingredients of two or more pesticides are substantially similar, but the specific composition varies and the products present similar hazards, one fact sheet may suffice for these similar products.

(c) *Content of fact sheets.* Each fact sheet shall contain information, expressed in nontechnical terms, except for items specifically targeted towards medical personnel, such as antidotes or emergency treatment. The information shall include:

(1) Typical brand name(s) of the pesticide, and the chemical name and common name of the pesticide.

(2) Information on the physical characteristics of the pesticide, such as:

(i) Color, state (solid, liquid, or gas), odor, and comparative volatility.

(ii) Comparative flammability and explosivity.

(iii) Comparative shelf-life stability, comparative or actual compatibility or incompatibility to possible tank-mix products, and comparative likelihood of decomposing into hazardous components.

(3) Information on the comparative toxicity of the pesticide:

(i) The comparative acute toxicity for the pesticide when swallowed, inhaled, or absorbed through the skin, expressed in terms of the relative category (highly toxic, moderately toxic, slightly toxic or relatively nontoxic) and corresponding signal word, basing the category and signal word on the criteria of § 156.10(h) of this chapter.

(ii) The comparative skin irritation potential and eye irritation potential for the pesticide expressed in terms of the relative category (severely, moderately, or slightly irritating or relatively nonirritating to skin and/or eyes) and corresponding signal word, basing the category and signal word on the criteria of § 156.10(h) of this chapter.

(iii) The comparative sensitization category for the pesticide expressed in terms of the relative category (highly, moderately, or slightly likely or relatively unlikely to cause allergic or sensitivity reactions in some individuals).

(iv) Symptoms of overexposure.

(v) Any chronic or delayed health effects, including tumors, malignancy or cancer, changes in the genes or chromosomes, birth defects, illness or death (miscarriage or stillbirth) to a fetus, infertility or sterility in men or women, blood disorders, nerve or brain disorders, skin disorders, liver and kidney disorders, and/or lung and respiratory disorders.

(vi) Whether the pesticide has been found to be a potential cancer-causing agent by a government agency or recognized medical organization. The sources that must be considered include the latest editions of the National Toxicology Program Annual Report on Carcinogens (NTP), the International Agency for Research on Cancer Monographs (IARC), the Occupational Safety and Health Administration (OSHA), and EPA.

(vii) Medical conditions that may be aggravated by exposure to the product.

(viii) Emergency and first aid procedures for each applicable route of exposure, i.e., oral, dermal, inhalation, and eye.

(ix) Information for physicians on the antidote, if any, and other applicable information for medical treatment.

(x) The types of exposure limits that have been established for the pesticide. The exposure limits that must be investigated include the OSHA Permissible Exposure Limit (PEL) and the EPA restricted-entry interval (REI). Any other known and applicable exposure limit used or recommended by the manufacturer, formulator, importer or a governmental agency must also be noted. All listed limits must be accompanied by a reference source to permit more detailed information to be obtained.

(4) Information on any special protection needed in handling the product such as use of personal protective equipment, engineering controls, and workplace practices for the pesticide:

(i) Situations where personal protective equipment or engineering controls should be used.

(ii) Body protection, including the type of clothing to be worn during exposures, such as mixing/loading, cleaning of equipment, and other handling situations.

(iii) Hand and foot protection needed, including specific material, if known, that is chemical-resistant to the pesticide or typical carrier solvent.

(iv) Eye protection.

(v) Respiratory protection, including, if known, the specific respirator type (dust/mist filtering, vapor/gas-removing, or air-supplied) and the Mine Safety and Health Administration/National Institute for Occupational Safety and Health (MSHA/NIOSH) approval number prefix assigned to equipment that is protective for the pesticide for exposures outdoors and in enclosed areas.

(vi) Recommendations for ventilating enclosed areas, if appropriate.

(vii) Any other personal protective equipment that would be appropriate for specific exposure situations.

(viii) Recommended engineering controls, such as closed systems, enclosed cockpits, or enclosed cabs.

(ix) Other special protection information or special workplace practices.

(5) Information on spill or leak cleanup procedures and disposal methods for excess chemical and for containers.

(6) The date the fact sheet was prepared or revised to its present form.

(7) The telephone number of the National Pesticide Telecommunications Network and the name, address, and telephone number of the manufacturer, formulator, importer, or responsible party, if known, who could provide additional information about the formulated product or the active/inert ingredient and about appropriate emergency procedures.

(8) If relevant information for any given category on the fact sheet is not obtainable, the category shall be marked to so indicate.

(d) *Accuracy of information on the fact sheet and updates.* (1) The entity preparing the fact sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination or shall ensure that the information recorded accurately reflects the information published on the manufacturer's Material Safety Data Sheet or the pesticide registrant's product labeling.

(2) If the entity preparing the fact sheet becomes aware of any significant information regarding its hazards or those of its formulations or the inert ingredients, one of the following actions is required:

(i) The new information shall be added to the fact sheet within 3 months.

(ii) If the pesticide is not being produced or imported currently, the information shall be added to the fact sheet before the formulated product is introduced or reintroduced into the workplace.

(e) *Obtaining information.* If a fact sheet or Material Safety Data Sheet for the formulated product or for each label-listed active and inert ingredient in the formulated product is not available at the time the product is purchased, the agricultural employer shall take appropriate and timely steps to obtain the Material Safety Data Sheet or fact sheet from the distributor, the manufacturer, a State or Federal agency, or another distribution source.

(f) *Maintaining information.* The agricultural employer shall maintain the information specified in paragraph (a) of this section at an appropriate central location, accessible to workers during working hours and readily obtainable in an emergency.

(g) *Providing information.* The agricultural employer shall provide a written copy of the information specified in paragraph (b) of this section, within a reasonable amount of time, on the request of the worker, a representative of the worker, or medical personnel treating the worker.

4. By adding new § 170.233 to subpart C, to read as follows:

§ 170.233 Hazard information.

(a) *Requirement.* The handler employer shall provide hazard information concerning a pesticide, in accordance with this section, to any handler of a pesticide that is being handled or that has been handled within the past 30 days or to any handler who may be exposed to the pesticide during its normal conditions of use or in a foreseeable emergency.

(b) *Format of information.* Hazard information shall be in either one of the following forms:

(1) A Material Safety Data Sheet for the product, or for each active and inert ingredient listed on the label of the product.

(2) A fact sheet that has been prepared or approved by a State or Federal agency for the pesticide. If the chemical ingredients of two or more pesticides are substantially similar, but the specific composition varies and the products present similar hazards, one fact sheet may suffice for these similar products.

(c) *Content of fact sheets.* Each fact sheet shall contain information, expressed in nontechnical terms, except for items specifically targeted towards medical personnel, such as antidotes or emergency treatment. The information shall include:

(1) Typical brand name(s) of the pesticide, and the chemical name and common name of the pesticide.

(2) Information on the physical characteristics of the pesticide, such as:

(i) Color, state (solid, liquid, or gas), odor, and comparative volatility.

(ii) Comparative flammability and explosivity.

(iii) Comparative shelf-life stability, comparative or actual compatibility or incompatibility to possible tank-mix products, and comparative likelihood of decomposing into hazardous components.

(3) Information on the comparative toxicity of the pesticide:

(i) The comparative acute toxicity for the pesticide when swallowed, inhaled, or absorbed through the skin, expressed in terms of the relative category (highly toxic, moderately toxic, slightly toxic, or relatively nontoxic) and corresponding signal word, basing the category and signal word on the criteria of § 156.10(h) of this chapter.

(ii) The comparative skin irritation potential and eye irritation potential for the pesticide expressed in terms of the relative category (severely, moderately, or slightly irritating or relatively nonirritating to skin and/or eyes) and corresponding signal word, basing the category and signal word on the criteria of § 156.10(h) of this chapter.

(iii) The comparative sensitization category for the pesticide expressed in terms of the relative category (highly, moderately, or slightly likely or relatively unlikely to cause allergic or sensitivity reactions in some individuals).

(iv) Symptoms of overexposure.

(v) Any chronic or delayed health effects, including tumors, malignancy, or cancer, changes in the genes or chromosomes, birth defects, illness or death (miscarriage or stillbirth) to a fetus, infertility or sterility in men or women, blood disorders, nerve or brain disorders, skin disorders, liver and kidney disorders, and/or lung and respiratory disorders.

(vi) Whether the pesticide has been found to be a potential cancer causing agent by a government agency or recognized medical organization. The sources that must be considered include the latest editions of the National Toxicology Program Annual Report on Carcinogens (NTP), the International Agency for Research on Cancer Monographs (IARC), the Occupational Safety and Health Administration (OSHA), and EPA.

(vii) Medical conditions that may be aggravated by exposure to the product.

(viii) Emergency and first aid procedures for each applicable route of exposure, i.e., oral, dermal, inhalation, and eye.

(ix) Information for physicians on the antidote, if any, and other applicable information for medical treatment.

(x) The types of exposure limits that have been established for the pesticide. The exposure limits that must be investigated include the OSHA Permissible Exposure Limit (PEL) and the EPA restricted-entry interval (REI). Any other known and applicable exposure limit used or recommended by the manufacturer, formulator, importer or a governmental agency must also be noted. All listed limits must be accompanied by a reference source to permit more detailed information to be obtained.

(4) Information on any special protection needed in handling the product such as use of personal protective equipment, engineering controls, and workplace practices for the pesticide:

(i) Situations where personal protective equipment or engineering controls should be used.

(ii) Body protection, including the type of clothing to be worn during exposures, such as mixing/loading, cleaning of equipment, and other handling situations.

(iii) Hand and foot protection needed, including specific material, if known, that is chemical-resistant to the pesticide or typical carrier solvent.

(iv) Eye protection.

(v) Respiratory protection, including, if known, the specific respirator type (dust/mist filtering, vapor/gas-removing, or air-supplied) and the Mine Safety and Health Administration/National Institute for Occupational Safety and Health (MSHA/NIOSH) approval number prefix assigned to equipment that is protective for the pesticide for exposures outdoors and in enclosed areas.

(vi) Recommendations for ventilating enclosed areas, if appropriate.

(vii) Any other personal protective equipment that would be appropriate for specific exposure situations.

(viii) Recommended engineering controls, such as closed systems, enclosed cockpits, or enclosed cabs.

(ix) Other special protection information or special workplace practices.

(5) Information on spill or leak cleanup procedures and disposal methods for excess chemical and for containers.

(6) The date the fact sheet was prepared or revised to its present form.

(7) The telephone number of the National Pesticide Telecommunications Network and the name, address, and telephone number of the manufacturer, formulator, importer, or responsible party, if known, who could provide additional information about the formulated product or the active/inert ingredient and about appropriate emergency procedures.

(8) If relevant information for any given category on the fact sheet is not obtainable, the category shall be marked to so indicate.

(d) *Accuracy of information on the fact sheet and updates.* (1) The entity preparing the fact sheet shall ensure that the information recorded accurately reflects the scientific evidence used in making the hazard determination or shall ensure that the information recorded accurately reflects the information published on the manufacturer's Material Safety Data Sheet or the pesticide registrant's product labeling.

(2) If the entity preparing the fact sheet becomes aware of any significant information regarding its hazards or those of its formulations or the inert ingredients, one of the following actions is required:

(i) The new information shall be added to the fact sheet within 3 months.

(ii) If the pesticide is not being produced or imported currently, the information shall be added to the fact sheet before the formulated product is introduced or reintroduced into the workplace.

(e) *Obtaining information.* If a fact sheet or Material Safety Data Sheet for the formulated product or for each label-listed active and inert ingredient in the formulated product is not available at the time the product is purchased, the handler employer shall take appropriate and timely steps to obtain the Material Safety Data Sheet or fact sheet from the distributor, the manufacturer, a State or Federal agency, or another distribution source.

(f) *Maintaining information.* The handler employer shall maintain the information specified in paragraph (a) of this section at an appropriate central location, accessible to handlers during working hours and readily obtainable in an emergency.

(g) *Providing information.* The handler employer shall provide a written copy of the information specified in paragraph (b) of this section, within a reasonable amount of time, on the request of the handler, a representative of the handler, or medical personnel treating the handler.

[FR Doc. 92-20006 Filed 8-19-92; 10:31 am]
BILLING CODE 6560-50-F

40 CFR Part 170

[OPP-300164E; FRL-4160-7]

Exception to Worker Protection Standard Early Entry Prohibition for Hand Labor Tasks Performed on Cut Flowers and Cut Ferns

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed exception to rule; request for comment.

SUMMARY: EPA is considering an exception to the Worker Protection Standard, published elsewhere in this issue of the **Federal Register**, that would allow, under specified conditions, early entry to perform routine hand labor tasks on cut flowers and cut ferns.

DATES: Comments, data, or evidence should be submitted on or before September 21, 1992.

ADDRESSES: Comments should be submitted in triplicate and addressed to the Document Control Officer (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

All comments should bear the document control number OPP-300164E and will be available for public inspection from 8:30 a.m. to 4 p.m., Monday through Friday, at the OPP Document Control Office, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: James J. Boland, Acting Chief, Occupational Safety Branch (H7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 305-7666.

SUPPLEMENTARY INFORMATION:

I. Background

Section 170.112(e)(2) of the Worker Protection Standard (40 CFR part 170), which is published elsewhere in this issue of the **Federal Register**, provides a mechanism for considering exceptions to the provision in the Standard prohibiting early entry to perform routine hand labor tasks. Information that the Agency received from the cut flower and cut fern industry during the comment period for the Notice of Proposed Rulemaking for 40 CFR parts 156 and 170, the Worker Protection Standard for agricultural pesticides, has persuaded EPA that there could be substantial economic repercussions if routine hand labor tasks were prohibited during the restricted-entry interval. The Agency has reviewed the information received on the subject and is inclined to grant an exception to such a prohibition for this industry, because, in light of the economic benefits and new conditions of entry that would be imposed, the Agency believes it is likely that early entry would not pose unreasonable risks to workers in this industry.

II. Evidence

Rose growers (and other cut flower growers) opposed the proposed restricted-entry intervals because of the economic burden that would result to their industry. Several comments emphasized the need to cut the roses twice a day, 365 days a year. The comments stated that roses are sprayed on a weekly or biweekly basis and that not cutting flowers 26 to 50 days a year would be economically disastrous. One grower estimated that a 1 to 2-day restricted-entry interval would cause at least a 10- to 15-percent crop loss. Roses, Inc., estimated the crop loss would represent 14 percent of annual sales or, on average, a loss of more than $35,000 per year per acre.

Several comments suggested that reentry for tending floral crops be allowed after sprays dry, in normal work attire, for not more than 3 hours per worker per day. Others requested that entry to treated areas be allowed for not more than 1 hour in 24 hours per worker so that flowers could be tended.

III. Agency's Preliminary Findings

The Agency believes that the cut flower and cut fern industry must have frequent access to harvest and tend to this time-sensitive crop. However, the Agency has no basis for reducing or eliminating restricted-entry intervals on these crops. EPA is not aware of any substitute practice that could be used to avoid the economic burden to the industry. The Agency believes that the projected economic costs due to a prohibition of early entry to perform hand labor tasks are higher than the costs of sending workers in during the restricted-entry interval and providing them with the required early entry protections, including decontamination facilities, specific information, heat-stress avoidance, and providing, cleaning, and maintaining the personal protective equipment.

To avoid excessive economic burden to the cut flower industry, the Agency is inclined to allow early entry, under certain conditions, to perform hand labor tasks on cut flowers or cut ferns, such as harvesting, pruning, disbudding, and watering. The Agency believes that, in this situation, the use of personal protective equipment, accompanied by a limitation on worker-exposure time, accessible decontamination facilities, label-specific and general pesticide safety instruction, and, often, shade and mechanical cooling devices, will reduce the risk of excessive pesticide exposure for these workers. The Agency expects this exception would have no geographic or time limitations, because these crops are throughout the country and EPA has no basis to believe a time limitation is appropriate. The following additional factors also influenced the Agency's tentative conclusion: (1) Personal protective equipment would be worn for only limited periods of time because the tasks to be performed are of short duration; (2) the tasks to be performed could be accomplished in a reasonably efficient manner while wearing personal protective equipment, including coveralls, chemical-resistant gloves (possibly underneath leather gloves), chemical-resistant footwear and headgear, and safety glasses; (3) the accessibility, usual in this industry, of running water for decontamination and heat stress alleviation; and (4) the availability, also usual in this industry, of shade, fans, or other mechanical ventilation to provide some cooling. The Agency is therefore persuaded that early entry with personal protective equipment is feasible and likely to provide adequate reduction of risks to the workers in the cut flower and cut fern industry.

IV. Proposed Terms of Exception

Under the exception to § 170.112(a)(1) of the Worker Protection Standard that the Agency is considering, workers could carry out hand labor tasks associated with the cultivation and harvesting of cut flowers and cut ferns if the requirements of § 170.112(c)(3) through (c)(9) are met, i.e., (1) No entry takes place for the first 4 hours after the application and, thereafter, until any exposure level listed on the labeling has been reached or any ventilation criteria established by the Worker Protection Standard or in the labeling has been met; (2) the personal protective equipment required for early entry is provided, cleaned, and maintained for the worker; (3) the required decontamination and change areas are provided; (4) the required basic training and label-specific information have been furnished; and (5) measures to prevent heat-related illness are implemented, when appropriate. In addition, for this specific exception for cut flowers and cut ferns the time in treated areas for each worker could not exceed 3 hours in any 24-hour period.

V. Comments Solicited

The Agency is interested in a full range of comments and information on

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this proposed exception and grants 30 days for interested parties to comment. The Agency particularly welcomes comments supported by information, such as evidence demonstrating whether the risks to workers would be acceptable, whether the use of personal protective equipment in these circumstances would be feasible, and whether there are feasible alternative practices that would make routine early entry unnecessary. The Agency also would welcome any additional information concerning the likely economic impact on this industry of a prohibition of routine hand labor tasks during the restricted-entry intervals.

Dated: August 13, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92-20007 Filed 8-19-92; 10:31 am]

BILLING CODE 6560-50-F

federal register

Friday
August 21, 1992

Part IV

Department of the Interior

Minerals Management Service

Gulf of Alaska-Yakutat; Call for Information and Nominations; Notice

92 19341

4310-MR

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE
Alaska OCS Region

Gulf of Alaska-Yakutat
Lease Sale 158
Call for Information and Nominations
and
Notice of Intent to Prepare an Environmental Impact Statement

CALL FOR INFORMATION AND NOMINATIONS
(Responses Due in 45 Days)

In accordance with the Final Comprehensive Outer Continental Shelf (OCS) Natural Gas and Oil Resource Management Program, 1992-1997, the Minerals Management Service (MMS), Alaska OCS Region, is proceeding with the Call for Information and Nominations (Call) and Notice of Intent to Prepare an Environmental Impact Statement (EIS) for Gulf of Alaska-Yakutat Sale 158.

Purpose of Call

The purpose of the Call for Information and Nominations (Call) is to gather information for proposed Outer Continental Shelf (OCS) Lease Sale 158. This proposed sale, located in the Gulf of Alaska Planning Area, is tentatively scheduled for mid-1995.

Information and nominations on oil and gas leasing, exploration, and development and production within the Gulf of Alaska Planning Area are sought from all interested parties. This early planning and consultation step is part of the Area Evaluation and Decision Process and is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (OCSLAA) (43 U.S.C. 1331 - 1356 (1988)), and regulations at 30 CFR Part 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with applicable laws including all requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, the OCSLAA, and with established departmental procedures.

Description of Area

The area of this Call, located offshore the State of Alaska in the Gulf of Alaska Planning Area as depicted by the shaded area on the attached map, extends offshore about 3 miles to approximately 70 miles, in water depths about 50 meters to 4,000 meters. The area available for nominations and comments consists of approximately 1,307 blocks (about 7.2 million acres). Respondents may nominate and are asked to comment on any acreage within the entire Call area. A large scale map of the Gulf of Alaska Planning Area (hereinafter referred to as the Call map) showing boundaries of the area on a block-by-block basis and a complete list of Official Protraction Diagrams (OPD's) are available from the Records Manager, Alaska OCS Region, Minerals Management Service, 949 E. 36th Avenue, Room 502, Anchorage, Alaska 99508-4302, telephone (907) 271-6621. The OPD's may be purchased from the Records Manager for $2.00 each.

Current editions of the liated OPD's are based on the North American Datum of 1927. Prior to the issuance of any Proposed Notice of Sale, new editions of all the liated OPD's will be prepared based on the North American Datum of 1983.

Instructions on Call

Respondents are requested to nominate blocks within the Call area that they would like considered for inclusion in proposed OCS Lease Sale 158. Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Respondents are asked to submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are deemed to be proprietary information.

Respondents are also requested to rank areas nominated according to priority of interest (e.g., priority 1 (high), 2 (medium), or 3 (low)). Areas nominated that do not indicate priorities will be considered priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or social and economic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments are also sought on potential conflicts with

approved local coastal management plans (CMP's) that may result from the proposed sale and future OCS oil and gas activities. If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the Federal Register in envelopes labeled **"Nominations for Proposed Gulf of Alaska-Yakutat Lease Sale 158,"** or **"Comments on the Call for Information and Nominations for Proposed Gulf of Alaska-Yakutat Lease Sale 158,"** as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 E. 36th Avenue, Room 110, Anchorage, Alaska 99508-4302.

Use of Information from Call

Information submitted in response to this Call will be used for several purposes. First, responses will be used to help identify the areas for potential oil and gas development. Second, comments on possible environmental effects and potential use conflicts will be used in the analysis of environmental conditions in and near the Call area. A third purpose for this Call is to assist in the scoping of the Environmental Impact Statement (EIS) and the development of alternatives to the proposed action for analysis. The Notice of Intent to Prepare an EIS is included later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore oil and gas activities. Fifth, comments may be used to point out potential conflicts between offshore oil and gas activities and the State's CMP.

Existing Information

The Information Base Review (IBR) step was completed in February 1992 and, on the basis of that information, the determination was made that there was sufficient information to proceed with the Call. The MMS has gained access to many of the Exxon Valdez oil spill natural resource damage assessment studies after the IBR was completed. As these interim as well as final reports related to the injury to natural or cultural resources become available, the MMS will continue to review the data.

An extensive environmental, social and economic studies program has been under way in this area since 1975. The emphasis, including continuing studies, has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological effects of oil and gas activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (703) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Instructions on Call or by telephone at (907) 271-6620.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070.

Tentative Schedule

Approximate dates for actions and decision and consultation points in the planning process are:

Milestones	Dates
Comments Due on the Call	September 1992
Scoping Comments Due	October 1992
Area Identification	April 1993
Draft EIS/Proposed Notice of Sale Published	May 1994
Hearings on Draft EIS Held	July 1994
Governor's Comments Due on Proposed Notice of Sale	July 1994
FEIS Filed with EPA	February 1995
Consistency Determination Signed	February 1995
Final Notice of Sale Published	July 1995
Sale	August 1995

NOTICE OF INTENT TO PREPARE ENVIRONMENTAL IMPACT STATEMENT
(Comments Due in 45 Days)

Purpose of Notice of Intent

Pursuant to the regulations (40 CFR 1501.7) implementing the procedural provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), as amended, MMS is announcing its intent to prepare an EIS regarding the oil and gas leasing proposal known as Sale 158 Gulf of Alaska-Yakutat. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid MMS in determining the significant issues and alternatives to be analyzed in the EIS and the possible need for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale.

Instructions on Notice of Intent

Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Gulf of Alaska-Yakutat Lease Sale 158." Comments are due no later than 45 days from publication of this Notice.

Scott Sewell 8/14/92

Director, Minerals Management Service

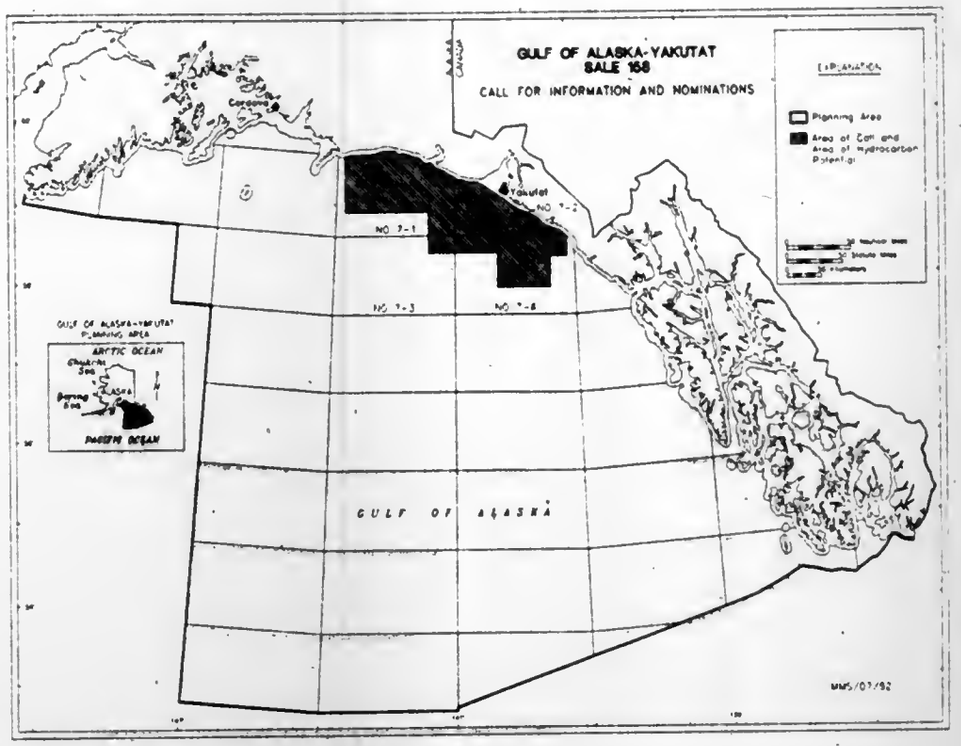
Approved:

Scott Sewell

David O'Neal 8.14.92

Assistant Secretary, Land and Minerals Management — Date

David O'Neal s



[FR Doc. 92-19981 Filed 8-20-92; 8:45 am]

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Part V

Department of Energy

Request for Comments Concerning State Policies Affecting Natural Gas Consumption; Notice

DEPARTMENT OF ENERGY

Request for Comments Concerning State Policies Affecting Natural Gas Consumption

AGENCY: Office of Domestic and International Energy Policy, Department of Energy.

ACTION: Notice of Inquiry and Request for Public Comments: State Policies Affecting Natural Gas Consumption.

SUMMARY: As part of the National Energy Strategy (NES), the Department of Energy (DOE) is conducting a study of state policies that impact the efficient use of natural gas. The purpose of this notice is to solicit comments and information for use in this study.

The NES states: "The fundamental thrust of the (NES) natural gas initiatives is to build on the progress that has been made by reducing remaining regulatory barriers and allowing market forces to better ensure the adequate supply and efficient delivery of natural gas." The relative significance of the role states play in the natural gas industry is growing as the importance of natural gas to energy security, the environment and the economy is increasingly recognized and as federal regulations are reformed to place greater reliance on market forces. Understand how state policies and regulations impact the gas industry will aid policymakers at both the state and federal levels to develop strategies to improve efficiency in the natural gas marketplace.

The NES proposed regulatory reforms for the natural gas industry which focused primarily on federal actions. The current DOE study of state regulations is intended to enhance coordination of federal and state natural gas regulatory policy.

DATES: Written comments and other materials must be submitted by October 20, 1992, to ensure their consideration. Reply comments should be submitted by November 19, 1992. If you intend to file reply comments, please indicate this at the time you file initial comments so that we may provide you with a set of all initial comments filed by the parties.

ADDRESSES: Send comments to Michael York, Office of Domestic and International Energy Policy, U.S. Department of Energy, Forrestal Building, room 7H–049, PE–52, 1000 Independence Ave., SW., Washington, DC 20585, Fax: (202) 586–4341.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Michael York, at (202) 586–5069.

SUPPLEMENTARY INFORMATION:

I. Introduction

Natural gas use decreased from a high in 1972 of 22 trillion cubic feet (tcf) to a recent low of 16.2 tcf in 1986. As reforms of federal regulation began to have an impact, consumption since 1986 has increased to about 19.5 tcf in 1991. Despite this recent increase in consumption, there is a growing consensus that the natural gas resource base and economically recoverable reserves are sufficiently abundant to support greater reliance on natural gas.

The decrease in the utilization of natural gas from its high in 1972 through 1986 is largely the result of federal regulations in the 1970s. Since enactment of the Natural Gas Policy Act (NGPA) in 1978 [1], the general trend has been to reform federal laws and regulations to remove several unnecessary impediments to natural gas use, but it has been argued that much more should be done to increase the role of natural gas in the energy mix, especially at the state level. DOE, in this notice, seeks public comment in order to help it better understand state policies, laws and regulations regarding natural gas, and, in particular, to identify those that may impede market efficiency.

The regulatory changes that have taken place at the federal level represent a new regulatory framework requiring reconsideration of state regulation of natural gas. To that end, DOE and the National Association of Regulatory Utility Commissioners (NARUC) cosponsored a conference on "State Regulation and the Market Potential for Natural Gas: Challenges and Opportunities", in Phoenix, Arizona, February 3–5, 1992. (A copy of the proceedings can be obtained by contacting John Sacco at DOE, phone: (202) 586–5667).

In comments made at the conference, one state public utility Commission Chairman stated that:

> The traditional methods of State regulation were quite suitable to the old fabric of a fully regulated natural gas industry. There was a continuum of regulation from the wellhead to the burner tip. * * * The question at this conference * * * is whether the State regulatory methods which were suitable to the former industry structure are still suitable today. * * * Also, I am concerned that a failure to adjust state regulation to the new federal policies, ongoing technological changes, increasingly competitive market dynamics, and the environmental needs of the nation, may cause economic distortions or raise barriers to the efficient, economical and environmentally sound use of natural gas.

[1] 15 U.S.C. Sec. 3301–3432 (1988).

DOE is seeking to ascertain what regulatory authority the states have over the natural gas industry, how that authority has traditionally been exercised, and what the effect of changes in the industry have, will, or should have on state regulation. In addition, and in particular, DOE is interested in any state regulations or policies that are perceived to raise a barrier to competition in the natural gas industry. The following issues, addressed in greater detail in Part III of this notice, are of special interest to DOE:

A. The regulatory impediments to natural gas exploration and production.

B. State regulatory barriers to timely and accurate reporting of natural gas deliverability data.

C. State regulatory barriers to natural gas consumption.

D. Cost allocation and rate design practices by local distribution companies (LDC), and their effect on customer classes and markets for gas.

E. The potential for unbundling of transportation services at the state level.

F. Regulatory prudence reviews of LDC purchasing practices related to gas supplies and new capacity and transportation services.

G. The impact of long-term contracts on the natural gas purchaser's supply portfolio.

H. Impediments to the use of incentive regulation in a traditional cost-based regulatory framework.

I. Impact of combined electric/gas utility companies on market penetration of natural gas.

J. The effects of utility company diversification on competition and efficient pricing.

K. The impact of FERC Order No. 636 on municipal utilities [2].

L. The impact of state regulation on the financial sector's perception of the natural gas industry.

M. The role of natural gas in generation of electricity by utilities, independent power producers, and cogenerators.

N. Impediments to the penetration of new natural gas end-use technologies.

O. State regulatory barriers to natural gas due in the transportation sector.

P. The effect of integrated resource planning on the natural gas market.

Q. Other factors affecting natural gas use.

[2] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Wellhead Decontrol, Order 636, 57 FR 13267 (April 16, 1992), FERC Stats. and Regs. Para. 130,939 (1992).

These and other issues may be addressed by respondents. Responses will be used to identify potential impediments of regulatory practices and policies that may have an impact on efficient functioning of the natural gas market. Responses may also identify areas where federal and state regulations could be better coordinated. Finally, responses may include suggestions for general or specific changes in state regulatory practice which would have a positive impact on the natural gas industry as a whole.

II. Background

Federal regulation in the 1980s did much to move the natural gas industry toward a less regulated, more market-oriented structure. The National Energy Strategy provided further impetus to significant reforms of downstream aspects of the industry. Among the significant changes that have shaped the increasingly competitive natural gas industry were:

- Amendments to the Powerplant and Industrial Fuel Use Act of 1978 (Fuel Use Act) [3] and to the NGPA;
- Issuance of Federal Energy Regulatory Commission (FERC) Order No. 451 [4] in 1986;
- Promotion of "open access" transportation on interstate natural gas pipelines through FERC Order Nos. 436/500 [5];
- Development and emergence of a large natural gas spot market;
- Enactment of the Natural Gas Wellhead Decontrol Act of 1989 [6], lifting remaining controls of wellhead prices by January 1, 1993;
- Implementation of the U.S.–Canada Free-Trade Agreement; and
- FERC Order No. 636, which will unbundle natural gas pipeline services, establish equal access to pipeline transportation services, and establish more efficient primary and secondary markets for capacity.

In July 1989, President Bush directed the Secretary of Energy to initiate the development of the comprehensive NES. After 18 public hearings, over 20,000 pages of public comments, and nineteen months of analysis, the first edition of the NES was released by the President in February 1991.

The NES proposed important goals, objectives, and initiatives to address regulatory and technology barriers impeding increased natural gas production, transportation and use. NES proposals are being implemented by FERC under existing authority and through legislative initiatives that are part of comprehensive legislation currently under consideration by Congress.

For example, the recent restructuring rule (FERC Order No. 636) implements several important NES recommendations and ushers in a new era of regulation which focuses increasingly on providing new options to both buyers and sellers of natural gas. An issue to be addressed in the inquiry is whether current state regulations and policies are likely to enhance or constrain the opportunities created by Order No. 636. Similarly, do state regulations enhance or thwart reforms announced by FERC on pipeline construction, incentive ratemaking and natural gas use for transportation? Additionally, what state actions should be taken to enhance the new provisions of the legislation that will encourage a larger role for the functioning of a competitive natural gas market? Lastly, given the dramatic changes in the perception of the role that natural gas could play in the national energy mix, are there other aspects of state policies that require some reconsideration because they were premised on outdated perceptions or attitudes regarding natural gas supply or use?

III. Issues

A. Natural Gas Exploration And Production

The history of the natural gas industry suggests that many regulatory measures, which now represent barriers, were implemented in the past because of a mistaken perception that the resource base was quite limited. At the federal level, both the NGPA and Fuel Use Act were passed in 1978 for this very reason. Rules for gaining the permits necessary for new gathering facilities and intrastate pipelines have also reflected the bias that the limited economically recoverable reserves required special attention. Thus, there may be instances where these regulations need to be revised. In other cases it may be beneficial to apply existing rules and regulations in a more expansive and expeditious manner.

One speaker at the Phoenix conference stated that, after spending ten years going through the seismic and drilling process and discovering natural gas at the Mary Ann Field in the Mobile Bay area, it then took another nine years to work through such issues as procedures for development, federal and state permits, and the environmental impact report, to finally complete development.

Questions for comment:

1. Are there state environmental rules and regulations governing natural gas exploration and production that could be revised or removed without lessening safety, environment or property rights concerns that would permit natural gas to capture its market potential?

2. Do barriers exist in the regulation of gathering and intrastate pipeline operations?

3. Could existing state regulations be carried out in a more expeditious fashion, without compromising intended results?

B. Natural Gas Deliverability Data

The implementation of FERC Order No. 636, and its mandated use of Electronic Bulletin Boards (EBB), provides a unique opportunity to develop or reform the information systems that will guide future competitive business and policy decisions. Such electronic information systems could cover aspects of production, transmission, and distribution operations, whether regulated by states or the federal government. The result would be a database that could be used to accurately assess the potential of the natural gas industry to supply the economy's energy needs now, and in the future.

The electronic information system could be used to fill some of the gaps between federal and state reporting of gas deliverability. State installation of software and hardware could allow realtime tracking of such items as gathering capacities and flows, intrastate volumes, intrastate sales, and distributor sales. This information

[3] Pub. L. No. 95–620, 92 Stat. 3281 (1978).

[4] Ceiling Prices: Old Gas Pricing Structure, Order 451, 51 FR 22168 (June 18, 1986), 53 FR 7503 (March 9, 1988), FERC Stats. and Regs. [Regulation Preambles 1986–1990] Para. 130,701 (1986); Order 451–A, 51 FR 46762 (December 24, 1986), FERC Stats. and Regs. [Regulation Preambles 1986–1990] Para. 130,720 (1986); and Order 451–B, 52 FR 21669 (June 9, 1987), FERC Stats. and Regs. [Regulation Preambles 1986–1990] Para. 130,748 (1987).

[5] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, 50 FR 42408 (Oct. 18, 1985), FERC Stats. and Regs. [Regulations Preambles 1982–1985] Para. 30,665 (1985), *vacated and remanded*, Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied*, 485 U.S. 1006 (1988), *reodopted on an interim basis*, Order No. 500, 52 FR 30334 (Aug. 14, 1987), FERC Stats. and Regs. [Regulations Preambles, 1986–1990] Para. 30,761 (1987), *remanded*, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), *reodopted*, Order No. 500–H, 54 FR 52344 (Dec. 21, 1989), FERC Stats. and Regs. [Regulations Preambles 1986–1990] Para. 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, 55 FR 6605 (Feb. 26, 1990), FERC Stats. and Regs. [Regulations Preambles 1986–1990] Para. 30,880 (1990), *aff'd in part and remanded in part*, American Gas Association v. FERC, 912 F.2d 1496 (D.C. Cir. 1990), *cert. denied*, 111 S. Ct. 957 (1991).

[6] Pub. L. No. 101–60, 103 Stat. 157 (1989).

would then be electronically linked with FERC data to form a national database.

Another benefit could be the link-up of industry and government officials to ensure good communications between all parties in the gas market during times of emergency and to ensure continued deliveries of natural gas to high-priority human needs customers.

Questions for comment:

1. Does the lack of a comprehensive natural gas data base pose a barrier to natural gas achieving its market potential? If so, what areas of information tracking could be improved?

2. An electronic database is often times an expensive proposition to develop and operate. How might this system be funded? Who would be best suited to oversee the database?

3. Would states be willing to participate in a cooperative effort to standardize the electronic reporting of gas production and deliverability data in a realtime basis?

C. Natural Gas Consumption

The mistaken perception of the size of the gas resource base may not only have led to limitations in gas exploration but may also have led to limitations in gas use. Some PUCs still impose moratoria on gas use in certain applications and maintain limits on LDC advertising that could encourage greater economical use of natural gas. It also has been observed that in a few states there is still legislation that bars natural gas for heating in mobile homes.

Questions for comment:

1. How widespread are state-imposed limits to the consumption of natural gas?

2. What are the specific limitations by end-use sectors, classes of consumers, type of hook-up, etc?

3. What are the policy or regulatory reasons for state limits on consumption?

4. Are state limitations on natural gas consumption actively enforced, or are they residual regulatory practices that act as psychological market barriers?

D. LDC Rate Design

Some contend that the most direct manner to achieve the full market potential for natural gas is to price all gas services efficiently. FERC, commencing in 1985 with Order No. 436 and continuing in 1989 with the Policy Statement on Rate Design, and recently with Order No. 636, has sought to change pipeline transmission rates such that gas use at peak is rationed in accordance with market demand, non-peak throughput is maximized, and producers can sell their gas in a competitive market, irrespective of the pipeline's transmission costs. Thus, it could be said that the price signals for open access transportation and the emergency of a more competitive natural gas market have been or are soon to be achieved.

Questions have been raised concerning whether rate designs for LDC distribution approved by state regulators have been similarly changed to accurately price differences in seasonal use of the distribution system, properly allocate risk and encourage maximum gas use. Thus, it has been argued that the price signal determined at the federal level become muted by the time state regulated rates are applied, and burner-tip customers make consumption decisions based upon inaccurate price and risk allocation.

Questions for comment:

1. Are there barriers to pricing natural gas efficiently at the burner tip that prevent natural gas from gaining its full market potential?

2. Where workable competition exists (for example, provision of gas supply and storage) could public utility commissions (PUC) lessen or eliminate regulation of LDC services and their pricing in such a way that market forces are more effective and beneficial to consumers?

3. What rate policies should state PUCs employ to efficiently price natural gas services? Would a change in these rate policies adversely affect or benefit residential customers?

4. Could efficient pricing of natural gas eliminate the need for demand side management policies?

5. How could PUCs address Order No. 636 transition costs passthrough? Should these be added to firm service demand charges or added to the volumetric component for both firm and interruptible rates?

E. Access to LDC Distribution Services

Through changes in federal regulation gas supply, transmission capacity, storage, merchant, and no-notice service have become distinct, "unbundled" products and services. Many observers believe that this process should continue, and that LDCs should establish comparability of service choices for their customers. The natural gas distributor could become the final transporter to those customers who request transportation only and, where applicable, could separately price and offer storage service. One possible outcome of LDC unbundling is that the LDC would be able to reduce the potential for bypass. However, concerns have been raised over the possibility of cross-subsidization among customer classes in the pricing and selection of these unbundled services.

Questions for comment:

1. Can LDC customers obtain comparable firm bundled and unbundled distribution services?

2. Will customer access to LDC unbundled services permit the development of market-driven demand for natural gas?

3. How would unbundled service at the LDC level impact by-pass?

4. How would the LDC's service obligations change after unbundling?

F. PUC Review of LDC Purchasing Practices and Transportation Arrangements

Pipelines no longer provide one federally approved rate for firm city-gate gas sales service. Under either Order No. 636 or as embodied in pending energy legislation, FERC would defer to market forces to judge the prudence of pipelines' gas supply portfolio, pipeline storage and transmission rates vary within bands of reasonableness, rates for new pipeline capacity will be based on negotiated terms, and customers can resell their claims on pipeline and storage capacities in a secondary market at market prices subject to price ceilings. Thus, the rates which LDCs pay to pipelines and the revenues which they collect from customers depend upon their skill in anticipating market conditions and negotiating contract terms.

New issues arise for state commissions when judging LDCs' purchasing and contracting practices. It would appear that few PUCs have resolved the question of how capacity resale proceeds will be distributed. Little incentive exists to encourage maximum gain in revenue from resale if all funds are credited to firm customers. Yet gas use could be constrained if the LDC does not actively resell capacity.

Reduced regulation at the federal level may have led many state commissions to conclude that it is necessary for them to increase their level of scrutiny of the various components of the city-gate price of natural gas. The result—inquiries of natural gas purchasing practices, management audits, and formal least-cost planning documentation—may have become a new, and possibly unnecessary, regulatory burden for both commissions and LDCs.

Advocates for increasing state review of purchasing practices argue that this is the only way to assure that captive customers do not end up paying excessively high gas costs. However, critics argue that the prudence review process abrogates deregulatory efforts and leads LDCs to try to minimize risk exposure, rather than to minimize costs.

Questions for comment:

1. Do after-the-fact investigations by state regulators of natural gas purchasing practices pose a barrier to increased natural gas sales?

2. Would before-the-fact, or forward-looking reviews, present any problems?

3. Do incentive rate mechanisms supplant the need for PUCs to have both before- or after-the-fact reviews of LDC gas purchasing and transportation contracting decisions?

4. Should states review transactions by LDCs where such transactions take place in a competitive market?

5. How will LDC purchases and sales (specifically, capacity brokering and capacity negotiation) of firm pipeline capacity affect the efficiency of the natural gas market?

6. If purchasing practice reviews are deemed necessary, how could they be implemented so as not to pose a barrier to natural gas achieving its market potential?

G. LDC Use of Long-Term Contracts

The place of long-term contracts in the gas supply portfolio of the LDC is subject to substantial controversy. Arguments have been made for the use of long-term contracts primarily to protect against supply shortages. Also, because of the fear of supply shortages, proponents argue that long-term contracts should carry a price premium over the spot market price. In addition, there are assertions that long-term contracts must have realistic contract pricing indices that keep the price of these contracts linked to the current market gas price.

Arguments have also been made that in the currently more competitive natural gas industry, supply reliability can be achieved by transacting business at the current spot market price. Under this line of thinking, long-term contracts convey very little value and hence would not be expected to garner a price premium. There is also a middle of the road position which simply advocates a portfolio approach to contracting, involving a mix of spot, intermediate (two to five years), and long-term (five years or longer) supply contracts. Some have that state regulation of LDC contracting practices may push the LDC towards short-term contracts. This may lessen producers' motivation to further exploration activities. Thus, this school of thought advocates that state PUCs adopt policies that foster and encourage the development of long-term contracts with producers.

Question for comment:

1. Does the length of the supply term or the pricing provision of a contract pose a barrier to the use of natural gas?

2. Do the policies of PUCs regarding the recapture of purchase gas costs force LDCs to pursue one type of contract (duration and pricing provisions) over others?

3. Assuming that state policy is not neutral, would natural gas utilization increase if state governments maintained a neutral policy with regard to the nature of private contracts for gas supply?

4. How should PUCs protect core customers from unwanted risks and yet create a regulatory setting which allows the LDC to exercise its own judgment in assembling its gas portfolio?

5. What price risks are reasonable for a core customer to bear? Is it proper for the LDC to speculate on long-term prices in order to attempt to lock-in below market prices for gas?

H. Incentives Rates

In the new, unbundled natural gas market, LDCs have more options for achieving reliable least-cost service. One argument is that although traditional regulation is inadequate, deregulation is also inappropriate since the LDC continues to hold a natural monopoly over some of its services. This reasoning argues for some form of incentive regulation, ranging from price caps to indexes, by which the LDC's rates become divorced from its actual costs. The LDC gains greater rewards from good decisions and is also placed at greater risk. It has been argued that state commissions have implemented incentive regulations in the telecommunication industry with generally favorable results, and that similar results could be achieved with gas.

Proponents claim incentive regulation facilitates more flexible pricing and initiation of new services. Opponents believe that LDCs can function quite efficiently under traditional regulation.

Questions for Comment:

1. Does traditional state regulation reduce the incentives for a utility to operate in the most efficient manner? If so, how? Can incentive regulation improve the process?

2. How can incentive regulation best be applied? Is it best applied to specific aspects of operations (cost of distribution, purchased gas cost, pipeline capacity cost) or can it be applied on a utility-wide basis?

3. If an alternative to traditional regulation is needed, is deregulation preferable to incentive regulation? If so, what are the principal obstacles to deregulation?

4. Is incentive regulation an adequate or desirable alternative to purchased gas adjustment (PGA) regulations?

5. Will state regulatory policies that provide greater incentives for gas distributors contribute to increased natural gas use?

I. Impact Of Combination Gas/Electric Companies On The Use Of Natural Gas

The emergence of efficient pricing and optimal output is enhanced when both interfuel and gas-on-gas competition are facilitated. Some argue that competition between electricity and natural gas can be enhanced by the breakup of combination natural gas and electric utilities. The thinking is that the synergies gained from such areas as pooled administration, combined field staffs, reduced meter reading costs and gains from financial diversification are outweighed by the failure to capture the cost efficiencies that would result from increased interfuel competition. Proponents of combination utilities argue that not only are the synergies crucial but also that unique opportunities will be available to them in the form of interfuel load balancing (fuel switching).

The proponents of break-up also note that combination utilities are a rarity in other industrialized nations, and their absence elsewhere does not appear to raise problems. Finally, these proponents perceive that natural gas use in cogeneration may have been held in abeyance in those service areas in which combination utilities with excess electric generation capacity are located.

Questions for comment:

1. Do combination electric and natural gas utilities create a barrier to existing or future competition between the two fuels? Is competition suppressed? Is the market for natural gas thus limited?

2. Do combination utilities use revenues from the natural gas business to subsidize the electric business, or vice-versa? Do they coordinate electric and gas price structures and levels to maximize total company return at the expense of interfuel competition?

3. What is the magnitude of the synergies from combination utilities? What is the magnitude of the cost efficiencies and more efficient pricing when combination utilities are divested?

4. If PUCs established incentive rate mechanisms for both natural gas and electric rates, would utilities work in their own self interest to divest or combine so as to capture the gains of increased operating efficiency?

5. Assuming that there are net benefits from separating combination utilities, are there alternatives short of divesture

(such as separation operating subsidiaries) in which these alleged gains can be achieved?

J. Utility Diversification

Utility diversification and its impact on the regulated utility has long been an area of controversy. Utilities have, for some time, been involved in diversification efforts such as other energy related businesses, real estate, international ventures and banking. It has been argued that there are benefits to ratepayers from diversification in the form of a lower cost of capital, due to risk spreading, and lower operating expenses. Proponents also say that the unregulated entities can be separated to insulate ratepayers from any cross-subsidization. Another line of thinking is that the problems of cross-subsidization and changes in the overall risk of the firm cannot be eliminated without divestiture of the unregulated business(es). Opponents also argue that investors are perfectly capable of structuring diversified portfolios of investments in various businesses on their own and do not need utility management doing this for them.

Questions for comment:

1. Are there examples where diversification efforts have or have not resulted in cross-subsidization?

2. Do diversification efforts result in cross-subsidization, and, therefore, higher or lower prices for natural gas than would be the case with a stand-alone natural gas company?

3. Is it sufficient to have an unregulated company operated as a separate subsidiary or do the two need to be completely separate entities?

K. Impacts of Federal Regulatory Reforms on Municipal Gas Utilities

Just as the move towards deregulation at the federal level will have a profound impact on local distribution companies, municipal natural gas utilities may also be affected. In order for municipalities to remain efficient suppliers of natural gas, it is argued that municipals will need to form consortia to buy, as a group, the necessary natural gas supplies, firm and interruptible capacity, and storage. It is said that a specialist will be needed to line up these services. There are also questions about how the new gas costs will flow through most efficiently to customers.

There is also a line of thinking that questions whether the natural gas market would not function better if municipal distributors became privatized. Because municipals can obtain lower cost financing, municipals become overly capital intensive in their gas operations. Further, some are concerned that municipal natural gas service contains hidden charges to cover non-gas municipal expenditures. Proponents, however, argue that the ability to gain debt at a lower cost is essential for municipal distributors to economically perform service in smaller and rural communities.

Questions for comment:

1. Does a more competitive natural gas industry place municipals at a disadvantage in providing service in a cost-effective manner?

2. Does the issuance of tax-exempt bonds by the municipal distributor bias its decision-making in its provision of service towards greater capital expenditures and debt?

L. The Financial Sector's Perception of the Natural Gas Industry

Wall Street has reacted recently to the regulatory changes and financial condition of companies in the natural gas industry. It is argued that some of the risk borne by pipelines and local distribution companies (LDCs) today is created by the regulatory environment. The financial sector's view of the policies of state and federal regulatory bodies affects financing opportunities that affect the overall cost of supplying natural gas to the market. As regulatory barriers to competition are removed, the cost of capital to pipelines and LDCs will move to the point where it reflects only the risks of doing business in a competitive environment.

Questions for comment:

1. What regulatory or other changes can be made to reduce or eliminate regulatory risk as a component of all aspects of the cost of capital?

2. It has been said that cogenerators cannot get financing without procuring a long-term contract for natural gas. Is this a rational requirement in this environment of greater supply reliability and greater competition? If not, how can financiers be assured that shorter-term contracts are not more risky, or that they will be compensated for greater risk? Would the risk increase, if any, significantly affect the cogeneration industry?

M. Natural Gas in Electric Generation

Natural gas is one of the primary energy forms under consideration for use in electric generation in the future. It has environmental advantages that would enable utilities to meet environmental requirements more easily. Natural gas also has technological advantages, even for baseload generation. Also, changes in electric generation involving such areas as bidding, transmission access and integrated resource planning, may have a positive impact on the role that natural gas plays in the electric generation market. However, even with these advantages and changes, natural gas may face barriers that keep it from achieving greater acceptance in the marketplace. Natural gas may suffer from an unfair disadvantage when competing against other fuels. Coal may have an advantage over natural gas, it has been argued, because PUCs tend to scrutinize variable fuels costs more closely than fixed capital costs. Certain state commissions may also favor coal because of the economic dependence on coal in their states, even though the Clean Air Act Amendments and other economic and policy factors would seem to lead to greater use of natural gas due to its economic and environmental advantages.

Questions for comments:

1. What are the state regulatory barriers, if any, to natural gas achieving its full potential in the electric generation market?

2. What are the regulatory implications of using natural gas for generation of electricity for peaking vs. base loading?

3. Are there changes in state regulation that should be made to allow natural gas to compete on an even footing with other electric generation energy sources?

4. In the past, some state PUCs have held that natural gas is a relatively scarce resource and should be reserved for uses other than electric generation. Is this still the case?

5. To what extent will state regulation of sales of emissions allowances and compliance with the Clean Air Act Amendments affect natural gas use in electric generation?

N. New Natural Gas End-Use Technologies

Recent developments in a number of natural gas end-use technologies have led to the belief that the potential exists for gains in natural gas use, particularly during the summer months. For instance, substantial improvements in the efficiency and first-cost premium of natural gas cooling and desiccant dehumidification are making these space conditioning technologies competitive in some cases. However, there are barriers to acceptance in the marketplace, it is argued, which may keep gas technologies from achieving their potential in this market.

Questions for comment:

1. What are the critical barriers to natural gas end-use technologies? Are they principally technological? Economic?

2. If so, what can state regulators do to remove the barriers? What can natural gas utilities and equipment manufacturers do?

3. Should LDCs become involved in research and development efforts or promotion of end-use technologies? If so, how should these be treated for ratemaking purposes? And how should these efforts and rates relate to the efforts and rates associated with the Gas Research Institute?

4. How would incentive regulation impact LDC expenditures on research and development, and promotion of new technologies? How should research and development efforts be divided between the regulated distributors and the unregulated developers and vendors of new technologies?

O. Natural Gas Vehicles

In the last few years, natural gas has begun to enter the transportation sector as a viable energy form. However, it is said there are currently regulations which may hinder its penetration in this market. Regulations that treat natural gas service stations as public utilities and prohibit compressed natural gas vehicles from driving through tunnels may be unnecessary impediments to natural gas vehicle (NGV) penetration.

In order for natural gas to make inroads in the transportation market, it is argued that regulators should allow cost recovery of related expenses incurred by LDCs, such as the costs of establishing fueling facilities, as well as the cost of vehicle conversions. Opponents of cost recovery argue that any investment in the vehicular natural gas market should be made as part of a separate, unregulated venture. Such expenses are not incurred to provide existing ratepayers with natural gas, and therefore should not be a part of existing rates. These opponents argue that if the utility wants to enter a new and competitive market for its product, the shareholders should be the ones to make the investment.

Questions for comment:

1. Are state regulations unduly obstructing and limiting natural gas use in the transportation market?

2. Should the utility's expenditures to enter this market be included in its regulated operations, or should such expenditures be made through an unregulated venture?

3. Should the natural gas utility even be involved in vehicular natural gas sales?

4. What can states do to encourage sensible, timely development of compressed natural gas fueled fleets in the public and private sectors?

P. Integrated Resource Planning

Integrated resource planning (IRP) for gas utilities is receiving increasing attention. A 1991 survey of state commissions found 15 states implementing IRP for LDCs in their jurisdictions, with several more states moving rapidly toward gas IRP efforts. A 1992 survey of 85 LDCs found 11 with approved IRPs in place, 20 more under Commission order to file, and 41 who expect to have an IRP program within two years.

These efforts are still in their infancy when compared to electric IRP. Electric IRP concepts and techniques are much better developed than those for gas IRP, primarily because the electric utility industry has been pursuing the topic for a longer period of time and has more experience with it. A 1992 survey found 30 states implementing IRP, covering about 60 percent of the nation's approximately 250 investor-owned utilities. A 1992 survey of public power utilities found 227 that prepare IRPs. Gas utilities have only recently begun to define the scope, processes, and appropriate applications for gas IRP.

Some perceive opportunity for IRP to benefit gas utilities. One objective of IRP is to evaluate all resource options on an equal and consistent basis without preconceived bias toward any particular resource option, fuel type, technology, or form of ownership. As a result, IRP seeks to ensure that gas and electric resource alternatives compete on a level playing field, thus leading to removal of unwarranted barriers to effective competition. IRP could enable gas utilities to make the case for gas based on technical, economic, and environmental merits without preconceptions against new applications and markets, including gas cooling and cogeneration.

Others perceive that substantial differences in market structure, regulations, and business conditions make it inappropriate to adopt the electric IRP model for gas. For example, methods for determining avoided costs of electricity—a key element in evaluating electric demand-side management (DSM) programs—are much better understood and accepted than are the approaches for determining avoided costs for gas.

Still others assert that when DSM program costs, that is, the expenditures incurred to alter the timing and/or quantity of energy that customers consume, are incorporated into rates, the result will be higher rates. Though participants will see an overall reduction in their costs, nonparticipants could see an increase. These increases could affect the use of natural gas, relative to other energy forms such as fuel oil and propane.

IRP's potential affect on interfuel competition could be significant. In many regions of the country, gas and electricity compete for market share for end-uses such as water heating, space heating, and air conditioning. Gas-fired, on-site generation and cogeneration compete in some regions with utility provided electric service. Ultimately, the challenge is to establish appropriate IRP processes that both electric and gas utilities can work within so that all parties have the opportunity to benefit.

Questions for comment:

1. What positive and negative effects can be expected from gas IRP on the natural gas industry (producers, pipelines, distribution companies, consumers, state regulatory agencies)?

2. To what extent is gas IRP expected to overcome barriers to efficient market operation? Are there other approaches that can be applied to increase competition and economic efficiency in gas utility markets?

3. How will fundamental differences in market structure, regulations, and products and services affect transferability of IRP experiences from the electric utility industry to the gas utility industry? How should electric IRP concepts and techniques be modified to suit natural gas applications?

4. How should state IRP policies handle interfuel competition for market share between electric and gas utilities? How can the interests of utilities, consumers, and states be balanced with respect to interfuel competition, fuel switching, and related issues?

5. Do DSM programs (and the state policies which encourage them) offer competitive advantage or disadvantage to the utilities who implement them?

6. What measures of avoided costs should be used to assess the benefits of gas DSM programs? How should the perspective of the various stakeholders (ratepayers, utilities, society) be incorporated into cost/benefit evaluations of gas demand-side management?

7. How does the long-term availability and expected prices for natural gas affect gas and electric IRP processes, and vice-versa?

8. One of the reasons for establishing a regulatory climate conducive to the IRP process is to correct market failures. What are the market or regulatory failures that exist that justify regulatory changes for natural gas IRP? Are these regulatory changes the best way of addressing any perceived market

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failures? Should IRP be required by the states?

9. To what extent could efficient pricing, as a form of passive DSM, capture the inherent benefits of IRP?

Q. Other Factors Affecting The Use Of Natural Gas

In this document, we have focused primarily on PUC regulations and policies. However, state and local rules, policies and legislation can also impede the use of natural gas in ways that would otherwise support federal environmental, economic, and energy security policies. Particularly, some policies differentially affect the use of natural gas and other energy forms. For example, it is said that differential tax policy on natural gas and fuel oil could distort prices in favor of fuel oil. Other areas such as state tax policies, royalty payments, franchise fees, environmental regulations, economic development incentives, and even regulatory fees may treat one energy form preferentially over another. Another school of thought is that these issues have little impact on the use of natural gas in the nation's overall energy mix.

Question for comment.

1. Are there state and local policies, rules, or laws other than in the public utility area that impose impediments to the efficient use of natural gas? Please try to be specific in detailing the particular law or policy and in identifying the manner and magnitude of any impact on gas consumption.

2. Do state legislation or local policies unduly favor or adversely affect the use of natural gas, relative to electricity, fuel oil, coal, propane, or conservation? Please cite specific examples and their effect.

IV. Request for Comments

In accordance with the NES, DOE is soliciting comments for a study it is conducting on the impact of state regulation on the natural gas industry. Commentors should not limit themselves to the issues identified above but should bring to the Department's attention any state policy that unnecessarily prevents or impedes the use of natural gas. Commentors are requested to provide DOE with the citation for the state laws or regulations that they are commenting on, and, to the extent practicable, a copy of the mentioned regulations or laws. While quantitative assessments are not required, they will help DOE to assess impacts.

Commentors are encouraged to provide specific examples of impacts caused by such state regulation. Because of the sensitive nature of certain issues, the Department will accept comments from parties anonymously. Comments should be submitted to the address indicated in the "**ADDRESSES**" section of this notice and should be identified on the outside envelope and on documents submitted with the designation "STATE REGULATION." Five (5) copies, if possible, should be submitted.

Any written comments received in response to this notice will be available for public inspection at DOE's Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC. 20585, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays.

Issued in Washington, DC, August 14, 1992.

John J. Easton, Jr.,

Assistant Secretary, Office of Domestic and International Energy Policy.

[FR Doc. 92–20050 Filed 8–20–92; 8:45 am]

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federal register

Friday
August 21, 1992

Part VI

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1 and 2

Revision of Patent and Trademark Fees; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 2

[Docket No. 920401-2194]

RIN 0651-AA54

Revision of Patent and Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule and request for comments.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in patent and trademark cases, parts 1 and 2 of title 37, Code of Federal Regulations, to adjust certain patent and trademark fee amounts to reflect fluctuations in the Consumer Price Index (CPI) and to recover costs of operation. The PTO is also establishing fees for providing public access to APS-Text in Patent and Trademark Depository Libraries (PTDLs), and for dividing a trademark application. In response to comments received from the Libraries in which they expressed their concerns about the administrative burdens of collecting fees from the public for use of APS-Text, the Commissioner is immediately suspending collection of that fee to provide additional time for the PTO to solicit input from the private sector on alternative collection methods, and other options for accessing patent search and retrieval in the Libraries.

DATES: *Effective Date:* October 1, 1992. Rule 1.21(p) will take effect on October 1, 1992 but will immediately be suspended by the Commissioner.

Comment Date: The PTO will accept comments on alternative collection methods, and other options for accessing patent search and retrieval in the PTDLs (37 CFR 1.21(p)) until January 4, 1993. The Office will provide written notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office* thirty days before starting to collect fees for accessing APS-Text in the PTDLs.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Frances Michalkewicz, suite 507, Crystal Park 1, or by FAX to (703) 305-8436.

FOR FURTHER INFORMATION CONTACT: Frances Michalkewicz by telephone at (703) 305-8510 or by mail marked to her attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This rule change is designed to adjust the Patent and Trademark Office fees in accordance with the applicable provisions of title 35, United States Code, section 31 of the Trademark (Lanham) Act of 1946 (15 U.S.C. 1113), and section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), all as amended by the Patent and Trademark Office Authorization Act of 1991 (Pub. L. 102-204).

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41 and 35 U.S.C. 376. A 50 percent reduction in the fees paid under 35 U.S.C. 41(a) and 41(b) by independent inventors, small business concerns, and nonprofit organizations who meet prescribed definitions is authorized by 35 U.S.C. 41(h).

Subsection 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41 (a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the Consumer Price Index (CPI) over the previous 12 months.

Section 10101 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) provides that there shall be a surcharge on all fees established under 35 U.S.C. 41(a) and 41(b) to collect $99 million in fiscal year 1993.

Subsection 41(d) of title 35, United States Code, authorizes the Commissioner to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, and for each black and white copy of a patent.

Section 376 of title 35, United States Code, authorizes the Commissioner to set fees for patent applications filed under the Patent Cooperation Treaty.

Subsection 41(g) of title 35, United States Code, provides that new fee amounts established by the Commissioner under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office.*

Subsection 41(i)(3) of title 35, United States Code, authorizes the Commissioner to establish reasonable fees for access to automated search systems of the PTO.

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials furnished by the PTO relating to trademarks and other marks.

Section 31(a) of the Trademark (Lanham) Act of 1946 (15 U.S.C.1113(a)), as amended, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding 12 months in the CPI.

Section 31 also allows new fee amounts to take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office.*

Recovery Level Determinations

Fees have been adjusted for a planned recovery of $486,000,000 in fiscal year 1993, as proposed in the Administration's budget request to the Congress.

Fees established by 35 U.S.C. 41(a) and 41(b) (patent statutory fees) may be adjusted on October 1, 1992, to reflect any fluctuations occurring during the previous 12 months in the CPI. The Office of Management and Budget (OMB) has determined that the PTO should use Consumer Price Index-U to adjust patent statutory fees. The Department of Labor's Consumer Price Index is made public approximately 21 days after the end of the month being calculated. The patent statutory fees are being adjusted by 3.3 percent, which reflects the Administration's projected Consumer Price Index-U for the 12-month period beginning October 1, 1991.

The patent statutory fees established by rule (56 FR 65142) on December 13, 1991, are being adjusted by the projected changes in the CPI of 3.3 percent. Amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees of $100 or more were rounded to the nearest $10. Fees between $2 and $99 were rounded to an even number so that the comparable small entity fee would be a whole number.

Patent statutory fees also are subject to the provisions of the Omnibus Budget Reconciliation Act of 1990, as amended by Public Law 102-204. These provisions require the $99 million be collected in fiscal year 1993 for deficit reduction purposes in lieu of seeking general taxpayer funds from the U.S. Treasury. The $99 million is deposited in a special account in the U.S. Treasury, and is reserved exclusively for use by the PTO, and is made available to the PTO through the appropriation process.

In establishing the 1993 patent statutory fees, the PTO applied the projected Consumer Price Index-U rate 3.3 percent to the 1992 fees. The 1993 fees were rounded as explained above. Of the total amount of section 41(a) and (b) income expected to be collected in 1993, $99 million must be deposited to the Fee Surcharge Fund.

Non-statutory patent service established under section 41(d) of title 35, United States Code, as amended, and PCT processing fees are being adjusted to recover planned costs in 1993, except in the case of three patent service fees set by statute. The three fees are assignment recording fees, printed patent copy fees and photocopy charge fees.

Trademark fees are being adjusted in fiscal year 1993, in the aggregate, to reflect changes over the prior 12 months in the CPI. The OMB has determined that the PTO should use Consumer Price Index-U to adjust trademark fees, which is made public by the Department of Labor approximately 21 days after the end of the month being calculated. The trademark fees are being adjusted, in the aggregate, by 3.3 percent, which reflects the Administration's projected Consumer Price Index-U for the 12 month period beginning October 1, 1991.

The PTO is adjusting only two trademark fees in 1993: For filing an application (37 CFR 2.6(a)(1)) and for assignment records, abstract of title and certification (37 CFR 2.6(b)(7)). One new fee is being set for dividing an application (37 CFR 2.6(a)(19)). No other trademark fees are changing in 1993. The net effect of these changes is to increase trademark fees, in the aggregate, by 3.3 percent, the expected Consumer Price Index-U rate for the prior 12 month period.

Workload Projections

Determination of workloads varies by fee. Principal workload projection techniques are as follows:

Patent and trademark application workloads are projected from statistical regression models using recent application filing trends. Patent issues are projected from an in-house patent production model and reflect examiner production achievements and goals. Patent maintenance fee workloads utilize patents issued 3.5, 7.5 and 11.5 years prior to payment and assume payment rates of 75 percent, 50 percent and 25 percent, respectively. Trademark affidavit projections are based on filing trends for marks registered five to six years prior to 1993. Trademark renewal projections are based on marks registered 20 years prior to 1993. Service fee workloads follow linear trends from prior year activities.

Public Access to Automated Systems

In April 1989, the PTO began providing access to APS-Text in the Patent Search Room at its facilities in Arlington, Virginia. On February 12, 1990, the PTO began charging a fee for access to APS-Text in the Patent Search Room. In September 1991, the PTO began providing, without charge, APS-Text to 14 Patent and Trademark Depository Libraries (PTDLs) as a pilot test program. APS-Text provides users of the patent search files with a value added search tool that enables them to conduct more comprehensive searches.

Although many PTDLs believe that government information should be available to the public free of charge, the PTO's fiscal year 1993 budget does not include any general taxpayer funds, but requires that all of the expenses of the PTO be recovered through user fees. These expenses include the cost of providing APS-Text to the public, both in the Patent Search Room in Virginia and at the PTDLs. Continuation of this service in the PTDLs, without direct charge to the users of the automated system, would require support from all other customers who pay for products and services from the PTO.

A second issues raised by many PTDLs concerns the method that PTO would use to collect fees from the users of APS-Text in the PTDLs. Users of APS-Text in the Patent Search Room pay for use of the system directly to the PTO. PTDLs have commented that collecting fees would be an administrative burden for many, while some are legally precluded from collecting fees.

The PTO has a strong interest in expanding access to APS-Text to all PTDLs that wish to participate, but considers allocating user fees paid for other products and services to subsidize this effort to be inappropriate. Therefore, PTO concludes that establishment of a fee for access to APS-Text is necessary.

At the same time, PTO wants to limit the administrative burden imposed on the PTDLs to collect user fees. Therefore, PTO intends to enter into an agreement establishing a service bureau arrangement for administering the collection of fees at participating PTDLs. This arrangement provides one alternative for providing administrative services, but PTO is seeking others. Therefore, through this rulemaking notice, the PTO is soliciting alternatives from other organizations, including the libraries themselves, for providing the administrative services associated with APS-Text. Likewise, the Office would like to consider other options for accessing patent search and retrieval in the PTDLs. The PTO will accept comment on alternative collection methods, and other options for accessing patent search and retrieval in the PTDLs until January 4, 1993.

In rule 1.21(p), the PTO is establishing a $70 per connect hour fee to recover the cost of providing APS-Text Services in participating PTDLs, but the Commissioner is immediately suspending collection of that fee until alternative methods of collecting the fee from users of APS-Text in the PTDLs are identified. Although access to the 14 pilot PTDLs will continue for further evaluation purposes, the PTO will not extend access to additional PTDLs until a fee collection arrangement is established. Section 41(i)(3) of 35 U.S.C. states that if PTO establishes fees for access to the automated search system "a limited amount of free access shall be made available to users of the systems for purposes of education and training."

The $70 per connect hour fee amount established by this rule is based on a calculation of the costs of PTO services, and preliminary cost estimates that were provided by a potential service bureau contractor. The cost elements for PTO include training; training software for personal computers (to be developed); manuals and documentation; additional mainframe CPU; and additional staff time for client support. The cost elements for services provided by the service bureau include billing, account administration, and user support; telecommunication costs to the network; and the Messenger Software enhancement fee.

After PTO has evaluated other options for a service bureau arrangement, a notice will be published in the **Federal Register** and the *Official Gazette of the Patent and Trademark Office.* At that time, PTO will provide administrative procedures for public use of APS-Text in the PTDLs. Depending on responses to the solicitation for alternatives for providing the administrative services associated with APS-Text, the fee amount could be reduced at that time.

General Procedures

Any fee amount that is paid on or after October 1, 1992, would be subject to the new fees then in effect. For purposes of determining the amount of the fee to be paid, the date of mailing indicated on a proper Certificate of Mailing, where authorized under 37 CFR 1.8, will be considered to be the date of receipt in the PTO. A "Certificate of Mailing under section 1.8" is not "proper" for items which are specifically excluded from the provisions of § 1.8.

Section 1.8 should be consulted for those items for which a Certificate of Mailing is not "proper." Such items include, inter alia, the filing of national and international applications for patents and the filing of trademark applications. However, the provisions of 37 CFR 1.10 relating to filing papers and fees with an "Express Mail" certificate do apply to any paper or fee (including patent and trademark applications) to be filed in the PTO. If an application or fee is filed by "Express Mail" with a proper certificate dated on or after the effective date of rules, as amended, the amount of the fee to be paid would be the fee established by the amended rules.

A comparison of existing and revised fee amounts is included as an Appendix to this final rule.

In order to ensure clarity in the implementation of the revised fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a)–(d) and (f)–(j), is revised to adjust patent application filing fees to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application Processing Fees

Section 1.17, paragraphs (b)–(g), and (m), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.17, paragraphs (j), (n) and (o), is revised to adjust fees established therein to recover costs.

37 CFR 1.18 Patent Issue Fees

Section 1.18, paragraphs (a)–(c), is revised to adjust the issue fee for each original or reissue patent to reflect fluctuations in the CPI.

37 CFR 1.19 Document Supply Fees

Section 1.19, subparagraph (b)(4) and paragraphs (f) and (h), is revised to adjust fees established therein to recover costs.

37 CFR 1.20 Post-Issuance Fees

Section 1.20, paragraphs (a), (c), and (i), is revised to adjust fees established therein to recover costs.

Section 1.20, paragraphs (e)–(g), is revised to adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.21 Miscellaneous Fees and Charges

Section 1.21, subparagraphs (a)(1), (a)(5), (a)(6), (b)(2), (b)(3), and paragraphs (e) and (i), is revised to adjust fees established therein to recover costs.

Section 1.21, paragraph (p), is added to establish the fee for providing public access to the Automated Patent System full-text search (APS-Text) capability in Patent and Trademark Depository Libraries. The $70.00 per connect hour fee would recover the marginal cost of providing the service to the public, including the cost for a service bureau to handle billing, account administration, and user support.

37 CFR 1.26 Refunds

Section 1.26, paragraph (a), is revised to increase the minimum amount of a refund, without a request, from one dollar to twenty-five dollars in accordance with the Treasury Fiscal Manual, Volume One, Part Six, Chapter 3000.

Section 1.26, paragraph (c), is revised to provide for a refund of $1,690 if the Commissioner decides not to institute reexamination proceedings. The $1,690 refund would apply to those instances where the reexamination fee of $2,250 under 37 CFR 1.20(c) was paid. The current $1,635 refund would be made in those cases where the current $2,180 reexamination fee was paid.

37 CFR 1.445 International Application Filing, Processing, and Search Fees

Section 1.445, is revised to adjust the fees authorized by 35 U.S.C. 378 to recover costs.

37 CFR 1.482 International Preliminary Examination Fees

Section 1.482, subparagraphs (a)(1), and (a)(2)(ii), is revised to adjust the fees authorized by 35 U.S.C. 376 to recover costs.

37 CFR 1.492 National Stage Fees

Section 1.492, subparagraphs (a)(1)–(a)(3), and paragraphs (b)–(d), is revised to adjust fees established therein to reflect fluctuations in the CPI.

Section 1.492, subparagraph (a)(5), is revised to adjust the fee authorized by 35 U.S.C. 376 to recover costs.

37 CFR 2.6 Trademark Fees

Section 2.6, subparagraphs (a)(1) and (b)(7), is revised to adjust the fees authorized by the Trademark (Lanham) Act of 1946 to reflect fluctuations in the CPI.

New § 2.6(a)(19), is added to establish a fee for dividing a trademark application in accordance with 37 CFR 2.87. Section 2.6(a)(19) is revised from the proposal by adding the words "file wrapper" to clarify that the fee amount is due for each new file wrapper created.

37 CFR 2.87 Dividing an Application

Section 2.87, is revised to establish a fee for dividing an application into two or more applications. Currently, no fee is charged for the physical act of dividing an application. Experience to date reveals that the creation of so-called "divisional" applications is labor intensive. For that reason, and because the creation of a divisional application is a significant benefit to an applicant, the PTO will charge a fee for dividing an application. The fee will be due for each new file wrapper created.

Section 2.87, is revised to divide paragraph (a) into paragraphs (a) and (b), and renumber paragraphs (b) and (c) as (c) and (d).

Response to Comments on the Rules

A notice of proposed rulemaking to adjust patent and trademark fees in accordance with the proposed provisions of Public Law 102–204 was published in the **Federal Register** on May 20, 1992, at 57 FR 21536, and in the Official Gazette on May 26, 1992, at 1138 OG 58. Corrections were published in the **Federal Register** on June 2, 1992, at 57 FR 23257.

A public hearing was held on June 24, 1992. A total of 28 comments were received: 27 respondents submitted written comments and three people presented oral testimony (two of whom also submitted written comments) at the public hearing. Over half of the comments received represented the views of libraries. All of the written and oral comments were considered in adopting the rules set forth herein.

Comment: Two people claimed that the proposed fees for filing an application under the Patent Cooperation Treaty (PCT) is discriminatory against applicants who file under the PCT route.

Response: The PTO is undertaking a thorough analysis of all PCT fees. The results of this analysis, and the recommendations concerning PTO's fee structure to be made to the Secretary of Commerce by the Advisory Commission on Patent Law Reform, will be taken into consideration when PTO proposes the fiscal year 1994 fee adjustments.

Comment: One respondent, although not objecting to the proposed 3.3 percent fee increase, suggested that the PTO may be understanding its projected income from maintenance fees with could be used to offset inflationary increases and possibly reduce PCT fees.

Response: When maintenance fees first were imposed, the Office looked at historical payment trends experienced by other offices, such as the European

Patent Office. The PTO conservatively projected the number of maintenance fees to be paid for two reasons. First, there is not a long history of maintenance fee payments on which to base income projections; for example, second stage maintenance fees only recently have started to come due, and third stage maintenance fees will not become due for many patent owners until 1995. Second, the percentage of patent owners paying second stage maintenance fees in recent months has declined from the renewal rate that was experienced during the first year that second stage maintenance fees were paid. Therefore, PTO is properly conservative in its maintenance fee payment projections. We will conduct a comprehensive analysis of projected maintenance fee payments prior to proposing the fiscal year 1994 fee adjustment.

Comment: Eighteen respondents opposed establishment of fees for the public to access APS-Text at the Patent and Trademark Depository Libraries, primarily because the public has a right to free access to patent information. One person asked about administrative procedures for providing APS-Text in the PTDLs, and suggested that CD-ROM products continue to be made available free of charge and access for APS-Text be kept as low as possible.

Response: As a fully fee-funded agency, the costs to the PTO of providing access to APS-Text in the 74 Patent and Trademark Depository Libraries (PTDLs) would have to be borne either by the individual users of the system, or by all users of the patent system (e.g., patent applicants). In June 1988, the PTO published in 53 FR 23677 the results of comments solicited on alternatives for funding access to the PTO's automated systems. In response, the PTO received 21 comments, 12 of which advocated the use of taxpayer revenues, and seven supported at least some reliance on user fees. The latter based their decisions on the reality of budget deficit problems; the inequity of providing taxpayer funds to subsidize on-line searchers who charge fees for their services; and the need to have an equitable fee structure that applies throughout the United States.

The PTO has a strong interest in expanding access to APS-Text to all PTDLs that wish to participate, with the least amount of administrative burden to the PTDLs, but considers allocating user fees paid for other products and services to subsidize this effort to be inappropriate. Therefore, the PTO is establishing a fee of $70 per connect hour for accessing APS-Text in the PTDLs, which includes the cost of having a service bureau provide billing, account administration, and user support. However, the Commissioner is immediately suspending collection of that fee to provide additional time to solicit comments through this rulemaking for providing the administrative services associated with APS-Text. Likewise, the Office would like to consider other options for accessing patent search and retrieval in the PTDLs. The Office will publish a notice in the **Federal Register** and the Official Gazette of the Patent and Trademark Office thirty days before it begins collecting a fee for public access to APS-Text in the PTDLs.

Comment: One respondent claimed that proposed 37 CFR 1.21(p) is not in accord with the rulemaking provision of 5 U.S.C. 553(b) which requires that the issues involved be described in the notice of proposed rulemaking.

Response: The Notice of Proposed Rulemaking 57 FR 21536, referenced 35 U.S.C. 41(i)(3) which authorizes the Commissioner to establish reasonable fees for access to automated search systems of the PTO. Further in the notice at 57 FR 21537, under the discussion of the proposed revision to 37 CFR 1.21, it was stated that the proposed $40.00 fee would recover the PTO's estimated marginal cost of providing the service to the PTDLs. The notice also indicated the PTO was investigating the use of a contract service bureau to provide access in which case the fee would be approximately $70.00. This fully described the issue involved in the proposed rule change.

Comment: Two respondents commented on the administrative burden caused by a change to the fee structure at this time particularly in light of prior fee changes and the small amount of the adjustment.

Response: The PTO proposed to adjust its fees because operating costs have increased over the past year. The Commissioner is authorized to adjust patent and trademark fees on October 1, 1992 and every year thereafter to reflect fluctuations in the Consumer Price Index over the prior twelve months. Future changes are expected to occur annually on October 1st. The fee increases that will be implemented on October 1, 1992, are expected to generate $15.1 million. Without this revenue, PTO would be forced to make cuts in patent and trademark operations that would affect the quality of examination.

Comment: One person expressed concern about the quality and timeliness of services for which new or increased fees are proposed, complaining specifically of the delay in receiving an official receipt when a trademark application is divided and in the recording of assignments.

Response: A major objective of the Office is to assure continuous quality improvements throughout all operations. The Office has taken steps to address the areas of concern identified.

Comment: One organization and one person objected to the PTO's sole reliance on fee income, particularly for funding automation development costs.

Response: The Omnibus Budget Reconciliation Act of 1990 requires that a user fee surcharge on certain patent fees replace taxpayer funds for the five year period 1991–1995. Whether PTO should receive funds from other sources in future fiscal years is beyond the scope of the rule package.

The automation programs, which are funded from user fees, are designed to improve the quality and timeliness of PTO services and products, and to discontinue reliance on manual processes and paper references.

Comment: One person said that small entities do not benefit from the 50 percent reduction to certain patent fees, because many small companies, particularly those in high technology areas, must license their patent rights and thus pay large entity status fees.

Response: The purpose of the small entity subsidy is to ensure that individual investors, small businesses and non-profit organizations are not barred from using the patent system because of the PTO's fee structure. Once a small entity assigns the rights to a patent application or a patent to a large entity, presumably receiving compensation from the large entity, the reduced fee amounts no longer apply.

Comment: One organization said that trademark fees appear to be justified but PTO must ensure that trademark functions are being discharged in the most efficient and economical manner. For example, the organization questioned whether it is efficient for the Office to continue to maintain a paper search file and to continue to pay the General Service Administration (GSA) for building services.

Response: The Office is committed to ensuring that its trademark functions are being discharged effectively and, as part of its quality improvement program, is currently reviewing various work-related processes. No decision has yet been made as to when the paper search file will be eliminated and no such decision will be made until the public has been given an opportunity to comment. The Office has asked GSA to

review the level of charges assessed in light of current market conditions.

Other Considerations

The rule change is in conformity with the requirements of the Regulatory Flexibility Act (Pub. L. 96–354); Executive Orders 12291 and 12612; and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq. There are no information collection requirements relating to patent and trademark fee rules.

The PTO has determined that this notice has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

The General Counsel of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule change would not have a significant adverse impact on a substantial number of small entities (Regulatory Flexibility Act, Pub. L. 96–354). The rule change increases fees by changes in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h), which provides small entities with a 50-percent reduction in the major patent fees.

The PTO has determined that this rule change is not a major rule under Executive Order 12291. The annual effect on the economy would be less than $100 million. There would be no major increase in costs or prices for consumers; individual industries; Federal, state, or local government agencies; or geographic regions. There would be no significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, chapter I, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR part 1 would continue to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Section 1.16 is amended by revising paragraphs (a)–(d), the parenthetical following paragraph (d), paragraphs (f)–(j), and the note at the end of the section to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except design or plant cases:

By a small entity (§ 1.9(f)) $355.00
By other than a small entity $710.00

(b) In addition to the basic filing fee in an original application, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f)) $37.00
By other than a small entity $74.00

(c) In addition to the basic filing fee in an original application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.9(f)) $11.00
By other than a small entity $22.00

(d) In addition to the basic filing fee in an original application, if the application contains, or is amended to contain, a multiple dependent claim(s) per application:

By a small entity (§ 1.9(f)) $115.00
By other than a small entity $230.00

(If the additional fees required by paragraphs (b), (c), and (d) of this section are not paid on filing or on later presentation of the claims for which the additional fees are due, they must be paid or the claims canceled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

* * * * *

(f) For filing each design application:

By a small entity (§ 1.9(f)) $145.00
By other than a small entity $290.00

(g) Basic fee for filing each plant application:

By a small entity (§ 1.9(f)) $240.00
By other than a small entity $480.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.9(f)) $355.00
By other than a small entity $710.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.9(f)) $37.00
By other than a small entity $74.00

(j) In addition to the basic filing fee in a reissue application, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 and also in excess of the number of claims in the original patent. (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a small entity (§ 1.9(f)) $11.00
By other than a small entity $22.00

Note: See §§ 1.445, 1.482 and 1.492 for international application filing and processing fees.

3. Section 1.17 is amended by revising paragraphs (b)–(g), (j), (m)–(o) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(b) Extension fee for response within second month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)) $180.00
By other than a small entity $360.00

(c) Extension fee for response within third month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)) $420.00
By other than a small entity $840.00

(d) Extension fee for response within fourth month pursuant to § 1.136(a):

By a small entity (§ 1.9(f)) $660.00
By other than a small entity $1,320.00

(e) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.9(f)) $135.00
By other than a small entity $270.00

(f) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.9(f)) $135.00
By other than a small entity $270.00

(g) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in appeal under 35 U.S.C. 134:

By a small entity (§ 1.9(f)) $115.00
By other than a small entity $230.00

* * * * *

(j) For filing a petition to institute a public use proceeding under

§ 1.292 ..... $1,350.00

* * * * *

(m) For filing a petition:

(1) For revival of an unintentionally abandoned application, or

(2) For the unintentionally delayed payment of the fee for issuing a patent:

By a small entity (§ 1.9(f)) $585.00
By other than a small entity $1,170.00

(n) For requesting publication of a statutory invention registration prior to the mailing of the first examiner's action pursuant to § 1.104—$820.00 reduced by the amount of the application basic filing fee paid

(o) For requesting publication of a statutory invention registration after the mailing of the first examiner's action pursuant to § 1.104—$1,640.00 reduced by the amount of the application basic filing fee paid

* * * * *

4. Section 1.18 is amended by revising paragraphs (a)–(c) to read as follows:

§ 1.18 Patent issue fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.9(f)) $585.00
By other than a small entity $1,170.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.9(f)) $205.00
By other than a small entity $410.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.9(f)) $295.00
By other than a small entity $590.00

* * * * *

5. Section 1.19 is amended by revising paragraph (b)(4) and paragraphs (f) and (h) to read as follows:

§ 1.19 Document supply fees.

* * * * *

(b) * * *

(4) For assignment records, abstract of title and certification,

per patent $25.00

* * * * *

(f) Uncertified copy of a non-United States patent document,

per document $25.00

* * * * *

(h) Additional filing receipts; duplicate; or corrected due to:

applicant error $25.00

6. Section 1.20 is amended by revising paragraphs (a), (c), (e)–(g) and (i) to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for applicant's mistake:

(§ 1.323) $100.00

* * * * *

(c) For filing a request for reexamination:

(§ 1.510(a)) $2,250.00

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant

By a small entity (§ 1.9(f)) $465.00
By other than a small entity $930.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant

By a small entity (§ 1.9(f)) $935.00
By other than a small entity $1,870.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant

By a small entity (§ 1.9(f)) $1,410.00
By other than a small entity $2,820.00

* * * * *

(i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the

Commissioner to have been unavoidable $620.00

* * * * *

7. Section 1.21 is amended by revising paragraphs (a)(1), (a)(5), (a)(6), (b)(2), (b)(3) (e), and (i) and adding paragraph (p) to read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) * * *

(1) For admission to examination for registration to practice:

fee payable upon application $300.00

* * * * *

(5) For review of a decision of the Director of Enrollment and Discipline under

§ 10.2(c) $130.00

(6) For requesting regarding of an examination under

§ 10.7(c) $130.00

(b) * * *

(2) Service charge for each month when the balance at the end of the month is:

Below $1,000 ..... $25.00

(3) Service charge for each month when the balance at the end of the month is below $300 for restricted subscription deposit accounts used exclusively for:

Subscription order of patent copies as issued $25.00

* * * * *

(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a:

National patent application $40.00

* * * * *

(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale:

Each application or patent $25.00

* * * * *

(p) Library service: marginal cost for providing to a Patent and Trademark Depository Library access to Automated Patent System (APS) full-text search capability:

Per hour of terminal session time, including print time $70.00

8. Section 1.26 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1.26 Refunds.

(a) Money paid in excess will be refunded, but a mere change of purpose after the payment of money, as when a party desires to withdraw an application, an appeal, or a request for oral hearing, will not entitle a party to demand such a return. Amounts of twenty-five dollars or less will not be returned unless specifically requested within a reasonable time, nor will the payer be notified of such amount; amounts over twenty-five dollars may be returned by check, or if requested, by credit to a deposit account.

* * * * *

(c) If the Commissioner decides not to institute a reexamination proceeding, a refund of $1,690 will be made to the requester of the proceeding. Reexamination requesters should indicate whether any refund should be made by check or by credit to a deposit account.

9. Section 1.455 is amended by revising paragraphs (a) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A transmittal fee:

(see 35 U.S.C. 361(d) and PCT Rule 14)..... $200.00

(2) A search fee (see 35 U.S.C. 361(d) and PCT Rule 16) where:

(i) No corresponding prior United States national application with basic filing fee has been filed..... $620.00
(ii) A corresponding prior United States national application with basic filing fee has been filed..... $410.00

(3) A supplemental search fee when required:

Per additional invention..... $170.00

* * * * *

10. Section 1.482 is amended by revising paragraphs (a) introductory text, (a)(1), and (a)(2)(ii) to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Commissioner under the authority of 35 U.S.C. 376:

(1) A preliminary examination fee is due on filing the Demand:

(i) Where an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority, a preliminary examination fee of....$450.00
(ii) Where an International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office, a preliminary examination fee of..... $670.00

(2) * * *

(ii) Where the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office..... $230.00

* * * * *

11. Section 1.492 is amended by revising paragraphs (a)(1)–(a)(3), (a)(5), paragraphs (b)–(d), and the parenthetical following paragraph (d) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) * * *

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f))..... $320.00
By other than a small entity..... $640.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.9(f))..... $355.00
By other than a small entity..... $710.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.9(f))..... $475.00
By other than a small entity..... $950.00

* * * * *

(5) Where search report on the international application has been prepared by the European Patent Office or the Japanese Patent Office:

By a small entity (§ 1.9(f))..... $415.00
By other than a small entity..... $830.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.9(f))..... $37.00
By other than a small entity..... $74.00

(c) In addition to the basic national fee, for filing or later presentation of each claim (whether independent or dependent) in excess of 20 (Note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes.):

By a small entity (§ 1.9(f))..... $11.00
By other than a small entity..... $22.00

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.9(f))..... $115.00
By other than a small entity..... $230.00

(If the additional fees required by paragraphs (b), (c), and (d) are not paid on presentation of the claims for which the additional fees are due, they must be paid or the claims cancelled by amendment prior to the expiration of the time period set for response by the Office in any notice of fee deficiency.)

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is amended by revising paragraphs (a)(1) and (b)(7) and adding paragraph (a)(19) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) Trademark process fees.

(1) For filing an application, per class....$210.00

* * * * *

(19) Dividing an application, per new application (file wrapper) created..$100.00

(b) Trademark service fees.

* * * * *

(7) For assignment records, abstract of title and certification, per registration..... $25.00

* * * * *

3. Section 2.87 is revised to read as follows:

§ 2.87 Dividing an application.

(a) An application may be physically divided into two or more separate applications upon the payment of a fee for each new application created and submission by the applicant of a request in accordance with paragraph (d) of this section.

(b) In the case of a request to divide out one or more entire classes from an application, only the fee under paragraph (a) of this section will be required. However, in the case of a request to divide out some, but not all, of the goods or services in a class, an application filing fee for each new separate application to be created by the division must be submitted, together with the fee under paragraph (a) of this section. Any outstanding time period for action by the applicant in the original application at the time of the division will be applicable to each new separate application created by the division.

(c) A request to divide an application may be filed at any time between the filing of the application and the date the Trademark Examining Attorney approves the mark for publication or the date of expiration of the six-month response period after issuance of a final action; or during an opposition, upon motion granted by the Trademark Trail and Appeal Board. Additionally, a request to divide an application under section 1(b) of the Act may be filed with a statement of use under § 2.88 or at any time between the filing of a statement of use and the date the Trademark Examining Attorney approves the mark for registration or the date of expiration of the six-month response period after issuance of a final action.

(d) A request to divide an application should be made in a separate paper from any other amendment or response in the application. The title "Request to divide application." should appear at the top of the first page of the paper.

Dated: August 17, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

Note.—The following appendix will not appear in the Code of Federal Regulations.

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS

37 CFR Sec.	Description	Dec. 1991	Oct. 1992
1.16(a)	Basic Filing Fee	$690	$710
1.16(a)	Basic Filing Fee (Small Entity)	345	355
1.16(b)	Independent Claims	72	74
1.16(b)	Independent Claims (Small Entity)	36	37
1.16(c)	Claims in Excess of 20	20	22
1.16(c)	Claims in Excess of 20 (Small Entity)	10	11
1.16(d)	Multiple Dependent Claims	220	230
1.16(d)	Multiple Dependent Claims (Small Entity)	110	115
1.16(e)	Surcharge—Late Filing Fee	130	130
1.16(e)	Surcharge—Late Filing Fee (Small Entity)	65	65
1.16(f)	Design Filing Fee	280	290
1.16(f)	Design Filing Fee (Small Entity)	140	145
1.16(g)	Plant Filing Fee	460	480
1.16(g)	Plant Filing Fee (Small Entity)	230	240
1.16(h)	Reissue Filing Fee	690	710
1.16(h)	Reissue Filing Fee (Small Entity)	345	355
1.16(i)	Reissue Independent Claims	72	74
1.16(i)	Reissue Independent Claims (Small Entity)	36	37
1.16(j)	Reissue Claims in Excess of 20	20	22
1.16(j)	Reissue Claims in Excess of 20 (Small Entity)	10	11
1.17(a)	Extension—First Month	110	110
1.17(a)	Extension—First Month (Small Entity)	55	55
1.17(b)	Extension—Second Month	350	360
1.17(b)	Extension—Second Month (Small Entity)	175	180
1.17(c)	Extension—Third Month	810	840
1.17(c)	Extension—Third Month (Small Entity)	405	420
1.17(d)	Extension—Fourth Month	1,280	1,320
1.17(d)	Extension—Fourth Month (Small Entity)	640	660
1.17(e)	Notice of Appeal	260	270
1.17(e)	Notice of Appeal (Small Entity)	130	135
1.17(f)	Filing a Brief	260	270
1.17(f)	Filing a Brief (Small Entity)	130	135
1.17(g)	Request for Oral Hearing	220	230
1.17(g)	Request for Oral Hearing (Small Entity)	110	115
1.17(h)	Petition—Not All Inventors	130	130
1.17(h)	Petition—Correction of Inventorship	130	130
1.17(h)	Petition—Decision on Questions	130	130
1.17(h)	Petition—Suspend Rules	130	130
1.17(h)	Petition—Expedited License	130	130
1.17(h)	Petition—Scope of License	130	130
1.17(h)	Petition—Retroactive License	130	130
1.17(h)	Petition—Refusing Maintenance Fee	130	130
1.17(h)	Petition—Refusing Maintenance Fee—Expired Patent	130	130
1.17(h)	Petition—Interference	130	130
1.17(h)	Petition—Reconsider Interference	130	130
1.17(h)	Petition—Late Filing of Interference	130	130
1.20(b)	Petition—Correction of Inventorship	130	130
1.17(h)	Petition—Refusal to Publish SIR	130	130
1.17(i)(1)	Petition—For Assignment	130	130
1.17(i)(1)	Petition—For Application	130	130
1.17(i)(1)	Petition—Late Priority Papers	130	130
1.17(i)(1)	Petition—Suspend Action	130	130
1.17(i)(1)	Petition—Divisional Reissues to Issue Separately	130	130
1.17(i)(1)	Petition—For Interference Agreement	130	130
1.17(i)(1)	Petition—Amendment After Issue	130	130
1.17(i)(1)	Petition—Withdrawal After Issue	130	130
1.17(i)(1)	Petition—Defer Issue	130	130
1.17(i)(1)	Petition—Issue to Assignee	130	130
1.17(i)(1)	Petition—Accord a Filing date Under § 1.53	130	130
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.60	130	130
1.17(i)(1)	Petition—Accord a Filing Date Under § 1.62	130	130
1.17(i)(2)	Petition—Make Application Special	1,310	1,350
1.17(j)	Petition—Public Use Proceeding	130	130
1.17(k)	Non-English Specification	110	110
1.17(l)	Petition—Revive Abandoned Appl	55	55
1.17(l)	Petition—Revive Abandoned Appl (Small Entity)	1,130	1,170
1.17(m)	Petition—Revive Unintentionally Abandoned Appl	565	585
1.17(m)	Petition—Revive Unintent Abandoned Appl (Small Entity)	790	820
1.17(n)	SIR—Prior to Examiner's Action	1,580	1,640
1.17(o)	SIR—After Examiner's Action		200
1.17(p)	Submission of an Information Disclosure Statement (§ 1.97)		

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Dec. 1991	Oct. 1992
1.18(a)	Issue Fee	1,130	1,170
1.18(a)	Issue Fee (Small Entity)	565	585
1.18(b)	Design Issue Fee	400	410
1.18(b)	Design Issue Fee (Small Entity)	200	205
1.18(c)	Plant Issue Fee	570	590
1.18(c)	Plant Issue Fee (Small Entity)	285	295
1.19(a)(1)(i)	Copy of Patent	3	3
1.19(a)(1)(ii)	Patent Copy—Expedited Local Service	6	6
1.19(a)(1)(iii)	Patent Copy Ordered Via EOS—Expedited Service	25	25
1.19(a)(2)	Plant Patent Copy	12	12
1.19(a)(3)(i)	Copy of Utility Patent or SIR in Color	24	24
1.19(b)(1)(i)	Certified Copy of Patent Application as Filed	12	12
1.19(b)(1)(ii)	Certified Copy of Patent Application as Filed, Expedited	24	24
1.19(b)(2)	Cert or Uncert Copy of Patent-Related File Wrapper/Contents	150	150
1.19(b)(3)	Cert of Uncert. Copies of Office Records, per Document	25	25
1.19(b)(4)	For Assignment Records, Abstract of Title and Certification	20	25
1.19(c)	Library Service	50	50
1.19(d)	List of Patents in Subclass	3	3
1.19(e)	Uncertified Statement-Status of Maintenance Fee Payment	10	10
1.19(f)	Copy of Non-U.S. Patent Document	12	25
1.19(g)	Comparing and Certifying Copies, Per Document, Per Copy	25	25
1.19(h)	Duplicate or Corrected Filing Receipt	20	25
1.20(a)	Certificate of Correction	70	100
1.20(c)	Reexamination	2,180	2,250
1.20(d)	Statutory Disclaimer	110	110
1.20(d)	Statutory Disclaimer (Small Entity)	55	55
1.20(e)	Maintenance Fee—3.5 Years	900	930
1.20(e)	Maintenance Fee—3.5 Years (Small Entity)	450	465
1.20(f)	Maintenance Fee—7.5 Years	1,810	1,870
1.20(f)	Maintenance Fee—7.5 Years (Small Entity)	905	935
1.20(g)	Maintenance Fee—11.5 Years	2,730	2,820
1.20(g)	Maintenance Fee—11.5 Years (Small Entity)	1,365	1,410
1.20(h)	Surcharge—Maintenance Fee—6 Months	130	130
1.20(h)	Surcharge—Maintenance Fee—6 Months (Small Entity)	65	65
1.20(i)	Surcharge—Maintenance After Expiration	600	620
1.20(j)	Extension of Term of Patent	1,000	1,000
1.21(a)(1)	Admission to Examination	290	300
1.21(a)(2)	Registration to Practice	100	100
1.21(a)(3)	Reinstatement to Practice	15	15
1.21(a)(4)	Certificate of Good Standing	10	10
1.21(a)(4)	Certificate of Good Standing, Suitable Framing	20	20
1.21(a)(5)	Review of Decision of Director, OED	120	130
1.21(a)(6)	Regrading of Examination	120	130
1.21(b)(1)	Establish Deposit Account	10	10
1.21(b)(2)	Service Charge Below Minimum Balance	20	25
1.21(b)(3)	Service Charge Below Minimum Balance	20	25
1.21(c)	Filing a Disclosure Document	10	10
1.21(d)	Box Rental	50	50
1.21(e)	International Type Search Report	35	40
1.21(g)	Self-Service Copy Charge	.25	.25
1.21(h)	Recording Patent Property	40	40
1.21(i)	Publication in the OG	20	25
1.21(j)	Labor Charges for Services	30	30
1.21(k)	Unspecified Other Services	(1)	(1)
1.21(l)	Retaining Abandoned Application	130	130
1.21(m)	Processing Returned Checks	50	50
1.21(n)	Handling Fee—Incomplete Application	130	130
1.21(o)	Terminal Use APS-TEXT	40	40
1.21(p)	Terminal Use APS-TEXT by the PTDL's		70
1.24	Coupons for Patent Copies	3	3
1.296	Handling Fee—Withdrawal SIR	130	130
1.445(a)(1)	Transmittal Fee	190	200
1.445(a)(2)(i)	PCT Search Fee—No U.S. Application	600	620
1.445(a)(2)(ii)	PCT Search Fee—Prior U.S. Application	400	410
1.445(a)(3)	Supplemental Search	160	170
1.482(a)(1)(i)	Preliminary Exam Fee	440	450
1.482(a)(1)(ii)	Preliminary Exam Fee	650	670
1.482(a)(2)(i)	Additional Invention	140	140
1.482(a)(2)(ii)	Additional Invention	220	230
1.492(a)(1)	Preliminary Examining Authority	620	640
1.492(a)(1)	Preliminary Examining Authority (Small Entity)	310	320
1.492(a)(2)	Searching Authority	690	710
1.492(a)(2)	Searching Authority (Small Entity)	345	355
1.492(a)(3)	PTO Not ISA nor IPEA	920	950
1.492(a)(3)	PTO Not ISA nor IPEA (Small Entity)	460	475
1.492(a)(4)	Claims—IPEA	90	90
1.492(a)(4)	Claims—IPEA (Small Entity)	45	45
1.492(a)(5)	Filing with EPO/JPO Search Report	800	830
1.492(a)(5)	Filing with EPO/JPO Search Report (Small Entity)	400	415
1.492(b)	Claims—Extra Individual (Over 3)	72	74

APPENDIX A.—COMPARISON OF EXISTING AND REVISED FEE AMOUNTS—Continued

37 CFR Sec.	Description	Dec. 1991	Oct. 1992
1.492(b)	Claims—Extra Individual (Over 3) (Small Entity)	36	37
1.492(c)	Claims—Extra Total (Over 20)	20	22
1.492(c)	Claims—Extra Total (Over 20) (Small Entity)	10	11
1.492(d)	Claims—Multiple Dependents	220	230
1.492(d)	Claims—Multiple Dependents (Small Entity)	110	115
1.492(e)	Surcharge	130	130
1.492(e)	Surcharge (Small Entity)	65	65
1.492(f)	English Translation—After 20 Months	130	130
2.6(a)(1)	Application for Registration, Per Class	200	210
2.6(a)(2)	Amendment to Allege Use, Per Class	100	100
2.6(a)(3)	Statement of Use, Per Class	100	100
2.6(a)(4)	Extension for Filing Statement of Use, Per Class	100	100
2.6(a)(5)	Application for Renewal, Per Class	300	300
2.6(a)(6)	Surcharge for late Renewal, Per Class	100	100
2.6(a)(7)	Publication of Mark Under § 12(c), Per Class	100	100
2.6(a)(8)	Issuing New Certificate of Registration	100	100
2.6(a)(9)	Certificate of Correction of Registrant's Error	100	100
2.6(a)(10)	Filing Disclaimer to Registration	100	100
2.6(a)(11)	Filing Amendment to Registration	100	100
2.6(a)(12)	Filing Affidavit Under Section 8, Per Class	100	100
2.6(a)(13)	Filing Affidavit Under Section 15, Per Class	100	100
2.6(a)(14)	Filing Affidavit Under Section 8 & 15, Per Class	200	200
2.6(a)(15)	Petitions to the Commissioner	100	100
2.6(a)(16)	Petition to Cancel, Per Class	200	200
2.6(a)(17)	Notice of Opposition, Per Class	200	200
2.6(a)(18)	Ex Parte Appeal to the TTAB, Per Class	100	100
2.6(a)(19)	Dividing an Application, Per New Application Created		100
2.6(b)(1)(i)	Copy of Registered Mark	3	3
2.6(b)(1)(ii)	Copy of Registered Mark, Expedited	6	6
2.6(b)(1)(iii)	Copy of Registered Mark Ordered Via EOS, Expedited Svc	25	25
2.6(b)(2)(i)	Certified Copy of TM Application as Filed	12	12
2.6(b)(2)(ii)	Certified Copy of TM Application as Filed, Expedited	24	24
2.8(b)(3)	Cert. or Uncert. Copy of TM-Related File Wrapper/Contents	50	50
2.6(b)(4)(i)	Cert. Copy of Registered Mark, Title or Status	10	10
2.6(b)(4)(ii)	Cert. Copy of Registered Mark, Title or Status—Expedited	20	20
2.6(b)(5)	Certified or Uncertified Copy of TM Records	25	25
2.2(b)(6)	Recording Trademark Property, Per Mark, Per Document	40	40
2.6(b)(6)	For Second and Subsequent Marks in Same Document	25	25
2.6(b)(7)	For Assignment Records, Abstracts of Title and Cert	20	25
2.6(b)(8)	Terminal Use T-Search	40	40
2.6(b)(9)	Self-Service Copy Charge	25	25
2.6(b)(10)	Labor Charges for Services	30	30
2.6(b)(11)	Unspecified Other Services	(1)	(1)
1.19(g)	Comparing and Certifying Copies, per Document, per Copy	25	25
1.24	Trademark Coupons	3	3

(1) Actual cost.

[FR Doc. 92-19968 Filed 8-20-92; 8:45 am]
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Friday
August 21, 1992

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 1992–93 migratory bird hunting season. These early seasons may open prior to October 1, 1992. The effects of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.106, and § 20.109 of title 50 CFR part 20.

EFFECTIVE DATE: This rule takes effect on August 21, 1992.

ADDRESSES: Season selections from States and Territories are to be mailed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received are available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1992

On May 8, 1992, the Service published for public comment in the **Federal Register** (57 FR 19865) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 25, 1992, a public hearing was held in Washington, DC, as announced in the May 8 and June 19 **Federal Register** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 10, 1992, the Service published in the **Federal Register** (57 FR 30884) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1992–93 season. This rulemaking is the fourth in the series, and establishes final frameworks for early-season migratory bird hunting regulations for the 1992–93 season.

Review of Public Comments and the Service's Response

As of July 23, 1992, the Service had received 60 written comments; 28 of these specifically addressed early-season issues. Early-season comments are summarized and discussed in the order used in the May 8, 1992, **Federal Register** (57 FR 19865). Only the numbered items pertaining to early seasons for which comments were received are included.

General

Council Recommendations: The Central Flyway Council recommended no changes in frameworks for those regulations not addressed by other Central Flyway Council recommendations.

Public Hearing Comments: Mr. Charles Kelley, representing the Southeastern Association of Fish and Wildlife Agencies, supported the regulations proposals for the 1992–1993 hunting seasons and commended the Service for its efforts to present information for public comment.

Ms. Susan Hagood, representing the Humane Society of the United States, suggested that all seasons for migratory birds should open at noon during midweek to reduce the high harvest associated with Saturday openings.

Mr. Wayne Pacelle, representing the Fund for Animals, provided comment on the regulatory process and suggested that the Service attempt to involve the public to a greater extent. He stated his organization opposed the killing of wildlife through sport hunting and expressed the view that the interests of non-hunters were not considered to the same extent as those of hunters.

Written Comments: The Illinois Department of Conservation requested an extension of the comment period until August 5, 1992. They claimed that the current comment period does not allow their staff sufficient time to conduct a careful review of the proposed rule. Furthermore, the current comment period does not provide an opportunity for a coordinated response by the Giant-Canada-Goose Committee of the Mississippi Flyway Technical Section.

The Wisconsin Department of Natural Resources also requested that the Service consider a longer comment period for the 1992 early hunting seasons to allow Flyway Councils to comment on the proposed modifications to the criteria for special Canada goose seasons.

The Humane Society of the United States requested that all seasons open at noon during midweek, so as to reduce the large kill associated with traditional Saturday openings.

A local organization from Massachusetts requested that shooting hours remain at one-half hour before sunrise to sunset for all species.

Eleven individuals expressed support for the migratory bird hunting regulations and encouraged the Service to continue providing this recreational opportunity while properly managing the resource.

Service Response: The Service appreciates the support it has received for its efforts to properly manage the migratory bird resource. In regard to opening dates, the Service focuses its concern on harvest impacts upon populations and, therefore, does not specify which day of the week any season should open; that choice is left to the States. The Service notes that even if framework dates opened mid-week, States would still have the option of delaying opening until a weekend. These frameworks provide for shooting hours of one-half hour before sunrise until sunset for all species and seasons unless specified otherwise.

In regard to the regulations-development process, the current process has been designed to provide the general public with the maximum opportunity possible to comment on the annual migratory bird hunting regulations. It also allows the Service to work cooperatively with state wildlife agencies and other organizations in the management of this resource. Regulations governing public participation, announcement of meetings, and maintenance of a public file are found in 50 CFR part 20 subpart N—"Special Procedures for Issuance of Annual Hunting Regulations." A brief synopsis of the regulations-development process was given in the September 26, 1991, **Federal Register** (at 56 FR 49114). The Service believes that the current process is open and receptive to all public comments. There is ample opportunity for the public to provide comments regarding the development of regulations. However, the Service welcomes suggested improvements to the process.

In regard to the request for an extension of the comment period, the Service believes this is not warranted. The early-season comment period, which opened about 2 months later than normal, still provided ample time for comment during the 73 days between May 8 and July 20. In addition, specific Service proposals were announced on June 25 which allowed sufficient time for States and Councils to respond. The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed early-season rulemaking was published on July 10, 1992, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that at the close of the comment period time would be of the essence. That is, if there was a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions. The major concern regarding the early-season comment period appears to be the Special Canada goose season criteria. Because these criteria govern both early and late seasons, as stated in the Service response to comments under item *4. Canada Geese*, comments will be considered through August 30.

1. Ducks

iii. September Teal Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended interim criteria for reinstatement of the September teal seasons as follows:

"Breeding population indices were viewed as the most appropriate basis for development of interim guidelines for reinstatement of September teal seasons. Final guidelines for September teal seasons should include a range of criteria, including breeding populations, habitat conditions, harvest rates, and development of an approach to evaluate teal harvest south of the United States."

"In the interim (1992), reinstatement of September teal seasons is recommended if the breeding population is sustained at 1991 levels (3.779 +/− 0.245 million). This criterion includes consideration of the precision of population surveys for blue-winged teal. Thus, a breeding population of 3.5 million breeding blue-winged teal would be considered sufficient to recommend reinstatement of the season for 1992. The Service and the Mississippi Flyway Council should jointly develop final implementation criteria (in conjunction with development of stabilized regulations strategies) by March 1994."

The Central Flyway Council recommended reinstatement of the September teal season when the 3-year running average of the breeding population index equals or exceeds 3 million. The season length and daily bag limits should be the same as used in past years—a 9-day season with a 4-bird daily bag limit. The September teal season should be reviewed if the 3-year running average of the breeding population index falls below 3 million.

Public Hearing Comments: Ms. Susan Hagood, representing the Humane Society of the United States, advocated a closure on the hunting of all waterfowl species. She also opposed special seasons in an effort to further reduce hunter participation. Mr. Wayne Pacelle, representing the Fund for Animals, was distressed over the proposed reopening of the September teal season.

Written Comments: The Lower-Region Regulations Committee of the Mississippi Flyway Council and the Central Flyway's Consultants supported a change in shooting hours to accommodate an evaluation of the impact of presunrise shooting hours on nontarget duck species.

The Minnesota Department of Natural Resources stated that allowing nonproduction states an extra 9-day teal season, if the opening framework date for the regular duck season is delayed later than the Saturday nearest October 1, is unacceptable. It aggravates inequities and seriously contradicts the Service's responsibility to provide a fair distribution of hunting opportunity. They further commented that States selecting the September teal season should fund research to evaluate blue-winged teal harvest in South America and additional teal banding to ensure adequate sample size and distribution of banding. They also remarked that a reward-band study would be appropriate to determine reporting rates for teal. They further stated that the bag limit during special duck seasons should not exceed the bag limit during regular seasons.

The Wisconsin Department of Natural Resources supported the concept of September teal seasons to allow additional harvest of this species. However, they feel that breeding populations must recover to meet the population objective established in the North American Waterfowl Management Plan before reinstatement of these seasons. They believe the Service should address whether the harvest of adult female blue-winged teal during the mid-1980's was within acceptable levels. They also indicated that the harvest of blue-winged teal south of the U.S. border may be substantial, and thus harvest rates may be considerably higher than currently indicated. These considerations should be researched further and management based on previous assumptions should be restrained until sufficient data have been collected and analyzed. They also indicated that not only has important breeding habitat been subject to recent drought, but migrational and wintering habitats are also being destroyed. Important habitats are being degraded and destroyed south of the U.S. and certain pesticides prohibited in the U.S. continue to be used in some other countries.

They later expressed their concern about the inequitable hunting opportunity and suggested curtailing the number of days offered during the regular season for States participating in September teal seasons or offering additional days during the regular season to those States not participating in September teal seasons. They are also concerned about the lack of any significant evaluation of incidental kill of nontarget species.

The Iowa Department of Natural Resources stated that the special teal season, if reinstated, should be more conservative with fewer days and a bag limit that does not exceed the bag limit in effect during the regular duck season. They felt surprised that this special season can be held without a more thorough, statistically sound, evaluation of its impacts on blue-winged teal and other duck populations. Reinstating the September teal season in 1992, only 2 years after the lowest breeding population on record, is not a good idea. But liberalizing duck hunting regulations in some States, by reinstating the teal season, without offering some equitable liberalization of duck hunting regulations for northern States, is unacceptable. Northern States have spent too much time and money trying to enhance and preserve waterfowl breeding habitat to be ignored in this proposal. Iowa should be allowed to have a September duck season if the teal season is granted to other States. Northern states must be offered an equitable liberalization of duck hunting regulations, or States that choose to have a special teal season should subtract teal-season days from the length of their regular duck season.

The North American Wildlife Foundation opposed the reopening of September teal seasons. They stated that a breeding population of 3 million blue-winged teal should not be sufficient to reopen the season, that the Canadian Wildlife Service and northern States should be consulted prior to this action, and that they were concerned about the message reinstatement of these seasons would carry to waterfowlers in regards to population status of ducks.

The Humane Society of the United States requested that all special seasons be discontinued.

A local organization and four individuals in Texas and an individual from Illinois requested that the Service reinstate the September teal season. A petition with 1080 signatures was received from a local organization in Louisiana also requesting that the Service reinstate the September teal season.

A local organization from Massachusetts requested a special September teal season if the numbers remain equal to last year or improve.

An individual from Wisconsin opposed reinstatement of the September teal season. He suggested that a 1-year increase in breeding populations was not significant, that harvests south of the U.S. by indigenous peoples was excessive, that the special season will result in additive mortality that will exceed recruitment, and that populations should increase by at least 50 percent before any special season is initiated.

Service Response: In cooperation with the Flyway Councils, the Service developed the following interim criteria which will govern these September teal seasons until a stabilized-regulations harvest strategy for duck hunting is completed:

1. A September teal season will be permitted annually whenever the breeding population exceeds 3.3 million blue-winged teal.

2. Seasons of up to 9 days in length may be held during September 1-30 in non-production States of the Mississippi and Central Flyways, with a daily bag limit not to exceed 4 teal.

3. If breeding populations of blue-winged teal fall below 3.3 million or if band-recovery rates exceed those with which we have experience, a more conservative harvest strategy will be considered. A decision to suspend the special season or to enact restrictions during the regular season will be based on all available information related to population status, harvests, and habitat.

The 1992 breeding population index for blue-winged teal of 4.33 million exceeds the level established in the above interim criteria. Therefore, the frameworks contained in this document provide for reinstatement of the 9-day special September teal season with a 4-teal bag limit. This season is offered to nonproduction States in the Mississippi and Central Flyways, which are listed in a later portion of this document. Shooting hours will begin at one-half hour before sunrise to allow States, that may wish, the opportunity to compare the impact of presunrise and postsunrise shooting on nontarget duck species.

With respect to future evaluations, the Service will continue to support efforts to estimate harvests south of the U.S. and will promote blue-winged teal banding as part of the mallard preseason banding program in order to improve the ability to estimate survival and recovery rates. Recently completed harvest surveys and an appraisal of possible band-reporting rates south of the U.S. have helped allay fears of excessive harvests beyond U.S. borders. Moreover, band-recovery data suggest that a greater proportion of the harvest south of the U.S. is comprised of adult males when compared to harvests in the U.S. and Canada. Finally, the Service strongly urges the Flyway Councils to document changes in wintering-habitat-management practices that may result from reinstatement of the September teal season.

iv. Experimental September Teal/Wood Duck Seasons

Council Recommendations: The Atlantic Flyway Council recommended that Florida be allowed to hold a September teal season (in conjunction with their experimental September wood duck season) when and if September teal seasons are restored in the Central and Mississippi Flyways.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that if the full September teal season is reinstated, teal be incorporated into the daily bag limit in Kentucky's and Tennessee's September wood duck season and that the bag limit be 4 birds, including no more than 2 wood ducks. If an abbreviated September teal season is offered, the Committee recommended a daily bag limit of 2 teal or wood ducks, singly or in the aggregate.

Public Hearing Comments: Ms. Susan Hagood, representing the Humane Society of the United States, advocated a closure on the hunting of all waterfowl species. She also opposed special seasons in an effort to further reduce hunter participation.

Written Comments: The Humane Society of the United States requested that all special seasons be discontinued.

Service Response: Due to the increase in the breeding population index of blue-winged teal and the subsequent reinstatement of the September teal seasons in 1992, the Service will allow the harvest of teal in the former experimental September wood duck seasons. These seasons are now experimental September teal/wood duck seasons. The frameworks contained in this document allow shooting hours in Florida, Kentucky, and Tennessee to begin at one-half hour before sunrise and extend until sunset during the 1992 seasons. This will allow Kentucky and Tennessee the opportunity to compare the impacts of presunrise and postsunrise shooting on nontarget duck species.

3. Sea Ducks

Public Hearing Comments: Ms. Susan Hagood, representing the Humane Society of the United States, opposed the liberal limits on sea ducks.

Written Comments: A local organization from Massachusetts requested continuation of the special sea duck season in the Atlantic Flyway with no change in frameworks. The Humane Society of the United States expressed opposition to the sea duck season in the Atlantic Flyway.

Service Response: The Service continues to be concerned about the potential increase in harvest pressure on these species. Additional data are needed to assist management efforts for these species and a management plan is needed to guide future management efforts. The Service asks that the Flyway Councils make substantial progress to address these concerns prior to the regulations cycle for the 1993–94 seasons. Without more complete information on population status and harvest, the Service may be forced to restrict this season.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that new experimental seasons for resident Canada geese be initiated in 1992 in Erie, Cattaraugus, and Chautaugua Counties of New York and Bucks, Lehigh, Montgomery, Crawford, Erie, Butler, and Mercer Counties of Pennsylvania.

The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service closely monitor existing regular and special seasons for impacts on the Southern James Bay Population of Canada geese. They further recommended that the Service fully analyze data from existing seasons before expanding seasons that might cause cumulative harvest on this population of geese. They emphasized that special seasons should adhere to the criteria established by the Service.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service approve operational status of the seasons in the Upper-Peninsula and Northern-Lower-Peninsula portions of Michigan which were part of the original 1986–89 experimental season and that the Service approve a 3-year expanded experiment in the eastern Upper Peninsula.

The Committee further recommended that the experimental seasons in the Fergus Falls/Alexandria and Southwest Border goose zones in Minnesota be extended pending completion of the final reports. Preliminary final reports indicate that these seasons meet the criteria outlined in the Memorandum of Agreement between Minnesota and the Service; however, Minnesota is unable to complete the final reports until 1991 band-recovery and parts-collection-survey data are obtained. The final reports will be completed prior to the March 1993 Council meeting.

The Committee also recommended that the Service establish a 3-year experimental special season in Boone, Callaway, Cole, and Howard Counties of central Missouri. They recommended that the season be 9–15 days long and be held prior to October 15. The daily bag limit would be 3 geese. All geese harvested would be checked at mandatory check stations and a special permit would be required for hunters to participate.

The Pacific Flyway Council recommended no change for the Oregon-Washington season except that the hunt area in Oregon be enlarged to include Youngs Bay, its tributaries south and east of the city of Astoria, and adjacent agricultural lands. Also, the Council recommended no change for September Canada goose hunting seasons in Utah and Wyoming.

Public Hearing Comments: Ms. Susan Hagood, representing the Humane Society of the United States, advocated a closure on the hunting of all waterfowl species and opposed special seasons in an effort to further reduce hunter participation.

Written Comments: The Michigan Department of Natural Resources supported the recommendation by the Upper-Region Regulations Committee of the Mississippi Flyway Council. Michigan indicated that they meet or are very close to the criteria established by the Service for the proportion of migrants in the harvest. They further indicated that they intend to obtain larger sample sizes and intensively monitor the harvest for all special goose seasons.

The Illinois Department of Conservation suggested that existing regulations do not fairly or adequately address the issue of impacts of early Canada goose seasons on nontarget populations exceeding standard population objectives.

The Wisconsin Department of Natural Resources supported the proposed regulations for their State. However, they remain concerned about the special season criteria and believe that some modifications are appropriate.

The Minnesota Department of Natural Resources requested that the Service provide assistance to States experiencing increasing problems with breeding Canada goose flocks. They noted that the Service obtains harvest and hunter-activity information for September teal seasons, yet States are required to obtain this information for seasons designed to control nuisance Canada geese.

The Oregon Department of Fish and Wildlife supported the expansion of the experimental September Canada goose season along the lower Columbia River to include Youngs Bay and adjacent upland areas.

The North American Wildlife Foundation suggested that States experiencing nuisance goose problems, such as Illinois, should not be required to meet criteria for nonmigrant composition of the harvest.

A local organization from Massachusetts requested continuation of the special seasons in that State.

Service Response: The frameworks contained herein provide for new experimental seasons in both New York and Pennsylvania and continuation of the season in Massachusetts.

In regard to the recommendation that the Service analyze data from existing seasons, the Service regularly monitors hunting seasons and analyzes data gathered during these seasons to assess impacts on all Canada goose populations. All special Canada goose seasons are required to meet the established criteria.

Data gathered to date during the experimental period for the existing special seasons in the above-referenced areas of Michigan are still not sufficient to permit an adequate evaluation of the seasons relative to the special-season criteria. The existing seasons in these areas are being extended on an experimental basis to allow the State an opportunity to obtain the required sample sizes. Until an assessment can be made about whether the existing season in the southern portion of the Upper Peninsula meets the special-season criteria, the Service believes that the special season in the Upper Peninsula should not be expanded.

The Service concurs with the recommendations to extend the experimental seasons in the two Minnesota zones and to initiate a 3-year experimental special season in Missouri.

In regard to Oregon, the Service concurs with this expanded zone because the addition is small; and it is used by the same flock of geese now being hunted in this special season.

The Service proposed to revise the criteria in the June 19, 1992, **Federal Register** (at 57 FR 27674) and again in the July 10, 1992, **Federal Register** (at 57 FR 30887) and plans to finalize these modified criteria, after consideration of public comment, in the late-season final frameworks document scheduled for publication in late September. Because these criteria address both early and late special seasons, comments will be accepted until August 30, 1992.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended no changes in the Mid-continent sandhill crane hunting frameworks. The management plan currently is being revised. The Council believes that frameworks should not be modified prior to the revision and that future frameworks should abide by the revised management plan.

The Central and Pacific Flyway Councils recommended that an experimental season be initiated in Montana for the Rocky Mountain Population of sandhill cranes. All hunts would follow guidelines as outlined in the revised *Pacific and Central Flyway Management Plan for Rocky Mountain Greater Sandhill Cranes.*

Public Hearing Comments: Mr. Wayne Pacelle, representing the Fund for Animals, expressed the opinion that the shooting of cranes was unethical.

Service Response: These frameworks provide for initiation of a season in Montana consistent with the revised management plan.

12. Rails

Written Comments: The Wisconsin Department of Natural Resources supported the proposed framework dates, season lengths, and bag limits.

Service Response: The Service appreciates the support for the frameworks contained in this document.

13. Snipe

Written Comments: The Wisconsin Department of Natural Resources supported the proposed framework dates, season lengths, and bag limits.

Service Response: The Service appreciates the support for the frameworks contained in this document.

14. Woodcock

Written Comments: The Wisconsin Department of Natural Resources supported the proposed framework dates, season lengths, and bag limits.

The Humane Society of the United States requested that woodcock seasons in the Eastern Region be closed or reduced.

Service Response: The Service appreciates the support for the frameworks contained in this document. Significant regulatory restrictions were enacted in the Eastern Region in 1985. Available evidence suggests that woodcock populations may be stabilizing in both regions. The Service does not believe that further restrictions are warranted at this time.

15. Band-tailed Pigeons

Council Recommendations: The Pacific Flyway Council recommended no change in frameworks for either the Coastal (Pacific Coast) Population or the Interior (Four-Corners) Population of band-tailed pigeons. They further indicated that formulation of a Interior Population management plan and revision of the Coastal Population plan will provide accessible background information, and provide a format for collection of population-status information in the future.

Public Hearing Comments: Ms. Susan Hagood, representing the Humane Society of the United States, and Mr. Wayne Pacelle, representing the Fund for Animals, both supported the hunting-season closure on the Coastal Population of band-tailed pigeons, but Mr. Pacelle also opposed the hunting season on the Interior Population, citing lack of population-status and harvest data.

Written Comments: The California Department of Fish and Game requested that the season for the Coastal Population of band-tailed pigeons remain open. They suggested that the Service consider alternatives short of complete closure to maintain the information-gathering networks established to gain insight into the actual causes for the population decline in pigeons. These efforts include the Migratory Bird Harvest Information Program; reproductive and disease information from hunter-killed birds; and band-recovery information from marked samples. They indicated that, because of restrictive regulations, the breeding-population information for the past 6 years does not reflect the long-term downward trend, and that hunting is not limiting pigeon populations.

The Oregon Department of Fish and Wildlife urged the Service to reverse the decision to close the hunting season for the Coastal Population of band-tailed pigeons. Based on surveys conducted in Oregon, populations have stabilized since the 1970's and the counts in 1991 showed a 23 percent increase over 1990. The harvest survey, based on a mandatory hunter-permit program initiated in 1990, estimated a harvest of 2,200 pigeons that year. It is believed that a harvest of that magnitude would not adversely impact the resource. Recent activities by the Pacific Flyway Council have put increased emphasis on band-tailed pigeon management. Analysis of past banding data, collection of wings from harvested birds to obtain recruitment data, development of disease bulletins, and initiation of a research study by Oregon State University to learn more about the species, are some of the activities undertaken in the past year. Considering this emphasis, the season closure is deemed to be premature. If a total closure is warranted, it should be fully discussed by the Pacific Flyway Study Committee before such action is taken.

The Colorado Department of Natural Resources suggested that the Service did not provide sufficient notice of its intent to require a permit for some States to be able to implement such a requirement this year. They indicated that they currently obtain information from statewide harvest surveys. They stated that they plan to cooperate in the development of a management plan for the Interior Population and that they will participate in a cooperative management effort, including a permit requirement, beginning in 1993.

The Humane Society of the United States supported the Service's decision to close the season on the Coastal Population of band-tailed pigeons and urged the Service to also close the season on the Interior Population.

An individual in Washington requested that the Service close the hunting season for band-tailed pigeons in Washington, Oregon, and California. He further indicated that widespread habitat alteration and use of biocides have adversely affected pigeon populations and that biological information necessary to evaluate status of the population is not available.

Service Response: The Service recognizes that the database used to manage band-tailed pigeon populations needs to be expanded and improved. Nevertheless, available information indicates that the Coastal Population has been declining since 1972, and apparently at an increased rate since 1985. The series of regulation restrictions, first initiated in 1975, have not been completely effective in reversing the population decline. In the July 15, 1991, **Federal Register** (56 FR 32264), the Service stated that it continued to be concerned about the decline of the Coastal Population of band-tailed pigeons and encouraged cooperative investigations into factors causing the decline. The Service believes that immediate further reduction in harvest is appropriate at this time. The Coastal Population band-tailed pigeon season will be reduced to 9 days with a daily bag limit of 2 birds. In addition, the Service recognizes the need for better information; in 1992, California, Washington, Oregon, and Nevada must either issue mandatory permits to band-tailed pigeon hunters to provide a framework which can be used to obtain harvest estimates or the States will obtain similar information through State surveys. These States will be required to acquire and report harvest and hunter-participation information to the Service by June 1 of the following year.

With this decision, the Service does not wish to imply that hunting necessarily caused the decline. However, the low reproductive potential of this species is such that any form of mortality is difficult to counterbalance when populations are at low levels.

There is little evidence that the Interior Population of band-tailed pigeons is experiencing a decline similar to that of the Coastal Population. A closure of the bandtail season in Utah, Colorado, Arizona, and New Mexico is not considered necessary at this time. Nevertheless, the Service recognizes the need for better information; in 1992, the four States will either issue mandatory permits to band-tailed pigeon hunters to provide a framework which can be used to obtain harvest estimates or the States will obtain similar information through State surveys. These States will be required to acquire and report harvest and hunter-participation information to the Service by June 1 of the following year.

16. Mourning Doves

Council Recommendations: The Central Flyway Council recommended that the portion of the South Zone in Texas from Del Rio to Fort Hancock be transferred to the Central Zone, and further that the same area be discontinued as part of the Special White-winged Dove Area. Transferring this area to the Central Zone would permit the hunting of both white-winged doves and mourning doves to begin in this area on September 1, rather than limiting the hunt prior to September 20 to weekends during the special season.

The Central Flyway Council recommendation regarding the number of white-winged doves allowed in the aggregate daily bag limit affects mourning doves as well. See item **17. White-winged and White-tipped Doves.**

The Pacific Flyway Council recommended no change in frameworks. They remarked that significant restrictions in mourning dove frameworks were implemented in 1987. Since that time, the Western Management Unit call-count index has shown a modest increase.

Written Comments: The Georgia Department of Natural Resources requested a modification to the boundary separating the mourning dove zones.

The Humane Society of the United States requested that the mourning dove seasons in the Western Management Unit be closed or, at a minimum, bag limits and season lengths should be substantially reduced due to the long-term decline in this population.

Service Response: These frameworks implement the requested zone changes in Texas and Georgia. In response to declining populations, restrictive hunting regulations were implemented by the Service in 1987 in the Western Management Unit. Since that time, there has been a significant increasing trend in the population. The Service does not believe that further restrictions are warranted at this time. However, the Service will continue to closely monitor this population and recommends that affected States contribute to ongoing and planned studies designed to address factors causing the lowered population status.

17. White-winged and White-tipped Doves

Council Recommendations: The Central Flyway Council recommended that the special white-winged dove season be increased from 2 days to 4 days in September if the Lower Rio Grande Valley whitewing population increased in 1992 to over 350,000 breeding birds.

The Council further recommended that the number of white-winged doves permitted in the 12-dove aggregate daily bag limit during the Texas mourning dove season in Cameron, Hidalgo, Starr, and Willacy Counties in the Lower Rio Grande Valley be increased from 2 to 6 to match the statewide daily bag limit.

Finally, the Central Flyway Council recommendation regarding realignment of zone boundaries affects white-winged doves. See item **16. Mourning Doves.**

The Pacific Flyway Council recommended no change in frameworks. They noted that since the implementation of restrictive regulations in 1987, white-winged dove populations appear to be stable or slightly increasing in areas where data are collected.

Service Response: These frameworks provide for a 4-day special season in Texas. However, the Service believes that whitewing populations have not sufficiently recovered from the freeze during the winter of 1989 and from several years of drought to warrant allowing the number of whitewings permitted in the aggregate bag limit to increase from 2 to 6 in Cameron, Hidalgo, Starr, and Willacy Counties.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended no change in frameworks for Alaska, including continuation of the tundra swan season.

Public Hearing Comments: Ms. Susan Hagood, representing the Humane Society of the United States, stated that the proposed opening framework date for Alaska was too early, allowing young birds to be taken, and requested that the opening be delayed by 2 weeks. Mr. Wayne Pacelle, representing the Fund for Animals, echoed the view of the Humane Society of the United States that seasons in Alaska opened too early and were too long.

Written Comments: The Humane Society of the United States requested that opening dates in Alaska be delayed by 2 weeks.

Service Response: Young birds have been and always will be a component of the harvest and delaying seasons in Alaska by 2 weeks will not reduce the component of young in the harvest. Phenologically, conditions in portions of Alaska, especially at higher altitudes and latitudes, are such that by mid-September in some years, ice has formed and most migratory birds are in migration. In such places, young birds have either matured sufficiently to migrate or they perish. There is no biological merit in delaying seasons in Alaska until mid-September. While most of Alaska's seasons are as long as permitted by treaty and limits are generally more liberal than elsewhere, migratory bird hunters in Alaska spend fewer days afield and bag fewer birds than their counterparts in the conterminous States. In general, climatic conditions and opportunity are more important in Alaska in governing the magnitude of harvest than is season length.

21. Virgin Islands

The frameworks contained in this document do not provide for an open season on scaly-naped pigeons in the Virgin Islands during the 1992–93 season.

22. Falconry

Written Comments: The Minnesota Department of Natural Resources requested that the Service increase the number of segments allowed during the extended falconry seasons from 3 to 4 segments or offer another option that would allow States with 3-way-split regular seasons to select extended falconry dates in a manner so that, when viewed in conjunction with their regular-season days, the combined seasons will appear continuous.

The Wisconsin Department of Natural Resources suggested that the number of splits available during extended falconry seasons should be unlimited, because the taking of migratory game birds by falconry is insignificant. They further question the policy of selecting extended falconry dates separately from those occurring during the regular seasons.

Service Response: The Service recognizes the small magnitude of harvest by falconers and attempts to provide the maximum amount of opportunity possible. However, the Service believes that the provisions for extended falconry seasons allow sufficient flexibility for season selections. The frameworks contained herein provide for seasons up to 107 days in length (in combination with other seasons). The extended falconry seasons may be selected between September 1 and March 10 and may be split into a maximum of 3 segments. Allowing a greater number of split seasons would needlessly complicate the regulations. Extended-season dates are selected separately from those occurring in conjunction with the firearm seasons in an effort to avoid errors. This effort has been successful and will be continued.

Each extended falconry season may be divided into a maximum of three

segments. However, in an effort to accommodate attempts by States to publish simplified regulations, additional segments will be allowed when the combination of extended falconry seasons, regular firearm seasons, and special firearm seasons would span a single, continuous set of dates. States will be responsible for documenting that these seasons span a single, continuous set of dates and must indicate the number of days contained in each extended falconry segment, regular firearm segment, and special firearm segment to ensure that the total number of hunting days will not exceed 107 days. This documentation must be presented at the time States make their annual season selections.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)", filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

On July 2, 1992, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the May 8 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

In the May 8 **Federal Register**, the Service stated that it planned to publish its Memorandum of Law for the 1992–93 migratory bird hunting regulations with its first final rulemaking.

Memorandum of Law. Section 4 of the Executive Order 12291 requires that certain determinations be made before any final major rule may be approved. Section 4(a) specifies that the regulation must be clearly within the authority of law and consistent with congressional intent, and that a memorandum of law be provided to support that determination. Also, the agency must state that the factual conclusions upon which the law is based have substantial support in the agency record and that full attention has been given to public comments in general, and to comments of persons directly affected by the rule in particular.

The development of the annual migratory bird hunting regulations is provided under section 3 of the Migratory Bird Treaty Act (Act) of July 3, 1918, as amended (16 U.S.C. 703–712). The Act authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported. Such regulations for hunting have been promulgated annually since 1918. They appear in 50 CFR part 20, subpart K. Congressional support for the development of these rules and ancillary activities involved in their development are reflected in the Service's budget. Among these activities are biological surveys, hunter-activity and harvest surveys, research investigations, law enforcement, and administrative costs associated with the development and publication of the proposed and final rules. Many other Service activities, such as the acquisition and management of habitats for migratory birds, indirectly assist in maintaining the migratory bird resource at levels which allow reasonable sport hunting harvest.

In developing its annual hunting rules for 1992–93, the Service has published three proposed rules for public comment and conducted two public hearings to facilitate public input into the rulemaking process. Four additional rulemakings are included in the remaining schedule for establishing the annual hunting regulations for 1992–93. Numerous public comments were summarized in **Federal Registers** listed in the preamble of this document. Many of these comments originated from affected State conservation agencies, while others were submitted by the affected public. Comments in support of the Service's initial or supplementary regulatory proposals are noted. Comments which do not support proposed Service action have been adequately addressed. Additional public comments are invited and will be addressed in subsequent **Federal Register** documents. The complete administrative record, including copies of public comments, is available for inspection at the Office of Migratory Bird Management.

Consequently, the Department has determined that it has fulfilled requirements of section 4 of Executive Order 12291 and the Migratory Bird Treaty Act in developing the 1992–93 migratory bird hunting regulations which are adequately supported by the Service's records.

Authorship

The primary authors of this rule are Robert J. Blohm and William 0. Vogel, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting regulations must, by its nature, operate under severe time

constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed early-season rulemaking was published on July 10, 1992, the Service established what it believed was the longest period possible for public comment. In doing this, the Service recognized that, at the close of the comment period, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that the States would have insufficient time to select season dates and limits; to communicate those selections to the Service; and to establish and publicize the necessary regulations and procedures that implement their decisions.

Therefore, the Service, under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (16 U.S.C. 703–712), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State and Territory conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from these officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, for the 1992–93 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1992–93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703–712), and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a—d and e—j).

Dated: July 31, 1992.

Mike Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1992–93 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved the following frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select seasons for certain migratory game birds.

General

Dates: All outside dates noted below are inclusive.Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area and Zone Descriptions: Geographic descriptions are contained in a later portion of this document.

Mourning Doves

Outside Dates: Between September 1, 1992, and January 15, 1993, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Monagement Unit (All States east of the Mississippi River, and Louisiana)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana, and Mississippi may commence no earlier than September 20, 1992. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit (Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming)

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1, 1992 and January 25, 1993; and for the South Zone between September 20, 1992, and January 25, 1993.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 6 of which may be white-winged doves and no more than 2 of which may be white-tipped doves, with the following exceptions:

1. During the special white-winged dove season in the South Zone, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

2. In Cameron, Hidalgo, Starr, and Willacy Counties, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-winged doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington)

Hunting Seasons and Daily Bag Limits:

Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days which may be split between two periods, September 1–15, 1992, and November 1, 1992– January 15, 1993. In Arizona, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged Doves

Hunting Seasons and Daily Bag Limits:

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada counties of Clark and Nye, and in the California counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which not more than 6 may be white-winged doves and not more than 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties where the daily bag limit may include no more than 2 white-winged doves and 2 white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19, 1992. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Band-tailed Pigeons

Pacific Coast States: California, Oregon, Washington, and Nevada.

Outside Dates: Between September 15, 1992, and January 1, 1993.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Permit Requirement: The appropriate State agency must issue permits or, at a minimum, obtain harvest and hunter-participation data, and report on harvest and hunter participation to the Service by June 1 of the following year.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 7, 1992.

Four-Corners States: Arizona, Colorado, New Mexico, and Utah.

Outside Dates: Between September 1 and November 30, 1992.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Permit Requirement: The appropriate State agency must issue permits or, at a minimum, obtain harvest and hunter-participation data, and report on harvest and hunter participation to the Service by June 1 of the following year.

Areas: These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1, 1992.

Rails

Outside Dates: States included herein may select seasons between September 1, 1992, and January 20, 1993, on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into two segments.

Clapper and King Rails

Daily Bag Limits:

In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species.

In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits: In the Atlantic, Mississippi, and Central Flyways and the Pacific- Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

American Woodcock

Outside Dates: States in the Atlantic Flyway may select hunting seasons between October 1, 1992, and January 31, 1993. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1992, and January 31, 1993.

Hunting Seasons and Daily Bag Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with a daily bag limit of 3; in the Central and Mississippi Flyways, seasons may not exceed 65 days, with a daily bag limit of 5. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates: Between September 1, 1992, and February 28, 1993. Except, in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1, 1992, and January 20, 1993, in the Atlantic, Mississippi, and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into two segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1, 1992, and February 28, 1993.

Hunting Seasons: Seasons not to exceed 58 days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming.

Seasons not to exceed 93 days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit in his possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside dates: Between September 1, 1992, and January 31, 1993.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and not to exceed 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils. All hunts except those in Arizona, New Mexico (Middle Rio Grande Valley), and Wyoming will be experimental.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15, 1992, and January 20, 1993.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed species.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may select, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate of these species. In all other areas, sea ducks may be taken only during the regular open season for ducks and they must be included in the regular duck-season daily bag and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States.

September Teal Season

Outside Dates: Between September 1 and September 30, 1992, an open season on all species of teal may be selected by Alabama, Arkansas, Colorado (Central Flyway portion only), Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico (Central Flyway portion only), Ohio, Oklahoma, Tennessee, and Texas in areas delineated by State regulations.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days, with a daily bag limit of 4 teal.

Special September Teal/Wood Duck Seasons

Florida: An experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Tennessee and Kentucky: In lieu of a special September teal season, an experimental 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Special Early Canada Goose Seasons

Atlantic Flyway

Hunting Seasons: Experimental Canada goose seasons of up to 10 consecutive days may be selected by Massachusetts, New York, North Carolina, and Pennsylvania. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside dates: Between September 1 and September 10, 1992.

Daily bag limits: Not to exceed 5 Canada geese.

Mississippi Flyway

Hunting Seasons: Canada goose seasons of up to 10 consecutive days may be selected by Indiana, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The seasons in the following States and portions of States are experimental: Indiana; Missouri; Ohio; Wisconsin; in Michigan, that portion of the Upper Peninsula previously open to the hunting of Canada geese in early September and that portion of the Lower Peninsula including Oceana, Newaygo, Mecosta, Isabella, Midland, and Bay Counties and all counties north thereof; in Minnesota, the Fergus Falls/Alexandria and Southwest Border Zones. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Outside dates: Between September 1 and September 10, 1992, except in Missouri, where the outside dates are October 1 to October 15, 1992.

Daily bag limits: Not to exceed 5 Canada geese.

Pacific Flyway

Wyoming may select a September season on Canada geese subject to the following conditions:

1. The season must be concurrent with the September portion of the sandhill crane season.
2. Hunting will be by State permit.
3. No more than 150 permits, in total, may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

Utah may select an experimental special season on Canada geese in Cache County subject to the following conditions:

1. Not to exceed 4 days during September 1-15, 1992.
2. Hunting will be by State permit.
3. Not more than 200 permits may be issued.
4. Each permittee may take no more than 2 Canada geese per season.

Oregon and Washington may select an experimental season on Canada geese subject to the following conditions:

1. The seasons in Oregon and Washington must be concurrent.
2. Not to exceed 10 days during September 1-10, 1992.
3. Hunting will be by State permit.
4. Each permittee may take no more than 2 Canada geese per day.

Alaska

Outside Dates: Between September 1, 1992, and January 26, 1993.

Hunting seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, cackling Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits:

Ducks— Except as noted, a basic daily bag limit of 5 and a possession limit of 15 ducks. Daily bag and possession limits in the North Zone are 8 and 24, and in the Gulf Coast Zone they are 6 and 18, respectively. The

basic limits may include no more than 2 pintails daily and 6 in possession, and 2 canvasbacks daily and 6 in possession.

In addition to the basic limit, there is a daily bag limit of 15 and a possession limit of 30 scoter, common and king eiders, oldsquaw, harlequin, and common and red-breasted mergansers, singly or in the aggregate of these species.

Geese—A basic daily bag limit of 6, of which not more than 4 may be greater white-fronted or Canada geese, singly or in the aggregate of these species.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—A daily bag limit of 3.

Tundra swans—In Game Management Unit 22, an open season for tundra swans may be selected subject to the following conditions:

1. No more than 300 permits may be issued, authorizing each permittee to take 1 tundra swan.

2. The season must be concurrent with other migratory bird seasons.

3. The appropriate State agency must issue permits, obtain harvest and hunter-participation data, and report the results of this hunt to the Service by June 1 of the following year.

Hawaii

Outside Dates: Between September 1, 1992, and January 15, 1993.

Hunting Seasons: Not more than 60 days (70 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1, 1992, and January 15, 1993.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves and scaly-naped pigeons in the aggregate, no more than 5 of which may be scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1, 1992, and January 31, 1993.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 3.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 6.

Closures: The season is closed on the ruddy duck *(Oxyura jamaicensis)*; the White-cheeked pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *(Dendrocygna arborea)*; fulvous whistling (tree) duck *(Dendrocygna bicolor)*, and the masked duck *(Oxyura dominica)*, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule *(Porphyrula martinica)*, common coot *(Fulica americana)*, and Caribbean coot *(Fulica caribaea)*.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1, 1992, and January 15, 1993.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain birds: Zenaida dove *(Zenaida aurita)* -- mountain dove; Bridled quail dove *(Geotrygon mystacea)* -- Barbary dove, partridge; Common Ground dove *(Columba passerina)* -- stone dove, tobacco dove, rola, tortolita; Scaly-naped pigeon *(Columba squamosa)* -- red-necked pigeon, scaled pigeon.

Ducks:

Outside Dates: Between December 1, 1992, and January 31, 1993.

Hunting Seasons: Not more than 55 consecutive days may be selected for hunting ducks.

Daily Bag Limits: Not to exceed 3 ducks.

Closures: The season is closed on the ruddy duck *(Oxyura jamaicensis)*; the White-cheeked pintail *(Anas bahamensis)*; West Indian whistling (tree) duck *(Dendrocygna arborea)*; fulvous whistling (tree) duck *(Dendrocygna bicolor)*; and the masked duck *(Oxyura dominica)*.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR part 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1, 1992 and March 10, 1993.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR part 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Zone Descriptions

Central Flyway portion of the following States consists of:

Colorado: That area lying east of the Continental Divide.

Montana: That area lying east of Hill, Chouteau, Cascade, Meagher, and Park Counties.

New Mexico: That area lying east of the Continental Divide but outside the Jicarilla Apache Indian Reservation.

Wyoming: That area lying east of the Continental Divide.

The remaining portions of these States are in the Pacific Flyway.

Mourning and White-winged Doves:

Alabama

South Zone: Mobile, Baldwin, Escambia, Covington, Coffee, Geneva, Dale, Houston, and Henry Counties.

North Zone: Remainder of the State.

California:

White-winged Dove Open Areas: Imperial, Riverside, and San Bernardino Counties.

Georgia

Zone 1: That portion of the State lying north of US Highway 280 or east of US Interstate 75.

Zone 2: That portion of the State lying south of US Highway 280 and west of US Interstate 75.

Louisiana

North Zone: That portion of the State north of Interstate Highway 1 0 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone: The remainder of the State.

Mississippi

North Zone: That portion of the State lying north of U.S. Highway 84.

South Zone: The remainder of the State.

Nevada

White-winged Dove Open Areas: Clark and Nye Counties.

Texas

North Zone: That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone: That portion of the State south and west of a line beginning at the International Bridge south of Del Rio proceeding east on U.S. 90 to San Antonio; then east on Interstate 10 to Orange, Texas.

Special White-winged Dove Area in the South Zone: That portion of the State south and west of a line beginning at the International Bridge south of Del Rio proceeding east on U.S. 90 to Uvalde; south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southwest along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions: Cameron, Hidalgo, Starr, and Willacy Counties.

Central: That portion of the State lying between the North and South Zones.

Band-tailed Pigeons:

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock:

New Jersey

North Zone: That portion of the State north of State Highway 70.

South Zone: The remainder of the State.

Special September Goose Seasons:

Massachusetts

Western Zone—That portion of the State west of a line extending from the Vermont line at Interstate 91, south to Route 9, west on Route 9 to Route 10, south on Route 10 to Route 202, south on Route 202 to the Connecticut line.

New York

St. Lawrence Area—All or portions of St. Lawrence County; see State hunting regulations for area descriptions.

Erie Area—Counties of Erie, Cattaraugus, and Chautauqua.

North Carolina

Early-season Canada Goose Area—That portion of the State west of Interstate 95; see State hunting regulations for area descriptions.

Pennsylvania

Northwestern Early-Season Goose Area—Counties of Butler, Crawford, Erie, and Mercer.

Southeastern Early-Season Goose Area—Counties of Bucks, Lehigh, and Montgomery.

Indiana

Early-season Canada Goose Area—Adams, Allen, DeKalb, Elkhart, Huntington, Kosciusko, LaGrange, Noble, Steuben, Wabash, Wells, and Whitley Counties.

Michigan

Lower Peninsula—All areas except Huron, Saginaw, and Tuscola Counties and the Allegan State Game Area in Allegan County.

Upper Peninsula—That area bounded by a line beginning at the Michigan/Wisconsin border in Green Bay and extending north through the center of Little Bay De Noc and the center of White Fish River to U.S. Highway 2, east along U.S. Highway 2 to Interstate Highway 75, north along Interstate 75 to State Highway 28, west along State Highway 28 to State Highway 221, then north along State Highway 221 to Brimley, then north to the Michigan/Ontario border.

Minnesota

Twin Cities Metropolitan Zone—All or portions of Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties.

Fergus Falls/Alexandria Zone—All or portions of Pope, Douglas, Otter Tail, Wilkin, and Grant Counties.

Southwest Border Zone—All or portions of Martin and Jackson Counties.

Missouri

Central Missouri Zone: All or portions of Boone, Callaway, Cole, and Howard Counties.

Ohio

Early-season Canada Goose Area—Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.

Wisconsin

Early Goose Hunt Subzone—That area bounded by a line beginning at Lake Michigan in Port Washington and extending west along Highway 33 to Highway 175, south along Highway 175 to Highway 83, south along Highway 83 to Highway 36, southwest along Highway 36 to Highway 120, south along Highway 120 to Highway 12, then southeast along Highway 12 to the Illinois State line.

Oregon

Early-season Canada Goose Area—Those portions of Multnomah, Columbia, and Clatsop Counties (excluding Sauvie Island Wildlife Area) within the following boundary: Beginning at Portland, Oregon, at the south end of the Interstate 5 bridge; south on I-5 to Highway 30; west on Highway 30 to the town of Svensen; south from Svensen to Youngs River Falls; due west from Youngs River Falls to the Pacific Ocean coastline; north along the coastline to a point where Clatsop Spit and the South Jetty meet; due north to the Oregon-Washington border; east and south along the Oregon-Washington border to the I-5 bridge; south on the I-5 bridge to the point of beginning.

Utah

Early-season Canada Goose Area—Cache County

Washington

Early-season Canada Goose Area—Starting in Vancouver at the Interstate Highway 5 bridge north on I-5 to Kelso, west on State Highway 4 from Kelso to State Highway 401, south and west on

State Highway 401 to the Astoria-Megler bridge, from the Astoria-Megler bridge along the Washington-Oregon State line to the point of beginning.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Sandhill Cranes:

Central Flyway

Colorado

Regular-Season Open Area—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, and Rio Grande Counties and the portion of Saguache County east of the Continental Divide) and North Park (Jackson County).

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Hunt Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Hatch-Deming Zone—Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area—That portion of the State west of I-35.

Texas

Regular-Season Open Area—That portion of the State west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary.

North Dakota

Regular-Season Open Area—That portion of the State west of U.S. Highway 281.

South Dakota

Regular-Season Open Area—Statewide.

Montana

Regular-Season Open Area—The Central Flyway portion of the State except that area south of I-90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State Regulations.

Utah

Special-Season Area—Cache and Rich Counties.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska:

North Zone: State Game Management Units 11-13 and 17-26.

Gulf Coast Zone: State Game Management Units 5-7, 9, 14-16, and 10—Unimak Island only.

Southeast Zone: State Game Management Units 1-4.

Pribilof and Aleutian Islands Zone: State Game Management Unit 10—except Unimak Island.

Kodiak Zone: State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the Municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra municipality boundary to the point of beginning.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) is proposing to establish the 1992-93 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: The comment period for proposed late-season frameworks will end on August 31, 1992.

ADDRESSES: Comments should be mailed to Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240, (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1992

On May 8, 1992, the Service published for public comment in the **Federal Register** (57 FR 19665) a proposal to amend 50 CFR part 20, with comment periods ending as noted earlier. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks.

As announced in the May 8 and June 19 **Federal Registers**, a public hearing was held in Washington, DC, on June 25, 1992, to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early reasons. On July 10, 1992, the Service published in the **Federal Register** (57 FR 30884) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1992-93 season.

On August 6, 1992, a public hearing was held in Washington, DC, as announced in the **Federal Registers** of May 8 (57 FR 19865), June 19 (57 FR 27672), and July 10 (57 FR 30884), 1992, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. The Service later published a fourth document containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1992-93.

This document is the fifth in the series of proposed, supplemental, and final rulemaking documents for migratory bird hunting regulations and deals specifically with supplemental proposed frameworks for the 1992-93 late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1992-93 season. All pertinent comments on the May 8 proposals received through August 6, 1992, have been considered in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES**. Final regulatory frameworks for late-season migratory game bird hunting are scheduled for publication in the **Federal Register** on or about September 20, 1992.

Special Assessment: Use of Framework Dates as a Regulatory Tool

Since 1947, framework dates (i.e., the earliest opening and latest closing dates that a State may select for duck hunting) have been part of the Federal annual regulations set for each flyway and they have been used in concert with season length, bag limits, and other regulations to manage the harvests of ducks. In 1990, the Central and Mississippi Flyway Councils recommended that the Service forego annual adjustments of framework dates for purposes of managing duck harvest. Based on these recommendations, the Service elected to review the role of framework dates as a management tool.

The Service recently completed a report on duck hunting framework dates that has been reviewed by the Flyway Councils. The independent effects of framework-date changes on the harvest rates of ducks were impossible to isolate due to the confounding effects of changes in season length, bag limits, and other regulations. However, circumstantial evidence suggested that framework opening dates could be manipulated to affect the age, sex, and species composition of the harvest and that closing dates could be used to affect the age composition of the harvest. Adjustments to framework opening dates also could be used to manage the proportion of local and migrant ducks harvested. Therefore, the Service believes that the ability to manipulate framework dates annually is potentially useful for managing duck harvests.

Council Recommendations: In March, the Atlantic Flyway Council noted that framework opening dates may be useful for managing harvests of certain duck populations in the Atlantic Flyway. Under normal circumstances, the opening date in the Atlantic Flyway should be October 1. Framework closing dates should not be used as a tool for managing duck harvest and should be fixed indefinitely at no earlier than January 15 for the Atlantic Flyway.

In August, the Atlantic Flyway Council stated that they were opposed to the use of framework dates to regulate total duck harvest. They also believed that restrictions on framework dates that have been used in the Atlantic Flyway since 1968 may have benefited some eastern populations of waterfowl, but the need to further protect these populations has not been documented. They also noted that liberalizing framework dates while holding other regulations stable could increase our understanding of the effects of opening and closing dates.

In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that framework dates be fixed dates not subject to annual fluctuations and that these dates should be the Saturday nearest October 1 through January 20. They reaffirmed this position during their July meeting.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service not use framework dates to adjust harvest, but if framework dates are used, the Service should develop a well-designed study to clarify the various impacts of framework dates. The Committee had previously recommended that framework dates should be the Saturday nearest to October 1 and the Sunday nearest to January 20. They stated that impacts of framework-date manipulations cannot

be separated from other past regulatory changes and that the current framework application may not provide regulatory fairness throughout their flyway.

In March, the Central Flyway Council noted that the Service's review of framework dates has failed to provide evidence of measurable benefits from past use of framework dates to regulate harvests. The Council stated that the use of framework dates for harvest management is selective in its impact on northern and southern States. The Council believes that harvest management should focus on more equitable regulations, such as season length and daily bag limits. Framework dates should not be used to regulate annual harvests, but should be used to establish an appropriate biological framework for duck hunting.

In August, the Central Flyway Council stated that season length and bag limits should be the principal means of adjusting harvest and that framework dates should be used only under extraordinary circumstances. They disagreed with using fixed calendar dates for opening and closing duck seasons and recommend framework dates identical to those used during 1980–84. They also believe that framework dates need not necessarily be the same in all flyways and that opening and closing dates can be manipulated independently.

In March, the Pacific Flyway Council recommended that manipulation of framework dates should continue to be an option for regulating duck harvest. The Service should not eliminate any duck-harvest-management options, although the evaluation conducted by the Service to assess the impact of utilizing framework dates to regulate harvest was inconclusive.

In August, the Pacific Flyway Council recommended using the first Saturday in October through the second Sunday in January during periods of restrictive regulations. In periods of more liberal regulations, they recommended using the Saturday nearest October 1 through the Sunday nearest January 20. They preferred floating rather than fixed framework dates. They supported further evaluations of the effectiveness of framework dates as a regulatory tool.

Written Comments: The States of Arkansas, Colorado, Florida, Minnesota, Mississippi, North Carolina, North Dakota, South Dakota, and Texas opposed the use of framework dates as a tool to regulate total duck harvest. Colorado, Minnesota, Mississippi, North Carolina, North Dakota, and South Dakota believed that management of harvest rates of ducks should be accomplished principally by adjustments in season length and bag limits. South Dakota believed that framework dates should be standardized, while Arkansas, Florida, Massachusetts, and North Carolina believed that dates should generally be standardized, except that they may be manipulated to meet specific objectives or when populations are critically low. Florida, Maryland, and North Carolina believed that opening and closing dates should be treated as independent regulatory tools. Florida and Mississippi desired fixed calendar opening dates; while Arkansas, Colorado, Minnesota, North Dakota, and South Dakota desired floating opening-dates. Fixed calendar closing-dates were preferred by Arkansas, Florida, Minnesota, and Mississippi, while floating closing-dates were preferred by Colorado.

Massachusetts, Mississippi, and North Carolina preferred that the framework open on October 1, while Arkansas, Colorado, Minnesota, North Dakota, and South Dakota preferred the Saturday nearest October 1. Massachusetts and Florida preferred that the framework close on January 15; North Carolina desired a closing date no earlier than January 15; Colorado preferred that the framework close on the Sunday nearest January 20; and Arkansas, Minnesota, Mississippi, the Mississippi Legislature, a U.S. Senator from Mississippi, a U.S. Congressman from Mississippi, and a Mississippi State Senator preferred that the framework close on January 20.

Texas, Minnesota, North Dakota, and Colorado noted that using framework dates to manage harvest can be unfair to northern and southern States. Colorado believed that framework dates can be a useful tool for managing the species composition of the harvest. Colorado and Maryland thought that delays in opening dates can result in greater harvest on certain species because of the loss of a buffering effect from early-migrating species. Massachusetts and Minnesota believed that delayed opening-dates can reduce the harvest of some local populations of ducks, while Nebraska questioned this interpretation. Florida, Massachusetts, Maryland, and Nebraska thought that framework-date adjustments may geographically displace, but not reduce harvest.

Proposed Service Policy: The Service will retain the option of using framework dates as a regulatory tool. Guidelines for the use of framework dates will be developed in cooperation with all flyways and other interested parties. Consideration will be given to: (1) the relative importance of framework dates, bag limits, season lengths, and other regulations for managing duck harvests; (2) the advantages and disadvantages of using fixed-calendar versus floating dates; (3) allowing inter-flyway differences in framework dates for meeting specific harvest objectives; and (4) independently manipulating opening and closing dates to achieve specific harvest objectives.

Rationale: In the past, framework dates, bag limits, and season lengths have been adjusted concurrently, and these "packages" of regulations have been effective in managing the total harvest of ducks. Since framework dates have not been adjusted independently, their contribution to the effectiveness of a regulatory package is unknown. However, the degree to which the exclusion of framework dates would reduce the effectiveness of regulations in controlling duck harvests likewise is unknown. Thus, the Service believes that framework dates should continue as one of several regulations considered annually in managing duck harvests.

Presentations at Public Hearing

Service employees presented reports on the status of waterfowl. These reports are briefly reviewed as a matter of public information. The first three presentations are summaries of information contained in the "Status of Waterfowl and Fall Flight Forecast" report. The last presentation is a regulatory perspective of waterfowl harvests.

Dr. Robert Trost reported on geese and swans. The status of geese and swans was summarized by several different methods. Satellite imagery suggested that snow cover was more persistent and extensive this year than last year throughout most arctic and subarctic regions of Canada. Intensive surveys suggested that nesting phenology was from 1 to 3 weeks later than last year throughout most of the major breeding areas. For goose populations in Alaska and the western Canadian Arctic, nesting was delayed about 7 to 10 days, resulting in lower production than last year. However, most nesting areas in this region became snow-free in time for successful nesting to take place. In the eastern Canadian Arctic, to the north and east of a line running roughly from Cambridge Bay south and east to the Ungava Peninsula and including Southampton Island, nesting was delayed up to 3 weeks. Most goose populations nesting in this region likely had severely-reduced or no production this year. Nesting conditions in the lowlands surrounding Hudson Bay were similar to the western Canadian Arctic with reduced production forecast for all goose populations in this area. An exception was the most southerly nesting population, the Southern James Bay Population of Canada geese, which experienced fair production this year for the first time in the past several years. Most geese nesting at more southerly latitudes will experience average to good production this year. Most goose populations remain at or above population objectives and the poor production forecast for this year is not expected to seriously threaten the long-term status of any population. The Atlantic Population of Canada geese has experienced a long-term decline and this year's mid-winter index was the lowest index during the last 23 years. The status of this population is a matter of serious concern. The eastern and western tundra swan populations likely experienced average or below-average production this year, and no change in their population status is expected.

Dr. David Caithamer reported on habitat conditions and the status of duck populations as of May 1992. Dry conditions existed across the central and western portions of the prairie-pothole region and much of the western U.S. Upland nesting conditions were variable and may have limited nesting efforts in many regions. The total number of May ponds in Prairie Canada and the northcentral U.S. increased 13 percent from 1991, but remained 21 percent below the 1974–91 average. In the Arctic, northern and eastern Canada, and the northeastern U.S., spring weather conditions were delayed 1–2 weeks this year. Water levels were generally near normal across these areas, but some flooding was reported on interior river flats in Alaska and the Northwest Territories.

In 1992, the estimated breeding population of all ducks, excluding scoters, eiders, oldsquaws, and mergansers, was 29.4 million, an increase of 11 percent from the 1991 estimate of 26.6 million. Total duck numbers were at the highest level observed since 1986, but remained 6 percent below the long-term average. Total duck populations increased significantly in Saskatchewan, Manitoba, and Western Ontario, while they decreased in Alaska. The distribution of ducks within the surveyed area was similar to recent years, with about 50 percent found in Prairie Canada and the northcentral U.S. Of the 10 major species monitored each spring, only mallard, gadwall, and redhead exhibited a significant change in populations size from last year. The mallard population was 6.0 million, up 10 percent from that in 1991 and the highest estimate since 1986; however, mallard numbers remain 17 percent below the long-term average. Most of the improvements in the mallard population occurred in southern Saskatchewan, southern Manitoba, and Minnesota. Increases in these areas were probably related to increased pond numbers. The breeding population estimate for gadwall increased 28 percent to a record high of 2.0 million; this is 57 percent above its long-term average. Redhead numbers increased 34 percent this year to 596,000 and approximated their long-term average. Breeding populations of some prairie-nesting species continue to be depressed due to limitations in nesting cover, high predator populations, and extended drought in some regions, all of which have acted in concert to limit recruitment.

Dr. James Dubovsky reported that throughout much of the survey area, favorable weather during the first 2 weeks of June generally resulted in stable or improved habitat conditions. Moderate to heavy amounts of rain were recorded across the northcentral U.S. and Prairie Canada. The number of July ponds decreased 50 percent and 23 percent from 1991 in Prairie Canada and the northcentral U.S., respectively, and were 20 percent and 12 percent below their respective long-term averages. The brood index for the grasslands of Alberta was the lowest recorded, and several areas in westcentral Saskatchewan had the lowest water levels observed in the last 3 decades. In contrast, southern Manitoba and some areas in the eastern Dakotas had good to excellent brood-rearing cover. Production from western areas of the surveyed region was expected to be poor, whereas production in eastern areas should have been average to good. Overall, brood indices for Prairie Canada and the northcentral U.S. were 51 percent and 57 percent below long-term averages, respectively. Production of pintails was likely poor, and this will not help re-build that population to former levels. The mallard fall-flight index should be about 9 million birds, up 20 percent from 1991. The total duck fall flight was estimated at approximately 62 million birds, and is unchanged from last year. Fall flights for the Pacific, Central, and Mississippi Flyways should be similar to last year. The Atlantic Flyway fall flight was predicted to be slightly larger than in 1991.

Mr. Fred Johnson stated that since 1984, hunting regulations for ducks in the United States have been made increasingly restrictive in response to declining breeding populations. During the 1991–92 hunting season, regulations remained very restrictive.

In 1991, the number of waterfowl hunters and days spent afield were similar to the 1990 hunting season. Hunter success and total harvest of ducks also were unchanged. All of these statistics remain at levels substantially below the 1980–84 period when regulations were more liberal. The harvests of individual species during the 1991 hunting season also were very similar to 1990, but are approximately half of those observed during 1980–84.

Banding data suggest that harvest rates of mid-continent mallards have declined with increasingly restrictive regulations. The proportion of the adult fall population currently being harvested is well below 10 percent. Mallards tend to have the highest harvest rates of any duck species, suggesting that current harvest rates of all ducks are very low.

Harvest is believed to play a greater role in the dynamics of goose populations than is the case for most ducks. Because geese breed later and produce fewer young, goose populations are less able to support high harvest pressure. The harvest of Canada geese declined slightly last year, but remained near the record high, reflecting the generally good status of this species. Snow goose harvests have changed little in recent years, despite the fact that populations are at or near record-high levels. The harvest of white-fronted geese has also remained relatively stable over time. Brant harvests were similar to the 1990–91 season and are small compared to those of other geese.

Review of Comments Received at Public Hearing

Fourteen individuals presented statements at the August 6, 1992, public hearing. These comments are summarized below.

Mr. Paul Accomundo, representing a Massachusetts sportsmen's organization, asked the Service to consider giving compensatory days to those States of the Atlantic Flyway which prohibit Sunday hunting. He claimed that the Service has not responded well to this request in the past.

Mr. Lloyd H. Piasse, Jr., representing several local Massachusetts sportsmen's organizations, requested a 50-day, 4-bird brant season; a 70-day, 3-bird goose season; a 107-day sea duck season; a 35-day duck season; and compensatory days for those lost because of the prohibition in Massachusetts against hunting on Sundays.

Ms. Susan Hagood, representing The Humane Society of the United States, was opposed to duck hunting and called for more opportunities for the non-

hunting public to be involved in the regulatory process. She supported a closed season on pintails and on all other ducks in areas where pintails were present and thus could be incidentally taken. She admonished the Service for not collecting data on the status of ruddy ducks, bufflehead, goldeneyes, mergansers, and other duck species. She believed limits on sea ducks and coots are excessive in view of the lack of data on those species. Splits, zones, and other regulatory options that encourage hunting should not be used; rather, seasons should open Wednesday at noon so as to reduce the high harvests typically associated with Saturday openings.

Mr. Frank Anderson, President, Concerned Coastal Sportsmen's Association, spoke on behalf of several local sportsmen's groups. He requested a 50-day, 2-bird brant season, and a 35-day regular duck season. Because of the increases in teal populations and reinstatement of the September teal season elsewhere, he requested that the Service review special teal seasons for possible implementation in the Atlantic Flyway next year. He also requested that the Service evaluate the potential for a special scaup season. He sought compensatory days for those lost because of State-dictated Sunday closures. He acknowledged that this was a State problem, but noted that all four Flyway Councils supported compensation. He referred to a recently-completed report that detailed the economic benefits that would accrue from additional days should they be granted. He proposed that the additional days be given on an experimental basis; hunting would be by special permit so that the resulting hunter participation and harvest could be evaluated. He contended that use of calendar days in determining a season's length is unfair; whereas, using the number of days open to hunting would be fair.

Mr. Lloyd A. Jones, representing the Central Flyway Council and the North Dakota Game and Fish Department, pointed out that one of the primary considerations in adopting the flyway management concept was to allow for individual flyway considerations. He indicated that sex ratios on the breeding grounds important for the Central Flyway have become unbalanced due to recent years of low recruitment. Last year, mallard harvest in the Central Flyway was only 9 percent of the total U.S. harvest, while the Mississippi Flyway harvested 39 percent. For the Central Flyway, an extra drake mallard would not significantly increase mallard harvests. The Central Flyway mallard harvest reflected a 9 males:1 hen sex ratio, while the Mississippi Flyway had a 3:1 ratio. During 1980–89, duck-hunter numbers declined 33 percent in the Central Flyway but only 18 percent in the Mississippi Flyway. Seasonal harvest per hunter in the Central Flyway was 2 ducks fewer than for the remainder of the U.S. He concluded that there are surplus drake mallards in the Central Flyway and that an additional drake mallard would not impact an assessment of framework-date changes, and that production would possibly increase because of less strife during the breeding period. In addition, he indicated that the Central Flyway Council preferred the use of floating dates instead of the proposed fixed dates for opening and closing framework dates. Finally, he complimented the Service for accepting goose and swan season recommendations from the Central Flyway.

Mr. Gerald Woodmansee, representing several local sportsmen's organizations, urged retention of three duck zones in Massachusetts; shooting hours of from one-half hour before sunrise to sunset; a 50-day, 4-bird brant season; a 35-day duck season; a 70-day, 3-bird goose season; a 107-day sea duck season; a special teal season; a special scaup season; and compensatory days for those lost to Sunday closures. He requested that objective threshold levels be developed for each species and population. He urged changes in the Migratory Bird Treaty to allow the taking of crows, cormorants, and mergansers, in part because of the impact of some species on fisheries. He urged the Service to conduct better surveys that would reflect the status of waterfowl in the Northeast and report those data as is now done for other parts of the continent. He believes that there has been a proliferation of guides and hunters involved in sea-duck hunts, and suggested that guides should be licensed as a means of regulating this activity and obtaining better information.

Mr. John M. Anderson, representing the National Audubon Society, recommended continued use of conservative bag limits, season lengths, and other frameworks because duck populations remain at severely depressed levels and there was essentially no change in the fall flight forecast. He supported the use of restrictive framework dates when adjustments in season length and bag limits are unable to produce the desired effect in harvest, and a complete season closure is undesirable. However, whenever possible, framework dates should allow equitable harvest opportunity at the northern and southern extremes of the flyways. He supported current harvest restrictions on black ducks, pintails, redheads, and the closure on canvasbacks. The Central Flyway's request for an extra drake mallard appears unwarranted at this time. However, if mallard spring sex ratios highly favor males and if an additional drake mallard does not lead to increased hen mortality or increased mortality of other species, then it could be justified. In summary, he stated that recruitment for duck populations is the single most important determinant of population levels. Tinkering with annual hunting regulations will result in a minimal amount of recovery of North American duck populations. Full recovery will not occur until wetlands receive adequate protection, the North American Waterfowl Management Plan is fully funded, the U.S. Department of Agriculture's Conservation Reserve Program and Swampbuster Program are renewed, and normal precipitation patterns return to the prairies.

Mr. Richard Bishop, representing the Mississippi Flyway Council, requested that framework dates for duck hunting be set for multiple years. He recommended that framework dates not be used as a regulatory tool in duck harvest-management and that framework dates be the Saturday nearest October 1 to January 20. He further recommended that those States not eligible for a September teal season be allowed a 5-bird bag limit (2 of which must be teal) during the first 9 days of the regular duck season. He reiterated the Council's position opposing the release of hand-reared mallards and requested that released hand-reared mallards be considered the same as wild mallards in terms of regulations. He urged the Service to move forward with a review of the regulations governing the release and harvest of captive-reared mallards.

Mr. Brad Bales, representing the Pacific Flyway Council, stated the Pacific Flyway Council's recommendation calling for member States and the Service to adopt a moratorium against new captive-reared waterfowl release programs or the expansion of currently-existing programs in the flyway until all aspects of such programs have been reviewed by the public. The Council is concerned about biological impacts of captive-reared mallards on wild populations of waterfowl, including disease outbreaks, genetic crossing, and the confounding of various population surveys. He noted problems surrounding the interpretation of regulations pertaining to the use of live decoys and baiting when and wherever captive-reared mallards and wild ducks are in association. The Council requested that the Service initiate a prompt, all-encompassing review and publish a position paper on this issue prior to a meeting of its Pacific Flyway Study Committee in January 1993.

Mr. Roger Holmes, representing the Minnesota Department of Natural Resources, opposed the use of framework dates in duck harvest management and requested that framework dates be stabilized at the Saturday nearest October 1 to the Sunday nearest January 20. Harvests should be managed by the use of season length and bag limit only, with other special regulations employed when needed. He commended the Service for the 1992 regulations overall.

Mr. Wayne Pacelle, representing The Fund for Animals, provided comment on the regulatory process and the lack of sufficient opportunity for public involvement. He suggested that the Service do a better job inviting public participation since many diverse views on the issue of hunting are not being considered. He claimed that decisions to allow hunting were not made on a biological basis, but simply to permit killing for sport. Consequently, many animals are crippled and suffer. He opposed presunrise hunting, duck zones, and sea-duck seasons. He indicated that coots and mergansers should not be hunted because he doubted that these species are consumed by hunters. He expressed his view that hunting seasons are too liberal and that the Service goes out of its way to exploit many populations of birds. He called for a closed season on black ducks, in order to allow populations to recover to their former status. He accused the Service of subverting the potential listing of the pintail as a candidate species under the Endangered Species Act because this might impact the hunting of other migratory game birds. Further, he thought the hunting of tundra swans for sport was repulsive and could not be defended with biological reasons.

Mr. Tom Hauge, representing the Wisconsin Department of Natural Resources, commended the Office of Migratory Bird Management and the Service for their annual efforts to compile waterfowl status information. He stated that the proposed framework dates for duck seasons are satisfactory, but requested that consideration be given to changing to floating dates of the Saturday nearest October 1 to the Sunday nearest January 20. He also requested reinstatement of the teal bonus, and requested that the framework opening date for geese in all harvest areas for Mississippi Valley Population Canada geese be in September.

Mr. Jim Phillips, a writer residing in Maryland, discussed what he perceived to be failure in managing waterfowl by the so-called establishment. He said that nobody cares anymore about either the status or management of ducks. He said that his efforts to analyze banding data had been thwarted by the Service but that he and an associate would soon publish evidence that would contradict certain assumptions regarding harvest and survival rates of ducks. He recommended closing the season on all ducks for 2 years and, after population recovery, resume hunting with the annual harvest per hunter being limited through a tag system.

Mr. Richard Elden, representing the Michigan Department of Natural Resources, requested reinstatement of the teal bonus and floating framework opening and closing dates for duck seasons in the Mississippi Flyway. He further requested, on behalf of the Mississippi Valley Population Canada Goose Committee and the Upper-Region Regulations Committee of the Mississippi Flyway Council, that the framework opening date for goose seasons be September 26. He commended the Service for working with Michigan during the past year on Canada goose management problems in the State.

Flyway Council Recommendations and Written Comments

The preliminary proposed rulemaking which appeared in the **Federal Register** dated May 8, 1992 (57 FR 19865), opened the public comment period for late-season migratory game bird hunting regulations. As of August 6, 1992, the Service had received 78 comments; 57 of these specifically addressed late-season issues. These late-season comments are summarized below and numbered in the order used in the May 8 **Federal Register**. Only the numbered items pertaining to late seasons for which written comments were received are included.

General.

Council Recommendations: The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council and the Central Flyway Council concurred with the proposed regulations for waterfowl except where otherwise noted below.

Written Comments: Waterfowl hunting regulations were endorsed by 32 individuals.

1. Ducks.

A. General Harvest Strategy.

Written Comments: A local organization from Massachusetts requested a continuation of shooting hours from one-half hour before sunrise to sunset.

B. Framework Dates.

Council Recommendations: The Atlantic Flyway Council opposed continuation of restrictive framework dates for regular duck seasons in the Atlantic Flyway. They recommended that framework dates for 1992–93 be October 1 and January 20. The Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended framework dates of the Saturday nearest October 1 and January 20. The Central Flyway Council recommended floating framework dates of the Saturday nearest October 1 to the Sunday nearest January 20. The Pacific Flyway Council recommended using the Saturday nearest October 1 through the second Sunday in January.

Written Comments: A U.S. Senator from Mississippi requested a closing date of January 20. A U.S. Congressman from Minnesota suggested that the duck season should begin as early as possible, while another U.S. Congressman from that State suggested that the season should not be delayed beyond October 3 and that the Service should consider other methods of managing the harvest.

The Mississippi Department of Wildlife, Fisheries, and Parks requested that framework dates be set at October 1 through January 20; the Alabama Department of Conservation and Natural Resources requested October 1 through the Sunday nearest January 20; the Minnesota Department of Natural Resources suggested that the season should begin on the Saturday nearest October 1; the Wisconsin Department of Natural Resources requested the Saturday nearest October 1 through January 20; and the Montana Department of Fish, Wildlife, and Parks requested an opening date no later than October 3, citing the increased likelihood that cold temperatures could shorten a delayed season.

Requests for more liberal framework dates were also received from the Minnesota and Wisconsin Waterfowl Associations, a local sportsmen's association from Wisconsin, and 14 individuals.

A local organization from Massachusetts suggested that framework dates should be manipulated this year if necessary, rather than shortening the season length.

C. Season Lengths.

Council Recommendations: The Atlantic Flyway Council,the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council, and the Central Flyway Council recommended no change in season length.

The Pacific Flyway Council recommended extending the season length from 59 days to 60 days to accommodate States with split seasons that may wish to open seasons on Saturdays and close on Sundays.

Written Comments: A local organization from Massachusetts requested a 35-day season for ducks and 5 individuals from Massachusetts requested 40-day seasons.

The Wisconsin Waterfowl Association endorsed the 30-day duck season; an individual from Michigan stated that he was frustrated with the shorter, 30-day seasons; and an individual from Illinois requested a 35-day season.

An individual from Nebraska expressed displeasure with the 51-day season and requested a 72-day season. Two individuals from Texas requested a 55-day season.

D. Closed Season.

Written Comments: Two individuals from California indicated that they would not be opposed to closing the waterfowl seasons for a few years in order to restore healthy waterfowl populations.

E. Bag Limits.

Council Recommendations: The Atlantic Flyway Council recommended a 3-duck daily bag limit.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that States not offered a September teal season be offered a bag limit that includes a provision for 2 additional teal during the first 9 days of the regular duck season.

The Central Flyway Council recommended that the regular duck bag limit be increased from 3 to 4, that the mottled duck bag limit be increased from 1 to 3 for Texas, and that the bag limit for mallard drakes be increased from 2 to 3. The Council further recommended that a 25-point category be established in the point system for gadwall, green-winged teal, blue-winged teal, and northern shovelers.

The Pacific Flyway Council recommended no change in bag limits.

Written Comments: The Wisconsin Waterfowl Association endorsed the 3-duck limit. An individual from Michigan and another from Nebraska requested a larger bag limit.

An individual from Colorado requested a return to a 3-drake mallard limit, while an individual from South Carolina requested a bag limit of 3 for wood ducks.

A local organization from Wisconsin requested an additional 2 teal in the bag for the first 9 days of the season.

A local organization and two individuals from Texas requested continuation of the point system, but with revised point values that would allow additional harvest on species which are abundant.

F. Zones and Splits.

Council Recommendations: The Pacific Flyway Council recommended that the Southern San Joaquin Zone in California, established on an emergency basis in 1991 due to drought, be retained during the 1992–93 season.

Written Comments: A local organization from Massachusetts requested that the zoning concept should be continued as currently established. An individual from New Jersey requested that split seasons be discontinued.

G. Special/Species Management.

i. Canvasback Harvest Management.

In March, the Atlantic Flyway Council recommended that the Service develop an interim strategy for canvasback harvests to be used until the establishment of stabilized-regulations guidelines. This interim strategy should be based on current biological data, including information that indicates the east/west delineation of the canvasback population is no longer warranted. The Council stated that this interim strategy should be equitable among the four flyways.

In August, the Atlantic Flyway Council recommended that the Atlantic Flyway be allowed to initiate a season on canvasbacks when the continental breeding population index exceeds 450,000 (3-year running average) and the breeding habitat in the prairie-pothole portion of the U.S. and Canada exceeds 3 million ponds. They further recommended that this season continue until the revised breeding population index falls below a 3-year running average of 400,000. In the Atlantic Flyway, regulations under a limited season would allow one canvasback under the conventional bag. The Council also recommended that all four flyways be given the opportunity to open a season on canvasbacks during the 1992–93 season.

In August, the Upper-Region and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended no change for canvasbacks during the 1992–93 season.

In March, the Central Flyway Council recommended that a season be initiated when the continental breeding population index exceeds 450,000 (3-year average) and the pond index exceeds 3 million. This season would continue until the continental breeding population index falls below 400,000 (3-year average). The Council stated that banding data indicated that the canvasback population is not comprised of two distinct subpopulations and that all flyways should be given an opportunity to conduct a season. The Council recommended that this interim strategy should be used until stabilized regulations becomes operational.

In August, the Central Flyway Council recommended that a canvasback season for drakes be offered and that the season on female canvasback should remain closed.

In March, the Pacific Flyway Council recommended that the Service continue to manage canvasback harvest by subunits. They strongly believe that management actions are most effective when they recognize biological differences among and within populations. Although Western and Eastern canvasback populations are not completely distinct, biological differences do exist that should be recognized in management design. The Council specifically recommended that the quality of the midwinter survey be improved with respect to canvasbacks in the western United States, that the aggregate canvasback/redhead bag limit should be maintained, that the Service evaluate the cost of trapping and banding required to better determine distribution and derivation of canvasback harvests, and that harvest strategies be developed that distinguish between western and eastern populations, but remain sensitive to population overlap.

In August, the Pacific Flyway Council recommended continuation of a 2-duck aggregate bag limit of canvasbacks and redheads for their Flyway.

Note: In the May 8 Federal Register, the Service indicated that more work is needed to identify an appropriate harvest strategy before considering nationwide open seasons, because of the canvasback's need for protection when populations reach low levels. Consequently, the Service requests that the Flyway Councils continue to work with the Service to develop appropriate long-term harvest strategies for canvasbacks. As an interim strategy during the 1992 regulations-development process, the Service will continue to use existing criteria, including eastern and western population thresholds, for determining seasons.

ii. Pintail Harvest Management.

Council Recommendations: In March, the Central Flyway Council recommended that the Service maintain the current harvest regulations unless a significant decline occurs in the breeding population index. If such a decline should occur, coordination should be initiated between the Service and the flyways to develop options for conservation of the pintail. The Council recognized the low population status of the pintail but indicated that sport harvest was not the cause of the decline, there is no biological justification for closing the pintail season, and a closed season for pintails would complicate regulations and hamper habitat-management efforts.

In March, the Pacific Flyway Council recommended that harvest-management options short of season closures should be pursued. Total season closure seems inappropriate because of the lack of evidence that demonstrates population levels have been or are now being affected by harvest. Closure also may negatively impact support for ongoing habitat-enhancement efforts.

In August, all Flyway Councils recommended that there be no change in regulations for pintails during the 1992–93 seasons.

Written Comments: An individual from Michigan urged the Service to take serious action in light of the low population status of pintails.

iii. Other Species/Special Seasons.

Council Recommendations: The Pacific Flyway Council requested that the Service provide harvest-management guidelines for the 1993–94 season that would allow additional harvest opportunity on duck species that are near or above historic high levels (e.g., gadwall, shoveler, green-winged teal).

Written Comments: A local organization from Massachusetts requested a special scaup season.

3. Mergansers.

Council Recommendations: The Atlantic and Central Flyway Councils and both regulations committees of the Mississippi Flyway Council recommended that there be no change in regulations for mergansers during the 1992–93 season.

4. Canada Geese.

Council Recommendations: In March, the Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service closely monitor existing regular and special seasons for the impacts on the Southern James Bay Population of Canada geese. They further recommend that the Service fully analyze data from existing seasons before expanding seasons that might cause excessive cumulative harvest on this population of geese. They emphasized that special seasons should adhere to the criteria established by the Service.

A. Special Seasons.

The Service is concerned about the protection of nontarget Canada goose populations during special seasons, and continues to believe that most Canada goose harvest-management objectives can be addressed through the regular Canada goose hunting-season frameworks in accordance with flyway management plans. However, the Service recognizes the need for special seasons in certain circumstances to control local breeding and/or nuisance populations of Canada geese. As indicated in the June 19, 1992, Federal Register (57 FR 27672), the Service has become aware of the need to modify the special-season criteria previously published in the September 26, 1991, Federal Register (56 FR 49104). The proposed modified criteria are:

Criteria for Special Canada Goose Seasons

1. States may hold special Canada goose seasons, in addition to their regular seasons, for the purpose of controlling local breeding populations or nuisance geese. These seasons are to be directed only at Canada goose populations that nest primarily in the conterminous United States and must target a specific population of Canada geese. The harvest of nontarget Canada geese must not exceed 10 percent of the special-season harvest during early seasons or 20 percent during late seasons. More restrictive proportions may apply in instances where a nontarget Canada goose population of special concern is involved.

2. Early seasons must be held prior to the regular season. In the Atlantic and Mississippi Flyways, where seasons are focused primarily on local breeding populations of giant Canada geese, seasons may not exceed 10 consecutive days and will generally be held between September 1 and September 10. In the Central and Pacific Flyways, seasons may not exceed 30 consecutive days, generally between September 1 and September 30, and must be directed at local breeding populations or nuisance situations that cannot be addressed through the regular-season frameworks.

3. Late seasons must be held after the regular season and prior to February 15.

4. The daily bag and possession limits may be no more than 5 and 10 Canada geese, respectively.

5. The area(s) open to hunting will be described in State regulations.

6. All seasons will be conducted under a specific Memorandum of Agreement. Provisions for discontinuing, extending, or modifying the season will be included in the Agreement.

7. Initially, all seasons will be considered experimental. The evaluation required of the State will be incorporated into the Memorandum of Agreement and will include at least the following:

A. Conduct neck-collar observations (where appropriate) and population surveys beginning at least 1 year prior to the requested season and continuing during the experiment. For early seasons to be held after September 10, data-gathering must begin at least 2 years prior to the requested season.

B. Determine derivation of neck-collar codes and/or leg-band recoveries from observations and harvested geese.

C. Collect morphological information from harvested geese, where appropriate, to ascertain probable source population(s) of the harvest.

D. Analyze relevant band-recovery data.

E. Estimate hunter activity and harvest.

F. Prepare annual and final reports of the experiment.

8. If the results of the evaluation warrant continuation of the season beyond the experimental period, the State will continue to estimate hunter activity and harvest and report these to the Service annually for all years the season is offered.

9. The season will be subject to periodic re-evaluations when circumstances or special situations warrant.

For early seasons held after September 10, the Service emphasizes that data gathered prior to and during the experiment must strongly indicate that the season will successfully meet all established criteria for special early Canada goose seasons.

Council Recommendations: As mentioned above, the Lower-Region Regulations Committee of the Mississippi Flyway Council emphasized

that special seasons should adhere to the criteria established by the Service.

Written Comments: The Illinois Department of Conservation suggested that existing regulations do not fairly or adequately address the issue of impacts of early Canada goose seasons on nontarget populations exceeding population objectives. The Wisconsin Department of Natural Resources remained concerned about the special-season criteria and believe that some modifications are appropriate. The Minnesota Department of Natural Resources requested that the Service provide assistance to States experiencing increasing problems with breeding Canada goose flocks. They noted that the Service obtains harvest and hunter-activity information for September teal seasons, yet States are required to obtain this information for seasons designed to control nuisance Canada geese. The North American Wildlife Foundation suggested that States experiencing nuisance goose problems, such as Illinois, should not be required to meet criteria for nonmigrant composition of the harvest.

i. Early Seasons:

Comments and Service responses were included in the early-season final frameworks published in the **Federal Register** on August 21, 1992.

ii. Late Seasons.

Council Recommendations: The Atlantic Flyway Council recommended that the closing date for Connecticut's late resident Canada goose season in the South Zone be extended to February 14. They also recommended that Georgia be permitted to conduct an experimental late resident Canada goose season in the northern and southwestern portions of the State during the 1993–1995 seasons, and that Pennsylvania be permitted to initiate an experimental late resident Canada goose season between January 20 and February 5 along portions of the Susquehanna and Juniata Rivers during the 1993–95 seasons.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the late seasons in the Twin Cities Metropolitan Goose Zone and Olmsted County could be discontinued if the regular seasons in these areas were extended by 10 days. The Committee further recommended that the special late season in the Southern Michigan Goose Management Unit begin as early as January 2.

Written Comments: The South Carolina Wildlife and Marine Resources Department requested that the bag limit during their special late Canada goose season be increased from 1 per season to 1 per day. The Wisconsin Department of Natural Resources requested that the late season in the Rock Prairie Subzoned be discontinued. A local organization from Massachusetts requested continuation of the late seasons in that State.

B. Regular Seasons.

Council Recommendations: The Atlantic Flyway Council recommended that the harvest of Atlantic Population Canada geese be reduced by 60 percent from 1985–87 levels to allow recovery of this population. This strategy would begin in 1992 and continue for a minimum of 3 years.

In the Southern Region, they recommended that hunting of migrant geese be suspended in North and South Carolina, Georgia, Florida, and the Back Bay area of Virginia whenever the estimate for this population falls below 30,000 geese. A limited harvest consistent with continued population growth would be considered when the population ranges between 30,000–60,000 birds.

In the Chesapeake Region (Maryland, Delaware, and most of Virginia), it was recommended that the Canada goose hunting season frameworks be as follows: 60 days between November 16–January 20; 1 goose per day for at least the first 20 days; and no more than 2 geese per day thereafter.

In the Mid-Atlantic Region (New Jersey and the southern portions of New York and Pennsylvania), it was recommended that the Canada goose hunting season be as follows: 70 days between October 15 and January 31; no more than 15 days may occur before November 16; the bag limit shall be no more than 1 goose per day prior to November 16; 2 geese per day prior to January 1; and 3 geese per day from January 1 thereafter; and the bag limit shall be no more than 1 goose per day for the first 8 days of the goose season, regardless of when the opening date occurs.

In the New England Region (including northern portions of New York and Pennsylvania), it was recommended that the seasons be as follows: 70 days between October 1 and January 31; the bag limit shall be no more than 1 goose per day prior to October 16; no more than 2 geese per day prior to January 1; and no more than 3 geese per day from January 1 thereafter; and the bag limit shall be no more than 1 goose per day for the first 8 days of the goose season, regardless of when the opening date occurs.

In the Pennsylvania Counties of Erie, Mercer, and Butler, the season shall be 70 days between October 1 and January 31; the bag limit shall be no more than 1 goose per day prior to October 16; and 2 geese per day thereafter; and the bag limit shall be no more than 1 goose per day for the first 8 days of the season, regardless of when the opening date occurs. In Crawford County, the season shall be 70 days with a daily bag limit of 1 goose.

In March, the Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service establish a 3-year experimental season in Boone, Callaway, Cole, and Howard Counties of central Missouri. This season would be 9–15 days long and would be held prior to October 15. The daily bag limit would be 3 geese. All geese harvested would be checked at mandatory check stations and a special permit would be required for hunters to participate. The recommended season would be in addition to the regular Canada goose season.

The Committee also recommended that the Canada goose frameworks in Wisconsin be modified as follows: (1) eliminate the Pine Island and Theresa Zones and incorporate these areas into the Horicon Zone; (2) establish permit-issuance procedures for times when Wisconsin's Federally-assigned harvest quota for Canada geese exceeds 160,000; and (3) liberalize hunting authorizations for times when Wisconsin's harvest quota exceeds 200,000. When Wisconsin's quota exceeds 160,000 birds, tag-zone hunters will be authorized to harvest a limited number of birds (controlled by tags) in the Exterior Zone, and Exterior-Zone hunters will be allowed to harvest a limited number of birds (controlled by tags) in the Horicon Zone. When Wisconsin's quota exceeds 200,000 birds, all zone restrictions will be dropped and hunters will be permitted to hunt anywhere in the State if they first obtain a Canada goose hunting permit, as long as an acceptable harvest-monitoring system is in place.

In August, the Committee recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26, and that the restriction for Canada geese in the daily bag limit be changed from 3 to 2. They also recommended a number of changes in season length, bag limits, and/or harvest quotas in areas used by Mississippi Valley Population Canada geese.

The Committee also recommended extending the season in 9 northeastern counties of Illinois by 9 days and by 10

days in those portions of the Southeast Goose Zone of Minnesota within the Twin Cities Metropolitan Zone and Olmsted County. The Committee recommended that management zones in Ohio be modified to better focus restrictions needed for the Southern James Bay Population of Canada geese.

The Lower-Region Regulations Committee recommended that a new zone be created in northwest Arkansas, and that a 14-day season be offered. The Committee also recommended several restrictions in season length, bag limits, and/or harvest quotas in Kentucky, Tennessee, and portions of Mississippi in anticipation of low production and reduced fall flights of Mississippi Valley Population Canada geese this year.

In March, the Central Flyway Council recommended that an interim harvest strategy be developed for dark geese in the Central Flyway. This strategy should endorse attempts to increase harvest of all dark geese in the Western Tier and increase harvest on large Canada geese, while maintaining harvest of small Canada geese and white-fronted geese, in the Eastern Tier. During the interim, management plans will be revised.

In August, the Central Flyway Council recommended that North Dakota's fixed date for changing bag limits from 1 to 2 would be changed from October 19 to a floating date of the Saturday nearest October 20.

The Pacific Flyway Council recommended that the Salmon River Valley no longer be the boundary between two areas, but that it be added to the Southeastern Area. They also recommended eliminating the District 22 Canada goose harvest zone in the Southern Zone of California, thereby allowing identical seasons and limits throughout the Southern Zone.

The Pacific Flyway Council also recommended adjustments to season length and bag limits in 5 Oregon counties. In Lake, Klamath, and Harney Counties; the season length should be increased from 93 days to 100 days; bag and possession limits for dark and white geese should be separate; and the daily bag limit for dark geese should be increased from 3 (including 3 white-fronted geese) to 4 (including no more than 2 white-fronted geese). In Baker County, the daily bag limits should be increased from 2 to 3 geese and the closing date should be extended from the first Sunday in January to the Sunday closest to January 20. In Malheur County, the bag limit should be increased from 2 to 3 Canada geese during the portion of the season preceding November 16; but, on November 16 and thereafter, the bag limit should remain at 2 Canada geese.

Written Comments: A local organization from Massachusetts requested that their State be able to maintain a 70-day season with the same limits as last year. An individual from Delaware supported the restrictions on Canada geese in the Atlantic Flyway. An individual from Nebraska requested a 90-day, 2-bird season for dark geese. An individual from California requested that the bag limit be expanded to include 3 Canada geese per day.

5. White-fronted Geese.

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommendation regarding an interim harvest strategy for dark geese in the Central Flyway involves white-fronted geese. See item 4. **Canada Geese.**

The Pacific Flyway Council recommended that in Lake, Klamath, and Harney Counties, the season length should be increased from 93 days to 100 days; bag and possession limits for dark and white geese should be separate, and the daily bag limit for dark geese should be increased from 3 (including 3 white-fronted geese) to 4 (including no more than 2 white-fronted geese). The season on white-fronted geese should not open before October 24 (previously November 1). In Baker County, the closing date should be extended from the first Sunday in January to the Sunday closest to January 20. The Council further recommended that for the Northeastern Zone of California, the daily bag limit may be increased from 1 to 2 white-fronted geese per day, and the season length should remain at 24 days.

6. Brant.

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommendation regarding an interim harvest strategy for dark geese in the Central Flyway involves brant. See item 4. **Canada Geese.**

Written Comments: A local organization from Massachusetts requested a 50-day season with a 4-bird limit.

7. Snow and Ross's Geese.

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the framework opening date for all geese should be changed from the Saturday nearest October 1 to a fixed date of September 26.

The Central Flyway Council recommended that season length and bag limit in the eastern-tier States should be expanded to 107 days with a bag limit of 10. In addition, the bag limit for the Middle Rio Grande Valley of New Mexico should be increased to 10 per day. The Pacific Flyway Council recommended that in Lake, Klamath, and Harney Counties, the season length should be increased from 93 days to 100 days, and bag and possession limits for dark and white geese should be separate. In Baker County, the closing date should be extended from the first Sunday in January to the Sunday closest to January 20.

8. Tundra Swans.

Council Recommendations: The Central Flyway Council recommended that an additional 500 tundra swan hunting permits be allocated to South Dakota. This change would result in a total allocation of 1,500 permits for South Dakota.

23. Other.

A. Compensatory Days.

Council Recommendations: The Atlantic Flyway Council recommended that the Service allow for compensatory days for days lost during the duck season, on a day-for-day basis (not to exceed 30 days), in Atlantic Flyway States where Sunday hunting is prohibited statewide by State law, on an experimental basis in 1992–93 and 1993–94.

Written Comments: Five individuals from Massachusetts and an individual from Virginia requested compensatory days for those days lost due to Sunday-hunting prohibitions.

B. Captive-reared Mallards.

Council Recommendations: The Atlantic Flyway Council complimented the Service for recognizing the potentially serious impacts of released captive-reared mallards on wild waterfowl populations due to possible spread of disease, the deterioration of data collection for management programs, the compromise of genetic integrity, and law enforcement conflicts. The Council extended its thanks to the Service for undertaking a review of this

issue and urged the Service to develop a policy regarding these releases and their potential impacts.

The Mississippi Flyway Council recommended that the provisions of section 21.13 of 50 CFR 21 should only apply to restrictive situations (i.e., tower shoots). When mallards are free-flying they would be afforded full protection under the Migratory Bird Treaty Act and count toward the daily bag limit. In order to minimize the harvest of wild birds during tower shoots, shooting should only be permitted between the tower and the feeding area. The Council also suggested that shooting not be allowed directly on the feeding area or within a minimal distance of 100 yards from the feeding area.

The Pacific Flyway Council requested its member States and the Service to adopt a moratorium against new captive-reared waterfowl release programs or the expansion of currently existing programs in the Pacific Flyway. This moratorium would remain in effect until the Service solicits public comment on all aspects of captive-reared waterfowl release programs and publishes a position paper, at which time the Council will again evaluate its position on this issue. The Council requested that the Service report progress on this issue to the council prior to the January Flyway Study Committee meeting.

The Pacific Flyway Council is on record as discouraging captive-reared waterfowl programs. They indicated that there is serious concern about the biological impacts on wild populations of waterfowl. These concerns include disease outbreaks, genetic crossing, and the impacts on various biological surveys. There are also problems with the interpretation of Federal laws dealing with live decoy and baiting regulations. The Council believes that a complete review of this issue needs to be undertaken so that sound management decisions protecting wild populations of waterfowl can occur.

Public Comment Invited

Based on the results of migratory game bird studies now in progress, and having due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) the need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability before mid-June of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's office in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

All relevant comments received during the comment period will be considered. The Service will attempt to acknowledge comments received, but a substantive response to individual comments may not be provided.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 18, 1988 (53 FR 31341). However, this programmatic document does not prescribe year-specific regulations, those are developed annually. The annual regulations and options were considered in the Environmental Assessment, "Waterfowl Hunting Regulations for 1992."

Endangered Species Act Consideration

On July 2, 1992, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the May 8 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis (FRIA), and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634-Arlington Square, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the early-season final frameworks **Federal Register** document published on August 21, 1992.

Authorship

The primary authors of this proposed rule are David F. Caithamer and William O. Vogel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1992–93 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703–712), and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a—d and e—j).

Dated: August 18, 1992.

Mike Hayden

Assistant Secretary for Fish and Wildlife and Parks

Proposed Regulations Frameworks for 1992–93 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Director has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots. Late-season frameworks are summarized below:

General

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily, for all species and seasons.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by flyway.

Atlantic Flyway

Atlantic Flyway includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Ducks, Coots, and Mergansers

Hunting Season: Not more than 30 days.

Outside Dates: Between October 1, 1992, and January 20, 1993.

Duck Limits: The daily bag limit is 3 and may include no more than 1 hen mallard, 2 wood ducks, 2 redheads, 1 black duck, 1 mottled duck, 1 pintail, and 1 fulvous whistling duck.

Closures: The seasons on canvasbacks and harlequin ducks are closed.

Sea Ducks: In all areas outside of special sea duck areas, sea ducks are included in the regular duck daily bag and possession limits. However, during the regular duck season within the special sea duck areas, the sea duck daily bag and possession limits may be in addition to the regular duck daily bag and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Maryland, North Carolina, Rhode Island, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may zone and may split their seasons into two segments in each zone; while Florida, Georgia, and South Carolina may split their statewide seasons into two segments. Zone descriptions that differ from those published in the September 26, 1991, **Federal Register** (at 56 FR 49104) are described in a later portion of this document.

Canada Geese

Season Lengths, Outside Dates, and Limits: Unless specified otherwise, seasons may be split into two segments. Seasons in States, and in independently described goose management units within States, may be as follows:

Connecticut:

North Zone—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

South Zone—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening. In addition, a special experimental season may be held between January 15 and February 15, with 5 geese per day.

Delaware: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese thereafter.

Florida: Closed season.

Georgia: In specific areas, an experimental season may be held between November 15 and February 5, with a limit of 5 Canada geese per day.

Maine: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

Maryland: 60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese thereafter.

Massachusetts: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening. In addition, a special 16-day season for resident Canada geese may be held in the Coastal and Central Zones during January 21 to February 5, with 5 geese per day.

New Hampshire: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

New Jersey: 70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

New York:

Northeast Zone—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

Remainder of State—70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16.

North Carolina:

East of I-95—Suspended.

West of I-95—Suspended.

Pennsylvania:

South Zone—70 days between October 15 and January 31, with 1 goose per day through November 15; 2 geese per day through December 31; 3 geese per day thereafter; 1 goose per day for the first 8 days after the opening; no more than 15 days before November 16. In addition, an experimental late resident Canada goose season may be

held along portions of the Susquehanna and Juniata Rivers from January 20 to February 5 with 5 geese per day.

Erie, Mercer, and Butler Counties—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese thereafter; 1 goose for the first 8 days after the opener.

Crawford County—70 days between October 1 and January 20; with 1 goose per day.

Remainder of State—70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

Rhode Island: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

South Carolina: Suspended regular season. A special 4-day season for resident Canada geese may be held in the Central Piedmont, Western Piedmont, and Mountain Hunt Units during January 15 to February 15, with a limit of 1 Canada goose per season.

Vermont: 70 days between October 1 and January 31, with 1 goose per day through October 15; 2 geese per day through December 31; and 3 geese thereafter; 1 goose for the first 8 days after the opening.

Virginia:

Back Bay—Suspended.

Remainder—60 days between November 16 and January 20, with 1 goose per day for the first 20 days; 2 geese thereafter.

West Virginia: 70 days between October 1 and January 20, with 3 geese per day.

Light Geese

Definition: For purpose of hunting regulations listed below, the collective term "light" geese includes lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1, 1992, and February 10, 1993, with 5 geese per day. States may split their seasons into two segments.

Atlantic Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1, 1992, and January 20, 1993, with 2 brant per day.

Mississippi Flyway

The Mississippi Flyway includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Ducks, Coots, and Mergansers

Hunting Seasons: Not more than 30 days.

Outside Dates: Between October 1, 1992, and January 20, 1993.

Duck Limits: The daily bag limit is 3, and may include no more than 2 mallards (no more than 1 of which may be a female), 1 black duck, 1 pintail, 2 wood ducks, and 1 redhead.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, black duck, redhead, hooded merganser

50 points—male mallard, wood duck

35 points—all other ducks and mergansers.

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed. Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons for ducks, coots, and mergansers by zones described later in these frameworks. Zones not described herein are described in the September 26, 1991, **Federal Register** (at 56 FR 49104).

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Mississippi, the season may be split into two segments.

In Arkansas and Minnesota, the season may be split into three segments.

Pymatuning Reservoir Area, Ohio: The waterfowl seasons, limits, and shooting hours shall be the same as those selected in the adjacent portion of Pennsylvania.

Geese

Definition: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, and brant.

Light geese—lesser snow (including blue) geese, greater snow geese, and Ross' geese.

Split Seasons: Seasons for geese may be split into two segments.

Season Lengths, Outside Dates, and Limits: States may select seasons for geese not to exceed 70 days for dark geese between the Saturday nearest October 1 (October 3, 1992) and January 31, 1993, and 80 days for light geese between the Saturday nearest October 1 (October 3, 1992), and February 14, 1993. The daily bag limit is 7 geese, to include no more than 2 Canada and 2 white-fronted geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State.

Alabama: The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Arkansas Zone. In the West Arkansas Zone, an experimental season for Canada geese of up to 14 days may be selected. In both zones, the daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 79,000 birds. In the:

(a) Southern Illinois Quota Zone - The season for Canada geese will close after 79 days or when 39,500 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession. If any of the following conditions exist after December 20, 1992, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

1. 10 consecutive days of snow cover, 3 inches or more in depth.

2. 10 consecutive days of daily high temperatures less than 20 degrees F.

3. Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

4. Starvation or a major disease outbreak resulting in observed mortality exceeding 500 birds per day for 10 consecutive days, or a total mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

(b) Rend Lake Quota Zone—The season for Canada geese will close after 79 days or when 11,850 birds have been harvested, whichever occurs first. Limits are 2 Canada geese daily and 10 in possession.

(c) Knox-Fulton Zone—The season for Canada geese may not exceed 79 days. Limits are 2 Canada geese daily and 4 in possession.

(d) Remainder of the State—The season for Canada geese may extend for 79 days in the respective duck-hunting zones, except in Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties, where the season may not exceed 88 days. Limits are 2 Canada geese daily and 4 in possession.

Indiana: The total harvest of Canada geese in the State will be limited to 19,000 birds. In:

(a) Posey County—The season for Canada geese will close after 70 days or when 6,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese, except in LaGrange and Steuben Counties and on the Kankakee and Jasper-Pulaski Fish and Wildlife Areas, where the daily bag limit is 1.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese. The season for geese in the Southwest Goose Zone may be held at a different time than the season in the remainder of the State.

Kentucky: In the:

(a) Western Zone—The season for Canada geese may extend for 79 days, and the harvest will be limited to 22,400 birds. Of the 22,400-bird quota, 14,560 birds will be allocated to the Ballard Reporting Area and 4,260 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 79-day season, the season in that reporting area will be closed. If this occurs, the season in those counties and portions of counties outside of, but associated with, the respective subzone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 79 days. The season in Fulton County may extend to February 15, 1993. The daily bag limit is 2 Canada geese.

(b) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: Louisiana may hold 80-day seasons on light geese and 70-day seasons on white-fronted geese and brant between the Saturday nearest October 1 (October 3, 1992), and February 14, 1993, in the respective duck-hunting zones. The daily bag limit is 7 geese, to include no more than 2 white-fronted geese, except as noted below. In the Southwest Zone, an experimental 9-day season for Canada geese may be held during January 22–30, 1993. During the experimental season, the daily bag limit for Canada and white-fronted geese in the Southwest Zone is 2, no more than 1 of which may be a Canada goose. Hunters participating in the experimental Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 54,600 birds. In the:

(a) North Zone:

(1) West of Forest Highway 13—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(2) Remainder of North Zone—The framework opening date for all geese is September 26 and the season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(b) Middle Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) South Zone:

(1) Allegan County GMU—The season for Canada geese will close after 50 days or when 5,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose through November 14 and 2 Canada geese thereafter.

(2) Muskegon Wastewater GMU—The season for Canada geese will close after 50 days or when 1,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(3) Saginaw County GMU—The season for Canada geese will close after 40 days or when 4,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(4) Tuscola/Huron GMU—The season for Canada geese will close after 40 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(5) Remainder of South Zone:

(i) West of U.S. Highway 27/127—The season for Canada geese may extend for 45 days. The daily bag limit is 2 Canada geese.

(ii) East of U.S. Highway 27/127 - The season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(d) Southern Michigan GMU—An experimental late special Canada goose season of up to 30 days may be held between January 9 and February 7, 1993. The daily bag limit is 2 Canada geese.

Minnesota: In the:

(a) West Central Goose Zone—The season for Canada geese may extend for 40 days. In the Lac Qui Parle Goose Zone the season will close after 40 days or when a harvest of 6,000 birds has been achieved, whichever occurs first. Throughout the West-Central Zone, the daily bag limit is 1 Canada goose.

(b) Southeast Goose Zone—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese. In the Twin Cities Metropolitan Zone and Olmsted County, the season may not exceed 80 days.

(c) Remainder of the State—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Missouri: In the:

(a) Swan Lake Zone—The season for Canada geese closes after 50 days or when 10,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) Schell-Osage Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Central Missouri Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese. An experimental special season of up to 10 consecutive days prior to October 15 may be selected in addition to the regular season. During the special season, the daily bag limit is 3 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 50 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Ohio: The season may extend for 70 days, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP and Northeast SJBP Zones, where the daily bag limit will be 1 Canada goose.

Tennessee: In the:

(a) Northwest Tennessee Zone—The season for Canada geese may extend for 72 days, and the harvest will be limited to 8,900 birds. Of the 8,900-bird quota, 8,200 birds will be allocated to the Reelfoot Quota Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 72-day season, the season in the quota zone will be closed. If this occurs, the season in the remainder of the Northwest Tennessee Zone may continue for an additional 7 days, not to exceed a total of 72 days. The season may extend to February 15, 1993. The daily bag limit is 2 Canada geese.

(b) Southwest Tennessee Zone—The season for Canada geese may extend for 58 days, and the harvest will be limited to 500 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky Lake Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The framework opening date for all geese is September 26. The total harvest of Canada geese in the State will be limited to 71,200 birds. In the:

(a) Horicon Zone—The harvest of Canada geese is limited to 45,000 birds. The season may not exceed 80 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(b) Collins Zone—The harvest of Canada geese is limited to 1,700 birds. The season may not exceed 70 days. All Canada geese harvested must be tagged. The daily bag limit is 1 Canada goose and the season limit will be the number of tags issued to each permittee. The possession limit is 10 Canada geese.

(c) Exterior Zone - The harvest of Canada geese is limited to 20,000 birds. The season may not exceed 80 days, except as noted below. The daily bag limit is 1 Canada goose, except as noted below. In the Mississippi River Subzone, the season for Canada geese may extend for 80 days in each duck zone. In the North-Duck-Zone portion of the Subzone, the daily bag limit is 1 Canada goose through the first segment of the duck season, and 2 thereafter; in the South-Duck-Zone portion, the daily bag limit is 1 Canada goose through the first segment of the duck season, and 2 thereafter. In the Brown County Subzone, an experimental late special season to control local populations of giant Canada geese may be held during December 1–31. The daily bag limit during this special season is 2. The progress of the harvest in the Exterior Zone must be monitored, and the zone's season closed, if necessary, to ensure that the harvest does not exceed the limit stated above. This closure will not apply to the special late-season giant Canada goose season in the Brown County Subzone.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Illinois, Indiana, Kentucky, Missouri, and Tennessee Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Southern Illinois Quota Zone, the Rend Lake Quota Zone in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Swan Lake Zone in Missouri, and the Reelfoot Subzone in Tennessee will have been filled, the season for taking Canada geese in the respective area will be closed by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Shipping restrictions: In Illinois and Missouri, and in the Kentucky counties of Ballard, Hickman, Fulton, and Carlisle, geese may not be transported, shipped, or delivered for transportation or shipment by common carrier, the Postal Service, or by any person except as the personal baggage of licensed waterfowl hunters, provided that no hunter shall possess or transport more than the legally-prescribed possession limit of geese. Geese possessed or transported by persons other than the taker must be labeled with the name and address of the taker and the date taken.

Central Flyway

The Central Flyway includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Ducks (including mergansers) and Coots

Hunting Seasons: Seasons in the High Plains Mallard Management Unit, roughly defined as that portion of the Central Flyway which lies west of the 100th meridian, may include no more than 51 days, provided that the last 12 days start no earlier than the Saturday closest to December 10 (December 12, 1992). Seasons in the Low Plains Unit may include no more than 39 days.

Outside Dates: October 1, 1992, through January 20, 1993.

Duck Limits: The daily bag limit is 3, including no more than 2 mallards, no more than 1 of which may be a female, 1 mottled duck, 1 pintail, 1 redhead, and 2 wood ducks.

As an alternative to conventional bag limits for ducks and mergansers, a point system for bag and possession limits may be selected. Point values are as follows:

100 points—female mallard, pintail, redhead, hooded merganser, mottled duck

50 points—male mallard, wood duck

35 points—All other ducks and mergansers

Under the point system, the daily bag limit is reached when the point value of the last bird taken, added to the sum of point values of all other birds already taken during that day, reaches or exceeds 100 points. The possession limit is the maximum number of birds that legally could have been taken in 2 days.

Closures: The season on canvasbacks is closed.

Merganser Limits: Under the conventional bag-limit option only, a daily bag limit of 5 mergansers may be taken, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), and South Dakota (Low Plains portion) may select hunting seasons for ducks, coots, and mergansers by zones described later in these frameworks. Zones not described herein are described in the September 26, 1991, **Federal Register** (at 56 FR 49104).

In Montana, Nebraska (Low and High Plains portions), New Mexico, North Dakota (Low Plains portion), Oklahoma (Low and High Plains portions), South Dakota (High Plains portion), and Texas (Low Plains portion), the season may be split into two segments.

In Colorado, Kansas (Low and High Plains portions), North Dakota (High Plains portion), and Wyoming, the season may be split into three segments.

Geese

Definitions: In the Central Flyway, "geese" includes all species of geese and brant; "dark geese" includes Canada and white-fronted geese and black brant; and "light geese" includes all others.

Season Lengths, Outside Dates, and Limits: Seasons may be split into two segments. The Saturday nearest October 1 (October 3, 1992), through January 31, 1993, for dark geese and the Saturday nearest October 1 (October 3, 1992), through the Sunday nearest February 15 (February 14, 1993), except in New Mexico where the closing date is February 28, for light geese. Seasons in States, and independently in described goose management units within States, may be as follows:

Colorado: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Kansas: For dark geese, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For Light Goose Units 1 and 2, no more than 107 days, with a daily bag limit of 10.

Montana: No more than 107 days, with daily bag limits of 2 dark geese and 5 light geese in Sheridan County and 4 dark geese and 5 light geese in the remainder of the Central Flyway portion.

Nebraska: For dark geese in the North Unit, no more than 79 days, with daily bag limits of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 9, 1992), and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the East and West Units, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose for no more than 37 consecutive days, and a bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

New Mexico: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese, except in the Middle Rio Grande Valley where the daily bag limit of light geese is 10.North Dakota: For dark geese, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose or 2 white-fronted geese until the Saturday nearest October 20 (October 17, 1992), and no more than 2 dark geese during the remainder of the season.

For light geese, no more than 107 days, with a daily bag limit of 10.

Oklahoma: For dark geese, no more than 79 days, with a daily bag limit of 2 Canada geese or 1 Canada goose and 1 white-fronted goose.

For light geese, no more than 107 days, with a daily bag limit of 10.

South Dakota: For dark geese in the Missouri River Unit, no more than 79 days, with a daily bag limit of 1 Canada goose and 1 white-fronted goose until the Saturday nearest November 8 (November 8, 1992), and no more than 2 Canada geese or 1 Canada goose and 1 white-fronted goose for the remainder of the season.

For dark geese in the remainder of the State, no more than 79 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 30 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 49 days; or no more than 72 days, with a daily bag limit of not more than 2 Canada geese, or 1 Canada goose and 1 white-fronted goose, for no more than 37 consecutive days, and a daily bag limit of not more than 1 Canada goose and 1 white-fronted goose for the remaining 35 days.

For light geese, no more than 107 days, with a daily bag limit of 10.

Texas: West of U.S. 81, no more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

For dark geese east of U.S. 81, no more than 79 days. The daily bag limit is 1 Canada goose and 1 white-fronted goose during the first 72 days; during the last 7 days, the season is closed on white-fronted geese and the daily bag limit is 2 Canada geese.

For light geese east of U.S. 81, no more than 107 days, with a daily bag limit of 10.

Wyoming: No more than 107 days, with a daily bag limit of 5 light geese and 3 dark geese.

Pacific Flyway

The Pacific Flyway includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Ducks, Coots, and Common Moorhens

Hunting Seasons: Concurrent 59-day seasons on ducks (including mergansers), coots, and common moorhens may be selected except as subsequently noted. In the Columbia Basin Mallard Management Unit, the seasons may be an additional 7 days. The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 93 days.

Outside Dates: Between October 1, 1992, and January 20, 1993.

Duck and Merganser Limits: The basic daily bag limit is 4 ducks, including no more than 3 mallards, no more than 1 of which may be a female, 1 pintail, and either 2 canvasbacks, 2 redheads, or 1 of each.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons for ducks (including mergansers), coots, and common moorhens by zones described later in these frameworks. Zones not described herein are described in the September 26, 1991, **Federal Register** (at 56 FR 49104).

Arizona, California, Idaho, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming may split their seasons into two segments either statewide or in each zone. Colorado and Montana may split their duck seasons into three segments.

Colorado River Zone, California: Duck, coot, and common moorhen seasons and limits shall be the same as seasons and limits selected by Arizona.

Geese (including Brant)

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 93-day seasons may be selected, with outside dates between the Saturday closest to October 1 (October 3, 1992), and the Sunday closest to January 20 (January 17, 1993), and the basic daily bag and possession limits are 6 geese, provided that the daily bag limit includes no more than 3 light geese (including snow, blue, and Ross') and 3 dark geese (all other species of geese, including brant). In only California, Oregon, and Washington, the daily bag limit is 2 brant and is additional to dark goose limits, and the open season on brant in those States may differ from that for other geese.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway and no open season on cackling Canada geese in California, Oregon, and Washington; and those three States must include a statement on the closure for both those subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese may not include more than 2 Canada geese.

California:

Northeastern Zone—White-fronted geese may be taken only during the first 23 days of such season. The daily bag limit is 3 geese and may include no more than 2 Canada geese or 2 white-fronted geese.

Colorado River Zone—The seasons and limits must be the same as those selected by Arizona. Southern Zone - The daily bag and possession limits for dark geese may not include more than 2 Canada geese.

Balance-of-the-State Zone—A 79-day season may be selected, except that white-fronted geese may be taken during only the first 65 days of such season. Limits may not include more than 3 geese per day and in possession, of which not more than 1 may be a dark goose. The dark goose limits may be expanded to 2 provided that they are Canada geese.

Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the counties of Del Norte and Humboldt there will be no open season for Canada geese.

(2) In the Sacramento Valley Area, the season on white-fronted geese must end on or before November 30, 1992, and, except in the Western Canada Goose Hunt Area, there will be no open season for Canada geese. In the Western Canada Goose Hunt Area, the take of Canada geese other than cackling and Aleutian Canada geese is allowed.

(3) In the San Joaquin Valley Area, the hunting season for Canada geese will close no later than November 23, 1992.

Brant Season: A statewide, 30-consecutive-day season on brant may be selected.

Colorado: The season must end on or before the second Sunday in January (January 10, 1993). The daily bag limit for dark geese may not include more than 2 Canada geese.

Idaho:

10 Northern Counties Area—The daily bag limit may not include more than 3 geese.

Southwestern Area—The season must end on or before the first Sunday in January (January 3, 1993) with a daily bag limit of 3 geese, that may not include more than 2 Canada geese.

Southeastern Area, including the Ft. Hall-American Falls Zone—The season must end on or before the second Sunday in January (January 10, 1993); the daily bag limit is 3 geese.

Montana:

East of Divide Zone—The season must end on or before the second Sunday in January (January 10, 1993).

West of Divide Zone—The season must end on or before the first Sunday in January (January 3, 1993). The daily bag limit on dark geese may not include more than 2 Canada geese.

Nevada:

Clark County Zone—The daily bag limit of dark geese may not include more than 2 Canada geese.

New Mexico: The daily bag limit for dark geese may not include more than 2 Canada geese.

Oregon:

Eastern Zone—In the Columbia Basin Goose Area, the season may be an additional 7 days.

Western Zone—In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In those designated areas, seasons must end upon attainment of their individual quotas which collectively equal 110 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Malheur County Zone—The season must end on or before the first Sunday in January (January 3, 1993). From November 16, 1992, through the remainder of the season, the daily bag limit of dark geese may not include more than 2 Canada geese.

Lake, Klomath, and Harney Counties Zone—The season length may be 100 days. The dark goose limits are 4 per day and 8 in possession; and the dark goose limits may not include more than 2 white-fronted geese per day and 4 in possession. White-fronted geese may not be taken before October 24 during the regular goose season. Light goose limits are 3 per day and 6 in possession and additional to those for dark geese.

Brant Season—A 16-consecutive-day season on brant may be selected.

Utah:

Washington County Zone—The daily bag limit for dark geese may not include more than 2 Canada geese.

Remainder-of-the-State Zone—The season must end on or before the second Sunday in January (January 10, 1993). The daily bag limit for dark geese may not include more than 2 Canada geese. In Cache County, the combined special September Canada goose season and the regular goose season shall not exceed 93 days. Washington: The daily bag limit is 3 geese.

Eastern Zone—In the Columbia Basin Goose Area, the season may be an additional 7 days.

Western Zone—In the Lower Columbia River Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. For designated areas, seasons on Canada geese must end upon attainment of individual quotas which collectively will equal 90 dusky Canada geese. Hunting of Canada geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of cackling and Aleutian Canada geese.

Brant Season—A 16-consecutive-day season on brant may be selected.

Wyoming: In Lincoln, Sweetwater, and Sublette Counties, the combined special September Canada goose seasons and the regular goose season shall not exceed 93 days. The season must end on or before the second Sunday in January (January 10, 1993).

Tundra Swans

In Montana, Nevada, New Jersey, North Carolina, North Dakota, South Dakota, Utah, and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental.

—The season may be 90 days, must occur during the light goose season, but may not extend beyond January 31.

—In New Jersey, no more than 200 permits may be issued.

—In North Carolina, no more than 6,000 permits may be issued.

—In Virginia, no more than 600 permits may be issued.

In the Central Flyway

—In the Central Flyway portion of Montana, no more than 500 permits may be issued. The season must run concurrently with the season for taking geese.

—In North Dakota, no more than 2,000 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

—In South Dakota, no more than 1,500 permits may be issued. The experimental season must run concurrently with the season for taking light geese.

In the Pacific Flyway

—A 93-day season may be selected between the Saturday closest to October 1 (September 28, 1992), and the Sunday closest to January 20 (January 19, 1993). Seasons may be split into 2 segments.

—In Utah, no more than 2,500 permits may be issued.

—In Nevada, no more than 650 permits may be issued. Permits will be valid for Churchill, Lyon, and Pershing Counties.

—In the Pacific Flyway portion of Montana, no more than 500 permits may be issued. Permits will be valid for Cascade, Hill, Liberty, Pondera, Teton, and Toole Counties.

Area, Unit, and Zone Descriptions

Except for the following descriptions, the Service does not propose any changes to those zone, area, and unit descriptions published in the September 28, 1991, Federal Register (at 56 FR 49104). The Service will publish descriptions of all waterfowl zones, areas, and units in the late-season final frameworks.

Ducks

Pacific Flyway

California

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Geese

Atlantic Flyway

Georgia

Special Season Area: See State regulations.

Pennsylvania

North Zone: That portion of the State north of I-80 from the Ohio border to Route 220, north of Route 220 from I-80 to I-180, north and east of I-180 from Route 220 to I-80, and north of I-80 from I-180 to the Delaware River.

Crawford County: All of Crawford County.

Erie, Mercer, and Butler Counties: All of Erie, Mercer, and Butler Counties.

South Zone: The remaining portion of Pennsylvania.

Mississippi Flyway

Arkansas

East Arkansas Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Arkansas Zone: Benton, Carroll, Boone, Marion, Baxter, Fulton, Izard, Sharp, Stone, Searcy, Newton, Madison, Washington, Crawford, Franklin, Johnson, Pope, Van Buren, Conway, Cleburne, and Faulkner Counties, and those portions of Sebastian, Logan, Yell, and Perry Counties lying north of a line extending along State Highway 10 from the Oklahoma border east to Perry, south on State Highway 9 to State Highway 60, then east on State Highway 60 to the Faulkner County line.

Illinois

Same zones as for ducks but in addition:

Central Zone:

Knox-Fulton Zone: The following counties or portions of counties: Fulton (Buckheart, Canton, Cass, Deerfield, Fairview, Farmington, Joshua, Orion, and Putnam Townships, and that portion of Banner Township bounded on the north by Illinois Highway 9 and on the east by U.S. Highway 24) and Knox Counties.

South Zone:

Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Missouri

Same zones as for ducks but in addition:

North Zone:

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone:

Schell-Osage Zone: That portion of the State encompassed by a line running east from the Kansas border along U.S. Highway 54 to Missouri Highway 13, north along Missouri 13 to Missouri 7, west along Missouri 7 to U.S. 71, north along U.S. 71 to Missouri 2, then west along Missouri 2 to the Kansas border.

Central Missouri Zone: All or portions of Boone, Callaway, Cole, and Howard Counties.

Ohio

Pymatuning Area: Pymatuning Reservoir and that part of Ohio bounded on the north by County Road 306 (known as Woodward Road), on the west by Pymatuning Lake Road, and on the south by U.S. Highway 322.

Early-season Canada Goose Area—Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Summit, and Trumbull Counties.

Lake Erie SJBP Zone: Those portions of Lucas, Wood, Ottawa, Sandusky, and Erie Counties bounded by the Maumee River on the west, Ohio State Route 51, U.S. Highway 80/90, and State Route 6 on the south, the Huron River on the east, and the Ohio State border on the north.

Northeast SJBP Zone: Those portions of Ashtabula and Trumbull Counties bounded by Ohio State Route 534 on the west, State Route 82 on the south, the Pennsylvania border on the east, and State Route 6 on the north.

Wisconsin

Horicon Zone: The area encompassed by a border commencing at the intersection of Highway 11 and the Fox River in Winnebago County, then running westerly along Highway 11 to its intersection with the west boundary of Winnebago County, then southerly along the west boundary of Winnebago County to its intersection with the north boundary of Green Lake County, then westerly along the north boundary of Green Lake County to its intersection with the north boundary of Marquette County, then westerly along the north boundary of Marquette County to its intersection with Highway 22, then southerly along Highway 22 to its intersection with Highway 33, then westerly along Highway 33 to its intersection with Highway 16, then westerly along Highway 16 to its intersection with Weyh Road, then southerly along Weyh Road to its intersection with County Highway 0, then southerly along County Highway 0 to its intersection with the west boundary of Section 31, then southerly along the west boundary of Section 31 to its intersection with the Sauk County/Columbia County boundary, then southerly along the Sauk County/Columbia County boundary to its intersection with Highway 33, then westerly along Highway 33 to its intersection with Interstate 90/94, then southerly along Interstate 90/94 to its intersection with Highway 60, then easterly along Highway 60 to its intersection with Highway 83, then northerly along Highway 83 to its intersection with Highway 175, then northerly along Highway 175 to its intersection with Highway 33, then easterly along Highway 33 to its intersection with Highway 45, then northerly along Highway 45 to its intersection with the east shore of the Fond Du Lac River, then northerly along the east shore of the Fond Du Lac River to its intersection with Lake Winnebago, then northerly along the western shoreline of Lake Winnebago to its intersection with the Fox River, then westerly along the Fox River to its intersection with Highway 11.

Collins Zone: The area encompassed by a border commencing at the intersection of Hilltop Road and Collins

Marsh Road in Manitowoc County, then running westerly along Hilltop Road to its intersection with Humpty Dumpty Road, then southerly along Humpty Dumpty Road to its intersection with Poplar Grove Road, then easterly and then southerly along Poplar Grove Road to its intersection with County Highway JJ, then southeasterly along County Highway JJ to its intersection with Collins Road, then southerly along Collins Road to its intersection with the Manitowoc River, then southeasterly along the Manitowoc River to its intersection with Quarry Road, then northerly along Quarry Road to its intersection with Einberger Road, then northerly along Einberger Road to its intersection with Moschel Road, then westerly along Moschel Road to its intersection with Collins Marsh Road, then northerly along Collins Marsh Road to its intersection with Hilltop Road.

Exterior Zone:

Mississippi River Subzone: That portion of the State encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County, then extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Brown County Subzone: The area encompassed by a border commencing at the intersection of the Fox River with Green Bay in Brown County, then running southerly along the Fox River to its intersection with Highway 29, then northwesterly along Highway 29 to its intersection with the Brown County line, then counterclockwise along the Brown County line to its intersection with Green Bay, then directly east to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to its intersection with the Fox River.

Remainder of Exterior Zone: That portion of the State not included in the Horicon or Collins Zones; or the Mississippi River or Brown County Subzones.

Early-Season Goose Subzone: That area bounded by a line beginning at Lake Michigan in Port Washington and extending west along Highway 33 to Highway 175, south along Highway 175 to Highway 83, south along Highway 83 to Highway 36, southwest along Highway 36 to Highway 120, south along Highway 120 to Highway 12, then southeast along Highway 12 to the Illinois State line.

Pacific Flyway

California

Southern Zone: In that portion of southern California (but excluding the Colorado River Zone) lying south and east of a line beginning at the mouth of the Santa Maria River at the Pacific Ocean; east along the Santa Maria River to where it crosses Highway 166 near the City of Santa Maria; east on Highway 166 to the junction of Highway 99; south on Highway 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to where it intersects Highway 178 at Walker Pass; east on Highway 178 to the junction of Highway 395 at the town of Inyokern; south on Highway 395 to the junction of Highway 58; east on Highway 58 to the junction of Interstate 15; east on Interstate 15 to the junction with Highway 127; north on Highway 127 to the point of intersection with the California-Nevada State line.

Idaho

Southwestern Area: That portion of Idaho lying west of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border (except the 10 Northern Counties Area and except Custer and Lemhi Counties).

Southeastern Area: That portion of Idaho lying east of the line formed by U.S. Highway 93 north from the Nevada border to Shoshone, thence northerly on Idaho State Highway 75 (formerly U.S. Highway 93) to Challis, thence northerly on U.S. Highway 93 to the Montana border, including all of Custer and Lemhi Counties.Oregon

Malheur County Zone: All of Malheur County.

Klamath, Lake, and Harney Counties Zone: All of Klamath, Lake, and Harney Counties.

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federal register

Friday
August 21, 1992

Part VIII

The President

Presidential Determination No. 92-41—Resumption of Foreign Air Cargo Service to Lebanon

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Presidential Documents

Title 3—

The President

Presidential Determination No. 92–41 of August 17, 1992

Resumption of Foreign Air Cargo Service to Lebanon

Memorandum for the Secretary of Transportation

By virtue of the authority vested in me by section 1114(a) of the Federal Aviation Act of 1958, as amended ("the Act") (49 U.S.C. 1514), I hereby determine that the prohibition of all transportation services to Lebanon by Presidential Determination 85–14 of July 1, 1985, is hereby amended to permit the outward carriage of cargo to Lebanon by foreign carriers. All other prohibitions set forth in Presidential Determination 85–14, including the prohibition on U.S. air carriers flying into Lebanon, remain in effect.

You are directed to bring this determination immediately to the attention of all air carriers within the meaning of section 101(3) of the Act (49 U.S.C. 1301(3)).

You are further directed to publish this determination in the **Federal Register**.

George Bush

THE WHITE HOUSE,
Washington, August 17, 1992.

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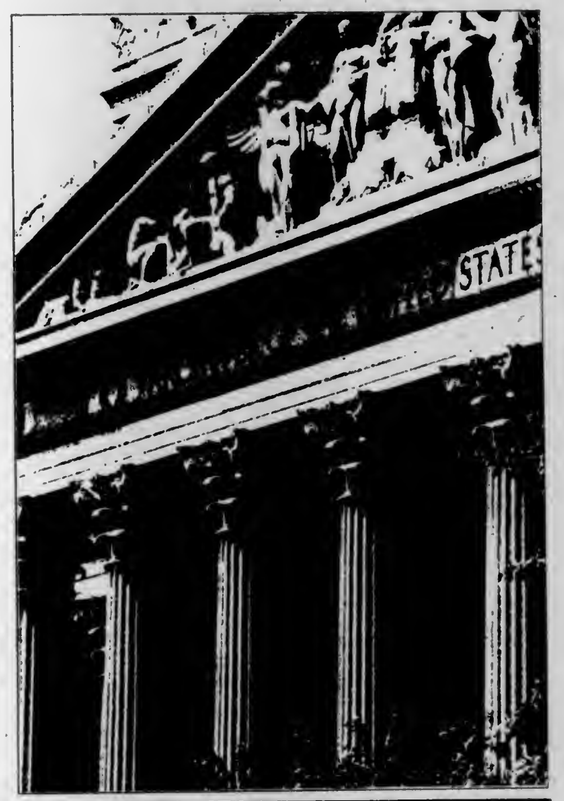
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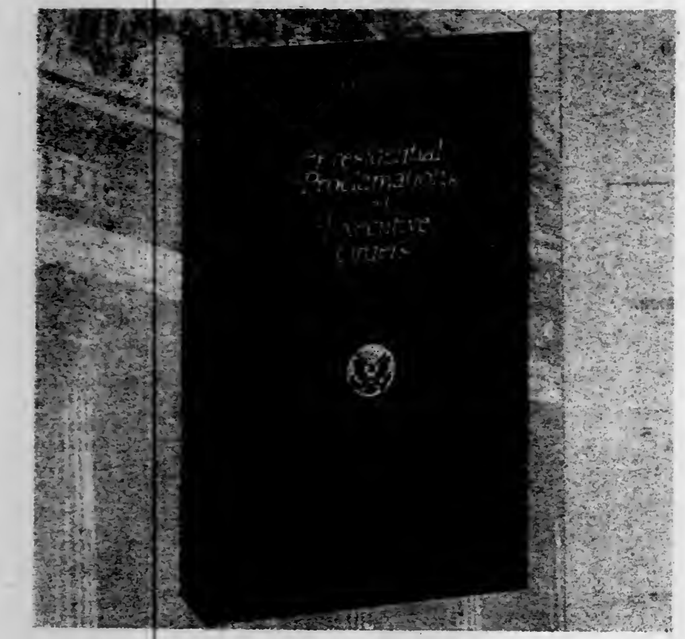
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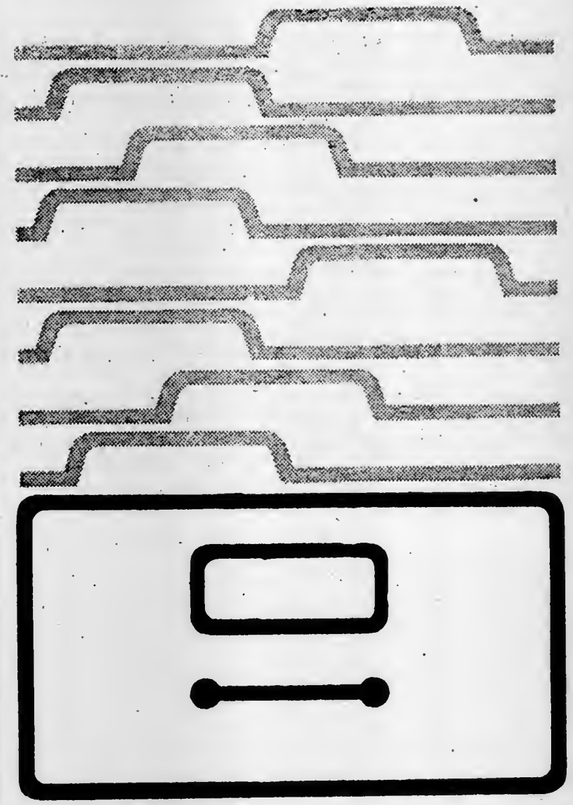
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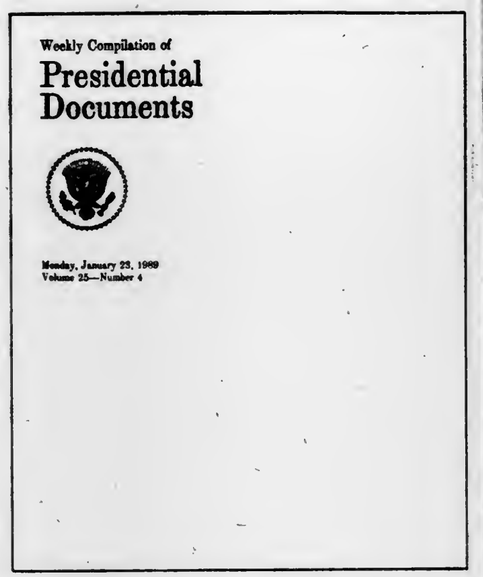
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Rules and Regulations

Federal Register
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Monday, August 24, 1992

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Parts 614 and 619

RIN 3052-AB13

Loan Policies and Operations; Definitions; Lending Authorities and Purchase and Sale of Interests in Loans

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts final regulations that amend parts 614 and 619 of FCA regulations governing the lending, loan sale and purchase, and loan participation authorities of Farm Credit System (FCS or System) institutions. The FCA originally proposed to amend these regulations on November 3, 1988, 53 FR 44438. In response to comments, the FCA reproposed amendments to certain regulations on January 23, 1991, 56 FR 2452. Pursuant to the Agricultural Credit Act of 1987 (1987 Act),[1] which amended the Farm Credit Act of 1971 (Act), the final regulations reconcile the loan-related authorities of FCS institutions that are created either by mergers or the transfer of long-term lending authorities from a bank to an association. These final regulations also implement provisions in the Act that authorize FCS institutions to sell and purchase non-participation interests in loans. The FCA has eliminated from the final regulations existing requirements that the agency give prior approval to loan purchase and sale transactions by FCS institutions. The final regulations also address the sale of loans to a pooler certified by the Federal Agricultural Mortgage Corporation (Farmer Mac) and lenders that are not FCS institutions.

[1] Public Law No. 100-233, 101 Stat. 1568 (1988).

EFFECTIVE DATE: The regulations shall become effective upon the expiration of 30 days after publication during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

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SUPPLEMENTARY INFORMATION:

I. General

A. Historical Background

Proposed amendments pertaining to appraisal standards, lending limits, and loan participations were originally part of the eligibility/lending authorities regulations that the FCA proposed on November 3, 1988, 53 FR 44438. The appraisal standards, lending limits, and loan participation regulations were separated from the original proposal, and subsequently reproposed on January 23, 1991, 56 FR 2452. The comment period for the reproposed regulations expired on March 25, 1991. The FCA received approximately 430 comment letters about the reproposed appraisal standards, lending limits, and loan participations regulations. Most of these comments addressed FCA's proposed amendments to the lending limits and appraisal standards regulations.

As a result of these comments, the FCA published a Notice of Public Hearing on May 10, 1991, 56 FR 21637, so that System institutions, their borrowers, and other interested parties would be afforded another opportunity to express their concerns about these reproposed regulations, and to offer constructive suggestions about the content of the final regulations. The Notice of Public Hearings solicited public comments on specific topics. Testimony was presented by 121 individuals during the 4 days of the public hearings. Testimony on regulations relating to loan participations and loan sale and purchase authorities was confined to their interface with lending limits.

After carefully considering all comments, testimony, and documents received from the public, the FCA has adopted final regulations amending subparts A and H of part 614, which pertain to lending authorities, loan participations, and loan purchase and sale transactions. As explained in greater detail elsewhere in this preamble, the FCA incorporated many of the commenters' substantive and technical recommendations into the final regulations and declined to adopt others. The appraisal and lending limit regulations will be addressed separately at a future date.

B. Economic Impact

On January 30, 1992, the President of the United States unveiled an initiative for economic growth.[2] The President's initiative requires Federal agencies to review their regulations in order to: (1) Identify those regulations that impede economic growth; and (2) accelerate action on those regulations that promote growth. The President's initiative establishes five criteria for evaluating the impact of a regulation on economic growth. First, the expected benefits of the regulation to society should clearly outweigh its costs. Second, the regulation should be fashioned to maximize the net benefits to society. Third, the regulation should rely, to the maximum extent possible, on performance standards instead of prescriptive command-and-control requirements. Fourth, the regulation should, to the maximum extent possible, rely upon market mechanisms. Finally, the regulation should be expressed with clarity and certainty to guide regulated entities, and it should be designed to avoid needless litigation.

The FCA has decided to promulgate these regulations at this time because they promote economic growth. For the first time, the regulations in subpart A of part 614 specifically address the loan sale and purchase authorities of Farm Credit Banks (FCBs), agricultural credit banks (ACBs), Federal land credit associations (FLCAs), production credit

[2] Presidential Memorandum dated January 28, 1992, addressed to certain Department and Agency Heads. The subject of the memorandum was "Reducing the Burden of Government Regulation."

associations (PCAs), and agricultural credit associations (ACAs). As a result, FCS institutions will be able to exercise their authorities to the maximum extent allowed by law. For example, these regulations authorize FLCAs and ACAs to make, sell, or purchase, long-term loans that are statutorily permissible for the transferring FCB or ACB. Additionally, the FCA has liberally reconciled the residual powers of FCBs and ACBs so that they remain a source of credit for America's farmers, ranchers, and aquatic producers and harvesters, after their long-term lending authorities have been transferred to direct lender associations. The final regulations also facilitate the sale of loans to Farmer Mac and non-System lenders by clarifying regulatory treatment of such sales.

As a result, the FCA concludes that these regulations satisfy the criteria of the President's economic initiative because: (1) The benefits of these regulations clearly outweigh their costs; and (2) these regulations maximize net benefits to society. These regulations also rely, to the maximum extent permitted by the Act, on market mechanisms by enhancing the authorities of the FCS to participate in the secondary markets. With the enhancement of the System's authorities to purchase and sell loans, including participations and secondary market transactions, the FCS institutions will be provided additional avenues through which they can better manage their loan portfolios and the associated risk and income streams.

Finally, the FCA has eliminated from these regulations the requirement that the agency give prior approval to loan sale and purchase transactions. As a result, FCA will no longer exercise control over market transactions of System institutions. Prior approval of loan sales and purchase created delays and increased costs for FCS institutions.

II. Subpart A—Lending Authorities

A. General Authorities

The FCA adopts final regulations that amend subpart A concerning lending authorities. Comments concerning lending authorities were received from the Farm Credit Council (FCC), two FCBs, and two ACAs.

All commenters opined that the reproposed regulations unduly restricted the lending authorities of FCS institutions. These commenters suggested that the reproposed regulation would prohibit FCS institutions from purchasing non-participation interests in loans from financial institutions outside the System for purposes other than Farmer Mac pooling. According to these commenters, this prohibition would place FCS institutions at a competitive disadvantage with commercial banks. These commenters also expressed concern that the reproposed regulation would also prevent a FCS institution from purchasing loans to sell to other secondary markets such as the Federal National Mortgage Corporation (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac).

In response, the FCA notes that no provision of the Act authorizes System institutions to purchase from non-FCS institutions interests in loans, other than participations, except for Farmer Mac pooling. The proposed regulations in subpart A, §§ 614.4000(e)(3), 614.4010(f)(3), 614.4030(c)(3), 614.4040(d)(2), 614.4050(d)(3), 614.4325(b), and 614.4325(c)(1) reflect these statutory restrictions on the purchase of non-participation interests in loans from non-FCS institutions. Although all System commenters denied that the Act prohibits FCS institutions from purchasing such interests in loans from financial institutions outside the System for purposes other than Farmer Mac pooling, no commenter supplied any legal support for this position. After a careful review of the Act and its legislative history, the FCA reaffirms its legal conclusion that FCS institutions are not authorized to purchase non-participation interests in loans from non-FCS institutions for purposes other than for Farmer Mac pooling.

As noted earlier, these commenters expressed concern that the regulation does not allow FCS institutions to purchase loans for sale to other secondary markets, such as Fannie Mae and Freddie Mac. The FCS institutions do not have the statutory authority to purchase loans from non-FCS institutions for the purpose of pooling such loans for any secondary market, except Farmer Mac. Section II E of this preamble addresses the authorities of FCS institutions to sell loans to other secondary market entities such as Fannie Mae and Freddie Mac.

B. Affiliate Authorities

The FCC and a FCB suggested that the FCA amend the regulation in subpart A to clarify that FCBs, ACBs, PCAs, FLCAs, and ACAs are authorized to purchase or sell interests in loans through subsidiaries chartered under section 4.25 of the Act, or affiliates chartered under section 8.5(e)(1) of the Act.

The FCA recognizes that the Act authorizes FCS institutions to exercise certain of their functions through subsidiaries. The authorities of a subsidiary derives from the authorities of its parent(s). The derivative authority of the subsidiary is generally reflected in its charter, rather than in regulations.

A new § 614.4060 has been added to the final regulation, however, which generally describes the authorities of FCS affiliates that pool and securitize loans under title VIII of the Act. Section 8.5(e)(1) of the Act impliedly amended section 4.25 of the Act so that associations, as well as banks, could organize affiliates that operate as poolers in the Farmer Mac program. Section 614.4060 clarifies that a FCS pooler affiliate is authorized to purchase loans from both FCS and non-System institutions that its parent is not authorized to make. Although the lending authorities of Farm Credit banks and associations are not expanded by provisions in the Act authorizing FCS institutions to operate as a certified agricultural mortgage marketing facility for the Farmer Mac program, title VIII of the Act permits certified agricultural mortgage marketing facilities to purchase, pool, and securitize any loan that complies with Farmer Mac's underwriting standards.

Two commenters asserted that System banks are statutorily authorized to sell or purchase interests in loans through existing subsidiaries that were organized under section 4.25 of the Act. The authority of a section 4.25 subsidiary to engage in such transactions would depend on its Articles of Incorporation. Accordingly, the authority of existing section 4.25 subsidiaries to sell or purchase interests in loans on behalf of their parent banks is determined on a case-by-case basis by reference to its Articles of Incorporation. Outside of the Farmer Mac context, the purchase of an interest in a loan may, in certain circumstances, be construed as an extension of credit to a borrower, and such activities cannot be legally conducted through a section 4.25 subsidiary. FCBs and ACBs should consult with the FCA before they conduct any loan sale or purchase activities through an existing section 4.25 subsidiary.

C. Loan Purchase and Sale Authorities

The FCC suggested that the FCA amend § 614.4040(d)(2) to authorize PCAs to sell interests in loans to non-FCS institutions for pooling and securitizing such loans pursuant to title VIII of the Act. The reproposed regulations in subpart A of part 614 only authorized PCAs and other FCS institutions to purchase non-participation interests in loans from non-FCS institutions for Farmer Mac pooling and securitization. These reproposed regulations did not reflect the statutory authority of FCS institutions to sell interests in loan to non-FCS institutions that are certified agricultural mortgage marketing facilities under title VIII of the Act. Sections 1.5(24) and 2.2(21) of the Act authorize Farm Credit banks and associations to originate loans that are subsequently sold to a Farmer Mac pooler. Therefore, the FCA amends §§ 614.4000(e)(1), 614.4010(f)(1), 614.4030(c)(1), 614.4040(d)(1), and 614.4050(d)(1) to reflect the statutory authority of FCS institutions to sell non-participation interests in loans to non-FCS institutions that operate as certified agricultural mortgage marketing facilities under title VIII of the Act.

Neither the Act or the final regulation authorizes FCS institutions to purchase or originate loans that they have no statutory authority to originate, for the purpose of selling them to a Farmer Mac pooler. For example, a PCA could not originate 30-year mortgage loans even though it intended to sell such loans to a Farmer Mac pooler. A PCA has no statutory authority to hold these loans on its books prior to a sale to a Farmer Mac pooler. Furthermore, the PCA would be illegally holding long-term loans if the pooler were to reject these loans because they do not qualify with Farmer Mac's underwriting standards. However, a FCS institution certified by Farmer Mac as a certified agricultural marketing mortgage facility may purchase such loans in its capacity as a pooler.

The FCA has also amended §§ 614.4000(e)(3), 614.4010(f)(3), 614.4030(c)(3), 614.4040(d)(3), and 614.4050(d)(3) to clarify that FCS institutions are authorized to purchase non-participation interests in loans from non-System institutions only in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act. Sections 1.5(24) and 2.2(21) of the Act authorizes FCS institutions to become certified agricultural mortgage marketing facilities for Farmer Mac. In their capacity as Farmer Mac poolers, FCS institutions are authorized to engage in activities that may not be authorized under their other statutory power. For example, a PCA that is acting in its capacity as a certified agricultural mortgage marketing facility is authorized to purchase long-term real estate loans that it can neither make under § 614.4040(a), nor purchase in other circumstances under § 614.4040(d)(2).

The FCA expects FCS institutions certified as agricultural marketing facilities to maintain a separation between their Farmer Mac pooling activities and their other operations. The FCA intends to exercise its examination and enforcement powers to ensure that such a separation is maintained.

An ACA recommended that the FCA amend §§ 614.4030 and 614.4050 to allow FLCAs and ACAs to sell or purchase non-participation interests in loans from other associations in the System. The reproposed regulation only authorized FLCAs and ACAs to engage in such transactions with FCBs, ACBs, or banks for cooperatives.

Section 1.5(16) of the Act authorizes FCBs to : (1) Sell interests in loans to non-FCS financial institutions; and (2) sell and purchase interests in loans to other FCS institutions. Section 7.6(a) of the Act enables a FCB to transfer its authority to "make and participate in long-term real estate mortgage loans" to an ACA or a FLCA, while section 7.6(c) of the Act requires the FCA to issue regulations governing the transfer of powers from the bank to an association. Sections 614.4030(c)(1) and 614.4050(d)(1) of the reproposed regulations reflect the FCA's determination that a FCB's powers to sell interests in long-term real estate loans to non-FCS institutions under section 1.5(16) of the Act can be transferred to FLCAs and ACAs.

The FCA non concludes that ACAs and FLCAs also inherit the authority of the FCB under section 1.5(16) of the Act to buy from or sell to other FCS institutions interests in long-term loans. Accordingly, §§ 614.4030(c) and 614.4050(d) of the final regulations authorize transferee FLCAs and ACAs to buy from or sell to other FCS institutions interests in long-term real estate loans.

The FCA emphasizes that the authority of ACAs to sell interests in loans to non-System institutions, and to sell to or purchase from FCS associations such loan interests applies only to lending authorities that are derived from the FCB, not from a PCA. Since section 2.2(11) of the Act restricts the authority of PCAs to sell or purchase interests in short- and intermediate-term loans to Farm Credit banks, § 614.4050(d) does not authorize ACAs to purchase or sell non-participation interests in short- and intermediate-term loans with institutions that are not Farm Credit banks. The FCA has amended final § 614.4050 to clearly distinguish the purchase and sale authorities of ACAs with respect to long-term and short-term loans.

D. Residual Authorities

The FCC requested that the FCA clarify in the regulation whether a FCB retains residual authority to participate loans with non-FCS lenders after the bank transfers it lending authority to an association. Section 7.6(c) of the Act requires the FCA to issue regulations that reconcile the authorities of FCS institutions after a bank transfers its lending authority to an association. In the preamble to the reproposed regulation, the FCA adopted the position that the transfer of lending authority to an association does not deplete the loan-related authorities of the FCB. The FCA also recognized the need to reconcile these authorities in a manner that best serves the credit needs of farmers, ranchers, and aquatic producers and harvesters. See 56 FR 2457 (January 23, 1991).

Pursuant to its powers under section 7.6 of the Act, the FCA determines that FCBs and ACBs that have transferred their lending authority to an ACA or a FLCA retain residual powers to: (1) Participate in loans with FCS and non-FCS lenders; (2) purchase or sell other interests in loans in accordance with these regulations; and (3) make loans in territories of the Farm Credit district where no active association operates. Accordingly, the FCA has added new §§ 614.4000(f) and 614.4010(g) to the final regulation to clarify the residual powers of FCBs and ACBs after they transfer their lending authority to an association. The lending authorities of the FCBs in territories served by FLBAs are, of course, continue and are unaffected by these provisions.

E. Loan Sales to Other Lenders

The FCC requested that the phrase "other lending institution" in §§ 614.4000(e)(1), 614.4010(f)(1), 614.4030(c)(1), and 614.4050(d)(1) be changed to "other financial institutions.' This commenter asserted that although the statute allows FCS institutions to sell interests in loans to "other lenders," Congress intended to include "other financial institutions such as insurance companies and financial intermediaries that are in the business of purchasing loans."

The FCA agrees with the commenter that the statute authorizes FCBs, ACBs, FLCAs, and ACAs to sell their loans to a broad spectrum of purchasers. However, instead of following the FCC's recommendation, the FCA has decided to change the term "other lending institutions" in §§ 614.4000(e)(1), 614.4010(f)(1), 614.4030(c)(1), and 614.4050(d)(1) to "other lenders." As a

result of this change, the language of the final regulation and the Act is identical. After carefully reviewing the legislative history of section 1.5(16) of the Act, the FCA interprets the term "other lenders" to mean parties that extend credit in the ordinary course of their business. In this context, the term "lenders" includes commercial banks, savings associations, credit unions, insurance companies, trust companies, agricultural credit corporations, incorporated livestock loan companies, and other financial intermediaries that extend credit as a regular part of their business. In response to two comments, the FCA concludes that §§ 614.4000(e)(1), 614.4010(f)(1), 614.4030(c)(1), and 614.4050(d)(1) authorize FCS institutions to sell their loans to other secondary markets such as Fannie Mae and Freddie Mac.

The FCA emphasizes that System institutions are required to comply with the borrower rights regulation, § 614.4330, when loans are sold to purchasers that are not System institutions.

F. Purchases of Interests in Farmer Mac Pools

The FCC requested that the FCA amend § 614.4000(e)(4) so that FCBs and ACBs that act in the capacity of a certified agricultural mortgage marketing facility under title VIII of the Act would be able to purchase an interest in a pool of subordinated participation interests where the pool had been assembled solely from loans purchased from other entities. The FCA rejects this suggestion because the risk is increased where the institution is exposed to the first risk of loss on loans in the pool, none of which it originated. The institution would be unable to determine whether any of the loans underlying the securities meet Farmer Mac underwriting standards and would have no control over the loan servicing. The FCA's position is consistent with the regulatory policy of the Office of the Comptroller of the Currency (OCC), which prohibits a national bank from acquiring a direct subordinated interest in loans sold by other lenders into the Farmer Mac program. See OCC BC–248 (October 24, 1990).

III. Subpart H—Purchase and Sale of Interests in Loans

The FCA now adopts as final regulation amendments to subpart H pertaining to loan participation transactions, and the sale and purchase of other (non-participation) interests in loans. This regulation also addresses the treatment of loan participations and other interests in loans that are sold by FCS institutions to certified Farmer Mac poolers. As discussed in further detail, the FCA, in some instances, amended the reproposed regulation to incorporate suggestions of the commenters.

A. Definitions

The FCC and a FCB commented that the definition of "interests in loans" in reproposed § 614.4325(a)(1) restricts the authority of FCS institutions to negotiate for the purchase of "any aspect" of a loan transaction from non-FCS institutions. These commenters suggested that the FCA revise § 614.4325(a)(1) to clarify that the lender's rights in collateral are included in the definition of "interest in loans."

The FCA declines to make the changes suggested by the commenters. The FCA's approach provides FCS institutions with a sufficient degree of flexibility in structuring agreements to reach interests in collateral in appropriate circumstances. In certain situations, rights in a loan may not extend to collateral because the FCS institution acquires an unsecured interest in a loan. Additionally, rights in collateral and other aspects of the transaction derive from the agreement between the parties.

The FCC, a FCB, several associations, and an individual suggested that the FCA amend § 614.4325(a)(4) to indicate that loan participations are a subcategory of interests in loans. These commenters argue that the Act authorizes FCS institutions to purchase non-participation interests in loans from non-System institutions because loan participations are a subcategory of interests in loans. The FCA disagrees with this rationale because it does not follow the plain language of the Act. Under the Act, the authority of FCS institutions to participate in loans is separate and distinct from their authority to purchase or sell other interests in loans. While the Act authorizes FCS institutions to participate in loans with non-System institutions, the statute does not allow FCS institutions to purchase other interests in loans from non-System institutions.

The FCC also recommended that the FCA revise the definition of a participation interest in § 614.4325(a)(4) to encompass interest payments and collateral security.

From the perspective of the FCA, reproposed § 614.4325(a)(4) provides System institutions with sufficient flexibility to structure participation agreements to encompass interest payments and collateral security. Under the FCA's approach, an institution's fractional undivided interest in the principal is not required to be equal to its share of the collateral or interest payments. For this reason, the FCA declines to adopt the commenter's recommendation.

Several commenters suggested that the FCA revise § 614.4325(a)(4) and (a)(5) by changing "fractional undivided interest" to "undivided fractional interest" in order to clarify that the fractional interest is undivided. The FCA declines to accept this suggestion because "fractional undivided interest" more clearly communicates the FCA's intention that all rights of ownership in the entire loan be shared on a pro rata basis. An "undivided fractional interest" can be interpreted to mean that the institution assumes all risks inherent in the fraction of the loan it purchases, instead of assuming all of the risks in the entire loan interest in an amount proportional to its fractional interest in the loan. The revision suggested by the commenters would significantly expand the types of transactions in which FCS institutions can engage. The FCA believes that the regulation allows FCS institutions reasonable flexibility in structuring loan participations, while retaining adequate standards for excluding loan participations sold from lending limit calculations.

A FCB and its related associations commented that "lead lender" is a very broad definition that does not take into account subparticipations that may be sold by a "first tier" participant. The commenter suggested that "lead lender" be changed to "financial institution." The reproposed regulation allows FCS institutions to purchase or sell participations when they are not lead lenders; however, prudent business practices require the agreement to extend to a lead lender who is responsible for servicing the loan or collecting payments. Therefore, the references to "lead lender" contained in §§ 614.4330(a)(1) and 614.4325(a)(4) remain unchanged.

B. Prior Approvals, Lending Limits Exclusions, Purchase and Sale Agreements

1. Prior Approvals and Lending Authorities

The reproposed regulation would eliminate the existing requirement that the FCA prior approve loan purchase and sale agreements by FCS institutions. The FCA received no comments about this proposed revision and the proposed position is adopted unchanged.

The FCC objected to reproposed § 614.4325(b), which would only enable FCS institutions to purchase or sell

interests in loans pursuant to their lending authorities in subpart A of these regulations and the requirements of reproposed § 614.4330. The commenter asserts that the reproposed regulation is too narrowly drafted with regard to the authority of FCS institutions to purchase interests in loans from non-FCS institutions. Accordingly, the FCC requests that the FCA delete such restrictions from subpart A and § 614.4325(b). As an alternative, the FCC suggests that the FCA "grandfather" purchases of loans from non-FCS institutions that do not conform with the final regulations.

As explained in this preamble to subpart A, these regulations reflect the FCA's view that FCS institutions are not authorized to purchase non-participation interests in loans from non-FCS institutions except pursuant to their authority to act as certified agricultural mortgage marketing facilities under title VIII of the Act. For this reason, the final regulation retains this prohibition. Because the purchase of such loan interests is without statutory authority, the FCA has no authority to "grandfather" the purchase of such loan interests.

2. Exclusion From Lending Limits and Capital Requirements

The FCC, a FCB, several associations, and an individual commenter suggested that the FCA revise § 614.4325(a)(6) to exclude situations where a seller retains some risk of loss from a "sale with recourse." The FCB recommended that the definition of "sale with recourse" loans should not cover circumstances where servicing rights and other aspects of the loan are retained.

In response, the reproposed regulation did not treat the retention of servicing rights alone as a sale with recourse. Nonetheless, the FCA amends § 614.4325(a)(6) so that the final regulation explicitly states that the retention of servicing rights alone does not constitute recourse.

Two System commenters suggested that the FCA modify proposed § 614.4325(g)(1) in order to clarify that an undivided interest in the loan must extend to the same percentage of collateral securing the loan if the seller is to be allowed to exclude the portion of the loan sold from its lending limit. The FCA has modified § 614.4325(g)(1) in order to address the commenters' concerns.

The American Bankers Association (ABA) commented that national banks are subject to additional limitations that the FCA does not impose on FCS institutions. The commenter complained that the OCC limits the amount of subordinated loan participations and subordinated securities that national banks can hold in Farmer Mac to 25 percent of capital. The ABA urges the FCA to impose this same restriction on FCS institutions. The FCA rejects this suggestion because this OCC policy is not suitable for the System, which was established to serve as a primary source of credit for American agriculture. Since Farmer Mac is a FCS institution, the FCA chooses not to impose a limit at this time on the subordinated loan participations or subordinated securities that other FCS institutions may purchase. However, the FCA interprets § 614.4325 as requiring each FCS institution to establish internal policies that limit the amount of subordinated securities that it shall purchase in total or from one pooler.

3. Purchase and Sale Agreements

The FCA received three comments proposing minor modifications of reproposed § 614.4330, which pertains to sale or purchase of participation interests in loans. Several FCS commenters sought clarification as to whether or not § 614.4330(b) requires a non-FCS institution to hold the lesser of a 10-percent interest in the principal amount of the loan, or its lending limit, whenever it sells loan participation to a System institution but retains servicing rights. The ABA supported the easing of the retention requirements on loan participations sold by commercial banks. Accordingly, the agency has modified the language of § 614.4330(b) in order to clarify the retention requirements imposed on non-FCS institutions.

Several System commenters also suggested that the FCA modify the terminology in § 614.4330(a)(9) to eliminate any confusion about the certificates required to evidence an undivided interest in a loan. The reproposed regulation referred to "participation certificates," which is also the term for nonvoting stock in FCS institutions. The FCA has adjusted the language in final § 614.4330(a)(9) to avoid potential confusion.

C. Independent Credit Judgment

The FCA adopts § 614.4325(e), which requires each FCS institution to exercise independent credit judgment on every interest in a loan that it purchases. From the perspective of the FCA, FCS institutions may be engaging in unsafe and unsound lending practices whenever they purchase a participation or other interest in a loan without performing an independent credit analysis and exercising independent judgment concerning the creditworthiness of the borrower or the quality of the asset. Additionally, a FCS institution that purchases an interest in a loan without the servicing rights incurs considerable risk in relying upon the lead lender to discharge its servicing responsibilities under the agreement. The purchasing institution must have sufficient capital to absorb any risk associated with the purchased interest, especially risks resulting from the failure of the lead lender to perform certain duties. Fraudulent activity, ineffective servicing, or the insolvency of the lead lender can result in loss to the participant, which in turn adversely affects its capital position. In order to reduce this exposure, the final regulation requires each FCS institution to conduct an independent credit analysis sufficient for it to exercise independent judgment when it purchases a loan or any interest therein. Independent credit judgment requires the purchaser to consider the creditworthiness of the borrower as well as the financial stability and servicing capacity of the lead lender.

The FCA received comments from the FCC, the FCB of Baltimore, associations in the Second Farm Credit District, and an individual concerning reproposed § 614.4325(e), which requires each FCS institution to exercise independent credit judgment prior to purchasing any interest in or agreeing to taking any servicing action on a loan that alters the terms of the original agreement. The FCC and the FCB suggested that the FCA insert the word "material" into the final regulation in order to describe the types of servicing actions where the participant is expected to exercise independent judgment. These commenters stated that it is customary for a participating lender to contractually delegate certain discretionary authority to the servicing lender where such decisions will not materially alter the credit risk on the loan. Most commenters expressed concern that reproposed § 614.4325(e) would cause unwarranted delays and "decision gridlock" in servicing actions on loans since all participants would need to concur in any servicing action. These commenters also suggested that the independent credit judgment requirement would increase the costs of participation arrangements. One commenter opined that the reproposed regulation would offer no protection to a lead lender where participants unnecessarily delay any decision. All commenters from the Second Farm Credit District inquired whether the reproposed regulation would authorize an agent to make certain decisions and take certain actions on behalf of

participants or purchasers of interests in a loan. These commenters cited certain precedents within the FCS where similar arrangements were used. The FCA also received comments noting that commercial lenders are more frequently allowing servicing decisions to be vested in a few participants, who in effect assume a controlling interest in the loan. Questions were also raised about whether the reproposed regulation required two FCS institutions to exercise absolute independence in their credit judgment, in situations where both institutions share a common director or voting interest, or when one institution exercises supervisory authority over another institution.

The final regulation grants the participants some discretion to delegate, by contract, certain judgments or servicing actions to either the lead lender or an agent. The final regulation does not require all participants in a loan to review decisions on non-substantive matters. The FCA considers certain servicing actions, such as granting time extensions for certain reporting requirements, releasing non-material portions of collateral, or granting a reasonable forbearance for meeting defined financial covenants, as non-substantive in nature. Although final § 614.4325(e) requires that the participating institution perform an independent credit analysis and exercise independent judgment with respect to each interest purchased, the participants may rely on an agent to assist in such functions as analyzing the creditworthiness of the borrower, determining the appropriateness of any proposed servicing action, and monitoring the performance of both the borrower and the lead lender under the terms of the contracts. Nevertheless, the FCA continues to believe that each participant must independently review and agree to any action which substantively alters either the terms of the loan or the participant's interest therein.

Although § 614.4325(e) may cause some delays in originating and servicing loans, the FCA does not believe that these inconveniences offset the need for each participant to independently analyze the creditworthiness of the borrower or the appropriateness of any substantive servicing action. Failure to assess the risks involved in these actions independently could result in material loss to the FCS participant.

Other alternatives exist to avert problems posed by decision gridlock. For example, participation agreements may contain provisions that require each participant to acquiesce in the decision of the other participants if it fails to make its decision within a prescribed period of time. Additionally, arrangements can be made to substitute participants.

The final regulation reaffirms the FCA's position that an institution's directors cannot delegate basic decisions inherent to its operation to an agent. An institution's directors are responsible for ensuring that assets are purchased and recorded at their proper value, and that the institution is not exposed to unnecessary risks. The final regulation requires that a FCS institution exercise credit judgment and analysis independently of the originating or lead lender and any intermediary seller or broker.

Furthermore, § 614.4325(e) requires that the independent credit analysis be performed by employees of the participating institution who are directly accountable to the board of directors. Additionally, the final regulation prohibits an employee who performed an appraisal of real estate supporting the loan decision from participating in the decision to purchase a loan. Some commenters noted that, in the past, one or more FCS institutions have delegated the decision to participate in certain loans to another body. In response, the FCA notes that those arrangements resulted from the seller's need for financial assistance from the participants. Moreover, such decisions were duly adopted by a body representative of all participants.

Section 614.4325(e) does not prohibit a FCS institution that participates in a loan from considering the analysis of the originating or lead lender. The final regulation does not require the FCS participant to gather information independently. However, the FCS institution purchasing a loan interest would be required to obtain such information if the originating lender does not provide the necessary information to support the purchasing institution's decision. It is the responsibility of the purchasing FCS institution to ensure that information furnished by the originating or selling institution meets the standards necessary to support the loan participation decision.

Final § 614.4325(e) now explicitly states that information such as appraisals of collateral and inspection reports can be accepted and utilized by the purchasing institutions. Section 614.4325(e) does not require the participating institution to prepare a lengthy analysis or to compile separate documentation from the originating or lead lender. However, § 614.4325(e) requires the purchasing institution to perform an objective, independent, and thorough analysis when it makes a loan decision. The regulation prohibits a participating institution from relying upon the analysis and judgment of the originating or selling institution when reaching its own credit judgment. The final regulation contemplates that the participation agreement will require the originating or selling institution to provide the participating FCS institution with all necessary information for assessing and monitoring risk in the loan on a timely and continuing basis. When the lead lender is a FCS institution, that information would include the credit and performance classification of the asset.

Although the final regulation permits the board of directors to delegate to institution employees functional or ministerial responsibilities, the board cannot delegate its fiduciary duties. Furthermore, the board must exercise appropriate oversight over employees who perform delegated responsibilities. While an agent may perform certain administrative and operational functions pertaining to credit analysis under the final regulation, the agency relationship must be structured to preserve the institution's responsibility to conduct an independent analysis and reach an independent, objective credit decision. Where a funding bank acts as agent, § 614.4325(e) requires that the association have sufficient independence under the agreement to disagree with the bank's analysis, refuse to participate in a loan, and cancel the contract, in its entirety or on an individual loan, without fear of reprisal. The FCA considers these requirements necessary for the board to effectively discharge its fiduciary responsibility to the institution's stockholders. The regulation will require that adequate internal controls be in place to safeguard the institution's assets.

The FCC also inquired whether a FCS institution that purchases an interest in a pool of subordinated participation interests pursuant to title VIII of the Act is required to exercise its independent credit judgment. An interest in a pool of subordinated participation interests enables a FCS institution to exchange the risk of a subordinated participation interest in a particular loan for the risk that is dispersed throughout a pool of subordinated participation interests. In these situations, subordinated participation interests in loans originated by the FCS institution must be included in the pool of subordinated participation interests. In such a transaction, the purchaser of subordinated participation interests relies on: (1) Pooler compliance with the underwriting standards of Farmer Mac; and (2) Farmer Mac enforcement of its certification requirements. The purchaser should exercise the same credit judgment that is expected of a prudent investor in such investments.

The FCC questioned whether proposed § 614.4325(e) applied to: (1) Transfers of direct lending authority from FCBs to associations; or (2) territorial adjustments pursuant to § 611.1124 of this chapter. The FCA emphasizes that the agency still retains prior approval authority for loan sales or purchases resulting from: (1) Merger of two or more FCS institutions; (2) adjustments to the chartered territory of a FCS institution; (3) the transfer of direct lending authority from a bank to an association; or (4) financial assistance. In these four situations, the prior approval authority of the FCA emanates from other provisions of the Act and separate regulations.

Independent credit judgment is required in situations where the acquirer may refuse to purchase any loan or interest therein. The FCA envisions that FCS institutions that acquire loans or interests therein as a means of rendering financial assistance to another FCS institution shall exercise independent credit judgment. Additionally, the FCA interprets § 614.4325(e) as applying to the transfer of direct lending authority if the transfer agreement allows the transferee institution to refuse loans originated by the bank prior to the time of transfer. Where the institution is required to accept all assets, the regulation does not impose an independent credit judgment requirement on specific loans. However, in these situations, the institution would not be relieved of its responsibility to exercise due diligence over the entire transaction, and shareholder approval is required.

D. Borrower Rights

The reproposed regulations would address the impact of the sale of a loan or an interest therein on the borrower's rights under title IV of the Act. Section 614.4336(a) of the reproposed regulation would require a FCS institution that sells an interest in a loan to either: (1) Obtain the borrower's consent to the sale, including the relinquishment of the statutory borrower rights; or (2) incorporate the statutory borrower rights into the loan contract so that the purchaser of the loan would continue to afford these statutory rights to the borrower. Under the reproposed regulation, the relinquishment of borrower rights would take effect at the time the loan is sold, and would remain in effect only so long as the loan is not reflected on the books of a FCS institution. In the event that the originating institution or another FCS direct lender repurchases the loan, statutory borrower rights would reattach under the reproposed regulation.

The FCA received comments about reproposed § 614.4336 from the FCC, a FCB, and an ACA. All commenters interpreted the reproposed regulation as applying to all loan sales by FCS institutions. All three commenters suggested that reproposed § 614.4336(a) would conflict with section 8.9(b) of the Act if the reproposed regulation applied to loans that were sold to Farmer Mac. The ACA expressed concern that reproposed § 614.4336(a) would extend to loan sales with other FCS institutions, including situations where a FCB sold its loan portfolio to a transferee ACA or FLCA. The FCB commented upon the impact of the reproposed regulation on loan sales to non-FCS institutions which are not Farmer Mac poolers.

These comments indicate that reproposed § 614.4336 created significant confusion in the System about the treatment of borrower rights when loans are sold to different types of purchasers. The commenters indicated that the reproposed regulation did not clearly distinguish the treatment of borrower rights when loans are sold to: (1) A Farmer Mac pooler under title VIII of the Act; (2) non-FCS institutions that are not Farmer Mac poolers; or (3) FCS institutions. The FCA is now amending § 614.4336 so that the final regulation will clearly distinguish the application of borrower rights in these three situations. The final regulation clarifies that FCS lenders will be required to incorporate the statutory borrower rights into the contract, or obtain the borrower's consent to the sale subject to the relinquishment of borrower rights, whenever loans are sold to non-FCS institutions which are not Farmer Mac poolers.

Final § 614.4336 requires a FCS institution to comply with the borrower rights notification requirements of § 614.4367(b) whenever it sells a loan to a Farmer Mac pooler pursuant to title VIII of the Act. This approach is consistent with section 8.9(b) of the Act which requires a FCS institution that sells a loan to a Farmer Mac pooler to: (1) Notify the borrower that the statutory borrower rights will no longer apply once the loan is sold into the agricultural mortgage secondary market under title VIII of the Act; and (2) inform the borrower that he or she has the right to not have the loan pooled. Section 8.9(b) of the Act and § 614.4367(b) also enable borrowers to retain their statutory borrower rights by refusing to allow the System lender to pool the loan.

The FCA never intended for reproposed § 614.4336 to apply to the sale of loans within the System. As noted elsewhere in the preamble, borrower rights continue to apply when a loan is sold within the System because all System lenders are "qualified lenders" as described in section 4.14A(a)(6) of the Act. The final regulation clearly establishes that the borrower rights provisions of § 614.4336 do not apply to such sales.

The FCA's decision to impose the requirements in reproposed § 614.4336(a) on loan sales to non-FCS institutions (that are not Farmer Mac poolers) proved controversial. A FCB argued that the borrower rights requirements in reproposed § 614.4336(a) violate the Act when applied to loans that are sold to such non-FCS institutions. The commenter asserts that section 4.14A(a)(6) of the Act only requires FCS institutions and OFIs within the meaning of section 1.7(b)(1) of the Act to comply with the borrower rights provisions in title IV of the statute. This commenter also opines that the statutory authority to sell interests in loans to non-FCS institutions predates, and thus supersedes, the borrower rights provisions in title IV of the Act. In the alternative, the commenter argues that Congress would have written the statute differently if it had intended for non-System purchasers of FCS loans to adhere to these statutory borrower rights requirements. This commenter further argues that the borrower rights are automatically extinguished when a loan is sold to a non-FCS institution (that is not a Farmer Mac pooler) because these rights are created by statute, not contract.

All commenters advanced several non-legal arguments against the borrower rights requirements in reproposed § 614.4336. The FCC claimed that most prospective purchasers would decline to buy loans that incorporated these borrower rights provisions. Another commenter opined that a non-System purchaser would face numerous impracticalities in administering borrower rights that were incorporated into the loan contract because it would be unfamiliar with FCA regulations, policies, procedures, and interpretations. These commenters also complained that the alternative of requiring a borrower both to consent to the sale and to relinquish the statutory borrower rights effectively enables borrowers to veto

loan sales, thus defeating the statutory rights of the FCS institutions to sell loans.

After careful consideration of these comments, the FCA has decided to retain the requirements that a FCS lender either incorporate the statutory borrower rights into a contract to which the borrower is a signatory or obtain the borrower's signed, written consent to the sale, including the relinquishment of borrower rights, whenever the loan is sold to a non-FCS lender that is not a Farmer Mac pooler. The FCA rejects the arguments that the regulation violates the statute. The FCA concludes that the regulation implements the Act by balancing the authority of FCS institutions to sell loans in the secondary market with the borrower rights provisions in title IV of the Act. The FCA finds no support in either the Act or its legislative history for the claim that the authority of the FCS to sell loans to non-FCS lenders is superior to borrower rights provisions in title IV of the Act.

The claim that borrower rights are automatically extinguished whenever a FCS institution sells a loan to a non-FCS institution denies borrowers those rights and benefits that Congress enacted into law. In fact, a FCS institution could face significant litigation liability that could potentially undermine its solvency if the issue of borrower rights is left unresolved at the time the loan is sold to a non-FCS institution. Section 614.4336 reduces this litigation risk by compelling the seller to obtain either the purchaser's assumption of borrower rights, or the borrower's consent to the sale with the relinquishment of borrower rights.

The FCA acknowledges that borrower rights are established by statute and that section 4.14A(a)(6) of the Act only imposes these borrower rights requirements on the System and OFIs. However, title IV of the Act neither prohibits a FCS lender from incorporating the statutory borrower rights into the loan contract nor prevents a non-FCS institution from voluntarily assuming borrower rights obligations. The claim that many potential purchasers would decline to buy a loan containing borrower rights provisions does not provide a sufficient reason for deleting this provision from the final regulation. From the perspective of the FCA, the regulation provides FCS institutions with two options for resolving borrower rights issues when loans are sold outside the System to parties who are not Farmer Mac poolers. Although non-FCS institutions may experience difficulties with borrower rights requirements, these non-FCS institutions have voluntarily and knowingly assumed these obligations with any attendant problems.

In order to provide greater flexibility to FCS institutions that choose this option, the FCA modifies § 614.4336(a)(2)(i) to allow the borrower rights to be incorporated into either the original loan contract or a subsequent modification agreement that is signed by the borrower. This approach does not require a FCS institution to incorporate borrower rights into the contract until such time as it sells the loan to a non-FCS lender that is not a Farmer Mac pooler.

The FCA also declines to delete the alternative requirement that the borrower consent to the loan sale and relinquish the statutory borrower rights. As stated earlier, the FCA rejects the argument that the statutory lending authorities of FCS institutions supersede the borrower rights provisions in title IV of the Act. Borrower rights are an unique feature of FCS loans which may enhance the competitiveness of the System in agricultural credit markets.

The approach advocated by the commenters would allow FCS institutions to unilaterally deprive borrowers of their rights without their consent. As a result, the FCS institution and the non-System purchaser would profit from the sale of the loan at the expense of the borrower, who is denied any voice in the matter. The borrower receives no consideration for involuntarily forfeiting borrower rights. From the perspective of the FCA, such an approach is inherently unfair to System borrowers. The regulation maintains the balance of power that title IV of the Act establishes between FCS lenders and borrowers. The FCA believes that borrowers should be afforded an ability to consent to relinquishment of their borrower rights. Furthermore, the FCA is modifying the language of the regulation to reflect more accurately the fact that the borrower is consenting to the loan sale and relinquishing borrower rights.

At this juncture, the FCA emphasizes that section 4.14A(a)(5) of the Act only extends borrower rights to loans made to farmers, ranchers, and aquatic producers and harvesters for any agricultural or aquatic purpose and other credit needs of such borrowers. Therefore, § 614.4336 applies only if the borrower is a farmer, rancher, or aquatic producer or harvester, and the loan is sold to either a certified Farmer Mac pooler or a non-System institution. Section 614.4336(a), however, would not apply when a FCS lender sold to a non-System institution a rural housing loan made under either section 1.11(b) or 2.4(b) of the Act to a borrower who is not a farmer, rancher, or aquatic producer or harvester for residential property that could not produce agricultural products for sale on a sustained basis.

E. Borrower Stock

Section 614.4335 of the reproposed regulations reflects the statutory requirement that a borrower, as a condition of obtaining a loan from or through a Farm Credit bank or association, purchase an amount of stock that is not less than the lower of $1,000 or 2 percent of the loan amount. Additionally, the Act contemplates that individual institutions may need to require a higher minimum stock purchase in order to adequately capitalize the institution. The reproposed regulation would require a FCS institution to impose the institution's minimum stock purchase requirement upon all borrowers, whether or not the loan is made for the purpose of sale. Accordingly, reproposed § 614.4335 would not allow an institution to retire stock below its minimum stock purchase requirement for the entire loan whenever: (1) A subordinated participation interest is retained; (2) an interest in a pool of subordinated participation interests is purchased; or (3) a contribution to a cash reserve is made to satisfy the requirements of title VIII of the Act.

The regulation that was reproposed on January 23, 1991, would allow an institution to retire a portion of the borrower's stock investment when it sells a fractional interest in the principal amount of a loan that qualifies for exclusion from capital computations. In such situations, reproposed § 614.4335 allows an institution, in its discretion, to retire a proportionate share of the borrower stock, provided that after the stock is retired the institution would: (1) Continue to comply with its minimum permanent capital standards; and (2) retain adequate capital to cover the risk in its portfolio. Since the reproposed regulation would grant FCS institutions discretion concerning stock retirements in such circumstances, the FCA encourages all institutions to carefully evaluate both their present and future capital needs before deciding whether to retire the borrower's stock. In addition, the FCS institutions must maintain a minimum borrower stock requirement to support the statutory requirements of institution membership where a loan to a borrower is held outstanding.

The FCA received comments on reproposed § 614.4335(a) from the FCC, two FCBs, a PCA, and a Federal land bank association (FLBA) regarding the requirement that FCS institutions require their borrowers to purchase stock on loans originated for future sale into the secondary market. One commenter suggested that the FCA require the borrower to purchase stock in the FCS institution if the loan is not sold into the secondary market within a reasonable period of time. The FCC asserted that the stock purchase requirement places FCS institutions at a competitive disadvantage with other lenders who originate loans for sale to the secondary market. More specifically, the commenter argued that the borrower stock requirement increases the cost of the loan for the borrower and poses marketing difficulties for a FCS institution. The FCC also argued that the reproposed regulation focuses on capitalization of an individual loan rather than the institution.

The FCC transmitted to the FCA an opinion of counsel to bolster its position on borrower stock. The opinion concludes that the FCA has discretion to waive the borrower stock requirement for loans that FCS institutions contemplate selling into the secondary market. The opinion states that the primary purposes of the stock purchase requirement are: (1) To furnish at least a portion of the capital that the bank or association must hold to support the loan as an asset; and (2) to implement the cooperative principle that each FCS institution is owned by its borrowers. Accordingly, the FCC's legal counsel concludes that the reasons behind the borrower stock requirements no longer apply when a loan is sold into the secondary market because the loan is no longer an asset of the bank or association.

In response, the FCA believes that the stock purchase requirement should be imposed on all borrowers, even if the institution contemplates selling their loans on the secondary market. First, the possibility that a loan or an interest therein may be subsequently sold does not negate the requirement of the Act that borrowers, who are farmers, ranchers, or aquatic producers and harvesters, purchase voting stock in the institution. The potential sale of a loan on the secondary market does not relieve the FCS institution of its legal obligation to sell stock to the borrower, especially where the FCS institution is likely to retain servicing rights or a subordinated participation interest in the loan. Second, the possible future sale of a loan or an interest therein is not a certainty at the time a loan is made. Loans contemplated for sale on the secondary market must meet the underwriting criteria of the secondary market and exhibit characteristics desired by potential purchasers. Although the lender, at the time the loan is originated, may contemplate selling it on the secondary market, such a sale may never occur. Third, the FCA believes that as long as the institution retains a portion of the loan as an asset, the statute requires the borrower to hold stock in the institution. The regulation provides FCS institutions with latitude to set a minimum stock purchase requirement. In exercising its authority to set a minimum stock requirement, each institution should balance its need to attract potential borrowers with its responsibility to be viable and adequately capitalized. For the same reasons, § 614.4335 also requires the borrower to repurchase stock or participation certificates equal to the institution's minimum stock purchase requirement whenever the institution repurchases the loan.

The FCA is persuaded that the regulation should provide as much flexibility as the law allows to facilitate the sale of loans into the Farmer Mac program, and that the statutory stock requirement only applies when a portion of the borrower's loan is retained as a loan asset. Consequently, the final regulation allows a FCS institution to retire borrower stock when the entire loan is sold to a Farmer Mac pooler. The stock requirement emanates from a membership requirement rather than as a means of capitalizing an individual loan. In addition, if a loan is sold to another lender outside of the Farmer Mac secondary market and a portion of the loan, or recourse to the selling institution is retained, then the institution would be required to retain the borrower stock as if the entire loan had not been sold.

Therefore, the FCA revises § 614.4335 so that the final regulation provides a FCS institution with latitude to retire the full amount of the borrower's stock where the entire loan has been transferred from the institution's books through the sale of the loan even if an interest in a pool of subordinated interests is purchased to satisfy statutory requirements. However, for other regulatory purposes, the purchased interest is treated like any loan sale where a portion of the loan and/or associated risk is retained. The institution will still be required to comply with the capital requirements and disclosure requirements as described in parts 615 and 620, respectively, of this chapter.

These commenters also expressed concerns about reproposed § 614.4335(b), which requires a borrower to repurchase stock in the event that the institution subsequently repurchases the loan. All commenters asserted that such a requirement was impractical, and that there may be no legal or business basis for requiring the borrower to repurchase stock in a FCS institution. The FCC asserted that Congress did not intend to cripple FCS institutions through the use of such restrictions as stock repurchase requirements.

In response to comments on proposed § 614.4335(b), the FCA continues to believe that borrowers whose loans are repurchased should be required to repurchase stock in the institution. FCS institutions have discretion to set minimum stock purchase requirements at a level where no additional stock purchase will be needed in the event a loan is repurchased. FCS institutions that contemplate selling loans on the secondary market should insert provisions into membership contracts that require the borrower to repurchase stock in the event that the institution reacquires the loan. Any disclosures about potential retirement of stock on the sale of a loan should also notify the borrower that the stock cannot be retired if the institution is not in compliance with minimum permanent capital standards, or its capital is not adequate to support the risk in its loan operations.

As noted in the preamble to subpart A of part 614 of these regulations, §§ 614.4030(c) and 614.4050(d) of the final regulation allows FLCAs and ACAs to sell loans to FCS institutions other than banks. The FCA believes that the final regulations should address the borrower stock requirement in such situations. The FCA anticipates that, in most situations, the selling FCS institution will retain servicing rights but will sell the loan without recourse to another System institution. In some instances, the purchasing institution may be located far from the borrower.

The Act requires farmers, ranchers, and aquatic producers or harvesters who borrow from the FCS to hold stock in a System institution. A loan sale within the FCS does not negate statutory requirements concerning borrower rights and borrower stock. The FCA believes that the borrower should be afforded the opportunity to elect whether to hold stock in the selling or purchasing FCS institution. Since the borrower has an established relationship with the local FCS institution that originated his or her

loan, the FCA expects that many borrowers will elect to remain a member of that institution. For these reasons, the FCA has added a new § 614.4335(d), which allows the borrower to choose membership in either the selling or purchasing FCS institution. The FCA concludes that the cooperative principles of the FCS would be violated if such borrowers did not retain stock in either the originating or purchasing FCS institution.

F. Disclosure to Borrowers

The FCA received four comments about reproposed § 614.4337, concerning disclosures to borrowers. All of the commenters indicated that the reproposed regulation would apply to loans that were sold "without" servicing rights. The FCA corrects this inadvertent error, and the final § 614.4337 applies to loans that are sold with servicing rights.

Some commenters expressed the opinion that reproposed § 614.4337 (a)(3) and (a)(4) should be deleted because they duplicate the requirements of § 614.4336(b). These provisions are not redundant because they address different issues. Accordingly, the FCA declines to delete § 614.4336 (a)(3) and (a)(4).

Conversely, some commenters argued that § 614.4337(b) should be deleted because it duplicates the requirements of § 614.4337(a). As noted in the preamble to the reproposed regulation, § 614.4337(b) was added in order to address concerns in a recent General Accounting Office (GAO) study about damage to borrowers caused by the transfer of servicing rights. Accordingly, the FCA declines to delete § 614.4337(b). The FCA, however, clarifies that § 614.4337(b) only applies to situations where a FCS institution purchases the loan or an interest therein.

Finally, one commenter suggested the reproposed § 614.4337(a)(3) would require FCS institutions to give legal advice to their borrowers. The FCA modified the language of this provision to address the commenter's concern.

IV. Part 619—Definitions

The final regulation reflects a definition of "loan participation" consistent with its meaning in part 614, subpart H. The comments received on the proposed change have been addressed elsewhere in this preamble.

List of Subjects

12 CFR Part 614

Agriculture, Banks, Banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

12 CFR Part 619

Agriculture, Banks, Banking, Rural areas.

For reasons stated in the preamble, parts 614 and 619 of chapter VI, title 12 of the Code of Federal Regulation are amended as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 is revised to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639

Subpart A—Lending Authorities

2. Section 614.4000 is amended by adding new paragraphs (e) and (f) to read as follows:

§ 614.4000 Farm Credit Banks.

* * * * *

(e) *Other interests in loans.* (1) Subjects to the requirements of subpart H of this part, Farm Credit Banks may sell interests in loans only to:

(i) Farm Credit System institutions authorized to purchase such interests;

(ii) Other lenders that are not Farm Credit System institutions; and

(iii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, Farm Credit Banks may purchase interests other than participation interests in loans and nonvoting stock from other Farm Credit System institutions.

(3) Farm Credit Banks, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans (other than participation interests authorized in paragraph (d) of this section) from institutions other than Farm Credit System institutions only for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) A Farm Credit Bank may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated to satisfy the requirements of title VIII of the Act with respect to such loans.

(f) *Residual powers after the transfer of lending authority to an association.* After transferring its authority to make and participate in long-term real estate loans to an agricultural credit association of a Federal land credit association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, a Farm Credit Bank retains residual authority to:

(1) Enter into loan participation agreements pursuant to paragraph (d) of this section;

(2) Purchase or sell other interests in loans in accordance with paragraph (e) of this section; and

(3) Make long-term real estate loans in accordance with paragraph (a) of this section in areas of its chartered territory where no active association operates.

3. Section 614.4010 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 614.4010 Agricultural credit banks.

* * * * *

(f) *Other interest in loans.* (1) Subject to the requirements of subpart H of this part, agricultural credit banks may sell interests in loans, except those originated under paragraph (d) of this section, only to:

(i) Farm Credit System institutions authorized to purchase such interests;

(ii) Other lenders that are not Farm Credit System institutions; and

(iii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, agricultural credit banks may purchase interests other than participation interests in loans and nonvoting stock from other Farm Credit System institutions.

(3) Agricultural credit banks, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans (other than participation interests authorized in paragraph (e) of this section) from institutions other than Farm Credit System institutions only for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) An agricultural credit bank may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated, to satisfy the requirements of title VIII of the Act with respect to such loans.

(g) *Residual powers after the transfer of lending authority to an association.*

After transferring its authority to make and participate in long-term real estate loans to an agricultural credit association or a Federal land credit association pursuant to section 7.6(a) of the Act and subpart E of part 611 of these regulations, an agricultural credit bank retains residual authority to:

(1) Enter into loan participation agreements pursuant to paragraph (e) of this section;

(2) Purchase or sell other interests in loans in accordance with paragraph (f) of this section; and

(3) Make long-term real estate loans in accordance with paragraph (a) of this section in areas of its chartered territory where not active association operates.

4. Section 614.4030 is amended by adding a new paragraph (c) to read as follows:

§ 614.4030 Federal land credit associations.

* * * * *

(c) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part and the supervision of their respective funding banks, Federal land credit associations may sell interests in loans made under paragraph (a) of this section only to:

(i) Farm Credit System institutions, as authorized by their respective funding banks;

(ii) Other lenders that are not Farm Credit System institutions, as authorized by their respective funding banks; and

(iii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, Federal land credit associations may purchase interests in loans that comply with the requirements of paragraph (a) of this section and nonvoting stock from Farm Credit System institutions.

(3) Federal land credit associations, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans (other than participation interests under paragraph (b) of this section) from institutions other than Farm Credit System institutions for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) A Federal land credit association may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated, to satisfy the requirements in title VIII of the Act.

5. Section 614.4040 is amended by adding a new paragraph (d) to read as follows:

§ 614.4040 Production credit associations.

* * * * *

(d) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part and the supervision of their respective funding banks, production credit associations may sell interests in loans that are made under paragraph (a) of this section to:

(i) Banks of the Farm Credit System, as authorized by their respective funding banks; and

(ii) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, production credit associations, as authorized by their respective funding banks, may purchase interests in loans that comply with the requirements of paragraph (a) of this section and nonvoting stock from banks of the Farm Credit System.

(3) Production credit associations, in their capacity as certified mortgage marketing facilities under title VIII of the Act, may purchase from Farm Credit System institutions and institutions that are not Farm Credit System institutions interests in loans (other than participation interests authorized by paragraph (c) of this section) for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) A production credit association may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated, to satisfy the requirements of title VIII of the Act.

6. Section 614.4050 is amended by adding a new paragraph (d) to read as follows:

§ 614.4050 Agricultural credit associations.

* * * * *

(d) *Other interests in loans.* (1) Subject to the requirements of subpart H of this part and the supervision of their respective funding banks, agricultural credit associations may sell:

(i) Interests in loans made under paragraph (a) of this section only to:

(A) Farm Credit System institutions, as authorized by their respective funding banks;

(B) Lenders that are not Farm Credit System institutions, as authorized by their respective funding banks; and

(C) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(ii) Interests in loans made under paragraph (b) of this part only to:

(A) Banks of the Farm Credit System, as authorized by their respective funding banks; and

(B) Any certified agricultural mortgage marketing facility, as defined by section 8.0(3) of the Act, for the purpose of pooling and securitizing such loans under title VIII of the Act.

(2) Subject to the requirements of subpart H of this part, agricultural credit associations may purchase:

(i) Interests in loans that comply with the requirements in paragraph (a) of this section from institutions of the Farm Credit System;

(ii) Interests in loans that comply with the requirements of paragraph (b) of this section from banks of the Farm Credit System; and

(iii) Nonvoting stock from institutions of the Farm Credit System.

(3) Agricultural credit associations, in their capacity as certified agricultural mortgage marketing facilities under title VIII of the Act, may purchase interests in loans, other than participation interests authorized by paragraph (c) of this section, from institutions other than Farm Credit System institutions for the purpose of pooling and securitizing such loans under title VIII of the Act.

(4) An agricultural credit association may purchase an interest in a pool of subordinated participation interests that contains a subordinated participation interest in a loan it has originated, to satisfy the requirements in title VIII of the Act.

7. A new § 614.4060 is added to read as follows:

§ 614.4060 Affiliates established pursuant to section 8.5(e)(1) of the Farm Credit Act of 1971.

An affiliate established by one or more Farm Credit System institutions pursuant to section 8.5(e)(1) of the Act and § 611.1137 of this chapter, as a certified agricultural mortgage marketing facility, may purchase loans from Farm Credit System institutions and institutions other than Farm Credit System institutions in accordance with title VIII of the Act and any applicable regulation promulgated thereunder.

8. Subpart H is revised to read as follows:

Subpart H—Loan Purchases and Sales

Sec.

614.4325 Purchase and sale of interests in loans.
614.4330 Loan participations.
614.4335 Borrower stock requirements.

Sec.
614.4336 Borrower rights.
614.4337 Disclosure to borrowers.

Subpart H—Loan Purchases and Sales

§ 614.4325 Purchase and sale of interests in loans.

(a) *Definitions.* For the purposes of this subpart, the following definitions shall apply:

(1) *Interests in loans* means ownership interests in the principal amount, interest payments, or any aspect of a loan transaction, including servicing rights.

(2) *Lead lender* means a lending institution having a direct contractual relationship with a borrower to advance funds, which institution sells or assigns an interest or interests in such loan to one or more other lenders.

(3) *Loan* means any extension of credit or similar financial assistance of the type authorized under the Act, such as leases, guarantees, letters of credit, and other similar transactions.

(4) *Loan participation* means a fractional undivided interest in the principal amount of a loan that is sold by a lead lender to a participating institution in accordance with the requirements of § 614.4330 of this subpart. The term "loan participation" does not include a subordinated participation interest.

(5) *Participating institution* means an institution that purchases a fractional undivided interest in the principal amount of a loan originated by another lender.

(6) *Sale with recourse* means a sale of a loan or an interest in a loan in which the seller:

(i) Retains some risk of loss from the transferred asset for any cause except the seller's breach of usual and customary warranties or representations designed to protect the purchaser against fraud or misrepresentation; or

(ii) Has an obligation to make payments of principal or interest to any party resulting from:

(A) Default on the payment of principal or interest on the loan by the borrower or guarantor or any other deficiencies in the obligor's performance;

(B) Changes in the market value of the assets after transfer;

(C) Any contractual relationship between the seller and purchaser incident to the transfer that, by its terms, could continue even after final payment, default, or other termination of the assets transferred; or

(D) Any other cause, except the retention at servicing rights alone shall not constitute recourse.

(7) *Subordinated participation interest* means an interest in a loan that bears the first risk of loss, including the retention of such an interest when a loan is sold to a pooler certified by the Federal Agricultural Mortgage Corporation pursuant to title VIII of the Act, or an interest in a pool of subordinated participation interests purchased to satisfy the requirements of title VIII of the Act with respect to a loan sold to such a certified pooler.

(b) *Authority to purchase and sell interests in loans.*

Loans and interests in loans may only be sold in accordance with each institution's lending authorities, as set forth in subpart A of this part. No Farm Credit System institution may purchase from an institution that is not a Farm Credit System institution any interest in a loan, except for the purpose of pooling and securitizing such loans under title VIII of the Act, unless such an interest is a participation interest that qualifies under the institution's lending authority, as set forth in subpart A of this part, and meets the requirements of § 614.4330 of this subpart.

(c) *Policies.* Each Farm Credit System institution that is authorized to sell or purchase interests in loans under subpart A of this part shall exercise that authority in accordance with a policy adopted by its board of directors that addresses the following matters:

(1) The types of purchasers to which the institution is authorized to sell interests in loans;

(2) The types of loans in which the institution may purchase or sell an interest and the types of interests which may be purchased or sold;

(3) The underwriting standards to be applied in the purchase of interests in loans:

(4) Such limitations on the aggregate principal amount of interests in loans that the institution may purchase from a single institution as are necessary to diversify risk, and such limitations on the aggregate amount the institution may purchase from all institutions as are necessary to assure that service to the territory is not impeded;

(5) Provision for the identification and reporting of loans in which interests are sold or purchased;

(6) Requirements for providing and securing in a timely manner adequate credit and other information needed to make an independent credit judgment; and

(7) Any limitations or conditions to which sales or purchases are subject that the board deems appropriate, including arbitration.

(d) *Purchase and sale agreements.* Agreements to purchase or sell an interest in a loan shall, at a minimum:

(1) Identify the particular loan(s) to be covered by the agreement;

(2) Provide for the transfer of credit and other borrower information on a timely and continuing basis;

(3) Provide for sharing, dividing, or assigning collateral;

(4) Identify the nature of the interest(s) sold or purchased;

(5) Set forth the rights and obligations of the parties and the terms and conditions of the sale; and

(6) Contain any terms necessary for the appropriate administration of the loan and the protection of the interests of the Farm Credit System institution.

(e) *Independent credit judgment.* Each institution that purchases an interest in a loan shall make a judgment on the creditworthiness of the borrower that is independent of the originating or lead lender and any intermediary seller or broker prior to the purchase of the interest and prior to any servicing action that alters the terms of the original agreement, which judgment shall not be delegated to any person(s) not employed by the institution. A Farm Credit System institution that purchases a loan or any interest therein may use information, such as appraisals or collateral inspections, furnished by the originating or lead lender, or any intermediary seller or broker; however, the purchasing Farm Credit System institution shall independently evaluate such information when exercising its independent credit judgment. No employee who performed a real estate appraisal on any collateral supporting a loan shall participate in the decision to purchase that loan. The independent credit judgment shall be documented by a credit analysis that considers factors set forth in § 614.4160 of this part and is independent of the originating institution and any intermediary seller or broker. The credit analysis shall consider such credit and other borrower information as would be required by a prudent lender and shall include an evaluation of the capacity and reliability of the servicer. Boards of directors of jointly managed institutions shall adopt procedures to ensure that the interests of their respective shareholders are protected in participation between such institutions.

(f) *Limitations.* The aggregate principal amount of interests in loans purchased from a single lead lender and the aggregate principal amount of interests in loans purchased from other institutions shall not exceed the limits set in the institution's policy.

(g) *Lending limits.* In order to exclude the principal amount of interests sold from the principal amount of the loan for the purpose of determining compliance with the lending limits set forth in subpart J of this part, sale agreements must meet the following requirements:

(1) The interest sold must be an undivided interest in the principal amount of the loan and in all collateral securing the loan; and

(2) The interest must be sold without recourse; and

(3) The agreement under which the interest is sold must provide for the sharing of all payments of principal, collection expenses, collateral proceeds, and risk of loss on a pro rata basis according to the percentage interest in the principal amount of the loan. Agreements that provide for the pro rata sharing to commence at the time of default or similar event, as defined in the agreement under which the interest is sold, shall be considered to be pro rata agreements, notwithstanding the fact that advances are made and payments are distributed on a basis other than pro rata prior to that time.

(h) *Sales with recourse.* When a loan or interest in a loan is sold with recourse, it shall be accorded the following treatment:

(1) The loan shall be considered, to the extent of the recourse, an extension of credit by the purchaser to the seller, as well as an extension of credit from the seller to the borrower(s), for the purpose of determining whether credit extensions to a borrower are within the lending limits established in subpart J of this part.

(2) The amount of the loan subject to the recourse agreement shall be considered a loan sold with recourse for the purpose of computing permanent capital ratios.

§ 614.4330 Loan participations.

Agreements to purchase or sell a participation interest shall be subject to the provisions of § 614.4325 of this subpart, and, in addition, shall satisfy the requirements of this section.

(a) *Participation agreements.* Agreements to purchase or sell a participation interest in a loan shall, in addition to meeting the requirements of § 614.4325(d) of this subpart, at a minimum:

(1) Define the duties and responsibilities of the participating institution and the lead lender, and/or the servicing institution, if different from the lead lender.

(2) Provide for loan servicing and monitoring of the servicer;

(3) Set forth authorization and conditions for action in the event of borrower distress or default;

(4) Provide for sharing of risk;

(5) Set forth conditions for the offering and acceptance of the loan participation and termination of the agreement;

(6) Provide for sharing of fees, interest charges, and costs between participating institutions;

(7) Provide for a method of resolution of disagreements arising under the agreement between two or more institutions;

(8) Specify whether the contract is assignable by either party; and

(9) Provide for the issuance of certificates evidencing an undivided interest in a loan.

(b) *Retention requirement.* No participation interest may be purchased from an institution that is not a Farm Credit System institution unless the servicing institution has an ownership interest in the principal amount equal to the lesser of 10 percent of the principal amount or such lesser amount as represents the servicing institution's lending limit, which ownership interest cannot be assigned separately from the servicing rights.

(c) *Intrasystem participations.* Loans participated between or among Farm Credit System institutions shall meet the borrower eligibility, membership, loan term, loan amount, loan security, and stock purchase requirements of the originating lender.

§ 614.4335 Borrower stock requirements.

(a) As a condition of obtaining a loan from or through a Farm Credit System institution, including loans originated for sale to other lenders, a borrower shall meet the institution's minimum stock purchase requirements.

(b) Borrower stock may be retired only if the institution meets its minimum permanent capital standards and only in accordance with paragraphs (b)(1) or (b)(2) of this section.

(1) When a loan is sold to a party that is not a certified agricultural mortgage marketing facility under title VIII of the Act:

(i) Subject to the requirements of paragraph (d) of this section, borrower stock may be retired if the entire loan is sold without recourse.

(ii) Borrower stock may not be retired when the entire loan is sold with recourse.

(iii) When an interest in a loan is sold without recourse, or an interest is retained that is not a subordinated interest, a proportionate amount of borrower stock may be retired, but in no event may stock be retired below the institution's minimum stock purchase requirement for the interest retained.

(2) When a loan or an interest therein is sold to a certified agricultural mortgage marketing facility under title VIII of the Act, the stock may be retired; but, in no event may stock be retired below the institution's minimum stock purchase requirement for the portion retained.

(c) If an institution repurchases a loan on which the stock has been retired, the borrower shall be required to repurchase stock in the amount of the minimum stock purchase requirement.

(d) When the loan is sold without recourse to another Farm Credit System institution pursuant to paragraph (b)(1)(i) of this section, the borrower may elect to hold stock in either the selling or purchasing institution.

§ 614.4336 Borrower rights.

(a) Each institution that contemplates selling a loan or an interest therein that is subject to the borrower rights provisions of title IV of the Act shall either:

(1) For loans intended for sale to a certified agricultural mortgage marketing facility pursuant to title VIII of the Act, comply with the requirements of § 614.4367(b) of this part; or

(2) For loans intended for sale to institutions that are neither Farm Credit System institutions nor certified agricultural mortgage marketing facilities under title VIII of the Act, comply with one of the following two requirements:

(i) Include provisions in the contract with the borrower, or a written modification thereto, that ensure that the purchaser of the loan will be obligated to accord the borrower the same rights "qualified lenders" must provide under the Act; or

(ii) Obtain from the borrower a signed written consent to the sale which explicitly states that the borrower relinquishes the statutory borrower rights. The consent to the loan sale and the relinquishment of the borrower rights shall have no effect until the loan is actually sold and shall be in effect in the event that lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(b) Before obtaining the borrower's consent to the sale of the loan and the relinquishment of borrower rights pursuant to paragraph (a)(2)(ii) of this section, the lending institution shall disclose in writing to the borrower:

(1) A full and complete description of the statutory rights that the borrower is asked to relinquish;

(2) Any changes in the loan terms or conditions that will occur if the loan is not sold;

(3) The fact that the relinquishment of the statutory borrower rights will not become effective unless the loan is actually sold and shall become ineffective in the event that the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(c) The making of a loan may not be conditioned on the borrower's consent to its sale and relinquishment of statutory borrower rights.

§ 614.4337 Disclosure to borrowers.

When a loan or an interest in a loan other than a participation interest is sold with servicing rights, the disclosure shall be made to the borrower in accordance with this section:

(a) The selling institution shall disclose to the borrower at least 10 days prior to the borrower's next payment date:

(1) The name, address, and telephone number of the purchasing institution;

(2) The name and address of the party to whom payment is to be made;

(3) A description of the impact of the sale on statutory borrower rights after the sale;

(4) Any terms in the agreement that would permit a purchaser to change the terms or conditions of the loan.

(b) A Farm Credit System institution that purchases a loan or a non-participation interest therein shall not take any servicing action that adversely affects the borrower until it ensures that disclosure has been made to the borrower of:

(1) The name, address, and telephone number of the purchasing institution; and

(2) The address where the payment should be sent.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

§ 614.4510 [Amended]

9. Section 614.4510 is amended by removing the reference "§ 614.4330" and adding in its place, "§ 614.4325" in paragraph (c).

Subpart O—Banks for Cooperatives Financing International Trade

§ 614.4710 [Amended]

10. Section 614.4710 is amended by removing the reference "§ 614.4334" and adding in its place, "§ 614.4020(b)" in paragraphs (a)(4) and (b)(2).

PART 619—DEFINITIONS

11. The authority citation for part 619 is revised to read as follows:

Authority: Secs. 1.7, 2.4, 4.9, 5.9, 5.12, 5.17, 5.18, 7.0, 7.6, 7.7, 7.8 of the Farm Credit Act; 12 U.S.C. 2015, 2075, 2160, 2243, 2246, 2252, 2253, 2279a, 2279b, 2279b–1, 2279b–2.

12. Section 619.9195 is revised to read as follows:

§ 619.9195 Loan participation.

A fractional undivided interest in the principal amount of a loan that is sold by a lead lender to a participating institution in accordance with the requirements of § 614.4330 of this chapter. The term "loan participation" does not include a subordinated participation interest.

§ 619.9320 [Removed]

13. Section 619.9320 is removed.

Dated: August 14, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–20153 Filed 8–21–92; 8:45 am]

BILLING CODE 6705–01–M

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12 CFR Part 615

RIN 3052–AB18

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations

AGENCY: Farm Credit Administration.

ACTION: Suspension of rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts a temporary suspension, through December 31, 1994, of certain provisions of the regulations governing the computation of permanent capital ratios of Farm Credit System (System) institutions. The effect of the suspension is to allow Farm Credit Banks and direct lender associations through the end of 1994 to determine by agreement whether, and to what extent, an association's investment in a Farm Credit Bank is considered as part of the association's permanent capital for the purpose of computing the permanent capital ratio.

EFFECTIVE DATE: The suspension shall become effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Robert S. Child, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: On May 14, 1992, the FCA Board adopted a proposal to suspend, for a period of 2 years, certain provisions of FCA regulation § 615.5210(d) governing the computation of permanent capital ratios of Farm Credit System (System) banks and associations. See 57 FR 26788 (June 16, 1992). Specifically, those provisions are:

1. Paragraph (d)(2)(i)

This provision states that, until January 1, 1993, each Farm Credit Bank shall, with the agreement of a majority of the direct lender associations in its district, adopt a districtwide plan specifying a percentage allocation of an association's investment in the bank between the bank and the association. The bank and associations are permitted to amend the plan each year. In the event that the bank and the associations are unable to reach agreement on the allocation, the direct lender associations' investments are required to be allocated 20 percent to the bank and 80 percent to the associations. In this provision, only the phrase "until January 1, 1993," was proposed to be suspended.

2. Paragraph (d)(2)(ii)

This provision states that, beginning January 1, 1993, and thereafter, all equities of a Farm Credit Bank that were purchased by direct lender associations must be allocated to the bank. This provision was proposed to be suspended in its entirety.

3. Paragraph (d)(2)(iii)

This provision requires equities of a Farm Credit Bank allocated to direct lender associations to be counted as permanent capital at the Farm Credit Bank and deducted from the capital of the direct lender associations, and sets forth a phase-in period for such requirement. The phase-in period commences on January 1, 1993 and specifies for each year until 1998 the minimum percentage of bank equities allocated to the association that must be counted as bank capital and deducted from association capital. In 1993, associations are permitted to count up to 100 percent of the bank equities

allocated to the association; the permissible allocation to the association decreases by 20 percentage points each following year until 1998. In 1998 and thereafter, all of the bank equities allocated to the association as a distribution of earnings must be counted by the bank and deducted from association capital. This provision was proposed to be suspended in its entirety.

During the proposed suspension period, other provisions of the regulation would remain in effect. This means that a Farm Credit Bank, with the agreement of a majority of the direct lender associations in its district, could adopt a districtwide plan specifying that a percentage of the direct lender association's investment in the bank could be counted as association capital for the purpose of computing the permanent capital ratio. In the absence of such an agreement, 20 percent of the associations' investment in the bank would be counted by the bank, and 80 percent would be counted by the associations.

The FCA received comments from the Farm Credit Council (FCC) on behalf of its member Farm Credit Banks, the Federal Intermediate Credit Bank of Jackson, and direct lender associations, and from 10 System institutions. The commenters unanimously supported the proposed suspension of the regulations. In addition, most commenters expressed their opinion that the 2-year suspension should be made permanent—*i.e.*, that the regulations in question should be revoked rather than merely suspended. Several commenters commented that a temporary suspension of the regulation for only 2 years would not provide System institutions with an adequate basis upon which to make long-term capital and business plans.

The Board understands the needs of System institutions to be able to make long-term plans and is aware that a temporary suspension will not have the same effect as a withdrawal. The Board is committed to moving forward with a reconsideration of the regulation to address System concerns. For System institutions' planning and convenience purposes, the Board has decided to extend the suspension period through December 31, 1994, to coincide with the end of a calendar year. This extension would result in a suspension period of approximately 26 to 27 months.

As was stated in the supplementary information to the proposed suspension, the Board intends during the suspension period to re-examine the computation issue in light of System concerns and to propose amendments to the capital regulations to address those concerns as soon as practicable. The Board fully appreciates the concerns of commenters that the existing phase-in period as set forth in § 615.5210(d)(2) could not practicably be reinstated at the end of the suspension period and will address these concerns in the course of the review.

Some of the comments received pertained to the substance of the capital regulations,which is beyond the scope of the proposed suspension on which the FCA solicited comments. These comments are not addressed here but will be considered by the FCA in its re-examination of and proposed revisions to the capital adequacy regulations.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, Banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, the following provisions of part 615 of chapter VI, title 12 of the Code of Federal Regulations are hereby suspended through December 31, 1994:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26 of the Farm Credit Act; 12 U.S.C. 2013, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

§ 615.5210 [Amended]

2. Section 615.5210 is amended by suspending, through December 31, 1994, the phrase "until January 1, 1993," in paragraph (d)(2)(i); and paragraphs (d)(2)(ii) and (d)(2)(iii) in their entirety.

Dated: August 13, 1992.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 92–20152 Filed 8–21–92; 8:45 am]

BILLING CODE 6705–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–28–AD; Amendment 39–8316; AD 92–16–09]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped with General Electric CF6–45/50 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes equipped with General Electric CF6–45/50 series engines, that requires repetitive inspections to detect cracking of the number 1 strut idler pulley support bracket assembly; inspections of all associated fasteners for tightness, and tightening of any loose fasteners found; and replacement of the bracket assembly. This amendment is prompted by recent reports of fatigue cracks found in the thrust control cable idler pulley support brackets on the number 1 strut. The actions specified by this AD are intended to prevent the loss of engine thrust control.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. G. Michael Collins, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2689; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 Series Airplanes Equipped with General Electric CF6–45/50 series engines was published in the **Federal Register** on March 27, 1992 (57 FR 10617). [A correction of the proposal was published in the **Federal Register** on April 22, 1992 (57 FR 14751).] That action proposed to require repetitive inspections to detect cracking of the number 1 strut idler pulley support bracket assembly; inspections of all associated fasteners for tightness, and tightening of any loose fasteners found; and replacement of the bracket assembly.

Interested persons have been afforded an opportunity to participate in the

making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

Since issuance of the proposal, the FAA has reviewed and approved Boeing Alert Service Bulletin 747-76A2083, Revision 1, dated May 28, 1992. This revised service bulletin is essentially the same as the original issue, but contains new procedures for an "interim repair" procedure to be used when cracks in the bracket are detected. The interim repair addresses only cracks that are less than two inches in length, and involves stop drilling a hole at the end of the crack.

The FAA has revised the final rule to include Revision 1 of the Boeing service bulletin as an acceptable source of service information, and to provide operators with the option to install the interim repair in those cases where only one crack, having a length of less than two inches, is found in the bracket. Although the service bulletin recommends use of the interim repair method when "cracks" are found in the bracket, the FAA has determined that use of the interim repair is acceptable only if one crack is found and the length of that crack does not exceed two inches. If the optional interim repair is used, operators must perform repetitive inspections of the bracket at intervals of 100 flight hours and replace the bracket within 750 flight hours. The FAA has determined that this optional procedure will provide an acceptable level of safety.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 140 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $630 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,160, or $1,290 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-09. Boeing: Amendment 39-8318. Docket 92-NM-28-AD.

Applicability: Model 747 series airplanes; line positions 202 through 886, inclusive; equipped with General Electric CF6-45/50 series engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of engine thrust control, accomplish the following:

(a) Prior to or upon the accumulation of 9,000 total flight hours on the airplane, or within 600 flight hours after the effective date of this AD, whichever occurs later, perform a visual inspection of the number 1 strut idler pulley support bracket assembly to detect cracks; and inspect all associated fasteners for proper tightness; in accordance with Boeing Alert Service Bulletin 747-76A2083, dated December 18, 1991; or Revision 1, dated May 28, 1992.

(1) If no cracks are found in the bracket assembly, return the airplane to service and repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 600 flight hours.

(2) If only one crack is found in the bracket assembly and its length is two inches or less, prior to further flight, accomplish the procedures specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD:

(i) Accomplish the interim repair described in Paragraph E. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747-76A2083, Revision 1, dated May 28, 1992. Thereafter, repeat the inspections described in paragraph (a) of this AD at intervals not to exceed 100 flight hours. Within 750 flight hours after installation of the interim repair, replace the bracket assembly in accordance with the service bulletin. Replacement of the bracket assembly constitutes terminating action for the repetitive inspections required by this paragraph.

(ii) Replace the bracket assembly in accordance with Boeing Alert Service Bulletin 747-76A2083, dated December 18, 1991; or Revision 1, dated May 28, 1992.

(3) If cracks are found in the bracket assembly, or if only one crack is found and its length exceeds two inches, prior to further flight, replace the bracket assembly in accordance with Boeing Alert Service Bulletin 747-76A2083, dated December 18, 1991; or Revision 1, dated May 28, 1992.

(4) If any fasteners are found to be loose, prior to further flight, tighten those fasteners to within specified torque limits, in accordance with Boeing Alert Service Bulletin 747-76A2083, dated December 18, 1991; or Revision 1, dated May 28, 1992.

(b) Except as provided by paragraph (a)(2)(i) of this AD, within 18 months after the effective date of this AD, replace the bracket assembly, in accordance with Boeing Alert Service Bulletin 747-76A2083, dated December 18, 1991; or Revision 1, dated May 28, 1992.

(c) Replacement of the bracket assembly in accordance with Boeing Alert Service Bulletin 747-76A2083, dated December 18, 1991; or Revision 1, dated May 28, 1992; constitutes terminating action for the repetitive inspections required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacement shall be done in accordance with Boeing Alert Service Bulletin 747-76A2083, dated December 18, 1991; or Boeing Alert Service Bulletin 747-76A2083, Revision 1, dated May 28, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(g) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 10, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20123 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-30-AD; Amendment 39-8339; AD 92-17-10]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires incorporation of an operational procedure into the FAA-approved Airplane Flight Manual (AFM) to address uncommanded spoiler deployments on final approach. That AD also requires identification and replacement of failed spoiler Power Control Actuators (PCA) in the event of an uncommanded spoiler deployment. That AD was prompted by reports of single uncommanded asymmetric spoiler deployments at flaps 25 and 30 caused by failed spoiler PCA's. This amendment requires replacing all spoiler PCA's with modified PCA's. The actions specified by this AD are intended to prevent uncommanded spoiler deployments caused by failed spoiler PCA's.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98214. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Timothy J. Dulin, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2675; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-24-10, Amendment 39-8096 (56 FR 57590, November 13, 1991), which is applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on March 31, 1992 (57 FR 10840). The action proposed to require replacing all spoiler PCA's with modified PCA's.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter requests that the compliance time for replacement of all outboard PCA's (positions 1, 2, 3, 10, 11, and 12) be increased from the proposed 24 months to at least 36 months; and that the compliance time for replacement of all inboard PCA's (positions 4, 5, 6, 7, 8, and 9) be increased from the proposed 48 months to at least 60 months.

The commenter is concerned about the availability of repair kits. The current schedule for delivery of the repair kits is approximately 10 kits per month. The commenter states that it needs approximately 840 repair kits to modify its fleet, and it cannot comply with the proposed compliance times unless delivery of the repair kits is increased substantially. The commenter also states that acquiring the Automated Test Equipment needed to perform functional testing on the unit requires a lead time of 12 months. The commenter is concerned that the proposed compliance periods do not provide sufficient time to rotate unmodified units to the vendor, Allied Signal, for modification since Allied Signal has indicated that more than 24 months is needed for fleet modification. The FAA does not concur with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, the FAA considered not only the degree of urgency associated with addressing the subject unsafe condition, but the availability of required parts and the practical aspect of installing the required modification within a maximum interval of time allowable for all affected airplanes to continue to operate without compromising safety. The FAA also worked with both the manufacturer and the supplier of the parts to establish reasonable compliance times with respect to parts availability. The manufacturer has advised that an ample number of required parts will be available for modification of the U.S. fleet within the proposed compliance period. In light of this, the FAA does not consider an extension of the compliance time to be necessary. However, under the provisions of paragraph (f) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment will provide an acceptable level of safety.

One commenter suggests textual changes in paragraphs (c) and (d) of the rule. Paragraph (c) should be changed from "replace all outboard spoiler PCA's * * *" to "replace the PCA's on all outboard spoilers * * *." Likewise, paragraph (d) should be changed from "replace all inboard spoiler PCA's * * *" to "replace the PCA's on all inboard spoilers * * *." The FAA concurs that the suggested changes will make the requirements of the rule clearer. The final rule has been changed accordingly.

Paragraph (f) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has

determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 408 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 260 airplanes of U.S. registry will be affected by this AD, that it will take approximately 78 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,115,400 or $4,290 per airplane. The total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8096 (56 FR 57590, November 13, 1991), and by adding a new airworthiness directive (AD), amendment 39–8339, to read as follows:

92–17–10. Boeing: Amendment 39–8339. Docket 92–NM–30–AD. Supersedes AD 91–24–10, Amendment 39–8096.

Applicability: Model 757 series airplanes; line positions 001 through 408, inclusive, certificated in any category.

Compliance: Required as indicted, unless accomplished previously.

To prevent uncommanded spoiler deployments caused by failed spoiler Power Control Actuators (PCA), accomplish the following:

(a) Within 10 days after December 2, 1991 (the effective date of AD 91–24–10, amendment 39–8096), incorporate the following procedures into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD into the AFM.

"If, upon selection of flap 25 or 30, the SPOILERS EICAS message is observed, uncommanded airplane roll is encountered, or sustained control wheel displacement is required, immediately retract flaps to 20 and use flaps 20 and V_{ref} 20 for landing. Select the ground proximity flap override switch to override."

(b) If, upon selection of flap 25 or 30, the SPOILERS EICAS message is observed, the SPOILERS caution light illuminates, or uncommanded airplane roll is encountered, prior to further flight, determine if a spoiler PCA fault ball is displayed on any of the spoiler control modules. If a spoiler fault ball is displayed, prior to further flight, identify the failed spoiler PCA pair and replace both spoiler PCA's, unless the direction of the roll upset is known, in which case only the spoiler PCA in the wing of the roll direction must be replaced. Any spoiler PCA that has been removed in accordance with this paragraph must not be installed on any airplane until the spoiler PCA is modified in accordance with Boeing Alert Service Bulletin 757–27A0105, dated December 5, 1991.

(c) Within 24 months after the effective date of this AD, replace the PCA's on all outboard spoilers (positions 1, 2, 3, 10, 11, and 12), in accordance with Boeing Alert Service Bulletin 757–27A0105, dated December 5, 1991.

(d) Within 48 months after the effective date of this AD, replace the PCA's on all inboard spoilers (positions 4, 5, 6, 7, 8, and 9), in accordance with Boeing Alert Service Bulletin 757–27A0105, dated December 5, 1991.

(e) Replacement of all spoiler PCA's, as required by paragraphs (c) and (d) of this AD, constitutes terminating action for the requirements of this AD for that airplane. Once replacement is accomplished, the operating limitations required by paragraphs (a) and (b) of this AD may be removed.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The replacement shall be done in accordance with Boeing Alert Service Bulletin 757–27A0105, dated December 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 23, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20124 Filed 2–21–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 91–NM–264–AD; Amendment 39–8261; AD 92–12–01]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Airbus Industrie Model A300 series airplanes, that currently requires inspections and replacement of the bolts in the aft attachment of flap beam numbers 2 through 6. This amendment requires a change in the size of the replacement bolts in flap beam numbers 3 through 6. This amendment is prompted by reports indicating that the existing AD inadvertently cited the incorrect dimensions for the replacement bolt in flap beam numbers 3 through 6. The actions specified by this AD are intended to prevent the installation of incorrectly sized bolts, which could lead to loss of tension in the aft attachment of the flap beams.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Greg Holt, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2140; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 88–22–08, Amendment 39–6049 (53 FR 41149, October 20, 1988), which is applicable to Airbus Industrie Model A300 series airplanes, was published in the **Federal Register** on February 12, 1992 (57 FR 5086). The action proposed to require change in the size of the replacement bolts in flap beam numbers 3 through 6.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 77 airplanes of U.S. registry will be affected by this AD, that it will take approximately 78 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $330,330.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6049 (53 FR 41149, October 20, 1988), and by adding a new airworthiness directive (AD), amendment 39–8261, to read as follows:

92–12–01. Airbus Industrie: Amendment 39–8261. Docket 91–NM–264–AD. Supersedes AD 88–22–08, Amendment 39–6049.

Applicability: Airbus Industrie Model A300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the installation of incorrectly sized bolts, which could lead to loss of tension in the aft attachment of the flap beams, accomplish the following:

(a) Within 350 landings after December 1, 1988 (the effective date of AD 88–22–08, Amendment 39–6049), perform a detailed visual inspection of flap beam numbers 2, 3, 4, 5, and 6 aft attachment on both wings to detect damage. Repeat this inspection within 700 landings after December 1, 1988. If damaged parts are found, replace in accordance with Airbus Industrie Service Bulletin A300–57–150, Revision 1, dated September 18, 1987, or in accordance with Airbus Industrie Service Bulletin A300–57–145, Revision 3, dated February 10, 1988.

(b) For airplanes on which Modification 3553 has not been accomplished: Within 700 landings after December 1, 1988 (the effective date of AD 88–22–08, Amendment 39–6049), replace the bolts on flap beam number 2 with ⅝-inch diameter bolts in accordance with Airbus Industrie Service Bulletin A300–57–145, Revision 3, dated February 10, 1988.

(c) For airplanes on which Modification 3553 has been accomplished: Within 1,000 landings after December 1, 1988 (the effective date of AD 88–22–08, Amendment 39–6049), replace the bolts on flap beam number 2 with $^{7}/_{16}$-inch diameter bolts in accordance with Airbus Industrie Service Bulletin A300–57–145, Revision 3, dated February 10, 1988.

(d) For all airplanes: Within 1,000 landings after the effective date of this AD, replace the bolts on flap beam numbers 3, 4, 5, and 6 and ⅝-inch diameter bolts, in accordance with Airbus Service Bulletin A300–57–145, Revision 3, dated February 10, 1988.

(e) Replacement of the flap beam bolts in accordance with Airbus Service Bulletin A300–57–145, Revision 3, dated February 10, 1988, constitutes terminating action for the inspections required by paragraph (a) of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. The request shall be forwarded through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The inspections and modifications shall be done in accordance with Airbus Industrie Service Bulletin A300–57–150, Revision 1, dated September 18, 1987; or in accordance with Airbus Industrie Service Bulletin A300–57–145, Revision 3, dated February 10, 1988, as applicable. These service bulletins contain the following list of effective pages:

Service bulletin	Page no.	Revision level	Date
A300–57–150....	1–2, 4–9	1.....	Sept. 18, 1987.
Revision 1.....	3, 10–12	Original.....	July 10, 1987.
A300–57–145....	1–3, 6–18	3.....	Feb. 10, 1988.
Revision 3.....	4–5	2.....	Nov. 13, 1987.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained

from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on May 12, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20118 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-235-AD; Amendment 39-8333; AD 92-17-04]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires that landing gear brake wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment requires the inspection of certain additional landing gear brakes for wear, replacement of the brakes if the wear limits prescribed in this AD are not met, and the incorporation of new maximum wear limits into the FAA-approved maintenance inspection program. This amendment is prompted by the determination of the allowable brake wear limits for the additional brakes. The actions specified by this AD are intended to prevent the loss of braking effectiveness of the landing gear brakes.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David M. Herron, Aerospace Engineer, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056, telephone (206) 227-2672, fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-18-09, Amendment 39-8012 (56 FR 51156, October 10, 1991), which is applicable to Boeing Model 757 series airplanes, was published in the **Federal Register** on February 12, 1992 (57 FR 5096). The action proposed to require the inspection of certain additional landing gear brakes for wear, replacement of the brakes if the wear limits prescribed in the rule are not met, and the incorporation of these new wear limits into the FAA-approved maintenance inspection program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposal.

One commenter requests clarification concerning the contents of BFGoodrich Service Bulletin 2-1457-32-13 as cited in paragraph (c) of the proposal. This commenter considers that there may be confusion as to whether the procedures in the service bulletin relate to steel brakes or to carbon brakes. The FAA notes that the service bulletin procedures related to specific steel brakes manufactured by BFGoodrich (part number 2-1457 series brakes).

This commenter also requests clarification concerning the proposed option to extend the maximum allowable brake wear limit for the BFGoodrich 2-1510 carbon brake from 1.7 inches to 2.2 inches, as would be permitted by proposed paragraph (b). The commenter considers that describing this procedure as "optional" is misleading since it implies that affected operators may choose between 1.7-inch and 2.2-inch maximum wear limits; however, the brake manufacturer is only shipping one build of the brake to customers. The FAA does not consider that the "option" being provided in the rule is misleading. While it may be true that the brake manufacturer is currently only shipping brakes with a 2.2-inch wear limit, there may be many operators who currently are using a 1.7-inch limit. The FAA considers that the use of either the 1.7-inch or the 2.2-inch limit is acceptable in terms of safety.

This commenter also requests that the final rule include an additional table to incorporate the information in proposed paragraphs (b) and (c). The commenter suggests that use of a table would clarify the rule and make it more consistent with other rules. The FAA does not concur. Although the use of a table is effective for paragraph (a) of this rule, the FAA considers that the additional information and instructions that need to be conveyed in paragraphs (b) and (c) are not conducive to a table format.

One commenter requests that proposed paragraph (c) include a reference to Revision 1 of BFGoodrich Service Bulletin 2-1457-32-13 as an additional source of service information relative to the BFGoodrich part number 2-1457 series brakes. The FAA concurs. Since issuance of the notice, the FAA has reviewed and approved BFGoodrich Service Bulletin 2-1457-32-13, Revision 1, dated December 16, 1991 (issued February 28, 1991). This revised service bulletin is essentially the same as the originally issued version, but includes procedures specific to the part number 2-1457-1 and -2 series main landing gear brake assemblies, and additional notational information concerning rotor and brake lining dimensions. The FAA has revised the final rule to indicate that operators may use the revised service bulletin as a source of service information.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 305 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 217 airplanes of U.S. registry will be affected by this AD; of this number, 106 airplanes are added by this AD action. Approximately eight U.S. operators will be affected by this AD.

The FAA estimates that it will take approximately 21 work hours per airplane to accomplish the required actions, at an average labor cost of $55 per work hour. In addition, it is estimated that the cost of parts to accomplish the change in wear limits on these airplanes (that is, the cost resulting from the requirement to change brakes before they are worn to their previously recommended limits for a one-time change) will be approximately $3,350 per airplane. Based on these figures, the total cost impact on U.S. operators, with regard to the change in brake wear limits, is estimated to be $977,585; of this total amount, $477,530 is added by this AD action.

Further, the FAA estimates that it will require 20 work hours per operator, at an average labor cost of $55 per work hour, to incorporate the requirements into an operator's FAA-approved maintenance inspection program. Based on these figures, the total cost impact of the rule on the eight affected U.S. operators, with regard to revising the maintenance inspection program, is estimated to be $8,800.

Based on the figures discussed above, the total cost impact of the rule on U.S. operators is estimated to be $986,385. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8012 (56 FR 51156, October 10, 1991), and by adding a new airworthiness directive (AD), amendment 39-8333, to read as follows:

92-17-04. Boeing: Amendment 39-8333; Docket No. 91-NM-235-AD. Supersedes AD 91-18-09, Amendment 39-8012.

Applicability: Model 757 series airplanes, equipped with brake part numbers (P/N) identified in paragraphs (a) and (c) of this AD, certificated in any category.

Compliance required as indicated, unless accomplished previously.

To prevent loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after November 12, 1991 (the effective date of Amendment 39-8012, AD 91-18-09), incorporate the maximum brake wear limits, shown below, into the FAA-approved maintenance inspection program.

Brake mfr.	Brake P/N	Boeing P/N	Max. wear limit
Dunlop..	AHA 1301 ...	S160N020-1 ...	2.46 inches.
Dunlop..	AHA 1637 ...	S160N020-5 ...	2.46 inches.
Dunlop..	AHA 1676 ...	S160N020-7 ...	2.46 inches.
Dunlop..	AHA 1693 ...	S160N020-8 ...	2.46 inches.
Dunlop..	AHA 1884 ...	S160N020-14.	2.60 inches.
BF-Goodrich.	2-1510	S160N020-11.	1.70 inches.

(b) For BFGoodrich brake P/N 2-1510 (Boeing P/N S160N020-11), in lieu of the limit specified in paragraph (a) of this AD, the maximum allowable brake wear may be extended to 2.2 inches when it is placed into the FAA-approved maintenance inspection program.

(c) Within 180 days after the effective date of this AD, accomplish the following:

(1) For airplanes equipped with BFGoodrich Brake P/N's 2-1457 and 2-1457-1, (Boeing P/N S160N010-43 AND S160N010-45): Accomplish the procedures specified in Section 2.B.(1) of BFGoodrich Service Bulletin 2-1457-32-13, dated January 30, 1991, or Revision 1, dated December 16, 1991 (issued February 28 1991). Brakes found worn more than the 1.4-inch allowable brake wear must be removed and replaced, prior to further flight, with either a brake built in accordance with Section 2.B.(1)c. of the service bulletin, or a brake with more than 1.4 inches of allowable wear remaining.

(2) For airplanes equipped with BFGoodrich Brake P/N's 2-1457, 2-1457-1, and 2-1457-2, (Boeing P/N S160N010-43, S160N010-45, and S160N010-46): Incorporate either Figure 1 and/or Figure 2 of Section 2.B.(1)c. of BFGoodrich Service Bulletin 2-1457-32-13, dated January 30, 1991, or Revision 1, dated December 16, 1991 (issued February 28, 1991), into the FAA-approved maintenance inspection program.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(f) The procedures relative to BFGoodrich Brake P/N's 2-1457 and 2-1457-1, 2-1457-2 shall be done in accordance with BFGoodrich Service Bulletin S-1457-32-13, dated January 30, 1991; or BFGoodrich Service Bulletin 2-1457-32-13, Revision 1, dated December 16, 1991 (issued February 28, 1991). This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; and BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certificotion Service.

[FR Doc. 92-20128 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-143-AD; Amendment 39-8319; AD 92-16-10]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires an inspection of the hydraulic pressure tube to the power drive unit for the inboard leading edge slats and the adjacent pneumatic duct, and replacement if

clearance is less than allowable limits or chafing is evident; and replacement of the hydraulic return tube, if a new hydraulic pressure tube is installed. This amendment is prompted by two reports of leaks in the hydraulic pressure tube caused by chafing between the hydraulic tube and pneumatic duct. The actions specified by this AD are intended to prevent temporary impairment of the crew's vision caused by hydraulic fluid in the environmental control system.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket 91-NM-143-AD, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth W. Frey, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S; telephone (206) 227-2673; fax (206) 227-1181. Mailing address: FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the Federal Register on March 2, 1992 (57 FR 7334). That action proposed to require an inspection of the hydraulic pressure tube to the power drive unit for the inboard leading edge slats and the adjacent pneumatic duct, and replacement if clearance is less than allowable limits or chafing is evident; and replacement of the hydraulic return tube, if a new hydraulic pressure tube is installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter concurs with the proposal.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the repair procedure be revised to allow replacement of the hydraulic pressure tube with a fabricated pressure tube having a bend closer to the fuselage. The commenter states that the fabricated pressure tube would meet the minimum hydraulic tube clearance, so replacement of the hydraulic return tube would not be necessary. The commenter further states that the requested change would eliminate unnecessary expenses, including parts and labor associated with replacement of the hydraulic return tube. The FAA cannot concur with this request since no technical data describing the procedure to fabricate the pressure tube was provided. However, the FAA may consider approval of an alternative method of compliance, in accordance with the provisions of paragraph (c) of this AD, if such data were provided to justify the request.

One commenter requests permission to perform an interim repair if discrepancies are detected, and to accomplish the replacement of the pressure tube at a future date. The commenter asserts that an interim repair would allow operators to conduct inspections immediately at stations where certain replacement parts may not be available. The FAA does not concur. The inspection should be performed at a maintenance facility where replacement hydraulic tubes are available, if such replacement is necessary. However, should an operator develop an interim repair, the FAA would consider a request for an alternative method of compliance, in accordance with the provisions of paragraph (c) of this AD, if data were provided to justify that the repair would provide an acceptable level of safety in the interim.

Two commenters request that the proposed compliance time of 3,000 flight hours be extended in order to accommodate a parts availability problem. The commenters insist that Boeing has advised them that there were no spare parts assemblies in stock, and that a 280-day lead time for obtaining parts is standard. The FAA does not consider an extension to be necessary. The FAA has confirmed that ample parts are currently available for any necessary replacement; spare kits can be shipped by the manufacturer within 48 hours, if necessary.

Paragraph (c) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 342 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 129 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $28,380. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-10. Boeing: Amendment 39-8319. Docket 91-NM-143-AD.

Applicability: Model 767 airplanes, as listed in Boeing Alert Service Bulletin 767-29A0064, Revision 1, dated October 24, 1991, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent hydraulic fluid from entering the cabin, accomplish the following:

(a) Within 3,000 flight hours after the effective date of this AD, inspect the inboard leading edge slat power drive unit hydraulic pressure tube for clearance from the adjacent pneumatic duct and for signs of chafing, in accordance with Boeing Alert Service Bulletin 767-29A0064, Revision 1, dated October 24, 1991:

(1) If the clearance is more that 0.25 inch and there are no signs of chafing, no further action is necessary.

(2) If the clearance is 0.25 inch or less, or if signs of chafing are found on the hydraulic tube, prior to further flight, replace both the hydraulic pressure tube and the hydraulic return tube, in accordance with the service bulletin.

(3) If chafing is found on the pneumatic duct, prior to further flight, repair the pneumatic duct in accordance with the service bulletin.

(b) For airplanes on which the hydraulic pressure tube has been replaced in accordance with Boeing Alert Service Bulletin 767-29A0064 (original issue), dated June 13, 1991: Within 4,000 flight hours after the effective date of this AD, replace the hydraulic return tube in accordance with Paragraph III.D. of Boeing Alert Service Bulletin 767-29A0064, Revision 1, dated October 24, 1991.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternatives methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection, repairs, and replacement shall be done in accordance with Boeing Alert Service Bulletin 767-29A0064, Revision 1, dated October 24, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 13, 1992.

Bill R. Boxwell,

Acting Manager, Transportation Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20125 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-270-AD; Amendment 39-8332; AD 92-17-03]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires inspection of the main landing gear forward trunnion support fitting fuse pins and replacement of any incorrect fuse pins found. This amendment is prompted by reports indicating that incorrect fuse pins were installed on one airplane during a landing gear change and others were installed during production. The actions specified by this AD are intended to prevent structural damage to the wing rear spar and fuel leakage in the event of a main landing gear breakaway, or the failure to withstand ultimate landing loads on high gross weight models.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2776; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the Federal Register on March 2, 1992 (57 FR 7338). That action proposed to require inspection to the main landing gear forward trunnion support fitting fuse pins and replacement of any incorrect fuse pins found.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Three commenters request that proposed paragraph (a)(1), which would require replacement of incorrect fuse pins prior to further flight, be revised to reflect a compliance time of 30 days for replacement, since this time frame is recommended in Boeing Service Bulletin 767-57A0038 (the service information referenced in the proposal). These commenters contend that a requirement to replace incorrect fuse pins prior to further flight exceeds that which is necessary to maintain an acceptable level of safety in light of the fact that criteria to allow deferral is available in the service bulletin. In addition, one commenter expresses concern that this requirement would discourage early inspection of the fuse pins if replacement pins are not readily available at the inspection site.

The FAA does not concur. The FAA has determined that certain combinations of airplane gross weight and fuse pin strength under the critical braking condition could result in loss of the landing gear. This critical combination of fuse pin strength and airplane gross weight has been found on three in-service airplanes. Therefore, the FAA finds that replacement of incorrect pins prior to further flight is warranted, considering the potential consequences of failed pins. As far as the commenter's concern as to the compliance time discouraging "early inspection of the fuse pins," the FAA notes that operators initially were informed of the fuse pin problem and its resolution through the issuance of four Boeing service documents: Service Letter 767-CL-57-20, dated October 16, 1991; Alert Service Bulletin 767-57A0038, dated November 4, 1991; Revision 1, dated November 21, 1991; and Revision 2, dated February 20, 1992. In addition, the FAA provided

notice to operators of this problem through issuance of the notice of proposed rulemaking that preceded this final rule. Consequently, the FAA concludes that operators have received ample notice regarding this issue; therefore, the compliance time requirements of paragraph (a)(1) should pose no undue hardship on any operator.

Since issuance of the notice, Boeing has issued Revision 2 to Alert Service Bulletin 767-57A0038, dated February 20, 1992, which is essentially identical to Revision 1, but adds procedures for use of an operator-fabricated tool used to help decide which fuse pin is installed. The effectivity listing of the revised service bulletin reflects airplane operator changes and arranges the airplane effectivity into four groups; no additional airplanes have been added, however. The applicability statement of the final rule has been revised to indicate that affected airplanes are those listed in the latest service bulletin revision. The FAA also has revised the final rule to reflect the latest revision to the service bulletin as an additional service information source.

The revised service bulletin also indicates a decrease in the estimated time necessary to accomplish the inspection required by this AD from 21 to 5 work hours. This revised estimate is based on operator experience. The economic analysis paragraph, below, has been revised accordingly.

Paragraph (c) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 398 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 135 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,125. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-17-03. Boeing: Amendment 39-8332. Docket 91-NM-270-AD.

Applicability: Model 767 series airplanes; as listed in Boeing Alert Service Bulletin 767-57A0038, Revision 2, dated February 20, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the wing rear spar and prevent fuel leakage in the event of a main landing gear (MLG) breakaway, accomplish the following:

(a) Within the next 30 days after the effective date of this AD, inspect the MLG forward trunnion support fitting fuse pins to determine if the correct part-numbered pins are installed, in accordance with Boeing Alert Service Bulletin 767-57A0038, Revision 1, dated November 21, 1991; or Revision 2, dated February 20, 1992.

(1) If incorrect fuse pins are installed, prior to further flight, replace the fuse pins in accordance with Boeing Alert Service Bulletin 767-57A0038, Revision 1, dated November 21, 1991; or Revision 2, dated February 20, 1992.

(2) If correct fuse pins are installed, no further action is required.

(b) Within 10 days after completion of the inspection required by paragraph (a) of this AD, submit a report of findings of discrepancies to the Manager, Seattle Manufacturing Inspection District Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; fax (206) 227-1187. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provision of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(c) An Alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principle Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with Boeing Alert Service Bulletin 767-57A0038, Revision 1, dated November 21, 1991; or Boeing Alert Service Bulletin 767-57A0038, Revision 2, dated February 20, 1992. (Note: The issue date of Boeing Alert Service Bulletin 767-57A0038, Revision 1, is indicated only on page 1 of the document; no other page of the document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20127 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 91-NM-247-AD; Amendment 39-8326; AD 92-16-16]

Airworthiness Directives; Boeing Model 767-200, -200ER, -300, and -300ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires an inspection to locate discrepant Flap Stabilizer Position Modules (FSPM), and modification, if necessary. This amendment requires an inspection for installation of the correct FSPM cards and connector pins, and repair or replacement of discrepant cards. This amendment is prompted by the discovery of incorrect connector keying installed in some FSPM units. The actions specified by this AD are intended to prevent replacement FSPM units from being installed in the wrongly-configured airplane; this condition could result in the warning system failing to alert the crew of an incorrect take-off flap setting.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank van Leynseele, Seattle Aircraft Certification Office, Systems and Equipment Branch, ANM-130S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2671; fax (206) 392-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90-21-04, Amendment 39-6759 (55 FR 40155, October 2, 1990), which is applicable to certain Boeing Model 767 series airplanes, was published in the **Federal Register** on March 31, 1992 (57 FR 10844). The action proposed to require an inspection for installation of the correct FSPM cards and connector pins, and repair or replacement of discrepant cards.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule. The other commenter expresses no technical objection to the proposed rule.

Paragraph (e) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 399 Model 767-200, -200ER, -300, and -300ER series airplanes of the affected design in the worldwide fleet. The FAA estimates that 140 airplanes of U.S. registry will be affected by this AD, that it will take approximately .5 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,850. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.09.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-6759 (55 FR 40155, October 2, 1990), and by adding a new airworthiness directive (AD), amendment 39-8326, to read as follows:

92-16-16. Boeing: Amendment 39-8326. Docket 91-NM-247-AD. Supersedes AD 90-21-04, Amendment 39-6759.

Applicability: Model 767-200, -200ER, -300, and -300ER series airplanes; as listed in Boeing Alert Service Bulletin 767-27A0118, Revision 1, dated January 9, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of warning of incorrect take-off flap setting, and a gear-up-landing condition when flaps are set at 25 degrees, accomplish the following:

(a) For airplanes defined as Group I in Boeing Alert Service Bulletin 767-27A0118, Revision 1, dated January 9, 1992: Within 45 days after the effective date of this AD, perform a one-time visual inspection of the Flap Stabilizer Position Module (FSPM) in the P50 card file (in 3 places), to locate discrepant FSPM cards, in accordance with Boeing Alert Service Bulletin 767-27A0118, Revision 1, dated January 9, 1992.

(1) If any P/N 285T0099-17 FSPM card is found, prior to further flight, remove that card in accordance with the Accomplishment Instructions in the service bulletin, and replace it with a P/N 285T0099-13 FSPM card.

(2) If no discrepancies are detected, no further action is necessary.

(b) For airplanes defined as Group II in Boeing Alert Service Bulletin 767-27A0118, Revision 1, dated January 9, 1992: Within 45 days after the effective date of this AD, perform a one-time visual inspection of the P/N 285T0099-17 FSPM in the P50 card file (in 3 places); remove all P/N 285T0099-17 FSPM cards, and visually inspect the connectors for proper pin keying, in accordance with Boeing Alert Service Bulletin 767-27A0118, Revision 1, dated January 9, 1992.

(1) FSPM P/N 285T0099-17 cards designated "MOD A" do not need to be inspected or removed.

(2) If pins other than numbered parts 47 and 64 are clipped on the FSPM 285T0099-17 connector, prior to further flight, remove and repair the FSPM, reinstall, and test, in accordance with the service bulletin.

(3) If no discrepancies are detected, reinstall and test each P/N 285T0099-17 FSPM card in accordance with the service bulletin.

(c) Within 15 days after accomplishing the requirements of paragraph (a) and (b) of this AD, submit a report of all discrepant FSPM parts that require rework to the Manager, Manufacturing Inspection District Office, ANM-108S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; or fax (206) 227-1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(d) As of the effective date of this AD, no person may install a P/N 285T009-17 FSPM unit on any airplane unless that FSPM is new or has been inspected and tested in accordance with Boeing Alert Service Bulletin 787-27A0118, Revision 1, dated January 9, 1992.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, repair, and test shall be done in accordance with Boeing Alert Service Bulletin 767-27A0118, Revision 1, dated January 9, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20126 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-64-AD; Amendment 39-8341; AD 92-17-12]

Airworthiness Directives; British Aerospace Model BAe 125-600A, -700A, and -800A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 125-600A, -700A, and -800A series airplanes, that requires modification of the cabin and toilet fluorescent lighting systems. This amendment is prompted by a report that faults in certain cabin and toilet fluorescent lighting systems could cause overheating of components and wiring. The actions specified by this AD are intended to prevent electrical arcing, which can result in a fire

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 1714, Dulles International Airport, Washington DC 20041-0414.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 125-600A, -700A, and -800A series airplanes was published in the **Federal Register** on June 4, 1992 (57 FR 23550). That action proposed to require modification of the cabin and toilet fluorescent lighting systems.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Both commenters support the proposed rule.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 10 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $3,600 per airplane. Based on these figures, the total cost impact of the AD on U. S. operator is estimated to be $47,000, or $4,700 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-17-12. British Aerospace: Amendment 39-8341. Docket 92-NM-64-AD.

Applicability: Model BAe 125-600A, -700A, and -800A airplanes, as listed in British Aerospace Service Bulletin 33-45-25A027A&B, dated December 23, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing and a resultant fire, accomplish the following:

(a) Within 180 days after the effective date of this AD, modify the cabin and toilet fluorescent lighting systems, in accordance with British Aerospace Service Bulletin 33-45-25A027A&B, dated December 23, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with British Aerospace Service Bulletin 33-45-25A027A&B, dated December 23, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 24, 1992.

Bill R. Boxwell,

Acting Monager, Transport Airplone Directorate, Aircraft Certificotion Service.

FR Doc. 92-20116 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-25-AD; Amendment 39-8334; AD 92-17-05]

Airworthiness Directives; Dassault Aviation Model Fan Jet Falcon Basic, Series D, E, and F Airplanes; and Model Mystere-Falcon 20-C5, D5, E5, and F5 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Aviation Model Fan Jet Falcon And Model Mystere-Falcon 20 series airplanes, that requires supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness of these airplanes. This amendment is prompted by a structural reevaluation, which has identified certain significant structural components to inspect for fatigue cracks as these airplanes approach and exceed the manufacturer's original design life. The actions specified by this AD are intended to prevent reduced structural integrity of these airplanes.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2140; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Fan Jet Falcon and Model Mystere-Falcon 20 series airplanes was published in the **Federal Register** on May 1, 1992 (57 FR 18847). That action proposed to require supplemental structural inspections, and repair or replacement, as necessary, to ensure continued airworthiness of these airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 253 airplanes of U.S. registry will be affected by this AD, that it will take approximately 160 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,226,400, or $8,800 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact,

positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-17-05. Dassault Aviation: Amendment 39-8334. Docket 92-NM-25-AD.

Applicability: Model Fan Jet Falcon Basic D, E, and F series airplanes; and Model Mystere-Falcon 20-C5, D5, E5, and F5 airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of these airplanes, accomplish the following:

(a) Incorporate a revision into the FAA-approved maintenance inspection program that provides for inspection of the Significant Structural Items defined in Dassault Aviation Service Bulletin FJF-00-26 (FJF-730), Revision 1, dated December 12, 1990, at the later of the times specified in subparagraph (a)(1) or (a)(2):

(1) Prior to the accumulation of 20,000 landings or 30,000 hours time-in-service, whichever occurs first; or

(2) Within 6 months after the effective date of this AD.

(b) Report the results, positive or negative, of each inspection required by paragraph (a) of this AD to Dassault Aviation, in accordance with the instructions in Dassault Aviation Service Bulletin FJF-00-26 (FJF-730), Revision 1, dated December 12, 1990. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(c) Cracked structures detected during the inspections required by paragraph (a) of this AD must be repaired or replaced, prior to further flight, in accordance with the instructions in Dassault Aviation Service Bulletin FJF-00-26 (FJF-730), Revision 1, dated December 12, 1990, or in accordance with other data meeting the certification basis of the airplane which is approved by the FAA or by the French Direction Générale de l'Aviation Civile (DGAC).

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, repairs, and replacement shall be done in accordance with Dassault Aviation Service Bulletin FJF-00-26 (FJF-730), Revision 1, dated December 12, 1990. This incorporation by reference was approved by the director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20129 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-135-AD; Amendment 39-8325; AD 92-14-51]

Airworthiness Directives; McDonnell Douglas Model MD-11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 92-14-51 that was sent previously to all known U.S. owners and operators of McDonnell Douglas Model MD-11 series airplanes by individual telegrams. This AD requires a one-time inspection of the slat mechanical input system for proper clearance and rigging, and adjustment of the system, if necessary. This amendment is prompted by two incidents of inadvertent slat extension during flight at cruise altitude. The actions specified by this AD are intended to prevent inadvertent slat deployment during flight, which could create significant vibrations and cause damage to the elevators.

DATES: Effective September 8, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-14-51, issued June 29, 1992, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 8, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 23, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-135-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

The applicable service information may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-l5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Maurice Cook, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5226; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: On June 29, 1992, the FAA issued telegraphic AD T92-14-51, applicable to McDonnell Douglas Model MD-11 series airplanes, which requires a one-time inspection of the slat mechanical input system for proper clearance and rigging, and correction of any discrepancies found.

That action was prompted by two incidents of inadvertent slat extension on McDonnell Douglas Model MD-11 series airplanes that occurred during flight at cruise altitude. The crew of the initial affected airplane reported a slat disagree indication, followed shortly by a pitch up and roll. The affected airplane also experienced some buffeting during this event. A second similar incident, which occurred on June 28, 1992, caused injuries to passengers. A rigging inspection of the airplane involved in the first incident revealed that the slat mechanical system was not in proper rig. There is no evidence indicating that the slat mechanical system had been adjusted since delivery of the airplane.

Misrigging of the slat mechanical system could lead to an inadvertent slat deployment. Inadvertent slat deployment during flight at cruise altitude could result in the airplane entering the stall buffet flight regime, which could create significant vibrations and cause damage to the elevators.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A27-29, dated June 23, 1992, that describes procedures for a one-time inspection of the slat mechanical input system for proper clearance and rigging, and adjustment of the system, if necessary. Accomplishment of the inspection and correction of any discrepancies found will minimize the possibility of an inadvertent slat extension.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued Telegraphic AD T92-14-51 to prevent inadvertent slat deployment during flight, which could create significant vibrations and cause damage to the elevators. The AD requires a one-time inspection of the slat mechanical input system for proper clearance and rigging, and adjustment of the system, if necessary. The actions are required to be accomplished in accordance with the service bulletin previously described.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on June 29, 1992 to all known U.S. owners and operators of McDonnell Douglas Model MD-11 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-135-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft.

It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-14-51. McDonnell Douglas: Amendment 39-8325. Docket 92-NM-135-AD.

Applicability: Model MD-11 series airplanes having fuselage numbers 447 through 499; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent slat deployment during flight, which could create significant vibrations and cause damage to the elevators, accomplish the following:

(a) Within 10 days after the effective date of this amendment, conduct a one-time inspection of the slat mechanical input system for proper clearance and rigging; and, prior to further flight, correct any discrepancies found; in accordance with McDonnell Douglas Alert Service Bulletin A27-29, dated June 23, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of

compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and adjustment shall be done in accordance with McDonnell Douglas Alert Service Bulletin A27-29, dated June 23, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-l5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 8, 1992, to all persons except those persons to whom it was made immediately effective by telegraphic AD T92-14-51, issued on June 29, 1992, which contained the requirements of this amendment.

Issued in Renton, Washington, on July 15, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20130 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-59-AD; Amendment 39-8321; AD 92-16-12]

Airworthiness Directives; British Aerospace Model DH/BH/HS/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model DH/BH/HS/BAe 125 series airplanes, that requires the installation of fluid vent masts on the undercarriage fairing. This amendment is prompted by recent reports that fluid leaking from the overboard drains under the wing can stream back along the outside of the fuselage and re-enter the fuselage tail cone. The actions specified by this AD are intended to prevent a fire in the tail cone.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model DH/BH/HS/BAe 125 series airplanes was published in the **Federal Register** on April 27, 1992 (57 FR 15258). That action proposed to require the installation of fluid vent masts on the undercarriage fairing.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined the air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 450 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $434,250, or $965 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-16-12. British Aerospace: Amendment 39-8321. Docket 92-NM-59-AD.

Applicability: Model DH/BH/HS/BAe 125 series airplanes; post-modifications 255640/252906 and pre-modification 253193B airplanes; and pre-modification 255640 airplanes; certificated in any category.

Compliance: Required within 4 months after the effective date of this AD, unless accomplished previously.

To prevent fire in the tail cone, accomplish the following:

(a) Install fluid vent masts on the undercarriage fairing, and plug certain existing vent holes, in accordance with British Aerospace Service Bulletin 53-74-3193C&D, dated January 7, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installation shall be done in accordance with British Aerospace Service Bulletin 53-74-3193C&D, dated January 7, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 14, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20119 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-62-AD; Amendment 39-8338; AD 92-17-09]

Airworthiness Directives; British Aerospace Model BAe 125-800A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Model BAe 125-800A series airplanes, that requires implementing a modification that would utilize countersunk headed bolts in the thrust reverser door hinge pivot. This amendment is prompted by an incident in which loose rivets or hexagon head bolts interfered with the thrust reverser system. The actions specified by this AD are intended to prevent damage to the thrust reverser system that could cause unsymmetrical thrust affecting directional control.

DATES: Effective September 28, 1991.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Model BAe 125-800A series airplanes was published in the **Federal Register** on April 27, 1992 (57 FR 15263). That action proposed to require implementing a modification that would utilize countersunk headed bolts in the thrust reverser door hinge pivot.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The commenters support the proposed rule.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $11,000 or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-17-09. British Aerospace: Amendment 39-8338. Docket 92-NM-62-AD.

Applicability: Model BAe 125-800A series airplanes on which Modification 259283C thrust reversers have been installed, and on which Modification 259949A or BAe Repair Instruction Leaflet (RIL) 25-8ES18 has not been installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage that may cause unsymmetrical thrust, accomplish the following:

(a) Within 9 months after the effective date of this AD, install Modification 259949A, in accordance with British Aerospace Service Bulletin SB.78-4-9949A, dated January 20, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with British Aerospace Service Bulletin SB.78-4-9949A, dated January 20, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 22, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20120 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-53-AD; Amendment 39-8336; AD 92-17-07]

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, that currently requires a detailed visual inspection to detect cracks and corrosion in the left and right main landing gear (MLG) door rear hinge bracket assemblies, and repair of corrosion or replacement of brackets, if necessary. This amendment extends the threshold for the initial inspection and requires repetitive visual inspections. This amendment is prompted by results of a review of initial inspection findings conducted by the manufacturer, which revealed that the threshold for the initial inspection may be extended, and that repetitive inspections must be conducted in order to detect cracks and corrosion in a timely manner. The actions specified by this AD are intended to prevent in-flight separation of a landing gear door from the airplane.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91-14-19, Amendment 39-7060 (56 FR 30314, July 2, 1991), which is applicable to all British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, was published in the Federal Register on May 1, 1992 (57 FR 18845). The action proposed to require repetitive detailed visual inspections to detect cracks and corrosion in the left and right main landing gear (MLG) door rear hinge bracket assemblies, and repair of corrosion or replacement of brackets, if necessary. The action also proposed to extend the compliance time for the currently required initial inspection.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The single commenter requests that the FAA provide assurance that extending the initial compliance time from 6,000 to 9,000 landings, as proposed in the Notice, will not result in an in-flight failure of the main landing gear rear hinge bracket. The FAA responds by noting that, as described in detail in the preamble to the notice, the United Kingdom Civil Aviation Authority and British Aerospace have conducted a review of the findings of the initial inspection required by AD 91-14-19. Data gathered from those findings revealed that the threshold for the inspection may be extended from 6,000 to 9,000 landings, if repetitive inspections are conducted at intervals not to exceed 3,000 landings in order to detect cracks and corrosion in a timely manner. The FAA reviewed these findings and concurred with them. Consequently, the FAA has determined that the initial compliance time may be extended by 3,000 landings without adversely affecting safety.

Paragraph (b) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,070. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-7060 (56 FR 30314, July 2, 1991), and by adding a new airworthiness directive (AD), amendment 39-8336, to read as follows:

92-17-07. British Aerospace: Amendment 39-8336. Docket 92-NM-53-AD. Supersedes AD 91-14-19, Amendment 39-7060.

Applicability: All Model BAe 146-100A, -200A, and -300A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight separation of a landing gear door from the airplane, accomplish the following:

(a) Prior to the accumulation of 9,000 landings, or within 30 days after the effective date of this AD; or if previously inspected in accordance with AD 91-14-19 (56 FR 30314, July 2, 1991), within 3,000 landings after the last inspection in accordance with that AD; whichever occurs later; and thereafter at intervals not to exceed 3,000 landings; accomplish the following:

(1) Perform a visual inspection of the left and right main landing gear (MLG) door rear hinge bracket assemblies to detect cracks and/or corrosion, in accordance with British Aerospace Inspection Service Bulletin 32-A119, Revision 1, dated December 2, 1991.

(2) Prior to further flight, replace any cracked hinge bracket with a serviceable part, in accordance with British Aerospace Inspection Service Bulletin 32-A119, Revision 1, dated December 2, 1991; or temporarily repair cracked brackets in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(3) Prior to further flight, remove any corrosion found, in accordance with the British Aerospace Model 146 Structural Repair Manual, and accomplish the following:

(i) If less than 0.100 inch of corrosion was removed, re-protect the hinge bracket in accordance with the maintenance manual; and obtain a life limit for the hinge bracket from the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(ii) If 0.100 inch, but less than 0.150 inch, of corrosion was removed, re-protect the hinge bracket in accordance with the maintenance manual; and, within 300 landings after accomplishing the re-protection procedure, replace the hinge bracket with a new part.

(iii) If 0.150 inch or more of corrosion was removed, prior to further flight, replace the hinge bracket with a new part.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections shall be done in accordance with British Aerospace Inspection Service Bulletin 32-A119, Revision 1, dated December 2, 1991, which includes the following list of effective pages:

Pages	Revision level	Date
1-4	1	December 2, 1991.
5	Original	November 14, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 22, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 92-20121 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-26-AD; Amendment 39-8337; AD 92-17-08]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Boeing Model 757 series airplanes, that requires repetitive checks to detect corroded or seized bearings of the passenger door emergency power assist assembly, and correction of any discrepancies found. This amendment is prompted by reports of corroded or seized bearings found in the emergency power assist assembly of the passenger doors. The actions specified by this AD are intended to prevent seizure of the passenger door emergency power assist support bearings, which could delay the opening of an exit door during an emergency evacuation.

DATES: Effective September 28, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 28, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket 92-NM-26-AD, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capital Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Monica L. Nemecek, Seattle Aircraft Certification Office, Crashworthiness and Interiors Section, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2773; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an

airworthiness directive (AD) that is applicable to certain Boeing Model 757 series airplanes was published in the Federal Register on March 18, 1992 (57 FR 9394). That action proposed to require repetitive checks to detect corroded or seized bearings of the passenger door emergency power assist assembly, and correction of any discrepancies found. Additionally, that proposal included an optional terminating action for the repetitive checks, which consisted of replacement of the existing alloy steel bearing with a new stainless steel bearing, bearing seal, and back-up ring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of several of its member operators, requests that the FAA review the need to proceed with this AD rulemaking prior to such time that a service bulletin and necessary parts for accomplishing the terminating action are available. The commenter states that the Boeing service letter referenced in the proposal does not contain instructions for accomplishing the terminating action. The commenter states that, since the terminating action could be accomplished in the same amount of time as the repetitive checks, it would save the operators time and money to accomplish the terminating action at the time of the initial check. In response to this commenter, the FAA notes that it recently reviewed and approved Boeing Service Bulletin 757-52-0055, dated June 25, 1992. This service bulletin describes procedures for repetitive checks of the passenger door emergency power assist assembly, correction of any discrepancies found, and the replacement of currently installed alloy steel bearings with new stainless steel bearings as terminating action for the repetitive checks. Paragraph (a) and (b) of the final rule have been changed to include reference to the new service bulletin as an appropriate source of service information.

Additionally, the effectivity listing of this new Boeing service bulletin is limited to a certain number of airplanes. The FAA has revised the applicability statement of the final rule accordingly.

This commenter also requests that the proposed rule's economic analysis be revised. The commenter asserts that accomplishment of the checks will require at least 32 work hours, rather than the 21 work hour estimate cited in the preamble to the notice. The commenter maintains that checks cannot be accomplished during an overnight hold, and that operators would need to schedule this check specially at a main base facility. This procedure may entail considerable time and expense beyond what was estimated by the cost impact analysis indicated in the notice. The FAA concurs that a revision to the work hour figure is necessary. The economic analysis paragraph, below, has been revised to indicate a total of 32 work hours necessary for the actions required by the AD.

The same commenter requests that the compliance time for the initial check be increased from the proposed 1,500 flight hours to 2,000 flight hours in order to allow operators to accomplish the inspection during a regularly scheduled "C" check. The FAA does nor concur. During the initial development of an appropriate compliance time for this AD action, the FAA first considered that 1,000 flight hours was an acceptable interval. This was based on (1) the service history, (2) the degree of urgency associated with addressing the unsafe condition, (3) the recommendations of the manufacturer, and (4) the fact that, by the time the final rule for the action was issued, the interval would fall during a time of regularly scheduled maintenance for most affected operators. However, the FAA extended this considered compliance time by an additional 500 flight hours to take into account the operational and maintenance schedules of affected major operators, as well as to provide a "buffer period" for all operators, in anticipation of the release of a service bulletin containing terminating action procedures. The FAA determined that a compliance time of 1,500 flight hours would not compromise safety and would allow ample time for the accomplishment of the check during normal maintenance schedules without undue burden on any operator. The FAA considers that any additional extension to the initial compliance time is not warranted. As discussed previously, a service bulletin containing instructions for accomplishing the terminating modification was released on June 25, 1992; therefore, operators now have access to the specific procedures for performing that action. The FAA has determined that 1,500 flight hours will allow operators sufficient time to schedule and accomplish the initial check, correct any discrepancies found, and maintain an acceptable level of safety. Under the provisions of paragraph (c) of the final rule, however, the FAA will consider requests for use of alternative methods of compliance with this rule or an adjustment of the compliance time, provided sufficient data is submitted to justify such a request.

Another commenter asserts that the final rule should reference the use of alternative tooling that Boeing has indicated is acceptable for accomplishment of the checks/lubrications. The commenter maintains that this tooling should be referenced in the AD in order to eliminate the need for submitting requests for an alternative method of compliance with the AD should an operator elect to use that tooling. The FAA does not concur. The final rule now references the Boeing service bulletin, which describes procedures for accomplishing the check for sufficient travel of the actuation cable in accordance with the 757 Maintenance Manual. It would be virtually impossible to call out all other tooling that may be used. However, should an operator develop an alternative tooling, the FAA would consider a request for an alternative method of compliance in accordance with the provisions of paragraph (c) of the final rule.

Another commenter, Boeing Commercial Airplane Group, requests that the wording of the unsafe condition be changed throughout the AD.

The commenter suggests that the seizure of the passenger door emergency power assist support bearings may "delay" the opening of an exit door, but would not "impede" the opening, as was stated in the notice. Failure to activate the power reservoir only prevents power assistance in opening the door, but does not obstruct the manual opening sequence. The FAA concurs that the commenter's suggested wording is more accurate and has changed the wording of the unsafe condition accordingly.

Paragraph (c) of the proposal has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 428 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 264 airplanes of U.S. registry will be affected by this AD, that it will take approximately 32 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $464,640, or $1,760 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-17-06. Boeing: Amendment 39-8337. Docket 92-NM-26-AD.

Applicability: Model 757 series airplanes; line numbers 1 through 454, inclusive except 757PF (Freighters); certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent seizure of the passenger door emergency power assist support bearings, which could delay the opening of an exit door during an emergency evacuation, accomplish the following:

(a) Prior to or upon the accumulation of 8,000 fight hours or within 1,500 flight hours after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 4,000 flight hours; perform a check of the emergency power assist cable travel to detect corroded or seized bearings, in accordance with Boeing Service Letter 757-SL-52-6, dated September 17, 1991, or Boeing Service Bulletin 757-52-0055, dated June 25, 1992. If discrepancies are detected, prior to further flight, correct them in accordance with the service letter or bulletin.

(b) Replacement of the existing alloy steel bearing with a new stainless steel bearing, bearing seal, and back-up ring, in accordance with Boeing Service Bulletin 757-52-0055, dated June 25, 1992; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; constitutes terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The checks and repairs shall be done in accordance with Boeing Service Letter 757-SL-52-6, dated September 17, 1992; or Boeing Service Bulletin 757-52-0055, dated June 25, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on September 28, 1992.

Issued in Renton, Washington, on July 22, 1992.

Darrell M. Pederson,

Acting Manager Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 92-20122 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 26946; Amdt. No. 1505]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. the circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC, on August 14, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPS, identified as follows:

NFDC TRANSMITTAL LETTER

Effective	State	City	Airport	FDC Number	SIAP
07/31/92	MO	Point Lookout	M Graham Clark	2/4388	RNAV RWY 29 AMDT 1...
08/06/92	CA	LaVerne	Brackett Field	2/4588	ILS RWY 26L AMDT 2A...
08/07/92	NC	Whiteville	Columbus County Muni	2/4608	NDB RWY 5 AMDT 3...
08/07/92	TN	Athens	McMinn County	2/4607	NDB RWY 2 AMDT 5...
08/11/92	MA	Northampton	Northampton	2/4694	VOR/DME-B AMDT 1...
08/11/92	MA	Northampton	Northampton	2/4695	VOR-A AMDT 1..

NFDC Transmittal Letter Attachment

LaVerne

Brackett Field
California
ILS RWY 26L AMDT 2a...
Effective: 08/06/92
FDC 2/4588/POC/ FI/P Brackett Field, LaVerne, CA. ILS RWY 26L AMDT 2A...Remove OM from FAF identification, change HAWNN OM/INT to HAWNN INT on profile and plan views. Delete note...IFR use only, practice approaches not authorized. This becomes ILS RWY 26L AMDT 2B.

Northampton

Northampton
Massachusetts
VOR/DME-B AMDT 1...
Effective: 08/11/92
FDC 2/4694/7B2/ FI/P Northampton, Northampton, MA. VOR/DME-B AMDT 1...GRABB BAF 16DME/radar, GRABB fix alt at or above 2500. Radar required for procedure. Delete...hold in lieu of PT at GRABB. Feeder from BAF VORTAC to GRABB. VASI light note. This is VOR/DME-B AMDT 1A.

Northampton

Northampton
Massachusetts
VOR-A AMDT 1...
Effective: 08/11/92
FDC 2/4695/7B2/ FI/P Northampton, Northampton, MA. VOR-A AMDT 1...
BAF VORTAC (IAF) 3000.
Delete...NOPT for arrivals on BAF VORTAC airway radial 254.
Delete...VASI light note. This is VOR-A AMDT 1A.

Point Lookout

M Graham Clark
Missouri
RNAV RWY 29 AMDT 1...
Effective: 07/31/92
FDC 2/4388/PLK/ FI/P M Graham Clark, Point Lookout, MO. RNAV RWY 29 AMDT 1...TRML RTE from HRO to MIKEL WP...3200. This becomes RNAV RWY 29 AMDT 1A.

Whiteville

Columbus County Muni
North Carolina
NDB RWY 5 AMDT 3...
Effective: 08/07/92
FDC 2/4608/CPC/ FI/P Columbus County Muni, Whiteville, NC. NDB RWY 5 AMDT 3...Terminal route from RAPEN INT to CPC NDB CRS/DSTC 268/17.6. Terminal route from CRE VORTAC to CPC NDB CRS/DSTC 004/27.5. This becomes NDB RWY 5 AMDT 3A.

Athens

McMinn County
Tennessee
NDB RWY 2 AMDT 5...
Effective: 08/07/92
FDC 2/4607/MMI/ FI/P McMinn County, Athens, TN. NDB RWY 2 AMDT 5...Terminal Route Gross INT to MMI NDB MIN ALT 3100. This becomes NDB RWY 2 AMDT 5A.

[FR Doc. 92-20167 Filed 8-21-92; 6:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 26947; Amdt. No. 1506]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporated by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on August 14, 1992.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective October 15, 1992

Sitka, AK—Sitka, LDA/DME RWY 11, Amdt. 11
Monee, IL—Sanger, VOR RWY 5, Amdt. 2
Troy, MI—Oakland/Troy, VOR-A, Amdt. 3
St. Joseph, MO—Rosecrans Memorial, VOR RWY 17, Amdt. 12
St. Joseph, MO—Rosecrans Memorial, LOC BC RWY 17, Amdt. 7
St. Joseph, MO—Rosecrans Memorial, NDB RWY 17, Amdt. 8
St. Joseph, MO—Rosecrans Memorial, NDB RWY 35, Amdt. 28
St. Joseph, MO—Rosecrans Memorial, ILS RWY 35, Amdt. 29
Morristown, NJ—Morristown Muni, ILS RWY 23, Amdt. 8
Cortland, NY—Cortland County-Chase Field, VOR RWY 6, Amdt. 1A, CANCELLED
Cortland, NY—Cortland County-Chase Field, VOR-A, Orig.
Hamilton, NY—Elisha Payne, VOR-A, Amdt. 3
Fargo, ND—Hector International, VOR/DME or TACAN RWY 17, Orig.
Cincinnati, OH—Cincinnati-Blue Ash, VOR RWY 6, Amdt. 4
Cincinnati, OH—Cincinnati-Blue Ash, VOR RWY 24, Amdt. 3
Ardmore, OK—Ardmore Muni, VOR RWY 4, Amdt. 18
Ardmore, OK—Ardmore Muni, NDB RWY 30, Amdt. 3
Ardmore, OK—Ardmore Muni, ILS RWY 30, Amdt. 1
Ebensburg, PA—Ebensburg, VOR-A, Amdt. 6
York, PA—York, NDB RWY 16, Amdt. 2
Dallas, TX—Redbird, VOR RWY 13, Amdt. 8, CANCELLED

Effective September 17, 1992

Upland, CA—Cable, VOR RWY 6, Amdt. 8
Tampa, FL—Peter O. Knight, NDB-A, Orig.
Cartersville, GA—Cartersville, LOC, RWY 18, Orig.
Greencastle, IN—Putnam County, VOR/DME-A, Amdt. 5
Greencastle, IN—Putnam County, NDB RWY 18, Orig.
Kendallville, IN—Kendallville Muni, VOR-A, Amdt. 6
New Orleans, LA—New Orleans Intl. (Moisant Fld), ILS RWY 28, Amdt. 2
New York, NY—LA Guardia, LOA-A Amdt. 1.

[FR Doc. 92-20166 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 18, 122

[T.D. 92-82]

RIN-1515-AB12

Air Waybill as In-Bond Document

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to make specific mention of the availability of an air waybill as an in-bond document. Customs previously concluded a successful test program allowing air carriers to forward in-bond shipments using an air waybill as the sole in-bond document. The use of the air waybill for this purpose has facilitated the movement of cargo and the delivery of in-bond freight. Accordingly, the procedure is made available on a permanent basis.

EFFECTIVE DATE: October 23, 1992.

FOR FURTHER INFORMATION CONTACT: Ernie Cunningham, Office of Inspection and Control (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

In November 1988, Customs commenced a test program allowing air carriers to use the air waybill (AWB) as the sole in-bond document in place of Customs Form 7512 (Transportation Entry and Manifest of Goods Subject to Customs Inspection and Permit) and Customs Form 7512-C (Transportation Entry and Manifest of Goods), or Transit Air Cargo Manifest (TACM) documents. These documents are used to move and track merchandise that is transferred in-bond for entry or exportation.

The test using only an AWB for this purpose was designed to take advantage of the unique number, and the detailed information, available on an AWB. A number of air carriers participated in the test wherein the use of the air waybill in this manner was found to facilitate the movement of cargo and the delivery of in-bond freight.

As a result of the successful test Customs determined to make this procedure available on a permanent basis and to amend the Customs Regulations to reflect this. Accordingly, by notice published in the **Federal Register** (56 FR 67253) on December 30, 1991, Customs solicited public comment on a proposal allowing air carriers to forward in-bond shipments using an air waybill as the sole in-bond document.

Specifically, in accordance with the test and under the proposed regulatory amendments, air carriers may forward in-bond shipments from the first port of arrival/unlading using an AWB as the in-bond document and the 11-digit AWB number as the in-bond control number. The first three digits of the number are the issuing airline's identification code. The AWB used must record the same information as the universal AWB recognized and accepted by the International Air Transport Association (IATA). The AWB must also contain the final port of destination in the U.S. or the actual ultimate country of destination of the shipment indicated by available airline shipping documents. The ultimate destination must be shown even though the air transportation may be scheduled to terminate in a country prior to the shipment's ultimate destination.

Importers may opt to use this procedure for merchandise entered for immediate transportation, transportation and exportation, and immediate exportation. Such use does not modify any carrier's liability for in-bond freight and does not modify bond requirements already in the Customs Regulations. It is still necessary that the delivering carrier, whether or not it is the initial bonded carrier, surrender the in-bond document as notice of arrival promptly, but no more than two working days after the arrival of any portion of the covered shipment at the port of destination.

District directors will consider individual port factors, such as presence of an operational Manifest Review Unit (MRU), in determining the level of supervision that is necessary in each district.

It is noted that § 122.92(a), Customs Regulations (19 CFR 122.92(a)), already states that, "Customs Form 7512 or other Customs approved documents" shall be used for both entry and manifest. The final rule adopted herein basically amends § 122.92(a) to make specific reference to an AWB as one of those Customs approved documents, as well as making other appropriate conforming changes to part 18, Customs Regulations (19 CFR part 18).

One commenter responded to the notice of proposed rulemaking. A discussion of the brief comments submitted is set forth below.

Analysis of Comments

Comment: It was recommended that Customs reconsider permitting alternate waybill formats to be used, deleting the words, "be in the format, and" from proposed § 122.92(a)(3)(i).

Response: Customs agrees with this recommendation and the section is amended accordingly. Customs wants to ensure that the information on the air waybill meets its requirements. What is of importance to Customs is not the International Air Transport Association (IATA) format, per se, but rather the substantive information contained therein.

Comment: It was also recommended that Customs apply the air waybill procedure to all portions of split shipments.

Response: Customs is unable to do this due to current programming constraints. At present, Customs keeps track of the in-bond shipment of merchandise made on an air waybill by using its unique 11-digit number. Only the first portion of a split shipment of such merchandise may be related to this number, with its in-bond movement being tracked in this manner.

Conclusion

After careful consideration of the comments received and further review of the matter, it has been determined that the amendments with the modification discussed above should be adopted. Also, the word "Customs" appearing before "approved documents" in the first sentence of § 122.92(a), which was omitted in the proposed amendment, is retained, for clarity.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in Executive Order 12291. Accordingly, a regulatory impact analysis is not required.

Drafting Information

The principal author of this document was Russell Berger, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 18

Common carriers, Exports, Freight forwarders.

19 CFR Part 122

Air carriers, Freight.

Amendments to the Regulations

For the reasons set forth in the preamble, parts 18 and 122, Customs Regulations (19 CFR parts 18, 122), are amended as set forth below.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general and specific authority citations for part 18 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1624;

* * * * *

§§ 18.11 and 18.12 also issued under 19 U.S.C. 1484;

* * * * *

2. Section 18.11 is amended by revising the first sentence of paragraph (h) to read as follows:

§ 18.11 Entry; classes of goods for which entry is authorized; form used.

* * * * *

(h) Either Customs Form 7512, a carnet, or an air waybill (see § 122.92 of this chapter), shall be used as a combined transportation entry, invoice, and manifest. * * *

* * * * *

3. Section 18.20 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 18.20 Entry procedure; forwarding.

(a) When an importation is entered for transportation and exportation, except as provided for in subparts D, E, F and G of Part 123 of this chapter (relating to merchandise in transit through the U.S. between two points in contiguous foreign territory), a carnet, three copies of an air waybill (see § 122.92 of this chapter), or four copies of Customs Form 7512 shall be required. * * *

* * * * *

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1623, 1624, 1644, 49 U.S.C. App. 1509.

2. Section 122.92 is amended by revising the heading and first sentence of paragraph (a)(1), adding a paragraph (a)(3), and by revising paragraph (b)(1) to read as follows:

§ 122.92 Procedure at port of origin.

(a) *Forms required.* (1) *Customs Form 7512 or other document.* Customs Form 7512 or other Customs approved documents, such as an air waybill (see paragraph (a)(3) of this section), shall be used for both entry and manifest. * * *

* * * * *

(3) *Air Waybill.* An air waybill may be used for both entry and manifest. Three copies of the air waybill are required unless the district director deems additional copies necessary. Photocopies of the original air waybill are acceptable. Either preprinted stock air waybills or electronically generated air waybills may be used. The air waybill must:

(i) Contain the information required of a universal air waybill as recognized and accepted by the International Air Transport Association (IATA), be legible and in the English language;

(ii) Display a unique 11-digit number, the first three digits being the air carrier's identification code;

(iii) Display the number of packages based on the smallest external packaging unit (e.g., 14 packages is acceptable, 1 pallet is unacceptable);

(iv) Display the name of the final port of destination in the U.S. or the name of the ultimate country of destination of the cargo indicated by available air carrier shipping documents. The ultimate destination must be shown even though the air transportation may be scheduled to terminate in a country prior to the cargo's final destination;

(v) Be modified to contain the following information which should appear in a block or attachment in the upper right-hand corner as in this example. The numbers 1–8 correspond to the descriptions that follow; the numbers do not have to appear on the AWB:

(1) _____
Origin
(2) _____
Entry Type
(3) _____
Destination
(4) _____
Importing Carrier/Flight Number/Arrival Date
(5) _____
Bonded Carrier/Exporter
(6) _____
Date
(7) _____
Signature of Carrier's Agent (or Exporter)
(8) _____
Customs Officer Date

The item numbers correspond to the following information:

Item 1—Origin—The numeric district/port code as listed in Schedule D of the Harmonized Tariff Schedules of the United States, or the port where the in-bond entry is presented.

Item 2—Entry type—The appropriate in-bond code number such as I.T./61 for Immediate Transportation, T&E/62 for Transportation and Exportation, and I.E./63 for Immediate Exportation.

Item 3—Destination—The numeric district/port code for the intended port of destination for entry or exportation.

Item 4—Importing Carrier/Flight Number/Arrival Date—This information serves to identify the shipment in terms of the inward foreign manifest of the importing carrier. The "Arrival Date" is the date of arrival of the importing conveyance in the U.S. The information must be supplied in all instances.

Item 5—Bonded Carrier/Exporter—The bonded carrier or exporter who will be liable for the proper movement, handling, and safekeeping of the merchandise once the in-bond movement is authorized by Customs. If this information is not supplied, the in-bond movement will be carried out under the bond of the importing carrier. (See Item 7 for further information on transfer of liability.)

Item 6—Date—The date of the in-bond entry preparation. Since an in-bond entry can be prepared before the date of entry presentation and/or acceptance, and prior to the actual arrival of the importing conveyance, this date should only be used for duty assessment purposes when the date in Item 8 is left blank. If a date is not present, the date of in-bond preparation will be deemed to be the date of arrival.

Item 7—Signature of Carrier's Agent (or Exporter)—This signature of the authorized agent of the bonded carrier or exporter identified previously (See Item 5) constitutes acceptance of the liability for the in-bond shipment by the party signing. A signature is required except when the in-bond movement is under the bond of the importing carrier. If unsigned, the submission to Customs of an AWB requesting such a movement is evidence of the acceptance of liability if the AWB is approved by Customs.

Item 8—Customs Officer/Date—Signature of the Customs officer who authorizes the initiation of the in-bond movement and the date of such authorization. Customs will check to make sure merchandise is released only to a bonded carrier. The date is used to start the time limit for completion of the in-bond movement and for consumption entry purposes in accord with § 141.69(b) of this chapter. Customs authorization procedures which use a perforation device are acceptable in lieu of the appropriate Customs signature. The district director will determine whether a signature will be required in this block prior to the time that the cargo is allowed to move.

(b) *Delivery of Customs form to carrier*—(1) *Merchandise entered for immediate transportation without appraisement.* When merchandise is entered for immediate transportation without appraisement, two copies of Customs Form 7512 or other Customs approved document, and the duplicate copy of Customs Form 7512–C shall be delivered to the carrier. When an air waybill is used, Customs Form 7512–C is not required.

Approved: August 10, 1992.

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Michael H. Lane,

Acting Commissioner of Customs.

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92–19961 Filed 8–21–92; 8:45 am]

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INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

22 CFR Part 215

Regulations for Implementation of the Privacy Act of 1974, as Amended

AGENCY: Agency for International Development (A.I.D.), International Development Cooperation Agency (IDCA).

ACTION: Final rule.

SUMMARY: The Agency for International Development is revising its Privacy Act regulations to make minor editorial changes; to incorporate certain internal changes within the Agency; to specifically identify the appeals officer as designated by the Administrator; and to change the current fee schedule.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: James Harper, Chief, Public Inquiries Division, Office of External Affairs, Agency for International Development, room 4889, Washington, DC, (202–647–1850).

SUPPLEMENTARY INFORMATION: A.I.D. received no comments to the proposed rule published in the **Federal Register** on January 23, 1991 (56 FR 2475–80).

List of Subjects in 22 CFR Part 215:

Privacy.

22 CFR Part 215 is revised to read as follows:

PART 215—REGULATIONS FOR IMPLEMENTATION OF PRIVACY ACT OF 1974

Sec.
215.1 Purpose and scope.
215.2 Definitions.
215.3 Procedures for requests pertaining to individual records in a system of records.
215.4 Times, places and requirements for identification of individuals making requests.
215.5 Access to requested information by individuals.
215.6 Special procedures: Medical records.
215.7 Request for correction of amendment of record.
215.8 Agency review of request for amendment of record.
215.9 Appeal of initial adverse agency determination.
215.10 Disclosure of record to person other than the individual to whom it pertains.
215.11 Fees.
215.12 Penalties and remedies.
215.13 General exemptions.
215.14 Specific exemptions.

Authority: Sec. 621, Foreign Assistance Act of 1961, as amended, (22 U.S.C. 2381; 75 Stat. 445); secs. 3,4, Administrative Procedure Act (5 U.S.C. 553; 60 Stat. 237); Privacy Act of 1974 (Pub. L. 93–579; 5 U.S.C. 552a; 88 Stat. 1896).

§ 215.1 Purpose and scope.

(a) It is the purpose and objective of the International Development Cooperation Agency and the Agency for International Development to collect information, revise personal data collection forms or processes, and maintain Agency records in a manner that will prevent an unwarranted invasion of privacy of those individuals who are the subject of Agency records.

(b) These regulations establish the procedures by which an individual may obtain notification of the existence of Agency records pertaining to that individual, gain access to those records, request an amendment or correction to the records, and appeal adverse decisions to requests for amendment or correction of Agency records.

(c) The Agency separately states and publishes in the **Federal Register** a public notice of the existence and character of systems maintained by the Agency, pursuant to the provisions of sections (e)(4) and (e)(11) of the Privacy Act of 1974 (5 U.S.C. 552a; 88 Stat. 1896).

§ 215.2 Definitions.

(a) *Act* means the Privacy Act of 1974 (5 U.S.C. 552a; 88 Stat. 1896);

(b) *Agency* means the International Development Cooperation Agency or the Agency for International Development, its offices, bureaus, divisions, and posts abroad;

(c) *Amend* shall include the amendment of a record;

(d) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence;

(e) *Maintain* includes maintain, collect, use or disseminate;

(f) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph;

(g) *Routine use* means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected;

(h) *Statistical Record* means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by section 8 of title 13;

(i) *System of Records* means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

§ 215.3 Procedures for requests pertaining to individual records in a system of records.

(a) Requests for notification of access to or amendment of Agency records contained in a system of records pertaining to an individual may be made in person or by mail as follows: For the International Development Cooperation Agency-Assistant Director for Administration, International Development Cooperation Agency, Room 4889 New State, 2201 C Street, NW., Washington, DC 20523 Attention: Privacy Liaison Officer. For the Agency for International Development-Privacy Liaison Officer, Agency for International Development, Room 4889 New State, 2201 C Street, NW., Washington, DC 20523.

(b) Such request should include information necessary to identify the record, e.g., the individual's full name, date of birth, place of birth, present mailing address, or system of record identification name and number, if known, and, to facilitate the retrieval of records contained in those systems of records which are retrieved by social security numbers, the social security number of the individual to whom the record pertains.

(c) With respect to a system of records which may be maintained by the Agency in offices outside the United States, an individual may inquire whether he or she is the subject of an Agency record or may request access to or amendment of such records by appearing in person or by writing to the Privacy Liaison Officer, Agency for International Development, at the overseas missions.

(d) The Assistant Director for Administration for requests to I.D.C.A. or the appropriate Privacy Liaison Officer for request to A.I.D., or their designees shall, within ten (10) working days of receipt of the request, furnish in writing to the requesting individual notice of the existence or nonexistence of any records described in the request.

§ 215.4 Times, places, and requirements for identification of individuals making requests.

(a) Individuals making personal requests for notification, access or contest may do so at the place designated in paragraph (a) of § 215.3, which is open 9 a.m. to 5 p.m. daily, except Saturdays, Sundays, and legal public holidays.

(b) Individuals making personal requests for notification, access or contest at offices outside the United States may do so at the overseas missions during the regular business hours of those offices.

(c) An individual requesting such information in person shall provide such personal identification as is reasonable under the circumstances to verify the individual's identity; e.g. driver's license, employee identification card or medicare card. (The identification should contain a photograph of the individual.)

(d) An individual requesting such information by mail shall include in his or her request a signed notarized statement to verify his or her identity and which stipulates that the individual understands that knowingly or willfully seeking or obtaining access to records about another individual under false pretenses is punishable by a fine up to $5,000, as provided in section (i)(3) of the Act.

(e) Verification of identity as set forth in paragraphs (c) and (d) of this section shall not be required of individuals seeking access to records otherwise available to members of the public under the Freedom of Information Act (5 U.S.C. 552; 88 Stat. 1561).

(f) An individual who wishes to be accompanied by another person when reviewing a record shall furnish the Agency with a written statement

authorizing discussion of his or her record in the presence of the accompanying person. Such statement need not contain any reasons for the access or for the accompanying person's presence.

§ 215.5 Access to requested information by individuals.

(a) Upon receipt of a request by an individual made in accordance with the provisions of § 215.3, such individual shall be granted access to any record pertaining to him or her which is contained in a system of records maintained by the Agency subject to exemptions discussed in §§ 215.13 and 215.14.

(b) Notwithstanding the provisions of paragraph (a) of this section, access will not be allowed an individual to information or records compiled by the Agency in reasonable anticipation of a civil or criminal action or proceeding.

(c) Whenever possible, access to requested records will be granted:

(1) Where the request is presented in person and the record is readily available, promptly upon receipt of the request for access, determination that access to the record may be granted, verification of the identity of the individual seeking access, and, where applicable, receipt of consent to discuss the record with a person accompanying the individual;

(2) Where the request is made by mail, the record will, whenever possible, be provided within ten (10) working days of receipt of the request.

(d) Where access to a record cannot reasonably be granted as provided in paragraphs (c)(1) and (2) of this section, the Agency will acknowledge in writing receipt of the request for access and indicate a reasonable time within which access to the record can be granted.

(e) Where no reasonable means exist for an individual to have access to his or her record in person, a copy of the record must be provided through the mail.

§ 215.6 Special procedure: Medical records.

If the Assistant Director for Administration or the Privacy Liaison Officer, determines that the release directly to the individual of medical records maintained by the Agency could have an adverse effect upon such individual, the Director/Officer will attempt to arrange an alternative acceptable to both the individual and Agency (such as the release of said information to a doctor named by the individual) in granting access to such record.

§ 215.7 Request for correction or amendment of record.

(a) An individual may request the Agency to correct or amend a record pertaining to him or her which the individual believes is not accurate, relevant, timely or complete.

(b) Such request must be in writing and must be presented, in person or by mail to the addresses listed in § 215.3(a).

(c) Such requests must set forth the following information:

(1) Identification of the system of records in which the particular record is maintained;

(2) The portion(s) of the record to be amended or corrected;

(3) The desired amendment or correction; and

(4) The reasons for the amendment or correction.

The request must be accompanied by evidence, documentation, or other information in support of the request.

(d) Assistance in preparing a request to amend a record may be obtained from the officials listed in § 215.3(a).

§ 215.8 Agency review of requests for amendment of record.

(a) The Agency will examine the information requested to be amended to determine its accuracy, timeliness, completeness, and its relevancy and necessity to accomplish a purpose of the Agency required to be accomplished by statute or by executive order.

(b) Within ten (10) working days after the receipt by the Assistant Director for Administration or the Privacy Liaison Officer, of a request made in accordance with this section, the Assistant Director for Administration or the Privacy Liaison Officer shall acknowledge in writing such receipt and shall, after examination in accordance with the provisions of paragraph (a) of this section, promptly either:

(1) Make any amendment of any portion thereof which the individual believes is not accurate, relevant, timely or complete, and notify the individual of the amendment made; or

(2) Inform the individual of the Agency's refusal to amend the record in accordance with the request, the reason(s) for the refusal, and the procedures established by the Agency for the individual to request a review of that refusal.

(c) If the Agency agrees with the individual's request to amend a record, in addition to proceeding as set forth in paragraph (b)(1) of this section, it shall promptly advise all previous recipients of the record of the fact that the amendment was made and the substance of the amendment where an accounting of disclosures has been made.

(d) If unusual circumstances prevent the completion of Agency action on the request to amend within 30 days after the receipt thereof by the Assistant Director for Administration or the Privacy Liaison Officer, the individual will be promptly advised of the delay, the reasons for the delay, and of the date by which the review is expected to be completed.

(e) If the Agency, after its initial examination of the record and the request for Amendment, disagrees with all or any part of the individual's request to amend it shall:

(1) To the extent the Agency agrees with any part of the individual's request to amend, proceed as described in paragraphs (b)(1) and (c) of this section;

(2) Advise the individual of its refusal and the reason(s) therefor;

(3) Inform the individual that he or she may request a further review by the Director or the Administrator, or their designees; and

(4) Describe the procedures for requesting such review, including the name and address of the official to whom the request should be directed.

(f) No part of these regulations shall be construed to permit:

(1) The alteration of evidence presented in the course of judicial, quasi-judicial or quasi-legislative proceedings;

(2) Collateral attack upon any matter which has been the subject of judicial or quasi-judicial action; or

(3) An amendment or correction which would be in violation of an existing statute, executive order or regulation.

§ 215.9 Appeal of initial adverse agency determination.

(a) An individual who disagrees with the denial or partial denial of his or her request to amend a record may file a request for review of such refusal within 60 days after the date of notification of the denial or partial denial.

(b) The request for review must be in writing and may be presented in person or by mail to:

Director, International Development Cooperation Agency, 2201 C Street, NW., Washington, DC 20523. Attention: Privacy Review Request.

Director, Office of External Affairs, Agency for International Development, 2201 C Street, NW., Washington, DC 20523. Attention: Privacy Review Request.

Both the envelope and the letter should be clearly marked: Attention: Privacy Review Request. Such request should include any documentation, information or statements advanced for the

amendment of the record, and a copy of the initial adverse determination.

(c) Upon receipt of the request for review, the Director or the Assistant Administrator, or an officer of the Agency designated in writing by the Director or Administrator, shall undertake an independent review of the initial determination.

(d) If someone other than the Director or the Assistant Administrator is designated to conduct the review, he or she shall be an officer who is organizationally independent of or senior to the officer or employee who made the initial determination.

(e) In conducting the review, the reviewing official, may at his or her option, request such additional information as is deemed necessary to establish that the record contains only that information which is accurate, timely, complete and necessary to assure fairness in any determination which may be made about the individual on the basis of the record.

(f) Within 30 days after receipt of the request for review, the Director, the Assistant Administrator, or the official designated to conduct the review, shall advise the individual of the Agency's final decision. If unusual circumstances prevent the completion of the review within the 30-day period, the Agency shall, prior to the expiration of the 30-day period, advise the individual in writing of the circumstances preventing the completion of such review and inform him or her of the date by which the review is expected to be completed.

(g) If the reviewing official determines that the record should be amended in accordance with the individual's request, the Agency shall:

(1) Amend the record accordingly;

(2) Advise the individual of the amendment; and

(3) Where an accounting of disclosures has been made, advise all previous recipients of the fact that the amendment was made and the nature of the amendment.

(h) If, after conducting the review, the reviewing official refuses to amend the record, in whole or in part, in accordance with the individual's request, Agency shall advise the individual:

(1) Of its refusal and the reasons therefor;

(2) Of the individual's right to file a concise statement of his or her reasons for disagreeing with the Agency's decision;

(3) Of the procedures for filing a statement of disagreement;

(4) That any such statement will be sent to anyone to whom the record is subsequently disclosed, together with a brief statement by the Agency summarizing its reasons for refusing to amend the record;

(5) That to the extent an accounting of disclose was maintained, prior recipients of the disputed record will be provided a copy of any statement of disagreement and of the Agency's statement summarizing its reasons for refusing to amend the record; and

(6) Of the individual's right to seek judicial review of the Agency's refusal to amend a record as provided for in section (g)(1)(a) of the Act.

§ 215.10 Disclosure of record to person other than the individual to whom it pertains.

(a) Subject to the conditions of paragraphs (b) and (c) of this section, the Agency shall not disclose any record which is contained in a system of records by any means of communication to any person or other agency who is not the individual to whom the record pertains.

(b) Upon written request or with prior written consent of the individual to whom the record pertains, the Agency may disclose any such record to a person or to another agency as requested or authorized.

(c) Notwithstanding the absence of written consent from the individual to whom the record pertains, the Agency may disclose any such record provided such disclosure is:

(1) To those officers and employees of the Agency who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (5 U.S.C. 552);

(3) For a routine use as defined in § 215.2;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Agency with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his or her designee, to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity authorized by law: Provided, The head of the agency or instrumentality has made a prior written request to the Assistant Administrator of Administration or the Privacy Liaison Officer, specifying the particular record and the law enforcement activity for which it is sought;

(8) To a responsible person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification will be transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of a matter within its jurisdiction, any committee or subcommittee, or joint committee of Congress, or subcommittee of such joint committee;

(10) To the Comptroller General, or any of his/her authorized representatives, in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to an order of a court of competent jurisdiction or;

(12) To a consumer reporting agency in accordance with section 3711(f) of Title 31.

§ 215.11 Fees.

(a) The only fees to be charged to or collected from an individual under the provisions of this part are for copying records at the request of the individual.

(b) No fees shall be charged or collected for the following: Search for and retrieval of the records; review of the records; copying at the initiative of the Agency without a request from the individual; the first 100 pages; and first-class postage. However if special handling or other than first-class mail is requested or required, the costs shall be added to the basic fee.

(c) The copying fees prescribed in paragraph (a) of this section are:

Ten (10) cents per page. Twenty (20) cents per page of computer printout.

(d) Payment may be in the form of a check, bank draft on a bank in the United States, or postal money order payable to the Treasurer of the United States.

(e) A receipt for fees paid will be given only upon request.

(f) A copying fee totaling $15.00 or less shall be waived but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

(g) A fee may be reduced or waived by the Privacy Liaison Officer.

§ 215.12 Penalties and remedies.

The provisions of the Act relating to penalties and remedies are summarized below:

(a) An individual may bring a civil action against the Agency when the Agency:

(1) Makes a determination not to amend a record in accordance with the individual's request;

(2) Refuses to comply with an individual's request pursuant to 5 U.S.C. 552a (d)(1);

(3) Fails to maintain a record concerning an individual with such accuracy, relevance, timeliness and completeness as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and as a result thereof a determination is made which is adverse to the individual; or

(4) Fails to comply with any other provision of section (d) of the Act in such a way as to have an adverse effect on an individual.

(b) The court may order the correction or amendment of the records, may enjoin the Agency from withholding the records, may order the Agency to produce any records improperly withheld, and may assess attorney's fees and costs.

(c) Where a court of competent jurisdiction makes a determination that the Agency action was willful or intentional with respect to 5 U.S.C. 552a (g)(1) (c) or (d), the United States shall be liable for actual damages of no less than $1,000, the costs of the action, and attorneys' fees.

(d) Criminal penalties may be imposed against an officer or employee of the Agency who willfully discloses material which he or she knows is prohibited from disclosure, or who maintains a system of records without complying with the notice requirements.

(e) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses. The offenses enumerated in paragraphs (d) and (e) of this section are misdemeanors, with fines not to exceed $5,000.

§ 215.13 General exemptions.

(a) Pursuant to 5 U.S.C. 552a (j)(2), the Director or the Administrator may, where there is a compelling reason to do so, exempt a system of records within the Agency from any part of the Act, except subsections (b), (c) (1) and (2), (e)(4)(A) through (F), (e) (6), (7), (9), (10), and (11), and (i) thereof, if the system of records is maintained by the Agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals, and the activities of prosecutors, courts, correctional, probation, pardon, or parole authorities, and which consists of:

(1) Information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status;

(2) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; or

(3) Reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws from arrest or indictment through release from supervision.

(b) Each notice of a system of records that is the subject of an exemption under this section will include a statement that the system has been exempted, the reasons therefore, and a reference to the **Federal Register**, volume and page, where the exemption rule can be found.

(c) The systems of records to be exempted under section (j)(2) of the Act, the provisions of the Act from which they are being exempted, and the justification for the exemptions, are set forth below:

(1) *Criminal Law Enforcement Records.* This system of records is to be exempted from sections (c) (3) and (4); (d); (e) (1), (2), and (3); (e) (4) (G), (H), and (I); (e) (5) and (8); (f), (g) and (h) of the Act. These exemptions are necessary to insure the proper functioning of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to maintain the integrity of the law enforcement procedures, to avoid premature disclosure of the knowledge of criminal activity and the evidentiary bases of possible enforcement actions, to prevent interference with law enforcement proceeding, to avoid the disclosure of investigative techniques, and to avoid the endangering the law enforcement personnel.

§ 215.14 Specific exemptions.

(a) Pursuant to 5 U.S.C. 552a(k), the Director or the Administrator may, where there is a compelling reason to do so, exempt a system of records, from any of the provisions of subsections (c) (3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Act if a system of records is:

(1) Subject to the provisions of 5 U.S.C. 552(b)(1);

(2) Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) of the Act: Provided, however, That if any individual is denied any right, privilege, or benefit to which he or she would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(3) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(4) Required by statute to be maintained and used solely as statistical records;

(5) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence;

(6) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(7) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence.

(b) Each notice of a system of records that is the subject of an exemption under 5 U.S.C. 552a(k) will include a statement that the system has been exempted, the reasons therefore, and a reference to the **Federal Register**, volume and page, where the exemption rule can be found.

(c) The systems of records to be exempted under section (k) of the Act, the provisions of the Act from which they are being exempted, and the justification for the exemptions, are set forth below:

(1) *Criminal Law Enforcement Records.* If the 5 U.S.C. 552a(j)(2) exemption claimed under paragraph (c) of § 215.13 and on the notice of systems of records to be published in the **Federal Register** on this same date is held to be invalid, then this system is determined to be exempt, under 5 U.S.C. 552(a)(k) (1) and (2) of the Act, from the provisions of 5 U.S.C. 552a (c)(3); (d); (e)(1); (e)(4); (G); (H); (I); and (f). The reasons for asserting the exemptions are to protect the materials required by executive order to be kept secret in the interest of the national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain necessary information, to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel.

(2) *Personnel Security and Suitobility Investigatory Records.* This system is exempt under U.S.C. 552a (k)(1), (k)(2), and (k)(5) from the provisions of 5 U.S.C. 552a (c)(3); (d); (e)(1); (e)(4); (G); (H); (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering those sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted.

(3) *Litigation Records.* This system is exempt under 5 U.S.C. 552(k)(1), (k)(2), and (k)(5) from the provisions of 5 U.S.C. 552a (c)(3); (d); (e)(1); (e)(4) (G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information.

(4) *Employee Equal Employment Opportunity Complaint Investigatory Records.* This system is exempt under 5 U.S.C. 552a (k)(1) and (k)(2) from the provisions of 5 U.S.C. 552a (c)(3); (d); (e)(1); (e)(4) (G), (H), (I); and (f). These exemptions are claimed to protect the materials required by executive order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to insure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources.

(5) The following systems of records are exempt under 5 U.S.C. 552a (k)(5) from the provision of 5 U.S.C. 552a (c)(3); (d); (e)(1); (e)(4) (G), (H), (I); and (f):

(i) Employee Conduct and Discipline Records.

(ii) Employee Relations Records.

This exemption is claimed for these systems of records to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources and, ultimately, to facilitate proper selection or continuance of the best applicants or persons for a given position or contract. Special note is made of the limitation on the extent to which this exemption may be asserted. The existence and general character of the information exempted will be made known to the individual to whom it pertains.

Dated: August 13, 1992.

James Harper,

Chief, Public Inquiries Division.

[FR Doc. 92-20132 Filed 8-21-92; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8428]

RIN 1545-AP79

Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the use of certain corporate tax attributes under section 382 of the Internal Revenue Code of 1986 (the "Code") that are attributable to the period preceding an ownership change of a loss corporation. These final regulations under section 382 provide special rules regarding the segregation of stock ownership of an open-end regulated investment company following certain issuances and redemptions of its stock.

DATES: The regulations are effective as of August 21, 1992, and generally are applicable to testing dates occurring after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Charles Whedbee of the Office of Assistant Chief Counsel (Corporate), Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or telephone (202) 622-7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545-1281. The estimated annual burden per respondent/recordkeeper varies from 5 to 10 minutes, depending on individual circumstances, with an estimated average of 7.5 minutes.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, TR:FP, Washington, DC 20224, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

Background and Explanation of Provisions

This document contains final regulations to be added to parts 1 and 602 of title 26 of the Code of Federal Regulations (CFR) under section 382 of the Internal Revenue Code. On October 30, 1991, the Federal Register published a Notice of Proposed Rulemaking (56 FR 55858) proposing amendments to the Income Tax Regulations under section 382. That document proposed amendments to the temporary regulations under section 382 which were published in the **Federal Register** on August 11, 1987 (T.D. 8149, 52 FR 29668). The proposed regulations provided that the segregation rules of § 1.382–2T(j)(2) would not apply to the issuance and redemption of stock by open-end regulated investment companies (commonly known as mutual funds) in the ordinary course of business. The proposed regulations were proposed to be effective for testing dates after December 31, 1986. However, the proposed regulations provided that taxpayers may elect to apply the amendments only to testing dates on or after October 29, 1991 (the date that the proposed regulations were filed with the Federal Register).

Only two written comments were received by the Internal Revenue Service with respect to the proposed regulations. One recommended that we adopt the proposed regulations without change. Another requested that the exception provided in the proposed regulations be extended to include the issuance and redemption of stock by certain institutions under the Farm Credit System (*see* 12 U.S.C. 2001 through 2219). The Farm Credit System is a network of borrower-owned cooperative lending institutions and specialized service organizations.

As discussed in the preamble to the proposed regulations, an exception to the segregation rule for issuances and redemptions of shares by mutual funds is appropriate because those issuances and redemptions substitute for public trading in its shares. Accordingly, requiring mutual funds to track the issuance and redemption of their shares in the ordinary course of business imposes administrative burdens similar to the burdens of tracking secondary trading between less-than-five-percent shareholders.

In the case of certain institutions under the Farm Credit System, borrowers typically are required to purchase stock of the lending institution as a condition to borrowing. Borrowers may be required to adjust their stock ownership through additional purchases or redemptions to reflect changes in the level of borrowing. However, issuances and redemptions are not a substitute for secondary trading of stock by these institutions and generally do not rise to the same level as that found with respect to mutual funds.

The final regulations adopt the rules contained in the proposed regulations without substantive change. This regulations project was intended only to address situations where issuances and redemptions by a corporation substitute for secondary trading, and tracking issuances and redemptions generally would involve burdens similar to the burdens associated with tracking secondary trading. However, the Service will consider the comments of the institutions of the Farm Credit System in the context of other guidance projects that address the section 382 segregation rules.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the Notice of Proposed Rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on their impact on small business.

Drafting Information

The principal author of these regulations is Lori J. Brown, Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations, on matters of both substance and style.

List of Subjects

26 CFR 1.381(a)–1 Through 1.383–3

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, parts 1 and 602 of title 26 of the Code of Federal Regulations are amended as follows:

PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended in part by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.382–4 also issued under 26 U.S.C. 382(m).
* * *

Par. 2. Section 1.382–2T(j)(2)(iii)(A) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 1.382–2T Definition of ownership change under section 382, as amended by the Tax Reform Act of 1986 (temporary).

* * * * *

(j) * * *

(2) * * *

(iii) * * * (A) * * * For an exception applicable to certain regulated investment companies, see § 1.382–4(k)(1).

* * * * *

Par. 3. New § 1.382–4 is added to read as follows:

1.382–4 Definitions and rules relating to a 5-percent shareholder.

(a) Through (j). [Reserved]

(k) *Special rules for certain regulated investment companies*—(1) *In general.* The segregation rules of § 1.382–2T(j)(2) do not apply to the issuance (as described in § 1.382–2T(j)(2)(iii)(B)(1)(*ii*)) or the redemption (as described in § 1.382–2T(j)(2)(iii)(C)) of any redeemable security, as defined in 15 U.S.C. 80a–2(a)(32), by a regulated investment company in the ordinary course of business.

(2) *Effective date.*—(i) *General rule.* Paragraph (k)(1) of this section applies to testing dates after December 31, 1986. A corporation may file an amended return for taxable years ending before August 21, 1992 (subject to any applicable statute of limitations) to take into account paragraph (k)(1) of this section only if corresponding adjustments are made in amended returns for all affected taxable years ending after December 31, 1986 (subject to any applicable statute of limitations).

(ii) *Election to apply prospectively.* A corporation may elect to apply paragraph (k)(1) of this section only to testing dates on or after October 29, 1991. The election must be made on the first return which is filed after October 20, 1992 by stating on such return, "This is an Election To Apply § 1.382–4(k)(1) Only to Testing Dates on or After October 29, 1991."

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by adding the following entry in the table: "1.382–4 ... 1545–1281".

Dated: July 23, 1992.

David G. Blattner,

Acting Commissioner of Internal Revenue.

Approved:

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92–19951 Filed 8–21–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 92–057]

Special Local Regulation: Gateway Powerboat Regatta, Greenwich and Stamford, CT

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the Gateway Powerboat Regatta. The regatta will be held on Saturday, August 22, 1992, in the waters of Long Island Sound adjacent to the harbors of Greenwich and Stamford, Connecticut. This regulation is needed to protect the boating public from the hazards associated with high speed powerboat racing in confined waters.

EFFECTIVE DATE: This regulation is effective from 10 a.m. to 3 p.m. on August 22, 1992. In case of inclement weather, the rain date for this event is August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) E.G. Westerberg, Chief, Boating Safety Affairs Branch, First Coast Guard District (617) 223–8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this document are LTJG E.G. Westerberg, Project Manager, First Coast Guard District, and LCDR J. Astley, Project Attorney, First Coast Guard District, Legal Office.

Regulatory History

On July 10, 1992, the Coast Guard published a notice of proposed rulemaking entitled Special Local Regulation: Gateway Powerboat Regatta, Greenwich and Stamford, CT, in the **Federal Register** (57 FR 30704). The Coast Guard received one letter commenting on the proposal. A public hearing was not requested and none was held. There is good cause for this temporary final rule to become effective on the dates specified, prior to thirty days after publication. This rule must become effective on the dates specified in the interest of marine safety, to ensure the safety of persons involved in the Gateway Powerboat Regatta as well as the safety of other marine interests that may be transiting western Long Island Sound during the event. The public was given adequate notice of the event by the notice of proposed rulemaking, which encompassed a full comment period. By affording the public the proper opportunity to comment (comment period ended August 1, 1992), it is impracticable to publish this final rule thirty days prior to the event. Therefore, good cause exists for not making this temporary final rule effective thirty days after publication.

Background and Purpose

On April 20, 1992 the sponsor, Gateway Powerboat Association, Inc., submitted a request to hold an offshore powerboat race on Long Island Sound. The Coast Guard is establishing a temporary regulation in Long Island Sound for this event known as the "Gateway Powerboat Regatta." This regulation establishes a regulated area in Long Island Sound an provides specific guidance to control vessel movement during the limited duration of the race.

This event will include up to 40 powerboats competing on a rectangular course at speeds approaching 100 m.p.h. Due to the inherent dangers of a race of this type, restriction of traffic will be temporarily effected to promote the safe navigation of the other users of Long Island Sound.

The sponsors, Gateway Powerboat Association, Inc. have previously conducted this event in Long Island Sound in 1987 and 1988. This year's race will follow a similarly marked course and the same regulations as set forth in the previous years. By providing sufficient lead time, the U.S. Coast Guard, in cooperation with Gateway Powerboat Association, Inc., is attempting to minimize any burden to the users of the waterway.

Discussion of Comments and Changes

One letter of comment was received from the Town of Greenwich citing past civil disturbances associated with the race. The comment was discussed with the town officials. In prior races, race sponsor and participants had conflicts with the town over utilization of launching ramps and shore facilities. Their concern and comments did not touch on the proposed regulated area or the proposed special local regulation. Therefore, no changes to the proposed regulation were made as a result of their comments.

The special regulation is amended to provide for a rain date. The rain date was inadvertently omitted from the NPRM. The planning and operational commitment involved with this event is such that the addition of a rain date is justified. In the event of inclement weather, this change provides that the race be held on August 24, 1992, subject to the same times and regulations. This change places no appreciable new burden on the boating public.

Regulatory Evaluation

This regulation is considered to be not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary due to the limited duration of the race, the extensive advisories that have been and will be made to the affected maritime community, and the fact that the major portion of the event is taking place on a Saturday afternoon, which is normally a very light volume day for commercial marine traffic. In addition, ample alternate routes are available for all sizes of commercial and recreational vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under

section 3 of the Small Business Act (15 U.S.C. 632).

The Coast Guard expects the impact of this regulation to be minimal. Because of the limited duration of the race and the fact that the event is taking place on a Saturday, the Coast Guard certifies under 5 U.S.C. 605(b) that this regulation will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

PART 100—[AMENDED]

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, 100.35T01–057 is added to read as follows:

§ 100.T01–057 Gateway Powerboat Regatta, Stamford and Greenwich, CT.

(a) *Regulated area.* The regulated area will include all waters within the following points:

Latitude	*Longitude*
40°55.9' N	73°37.5' W
40°57.8' N	73°32.9' W
40°58.6' N	73°33.9' W
40°57.0' N	73°38.3' W

(b) *Special local regulations.* (1) Commander, U.S. Coast Guard Group Long Island Sound reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area during the effective period of regulation unless participating in the event as authorized by the sponsor or the Coast Guard. The Patrol Commander, as delegated by the Commander, Coast Guard Group Long Island Sound, will attempt to minimize any delays for commercial vessels transiting the area and will monitor channel 16 VHF–FM.

(3) All persons and vessels shall comply with the instructions of the Commander, U.S. Coast Guard Group Long Island Sound or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(c) *Effective period.* This regulation is effective from 10 a.m. to 3 p.m. on August 22, 1992. In case of inclement weather, the rain date for this event is August 24, 1992.

Dated: August 13, 1992.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 92–20002 Filed 8–21–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[GC Docket 91–120; FCC 92–338]

Administrative Practice and Procedure

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The report and order amends the rules to provide for the temporary suspension of attorneys practicing before the Commission who are the subject of a final order or suspension or disbarment by a court or other lawful tribunal. It is necessary to amend the rules to safeguard the public from unethical practices and protect the integrity of the Commission's processes. The intended effect is to establish a procedure that will expeditiously enable the Commission to safeguard the public and its processes from the conduct of an attorney who has been found unfit to practice by another disciplinary tribunal.

EFFECTIVE DATE: September 21, 1992.

FOR FURTHER INFORMATION CONTACT: James Mullins, Office of General Counsel, (202) 254–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's report and order, GC Docket 91–120 adopted July 21, 1992 and released August 6, 1992. [Initiating document: NPRM 56 FR 19826 (April 30, 1991).] The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Summary of Report and Order

I. Introduction and Background

1. On April 12, 1991, the Commission adopted a Notice of Proposed Rulemaking, 56 FR 19826, April 30, 1991, in General Docket No. 91–120 proposing to amend 47 CFR 1.24 to provide for the temporary suspension of any lawyer, at the discretion of the Commission and without opportunity for preliminary hearing, upon receipt by the Commission of official notification of that person's final suspension or disbarment by a duly authorized tribunal. The temporary suspension would remain in effect until completion of the Commission's disciplinary proceeding conducted pursuant to § 1.24(b) or until the Commission determines that reinstatement of the practitioner, prior to the completion of those proceedings, would serve the public interest.

2. The Commission also proposed to amend 47 CFR 1.23 to add that an attorney who is subject to suspension, disbarment or otherwise restricted from the practice of law by a final order of a lawfully authorized Federal or State agency is prohibited from practice before the Commission.

3. In response to the Notice only the Federal Communications Bar Association (FCBA) filed comments.

II. Discussion

4. The Commission has amended the rules governing the conduct of attorneys practicing before the Commission. The new rules provide for the temporary suspension, at the Commission's discretion and without opportunity for hearing, of any attorney subject to a final order of suspension or disbarment by any tribunal of competent authority.

5. The Commission's objective was to establish a procedure that will enable it to safeguard the public and its processes from the conduct of an attorney who has been found unfit to practice by another disciplinary tribunal.

6. After considering FCBA's comments, the Commission decided that it will not consider suspension or disbarment orders by all courts or federal or state agencies as grounds for disbarment at the FCC. The new rules provide that only an order of a tribunal authorized to regulate the practice of law generally within its territorial boundaries would affect eligibility to practice or cause the Commission to consider initiating disciplinary proceedings against a practitioner.

III. Conclusion

7. Accordingly, *It is ordered* That effective September 21, 1992, part 1 of the Commission's rules, 47 CFR part 1, is amended as set forth in the final rules. Authority for such action is found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

8. *It is further ordered* That this proceeding is terminated.

List of Subjects in 47 CFR Part 1

Administrative Practice and Procedure, Lawyers.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Final Rules

Part 1 of chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority for part 1 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended, 47 U.S.C. 154, 303.

2. In § 1.23, paragraph (a) is revised to read as follows:

§ 1.23 Persons who may be admitted to practice.

(a) Any person who is a member in good standing of the bar of the Supreme Court of the United States or of the highest court of any state, territory or the District of Columbia, and who is not under any final order of any authority having power to suspend or disbar an attorney in the practice of law within any state, territory or the District of Columbia that suspends, enjoins, restrains, disbars, or otherwise restricts him or her in the practice of law, may represent others before the Commission.

* * * * *

3. In § 1.24, paragraph (b) is revised and paragraph (c) is added to read as follows:

§ 1.24 Censure, suspension, or disbarment of attorneys.

* * * * *

(b) Except as provided in paragraph (c) of this section, before any member of the bar of the Commission shall be censured, suspended, or disbarred, charges shall be preferred by the Commission against such practitioner, and he or she shall be afforded an opportunity to be heard thereon.

(c) Upon receipt of official notice from any authority having power to suspend or disbar an attorney in the practice of law within any state, territory, or the District of Columbia which demonstrates that an attorney practicing before the Commission is subject to an order of final suspension (not merely temporary suspension pending further action) or disbarment by such authority, the Commission may, without any preliminary hearing, enter an order temporarily suspending the attorney from practice before it pending final disposition of a disciplinary proceeding brought pursuant to § 1.24(a)(2), which shall afford such attorney an opportunity to be heard and directing the attorney to show cause within thirty days from the date of said order why identical discipline should not be imposed against such attorney by the Commission.

[FR Doc. 92–20074 Filed 8–21–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 2

[General Docket No. 89–349; FCC 92–334]

Importation of Radio Frequency Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order on reconsideration.

SUMMARY: The Commission, through this action, increases the number of radio frequency devices allowed to be imported for test and evaluation and clarifies the scope of the related rules. The number of devices allowed to be imported for trade show demonstration purposes is not increased. The Commission declined to adopt a blanket waiver of the rules limiting the number of devices imported prior to grant of equipment authorization. The rules at 56 FR 28616 (6/10/91), prohibiting importation of devices pending authorization are affirmed as is the policy to continue to make Form 740 information routinely available for public inspection. Persons desiring to have information withheld from public inspection must continue to seek protection under the rules.

EFFECTIVE DATE: September 23, 1992.

FOR FURTHER INFORMATION CONTACT: Dan S. Emrick, Telephone: (202) 632–6345.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration in General Docket Number 89–349, adopted July 17, 1992, and released August 5, 1992. The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractor, Downtown Copy Center at (202) 452–1422, 1919 M Street, NW., room 246, Washington, DC 20554.

The rules pertaining to the importation of radio frequency devices were established in December of 1975 in cooperation with Customs. The rules are intended to keep imported devices which do not comply with FCC technical requirements from being distributed within the United States, thereby reducing the potential for harmful interference being caused to authorized radio communications users.

The rules allow certain devices to be imported in limited quantities for test, evaluation or demonstration purposes. This Order on Reconsideration changes the definition of "limited quantities" from ten to 200 for purposes of test and evaluation. This increase will allow importation of a sufficient number of units so that a new device or a new model of a device may be evaluated for both FCC and non-FCC compliance and for product reliability through testing. The revised rule still allows importers to request a waiver of this limit.

The existing practice of making all Form 740 information available to the public is affirmed. An importer who desires information withheld from public inspection can apply for protection under § 0.459 of the Commission's rules as previously provided. The routine thirty to sixty day period for processing and analysis of electronically filed declarations will allow written requests to be reviewed before release of the data in question.

The repeated recommendation from commenters that the FCC establish a blanket filing process for imports was denied. The Commission noted that any benefits of a blanket filing approach would be outweighed by the complexity and cost of administering the process.

List of Subjects in 47 CFR Part 2

Imports, Reporting and recordkeeping.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 2 of title 47 of the CFR is amended as follows:

1. The authority citation for part 2 is revised to read as follows:

Authority: Sec. 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.1201 is amended by adding paragraph (c) to read as follows:

§ 2.1201 Purpose.

* * * * *

(c) Nothing in this section prevents importers from shipping goods into foreign trade zones or Customs bonded warehouses, such as is the prescribed procedure under § 2.1204(a)(5). Radio frequency devices capable of causing harmful interference, however, cannot be withdrawn from these areas except in accordance with the provisions of this section.

3. Section 2.1204(a) (3) and (4) are revised to read as follows:

§ 2.1204 Import conditions.

(a) * * *

(3) The radio frequency device is being imported in limited quantities for testing and evaluation to determine compliance with the FCC Rules and Regulations or suitability for marketing. The device will not be offered for sale or marketed. The phrase "limited quantities," in this context, means 200 or fewer units. Prior to importation of more than 200 units, written approval must be obtained from the Chief, Enforcement Division, Field Operations Bureau, FCC. Distinctly different models of a product and separate generations of a particular model under development are considered to be separate devices.

(4) The radio frequency device is being imported in limited quantities for demonstration at industry trade shows and the device will not be offered for sale or marketed. The phrase "limited quantities," in this context, means ten or fewer units. Prior to importation of more than ten units, written approval must be obtained from the Chief, Enforcement Division, Field Operations Bureau, FCC. Distinctly different models of a product and separate generations of a particular model under development are considered to be separate devices.

* * * * *

[FR Doc. 92-20075 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-477; RM-7349, RM-7605, RM-7630]

Radio Broadcasting Services; Fisher, Mattoon, Neoga, Teutopolis, and Tuscola, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 267B1 for Channel 267A at Mattoon, Illinois, reallots Channel 267B1 from Mattoon to Neoga, Illinois, and modifies the license for Station WMCI (FM) to specify Neoga, Illinois, as its community of license, in accordance with the Commission's Rules, at the request of The Cromwell Group, Inc. of Illinois. In addition, this action also allots Channel 273A to Fisher, Illinois, and Channel 272A to Teutopolis, Illinois, as first local FM services to each community. See 55 FR 46232, November 2, 1990, and **SUPPLEMENTARY INFORMATION,** *infra.*

DATES: Effective October 1, 1992. The window period for filing applications for Fisher, Illinois, and Teutopolis, Illinois, will open on October 2, 1992, and close on November 2, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-477, adopted July 23, 1992, and released August 18, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Channel 267B1 can be allotted to Neoga in compliance with the Commission's minimum distance separation requirements with a site restriction of 16 kilometers (9.9 miles) east of the city, in order to avoid a short-spacing to the licensed site of Station WMGI (FM), Channel 264B, Terre Haute, Indiana, and Station WBNQ (FM), Channel 268B, Bloomington, Indiana. The coordinates are North Latitude 39-17-19 and West Longitude 88-16-15. Channel 273A can be allotted to Fisher, Illinois, in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 4.7 kilometers (2.9 miles) northwest of the community. The coordinates are North Latitude 40-20-19 and West Longitude 88-23-56. Channel 272A can be allotted to Teutopolis, Illinois, without a site restriction. The coordinates are North Latitude 39-07-54 and West Longitude 88-28-36. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 267A at Mattoon, by adding Neoga, Channel 267B1, by adding Fisher, Channel 273A, and by adding Teutopolis Channel 272A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20081 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Defense Federal Acquisition Regulation Supplement; Bond Waiver for 8(a) Contractors

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 813 of the FY 1992 National Defense Authorization Act (Pub. L. 102-190). Section 813 authorizes the Secretary of Defense to waive Miller Act requirements for surety bonds on construction contracts awarded to small disadvantaged businesses under the Section 8(a) program. DoD is required to award no fewer than 30 such contracts for each of fiscal years 1992, 1993, and 1994.

DATES: *Effective Date:* August 14, 1992.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on or before September 23, 1992, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to the Defense Acquisition Regulations System, ATTN: Mrs. Alyce Sullivan, IMD 3D139, OUSD(A), 3062 Defense Pentagon, Washington, DC 20301-3062. FAX (703) 697-9845. Please cite DAR Case 91-316 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697-7266.

SUPPLEMENTARY INFORMATION:

A. Background

The Director of Defense Procurement issued these revisions on August 14, 1992, by Departmental Letter 92-007.

B. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this regulation as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment because section 813 requires publication of a final rule within 270 days (August 31, 1992) after enactment.

C. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* While the exact number of small disadvantaged businesses that cannot obtain required Miller Act surety bonds is not known, it is not a significant number in terms of all small businesses, or in terms of small disadvantaged businesses, that perform construction contracts. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 92-610 in correspondence.

D. Paperwork Reduction Act

The interim rule does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Claudia L. Naugle,

Executive Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 219 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, Defense FAR Supplement 201.301.

PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

219.808 and 219.801-1 [Added]

2. Section 219.808 and 219.808-1 are added to read as follows:

219.808 Contract negotiation.

219.808-1 Sole source.

(b) Section 813 of Public Law 102-190 authorizes DoD to waive Miller Act requirements for performance and payment bonds under 8(a) construction contracts awarded before October 1, 1994. Section 813 requires for each of fiscal years 1992, 1993, and 1994, that DoD award no fewer than 30 contracts using this bond waiver authority.

(i) A determination to waive bonds shall be approved at a level above the contracting officer. A determination to waive bonding will be made in instances in which the contracting officer finds that—

(A) The contractor is unable to obtain the requisite bonds from a surety. The contracting officer will verify with surety companies, SBA, and other appropriate sources that the contractor cannot obtain the required bonding.

(B) The contractor has received less than five bond waivers while a participant in the 8(a) program.

(C) The contractor is otherwise responsible.

(ii) The authority of Section 813 shall not be used—

(A) When SBA notifies the contracting officer that it will waive bonding requirements in accordance with 13 CFR 124.305;

(B) For requirements expected to exceed $3 million; or

(C) When competitive procedures described in 19.805 are anticipated.

(iii) The contracting officer shall require the contractor to establish a special bank account before award (see 252.219-7007) to ensure protection of all suppliers and subcontractors expected to provide materials or services for performance of the contract.

219.811, 219.811-1 and 219.811-3 [Added]

3. Sections 219.811, 219.811-1, and 219.811-3 are added to read as follows:

219.811 Preparing the contracts.

219.811-1 Sole source.

(b)(5) See also 219.808-1(b).

219.811-3 Contract clauses.

(a) Use the clause at FAR 52.219-11, Special 8(a) Contract Conditions, with 252.219-7007, Alternate A, when the contracting office has waived performance and payment bond requirements in accordance with 219.808-1(b).

(b) Use the clause at FAR 52.219-12, Special 8(a) Subcontract Conditions, with 252.219-7007, Alternate B, when the contracting office has waived performance and payment bond requirements in accordance with 219.808-1(b).

(c) Use the clause at FAR 52.219-17, Section 8(a) Award, with 252.219-7007, Alternate C, when the contracting office has waived performance and payment bond requirements in accordance with 219.808-1(b).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.219-7007 [Added]

4. Section 252.219-7007 is added to read as follows:

252.219-7007 Alternates.

Alternate A (Aug 1992)

As prescribed in 219.811-3(a), substitute the following paragraph (d) for paragraph (d) of the clause at FAR 52.219-11:

(d) That payments to be made under the contract will be deposited by the contracting activity to a special account established by the subcontractor and that all disbursements will be subject to approval of the Contracting Officer.

Alternate B (Aug 1992)

As prescribed in 219.811-3(b), substitute the following paragraph (b) for paragraph (b) of the clause at FAR 52.219-12:

(b) The ..... (insert name of subcontractor), hereafter referred to as

the subcontractor, agrees and acknowledges as follows:

(1) That, in accordance with section 813 of Public Law 102–190, it will establish a special account, at a bank insured by the Federal Deposit Insurance Corporation, under which (i) all payments under this subcontract will be deposited directly by the ..... (insert name of contracting activity) and (ii) all disbursements will be subject to approval of the Department of Defense's Contracting Officer.

(2) That it will make timely payment to all suppliers of material and labor.

(3) That it will notify all suppliers of material or labor and will obtain written acknowledgment from such suppliers,

that the contract is exempt from the Miller Act's bonding requirement and that neither the SBA nor the ..... (insert name of contracting activity) are liable for payment to suppliers for materials or labor. Such acknowledgments must be provided to the Contracting Officer before approval of disbursements to the Contractor from the special bank account.

Alternate C (Aug 1992)

As prescribed in 219.811–3(c), substitute the following paragraph (a)(3) for paragraph (a)(3) of the clause at FAR 52.219–17:

(a)(3) That payments to be made under the contract will be deposited by the contracting activity to a special account established by the subcontractor and that all disbursements will be subject to approval of the Contracting Officer.

[FR Doc. 92–20175 Filed 8–21–92; 8:45 am]

BILLING CODE 3810–01–M

Proposed Rules

Federal Register

Vol. 57, No. 164

Monday, August 24, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48, 75, and 77

RIN 1219–AA55

Training and Retraining of Miners

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Extension of comment period.

SUMMARY: The Mine Safety and Health Administration (MSHA) is extending the period for public comment regarding the Agency's proposed rule concerning the training and retraining of miners from August 24, 1992, to September 25, 1992, in response to requests from the mining community.

DATES: Written comments must be received on or before September 25, 1992.

ADDRESSES: Send written comments to the Office of Standards, Regulations, and Variances, MSHA, room 631, Ballston Towers No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA. (703) 235–1910.

SUPPLEMENTARY INFORMATION: On September 24, 1991, MSHA published a proposed rule to amend its training requirements for miners in 30 CFR part 48 (56 FR 48376). The proposed rule would revise the definition of "miner" to include all supervisory personnel. It would revise the definition of "experienced miner" to mean a miner who has had one year of mining experience and, for miners hired after October 13, 1978, "experienced miner" would mean those who have completed new miner training. In addition, the proposal would strengthen the training for experienced miners, including supervisory personnel, by adding course requirements. The comment period for the proposed rule was scheduled to close on August 24, 1992, but in response to requests from the mining community for more time in which to prepare their comments, MSHA is extending the comment period to September 25, 1992. All interested parties are encouraged to submit comments prior to this date.

Dated: August 18, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 92–20138 Filed 8–21–92; 8:45 am]

BILLING CODE 4510–43–M

ENIVRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRI–4196–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Binghamton Equipment Company (BEC) Trucking site from the National Priorities List: request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the BEC Trucking site from the National Priorities List (NPL), Appendix B, and requests public comment on this action. EPA and the State of New York have determined that no further cleanup by responsible parties is appropriate under Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Moreover, EPA and the State have determined that CERCLA activities conducted at the BEC Trucking site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the BEC Trucking site from the NPL may be submitted on or before September 18, 1992.

ADDRESSES: Comments concerning the deletion of the BEC Trucking site from the NPL may be submitted to: Arnold Bernas, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 29–30, New York, New York 10278.

Comprehensive information on the BEC Trucking site is contained in the EPA Region II public docket, which is located at EPA's Region II office, and is available for viewing by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays.

Background information from the Regional public docket is also available for viewing at the BEC Trucking site's Administrative Record repositories located at:

Vestal Public Library, 320 Vestal Parkway East, Vestal, New York 13850 and Vestal Town Hall, 605 Vestal Parkway West, Vestal, New York 13850.

FOR FURTHER INFORMATION CONTACT: For further information, or to request an appointment to review the public docket, please contact Mr. Bernas at (212) 264–7612.

SUPPLEMENTARY INFORMATION:

Table Contents

I. Introduction.
II. NPL Deletion Criteria.
III. Deletion Procedures.
IV. Basis for Intended Site Deletion.

I. Introduction

EPA Region II announces its intent to delete the BEC Trucking site from the NPL and requests public comment on this action. The NPL is appendix B to the NCP, which EPA promulgated pursuant to section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL, as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the "Fund"). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such site warrant action.

EPA will accept comments concerning the BEC Trucking site for thirty (30) days after publication of this notice in the **Federal Register** (until September 18, 1992).

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the BEC Trucking site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR

300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

1. EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

2. All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

3. Based on a remedial investigation and feasibility study (RI/FS), EPA, in consultation with the State, has determined that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the BE Trucking site:

1. EPA Region II has recommended deletion and has prepared the relevent documents.

2. The State of New York has concurred with the deletion decision.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on August 19, 1992 and concluding on September 18, 1992.

4. The Region has made all relevant documents available in the Regional Office and the local site information repositories.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary which will address the comments received during the public comment period.

If after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The BEC Trucking site is an open lot of approximately 3.5 acres located in the Town of Vestal, Broome County, New York. The area surrounding the site is primarily industrial and commercial.

Concerns related to contamination at the BEC Trucking property began in May 1982, when the Town of Vestal found evidence of possible illegal dumping of miscellaneous debris and the improper storage of approximately 50 drums containing what appeared to be petroleum and chemical products. The discovery led to an NYSDEC inspection of the site. NYSDEC's inspection revealed 20 drums containing various liquid waste materials, most of which were waste engine or cutting oils, and some of which appeared to contain enamel reducers, paint thinners, and waste solvents; the others were empty.

In January 1983, the analysis of a composite sample obtained from eight of the existing drums revealed the presence of total organic halides, lead, and cadmium.

In August 1983, the property owner contracted with an NYSDEC-approved waste hauler to remove the 50 surface drums. Some stained soil located around the drums was excavated and contained in drums on-site; these drums were removed by EPA in March 1991.

The site was included on the National Priorities List in June 1986, based primarily on the potential for exposure to lead in ground water and that such an exposure pathway could develop.

An RI/FS was conducted at the site in 1988 to determine the nature and extent of the contamination at and emanating from the site, to determine what threat the site poses to public health and the environment, and to evaluate remedial alternatives. As a result of the previous cleanup activities conducted at the site in 1983, and based upon the results of the RI/FS, EPA, in consultation with the State of New York, determined that the BEC Trucking site does not pose a significant threat to human health or the environment, and therefore, taking additional remedial measures is not appropriate. Accordingly, on September 28, 1989, EPA signed a Record of Decision (ROD) for this site, selecting "No Further Action." This alternative includes performing no further remedial action at the site to remove, remediate, or contain any contaminated soils. The ROD also calls for the development and implementation of a monitoring program to ensure that the selected remedy continues to be protective of human health and the environment, particularly with respect to the potential exposure pathways to the adjacent wetlands. The monitoring program includes the collection of surface-water, ground-water, and sediment samples along the western and northern margins of the site, and at various locations in the adjacent wetlands, during high- and low-flow conditions initially and again in five years.

Based upon the results from two sampling rounds in 1991 (which showed the contaminant concentration to be below the site action levels) and an environmental assessment, coupled with the results of the RI/FS, it was determined that significant migration of contaminants from the BEC Trucking site is not occuring

Following the completion of the sampling and an environmental assessment during the fifth year, EPA will evaluate the results and determine whether any additional monitoring is necessary.

Because the "No Further Action" remedy does not result in hazardous substances (attributable to on-site activities) remaining on-site above health-based levels, the five-year review does not apply.

Having met the deletion criteria, EPA proposes to delete this site from the NPL. EPA and the State have determined that the response actions are protective of human health and the environment.

Dated : August 10, 1992

Constantine Sidamon-Eristoff,

Regional Administrator.

[FR Doc. 92-20032 Filed 8-21-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92-109, RM-7966]

Radio Broadcasting Services; Carmel Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: This document dismisses a petition for rule making filed by Eric R. Hilding on behalf of Joseph and Jan Miller requesting the allotment of Channel 290A to Carmel Valley, California as that community's first local FM service. See 57 FR 21369 (May 20, 1992). No expression of interest in the allotment was filed by any party, therefore no allotment will be made.

FOR FURTHER INFORMATION CONTACT: Elizabeth Beaty, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92-109, adopted July 22, 1992, and released August 18, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St. NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20078 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-172, RM-6965]

Radio Broadcasting Services; Leland, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document comments on a petition filed by Interchange Communications, Inc., proposing the substitution of Channel 232C2 for Channel 232A at Leland, Mississippi, and modification of the license for Station WBAD (FM) to specify operation on the higher class channel. The coordinates for Channel 232C2 are 33-24-55 and 90-59-18.

DATES: Comments must be filed on or before October 8, 1992, and reply comments on or before October 23, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David Tillotson, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking, MM Docket No. 92-172, adopted July 24, 1992, and released August 18, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20080 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-174, RM-8035]

Radio Broadcasting Services; Grants, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Philip D. Vanderhoof seeking the allotment of Channel 224C2 to Grants, New Mexico, as the community's fourth local commercial FM service. Channel 224C2 can be allotted to Grants in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 35-09-06 and West Longitude 107-51-36.

DATES: Comments must be filed on or before October 8, 1992, and reply comments on or before October 23, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Philip D. Vanderhoof, P.O. Box 11102, Albuquerque, New Mexico 87192 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-174, adopted July 24, 1992, and released August 18, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20078 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-173, RM-8033]

Radio Broadcasting Services; Lakewood, NY, and Clarendon, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Robert Stevens seeking the allotment of Channel 295B1 to Lakewood, New York, as the community's first local FM transmission service, and the substitution of Channel 282A for unoccupied but applied-for Channel 295A at Clarendon, Pennsylvania. Channel 295B1 can be allotted to Lakewood in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.1 kilometers (6.3 miles) south to avoid short-spacings to Stations WCTL, Channel 292A, Union City, Pennsylvania, and CILQ-FM, Channel 296C1, Toronto, Ontario, Canada, at coordinates North Latitude 42-00-54 and West Longitude 79-17-38. Channel 282A can be allotted to Clarendon with a site restriction of 4.1 kilometers (2.6 miles) west to avoid a short-spacing to Station WLMI, Channel 280A, Kane, Pennsylvania, at coordinates 41-47-21; 79-08-29. We note that Channel 282A can also be used at the site coordinates specified in the pending application for Channel 295A at Clarendon, which are 41-48-50; 79-10-04. Canadian concurrence in the allotments is required since both communities are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before October 8, 1992, and reply comments on or before October 23, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Frederick A. Polner, Esq., Rothman Gordon Foreman & Groudine, P.C., Third Floor, Grant Building, Pittsburgh, Pennsylvania 15219 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-173, adopted July 24, 1992, and released August 18, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20079 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-175, RM-8034]

Radio Broadcasting Services; Pawley's Island and Atlantic Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Audrey R. Morris, seeking the reallotment of Channel 262A from Pauley's Island to Atlantic Beach, South Carolina, as the community's first local FM transmission service, and the modification of Station WPAW's construction permit accordingly. Channel 262A can be allotted to Atlantic Beach in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 33-48-09 and West Longitude 78-43-00.

DATES: Comments must be filed on or before October 8, 1992, and reply comments on or before October 23, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Neal J. Freidman, Esq., Louise Cybulski, Esq., Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-175, adopted July 24, 1992, and released August 18, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20077 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 80

[PR Docket No. 92-164; FCC 92-343]

Class C Emergency Position Indicating Radio Beacons

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Notice of Proposed Rule Making proposes to amend part 80 of the Commission's Rules to phase out the use of the Class C Emergency Position Indicating Radio Beacons (EPIRBs) after February 1, 1999. This action is in response to a request from the United States Coast Guard. Informing the maritime community now that the Commission intends to eliminate authorization of Class C EPIRBs by February 1, 1999, will allow for amortization of existing Class C EPIRBs and provide sufficient time for the marine public to obtain another type of EPIRB prior to the full implementation of the Global Maritime Distress and Safety System.

DATES: Comments must be received on or before September 21, 1992, and reply comments on or before October 6, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Roger S. Noel, Aviation and Marine Branch, Private Radio Bureau, Federal Communications Commission, 2025 M St. NW., Washington, DC 20554; or telephone (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, PR Docket No. 92-164, adopted July 22, 1992, and released August 10, 1992. The complete text of the Notice of Proposed Rule Making, including Appendices, is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The full text also may be purchased from the Commission's copy contractor: Downtown Copy Center, (202) 452-1422, 1990 M Street, NW., suite 640, Washington, DC 20036. DCC's FAX number is (202) 296-3780.

Summary of Notice of Proposed Rule Making

1. The United States Coast Guard requests that the Commission amend its Maritime Services Rules (part 80) to eliminate authorization of Class C EPIRBs by February 1, 1999. EPIRBs are small, battery powered transmitters carried on ships for the purpose of sending a distress signal. Class C EPIRBs transmit distress signals on marine VHF channels 15 and 16 both as an alarm to alert others that a ship is in distress and as a beacon to aid in its location by search and rescue personnel. Because satellites do not monitor marine VHF channels 15 and 16, only nearby ships and coast stations can receive their distress signal.

2. The Global Maritime Distress and Safety System (GMDSS), which will be fully implemented by February 1, 1999, changes the mandatory watch requirement for ships from marine VHF channel 16 to an automated watch on Digital Selective Calling (DSC) channel 70. The Coast Guard also intends to discontinue its watch on marine VHF channel 16 after February 1, 1999. This lack of monitoring by satellites, ocean going vessels and the Coast Guard will dramatically reduce the effectiveness and need for Class C EPIRBs during search and rescue operations. Informing the maritime community now that the Commission intends to eliminate authorization of Class C EPIRBs by February 1, 1999, will allow for amortization of existing Class C EPIRBs and provide sufficient time for the marine public to obtain another type of EPIRB prior to the full implementation of the GMDSS.

Procedural Matters

3. This is a non-restricted notice and comment rule making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 CFR 1.1202, 1.1203, 1.1206(a).

4. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before September 21, 1992, and reply comments on or before October 6, 1992. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file an original plus nine copies. You should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Docket's Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

5. We certify that the Regulatory Flexibility Act of 1980 does not apply to this rule making proceeding because if the proposed rule amendments are promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. The changes proposed herein will have a beneficial effect on the maritime community by improving safety at sea. These changes will not have a significant economic impact on any entity. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 605(b) of the Regulatory Flexibility Act. Public Law 96-354, 94 Stat. 1164, 5 U.S.C. 601-612 (1980).

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

List of Subjects in 47 CFR Part 80

Communications equipment, Maritime safety, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Proposed Rules

Part 80 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 80—STATIONS IN THE MARITIME SERVICES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064-1068, 1081-1105, as amended; 47 U.S.C. 151-155, 301-609, 3 UST 3450, 3 UST 4726, 12 UST 2377.

2. Section 80.15 is amended by revising paragraph (e)(1) introductory text to read as follows:

§ 80.15 Eligibility for station license.

* * * * * *

(e) EPIRB stations. (1) New class C EPIRB stations will not be authorized after February 1, 1995. Class C EPIRB stations installed and licenses before February 1, 1995, will be authorized until February 1, 1999:

* * * * * *

3. Section 80.205 is amended by revising the "G3N" entry in the table in paragraph (a) in order to add a new footnote 13 to read as follows:

§ 80.205 Bandwidths.

(a) * * *

G3N[2, 13]					

* * * * * *

Class C EPIRB stations will not be authorized after February 1, 1999.

* * * * *

4. Section 80.207 is amended by revising the "156.750 and 156.800 MHz" entry in the table in paragraph (d) in order to add a new footnote 13 to read as follows:

§ 80.207 Classes of emission.

* * * * *

(d) * * *

156.750 and 156.800 MHz [13]

* * * * *

[13] Class C EPIRB stations will not be authorized after February 1, 1999.

5. Section 80.209 is amended by revising the "Operating on 156.750 and 156.800 MHz" entry in the table in paragraph (a)(5)(iv) to read as follows in order to add a new footnote 6.

§ 80.209 Transmitter frequency tolerance.

(a) * * *

(5) * * *

(iv) * * *

Operating on 156.750 and 156.800 MHz [6]

* * * * *

[6] Class C EPIRB stations will not be authorized after February 1, 1999.

6. Section 80.1057 is amended by adding introductory text to read as follows:

§ 80.1057 Special requirements for Class C EPIRB stations.

Class C EPIRBs shall not be manufactured, imported or sold in the United States after February 1, 1995. Class C EPIRB stations installed on board vessels before February 1, 1995, will be authorized until February 1, 1999.

* * * * *

[FR Doc. 92-19959 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 57, No. 164

Monday, August 24, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting of the Board

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board has scheduled its regular business meetings to take place in Washington, DC on Tuesday and Wednesday, September 8–9, 1992 at the times and location noted below.

DATES: The schedule of events is as follows:

Tuesday, September 8, 1992, 1:30–4:30 pm, Executive Committee.

Wednesday September 9, 1992, 9–10:30 am, Technical Programs Committee.

10:30–12:30 pm, Planning and Budget Committee.

2–4:30 pm, Board Meeting.

ADDRESSES: The meetings will be held at: Holiday Inn Crowne Plaza, Metro Center, Salon A, 775 12th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434 ext. 13.

SUPPLEMENTARY INFORMATION:

At its business meeting, the Board will consider the following agenda items:

- Approval of the Minutes of the July 15, 1992 Board Meeting.
- Executive Director's Report.
- Committee Reports.
- Report on Use of Extraordinary Work.
- Directive on Administrative Communications System.
- New Standards of Ethical Conduct for Employees of the Executive Branch.
- Complaint Status Report.
- Status of Technical Program Projects.
- Letter to the Department of Justice on AT&T Text Telephones.
- Technical Program Priorities for FY 1993 Research Projects.
- Fiscal Year 1992 Budget Reprogramming (closed).
- Fiscal Year 1993 Programming (closed).
- Title II Notice of Proposed Rulemaking Status (closed).
- Vehicle Door Height petition (closed).

International Mass Retail Association petition on Detectable Warnings (closed).

Transit Agencies' on Detectable Warnings and Communications in Key Stations (closed).

- Elections of Officers (closed).

Some meetings or items may be closed to the public as indicated above. All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 92-20213 Filed 8-21-92; 8:45 am]

BILLING CODE 8150-01-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors Technical Advisory Committee; Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held September 15, 1992, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on (202) 377–2583.

Dated: August 17, 1992.

Betty Anne Ferrell,

Director, Technicol Advisory Committee Staff.

[FR Doc. 92-20070 Filed 8-21-92; 8:45 am]

BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Board Order No. 593]

Approval for Export Manufacturing Activity (Personal Computers) Within Foreign-Trade Zone 45; Portland, OR

Pursuant to its authority under the Foreign-Trade Zones Act of June 16, 1934, as amended (19 U.S.C. 81a–81u) (the Act), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following order:

Whereas, pursuant to § 400.28(a)(2) of the Board's regulations, approval of the Board is required prior to commencement of new manufacturing/processing activity within existing zone facilities;

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (§ 400.32(b)(1)(ii));

Whereas, the Port of Portland, grantee of FTZ 45, has made application (filed 7–20–92, A(32b1)–6–92: Doc. 27–92, 8–7–92) to the Board on behalf of Telecomp Computer Technologies, Inc., for authority to manufacture personal

computers for export under zone procedures within FTZ 45, Portland, Oregon;

Whereas, the FTZ Staff has reviewed the proposal and finds that the criteria for processing the proposal under § 400.32(b)(1) are met and that, upon consideration of the criteria enumerated in § 400.31(b), the proposal is deemed to be in the public interest;

Whereas, based on the foregoing review and pursuant to § 400.32(b)(1), the Executive Secretary recommends approval of the proposal;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request for authority to manufacture personal computers for export under zone procedures at the Telecomp Computer Technologies, Inc., plant within FTZ 45, Portland, Oregon, subject to the Act and the Board's Regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28.

Signed at Washington, DC this 13th day of August, 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest: Dennis Puccinelli,

(Acting) Executive Secretary.

[FR Doc. 92–20072 Filed 8–21–92; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 26–92]

Foreign-Trade Zone 41—Milwaukee, WI; Request for Manufacturing Authority (Children's Books)

A request has been submitted to the Foreign-Trade Zones (FTZ) Board pursuant to § 400.32(b)(2) of the Board's regulations for approval of zone manufacturing authority within FTZ 41 by the Foreign Trade Zone of Wisconsin, Ltd., grantee of FTZ 41. It was formally filed on August 6, 1992.

The proposed zone manufacturing operation would involve the attachment of electronic touch sound pads to children's books by Western Publishing Company, Inc. The sound pad is sourced abroad, and the books are printed in the United States. The items would be assembled at Western's assembly facility within FTZ 41, Site 2, West Allis, Wisconsin, some seven miles west of Milwaukee. The finished product with sound device would be classified as a book.

Zone procedures would exempt Western Publishing from payment of Customs duties on foreign merchandise that is used in products made for export. On its domestic sales, zone procedures would allow the company to choose the duty-free rate that applies to books. The duty rate on the sound pads (classified as electrical machines and apparatus) is 3.9 percent.

Public comment on the proposal is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 23, 1992.

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 17, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92–20071 Filed 8–21–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of open meeting.

SUMMARY: The President's Export Council (PEC) is holding an open meeting to discuss current trade issues and future projects. Agenda items will include NAFTA, export promotion resources and programs, and export control issues. The President's Export Council was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. export trade.

DATES: September 10, 1992, from 10 a.m.-12:30 p.m.

ADDRESSES: J.W. Marriott Hotel, Salon I, Grand Ballroom, 1331 Pennsylvania Ave., NW., 20004. Seating is limited and will be on a first come, first serve basis.

FOR FURTHER INFORMATION CONTACT: Ms. Tiffany Smith, President's Export Council, Room 3215, Washington, DC 20230.

Dated: August 17, 1992.

Wendy H. Smith,

Director, President's Export Council.

[FR Doc. 92–20063 Filed 8–21–92; 8:45 am]

BILLING CODE 3510–DR–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Decision of Panel

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel in the binational panel review of the final determination of dumping made by the Deputy Minister for National Revenue for Customs and Excise (Revenue Canada) respecting Certain Beer Originating In or Exported From the United States of America by G. Heilemam Brewing Company, Inc., Pabst Brewing Company and The Stroh Brewery Company For Use and Consumption in the Province of British Columbia (Secretariat File No. CDA–91–1904–01).

SUMMARY: By a decision dated August 6, 1992, the Binational Panel affirmed in part and remanded in part the final determination of dumping made by Revenue Canada respecting Certain Beer Originating In or Exported From the United States of America by G. Heilemam Brewing Company, Inc., Pabst Brewing Company and The Stroh Brewery Company for Use and Consumption in the Province of British Columbia published in the Canada Gazette part I on September 21, 1991 (Vol. 125, No. 38). A copy of the complete Panel decision is available from the Binational Secretariat.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews

("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The panel review in this matter was conducted in accordance with these Rules.

BACKGROUND: Panel review was requested and complaints were filed by G. Heilemam Brewing Company, Inc. (Heileman), The Stroh Brewery Company (Stroh), and Labatt Breweries of British Columbia, Molson Breweries (B.C.), and Pacific Western Brewing Companies (B.C. Brewers) to contest Revenue Canada's final determination of dumping. The Binational Panel had jurisdiction over the action pursuant to article 1904(2) of the Canada-United States Free-Trade Agreement and § 77.15 of the Special Import Measures Act, Revised Statutes of Canada 1985, Chapter S–15, as amended (SIMA). The products under review were imports of beer from the U.S. by or on behalf of Heileman, Stroh and Pabst Brewing Company (Pabst).

Complainant, Heilman, argued that Revenue Canada erred in the following respects:

(1) In finding that the domestic and exported beer, which is physically identical and sold under the same brand name in the same packaging configuration, are "identical in all respects" within the meaning of the like goods definition;

(2) In determining the preponderant price of the like goods sold in the four-by-six packaging configuration by reference to sales of twelve-ounce cans sold in other configurations;

(3) In failing to make adjustments for promotional activities performed in both the home and export markets and in failing to adjust for differences in general and administrative expenses in the home and export markets; and

(4) In finding that all twelve-ounce Rainier bottle sales were unprofitable and in using the profit earned on Rainier beer in cans and forty-ounce bottles to calculate profit for the unprofitable bottle sales.

Complainant, Stroh, argued that Revenue Canada erred in including certain interest expenses in the calculation of its cost of production.

Complainants, B.C. Brewers, argued that Revenue Canada erred in the following respects:

(1) In making downward adjustments to normal values calculated for Heileman, Pabst and Stroh pursuant to Regulation 6 of SIMA;

(2) In failing to deduct commissions from Pabst's export price; and

(3) In failing properly to calculate Pabst's freight deduction and in failing to deduct from Pabst's export price the cost of returning the pallets to Pabst's brewery.

PANEL DECISION: The Panel remanded to Revenue Canada, with instructions, that aspect of the final determination concerning the determination of a preponderant price for Heileman's sales in the home market. The Panel also remanded, with instructions, that aspect of the final determination concerning the inclusion of interest expenses in the calculation of Stroh's cost of production. The Panel affirmed all other aspects of Revenue Canada's final determination at issue before the Panel.

Revenue Canada was instructed to provide a determination on remand to the Panel within 45 days of the issuance of the decision (by no later than September 21, 1992).

Dated: August 13, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92–20114 Filed 8–21–92; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of First Request for Panel Review of Final Affirmative Antidumping Duty Determination made by the Department of Commerce, International Trade Administration, Import Administration, respecting Pure Magnesium and Alloy Magnesium from Canada, filed by Norsk Hydro Canada, Inc. with the United States Section of the Binational Secretariat on August 10, 1992.

SUMMARY: On August 10, 1992, Norsk Hydro Canada, Inc. filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Final Affirmative Antidumping Duty Determination respecting Pure Magnesium and Alloy Magnesium from Canada made by the International Trade Administration, Import Administration, Import Administration File Number A–122–814, which was published in the **Federal Register** on July 13, 1992, (57 FR 30939). The Binational Secretariat has assigned Case Number USA–92–1904–04 to this Request.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 377–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary of the responsible Section of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the United States Section of the Binational Secretariat, pursuant to article 1904 of the Agreement, on August 10, 1992, requesting panel review of the final determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is September 9, 1992);

(b) A Party, an investigating authority or any interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is September 24, 1992); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: August 13, 1992.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 92-20115 Filed 8-21-92; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Statement of Organization, Practices and Procedures

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of revision to statement of organization, practices and procedures.

SUMMARY: Pursuant to section 302(f)(6) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), 16 U.S.C. 1801 *et seq.*, each Regional Fishery Management Council (Council) is responsible for carrying out its functions under the Magnuson Act, in accordance with such uniform standards as are prescribed by the Secretary of Commerce (Secretary). Further, each Council must make available to the public a statement of its organization, practices and procedures (SOPP).

On January 6, 1992, NOAA published in the **Federal Register** (57 FR 375) a final rule that revised the regulations (50 CFR parts 601 and 605) and guidelines concerning the operations of the Councils under the Magnuson Act. The final rule, effective February 5, 1992, implemented parts of sections 108 and 109 of Public Law 101-627, the Fishery Conservation Amendments of 1990, which amended and reauthorized the Magnuson Act through September 30, 1993.

In accordance with the above-mentioned final rule, the Pacific Fishery Management Council (Pacific Council) has revised its SOPP, which was originally published in the **Federal Register** on February 15, 1984 (49 FR 5807). Interested parties may obtain a copy of the Pacific Council's revised SOPP by contacting Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 200 SW. First Avenue, suite 420, Portland, OR 97201; telephone: (503) 326-6352.

Dated: August 18, 1992.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-20190 Filed 8-21-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

August 18, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and Mauritius agreed to extend their current bilateral agreement through September 30, 1993.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 18, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement, effected by exchange of notes dated June 3 and 4, 1985, as amended and extended, between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on October 1, 1992 and extending through September 30, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Knit group 345, 438, 445, 446, 645 and 646, as a group. Levels not in a group	124,529 dozen.
237	160,587 dozen.
331	425,555 dozen pairs.
335/835	63,834 dozen.
336	75,117 dozen.
338/339	300,726 dozen.
340/640	481,899 dozen of which not more than 297,916 dozen shall be in Categories 340-Y/640-Y [1].
341/641	339,025 dozen.
342/642/842	220,808 dozen.
347/348	602,671 dozen.
351/651	148,877 dozen.
352/652	1,262,477 dozen of which not more than 1,073,106 dozen shall be in Category 352.
442	11,233 dozen.
604-A [2]	311,792 kilograms.
638/639	345,836 dozen.
647/648/847	496,482 dozen.

[1] Category 340-Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640-Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[2] Category 604-A: only HTS number 5509.32.0000.

Imports charged to these category limits for the period October 1, 1991 through September 30, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Mauritius.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-20210 Filed 8-21-92; 8:45 am]

BILLING CODE 3510-DR-F

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to the Procurement List a service to be furnished by a nonprofit agency employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 21, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On February 14, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (57 F.R. 5420) of a proposed addition to the Procurement List. Comments were received from the current contractor for this service in response to a request from the Committee for sales data in conjunction with the proposed addition to the Procurement List of a much larger janitorial/custodial contract for which the firm was also the current contractor. The contractor opposed that action on the basis that his firm had just taken over the contract, had expended extra resources in cleaning it to standards, and had counted on recouping the extra resources by competing for and obtaining the contract for a longer period of time when it was resolicited in early 1993.

In addition, the contractor provided information indicating several of his current Government contracts were expiring and that his firm would lose the opportunity to compete to retain two of them because they were going to be offered to 8(a) firms. He said that adding the contract in question to the Procurement List would almost put the firm out of business. In closing, the contractor suggested that the Committee put persons with disabilities to work for current Federal contractors, noting that he was always looking for qualified people.

Because adding the larger contract on which the contractor commented to the Procurement List might have a severe adverse impact on the firm's business, the Committee is not at this time taking such action. The addition of the considerably smaller contract covered by this action will not in the Committee's judgement result in severe adverse impact on the contractor. In reaching this conclusion, the Committee considered sales data provided by the contractor and contract information provided by the General Services Administration, which has a number of contracts with the firm.

The Committee also took into account the strong likelihood that in the absence of action by the Committee to add this contract to the Procurement List, it would have been set-aside for provision by an 8(a) firm under the Small Business Administration's 8(a) Program. If this had occurred, the current contractor would not have the opportunity to compete for the contract in the future, and the Committee's action could not be regarded as having had any impact on the firm.

With respect to the contractor's suggestion that the Committee act to place qualified persons with disabilities on the workforces of current contractors, the Committee has no authority to implement such a suggestion. Moreover, the individuals with severe disabilities who work on contracts added to the Procurement List are not, by definition, ready to assume jobs in the competitive marketplace. The Committee also believes that the suggested approach would not necessarily achieve a primary goal of its program, which is to provide stable employment for people with severe disabilities, since private contractors are not guaranteed future contracts.

After consideration of the material presented to it concerning the capability of a qualified nonprofit agency to provide the service, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Janitorial/Custodial

Federal Building (Terminal Annex Building), 207 S. Houston, Dallas, Texas.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92-20063 Filed 8-21-92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Army

Office of the Secretary of the Army; Environmental Assessment for Realignment Actions at Anniston Army Depot, AL

AGENCY: Department of Defense, United States Army.

ACTION: Finding of No significant impact.

SUMMARY: The proposed action is to implement the Defense Base Closure Commission's decision to realign the electro-optics/night vision maintenance workload from Sacramento Army Depot, California to Anniston Army Depot (ANAD), Alabama and the missile maintenance workload from ANAD to Letterkenny Army Depot, Chambersburg, Pennsylvania and the U.S. Army's initiative to transfer the tank maintenance workload from Mainz Army Depot to ANAD.

The realignment of the electro-optics/night vision maintenance workload is the subject of public-to-public competition between ANAD and the Sacramento Air Logistics Center at McClellan Air Force Base in California. The overall affect of these realignments would be a net increase of approximately 14 positions at ANAD.

Four alternatives were considered in the Environmental Assessment (EA). In the Preferred Alternative, ANAD is successful in winning the competition for realignment of the electro-optics/night vision maintenance workload, and the timing of the transfer of the missile maintenance workload to Letterkenny Army Depot is such that the missile maintenance functions have vacated facilities at ANAD before the electro-optics/night vision maintenance workload arrives. Tank maintenance transfers independently from Mainz Army Depot to ANAD in 1993. Alternative 1, modified timing, is the same as the Preferred Alternative except that the timing of the transfer of the missile maintenance workload is such that it would be performed concurrently with the electro-optics/night vision maintenance workload at ANAD for a period of time. Alternative 2 differs from the Preferred Alternative in that ANAD is not successful in winning the competition for realignment of the electro-optics/night vision maintenance workload. Alternative 3 is the No-Action alternative. The No-Action Alternative provides a baseline against which the proposed action can be compared.

None of the alternatives would require building construction at ANAD, and, with the exception of utility extensions, none require renovations external to the buildings. The tank maintenance workload to be transferred to ANAD consists of the same types of activities as the tank maintenance work already conducted at ANAD and would be accommodated by existing facilities. The electro-optics/night vision maintenance workload would also be accommodated by existing facilities.

The addition of electro-optics/night vision maintenance workload and the increase in tank maintenance workload would result in a subsequent increase in air emissions, noise, hazardous waste generation, and chance for disturbing soils, surface water and contaminated groundwater. However, these effects would be insignificant, and would be decreased following the transfer of missile maintenance from ANAD to Letterkenny Army Depot. The proposed realignments are also expected to have an insignificant effect on housing, and the quality of life. Biological, physical and cultural resources such as native vegetation, wildlife, including threatened and endangered species, historic structures, and archeological sites would not be affected by this action.

Based on the environmental impact analyses found in the EA, which is hereby incorporated into this Finding of No Significant Impact (FNSI), it has been determined that implementation of the proposed action would not have significant individual or cumulative impacts on the quality of the natural or human environment. Because there would be no significant environmental impacts resulting from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Comments must be received on or before September 23, 1992.

ADDRESSES: Persons wishing to comment may obtain a copy of the EA or inquire into this FNSI by writing to the U.S. Army Corps of Engineers, Mobile District, ATTN: CESAM-PD-ER, P.O. Box 2288, Mobile, AL 36628.

FOR FURTHER INFORMATION: Questions regarding this FNSI may be directed to Dr. Neil Robison at (205) 694-4112.

Dated: August 17, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health), OASA (IL&E).

[FR Doc. 92-20139 Filed 8-21-92; 8:45 am]

BILLING CODE 3710-08-M

Office of the Secretary of the Army; Environmental Assessment for Realignment Actions at Letterkenny Army Depot, PA

AGENCY: Department of Defense, United States Army.

ACTION: Finding of no significant impact.

SUMMARY: The proposed action implements the Defense Base Closure Commission's decision to realign administrative and maintenance workloads at Letterkenny Army Depot (LEAD). The administrative realignments involve the transfer of Headquarters, U.S. Army Depot System Command (DESCOM) and the Systems Integration and Management Activity (SIMA) from LEAD to Rock Island Arsenal.

Maintenance realignments, including all applicable secondary items, subassemblies and peripherals, are occurring to consolidate workloads among Army depots. These realignments involve the following:

—The transfer of tactical missile maintenance workloads from contractor facilities, Anniston Army Depot, Tobyhanna Army, Depot (AN/TSQ-73 Air Defense Command and Control System), Red River Army Depot, and Navy and Air Force facilities to LEAD.

—The realignment of the Firefinder Radar maintenance workload from Sacramento Army Depot (SAAD) to LEAD. The workload realignment from SAAD is subject to competition between LEAD and the Sacramento Air Logistics Center.

—The realignment of the tactical vehicle maintenance workload from LEAD to Tooele Army Depot, and the realignment of the self-propelled and towed artillery maintenance workload from LEAD to Red River Army Depot.

The overall effect of these realignments would be a net loss of approximately 52 civilian and 39 military work-years at LEAD.

Alternatives considered in the Environmental Assessment (EA) include the following:

—The Preferred Alternative, which would transfer the artillery and vehicle workloads from LEAD by 1994, phase the incoming missile maintenance workload over a 5-year period, and result in successful competition for the Firefinder Radar maintenance workload;

—Alternative 1, which differs from the Preferred Alternative in that the artillery and vehicle workloads begin to leave LEAD in 1995, after the arrival of much of the incoming missile maintenance workload;

—Alternative 2, which would be the same as the Preferred Alternative, except that LEAD would be unsuccessful in winning the competition for the Firefinder Radar maintenance workload;

—Alternative 3, the No-Action Alternative, which provides the baseline at LEAD against which the other alternatives can be compared.

None of the alternatives would require building construction at LEAD, and with the exception of utility extensions, none would require renovations external to the buildings. There are internal renovations to existing buildings. The workload to be transferred to LEAD is the same or similar to maintenance work already conducted at LEAD. Although the overall result will be a small decrease in positions at the installation, the maintenance workload will increase. This increase would affect water and energy use, waste water flows, air emissions, and municipal solid and hazardous waste generation. Neither the resources used or waste streams produced would have a significant impact on the environment. Biological, physical, and cultural resources would not be affected by this action since existing buildings to be renovated and used for maintenance activities are located in developed or otherwise disturbed areas.

The proposed realignments are expected to have an insignificant effect on the socioeconomic environment, including total sales, employment, population and income. Although Headquarters DESCOM/SIMA employees may have difficulties in finding positions elsewhere at LEAD, the impact will not be significant, and the effect will be minimized by assisting in job relocation and training, as appropriate.

Based on the environmental impact analyses found in the EA, which is hereby incorporated into the Finding of No Significant Impact (FNSI), it has been determined that implementation of the proposed action would not have significant individual or cumulative impacts on the quality of the natural or human environment. Because there would be no significant environmental impacts resulting from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Comments must be received on or before September 23, 1992.

ADDRESSES: Persons wishing to comment may obtain a copy of the EA or inquire into this FNSI by writing to the U.S. Army Corps of Engineers, Baltimore District, ATTN: CENAB-PL-E (Mr. Larry Eastman), P.O. Box 1715, Baltimore, Maryland 21203-1715.

FOR FURTHER INFORMATION CONTACT: Questions regarding this FNSI may be directed to Mr. Larry Eastman by calling (410) 962-4938.

Dated: August 17, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health) OASA (IL&E).

[FR Doc. 92-20140 Filed 8-21-92; 8:45 am]

BILLING CODE 3710-08-M

CONUS Automated Rate System (CARTS); Proposed Changes

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of extension to comment period.

SUMMARY: This advises extension of comment period for the proposed changes to the CONUS Automated Rate System (CARTS). The changes were identified in the **Federal Register** (57 FR 28842) June 29, 1992. Subject was "Military Traffic Management Command, Directorate of Personal Property, CONUS Automated Rate System (CARTS): Proposed changes."

DATES: Comments must be received not later than October 1, 1992.

ADDRESSES: Comments may be mailed to Headquarters, Military Traffic Management Command, ATTN: MTPP-CD, room 408, 5611 Columbia Pike-Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Janet Nemier (703) 756-1190, Military Traffic Management Command, ATTN: MTPP-CD, room 408, 5611 Columbia Pike, Falls Church, VA 22041-5050.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-20133 Filed 8-21-92; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Closed and Partially Closed Teleconference Meetings

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming teleconference meetings of the National Assessment Governing Board and three of its committees, Subject Area Committee #1, Achievement Levels Committee, and the Executive Committee. This notice also describes the functions of the Board. Notice of this meeting is required under section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open meeting and the open portion of the partially closed teleconference meeting.

DATES: September 3, 9, 23, and 29, 1992.

TIME: September 3, 1992—Subject Area Committee #1, 11 a.m.-noon, (open); September 9, 1992—Achievement Levels—11 a.m. to 1 p.m. (closed); September 23, 1992—Executive Committee—11 a.m. to 11:30 a.m. (open), 11:30 a.m.—1 p.m. (closed); September 29, 1992—Full Board—11 a.m.—1 p.m. (closed).

LOCATION: National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC. 20002-4233. Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297). (20 U.S.C. 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

On September 3, 1992, the Subject Area Committee #1 will meet via teleconference from 11 a.m. to noon. In this meeting the Committee will take final action on the U.S. History and geography items developed for the 1993 field test in preparation for the assessment in 1994. This meeting will be open to the public.

On September 9, 1992, the Achievement Levels Committee will meet via teleconference from 11 a.m. until 1 p.m. This meeting will be closed to the public to permit the Committee to continue their review of preliminary, unreleased data from the 1992 math assessment. Upon the completion of the review of these data, the Committee will formulate a recommendation for action by the Executive Committee. The discussion will include references to specific items from the assessment, the disclosure of which would significantly frustrate implementation of the NAEP. The results of the assessment must be presented in closed session because reference may be made to data which may be incorrect, incomplete, or misinterpreted. Premature disclosure of these data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

On September 23, 1992, the Executive Committee will meet via telephone conference in open session from 11 a.m. until 11:30 a.m. to discuss the status of the budget request for fiscal years 1993 and 1994 and to act on policies to implement the memorandum of understanding recently signed by the Board and the Secretary. Beginning at 11:30 a.m., the meeting will close to the public because the Committee will review the recommendations from the Achievement Levels Committee regarding the setting of "cut scores" for the 1992 math assessment. The Committee will discuss these recommendations and, if appropriate, take final action. Otherwise, the Committee will formulate a recommendation for action for the full Board. This portion of the Executive Committee meeting (11:30 a.m. to 1 p.m.) will be closed to the public to permit the members to review preliminary, unreleased data from the 1992 math assessment. The discussion will include references to specific items from the assessment, the disclosure of which would significantly frustrate implementation of the NAEP. The results of the assessment must be presented in closed session because reference may be made to data which may be incorrect, incomplete, or misinterpreted. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C. Telephonic devices and seating space will be available to permit the public to hear and participate in the open portions of the meetings.

The full Board will convene via telephone conference in closed session from 11 a.m. to 1 p.m. on September 29, 1992 to review the recommendation from the Achievement Levels and the Executive Committees and to take final action on this matter. The meeting will be closed to the public because the Board's deliberations will involve the review of preliminary unreleased data from the 1992 math assessment. The discussion will include references to specific items from the assessment, the disclosure of which would significantly frustrate implementation of the NAEP. The results of the assessment must be presented in closed session because reference may be made to data which may be incorrect, incomplete, or misinterpreted. Premature disclosure of this data might significantly frustrate implementation of a proposed agency action. Such matters are protected by exemption 9(B) of section 552b(c) of title 5 U.S.C.

A summary of the activities at the closed sessions and related matters, which are informative to the public and consistent with the policy of 5 U.S.C. 552b, will be available to the public within fourteen days after the meeting.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Dated: August 18, 1992.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 92-20113 Filed 8-21-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Final Consent Order With Robert J. Martin

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Department of Energy (DOE) has determined that a proposed Consent Order between the DOE and Robert J. Martin, which was published for public comment in 57 FR 30205 (July 8, 1992), shall be made final. The Consent Order resolves matters relating to Martin's compliance with the federal petroleum price and allocation regulations for the period August 19, 1973 through January 27, 1981. To resolve these matters, Martin will pay to the DOE the principal sum of $560,000, plus interest from the effective date of the Consent Order, over three years. Following receipt of the settlement monies, ERA will petition the DOE's Office of Hearings and Appeals to implement Special Refund Procedures pursuant to 10 CFR part 205, subpart V, in which proceedings any persons who claim to have suffered injury from the alleged overcharges would have the opportunity to submit claims for payment.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, Department of Energy, 820 First Street, NE., Suite 810, Washington, DC 20002, (202) 523-3045.

SUPPLEMENTAL INFORMATION:

I. Introduction
II. Comment Received
III. Analysis of Comment
IV. Decision

I. Introduction

On July 8, 1992, the DOE's Economic Regulatory Administration (ERA) issued a notice announcing a proposed Consent Order between DOE and Martin, which would resolve matters relating to Martin's compliance with the federal petroleum price and allocation regulations for the period August 19, 1973 through January 27, 1981. 57 FR 30205. Specifically, the July 8 Notice provided information regarding Martin's potential refund liability for alleged entitlements misreporting and circumvention violations arising from certain crude oil and processing agreement transactions at issue in a Proposed Remedial Order (PRO) issued January 31, 1990, to Martin and four others. The Notice also explained the considerations which underlay the ERA's preliminary view that the settlement is favorable to the government and in the public interest.

The Notice solicited written comment from the public relating to the terms and conditions of the settlement and whether the settlement should be made final. ERA received one written comment, which was considered in making the decision to issue the proposed Consent Order as a final Order.

II. Comment Received

The one comment received on the proposed Consent Order, submitted on behalf of a group of utilities, transporters and manufacturers (hereafter end users), addressed the adequacy of the information provided in the July 8 Notice concerning Martin's financial condition. Specifically, the end users contended that the July 8 Notice did not supply sufficient information in order to permit meaningful comment on the amount of the proposed settlement, and thus failed to comply with the requirements contained in 10 CFR 205.199.[1]

III. Analysis of Comment

The DOE is required under 10 CFR 205.199J(c) to provide, "at a minimum," the following information in the **Federal Register** Notice:

The name of the company concerned, a brief summary of the Consent Order and other facts or allegations relevant thereto, the address and telephone number of the DOE

[1] Section 205.199 concerns the requirements for filing a motion for evidentiary hearing in PRO proceedings conducted before the Office of Hearings and Appeals. ERA assumes the end users intended to cite 10 CFR 205.199J(c), which governs the notice and public comment procedures applicable to proposed settlements of $500,000 or more.

office at which copies of the Consent Order will be available free of charge, the address to which comments on the Consent Order will be received by the DOE, and the date by which such comment should be submitted

* * *

The July 8 Notice clearly met these regulatory requirements. Not only was a summary of the proposed settlement terms provided, but the complete text of the Consent Order was published as well. The matters to be resolved by the proposed Consent Order were specifically identified, and the bases for the DOE's preliminary agreement to the proposed settlement were explained.

Furthermore, the July 8 Notice stated that the proposed settlement amount to be paid by Martin was based on ability-to-pay considerations; and that after analysis of documents submitted to DOE by Martin reflecting his financial condition, "ERA * * * determined that Martin would not be able to satisfy a judgment in an amount approaching the potential maximum liability alleged in the PRO." 57 FR 30205.

Because Martin's financial information was provided to ERA on a confidential basis and for settlement purposes only, disclosure of those data would be contrary to the well-recognized confidentiality of the substance of settlement negotiations and would discourage parties from entering into settlement with DOE. ERA notes generally that Martin provided, subject to the penalty prescribed by 18 U.S.C. 1001 (false statements), financial data covering a period of ten years, such as, *inter alia*, personal income tax returns; partnership tax returns; a detailed financial statement; purchases, sales and transfers of real and personal property, including securities; listing of checks written for over $500; jointly held property; statement of assets and liabilities; and notes, agreements, and other documentary support for the above information. In assessing Martin's ability to pay, ERA employed the percentage of net worth figures set forth in the Settlement Guidelines filed by DOE with the Federal Energy Regulatory Commission (FERC) in Docket Nos. RO86-6-000 *et al.* on January 27, and February 24, 1988.[2] Based on its analysis of Martin's condition, ERA preliminarily agreed to the proposed settlement.

IV. Decision

Upon consideration of the written comment received and addressed above, and inasmuch as there are not other bases proffered for rejecting or modifying the settlement as proposed, the DOE has determined that it is in the best interest of the public to make the proposed Consent Order final without change. By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between DOE and Martin is made a final Order of the Department of Energy, effective on the date of publication of this notice in the **Federal Register**.

Issued in Washington, DC, on August 17, 1992.

Milton C. Lorenz,

Chief Counsel for Enforcement Litigation, Economic Regulatory Administration.

[FR Doc. 92-20188 Filed 8-21-92; 8:45 am]

BILLING CODE 6450-01-M

[2] While the Settlement Guidelines were, by their express terms, applicable only to 22 "layering" cases then pending appeal before FERC in *Erickson Refining Corp., et al.*, DOE stated therein its potential use of the Guidelines in other cases as will. Since their filings, ERA has employed the Settlement Guidelines, percentage of net worth approach in many (in)ability to pay settlements.

Federal Energy Regulatory Commission

[Docket No. QF90-217-003]

Sumas Cogeneration Co., L.P.; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

August 18, 1992.

On August 13, 1992, Sumas Cogeneration Company L.P. of 17411 N.E. Union Hill Road, suite 290, Redmond, Washington 98052, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the City of Sumas, Washington. The Commission previously certified the facility as a qualifying cogeneration facility, *Sumas Energy, Inc.*, 53 FERC ¶62,148 (1990). The instant request for recertification is due to change in ownership of the facility from Sumas Energy, Inc. to Sumas Cogeneration Company L.P., an increase in the net electric power production capacity to 122.9 MW and a change in the installation and operational date to March 1992 and May 1993 respectively.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20159 Filed 8-21-92; 8:45 am]

BILLING CODE 6717-01-M

[FERC No. JD92-02505T (Texas-15 Addition 3) Vicksburg Formation]

[FERC No. JD 92-02506T (Texas-48) Upper Wilcox Formation]

Railroad Commission of Texas Tight Formation Determinations; Informal Conference

August 18, 1992.

Take notice that an informal conference will be convened in the above-referenced proceedings on Thursday, August 27, 1992, at 9 a.m. The conference will be held in room 3400C at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

For further information, contact Janet Ardinger at (202) 208-0895.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20160 Filed 8-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10936-001 Washington]

Swift Creek Hydro, Inc.; Surrender of Preliminary Permit

August 18, 1992.

Take notice that Swift Creek Hydro, Inc. Permittee for the Swift Creek Project No. 10936, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10936 was issued September 28, 1990, and would have expired August 31, 1993. The project would have been located on Swift Creek within the Mount Baker

National Forest in Whatcom County, Washington.

The Permittee filed the request on March 26, 1992, and the preliminary permit for Project No. 10938 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20161 Filed 8-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-1-001]

Alabama-Tennessee Natural Gas Co. Proposed PGA Rate Adjustment

August 18, 1992.

Take notice that on August 10, 1992, Alabama-Tennessee Natural Gas Company ("Alabama-Tennessee"), Post Office Box 918, Florence, Alabama 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet with a proposed effective date of July 1, 1992:

Sub. 32nd Rev. Sheet No. 4

Alabama-Tennessee states that this filing is being made to comply with the Commission's Letter Order issued July 31, 1992 in the above-referenced proceeding. According to Alabama-Tennessee, Sub. 32nd Rev. Sheet No. 4 reflects the corrected summer total of the substitution charge component of Rate Schedule SG and the removal of Order No. 94 surcharge amounts as directed by the Commission. In addition, Alabama-Tennessee has attached various schedules showing the computation of certain adjustments as further required by the Commission.

Alabama-Tennessee has requested any waivers of the Commission's Regulations that may be necessary to permit the tariff sheet to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20154 Filed 8-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-2704-000, CP91-2705-000, CP91-2730-000]

Blue Lake Gas Storage Co.; ANR Pipeline Co.; ANR Storage Co.; Site Visit

August 17, 1992.

This is to inform all parties to the proceeding in the above dockets that the staff of the Federal Energy Regulatory Commission will conduct a field inspection of the construction sites for the Blue Lake Storage Project in Kalkaska County, Michigan on August 25 and 26, 1992. All parties to the proceeding are welcome to attend. Anyone interested must provide their own transportation. Please contact Mr. Steve Grape at (202) 208-0812 for additional information.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 92-20103 Filed 8-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No RP91-123-004]

Canyon Creek Compression Co.; Changes in FERC Gas Tariff

August 18, 1992.

Take notice that on August 13, 1992, Canyon Creek Compression Company (Canyon) tendered for filing Second Revised Sheet No. 7 (First Revised Volume No. 1) and Second Revised Sheet No. 5 (First Revised Volume No. 1A) to be effective September 1, 1992.

Canyon states the purpose of this filing is to comply with the Commission's order issued June 29, 1992 at Docket No. RP91-123-003.

Canyon requested waiver of the Commission's Regulations to the extent necessary to permit the above listed tariff sheets to become effective September 1, 1992.

Canyon states that copies of the filing was mailed to Canyon's jurisdictional customers, and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20158 Filed 8-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TQ92-7-24-001, TA92-1-24-002]

Equitrans, Inc.; Revision to Proposed Tariff Changes

August 18, 1992.

Take notice that Equitrans, Inc. (Equitrans) on August 12, 1992, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective September 1, 1992:

Second Substitute Thirty-Seventh Revised Sheet No. 10

Second Substitute Twenty-Seventh Sheet No. 34

This filing is intended to correct the rate contained in the Account 858 Current Adjustment column included in the PLS and ISS Rate Schedules filed on July 31, 1992 in Docket Nos. TQ92-7-24-000 and TA92-1-24-001. The rate was incorrectly calculated by using the wrong volume to arrive at the commodity cost for the Tennessee Gas Pipeline Company (Tennessee) Rate Schedule FT-B. This results in a decrease in the PLS commodity rate of $0.0735 per dth.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20155 Filed 8-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP92-104-000 and RP92-131-000]

K N Energy, Inc.; Informal Settlement Conference

August 18, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, September 16, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger, (202) 208-2215 or Lorna Hadlock, (202) 208-0737.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20158 Filed 8-21-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-166-000]

Northwest Pipeline Corp.; Informal Settlement Conference

August 18, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on Thursday, October 15, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger, (202) 208-2215 or Joan Dreskin, (202) 208-0738.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20157 Filed 8-21-92; 8:45 am]

BILLING CODE 6717-01-M#

Office of Hearings and Appeals

Issuance of Proposed Decision and Order During the Week of July 20 Through July 24, 1992

During the week of July 20 through July 24, 1992, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR part 205, subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determinatiion made in a proposed decision and order must also file a detailed statement objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order is available in the public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: August 18, 1992.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Smith Wholesalers, Inc., Atlanta, TX, LEE-0040 Reporting Requirements

Smith Wholesalers, Inc., filed an Application for exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE tentatively found that the firm was not adversely affected by the reporting requirements in a way that was significantly different from the burden borne by similar reporting firms. On July 24, 1992, the DOE issued a Proposed Decision and Order which determined that the exception request should be denied.

[FR Doc. 92-20189 Filed 8-21-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4197-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 23, 1992.

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

TITLE: Reporting and Recordkeeping Requirements for the New Source Performance Standards (NSPS) Subpart VVV, Polymeric Coating of Supporting Substrates (ICR No. 1284.03; OMB No. 2060-0181).

ABSTRACT: This ICR is for an extension of an existing information collection in support of the Clean Air Act, as described under the general NSPS at 40 CFR 60.7-60.8, and the specific NSPS for volatile organic compound (VOC) emissions from facilities conducting polymeric coating of supporting substrates at 40 CFR 60.740-60.747. The information will be used by the EPA to direct monitoring, inspection, and enforcement efforts, thereby ensuring compliance with the NSPS.

Under this ICR, owners and operators of affected facilities must provide EPA or the delegated authority with: (1) Notification of construction, reconstruction, or modification; (2) anticipated and actual dates of facility start-up; (3) initial performance test data, results, and if appropriate, projected solvent consumption for that year; (4) notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; (5) notification of demonstration of the continuous monitoring system; and (6) monitoring reports (submitted semiannually for facilities operating within accepted parameters, quarterly for facilities which experience excess emissions or which deviate from operating parameters).

All affected facilities must maintain records on the facility operation that document: (1) The occurrence and duration of any start-ups, shutdowns, and malfunctions; (2) actual solvent consumption; (3) initial performance test results; and (4) data on continuously monitored operating parameters.

Presently, there are 16 facilities subject to the regulation with an estimated annual growth of 5.2 facilities over the next three years. All subject facilities must maintain records related to compliance for two years.

Burden Statement: Public reporting burden for facilities subject to this collection of information is estimated to average 40 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining data, and completing and reviewing the collection of information. Public recordkeeping burden is estimated to average 123.6 hours annually.

Respondents: Owners or operators of subject polymeric coating operations that have undergone construction, reconstruction, or modification after April 30, 1987.

Estimated Number of Respondents: 23.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 4763 hours.

Frequency of Collection: One-time notifications for new facilities; quarterly or semiannual reporting, as appropriate, for existing facilities.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC 20460; and

Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: August 14, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-20065 Filed 8-21-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4198-1]

Renewal and Request for Suggestions of Candidates for Membership on the National Advisory Council for Environmental Policy and Technology

Renewal: The National Advisory Council for Environmental Policy and Technology (NACEPT) has been renewed for an additional two-year period. The Agency has determined that the renewal of the Council is in the public interest in connection with the performance of duties imposed on EPA by law. The Council will operate in accordance with the provisions of the Federal Advisory Committee Act and the rules and regulations issued in implementation on the Act.

New Member: The Environmental Protection Agency (EPA) hereby requests suggestions of candidates for membership on (NACEPT), an Advisory Committee to EPA's Administrator established under the Federal Advisory Committee Act, U.S.C. (App. 19(c)). The Advisory Council assists the Agency in performing its duties prescribed in legislation executive orders and regulations. The Council has a special focus on environmental policy issues, implementing the Federal Technology Transfer Act of 1986 and Executive Order 12591. It will advise the Administrator on ways to improve development and implementation of domestic and international environmental management policies programs and technologies.

The membership of the Advisory Council currently includes a balanced representation of interested person with professional and personal qualifications and experience to contribute to the functions of the Advisory Council drawn from business and industry; the academic, education and training community; governmental organizations and professional associations. New members will serve two-year terms.

DATES: Submit suggestions for candidates no later than September 8, 1992. Any interested person or organization may submit the names of qualified persons. Suggested candidates should be identified by name, occupation, organization, position, address, and telephone. Candidates must submit a resume of their background, experience, and other relevant information as a part of the consideration process.

ADDRESSES: Submit suggestions for the list of candidates to: Office of Cooperative Environmental Management (A-101-F6), U. S. Environmental Protection Agency, Fairchild Building, suite 115, 499 S. Capitol Street, SW., Washington, DC 20460, Attention: Abby J. Pirnie.

FOR FURTHER INFORMATION CONTACT: Abby J. Pirnie at the above address or at 202-260-9741. The Agency will not formally acknowledge or respond to suggestions.

Dated: August 14, 1992.

Abby J. Pirnie,

Director, Office of Cooperative Environmental Management.

[FR Doc. 92-20066 Filed 8-21-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4197-9]

Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the next two meetings of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to enhancing the Federal facilities environmental restoration process

DATES: The first meeting will be held on September 15, 1992, from 9 until 5 p.m. and on September 16, 1992, from 8:30 until 4 p.m. The second meeting will be held on November 17, 1992, from 9 until 5 p.m. and on November 18, 1992, from 8:30 until 4 p.m.

ADDRESSES: The first meeting will be held at Sheraton Crystal City, 1800 Jefferson Davis Highway, Arlington, VA The second meeting will be held at the Georgetown University Conference Center, 3800 Reservoir Road, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on any aspect of the Federal Facilities Environmental Restoration Dialogue Committee should contact Nicholas Morgan, Office of Federal Facilities Enforcement, U.S. EPA (OE-2261), 401 M Street, SW., 20460, (202) 260-1270.

Dated: August 14, 1992.

Nicholas Morgan,

Designated Federal Official.

[FR Doc. 92-20067 Filed 8-21-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 92-1132]

Comments Invited on Austin Area Public Safety Plan

August 18, 1992.

The Commission has received the public safety radio communications plan for the Austin area (Region 49).

In accordance with the Commission's Memorandum Opinion and Order in General Docket 87-112, Region 49 consists of the following counties: Bosque, Hill, Hamilton, McLennan, Limestone, Freestone, Mills, Coryell, Falls, Robertson, Leon, San Saba. Lampasas, Bell, Milam, Brazos, Madison, Grimes, Llano, Burnet, Williamson, Burleson, Lee, Washington, Blanco, Hays, Travis, Caldwell, Bastrop and Fayette. (General Docket No. 87-112, 3 FCC Rcd 2113 (1988)).

In accordance with the Commission's Report and Order in General Docket No. 87-112 implementing the Public Safety National Plan, interested parties may file comments on or before September 25, 1992 and reply comments on or before October 13, 1992. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 54.)

Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission Washington, DC 20554 and should clearly identify them as submissions to PR Docket 92-190 Austin Area-Public Safety Region 49.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-20193 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM docket No.
I		
A. William F. O'Shaughnessy; South Waverly, PA.	BPH-910703MK	92-185
B. Shirley A. Penrod; South Waverly, PA.	BPH-910708ME	
Issue heading and applicants 1. Comparative, A and B 2. Ultimate, A and B		
II		
A. Western Inspirational Broadcasters, Inc.; Chico, CA.	BPED-910923MF	92-183
B. Broad Spectrum Communications, Inc.; Chico, CA.	BPH-910926ME	BPH-910925ME
C. Phoenix Broadcasting, Inc.; Chico, CA.	BPH-910926ME	
D. Ninety-Two Seven Ltd.; Chico, CA.	BPH-910926MF	
E. The Park Lane Group, Inc.; Chico, CA.	BPH-910925MC (Dismissed herein)	
Issue heading and applicants 1. Environmental Impact, C and D 2. Comparative, A, B, C, D 3. Ultimate, A, B, C, D		
III		
A. Alexander Snipe, Jr. d/b/a Glory Communications; S. Congaree, SC.	BPH-910228MC	92-184
B. Valentine Communications, Inc., S. Congaree, SC.	BPH-910228MD	
C. William K. Durst and William L. Faircloth d/b/a Lexco Radio; S. Congaree, SC.	BPH-910228MB (dismissed herein)	
Issue Heading and Applicants 1. Environmental, A and B 2. Comparative, A and B 3. Ultimate, A and B		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used above to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, room 248, 1919 M Street NW., Washington, DC 20554 (telephone (202)-659-8657).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 92-20196 Filed 8-21-92; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM docket No.
I		
A. Stephen W. Samet, Oglesby, IL.	BPH-910820MB	92-188
B. Doris A. Studstill, Oglesby, IL.	BPH-910820MC	
C. First Assembly of God Church, Oglesby, IL.	BPH-910821ME	
D. Charles Tiemann d/b/a Starved Rock Radio, Oglesby, IL.	BPH-910822ME (dismissed herein)	
Issue heading and applicants 1. Comparative, A, B and C 2. Ultimate, A, B and C		
II		
A. KCBX, Inc., San Luis Obispo, CA.	BPED-890619MH	92-186
B. Logos Broadcasting Corporation, San Luis Obispo, CA.	BPED-910219MJ	
Issue heading and applicants 1. Financial, A 2. Comparative—Noncommercial Educational FM, A, B 3. Ultimate, A, B		
III		
A. Family Stations, Inc., Bakersfield, CA.	BPED-890815MC	92-187

Applicant, city and state	File No.	MM docket No.
B. Shepherd Communications, Inc., Shafter, CA.	BPED-891113ME	
C. Skyride Unlimited, Incorporated, Shafter, CA.	BPED-901004MM	

Issue heading and applicants

1. 307(b)—Noncommercial Educational FM, A, B, C
2. Contingent Comparative—Noncommercial Educational FM: A, B, C
3. Ultimate; A, B, C

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986.

The letter shown before each applicant's name, above, is used above to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, room 246, 1919 M Street NW., Washington, DC 20554 (telephone (202) 659–8657).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 92–20195 Filed 8–21–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions For Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: The Federal Deposit Insurance Corporation (Corporation) has adopted a policy statement concerning 12 U.S.C. 1825(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and 28 U.S.C. 2410(c). The policy statement and an initial listing of financial institutions in liquidation were published in the July 2, 1992 edition of the Federal Register. The following is a list of financial institutions which have been placed in liquidation since the July 2 publication.

FEDERAL DEPOSIT INSURANCE CORPORATION ACTIVE INSTITUTIONS IN LIQUIDATION—ALPHA LISTING (NAME)

Institution Name, City/State	Date closed region	Ref. No.
American Interstate Bank, Newport Beach, CA	6/12/92, San Francisco	4499
American National Bank—Post Oak, Houston, TX	6/25/92, Dallas	4501
American Savings Bank, White Plains, NY	6/12/92, New York	4497
Castle Hills National Bank, San Antonio, TX	6/25/92, Dallas	4502
First National Bank of Texas, Webster, TX	7/23/92, Dallas	4506
Foxworth Bank, Foxworth, MS	8/07/92, Chicago	4508
Home State Bank, Longton, Kansas, Longton, KS	6/04/92, Chicago	4495
Landmark Bank For Savings, Whitman, MA	6/12/92, New York	4496
Massachusetts Bank & Trust Co., Brockton, MA	7/31/92, New York	4507
Mayfair Bank, Chicago, IL	6/04/92, Chicago	4494
Olympic Internat'l. Bank & Trust Co., Boston, MA	6/26/92, New York	4500
Riverhead Savings Bank, White Plains, NY	6/12/92, New York	4498
State Bank of Springfield, Springfield, MN	7/17/92, Chicago	4505
The Somersworth Bank, Somersworth, NH	6/26/92, New York	4503
Vernon Bank, Vernon, CT	6/26/92, New York	4504
Winchendon Savings Bank, Winchendon, MA	8/13/92, New York	4509

Dated: August 18, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–20131 Filed 8–21–92; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Renewal of FEMA Advisory Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Director of FEMA (Director) gives notice of the renewal of the FEMA Advisory Board (Board) for a period of two years. Renewal of the Board is a matter of the public interest in connection with the performance of duties imposed on the agency by law, to provide independent advice on FEMA plans and programs.

DATES: Renewal of the Board is effective as of August 1, 1992 through July 31, 1994. Comments on renewal of the Board should be submitted on or before October 23, 1992.

ADDRESSES: Comments on renewal of the Board are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Dirk J. Vande Beek, Executive Assistant to the Director, Federal Emergency Management Agency, 500 C Street SW., room 828, Washington, DC 20472, (202) 646–3923.

SUPPLEMENTARY INFORMATION: Acting under the Federal Advisory Committee Act, 5 U.S.C. app. 2, the National Security Act of 1947, as amended, 50 U.S.C. 401 et seq., 41 CFR 101–6.10 et seq., and 44 CFR part 12, the Director has determined that renewal of the FEMA Advisory Board is a matter of the public interest in connection with the performance of duties imposed on the agency by law.

The Board is the principal advisory body to the Director. Its objectives include independent advice to the Director on the adequacy of FEMA plans and programs for civil emergencies, such as: Natural or man-made disasters, mobilization of resources during crises or war, civil defense and continuity-of-government measures during conflicts, essential post-conflict resources management for national reconstitution, and other civil emergency roles assigned by Acts of Congress or by Executive Order. The Board will also assist the Director in meeting his advisory responsibilities to the President pursuant to the National Security Act of 1947, as amended.

The Board draws on the expertise of its members and other sources to provide advice and make recommendations to the Director. In addition to its role of providing guidance on major issues across all FEMA program areas, the Board advises on mission priorities, strategies for addressing Agency objectives, critiques of emerging policy and program concepts, and options for solutions to major management problems.

The Board functions solely as an advisory body, and complies fully with the provisions of the Federal Advisory Committee Act and the National Security Act.

The Board consists of 21 members who are appointed by the Director. The Board contains broad and balanced representation from all interested segments including: former government officials, both Federal and State; respected representatives from academia, science and the research community; leaders in business and industry; and the public at large.

To ensure that the Board is objective and not influenced by special interests, members are required to file an annual Statement of Financial Interests and Affiliations and a Conflict of Interest Agreement (recusal statement). The members serve at the discretion of the Director with two-year renewable terms.

Dated: August 18, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92–20146 Filed 8–21–92; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–953–DR]

Indiana; Notice of Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 17, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–953–DR), dated August 17, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 17, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Indiana, resulting from severe storms and flash flooding on August 8–9, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Phil Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Indiana to have been affected adversely by this declared major disaster:

The counties of Clark, Jackson, Jefferson, Lawrence, Scott and Washington for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Wallace E. Stickney,

Director.

[FR Doc. 92–20147 Filed 8–21–92; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–953–DR]

Indiana; Amendment to Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 18, 1992.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–953–DR), dated August 17, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is hereby amended to be August 8, 1992, through and including August 11, 1992.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 92–20148 Filed 8–21–92; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Announcement Number 276]

Cooperative Agreement for a Demonstration Project on Arthritis or Urinary Incontinence; Availability of Funds for Fiscal Year 1992

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1992 funds for a new competing cooperative agreement to initiate and evaluate a demonstration project to develop state health department capacity for chronic conditions associated with aging, specifically, either arthritis or urinary incontinence.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Diabetes and Chronic Disabling Conditions. (For ordering a copy of Healthy People 2000, see the section Where to Obtain Additional Information.)

Authority

This program is authorized under sections 301(a) and 317(k)(3), [42 U.S.C. 241(a) and 247b(k)(3)], of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are the official public health agencies of states or their bona fide agents or instrumentalities. This includes the District of Columbia, America Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

Competition is limited to the official public health agencies of states because the project requires: Experience in community-based public health interventions, experience in collaborations with organizations having expertise in developing and conducting intervention activities, and the ability to reach a wide variety of demographically distinct populations, including traditionally underserved populations.

Availability of Funds

Approximately $200,000 is available in FY 1992 to fund one award. It is expected that the award will begin on or about September 25, 1992, for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress, specifically the development of intervention and evaluation protocols, and the availability of funds.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Purpose

The purpose of this cooperative agreement is to develop organizational and personnel capacity and capability within a state health department to address chronic disease conditions associated with arthritis or urinary incontinence; and to implement an intervention program among persons aged 65 years and older and evaluate its efficacy. The project will target secondary and tertiary prevention through an educational intervention.

Program Requirements

Applicants requesting funding for arthritis should describe activities for developing, implementing, and evaluating an educational, self-help program to reduce pain, depression, nursing home placements, and physician visits among persons aged 65 and older who are afflicted with arthritis.

Applicants requesting funding for urinary incontinence should describe activities for developing, implementing, and evaluating an educational program for reducing the prevalence of urinary incontinence among older Americans. This educational program should include activities to increase awareness that incontinence is a treatable condition, and to educate health care providers on the treatment of incontinence using guidelines such as those developed by the Agency for Health Care Policy and Research, PHS, DHHS.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under A., below, and CDC shall be responsible for the activities under B., below:

A. Recipient Activities

1. Build coalitions within the community to assess the need for and the acceptability of the intervention project within various cultural and ethnic populations.

2. Define and describe the target population including intervention and control groups.

3. Develop, describe, and carry out interventions for the study group and the control group.

4. Develop, describe, and conduct the evaluation, including generic and condition-specific quality of life measures, and measures of program acceptability and effectiveness.

5. Participate through direct financial or in-kind support in a portion of the project costs.

6. Collaborate with organizations having expertise in developing and conducting the intervention activities. These organizations could include schools of public health, medical schools, voluntary or other organizations.

B. Centers for Disease Control Activities

1. Convene regular information sharing meetings with the recipient.

2. Collaborate in planning, operating, and evaluating the project activities.

3. Collaborate in the development of intervention and evaluation protocols, including the selection and development of quality of life measures.

4. Provide relevant state-of-the-art research findings and public health recommendations to the awardee.

5. Collaborate in the analysis, publication, and dissemination of project results.

6. If direct technical assistance is requested, CDC will provide personnel with epidemiologic, evaluation, or management experience in lieu of a portion of the cooperative agreement funds.

Evaluation Criteria

Applications will be reviewed and evaluated based on the following criteria:

A. The extent to which the application reflects an understanding of the problem, demonstrates community support, and represents a collaborative effort of the state health agency with other organizations with expertise in the intervention area (schools of public health, medical schools, voluntary and other organizations) and coordination with these organizations in planning, delivering, and assessing the need and acceptability of the intervention program. (15 points)

B. The extent to which population-based intervention and control groups are identified and their appropriateness to the project goals are determined. (10 points)

C. The extent to which the intervention component complies with the stated purposes of the cooperative agreement. (20 points)

D. The qualifications and appropriateness of project personnel and collaborators. (10 points)

E. The consistency of the specific and time-related measurable objectives with the stated purpose of the cooperative agreement and the ability to monitor and document the effects of the project. (10 points)

F. The extent to which the evaluation component includes quality of life, acceptability, and effectiveness measures. (25 points)

G. The extent to which the applicant demonstrates the capacity and commitment to translate the intervention to the control group. (5 points)

H. Evidence of the applicants long-term commitment to the proposed project, including documentation of cost-sharing plans. (5 points)

I. The extent to which the budget is reasonable and consistent with the intended use of cooperative agreement funds. (not scored).

Funding Priorities

The Evaluation Criteria are weighted to afford preference to applicants:

A. Proposing collaborative relationships between an official health agency and a school of public health or medicine and the coordination with other agencies and entities in the planning, delivery, and assessment of the project including the need and acceptability of the intervention program.

B. Documenting the capacity and commitment to participate in the ongoing cost of the project especially the translation of the intervention of the control group.

Recipient Financial Participation

Although this program has no statutory matching requirements, recipients are expected to contribute direct financial and in-kind support.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, GA 30305, no later than September 30, 1992. The due date for state process recommendations is 30 days after the application deadline date for this new award. (A waiver for the 60-day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 Code of Federal Regulations part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

The original and two copies of the application PHS Form-5161-1 must be submitted to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, GA 30305, on or before September 1, 1992.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications

Applications which do not meet the above criteria in 1.a. or 1.b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Locke Thompson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mail Stop E-14, Atlanta, GA 30305, telephone (404) 842-6595. Programmatic technical assistance may be obtained from Paul Scherr, Ph.D., Sc.D., Aging Branch, Division of Chronic Disease Control and Community Intervention, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Mail Stop K-51, 1600 Clifton Road, NE., Atlanta, GA 30333, telephone (404) 488-5458.

Please refer to Program Announcement Number 276 when requesting information and submitting an application.

Potential applicants may obtain a copy of Health People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, (Telephone 202-783-3238).

Dated: August 17, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92-20137 Filed 8-21-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92F-0305],

Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polydextrose as a bulking agent/texturizer in tablespreads.

FOR FURTHER INFORMATION CONTACT: James C. Wallwork, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9515.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2A4332) has been filed by Pfizer, Inc., 235 East 42d St., New York, NY 10017-5755. The petition proposes to amend the food additive regulations in § 172.841 *Polydextrose* (21 CFR 172.841) to provide for the safe use of polydextrose as a bulking agent/texturizer in tablespreads.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental

impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 12, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-20084 Filed 8-21-92; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

Women's Health Initiative Program Advisory Committee; Establishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 [Pub. L. 92-463, 86 Stat. 770-776] and section 402(b)(6), of the Public Health Service Act, as amended [42 U.S. Code 282(b)(6)], the Director, National Institutes of Health (NIH), announces the establishment of the Women's Health Initiative Program Advisory Committee.

The Women's Health Initiative Program Advisory Committee will provide advice and guidance to the Director, NIH, on matters relating to the studies comprising the Women's Health Initiative. These include clinical trials, longitudinal observational studies, and community studies. The Committee will advise on the comprehensive plan for studies of prevention of cancer, heart disease, and osteoporosis and the specific plans for each of the three component studies. This will include matters relating to the conduct and support of the studies, such as recruitment and retention of participants, including population representation; and the dissemination of information relating to the Women's Health Initiative.

Unless renewed by appropriate action prior to its expiration, the Women's Health Initiative Program Advisory Committee will terminate two years from the date of establishment.

Dated: August 10, 1992.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 92-20174 Filed 8-21-92; 8:45 am]

BILLING CODE 4140-01-M

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the patent applications listed below may be obtained by writing to the indicated Licensing Specialist at the Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone 301/496-7735; fax 301/402-0220). Issued patents may be obtained from the Commissioner of Patents U.S. Patent and Trademark Office, Washington, DC 20231.

06/513,249—Reductive Destruction of Nitrosamines, Hydrazines, Azo- and Azoxy-Compounds. Licensing Specialist: Todd Leonard

07/696,556—Compositions Having Use as Treatment of Neuropsychiatric Deficits. Licensing Specialist: Todd Leonard

07/743,892—Anti-Hypertensive Compositions of Secondary Aminenitric Oxide Adducts and Use Thereof. Licensing Specialist: Todd Leonard

07/751,830—Targeted Defective Interfering HIV Particles as an Antiviral Therapy Against AIDS. Licensing Specialist: Todd Leonard

07/764,906—Therapeutic Inhibition of Platelet Aggregation by Nucleophile-Nitric Oxide Complexes and Derivatives Thereof. Licensing Specialist: Todd Leonard

07/765,746—Substituted Phenserines as Specific Inhibitors of Acetyl-Cholinesterase. Licensing Specialist: Arthur Cohn

07/765,766—Thiapysovenine and Carbamate Analogs, Pharmaceutical Compositions and Method for Inhibiting Cholinesterases. Licensing Specialist: Arthur Cohn

07/845,081—Carbamate Analogs of Thiaphysovenine, Pharmaceutical Compositions, and Method for Inhibiting Cholinesterases. Licensing Specialist: Arthur Cohn

07/861,329—Phenylcarbamates of (-)-Eseroline, (-)-N1-Noreseroline and (-)-N1-Benzylnoreseroline: Selective Inhibitors of Acetyle and Butyrylcholinesterase, Pharmaceutical Compositions, and Method of Use Thereof. Licensing Specialist: Arthur Cohn.

Dated: August 17, 1992.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92-20172 Filed 8-21-92; 8:45 am]

BILLING CODE 4140-01-M

A Special Meeting of the Acquired Immunodeficiency Syndrome Program Advisory Committee (APAC)

Pursuant to Pub. L. 92-463, notice is hereby given of a special meeting of the Acquired Immunodeficiency Syndrome (AIDS) Program Advisory Committee on September 3, 1992, at the National Institutes of Health (NIH), Bethesda, Maryland. The meeting will take place on September 3 from 8:30 a.m. until 5 p.m. in Building 31, C Wing, Conference Room 10 to review human subjects protections under parallel track proposals. The meeting will be open to the public from 8:30 a.m. until 9:30 a.m. for a staff orientation on the parallel track initiative and the review of human subjects protections. Attendance by the public will be limited to space available. Please contact Deborah Fountain in the Office of AIDS Research at 301-496-0358, if you are planning to attend.

In accordance with the provision set forth in sections 552b(c)(4), title 5 U.S.C. and section 10 of Public Law 92-463, the meeting will be closed to the public at 9:30 a.m. until adjournment for the review, discussion, and evaluation of an individual proposal for expanded availability of an investigational new AIDS drug through the parallel track mechanism. This proposal and subsequent discussion could reveal confidential trade secrets or commercial property such as patentable material.

Deborah S. Fountain, Committee Management Officer, Office of AIDS Research, National Institutes of Health, Building 31, room 5C02, 9000 Rockville Pike, Bethesda, MD 20892, (301) 496-0358, will furnish the meeting agenda, roster of committee members, and substantive program information upon request.

Dated: August 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-20104 Filed 8-21-92; 8:45 am]

BILLING CODE 4140-01-M

National Heart, Lung, and Blood Institute; Cardiology Advisory Committee; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, November 5-6, 1992, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public on November 5 from 11 a.m. to 5 p.m. and on November 6 from 8:30 a.m. to adjournment. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Michael J. Horan, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases; National Heart, Lung, and Blood Institute; room 318, Federal Building, Bethesda, Maryland 20892, (301) 496-5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 93.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: August 18, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-20170 Filed 8-21-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, September 21-22, 1992, which is being held in conjunction with the NICHD 30th Anniversary Celebration. The meeting will be held in Wilson Hall, Shannon Building, National Institutes of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be held on September 21 in Building 31, room 2A03.

The Council meeting will be open to the public on September 1 from 9:30 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, the Annual Review of the Intramural Research Program, and a presentation by the Surgeon General of the United States. The meeting will be open on September 22 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on September 21 from 8 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting of the full Council will be closed to the public on September 22 from 8 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Council Secretary, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496-1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health.)

Dated: August 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-20101 Filed 8-21-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Dental Research; Meeting of the National Advisory Dental Research Council

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Advisory Dental Research Council, National Institute of Dental Research, to be held September 14-15, 1992, Conference Room 10, Building 31C, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:30 a.m. to recess on September 14 for general discussion and program presentations. A meeting of the National Advisory Dental Research Council Subcommittee on Minority Activities will be held on September 15 from 1 p.m. until adjournment at the same location. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting of the Council will be closed to the public on September 14 from 8:30 a.m. to 9:30 a.m. and on September 15 from 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Dushanka V. Kleinman, Executive Secretary, National Advisory Dental Research Council, and Deputy Director, National Institute of Dental Research, National Institutes of Health, Building 31, Room 2C39, Bethesda, Maryland 20892, (telephone 301-496-9469) will furnish a roster of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research)

Dated: August 17, 1992.

Susan F. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-20102 Filed 8-21-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council and its subcommittees, National Institute of Diabetes and Digestive and Kidney Diseases, on September 23-24, 1992, Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public September 23, from 8:30 a.m. to 12 noon and again on September 24, from 10 a.m. to adjournment to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the subcommittee and full Council meeting will be closed to the public for the review, discussion and evaluation of individual grant applications. The following subcommittees will be closed to the public on September 23, from 1 to 5 p.m.: Diabetes, Endocrine and

Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney, Urologic and Hematologic Diseases. The full Council meeting will be closed on September 24, from 8:30 a.m. to 10 a.m.

These deliberations could reveal confidential trade secrets or commercial property, such as patentable materials, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Further information concerning the Council meeting may be obtained from Dr. Walter Stolz, Executive Secretary, National Diabetes and Digestive and Kidney Diseases Advisory Council, NIDDK, Westwood Building, Room 657, Bethesda, Maryland 20892, (301) 496–7277.

A summary of the meeting and roster of the members may be obtained from the Committee Management Office, NIDDK, Building 31, room 9A19, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–6917.

(Catalog of Federal Domestic Assistance Program No. 93.847–849, Diabetes, Endocrine and Metabolic Diseases; Digestive Diseases and Nutrition; and Kidney Diseases, Urology and Hematology Research, National Institutes of Health)

Dated: August 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–20100 Filed 8–21–92; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Neurological Disorders and Stroke; Meeting

Pursuant to Public Law 92–463, notice is hereby given of meetings of committees of the National Institute of Neurological Disorders and Stroke (NINDS). These meetings will be open to the public to discuss program planning, program accomplishments and special reports or other issues relating to committee business as indicated in the notice.

The Council meeting will be open to the public on October 1, 1992, as listed below. The agenda includes a report by the Director, NINDS, a report by the Acting Director, Division of Extramural Activities, NINDS, and a scientific presentation by an NINDS grantee. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Acting Executive Secretary or the Scientific Review Administrator indicated.

Name of Committee: The Planning Subcommittee of the National Advisory Neurological Disorders and Stroke Council.

Date: September 30, 1992

Place: National Institutes of Health, Building 31, Conference Room 8A28, 900 Rockville Pike, Bethesda, MD 20892.

Open: 1 p.m.–3 p.m.

Closed: 3 p.m.–recess.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Dates: October 1–2, 1992.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Open: October 1, 9 a.m.–1 p.m.

Closed: October 1, 1 p.m.–recess, October 2, 8:30 a.m.–adjournment.

Acting Executive Secretary: Edward M. Donohue, Acting Director, Division of Extramural Activities, NINDS, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–4188.

Name of Committee: Neurological Disorders Program Project Review A Committee.

Dates: October 14–16, 1992.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Open: October 14, 7:30 p.m.–8 p.m.

Closed: October 14, 8 p.m.–recess, October 15, 8:30 a.m.–recess, October 16, 8:30 a.m.–adjournment.

Scientific Review Administrator: Dr. Katherine Woodbury, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

Name of Committee: Training Grant and Career Development Review Committee.

Dates: October 23–25, 1992.

Place: Guest Quarters Suite Hotel, 1707 Fourth Street, Santa Monica, CA 90401.

Open: October 23, 8 p.m.–8:30 p.m.

Closed: October 23, 8 p.m.–recess, October 24, 8 a.m.–recess, October 25, 8 a.m.–adjournment.

Scientific Review Administrator: Dr. Herbert Yellin, Federal Building, room 9C–14, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: October 23–25, 1992.

Place: La Jolla Cove, 1155 Coast Boulevard, La Jolla, CA 92037.

Open: *October 23, 7 p.m.–8:30 p.m.*

Closed: October 23, 8:30 p.m.–recess, October 24, 8:30 a.m.–recess, October 25, 8:30 a.m.–adjournment.

Scientific Review Administrator: Dr. Paul Sheehy, Federal Building, room 9C–10, National Institutes of Health, Bethesda, MD 20892, Telephone: (301) 496–9223.

(Catalog of Federal Domestic Assistance Program No. 93.853, Clinical Research Related to Neurological Disorders; No. 93.854, Biological Basis Research in the Neurosciences)

Dated: August 17, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92–20099 Filed 8–21–92; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive Patent License

AGENCY: National Institutes of Health, Public Health Services, HHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the inventions embodied in U.S. Patent Applications Serial Numbers 07/390,745, entitled "Partial Agonists of the Strychnine Insensitive Glycine Modulatory Site of the N-Methyl-D-Aspartate Receptor Complex as Neuropsychopharmalogical Agents," and 07/541,032 (issued as U.S. Patent 5,086,072), entitled "Treatment of Mood Disorders With Functional Antagonists of the Glycine/NMDA Receptor Complex" to Symphony Pharmaceuticals, Inc. having a place of business at Philadelphia, Pennsylvania. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The inventions relate to a novel class of compounds that have partial N-Methyl-D-Aspartate (NMDA) receptor complex agonist and/or antagonist properties and methods of using these compounds therapeutically to treat various neurological and psychological disorders.

The availability of the inventions claimed in 07/390,745 for licensing was published in the **Federal Register** of December 19, 1989. The availability of the inventions claimed in 07/541,032 for licensing was published in the **Federal Register** of March 4, 1991. Requests for a copy of the above identified patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Arthur J. Cohn, J.D., Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, Maryland 20892 (telephone: (301) 496–7735; FAX: (301) 402–0220). Properly filed competing applications for a license filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: August 12, 1992.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92–20173 Filed 8–21–92; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Neurological Disorders and Strokes: Opportunity for a Cooperative Research and Development Agreement (CRADA) for a Prototype Development and Commercialization of a Two- and Three-Dimensional Autoradiographic Imaging System

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (HIH) seeks an agreement with a company(s) which can pursue the commercial development of a Two- and Three-Dimensional Autoradiographic Imaging System. The National Institutes of Neurological Disorders and Strokes has also determined that the developed technology can be utilized in other scientific areas. A CRADA for the co-development of this system will be granted to the awardee.

ADDRESSES: Questions about this opportunity may be addressed to Stephen Finley, National Institutes of Health, NINDS, 9000 Rockville Pike, Building 31, room 8A46, Bethesda, MD 20892. Telephone 301–496–4697.

DATES: Proposals must be received by November 1, 1992.

SUPPLEMENTARY INFORMATION: The National Institutes of Neurological Disorders and Strokes (NINDS) and the National Center for Research Resources (NCRR) have jointly identified and developed an improved technique for the acquisition and resolution of Two- and Three-dimensional autoradiographic images. The NINDS and the NCRR have already funded and successfully simulated a preliminary model of the Imaging System. The next phase would entail the design and testing of a full scale prototype.

The methodology associated with this system permits a tissue containing one or more radioactive isotopes to be scanned sectioned, and a three-dimensional image of the tissue be constructed via a computer based software program. The developed technology for the imagery apparatus has further potential for utilization for real time in vivo imagery of metabolic processes and in the field of gel electrophoresis.

The CRADA awardee will have an option to negotiate for an exclusive license to market and commercialize any new technology jointly developed for the Image Acquisition and Analysis System. This CRADA may be directed toward the co-development of the improved Two- and Three-Dimensional Imaging System prototype, the in vivo imaging, or the gel imaging device.

Roles of NINDS AND NCRR

1. Provide design and user expertise, some equipment requirements and assist in beta testing.

2. Work cooperatively with the company(s) to determine the market potential for the imagery technology and imagery system and to design a prototype.

Selection criteria for choosing the CRADA partner(s) will include, but not be limited to the following:

1. Ability to provide funding for production and testing of an imagery analysis system prototype.

2. Capability to develop, implement and manage the product commercialization so as to ensure the dissemination of the technology(s) to health care services and other research services.

Dated: August 5, 1992.

Reid G. Adler,

Director, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 92–20171 Filed 8–21–92; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting, Announcement of NTP Draft Technical Reports Projected for Public Review From December 1992 Through Fall 1994

To earlier inform the public and allow interested parties to comment or obtain information on long-term toxicology and carcinogenesis studies and short-term toxicity studies prior to public peer review, the National Toxicology Program (NTP) again publishes in the **Federal Register** a current listing of draft Technical Reports projected for evaluation by the NTP Board of Scientific Counselors' Technical Reports Review Subcommittee during their next seven meetings from December 1992 through fall 1994. We plan to continue updating the listing with announcements in the **Federal Register** approximately twice a year. The next meeting date is December 1–2, 1992. Specific dates for 1993 and 1994 meetings will be established at a later time.

The attachment gives draft Technical Reports of studies on chemicals listed alphabetically within known or approximate dates of reviews and includes Chemical Abstracts Service registry numbers, responsible study scientists with telephone numbers, NTP report numbers (if assigned), primary use(s), species, route of administration, and exposure levels used.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP study scientist as early as possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park (RTP), North Carolina 27709. The staff scientist would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry C. Hart, NTP, P.O. Box 12233, Research Triangle Park, North Carolina 27709, telephone 919/541–3971, will furnish final agendas, and other program information prior to a meeting, and summary minutes subsequent to a meeting.

Attachment

Dated: August 10, 1992.

Kenneth Olden,

Director, National Toxicology Program.

National Toxicology Program Toxicology and Carcinogenesis Studies

Chemicals Projected for Peer Review

December 1992 through Fall, 1994

(Report Date: July 16, 1992)

BILLING CODE 4140-01-M

NTP Toxicology and Carcinogenesis Studies
Chemicals Projected for Peer Review

CHEMICAL NAME/CAS NO.	USE	STUDY SCIENTIST	ROUTE	SPECIES	EXPOSURE LEVELS	NTP TR NO.
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW DECEMBER 1 & 2, 1992						
LONG-TERM STUDIES:						
1-AMINO-2,4-DIBROMOANTHRAQUINONE 81-49-2	DYE	J. Huff 919-541-3760	FEED	RM	R: 0,.2,.5,1.0,2.0, M: 0,1.0, 2.0 %/50 PER GROUP	383
BARIUM CHLORIDE DIHYDRATE 10326-27-9	DYE	K. Abdo 919-541-7819	WATER	RM	0,500,1200,2500 PPM	432
BENZYL ACETATE 140-11-4	FOOD	K. Abdo 919-541-7819	FEED	RM	R: 0,0.3,0.6,1.2%, M: 0,0.033, 0.1,0.3%/50 PER GROUP	431
O-BENZYL-P-CHLOROPHENOL 120-32-1	GERM	W. Eastin 919-541-7941	SP	M	ACETONE CONTROL, DMBA/DMBA, DMBA/ACETONE, DMBA/TPA, DMBA/BCP(1,10,30 MG/ML), TPA/TPA, BCP(100)/TPA, BCP/BCP, BCP(10)/BCP(1,10,30)	444
O-BENZYL-P-CHLOROPHENOL 120-32-1	GERM	D. Marsman 919-541-3233	GAV	RM	MR: 0,30,60,120, FR: 0,60,120, 240, M: 0,120,240,480 MG/KG/50 PER GROUP	424
TERT-BUTYL ALCOHOL 75-65-0	PHAR	R. Maronpot 919-541-4861	WATER	RM	R: 0,0.125, 0.25, 0.5%(M). 0, 0.25, 0.5, 1.0%(F). M:0, 0.5,1.0,2.0%(M&F)/50 PER GROUP	436
C.I. DIRECT BLUE 218 28407-37-6	DYE	J. Dunnick 919-541-4811	FEED	RM	0, 1000, 3000, 10000 PPM/60 PER GROUP	430
CORN OIL 8001-30-7	FOOD	G. Boorman 919-541-3440	GAV	R	0, 2.5, 5, 10 ML CORN OIL/KG FOR 103 WEEKS./50 PER GROUP	426
METHYLENE CHLORIDE 75-09-2	SOLV	G. Boorman 919-541-3440	GAV	R	MALE RATS ONLY 0,2.5,5,10 ML/KG/50 PER GROUP (CORN OIL), METHYLENE CHLORIDE IS SAME AT ALL CORN OIL DOSES (500 MG/KG). TESTING THE INTERACTION OF METHYLENE CHLORIDE ON CORN OIL.	426
PROMETHAZINE HYDROCHLORIDE 58-33-3	PHAR	K. Abdo 919-541-7819	GAV	RM	R: 0,8.3,16.8,33.3, FM: 0, 3.75,7.5,15.0, MM: 0,11.25, 22.5,45.0 MG/KG	425
SAFFLOWER OIL 8001-23-8	FOOD	G. Boorman 919-541-3440	GAV	R	0,2.5,5,10 ML/KG/50 PER GROUP	426
4,4-THIOBIS(6-TERT-BUTYL-M-CRESOL) 96-69-5	RUBR	J. Cirvello 919-541-1408	FEED	RM	R: 0,.05,.1,.25, M: 0,.025, .05,.1 %	435
TRICAPRYLIN 538-23-8	FOOD	G. Boorman 919-541-3440	GAV	R	0,2.5,5,10 ML/KG/50 PER GROUP	426
TRICRESYL PHOSPHATE 1330-78-5	PLAS	R. Irwin 919-541-3340	FEED	RM	R: 0,75,150,300,600, M: 0,60, 125,250 PPM/50 PER GROUP	433
SHORT-TERM TOXICITY STUDIES:						
CHEMICAL MIXTURE - DRINKING WATER CONTAMINANTS CHEMMIXH2O	COMT	J. Bucher 919-541-4532	WATER	RM	R&M: 0, 25, 75, 225, 750 PPM	35
2-CHLORONITROBENZENE 88-73-3	INTR	J. Bucher 919-541-4532	INHAL	RM	0, 1.1, 2.3, 4.5, 9 OR 18 PPM (10/S/S)	33
4-CHLORONITROBENZENE 100-00-5	INTR	J. Bucher 919-541-4532	INHAL	RM	0, 1.5, 3, 6, 12, OR 24 PPM (10/S/S)	33
CUPRIC SULFATE 7758-99-8	FOOD	C. Hebert 919-541-1870	FEED	RM	R: 0, 500, 1000, 2000, 4000, 8000 PPM M: 0, 1000, 2000, 4000, 8000, 16000 PPM (10/S/S)	29

NTP Toxicology and Carcinogenesis Studies
Chemicals Projected for Peer Review

CHEMICAL NAME/CAS NO.	USE	STUDY SCIENTIST	ROUTE	SPECIES	EXPOSURE LEVELS	NTP TR NO.
DIBUTYL PHTHALATE 84-74-2	PLAS	J. Bucher 919-541-4532	FEED	RM	IN UTERO WITH F344 RATS; SEE C62022B	30
DIBUTYL PHTHALATE 84-74-2	PLAS	J. Bucher 919-541-4532	FEED	RM	R: 0, 2500, 5000, 10000, 20000, OR 40000 PPM R: 0, 1250, 2500, 5000, 10000, 20000 PPM (10/S/S)	30
ETHYLENE GLYCOL MONOBUTYL ETHER (EGMBE) 111-76-2	SOLV	M. Dieter 919-541-3368	WATER	RM	CORE STUDY: R&M: 0,750,1500, 3000,4500,6000 PPM/10 PER GROUP; STOP STUDY: R: 0, 1500, 3000, 6000 PPM/30 PER GROUP	26
ETHYLENE GLYCOL MONOETHYL ETHER (EGMEE) 110-80-5	SOLV	M. Dieter 919-541-3368	WATER	RM	CORE STUDY: R: 0,1250,2500, 5000,10000,20000, M: 0,2500, 5000,10000,20000,40000 PPM/10 PER GROUP STOP STUDY R: 0, 5000, 10000, 20000 PPM/30 PER GROUP	26
ETHYLENE GLYCOL MONOMETHYL ETHER (EGMME) 109-86-4	COSM	M. Dieter 919-541-3368	WATER	RM	CORE STUDY: R: 0,750,1500, 3000,4500,6000, M: 0,2000, 4000,6000,8000,10000 PPM/ 10 PER GROUP; STOP STUDY DOSES: R: 0, 1500, 3000, 6000 PPM/ 30 PER GROUP	26
ISOPRENE 78-79-5	RUBR	R. Melnick 919-541-4142	INHAL	RM	R&M: 0,70,220,700,2200,7000 PPM	31
ISOPRENE 78-79-5	RUBR	R. Melnick 919-541-4142	INHAL	RM	MALES ONLY; R&M: 0, 70, 220 700, 2200, 7000 PPM	31
METHYLENE BIS(THIOCYANATE) 6317-18-6	FUNG	L. Burka 919-541-4667	GAV	RM	R&M: 0, 1, 2, 4, 8, 16 MG/KG; GAVAGE IN METHYLCELLULOSE 10 ANIMALS/GROUP	32
1-NITROPYRENE 5522-43-0	LABC	P. Chan 919-541-7561	INHAL	R	R: 0, 0.5, 2.0, 8.0, 20.0, OR 50.0 MG/M3 12/S/GROUP (CORE) 5/S/GROUP FOR LUNG BURDEN	34
PESTICIDE/FERTILIZER CONTAMINATION--MIXTURE 2 PESTFERTMIX2	COMT	J. Bucher 919-541-4532	WATER	RM	RATS AND MICE (0, 0.1X, 1X, OR 10X); RATS 40/GROUP, MICE 30/GROUP	36
PESTICIDE/FERTILIZER CONTAMINATION--MIXTURE 3 PESTFERTMIX3	COMT	J. Bucher 919-541-4532	WATER	RM	RATS AND MICE (0, 0.1X, 1X, OR 10X); RATS 40/GROUP, MICE 30/GROUP	36

CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW SPRING 1993

LONG-TERM STUDIES:

BENZETHONIUM CHLORIDE 121-54-0	GERM	R. Sills 919-541-0180	SP	RM	R&M: 0,0.15,0.5,1.5 MG/KG/50/GROUP	
DIETHYL PHTHALATE 84-66-2	INTR	W. Eastin 919-541-7941	SP	RM	R: 0,100,300 M: 0,7.5,15,30 UL/100 UL SOLUTION /50 PER GROUP	440
DIETHYL PHTHALATE 84-66-2	INTR	W. Eastin 919-541-7941	SP	M	100 UL (PROMOTOR) NEAT CHEMICAL	429
DIMETHYL PHTHALATE 131-11-3	PLAS	W. Eastin 919-541-7941	SP	M	100 UL (PROMOTOR) NEAT CHEMICAL ON UNINITIATED AND DMBA INITIATED SKIN	429
HEXACHLOROCYCLOPENTADIENE 77-47-4	PEST	K. Abdo 919-541-7819	INHAL	RM	R:0,.01,.05,.2PPM M:0,.01,.05, .2,.5PPM/50 PER GROUP	437

NTP Toxicology and Carcinogenesis Studies
Chemicals Projected for Peer Review

CHEMICAL NAME/CAS NO.	USE	STUDY SCIENTIST	ROUTE	SPECIES	EXPOSURE LEVELS	NTP TR NO.
INIT/PROM COMPARATIVE MOUSE STUDY (DMBA/TPA/BPO/MNNG) INIT/PROM	PHAR	W. Eastin 919-541-7941	SP	MM	DMBA/ACETONE(50,25,2.5UG),DMBA 2.5,TPA 5UG,BPO 20MG,DMBA/TPA (2.5,25,50UG/5UG),DMBA/BPO (2.5,25UG/20MG) AND MNNG/ACETONE(1000,500,100UG), MNNG 100UG,TPA 5UG,BPO 20MG, MNNG/BPO(100,500,1000UG/20MG), MNNG/TPA(100,1000UG/5UG)	441
INIT/PROM COMPARATIVE MOUSE STUDY (DMBA/TPA/BPO/MNNG) INIT/PROM	PHAR	W. Eastin 919-541-7941	SP	MM	DMBA/ACETONE(25,2.5,.25UG), DMBA 2.5,TPA 5 UG,BPO 20MG, DMBA/TPA(.25,2.5,25/5UG), DMBA/BPO(2.5,25UG/20MG) AND MNNG/ACETONE(1000,500,100UG), MNNG 100UG,TPA 5UG,BPO 20MG, MNNG/BPO(100,500,1000UG/20MG), MNNG/TPA(1000,1000UG/5UG)	441
INIT/PROM COMPARATIVE MOUSE STUDY (DMBA/TPA/BPO/MNNG) INIT/PROM	PHAR	W. Eastin 919-541-7941	SP	MM	DMBA/ACETONE(25,2.5,.25UG): DMBA 2.5:TPA 1UG:BPO 20MG: DMBA/TPA(.25,2.5,25/1UG): DMBA/BPO(2.5,25UG/20MG) AND MNNG/ACETONE(1000,500,100UG): MNNG 100UG:TPA 5UG:BPO 20MG: MNNG/BPO(100,500,1000 UG/20MG)	441
METHYLPHENIDATE HYDROCHLORIDE 298-59-9	PHAR	J. Dunnick 919-541-4611	FEED	RM	R: 0,100,500,1000 PPM. M: 0,50,250,500 PPM/50 PER GROUP	439
P-NITROBENZOIC ACID 62-23-7	INTR	J. Dunnick 919-541-4611	FEED	RM	0, 1250, 2500, OR 5000 PPM /60 PER GROUP	444

SHORT-TERM TOXICITY STUDIES:

BETA-BROMO-BETA-NITROSTYRENE 7166-19-0	PEST	J. Bucher 919-541-4532	GAV	RM	R&M 0, 0.037, 0.075, 0.3, 0.15, 0.6 G/KG; 10/GRP	
SODIUM CYANIDE 143-33-9	FUME	J. Bucher 919-541-4532	WATER	RM	R&M: 0, 3, 10, 30, 100, 300 PPM (10 PER GROUP)	
SODIUM SELENATE 13410-01-0	PEST	J. Bucher 919-541-4532	WATER	RM	3.75, 7.5, 15, 30, 60 PPM	
SODIUM SELENITE 10102-18-8	FEED	J. Bucher 919-541-4532	WATER	RM	0, 2, 4, 8, 16, 32 PPM (10 PER GROUP)	
1,1,1-TRICHLOROETHANE 71-55-6	SOLV	J. Bunnick 919-541-4611	MICRO	RM	R&M: 0, 0.5, 1.0, 2.0, 4.0, AND 8.0 % (10/S/S)	

CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW SUMMER 1993

LONG-TERM STUDIES:

ACETONITRILE 75-05-8	SOLV	J. Roycroft 919-541-3627	INHAL	RM	R: 0, 100, 200, OR 400 PPM M: 0, 50, 100, OR 200 PPM ; 50/GROUP	
ISOBUTYL NITRITE 542-56-3	INTR	K. Abdo 919-541-7819	INHAL	RM	R&M: 0, 37, 75, OR 150 PPM	
OXAZEPAM 604-75-1	PHAR	J. Bucher 919-541-4532	FEED	MM	M4: 0, 2500, OR 5000; M3: 0, 125, 2500, OR 5000 PPM; 60/GROUP	
SCOPOLAMINE HYDROBROMIDE TRIHYDRATE 6533-68-2	PHAR	K. Abdo 919-541-7819	GAV	RM	R&M: 0, 1, 5, OR 25 MG/KG; 70/GROUP. DIET RESTRICTION MICE: 0 OR 0.25 MG/KG; 70/GROUP	

NTP Toxicology and Carcinogenesis Studies
Chemicals Projected for Peer Review

CHEMICAL NAME/CAS NO.	USE	STUDY SCIENTIST	ROUTE	SPECIES	EXPOSURE LEVELS	NTP TR NO.
TETRAFLUOROETHYLENE 116-14-3	FOOD	J. Roycroft 919-541-3627	INHAL	RM	MICE & FR: 0, 312, 625, OR 1250 MR: 0, 156, 312, OR 625 PPM; 50/GROUP	
1-TRANS-DELTA-9-TETRAHYDROCANNABINOL 1972-08-3	PHAR	J. Dunnick 919-541-4811	GAV	RM	R: 0, 12.5, 25, OR 50; M: 0, 125, 250, OR 500 MG/KG; 50/GROUP	
TRIETHANOLAMINE 102-71-6	DTRG	R. Herbert 919-541-4613	SP	RM	MR: 0, 32, 63, OR 125; FR: 0, 63, 125, OR 250; MM: 0, 200, 630, OR 2000; FM: 0, 100, 300, OR 1000 MG/KG; 60/GROUP	
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW FALL 1993						
LONG-TERM STUDIES:						
2,2-BIS(BROMOMETHYL)-1,3-PROPANEDIOL 3296-90-0	FLAM	R. Irwin 919-541-3340	FEED	RM	R: 0, 2500, 5000, OR 10000 PPM; 70/GROUP M: 0, 312, 625, OR 1250 PPM; 60/GROUP	
BUTYL BENZYL PHTHALATE 85-68-7	PLAS	K. Abdo 919-541-7819	FEED	RR	MR: 0, .3%, .6%, OR 1.2% FR: 0, .6%, 1.2%, OR 2.4%; 60/GROUP	
CODEINE 76-57-3	PHAR	D. Walters 919-541-3355	FEED	RM	R: 0, 400, 800, OR 1600 M: 0, 750, 1500, OR 3000 PPM; 60/GROUP	
NICKEL (II) OXIDE 1313-99-1	INTR	W. Eastin 919-541-7941	INHAL	RM	R: 0, .62, 1.25, OR 2.5 M: 0, 1.25, 2.5, OR 5.0 MG/M3; 50/GROUP	
NICKEL SULFATE HEXAHYDRATE 10101-97-0	INTR	W. Eastin 919-541-7941	INHAL	RM	R: 0, 0.125, 0.25, OR 0.5 M: 0, .25, .5, OR 1.0 MG/M3; 50/GROUP	
NICKEL SUBSULFIDE 12035-72-2	ENVH	W. Eastin 919-541-7941	INHAL	RM	R: 0, 0.075, OR 0.15 M: 0, 0.6, OR 1.2 MG/M3; 50/GROUP	
SALICYLAZOSULFAPYRIDINE 599-79-1	PHAR	F. Karl 919-541-2926	GAV	RM	R: 84, 168, OR 337.5 MG/KG; 70/GROUP M: 675, 1350, OR 2700 MG/KG; 60 GROUP	
SHORT-TERM TOXICITY STUDIES:						
M-CHLOROANILINE 108-42-9	INTR	R. Chhabra 919-541-3386	GAV	RM	R&M 0, 10, 20, 40, 80, 160 MG/KG, 20/GRP (RATS); 10/GRP (MICE)	
O-CHLOROANILINE 95-51-2	DYE	R. Chhabra 919-541-3386	GAV	RM	R&M 0, 10, 20, 40, 80, & 160 MG/KG; 20/GRP (RATS);10/GRP (MICE)	
LEAD ORES LEADORES	METL	M. Dieter 919-541-3368	FEED	R	ORES: MALE RATS, 30/GRP; LEAD SULFIDE USED AS STANDARD: MALE AND FEMALE 30/GRP; 10 ADD'L MALES TREATED 180 DAYS (PB SULFIDE) 0, 10, 30, & 100 PPM; PARTICLE SIZE <38 MICRONS; 30, 60, 90-DAY SACRIFICE	
LEAD SULFIDE 1314-87-0	PNT	M. Dieter 919-541-3368	FEED	R	RATS: MALE AND FEMALE 0, 10, 30, 100 PPM, 10/GRP 30, 60, 90, 180 DAY SAC	
METHYLENE BLUE TRIHYDRATE 7220-79-3	DYE	R. Chhabra 919-541-3386	GAV	RM	R&M: 0, 0.125, 0.25, 0.5, 1.0, 2.0 GM/KG BODY WT. R: 20/GROUP/SEX; M: 10/GROUP/SEX	

NTP Toxicology and Carcinogenesis Studies
Chemicals Projected for Peer Review

CHEMICAL NAME/CAS NO.	USE	STUDY SCIENTIST	ROUTE	SPECIES	EXPOSURE LEVELS	NTP TR NO.
O-NITROTOLUENE 88-72-2	RUBR	M. Elwell 919-541-5066	FEED	R	MALE R: 0, 0 ALTERED MICROFLORA 20/GRP; 5000 PPM 60/GRP; 5000 PPM ALTERED MICROFLORA 40/GRP	
O-TOLUIDINE HYDROCHLORIDE 636-21-5	DYE	M. Elwell 919-541-5066	FEED	R	O AND 0 ALTERED MICROFLORA; 20/GRP; 5000 PPM; 60/GRP	
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW SPRING 1994						
LONG-TERM STUDIES:						
T-BUTYLHYDROQUINONE 1948-33-0	FOOD	K. Abdo 919-541-7819	FEED	RM	R&M: 0, 0.125, 0.25, OR 0.5% IN FEED; 70 RATS, 60 MICE	
1,2-DIHYDRO-2,2,4-TRIMETHYLQUINOLINE (MONOMER) 147-47-7	RUBR	J. Dunnick 919-541-4811	SP	RM	RATS: 0, 60, OR 100 MG/KG MICE: 0, 6, OR 10 MG/KG (CORE)	
ETHYLBENZENE 100-41-4	RUBR	J. Roycroft 919-541-3627	INHAL	RM	R&M: 0, 75, 250, OR 750 PPM	
MOLYBDENUM TRIOXIDE 1313-27-5	METL	J. Roycroft 919-541-3627	INHAL	RM	R&M: 10, 30, OR 100 MG/M3; 50/GROUP	
NITROMETHANE 75-52-5	FUEL	J. Roycroft 919-541-3627	INHAL	RM	R: 0, 94, 188, OR 375 PPM; 50/GROUP M: 0, 188, 375, OR 750 PPM; 50/GROUP	
TETRAHYDROFURAN 109-99-9	SOLV	J. Roycroft 919-541-3627	INHAL	RM	R&M: 0, 200, 600, OR 1600 PPM (50/S/S)	
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW SUMMER 1994						
LONG-TERM STUDIES:						
COBALT SULFATE HEPTAHYDRATE 10026-24-1	PNT	J. Roycroft 919-541-3627	INHAL	RM	R&M: 0, 0.3, 1.0, OR 3.0 MG/M3 (50/S/S)	
D & C YELLOW NO. 11 8003-22-3	DYE	W. Eastin 919-541-7941	FEED	R	RATS: 0, 0.05, 0.17, OR 0.5%; 60/GROUP	
ISOBUTYRALDEHYDE 78-84-2	INTR	J. Roycroft 919-541-3627	INHAL	RM	R&M: 0, 500, 1000, OR 2000 PPM (50/S/S)	
OZONE 10028-15-6	IND	G. Boorman 919-541-3440	INHAL	RM	R&M: 0, 0.12, 0.5, OR 1.0 PPM (50/S/S) - 103-week study	
OZONE 10028-15-6	IND	G. Boorman 919-541-3440	INHAL	RM	R&M: 0, 0.5, OR 1.0 PPM (50/S/S) - 130-week study	
OZONE/NNK OZONNNKCOMB	TBCO	G. Boorman 919-541-3440	INHAL	R	MALE RATS ONLY: 0, 0.5 PPM OZONE WITH 0, 0.1, 1.0 MG/KG NNK BY S.C. INJECTION (20 WEEKS ONLY)	
SODIUM XYLENESULFONATE 1300-72-7	DTRG	W. Eastin 919-541-7941	SP	RM	R: 0, 60, 120, OR 240 MG/KG M: 0, 182, 364, OR 727 MG/KG (50/S/S)	
THEOPHYLLINE 58-55-9	PHAR	R. Irwin 919-541-3340	GAV	RM	R: 7.5, 25, OR 75 MG/KG; 50/GROUP FM: 7.5, 25, OR 75 MG/KG; 50/GROUP MM: 15, 50, OR 150 MG/KG; 50/GROUP	

NTP Toxicology and Carcinogenesis Studies
Chemicals Projected for Peer Review

CHEMICAL NAME/CAS NO.	USE	STUDY SCIENTIST	ROUTE	SPECIES	EXPOSURE LEVELS	NTP TR NO.
SHORT-TERM TOXICITY STUDIES:						
CIS & TRANS 1,2-DICHLOROETHYLENE 540-59-0	SOLV	J. Dunnick 919-541-4811	MICRO	RM		
CIS-1,2-DICHLOROETHYLENE 156-59-2	SOLV	J. Dunnick 919-541-4811	MICRO	RM		
TRANS-1,2-DICHLOROETHYLENE 156-60-5	SOLV	J. Dunnick 919-541-4811	MICRO	RM		
METHACRYLONITRILE 126-98-7	PLAS	S. Ghanayem 919-541-3369	WATER	RM	R: 0,7.5,15.0,30.0,60.0,120.0 MG/KG/DAY; M: 0,0.75,1.5,3.0, 6.0,12.0 MG/KG/DAY; RATS: 20/GRP; MICE: 10/GRP	
3,3',4,4'-TETRACHLOROAZOBENZENE 14047-09-7	HERB	C. Nebert 919-541-1870	GAV	RM	R&M; 10/GROUP	
3,3',4,4'-TETRACHLOROAZOXYBENZENE 21232-47-3	COMT	C. Nebert 919-541-1870	GAV	RM	R&M: 10/GRP	
1,1,2,2-TETRACHLOROETHANE 79-34-5	SOLV	J. Dunnick 919-541-4811	MICRO	RM		
1,1,2,2-TETRACHLOROETHANE 79-34-5	SOLV	J. Dunnick 919-541-4811	GAV	RM		
CHEMICALS TENTATIVELY SCHEDULED FOR PEER REVIEW FALL 1994						
LONG-TERM STUDIES:						
CHLOROPRENE 126-99-8	PLAS	J. Roycroft 919-541-3627	INHAL	RM	R&M: 0, 12.8, 32.0, OR 80.0 PPM (50/S/S)	
1-CHLORO-2-PROPANOL 127-00-4	INTR	J. Dunnick 919-541-4811	WATER	RM	R: 0, 150, 325, OR 650 M: 0, 250, 500, OR 1000 PPM	
DIETHANOLAMINE 111-42-2	TEXL	W. Eastin 919-541-7941	SP	RM	MR: 0, 16, 32, OR 64 MG/KG; FR: 0, 8, 16, OR 32 MG/KG; MICE: 0, 40, 80, OR 160 MG/KG (50/S/S)	
INTERFERON AD + 3'-AZIDO-3'-DEOXYTHYMIDINE (AIDS INITIATIVE) INTAZTCOMB	PHAR	R. Irwin 919-541-3340	SC,GV	MM	DUAL ROUTES WITH BOTH COMPOUNDS: AZT: 0, 30, 60, OR 120 (GAV) MG/KG; IFN: 500 OR 5000 UNITS 3X/WEEK	
PHENOLPHTHALEIN 77-09-8	PHAR	J. Dunnick 919-541-4811	FEED	RM	R: 0, 1.2, 2.5, OR 5%; M: 0, 0.3, 0.6, OR 1.2% IN FEED	
PYRIDINE 110-86-1	SOLV	J. Dunnick 919-541-4811	WATER	RM	R: 0, 100, 200, OR 400 PPM MM: 0, 250, 500, OR 1000 PPM FM: 125, 250, OR 500 PPM MWR: 0, 100, 200, OR 400 PPM	

BILLING CODE 4140-01-C

NTP National Toxicology and Carcinogenesis Studies

Chemicals Projected for Peer Review

Abbreviations used:
USE Primary Use Category:
COMT Contaminates and/or Impurities
COSM Cosmetics, Perfumes, Fragrances, Hair Preparations, Skin Lotions
DTRG Detergents and Cleansers
DYE As or in Dyes, Inks, and Pigments
ENVH Environmental (Air/Water) Pollutants
FEED As or in Animal Feed or Feed Products
FLAM Flame Retardants
FOOD Food, Beverages, or Additives
FUEL As or in Fuel or Oil Products
FUME Fumigants
FUNG Fungicide(s)
GERM Germicides, Disinfectants, Antiseptics
HERB Herbicide(s)
IND Industrial Uses
INTR Chemical Intermediate or Catalyst
LABC Unspecified Chemical Uses not Fitting into SOLV, INTR, or REAG categories
METL Metals or in Metal Products
PEST Pesticides, General or Unclassified
PHAR Pharmaceuticals or Intermediates
PLAS As or in Plastics
PNT Paint Ingredient
RUBR Rubber Chemical
SOLV Vehicles and Solvents
TBCO Tobacco and Tobacco Products
TEXL In Manufacture of Textiles
ROUTE Route of Administration:
FEED Oral in Feed
GAV Oral, Gavage
INHAL Inhalation
MICRO Microencapsulation in Feed
SC, GV Subcutaneous Inj. + Gavage
SP Skin Paint
WATER Oral with Water
SPEC Species:
R=Rats
M=Mice

[FR Doc. 92-20107 Filed 8-21-92; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-931-6321-09; GP2-393]

Record of Decision for the Western Oregon Program—Management of Competing Vegetation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of record of decision (ROD).

SUMMARY: Notice is given that, in accordance with the National Environmental Policy Act of 1969, as amended, the Bureau of Land Management (BLM) has released the approved Western Oregon Program—Management of Competing Vegetation Final Record of Decision. This decision outlines the vegetation treatment measures for use of BLM-administered lands in western Oregon. The purpose of the vegetation treatment is to manage the vegetation for improved timber production, habitat conditions for wildlife and livestock, rights-of-way, and to provide guidelines for herbicide application regarding human health and safety. Vegetation management treatment methods include manual, mechanical, biological, prescribed fire, and herbicide treatments, individually and in combination. Approximately 90,200 acres would be treated annually; a cap of 8,800 acres is placed on annual herbicide treatments.

This approved ROD completes the program-management plan development and associated environmental documentation for western Oregon Bureau of Land Management as required by the Federal Land Policy and Management Act (FLPMA) and the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Larry Larsen, Program Coordinator, Oregon State Office, BLM, P.O. Box 2965, Portland, Oregon, 97208, (503) 280-7080.

SUPPLEMENTARY INFORMATION: Copies of the FEIS and ROD may be obtained from the Oregon State Office at the above address. Copies are available for review at the following BLM Offices:

Coos Bay District Office, 1300 Airport Lane, North Bend, OR 97459
Eugene District Office, 2890 Chad Drive, Eugene, OR 97440
Klamath Falls Resource Area, 2795 Anderson Ave., Bldg. 25, Klamath Falls, OR 97603
Medford District Office, 3040 Biddle Road, Medford, OR 97504
Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, OR 97470
Salem District Office, 1717 Fabry Road, S.E., Salem, OR 97306
Tillamook Resource Area, 4610 Third Street, Tillamook, OR 97141

Dated: August 13, 1992.

Robert J. Rivers,

Acting State Director, Oregon and Washington.

[FR Doc. 92-20134 Filed 8-21-92; 8:45 am]
BILLING CODE 4310-33-M

[AZ-040-02-4333-02]

Meeting for the Gila Box Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1780 that two meetings of the Gila Box Riparian National Conservation Area (NCA) Advisory Committee will be held.

DATES: September 15, 1992, 10 a.m.–4 p.m. October 29, 1992, 10 a.m.–4 p.m.

ADDRESSES: BLM Safford District Office, 425 E. 4th St., Safford, Arizona.

SUPPLEMENTARY INFORMATION: The NCA Advisory Committee was established by the Arizona Desert Wilderness Act of 1990 to provide input to the Safford District on management of the Gila Box Riparian National Conservation Area (NCA). The Committee is continuing work on the Gila Box Interdisciplinary Activity Plan, which must be completed by November 28, 1992. The plan is being written using the Limits of Acceptable Change (LAC) planning process.

The preferred alternative will be finalized at the September 15 meeting and the draft document will be reviewed at the October 29 meeting.

All meetings are open to the public. Interested persons may make oral statements to the Committee between 10:30 and 11 a.m., or may file written statements for consideration by the Committee. Anyone wishing to make an oral statement must contact the BLM Gila Resource Area Manager at least two working days prior to the meeting. Written statements are also accepted at any time during preparation of the draft plan, and will be reviewed by the committee.

Statements should be mailed to Jonathan Collins, Team Leader, Gila Resource Area, 425 E. 4th St., Safford, Arizona 85546.

Summary minutes of the meeting will be maintained in the Safford District Office and will be available for public inspection (during regular business hours) within 30 days after each meeting.

FOR FURTHER INFORMATION: Meg Jensen, Gila Resource Area Manager, or Jonathan Collins, Team Leader, 425 E. 4th St., Safford, Arizona 85546, Telephone (602) 428-4040.

Dated: August 12, 1992.
Frank Rowley,
Acting District Manager
[FR Doc. 92-20135 Filed 8-21-92; 8:45 am]
BILLING CODE 4310-32-M

[NM-040-4410-08]

Intent To Prepare Texas Resource Management Plan (TX-RMP); Invitation for Public Participation and Call for Information

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a Resource Management Plan (RMP), invitation for public involvement, notice of public meetings, and call for information on coal and other minerals and resources.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, Oklahoma Resource Area, is initiating preparation of a RMP and Environmental Impact Statement (EIS) for BLM managed Federal minerals throughout the State of Texas. The Code of Federal Regulations, title 43, subpart 1600 (43 CFR 1600) will be followed in the preparation of this plan. The pubic is invited to participate in this land use planning effort, beginning with the identification of issues and planning criteria. Written comments or suggested issues and planning criteria will be accepted through January 4, 1993. The BLM will hold a series of public scoping meetings at which time oral comments and suggestions will be accepted. This notice is also to solicit coal and other mineral and resource information and indications of interest and needs pursuant to 43 CFR 3410.1-2, and 3500, for inclusion in the Texas RMP. Coal companies, other mineral extraction companies, State and local governments, and the general public are encouraged to submit information to the BLM to assist in the determinations of coal and other mineral development potential and possible conflicts with other resources. Where such information is determined to indicate development potential for an area, the area may be included in the land use plan for further consideration for leasing.

DATES: Comments relating to the identification of issues and planning criteria, and responses to this call for coal, other mineral, and other resource information will be accepted through close of business January 4, 1993.

ADDRESSES: Comments and requests to be included on the mailing list should be sent to: Paul Tanner, Area Manager, Bureau of Land Management, Oklahoma Resource Area, 221 North Service Road, Moore, Oklahoma 73160. Proprietary data should be identified as such to ensure confidentiality.

FOR FURTHER INFORMATION CONTACT: Paul W. Tanner, Area Manager, or Brian Mills, RMP Team Leader, Oklahoma Resource Area, 405-794-9624.

SUPPLEMENTARY INFORMATION: The planning area for the Texas RMP will include all BLM managed Federal mineral estate within Texas. The Federal mineral estate encompasses over 1.5 million acres of both split estate minerals (Federal minerals under private or State surface) and minerals under other Federal surface management agenies' lands. (Not included are approximately 1.1 million acres of Federal minerals under the U.S. Forest Service managed National Forests and National Grassland.) The anticipated issues to be addressed by this RMP/EIS effort include oil and gas leasing and development and the identification of areas acceptable for further consideration for coal and other mineral leasing. The issue of leasing the Federal oil and gas resource will include:

1. Determining which areas will be open for leasing and development subject to standard lease terms and conditions.

2. Determining which areas will be open for leasing and development subject to minor constraints such as seasonal restrictions (wildlife, recreation, etc.).

3. Determining which areas will be open for leasing and development subject to major constraints such as No-Surface Occupancy stipulations on areas larger than 40 acres in size or more than ¼ mile in width.

4. Determining which areas will be closed to leasing. We expect the development of the coal resource to be one of the issues addressed in the RMP. The BLM hopes to acquire sufficient information from this call, as well as from its own data sources, to identify, and categorize areas of coal development potential within the planning area. Industry and other interested parties are asked to provide any information that will be useful in meeting the requirements of the Federal Coal Management Program defined in 43 CFR 3420, including application of the coal planning screens and future activity planning such as tract delineation, ranking and selection. Information resulting from this call will be used to determine potential for coal development and likelihood of conflict with other resources.

The issue of leasing the Federal coal resources will include:

1. Determining areas acceptable for further coal leasing consideration with standard stipulations.

2. Determining areas acceptable for consideration with special stipulations.

3. Determining areas unacceptable for further coal leasing consideration.

The BLM will apply the coal development potential, unsuitability criteria, multiple use conflict, and consultation screens in order to make these determinations.

The type of information needed includes, but is not limited to the following:

1. Location.

a. Federal coal tracts desired by mining companies should include a narrative description with areas delineated on a map with a scale of not less than ½ inch to the mile.

b. Descriptions of both public and private industry coal users in the general region.

2. Quantity needs (tonnage, dates) for both public and private industry coal users and coal developers.

3. Quality needs (by type and grade) for end users of the coal.

4. Coal reserve drilling data which may pertain to the planning area.

5. Information relating to surface and mineral ownership.

a. Surface owner consents previously granted, whether consent is transferrable, surface owner leases with coal companies.

b. Non-federal, or fee coal ownership adjacent to Federal tracts currently leased or mined.

6. Other resource values occurring within the planning area which may conflict with coal development.

a. Describe the resource value, and locate them on a map with a scale of not less than ½ inch to the mile.

b. State the reasons the particular resource would conflict with coal development.

Any individual, business entity, or public body may participate in this process by providing coal or other resource information under this call. The 1947 Mineral Leasing Act For Acquired Lands requires that all minerals on acquired lands be leased rather than claimed or sold. All Federal minerals in Texas are classified as acquired and are thus leasable. These include metallic minerals such as gold, silver, copper, and uranium, and industrial minerals such as sand and gravel, building stone, limestone and gypsum.

The issue of other Federal minerals will include:

1. Determinating which Federal lands have present or potential mineral development.

2. Determining which areas will be open to other Federal minerals leasing and development.

3. Determining which areas are or will be closed to other Federal mineral leasing and development.

4. Identifying which areas need special terms and conditions which may constrain mineral activities.

The proposed planning criteria include:

1. All proposed actions must comply with laws, executive orders, and regulations.

2. For each proposed action, the resource outputs must be reasonable and achievable with available technology.

3. All proposed actions must evaluate and consider long term effects to the public in relation to short term effects.

4. All proposed actions must provide for the orderly development of leasable minerals while containing environmental impacts to a minimum.

These planning issues and criteria are presented for public comment and are subject to change based upon such public comment. Comments should be received by close of business January 4, 1993. The planning team will seek public involvement throughout the planning process. A series of public scoping meetings/open houses will be held throughout the State to provide the public an opportunity to participate in this planning effort. Comments on the preliminary planning issues and criteria as well as suggestions concerning additional issues to be addressed will be accepted at these public meetings/open houses. The public meetings/open houses will start at 3 p.m. each day and are scheduled for:

Austin on September 24, 1992 at the Ramada Airport Hotel, 5660 North Interstate 35, Austin, Texas.

Amarillo on September 28, 1992 at the Fifth Season Inn East, 2501 Interstate 40 East, Amarillo, Texas.

Midland on September 29, 1992 at the Ramada Hotel, 3100 West Wall, Midland, Texas.

Dallas/Fort Worth on October 13, 1992 at the Sheraton Hotel Arlington, 1500 Stadium Drive East, Arlington, Texas.

Houston on October 14, 1992 at the Hilton Southwest, 6780 Southwest Freeway, Houston, Texas.

Corpus Christi on October 15, 1992 at the Sheraton Corpus Christi Bayfront, 707 North Shoreline Drive, Corpus Christi, Texas.

Complete records of all phases of the planning process will be available for public review at the Bureau of Land Management, Oklahoma Resource Area Office, 221 North Service Road, Moore, Oklahoma. The Draft RMP/Draft EIS and the Proposed RMP/Final EIS documents will be available upon request.

Dated: August 14, 1992.
Monte G. Jordan,
Associate State Director.
[FR Doc. 92-20090 Filed 8-21-92; 8:45 am]
BILLING CODE 4310-FB-M

[MT-940-08-4520-11]

Land Resource Management

AGENCY: Montana State office, Bureau of Land Management, DOI.

ACTION: Notice of filing of plat of survey.

SUMMARY: Plats of survey for the following described land accepted July 25, 1992, will be officially filed in the Montana State Office, Billings, Montana, effective 30 days after publication.

Principal Meridian, Montana

T. 3 N., R. 30 E.
The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 21, 22, and 28, and the Metes and Bounds description of two Warranty Deeds in the northwest quarter of section 28, the subdivision of sections 21 and 28, the survey of the right bank meanders of the Yellowstone River through section 21 and a portion of section 22, and an unsurveyed Island in the Yellowstone River, Township 3 North, Range 30 East, Principal meridian, Montana.

The triplicate original of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on the plat, is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. The protested plat of survey will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

This survey was executed at the request of miles City District Office, of administrative needs of the Bureau.

EFFECTIVE DATE: August 5, 1992.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32d Street, P.O. Box 36800, Billings, Montana 59107.

Dated: August 10, 1992.
Francis R. Cherry, Jr.,
Associate State Director.
[FR Doc. 92-19809 Filed 8-21-92; 8:45 am]
BILLING CODE 4310-84-M

Minerals Management Service

Assessments for Late Reports

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of assessment rate.

SUMMARY: The Minerals Management Service (MMS) regulation at 30 CFR 218.40(a) provides for assessments in the nature of liquidated damages for late reports submitted by payors, operators, or lessees on Federal and Indian leases. The regulation at 30 CFR 218.40(e) requires that the assessment amount (rate) for each violation will be established periodically, based on actual MMS experience, and that a Notice be published in the Federal Register on the new rate. This Notice establishes a new assessment rate of $3 per report for late reporting in accordance with the regulation.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Betty Middle, Chief, Automated Exception Processing Section, MS 3212, Minerals Management Service, P.O. Box 25165, Denver, Colorado 80225-0165, at (303) 231-3582 or (800) 433-9601.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public of the assessment rate for all late reports submitted on Forms MMS-2014 and MMS-4014 by payors, operators, or lessees to the MMS automated Auditing and Financial System (AFS) on Federal and Indian leases pursuant to established regulations.

The regulation at 30 CFR 218.40(e) requires that the assessment shall be established periodically by MMS. The assessment amount for the violation will be based on experience with costs and improper reporting. The MMS will publish a Notice of the assessment amount to be applied in the Federal Register. Based on actual MMS experience, the new rate established by MMS for all late reports submitted on Forms MMS-2014 and MMS-4014 to the AFS is $3 per report. The old rate was $10 per report. The rate will be assessed for each report that is received late. A report is defined at 30 CFR 218.40(c) as each line item on a Form MMS-2014 or Form MMS-4014. The total AFS late-reporting assessments shall not exceed $10,000 per payor code per monthly AFS late-reporting billing cycle.

The effective date for the new assessment rate is upon publication in order to provide immediate results from changing the assessment rate from $10 to $3 per report. The AFS late-reporting assessment rate established in this Notice will apply to reports billed after the effective date. This rate will remain in effect until a subsequent Notice is published in the **Federal Register** which changes the assessment rate.

Date: August 17, 1992.

James W. Shaw,

Associate Director for Royalty Management.

[FR Doc. 92-20089 Filed 8-21-92; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-27,470]

A.B. Myr Sheet Metal Industries, Inc., Belleville, MI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992 by the Sheet Metal Workers' International Association on behalf of workers at A.B. Myr Sheet Metal Industries, Incorporated, Belleville, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20177 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,467]

Gallagher-Kaiser Corp.; Detroit, MI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992 by the Sheet Metal Workers' International Association on behalf of workers at Gallagher-Kaiser Corporation, Detroit, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20178 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,468]

Giffin, International, Farmington, MI; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992 by the Sheet Metal Workers' International, Incorporated on behalf of workers at Giffin, International, Farmington, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20179 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,469]

Haden-Schweitzer Corp., Madison Heights, MI, Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992 by the Sheet Metal Workers' International Association on behalf of workers at Haden-Schweitzer Corporation, Madison Heights, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20180 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,044]

Odeco Oil and Gas Co. New Orleans, LA et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Diamond M-Odeco Drilling, Inc. Houston, Texas and Operating in the States of Texas (TA-W-27,044A) and Louisiana (TA-W-27,044B) and TA-W-27,050 Murphy Exploration and Production Company, New Orleans, Louisiana

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 19, 1992, applicable to all workers of Murphy Exploration and Production Company and ODECO Oil and Gas Company, both located in New Orleans, Louisiana. The notice was published in the **Federal Register** on June 12, 1992 (57 FR 25080).

New information was received from the company that showed that the Diamond M-Corporation ODECO on January 31, 1992 and changed its name to Diamond M-Odeco Drilling, Inc., with operations in Texas and Louisiana. It was the Department's intent to amend the certification regarding former workers of ODECO Oil and Gas Company (TA-W-27,044), not Murphy Exploration and Production Company (TA-W-27,050) as was published in the **Federal Register** on August 6, 1992 (57 FR 34787).

The intent of the Department's certification is to include all workers of ODECO Oil and Gas Company and its successors who were adversely affected by increased imports.

The amended notice applicable to TA-W-27,044 and TA-W-27,050 is hereby issued as follows:

"All workers of ODECO Oil and Gas Company, New Orleans, Louisiana (TA-W-27,044), Diamond-M Odeco Drilling, Inc., headquartered in Houston, Texas and Operating at other locations in the States of Texas (TA-W-27,044A) and Louisiana (TA-W-27,044B); and Murphy Exploration and Production Company, New Orleans, Louisiana (TA-W-27,050), who became totally or partially separated from employment on or after March 3, 1991 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 12th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20181 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Pride Health Care et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than September 8, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 8, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Pride Health Care—Metal Division (workers)	W. Wyoming, PA	08/10/92	05/28/92	27,583	Metal frames.
R&C Drilling Co. (workers)	Woodward, OK	08/10/92	08/03/92	27,584	Oil drilling.
King Ranch Oil & Gas, Inc. (Co.)	Houston, TX	08/10/92	08/04/92	27,585	Crude oil, natural gas.
Weyerhaeuser Company (IWA)	Cottage Grove, OR	08/10/92	08/30/92	27,586	Laminated beams, tresses.
Koike Aronson (workers)	Arcade, NY	08/10/92	07/20/92	27,587	Welding positioners and cutting machines.
ABB Betco Gray, Inc. (workers)	Harvey, LA	08/10/92	07/17/92	27,588	Oilfield equipment.
Commodore Semiconductor Group (workers)	Norristown, PA	08/10/92	07/24/92	27,589	Integrated circuits.
Jamieson Mfg. Co., Inc. (workers)	Italy, TX	08/10/92	07/27/92	27,590	Steel fittings for chainlink fence.
Timex Corp. (workers)	Torrington, CT	08/10/92	07/16/92	27,591	Packaging and distribution center.
Smith Corona Corp. (workers)	Cortland, NY	08/10/92	07/23/92	27,592	Word processors typewriters.
Marathon Oil Co. (workers)	Cody, WY	08/10/92	07/29/92	27,593	Oil and gas.
Dundee Wire & Mfg. (workers)	Dundee, MI	08/10/92	07/28/92	27,594	Music wire; valve spring wire.
Pay and Pak Corp. (workers)	Portland, OR	08/10/92	07/24/92	27,595	Home improvement products.
Ronitex Jacquard Mills, Inc. (workers)	Paterson, NJ	08/10/92	07/27/92	27,596	Upholstry fabric.
Exxon Chemical Co. (workers)	Houston, TX	08/10/92	07/29/92	27,597	Chemicals.
Hilliard Petroleum, Inc. (workers)	Shreveport, LA	08/10/92	07/31/92	27,598	Oil and gas.
Town & Country Chevrolet-Oldsmobile (workers)	Russellville, AL	08/10/92	07/24/92	27,599	Retail sales and repairs.
M.I. Drilling Fluids, Mich. Div. (workers)	Kalkaska, MI	08/10/92	07/30/92	27,600	Drilling fluids.
Dril-quip, Inc. (workers)	Houston, TX	08/10/92	07/25/92	27,601	Subsea wellhead equipment.
Nokia-Meilafer, Inc. (workers)	South Hadley, MA	08/10/92	07/20/92	27,602	Wire cable mfg. equipment.
M.I. Drilling Fluids (workers)	Olney, IL	08/10/92	07/31/92	27,603	Drilling fluids.

[FR Doc. 92-20182 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,471]

Sheet Metal Industries, Inc., Melvindale, MI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992 by the Sheet Metal Workers' International Association on behalf of workers at Sheet Metal Industries, Incorporated, Melvindale, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of August, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20183 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,472]

Tri-Mark Metal Corp.; Detroit, MI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992 by the Sheet Metal Workers International Association on behalf of workers at Tri-Mark Metal Corporation, Detroit, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 15th day of August, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20184 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administrator

[TA-W-27,473]

Venderbush Industriel, Mt. Clemens, MI; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was

initiated on July 6, 1992 in response to a worker petition which was filed on July 6, 1992 by the Sheet Metal Workers' International Association on behalf of workers at Venderbush Industrial, Mt. Clemens, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 13th day of August, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20185 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines and Related Provisions; Meeting

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of advisory committee meeting.

SUMMARY: This notice provides the date, time, place and agenda summary for the sixth meeting of the Mine Safety and Health Administration's Advisory Committee on the Use of Air in the Belt Entry to Ventilate the Production (Face) Area at Underground Coal Mines and Related Provisions.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Ballston Tower #3, 4015 Wilson Boulevard, room 631, Arlington, Virginia 22203; phone (703) 235-1910.

SUPPLEMENTARY INFORMATION: Under sections 101(a) and 102(c) of the Federal Mine Safety and Health Act of 1977, a public meeting of the advisory committee will be held as follows:

September 9-11, 1992, from 8 a.m. until 4 p.m. at the Ramada Renaissance Hotel (Gallery II Ballroom) located at 950 N. Stafford Street, Arlington, Virginia 22203.

The Secretary of Labor appointed this advisory committee to make recommendations on conditions under which belt entry air could be safely used in the face areas of underground coal mines.

The purpose of the meeting is to obtain information relative to: (1) The conditions under which belt haulage entries could be safely used as intake air courses to ventilate working places; (2) minimum velocities in conveyor belt haulageways; and (3) ventilation of escapeways.

The agenda for the sixth meeting will include preparation of the committee's report and recommendations to the Secretary of Labor.

The public is invited to attend. During the meeting, the chairperson will provide a half hour, twice each day, to allow interested persons to comment. Officials record of the meeting will be available for public inspection at the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 631, Arlington, Virginia 22203.

Dated: August 18, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-20093 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-43-M

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M-92-87-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Osage No. 3 Mine (I.D. No. 46-01455) located in Monongalia County, West Virginia. Due to deteriorating roof conditions, traveling the affected area exposes persons to safety hazards. The petitioner proposes to establish monitoring stations at intake air and return air locations to rest for methane and the quantity of air. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Consolidation Coal Company

[Docket No. M-92-88-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petitioner proposes to connect a ground check circuit to control the operation of a magnetic contactor instead of a circuit breaker. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection to the miners as would the mandatory standard.

3. Costain Coal, Inc.

[Docket No. M-92-89-C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Baker Mine (I.D. No. 15-14492) and its Pyro No. 9 Wheatcroft Mine both located in Webster County, Kentucky. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternate method would provide no less than same measure of protection as would the mandatory standard.

4. Consolidation Coal Company

[Docket No. M-92-90-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Robinson Run Mine (I.D. No. 46-01316) located in Harrison County, West Virginia. The petitioner proposes to use high-voltage cables inby the last open crosscut to supply power to a longwall mining system from an electrical power system. The petitioner asserts that the proposed alternate method would provide the same measure of protection as would the mandatory standard.

5. Double M No. 2 Mine, Inc.

[Docket No. M-92-91-C]

Double M No. 2 Mine, Inc., P.O. Box 349, Appalachia, Virginia 24216 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its No. 2 Mine (I.D. No. 44-05815) located in Wise County, Virginia. Due to the rise and dip of mine roof and floor, the petitioner requests relief from the use of canopies on continuous miner and the two 6-L Galis Shuttle cars and the TD 30 roof drill. The petitioner asserts that use of canopies creates a hazard to the equipment operator.

6. Consolidation Coal Company

[Docket No. M-92-92-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Loveridge No. 22 Mine (I.D. No. 46-01433) located in Monongalia County, West Virginia. Due to roof falls and other hazardous conditions, the affected area cannot be safely traveled. The petitioner proposes to make weekly air and methane checks inby and outby the seals. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Peabody Coal Company

[Docket No. M-92-93-C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Camp 2 Underground Mine (I.D. No. 15-02705) located in Union County, Kentucky. Due to hazardous roof conditions, the affected area cannot be safely traveled. The petitioner proposes to monitor the quality and quantity of air at a station in the intake and return aircourses. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Costain Coal, Inc.

[Docket No. M-92-94-C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Baker Mine (I.D. No. 15-14492) located in Webster County, Kentucky. Due to adverse roof conditions, the affected area cannot be safely traveled. The petitioner proposes to establish monitoring points to continuously monitor the quality and quantity of air entering and leaving the first submain west. The petitioner asserts that complying with the mandatory standard would result in a diminution of safety to persons required to make weekly examinations.

9. Hang On Buddy, Inc.

[Docket No. M-92-95-C]

Hang On Buddy, Inc., P.O. Box 1389, Clintwood, Virginia 24228 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Mine No. 1 (I.D. No. 15-15557) located in Perry County, Kentucky. Due to adverse roof conditions, certain areas of the mine cannot be safely traveled. The petitioner proposes to establish checkpoints to monitor the quality and quantity of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before September 23, 1992. Copies of these petitions are available for inspection at that address.

Dated: August 17, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-20187 Filed 8-21-92; 8:45 am]

BILLING CODE 4510-43-M

LEGAL SERVICES CORPORATION

Grant Awards to Successful Applicants of the Meritorious and Innovative Grants Program (MIGP)

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant awards.

SUMMARY: The Legal Services Corporation hereby announces its intention to award grants to 10 legal services and community programs selected as grantees through the Meritorious and Innovative Grants Program. Pursuant to the Corporation's announcement of funding availability on April 21, 1992 (57 FR 14590); a total of $500,000 will be awarded to the following programs.

Program	State	Amount
1. New Hampshire Legal Assistance.	NH	$70,762
2. Northern Manhattan Improvement Corporation.	NY	37,759
3. Legal Assistance Foundation of Chicago.	IL	42,759
4. Legal Services Corporation of Iowa.	IA	42,759
5. Georgia Legal Services	GA	63,101
6. Tennessee Association of Legal Services.	TN	15,081
7. DNA—Peoples Legal Services.	AZ	75,000
8. Legal Aid Society of Albuquerque.	NM	75,000
9. Legal Aid Foundation of Los Angeles.	CA	30,000
10. Western Center on Law and Poverty.	CA	47,759
Total		500,000

These one-time, non-recurring grants are awarded under the authority of the Legal Services Corporation Act of 1974, as amended. This public notice is issued pursuant to section 1007(f) of the Act, with a request for comments and recommendations within a period of 30 days from the date of publication of this notice. Grant awards will become effective and grant funds will be distributed only upon the expiration of this thirty-day public comment period.

DATES: All comments and recommendations must be received on or before 5 p.m. on September 21, 1992.

ADDRESSES: Comments should be sent to: Office of Field Services, Legal Services Corporation, 750 First Street NE., 11th Floor, Washington, DC 20002-4250.

FOR FURTHER INFORMATION CONTACT: Ressie Walker, Grants Specialist, Grants and Budgets Division, Office of Field Services, at (202) 336-8826.

Dated: August 19, 1992.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 92-20191 Filed 8-21-92; 8:45 am]

BILLING CODE 7050-01-M

NATIONAL COMMISSION ON MIGRANT EDUCATION

Meeting

ACTION: Change in meeting time.

SUMMARY: The meeting of the National Commission on Migrant Education on Monday, August 24, 1992, which was published in the **Federal Register** on Thursday, August 20, 1992, has been changed to begin at 11 a.m. All other information remains the same.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Skiles (301) 492-5336, National Commission on Migrant Education, 6120 Woodmount Avenue, Fifth Floor, Bethesda, Maryland 20814.

Linda Chavez,

Chairman.

[FR Doc. 92-20226 Filed 8-19-92; 4:06 pm]

BILLING CODE 6820-DE-M

NATIONAL CREDIT UNION ADMINISTRATION

Fees Paid by Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comments; extension of comment period.

SUMMARY: On July 24, 1992, the NCUA issued a request for comments concerning a modification of the operating fee scale for federal credit unions. The notice was published in the **Federal Register** on August 3, 1992 (see 57 FR 34152). The NCUA Board

requested that comments be submitted by September 2, 1992. Due to requests made, the Board has decided to extend the comment period. All comments received on or before September 22, 1992, will be considered by NCUA.

DATES: Comments must be submitted by September 22, 1992.

ADDRESSES: Send comments to Becky Baker, Secretary of the Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Herbert S. Yolles, Controller or David M. Marquis, Deputy Director of Examination and Insurance, at the above address, telephone (202) 682–9600.

By the National Credit Union Administration Board on August 18, 1992.

Becky Baker,

Secretary of the Board.

[FR Doc. 92–20163 Filed 8–21–92; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Directorate for Education and Human Resources Instrumentation and Laboratory Improvement; Availability of Program Announcement

This is to announce the availability of the Program Announcement and Guidelines for Instrumentation and Laboratory Improvement (NSF 92–68).

You can obtain a copy of this document by sending an E-mail request to STIS (NSF's Science and Technology Information System). Send your request to "stisserv@nsf.gov" (Internet) or "stisserv@NSF" (BITNET). The "Subject:" line will be ignored. Put the following commands in the text of the message:

Request: stis
Topic: NSF9268
Request: end

If you cannot send E-mail to Internet or BITNET addresses, you may request a printed copy of the document by calling the Forms and Publications Unit, 202–357–7861 or writing: Forms and Publications Unit, Room 232, National Science Foundation, 1800 G Street NW., Washington, DC 20550.

Dated: August 18, 1992.

Duncan McBride,

Program Director.

[FR Doc. 92–20182 Filed 8–21–92; 8:45 am]

BILLING CODE 7555–01–M

OFFICE OF PERSONNEL MANAGEMENT

Establishment of the Hispanic Federal Employment Advisory Group

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

ESTABLISHMENT OF AN ADVISORY GROUP: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the establishment of the Hispanic Federal Employment Advisory Group. The Director of the Office of Personnel Management has determined that establishment of this Advisory Group is in the public interest.

DESIGNATION: Hispanic Federal Employment Advisory Group.

PURPOSE: The Advisory Group will advise the Director, OPM, on the development of personnel policies that affect the recruitment and advancement of Hispanics in the Federal workforce. Members will include the presidents of selected academic associations, Hispanic-serving institutions, professional and key community-based organizations, and selected Federal Directors of Human Resources Management. The Group will be chaired by the Associate Director of the Career Entry Group, OPM.

FOR FURTHER INFORMATION CONTACT: The Director, Office of Personnel Management, is the sponsor of this Advisory Group. For further information, contact Fran Lopes, Assistant Director for Affirmative Recruiting and Employment, OPM, on (202) 606–0870.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–20092 Filed 8–21–92; 8:45 am]

BILLING CODE 6325–01–M

Establishment of the Historically Black Colleges and Universities Federal Employment Advisory Group

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

ESTABLISHMENT OF AN ADVISORY GROUP: This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) and advises of the establishment of the Historically Black Colleges and Universities Federal Employment Advisory Group. The Director of the Office of Personnel Management has determined that establishment of this Advisory Group is in the public interest.

DESIGNATION: Historically Black Colleges and Universities Federal Employment Advisory Group.

PURPOSE: The purpose of the group is to advise the Director, OPM, on the initiatives developed in response to Section 11 of Executive Order 12877. The Executive order mandated OPM to develop a program to increase the employment of students from Historically Black Colleges and Universities (HBCU's) in part-time and summer employment. Members will include Directors of Personnel, HBCU's Presidents, the President of the National Association for Equal Opportunity in Higher Education, and the Executive Director of the White House Initiative on Historically Black Colleges and Universities, Department of Education.

FOR FURTHER INFORMATION CONTACT: The Director, Office of Personnel Management, is the sponsor of this Advisory Group. For additional information, contact Fran Lopes, Assistant Director for Affirmative Recruiting and Employment, Career Entry Group, OPM, on (202) 606–0870.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92–20093 Filed 8–21–92; 8:45 am]

BILLING CODE 6325–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 31047; File No. SR-CBOE-92-14]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Buy-Write Options Unitary Derivatives ("BOUNDs")

August 17, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 24, 1992, the Chicago Board Options Exchange, Inc. ("CBOE or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend its rules to permit trading in "BOUNDs" ("Buy-Write Options Unitary Derivatives"). As described in more detail below, BOUNDs are long term options with a duration of up to 60 months which have the same economic characteristics as covered calls.[1] BOUND holders will be able to participate in a stock's price appreciation up to but not exceeding a specified strike price while receiving payments equivalent to any cash dividends declared on the underlying stock. The Exchange also proposes to permit the listing of long term equity options ("LEAPs") with a duration of up to 60 months (5 years).

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The Exchange proposes to list BOUNDs, a synthetic options product which provides an alternative to existing methods of trading covered writes. The Options Clearing Corporation ("OCC") will be the issuer of all BOUNDs traded on the Exchange.[2] Except as described herein, BOUNDs will be subject to the rules governing standardized options.

BOUNDs will offer essentially the same economic characteristics as covered calls with the added benefits that BOUNDs can be traded in a single transaction and are not subject to early exercise. BOUND holders will profit from the stock's movement up to the strike price and will receive payments equivalent to the regular cash dividends paid on the underlying stock. On the ex-date for a dividend on the underlying stock, OCC will debit all accounts with a short BOUND position and credit all accounts with a long BOUND position with an amount equal to the dividend on the underlying stock.

At expiration, BOUND holders will receive 100 shares of the underlying stock for each BOUND held if, on the last day of trading, the underlying stock closes at or below the strike price. However, if at expiration the underlying stock closes above the strike price, the BOUND holder will receive a cash payment equal to 100 times the BOUND's strike price. At expiration, persons who have sold a BOUND will be required to deliver either 100 shares of the underlying stock or cash value of the strike price multiplied by 100. This settlement design mimics the economic result of a covered call at the expiration of the call option.

For example, if XYZ BOUND has a strike price of $50 and XYZ stock closes at $50 or less at expiration, the holder of an XYZ BOUND will receive 100 shares of XYZ stock. This is the same result as if the call option in a buy-write position expired out of the money; *i.e.*, the option would expire worthless and the writer would retain the underlying stock. IF XYZ closes above $50 per share, then the holder of an XYZ BOUND will receive $5,000 in cash (100 times the $50 strike price).

It should be noted that BOUNDs are "European" style options. The Exchange believes that a European style BOUND will have greater acceptance among investors than an American style product since a European style BOUND will permit purchasers to receive for a definite period of time the dividend yield provided by the BOUND.

Generally, the Exchange anticipates listing BOUNDs with respect to the same underlying securities that have LEAPs listed on them. The criteria for stocks underlying BOUNDs will be the same as the criteria for stocks underlying LEAPs.

It is anticipated that the sum of the market prices of a LEAP and a BOUND on the same underlying stock with the same expiration month and the same strike price will closely approximate the market price for the underlying stock. If the combined price of the LEAP and BOUND diverge from that of the underlying common stock, there will be an arbitrage opportunity which, when executed, will tend to bring the price relationships back into line.

BOUNDs will have the same strike prices and expiration dates as their respective LEAPs. The Exchange anticipates that it will list new complementary LEAPs and BOUNDs on the same underlying securities annually, or at more frequent intervals, depending on market demand. While the Exchange has current authority to list LEAPs with up to 39 months until expiration, there has been increasing member firm and customer interest in longer term instruments. Therefore, the Exchange is proposing: (i) To amend Exchange Rule 5.8 to permit the listing of LEAPs with up to 60 months (5 years) until expiration, and (ii) to introduce BOUNDs with up to the same five year duration.

BOUNDs will be subject to the position limits for equity options set forth in Exchange Rule 4.11. In addition, BOUNDs will be aggregated with other equity options on the same underlying stock for purposes of calculating position limits. However, since a BOUND, from the perspective of the holder, is the equivalent of a long stock/short call position, long BOUNDs will be aggregated with short call and long put positions. Similarly, since the BOUND, from the perspective of the seller, is the equivalent of a long call/short stock position, short BOUNDs will be aggregated with long call and short put positions. In addition, since BOUNDs are the equivalent to either a long stock/short call or a short stock/long call position, investors in BOUNDs may be eligible for larger positions pursuant to the Exchange's hedged position limit pilot program. Thus, the largest BOUND position that any one person, or group of persons acting in concert, may establish would be 16,000 BOUNDs, *i.e.* two times the maximum regular position limit of 8,000 option contracts.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster

[1] Covered call writing is a strategy by which an investor sells a call option while simultaneously owning the number of shares of the stock underlying the call.

[2] As with all OCC issued options, BOUNDs will be created when an opening buy and an opening sell order are executed. The execution of every such order will increase BOUND open interest. This is not to say, however, that an opening BOUND order cannot be executed against a closing BOUND order. Although a BOUNDs position may be established by executing an opening BOUND order against a closing BOUND order, this transaction would not increase the net open interest in the particular BOUND series.

cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and the national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by September 14, 1992.

For the Commission by the Division of Market Regulation, pursuant to the delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20105 Filed 8-21-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18896; 811-2270]

Nuveen Income Trust, Series 1 Check-A-Month Plan; Application

August 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Nuveen Income Trust, Series 1 Check-A-Month Plan.

RELEVANT ACT SECTIONS: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: Applicant filed the application on March 12, 1992 and amended on May 20, 1992 and July 28, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 8, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272-7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a unit investment trust created under the laws of the State of Illinois pursuant to a Trust Indenture and Agreement dated August 16, 1972 ("Trust Agreement"). On February 18, 1972, applicant registered under the Act and filed a registration statement under the Securities Act of 1933. The registration statement was declared effective and applicant commenced its initial public offering on August 21, 1972.

2. On September 28, 1990, the securities held in applicant's portfolio fell below twenty percent of the original aggregate principal amount of securities deposited therein. In accordance with the Trust Agreement, when the value of the trust fund was reduced to less than twenty percent of the aggregate principal amount of portfolio securities initially deposited in the trust fund, the Trustee, at the direction of the board of directors of applicant, was to terminate and liquidate the trust fund. Applicant's board of directors recommended the dissolution of applicant in August, 1990, after a proposal was received by The First National Bank of Chicago, as trustee for applicant (the "Trustee"), on July 2, 1990.

On September 28, 1990, the Trustee sent a notice of termination to all unitholders stating, among other things, that applicant would be terminated on October 1, 1990. Procedures were set forth therein to enable each unit holder to receive its pro rata share of the final distribution of principal and interest. On April 1, 1991, the Trustee sent a second notice of termination to all unitholders who had not delivered their certificate transmittal to the Trustee and not received final distribution.

4. As of July 22, 1992, 422 units held by 9 unitholders remained outstanding and applicant, through its Trustee, had retained cash in the amount of $24,775.62 in a non-interest bearing account for distribution to these 9 unitholders. The Trustee periodically will send additional notices to the remaining unitholders in an attempt to notify them of applicant's termination and final distribution. In accordance with state law, any assets remaining unclaimed after October 1, 1997 (seven years after the effective date of final distribution) will be presumed abandoned, and will be reported and remitted to the Director of the Illinois Department of Financial Institutions ("Director"). Thereafter, any person claiming an interest in any property previously delivered to the Director must file a claim, and if the claim is allowed, the Director will instruct the

State Treasurer to make payment to the owner.

5. All expenses incurred and to be incurred in connection with the liquidation of applicant and deregistration under the securities laws have been borne by applicant's investment adviser, Nuveen Advisory Corp. Any additional expenses incurred by applicant or the Trustee in the Trustee's attempt to locate the remaining unitholders will be borne by the trust assets of applicant as provided by the Trust Agreement.

6. As of the date of the amended application, applicant had no debts or other outstanding liabilities, and is not a party to any litigation or administrative proceedings. Applicant is not presently engaged, and does not propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20144 Filed 8-21-92; 8:45 am]

BILLING CODE 8010-01-M

[(Release No. 35-25607); International Series Release No. 436]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 14, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 8, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

System Fuels, Inc., et al. (70-7668)

System Fuels, Inc. ("SFI"), 639 Loyola Avenue, New Orleans, Louisiana 70113, a fuel procurement subsidiary company, together with two of its parent companies, Louisiana Power & Light Company ("LP&L"), 317 Baronne Street, New Orleans, Louisiana 70112 and Arkansas Power & Light Company ("AP&L"), 425 West Capitol, Floor 40, Little Rock, Arkansas 72201, each an electric public-utility subsidiary company of Entergy Corporation ("Entergy"), a registered holding company, and System Energy Resources, Inc. ("SERI"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213, also an electric public-utility subsidiary company of Entergy (LP&L, AP&L and SERI collectively referred to as the "Operating Companies"), have filed a post-effective amendment under sections 6(a), 7 and 12(b) of the Act and rule 45 thereunder to their declaration in File No. 70-7668, as amended.

By orders dated September 27, 1989 (HCAR No. 24957) and February 5, 1992 (HCAR No. 25467), the Commission authorized SFI to enter into a credit agreement in order to borrow funds necessary to finance its nuclear materials and service inventory. In accordance with the orders, SFI entered into a credit agreement, dated October 3, 1989 ("Credit Agreement"), with The Yasuda Trust and Banking Company, Ltd., New York Branch ("Yasuda"), as agent for the lenders names therein (collectively, "Banks"), including Yasuda, and the Banks, pursuant to which revolving credit loans ("Loans") are made to SFI in an aggregate principal amount of up to $45 million.

As security for the performance of its obligations under the Credit Agreement, SFI entered into a security agreement with Yasuda dated October 3, 1989, as amended ("Security Agreement"), under which SFI granted Yasuda a security interest in certain nuclear materials, services inventory, accounts receivable and certain other incidental rights and instruments. The Operating Companies, SFI and Yasuda also entered into a consent and agreement, dated October 3, 1989, under which the Operating Companies acknowledged and consented to SFI's grant of a security interest to Yasuda in its accounts receivable arising from certain sales by SFI of nuclear materials and services to the Operating Companies and also entered into certain covenants.

The Credit Agreement will expire on September 30, 1994 unless SFI requests a one-year extension. Therefore, SFI has requested that Yasuda extend the expiration date of the Credit Agreement an additional year until September 30, 1995. As a condition to such an extension, Yasuda has requested that SFI amend the Credit Agreement to provide for an increase in the quarterly commitment fee payable for SFI from 0.15% to 0.18% per annum of the difference between: (i) The amount of the Banks' commitments to make Loans and (ii) the total principal amount of their loans. In addition, Yasuda has requested that SFI amend the Credit Agreement to increase the margin payable on loans bearing interest at the Eurodollar Rate from 0.4375% to 0.5% and on loans bearing interest at the CD Rate from 0.5625% to 0.625%.

Entergy Corporation, et al. (70-8002)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered public-utility holding company, Electec, Inc. ("Electec"), 639 Loyola Avenue, New Orleans, Louisiana 70113, Entergy's wholly-owned nonutility subsidiary company, and Entergy Power, Inc. ("EPI"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, Entergy's public-utility subsidiary company (Entergy together with Electec and EPI "Applicants"), have filed an amended application-declaration under sections 3(a)(5), 3(b), 6(a), 7, 9(a), 10, 12(b), 13(b) and 13(f) of the Act and rules 10, 43, 45, 51, 83, 86, 87, 88, 90, 91 and 93-95 thereunder. The Commission first issued a notice of the filing on June 5, 1992 (HCAR No. 25551; International Series Release No. 396) ("June Notice"). The City of New Orleans and the Arkansas Public Service Commission have requested a hearing. In addition, the Louisiana Public Service Commission filed a request to intervene and requested that it be kept informed of any hearing on this matter. The Mississippi Public Service Commission filed a notice of intervention supporting New Orleans' request for a hearing, and filed a letter expressing its additional concerns. Applicants have materially amended their application-declaration requiring the Commission to issue this supplemental notice.

Entergy has acquired an option ("Option") to participate in a consortium ("Consortium") with other nonaffiliated companies [1] to acquire a 60% interest in

[1] The other Consortium members are: Empresa Nacional de Electricidad, S.A. (approximately 30%); Enersis, S.A., Distribuidora Chilectra Metropolitana

Continued

Argentina's Costanera steam electric generating facility ("Facility") for $90.121 million and to operate and maintain the Facility.[2] The Facility presently is held by Central Costanera, S.A. ("Costanera"), a company wholly owned by the Argentine government and an electric utility company within the meaning of section 2(a) (3) of the Act. The remaining 40% of the shares of Costanera will be held by the Argentine government, with 10% to be transferred to employees of Costanera and the remainder to be sold in Argentina and internationally pursuant to public offerings. The Facility consists of seven natural gas/oil-fired generating units, with a total installed capacity of 1260 megawatts and serves the electricity needs of Buenos Aires. A Chilean member of the Consortium, Empresa Nacional de Electricidad, S.A., will operate the Facility.

Entergy seeks authority to exercise its Option prior to November 11, 1992, and thus to acquire indirectly up to a 6.002% voting interest in Costanera. Entergy's obligations will not exceed $22.5 million. Entergy's principal obligations will be the following: (1) To pay its percentage share of the Consortium's "common expenses" in connection with the submission of the bid to acquire 60% of Costanera; (2) to pay its share of the purchase price to the appropriate members of the Consortium, to make the required working capital contributions and to assume certain contingent liabilities of Costanera; [3] and (3) not to assign or dispose of its equity share in Costanera for a period extending five years after May 20, 1992 unless otherwise agreed by, among others, the Government of Argentina. The Consortium members' principal rights, with respect to Costanera, are to have no more than two voting members out of three on the Comptrolling Committee [4] of Costanera, and to have five voting members out of eight voting members on the Board of Directors of Costanera.[5]

For tax reasons, Applicants anticipate that Entergy, through Electec, will form a new wholly owned subsidiary ("Entergy, S.A."), organized under Argentine law, to purchase and exercise indirectly the Option. Entergy will purchase up to 22,500 shares of Electec for $1000 per share, and Electec, in turn, will acquire virtually all the common stock of Entergy S.A.[6] Entergy S.A. then will purchase shares of the common stock of Costanera for $9.01 million.

Since the June Notice, the Consortium has formed a new Argentine company ("Argelec") to administer the 60% collective ownership interest of its members in Costanera. Applicants now propose that Entergy S.A. acquire a 10% interest in Argelec. It is stated that initially Argelec will have no employees or assets, will be nominally capitalized (a maximum of $30,000), and will not own, control, or hold with power to vote any of the voting securities of Costanera. Applicants stated that all of such securities will be held directly by the individual members of the Consortium. If, however, the Consortium members at some time in the future determine to transfer their ownership interest in Costanera to Argelec, Argelec will be a holding company within the meaning of section 2(a) (7) of the Act.

Electec seeks authority to provide consulting services to Costanera with respect to management, technical, operating, environmental and fuel supply training services on a competitive fee basis, which Applicants represent will neither favor nor discriminate against affiliates of Costanera. Applicants, however, make no representation that the consulting services to be provided to Costanera will be provided at greater than or less than cost. Electec expects that on an annual basis the provision of such services may range up to a maximum of $1 million, with the average likely to be substantially less. Applicants request that any possible consulting arrangement between Electec and Costanera be exempt from section 13 and the rules promulgated thereunder.

Electec may obtain services from its associate companies, Arkansas Power & Light Company ("AP&L"), Louisiana Power & Light Company ("LP&L"), Mississippi Power & Light Company ("MP&L"), New Orleans Public Service Inc. ("NOPSI"), EPI and Entergy Services, Inc. ("ESI") to carry out its consulting arrangements with Costanera. Electec will reimburse its associate companies at cost. Electec has been previously authorized to obtain services from AP&L, LP&L, MP&L, NOPSI and ESI (HCAR No. 23200, January 13, 1984).

Applicants request authorization for Electec to obtain services from EPI directly and for Electec to reimburse EPI at cost. EPI represents that it is not requesting authority in this application-declaration to purchase services from any other affiliate company.

As a result of the proposed transactions, Entergy S.A. and Argelec will become subsidiary companies of Entergy within the meaning of section 2(a)(8) of the Act; Entergy S.A., Argelec (should it hold the Consortium's interest in Costanera), and Electec will be holding companies within the meaning of section 2(a)(7) of the Act; and Costanera will be an affiliate of Entergy within the meaning of section 2(a)(11)(A) of the Act. Applicants state that a change in the structure of this transaction may be required by the Act.

Applicants request an order under section 3(b) exempting Entergy S.A. and Argelec, as subsidiary companies, from all provisions of the Act, and under section 3(a)(5), exempting Entergy S.A., Argelec, and Electec as holding companies, from all provisions of the Act.

Applicants state that Entergy S.A. and Argelec will derive their income, directly or indirectly, only from Argentine sources and that neither Entergy S.A. nor Argelec nor any of their subsidiaries is a public-utility company operating within the United States. In addition, should Entergy S.A., Argelec, and Electec become holding companies, Applicants state that Entergy S.A., Argelec, and Electec will derive no material part of their income from subsidiary companies, which are companies the principal business of which within the United States is that of a public-utility company.

S.A. (collectively, 12%); Inter-Rio Holdings Establishment (approximately 7.50%); Perez Companc S.A.C.F.I.M.F.A. and Sade S.A.C.C.I.F.I.M. (collectively, approximately 7.50%); and PSI resources Inc. (approximately 3.0%, with an option to acquire an additional 3.0%).

[2] All monetary amounts are given in United States dollars.

[3] The principal contingent liability includes the joint assumption by Costanera and the members of the Consortium in accordance with their respective percentage interests of a $95 million, 20-year maturity, 1.5% interest rate loan from the Italian government to be utilized for the refurbishment of the Facility. Costanera also has $66 million of short-term debt payable to Gas del Estado, YPF, and Banco de Nacion.

Interest is payable as part of the $9.01 million purchase price for the approximately 6.0% interest of Costanera and on any additional working capital contribution required and is payable at the rate of 2.5% per month during the six-month period in which the Option is exercisable by Entergy; interest is also payable on Entergy's share of the "common expenses" at the LIBOR rate for 180-day U.S. dollars; no interest is payable if the Option is not exercised.

[4] The Comptrolling Committee ("Comision Fiscalizadora") in Argentine corporations represents the shareholders before the Board of Directors.

[5] There is a requirement that the 40% of the shares of Costanera not acquired by the Consortium Members be represented on the Board; the employees eventually will be entitled to one voting member, while the public shareholders eventually will be entitled to two voting members. Each member of the Board of Directors will have one vote.

[6] One share of Entergy S.A. will be held by a nominee of Electec in order to conform with Argentine law.

Entergy Corporation, et al. (70–8010)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered public-utility holding company, Electec, Inc. ("Electec"), 639 Loyola Avenue, New Orleans, Louisiana 70113, Entergy's wholly owned nonutility subsidiary company, and Entergy Power, Inc., 425 West Capitol Avenue, Little Rock, Arkansas 72201, Entergy's public-utility subsidiary company, have filed an amended application-declaration under section 2(a)(8), 3(a)(5), 3(b), 6(a), 7, 9(a), 10, 12(b), 13(b) and 13(f) of the Act and rules 10, 43, 45, 51, 83, 86, 87, 90, 91 and 95 thereunder. A notice of this application-declaration was previously issued on July 10, 1992 (HCAR No. 25579) ("July Notice"). The City of New Orleans and the Arkansas Public Service Commission have requested a hearing and the Mississippi Public Service Commission has filed a notice of intervention. Applicants have materially amended their application-declaration requiring the Commission to issue this supplemental notice.

The July Notice reported that the applicants seek authority, among other things, to invest up to $50 million in one of two newly formed Argentine electric-utility companies that will own and operate transmission and distribution systems in the City of Buenos Aires and the surrounding area ("Distribution Company"). Entergy acquired an option (the "Option") to participate in a consortium ("Consortium") with five other nonaffiliated entities to acquire from the government of Argentina, pursuant to public competitive bidding, a 51% interest in Distribution Company.

The July Notice indicated that upon a successful bid, the members of the Consortium would form Investor Company to acquire the 51% ownership interest in Distribution Company. Entergy Argentina S.A. ("Entergy Argentina"), a proposed to-be-formed wholly owned Argentine subsidiary company of Electec, proposed to acquire up to 15% of Investor Company and thus to acquire indirectly up to a 7.7% voting interest in Distribution Company.

The July Notice also stated that Entergy's share of the costs and contingent liabilities in connection with the acquisition and ownership of its indirect interest in Distribution Company over approximately the next three years was not expected to exceed $50 million. To finance its investment, Entergy proposed to acquire up to 50,000 shares of the common stock of Electec for $1,000 per share.

Since publication of the July Notice, the Consortium through Investor Company, won the bid and was awarded the right to acquire 51% of Edesur S.A. ("Edesur") for $511 million. Edesur has a franchise to provide electric distribution and marketing services in the southern sector of the City of Buenos Aires and the surrounding area which currently contains approximately 1.9 million customers with aggregate sales of 6000 gwh/year.

According to the amended application-declaration, Entergy Argentina now proposes to acquire up to 10% of Investor Company, and thus acquire indirectly up to a 5.1% voting interest in Edesur. Entergy's share of the costs and contingent liabilities in connection with the acquisition and ownership of its indirect interest in Edesur over approximately the next three years is now not expected to exceed $77.5 million.[7] In addition, to finance its investment, Entergy proposes to acquire up to 77,500 shares of the common stock of Electec for $1,000 per share. In all other respects the application-declaration remains unchanged.

The Columbia Gas System, Inc., et al. (70–8011)

The Columbia Gas System, Inc., ("Columbia"), a registered holding company, its wholly-owned subsidiary, the Inland Gas Company, Inc. ("Inland"), both at 20 Montchanin Road, Wilmington, Delaware 19807, and Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), 200 Civic Center Drive, Columbus, Ohio 43215, and Columbia Natural Resources, Inc. ("Columbia Natural"), 900 Pennsylvania Avenue, Charleston, West Virginia 25302, each a wholly-owned subsidiary company of Columbia, have filed an application-declaration pursuant to section 2(a)(4), 9(a), 10, 12(d) and 12(f) of the Act and rules 43 and 44 thereunder.

Inland proposes to sell and transfer, and Columbia Natural proposes to acquire, Inland's natural gas production and gathering facilities at their current net book value of approximately $3 million. Inland also proposes to sell and transfer, and Columbia Kentucky proposes to acquire, Inland's transmission facilities at their current net book value of approximately $2 million. Miscellaneous facilities necessary to continue service to American Natural Rubber Company, a nonaffiliated company, will be sold to Mountaineer Gas Company, also a nonaffiliated company, for $3,000. Inland's remaining facilities, located primarily in Ohio and West Virginia, will be abandoned in place. The total book value of assets, for which Inland has found no purchaser, that will be written off is approximately $654,000.

Columbia Kentucky and Columbia Natural, as an obligation of ownership of Inland's facilities following their acquisition, will also assume certain of Inland's service obligations. Inland's service obligations consist of the sale and/or transportation of natural gas to its customers who are served as required by Kentucky law ("KRS Customers"—under Kentucky Revised Statutes 278.485, the owner of a gathering line who obtains gas from producing wells in Kentucky must furnish gas service to the owner of property located within one-half air-mile of the line or well), individual contracts, rights-of-way agreements or Federal Energy Regulatory Commission approved tariffs.

Columbia Natural requests an order from the Commission pursuant to section 2(a)(4) of the Act declaring Columbia Natural not to be a gas utility company. It is stated that Columbia Natural not to be a gas utility company. It is stated that Columbia Natural has been and will continue to be (after its acquisition of Inland's natural gas production and gathering facilities) primarily engaged in the business of producing gas. Columbia Natural states that it will not be seeking to provide a gas utility service to end-use residential customers, although it will serve the KRS Customers currently being served by Inland.

Columbia Gas System, Inc., et al. (70–8012)

The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and TriStar Ventures Corporation ("TVC"), a wholly owned nonutility subsidiary of Columbia, both located at 20 Monchanin Road, Wilmington, Delaware 19807, and the following wholly owned subsidiaries of TVC, TriStar Binghamton General Corporation and TriStar Binghamton Limited Corporation (collectively, the "Binghamton Cogeneration Subsidiaries"), TriStar Vineland General Corporation and TriStar Vineland

[7] The principal contingent liabilities include the assumption by the Investor Company in the event of a default by Edesur of certain short-term debt of Edesur. At the time of transfer to the winning bidders, Edesur will have short-term debt of approximately $136 million, payable not later than December 1, 1992. Any obligations flowing from such contingent liabilities are included within Entergy's request for authorization to invest indirectly up to $77.5 million in Investor Company. Edesur currently intends to seek permanent financing on more favorable terms in amounts up to approximately $250 million, the proceeds of which would be applied, first, to repay its outstanding short-term debt and the balance to finance Edesur's working capital needs, including capital improvements.

Limited Corporation (collectively, the "Vineland Cogeneration Subsidiaries") and TriStar Georgetown General Corporation and TriStar Georgetown Limited Corporation (collectively, the "Georgetown Cogeneration Subsidiaries"), of the same address as Columbia (collectively, the "Cogeneration Subsidiaries"), and the following indirect subsidiaries of TVC, Vineland Cogeneration Limited Partnership ("VCLP"), 1199 Black Horse Pike, Pleasantville, New Jersey 08232, and Georgetown Cogeneration, L.P. ("GCLP"), P.O. Box 26532, Richmond, Virginia 23261, have filed an application-declaration with this Commission under sections 6(a), 7, 9(a), 10, 12(c), and 13 and rules 43, 45, 50(a)(5), 51, 87(b)(1), 90, and 91 thereunder.

Pursuant to previous Commission authorization,[8] TVC has participated in several limited partnerships which engage in cogeneration ventures. These partnerships include the Binghamton Cogeneration Limited Partnership ("BCLP"), the VCLP and the GCLP. The BCLP is constructing a 50 MW facility located in Binghamton, New York, in which the Binghamton Cogeneration Subsidiaries hold an aggregate 33.3% interest. The facility has been project financed, is under construction and is expected to become operational in August 1992. VCLP, in which the Vineland Cogeneration Subsidiaries hold a 50% interest, is constructing a 46 MW facility located in Vineland, New Jersey. The Georgetown Cogeneration Subsidiaries hold an aggregate 50% interest in GCLP, which proposes to construct a 56 MW facility on the Georgetown University campus in Washington, DC. The projects have been certified as qualifying cogeneration facilities ("QF's") under the Public Utility Regulatory Policies Act of 1978 and the regulations thereunder.

The Columbia, TVC and the Cogeneration Subsidiaries, request authority to make equity and contingent equity contributions to these three limited partnerships. Under Equity Contribution Agreements relating to each venture, the Cogeneration Subsidiaries would not normally be required to make their equity contributions in full until commercial operation of the facilities. However, because of Columbia's bankruptcy proceeding [9] and its impact on TVC's credit, lenders will require that such contributions be made, through escrow accounts, letters of credit or other arrangements, at financial closing of these projects.

In order to finance its equity contributions, TVC proposes to issue and sell, and Columbia proposes to acquire, through December 31, 1993, up to $25 million of common stock of TVC, $25 par value, for $290 per share and/or installment promissory notes ("Notes"). The Notes would bear a fixed interest rate to be determined at the time of issuance based upon the preceding calendar quarter three-month average yield on newly issued "A" rated 25–30 year utility bonds as published in Salomon Brothers' weekly Bond Market Roundup or 2% per annum above the foregoing applicable rate if interest or principal payment on the Notes becomes past due. The Notes will be payable in installments over a period not to exceed 30 years and will be dated the date of their issue.

TVC in turn proposes to acquire shares of common stock to be issued by the Cogeneration Subsidiaries in order for them to make their respective equity and contingent equity contributions: the Binghamton Cogeneration Subsidiaries will contribute up to $9.6 million to BCLP; the Vineland Cogeneration Subsidiaries will contribute up to $9.9 million to VCLP; and the Georgetown Cogeneration Subsidiaries will contribute up to $8.3 million to GCLP. The funds for TVC's purchases of the Cogeneration Subsidiaries' securities will be derived from: (i) TVC's issuance of stock or installment promissory notes to Columbia of up to $25 million; and (ii) up to $2.6 million of TVC's cash on hand and development costs to be refunded at the closing of project financing for two of the projects.

VCLP and BCLP request authority to engage in project financing. VCLP is seeking authority to issue notes to banks up to $73 million in connection with the issuance of electric energy facility revenue (tax-exempt) bonds by the New Jersey Economic Development Authority. Interest on the unrated bonds is expected to be approximately 8¾% and is not expected to exceed 12%.

Maturity of the bonds will be 27 years or less. The costs of the construction of the facility to be paid from the proceeds of the bonds include costs to be paid under the Turnkey Construction Contract between VCLP and National Energy Production Company, a subsidiary of Zurn Industries, Inc., and costs to be paid to Cogeneration Partners of America, a New Jersey partnership 50% owned by TVC which provides administrative services relating to QF projects, under the terms of a management agreement. If the Vineland Cogeneration Subsidiaries do not have sufficient funds to place their equity and contingent equity commitments by financial closing of the project, they expect to sell their interests and retain an option to repurchase those interests.

GCLP is also seeking authority to issue up to $66.4 million in notes in connection with commercial construction and term loan financing with a group of banks. The loans would be evidenced by a note for a term not to exceed 15 years, with an interest rate that would not exceed either: (i) The sum of LIBOR plus two percent or the lender's alternate base rate plus one percent for the construction loan; or (ii) LIBOR plus two percent or the lender's alternate base rate plus two percent for the term loan. Interest rate protection plans would be entered into with respect to the construction loan and, for an initial ten-year period, for at least 75% of the term loan, at an interest rate not to exceed 11%. Financial closing is anticipated for October 1992. The financing will be non-recourse to the partners except to the extent of their pledge of their interest in the GCLP and their obligations to make equity contribution commitments.

In addition to the investments described above, TVC seeks authority, through December 31, 1994, to the extent that funds are available from cash on hand or development cost refunds, to invest directly or indirectly up to $10 million in its preliminary development and administrative operations. Such preliminary development and administrative activities would be conducted by TVC directly or indirectly through the Cogeneration Subsidiaries or subsidiaries thereof. The proposed investment would be made either through promissory notes, the purchase of common stock or through capital contributions. TVC states that preliminary development activities would include, but not be limited to, the investigation of sites, preliminary engineering and licensing activities, acquiring options and rights, contract drafting and negotiating, preparation of proposals and the other necessary activities to identify and analyze feasible investment opportunities and to initiate the commercialization of a project. Administration would include the ongoing personnel, accounting, engineering, legal, financial and other support activities necessary for TVC to manage its investments in QF's. TVC represents that once it decides to proceed beyond such preliminary development, additional acquisitions of partnership interests, joint ventures or investments in other entities would be subject to prior Commission approval or conditioned upon receipt of Commission authorization.

The applicants request an exception from the competitive bidding requirements of rule 50 pursuant to rule 50(a)(5) for the proposed transactions (except for the issuance of common stock and installment promissory notes by TVC and of securities by the Cogeneration Subsidiaries, which applicants assert is exempt from such requirements under rule 50(a)(3)). The applicants state that competitive bidding is not necessary or appropriate to aid the Commission in its determination whether the fees, commissions or other remuneration to be paid in connection with such transactions is reasonable. The applicants may negotiate with leanders in connection with the above proposed transactions.

[8] HCAR No. 24199 (September 26, 1986) (authorized the organization of TVC; authorized TVC to issue and sell up to $25 million of common stock and/or installment promissory notes to Columbia); HCAR No. 24199–A (November 5, 1986) (TVA authorized to make investments through wholly-owned subsidiaries; authorized TVC to issue and sell up to $25 million of common stock and/or installment promissory notes to Columbia); HCAR No. 24554 (December 31, 1987) (extended TVC's financing authority); HCAR No. 24569 (January 29, 1988) (extended TVC's financing authority and authorized an additional $25 million of financing for TVC).

[9] Columbia is currently a debtor in possession under Chapter 11 of the Bankruptcy Code. Columbia and its wholly owned subsidiary company, Columbia Gas Transmission Corporation ("Transmission"), filed separately for protection with the Bankruptcy Court for the District Court of Delaware on July 31, 1992. The cases have been consolidated for procedural purposes and are jointly administered under the caption In re The Columbia Gas System, Inc. and Columbia Gas Trans. Corp., No. 91–804. Transmission is not a party to this application-declaration.

Southwestern Electric Power Company (70–8041)

Southwestern Electric Power Company ("SWEPCO"), 428 Travis Street, Shreveport, Louisiana 71101, an electric public-utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(c) of the Act and rules 42(a), 50, and 50(a)(5) thereunder.

SWEPCO proposes to issue and sell First Mortgage Bonds ("New Bonds") in an aggregate principal amount up to $320 million in one or more series from time to time through December 31, 1994. The New Bonds would have maturities not less than five years nor more than thirty years. The New Bonds will be issued under SWEPCO's Indenture dated February 1, 1940, as amended and supplemented.

The proceeds from the sale of the New Bonds will be used principally to redeem all or a portion of one or more series of SWEPCO's outstanding First Mortgage Bonds, including Series I, $30 million, 4⅝%, due April 1, 1993 ("Series I Bonds"); Series K, $35 million, 9%, due December 1, 1999 ("Series K Bonds"); Series N, $45 million, 8¾%, due May 1, 2006 ("Series N Bonds"); Series O, $50 million, 8¾%, due August 1, 2008 ("Series O Bonds") and Series T, $55.5 million, 8.85%, due May 1, 2016 ("Series T Bonds") at the then current general redemption price (currently, 100.00%, 102.30%, 103.93%, 104.53% and 106.11% of the principal amount of the Series I Bonds, Series K Bonds, Series N Bonds, Series O Bonds and the Series T Bonds, respectively), plus accrued and unpaid interest to the redemption date. The proceeds may also be used to purchase through a tender offer all or a portion of an additional series of SWEPCO's outstanding First Mortgage Bonds, or to repay all or a portion of SWEPCO's outstanding $50 million Variable Rate Bank Loan (the "Bank Loan") due June 15, 1997. The Series I Bonds, Series K Bonds, Series N Bonds, Series O Bonds, the Series T Bonds and the bonds which may be subject to a tender offer are referred to herein as the "Old Bonds".

Any net proceeds not used for the redemption or repurchase of the Old Bonds will be used to repay outstanding short-term borrowings or for other general corporate purposes. In the event the proceeds from the issuance of the New Bonds are less than the amount required to redeem all of any series of SWEPCO's Old Bonds being redeemed or purchased, or the Bank Loan, SWEPCO will pay a portion of the redemption or tender price from internally generated funds or available short-term borrowings.

Since the Old Bonds were issued or the Bank Loan incurred, there has been a significant reduction in long-term interest rates. SWEPCO will not issue the New Bonds unless the estimated present value savings (derived from the net difference between interest payments on any New Bonds to be issued for refunding purposes and the Old Bonds and the Bank Loan) is, on an after-tax basis, greater than the present value of all redemption and issuance costs, assuming an appropriate discount rate.

SWEPCO seeks authority to issue the New Bonds with terms which deviate from provisions contained in the Commission's Statement of Policy Regarding First Mortgage Bonds, as amended (HCAR Nos. 13105 and 16369). The New Bonds may include terms which (i) limit SWEPCO's ability to redeem or refund the New Bonds for a period up to fifteen years, (ii) do not include a sinking fund or retirement fund requirement, and/or (iii) do not restrict SWEPCO's ability to pay dividends on its common stock.

SWEPCO requests authority to sell the New Bonds either: (i) pursuant to competitive bidding pursuant to rule 50 or, in the case of a delayed or continuous offering and sale pursuant to rule 415 under the Securities Act of 1933, as amended, the alternative bidding procedures as permitted by HCAR No. 22623 (September 2, 1982); or (ii) in a negotiated transaction with underwriters or agents. SWEPCO therefore requests authority to enter into negotiations with potential underwriters with respect to the interest rate, redemption provisions and other terms and conditions applicable to the New Bonds. It may do so.

New England Electric System (70–8043)

New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed a declaration under sections 6(a), 7 and 12(c) of the Act and rule 42 thereunder.

By prior order dated September 21, 1990 (HCAR No. 25155), NEES was authorized to issue short-term promissory notes to banks up to a maximum aggregate principal amount outstanding at any one time not to exceed $100 million. This borrowing authority expires on October 31, 1992.

NEES now proposes to issue short-term promissory notes to banks from time-to-time between November 1, 1992, and October 31, 1995. The maximum aggregate principal amount of such notes to be outstanding at any one time will not at any time exceed $100 million. NEES currently does not expect to incur short-term borrowings during the applicable period, but believes the requested short-term borrowing authority is necessary in order for it to be prepared for unforeseen events.

The proposed borrowings by NEES will be evidenced by notes maturing in less than one year from the date of issuance. NEES will negotiate with banks the interest costs of such borrowings. NEES pays fees to the banks in lieu of compensating balance arrangements. The effective interest cost of borrowings from a bank will not exceed the greater of the bank's base or prime lending rate, or the rate published in the Wall Street Journal as the high federal funds rate, plus, in either case, one percent. Based on the current base lending rate of 6% and an equivalent or lower high federal funds rate, the effective interest costs of such borrowing would not exceed 7% per annum.

Certain of such borrowings may be without prepayment privileges. Payment of any short-term promissory notes prior to maturity will be made on the basis most favorable to NEES, taking into account fixed maturities, interest rates, and any other relevant financial consideration.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-20106 Filed 8-21-92; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-18895; 811-6249]

Seahawk Capital Corp.; Application

August 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Seahawk Capital Corporation ("Seahawk").

RELEVANT 1940 ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Seahawk seeks an order declaring that its registration under section 8 of the Act has ceased to be in effect. Such an order would be retroactively effective as of February 6, 1992, the date on which Seahawk filed a Notification of Election to be Subject to section 55 through 65 of the Investment Company Act of 1940 Filed Pursuant to section 54(a) of the Act on Form N-54A.

FILING DATE: The application was filed on May 28, 1991 and amended on April 16, 1992 and July 10, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 8, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 18552 MacArthur Boulevard, Suite 395, Irvine, California 92715.

FOR FURTHER INFORMATION CONTACT: Marilyn Mann, Special Counsel, at (202) 504-2259, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations and Legal Analysis

1. Seahawk, a New Jersey corporation, was primarily an operating oil and gas company from its inception in 1979 until November 1989. Seahawk has 13,136,980 shares of common stock outstanding and approximately 4,500 shareholders.

2. In late 1989, after an extensive evaluation of industry changes and prospects for the oil and gas industry, the management and board of directors of Seahawk determined that Seahawk should discontinue its domestic operations as a small oil and gas development company. In November 1989, Seahawk sold substantially all of its domestic oil and gas properties, while retaining its interest in certain foreign oil and gas prospects in Belize, Central America and Sierra Leone, Africa. The sale of Seahawk's domestic oil and gas properties was approved by stockholders of Seahawk at a special meeting held on November 13, 1989.

3. A portion of the cash proceeds from its sale of domestic oil and gas properties were used by Seahawk to discharge transactional costs and expenses and to retire all of its outstanding indebtedness. In a proxy statement dated September 29, 1989, Seahawk stated that "[t]he corporate plan for [Seahawk] is to acquire a profitable, private company that will enable [Seahawk] to make maximum use of its approximately $10,600,000 tax loss carry forward."

4. Pending location of such a business opportunity, Seahawk invested the remaining cash proceeds of the sale of its domestic oil and gas properties in, among other things, the common stock of Mobil Oil Corporation, in covered call options with respect to that stock, and in put options on Phillips Petroleum Company stock. Later, Seahawk disposed of its shares of oil company stock and related options and invested the proceeds in government securities, shares of money market funds, and other liquid assets. As of March 31, 1992, approximately 81% of Seahawk's assets on a consolidated basis were invested in interest bearing money market checking accounts.

5. Notwithstanding active investigation and negotiations, business opportunities for reinvestment of Seahawk's cash proceeds were slower to develop than management had anticipated in late 1989. On November 29, 1990, Seahawk filed an application with the Commission for an order pursuant to section 3(b)(2) of the Act declaring that Seahawk was not an investment company or, in the alternative, for an order under section 6(c) of the Act exempting Seahawk from all provisions of the Act. Seahawk withdrew this application on March 25, 1991.

6. On March 4, 1991, Seahawk filed a notification on Form N-8A of Seahawk's registration under section 8(a) of the Act. However, Seahawk believes that the amount of its assets are insufficient to enable it to economically justify the cost of registration or to adequately compensate a registered investment adviser. On May 28, 1991, Seahawk filed an application under section 8(f). On February 6, 1992, Seahawk filed an election on Form N-54A to be a business development company ("BDC") within the meaning of sections 55 through 65 of the Act. That action was authorized at a meeting of Seahawk's board of directors held on January 15, 1992.

7. Seahawk is currently operating as a closed-end diversified management investment company and a BDC,[1] and is engaged in exploring investment opportunities for the purpose of acquiring equity interests in privately-held business enterprises.

8. Seahawk's election to be a BDC, by virtue of section 6(f) of the Act, exempts Seahawk from the registration provisions of section 8 of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 92-20143 Filed 8-21-92; 8:45 am]
BILLING CODE 8010-01-M

[1] The application contains certain statements regarding Seahawk's present compliance with the provisions of the Act relating to BDCs. Seahawk acknowledges, however, that the Division of Investment Management has not given any opinion or assurance with respect to Seahawk's present compliance, or ability to comply in the future, with the provisions of the Act relating to BDCs.

[Rel. No. IC-18894; 812-7800]

Thomson Fund Group, et al.; Application

August 14, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Thomson Fund Group ("TFG"); Cash Accumulation Trust ("CAT"); and Thomson Advisory Group L.P. (the "Adviser").

RELEVANT ACT SECTIONS: Order requested under section 6(c) exempting applicants from sections 13(a)(2), 13(a)(3), 17(a)(1), 18(f)(1), 22(f) and 22(g) and rule 2a-7 thereunder, and pursuant to section 17(d) and rule 17d-1 thereunder to permit certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek an order under section 6(c) of the Act exempting them from sections 13(a)(2), 17(a)(1), 18(f)(1), 22(f) and 22(g) and rule 2a-7 thereunder, and under section 17(d) and rule 17d-1 thereunder that would permit TFG and CAT to offer deferred compensation agreements (the "Agreements") to their trustees who are not interested persons within the meaning of section 2(a)(19). To enable TFG and CAT to meet their obligations under the Agreements, the order would permit them to purchase their own shares and shares of affiliated investment companies, and to sell their shares to affiliated investment companies. The order also would exempt one series of TFG from section 13 (a)(3) to enable it, without a shareholder vote, to purchase shares of affiliated investment companies to fulfill its obligations under the agreements, notwithstanding an investment policy that would not permit such purchases.

FILING DATES: The application was filed on October 9, 1991 and amended on March 17, 1992 and June 30, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 8, 1992, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o J.B. Kittredge, Ropes & Gray, One International Place, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Maura A. Murphy, Staff Attorney, at (202) 272-7779 or Barry D. Miller, Senior Special Counsel, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. TFG and CAT are registered open-end management investment companies advised by the Adviser. TFG has ten series and CAT has three series. Applicants request that the exemptions it requests, other than the exemption from section 13(a)(3) (which, as described below, applies only to Thomson U.S. Government Fund) also apply to any registered open-end investment company for which the adviser subsequently serves as investment adviser.

2. Each of TFG and CAT has a board of trustees consisting on nine persons, seven of whom are not interested persons of the applicants within the meaning of section 2(a)(19). Trustees who are not interested persons receive annual fees for their services plus meeting attendance fees and additional fees for service on board committees. For 1992, TFG estimates that the aggregate amount paid to trustees for their services will be $107,000 and CAT estimates that the aggregate amount paid to trustees for their services will be $101,400, which in each case represents a *de minimis* amount of net assets. No trustee who is an interested person receives an remuneration from TFG or CAT.

3. TFG and CAT propose to enter into Agreements with individual trustees The Agreements would permit the trustees to elect to defer receipt of their trustees' fees in order to defer payment of income taxes or for other reasons.

4. Under each Agreement, the deferred fees will be credited to a book reserve account (the "Deferred Fee Account"), established by TFG or CAT with respect to each of its series, as of the date the fees would have become payable to the trustee.

5. The value of the Deferred Fee Account on any day shall be equal to the value it would have had if the deferred fees credited to it had been invested in certain designated securities (the "Underlying Securities") as of the date the fees were credited. The Deferred Fee Account shall be credited or charged with book adjustments representing all interest, dividends, and other earnings, and all gains and losses that would have been realized if the Deferred Fee Account had been invested in the Underlying Securities.

6. The underlying Securities will be shares of such series of either TFG or CAT as the Board of Trustees and the participating trustee shall have agreed upon in writing from time to time. Thus, for example, shares of a stock fund could be Underlying Securities with respect to deferred fees payable by a bond or money market fund, or vice versa.

7. Applicants also request an exemption from section 13(a)(3) to enable Thomson U.S. Government Fund (the "Government Fund"), a series of TFG, to purchase shares of affiliated investment companies as Underlying Securities without a shareholder vote. The Government Fund has an investment policy that prohibits it from investing, without shareholder approval, in any securities other than U.S. government securities, repurchase agreements relate thereto, put and call options thereon, futures contracts with respect to U.S. government securities, and options on such futures contracts. This policy would prevent the Government Fund from purchasing shares of any other series of TFG or any series of CAT without a shareholder vote.

8. Under deferred compensation arrangements now in existence, certain trustees have deferred receipt of their compensation on a basis similar to that proposed under the Agreements, except that under the existing arrangements each trustee is entitled to receive an amount equal to the amount that such deferred compensation would have had if it had been invested in the series to TFG or CAT for which the trustee rendered services. Applicants will not transfer any amounts from the existing deferred fee arrangements to any Deferred Fee Account created under the Agreements in reliance upon any order issued in connection with this application.[1]

[1] Applicants have not requested, and any order will not grant, an exemption to allow the implementation or continuance of the existing deferred compensation arrangements.

9. The obligations to make payments from the Deferred Fee Accounts will be general unsecured obligations of the series of TFG and CAT, and payments from the Deferred Fee Accounts will be made from the series; general assets and property.

10. The Agreements will not obligate TFG or CAT to purchase, hold, or dispose of any investments, but, if TFG or CAT chooses to purchase investments to cover its obligations under the Agreements, then any and all such investments will continue to be a part of the general assets and property of TFG or CAT. As a matter of prudent risk management, both TGF and CAT intend and, with respect to any money market series that values its assets by the amortized cost method, undertake to purchase and maintain Underlying Securities in the amounts credited to the Deferred Fee Accounts.

11. Under the Agreements, a trustee may elect to defer payment of fees from TFG or CAT until: (a) The trustee dies or ceases to serve as a trustee; (b) the dissolution, liquidation, winding up, or disposition of all or substantially all assets of TFG or CAT; or (c) the merger or consolidation of TFG or CAT, unless the Board of Trustees determines in advance that the Agreements shall survive such merger or consolidation. Payments shall be made in a lump sum or in up to ten annual installments. In the vent of the trustee's death, the deferred compensation will be paid to his or her designated beneficiary. In all other situations, the trustee's right to receive payments will be nontransferable.

12. Deferral of trustees' fees in accordance with the Agreements will have no effect on each series's net assets or net income per share because each series will hold Underlying Securities in an amount equal to the balance in the Deferred Fee Accounts, so that the amount of TFG's or CAT's liability for deferred fees will be exactly offset by the value of the Deferred Fee Accounts.

13. The Agreements will not obligate TFG or CAT to retain the services of any trustee, nor will they obligate TFG or CAT to pay any particular level of compensation to any trustee.

Applicants' Legal Analysis

1. Applicants believe that the Agreements are in the best interest, TFG, CAT, and their shareholders, and that the Agreements will enhance the ability of TFG and CAT to attract and retain qualified trustees to serve on their Boards of Trustees. Applicants believe that the proposed arrangements are necessary and appropriate in the public interest, consistent with the protection of investors, and with the purposes fairly intended by the policy and provisions of the Act.

2. Section 18(f)(1) generally prohibits a registered open-end investment company from issuing senior securities. Section 13(a)(2) requires that an open-end company obtain shareholder authorization before issuing any senior security not contemplated by the recitals of policy in its registration statement. Applicants contend that the Agreements possess none of the characteristics of senior securities that led Congress to enact sections 18(f)(1) and 13(a)(2). The Agreements would not: (a) Induce speculative investments or provide opportunities for manipulative allocation of TFG's or CAT's expenses or profits; (b) affect control of TFG or CAT; (c) confuse investors or convey a false impression as to the safety of their investments; or (d) be inconsistent with the theory of mutuality of risk. All liabilities created by credits to Deferred Fee Accounts would be offset by equal amounts of assets that would not remain in TFG or CAT if the trustees' fees were paid on a current basis.

3. Section 22(f) bars undisclosed restrictions on transferability or negotiability of redeemable securities issued by open-end investment companies. The Agreements would set forth all such restrictions, which would be included primarily to benefit the participating trustees and would not adversely affect the interests of such trustees or of any shareholder.

4. Section 22(g) prohibits a registered open-end investment company from issuing any of its securities for services or for property other than cash or securities. This provision prevents the dilution of equity and voting power that can result when securities are issued for consideration that is not readily valued. Applicants assert that the Agreements would not dilute shareholders' equity or voting powers. In addition, although any trustees fees would clearly be paid in return for services, the Agreements would provide for deferral of payment of such fees rather than for issuance of securities in return for services.

5. Section 17(a)(1) generally prohibits an affiliated person of a registered investment company, or any affiliated person of such person, from selling any security to such registered investment company. Pursuant to section 2(a)(3), the Adviser is an affiliated person of each series of TFG and CAT, so that each series is an affiliated person of an affiliated person of each other series and is subject to the prohibitions of section 17(a)(1). Applicants believe that an exemption from this provision would facilitate the matching of each series' liability for deferred fees with the Underlying Securities that would determine the amount of such liability.

6. Section 13(a)(3) provides that no registered investment company shall, unless authorized by the vote of a majority of its outstanding voting securities, deviate from any investment policy that is changeable only if authorized by shareholder vote. Applicants believe that it is appropriate to exempt the Government Fund from section 13(a)(3) so as to enable it to invest in Underlying Securities without a shareholder vote. The value of the Underlying Securities will be *de minimis* in relation to the total net assets of the Government Fund, and will at all times equal the value of the Government Fund's obligations to pay deferred fees. Changes in the value of the Underlying Securities will not affect the value of shareholders' investments in the Government Fund. Thus, permitting the Government Fund to invest in Underlying Securities without obtaining the shareholder approval required by section 13(a)(3) would result in no harm to TFG or its shareholders.

7. Rule 2a–7 provides that the current price per share of a "money market fund" may be computed by use of the amortized cost method under certain circumstances. Two of these circumstances require that the money market fund: (1) Limit its investments to securities that have a remaining maturity of 397 days or less and that meet certain credit quality standards; and (2) maintain a dollar-weighted average portfolio maturity that does not exceed 90 days. Applicants request an exemption from rule 2a–7 to the limited extent necessary to permit the money market series of TFG and CAT to invest in Underlying Securities and to exclude Underlying Securities in calculating their dollar-weighted average maturities. Exempting the money market series of CAT and TFG from rule 2a–7 would permit exact matching of Underlying Securities with the deemed investments of the Deferred Fee Accounts, ensuring that the Agreements will not affect the net asset value of the money market series because any increase or decrease in the value of the Underlying Securities will be precisely offset by a simultaneous increase or decrease in each series' liability for deferred fees.

8. Section 17(d) and rule 17d–1 generally prevent a registered investment company's joint or joint and several participation with an affiliated person in any joint enterprise or other joint arrangement or profit-sharing plan on a basis different from or less advantageous than that of the affiliated person. Under the Agreements, trustees will not receive a benefit, directly or indirectly, that would otherwise inure to TFG, CAT, or any of their shareholders. Participating trustees will receive tax deferral, but the Agreements otherwise will maintain the parties, viewed both separately and in their relationship to one another, in the same position as if the deferred fees were paid on a current basis. When all payments have been made to a trustee, the trustee will be no better off (apart from the effect of tax deferral) than if he or she had received trustees' fees on a current basis and invested them in Underlying Securities.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The balance sheet for each series will show liability and asset entries for deferred fees or will include a footnote explaining that such series has offset its liability for deferred fees with the assets that determine the amount of such series' liability.

2. With respect to the requested relief from rule 2a–7, any money market series that values its assets using the amortized cost method will buy and hold the Underlying Securities that determine the performance of Deferred Fee Accounts to achieve an exact match between such series' liability to pay deferred fees and the assets that offset that liability.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20145 Filed 8–21–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 14, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48290.
Date filed: August 10, 1992.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 587.
Air Cargo Rates Airport to Airport (EC requirements).
Proposed Effective Date: January 1, 1993.

Docket Number: 48291.
Date filed: August 10, 1992.
Parties: Members of the International Air Transport Association.
Subject: Comp MV/C 0359 dated July 15, 1992.
Mail Vote 579.
Revalidating/Amending Resos—Except Re US/USA Territories.
R–1–002 R–2–501 R–3–002.
Proposed Effective Date: October 1, 1992.

Docket Number: 48292.
Date filed: August 10, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC12 Fares 0387 dated July 31, 1992.
USA–UK add-on amounts.
Proposed Effective Date: October 1, 1992.

Docket Number: 48294.
Date filed: August 12, 1992.
Parties: Members of the International Air Transport Association.
Subject: Comp MV/C 0360 dated July 15, 1992.
Mail Vote 580–TC31 Southeast Asia—USA/USTerr.
TC1–South Asian subcontinent via Atlantic.
Revalidating/Amending Resos—To/From USA/US Territories.
Telex—Amendment To Mail Vote.
r–1—002 R–4—002cc
r–2—551 r–5—501
r–3—002 r–6—002
Proposed Effective Date: October 1, 1992.

Docket Number: 48297.
Date filed: August 14, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC23 Reso/P 0525 dated July 10, 1992.
Europe-Southeast Asia Resos—R–1 to R–8.
TC23 Reso/P 0530 dated July 31, 1992—Correction.
TC23 Meet/P 0201 dated July 28, 1992—Minutes.
TC23 Fares 0426 dated August 4, 1992—Tables.
Proposed Effective Date: November 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92–20112 Filed 8–21–92; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended August 14, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48295.
Date filed: August 13, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 10, 1992.
Description: Application of United Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for an amendment to its certificate of public convenience and necessity for Route 632 to realign the points listed on segment 1 of this Route.

Docket Number: 48298.
Date filed: August 14, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 11, 1992.
Description: Application of Atlas Air, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations, applies for issuance of a certificate of public convenience and necessity, seeking (a) worldwide cargo charter authority and (b) scheduled service property and mail authority between points in the United States and Taipei/Kaoshiung.

Docket Number: 44505.
Date filed: August 11, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 8, 1992.
Description: Application of Haiti Air Freight International, S.A., pursuant to section 402 of the Act and Subpart Q of the Act, request renewal of its foreign air carrier permit authorizing it to engage in non-scheduled foreign air transportation of property and mail over the following segment: Between Port-au-Prince, Haiti and the terminal points Miami, Florida; New York, New York; San Juan, Puerto Rico; and the U.S. Virgin Islands

Docket Number: 48075.
Date filed: August 10, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 8, 1992.
Description: First Amendment to the Application of Laker Airways (Bahamas) Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations, of its foreign air carrier

permit, amending its authority to engage in the scheduled air transportation of persons, property and mail between Freeport, Bahamas, on the one hand, and the co-terminal points Chicago, IL; Cleveland, OH; Richmond, VA; Raleigh-Durham, NC; Orlando, FL; Cincinnati, OH; Fort Lauderdale, FL; Miami, FL#; Nashville, TN; and West Palm Beach, FL, on the other hand.

Phyllis R. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-20111 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[Docket 48207; Order 92-8-23]

Application of CCAIR, Inc. for Issuance of Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding CCAir, Inc. d/b/a USAir Express d/b/a Piedmont Charter d//b/a Piedmont Commuter fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than September 2, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 48207 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: August 18, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-20110 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-62-M

[Order 92-8-24, Docket No. 47727]

Application of Michael A. Spisak d/b/a Ram Aviation for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Michael A. Spisak d/b/a Ram Aviation fit and award it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than September 2, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 47727 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served on all persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: August 18, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-20109 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-62-M

[Order 92-8-25; Docket 43232]

Security of Aircraft and Safety of Passengers Transiting Lebanon

AGENCY: Department of Transportation.

ACTION: Notice.

SUMMARY: The Department of Transportation has issued an order granting an exemption to U.S. and foreign carriers from the Department's prohibition on the sale in the United States of any transportation by air which includes any type of stop in Lebanon to the extent necessary to permit the outward carriage of cargo to Lebanon. This action is in furtherance of Presidential Determination 92-41, August 17, 1992. All other prohibitions in Presidential Determination 85-14, including the prohibition on U.S. air carriers flying into Lebanon, and in Order 85-7-45, precluding the sale in the United States of passenger transportation by air to Lebanon, remain in effect.

Dated: August 18, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-20108 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Advisory Circular 21-29A, Detecting and Reporting Suspected Unapproved Parts

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of Advisory Circular (AC) 21-29A, Detecting and Reporting Suspected Unapproved Parts. Advisory Circular 21-29A provides information and guidance to the aviation community for detecting and reporting suspected unapproved aircraft parts, and includes procedures for referral of such reports to the appropriate Federal Aviation Administration Office.

ADDRESSES: Copies of AC 21-29A can be obtained from the following: Federal Aviation Administration, Department of Transportation, Utilization and Storage Section, M443.2, 400 Seventh Street SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David W. Broughton, Project Manager, Aircraft Manufacturing Division (AIR-200), 800 Independence Avenue SW., Washington, DC 20591, (202) 267-9575.

Issued in Washington, DC, on July 16, 1992.

Michael Fradette,

Acting Manager, Aircraft Manufacturing Division.

[FR Doc. 92-20176 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

Information Concerning FAA Procedures for Examining and Monitoring Foreign Air Carriers

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: This notice provides a description of the FAA's program for gathering safety information concerning new and existing foreign air carriers operating into the United States. This notice describes the type of information sought by the FAA and how the information will be used to evaluate the safety oversight of those foreign air carriers by the appropriate civil aviation authority.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Kenney, Flight Standards International Programs Office, FAA, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 267-3651.

SUPPLEMENTARY INFORMATION:

Background

The international requirements governing air safety are contained in the Convention on International Civil Aviation, 61 Stat. 1180 (Chicago Convention) and its related Annexes, primarily Annex 6 and Annex 8. A basic precept of the international scheme is that sovereign states that accept the Convention's obligations will comply with them.

If a particular foreign air carrier of a sovereign state desires to conduct foreign air transportation operations into the United States, it must file an application with the Office of the Secretary of Transportation (OST) for a foreign air carrier permit under section 402 of the Federal Aviation Act of 1958, as amended, or for an exemption under section 416(b) of the Act. Parts 211 and 302 of the Economic Regulations of OST (14 CFR parts 211 and 302) prescribe the requirements for issuance of these authorities. Consistently with international law, certain safety requirements for operation into the United States are prescribed by the FAA's part 129 (14 CFR part 129). Before OST issues a foreign air carrier permit or exemption, it notifies the FAA of the application and request the FAA's evaluation of the applicant's capability for safe operations. This practice and procedure has been in effect for many years. OST does not issue a foreign air carrier permit or exemption, and FAA does not issue part 129 operations specifications unless the FAA is satisfied that a foreign air carrier is capable of conducting safe operations within the United States.

New Applicants

When the FAA is notified of OST's receipt of a section 402 permit application, the FAA seeks certain information. That information includes, but is not limited to, the following:

1. Whether the foreign air carrier holds a proper Air Operator Certificate (AOC), issued by its Civil Aviation Authority (CAA);
2. Whether the CAA provides oversight of the foreign air carrier sufficient to ensure safe operations, in accordance with the Chicago Convention and any applicable bilateral air transport agreement; and
3. Whether the foreign air carrier has an organization, the personnel, the management, and equipment necessary to conduct safe air transportation operations into the United States.

In obtaining this information, the FAA meets with officials of the foreign air carriers and its CAA, and seeks copies of appropriate documents, certificates and other records.

If the FAA is satisfied that the foreign air carrier is capable of conducting safe operations, the FAA notifies OST. After OST issues the carrier its foreign air carrier permit or exemption, the FAA will issue part 129 operations specifications. Conversely, if the FAA is not satisfied, then the FAA notifies OST that a foreign air carrier permit or exemption should not be issued, and the FAA will not issue part 129 operations specifications to the foreign air carrier. The issuance of a foreign air carrier permit or exemption and part 129 operations specifications are conditions precedent to a foreign air carrier's ability to operate into the United States.

Foreign Air Carriers Now Operating Into the United States

OST and FAA also have responsibilities with respect to foreign air carriers now operating into the United States. The FAA monitors safety of operations. If the FAA learns of conditions indicating that a foreign air carrier may not be conducting its operations safely in compliance with applicable laws, the FAA will take appropriate action within its jurisdiction and will also notify OST as necessary and appropriate. In addition, the FAA will take all measures necessary, consistent with domestic and international law, to prevent further flights of unairworthy aircraft in United States airspace, regardless of the aircraft's country of registry. Failures to correct unsafe conditions can lead to loss of section 402 permits and operations specifications.

Technical Assistance

The FAA dedicates significant resources to international aviation. For example, it has an Office of International Aviation within which there is an International Assistance Division. The FAA's Flight Standards Service has an Office of International Programs. In appropriate cases, the FAA offers technical assistance to sovereign nations in the interest of solving specific safety problems.

Issued in Washington, DC, on August 18, 1992.

Anthony J. Broderick,

Associate Administrator for Regulation and Certification.

[FR Doc. 92-20165 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

Guam International Air Terminal, Tamuning, GU; Intent To Rule on Application

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to rule on application to impose and use the revenue from a passenger facility charge (PFC) at Guam International Air Terminal, Tamuning Guam.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Guam International Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and 14 CFR part 158.

On August 7, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by Guam Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 7, 1992.

DATES: Comments must be received on or before September 23, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Honolulu Airports District Office, P.O. Box 50244, Honolulu, HI 96850-0001; Street Address: 300 Ala Moana Blvd., room 7116, Honolulu, HI 96813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jess Q. Torres, Executive Manager of the Guam Airport Authority at the following address:

Guam Airport Authority, Guam International Air Terminal, P.O. Box 8770, Tamuning, Guam 96911.

Comments from air carriers and foreign air carriers may be in the same form as provided to the Guam Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Henry A. Sumida, Manager, Honolulu Airports District Office, 300 Ala Moana Blvd., room 7116, Honolulu, HI 96813; Mailing Address: P.O. Box 50244, Honolulu, HI 96850; Telephone: (808) 541-1230. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The following is a brief overview of the application.

Level of the proposed PFC: $3.00. Proposed charge effective date: September 1, 1992. Proposed charge expiration date: December 15, 1993. Total estimated PFC revenue: $5,632,360.00.

Brief description of proposed project(s):

102. Environmental Assessment—Terminal Renovation and Expansion.

303. Runway Improvements.

304. Environmental Assessment—Navy land Acquisition.

403. Aprons 1–9 Rehabilitation.

404. Aprons 11–13 Construction.

AVAILABILITY OF APPLICATIONS: Any person may inspect the application in person at the FAA office listed above and at the FAA regional Airports office located at:

Western-Pacific Region, Airports Division, room 3E24, 15000 Aviation Blvd., Hawthorne, CA 90261.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Guam Airport Authority.

Issued in Hawthorne, California, on August 7, 1992.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 92-20164 Filed 8-21-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular; Public Debt Series; No. 27-92]

Treasury Bonds of August 2022

Washington, August 14, 1992.

The Secretary announced on August 13, 1992, that the interest rate on the bonds designated Bonds of August 2022, described in Department Circular—Public Debt Series—No. 27-92 dated August 5, 1992, will be 7¼ percent. Interest on the bonds will be payable at the rate of 7¼ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92-20151 Filed 8-21-92; 8:45 am]

BILLING CODE 4810-40-M

[Department Circular; Public Debt Series; No. 28-92; (CUSIP No. 912827 G6 3)]

Treasury Notes of August 31, 1994, Series AD-1994

Washington, August 19, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of chapter 31 to title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price of Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities.

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketplace securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the Treasury Direct Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR part 357), apply to the Notes offered in this circular.

3. Sales Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239-1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender fore more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, not may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors.

Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

John A. Kilcoyne,
Acting Fiscal Assistant Secretary.

Attachment A

Treasury's Single Bidder Guidelines for Noncompetitive Bidding in All Treasury Security Auctions

The investor categories listed below defined what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is not permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subidivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219-3350).

Auction of 2-Year and 5-Year Notes Totaling $25,500 Million

The Treasury will auction $15,000 million of 2-year notes and $10,500 million of 5-year notes to refund $12,298 million of securities maturing August 31, 1992, and to raise about $13,200 million new cash. The $12,298 million of maturing securities are those held by the public, including $710 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The $25,500 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,131 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED AUGUST 31, 1992

[August 19, 1992]

Amount Offered to the Public	$15,000 million	$10,500 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series AD-1994 (CUSIP No. 912827 G6 3)	Series Q-1997 (CUSIP No. 912827 G7 1).
Maturity date	August 31, 1994	August 31, 1997.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	February 28 and August 31	The last calendar day of February and August through August 31, 1997.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, August 25, 1992	Wednesday, August 26, 1992.
(a) noncompetitive	Prior to 12 noon, EDST	Prior to 12 noon, EDST.
(b) competitive	Prior to 1 p.m., EDST	Prior to 1 p.m., EDST.
Settlement (final payment due from institutions):		
(a) funds immediately available to the Treasury	Monday, August 31, 1992	Monday, August 31, 1992.
(b) readily-collectible check	Thursday, August 27, 1992	Thursday, August 27, 1992.

[FR Doc. 92-20264 Filed 8-20-92; 9:11 am]
BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series; No. 26-92]

Treasury Notes, Series B-2002

Washington, August 13, 1992.

The Secretary announced on August 12, 1992, that the interest rate on the notes designated Series B-2002, described in Department Circular—Public Debt Series—No. 26-92 dated August 5, 1992, will be 6⅜ percent. Interest on the notes will be payable at the rate of 6⅜ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 92-20150 Filed 8-21-92; 8:45 am]
BILLING CODE 4810-40-M

[Supplement to Department Circular; Public Debt Series; No. 25-92]

Treasury Notes, Series Q-1995

Washington, August 12, 1992.

The Secretary announced on August 11, 1992, that the interest rate on the notes designated Series Q-1995, described in Department Circular—Public Debt Series—No. 25-92 dated August 5, 1992, will be 4⅝ percent. Interest on the notes will be payable at the rate of 4⅝ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.

[FR Doc. 92-20149 Filed 8-21-92; 8:45 am]
BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 29-92 and CUSIP No. 912827 G7 1]

Treasury Notes of August 31, 1997, Series Q-1997

Washington, August 19, 1992.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for United States securities, as described above and in the offering announcement, hereafter referred to as Notes. The Notes will be sold at auction, and bidding will be on a yield basis. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The issue date and maturity date of the Notes are stated in the offering announcement. The Notes will accrue interest from the issue date. Interest will be payable on a semiannual basis as described in the offering announcement through the date that the principal becomes payable. The Notes will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes will be issued only in book-entry form in the minimum and multiple amounts stated in the offering announcement. They will not be issued in registered definitive or in bearer form.

2.3. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR part 306), as to the extent applicable to marketable securities issued in book-entry from, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in Department of the Treasury Circular, Public Debt Series, No. 2-86 (31 CFR Part 357), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239–1500. The closing times for the receipt of noncompetitive and competitive tenders are specified in the offering announcement. Noncompetitive tenders will be considered timely if postmarked (U.S. Postal Service cancellation date) no later than the day prior to the auction and received no later than close of business on the issue day.

3.2. The par amount of Notes bid for most be stated on each tender. The minimum bid is stated in the offering announcement, and larger bids must be in multiples of that amount.

3.3. Competitive bids must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. A single bidder, as defined in Treasury's single bidder guidelines contained in Attachment A to this circular, may submit bids at more than one yield. However, at any one yield, the Treasury will not recognize any amount tendered by a single bidder in excess of 35 percent of the public offering amount. A competitive bid by a single bidder at any one yield in excess of 35 percent of the public offering will be reduced to that amount.

3.4. Noncompetitive tenders do not specify a yield. A single bidder should not submit a noncompetitive tender for more than $5,000,000. A noncompetitive bid by a single bidder in excess of $5,000,000 will be reduced to that amount. A bidder, whether bidding directly or through a depository institution or a government securities broker/dealer, may not submit a noncompetitive bid for its own account in the same auction in which it is submitting a competitive bid for its own account. A bidder may not submit a noncompetitive bid if the bidder holds a position, in the Notes being auctioned, in "when-issued" trading, or in futures or forward contracts. A noncompetitive bidder may not enter into any agreement to purchase or sell or otherwise dispose of the security being auctioned, nor may it commit to sell the security prior to the designated closing time for receipt of competitive bids.

3.5. The following institutions may submit tenders for accounts of customers: Depository institutions, as described in Section 19(b)(1)(A), excluding those institutions described in subparagraph (vii), of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)); and government securities broker/dealers that are registered with the Securities and Exchange Commission or noticed as government securities broker/dealers pursuant to section 15C(a)(1) of the Securities Exchange Act of 1934. Others are permitted to submit tenders only for their own account. A submitter, if bidding competitively for customers, must include a customer list with the tender giving, for each customer, the name of the customer and the amount bid. A separate tender and customer list should be submitted for each competitive yield. For noncompetitive bids, the customer list must provide, for each customer, the name of the customer and the amount bid. For mailed tenders, the customer list must be submitted with the tender. For other than mailed tenders, the customer list should accompany the tender. If the customer list is not submitted with the tender, information for the list must be complete and available for review by the deadline for submission of noncompetitive tenders. The customer list should be received by the Federal Reserve Bank on auction day. All competitive and noncompetitive bids submitted on behalf of trust estates must provide, for each trust estate, the name or title of the trustee(s), a reference to the document creating the trust with the date of execution, and the employer identification number of the trust. Customer bids may not be aggregated on the customer list. The customer list must include customers and customers of those customers, where applicable.

3.6. A competitive single bidder must report its net long position if the total of all its bids for the security being offered and its net position in the security equals or exceeds $2 billion, with the position to be determined as of one half-hour prior to the closing time for the receipt of competitive tenders. A net long position includes positions, in the security being auctioned, in "when-issued" trading, and in futures and forward contracts. Bidders who meet this reporting requirement and are customers of a depository institution or a government securities broker/dealer must report their positions through the institution submitting the bid on their behalf.

3.7. Tenders from bidders who are making payment by charge to a funds account at a Federal Reserve Bank and tenders from bidders who have an approved autocharge agreement on file at a Federal Reserve Bank will be received without deposit. In addition, tenders from States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; and Federal Reserve Banks will be received without deposit. Tenders from all others, including tenders submitted for Notes to be maintained on the book-entry records of the Department of the Treasury, must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.8. After the deadline for receipt of competitive tenders, there will be a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive bids will be accepted in full, and then competitive bids will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Bids at the highest accepted yield will be prorated if necessary. After the determination is made as to which bids are accepted, an interest rate will be established at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive bids will pay the price equivalent to the weighted average yield of accepted competitive bids. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive bids received would absorb all or most of the offering, competitive bids will be accepted in an amount sufficient to provide a fair determination of the yield. Bids received from Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive bids.

3.9. No single bidder will be awarded securities in an amount exceeding 35 percent of the public offering. The determination of the maximum award to a single bidder will take into account the bidder's net long position, if the bidder has been obliged to report its position per the requirements outlined in Section 3.6.

3.10. Notice of awards will be provided by a Federal Reserve Bank or Branch or the Bureau of the Public Debt to bidders who have submitted accepted competitive bids, whether for their own account or for the account of customers. Those submitting noncompetitive bids will be notified only if the bid is not accepted in full, or when the price at the average yield is over par. No later than 12 noon local time on the day following the auction, the appropriate Federal Reserve Bank will notify each depository institution that has entered into an autocharge agreement with a bidder as to the amount to be charged to the institution's funds account at the Federal Reserve Bank on the issue date. Any customer that is awarded $500 million or more of securities must furnish, no later than 10:00 a.m. local time on the day following the auction, written confirmation of its bid to the Federal Reserve Bank or Branch where the bid was submitted. A depository institution or government securities broker/dealer submitting a bid for a customer is responsible for notifying its customer of this requirement if the customer is awarded $500 million or more of securities as a result of bids submitted by the depository institution or government securities broker/dealer.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all bids in whole or in part, to allot more or less than the amount of Notes specified in the offering announcement, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made timely at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted will be made by a charge to a funds account or pursuant to an approved autocharge agreement, as provided in Section 3.7. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.7. must be made or completed on or before the issue date. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury notes or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors by the time stated in the offering announcement. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted may, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in Treasury Direct are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the Note being purchased. In any such case, the tender form used to place the Notes allotted in Treasury Direct must be completed to show all the information required thereon, or the Treasury Direct account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

6.4. Attachment A and the offering announcement are incorporated as part of this circular.

John A. Kilcoyne,

Acting Fiscol Assistant Secretory.

Attachment A

Treasury's Single Bidder Guidelines for Noncompetitive Bidding in all Treasury Security Auctions

The investor categories listed below define what constitutes a single noncompetitive bidder.

(1) *Bank Holding Companies and Subsidiaries*—A bank holding company (includes the company and/or one or more of its subsidiaries, whether or not organized as separate entities under applicable law).

(2) *Banks and Branches*—A parent bank (includes the parent and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(3) *Thrift Institutions and Branches*—A thrift institution, such as a savings and loan association, credit union, savings banks, or other similar entity (includes the principal or parent office and/or one or more of its branches, whether or not organized as separate entities under applicable law).

(4) *Corporations and Subsidiaries*—A corporation (includes the corporation and/or one or more of its majority-owned subsidiaries, i.e., any subsidiary more than 50 percent of whose stock is owned by the parent corporation or by any other of its majority-owned subsidiaries).

(5) *Families*—A married person (includes his or her spouse, and any unmarried adult children, having a common address and/or household).

Note: A minor child, as defined by the law of domicile, is *not* permitted to submit tenders individually, or jointly with an adult bidder. (A minor's parent acting as natural guardian is *not* recognized as a separate bidder.)

(6) *Partnerships*—Each partnership (includes a partnership or individual partner(s), acting together or separately, who own the majority or controlling interest in other partnerships, corporations, or associations).

(7) *Guardians, Custodians, or other Fiduciaries*—A guardian, custodian, or similar fiduciary, identified by (a) the name or title of the fiduciary, (b) reference to the document, court order, or other authority under which the fiduciary is acting, and (c) the taxpayer identifying number assigned to the estate.

(8) *Trusts*—A trust estate, which is identified by (a) the name or title of the trustee, (b) a reference to the document creating the trust, e.g., a trust indenture, with date of execution, or a will, (c) the IRS employer identification number (not social security account number).

(9) *Political Subdivisions*—(a) A state government (any of the 50 states and the District of Columbia).

(b) A unit of local government (any county, city, municipality, or township, or other unit of general government, as defined by the Bureau of the Census for statistical purposes, and includes any

trust, investment, or other funds thereof).

(c) A commonwealth, territory, or possession.

(10) *Mutual Funds*—A mutual fund (includes all funds that comprise it, whether or not separately administered).

(11) *Money Market Funds*—A money market fund (includes all funds that have a common management).

(12) *Investment Agents/Money Managers*—An individual, firm, or association that undertakes to service, invest, and/or manage funds for others.

(13) *Pension Funds*—A pension fund (includes all funds that comprise it, whether or not separately administered).

Notes: The definitions do not reflect all bidder situations. "Single bidder" is not necessarily synonymous with "single entity".

Questions concerning the guidelines should be directed to the Office of Financing, Bureau of the Public Debt, Washington, DC 20239 (telephone 202/219-3350).

Auction of 2-Year and 5-Year Notes Totaling $25,500 Million

The Treasury will auction $15,000 million of 2-year notes and $10,500 million of 5-year notes to refund $12,298 million of securities maturing August 31, 1992, and to raise about $13,200 million new cash. The $12,298 million of maturing securities are those held by the public, including $710 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities.

The $25,500 million is being offered to the public, and any amounts tendered by Federal Reserve Banks as agents for foreign and international monetary authorities will be added to that amount. Tenders for such accounts will be accepted at the average prices of accepted competitive tenders.

In addition to the public holdings, Federal Reserve Banks, for their own accounts, hold $1,131 million of the maturing securities that may be refunded by issuing additional amounts of the new securities at the average prices of accepted competitive tenders.

Details about each of the new securities are given in the attached highlights of the offerings and in the official offering circulars.

Attachment

HIGHLIGHTS OF TREASURY OFFERINGS TO THE PUBLIC OF 2-YEAR AND 5-YEAR NOTES TO BE ISSUED AUGUST 31, 1992

[August 19, 1992]

Amount Offered to the Public	$15,000 million	$10,500 million.
Description of Security:		
Term and type of security	2-year notes	5-year notes.
Series and CUSIP designation	Series AD-1994 (CUSIP No. 912827 G6 3)	Series Q-1997 (CUSIP No. 912827 G7 1).
Maturity date	August 31, 1994	August 31, 1997.
Interest rate	To be determined based on the average of accepted bids.	To be determined based on the average of accepted bids.
Investment yield	To be determined at auction	To be determined at auction.
Premium or discount	To be determined after auction	To be determined after auction.
Interest payment dates	February 28 and August 31	The last calendar day of February and August through August 31, 1997.
Minimum denomination available	$5,000	$1,000.
Terms of Sale:		
Method of sale	Yield auction	Yield auction.
Competitive tenders	Must be expressed as an annual yield with two decimals, e.g., 7.10%.	Must be expressed as an annual yield, with two decimals, e.g., 7.10%.
Noncompetitive tenders	Accepted in full at the average price up to $5,000,000.	Accepted in full at the average price up to $5,000,000.
Accrued interest payable by investor	None	None.
Key Dates:		
Receipt of tenders	Tuesday, August 25, 1992	Wednesday, August 26, 1992.
(a) noncompetitive	Prior to 12 noon, EDST	Prior to 12 noon, EDST.
(b) competitive	Prior to 1 p.m., EDST	Prior to 1 p.m., EDST.
Settlement (final payment due from institutions):		
(a) funds immediately available to the Treasury	Monday, August 31, 1992	Monday, August 31, 1992.
(b) readily-collectible check	Thursday, August 27, 1992	Thursday, August 27, 1992.

[FR Doc. 92-20265 Filed 8-20-92; 8:45 am]
BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 164
Monday, August 24, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 4, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-20291 Filed 8-20-92; 2:42 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 11, 1992.

PLACE: 2033 K St., NW., Washington, DC., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-20292 Filed 8-20-92; 2:42 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 18, 1992.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-20293 Filed 8-20-92; 2:42 pm]
BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, September 25, 1992.

PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.

[FR Doc. 92-20294 Filed 8-20-92; 2:42 pm]
BILLING CODE 6351-01-M

Corrections

Federal Register
Vol. 57, No. 164
Monday, August 24, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 201, 202, 210, 229, 230, 232, 239, 240, 249, 260, and 269

[Release Nos. 33-6944; 34-30951; 35-25587; 39-2285; IC-18862; File No. S7-21-92]

RIN 3235-AC48

Rulemaking for EDGAR System

Correction

In proposed rule document 92-17957 beginning on page 35070 in the issue of Friday, August 7, 1992, on page 35143, beginning in the first column, appendix E is reprinted in its entirety:

Appendix E—Division of Corporation Finance Phase-In Schedule for EDGAR

At least three months prior to phase-in, registrants should file a completed Form ID with the Commission. After becoming subject to EDGAR, a filer must submit all filings in electronic format unless exempted from doing so. Note: Once a registrant is required to file electronically, all persons or entities submitting a filing relating to that registrant, such as a tender offer schedule, proxy statement or Schedule 13D, must submit the filing in electronic format.

July 15, 1992—Pilot filers that so elect may convert to the EDGAR system. Persons or entities making filings with respect to such filers may, at their option, submit their filings on EDGAR.

April 1993—Pilot filers and any approved Division volunteers will commence mandated electronic filing (Group CF-01). This is the first of four subgroups that comprise the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

July 1993—The group of 525 registrants listed in Group CF-02 of Appendix E, less any volunteers that moved to CF-01, must make all filings via EDGAR on or after this date. This is the second of four subgroups that comprise the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

October 1993—The group of 750 registrants listed in Group CF-03 of Appendix E must make all filings via EDGAR on or after this date. This is the third of four subgroups that comprise the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

December 1993—The group of 1000 registrants in Group CF-04 of Appendix E must make all filings via EDGAR on or after this date. This is the last of the subgroups that comprise the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

August 1994—The group of registrants listed as Group CF-05 in Appendix E must make all filings via EDGAR on or after this date. This is the first group of registrants following the "significant test group." Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

November 1994—The group of registrants listed in Group CF-06 of Appendix E must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

May 1995—The group of registrants listed in Group CF-07 of Appendix E must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

August 1995—The group of registrants listed in Group CF-08 of Appendix E must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

November 1995—The group of registrants listed in Group CF-09 of Appendix E must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

May 1996—The group of registrants listed in Group CF-10 of Appendix E, plus any other parties submitting materials to the Commission and not previously named in Appendix E, must make all filings via EDGAR on or after this date. Persons or entities making filings with respect to these registrants must begin to submit their filings on EDGAR.

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-01

Registrant	CIK No.
AETNA LIFE CASUALTY CO	002648
ALABAMA POWER CO	003153
ALBERTSONS INC /DE/	003333
ALCOA INTERNATIONAL HOLDINGS CO	836243
ALLEGHENY WESTERN RAILWAY CO	003650
ALLTEL CORP	065873
ALPART JAMAICA INC	856651
ALUMINUM CO OF AMERICA	004281
AMERICAN EXPRESS CREDIT CORP	004969
AMERICAN NUCLEAR CORP	005550
AMERICAN PRESIDENT COMPANIES LTD	725457
AMERICAN TELEPHONE TELEGRAPH CO	005907
ANHEUSER BUSCH COMPANIES INC	310569
ANHEUSER-BUSCH INC	006627
ARCHER DANIELS MIDLAND CO	007084
AT&T CAPITAL CORP	881940
AT&T CREDIT CORP	760615
ATLANTIC CITY ELECTRIC CO	008192
ATLANTIC ENERGY INC	806393
ATWOOD OCEANICS INC	008411
BB&T FINANCIAL CORP	013839
BELL ATLANTIC CAPITAL FUNDING CORP	867881
BELL ATLANTIC CORP	732712
BELLSOUTH CAPITAL FUNDING CORP	815474
BELLSOUTH CORP	732713
BELLSOUTH SAVINGS EMPLOYEE STOCK OWNERSHIP TRUST	852339
BELLSOUTH SAVINGS SECURITY ESOP TRUST	859224
BLACK & DECKER CORP	012355
BOWNE & CO INC	013610
BRENCO INC	014029
CADMUS COMMUNICATIONS CORP/NEW	745274
CAPITAL HOLDING CORP	017206
CENTRAL & SOUTH WEST CORP	018540
CENTRAL POWER & LIGHT CO /TX/	018734
CERIDIAN CORP	109758
CHECKPOINT SYSTEMS INC	215419
CONNECTICUT NATURAL GAS CORP	023432
CONSOLIDATED FREIGHTWAYS INC	023675
CONSOLIDATED PAPERS INC	023752
CONTROL DATA SYSTEMS, INC	887309
CROWN CENTRAL PETROLEUM CORP /MD/	025885
CSX CORP	277948
CSX TRANSPORTATION INC	068128
CURTIS HELENE INDUSTRIES INC /DE/	745142
DAYTON & MICHIGAN RAILROAD CO	027409
DESOTO INC	028345
DIGITAL EQUIPMENT CORP	028887
DOMINION RESOURCES INC /VA/	715957
DONNELLEY R R & SONS CO	029669
DOW JONES & CO INC	029924
DUPONT E I DE NEMOURS & CO	030554
DURR FILLAUER MEDICAL INC	030645
EASTMAN KODAK CO	031235
EASTMAN KODAK CREDIT CORP	790534
EATON CORP	031277
EATON ETN OFFSHORE LTD	864915
EMC INSURANCE GROUP INC	356130
EMBASSY SUITES INC	858395
EXXON CAPITAL CORP	788903
EXXON CAPITAL VENTURES INC	811895
EXXON CORP	034088

APPENDIX E.--DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-01

Registrant	CIK No.
FAIRCHILD INDUSTRIES INC	034257
FARMLAND INDUSTRIES INC	034616
FEDERAL MOGUL CORP	034879
FIRST CITIZENS BANCSHARES INC /TN/	719264
FIRST COMMONWEALTH FINANCIAL CORP / PA/	712537
FIRST FRANKLIN FINANCIAL CORP	038723
FIRST MARYLAND BANCORP	036510
FLEETWOOD ENTERPRISES INC/DE/	314132
FMC CORP	037785
GANDALF TECHNOLOGIES INC	355876
GATX CORP	040211
GEICO CORP	277795
GENERAL AMERICAN TRANSPORTATION CORP /NY	276478
GENERAL DYNAMICS CORP	040533
GENERAL ELECTRIC CO	040545
GENERAL MOTORS ACCEPTANCE CORP	040729
GENERAL MOTORS CORP	040730
GENERAL PUBLIC UTILITIES CORP /PA/	040779
GENERAL SIGNAL CORP	040834
GENRAD INC	040972
GEORGIA POWER CO	041091
GMAC 1985-A GRANTOR TRUST	779507
GMAC 1986-A GRANTOR TRUST	787812
GMAC 1986-B GRANTOR TRUST	788048
GMAC 1986-C GRANTOR TRUST	788047
GMAC 1986-E GRANTOR TRUST	788045
GMAC 1986-F GRANTOR TRUST	796653
GMAC 1986-G GRANTOR TRUST	796652
GMAC 1987-A GRANTOR TRUST	796651
GMAC 1987-B GRANTOR TRUST	796650
GMAC 1987-C GRANTOR TRUST	796649
GMAC 1987-D GRANTOR TRUST	796648
GMAC 1987-F GRANTOR TRUST	811709
GMAC 1990-A GRANTOR TRUST	868571
GMAC 1991-A GRANTOR TRUST	872551
GMAC 1991-B GRANTOR TRUST	872552
GMAC 1991-C GRANTOR TRUST	872553
GMAC 1992-A GRANTOR TRUST	882234
GMAC 1992-B GRANTOR TRUST	882237
GMAC 1992-C GRANTOR TRUST	882239
GMAC 1992-D GRANTOR TRUST	882240
GMAC AUTO RECEIVABLES CORP	869739
GOLDEN VALLEY MICROWAVE FOODS INC	797394
GTE CORP	040858
GULF POWER CO	044545
GULF STATES UTILITIES CO	044570
HARLAND JOHN H CO	045599
HEWLETT PACKARD CO	047217
HUMANA INC	049071
IBM CREDIT CORP	353524
IMC FERTILIZER GROUP INC	820626
IMCERA GROUP INC	051396
INDIANA BELL TELEPHONE CO INC	050178
INTERNATIONAL BUSINESS MACHINES CORP	051143
ITT CORP	216228
JEFFERSON PILOT CORP	053347
JERSEY CENTRAL POWER & LIGHT CO	053458
KAISER ALUMINA AUSTRALIA CORP	856654
KAISER ALUMINUM & CHEMICAL CORP	054291
KAISER ALUMINUM CORP	811596
KAISER JAMAICA CORP	856650
KANSAS POWER & LIGHT CO	054507
KELLY SERVICES INC	055135
KOLLMORGEN CORP	056583
L&N FUNDING CORP	740127
LOCKHEED CORP	060026
LONGS DRUG STORES CORP	764762
MARK IV INDUSTRIES INC	062418
MASSACHUSETTS ELECTRIC CO	063073
MCGRAW HILL INC	064040
MCI COMMUNICATIONS CORP	064079
MCKESSON CORP /DE/	816768
MCN CORP	837579
MEDTRONIC INC	064670
MENTOR GRAPHICS CORP	701811
MERRILL CORP	790406
METROPOLITAN EDISON CO	065350
MICHIGAN BELL TELEPHONE CO	065622
MICHIGAN CONSOLIDATED GAS CO /MI/	065632
MICRO SECURITY SYSTEMS INC	736469
MISSISSIPPI POWER CO	066904
MOBIL CORP	087182
MOBIL OIL CORP ESOP TRUST	862072
MOMENTUM DISTRIBUTION INC	853436
MONSANTO CO	067686
MONTGOMERY WARD HOLDING CORP	836974

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-01

Registrant	CIK No.
MORGAN J P & CO INC	068100
MOTORS MECHANICAL REINSURANCE CO LTD	790381
NARRAGANSETT ELECTRIC CO	069659
NATIONAL FUEL GAS CO	070145
NATIONAL GRAPE COOPERATIVE ASSOCIATION INC	277587
NATIONAL SEMICONDUCTOR CORP	070530
NAVISTAR INTERNATIONAL CORP /DE/NEW	808450
NAVISTAR INTERNATIONAL TRANSPORTATION CO	051296
NEW ENGLAND ELECTRIC SYSTEM	071297
NEW ENGLAND POWER CO	071337
NEW ENGLAND TELEPHONE & TELEGRAPH CO	071344
NEW YORK TELEPHONE CO	071689
NIKE INC	320187
NORTHROP CORP	072945
NYNEX CAPITAL FUNDING CORP	862447
NYNEX CORP	732714
OHIO EDISON CO	073960
OXFORD INDUSTRIES INC	075288
PACIFIC BELL	075641
PACIFIC TELESIS GROUP	732718
PACIFICORP /OR/	075594
PACTEL CAPITAL RESOURCES	785213
PACTEL PERSONAL COMMUNICATIONS	822636
PENNSYLVANIA ELECTRIC CO	077227
PFIZER INC	078003
PHILIP MORRIS COMPANIES INC	764180
PHILIP MORRIS INC	078141
PIONEER HI BRED INTERNATIONAL INC	078716
POLICY MANAGEMENT SYSTEMS CORP	356226
PRICE CO	356461
PROCTER & GAMBLE CO	080424
PROCTER & GAMBLE EMPLOYEE STOCK OWNERSHIP TRUST	862335
PROMUS COMPANIES INC	858339
PUBLIC SERVICE CO OF NORTH CAROLINA INC	081025
PUBLIC SERVICE CO OF OKLAHOMA	081027
PUBLIC SERVICE ELECTRIC & GAS CO	081033
PUBLIC SERVICE ENTERPRISE GROUP INC	788784
QUAKER OATS CO	081371
RALSTON PURINA CO	081870
RAYTHEON CO	082267
RELIABILITY INC	034285
REPUBLIC NEW YORK CORP	063246
RESIDENTIAL FUNDING MORTGAGE SECURITIES I INC	774352
REXNORD HOLDINGS INC	083573
ROBERTSON CECO CORP	868635
SATELLITE INFORMATION SYSTEMS CO	721235
SAVANNAH ELECTRIC & POWER CO	086940
SCANA CORP	754737
SHELL CANADA LTD	702983
SIERRA PACIFIC RESOURCES	741508
SIGNAL CAPITAL HOLDINGS CORP	842461
SOUTH CAROLINA ELECTRIC & GAS CO	091882
SOUTH CENTRAL BELL TELEPHONE CO	091899
SOUTHERN BELL TELEPHONE & TELEGRAPH CO	092088
SOUTHERN CO	092122
SOUTHERN ELECTRIC GENERATING CO	092150
SOUTHERN NEW ENGLAND TELECOMMUNICATIONS CORP	790650
SOUTHWESTERN BELL CAPITAL CORP	798263
SOUTHWESTERN BELL CORP	732717
SOUTHWESTERN BELL TELEPHONE CO	092478
SOUTHWESTERN ELECTRIC POWER CO	092487
SPECTRUM FINANCIAL CORP	741212
ST PAUL COMPANIES INC /MN/	086312
SUBURBAN BANCORP INC /DE/	356981
SUN CITY INDUSTRIES INC	095302
SUN CO INC	095304
SYNCOR INTERNATIONAL CORP /DE/	202763
TJX COMPANIES INC /DE/	109198
TRANSAMERICA CORP	099189
TRANSAMERICA FINANCE GROUP INC	099193
TRAVELERS CORP	099429
TRINOVA CORP	059198
TW HOLDINGS INC	852772
TW SERVICES INC	807882
U S TRUST CORP	225971
U S WEST CAPITAL FUNDING INC	794987
U S WEST COMMUNICATIONS INC	068622
U S WEST FINANCIAL SERVICES INC	780577
UNION LIGHT HEAT & POWER CO	100658

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-01

Registrant	CIK No.
URS CORP /NEW/	102379
US WEST INC	732718
US WEST NEWVECTOR GROUP INC	822661
VIRGINIA ELECTRIC & POWER CO	103682
VWR CORP	788043
WASHINGTON ENERGY CO	225998
WASHINGTON NATURAL GAS CO	104880
WEST TEXAS UTILITIES CO	105860
WISCONSIN ELECTRIC POWER CO	107815
WISCONSIN ENERGY CORP	783325
WISCONSIN NATURAL GAS CO	107830
WRIGLEY WILLIAM JR CO	108601
XEROX CORP	108772
XEROX CREDIT CORP	351936

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-02

Registrant	CIK No.
AANCOR HOLDINGS INC	795738
ABBOTT LABORATORIES	001800
ADVANCED MICRO DEVICES INC	002488
ADVANTA CORP	096638
AFG INDUSTRIES INC	007666
AGWAY INC	002852
AHMANSON H F & CO /DE/	771667
AIR PRODUCTS & CHEMICALS INC /DE/	002969
ALCO STANDARD CORP	003370
ALEXANDER & BALDWIN INC	003453
ALLEGHENY POWER SYSTEM INC	003673
ALLIED SIGNAL INC	773840
ALLIED STORES CORP	003961
AMAX INC /NY/	004363
AMBASE CORP	020639
AMDAHL CORP	004427
AMERADA HESS CORP	004447
AMERCO /NV/	004457
AMERICAN AIRLINES INC	004515
AMERICAN BRANDS INC /DE/	789073
AMERICAN CYANAMID CO	004829
AMERICAN ELECTRIC POWER COMPANY INC	004904
AMERICAN EXPRESS CO	004962
AMERICAN FINANCIAL CORP	005016
AMERICAN GENERAL CORP /TX/	005103
AMERICAN GENERAL FINANCE CORP	025596
AMERICAN GENERAL FINANCE INC	025600
AMERICAN GREETINGS CORP	005133
AMERICAN HOME PRODUCTS CORP	005187
AMERICAN INFORMATION TECHNOLOGIES CORP	732715
AMERICAN INTERNATIONAL GROUP INC	005272
AMERICAN MEDICAL HOLDINGS INC	861439
AMERICAN MEDICAL INTERNATIONAL INC / DE/	312655
AMERICAN PETROFINA INC	005611
AMERICAN SOUTHWEST FINANCIAL CORP	706236
AMERICAN STANDARD INC	005850
AMERICAN STORES CO /NEW/	090811
AMERICAN TELEVISION & COMMUNICATIONS CORP	005910
AMERICAN WATER WORKS CO INC	318819
AMERITRUST CORP	020972
AMES DEPARTMENT STORES INC	006071
AMOCO CO	766918
AMOCO CORP	093397
AMP INC	006164
AMPAL AMERICAN ISRAEL CORP /NY/	731859
AMR CORP	006201
AMSOUTH BANCORPORATION	003133
ANAC HOLDING CORP	805741
ANADARKO PETROLEUM CORP	773910
ANR PIPELINE CO	065695
AON CORP	315293
APPALACHIAN POWER CO	006879
APPLE COMPUTER INC	320193
ARA GROUP INC	757523
ARCO CHEMICAL CO	819544
ARISTAR INC	007214
ARIZONA PUBLIC SERVICE CO	007288
ARKANSAS POWER & LIGHT CO	007323
ARKLA INC	007314

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-02

Registrant	CIK No.
ARMCO INC	007383
ARMSTRONG WORLD INDUSTRIES INC	007431
ARVIN INDUSTRIES INC	007636
ASARCO INC	007649
ASHLAND OIL INC	007694
ASSET INVESTORS CORP	804138
ASSOCIATES CORPORATION OF NORTH AMERICA	007973
ASSOCIATES FIRST CAPITAL CORP	007974
ATLANTA GAS LIGHT CO	008154
ATLANTIC RICHFIELD CO /DE	775483
AUTOMATIC DATA PROCESSING INC	008670
AVCO FINANCIAL SERVICES INC	008795
AVERY DENNISON CORPORATION	008816
AVNET INC	008858
AVON PRODUCTS INC	008868
BAKER HUGHES INC	808362
BALLY MANUFACTURING CORP	009435
BALTIMORE GAS & ELECTRIC CO	009466
BANC ONE CORP/OH/	036090
BANCORP HAWAII INC	046195
BANK OF BOSTON CORP	036672
BANK OF NEW ENGLAND CORP	071322
BANK OF NEW YORK CO INC	009626
BANKAMERICA CORP	009672
BANKERS TRUST NEW YORK CORP	009749
BARNETT BANKS INC	010012
BAUSCH & LOMB INC	010427
BAXTER INTERNATIONAL INC	010456
BAYBANKS INC	010497
BEAR STEARNS COMPANIES INC	777001
BEATRICE COMPANY	785960
BECTON DICKINSON & CO	010795
BELL TELEPHONE CO OF PENNSYLVANIA	011107
BENEFICIAL CORP	008960
BERGEN BRUNSWIG CORP	011454
BERKSHIRE HATHAWAY INC /DE/	109694
BEST PRODUCTS CO INC	011821
BETHLEHEM STEEL CORP /DE/	011860
BEVERLY ENTERPRISES INC /DE	912305
BHC COMMUNICATIONS INC	855433
BOATMENS BANCSHARES INC /MO	040454
BOEING CO	012927
BOISE CASCADE CORP	012978
BORDEN INC	013239
BORG WARNER CORP /DE/	817945
BOSTON EDISON CO	013372
BOWATER INC	743366
BRISTOL MYERS SQUIBB CO	014272
BROOKLYN UNION GAS CO	014525
BROWNING FERRIS INDUSTRIES INC	014827
BRUNSWICK CORP	014930
BURLINGTON HOLDINGS INC	820110
BURLINGTON NORTHERN INC/DE/	351979
BURLINGTON NORTHERN RAILROAD CO	015511
BURLINGTON RESOURCES INC	833320
CABLEVISION SYSTEMS CORP	784681
CABOT CORP	016040
CALFED INC	727011
CAMPBELL SOUP CO	016732
CAPITAL CITIES ABC INC /NY/	017109
CAPSTEAD MORTGAGE CORP	766701
CARNIVAL CRUISE LINES INC	815097
CAROLINA POWER & LIGHT CO	017797
CARTER HAWLEY HALE STORES INC /DE/	750217
CASTLE & COOKE INC	016189
CATERPILLAR FINANCIAL SERVICES CORP	764784
CATERPILLAR INC	018230
CBI INDUSTRIES INC /DE/	310431
CBS INC	018366
CENTEL CORP	018787
CENTERIOR ENERGY CORP	774197
CENTEX CORP	018532
CENTRAL HUDSON GAS & ELECTRIC CORP	018647
CENTRAL ILLINOIS PUBLIC SERVICE CO	018654
CENTRAL MAINE POWER CO	018675
CENTRAL TELEPHONE CO	018792
CENTURY COMMUNICATIONS CORP	785080
CHAMPION INTERNATIONAL CORP	019150
CHARTER MEDICAL CORP	019411
CHASE MANHATTAN CORP	019489
CHASE MANHATTAN LEASING COMPANY MICH INC	020724
CHEMICAL BANKING CORP	019617
CHEMICAL WASTE MANAGEMENT INC	800287
CHESAPEAKE & POTOMAC TELEPHONE CO OF MARYLAND	019722
CHESAPEAKE & POTOMAC TELEPHONE CO OF VIRGINIA	019725
CHEVRON CORP	093410
CHICAGO & NORTH WESTERN HOLDINGS CORP	854884
CHIQUITA BRANDS INTERNATIONAL INC	101063
CHRIS CRAFT INDUSTRIES INC	020067
CHRYSLER CORP /DE	791259
CHRYSLER FINANCIAL CORP	020164
CHUBB CORP	020171
CIGNA CORP	701221
CILCORP INC	762129
CINCINNATI BELL INC /OH/	716133
CINCINNATI GAS & ELECTRIC CO	020290
CIRCLE K CORP /NEW/	350215
CIT GROUP HOLDINGS INC /DE/	020388
CITICORP	020405
CITIZENS & SOUTHERN CORP/GA/	020429
CITIZENS UTILITIES CO	020520
CLEVELAND ELECTRIC ILLUMINATING CO	020947
CLOROX CO /DE/	021076
CMS ENERGY CORP	811156
CNA FINANCIAL CORP	021175
COASTAL CORP	021267
COCA COLA CO	021344
COCA COLA ENTERPRISES INC	804055
COLGATE PALMOLIVE CO	021665
COLORADO INTERSTATE GAS CO	200155
COLTEC HOLDINGS INC	832369
COLUMBIA GAS SYSTEM INC	022099
COLUMBIA SAVINGS & LOAN ASSOCIATION/CA/	824204
COLUMBUS SOUTHERN POWER CO /OH/	022198
COMCAST CORP	022301
COMDISCO INC	722487
COMERICA INC /NEW/	028412
COMMERCIAL CREDIT CO	201499
COMMONWEALTH EDISON CO	022608
COMMONWEALTH ENERGY SYSTEM	071304
COMMUNICATIONS SATELLITE CORP	022698
COMPAQ COMPUTER CORP	714154
COMPUTER ASSOCIATES INTERNATIONAL INC	356029
CONAGRA INC /DE/	023217
CONNECTICUT LIGHT & POWER CO	023426
CONSOLIDATED EDISON CO OF NEW YORK INC	023632
CONSOLIDATED NATURAL GAS CO	023736
CONSOLIDATED RAIL CORP /PA/	810765
CONTAINER CORP OF AMERICA /DE/	798918
CONTEL CORP	024188
CONTINENTAL AIRLINES HOLDINGS INC	316647
CONTINENTAL BANK CORP	024058
CONTINENTAL CABLEVISION INC	355069
CONTINENTAL CORP	024011
CONTINENTAL HOLDINGS INC	752198
COOPER INDUSTRIES INC	024454
COORS ADOLPH CO	024545
CORESTATES FINANCIAL CORP	069952
CORNING INC /NY	024741
COUNTRYWIDE MORTGAGE INVESTMENTS INC /DE	773468
COUNTRYWIDE MORTGAGE OBLIGATIONS III INC	775748
CPC INTERNATIONAL INC	025350
CRESTAR FINANCIAL CORP	101880
CROWN CORK & SEAL CO INC	025690
CUMMINS ENGINE CO INC	026172
CYPRUS MINERALS CO	769589
DANA CORP	026780
DAYTON HUDSON CORP	027418
DAYTON POWER & LIGHT CO	027430
DCNY CORP	718448
DEERE & CO	315189
DEERE JOHN CAPITAL CORP	027673
DELMARVA POWER & LIGHT CO /DE/	027879
DELTA AIR LINES INC /DE/	027904
DETROIT EDISON CO	028385
DILLARD DEPARTMENT STORES INC	028917
DISCOVER CREDIT CORP	815743
DISNEY WALT CO	029082
DOMINION BANKSHARES CORP	029567
DOVER CORP	029905
DOW CHEMICAL CO /DE/	029915
DOW CORNING CORP	029917
DPL INC	787250
DRESSER INDUSTRIES INC /DE/	030099
DUKE POWER CO /NC/	030371
DUN & BRADSTREET CORP	030419
DUQUESNE LIGHT CO	030573
DURACELL HOLDINGS CORP	837338
EASTERN AIR LINES INC	031089
EASTERN ENTERPRISES	311259
EASTERN UTILITIES ASSOCIATES	031224
ECHLIN INC	031348
ECKERD JACK CORP /DE/	031364
EDWARDS A G INC	716462
EL PASO ELECTRIC CO /TX/	031978
EL PASO NATURAL GAS CO	031986
EMERSON ELECTRIC CO	032604
ENGELHARD CORP	352947
ENRON CORP	072859
ENRON OIL & GAS CO	821189
ENSERCH CORP	033015
ENTERGY CORP	065984
EQUITABLE OF IOWA COMPANIES	225300
EQUITABLE RESOURCES INC /PA/	033213
ETHYL CORP	033656
FAIRCHILD CORP	009779
FEDERAL EXPRESS CORP	230211
FEDERAL PAPER BOARD CO INC	034891
FEDERATED DEPARTMENT STORES INC	034945
FIFTH THIRD BANCORP	035527
FIRST AMERICAN CORP /TN/	036066
FIRST BANK SYSTEM INC	036104
FIRST CAPITAL HOLDINGS CORP	719520
FIRST CHICAGO CORP	036161
FIRST EMPIRE STATE CORP	036270
FIRST EXECUTIVE CORP	036288
FIRST FIDELITY BANCORPORATION /NJ/	823670
FIRST FINANCIAL MANAGEMENT CORP	036326
FIRST INTERSTATE BANCORP /DE/	105962
FIRST OF AMERICA BANK CORP /MI/	036703
FIRST REPUBLICBANK CORP	063251
FIRST TENNESSEE NATIONAL CORP	036966
FIRST UNION CORP	036995
FIRST WACHOVIA CORP	774203
FIRSTAR CORP/WI	037076
FLEET NORSTAR FINANCIAL GROUP INC	050341
FLEMING COMPANIES INC /OK/	352949
FLORIDA POWER CORP	037637
FLORIDA PROGRESS CORP	357261
FLUOR CORP/DE/	037748
FOOD LION INC	037912
FORD HOLDINGS INC	857775
FORD MOTOR CO	037996
FORD MOTOR CREDIT CO	038009
FOREST CITY ENTERPRISES INC	038067
FORT HOWARD CORP	038195
FOSTER WHEELER CORP	038321
FPL GROUP INC	753308
FREEPORT MCMORAN ENERGY PARTNERS LTD	784207
FREEPORT MCMORAN INC	351116
FREEPORT MCMORAN RESOURCE PARTNERS LTD PARTNERSHIP 793421	771298
FRUIT OF THE LOOM INC /DE/	778867
FUND AMERICAN COMPANIES INC	038547
FUQUA INDUSTRIES INC /DE/	038698
GAF CORP	038699
GANNETT CO INC /DE/	040888
GENCORP INC	040493
GENERAL CINEMA CORP	040554
GENERAL ELECTRIC CAPITAL CORP	797463
GENERAL ELECTRIC FINANCIAL SERVICES INC	040656
GENERAL INSTRUMENT CORP /DE/	040704
GENERAL MILLS INC	317745
GENERAL RE CORP	040967
GENUINE PARTS CO	041077
GEORGIA PACIFIC CORP	041289
GIANT FOOD INC	041409
GILLETTE CO	774488
GLENFED INC	852804
GND HOLDINGS CORP /DE/	042246
GOLDEN NUGGET INC	042293
GOLDEN WEST FINANCIAL CORP /DE/	042542
GOODRICH B F CO	042582
GOODYEAR TIRE & RUBBER CO /OH/	042672
GRACE W R & CO/NY	317633
GREAT AMERICAN COMMUNICATIONS CO	043287
GREAT AMERICAN MANAGEMENT & INVESTMENT I	043300
GREAT ATLANTIC & PACIFIC TEA CO INC	043362
GREAT LAKES CHEMICAL CORP	043414
GREAT NORTHERN NEKOOSA CORP	043512
GREAT WESTERN FINANCIAL CORP	043959
GREYHOUND DIAL CORP /AZ/	043960
GREYHOUND FINANCIAL CORP	044279
GRUMMAN CORP	040864
GTE CALIFORNIA INC	040865
GTE FLORIDA INC	040867
GTE NORTH INC	040877
GTE NORTHWEST INC	040876
GTE SOUTH INC	040874
GTE SOUTHWEST INC	045012
HALLIBURTON CO	045529
HARCOURT BRACE JOVANOVICH INC	801898
HARNISCHFEGER INDUSTRIES INC	202058
HARRIS CORP /DE/	046080
HASBRO INC	354707
HAWAIIAN ELECTRIC INDUSTRIES INC	826490
HEALTHTRUST INC THE HOSPITAL CO	046640
HEINZ H J CO	046738
HELLER FINANCIAL INC	840216
HENLEY PROPERTIES INC	048989
HERCULES INC	047111
HERSHEY FOODS CORP	047129
HERTZ CORP	047288
HIBERNIA CORP	837173
HILLSBOROUGH HOLDINGS CORP	047580
HILTON HOTELS CORP	812427
HOECHST CELANESE CORP	860602
HOLNAM INC	354950
HOME DEPOT INC	743872
HOMESTAKE MINING CO /DE/	048305
HONEYWELL INC	311314
HOSPITAL CORP OF AMERICA /TN/	048681
HOUSEHOLD FINANCE CORP	354964
HOUSEHOLD INTERNATIONAL INC	202131
HOUSTON INDUSTRIES INC	048732
HOUSTON LIGHTING & POWER CO	049196
HUNTINGTON BANCSHARES INC/MD	850422
HUNTINGTON BANCSHARES INC/MD	811128
HYSTER YALE MATERIALS HANDLING INC	811151
IBM 1991 A TAX EXEMPT GRANTOR TRUST	811152
IBM 1991 B NEW YORK TAX EXEMPT GRANTOR TRUST	052477
IBM 1991 C CALIFORNIA TAX EXEMPT GRANTOR TRUST	049648
IBP INC	049789
IDAHO POWER CO	859119
ILLINOIS BELL TELEPHONE CO	049792
ILLINOIS CENTRAL CORP	049816
ILLINOIS CENTRAL RAILROAD CO	049826
ILLINOIS POWER CO	050172
ILLINOIS TOOL WORKS INC	050217
INDIANA MICHIGAN POWER CO	050485
INDIANAPOLIS POWER & LIGHT CO	050548
INGERSOLL RAND CO	790528
INLAND STEEL CO	050623
INLAND STEEL INDUSTRIES INC /DE/	050857
INSILCO CORP	050863
INTEGRATED RESOURCES INC	050918
INTEL CORP	050957
INTER REGIONAL FINANCIAL GROUP INC	714311
INTERCO INC	051434
INTERNATIONAL LEASE FINANCE CORP	051644
INTERNATIONAL PAPER CO /NEW/	052491
INTERPUBLIC GROUP OF COMPANIES INC	310170
IOWA ILLINOIS GAS & ELECTRIC CO	726391
IOWA RESOURCES INC	052795
IPALCO ENTERPRISES INC	052825
ITEL CORP	052827
ITT CORP	053117
ITT RAYONIER INC	727742
JAMES RIVER CORP OF VIRGINIA	200406
JEFFERSON SMURFIT CORP	053669
JOHNSON & JOHNSON	105634
JOHNSON CONTROLS INC	056824
JWP INC/DE/	054478
K MART CORP	054496
KANSAS CITY POWER & LIGHT CO	795266
KANSAS GAS & ELECTRIC CO /KS/	055067
KAUFMAN & BROAD HOME CORP	055195
KELLOGG CO	055387
KEMPER CORP	055458
KENTUCKY UTILITIES CO	036208
KERR MCGEE CORP	794323
KEYCORP	055785
KIEWIT PETER SONS INC	205520
KIMBERLY CLARK CORP	318717
KNIGHT RIDDER INC	056873
KRAFT GENERAL FOODS INC	716783
KROGER CO	023666
LAFARGE CORP	096223
LEE SARA CORP	059478
LEUCADIA NATIONAL CORP	701985
LILLY ELI & CO	059558
LIMITED INC	059880
LINCOLN NATIONAL CORP	060086
LITTON INDUSTRIES INC	060150
LOEWS CORP	060195
LOMAS FINANCIAL CORP	791348
LONE STAR INDUSTRIES INC	060251
LONE STAR TECHNOLOGIES INC	060357
LONG ISLAND LIGHTING CO	060512
LORAL CORP /NY/	060519
LOUISIANA LAND & EXPLORATION CO	060527
LOUISIANA PACIFIC CORP	060549
LOUISVILLE GAS & ELECTRIC CO /KY/	060667
LOWES COMPANIES INC	103944
LTV AEROSPACE & DEFENSE CO	060731
LTV CORP	083264
LTV STEEL CO INC	842635
LYONDELL PETROCHEMICAL CO	061213
MACK TRUCKS INC /PA/	062119
MANUFACTURERS HANOVER CORP	062126
MANUFACTURERS NATIONAL CORP	355473
MANVILLE CORP	062142
MAPCO INC	314733
MARRIOTT CORP	062741
MARSHALL & ILSLEY CORP/WI/	062857
MARTIN MARIETTA CORP	062996
MASCO CORP /DE/	745448
MASCO INDUSTRIES INC	724176
MAXUS ENERGY CORP /DE/	764542
MAXXAM GROUP INC /DE/	063814
MAXXAM INC	063416
MAY DEPARTMENT STORES CO	063541
MCA INC	063577
MCCAW CELLULAR COMMUNICATIONS INC	818687
MCDERMOTT INTERNATIONAL INC	708819
MCDONALDS CORP	063908
MCDONNELL DOUGLAS CORP	063917
MCDONNELL DOUGLAS FINANCE CORP /DE	711513
MDC HOLDINGS INC	773141
MEAD CORP	064394
MELLON BANK CORP	064782
MELVILLE CORP	064803
MEMOREX TELEX CORP	097031
MERCANTILE BANCORPORATION INC	064907
MERCANTILE STORES CO INC	064923
MERCK & CO INC	064978
MERIDIAN BANCORP INC	723916
MERRILL LYNCH & CO INC	065100
MESA LTD PARTNERSHIP	775967
MGM PATHE COMMUNICATIONS CO	778706
MICHIGAN NATIONAL CORP	065660
MICROSOFT CORP	789019
MIDLANTIC CORP	793546
MIDWEST ENERGY CO	740072
MINNESOTA MINING & MANUFACTURING CO	066740
MINNESOTA POWER & LIGHT CO	066756
MISSISSIPPI POWER & LIGHT CO	066901
MISSOURI PACIFIC RAILROAD CO/DEL	310163
MITCHELL ENERGY & DEVELOPMENT CORP	311995
MNC FINANCIAL INC /MD/	062973
MONTANA POWER CO /MT/	067727
MORGAN STANLEY GROUP INC /DE/	789625
MORTON INTERNATIONAL INC	068381
MOTEL 6 LP	794359
MOTOROLA INC	068505
MURPHY OIL CORP /DE	717423
NACCO INDUSTRIES INC	789933
NATIONAL BREWING HOLDINGS LTD	804137
NATIONAL CITY CORP	069970
NATIONAL GYPSUM CO	070174
NATIONAL INTERGROUP INC	718644
NATIONAL MEDICAL ENTERPRISES INC /NV/	070316
NATIONAL RURAL UTILITIES COOPERATIVE FINANCE CORP	070502
NATIONAL STEEL CORP	070578
NAVISTAR FINANCIAL CORP	051303
NBD BANCORP INC /DE/	070040
NCNB CORP	070658
NCR CORP	070666
NERCO INC	748581
NEVADA POWER CO	071180
NEW JERSEY BELL TELEPHONE CO	071428
NEW YORK STATE ELECTRIC & GAS CORP	071675
NEW YORK TIMES CO	071691
NEWMONT MINING CORP	071824
NIAGARA MOHAWK POWER CORP /NY/	071932
NICOR INC	072020
NIPSCO INDUSTRIES INC	823392
NL INDUSTRIES INC	072182
NORDSTROM INC	072333
NORFOLK & WESTERN RAILWAY CO&/PRED/	072342
NORFOLK SOUTHERN CORP	702165
NORFOLK SOUTHERN RAILWAY CO/VA	092275
NORTH AMERICAN PHILIPS CORP	072523
NORTHEAST FEDERAL CORP	863517
NORTHEAST UTILITIES	072741
NORTHERN STATES POWER CO /MN/	072903
NORTHERN STATES POWER CO /WI/	072909
NORTHERN TRUST CORP	073124
NORTHWEST PIPELINE CORP	110019
NORTON SIMON INC	090534
NORWEST CORP	072971
NORWEST FINANCIAL INC	708461
NVR LP	792972
OCCIDENTAL PETROLEUM CORP /DE/	797468
OGDEN CORP	073902
OGDEN PROJECTS INC	851945
OGLETHORPE POWER CORP	788816
OHIO BELL TELEPHONE CO	073946
OHIO POWER CO	073966
OKLAHOMA GAS & ELECTRIC CO	074145
OLD KENT FINANCIAL CORP /MI/	746969
OLIN CORP	074303
OMNICOM GROUP INC	029980
OPPENHEIMER & CO INC	728648
ORYX ENERGY CO	836442
OUTBOARD MARINE CORP	075149
OVERSEAS SHIPHOLDING GROUP INC	075206
OWENS CORNING FIBERGLAS CORP	075234
OWENS ILLINOIS GROUP INC	812233
OWENS ILLINOIS INC /DE/	812074
PA HOLDINGS CORP	835783
PACCAR FINANCIAL CORP	731288
PACCAR INC	075362
PACIFIC ENTERPRISES INC	075527
PACIFIC GAS & ELECTRIC CO	075488
PACIFIC TELECOM INC	096977
PAINE WEBBER GROUP INC	075754
PAN AM CORP/DE	743216
PAN AMERICAN WORLD AIRWAYS INC	075989
PANHANDLE EASTERN CORP /DE/	351696
PARAMOUNT COMMUNICATIONS INC /DE/	044482
PARKER HANNIFIN CORP	076334
PAYLESS CASHWAYS INC	076744
PENN CENTRAL CORP	077098
PENN TRAFFIC CO	077155
PENNEY J C CO INC	077182
PENNEY J C FUNDING CORP	077193
PENNSYLVANIA POWER & LIGHT CO /PA	317187
PENNSYLVANIA POWER CO	077278
PENNZOIL CO /DE/	077320
PEOPLES ENERGY CORP	077385
PEOPLES GAS LIGHT & COKE CO	077388
PEPSICO INC	077476
PHARMACIA CORP	355942
PHELPS DODGE CORP	076066
PHH CORPORATION	077778
PHILADELPHIA ELECTRIC CO	078100
PHILLIPS PETROLEUM CO	078214
PHM CORP	822416
PINNACLE WEST CAPITAL CORP	764622
PITNEY BOWES CREDIT CORP	768170
PITNEY BOWES INC /DE/	078814
PNC FINANCIAL CORP	713676
POLAROID CORP	078326
PORTLAND GENERAL CORP /OR	079636
PORTLAND GENERAL ELECTRIC CO /OR/	784977
POTLATCH CORP	079715
POTOMAC EDISON CO	079731
POTOMAC ELECTRIC POWER CO	079732
PPG INDUSTRIES INC	079879
PREMARK INTERNATIONAL INC	800575
PRIME MOTOR INNS INC	060293
PRIMERICA CORP /NEW/	831001
PRIMERICA HOLDINGS INC	004690
PROSPECT GROUP INC	739169
PRUDENTIAL REALTY SECURITIES II INC	730713
PSI ENERGY INC	081020
PSI RESOURCES INC	829966
PUBLIC SERVICE CO OF COLORADO	081018
PUBLIC SERVICE CO OF NEW HAMPSHIRE	315256

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-02

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-02

Registrant	CIK No.
PUBLIC SERVICE CO OF NEW MEXICO	081023
PUBLIX SUPER MARKETS INC	081061
PUGET SOUND POWER & LIGHT CO /WA/	081100
QUANTUM CHEMICAL CORP	070047
QUESTAR CORP	751652
RAC MORTGAGE INVESTMENT CORP	826675
RALPHS GROCERY CO	836023
RAYCHEM CORP	062206
READERS DIGEST ASSOCIATION INC	858556
REEBOK INTERNATIONAL LTD	770949
RELIANCE ELECTRIC CO/DE	814331
RELIANCE GROUP HOLDINGS INC	356395
REVLON INC	083539
REYNOLDS METALS CO	083604
RHONE POULENC RORER INC	217028
RIGGS NATIONAL CORP	350847
RITE AID CORP	084129
RJR NABISCO INC	083612
ROADWAY SERVICES INC	701706
ROCHESTER GAS & ELECTRIC CORP	064557
ROCKEFELLER CENTER PROPERTIES INC	773652
ROCKWELL INTERNATIONAL CORP	064636
ROHM & HAAS CO	084792
ROHR INDUSTRIES INC	084801
ROUSE CO	085366
RYDER SYSTEM INC	085961
RYLAND GROUP INC	085974
SAFECO CORP	086104
SAFEWAY CANADA HOLDINGS INC	802640
SAFEWAY INC	086144
SAFEWAY U S HOLDINGS INC	802639
SAINT JOE PAPER CO	745308
SALOMON INC	200245
SAN DIEGO GAS & ELECTRIC CO	086521
SANTA FE PACIFIC CORP	732639
SATURN CORP	879143
SCECORP	827052
SCHERING PLOUGH CORP	310158
SCHWAB CHARLES CORP	316709
SCI HOLDINGS INC	772973
SCOTT PAPER CO	057848
SCRIPPS E W CO /DE	832426
SEAGATE TECHNOLOGY INC	354952
SEALY CORP	748015
SEARS ROEBUCK & CO	319256
SEARS ROEBUCK ACCEPTANCE CORP	088255
SECURITY PACIFIC CORP	088606
SEQUA CORP /DE/	095301
SERVICE CORPORATION INTERNATIONAL	089089
SERVICE MERCHANDISE CO INC	089107
SHAWMUT NATIONAL CORP	823393
SHEARSON LEHMAN BROTHERS HOLDINGS INC	806085
SHEARSON LEHMAN BROTHERS INC	728566
SHELL OIL CO	089629
SHERWIN WILLIAMS CO	089800
SIGNET BANKING CORP	009659
SOCIETY CORP	091578
SONAT INC	092236
SOUTH CAROLINA NATIONAL CORP	091893
SOUTHEAST BANKING CORP	091980
SOUTHERN CALIFORNIA EDISON CO	092103
SOUTHERN CALIFORNIA GAS CO	092108
SOUTHERN NATURAL GAS CO	092232
SOUTHERN NEW ENGLAND TELEPHONE CO	092244
SOUTHERN PACIFIC TRANSPORTATION CO	092258
SOUTHLAND CORP	092344
SOUTHTRUST CORP	092661
SOUTHWEST AIRLINES CO	092360
SOUTHWEST GAS CORP	092418
SOUTHWESTERN PUBLIC SERVICE CO	092521
SOVRAN FINANCIAL CORP	103702
SPIEGEL INC	276641
SPRINGS INDUSTRIES INC	093102
SQUARE D CO	093128
ST PAUL BANCORP INC	810578
STANLEY WORKS	093556
STATE STREET BOSTON CORP	093751
STONE CONTAINER CORP	094810
STRAUSS LEVI ASSOCIATES INC	778877
SUN ENERGY PARTNERS LP	778201
SUN MICROSYSTEMS INC	709519
SUNDSTRAND CORP /DE/	095395
SUNTRUST BANKS INC	750556
SUPER VALU STORES INC	095521
SUPERMARKETS GENERAL HOLDINGS CORP	821139
SYNTEX CORP	096000
SYSCO CORP	096021
SYSTEM ENERGY RESOURCES INC	202584
TALLEY INDUSTRIES INC	096236
TANDEM COMPUTERS INC /DE/	315180
TANDY CORP /DE/	096269
TECO ENERGY INC	350563
TELE COMMUNICATIONS INC	096803
TELEDYNE INC	096935
TEMPLE INLAND INC	731939
TENNECO CREDIT CORP	805018
TENNECO INC /DE/	823548
TENNESSEE GAS PIPELINE CO	097142
TEXACO INC	097349
TEXAS EASTERN CORP	097430
TEXAS INSTRUMENTS INC	097476
TEXAS UTILITIES CO	097561
TEXTRON INC	217346
TIME WARNER INC	736157
TIMES MIRROR CO	098349
TIMKEN CO	098362
TOLEDO EDISON CO	352049
TOYOTA MOTOR CREDIT CORP	834071
TOYS R US INC	051734
TRANS WORLD AIRLINES INC /NEW/	278327
TRANSCO ENERGY CO	099231
TRANSCONTINENTAL GAS PIPE LINE CORP	099250
TRIBUNE CO	726513
TRW INC	100030
TUCSON ELECTRIC POWER CO	100122
TURNER BROADCASTING SYSTEM INC	100240
TWENTIETH CENTURY FOX FILM CORP /DE/ /NE	356364
TYCO LABORATORIES INC	100441
TYSON FOODS INC	100493
UAL CORP /DE/	100517
UJB FINANCIAL CORP /NJ/	101320
UNICORP AMERICAN CORP /DE/ /NEW/	202172
UNION CAMP CORP	100783
UNION CARBIDE CHEMICALS & PLASTICS CO INC	100790
UNION ELECTRIC CO	100826
UNION EXPLORATION PARTNERS LTD	769747
UNION OIL CO OF CALIFORNIA	100860
UNION PACIFIC CORP	100885
UNION TANK CAR CO	100923
UNION TEXAS PETROLEUM HOLDINGS INC	774214
UNIROYAL GOODRICH TIRE CO	831872
UNISYS CORP	746838
UNITED AIR LINES INC	101001
UNITED BANKS OF COLORADO INC	101047
UNITED ILLUMINATING CO	101265
UNITED PARCEL SERVICE OF AMERICA INC	809697
UNITED STATES LEASING INTERNATIONAL INC	101579
UNITED STATES SHOE CORP	101771
UNITED TECHNOLOGIES CORP /DE/	101829
UNITED TELECOMMUNICATIONS INC	101830
UNITED TELEPHONE CO OF FLORIDA/NEW	037664
UNIVERSAL CORP /VA/	102037
UNOCAL CORP/DE	716039
UPJOHN COMPANY	102237
USAIR GROUP INC	701345
USBANCORP INC /PA/	707605
USF&G CORP	354396
USG CORP	757011
USX CORP	101778
UTILICORP UNITED INC	066960
V F CORP /PA/	103379
VALERO NATURAL GAS PARTNERS L P	910021
VALHI INC /DE/	059255
VALLEY NATIONAL CORP	350006
VIACOM INC	813828
VIACOM INTERNATIONAL INC /DE/	614135
VONS COMPANIES INC	715639
WAL MART STORES INC	104169
WALGREEN CO	104207
WANG LABORATORIES INC	104519
WARNER LAMBERT CO	104669
WASHINGTON POST CO	104889
WASHINGTON WATER POWER CO	104918
WASTE MANAGEMENT INC	104938
WELLS FARGO & CO	105598
WEST PENN POWER CO	105839
WEST POINT PEPPERELL INC	105846
WESTERN MASSACHUSETTS ELECTRIC CO	106170
WESTINGHOUSE CREDIT CORP	106412
WESTINGHOUSE ELECTRIC CORP	106413
WESTVACO CORP	106496
WEYERHAEUSER CO	106535
WHEELABRATOR TECHNOLOGIES INC /DE/	790159
WHEELING PITTSBURGH STEEL CORP	106618
WHIRLPOOL CORP /DE/	106640
WHITMAN CORP	049573
WICKES COMPANIES INC /DE/	106998
WILLAMETTE INDUSTRIES INC	107189
WILLIAMS COMPANIES INC	107263
WINN DIXIE STORES INC	107681
WISCONSIN BELL INC	107844
WITCO CORP	107889
YELLOW FREIGHT SYSTEM INC OF DELAWARE	716006
ZALE CORP	109156

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-03

Registrant	CIK No.
AAR CORP	001750
ACE HARDWARE CORP	002024
ADELPHIA COMMUNICATIONS CORP	796486
ADOBE RESOURCES CORP	777877
ADVEST GROUP INC	319489
AFFILIATED BANKSHARES OF COLORADO INC	002682
AGENCY RENT A CAR INC	718936
AIR & WATER TECHNOLOGIES CORP	823556
AIRBORNE FREIGHT CORP /DE/	003000
ALASKA AIR GROUP INC	766421
ALBANY INTERNATIONAL CORP /DE/	819793
ALBERTO CULVER CO	003327
ALCO HEALTH SERVICES CORP	731269
ALEXANDER & ALEXANDER SERVICES INC	003449
ALLEGHANY CORP /DE	775368
ALLEGHENY LUDLUM CORP	811929
ALLERGAN INC	850693
ALLIED PRODUCTS CORP /DE/	003941
AM INTERNATIONAL INC	002310
AMC ENTERTAINMENT INC	722077
AMERICA WEST AIRLINES INC	706270
AMERICAN CAPITAL CORP	004707
AMERICAN FAMILY CORP	004977
AMERICAN HEALTH PROPERTIES INC	808240
AMERICAN HEALTHCARE MANAGEMENT INC	738339
AMERICAN MAIZE PRODUCTS CO	005405
AMERICAN REAL ESTATE PARTNERS L P	813762
AMERICAN SOUTHWEST MORTGAGE INVESTMENTS CORP	817383
AMERICOLD CORP /OR/	811119
AMERON INC/DE	790730
AMETEK INC	006082
AMOSKEAG CO	006161
AMSTAR CORP /DE/	807711
ANACOMP INC	006260
ANALOG DEVICES INC	006281
APACHE CORP	006769
APL CORP	006841
APPLE BANCORP INC	829761
APPLIED MATERIALS INC /DE	006951
APPLIED POWER INC	006955
ARKANSAS BEST CORP	007332
ARKLA EXPLORATION CO	858592
ARROW ELECTRONICS INC	007536
ARVIDA JMB PARTNERS L P	814046
ATKINSON GUY F CO OF CALIFORNIA	008137
AVATAR HOLDINGS INC	039677
AVONDALE INDUSTRIES INC	829444
AVX CORP	008878
AZTAR CORP	852807
BALFOUR MACLAINE CORP	054811
BALL CORP	009389
BALLYS PARK PLACE INC	311359
BALTIMORE BANCORP	751926
BANCFLORIDA FINANCIAL CORP	719146
BANCOKLAHOMA CORP	009515
BANDAG INC	009534
BANK SOUTH CORP	039394
BANKATLANTIC FINANCIAL CORP	315858
BANKS OF IOWA INC	009767
BANKS OF MID AMERICA INC	737267
BANPONCE CORP	763901

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-03

Registrant	CIK No.
BANTA CORP	009801
BARD C R INC /NJ/	009892
BATTLE MOUNTAIN GOLD CO	771498
BAY STATE GAS CO /NEW/	010488
BEARINGS INC /OH/	109563
BECKMAN INSTRUMENTS INC/DE/	840467
BELO A H CORP	356080
BEMIS CO INC	011199
BERLITZ INTERNATIONAL INC	856529
BETZ LABORATORIES INC	011884
BIG THREE INDUSTRIES INC	012099
BLOCK DRUG CO INC	012654
BLOCKBUSTER ENTERTAINMENT CORP	710979
BLOUNT INC	012707
BONNEVILLE PACIFIC CORP	795182
BORDEN CHEMICALS & PLASTICS LIMITED PARTNERSHIP	821202
BOSTON GAS CO	013390
BP PRUDHOE BAY ROYALTY TRUST	850033
BRIGGS & STRATTON CORP	014195
BROAD INC	054727
BROWN ALEX INC	787977
BROWN FORMAN CORP	014693
BROWN GROUP INC	014707
BRUNOS INC	014920
BRUSH WELLMAN INC	014957
BUCKEYE PARTNERS L P	805022
BURLINGTON COAT FACTORY WAREHOUSE CORP	718916
BUSINESSLAND INC	707542
C TEC CORP	310433
CAESARS WORLD INC	016095
CALIFORNIA ENERGY CO INC	720556
CALIFORNIA WATER SERVICE CO	016422
CALMAT CO	023533
CALTON INC	717216
CANAL ELECTRIC CO	016906
CAPITAL ASSOCIATES INC	804188
CARLISLE COMPANIES INC	790051
CARLYLE REAL ESTATE LTD PARTNERSHIP XIII	711604
CARLYLE REAL ESTATE LTD PARTNERSHIP XV	761023
CAROLCO PICTURES INC	801441
CAROLINA FREIGHT CORP	706166
CAROLINA TELEPHONE & TELEGRAPH CO	275177
CARPENTER TECHNOLOGY CORP	017843
CARTER WALLACE INC /DE/	018000
CCB FINANCIAL CORP	714812
CELLULAR COMMUNICATIONS INC	761878
CENTRAL BANCSHARES OF THE SOUTH INC	018568
CENTRAL FIDELITY BANKS INC	276235
CENTRAL ILLINOIS LIGHT CO	018651
CENTRAL LOUISIANA ELECTRIC CO INC	018672
CENTRAL NEWSPAPERS INC	854094
CENTRAL TELEPHONE CO OF FLORIDA	018793
CENTRAL VERMONT PUBLIC SERVICE CORP	018808
CENTURY TELEPHONE ENTERPRISES INC	018926
CENVILL DEVELOPMENT CORP	319302
CERTIFIED GROCERS OF CALIFORNIA LTD	320431
CHAMBERS DEVELOPMENT CO INC	778074
CHAPARRAL STEEL CO	833226
CHARMING SHOPPES INC	019353
CHEMED CORP	019584
CHESAPEAKE & POTOMAC TELEPHONE CO	019719
CHESAPEAKE & POTOMAC TELEPHONE CO OF WEST VIRGINIA	019724
CHESAPEAKE CORP /VA/	019731
CHILD WORLD INC	019930
CINCINNATI FINANCIAL CORP	020286
CINCINNATI MILACRON INC /DEL/	716823
CIRCUIT CITY STORES INC	104599
CIRCUS CIRCUS ENTERPRISES INC	725549
CITADEL HOLDING CORP	716634
CITIZENS FIRST BANCORP INC /NJ/	702163
CITY NATIONAL CORP	201461
CITYTRUST BANCORP INC	023413
CLAIBORNE LIZ INC	352363
CLARK EQUIPMENT CO /DE/	109710
CLARK OIL & REFINING CORP	020762
CLAYTON HOMES INC	719547
CLEVELAND CLIFFS INC	764065
CNC HOLDING CORP/DE	769644
COCA COLA BOTTLING CO CONSOLIDATED / DE/	317540
COLLINS FOODS INTERNATIONAL INC /DE/	350929
COLOR TILE INC	278780
COLORADO NATIONAL BANKSHARES INC	021956
COLORADO UTE ELECTRIC ASSOCIATION INC	752757
COLTEC INDUSTRIES INC	201493
COLUMBIA REAL ESTATE INVESTMENTS INC	779608
COMDATA HOLDINGS CORP	814246
COMFED BANCORP INC	825393
COMMERCE CLEARING HOUSE INC	022366
COMMERCIAL BANCSHARES INC /WV/	726738
COMMERCIAL METALS CO	022444
COMMONWEALTH EQUITY TRUST	314485
COMMONWEALTH MORTGAGE OF AMERICA L P	799030
COMMUNITY PSYCHIATRIC CENTERS /NV/	022764
COMPUTER SCIENCES CORP	023082
CONE MILLS CORP	023304
CONNER PERIPHERALS INC	792397
CONSECO INC	719241
CONTEL OF CALIFORNIA INC	024186
CONTINENTAL AIRLINES INC /DE/	319687
COOPER TIRE & RUBBER CO	024491
COPELAND AL ENTERPRISES INC	020224
COSTCO WHOLESALE CORP	734198
COTTER & CO	025095
COUNTRYWIDE CREDIT INDUSTRIES INC	025191
CRANE CO /DE/	025445
CRAY RESEARCH INC	025506
CRI INSURED MORTGAGE ASSOCIATION INC	847322
CRI LIQUIDATING REIT INC	850143
CROSS & TRECKER CORP	277721
CRYSTAL BRANDS INC	778169
CULBRO CORP	026093
CULLEN FROST BANKERS INC	039263
CULLUM COMPANIES INC	026114
CURTICE BURNS FOODS INC	026285
CURTISS WRIGHT CORP	026324
CYCLOPS INDUSTRIES INC	202648
DALTON B BOOKSELLER INC	823970
DAMON GROUP INC	033073
DAMSON BIRTCHER REALTY INCOME FUND II&L P	773915
DANAHER CORP /DE/	313616
DART GROUP CORP	026938
DATA GENERAL CORP	026999
DAUPHIN DEPOSIT CORP	215819
DE TOMASO INDUSTRIES INC	028367
DEAN FOODS CO	027500
DEKALB ENERGY CO	111001
DELTA WOODSIDE INDUSTRIES INC /DE	806624
DELUXE CORP	027996
DENNISON MANUFACTURING CO /NV/	028117
DEPOSIT GUARANTY CORP	028209
DEXTER CORP	028582
DIAMOND SHAMROCK INC	810316
DIAMOND STATE TELEPHONE CO	028729
DIBRELL BROTHERS INC	028755
DIEBOLD INC	028823
DILLARD INVESTMENT CO INC	773428
DIVERSIFIED ENERGIES INC	703300
DIXIE YARNS INC	029332
DOSKOCIL COMPANIES INC	004960
DR PEPPER SEVEN UP COMPANIES INC /DE/	836400
DREYFUS CORP	030183
DSC COMMUNICATIONS CORP	316004
DWG CORP	030697
E SYSTEMS INC	030875
EAGLE INDUSTRIES INC /DE/	837486
EAGLE PICHER INDUSTRIES INC	030927
EASTERN EDISON CO	014407
ECOLAB INC	031482
EDGCOMB CORP	802898
EDGCOMB METALS CO	791904
EDISON BROTHERS STORES INC	031575
EG&G INC	031791
ELIZABETHTOWN GAS CO	032377
EMERSON RADIO CORP	032621
EMPIRE DISTRICT ELECTRIC CO	032689
ENERGEN CORP	277595
ENSERCH EXPLORATION PARTNERS LTD	764625
ENSTAR GROUP INC	055820
ENVIRODYNE INDUSTRIES INC	033073
ENVIROSOURCE INC	106752
EPIC HEALTHCARE GROUP INC /DE/	841940
EQUIMARK CORP	033189
ESSELTE BUSINESS SYSTEMS INC	743418
ESSEX GROUP INC	033565
ETOWN CORP	764403
EXIDE CORP	813761
FAIRFIELD COMMUNITIES INC	276189
FAMILY DOLLAR STORES INC	034408
FARWEST FINANCIAL CORP	034489
FAY LESLIE COMPANIES INC	796226
FEDERAL REALTY INVESTMENT TRUST	034903
FERRELLGAS INC	811082
FERRO CORP	035214
FHP INTERNATIONAL CORP	793499
FIELDCREST CANNON INC	035469
FIGGIE INTERNATIONAL INC /DE/	720032
FINANCIAL CORP OF SANTA BARBARA	035679
FINGERHUT COMPANIES INC	740126
FIRST ALABAMA BANCSHARES INC	036032
FIRST BANCORPORATION OF OHIO	354889
FIRST BRANDS CORP	797320
FIRST COMMERCE CORP /LA/	036204
FIRST FINANCIAL CARIBBEAN CORP	840889
FIRST FINANCIAL CORP /WI/	735553
FIRST FLORIDA BANKS INC	109834
FIRST HAWAIIAN INC	036377
FIRST MISSISSIPPI CORP	036537
FIRST NATIONAL FINANCIAL CORP /NM/	779575
FIRST SECURITY CORP /DE/	312367
FIRST UNION REAL ESTATE EQUITY & MORTGAGE INV	037008
FIRST VIRGINIA BANKS INC	037032
FIRSTFED FINANCIAL CORP	810536
FISERV INC	798354
FLEXI VAN CORP	037464
FLIGHTSAFETY INTERNATIONAL INC	037481
FLORIDA EAST COAST INDUSTRIES INC	740796
FLORIDA STEEL CORP	037661
FLS HOLDINGS INC	839727
FOOD 4 LESS SUPERMARKETS INC	852640
FOODMAKER INC /DE/	807882
FOOTE CONE & BELDING COMMUNICATIONS INC	037931
FOOTHILL GROUP INC	037941
FOREST OIL CORP	038079
FORMICA CORP	814241
FORUM GROUP INC	033939
FOURTH FINANCIAL CORP	038475
FOXBORO CO	038563
FPL GROUP CAPITAL INC	794447
FRANKLIN RESOURCES INC	038777
FREEPORT MCMORAN COPPER & GOLD INC	831259
FULLER H B CO	039368
GAP INC	039911
GATX CAPITAL CORP	357019
GAYLORD CONTAINER CORP /DE/	812700
GENENTECH INC	318771
GENERAL CHEMICAL CORP/DE	854599
GENERAL HOST CORP	040638
GENERAL NUTRITION INC	317030
GENERAL WATERWORKS CORP /NEW/	040921
GEORGIA GULF CORP /DE/	805264
GERBER PRODUCTS CO	041130
GIBSON GREETINGS INC	717829
GITANO GROUP INC	837912
GLATFELTER P H CO	041719
GLOBAL MARINE INC	041850
GOLD KIST INC	215994
GORDON JEWELRY CORP	042632
GOULDS PUMPS INC	042791
GRACE ENERGY CORP	852551
GRAINGER W W INC	277135
GRAYBAR ELECTRIC CO INC	205402
GREEN TREE ACCEPTANCE INC	315815
GRENADA SUNBURST SYSTEM CORP	789575
GREY ADVERTISING INC /DE/	043952
GREYHOUND LINES INC	813040
GTE HAWAIIAN TELEPHONE CO INC	046218
GTECH CORP	719702
GUARANTEED MORTGAGE CORP III	752302
GUILFORD MILLS INC	044471
GWC CORP	779244
H&R BLOCK INC	012659
HADSON CORP	044801
HAMILTON OIL CORP	727283
HANDLEMAN CO /MI/	314727
HANDY & HARMAN	045333
HANNA M A CO/DE	045370
HANNAFORD BROTHERS CO	045379
HARLEY DAVIDSON INC	793952
HARMAN INTERNATIONAL INDUSTRIES INC / DE/	800459
HARNISCHFEGER CORP /DE/	027803
HARSCO CORP	045878
HARTE HANKS COMMUNICATIONS INC	045919
HARTMARX CORP/DE	723371

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-03

Registrant	CIK No.
HARVARD INDUSTRIES INC	046012
HEALTH CARE PROPERTY INVESTORS INC	765880
HEALTHVEST	792337
HECHINGER CO	048517
HEILIG MEYERS CO	048601
HELMERICH & PAYNE INC	046765
HERITAGE MEDIA CORP	821020
HEWLETT PACKARD FINANCE CO	741171
HEXCEL CORP/DE	717605
HIGHLAND SUPERSTORES INC	766003
HILLENBRAND INDUSTRIES INC	047518
HILLHAVEN CORP	276477
HILLS DEPARTMENT STORES INC /DE/	786877
HOME INSURANCE CO	048195
HOME SHOPPING NETWORK INC	791024
HOMEPLEX MORTGAGE INVESTMENTS CORP	833079
HOMESTEAD FINANCIAL CORP	048272
HOOK SUPERX INC	823883
HORMEL GEORGE A & CO	048465
HORN & HARDART CO /NY/	320333
HORSEHEAD INDUSTRIES INC	847326
HOVNANIAN ENTERPRISES INC	357294
HUBBELL INC	048898
HUDSON FOODS INC	786617
HUNT J B TRANSPORT SERVICES INC	728535
ICH CORP	049588
ICN PHARMACEUTICALS INC /DE/	049601
IE INDUSTRIES INC	789943
IMO INDUSTRIES INC	804151
IMPERIAL HOLLY CORP	831327
INB FINANCIAL CORP /IN/	050200
INDIANA ENERGY INC	780859
INDIANA GAS CO INC	050183
INGLES MARKETS INC	050493
INSPIRATION RESOURCES CORP	722079
INTERFACE INC	715787
INTERGRAPH CORP	351145
INTERLAKE CORP	790929
INTERMARK INC /DE/	731573
INTERNATIONAL CONTROLS CORP	051200
INTERNATIONAL FLAVORS & FRAGRANCES INC	051253
INTERNATIONAL MULTIFOODS CORP	051410
INTERNATIONAL SHIPHOLDING CORP	278041
INTERSTATE BAKERIES CORP /DE/	030021
INTERSTATE JOHNSON LANE INC	771296
INTERSTATE POWER CO	051720
INVG MORTGAGE SECURITIES CORP /DE/	792014
IOWA ELECTRIC LIGHT & POWER CO	052485
IOWA SOUTHERN INC	790499
IP TIMBERLANDS LTD	781880
IRE REAL ESTATE FUND LTD SERIES 25	720042
JAMESWAY CORP	053134
JEFFERIES GROUP INC	717867
JEFFERSON BANKSHARES INC	311100
JOHNSTON COCA COLA BOTTLING GROUP INC	818433
JONES FINANCIAL COMPANIES	815917
JONES INTERCABLE INC	275805
JONES SPACELINK LTD	353796
JOSTENS INC	054050
JOURNAL COMMUNICATIONS INC	054058
JOY TECHNOLOGIES INC	812944
JP INDUSTRIES INC	319375
JPS TEXTILE GROUP INC /DE/	846615
K&F INDUSTRIES INC	851797
KAMAN CORP	054381
KANSAS CITY SOUTHERN INDUSTRIES INC	054480
KASH N KARRY FOOD STORES INC	842913
KAY JEWELERS INC	766568
KAY MARY CORP	783197
KELLWOOD CO	055080
KENNAMETAL INC	055242
KENTUCKY POWER CO	055373
KEYSTONE INTERNATIONAL INC	055642
KIMBALL INTERNATIONAL INC	055772
KING WORLD PRODUCTIONS INC	756764
KN ENERGY INC	054502
KOGER PROPERTIES INC /FL/	355357
LA QUINTA MOTOR INNS INC	278243
LA Z BOY CHAIR CO	057131
LACLEDE GAS CO	057183
LADD FURNITURE INC	721669
LANDMARK BANCSHARES CORP	036948
LANDMARK LAND CO INC/DE	749028
LDI CORP	814500
LEAR SEATING CORP	842182
LEE ENTERPRISES INC	058361
LEGG MASON INC	704051
LEGGETT & PLATT INC	058492
LENNAR CORP	058896
LFC HOLDING CORP	787554
LIBERTY NATIONAL BANCORP INC /KY/	316909
LIN BROADCASTING CORP	059498
LINCOLN ELECTRIC CO	059527
LIVE ENTERTAINMENT INC	840260
LOCTITE CORP	060041
LOMAS & NETTLETON MORTGAGE INVESTORS	060153
LONGVIEW FIBRE CO	060302
LORILLARD INC	277684
LOTUS DEVELOPMENT CORP	711781
LPL TECHNOLOGIES INC	799315
LSB INDUSTRIES INC	060714
LSI LOGIC CORP	703360
LUBRIZOL CORP	060751
LUKENS INC /DE/	808317
LUKENS INC /DE/	060860
MA COM INC	065771
MACY CREDIT CORP	061298
MADISON GAS & ELECTRIC CO	061339
MAGMA COPPER CO	061425
MAGNETEK INC	751085
MAI BASIC FOUR INC	760436
MAINE YANKEE ATOMIC POWER CO	061617
MANOR CARE INC/NEW	354604
MARION MERRELL DOW INC	062391
MATTEL INC /DE/	063278
MAXTOR CORP	711039
MAYFLOWER GROUP INC /IN/	063506
MCCLATCHY NEWSPAPERS INC	822043
MCCORMICK & CO INC	063754
MCCRORY CORP	063801
MCCRORY PARENT CORP	055211
MCORP	064924
MDU RESOURCES GROUP INC	067716
MEASUREX CORP /DE/	751190
MEDCO CONTAINMENT SERVICES INC	741520
MEDIA GENERAL INC	216539
MEDIQ INC	350920
MEDITRUST INC	774350
MEPC CAPITAL CORP	819343
MERCANTILE BANKSHARES CORP	064908
MERCHANTS NATIONAL CORP	064970
MERCURY FINANCE COMPANY	846378
MEREDITH CORP	065011
MERRY LAND & INVESTMENT CO INC	350071
METRO MOBILE CTS INC	749922
METROPOLITAN FINANCIAL CORP /DE/	741341
METROPOLITAN MORTGAGE & SECURITIES CO INC	065384
MEYER FRED INC	701169
MHS HOLDINGS CORP	854067
MICRON TECHNOLOGY INC	723125
MIDLAND ENTERPRISES INC /DE/	066029
MIDWAY AIRLINES INC /DE/	319668
MILLER HERMAN INC	066382
MILLIPORE CORP	068479
MINE SAFETY APPLIANCES CO	066570
ML MEDIA PARTNERS LP	785959
MOLEX INC	067472
MONARCH CAPITAL CORP /MA/	067516
MONONGAHELA POWER CO /OH/	067646
MORNINGSTAR FOODS INC	832788
MORRISON KNUDSEN CORP	763739
MORTGAGE & REALTY TRUST	079259
MOUNTAIN FUEL SUPPLY CO	068589
MUELLER INDUSTRIES INC	039439
MULTIBANK FINANCIAL CORP	068803
MULTIMEDIA INC	068813
MUSICLAND GROUP INC /DE	798507
NALCO CHEMICAL CO	069598
NASH FINCH CO	069671
NATIONAL BANCSHARES CORP OF TEXAS	069834
NATIONAL COMMUNITY BANKS INC	841534
NATIONAL CONSUMER COOPERATIVE BANK /DC/	358801
NATIONAL CONVENIENCE STORES INC /DE/	314662
NATIONAL EDUCATION CORP	277821
NATIONAL HEALTH LABORATORIES INC	832427
NATIONAL REALTY L P	819671
NATIONAL SERVICE INDUSTRIES INC	070538
NCH CORP	069960
NEIMAN MARCUS GROUP INC	819539
NEW JERSEY RESOURCES CORP	356309
NEW ORLEANS PUBLIC SERVICE INC	071508
NEWELL CO	814453
NEWMONT GOLD CO	793308
NOBLE AFFILIATES INC	072207
NORTEK INC	072423
NORTH FORK BANCORPORATION INC	352510
NORTHEAST BANCORP INC /CT/	072740
NORTHWEST NATURAL GAS CO	073020
NORTHWESTERN STEEL & WIRE CO	073093
NOVELL INC	758004
NRM ENERGY COMPANY L P	759202
NUCOR CORP	073309
NUI CORP	070668
OCEAN DRILLING & EXPLORATION CO	073722
OLD REPUBLIC INTERNATIONAL CORP	074260
OMI CORP	732780
ONE VALLEY BANCORP OF WEST VIRGINIA INC	351816
ONEOK INC	074154
ORACLE SYSTEMS CORP	777678
ORANGE & ROCKLAND UTILITIES INC	074778
ORION PICTURES CORP	035590
OTTER TAIL POWER CO	075129
PACIFIC LUMBER CO /DE/	796838
PALL CORP	075829
PAPER CORP OF AMERICA	067023
PARTECH HOLDINGS CORP	791027
PATHE COMMUNICATIONS CORP	720695
PAY N PAK STORES INC	076732
PENNSYLVANIA AMERICAN WATER CO	106239
PENNSYLVANIA ENTERPRISES INC	077231
PENNSYLVANIA GAS & WATER CO	077242
PENTAIR INC	077360
PEP BOYS MANNY MOE & JACK	077449
PERINI CORP	077543
PERKIN ELMER CORP	077551
PERMIAN PARTNERS LP	812023
PETERS J M CO INC	813945
PETRIE STORES CORP	077808
PHILADELPHIA SUBURBAN CORP	078128
PHILIPS INDUSTRIES INC /OH/	205778
PHILLIPS VAN HEUSEN CORP /DE/	078239
PHLCORP INC	230046
PIEDMONT NATURAL GAS CO INC	078460
PIER 1 IMPORTS INC/DE	278130
PIPER JAFFRAY INC	078778
PITTSTON CO	078890
PITTWAY CORP	078895
PITTWAY CORP /DE/	093469
PLAYTEX APPAREL INC	817215
PLAYTEX BEAUTY CARE INC	817217
PLM INTERNATIONAL INC	814877
PLUM CREEK TIMBER CO L P	849213
POGO PRODUCING CO	230463
POPE & TALBOT INC /DE/	311871
PRECISION CASTPARTS CORP	079958
PREMIER BANCORP INC	781332
PRESIDIO OIL CO	080134
PRESTON CORP	716741
PRO FAC COOPERATIVE INC	202932
PROGRESSIVE CORP/OH/	080661
PS GROUP INC	080966
PUGET SOUND BANCORP	352078
QUAKER STATE CORP	081381
QUANEX CORP	276889
QUESTAR PIPELINE CO	764044
QUICK & REILLY GROUP INC&/D—/	719544
QVC NETWORK INC	797565
RAYMOND JAMES FINANCIAL INC	720005
READING & BATES CORP	082329
RELIANCE GROUP INC/NEW/	700756
RELIANCE INSURANCE CO	083053
RESIDENTIAL MORTGAGE ACCEPTANCE INC	795807
RESIDENTIAL MORTGAGE INVESTMENTS INC	791681
RESORTS INTERNATIONAL INC	083394
RESTAURANT ENTERPRISES GROUP INC / DE/	813855
REX PT HOLDINGS INC	843761
REXENE CORP	829218
REYNOLDS & REYNOLDS CO	083588
RHODES INC	083679
ROCHESTER TELEPHONE CORP	084567
ROLLINS TRUCK LEASING CORP	084244
ROSES STORES INC	085149
ROUNDYS INC	314423
ROWAN COMPANIES INC	085408
RPM INC/OH/	110621
RUBBERMAID INC	085627
RUDDICK CORP	085704

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-03

Registrant	CIK No.
RUSSELL CORP	085812
RYKOFF SEXTON INC	085973
RYMAC MORTGAGE INVESTMENT CORP	835669
SAFETY KLEEN CORP	086135
SAHARA CASINO PARTNERS L P	612482
SAHARA RESORTS	704435
SALANT CORP	086346
SANTA FE ENERGY PARTNERS L P	780391
SANTA FE ENERGY RESOURCES INC	086772
SANTA FE PACIFIC PIPELINE PARTNERS LP	840251
SAUL B F REAL ESTATE INVESTMENT TRUST	086902
SAVANNAH FOODS & INDUSTRIES INC	086941
SCHERER R P CORP	087243
SCI SYSTEMS INC	087744
SCIENCE APPLICATIONS INTERNATIONAL CORP	353394
SCIENTIFIC ATLANTA INC	087777
SCRIPPS HOWARD BROADCASTING CO	088034
SEABOARD CORP /DE/	088121
SEAGULL ENERGY CORP	320321
SEAMENS CORP	794932
SECURITY BANCORP INC /MI/	088496
SERVICE AMERICA CORP	820267
SERVICEMASTER LTD PARTNERSHIP	806027
SHAW INDUSTRIES INC	088498
SHONEYS INC	069902
SIGMA ALDRICH CORP	090185
SIGNAL FINANCE CORP	090218
SILGAN CORP	825541
SILICON GRAPHICS INC /CA/	802301
SIX FLAGS CORP /DE/	818243
SMITH A O CORP	091142
SMITHS FOOD & DRUG CENTERS INC	850309
SNAP ON TOOLS CORP	091440
SONOCO PRODUCTS CO	091787
SOTHEBYS HOLDINGS INC	823094
SOUTH JERSEY INDUSTRIES INC	091928
SOUTHDOWN INC	313068
SOUTHERN INDIANA GAS & ELECTRIC CO	092195
SOUTHERN NATIONAL CORP /NC/	092200
SOUTHMARK CORP	719998
SOUTHWESTERN ENERGY CO	007332
SPECIALTY RETAILERS INC /DE/	846723
SPI HOLDING INC	819898
SPRAGUE TECHNOLOGIES INC	814564
SPX CORP	088205
STANDARD COMMERCIAL CORP	093319
STANDARD MOTOR PRODUCTS INC	093389
STANDARD PACIFIC LP	799146
STANDARD PRODUCTS CO	093448
STANDARD REGISTER CO	093456
STANHOME INC	093542
STAR BANC CORP /DE/	036678
STERLING CHEMICALS INC	795662
STOKELY VAN CAMP INC	094567
STONE & WEBSTER INC	094601
STONERIDGE RESOURCES INC	074783
STORAGE TECHNOLOGY CORP	094673
STRAWBRIDGE & CLOTHIER	094855
SUBARU OF AMERICA INC	095056
SUNBEAM CORP/DE/	095370
SUNWEST FINANCIAL SERVICES INC	036758
TAMBRANDS INC	096277
TAYLOR ANN HOLDINGS INC	850098
TCF FINANCIAL CORP	814184
TECUMSEH PRODUCTS CO	096831
TEKTRONIX INC	096879
TELECOM USA INC /DE/	763392
TELEFLEX INC	096943
TELEMUNDO GROUP INC	808083
TELEPHONE & DATA SYSTEMS INC	096966
TERADYNE INC	097210
TEREX CORP	097216
TESORO PETROLEUM CORP /NEW/	050104
TEXAS GAS TRANSMISSION CORP	097452
TEXAS INDUSTRIES INC	097472
TEXAS NEW MEXICO POWER CO	022767
THERMADYNE INDUSTRIES INC	822795
THERMO ELECTRON CORP	097745
THIOKOL CORP /DE/	068366
THOMAS & BETTS CORP	097854
THOMAS INDUSTRIES INC	097866
TIDEWATER INC	098222
TIS MORTGAGE INVESTMENT CO	833088
TLC BEATRICE INTERNATIONAL HOLDINGS INC	835589
TNP ENTERPRISES INC	741612
TODD SHIPYARDS CORP	098537
TOLL BROTHERS INC	794170
TONKA CORP	098651
TOPS MARKETS INC/NY/	071922
TORCHMARK CORP	320335
TORO CO/DE	737758
TOSCO CORP	074091
TPI ENTERPRISES INC	096919
TRANSCAPITAL FINANCIAL CORP	099321
TREDEGAR INDUSTRIES INC	850429
TRIANGLE PACIFIC CORP	230602
TRINITY INDUSTRIES INC	099780
TRINITY INDUSTRIES LEASING CO	350024
TRITON ENERGY CORP	099830
TRITON GROUP LTD /DE/	319250
TRUMP PLAZA FUNDING INC	791445
TRUMPS CASTLE FUNDING INC	770618
TRUSTCOMPANY BANCORPORATION	786905
TRUSTMARK CORP	036146
TURNER CORP	743475
U S HOME CORP /DE/	101640
UDC UNIVERSAL DEVELOPMENT LP	789624
UGI CORP	100548
UNC INC	276104
UNIMAR CO	752290
UNION PLANTERS CORP	100693
UNIONFED FINANCIAL CORP	802223
UNISYS FINANCE CORP	814073
UNITED ASSET MANAGEMENT CORP	796370
UNITED INVESTORS MANAGEMENT CO	791262
UNITED MISSOURI BANCSHARES INC	101382
UNITED STATIONERS INC	355999
UNITED TELEPHONE CO OF OHIO	101839
UNITED TELEPHONE CO OF PENNSYLVANIA	101841
UNITED WATER RESOURCES INC	715969
UNIVAR CORP	101929
UNIVERSAL FOODS CORP	310142
UNIVERSAL HEALTH SERVICES INC	352915
UNUM CORP	795581
USLICO CORP	750234
USLIFE CORP	102420
UST INC	611069
VALERO ENERGY CORP	021271
VALLEY BANCORPORATION	102681
VALLEY NATIONAL BANCORP	714310
VARIAN ASSOCIATES INC /DE/	203527
VERMONT YANKEE NUCLEAR POWER CORP	103298
VISHAY INTERTECHNOLOGY INC	103730
VISTA CHEMICAL CO /DE/	805270
VORNADO INC	103925
VULCAN MATERIALS CO	103973
WABAN INC	850316
WABASH RAILROAD CO	104005
WALLACE COMPUTER SERVICES INC	104348
WARNACO GROUP INC /DE/	801351
WARNACO INC	104626
WASHINGTON GAS LIGHT CO	104819
WASHINGTON NATIONAL CORP	104867
WEINGARTEN REALTY INVESTORS /TX/	826916
WEIRTON STEEL CORP	849979
WEIS MARKETS INC	105418
WELLMAN INC	812708
WENDYS INTERNATIONAL INC	105668
WESCO FINANCIAL CORP	105729
WEST ONE BANCORP	351155
WESTAMERICA BANCORPORATION	311094
WESTCORP /CA/	813461
WESTERN COMPANY OF NORTH AMERICA	106015
WESTERN DIGITAL CORP	106040
WESTERN UNION CORP /DE/	106367
WESTERN UNION CORP /NY/	106374
WESTFIELD FINANCE INC	823869
WESTMARK INTERNATIONAL INC	806086
WESTMORELAND COAL CO	106455
WESTWOOD ONE INC /DE/	771950
WETTERAU INC	106521
WHITNEY HOLDING CORP	106926
WHITTAKER CORP	106945
WICOR INC	314890
WILLIAMS NATURAL GAS CO /DE/	020415
WISCONSIN GAS CO	107819
WISCONSIN POWER & LIGHT CO	107832
WISCONSIN PUBLIC SERVICE CORP	107833
WORTHEN BANKING CORP	350572
WORTHINGTON INDUSTRIES INC	108516
WPL HOLDINGS INC	352541
WYMAN GORDON CO	106703
XTRA CORP /DE/	217581
YANKEE ENERGY SYSTEM INC	849210
ZAPATA CORP	109177
ZENITH ELECTRONICS CORP	109265
ZIONS BANCORPORATION /UT/	109380
ZURN INDUSTRIES INC	109446

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-04

Registrant	CIK No.
20TH CENTURY INDUSTRIES	100331
3 BEALLS HOLDING CORP	840466
3COM CORP	738076
ABCO MARKETS INC /AZ/	843087
ABF FREIGHT SYSTEM INC	838830
ACKERLEY COMMUNICATIONS INC	319120
ACME CLEVELAND CORP	002066
ACME STEEL CO	002093
ACNB CORP	715579
ACTION AUTO RENTAL INC	810309
ACUSON CORP	717014
ADC TELECOMMUNICATIONS INC	061478
ADDINGTON RESOURCES INC	810665
ADIA SERVICES INC	752200
ADVENCE INC	846972
ADVANCED TELECOMMUNICATIONS CORP	729647
ADVO SYSTEM INC	801522
AEL INDUSTRIES INC	004911
AFFILIATED BANC CORP	824205
AIR EXPRESS INTERNATIONAL CORP/DE/	700674
AIR WIS SERVICES INC	717324
AIRGAS INC	804212
AL LABORATORIES INC	730469
ALABAMA GAS CORP	003146
ALC COMMUNICATIONS CORP	783425
ALEXANDERS INC	003499
ALLEGHENY & WESTERN ENERGY CORP	351547
ALLEN GROUP INC	003721
ALLIANCE BANCORPORATION /AK/	728534
ALLIANCE CAPITAL MANAGEMENT LP	825313
ALLSTAR INNS L P /DE/	810992
ALLWASTE INC	804742
ALTUS FINANCE CORPORATION	816643
ALZA CORP	004310
AMAX GOLD INC	814577
AMBRIT INC	319678
AMCAST INDUSTRIAL CORP	027425
AMDURA CORP	005177
AMERICA FIRST TAX EXEMPT MORTGAGE FUND LP	776734
AMERICAN BUILDING MAINTENANCE INDUSTRIES INC	771497
AMERICAN BUSINESS PRODUCTS INC	004672
AMERICAN CAPITAL & RESEARCH CORP / DE/	856200
AMERICAN CARRIERS INC	719271
AMERICAN EXPLORATION CO	715426
AMERICAN FRUCTOSE CORP	725552
AMERICAN INSURED MORTGAGE INVESTORS	724533
AMERICAN INSURED MORTGAGE INVESTORS L P	784014
AMERICAN OIL & GAS CORP	746896
AMERICAN PACESETTER	005577
AMERICAN REALTY TRUST INC /GA	827166
AMERICAN RICE INC	824206
AMERICAN SOUTHWEST FINANCE CO INC	725349
AMGEN INC	318154
AMITY BANCORP INC	799026
AMPCO PITTSBURGH CORP	006178
AMPLICON INC	803016
AMREP CORP	006207
AMVESTORS FINANCIAL CORP	005320
ANALOGIC CORP	006284
ANCHOR CAPITAL I INC	819336
ANDERSONS	006474
ANDREW CORP	317093
ANGELES CORP /CA/	318315
ANGELICA CORP /NEW/	006571
ANTHONY C R CO	006715
ANTHONY INDUSTRIES INC	006720
AP INDUSTRIES INC	726819
APOGEE ENTERPRISES INC	006815

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-04

Registrant	CIK No.
APPLETREE MARKETS INC	840470
APPLIED BIOSYSTEMS INC	719545
APPLIED MAGNETICS CORP	006848
ARBOR DRUGS INC	791048
ARCHIVE CORP /DE/	731655
ARCTIC ALASKA FISHERIES CORP	819790
ARDEN GROUP INC	225051
ARGONAUT GROUP INC	800082
ARIS CORPORATION	785962
ARMOR ALL PRODUCTS CORP	797975
ASB CAPITAL CORP	766841
ASB FUNDING CORP	803337
ASHLAND COAL INC	833890
ASHTON TATE CORP	727472
ASK COMPUTER SYSTEMS INC	354797
ASSOCIATED NATURAL GAS CORP	836666
AST GENERAL CORP /DE/	844218
AST RESEARCH INC /DE/	725182
ASTEC INDUSTRIES INC	792987
ATARI CORP	802019
ATHLONE INDUSTRIES INC	008117
ATICO FINANCIAL CORP	008126
ATLANTIC SOUTHEAST AIRLINES INC	702720
ATLANTIS GROUP INC /DE/	611828
ATMOS ENERGY CORP	731802
AUDIOVOX CORP	807707
AUGAT INC	008462
AUTODESK INC	769397
AUTODIE CORP	778705
AVANTEK INC	277181
AYDIN CORP	008919
BAIRNCO CORP	350750
BAKER J INC	792570
BALCOR EQUITY PENSION INVESTORS I	723873
BALCOR EQUITY PENSION INVESTORS II	748501
BALCOR PENSION INVESTORS IV	709329
BALCOR PENSION INVESTORS V	732350
BALCOR PENSION INVESTORS VI	755497
BALCOR REALTY INVESTORS 84	728927
BALCOR REALTY INVESTORS 84 SERIES II	740582
BALDOR ELECTRIC CO	009342
BALDWIN PIANO ORGAN CO /DE	797315
BALDWIN TECHNOLOGY CO INC	805792
BANCTEC INC	318376
BANCTEXAS GROUP INC	310979
BANGOR HYDRO ELECTRIC CO	009548
BANK OF NEW HAMPSHIRE CORP	313857
BANK OF SAN FRANCISCO CO HOLDING CO	351238
BARNES GROUP INC	009984
BARRYS JEWELERS INC /CA/	790360
BASIC AMERICAN MEDICAL INC	717723
BASSETT FURNITURE INDUSTRIES INC	010329
BAY FINANCIAL CORP	313294
BAYOU STEEL CORP	807877
BE HOLDINGS INC	824776
BELL INDUSTRIES INC/DEL/	314346
BELL JAN MARKETING INC	817946
BERRIE RUSS & CO INC	739878
BEST BUY CO INC	764478
BIBB CO /DE	814570
BIC CORP	011975
BICOASTAL CORP	090656
BIG B INC	352720
BINDLEY WESTERN INDUSTRIES INC	722808
BINKS MANUFACTURING CO	012180
BIO RAD LABORATORIES INC	012208
BIOCRAFT LABORATORIES INC	763043
BIOGEN INC	714655
BIOMET INC	351346
BIRMINGHAM STEEL CORP	779334
BLACK HILLS CORP	012400
BLAIR CORP	071525
BMA CORP /MO/	830158
BOHEMIA INC	012960
BOLAR PHARMACEUTICAL CO INC	013006
BOLT BERANEK & NEWMAN INC	013021
BRADY W H CO	746598
BRAND COMPANIES INC	806635
BRANIFF INC	737576
BRE PROPERTIES INC	009677
BRENDLES INC	791851
BRENTON BANKS INC	014060
BROOKE GROUP LTD	059440
BROWN & SHARPE MANUFACTURING CO / DE/	014637
BRT REALTY TRUST	014846
BSD BANCORP INC	319498
BTR REALTY INC	015019
BULOVA CORP	015310
BUREAU OF NATIONAL AFFAIRS INC	015393
BURNHAM PACIFIC PROPERTIES INC	805730
BURNUP & SIMS INC	015615
BURR BROWN CORP	715577
BUTLER MANUFACTURING CO	015840
BWIP HOLDING INC	817637
CABLE TV FUND 12-D LTD	789292
CABLE TV FUND 14 B LTD	821480
CABOT OIL & GAS CORP	858470
CADENCE DESIGN SYSTEMS INC	813672
CAESARS NEW JERSEY INC	276310
CAL REP BANCORP INC	705679
CALGON CARBON CORPORATION	812701
CALIFORNIA SEVEN ASSOCIATES LTD PARTNERSHIP	785506
CAMBREX CORP	820081
CANANDAIGUA WINE CO INC	016918
CAPITAL CITY BANK GROUP INC	726601
CAPITOL BANCORPORATION	017329
CAPITOL STREET CORP	057424
CARDINAL DISTRIBUTION INC	721371
CARE ENTERPRISES INC /DE	794458
CARLISLE PLASTICS INC	846902
CARLYLE REAL ESTATE LTD PARTNERSHIP X	314459
CARLYLE REAL ESTATE LTD PARTNERSHIP XI	350667
CARLYLE REAL ESTATE LTD PARTNERSHIP XII	700949
CARLYLE REAL ESTATE LTD PARTNERSHIP XIV	737291
CARLYLE REAL ESTATE LTD PARTNERSHIP XVI	789950
CARMIKE CINEMAS INC	799088
CAROLINA STEEL CORPORATION	846466
CARROLS CORP	017927
CASCADE NATURAL GAS CORP	018072
CASEYS GENERAL STORES INC	726958
CASTLE A M & CO	018172
CBT CORP /KY/	719227
CDI CORP	018396
CECO INDUSTRIES INC /DE/	806090
CEDAR FAIR L P	811532
CENCOM CABLE INCOME PARTNERS LP	798769
CENCOR INC	018497
CENTENNIAL GROUP INC /DE/	810909
CENTOCOR INC	708823
CENTRAL FREIGHT LINES INC	018639
CENTRAL HOLDING CO	771722
CENTRAL STEEL & WIRE CO	018783
CENTRAL TELEPHONE CO OF ILLINOIS	018794
CENTRAL TELEPHONE CO OF VIRGINIA	018795
CENTURY PROPERTIES FUND XIX	705752
CENTURY PROPERTIES GROWTH FUND XXII	740158
CENVEST INC	811209
CETUS CORP	350383
CF INCOME PARTNERS L P	802779
CF&I STEEL CORP	019020
CHANCELLOR CORP	724051
CHARTER BANCSHARES INC	718607
CHARTER CO	312667
CHARTWELL GROUP LTD	790230
CHEROKEE GROUP	729582
CHERRY CORP	019704
CHESHIRE FINANCIAL CORP	800042
CHILIS INC	703351
CHIPS & TECHNOLOGIES INC	767965
CHITTENDEN CORP /VT/	200138
CHOCK FULL O NUTS CORP	020041
CHURCH & DWIGHT CO INC /DE/	313927
CINTAS CORP	723254
CIVISTA CORP	831486
CLARCOR INC	020740
CLARIDGE HOTEL & CASINO CORP	730409
CLEAN HARBORS INC	822618
CLIFFS DRILLING CO	831964
CLINTON MILLS INC	810571
CLYDE FINANCIAL CORP	802902
CML GROUP INC	729578
CNB FINANCIAL CORP/KS	700918
COBE LABORATORIES INC	021310
COEUR D ALENE MINES CORP	215466
COHERENT INC	021510
COLONIAL GAS CO	060653
COMMERCIAL INTERTECH CORP	022470
COMMONWEALTH GAS CO	022620
COMMTRON CORP	793277
COMMUNICATIONS TRANSMISSION INC	820285
COMMUNITY BANK SYSTEM INC	723188
COMMUNITY NATIONAL BANCORPORATION	855386
COMPREHENSIVE CARE CORP	022872
COMPUTER FACTORY INC	351360
CONAIR CORP/DE/NEW	769208
CONCURRENT COMPUTER CORP/DE	749038
CONNECTICUT ENERGY CORP	310103
CONNECTICUT WATER SERVICE INC / CT	276209
CONSECO EXPLORATION CO	354829
CONSOLIDATED CAPITAL INSTITUTIONAL PROPERTIES II	719184
CONSOLIDATED CAPITAL INSTITUTIONAL PROPERTIES	352983
CONSOLIDATED STORES CORP /DE/	768835
CONSTAR INTERNATIONAL INC	029806
CONSUMERS POWER CO	201533
CONSUMERS WATER CO	023910
CONTEL CELLULAR INC	822419
CONTINENTAL HOMES HOLDING CORP	796122
CONTINENTAL MEDICAL SYSTEMS INC /DE/	802284
CONVEX COMPUTER CORP	743653
COOPER COMPANIES INC	711404
COPPERWELD CORP	024596
CORDIS CORP	024654
CORE INDUSTRIES INC	091817
CORROON & BLACK CORP	024975
COUSINS PROPERTIES INC	025232
CPB INC	701347
CPI CORP	025354
CRACKER BARREL OLD COUNTRY STORE INC	025373
CROMPTON & KNOWLES CORP	025757
CROSS A T CO	025793
CRSS INC	025941
CSC INDUSTRIES INC	806400
CTS CORP	026058
CU BANCORP	356050
CUBIC CORP /DE/	026078
CV REIT INC	018934
CVB FINANCIAL CORP	354647
CYPRESS SEMICONDUCTOR CORP /DE/	791915
DAIRY MART CONVENIENCE STORES INC	721675
DAISY SYSTEMS CORP /DE	811028
DAMON CORP	026757
DAMSON ENERGY CO LP	764865
DANIEL INDUSTRIES INC	026821
DANIELS & ASSOCIATES INC	807645
DARLING DELAWARE CO INC	845756
DATA SWITCH CORP	701376
DATAPOINT CORP	205239
DCS CAPITAL CORP	711054
DEKALB GENETICS CORP	835015
DEL VAL FINANCIAL CORP	215639
DELCHAMPS INC	729970
DELL COMPUTER CORP	826083
DELTONA CORP	027984
DIAMOND SHAMROCK OFFSHORE PARTNERS LTD PARTNERSHIP 773350	317814
DIASONICS INC	712744
DIGITAL COMMUNICATIONS ASSOCIATES INC	765878
DOLLAR FINANCE INC	029534
DOLLAR GENERAL CORP	029644
DONALDSON CO INC	805583
DONNELLY CORP	029854
DOUGLAS & LOMASON CO	843396
DR PEPPER BOTTLING HOLDINGS INC	030067
DRAVO CORP	717724
DRESS BARN INC	352305
DREYERS GRAND ICE CREAM INC	832922
DRUG EMPORIUM INC/DE	790168
DS BANCOR INC	714603
DST SYSTEMS INC	783280
DUKE REALTY INVESTMENTS INC	030547
DUPLEX PRODUCTS INC	316444
DURHAM CORP	030625
DURIRON CO INC	811523
DYERSBURG FABRICS INC	030819
DYNAMICS CORP OF AMERICA	030828
DYNASCAN CORP	030841
DYNATECH CORP	030770
DYNCORP	792369
EAGLE FINANCIAL CORP	030908
EAGLE FOOD CENTERS INC	350797
EATON VANCE CORP	031617
EDO CORP	832320
EGGHEAD INC /WA/	803130
EHRLICH BOBER FINANCIAL CORP	018827
EKCO GROUP INC /DE/	032013
ELCO INDUSTRIES INC	032166
ELECTRO RENT CORP	032379
ELIZABETHTOWN WATER CO /NJ/	846657
ELJER INDUSTRIES INC	790070
EMC CORP	806627
EMERALD HOMES LP	783005
EMMIS BROADCASTING CORPORATION	032703
EMPIRE GAS CORP /MO/	312640
EMPIRE OF CAROLINA INC	764037
ENCORE COMPUTER CORP /DE/	725625
ENDEVCO INC	773649
ENERGY DEVELOPMENT PARTNERS LTD	314808
ENERGY SERVICE COMPANY INC	032991
ENGRAPH INC	717239
ENSTAR INDONESIA INC	774709
ENVIRONMENTAL SYSTEMS CO /DE/	796509
EOK GREEN ACRES LP	755926
EOK REALTY INVESTORS I	806029
EQUITABLE REAL ESTATE SHOPPING CENTERS LP	030966
ERLY INDUSTRIES INC	033619
ESTERLINE CORP	276283
EVANS & SUTHERLAND COMPUTER CORP	033769
EVANS BOB FARMS INC	033837
EVEREST & JENNINGS INTERNATIONAL LTD	816762
EVEREX SYSTEMS INC /DE/	740668
EXCEL INDUSTRIES INC	725282
EXECUTONE INFORMATION SYSTEMS INC	034125
F&M NATIONAL CORP	034136
FAB INDUSTRIES INC	034151
FABRI CENTERS OF AMERICA INC	034501
FARAH INC	034563
FARMER BROTHERS CO	713095
FARMERS CAPITAL BANK CORP	700850
FARMERS NATIONAL BANCORP /MD/	034615
FARMLAND FOODS INC	034768
FAYS INCORPORATED	700725
FB&T CORP	744106
FEDDERS CORP /DE	277509
FEDERAL SIGNAL CORP /DE/	833053
FIBREBOARD CORP /DE	830141
FINEVEST FOODS INC	036029
FIRST ABILENE BANKSHARES INC	782842
FIRST ALBANY COMPANIES INC	702654
FIRST AMARILLO BANCORPORATION INC	705025
FIRST BANCORP OF KANSAS	708848
FIRST CITIZENS BANCORPORATION OF SOUTH CAROLINA	813749
FIRST FEDERAL BANCORP INC	822741
FIRST FEDERAL CAPITAL FUNDING III INC	726737
FIRST FINANCIAL ASSOCIATES INC	787075
FIRST FINANCIAL HOLDINGS INC /DE/	712534
FIRST MERCHANTS CORP	351825
FIRST NATIONAL BANCORP /GA/	806364
FIRST NATIONAL BANK CORP	700941
FIRST NATIONAL CORP /CA/	770975
FIRST REPUBLIC BANCORP INC	036856
FIRST REPUBLIC CORP OF AMERICA	717217
FIRST SECURITY FINANCIAL CORP	355883
FIRST UNITED BANCSHARES INC /AR/	763907
FIRST UNITED CORP/MD/	749099
FIRSTCORP INC	037115
FISCHER & PORTER CO	037180
FISHER FOODS INC /OH/	037651
FLORIDA ROCK INDUSTRIES INC	037743
FLUKE JOHN MANUFACTURING CO INC	814429
FMC GOLD CO	000063
FNW BANCORP INC	037914
FOODARAMA SUPERMARKETS INC	038074
FOREST LABORATORIES INC	798248
FORSTMANN & CO INC	804752
FORUM RETIREMENT PARTNERS L P	037755
FURON CO	818814
FURRS BISHOPS CAFETERIAS L P	791182
GANTOS INC	856386
GEHL CO	040481
GENERAL BINDING CORP	040518
GENERAL DATACOMM INDUSTRIES INC	018498
GENESCO INC	731336
GENETICS INSTITUTE INC	860192
GENEVA STEEL	766738
GENICOM CORP	833076
GENLYTE GROUP INC	040970
GENOVESE DRUG STORES INC	041133
GERBER SCIENTIFIC INC	041147
GERIATRIC & MEDICAL CENTERS INC	079849
GETTY PETROLEUM CORP	769027
GF MORTGAGE CORP	041296
GIANT GROUP LTD	856465
GIANT INDUSTRIES INC	851588
GIDDINGS & LEWIS INC /WI/	740763
GILBERT ASSOCIATES INC/NEW	743239
GLEASON CORP /DE/	790129
GLENBOROUGH LTD	041781
GLENMORE DISTILLERIES CO	733289
GLOBAL NATURAL RESOURCES INC/NJ	763840
GOLDOME FLORIDA FUNDING CORP	790632
GOLDOME FLORIDA FUNDING CORP II	317332
GOODY PRODUCTS INC	790414
GOTTSCHALKS INC	779335
GOULD INVESTORS L P	042617
GOVERNMENT EMPLOYEES FINANCIAL CORP	051467
GR FOODS INC	042666
GRACO INC	727162
GRAPHIC INDUSTRIES INC	043142
GRAPHIC SCANNING CORP	043279
GREAT AMERICAN INDUSTRIES INC	826619
GREEN A P INDUSTRIES INC	043704
GREEN MOUNTAIN POWER CORP	043920
GREIF BROTHERS CORP	033798
GROSSMANS INC	044171
GROW GROUP INC	216039
GRUBB & ELLIS CO	749751
GUARDIAN BANCORP	044549
GULF RESOURCES & CHEMICAL CORP	046205
HAL INC /HI/	315213
HALF ROBERT INTERNATIONAL INC /DE/	063436
HALL FINANCIAL GROUP INC	044956
HALL FRANK B & CO INC	355766
HALLWOOD GROUP INC	612906
HANCOCK FABRICS INC	750577
HANCOCK HOLDING CO	313478
HARKEN ENERGY CORP	045674
HARPER GROUP INC /DE/	067266
HART HOLDING CO INC	310823
HARTFORD STEAM BOILER INSPECTION & INSURANCE CO	216085
HAVERTY FURNITURE COMPANIES INC	803649
HEALTH & REHABILITATION PROPERTIES TRUST	766704
HEALTH CARE REIT INC /DE/	822415
HEALTH EQUITY PROPERTIES INC	717517
HEALTHCARE INTERNATIONAL INC	046454
HEALTHCO INTERNATIONAL INC	785161
HEALTHSOUTH REHABILITATION CORP	719413
HECLA MINING CO/DE/	773594
HEEKIN CAN INC	275514
HERITAGE FINANCIAL CORP /VA/	047312
HICKORY FURNITURE CO	811658
HOLIDAY RAMBLER CORP	048039
HOLLY CORP	048174
HOME BENEFICIAL CORP	715128
HOME NATIONAL CORP/MA	835582
HOMELAND HOLDING CORP	048287
HON INDUSTRIES INC	076696
HONDO OIL & GAS CO	048304
HORIZON INDUSTRIES INC/GA/	720501
HORRIGAN AMERICAN INC	716801
HOTEL INVESTORS CORP	316206
HOTEL INVESTORS TRUST	048595
HOUGHTON MIFFLIN CO	048638
HOUSE OF FABRICS INC/DE/	315125
HPSC INC	718909
HRE PROPERTIES	048896
HUBCO INC	703559
HUFFY CORP	225463
HUGHES SUPPLY INC	049029
HUNT MANUFACTURING CO	049145
HYDRAULIC CO	049423
ICM PROPERTY INVESTORS INC	757448
ICN BIOMEDICALS INC	798166
IDB COMMUNICATIONS GROUP INC	799319
IDEX CORP /DE/	832101
INACOMP COMPUTER CENTERS INC	730717
INDEPENDENCE MINING COMPANY INC	788961
INDEPENDENT INSURANCE GROUP INC	319735
INDUSTRIAL FUNDING CORP	857067
INFINITY BROADCASTING CORP	792883
INFORMATION RESOURCES INC	714278
INFORMIX CORP	799089
INGRES CORP	712849
INSTRUMENT SYSTEMS CORP /DE/	050725
INSURED INCOME PROPERTIES 1985	754758
INSURED INCOME PROPERTIES 1986 LP	778435
INTEGRATED DEVICE TECHNOLOGY INC	703361
INTELLIGENT ELECTRONICS INC	614430
INTELOGIC TRACE INC	771993
INTERMEC CORP	051017
INTERMET CORP	745287
INTERNATIONAL ALUMINUM CORP	051103
INTERNATIONAL AMERICAN HOMES INC	760678
INTERNATIONAL DAIRY QUEEN INC	051207
INTERNATIONAL GAME TECHNOLOGY	353944
INTERNATIONAL INCOME PROPERTY INC	310989
INTERNATIONAL RECTIFIER CORP /DE/	316793
INTERNATIONAL TECHNOLOGY CORP	731190
INTERNATIONAL TELECHARGE INC	780853
INTERNATIONAL THOROUGHBRED BREEDERS INC	320573
INTERSTATE GENERAL CO L P	807364
INVESTORS SAVINGS CORP	804124
INVG GOVERNMENT SECURITIES CORP	793467
IONICS INC	052466
IOWA SOUTHERN UTILITIES CO	052506
IRONSTONE GROUP INC	723269
IRT PROPERTY CO	311099
IWC RESOURCES CORP	790523
JACOBS ENGINEERING GROUP INC /DE/	052988
JACOBSON STORES INC	053025
JACOR COMMUNICATIONS INC	702808
JESUP GROUP INC	702724
JHM MORTGAGE SECURITIES L P	820167
JIFFY LUBE INTERNATIONAL INC	730922
JMB INCOME PROPERTIES LTD X	719244
JMB INCOME PROPERTIES LTD XI	744437
JMB INCOME PROPERTIES LTD XII	765813
JMB INCOME PROPERTIES LTD XIII	790603
JOHNSON WORLDWIDE ASSOCIATES INC	788329
JORDAN INDUSTRIES INC	839484
JORGENSEN EARLE M CO /DE/	054003
JOSLYN CORP /IL/	054045
JUSTIN INDUSTRIES INC	054182
KANEB SERVICES INC	054441
KANSAS CITY LIFE INSURANCE CO	054473
KARCHER CARL ENTERPRISES INC	353718
KATY INDUSTRIES INC	054681
KAYDON CORP	740694
KD HOLDINGS CORP	851089
KDI CORP	054878
KERR GLASS MANUFACTURING CORP	055454
KETEMA INC	838224
KEYSTONE CONSOLIDATED INDUSTRIES INC	055604
KINETIC CONCEPTS INC /TX/	831967
KIRBY CORP	056047
KLA INSTRUMENTS CORP	319201
KLEIN CALVIN INC	778422
KOGER CO/FL/NEW	353025
KOGER EQUITY INC	835664
KOPPERS HOLDINGS CORP	852553
KRUPP CASH PLUS III LTD PARTNERSHIP	803767
KRUPP INSURED PLUS LTD PARTNERSHIP	786622
KYSOR INDUSTRIAL CORP/MI	202356
LA GEAR INC	793937
LA PETITE ACADEMY INC	357158
LA QUINTA MOTOR INNS LTD PARTNERSHIP	799169
LACLEDE STEEL CO /DE/	057187
LADISH CO INC	814250
LAMSON & SESSIONS CO	057497
LANCASTER COLONY CORP	057515
LANCE INC	057528
LANDS END INC	799288
LANDSING PACIFIC FUND	831300
LANDSTAR SYSTEM INC	853816
LARIZZA INDUSTRIES INC	817134
LAURENTIAN CAPITAL CORP/DE/	092342
LAWTER INTERNATIONAL INC	058091
LCB BANCORP INC	745276
LDDS COMMUNICATIONS INC /TN/	047409
LEISURE TECHNOLOGY INC	058621
LEPERCO CORPORATE INCOME FUND L P	790877
LIBERTY CORP	059229
LIFE TECHNOLOGIES INC	727737
LIFETIME CORP	276886
LILLY INDUSTRIAL COATINGS INC	059479
LINCOLN TELECOMMUNICATIONS CO	320446
LIONEL CORP	059696
LOEHMANNS HOLDINGS INC	843081
LONDONTOWN CORP	060183
LONDONTOWN HOLDINGS CORP	849286
LOUISIANA GAS SERVICE CO	352319
LTX CORP	357020
LUBYS CAFETERIAS INC	016099
LUFKIN INDUSTRIES INC	060849

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-04

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-04

Registrant	CIK No.
LURIA L & SON INC	277057
LVI GROUP INC	058526
LW INDUSTRIES INC	057792
LYPHOMED INC	716827
MADISON JAMES LTD	350836
MAGMA POWER CO /NV/	355878
MALRITE COMMUNICATIONS GROUP INC	734102
MANHATTAN NATIONAL CORP	061952
MANITOWOC CO INC	061986
MARCADE GROUP INC	100979
MARCUS CORP	062234
MARITRANS PARTNERS L P	810113
MARSH & MCLENNAN COMPANIES INC	062709
MARSH SUPERMARKETS INC	062737
MARSHALL INDUSTRIES	062765
MAXICARE HEALTH PLANS INC	722573
MBIA INC	814585
MCDONALD & CO INVESTMENTS INC	720900
MCNEIL REAL ESTATE FUND XII LTD	351706
MEDICAL CARE INTERNATIONAL INC	704156
MEI DIVERSIFIED INC	790725
MENDIK REAL ESTATE LIMITED PARTNERSHIP	783996
MERCHANTS BANCORP INC/CT	740666
MERCHANTS BANCSHARES INC	726517
MERRY GO ROUND ENTERPRISES INC	719721
METCALF & EDDY COMPANIES INC	839479
MGI PROPERTIES	068330
MGM GRAND INC	789570
MICHAEL FOODS INC	811930
MICHAELS STORES INC	740670
MICROPOLIS CORP	718865
MID AMERICA BANCORP /KY/	711083
MIDLAND CO	056025
MIDSOUTH CORP /DE/	807359
MILLICOM INC	703789
MINSTAR INC	007119
MIPS COMPUTER SYSTEMS INC /CA/	857327
MISSISSIPPI CHEMICAL CORP	066895
ML EQ REAL ESTATE PORTFOLIO L P	808369
ML MEDIA OPPORTUNITY PARTNERS L P	818080
MLX CORP /NV	064247
MMR HOLDING CORP	810666
MODINE MANUFACTURING CO	067347
MOOG INC	067987
MOORE BENJAMIN & CO	276899
MORGAN KEEGAN INC	729600
MORGAN PRODUCTS LTD	739790
MORRISON INC /DE/	068270
MOSINEE PAPER CORP	068412
MRI BUSINESS PROPERTIES FUND LTD III	786635
MTS SYSTEMS CORP	068709
MYLAN LABORATORIES INC	069499
NAPA VALLEY BANCORP	700926
NASHUA CORP	069680
NATIONAL CITY BANCSHARES INC	764241
NATIONAL COMPUTER SYSTEMS INC	069999
NATIONAL DATA CORP	070033
NATIONAL HEALTHCARE INC	765052
NATIONAL HEALTHCORP L P	805274
NATIONAL INCOME REALTY TRUST	277577
NATIONAL LEASE INCOME FUND 8 LP	799034
NATIONAL PATENT DEVELOPMENT CORP	070415
NATIONAL PIZZA CO/KS	748714
NATIONAL PRESTO INDUSTRIES INC	080172
NATIONAL STANDARD CO	070564
NATIONAL WESTERN LIFE INSURANCE CO	070684
NATIONWIDE HEALTH PROPERTIES INC	780053
NBB BANCORP INC	929732
NBC CAPITAL CORP	742054
NCF FINANCIAL CORP	807712
NETWORK EQUIPMENT TECHNOLOGIES INC	752431
NETWORK SYSTEMS CORP	319645
NEUTROGENA CORP	071125
NEW CENTURY COMMUNICATIONS INC	842809
NEW ENGLAND BUSINESS SERVICE INC	205700
NEW PLAN REALTY TRUST	071519
NEWHALL LAND & FARMING CO /CA/	751976
NOBLE DRILLING CORP	777201
NOLAND CO	072243
NORD RESOURCES CORP	072316
NORDSON CORP	072331
NORTH CAROLINA NATURAL GAS CORP	072596
NORTH STAR UNIVERSAL INC	768158
NORTHWESTERN PUBLIC SERVICE CO	073066
NPL CORP	352973
NS GROUP INC	745026
NU MED INC	314926
OAK INDUSTRIES INC	073568
OAKWOOD HOMES CORP	073609
OBRIEN ENERGY SYSTEMS INC	795185
OCEAN SHOWBOAT INC	810312
OCTEL COMMUNICATIONS CORP	792723
OFFICE DEPOT INC	800240
OGLEBAY NORTON CO	073918
OHM CORP	788864
OLSTEN CORP	074386
OLYMPUS CAPITAL CORP/UT	707708
ONEIDA LTD	074585
OPTICAL RADIATION CORP	074702
ORANGE CO INC /FL/	004507
ORCHARD SUPPLY HARDWARE CORP	856712
OREGON STEEL MILLS INC	830260
ORIOLE HOMES CORP	074926
ORION CAPITAL CORP	074931
OSHKOSH B GOSH INC	075042
OSHKOSH TRUCK CORP	775158
OSHMANS SPORTING GOODS INC	075043
OSULLIVAN CORP	075072
OUTLET BROADCASTING INC	804060
OUTLET COMMUNICATIONS INC	803743
OWENS & MINOR INC	075252
OXFORD ENERGY CO	743332
PACIFIC SCIENTIFIC CO	075606
PACIFIC WESTERN BANCSHARES INC /DE/	317964
PAINEWEBBER EQUITY PARTNERS TWO LTD PARTNERSHIP	793973
PANSOPHIC SYSTEMS INC	353652
PARK COMMUNICATIONS INC	726957
PARK ELECTROCHEMICAL CORP	076267
PARKER & PARSLEY DEVELOPMENT PARTNERS LP	818093
PARKER DRILLING CO /DE/	076321
PATTEN CORP	778946
PAY N SAVE INC	793322
PBL ACQUISITION CORP	846717
PEC ISRAEL ECONOMIC CORP	076868
PEEBLES INC	804125
PENN VIRGINIA CORP	077159
PEOPLES BANCORP INC	318300
PEOPLES BANCORPORATION	707603
PEOPLES FIRST CORP	718077
PEOPLES HOLDING CO	715072
PERINI INVESTMENT PROPERTIES INC	743443
PERRY DRUG STORES INC	077628
PETROLEUM HEAT & POWER CO INC	736768
PETROLEUM HELICOPTERS INC	350403
PETROLITE CORP	077943
PHOENIX LEASING CASH DISTRIBUTION FUND II	796905
PIC N SAVE CORP	078384
PICCADILLY CAFETERIAS INC	277923
PILGRIMS PRIDE CORP	802481
PIONEER FINANCIAL CORP	826329
PIONEER FINANCIAL SERVICES INC /DE	799036
PIONEER STANDARD ELECTRONICS INC	078749
PITT DES MOINES INC	078853
PIZZA INN INC /TX/	718332
PLANTERS CORP	709469
PLENUM PUBLISHING CORP	079166
PLM EQUIPMENT GROWTH FUND II	812072
PLY GEM INDUSTRIES INC	079209
PNP PRIME CORP	825312
POLARIS AIRCRAFT INCOME FUND II	789895
POLARIS AIRCRAFT INCOME FUND III	806031
POLARIS AIRCRAFT INCOME FUND IV	818145
POLARIS INDUSTRIES PARTNERS L P	816951
POLIFLY FINANCIAL CORP	826501
PRATT HOTEL CORP /DE/	030117
PREMIER BANKSHARES CORP	797541
PREMIER FINANCIAL SERVICES INC	036340
PREMIER INDUSTRIAL CORP	080051
PRICE COMMUNICATIONS CORP	355787
PRICE T ROWE ASSOCIATES INC /MD/	789671
PRIMARK CORP	356064
PRIME CAPITAL CORP	791013
PROLER INTERNATIONAL CORP	080693
PROPERTY CAPITAL TRUST	080718
PROTECTIVE LIFE CORP	355429
PROVIDENCE ENERGY CORP	319651
PROVIDENCE GAS CO	080812
PST HOLDINGS INC	810627
PUERTO RICAN CEMENT CO INC	081076
PULITZER PUBLISHING CO	805357
PULTE HOME CREDIT CORP	713076
PURITAN BENNETT CORP	081199
PYRAMID TECHNOLOGY CORP	714865
QINTEX ENTERTAINMENT INC	830351
QMS INC	710983
QUAKER CHEMICAL CORP	081362
QUANTUM CORP /DE/	709283
RAMADA NEW JERSEY HOLDINGS CORP	756708
RAMSAY HEALTH CARE INC	773136
RANGER INDUSTRIES INC	021610
RAYMOND CORP	082231
RAYONIER TIMBERLANDS LP	778439
RE CAPITAL CORP /DE/	074347
RECOGNITION EQUIPMENT INC	082523
RED LION INNS LIMITED PARTNERSHIP	810724
REEVES INDUSTRIES INC /DE/	799274
RELIANCE FINANCIAL SERVICES CORP	083047
REPUBLIC BANCORP INC	813606
RESIDENTIAL RESOURCES MORTGAGE INVESTMENTS CORP	831007
RICHARDSON ELECTRONICS LTD/DE	355848
RICHFOOD HOLDINGS INC	819632
RISER FOODS INC /DE/	832177
RMI TITANIUM CO	854663
ROANOKE ELECTRIC STEEL CORP	084278
ROCHESTER & PITTSBURGH COAL CO	084548
RODMAN & RENSHAW CAPITAL GROUP INC	726977
ROGERS CORP	084748
ROLLINS ENVIRONMENTAL SERVICES INC	701856
ROLLINS INC	084839
ROSEVILLE TELEPHONE CO	065153
ROSS STORES INC	745732
RPS REALTY TRUST	842183
RYANS FAMILY STEAK HOUSES INC	355622
SAFE HARBOR WATER POWER CORP	086100
SAFECARD SERVICES INC	086103
SAFEGUARD SCIENTIFICS INC	086115
SALEM CARPET MILLS INC	086357
SANDY SPRING BANCORP INC	824410
SANTA ANITA OPERATING CO	313749
SANTA ANITA REALTY ENTERPRISES INC	314861
SANTA BARBARA BANCORP	357264
SAVIN CORP	276894
SB PARTNERS	087047
SCA TAX EXEMPT FUND LIMITED PARTNERSHIP	806641
SCHULMAN A INC	087565
SCOTSMAN INDUSTRIES INC	846860
SCOTTS COMPANY	825542
SEALED AIR CORP	088204
SEAMENS CAPITAL CORP	795577
SEAWAY FOOD TOWN INC	088296
SEMINOLE KRAFT CORPORATION	815276
SENECA FOODS CORP /NY/	088948
SENSORMATIC ELECTRONICS CORP	088974
SEQUENT COMPUTER SYSTEMS INC /OR/	811716
SHARED MEDICAL SYSTEMS CORP	089415
SHEARSON UNION SQUARE ASSOCIATES LTD PARTNERSHIP	795879
SHORELINE FINANCIAL CORP	822697
SHOWBOAT INC	089966
SIERRA CAPITAL REALTY TRUST VII CO	774853
SIMMONS FIRST NATIONAL CORP	090498
SIZZLER RESTAURANTS INTERNATIONAL INC	706894
SJW CORP	766829
SKYLINE CORP	090698
SMITH CORONA CORP	851292
SMITH INTERNATIONAL INC	721083
SMITHFIELD FOODS INC	091386
SMUCKER J M CO	091419
SNYDER OIL CORP	860713
SNYDER OIL PARTNERS LP	357221
SOFTSEL COMPUTER PRODUCTS INC	724941
SOUTHEASTERN MICHIGAN GAS ENTERPRISES INC	277156
SOUTHEASTERN PUBLIC SERVICE CO	092050
SOUTHERN CALIFORNIA WATER CO	092118
SOUTHERN UNION CO	203248
SPARTECH CORP	077597
SPARTON CORP	092679
SPC ACQUISITION INC	700990
SPRECKELS INDUSTRIES INC	824086
SPS TECHNOLOGIES INC	093444
ST JOSEPH LIGHT & POWER CO	096251
ST JUDE MEDICAL INC	203077
STANDARD BRANDS PAINT CO	093308
STANDEX INTERNATIONAL CORP/DE/	310354
STANLEY INTERIORS CORP	797465
STARRETT HOUSING CORP	093575
STARRETT L S CO	093676

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-04

Registrant	CIK No.
STEPAN CO	094049
STERLING BANCORP	093451
STERLING FINANCIAL CORP /PA/	811671
STERLING SOFTWARE INC	716714
STEWART & STEVENSON SERVICES INC	094328
STIFEL FINANCIAL CORP	720672
STOKELY USA INC	777536
STORAGE EQUITIES INC	318380
STOTLER GROUP INC	822614
STRATUS COMPUTER INC	723610
STRIDE RITE CORP	094887
STRYKER CORP	310784
SUDBURY INC	811801
SUFFOLK BANCORP	754673
SUMMIT HEALTH LTD	725555
SUMMIT TAX EXEMPT BOND FUND LP	786156
SUMMIT TAX EXEMPT L P II	792924
SUN DISTRIBUTORS L P	807396
SUN ELECTRIC CORP	095311
SUNGARD DATA SYSTEMS INC	789388
SUPER FOOD SERVICES INC	095504
SUPER RITE FOODS INC	731133
SUPERIOR INDUSTRIES INTERNATIONAL INC	095552
SYMBOL TECHNOLOGIES INC	278352
SYMS CORP	724742
SYNTHETIC INDUSTRIES INC	809603
T2 MEDICAL INC	830735
TALMAN FINANCE CORP A	796315
TALMAN FINANCE CORP B	796316
TALMAN FINANCE CORP C	810692
TALMAN FINANCE CORP D	813423
TALMAN FINANCE CORP E	814727
TALMAN FINANCE CORP G	819819
TALMAN FINANCE CORP H	822436
TANDON CORP	350068
TBC CORP	718449
TCA CABLE TV INC	700997
TCBY ENTERPRISES INC	740693
TECH SYM CORP	096669
TELCO CAPITAL CORP	096895
TELECREDIT INC	096929
TELLABS INC	317771
TELXON CORP	352495
TERADATA CORP /DE/	816761
TEXAS SECURITY BANCSHARES INC	813784
TGX CORP	319650
THERMO INSTRUMENT SYSTEMS INC	795986
TIE COMMUNICATIONS INC	313309
TIFFANY & CO	098248
TIMBERLAND CO	814361
TJ INTERNATIONAL INC	099974
TOKHEIM CORP	098559
TOOTSIE ROLL INDUSTRIES INC	098677
TOWN & COUNTRY CORP	766808
TPI RESTAURANTS INC	719663
TRAK AUTO CORP	716438
TRAMMELL CROW REAL ESTATE INVESTORS	776437
TRANS FINANCIAL BANCORP INC	704469
TRANS RESOURCES INC	810020
TRANS WORLD MUSIC CORP	795212
TRANSCONTINENTAL REALTY INVESTORS INC	733590
TRANSTECHNOLOGY CORP	099359
TRIAD SYSTEMS CORP	313867
TRICO PRODUCTS CORP	099724
TRIMAS CORP	842633
TRUSTCO BANK CORP N Y	357301
TUBOSCOPE CORP	860097
TULTEX CORP	100166
TVX BROADCAST GROUP INC	774388
TYCO INDUSTRIES INC	849262
TYCO TOYS INC	786130
ULTIMATE CORP	350674
UNICARE HEALTH FACILITIES INC	732010
UNIFI INC	100726
UNIFIRST CORP	717954
UNILAB CORP	835472
UNION BANCSHARES INC/KS/	701546
UNION VALLEY CORP	794223
UNIROYAL PLASTICS ACQUISITION CORP	813792
UNITED BANKSHARES INC/WV	729986
UNITED CAPITAL CORP /DE/	065358
UNITED CITIES GAS CO	101105
UNITED COMPANIES FINANCIAL CORP	217416
UNITED DOMINION REALTY TRUST INC	074208
UNITED GROCERS INC /OR/	225966
UNITED INDUSTRIAL CORP /DE/	101271
UNITED INNS INC	101281
UNITED MERCHANTS & MANUFACTURERS INC	101357
UNITED STATES CELLULAR CORP	821130
UNITED STATES SURGICAL CORP	101788
UNITED TELEVISION INC	352942
UNITED THERMAL CORP	820411
UNITED VERMONT BANCORPORATION	351965
UNIVERSAL HEALTH REALTY INCOME TRUST	798783
UNIVEST CORP OF PENNSYLVANIA	102212
UNR INDUSTRIES INC	315641
URCARCO INC	804269
UST CORP	318901
VALID LOGIC SYSTEMS INC	706314
VALMONT INDUSTRIES INC	102729
VALSPAR CORP	102741
VAN DORN CO	102883
VANGUARD CELLULAR SYSTEMS INC	771178
VANGUARD REAL ESTATE FUND I /MA/	801124
VARLEN CORP	103071
VERMONT FINANCIAL SERVICES CORP	706116
VESTRON INC	775526
VIATECH INC	103392
VICORP RESTAURANTS INC	703799
VICTORY MARKETS INC	103492
VIEW MASTER IDEAL GROUP INC	723922
VILLAGE SUPER MARKET INC	103595
VISTA PROPERTIES	716942
VLSI TECHNOLOGY INC	704386
VMS NATIONAL PROPERTIES JOINT VENTURE	789069
VMS STRATEGIC LAND FUND II	812914
VOLT INFORMATION SCIENCES INC	103872
WACKENHUT CORP	104030
WAINOCO OIL CORP	110430
WALTHAM CORP	810962
WASHINGTON BANCORP INC	811553
WASHINGTON TRUST BANCORP INC	737468
WATKINS JOHNSON CO	105006
WATTS INDUSTRIES INC	795403
WAUSAU PAPER MILLS CO	105078
WAXMAN INDUSTRIES INC	105096
WEBB DEL CORP	105189
WERNER ENTERPRISES INC	783074
WESBANCO INC	203596
WEST CO INC	105770
WEST COAST BANCORP /CA/	352187
WEST SUBURBAN BANCORP INC	805080
WESTBANK CORP	742070
WESTERN GAS PROCESSORS LTD	813790
WESTERN GAS RESOURCES INC	856716
WESTERN INVESTMENT REAL ESTATE TRUST	106135
WESTERN PACIFIC INDUSTRIES INC	106290
WESTERN PUBLISHING GROUP INC	790706
WESTERN RESERVE TELEPHONE CO	106291
WESTERN WASTE INDUSTRIES	718244
WESTON ROY F INC	106473
WHEREHOUSE ENTERTAINMENT INC	050859
WILEY JOHN & SONS INC	107140
WILLCOX & GIBBS INC	107203
WINDMERE CORP	217084
WINNEBAGO INDUSTRIES INC	107687
WITTER DEAN EQUITY PARTNERS III LP	784181
WITTER DEAN REALTY INCOME PARTNERSHIP II LP	752744
WITTER DEAN REALTY INCOME PARTNERSHIP IV LP	819342
WITTER DEAN REALTY YIELD PLUS L P	810118
WLR FOODS INC	760775
WOLVERINE WORLD WIDE INC /DE/	110471
WOODWARD GOVERNOR CO	106312
WORK WEAR CORP INC	217577
WORLDCORP INC	811664
WTD INDUSTRIES INC	797543
WYLE LABORATORIES	108683
WYNNS INTERNATIONAL INC	108721
WYOMING NATIONAL BANCORPORATION	108738
XL DATACOMP INC	763358
ZENITH NATIONAL INSURANCE CORP	109261
ZERO CORP	109284

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-05

Registrant	CIK No.
21ST CENTURY FILM CORP	838179
A&W BRANDS INC /DE/	799692
AARON RENTS INC	706688
ABC BANCORP	351569
ABINGTON BANCORP INC	812146
ABRAMS INDUSTRIES INC	001923
ACCLAIM ENTERTAINMENT INC	804888
ACETO CORP	002034
ACMAT CORP	002062
ACME ELECTRIC CORP	002070
ACTION AUTO STORES INC	811096
ACTION INDUSTRIES INC	002145
ACTON CORP/DE	103575
ACXIOM CORP	733269
ADAC LABORATORIES	313798
ADAPTEC INC	709804
ADOBE SYSTEMS INC /CA/	796343
ADVANCED LOGIC RESEARCH INC	861289
ADVANCED MARKETING SERVICES INC	814580
ADVANCED MEDICAL INC	817161
AEP INDUSTRIES INC	785767
AEROVOX INC	658164
AIFS INC	785929
AIM TELEPHONES INC	354173
AIR MIDWEST INC	310454
AIRCOA HOSPITALITY SERVICES INC	703570
AIRCOA HOTEL PARTNERS L P	812591
AIRLEASE LTD	799033
ALAMCO INC	355115
ALATENN RESOURCES INC	701288
ALDUS CORP /WA/	813656
ALICO INC	003545
ALLEN ORGAN CO	003753
ALLIANCE PHARMACEUTICAL CORP	736894
ALLIANT COMPUTER SYSTEMS CORP /DE/	806002
ALLIED RESEARCH CORP	003952
ALPHA INDUSTRIES INC	004127
ALTA GOLD CO /NV/	090350
ALTERA CORP	768251
AMBANC CORP	702904
AMBASSADOR FINANCIAL GROUP INC	724458
AMERICA FIRST FEDERALLY GUARANTEED MTG FUND II LP	799212
AMERICA FIRST PARTICIPATING PREFERRED EQ MTG FUND	789951
AMERICAN BANCORPORATION /OH/	004570
AMERICAN BILTRITE INC	004611
AMERICAN CABLE TV INVESTORS 3	742274
AMERICAN CABLE TV INVESTORS 4 LTD	785025
AMERICAN CABLE TV INVESTORS 5 LTD	810963
AMERICAN CAPITAL MANAGEMENT & RESEARCH INC	789466
AMERICAN CITY BUSINESS JOURNALS INC	769339
AMERICAN COLLOID CO	813621
AMERICAN CONSUMER PRODUCTS INC	799028
AMERICAN ECOLOGY CORP	742126
AMERICAN FILTRONA CORP	005009
AMERICAN HERITAGE LIFE INVESTMENT CORP	005172
AMERICAN HOME SHIELD CORP	005193
AMERICAN INCOME PARTNERS III-A LIMITED PARTNERSHIP 808512	
AMERICAN INCOME PARTNERS III-B LIMITED PARTNERSHIP 808513	
AMERICAN MANAGEMENT SYSTEMS INC	310624
AMERICAN NATIONAL BANKSHARES INC	741518
AMERICAN NATIONAL PETROLEUM CO /DE/	350898
AMERICAN NURSERY PRODUCTS INC	740055
AMERICAN PACIFIC CORP/DE	350832
AMERICAN RECREATION CENTERS INC	005719
AMERICAN REPUBLIC BANKCORP	352904
AMERICAN SHARED HOSPITAL SERVICES	744825
AMERICAN SHIP BUILDING CO	005818
AMERICAN SOFTWARE INC	713425
AMERICAN STEEL & WIRE CORPORATION	804307
AMERICAN WOODMARK CORP	794619
AMERICANA HOTELS & REALTY CORP	358959
AMRE INC	809572
ANALYSIS & TECHNOLOGY INC	310876
ANDAL CORP	070262
ANDERSEN GROUP INC	006383
ANDOVER TOGS INC	793029
ANDREWS GROUP INC /DE/	277025
ANGELES INCOME PROPERTIES LTD 8	812564
ANGELES PARTICIPATING MORTGAGE TRUST	831972
ANTHEM ELECTRONICS INC /DE/	727120
AOI COAL CO	7*7358

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-05

Registrant	CIK No.
APACHE OFFSHORE INVESTMENT PARTNERSHIP	727536
APERTUS TECHNOLOGIES INC	351139
APPAREL AMERICA INC	004319
APPLIED BIOSCIENCE INTERNATIONAL INC	810723
ARITECH CORP	793582
ARKANSAS FREIGHTWAYS CORP	846729
ARLINGTON FINANCE CORP	788810
ARMADA CORP	007377
ARNOLD INDUSTRIES INC	700612
ARROW AUTOMOTIVE INDUSTRIES INC	007533
ARTRA GROUP INC	200243
ARX INC	002601
ASSOCIATED COMMUNICATIONS CORP	230036
ASSOCIATED MORTGAGE INVESTORS	007913
ASTROSYSTEMS INC	008065
AT&E CORP	009078
ATALANTA SOSNOFF CAPITAL CORP /DE/	792449
ATI MEDICAL INC	737276
ATLANTIC EXPRESS INC	786618
ATLAS CORP	008302
ATLAS VAN LINES INC	318397
AUDIO VIDEO AFFILIATES INC	744187
AUTO TROL TECHNOLOGY CORP	278048
AUTOCLAVE ENGINEERS INC	350067
AVEMCO CORP	008802
BABBAGES INC	833443
BADDOUR INC	724571
BADGER METER INC	009092
BADGER PAPER MILLS INC	009096
BAKER MICHAEL CORP	008263
BALCOR COLONIAL STORAGE INCOME FUND 85	763535
BALCOR COLONIAL STORAGE INCOME FUND 86	795748
BALCOR CURRENT INCOME FUND 85	763687
BALCOR EQUITY PENSION INVESTORS IV	796805
BALCOR EQUITY PROPERTIES XIV	714913
BALCOR EQUITY PROPERTIES XVIII	740553
BALCOR PENSION INVESTORS	225075
BALCOR PENSION INVESTORS II	350845
BALCOR PENSION INVESTORS III	357329
BALCOR PENSION INVESTORS VII	783458
BALCOR REALTY INVESTORS 83	705959
BALCOR REALTY INVESTORS 83 SERIES II	717856
BALCOR REALTY INVESTORS 85 SERIES I	751341
BALCOR REALTY INVESTORS 85 SERIES II	759831
BALCOR REALTY INVESTORS 85 SERIES III	766769
BALCOR REALTY INVESTORS 86 SERIES I	777574
BALCOR REALTY INVESTORS LTD 82	355797
BAMBERGER POLYMERS INC	806011
BANK MARYLAND CORP	819540
BANK OF GRANITE CORP	810689
BAR HARBOR BANKSHARES	743367
BARDEN CORP	009801
BARR LABORATORIES INC	010081
BARRY R G CORP /OH/	749872
BAYLAKE CORP	275119
BEARD OIL CO /DE/	832192
BEEBAS CREATIONS INC	772263
BEI ELECTRONICS INC	851478
BEI HOLDINGS LTD /DE/	225569
BELDING HEMINWAY CO INC /DE/	011027
BELL W & CO INC	011109
BELMONT BANCORP	726294
BERKLINE CORP	011545
BERKSHIRE GAS CO /MA/	317406
BERRY PETROLEUM CO	778438
BEST FRANK E INC	011806
BEST LOCK CORP	011814
BEST UNIVERSAL LOCK CO	011825
BIG O TIRES INC	718082
BIOTECHNICA INTERNATIONAL INC	715374
BIRD CORP	012245
BIZMART INC	827651
BKLA BANCORP	716615
BLESSINGS CORP	012614
BLISS & LAUGHLIN INDUSTRIES INC /DE	842679
BMC BANKCORP INC	702903
BMC INDUSTRIES INC/MN/	215310
BMC SOFTWARE INC	835729
BNH BANCSHARES INC	764205
BNR BANCSHARES INC	701258
BODDIE NOELL RESTAURANTS PROPERTIES INC	812150
BOKUM RESOURCES CORP	013000
BOMBAY COMPANY INC	092687
BOOLE & BABBAGE INC	734394
BOSTON FINANCIAL QUALIFIED HOUSING LTD PARTNERSHIP 810663	
BRADLEY REAL ESTATE TRUST	013777
BRESLER & REINER INC	014073
BROOKS BOBBIE INC	014537
BROWN TOM INC /DE	014803
BRYN MAWR BANK CORP	802681
BSN CORP	319237
BTU INTERNATIONAL INC	840883
BUELL INDUSTRIES INC	015186
BUFFETS INC	750274
BUFFTON CORP	351220
BURGER KING INVESTORS MASTER LP	785994
BUSH INDUSTRIES INC	758604
BUSINESS RECORDS CORPORATION HOLDING CO	205219
C3 INC	320121
CABLE TV FUND 12-A	763657
CABLE TV FUND 12-B	774557
CABLE TV FUND 14-A LTD	810334
CABLETRON SYSTEMS INC	848809
CACI INTERNATIONAL INC /DE/	016058
CAGLES INC	016104
CALGENE INC /DE/	793931
CALIFORNIA BIOTECHNOLOGY INC	726512
CALIFORNIA COMMERCIAL BANKSHARES	704886
CALIFORNIA JOCKEY CLUB	016343
CALIFORNIA MICROWAVE INC	016357
CALIFORNIA REAL ESTATE INVESTMENT TRUST	016387
CALLAHAN MINING CORP	016455
CALPROP CORP	018496
CALUMET INDUSTRIES INC	016511
CANAL CAPITAL CORP	101821
CANOME ENVIRONMENTAL SERVICES CORP	796139
CAPITAL GROWTH MORTGAGE INVESTORS L P	796533
CAPITAL HOUSING & MORTGAGE PARTNERS INC	849537
CAPITAL REALTY INVESTORS III LTD PARTNERSHIP	722833
CAPITAL REALTY INVESTORS IV LIMITED PARTNERSHIP	740371
CAPITAL REALTY INVESTORS TAX EXEMPT FUND LP	799690
CAPITAL SOURCE II L P A	799410
CAPITALCORP INC	725056
CARDIS CORP /DE/	748313
CAREERCOM CORP	005931
CARL JACK 312 FUTURES INC	792861
CARLYLE INCOME PLUS LTD	792978
CARLYLE REAL ESTATE LTD PARTNERSHIP IX	310812
CARLYLE REAL ESTATE LTD PARTNERSHIP VII	215371
CARLYLE REAL ESTATE LTD PARTNERSHIP VIII	275172
CAROLINA BANCORP INC /DE/	825546
CAROLINA FIRST CORP	797871
CARRIAGE INDUSTRIES INC	746650
CASCADE CORP	018061
CASH AMERICA INVESTMENTS INC /TX/	807884
CASUAL MALE CORP	836866
CATO CORP	018255
CCX INC	024009
CELLCOM CORP	737275
CELLULAR INC	787912
CELLULAR INFORMATION SYSTEMS INC	836184
CENTEX TELEMANAGEMENT INC	819724
CENTRAL & SOUTHERN HOLDING CO/GA	815032
CENTRAL BANC SYSTEM INC	712535
CENTRAL PENNSYLVANIA FINANCIAL CORP	769751
CENTRAL SERVICE CORP	018751
CENTRAL SPRINKLER CORP	766041
CENTURI INC	003905
CENTURY PENSION INCOME FUND XXIII	764543
CENTURY PROPERTIES FUND XIV	278128
CENTURY PROPERTIES FUND XV	314890
CENTURY PROPERTIES FUND XVI	351931
CENTURY PROPERTIES FUND XVII	356472
CENTURY PROPERTIES FUND XVIII	704271
CENTURY PROPERTIES FUND XX	736909
CERNER CORP /MO/	804753
CHALONE INC	742695
CHAMPION ENTERPRISES INC	814068
CHAMPION PARTS INC	019161
CHART HOUSE ENTERPRISES INC	820757
CHARTER POWER SYSTEMS INC	808084
CHATTEM INC	019520
CHAUS BERNARD INC	793983
CHEMDESIGN CORP	734541
CHEMICAL LEAMAN CORP /PA/	215425
CHEMUNG FINANCIAL CORP	783563
CHESAPEAKE UTILITIES CORP	019745
CHEYENNE SOFTWARE INC	736830
CHICAGO DOCK & CANAL TRUST	774658
CHIRON CORP	706539
CHRISTIANA COMPANIES INC	020104
CHYRON CORP	020232
CIGNA INCOME REALTY I LTD PARTNERSHIP	784000
CII-X HOLDINGS INC	026301
CIMCO INC /DE/	791243
CIMFLEX TEKNOWLEDGE CORP	716214
CINCINNATI MICROWAVE INC	729583
CIRCON CORP	719727
CIRRUS LOGIC INC	772406
CISCO SYSTEMS INC	858877
CITIZENS & NORTHERN CORP	810958
CITY HOLDING CO	726854
CLAIRES STORES INC	034115
CLAIRSON INTERNATIONAL CORP	803028
CLEAR CHANNEL COMMUNICATIONS INC	739706
CLEVETRUST REALTY INVESTORS	020975
CLINTON GAS SYSTEMS INC	702256
CLOTHESTIME INC	727739
CLR CORP	205171
CLUB CAR INC	846572
CMI CORP	021157
CMS ENHANCEMENTS INC	764864
CNB CORP /SC/	764581
CNB FINANCIAL CORP/PA	736772
COACHMEN INDUSTRIES INC	021212
COAST DISTRIBUTION SYSTEM	728303
COCA MINES INC	066627
CODORUS VALLEY BANCORP INC	806279
COLLAGEN CORP /DE	021686
COLLINS INDUSTRIES INC	021759
COLONIAL COMPANIES INC	853995
COLONIAL GROUP INC /MA/	783282
COM SYSTEMS INC	355374
COMDIAL CORP	230131
COMMERCE BANCORP INC /NJ/	715096
COMMERCEBANCORP	720863
COMMERCIAL BANCORP	717059
COMMONWEALTH INDUSTRIES CORP	022626
COMMUNITY BANCORP INC /MA/	742170
COMMUNITY BANKS INC /PA/	714710
COMMUNITY BANKSHARES INC /NH/	776815
COMPRESSION LABS INC	319085
COMPUCOM SYSTEMS INC	736291
COMPUTER DATA SYSTEMS INC	022989
COMPUTER LANGUAGE RESEARCH INC	716803
COMPUTER PRODUCTS INC	023071
COMPUTER TASK GROUP INC	023111
COMSHARE INC	201513
CONCORD FABRICS INC	023249
CONCORD MILESTONE INCOME FUND LP	757639
CONCORD TELEPHONE CO	023258
CONESTOGA ENTERPRISES INC	854727
CONESTOGA TELEPHONE & TELEGRAPH CO	023315
CONNECTICUT BANCORP INC	804147
CONNECTICUT GENERAL REALTY INVESTORS III	745471
CONSOLIDATED CAPITAL GROWTH FUND	201529
CONSOLIDATED CAPITAL INSTITUTIONAL PROPERTIES 3	765890
CONSOLIDATED CAPITAL PROPERTIES I	275251
CONSOLIDATED CAPITAL PROPERTIES II	311667
CONSOLIDATED CAPITAL PROPERTIES III	317331
CONSOLIDATED CAPITAL PROPERTIES V	725614
CONSOLIDATED CAPITAL VENTURE PROPERTIES I	769902
CONSOLIDATED EQUITIES CORP	023648
CONSOLIDATED PACKAGING CORP	023750
CONSOLIDATED PRODUCTS INC /IN/	093859
CONSOLIDATED RESOURCES HEALTH CARE FUND V	764544
CONSOLIDATED RESOURCES HEALTH CARE FUND VI	777953
CONSOLIDATED RESOURCES HEALTH CARE FUND IV	752895
CONSOLIDATED TOMOKA LAND CO	023795
CONSTON CORP	793925
CONSUL RESTAURANT CORP	313632
CONTINENTAL HEALTH AFFILIATES INC	354781
CONTINENTAL INC	821617

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-05

Registrant	CIK No.
CONTINENTAL MATERIALS CORP	024104
CONTINUUM CO INC	096608
COOPER DEVELOPMENT CO	720062
COPLEY PROPERTIES INC	769017
CORCAP INC	835178
CORPORATE DATA SCIENCES INC	726911
CORPORATE PROPERTY ASSOCIATES 2	312918
CORPORATE PROPERTY ASSOCIATES 3	350745
CORPORATE PROPERTY ASSOCIATES 4	706005
CORPORATE PROPERTY ASSOCIATES 5	718075
CORPORATE PROPERTY ASSOCIATES 6	750456
CORPORATE PROPERTY ASSOCIATES 7	789459
CORPORATE REALTY INCOME FUND I L P	785898
CORPORATE SOFTWARE INCORPORATED	815273
CORPUS CHRISTI BANCSHARES INC	757012
CORRECTIONS CORPORATION OF AMERICA	739404
CORTLAND BANCORP INC	774569
CORTLAND FIRST FINANCIAL CORP	796317
COSTAR CORP	027025
COUNTRY LAKE FOODS INC	823248
COUNTRY WIDE TRANSPORT SERVICES INC	810950
COUNTRYWIDE MORTGAGE TRUST 1987-I	814389
COURIER CORP	025212
COVINGTON DEVELOPMENT GROUP INC	814849
CPC REXCEL INC	805645
CPI ACQUISITION INC	808411
CRAIG CORP	110985
CRAWFORD & CO	025475
CRAY COMPUTER CORP	857101
CRAZY EDDIE INC	746550
CRESTWOOD REALTY INVESTORS INC/DE	778971
CROWLEY MILNER & CO	025871
CROWN BOOKS CORP	719798
CROWN CRAFTS INC	025895
CROWTHERS MCCALL PATTERN INC	779409
CRUISE AMERICA INC	733775
CRYSTAL OIL CO /LA/	745907
CSA FINANCE CORP	781883
CSA INCOME FUND LIMITED PARTNERSHIP III	831890
CSS INDUSTRIES INC	020629
CULP INC	723603
CUMBERLAND HEALTHCARE L P I-A	790952
CYCARE SYSTEMS INC	354868
DACOTAH BANK HOLDING CO	026525
DAKA INTERNATIONAL INC	840826
DALLAS SEMICONDUCTOR CORP	749420
DAMSON BIRTCHER REALTY INCOME FUND I	745932
DAMSON OIL CORP	026771
DART DRUG STORES INC	788965
DATA DESIGN LABORATORIES INC	026987
DATA I/O CORP	351998
DATASCOPE CORP	027096
DATRON SYSTEMS INC/DE	027118
DAVEY TREE EXPERT CO	277638
DAVIS WATER & WASTE INDUSTRIES INC	027326
DCB CORP	357224
DEB SHOPS INC	715779
DEFIANCE INC	775995
DEL LABORATORIES INC	027751
DEL TACO RESTAURANTS INC	725820
DELAWARE OTSEGO CORP	757189
DELTA NATURAL GAS CO INC	277375
DEP CORP	728330
DESIGNS INC	813298
DETREX CORPORATION	028372
DEVCON INTERNATIONAL CORP	028452
DEVLIEG BULLARD INC	858710
DEVON ENERGY CORP /DE/	837330
DEVON GROUP INC	040542
DI INDUSTRIES INC	320186
DIAGNOSTEK INC	726606
DIAGNOSTIC PRODUCTS CORP	702259
DIAGNOSTIC RETRIEVAL SYSTEMS INC	028630
DIAL REIT INC	805057
DIANA CORP	057201
DICEON ELECTRONICS INC	727010
DIGICON INC	028866
DIGITAL MICROWAVE CORP /DE/	812703
DIONEX CORP /DE	708850
DIVERSICARE CORPORATION OF AMERICA	092057
DIVERSIFIED HISTORIC INVESTORS II	763566
DIVERSIFIED INDUSTRIES INC	029208
DIXON TICONDEROGA CO	014995
DNA PLANT TECHNOLOGY CORP	730985
DNB FINANCIAL CORP	713671
DREW INDUSTRIES INCORPORATED	783744
DREXEL BURNHAM LAMBERT REAL ESTATE ASSOCIATES III	761657
DRIVER HARRIS CO	030197
DRUG GUILD DISTRIBUTORS INC	201696
DUCOMMUN INC /DE/	030305
DURAKON INDUSTRIES INC	748792
DUTY FREE INTERNATIONAL INC	820756
DVI FINANCIAL CORP	801550
DYCOM INDUSTRIES INC	067215
DYNAMICS RESEARCH CORP	030622
DYNEER CORP/DE	830047
EAGLE BANCSHARES INC	783604
EASCO HAND TOOLS INC	811798
EASTERN CO	031107
EASTERN STAINLESS CORP /VA/	843867
EASTEX ENERGY INC	818075
EASTGROUP PROPERTIES	049600
ECC INTERNATIONAL CORP	031660
ECOLOGY & ENVIRONMENT INC	809933
EECO INC /DE/	811638
ELCOR CORP	032017
ELDEC CORP	793575
ELDON INDUSTRIES INC /DE/	032032
ELDORADO BANCORP	351991
ELECTRO SCIENTIFIC INDUSTRIES INC	726514
ELECTROMAGNETIC SCIENCES INC	032198
ELECTRONIC ARTS	712515
ELSINORE CORP	311049
EMULEX CORP /DE/	350917
ENCLEAN INC	842916
ENERGY VENTURES INC /DE/	032908
ENERGYNORTH INC	704503
ENNIS BUSINESS FORMS INC	033002
ENSR CORP	813566
ENTERRA CORP /DE/	353181
ENTERTAINMENT MARKETING INC	788178
ENTWISTLE CO	033061
ENVIRONMENTAL CONTROL GROUP INC	835014
ENVIROSAFE SERVICES INC	811932
ENZO BIOCHEM INC	316253
EQUIFAX INC	033185
EQUITEC FINANCIAL GROUP INC	722807
EQUITY OIL CO	033325
ERC ENVIRONMENTAL & ENERGY SERVICES COMPANY INC	842151
ERIE FAMILY LIFE INSURANCE CO	033416
ESCALADE INC	033486
ESI INDUSTRIES INC	350646
ESSEF CORP	814037
ESSEX COUNTY GAS COMPANY	048189
ESSEX FINANCIAL PARTNERS LP	847325
EVANS INC	033780
EXABYTE CORP /DE/	855109
EXAR CORP	753568
EXIDE ELECTRONICS GROUP INC	772372
EXOLON ESK CO	034046
EXPEDITORS INTERNATIONAL OF WASHINGTON I	746515
EXPLORATION CO OF LOUISIANA INC	720678
EZ EM INC	727008
F & M COMPUTER TECHNOLOGIES INC	827838
F&M BANCORP	736473
FABRICLAND INC	034165
FALCON CABLE SYSTEMS CO	783008
FALL RIVER GAS CO	034371
FAMILY STEAK HOUSES OF FLORIDA INC	784539
FAMOUS RESTAURANTS INC	354929
FANSTEEL INC	034471
FARM FAMILY MUTUAL INSURANCE CO	277269
FARM HOUSE FOODS CORP	034552
FARR CO	034629
FEDERAL INSURED MORTGAGE INVESTORS LP	779229
FEDERAL INSURED MORTGAGE INVESTORS LP II	798433
FEDERAL SCREW WORKS	034906
FFP PARTNERS L P	811863
FIBRONICS INTERNATIONAL INC	724968
FILENET CORPORATION	816181
FILTERTEK INC/DE	719164
FINANCIAL CENTER BANCORP	724769
FINANCIAL NEWS NETWORK INC	700860
FINNIGAN CORP /VA/	035968
FIRST AMERICAN FINANCIAL CORP	036047
FIRST BANCORP /NC/	811589
FIRST BANCSHARES OF ST LANDRY INC	355543
FIRST BANKING CENTER INC	356858
FIRST BANKING CO OF SOUTHEAST GEORGIA	357208
FIRST CAPITAL INCOME PROPERTIES LTD SERIES IX	771963
FIRST CAPITAL INCOME PROPERTIES LTD SERIES VIII	703482
FIRST CAPITAL INCOME PROPERTIES LTD SERIES X	750301
FIRST CAPITAL INSTITUTIONAL REAL ESTATE LTD 2	727087
FIRST CAPITAL INSTITUTIONAL REAL ESTATE LTD 4	794665
FIRST CAPITAL INSTITUTIONAL REAL ESTATE LTD 1	730212
FIRST CAPITAL INSTITUTIONAL REAL ESTATE LTD 3	757528
FIRST CHARTER CORP /NC/	717306
FIRST CONTINENTAL REAL ESTATE INVESTMENT TRUST /TX 036233	
FIRST FARMERS & MERCHANTS CORP	703329
FIRST FEDERAL CAPITAL FUNDING INC	796125
FIRST FIDELITY BANCORP INC	711403
FIRST FRANKLIN CORP	742161
FIRST GEORGIA HOLDING INC	826491
FIRST GOLDEN BANCORPORATION	036352
FIRST HUNTSVILLE CORP	036394
FIRST M&F CORP/MS	320387
FIRST NATIONAL CORP /ND/	731650
FIRST NATIONAL FINANCIAL CORP /MS/	715259
FIRST NATIONAL LINCOLN CORP /ME/	785207
FIRST OF LONG ISLAND CORP	740663
FIRST OF MICHIGAN CAPITAL CORP	036781
FIRST PULASKI NATIONAL CORP	354706
FIRST WILKOW VENTURE	037070
FIRSTBANK CORP	778972
FIRSTMISS GOLD INC	824590
FISHKILL NATIONAL CORP	749923
FITCHBURG GAS & ELECTRIC LIGHT CO	037248
FLAGSHIP EXPRESS INC	791953
FLEXSTEEL INDUSTRIES INC	037472
FLEXTRONICS INC	820095
FLIGHT INTERNATIONAL GROUP INC	732775
FLOATING POINT SYSTEMS INC	276558
FLORIDA PUBLIC UTILITIES CO	037643
FLOW INTERNATIONAL CORP	713002
FNB BANKING CO /GA	757262
FNB CORP/NC	764811
FONAR CORP	355019
FOOTHILL INDEPENDENT BANCORP	718903
FOR BETTER LIVING INC	037946
FOSTER L B CO	352825
FOUNDATION HEALTH CORPORATION	859493
FOXFIELD FUND	775045
FPA CORP /DE/	038570
FRANKLIN ELECTRIC CO INC	038725
FRANKLIN ELECTRONIC PUBLISHERS INC	356841
FREDERICKSBURG NATIONAL BANCORP INC	707177
FREEMAN DIVERSIFIED REAL ESTATE II LP	750258
FREEMAN DIVERSIFIED REAL ESTATE III LP	773679
FREEMAN GROWTH PLUS LP	795757
FREQUENCY ELECTRONICS INC	039020
FRETTER INC	790815
FREYMILLER TRUCKING INC	811213
FRIES ENTERTAINMENT INC	733267
FRISCHS RESTAURANTS INC	039047
FRONTIER FINANCIAL CORP /WA/	716457
FROZEN FOOD EXPRESS INDUSTRIES INC	039273
FUTURE FUND	277807
FUTURES DIMENSION FUND	789864
G IN APPAREL GROUP LTD/DE	821002
G&K SERVICES INC	039648
GALAXY CABLEVISION L P	809808
GALILEO ELECTRO OPTICS CORP	711425
GALLAGHER ARTHUR J & CO	354190
GALOOB LEWIS TOYS INC /DE/	751968
GALVESTON HOUSTON CO	039838
GARAN INC	039917
GARDEN STATE BANCSHARES INC	752390
GATEWAY BANCORP INC /NY/	758029
GELMAN SCIENCES INC	310252
GENCOR INDUSTRIES INC	064472
GENERAL BUILDING PRODUCTS CORP	810625
GENERAL COMMUNICATION INC	808461
GENERAL HOUSEWARES CORP	040643
GENESEE CORP	040934
GENUS INC	837913
GENZYME CORP	732485
GEO INTERNATIONAL CORP /NEW/	702993
GEODYNAMICS CORP	769409
GEODYNE RESOURCES INC	318223

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-05

Registrant	CIK No.
GEOSTAR CORP /DE/	832481
GIBSON C R CO	041365
GOAL SYSTEMS INTERNATIONAL INC/OH	847434
GOLDEN CORRAL RESTAURANT JOINT VENTURES	319495
GOLDEN ENTERPRISES INC	042228
GOLDEN POULTRY CO INC	758292
GOLF HOST RESORTS INC	042429
GOOD GUYS INC	785931
GOODMARK FOODS INC	778709
GORMAN RUPP CO	042682
GRADCO SYSTEMS INC	719597
GRAHAM CORP	716314
GRAHAM FIELD HEALTH PRODUCTS INC	709136
GRANADA BIOSCIENCES INC	854154
GRANADA FOODS CORP	854153
GRC INTERNATIONAL INC	201944
GREAT AMERICAN RECREATION INC	103317
GREATBANC INC	351005
GREENE COUNTY BANCSHARES INC	764402
GREENERY REHABILITATION GROUP INC	778433
GREENMAN BROTHERS INC	043837
GREINER ENGINEERING INC	040956
GRIFFITH CONSUMERS CO /MD/	801937
GRIST MILL CO	044041
GROUNDWATER TECHNOLOGY INC	795579
GROWTH & GUARANTEE FUND L P	812188
GUARDSMAN PRODUCTS INC	044420
GUEST SUPPLY INC	722642
GULF SOUTHWEST BANCORP INC	717411
GULFBANKS INC	813921
GUNDLE ENVIRONMENTAL SYSTEMS INC	805023
HABERSHAM BANCORP	754597
HACH CO	044754
HADCO CORP	729533
HALL STUART CO INC	094963
HALLWOOD ENERGY CORP	319019
HALLWOOD ENERGY PARTNERS LP	768172
HAMMOND CO/CA	722075
HAMPTON INDUSTRIES INC /NC/	045260
HAMPTONS BANCSHARES INC	746715
HANCOCK JOHN PROPERTIES LTD PARTNERSHIP	748262
HANCOCK JOHN REALTY INCOME FUND II LP	818257
HANCOCK JOHN REALTY INCOME FUND LTD PARTNERSHIP	795196
HARBOR BANCORP	708193
HARDING ASSOCIATES INC	818968
HARLEYSVILLE NATIONAL CORP	702902
HARMON INDUSTRIES INC	045635
HARRIS PAUL STORES INC	045791
HARROW INDUSTRIES INC	811081
HARVEST BANCORP INC	745299
HASTINGS MANUFACTURING CO	046109
HAWAII NATIONAL BANCSHARES INC	805304
HBO & CO	310377
HEALTH CHEM CORP	046428
HEALTH IMAGES INC	769689
HEALTHCARE SERVICES GROUP INC	731012
HEALTHDYNE INC	046455
HEI CORP	720609
HEICO CORP	046619
HEIN WERNER CORP	046613
HELDOR INDUSTRIES INC	350684
HELEN OF TROY CORP	046675
HELM RESOURCES INC/DE/	351685
HERITAGE ENTERTAINMENT INC	047016
HI SHEAR INDUSTRIES INC	047268
HICKORY TECH CORP	766561
HIGHLAND TELEPHONE CO	047417
HILLS BANCORPORATION	732417
HMG COURTLAND PROPERTIES INC	311617
HOGAN SYSTEMS INC	709139
HOLCO MORTGAGE ACCEPTANCE CORP I	813418
HOLLYWOOD PARK REALTY ENTERPRISES INC	356213
HOME FEDERAL CORP	811097
HOME NUTRITIONAL SERVICES INC	857009
HOME OFFICE REFERENCE LABORATORY INC	816151
HOMEWOOD FINANCE CORP	735297
HOPPER SOLIDAY CORP	793042
HORIZON BANCORP INC /WV/	730025
HORIZON FINANCIAL SERVICES INC	794621
HORIZON HEALTHCARE CORP	806151
HOUSTON OIL TRUST	355118
HOWE RICHARDSON INC /DE/	061931
HOWELL CORP /DE/	745113
HUDSON GENERAL CORP	048948
HUFFMAN KOOS INC	797462
HUNTER ENVIRONMENTAL SERVICES INC	803740
HUNTWAY PARTNERS L P	840335
HURCO COMPANIES INC	315374
HUTCHINSON TECHNOLOGY INC	772897
HUTTON CONAM REALTY INVESTORS 3	711389
HUTTON CONAM REALTY INVESTORS 4	722745
HUTTON CONAM REALTY PENSION INVESTORS	706120
HUTTON ENERGY ASSETS 3RD ENERGY PARTNERSHIP A LTD	760728
HUTTON GSH COMMERCIAL PROPERTIES 2	706003
HUTTON GSH COMMERCIAL PROPERTIES 3	725787
HUTTON REAL AMERICAN PROPERTIES	758479
HYDE ATHLETIC INDUSTRIES INC	049401
IFR SYSTEMS INC	785546
ILLINI COMMUNITY BANCORP INC	730037
IMAGINE FILMS ENTERTAINMENT INC	793726
IMCO RECYCLING INC	202890
IMMUNEX CORP /DE/	719529
IMNET INC /DE/	075448
INBANCSHARES	357074
INCOME OPPORTUNITY REALTY INVESTORS INC	760730
INCSTAR CORP	216184
INDEPENDENCE BANCORP INC /NJ/	741356
INDEPENDENCE BANCORP INC /PA/	700753
INDEPENDENT BANK CORP /MI/	039311
INDEPENDENT BANKGROUP INC	706194
INDEPENDENT BANKSHARES INC	316870
INDEX TECHNOLOGY CORP	739661
INDIANA BANCSHARES INC /IN/	813617
INDIANA UNITED BANCORP	720002
INDUSTRIAL ACOUSTICS CO INC	050253
INFOPAGE INC	716944
INFOTRON SYSTEMS CORP	350921
INMAC CORP	801121
INSITUFORM OF NORTH AMERICA INC	353020
INSTEEL INDUSTRIES INC	764401
INSTRON CORP	050716
INSURED INCOME PROPERTIES 1983	710670
INSURED INCOME PROPERTIES 1984	730988
INSURED INCOME PROPERTIES 1988 L P	808029
INSURED PENSION INVESTORS 1984	747549
INSURED PENSION INVESTORS 1985	756896
INTEGRA A HOTEL & RESTAURANT CO	316740
INTEGRATED RESOURCES NATIONAL LEASE INCO	764691
INTELLICALL INC	818674
INTELLIGENT SYSTEMS MASTER L P	806846
INTER TEL INC	350066
INTERCHANGE FINANCIAL SERVICES CORP / NJ/	755933
INTERCONTINENTAL ENTERPRISES INC	783994
INTERIM SYSTEMS CORP	823913
INTERLEAF INC /MA/	793604
INTERMAGNETICS GENERAL CORP	351012
INTERNATIONAL BROADCASTING CORP /MN/	355912
INTERNATIONAL BUSINESS INTERIORS CORP	854899
INTERNATIONAL MICROELECTRONIC PRODUCTS INC	612927
INTERNATIONAL MORTGAGE ACCEPTANCE CORP	735381
INTERNATIONAL RECOVERY CORP	789460
INTERNATIONAL RESEARCH & DEVELOPMENT CORP	051497
INTERNATIONAL SPEEDWAY CORP	051548
INTERSPEC INC	814059
INTERTRANS CORP	737573
INTERVOICE INC	784244
INTRENET INC	778181
INVACARE CORP	742112
INVESTMENT PROPERTIES ASSOCIATES	052067
INVESTORS FIRST STAGED EQUITY LP	768834
INVESTORS HERITAGE LIFE INSURANCE CO /KY	052301
INVITRON CORP /DE/	052441
IOMEGA CORP	820413
IOWA AMERICAN CAPITAL CORP	352789
IOWA FIRST BANCSHARES CORP	751655
IRE REAL ESTATE FUND LTD SERIES 26	740155
IREX CORP/PA	748620
IROQUOIS BRANDS LTD	001952
IRWIN FINANCIAL CORPORATION	052586
ISOMEDIX INC	052617
ISS INTERNATIONAL SERVICE SYSTEM INC	719522
IVAX CORP	080904
IVERSON TECHNOLOGY CORP	772197
J R GOLD MINES INC	771858
J&J SNACK FOODS CORP	794219
JACKPOT ENTERPRISES INC	785956
JACOBS JAY INC	351903
JASON INC	812127
JBS RESTAURANTS INC	813471
JEFFERSON BANCORP INC	053281
JETSTREAM II L P	053316
JETSTREAM LP	831331
JG INDUSTRIES INC/IL/	825336
JLG INDUSTRIES INC	042179
JMB INCOME PROPERTIES LTD IX	216275
JMB INCOME PROPERTIES LTD VI	355472
JMB INCOME PROPERTIES LTD VII	275600
JMB MORTGAGE PARTNERS LTD III	313019
JOHNSTON INDUSTRIES INC	763820
JONES CABLE INCOME FUND 1-C LTD	041017
JONES INTERCABLE INVESTORS L P	813710
JUNIATA VALLEY FINANCIAL CORP	802361
JUNO LIGHTING INC	714712
K TRON INTERNATIONAL INC	723888
KAHLER CORP/DE/	000020
KANE INDUSTRIES INC	054235
KANEB PIPE LINE PARTNERS L P	796770
KASLER CORP	853890
KCS GROUP INC	357257
KEITHLEY INSTRUMENTS INC	832820
KELLEY OIL & GAS PARTNERS LTD	054991
KENAN TRANSPORT CO	776818
KENTUCKY COMMUNITY BANCORP INC	745379
KETCHUM & CO INC	702661
KETTLE RESTAURANTS INC	055510
KEWAUNEE SCIENTIFIC CORP /DE/	711205
KEY PRODUCTION COMPANY INC	055529
KEY TRONIC CORP	837290
KEYSTONE CAMERA PRODUCTS CORP	719733
KFC NATIONAL PURCHASING COOPERATIVE INC	006125
KILLEARN PROPERTIES INC	310205
KIMMINS ENVIRONMENTAL SERVICE CORP	055742
KIRSCHNER MEDICAL CORP	611562
KLLM TRANSPORT SERVICES INC	785022
KNAPE & VOGT MANUFACTURING CO	793765
KNOGO CORP	056362
KNOWLEDGEWARE INC	056439
KOMAG INC /DE/	854992
KRUG INTERNATIONAL CORP	813347
KRUPP CASH PLUS II LTD PARTNERSHIP	096793
KRUPP CASH PLUS IV LIMITED PARTNERSHIP	785988
KRUPP REALTY LTD PARTNERSHIP V	819999
KRUPP REALTY LTD PARTNERSHIP VII	721799
KUHLMAN CORP	751570
KULICKE & SOFFA INDUSTRIES INC	056955
KV PHARMACEUTICAL CO /DE/	056978
L&N HOUSING CORP	057055
LABARGE INC	350206
LAM RESEARCH CORP	057139
LAMA TONY CO INC	707549
LANCER CORP /TX/	057418
LANDMARK FINANCIAL GROUP INC/TX	768162
LANDMARK GRAPHICS CORP	730606
LASALLE MARKET STREETS ASSOCIATES LTD	749510
LATTICE SEMICONDUCTOR CORP	766418
LAWRENCE INSURANCE GROUP INC	855658
LAWSON PRODUCTS INC/NEW/DE	805266
LAZARE KAPLAN INTERNATIONAL INC	703604
LDB CORP /TX/	202375
LEARONAL INC	740745
LECHTERS INC	058172
LEES INNS OF AMERICA INC	798186
LEPERCQ CORPORATE INCOME FUND II L P	202362
LESCO INC/OH	809862
LEXINGTON PRECISION CORP	745394
LIBERTY EQUIPMENT INVESTORS 1983	012570
LIBERTY EQUIPMENT INVESTORS LP 1984	717233
LIBERTY HOMES INC	749502
LINDBERG CORP /DE/	059240
LINDSAY MANUFACTURING CO	059593
LINEAR TECHNOLOGY CORP /CA/	836157
LIQUI BOX CORP	791907
LNB BANCORP INC	216430
LOAN AMERICA FINANCIAL CORP	737210
LOCKWOOD BANC GROUP INC	759578
LOGICON INC /DE/	811910
LORI CORP	311948
	006814

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-05

Registrant	CIK No.
LSI INDUSTRIES INC	763532
LUMEX INC	080878
LYDALL INC /DE/	060977
LYNCH CORP	061004
MACDERMID INC	061138
MACNEAL SCHWENDLER CORP	717238
MADISON FINANCIAL CORP	061336
MAGELLAN PETROLEUM CORP /DE/	061398
MAINE PUBLIC SERVICE CO	061611
MALLARD COACH CO INC	820062
MANUFACTURED HOMES INC	721688
MARCOR RESORTS INC	734380
MARIETTA CORP	792969
MARK CONTROLS CORP /DE/	820392
MARKEL CORP	803509
MARQUEST MEDICAL PRODUCTS INC	719497
MARTEN TRANSPORT LTD	799187
MARTIN LAWRENCE LIMITED EDITIONS INC	745600
MASON GEORGE BANKSHARES INC	781651
MATERIAL SCIENCES CORP	755003
MATEWAN BANCSHARES INC	742246
MATLACK SYSTEMS INC	837339
MATTEL FUNDING CORPORATION	818966
MATTHEWS INTERNATIONAL CORP	063296
MAUI LAND & PINEAPPLE CO INC	063330
MAUNA LOA MACADAMIA PARTNERS LP	792161
MAXIM INTEGRATED PRODUCTS INC	743318
MAXWELL LABORATORIES INC /DE/	319815
MAYNARD OIL CO	063528
MBC CORP	701073
MCCORMICK CAPITAL INC	788077
MCFARLAND ENERGY INC	063959
MCGRATH RENTCORP	752714
MCM CORP	275710
MCNEIL REAL ESTATE FUND IX LTD	276326
MCNEIL REAL ESTATE FUND X LTD	312812
MCNEIL REAL ESTATE FUND XI LTD	318140
MCNEIL REAL ESTATE FUND XIV LTD	702657
MCNEIL REAL ESTATE FUND XV LTD /CA	751044
MDT CORP /DE/	806089
MECHANICAL TECHNOLOGY INC	064463
MEDALIST INDUSTRIES INC	064493
MEDCHEM PRODUCTS INC /MA/	711074
MEDICAL IMAGING CENTERS OF AMERICA INC	746712
MEDICAL PROPERTIES INC	803608
MEDICINE SHOPPE INTERNATIONAL INC	731841
MEDUSA CORP	064674
MELAMINE CHEMICALS INC	816955
MELLON PARTICIPATING MTG TRUST COMM PROP SERIES 85 759174	
MEM CO INC	064807
MENTOR CORP /MN/	064892
MERCHANTS CAPITAL CORP /MS/	357065
MERCHANTS GROUP INC	803027
MERIDIAN INSURANCE GROUP INC	809801
MESTEK INC	065195
MET COIL SYSTEMS CORP	745469
METHODE ELECTRONICS INC	065270
METRO AIRLINES INC	355625
METROCORP INC	200513
METROPOLITAN REALTY CORP	811516
MGI PHARMA INC	702131
MHI GROUP INC	067217
MI SCHOTTENSTEIN HOMES INC	799292
MICHAEL ANTHONY JEWELERS INC	799515
MICHIGAN GENERAL CORP	065648
MICKELBERRY CORP	065705
MICROAGE INC /DE/	814249
MICROCOM INC	795571
MICROSEMI CORP	310568
MID ATLANTIC CENTERS LIMITED PARTNERSHIP	808375
MID STATES BANCSHARES INC	793788
MIDDLEBY CORP	769520
MIDDLESEX WATER CO	066004
MIDWEST COMMUNICATIONS CORP /DE/	813745
MIDWEST GRAIN PRODUCTS INC	835011
MILGRAY ELECTRONICS INC	066270
MILTOPE GROUP INC	752692
MILWAUKEE INSURANCE GROUP INC	801321
MINISCRIBE CORP	714921
MIP PROPERTIES INC	788680
MISCHER CORP	066849
MISSION RESOURCE PARTNERS L P	820745
MISSION VALLEY BANCORP	726966
MISSION WEST PROPERTIES/NEW/	704874
MNX INC	795425
MOBILE GAS SERVICE CORP	067212
MOBILE TELECOMMUNICATION TECHNOLOGIES CO	842915
MOLECULAR BIOSYSTEMS INC	719598
MOMENTUM INC	703845
MONARCH CEMENT CO	067517
MONARCH MACHINE TOOL CO	067532
MONY REAL ESTATE INVESTORS	067872
MOORE MEDICAL CORP	074691
MOORE PRODUCTS CO	067975
MOR FLO INDUSTRIES INC	068013
MPSI SYSTEMS INC	714540
MR COFFEE INC	831463
MR GASKET CO	724967
MRI BUSINESS PROPERTIES FUND LTD II	745289
MS CARRIERS INC	790372
MSA REALTY CORP	740074
MUELLER PAUL CO	068726
MULTI COLOR CORP	819220
MUNSINGWEAR INC	069067
MYERS INDUSTRIES INC	069488
N W GROUP INC	808918
NABORS INDUSTRIES INC	798943
NAPCO SECURITY SYSTEMS INC	069633
NASTA INTERNATIONAL INC	812628
NATIONAL GAS & OIL CO	355313
NATIONAL LEASE INCOME FUND 3	740581
NATIONAL LEASE INCOME FUND 5	779813
NATIONAL LUMBER & SUPPLY INC	725364
NATIONAL MEDIA CORP	070412
NATIONAL SANITARY SUPPLY CO	793500
NAVIGATORS GROUP INC	793547
NBI INC	313518
NCC INDUSTRIES INC	070855
NECO ENTERPRISES INC	801547
NELLCOR INC /DE/	799290
NELSON THOMAS INC	071023
NEORX CORP	755806
NEW BRUNSWICK SCIENTIFIC CO INC	071241
NEW ENERGY CO OF INDIANA	355783
NEW ENGLAND CRITICAL CARE INC	799300
NEW ENGLAND LIFE PENSION PROPERTIES II	728525
NEW ENGLAND LIFE PENSION PROPERTIES III	757221
NEW ENGLAND LIFE PENSION PROPERTIES IV	779742
NEW ENGLAND PENSION PROPERTIES V	806028
NEW IBERIA BANCORP INC	731940
NEW JERSEY STEEL CORP	812310
NEW LINE CINEMA CORP	797858
NEW LONDON INC	350402
NEW MEXICO & ARIZONA LAND CO	071478
NEWCOR INC	071745
NEWMARK & LEWIS INC	788940
NEWPORT CORP	225263
NHP RETIREMENT HOUSING PARTNERS I LTD PARTNERSHIP	793730
NICHOLS INSTITUTE /DE/	765410
NICHOLS S E INC	071985
NICOLET INSTRUMENT CORP	072013
NORSTAN INC	072418
NORTANKERS INC	847452
NORTH AMERICAN VENTURES INC	786785
NORTH LILY MINING CO	072655
NORTH PITTSBURGH SYSTEMS INC	784785
NORTH SIDE CAPITAL CORP	799276
NORTH WEST TELECOMMUNICATIONS INC	072724
NORTHBAY FINANCIAL CORP	844162
NORTHERN CALIFORNIA COMMUNITY BANCORPORATION INC	318779
NORTHLAND CRANBERRIES INC /WI/	818010
NORTHWEST BANK HOLDING CO	313292
NOVA PHARMACEUTICAL CORP	714460
NOVA VISTA INDUSTRIES INC	316656
NOVACARE INC	802843
NOVELLUS SYSTEMS INC	836106
NTS PROPERTIES VI	765232
NU WEST INDUSTRIES INC	840759
NUCLEAR METALS INC	276331
NUTMEG INDUSTRIES INC	793652
NVF CO	073515
NYCOR INC /DE/	809066
OAK HILL SPORTSWEAR CORP /NY/	012203
OCEANEERING INTERNATIONAL INC	073756
ODETICS INC	350868
OEA INC /DE/	073864
OFFICE CLUB INC	807450
OFFSHORE LOGISTICS INC	073687
OIL DRI CORP OF AMERICA	074046
OILGEAR CO	074058
OLD POINT FINANCIAL CORP	740971
OLDE WINDSOR BANCORP INC	752324
OLYMPIC FINANCE CORPORATION A	828526
OLYMPIC FINANCE CORPORATION B	828527
OMNICARE INC	353230
ON LINE SOFTWARE INTERNATIONAL INC	705406
ONEITA INDUSTRIES INC	820957
OPPENHEIMER CAPITAL L P /DE/	814562
OPTEK TECHNOLOGY INC	804312
OPTICAL COATING LABORATORY INC	074697
ORANGE NATIONAL BANCORP	801443
ORBIT INSTRUMENT CORP	074818
ORBITAL SCIENCES CORP II	820736
OREGON METALLURGICAL CORP	074856
ORIENT EXPRESS HOTELS INC	068096
OSBORN COMMUNICATIONS CORP /DE/	811714
OSMONICS INC	075049
OUTLOOK INCOME FUND 9	801449
OUTLOOK INCOME GROWTH FUND VIII	771998
OWENS MORTGAGE INVESTMENT FUND II	841501
P LEINER NUTRITIONAL PRODUCTS CORP	748226
P&F INDUSTRIES INC	075340
PACESETTER BUSINESS PROPERTIES	835169
PACESETTER HOMES INC	835170
PACIFIC AGRICULTURAL HOLDINGS INC	727273
PACIFIC BANCORPORATION	075417
PACIFIC INTERNATIONAL SERVICES CORP	727066
PACIFIC NUCLEAR SYSTEMS INC	782379
PACIFIC REAL ESTATE INVESTMENT TRUST	230437
PACIFIC SECURITY COMPANIES	203159
PACIFICARE HEALTH SYSTEMS INC	766456
PACKAGE MACHINERY CO	075675
PAINE WEBBER INCOME PROPERTIES EIGHT LP	792888
PAINE WEBBER QUALIFIED PLAN PROPERTY FUND FOUR LP	756428
PAINEWEBBER EQUITY PARTNERS ONE LTD PARTNERSHIP	766656
PAINEWEBBER GROWTH PARTNERS THREE L P	759647
PAINEWEBBER R&D PARTNERS II LP	814575
PAM TRANSPORTATION SERVICES INC	796267
PANCHOS MEXICAN BUFFET INC /DE	075929
PAPERCRAFT CORP	076120
PAR PHARMACEUTICAL INC	728351
PAR TECHNOLOGY CORP	708821
PARK OHIO INDUSTRIES INC	076262
PARKWAY CO/TX	729237
PARTICIPATING DEVELOPMENT FUND 86	785940
PARTICIPATING INCOME PROPERTIES 1986 LP	797977
PARTNERS PREFERRED YIELD LTD	819635
PATRICK INDUSTRIES INC	076605
PATRICK PETROLEUM CO /DE/	316695
PAXAR CORP	075681
PAYCHEX INC	723531
PAYCO AMERICAN CORP	076741
PCA INTERNATIONAL INC	076791
PEERLESS TUBE CO	076958
PEGASUS AIRCRAFT PARTNERS L P	835900
PENN ENGINEERING & MANUFACTURING CORP	077106
PENNROCK FINANCIAL SERVICES CORP	790998
PENNSYLVANIA ENGINEERING CORP	077226
PENNSYLVANIA REAL ESTATE INVESTMENT TRUST	077281
PENWEST LTD	739606
PEOPLES BANCTRUST CO INC	782126
PEORIA JOURNAL STAR INC	729969
PERKINS FAMILY RESTAURANTS LP	797460
PETROLEUM EQUIPMENT TOOLS CO	277014
PETTIBONE CORP	077969
PGI INC	061157
PHILADELPHIA ELECTRIC POWER CO	078103
PHM CREDIT CORP	351015
PHOENIX AMERICAN INC	710126
PHOENIX RESOURCE COMPANIES INC	097483
PHOENIX TECHNOLOGIES LTD	832767
PIEDMONT MANAGEMENT CO INC	078457
PIGGLY WIGGLY ALABAMA DISTRIBUTING CO INC	766592
PIONEER AMERICAN HOLDING CO CORP	760731
PIONEER GROUP INC	733060
PLAINS PETROLEUM CO	775272
PLAINS RESOURCES INC	350426
PLASTI LINE INC /TN/	790966

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-05

Registrant	CIK No.
PLAYBOY ENTERPRISES INC	079114
PLM EQUIPMENT GROWTH FUND	788813
POLARIS AIRCRAFT INCOME FUND I	748218
POPE RESOURCES	784011
PORTA SYSTEMS CORP	079564
PORTEC INC	079570
POWELL INDUSTRIES INC	080420
POWER TEST INVESTORS LTD PARTNERSHIP	766748
PRATT & LAMBERT INC	079920
PRECISION AEROTECH INC /DE/	802825
PRECISION STANDARD INC	771729
PREFERRED PROPERTIES FUND 80	312903
PREFERRED PROPERTIES FUND 81	318995
PREFERRED PROPERTIES FUND 82	702173
PREMIER ACCEPTANCE CORP /MN/	833374
PRESIDENTIAL LIFE CORP	080124
PRESIDENTIAL MORTGAGE CO	757078
PRICE STERN SLOAN INC	080252
PRIDE PETROLEUM SERVICES INC	833081
PRIME MOTOR INNS LTD PARTNERSHIP	804219
PRINTRONIX INC	311505
PRODUCTION OPERATORS CORP	100712
PROFFITTS INC	812900
PROGRESS FINANCIAL CORP	790183
PROPERTY TRUST OF AMERICA	080737
PROVIDENCE & WORCESTER RAILROAD CO	831968
PRUDENTIAL ACQUISITION FUND I LP	717319
PRUDENTIAL BACHE VMS REALTY ASSOCIATES LP I	350558
PRUDENTIAL REALTY SECURITIES INC	715770
PRUDENTIAL REALTY TRUST	771641
PS PARTNERS II LTD	727069
PS PARTNERS III LTD	741513
PS PARTNERS IV LTD	746901
PS PARTNERS LTD	702276
PS PARTNERS V LTD	763541
PS PARTNERS VII LTD	781850
PSH MASTER L P I	813897
PUBCO CORP	080984
PUBLIC STORAGE PROPERTIES XVII LTD	775812
PUBLIC STORAGE PROPERTIES XVIII LTD	790128
PUBLICKER INDUSTRIES INC	081050
PUBLISHERS EQUIPMENT CORP	715414
PULASKI FURNITURE CORP	081112
QUALITY FOOD CENTERS INC	804333
QUEEN CITY BROADCASTING INC /DE/	818013
QUEEN CITY BROADCASTING OF NEW YORK INC	818012
QUIXOTE CORP	032870
QUME CORP	812544
RACING CORPORATION OF AMERICA	355611
RADIATION SYSTEMS INC /NV/	216949
RAGAN BRAD INC	081764
RAVEN INDUSTRIES INC	082166
RAX RESTAURANTS INC	710485
RAYTECH CORP	797917
RB&W CORP	061927
READING CO	082334
REAL ESTATE ASSOCIATES LTD VI	715578
REAL ESTATE INCOME PARTNERS III LTD PARTNERSHIP	785566
REAL ESTATE INVESTMENT TRUST OF CALIFORNIA	082373
REALTY REFUND TRUST	082473
REECE CORP	082696
REEDS JEWELERS INC	805900
REGAL BELOIT CORP	082811
REGENCY CRUISES INC	765881
REPUBLIC AUTOMOTIVE PARTS INC	083194
REPUBLIC GYPSUM CO	083226
REPUBLIC PICTURES CORP/DE	761915
RESORT INCOME INVESTORS INC	837336
RESOURCES ACCRUED MORTGAGE INVESTORS LP SERIES 86	779231
RESOURCES PENSION SHARES 5 LP	789987
RETAILING CORP OF AMERICA	720626
REUTER INC	083490
REXON INC	701290
RHEOMETRICS INC	779164
RHNB CORP	706852
RIC 17 LTD	736948
RIC 21 LTD	783318
RIC 22 LTD	804148
RIC 23 LTD	804149
RIDGEWOOD PROPERTIES INC	783728
RIEDEL ENVIRONMENTAL TECHNOLOGIES INC	790704
RIVERBEND INTERNATIONAL CORP	809719
RIVERSIDE GROUP INC/FL	277356
RLI CORP	084248
ROADMASTER INDUSTRIES INC	818350
ROADWAY MOTOR PLAZAS INC	798935
ROANOKE GAS CO	084279
ROBBINS & MYERS INC	084290
ROBEC INC	854462
ROBINSON NUGENT INC	276747
ROCKING HORSE CHILD CARE CENTERS OF AMERICA /DE/	721237
ROCKWOOD HOLDING CO	352906
ROPAK CORP /CA/	043514
ROSPATCH CORP /MI/	774487
ROTHSCHILD L F HOLDINGS INC	789458
ROTO ROOTER INC	755548
ROTOR TOOL CO	085357
ROTOREX CORP /NY/	034821
ROWE FURNITURE CORP	085417
ROY MILTON CO	066527
ROYAL BANK GROUP INC	742053
ROYAL INTERNATIONAL OPTICAL CORP	730006
RPC ENERGY SERVICES INC	742278
RSI CORP	085540
RULE INDUSTRIES INC	276437
RURBAN FINANCIAL CORP	767405
RUSS TOGS INC	085795
RYAN BECK & CO INC	793280
RYMER FOODS INC	056871
SAFETY FUND CORP	086134
SAGE ENERGY CO	216991
SAGE SOFTWARE INC	805330
SALEM CORP	086358
SALICK HEALTH CARE INC	762131
SAMSON ENERGY CO LTD PARTNERSHIP	777568
SAN JUAN BASIN ROYALTY TRUST	319655
SANDERSON FARMS INC	812128
SANDS REGENT	753899
SANFORD CORP	772112
SANMARK STARDUST INC	093631
SBARRO INC	766004
SBT BANCORP INC	350999
SCAN OPTICS INC	087086
SCHULT HOMES CORP	803349
SCHULTZ SAV O STORES INC	087588
SCHWARTZ BROTHERS INC	087669
SCHWITZER INC	846659
SCI MED LIFE SYSTEMS INC	087743
SCOPE INDUSTRIES	087864
SCOR US CORP	796363
SCOTT & STRINGFELLOW FINANCIAL INC	802555
SCOTTISH HERITABLE INC	082020
SDNB FINANCIAL CORP	702147
SEALRIGHT CO INC	712964
SECURED INVESTMENT RESOURCES FUND LP II	797331
SECURITY FINANCIAL GROUP INC	811970
SECURITY FUNDING CAPITAL CORP	800038
SEEQ TECHNOLOGY INC	702756
SEI CORP	350894
SEIBELS BRUCE GROUP INC	276380
SELAS CORP OF AMERICA	088790
SEQUOIA SYSTEMS INC	724821
SEVEN OAKS INTERNATIONAL INC	352330
SEVENSON ENVIRONMENTAL SERVICES INC	846976
SHARPER IMAGE CORP	811696
SHEARSON BEVERLY HILLS MEDICAL OFFICE PARTNERS LP	811800
SHEARSON CALIFORNIA RADISSON PLAZA PARTNERS LP	822026
SHEARSON LEHMAN SELECT ADVISORS FUTURES	811078
SHEARSON LEHMAN SENIOR INCOME FUND LTD PARTNERSHIP 805387	730564
SHELBY WILLIAMS INDUSTRIES INC	089615
SHELDAHL INC	821530
SHELTER COMPONENTS CORP	702174
SHELTER PROPERTIES IV LIMITED PARTNERSHI	712753
SHELTER PROPERTIES V LIMITED PARTNERSHIP	730013
SHELTER PROPERTIES VI LIMITED PARTNERSHIP	206018
SHEPAUG CORP	071694
SHIRT SHED INC	810781
SHOPCO LAUREL CENTRE L P & CONSOLIDATED	800266
SHOREWOOD PACKAGING CORP	813920
SHOWBIZ PIZZA TIME INC	791425
SHURGARD INCOME PROPERTIES ELEVEN	808415
SHURGARD INCOME PROPERTIES FUND 14 LP	791424
SHURGARD INCOME PROPERTIES TEN	791426
SHURGARD INCOME PROPERTIES TWELVE	759819
SIERRA CAPITAL REALTY TRUST IV CO	786050
SIERRA CAPITAL REALTY TRUST VI CO	703702
SIERRA REAL ESTATE EQUITY TRUST 83	733594
SIERRA REAL ESTATE EQUITY TRUST 84 CO	090168
SIFCO INDUSTRIES INC	790715
SIGMA DESIGNS INC	105107
SIGNAL APPAREL COMPANY INC	352948
SIGNATURE INNS INC/IN	090245
SIKES CORP /FL/	082628
SILICON GENERAL INC	719739
SILICON VALLEY BANCSHARES	712752
SILICON VALLEY GROUP INC	090283
SILICONIX INC	831323
SILK GREENHOUSE INC	090429
SILVERCREST INDUSTRIES INC	090588
SIMPSON INDUSTRIES INC	805419
SIZELER PROPERTY INVESTORS INC	755499
SKI LTD	793733
SKYWEST INC	089270
SL INDUSTRIES INC	004139
SLATTERY GROUP INC /NJ/	319094
SMITH LABORATORIES INC	747345
SMITHTOWN BANCORP INC	318673
SNL FINANCIAL CORP	705432
SOBANK INC	755659
SOFTWARE PUBLISHING CORP	798534
SOFTWARE TOOLWORKS INC	835541
SOLECTRON CORP	091668
SOLITRON DEVICES INC	789792
SOMERSET GROUP INC	091741
SONESTA INTERNATIONAL HOTELS CORP	793971
SOUND ADVICE INC	353386
SOUTHEASTERN BANKING CORP	703904
SOUTHERN BANCSHARES NC INC	778921
SOUTHMARK EQUITY PARTNERS II LTD	793307
SOUTHMARK EQUITY PARTNERS III LTD	810481
SOUTHMARK PRIME PLUS L P	758745
SOUTHMARK REALTY PARTNERS II LTD	734761
SOUTHMARK REALTY PARTNERS LTD	813619
SOUTHWALL TECHNOLOGIES INC /DE/	702991
SOUTHWEST REALTY LTD	092472
SOUTHWEST WATER CO	092488
SOUTHWESTERN ELECTRIC SERVICE CO	092769
SPECTRUM CONTROL INC	723048
SPI PHARMACEUTICALS INC	093109
SPROUSE REITZ STORES INC	093134
SQUARE INDUSTRIES INC	802777
ST CHARLES FINANCE CORP	814248
ST IVES LABORATORIES INC	720480
STAFF BUILDERS INC /DE/	811933
STAGE II APPAREL CORP	701869
STAMFORD CAPITAL GROUP INC	799149
STAMFORD TOWERS LIMITED PARTNERSHIP	093384
STANDARD MICROSYSTEMS CORP	725727
STANFORD TELECOMMUNICATIONS INC	791519
STAPLES INC	723458
STATE BANCORP INC	093736
STATE O MAINE INC	094170
STEEGO CORP	820960
STEEL OF WEST VIRGINIA INC	771790
STEEL TECHNOLOGIES INC	052522
STERLING OPTICAL CORP	817644
STEVENS GRAPHICS CORP	094344
STEWART INFORMATION SERVICES CORP	812071
STRATEGIC MORTGAGE TRUST 1986-I	816221
STRATEGIC MORTGAGE TRUST 1987-I	803515
STROBER ORGANIZATION INC	820235
STRUCTURAL DYNAMICS RESEARCH CORP / OH/	744795
STUARTS DEPARTMENT STORES INC	095029
STURM RUGER & CO INC	095045
STV ENGINEERS INC	095052
SUAVE SHOE CORP	818470
SUMMAGRAPHICS CORP	745344
SUMMIT BANCSHARES INC /TX/	742282
SUMMIT HOLDING CORP	856711
SUN SPORTSWEAR INC	720577
SUNRISE MEDICAL INC	095479
SUNSHINE JR STORES INC	317083
SUNSHINE PRECIOUS METALS INC	313042
SUNWARD TECHNOLOGIES INC	095574
SUPERIOR SURGICAL MANUFACTURING CO INC	

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-05

Registrant	CIK No.
SUPERIOR TELETEC INC	771935
SURGICAL CARE AFFILIATES INC	722692
SWANK INC	095779
SWIFT ENERGY CO	351817
SYMANTEC CORP	849399
SYMBOLICS INC	745664
SYNALLOY CORP	095953
SYNERGEN INC	730358
SYNETIC INC	850436
SYNOPTICS COMMUNICATIONS INC	816530
SYSTEM INDUSTRIES INC	317781
SYSTEM SOFTWARE ASSOCIATES INC	808207
SYSTEMS & COMPUTER TECHNOLOGY CORP	707606
SYSTEMS CENTER INC /DE/	713412
T SF COMMUNICATIONS CORP	847841
TAB PRODUCTS CO	096118
TACOMA BOATBUILDING CO	318830
TALCON LP	814855
TANDYCRAFTS INC	096294
TASTY BAKING CO	096412
TCI INTERNATIONAL INC	357064
TEAM INC	318633
TECH DATA CORP	790703
TECHNITROL INC	096763
TEJON RANCH CO	096869
TELCO SYSTEMS INC /DE/	736893
TELECOM CORP	096918
TELEMATICS INTERNATIONAL INC /FL/	801313
TELESPHERE COMMUNICATIONS INC	351978
TELEVIDEO SYSTEMS INC	353779
TENNANT CO	097134
TEXAS MERIDIAN RESOURCES LTD	768863
TEXFI INDUSTRIES INC	097579
THERMEDICS INC	721356
THERMO PROCESS SYSTEMS INC	796038
THOMASTON MILLS INC	097931
THOR INDUSTRIES INC	730263
THORN APPLE VALLEY INC	038851
THOUSAND TRAILS INC	312187
TIERCO GROUP INC/DE	701374
TITAN CORP	032258
TNE FUNDING CORP	811642
TOPPS CO INC	812076
TOTAL SYSTEM SERVICES INC	721683
TRADITIONAL INDUSTRIES INC	789605
TRANS KENTUCKY BANCORP	718928
TRANS LEASING INTERNATIONAL INC	789577
TRANS LUX CORP	099108
TRANS NATIONAL LEASING INC	099114
TRANSCISCO INDUSTRIES INC	786053
TRANSCO EXPLORATION PARTNERS LTD	720246
TRANSCONTINENTAL REALTY TRUST INC	319416
TRANSTECH INDUSTRIES INC	087799
TRANSWORLD BANCORP	700613
TRANZONIC COMPANIES	001781
TRI CITY BANKSHARES CORP	313337
TRI STATE MOTOR TRANSIT CO OF DELAWARE	744081
TRIANGLE CORP	099703
TRIBUNE SWAB FOX COMPANIES INC	066109
TRICO BANCSHARES	356171
TUESDAY MORNING INC	737031
TUSCARORA PLASTICS INC	821538
TWENTIETH BANCORP INC	724096
TWIN DISC INC	100378
U S GOLD CORP	314203
U S HEALTHCARE INC	711405
U S INTEC INC	778424
ULTRATECH KNOWLEDGE SYSTEMS INC	791118
UNI MARTS INC	805020
UNICARE FINANCIAL CORP	799297
UNION BANKSHARES CO/ME	745083
UNION CORP	100617
UNION PLAZA HOTEL & CASINO INC	087918
UNIPROP MANUFACTURED HOUSING COMM INCOME FUND II	805993
UNIT CORP	798949
UNITED BANCORP INC /MI/	775345
UNITED EDUCATION & SOFTWARE INC /DE/	814069
UNITED FIRE & CASUALTY CO	101199
UNITED FOODS INC/DE	728258
UNITED GAMING INC	002491
UNITED HEALTHCARE CORP	731766
UNITED MEDICAL CORP	352997
UNITED STATES BANKNOTE CORP /NY/	051124
UNITEL VIDEO INC/DE	740103
UNITIL CORP	755001
UNITOG CO	101909
UNITRODE CORP	101911
UNIVERSAL MEDICAL BUILDINGS LIMITED PARTNERSHIP	799642
UNIVERSITY REAL ESTATE FUND 10 LTD	356311
USAA INCOME PROPERTIES II LTD PARTNERSHIP	739245
USAA INCOME PROPERTIES III LTD PARTNERSHIP	764036
USAA INCOME PROPERTIES IV LIMITED PARTNERSHIP	810584
USB HOLDING CO INC	707805
USP REAL ESTATE INVESTMENT TRUST	102438
V BAND CORPORATION	731181
VALCOM INC	818815
VALLEN CORP	312907
VALLEY RESOURCES INC /RI/	102710
VALUE LINE INC	717720
VALUE MERCHANTS INC	614228
VARCO INTERNATIONAL INC	102993
VENTURA COUNTY NATIONAL BANCORP	744471
VERIT INDUSTRIES	103274
VERNITRON CORP	206030
VERNON LILLIAN CORPORATION	818008
VERSA TECHNOLOGIES INC	320357
VERSAR INC	803647
VESPER CORP	108140
VF FUNDING CORP	810544
VICON INDUSTRIES INC /NY/	310056
VICTORIA CREATIONS INC	796812
VIDEO DISPLAY CORP	758743
VIE DE FRANCE CORP	737802
VIKING OFFICE PRODUCTS INC	859303
VINLAND PROPERTY TRUST	023593
VIRCO MANUFACTURING CORP/DE	751365
VISTA RESOURCES INC	088190
VITALINK COMMUNICATIONS CORP	710884
VIVRA INC	850882
VMS HOTEL INVESTMENT FUND	764897
VMS MORTGAGE INVESTORS L P II	778714
VMS MORTGAGE INVESTORS L P III	802678
VMS SHORT TERM INCOME TRUST /MA/	749882
VMS STRATEGIC LAND TRUST	790817
VMX INC	700816
VSE CORP	102752
WALBRO CORP	104174
WALL TO WALL SOUND & VIDEO INC	769465
WAREHOUSE CLUB INC	716180
WARRANTECH CORP	735571
WARWICK INSURANCE MANAGERS INC	710849
WASHINGTON CORP	314625
WASHINGTON REAL ESTATE INVESTMENT TRUST	104894
WASHINGTON SCIENTIFIC INDUSTRIES INC	104897
WATERHOUSE INVESTOR SERVICES INC	812712
WATSCO INC	105018
WAVERLY INC	105085
WAVETEK CORP/DE/	700839
WAYNE BANCORP INC /OH/	788134
WD 40 CO	105132
WEAN INC	821468
WEATHERFORD INTERNATIONAL INC	029302
WEDGESTONE FINANCIAL	315621
WEIGH TRONIX INC	105318
WELLINGTON LEISURE PRODUCTS INC	840887
WELLS ALUMINUM CORP	826737
WEST MASS BANKSHARES INC	793992
WESTAIR HOLDING INC	839480
WESTPORT BANCORP INC	735961
WESTWOOD GROUP INC	083530
WETTERAU PROPERTIES INC	810907
WEYCO GROUP INC	106532
WHITEHALL CORP	106827
WHOLESALE CLUB INC	752033
WILFRED AMERICAN EDUCATIONAL CORP	745905
WILLIAMS INDUSTRIES INC	107294
WILLIAMS SONOMA INC	719955
WILLIAMS W W CO	107362
WILSHIRE OIL CO OF TEXAS	107454
WINDPOWER PARTNERS 1983-1	719934
WINTHROP GROWTH INVESTORS I LTD PARTNERSHIP	722585
WINTHROP INSURED MORTGAGE INVESTORS II	709287
WISCONSIN REAL ESTATE INVESTMENT TRUST	107835
WISER OIL CO	107874
WITTER DEAN CORNERSTONE FUND IV	808373
WITTER DEAN REALTY GROWTH PROPERTIES L P	765923
WITTER DEAN REALTY INCOME PARTNERSHIP I LP	726315
WM BANCORP	804194
WMS INDUSTRIES INC /DE/	350077
WOLOHAN LUMBER CO	108079
WOLVERINE EXPLORATION CO	005896
WOODHEAD INDUSTRIES INC	108215
WRITER CORP	108606
WSMP INC	067494
WUNDIES INDUSTRIES INC	771639
XICOR INC	319191
XOMA CORP /DE/	791908
XYVISION INC	721080
YORK WATER CO	108985
ZEMEX CORP	075644
ZENITH LABORATORIES INC	109259
ZEUS COMPONENTS INC	756055
ZIEGLER CO INC	108312
ZIONS COOPERATIVE MERCANTILE INSTITUTION	109378
ZYCAD CORP	727621

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-06

Registrant	CIK No.
1ST COMMUNITY BANCORP INC	803164
50 OFF STORES INC	735584
AA IMPORTING CO INC	730052
ABIGAIL ADAMS NATIONAL BANCORP INC	356809
ABIOMED INC	815094
ABS INDUSTRIES INC /DE/	313368
ACA JOE INC	098707
ACC CORP	783233
ACCEPTANCE INSURANCE HOLDINGS INC	793588
ACCUHEALTH INC	840401
ACME UNITED CORP	002098
ACTION STAFFING INC	058254
ADACORP INC	006050
ADAGE INC	002186
ADAMS RESOURCES & ENERGY INC	002178
ADDSCO INDUSTRIES INC	003141
ADVANCE CIRCUITS INC	002435
ADVANCE ROSS CORP	002457
ADVANCED MAGNETICS INC	792977
ADVANCED POLYMER SYSTEMS INC /DE/	818033
ADVATEX ASSOCIATES INC	820906
AEI REAL ESTATE FUND XVI LTD PARTNERSHIP	804127
AEQUITRON MEDICAL INC	736970
AERO SERVICES INTERNATIONAL INC	350200
AERO SYSTEMS ENGINEERING INC	002589
AERO SYSTEMS INC	002590
AEROSONIC CORP /DE/	109471
AFA PROTECTIVE SYSTEMS INC	002668
AFP IMAGING CORP	319126
AGOURON PHARMACEUTICALS INC	811210
AGRIPOST INC	313997
AILEEN INC	002904
AIRSENSORS INC	790706
AIRSHIP INTERNATIONAL LTD	764587
AJAY SPORTS INC	854858
AKORN INC	003116
ALASKA GOLD CO	003228
ALBA WALDENSIAN INC	003292
ALDEN ELECTRONICS INC	003398
ALEXANDER ENERGY CORP	355143
ALFIN INC	724989
ALL AMERICAN SEMICONDUCTOR INC	818074
ALL AMERICAN TELEVISION INC	783265
ALLEGHENY BANKSHARES CORP	715606
ALLIED GROUP INC	774624
ALLIS CHALMERS CORP	003962
ALLOU HEALTH & BEAUTY CARE INC	846538
ALLOY COMPUTER PRODUCTS INC	793522
ALLSTATE FINANCIAL CORP /VA/	852220
ALOETTE COSMETICS INC	792160
ALPHA MICROSYSTEMS	352869
ALPINE GROUP INC /DE/	004164

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
ALPNET INC	712425
ALTA ENERGY CORP	355493
ALTRON INC	741339
AM DIAGNOSTICS INC	005483
AMCOR CAPITAL CORP	831002
AMELCO CORP	004438
AMERIBANC INVESTORS GROUP	088336
AMERICA FIRST PREP FUND 2 PENSION SERIES	812565
AMERICAN AFFORDABLE HOUSING II LIMITED PARTNERSHIP 815024	
AMERICAN BANCORP INC/LA	721238
AMERICAN BANCORP OF NEVADA	701603
AMERICAN BANCSHARES OF HOUMA INC	352601
AMERICAN CABLE TV INVESTORS	353712
AMERICAN CABLE TV INVESTORS 2	704447
AMERICAN COMMUNITY DEVELOPMENT GROUP INC	019548
AMERICAN FIRST CORP	109543
AMERICAN HEALTH SERVICES CORP /DE/	712194
AMERICAN INCOME 2 LTD PARTNERSHIP	742102
AMERICAN INCOME 3 LTD PARTNERSHIP	742103
AMERICAN INCOME 4 LTD PARTNERSHIP	788573
AMERICAN INCOME 5 LTD PARTNERSHIP	799175
AMERICAN INCOME 7 LTD PARTNERSHIP	780398
AMERICAN INCOME 8 LIMITED PARTNERSHIP	780399
AMERICAN INCOME PARTNERS III-C LIMITED PARTNERSHIP 808515	
AMERICAN INTEGRITY CORP	732179
AMERICAN INTERNATIONAL PETROLEUM CORP /NV/	799119
AMERICAN LEARNING CORP	794881
AMERICAN MIDLAND CORP	066052
AMERICAN MOBILE SYSTEMS INC	714593
AMERICAN PHYSICIANS SERVICE GROUP INC	724024
AMERICAN POWER CONVERSION CORPORATION	835010
AMERICAN PRECISION INDUSTRIES INC	005657
AMERICAN PROPERTIES LTD	786717
AMERICAN RELIANCE GROUP INC	792126
AMERICAN REPUBLIC REALTY FUND I	711512
AMERICAN RETIREMENT VILLAS PROPERTIES	778643
AMERICAN TECHNICAL CERAMICS CORP	769430
AMERICAN TOXXIC CONTROL INC	318025
AMERICAN VANGUARD CORP	005981
AMERICAN VISION CENTERS INC	277592
AMERICORP INC	757765
AMERIHEALTH INC	721601
AMERISCRIBE CORP	072254
AMISTAR CORP	741559
AMTECH CORP	855612
AMWEST INSURANCE GROUP INC	780118
ANALYSTS INTERNATIONAL CORP	008292
ANAREN MICROWAVE INC	006314
ANCHOR FINANCIAL CORP	741581
ANDROS INC	352425
ANW INC /DE	008756
APCO ARGENTINA INC/NEW	311471
APPIAN TECHNOLOGY INC	704322
APPLEBEES INTERNATIONAL INC	853665
APPLIED SOLAR ENERGY CORP	311862
ARABIAN SHIELD DEVELOPMENT CO	007039
ARCH PETROLEUM INC	722144
ARIX CORP	838445
ARIZONA LAND INCOME CORP	830746
ARK RESTAURANTS CORP	779544
ARMATRON INTERNATIONAL INC	008899
ASA INTERNATIONAL LTD	793861
ASPEN IMAGING INTERNATIONAL INC	741517
ASSIX INTERNATIONAL INC	832613
ASSUMPTION BANCSHARES INC	742356
ASTREX INC	008038
ASTRO MED INC /NEW/	008146
ASTRONICS CORP	008063
ATA RESEARCH PROFUTURES DIVERSIFIED FUND LP	812192
ATEK METALS CENTER INC	818730
ATHEY PRODUCTS CORP	008108
ATLANTIC GROUP INC	073382
ATNN INC	765028
AUBURN BANCORP	707364
AURA SYSTEMS INC	826253
AUTOINFO INC	351017
AUTOTROL CORP	008756
AVERY INC	740630
AVON RENT A CAR & TRUCK CORP	832493
AZTEC MANUFACTURING CO	008947
BAILEY CORP	753237
BALCOR CURRENT INCOME FUND-87	798790
BALCOR EQUITY PROPERTIES LTD X	351892
BALCOR EQUITY PROPERTIES LTD-VIII	310614
BALCOR EQUITY PROPERTIES XII	701785
BALCOR FILM INVESTORS	751312
BALCOR INCOME PROPERTIES LTD II	215168
BALCOR MOBILE HOME INCOME FUND	797987
BALCOR PREFERRED PENSION-12	819576
BALCOR REALTY INVESTORS LTD 80	313852
BALCOR REALTY INVESTORS LTD 81	320036
BALDWIN SECURITIES CORP /DE/	009375
BALLARD MEDICAL PRODUCTS	723534
BALTEK CORP	009442
BANCORP OF SOUTHERN INDIANA	711667
BANCSHARES 2000 INC	768177
BANCTENN CORP	763538
BANK BUILDING & EQUIPMENT CORP OF AMERICA	313214
BANKERS NOTE INC	354611
BANYAN CORP	744041
BARNWELL INDUSTRIES INC	010046
BARRETT RESOURCES CORP	351993
BARRISTER INFORMATION SYSTEMS CORP	754126
BARTON INDUSTRIES INC	352363
BARUCH FOSTER CORP	010226
BASE TEN SYSTEMS INC	010242
BASIX CORP	106790
BASS INCOME PLUS FUND LIMITED PARTNERSHIP	810368
BAY AREA BANCSHARES	701153
BAY COMMERCIAL SERVICES	707854
BAY MEADOWS OPERATING CO	715273
BAYLY CORP	010518
BE AVIONICS INC	861361
BEAUTICONTROL COSMETICS INC	788330
BEL FUSE INC /NJ/	729580
BELCOR INC	099286
BELDEN & BLAKE ENERGY CO	734778
BELVEDERE CORP	805265
BEN & JERRYS HOMEMADE INC	768364
BENIHANA NATIONAL CORP	715384
BERRY & BOYLE CLUSTER HOUSING PROPERTIES	726995
BERRY & BOYLE DEVELOPMENT PARTNERS	785540
BERRY & BOYLE DEVELOPMENT PARTNERS II	806397
BETHEL BANCORP	811831
BEVERLY HILLS BANCORP	011917
BF ENTERPRISES INC	814856
BGS SYSTEMS INC	719078
BHA GROUP INC	801128
BI INC	716629
BIG BOULDER CORP/PA	277666
BILTMORE BANK CORP	757546
BINGO KING CO INC	355142
BIO MEDICUS INC	012204
BIO TECHNOLOGY GENERAL CORP	722104
BIOMAGNETIC TECHNOLOGIES INC	729330
BIOPHARMACEUTICS INC	733337
BIOTECH RESEARCH LABORATORIES INC	350405
BIRTCHER MEDICAL SYSTEMS INC	012298
BISCAYNE HOLDINGS INC	068706
BLAU BARRY & PARTNERS INC	780295
BLOC DEVELOPMENT CORP	799624
BLUE DOLPHIN ENERGY CO	793306
BLUE RIDGE REAL ESTATE CO	012779
BOETTCHER WESTERN PROPERTIES II LTD	703152
BOETTCHER WESTERN PROPERTIES III LTD	716822
BOETTCHER WESTERN PROPERTIES IV LTD	737028
BONRAY DRILLING CORP	351693
BOONTON ELECTRONICS CORP	013191
BOSTON ACOUSTICS INC	805268
BOSTON CELTICS LIMITED PARTNERSHIP	805009
BOSTON DIGITAL CORP	013370
BOSTON TECHNOLOGY INC	771470
BOWL AMERICA INC	013573
BOWMAR INSTRUMENT CORP	013606
BRAJDAS CORP	320581
BRANDON SYSTEMS CORP	807782
BRAUVIN HIGH YIELD FUND L P	810587
BRAUVIN REAL ESTATE FUND LP 4	736908
BRAUVIN REAL ESTATE FUND LP 5	762848
BREMNER INTERNATIONAL INC	029051
BRIDGFORD FOODS CORP	014177
BRIGHT STAR HOLDING INC	799369
BRITE VOICE SYSTEMS INC	852637
BROCK EXPLORATION CORP	014399
BROWN FLOURNOY EQUITY INCOME FUND LTD PARTNERSHIP	796333
BRUCE ROBERT INDUSTRIES INC	753263
BRUNSWICK BANCORP	771614
BUILDERS TRANSPORT INC	726617
BURKE MILLS INC	015486
BURLINGAME BANCORP	737289
BUSINESS BANCORP	700570
BUTTON GWINNETT BANCORP INC	313613
BWC FINANCIAL CORP	353650
BYTEX CORP	726744
C COR ELECTRONICS INC	350621
C&K 1980 FUND B LTD	319315
C&R CLOTHIERS INC	015693
CABLE TV FUND 11-B LTD	725684
CABLE TV FUND 12-C LTD	782975
CABOT MEDICAL CORP	719073
CADE INDUSTRIES INC	356211
CAERE CORP	854916
CAFES ONE L P	805275
CALIFORNIA BEACH RESTAURANTS INC	738274
CALIFORNIA MICRO DEVICES CORP	800460
CALLON CONSOLIDATED PARTNERS L P	832478
CALMARK REAL ESTATE FUND LTD	354701
CAMBEX CORP	016590
CAMBRIDGE BIOTECH CORP	764292
CANDELA LASER CORP	793279
CANNON EXPRESS INC	801558
CANTEL INDUSTRIES INC	019446
CAPITAL INDUSTRIES INC	726563
CAPITAL INVESTMENT OF HAWAII INC	017221
CAPITAL PROPERTIES INC /RI/	202947
CAPITAL REALTY INVESTORS 85 LTD PARTNERSHIP	770886
CAPITAL REALTY INVESTORS II LTD PARTNERSHIP	713571
CAPITOL TRANSAMERICA CORP	017386
CARDINAL INDUSTRIES INC	355168
CARE PLUS INC	726330
CARLSBERG MOBILE HOME PROPERTIES LTD 73	017670
CARLYLE REAL ESTATE LTD PARTNERSHIP 75	017701
CARLYLE REAL ESTATE LTD PARTNERSHIP VI	017696
CAROLINA MOUNTAIN HOLDING CO	745080
CARVER CORP	766177
CASCADE INTERNATIONAL INC	826174
CASTLE ENERGY CORP	709355
CAVALIER HOMES INC	278166
CAVCO INDUSTRIES INC	356649
CAYMAN RESOURCES CORP	850822
CCAIR INC	731122
CCFNB BANCORP INC	854659
CEDAR GROUP INC	761648
CEDAR INCOME FUND LTD	816284
CELGENE CORP /DE/	818159
CELL TECHNOLOGY INC /DE/	716879
CELLTEL INC	793933
CEM CORP	702430
CENTENNIAL BANCORP	736960
CENTENNIAL MORTGAGE INCOME FUND	773337
CENTENNIAL MORTGAGE INCOME FUND II	723503
CENTER INCOME PROPERTIES 1	748885
CENTER INCOME PROPERTIES 2	826330
CENTERCORE INC	718684
CENTRAL BANCORPORATION /WA/	826481
CENTRAL FINANCIAL CORP /PA/	215403
CENTRAL RESERVE LIFE CORP	018801
CENTRAL UNITED CORP	785813
CENTURY BANCSHARES INC	809034
CENTURY PACIFIC HOUSING FUND I	780590
CENTURY PENSION INCOME FUND XXIV	215406
CENTURY PROPERTIES FUND XI	275193
CENTURY PROPERTIES FUND XII	276703
CENTURY PROPERTIES FUND XIII	019837
CERADYNE INC	826821
CERBCO INC	019002
CERTRON CORP	799209
CETUS HEALTHCARE LTD PARTNERSHIP II	790932
CHARIOT GROUP INC	201424
CHEFS INTERNATIONAL INC	354278
CHEMFIX TECHNOLOGIES INC	215420
CHEMI TROL CHEMICAL CO	725813
CHEMICAL FABRICS CORP	847565
CHEMPOWER INC	019736
CHESAPEAKE INDUSTRIES INC /MD/	019739
CHESAPEAKE LIFE INSURANCE CO	

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
CHICAGO RIVET & MACHINE CO	019871
CHILDRENS DISCOVERY CENTERS OF AMERICA INC	775820
CHIPWICH INC	704175
CHRISKEN PARTNERS CASH INCOME FUND L P	815278
CHRONAR CORP	352800
CHURCH LOANS & INVESTMENTS TRUST	020199
CHURCHILL DOWNS INC	020212
CINE SOURCE INC /CO	839428
CIP CORP	020341
CIRCLE FINE ART CORP	020356
CIRCUIT SYSTEMS INC	773657
CIRO INC	726602
CIS CAPITAL EQUIPMENT FUND LTD 2	807080
CIS TECHNOLOGIES INC	808072
CITIZENS BANCSHARES CORP /GA/	813640
CITIZENS BANCSHARES INC /LA/	715762
CITIZENS BANCSHARES INC /WV/	771481
CITIZENS FINANCIAL CORP/DE/	764156
CITIZENS FINANCIAL SERVICES INC	739421
CITIZENS INC	024090
CITIZENS INDEPENDENT BANCORP	739412
CITY NATIONAL BANCSHARES CORP	714980
CLARK DICK PRODUCTIONS INC	805370
CLOVER INCOME PROPERTIES II L P	818671
CLOVER INCOME PROPERTIES L P	802679
CNL INCOME FUND II LTD	806510
CNL INCOME FUND III LTD	817845
CODA ENERGY INC	356799
CODE ALARM INC	821509
COGNEX CORP	851205
COHU INC	021535
COLLABORATIVE RESEARCH INC	356830
COLONIAL COMMERCIAL CORP	021628
COLOROCS CORP /GA/	789990
COLUMBIA LABORATORIES INC	821995
COMARCO INC	022252
COMBANCORP	741318
COMCOA INC	718451
COMMERCE BANCSHARES INC /MO/	022356
COMMERCE NATIONAL CORP	773319
COMMERCIAL DEVELOPMENT FUND 85	769400
COMMERCIAL FEDERAL CORP	744778
COMMERCIAL INTERNATIONAL CORP	022428
COMMERCIAL PROGRAMMING UNLIMITED INC	022460
COMMODITY TREND TIMING FUND II	702655
COMMODORE ENVIRONMENTAL SERVICES INC /UT	071528
COMMON GOAL HEALTH CARE PARTICIPATING MTG FUND LP	800444
COMMONWEALTH FINANCIAL FUTURES FUND	708131
COMMONWEALTH FINANCIAL FUTURES FUND II	737841
COMMONWEALTH GROWTH FUND I	793034
COMMONWEALTH OIL REFINING CO INC	022646
COMMUNICATION CABLE INC	789869
COMMUNICATIONS SYSTEMS INC/MN	022701
COMMUNITY BANCORP /VT/	716413
COMMUNITY BANCSHARES INC /DE/	752195
COMMUNITY BANKSHARES INC /VA/	742279
COMNET CORP	023055
COMPTEK RESEARCH INC/NY	720031
COMPTRONIX CORPORATION	848482
COMPUCHEM CORP	747902
COMPUDYNE CORP	022912
COMPUMAT INC	831889
COMPUTER HORIZONS CORP	023019
COMPUTER MEMORIES INC	356448
COMPUTER POWER INC	792986
COMPUTRAC INC	720507
COMSTOCK RESOURCES INC	023194
COMTECH TELECOMMUNICATIONS CORP /DE/	023197
COMVERSE TECHNOLOGY INC/NY/	803014
CONCORD CAMERA CORP	831881
CONCORD COMPUTING CORP	740112
CONCORDE CAREER COLLEGES INC	832483
CONGRESS STREET PROPERTIES INC	745770
CONKLIN CO INC	215506
CONMED CORP	816956
CONNECTICUT GENERAL EQUITY PROPERTIES I	733460
CONNECTICUT GENERAL REALTY INVESTORS II	716008
CONNECTICUT GENERAL REALTY INVESTORS L P	356456
CONQUEST AIRLINES CORP	810328
CONSILIUM INC	795090
CONSOLIDATED CAPITAL PROPERTIES VI	755908
CONSOLIDATED CAPITAL PROPERTIES VII	783321
CONSOLIDATED FIBRES INC	023657
CONSOLIDATED OIL & GAS INC	023744
CONSOLIDATED RESOURCES HEALTH CARE FUND III	744594
CONSOLIDATED RESOURCES HEALTH CARE FUND II	732247
CONSUMAT SYSTEMS INC	312950
CONTROL RESOURCE INDUSTRIES INC	769626
CONVERGENT SOLUTIONS INC /NY/	811870
CONVEST ENERGY PARTNERS LTD	766776
COOKER RESTAURANT CORP /OH/	832412
COOPER LIFE SCIENCES INC	759718
COPLEY REALTY INCOME PARTNERS I	784928
CORADIAN CORP	310402
CORCOM INC	316402
CORNERSTONE FINANCIAL CORP	716407
CORNING NATURAL GAS CORP	024751
CORPORATE INVESTMENT CO	024900
CORPORATE PROPERTY ASSOCIATES	276280
COSMETIC & FRAGRANCE CONCEPTS INC	793520
COSMO COMMUNICATIONS CORP	718096
COTTON STATES LIFE & HEALTH INSURANCE CO	025118
COURIER DISPATCH GROUP INC	730259
CPAC INC	351717
CPT CORP	025360
CRESCOTT INC	715795
CRI HOTEL INCOME PARTNERS L P	808377
CRITICAL INDUSTRIES INC	820739
CRITICARE SYSTEMS INC /DE/	812121
CROWN ANDERSEN INC	778808
CROWN BANCORP	706244
CROWN BRANDS INC/NJ/	808839
CROWNAMERICA INC	025933
CSA INCOME FUND LIMITED PARTNERSHIP II	809224
CSP INC /MA/	356037
CUPERTINO NATIONAL BANCORP	757790
CUSTOMEDIX CORP	028361
CYBERTEK CORP /DE/	725869
CYPRESS BANKS INC	729981
CYTOGEN CORP	725058
DAHLBERG INC	028364
DAILY JOURNAL CORP	783412
DAIN INCOME PROPERTIES-86	813367
DAIN PENSION INVESTORS 85	756765
DAIN REAL ESTATE PARTNERS I	715764
DAIN SOUTHEAST GROWTH PROPERTIES	795963
DASH INDUSTRIES INC	027153
DATA MEASUREMENT CORP	354827
DATA TRANSLATION INC	713138
DATA TRANSMISSION NETWORK CORP	790498
DATAFLEX CORP	355735
DATAMARINE INTERNATIONAL INC	027075
DATAMETRICS CORP	027082
DATAPHAZ INC	819897
DATARAM CORP	027093
DATASOUTH COMPUTER CORP	722582
DATRONIC RENTAL CORP /IL/	027117
DATUM INC	027119
DAVOX CORP	811640
DAXOR CORP	027367
DBA SYSTEMS INC	027442
DC TRADING & DEVELOPMENT CORP	027448
DE ANZA HOLDING CORP	702336
DE ANZA PROPERTIES XII LTD	351509
DECADE COMPANIES INCOME PROPERTIES	775840
DEL ELECTRONICS CORP	027748
DELAWARE NATIONAL BANKSHARES CORP	763827
DELMED INC	320185
DELTA NATIONAL BANCORP	706343
DELTAK CORP	027978
DERAND REAL ESTATE INVESTMENT TRUST	028238
DERWOOD INVESTMENT CORP	082455
DESIGNATRONICS INC	028323
DETECTION SYSTEMS INC	028365
DETROIT & CANADA TUNNEL CORP	028374
DH TECHNOLOGY INC	728376
DIGI INTERNATIONAL INC	854775
DISTRIBUTED LOGIC CORP	718823
DIVALL INSURED INCOME FUND LTD PARTNERSHIP	786974
DIVERSCO INC	811515
DIVERSIFIED HISTORIC INVESTORS	745143
DIVERSIFIED HISTORIC INVESTORS V	816669
DIXIE NATIONAL CORP	029322
DMI FURNITURE INC	225261
DOC OPTICS CORP	002131
DOMINGUEZ WATER CORP	029576
DONEGAL GROUP INC	800457
DORCHESTER HUGOTON LTD	703814
DOTRONIX INC	351809
DOUGHTIES FOODS INC	029850
DREWRY PHOTOCOLOR CORP	030121
DREXEL BURNHAM LAMBERT REAL ESTATE ASSOCIATES II	725646
DREXEL BURNHAM LAMBERT REAL ESTATE ASSOCIATES	700951
DSI REALTY INCOME FUND X	792989
DUNES HOTELS & CASINOS INC	024004
DURAMED PHARMACEUTICALS INC	799903
DYANSEN CORP	719650
E&B MARINE INC	716740
EA ENGINEERING SCIENCE & TECHNOLOGY INC	802492
EAC INDUSTRIES INC	030892
EAGLE TELEPHONICS INC	722383
EARTH SCIENCES INC	030985
EARTH TECHNOLOGY CORP USA	819541
EASTCO INDUSTRIAL SAFETY CORP	031079
EASTERN ENVIRONMENTAL SERVICES INC	815272
EASTOVER CORP	036207
EASTPOINT MALL LTD PARTNERSHIP	772074
ECI ENVIRONMENTAL INC	855571
ECL INDUSTRIES INC	072357
EDAC TECHNOLOGIES CORP	772572
EDISON THOMAS INNS INC	808218
ELCOTEL INC	801448
ELECTRIC & GAS TECHNOLOGY INC	785819
ELECTROMEDICS INC	032203
ELECTRONIC ASSOCIATES INC	313096
ELECTRONIC DATA TECHNOLOGIES	820759
ELECTROSOUND GROUP INC	103542
EMCON ASSOCIATES /CA/	819977
EMONS HOLDINGS INC	032666
EMPIRE BANCORP	711211
EMPIRE ORR INC/NY	757185
EMPIRE STATE BUILDING ASSOCIATES	032776
ENERCAP CORP /DE/	313419
ENERGY ASSETS INTERNATIONAL CORP	315406
ENERGY CONVERSION DEVICES INC	032878
ENEX PROGRAM I PARTNERS L P	775274
ENEX RESOURCES CORP	314864
ENGINEERED SUPPORT SYSTEMS INC	772891
ENTREE CORP	814579
ENTRONICS CORP/DE/	818017
ENVIRONMENTAL POWER CORP	805012
ENVIRONMENTAL TECTONICS CORP	033113
ENZON INC	727510
EPI INTERNATIONAL INC	032160
EPIC HEALTH GROUP INC	718084
EQUITABLE BANKSHARES OF COLORADO INC	315881
EREIM LP ASSOCIATES	808370
ERIE LACKAWANNA INC	033420
ESPEY MANUFACTURING & ELECTRONICS CORP	033533
ESQUIRE RADIO & ELECTRONICS INC	033541
ESSEX CORPORATION	355199
ESSEX REAL ESTATE PARTNERS LTD	714233
EVERGOOD PRODUCTS CORP	714162
EVERGREEN RESOURCES INC	353943
F&M BANK CORP	740806
FAIR GROUNDS CORP	034236
FAIR ISAAC & COMPANY INC	814547
FALCON OIL & GAS CO INC	215797
FALCON PRODUCTS INC /DE/	034339
FALLS CITY INDUSTRIES INC	034382
FAR WEST ELECTRIC ENERGY FUND L P	753767
FASTENAL COMPANY	815556
FCS FINANCIAL CORP /GA/	784720
FEDERAL AGRICULTURAL MORTGAGE CORP	845877
FERROFLUIDICS CORP	353286
FERRY CAP & SET SCREW CO	035223
FIDELITY LEASING INCOME FUND II	764761
FIDELITY LEASING INCOME FUND III LP	786470
FIDELITY LEASING INCOME FUND IV L P	810363
FIDELITY NATIONAL FINANCIAL INC /DE/	809398
FINANCIAL GUARDIAN GROUP INC	035720
FIRST AMERI CABLE CORP /OH/	760995
FIRST AMERICAN CORP /GA/	109830

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
FIRST CAPITAL INCOME PROPERTIES LTD SERIES VII	355774
FIRST CAPITAL INCOME PROPERTIES LTD SERIES VI	318217
FIRST CAPITAL INCOME PROPERTIES LTD SERIES V	311916
FIRST CAROLINA INVESTORS INC	811040
FIRST CENTRAL FINANCIAL CORP	759441
FIRST COMMERCIAL BANCORPORATION	775621
FIRST COMMONWEALTH CORP	200776
FIRST COMMUNITY CORP	812498
FIRST DEARBORN INCOME PROPERTIES LP	806182
FIRST FINANCIAL BANCORP /CA/	729502
FIRST HOME CREDIT CORP L	805675
FIRST INDEPENDENCE CORP	745140
FIRST KEYSTONE CORP	737875
FIRST LEESPORT BANCORP INC	775662
FIRST LIBERTY BANCORP INC	816237
FIRST MANISTIQUE CORP	036506
FIRST MERCHANTS BANCORP INC	804126
FIRST NATIONAL BANKSHARES CORP	814178
FIRST PACIFIC BANCORP INC	354271
FIRST PEOPLES BANCORP INC/TN/	725570
FIRST REAL ESTATE INVESTMENT TRUST OF NEW JERSEY	036840
FIRST REGIONAL BANCORP	356708
FIRST SUNBELT BANKSHARES INC	802776
FIRST UNITED BANCORP INC	717585
FIRST UNITED INC	037014
FIRST WORLD CHEESE INC	791714
FLANIGANS ENTERPRISES INC	012040
FLORIDA INCOME FUND II LTD PARTNERSHIP	790986
FLOWMOLE CORP	821361
FORSCHNER GROUP INC	731947
FORTUNE NATIONAL CORP	036240
FOUNDATION REALTY FUND LTD	813652
FOUNTAIN POWERBOAT INDUSTRIES INC	764858
FOX STRATEGIC HOUSING INCOME PARTNERS	800060
FRANCOR FINANCIAL INC	726317
FRAWLEY CORP	038824
FREDERICKS OF HOLLYWOOD INC	038868
FREEMAN DIVERSIFIED REAL ESTATE I LP	721673
FREEMAN DIVERSIFIED REAL ESTATE IV L P	808378
FREEMAN INCOME REAL ESTATE LP	768598
FREEPORT MCMORAN OIL & GAS ROYALTY TRUST	727094
FRENCHTEX INC	849605
FRIEDMAN INDUSTRIES INC	039092
FSI INTERNATIONAL INC	841692
FURNISHINGS 2000 INC	730302
FUTURES ADVANTAGE FUND	773825
FUTURES EXPANSION FUND LTD PARTNERSHIP	799824
FWB BANCORPORATION	719486
GAINSCO INC	786344
GALLERY OF HISTORY INC	763730
GAMMA BIOLOGICALS INC	317890
GANDER MOUNTAIN INC	789596
GARNET RESOURCES CORP /DE/	820084
GEMCO NATIONAL INC	043340
GEMINI EQUIPMENT PARTNERS INCOME FUND IX	761261
GENDEX CORP	818479
GENERAL AUTOMATION INC	040443
GENERAL COMPUTER CORP	788306
GENERAL MICROWAVE CORP	040703
GENERAL PARAMETRICS CORP /DE/	795665
GENISCO TECHNOLOGY CORP /DE/	746071
GENTEX CORP	355811
GEONEX CORP	796318
GEORGIA BONDED FIBERS INC	041052
GEOTEK INDUSTRIES INC	844843
GERAGHTY & MILLER INC /DE/	821527
GIBRALTAR FINANCIAL CORP	041336
GIGA TRONICS INC	719274
GMI GROUP INC	082554
GNI INC /DE/	043422
GOLD CO OF AMERICA	751260
GOLD RESERVE CORP	042119
GOLDEN CORRAL REALTY CORP	751364
GOLDFIELD CORP	042316
GOLDTEX INC	819676
GRAND VALLEY GAS CO	841709
GRANGE NATIONAL BANC CORP	763650
GREASE MONKEY HOLDING CORP	350179
GREAT FALLS BANCORP	773845
GREAT FALLS GAS CO	043350
GREAT NORTHERN IRON ORE PROPERTIES	043410
GREEN DANIEL CO	026820
GREENWICH PROPERTIES I LTD	719174
GRI CORP	043965
GRIFFIN REAL ESTATE FUND II	319718
GRIFFIN REAL ESTATE FUND III	705974
GRIFFIN REAL ESTATE FUND IV	728526
GRIFFIN REAL ESTATE FUND V	760451
GRIFFIN REAL ESTATE FUND VI	783452
GRIFFIN TECHNOLOGY INC	082295
GROUP 1 SOFTWARE INC	806435
GRUBB & ELLIS REALTY INCOME TRUST	763977
GTI CORP	044319
GUARANTY BANCSHARES CORP	768536
GUARANTY BANCSHARES HOLDING CORP	706731
GULF & SOUTHERN FINANCIAL CORP	774555
GULF APPLIED TECHNOLOGIES INC	044524
GV MEDICAL INC	727672
GZA GEOENVIRONMENTAL TECHNOLOGIES INC	852004
H&H OIL TOOL CO INC	355902
HADRON INC	044800
HAKO MINUTEMAN INC	610676
HALIFAX ENGINEERING INC/VA	720671
HALLADOR PETROLEUM CO	788965
HALLWOOD INDUSTRIES INC	046535
HALSEY DRUG CO INC/NEW	786947
HAMMOND MORTGAGE SECURITIES CORP	744362
HAMPSHIRE FUNDING INC	205422
HANA BIOLOGICS INC	791925
HANCOCK JOHN REAL ESTATE LTD PARTNERSHIP	708319
HANDEX ENVIRONMENTAL RECOVERY INC	850414
HANGER ORTHOPEDIC GROUP INC	722723
HARDEES LEASE PARTNERS 1980	318225
HARLYN PRODUCTS INC	045621
HAROLDS STORES INC	818682
HARRIS BANKCORP INC	045729
HARVEY GROUP INC	046043
HATHAWAY CORP	046129
HAWKINS CHEMICAL INC	046250
HCW PENSION REAL ESTATE FUND LTD PARTNERSHIP	745538
HEALTH CARE PROPERTIES II	760689
HEALTH MOR INC	046445
HEALTHCARE COMPARE CORP/DE/	812910
HEALTHSOURCE INC	855587
HEARTLAND EXPRESS INC	799233
HEIST C H CORP	046653
HELIAN HEALTH GROUP INC	856288
HELIX TECHNOLOGY CORP	046709
HEMET BANCORP	804135
HENRY JACK & ASSOCIATES INC	779152
HERBALIFE INTERNATIONAL INC	791449
HERLEY INDUSTRIES INC /NEW	047035
HERSHEY OIL CORP	047114
HICKAM DOW B INC	736915
HIGH PLAINS CORP	317551
HIGHLANDS BANKSHARES INC	756862
HILB ROGAL & HAMILTON CO /VA/	814898
HINDERLITER INDUSTRIES INC	355557
HIPOTRONICS INC	047647
HITOX CORPORATION OF AMERICA	842295
HNB FINANCIAL GROUP	737213
HOFMANN INDUSTRIES INC	047878
HOLIDAY RV SUPERSTORES INC	822078
HOLLYWOOD PARK OPERATING CO	356212
HOMASOTE CO	048165
HOME CENTERS INC	788588
HOME INTENSIVE CARE INC	313321
HOMESTYLE BUFFET INC	831984
HOOPER HOLMES INC	741815
HORIZON FUTURES FUND	316225
HORIZON GOLD CORP	750740
HOSPITAL STAFFING SERVICES INC	731625
HOUSTON BIOTECH PARTNERS L P	812592
HOWELL INDUSTRIES INC	048824
HOWTEK INC	749660
HQ OFFICE SUPPLIES WAREHOUSE INC	837292
HUTTON APACHE ENERGY INCOME FUND II	717566
HUTTON ASSET RECOVERY FUND	731717
HUTTON CONAM REALTY INVESTORS 2	357099
HUTTON CONAM REALTY INVESTORS 5	761310
HUTTON CONAM REALTY INVESTORS 81	350023
HUTTON ENERGY ASSETS 2ND OIL & GAS COM & EQ PT A	791190
HUTTON GSH AMERICAN STORAGE PROPERTIES LP	769330
HUTTON GSH COMMERCIAL PROPERTIES 1	353891
HUTTON GSH COMMERCIAL PROPERTIES 4	759852
HUTTON INVESTORS FUTURES FUND L P II	812818
HUTTON INVESTORS FUTURES FUND LTD PARTNE	794224
HUTTON SOUTHERN TIMBER PARTNERS 2	707600
HUTTON SOUTHERN TIMBER PARTNERS I	355298
HYDRO FLAME CORP	049438
ICO INC	353567
ICOT CORPORATION	065745
IDS BALCOR INCOME PARTNERS	811524
IDS JONES GROWTH PARTNERS	811435
IDS MANAGED FUTURES II L P	813831
IGI INC	352998
II-VI INC	820818
IKOS SYSTEMS INC	756365
ILC TECHNOLOGY INC	719825
ILIO INC	854550
IMAGE BANK INC	850341
IMAGE ENTERTAINMENT INC	216324
IMATRON INC	720477
IMMUCOR INC	736822
IMMUNOGEN INC	655654
IMPACT SYSTEMS INC /CA/	813740
INAMED CORP	109631
INDEPRO PROPERTY FUND I LP	710982
INDEPRO PROPERTY FUND II LP	722232
INDIAN RIVER CITRUS INVESTORS LTD PARTNERSHIP	760612
INDIANA FINANCIAL INVESTORS INC	310621
INFORMATION INTERNATIONAL INC	216205
INNOVEX INC	050601
INSITUFORM EAST INC	355431
INSITUFORM GULF SOUTH INC	806173
INSITUFORM MID AMERICA INC	807903
INSITUFORM SOUTHEAST CORP	799096
INSTITUTIONAL PROPERTIES 4	806638
INSURED INCOME PROPERTIES 1982	353392
INSURED PENSION INVESTORS 1983	709947
INTELLICORP INC	730169
INTERFACE SYSTEMS INC	714981
INTERGROUP CORP	069422
INTERMETRICS INC	702736
INTERNATIONAL CONSUMER BRANDS INC	779314
INTERNATIONAL LEISURE ENTERPRISES INC /AZ/	819551
INTERNATIONAL MERCANTILE CORP	051387
INTERNATIONAL MOBILE MACHINES CORP	354913
INTERNATIONAL POWER MACHINES CORP	318775
INTERNATIONAL TOTALIZATOR SYSTEMS INC	354813
INTERPHASE CORP	728249
INTERPOINT CORP /NEW/	050842
INVESTORS REAL ESTATE TRUST	798359
IRE PENSION INVESTORS LTD	748627
IRE REAL ESTATE FUND LTD SERIES 27	756800
IRE REAL ESTATE GROWTH FUND LTD SERIES 26	769643
IRT CORP	052589
ISCO INC	773730
JACLYN INC	052969
JACO ELECTRONICS INC	052971
JACQUES MILLER INCOME FUND LP	752696
JACQUES MILLER INCOME FUND LP II	774655
JACQUES MILLER REALTY PARTNERS LP II	721700
JACQUES MILLER REALTY PARTNERS LP III	757775
JACQUES MILLER REALTY PARTNERS LP IV	784040
JAYARK CORP	053260
JERRYS INC	053453
JETBORNE INTERNATIONAL INC	811786
JETRONIC INDUSTRIES INC	053500
JEWELMASTERS INC	794048
JMB INCOME PROPERTIES LTD II	053567
JMB INCOME PROPERTIES LTD IV	053568
JMB MORTGAGE PARTNERS LTD	706074
JMB MORTGAGE PARTNERS LTD II	730206
JOHNSON PRODUCTS CO INC	053748
JOHNSTOWN CONSOLIDATED INCOME PARTNERS 1	787821
JONES CABLE INCOME FUND 1-B LTD	799122
JONES MEDICAL INDUSTRIES INC /DE/	793613
JONES PLUMBING SYSTEMS INC	096853
JOULE INC	798166
K TEL INTERNATIONAL INC	054193
KAPLAN INDUSTRIES INC	320432
KEANE INC	054863
KEEGAN MANAGEMENT CO	857400
KEITH GROUP OF COMPANIES INC	803656
KELLEY OIL CORP	746627

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
KEMPER CYMROT REAL ESTATE INVESTMENT FUND A LP	751262
KENT ELECTRONICS CORP	793024
KENT FINANCIAL SERVICES INC	316028
KENTUCKY INVESTORS INC	055362
KENWIN SHOPS INC	055393
KEPTEL INC	819840
KIDDIE PRODUCTS INC	055686
KINARK CORP	055805
KINGFISHER BANCORP INC	771859
KINGS ROAD ENTERTAINMENT INC	773588
KIT MANUFACTURING CO	056151
KLEINERTS INC /PA/	056252
KMS INDUSTRIES INC	056356
KOSS CORP	056701
KP MILLER REALTY GROWTH FUND I	700834
KRELITZ INDUSTRIES INC	056808
KRISCH AMERICAN INNS INC	799099
KRUPP INSTITUTIONAL MORTGAGE FUND LTD PARTNERSHIP	757549
KRUPP REALTY FUND LTD II	350478
KURZWEIL MUSIC SYSTEMS INC	730991
KUSHNER LOCKE CO	842009
LAKELAND FINANCIAL CORP	721994
LAKELAND INDUSTRIES INC	796081
LASER PHOTONICS INC	711665
LASER PRECISION CORP	312242
LASERMASTER TECHNOLOGIES INC	857470
LASERSCOPE	851737
LATSHAW ENTERPRISES INC	023236
LCS INDUSTRIES INC	056151
LEASTEC INCOME FUND III	773911
LEASTEC INCOME FUND IV	799179
LEASTEC INCOME FUND V	821218
LEE PHARMACEUTICALS	058411
LEECO DIAGNOSTICS INC	726294
LEISURE CONCEPTS INC	058592
LEQS INDUSTRIES INC	760487
LEXICON CORP	312065
LIFELINE SYSTEMS INC	720195
LIFETIME PRODUCTS INC	039503
LINCAM PROPERTIES LTD SERIES 85	774489
LINCOLN FOODSERVICE PRODUCTS INC	791726
LINCOLN NC REALTY FUND INC	773654
LINCOLN PROPERTY ASSOCIATES LTD	777350
LINDAL CEDAR HOMES INC /DE/	059591
LIPE ROLLWAY CORP	047798
LIPOSOME CO INC	786557
LIPOSOME TECHNOLOGY INC /DE/	812444
LLAE ROYALTY TRUST	721785
LLOYDS SHOPPING CENTERS INC	059956
LOGISTIX INC	023107
LONG LAKE ENERGY CORP	790044
LORIMAR FILM PARTNERS L P	778923
LOWRANCE ELECTRONICS INC	804073
LUNAR CORP	864906
MACHINE TECHNOLOGY INC	320654
MAIL BOXES ETC	791014
MAJOR GROUP INC	081700
MAJOR REALTY CORP	061566
MALLON RESOURCES CORP	837759
MANISCHEWITZ B CO	061981
MARATHON BANCORP	718448
MARC INC	356267
MARGATE VENTURES INC	781198
MARGO NURSERY FARMS INC	806493
MARINE MIDLAND BANKS INC	062348
MARKET FACTS INC	062465
MARKETPLACE INCOME PROPERTIES	784508
MARS GRAPHIC SERVICES INC	796872
MARSAM PHARMACEUTICALS INC	810590
MASSTOR SYSTEMS CORP /DE/	715066
MATEC CORP/DE/	065606
MATTHEWS & WRIGHT GROUP INC	795255
MAX & ERMAS RESTAURANTS INC	706471
MAXCO INC	078966
MAYS J W INC	054187
MCCLAIN INDUSTRIES INC	063686
MCCORMICK COMMODITY FUND I LIMITED PARTNERSHIP	354995
MCNEIL PACIFIC INVESTORS FUND 1972	064309
MCRAE INDUSTRIES INC/DE	729294
MED CARE CORP	857887
MEDAR INC	719152
MEDEX INC	064513
MEDIAGENIC	718677
MEDICAL ACTION INDUSTRIES INC	748270
MEDICAL MANAGEMENT OF AMERICA INC	838443
MEDICAL RESOURCE COMPANIES OF AMERICA	105744
MEDICORE INC	008643
MEDSTONE INTERNATIONAL INC /DE/	819939
MEGATEST CORP	745213
MERCOM INC	850315
MERCURY AIR GROUP INC	052532
MERIDIAN NATIONAL CORP	717192
MERRIMAC INDUSTRIES INC	706864
MESA AIRLINES INC	810332
MESA ROYALTY TRUST/TX	313364
MET PRO CORP	065201
METATEC CORP	203200
MICHAELS J INC	065596
MICHIGAN RIVET CORP	065666
MICRO BIO MEDICS INC	318251
MICRODYNE CORP	065743
MICROLOG CORP	792094
MICROS SYSTEMS INC	320345
MID CITY BANCORP	709331
MID PLAINS TELEPHONE INC	065901
MID SOUTH BANCORP INC /KY/	713143
MIDSOUTH BANCORP INC	745981
MILLER BUILDING SYSTEMS INC	791905
MILLFELD TRADING CO INC	857737
MILTEX MORTGAGE ACCEPTANCE CORP	788604
MINING SERVICES INTERNATIONAL CORP	356342
MINNTECH CORP	724969
ML TECHNOLOGY VENTURES LP	748828
MMI MEDICAL INC	746072
MOLECULON INC	729069
MONARCH BANCORP	721670
MONITERM CORP	351507
MONMOUTH REAL ESTATE INVESTMENT CORP	067525
MONTGOMERY BANCORP INC	807522
MOORE HANDLEY INC /DE/	788951
MORGANS FOODS INC	068145
MOSCOM CORP	747605
MOTO PHOTO INC	704508
MOTOR CLUB OF AMERICA	068480
MOUNTAIN MEDICAL EQUIPMENT INC	351707
MULTI BENEFIT REALTY FUND 87-1	802200
MULTIVEST REAL ESTATE FUND LTD SERIES IV	205671
MULTIVEST REAL ESTATE FUND LTD SERIES V	068842
MULTIVEST REAL ESTATE FUND LTD SERIES VI	068841
MUNICIPAL DEVELOPMENT CORP	790812
MURRAY INCOME PROPERTIES I LTD	742299
MURRAY INCOME PROPERTIES II LTD	785163
MYCOGEN CORP	813742
MYERS L E CO GROUP	700923
MYLEX CORP	731819
NAHAMA & WEAGANT ENERGY CO	350070
NAMSCO CORP	822373
NANOMETRICS INC	704532
NANTUCKET INDUSTRIES INC	069823
NAPA NATIONAL BANCORP	700699
NATEC RESOURCES INC	050361
NATIONAL BANCSHARES CORP /OH/	790362
NATIONAL CAPITAL MANAGEMENT CORP	826495
NATIONAL ENTERPRISES INC	070202
NATIONAL ENVIRONMENTAL GROUP INC	318996
NATIONAL HERITAGE INC	810306
NATIONAL HERITAGE INDUSTRIES INC	824426
NATIONAL HMO CORP/DE	726389
NATIONAL HOUSING PARTNERSHIP REALTY FUND IV	780149
NATIONAL HOUSING TRUST LIMITED PARTNERSHIP	818603
NATIONAL LEASE INCOME FUND 2	717726
NATIONAL MICRONETICS INC	070333
NATIONAL REAL ESTATE LTD PARTNERSHIP V	729445
NATIONAL SECURITIES CORP/WA/	811859
NATIONAL TECHNICAL SYSTEMS INC /DE/	110536
NATIONWIDE CELLULAR SERVICE INC	795265
NATURES BOUNTY INC	070793
NATURES SUNSHINE PRODUCTS INC	275053
NBT BANCORP INC	790359
NET 1 L P	821129
NETWORK GENERAL CORPORATION	844643
NEUROGEN CORP	849043
NEW ENGLAND LIFE PENSION PROPERTIES	711417
NEW ENGLAND REALTY ASSOCIATES LIMITED PARTNERSHIP	746514
NEW IMAGE INDUSTRIES INC	853706
NEW ULM TELECOM INC	071557
NEW VISIONS ENTERTAINMENT CORP	356906
NEWMAN FINANCIAL CORP	785665
NEWPARK RESOURCES INC	071829
NEWPORT ELECTRONICS INC	071642
NEWPORT PHARMACEUTICALS INTERNATIONAL INC /DE/	110074
NHD STORES INC	070182
NICHOLS RESEARCH CORP /AL/	806386
NMR OF AMERICA INC	724141
NOONEY INCOME FUND LTD II L P	757764
NOONEY INCOME FUND LTD III LP	797978
NOONEY INCOME FUND LTD LP	725266
NOONEY REAL PROPERTY INVESTORS FIVE L P	708133
NOONEY REAL PROPERTY INVESTORS FOUR L P	700720
NOONEY REAL PROPERTY INVESTORS THREE L P	350113
NOONEY REALTY TRUST INC	748580
NORTH AMERICAN BIOLOGICALS INC	072444
NORTH ATLANTIC INDUSTRIES INC	072575
NORTH BAY BANCORP	754440
NORTHEAST WISCONSIN FINANCIAL SERVICES INC	793498
NORTHERN EMPIRE BANCSHARES	746253
NORTHERN NECK BANKSHARES CORP	750005
NORTHLAND CABLE PROPERTIES SEVEN LP	813658
NORTHLAND CABLE PROPERTIES SIX LP	788736
NORTHWEST TELEPRODUCTIONS INC	073046
NORTHWESTERN DRUG CO	073056
NOVA TECHNOLOGY LIMITED PARTNERSHIP	815563
NOVAMETRIX MEDICAL SYSTEMS INC	310450
NTS PROPERTIES III	703667
NTS PROPERTIES IV	719589
NTS PROPERTIES V	745302
NU HORIZONS ELECTRONICS CORP	718074
NUCLEAR DATA INC /DE/	073271
NUCLEAR SUPPORT SERVICES INC	317488
NUCORP INC / DE/	837906
NUVISION INC	756918
NYCAL CORP	706066
OHIO ART CO	073942
OKC LTD PARTNERSHIP	353607
OLD FASHION FOODS INC/GA	724103
OLD STONE CORP	074273
OLSON INDUSTRIES INC /DE/	074374
OLYMPIA BROADCASTING CORP	786533
OLYMPIC NATIONAL BANCORP	710965
OMNICORP LTD	719775
ONCOGENE SCIENCE INC	729922
ONE AMERICAN CORP	706817
ONE LIBERTY PROPERTIES INC	712770
ONE PRICE CLOTHING STORES INC	812446
OPPENHEIMER INDUSTRIES INC	074664
OPTO MECHANIK INC	031688
ORTHOMET INC	765353
OSICOM TECHNOLOGIES INC	812491
OTRA SECURITIES GROUP INC	816330
OUTLET CENTRE PARTNERS	812094
OUTLOOK ALL SUITE HOTELS L P	810736
OUTLOOK PENSION INVESTORS	755869
OUTLOOK PROPERTIES FUND IV	777955
OVERMYER CORP	075189
OXFORD FUTURES FUND LTD	811100
OXFORD RESIDENTIAL PROPERTIES I LTD PARTNERSHIP	744766
OXIDYNE GROUP INC	310801
PACIFIC FIRST FINANCIAL CORP	741295
PACIFIC INLAND BANCORP	724179
PAGE AMERICA GROUP INC	311048
PAINE WEBBER GROWTH PROPERTIES LP	705191
PAINE WEBBER GROWTH PROPERTIES TWO LP	722569
PAINE WEBBER INCOME PROPERTIES SIX LTD PARTNERSHIP 745933	
PAINE WEBBER IRB PROPERTY FUND LTD PARTNERSHIP	354875
PAINE WEBBER QUALIFIED PLAN PROPERTY FUND TWO LP	700913
PAINE WEBBER QUALIFIED PLAN PROPERTY FUND THREE LP 724136	
PAINEWEBBER DEVELOPMENT PARTNERS FOUR LTD	772124
PAINEWEBBER EQUITY PARTNERS THREE LTD PARTNERSHIP	814460

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
PAINEWEBBER GEODYNE ENERGY INCOME LP I-E	806613
PAINEWEBBER GEODYNE ENERGY INCOME LP II-B	826345
PAINEWEBBER INCOME PROPERTIES TWO LTD PARTNERSHIP	313044
PAINEWEBBER MORTGAGE PARTNERS FIVE L P	779339
PAINEWEBBER R&D PARTNERS LP	770470
PAJARO VALLEY BANCORPORATION	707801
PAN PETROLEUM MASTER LTD PARTNERSHIP	814850
PANATECH RESEARCH & DEVELOPMENT CORP	354992
PARADISE FRUIT CO INC /FL/	078149
PARIS BUSINESS FORMS INC	789660
PARKER & PARSLEY 83-B LTD	743457
PARKER & PARSLEY 84-A LTD	757545
PARKER & PARSLEY 86-C LTD	789791
PARKER & PARSLEY 87-A LTD	810999
PARKER & PARSLEY 87-B LTD	811000
PARLEX CORP	724988
PARLUX FRAGRANCES INC	802356
PATLEX CORP	076057
PDA ENGINEERING	759436
PEERLESS MANUFACTURING CO	076954
PENGO INDUSTRIES INC	225747
PENRIL CORP	077326
PENTECH INTERNATIONAL INC	760461
PEOPLES BANCSHARES OF POINTE COUPEE PARISH INC	720026
PEOPLES TELEPHONE COMPANY INC	819694
PERCEPTION TECHNOLOGY CORP	791453
PERCEPTRONICS INC	710217
PETROLEUM DEVELOPMENT CORP	077877
PETROLEUM INVESTMENTS LTD	356224
PHARMACONTROL CORP	353827
PHARMACY MANAGEMENT SERVICES INC	861049
PHARMAKINETICS LABORATORIES INC	351506
PHM FINANCE CORP I	745893
PHOENIX MEDICAL TECHNOLOGY INC	745167
PHOENIX RE CORP	799721
PHOTO CONTROL CORP	078311
PHOTRONICS INC	810136
PHP HEALTHCARE CORP	803568
PICO PRODUCTS INC	352994
PICTURETEL CORP	755095
PLACER BANCORPORATION	711651
PLASMA THERM INC	354452
PLAYERS INTERNATIONAL INC /NV/	796912
PLEXUS CORP	785786
PLYMOUTH RUBBER CO INC	079225
PNB FINANCIAL GROUP	704693
POE & ASSOCIATES INC	079282
POLK AUDIO INC	793982
POLORON PRODUCTS INC	079388
POP RADIO CORP	799937
POPE EVANS & ROBBINS INC	079511
PORTAGE INDUSTRIES CORP /DE/	808241
POTOMAC BANCORP INC	720469
PRAB ROBOTS INC	354383
PRE PAID LEGAL SERVICES INC	311657
PRESIDENTIAL REALTY CORP/NEW/DE	731245
PRICOR INC	816247
PRIMA ENERGY CORP	318107
PRIME MEDICAL SERVICES INC	717421
PRIMEENERGY CORP	056868
PRISM ENTERTAINMENT CORP	773135
PRIVATE BRANDS INC	804084
PROCYTE CORP /WA/	856072
PROFESSIONAL BANCORP INC	700914
PROFIT SYSTEMS INC	076773
PROGRAMMING & SYSTEMS INC	080630
PROGROUP INC	080397
PROMETHEUS INCOME PARTNERS	803026
PRONET INC /DE/	815553
PROPERTY RESOURCES FUND VI	702313
PROPERTY RESOURCES FUND VII	716497
PRUDENTIAL BACHE VMS REALTY ASSOCIATES LP II	734362
PRUDENTIAL BACHE WATSON & TAYLOR LTD 2	737296
PRUDENTIAL BACHE WATSON & TAYLOR LTD 3	759726
PRUDENTIAL BACHE WATSON & TAYLOR LTD-4	780352
PS PARTNERS VII LTD	793934
PSICOR INC	792853

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
PUBLIC STORAGE PROPERTIES IV LTD	225775
PUBLIC STORAGE PROPERTIES IX LTD	707883
PUBLIC STORAGE PROPERTIES V LTD	277925
PV FINANCIAL	702901
PVC CONTAINER CORP	081288
PYRAMIDWEST DEVELOPMENT CORP	072654
QANTEL CORP /NY/	067421
QUADREX CORP	073299
QUANTRONIX CORP	081426
QUAREX INDUSTRIES INC	061942
QUEST MEDICAL INC	351721
QUESTECH INC	737033
QUIKSILVER INC	805305
QUIPP INC	796577
RADIUS INC	805574
RADIX VENTURES INC	758452
RAL YIELD PLUS EQUITIES IV LTD PARTNERSHIP	799126
RAMSAY HMO INC	857404
RASTEROPS	833619
RAUCH INDUSTRIES INC	715817
READICARE INC	710851
REAL EQUITY PARTNERS	717303
REAL ESTATE ASSOCIATES LTD VII	722648
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP VI-A	822783
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP IV	763698
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP V	790067
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP III	733591
REALTY BUSINESS PARTNERS	766850
REALTY SOUTH INVESTORS INC	763738
RECEPTECH CORP	855611
RECOTON CORP	082536
RED EAGLE RESOURCES CORP	086997
REFAC TECHNOLOGY DEVELOPMENT CORP	082788
REGAL INTERNATIONAL INC	357434
REGENCY EQUITIES CORP	046656
REGIONAL FEDERAL BANCORP INC	801336
RELM COMMUNICATIONS INC	082845
REN CORP USA	840491
REPLIGEN CORP	730272
REPUBLIC CORP /TX/	202995
REPUBLIC SAVINGS FINANCIAL CORP	743136
RESEARCH INDUSTRIES CORP	083306
RESOURCE AMERICA INC	083402
RESOURCE RECYCLING TECHNOLOGIES INC	051519
RESOURCES ACCRUED MORTGAGE INVESTORS 2 LP	804671
RESPIRONICS INC	780434
RESURGENS COMMUNICATIONS GROUP INC	723527
RETAIL EQUITY PARTNERS LIMITED PARTNERSHIP	818021
REXHALL INDUSTRIES INC	850476
REXWORKS INC	811432
RIC 15 LTD	705973
RIC 16 LTD	717223
RIC 18 LTD	760087
RIC 19 LTD	771603
RIC 20 LTD	783317
RICHTON INTERNATIONAL CORP	083877
RIGHT MANAGEMENT CONSULTANTS INC	802806
RIVER OAKS INDUSTRIES INC	718978
RIVERSIDE PROPERTIES	084202
ROBERTS PHARMACEUTICAL CORP	853022
ROBERTS RICHARD REAL ESTATE GROWTH TRUST I	781236
ROBOTIC VISION SYSTEMS INC	225868
ROCKWOOD NATIONAL CORP	084651
RONSON CORP	084919
ROSS A J LOGISTICS INC	760031
ROTECH MEDICAL CORP	771142
ROYAL PALM BEACH COLONY LTD PARTNERSHIP	764606
ROYALPAR INDUSTRIES INC	085558
RSI HOLDINGS INC	853697
RUDYS RESTAURANT GROUP INC	793026
RURAL ELECTRIC COOP GRANTOR TRUST SOYLAND 1987-AZ	814695
RWB MEDICAL INCOME PROPERTIES 1 LTD PARTNERSHIP	750457
S&K FAMOUS BRANDS INC	723924
SADDLEBROOK RESORTS INC	313151
SADLIER WILLIAM H INC	086082
SAFEGUARD HEALTH ENTERPRISES INC	727303
SANDWICH CHEF INC	705408

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
SANDY CORP	778107
SARATOGA BANCORP	702700
SBC FINANCIAL CORP	763858
SBC TECHNOLOGIES INC /DE/	812955
SBT CORP /CT/	731278
SCANFORMS INC	067097
SCHEIB EARL INC	067196
SCHERER HEALTHCARE INC	703596
SCHWERMAN TRUCKING CO	067731
SCIENCE MANAGEMENT CORP	087759
SCIENTIFIC SOFTWARE INTERCOMP INC	087822
SCOTTS LIQUID GOLD INC	088000
SCS COMPUTE INC	727127
SDN BANCORP	701255
SEA GALLEY STORES INC	275985
SEAFIRST CORP	088178
SEATRAIN LINES INC	088275
SECONN HOLDING CO	764862
SECURED INVESTMENT RESOURCES FUND LP	745481
SECURITY CHICAGO CORP	723926
SECURITY FEDERAL CORPORATION	818677
SECURITY NATIONAL CORP /DE/	821672
SECURITY TAG SYSTEMS INC	356623
SEITEL INC	750813
SELECTERM INC	718577
SELECTRONICS INC	733472
SELFIX INC	814457
SEMTECH CORP	088941
SENIOR SERVICE CORP	799231
SERV TECH INC /TX/	852485
SERVICE FRACTURING CO	317832
SFE TECHNOLOGIES	086537
SFM CORP	089261
SHAER SHOE CORP	089289
SHARE PARTNERS LTD 1972	089411
SHAREBASE CORP	316845
SHARED IMAGING PARTNERS L P	612381
SHARED TECHNOLOGIES INC	817832
SHAWSVILLE BANCORP INC	769967
SHEARSON LEHMAN COAST SAVINGS HOUSING PARTNERS LTD 750304	768156
SHEARSON LEHMAN FUTURES 1000 FUND	816290
SHEARSON MURRAY REAL ESTATE FUND II LTD	318087
SHEARSON MURRAY REAL ESTATE FUND III LTD	709296
SHEARSON MURRAY REAL ESTATE FUND VII LTD /TX/	319723
SHELTER PROPERTIES II LTD PARTNERSHIP	353282
SHELTER PROPERTIES III LTD PARTNERSHIP	758009
SHELTER PROPERTIES VII LTD PARTNERSHIP	354963
SHENANDOAH TELECOMMUNICATIONS CO/VA/	811917
SHERWOOD GROUP INC	089925
SHOPSMITH INC	812882
SHOWSCAN CORP	808412
SHURGARD GROWTH CAPITAL FUND 15 LTD PARTNERSHIP	808413
SHURGARD GROWTH CAPITAL FUND 17 LTD PARTNERSHIP	764767
SHURGARD INCOME PROPERTIES EIGHT	733449
SHURGARD INCOME PROPERTIES FIVE	721687
SHURGARD INCOME PROPERTIES FUND 18 LTD PARTNERSHIP 808416	764768
SHURGARD INCOME PROPERTIES IV	764766
SHURGARD INCOME PROPERTIES NINE	750242
SHURGARD INCOME PROPERTIES SEVEN	090045
SHURGARD INCOME PROPERTIES SIX	796220
SI HANDLING SYSTEMS INC	754009
SICO INC	724991
SIERRA HEALTH SERVICES INC	855272
SIERRA ON LINE INC	769603
SIERRA TUCSON COMPANIES INC	073967
SIGNATURE VII LTD	090721
SIMETCO INC	719113
SIRCO INTERNATIONAL CORP	721161
SIS CORP	799850
SJNB FINANCIAL CORP	835342
SKYLINK AMERICA INC	810354
SMITHFIELD COMPANIES INC	354260
SOCIETY FOR SAVINGS BANCORP INC	351566
SOFTECH INC	753900
SOUTH BANKING CO	704171
SOUTH FLORIDA FINANCIAL CORP	
SOUTH VALLEY BANCORPORATION	
SOUTHEASTERN INCOME PROPERTIES LIMITED PARTNERSHIP 802969	

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
SOUTHERN BANK GROUP INC	811096
SOUTHERN EDUCATORS LIFE INSURANCE CO	092149
SOUTHERN ELECTRONICS CORP	800286
SOUTHERN SCOTTISH INNS INC	092284
SOUTHMARK CRCA HEALTH CARE FUND VII LP	797672
SOUTHMARK CRCA HEALTH CARE FUND VIII L P	811674
SOUTHMARK CRCA HEALTH CARE INCOME FUND I LP	797504
SOUTHMARK EQUITY PARTNERS LTD	756427
SOUTHMARK INCOME INVESTORS LTD	750334
SOUTHMARK REALTY PARTNERS III LTD	783414
SOUTHWEST CAFES INC	719961
SOUTHWEST GEORGIA FINANCIAL CORP	315849
SOVEREIGN BANCORP INC	811830
SPAGHETTI WAREHOUSE INC	775298
SPAN AMERICA MEDICAL SYSTEMS INC	718924
SPARTAN MOTORS INC	743238
SPEAR FINANCIAL SERVICES INC	746425
SPEARHEAD INDUSTRIES INC	355868
SPECS MUSIC INC	777277
SPIRE CORP	731857
SPORTS ARENAS INC	093003
SPORTS SHINKO FLORIDA CO LTD	706073
SPRINGS VILLAGE LTD	813763
STAAR SURGICAL CORP	718937
STANSBURY HOLDINGS CORP	093566
STAR TECHNOLOGIES INC	733871
STARS TO GO INC	796040
STATESWEST AIRLINES INC	784259
STERLING BANCORPORATION /CA/	702170
STERLING ELECTRONICS CORP	094136
STERLING SUGARS INC	094185
STEVES HOMEMADE ICE CREAM INC	792643
STEWART SANDWICHES INC	094369
STOCKHOLDER SYSTEMS INC	732591
STOR FURNISHINGS INTERNATIONAL INC	861383
STRATAMERICA CORP	810829
STRATFORD AMERICAN CORP	836435
STRUTHERS WELLS CORP	094947
SUGARLOAF MOUNTAIN CORP	095153
SUMMIT BANCSHARES INC/CA	353203
SUMMIT OILFIELD CORP	355730
SUN COAST PLASTICS INC/DE/	319129
SUNAIR ELECTRONICS INC	095366
SUNGROUP INC	067903
SUNLITE INC	312540
SUPERTEX INC	730000
SUPRADUR COMPANIES INC	095618
SUPREME EQUIPMENT & SYSTEMS CORP	095620
SURGICAL LASER TECHNOLOGIES INC /DE/	854099
SURVIVAL TECHNOLOGY INC	095678
SWIFT ENERGY INCOME PARTNERS 1987-B LTD	825167
SWIFT ENERGY INCOME PARTNERS 1987-C LTD	831329
SWITCHCO INC	354874
SYM TEK SYSTEMS INC	350615
SYMBION INC	720327
SYNBIOTICS CORP	719483
SYNERCOM TECHNOLOGY INC	710807
SYNTECH INTERNATIONAL INC	351940
SYNTREX INC	316280
T CELL SCIENCES INC	744218
TARA BANKSHARES CORP	814678
TASA PRODUCTS LTD	318346
TDINDUSTRIES INC	716757
TECH OPS LANDAUER INC	825410
TECHE BANCSHARES INC	740878
TECHNODYNE INC	315777
TECHNOLOGY DEVELOPMENT CORP	770719
TECHNOLOGY FUNDING SECURED INVESTORS I	764062
TECHNOLOGY FUNDING SECURED INVESTORS II	764061
TECOGEN INC	813895
TEKELEC	790705
TEMCO NATIONAL CORP	726392
TEMTEX INDUSTRIES INC	110740
TENERA LP	804731
TENNEY ENGINEERING INC	097184
TERMINAL DATA CORP	097224
TEXAS PACIFIC LAND TRUST	097517
TEXAS UTILITIES ELECTRIC CO	710182
TEXON ENERGY CORP	312627
TEXSCAN CORP/DE	771984

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
THACKERAY CORP	354639
THERMAL INDUSTRIES INC	097726
THERMAL PROFILES INC	319239
THERMO CARDIOSYSTEMS INC	841939
THOMSON ADVISORY GROUP L P	822426
THOR ENERGY RESOURCES INC	003933
THREE D DEPARTMENTS INC	034169
TIGERA GROUP INC	714399
TII INDUSTRIES INC	277926
TIPPERARY CORP	098410
TITUS FOODS INC	725458
TMBR SHARP DRILLING INC	751288
TODD AO CORP	061442
TONS OF TOYS INC	812153
TOTH ALUMINUM CORP	098788
TOWER BANCORP INC	740942
TOWER PROPERTIES CO	098827
TRACE PRODUCTS	731427
TRANS INDUSTRIES INC	099102
TRANS PACIFIC BANCORP	729661
TRANSNATIONAL INDUSTRIES INC	796228
TRANSNET CORP	099313
TRAVELERS INCOME PROPERTIES I LTD PARTNERSHIP	705024
TRAVELERS REALTY 100 LP	773655
TRC COMPANIES INC /DE/	103096
TREND LABORATORIES INC	800443
TRICARE INC	858452
TRIDEX CORP	047254
TRIMEDYNE INC	357001
TRIO TECH INTERNATIONAL	732026
TRION INC	099802
TROY INVESTMENT FUND	099027
TSENG LABS INC	741742
TSI CORP /DE/	841243
TSI INC	100063
TUCKER DRILLING CO INC	100102
TURF PARADISE INC	100217
TWO PESOS INC	802574
U S BIOSCIENCE INC	847562
U S SHELTER CORP /DE/	726360
UNICO AMERICAN CORP	100718
UNIFLEX INC	100740
UNIFORCE TEMPORARY PERSONNEL INC	740285
UNIMAX HOLDINGS CORP	747566
UNIPROP MANUFACTURED HOUSING COMM INCOME FUND	769656
UNITED BANCORP /OR/	101032
UNITED BANCORP INC /DE/	721357
UNITED BANCORP INC /OH/	731653
UNITED BANCORPORATION OF ALABAMA INC	704561
UNITED COASTS CORP	814497
UNITED FINANCIAL BANKING COMPANIES INC	714286
UNITED FINANCIAL GROUP INC/DE	355589
UNITED FINANCIAL OPERATIONS INC	225406
UNITED GROUP INC	101252
UNITED MOBILE HOMES INC	752642
UNITED PARK CITY MINES CO	101424
UNITED RESOURCES INC	101473
UNITED SECURITY BANCORPORATION	726990
UNITED SECURITY BANCSHARES INC	717806
UNITED STATES EQUIPMENT INCOME FUND II	773432
UNITED TOTE INC	750004
UNIVERSAL BANCORP INC	744636
UNIVERSAL HOLDING CORP	709878
UNIVERSAL SECURITY INSTRUMENTS INC	102109
UNIVERSITY REAL ESTATE FUND 12 LTD	713010
UNIVERSITY REAL ESTATE INVESTORS	276782
URANIUM RESOURCES INC /DE/	612075
URT INDUSTRIES INC	839470
US BANCORP /OR/	101461
US ENERGY CORP	101542
US REALTY PARTNERS LTD PARTNERSHIP	101594
USAA REAL ESTATE INCOME INVESTMENTS I LP	788955
USAA REAL ESTATE INCOME INVESTMENTS II LP	751488
USB CORP	820094
USMX INC	811163
UTAH MEDICAL PRODUCTS INC	315523
UTILITECH INC	706686
VACATION SPA RESORTS INC	743029
VALLEY FAIR CORP	087992
VALLEY FINANCIAL SERVICES INC	102678
VALLEY FORGE CORP	719366
	102680

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No
VALLEY INDUSTRIES INC	102695
VANDERBILT GOLD CORP	102854
VARI CARE INC	103000
VARITRONIC SYSTEMS INC	738633
VELOBIND INC	103166
VENCOR INC	740260
VENTREX LABORATORIES INC	203530
VENTURA ENTERTAINMENT GROUP LTD	628217
VENTURIAN CORP	746756
VERDIX CORP	722056
VERNON VALLEY RECREATION ASSOCIATION INC	705783
VERTEX COMMUNICATIONS CORP /TX/	780416
VESTRO FOODS INC	080418
VHA ENTERPRISES INC	746442
VHC LTD	719159
VIEJO BANCORP	718934
VIRATEK INC	351237
VISTA ORGANIZATION PARTNERSHIP LP	790411
VISUAL INDUSTRIES INC	103755
VITRONICS CORP	712036
VMS MORTGAGE INVESTORS L P	757245
VOIT CORP	083062
VOLUNTEER CAPITAL CORP / TN /	103884
VOPLEX CORP	103916
VTX ELECTRONICS CORP	798438
WALKER B B CO	104218
WALNUT EQUIPMENT LEASING CO INC	312259
WARWICK VALLEY TELEPHONE CO	104777
WASHINGTON COUNTY BANCSHARES INC	727276
WEBSTER CLOTHES INC	790984
WEDCO TECHNOLOGY INC	104060
WEGENER CORP	715073
WEIMAN CO INC/DE/	105396
WEITEK CORP	719322
WELDOTRON CORP	105519
WELLCO ENTERPRISES INC	105532
WELLESLEY LEASE INCOME LTD PARTNERSHIP D	720306
WELLESLEY LEASE INCOME LTD PARTNERSHIP IID	799712
WELLS GARDNER ELECTRONICS CORP	105606
WELLS REAL ESTATE FUND I	748259
WELLS REAL ESTATE FUND II	797544
WEST AMERICAN HOLDING INC	750540
WESTAMERICA INC	031964
WESTBRIDGE CAPITAL CORP	703701
WESTCOTT COMMUNICATIONS INC	850670
WESTERN COMMUNITY BANCORP	820749
WESTERN MICRO TECHNOLOGY INC	715842
WESTERN OHIO HEALTH CARE CORP	823548
WESTLAND DEVELOPMENT CO INC	106423
WESTWORLD RESOURCES INC	074276
WHITING PETROLEUM CORP	727097
WICAT SYSTEMS INC	351134
WICHITA RIVER OIL CORP/DE/	857566
WIENER ENTERPRISES INC	319320
WILAND SERVICES INC	748939
WILSHIRE CENTER BANCORP	320603
WINDSOR PARK PROPERTIES 3	774544
WINDSOR PARK PROPERTIES 4	796177
WINDSOR PARK PROPERTIES 5	818817
WINTHROP INSURED MORTGAGE INVESTORS I	706234
WINTHROP PARTNERS 80	315275
WINTHROP RESIDENTIAL ASSOCIATES III	711416
WISCONSIN SOUTHERN GAS CO INC	107841
WM REALTY LTD PARTNERSHIP	791852
WNS INC	769413
WOLF FINANCIAL GROUP INC	710774
WOODBURY TELEPHONE CO	106202
WORDSTAR INTERNATIONAL INC	719612
WORLD WIDE TECHNOLOGY INC	819479
WORTH CORP	701974
WORTHINGTON GEORGE CO	836155
X RITE INC	790618
XYLOGICS INC /DE/	810957
YES CLOTHING CO	858979
YORK RESEARCH CORP	106978
ZACHARY BANCSHARES INC	740675
ZITEL CORP	731647
ZYGO CORP	730716

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-07

Registrant	CIK No.
1ST AMERICAN BANCORP INC	806387
1ST SOURCE CORP	034782
ABQ CORP	721689
ACCESS CORP	001988
ACCUGRAPH CORP	811703
ACS ENTERPRISES INC	702511
ADTEC INC	809796
ADVANCED COMPUTER TECHNIQUES CORP	002467
ADVANCED ENERGY RESOURCES INC	740966
ADVANCED ENVIRONMENTAL RECYCLING TECHNOLOGIES INC	849706
ADVANCED MANUFACTURING SYSTEMS INC	319319
AEI REAL ESTATE FUND 85-A LTD PARTNERSHIP	759641
AEI REAL ESTATE FUND 85-B LTD PARTNERSHIP	771677
AEI REAL ESTATE FUND 86-A LTD PARTNERSHIP	785788
AEI REAL ESTATE FUND XV LTD PARTNERSHIP	793631
AFN INC	810351
AG AUTOMOTIVE WAREHOUSES INC	853892
AIC INTERNATIONAL INC	002880
AIR TRANSPORTATION HOLDING CO INC	353184
ALANCO RESOURCES CORP	098618
ALASKA NORTHWEST PROPERTIES INC	313809
ALCIDE CORP	708484
ALFA CORP	743532
ALFA INTERNATIONAL CORP	820600
ALL STATE PROPERTIES LP	745543
ALLERCARE INC	716193
ALLICO CORP	352996
ALPHAREL INC /CA/	813747
ALS FORMAL WEAR INC	824185
ALTAI INC	796313
AMALGAMATED AUTOMOTIVE INDUSTRIES INC	004325
AMBASSADOR FOOD SERVICES CORP	008734
AMBER RESOURCES CO	276750
AMCORE FINANCIAL INC	714758
AMERIBANC INC	004468
AMERICAN AFFORDABLE HOUSING III LTD PARTNERSHIP	815025
AMERICAN AIRCRAFT CORP/OR/	794803
AMERICAN BODY ARMOR & EQUIPMENT INC	845752
AMERICAN BUSINESS COMPUTERS CORP	748103
AMERICAN CAMPGROUNDS INC	004688
AMERICAN COMMUNICATIONS & TELEVISION INC	357070
AMERICAN DESIGN CORP	860427
AMERICAN DRUG SCREENS INC	837038
AMERICAN ENTERTAINMENT PARTNERS II L P	808378
AMERICAN EQUINE PRODUCTS INC	784199
AMERICAN EQUITY HOUSING FUND 1	317548
AMERICAN FILM TECHNOLOGIES INC /DE/	819028
AMERICAN FRANCHISE GROUP INC	351541
AMERICAN HOUSING PARTNERS	005207
AMERICAN INDEMNITY FINANCIAL CORP	005227
AMERICAN LIST CORP	005385
AMERICAN LOCKER GROUP INC	008855
AMERICAN MEDICAL BUILDINGS INC	005431
AMERICAN MEDICAL ELECTRONICS INC	715247
AMERICAN METALS SERVICE INC	319018
AMERICAN NETWORK GROUP INC	837298
AMERICAN PACIFIC MINT INC	701719
AMERICAN PLASTICS & CHEMICALS INC	078319
AMERICAN RESTAURANT PARTNERS L P	817900
AMERICAN RESTAURANTS CORP	729545
AMERICAN SAFETY CLOSURE CORP	770701
AMERICAN SCIENCE & ENGINEERING INC	005768
AMERICAN SCREEN CO	799296
AMERICAN VIDEO IMAGING INC	818263
AMERICUS MANAGEMENT CORP	066661
AMERIHOST PROPERTIES INC	778423
AMOSKEAG BANK SHARES INC	725729
AMRECORP REALTY FUND II	745061
AMSERV INC	078302
AMTECH SYSTEMS INC	720500
ANAHEIM FOUNDRY CO	839022
ANALYTICAL SURVEYS INC	753048
ANDOVER BANCORP INC	810589
ANDREA RADIO CORP	006494
ANGELON CORP/MN	815093
ANGELES OPPORTUNITY PROPERTIES LTD	789282
ANSONIA DERBY WATER CO	006694
APA OPTICS INC /MN/	796505

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
APACHE PETROLEUM LTD PARTNERSHIP 1980-I	318681
APPLIED DATA COMMUNICATIONS INC	726398
ARCUS INC	844849
ARDEN INTERNATIONAL KITCHENS INC	353575
ARES SERONO RESEARCH & DEVELOPMENT LTD PARTNERSHIP 813632	724904
ARIZONA INSTRUMENT CORP	007346
ARLEN CORP	760719
ARMORED STORAGE INCOME INVESTORS LTD PARTNERSHIP	061494
ARROW MAGNOLIA INTERNATIONAL INC	718044
ARTEL COMMUNICATIONS CORP	007610
ARTISTIC GREETINGS INC	007823
ARTS WAY MANUFACTURING CO INC	007686
ASHLAND FINANCIAL SERVICES INC	314202
ASKCORP	841073
ASPEN WIND INC	007789
ASSOCIATED BANC CORP	785791
ASSOCIATED PLANNERS REALTY FUND	808420
ASSOCIATED PLANNERS REALTY INCOME FUND	006033
ASTRA CORP	351385
ASTRO DRILLING CO	215155
ASTROCOM CORP	828828
ATC ENVIRONMENTAL INC	785857
ATEL CASH DISTRIBUTION FUND	278314
ATHANOR GROUP INC	002618
ATI PHARMACEUTICALS INC	006155
ATLANTA MOTOR SPEEDWAY INC	802490
ATLANTIC RESTAURANT VENTURES INC	702338
ATLANTIC WEST LANDMARK PROPERTIES LTD	809875
ATRIX LABORATORIES INC	723639
AULT INC	725518
AURORA ENVIRONMENTAL INC	006588
AUTHENTICOLOR INC	843066
AUTHORIZED DISTRIBUTION NETWORK INC	006598
AUTO GRAPHICS INC	702891
AUTOMATIX INC	833441
AUTOMOBILE PROTECTION CORP APCO	008958
AZUSA VALLEY WATER CO	726656
BAKER COMMUNICATIONS INC	804215
BALA REALTY INC	009326
BALCHEM CORP	792334
BALCOR GROWTH FUND	009329
BALCOR INCOME PROPERTIES LTD	278218
BALCOR INCOME PROPERTIES LTD III	708480
BALVERNE CELLARS INC	760496
BANCFIRST CORP /OK/	701853
BANCORP OF MISSISSIPPI INC	031606
BANGOR AMERICA INC	036322
BANKEAST CORP	314404
BANKERS BUILDING LAND TRUST	732640
BANKERS FIRST CORP	811436
BANKWORCESTER CORP	859463
BARRINGER LABORATORIES INC	010119
BARRINGER RESOURCES INC	010254
BASIC EARTH SCIENCE SYSTEMS INC	750303
BASS REAL ESTATE FUND 84	783992
BASS REAL ESTATE FUND II	806741
BEAR STEARNS SECURED INVESTORS INC	811422
BEAUTY LABS INC	075439
BELL NATIONAL CORP	319459
BELLWETHER EXPLORATION CO	312651
BENEDICT NUCLEAR PHARMACEUTICALS INC	845289
BENTON OIL & GAS CO	790710
BERES INDUSTRIES INC	706777
BERGER HOLDINGS LTD	849343
BERNSTEIN LEIBSTONE ASSOCIATES INC / NY/	320443
BESICORP GROUP INC	726443
BEST BUY DRUGS INC	004344
BESTWAY RENTAL INC	011858
BETHLEHEM CORP	313522
BIG SKY TRANSPORTATION CO	318598
BIG TURTLE INC /ID/	355007
BIO LOGIC SYSTEMS CORP	792641
BIO REFERENCE LABORATORIES INC	726570
BIOMEDICAL DYNAMICS CORP	073290
BIOMERICA INC	040944
BIOPLASTY INC	350648
BIOSEARCH MEDICAL PRODUCTS INC	012239
BIOSPHERICS INC	012257
BIRDSBORO CORP	012304
BISHOP INC	012404
BLACK INDUSTRIES INC	839871
BLACK WARRIOR WIRELINE CORP	

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
BMF MORTGAGE INCOME FUND	758113
BMJ FINANCIAL CORP	731244
BOETTCHER PENSION INVESTORS LTD	745895
BOGEN CORP	732287
BOGERT 1986-II LIMITED PARTNERSHIP	806605
BOGERT 1986-III LIMITED PARTNERSHIP	806606
BOSTON BANCORP	760079
BOSTON FIVE BANCORP INC	826756
BOULEVARD BANCORP INC /DE/	746594
BOUNTY GROUP INC	810674
BOUTON CORP/PA	064382
BOWLES FLUIDICS CORP	013585
BOWLINE CORP	034682
BRAUVIN REAL ESTATE FUND I	318722
BRAUVIN REAL ESTATE FUND II	701467
BRILUND LTD	014231
BRISTOL HOLDINGS INC	014280
BRNF LIQUIDATING TRUST	751310
BROADCAST INTERNATIONAL INC /UT/	832411
BRUSH CREEK MINING & DEVELOPMENT CO INC	715583
BRYAN STEAM CORP	014971
BT ENERGY CORPORATION	716786
BT FINANCIAL CORP	716459
BUCKEYE FINANCIAL CORP	314482
BUILDERS DESIGN INC /DE/	812629
BULL & BEAR GROUP INC	052234
BULL RUN GOLD MINES LTD	319697
BURGER KING LTD PARTNERSHIP I	356956
BURGER KING LTD PARTNERSHIP II	705740
BURGER KING LTD PARTNERSHIP III	733667
BUTTERFIELD PREFERRED GROWTH FUND 83	355809
C&K 1981 FUND A LTD	355058
CABLE CAR BEVERAGE CORP	081057
CABLE TV FUND 10-C LTD	711680
CABLE TV FUND 11-E LTD	751371
CABLE TV FUND 11-F	756904
CABLEVISION INVESTMENT OF DETROIT INC	806003
CACHE INC	350199
CALIFORNIA ALMOND INVESTORS I	806179
CALIFORNIA AMPLIFIER INC	730255
CALNETICS CORP	277378
CALSTAR INC	771777
CAMERA PLATFORMS INTERNATIONAL INC	775714
CANAL RANDOLPH LTD PARTNERSHIP	764129
CANAVERAL INTERNATIONAL CORP	016926
CANCER TREATMENT HOLDINGS INC	832092
CANTERBURY EDUCATIONAL SERVICES INC /PA/	794927
CANYON RESOURCES CORP	739460
CAPITAL BANCORP/FL	702184
CAPITAL BUILDERS DEVELOPMENT PROPERTIES /CA/	763978
CAPITAL BUILDERS DEVELOPMENT PROPERTIES II	791452
CAPITAL REALTY INVESTORS LTD	354521
CAPITAL RESOURCES REAL ESTATE PARTNERSHIP II	017294
CAPT CRAB INC	356622
CAPUCINOS INC /DE/	857134
CARDIAC CONTROL SYSTEMS INC	706507
CARE GROUP INC	847935
CARIBBEAN SELECT INC	774554
CARLSBERG MOBILE HOME PROPERTIES LTD	205132
CARLSBERG MOBILE HOME PROPERTIES LTD 72	017669
CARLYLE REAL ESTATE LTD PARTNERSHIP 72	017698
CARLYLE REAL ESTATE LTD PARTNERSHIP 73	017699
CARLYLE REAL ESTATE LTD PARTNERSHIP 74	017700
CAROLINA INVESTMENT PARTNERS LIMITED PARTNERSHIP	789457
CAROM CAPITAL CORP	759855
CARRINGTON LABORATORIES INC /TX/	716007
CARTER DAY INDUSTRIES INC	022296
CASPEN OIL INC	095254
CATTLEGUARD INC	842728
CB BANCSHARES INC/HI	316312
CB FINANCIAL CORP	351326
CBL MEDICAL INC	832440
CBLX HOLDINGS INC	818675
CCA INDUSTRIES INC	721447
CCC FRANCHISING CORP	790526
CCNB CORP	018387

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
COR INC	789681
CEL COMMUNICATIONS INC	355271
CELINA FINANCIAL CORP	201401
CELLTRONICS INC	740664
CENTENNIAL PENSION INVESTORS LTD	707806
CENTRAL BANKING SYSTEM INC	018575
CENTRAL COAL & COKE CORP	018605
CENTRAL CORP /LA/	018620
CENTRAL JERSEY BANCORP	761201
CENTRAL PACIFIC CORP	350649
CENTREVEST CORP	766515
CENTURY BANCORP INC	812348
CENTURY MEDICORP	726985
CENTURY PACIFIC CORP	791770
CENTURY PROPERTIES EQUITY FUND 73	818904
CENTURY PROPERTIES FUND X	018909
CENTURY REALTY TRUST	818914
CERAMICS PROCESS SYSTEMS CORP/DE/	814678
CFS FINANCIAL CORP	752260
CFS REAL ESTATE INVESTORS LTD	735585
CHALCO INDUSTRIES INC	019082
CHARTER ONE FINANCIAL INC	819692
CHARTWELL PARTNERS LP	799660
CHASE CORP	630524
CHECK TECHNOLOGY CORP	350892
CHECKROBOT INC	773546
CHEMICAL FINANCIAL CORP	019612
CHERNE MEDICAL INC	731446
CHESTER COUNTY BANCSHARES INC	810997
CHIEF CONSOLIDATED MINING CO	019913
CHOICE DRUG SYSTEMS INC	792932
CHURCHILL TECHNOLOGY INC	721233
CIATTIS INC /DE/	802517
CIMARRON INVESTMENT CO INC	020270
CINCINNATI UNION STOCK YARD CO	020305
CIPRICO INC	720145
CIRCADIAN INC	738014
CITIZENS BANCORP /MD/	704054
CITIZENS BANKING CORP	351077
CITIZENS GROWTH PROPERTIES	020467
CITIZENS SECURITY GROUP INC /MN/	802971
CLARK COUNTY PROPERTIES 5	766881
CLARY CORP	020819
CLINICAL DATA INC	716646
CLINTON APPALACHIAN IX LTD PARTNERSHIP	773280
CLINTON APPALACHIAN V LTD PARTNERSHIP	727065
CLINTON APPALACHIAN VII LTD	746894
CLINTON APPALACHIAN X LTD PARTNERSHIP	788909
CM COMMUNICATIONS INC	852448
CMS DATA CORP	862420
CNB BANCSHARES INC	724196
CNS INC /DE/	814258
COACHMAN INC	816249
COACHMAN INNS INCOME LTD PARTNERSHIP	787494
COBB RESOURCES CORP	049444
CODENOLL TECHNOLOGY CORP	318379
COGNITRONICS CORP	021438
COLLEGE BOUND INC	824575
COLONIAL BANCGROUP INC	092339
COLONIAL DATA TECHNOLOGIES CORP	811243
COLONIAL STORAGE CENTERS I LTD	319000
COLONIAL STORAGE CENTERS II LTD	357175
COLONIAL STORAGE CENTERS III LTD	715763
COLOR SYSTEMS TECHNOLOGY INC/DE	771817
COLUMBIA FUTURES FUND	701286
COLUMBIA LEASE INCOME FUND A LP	751683
COLUMBIA LEASE INCOME FUND B LP	751684
COLUMBIA LEASE INCOME FUND II-A LP	769332
COLUMBIA MANAGEMENT CO	022120
COLUMBIAN ENERGY CO LTD PARTNERSHIP	793521
COM TEK RESOURCES INC	732700
COMCAST CABLEVISION OF PHILADELPHIA INC	711419
COMMERCE GROUP CORP /DE/	109757
COMMERCIAL DECAL INC	022412
COMMODITY STRATEGY PARTNERS	700705
COMMODITY TREND TIMING FUND	310913
COMMODITY VENTURE FUND	318294
COMMONWEALTH BANCSHARES CORP	355574
COMMONWEALTH EQUITY TRUST USA	803771
COMMONWEALTH GROWTH FUND II	810387
COMPARATOR SYSTEMS CORP	277809
COMPONENTGUARD INC	818973
COMPUMED INC	700998
COMPUTER AUTOMATION INC	022962
COMPUTER COMMUNICATIONS INC	022973

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
COMPUTER IDENTICS CORP /MA/	023023
COMPUTER NETWORK TECHNOLOGY CORP	701319
COMPUTER RESEARCH INC	201511
COMPUTER TELEPHONE CORP	764841
CONDEV LAND GROWTH FUND 86 LTD	795280
CONESCO INDUSTRIES LTD	023314
CONFERTECH INTERNATIONAL INC	756768
CONOLOG CORP	023503
CONSOLIDATED CAPITAL CORP/FL/	023591
CONSOLIDATED IMAGING CORP	752346
CONSULIER ENGINEERING INC	846718
CONTINENTAL CONNECTOR INDUSTRIES INC	753282
CONTINENTAL REAL ESTATE PARTNERS LTD	024148
COPYTELE INC	715446
CORAL COMPANIES INC	821356
CORKEN INTERNATIONAL CORP	808021
CORTEX PHARMACEUTICALS INC/DE/	849836
COVENTRY CARE INC	025243
CRAFTMADE INTERNATIONAL INC	856250
CREOO PETROLEUM CORP	277924
CRESTED CORP	025657
CRESTEK INC /NJ/	025652
CROP GENETICS INTERNATIONAL CORP	810618
CROWELL & CO INC /GA/	065905
CRYOMEDICAL SCIENCES INC	834365
CRYSTAL MOUNTAIN INC	026020
CSA INCOME FUND LTD PARTNERSHIP I-D	764829
CSM ENVIRONMENTAL SYSTEMS INC	065356
CUCOS INC	731724
CUTCO INDUSTRIES INC	026379
CVD EQUIPMENT CORP	766792
CYBERMEDIC INC	720013
CYBEROPTICS CORP	768411
DAEDALUS ENTERPRISES INC	026537
DAIG CORP	314416
DAIN PENSION INVESTORS 84	726370
DAIN PROPERTIES 81 LTD	350115
DAIN TEXAS PARTNERS	730566
DALLAS OIL & MINERALS INC	320380
DANNINGER MEDICAL TECHNOLOGY INC	731241
DAROX CORP	706743
DARTMOUTH BANCORP INC	740970
DATAGUARD RECOVERY SERVICES INC	797221
DATAIMAGE INC /DE/	853635
DATAKEY INC	704914
DATAMAG INC	795780
DAWSON GEOPHYSICAL CO	351231
DAYLIGHT INDUSTRIES INC	027399
DCX INC	783284
DDI PHARMACEUTICALS INC	109657
DE ROSE INDUSTRIES INC	028262
DECOM SYSTEMS INC	357176
DECORATOR INDUSTRIES INC	027613
DECORP INC	095133
DEL TACO INCOME PROPERTIES IV	812630
DEL TACO RESTAURANT PROPERTIES I	711213
DEL TACO RESTAURANT PROPERTIES II	749153
DEL TACO RESTAURANT PROPERTIES III	788360
DELPHI INFORMATION SYSTEMS INC /DE/	814549
DENSE PAC MICROSYSTEMS INC	784770
DENTO MED INDUSTRIES INC	028146
DESCHUTES BUSINESS PARK CO LTD	313420
DESIGNCRAFT INDUSTRIES INC/DE/	028325
DEV TECH CORP	818970
DEWEY ELECTRONICS CORP	028561
DIGIMETRICS INC	814853
DIGITAL METCOM INC	756759
DIGITAL OPTRONICS CORPORATION	816954
DIGITAL PRODUCTS CORP	028895
DIGITAL TRANSMISSION INC	784577
DIMENSIONAL MEDICINE INC	723799
DIMENSIONAL VISIONS GROUP LTD	836809
DIODES INC /DEL/	029002
DIRECT PHARMACEUTICAL CORP	745480
DISCOVERY TECHNOLOGIES INC /KS/	857949
DISCUS CORP	746156
DIVERSIFIED FOODSERVICE DISTRIBUTORS INC	800263
DIVERSIFIED HISTORIC INVESTORS IV INCOME FUND	810623
DIVERSIFIED HUMAN RESOURCES GROUP INC	779226
DIVERSIFIED INDUSTRIAL CORP OF KANSAS INC	029207
DIVERSIFIED RETAIL GROUP INC	820163
DOUBLE HELIX FILMS INC	758924
DOVER LEASING INCOME FUND LTD 1-A	766495
DREXLER TECHNOLOGY CORP	030140

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
DRX INC	320211
DSI REALTY INCOME FUND IX	764586
DSI REALTY INCOME FUND VIII	743366
DSP TECHNOLOGY INC	773720
DTI MEDICAL CORPORATION INC	718247
DURATEK CORP	785186
DYCO 1979 OIL & GAS PROGRAMS	276338
DYCO 1980 OIL & GAS PROGRAMS	313317
DYCO 1982 OIL & GAS PROGRAMS	354808
DYCO 1985 OIL & GAS PROGRAMS	751337
DYCO OIL & GAS PROGRAM 1979-2	806574
DYCO OIL & GAS PROGRAM 1980-1	806576
DYCO OIL & GAS PROGRAM 1980-2	806577
DYCO OIL & GAS PROGRAM 1981-1	702402
DYCO OIL & GAS PROGRAM 1981-2	702403
DYCO OIL & GAS PROGRAM 1982-1	718943
DYCO OIL & GAS PROGRAM 1983-1	719958
DYCO OIL & GAS PROGRAM 1983-2	715369
DYCO OIL & GAS PROGRAM 1984-1	725261
DYCO OIL & GAS PROGRAM 1984-2	725262
DYCO OIL & GAS PROGRAM 1985-1	751255
DYCO OIL & GAS PROGRAM 1985-2	751256
DYCO OIL & GAS PROGRAM 1986-2	778961
DYCO OIL & GAS PROGRAM 1986-X	803095
DYCO OIL & GAS PROGRAM 1987-1	811438
DYCO OIL & GAS PROGRAM 1987-2	811442
DYNA GROUP INTERNATIONAL INC	844787
DYNAMIC AMERICAN CORP	030780
DYNAMIC CLASSICS LTD/DE	030786
DYNATRONICS LASER CORP	720675
E&J PROPERTIES LTD	350268
EAGLE ENTERTAINMENT INC	790066
EARTHWORM INC	752363
ECC ENERGY CORP	836044
ECOGEN INC	814050
EDISON CONTROL CORP	795968
EDUCATIONAL DEVELOPMENT CORP	031867
EFI ELECTRONICS CORP	785970
EIP MICROWAVE INC	026782
ELECTRO CATHETER CORP	032120
ELECTRO SENSORS INC	351789
ELECTRONIC CLEARING HOUSE INC	721773
ELECTRONIC TECHNOLOGY GROUP INC	854556
ELECTRONIC TELE COMMUNICATIONS INC	773547
ELECTRONICS MISSILES & COMMUNICATIONS INC	032312
ELECTROSOURCE INC	823927
ELEXIS CORP	806305
ELMERS RESTAURANTS INC	771214
ELXSI CORP	712843
EMPI INC	317032
EMPIRE BANC CORP	810830
ENCHANTED PARKS INC	764217
ENCORE GROUP INC	276259
ENDOTRONICS INC	704384
ENERGETICS INC	032666
ENERGY SOURCES INC	032907
ENEX OIL & GAS INCOME PROGRAM II-1	743801
ENEX OIL & GAS INCOME PROGRAM II-2	757658
ENEX OIL & GAS INCOME PROGRAM III SERIES 5 LP	825247
ENEX OIL & GAS INCOME PROGRAM III SERIES 4 LP	820159
ENGINEERING MEASUREMENTS CO	205303
ENSTAR INCOME GROWTH PROGRAM FIVE-A LP	805391
ENSTAR INCOME GROWTH PROGRAM FIVE-B LP	805392
ENSTAR INCOME PROGRAM 1984-1 LP	737762
ENSTAR INCOME PROGRAM II-1 LP	757595
ENSTAR INCOME PROGRAM II-2 LP	757597
ENSTAR INCOME PROGRAM IV-1 LP	783763
ENSTAR INCOME PROGRAM IV-2 LP	783764
ENSTAR INCOME PROGRAM IV-3 L P	783765
ENVIRONMENT ONE CORP	033081
ENVIRONMENTAL MONITORING & TESTING CORPORATION	842919
ENVIRONMENTAL SERVICES OF AMERICA INC	773399
ENVIROPACT INC	797969
EPITOPE INC/OR/	801555
EQUIPMENT COMPANY OF AMERICA	033195
EQUITY AU INC	830741
EQUITY CONCEPTS INC	789853
ERC INDUSTRIES INC /DE/	775477
ERNST DIESSNER MORTGAGE FUND 86 LTD PARTNERSHIP	785545
ESCAGENETICS CORP	810370

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
ESPERO ENERGY CORP	230624
EUROCAPITAL CORP	357010
EUROPA CRUISES CORP	844867
EVERGREEN BANCORP INC	351521
EXCALIBUR TECHNOLOGIES CORP	318222
EXCEL BANCORP INC	793569
EXCEL INTERFINANCIAL CORP	354247
EXCEL REALTY TRUST INC	798288
EXECUTIVE NATIONAL DEVELOPMENT CORP	703805
EXECUTIVE OFFICE GROUP INC	834935
EXPLORATION CO	313395
EXPLOSIVE FABRICATORS INC	034067
EXPORT TYRE HOLDING CO	798275
F M G RITA RANCH LIMITED PARTNERSHIP	820047
F&M FINANCIAL SERVICES CORP	357372
FAIRCOM INC	810827
FAIRMOUNT CHEMICAL CO INC	034296
FARADYNE ELECTRONICS CORP	034497
FARM FISH INC	034551
FBX CORP	798904
FCS LABORATORIES INC	719130
FDP CORP	722826
FEDERATED NATURAL RESOURCES CORP	722203
FEDERATED PURCHASER INC	034977
FERTILITY & GENETICS RESEARCH INC	779162
FIBERCHEM INC /IA/	811014
FIDELITY LEASING INCOME FUND	740667
FIDELITY MEDICAL INC	320017
FILMSTAR INC /DE/	819794
FINANCIAL INSTITUTIONS INSURANCE GROUP LTD	805647
FINANCIAL LAND CORP	035754
FINANCIAL TRUST CORP	702508
FIND SVP INC	801338
FINGERMATRIX INC	316618
FIRECOM INC	732248
FIREPLACE MANUFACTURERS INC	738992
FIRETECTOR INC	823130
FIRST CENTENNIAL CORP	316638
FIRST CITIZENS BANCSHARES INC /NC/	798941
FIRST COLONIAL BANKSHARES CORP	275360
FIRST COMMERCE BANCSHARES INC	768532
FIRST COMMERCIAL BANCSHARES INC	720843
FIRST COMMERCIAL CORP	316769
FIRST CONSTITUTION FINANCIAL CORP	790071
FIRST CONTINENTAL BANCSHARES INC	700571
FIRST EASTERN CORP /PA/	357427
FIRST ESSEX BANCORP INC	808246
FIRST EVERGREEN CORP	278138
FIRST FINANCIAL BANCORP /OH/	708955
FIRST FINANCIAL CORP /IN/	714582
FIRST FINANCIAL CORP /TX/	036315
FIRST ILLINOIS CORP	036396
FIRST INDIANA CORP	769670
FIRST INTERSTATE CORP OF WISCONSIN	020436
FIRST INTERSTATE OF HAWAII INC	775749
FIRST INTERSTATE OF IOWA INC	276293
FIRST LIBERTY FINANCIAL CORP	760077
FIRST MICHIGAN BANK CORP	036522
FIRST MIDWEST BANCORP INC	702325
FIRST NATIONAL OF NEBRASKA INC	036725
FIRST NATIONAL PENNSYLVANIA CORP	351396
FIRST PEOPLES FINANCIAL CORP	807521
FIRST PROVIDENT GROUP INC	802904
FIRST SECURITY CORP OF KENTUCKY	036866
FIRST STATE FINANCIAL SERVICES INC	820240
FIRST SUN SOUTH CORP	043566
FIRST WESTERN BANCORP INC	740676
FIRST WESTERN FINANCIAL CORP	037059
FIRSTBANK OF ILLINOIS CO	037069
FIRSTIER FINANCIAL INC /NE/	074431
FISCHER WATT GOLD CO INC	844766
FISHER TRANSPORTATION SERVICES INC	811237
FLAMEMASTER CORP	037358
FLIGHT DYNAMICS INC	352284
FLOCK INDUSTRIES INC	037509
FLORAFAX INTERNATIONAL INC	037525
FLORIDA GLASS INDUSTRIES INC	037584
FLORIDA INCOME FUND LP	737829
FMA REALTY INVESTORS I LTD PARTNERSHIP	715289
FNB CORP/PA	037808
FOLIAGE PLUS INC	778702
FORD BANK GROUP INC	778168
FORT WAYNE NATIONAL CORP	357289
FORTUNE FINANCIAL GROUP INC	734370
FORTY SIX HUNDRED LTD PARTNERSHIP	768626
FOX TECHNOLOGY INC	721778
FRANCHISEIT CORP	733595
FRANKFORD CORP	700714
FRANKLIN CONSOLIDATED MINING CO INC	215913
FRANKLIN TELECOMMUNICATIONS CORP	722572
FRONTEER DIRECTORY COMPANY INC	844780
FRONTIER ADJUSTERS OF AMERICA INC	735349
FRONTIER INSURANCE CO	039244
FRONTIER INSURANCE GROUP INC	797496
FULTON FINANCIAL CORP	700564
FUTURE COMMUNICATIONS INC	032190
FUTURE FUND II	354993
GAINER CORP	705029
GALAXY CHEESE CO	819527
GALVEST INC	842808
GARB OIL & POWER CORP	798371
GATEWAY COMMUNICATIONS INC	725876
GC INTERNATIONAL INC /CA	841708
GEMINI 87-88 XI L P	813784
GEMINI 87-88 XII L P	813785
GEMINI EQUIPMENT PARTNERS INCOME FUND IV LP	761276
GEMINI EQUIPMENT PARTNERS INCOME FUND V	761277
GEMINI EQUIPMENT PARTNERS INCOME FUND VI LP	761278
GEMINI EQUIPMENT PARTNERS INCOME FUND X LP	761282
GENERAL BUILDERS CORP	040472
GENERAL DEVICES INC	040526
GENERAL EMPLOYMENT ENTERPRISES INC	040570
GENERAL KINETICS INC	040675
GENERAL MAGNAPLATE CORP	040687
GENERAL PARCEL SERVICE INC	853532
GENERAL SCIENCES CORP	789096
GENEX CORP	704695
GEORESOURCES INC	041023
GEOTEL INC	041114
GEXA GOLD CORP	821113
GISH BIOMEDICAL INC	700945
GLASSMASTER CO	109870
GLOBAL ENVIRONMENTAL CORP	825521
GMX COMMUNICATIONS INC	790933
GNC ENERGY CORP	043398
GO VIDEO INC	784721
GODDARD INDUSTRIES INC	041980
GOLD KING CONSOLIDATED INC	314834
GOLD MEDALLION CORP SHAREHOLDERS LIQUIDATING TRUST 042100	
GOLD STANDARD INC	042136
GOLDEN OIL CO /DE/	350685
GOODHEART WILLCOX CO INC	042504
GRAHAM INCOME FUND 82A	400001
GRAYHOUND ELECTRONICS INC	833218
GREAT AMERICAN CORP	043271
GREAT EASTERN ENERGY & DEVELOPMENT CORP	352871
GREAT WESTERN SYSTEMS INC	068805
GREENSTONE RABASCA ROBERTS INC	845048
GREENWICH PHARMACEUTICALS INC	094784
GREENWOOD HOLDINGS INC/CO/	718474
GROWTH DEVELOPMENT CORP	783266
GTS CORP/DE/	041107
GUILDER 82 PROPERTY CO	706148
GUILDER 83 PROPERTY CO	719503
GULF EXPLORATION CONSULTANTS INC	824088
GYRODYNE COMPANY OF AMERICA INC	044689
HABERSHAM ENERGY CO	101704
HADSON EUROPE INC	350091
HALL INSTITUTIONAL MORTGAGE FUND LTD PARTNERSHIP	757004
HAMILTON DIGITAL CONTROLS INC	045136
HAMPTON INCOME FUND LTD 1983-B	704868
HANDY HARDWARE WHOLESALE INC	354063
HANDYMAN CORP	768906
HARBOR AMERICAN HEALTH CARE TRUST INC	810696
HARCOR ENERGY INC	315272
HARDINGE BROTHERS INC	313718
HARRIER INC	789847
HAWAIIAN ELECTRIC CO INC	046207
HAWKEYE BANCORPORATION	046238
HAWKINS ENERGY CORP	854661
HAWKS INDUSTRIES INC	015578
HAWTHORNE FINANCIAL CORP	046267
HDR POWER SYSTEMS INC /DE/	803348
HEALTH CONCEPTS IV INC	811565
HEALTHWATCH INC	725627
HEARX LTD /DE/	821536
HEI INC	351298
HELIONETICS INC	319849
HEMACARE CORP /CA/	801748
HEMODYNAMICS INC	801350
HERITAGE FINANCIAL SERVICES INC /IL/	356946
HIA INC	318189
HICKOK ELECTRICAL INSTRUMENT CO	047307
HICKORY HILLS LTD	824481
HICKORY LENDERS LTD	824482
HIGHLANDER INTERNATIONAL CORP	704774
HIGHLINE INDUSTRIES INC	313372
HILLIARD FUND 79-A LTD	314016
HILLIARD FUND 79-B LTD	314018
HMO AMERICA INC	742415
HODGSON HOUSES INC	047800
HOLOGIC INC	859737
HOMEFREE VILLAGE RESORTS INC	065291
HOMEOWNERS GROUP INC	831906
HOMESTEAD MINERALS CORP	048276
HORNBECK OFFSHORE SERVICES INC	354359
HOSOI GARDEN MORTUARY INC	048544
HOSPOSABLE PRODUCTS INC	048569
HOTELECOPY INC	854883
HOUSTON OIL ROYALTY TRUST	316245
HUMPHREY INC	049101
HUTTON APACHE 1982 ENERGY INCOME FUND LTD	702653
HUTTON ENERGY ASSETS 2ND OIL & GAS COMP & EQUIP LP 791997	
HUTTON INVESTORS FUTURES FUND L P III	821541
HUTTON PRC TECHNOLOGY PARTNERS 2	751313
HYCOR BIOMEDICAL INC /DE/	719447
HYDRAULIC PRESS BRICK CO	049425
HYDROGEN ENERGY CORP	215244
HYTEK MICROSYSTEMS INC	715583
IDS JMB BALANCED INCOME GROWTH LTD	811430
IDS MANAGED FUTURES L P	809061
IEH CORPORATION	050292
IMAGE RETAILING GROUP INC	814611
IMEX MEDICAL SYSTEMS INC	715430
IMMUCELL CORP /DE/	811641
IMMUNOMEDICS INC	722830
IMPERIAL BANCORP	049899
IMPERIAL INDUSTRIES INC	049930
IMREG INC	730757
IMTEC INC	730045
IN HOME HEALTH INC /MN/	818645
INDEPENDENCE LEAD MINES CO	050073
INDEPENDENT AMERICAN PARTICIPATING INCOME FUND LP	760688
INDEPENDENT BANK CORP /MA/	776901
INDUSTRIAL INVESTMENT CORP	050326
INDUSTRIAL TRAINING CORP	764867
INFINITE GRAPHICS INC	744500
INFODATA SYSTEMS INC	050420
INFORMATION MANAGEMENT TECHNOLOGIES CORP	824578
INFORMATION SCIENCE INC	721934
INFORMATION SOLUTIONS INC	722674
INFRASONICS INC	748618
INLAND GOLD & SILVER CORP /WA/	819038
INLAND MORTGAGE INVESTORS FUND LP	788149
INLAND REAL ESTATE GROWTH FUND II LP	817652
INRAD INC	719494
INSURED INCOME PROPERTIES 1981	318844
INTECH INC	110840
INTEGRAL SYSTEMS INC /MD/	718130
INTEGRATED SYSTEMS INC	775183
INTEK DIVERSIFIED CORP	050877
INTERCARE INC	773678
INTERCIM CORP	744731
INTERFERENCE CONTROL TECHNOLOGIES INC	751314
INTERFERON SCIENCES INC	351532
INTERMARK GAMING INTERNATIONAL INC/DE/	764838
INTERNATIONAL 800 TELECOM CORP	814220
INTERNATIONAL AIRLINE SUPPORT GROUP INC	856307
INTERNATIONAL BANCSHARES CORP	315709
INTERNATIONAL BARRIER CORP	842396
INTERNATIONAL BASIC RESOURCES INC	036463
INTERNATIONAL BROADCAST SYSTEMS LTD /DE/	846823
INTERNATIONAL CMOS TECHNOLOGY INC	796865
INTERNATIONAL CONTAINER SYSTEMS INC	769832
INTERNATIONAL HOLDING CAPITAL CORP	751417

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
INTERNATIONAL REMOTE IMAGING SYSTEMS INC	319240
INTERNATIONAL YOGURT CO	821572
INTERWEST MEDICAL CORP	717197
INVENTION DESIGN ENGINEERING ASSOCIATES	719582
INVESTORS COMMODITY FUND III	814440
INVESTORS TITLE CO	720858
IOWA NATIONAL BANKSHARES CORP	355818
IPL SYSTEMS INC	351810
IRE PENSION INVESTORS LTD-II	775440
IRONTON IRON INC	771176
ISOMET CORP	052708
ISRAMCO INC	719209
J2 COMMUNICATIONS /CA/	798078
JACKS INC	797894
JACQUES MILLER BALANCED FUND LP	785958
JACQUES MILLER REALTY PARTNERS LP	703710
JAEGER INDUSTRIES INC	216262
JASON NORTHCO PROPERTIES LTD PARTNERSHIP II	746031
JEAN PHILIPPE FRAGRANCES INC	822663
JENNIFER CONVERTIBLES INC	806817
JEROME GROUP INC /DE/	053448
JMB 245 PARK AVENUE ASSOCIATES LTD	747159
JMB INCOME PROPERTIES LTD 1973	053569
JMB MANHATTAN ASSOCIATES LTD	771210
JOHNSON ELECTRONICS INC	053678
JOHNSTOWN CONSOLIDATED INCOME PARTNERS 2	812431
JONES CABLE INCOME FUND 1-A	779542
JOURNEYS END RESORTS INC	825797
JRM HOLDINGS INC	821609
K MED CENTERS INC	724267
KAMENSTEIN M INC	734101
KAPPA NETWORKS INC	748212
KAUFMAN H W FINANCIAL GROUP INC	054750
KELDON OIL CO	205508
KEMPER FINANCIAL COMPANIES INC	799367
KENILWORTH SYSTEMS CORP	055234
KENTANA DEVELOPMENT INC	313261
KEVLIN MICROWAVE CORP	701194
KEY CENTURION BANCSHARES INC	723648
KEY CO /NC/	055536
KEYSTONE FINANCIAL INC	717809
KEYSTONE HERITAGE GROUP INC	715366
KEYSTONE MORTGAGE FUND	793038
KEYSTONE MORTGAGE FUND II	812084
KINNARD INVESTMENTS INC	314037
KITCHEN BAZAAR INC	837022
KLEER VU INDUSTRIES INC/DE/	719729
KNICKERBOCKER VILLAGE INC	056396
KNOWLEDGE DATA SYSTEMS INC	319316
KOALA TECHNOLOGIES CORP /CA/	801873
KOBER CORP	313142
KP GRUBB & ELLIS REALTY INCOME FUND LP	806186
KREISLER MANUFACTURING CORP	056806
KRUPP ASSOCIATES 1980-1	318528
KUSTOM ELECTRONICS INC	057041
LAKE SHORE BANCORP INC	356596
LAKELAND DEVELOPMENT CORP	057370
LANCER ORTHODONTICS INC /CA/	057538
LANDER ENERGY CO	103657
LANDMARK BANCORP	705403
LANE PLYWOOD INC	351864
LANGER BIOMECHANICS GROUP INC	725480
LARCHDALE OWNERSHIP CO LTD	753258
LARSON DAVIS INC	789851
LASER CORP	740726
LASER MASTER INTERNATIONAL INC	700892
LASERMETRICS INC	057861
LASERTECHNICS INC	710597
LE PEEP RESTAURANTS INC	793630
LEADVILLE CORP	058204
LEASTEC INCOME FUND 1984-I	788373
LEASTEC INCOME FUND 1985-I	758939
LECTEC CORP /MN/	805928
LIBRARY BUREAU INC	225662
LIFECO INVESTMENT GROUP INC	802677
LIFECORE BIOMEDICAL INC	029626
LIFESURANCE CORP	059425
LINCOLN FINANCIAL CORP	059532
LINCOLN INTERNATIONAL CORP	059544
LINCOLN LOGS LTD	717422
LINPRO SPECIFIED PROPERTIES	709816
LITTLEFIELD ADAMS & CO	059870
LLOYDS ACCEPTANCE CORP	820087
LMR LAND CO LTD /TN/	809938
LOBELL LANA INCOME PARTNERS II	789955
LOGIC DEVICES INC	802851
LOGIMETRICS INC	060128
LOJACK CORP	355777
LOMAK PETROLEUM INC	315852
LOYOLA CAPITAL CORP	798953
LRH INCOME PROPERTIES LTD	275663
LUND INTERNATIONAL HOLDINGS INC	820526
LUTHERAN BROTHERHOOD REALTY FUND I	821365
LYNTON GROUP INC	027568
MAGIC CIRCLE ENERGY CORP	315571
MAGIC YEARS CHILD CARE & LEARNING CENTERS INC	720131
MAGNA GROUP INC	036094
MAGNETECH CORP	743051
MAGNETIC TECHNOLOGIES CORP	015354
MALL CORP	790210
MANAGEMENT ASSISTANCE INC LIQUIDATING TRUST /NY/	785852
MANAGEMENT TECHNOLOGIES INC	806586
MANATRON INC	798736
MANSION INDUSTRIES INC	062090
MARGAUX INC /DE/	709694
MARINA LIMITED PARTNERSHIP	803605
MARINE CORP /IL/	713188
MARKETING SYSTEMS OF AMERICA INC	739261
MARKITSTAR INC	756680
MARLTON TECHNOLOGIES INC	096988
MARROW TECH INC	829549
MASCOTT CORP	850338
MASS MICROSYSTEMS INC	855610
MATTERHORN COMMODITY PARTNERS	350198
MATTERHORN COMMODITY PARTNERS II	728296
MAVERICK RESTAURANT CORP	727089
MAXON INDUSTRIES INC	063373
MCCOMBS INCOME PARTNERS LTD	750500
MCCORMICK COMMODITY FUND II LIMITED PARTNERSHIP	702405
MCDERMOTT INC	225615
MCKEE INCOME REALTY TRUST	064127
MCNEIL PENSION INVESTMENT FUND LTD	357270
MCNEIL REAL ESTATE FUND IV LTD	064312
MCNEIL REAL ESTATE FUND V LTD	064310
MEASUREMENT SPECIALTIES INC	778734
MEDCO GROUP INC	064500
MEDCROSS INC	849145
MEDIA LOGIC INC	815185
MEDICAL DEVICES INC	064578
MEDICAL DYNAMICS INC	216540
MEDICAL GRAPHICS CORP /MN/	352862
MEDICAL INNOVATIONS INC /DE/	835906
MEDICAL STERILIZATION INC	723592
MEGADATA CORP	225626
MEMBERS SERVICE CORP	813342
MEMRY CORP	720896
MERET INC /OH/	714282
MERIDIAN DIAGNOSTICS INC	794172
MERLIN MINING CO	789949
MERRIMACK BANCORP INC	810737
MESABI TRUST	065172
MET CAPITAL CORPORATION	814065
METAL RESOURCES CORP	812168
METALCLAD CORP	013547
METALLURGICAL INDUSTRIES INC	065231
METRO BANCSHARES INC	837602
METRO CABLE CORP	353601
METRO SELF STORAGE LTD PARTNERSHIP I	277143
METRO TEL CORP	065312
METROBANK FINANCIAL GRDUP INC	813896
MHP MACHINES INC	743365
MICHIGAN FINANCIAL CORP	065637
MICRO GENERAL CORP	067383
MICRO HEALTHSYSTEMS INC	795965
MICRO IMAGING SYSTEMS INC	800267
MICROENERGY INC	740622
MICRON PRODUCTS INC	804334
MICROPAC INDUSTRIES INC	065759
MICROWAVE FILTER CO INC /NY	716688
MICROWAVE LABORATORIES INC	798289
MID AM INC	357066
MID ATLANTIC MEDICAL SERVICES INC	805037
MID STATE RACEWAY INC	065914
MIDWESCO FILTER RESOURCES INC	857135
MILASTAR CORP	066544
MILE HIGH KENNEL CLUB	066244
MILLS JENNINGS CO	075136
MIMBRES VALLEY FARMERS ASSOC INC	781689
MIRACLE RECREATION EQUIPMENT CO	066827
MIRAMAR RESOURCES INC	831246
MISSION BAY SUPER 8 LTD	803868
MISSION VALLEY COMFORT SUITES LTD	810661
MISSOURI RESEARCH LABORATORIES INC	066965
MITEK SYSTEMS INC	807863
MIZLOU COMMUNICATIONS CO INC	736458
MLL EQUIPMENT INVESTORS I	353940
MLL EQUIPMENT INVESTORS II	700731
MOBILE AMERICA CORP	067199
MOD U KRAF HOMES INC	067251
MODERN CONTROLS INC	067279
MOMED HOLDING CO	315845
MONARCH AVALON INC	202685
MONITEK TECHNOLOGIES INC	814180
MONOCLONAL ANTIBODIES INC /DE/	353569
MOORES LANE PROPERTIES LTD	790609
MORGAN TREND FUND	792934
MOUNTAINEER BANKSHARES OF W VA INC	722202
MOVIE SUPERSTORE INC /AZ/	855110
MOYCO INDUSTRIES INC	200533
MSI ELECTRONICS INC	354807
MULTIVEST CORP	718430
MULTIVEST REAL ESTATE FUND LTD SERIES I	068837
MULTIVEST REAL ESTATE FUND LTD SERIES II	068838
MULTIVEST REAL ESTATE FUND LTD SERIES VI	068836
MULTNOMAH KENNEL CLUB	068851
MUSTANG COMPANIES INC	352798
MUTUAL BENEFIT COMMERCIAL PROPERTIES INC	766828
MUTUAL BENEFIT MORTGAGE INVESTORS 1985	760994
MUTUAL BENEFIT SECURED MORTGAGE INVESTORS	715151
MYO TECH CORP	830991
NASHVILLE LAND FUND LTD	793935
NASHVILLE PARKVIEW PARTNERS	357319
NATIONAL BANC OF COMMERCE CO	713078
NATIONAL BANCORP OF ALASKA INC	705358
NATIONAL CITY BANCORPORATION	069968
NATIONAL COMMERCE BANCORPORATION / TN/	101844
NATIONAL ENVIRONMENTAL CONTROLS INC	070083
NATIONAL HOUSING PARTNERSHIP REALTY FUND TWO	762859
NATIONAL IMAGING INC	811864
NATIONAL INSURANCE GROUP /CA/	815555
NATIONAL LAMPOON INC	100348
NATIONAL PENN BANCSHARES INC	700733
NATIONAL PROPERTIES CORP	070453
NATIONAL REAL ESTATE LTD PARTNERSHIP III	700580
NATIONAL REAL ESTATE LP INCOME PROP	759857
NATIONAL REAL ESTATE LP INCOME PROP II	795306
NATIONAL REAL ESTATE LTD PARTNERSHIP IV	714314
NATIONAL REAL ESTATE LTD PARTNERSHIP VI	785703
NATIONAL TECHTEAM INC /DE/	805054
NATURAL ALTERNATIVES INTERNATIONAL INC	787253
NBSC CORP	707602
NDL PRODUCTS INC /DE/	814930
NELSON L B CORP	070998
NEOGEN CORP	711377
NEOLENS INC	780068
NESB CORP	810949
NETWORKS ELECTRONIC CORP	071106
NEUROMEDICAL TECHNOLOGIES INC	845605
NEW ENGLAND BANCORP INC	071282
NEW GENERATION FOODS INC	315958
NEW HAMPSHIRE SAVINGS BANK CORP	710984
NEW PARAHO CORP	216810
NEW RETAIL CONCEPTS INC	797659
NEW SKY COMMUNICATIONS INC	771999
NEW YORK BANCORP INC	820068
NEW YORK TESTING LABORATORIES INC	071600
NEWBERRY BANCORP INC	811211
NEWMIL BANCORP INC	807524
NEWORLD BANCORP INC	801771
NEWS COMMUNICATIONS INC	794487
NFS FINANCIAL CORP	794103
NIAGARA CORP	710976
NOBILITY HOMES INC	072205
NOBLE ROMANS INC	709005

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
NON INVASIVE MONITORING SYSTEMS INC / FL/	720762
NOONEY REAL PROPERTY INVESTORS LP	275829
NORMANDY OIL & GAS CO INC	754012
NORTH AMERICAN NATIONAL CORP	072514
NORTH CAROLINA RAILROAD CO	813794
NORTH COAST ENERGY INC / DE/	839950
NORTH DALLAS PARTNERS	704216
NORTH EAST INSURANCE CO	352182
NORTHLAND CABLE PROPERTIES FIVE LTD PARTNERSHIP	778730
NORTHLAND CABLE PROPERTIES FOUR LTD PARTNERSHIP	760729
NORWEST MORTGAGE CONVENTIONAL 1 INC	731182
NORWEST MORTGAGE INSURED 1 INC	731767
NOSTALGIA NETWORK INC	747178
NOVEN PHARMACEUTICALS INC	815836
NOXSO CORP	314307
NRP INC	778426
NRUC CORP	277028
NTS PROPERTIES VII LTD	814222
NUCLEAR RESEARCH CORP	073296
NUMERICA FINANCIAL CORP	788603
NURSECARE HEALTH CENTERS INC	073354
NYCOM INFORMATION SERVICES INC	793526
NYTEST ENVIRONMENTAL INC	766823
OCCUPATIONAL MEDICAL CORP OF AMERICA INC	754438
OCEAN BIO CHEM INC	350737
OCEANIC EXPLORATION CO	073759
ODYSSEY ENTERTAINMENT LTD	771262
OFFICE PRODUCTS OF AMERICA INC	851631
OFFICIAL INDUSTRIES INC	073881
OHIO BANCORP	357149
OI CORP	073773
OIS OPTICAL IMAGING SYSTEMS INC	753601
OLD NATIONAL BANCORP	707179
OMEGA FINANCIAL CORP /PA/	705671
OMNI EXPLORATION INC	353153
OMNI FILMS INTERNATIONAL INC	816348
OMNITEC INC	838672
OPPENHEIMER LANDMARK PROPERTIES	205741
OPTICAL SPECIALTIES INC	706766
OPUS COMPUTER PRODUCTS INC	023080
ORBIT GAS CO	074816
ORGANOGENESIS INC	779733
ORION FINANCIAL LTD	711210
ORMAND INDUSTRIES INC	074954
ORS CORP /OK/	310316
OVONIC SYNTHETIC MATERIALS CO INC	784571
OXFORD CONSOLIDATED INC	766585
OZITE CORP	091755
PACER TECHNOLOGY	275866
PACIFIC PARTNERS REAL ESTATE LEASING PART 1985	766869
PAINE WEBBER CMJ PROPERTIES LP	711393
PAINE WEBBER INCOME PROPERTIES FIVE LTD	714211
PAINE WEBBER INCOME PROPERTIES FOUR LTD	354884
PAINEWEBBER GEODYNE ENERGY INCOME LP I-F	811031
PAINEWEBBER GEODYNE ENERGY INCOME LP I-B	780200
PAINEWEBBER GEODYNE ENERGY INCOME LP I-D	799178
PAINEWEBBER GEODYNE ENERGY INCOME LP I-C	791067
PAINEWEBBER INCOME PROPERTIES LTD PARTNERSHIP	277641
PAINEWEBBER INCOME PROPERTIES THREE LP	318016
PALMETTO REAL ESTATE TRUST	075894
PALO ALTO FUTURES FUND	704475
PANHANDLE ROYALTY CO	315131
PANTHEON INDUSTRIES INC	783733
PARALLEL PETROLEUM CORP /DE/	750561
PARAMETRIC TECHNOLOGY CORP	857005
PARKER & PARSLEY 83-A LTD	743456
PARKER & PARSLEY 85-A LTD	791230
PARKER & PARSLEY 85-B LTD	791231
PARKER & PARSLEY 86-A LTD	789789
PARKER & PARSLEY 86-B LTD	789790
PARKER & PARSLEY PRODUCING PROPERTIES 87-B LTD	809017
PARLIAMENT HILL CORP	317951
PARTNERS HEALTH PLAN OF PENNSYLVANIA INC	801335
PARTNERS OIL CO	318894
PAY FONE SYSTEMS INC	076726
PC QUOTE INC	745774
PEACHES ENTERTAINMENT CORP	709197
PENOBSCOT SHOE CO	077326
PENTA SYSTEMS INTERNATIONAL INC	714956
PERIPHERAL SYSTEMS INC	768153
PERMIAN BASIN ROYALTY TRUST	319654
PERSONAL COMPUTER PRODUCTS INC	725384
PERSONAL DIAGNOSTICS INC	351835
PETROMINERALS CORP	077952
PHOENIX FARMLAND INVESTORS LTD PARTNERSHIP I	726573
PHOTOCOMM INC	746255
PHOTOGRAPHIC SCIENCES CORP	319379
PHOTON TECHNOLOGY INTERNATIONAL INC	808338
PIEDMONT BANKGROUP INC	216870
PIEDMONT MINING CO INC	819517
PIEMONTE FOODS INC	813765
PIKEVILLE NATIONAL CORP	350852
PILGRIM INTERGROUP INVESTMENT CORP	078563
PIONEER SYSTEMS INC	078751
PIONEER WESTERN PROPERTIES INCOME FUND LP	799320
PISMO COAST VILLAGE INC	216877
PITTSBURGH & WEST VIRGINIA RAILROAD	078638
PLASTIGONE TECHNOLOGIES INC	835494
PLAZA COMMERCE BANCORP	353000
PLM TRANS EQUIP PARTNERS IXA 1986 INCOME FUND	778791
PLM TRANS EQUIP PARTNERS IXC 1986 INCOME FUND	778793
PLM TRANS EQUIP PARTNERS IXB 1986 INCOME FUND	778792
PLM TRANS EQUIP PARTNERS VIIC 1985 INCOME FUND	754714
PLM TRANS EQUIP PARTNERS VIIB 1985 INCOME FUND	754712
PMC POWDERED METALS CORP	079242
POCI INC	777623
POCONO HOTELS CORP	079274
POLARIS AIRCRAFT INVESTORS I	700763
POLARIS AIRCRAFT INVESTORS II-C	717295
POLARIS AIRCRAFT INVESTORS II-D	746568
POLLUTION RESEARCH & CONTROL CORP / CA/	763950
POSSIS CORP	079677
PRECISION RESOURCES INC /NJ/	102866
PREFERRED HEALTH CARE LTD /DE/	723532
PREFERRED HOMECARE OF AMERICA INC	849804
PREMIER RESOURCES LTD	109410
PRESSTEK INC /DE/	846878
PRIMAGES INC	716712
PRIME TELECOMMUNICATIONS CORP	852124
PRINCETON DIAGNOSTIC LABORATORIES OF AMERICA INC	811421
PROFESSIONAL CARE INC	275503
PROFIT TECHNOLOGY INC	729232
PROGRESSIVE BANK INC	797507
PROPERTY RESOURCES EQUITY TRUST	765195
PROPERTY RESOURCES FUND IX	796981
PROPERTY SECURED INVESTMENTS INC	790410
PROVENA FOODS INC	814139
PROVIDENT BANCORP INC	316770
PRUDENTIAL BACHE WATSON & TAYLOR LTD I	708320
PS BUSINESS PARKS LTD	353535
PS CAROLINAS BALANCED FUND LTD	724536
PUBLIC STORAGE PARTNERS II LTD	275915
PUBLIC STORAGE PROPERTIES LTD	202953
PURE TECH INTERNATIONAL INC	809646
PURECYCLE CORP	276720
PUROFLOW INC	100581
PYRAMID OIL CO	081318
Q MED INC	729213
QMC TECHNOLOGIES INC	809800
QSR INC	707361
QSR INCOME PROPERTIES II LTD	810274
QUADRAX CORP /DE/	814273
QUALITY SYSTEMS INC	708818
QUESTA OIL & GAS CO /CO/	352511
RABBIT SOFTWARE CORP /PA /	804121
RADIANT TECHNOLOGY CORP	310235
RADVA CORP	792984
RADYNE CORP	718573
RAGEN CORP	081768
RAINBOW TECHNOLOGIES INC	819706
RAL YIELD EQUITIES II LTD PARTNERSHIP	793035
RAL YIELD PLUS EQUITIES III LTD PARTNERSHIP	768825
RAMTEK CORP	277317
RANDERS GROUP INC	830104
RANDOM ACCESS INC	786588
RAVENS METAL PRODUCTS INC	082172
RAWSON KOENIG INC	725014
RAYCOMM TRANSWORLD INDUSTRIES INC	082213
RAYDON TECHNOLOGY CORP	082214
RCM TECHNOLOGIES INC	700841
REAL ESTATE ASSOCIATES LTD III	318986
REAL ESTATE ASSOCIATES LTD IV	355573
REAL ESTATE ASSOCIATES LTD V	702644
REAL ESTATE EQUITIES CORP	082363
REAL ESTATE FUND INVESTMENT TRUST	311157
REALMARK PROPERTY INVESTORS LIMITED PARTNERSHIP I	312982
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP II	704165
REALTY SOUTHWEST FUND II LTD	721520
REALTY SOUTHWEST FUND III LTD	754545
REDWOOD MORTGAGE INVESTORS VI	811582
REGENCY AFFILIATES INC	099249
REGIONAL BANCORP INC	810746
REICH & TANG L P	612488
RENTRAK CORP	800456
REPUBLIC CAPITAL GROUP INC	820200
RESEARCH INC	216983
RESERVE INDUSTRIES CORP /NM/	083347
RESERVE PETROLEUM CO	083350
RESOURCE FUND	230482
RESPONSE TECHNOLOGIES INC	763098
REVOTEK INC	822374
RHODES M H INC	083680
RIBI IMMUNOCHEM RESEARCH INC	352331
RIC 14 LTD	356489
RIC 79 LTD	310797
RIC 81 LTD	319180
RIO GRANDE INC /DE/	352964
RIPLEY CO INC	084091
RIVER FOREST BANCORP INC	051939
RIVERCHASE INVESTORS I LTD	764031
RMS INTERNATIONAL INC	084262
ROBERT MARK INC	796542
ROBERTSON COMPANIES INC	084415
ROCKY MOUNT UNDERGARMENT CO INC	084655
ROCKY MOUNTAIN MINERALS INC	312583
ROSS COSMETICS DISTRIBUTION CENTERS INC	737203
ROSS INDUSTRIES INC /VA/	754365
ROYAL GOLD INC /DE/	085535
RTI INC	081699
RUBICON CORP	777479
RYKA INC	828750
S&M CO	217058
S&T BANCORP INC	719220
SABINE ROYALTY TRUST	710752
SAFETY RAILWAY SERVICE CORP	314865
SAFEWAY AUSTRALIA HOLDINGS INC	802842
SAGE ANALYTICS INTERNATIONAL INC	796080
SAGE DRILLING CO INC	350019
SAGE LABORATORIES INC	086166
SAINT LOUIS RAINTREE PARTNERS LTD	310157
SALVATORI OPHTHALMICS INC	823187
SAMNA CORP /GA/	812193
SAN JUAN FIBERGLASS POOLS INC	813609
SANDATA INC	755465
SANITAS INC	086727
SANTA FE FINANCIAL CORP	086759
SAZTEC INTERNATIONAL INC	801354
SBE INC	087050
SCHIELD MANAGEMENT CO	765815
SCIENCE ACCESSORIES CORP /DE/	803498
SCIENCE DYNAMICS CORP	350644
SCIENTIFIC MEASUREMENT SYSTEMS INC/ TX	087814
SCIENTIFIC TECHNOLOGIES INC	708250
SCIOTO DOWNS INC	087836
SCORE BOARD INC	813013
SCRIPT SYSTEMS INC	750485
SEACOAST BANKING CORP OF FLORIDA	730708
SEAGO GROUP INC	063516
SEAL FLEET INC	110027
SEAPORT CORP	088217
SEATTLE FILMWORKS INC	791050
SECOM GENERAL CORP	790375

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
SECOND BANCORP INC	803112
SECTOR ASSOCIATES LTD	785081
SECURITY ENVIRONMENTAL SYSTEMS INC	842399
SECURITY FIRST REAL ESTATE INVESTMENT TRUST	086539
SECURITY INVESTORS LTD II	722782
SECURITY SPRING & BOE INVESTORS LTD 82	704430
SELVAC CORP	726808
SEMICON INC	088922
SENSOR CONTROL CORP	806166
SERVOTRONICS INC /DE/	089140
SGI INTERNATIONAL	737855
SHAREDATA INC	700885
SHEARSON EQUIPMENT INVESTORS II	352849
SHEARSON MURRAY REAL ESTATE FUND LTD	311781
SHEARSON MURRAY REAL ESTATE FUND V LTD	320341
SHEARSON MURRAY REAL ESTATE FUND VI LTD	354106
SHELLY ASSOCIATES INC	790840
SHELTER PROPERTIES I LTD PARTNERSHIP	316220
SHERWOOD CORP	089807
SHOP TELEVISION NETWORK INC	814693
SHORT C A INTERNATIONAL INC	354564
SHURGARD INCOME PROPERTIES II	353812
SHURGARD MINI STORAGE LTD PARTNERSHIP I	313297
SIERRA REAL ESTATE EQUITY TRUST 82	315138
SIGNATURE X LTD	813826
SILVAR LISCO	708367
SIMONE L J INC	813424
SIXX HOLDINGS INC	832407
SKOLNIKS INC	821124
SKYLINE CHILI INC	803497
SMI/USA INC	095111
SOFTWARE DEVELOPERS CO INC/DE/	840824
SOI INDUSTRIES INC	814920
SOLITEC INC	729971
SOURCE VENTURE CAPITAL INC	757786
SOUTH CAROLINA FEDERAL CORP	806634
SOUTHEAST ACQUISITIONS I L P	810994
SOUTHERN HOSPITALITY CORP	052552
SOUTHERN MINERAL CORP	092223
SOUTHERN SECURITY LIFE INSURANCE CO	109747
SOUTHERN STARR BROADCASTING GROUP INC /DE/	810627
SOUTHLAND COMMUNICATIONS INC /CA/	814084
SOUTHWEST NATIONAL CORP	092440
SOUTHWEST OIL & GAS INCOME FUND VII A LP	809028
SOUTHWEST ROYALTIES INC INCOME FUND V	782149
SOUTHWEST ROYALTIES INC INCOME FUND VI	796489
SOUTHWEST ROYALTIES INST INCOME FUND VII-B LP	810117
SPECIALTY RETAIL SERVICES INC	824768
SPECTEX INDUSTRIES INC	092739
SPECTRAN CORP	718487
SPECTRUM INFORMATION TECHNOLOGIES INC	812551
SPEED O PRINT BUSINESS MACHINES CORP /DE	771504
SPEIZMAN INDUSTRIES INC /DE/	092827
SPINNAKER SOFTWARE CORP/MN	801343
SPORTING LIFE INC	727503
SPORTS TECH INTERNATIONAL INC	850091
ST LOUIS STEEL CASTING INC	086293
STANDARD METALS CORP	093383
STAODYN INC	203265
STAR CLASSICS INC	806842
STARTEL CORP	725572
STATE FINANCIAL SERVICES CORP	745614
STATE FIRST FINANCIAL CORP	766842
STATEWIDE BANCORP	700722
STERLING ASSET & INCOME FUND L P A-1	814330
STERLING FUEL RESOURCES DRILLING FUND 1983-1	721536
STERLING FUEL RESOURCES DRILLING FUND 1983-2	722439
STERLING FUEL RESOURCES DRILLING FUND 1984-2	748659
STERLING MEDICAL SYSTEMS INC /UT/	819221
STRIKER PETROLEUM CORP	352944
SUFFIELD FINANCIAL CORP	802763
SUMMA MEDICAL CORP	310438
SUMMCORP	352952
SUMMIT BANCORPORATION	200754
SUMMIT TECHNOLOGY INC	813902
SUNGROWTH PROPERTY INVESTORS LTD	727165
SUNSHINE FIFTY INC	095477
SUNSTAR FOODS INC	095490
SUNSTYLE CORP	839219
SUPER 8 ECONOMY LODGING IV LTD	700864
SUPER 8 MOTELS II LTD	316554
SUPER 8 MOTELS III LTD	317859
SUPER 8 MOTELS LTD	311174
SUPER FUND LIMITED PARTNERSHIP	612796
SUPERCOMPUTING SOLUTIONS INC	824600
SURETY CAPITAL CORP /DE/	784932
SUSQUEHANNA BANCSHARES INC	700863
SUTRON CORP	728331
SWIFT ENERGY INCOME PARTNERS 1986-C LTD	811957
SWIFT ENERGY INCOME PARTNERS 1986-D LTD	814414
SWIFT ENERGY INCOME PARTNERS 1987-A LTD	820155
SWISS CHALET INC	095898
SYNOVUS FINANCIAL CORP	018349
SYNTRO CORP /DE/	794627
SYSTEMS EQUIPMENT CORP	812156
TAYLOR DEVICES INC	096536
TCC EQUIPMENT INCOME FUND	820083
TCS ENTERPRISES INC	733729
TECH OPS SEVCON INC	825411
TECHDYNE INC	764039
TECHKNITS INC	814081
TECHNALYSIS CORP	096677
TECHNE CORP /MN/	842023
TECHNICAL COATINGS INC	755113
TECHNICAL COMMUNICATIONS CORP	096699
TECHNOLOGY FUNDING PARTNERS I	744964
TECHNOLOGY FUNDING PARTNERS II	772001
TECHNOLOGY GENERAL CORP	768914
TECHNOLOGY MARKETING INC	351115
TECHNOLOGY RESEARCH CORP	741556
TEL OFFSHORE TRUST	097148
TELE OPTICS INC	813565
TELECONCEPTS CORP	048107
TELEQUEST INC	789754
TELEVISION TECHNOLOGY CORP	700600
TELTONE CORP	096890
TELTRONICS INC	097052
TEMPEST TECHNOLOGIES INC	821126
TENET INFORMATION SERVICES INC	845696
TERMIFLEX CORP	726431
TERMINAL APPLICATIONS GROUP INC	841075
TERRANO CORP	720481
TESCO AMERICAN INC	315981
TEXCEL INTERNATIONAL INC	729519
TEXLAND DRILLING PROGRAM 1982	701440
THERAGENICS CORP	796762
THERMAL EXPLORATION CO	097725
THERMODYNETICS INC	351902
THERMWOOD CORP	732240
THOMSON FINANCIAL FUTURES PARTNERS II	770327
THREE FIVE SYSTEMS INC	032272
TIDE WEST OIL CO	705453
TIMBERLINE SOFTWARE CORPORATION	314436
TIME ENERGY SYSTEMS INC	711307
TINSLEY LABORATORIES INC	098383
TLM CORP	096959
TM CENTURY INC	754590
TODAY HOME ENTERTAINMENT INC	798526
TOLTEC REAL ESTATE CORP	092522
TOP AIR MANUFACTURING INC	355469
TOP SOURCE INC	800055
TOREADOR ROYALTY CORP	098720
TOROTEL INC	098752
TOTAL ASSETS PROTECTION INC	741330
TOTAL RESEARCH CORP	803058
TRANS ATLANTIC VIDEO INC	847420
TRANSACT INTERNATIONAL INC	102701
TRANSCO REALTY TRUST	099235
TRANSFORM LOGIC CORP	788178
TRANSMATION INC	099302
TRANSTECTOR SYSTEMS INC	746630
TRAVELERS INCOME PROPERTIES II LTD PARTNERSHIP	731163
TRI R SYSTEMS CORP	832436
TRIANGLE HOME PRODUCTS INC/DE	099803
TRILLING MEDICAL TECHNOLOGIES INC	721176
TRUDY CORP	815098
TRUVEL CORP /CA/	823880
TSI INC /MT/	099506
TSR INC	098338
TSS LTD	848013
TUCKER LAND CO	100113
TVC IMAGE TECHNOLOGY INC	027030
TVI CORP	352079
TWAIN MARK BANCSHARES INC	100307
TWIN STAR PRODUCTIONS INC	847906
TWISTEE TREAT CORP	714256
TWO COUNT HOLDING CO	806631
ULTRAK INC	318259
UNICO INC /DE/	797564
UNICO INC /NM/	766794
UNIFAST INDUSTRIES INC	715803
UNIGENE LABORATORIES INC	352747
UNIMED INC	100759
UNITED CAROLINA BANCSHARES CORP	101090
UNITED COUNTIES BANCORPORATION	719623
UNITED FASHIONS INC	354199
UNITED GUARDIAN INC	101295
UNITED HERITAGE CORP	354567
UNITED MEDICORP INC	831480
UNITED NEW MEXICO FINANCIAL CORP	009664
UNITED SECURITY FINANCIAL CORP OF ILLINOIS	101499
UNITED SERVICES ADVISORS INC	754811
UNITED STATES ANTIMONY CORP	101538
UNITED TRUST INC /IL/	832480
UNITRONIX CORP	835270
UNITY HEALTHCARE HOLDING COMPANY INC	848092
UNIVERSAL DYNAMICS INC	081846
UNIVERSAL GUARANTY INVESTMENT CO	110619
UNIVERSAL LIFE HOLDING CORP	102043
UNIVERSAL MANUFACTURING CO	102049
UNIVERSAL VOLTRONICS CORP	102136
UNIVERSITY PATENTS INC	102196
UNIVERSITY REAL ESTATE INVESTORS-80	314086
UPTOWNER INNS INC	102267
US FACILITIES CORP	796065
US REALTY INCOME PARTNERS LP	822819
US TRANSPORTATION SYSTEMS INC	779954
USA WASTE SERVICES INC	823768
UTAH RESOURCES INTERNATIONAL INC	353783
VAC TEC SYSTEMS INC	317280
VACATION PUBLICATIONS INC	799068
VACU DRY CO	102588
VADER GROUP INC	097196
VALENCIA PARK ASSOCIATES LTD	704215
VALLEY CAPITAL CORP	701937
VANZETTI SYSTEMS INC	718432
VAUGHN COMMUNICATIONS INC	806095
VECTOR AEROMOTIVE CORP	830664
VENETIAN PARK ASSOCIATES LTD	745345
VENTURA MOTION PICTURE GROUP LTD	854937
VERMONT RESEARCH CORP /VT/	319922
VERSUS TECHNOLOGY INC	842636
VESTAR INC	799229
VICOM INC	732412
VICON FIBER OPTICS CORP	718396
VICTOR TECHNOLOGIES INC	715261
VICTORIA BANKSHARES INC	103466
VICTORIA FINANCIAL CORP	720479
VIDEO JUKEBOX NETWORK INC	803266
VIDEO SUPERSTORES OF AMERICA INC	803167
VILLAGE GREEN BOOKSTORE INC	791731
VINEYARD OIL & GAS CO	777582
VIPONT ROYALTY INCOME FUND LTD	809873
VIRAGEN INC	353482
VISION SCIENCES INC	787922
VISTA ORGANIZATION LTD	725311
VIVIGEN INC	722580
VOGART CRAFTS CORP	103803
VTN CORP	103958
WALKER INTERNATIONAL INDUSTRIES INC	104224
WALKER TELECOMMUNICATIONS CORP	276341
WALSHIRE ASSURANCE COMPANY	818155
WARNER COMPUTER SYSTEMS INC	737300
WASATCH EDUCATION SYSTEMS CORP /UT/	837967
WASHINGTON BANCORPORATION	714396
WASTE RECOVERY INC	710118
WASTE TECHNOLOGY CORP	781902
WATERS INSTRUMENTS INC	104987
WATSON GENERAL PICTURES INC	817820
WEB PRESS CORP	105183
WEBSTER FINANCIAL CORP	801337
WEDDING INFORMATION NETWORK INC	818812
WELLESLEY LEASE INCOME LTD PARTNERSHIP A	720276

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-07

Registrant	CIK No.
WELLESLEY LEASE INCOME LTD PARTNERSHIP B	720277
WELLESLEY LEASE INCOME LTD PARTNERSHIP C	751235
WELLESLEY LEASE INCOME LTD PARTNERSHIP III-C	760382
WELLESLEY LEASE INCOME LTD PARTNERSHIP III-D	760386
WELLESLEY LEASE INCOME LTD PARTNERSHIP II-B	739710
WELLESLEY LEASE INCOME LTD PARTNERSHIP III-A	760371
WELLESLEY LEASE INCOME LTD PARTNERSHIP III-B	760375
WELLESLEY LEASE INCOME LTD PARTNERSHIP II-C	720307
WELLESLEY LEASE INCOME LTD PARTNERSHIP II-A	739709
WELLINGTON HALL LTD	105567
WESTAR CORP	726803
WESTERBEKE CORP	796502
WESTERN ACCEPTANCE CORP /NV/	823386
WESTERN CAPITAL INVESTMENT CORP	716720
WESTERN FINANCIAL CORP /KS	732781
WESTERN FUTURES FUND	812025
WESTERN HOST MONTEREY PARTNERS	311158
WESTERN MICROWAVE INC	108176
WHITE DAVID INC	062414
WILLIAM & CLARISSA INC	852450
WILLIAMS CONTROLS INC	854860
WILSON BROTHERS	107489
WILTEK INC	107559
WINDERMERE LTD	758765
WINDSOR PARK PROPERTIES 2	755500
WINDSOR PARK PROPERTIES LTD	725418
WINSTON RESOURCES INC	815274
WINTER SPORTS INC /NEW	803003
WINTHROP PARTNERS 79	277886
WINTHROP PARTNERS 81	351147
WISMER MARTIN INC	791260
WOLF HOWARD B INC	108018
WOODBINE PETROLEUM INC	319646
WORLCO DATA SYSTEMS INC	726991
WORLCO INC	106383
WORLD LIFE & HEALTH INSURANCE CO OF PENNSYLVANIA	108418
WORLDWIDE COMPUTER SERVICES INC /NJ/	790423
XETA CORP	742550
XPLOR CORP	776820
XSCRIBE CORP /CA/	814427
XSIRIUS INC	792381
XSIRIUS SUPERCONDUCTIVITY INC /DE/	845753
Y&A GROUP INC	813359
YORK FINANCIAL CORP	777876
YOUNGWOOD ELECTRONIC METALS INC	109088
YUBA WESTGOLD INC	109110
ZENTEC CORP	320141
ZEOS INTERNATIONAL LTD	854460
ZG ENERGY CORP	810353
ZONIC CORP	320515

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-08

Registrant	CIK No.
ACTION PRODUCTS INC	795887
ACTION PRODUCTS INTERNATIONAL INC	747435
ACTV INC /DE/	854152
ACUNET CORPORATION	816239
AD RAK HOLDINGS INC	806586
ADAMS JOHN LIFE CORP	773727
ADCOM SYSTEMS INC	741012
ADM TRONICS UNLIMITED INC/DE	849401
ADMAR GROUP INC	779438
ADVANCE DISPLAY TECHNOLOGIES INC	770034
ADVANCED CELLULAR TECHNOLOGY INC	726747
ADVANCED ENVIRONMENTAL SYSTEMS INC	796960
ADVANCED MEDICAL PRODUCTS INC	807732
ADVANCED MONITORING SYSTEMS INC	315898
ADVANCED NMR SYSTEMS INC	722567
ADVANCED TOBACCO PRODUCTS INC	737717
ADVANCED VIRAL RESEARCH CORP	786623
AETNA REAL ESTATE ASSOCIATES L P	785860
AGINCOURT VENTURES LTD	797325
AGRI DYNAMICS INC	002817
AGRIBIOTECH INC /DE/	818071
AGRISTAR INC	842888
AKIRA CORP	815107
ALASKA PRECIOUS METALS LTD	817642
ALCO INTERNATIONAL GROUP INC	701722
ALD INC	003392
ALFA LEISURE INC	014811
ALFACELL CORP	708717
ALGOREX CORP	003535
ALLEGHENY GENERATING CO	774459
ALLIANCE WELL SERVICE INC	745452
ALLSTAR VIDEO INC	778595
ALPHA 1 BIOMEDICALS INC /DE/	707511
ALPHA PAY PHONES LTD III	806767
ALPHA SOLARCO INC	312257
ALPINE INTERNATIONAL CORP	004165
ALTEX INDUSTRIES INC	775057
AM COMMUNICATIONS INC	318580
AMACAN RESOURCES CORP	004317
AMALGAMATED INVESTMENT CORP	774448
AMBASSADOR REAL ESTATE INVESTORS LP	756709
AMBULATORY MEDICAL CARE INC	724126
AMERALIA INC	811419
AMERICA FIRST FINANCIAL FUND 1987-A LP	818789
AMERICAN BIONETICS INC	741443
AMERICAN CLAIMS EVALUATION INC	774517
AMERICAN COMPLETION PROGRAM 1983-3	743458
AMERICAN CONSOLIDATED GOLD CORP	812407
AMERICAN CONSUMERS INC	004811
AMERICAN CONTINENTAL CORP /OH/	314474
AMERICAN CORPORATE INVESTORS INC	811780
AMERICAN CREDIT OPTICAL INC /DE/	819913
AMERICAN CYTOGENETICS INC	004833
AMERICAN EAGLE RESOURCES INC	731297
AMERICAN EDUCATIONAL PRODUCTS INC	790069
AMERICAN ELECTROMEDICS CORP	352281
AMERICAN ENTERPRISES INC	315428
AMERICAN FINANCIAL ENTERPRISES INC / CT/	319157
AMERICAN GEOLOGICAL ENTERPRISES INC	005117
AMERICAN INCOME 1 LTD PARTNERSHIP	742101
AMERICAN LIBERTY FINANCIAL CORP	005366
AMERICAN MEDICAL ALERT CORP	700721
AMERICAN MORTGAGE & INVESTMENT CO	005486
AMERICAN RESOURCES GROUP INC/CO	225255
AMERICAN SPORTS ADVISORS INC	350190
AMERICAN SURGERY CENTERS CORP	318024
AMERICAN UNDERWRITERS GROUP INC	005951
AMERICAN WATER RESOURCES INC	080040
AMERIFAX INC /DE/	837993
AMERIMARK CORP	799898
AMETECH INC	001969
AN CON GENETICS INC	719135
ANDERSON STOKES INC	007659
ANGHEL LABORATORIES INC	706081
ANGIO MEDICAL CORP /DE/	811317
ANNANDALE CORP	318499
ANVIL INVESTOR SERVICES INC	742492
AORTECH INC	716399
APACHE PETROLEUM PARTNERSHIP 1985 LP	769529
API ENTERPRISES INC	003197
APOGEE ROBOTICS INC	724915
APOGEE TECHNOLOGY INC	823876
APPLIED DNA SYSTEMS INC	716778
APPLIED GENETIC VENTURES INC	761034
APPLIED MEDICAL DEVICES INC	312258
APPLIED MICROBIOLOGY INC	744962
APPLIED RESEARCH CORP	794876
APPLIED SPECTRUM TECHNOLOGIES INC	705868
AQUANAUTICS CORP	352991
AQUASCIENCES INTERNATIONAL INC	762831
ARIL GROUP INC	765383
ARISTA INVESTORS CORP	799902
ARLINGTON REALTY INVESTORS	085942
ARMORED STORAGE INCOME INVESTORS 2	788078
ARRHYTHMIA RESEARCH TECHNOLOGY INC /DE/	819689
ARROW FINANCIAL CORP	717536
ARTECH RECOVERY SYSTEMS INC	804237
ARVAL HOLDINGS INC	812704
ASDAR GROUP INC	746631
ASHA CORP	789547
ASPEN EXPLORATION CORP	319458
ASPEN LEAF INC	814725
ASSET GROWTH PARTNERS INC	799241
ASSOCIATED PLANNERS REALTY GROWTH FUND	814077
ASTRO STREAM CORP	782145
ATLANTIC FUNDING LTD	789876
ATRATECH INC	825830
ATS MONEY SYSTEMS INC	828509
ATTENTION MEDICAL CO INC	781272
AUDRE RECOGNITION SYSTEMS INC	811206
AUNTEL CAPITAL INC	814548
AURIC METALS CORP	008497
AUTOFINANCE GROUP INC /CA/	357078
AUTOMEDIX SCIENCES INC	754568
AVESIS INC	795574
AVOCA INC	316537
AW COMPUTER SYSTEMS INC	319037
AZATECH INC	791012
AZTECH INTERNATIONAL LTD	225087
BAGDAD CHASE INC	009128
BALA CYNWYD CORP	052813
BALLISTIC RECOVERY SYSTEMS INC	801907
BANCALABAMA INC	814575
BANCINSURANCE CORP	276400
BANK OF GONZALES HOLDING CO INC	718907
BANYAN INDUSTRIES INC	811232
BARRIE RICHARD FRAGRANCES INC	836937
BARRIER SCIENCE & TECHNOLOGY INC	732786
BASEBALL CARD SOCIETY INC	814925
BATH NATIONAL CORP	709335
BATON ROUGE BANCSHARES INC	716135
BAY AREA HOLDINGS INC	060798
BC COMMUNICATIONS INC	773430
BCI GEONETICS INC	806516
BEACON FINANCIAL INC	789092
BEAN CAROLYN PUBLISHING LTD	768260
BELMAC CORP /FL/	821818
BENNETT PETROLEUM CORP	011337
BERYLLIUM INTERNATIONAL CORP /UT/	315263
BETA PHASE INC /DE/	792183
BEVERLY NATIONAL CORP	742275
BEVIS INDUSTRIES INC /RI/	011929
BIG PINEY OIL & GAS CO	012078
BIG SKY USA INC	807526
BIO MONITOR INC	845032
BIO VASCULAR INC	780127
BIOANALOGICS INC /CA/	837487
BIOCHEM INTERNATIONAL INC	312833
BIOCONTROL TECHNOLOGY INC	225211
BIOENERGY NUTRIENTS INC	812788
BIOMECHANICS CORP OF AMERICA	856143
BIOPOOL INTERNATIONAL INC	830736
BIOPORE INC	838442
BIOSENSOR CORP	708282
BIOSONICS INC	352715
BIOSYNERGY INC	715912
BIOTECHNOLOGY DEVELOPMENT CORP	723889
BLACK DOME ENERGY CORP	316704
BLACK HAWK HOLDINGS INC /MN/	852426
BLOCKERS C A INC	820734
BLUE DIAMOND COAL CO	704870
BLYTH HOLDINGS INC	820736
BOGERT 1985-II LTD PARTNERSHIP	774196
BOGERT 1985-III LTD PARTNERSHIP	783332
BOGERT 1985-IV LTD PARTNERSHIP	787671
BOGERT 1986-IV LTD PARTNERSHIP	810626
BOLT TECHNOLOGY CORP	354855
BOMED MEDICAL MANUFACTURING LTD	719722
BOSTON FINANCIAL APARTMENTS ASSOCIATES LP	354626
BOULDER BREWING CO	721693
BRAINERD INTERNATIONAL INC	771249
BRIGHTON INFORMATION SYSTEMS CORP	773342
BRISTOL RESEARCH CORP	838436
BROAD NATIONAL BANCORPORATION	793890
BROADWAY FINANCIAL CORP	711206
BRODIE EXPLORATION CORP	014423
BSD MEDICAL CORP	350174
BSI HOLDINGS INC /VA/	788889
BUCK HILL FALLS CO /PA/	783283
BUDGET STORAGE ASSOCIATES I L P	788839
BUFFALO INC	788534
BUFFS N PUFFS LTD	350133
BUNTING INC	015368
BURST AGRITECH INC	314840
BUSINESS DEVELOPMENT CORP OF SOUTH CAROLINA	727730
BUTLER NATIONAL CORP	016847
C&K 1980 FUND A LTD	319878
C&K 1981 FUND B LTD	356288
CABLE TV FUND 11-D LTD	741124
CADEMA CORP	319851
CALCASIEU REAL ESTATE & OIL CO INC	362955
CALIFORNIA ENGELS MINING CO	016317
CALVIN EXPLORATION INC	317438
CAM DATA SYSTEMS INC	818834
CAMBRIDGE HOLDINGS LTD	712757
CAMELOT CORP	013033
CAMERON CAPITAL CORP	788891
CANADA CREEK RANCH ASSOCIATION INC	215352
CANANDAIGUA NATIONAL CORP	758458
CANTON INDUSTRIAL CORP	788738
CAPFILM INC	788845
CAPITAL BANCORPORATION INC	749529
CAPITAL INCOME PROPERTIES C LTD PARTNERSHIP	780348
CAPITAL RESERVE CORP	707674
CAPITOL RESOURCES INC	017377
CAPLAN CORP	725385
CAPROCK CORP	801310
CAPTAIN TONYS PIZZA INC /NY/	802523
CARDIAC RESUSCITATOR CORP	017482
CARDINAL TECHNOLOGIES INC	787428
CARDTEL INC	787974
CARE MED CENTERS INC	825381
CARMEL ENERGY INC	747681
CAS MEDICAL SYSTEMS INC	784579
CB&T FINANCIAL CORP	736475
CB&T INC	357130
CDX CORP	351129
CEASE FIRE CORP	800485
CEC INDUSTRIES CORP	054178
CEL SCI CORP	725383
CELCOR INC	745851
CELEBRITY RESORTS INC	831671
CELEREX CORP	795711
CELESTA CORP /CO/	813308
CELESTIAL VENTURES CORP	811638
CELLULAR PRODUCTS INC	718585
CENTER BANCORP INC	712771
CENTERSCOPE INC	776208
CENTRAC ASSOCIATES INC	814257
CENTRAL ILLINOIS FINANCIAL CORP	748898
CENTRAL REALTY INVESTORS INC	786714
CENTRUM INDUSTRIES INC	351127
CENTURION MINES CORP	836123
CENTURY LABORATORIES INC	018898
CENTURY PARK PICTURES CORP	728387
CENTURY PROPERTIES EQUITY PARTNERSHIP 72	018905
CERPROBE CORP	725258
CEZAR INDUSTRIES LTD	202198
CGS SCIENTIFIC CORP	019047
CHAD THERAPEUTICS INC	713482
CHAMPIONS SPORTS INC	771858
CHANNEL AMERICA LPTV HOLDINGS INC	833850
CHANTAL PHARMACEUTICAL CORP	721408
CHAPARRAL RESOURCES INC	019252
CHARTER GOLF INC	820774
CHARTWELL CABLE FUND INC	824808
CHASE GENERAL CORP	015357
CHECK EXPRESS INC	806439
CHEMEX PHARMACEUTICALS INC	316308
CHEMICAL DEPENDENCY HEALTHCARE INC / CA/	739717
CHEQUE ALERT INC	808153
CHESAPEAKE BIOLOGICAL LABORATORIES INC	788485
CHEUNG LABORATORIES INC	746847
CHILDRENS CREATIVE WORKSHOP LTD	785317
CHOICES ENTERTAINMENT CORP	822636
CHROMALUX CORP	802355
CHRONODYNAMICS LTD	826879
CIMARRON GRANDVIEW GROUP INC	043052
CIMMI INC	822984
CINEMA GROUP PARTNERS	351002
CIRCUIT RESEARCH LABS INC	725897
CISTRON BIOTECHNOLOGY INC	793725
CITADEL ASSET MANAGEMENT LTD	799097
CITI BANCSHARES INC	715981
CITINATIONAL DEVELOPMENT TRUST	020423
CIVIC BANCORP	747205
CLAJON CAPITAL INC	814603
CLAJON HOLDINGS L P	814604
CLARK MELVIN SECURITIES CORP /DE/	829586
CLAYTON SILVER MINES INC	020871
CLIFF ENGLE LTD /NY/	793586
CLIFTON INCOME FUND LTD PARTNERSHIP II	788089
CLINICAL TECHNOLOGIES ASSOCIATES INC	805326
CLUB DE SPORT INC	803573
CNL FINANCIAL CORP	021193
COASTAL STRATEGIES INCOME FUND A	792220
COASTAL STRATEGIES INCOME FUND B	792222
COASTLAND CORP OF FLORIDA	310285
CODERCARD INC	730380
COGNITIVE SYSTEMS INC	736371
COLORADO GOLD & SILVER INC	354699
COLUMBIA LEASE INCOME FUND II-D LP	769335
COLUMBIA LEASE INCOME FUND II-E LP	769336
COLUMBIAN OIL & GAS DRILLING PROGRAM 1985-B LP	763713
COLUMBIAN OIL & GAS DRILLING PROGRAM 1985-A LP	763711
COLUMBIAN OIL & GAS PRODUCTION PROGRAM 1-A LP	806118
COM VU CORP	714261
COMET ENTERTAINMENT INC	748856
COMM BANCORP INC	730030
COMMAND CREDIT CORP	856130
COMMODITY GROWTH FUND LTD	725582
COMMUNICATIONS GROUP INC	355627
COMMUNICATIONS WORLD INTERNATIONAL INC	727347
COMMUNITY BANCORP INC /PA/	838164
COMMUNITY BANCORP INC/NY	776848
COMMUNITY BANCSHARES INC /TN	763585
COMMUNITY FINANCIAL CORP	771970
COMMUNITY NATIONAL BANCORP INC	825539
COMP U CHECK INC	022788
COMPLIANCE RECYCLING INDUSTRIES INC	780151
COMPUFLIGHT INC	790272
COMPUSONICS CORP	724027
COMPUSONICS VIDEO CORP	777844
COMPUTER DEVICES INC /MD	311507
COMPUTER PLUS INC	826443
COMPUTER TRANSCEIVER SYSTEMS INC	023120
COMPUTERIZED BUYING NETWORK INC	730629
COMSOUTH BANKSHARES INC	823248
COMTEX SCIENTIFIC CORP	352980
COMTREX SYSTEMS CORP	789525
CONCORDE HOLDINGS CORP	215503
CONCOURSE CORP	729156
CONGRESS INDUSTRIES INC	791679
CONSOLIDATED ENERGY SYSTEMS INC /CA/	816787
CONSOLIDATED SILVER CORP	029779
CONSTELLATION BANCORP	753790
CONSTITUTION BANCORP OF NEW ENGLAND INC	809794
CONTINENTAL HERITAGE CORP	024055
CONTINENTAL INVESTMENT CORP /GA/	024077
CONTINENTAL RECREATION CORP	024152
CONTINENTAL VENTURES INC	775818
CONVEST INCOME PROGRAM VII-F	788994
CONWOOD CAPITAL CORP	780366
CONWOOD CO L P	780368
COPYMAT INC	799839
CORAL INC	809449
CORDATUM INC	713998
CORFACTS INC	791299
CORPORATE MANAGEMENT GROUP INC /FL/	741557
CORRECTIONS SERVICES INC	785562
COTTON PETROLEUM CORP 1979 OIL & GAS PROGRAM	025114
COUNTRYWIDE MORTGAGE TRUST 1987-II	816430
CPS CORPORATE PLANNING SERVICES INC	773383
CREATIVE COMPUTER APPLICATIONS INC	712815
CREATIVE LEARNING PRODUCTS INC	846814
CREATIVE TECHNOLOGIES CORP	785321
CRESCENT OIL & GAS CORP	717818
CROFF OIL CO	025743
CROWLEY FINANCIAL SERVICES INC	792455
CROWN NATIONAL VENTURES INC	788659
CRYOTECH INDUSTRIES INC	799365
CRYSTAL OIL 1981 EXPLORATION & DEVELOPMENT PROGRAM 351400	
CSA INCOME FUND LTD PARTNERSHIP I-B	764627
CSA INCOME FUND LTD PARTNERSHIP I-C	764628
CUC INTERNATIONAL INC /DE/	723612
CULINARY CAPITAL CORP	795267
CUYAHOGA LANDMARK INC	782980
CYANOTECH CORP	788408
CYBER DIGITAL INC	721295
CYTRX CORP	799698
DAINE INDUSTRIES INC	824845
DALTEX MEDICAL SCIENCES INC	742686
DAMSON 1984-85 INST OIL & GAS INCOME FUND SERIES	789121
DATA DIMENSIONS INC	026990
DATA DISPLAY CORP	796513
DATA LEASE FINANCIAL CORP	027011
DATA NATIONAL CORP	760462
DATA SYSTEMS INC OREGON	027053
DATATAB INC	027099
DATAVISION INC /DE/	027109
DAVIN COMPUTER CORP /DE/	795803
DAVIN ENTERPRISES INC	815017
DCC COMPACT CLASSICS INC	809932
DECISION SYSTEMS INC	027564
DEFAULT PROOF CREDIT CARD SYSTEM INC /FL/	803260
DEL PAINT CORP	786767
DELCOTT COMMODITY PARTNERS	716833
DELTA COMPUTEC INC	776336
DELTA MANAGEMENT SYSTEMS INC	731136
DELTA PETROLEUM CORP/CO	821483
DELTA RENTAL SYSTEMS INC	758328
DENCOR ENERGY COST CONTROLS INC	312066
DENNING MOBILE ROBOTICS INC	720505
DENPAC CORP	754066
DETONICS SMALL ARMS LTD	351397
DEUCALION RESEARCH INC	820295
DI AN CONTROLS INC	028613
DIAGNON CORP	719711
DIAGNOSTIC MEDICAL INSTRUMENTS INC/NY	794147
DIAGNOSTIC SCIENCES INC /NEW/	806850
DIAPULSE CORP OF AMERICA	026742
DIGITAL DEVICES INC	725731
DIGITAL RECORDING CORP	318439
DIGITAL SOLUTIONS INC	785557
DIMENSION CAPITAL CORP	818073
DIONICS INC	029006
DIRECT CONNECT INTERNATIONAL INC	311507
DISEASE DETECTION INTERNATIONAL INC	826443
DISTINCTIVE DEVICES INC	059963
DIVIDE DRIVES INC /NV/	812795
DIXCOM INC	780777
DIXON CAPITAL CORPORATION	819840
DMI INC /CO/	796337
DOAK PHARMACAL CO INC	029386
DOCUCON INCORPORATED	843006
DOCUGRAPHIX INC /CA/	788841
DOL RESOURCES INC	029504
DOMINION RESOURCES INC/DE/	314712
DOMINION STOCK INDEX FUND	780867
DOUBLE EAGLE PETROLEUM & MINING CO	029834
DOUBLE RIVER OIL & GAS COMPANY	351400
DRAGON MINING CORP	030037
DRCA MEDICAL CORP	807144
DREAMCAR HOLDINGS INC	826220
DRILLSTAR INTERNATIONAL CORP	829084
DRIVEFONE INC	826771
DROVERS BANCSHARES CORP	703109
DRUG SCREENING SYSTEMS INC	826747
DRUSILLA SEAFOOD RESTAURANTS INC	794825
DWI CORP	709598
DYCO 1976 OIL & GAS PROGRAMS	355055
DYCO 1977 OIL & GAS PROGRAMS	201707
DYCO 1978 OIL & GAS PROGRAMS	215718
DYCO OIL & GAS PROGRAM 1975	318808
DYCO OIL & GAS PROGRAM 1976-1	806569
DYCO OIL & GAS PROGRAM 1977-1	806570
DYCO OIL & GAS PROGRAM 1977-X	310908
DYCO OIL & GAS PROGRAM 1978-1	806571
DYCO OIL & GAS PROGRAM 1978-2	806572
DYCO OIL & GAS PROGRAM 1979-1	806573
DYCO OIL & GAS PROGRAM 1986-1	778956
DYNAMARK CORP	824846

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-08

Registrant	CIK No.
2 B SYSTEM INC	100404
202 DATA SYSTEMS INC	718246
21ST CENTURY AMERICAN TECHNOLOGY DEVELOPMENT CORP	803031
21ST CENTURY HOLDINGS INC	817747
250 WEST 57TH ST ASSOCIATES	100412
AAON INC	824142
ABATIX ENVIRONMENTAL CORP	845779
ABCO ICE CREAM INC	815108
ABF ENERGY CORP	354195
ABS LIFESCIENCES INC	806063
ACADEMIC COMPUTER SYSTEMS INC	001961
ACAP CORP	792468
ACCELR8 TECHNOLOGY CORP	727207
ACQUISITION INDUSTRIES INC /CO/	813928
ACTEK INC	751158

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
DYNAMIC HOMES INC	225278
DYNAMIC SCIENCES INTERNATIONAL INC	729520
DYNATEC INTERNATIONAL INC	752208
DYNATEM INC	795424
EAGLE EXPLORATION CO	030906
EASTERN EMPIRE CORP	031121
EATERIES INC	796369
EDGEMARK FINANCIAL CORP	320547
EDMARK CORP	777249
EDUCATION SYSTEMS & PUBLICATIONS CORP	031647
EDUCATORS INDUSTRIES INC	031696
EDUDATA CORP	738194
EH INTERNATIONAL INC	031827
EICO ELECTRONIC INSTRUMENT CO INC	031862
ELDORADO ARTESIAN SPRINGS INC	796124
ELECTRIC AVENUE INC	107707
ELECTRIC M & R INC	016218
ELECTRO KINETIC SYSTEMS INC	723616
ELECTROGRAPH SYSTEMS INC	722641
ELECTRONIC ASSEMBLY SERVICES INC	831241
ELECTRONIC CONTROL SYSTEMS INC	032228
ELECTRONIC DATA CONTROLS CORP	032230
ELECTRONIC SPECIALTY PRODUCTS INC	317191
ELECTRONIC SYSTEMS TECHNOLOGY INC	752294
ENB HOLDING CO	731904
ENCO FLORIDA FUND LTD	753551
ENERCON DATA CORP /DE/	022932
ENERGY OPTICS INC	350193
ENERGYSEARCH 1980 2 DEVELOP DRILLING PARTNERSHIP	352712
ENERGYSEARCH 1980 3 DEVELOP DRILLING PARTNERSHIP	354597
ENERGYSEARCH 1981-1 DEVELOP DRILLING PARTNERSHIP	356329
ENERGYSEARCH 1981-2 DEVELOP DRILLING PARTNERSHIP	701624
ENEX OIL & GAS INCOME PROGRAM II 7	782335
ENEX OIL & GAS INCOME PROGRAM II-10	799171
ENEX OIL & GAS INCOME PROGRAM II-3	766039
ENEX OIL & GAS INCOME PROGRAM II-4	769502
ENEX OIL & GAS INCOME PROGRAM II-5	769501
ENEX OIL & GAS INCOME PROGRAM II-6	769503
ENEX OIL & GAS INCOME PROGRAM II-8	789882
ENEX OIL & GAS INCOME PROGRAM II-9	798954
ENEX OIL & GAS INCOME PROGRAM III SERIES 6 LP	830319
ENEX OIL & GAS INCOME PROGRAM III SERIES 3 LP	814780
ENEX OIL & GAS INCOME PROGRAM III SERIES 2 LP	811205
ENTERPRISE ENERGY PARTNERS 1980	317923
ENTOURAGE INTERNATIONAL INC	774740
ENVIRONMENTAL DIAGNOSTICS INC	739944
ENVIROTECH SYSTEMS INC	792981
EPOLIN INC /NJ/	797079
EQUIFUND LP	350972
EQUITEC REAL ESTATE INVESTORS FUND XVI	761199
EUA POWER CORP /NH/	808277
EUROAMERICAN GROUP INC	832443
EUROPA TRADING CORP	817638
EVRO FINANCIAL CORP	033115
EXCALIBUR INDUSTRIES	201779
EXECUTIVE HOUSE INC	033992
EXOTECH INC	034047
EXOVIR INC	717653
EXPERTELLIGENCE INC	723533
EXTEN VENTURES INC	811779
EYE TECHNOLOGY INC	776008
F&E RESOURCE SYSTEMS TECHNOLOGY INC	748055
FAFCO INC	352956
FAIRFIELD ACCEPTANCE CORP	710561
FAR WEST VENTURES INC	806514
FARMERS NATIONAL BANC CORP /OH/	709337
FARMERS NATIONAL BANCORP INC /DE/	700946
FARMSTEAD TELEPHONE GROUP INC	804331
FAST FOOD OPERATORS INC	350487
FASTCOMM COMMUNICATIONS CORP	828529
FBC MORTGAGE SECURITIES TRUST 18	825087
FCNB CORP	803644
FERTIL A CHRON INC	729216
FFM FINANCE CORP	778211
FFM FINANCE CORP II	794558
FIFTH DIMENSION INC	035522
FINANCIAL INDUSTRIES CORP	035733
FINANCIAL SERVICES CORPORATION OF THE MIDWEST	035838
FIREMANS FUND MORTGAGE CORP	801543
FIRMA INC	806575
FIRST AMERICAN CAPITAL CORP/DE/	730822
FIRST AMERICAN HEALTH CONCEPTS INC	776997
FIRST AMFED CORP	783995
FIRST BATH CORP	705459
FIRST CAPITAL REALTY OF OHIO	036141
FIRST COLONIAL GROUP INC	714719
FIRST COMMERCIAL BANCORP INC	315547
FIRST COMMUNITY BANCORP INC /PA/	741355
FIRST COMMUNITY BANCSHARES INC	709344
FIRST COMMUNITY BANCSHARES INC/GA/	825351
FIRST EQUITY OF NEW JERSEY INC	806844
FIRST FILMS INC	796312
FIRST FINANCIAL BANCORPORATION /IA/	779633
FIRST FINCORP INC	749879
FIRST HIGHLAND CORP	820394
FIRST JERMYN CORP	741562
FIRST KNOX BANC CORP	756899
FIRST MCMINNVILLE CORP	743397
FIRST MEDICAL DEVICES CORP	793771
FIRST MEDICAL INTERNATIONAL INC	824186
FIRST MID ILLINOIS BANCSHARES INC	700565
FIRST MONTAUK FINANCIAL CORP	083125
FIRST MORTGAGE CORP	036548
FIRST MUTUAL INC	069280
FIRST NATIONAL BANCORP INC /IL/	788783
FIRST NATIONAL BANKSHARES INC/LA/	700694
FIRST NATIONAL CORP /SC/	764038
FIRST OAK BROOK BANCSHARES INC	717837
FIRST OF HURON CORP	355433
FIRST PRIORITY GROUP INC	778184
FIRST TEAM SPORTS INC	820242
FIRST UNITED BANCORPORATION /SC/	820379
FIRST VICTORIA CORP	764469
FIRST WEST CHESTER CORP	744126
FIRST WOBURN BANCORP INC	812334
FISHER BUSINESS SYSTEMS INC	790733
FLAGLER BANK CORP	721296
FLAT TOP BANKSHARES INC	707123
FLEXCEL INTERNATIONAL INC	723595
FLEXWATT CORP	704360
FLORIDA LIFE EQUITIES INC	756910
FLORIDA PARTNERS CORP	705405
FLORIDA WESTCOAST BANKS INC	700566
FLOYD VALLEY PACKING CO	037727
FNB FINANCIAL SERVICES CORP	742679
FNB ROCHESTER CORP	745087
FORELAND CORP	773326
FOREST 1980 DRILLING PROGRAM	314579
FORTUNE PETROLEUM CORP	038242
FOUR CORNERS FINANCIAL CORP	230014
FOXMOOR INTERNATIONAL FILMS LTD	720527
FRANKLIN CAPITAL CORP /DE/	063216
FRANKLIN FINANCIAL SERVICES CORP /PA/	723646
FRANKLIN JOE PRODUCTIONS INC	205048
FRESH JUICE CO INC	802354
FRONTIER MINING & OIL CORP	707945
FURIA ORGANIZATION INC /DE/	757563
FUTURA WEST INC	737212
FUTURE MEDICAL PRODUCTS INC /NY/	839067
GAB BANCORP	714395
GALLERIA GROUP INC	790072
GAM RAD INC	039843
GAMOGEN INC	803034
GAP INSTRUMENT CORP	039910
GARMENT CAPITOL ASSOCIATES	040023
GASCARD INC /DE/	807062
GBC BANCORP	351710
GBI INTERNATIONAL INDUSTRIES INC	764482
GCI INDUSTRIES INC	708712
GEMINI ENERGY CORPORATION	810270
GEMINI EQUIPMENT PARTNERS INCOME FUND III LP	781275
GENERAL ENERGY RESOURCES & TECHNOLOGY CORP	350387
GENERAL GENETICS CORP	707452
GENERAL METAL & ABRASIVES CO	745612
GENERAL REAL ESTATE SHARES	040788
GENERAL RESIDENTIAL CORP	040808
GENERATION 5 TECHNOLOGY INC /CO/	818726
GENETIC ENGINEERING INC	319649
GENETIC LABORATORIES WOUND CARE INC	831365
GENIUS TECHNOLOGIES INC	730038
GENTNER ELECTRONICS CORP	840715
GEOKINETICS INC	314606
GHS INC	791398
GIBRALTAR PARI MUTUEL INC	215970
GIL MED INDUSTRIES INC	731306
GLADSTONE RESOURCES INC	041656
GLENDALE BANCORPORATION/NJ	769600
GLOBAL CAPITAL GROUP INC/NY	793635
GLOBAL GAMING & TECHNOLOGY INC	276165
GLOBAL RESOURCES INC /AK/	842683
GLOBESAT HOLDING CORP	836868
GLOBUS GROWTH GROUP INC	352868
GNF CORP /NJ/	722310
GOLD COIN MINING INC	748794
GOLD EXPRESS CORP	761895
GOLD SECURITIES CORP	773487
GOLDEN BEVERAGE COMPANY	811271
GOLDEN CYCLE GOLD CORP	719754
GOLDEN MAPLE MINING & LEACHING CO INC	700815
GOLDEN TRIANGLE ROYALTY & OIL INC	042284
GOOD SOFTWARE CORP	313252
GOOD TIMES RESTAURANTS INC	825324
GRACIOUS ESTATES PROPERTIES LTD	042887
GRANITE LTD	703901
GRANITE STATE BANKSHARES INC	792360
GRASON INDUSTRIES INC	828931
GREAT AMERICAN REALTY CORP	043296
GREAT BAY BANKSHARES INC	819550
GREAT NORTHERN GAS CO	352684
GREENFIELD BANCSHARES INC /IN/	356031
GREENFIELD FINANCIAL CORP /UT/	763821
GREENTREE SOFTWARE INC	727063
GREENWICH FINANCIAL CORP	814479
GRIFFIN RESORTS INC	836104
GRUDGE MUSIC GROUP INC	826144
GULF & MISSISSIPPI CORP	798044
GVC VENTURE CORP /DE/	814286
GYNEX INC	734194
H&S TREAT & RELEASE INC	787793
HABEN INDUSTRIES INC	764218
HABER INC	355899
HAHN INC	225418
HAILEY ENERGY CORP	723906
HALTER VENTURE CORP	790934
HANKS SEAFOOD CO INC	045356
HANOVER BANCORP INC	713094
HANOVER INSURANCE CO	045403
HARRIS & HARRIS GROUP INC	714504
HART INDUSTRIES INC	751145
HART TECHNOLOGIES INC	822046
HARVEST CAPITAL CORP	785544
HAUSER CHEMICAL RESEARCH INC	773723
HDL COMMUNICATIONS	805907
HEALTH & LEISURE INC /DE/	774657
HEALTH INSURANCE OF VERMONT INC	046441
HEALTHPLEX INC	770506
HEAVY DUTY AIR INC	741560
HELENA SILVER MINES INC	046678
HEMCURE INC	810206
HEMOKINETICS INC	351297
HIGH HOPES INC	800181
HIGH POINT FINANCIAL CORP	706815
HIKO BELL MINING & OIL CO	047431
HILLIARD FUND 81-A LTD	319498
HILLIARD FUND 82-B LTD	709313
HILLS STORES CO /NEW/	782998
HIMEDICS INC	842914
HIPOINT INVESTMENTS LTD	350878
HITECH ENGINEERING CO	731838
HJELMS JIM PRIVATE COLLECTION LTD /DE/	806384
HOH WATER TECHNOLOGY CORP	808015
HOLDEN DAY INC	047931
HOLDEN REAL ESTATE INCOME & GROWTH FUND	803131
HOLIDAY GULF HOMES INC	082179
HOLOBEAM INC	048105
HOLOMETRIX INC	812151
HOME DISH SATELLITE NETWORKS INC	820070
HOME INTERSTATE BANCORP	357133
HOMECALL INC /MD/	809718
HOMECARE MANAGEMENT INC	791164
HOMETOWN BANCORPORATION INC	812699
HOOKER ENTERPRISES INC	763364
HORIZON BANCORP /IN/	706129
HORN & HARDART BAKING CO	048466
HORN SILVER MINES INC	048474
HOUSTON BIOMEDICAL INC	322563
HUGHES TEXAS PETROLEUM CORP	067815
HUNTER INDUSTRIAL FACILITIES INC	795430
HUTTON PRC TECHNOLOGY PARTNERS 1	741619
HYDROMER INC	704432
HYTK INDUSTRIES INC	775351

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-06

Registrant	CIK No.
! FLOW CORP /CA/	857726
IBC HOLDINGS CORP	829499
ICC TECHNOLOGIES INC	756502
ICON CASH FLOW PARTNERS LP SERIES A	775346
IDAHO CO	809365
IDENTIX INC	735780
IEA MARINE CONTAINER FUND	311780
IFRB CORP	036414
IFS INTERNATIONAL INC	808310
IGENE BIOTECHNOLOGY INC	793180
IMMUNE RESPONSE INC	824174
IMMUNOTHERAPEUTICS INC	812796
IMPERIAL PETROLEUM INC	355358
IMPLANT TECHNOLOGIES INC	703339
IMPROCOM INC	805327
IMRE CORP	716054
INCE IV INC	804689
INCOMNET INC	353358
INCORP INC	051853
INDEPENDENT BANKS OF VIRGINIA INC	719731
INDEPENDENT ENTERTAINMENT GROUP INC	833847
INDUSTRIAL SERVICES OF AMERICA INC /FL	004167
INDUSTRIAL TRAINING SYSTEMS CORP	801309
INERTIAL MOTORS CORP	050394
INFERGENE CO	797542
INFORMATION ANALYSIS INC	803578
INLAND INVESTORS INC /WA/	796866
INMEDICA DEVELOPMENT CORP	726037
INNOVET INC	821243
INSTA COOL INC OF NORTH AMERICA	811212
INSTANT TRANSACTIONS CORP OF AMERICA	218209
INSTRUCTIVISION INC	770183
INSURANCE INVESTORS & HOLDING CO	050773
INTEGRATED LOGIC SYSTEMS INC	729439
INTEGRATED RESOURCES AMER INS MTG INV SERIES 85	753281
INTER CONTINENTAL SERVICES CORP	310585
INTERACTIVE MEDIA TECHNOLOGIES INC	850510
INTERAND CORP	718460
INTERCOM SYSTEMS INC	723501
INTERCONTINENTAL LIFE CORP	050982
INTERMOUNTAIN EXPLORATION CO	051072
INTERNATIONAL BANKCARD SERVICES CORP	814915
INTERNATIONAL DESIGN GROUP INC /DE/	773267
INTERNATIONAL ELECTRONICS INC	717751
INTERNATIONAL FUTURES FUND ONE	748829
INTERNATIONAL LEISURE HOSTS LTD /NEW/	052935
INTERNATIONAL MANAGEMENT & RESEARCH CORP	740892
INTERNATIONAL MICROCOMPUTER SOFTWARE INC	814929
INTERNATIONAL NUTRITION & GENETICS CORP	814234
INTERNATIONAL ROYALTY & OIL CO	051511
INTERNATIONAL SUPERCONDUCTOR CORP	846537
INTERNATIONAL SYSTEMS & TECHNOLOGY INC	704525
INTERNEURON PHARMACEUTICALS INC	854222
INTRAMERICAN CORP	031063
INTREX FINANCIAL SERVICES INC	810752
INVESTEX INC	008626
INVESTMENT TECHNOLOGIES INC	759672
IOWA POWER INC	052499
IRVINE SENSORS CORP/DE/	357108
ITI CORP/OH	052811
IVCI CORPORATION	758249
IVEY PROPERTIES INC	315882
JAM INC	765449
JAMCO LTD	066995
JEC LASERS INC	354867
JEGEROL CORP	351921
JENNINGS 1981-2 LTD PARTNERSHIP	701515
JMB INCOME PROPERTIES LTD III	053563
JOURNAL EMPLOYEES STOCK TRUST	054058
JUDICATE INC	732152
KCR TECHNOLOGY INC	313489
KENTUCKY BANCORPORATION INC	734134
KENTUCKY CENTRAL LIFE INSURANCE CO	055345
KEYSTONE MEDICAL CORPORATION	722839
KIEWIT ROYALTY TRUST	711477
KIMCO ENERGY CORP	320427
KINGSFORD INDUSTRIES INC	055977
KNUSAGA CORP	225544
KP TEMPLETON INSTITUTIONAL OIL & GAS INC	715118
L A ENTERTAINMENT INC	852570
LA MAN CORP	718660
LABOR READY INC	768899
LAKE ARIEL BANCORP INC	723878
LAKESIDE BANCSHARES INC	711414
LAMCOR INC	806549
LANNETT CO INC	057725
LAS VEGAS DISCOUNT GOLF & TENNIS INC	793044
LASER RECORDING SYSTEMS INC	655581
LASERGATE SYSTEMS INC	797324
LAWN AMERICA INC	626594
LAZARUS INDUSTRIES INC	789868
LEADVILLE MINING & MILLING CORP	726845
LEADVILLE SILVER & GOLD INC	731654
LEAK X CORP	842697
LEARNING ANNEX INC	748563
LEASERVICE INCOME FUND I	709145
LEGAL SOFTWARE SOLUTIONS INC	770509
LEGEND FOODS INC	812790
LEGENDS COMPANY OF CHICAGO INC /DE/	842681
LEHMAN ABS CORP	629281
LEHMAN CMO INC	742454
LIBRA SYSTEMS INC	070031
LIFE RESOURCES INC	059399
LIFE SCIENCES INC	059401
LIFEWAY FOODS INC	814586
LINIUM TECHNOLOGY INC	804191
LITTLE PRINCE PRODUCTIONS LTD	318958
LITTLE SQUAW GOLD MINING CO	059660
LOBELL LANA INCOME PARTNERS	764827
LOCH EXPLORATION INC	313041
LOGAN COUNTY BANCSHARES INC	760327
LOGITEK INC /NY	812083
LONG SHORE DEVELOPMENT CORP	700760
LONGWOOD GROUP LTD	813775
LSB BANCSHARES INC /NC/	714530
LSB BANCSHARES INC OF SOUTH CAROLINA	742263
LUNN INDUSTRIES INC /DE/	060911
LUTHER MEDICAL PRODUCTS INC	319204
LUXTEC CORP /MA/	793523
LWAY PRODUCTIONS INC	806277
LYNX EXPLORATION CO	352180
LYRIC ENERGY INC	319420
MACK TRUCKS RECEIVABLES CORP	810903
MACROCHEM CORP	743884
MAGIC CIRCLE ENERGY 1982 DRILLING PROGRAM	356128
MAGNOLIA FOODS INC	794107
MAGNUM RESOURCES INTERNATIONAL INC /NV/	791912
MAIL BOXES COAST TO COAST INC	808013
MAMBA CORP	825832
MAMMATECH CORP	704366
MANAGEMENT ADVISORY SOFTWARE INC/DE/	801426
MARBLE FINANCIAL CORP	794620
MARINE PETROLEUM TRUST	062962
MARITEK CORP	715781
MARKET GUIDE INC	720462
MASSBANK CORP	799166
MAST KEYSTONE INC	743250
MCDANIEL AUSTIN CORP	788942
MCMARTIN INC	079383
MD ENTERPRISES OF CONNECTICUT INC	806178
MEADOW GROUP INC	829903
MEDCO RESEARCH INC	723385
MEDGROUP INC	859364
MEDI MAIL INC /NV/	832485
MEDICAL ADVISORY SYSTEMS INC	771252
MEDICAL DEPOT INC	747539
MEDICAL TECHNOLOGY PRODUCTS INC	718633
MEDICAL TECHNOLOGY SYSTEMS INC /DE/	823560
MEDISCIENCE TECHNOLOGY CORP	064647
MEDITECH MANAGEMENT INC	789609
MEDIVIX INC	715994
MEDMASTER SYSTEMS INC /DE/	794324
MEDPHONE CORP	771874
MEDSTAT SYSTEMS INC	726732
MEGA GROUP INC	828942
MEGATECH CORP	064706
MEICOR INC	805644
MELBOURNE FUTURES FUND L P	777197
MELDON ALUMNI INC	350088
MEMORY SCIENCES CORP /DE/	819203
MEMTEK CORP	353377
MERCHANTS BANCORP INC/DE/	707817
MERCHANTS CAPITAL CORP /DE/	821121
MESA CONTRACT MINING INC	774491
MESA MEDICAL INC	724004
METAL ARTS CO INC	320303
METRO SELF STORAGE LTD PARTNERSHIP-II	799667
METROPOLITAN MINES CORP LTD	065381
MEXCO ENERGY CORP	066418
MICROFRAME INC	754813
MICRONETICS INC /DE/	820097
MICROSIZE INC	744099
MICROTECH MEDICAL SYSTEMS INC	755720
MICROTEL FRANCHISE & DEVELOPMENT CORP /NY/	846469
MID AMERICA RACING STABLES INC	813309
MID AMERICAN LINES INC	065820
MIDNITE MINES INC	066076
MIDWEST BEST WATER SALES INC	811783
MIDWEST MANAGEMENT CORP	066124
MIKRON INSTRUMENT CO INC	787809
MIKROS SYSTEMS CORP	317340
MILLER INDUSTRIES INC	066368
MINERS NATIONAL BANCORP INC	714309
MINEX RESOURCES INC	350389
MINNEGASCO INC	722010
MINORITY BUSINESS ENTERPRISES INC	729639
MIRROR TECHNOLOGIES INC /DE/	783738
MLH INCOME REALTY PARTNERSHIP III	710132
MLH INCOME REALTY PARTNERSHIP IV	718417
MLH INCOME REALTY PARTNERSHIP V	755643
MLH INCOME REALTY PARTNERSHIP VI	771586
MOBILE NATIONAL CORP	783739
MODERN TECHNOLOGY CORP	711422
MONOGRAM OIL & GAS INC	319478
MONTANA CORP /MT/	067715
MONTANA NATURALS INTERNATIONAL INC	819182
MONTANA PRECISION MINING LTD	799268
MONUMENT RESOURCES INC	818468
MOREHOUSE INDUSTRIES INC	062262
MORGRO CHEMICAL CO	727346
MORTGAGE BANKERS FINANCIAL CORP I	741627
MOTHER LODE GOLD MINES CONSOLIDATED	802595
MR ROOTER CORP	797502
MRI OF NORTHERN NEW JERSEY L P	810143
MSE CABLE SYSTEMS INC	104501
MTX INTERNATIONAL INC	710197
MULTI SOFT INC	766404
MULTI SOLUTIONS INC	723733
MULTIVEST REAL ESTATE FUND LTD SERIES III	066839
MURDOCK CAPITAL CORP /CO/	814472
MUTUAL BANCORP INC	826489
MUTUAL BENEFIT TRAMMELL CROW RES OPPORTUNITY FUND	779317
NACO FINANCE CORP	806067
NASTECH PHARMACEUTICAL CO INC	737207
NATIONAL AFFILIATED CORP	706597
NATIONAL BANKSHARES INC	796534
NATIONAL DATACOMPUTER INC	812880
NATIONAL DIVERSIFIED SERVICES INC	772784
NATIONAL HEALTH CARE SYSTEMS INC	070164
NATIONAL HEALTH ENHANCEMENT SYSTEMS INC	804368
NATIONAL HOUSING PARTNERSHIP REALTY FUND I	731131
NATIONAL INDUSTRIAL SECURITY CORP	104401
NATIONAL LEASE INCOME FUND	357219
NATIONAL MEDICAL HEALTH CARD SYSTEMS INC	813562
NATIONAL MERCANTILE BANCORP	714801
NATIONAL PETROLEUM CORP LTD	070427
NATIONAL PROPANE CORP	070452
NATIONAL QUICK LUBE LTD	851063
NATIONAL REAL ESTATE LTD PARTNERSHIP II	350382
NATIONAL TECHNOLOGIES INC	737923
NATIONAL TRANSACTION NETWORK INC	315999
NATIONAL TRANSFER & REGISTER CORP	792933
NAUTILOID CORP	070808
NAVARRE 500 BUILDING ASSOCIATES	070818
NDE ENVIRONMENTAL CORP	851476
NEMDACO INC	793036
NEOTERIK HEALTH TECHNOLOGIES INC	838790
NESTOR INC	720851
NETCOR INC	809060
NETI TECHNOLOGIES INC	778362
NETWORD INC	715031
NETWORKED PICTURE SYSTEMS INC /CA/	811802
NEUROTECH CORP	758953
NEW AGE CORP	714634
NEW HILARITY MINING CO	071391
NEW QUINCY MINING CO	071530
NEW STAR ENTERTAINMENT INC /CA/	769122
NEW YORK FILM WORKS INC	739279

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-08

Registrant	CIK No.
NIGHT FLIGHT ENTERTAINMENT INC	817746
NIX O TINE PHARMACEUTICALS LTD	848468
NMC CORP	072170
NOISE CANCELLATION TECHNOLOGIES INC	722051
NORCAP FINANCIAL CORP	742127
NORDSTROM CREDIT INC	757439
NORMAR INVESTMENT CORP	767791
NORTECH SYSTEMS INC	722313
NORTH AMERICAN BANCORPORATION INC	700929
NORTH AMERICAN COMMODITY FUND III LTD PARTNERSHIP	730073
NORTH AMERICAN DIVERSIFIED INVESTMENT FUND LP	776001
NORTH AMERICAN DIVERSIFIED INVESTMENT FUND II LP	799878
NORTH ATLANTIC FISHERIES INC	759695
NORTH ATLANTIC TECHNOLOGIES INC	706021
NORTH COUNTY BANCORP	357282
NORTH EUROPEAN OIL ROYALTY TRUST	072633
NORTH SHORE GAS CO /IL/	110101
NORTH VALLEY BANCORP	353191
NORTHAMPTON INC	783209
NORTHERN ILLINOIS FINANCIAL CORP	826447
NORTHERN ILLINOIS GAS CO /IL/ /NEW/	110104
NORTHWEST ILLINOIS BANCORP INC	216729
NORWEST MORTGAGE INSURED 2 INC	740768
NOVA INTERNATIONAL FILMS INC	773384
NOVA NATURAL RESOURCES CORP	792835
NRG INC	073225
NRM 1984 DEVELOPMENT INCOME FUND LTD	752201
NRM DEVELOPMENT INCOME FUND LTD	714915
NTN COMMUNICATIONS INC	748592
NUGGET EXPLORATION INC	356590
NUMERICOM INC /OK/	357038
NUTRAMAX PRODUCTS INC /DE/	818467
NUTRITION NOW INC	790648
OAK TREE CONSTRUCTION COMPUTERS INC	789426
OASIS LAUNDRIES INC	823073
OCCUPATIONAL URGENT CARE HEALTH SYSTEMS INC	744040
OCG TECHNOLOGY INC	073779
OHIO CASUALTY CORP	073952
OIA INC	797682
OIL CITY PETROLEUM INC	277952
OLD SECOND BANCORP INC	357173
ON SITE TOXIC CONTROL INC	818163
ONCOR INC	809637
OPT SCIENCES CORP	074586
OPTELECOM INC	275858
OPTICORP INC	836433
OPTIMUM ELECTRONICS INC	806174
OPTIMUMCARE CORP /DE/	820474
ORANGE BANCORP	702302
ORBIS INC	799514
ORIGINAL ITALIAN PASTA PRODUCTS CO INC	802666
ORRSTOWN FINANCIAL SERVICES INC	826154
OUTBACK OIL & MINERAL EXPLORATION CORP	352670
OUTRIGHT INDUSTRIES INC	786348
OXBORO MEDICAL INTERNATIONAL INC	350557
OXFORD CAPITAL CORP	816475
OZO DIVERSIFIED AUTOMATION INC /CO/	812152
P&C FOOD MARKETS INC /NY/	784558
PACE GROUP INTERNATIONAL INC	791958
PACE MEDICAL INC	814057
PACIFIC CAPITAL BANCORP	731805
PACIFIC ENERGY & MINING CO	778584
PACIFIC GOLD CORP	277058
PACIFIC INTERNATIONAL FUTURES FUND/CA	769347
PACIFICORP FINANCIAL SERVICES INC	072965
PAINEWEBBER COMMODITY LTD PARTNERSHIP II	352911
PAINEWEBBER COMMODITY LTD PARTNERSHIP I	313909
PAK MAIL CENTERS OF AMERICA INC	754921
PALMETTO BANCSHARES INC	706674
PANHANDLE EASTERN PIPE LINE CO	076063
PAPERBACK SOFTWARE INTERNATIONAL	756439
PARKER & PARSLEY 82 I LTD	714909
PARTNERS HEALTH PLAN OF FLORIDA INC	756926
PASSPORT TRAVEL INC	313141
PATHE COMPUTER CONTROL SYSTEMS CORP	731695
PATHFINDER DATA GROUP INC	716499
PATTERN PROCESSING TECHNOLOGIES INC	704460
PAUL ENTERTAINMENT INC	809706
PAULSON CAPITAL CORP	704159
PAVICHEVICH BREWING CO /IL/	818786
PAYLINE SYSTEMS INC	779628
PC ETCETERA INC	827059
PCR INTERNATIONAL INC	796398
PDG ENVIRONMENTAL INC	771485
PEI INC /DE/	716524
PELL INDUSTRIES INC	077004
PEMI BANCORP INC	768868
PENN CENTRAL BANCORP INC	737220
PENN PACIFIC CORP	077140
PENN TIDE CORP	740045
PENNS WOODS BANCORP INC	716605
PEOPLES BANCORP OF WORCESTER INC	811908
PEOPLES MID ILLINOIS CORP	763661
PERFECTDATA CORP	719662
PERPETUAL FINANCIAL CORP	815275
PETRO GLOBAL INC	217165
PETROL INDUSTRIES INC	077864
PHARMACO MEDICO SYSTEMS CORP	720685
PHARMATEC INC	713275
PHARMETICS INC	823754
PHC INC	225759
PHOENIX ADVANCED TECHNOLOGY INC	769562
PHOENIX LASER SYSTEMS INC	848102
PHOENIX LEASING PERFORMANCE FUND 1981	320451
PHOENIX NETWORK INC	704662
PHONETEL TECHNOLOGIES INC	821511
PHOTO ACOUSTIC TECHNOLOGY INC	743871
PHYSIO TECHNOLOGY INC	729645
PIASECKI AIRCRAFT CORP	076375
PICNIC POINT DEVELOPMENT CO LTD	277318
PIERCE INTERNATIONAL INC	823367
PIEZO ELECTRIC PRODUCTS INC	352427
PINNACLE BANC GROUP INC	827065
PINNACLE ENVIRONMENTAL INC	857353
PIONEER RAILROAD CO INC /IA/	796374
PIONEER WESTERN ENERGY 1987-A INCOME LTD	819665
PIONEER WESTERN ENERGY 1987-B INCOME LTD	822507
PLANO PETROLEUM CORP	315671
PLATRONICS INC	810628
PLAZA COMMUNICATIONS INC	079090
PLM TRANS EQUIP PARTNERS IXD 1986 INCOME FUND	778794
POCAHONTAS BANKSHARES CORP	723584
POLAR MOLECULAR CORP /UT/	810613
POLYMER RESEARCH CORP OF AMERICA	079424
POLYMERIX INC	813719
POLYMUSE INC	795422
POOL ENERGY SERVICES CO	842615
PORTSMOUTH BANK SHARES INC	825534
PORTSMOUTH SQUARE INC	079661
POWER CELL INC	796539
POWER DESIGNS INC	079629
POWER OIL CO	079639
POWER SPECTRA INC /CA/	777527
POWEREC INTERNATIONAL INC	826757
PREMIER BANCORPORATION INC	826810
PREMIS CORP	724910
PRESSURE PIPING COMPONENTS INC	747675
PRESTO TEK CORP	804126
PRIME FINANCIAL PARTNERS L P	813618
PRIMEFAX INC	720478
PRINCETON ELECTRONIC PRODUCTS INC	080324
PRINCETON MINING CO	080327
PRINTRON INC	829068
PRO DEX INC	786920
PRO OIL INC	355511
PROBAC INTERNATIONAL CORP	800401
PROGRESSIVE BANCORPORATION INC	795424
PROMENADE BANCSHARES INC	711810
PROSPECT PARK FINANCIAL CORP /DE/	818239
PROTEIN DATABASES INC	770131
PROTOCOM DEVICES INC	788565
PROVIDENT BANKSHARES CORP	818969
PROVIDENT LIFE CAPITAL CORP	821475
PRUDENTIAL BACHE PENSION & RETIREMENT LP PBR-1	774457
PSYCHEMEDICS CORP	808517
Q1 CORP	061344
QCB BANCORP	714308
QUANTECH ELECTRONICS CORP	715788
QUANTUM DIAGNOSTICS LTD /NY/	788886
QUANTUM VENTURES GROUP INC	801557
QUARTZ INC	804330
QUATECH INC	789945
QUEST BIOTECHNOLOGY INC	793395
QUICKSILVER ENTERPRISES INC	832985
QWIX TECHNOLOGIES INC	830484
R 2000 CORP	700573
R SCAN CORP	827958
RADIATION DISPOSAL SYSTEMS INC	758256
RADON TESTING CORP OF AMERICA INC	805905
RAMAPO FINANCIAL CORP	081893
RAMPART GENERAL INC	081918
RAPHOLZ SILVER INC	740110
RAPITECH SYSTEMS INC	795611
RARITAN BANCORP INC	811434
RASTRA BUILDING SYSTEMS INC	805228
RATEL CORP	825829
RATEX RESOURCES INC	798293
REAL ESTATE ASSOCIATES LTD I	225789
REAL ESTATE ASSOCIATES LTD II	314237
REALAMERICA CO/NEW	716266
REALMARK PROPERTY INVESTORS LTD PARTNERSHIP VI-B	822784
RECREATIVE TECHNOLOGIES CORP	825828
REDDING BANCORP	702513
REEVES TELECOM LTD PARTNERSHIP	314741
REGAL COMMUNICATIONS CORP	783414
REGENT PETROLEUM CORP	319200
REMITTANCE TECHNOLOGIES CORP	850921
RENT A WRECK OF AMERICA INC	763567
REPRO MED SYSTEMS INC	704440
REPUBLIC HOLDINGS CORP	810739
REPUBLIC OIL CO	780126
REPUBLIC WASTE INDUSTRIES INC	350899
RES TECH INC	780537
RESEARCH FRONTIERS INC	793524
RESERVE EXPLORATION CO	353578
RESOURCE GENERAL CORP	035305
RESOURCE NETWORK INTERNATIONAL INC	806371
RESTAURANT HOTLINE SYSTEMS INC	631320
REX LEASING COVERED HOPPER RAILCAR MGMT PROG 1980	315276
RISK GEORGE INDUSTRIES INC	084112
RIVER TOWNE PARTNERS I LTD	717561
ROBERTS OIL & GAS INC	355300
ROCK FINANCIAL CORP/NJ/	775663
ROCKY MOUNTAIN BEVERAGE CO	772831
ROCKY MOUNTAIN CHOCOLATE FACTORY INC	785815
ROLLFORM OF JAMESTOWN INC	830256
ROOSEVELT HOT SPRINGS CORP	217026
ROTAN MOSLE REALTY FUND I LTD	354082
ROVAC CORP	085399
ROYAL BUSINESS GROUP INC	312160
ROYAL CAPITAL CORP	828956
ROYCE LABORATORIES INC /FL/	789462
RUBY MINING CO	085684
RYAN MURPHY INC	802524
S B H VENTURES	807830
S2 GOLF INC	782126
SABLE CORP	825152
SAFARI CORP	789559
SAFE WASTE SYSTEMS INC	769107
SAI GROUP INC	319519
SAINTS & SINNERS ENTERTAINMENT CO	813610
SAN MATEO COUNTY BANCORP	775473
SANCHEZ OBRIEN 1981 A DRILLING CO	350212
SANI MED INC	823570
SARATOGA MINT LTD	820100
SAWYER ADECOR INTERNATIONAL INC	067009
SC BANCORP	351617
SCAN GRAPHICS INC	764843
SCAT HOVERCRAFT INC	779999
SCIENTIFIC IMAGING INSTRUMENTS INC / DE/	852003
SCIENTIFIC INDUSTRIES INC	087802
SCIENTIFIC NRG INC	794929
SCIENTIFIC RADIO SYSTEMS INC	087817
SCORE EXPLORATION CORP	318852
SCORPION TECHNOLOGIES INC	803190
SCOTT INSTRUMENTS CORP	350899
SCOTT SCIENCE & TECHNOLOGY INC	735635
SEA GALLEY PROPERTIES LTD 1980	317892
SEA ISLAND BANKSHARES INC	824905
SEAHAWK CAPITAL CORP	317788
SEAHAWK DEEP OCEAN TECHNOLOGY INC	833020
SEARCH NATURAL RESOURCES INC	318672
SECURITY BANC CORP	763956
SECURITY CAPITAL CORP/DE/	314340

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-08

Registrant	CIK No.
SECURITY LAND & DEVELOPMENT CORP	068572
SEMICON TOOLS INC /NV/	794996
SENTEX SENSING TECHNOLOGY INC	729599
SEQUENTIAL INFORMATION SYSTEMS INC	069041
SERVAM CORP	820286
SERVINATIONAL INC	069122
SEVEN J STOCK FARM INC	069177
SHEARSON EQUIPMENT INVESTORS III	357012
SHEFFIELD EXPLORATION CO INC	755199
SHELTON BANCORP INC	820766
SHOP AT HOME INC /TN/	810029
SHORT TAKES INC	844698
SHOWCASE COSMETICS INC	807397
SIBONEY CORP	090057
SIDARI CORP	801899
SIERRA MONITOR CORP /CA/	100625
SIERRA TAHOE BANCORP	790555
SILVER BUTTE MINING CO	090310
SILVER LEDGE INC	090357
SILVER MOUNTAIN LEAD MINES INC	090366
SLHD INC	730339
SLM ENTERTAINMENT LTD	354830
SMARTCARD INTERNATIONAL INC /NY/	795214
SNOWY OWL INN CORP	356996
SOFTGUARD SYSTEMS INC	727477
SOFTWARE FUND II	722581
SOFTWARE SERVICES OF AMERICA INC	725628
SOLV EX CORP	350305
SOMERSET BANKSHARES INC	814272
SONAR RADIO CORP	091735
SONEX RESEARCH INC	723312
SONO TEK CORP	806172
SOONER ENERGY CORP	353904
SOUTH BRANCH VALLEY BANCORP INC	811808
SOUTH STANDARD MINING CO	091950
SOUTH TEXAS DRILLING & EXPLORATION INC	320575
SOUTHERN ACCEPTANCE CORP	092066
SOUTHERN BANKSHARES INC/WV/	715135
SOUTHERN HERITAGE INSURANCE CO	809937
SOUTHERN JERSEY BANCORP OF DELAWARE INC	740830
SOUTHERN KITCHENS INC	831668
SOUTHERN MICHIGAN BANCORP INC	703699
SOUTHERN STATES CORP	277385
SOUTHLAND ESTATE WINERY INC	788132
SOUTHLAND NATIONAL INSURANCE CORP	071546
SOUTHMARK LIFE SUBSIDIARY CORP	050829
SOUTHNET CORP	820114
SOUTHSIDE BANCSHARES CORP	703970
SOUTHWARD VENTURES DEPOSITARY TRUST	701983
SPARTA SURGICAL CORP	819981
SPECTRUM DATATECH INC	830985
SPECTRUM LABORATORIES INC /CA	319013
SPENDTHRIFT FARM INC	729499
SPHINX MINING INC	796117
SPORTS ENTERTAINMENT GROUP INC	814254
SPORTSMANS GUIDE INC	791450
SPRING BANCORP INC	825042
SSE TELECOM INC	808220
ST LAWRENCE SEAWAY CORP	086264
STAN WEST MINING CORP	320549
STANDARD ENERGY CORP	205921
STANDARD LOGIC INC	093379
STANDARD OIL & EXPLORATION OF DELAWARE INC	831978
STANWICK CORP	093584
STARSTREAM COMMUNICATIONS GROUP INC	815029
STATE RECREATION INC	093741
STAUN BANCORP INC	826615
STELLAR PETROLEUM INC	740401
STEPHAN CO	094056
STERLING FINANCIAL CORP /MO/	094140
STERLING GAS DRILLING FUND 1981	356448
STERLING GAS DRILLING FUND 1982	704202
STEVIA CO INC	731933
STONE MEDICAL SUPPLY CORP	718431
STOTLER FUTURES FUND	787627
STOTLERS HEARTLAND FUTURES FUND	788737
STRATEGIC ABSTRACT & TITLE CORP	845414
STRATEGIC DISTRIBUTION INC	073822
STRATFORD FINANCIAL GROUP LTD /NY/	751416
STRINGS LTD	849682
STRUCTOFAB INC	788902
STRUTHERS OIL & GAS CORP	094945
SULCUS COMPUTER CORP	726712
SUMMA RX LABORATORIES INC	777517
SUMMIT BANK CORP	820067
SUN UP FOODS INC	819803
SUNLITE TECHNOLOGIES CORP	814071
SUNRISE BANCORP	701709
SUNRISE PRESCHOOLS INC/DE/	818695
SUNRISE TECHNOLOGIES INC	848771
SUNWALKER DEVELOPMENT INC	789879
SUPERMAIL INTERNATIONAL INC	832508
SURE HAIR INC	801412
SURGE COMPONENTS INC	747540
SURGIDYNE INC	745788
SWIFT ENERGY INCOME PARTNERS 1986-A LTD	799084
SWIFT ENERGY INCOME PARTNERS 1986-B LTD	806614
SWISHER INTERNATIONAL INC	808356
SYMETRICS INDUSTRIES INC	095944
SYNERGETICS INTERNATIONAL INC	724264
SYNERGISTICS INC	095986
SYNTHETECH INC	749290
SYS	096057
SYSTEMS TECHNOLOGY ASSOCIATES INC	756824
SYSTEMS WEST INC	819346
SYSTONETICS INC	096079
TABOR ENVIRONMENTAL SERVICES INC	831490
TAGO INC	718543
TAHOE CO INC /CO/	791956
TAL CAP INC	096207
TANDY CREDIT CORP	818153
TAPE SPECIALTY INC	353821
TATUM PETROLEUM CORP	766624
TAURUS PETROLEUM INC /CO/	225926
TECFIN CORP	352860
TECH TIME INC	766867
TECHNICLONE INTERNATIONAL CORP	704562
TECHNOLOGY 80 INC	735703
TECHNOLOGY INTERNATIONAL LTD	201040
TECHSCIENCE INDUSTRIES INC	318523
TEECO PROPERTIES LP	277377
TEL ELECTRONICS INC	756767
TELEBYTE TECHNOLOGY INC	726451
TELECALC INC	741038
TELECOMMUNICATION PRODUCTS INC	725929
TELECONFERENCING SYSTEMS INTERNATIONAL INC	754435
TELENETICS CORP	810018
TELEPHONE SPECIALISTS INC	715805
TELETEK INC	312979
TELETIMER INTERNATIONAL INC	790238
TELETRAK ADVANCED TECHNOLOGY SYSTEMS INC	722828
TELVUE CORP	639443
TEMPLETON 82 B LTD	703877
TERRITORIAL RESOURCES INC	319770
TEXAS REGIONAL BANCSHARES INC	787648
TEXAS SECURITIES INC	806583
TEXAS VANGUARD OIL CO	315261
TGC INDUSTRIES INC	799165
THERAPEUTIC TECHNOLOGIES INC	761800
THERMACOR TECHNOLOGY INC	786129
THOMSON COMMODITY PARTNERS II	704848
THOMSON DIAMOND TRUST JEFFERSON COLLECTION	320187
THORATEC LABORATORIES CORP	350907
THRIFTY TEL INC	620417
THT INC	721602
TIC INTERNATIONAL CORP	711034
TIDELANDS ROYALTY TRUST B	096596
TIMBERLINE MINERALS INC	276077
TIME MANAGEMENT CORP /MN/	096305
TNR TECHNICAL INC	813717
TOFUTTI BRANDS INC	723615
TOUCHSTONE SOFTWARE CORP /CA/	730349
TPA OF AMERICA INC	751160
TPC COMMUNICATIONS INC	772249
TPEX EXPLORATION INC	217370
TRAKIT CORP	312642
TRANSAMERICAN PETROLEUM CORP	354867
TRANSMEDIA NETWORK INC /DE/	801451
TRAVELERS MORTGAGE SECURITIES CORP	076536
TRIANGLE GROUP INC	737264
TRION FUND II	764763
TRIUMPH OIL & GAS CORP	786563
TROUND INTERNATIONAL INC	789558
TRVLSYS INC	312478
TSL INC	755835
TSUNAMI CAPITAL CORP	643961
TUBBYS INC	799230
TWENTY SERVICES INC	725398
TWIN CREEK EXPLORATION CO INC	031704
TYREX OIL CO	316291
U S TECHNOLOGIES INC	317889
UCI MEDICAL AFFILIATES INC	810130
UINTAH ENERGY CORP	737561
ULTIMAP INTERNATIONAL CORP	350095
ULTRA PAC INC	795820
UMC ELECTRONICS CO	813134
UNB CORP/OH	100619
UNICOMP INC	746481
UNIPHY DIAGNOSTICS PHYSICIANS LTD	792341
UNIQUE MOBILITY INC	810626
UNITED BUYING SERVICE INTERNATIONAL INC	315449
UNITED CAPITAL HOLDINGS INC	819187
UNITED FINANCIAL CORP OF SOUTH CAROLINA&INC	101554
UNITED IOWA CORP	818096
UNITED LEISURE CORP	757641
UNITED NATIONAL BANCORPORATION	059684
UNITED NATIONAL FINANCIAL CORP	355453
UNITED OKLAHOMA BANKSHARES INC	225968
UNITED RESERVE UNDERWRITERS INC	725806
UNITED SATELLITE AMERICA INC	101471
UNITED SERVICE SOURCE INC	641128
UNITED SHOPPERS OF AMERICA INC	810624
UNITED SOFTWARE SECURITY INC	808715
UNITED STORAGE ASSOCIATES 85-1 LTD	742714
UNITED STORAGE ASSOCIATES 86-1 LTD	768749
UNITED SYSTEMS TECHNOLOGY INC	790415
UNITED TRANS WESTERN INC	350194
UNIVERSAL CAPITAL CORP	316600
UNIVERSAL CERAMICS INC	798528
UNIVERSAL SERVICES GROUP INC /DE/	320579
UNIVERSITY GENETICS CO	741564
UNIVERSITY GRAPHICS INC	717193
UNIVERSITY REAL ESTATE INVESTORS-81	102163
UNO INC	320175
UPBANCORP INC	811512
UPWARD TECHNOLOGY CORP	715081
URBAN IMPROVEMENT FUND LTD 1973	062600
URBAN IMPROVEMENT FUND LTD 1974	102341
USA BANCORP INC	102343
USA INTERNATIONAL DEFENSE SYSTEMS INC	826740
USAIR INC /NEW/	808267
USASIA INTERNATIONAL PUBLICATIONS INC	714560
USR INDUSTRIES INC/DE/	819931
UTAH SHALE LAND & MINERALS CORP	316911
VALCO COMMUNICATIONS INC	102499
VALDAK CORP	813901
VALLEY BANCORP INC	102625
VALLEY FORGE SCIENTIFIC CORP	070670
VANDERBILT SQUARE CORP	636429
VEGAS CHIPS INC	764773
VERAZZANA VENTURES LTD	811666
VEREX LABORATORIES INC/CO	790023
VERITEC INC	716851
VERTEX INDUSTRIES INC	773318
VERTICAL SOFTWARE SYSTEMS INC	779681
VEST H D INC /TX/	730672
VETLINE INC/CO/	619521
VIABLE RESOURCES INC	797568
VIDEO COMMUNICATIONS & RADIO INC	319006
VIDEO SCIENCE TECHNOLOGY INC	803170
VIDEO SHOPPING MALL INC	754881
VIDEOPLEX INC	765484
VIKONICS INC /NY/	758119
VILLAGE BANCORP INC	814932
VIRAL RESPONSE SYSTEMS INC	715148
VISION TECHNOLOGIES INTERNATIONAL INC	744956
VISX INC	812805
VITA PLUS INDUSTRIES INC	637991
VITAFORT INTERNATIONAL CORP	721684
VITEL FIBER OPTICS CORP	857139
VITRO DIAGNOSTICS INC	806492
VOCALTECH INC	793171
VOICEMAIL INTERNATIONAL INC	793043
VOLUNTEER BANCSHARES INC	731819
VOLUNTEER STATE BANCSHARES INC	356003
VOTRAX INC	709417
VYSTAR GROUP INC	721353
W W CAPITAL CORP	797164
WAINOCO 77 CO	631253
WALL STREET FINANCIAL CORP /DE/	203951
	837491

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
WASHINGTON COMMERCIAL BANCORP	817643
WAVEMAT INC	803957
WAVETECH INC	799694
WEBCOR ELECTRONICS INC	058636
WELLS AMERICAN CORP	351514
WEPCO ENERGY CO/NEW/	752388
WESPERCORP	312835
WEST COAST BANCORP INC	826764
WESTBRIDGE RESEARCH GROUP	750150
WESTERN ENERGY RESOURCES INC	786822
WESTERN GOLD MINING INC	106105
WESTERN HOST SACRAMENTO PARTNERS	702387
WESTERN MEDIA GROUP CORP	225501
WESTERN SILVER LEAD CORP	106311
WESTERN STANDARD CORP	106316
WESTERN STAR INC	727184
WESTFORD GROUP INC	022709
WESTIN HOTELS LTD PARTNERSHIP	790549
WESTPAR CORP	806308
WETJET INTERNATIONAL LTD /DE/	814183
WHITETAIL INC	793764
WHITING PETROLEUM 1982 I INCOME & DEVELOP PART LTD 356871	352183
WHITMAN MEDICAL CORP	827245
WILDEY INC	076878
WILLARD PEASE OIL & GAS CO	822036
WILLOW INVESTMENTS INC	819216
WILSON DOUG STUDIOS INC /DE/	058429
WILSON LEE ENGINEERING CO INC	313988
WINCO PETROLEUM CORP	831982
WINE SOCIETY OF AMERICA INC /DE/	773870
WINGATE HOUSING PARTNERS 85 LTD PARTNERSHIP	715769
WINGATE HOUSING PARTNERS LTD II	107748
WINJAK INC /DE/	759253
WINTHROP FINANCIAL ASSOCIATES	718535
WINTHROP INTERIM PARTNERS I	350903
WINTHROP RESIDENTIAL ASSOCIATES I	356141
WINTHROP RESIDENTIAL ASSOCIATES II	707369
WIRE GRAPHICS INC /NY/	800454
WITH DESIGN IN MIND INTERNATIONAL INC	311268
WORD TRONICS CORP	820526
WORKINGMENS CORP	745374
WORLD CONTAINER CORP	108618
WSC GROUP INC	108637
WURLTECH INDUSTRIES INC	108712
WYNN INDUSTRIES INC	108729
WYOMING OIL & MINERALS INC	108770
XEDAR CORP	786703
XELEX INC	837026
XENEJENEX INC	782995
XIOX CORP	820508
XTRAMEDICS INC /NV/	731252
XYTRONYX INC	802781
YARDLEY VENTURES INC	313109
YELLOW GOLD OF CRIPPLE CREEK INC	715142
YELLOWSTONE RESOURCES INC	109105
YREKA UNITED INC	757783
YUKON ENERGY CORP	812163
ZALE CREDIT CORP	779676
ZENOX INC	847541
ZFAX IMAGE CORP	827156
ZILA INC	789892
ZINETICS MEDICAL INC/ UT	811784
ZOMAX INC	

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-09

Registrant	CIK No.
1500 MARKET STREET ASSOCIATES	754080
1867 WESTERN FINANCIAL CORP	840663
1990 CALIFORNIA TAX CREDIT PARTNERS L P	841020
1990 FEDERAL TAX CREDIT PARTNERS LP	837924
3333 HOLDING CORP	816782
60 EAST 42ND STREET ASSOCIATES	090794
A R CABLE SERVICES INC	002271
ABLE TELCOM HOLDING CORP	826411
ABOVE TECHNOLOGIES INC	743213
ACADEMY INSURANCE GROUP INC	001973

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
ACCEL INTERNATIONAL CORP	001985
ACCESS GROUP INC	833798
ACQUISITION CAPABILITY INC	819255
ACTION COMMUNICATIONS INC	752263
ACTIVE CAPITAL INC	824301
ADDITIVE TECHNOLOGY CORP	730347
ADEN ENTERPRISES INC	798536
ADINA INC	826773
ADVANCED BIOLOGICAL SYSTEMS INC	843004
ADVANCED ENERGY CORP	320179
ADVANCED RECORDING INSTRUMENTS INC	725935
ADVANTAGE LIFE PRODUCTS INC / CO	824840
ADVANTISTICS INC /DE/	843498
ADVEN INC	802206
AEGIS FINANCIAL CORP	825722
AEI REAL ESTATE FUND XVII LIMITED PARTNERSHIP	819577
AEI REAL ESTATE FUND XVIII LIMITED PARTNERSHIP	840459
AG-BAG INTERNATIONAL LTD	842269
AGRI POWICS INC	826678
AIRCRAFT INCOME PARTNERS L P	826156
AIRFUND INTERNATIONAL LIMITED PARTNERSHIP	842184
AIRTRAN CORP	835768
ALFA RESOURCES INC	354767
ALL QUOTES INC	837472
ALLANTE CAPITAL CORP	813362
ALLCITY INSURANCE CO /NY/	003842
ALLIANCE ENTERPRISES INC	828661
ALLIANCE HEALTH INC	822434
ALLIED BANKSHARES INC	810995
ALLIED SILVER LEAD CO	003959
ALPINE MEADOWS OF TAHOE INC	806302
ALZA TTS RESEARCH PARTNERS LTD	710178
AMDL INC	838879
AMERICA FIRST FEDERALLY GUARANTEED MTG FUND 2 /NE/ 764638	
AMERICA FIRST PARTICIPATING PREFD EQ MTG FUND LP	789952
AMERICA FIRST PREP FUND 2 LIMITED PARTNERSHIP	844327
AMERICA FIRST TAX EXEMPT MORTGAGE FUND 2 LP	793245
AMERICAN BANKERS INSURANCE GROUP INC	350571
AMERICAN BANKSHARES INC /GA/	840500
AMERICAN COAL CORP	799194
AMERICAN CONFECTIONERY CORP	762404
AMERICAN EDUCATORS FINANCIAL CORP/ DE/	320349
AMERICAN ENTERTAINMENT PARTNERS LP	793078
AMERICAN ENTERTAINMENT VENTURE CORP	737299
AMERICAN INCOME 6 LTD PARTNERSHIP	760396
AMERICAN INCOME PARTNERS III-D LIMITED PARTNERSHIP 808518	
AMERICAN INCOME PARTNERS IV A	826929
AMERICAN INCOME PARTNERS IV B	826930
AMERICAN INCOME PARTNERS IV C L P	826931
AMERICAN INCOME PARTNERS IV D LP	826932
AMERICAN INDUSTRIES LTD	276296
AMERICAN INSURED MORTGAGE INVESTORS L P	811437
AMERICAN INSURED MORTGAGE INVESTORS SERIES 89	842181
AMERICAN JET HOLDINGS INC	830483
AMERICAN LIFE INVESTORS INC	766710
AMERICAN QUALITY PRODUCTS INC	723253
AMERICAN RETIREMENT VILLAS PROPERTIES II	830156
AMERICAN TAX CREDIT PROPERTIES LP	830159
AMERICAN TRAVELLERS CORP	790928
AMERICAN VETERINARY PRODUCTS INC	841543
AMERICAN VIDEO CLEARING HOUSE INC	837037
AMERICAS COFFEE CUP INC	830746
AMERICUS FUNDING CORP	831547
AMERISERVE CAPITAL CORP	797892
AMFAC JMB HAWAII INC	839437
AMNET TELECOMMUNICATIONS GROUP LTD	839867
AMRECORP REALTY FUND III	776813
AMS INC /OK/	843099
ANCHOR CAPITAL II INC	819716
ANCO PRODUCTION CO	841002
ANDOVER EQUITIES CORP	842923
ANGELES FINANCE TRUST	840999
ANGELES MORTGAGE INVESTMENT TRUST	840997
ANGELES PARTNERS 16	812167
ANNAPOLIS BANCSHARES INC	842705

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
ANTARES RESOURCES CORP	065202
ANTENNAS AMERICA INC	826326
APACHE ENERGY & MINERALS CO	315645
APACHE INVESTMENTS INC	824104
APACHE PETROLEUM LTD PARTNERSHIP 1980-II	313304
APPLIED BIOSENSORS INC	806523
APPLIED DENTAL TECHNOLOGY INC	799103
APPLIED TECHNOLOGY SYSTEMS INC	818469
APT HOUSING PARTNERS LTD PARTNERSHIP	721465
AQUA BUOY CORP	841054
AQUASEARCH INC	837490
ARAPAHO PETROLEUM INC	007047
ARICO AMERICA REALESTATE INVESTMENT CO	702301
ARINCO COMPUTER SYSTEMS INC	356581
ART GUARD INC	820735
ASI HOLDING CORP	836102
ASSET BACKED SECURITIES CORP	797510
ASSET MANAGEMENT INTL FINANCING AND SETTLEMENT	814054
ASSISTED HOUSING FUND LP I	825535
ASTORIA INC	837584
ATCHISON TOPEKA & SANTA FE RAILWAY CO	006066
ATCORP INC	840016
ATEL CASH DISTRIBUTION FUND II	823065
ATHENA FUND II L P	821529
ATHENA VENTURES INC	844053
ATLANFED BANCORP INC	832770
ATLANTIC AMERICAN CORP	006177
ATLANTIC CITY BOARDWALK ASSOCIATES LP	730408
ATLANTIC INCOME PROPERTIES LIMITED PARTNERSHIP	831612
ATRIX INTERNATIONAL INC	831532
AUDIOVENTURES CORP	786625
AUTO CHEK CENTERS INC	841715
AVENGER CORP	826878
AVIATION EDUCATION SYSTEMS INC	812371
BALCOR EQUITY PENSION INVESTORS III	768605
BANC ONE OHIO CORP	841690
BANCORP NEW JERSEY INC	829753
BAND IT IDEX INC	832102
BANK CORP OF GEORGIA	315706
BANK OF AMERICA NATL TRUST & SAVINGS ASSN SERIES	310685
BANK OF AMERICA NATL TRUST & SAVINGS ASSN SERIES	316364
BANKERS FIDELITY LIFE INSURANCE CO	009696
BASS MORTGAGE INCOME FUND I LIMITED PARTNERSHIP	799566
BAY TACT CORP	814927
BAY VIEW CAPITAL CORP	840387
BEAR STEARNS MORTGAGE CAPITAL CMO TRUST	831203
BELL SAVINGS HOLDINGS INC	837534
BELLATRIX INTERNATIONAL INC	826152
BENCHMARK BANKSHARES INC	804563
BERKLEY W R CORP	011544
BEST ACQUISITIONS INC	829649
BIG RIVER PRODUCTIONS LTD PARTNERSHIP	759440
BIO ELECTRO SYSTEMS INC	841076
BIRMINGHAM TURF CLUB INC	789034
BIRMINGHAM TURF CLUB LTD	785538
BLACKSTONE VALLEY ELECTRIC CO	012473
BLACKWOOD ENTERPRISES INC	788616
BLAZO CORP	835407
BMR FINANCIAL GROUP INC	831677
BNB HOLDING COMPANY INC	837677
BOL BANCSHARES INC	832818
BORDEAUX PETROLEUM CO	312340
BOSTON CAPITAL TAX CREDIT FUND LTD PARTNERSHIP	835095
BOSTON FINANCIAL QUAL HOUSING TAX CREDIT LP III	839345
BOSTON PRIVATE BANCORP INC	821127
BOUCHER OEHMKE HOLDINGS INC	809393
BRACKEN EXPLORATION CO LIQUIDATING TRUST	352957
BRADLEY COUNTY FINANCIAL CORP	840709
BRAUVIN HIGH YIELD FUND L P II	832775
BRAUVIN INCOME PROPERTIES LP 6	793066
BRAUVIN REAL ESTATE FUND LP 3	715988
BREMER FINANCIAL CORPORATION	846616
BRILL HYGIENIC PRODUCTS INC	837161
BRONCO OIL & GAS CO	014474
BROOKFIELD BANCSHARES CORP	830248

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
BROWN BENCHMARK PROPERTIES LIMITED PARTNERSHIP	818084
BRUNNER COMPANIES INCOME PROPERTIES LP I	830737
BRUNNER COMPANIES INCOME PROPERTIES LP II	839705
BRUSHGARD SYSTEMS INC /DE/	780088
BSB BANCORP INC	830257
BUCYRUS ERIE CO /DE	740781
BULLION SECURITY CORP	821140
BUSINESS DATA GROUP INC	718905
BUTTES GAS & OIL CO /DE/	015878
C SQUARE VENTURES INC	844008
CABLE TV FUND 11	709472
CABLE TV FUND 11-A LTD	725683
CABLE TV FUND 11-C LTD	742181
CABLE TV FUND 12	756902
CABLE TV FUND 15	839483
CABLEVISION OF BOSTON LTD PARTNERSHIP	709105
CAGY INDUSTRIES INC	818471
CALHOUN BANKSHARES INC	834157
CALIFORNIA CARS GRANTOR TRUST 1986-A	804143
CALIFORNIA FINANCIAL HOLDING CO	828978
CALIFORNIA REAL ESTATE PARTNERS	825155
CAMBRIDGE ELECTRIC LIGHT CO	016573
CANARCHON HOLDINGS LTD	079451
CANNON PICTURES INC	703807
CAPITAL ACQUISITION CO	798952
CAPITAL APPRECIATION PLUS L P I	832990
CAPITAL BANKSHARES INC	829233
CAPITAL DIRECTIONS INC	830157
CAPITAL GROWTH INC	839441
CAPITAL REALTY INVESTORS TAX EXEMPT FUND	822522
CAPITAL SOURCE L P	775829
CAPITAL VENTURES INC /DE/	806852
CAPITOL BANCORP LTD	840264
CARDIFF COMMUNICATIONS INC	017465
CARDINAL INDUSTRIES INCOME PROPERTIES II LP	835668
CARDIOTRONICS SYSTEMS INC	835316
CARE CONCEPTS INC	842927
CARLYLE INCOME PLUS LP II	827086
CARLYLE REAL ESTATE LTD PARTNERSHIP XVII	804214
CAROLINA FIRST BANCSHARES INC	846465
CAROLINAS REAL ESTATE FUND	355291
CC&S SYSTEMS INC	215367
CEETAC CORP	840249
CENCOM CABLE ENTERTAINMENT INC	827160
CENCOM CABLE INCOME PARTNERS II L P	821582
CENTENNIAL REAL ESTATE INVESTMENT FUND	820273
CENTER BANKS INC	829282
CENTEX ACCEPTANCE CORP	712790
CENTEX COLLATERALIZED MORTGAGE CORP	779240
CENTEX CREDIT CORP	783193
CENTEX DEVELOPMENT CO LP	818764
CENTRAL LIFE ASSURANCE CO	837332
CENTURY FINANCIAL CORP /PA/	820474
CENTURY HILLCRESTE APARTMENT INVESTORS LP	835596
CENTURY PACIFIC TAX CREDIT HOUSING FUND	840256
CENTURY PROPERTIES PREFERRED FUND 73	018911
CENTURY PROPERTIES PREFERRED PARTNERSHIP 72	018912
CERON RESOURCES CORPORATION	037845
CFW COMMUNICATIONS CO	829678
CHARGE INC	805074
CHASE MORTGAGE FINANCE CORP	830379
CHATTAHOOCHEE BANCORP INC	839091
CHEROKEE INC	844161
CHESTER COUNTY SECURITY FUND INC	793375
CHILD WRIT & CO INC	830747
CHOCOLATE PIX INC	803865
CIMETRIX INC	786620
CIMSTAT INVESTMENTS INC	840388
CINEMA N DRAFTHOUSE SYSTEMS INC	830984
CINEMA PLUS LP	822368
CITICORP MORTGAGE INC	700830
CITIZENS SAVINGS FINANCIAL CORP	315176
CITY INVESTING CO LIQUIDATING TRUST	778171
CLANCY SYSTEMS INTERNATIONAL INC /CO/	789316
CLAREMONT ASSOCIATES	710632
CLARITY HOLDINGS CORP	834154

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
CLARK COUNTY PROPERTIES 2	748384
CLARKE CORP	020784
CLASSIFIED FINANCIAL CORP	020628
CLINICAL HOMECARE LTD	818725
CLOVER APPRECIATION PROPERTIES I L P	837103
CLOVER INCOME PROPERTIES III LP	844151
CLUB AMERICA INC	027694
CM MAGNETICS CORP	822150
CNB BANCORP INC /NY/	839926
CNL INCOME FUND IV LTD	829739
CNL INCOME FUND LTD	788336
CNL INCOME FUND V LTD	837985
CNL INCOME FUND VI LTD	837986
COAST SAVINGS FINANCIAL INC	841074
COASTAL 1981 DEVELOPMENT PROGRAM LTD	319516
COASTAL 1982 DRILLING PROGRAM LTD	355539
COASTAL 1983 DRILLING PROGRAM LTD	708132
COASTAL 1984 B DRILLING PROGRAM LTD	740933
COASTAL 1984 DRILLING PROGRAM LTD	732366
COASTAL 1985 DRILLING PROGRAM LTD	757771
COASTAL 1985-B DRILLING PROGRAM LTD	789522
COASTAL 1986 DRILLING PROGRAM LTD	763747
COASTAL 1987 DRILLING PROGRAM LTD	812067
COASTAL STRATEGIES INCOME FUND C	817133
COGENRON INC	822814
COLLATERALIZED MORTGAGE SECURITIES CORP	762852
COLLATERALIZED MORTGAGE SECURITIES TRUST	799281
COLLECTIVE BANCORP INC	835345
COLLINS FUTURES FUND III	790416
COLONY BANKCORP INC	711689
COLUMBIA LEASE INCOME FUND II-B LP	769333
COLUMBIA LEASE INCOME FUND II-C LP	769334
COLUMBIA SUSSEX CORP	843381
COLUMBIAN OIL & GAS DRILLING PROGRAM 1984 A LP	736449
COLUMBIAN OIL & GAS PRODUCTION PROGRAM 1-B LP	806119
COLUMBUS ENERGY CORP	823975
COMAIR HOLDINGS INC	835344
COMBINED ASSETS INC	744152
COMBINED ENTERTAINMENT ORGANIZATION INC	829342
COMDATA NETWORK INC	022906
COMMERCE GROUP INC /MA	811612
COMMERCIAL BANCORPORATION OF COLORADO	022990
COMMERCIAL NATIONAL FINANCIAL CORP / MI	828535
COMMONWEALTH BANKSHARES INC	835012
COMMONWEALTH ELECTRIC CO	071222
COMPASS FUTURES FUND	811273
COMPUTERLAND CORP	836100
COMSTOCK INDUSTRIES INC	717410
CONCORD CAPITAL INC	844055
CONCORD MILESTONE INCOME FUND II L P	824303
CONCORD MILESTONE PLUS L P	808460
CONDEV LAND FUND II LTD	828744
CONDOR CAPITAL INC	831375
CONDOR WEST CORP	831376
CONSOLIDATED AMERICAN INDUSTRIES INC /DE	843462
CONSOLIDATED CAPITAL OF NORTH AMERICA INC	809426
CONSOLIDATED CAPITAL PROPERTIES IV	355804
CONSOLIDATED FINANCIAL CORP /DE/	838808
CONSOLIDATED RESOURCES HEALTH CARE FUND	705186
CONSOLIDATED TECHNOLOGY INC	823189
CONSUMERS FINANCIAL CORP	100320
CONTINENTAL CAPITAL RESOURCES INC	835909
CONVERGENCE INC	824305
COOPERATIVE UTILITY TRUST BIG RIVERS SER 1988-A3	829297
COPILOT ELECTRONIC PRODUCTS INC	831887
COPLEY PENSION PROPERTIES VI	824209
COPLEY PENSION PROPERTIES VII	841295
COPLEY REALTY INCOME PARTNERS 2	809765
COPLEY REALTY INCOME PARTNERS 3	829906
COREAST CAPITAL FUNDING I INC	833687
CORNERSTONE MORTGAGE INVESTMENT GROUP II INC	808767
CORNERSTONE MORTGAGE INVESTMENT GROUP INC	790524
CORPORATE FINANCIAL VENTURES INC	811644
CORPORATE PROPERTY ASSOCIATES 6 LP	824978

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
COTA BIOTECH INC	842613
COUNTY BANK CORP	830460
CRAMER INC	316497
CRAWFORD ENERGY INC	350853
CREATIVE RESOURCES INC	814419
CRITERION ACCEPTANCE CORP	726327
CROWN NATIONAL BANCORPORATION INC	845777
CROWN RESOURCES CORP	841555
CRYSTAL VENTURE CORP	830489
CS PRIMO CORP	792157
CUMBERLAND FEDERAL BANCORPORATION INC	830315
D H Z CAPITAL CORP	817679
D&N FINANCIAL CORP	830143
DAIN INCOME PROPERTIES IV	783235
DAMSON 1983-84 OIL & GAS INCOME FUND SERIES 1985-1 769563	
DAMSON INCOME ENERGY LTD PARTNERSHIP	776809
DAMSON INSTITUTIONAL ENERGY LTD PARTNERSHIP	777355
DANIELSON HOLDING CORP	225648
DANZAR INVESTMENT GROUP INC	726435
DATA MED CLINICAL SUPPORT SERVICES INC /MN/	804157
DATA SERVICES INTERNATIONAL LTD	843364
DATRONIC EQUIPMENT INCOME FUND XVII L P	833409
DAWN CAPITAL CORP	831752
DBSI TRI EQUITY INCOME FUND	809799
DCUSA CORP	833083
DE ANZA PROPERTIES IX	027466
DE ANZA PROPERTIES X	215626
DE ANZA PROPERTIES XI LTD	352978
DECADES MONTHLY INCOME & APPRECIATION FUND	820395
DEER PARK FINANCIAL CORP	839106
DELPHI FILM ASSOCIATES	700579
DELPHI FILM ASSOCIATES II	719615
DELPHI FILM ASSOCIATES III	732288
DELPHI FILM ASSOCIATES IV	764636
DELPHI FILM ASSOCIATES V	771976
DELTA GOVERNMENT OPTIONS CORP	832229
DESIGN INSTITUTE AMERICA INC	842266
DEWANI LAURO MARINE PRODUCT DEVELOPMENT	830739
DFSOUTHEASTERN INC	839000
DIABLO REAL ESTATE INVESTMENT TRUST	314178
DIAL A GIFT INC	806972
DIAL ONE ACQUISITION INC	816557
DIALOGUE INCORPORATED	829066
DIM INC	843212
DIME FINANCIAL CORP /CT/	841909
DIMENSION GROUP INC	841447
DISCOVERY CAPITAL CORP	836193
DIVALL INSURED INCOME PROPERTIES 2 LTD PARTNERSHIP 825788	
DIVERSIFIED HISTORIC INVESTORS III	792979
DIVERSIFIED HISTORIC INVESTORS VI	826604
DIVERSIFIED PHOTOGRAPHIC INDUSTRIES INC	840827
DIVERSIFIED REALTY INC	029258
DLJ MORTGAGE ACCEPTANCE CORP	834163
DOLOMITE GLASS FIBRES INC	029540
DONNEBROOKE CORP	843494
DORCHESTER MASTER LTD PARTNERSHIP	759864
DRILEX OIL & GAS INC	030177
DSI REALTY INCOME FUND VI	316835
DSI REALTY INCOME FUND VII	719581
DSI REALTY INCOME FUND XI	844048
DUCKBACK INDUSTRIES INC	831240
DUFF & PHELPS INC	843764
DULLES BANK CORP	844857
DUMAC CORP	843763
DYCO 1988 DEVELOPMENT GENERAL PARTNERSHIP	832846
DYCO 1988 DEVELOPMENT LIMITED PARTNERSHIP	832845
DYCO DEVELOPMENT PARTNERS 1988	832844
DYCO OIL & GAS PROGRAM 1982-2	718944
EAGLE 86 NOVEMBER LTD PARTNERSHIP	789611
EAGLE 86 OSCAR LTD PARTNERSHIP	789612
EAGLE 87 QUEBEC LIMITED PARTNERSHIP	813379
EAGLE 88 SIERRA LIMITED PARTNERSHIP	831814
EAGLE 88 TANGO LTD PARTNERSHIP	842802
EAGLE BANCORP INC /DE/	830996
EAGLE CAPITAL CORP II	830349
EASTCHESTER FINANCIAL CORP	844126

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
EASTERN BANCORP INC	793169
EASTLAND FINANCIAL CORP/RI/	823557
ECONTECH I INC	837889
EDGEMARK VOTING TRUST	836642
EDP OF CALIFORNIA INC	067152
ELECTRONIC PUBLISHING TECHNOLOGY CORP /CO	277471
ELECTRONIC TRANSLATION CORP	843518
ELLISON RAY MORTGAGE ACCEPTANCE CORP	754591
EMC ENERGIES INC	032567
EMERALD EAGLE CORP	832975
EMERALD INSTRUMENT CORP	818320
EMMET INC	835641
EMPIRE FINANCIAL CORP/NJ	032695
EMPIRE STATE LIFE INSURANCE CO	107613
ENERGY ASSETS IV-A LTD	841238
ENERGY RECOVERY SYSTEMS INC	351328
ENEX 88-89 INCOME & RETIREMENT FUND SERIES 2 LP	842829
ENEX INCOME & RETIREMENT FUND SERIES 1 LP	820750
ENEX INCOME & RETIREMENT FUND SERIES 2 LP	825248
ENEX INCOME & RETIREMENT FUND SERIES 3 LP	830320
ENEX OIL & GAS INCOME PROGRAM III SERIES I LP	806612
ENEX OIL & GAS INCOME PROGRAM IV SERIES 1 LP	842832
ENSTAR INCOME GROWTH PROGRAM SIX A L P	824778
ENSTAR INCOME GROWTH PROGRAM SIX B L P	824779
ENTERTAINMENT CORPORATION OF AMERICA	826772
ENTERTAINMENT PUBLISHING CORP	843028
ENVIRITE CORP	803501
ENVIRONETICS INC	812013
EPIC VENTURES CORP	840099
EQUITEC 80 REAL ESTATE INVESTORS	314687
EQUITEC 81 REAL ESTATE INVESTORS	351835
EQUITEC 82 LEASING INVESTORS	701466
EQUITEC 82 REAL ESTATE INVESTORS	701437
EQUITEC 83 LEASING INVESTORS	722823
EQUITEC 83 REAL ESTATE INVESTORS	716387
EQUITEC INCOME REAL ESTATE INVESTORS A	775051
EQUITEC INCOME REAL ESTATE INVESTORS B	775053
EQUITEC INCOME REAL ESTATE INVESTORS C	775054
EQUITEC LEASING INVESTORS 10	798051
EQUITEC LEASING INVESTORS 9	798050
EQUITEC MORTGAGE INVESTORS FUND IV	732413
EQUITEC REAL ESTATE INVESTORS FUND 17	783421
EQUITEC REAL ESTATE INVESTORS FUND 18	783422
EQUITEC REAL ESTATE INVESTORS FUND XIII	735419
EQUITEC REAL ESTATE INVESTORS FUND XIV	746263
EQUITEC VENTURE LEASING INVESTORS A	747409
EQUITEC VENTURE LEASING INVESTORS B	747410
ESKEY INC	313757
EVEREST ENERGY FUTURES FUND L P	837919
EXCALIBUR SECURITY SERVICES INC	834162
EXCEL PROPERTIES LTD	785932
EXECUFIRST BANCORP INC	834285
EXECUTIVE TELECARD LTD	842807
EXHIBITRONIX INC	827164
F 1000 GUARANTEE FUTURES FUND L P SERIES II	826741
F 1000 GUARANTEE FUTURES FUND L P SERIES IV	837107
F&M BANCORPORATION INC	793049
F-1000 FUTURES FUND LP SERIES V	841098
F-1000 GUARANTEE FUTURES FUND LP SERIES	832903
FAIRFIELD COUNTY BANCORP INC	831464
FAIRVIEW MOUNTAIN GOLD INC	831256
FAMILY GROUP BROADCASTING L P	799668
FARM & HOME FINANCIAL CORP	829902
FARMERS & MERCHANTS BANCORP INC	792966
FARMERS BANCORP	730726
FAYETTE COUNTY BANCSHARES INC /GA/	837874
FBC MORTGAGE SECURITIES TRUST 20	842901
FBS MORTGAGE CORP	784556
FBS MORTGAGE CORP MTG PASS THR CERT SER 1988-A1	812259
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-B	812261
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-C2	812263
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-F1	812265
FBS MORTGAGE CORP MTG PASS THR CERT SER 1988-A2	812260
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-D	812264
FBS MORTGAGE CORP MTG PASS THR CERT SER 1987-A	812269
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-C1	812262
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-F3	812267
FBS MORTGAGE CORP MTG PASS THR CERT SER 1986-F4	812268
FCC NATIONAL BANK	819975
FEDTRUST CORP	842640
FFCA INVESTOR SERVICES CORP 85-A	778969
FFCA INVESTOR SERVICES CORP 86-A	778436
FFCA INVESTOR SERVICES CORP 86-B	797978
FFCA INVESTOR SERVICES CORP 88-A	826579
FFCA INVESTOR SERVICES CORP 88-B	824134
FFCA INVESTOR SERVICES CORP 88-C	820807
FFM FINANCE CORP III	812086
FFM FINANCE CORP IV	807071
FFO FINANCIAL GROUP INC	836819
FIDELITY LEASING INCOME FUND V LP	830660
FIDELITY SOUTHERN CORP	822662
FINACORP INC	844884
FINALCO INCOME FUND LTD IA	723621
FINALCO INCOME FUND LTD IB	723622
FINALCO INCOME FUND LTD IC	723623
FINALCO INCOME FUND LTD ID	723624
FINANCIAL BENEFIT GROUP INC /DE/	737823
FINANCIAL RESOURCES MARKETING CORP	835314
FIRST AGATE CAPITAL CORP	835953
FIRST AMERICAN ENERGY INC	843189
FIRST ARTISTS MEDIA ENTERTAINMENT LTD	823005
FIRST BANCORP /IN/	840458
FIRST BANKERS TRUSTSHARES INC	844419
FIRST BOSTON MORTGAGE SECURITIES CORP /DE/	802106
FIRST BUSEY CORP /DE/	314489
FIRST CAPITAL GROWTH FUND-XIV	826745
FIRST CAPITAL INCOME & GROWTH FUND SERIES XII	811117
FIRST CAPITAL INCOME PROPERTIES LTD SERIES	716297
FIRST CAPITAL INSURED REAL ESTATE LIMITED IX	819253
FIRST CHATTANOOGA FINANCIAL CORP	838330
FIRST CHEROKEE BANCSHARES INC	841545
FIRST CITIZENS BANCSTOCK INC	826328
FIRST CITIZENS FINANCIAL CORP	846869
FIRST CITY BANCORP INC /TN/	830154
FIRST CITY BANCORPORATION OF TEXAS INC	828678
FIRST COLONIAL VENTURES LTD	769882
FIRST COMMUNITY BANCORP INC	700858
FIRST DEARBORN INCOME PROPERTIES LP II	837557
FIRST EXPLORATION CO /CO/	091650
FIRST FEDERAL CAPITAL FUNDING II INC	810696
FIRST FEDERAL CAPITAL FUNDING IV INC	833729
FIRST FINANCIAL OF RUSSELLVILLE INC	842393
FIRST FINANCIAL SHARES INC	835734
FIRST HARRISBURG BANCOR INC	846788
FIRST NATIONAL BANK OF CHICAGO /USA/	819974
FIRST NEW YORK BUSINESS BANK CORP	837471
FIRST PITTSBURGH CAPITAL CORP	835320
FIRST SAVINGS BANCORP	837180
FIRST SECURED MORTGAGE DEPOSIT CORP	833018
FIRST SECURITY 1988-A GRANTOR TRUST	841538
FIRST USA BANK	832500
FIRSTFEDERAL FINANCIAL SERVICES CORP	846814
FIRSTSHARES OF TEXAS INC	840014
FIRSTSOUTH COMMERCIAL CORP	752789
FLAME INDUSTRIES INC	225360
FLEXWEIGHT CORP	318128
FLORIDA FIRST EQUITIES CORP	037577
FLORIDA INCOME FUND III LIMITED PARTNERSHIP	826496
FLORIDA POWER & LIGHT CO	037634
FMD INC	773475
FMS FINANCIAL CORP	839645
FNB FINANCIAL CORP	831787
FOGELMAN MORTGAGE L P I	800608
FOGELMAN PROPERTY INVESTORS LTD	702806
FOGELMAN SECURED EQUITY L P	811556
FONE AMERICA INC	809928
FOREMOST CORP OF AMERICA	018506
FORME CAPITAL INC	808047
FORTUNISTICS INC	836796
FOSSIL BAY HOLDING CO INC	839206
FOUNDATION REALTY FUND LTD II	833197
FOUR NINES GOLD INC	827157
FOUR SEASONS FUND LIMITED PARTNERSHIP	767682
FRANCISCO INDUSTRIES INC	038626
FRANKLIN FINANCIAL CORP /TN/	846903
FRANKLIN FIRST FINANCIAL CORP	833050
FRANKLIN REAL ESTATE INCOME FUND	820206
FREIGHT SERVICE GROUP INC /CO/	830380
FREMONT GENERAL CORP	038984
FSA CAPITAL INC	793962
FTB VENTURES LTD	832811
FUND AMERICA INVESTORS CORP	823980
FUTURES DIMENSION FUND II LP	811533
GALT FINANCIAL CORP	832324
GAME A TRON CORP	310449
GATEWAY FINANCIAL CORPORATION	846539
GATEWAY MORTGAGE ACCEPTANCE CORP	841975
GATEWAY SPORTING GOODS CO	040194
GE CAPITAL MORTGAGE SERVICES INC	792428
GEMINI 87-88 XIV L P	813787
GEMINI 87-88 XV L P	813788
GEMINI 87-88 XVI L P	813789
GEMINI EQUIPMENT PARTNERS INCOME FUND VIII LP	761280
GEMSTAR ENTERPRISES INC	829323
GENERAL CELLULAR CORP	831104
GENERAL GROWTH LTD PARTNERSHIP	778339
GLACIER HOLDINGS INC	814924
GLENDALE FEDERAL BANK FEDERAL SAVINGS BANK	820899
GLOBAL ASSET ALLOCATION PORTFOLIO L P	835539
GMAC MORTGAGE SECURITIES INC	792859
GMBS INC SERIES 1990-2	840339
GNS FINANCE CORP	832613
GNW FINANCIAL CORP	837921
GOLDEN ARK INC	844063
GOLDEN ISLES FINANCIAL HOLDINGS INC	828749
GOLDEN NUGGET FINANCE CORP/NV	813663
GOLDOME NEW YORK CAPITAL CORP II	826746
GOODHEART VENTURES INC	825530
GOVERNMENT BACKED TRUST T 4	842907
GOVERNMENT BACKED TRUST T-1	841535
GOVERNMENT BACKED TRUST T-2	841536
GOVERNMENT BACKED TRUST T-3	841537
GOVERNMENT SECURITIES TRUST J 1	842814
GOVERNMENT TRUST 1 A	837577
GOVERNMENT TRUST 1 B	837578
GOVERNMENT TRUST 1 C	837582
GOVERNMENT TRUST 1 D	837583
GOVERNMENT TRUST 2 A	842667
GOVERNMENT TRUST 2 B	842668
GOVERNMENT TRUST 2 C	842669
GOVERNMENT TRUST 2 D	842670
GOVERNMENT TRUST 2 E	842899
GOVERNMENT TRUST 2 F	842900
GRADIN EQUITIES INC	835092
GRAHAM ENERGY INCOME FUND SERIES I	826500
GRANADA FOODS L P	819215
GRAYBAR ELECTRIC CO INC VOTING TRUST	313563
GRAYCOR LASER SYSTEMS INC	842922
GRAYSTONE COMPANIES INC	841006
GREAT BEAR AUTOMOTIVE CENTERS INC	819344
GREAT WESTERN BANK	741511
GREATE BAY PROPERTY FUNDING CORP	827771
GREATER ENERGY CORPORATION	835868
GREENWOOD NATIONAL BANCORPORATION	832847
GREYSTONE FINANCIAL SERVICES INC	799020
GROUP W CABLE ASSOCIATES OF CHICAGO	742665
GROWTH HOTEL INVESTORS	769129
GROWTH HOTEL INVESTORS II	791346
GRUBB & ELLIS REALTY FUND II	044251
GRUBB & ELLIS REALTY FUND III	278230
GUARANTEED HOTEL INVESTORS 1985 LP	773933
GUARANTEED MORTGAGE CORP	356127
GUARANTEED MORTGAGE CORP II	722124
GULLEDGE REALTY INVESTORS II	739626
GUNNER ENERGY CORP	832986

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
GUSTAVUS ADOLPHUS COLLEGE POOLED LIFE INCOME FUND	625108
GVS MED INC	624106
GWINNETT BANCORP INC	840188
HADSON PETROLEUM USA INC	782458
HALLWOOD CONSOLIDATED PARTNER LP	823247
HANCOCK JOHN REALTY INCOME FUND III LP	842741
HANSEN CAPITAL FUNDING I INC	836383
HARLEYSVILLE GROUP INC	792013
HARMONEY STREET CAPITAL INC	830488
HARTFORD FIRE INSURANCE CO	049839
HAVENWOOD VENTURES INC	838846
HAVERFIELD CORP	845817
HAWAII PACIFIC CAPITAL CORP	813855
HAWAII VENTURES INC	829806
HEALTH CORP OF AMERICA	737214
HEARTLAND PARTNERS L P	843984
HERITAGE BANCORP INC /DE/	828123
HERITAGE BANCSHARES INC /FLA/	845518
HERITAGE BANKCORP INC	846877
HI LO NO INC	833205
HIBERNIA NATIONAL BANK 1989 A GRANTOR TRUST	842811
HIGH CASH PARTNERS L P	784884
HIGH EQUITY PARTNERS L P SERIES 88	784054
HIGH EQUITY PARTNERS L P SERIES 89	831574
HISTORIC HOUSING FOR SENIORS II LTD PARTNERSHIP	835413
HISTORIC HOUSING FOR SENIORS LIMITED PARTNERSHIP	820198
HISTORIC PRESERVATION PROPERTIES 1988 LP	839814
HOLCO SECURED MORTGAGE INVESTMENT III	798275
HOLMES MICROSYSTEMS INC	832100
HOME MISSION BD OF THE SOUTH BAPT CONV SERIES D	771459
HOME PORT BANCORP INC	832788
HOME SAVINGS OF AMERICA FA	784322
HOMEFED CORP	833796
HOMEFREE INVESTORS L P	820888
HOMESTEAD HOLDING CORP	830921
HOMETOWN BANCSHARES INC	837994
HOPE TECHNOLOGIES INC /NV	804154
HORIZON BANKS INC	830982
HORIZON WORLD FUTURES FUND	715123
HOSPITALITY CAPITAL CORP /AZ/	310540
HOUSING FOR SENIORS PARTICIPATING MTG FUND LP	833625
HOUSTON OIL & ENERGY INC	317795
HOUSTON PIPE LINE CO	048738
HUNT INTERNATIONAL RESOURCES CORP	216153
HUTTON GSH QUALIFIED PROPERTIES 80	317278
HUTTON INDIAN WELLS 1983 ENERGY INCOME FUND LTD	715327
IBS COMPUTER CORP	835596
IBT BANCORP INC /MI/	842517
IDM FINANCIAL INCOME PARTNERS CO II	832477
IDM PARTICIPATING INCOME CO	813814
IDM PARTICIPATING INCOME CO II	833475
IDM PARTICIPATING INCOME CO III	832476
IDM PARTICIPATING INCOME COMPANY IV	842812
IDORA SILVER MINES INC	048934
IDS SHURGARD INCOME GROWTH PARTNERS L P II	843023
IEA INCOME FUND IX L P	826572
IEA INCOME FUND VI	774482
IEA INCOME FUND VII	809511
IEA INCOME FUND VIII	821097
IEA MARINE CONTAINER FUND II	315806
IEA MARINE CONTAINER INCOME FUND III	350202
IEA MARINE CONTAINER INCOME FUND IV	357047
IEA MARINE CONTAINER INCOME FUND V-A	727047
IEA MARINE CONTAINER INCOME FUND V-B	727048
INCOME GROWTH PARTNERS LTD X	820851
INDEPENDENT BUSINESS ALLIANCE INC	025818
INDIANA FEDERAL CORP	830250
INFINITY INC	822748
INFISY SYSTEMS INC	734388
INFOAMERICA INC	780497
INFORMATION DISPLAY TECHNOLOGY INC	836405
INLAND MONTHLY INCOME FUND II L P	826332
INLAND MORTGAGE INVESTORS FUND III LP	841129
INLAND MORTGAGE INVESTORS FUND LP II	808434
INLAND REAL ESTATE GROWTH FUND LP	773838
INNOVATIVE TECH SYSTEMS INC	824008
INNOVATIVE TECHNOLOGY INC	312646
INNOVO GROUP INC	844143
INSIGHT CAPITAL CORP	833813
INTEGRA FINANCIAL CORP	831231
INTEGRATED RESOURCES HIGH EQUITY PARTNERS SER 85	730967
INTELEPLEX CORP	365270
INTERACTIVE MEDICAL TECHNOLOGIES LTD	822997
INTERCARGO CORP	815767
INTERCELL CORP	745685
INTERFERON SCIENCES RESEARCH PARTNERS LTD	749525
INTERLINE RESOURCES CORP	841522
INTERMOUNTAIN RESOURCES INC	320148
INTERNATIONAL CONVERTER CORP/CO/	837485
INTERNATIONAL FUTURES FUND TWO	783276
INTERNATIONAL GAMING MANAGEMENT INC	803188
INTERNATIONAL META SYSTEMS INC/DE/	820475
INTERNATIONAL SPORTSFEST INC	840159
INTERNET COMMUNICATIONS CORP	841093
INTERSTATE LAND INVESTORS I LTD PARTNERSHIP	835348
INTERVEST CORPORATION OF NEW YORK	835955
INTERWEST OPPORTUNITIES INC	798823
INVESTMENT GROWTH RESOURCES INC	832398
INVESTORS COMMODITY FUND II	783488
IOWA PUBLIC SERVICE CO /IA	052502
IPO FINANCING CORP	842958
IRE REAL ESTATE INCOME FUND LTD	785220
IROQUOIS BANCORP INC	846753
IVC INC	780546
IVORY CAPITAL CORP	841006
IVY MEDICAL INC /DE/	772337
JACQUES MILLER HEALTHCARE PROPERTIES L P	844456
JAGUAR CAPITAL CORP	844186
JCP RECEIVABLES INC	823210
JEFFERSON FUTURES FUND	814061
JERICAF INC	830431
JES PROPERTIES LTD PARTNERSHIP	729626
JHM ACCEPTANCE CORP	839461
JHM ACCEPTANCE CORP III	792951
JHM ACCEPTANCE CORP IV	826486
JIFFY LUBE INSURED INCOME PARTNERS LP	059540
JILCO INDUSTRIES INC	791115
JILLY BEAR & CO INC	202240
JMB INCOME PROPERTIES LTD V	319192
JMB INCOME PROPERTIES LTD VIII	790559
JMB MORTGAGE PARTNERS LTD IV	843888
JONATHON NO 2 GROUP INC	843010
JONES GROWTH PARTNERS L P	832901
JONES PROGRAMMING PARTNERS LTD	824955
JONES SPACELINK INCOME GROWTH FUND 1	833834
JP 2000 CORP	833839
JRS FOODS INC	810156
JSL INC	820140
K TECH INC	801904
KAISER RESEARCH INC	729385
KAISER STEEL RESOURCES INC	825409
KAR VENTURES INC	818876
KB COMMUNICATIONS INC	816162
KBF POLLUTION MANAGEMENT INC	353840
KEEBEE CORP	825343
KELLEY PARTNERS 1988 DEVELOPMENT DRILLING PROGRAM	751263
KEMPER CYMROT REAL ESTATE INVESTMENT FUND B LP	755872
KEYES FLORIDA PROPERTIES LTD 85	798782
KEYES OFFSHORE LTD PARTNERSHIP	843985
KIDDER PEABODY MORTGAGE ASSETS TRUST TWENTY TWO	787329
KIMBELL DECAR CORP	822812
KINDER CARE LEARNING CENTERS INC /DE	758401
KINLAW ENERGY PARTNERS CORP	840402
KIWI III LTD	202328
KOGER PARTNERSHIP LTD	716139
KP MILLER REALTY GROWTH FUND II	765197
KP MILLER REALTY GROWTH FUND III	715112
KP TEMPLETON OIL & GAS INCOME FUND LTD 1983	768175
KRUPP CASH PLUS LTD PARTNERSHIP	699427
KRUPP CASH PLUS V LIMITED PARTNERSHIP	732729
KRUPP COMMERCIAL PROPERTIES LTD PARTNERSHIP	842895
KRUPP INSURED MORTGAGE LIMITED PARTNERSHIP	905299
KRUPP INSURED PLUS II LTD PARTNERSHIP	832091
KRUPP INSURED PLUS III LIMITED PARTNERSHIP	702117
KRUPP REALTY FUND LTD III	716389
KRUPP REALTY LTD PARTNERSHIP IV	818677
KRUPP YIELD PLUS LIMITED PARTNERSHIP	845991
LAKELAND BANCORP INC	836626
LAKELAND FIRST FINANCIAL GROUP INC	722988
LANCER INDUSTRIES INC /DE/	826988
LANDMARK COMMUNITY BANCORP INC	808847
LANDMARK FINANCIAL CORP /DE/	711998
LANDSING DIVERSIFIED PROPERTIES II	727745
LANDSING DIVERSIFIED PROPERTIES III	842898
LANIER BANKSHARES INC	276388
LAS VEGAS INVESTORS LTD	826997
LASERMAX CORP	780376
LATIN FOODS INTERNATIONAL INC	826878
LATOKA INC /TX	067998
LAUGHLIN RECREATIONAL ENTERPRISES INC	833218
LAUR CORP	734748
LAUTREC INC	844054
LAVA INVESTMENT CORP	750567
LBO CAPITAL CORP	811429
LEGNA ENTERPRISES INC	821462
LESCARDEN INC	056822
LETCHWORTH INDEPENDENT BANCSHARES CORP	723323
LEWIS RESOURCES INC	826413
LIDAK PHARMACEUTICALS	856809
LIF	757642
LIFE BALANCES INTERNATIONAL INC	840199
LIGHTNING BOLT INTERNATIONAL INC	826405
LIGHTWAVE CABLEVISION SYSTEMS INC	797154
LINCOLN LIBERTY AVENUE LTD	779566
LINCOLN SERVICE CAPITAL TRUST I	792562
LINCOLN SERVICE CAPITAL TRUST II	806808
LINCOLN SERVICE CAPITAL TRUST III	806809
LINCOLN SERVICE CAPITAL TRUST IV	806810
LINCOLN SERVICE CAPITAL TRUST V	806811
LIND WALDOCK COMMODITY PARTNERS LTD PARTNERSHIP	839816
LINKON CORP	833203
LMD ACQUISITIONS INC	791350
LONG ISLAND CITY FINANCIAL CORP	839041
LOON MOUNTAIN RECREATION CORP	060398
LORD ABBOTT INC	832370
LOUISIANA PACIFIC RESOURCES INC	080625
LSS HOLDINGS CORP	842161
LUBRIQUIP INC	832103
LUMINALL PAINTS INC	060878
LUXELLO PROPERTIES INC	729818
M INC	710846
MACKINAC FINANCIAL CORP	888839
MADISON BANCSHARES GROUP LTD	846809
MAGIC CIRCLE ENERGY 1981-A DRILLING PROGRAMS	702399
MAGIC CIRCLE ENERGY 1981-B DRILLING PROGRAMS	702400
MAGIC RESTAURANTS INC	837568
MALEX INC	819828
MANATI INDUSTRIES INC	061682
MARCO VENTURES	827055
MARCUS & MILLICHAP PENSION VENTURES	830481
MARCUS & MILLICHAP PROPERTY PARTNERS 86	830482
MARIN FUND INC	831068
MARKET DATA CORP	833837
MARKET LINE INTERNATIONAL INC	749860
MARLENE INDUSTRIES CORP/NY	840070
MARTEL MICRO SYSTEMS INC	724880
MARTINIQUE VENTURES CORP	838498
MARYLAND CABLE CORP	837554
MARYLAND CABLE HOLDINGS CORP	837555
MAST OPTICAL SYSTEMS INC	806497
MASTER MORTGAGE INVESTMENT FUND INC	805712
MAUI CAPITAL CORP	842985
MAXI GROUP INC	798511
MAY DRILLING PARTNERSHIP 1982-1	711308
MAY DRILLING PARTNERSHIP 1982-2	711309
MAY DRILLING PARTNERSHIP 1982-3	711310
MAY DRILLING PARTNERSHIP 1984-1	739845
MAY DRILLING PARTNERSHIP 1984-2	739846
MAY DRILLING PARTNERSHIP 1984-3	739847
MAY DRILLING PARTNERSHIP 1985-2	761185
MAY LIMITED PARTNERSHIP 1982-1	725650
MAY LIMITED PARTNERSHIP 1982-2	736652
MAY LIMITED PARTNERSHIP 1982-3	743468
MAY LIMITED PARTNERSHIP 1984-1	757525
MAY LIMITED PARTNERSHIP 1984-2	757385

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
MAY LIMITED PARTNERSHIP 1984-3	765948
MAY LIMITED PARTNERSHIP 1985-2	799177
MBNA CREDIT CARD TRUST 1987-A	824090
MBNA CREDIT CARD TRUST 1988-A	831260
MCCOMBS PROPERTIES V LTD	353391
MCCOMBS PROPERTIES VI LTD	356661
MCCOMBS PROPERTIES VIII LTD	721937
MCCOMBS REALTY PARTNERS LTD	759198
MCCOMBS RENTA SPACE PROPERTIES LTD	276282
MCCORMICK COMMODITY FUND III LIMITED PARTNERSHIP	843819
MCCORMICK INTERNATIONAL FUND I LIMITED PARTNERSHIP	838631
MCDONNELL DOUGLAS CAPITAL INCOME 1A LP	823251
MCDONNELL DOUGLAS CAPITAL INCOME 1B LP	823252
MCDONNELL DOUGLAS CAPITAL INCOME 1C LP	823253
MCDONNELL DOUGLAS CAPITAL INCOME 1D LP	823254
MCDONNELL DOUGLAS CAPITAL INCOME 1E LP	823256
MECHANICS & FARMERS SAVINGS BANK FSB	802897
MED VENTURE INC	722566
MEDIA DEVELOPMENT INDUSTRIES LTD	818181
MEDICAL EQUIPMENT INCOME FUND LIMITED PARTNERSHIP	839092
MEDICAL INCOME PROPERTIES 2A LTD PARTNERSHIP	814433
MEDICAL PLAZA PARTNERS LTD	764835
MEDICAL SCIENCES INC	810107
MEDITECH PHARMACEUTICALS INC	717588
MEDIZONE INTERNATIONAL INC	753772
MEGAPIX CORP	794355
MEGO CORP	736035
MELBOURNE CAPITAL CORP	841126
MELLYNE HOLDINGS INC	842674
MEMBERS FINANCIAL SERVICE BUREAU INC	820168
MEMOREX CORP /DE/	110704
MENDELL DENVER CORP	827181
MEPC CAPITAL CORP II	831654
MERCURY CAPITAL CORP	835787
MERCURY ENTERTAINMENT CORP	747777
MERCURY GENERAL CORP	064996
MERIDIAN FUND LTD	833051
MERIDIAN HEALTHCARE GROWTH & INCOME FUND LP	826682
MERISEL INC	839438
MERRICO GUARANTY INCOME FUND LTD 1984-4	794481
MERRILL LYNCH CORPORATE PASS THROUGH SEC	351709
MERRILL LYNCH ENERGY PARTNERS I LP	713977
MERRILL LYNCH ENERGY PARTNERS IIA L P	780217
MERRILL LYNCH ENERGY PARTNERS IIB L P	780219
MERRILL LYNCH MORTGAGE INVESTORS INC /DE	809940
MESA OFFSHORE TRUST	711303
METALINE MINING & LEASING CO	065224
METRIC PARTNERS GROWTH SUITE INVESTORS LP	800730
METROPOLITAN FUND DOVER PENSION INVESTORS 1986	773540
MICROBYX CORP	771570
MICROCARE INC	793629
MID ALLEGHENY CORP	794278
MID ATLANTIC BANKCORP	759727
MID SOUTH INSURANCE CO	791254
MID STATE TRUST II	828978
MIDAMERICAN CORP	808687
MIDMERICA BANK CORP	833727
MIDTOWN NORTH LTD /GA/	779587
MILESTONE CAPITAL INC	817129
MILLS MUSIC TRUST	066496
MINERAL DEVELOPMENT INC	316300
MINERAL KING BANCORP INC	842179
MINERAL MOUNTAIN MINING & MILLING CO	066600
ML ASSET BACKED CORP	822760
ML DELPHI PREMIER PARTNERS LP	795252
ML REAL ESTATE RECOVERY FUND L P	825036
ML TRUST XLI	837561
ML TRUST XLII	837571
MLH INCOME REALTY PARTNERSHIP	317150
MLH INCOME REALTY PARTNERSHIP II	701265
MLH PROPERTIES LTD PARTNERSHIP	310990
MLH PROPERTIES LTD PARTNERSHIP II	316223
MLH PROPERTIES LTD PARTNERSHIP III	350671
MONEY RADIO INC	843514
MONITREND INVESTMENT MANAGEMENT INC	811614
MONOCLONAL MEDICAL INC	841112
MONTCLAIR BANCORP INC	829341
MORGAN CLIFTON FUND LTD PARTNERSHIP	789101
MORGAN MEDICAL HOLDINGS INC	834112
MORGAN WINDSOR LTD	840823
MORITZ ENERGY CORP	317949
MORTGAGE SECURITIES I CORP	751419
MORTGAGE SECURITIES II CORP	789357
MORTGAGE SECURITIES III TRUST A	785818
MORTGAGE SECURITIES III TRUST C	814144
MORTGAGE SECURITIES III TRUST D	808264
MOTELS OF AMERICA SERIES XIV	831974
MOUNTAIN STATES GUARANTY MORTGAGE CO	828740
MOUNTAIN VENTURES INC	835289
MPB CORP /DE/	068668
MRI BUSINESS PROPERTIES FUND LTD	722986
MSA SHOPPING MALLS INC	718572
MULTIPLEX SERVICES INC	740073
MURRAY UNITED DEVELOPMENT CORP	826444
MUSICLAND STORES CORP	832995
MUSTANG RANCH INC	840006
MUTUAL BENEFIT INCOME PARTNERS LP I	830350
MUTUAL BENEFIT MORTGAGE INVESTORS III LP	786420
NAC RE CORP	775542
NACOMA CONSOLIDATED INDUSTRIES INC	842684
NASHVILLE SUPER 8 LTD	820062
NATL BANK OF DETROIT RET PLAN & TRUST FOR SELF EM	070846
NATIONAL CREDIT CARD TRUST 1988-1	839949
NATIONAL CREDIT CARD TRUST 1989-1	845581
NATIONAL HOUSING PARTNERSHIP REALTY FUND III	769028
NATIONAL LEASE INCOME FUND 7 L P	835737
NATIONAL MARINAS L P	836867
NATIONAL MORTGAGE ACCEPTANCE CORP	768600
NEEDLE IN A HAYSTACK INC	793364
NET 2 L P	843756
NETWORK REAL ESTATE OF CALIFORNIA INC	820771
NEW EAST BANCORP	845754
NEW GOLF CONCEPTS INC	820221
NEW HAMPSHIRE THRIFT BANCSHARES INC	846931
NEW PIG CORP	825371
NGT ENTERPRISES INC	353646
NIAGARA EXCHANGE CORP	732433
NIGHTINGALE INC	837296
NIGHTWING GROUP INC	811787
NITE LITE USA LTD	832488
NOONEY REAL PROPERTY INVESTORS TWO L P	312155
NORCAP INC	793702
NORTH AMERICAN ENERGY OF DELAWARE INC /DE/	225854
NORTH BY NORTHEAST LTD	835954
NORTH GEORGIA NATIONAL BANCSHARES INC	843493
NORTHERN INDIANA PUBLIC SERVICE CO	072843
NORTHLAND CABLE PROPERTIES EIGHT LTD PARTNERSHIP	843368
NORTHLAND CABLE PROPERTIES TWO LTD PARTNERSHIP	732048
NORTHSTAR INCOME FUND I LP	838814
NORTHWEST GOLD INC	352447
NORWICH FINANCIAL CORP	828808
NOVA CAPITAL INC	840404
NOVA COLOR INC	313457
NOVATEK INTERNATIONAL INC	832334
NRM OPERATING CO LP	794413
NSA INC /CO	798176
NSC SERVICE GROUP INC	810111
NTS MORTGAGE INCOME FUND	841942
NTS PROPERTIES PLUS LTD	816089
NUGGET OIL CORP	276327
NUMEX CORP	318718
NUTRI PRODUCTS INC	831202
NYLIFE GOVERNMENT MORTGAGE PLUS LTD PARTNERSHIP	844414
OHIO & SOUTHWESTERN ENERGY CO	053320
OLD TYME SOFT DRINKS INC	819967
OLDE FINANCIAL CORP	813180
OLYMPIC FINANCE CORPORATION G	842334
OMNI CAPITAL GROUP INC	838670
ONBANCORP INC	846609
ONE BANCORP	740781
OPTI MAG SUBSTRATE INC	814921
OPTIFUND INC	819201
ORBITRON CAPITAL CORP	797983
ORCHARD HOUSE PARTNERSHIP	837590
ORIGINAL SIXTEEN TO ONE MINE INC /CA/	074925
OUTLOOK INCOME FUND 10	822729
OXFORD TAX EXEMPT FUND LTD PARTNERSHIP	789020
PAB BANKSHARES INC	705200
PACIFIC EAGLE TREASURE SALVORS INC	786128
PAINEWEBBER GEODYNE ENERGY INCOME L P I-A	746254
PAINEWEBBER GEODYNE ENERGY INCOME L P II-A	824894
PAINEWEBBER GEODYNE ENERGY INCOME L P II-C	833054
PAINEWEBBER GEODYNE ENERGY INCOME L P II-D	833526
PALFED INC	793075
PAN AMERICAN ENERGY CORPORATION	095626
PAN ATLANTIC INC	807906
PANACO INC	862074
PANTHER MOUNTAIN WATER PARK INC /DE/	815577
PARAGON TEMPLETON 81-A LTD	320342
PARAGON TEMPLETON 81-B LTD	356180
PARK PREMIER MINING CO	076286
PARKER & PARSLEY 82 II LTD	717374
PARKER & PARSLEY 88 A L P	828188
PARKER & PARSLEY 88 B L P	828191
PARKER & PARSLEY 89 A G P	844624
PARKER & PARSLEY 89 A L P	844582
PARKER & PARSLEY 89 B L P	844606
PARKER & PARSLEY PRODUCING PROPERTIES 87-A LTD	809018
PARKER & PARSLEY PRODUCING PROPERTIES 88A LP	837893
PARKER AUTOMOTIVE CORP	839434
PARKVALE FINANCIAL CORP	820907
PARKWAY CAPITAL CORP	825517
PARTICIPATING INCOME PROPERTIES II LP	820806
PARTNERS PREFERRED YIELD II LTD	827101
PARTNERS PREFERRED YIELD III LTD	827102
PATRIOT FINANCIAL CORP	836564
PB SECURED FINANCING CORP	839849
PBM BANCORP INC	704538
PCC GROUP INC	756972
PCI ASSOCIATES NO 8 LIMITED PARTNERSHIP	831233
PCPI FUNDING CORP	824581
PEACHTREE EQUITIES INC	831859
PEGASUS GYMNASTICS EQUIPMENT INC	806521
PEMBROKE CAPITAL INC	842706
PENN TREATY AMERICAN CORP	814181
PEOPLES HERITAGE FINANCIAL GROUP INC	829750
PEOPLES SAVINGS FINANCIAL CORP	846801
PERSHING LEASE INCOME LTD PARTNERSHIP	826407
PETROLEUM SEC FUND 1980 DEV DRIL PROG LTD PT NO 1	317616
PHASE OUT OF AMERICA INC	824418
PHH CAPITAL INC	718789
PHOENIX HIGH TECH HIGH YIELD FUND	837903
PHOENIX LEASING CAPITAL ASSURANCE FUND	773821
PHOENIX LEASING CASH DISTRIBUTION FUND	755118
PHOENIX LEASING CASH DISTRIBUTION FUND III	822690
PHOENIX LEASING GROWTH FUND 1982	356225
PHOENIX LEASING INCOME FUND 1977	216860
PHOENIX LEASING INCOME FUND 1980	313351
PHOENIX LEASING INCOME FUND 1981	353543
PHOENIX LEASING INCOME FUND 1982-1	355945
PHOENIX LEASING INCOME FUND 1982-2	702803
PHOENIX LEASING INCOME FUND 1982-3	702804
PHOENIX LEASING INCOME FUND 1982-4	702805
PHOENIX LEASING INCOME FUND VI	709995
PHOENIX LEASING INCOME FUND VII	732678
PHOENIX LEASING PERFORMANCE FUND 1980	316578
PHOENIX NBC PLAZA LTD	702927
PHOENIX VENTURES INC	215023
PIEDMONT FEDERAL CORP	829552
PINNACLE BANCORP INC	836881
PITCAIRN GROUP L P	801588
PLANTS FOR TOMORROW INC	824103
PLANVEST DEVELOPMENT PARTNERS	769025
PLAYTEX FAMILY PRODUCTS CORP /DE/	842945
PLAZA FINANCE CO INC	839084

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
PLM EQUIPMENT GROWTH FUND III	824210
PMR CORP	829608
PNB BANKSHARES INC	847068
POLARIS AIRCRAFT INCOME FUND V	832923
POLYDYNE INDUSTRIES INC	832964
PORT ST LUCIE NATIONAL BANK HOLDING CORP	835411
PRECIOUS METAL MINES INC	825999
PREFERRED INCOME FUND II LIMITED PARTNERSHIP	843005
PREMIERE LTD	792336
PRESIDENTIAL FUND I LIMITED PARTNERSHIP	831242
PRICE T ROWE REALTY INCOME FUND I	752743
PRICE T ROWE REALTY INCOME FUND II	787493
PRICE T ROWE REALTY INCOME FUND III	805296
PRICE T ROWE REALTY INCOME FUND IV	826315
PRIME BANCORP INC	823550
PRIME CABLE INCOME PARTNERS LP	793598
PRIME PLUS REALTY PARTNERS	357217
PRIMEBANK FINANCIAL CORP	846804
PRIMOS HOLDINGS INC	837760
PRINCETON FINE ART INC	789850
PRINCIPAL GROWTH MORTGAGE INVESTORS FUND LP SER I	823195
PROCYON CORP	812306
PROFESSIONAL VENTURES INC	803172
PROGRAMS UNLIMITED INC	353705
PROGRESSIVE VENTURES INC	843516
PROPERTY RESOURCES FUND VIII	746720
PROPERTY SOLUTION USA INC	775782
PROPHETSTOWN MANUFACTURING INC	729975
PROVIDENT AMERICAN CORP	768892
PRUDENTIAL BACHE DIVERSIFIED FUTURES FUND LP	833225
PRUDENTIAL BACHE ENERGY GROWTH FUND LP G-2	801582
PRUDENTIAL BACHE ENERGY GROWTH FUND LP G-3	801585
PRUDENTIAL BACHE ENERGY GROWTH FUND LP G-1	801580
PRUDENTIAL BACHE ENERGY INCOME FUND 1983 P-3	745148
PRUDENTIAL BACHE ENERGY INCOME FUND 1983 P-2	743452
PRUDENTIAL BACHE ENERGY INCOME FUND 1983 P-1	743451
PRUDENTIAL BACHE ENERGY INCOME LP IVP-17	814397
PRUDENTIAL BACHE ENERGY INCOME LP IVP-16	813768
PRUDENTIAL BACHE ENERGY INCOME LP VP-19	825198
PRUDENTIAL BACHE ENERGY INCOME LP VIP-23	826493
PRUDENTIAL BACHE ENERGY INCOME LP VP-18	820079
PRUDENTIAL BACHE ENERGY INCOME LP VP-21	831963
PRUDENTIAL BACHE ENERGY INCOME LP VP-20	831362
PRUDENTIAL BACHE ENERGY INCOME LP VP-22	837493
PRUDENTIAL BACHE ENERGY INCOME LP IIP-12	798912
PRUDENTIAL BACHE ENERGY INCOME LP IIP-13	799170
PRUDENTIAL BACHE ENERGY INCOME LP IIP-8	774456
PRUDENTIAL BACHE ENERGY INCOME LP IIP-10	736493
PRUDENTIAL BACHE ENERGY INCOME LP IIP-11	795751
PRUDENTIAL BACHE ENERGY INCOME LP IIP-9	782997
PRUDENTIAL BACHE ENERGY INCOME LP IIP-4	751373
PRUDENTIAL BACHE ENERGY INCOME LP IIP-7	764575
PRUDENTIAL BACHE ENERGY INCOME LP IIP-5	751375
PRUDENTIAL BACHE ENERGY INCOME LP IIP-6	785947
PRUDENTIAL BACHE ENERGY INCOME LP IIP-15	790518
PRUDENTIAL BACHE EQUITEC REAL ESTATE PARTNERSHIP	757191
PRUDENTIAL BACHE FUTURES GROWTH FUND LP	823347
PRUDENTIAL BACHE PENSION & INTL INVESTOR LP PI 2	837494
PRUDENTIAL BACHE PENSION & INTL INVESTOR LP PI 1	837492
PRUDENTIAL BACHE PENSION & RETIREMENT LP PBR-3	793711
PRUDENTIAL BACHE PENSION & RETIREMENT LP PBR-4	813767
PRUDENTIAL BACHE PENSION & RETIREMENT LP PBR-2	775301
PRUDENTIAL HOME MORTGAGE SECURITIES COMPANY INC	822657
PRUDENTIAL REALTY ACQUISITION FUND II LP	752292
PS MARINA INVESTORS I	831491
PS PARTNERS VI LTD	773281
PSN COMMUNICATIONS INC	742689
PUBLIC STORAGE PROPERTIES VI INC	313741
PUBLIC STORAGE PROPERTIES VII LTD	319785
PUBLIC STORAGE PROPERTIES VIII LTD	353461
PUBLIC STORAGE PROPERTIES X LTD	709333
PUBLIC STORAGE PROPERTIES XI LTD	726282
PUBLIC STORAGE PROPERTIES XII LTD	737206
PUBLIC STORAGE PROPERTIES XIV LTD	719839
PUBLIC STORAGE PROPERTIES XIX LTD	800160
PUBLIC STORAGE PROPERTIES XV LTD	757564
PUBLIC STORAGE PROPERTIES XVI LTD	789569
PUBLIC STORAGE PROPERTIES XX LTD	819335
QNB CORP	750556
QSR INCOME PROPERTIES LTD	783267
QUAD METALS CORP/WA	081350
QUALIFIED HOUSING PARTNERS LIMITED PARTNERSHIP	826817
QUALITY RESORTS OF AMERICA INC	786431
QUANTUS CAPITAL INC	826878
QUIESCENT CORP	841262
RAL INCOME PLUS EQUITY GROWTH V LTD PARTNERSHIP	832310
RAMADA ASSURED INCOME ASSOCIATES LP	812621
RAMCO ENERGY CORP	829283
RANCHO VENTURES LTD	789986
REALTY PARKING PROPERTIES LP	841127
RECOGNITION TECHNOLOGY INC	799634
REDWOOD EMPIRE BANCORP	840007
REFLECTONE INC /FL/	785037
REGENT BANCSHARES CORP	848979
REMINGTON FOX INC	829548
RENAISSANCE CONCEPTS INC	821706
REPUBLIC HEALTH CORP	719242
REPUBLIC LEASING INC /WA/	781882
RESIDENTIAL RESOURCES INC	791344
RESNICK WORLDWIDE INC	838044
RESOURCE TECHNOLOGY GROUP INC	831206
RETIREMENT LIVING TAX EXEMPT MORTGAGE FUND LP	789283
REVCO D S INC	083496
REXNORD CORP	843762
RF&P CORP	826830
RIC 24 LTD	825006
RIC 25 LTD	825007
RINGOR INTERNATIONAL LIMITED	826511
RINGSIDE INTERNATIONAL BROADCASTING CORP	824961
RITTENHOUSE CAPITAL CORP	831382
RIVAL CO	860184
RIVERSIDE CAPITAL INC	842694
RMI COVERED HOPPER RAILCAR MANAGEMENT PROGRAM 79-1 311250	843492
RMSM LITHOTRIPTER LIMITED PARTNERSHIP	827100
ROBOTIC LASERS INC	840058
ROCHESTER COMMUNITY SAVINGS BANK	819553
ROCK A BYE BABY INC /DE	084613
ROCKLAND ELECTRIC CO	830055
ROOSEVELT FINANCIAL GROUP INC	099680
ROTHCHILD COMPANIES INC	018300
ROYALE GROUP LTD	823211
RPS GROWTH & INCOME FUND LP	825980
RPS HOUSING FUND I L P	840252
RS FINANCIAL CORP	814702
RURAL ELEC COOP GRANTOR TRUST SOYLAND 1987 A-4	814699
RURAL ELEC COOP GRANTOR TRUST SOYLAND 1987-A33	820761
RURAL ELEC COOP GRANTOR TRUST KEPCO 1989-K1	
RURAL ELEC COOP GRANTOR TRUST DESERET 1988-D2	829674
RURAL ELEC COOP GRANTOR TRUST DESERET 1988-D1	829673
RURAL ELEC COOP GRANTOR TRUST TEX LA 1988-T2	829648
RURAL ELEC COOP GRANTOR TRUST TEX LA 1988-T1	829547
RURAL ELEC COOP GRANTOR TRUST KEPCO 1988-K2	829677
RURAL HOUSING TRUST 1987-1	820763
RUSSCO INC	790228
RYAN MORTGAGE ACCEPTANCE CORP	703347
RYAN MORTGAGE ACCEPTANCE CORP II	725591
RYAN MORTGAGE ACCEPTANCE CORP III	740987
RYAN MORTGAGE ACCEPTANCE CORP IV	740963
RYAN MORTGAGE ACCEPTANCE CORP V	832357
RYLAND ACCEPTANCE CORP THREE	724272
RYLAND ACCEPTANCE CORP TWO	708318
RYLAND ACCEPTANCE CORPORATION FOUR	769660
RYLAND MORTGAGE SECURITIES CORP /VA/	811493
S L RESOURCES INC	842906
S Y BANCORP INC	835324
SAFE AID PRODUCTS INC	829117
SALOMON BROTHERS MORTGAGE SECURITIES VII INC	809877
SAME DAY EXPRESS INC	786815
SANCHEZ OBRIEN 1981 B DRILLING CO	354253
SANI TECH INDUSTRIES INC	805904
SANTA BARBARA FUNDING I INC	788426
SANTA BARBARA SAVINGS & LOAN ASSOCIATION	809171
SANWA BANK CALIFORNIA	059951
SARKIS CAPITAL INC	813567
SASSOON INTERNATIONAL INC	724977
SCFC AUTOMOBILE LOAN TRUST 1989-1	841392
SCI TECH VENTURES INC	826674
SCOTTSDALE LAND TRUST LIMITED PARTNERSHIP	824098
SEA WOLF VENTURES INC	841124
SEAMENS MORTGAGE FINANCE II INC	831238
SEAMENS MORTGAGE FINANCE INC	818434
SEARS CREDIT ACCOUNT TRUST 1988 A	832068
SEARS CREDIT ACCOUNT TRUST 1988 B	838162
SEARS CREDIT ACCOUNT TRUST 1988 C	843767
SEARS MORTGAGE FUNDING TRUST 1988-1	842703
SEAWAY FINANCIAL CORP	830927
SECURED EQUITY LEASING PLUS LP	840214
SECURED INCOME L P	804217
SECURED INVESTMENT RESOURCES FUND LP III	839638
SECURITY BANCORP INC /GA/	843155
SECURITY INVESTMENTS GROUP INC	088547
SECURITY PACIFIC NATIONAL BANK /DE/	806244
SECURNET MORTGAGE SECURITIES CORP I	811594
SELECTIVE INSURANCE GROUP INC	230557
SELECTORS INC	746778
SEMPER BARRIS INC	819555
SENERGY 1986 LTD	784009
SEPTIMA ENTERPRISES INC	842013
SEVEN VENTURES INC	779956
SFFED CORP	829803
SHEARSON BK PROPERTIES INC	783483
SHEARSON BK REALTY INC	783482
SHEARSON BK RESTAURANTS INC	783464
SHEARSON MURRAY REAL ESTATE FUND IV LTD	819303
SHOPCO REGIONAL MALLS LP	830738
SHUR SCAPE SYSTEM INC	833204
SHURGARD INCOME PROPERTIES FUND 18 LP	808417
SHURGARD INCOME PROPERTIES III	706004
SIE COMMUNICATIONS INC	827083
SIERRA CAPITAL REALTY TRUST VIII CO	826957
SIERRA PACIFIC POWER CO	090144
SILVER CRESCENT INC /NEW/	319984
SILVER SCREEN PARTNERS II L P	764219
SILVER SCREEN PARTNERS III LP	799101
SILVER SCREEN PARTNERS IV L P	826600
SILVER SCREEN PARTNERS L P	715082
SIMPLICITY HOLDINGS INC	832504
SKIN CONTROL SYSTEMS INC	716939
SLH PERFORMANCE PARTNERS FUTURES FUND LP	841941
SMITH BARNEY MORTGAGE CAPITAL TRUST VI	842798
SOLAR SATELLITE COMMUNICATION INC	729588
SOLARCELL CORP	091849

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-09

Registrant	CIK No.
SOLECTRIC CORP	731651
SONOCHEM INC	799120
SOUTHEAST ACQUISITIONS II LP	829905
SOUTHEASTERN CONTROL SYSTEMS INC	819631
SOUTHERN GOURMET PRODUCTS INC	791302
SOUTHERN LAND & EXPLORATION INC	789885
SOUTHWEST CAPITAL CORP	217222
SOUTHWEST FINANCIAL CORP	354509
SOUTHWEST OIL & GAS INCOME FUND VIII-A LP	825881
SOUTHWEST ROYALTIES INST INCOME FUND VIII B LP	825886
SPACE WIF CORP	830519
SPANTEL CORP	732946
SPARTA CORP	838171
SPECIAL DELIVERY SYSTEMS INC	844164
SPECIALTY RETAIL VENTURES INC	840570
SPERZEL NV INC /NV/	823190
SPM GROUP INC	315545
ST JOSEPHS PHYSICIAN ASSOCIATES INC	833212
ST LOUIS SUNSWEPT PARTNERS LTD	317261
ST SYSTEMS INC	742187
STAMFORD TOWERS DEPOSITARY CORP	805890
STAR ACQUISITIONS CORP	819690
STAR PARTNERS II LTD	899516
STAR PARTNERS LTD	820780
STAR RESOURCES INC /DE/	827085
STAR STATES CORP	828944
STARS & STRIPES INVESTMENTS INC	812951
STATESMAN GROUP INC	093779
STERLING ASSET & INCOME FUND L P A-3	842715
STERLING FUEL RESOURCES DRILLING FUND 19	748858
STERLING HISTORIC INVESTORS LP	771557
STERLING INVESTMENTS LTD	829322
STERLING OIL OF OKLAHOMA INC	094167
STIMUTECH INC	719272
STONE MOUNTAIN INDUSTRIES INC	831674
STORAGE PROPERTIES INC	839477
STRIPPIT INC	832104
STRUCTURED ASSET SECURITIES CORPORATION	808851
STYLEX HOMES INC	095047
SUBURBAN BANKSHARES INC /FL	793080
SUN BANCORP INC	713975
SUNRISE BANCORP INC	840115
SUNSHINE MINING CO /DE	833376
SUPER 8 LODGING V LTD	737878
SUPER 8 MOTELS NORTHWEST I	316297
SUPER 8 MOTELS NORTHWEST II	701258
SUPER 8 MOTELS TEXAS LTD	313299
SUPER FUND PREFERRED LTD PARTNERSHIP	832453
SUPREME INCOME FUND LP	826401
SWIFT ENERGY INCOME PARTNERS 1988-1 LTD	842786
SWIFT ENERGY INCOME PARTNERS 1988-B LTD	842784
SWIFT ENERGY MNGD PENSION ASSETS PART 1988-1 LTD	842785
SWIFT ENERGY MNGD PENSION ASSETS PART 1988-B LTD	842787
SYBRON CHEMICAL INDUSTRIES INC	832816
SYBRON CHEMICALS INC	832815
SYMMAR INC	095948
SYNTHETIC BLOOD & MEDICAL TECHNOLOGIES INC	833844
SYNTHETIC BLOOD INTERNATIONAL INC	034956
SYSTEMS ASSURANCE CORP /ME/	705581
TALKING RINGS ENTERTAINMENT INC	828827
TALMAN FINANCE CORP F	818031
TAMPA ELECTRIC CO	096271
TAMPA FOODS L P	835949
TARRAGON CORP	778701
TECH HOLDING INC	818180
TECHNICRAFT FINANCIAL LTD	831868
TECHNOLOGY FUNDING SECURED INVESTORS III	844217
TECON INC /UT/	769592
TEJAS GAS CORP /DE/	840257
TEL INSTRUMENT ELECTRONICS CORP	096885
TELCO COMMUNICATIONS INC	827082
TELESCAN INC	832175
TEMPO LP INC	794450
TERRAMAR CORP	097256
TEXAS EASTERN TRANSMISSION CORP	097432
TEXAS TORTILLA BAKERY INC	843523
TEXLAND DRILLING PROGRAM 1981	352507
THERMAL ENERGY STORAGE INC	313277
TIS MORTGAGE ACCEPTANCE CORP	841752
TIVOLI VENTURES INC	799205
TMI INCOME PLUS LIMITED PARTNERSHIP	840543
TMS INC	835412
TOEN GROUP INC	837295
TONGA CAPITAL CORP	813718
TPI LAND DEVELOPMENT III LIMITED PARTNERSHIP	785539
TPI LAND DEVELOPMENT IV LIMITED PARTNERSHIP	825668
TPI LAND INVESTORS II LIMITED PARTNERSHIP	740727
TRADUX CORP	820377
TRANSAMERICA OCCIDENTAL LIFE INSURANCE CO /CA/	837757
TRANSCOLOR CORP	832444
TRANSMAGNETICS INC	099300
TRANSMARK USA INC	811591
TRAWEEK INVESTMENT FUND NO 12 LTD	702321
TREATS ENTERPRISES INC	839430
TRENWICK GROUP INC	787952
TRIPLE CO /CO/	831126
TRISTATE BANCORP INC	839539
TROY LEASE INCOME L P	833026
TRUMP TAJ MAHAL FUNDING INC	835544
TUBOSCOPE INC	100087
TUDOR PRIME ADVISORS FUND LP	835866
TUFCO INTERNATIONAL INC	808714
TV COMMUNICATIONS NETWORK INC	819802
TWO PARK AVENUE ASSOCIATES	356024
U HAUL INTERNATIONAL INC	004458
U S ENVIRONMENTAL INC	844010
U S THRIFT OPPORTUNITY PARTNERS L P	831660
U T INC	830995
UAC INC	203505
UGTC CAPITAL CORP	831873
UGTC HOLDING CORP	832172
UNCLE GEORGES PIZZA & SUBS INC	840255
UNDERWRITERS RE CORP	832425
UNIMAX CORP	100757
UNIOIL CORP	352710
UNIROYAL CHEMICAL ACQUISITION CORP	830994
UNITED EDUCATORS INC	101150
UNITED ENVIRONMENTAL CORP	832193
UNITED FEDERAL BANCORP INC	843082
UNITED INSURANCE COMPANIES INC	773660
UNITED INVESTORS GROWTH PROPERTIES	831663
UNITED INVESTORS INCOME PROPERTIES	830056
UNITED MAGAZINE CO	020469
UNITED NATIONAL BANCORP	831959
UNITED STATES EQUIPMENT INCOME FUND I	750681
UNITED STATES EQUIPMENT INCOME FUND III	808274
UNITED STATES HOME FINANCE CORP	316692
UNITED STATES HOME MORTGAGE CAPITAL CORP	730473
UNITED STATES HOME MORTGAGE CREDIT CORP	713621
UNIVERSAL CABLE TELEVISION INC	803964
UNIVERSAL CAPITAL INC	840466
UNIVERSAL FUELS CO	315375
UNIVERSITY REAL ESTATE PARTNERSHIP V	311173
UNSL FINANCIAL CORP	846807
UPTICK VENTURES INC	831232
URBAN IMPROVEMENT FUND LTD 1973 II	102342
US ACCEPTANCE CORP	786549
USA INTERNATIONAL CHEMICAL INC	840399
USF&G LEGG MASON REALTY PARTNERS LIMITED	832482
UST FASTBACS 1987-A GRANTOR TRUST	820784
UST FASTBACS 1987-B GRANTOR TRUST	823884
UST FASTBACS 1988-A GRANTOR TRUST	829286
UST FASTBACS 1988-B GRANTOR TRUST	840544
VALENCE TECHNOLOGY INC	885551
VAN DOREN RUBBER COMPANY INC	844494
VANDEN CAPITAL GROUP INC	837600
VANFED BANCORP	840575
VANGUARD REAL ESTATE FUND II	823488
VANTAGE INC	789667
VARSITY DEVELOPMENT INC	786333
VENTNOR CORP	810822
VENTURA INC	835406
VENTURE ENTERPRISES INC	778165
VENTURE FUNDING CORP	774454
VENTURE WORLD LTD	826683
VERTX CORP	702177
VESTEX INC	837342
VIBRATECH INC	832105
VICTORY TAX EXEMPT REALTY INCOME FUND LI	829374
VIDA MEDICAL SYSTEMS INC	103501
VIDEO STATION INC	700711
VIGILANCE SYSTEMS CORP	315411
VIKING PUMP INC	832108
VINEYARD NATIONAL BANCORP	840256
VMS INVESTORS FIRST STAGED EQUITY LP II	790882
VMS MORTGAGE INVESTMENT FUND	822829
VMS NATIONAL HOTEL PARTNERS	792898
WARNER TECHNOLOGIES INC /LA/	806280
WARREN BANCORP INC	830750
WARREN RUPP INC	832107
WASHINGTON GEORGE CORP	104826
WELCOM CAPITAL INC	833209
WELLESLEY LEASE INCOME LIMITED PARTNERSHIP IV	825851
WELLMAN MINING CORP	789858
WELLS REAL ESTATE FUND II-OW	824004
WELLS REAL ESTATE FUND III L P	836856
WENDYS OF WEST MICHIGAN LIMITED PARTNERSHIP	801446
WES TENN BANCORP INC	823555
WEST TENNESSEE FINANCIAL CORP	831662
WESTAM MORTGAGE FINANCIAL CORP	832434
WESTAR INDUSTRIES INTERNATIONAL INC	826445
WESTERN ANTENNA CORP	805902
WESTERN FEDERAL SAVINGS & LOAN ASSOCIATION	786706
WESTERN FINANCIAL AUTO LOANS 2 INC	802678
WESTERN NATIONAL LIFE INSURANCE CO	841286
WESTERN REAL ESTATE FUND INC	806187
WESTFED HOLDINGS INC	840784
WESTSTAR GROUP INC	814741
WESTWIND GROUP INC	838783
WHITE CLOUD EXPLORATION INC	736314
WHITE HALL INVESTMENTS INC	841287
WHITEHALL INCOME FUND 86	790027
WHOLESALE OPTICAL CLUB INTERNATIONAL INC	835766
WILDCAT MOUNTAIN CORP	107111
WILDER RICHMAN HISTORIC PROPERTIES II LP	827830
WINDPOWER PARTNERS 1984	748059
WINDSOR PARK PROPERTIES 8	836393
WINGATE HOUSING PARTNERS LTD	701745
WINLAND ELECTRONICS INC	749935
WINTERHAWK INVESTMENTS INC	839495
WITTER DEAN CORNERSTONE FUND I	736998
WITTER DEAN CORNERSTONE FUND II	736999
WITTER DEAN CORNERSTONE FUND III	737000
WITTER DEAN DIVERSIFIED FUTURES FUND II	839945
WITTER DEAN PRINCIPAL GUARANTEED FUND II LP	841754
WITTER DEAN PRINCIPAL GUARANTEED FUND III LP	844234
WITTER DEAN PRINCIPAL GUARANTEED FUND LP	832350
WITTER DEAN REALTY YIELD PLUS II LP	830340
WONG SUE INTERNATIONAL INC	797666
WORK RECOVERY INC	841712
WORLD CUP CHAMPIONSHIP FUND LIMITED PARTNERSHIP	832487
WORLD WIDE STONE CORP	841123
WR CAPITAL GROUP INC	821357
WULF OIL CORP	108633
X ZEL INC	778885
XI TEC INC	786301
YAGER KUESTER PUBLIC FUND LIMITED PARTNERSHIP	797397
YELLOW LINE CAPITAL INC	790025
YOUNG CLIFF RESTAURANTS INC	832099
ZENITH VENTURES CORP	831251
ZEVEX INTERNATIONAL INC	827056
ZIEGLER MORTGAGE SECURITIES INC II	784013
ZODIAC FUTURES FUND LP	832606
ZOND PANAERO WINDSYSTEM PARTNERS I	767404
ZORBAS PALACE INC	741256
ZOTEK INC	836457

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS

Group CF-10

Registrant	CIK No.
1988-A GRANTOR TRUST	829083
1ST NATIONAL FILM CORP	853832
ACTIVE ACQUISITIONS INC	846184
ADLEX CORP	859173
ADVANCED MEDICAL DYNAMICS INC	823314
ADVANCED PORTFOLIO MANAGEMENT II L P	845927
ADVANTAGE CORPORATE INCOME FUND L P	851719
AEP GENERATING CO /OH/	857571
AERIAL ACQUISITION INC	856572
AFFILIATED PUBLICATIONS INC	849696
AHSC HOLDINGS CORP	855042
AIRFUND II INTERNATIONAL LIMITED PARTNERSHIP	853937
ALFA INDUSTRIES INC	846376
ALTERNATIVE ASSET GROWTH FUND L P	851998
AME FINANCIAL SERVICES INC	852905
AMERIANA BANCORP	855574
AMERICA FIRST FINANCIAL FUND 1988 LTD PARTNERSHIP	854696
AMERICAN CAPITAL HOLDINGS INC	842570
AMERICAN EAGLE INVESTMENT CORP	847394
AMERICAN HOME FUNDING TRUST 1989-2	852774
AMERICAN HOUSING TRUST III /NY/	848613
AMERICAN HOUSING TRUST IV	848009
AMERICAN INCOME PARTNERS V A LTD PARTNERSHIP	847557
AMERICAN INCOME PARTNERS V B LTD PARTNERSHIP	847558
AMERICAN MEDICAL TECHNOLOGIES INC	842695
AMERICAN OPPORTUNITY SEARCH INC	855689
AMERICAN RETIREMENT VILLAS PROPERTIES III LP	853274
AMERICAN TAX CREDIT PROPERTIES II L P	842314
AMERICAN TAX CREDIT PROPERTIES III LP	856135
AMERINST INSURANCE GROUP INC	822615
AMES FINANCIAL CORP	862694
AMFAC JMB FINANCE INC	842701
ANDRAPLEX CORP	849146
ANGELES GROWTH & INCOME FUND	852159
ANKAP INC	853529
ANTAEUS ACQUISITIONS INC	852001
APPLIED VISION SYSTEMS INC /MN/	845751
ARGYLE FUNDING INC	846806
ARIZONA LAND OPPORTUNITY FUND LIMITED PARTNERSHIP	846906
ARMANINO FOODS OF DISTINCTION INC / CO/	814339
ART CARDS INC	822618
ARVIDA JMB PARTNERS L P II	852494
ASHLAND CAPITAL GROUP INC	831744
ASPEN FOUR SEASONS L P	854185
ASTROTECH INTERNATIONAL CORP /NEW	835759
ATLANTIS CATALINA L P	853997
BAKER VIDEOACTIVE CORP	846874
BALANCED OPPORTUNITY FUND LIMITED PARTNERSHIP	854151
BALDWIN & LYONS INC	009346
BANK OF NEW ENGLAND 1989 A GRANTOR TRUST	856927
BANK OF NEW ENGLAND WEST NA	856675
BANKNORTH GROUP INC /DE/	851105
BARTON WILLIAM FINANCIAL INC	849312
BASES BURKE INSTITUTE INC	851964
BASS REAL ESTATE FUND III LIMITED PARTNERSHIP	819934
BAYVIEW CAPITAL INC	856571
BDOL 1979 PROGRAM LTD	278050
BEACON CAPITAL CORP	853530
BEAR STEARNS SECURED INVESTORS TRUST 1989-2	846892
BEAR STEARNS SECURED INVESTORS TRUST 1989-4	849134
BELLBROOK BANCORP INC	849346
BENAPLEX CORP	849215
BERRY & BOYLE DEVELOPMENT PARTNERS III	841239
BEST RESOURCES INC	846866
BIG BEAR STORES COMPANY/DE/	848099
BIO MANUFACTURING INC	862339
BJ SERVICES CO	864328
BLACK BOX INCORPORATED	849547
BLACKHAWK CAPITAL CORP	845042
BLUEFIELD ENTERPRISES	847416
BOARDWALK CONVENTION HOTEL PARTNERS LTD	855893
BOGERT 1989 II LTD PARTNERSHIP	862069
BOGERT 1989 III LTD PARTNERSHIP	862070
BOGERT 1989-I LIMITED PARTNERSHIP	857491
BORLAND INTERNATIONAL INC/DE	853273
BOSTON CAPITAL TAX CREDIT FUND II LTD PARTNERSHIP	853566
BOSTON FINANCIAL QUAL HOUSING TAX CREDIT LP 4 /MA/ 845035	
BOSTON FINANCIAL QUAL HOUSING TAX CREDIT LP 2	830997
BRADFORD BANKSHARES INC	852618
BRAUVIN INCOME PLUS L P III	850142
BRIAN CAPITAL INC	845674
BROWN DISC PRODUCTS CO INC	855373
BRUNNER COMPANIES INCOME PROPERTIES LP III	847319
BRYAN BANCORP OF GEORGIA INC	850210
BTNC CORP	846491
BURKE MARKETING RESEARCH INC /OH	851963
BURLINGTON INDUSTRIES CAPITAL INC	855047
BW TRUST 1989 1	854773
CABLE TV FUND 10	355582
CABLE TV FUND 15-A LTD	849976
CALMAR SPRAYING SYSTEMS INC	844864
CAMELBACK CAPITAL INC	814499
CAPITAL ADVISORS ACQUISITION CORP	844893
CAPITAL MORTGAGE PLUS L P	845875
CAPSTEAD SECURITIES CORP II	819046
CARDINAL FINANCIAL GROUP INC	842925
CARGILL BANCORP INC	844125
CATERAIR HOLDINGS CORP	855020
CAYMAN ACQUISITIONS INC	846810
CB COMMERCIAL HOLDINGS INC	852203
CECO FILTERS INC	811037
CELLULAR TELEPHONE ENTERPRISES INC	862885
CENTENNIAL FINANCIAL CORP	861997
CENTRA CORP	831904
CENTRAL JERSEY FINANCIAL CORP	851835
CENTRAPLEX CORP	849147
CENTURY SOUTH BANKS INC	357105
CERRITOS VALLEY BANCORP	822371
CFAC REMIC TRUST 1989-A	856584
CFC-7 GRANTOR TRUST	855918
CHEMICAL BANK CREDIT CARD TRUST 1989-A	857089
CHEMICAL BANK GRANTOR TRUST 1989 A	855579
CHEMICAL GRANTOR TRUST 1989 B	858234
CHESAPEAKE FINANCIAL SHARES INC	847536
CHESTER VALLEY BANCORP INC	854096
CHEVY CHASE EXTENDIBLE CREDIT CARD TRUST 1989-C	856421
CHEVY CHASE EXTENDIBLE CREDIT CARD TRUST 1989-B	856420
CHICAGO & NORTH WESTERN ACQUISITION CORP	854384
CHRISKEN GROWTH & INCOME LP II	850625
CHRISTIAN PURCHASING NETWORK INC	855663
CHRYSLER CAPITAL INCOME PARTNERS L P	852578
CIS CAPITAL EQUIPMENT FUND LTD 1	769725
CITI CREDIT CARD TRUST 1989 1	849487
CITI CREDIT CARD TRUST 1989-2	856610
CITIBANK FEDERAL SAVINGS BANK	848655
CITIBANK N A MORTGAGE PASS THROUGH CERTIFICATES	849345
CITIBANK NA	036684
CITICORP MORTGAGE SECURITIES INC	811785
CITICORP NATL SERV INC CONS AUTO CERT GRANT TR	854118
CITICORP NATL SERV INC CONS AUTO CERT GRANT TR II	854119
CITIZENS & SOUTHERN 1989 A GRANTOR TRUST	853771
CITIZENS BANCSHARES INC /OH/	855878
CITRUS FINANCIAL SERVICES INC	852616
CLINTON APPALACHIAN 89 PROGRAM	850413
CLUB USPN INC	845807
CML CHURCH MORTGAGE INC	847433
COALMONT INC	855372
COLLATERALIZED MORTGAGE OBLIGATION TRUST 59	848654
COLLATERALIZED MORTGAGE OBLIGATION TRUST 56	848794
COLLATERALIZED MORTGAGE OBLIGATION TRUST 57	845840
COLLATERALIZED MORTGAGE OBLIGATION TRUST 60	849403
COLLATERALIZED MORTGAGE OBLIGATION TRUST 61	856230
COLONIAL CREDIT CARD TRUST 1989-A	857017
COLONIAL NATIONAL BANK USA	822399
COMMERCE VENTURES INC	814606
COMMERCIAL ACQUISITIONS CORP /CO/	854096
COMMERCIAL BANCORP OF GWINNETT INC	852573
CON TECH SYSTEMS INC	842233
CONDOFI SERVICES INC	845815
CONNECTICUT BANK & TRUST COMPANY NA	817427
CONQUEST VENTURES INC	845880
CONROY INC LIQUIDATING TRUST	023538
CONSERVATIVE SAVINGS CORP	855890
CONSOLIDATED CIGAR CORP	846584
CONTINENTAL BANCORPORATION	847926
CONTINENTAL GENERAL CORP	829650
CONTINENTAL SAVINGS OF AMERICA SERIES 19	846960
COOPER LABORATORIES INC	024473
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A7	852942
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A8	852943
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A9	852944
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A11	851872
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A10	851870
COOPERATIVE UTILITY TRUST CAJUN SERIES 1988-A12	851876
COORDINATED MEDICAL SERVICES OF NORTH CAROLINA INC 857100	
COPLEY REALTY INCOME PARTNERS 4	847450
CORPORATE ACQUISITION GROUP INC	855879
CORPORATE PROPERTY ASSOCIATES 9 L P	845028
CORPORATE REALTY INCOME TRUST I	853075
CROSSLAND COMMERCIAL FUNDING CORP I	847077
CURBSTONE ACQUISITION CORP	846005
CXR CORP	854852
CYPRESS EQUIPMENT FUND LTD	847486
DANDEES ENTERPRISES INC	852769
DATABASE TECHNOLOGIES INC	849315
DATATRONIX FINANCIAL SERVICES	857736
DATRONIC EQUIPMENT INCOME FUND XVI L P	814323
DATRONIC EQUIPMENT INCOME FUND XVIII L P	850671
DAVID ENTERPRISES INC	854242
DECATHLON ADVISORS LP	850340
DELTA OMEGA TECHNOLOGIES INC	846978
DESAI FUTURES FUND LIMITED PARTNERSHIP	847479
DISTRIBUTION SERVICES INC	853930
DIVERSIFIED HISTORIC INVESTORS VII	845029
DLJ ACCEPTANCE TRUST I	850451
DLJ ACCEPTANCE TRUST II	851745
DOLLAR DRY DOCK FUNDING CORP	821131
DOVER CAPITAL CORP	846770
DOVER HISTORIC PARTNERS L P	849544
DOWELL ENTERPRISES INC	846873
DQE INC	846930
DR HOLDINGS INC OF DELAWARE	859081
DR PEPPER BOTTLING COMPANY OF TEXAS	843397
DREWRY PHOTOCOLOR CORPORATION LIQUIDATING TRUST	862310
DREXEL BURNHAM LAMBERT CMO TRUST SERIES 27	846498
DRUMMOND BANKING CO	857556
DURAPLEX CORP	849143
EAGLE BANCORP INC /GA/	865792
EAGLE EYE ENTERPRISES INC	855361
EAGLE VISION INC	845560
EASTERN PETROLEUM CO /OH/	853633
ECOVA CORP	799541
EDINBURGH CAPITAL INC	849291
EDISTO RESOURCES CORP	857102
EIGHT HOLDINGS INC	858365
EL PASO REFINERY LP	854932
ELECTRO BRAIN INTERNATIONAL CORP	820902
ELEVEN HOLDINGS INC	858368
ELLER INDUSTRIES INC	850493
EMERALD CAPITAL INC /DE/	854164
EMPLOYEE BENEFIT PLANS INC	854807
ENEX 86 89 INCOME & RETIREMENT FUND SERIES I LP	837896
ENEX 86 89 INCOME & RETIREMENT FUND SERIES 5 LP	857507
ENEX 86-89 INCOME & RETIREMENT FUND SERIES 3 LP	848081
ENEX 86-89 INCOME & RETIREMENT FUND SERIES 6 LP	861065

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-10

Registrant	CIK No.
ENEX 88-89 INCOME & RETIREMENT FUND SERIES 4 LP	861064
ENEX OIL & GAS INCOME PROGRAM III SERIES 6 LP	837894
ENEX OIL & GAS INCOME PROGRAM III SERIES 7 LP	837895
ENEX OIL & GAS INCOME PROGRAM IV SERIES 2 LP	848463
ENEX OIL & GAS INCOME PROGRAM IV SERIES 3 LP	854221
ENEX OIL & GAS INCOME PROGRAM IV SERIES 4 LP	855112
ENEX OIL & GAS INCOME PROGRAM IV SERIES 5 LP	861063
EQ SHEARSON HOTEL PROPERTIES L P	822968
EQUIPMENT LEASING CORPORATION OF AMERICA	794566
EQUITAS GROUP	850317
EQUITEC INCOME REAL ESTATE INVESTORS EQUITY FUND 4 820903	
EQUIVEST FINANCE INC	820917
ES&L BANCORP INC	861995
ESCO ELECTRONICS CORP	866706
ESELCO INC	828941
EUREKA CAPITAL CORPORATION I	846715
EVCO INDUSTRIES INC	854378
EVERFLOW DRILLING PROGRAM 1989-90A	862015
EXALTISTICS INC	846361
EXCEL PROPERTIES LTD II	850958
EXCELSIOR CAPITAL CORP/CO/	824485
EXCELSIOR FUND II L P	852525
EXESS INC	851720
EXOTIC BODIES INC	846476
F 1000 FUTURES FUND LP SERIES VI	856646
FAIRVIEW PRINTING INC	853931
FAIRVIEW REAL ESTATE INC	853932
FALCON CLASSIC CABLE INCOME PROPERTIES LP	846811
FALLS FINANCIAL INC	854666
FAMILY BANCORP	825314
FBS MORTGAGE CORP MTG PASS THR CERT SER ABC 1989-A 863450	
FCC 1989-A GRANTOR TRUST	854723
FFCA INVESTOR SERVICES CORP 85-B	811520
FI TEK III INC	846775
FI TEK IV INC	857502
FIDELITY BANCSHARES INC	850345
FIDELITY LEASING INCOME FUND VI LP	846471
FIFTEEN HOLDINGS INC	858371
FILENES BASEMENT INC	851277
FIRST & PEOPLES BANCSHARES INC	847453
FIRST AMERICAN 1989-A GRANTOR TRUST	858453
FIRST AMERICAN BANCORP /AL/	854631
FIRST AMERICAN BANCORP /OH/	865117
FIRST CAPITOL FINANCIAL CORP	821138
FIRST CLAYTON BANCSHARES INC	849627
FIRST COMMERCIAL HOLDING CORP	853071
FIRST COMMUNITY BANCORP INC /GA/	853467
FIRST FEDERAL CAPITAL CORP	851207
FIRST FEDERAL FINANCIAL CORPORATION OF KENTUCKY	854395
FIRST FED SAV & LOAN ASSN OF ROCHESTER 1989 SER 5	854218
FIRST FED SAV & LOAN ASSN OF ROCHESTER 1989 SER 4	857492
FIRST HOME CREDIT CORPORATION II	814710
FIRST INTER BANCORP INC	850486
FIRST LANDMARK HOLDING CO	844215
FIRST NATIONAL BANKSHARES OF HENRY COUNT	852556
FIRST NATIONAL FINANCIAL CORP /GA/	855582
FIRST NATIONAL REALTY ASSOCIATES INC	854882
FIRST NATIONWIDE BANK SERIES 1989 AMRES-2	856221
FIRST NATIONWIDE BANK SERIES 1989 AMRES-3	856219
FIRST NATIONWIDE BANK SERIES 1989 AMRES-4	857304
FIRST NATIONWIDE BANK SERIES 1989 FNB-1	857303
FIRST NATIONWIDE BANK SERIES 1989 FNB-2	856222
FIRST NATIONWIDE BANK SERIES 1989 ICAMC-1	856224
FIRST PATRIOT BANKSHARES CORP	855645
FIRST SECURITY CORP /GA/	856064
FIRST USA CREDIT CARD TRUST 1989-A	853023
FIRST USA CREDIT CARD TRUST 1989-B	856648
FIRSTFED MICHIGAN CORPORATION	846492
FIVE HOLDINGS INC	858363
FIVE K 2 CO INC	846733
FLAGSHIP FINANCIAL CORP	844060
FLAIR COMMUNICATIONS INC	820789
FLEA FAIR USA INC	846773
FLEET REMIC CASH FLOW CERT SERIES 1989-3 TRUST	860126
FLORIDA FORECLOSURE RESALE CORP	844883
FLOWERS INDUSTRIES INC /GA	826227
FORD CREDIT 1989-A GRANTOR TRUST	842911
FORD CREDIT 1989-B GRANTOR TRUST	857464
FOTG FUND I LIMITED PARTNERSHIP	849937
FOUR HOLDINGS INC	858362
FOURTEEN HOLDINGS INC	858370
FRANKLIN SELECT REAL ESTATE INCOME FUND	845613
FRP PROPERTIES INC	844059
FUTURE FUNDING CORP	855578
FUTURE SYSTEMS INC	857328
FUTURISTIC INNOVATIONS INC	855424
G I HOLDINGS INC	845808
GANT J W FINANCIAL INC	855926
GATEWAY FED CORP	853275
GATEWAY TAX CREDIT FUND LTD	824605
GEM CITY FINANCIAL FUNDING INC	844838
GEMINEX INDUSTRIES INC	831970
GEMINI INCOME FUND 17 LP	847472
GENESIS INVESTMENT GROUP INC	852449
GILBERT ROBINSON INC /DE/	846583
GLASSTECH INDUSTRIES INC /DE/	857564
GLENDALE FED BANK FED SAV BANK CLASS A SER 1989-1	849287
GLENDALE FED BANK FED SAV BANK SERIES 1991-1	860219
GMAC MORTGAGE SECURITIES II INC	812354
GNB BANCSHARES INC	855572
GNI GROUP INC /DE/	355269
GNLV FINANCE CORP	793723
GOLAR GAS HOLDING COMPANY INC	856567
GOLDEN GATE ACQUISITIONS INC	854053
GOLDRIVER FINANCE CORP	845609
GOLDRIVER LIMITED PARTNERSHIP	845610
GOVERNMENT TRUST 3 A	853492
GOVERNMENT TRUST 3 B	853493
GOVERNMENT TRUST 3 C	853494
GOVERNMENT TRUST M 1	856139
GOVERNMENT TRUST P 1	845381
GOVERNMENT TRUST P 2	845382
GOVERNMENT TRUST P 3	845383
GP GROUP INC	853927
GRAND COMPANY LIMITED PARTNERSHIP	852130
GREAT OAKS FINANCIAL CORP	835307
GREAT SOUTHERN BANCORP INC	854560
GREAT WEST LIFECO INC	850918
GREEN MOUNTAIN HOLDING CORP	854558
GROWTH FINANCIAL CORP	848212
GS TRUST 8	823000
GTA CORP	854575
GULL LABORATORIES INC /UT/	832404
GWINNETT BANCSHARES INC	858862
HANCOCK JOHN MORTGAGE INVESTORS LTD PARTNERSHIP	852906
HANOVER FOODS CORP /PA/	853733
HANOVER LEASE INCOME LTD PARTNERSHIP	796529
HARMONIA BANCORP INC	854160
HARVEST FINANCIAL CORP /IA/	857069
HAWK MARINE POWER INC	841183
HAYNES INTERNATIONAL INC	856655
HAZLETON BANCORP INC	864970
HCA HOSPITAL CORPORATION OF AMERICA	846489
HEALTH ADVANCEMENT SERVICES INC /DE/	853074
HEALTHTEK INC	847929
HEARTFED FINANCIAL CORP	849939
HEAVENLY HOT DOGS INC /DE/	823546
HENLEY GROUP INC/DE/	855911
HENRY JOHN W & CO/MILLBURN L P	853456
HERITAGE FINANCIAL LIMITED	855114
HFC HOME EQUITY LOAN TRUST SERIES 1988-1	848188
HFC HOME EQUITY LOAN TRUST SERIES 1989 1	853906
HIGH COUNTRY VENTURES INC	845879
HIGHLAND GOLD PROPERTIES INC	852903
HISTORIC HOUSING FOR SENIORS III LTD PARTNERSHIP	850961
HOME EQUITY LOAN ASSET BACKED CERTIFICATE 1989-2	861093
HOME EQUITY LOAN ASSET BACKED TRUST SERIES 1989-1	859229
HOME FINANCIAL CORP /DE/	847410
HOME MISSION BD OF THE SOUTHERN BAPT CONV	847789
HOME MISSION BD OF THE SOUTHERN BAPT CONV SER C	847790
HOME MISSION BD OF THE SOUTHERN BAPT CONV SER B	847791
HOME MISSION BD OF THE SOUTHERN BAPT CONV SER E	862262
HOMESTEAD NATIONAL CORPORATION	835920
HORACE MANN EDUCATORS CORP	850141
ICA MORTGAGE CORPORATION TRUST 1989-2	851744
ICON CASH FLOW PARTNERS LP SERIES B	849278
IDM PARTICIPATING INCOME COMPANY V	849623
IDS JONES GROWTH PARTNERS 87-A LTD/ CO/	857488
IDS JONES GROWTH PARTNERS 89-B LTD	849978
IDS JONES GROWTH PARTNERS II L P	850869
IDS SHUGARD INCOME GROWTH PARTNERS LP	822618
IEA INCOME FUND X LP	853735
IMA MEDIKOS GROUP INC	849407
IMAGING MANAGEMENT ASSOCIATES INC/ COLO/	845401
INDEPENDENT RESEARCH AGENCY FOR LIFE INSURANCE INC 354242	
INDEPENDENT TELECOMMUNICATIONS NETWORK INC	834948
INDSPEC CHEMICAL CORP	847069
INFORMATION RESOURCE ENGINEERING INC	850313
INLAND LAND APPRECIATION FUND II LP	853496
INLAND LAND APPRECIATION FUND LP	825315
INLANDS MONTHLY INCOME FUND L P	812909
INSIGHT ENVIRONMENTAL CORP	849356
INSTAFF INTERNATIONAL INC	850217
INSTITUTE FOR LABORATORY MEDICINE INC	824109
INTERCAP MONITORING INCOME FUND IV-A LTD	864338
INTERCAP MONITORING INCOME FUND IV-B LTD	855419
INTERCAP MONITORING INCOME FUND IV-C LTD	863449
INTERNATIONAL CABLECASTING TECHNOLOGIES	865745
INTERPORE INTERNATIONAL /CA/	854093
INTERSTATE LAND INVESTORS II LTD PARTNER	853891
INTERWEST COMMUNICATIONS CORP	845400
INVESTAR INC /MN/	845044
INVESTORS ADJUSTABLE MORTGAGE TRUST I	854577
INVESTORS CHOICE FLORIDA PUBLIC FUND I LTD	853841
INVESTORS CHOICE FLORIDA PUBLIC FUND II LTD	853851
INVESTORS CHOICE FLORIDA PUBLIC FUND III LTD	853854
INVESTORS CHOICE FLORIDA PUBLIC FUND IV LTD	853857
INVESTORS CHOICE FLORIDA PUBLIC FUND V LTD	853859
INVESTORS FINANCIAL CORP/VA/	825160
INVESTORS GNMA MTG BACKED SECURITIES TRUST INC /MD 857929	825203
ITRONICS INC	847537
IVORY COAST INC	852333
J C CAPITAL CORP	833211
JCP MASTER CREDIT CARD TRUST	824573
JENNICA INC	846927
JETFLEET AIRCRAFT L P	849626
JOHN HANSON BANCORP INC	849355
KANGAROO FRANCHISES INC	823546
KELLEY PARTNERS 1989 DEVELOPMENT DRILLING PROGRAM	853635
KELLY MOTORS LTD	853154
KENTUCKY MEDICAL INSURANCE CO	840163
KIDDER PEABODY MORTGAGE ASSETS TRUST TWENTY THREE	847280
KIDDER PEABODY MORTGAGE ASSETS TRUST TWENTY FOUR	847596
KP WINGATE INSURED PARTNERS LIMITED PARTNERSHIP	814826
KWIK TRIP FINANCIAL INC	857008
KYLE DEVELOPMENT CORP	855852
LAFAYETTE ENTERPRISES LTD	846107

APPENDIX E.—DIVISION OF CORPORATION FINANCE GROUPS OF MANDATED ELECTRONIC FILERS—Continued

Group CF-10

Registrant	CIK No.
LASALLE CAPITAL CORP	850412
LAUREL CENTRE DEPOSITARY CORP	811715
LEGENT CORP	845607
LIBERTY INCOME PLUS LIMITED PARTNERSHIP	843730
LIFE USA HOLDING INC /MN/	832089
LOS ALAMOS DIAGNOSTICS INC /DE	816944
LUBBOCK NATIONAL BANCSHARES INC	857401
MACKENZIE INVESTMENT MANAGEMENT INC	855711
MACY RECEIVABLES FUNDING CORP	847840
MADISON EQUITIES INC	822822
MAF BANCORP INC	854662
MAGELLAN TECHNOLOGY INC	855923
MAGNOLIA FUND LTD	853291
MAGNUM PETROLEUM INC /NV/	854271
MAIN LINE BANCSHARES INC	857345
MAIN ST & MAIN INC	847466
MALIBU INC	847390
MALRITE GUARANTEED BROADCAST PARTNERS LP	809018
MARCAM CORP	848551
MARINE HOLDING CO	860521
MARINE MIDLAND 1987-1 CARS TRUST	814654
MARINE MIDLAND 1988-1 CARS R TRUST	848890
MARINE MIDLAND 1988-2 CARS R TRUST	848891
MARINE MIDLAND 1989 1 CARS R TRUST	848221
MARINE MIDLAND 1989-2 CARS R TRUST	852540
MARINE MIDLAND BANK N A	318905
MARTECH USA INC	857475
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federal register

Monday
August 24, 1992

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Approved Tribal-State Compact; Notice

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-state compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority has approved the Cocopah Indian Tribe and the State of Arizona Gaming Compact of 1992, executed on July 28, 1992.

DATES: This action is effective August 24, 1992.

ADDRESSES: Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, MS/MIB 4603, 1849 "C" Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Tribal Government Services, Bureau of Indian Affairs, Washington, DC 20240, (202) 208–7446.

Dated: August 17, 1992.

Eddie F. Brown,

Assistant Secretary—Indian Affairs.

[FR Doc. 92–20068 Filed 8–21–92; 8:45 am]

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
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1910 (§§ 1910.1000 to end)	(869–013–00110–9)	14.00	July 1, 1991
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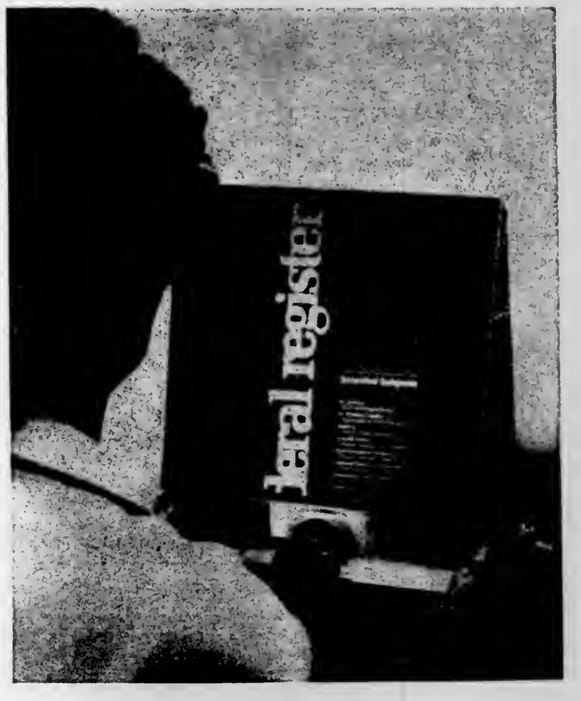
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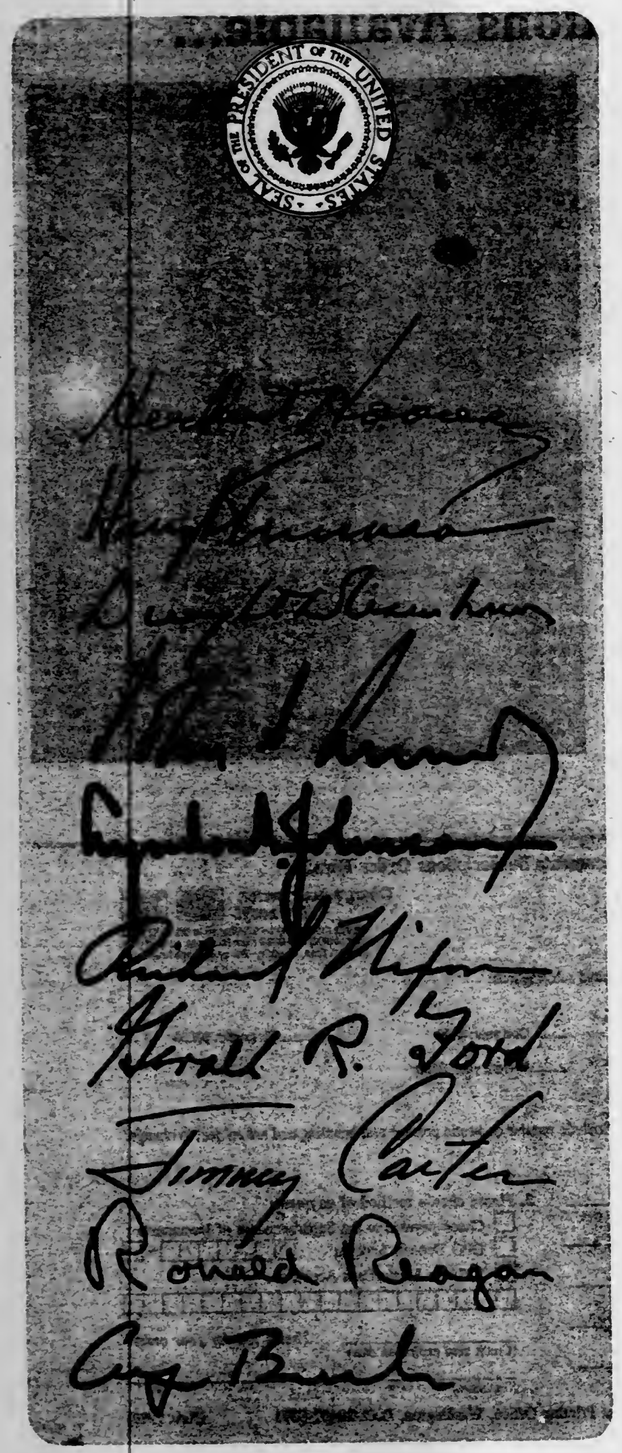
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Rules and Regulations

Federal Register
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Tuesday, August 25, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV-92-088]

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oregon; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 945 for the 1992–93 fiscal period (August 1, 1992, through July 31, 1993). Authorization of this budget enables the Idaho-Eastern Oregon Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1992, through July 31, 1993. Comments received by September 24, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Order No. 945, both as amended [7 CFR part 967], regulating the handling of Irish potatoes grown in designated counties in Idaho and Malheur County, Oregon. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Idaho-Eastern Oregon potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1992–93 fiscal period, beginning August 1, 1992, through July 31, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 66 handlers of Idaho-Eastern Oregon potatoes under this marketing order, and approximately 2,200 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Idaho-Eastern Oregon potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the Idaho-Eastern Oregon Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Idaho-Eastern Oregon potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh Idaho-Eastern Oregon potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 9, 1992, and unanimously recommended a 1992–93 budget of $88,535, $16,203 less than the previous year. An increase of $2,485 in salaries will be more than offset by a

decrease of $19,088 in the contingency category.

The Committee also unanimously recommended an assessment rate of $0.0026 per hundredweight, the same as each year for the past decade. This rate, when applied to anticipated shipments of 28,000,000 hundredweight, will yield $72,800 in assessment income. This, along with $15,735 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1992–93 fiscal period, estimated at about $47,000, will be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the fiscal period begins on August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Idaho-Eastern Oregon potatoes handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 945.245 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 945.245 Expenses and assessment rate.

Expenses of $88,535 by the Idaho-Eastern Oregon Potato Committee are authorized, and an assessment rate of $0.0026 per hundredweight of assessable potatoes is established for the fiscal period ending July 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20313 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 946

[Docket No. FV–92–037]

Irish Potatoes Grown in Washington; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenses and establishes an assessment rate under Marketing Order No. 946 for the 1992–93 fiscal period (July 1, 1992, through June 30, 1993). Authorization of this budget enables the State of Washington Potato Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1992, through June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 113 and Order No. 946, both as amended [7 CFR part 946], regulating the handling of Irish potatoes grown in Washington. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Irish potatoes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable potatoes handled during the 1992–93 fiscal period, which began July 1, 1992, through June 30, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(c)(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington potatoes under this marketing order, and approximately 450 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Washington potato producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal period was prepared by the State of Washington Potato Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Washington potatoes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington potatoes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met February 6, 1992, and unanimously recommended a 1992–93 budget of $38,100, $3,100 more than the previous year. Major increases are $1,100 for compliance audits, $600 for salaries, and $500 for compensation.

The Committee also unanimously recommended an assessment rate of $0.005 per cwt., the same as last season. This rate, when applied to anticipated shipments of 7 million hundredweight, will yield $35,000 in assessment income. This, along with $3,100 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $27,634, were within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on June 10, 1992 [57 FR 24561]. This document contained a proposal to add § 946.245 to authorize expenses and establish an assessment rate for the Committee. This rule provided that interested persons could file comments through July 10, 1992. No comments were filed.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the program began on July 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable Washington potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is hereby amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR part 946 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 946.245 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 946.245 Expenses and assessment rate.

Expenses of $38,100 by the State of Washington Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20314 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 967

[Docket No. FV–92–060]

Celery Grown in Florida; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 967 for the 1992–93 fiscal year (August 1, 1992 through July 31, 1993). Authorization of this budget enables the Florida Celery Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1992, through July 31, 1993. Comments received by September 24, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 149 and Order No. 967, both as amended [7 CFR part 967], regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental

Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida celery is subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable celery handled during the 1992–93 fiscal year, beginning August 1, 1992, through July 31, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 7 handlers of Florida celery under this marketing order, and approximately 13 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Florida celery producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 fiscal year was prepared by Florida Celery Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of Florida celery. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida celery. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 10, 1992, and unanimously recommended a 1992–93 budget of $150,000, $15,000 less than the previous year. The addition of a $2,000 contingency reserve category will be offset by decreases of $10,000 for promotion, merchandising & PR, and $6,000 for research, for which no funding was recommended.

The Committee also unanimously recommended an assessment rate of $0.03 per crate, the same as last season. This rate, when applied to anticipated shipments of 5,000,000 crates, will yield $150,000 in assessment income. Funds in the Committee's authorized reserve as of July 31, 1991, estimated at $20,142, were within the maximum permitted by the order of one marketing year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year begins on August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Florida celery handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and which is similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 967

Celery, Marketing agreements, reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 967.227 is added to read as follows:

Note: This section will not appear in the Code of Federal of Regulations.

§ 967.227 Expenses and assessment rate.

Expenses of $150,000 by the Florida Celery Committee are authorized, and an assessment rate of $0.03 per crate of assessable celery is established for the fiscal year ending July 31, 1993. Unexpended funds may be carried over as reserve.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20310 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 981

[Docket No. FV–92–005FR]

Handling of Almonds Grown in California; Salable and Reserve Percentages for the 1991–92 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes, without modification, the provisions of an interim final rule which established increased salable and reduced reserve percentages for marketable California almonds received by handlers during the 1991–92 crop year (July 1–June 30). The Almond Board of California (Board) unanimously recommended increasing the salable percentage from 90 to 100 percent and decreasing the reserve percentage from 10 to 0 percent. Half of the reserve was released upon publication of an interim final rule on April 1, 1992, and the remaining half was released on May 1, 1992. That action relaxed restrictions on handlers and was necessary to provide a sufficient quantity of almonds to meet trade demand and carryover needs.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Specialist, Fruit and Vegetable Division, AMS, USDA, Room 2523–S, P.O. Box 96456, Washington D.C. 20090–6456; telephone: (202) 205–2830.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 981 (7 CFR part 981), both as amended, hereinafter referred to as the order, regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, salable and reserve percentages may be established for almonds during any crop year. This action continues in effect revised salable and reserve percentages for marketable California almonds received by handlers during the 1991–92 crop year (July 1, 1991 through June 30, 1992). This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of almonds who are subject to regulation under the order and approximately 7,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less that $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California almonds may be classified as small entities.

The 1991–92 almond salable, reserve, and export percentages were established in a final rule published in the **Federal Register** on November 22, 1991 [56 FR 58841]. The initial salable percentage was 90 percent, the reserve percentage was 10 percent, and the export percentage was 0 percent. These percentages were established pursuant to §§ 981.47 and 981.49 of the almond marketing order. At a December 5, 1991, meeting the Board recommended releasing the 10 percent reserve at one time. However, the Department was unable to act on the Board's recommendation because sufficient justification for such action was not provided.

On January 8, 1992, the Board met again and unanimously recommended increasing the salable percentage from 90 to 100 percent and decreasing the reserve percentage from 10 to 0 percent. It further recommended that half of the reserve be released on March 1 and the remaining half be released on May 1, 1992. The Board based its recommendation on the current estimates of marketable supply, combined domestic and export trade demand for the 1991–92 crop year, and desirable carryover for the 1992–93 crop year.

On the basis of that recommendation, the supporting information supplied, and other information, the Department issued an interim final rule published in the **Federal Register** on April 1, 1992 [57 FR 10976]. That interim final rule authorized release of half of the reserve on April 1, 1992, and the remaining half on May 1, 1992. That action was intended to provide an orderly flow of almonds to the market, without imposing any additional burden or costs on handlers. This action adopts, without change, that interim final rule.

Comments to the interim final rule were requested through May 1, 1992, and one comment was received from Panoche Creek Packing.

The commentor questioned why the initial release of the almond reserve was made effective April 1 rather than March 1 as the Board recommended. The 10 percent reserve percentage earlier established by the Department was in effect until modified in accordance with the rulemaking procedures required under the Administrative Procedure Act (5 U.S.C. 553). Therefore, the first release of the reserve could not be made effective on March 1, 1992, as recommended by the Board, because the rulemaking action relaxing the reserve percentages was not issued by the Department until March 27, 1992, and not published in the **Federal Register** until April 1, 1992.

The commentor also questioned the methods used in formulating the desirable carryover. The projected desirable carryover is based on production volume and market needs each year and is adjusted to reflect changing supply and market conditions as the season progresses.

Obviously, it is difficult to anticipate the exact volume of this year's crop and

to make projections for next year's crop at the outset of the current season. Therefore, the Board's estimates and the Secretary's rulemaking actions tend to be conservative early in the season.

As the season progresses, if the Board finds that its initial crop estimate is reasonably close to the actual crop, it sometimes raises the desirable carryover above its initial estimate. Larger desirable carryover estimates generally have been made by the Board in early May of the crop year after the Department's initial estimate of the upcoming crop is available. When the upcoming crop is estimated to be below normal levels, the Board generally has raised the desirable carryover to consider the contemplated shortage of almonds expected during the following crop year.

The estimates used by the Board in establishing the original and revised salable and reserve percentages, are shown below.

MARKETING POLICY ESTIMATES—1991 CROP

[Kernelweight basis in millions of pounds]

	11/22/91 initial estimates	1/8/92 revised estimates
Estimated production:		
1. 1991 Production	460.0	488.0
2. Loss and exempt—4.0%	23.0	24.4
3. Marketable Production	437.0	463.6
Estimated trade demand:		
4. Domestic	190.0	190.0
5. Export	370.0	395.0
6. Total	560.0	585.0
Inventory adjustment:		
7. Carryin 7/1/91	250.0	250.0
8. Desirable Carryover 6/30/92	83.30	128.6
9. Adjustment (item 8 minus item 7)	(166.7)	(121.4)
Salable reserve:		
10. Adjusted Trade Demand (item 6 plus item 9)	393.3	463.6
11. Reserve (item 3 minus item 10)	43.7	0
12. Salable percentage (item 10 divided by item 3×100)	90	100
13. Reserve percentage (100 percent minus item 12)	10	0

Estimated 1991–92 crop production increased from 460 to 488 million kernelweight pounds. Estimated weight losses resulting from the removal of inedible kernels by handlers and losses during manufacturing also increased from 23 to 24.4 million kernelweight pounds. Therefore, marketable production is now expected at 463.6 million kernelweight pounds, compared to the initial estimate of 437 million kernelweight pounds.

The 1991–92 estimated domestic demand remained at 190 million kernelweight pounds. Estimated export demand increased from 370 to 395 million kernelweight pounds. Therefore, total estimated demand increased from 560 to 585 million kernelweight pounds for the 1991–92 crop year.

The Board estimated that 250 million kernelweight pounds of almonds were carried-in from the 1990–91 crop year to the 1991–92 crop year. The Board increased its estimate of desirable carryover from 83.3 to 128.6 million kernelweight pounds. After taking carryin (July 1991) and desirable carryover (June 1992) into account, the adjusted trade demand increased from 393.3 to 463.6 million kernelweight pounds, an amount equal to the Board's estimate of marketable production.

The increase in the salable percentage from 90 to 100 percent was intended to meet the increased export and carryover needs. The reason for the gradual release was to avoid potential marketing problems which the Board anticipated if all of the reserve had been released at the same time. Releasing the reserve in two increments was intended to help even out the increased supplies for the remainder of the crop year.

When recommending the establishment of salable, reserve, and export percentages for any crop year, the Board may include normal export requirements with domestic requirements in its estimate of trade demand. For the 1991–92 crop year, estimated exports are included in the trade demand. Because 0 percent was established as the export percentage, reserve almonds are not eligible for export to normal export outlets. However, handlers may ship their salable almonds to export markets. The export percentage is not affected by this action.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the comment received, and the Board's recommendation, it is found that this action will tend to effectuate the declared policy of the Act. The purpose of the two-step release was to allow a gradual flow of additional almonds into marketable channels. The Board was concerned that a one-step release could burden the market. The Board concluded that the conditions in the industry had changed since the reserve was recommended in July 1991, and established in November 1991.

Continuation of the interim final rule is expected to satisfy the increased market needs for almonds expected during the 1991–92 crop year.

Pursuant to 5 U.S.C. 553, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This rule is intended to provide sufficient quantities of almonds for normal domestic, export, and carryover needs during the 1991–92 crop year; (2) this action was discussed at a public meeting; (3) this action is a relaxation of a regulation; and (4) this rule adopts an interim final rule without modification.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 901–674.

2. Accordingly, the interim final rule revising § 981.238, which was published on April 1, 1992 [57 FR 10976], is adopted as a final rule without change.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20308 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 981

[Docket No. FV–92–081]

Almonds Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 981 for the 1992–93 crop year (July 1, 1992, through June 30, 1993). Authorization of this budget enables the Almond Board of California (Board) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning July 1, 1992, through June 30, 1993. Comments received by September 24, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 981, both as amended [7 CFR part 981], regulating the handling of almonds grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "Non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California almonds are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable almonds handled during the 1992–93 crop year, beginning July 1, 1992, through June 30, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 115 handlers of California almonds under this marketing order, and approximately 7,000 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California almond producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 crop year was prepared by the Almond Board of California, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Board are producers and handlers of California almonds. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected shipments of California almonds. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

The Board met June 4, 1992, and unanimously recommended a 1992–93 budget of $12,395,049, $854,954 more than the previous year. This amount includes administrative and other expenses of $5,620,049, $1,904,454 more than the previous year, and $6,775,000 for creditable advertising expenditures. Major increases include $200,000 for salaries, $7,000 for employee benefits, $20,500 for retirement, $2,000 for payroll taxes, $16,000 for office rent, $2,000 for storage rent, $2,000 for insurance, $3,500 for audit (contract), $33,000 for vehicles, $1,400 for security, $2,000 for telephone, $4,000 for postage & UPS, $15,000 for office equipment, $2,500 for equipment maintenance, $82,654 for production research, $1,626,000 for public relations, $3,500 for crop estimate, and the addition of a $10,000 relocation expenses category. These would be partially offset by decreases of $4,000 for research conference, $3,000 for field rep travel, $10,000 for investigation/consultant, $9,000 for newsletter, $3,000 for printing, and $100,000 for management consultant for which no funding was recommended.

The Board also unanimously recommended an assessment rate of 2.25 cents per kernel pound, the same as last year. It was also unanimously recommended that handlers should be eligible to receive credit for their own marketing promotion activities for up to 1.25 cents of this 2.25 cents assessment rate, 0.50 cents less than last year. The 1.00 cent per kernel pound noncreditable assessment rate is .50 cents more than last year. Revenues are expected to be $5,420,000 from administrative assessments (542,000,000 pounds @ 1.00 cent per pound), $960,000 from advertising assessments, $30,000 from interest, and $100,000 from the sale of generic packages for a total of $6,510,000. A cash carryin from 1991–92 of $301,578 also is expected.

The remaining $6,775,000 of recommended 1992–93 expenses is the estimated amount which handlers are expected to spend on their own marketing promotion activities based on a projected 1992–93 marketable California production of 542,000,000 kernel pounds. This figure also assumes that all handlers will receive full credit against their 1.25 cents per pound creditable assessment obligation. Unexpended funds from 1992–93 may be carried over to cover expenses during the first four months of the 1993–94 crop year.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional

costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Board needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the crop year began on July 1, 1992, and the marketing order requires that the rate of assessment for the crop year apply to all assessable California almonds handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Board at a public meeting and similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 981 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 981.339 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 981.339 Expenses and assessment rate.

Expenses of $12,395,049 by the Almond Board of California are authorized for the crop year ending June 30, 1993. An assessment rate for the crop year payable by each handler in accordance with § 981.81 is fixed at 2.25 cents per kernel pound of almonds less any mount credited pursuant to § 981.41, but not to exceed 1.25 cents per kernel pound of almonds.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20309 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 982

[Docket No. FV–91–447FR]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1991–92 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service is adopting, without modification, as a final rule the provisions of an interim final rule which established interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1991–92 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This action was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–6862.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) under Executive Order 12291 and Departmental Regulation 1512–1, and has been determined to be a "non-major" rule under criteria contained therein.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, interim and final free and restricted percentages for sales of inshell filberts/hazelnuts may be established. This action establishes interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1991–92 marketing year, beginning July 1, 1992, through June 30, 1992. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 25 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order and approximately 1,000 producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this final rule are based on requirements specified in the order. This rule will restrict the amount of inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of interim and final free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can utilize throughout the season, and the percentages release the inshell trade demand. The preliminary percentages release 80 percent of the inshell trade demand, while the interim and final percentages release 100 percent and 115 percent, respectively, of the inshell trade demand.

The inshell trade demand, rounded to the nearest whole number, equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, with the provision that the Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported or shelled (restricted) early in the 1991–92 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates.

At its August 28, 1991, meeting, the Board computed and announced preliminary free and restricted percentages of 12 and 88 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against underestimates of the crop. The preliminary restricted percentage is 100 percent minus the free percentage. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

On or before November 15, the Board must meet to recommend to the Secretary interim percentages which release 100 percent of the inshell trade demand and final percentages which release an additional 15 percent of the three-year-average trade acquisitions.

The Board uses current crop estimates to calculate the interim final and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions to ensure an adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with order provisions, the Board met on November 14, 1991, reviewed and approved an amended marketing policy and recommended the establishment of interim and final free and restricted percentages of 16 and 84 percent and 19 and 81 percent, respectively. The Board also recommended that the final percentages be effective on May 1, 1992, which is 60 days prior to the end of season. The marketing percentages are based on the industry's final production estimates and release of 4,263 tons to the domestic inshell market. (The interim final rule incorrectly stated that 25,133 tons were released to the domestic inshell market.) The Oregon Agricultural Statistics Service provided an early estimate of 25,300 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 25,133 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 25,133 tons.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1991–92 marketing year:

Inshell supply		Tons
(1) Total production (Filbert/Hazelnut Marketing Board handler survey estimate)		25,133
(2) Less substandard, farm use (disappearance)		2,161
(3) Merchantable production (the Board's adjusted crop estimate)		22,972
(4) Plus undeclared carryin as of July 1, 1992, subject to regulation		37
(5) Supply subject to regulation (Item 3 plus Item 4)		23,009
(6) Average trade acquisitions based on three prior years' domestic sales		4,252
(7) Increase to encourage increased sales (10 percent)		425
(8) Less declared carryin as of July 1, 1992, not subject to regulation		1,052
(9) Inshell Trade Demand		3,625
(10) 15 percent of the average trade acquisitions based on three years domestic sales		638
(11) Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)		4,263
Percentages	**Free**	**Restricted**
(12) Interim percentages (Item 9 divided by Item 5) x 100	16	84
(13) Final percentages (Item 11 divided by Item 5) x 100	19	81

In addition to complying with the provisions of the marketing order, the Board also considers the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that this primary market have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This is to provide for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. In order to meet expected needs of the trade and to meet the Guidelines, an increase of 10 percent (425 tons) has been included in the calculations used in determining the inshell trade demand.

The established interim and final percentages, which release 100 percent and 115 percent, respectively, of the inshell trade demand, will make available 110 percentage and 125 percent, respectively, of prior years' sales, thus exceeding the goal of the Guidelines.

An interim final rule establishing final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1991–92 marketing year was published in the Federal Register on January 10, 1992 [57 FR 1073]. A 30-day comment period was established to provide opportunity for industry comment. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the establishment of interim and final free and restricted percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because:

(1) The 1991–92 marketing year began July 1, 1991, and the percentages established herein apply to all merchantable filberts/hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this action, which was recommended at an open Board meeting, and need no additional time to comply with these percentages which release more filberts/hazelnuts than the preliminary percentages; and (3) this final rule is an adoption, without modification, of an interim final rule effective January 6, 1992, establishing interim and final free and restricted percentages for the 1991–92 crop year.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. For the reasons set forth in the preamble, the provisions of the interim final rule amending 7 CFR part 982 which were published at 57 FR 1074 on January 10, 1992, are adopted as a final rule without change.

Dated: August 19, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20311 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 993

[Docket No. FV–92–092]

Dried Prunes Produced in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule and request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 993 for the 1992–93 crop year (August 1, 1992, through July 31, 1993). Authorization of this budget enables the Prune Marketing Committee (Committee) to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective beginning August 1, 1992, through July 31, 1993. Comments received by September 24, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2423–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended [7 CFR part 993], regulating the handling of dried prunes produced in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California prunes are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable prunes handled during the 1992–93 crop year, beginning August 1, 1992, through July 31, 1993. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 17 handlers of California prunes under this marketing order, and approximately 1,400 producers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of California Prune producers and handlers may be classified as small entities.

The budget of expenses for the 1992–93 crop year was prepared by the Prune Marketing Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of California prunes. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of dried California prunes. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 23, 1992, and unanimously recommended a 1992–93 budget of $285,000, $5,224 less than the previous year. Major increases of $8,750 for salaries and wages, $1,000 for office supply and expense, $1,000 for postage and messenger, and $4,500 for fieldman and Committee travel will be offset by decreases of $1,500 for insurance, $2,000 for repairs and maintenance, $1,000 for telephone, $1,500 for office travel, $5,000 for purchase of equipment, $2,000 for research and development, and $4,624 in the reserve for contingencies.

The Committee also unanimously recommended an assessment rate of $1.50 per salable ton, $0.26 less than the previous year. This rate, when applied to anticipated shipments of 190,000 salable tons, will yield $285,000 in assessment income, which will be adequate to cover budgeted expenses. Any funds not expended by the Committee during a crop year may be used, pursuant to § 993.81(c), for a period of five months subsequent to that crop year. At the end of such period, the excess funds are returned or credited to handlers.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, (2) the crop year begins on August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable California prunes handled during the crop year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and similar to other budget actions issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 993.343 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 993.343 Expenses and assessment rate.

Expenses of $285,000 by the Prune Marketing Committee are authorized, and an assessment rate of $1.50 per salable ton of assessable dried prunes is established for the crop year ending July 31, 1993.

Dated: August 19, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20315 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 998

[Docket No. FV–92–051]

Expenses, Assessment Rate, and Indemnification Reserve for Marketing Agreement No. 146 Regulating the Quality of Domestically Produced Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures for administration and indemnification, establishes an assessment rate, and authorizes continuation of an indemnification reserve under Marketing Agreement 146 for the 1992–93 crop year [July 1, 1992 through June 30, 1993]. Authorization of this budget enables the Peanut Administrative Committee (Committee) to incur operating expenses, collect funds to pay these expenses, and settle indemnification claims during the 1992–93 crop year. Funds to administer this program are derived from assessments on handlers who have signed the agreement.

EFFECTIVE DATES: July 1, 1992 through June 30, 1993.

FOR FURTHER INFORMATION CONTACT: Tom Tichenor, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–6862.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement 146 [7 CFR part 998] regulating the quality of domestically produced peanuts. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing agreement now in effect, peanut handlers signatory to the agreement are subject to assessments. Funds to administer the peanut agreement program are derived from such assessments, and deductible type insurance for 1992–93 indemnification expenses. This rule authorizes expenditures and establishes an assessment rate for the Peanut Administrative Committee for the fiscal period beginning July 1, 1992. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 70 handlers of peanuts covered under the peanut marketing agreement, and approximately 47,000 producers in the 16 States covered under the agreement. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. Some of the handlers covered under the agreement are small entities, and a majority of producers may be classified as small entities.

Under the marketing agreement, the assessment rate for a particular crop year applies to all assessable tonnage handled from the beginning of such year (i.e., July 1). An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are handlers and producers of peanuts. They are familiar with the Committee's needs and with the costs for goods, services, and personnel for program operations and, thus, are in a position to formulate appropriate budgets. The budgets are formulated and discussed at industry-wide public meetings. Thus, all directly affected persons have an opportunity to provide input in recommending the budget, assessment rate, and indemnification reserve. The handlers of peanuts who are directly affected have signed the marketing agreement authorizing the expenses that may be incurred and the imposition of assessments.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected receipts and acquisitions of farmers' stock peanuts. It applies to all assessable peanuts received by handlers from July 1, 1992. Because that rate is applied to actual receipts and acquisitions, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses.

The Committee met on March 4–5, 1992, and unanimously recommended 1992–93 crop year administrative expenses of $1,042,000 and an administrative assessment rate of $0.57 per net ton of assessable farmers' stock peanuts received by handlers. In comparison, 1991–92 crop year budgeted administrative expenditures were $1,009,258, and the administrative assessment rate was $0.54 per ton.

Administrative budget items for 1992–93 which have increased compared to those budgeted for 1991–92 (in parentheses) are: Executive salaries, $138,364 ($131,775); clerical salaries, $158,368 ($140,000); field representatives salaries, $266,420 ($251,352); payroll taxes, $46,850 ($42,873); employee benefits, $147,000 ($133,500); Committee members travel, $32,000 ($30,000); field representative travel, $107,000 ($95,000); insurance and bonds, $7,500 ($6,500); office rent and parking, $54,000 ($51,000); repairs and maintenance agreements, $6,000 ($4,000); and audit fees, $8,000 ($7,000). Items which have decreased compared to those budgeted for 1991–92 (in parentheses) are: Furniture and equipment, $4,000 ($15,000); office supplies and stationery, $14,000 ($24,000); postage and mailing, $13,000 ($24,000); and employee bonus for 1990 claims work, $0 ($14,258). All other items are budgeted at least year's amounts. The administrative budget includes $9,000 for contingencies.

The Committee also unanimously recommended 1992 crop indemnification claims payments of up to $9,000,000 and an indemnification assessment of $2.00 per net ton of farmers' stock peanuts received or acquired by handlers to continue its indemnification program. The $9,000,000 of indemnification claims coverage to be provided on 1992 crop peanuts includes $5,000,000 in excess loss insurance to be purchased by the Committee.

The total recommended assessment rate is $2.57 per ton of assessable peanuts ($0.57 for administrative and $2.00 for indemnification). Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired. Application of the recommended rates to the estimated assessable tonnage of 1,828,070 will yield $1,042,000 for program administration and $3,656,140 for indemnification. The indemnification amount, when added to expected cash carry over from 1991–92 indemnification operations of $9,136,000, will provide $12,792,140, which should be adequate for the 1992 fund, and to maintain an adequate reserve.

A proposed rule was published in the **Federal Register** on June 9, 1992 [57 FR 24392], proposing to add § 998.405 authorizing expenses and an indemnification reserve and establishing administrative and indemnification assessment rates. Interested persons could file comments to the proposed rule through June 19, 1992. One comment was received from the manager of the Peanut Administrative Committee. On behalf of the Committee, he requested a change to make the final rule consistent with revised indemnification procedures for the 1992–93 crop year. The $9,000,000 indemnification fund should be reserved for payment of claims only. The cost of the indemnification insurance premium and the costs to carry out indemnification procedures (sampling and testing of 2–AB and 3–AB Subsamples, and crushing supervision, pursuant to the Outgoing Quality Regulation, § 998.200(c)), are additional costs which must be authorized and should be paid from available indemnification funds. Such indemnification costs not allocated to claims payments are not expected to exceed $2,000,000. This revision has been incorporated in this final rule.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers signatory to the agreement. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing agreement. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the expenses, assessment rates and indemnification reserve specified in this rule are reasonable and likely to be incurred and that such expenses, assessment rates and indemnification reserve will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1992–93 crop year for the marketing agreement begins July 1, 1992, and the marketing agreement requires that the rate of assessment for the crop year apply to all assessable peanuts handled during the crop year. In addition, handlers are aware of this action which was recommended by the Committee at a public meeting.

List of Subjects in 7 CFR Part 998

Marketing agreements, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 998 is amended as follows:

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR part 998 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 998.405 is added to read as follows:

NOTE: This section will not appear in the Code of Federal Regulations.

§ 998.405 Expenses, assessment rate, and indemnification reserve.

(a) *Administrative expenses.* The budget of expenses for the Peanut Administrative Committee for the crop year beginning July 1, 1992, shall be in the amount of $1,042,000, such amount being reasonable and likely to be incurred for the maintenance and functioning of the Committee and for such purposes as the Secretary may, pursuant to the provisions of the marketing agreement, determine to be appropriate.

(b) *Indemnification expenses.* Expenses of the Committee not to exceed $9,000,000 for indemnification claims payments and claims expenses, pursuant to the terms and conditions of indemnification applicable to the 1992 crop effective July 1, 1992, are authorized. In addition, indemnification expenses, in an undetermined amount estimated not to exceed $2,000,000, which are incurred by the Committee for excess loss insurance, sampling and testing fees for 2–AB and 3–AB Subsamples, and fees for the supervision of the crushing of indemnified peanuts are also authorized.

(c) *Rate of assessment.* Each handler shall pay to the Committee, in accordance with § 998.48 of the marketing agreement, an assessment at the rate of $2.57 per net ton of farmers' stock peanuts received or acquired other than from those described in §§ 998.31 (c) and (d). A total of $0.57 shall be for administrative expenses and a total of $2.00 shall be for indemnification. Assessments are due on the 15th of the month following the month in which the farmers' stock peanuts are received or acquired.

(d) *Indemnification reserve.* Monetary additions to the indemnification reserve, established in the 1965 crop year pursuant to § 998.48 of the agreement, shall continue. That portion of the total assessment funds accrued from the $2.00 rate not expended on indemnification claims payments on 1992 crop peanuts and related expenses shall be kept in such reserve and shall be available to pay indemnification expenses on subsequent crops.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20312 Filed 8–24–92; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R-0750]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted two amendments to its Regulation D to facilitate the computation and maintenance of reserves. The Board is reducing the lag in the application of vault cash to reserve requirements in order to damp the seasonal variations in required reserve balances. Reducing the lag in application should decrease the probability that reserve balances will drop seasonally to levels that would cause depository institutions difficulty in managing their reserve balances. The Board is also increasing from the greater of 2 percent or $25,000 to the greater of 4 percent or $50,000 the amount of excesses or deficiencies in reserve balances that may be carried over from one reserve maintenance period to the next to give depositories greater flexibility in managing reserve balances.

DATES: The amendment to § 204.3(c)(3) is effective November 12, 1992. The reduced lag in application of vault cash for weekly reporters will apply for the maintenance period beginning November 12, 1992. The amendments to § 204.3(h) are effective September 3, 1992. The increase in carryover of reserve deficiences or surpluses will apply for the maintenance period beginning September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Attorney (202/452-3818), or Lawranne Stewart, Attorney (202/452-3513), Legal Division; or Joshua Feinman, Economist (202/452-2841), Division of Monetary Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On March 6, 1992, the Board published for comment revisions to its Regulation D, Reserve Requirements of Depository Institutions, 12 CFR part 204, concerning the computation and maintenance of reserves.[1] The proposed changes, which concerned vault cash and carryover of reserve deficiencies and excesses, were intended to improve the ability of depository institutions to manage their reserve balances. Comments were due by April 6, 1992. The Board has reviewed the comments received on the proposals and is now adopting final amendments to Regulation D.

Summary of Comments

The Board received comments on the proposed rule changes from the following 39 commenters:

Type	Number
Commercial Banks	20
Bank holding companies	8
Federal Reserve Banks	5
Trade associations	2
Credit unions	2
Clearing house	1
Savings and loans	1

Vault Cash

Currently, reserve requirements for depository institutions that report weekly are assessed against transaction accounts on a roughly contemporaneous

[1] 57 FR 8096, March 6, 1992.

basis,[2] but offsetting vault cash is applied to the required reserves with a lag of two reserve maintenance periods. The Board proposed to amend Regulation D to reduce the lag in the application of vault cash to reserve requirements from two periods to one in order better to synchronize movements in required reserves and applied vault cash. The Board requested comment on whether a reduction in the lag in the application of vault cash would improve the ability of depository institutions to manage their required reserve balances and whether the proposal would have any adverse effects on their ability to predict required reserve balances. The Board also requested comment concerning the costs of implementing a shift in vault cash application, and whether these costs would be considered significant in relation to the benefits of the proposed amendment to the depository institution.

Thirty-five commenters supported the proposal generally, with twenty-four of these commenters indicating that the proposed amendment would improve their ability to manage their reserve positions. Of the fourteen commenters that addressed the question of costs, all indicated that the costs to depository institutions associated with the shift would be minimal.

Four of the commenters, while supporting the proposed shift in the application of vault cash, recommended that vault cash be applied to reserve requirements on a contemporaneous basis, that is, with no lag in application. The Board has not adopted this recommendation, as the lagged application of vault cash provides information needed to estimate the demand for reserves in the current maintenance period. Such estimates are essential to the conduct of open market operations. Two other commenters pointed out that the proposed amendment would not reduce the lag in the computation period for deposits other than transaction accounts, and indicated that if reserve requirements for nonpersonal time deposits and Eurocurrency liabilities were to be reimposed, depository institutions would have to maintain reserves based on three computation periods. At the time that the reserve ratios relating to nonpersonal time deposits and Eurocurrency liabilities were reduced to zero, however, the provisions of Regulation D providing for lagged maintenance of reserves against such deposits also were removed.[3] Should these ratios be raised above zero in the future, the Board would determine the appropriate period for reserve maintenance on such deposits at that time. Another commenter suggested that depository institutions be divided into two groups, with the reserve maintenance period for each group ending on alternating Wednesdays. The Board previously considered alternating maintenance periods, but concluded that such a system was not operationally feasible.

Although none of the commenters specifically opposed the proposed amendment, two commenters urged that reserve requirements be eliminated altogether. The Board does not have the authority to eliminate reserve requirements completely, as section 19(b) of the Federal Reserve Act establishes minimum reserve ratios for reserves on transaction account balances. Two other commenters expressed support for legislative proposals to permit interest to be paid on reserve balances.

In view of the comments received, the Board has adopted the amendment to reduce the lag in the application of vault cash to meet reserve requirements from two periods to one period as a final rule. The amendment will be effective for the reserve maintenance period beginning on November 12, 1992.[4] The delayed effective date has been provided in order to permit the necessary modifications to the reserve computation systems of depository institutions and the Federal Reserve Banks.

Carryover of Excesses or Deficiencies

The Board proposed an increase in the amount of reserve deficiencies or surpluses that a depository institution would be permitted to carry forward into the next maintenance period to the greater of 4 percent of required reserves and clearing balances[5] or $50,000. Currently, carryover of reserve surpluses or deficiencies into the next maintenance period is permitted up to the greater of 2 percent of the sum of required reserves and required clearing balances or $25,000. In either case, the carryover is reduced by the amount of an institution's required clearing balance penalty-free band, if applicable.[6] In proposing the amendment, the Board noted that reductions in reserve requirements have resulted in a decline in the maximum dollar value of the carryover, reducing the ability of a depository institution to cushion a given dollar shock to its reserve position late in maintenance period. The proposed amendment was intended to provide depository institutions with more flexibility in managing their reserve positions. The Board also proposed to amend the language of the carryover provision to clarify and more accurately reflect the method used to calculate the maximum carryover permitted.

Thirty-seven commenters stated that they supported the Board's proposed amendment. Of these thirty-seven, twenty-eight commenters indicated that the increase in permitted carryover would improve their ability to manage their reserve positions. No commenters opposed the amendment.

Two commenters suggested that the Board consider further increases in permitted carryover. While the Board would consider a further increase if it appeared necessary to permit depository institutions to manage their reserve positions adequately, the Board believes that carryover generally must be limited in order to permit accurate estimates of required reserves. Another commenter suggested that the penalty-free band for clearing balances also be increased in order to provide similar benefits to depository institutions that maintain required clearing balances but are not bound by reserve requirements. Since these institutions hold no reserve balances, their ability to manage their reserve accounts has not been adversely affected by the recent cuts in reserve requirements. The Board believes that the current penalty-free band provides these institutions with adequate leeway in managing their clearing balance accounts.

Based on the comments received, the Board has adopted the amendment as a final rule. For both weekly and quarterly reporting institutions, the amendment will be effective for the maintenance period beginning September 3, 1992, with reserve surpluses or deficiencies from this maintenance period carried over into the maintenance period beginning September 17, 1992, based on the amended carryover provisions.

[2] Weekly reporters generally are depository institutions with total deposits of $44.8 million or more. Required reserves for weekly reporters are assessed based on daily average balances for a period beginning on a Tuesday and ending on the second Monday thereafter. This period is known as the "computation period." Reserves against the daily average balances for the computation period must be maintained throughout the "maintenance period," which begins on the Thursday following the beginning of the computation period and ends on the second Wednesday thereafter. *See* 12 CFR 204.3(c).

[3] 55 FR 50540, Dec. 7, 1990.

[4] For the reserve maintenance period beginning Thursday, November 12th and ending Wednesday, November 25th, depository institutions will apply to their reserve requirements vault cash from the computation period beginning on Tuesday, October 27th, and ending on Monday, November 9th.

[5] Required clearing balances are set by agreement between a depository institution and its Federal Reserve Bank, based on clearing needs of the depository and its account overdraft record. Information on clearing balance requirements may be obtained from a depository institution's local Reserve Bank.

[6] The required clearing balance penalty-free band is currently equal to the greater of $25,000 or 2 percent of the depository institution's required clearing balance.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendments will not have a significant economic impact on a substantial number of small entities. The Board does not believe that the amendments would impose any additional reporting or recordkeeping requirements. To the extent changes in recordkeeping procedures may be required by the vault cash proposal, this will affect only weekly reporters, that is, depository institutions with total deposits of $44.8 million or more, and should enable these depository institutions to manage their required reserves more efficiently. Smaller institutions, which report only quarterly, will not be affected by the vault cash amendment.

Notice of Final Rule

A final rule generally is required to be published at least thirty days prior to its effective date. 5 U.S.C. 553(d). An exception is provided, however, for a substantive rule that grants or recognizes an exemption or relieves a restriction. 5 U.S.C. 553(d)(1). Although the amendment relating to carryover has an effective date less than thirty days after publication of this notice, the amendment permits a depository institution to carry over larger reserve balance deficiencies or surpluses than previously permitted. Because the amendment provides depository institutions with greater relief from reserve requirements, a thirty-day notice is not required for the amendment to become effective.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 U.S.C. 461 *et seq.*, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for part 204 continues to read as follows:

Authority: Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn St-Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. Section 204.3 is amended by revising paragraphs (c)(3) and (h) to read as follows:

§ 204.3 Computation and maintenance.

* * * * *

(c) * * *

(3) In determining the reserve balance that is required to be maintained with the Federal Reserve, the daily average vault cash held during the computation period that ended 3 days prior to the beginning of the maintenance period is deducted from the amount of the institution's required reserves.

* * * * * *

(h) *Carryover of excesses or deficiencies.* Any excess or deficiency in a depository institution's account that is held directly or indirectly with a Federal Reserve Bank shall be carried over and applied to that account in the next maintenance period as specified in this paragraph. The amount of any such excess or deficiency that is carried over shall not exceed the greater of:

(1) The amount obtained by multiplying .04 times the sum of the depository institution's required reserves and the depository institution's required clearing balance, if any, and then subtracting from this product the depository institution's required clearing balance penalty-free band, if any; or

(2) $50,000, minus the depository institution's required clearing balance penalty-free band, if any. Any carryover not offset during the next period may not be carried over to subsequent periods.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 19, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20270 Filed 8-24-92; 8:45 am]

BILLING CODE 6210-01-F

12 CFR Part 204

[Regulation D; Docket No. R-0729]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a number of amendments to its Regulation D relating to the definition of "transaction account" and concerning the calculation of reserves. The amendments include adding "teller's checks" to the definition of "transaction account" and clarifying the definition of "cash items in the process of collection." The Board is also adopting four interpretations concerning the definition of "transaction account" and arrangements used to avoid transaction account reserve requirements.

EFFECTIVE DATES: September 29, 1992, except for §§ 204.2(a)(1), (b)(1), and (u) (teller's checks), § 204.2(i) (cash items in the process of collection), and § 204.136 (netting of trust balances), which will be effective December 22, 1992.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452-3625), Patrick J. McDivitt, Attorney (202/452-3818), or Lawranne Stewart, Attorney (202/452-3513), Legal Division; or Thomas Brady, Chief, Banking and Money Market Statistics Section (202/452-2469), Division of Monetary Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington DC 20551

SUPPLEMENTARY INFORMATION: On April 12, 1991, and by notice published in the **Federal Register**, 56 FR 15,522, April 17, 1991, the Board proposed a number of revisions to its Regulation D, Reserve Requirements of Depository Institutions, 12 CFR part 204, and a number of interpretations of the Federal Reserve Act and Regulation D. These proposals primarily relate to the definition of "transaction account" and the calculation of required reserves on transaction accounts. Comments were due on the proposals by June 24, 1991. The Board has reviewed the comments received on the proposals and is now adopting final amendments to

Regulation D and final interpretations to the Federal Reserve Act and Regulation D.

Under Regulation D, transaction accounts generally are subject to a 10 percent reserve requirement.[1] Currently, the reserve requirement applicable to all other deposit accounts is zero.[2] The Board has identified a number of practices that result in depository institutions: (1) issuing nonreservable payment instruments in place of functionally equivalent reservable instruments; (2) classifying accounts as time deposits when the accounts are used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others and are therefore the functional equivalent of transaction accounts; (3) taking inappropriate "due from" or "cash item in the process of collection" deductions from their gross demand deposits in calculating required reserves; or (4) inappropriately netting negative trust account balances against positive balances in unaffiliated accounts in order to reduce reserve requirements on transaction accounts containing commingled trust funds.

The described practices avoid or reduce transaction account reserves, reducing the reserve base available for the conduct of monetary policy. Avoiding reserve requirements by exploiting the technical language of the regulation frustrates congressional intent that transaction accounts be subject to reserve requirements, results in inequitable treatment of similar transactions at other depository institutions, and favors depository institutions that have the legal and automation resources to develop reserve avoidance practices and are willing to implement such practices. Moreover, the increased use of such reserve avoidance practices could reduce required reserve balances at institutions using these practices to levels below those needed for clearing purposes, potentially resulting in much less predictable demands for Federal Reserve balances and more volatile funds rates.

The Board believes that reductions in reserve requirements on transaction accounts should be accomplished by the Board through changes in the ratio of transaction account reserves under section 19(b)(2)(B) of the Federal Reserve Act, such as the Board's action reducing this ratio from 12 percent to 10 percent, rather than through the growth of arrangements and accounts designed to avoid or reduce reserve requirements. Accordingly, the Board is adopting a number of amendments to Regulation D and interpretations to the Federal Reserve Act and Regulation D to treat certain transaction account substitutes as transaction accounts subject to reserve requirements and to clarify the deductions that may be made in computing required reserves.

[1] A reduction in reserve requirements on transaction accounts from 12 percent to 10 percent became effective April 6, 1992. 57 FR 8056, March 6, 1992.

[2] In December 1990 the Board reduced reserve requirements on nonpersonal time deposits with a maturity of less than 18 months and net Eurocurrency liabilities from three percent to zero percent. 55 FR 50540, Dec. 7, 1990.

Comments on the April Proposals

The Board received comments on the proposals from the following 67 commenters:

Type	Number
Commercial Banks	22
Bank Holding Companies	20
Trade Associations	8
Credit Unions	5
Financial Service Providers	4
Federal Reserve Banks	4
Savings and Loans	3
Individuals	1
Total	67

The comments are summarized below.[3]

General Comments

One trade association urged that the comment period be extended an additional 120 days so that credit unions could study the effect of the teller's check proposal. This comment was received on the last day of the comment period and did not elaborate on the reasons a longer comment period was needed other than to refer to other Board proposals that were outstanding. Because the request was received after most commenters had already submitted their comments and because it did not demonstrate a clear need for an extension, the Board did not extend the comment period.

One commenter suggested that the Board should pay interest on reserves. The Board does not, however, have express statutory authority to pay interest on reserves. Another commenter suggested that Regulation D be clarified generally. One commenter urged the Board to provide transitional relief (such as a ninety-day period) if it adopts the proposals to permit depository institutions to institute operational changes. The Board is deferring for 120 days the effective date of the amendments defining teller's checks and incorporating teller's checks in the definition of transaction account, the amendments modifying the definition of cash items in the process of collection, and the proposed interpretation on trust netting. The other proposals will be effective thirty days after the date of publication in the Federal Register.

A number of commenters questioned the economic validity of the reserve function or suggested that the proposals would increase the regulatory burden imposed on depository institutions. Nineteen commenters generally expressed concern that more stringent applications of reserve requirements would increase the competitive disadvantage that depository institutions have, particularly in competing with money market funds and other financial institutions. For example, one commenter suggested that if reserves are a necessity, they should apply to all forms of deposits at every depository institution and any organization that provides payment services. Another commenter suggested that no change be made in Regulation D until an overall strategic direction is established for the Regulation. Five commenters claimed that the proposals would result in funds leaving the banking system for other financial institutions, and would therefore adversely affect the ability of the Board to control the reserve base for monetary policy purposes.

The Board believes that reserves continue to be an important tool for implementing monetary policy and therefore believes that it is important to continue to maintain the integrity of the reserve base. To the extent that reductions in reserve requirements on transaction accounts are appropriate, the Board believes that such reductions should be accomplished by the Board through changes in the ratio of transaction account reserves under section 19(b)(2)(B) of the Federal Reserve Act. As noted above, the Board has recently reduced from 12 percent to 10 percent the ratio applicable to transaction account balances of over $42.2 million. In addition, the Board from time to time may consider the level of reserve requirements to ensure that they are appropriate.

[3] The Board specifically requested comments from the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration, but did not receive written comments from any of these agencies.

Transaction Account Definition

Amendments

Teller's Checks

Many depository institutions use checks ("teller's checks") drawn by the depository institution on accounts at other depository institutions, Federal Home Loan Banks, or Federal Reserve Banks, or payable through or at depository institutions, as a substitute for reservable cashier's checks. Teller's checks are effective substitutes for cashier's checks, which are drawn by a depository institution on itself, because teller's checks bear the important legal characteristics of cashier's checks (*See* § 3–413(2) and § 3–802(1)(a) of the Uniform Commercial Code, Pre–1990 Official Text (UCC)). Under § 3–413(2) of the UCC, a bank drawing a check is liable on the check, whether it be a cashier's check or a teller's check, if the check is dishonored by the drawee. Under Section 3–802(1)(a) of the UCC, payment by either cashier's check or teller's check results in *pro tanto* discharge of the underlying obligation. However, under Regulation D, teller's checks have not been subject to reserve requirements while cashier's checks have been.

Teller's checks are often more economical to issue than cashier's checks, in part because they have not been subject to reserve requirements. Because of the cost savings attributable to shifting from cashier's checks to teller's checks, the Board is concerned that competitive pressures will encourage depository institutions to use teller's checks to avoid the cost of holding reserves against cashier's checks, and that this shift could materially affect the reserve base. Further, the disparate treatment accorded these instruments has put depository institutions using cashier's checks rather than nonreservable teller's checks, as well as teller's checks service providers that are bank affiliates, at a competitive disadvantage.[4]

Accordingly, the Board proposed amendments to Regulation D to change the manner in which reserve requirements apply to teller's checks, including checks drawn on Federal Home Loan Banks and Federal Reserve Banks. Under the proposal, a teller's check would be a transaction account of the depository institution drawing the check until the check is paid by the drawee. To the extent that the check is covered by immediately withdrawable funds of the selling depository institution on deposit in an account of the selling institution at the depository institution on which the check is drawn (or at or through which the check is payable), the selling depository institution would be able to take a "due from" deduction under § 204.3(f) of Regulation D.[5]

The proposal would: (1) amend Regulation D to include a definition of teller's checks; (2) amend § 204.2(a)(1)(iii) of Regulation D to define "deposit" to include teller's checks; (3) amend § 204.2(b)(1)(ii) of Regulation D to define "demand deposit" to include teller's checks; and (4) delete § 204.2(b)(3)(iv) of Regulation D, which excludes teller's checks from the definition of demand deposit.

The Board received thirty-three comments on this proposal. Seven of these commenters generally supported the proposal, twenty objected to the proposal generally, and six supported or did not object to the proposal as long as clarifications to the language of the provision were made. The objecting commenters claimed that adoption of this proposal would impose burdens on depository institutions, and suggested that reserves on teller's checks were unnecessary or should also be imposed on all financial institutions, not just depository institutions. One commenter suggested that the Board has not included teller's checks in the reserve base for eleven years and has not demonstrated a compelling reason to impose reserves on these items now. Another commenter noted that depository institutions can obtain economies of scale by using teller's checks provided by non-depository service providers. Another commenter suggested that the proposal should be limited to instruments drawn on a Federal Reserve Bank or a Federal Home Loan Bank because other transactions were already properly reflected in the reserve requirements calculation.

Teller's checks drawn on or payable through or at depository institutions as well as teller's checks drawn on Federal Reserve Banks and Federal Home Loan Banks currently are treated differently from cashier's checks for reserve purposes. In the proposal, the Board noted that, because of the cost savings attributable to shifting from the use of cashier's checks to teller's checks where the teller's check service provider is not subject to reserve requirements, the increased use of teller's checks could materially affect the reserve base. The Board also noted that market pressures could increase this effect. After a review of the comments, the Board continues to believe that its conclusions are correct.

Three commenters expressed concern that the proposal would require the same liability to be reserved against twice—once on the teller's check, and once by the depository institution where the funds are placed. The Board believes that the proposal generally would not produce this effect. Outstanding teller's check balances generally are not held in reservable deposit accounts at the drawee or paying bank. The Board understands that outstanding balances are generally invested by the service provider in order to earn a return on the funds for the service provider and the selling institutions.

The commenters indicated that the issuance of a teller's check resulted in a reduction of the due from account for the bank on which the check was drawn. For Call Report purposes, to the extent that a selling institution has a balance due from the drawee or paying bank, this balance must be reduced by the amount of any teller's checks drawn. For purposes of calculating reserve requirements, however, a depository institution may continue to take a due from deduction for a qualifying account at another depository institution until the balance in that account is debited to pay the teller's checks.

Nine commenters were concerned that depository institutions should not be subject to reserves on checks on which they have no liability (such as where the institution serves solely as agent for the entity drawing the instrument). Another commenter asserted that the proposal should be amended to apply to these instruments specifically. The Board's proposal would not impose reserve

[4] The Board has conditioned approval of bank holding company applications to issue and sell large-denomination payment instruments, including teller's checks, on several commitments that the bank holding company file weekly reports of the level of this activity and comply with certain deposit reserve requirements. These conditions were designed to counter the potential reserve-avoidance characteristics of such instruments and to ensure accurate reporting of related monetary statistics. *Midland Bank PLC*, 76 Federal Reserve Bulletin 860 (1990); *Midland Bank PLC*, 74 Federal Reserve Bulletin 252 (1988); *Hong Kong and Shanghai Banking Corporation*, 73 Federal Reserve Bulletin 808 (1987); *BankAmerica Corporation*, 73 Federal Reserve Bulletin 727 (1987); *FirstBank Holding Company of Colorado*, 72 Federal Reserve Bulletin 662 (1986); *Wells Fargo & Company*, 72 Federal Reserve Bulletin 148 (1986); *The Chase Manhattan Corporation*, 71 Federal Reserve Bulletin 905 (1985); *RepublicBank Corporation*, 71 Federal Reserve Bulletin 724 (1985); *Citicorp*, 71 Federal Reserve Bulletin 58 (1985); *BankAmerica Corporation*, 70 Federal Reserve Bulletin 364 (1984). In addition, a number of the Board orders referenced above include limits on the denominations of some payment instruments. The Board will entertain applications and requests for relief from conditions from bank holding companies subject to these limits or requirements.

[5] This deduction would not be available for accounts that do not meet the requirements for a due from deduction in § 204.3(f)(3) of Regulation D such as escrow accounts and balances held at a Federal Reserve Bank, or of pass-through reserves held at a Federal Home Loan Bank. 12 CFR 204.3(f)(3). In order for a depository institution to take a "due from" deduction for funds held at another depository institution, the funds generally must be held in an account in the name of the depositing institution and be subject to immediate withdrawal by the depositing institution.

requirements on sellers of checks sold in an agency capacity where that capacity is clearly stated on the face of the check, as the selling bank would not be the drawer of the check. (*See* Article 3–403 of the Uniform Commercial Code Pre 1990 Official Text and Article 3–403 of the 1990 Official Text.) The Board believes that it would not be appropriate to impose reserve requirements on the selling bank for instruments on which the selling bank has no liability, as such checks are not the equivalent of cashier's checks.[6]

Another commenter, a teller's check service provider, claimed that some banks offer these checks as agent for a non-depository institution (and therefore have no liability on the check), but that the depository institution still is the issuer of the obligation. For this reason, the commenter argued, the check is a "teller's check" for purposes of the Board's Regulation CC (12 CFR Part 229), and thus is entitled to next day availability under that regulation. The commenter further argued that, under state law (UCC section 3-102(1)(a)), the issuer and the drawer are not necessarily the same person. The Board believes that this comment reflects a misunderstanding of the provisions of Regulation CC. Under § 229.2(gg) of Regulation CC, the term "teller's check" is limited to checks drawn by banks (as that term is defined in Regulation CC.) Therefore, under Regulation CC, checks sold by a depository institution as agent, but on which a depository institution was not the drawer, would not be considered to be teller's checks even if the checks were "issued" by the depository institution.

One commenter suggested that, in states that have not adopted the new section 3–414 of the UCC, the Board would be assessing reserves on a bank beyond the Board's statutory authority if the proposal applied to banks issuing teller's checks without recourse. Under the Board's proposal, checks drawn without recourse against the drawer are not defined as teller's checks. Two commenters also were concerned that the proposal would subject depository institutions to reserves on traveler's checks, and one suggested the Board clarify that this is not the case. The Board's proposal does not apply to instruments sold as traveler's checks unless the checks are drawn by a depository institution. Two commenters suggested that the proposal should be revised to include an exception for teller's checks under $10,000. Another commenter suggested that teller's checks that were only used for certain classes of transactions, such as international payments, should be exempt from reserve requirements. The Board does not believe that a special purpose test for determining the applicability of teller's check reserve requirements is practical. Depository institutions can, however, provide their customers with checks on which the selling institution does not act as drawer. Such instruments would function as substitutes for money orders, rather than as substitutes for cashier's checks, and would not be reservable under the Board's proposal.

One trade association suggested that depository institutions with less than $100 million in assets should be exempt from reserves on their teller's checks. The Board does not believe that such an exemption is appropriate, as smaller institutions already have lower reserve requirements relative to their total reservable deposits under the zero and low reserve tranches, and report deposits considerably less frequently than larger banks. In addition, an exemption for depository institutions under $100 million in assets would allow the current erosion in the reserve base to continue as exempted institutions moved from cashier's to teller's checks. Another trade association suggested that, rather than adopt this proposal, the Board could impose additional reserves on depository institutions that habitually draw teller's checks in such a manner that they avoid reserves. The Board regards a "habitual abuser" test for determining the applicability of teller's check reserve requirements as impractical, as it would require the Board to determine the motivation for the use of teller's checks.

Two commenters suggested that the Board permit an arrangement whereby teller's check service providers would hold the reserves relating to teller's checks for their customer depository institution. While nonmember depository institutions may hold their reserves through another depository institution, a Federal Home Loan Bank, or the National Credit Union Central Liquidity Facility, the Federal Reserve Act does not permit banks that are members of the Federal Reserve System to maintain reserves through another depository institution.[7] Reporting of account balances, however, must be done by the account holding depository institution, in this case the selling institution.

One commenter argued that the proposal would require depository institutions drawing teller's checks to track and report outstanding teller's checks themselves and that this might cause depository institutions to return to the use of less efficient cashier's checks. This commenter further argued that, under certain existing teller's check programs, the drawee bank reserves against the teller's checks and that these arrangements should be permitted to continue in order to satisfy reserve requirements on teller's checks. Specifically, this commenter suggested that teller's checks be considered to be reservable deposits until paid by the drawee "or until the issuing depository institution has remitted immediately available funds to the drawee bank or payable through bank in satisfaction of the issuer's liability." This commenter further suggested that the Board require that the receipt of funds by the paying bank be a reservable deposit of the paying bank until the item had been paid or otherwise disbursed, and that the selling institution be permitted to take a "due from" deduction against funds remitted to the paying bank, regardless of the disposition of the funds after receipt by the paying bank. The commenter indicated that funds held by the paying bank are held in "omnibus accounts" for reasons of efficiency and to protect teller's check purchasers, and argued that separate accounts subject to withdrawal by the selling institutions should not be required in order for each selling institution to take a "due from" deduction against the accounts.

The Board has considered a number of alternatives for centralizing the holding of reserves against teller's checks, including the suggestion made by this commenter. Each alternative, however, suffers from significant practical or legal difficulties.

In order to create a liability subject to reserves that would be "centralized," a service provider would have to create a deposit subject to reserve requirements that could substitute for the liabilities of the individual depository institutions selling teller's checks. For example, the reserves could be maintained against the proceeds of outstanding teller's checks that are remitted to the service provider, instead of by the remitting depository institution, if the service provider placed the proceeds in a demand deposit account. This arrangement does not appear to be economically viable, as funds held in such a deposit account would not earn interest. The Board understands that teller's check service providers generally pay a return to sellers of teller's checks based on outstanding balances of funds remitted to the service provider to cover checks sold.[8] Sellers of teller's checks would no longer be able to earn such returns, as the service provider would receive no interest on its demand deposit and would not have earnings to pass on to selling institutions. Similarly, if the proceeds of the teller's checks were placed in an account under an agreement between the account holding depository institution and a depository institution selling the teller's checks to pay these checks, payment of interest on the account by the depository institution to the selling institution would constitute payment of interest on a demand account.

Finally, as noted above, while the holding of reserves against teller's checks could be centralized for many depository institutions by those institutions holding all their reserves through a single depository institution under a "pass through" arrangement under § 204.3(i) of Regulation D, section 19(c)(1) of the Federal Reserve Act precludes such arrangements for member banks.

Accordingly, the Board believes that the proposed structure of teller's check reserve requirements is appropriate. Staff will work with teller's check sellers and service providers to explore procedures to facilitate the holding of reserves against teller's checks.

Twelve commenters expressed concern that depository institutions would have to incur significant operating changes to treat teller's checks as reservable liabilities. One commenter asserted that a depository institution will not have the information it needs to report teller's checks for reserve purposes and, accordingly, should not be subject to reserves on these instruments. One commenter suggested that depository institutions be permitted to use the average outstanding balance of such instruments. Commenters indicated that drawers of teller's checks often do not track outstanding balances of teller's checks because this tracking is performed by the teller's check service providers, which may report activity to their customers only on a monthly basis. For a weekly reporter (generally a depository institution with deposits in excess of $44.8 million) to report teller's check data on a timely basis, confirmation of the daily outstanding balances of teller's checks would be required from the service provider with only a short lag.

The Board is concerned that it may not be appropriate to base teller's checks reporting requirements on average outstanding balances while other reporting requirements are based on actual balances. Special reporting arrangements would continue to favor the use of teller's checks over economically and legally similar cashier's checks. Further, daily deposit data permit verification of the data and ensure proper seasonal adjustments.

The Board recognizes, however, that implementation of the teller's check amendments will require operational changes for some drawers of teller's checks and for teller's check service providers, particularly for weekly reporters. These changes should be less significant for smaller institutions that report quarterly, as they are not required to track daily outstanding balances throughout the year. The Board is deferring the effective date of the teller's check amendment for 120 days. During that period, Board staff will work with teller's check sellers and service providers to ease potential reporting burdens.

Finally, one commenter suggested that the reference to teller's checks in proposed § 204.2(v)(iii) conflicted with the definition of teller's checks in proposed § 204.2(u). Section 204.2(a)(1)(iii) and § 204.2(b)(1)(ii) have been redrafted for clarity and § 204.2(u) has been revised to include checks payable through the drawing depository institution in the definition of teller's checks.

The Board is adopting the teller's check proposal subject to the drafting changes discussed above, with the effective date of this amendment deferred for 120 days to permit depository institutions to make appropriate arrangements to provide teller's check and other payment instrument services consistent with this amendment.

Incorporation of Reference to Interpretations

The definition of "transaction account" in Regulation D includes "[a]ll deposits other than time and savings deposits." 12 CFR 204.2(e)(6). The proposal would amend this subparagraph to refer also to accounts that may be nominally time or savings accounts, but that the Board has determined, by rule or order, to be transaction accounts. This amendment was intended to provide a reference to the Board's interpretations on transaction accounts. The only comment received on this amendment supported the amendment. The amendment is being adopted as proposed.

Interpretations

The Board identified two practices involving the use of time deposits (including savings deposits) that it believed were designed to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others. The Board believes that these time deposits should be considered to be transaction accounts. Accordingly, the Board proposed for comment two interpretations identifying as transaction accounts certain deposits that would otherwise be considered to be time deposits. The Board is adopting these interpretations with certain modifications discussed below. If other practices become prevalent in which time deposits are used directly or indirectly for the purpose of making payments or transfers to third persons or others, the Board will consider appropriate action to ensure that such deposits are not used to avoid reserve requirements on transaction accounts.

Linked Savings Accounts (§ 204.133)

The Board proposed an interpretation, to be published at 12 CFR 204.133, that would require a depository institution to treat multiple savings deposits as transaction accounts in certain circumstances. The proposed interpretation would prohibit a depository institution from assisting a customer to establish multiple savings deposits with transfer abilities unless the customer has a legitimate purpose for the multiple accounts.

The Board received twenty-nine comments on this proposal, all but three of which opposed the proposal.

Three commenters contended that multiple accounts are not used to avoid transfer limits, but rather to meet customer needs. Three commenters claimed that the proposal would force institutions to use complicated arrangements to move funds out of the depository institution overnight to earn a return for their customers without violating the regulation. The proposal was intended to maintain the distinction between savings deposits and transaction accounts. The Board recognizes that maintaining this distinction imposes costs on depository institutions, but believes that it is necessary to maintain this distinction for monetary policy purposes. One commenter suggested that the final interpretation clearly state that it does not apply to sweep arrangements

[6] If the selling bank is acting as agent for another depository institution, however, that depository institution would be required to hold reserves against the checks drawn by it or by the selling bank as its agent, as these checks would be drawn by that depository institution.

[7] See section 19(c)(1) of the Federal Reserve Act [12 U.S.C. 461].

[8] Similarly, depository institutions earn a return on the proceeds of the sale of cashier's checks until the cashier's checks are presented for payment.

involving only a single savings account. While this interpretation applies only to arrangements involving multiple savings accounts, the Board believes that sweep arrangements involving only a single savings account could constitute evasions of reserve requirements in certain circumstances not addressed here.

Thirteen commenters asserted that depository institutions would have difficulties in determining whether there was a legitimate business purpose for the use of multiple savings deposits, and expressed uncertainty as to the efforts that a depository institution would have to make to comply with the proposal. For example, one commenter stated that because depository institutions could not judge the legitimacy of the classification, the burden should be on the Board to judge the legitimacy of a customer's purpose in opening an account. One commenter urged that the proposal be revised to eliminate any duty to determine whether there is a business purpose for the opening of multiple accounts. One commenter noted that customers wishing to circumvent the restrictions would simply present false reasons for opening up the accounts. Another commenter asked whether the "business purpose" test could be met by establishing a "personal business" purpose, and noted that if that were the case, customers could easily justify a purpose for multiple accounts. One commenter contended that, as long as the depository institution does not promote multiple accounts, the depository institution should be able to assume that there is a legitimate purpose for the multiple accounts. That commenter also argued that the proposal relies upon whether the accounts are "solely" for transfer purposes, and that a bank would have a nearly impossible time of monitoring compliance. Another commenter suggested that specific guidance be provided for the treatment of accounts of related persons, such as close family members. One commenter requested a clarification that credit unions could continue to use a sub-account arrangement if the purpose was not to evade Regulation D. Another commenter, also a credit union, claimed that under the proposal it would have to convert all its savings accounts to transaction accounts.

In order to address the comments as to the difficulty of identifying the legitimacy of customer purposes for establishing multiple savings deposits, the Board has revised the proposed interpretation. The final interpretation classifies as transactions accounts multiple savings deposits established by a single customer when the depository institution suggests or otherwise promotes the establishment or operation of multiple savings deposit arrangements to increase the customer's transfer capabilities and the multiple accounts do not have another legitimate purpose. The Board believes that, while some customers of depository institutions may be able to avoid the transfer limits on savings deposits on their own initiative, the revised interpretation will lessen the administrative burden on depository institutions and will prevent proliferation of linked savings accounts that are encouraged by depository institutions.

One commenter suggested redrafting the interpretation so that the language of the interpretation would be more consistent with the language of Regulation D, thereby avoiding confusion or reclassification of an account as a result of an occasional lapse by a customer or an oversight by the depository institution. The language that concerned the commenter has been revised to parallel the language in Regulation D more closely.

The Board has adopted proposed interpretation § 204.133 subject to the modifications discussed above.

Linked Time Deposits and Transaction Accounts (§ 204.134)

The Board proposed an interpretation, to be published at 12 CFR 204.134, that would require depository institutions to classify certain deposits as transaction accounts that at present are classified as time deposits. The reclassification would apply to time deposits where a number of participating depositors maintain transaction accounts linked to time deposits in an arrangement that permits each depositor to draw checks based on the aggregate amount held by that depositor in these accounts, including unmatured time deposits. The time deposits in such arrangements are held directly by the depositor or indirectly through a trust or other arrangement that generally contains the commingled funds of a number of depositors. The individual depositor's interest in time deposits may be identifiable, with an agreement by the participating depositors that balances held in the arrangement may be used to pay checks drawn by other depositors participating in the arrangement, or the depositors may have undivided interests in a series of time deposits. The time deposits have staggered maturities so that one time deposit matures each business day. At the end of each day, funds over a specified balance in the depositors' transaction accounts are swept into one or more time deposits. New deposits made, as well as funds from any maturing time deposits, are available each day to pay checks or other charges to the transaction accounts of any of the depositors participating in the arrangement.

The depository institution's decision whether to pay checks drawn on an individual depositor's transaction account is based on the aggregate amount of funds that the depositor has invested in the arrangement, including any amount that may be invested in unmatured time deposits. Only if checks drawn by all depositors participating in the arrangement exceed the total balance of funds available that day is a time deposit withdrawn prior to maturity so as to incur an early withdrawal penalty. Because the aggregate of individual participants' deposits plus the time deposit maturing each day tends to exceed the aggregate of individual participants' withdrawals on any day, the total balance maintained in the arrangement is highly stable and an early withdrawal of time deposits is rarely, if ever, necessary. The arrangement may be marketed as an arrangement to provide the customers unlimited access to their funds with a high rate of interest.

The Board believes that (1) these arrangements substitute time deposit balances for transaction accounts balance with no meaningful reduction in the depositors' access to their funds in practice, and (2) the time deposits in such arrangements are used to provide funds indirectly for the purposes of making payments or transfers to third persons. Accordingly, the Board proposed an interpretation to be published at § 204.134 that would require that such time deposits be considered to be transaction accounts.

The Board received eighteen comments on this proposal. Three comments supported the proposal although one of these commenters urged the Board to permit depository institutions to compete against nondepository institutions for transaction balances. Ten commenters claimed that the purpose of this kind of program was not to avoid reserves, but to compete with nonbanking entities. One commenter contended that providing higher yield transaction accounts rather than reduction in reserves was the driving force behind such arrangements. The Board notes, however, that while the practice covered by the interpretation enables depositors to earn a higher rate of return than would be possible in the absence of these practices, it does so by allowing the depository institution to reclassify transaction accounts as time deposits, thereby avoiding the transaction account reserve requirement. Even though these funds remain in the banking system, reservable liabilities and the reserve base may be substantially reduced, impairing the ability of the Federal Reserve to conduct monetary policy. In addition, such arrangements allow depository institutions with the resources to establish such arrangements to reduce their reservable liabilities while other, often smaller, depository institutions lack the resources or sizeable deposit base necessary to establish similar programs.

One commenter suggested that the Board create a "super NOW" account upon which the first $5,000 would be reserved as a transaction account, and the balance as a savings deposit. The Board believes that such an exemption would provide an inequitable benefit by reducing reserve requirements on large deposits in transaction accounts while retaining reserve requirements on small deposits in transaction accounts.

Two commenters suggested that the arrangements covered by the proposal were preferable to other sweep arrangements where funds are transferred out of the bank to a securities dealer. These commenters believed that the Board should not encourage such arrangements because they are contrary to Board concerns about the systemic risks arising from a failure of the securities dealer, a computer system failure, or the failure of a bank in a large daylight overdraft position. The Board recognizes that funds transfers due to nightly sweep arrangements may involve operational and credit risks, but believes that permitting unlimited sweep arrangements within a depository institution could virtually eliminate transaction accounts and reduce reserve balances below the level necessary for the conduct of monetary policy.

One bank holding company contended that, under the proposed interpretation, large businesses and wealthy individuals have access to other sweep arrangements, but that others on the lower end of the economic spectrum would not. This commenter also argued that adoption of the proposal would not be fair because the commenter had developed its program after consultation with Board staff, and that, if the commenter's service had to be discontinued, it would lose a significant amount in research and development costs. At one time, Board staff had advised certain depository institutions that the program did not violate Regulation D, as it appeared that the time deposits met the requirements for time deposits under Regulation D. Experience with the arrangement, however, has demonstrated that the time deposits serve as an effective substitute for transaction accounts. Accordingly, the Board is exercising its authority under sections 19(a) and 19(b)(1)(F) of the Federal Reserve Act to treat such time deposits as transaction accounts.

Two commenters asked for clarification of the effect of this proposal on cash management sweep accounts generally. The proposal applies to the sweep arrangements described in the interpretation and does not necessarily apply to other sweep arrangements, although the Board might view other arrangements where funds are swept between transaction accounts and time deposits similarly.

Two commenters claimed that the Board's proposal would make transaction accounts out of certain commingled time deposits opened by trust departments for their fiduciary customers as allowed by state law and by regulations of the Comptroller of the Currency. The Board's interpretation is limited to the arrangements described in the interpretation and it does not necessarily apply to other arrangements. For example, where a bona fide trust or collective fund invests in certificates of deposit of the fiduciary bank, the proposed interpretation would not require the classification of these time deposits as a transaction account for Regulation D purposes in the absence of an arrangement under which these funds were used to fund a transaction account or to pay overdrafts incurred in a transaction account. Similarly, arrangements under the Comptroller's Interpretation section 9.3206 (*See*, Comptroller's Handbook for Fiduciary Activities, section 9.3206), in which funds are swept from demand deposits maintained by the trust department into a commingled interest bearing account maintained by the trust department and the trust department makes withdrawals from this account to carry out the terms of the trust agreement, would not necessarily be affected by the proposed interpretation. The Board notes, however, that an arrangement that is permissible under the Comptroller's rulings or is within a permissible trust activity may result in the reclassification of accounts under Regulation D if the arrangement is being used to avoid reserve requirements.

Two commenters expressed concern that the proposed interpretation, coupled with a recently issued staff interpretation on trust department use of non-interest bearing time deposit open accounts, would have the cumulative effect of prohibiting the long-standing practice of bank trust departments of segregating a portion of the trust department's commingled demand account into one or more time accounts. The practice of segregating a portion of the demand account into a non-interest bearing time account was the subject of a staff opinion letter dated May 17, 1991, which discussed the rescission in December 1987 of a 1959 interpretation of Regulation D (FRRS 2-491). The 1959 interpretation recognized the practice of classifying a portion of a demand deposit as a time deposit where the practice was consistent with principles of fiduciary law. The May 1991 staff letter expressed the opinion that, in view of recent technological advances, the practice of maintaining zero interest bearing time deposits is inconsistent with a trustee's responsibility to make productive use of trust funds (unless specific consent or authorization to the contrary is obtained). The proposed interpretation is directed at the use of time deposits to provide funds, indirectly, for the purpose of making payments or transfers to third persons. It is not directed at the segregation into time deposits of trust department balances that are not required for immediate disbursement.

The Board has adopted the interpretation § 204.134 as proposed.

Time Deposit Withdrawal Penalty

Section 204.2(c)(1)(i) of Regulation D defines "time deposit" generally to include a deposit from which the depositor does not have a right and is not permitted to make withdrawals within six days after the date of deposit, unless the withdrawal is subject to an early withdrawal penalty of at least seven days' simple interest. One type of time deposit, known as a "time deposit open account," does not have a stated maturity and may be payable any time after the expiration of a specified time not less than seven days after the date of deposit. *See* 12 CFR 204.2(c)(1)(i)(A). Unlike savings deposits, this type of time deposit may have no restrictions on the number of transfers from the account that can be made each statement period. If the early withdrawal penalty is not imposed on a time deposit, the account becomes either a savings deposit subject to limitations on withdrawals and transfers or a transaction account.

Depository institutions have asked whether the six-day period runs from the date of the last deposit or the date that an amount corresponding to the amount of the withdrawal was initially deposited. Under a first-in first-out, or "FIFO", accounting treatment, depositors could regularly withdraw funds from the account if a like amount had been on deposit for more than six days. Such withdrawals would not be subject to an early withdrawal penalty and would not be limited by the transfer limits on savings deposits.

The Board was concerned that a FIFO rule would facilitate the use of a time deposit open account to make transfers, in excess of those permissible for a savings deposit, from the time deposit to a transaction account for the purpose of making payments to third persons, thus avoiding transaction account reserves. Accordingly, for reserve purposes the Board proposed to adopt a last-in first-out or "LIFO" accounting treatment for time deposits. To this end, the Board proposed amending § 204.2(c)(1)(i) by adding the words the "last" before the word "deposit" at the end of the first sentence of that paragraph.

The Board received twelve comments on this proposal. Three commenters supported this proposal or indicated that it corresponded to their current practice. The remainder opposed the proposal. Four commenters contended that the proposal would freeze funds in the accounts and would be inconsistent with the expectation of customers that the customers can have access to their funds as long as an amount equal to the amount withdrawn had been on deposit for six days. Another commenter claimed that the proposal would preclude the use of time deposits for investing idle trust funds. One commenter argued that LIFO accounting for time deposits would permit as many withdrawals as FIFO accounting where only large periodic deposits are made.

Four commenters noted that the proposal would cause institutions to incur significant costs to implement and to monitor compliance with the proposal. One of these cited the costs associated with notifying customers of the change.

This amendment was proposed to prevent a time deposit from being used for the purpose of funding a transaction account through transfers from the time deposit in excess of the six transfers per month that can be made from a savings deposit to a transaction account. While the Board regards such an arrangement as a method of evading reserve requirements, the Board wishes to avoid imposing unnecessary costs on depository institutions that do not use time deposits for this purpose. Accordingly, the Board is not adopting the proposed amendment at this time. The Board may reconsider this proposal if the use of time deposits to fund transaction accounts proliferates.

Computation of Reserve Requirements

Amendments

Cash Items in the Process of Collection

Section 204.2(i)(1) of Regulation D defines the term "cash items in the process of collection" to include redeemed bonds and coupons. Section 204.3(f) provides that, in determining the reserve balance required by Regulation D, a depository institution may deduct the amount of cash items in the process of collection from its gross transaction accounts. The reference to redeemed bonds and coupons in § 204.2(i)(1)(iii)(B) has caused confusion, as bonds and coupons that have been redeemed by the paying agent have no further need for collection. The term "redeemed" could be interpreted, however, to refer to the receipt for redemption of bonds or coupons by a depository institution in order to send them for collection, regardless of when the bonds or coupons mature, if the depository institution has given credit for the bonds or coupons.

Such an interpretation could allow a depository institution to send bonds or coupons for redemption and extend credit on the security of the bonds or coupons while receiving a "cash item in the process of collection" deduction until the bonds or coupons were redeemed by the paying agent on maturity. This practice could materially reduce the amount of reserves held against transaction accounts in a way that the Board believes is inappropriate and inconsistent with the purpose of the "cash items in the process of collection" deduction.

The Board proposed an amendment to the definition of the term "cash item in the process of collection" in § 204.2(i)(1)(iii)(B) of Regulation D to delete the term "redeemed" and replace it with the term "matured." Bonds that have not reached the original maturity date, but that have been called and are payable immediately upon presentation, would be considered matured for the purposes of this provision.

The Board received seven comments on this proposal. Three commenters supported the proposal. One commenter noted that this proposal would be cumbersome and time consuming as normal account reconciliation would not necessarily coincide with reporting dates. One commenter suggested that the Board's regulation clarify that bonds that have been called can qualify for the deduction.

One commenter urged that bonds and coupons be eligible for the "cash item in the process of collection" deduction for two days prior to maturity. This commenter further maintained that the proposed treatment of bonds and coupons is inconsistent with some depository institutions' treatment of other items in the process of collection. The commenter indicated that some depository institutions take a cash item in the process of collection deduction for commercial paper and bankers' acceptances that have not yet matured, as well as for post-dated drafts.

The Board believes that the commenters have not demonstrated that the costs of reconciling bonds and coupons in the process of collection will outweigh the potential use of this deduction to avoid reserve requirements. With respect to commercial paper and bankers' acceptances that have not yet matured and post-dated drafts, which some depository institutions may be treating currently as cash items in the process of collection, the Board believes that these instruments do not fit within the current definition of "cash item in the process of collection," as these items are not "payable immediately upon presentation" when the deduction is taken, as required by § 204.2(i)(1)(iii) of Regulation D. Accordingly, the Board has adopted the amendment, with the clarification that called bonds may be considered to be cash items in the process of collection. The effective date of this amendment has been deferred for 120 days to permit depository institutions to make any necessary modifications to their systems.

Interpretations

Due from Deduction (§ 204.135)

A number of depository institutions have been engaging in practices designed to reduce their reserve requirements by increasing the use of the low reserve tranche among affiliated depository institutions. Under § 204.9(a)(2) of Regulation D, a depository institution is exempt from reserve requirements on its first $3.6 million in reservable liabilities and is subject to three percent reserves on its transaction account balances of up to $42.2 million. Under § 204.3(f)(1) of Regulation D, balances subject to immediate withdrawal from other depository institutions located in the United States may be deducted from gross transaction accounts in computing reserve requirements. Further, under

§ 204.2(a)(1)(vii)(A)(1) of Regulation D, federal funds transactions with other offices located in the United States of depository institutions and certain other entities generally are exempt from reserve requirements. In a number of cases, depository institutions have used the relationship between these provisions to reduce their reserve requirements through a series of transactions entered into for that purpose.

For example, when small depository institutions in an affiliated family of depository institutions do not take full advantage of the low reserve tranche in § 204.9(a)(1) of Regulation D (i.e. the 3 percent reserve ratio on transaction account balances up to $42.2 million), these small depository institutions may accept demand deposits from larger affiliates to increase the small institutions' total transaction accounts up to the $42.2 million limit. These deposits may be subject to immediate withdrawal by the larger depository institution and thereby generate a "due from" deduction for the larger depository institution. The transaction account balances at the small depository institutions are subject to a 3 percent reserve requirement rather than the full 10 percent requirement. The small depository institutions then return the funds to the larger depository institution, less an amount equal to the 3 percent reserve requirement that the small depository institutions must hold against the larger depository institution's deposit. The funds are returned by means of a federal funds transaction. The federal funds transaction is exempt from reserve requirements under § 204.2(a)(1)(vii)(A)(1) of Regulation D. The larger depository institution may then invest or lend the funds. The net effect of these transactions is to reduce the reserve requirements of the larger depository institution by 7 percentage points on the amount transferred to the smaller depository institutions at a cost of a few bookkeeping entries and funds transfers.

The Board believes these transactions are designed to avoid reserve requirements, and are inconsistent with the purpose for which Congress provided the low reserve tranche, and proposed an interpretation that would eliminate the due from deduction under these circumstances.

The Board received ten comments on this proposal. Three commenters supported the proposal. One of these commenters suggested that the proposal should also cover similar transactions that are designed to take advantage of the transition provisions of Regulation D, under which some institutions, including *de novo* or merged institutions, may be subject to lower reserve requirements during a phase-in period. The Board did not include such transactions in the final interpretation, but will monitor them to determine whether such transactions are being used to evade reserve requirements.

Seven commenters opposed the proposal. Generally, these commenters argued that the proposal would serve to penalize banks for legitimate transactions, such as deposits placed to compensate the smaller institution for services provided to the larger institution, or deposits to buttress the deposit base of the smaller institution or deposits for other prudent business purposes. Two commenters suggested that transactions between larger banks and smaller affiliates be permitted if the funds either do not flow back to the larger bank or, if they do, interest is charged at the going fed funds rate.

The Board recognizes that there may be legitimate reasons for large banks to place deposits subject to immediate withdrawal, and that are therefore eligible for the due from deduction, in small affiliated banks. However, in the case of deposits subject to immediate withdrawal by large banks in small affiliated banks or other small banks, the Board believes that there are few, if any, legitimate reasons for the small banks to then sell federal funds to the larger bank in lieu of the large bank withdrawing its deposit. This is particularly true in cases in which such sales are made at a low or zero rate of interest.

One commenter argued that this problem could be eliminated by elimination of the low reserve tranche. The low reserve tranche is established by section 19(b)(2) of the Federal Reserve Act, and therefore the Board does not believe that it has the authority to eliminate the low reserve tranche.

The Board has adopted the proposed interpretation with revisions to clarify that it applies to all situations in which funds are returned to the larger institution by a transaction that is exempt from reserve requirements, such as a sale of federal funds.

Commingled Trust Deposit Netting (§ 204.136)

Depository institutions' trust departments often commingle the idle balances of the individual trusts and place the funds in a single transaction account in the depository institution. This account is subject to reserve requirements as a transaction account. In some cases, the trust department nets negative balances in some trust accounts against positive balances in other trust accounts in order to arrive at a net amount that it credits to the commingled transaction account. This practice generally understates the balances in the transaction account. Individual trust instruments generally do not authorize the trustee to use the funds in one trust to lend to another trust. Consequently, any overdraft in a trust is covered, in effect, by a loan from the bank where the bank makes a payment on behalf of the trust. A negative balance in a trust account should be reflected as a zero balance and should not be netted against positive balances in other trusts in computing the amount in the commingled transaction account each day.

Accordingly, the Board proposed an interpretation to be published at 12 CFR 204.136 that, in certain circumstances, would prohibit the netting of negative balances in individual trust accounts against positive balances in other trust accounts. The effect of this proposal would be to increase aggregate trust department transaction account balances for reserve requirement purposes in certain depository institutions. The prohibition would not apply, however, if the applicable trust law specifically permitted the netting, or if a written trust agreement, valid under applicable trust law, permitted a trust to lend money to another trust account.

The Board received seventeen comments on this proposal, one of which supported the proposal. Seven commenters contended that adoption of the proposal would result in a competitive advantage for trust companies that deposit their institution's uninvested trust balances at another bank. They argued that those trust companies would not be subject to the prohibition on netting of trust balances because such netting would take place outside of the institution determining the reserves, while at the same time, trust demand deposit accounts of the reserving bank's own trust department would be subject to reserves on a gross basis even though the accounts at both institutions serve the same purpose. Additionally, these commenters claimed that prohibiting netting would inflate trust cash balances.

The Board believes that the prohibition against netting for reserve purposes is consistent with accurate accounting of a bank's cash deposit liability to its trust customers. Trust principles apply to non-depository as well as depository institutions engaged in the administration of fiduciary

accounts. These principles do not permit a trustee to lend funds from one trust to another trust unless specifically authorized by the governing trust agreement or State law. Consequently, unless such loans are expressly authorized, the negative balances in individual trust accounts, in effect, represent loans from the trustee institution. Both non-deposit trust companies and bank trust departments must conduct their activities in accordance with these trust principles. Additionally, the adoption of the interpretation should reduce, rather than promote, competitive inequalities that may now exist among trust institutions by reminding all such institutions that they are subject to the same fiduciary principles in the determination of cash balances for deposit.

Two commenters were concerned that national banks would be required to post additional collateral for trust deposits if netting were prohibited. National banks are required to post collateral only where the cash balance of an *individual* trust account is in excess of Federal insurance. As collateral requirements are not determined on the aggregate balance in a commingled trust department account, the Board does not believe that additional collateral will be required as a result of the interpretation.

Two commenters maintained that the proposed changes would place reserves on transactions that are accomplished on the trust side of the bank when Regulation D specifically excludes these transactions from reserve requirements. One commenter claimed that the proposal could be interpreted as a limit on the authority of the bank to pay overdrafts in a trust.

Fiduciary funds are not subject to reserve requirements under Regulation D unless they are placed in a deposit account in a depository institution. Most trust departments deposit uninvested trust funds in their depository institution. Where the institution has netted uninvested trust fund balances, it avoids reserve requirements by reporting a lower balance than that for which the fiduciary is responsible.

Other commenters requested the establishment of a safe harbor for overdrafts of less than $200,000 per day, requested an exemption from separate reporting for institutions with less than $100 million in trust assets, and requested guidance on the calculation of overdrafts and the meaning of netting. One commenter argued that the costs of complying with the proposal would be greater than the costs of holding the additional reserves that would be required.

The Board believes that it is unnecessary and in appropriate to provide safe harbors or exemptions from reserves for deposits by a depository institution's trust department. Further, the Board believes that it is inappropriate to specify detailed trust accounting procedures in Regulation D.

Nine commenters argued that the interpretation would prohibit overdrafts that are "technical overdrafts," i.e. overdrafts for bookkeeping purposes only, or that result from longstanding practices that trust departments are permitted to employ. Some of these commenters cited as examples of technical overdrafts negative balances in suspense accounts used for the prepayment of interest or dividends, and negative balances in clearing house fund accounts used for the processing of securities transactions.

The proposed interpretation was intended to prohibit netting of *true* overdrafts and was not intended to prohibit netting where overdrafts are merely technical and where funds are still available within the trust department to offset the overdraft. The Board agrees that technical overdrafts may be netted provided there is a corresponding positive balance for the trust incurring the overdraft that is available for the offset. For example, a negative balance in a trust account could be offset by a corresponding credit in a securities settlement suspense account until settlement date, and a negative balance in a pre-credit suspense account could be offset by a corresponding positive balance in a trust account until the dividend or interest payment corresponding to these entries is received. Paragraph (d) of the interpretation has been revised to reflect the permissibility of netting in these circumstances.

One commenter also urged that there be no prohibition on netting overdrafts in a common trust fund (using accrual accounting methods) since such overdrafts represent amounts, such as interest or dividends, that have been distributed to participating individual trust accounts. The commenter noted that OCC precedents require the use of accrual accounting and that OCC Regulations (12 CFR 9.18(b)(8)(i)) recognize the inevitability of net cash overdrafts in common trust funds. The only OCC precedent related to the permissibility of netting overdrafts in common trust funds appears to be OCC Opinion 9.6900. This Opinion permits offsetting within a single common trust fund of overdrafts of income cash with principal cash, where the income cash overdraft is the result of a required income distribution and the distribution does not exceed total principal and income cash then on hand. The Board's interpretation is not intended to prohibit netting in circumstances described in OCC Opinion 9.6900 where the fund has a legally permissible right of offset between principal cash and income cash. The Board notes, however, that the cited Opinion does not authorize net cash overdrafts, and that netting such balances against other trust accounts is prohibited by the interpretation.

One commenter requested the Board to clarify that the interpretation is not intended to limit a bank's payment of overdrafts in a trust account by means of extensions of credit by the bank. The proposal was not intended to limit this practice. Two commenters requested a delay in the implementation of the changes to allow institutions to make system changes in order to comply with the regulation.

The Board has adopted proposed interpretation § 204.136 with revisions to clarify its application to suspense accounts and other issues raised by the commenters. The Board is deferring the effective date of this interpretation for 120 days to permit depository institutions to adapt their internal systems to the interpretation.

Technical Amendments

In April 1991, the Board made several technical amendments to Regulation D concerning reserve deficiency charges. 56 FR 15493, April 17, 1991. Two conforming amendments are included in this rule to substitute the term "reserve deficiency charges" for "penalties" in § 204.3.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board certifies that these amendments and interpretations will not have a significant economic impact on a substantial number of small entities. With the exception of the amendment requiring sellers of teller's checks to maintain reserves against the outstanding balances of such checks, the Board does not believe that the amendments or interpretations would impose any additional reporting or recordkeeping requirements.

As a result of the teller's check amendments, depository institutions that sell teller's checks will be required to obtain outstanding teller's check balances from teller's check service providers and to include these balances in their reports of deposits. Currently, seller's of tellers checks generally obtain this information from teller's checks service providers on a monthly basis. After adoption of the amendment, weekly reporters, that is, depository institutions with assets of over $44.8 million, will need to obtain the information from providers on a more timely basis in order to include teller's check balances in their reports. Smaller institutions, which are required to report only on a quarterly basis, should already be receiving sufficient information from service providers to include outstanding teller's check balances in their reports of deposit. The issues and alternatives considered by the Board in adopting this amendment are detailed in the Supplementary Information.

Although these amendments and interpretations may increase required reserves for some depository institutions, they should not have a disproportionally adverse impact on small institutions, as Regulation D provides an exemption from reserve requirements for the first $3.6 million of transaction account balances and a low reserve tranche for transaction account balances above this limit up to $42.2 million, on which a lower rate of three percent rather than the full 10 percent is required. Although one of the interpretations (§ 204.135) would reduce the use of the low reserve tranche in some circumstances, this interpretation relates to the use of the low reserve tranche by larger depository institutions affiliated with a small depository institution, and does not affect the ability of the small institution to use the low reserve tranche for their own deposits. The Board does not expect that the amendments and interpretations will have a significant negative impact on the ability of small institutions to attract deposits. Further, the Board believes that the amendments and interpretations will improve the ability of small institutions to compete in some areas, as many small institutions do not have the resources available to develop and maintain reserve avoidance practices of the kinds the proposals address. Negating the effect of these practices will therefore improve the ability of small institutions to compete with larger institutions that would otherwise be able to use these reserve avoidance techniques.

Notice and Public Participation

With the exception of the technical amendments to § 204.3, all amendments and interpretations included in this notice have been published for notice and comment. Notice and comment have not been provided for the amendments to § 204.3, as these are technical, conforming amendments that do not make any substantive change to the regulation.

List of Subjects in 12 CFR Part 204

Banks; banking, Federal Reserve System, Reporting and recordkeeping requirements.

Pursuant to the Board's authority under section 19 of the Federal Reserve Act, 12 USC 461 *et seq.*, the Board is amending 12 CFR Part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS

1. The authority citation for Part 204 continues to read as follows:

Authority: Sections 11(a), 11(c), 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 248(a), 248(c), 371a, 371b, 461, 601, 611); section 7 of the International Banking Act of 1978 (12 U.S.C. 3105); and section 411 of the Garn St-Germain Depository Institutions Act of 1982 (12 U.S.C. 461).

2. Section 204.2 is amended by revising paragraphs (a)(1)(iii), (b)(1)(ii), (e)(6), and (i)(1)(iii)(B), by adding the word "or" after the semicolon at the end of paragraph (b)(3)(iii), by removing paragraph (b)(3)(iv), by redesignating paragraph (b)(3)(v) as (b)(3)(iv), and by adding paragraph (u), to read as follows:

§ 204.2 Definitions.

* * *

(a)(1) * * *

(iii) an outstanding teller's check, or an outstanding draft, certified check, cashier's check, money order, or officer's check drawn on the depository institution, issued in the usual course of business for any purpose, including payment for services, dividends or purchases;

* * * * *

(b)(1) * * *

(ii) certified, cashier's, teller's, and officer's checks (including such checks issued in payment of dividends);

* * * * *

(e) * * *

(6) All deposits other than time and savings accounts, including those accounts that are time and savings deposits in form but that the Board has determined, by rule or order, to be transaction accounts.

* * * * *

(i)(1) * * *

(iii) * * *

(B) matured bonds and coupons (including bonds and coupons that have been called and are payable on presentation);

* * * * *

(u) *Teller's check* means a check drawn by a depository institution on another depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, or payable at or through a depository institution, a Federal Reserve Bank, or a Federal Home Loan Bank, and which the drawing depository institution engages or is obliged to pay upon dishonor.

3. Section 204.3 is amended by revising the second sentence in paragraphs (a) introductory text and (g) to read as follows:

§ 204.3 Computation and maintenance.

(a) * * * Reserve deficiency charges shall be assessed for deficiencies in required reserves in accordance with the provisions of § 204.7. * * * * *

* * * * *

(g) * * * If a depository institution draws against items before that time, the charge will be made to its reserve account if the balance is sufficient to pay it; any resulting impairment of reserve balances will be subject to the penalties provided by law and to the reserve deficiency charges provided by this part. * * *

* * * * *

4. Section 204.133 is added to read as follows:

§ 204.133 Multiple savings deposits treated as a transaction account.

(a) *Authority.* Under section 19(a) of the Federal Reserve Act, the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

(b) *Background.* Under Regulation D, 12 CFR 204.2(d)(2), the term "savings deposit" includes a deposit or an account that meets the requirements of § 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make up to six transfers or withdrawals per month or statement cycle of at least four weeks. The depository institution may authorize up to three of these six transfers to be made by check, draft, debit card, or similar order drawn by the depositor and payable to third parties. If more than six transfers (or more than three third party transfers by check, etc.)

are permitted or authorized per month or statement cycle, the depository institution may not classify the account as a savings deposit. If the depositor, during the period, makes more than six transfers or withdrawals (or more than three third party transfers by check, etc.), the depository institution may, depending upon the facts and circumstances, be required by Regulation D (Footnote 5 at § 204.2(d)(2)) to reclassify or close the account.

(c) *Use of multiple savings deposits.* Depository institutions have asked for guidance as to when a depositor may maintain more than one savings deposit and be permitted to make all the transfers or withdrawals authorized for savings deposits under Regulation D from each savings deposit. The Board has determined that, if a depository institution suggests or otherwise promotes the establishment of or operation of multiple savings accounts with transfer capabilities in order to permit transfers and withdrawals in excess of those permitted by Regulation D for an individual savings account, the accounts generally should be considered to be transaction accounts. This determination applies regardless of whether the deposits have entirely separate account numbers or are subsidiary accounts of a master deposit account. Multiple savings accounts, however, should not be considered to be transaction accounts if there is a legitimate purpose, other than increasing the number of transfers or withdrawals, for opening more than one savings deposit.

(d) *Examples.* The distinction between appropriate and inappropriate uses of multiple accounts is illustrated by the following examples:

Example 1. (i) X wishes to open an account that maximizes his interest earnings but also permits X to draw up to ten checks a month against the account. X's Bank suggests an arrangement under which X establishes four savings deposits at Bank. Under the arrangement, X deposits funds in the first account and then draws three checks against that account. X then instructs Bank to transfer all funds in excess of the amount of the three checks to the second account and draws an additional three checks. Funds are continually shifted between accounts when additional checks are drawn so that no more than three checks are drawn against each account each month.

(ii) Suggesting the use of four savings accounts in the name of X in this example is designed solely to permit the customer to exceed the transfer limitations on savings accounts. Accordingly, the savings accounts should be classified as transaction accounts.

Example 2. (i) X is trustee of separate trusts for each of his four children. X's Bank suggests that X, as trustee, open a savings deposit in a depository institution for each of his four children in order to ensure an independent accounting of the funds held by each trust.

(ii) X's Bank's suggestion to use four savings deposits in the name of X in this example is appropriate, and the third party transfers from one account should not be considered in determining whether the transfer and withdrawal limit was exceeded on any other account. X established a legitimate purpose, the segregation of the trust assets, for each account separate from the need to make third party transfers. Furthermore, there is no indication, such as by the direct or indirect transfer of funds from one account to another, that the accounts are being used for any purpose other than to make transfers to the appropriate trust.

Example 3. (i) X opens four savings accounts with Bank. X regularly draws up to three checks against each account and transfers funds between the accounts in order to ensure that the checks on the separate accounts are covered. X's Bank did not suggest or otherwise promote the arrangement.

(ii) X's Bank may treat the multiple accounts as savings deposits for Regulation D purposes, even if it discovers that X is using the accounts to increase the transfer limits applicable to savings accounts because X's Bank did not suggest or otherwise promote the establishment of or operation of the arrangement.

5. Section 204.134 is added to read as follows:

§ 204.134 Linked time deposits and transaction accounts.

(a) *Authority.* Under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)), the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b)(2) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

(b) *Linked time deposits and transaction accounts.* Some depository institutions are offering or proposing to offer account arrangements under which a group of participating depositors maintain transaction accounts and time deposits with a depository institution in an arrangement under which each depositor may draw checks up to the aggregate amount held by that depositor in these accounts. Under this account arrangement, at the end of the day funds over a specified balance in each depositor's transaction account are swept from the transaction account into a commingled time deposit. A separate time deposit is opened on each business day with the balance of deposits received that day, as well as the proceeds of any time deposit that has matured that day that are not used to pay checks or withdrawals from the transaction accounts. The time deposits, which generally have maturities of seven days, are staggered so that one or more time deposits mature each business day. Funds are apportioned among the various time deposits in a manner calculated to minimize the possibility that the funds available on any given day would be insufficient to pay all items presented.

(1) The time deposits involved in such an arrangement may be held directly by the depositor or indirectly through a trust or other arrangement. The individual depositor's interest in time deposits may be identifiable, with an agreement by the depositors that balances held in the arrangement may be used to pay checks drawn by other depositors participating in the arrangement, or the depositor may have an undivided interest in a series of time deposits.

(2) Each day funds from the maturing time deposits are available to pay checks or other charges to the depositor's transaction account. The depository institution's decision concerning whether to pay checks drawn on an individual depositor's transaction account is based on the aggregate amount of funds that the depositor has invested in the arrangement, including any amount that may be invested in unmatured time deposits. Only if checks drawn by all participants in the arrangement exceed the total balance of funds available that day (i.e. funds from the time deposit that has matured that day as well as any deposits made to participating accounts during the day) is a time deposit withdrawn prior to maturity so as to incur an early withdrawal penalty. The arrangement may be marketed as providing the customer unlimited access to its funds with a high rate of interest.

(c) *Determination.* In these arrangements, the aggregate deposit balances of all participants generally vary by a comparatively small amount, allowing the time deposits maturing on any day safely to cover any charges to the depositors' transaction accounts and avoiding any early withdrawal penalties. Thus, this arrangement substitutes time deposit balances for transaction accounts balances with no practical restrictions on the depositors' access to their funds, and serves no business purpose other than to allow the payment of higher interest through the avoidance of reserve requirements. As the time deposits may be used to provide funds indirectly for the purposes of making payments or transfers to third persons, the Board has determined that the time deposits should be considered to be transaction accounts for the purposes of Regulation D.

6. Section 204.135 is added to read as follows:

§ 204.135 Shifting funds between depository institutions to make use of the low reserve tranche.

(a) *Authority.* Under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)) the Board is authorized to define terms used in section 19, and to prescribe regulations to implement and to prevent evasions of the requirements of that section. Section 19(b)(2) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. In addition to its authority to define terms under section 19(a), section 19(g) of the Federal Reserve Act also give the Board the specific authority to define terms relating to deductions allowed in reserve computation, including "balances due from other banks." This interpretation is adopted under these authorities.

(b) *Background.* (1) Currently, the Board requires reserves of zero, three, or ten percent on transaction accounts, depending upon the amount of transaction deposits in the depository institution, and of zero percent on nonpersonal time deposits. In determining its reserve balance under Regulation D, a depository institution may deduct the balances it maintains in another depository institution located in the United States if those balances are subject to immediate withdrawal by the depositing depository institution (§ 204.3(f)). This deduction is commonly known as the "due from" deduction. In addition, Regulation D at § 204.2(a)(1)(vii)(A) exempts from the definition of "deposit" any liability of a depository institution on a promissory note or similar obligation that is issued or undertaken and held for the account of an office located in the United States of another depository institution. Transactions falling within this exemption from the definition of "deposit" include federal funds or "fed funds" transactions.

(2) Under section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)), the Board is required to impose reserves of three percent on total transaction deposits at or below an amount determined under a formula. Transaction deposits falling within this amount are in the "low reserve tranche." Currently the low reserve tranche runs up to $42.2 million. Under section 19(b)(11) of the Federal Reserve Act (12 U.S.C. 461(b)(11)) the Board is also required to impose reserves of zero percent on reservable liabilities at or below an amount determined under a formula. Currently that amount is $3.6 million.

(c) *Shifting funds between depository institutions.* The Board is aware that certain depository institutions with transaction account balances in an amount greater than the low reserve tranche have entered into transactions with affiliated depository institutions that have transaction account balances below the maximum low reserve tranche amount. These transactions are intended to lower the transaction reserves of the larger depository institution and leave the economic position of the smaller depository institutions unaffected, and have no apparent purpose other than to reduce required reserves of the larger institution. The larger depository institution places funds in a demand deposit at a small domestic depository institution. The larger depository institution considers those funds to be subject to the "due from" deduction, and accordingly reduces its transaction reserves in the amount of the demand deposit. The larger depository institution then reduces its transaction account reserves by 10 percent of the deposited amount. The small depository institution, because it is within the low reserve tranche, must maintain transaction account reserves of 3 percent on the funds deposited by the larger depository institution. The small depository institution then transfers all but 3 percent of the funds deposited by the larger depository institution back to the larger depository institution in a transaction that qualifies as a "fed funds" transaction. The 3 percent not transferred to the larger depository institution is the amount of the larger depository institution's deposit that the small depository institution must maintain as transaction account reserves. Because the larger depository institution books this second part of the transaction as a "fed funds" transaction, the larger depository institution does not maintain reserves on the funds that it receives back from the small depository institution. As a consequence, the larger depository institution has available for its use 97 percent of the amount transferred to the small depository institution. Had the larger depository institution not entered into the transaction, it would have maintained transaction account reserves of 10 percent on that amount, and would have had only 90 percent of that amount for use in its business.

(d) *Determination.* The Board believes that the practice described above generally is a device to evade the reserves imposed by Regulation D. Consequently, the Board has determined that, in the circumstances described above, the larger depository institution depositing funds in the smaller institution may not take a "due from" deduction on account of the funds in the demand deposit account if, and to the extent that, funds flow back to the larger depository institution from the small depository institution by means of a transaction that is exempt from transaction account reserve requirements.

7. Section 204.136 is added to read as follows:

§ 204.136 Treatment of trust overdrafts for reserve requirement reporting purposes.

(a) *Authority.* Under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)), the Board is authorized to define the terms used in section 19, and to prescribe regulations to implement and prevent evasions of the requirements of that section. Section 19(b) establishes general reserve requirements on transaction accounts and nonpersonal time deposits. Under section 19(b)(1)(F), the Board also is authorized to determine, by regulation or order, that an account or deposit is a transaction account if such account is used directly or indirectly for the purpose of making payments to third persons or others. This interpretation is adopted under these authorities.

(b) *Netting of trust account balances.* (1) Not all depository institutions have treated overdrafts in trust accounts administered by a trust department in the same manner when calculating the balance in a commingled transaction account in the depository institution for the account of the trust department of the institution. In some cases, depository institutions carry the aggregate of the positive balances in the individual trust accounts as the balance on which reserves are computed for the commingled account. In other cases depository institutions net positive balances in some trust accounts against negative balances in other trust accounts, thus reducing the balance in the commingled account and lowering the reserve requirements. Except in limited circumstances, negative balances in individual trust accounts should not be netted against positive

balances in other trust accounts when determining the balance in a trust department's commingled transaction account maintained in a depository institution's commercial department. The netting of positive and negative balances has the effect of reducing the aggregate of a commingled transaction account reported by the depository institution to the Federal Reserve and reduces the reserves the institution must hold against transaction accounts under Regulation D. Unless the governing trust agreement or state law authorizes the depository institution, as trustee, to lend money in one trust to another trust, the negative balances in effect, for purposes of Regulation D, represent a loan from the depository institution. Consequently, negative balances in individual trust accounts should not be netted against positive balances in other individual trust accounts, and the balance in any transaction account containing commingled trust balances should reflect positive or zero balances for each individual trust.

(2) For example, where a trust department engages in securities lending activities for trust accounts, overdrafts might occur because of the trust department's attempt to "normalize" the effects of timing delays between the depository institution's receipt of the cash collateral from the broker and the trust department's posting of the transaction to the lending trust account. When securities are lent from a trust customer to a broker that pledges cash as collateral, the broker usually transfers the cash collateral to the depository institution on the day that the securities are made available. While the institution has the use of the funds from the time of the transfer, the trust department's normal posting procedures may not reflect receipt of the cash collateral by the individual account until the next day. On the day that the loan is terminated, the broker returns the securities to the lending trust account and the trust customer's account is debited for the amount of the cash collateral that is returned by the depository institution to the broker. The trust department, however, often does not liquidate the investment made with the cash collateral until the day after the loan terminates, a delay that normally causes a one day overdraft in the trust account. Regulation D requires that, on the day the loan is terminated, the depository institution regard the negative balance in the customer's account as zero for reserve requirement reporting purposes and not net the overdraft against positive balances in other accounts.

(c) *Procedures.* In order to meet the requirements of Regulation D, a depository institution must have procedures to determine the aggregate of trust department transaction account balances for Regulation D on a daily basis. The procedures must consider only the positive balances in individual trust accounts without netting negative balances except in those limited circumstances where loans are legally permitted from one trust to another, or where offsetting is permitted pursuant to trust law or written agreement, or where the amount that caused the overdraft is still available in a settlement, suspense or other trust account within the trust department and may be used to offset the overdraft.

By order of the Board of Governors of the Federal Reserve System, August 19, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20269 Filed 8-24-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-63-AD; Amendment 39-8335; AD 92-17-06]

Airworthiness Directives; British Aerospace Model BAC 1-11-200 and -400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1-11-200 and -400 series airplanes, that requires repetitive inspections to detect cracks in the top and bottom corners of the passenger and service door apertures, and repair, if necessary. This amendment is prompted by recent reports of fatigue cracks in the fuselage skins at the top and bottom corners of the passenger and service door apertures. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage pressure vessel.

DATES: Effective September 29, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 29, 1992.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1-11-200 and -400 series airplanes was published in the Federal Register on May 1, 1992 (57 FR 18843). That action proposed to require repetitive inspections to detect cracks in the top and bottom corners of the passenger and service door apertures, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

Paragraph (d) of the final rule has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $15,400, or $220 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-17-06. British Aerospace: Amendments 39-8335. Docket 92-NM-63-AD.

Applicability: Model BAC 1-11-200 and -400 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the fuselage pressure vessel, accomplish the following:

(a) For airplanes operated up to a maximum cabin pressure differential of 7.5 pounds per square inch, accomplish the following in accordance with British Aerospace Alert Service Bulletin 53-A-PM5989, Issue No. 1, dated October 3, 1991:

(1) For airplanes not having modification PM51 installed: Prior to the accumulation of 20,000 landings, or within 1,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual, dye penetrant, or eddy current inspection to detect cracks in the top and bottom corners of the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,600 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 3,200 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 5,000 landings, in accordance with the service bulletin.

(2) For airplanes having modification PM51 installed: Prior to the accumulation of 30,000 landings, or within 1,200 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual inspection, dye penetrant, or eddy current inspection to detect cracks in the top and bottom corners of the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,600 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 3,200 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 5,000 landings, in accordance with the service bulletin.

(3) For airplanes repaired in accordance with Structural Repair Manual Chapter 53-02-0, Figure 74: Prior to the accumulation of 20,000 landings (for airplanes not having modification PM51 installed), or prior to the accumulation of 30,000 landings (for airplanes having modification PM51 installed), from the date of installation of the repair; or within 1,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual inspection, dye penetrant, or eddy current inspection to detect cracks of the fuselage skin repair plates at the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,600 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 3,200 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 5,000 landings, in accordance with the service bulletin.

(b) For airplanes operated at a cabin pressure differential in excess of 7.5 pounds per square inch, but not exceeding 8.2 pounds per square inch, accomplish the following in accordance with British Aerospace Alert Service Bulletin 53-A-PM5989, Issue No. 1, dated October 3, 1991:

(1) For airplanes not having modification PM51 installed: Prior to the accumulation of 14,000 landings, or within 1,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual inspection, dye penetrant, or eddy current inspection to detect cracks in the top and bottom corners of the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,100 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 2,250 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 3,500 landings, in accordance with the service bulletin.

(2) For airplanes having modification PM51 installed: Prior to the accumulation of 20,000 landings, or within 1,000 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual, dye penetrant, or eddy current inspection to detect cracks in the top and bottom corners of the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,100 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 2,250 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 3,500 landings, in accordance with the service bulletin.

(3) For airplanes repaired in accordance with Structural Repair Manual Chapter 53-02-0, Figure 74: Prior to the accumulation of 10,000 landings (for airplanes not having modification PM51 installed), or prior to the accumulation of 15,000 landings (for airplanes having modification PM51 installed), from the date of installation of the repair; or within 500 landings after the effective date of this AD, whichever occurs later; and thereafter at intervals specified below; perform a close visual dye penetrant, or eddy current inspection to detect cracks of the fuselage skin repair plates at the passenger and service door apertures, in accordance with the service bulletin.

(i) If the immediately preceding inspection was performed using a close visual inspection technique, the next inspection must be performed within 1,100 landings, in accordance with the service bulletin.

(ii) If the immediately preceding inspection was performed using a dye penetrant technique, the next inspection must be performed within 2,250 landings, in accordance with the service bulletin.

(iii) If the immediately preceding inspection was performed using an eddy current technique, the next inspection must be performed within 3,500 landings, in accordance with the service bulletin.

(c) If cracks are found as a result of any inspection required by paragraphs (a) or (b) of this AD, prior to further flight, repair any cracks found; and inspect the door surround structure for associated damage, and, prior to further flight, repair any damage found; in accordance with British Aerospace Alert Service Bulletin 53-A-PM5989, Issue No. 1, dated October 3, 1991.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repair shall be done in accordance with British Aerospace Alert Service Bulletin 53-A-PM5989, Issue No. 1, dated October 3, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 29, 1992.

Issued in Renton, Washington, on July 21, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20117 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-149-AD; Amendment 39-8348; AD 92-18-04]

Airworthiness Directives; Fokker Model F-28 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Fokker Model F-28 series airplanes equipped with a certain horizontal stabilizer actuator. This action requires an inspection to detect free movement of the actuator servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement, if necessary. This amendment is prompted by a report of a horizontal stabilizer malfunction and subsequent uncommanded stabilizer movement caused by a broken spool in the actuator servo-valve assembly of the horizontal stabilizer control unit. The actions specified in this AD are intended to prevent uncommanded trimming or failure of the trim system of the horizontal stabilizer.

DATES: Effective September 9, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 1992.

Comments for inclusion in the Rules Docket must be received on or before October 26, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-149-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F-28 series airplanes equipped with horizontal stabilizer actuators, Part No. 11100. The RLD advises that a case has been reported of a horizontal stabilizer malfunction and subsequent uncommanded stabilizer movement caused by a broken spool in the actuator servo-valve assembly of the horizontal stabilizer control unit. While a Model F-28 series airplane was in flight at 29,000 feet, the stabilizer received an uncommanded trim input, the autopilot disengaged, and the airplane started to pitch up and climb. Although both pilots held the control column fully forward, the airplane continued to climb to 31,000 feet. After the crew reduced engine power, the climb stopped and the airplane started to descend. At the same time, the center of gravity had been moved forward by reseating the passengers. The airplane was diverted to the nearest suitable airfield and a safe emergency landing was made. During this occurrence, trimming according to Airplane Flight Manual (AFM) procedures was not possible, due to the high load on the stabilizer. Subsequent investigation revealed that the spool in the horizontal stabilizer actuator servo-valve assembly was broken between the spherical end and the first land. When this occurs, the centering spring brings the spool to an approximate neutral position. However, some leakage will occur, which causes a slow stabilizer runaway. The spool failed because the servo-valve rod-end connector was torqued too tightly onto the spool spherical end. Failure of the servo-valve sub-assembly rod-end bearing could result in the same failure condition. This condition, if not corrected, could result in uncommanded trimming or failure of the trim system of the horizontal stabilizer.

Fokker has issued Service Bulletin F28/27-180, dated July 3, 1992, that describes procedures for an inspection to detect free movement of the actuator servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement, if necessary. (Lack of free movement indicates overtorquing.) The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 92-077, dated July 13, 1992, in order to assure the continued airworthiness of these airplanes in The Netherlands.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent uncommanded trimming or failure of the trim system of the horizontal stabilizer. This AD requires an inspection to detect free movement of the actuator servo-valve sub-assembly of the horizontal stabilizer actuator, and replacement, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-149-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

92-18-04 Fokker: Amendment 39-8348. Docket 92-NM-149-AD.

Applicability: Model F-28 Mark 1000, 2000, 3000, and 4000 series airplanes; excluding Mark 0100 series airplanes; equipped with horizontal stabilizer actuators, Part No. 11100; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded trimming or failure of the trim system of the horizontal stabilizer, accomplish the following:

(a) Within 20 days after the effective date of this AD, perform an inspection of the servo-valve sub-assembly rod-end bearing and the servo-valve sub-assembly for movement, in accordance with Fokker Service Bulletin F28/27-180, dated July 3, 1992.

(1) If the servo-valve sub-assembly rod-end bearing and servo-valve sub-assembly move freely within the load limits specified in the Service Bulletin, reassemble and conduct a functional test, in accordance with the Service Bulletin.

(2) If the servo-valve sub-assembly rod-end bearing or servo-valve sub-assembly require higher loads for movement than specified in the Service Bulletin, prior to further flight, remove and replace the horizontal stabilizer control unit with a serviceable horizontal stabilizer control unit that has been inspected and found to be within the load limits of the Service Bulletin, or that has been inspected and repaired in accordance with Chapter 27-42-4 of the Menasco Overhaul Manual (OHM), as revised by Temporary Revision Number 3, dated July 10, 1992.

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report to Fokker of all inspection findings, including the condition and serial number of the horizontal stabilizer actuator when the inspection has revealed loads that exceed the specified limits, in accordance with Fokker Service Bulletin F28/27-180, dated July 3, 1992. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120-0056.

(c) As of the effective date of this AD, no person shall install a horizontal stabilizer control unit unless that horizontal stabilizer control unit has been inspected and found to be within the specified load limits of Fokker Service Bulletin F28/27-180, dated July 3, 1992.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then

send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection and replacement shall be done in accordance with Fokker Service Bulletin F28/27-180, dated July 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on September 9, 1992.

Issued in Renton, Washington, on August 7, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20334 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AEA-24]

Alteration of Control Zone and Transition Area; Westhampton Beach, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the existing Control Zone and 700 foot Transition Area at Westhampton Beach, NY, to reflect a name in the legal descriptions for both areas, and a new helicopter instrument approach procedure to the Southampton Heliport, Southampton, NY. This action revises that amount of controlled airspace deemed necessary by the FAA to contain aircraft operating under instrument flight rules.

EFFECTIVE DATE: 0901 u.t.c. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the legal descriptions of the Control Zone and 700 foot Transition Area at Westhampton Beach, NY, due to an airport name change and the establishment of a helicopter instrument approach procedure to the Southhampton Heliport, Southampton, NY (57 FR 20064). The proposed aciton would revise that amount of controlled airspace deemed necessary by the FAA to contain aircraft operating under instrument flight rules.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No written comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Control zones and transition areas are published in §§ 71.171 and 71.181 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The control zone and transition area listed in this document are to be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the Control Zone and 700 foot Transition Area established at Westhampton Beach, NY. This action is due to a name change for an airport contained in the legal description and the development of an instrument approach procedure for the Southampton Heliport, Southampton, NY.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

AEA NY CZ Westhampton Beach, NY [Revised]

Francis S. Gabreski Airport, Westhampton Beach, NY (lat. 40°50'37" N., long. 72°37'56" W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.8 mile radius of the Francis S. Gabreski Airport, excluding that portion within the Calverton, NY, Control Zone. This control zone is effective during the dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Section 71.181 Designation

* * * * *

AEA NY TA Westhampton Beach, NY [Revised]

Francis S. Gabreski Airport, Westhampton Beach, NY (lat. 40°50'37" N., long. 72°37'56" W.)

Southampton Heliport, NY (lat. 40°50'50" N., long. 72°27'52" W.)

SQUIR, NY, OM (lat. 40°54'16" N., long. 72°33'25" W.)

That airspace extending upward from 700 feet above the surface within a 7.9 mile radius of the Francis S. Gabreski Airport and within 4.4 miles either side of the Francis S. Gabreski Airport northeast localizer course, extending from the SQUIR OM to 10 miles northeast of the OM and within a 5 mile radius of the Southampton Heliport.

* * * * *

Issued, in Jamaica, New York, on August 6, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-20344 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AEA-25]

Change of Operating Hours of Control Zone; Chincoteague (Wallops Island), VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action advises of the increased operating hours of the NASA Wallops Flight Facility Air Traffic Control Tower, Wallops Island, VA. This action updates the times of the Control Zone operating hours to be established in advance by a Notice of Airmen (NOTAM) and published continuously in the Airport/Facility Directory. Additionally, this Control Zone is being renamed to coincide with the geographic location of the airport upon which the Control Zone is based, changes to the airport name, and updating of geographic coordinates.

EFFECTIVE DATE: 0901 u.t.c. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On April 21, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the legal description of the Chincoteague, VA, Control Zone by reflecting changes to the air traffic control tower operating hours, airport name, and geographic location (57 FR 19408). The proposed action would reflect the increased operating hours of the NASA Wallops Flight Facility Air Traffic Control Tower, and make updates to names and geographic locations contained in the legal description.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Control zones are published in § 71.171 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The Chincoteague, VA, Control Zone listed in this document will be removed subsequently from the Handbook. The Wallops Island, VA, Control Zone listed in this document will be added subsequently to the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the operating hours of the Chincoteague, VA, Control Zone, renames the area to the Wallops Island Control Zone, Wallops Island, VA, and updates information contained in the current legal description.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, incorporation by reference.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.171 Designation

* * * * *

AEA VA CZ Chincoteague, VA [Removed]

* * * * *

AEA VA CZ Wallops Island, VA [Added]

NASA Wallops Flight Facility, Wallops Island, VA (lat. 37°56'30" N., long. 75°27'45" W.)

Snow Hill VORTAC (lat. 38°03'23" N., long. 75°27'51" W.)

Within a 4.4-mile radius of NASA Wallops Flight Facility and within 1.8 miles each side of the Snow Hill, MD, VORTAC 181° radial, extending from the 4.4-mile radius to 2.2 miles south of the VOR. This control zone shall be effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on August 6, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92-20347 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 91-AEA-22]

Alteration of Transition Area; Indiana, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the existing 700 foot Transition Area at Indiana, PA, due to the development and revision of instrument approach procedures to Runway 28 at the Indiana County (Jimmy Stewart Field) Airport, Indiana, PA. This action revises controlled airspace to contain aircraft operating under instrument flight rules.

EFFECTIVE DATE: 0901 u.t.c. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

History

On April 9, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700 foot Transition Area at Indiana, PA (57 FR 15264). The proposed action would revise that amount of controlled airspace deemed necessary to contain aircraft operating under instrument flight rules.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments on the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Transition areas are published in § 71.181 of FAA Handbook 7400.7 effective November 1,

1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsquently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700 foot Transition Area established at Indiana, PA, due to the development and revision of instrument approach procedures to Runway 28 at the Indiana County (Jimmy Stewart Field) Airport, Indiana, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AEA PA TA Indiana, PA [Revised]

Indiana County (Jimmy Stewart Field) Airport, PA (lat. 40°38'00" N., long. 79°06'15" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Indiana County (Jimmy Steward Field) Airport and within 3.7 miles either side of the Indiana County (Jimmy Stewart Field) Airport localizer east course, extending from the 6.4-mile radius to 14.3 miles east of the threshold of Runway 28.

* * * * *

Issued in Jamaica, New York, on August 6, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92–20345 Filed 8–24–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–AEA–02]

Alteration of Transition Area; College Park, MD

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the 700 foot Transition Area established at College Park, MD, due to a pending revision of an instrument approach procedure to Runway 15 at the College Park Airport, College Park, MD. This action revises that amount of controlled airspace deemed necessary to contain aircraft operating under instrument flight rules.

EFFECTIVE DATE: 0901 u.t.c. December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis L. Brewington, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

History

On April 10, 1992, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the 700 foot Transition Area established at College Park, MD, due to a pending revision to an instrument approach procedure to Runway 15 at the College Park Airport, College Park, MD (57 FR 19821). The proposed action would revise that amount of controlled airspace deemed necessary to contain aircraft operating under instrument flight rules.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Transition areas are published in § 71.181 of FAA Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revises the 700 foot Transition Area established at College Park, MD, due to a pending revision to an instrument approach procedure to Runway 15 at the College Park Airport, College Park, MD.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

AEA MD TA College Park, MD [Revised]

College Park Airport, MD (lat. 38°58'50" N., long. 76°55'22" W.)

That airspace extending upward from the surface within a 6.4-mile radius of the College Park Airport and within 2 miles either side of a 303°(T) 313°(M) bearing extending from a point located at lat. 38°58'56" N., long. 76°55'29" W., extending northwest from said point and the 6.4-mile radius to 9.1 miles northwest of said point.

* * * * *

Issued in Jamaica, New York, on August 6, 1992.

Gary W. Tucker,

Manager, Air Traffic Division.

[FR Doc. 92–20346 Filed 8–24–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASW–25]

Revision of Transition Area: Gruver, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the transition area located at Gruver, TX. The development of a new standard instrument approach procedure (SIAP) has made this action necessary. A very high frequency omnidirectional range/distance measuring equipment (VOR/DME–A) SIAP has replaced the previous nondirectional radio beacon (NDB) SIAP. This action also revises the coordinates that describe the location of the Gruver Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the VOR/DME–A SIAP.

EFFECTIVE DATE: 0901 u.t.c., December 10, 1992.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5535.

SUPPLEMENTARY INFORMATION:

History

On October 29, 1991, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Gruver, TX (56 FR 55641).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Transition Areas are published in section 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document will be published subsequently in the Handbook.

The Rule

This amendment to part 71 of the Federal Aviation Regulations will revise the 700-foot transition area located at Gruver, TX. The development of a VOR/DME–A to replace the previous NDB SIAP makes this action necessary. This action also revises the coordinates used to describe the location of the Gruver Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for aircraft executing the VOR/DME–A SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.181 Designation

* * * * *

Gruver, TX [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Gruver Municipal Airport (latitude 36°14'01" N., longitude 101°25'54" W.), excluding that airspace within the Spearman, TX, transition area.

* * * * *

Issued in Fort Worth, TX, on June 30, 1992.

Larry L. Craig,

Manager, Air Traffic Division Southwest Region.

[FR Doc. 92–19112 Filed 8–24–92; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is authorizing certain option contracts traded on the London Metal Exchange ("LME") to be offered or sold to persons located in the United States. This order is issued pursuant to Commission rule 30.3(a),[1] which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered in the United States.[2]

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., Robert H. Rosenfeld, Esq., or Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under CFTC Rule 30.3(a) Permitting Option Contracts Traded on London Metal Exchonge To Be Offered or Sold in the United States Thirty Days After Notice to the Commission and Publication in the Federal Register of the Option Contracts To Be Traded

On July 23, 1987, the Commission adopted final rules governing the domestic offer or sale of commodity futures and option contracts traded on or subject to the rules of a foreign board

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[1] 17 CFR 30.3(a) (1992).

[2] See 52 FR 28980, 28998 (August 5, 1987). Notwithstanding the prohibition in Commission rule 30.3(a), non-domestic exchange-traded options which are traded pursuant to the trade option exemption in Commission rule 32.4(a), 17 CFR 32.4(a) (1992), may continue to be offered or sold.

of trade.[3] These rules, which became effective on February 1, 1988, establish, among other things, a regulatory framework for the offer or sale of foreign options to persons located in the United States.[4] Specifically, rule 30.3(a) provides that:

[N]otwithstanding any other provisions of this part, it shall be unlawful for any person to engage in the offer or sale of any foreign option until the Commission, by order, authorizes such foreign option to be offered in the United States * * *

In view of the history of abuses in the options markets prior to the imposition of the options ban,[5] the Commission determined to phase in foreign options on a market-by-market basis through particularized review of applications submitted by individual markets and issuance of an authorization order, as appropriate, by the Commission. In adopting the final rules which implement that procedure, the Commission stated that notwithstanding part 30, which provides a regulatory framework to govern transactions in both foreign futures and foreign options, and which has been the subject of extensive notice and comment, it would be unlawful for any person to engage in the offer or sale of a particular foreign option product until the Commission specifically authorizes such foreign option to be offered or sold in the United States.[6] As a consequence, rule 30.3(a) permits the Commission, as stated in the release accompanying the proposed rules, to consider, among other things, its ability to determine whether or not a particular trade has been transmitted to and executed on a foreign exchange as part of its decision to authorize transactions in specific foreign exchange-traded options.[7]

By letters dated December 13, 1991, as supplemented by letters dated July 6, and July 22, 1992,[8] the London Metal Exchange a Recognized Investment Exchange ("RIE") which is subject to regulatory oversight by the United Kingdom Securities and Investments Board ("SIB"), requested that the Commission authorize the offer or sale of option contracts traded on or subject to the rules of LME to persons located in the United States under Commission rule 30.3(a).

In issuing this Order, the Commission has considered: (1) The existence of information sharing arrangements relevant to preventing abuses in the trading of option contracts on LME; [9] (2) the arrangements in place for assuring that sales practice abuses in such options do not occur, including that sales practice compliance audits commensurate with those which apply to domestic products will be conducted with respect to firms engaged in the offer or sale of LME option products in the United States; (3) the arrangements for United States customers to redress grievances with respect to matters directly pertaining to the conduct of trading or other activities relevant to the offer or sale of such products occurring within the jurisdiction where the option is traded; and (4) the regulatory environment in which such foreign options are traded, including, among other things, the determination by the Commission under rule 30.10 to exempt specified firms in the United Kingdom from the application of certain of the Commission's rules governing foreign futures and option transactions based on the existence of a generally comparable regulatory system in effect in the United Kingdom.[10]

In determining the LME's showing with respect to the foregoing matters is sufficient to warrant the issuance of the Order herein, the Commission notes that as it acquires further experience it may determine that other considerations are also relevant. To this end, the Commission expects to continue to monitor the offer or sale of the products subject to this Order.[11]

Based upon the representations of LME contained in its letters dated December 13, 1991, as supplemented, the existence of information sharing arrangements with SIB and other relevant United Kingdom authorities,[12] the determination of the Commission to grant rule 30.10 relief to specified firms in the United Kingdom by Orders dated May 15, 1989, the memorandum from the Division of Trading and Markets to the Commission dated July 30, 1992 ("Staff Memorandum") recommending the approval of the Order herein, and pursuant to Commission rule 30.3(a), the Commission hereby authorizes the offer or sale in the United States of options traded on LME subject to the following conditions:

(1) Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, that no offer or sale of any LME option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order;

(2) That SIB and LME represent that LME is an RIE under the Financial Services Act and, as such, is subject to regulatory obligations under that Act, that transactions on LME in the LME option(s) referenced in such notice [13] will be subject to the rules of LME and

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[3] 52 FR 28980 (August 5, 1987).

[4] Rule 30.1(b), 17 CFR 30.1(b) (1992), defines a foreign option as any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty" or "decline guaranty", made or to be made on or subject to the rules of a foreign board of trade.

[5] Although the statutory prohibition on the offer or sale of foreign options formerly contained in section 4c(c) of the Commodity Exchange Act ("CEA") has been removed, see Futures Trading Act of 1986, Pub. L. No. 99-641, section 102, 100 Stat. 3556 (1986), the regulatory prohibition in Commission rule 32.11, 17 CFR 32.11 (1992), adopted pursuant to section 4c(b) of the CEA, remains in effect.

[6] 52 FR 28980, 28998.

[7] 51 FR 12104, 12105.

[8] See letters dated December 13, 1991, from D.E. King, LME, to Jean A. Webb, CFTC; December 13, 1991 from D.E. King, LME, to Andrea M. Corcoran, CFTC; July 6, 1992, from D.E. King, LME, to Jean A. Webb, CFTC; and July 22, 1992, from Marshall E. Hanbury, counsel to LME, to Jane C. Kang, CFTC.

[9] See 51 FR 12104, 12105 (April 8, 1986). The pattern of abuses that was characteristic of option sales practices in the past, and which contributed to the Commission's decision to suspend all option sales in 1978, included the unavailability of data necessary to permit a determination whether orders for options had in fact been executed. See 43 FR 16155 (April 17, 1978).

[10] 17 CFR 30.10 (1992). See Orders of the Commission dated May 15, 1989 granting rule 30.10 relief to the Securities and Investments Board, the Association of Futures Brokers and Dealers, The Securities Association and the Investment Management Regulatory Organisation, 54 FR 21599, 54 FR 21604, 54 FR 21609 and 54 FR 21614 (May 19, 1989). In issuing such Orders, the Commission determined that the requirements in appendix A to part 30, "Interpretative Statement with Respect to the Commission's Exemptive Authority Under Section 30.10 of its Rules," which sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to rule 30.10, had generally been satisfied. *Id.*

[11] The Commission has not sought to analyze the individual option contracts under the requirements which apply to the designation of an option contract proposed to be traded on a United States contract market. See 17 CFR 33.4 (1992), and 57 FR 3518 (January 30, 1992). The Commission has plenary authority with respect to option products. See section 4c of the CEA.

[12] See, *e.g.*, "Memorandum of Understanding on Mutual Assistance and Exchange of Information," entered into on September 25, 1991, by the CFTC, the Securities and Exchange Commission, the Department of Trade and Industry and the SIB, which encompasses, among other matters, cases involving fraud in the sale of foreign futures and option contracts and prohibited off-exchange futures and option contracts to U.S. customers, and the "Side Letter Reteting to UK/US MOU" signed on May 15, 1989 which provides for information sharing relevant to part 30 of the Commission's rules.

[13] See letter dated July 28, 1989 from M.B. Clttins, SIB, to Andrea M. Corcoran, CFTC. The option contracts which will initially be offered or sold pursuant to this Order, the terms and conditions for which are attached hereto are options on High Grade Primary Aluminum, Copper-Grade A, Special High Grade Zinc, Standard Lead, Primary Nickel and Tin futures contracts.

cleared on the London Clearing House and that SIB and/or LME provide the Commission with information as to all material changes thereto promptly;

(3) That options on futures on stock indices [14] and options on futures on foreign government debt securities [15] will not be permitted to be offered or sold hereunder absent certain additional procedures;

(4) That options traded pursuant to this Order may only be offset on LME or another market with respect to which the Commission has issued an order under Commission rule 30.3(a) authorizing its option products to be offered or sold in the United States;

(5) That options traded pursuant to the Order herein may only be offered or sold by persons registered in the appropriate capacity under the Commodity Exchange Act or by persons who have been granted an exemption from registration under rule 30.10 based on comparability of regulation, provided such persons also provide customers resident in the United States with the options risk disclosure statement in Commission rule 33.7, 17 CFR 33.7 (1992);

(6) If experience demonstrates that the continued effectiveness of this Order would be contrary to public policy or the public interest or that the operation or execution of the systems and arrangements in place for the trading of the option products subject hereto, or the exchange of information with respect to such products, do not warrant continuation of the authorization granted herein, the Commission may modify, suspend, terminate or otherwise restrict the authorization granted in this Order, as appropriate, on its own motion. In such event, appropriate arrangements to service existing positions will be made.

This Order is issued based on the information provided to the Commission and its staff as set forth herein and in the Staff Memorandum. Any changes or material omissions might require the Commission to reconsider the authorization granted in this Order.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry alphabetically:

Appendix B—Option Contracts Permitted To Be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
London Metal Exchange	Option Contracts on High Grade Primary Aluminum, Copper-Grade A, Special High Grade Zinc, Standard Lead, Primary Nickel and Tin futures contracts.	_____, 1992; _____ FR _____

Editorial note: These contracts will not appear in the Code of Federal Regulations.

LME High Grade Primary Aluminum Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME High Grade Primary Aluminum Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 27 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11:10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11:40 a.m. on Exercise day. Options not exercised automatically expire.

Last Trading Day—Up to close of business of the business day preceding the last Exercise day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—11:55–12:00, 12:55–13:00, 13:05–13:25, 15:35–15:40, 16:15–16:20 and 16:30–17:00 for Ring Trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME High Grade Primary Aluminum Futures Contract of 25 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 25 up to strike USD 1750, then USD 50 up to strike USD 3000, then USD 100 over strike USD 3000
STG Options—STG 25
DEM Options—DEM 100 up to strike DEM 5000, then DEM 200 over strike DEM 5000
YEN Options—YEN 10000 up to strike YEN 400000, then YEN 20000 over strike YEN 400000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorized to issue LME Futures and Options—contracts to counterparties. All LME Futures and Options—contracts are issued on a Principal to Principal basis.

LME Copper Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Copper Grade A Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 27 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11.10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11.40 a.m. on Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

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[14] See 52 FR 28980, 28982 n.6 and section 2a(1) of the CEA.

[15] See section 2a(1) of the CEA, section 3(a)(12) of the Securities Exchange Act of 1934 and Rule 3a12–8 promulgated thereunder.

Trading Hours—12:00–12:05, 12:30–12:35, 13:05–13:25, 15:30–15:35, 16:10–16:15 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Copper Grade A Futures contract of 25 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 25 up to strike USD 1750, then USD 50 up to strike USD 2000, then USD 100 over strike USD 3000
STG Options—STG 25 gradations
DEM Options—DEM 100 up to strike DEM 5000, then DEM 200 over strike DEM 5000
YEN Options—YEN 10000 up to strike YEN 400000, then YEN 20000 over strike YEN 400000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorised to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

LME Zinc Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Special High Grade Zinc Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 27 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11.10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11.40 a.m. on the Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—12:10–12:15, 12:50–12:55, 13:05–13:25, 15:25–15:30, 16:05–16:10 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Special High Grade Zinc Futures contract of 25 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 20 up to strike USD 2000, then USD 50 up to strike USD 2000
STG Options—STG 20
DEM Options—DEM 100 up to strike DEM 5000, then DEM 200 over strike DEM 5000
YEN Options—YEN 10000 up to strike YEN 400000, then YEN 20000 over strike YEN 400000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorised to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

LME Nickel Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Primary Nickel Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 15 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11:10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11:40 a.m. on Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—12:15–12:20, 13:00–13:05, 13:05–13:25, 15:45–15:50, 16:25–16:30 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Primary Nickel Futures contract of 6 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 100
STG Options—STG 50
DEM Options—DEM 200
YEN Options—YEN 20000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorised to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

LME Lead Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Standard Lead Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery/Expiry Month—Every month up to 15 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11:10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11:40 a.m. on the Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—12:05–12:10, 12:45–12:50, 13:05–13:25, 15:20–15:25, 16:00–16:05 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Standard Futures contract of 25 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 20
STG Options—STG 20
DEM Options—DEM 50 up to strike DEM 2500, then DEM 100 over strike DEM 2500
YEN Options—YEN 5000 up to strike YEN 250000, then YEN 10000 over strike YEN 250000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorised to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

LME Tin Options Contract

Unit of Trading—1 Option to buy (or sell) 1 LME Tin Futures contract with a price denominated in either US Dollars (USD) or Pounds Sterling (STG) or German Marks (DEM) or Japanese Yen (YEN).

Delivery Expiry Month—Every month up to 15 months forward, except for DEM and YEN if Delivery day is non-business day for that currency.

Exercise Day/Delivery Day/Expiry Day—Exercise by 11.10 a.m. of 1st Wednesday of the Delivery month. Assignment of Futures contract is by 11.40 a.m. on the Exercise day. Options not exercised automatically expire.

Last Trading Day—up to close of business of the business day preceding the last Exercise Day.

Quotations—In each of the currencies specified.

Minimum Price Movements for Premiums—
USD Options—USD 0.05
STG Options—STG 0.05
DEM Options—DEM 0.10
YEN Options—YEN 10

Trading Hours—11:50–11:55, 12:40–12:45, 13:05–13:25, 15:40–15:45, 16:20–16:25 and 16:30–17:00 for Ring trading or any time on the telephone market.

Contract Standard—Assignment of 1 LME Tin Futures contract of 5 tonnes with a delivery on the 3rd Wednesday of the Delivery month at the Exercise Price.

Exercise Price Interval (Gradations)—
USD Options—USD 100
STG Options—STG 50
DEM Options—DEM 200
YEN Options—YEN 20000

Option Price (Premium)—The option price is payable by the buyer to the seller on the next Business Day following the day on which the Option is traded.

Under the rules and regulations of the London Metal Exchange only Ring Dealing and Associate Broker members are authorized to issue LME Futures and Options contracts to counterparties. All LME Futures and Options contracts are issued on a Principal to Principal basis.

Issued in Washington, DC, on August 18, 1992.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 92-20299 Filed 8-24-92; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Produci® (Efrotomycin)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Merck Research Laboratories (formerly Merck Sharp & Dohme Research Laboratories), Division of Merck & Co., Inc. The NADA provides for the use of an efrotomycin Type A medicated article to make Type B and Type C medicated swine feeds for increased rate of weight gain and improved feed efficiency. The regulations are also amended to reflect a change of sponsor name from Merck Sharp & Dohme Research Laboratories to Merck Research Laboratories.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Center for Veterinary Medicine (HFV-128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-295-8602.

SUPPLEMENTARY INFORMATION: Merck Research Laboratories, Division of Merck & Co., Inc., Rahway, NJ 07065, filed NADA 140-818, which provides for the use of a 14.5 grams (g) per pound Produci® (efrotomycin) Type A medicated article to make Type B and Type C medicated swine feeds for increased rate of weight gain when fed at 3.6 to 14.5 g per ton and for improved feed efficiency when fed at 3.6 g per ton. Efrotomycin is a new animal drug used in a Type A medicated article to make Type B and Type C medicated feeds. As provided in 21 CFR 558.4(a), efrotomycin is a Category I drug, which as a sole ingredient, does not require an approved Form FDA 1900 for making Type B or Type C medicated feeds as in approved NADA 140-818.

In addition, Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc., has advised FDA of a change of sponsor name to Merck Research Laboratories, Division of Merck & Co., Inc. Accordingly, the regulations in 21 CFR 510.600(c)(1) and (c)(2) are amended to reflect that change.

The NADA is approved as of July 24, 1992, and new § 558.235 is added to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(i)), this approval qualifies for 5 years of marketing exclusivity beginning July 24, 1992, because no active ingredient (including any ester or salt thereof) has been previously approved in any other application filed under section 512(b)(1) of the act.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 376).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of*

approved applications is amended in paragraph (c)(1) in the entry for "Merck Sharp & Dohme Research Laboratories, Division of Merck & Co., Inc." and in paragraph (c)(2) in the entry for "000006" by revising the sponsor name to read "Merck Research Laboratories, Division of Merck & Co., Inc."

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: Secs. 512, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b, 371).

4. Section 558.4 is amended in paragraph (d) in the "Category I" table by alphabetically adding a new entry to read as follows:

§ 558.4 Medicated feed applications.

* * * * *

(d) * * *

CATEGORY I

Drug	Assay limits percent[1] type A	Type B maximum (200X)	Assay limits percent type B/C[2]
* *	* *	* *	*
Efrotomycin.....	94–113	1.45 g/lb (0.32%)	80–120
* *	* *	* *	*

[1] Percent of labeled amount.

[2] Values given represent ranges for either Type B or Type C medicated feeds. For those drugs that have two range limits, the first set is for a Type B medicated feed and the second set is for a Type C medicated feed. These values (ranges) have been assigned in order to provide for the possibility of dilution of a Type B medicated feed with lower assay limits to make Type C medicated feed.

* * * * *

5. New § 558.235 is added to subpart B to read as follows:

§ 558.235 Efrotomycin.

(a) *Approvals.* Type A medicated article: 14.5 grams per pound to 000006 in § 510.600(c) of this chapter.

(b) *Conditions of use*—(1) *Swine.* (i) *Amount.* 3.6 grams per ton.

(A) *Indications for use.* For improved feed efficiency.

(B) *Limitations.* Feed continuously as sole ration. Not to be used in swine weighing more than 250 pounds.

(ii) *Amount.* 3.6 to 14.5 grams per ton.

(A) *Indications for use.* For increased rate of weight gain.

(B) *Limitations.* Feed continuously as sole ration. Not to be used in swine weighing more than 250 pounds.

(2) [Reserved]

Dated: August 17, 1992.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 92-20206 Filed 8-24-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900-AF88

Rules of Practice

AGENCY: Department of Veterans Affairs.

ACTION: Interim rules.

SUMMARY: The Department of Veterans Affairs (VA) is publishing amendments to Board of Veterans' Appeals Rules of Practice relating to the fees and expenses of representatives who practice before VA. This action is required in order that these regulations may properly reflect changes in procedure which are necessitated by decisions of the United States Court of Veterans Appeals. The intended effect of this action is to bring these regulations into compliance with the Court's decisions and to prevent any unnecessary delay in benefit payments to veterans and their dependents or survivors.

DATES: The amendments to these regulations are effective on August 25, 1992. Comments must be submitted on or before September 24, 1992. Comments will be available for public inspection until October 5, 1992.

ADDRESSES: Send written comments to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170 at the address above, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until October 5, 1992.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Counsel to the Chairman (01C), Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–233–2978).

SUPPLEMENTARY INFORMATION: VA will consider public comment submitted to the address above, but it has not published a notice of proposed rulemaking on the amendment of these regulations, as allowed by 5 U.S.C. 553(b)(A) and (B). The affected regulations are rules of agency procedure and practice. In addition, the agency for good cause finds that notice and public procedure thereon would be unnecessary and contrary to the public interest because these changes are necessitated by decisions of the United States Court of Veterans Appeals.

The United States Court of Veterans Appeals has rendered decisions in two cases which have had a substantial impact upon VA's practice and procedure dealing with the review of representatives' charges for fees and expenses relating to their services in matters pending before VA; *Nagler* v. *Derwinski*, 1 Vet. App. 297 (1991) and *In the Matter of the Fee Agreement of William G. Smith in Case Number 90-58*, 1 Vet. App. 492 (1991). These decisions have had the effect of invalidating an expedited administrative fee and expense review process contemplated by VA when the Board of Veterans' Appeals current Rules of Practice were drafted. In *Nagler*, the Court held, in part, that the Board could not review fee agreements at a time when no representation has been provided before VA or BVA. In *Smith*, the Court held that the Chairman of the Board has no authority to review attorney-fee agreements for representation at the administrative level.

The current Rules of Practice include provisions for payment of an attorney's share of any past-due benefits awarded to a VA claimant at the same time that any such benefits are paid to the claimant. With the demise of expedited administrative review, this could result in a lengthy delay in the payment of benefits to disabled veterans or their dependents or survivors when the reasonableness of a representative's fees is being contested. Accordingly, these provisions are being removed. References to the now invalidated authority of the Chairman of the Board to rule on fee and expense review motions are also being removed so that the Rules of Practice will not be misleading in that regard.

The following changes have been made in part 20:

Section 20.102(d) has been amended to remove references to the delegation of the Chairman's authority to rule on fee and expense review motions.

Section 20.609 has been amended to remove provisions from paragraphs (h)(3)(i) and (h)(4) requiring payment of an attorney's share of any past-due benefits at the same time that benefits are paid to the claimant/appellant and to remove a provision from paragraph (i) indicating that rulings on motions for the review of fee agreements will be made by the Chairman.

Section 20.610, paragraph (d), has been amended to remove a provision indicating that rulings on motions for the review of representatives' expenses will be made by the Chairman.

VA has determined that these regulations do not contain a major rule as that term is defined by Executive Order 12291, Federal Regulation. The regulations will not have a $100 million annual effect on the economy and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that the regulations will have only a limited effect on individual VA claimants and their representatives. Pursuant to 5 U.S.C. 605(b), these regulations are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with these regulatory amendments.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Lawyers, Legal services, Veterans.

Approved: July 6, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 20 is amended as set forth below:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a).

2. In subpart B, § 20.102 is amended by revising the first sentence of paragraph (d) to read as follows:

§ 20.102 Rule 102. Delegation of authority—Rules of practice.

* * * * *

(d) The authority exercised by the Chairman of the Board of Veterans' Appeals described in Rules 606(e), 711(e), 711(h), and 1304(b) (§§ 20.606(e), 20.711(e), 20.711(h), and 20.1304(b) of this part) may also be exercised by the Vice Chairman of the Board and by Deputy Vice Chairmen of the Board. * * *

(Authority: 38 U.S.C. 512(a), 7102, 7104)

§ 20.609 [Amended]

3. In subpart G, § 20.609 is amended by removing the words "at the time that the appellant is paid retroactive benefits" from the last sentence of paragraph (h)(3)(i), by removing the last sentence of paragraph (h)(4) and by removing the following sentence from paragraph (i): "The ruling on the motion will be by the Chairman." The authority citation and Office of Management and Budget approval information for § 20.609 continue to read as follows:

(Authority: 38 U.S.C. 5902, 5904, 5905)

(Approved by the Office of Management and Budget under control number 2900–0085.)

§ 20.610 [Amended]

4. In subpart G, § 20.610 is amended by removing the following sentence from paragraph (d): "The ruling on the motion will be by the Chairman." The authority citation and Office of Management and Budget approval information for § 20.610 continue to read as follows:

(Authority: 38 U.S.C. 5904)

(Approved by the Office of Management and Budget under control number 2900–0085.)

[FR Doc. 92–20359 Filed 8–24–92; 8:45 am]

BILLING CODE 8320–01

POSTAL SERVICE

39 CFR Part 232

Conduct on Postal Property

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to close a gap in postal regulations. Rules concerning conduct on postal property already allow the Postal Service to inspect purses, briefcases, and other containers brought into, while on, or being removed from postal property, to protect the health and safety of employees and the public, and to assure the integrity of the mails and the postal system. Adding vehicles and their contents to the list of property subject to inspection closes a loophole in the inspection provision of the existing regulation. The vehicle inspection zone is limited to restricted nonpublic areas where there is a reduced expectation of privacy.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: H.J. Bauman, (202) 268–4415.

SUPPLEMENTARY INFORMATION: As amended, 39 CFR 232.1 will provide that an individual will be warned in advance of entry into the inspection zone by a prominently displayed sign. This will afford the individual a choice, prior to entry into the inspection zone, to not enter the restricted nonpublic area and avoid inspection. At the point and time of entry the individual may object to such inspection, but entry may be denied. Having been warned of the possibility of inspection, once the individual makes the choice to enter the restricted nonpublic area without objection to such inspection, consent to inspect shall be implied (prominently displayed warning signs will afford constructive notice).

Restricted nonpublic areas would not include the areas where mailers proceed to drop off mail shipments, even though access to these areas may be restricted. These areas would be considered restricted "public" areas as opposed to restricted "nonpublic" areas where the public normally does not have access, including, but not limited to employee parking lots, and postal vehicle lots.

List of Subjects in 39 CFR Part 232

Law enforcement, Postal Service.

Accordingly, 39 CFR part 232 is amended as follows:

PART 232—CONDUCT ON POSTAL PROPERTY

1. The authority citation for part 232 continues to read as follows:

Authority: 39 U.S.C. 401, 403(b)(3), 404(a)(7); 40 U.S.C. 318, 318a, 318b, 318c; sec. 613, Treasury, Postal Service, and General Government Appropriations Act, 1992, Pub. L. 102–141, 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844.

2. Section 232.1 is amended by redesignating existing paragraph (b)(2) as paragraph (b)(3), and by adding a new paragraph (b)(2) to read as follows:

§ 232.1 Conduct on postal property.

* * * * *

(b) * * *

(2) Vehicles and their contents brought into, while on, or being removed from restricted nonpublic areas are subject to inspection. A prominently displayed sign shall advise in advance that vehicles and their contents are subject to inspection when entering the restricted nonpublic area, while in the confines of the area, or when leaving the area. Persons entering these areas who object and refuse to consent to the inspection of the vehicle, its contents, or both, may be denied entry; after entering the area without objection, consent shall be implied. A full search of a person and

any vehicle driven or occupied by the person may accompany an arrest.

* * * * *

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

[FR Doc. 92-20255 Filed 8-24-92; 8:45 am]

BILLING CODE 7710-12-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[DA 91-1654]

Reorganization of the Office of Managing Director

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This amendment changes the Commission's Rules to incorporate the reorganization of the Office of Managing Director. The reorganization was necessary in order to promote a more efficient and effective organizational structure.

EFFECTIVE DATE: October 21, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Sullivan, Office of Managing Director, (202) 632-0923.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 21, 1991.
Released: June 30, 1992.

By the Managing Director:

1. The Commission has before it for consideration proposed changes in the organization of the Office of Managing Director. Implementation of the proposed changes requires amendments to § 0.231 of the Commission's Rules and Regulations.

2. To promote a more efficient and effective organizational structure, the Commission is hereby approving the realignment of the functions and elements of the Internal Control and Security Office within the Office of Managing Director. The physical, personnel and information security functions as well as the ethics function of the Internal Control and Security Office will remain intact, and will be placed within the Operations Support Division of the Office of Managing Director as a separate unit. The non-security functions of the Internal Control and Security Office will be transferred to offices within the Office of Managing Director which are already performing related tasks.

3. The amendments adopted herein pertain to agency organization. The prior notice procedure and effective date provisions of section 4 of the Administrative Procedure Act are therefore inapplicable. Authority for the amendments adopted herein is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. *It is ordered*, effective October 21, 1991 that part 0 of the Rules and Regulations is amended as set forth below.

List of Subjects in 47 CFR Part 0

Authority delegations, Organization and functions.

Federal Communications Commission.

Andrew S. Fishel,

Managing Director.

1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

47 CFR part 0 is amended as follows:

2. 47 CFR 0.231 is amended by revising paragraph (h) to read as follows:

§ 0.231 Authority delegated.

* * * * *

(h) The Chief of the Operations Support Division, Office of the Managing Director, is delegated authority to act as the "designated agency ethics official" within the meaning of sections 206 and 209 (10) of the Ethics in Government Act of 1978, Public Law 95-521, 92 Stat. 1824 (1978).

* * * * *

[FR Doc. 92-20197 Filed 8-24-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1004

[Ex Parte No. 55 (Sub-No. 88)]

Interpretations and Routing Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is removing a longstanding rule of interpretation that no specific operating authority is necessary for the return transportation of shipping containers if the carrier performed the outbound movement as obsolete. This rule is intended to make the Commission's regulations up to date.

EFFECTIVE DATE: September 24, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: In a Notice of Proposed Rulemaking, issued May 27, 1992 (57 FR 22205), we proposed to eliminate 49 CFR 1004.1 (former 49 CFR 1041.10), which codifies a longstanding rule of interpretation that no specific operating authority is necessary for the return transportation of shipping containers if the carrier performed the outbound movement. The section has been superseded by 49 U.S.C. 10526(a)(11) and no longer reflects the law. No comments were received opposing the proposed elimination, and it will be adopted.

This proposal does not change existing law. Thus, we concluded that it will not have a significant impact upon a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1004

Administrative practice and procedure, Motor carriers.

For the reasons stated in the preamble, Title 49, Chapter X, Part 1004 of the Code of Federal Regulations is amended as follows:

PART 1004—INTERPRETATIONS AND ROUTING REGULATIONS

1. The authority citation for part 1004 continues to read as follows:

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553. Subpart C also issued under 49 U.S.C. 10922(h)(I)(A).

§ 1004.1 [Removed]

2. Section 1004.1 is removed.

Decided: August 18, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmitt. Commissioner Simmons dissented with a separate expression.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-20303 Filed 8-24-92; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 57, No. 165
Tuesday, August 25, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV-92-062PR]

Avocados Grown in South Florida; Proposed Relaxation of Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would relax grade requirements for avocados grown in Florida by permitting handlers to ship fresh avocados seriously damaged, but not very seriously damaged, by Cercospora Spot in certain containers to destinations within the production area, during the period November 2, 1992, through March 31, 1993. This proposed action is expected to result in the shipment of small amounts of avocados damaged by Cercospora Spot during the latter part of the growing season to secondary markets within the production area.

DATES: Comments must be received by September 24, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: (202) 720-5331.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Marketing Agreement and Marketing Order No. 915, as amended [7 CFR part 915], regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is not intended to have retroactive effect. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 40 handlers of Florida avocados subject to regulation under Marketing Order No. 915, and about 300 avocado producers in the production are in South Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural services firms are defined as those whose annual receipts are less than $3,500,000. The majority of the avocado handlers and producers may be classified as small entities.

The Avocado Administrative Committee (committee) met April 8, 1992, and recommended this proposed action. The committee works with the Department in administering the marketing agreement and order. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

This proposed rule would amend § 915.306 [7 CFR 915.306] to permit handlers to ship fresh avocados seriously damaged, but not very seriously damaged, by Cercospora Spot to destinations within the production area in containers other than those authorized under § 915.305 [7 CFR 915.305], during the period November 2, 1992, through March 31, 1993. Cercospora Spot is a surface blemish which affects the rind tissue but not the edible portion of the fruit, and is classified as a defect under the United States Standards for Grades of Florida Avocados. Serious damage caused by Cercospora Spot, but not very serious damage, is permitted in shipments of U.S. No. 3 grade avocados, but not in shipments of U.S. No. 2 grade fruit.

Under the U.S. No. 2 grade, avocados may be damaged by Cercospora Spot, but not seriously damaged. Currently, all fresh avocados grown in Florida shipped to destinations within the production area must grade at least U.S. No. 2, except that avocados may be placed in containers with avocados of dissimilar varietal characteristics.

This proposed rule is expected to result in the shipment of small amounts of avocados damaged by Cercospora Spot during the latter part of the growing season to secondary markets within the production area. This should provide avocado growers and handlers with an opportunity to sell in the fresh market certain avocados which are being culled out during the packing process under the current grade requirements. In Florida, Cercospora Spot becomes more prevalent in the latter part of the growing season, particularly in the late fall and winter.

The committee recommended that this relaxation be made effective for the 1992–93 season only. The committee plans to evaluate this relaxation at the end of the 1992–93 season to see if a viable market exists for this lower quality fruit.

Currently, avocados imported into the United States must grade at least U.S. No. 2, as provided in § 944.28 [7 CFR 944.28]. Since this action does not change the minimum grade requirement of U.S. No. 2 specified in § 915.306 for avocados handled to points outside the production area, there is no need to change the avocado import regulation. Section 8e of the Act [7 U.S.C. 608e-1] requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

Maturity requirements for Florida avocados handled to points both within and outside the production area are specified in § 915.332 [7 CFR 915.332]. These requirements, based on minimum weights and diameters, would not be effected by this proposed rule.

The proposal herein reflects the committee's and the Department's appraisal of the need to relax the grade requirements for certain Florida grown avocados shipped to destinations within the production area.

Based on the above, the Administrator of the AMS has determined that this proposed action would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 915 is proposed to be amended as follows;

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In § 915.306, paragraph (a) introductory text is republished and paragraph (a)(1) is revised to read as follows:

§ 915.306 Florida avocado grade, pack, and container marking regulation.

(a) No handler shall handle any variety of avocados grown in the production area unless:

(1) Such avocados grade at least U.S. No. 2, except that avocados handled to destinations within the production area may be placed in containers with avocados of dissimilar varietal characteristics: *Provided,* That during the period November 2, 1992, through March 31, 1993, avocados may be handled to destinations within the production area in containers other than those authorized under § 915.305 affected by serious damage, but not very serious damage, caused by Cercospora Spot.

* * * * *

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20316 Filed 8–24–92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 948

[Docket No. FV–92–044]

Irish Potatoes Grown in Colorado; Proposed Reapportionment of Committee Membership

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would suspend, for an indefinite period, a provision of the marketing order requiring the Colorado Potato Committee (Committee) to be composed of two members and alternate members from each of three area committees. The production area is divided into three regulatory areas and provision is made for the are committees to act as administrative agencies for each of the areas. Area 1 has not been regulated for years, and is not expected to begin commercial interstate potato marketing in the foreseeable future. Because of this, the Committee has had to operate with only four members and alternate members. To allow the Committee to operate at its maximum membership level of six members and alternate members, this proposal would also reapportion Committee membership by adding one member and alternate member each to the active Area 2 and 3 committees and not provide representation for the inactive Area 1 committee. In addition, the paragraphs concerning the definition of Area 1 and the composition of the area committee for Area 1 would also be suspended in the marketing order. This action would improve the efficiency of the Committee, and allow it to remain functional if some members are absent.

DATES: Comments must be received by September 9, 1992.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC. 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the Office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC. 20090–6456, telephone (202) 690–0464.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No. 948 [7 CFR part 948], regulating the handling of Irish potatoes grown in Colorado. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended, [7 U.S.C. 601–674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a non-major rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 120 handlers of Colorado potatoes subject to regulation under the marketing order, and approximately 400 producers in the production area. Small agricultural service firms are defined as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

The production area under Marketing Order No. 948 is divided into three separate regulatory areas. Area 1, also called the Western Slope, consists of the northwestern portion of the State of Colorado. Area 2, known as the San Luis Valley, is located in the southwestern part of the State. Area 3, referred to as the Northern Colorado or the Greeley area, covers most of the eastern part of the State. Section 948.50 establishes area committees as administrative agencies for each of the three areas.

The Committee is established, pursuant to § 948.51, consisting of six members, with alternates. Section 948.51 further specifies that two members and alternates for the Committee shall be selected by the Secretary from each area committee. The Committee coordinates activities and affairs of mutual interest among the area committees.

For years, the primary cash crops of Area 1 have been relatively high-value tree fruit crops. As fruit production has increased, potato production has decreased. The small volume of potatoes still produced there is being consumed locally. As a result of such changes in potato production, rising costs of equipment and crop inputs, the potato industry in Area 1 has diminished significantly.

Consequently, handling regulations have not been implemented and an area committee has not been selected for years. Because of this, the Committee has had no representatives from Area 1 and has had to operate with only four members (two members and alternates each from the Area 2 and 3 committees). The Committee believes that it could function more effectively and obtain a broader cross-section of industry views with six members and alternates, as provided under section 948.51. Industry representatives believes it unlikely that Area 1 will again increase potato production to significant levels. Thus, it is unlikely that Area 1 will be able to provide the membership necessary to allow the Committee to operate with six members.

In light of this situation, the Committee met November 8, 1991, and unanimously passed a motion requesting the Area 2 and 3 committees to recommend reapportionment of the Committee. It requested that the two member and alternate member positions currently allocated to the Area 1 committee be allocated to the Area 2 and 3 committees so that each committee would have three members and alternates, rather than two members and alternates. On November 21, 1991, the Area 2 committee recommended this reapportionment action, and on December 5, 1991, the Area 3 committee recommended the same action.

In order to so reapportion Committee membership, the second sentence of § 948.51 would be suspended. That sentence specifies that, "Two members and alternates shall be selected from each area committee." With that sentence suspended, § 948.51 specifies that, "The Colorado Potato Committee is hereby established consisting of six members, with alternates. Committeemen shall be selected by the Secretary from nominations of area committee members or alternates." This language would permit the Committee to be composed of an equal number of members from each active area committee currently regulating shipments. This would make use of all six authorized member positions. The Committee believes that an additional member and alternate member from each active area would provide increased input, interest, and guidance in operating the marketing order. In the unlikely event that Area 1 again becomes a commercially important producer of potatoes, the Committee could again be reapportioned to reflect such changes in production. Such action would be considered by the Secretary at the request of the industry. In addition, paragraph (a) of §§ 948.4 and 948.50 of the order would also be suspended. Paragraph (a) of the definition of the term "area" describes Area 1. Paragraph (a) of § 948.50 establishes the composition of Area 1 (Western Slope) with the selection of four producers and handlers.

Based on available information, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities, and that the reapportionment of the Committee would benefit Colorado potato producers and handlers.

A comment period of 15 days after publication of this proposal in the Federal Register is deemed appropriate so that any reapportionment of the Committee can be made effective as soon as possible. The Committee and both area committees believe that it is important for the industry to have the reapportioned Committee in operation during the coming shipping season. The shipping season for Area 2 is expected to begin in late September and the shipping season for Area 3 is expected to begin in August. Finally, the proposal has been discussed at open meetings of the Committee and both area committees and the proposed reapportionment is fully supported.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 948 be amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 948.4 [Amended]

2. In section 948.4, paragraph (a) is suspended.

§ 948.50 [Amended]

3. In section 948.50, paragraph (a) is suspended.

4. In section 948.51, the second sentence is suspended. With that sentence suspended, § 948.51 reads as follows:

§ 948.51 Colorado Potato Committee.

The Colorado Potato Committee is hereby established consisting of six members, with alternates. Committeemen shall be selected by the Secretary from nominations of area committee members or alternates.

5. A new section 948.151 is added to Subpart- Rules and Regulations (7 CFR 948.100–948.150) to read as follows:

§ 948.151 Colorado Potato Committee membership.

The Colorado Potato Committee shall be comprised of six members and alternates selected by the Secretary. Three members and three alternates shall be selected from nominations of Area 2 committee members or alternates, and three members and three alternates shall be selected from nominations of Area 3 committee members or alternates.

Dated: August 19, 1992.

Daniel Haley,

Administrator, Agricultural Marketing Service.

[FR Doc. 92-20317 Filed 8-24-92; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 90-013P]

RIN 0583-AA78

Use of Tocopherol and Citric Acid in Various Meat Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to permit the use of tocopherol and citric acid in the preparation of various meat food products. Tocopherol acts as an antioxidant and citric acid acts as a synergist to increase the effectiveness of antioxidants. It is proposed that tocopherol be allowed in various meat products at a level not to exceed 0.03 percent based on the fat content, and that citric acid be allowed in various meat food products at a level not to exceed 0.01 percent based on the fat content. This proposed rule is in response to a joint petition submitted by Akzo Salt, Inc., and Henkel Corporation.

DATES: Comments must be received on or before September 24, 1992.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. (See also "Comments" under "Supplementary Information".

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205–0080.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule would permit the use of tocopherol and citric acid in the preparation of various meat products.

This proposed rule concerns the use of substances in meat products. States are precluded from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 678). States may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in case of the imported articles which are not at such an establishment, after their entry into the United States. States that conduct meat inspection programs must impose requirements at least equal to those imposed on federally inspected products and establishments under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect is to be given to this proposed rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this proposed rule. Prior to any judicial challenge to the application of its provisions, administrative procedures set forth in 9 CFR 306.5 must be exhausted.

Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal would allow the use of tocopherol as an alternative antioxidant in various meat food products, and the use of citric acid in various meat food products as a synergist. Manufacturers, both large and small, opting to use tocopherol as an antioxidant would be required to revise the ingredients statement on the labels to show the presence of tocopherol and citric acid. However, the use of these substances would be voluntary and any costs associated with new label applications would be covered under existing approved paperwork burdens of FSIS's prior label approval system. Thus, this proposed rule would not impose new paperwork requirements on the industry. Decisions by individual manufacturers on whether to use tocopherol as an alternative antioxidant and citric acid as a synergist in various meat food products would be based on their conclusions that the benefits would outweigh the costs of including these substances in their formulations.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 90–013P. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Joint Petition

FSIS has been jointly petitioned by Akzo Salt, Inc., Clarks Summit, Pennsylvania, and Henkel Corporation, Ambler Pennsylvania, to approve the use of tocopherol as an antioxidant and citric acid as a synergist in various meat food products. The petitioners requested that tocopherols be allowed to be added to dry sausage, semi-dry sausage, dried meats, uncooked fresh pork sausage, uncooked Italian sausage products, uncooked fresh sausage made from beef or beef and pork, uncooked meatballs and uncooked meat pizza toppings at a level of 0.05 percent based on fat content. They aslo requested that these products, when cooked, as well as brown-and-serve sausage, pregrilled beef patties, and restructured meats, be permitted to contain 0.1 percent tocopherol based on fat content. Tocopherols would not be used in combination with butylated hydroxyanisole (BHA), butylated hydroxytoluene (BHT), tertiary butylhydroquinone (TBHQ) or propyl gallate, which are other antioxidants permitted in various meat products in accordance with restrictions set forth in 9 CFR 318.7(c)(4). The use of tocopherols would be an effective alternative antioxidant to BHA and BHT in such meat food products.

The petitioners also requested that citric acid be permitted as a synergist in various products to increase the effectiveness of antioxidants, at a level of 0.01 percent based on the fat content.

Current Regulations

Section 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7(c)(4)) currently allows the use of tocopherols as antioxidants and oxygen interceptors in rendered animal fat or a combination of such fat and vegetable fat at a level of 0.03 percent. Section 318.7(c)(4) also allows the use of citric acid as a synergist in lard, shortening, fresh pork sausage and dried meats at 0.01 percent and in dry sausage at 0.003 percent. Citric acid may also be used as an acidifier, an anticoagulant, a curing accelerator, and a flavoring agent at various levels in various meat food products (9 CFR 318.7(c)(4)). Section 317.2(j)(10) of the Federal meat inspection regulations (9 CFR 317.2(j)(10)) requires that when antioxidants are added to products as permitted under part 318, a statement must appear on the product label identifying the specific antioxidant used and the purpose of such use, such as "BHA, BHT, and propyl gallate added to help protect flavor."

Section 381.147(f)(4) of the poultry products inspection regulations (9 CFR 381.147(f)(4)) permits the use of tocopherols as antioxidants and oxygen interceptors in various poultry products at a level of 0.03 percent based on the fat content. Prominent labeling is also required for poultry products containing antioxidants (9 CFR 381.120). Citric acid is allowed as a synergist in poultry fats at 0.01 percent, and as a curing accelerator and flavoring agent in various poultry products at various levels (9 CFR 381.147(f)(4)).

The Food and Drug Administration lists tocopherols in 21 CFR 182.3890 and citric acid in 21 CFR 182.1033 as generally recognized as safe (GRAS) for use in foods with no limitations other than good manufacturing practices.

The Proposal

After reviewing the petitioners' technical data, FSIS believes that the requested use levels for tocopherols were greater than needed to perform the intended purpose. FSIS believes that use levels not exceeding 0.03 percent, based on fat content, are sufficient for the intended purpose. This level parallels the use level allowed in 9 CFR 381.147(f)(4) of the poultry products inspection regulations. Over a period of years, this level has been found to be sufficient for the intended purpose. Therefore, FSIS proposes to permit the use of tocopherols as antioxidants at levels not to exceed 0.03 percent, based on the fat content, in various meat food products as requested by the petitioners.

The petitioners' requested 0.01 percent use level for citric acid is consistent with present use levels permitted in the regulations (9 CFR 318.7 and 381.147) for the use of such substance as a synergist, except use is limited to 0.003 percent in dried sausage and 0.01 percent of the total weight when used in dried meats. FSIS is proposing that citric acid be allowed as a synergist at the level of 0.01 percent, based on the fat content, since the use of citric acid does not present any safety issues and can be used in unlimited quantities for other purposes as prescribed in 9 CFR 318.7(c)(4).

Currently, the presence and purpose of any antioxidant added to meat and poultry products must be shown in prominent lettering on the product label and contiguous to the product name 9 CFR 317.2(j)(10) and 381.120). The Agency is reassessing its overall policy regarding prominent labeling and intends to issue a proposed rule in the near future to eliminate unnecessary product qualifiers that identify the presence of a substance that does not significantly alter the identify of the finished product. Such proposed rule would include the elimination of required product qualifiers on products containing antioxidants, including tocopherol. FSIS believes that such action would not deprive consumers of informative labeling because all substances used in the preparation of a product are required to be listed in the ingredients statement (9 CFR 317.2(f)(1) and 381.118). Today's consumer relies upon the ingredients statement as the source of information on the composition of a food product.

Because of the format of the chart of substances in 9 CFR 318.7(c)(4), this proposal would also revise the manner in which the entry for malic acid is presented in the chart. Malic acid follows citric acid under the Class of substance "Synergists" and shows "do" (or "ditto") under the amount column meaning the same amount of malic acid is used and calculated as specified in the last entry for citric acid. The proposed amendment for citric acid would change the basis for calculating the use level of citric acid, thus requiring that the chart specify the use level (amount) and basis of calculation for malic acid.

For reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENT; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4) under the Class of substance "Antioxidants and oxygen interceptors," the Substance "Tocopherols" would be amended by adding the following at the end thereof:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Antioxidants and oxygen interceptors.	Tocopherols	do	Dry sausage, semidry sausage, dried meats, uncooked or cooked fresh sausage made with beef and/or pork, uncooked or cooked Italian sausage products, uncooked or cooked meatballs, uncooked or cooked meat pizza toppings, brown and serve sausage, pregrilled beef patties, and restructured meats.	Not to exceed 0.03 percent based on fate content. Not used in combination with other antioxidants.

3. In the chart in § 318.7(c)(4) under the Class of substance "Synergists," the entries under the Substances "Citric acid" and "Malic acid" would be revised to read as follows:

Class of substance	Substance	Purpose	Products	Amount
Synergists (used in combination with antioxidants).	Citric acid	To increase effectiveness of antioxidants.	Any product permitted to contain antioxidants as provided in this Part.	Not to exceed 0.01 percent based on fat content.
	Malic acid	do	Lard and shortening	0.01 percent based on total weight in combination with antioxidants.

Done at Washington, DC, on: June 15, 1992.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 92-20287 Filed 8-24-92; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 381

[Docket No. 89-008P]

RIN 0583-AB09

Use of Tricalcium Phosphate in Mechanically Deboned Chicken

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal poultry products inspection regulations to permit the use, in accordance with current good manufacturing practices, of tricalcium phosphate in mechanically deboned chicken during the dehydration process to preserve the color of such dehydrated products. Use of tricalcium phosphate at a proposed level not to exceed 2 percent of the weight of the mechanically deboned chicken would sequester the iron present in the blood of mechanically deboned chicken during the dehydration process, thus preventing discoloration (browning) of the product. The proposed regulation is in response to a petition submitted by Henningsen Foods, Inc.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments provided under the Poultry Products Inspection Act to: Charles Edwards, (202) 205-0080. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205-0080.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This proposed rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. This proposed rule would permit the use of tricalcium phosphate in mechanically deboned chicken. This proposed rule concerns the use of substances in poultry products. States are precluded from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 457e). States may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA, or, in the case of imported articles which are not at such an establishment, after their entry into the United States. States that conduct poultry inspection programs must impose requirements at least equal to those imposed on federally inspected products and establishments under the PPIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect is to be given to this proposed rule. Thee are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this proposed rule. Prior to any judicial challenge to the application of its provisions to an inspector's decision relating to any inspection, applicable administrative procedures set forth in 9 CFR 381.35 must be exhausted.

Effects on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposal would permit the use of an additional substance at the manufacturer's option. Approximately, 505 manufacturers produce mechanically deboned chicken. Manufacturers, both large and small, opting to use tricalcium phosphate in this manner would be required to revise the ingredients statement on product labels to show the presence of such substances (9 CFR 381.118). However, the use of tricalcium phospate would be voluntary and any costs associated with new label applications would be covered under existing approved paperwork burdens of FSIS's prior label approval system. Thus, this proposed rule would not impose new paperwork requirements on the industry.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 89-008P. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. Charles Edwards so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Henningsen Foods Petition

On March 4, 1988, FSIS received a petition from Henningsen Foods, Inc., Omaha, Nebraska, to amend the poultry products inspection regulations to allow the use of tricalcium phosphate in mechanically deboned chicken during dehydration to avoid discoloration of the dehydrated product. During the process of dehydrating mechanically deboned chicken, the product becomes dark brown, resulting in a dehydrated product that is aesthetically unacceptable to the petitioner's customers who purchase the product for use in further processed products such as gravies, sauces, and dehydrated soups.

The petitioner claims that the addition of tricalcium phosphate to mechanically deboned chicken sequesters the iron present in the blood of the poultry product during dehydration and prevents discoloration of the mechanically deboned poultry product.

Supporting data submitted by the petitioner was based on a series of color tests of samples of dehydrated mechanically deboned chicken with variable amounts of tricalcium phosphate added before dehydration ranging from 0 to 3 percent of the weight of the mechanically deboned chicken. The data show that the color of the mechanically deboned chicken was fully preserved during dehydration with the addition of tricalcium phosphate at the 2 percent level. A copy of the petition and supporting data are included in this rulemaking record.

Current Regulations

The Food and Drug Administration (FDA) lists tricalcium phosphate as generally recognized as safe (GRAS) in 21 CFR 182.1217 when used in accordance with current good manufacturing practices. The poultry products inspection regulations currently do not permit the use of tricalcium phosphate in any poultry product.

The Proposal

After reviewing the petitioner's data and information, the Administrator of FSIS believes that the use of tricalcium phosphate at 2 percent of the weight of the mechanically deboned chicken would be in compliance with applicable FDA requirements, would not render dehydrated mechanically deboned chicken adulterated or misbranded, and would be in accordance with the provisions of the Poultry Products Inspection Act. Therefore, FSIS is proposing to amend the table of approved substances in 9 CFR 381.147(f)(4) to allow the use of tricalcium phosphate to preserve the color of mechanically deboned chicken during dehydration by preventing the development of a brown color. This proposal would permit tricalcium phosphate in such product at a level not to exceed 2 percent of the ingoing weight of the product, i.e., before dehydration. FSIS believes that the petitioner has presented technical data that demonstrate the efficacy of tricalcium phosphate for the intended purpose at a level not to exceed 2 percent.

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR part 381 to read as follows:

List of Subjects in 9 CFR Part 381

Food additives, Food labeling, Poultry inspection.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451-470, 7 CFR 2.17, 2.55.

2. In the table in § 381.147(f)(4), the Class of substance "Miscellaneous" would be amended by adding at the end thereof the following:

§ 381.147 Restriction on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
Miscellaneous	Tricalcium phosphate	To preserve product color during dehydration process.	Mechanically deboned chicken to be dehydrated.	Not to exceed 2 percent of the weight of the mechanically deboned chicken prior to dehydration, in accordance with 21 CFR 182.1217.

Done at Washington, DC, on:
Donald L. White,
Acting Administrator, Food Safety and Inspection Service.
[FR Doc. 92-20286 Filed 8-24-92; 8:45 am]
BILLING CODE 3410-DM-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Advertising Services Industries

AGENCY: Small Business Administration.
ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to revise its size standard for four advertising services industries: Standard Industrial Classification (SIC) code 7311, Advertising Agencies; SIC code 7312, Outdoor Advertising Services; SIC code 7313, Radio, Television, and Publishers' Advertising Representatives; and SIC code 7319, Advertising, N.E.C. from $3.5 million in annual receipts (defined to include all revenue in whatever form received or accrued from whatever source) to $6.0 million in annual receipts, but excluding amounts remitted to other firms, usually a provider of media services. Businesses in these industries typically reimburse more than half of their total revenues to media providers. As such, measuring the size of firms in these industries to exclude these remittances better measures the activities performed by these firms to generate revenues. A size standard of $6.0 million based on adjusted total revenues for each advertising industry would better define small businesses within these industries by more closely matching the size standards of these industries with their structure.

DATES: Comments must be received September 24, 1992.

ADDRESSES: Send comments to: Gary M. Jackson, Director, Size Standards Staff, U.S. Small Business Administration, 409 3rd Street SW., suite 8150, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Economist, Size Standards Staff, Tel: (202) 205-6618.

SUPPLEMENTARY INFORMATION: This notice proposes to revise the small business size standard of $3.5 million for the advertising services industries to $6.0 million and to modify the calculation of annual receipts for firms in the advertising services industries.

A significant issue concerning the size standard for these industries is how a firm's annual receipts should be calculated for determining the size of a firm. Prior to 1989 the SBA's treatment for an advertising agency (at least in terms of formal size appeals adjudication) had been to exclude from the average annual receipts calculation media charges that were collected by the agency and paid to a third party media provider on behalf of its clients. A 1989 regulatory change established a pass-through exclusion for real estate and travel agencies, but not for advertising agencies, thus requiring an advertising agency to include media charges in its calculation of average annual receipts. A recent court decision reinstated that previous agency practice of excluding pass-through for advertising agencies on administrative procedure grounds (C.A. No. 91-1569 TAF (D.C. D.C. 21992)). SBA has since analyzed the advertising agencies industry to ascertain whether it should reaffirm its pre-1989 treatment, or develop a new regulation to include media charges. SBA is proposing that it past practice of excluding certain monies from the calculation of annual receipts for advertising agencies should be followed and also extended to other advertising services industries.

SBA's research of the advertising services industries reveals that a large percentage of total revenues collected by firms is passed through to another firm, such as an advertising agency collecting money from client firms, typically for a media provider. In this respect, the advertising agency's revenue is similar to a commission based on the value of the media booking.

SBA allows exclusions from annual receipts to amounts collected as an agent for another for two other industries—Travel Agencies, SIC code 4724 (See 53 FR 18820) and Real Estate Agents and Managers, SIC code 6531 (See 54 FR 6267). These two industries share several characteristics that led SBA to believe it appropriate to exclude from total revenues funds received on behalf of an unaffiliated third party. First, a broker or agent-like relationship between a firm and a third party provider exists that represents a dominant or crucial activity of firms in these industries. Second, the pass-through funds associated with the broker or agent-like relationship is a significant proportion of total receipts. Third, as the normal business practice of firms in the industry, a firm's income remaining after the pass-through funds are remitted to a third party is typically derived from a standard commission or fee. Fourth, firms in these industries do not usually consider billings that are reimbursed to other firms as their own income, preferring instead to count only those receipts that are retained for their own use. Finally, Federal government agencies which engage in the collection of statistics and other industry analysts typically represent receipts of the firms on an adjusted total receipts basis.

Firms in the advertising services industries share a number of these general characteristics with the travel agents and the real estate agents and managers industries. An advertising services firm typically performs a broker or agent-like activity on behalf of its clients. Client firms typically have the firm prepare an advertisement and purchase advertising time or space with a media provider, such as a broadcaster or newspaper. Although not mandatory, this is a common practice in the industry. The client's bill from the advertising services firm will usually include the charges of the media provider's services that are temporarily held in trust by the firm for remittance to the media provider. Moreover, these remitted monies are typically much larger in magnitude than the firm's own earnings for preparing an advertisement and providing other services for the client, which usually are stated as a commission or fee from the total billings. Also, in these industries, more than half of billings are usually passed through to media service firms. In addition, receipts of firms in the advertising services

industries are typically viewed as revenues composed of commissions or fees from billing and charges for other services performed. For example, in 1977 the U.S. Bureau of the Census began collecting receipts data from firms in these industries based on commissions on media billings, fees and other income. *Advertising Age*, a trade industry publication, produces an annual report on advertising agencies that ranks firms by size on both a gross billings basis and a gross income basis, the latter term excluding amounts passed through to media providers.

Accordingly, SBA believes it is appropriate to exclude amounts collected on behalf of another firm for firms in the advertising services industries as it presently does for the travel agencies and the real estate agents and managers industries. SBA invites comments on the appropriateness of its intended treatment of annual receipts of advertising agencies, its application of this treatment to three other advertising services industries, and comments on its view of the industry practice of reporting receipts of advertising service firms. If a continuation of this treatment of receipts is supported by comments from the public, the definition of annual receipts will be revised as proposed in this notice. If not, SBA is willing to reassess its view of how receipts of advertising services firms should be measured for size standards purposes.

Factors Influencing the Size Standard Decision Process

In reviewing the appropriateness of a size standard, SBA generally evaluates an industry using five primary industry factors. These primary factors include: Industry competition, average firm size, start-up costs, distribution of firms by size and the impact on SBA's programs. Each of these factors were reviewed using various indexes relating to that factor.

As an indicator of industry competition, SBA first looks at competition within the industry as measured by the share of industry sales controlled by producers above a certain size, in this case $25.0 million in annual receipts. This size break was selected due to the availability of industry data from the U.S. Bureau of the Census at this size break.

If an industry's output is controlled by relatively large firms, especially when compared to other similar industries, the influence of this factor is to move the size standard upward. The result is to provide assistance to firms in a broad range of sizes that are competing with dominant firms in an industry. If an industry's output is more evenly distributed, however, SBA tends to set a lower size standard to assist relatively small firms in the industry.

Average firm size is the second factor considered by the SBA. To account for industry differences, SBA tends to set high size standards in industries with high average firm size relative to other industries in its division and low size standards in industries with relatively low average firm size. Average firm size can be expressed in terms of either receipts or employees, but the usual pattern is to compare industries by average receipts per firm if a receipts-based size standard is being evaluated and average employment per firm if an employee-based size standard is under review.

Indexes of start-up costs are the third factor affecting the appraisal of size standards. High start-up costs affect a firm's initial size because potential entrants into an industry must have sufficient capital to start a business. These costs often extend beyond expenditures on production equipment and the physical establishment itself to include non-capital equipment, marketing, research, distribution and follow-up services. High average start-up costs within an industry suggest the need for a relatively high size standard, while low average start-up costs are usually associated with a relatively low size standard. In this instance, SBA is using receipts per employee as an indicator of start-up costs relationships between industries, since there are no comprehensive data available on capitalization on a 4-digit SIC code basis in the service industries. Receipts per employee are generally correlated within industry groups with estimates of imbedded capital, and this is used as a "second best" indicator of capitalization and ease of entry differences between industries since other, more desirable indicators are not available.

The fourth factor—firm size distribution—describes the proportion of sales, employment and other economic activity accounted for by firms of different sizes within an industry, and relates these proportions to a size standard. For example, if the preponderance of an industry's output is by smaller firms, this would tend to support a low size standard. The opposite would be the case for an industry in which firm size distribution indicates that output is concentrated among large firms.

The fifth and final factor to be considered is the impact of the proposed size standard revision on SBA's programs. These usually involve a calculation of small business shares of Federal procurement, and often the average size of Federal contracts in an industry. In general, the lower the small business share of Federal procurement activity and the higher the average size of Federal contracts in an industry, the greater would be the justification for a relatively high size standard. Patterns of SBA lending guarantees by industry have also been used by the SBA in the past to evaluate the necessity of a size standard revision relating to SBA's program objectives.

Table 1 presents data for these five industry structure factors. Each measurement for these five factors was specifically calculated such that if an industry or an industry group had a larger index for any factor, that larger index would point to a higher size standard and vice versa. (The industry data used for the analysis of the advertising services industries are based on adjusted total revenue. Adjusted total revenue permits the exclusion of amounts collected for others upon which commissions or fees are earned.)

TABLE 1.—SELECTED INDUSTRY STRUCTURE FACTORS FOR ADVERTISING INDUSTRIES

SIC	Industry	Size standard	Percent of receipts by firms of—		Average receipts		Percent Federal procurement to large firms
			$5.0M or more in size	$25.0M or more in size	per employee (in thousands)	Per firm (in million)	
7311	Advertising	$3.5m	52.6	37.7	$76.8	$1.00	93.0
7312	Outdoor Advertising service	$3.5m	72.3	63.0	113.0	1.86	79.0
7313	Radio, TV, Publishers Rep	$3.5m	56.5	39.8	72.2	1.09	92.0
7319	Advertising, N.E.C	$3.5m	28.7	14.3	78.8	.85	96.0
731	Advertising (weighted average)	$3.5m	55.2	40.0	82.8	1.13	94.0

TABLE 1.—SELECTED INDUSTRY STRUCTURE FACTORS FOR ADVERTISING INDUSTRIES—Continued

SIC	Industry	Size standard	Percent of receipts by firms of—		Average receipts		Percent Federal procurement to large firms
			$5.0M or more in size	$25.0M or more in size	per employee (in thousands)	Per firm (in million)	
	All Service Ind. (Division I) excluding hospital services (unweighted averages).	$2.5m—$14.5m range.	36.3	21.6	54.0	.99	61.0

Source: 1987 Census of Service Industries, U.S. Bureau of the Census. Small business share of Federal procurements calculated from Federal Procurement Data System, 1989.

The indicators shown in table 1 for the advertising industries clearly indicate that these industries are significantly different than most of the service industries and thus would merit higher size standards than the average service industry. Among all advertising services industries aggregated together, every indicator points to a higher size standard than for most service industries. Both the percent of sales by firms in excess of $25.0 million in size and the average firm size of advertising firms, for example, exceed the size of the average service industry; and other indicators are all in about a three to two ratio to the average service firm.

Given that all review indicators for the advertising services industries point to a relatively high size standard, the question which arises is how much higher than the anchor size standard of $3.5 million would be appropriate. Table 2 addresses this question by comparing each indicator with industries grouped by size standard within the service industries. These indicators are compared in the same table with the indicators for the grouped advertising services industries in an attempt to compare the structural factors for these industries with those of service industries in general.

TABLE 2.—STRUCTURED INDICATORS OF ADVERTISING INDUSTRIES CONTRASTED WITH SERVICE INDUSTRIES (ALL OF DIVISION 1) GROUPED BY SIZE STANDARD

Industry	Percent of receipts by firms of—		Average receipts		percent Federal procurement to nonsmall firms
	$5.0M or more in size	$25.0M or more in size	Per employee (in thousands)	Per firm (in million)	
(7311–7319) Advertising	55.2	40.0	$82.8	$1.126	94.0
Size Standard of $2.5M	8.9	1.0	27.3	.212	86.0
Size Standard of $3.5M (Except Hospitals)	32.1	16.8	50.9	1.127	64.0
Average for Size Standards, $6.0M to $8.0M Range	56.2	38.1	39.8	1.211	48.0
Size Standard of $12.5M	66.7	49.5	68.2	.993	69.0
Size Standard of $14.5M	78.8	67.3	118.1	2.236	23.0
Size Standard of 500 emp.	79.7	59.7	77.9	2.753	83.0

Source: 1987 Census of Service Industries, U.S. Bureau of the Census. Small business share of Federal procurements calculated from data provided by the Federal Procurement Data System, 1989.

The indicators for the advertising services industries clearly pointed to a higher size standard than $3.5 million. Four of the five major indicators are larger for the advertising services industries than for service industries with $3.5 million size standard and the fifth indicator (average firm size) is equivalent. The pattern of these indicators suggested to SBA that it focus on size standards in the $6.0 to $8.0 million range.

In comparing the advertising services indicators with those of service industries with $6 to $8 million size standards, the size distribution of firms indicator (percent of sales in an industry by firms of $5.0 million or more in sales), the concentration indicator (percent of sales in an industry by firms of $25.0 million or more sales), and the average size of firm in an industry all indicate a close match. However, both the average receipt per employee indicator (an approximate indicator of the difficulty of entering an industry) and the share of Federal procurement to nonsmall firms in an industry suggest that the size standards for the advertising services industries should be even higher than the $6.0 to $8.0 million range. Complicating the analysis, however, is the fact that the average firm size for the advertising industries is virtually identical to the average firm size of service firms with a $3.5 million size standard, a factor which would continue against a size standard at the higher end of the $6.0 to $8.0 million range under consideration.

In weighing these factors together, SBA is proposing a size standard at the lower end of the $6.0 to $8.0 million range under consideration—$6.0 million. This proposed standard takes into consideration the level of average firm size compared to most service industries and SBA's reluctance to put significant weight on "receipts per employee" as an indicator of entry barriers in an industry. (This indicator substitutes of capitalization indexes such as asserts per firm data which are not available for the service industries at the four digit SIC code level.)

SBA specifically invites comment on the appropriateness of defining receipts in terms of adjusted gross revenues for the advertising services industries. This definition is similar to its definition for travel agents and real estate agents, but differs from other industries (in which all revenues are counted). SBA also invites comments on the appropriateness of these proposed size standards or on alternatives size standards (either higher or lower). Comments suggesting other standards should address the questions of:

(1) The interaction of these size standards with SBA's programs;
(2) The relative levels of participation at different size standards;
(3) The effect of these proposed size standards or other alternative size standards on business firms within these industries; and,
(4) The prospect of significant new entries into these industries in response to this program.

SBA is publishing this notice to elicit information from the public prior to the issuance of a final rule. However, SBA is not suggesting that either the size standard or the definition of receipts outlined in this proposal will necessarily be adopted as final for the advertising services industries. Rather, SBA is seeking input from the public in the formulation of final size standards which will reflect a more suitable definition of small business in these industries. As such, any final rule on this issue adopted by SBA will be the logical outgrowth of Agency research in conjunction with public comment to this notice.

Compliance With Regulatory Flexibility Act, Executive Orders 12291, 12612 and 12778, and the Paperwork Reduction Act

General

SBA considers that this proposed rule, if promulgated in final for, will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq*). However, if this rule is promulgated in final form, it would not constitute a major rule for the purpose of Executive Order 12291, since its annual economic effect is less than $100 million. Immediately below SBA has set forth an initial regulatory flexibility analysis of this proposal.

(1) *Description of entities to which the rules applies.* SBA estimates that 3600 additional firms out of a total of 14,000 firms active in the advertising services industries would be considered small if this proposed rule is adopted in final form. This constitutes about a third of the total net receipts of the advertising services industry. These firms will become eligible to seek assistance offered by SBA programs, provided they meet other program requirements for assistance. However, the proposed size standards do not impose a regulatory burden because they do not regulate or control business behavior.

Firms which would be newly considered small business if the proposed rule became final would be eligible for a variety of business development, financial assistance and procurement assistance programs offered by SBA. The impacts of the business development program help a small business to improve its competitiveness in the market. While it is difficult to precisely quantify the impacts of this proposed rule, estimates of the beneficial effect on SBA's financial and procurement programs can be made from statistics for earlier years; these impacts total less than $100 million, and therefore this rule is not considered a major rule.

During the 1989 fiscal year, there were a total of 30 guaranteed business loans totalling $4.0 million made to firms in the advertising services industries under the 7(a) Loan Program. Assuming a proportional relationship in loan demand based on a market share shift from 12 percent of industry activity under a $3.5 million size standard expressed in gross revenues to 48 percent under a $6.0 million size standard based on adjusted total revenues, the number of loans and the dollar volume of SBA guaranteed loan activity could quadruple under the proposed increase to approximately 120 loans and $16 million (an increase of 90 loans and $12 million).

A somewhat greater impact is anticipated in the Government contracting programs reserved for small business. Firms ranging from $0.5 million to $6.0 million in adjusted total income (the area of the proposed size standard increase) account for 34 percent of advertising sales. If the newly designated small firms were as successful in Federal contracting as they are in the industry in general, they would be awarded an additional 34 percent of $133 million, or about $45 million in additional Federal outlays to firms newly defined as small by the SBA. Of these, about $25 million are projected to be awarded under SBA's two procurement preference programs—the set-aside program for prime contracts and the contracting component of the 8(a) program for minority small businesses.

(2) *Description of reasons why this action is being taken and objectives of proposed rule.* SBA has provided above in the supplementary information a description of the reasons why this action is being taken and a statement of the reasons for and objectives of this proposed rule.

(3) *Legal basis for the proposed rule.* The legal basis for this proposed rule is sections 3(a) and 5(b) of the Small Business Act, 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

(4) *Federal rules.* There are no Federal rules which duplicate, overlap or conflict with this proposed rule. SBA has statutorily been given exclusive jurisdiction in establishing size standards.

(5) *Significant alternatives to proposed rule.* The changes set forth in this proposed rule from the current size standard attempt to establish the most appropriate definition of small businesses eligible for SBA's assistance programs. There are no significant alternatives to defining a small business other than developing an alternative size standard. These were discussed in the supplementary information.

SBA certifies that this proposed rule will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

SBA certifies that this proposed rule, if promulgated as final will not add any new reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C., chapter 35. For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

PART 121—[AMENDED]

(1) The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c).

§ 121.601 [Amended]

(2) In § 121.601, the table of "Size Standards by SIC Industry", Major Group 73, is amended by revising SIC codes 7311, 7312, 7313, and 7319 to read as follows:

SIC (* = New SIC Code in 1987, not used in 1972)	Description (N.E.C. = Not elsewhere classified)	Size standards in number of employees or millions of dollars
7311	Advertising agencies	$6.0 [10]
7312	Outdoor advertising services	6.0 [10]
7313	Radio, television, and publishers' advertising representatives	6.0 [10]
7319	Advertising, N.E.C	6.0 [10]

. . . . .

(3) In § 121.601, Standard Industrial Classification Table, Footnote 10 is revised to read as follows:

[10] SIC codes 4724, 6531, 7311, 7312, 7313, and 7319: As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions or directed to be reimbursed to a third party such as a media service for an advertising firm. The Commission received would be included as revenue.

(4) Section 121.402 (b)(2) is revised to read as follows:

§ 121.402 Annual receipts.

* * * * *

(b) * * *

(2) *Receipts* is defined to include all revenue in whatever form received or accrued from whatever source, including from the sales of products or services, interest, dividends, rents, royalties, fees, or commissions reduced by returns and allowances. However, the term "receipts" excludes proceeds from sales of capital assets and investments, proceeds from transactions between a concern and its domestic and foreign affiliates, amounts collected for another by a travel agent, an advertising agency, a real estate agent, and taxes collected for remittance to a taxing authority.

* * * * *

Dated: July 6, 1992.

Patricia Saiki,

Administrator, U.S. Small Business Administration.

[FR Doc. 92-20224 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASW-08]

Proposed Revision of Transition Area: Lawton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Lawton, OK. The development of a new standard instrument approach procedure (SIAP) to the Henry Post AAF, utilizing the Lawton very high frequency omnidirectional range/distance measuring equipment (VOR/DME), has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME Runway (RWY) 17 SIAP to the airport.

DATES: Comments must be received on or before October 15, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92-ASW-08, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone (817) 624-5535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92-ASW-08." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Lawton, OK. The development of a new VOR/DME RWY 17 SIAP to the Henry Post AAF, utilizing the Lawton VOR/DME, has necessitated this proposal. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the new VOR/DME RWY 17 SIAP.

Transition areas are published in section 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is proposed to be amended as follows:

Section 71.181 Designation

* * * * *

Lawton, OK. [Revised]

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Lawton Municipal Airport (latitude 34°34'04" N., longitude 98°24'59" W.), and within 4 miles east and 8 miles west of the 358° and 176° radials of the Lawton VOR (latitude 34°29'46" N., longitude 98°24'46" W.), extending from the 6.8-mile radius to 19.6 miles south of the airport and within 4 miles east and 8 miles west of the Lawton ILS Localizer south course extending from the 6.8-mile radius to 20.6 miles south of the airport and within a 6.5-mile radius of the Henry Post AAF (latitude 34°39'03" N., longitude 98°24'00" W.), and within 1.9 miles each side of the 003° radial of the Lawton VOR extending from the 6.5-mile radius to 7.6 miles north of the Henry Post AAF, excluding that airspace within R-5601 A and B when that restricted area is activated and excluding that airspace within the Wichita Falls, TX, Transition Area.

* * * * *

Issued in Fort Worth, TX on July 7, 1992.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 92-17357 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[IA-55-90]

[RIN 1545-AO79]

Clarification of Period During Which Interest Is Allowed With Respect to Certain Overpayments

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to § 301.6611-1 on Procedure and Administration. The proposed amendments clarify the period during which interest is allowed on overpayments credited against a taxpayer's liability for interest and certain additions to the tax. The proposed amendments are necessary as a result of changes to the law made by the Tax Equity and Fiscal Responsibility Act of 1982 and the Deficit Reduction Act of 1984. The proposed regulations affect all taxpayers that have overpayments credited against underpayments.

DATES: Written comments and requests for a public hearing must be received by October 26, 1992.

ADDRESSES: Send comments and requests for a public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (IA-55-90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Forest Boone of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 111 Constitution Avenue, NW., Washington, DC 2204 (Attention: CC:IT&A:Br06) or telephone 202-622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the regulations on Procedure and Administration (26 CFR part 301) under section 6611 of the Internal Revenue Code (Code) to clarify the period during which interest is allowed on overpayments that are credited against a taxpayer's liability for interest and certain additions to the tax. These proposed amendments will conform the regulations to section 344 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97-248, 96 Stat. 635), and section 158 of the Deficit Reduction Act of 1984 (DEFRA) (Pub. L. 98-369, 98 Stat. 696). The regulations are proposed to be effective for credits made on or after August 25, 1992.

Explanation of Provisions

Interest on Overpayments That Are Credited Against Interest on Underpayments

Section 6611(a) of the Code provides that interest shall be allowed and paid on any overpayment in respect of any internal revenue tax at the overpayment rate established under section 6621. Under section 6402(a), the Secretary may credit any overpayment (including any interest allowed thereon) against any liability imposed under the Code on the taxpayer. Under section 6611(b)(1), interest is allowed on an overpayment that is so credited from the date of the overpayment to the due date of the taxpayer's liability against which the overpayment is credited. For purposes of this interest computation, specific due dates are provided in § 301.6611-1(h) of the regulations.

Generally, section 6601(f) provides that once an overpayment is credited to satisfy a taxpayer's liability, interest no longer accrues on that liability. Section 344 of TEFRA added section 6622 of the Code, which requires interest imposed by the Code to be compounded daily. The effect of section 6601(f) on the compounding requirement of section 6622 is that once an overpayment is credited to satisfy the taxpayer's liability for interest, that credit cuts off any further compounding of that interest (*i.e.*, interest no longer accrues on the taxpayer's interest liability against which the credit has been made).

Similarly, it is appropriate that no interest liability to the taxpayer accrues on the overpayment once the overpayment is credited to satisfy the taxpayer's liability for interest. Thus, the proposed regulations amend § 301.6611-1(h)(2)(v) to clarify that interest does not continue to accrue on any portion of an overpayment that is credited against the taxpayer's liability for interest.

Interest on Governments That Are Credited Against Certain Additions to the Tax

Prior to DEFRA, interest only accrued on additions to the tax from the date of notice and demand, and then only if not paid within 10 days from the date of notice and demand. In section 158 of DEFRA, Congress added Code section 6601(e)(2)(B) to the Code, which requires taxpayers to pay interest on certain additions to tax from the due date of the relevant return (including any extensions) until the addition to the tax is paid. The number of additions to the tax that bear interest from the due date of the return was increased by Congress in 1988 and again in 1989. The proposed regulations amend § 301.6611-1(h)(2)(vi) of the regulations to clarify that no interest is allowed on any portion of an overpayment that is credited against certain additions to the tax for any period after the due date of the return (including extensions) to which the addition to the tax relates.

Prior Regulations Obsolete

These regulations are proposed to be effective on the date they are published. It should be noted that, since the enactment of section 6622 of the Code in TEFRA, the Service has treated § 301.6611(h)(2)(v) of the existing regulations as obsolete. Likewise, the Service has treated § 301.6611-1(h)(2)(vi) of the existing regulations as obsolete with respect to certain additions to the tax since the enactment of section 6601(e)(2)(B) in DEFRA. Thus, the Service has computed and is currently computing interest in a fashion consistent with these proposed rules.

Effect on Other Documents

On October 9, 1984, the Service published in the **Federal Register** (49 FR 39566 (LR-280-82, 1984-2 C.B. 660)) proposed amendments to § 301.6611-1 and § 301.6601-1 on Procedure and Administration. The proposed amendments revised § 301.6611-1 to reflect section 348 of TEFRA and section 714(n) of DEFRA, eliminated certain

deadwood provisions, and reorganized § 301.6611–1. The proposed amendments did not, however, include revisions to take into account section 344 of TEFRA or section 158 of DEFRA because those sections were beyond the scope of that regulation project. The proposed amendments have not been adopted as final regulations. If the proposed amendments are adopted as final regulations, their rules (and, to the extent necessary, their effective dates) will be modified to be consistent with these proposed regulations.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Written Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be scheduled and held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Forest Boone of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Service and Treasury Department participated in their development.

List of Subjects 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. Section 301.6611–1 is proposed to be amended by:

a. Revising paragraphs (h)(2)(v) and (h)(2)(vi) as set forth below.

b. Adding paragraph (k) to read as set forth below.

§ 301.6611–1 Interest on overpayments

* * * * *

(h) * * *

(2) * * *

(v) *Interest.* In the case of a credit against interest that accrues for any period ending prior to January 1, 1983, the due date is the earlier of the date of assessment of such interest or December 31, 1982. In the case of a credit against interest that accrues for any period beginning on or after December 31, 1982, such interest is due as it economically accrues on a daily basis, rather than when it is assessed.

(vi) *Additional amount, addition to the tax, or assessable penalty.* In the case of a credit against an additional amount, addition to the tax, or assessable penalty, the due date is the earlier of the date of assessment or the date from which such amount would bear interest if not satisfied by payment or credit.

* * * * *

(k) *Effective date.* Paragraphs (h)(2)(v) and (h)(2)(vi) of this section are effective for credits made on or after August 25, 1992.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–20256 Filed 8–24–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

DEPARTMENT OF DEFENSE

38 CFR Part 21

RIN 2900–AF59

Veterans Education; Change of Program for Post-Vietnam Era Veterans

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Proposed regulation.

SUMMARY: The Department of Veterans Affairs Nurse Pay Act of 1990 contains a section which affects most of the educational programs VA (Department of Veterans Affairs) administers. The section revises the rules for determining whether an individual can change programs of education. The regulation governing changes of programs of education for veterans receiving benefits under VEAP (Post-Vietnam Era Veterans Educational Assistance Program) must be changed in order to bring it into agreement with the law. This proposal will effect this change.

DATES: Comments must be received on or before September 24, 1992. Comments will be available for public inspection until October 5, 1992.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170 of the above address between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until October 5, 1992.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, (202) 233–2092.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs Nurse Pay Act (Pub. L. 101–366) liberalizes the rules for determining whether a veteran or eligible person can change a program of education. On page 865 of the **Federal Register** of January 9, 1992, VA published a notice of intent to amend 38 CFR 21.4234 in order to implement this provision of law. 38 CFR 21.5232, which governs changes of program of education under VEAP, contains a reference to 38 CFR 21.4234 which will no longer be accurate once the proposed 38 CFR 21.4234 becomes final. This revision will eliminate that inaccuracy. 38 CFR 21.4234, as proposed in the **Federal Register** of January 9, 1992, will be used in the administration of VEAP.

The Department of Veterans Affairs and the Department of Defense have determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

VA and the Department of Defense find that good cause exists for making the amendments to § 21.5232, like the provision of law they implement, retroactively effective on June 1, 1991. This amended regulation is intended to achieve a benefit for individuals. The maximum benefits intended in the legislation will be achieved through prompt implementation. Hence, a delayed effective date would be contrary to statutory design, would complicate administration of the provision of law; and might result in the denial of a benefit to someone who is entitled to it.

The Catalog of Federal Domestic Assistance number for the program affected by this regulation is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 16, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 17, 1992.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary (Military Manpower & Personnel Policy), Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a)

2. Section 21.5232 and its authority citation are revised to read as follows:

§ 21.5232 Change of program.

In determining whether a change of program of education may be approved for the payments of educational assistance, VA will apply § 21.4234 of this part.

(Authority: 38 U.S.C. 3241[, 3691]; Pub. L. 94–502[, Pub. L. 101–366] (June 1, 1991)

[FR Doc. 92–20360 Filed 8–21–92; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[GEN Docket No. 89–116, 89–117 and 89–118, FCC 92–341]

Procedure for Measuring Electromagnetic Emissions From Intentional Radiators, Unintentional Radiators, and Digital Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This Further Notice of Proposed Rule Making (FNPRM) proposes to adopt the American National Standards Institute's (ANSI) test procedure C63.4–1992 as the standard the Commission will use for measuring electromagnetic emissions from intentional and unintentional radiators, including digital devices, regulated under the FCC Rules. C63.4–1992 would be used instead of TP–3, TP–4, and TP–6, the test procedures proposed in the Notices of Proposed Rule Making (NPRMs) in this proceeding. This new procedure is a revision of ANSI test procedure C63.4–1991, incorporating additional instructions specific to the testing of intentional and unintentional radiators. C63.4–1992 also includes new criteria for site attenuation in a measurement facility description filing required by the FCC Rules.

DATES: Comments are due on or before November 9, 1992 and Reply Comments are due on or before December 8, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Mr. Hugh L. Van Tuyl, FCC Laboratory, 7435 Oakland Mills Road, Columbia, MD, 21048, telephone number: 301–725–1585, extension 221.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making in General Dockets 89–116, 89–117 and 89–118, adopted July 22, 1992, and released August 17, 1992.

The complete text of this FNPRM is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC, and may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036.

The following collection of information contained in the proposed rules has been submitted to the Office of Management and Budget for review under Section 3504(h) of the Paperwork Reduction Act. Copies of the submission may be purchased from the Commission's copy contract or, Downtown Copy Center, (202) 452–1422, 1990 M Street NW., suite 640, Washington, DC 20036. Persons wishing to comment on this information collection should direct their comments to Jonas Neihardt (202) 395–3785, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503. A copy of any comments should also be sent to the Federal Communications Commission, Office of Managing Director, Washington, DC 20554. For further information, contact Judy Boley, Federal Communications Commission, (202) 632–7513.

OMB Number: 3060–0398.

Title: Equipment Authorization Measurement Standards 2.948, 15.117(g)(2), 15.117(g)(3).

Action: Revision.

Respondents: Businesses (including small businesses) and other for-profit organizations.

Frequency of Response: On occasion or every three years, and record keeping requirement.

Estimated Annual Response: 320 respondents; 20 record keepers; 9,350 hours total annual burden; 27.5 hours average burden per respondent or record keeper.

Needs and Uses: Proposed revision to Rule 2.948 is needed to ensure repeatable test results by establishing additional test site performance criteria. This NPRM will not affect the burden or requirements of Rules 15.117(g)(2) and 15.117(g)(3). The data will be used by the FCC staff to ensure that data that accompanies requests for equipment authorization is valid, and that proper testing procedures have been utilized.

OMB Number: 3060–0428.

Title: Reporting and Recordkeeping Requirements for Radio Frequency Device Test Procedures 15.31(a).

Action: Revision.

Respondents: Businesses (including small businesses) and other for-profit organizations.

Frequency of Response: On occasion and record keeping requirement.

Estimated Annual Response: 8,600 respondents; 5,675 record keepers; 214,125 hours total annual burden; 15 hours average burden per respondent or record keeper.

Needs and Uses: Proposed revision to Rule 15.31(a) is needed to upgrade a well-established measurement procedure with a more current, state-of-the-art procedure. The new measurement procedure is essential for controlling radio frequency (RF) interference.

Synopsis of Further Notice of Proposed Rule Making

1. The NPRMs in this proceeding proposed to adopt three new measurement procedures, designated TP–3, TP–4, and TP–6 as the procedures the Commission will use for measuring electromagnetic emissions from intentional radiators and unintentional radiators authorized under part 15 of the rules. The Commission is now proposing to adopt the American National Standard Institute's (ANSI) measurement procedure, C63.4–1992, as its procedure for testing these devices, rather than TP–3, TP–4, and TP–6. ANSI C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," sets forth uniform methods for testing these devices for compliance with the technical standards in part 15 of the Rules.

2. We recently completed the proceeding addressing measurement procedures for digital devices. In this proceeding, the Commission, after initially proposing to adopt its own test procedure for measuring RF emissions from digital devices (TP–5), ultimately adopted instead a measurement procedure developed jointly by the FCC and industry. Specifically, the Commission incorporated by reference ANSI C63.4–1991 into part 15 as the procedure the Commission will use for testing digital devices.

3. The procedures we proposed for measuring RF emissions from intentional and unintentional radiators were similar to those for digital devices. This is due to the fact that the same basic test equipment and procedures are used for measuring radiated and line conducted emissions from any device. Consistency in test procedures for different devices ultimately saves time and money by eliminating multiple test set-ups required by differing test procedures or requirements. The Accredited Standards Committee, C63, recognized the opportunity to broaden the applicability of its standard, and thus proceeded to modify ANSI C63.4–1991 by incorporating additional sections for measurements on intentional and unintentional radiators (including transmitters with periodic operation and superregenerative receivers). To ensure adequate representation from manufacturers of intentional and unintentional radiators, the C63 Committee invited all parties commenting in the instant proceedings to participate. This effort culminated in a new standard, ANSI C63.4–1992, that was recently approved under ANSI's public review process.

4. In developing the new standard, the C63 Committee considered the issues raised in the comments on the FCC proposals. The test methods contained in the new standard represent a balanced state-of-the-art measurement procedure that appears to have broad-based industry support. In order to broaden the scope of ANSI C63.4–1991, two new sections containing specific information on testing intentional and unintentional radiators were added. The new section on intentional radiators specifies procedures for measuring AC powerline conducted and radiated emissions, transmitter operating frequency, and frequency variation with respect to voltage and temperature. For intentional radiators that transmit pulsed emissions and are subject to average limits, a procedure is provided for measuring the transmitter duty cycle. The new section on unintentional radiators specifies procedures for measuring AC powerline conducted and radiated emissions, output signal levels from TV interface devices, and isolation between antenna transfer switch ports.

5. In view of these considerations, we are proposing to amend Part 15 of the Rules to incorporate by reference ANSI C63.4–1992 as the procedure to be used by the Commission for performing radio-noise emission measurements on intentional and unintentional radiators, as well as digital devices. However, consistent with the actions we have taken earlier with regard to digital devices, there are three sections of ANSI C63.4–1992 that we are not proposing to adopt in determining compliance of devices with the FCC Rules. We are not proposing to adopt Section 5.7, which specifies the use of an artificial hand when measuring hand-held equipment. We believe that the use of an artificial hand adds complexity to testing, and there is insufficient evidence to show that it allows an accurate of repeatable measurement of the emission levels from a device. We also would not accept absorbing clamp measurements as a substitute for measuring radiated emissions as provided in Section 9. The Commission's limits are based on measurements of radiated emissions. There is no evidence to show that the results obtained with an absorbing clamp can be correlated with radiated emissions from electronic equipment. Finally, we do not propose the relaxation of the limits for "click" or short duration emissions as provided in section 14. Short duration emissions can produce as much nuisance to radio communications as continuous emissions.

6. Currently the Commission requires the filing of a measurement facility description pursuant to Section 2.948 of the Rules, including measurements of site attenuation showing compliance with the horizontal test site attenuation values specified in FCC Office of Engineering and Technology Bulletin 55 (OET 55). ANSI C63.4–1992 contains vertical site attenuation measurement requirements as well as the horizontal site attenuation measurement requirements contained in OET 55. We are proposing to require site attenuation data to be taken pursuant to C63.4–1992.

7. We recognize that a time period is needed for transition to the new measurement procedure and test site requirements. We propose to implement the use of C63.4–1992 for equipment authorizations filed on or after two years from the date C63.4–1992 is incorporated into the rules by reference.

8. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rule, 47 CFR 1.1231 for the rules governing permissible ex parte contacts.

9. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rules, if adopted, will not have a significant economic impact on a substantial number of small entities because it provides guidance and procedures consistent with the needs of industry. Public comment is requested on this initial regulatory flexibility analysis.

10. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to the approval of the Office of Management and Budget as prescribed by the Act.

11. Pursuant to the applicable procedures set out in § 1.415 of the Commission's Rules, interested persons may file comments with the Secretary of the FCC on or before November 9, 1992 and reply comments on or before December 8, 1992. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects

47 CFR Part 2

Description of measurement facility, Reporting and recordkeeping requirements.

47 CFR Part 15

Digital device measurement procedure, Intentional radiator measurement procedure, Reporting and recordkeeping requirements, Unintentional radiator measurement procedure.

Proposed Rule Changes

Part 2 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: Sec. 4, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154, 154(i), 302, 303, 303(r), and 307, unless otherwise noted.

2. Section 2.948 is amended by revising paragraph (b)(8) to read as follows:

§ 2.948 Description of measurement facilities.

* * * * *

(b) * * *

(8) A plot of site attenuation data.

(i) For a measurement facility that will be used for testing radiated emissions from a digital device for certification or verification on or after May 1, 1994, or for testing intentional and other unintentional radiators authorized under part 15 of the rules for certification or verification on or after 2 years from effective date of final rule, the site attenuation data shall be taken pursuant to the procedures contained in Sections 5.4.6 through 5.5 of the following procedure: American National Standards Institute (ANSI) C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on July 17, 1992 as document number SH15180. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI C63.4–1992 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of ANSI C63.4–1992 may be inspected at the following locations: (1) Federal Communications Commission, 1919 M Street NW., Dockets Branch (room 239), Washington, DC, (2) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD, or (3) Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

(ii) For a measurement facility that will be used for testing radiated emissions from a digital device prior to May 1, 1994, or from intentional and other unintentional radiators authorized under part 15 prior to 2 years from effective date of final rule, or for devices authorized under part 18 of the rules, the site attenuation data shall be taken pursuant to either ANSI C63.4–1992, Sections 5.4.6 through 5.5, or FCC/OET Bulletin 55. See above paragraph (Section 2.948(b)(8)(i)) for more information on ANSI C63.4–1992.

(iii) This requirement does not apply to equipment that is not measured on an open field test site.

* * * * *

Part 15 of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

1. The authority citation for Part 15 continues to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, 304, and 307.

2. Section 15.31(a) is revised to read as follows:

§ 15.31 Measurement standards.

(a) The following measurement procedures are used by the Commission to determine compliance with the technical requirements in this Part. Except where noted, copies of these procedures are available from the Commission's current duplicating contractor whose name and address are available from the Commission's Consumer Assistance Office at 202–632–7000.

(1) FCC/OET MP–2: Measurement of UHF Noise Figures of TV Receivers.

(2) FCC/OET MP–4 (1987): FCC Procedure for Measuring RF Emissions from Computing Devices.

Note: This procedure may be used only for testing digital devices for which verification is obtained or an application for certification is filed before May 1, 1994. For compliance testing of digital devices on or after May 1, 1994, see § 15.31(a)(3) below.

(3) Digital devices for which verification is obtained, or an application for certification is filed, on or after May 1, 1994, and intentional and other unintentional radiators, for which verification is obtained, or an application for certification filed, on or after two years from effective date of final rule are to be measured for compliance using the following procedure excluding § 5.7, section 9 and section 14: American National Standards Institute (ANSI) C63.4–1992, entitled "Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz," published by the Institute of Electrical and Electronics Engineers, Inc. on July 17, 1992, as document number SH15180. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. The Commission encourages the use of this procedure for testing digital devices, intentional radiators, and other unintentional radiators as soon as practical. Copies of ANSI C63.4–1992 may be obtained from: IEEE Standards Department, 455 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, Telephone 1–800–678–4333. Copies of C63.4–1992 may be inspected during normal business hours at the following locations: (1) Federal Communications Commission, 1919 M Street NW., Dockets Branch (room 239), Washington, DC, (2) Federal Communications Commission Laboratory, 7435 Oakland Mills Road, Columbia, MD, or (3) Office of the Federal Register, 1100 L Street NW., room 8401, Washington, DC.

* * * * *

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 92-20194 Filed 8-24-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Petition for Rulemaking; Denial

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Petition for rulemaking; denial.

SUMMARY: The purpose of this notice is to announce the denial of a rulemaking petition to amend Standard No. 208, *Occupant Crash Protection*, to prohibit the installation of passenger side air bags. The Intermodal Surface Transportation Efficiency Act of 1991 requires NHTSA to mandate air bags at all front outboard seating positions. Therefore, this petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel Cohen, NRM-12, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4911.

SUPPLEMENTARY INFORMATION: On February 26, 1992, Shelness Productions (Shelness) petitioned this agency to amend Federal motor vehicle safety standard No. 208, *Occupant Crash Protection*, to prohibit the installation of passenger side air bags until evidence is available that deploying air bags pose no danger to infants in rear-facing child seats. (Shelness also petitioned for a recall of all vehicles which have already been manufactured with passenger side air bags. This notice only addresses the petition for rulemaking.)

NHTSA's ongoing child safety seat program includes the evaluation of the interaction between air bags and child safety seats. As part of this evaluation, the agency completed 30 mph dynamic sled tests with top and mid mounted air bags in December, 1991. No vehicles with low mounted air bags were tested at that time. (For interested parties, the data from these tests are available in Docket No. 74-09, Notice 21.) The agency's preliminary findings regarding these tests showed safety concerns related to the interaction between rear-facing child seats and air bags. The concerns arise because rear-facing child seats, unlike forward-facing child seats, extend so far forward that they may rest against that part of the instrument panel from which the air bag deploys. Accordingly, the agency issued a "Consumer Advisory" on December 10, 1991. In the Consumer Advisory, the agency stated that rear-facing child seats should not be used in the front seat of a car equipped with an airbag or airbags. If a rear-facing child seat must be used in the front seat, the agency advised that the seat should be moved as far back as possible to maximize the distance from the instrument panel and lessen the possibility of injury. In addition, the agency is contemplating rulemaking to require warnings about the potential adverse interaction of rear-facing child seats and air bags to be included in vehicle owner manuals and/or on rear-facing child seats.

Data available to the agency indicate that the facts do not warrant a rulemaking action to prohibit the installation of passenger air bags. Notwithstanding the agency's concerns about air bags. Notwithstanding the agency's concerns about air bags and rear-facing child seats, the agency cannot prohibit the installation of passenger side air bags as the petitioner recommends. The Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) requires NHTSA to mandate air bags at all front outboard seating positions. Therefore, this petition is denied. However, the agency will continue to monitor the issue of child seats, especially rear-facing child seats, and air bags to determine if further public education or the other potential agency action indicated above is warranted.

Issued on August 18, 1992.
Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 92-20284 Filed 8-24-92; 8:45 am]
BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 89-22; Notice 4]

RIN 2127-AD13

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to delay for one year the effective date of a final rule amending Federal motor vehicle safety standard No. 216, *Roof Crush Resistance*, to extend its requirements to light trucks with a gross vehicle weight rating (GVWR) of 6,000 pounds or less. The agency believes that this delay would ease the economic burden of this regulation on the manufacturers of these vehicles, many of whom are small businesses, with minimal impact on occupant safety.

DATES: Comments must be received by October 5, 1992. If adopted, the proposed amendments would become effective September 1, 1994.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.-4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Flanigan, NRM-01.01, Special Projects Staff, Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4918.

SUPPLEMENTARY INFORMATION: On April 17, 1991, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 216, *Roof Crush Resistance*, to extend its requirements to multipurpose passenger vehicles, trucks, and buses with a gross vehicle weight rating (GVWR) of 6,000 pounds or less (hereinafter referred to as light trucks) (56 FR 15510). NHTSA extended Standard No. 216 to light trucks because of their increased use as passenger vehicles and the desire to ensure that those vehicles offer safety protection comparable to that offered passenger car occupants. This final rule adopted the same test procedure as that for passenger cars, except that there is no 5,000 pound ceiling on the force. This test force is applied to either side of the forward edge of the roof of the vehicle. That notice specified an effective date of September 1, 1993.

NHTSA is proposing to delay the effective date of the April 1991 final rule to September 1, 1994. During the rulemaking process which led to the April 1991 final rule, NHTSA learned that approximately 95 percent of the affected vehicles already voluntarily comply with Standard No. 216. Many of the remaining vehicles are manufactured in more than one stage, primarily by small business. NHTSA believes that allowing an additional year leadtime for compliance would allow the affected small businesses some flexibility in determining the most cost effective method to achieve compliance and to certify their vehicles are complying.

A November 14, 1991, letter to the agency from the Recreation Vehicle Industry Association (RVIA) spoke of the difficulties it foresaw for some of its members, most of which are small businesses, in meeting the Standard No. 216 requirements. This is because of the varying physical characteristics and configurations of the second stage units in van and motor home conversions. The agency, in promulgating the rule did consider the effect of these configurations, and it determined compliance could be achieved nonetheless. However, we believe that, by extending the rule's effective date, NHTSA can better accommodate RIVA's concerns and the special needs of small businesses because of their lesser financial resources. This can be done without compromising safety, since here is already widespread voluntary compliance among single stage light truck manufacturers, which constitute approximately 95 percent of the population.

In the case of van conversions, many of these vehicles include models equipped with raised roofs, which are installed by final stage manufacturers. In some cases these small, final stage manufacturers may have to redesign and strengthen the raised roofs in order to certify compliance to the new requirement. An additional year would give these manufacturers more time to determine the method of compliance with the standard.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is neither "major" within the meaning of E.O. 12291, however, it is "significant" within the meaning of the Department of Transportation regulatory policies and procedures. Based on the April 1991, Final Regulatory Evaluation, the agency estimates that a delay of the effective date would result in a cost savings of $3-$32 million and that $1-$30 million of this would be associated with vehicles produced by multi-stage manufacturers. The agency also estimates that this delay would not have a significant adverse impact on safety.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this proposal under the Regulatory Flexibility Act. I hereby certify that this rule would not have a significant economic impact on a substantial number of small entities. As explained above, the agency does not anticipate a significant economic impact as a result of this proposed rule.

National Environmental Policy Act

NHTSA has also analyzed this proposal under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; and the delegations of authority at 49 CFR 1.50 and 501.8.

Issued on August 20, 1992.
Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 92-20285 Filed 8-21-92; 8:45 am]
BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 57, No. 165
Tuesday, August 25, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Radio and Television Broadcast Use Fee Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Radio and Television Broadcast Use Fee Advisory Committee will meet in San Francisco, California, on September 21, 22, and 23, 1992, from 8 a.m. to 5 p.m. The Committee is comprised of eleven members. The purpose of the meeting is for the Committee to review information pertaining to fees for radio and television broadcast use on public and National Forest System lands. The designated Federal official on the Committee is Gordon H. Small, Director of Lands, USDA Forest Service. Richard Spight, Diablo Communications, Inc., Point Richmond, California, will chair the meeting, which is open to public attendance; however, participation is limited to Committee members and Forest Service and Bureau of Land Management personnel. Persons who wish to bring communications use fee matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATES: The meeting will be held September 21, 22, and 23, 1992.

ADDRESSES: The meeting will be held at the Holiday Inn—Financial District, Emerald Room, 750 Kearny Street, San Francisco, California 94108.

Send written comments to J. Kenneth Myers, Executive Secretary, Radio and Television Broadcast Use Fee Advisory Committee, c/o Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 205-1248.

FOR FURTHER INFORMATION CONTACT: Brent Handley, Lands Staff, (202) 205-1264.

Dated: August 18, 1992.

George M. Leonard,

Associate Chief.

[FR Doc. 92-20214 Filed 8-24-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Partially Closed Meeting

A meeting of the Material Technical Advisory Committee will be held September 17, 1992, 10:30 a.m., Herbert C. Hoover Building, room 1617-M2, 14h Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to materials or technology.

Agenda: General Session

1. Opening Remarks by the Chairman & Commerce Representative.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Discussion of Category 1 Proliferation Controls.
5. Discussion of Proposed Revision of Current Dual Use CW Equipment List.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: U.S. Department of Commerce/BXA Office of Technology & Policy Analysis, 14th & Constitution avenue, NW., Room 1621, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 12, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call 202-377-4959.

Dated: August 18, 1992.

Betty A. Ferrell,

Director, Technicol Advisory Committee Unit Office of the Assistant Secretary, for Export Administration.

[FR Doc. 92-20356 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DT-M

Subcommittee on Export Administration of the President's Export Council; Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration will be held September 17, 1992, 1 p.m. at the U.S. Department of Commerce, Herbert C. Hoover Building, room 6808, 14th and Constitution Avenue, NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

General Session

Status reports by Task Force Chairmen, and update on Export Administration initiatives:

Executive Session

Discussion of matters properly classified under Executive Order 12356 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved Sept. 27, 1991, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC.

For further information, contact Ms. Betty A. Ferrell (202) 377-2583.

Dated: August 18, 1992.

James M. LeMunyon,

Acting Assistant Secretary for Export Administration.

[FR Doc. 92-20355 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-557-805]

Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Vincent Kane, Gary Bettger, or Margo Lanouette, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2815, 377-2239, or 377-0160, respectively.

Final Determination

The Department of Commerce (the Department) determines that extruded rubber thread from Malaysia is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of our preliminary determination in the **Federal Register** on April 2, 1992, (57 FR 11287), the following events have occurred. From April 5 through June 15, 1992, we verified questionnaire responses. We received briefs from interested parties on July 27, 1992, and rebuttal briefs on August 3, 1992.

Scope of the Investigation

The product covered by this investigation is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Standing

The International Trade Commission (ITC) has preliminarily determined in this proceeding that there is one like product, which includes all of the merchandise defined by the scope of this investigation, including food grade rubber thread. We have analyzed the information on the record concerning this issue and have concluded that we are in agreement with the ITC's "like product" determination. Accordingly, we determine that petitioner produces a product like the imported product and, hence, has standing to file on behalf of the U.S. industry.

Period of Investigation

The period of investigation (POI) is March 1, 1991, through August 31, 1991.

Such or Similar Comparisons

We have determined that extruded rubber thread comprises a single category of such or similar merchandise. Comparisons were made on the basis of the following criteria: Gauge, type of finish, color and other special qualities. We made adjustments for differences in the physical characteristics of the merchandise, where appropriate, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of extruded rubber thread from Malaysia to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice. We found that more than ten percent of respondents' third country sales were at prices below the total cost of production (COP) and that less than 90 percent were below cost. Respondents provided no indication that these costs would be recovered over a reasonable period of time. Therefore, we have disregarded the below-cost sales in calculating FMV.

In order to compare sales of comparable quantities, we compared direct container sales for export to the United States with direct container sales for export to Hong Kong, and we compared sales from U.S. branch office warehouses to sales from Hong Kong branch office warehouses, in accordance with 19 CFR 353.58. We did not make fair value comparisons on U.S. sales of second quality merchandise or samples, since the volume of seconds and samples sold in the U.S. market during the POI was negligible.

On warehouse sales made by related overseas branch offices in both the United States and Hong Kong, we used invoice date as the date of sale because that date was either the same as the order confirmation date or followed it by one to three days. Moreover, respondents did not retain any record of the order confirmation date on warehouse sales.

On direct container sales the order confirmation date may precede the invoice date by as much as a month or more. Whereas order confirmation date frequently serves as the date of sale, we found, during verification, that the price and/or quantity frequently changed between the order confirmation date and the bill of lading date (for Rubberflex) or the invoice date (for Heveafil). Therefore, we are using the invoice date or the bill of lading date as the date of sale on direct container shipments.

United States Price

A. Heveafil Sdn. Bhd./Filmax Sdn. Bhd.

Heveafil Sdn. Bhd. (Heveafil) and Filmax Sdn. Bhd. (Filmax) are related companies, each producing extruded rubber thread. Heveafil also performs the selling an administrative functions for both companies. Filmax is solely a production company. For purposes of this fair value investigation, we are treating these two companies as one company.

For container sales made directly to unrelated U.S. customers by Heveafil and Filmax, we based USP on purchase price in accordance with section 772(b) of the Act because all container sales were made directly to unrelated parties prior to importation into the United States. Exporter's sales price (ESP) methodology was not appropriate for

direct container sales because the subject merchandise was not introduced into the inventory of the U.S. branch and the branch office acted essentially as a processor of sales-related documentation and as a communications link with unrelated U.S. customers.

We calculated purchase price based on packed, c.i.f. delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, containerization, ocean freight, marine insurance, U.S. brokerage, and inland freight, in accordance with section 772(d)(2) of the Act. In addition, where appropriate, we made deductions for rebates and discounts.

For sales made from the U.S. warehouse by Heveafil's U.S. branch office, we based USP on ESP, in accordance with section 772(c) of the Act, because the first sales to unrelated parties occurred after importation into the United States.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight and brokerage, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage, entry fees and, where appropriate, rebates. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for advertising, credit, and indirect selling expenses. Indirect selling expenses consist of warehouse costs, inventory carrying costs and general indirect selling expenses incurred in Malaysia and the United States with respect to U.S. sales.

B. Rubberflex

For container sales made directly to unrelated U.S. customers by Rubberflex, we based USP on purchase price in accordance with section 772(b) of the Act, because all container sales were made directly to unrelated parties prior to importation into the United States. ESP methodology was not appropriate for direct container sales because the subject merchandise was not introduced into the inventory of Rubberflex's U.S. distributor and the distributor acted only as a processor of sales-related documentation and as a communications link with unrelated U.S. customers.

We calculated purchase price based on packed, c.i.f. delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, foreign brokerage, ocean freight, marine insurance, U.S. brokerage, entry fees, and inland freight, in accordance with section 772(d)(2) of the Act. In addition, where appropriate, we made deductions for rebates.

For sales made from the U.S. warehouse by Rubberflex's U.S. branch, we based USP and ESP, in accordance with section 772(c) of the Act, because the first sales to unrelated parties occurred after importation into the United States.

We calculated ESP based on packed, delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, handling and brokerage, ocean freight, marine insurance, U.S. inland freight, U.S. brokerage, U.S. entry fees and, where appropriate, rebates. In accordance with section 772(e)(2) of the Act, we made additional deductions, where appropriate, for advertising, credit, and indirect selling expenses. Indirect selling expenses consist of warehouse costs, inventory carrying costs and general indirect selling expenses incurred in Malaysia and the United States with respect to U.S. sales.

Foreign Market Value

In order to determine whether there were sufficient sales of extruded rubber thread in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales to the volume of third country sales, in accordance with section 773(a)(1)(B) of the Act. None of the respondents had viable home markets during the POI. In selecting which third country market to use for comparison purposes, we first determined which third-country markets had "adequate" volumes of sales, within the meaning of 19 CFR 353.48(a). We determined that the volume of sales to a third country market was adequate if the sales of such or similar merchandise to that country exceeded or was equal to five percent of the volume sold to the United States. In selecting which of the third country markets with adequate sales volumes was the most appropriate for comparison purposes, we selected Hong Kong, the third country market to which Heveafil and Rubberflex had their largest volumes of sales, in accordance with 19 CFR 353.49(b)(2).

Based on petitioner's allegations, we investigated whether Heveafil's or Rubberflex's sales to Hong Kong were made at less than the COP.

A. Heveafil

In order to determine whether third country prices were above COP, we calculated the COP based on the sum of Heveafil's cost of materials, labor, other fabrication costs, and general expenses. As discussed above, we disregarded below-cost sales in calculating FMV. Where all the sales of a specific product were below cost, we based FMV on constructed value (CV), calculated in accordance with section 773(e) of the Act.

We relied on the submitted COP and CV information, except in the following instances, where the costs were not appropriately quantified or valued:

1. For COP and CV, we adjusted direct materials to account for an increase in certain chemical costs.

2. For COP and CV, we recalculated labor and other fabrication costs, allocating them based on standard production hours rather than actual production hours. We also adjusted direct labor and variable overhead to account for certain expenses which had been deducted twice from labor and incorrectly included in variable overhead. We adjusted cost of manufacturing (COM) to include royalty payments that were made for product line research and development (R&D).

3. For COP and CV, we revised the variable and fixed overhead of Heveafil by reclassifying certain expenses from variable overhead to fixed overhead#.

4. For COP and CV, we revised Heveafil's general and administrative expenses (G&A) and cost of goods sold to include the auditor's adjustments to the financial statements which were not available at the time the costs were submitted.

5. For COP and CV, we revised Heveafil's net interest expense to reflect the auditor's adjustments to the financial statements which were not available at the time the costs were submitted.

In accordance with section 773(e)(1)(B)(i) of the Act, we calculated CV using Heveafil's reported general expenses, adjusted as detailed above, because they exceeded the statutory minimum of ten percent of the COM. For profit on CV, we used the statutory minimum of eight percent of the total of COM and general expenses because Heveafil's actual profit on third country sales was less than eight percent.

Where CV was compared to purchase price transactions, we made a circumstance of sale adjustment for credit expenses. Where CV was compared to exporter sales price transactions, we deducted direct and indirect selling expenses, including credit and inventory carrying costs. The deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(1)(B)(2). Where FMV was based on third country prices, we based FMV for purchase price transactions on c.i.f. port prices to unrelated Hong Kong customers purchasing full container loads shipped direct. We based FMV for ESP transactions on delivered prices for sales from the Hong Kong branch warehouse to unrelated customers in accordance with section 773(a)(1)(B) of the Act.

We made deductions, where appropriate, for Malaysian inland freight, brokerage and handling charges, ocean freight, marine insurance and rebates. We made circumstance of sale adjustments, where appropriate, for differences in credit, pursuant to 19 CFR 353.56. We deducted third country packing costs and added U.S. packing costs. When FMV was compared with ESP, we also deducted freight-in and freight-out charges, inland insurance, and indirect selling expenses including inventory carrying expenses, warehousing expenses, and other indirect selling expenses. The deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses with respect to sales in the U.S. market, in accordance with 19 CFR 353.56(b).

Because Heveafil failed to report manufacturing cost for all items as requested in the cost questionnaire, we used the highest weighted-average margin, excluding aberrations, for those U.S. sales without appropriate cost information.

B. Rubberflex

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of Rubberflex's cost of materials, labor, other fabrication costs, and general expenses. As discussed above, we disregarded below-cost sales in calculating FMV. Where all the sales of a specific product were below cost, we based FMV on CV, calculated in accordance with section 773(e) of the Act.

We relied on the submitted COP and CV information, except in the following instances where the costs were not appropriately quantified or valued:

1. For COP and CV, Rubberflex originally submitted fabrication costs based on normalized production time because of what it termed an "extraordinary event" which occurred during the POI. Rubbeflex complied with the Department's request to revise costs based on actual production time. We calculated fabrication costs based on actual production hours and included only the offsets which related to the costs of production. We also adjusted COM to include royalty payments that were made for product line R&D.

2. For COR and CV, we revised Rubberflex's G&A to include the auditor's adjustments to the financial statements which were not available at the time the costs were submitted. We also reclassified certain expenses from G&A to fixed overhead.

3. For COP and CV, we revised Rubberflex's net interest expense to reflect the auditor's adjustments to the financial statements which were not available at the time the interest expense was submitted.

In accordance with section 773(e)(1)(b)(i) of the Act, we calculated CV using Rubberflex's reported general expenses, adjusted as detailed above, because they exceeded the statutory minimum of ten percent of the COM. For profit on CV, we used the statutory minimum of eight percent of the total of COM and general expenses because Rubberflex's actual profit on third country sales was less than eight percent.

Where CV was compared to purchase price transactions, we made a circumstance of sale adjustment for credit expenses. Where CV was compared to exporters sales price transactions, we deducted direct and indirect selling expenses, including credit and inventory carrying costs. The deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses incurred on U.S. sales, in accordance with 19 CFR 353.56(b)(2).

Where FMV was based on third country prices, we based FMV for purchase price transactions on c.i.f. port prices for direct shipments to unrelated Hong Kong customers purchasing full container loads. We based FMV for ESP transactions on delivered prices for sales made from the Hong Kong branch warehouse to unrelated customers, in accordance with section 773(a)(1)(B) of the Act.

We made deductions, where appropriate, for Malaysian inland freight, brokerage and handling charges, ocean freight and marine insurance. We made circumstance of sale adjustments, where appropriate, for differences in credit costs pursuant to 19 CFR 353.56(a). We deducted third country packing costs and added U.S. packing costs. When FMV was to be compared with ESP, we also deducted indirect selling expenses including inventory carrying expenses, warehousing expenses, and other indirect selling expenses. This deduction for third country indirect selling expenses was capped by the amount of indirect selling expenses with respect to sales in the U.S. market, in accordance with 19 CFR 353.56(b).

Because Rubberflex failed to report manufacturing cost for all items as requested in the cost questionnaire, we used the highest weighted-average margin, excluding aberrations, for those U.S. sales without appropriate cost information.

Currency Conversion

In accordance with 19 CFR 353.60, we converted foreign currency into the equivalent amount of United States currency using the official exchange rates in effect on the appropriate dates. All currency conversions were made at rates certified by the Federal Reserve Bank.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of extruded rubber thread from Malaysia. Section 735(a)(3) of the Act provides that critical circumstances exist when we determine that there is a reasonable basis to believe or suspect that:

(1) There is a history of dumping in the United States or elsewhere of the same class or kind of merchandise which is the subject of the investigation, or that the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise at less than fair market value; and

(2) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

To determine whether imports have been massive over a relatively short period, we based our analysis on respondents' shipment data for equal periods immediately preceding and following the filing of the petition.

Pursuant to section 735(a)(3)(B) of the Act, and 19 CFR 353.16(f), we examined a period beginning in the month in which the petition was filed and ending three months later. Thus, we selected the period from August 29, 1991 (the day the "proceeding began") to November 29, 1991 as the comparison period.

We then compared the quantity of imports during the comparison period for each respondent to the quantity of imports during the immediately preceding period (the "base period") of comparable duration. Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during

the base period, we will not consider the imports "massive." Our analysis indicates that shipments from Filmax and Rubberflex have increased by considerably more than 15 percent.

Because these companies show evidence of massive imports over a relatively short period of time, we need to consider whether there is a history of dumping or whether there is reason to believe or suspect that importers of this product knew or should have known that it was being sold at less than fair value. We examined past antidumping investigations and found no findings of dumping in the United States or elsewhere on the subject merchandise by Malaysian producers.

We then examined the magnitude of the dumping margins in this investigation, since it is our standard practice to impute knowledge of dumping under section 735(a)(3)(A)(ii) of the Act, when the estimated margins are of such a magnitude that the importer should have realized that dumping existed with regard to the subject merchandise. Normally, in purchase price sales, we consider estimated margins of 25 percent or greater to be sufficient, and in exporter's sales prices sales, margins of 15 percent or greater to be sufficient to impute knowledge of dumping. See, *e.g.*, Preliminary Determination of Sales at Less than Fair Value: Oscillating and Ceiling Fans from the People's Republic of China, 56 FR 66834 (December 26, 1991). In this investigation, there were both purchase price sales and exporter's sales price sales. Accordingly, we weight-averaged the 25 percent and 15 percent benchmarks by the volume of PP and ESP sales, respectively, to arrive at a weighted-averaged benchmark percentage for imputing knowledge. Because the weight-averaged dumping margin for Rubberflex exceeds the weight-averaged benchmark, we found that importers either knew or should have known that this company was selling the subject merchandise at less than its fair value.

Therefore, based on the imputation of knowledge on behalf of importers of sales at less than fair value and massive imports, we determine that critical circumstances exist with respect to imports of Malaysian extruded rubber thread from Rubberflex.

Verification

Pursuant to section 776(b) of the Act, we verified information used in reaching our final determination in this investigation. We used standard verification procedures, including examination of relevant accounting records and original documents provided by respondents. Our verification results are outlined in detail in the public version of our verification reports, which are on file in the Central Records Unit (room B-099) of the Main Commerce building.

Interested Party Comments

All written comments submitted by the interested parties in this investigation which have not been previously addressed in this notice are addressed below.

Comment 1: Respondents claim that food grade rubber thread is a separate like product, and that petitioner does not have standing to file an antidumping petition on food grade rubber thread because the petitioner does not produce or wholesale a like product in the United States. Respondents base their claim on each of the factors considered by the ITC in making like product determinations. Respondents assert that: Food grade thread has a different chemical composition than other types of rubber thread; food grade thread is sold to different customers than rubber thread used in the textile industry; and, other types of rubber thread cannot be used interchangeably with food grade rubber thread. Respondents also assert that customers perceive food grade as a distinct market segment.

Petitioner claims that respondents originally testified at the ITC that extruded rubber thread, including food grade rubber thread, constitutes a single like product. Respondents testified that the basic physical characteristics of food grade rubber thread are the same as those of other rubber thread, that they are sold through the same channels of distribution, and that all rubber thread is manufactured on the same machinery using the same basic manufacturing process. Therefore, the product under investigation constitutes one like product. The ITC agreed with petitioner's analysis. Further, Globe Manufacturing, another U.S. producer of rubber thread, produces food grade rubber thread and supports the petition.

DOC Position: After reviewing the ITC's preliminary determination and respondents' submissions, the Department agrees with the ITC's preliminary like product determination. Therefore, we determine that food grade rubber thread does not constitute a separate like product for purposes of this investigation, and that the petitioner properly has standing to file the petition on behalf of the industry producing the domestic like product.

Comment 2: Respondents have reported second quality sales and sample sales for export to the United States, but have requested that we exclude these sales from the analysis because they are in negligible quantities and are not in the ordinary course of trade. Rubberflex did not have any second quality sales in Hong Kong and Heveafil had a very small number.

DOC Response: The purpose of a less than fair value investigation is to estimate whether dumping exists and, if so, the extent of the dumping, in order to establish a cash deposit rate. No actual assessment of antidumping duties occurs until the Department has either completed its first administrative review or has ordered liquidation at the prevailing cash deposit rate because no review has been requested. As a result, for purposes of the less than fair value investigation, the Department need not investigate each and every U.S. sale. Because we found the volume of second quality and sample sales to be very small, we have disregarded respondents' second quality and sample U.S. sales for purposes of our analysis.

Comment 3: Respondents claim that in developing product matching criteria, the Department should not have included color as one of the criteria because the cost differences for color are negligible and have no effect on price. Further, respondents contend that the Department should not calculate separate costs for products with different colors but, instead, should determine separate costs for products with different finishes and gauges.

Petitioner disagrees with respondents' claim that differences in color are insignificant and should not be a factor in selecting model matches for comparison purposes. Petitioner states that it is not the Department's practice to consider cost or price as a basis for selecting the product matching criteria. Even if the Department were to consider these bases as appropriate, petitioner claims that the cost and price differences relating to variations in color clearly exceed the *de minimis* level. Respondents concede the importance of the color criterion by recognizing the dramatic effect the elimination of this criterion has on the product matches. Thus, because customer preference for particular colors is an important factor in marketing rubber thread, it would be inappropriate to disregard color as one of the model matching criteria.

DOC Position: The Department arrived at its model matching criteria on the basis of comments submitted by all of the parties, as well as its own assessment of the various factors that could affect product comparability. Because color can materially affect cost and can be important to the customer and to the use of the product, the Department determined at an early stage of this investigation that color should be included among the several product matching criteria. At the time of this decision, respondents expressed no objection.

Comment 4: Respondents claim that the DOC properly treated direct sales to unrelated customers as purchase price sales and sales from U.S. warehouses made by the related branch offices as ESP sales. Direct sales were made prior to importation, never entered the inventory of a branch office, and required less involvement on the part of the branch office. Branch office participation in these sales was limited to processing of sales-related documentation and serving as a communication link between the unrelated buyer and the Malaysian producer. Therefore, purchase price should clearly apply to these sales.

Petitioner claims that direct sales in container lots made for export to the United States should be treated as ESP sales because the U.S. branches function as more than processors of sales-related documentation and a communication link. Petitioner argues that evidence in the record indicates that responsibilities of the U.S. branches do not differ on direct sales and sales from the warehouse.

DOC Position: We agree with respondents. On direct sales, the goods are purchased prior to importation, and shipped directly to the unrelated buyer without ever entering a branch office warehouse. In addition, during verification, we found no evidence that the branch office's role in direct sales went beyond that of processing sales-related documents and serving as a communication link.

The statement in the verification report referred to by petitioner was intended as an explanation of why the Department verified direct sales at the branch office rather than at the head office in Malaysia. The U.S. branch office executes and maintains all of the paperwork with respect to these sales, except the bill of lading and the order confirmation. Therefore, the source documents necessary for verification were located at the branch office rather than at the head office in Malaysia.

Comment 5: Petitioner argues that if the U.S. branch office devotes little time or resources to direct sales, as claimed by respondents, then the Department should not allocate U.S. branch office selling expenses to these sales.

Respondents claim that the U.S. branch offices process documents and serve as communications links on all sales. As such, it would be incorrect and unwarranted to allocate all of the administrative and general selling expenses associated with these offices only to warehouse sales. Respondents also note that petitioner fails to make a similar argument with respect to the allocation of third country selling expenses.

DOC Position: The functions performed by the branch offices include receiving orders, preparing and executing order confirmations, invoices, packing lists, and other sales-related documentation, and receiving and processing payments from customers. Because the branch offices in both the United States and Hong Kong are staffed by just a few people, their roles on both direct sales and sales from warehouse generally don't extend beyond the functions described above. The one exception is warehousing, which applies only to ESP sales. Warehousing expenses, however, as a percent of total warehouse sales, were so small as to have no effect on the less than fair value margin calculation. Therefore, we have allocated branch offices' expenses across all sales.

Comment 6: Petitioner argues that the errors in Heveafil's and Rubberflex's responses are so serious that their questionnaire responses should be rejected, and the best information available (BIA) used. According to petitioner, one of these errors occurred when respondents erroneously used purchase price during the POI to value rubber latex and chemicals consumed in production instead of the actual cost of materials consumed during the POI. Petitioner claims that this is directly contrary to Department practice. Petitioner maintains that this situation is similar to the situation in the Preliminary Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Korea, 57 FR 27731, 27734 (June 22, 1992). In that case, petitioner claims, the Department disregarded the respondent's data and used BIA where Department practice was not followed. Petitioner maintains that materials, particularly latex, are the major cost components in producing rubber thread.

Petitioner also claims that Rubberflex misrepresented the date of sale as the invoice date when, in fact, the order confirmation date should have been reported as the date of sale.

Respondents disagree with petitioner's claims. Both Rubberflex and Heveafil argue that they have consistently reported actual latex costs on a consumption basis.

DOC Position: We disagree with petitioner that errors in the responses were serious enough that they should be rejected. With respect to latex costs, both Rubberflex and Heveafil calculated the cost based on consumption during the POI and the price of the latex actually consumed, consistent with Department practice. Although Rubberflex valued its chemicals using end of the month prices, instead of average monthly prices, the difference between the two methods is insignificant. Heveafil reported its chemical costs based on the price paid for purchases rather than on chemicals consumed. The Department noted, however, that during the POI the average consumption cost was less than the average purchase cost. This is in contrast to the situation in the Preliminary Determination of Sales at Less Than Fair Value: Certain Welded Stainless Steel Pipes from Korea, 57 FR 27731, 27734 (June 22, 1992), where the respondent not only valued its direct materials using the price of steel purchased during the POI, but also based material cost on one type of steel rather than averaging the two types of steel used to produce the subject merchandise. In Heveafil's case, the difference between the average purchase cost and the average consumption cost of chemicals was insignificant and does not warrant a BIA adjustment.

Regarding the frequency of price and quantity changes on Rubberflex's sales after order confirmation, we note that in the limited time available during verification we were not able to establish precisely the number of times these changes occurred. However, it was clear that changes in price and quantity between order confirmation date and bill of lading date were not uncommon. After the bill of lading date, however, we found no evidence of price or quantity changes. Because we found clear evidence that price and quantity changes were not uncommon after the order confirmation date, we concluded that the bill of lading date should be treated as the date of sale.

Comment 7: Petitioner claims that respondents misreported G&A expenses because they failed to report large royalty expenses. Respondents state that they reported royalty expenses in their respective responses are direct selling expenses because these expenses are based on sales value.

DOC Position: We agree with respondents that royalty costs were reported as direct selling expenses. However, we disagree with this treatment. Although the royalty is calculated based on sales revenue, these payments are not a cost of selling. Instead, the royalty is a payment for production technology and, hence, is

properly treated as a cost of manufacturing. See, e.g., Final Determination of Sales at Less Than Fair Value: Certain All-Terrain Vehicles from Japan, 54 FR 5864 (January 31, 1989) (ATVs), R&D activities carried out by a related party were reimbursed based on the period sales results. The respondent argued that R&D should be allocated to the subject merchandise based on the sales value. In ATVs, the Department stated that the R&D activities by nature are associated with the manufacturing process rather than the sales process. Therefore, we recalculated respondents' royalty cost per product by dividing total royalty payments by each company's cost of goods sold and applied the percentage to each product's COM. We included the resulting amount in the COM. See, Final Determination of Sales at Less Than Fair Value: Flat Panel Displays from Japan, 56 FR 32376, 32384 (July 16, 1991).

Comment 8: Petitioner claims that respondents misclassified fixed manufacturing costs as variable costs, precluding difference in merchandise adjustments.

Respondents disagree, claiming that they reported various overhead items using their normal accounting systems. They note that the Department did not find any material problems with the cost classification at verification.

DOC Position: Rubberflex's accounting system distinguishes between variable and fixed overhead costs. We found that this company reported its costs consistent with its accounting system. Moreover, the costs were classified appropriately.

With respect to Heveafil, the company classified depreciation as fixed overhead and all other overhead items as variable because it stated that it was too time consuming to determine the fixed or variable nature of each overhead expense. The Department analyzed all overhead items and determined that maintenance expense should be reclassified as fixed overhead because it is the type of expense which remains fixed over a relevant range of production. This reclassification is reflected in the final determination.

Comment 9: Petitioner alleges that Rubberflex ignored its own accounting practices and treated certain material costs (*e.g.*, acetic acid) as variable overhead expenses instead of as direct materials costs.

Rubberflex counters that petitioner misunderstands the proper classification of costs. Rubberflex argues that its accounting system considers many items such as packing boxes, diesel fuel and tubing to be direct materials, even though the Department has never considered them as such. According to Rubberflex, acetic acid is not part of the finished good and, therefore, is properly classified as a variable overhead expense (*i.e.*, something which is consumed during the production process but is not physically incorporated into the final product).

DOC Position: We agree with Rubberflex that acetic acid is properly treated as variable overhead rather than as a direct cost because it is not part of the finished good. The Department normally considers such consumable items to be variable overhead expenses.

Comment 10: Petitioner claims that Rubberflex understated fixed factory over head and that the Department should use BIA in making the adjustment.

Rubberflex claims that it inadvertently failed to report the write-off of replacement belts in its submission. It argues that the Department should account for this write-off only once in the cost calculations, either as a G&A expense because that is where Rubberflex recorded it in accordance with its normal accounting system, or else as a fixed overhead expense. Rubberflex argues that the omission has only minimal effect because fixed overhead is a relatively small part of the COP.

DOC Position: We agree with Rubberflex that the write-off should be included only once in the cost calculations. Although Rubberflex claims that it included the write-off in G&A as part of its normal accounting system, the company had reclassified the expense from its fixed overhead accounts to G&A. The Department considers this expense to be fixed overhead and, therefore, we have added it back to fixed overhead and deducted it from G&A.

Comment 11: Petitioner alleges that Heveafil incorrectly allocated fabrication costs using actual rather than standard production hours. Additionally, petitioner claims that Heveafil reported standard color costs rather than actual costs.

DOC Position: We agree with petitioner that Heveafil incorrectly allocated fabrication costs using actual production hours in its cost response. Heveafil allocated its fabrication costs to specific products using standard production hours. However, it determined per-hour fabrication costs based on actual production hours. As a result of using two different bases for allocation, it understated fabrication costs. Therefore, the Department adjusted hourly costs using total standard production hours for the final determination.

We also agree with petitioner's assertion that Heveafil incorrectly used standard costs for color. Heveafil submitted color costs based on the standard cost for black, white white, super white threads and two specialty products—food grade and heat resistant threads. The Department verified actual color costs based on consumption and made adjustments to the chemical costs for the threads.

Comment 12: Petitioner claims that Heveafil's misreporting of variable overhead warrants the use of BIA by the Department when making adjustments to the costs.

Heveafil acknowledges a clerical error with respect to its variable overhead. Heveafil claims that it inadvertently reported the fixed overhead value in the variable overhead field in its submitted summary COP and CV tables for the talc-finished threads and agrees that the error should be corrected.

DOC Position: The Department discovered this clerical error at verification, verified the correct amount and made the appropriate adjustment. The Department rejects the petitioner's argument that the Department should use BIA because the error was inadvertent and easily corrected.

Suspension of Liquidation

In accordance with section 735(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of extruded rubber thread from Malaysia, as defined in the "Scope of Investigation" section of this notice. The U.S. Customs Service shall require a cash deposit or bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Heveafil/Filmax Sdn. Bhd.	10.68
Rubberflex Sdn. Bhd.	22.00
All Others	15.18

This suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1671(d)).

Dated: August 17, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20212 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-604]

Industrial Phosphoric Acid From Israel; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On June 3, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on industrial phosphoric acid from Israel (57 FR 23377). The review covers one manufacturer/exporter of this merchandise to the United States and the period August 1, 1990 through July 31, 1991. We have now completed the review and determine the dumping margin to be 6.82 percent *ad valorem* for Haifa Chemicals.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1992, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on industrial phosphoric acid from Israel (57 FR 23377) covering the period August 1, 1990 through July 31, 1991. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA). This product is classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter to the United States of the subject merchandise, Haifa Chemicals, and the period August 1, 1990 through July 31, 1991. Haifa did not respond to the Department's questionnaire. Therefore, we used best information available for assessment of antidumping duties and cash deposit purposes. Best information is the highest margin for a company under the order, 6.82 percent.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received no comments.

Final Results of the Review

We determine the following dumping margin for the period August 1, 1990 through July 31, 1991:

Manufacturer/exporter	Margin (percent)
Haifa Chemicals	6.82

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed companies will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) cash deposits for all other manufacturers or exporters will be zero. This rate represents the highest rate for any firm (whose shipments to the United States were reviewed) in this, or the most recent administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-20230 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-475-603]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Italy; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On May 29, 1992, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished or unfinished from Italy (57 FR 22715). The review covers one manufacturer/exporter of the subject merchandise, Gnutti Carlo, S.p.A. (Gnutti), and the period August 1, 1990 through July 31, 1991.

We did not receive any comments; therefore, we have not changed the final

results from those presented in our preliminary results of review.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Peter Knapp or Jean C. Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On September 18, 1991, in accordance with 19 CFR 353.22(c), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order (52 FR 30417) on tapered roller bearings and parts thereof from Italy for the period August 1, 1990 through July 31, 1991 (56 FR 47185). On May 29, 1992, we published the preliminary results of this administrative review (57 FR 22715). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are tapered roller bearings and parts thereof (TRBs), finished and unfinished, including flange, take-up cartridge, and hanger units incorporating tapered roller bearings, and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. TRBs are currently classified under subheadings 8483.90.30, 8483.90.80, 8482.20.00, 8482.99.30, 8483.20.40, 8483.20.80, and 8483.90.20 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter, Gnutti, and the period from August 1, 1990 through July 31, 1991.

Final Results of the Review

We gave interested parties an opportunity to comment on our preliminary results; we received no comments. Therefore, the antidumping duty margin is 36.85 percent for merchandise produced by Gnutti entered during the period August 1, 1990 through July 31, 1991.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be as outlined above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 36.85 percent. This rate normally represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on best information available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

In addition, this notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.35(d). Failure to comply is a violation of the APO.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–20211 Filed 8–24–92; 8:45 am]

BILLING CODE 3510-DS-M

[C–557–806]

Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Extruded Rubber Thread From Malaysia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Bettger or Vincent Kane, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377–2239 or 377–2815, respectively.

FINAL DETERMINATION: Since the publication of the preliminary determination (56 FR 67276; December 30, 1991), the following events have occurred. On December 30, 1991, petitioner, the North American Rubber Thread Company, requested that the final determination in the countervailing duty investigation be aligned with the final determination in the antidumping duty investigation of extruded rubber thread from Malaysia. We published our notice to align these determinations on January 28, 1992 (57 FR 3163). At the request of respondents, on April 2, 1992, we published our notice postponing the final determination in the antidumping duty investigation (and, therefore, also the countervailing duty investigation) to August 17, 1992 (57 FR 11288).

We verified questionnaire responses in Malaysia between June 8 and June 16, 1992. On June 17, 1992, the International Trade Commission ("ITC") published notice of its decision to discontinue its injury investigation with respect to this countervailing duty investigation because the President terminated the duty free status under the Generalized System of Preferences ("GSP") of extruded rubber thread from Malaysia effective March 31, 1992. Finally, case briefs were filed on July 28 and July 30, 1992, and rebuttal briefs were filed on August 5, 1992.

Scope of Investigation

The product covered by this investigation is extruded rubber thread from Malaysia. Extruded rubber thread is defined as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inch or 140 gauge, to 1.42 mm, which is 0.056 inch or 18 gauge, in diameter. Extruded rubber thread is currently classified under subheading 4007.00.00 of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Programs

For purposes of this final determination, the period for which we are measuring bounties or grants (the period of investigation ("POI")) is calendar year 1990, which corresponds to the fiscal year of four of the five respondent companies. These findings are based upon our analysis of the petition, responses to our questionnaires, verification and written comments from respondents and petitioner.

In determining the benefits received under the various programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate comprised the *ad valorem* benefit received by each firm weighted by each firm's share of exports to the United States. The program rates were then summed to arrive at a country-wide rate for all programs.

Pursuant to 19 CFR 355.20(d), we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rate for Rubfil was significantly different from the country-wide rate. Therefore, this firm received an individual company rate. For the remaining four firms, we recalculated the country-wide rate, based solely on the benefits received by these four firms. We then assigned the recalculated overall country-wide rate to these four firms, and all other manufacturers, producers, and exporters, with the exception of Rubfil.

A. Programs Determined to Confer Bounties or Grants

We determine that bounties or grants are being provided to manufacturers, producers, or exporters in Malaysia of extruded rubber thread under the following programs:

1. Rubber Discount Program

The Rubber Discount Scheme was implemented in January 1985 in order: (1) To increase the domestic consumption of natural rubber, (2) to develop downstream rubber product applications in Malaysia, and (3) to reduce the cost of production in order to allow manufacturers to compete with manufacturers in other countries with access to low rubber latex prices. Under this program, the Government of Malaysia (GOM) provides a rebate of 20 Malaysian sen per kilogram on natural rubber latex purchased to manufacture products for export. Because this program is limited to exporters, we have determined that it is counteravailable.

The natural rubber latex is typically purchased through designated sellers (*i.e.*, the Malaysian Rubber Development Corporation (MARDEC), the Federal Land Development Authority (FELDA), or the Rubber Industry Smallholder Development Authority (RISDA)). If rubber latex is purchased from non-designated sellers (*i.e.*, small, local sellers), companies can still receive the discount; however, they must pay an endorsement fee to MARDEC to receive it. Subsequent to the purchase of the rubber, an "authorization letter" from the Malaysian Department of Treasury directs these suppliers to provide the discount in the form of a cash rebate.

A firm can precisely calculate the rubber discount rebate for each export transaction at the moment the transaction is made. Therefore, we have focused on rebates earned during the POI. (See, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Certain Steel Wire Nails From New Zealand* 52 FR 37196; October 5, 1987). We verified that all companies earned rubber discounts during the POI.

To calculate the benefit from this discount, we first deducted the amount of fees paid in order to qualify for receipt of the discounts, in accordance with section 771(6)(A) of the Act. Similarly, we reduced the discount amount to account for its delayed receipt. Because the GOM has mandated that companies may apply for the discount only every six months, we have assumed an average deferral of three months before the discount may be received. In accordance with section 771(6)(B) of the Act, we have allowed an offset for this deferral, basing the offset on the opportunity cost to the company, measured at the three-month fixed deposit rate.

We then divided the net discounts earned by each company in 1990 by that company's total exports, because the discounts apply to all exports. We then applied the calculation methodology for significantly different companies outlined above. On this basis, we determine the net bounties or grants from this program to be 2.78 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil whose net bounty or grant is 3.16 percent.

2. Export Credit Refinancing (ECR) Program

The ECR program was established in order to promote: (1) Exports of manufactured goods and agricultural food products that have significant value-added and high local content, (2) greater domestic linkages in export industries, and (3) easy access to credit facilities. In order to accomplish this, the Bank Negara Malaysia, the central bank of Malaysia, provides order-based and pre- and post-shipment financing of exports through commercial banks for periods of up to 120 and 180 days, respectively, and certificate of performance (CP)— based pre-shipment financing. Order-based financing is provided for specific sales to specific markets. CP-based financing is a line of credit based on the previous 12 months' export performance, and cannot be tied to specific sales in specific markets.

We verified that all five companies used the ECR program during the POI. We also verified that all of the pre-shipment financing received during the period was CP-based.

Because only exporters are eligible for ECR loans, we determine that the loans are counteravailable to the extent that they are provided at preferential rates. In order to determine whether these loans were provided at preferential rates, we compared the interest rate charged to a benchmark interest rate.

In past cases involving Malaysia, we have used banker's acceptances as the most comparable source of short-term commercial financing. (See, *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod From Malaysia* (53 FR 18303; April 22, 1988) (*Wire Rod*).) Since *Wire Rod*, however, our practice has been to select the predominant source of short-term financing in the country as our benchmark for short-term loans. (See *Final Affirmative Countervailing Duty Determination, New Steel Rails, Except Light Rails, from Canada* (54 FR 31991; August 3, 1989), *Final Affirmative Countervailing Duty Determination, Steel Wire Rope from Thailand* (56 FR 46299; September 11, 1991) and § 355.44(b)(3) of the *Department's Proposed Substantive Countervailing Duty Regulations* (54 FR 23366; May 31, 1989). Because banker's acceptances account for only a small portion of short-term financing in Malaysia, we have determined that it would no longer be appropriate to use these loans as a benchmark.

In Malaysia, term loans offered by commercial banks are the most predominant form of short-term financing, with overdraft loans being the second most predominant form. The average interest rates for these types of financing, however, are not individually

available. Therefore, we have used as our benchmark for ECR loans the average commercial bank lending rate as an estimate of these predominant short-term lending rates because at least 80 percent of the loans made by commercial banks were either term loans or overdrafts.

Based on a comparison of the ECR rates and the benchmark rate, we find that ECR loans are provided at preferential rates and, therefore, are countervailable. To calculate the benefit from ECR loans on which interest was paid in 1990, we used our short-term loan methodology which has been applied consistently in previous determinations. (See *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Dutt-Weld Pipe Fittings from Thailand* (55 FR 1695; January 18, 1990); *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Ceramic Tile from Mexico* (53 FR 15290; April 28, 1988); see also *Alhambra Foundry* v. *United States*, 826 F. Supp. 402 (CIT, 1985).) This methodology is also described in more detail under § 355.44(b)(3) of the Department's Proposed Substantive Countervailing Duty Regulations (54 FR 23366; May 31, 1989).) Because the post-shipment ECR loans were shipment specific, we included in our calculations only those loans used to finance exports of extruded rubber thread to the United States. Because the CP-based, pre-shipment loans were not shipment-specific, we included all CP loans on which interest was paid during the POI.

We compared the amount of interest actually paid during the POI to the amount that would have been paid at the benchmark rate. We then divided each company's interest savings by that company's total exports, in the case of CP-based loans, or by its exports to the United States, in the case of post-shipment loans. We then applied the calculation methodology for significantly different companies outlined above.

On this basis, we determine the net bounties or grants from this program to be 1.86 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, whose net bounty or grant is 1.06 percent.

3. Electricity Discount Program for Exporters

The Electricity Discount Program provided a reduction in the electricity rates charged to qualifying companies. The program was originally implemented in 1985 as a discount for rubber-based manufacturers. That program, however, was terminated and replaced by a new Electricity Discount Program in 1989.

The program in effect during our investigation provided discounts to companies that produced a manufactured product covered by the Industrial Coordination Act of 1975, and which exported at least 50 percent of their production. The amount of the discount was calculated by computing 20 percent of the ratio of export to total sales and multiplying the resulting amount by the total electricity charge. We verified that Heveafil and Rubberflex received discounts under this program during the POI. Because this program is limited to exporters, we determine it to be countervailable.

To calculate the benefit from this program, we divided the total amount of discounts received by each company by that company's total exports, because the benefits are not shipment-specific. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants from this program to be 0.02 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not receive electricity discounts during the POI.

We verified that this program was terminated on March 1, 1990. Consistent with our policy of taking into account measurable program-wide changes that occur before the preliminary determination, we will not include the net bounties or grants determined for this program in our calculation of the estimated countervailing duty cash deposit rate.

4. Abatement of Income Tax Based on the Ratio of Export Sales to Total Sales

The Investment Incentives Act of 1968 provided for an abatement of income tax based on the ratio of export sales to total sales. This law was repealed effective January 1, 1986, and replaced by the Promotion of Investments Act of 1986. Among other incentives, the new law also provides an abatement of income tax based on export performance. Specifically, a portion of income, equal to 50 percent of the ratio of export sales to total sales is exempt from income tax. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986. Because this program is limited to exporters, we determine it to be countervailable.

We verified that only Heveafil used this program during the POI. In addition to the export abatement, we verified that Heveafil used several other tax allowances available to offset taxable income during the POI. As discussed below, we have found certain of these allowances to be countervailable.

During the POI, the combination of countervailable and non-countervailable allowances substantially exceeded taxable income. Because we countervail only that portion of the available allowances actually used to offset taxable income in the POI, we had to determine which of the allowances were used and to what extent. Given the manner in which tax returns are prepared, it is not possible to document which of the allowances were actually used to offset taxable income. However, we have determined that it is reasonable to assume that a company would use the export abatement before any of the other allowances available in this case, because, unlike the other allowances, the export abatement could not be carried forward for use in future tax years.

To calculate the benefit, we determined the total income and development tax savings for Heveafil during the POI and divided them by the company's total exports, because these benefits applied to all exports. We verified that the applicable development tax rate for our POI was four percent, not three percent as reported in the response. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants for this program to be 0.75 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not use the export tax abatement during the POI.

For Heveafil, the export abatement did not fully offset taxable income and, hence, other allowances were used. Therefore, it is necessary to decide which of the remaining countervailable and non-countervailable allowances were used for tax abatement purposes. In making this decision, we took into account that one purpose of the countervailing duty law is to encourage foreign governments not to provide distortive subsidies to their exporting industries, and that the law also requires that countervailing duties offset the full amount of the net subsidy. To ensure that these objectives are fulfilled in this investigation, and in the absence of evidence which would permit us to identify which allowances were in fact used, we have determined that it is appropriate to assume the remaining countervailable allowances were used before the non-countervailable allowances in computing net taxable income.

5. Abatement of Five Percent of the Value of Indigenous Malaysian Materials Used in Exports

In addition to the Export Abatement discussed above, the Promotion of Investments Act of 1986 provided for an abatement of income tax in the amount of five percent of the ratio of export sales to total sales times the value of indigenous Malaysian materials used in the manufacture of exported products. This program is not available to companies still participating in programs under the repealed Investment Incentives Act of 1968, including pioneer status, or to companies granted pioneer status or an investment tax allowance under the Promotion of Investments Act of 1986.

We verified that natural rubber latex is included on the list of indigenous Malaysian materials qualifying for this abatement. Furthermore, we verified that Heveafil used this program during the POI.

Because this program is limited to exporters, we determine it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the POI for Heveafil and divided them by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants from this program to be 0.0002 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not use the industrial building allowance during the POI.

6. Industrial Building Allowance

Sections 63 through 66 of the Income Tax Act of 1967, as amended, allow an income tax deduction for a percentage of the value of constructed or purchased buildings used in manufacturing. In 1984, this allowance, which had been limited to manufacturing facilities, we extended to include buildings used as warehouses to store finished goods ready for export or imported inputs to be incorporated into exported goods. This program includes a ten percent initial and a two percent annual tax allowance (*i.e.*, 12 percent in the first year and 2 percent thereafter). The program effectively reduces taxable income and can be carried forward to future tax years. We verified that rubber-based exporters are eligible for this program. We also verified that Heveafil used this program during the POI.

Because this program, as it applies to warehouses or other buildings used to store finished goods ready for export or imported inputs to be incorporated into exported goods, is limited to exporters, we determine it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the POI for Heveafil and divided them by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants from this program to be 0.0002 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not use the industrial building allowance during the POI.

7. Double Deduction for Export Promotion Expenses

Section 41 of the Promotion of Investments Act of 1986 allows companies to deduct expenses related to the promotion of exports twice, once in calculating net income on the financial statement and again in calculating taxable income. We verified that Heveafil used this program during the POI.

Because this program is limited to exporters, we determine it to be countervailable. To calculate the benefit, we determined the total income and development tax savings from this program during the POI for Heveafil and divided them by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology for significantly different companies as outlined above.

On this basis, we determine the net bounties or grants from this program to be 0.03 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits. This firm did not take a double deduction for export promotion expenses during the POI.

8. Pioneer Status

Pioneer status is a tax incentive offered to promote investment in the manufacturing, tourist, and agricultural sectors. Pioneer status was first introduced under the Pioneer Industries (Relief from Income Tax) Ordinance, 1958. This ordinance was replaced by the Investment Incentives Act (IIA) in 1968, which was subsequently replaced by the Promotion of Investment Act (PIA) of 1986. Under the IIA and the PIA, the Minister of International Trade and Industry may determine products or activities to be pioneer products or activities.

Companies petition for pioneer status for products or activities that have already been approved and listed as pioneer products. Once a company receives pioneer status, its profits from the designated product or activity are exempt from the corporate income tax, the development tax, and the dividend tax for a period of five years, with the possibility of an extension for and additional five years. The five-year extension was abolished effective October 1, 1991. Furthermore, the computation of capital allowances, which are normally deducted against the adjusted taxable income is postponed to the post-tax holiday period.

In evaluating a project for pioneer status, the Malaysian Industrial Development Authority (MIDA) will consider whether:

(1) The product is being produced on a commercial scale suitable to the economic requirement or development of the country,

(2) There are prospects for further development, and

(3) The product or activity meets the national and strategic requirements of Malaysia.

Specifically, MIDA officials consider twelve essential criteria to evaluate whether a particular company should receive pioneer status. We verified that two of these twelve criteria specifically address the export potential of the proposed product or activity. Nevertheless, companies that produce only for the domestic market may also receive pioneer status. Furthermore, some companies may be rejected even though their export potential is high. Under certain conditions, however, companies must agree to an export commitment (*i.e.*, they must agree to export a certain percentage of their production) to receive pioneer status. Furthermore, an export requirement may sometimes be applied to certain

industries after it is determined that the domestic market is saturated and will no longer support additional producers. While we verified that Rubberflex satisfied a few of the twelve criteria, it also had to abide by an export commitment.

We verified that Rubberflex was the only company that used pioneer status during the POI. Rubfil, Filmax, and Filati qualified for the program, but have not yet used it.

In *Carbon Steel Wire Rod from Malaysia: Final Results of Administrative Review* (56 FR 14927; April 12, 1991) (*Wire Rod*), the Department found that pioneer benefits had been approved for over 2,000 companies and almost as many products cutting across numerous industrial sectors during the period 1980–1989. We concluded, therefore, based on this reason and others that no industry or group of industries used the program disproportionately and that the pioneer program was not countervailable. The *Wire Rod* determination, however, did not specifically address the case where companies were required to export a certain percentage of production to qualify for pioneer status.

After considering the implications of this criterion, the Department has decided to view the pioneer program as a two-faceted program. The first facet comprises those instances where one or more of the twelve criteria applies, including favorable prospects for export, but where the two export criteria do not carry preponderant weight. This facet of the program is what the Department found noncountervailable in *Wire Rod*.

In cases, however, where pioneer status is conferred on a company because it has been determined that the domestic market is saturated and will no longer support additional producers and because that company agrees to export a certain percentage of its production, the program conveys an export subsidy, regardless of the other "neutral" criteria the company is required to meet. This is because the company is clearly being approved due to the fact it will export and because receipt of benefits becomes contingent on export performance. Therefore, we have determined that this facet of the pioneer program bestows and export subsidy.

To calculate the benefit, we determined the total income and development tax savings from this program during the POI for Rubberflex and divided them by the company's total exports, because these benefits applied to all exports. We then applied the calculation methodology for significantly different companies as outlined above. On this basis, we determine the net bounties or grants from this program to be 4.12 percent *ad valorem* for all manufacturers, producers, and exporters in Malaysia of extruded rubber thread, except for Rubfil, which has significantly different aggregate benefits and received no benefits under this program during the POI.

B. Program Determined Not To Be Countervailable

1. Research and Development Provided by the Malaysian Rubber Research and Development Board (MRRDB)

The MRRDB was established under the Laws of Malaysia Act 401 to oversee research, development and promotion in support of the Malaysian natural rubber industry. Its objective is to modernize the natural rubber industry through advanced agronomic techniques as well as to ensure that consumers worldwide are aware of the advantages of natural rubber. To support itself, the MRRDB collects a 3.85 sen/kg "cess" on natural rubber exported out of Malaysia.

The MRRDB operating units include the Rubber Research Institute of Malaysia (RRIM), the Malaysian Rubber Products Research Association (MRPRA), and the Malaysian Rubber Bureau (MRB). The RRIM typically conducts agronomic research, the MRPRA conducts consumer-oriented research, and the MRB provides technical advisory services and promotional activities worldwide. Research and development work that is of general interest to producers of rubber latex and rubber-based products (*e.g.*, new rubber production or testing techniques) is regularly published and made available to all companies through these units. Companies can purchase reports containing such information through a booklet order form made available by the various units of MRRDB. Furthermore, the RRIM and the MRPRA each maintain for-profit consultancy units—RRIM has the Technical Advisory and Consultancy Unit (TACU) and the MRPRA has Rubber Consultants.

We verified that Rubberflex contracted with Rubber Consultants (United Kingdom branch) for testing services. At that time, Rubber Consultants maintained one of the few laboratories in the world capable of performing the test required by Rubberflex and there was no equipment available in Malaysia to perform the test. Additional tests were performed by RRIM in Malaysia later as part of the same original contract.

We verified that this service was billed on a cost-plus basis, where the "plus" refers to the profit made on an individual transaction. At that time, the only competing organization to bid on this project was the Rubber and Plastics Research Association (RAPRA), a private organization in the United Kingdom. Malaysian officials explained that RAPRA quoted the same price for the test. Furthermore, we verified that it is the stated practice of Rubber Consultants to conduct similar tests for other companies upon request at the same price.

Additionally, officials explained that Filati contracted with TACU to perform some tests during the POI. We found that TACU was started in 1990 as an arm of the RRIM to generate income and commercialize research. We verified that TACU used the maximum hourly salary of the most senior technician in order to set the price of these tests. There were no competitors in Malaysia performing the same tests; however, any customer would receive the same price.

Because there is no restriction on who may contract for testing and all users pay the same fees, we determine that this program is not countervailable. This decision is consistent with our recent determination in the *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada* (57 FR 30946; July 13, 1992).

C. Programs Determined to be not Used

1. Abatement of Five Percent of Taxable Income Due to Location in a Promoted Industrial Area.
2. Allowance of a Percentage of Net Taxable Income Based on the F.O.B. Value of Export Sales.
3. Double Deduction of Export Credit Insurance Payments.
4. Investment Tax Allowance.
5. Abatement of Taxable Income of Five Percent of Adjusted Income of Companies Due to Capital Participation and Employment Policy Adherence.
6. Preferential Financing for Bumiputras.

D. Programs Determined Not To Exist

1. Preferential Land Pricing.
2. Five- To Ten-Year Tax Holidays.
3. Electricity Discount for Rubber Based Manufacturers.

Comments

Comment 1: Respondents argue that the Department initiated this investigation under the authority of section 303(a)(2) of the Tariff Act of 1930, and, therefore, a final order can only go into effect pursuant to a finding of injury. Respondents argue that because the ITC has discontinued its injury investigation, the Department has no authority to issue a CVD order. Respondents further maintain that there is no authority under the statute to simply transfer, without notice, the jurisdiction for any investigation from section 303(a)(2) to section 303(a)(1). Respondents argue, however, that if the Department decides to make a final determination under section 303(a)(1), it must liquidate all duty-free entries prior to March 31, 1992, without regard to countervailing duties.

DOC Position: We disagree with respondents, in part. The Department initiated this investigation under section 303 of the Act, which gives the Department the authority to impose countervailing duties on merchandise from countries that are not signatories to the Agreement on the Interpretation and Application of articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade ("the GATT Subsidies Code"). That authority is contingent on an ITC injury determination only if the merchandise enters duty-free and the United States has an international obligation to provide an injury test with regard to such merchandise. Because Malaysia is no longer eligible for duty-free entry of the subject merchandise into the United States under the GSP, an injury determination is no longer required in order for the Department to issue a countervailing duty order in this case.

With respect to those entries occurring before March 31, 1992, the effective date of revocation of GSP status, the Department agrees with respondents that pursuant to section 303 of the Act, countervailing duties may not be levied on such duty-free entries in the absence of an injury determination. However, no duties will be levied under this order until, at the earliest, the first annual anniversary date of the issuance of the order. Therefore, we have determined that it is appropriate to continue to order the suspension of liquidation of such duty-free entries until we are able to determine how they should be properly treated.

Comment 2: Respondents argue that the Department has no authority to continue its critical circumstances investigation because: (1) The ITC has discontinued its injury investigation and (2) Malaysia has not acceded to the Subsidies Code. With regard to the first argument, respondents state that countervailing duties may be imposed on merchandise subject to suspension of liquidation under section 703(e)(2) for critical circumstances only if both the Department and the ITC make final affirmative critical circumstances findings.

Concerning their second argument, respondents suggest that the Department may issue an affirmative critical circumstances determination only if the alleged subsidies are found to be "inconsistent with the Agreement." In order for subsidies to be inconsistent with the Agreement, they must be granted contrary to the granting country's commitments under the Subsidies Code. Respondents argue that since Malaysia is not a signatory to the Subsidies Code and, therefore, has no commitments under the Code, the subsidies under investigation cannot be held to be inconsistent with that Code.

Furthermore, respondents argue that the Subsidies Code does not *per se* prohibit the use of subsidies by a developing country, like Malaysia. Consequently, even in the abstract, respondents contend that it is impermissible to conclude that Malaysia could maintain any type of subsidy which is inconsistent with the Subsidies Code.

DOC Position: We agree that, under section 303(b)(3) of the Act, in the case of merchandise that is not duty free, a critical circumstances finding is unnecessary. However, until we have decided how we will address the pre-March 31st entries, it is not as clear as to whether we should continue the critical circumstances investigation. Nonetheless, we disagree with respondents' argument that Malaysia's export subsidies cannot be considered inconsistent with the Subsidies Code because Malaysia is not a signatory to the Code. In essence, respondents interpret "inconsistent" to mean "a violation of" the Code. We interpret the inconsistency requirement to mean that a critical circumstances investigation is limited to those types of subsidies that are inconsistent with the Subsidies Code. It does not limit critical circumstances investigations to countries that are signatories to the Subsidies Code. Our interpretation is consistent with section 303, which establishes the Department's authority to impose countervailing duties on merchandise from countries that are not signatories to the Subsidies Code. Subsection (b) of section 303 expressly prohibits a critical circumstances determination only if the merchandise is not duty free. Respondents' proposition that there can never be a critical circumstances determination for a non-signatory effectively reads the distinction between duty-free and non-duty free merchandise out of the statute.

Although the statute would prevail in the event of an inconsistency, we find no inconsistency between the GATT and the retroactive assessment of duties in critical circumstances. We disagree with respondents' argument that article 5, paragraph 9 of the Subsidies Code, which permits the retroactive assessment of countervailing duties in critical circumstances, is limited to signatories to the Code. The fact that the Code recognizes the retroactive assessment of duties as a permissible countermeasure in no way restricts the imposition of those measures to signatories.

Finally, we are not persuaded by respondents' argument that Malaysia's export subsidies are not inconsistent with the Code provisions relating to developing countries. Article 14 of the Subsidies Code states that "the commitment of article 9 (to not grant export subsidies) shall not apply to developing country signatories, *subject to the provisions of paragraphs 5 through 8 below.*" Subsidies Code, article 14(2) (emphasis added). Paragraphs 5 and 6 relate to commitments be developing countries to reduce or eliminate export subsidies. Thus, contrary to respondents' assertion, there is no blanket exemption from the prohibition on export subsidies for developing countries.

We, therefore, confirm our preliminary determination that critical circumstances exist with respect to Filmax, Rubberflex, and Filati. Under section 705(b)(4) of the Act, an injury determination by the ITC is a prerequisite to the retroactive application of duties to entries made within 90 days prior to the preliminary determination. As discussed above, no duties will be assessed under this order until, at the earliest, the first annual anniversary date of the issuance of the order. Therefore, we have determined that it is appropriate to continue suspension of liquidation of entries made within 90 days prior to the preliminary determination until the proper disposition of these entries can be determined.

Comment 3: Respondents argue that since petitioner does not have standing with regard to products it does not produce, the investigation should be terminated with respect to these products. Respondents argue that even though they made a timely request to the Department to exclude certain products not produced by petitioner, the Department has not taken action to determine whether the scope should be narrowed (*i.e.*, sending questionnaires to petitioner). Consequently, the

Department must rely on the information provided by respondents.

Specifically, respondents suggest that the U.S. producers do not produce, and may not have the technical capability to produce, several categories of rubber thread currently under investigation including talc finish, fine gauge and heat resistant, and most notably, food grade thread. With regard to food grade rubber thread, respondents provide information to support their argument that food grade rubber thread should be considered a separate like product under the five criteria used by the ITC (*i.e.*, it has different physical characteristics, different end uses, is not interchangeable, is produced using a unique production process, elicits different customer perceptions, and constitutes a different market segment).

Petitioner points out that before the ITC, respondents argued at length that all rubber thread should be treated as one like product based on the five criteria.

DOC Position: We disagree with respondents. After reviewing the ITC's preliminary determination and respondents' submissions, the Department agrees with the ITC's like product determination.

Therefore, we determine that food grade rubber thread, and the other types of rubber thread mentioned by respondents do not constitute separate like products for purposes of this investigation, and that the petitioner properly has standing to file the petition on behalf of the industry producing the domestic like product.

Comment 4: Respondents argue that the Department should terminate its investigation with respect to the electricity discount program because petitioner failed under § 355.12(b)(7) of the Department's regulations to provide documentary evidence regarding such a program, a copy of any law or regulation, the identity of the authority under which the subsidy is granted, and an estimate of the value of any benefits to the exporters.

DOC Position: We disagree with respondents. The Department's regulations state that petitioner should provide, to the extent that it is reasonably available, the type of information outlined by respondents. For the reasons outlined in a November 5, 1991 Memorandum to Susan Kuhbach, the Department determined that petitioner had satisfied the regulatory requirements.

Comment 5: Respondents argue that petitioner did not provide new information to the Department regarding pioneer status; therefore, the Department should not have initiated an investigation of the Pioneer Program. Specifically, respondents note that in the original initiation memorandum, the Department stated that petitioner has provided no new evidence of changed circumstances with regard to this program, which had been found not countervailable in the *Final Results of Administrative Review: Carbon Steel Wire Rod From Malaysia* (56 FR 23303; June 22, 1991). Respondents also suggest that the information submitted by petitioner in its October 25, 1991 letter was already included in the original petition allegation, which was deemed inadequate by the Department.

DOC Position: We disagree with respondents. In its petition, petitioner simply quoted from a Malaysian government brochure which states that pioneer status is available to companies producing a promoted product. Petitioner said it had reason to believe that extruded rubber thread is a promoted product. In support of this allegation, petitioner cited the *Final Affirmative Countervailing Duty Determination: Steel Wire Rod From Malaysia* (53 FR 13304; April 22, 1988), where we found the program to be countervailable. However, in our initiation notice, we noted that in the *Final Results of Countervailing Duty Administrative Review: Carbon Steel Wire Rod From Malaysia* (56 FR 41649, August 22, 1991), the Department found the pioneer status program to be not countervailable because it was not limited to a specific industry or group of industries. Furthermore, we noted that petitioner had not provided any new evidence of changed circumstances with regard to the program.

In its October 25, 1991 letter to the Department, petitioner re-focused its allegation by highlighting information indicating that an 80 percent export "requirement" potentially had to be met before pioneer status was granted to producers/exporters in Malaysia. Petitioner stated that the Department had not fully investigated this requirement in the past. We agreed that this aspect of the program had not been fully considered before, and on November 5, 1991, we decided to include the pioneer program in our investigation.

Comment 6: Respondents contend that the Department has no authority to countervail the pioneer status and electricity discount programs because allegations concerning these programs were untimely filed. Respondents argue that the allegations were made 12 days late under the regulations which require new subsidy allegations to be filed no less than 40 days from the date of the "scheduled" preliminary determination. Respondents maintain that the allegations made on October 25, 1991, were only 28 days before the originally "scheduled" date for the Department's preliminary determination, November 22, 1991. Furthermore, respondents state that no valid 10-day extension was given to the petitioner in order to submit additional allegations. Finally, even if such an extension were given, petitioner filed its additional subsidy allegations two days past the maximum 10-day extension period.

DOC Position: We disagree with respondents. In an October 15, 1991 memorandum to the file, the Department indicated that a 10-day extension had been given to petitioner in order to file additional allegations. Further, on November 4, 1991, the Department extended the preliminary determination until December 13, 1991 (based on petitioner's October 25, 1991 request). Therefore, the additional allegations submitted to the Department on October 25th were filed more than 40 days prior to the newly scheduled preliminary determination.

Comment 7: Respondents argue that the Department erred by initiating investigations with respect to programs alleged by an unnamed affiant. Respondents maintain that the Department should not have relied on the unsupported allegations of such an individual. Additionally, the Department erred by not publicly disclosing the name of the affiant, thereby undermining respondents' ability to explain or clarify the relevant allegations.

DOC Position: In a December 16, 1991 letter to counsel to respondents, the Department stated that according to § 355.4(a)(8) of the Department's regulations, the names of particular persons from whom proprietary information was obtained would be considered as proprietary information in this countervailing duty proceeding. Furthermore, it has been the Department's practice to accept statements/affidavits from individuals with first-hand knowledge of the facts. Therefore, we have not required that petitioner make public the name and position of the affiant.

Comment 8: Respondents argue that it would be inconsistent with past practice for the Department not to use in its final determination updated information filed on May 22, 1992 (two weeks prior to verification) which outlined company use of programs for calendar year 1991. Furthermore, they note that the Department specifically refused to verify the 1991 information and, therefore, the Department prejudged the

issue of whether such information should be used.

Petitioner argues that the Department should not use 1991 calendar year data because by submitting the new data only two weeks before verification, respondents did not provide sufficient time for analysis by petitioner and others. Furthermore, petitioner states that it agreed to delay the final countervailing duty determination so that the Department could verify both the countervailing and antidumping duty responses at the same time. That delay should not be used to allow respondents to submit entirely new responses.

DOC Position: We disagree with respondents. A 1990 period of investigation was established in the questionnaire sent to the GOM on October 1, 1991. The preliminary determination was based on information provided by respondents in response to this questionnaire. It is not the Department's practice to change the period of investigation after a preliminary determination has been made. To do so would seriously limit the value of the preliminary determination because parties would have an entirely new set of data and issues to comment on.

In effect, the 1991 information submitted by respondent amounts to a new, unsolicited questionnaire response. According to § 355.31(b)(2) of the Department's regulations "in no event" will the Secretary consider unsolicited questionnaire responses submitted after the date of publication of the Secretary's preliminary determination. As such, we have returned the response, with a letter detailing the reasons for the return, to respondents.

Comment 9: Respondents argue that the abolition of the rubber discount scheme satisfies the criteria of the program-wide change doctrine. Respondents maintain that the GOM announced on December 14, 1990, that the program would end January 1, 1991. Respondents note that this announcement took place over one year prior to our preliminary determination. They maintain that the fact that the rubber discount program was extended until December 31, 1991, is not relevant. As such, they argue that the Department should reduce the deposit rate for the rubber discount program to zero. Additionally, they state that in order to have this change accounted for, they need not avail themselves of a suspension agreement in this case, as petitioner suggests below. Finally, if the Department does not take into account the program's termination, respondents argue that the Department should at least use the 1991 information as the basis for any deposit rate.

Petitioner argues that any speculative current or future changes in the rubber discount scheme should be ignored—only program-wide changes which occur before the preliminary determination should be considered. Furthermore, termination of a subsidy must be implemented before the preliminary determination in an investigation in order to be considered in the final determination. Additionally, petitioner suggests that the Department should not allow respondents to cite the delay in the date for the beginning of the verification as the basis for permitting consideration of events following the preliminary determination. Finally, petitioner states that the U.S. Court of International Trade held in its review of the Department's 1982 final determination regarding South African steel that termination of subsidy programs during an investigation can only be considered in the context of a suspension agreement.

DOC Position: We verified that the rubber discount program was in fact extended past the originally scheduled termination date until December 31, 1991. Therefore, the actual program-wide change took effect after the publication of our preliminary affirmative countervailing duty determination. The Department's practice is to adjust for program-wide changes that take place after the POI but before the preliminary determination (*e.g.*, see *Textile Mill Products and Apparel From Peru* (50 FR 9371; March 12, 1985). However, we did verify that the program was terminated effective January 1, 1992. Such termination can be accounted for in an administrative review, if one is requested.

Because we have determined not to make an adjustment for this program-wide change, petitioner's argument that a program-wide change can only be recognized in the context of a suspension agreement is moot. We note, however, that the case relied upon by petitioner was vacated. See *United States Steel Corp.* versus *United States*, 7 CIT 117 (1984).

Comment 10: Respondents contend that the Department improperly calculated the amount of the benefit received under the ECR program in its preliminary determination. Respondents argue that the Department must use the "cost of funds" to the GOM as the benchmark because item "k" of the Illustrative List of Export Subsidies annexed to the Subsidies Code so requires, and the appropriate "cost of funds" is the 90-day rate for government bonds. Respondents assert that if the Department does not use the 90-day bond rate, it should use the bankers acceptance rate because the bankers acceptances are identical to ECR financing in terms of risk, maturity and purpose.

Petitioner argues that the Department should not use the government's cost of borrowing, but rather the weighted-average, short-term commercial interest rate in Malaysia. Petitioner suggests that such a benchmark is consistent with the Department's Subsidies Appendix to its 1982 Countervailing Duty Determination on Cold Rolled Steel from Argentina. Additionally, that approach avoids burdensome speculations as to the particular interest rate a company would pay on short-term loans and recognizes that a typical company does not borrow from just one source.

DOC Position: The Illustrative List identifies common forms of subsidies but does not necessarily instruct the Department how to value them. Nor does the Illustrative List limit the United States in applying its own national CVD law to determine the countervailability of benefits bestowed on merchandise exported from Malaysia. The Department has a long-standing practice of valuing benefits to the recipient, rather than the cost to a government. This decision is consistent with *Ceramic Tile From Mexico: Final Results of Countervailing Duty Administrative Review* (57 FR 24247; June 8, 1992).

The Department's proposed substantive regulations require the use of the rate for the most predominant form of short-term financing in the country under investigation as the benchmark for short-term loans. Furthermore, the regulations stipulate that the source of short-term financing selected as a benchmark should normally constitute 50 percent or more of the short-term financing in the country.

In Malaysia, short-term commercial term and overdraft loans are the two most predominant forms of short-term financing. Because the average interest rates for these two types of financing are not available individually, in the preliminary determination we used as our benchmark the average commercial lending rate, since approximately 80 percent of this financing is accounted for by these two predominant forms of short-term financing. We note that even if the remaining portion of the average commercial lending rate includes some long-term financing, we found at verification that the only difference between short- and long-term interest

rates was a risk premium which is typically quite small.

In past Malaysian cases, we have selected bankers acceptances as the most comparable and commonly used alternative source of short-term financing. However, in this investigation, we verified that bankers acceptances are essentially different from other forms of short-term financing because they are based on short-term receivables or payables arising from trade in goods. However, bankers acceptances constitute an extremely small percentage of short-term financing in Malaysia. Therefore, we have determined that it is appropriate to continue to use the average commercial bank lending rate. An average including these two rates is in accord with § 355.44(b)(3)(i) of our proposed substantive regulations.

Comment 11: Petitioner asserts that given the significant number of errors in the reporting of pre-shipment export financing, the questionnaires should be considered unreliable with regard to such loans. Respondents suggest that this claim is unjustified in that respondents provided information with respect to hundreds of complex financial transactions; furthermore, discrepancies were rectified.

DOC Position: We agree with respondents. The number of errors relative to the number of transactions verified is minimal, and all discrepancies were later rectified at the government or company verifications.

Comment 12: Respondents argue that the Department was in error by assuming that Heveafil would use the export abatement before any of the other allowances available, merely because the export abatement could not be carried forward. Instead, respondents suggest that the Department must take into account the non-countervailable deductions. If those non-countervailable deductions equal the tax liability, then there is no benefit in the year in question.

DOC Position: We disagree with respondents. Essentially, they have asked us to assume that the non-countervailable allowances are used first, despite the fact that the non-countervailable allowances can be carried forward while the export allowance cannot be carried forward. Given this distinction, it is more reasonable to assume that the export abatement is used first. Therefore, we have treated the export abatement as fully countervailable in the tax year under investigation.

Comment 13: Respondents argue that the Department assumed that the entire deduction for all other export tax programs resulted in cash savings in the year under investigation. They argue that these programs are unlike the export abatement in that they can be carried forward.

DOC Position: The companies under investigation earned several types of allowances (in addition to the export allowance discussed above) which may be used to offset taxable income. Certain of these allowances are not countervailable, such as the depreciation allowance, whereas others, such as the industrial building allowance, are.

Each year, the company calculates the total value of allowances to which it is entitled. It then draws from this total the amount needed to eliminate any tax liability in that year. If anything remains in the pool, it can be carried forward to offset taxable income in future years.

The specific allowances drawn from the pool in any given year are not identified on the tax form. Therefore, it was necessary to develop a methodology for estimating the portion of the allowance used in a given year that is attributable to countervailable programs, and the portion that is attributable to non-countervailing programs in order to calculate the net bounties or grants.

In our preliminary determination, we assumed that the countervailable programs would be used first. Our rationale, as stated in the notice, was to take into account the fact that a central purpose of the countervailing duty law is to encourage foreign governments not to provide distortive subsidies to their exporting industries. In this investigation, this purpose can best be served by selecting the remaining countervailable allowances before selecting any of the non-countervailable allowances available to the companies.

In addition, if we treat only a portion of the countervailable allowances as having been used, some of the amount carried forward for future use would also be countervailable when used. This means that we would have to track carry forwards and trace from year to year what portion of the allowances carried forward is countervailable. To avoid an unadministrable system of tracking and tracing, we have treated the countervailable portions as having been used in the year under investigation.

Comment 14: Respondents argue that the Pioneer Program is not countervailable since it is generally available and is not limited to companies that export. They contend that at verification, the Department was able to confirm both the *de jure* and *de facto* availability of this program throughout the entire Malaysian economy. Additionally, respondents assert that the Department verified that the internal guidelines used to grant pioneer status are characterized by neutral criteria unrelated to exports, location or any other factors that could require a determination that the program is countervailable.

Respondents further assert that the Department's preliminary determination that the pioneer program is a two-faceted program (*i.e.*, some applicants receive benefits because of export requirements whereas others meet broader criteria) is wrong. Even assuming, however, that it is a two-faceted program, respondents argue that there is no benefit for the alleged export requirement. The Department has verified that there is no separate or additional tax benefit that is provided to Rubberflex as an exporter. In other cases where a program includes multiple facets, the Department calculates the benefit on only those facets that are not generally available.

Respondents point to the fact that the pioneer program was found not countervailable in past cases and maintain that the Department fully understood that the commitment to export is only one of multiple factors considered in granting pioneer status. Respondents note that, according to the Department's proposed regulations, a program is not countervailable if an export criterion is merely one of many eligibility criteria. Finally, respondents state that the Department verified that of the twelve criteria used to assess pioneer applications, a project need not necessarily meet all of the criteria. Further, with regard to the export commitment made by Rubberflex, respondents suggest that it was made as part of the company's manufacturing license approval, and was consequently incorporated into the later pioneer application. In fact, in Rubberflex's case, the absence of any appreciable domestic market in itself required Rubberflex to concentrate on export markets. Consequently, the voluntary export undertaking was immaterial and had no economic effect.

Petitioner argues that Rubberflex must export a large percentage of its output to qualify for pioneer status. Therefore, pioneer status constitutes a countervailable export subsidy. Furthermore, petitioner argues that the Department should not attempt to determine the intent of the decision makers with regard to respondents' claim that a particular export condition that was imposed to obtain pioneer status was not really a condition. Respondents assert that the Department does, in fact, look at the issue of intent when considering specificity. According to respondents, the sole purpose of examining the government's internal judgments is to determine the government's intent and purpose in approving or rejecting applications.

DOC Position: In our examination of the Pioneer Program as a domestic subsidy in *Carbon Steel Wire Rod From Malaysia: Final Results of Administrative Review* (56 FR 14927; April 12, 1991), we concluded that no industry or group of industries used the program disproportionately and found the program not to be countervailable. This determination, however, did not specifically address situations where companies had a specific export condition attached to their pioneer status approval. In the *Wire Rod* investigation, petitioner raised the issue of an export requirement. Thus, the requirement *per se* is not new, but it was not at issue with the companies investigated at the time.

We continue to view the "domestic" side of the Pioneer Program to be not countervailable. As respondents have pointed out, where export capabilities are one among many criteria considered in granting assistance, we do not automatically view the program as countervailable.

However, in this instance, recipients of the tax benefits conferred by Pioneer status can be divided into two categories: industries and activities that will find market opportunities in Malaysia and elsewhere, and those that face a saturated domestic market. At verification, we established that an export requirement may sometimes be applied to certain industries after it is determined that the domestic market will no longer support additional producers. The extruded rubber thread industry is among these industries.

The combination of the necessary export orientation of the industry due to lack of domestic market opportunities and the explicit export condition attached to Pioneer status approval, lead us to conclude that the "export" side of the Pioneer Program confers an export subsidy. Whether or not the commitment was voluntary, as respondents suggest, the company has obligated itself to export a very large portion of its production and that commitment appears to have been an important condition for approval of benefits.

This finding is consistent with the *Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof From Thailand*, (54 FR 19130; May 3, 1989). In that case, we examined tax exemptions under the Investment Promotion Act and found that the Board of Investment (BOI) in granting these exemptions considered various criteria, including demand in the Thai and overseas markets. This same program had also been found to be not countervailable when it operated as a domestic program. However, in certain product sectors, including the sector producing bearings, the BOI determined that exemptions would not be granted unless applicants exported all or almost all of production. In view of this requirement, we determined that the exemptions granted for bearings were countervailable.

Finally, with respect to respondents' argument that even if the Pioneer Program can be viewed as two-faceted, "exporters" receive no greater benefits than other recipients, we disagree that the generally available level of benefits limits the amount of the subsidy to exporters. The appropriate reference point is what the recipient would have received had the export benefit not been awarded. In this instance, because of the saturation of the domestic market with respect to extruded rubber thread, the companies would not have received any benefits.

Comment 15: Respondents argue that the Department's calculation of Rubberflex's Pioneer benefits fails to deduct normal capital allowances that would have been allowed if the program had not been used. Furthermore, respondents suggest that the Department incorrectly allocated Pioneer benefits over only export sales even though pioneer tax benefits are also applicable to profits on domestic sales.

DOC Position: We have not overstated the benefit from the Pioneer Program. When a company receives Pioneer status, it is allowed to stockpile normal capital allowances for use in future years. Therefore, these allowances should not be used to offset current benefits. Moreover, export sales should form the denominator because receipt of benefits is contingent upon exportation. See, § 355.47(a)(2) of the Department's proposed regulations.

Comment 16: Respondents argue that the Department's calculation of the all others rate must be amended to conform to the method established in the recent court case, *Ceramica Regiomontana, S.A. et al* v. *United States*, which held that the countervailing duty statute requires the Department to include all investigated firms' rates in calculating the all others rate.

DOC Position: Pursuant to 19 CFR 355.20(d), we compared the total *ad valorem* benefit received by each firm to the country-wide rate for all programs. The rate for one of the companies, Rubfil, was significantly different from the country-wide rate. Therefore, this firm received an individual company rate. For the remaining four firms, we recalculated the country-wide rate, based solely on the benefits received by these four firms. We then assigned the recalculated overall country-wide rate to these four firms, and all other manufacturers, producers, and exporters, with the exception of Rubfil.

The Department is not following *Ceramica Regiomontana* with respect to this issue because we disagree with that decision and acquiescence would deprive the Department of its right to appeal this issue in this proceeding.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determination. We followed standard verification procedures, including meeting with government and company officials, inspecting relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (room B-099) of the Main Commerce Building.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of extruded rubber thread from Malaysia. Section 703(e)(1) of the Act provides that critical circumstances exist if there is a reasonable basis to believe or suspect that (A) the alleged subsidy is inconsistent with the Agreement, and (B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

In our final determination we found that the GOM confers export subsidies on the manufacture, production, or exportation of extruded rubber thread. These subsidies are inconsistent with the Subsidies Code.

In determining whether there is a reasonable basis to believe or suspect that there have been massive imports over a relatively short period, we considered: (1) The volume and value of the imports, and (2) seasonal trends. In making this determination, our performance is to examine company-specific shipment data on exports to the United States of the subject merchandise.

Based on our analysis of the monthly shipment data for each respondent

company, we have found that imports from three of the five companies have been massive over a relatively short period of time. Therefore, we find that the requirements of section 703(e)(1) are met for the following companies exporting extruded rubber thread to the United States:

Company	Critical circumstances
Hevesfil	No.
Filmax	Yes.
Rubberflex	Yes.
Filati	Yes.
Rubfil	No.

Suspension of Liquidation

In accordance with our affirmative preliminary determination, we instructed the U.S. Customs Service to suspend liquidation of all entries of extruded rubber thread from Malaysia which were entered, or withdrawn from warehouse, for consumption, on or after December 30, 1991, the date of publication of our preliminary determination in the **Federal Register**. Because of our preliminary determination that critical circumstances exist, we also directed Customs to suspend liquidation on any unliquidated entries from Filmax, Rubberflex and Filati within the 90-day period prior to our preliminary countervailing duty determination.

We instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after April 28, 1992, pursuant to U.S. obligations under the Subsidies Code, but to continue the suspension of liquidation of all entries, or withdrawals from warehouse, for consumption of the subject merchandise entered prior to April 27, 1992.

Due to the withdrawal of GSP status for this product, no final determination of injury is required for entries after March 31, 1992. Therefore, we are directing the Customs Service to reinstate the suspension of liquidation and to require the deposit of estimated countervailing duties in the following amounts:

Manufacturer/exporter	Percent [1]
Rubfil Sdn. Bhd	4.21
All other manufacturers or exporters	9.63

[1] Net Ad Valorem Bounty or Grant (Percent).

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO. This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671(d)) and 19 CFR 355.20.

Dated: August 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-20228 Filed 8-24-92; 8:45 am]

BILLING CODE 3510 DS-M

[C-307-806]

Preliminary Affirmative Countervailing Duty Determination: Ferrosilicon From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Paulo F. Mendes, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-5050.

Preliminary Determination

The Department preliminarily determines that benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended ("the Act"), are being provided to manufacturers, producers, or exporters in Venezuela of the subject merchandise.

Case History

Since the publication of the notice of initiation in the **Federal Register** (57 FR 27024, June 17, 1992), the following events have occurred. On June 19, 1992, we presented a questionnaire to the Government of Venezuela ("GOV"). On August 27, 1992, we received responses from the GOV and CVG-Venezolana de Ferrosilicio C.A. ("FESILVEN"), the only producer and exporter of ferrosilicon in Venezuela. On August 31, 1992, we issued deficiency questionnaires; responses to these questionnaires were received on August 7 and August 14, 1992.

Scope of Investigation

The product covered by this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

Ferrosilicon is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. Ferrosilicon is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and reducing agent, and by cast iron producers as an inoculant.

Ferrosilicon is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of ferrosilicon found in a given shipment. Ferrosilicon grades are defined by the percentages of weight of contained silicon and other minor elements. Ferrosilicon is most commonly sold to iron and steel industries in standard grades of 75 percent and 50 percent ferrosilicon.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

Ferrosilicon is classifiable under the following subheadings of the Harmonized Tarfiff Schedule of the United States ("HTSUS"): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description on the scope of this investigation is dispositive.

Injury Test

On August 31, 1990, Venezuela became a contracting party of the General Agreement on Tariffs and Trade ("GATT"). Since qualification as "country under the Agreement" under section 701(b)(3) requires that the GATT not apply between the United States and the country from which the subject merchandise is imported, Venezuela is no longer eligible for treatment as a "country under the Agreement" within the meaning of section 701(b)(3). However, because Venezuela is a GATT contracting party, and merchandise within the scope of the petition which is imported under HTSUS subheadings 7202.21.1000, 7202.21.5000, 7202.29.0010, and 72.29.0050 is nondutiable, the petitioner is nonetheless required to allege that, and the International Trade Commission ("ITC") is required to determine whether, pursuant to section 303(a)(2), imports of this nondutiable merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry. The remaining HTSUS items, as described in the "Scope of Investigation" section of this notice, are dutiable. Therefore, for these items, the ITC is not required to determine whether, pursuant to section 303(a)(2), imports from Venezuela of these products materially injure, or threaten material injury to, a U.S. industry.

Analysis of Programs

Consistent with our practice in preliminary determinations, when a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, however, are subject to verification. If the responses cannot be supported at verification, and a program is otherwise counteravailable, the program will be considered a counteravailable study in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants (the period of investigation—"POI") is calendar year 1991, which corresponds to the fiscal year of FESILVEN.

Program Preliminarily Determined To Be Counteravailable

We preliminarily determine that bounties or grants are being provided to manufacturers, producers or exporters in Venezuela of ferrosilicon under the following programs:

1. *Preferential power rates.* The petitioners alleged that C.V.G. Electrificatión del Caroní C.A. ("EDELCA"), a government-owned hydroelectric power company, charges preferential electricity rates to FESILVEN. According to the questionnaire responses the electricity rates EDELCA charges large industrial consumers of electricity are the result of non-discriminatory, arms-length negotiations between EDELCA and its customers. During such negotiations, the consumption pattern of each customer is considered by EDELCA in determining each customer's electricity rate.

When analyzing whether the provision by a government of a good or service pursuant to a domestic program confers a countervailable benefit, we examine whether the good or service is being provided to a specific enterprise or industry or group of enterprises or industries and whether the price paid by the producers under investigation for that good or service is less than the benchmark price. See *e.g.*, Final Affirmative Countervailing Duty Determination: Certain Softwood Lumber Products from Canada, 57 FR 22570, 22586 (May 28, 1992). Although we do not have complete information as to EDELCA's rates, the response provides information on rates charged to other industrial groups which are large consumers of electricity. It appears from the information provided that FESILVEN paid a lower rate than another industrial group which consumed a larger quantity of electricity than FESILVEN during the POI. Therefore, we preliminarily determine that FESILVEN received electricity at a preferential rate. For purposes of this preliminary determination, the benchmark we are using is the rate charged by EDELCA to the other large industrial consumer of electricity referred to above.

To calculate the benefit, we first multiplied FESILVEN's total electricity consumption during the POI by the average electricity rate EDELCA charged the other industrial group during the POI. Next, we subtracted from the resultant figure FESILVEN's actual electricity cost for the POI. Finally, the difference was divided by FESILVEN's total sales. On this basis, we calculated estimated net bounties or grants of 4.97 percent *ad valorem*.

Respondents have argued that under FESILVEN's current electricity contract, the company began paying a markedly higher price for electricity after the POI. According to respondents, the increase resulted from an EDELCA initiative, begun in 1990, to raise power rates paid by large volume customers gradually so that by 1995 those rates will equal the long term marginal costs of EDELCA's hydroelectric generation activities. At this time, the Department does not have sufficient information to analyze whether a program-wide change has occurred. We will continue to seek further information on this issue for purposes of our final determination.

2. *Export bond program.* Although this program was not alleged in the petition, FESILVEN's financial statements and questionnaire responses indicate that FESILVEN benefited from this program during the POI. Based on previous investigations (see, *e.g.*, Final Affirmative Countervailing Duty Determination; Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, 53 FR 24763 (June 30, 1988)), we know that this program was designed to provide partial compensation for the requirement that exporters convert foreign currency export earnings to bolivars at an official rate significantly lower than the free market rate. The value of the export bond is based on a percentage of the FOB value of the product exported.

Because this program is limited to exporters, we preliminarily determine that it is countervailable. To calculate the benefit for the POI, we divided the bolivar amount of bonds shown on FESILVEN's 1991 financial statements by the company's total export sales. On this basis, we calculated estimated net bounties or grants of 1.69 percent *ad valorem*.

The export bond program was terminated as of June 15, 1991. Therefore, consistent with our policy of taking into account program-wide changes that occur before the preliminary determination, the cash deposit rate for this program is zero. See section 355.50 of the Department's proposed regulations, 54 FR 23366 (May 31, 1989).

B. Program Preliminarily Determined Not To Be Countervailable

1. *GOV grants.* The petitioners alleged that in December 1987, FESILVEN was authorized by the GOV to receive funds in the form of a government grant and loans from foreign sources to implement a major expansion plan. According to the questionnaire responses, FESILVEN financed its expansion plan by "long-term loans negotiated on ordinary commercial terms with two foreign banks, a loan from an unrelated foreign customer * * *" and capital contributions it received from its shareholders, composed of both private and public investors.

Rather than a government grant, it appears that FESILVEN received equity infusions in 1989 and 1991. Because the petitioners alleged that FESILVEN had received an equity infusion from the government in 1989 in their petition, the Department examined in this proceeding FESILVEN's equityworthiness for 1989. Based on information in the petition, we concluded that there was no reasonable basis to believe or suspect that FESILVEN was unequityworthy in 1989. For 1991, petitioners have made no unequityworthy allegation. The Department's policy is not to investigate an equity infusion in a firm absent a specific allegation by the petitioner. *See* section 355.44(e)(3) of the Department's proposed regulations (54 FR 23366; May 31, 1989). Accordingly, we preliminarily determine this program to be not countervailable.

C. Program For Which Additional Information Is Needed

1. GOV's assumption of debt. The petitioners allege that under Decree 1261, the GOV assumed a portion of FESILVEN's foreign currency debt in 1986, and the remaining portion in 1990. Furthermore, the petitioners alleged that the GOV only assumed the debt of 15 government-owned companies.

According to the questionnaire responses, the GOV "assumed all of the foreign currency debts of all government-owned companies • • •." Furthermore, the GOV specifically stated that its actions regarding FESILVEN's foreign currency debt were only intended to suspend the company's payment of interest and principal while the GOV attempted to renegotiate the terms of the debt. In addition, FESILVEN stated that it will shortly "recommence payment of principal and interest on those debts."

While the beneficiaries of this program may be limited to a specific enterprise or industry or group of enterprises or industries, it does not appear that their debt was assumed. Instead, it appears that the terms of the debt have been renegotiated. At this time, we have insufficient information on the record to determine whether the terms under which FESILVEN will repay its foreign debt will be consistent with commercial considerations. Therefore, we intend to seek additional information on this issue.

D. Programs Preliminarily Determined Not To Be Used

1. *Sales tax exemption.*

2. *Preferential Short-Term Financing—FINEXPO verification.* In accordance with section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of ferrosilicon from Venezuela, which are entered or withdrawn from warehouse, for consumption on or after the date of the publication of this notice in the **Federal Register** and to require a cash deposit or bond for such entries of the merchandise in the amount of 4.97 percent *ad valorem*. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Investigations, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 45 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 355.38 of the Department's regulations, we will hold a public hearing, if requested, on October 14, 1992, at 9:30 a.m. in room 3708, to afford interested parties an opportunity to comment on this preliminary determination. Interested parties who wish to request or participate in a hearing must submit a request within ten days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

In accordance with 19 CFR 355.38 (c) and (d), ten copies of the business proprietary version and five copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than October 2, 1992. Ten copies of the business proprietary version and five copies of the nonproprietary version of rebuttal briefs must be submitted to the Assistant Secretary no later than October 9, 1992. An interested party may make an affirmative presentation only on arguments included in that party's case or rebuttal brief. If no hearing is requested, interested parties still may comment on these preliminary results in the form of case and rebuttal briefs. Written argument should be submitted in accordance with § 355.38 of the Department's regulations and will be considered if received within the time limits specified in this notice.

This determination is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Dated: August 17, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-20229 Filed 2-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-064]

Fresh Cut Roses From Israel; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on fresh cut roses from Israel. Interested parties who object to this revocation must submit their comments in writing not later than September 30, 1992.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup, Philip Pia, or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-0983 or 377-3691.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1980, the Department of Commerce ("the Department") published a countervailing duty order on fresh cut roses from Israel (45 FR 58516). The Department has not received a request to conduct an administrative review of the countervailing duty order on fresh cut roses from Israel for four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

No later than September 30, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties neither request an administrative review nor object to the Department's intent to revoke by September 30, 1992, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 19, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-20353 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-601]

Certain Fresh Cut Flowers From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain fresh cut flowers from Peru.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On April 29, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 18130) its intent to revoke the countervailing duty order on certain fresh cut flowers from Peru (52 FR 13491; April 23, 1987). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On May 28, 1992, the Floral Trade Council, an interested party and the petitioner in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 19, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-20354 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-603]

Standard Carnations From Canada; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on standard carnations from Canada.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On March 10, 1992, the Department of Commerce ("the Department") published in the **Federal Register** (57 FR 8440) its intent to revoke the countervailing duty order on standard carnations from Canada (52 FR 7845; March 12, 1987). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. We had not received a request for an administrative review of the order for more than four consecutive anniversary months.

On March 31, 1992, the Floral Trade Council, an interested party and the petitioner in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This notice is in accordance with 19 CFR 355.25(d).

Dated: August 19, 1990.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-20352 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administrations

[C-533-807]

Alignment of the Final Countervailing Duty Determination With the Final Antidumping Duty Determination: Sulfanilic Acid From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Madg Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 15th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3530 or 377-4162, respectively.

ALIGNMENT OF ANTIDUMPING AND COUNTERVAILING DUTY CASES: On August 11, 1992, we published a preliminary affirmative countervailing duty determination pertaining to sulfanilic acid from India (57 FR 35784). The notice stated that we would make our final countervailing duty determination by October 15, 1992.

On August 5, 1992, in accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the "Act"), we received a request from petitioner to extend the due date for the final countervailing duty determination to coincide with the date of the final determination in the antidumping duty investigation of sulfanilic acid from India. Accordingly, we are extending the final determination in this countervailing duty investigation to not later than December 29, 1992.

In accordance with section 705 of the Act, and 19 CFR 355.20(c)(ii), the Department will direct the U.S. Customs Service to terminate the suspension of liquidation in the countervailing duty proceeding as of December 9, 1992. No cash deposits of bonds for potential countervailing duties will be required for merchandise which enters the United States on or after December 9, 1992. This suspension of liquidation will not be resumed unless and until the Department publishes a countervailing duty order. We will also direct the U.S. Customs Service to maintain the suspension of any entries suspended between August 11, 1992 and December

8, 1992, until the conclusion of this investigation.

The U.S. International Trade Commission is being advised of this postponement. This notice is published pursuant to section 705(d) of the Act.

Dated: August 18, 1992.

Francis J. Sailer,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 92-20227 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Taking and Importing of Marine Mammals Incidental to Commercial Fishing Operations.

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of removal of Pelly certifications.

SUMMARY: The Marine Mammal Protection Act (MMPA) requires that 6 months after the importation of yellowfin tuna has been banned from a nation, certification of the importation prohibition be made to the President. Certification under this provision is considered a certification for the purposes of section 8(a) of the Fishermen's Protective Act (the Pelly Amendment). The Pelly Amendment requires periodic review of the activities of the nation subject to the importation prohibition to determine if the reasons for which the certification was made no longer prevail. NMFS has lifted the yellowfin tuna embargoes that were in place against Vanuatu and Panama and, therefore, has removed the Pelly certifications that resulted from those embargoes.

EFFECTIVE DATE: The termination of these Pelly Certifications was effective August 4, 1992.

ADDRESSES: Nancy Foster, Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Wanda L. Cain, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910 (telephone 301-713-2055 or FTS 933-2055).

SUPPLEMENTARY INFORMATION: On March 26, 1991, the United States imposed a court-ordered prohibition on the importation of yellowfin tuna and products derived from yellowfin tuna harvested by Vanuatuan purse seine vessels in the eastern tropical Pacific Ocean (ETP). The court order also revoked the 1989 affirmative finding that allowed Vanuatu to export ETP purse seine-harvested yellowfin tuna to the United States through December 31, 1991. Vanuata submitted data for a 1990 marine mammal finding. However, NMFS found that Vanuatu had a rate of dolphin mortality greater than 1.25 times that of the United States for the same period, and the primary embargo remained in place.

On November 15, 1991, the Secretary of Commerce certified to the President that the primary embargo on yellowfin tuna harvested in the ETP by purse seine vessels of Vanuatu had been in effect for 6 months. As required by the Marine Mammal Protection Act (MMPA), this certification is considered a certification for purposes of section 8(a) of the Fishermen's Protective Act of 1967 (the Pelly Amendment, 22 U.S.C. 1978). The Pelly Amendment authorizes, at the discretion of the President, a restriction on imports of fish and fish products from certified nations to the extent such restrictions are consistent with the General Agreement on Tariffs and Trade. No sanctions were recommended or imposed as a result of the certification of Vanuatu.

On January 23, 1992, NMFS published a notice in the **Federal Register** (57 FR 2710) announcing an affirmative finding for Vanuatu and authorizing the importation of Vanuatuan purse seine-harvested ETP yellowfin tuna through December 31, 1992.

On May 24, 1992, a secondary embargo went into effect against Panama as a nation intermediary to Mexico. Mexico had been placed under a primary embargo by court order on February 22, 1991. The importation of yellowfin tuna harvested in the ETP by Mexican purse seine vessels was, therefore, prohibited from Panama. On November 25, 1991, the Secretary of Commerce certified to the President that that secondary embargo on Mexican yellowfin tuna exported from Panama had been in effect for 6 months.

On January 31, 1992, an expanded secondary embargo went into effect, and importation of all yellowfin tuna was prohibited from intermediary nations unless the intermediary nation prohibited the importation of the same yellowfin tuna banned from direct export to the United States. On March 25, 1992, Panama issued a resolution banning the importation of yellowfin tuna prohibited from direct export to the United States. On April 24, 1992, the United States lifted the secondary embargo on yellowfin tuna from Panama.

NMFS therefore announces that the Pelly Certifications imposed on Vanuatu and Panama as a result of yellowfin tuna embargoes were removed on August 4, 1992, as a result of the lifting of those embargoes.

Dated: August 14, 1992.

Michael F. Tillman,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 92-20233 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board; Meeting

AGENCY: National Technical Information Service, Technology Administration, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app 2, notice is hereby given that the National Technical Information Service Advisory Board will meet Thursday, August 27, 1992, from 9 a.m. to 4:30 p.m. and on Friday, August 28, 1992, from 9 a.m. to 4 p.m. The NTIS Advisory Board is composed of five members appointed by The Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of this meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include presentations on NTIS modernization, progress of the NTIS reorganization, targeted acquisition efforts, the impact of the American Technology Preeminence Act of 1991 on NTIS, the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET), and market research efforts. The discussion on the NTIS Business Plan scheduled to begin at 1:30 p.m. and ending at 4:30 p.m. on August 13, 1992, will be closed as it is likely to disclose confidential agency financial and planning information.

The NTIS Advisory Board was established by statute (Pub. L. 100-519) on October 24, 1988, and received its charter on September 15, 1989.

DATES: The meeting will convene August 27, 1992, at 9 a.m. and will adjourn at 4 p.m. on Friday, August 28, 1992. A closed session is scheduled on August 13, 1992, beginning at 1:30 p.m. and adjourning at 4:30 p.m.

ADDRESSES: The meeting will be held in room 1412, Department of Commerce, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Approximately thirty minutes each day will be set aside for oral comments or questions as indicated in the agenda. Seats will be available for the public and for the media. Seats will be available on a first come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time before and after the meeting. Copies of the minutes of the meeting will be available within thirty days from the address given below.

FOR FURTHER INFORMATION CONTACT: Dorothy A. Aukofer, NTIS Advisory Board Executive Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: 703-487-4778; by fax 703-487-4009.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 12, 1992, that the portion of the meeting of the NTIS Advisory Board that involves discussion of the NTIS Business Plan may be closed in accordance with section 552(c)(9)(B) of title 5, United States Code, since the meeting is likely to disclose confidential agency financial and planning information.

Dated: August 12, 1992.

Ronald Lawson,

Acting Director for Financial Management.

[FR Doc. 92-20198 Filed 8-24-92; 8:45 am]

BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0028]

OMB Clearance Request for Termination Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0028.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Termination Requirements.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Contracting officers terminate contracts, for default or convenience, only when it is in the best interest of the Government to do so. After receipt of the notice of termination, contractors are required to terminate subcontracts, advise the contracting officer of any special circumstances, submit any requests for an equitable adjustment, submit a settlement proposal, and take other action as directed. Records regarding the terminated contract must be maintained for 3 years.

The information submitted or retained in connection with contract termination is used to reach an equitable settlement with firms and to protect the interests of the Government and the terminated contractor.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *2,920;* responses per respondent, *1;* total annual responses, *2,920;* preparation hours per response, *3;* total response burden hours, *8,760;* and total recordkeeping hours, *2,920.*

Obtaining Copies of Proposals

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0028, Termination Requirements, in all correspondence.

Dated: August 11, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-20278 Filed 8-24-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Strategic Defense Initiative Advisory Committee

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92-463, the "Federal Advisory Committee Act," notice is hereby given that the Strategic Defense Initiative Advisory Committee has been renewed, effective August 17, 1992.

The Strategic Defense Initiative Advisory Committee provides expert advice to the Secretary of Defense and the Director, Strategic Defense Initiative (SDI) Organization on all matters pertaining to SDI research and technology. The Advisory Committee: evaluates reviews of technical plans relating to SDI programs; provides recommendations concerning the emphasis, schedule and content of the programs; and, examines and evaluates technologies associated with concepts for defense against ballistic missiles.

The Strategic Defense Initiative Advisory Committee will continue to be composed of approximately 12 to 14 members who are acclaimed leaders and experts in technical areas relating to the SDI program. The members will be a well-balanced composite of individuals drawn from universities, national laboratories, industry, and other segments of the public sector, to ensure that affected interest groups will be represented and that assigned functions will be performed.

For additional information regarding the Strategic Defense Initiative Advisory Committee, please contact Ms. Gail Gallant, telephone: 703-693-1532.

Dated: August 20, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-20290 Filed 8-24-92; 8:45 am]

BILLING CODE 3810-01-M

Nuclear Failsafe and Risk Reduction Advisory Committee; Meeting

AGENCY: Nuclear Failsafe and Risk Reduction Advisory Committee.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Nuclear Failsafe and Risk Reduction Review Advisory Committee. The purpose of the meeting is to discuss and approve the Committee's Final Report to the Secretary of Defense on its

comprehensive and independent review of U.S. positive measures for the prevention of unauthorized or inadvertent use of nuclear weapons with recommendations for enhancement of fail-safe policies, procedures and mechanisms and opportunities to reduce the risk of the outbreak of nuclear war. This meeting will be closed to the public.

DATES: September 18, 1992, 1000–1100.

ADDRESSES: Pentagon, Crisis Coordination Center, room 3C912.

FOR FURTHER INFORMATION CONTACT: Colonel Bill Jones, U.S.Army, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline #3, 5201 Leesburg Pike, suite 500, Falls Church, Virginia 22041, (703) 756–8680.

Dated: August 20, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–20287 Filed 8–24–92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board Ad Hoc Committee on Hyperbaric Medicine will meet on September 14–15, 1992, at the ANSER Corporation, Arlington, Virginia, from 8 a.m. to 5 p.m.

The purpose of this meeting is to gather information for the HBO study Final Report.

The meeting will be closed to the public in accordance with section 552b(c) of title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4811.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–20234 Filed 8–24–92; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.086]

Program for Children With Severe Disabilities; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purpose of this program is to provide Federal financial assistance for demonstration or development, research, training, and dissemination activities for children with severe disabilities, including deaf-blindness.

These priorities support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by assisting those with disabilities through improved services and better trained service providers.

Eligible Applicants: Any public or private, profit or nonprofit, organization or institution may apply for a grant under this program.

Note: The Department is not bound by any estimates in this notice.

Applications Available: September 15, 1992.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 315.

PROGRAM FOR CHILDREN WITH SEVERE DISABILITIES

Title and CFDA number	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Outreach—Serving Students with Severe Disabilities in Integrated Environments (CFDA 84.086U).	1–29–93	3–30–93	$405,000	$125,000–140,000	$135,000	3	Up to 36.
Developing Innovations for Educating Children With Severe Disabilities Full-time in General Education Classrooms (CFDA 84.086D).	12–04–92	2–2–93	525,000	170,000–180,000	175,000	3	Up to 36.
Model Inservice Training Projects (CFDA 84.086R).	12–11–92	2–9–93	495,000	155,000–170,000	165,000	3	Up to 36.
Statewide Systems Change (CFDA 84.086J)	12–11–92	2–9–93	750,000	210,000–260,000	250,000	3	Up to 60.

Applications submitted under 84.086D will be evaluated under the selection criteria for "Research projects".

Applications submitted under 84.086U, 84.086R and 84.086J will be evaluated under the selection criteria for "Demonstration, Training, and Dissemination Projects".

Note: The Department is not bound by any estimates in this notice.

Priorities: The final priorities for this program were published in the **Federal Register** on April 8, 1992 at 57 FR 12080.

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2466. Telephone: (202) 205–9503. Deaf and hearing impaired individuals may call (202) 205–6170 for TDD services.

Program Authority: 20 U.S.C. 1424.

Dated: August 19, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–20259 Filed 8–24–92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.025C]

Services for Children With Deaf-Blindness; & Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purpose of this program is to assist States in assuring the provision of early intervention, special education, and related services to infants, toddlers, children, and youth with deaf-blindness; to provide technical assistance to agencies that are preparing adolescents with deaf-blindness for adult placement; and to support research, development, replication, preservice and inservice training, parental involvement activities, and other activities to improve services to children with deaf-blindness.

This program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Educational Goals, by assisting those with disabilities through improved services and better trained service providers.

Eligible Applicants: Public or nonprofit private agencies, institutions, or organizations, including an Indian tribe and the Bureau of Indian Affairs of the Department of Interior (if acting on behalf of schools operated by the Bureau for children and students on Indian reservations) and tribally controlled schools funded by the Department of Interior are eligible to apply for an award.

Note: The Department is not bound by any estimates in this notice.

Deadline for Transmittal of Applications: February 8, 1993.

Deadline for Intergovernmental Review: April 9, 1993.

Applications Available: September 15, 1992.

Available Funds: $950,000.

Estimated Number of Awards: 1.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 307.

Priority: Under 34 CFR 75.105(c)(3) and 34 CFR 307.12 the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority: *Technical Assistance to State and Multi-State Projects.*

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9503. Deaf and hearing impaired individuals may call (202) 205–6170 for TDD services.

Program Authority: 20 U.S.C. 1422.

Dated: August 19, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–20260 Filed 8–24–92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.078C]

Postsecondary Programs for Individuals With Disabilities; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purpose of this program is to develop, operate, and disseminate specially designed model programs of postsecondary, vocational, technical, continuing, or adult education for individuals with disabilities.

This priority supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by assisting those with disabilities through improved career placement services. Specifically, National Education Goal 5 calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: State educational agencies, institutions of higher education, junior and community colleges, vocational and technical institutions, and other appropriate nonprofit educational agencies are eligible to apply for an award.

Note: The Department is not bound by any estimates in this notice.

Deadline for Transmittal of Applications: May 3, 1993.

Deadline for Intergovernmental Review: July 2, 1993.

Applications Available: September 15, 1992.

Available Funds: $1,800,000.

Estimated Range of Awards: $90,000–110,000.

Estimated Size of Awards: $100,000.

Estimated Number of Awards: 18.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 338.

Priority: The final priority for this program was published in the **Federal Register** on April 8, 1992 at 57 FR 12080.

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–9503. Deaf and hearing impaired individuals may call (202) 205–6170 for TDD services.

Program Authority: 20 U.S.C. 1424a.

Dated: August 19, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92–20259 Filed 8–24–92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.158]

Secondary Education and Transitional Services for Youth With Disabilities Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The purpose of this program is to assist youth with disabilities in the transition from secondary school to postsecondary environments, such as competitive or supported employment, and to ensure that secondary special education and transitional services result in competitive or supported employment for youth with disabilities.

The priorities in this notice support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals. Specifically, National Education Goal five calls for adult Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Institutions of higher education, State educational agencies, local educational agencies, and other appropriate public and private nonprofit institutions or agencies (including the State job training coordinating councils and service delivery area administrative entities established under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*)).

SECONDARY EDUCATION AND TRANSITIONAL SERVICES FOR YOUTH WITH DISABILITIES PROGRAM

Title and CFDA number	Deadline for transmittal of applications	Deadline for intergovernmental review	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Model Demonstration Projects to Identify, Recruit, Train, and Place Youth with Disabilities Who Have Dropped Out of School (CFDA 84.158D).	4-9-93	6-08-93	$630,000	$100,000-110,000	$105,000	6	Up to 36.
Model Demonstration Projects to Identify and Teach Skills Necessary for Self-Determination (CFDA 84.158K).	1-22-93	3-23-93	470,000	110,000-120,000	115,000	4	Up to 36.
Research Projects on the Transition of Special Populations to Integrated Post Secondary Environments (CFDA 84.158P).	12-11-92	2-9-93	550,000	100,000-120,000	110,000	5	Up to 36.

Note: The Department is not bound by any estimates in this notice.

Applications Available: September 15, 1992.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 326.

Priorities: The final priorities for this program were published in the **Federal Register** on April 8, 1992 at 57 FR 12080.

For Application or Information Contact: Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202-2466. Telephone: (202) 205-9503. Deaf and hearing impaired individuals may call (202) 205-6170 for TDD services.

Program Authority: 20 U.S.C. 1425.

Dated: August 19, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-20261 Filed 8-24-92; 8:45 am]

BILLING CODE 4000-01-M

President's Board of Advisors on Historically Black Colleges and Universities; Meeting

AGENCY: President's Board of Advisors on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda for a forthcoming meeting of the President's Board of Advisors on Historically Black Colleges and Universities. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: September 9, 1992, 9 a.m. until 5 p.m. Place: Grand Hyatt Hotel, 1000 H Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Hazel Mingo, Acting Executive Director, White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, 400 Maryland Avenue, SW., room 3682, ROB-3, Washington, DC 20202 Telephone # (202) 708-8667.

SUPPLEMENTARY INFORMATION: The President's Board of Advisors on Historically Black Colleges and Universities is established in accordance with Executive Order 12677, signed April 28, 1989. The Board is established to provide advice and make recommendations on developing an annual plan to increase the participation by historically black colleges and universities in federally sponsored programs and on how to increase the private sector's role in strengthening historically black colleges and universities. The Board is also responsible for developing alternative sources of faculty talent, particularly in the fields of science and technology; and for providing advice on how historically black colleges and universities can achieve greater financial security through the use of improved business, accounting, management, and development techniques.

The full Board will convene during National Historically Black Colleges Week to address its mandate of providing advice to the President regarding historically black colleges and universities. The President's Board of Advisors will discuss recommendations to be made to the President on the varied issues raised in the recent *United States* v. *Fordice* Supreme Court case. These issues include funding, admission standards, and academic mission for historically black colleges and universities. The agenda will include time for interested parties to comment on issues discussed during the Board meeting.

Records are kept of all Board meetings and are available for public inspection at the White House Initiative on Historically Black Colleges and Universities, U.S. Department of Education, ROB-3, room 3682, Washington, DC, from the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: August 20, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-20366 Filed 8-24-92; 8:45]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Proposal To Establish Transmission Rate for AC Intertie Non-Federal Capacity Ownership Upon Commercial Operation of the Third AC Intertie and Opportunity for Public Review and Comment

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of and opportunity for review and comment. BPA File No: 3ACP-92. BPA requests that all comments and documents intended to become part of the Official Record in this process contain the file number designation 3ACP-92.

SUMMARY: In June of 1987, BPA undertook a public process to describe and evaluate options for non-Federal participation in the northern portion of the Third AC (alternating current) Intertie. The Third AC Intertie will add approximately 1600 megawatts (MW) of transfer capability to the Pacific Northwest-Pacific Southwest (PNW-PSW) Intertie. BPA released its "Proposal for Non-Federal Participation in the Northern Portion of the Third AC Intertie" (1988 Proposal) in December 1988. Under the 1988 Proposal, BPA reserved its share of the first 800 MW increase for its own use. BPA proposed to offer its share of the second 800 MW increase (725 MW) for use by PNW non-Federal scheduling utilities through the year 2016. BPA would retain physical ownership of facilities and decisionmaking authority over the operation, maintenance, planning, and construction of facilities.

In 1989, BPA modified the portion of its 1988 Proposal related to the pricing methodology. That 1989 Proposal was further modified in early 1990 when it became clear that utilities interested in non-Federal participation were concerned about having only a limited term for use of BPA's share of increased PNW-PSW AC Intertie capacity. There was significant interest by those utilities in life-of-facilities contract rights to a share of expanded PNW-PSW AC intertie capacity. Therefore, BPA reconsidered its 1989 Proposal, modified the 1989 Proposal to its current Proposal (referred to as the 1990 Proposal throughout the remainder of this **Federal Register** Notice), and is currently preparing an environmental impact statement (EIS) to determine whether to offer non-Federal utilities life-of-facilities ownership of a portion of BPA's PNW-PSW AC Intertie capacity (referred to as capacity ownership throughout the remainder of this **Federal Register** Notice).

In order to proceed with its review and analysis of the 1990 Proposal and to assist in reaching a final decision whether capacity ownership will be offered, BPA is beginning a proceeding to develop a transmission rate for capacity ownership. The rate will be a formula (referred to as pricing methodology throughout the remainder of this **Federal Register** Notice) which is based on the costs of existing facilities which will be dedicated to the PNW-PSW AC Intertie upon commercial operation of the Third AC Intertie and newly constructed facilities required to increase the PNW-PSW AC Intertie rated transfer capability from 4000 MW to 4800 MW, and which will be used to determine the lump sum payment participants would make to BPA. In return for this payment, New Owners (the term used by BPA to describe utilities who execute capacity ownership agreements with BPA) would receive a life-of-facilities capacity ownership interest in 21 percent of BPA's share of the total PNW-PSW AC Intertie system. BPA's share of total PNW-PSW AC Intertie system after commercial operation of the Third AC Intertie will be 3450 MW through 2016. BPA's share of the PNW-PSW AC Intertie system beyond that date depends upon the outcome of negotiations with PacifiCorp Electric Operations (PacifiCorp), formerly Pacific Power & Light Company, one of the three current PNW owners of PNW-PSW AC Intertie. In any event, after 2016, New Owners would continue with a capacity ownership interest in 21 percent of BPA's share of the total PNW-PSW AC Intertie system. BPA will seek Federal Energy Regulatory Commission (FERC) approval of the pricing methodology.

BPA is currently preparing an EIS on non-Federal participation (NFP) in the PNW-PSW AC Intertie after commercial operation of the Third AC Intertie. Capacity ownership is BPA's preferred alternative in the NFP EIS. Thus, BPA is initiating this rate proceeding in parallel with preparation of the NFP EIS. BPA will rely on that EIS to support the Administrator's decision whether to offer capacity ownership. If, after completion of the NFP EIS, BPA decides to offer capacity ownership, BPA will file the record of the Administrator's decision on the proposed methodology with FERC. BPA would then execute capacity ownership contracts with a number of PNW utilities.

Responsible Official

Mr. Sydney D. Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA's wholesale power and transmission rates.

DATES: Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so in accordance with requirements stated later in this notice. Petitions to intervene must be received by BPA no later than 5 p.m. on September 9, 1992, and should be addressed as follows: Honorable Dean F. Ratzman, Hearing Officer, c/o Kathryn Silva-APR, Hearing Clerk, Bonneville Power Administration, 905 NE. 11th Avenue, P.O. Box 3621, Portland, Oregon 97208. In addition, a copy of the petition to intervene must be served on BPA's Office of General Counsel-APR, P.O. Box 3621, Portland, Oregon 97208.

BPA will prefile the testimony of its witnesses on September 16, 1992. Copies of the testimony will be available in BPA's Public Information Center and will be mailed to all parties to the 1991 general rate proceeding and to others requesting it.

A prehearing conference will be held before the Hearing Officer at 9 a.m. on September 16, 1992, in the Forum Building, suite 190, 525 NE. Oregon, Portland, Oregon. Registration for the prehearing conference will begin at 8:30 a.m. This proceeding will be conducted under BPA's rule for general rate proceedings. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, rule on any motions, establish additional rules of procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and for expediting any necessary cross-examination. Objections to orders made by the Hearing Officer at the prehearing conference must be made in person or through a representative at the prehearing conference.

The following schedule is proposed for this proceeding. A final schedule will be established by the Hearing Officer at the prehearing conference. A notice of the final schedule will be mailed to all parties of record.

September 9, 1992—Deadline for interventions to be filed.
September 16, 1992
Prehearing Conference to set schedule and act on petitions to intervene.
BPA Direct Case filed. Available at BPA's Public Information Center, 905 NE. 11th, 1st Floor, Portland, Oregon.
September 22, 1992—BPA Witness Clarification.
October 8, 1992—Parties' Direct Case filed.
October 14, 1992—Parties' Witness Clarification.
October 23, 1992—Participant comments due.
October 30, 1992—BPA and Parties' Rebuttal filed.
December 8-10, 1992—Cross Examination.
January 6, 1993—Initial Briefs.
February 16, 1993—Draft Record of Decision (estimated date).
August 31, 1993—Final Record of Decision (estimated date).

ADDRESSES: Written comments on the proposed pricing methodology should be submitted to the Public Involvement Manager-ALP, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement office, at the address listed above, 503-230-3478, or call 800-622-4519.

Information may also be obtained from:

Mr. George E. Bell, Lower Columbia Area Manager, suite 243, 1500 NE. Irving Street, Portland, Oregon 97232, 503–230–4551.
Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Street, Eugene, Oregon 97401, 503–465–6952.
Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.
Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.
Mr. Ronald K. Rodewald, Wenatchee District Manager, room 307, 301 Yakima Street, Wenatchee, Washington 98807, 509–662–4377, extension 379.
Mr. Terence G. Esvelt, Puget Sound Area Manager, suite 400, 201 Queen Anne Avenue, Seattle, Washington, 98109–1030, 206–553–4130.
Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6225.
Ms. Ruth B. Bennett, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.
Mr. James R. Normandeau, Boise District Manager, room 450, 304 N. Eighth Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION:

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I. Background

The present transmission capability of the PNW–PSW Intertie transmission lines is about 6300 MW, 3200 MW on two AC transmission lines and 3100 MW on a direct current (DC) transmission line. BPA owns 100 percent of the DC transmission line and shares ownership of the AC transmission lines with PacifiCorp and Portland General Electric Company (PGE). BPA owns 2100 MW of the AC transmission lines. (BPA, PacifiCorp, and PGE are referred throughout the remainder of this **Federal Register** Notice as the current owners.) The current owners are increasing the capacity of the northern portion of the PNW–PSW AC Intertie to 4800 MW by modifying existing facilities and constructing new facilities. Commercial operation is expected by November 1993.

BPA, PGE, and PacifiCorp will share the costs of increasing the capability of the PNW–PSW AC Intertie in the PNW by 1600 MW as set forth in the respective BPA–PGE and BPA-PacifiCorp Intertie Agreements.

A consortium of California parties in planning and constructing the southern portion of the Third AC Intertie Project (referred to as the California-Oregon transmission Project (COTP) in California). The COTP plans to add 1600 MW of transmission capability to the PNW–PSW AC Intertie system in California, increasing transmission capability to 4800 MW, the same capability planned for the northern portion.

BPA's portion of costs for the Third AC Intertie was authorized by Congress in July 1984. On June 22, 1987, BPA received a letter from the Chairman of the U.S. House of Representatives Committee on Energy and Commerce requesting information regarding non-Federal utility participation in the Third AC Intertie. BPA was asked to provide a study on non-Federal participation.

BPA released its "Final Study of Non-Federal Participation in the Northern Portion of the Third AC Intertie" (Study) in March 1988. The Study describes the options for non-Federal participation and examines their consequences in light of various criteria. The Study makes no recommendation whether to offer non-Federal participation or what type of non-Federal participation might be offered.

In December 1988, BPA released its 1988 proposal wherein BPA reserved its share of the first 800 MW increase of PNW–PSW AC Intertie capacity for its own use. BPA proposed to offer its share of the second 800 MW increase (725 MW) for use by PNW non-Federal scheduling utilities. Under the 1988 Proposal, BPA would retain physical ownership of facilities and decisionmaking authority over the operation, maintenance, planning, and construction of facilities. BPA would offer contracts to PNW scheduling utilities for scheduling rights on the PNW–PSW AC Intertie only through the year 2016. The 1988 Proposal contemplated that non-Federal participants would make a lump sum payment upon execution of participation contracts for construction and related costs, rather than through annual payments over the term of the participation contracts.

The pricing methodology included in the 1988 Proposal was based on BPA's cost of the second 800 MW of the Third AC Intertie Project (see section IV, ¶A, *infra*) plus the depreciated replacement cost of existing facilities (separately owned by BPA or PacifiCorp) required for operation of the Third AC Intertie. The costs included land, BPA's normal allocation of corporate overhead, interest during construction (IDC) on new facilities, and indirect expenses. The pricing methodology included an adjustment to be made, using depreciated replacement cost for both existing facilities and the Third AC Intertie Project, to account for the fact that non-Federal participants' scheduling rights would extend only through 2016 rather than for the life of the facilities.

After further consideration of the pricing methodology in the 1988 Proposal, BPA made two modifications in its 1989 Proposal. First, instead of using depreciated replacement cost as the basis for pricing, BPA proposed to use book value for pricing existing facilities. Book value represents capitalized investment cost less accumulated depreciation. Second, the 1988 Proposal included IDC as a component of the pricing methodology. The 1989 Proposal replaced IDC with Allowance for Funds Used During Construction (AFUDC) to estimate the interest on funds used during the construction period.

In early 1990, interested utilities objected to the limited term proposed for scheduling rights on BPA's share of PNW–PSW AC Intertie capacity. Instead, they expressed significant interest in life-of-facilities scheduling rights. As a result of further review and analysis, BPA revised its 1988 and 1989 Proposals. The 1990 Proposal now provides for life-of-facilities non-Federal ownership of a portion of BPS's PNW–PSW AC Intertie capacity and is referred to as capacity ownership.

During September through November 1991, BPA executed Memoranda of Understanding (MOU) with 11 PNW utilities and customer groups interested in capacity ownership. The MOUs outline the parameters of life-of-facilities capacity ownership; describe BPA's process related to environmental analysis; and set forth the understanding and intentions regarding potential contract development activities, rate case proceedings, and each utility's interest in capacity ownership. It is with some or all of those utilities that BPA expects to execute capacity ownership contracts. In those MOUs, utilities agreed to BPA's proposed price, payment, and other provisions related to capacity ownership, which are described in an exhibit to the MOU. Capacity ownership contracts would be executed in late 1993, prior to commercial operation of the Third AC

Intertie. New Owners would make a lump sum payment on or about the date when capacity ownership contracts are executed. After commercial operation of the Third AC Intertie, an adjustment to the lump sum payment would be made to reflect actual costs of construction, commercial operation date, and the appropriate discount for early payment.

The 1990 Proposal contains two revisions to the cost basis for the proposed pricing methodology contained in the 1989 Proposal. First, the adjustment to account for scheduling rights extending only through 2016 has been removed since scheduling rights are now proposed for the life of the facilities. Second, costs of existing facilities owned by PacifiCorp are no longer included in the proposed pricing methodology.

The 1990 Proposed provides that New Owners would make a lump sum payment upon execution of capacity ownership contracts. There will be an adjustment to that payment—to account for actual costs and commercial operation date as well as the discount for payment prior to commercial operation—approximately 2 years after commercial operation of the Third AC Intertie when all actual costs will have been accounted for.

BPA's proposed pricing methodology does not include costs associated with operation and maintenance, general plant, or replacements and renewals. Those costs would be paid annually by New Owners. Payment provisions and the formula for calculating the annual payments would be included in the capacity ownership contracts and are not part of the pricing methodology for which BPA is seeking FERC approval at this time. Annual costs will be addressed by BPA in its 1993 General Rate Case.

The testimony supporting BPA's proposed pricing methodology for capacity ownership will be available on September 16, 1992, at BPA's Public Information Center, BPA Headquarters Building, first floor, 905 NE. 11th, Portland, Oregon, and at BPA's Prehearing Conference to be held on the same day. The testimony may also be requested by phone or in writing from BPA's Public Involvement office.

To request the testimony by telephone, call BPA's document request line at 800–622–4520. Portland, Oregon, callers should call 230–3478.

II. Relevant Statutory Provisions

Section 7 of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e, contains a number of general directives that the BPA Administrator must consider in establishing rates for the transmission of non-Federal power. In particular, section 7(a)(1), 16 U.S.C. 839e(a)(1), provides that:

> [S]uch rates shall be established and, as appropriate, revised to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, including the amortization of the Federal investment in the Federal Columbia River Power System (including irrigation costs required to be repaid out of power revenues) over a reasonable period of years and the other costs and expenses incurred by the Administrator pursuant to this Act and other provisions of law. Such rates shall be established in accordance with sections 9 and 10 of the Federal Columbia River Transmission System Act (16 U.S.C. 838), section 5 of the Flood Control Act of 1944, and the provisions of this Act.

Rates established by BPA are effective when approved by FERC. 16 U.S.C. 839e(i)(6).

III. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be established according to certain procedures. These procedures include, among other things, issuance of a notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's Procedures Governing Bonneville Power Administration Rate Hearings (Procedures), 51 FR 7611 (1986), which implements the statutory requirements.

The hearings will be conducted according to the rule for general rate proceedings, section 1010.9 of BPA's Procedures. BPA Procedures provide for publication of a notice of the proposed rates, a prehearing conference, the opportunity for hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to FERC.

BPA's Procedures distinguish between participants in (Participants) and parties to (Parties) the hearings. BPA will receive comments, views, opinions, and information from Participants on the proposed pricing methodology. Participants are defined in section 1010.2 of the Precedures as persons who may submit comments without being subject to the duties of and having the privileges of Parties. Participants' written and oral comments will be made part of the official record and considered by the Administrator in his final decision. Participants are not entitled to participate in the prehearing conference (except to the extent that their petitions for Party status may be ruled on); may not cross examine Parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as Parties.

Written comments by Participants will be included in the record if they are submitted to BPA on or before October 23, 1992. Participants' written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement office.

The second category of interest is that of a Party. Section 1010.2 of BPA's Procedures define Party to mean any person who has been granted the right to intervene in the proceeding. Parties may participate in any aspect of the hearing process.

Persons wishing to become a Party to BPA's rate proceeding must notify BPA in writing of their request. Petitions to intervene shall state the name and address of the person requesting Party status and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on petitions filed in conformity with BPA's Procedures. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Petitions to intervene must be filed by 5 p.m. on September 9, 1992. Any opposition to a petition to intervene must be filed and served at least 24 hours before the September 16, 1992, prehearing conference. All timely petitions will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in BPA's Public Information Center, first floor, 905 NE. 11th, Portland, Oregon.

The record will include, among other things, the transcripts of any hearings, written material submitted by the Participants, and evidence accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, supplement it if necessary, and certify the record to the Administrator for decision.

The Administrator will make a decision on the final pricing methodology based on the entire record. The basis for the final pricing methodology will be expressed in the Administrator's Record of Decision (ROD). The Administrator will serve copies of the ROD on all Parties and will file the final pricing methodology, together will the record, with FERC for confirmation and approval.

IV. Capacity Ownership Pricing Methodology

The proposed pricing methodology is based on BPA's costs of new Third AC Intertie facilities and reinforcement to existing facilities needed to increase the PNW-PSW AC Intertie rated transfer capability from 4000 MW to 4800 MW, the book value of existing facilities which will be dedicated to the PNW-PSW AC Intertie upon commercial operation of the Third AC Intertie, and AFUDC associated with the new facilities.

BPA refers to the assignment of facilities and their costs as being required for either the first or second 800 MW increment. Those facilities associated with the first 800 MW increment are required to increase the PNW-PSW AC Intertie rated transfer capability from 3200 MW to 4000 MW. Those facilities associated with the second 800 MW increment are required to increase the PNW-PSW AC Intertie rated transfer capability from 4000 MW to 4800 MW.

In order to determine which costs are appropriately assigned to the first and second 800 MW of the Third AC Intertie Project, studies were performed to determine which facilities are needed for the PNW-PSW AC Intertie to operate reliably at 4000 MW. Costs were assigned to the first 800 MW on the basis of which facilities were needed for reliable operation at a rated transfer capability of 4000 MW from the PNW to the PSW. The remainder of the costs were assigned to the second 800 MW.

Following is a more detailed discussion of the components of the pricing methodology.

A. New Facilities

The new facilities associated with the Third AC Intertie Project are made up of two separate items: (1) Third AC Intertie System Reinforcement (Reinforcement) (which includes modifications to the existing PNW-PSW AC Intertie plus a new substation (Captain Jack) and related facilities) and (2) the Alvey-Meridian Transmission Line and related facilities. Costs associated with the Reinforcement are assigned to both the first and second 800 MW increments of the Third AC Intertie. These reinforcements are being made to the existing PNW-PSW AC Intertie and to existing main grid facilities that will become part of the PNW-PSW AC Intertie system upon commercial operation of the Third AC Intertie. A portion of the Reinforcement costs are assigned to the second 800 MW.

All of BPA's costs associated with the new Alvey-Meridian Transmission Line are assigned to the second 800 MW. Alvey-Meridian will be jointly-owned by BPA and PacifiCorp: BPA's portion of the line will be used for PNW-PSW AC Intertie purposes, while PacifiCorp's portion will be used to serve its obligations in southern Oregon and northern California.

B. Existing Support Facilities

A portion of two existing transmission lines and associated substations (new dedicated to serve BPA loads and wheeling obligations in the Willamette Valley) will become part of the PNW-PSW AC Intertie upon commercial operation of the Third AC Intertie Project. A portion of the book value of these facilities is included in BPA's pricing methodology for capacity ownership.

C. Allowance for Funds Used During Construction

The costs used in the proposed pricing methodology include an estimate for AFUDC.

D. Application of Proposed Pricing Methodology

For purposes of demonstrating application of the proposed pricing methodology below, BPA assumes that the New Owners' payments would be made upon commercial operation of the Third AC Intertie Project (currently estimated to be November 1993). In actuality, however, the New Owners' payments would be made to BPA when capacity ownership contracts are executed (currently to be late 1993). BPA would discount the payment to reflect receipt of the payment prior to commercial operation of the Third AC Intertie Project.

After commercial operation of the Third AC Intertie, an adjustment to the lump sum payment will be made to reflect actual costs of construction, commercial operation date, and the appropriate discount.

Using June 1989 program planning estimates of the cost of the Third AC Intertie Project, the estimated price for participation is $215/kW (in 1993 dollars). This estimate is provided to show how the pricing methodology will be applied. The estimate follows:

CAPACITY OWNERSHIP ESTIMATED PRICE [1] (1993 DOLLARS)

Cost item	Cost (millions of dollars)	Price per kW [2]
New Facilities	$157	
New Facilities needed for first 800 MW of 1600 MW	−39	
Cost of Second 800 MW	118	
AFUDC on Second 800 MW	19	
Existing Support Facilities	+19	
Total	156	$215

[1] Based on mid-1989 program planning levels.
[2] The Price per kW is derived by dividing the Total Price by 725 MW.

V. Major Issues

A. Which Facilities Are Appropriately Included in Pricing Methodology

Planned additions to transmission facilities owned by BPA, PacifiCorp, and PGE will upgrade the PNW-PSW AC Intertie from 3200 MW to 4800 MW. Existing facilities can be upgraded to 4000 MW by making reinforcements at a relatively lower cost than the remainder of the upgrade because of previous investments made by the current owners. The second 800 MW requires additional reinforcements plus construction of the Alvey-Meridian transmission line and associated facilities. BPA's proposed pricing methodology for capacity ownership is based on its portion of the costs associated with the second 800 MW of the 1600 MW Third AC Intertie Project.

In addition to the cost of new facilities specifically required for the second 800 MW of the Third AC Intertie (*see* § IV, ¶ A, *supra*), BPA's proposed pricing methodology includes the book value of portions of existing BPA transmission and substation facilities which will become part of the AC Intertie upon commercial operation of the Third AC Intertie Project (see section IV, ¶ B, *supra*).

The existing facilities that would be assigned to the PNW–PSW AC Intertie include one-half of one circuit of a double circuit 500 kV transmission line from Buckley to Marion, one-half of a single circuit 500 kV transmission line from Marion to Alvey, and one-half of the associated terminals at the Buckley and Marion substations. These facilities are currently considered part of BPA's main grid transmission system. The book value of these facilities is included in BPA's pricing methodology.

B. Cost Basis for Proposed Pricing Methodology

BPA proposes to price existing support facilities which will become part of the PNW–PSW AC Intertie upon commercial operation of the Third AC Intertie Project using the book value of those facilities.

VI. Proposed Capacity Ownership Rate Schedule

Section I. Availability

This schedule shall apply to all agreements which provide for non-Federal capacity ownership in BPA's share of the total PNW–PSW AC Intertie System. Capacity ownership to be offered by BPA totals 725 MW and equals approximately 21 percent of BPA's share of the total PNW–PSW AC Intertie system planned for November 1993.

Section II. Rate

The charge for non-Federal capacity ownership shall be the New Owners' payment to BPA as determined by the pricing methodology set out in Section III.

Section III. Determination of Rate

A. Lump Sum Payment

The New Owner's payment to BPA for capital and related costs shall be a share of the actual cost of facilities as determined by the formula shown below.

$$\frac{A-B+C+D}{E} = \text{Capacity Ownership Price in \$/kW}$$

Capacity Ownership Price in $/kW x number of kW contracted for by New Owner=New Owners payment to BPA.

Where:

A=BPA's cost of new facilities for the Third AC Intertie, which will increase the transfer capability of the PNW-PSW AC Intertie by approximately 1600 MW, is the construction costs (including land, BPA's normal allocation of corporate overhead, and indirect expenses) of the facilities associated with the Third AC Intertie System Reinforcement and the Alvey-Meridian Transmission Line (referred to jointly as the Third AC Intertie Project), including the following: New Captain Jack substation and related facilities; a 500 kV single-circuit transmission line from the Captain Jack substation to the California-Oregon Border; other required PNW-PSW AC Intertie improvements; and 50 percent of the construction costs associated with PacifiCorp's Alvey-Meridian 500 kV single-circuit transmission line and related facilities.

B=BPA's cost of new facilities needed for the first 800 MW increment of the 1600 MW Third AC Intertie Project and includes a portion of the construction costs (including land, BPA's normal allocation of overhead, and indirect expenses) associated with the new Captain Jack substation and related facilities; a 500 kV single-circuit transmission line from Captain Jack substation to the California-Oregon border; and other required PNW-PSW AC Intertie improvements.

C=AFUDC constitutes interest on the funds used for the Third AC Intertie Project while it is under construction. AFUDC is calculated and capitalized consistent with FERC requirements. The AFUDC is that amount capitalized on the second 800 MW increment of the 1600 MW Third AC Intertie Project, or A-B.

D=Book value of existing BPA support facilities which will be dedicated to the PNW-PSW AC Intertie upon commercial operation of the Third AC Intertie. It includes the book value of one half of one circuit of BPA's Buckley-Marion double-circuit 500 kV transmission line; the book value of one half of a single circuit of BPA's Marion-Alvey transmission line; and one-half of the associated terminals at BPA's Buckley and Marion substations.

E=725 MW, which equals BPA's share of the second 800 MW of the Third AC Intertie.

B. Annual Costs

Costs associated with operation and maintenance (O&M), general plant, and replacements and renewals, will be paid by New Owners as determined in BPA's periodic rate proceedings and published in BPA's Transmission Rate Schedules.

C. Upgrades of Intertie Facilities

The charge for additional transfer capability resulting from upgrades of intertie facilities and made available to New Owners shall be 21 percent of the capital and annual costs associated with the upgrade. Annual costs will be determined in BPA's periodic rate proceedings and published in BPA's Transmission Rate Schedules.

Section IV. Adjustments and Special Provisions

A. Payment

New Owners will make an initial, estimated lump sum payment of $215/kW at the time capacity ownership agreements are executed. Such payments will be based on mid-1989 cost estimates (in 1993 dollars) and will be discounted to reflect payment prior to the date of commercial operation of the Third AC Intertie, computed using BPA's weighted average interest rate on bonds outstanding with the U.S. Treasury.

B. Adjustment to Reflect Actual Costs

After commercial operation of the Third AC Intertie, the New Owners' payment to BPA shall be determined based on actual costs. At such time, New Owners would either receive a refund, with interest, from BPA or make an additional payment, with interest, to BPA to reflect the difference between the estimated payment described in Section IV.A. and the New Owners' payment to BPA described in Section III.A.

Issued in Portland, Oregon, on August 14, 1992.

John S. Robertson,
Deputy Administrator.

[FR Doc. 92-20332 Filed 8-24-92; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER92-763-000, et al.]

Southern California Edison Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 14, 1992.

Take notice that the following filings have been made with the Commission:

1.

Take notice that on August 4, 1992, Southern California Edison Company (Edison) tendered for filing the following amendment, executed on July 15, 1992, by the respective parties:

Amendment No. 1 (Amendment) to the Edison-AEPCO Load Control Agreement Between Southern California Edison Company and Arizona Electric Power Cooperative, Inc.

Edison's Valley Substation has replaced Mira Loma Substation as the location at which Edison can remotely control breaker equipment and acquire data from AEPCO's Mountain Center Substation. The Amendment replaces the references to "Edison's Mira Loma Substation" with "Edison's Valley Substation" and removes provision for breaker control.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corp.

[Docket No. ER92-768-000]

Take notice that on August 10, 1992, Florida Power Corporation (Florida Power filed a supplement to the service agreement pursuant to which it provides transmission service to Seminole Electric Cooperative under its T-1

Transmission Tariff. The supplement provides for the provision of transmission service to an additional delivery point. The supplement does not affect the rates charged pursuant to the service agreement.

Florida Power states that a copy of the filing has been posted as required by the Commission's regulations, and a copy has been mailed to the customer affected by the filing and to the Florida Public Service Corporation. Florida Power requests that the supplement become effective on October 9, 1992, which is 60 days after the supplement was tendered for filing.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Co.

[Docket No. ER92-769-000]

Take notice that on August 5, 1992, Carolina Power & Light Company tendered for filing with the Commission a contract amendment to a Rate Schedule contained in CP&L's Interconnection Agreement with Yadkin, Inc. dated June 1, 1961, as amended (CP&L Rate Schedule FERC No. 46). This contract amendment has been filed for the purpose of complying with FERC Order No. 84 issued on May 7, 1987, in Docket No. RM79-29.

A copy of this filing has been sent to the affected utility, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Interstate Power Co.

[Docket No. ER92-771-000]

Take notice that on August 10, 1992, Interstate Power Company tendered for filing a Firm Power Interchange Service Agreement between Interstate Power Company and Minnesota Power and Light Company. Under this Agreement, Interstate Power Company will sell 20 MW of firm power in accordance with Service Schedule J of the Mid-Continent Area Power Pool Agreement. This Agreement provides for firm power sales during the MAPP summer season only commencing May 1, 1992 and ending October 31, 1992. The parties request a waiver of the Commission's 60 day filing period for this Agreement and an effective date of May 1, 1992 for such Agreement.

Comment date: August 28, 1992, in accordance with Standard Paragraph E end of this notice.

5. West Texas Utilities Co.

[Docket No. ER92-772-000]

Take notice that on August 10, 1992, West Texas Utilities Company (WTU) tendered for filing agreements between WTU and the Cities of Brady and Coleman, Texas, respectively. The Agreements provide for curtailable supplemental energy sales to the Cities, which are currently partial requirements customers of WTU.

WTU requests an effective date of August 11, 1992, for both Agreements. Copies of the filing have been served on the Cities and the Public Utility Commission of Texas.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Interstate Power Co.

[Docket No. ER92-770-000]

Take notice that on August 10, 1992, Interstate Power Company tendered for filing a rate schedule for Firm Power Interchange Service provided by Interstate to other members of the Mid-Continent Area Power Pool (MAPP), pursuant to Service Schedule J of the MAPP Agreement. Interstate requests a waiver of the Commission's 60 day filing period for this rate schedule and an effective date of May 1, 1992.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Florida Power & Light Co.

[Docket No. ER92-622-000]

Take notice that on August 6, 1992, Florida Power & Light Company (FPL) tendered for filing an Amendment to Cancellation of Florida Power & Light Company's Partial Requirements Service to the City of Vero Beach, Florida and the Fort Pierce Utilities Authority (Amendment).

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. The United Illuminating Co.

[Docket No. ER92-443-000]

Take notice that on August 7, 1992, The United Illuminating Company (UI) tendered for filing an amendment to the rate schedule for the sale of system capacity and associated energy between UI and Central Vermont Public Service Corporation (Central Vermont). This amendment is a response to the Commission Staff's Deficiency Letter of July 10, 1992.

Copies of this amendment were served upon Central Vermont and the Vermont Public Utility Service Board.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Indiana Michigan Power Co.

[Docket No. ER92-30-000]

Take notice that American Electric Power Service Corporation (AEP) on August 3, 1992, tendered for filing on behalf of Indiana Michigan Power Company (I&M), information requested by the staff of the Commission which supports the charges made by I&M to PSI Energy, Inc. in connection with a maintenance agreement filed in the referenced docket.

A copy of this filing has been sent to the Indiana Utility Regulatory Commission.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Co.

[Docket No. ER91-562-001]

Take notice that on August 6, 1992, Virginia Electric and Power Company tendered for filing its refund compliance report in the above referenced docket.

Comment date: August 28, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. United States Department of Energy—Western Area Power Administration (Salt Lake City Area Integrated Projects)

[Docket No. ER92-5172-000]

Take notice that on August 13, 1992, the Assistant Secretary of Energy for Conservation and Renewable Energy of the United States Department of Energy (Assistant Secretary) filed with the Commission a request, on behalf of the Western Area Power Administration, for final confirmation and approval of Rate Schedule SLIP-F4 for firm power service from the Salt Lake City Area Integrated Projects and for final approval of Rate Schedule SP-FT4 for firm transmission service from the Colorado River Storage Project. The Assistant Secretary states that approval is sought for a period beginning October 1, 1992 and ending September 30, 1996. The Assistant Secretary further states that interim approval was given for the proposed rates on August 10, 1992.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Texas-New Mexico Power Co.

[Docket No. ES88-4-001]

Take notice that on August 11, 1992, Texas-New Mexico Power Company filed an amendment with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting that the authorization previously granted in this docket be amended to change the final maturity date of the short-term notes issued from June 30, 1995 to December 31, 1995.

Comment date: September 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20262 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM92-19-20-000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

August 19, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 17, 1992, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the following revised tariff sheets:

Proposed to be Effective August 1, 1992

11 Rev Sheet No. 41
11 Rev Sheet No. 42
Sub 11 Rev Sheet No. 42

Algonquin states that the revised tariff sheets are being filed to flow through changes in rates in Texas Eastern Transmission Corporation's ("Texas Eastern") Rate Schedules SS-2 and SS-3, which underlie Algonquin's Rate Schedules STB and SS-III, respectively. Pursuant to section 10 of Rate Schedule STB and section 9 of Rate Schedule SS-III in Algonquin's FERC Gas Tariff, Third Revised Volume No. 1, Algonquin is hereby filing the above sheets to track the latest changes filed by Texas Eastern in its latest Out of Cycle PGA filed in Docket No. TQ92-7-17 on July 30, 1992 to be effective August 1, 1992.

Algonquin also states that in its filing, Texas Eastern included two sets of tariff sheets, one to track its prior approved rates and substitute sheets to reflect rates derived from the cost of service of the Stipulation and Agreement ("S & A") in Docket Nos. RP90-119-010 and RP91-119-006. The prior rates are tracked in Algonquin's 11 Rev Sheet No. 42 and the S & A rates are tracked in 11 Rev Sheet No. 41 and Sub 11 Rev Sheet No. 42. Algonquin requests that the Commission approve Algonquin's appropriate sheets consistent with Commission action in Texas Eastern Docket No. TQ92-7-17.

Pursuant to §§ 10.3 and 9.3 of Rate Schedules STB and SS-III, respectively, the proposed effective date for the listed revised tariff sheets is August 1, 1992.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 26, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20341 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-401-012]

Citizens Power & Light Corp.; Filing

August 19, 1992.

Take notice that on August 5, 1992, Citizens Power & Light Corporation (Citizens) filed certain information as required by ordering paragraph (M) of the Commission's August 8, 1989 order in this proceeding, 48 FERC ¶ 61,210 (1989). Copies of Citizens' informational filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20335 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ92-5-21-001]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

August 19, 1992.

Take notice that Columbia Gas Transmission Corporation (Columbia) on August 14, 1992, tendered for filing the following proposed change to its FERC Gas Tariff, to be effective August 1, 1992:

Sub Tenth Revised Sheet No. 26D
Sub Eleventh Revised Sheet No. 26D

Columbia states that the foregoing tariff sheets are being filed in compliance with the Commission's order issued July 30, 1992 in Docket Nos. TQ92-5-21-001 and TM92-12-21-001. Such order directed Columbia to: (1) File working papers to support the TCRA base rates in the referenced filing; (2) show the development of the SGS minimum bill; and (3) correct the tariff sheet to reflect the correct rate for Rate Schedule OPT.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers, and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 26, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20339 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-198-001]

East Tennessee Natural Gas Co.; Compliance Filing

August 19, 1992.

Take notice that on August 14, 1992, East Tennessee Natural Gas Company

(East Tennessee) tendered for filing the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1992:

Second Revised Sheet No. 150
Second Revised Sheet No. 151
Second Revised Sheet No. 152

East Tennessee states that in accordance with the Commission's July 30, 1992 order, East Tennessee has submitted a revised index of Purchasers showing the current amount of demand billing determinants on East Tennessee's system.

East Tennessee states that copies of the filing has been mailed to all affected customers on East Tennessee's system and state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 26, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20338 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER92-521-000]

Hartwell Energy Limited Partnership; Issuance of Commission Order

August 19, 1992.

Take notice that, on August 5, 1992, the Federal Energy Regulatory Commission issued an Order Accepting Agreement for Filing and Granting and Denying Waiver. On May 4, 1992, as amended on July 22, 1992, Hartwell Energy Limited Partnership (Hartwell) filed a power purchase agreement with Oglethorpe Power Corporation (Oglethorpe) in Docket No. ER92-521-000. In addition to requesting that the Commission accept the power purchase agreement, Hartwell also requested a waiver of the 60-day prior notice requirement and certain other provisions of the Commission's regulations. In particular, Hartwell also requested that the Commission grant blanket approval under 18 CFR Part 34, of all future issuances of securities and assumptions of liability by Hartwell.

The Commission's August 5, 1992 order in Ordering Paragraphs (G), (H) and (I) reads as follows:

(G) Within thirty (30) days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liability by Hartwell should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 358.211 and 385.214).

(H) Absent a request for hearing within the period set forth in Ordering Paragraph (G) above, Hartwell is authorized to issue securities and assume obligations or liabilities as guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumptions for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

(I) The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of Hartwell's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 4, 1992.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol St., NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20336 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-43-000]

Mississippi River Transmission Corp.; Prefiling Conference

August 19, 1992.

Take notice that a prefiling conference will be convened in this proceeding on Friday, August 28, 1992, at 8:30 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC. The purpose of the conference is to address Mississippi River Transmission Corporation's summary of its proposal to comply with Order Nos. 636 and 636-A.

Any party, as defined in 18 CFR 385.102(c) (1992), or any participant, as defined in 18 CFR 385.102(b) (1992), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations, 18 CFR 385.214 (1992).

For additional information, contact David Cain at (202) 208-0909.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20340 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA92-1-55-001]

Questar Pipeline Co.; Filing and Waiver Request

August 19, 1992.

On June 29, 1992, Questar Pipeline Company (Questar) filed revised supporting information to its annual purchased gas adjustment (PGA) to correct errors on Schedule C1 of its original filing and to explain certain negative storage withdrawals reflected in the filing. Questar states that the filing is pursuant to the May 29, 1992, Commission letter order in Docket No. TA92-1-55-000. (Unpublished.)

Questar requests waiver of the May 29 letter order to reflect a correcting adjustment of negative $7,958 to its unrecovered purchased gas cost for September, 1991 storage activity in its next annual PGA filing.

Questar states that a copy of the filing has been provided each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 26, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20342 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-220-000]

Tennessee Gas Pipeline Co.; Proposed Changes in FERC Gas Tariff

August 19, 1992.

Take notice that on August 17, 1992, Tennessee Gas Pipeline Company (Tennessee), tendered for filing revised tariff sheets listed on appendix A attached to the filing, to amend Fourth Revised Volume No. I of its FERC Gas Tariff effective October 1, 1992.

Tennessee states that it is filing the revised tariff sheets to implement under part 284 of the Commission's regulations the new storage service agreed to by Tennessee in its "cosmic" settlement, effective October 1, 1992. Tennessee states that the filing consists of revisions to the existing SS-E, SS-NE, and SS-S rate schedules and new schedules FSS and ISS for firm and interruptible storage on a stand alone basis.

Tennessee states that the filing is being made in response to the Commission's order of June 25, 1992, approving the cosmic settlement, as modified, in Docket Nos. RP86-119, RP88-228, *et al.*, stated that the new storage service agreed to by Tennessee in settlement could be provided under part 284 of the Commission's regulations. Tennessee indicates that it has filed revisions to the SS rate schedules, and has included new FSS and ISS rate schedules, to fulfill the Commission's policy of preferring pipelines to provide a "full line" of storage services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 26, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20343 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-11-000]

Texas Eastern Transmission Corp.; Conference

August 18, 1992.

Take notice that on August 26, 1992, at 10 a.m., a conference will be convened in the captioned restructuring docket. The conference will be held at The Department of Health and Human Services Auditorium, 300 Independence Avenue, SW. (C Street Entrance), Washington, DC. The conference is being convened so that Texas Eastern can explain the tariff and rate changes made in the August 14, 1992 draft revisions package which would revise Texas Eastern's June 8, 1992 compliance filing. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information, interested parties can call Neil L. Levy at (202) 208-2794.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20263 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. FA88-6-000]

Wisconsin Electric Power Co.; Order Expanding the Scope of Hearing To Include Prudence Issue

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, Jerry J. Langdon and Branko Terzic

Issued August 19, 1992.

On February 4, 1992, pursuant to delegated authority, 18 CFR 375.303 (1992), the Chief Accountant issued a contested audit report to Wisconsin Electric Power Company (Company).[1] The audit report noted that the Company contested certain recommendations concerning the accounting and fuel adjustment clause billings for coal mine reclamation costs.[2] The Chief Accountant requested the Company to indicate whether it consented to shortened proceedings pursuant to part 41 of the Commission's regulations, 18 CFR part 41 (1992).[3]

The Company initially consented to shortened proceedings. Accordingly, on March 30, 1992, pursuant to delegated authority, 18 CFR 375.30 (1992), the Secretary issued an order instituting shortened proceedings.[4] Subsequently, before the case was submitted to the Commission, the Company filed a motion for termination of the shortened proceedings and, instead, requested a trial-type, evidentiary hearing. On May 14, 1992, pursuant to delegated authority, 18 CFR 375.30 (1992), the Secretary issued an order establishing hearing procedures.[5]

Before the presiding judge, the sole intervenor, the Cedarburg Group, questioned the prudence of the Company's payments that were the subject of the audit report. However, the presiding judge ruled that, because prudence had not been raised in the audit report, he did not have authority to address prudence without explicit Commission authorization.

On June 19, 1992, the Company and the intervenor filed a joint motion with the Commission requesting that the issue of prudence be included in the instant proceeding. While the Company states that it believes that its actions were prudent, the Company also acknowledges that the intervenor could raise the same allegations in a complaint which could lead to litigation in two proceedings over the same payments. The Company states that, if included promptly here, the prudence issue can be litigated efficiently with no delay in the hearing date and, accordingly, the Company joins in the motion.

On August 11, 1992, the intervenor, with the support of the Company, filed a motion requesting immediate action on the earlier-filed joint motion.

Discussion

Given the concurrence of both the Company and the sole intervenor, given the absence of any opposition, and given the reasons stated in the June 19, 1992 motion for addressing the issue in this proceeding as opposed to another proceeding, the June 19, 1992 motion will be granted. Any person wishing to become an additional party to this expanded proceeding must file a motion to intervene, in accordance with Rule 14 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (1992) within 20 days of the date of publication of this order in the **Federal Register**. The presiding judge has the discretion to determine the procedures best suited to accommodate the filing of any such motion.

The Commission Orders:

(A) The Company's and the intervenor's June 19, 1992 joint motion to

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[1] Wisconsin Electric Power Company, 58 FERC ¶ 62,121 (1992).

[2] *Id.* at 63,350, 63,357-60.

[3] *Id.* at 63,350.

[4] Wisconsin Electric Power Company, 58 FERC ¶ 61,332 (1992).

[5] Wisconsin Electric Power Company, 59 FERC ¶ 61,184 (1992).

include the prudence issue in this proceeding is hereby granted.

(B) The presiding judge designated to preside in this proceeding shall determine the procedures best suited to accommodate the granting of the June 19 joint motion and any future motions to intervene.

(C) This order shall be promptly published in the **Federal Register**.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20337 Filed 8-24-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

[Special Research Grant Program Notice 92-17]

Office of Science and Technology Advisor; Museum Science Education

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Science and Technology Advisor of the U.S. Department of Energy (DOE), in keeping with the energy-related mission of DOE, announces its interest in receiving Special Research Grant applications from museums that will support development of the media of informal energy-related science education. The media of informal science education include but are not limited to: Interactive exhibits, hands-on activities, and film/video productions. Examples of energy-related areas within the fundamental energy sciences include high energy and nuclear physics, nuclear science and technologies, global warming, waste management, energy efficiency, new materials development, fossil energy resources, renewable energy, health effects research including the human genome, emerging energy technologies, risk assessment, energy/environment, space exploration initiatives, public science literacy, and other timely topics. The purpose of the program is to fund the development and use of creative informal science education media which focus on energy-related science and technology. However, under this program only new activities, exhibits, etc., will be considered for funding. Expansion of ongoing efforts is not acceptable.

For the purpose of this notice, "museum" means: An established nonprofit institution serving the public on a year-round basis, providing interactive exhibits, demonstrations, and informal educational programs designed to further public understanding of science and technology. The term also includes organizations referred to as science centers, science-technology centers and youth museums. Thus, museums, as defined in this document, are eligible to submit Special Research Grant applications.

DATES: Preapplications to include an original and one copy must be received by November 4, 1992. To permit timely consideration for award in Fiscal Year 1993, formal applications submitted in response to this notice should be received no later than 4:30 p.m., February 3, 1993.

ADDRESSES: Preapplications should be sent to the following address: Kasse Andrews-Weller, Program Manager, Office of Science and Technology Advisor, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585. Completed formal applications referencing Program Notice 92-17 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, room G-236, Washington, DC 20585, Attn: Program Notice 92-17. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, Maryland 20874.

FOR FURTHER INFORMATION CONTACT: Kasse Andrews-Weller, Program Manager, Office of University and Science Education Programs, ST-512, Office of Science and Technology Advisor, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8949.

SUPPLEMENTARY INFORMATION: The DOE is strongly committed to increasing the public's science literacy as well as increasing the number of students interested in science and technology careers. Projects which are designed to enhance public awareness of, and to encourage all young people to consider careers in, science and technology are strongly desired. While the application must be submitted by a museum, collaborative efforts are encouraged. Such efforts by potential applicants may include: partnerships of several small museums, of a small and large museum, or of a history museum and youth museum in collaboration with museum organizations; and cooperative enterprises which utilize the scientific and technical expertise of the DOE laboratories, industry, and the broader educational community in conjunction with a museum.

As part of DOE's effort to promote public science literacy; enhance the Nation's mathematics, science, and engineering education; and fulfill the National Education Goal of "by the year 2000, U.S. students will be first in the world in science and mathematics achievements," eligibility for awards under this notice is restricted to U.S. museums which will offer informal energy-related science education. In accordance with 10 CFR 600.7(b)(1), this restriction is necessary to support established U.S. institutions which provide a valuable supplement to formal education. While this program anticipates awarding grants only from FY 1993 appropriations, the period of support of a grant may extend up to two years.

Before preparing a formal application, potential applicants are asked to submit a brief preapplication in accordance with 10 CFR 600.10(d) (2) and (3), which consists of no more than two pages of narrative describing the major project objectives and method of accomplishment to be utilized by the applicant or its designee to determine the effectiveness of the intended exhibit or media forum, dissemination plan, work schedule, and approximate cost of the project to DOE.

The purpose of the preapplication is to give the program staff the opportunity to determine the level and appropriateness of interest in the project or activity. The program staff will also look at the approach the museum is considering. Each museum will receive a written response to its preapplication. Once you have submitted a preapplication, however, you may submit a formal application, regardless of the written response to the preapplication. Telephone and telefax numbers are required to be part of the preapplication.

A formal application consists of an original and seven copies, a copy of the museum's Internal Revenue Service nonprofit determination letter, and other documents as stated in the Application Kit and Guide.

No electronic submissions (including fax) of preapplications or formal applications under this Program Notice will be accepted.

This notice requests further that the "Detailed Description of Research Work Proposed" component of a complete grant application as established by 10 CFR part 605 should not exceed 15 double-spaced, typed pages. This project description should include: Conceptual design and how that design relates to the program objectives; description of how the impact of the project will be maximized (dissemination); identification of the target audience(s) the project will serve and efforts planned to serve that audience; identification of the mechanisms to be used to organize and manage the project, including the rules and responsibilities, financial and otherwise, of any partnerships; clarification of the monitoring and evaluation plan, including how those plans can be used for possible project modification; delineation of the planned outcomes and how these outcomes will be assessed and reported; and discussion of the anticipated significance of the exhibit and how this will be confirmed. In addition, formal applications need to include information that will provide the expected impact in terms of populations served and any evaluation plan.

General information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures are contained in the OER Special Research Grant Application Kit and Guide. Multiple applications are permissible; however, each application must be limited to a single project. The DOE expects to make several grants in FY 1993 to meet the objectives of this program. It is anticipated that $1 million will be the total funds available in FY 1993, subject to tne availability of appropriated funds. Awards are expected to range from $10,000 to $200,000, with the number of awards determined by the number of fundable applications and the total amount of funds available for this program. The application kit and guide are available from the U.S. Department of Energy, Museum Science Education Program, Office of University and Science Education Programs, ST-50, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone requests may be made by calling (202) 586-8949.

The Catalog of Federal Domestic Assistance Number for this program is 81.049.

Issued at Washington, DC, on August 14, 1992.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92-20329 Filed 8-24-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. FE C&E 92-12; Certification Notice—104]

Filing Certification of Compliance; Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Modesto Irrigation District has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586-9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Modesto Irrigation District, Modesto, CA.

Operator: Modesto Irrigation District.

Location: Woodland Generation Station Project, Modesto, CA.

Plant Configuration: The prime mover of the facility will be a single-train, simple-cycle aeroderivative GE LM5000 PD gas-fired combustion turbine equipped with steam injection.

Capacity: 49.4 megawatts.

Fuel: Natural Gas.

Purchasing Utility: District will primarily use all or some of the electricity for its own account, and may sell some or all to others when it is excess to the District's needs.

Expected In-Service Date: Third Quarter, 1993.

Issued in Washington, DC on August 20, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-20331 Filed 8-24-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Order Confirming and Approving an Extension of the Parker-Davis Project Rates for Firm Power and Firm and Nonfirm Transmission Service

AGENCY: Western Area Power Administration.

ACTION: Notice is given of Rate Order No. WAPA-57 extending the existing Parker-Davis Project (P-DP) rate schedules; for firm power PD-F3, firm transmission PD-FT3, nonfirm transmission PD-NFT3, and transmission service for Salt Lake City Area Integrated Projects (SLCA/IP) PD-FCT3, until superseded by new P-DP rate schedules, but for not more than 1-year.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352-2650.

SUPPLEMENTAL INFORMATION: Power and Transmission rates for the P-DP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of May 28, 1954 (ch. 241, 68 Stat. 143).

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary of Department of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western Area Power Administration (Western), (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary, Conservation and Renewable Energy, of the Department of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such

rates to the Federal Energy Regulation Commission (FERC).

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Pursuant to Delegation Order No. 0204–108, FERC, in the order issued November 15, 1990, in Docket No. EF90–5041–000, confirmed and approved Rate Schedules: PD–F3 for firm power service, PD–FT3 for firm transmission service, PD–NFT3 for nonfirm transmission service and PD–FCT3 for Transmission Service or SLCA/IP Power. The rate schedules were approved for the 2-year period October 1, 1990, through September 30, 1992.

Western proposes to extend the existing rates for P–DP firm power and firm and nonfirm transmission service until such time as new P–DP rate schedules supersede the existing P–DP rate schedules, but for not more than 1-year. This proposal resulted from responses to public comments stating that additional time is needed to comment on unresolved issues relative to the forthcoming P–DP rate adjustments. The public comment and consultation period for the P–DP rate adjustment has been extended to September 28, 1992 (57 FR 34776, August 6, 1992) and the anticipated effective date for the proposed P–DP rates in the first half of FY 1993.

The purpose of Rate Order No. WAPA–57 is to extend the P–DP rate schedules PD–F3, PD–FT3, PD–NFT3 and PD–FCT3 until such time as new P–DP rate schedules supersede the existing P–DP rate schedules, but for not more than 1-year.

Issued in Washington, DC, August 19, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92–20330 Filed 8–24–92; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–4198–3]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice regarding waiver of federal preemption.

SUMMARY: The Administrator has determined that amendments to California's warranty statute and regulations and regulations establishing common emission control system nomenclature as applied through the 1993 model year are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Clean Air Act, as amended, 42 U.S.C. section 7543(b) (Act), to adopt and enforce its revised emission standards and accompanying enforcement procedures for 1979 and later model year vehicles and engines. For reasons discussed below, EPA is making no assessment of the scope of prior waivers with regard to the 1994 and later model years.

ADDRESSES: Any objection to the findings in this notice should be filed with Mr. Charles N. Freed, Director, Manufacturers Operations Division (6405–J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The Agency's decision as well as all documents relied upon in reaching that decision including those submitted by the California Air Resources Board are available for public inspection in Docket A–91–16 during the working hours of 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m. at the Environmental Protection Agency, Air Docket (LE–131), Room M–1500, Waterside Mall, 401 M Street SW., Washington, DC 20460. Copies of the decision can be obtained from EPA's Manufacturers Operations Division by contacting Leila Holmes Cook, as noted below.

FOR FURTHER INFORMATION CONTACT: Leila Holmes Cook, Attorney/Advisor, Manufacturers Operations Division (6405–J), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone: (202) 233–9252.

SUPPLEMENTARY INFORMATION: I have determined that California's amendments to its warranty statute and regulations as applied through the 1993 model year are within the scope of previous waivers of Federal preemption granted pursuant to section 209(b) of the Act, 42 U.S.C. section 7543(b). The substantive amendments to the emission warranty requirements which are applicable under California State law to 1990 and subsequent model year passenger cars, light-duty trucks, and medium-duty vehicles,[1] require manufacturers to provide the following:

(1) *An emission-related "defects warranty" for three years or 50,000 miles.* The manufacturer must warrant that the vehicle is free from defects in materials and workmanship which cause the failure of a warranted part to be identical in all material respects to the part described in the application for certification. The emission-related parts that are defective within this period must be repaired or replaced by the manufacturer at no cost to the vehicle owner.

(2) *A seven year or 70,000 miles "extended defects warranty" for expensive emission-related parts.* Manufacturers are required to identify and warrant for the extended period, those emission-related components that cost the consumer over $300 to replace as of the time of certification.

(3) *A "performance warranty" for three years or 50,000 miles, whichever first occurs.* Manufacturers must warrant the vehicle will pass an inspection and maintenance (SMOG CHECK) test. If a vehicle fails the Smog Check test the manufacturer will be liable for the cost of the part, labor, diagnosis, and the SMOG Check retest to ensure the vehicle passes. The manufacturer would not be liable for the failure if it can demonstrate that the failure was directly caused by abuse, neglect or improper maintenance or repair.

(4) *A prescribed Introductory Statement for owners.* Manufacturers of all 1991 and subsequent model vehicles produced after January 24, 1991 must include in their warranty booklet a specified, standardized statement that explains in layman's terms the vehicle owner's rights and responsibilities regarding the emission control systems warranty.

(5) *Common Nomencloture.* All emission-related service and certification documents, starting with the 1993 model year, must conform to the nomenclature and abbreviations in SAE publication J1930 "Diagnostic Acronyms, Terms, and Definitions for Electrical/Electronic Systems".

(6) The emission warranty requirements for covering pre-1990 and subsequent model motorcycles and heavy-duty vehicles and engines will be continued without substantial change.

Because CARB did not make the "protectiveness" determination required by section 209(b) of the Act with regard to Federal standards applicable in the 1994 and later model years as described by the 1990 Amendments to the Clean Air Act (CAAA), this determination of the scope of prior waivers will not address the California amendments as they apply to the 1994 and later model years.

California has also requested a waiver of Federal preemption for its standards as modified by new low emission vehicle (LEV) standards, which under California state law will be applicable to 1994 and later model year vehicles (which also is when the phase-in of the new Federal Tier 1 standards begins).[2] For the reasons stated above, CARB acknowledged, in its request for a waiver for its LEV standards, the possibility that EPA may address the warranty amendments as they apply only through the 1993 model year.[3] Since California has made a protectiveness finding with regard to the California standards as applicable to the 1994 and later model years compared to the applicable Federal standards (including Tier 1) as a basis for the waiver request addressing LEV standards, EPA sees no reason to request California to supplement its submission to this record to include a protectiveness finding comparing the pre-LEV California standards to the Federal standards required by the CAAA. EPA plans to address the waiver for California warranty provisions for 1994 and later model years in the LEV waiver proceeding.

With regard to the 1993 model year, these amendments do not undermine California's determination that its standards, in the aggregate are as protective of public health and welfare as comparable Federal standards, are not inconsistent with section 202(a) of the Act, and raise no new issues affecting the Environmental Protection Agency's (EPA) previous waiver determination. Thus these amendments are within the scope of previous waivers determinations. A full explanation of EPA's decision is contained in a determination document which may be obtained from EPA as noted above.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by October 26, 1992. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: August 14, 1992.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–20204 Filed 8–24–92; 8:45 am]

BILLING CODE 6560–50–M

[1] While the amended regulations affect the 1979 and subsequent model years, the changes made to 1979 through 1989 model year regulations are merely clarification and organizational changes. Only minor clarifications and prospective obligations are addressed up through model year 1989. Regulations addressing model years 1990 and later implement the substantive changes which are described in greater detail below.

[2] California Proposed Regulations for Low Emission Vehicle Standards and Clean Fuels (August 13, 1990). Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991.

[3] Letter from James D. Boyd, Executive Officer, CARB, to William K. Reilly, Administrator, EPA, dated October 4, 1991, p. 10, footnote 14.

[AMS–FRL–4198–2]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice regarding waiver of federal preemption.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act to enforce amendments that establish exhaust and evaporative emission standards and test procedures for various classes of dedicated-methanol and flexible-fuel vehicles and engines. California also amended its corresponding regulations.

ADDRESSES: A copy of the above standards and procedures, the decision document containing an explanation of the Administrator's determination, and the record of those documents used in arriving at this decision, are available for public inspection during normal working hours (8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m.) at the U.S. Environmental Protection Agency, Air Docket (LE–131), (Docket A–90–29), room M–1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460. Copies of the decision can be obtained from EPA's Manufacturers Operations Division by contacting Tiffany Schauer, as noted below. For further information contact: Tiffany Schauer, Attorney/Advisor, Manufacturers Operations Division (EN–340F), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Telephone: (202) 233–9298.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 290(b) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543(b), for amendments to its exhaust emission standards and test procedures and corresponding regulations to make them applicable to dedicated-methanol and flexible-fuel passenger cars, light-duty trucks, medium-duty vehicles, and heavy-duty engines, beginning with the 1993 model years. This waiver encompasses the adoption by the California Air Resources Board (CARB) of amendments to its emission standards and accompanying enforcement procedures for the certification of dedicated-methanol and flexible-fuel vehicles and engines.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that these standards and accompanying enforcement procedures do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No evidence has been presented which shows that California arbitrarily or capriciously reached this determination. Therefore, I cannot find California's determination to be arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I

agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its emission standards and test procedures are technologically feasible and present no inconsistency with Federal requirements and are, therefore, consistent with section 202(a) of the Act. No commenter submitted data or other information to satisfy the burden of persuading EPA that the standards are not technologically feasible within the available lead time, considering costs. Since California's amendments generally parallel the Federal methanol standards and test procedures, the amendments do not present any issues regarding inconsistent procedures. Accordingly, I hereby grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by October 26, 1992. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 12, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Nor is a Regulatory Impact Analysis being prepared under Executive Order 12291 for this determination, since it is not a rule.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: August 14, 1992.

Richard D. Wilson,

Assistant Administrator for Air and Radiation.

[FR Doc. 92-20203 Filed 8-24-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4197-3]

Workshops on Ecological Risk Assessment Case Studies

AGENCY: Environmental Protection Agency.

ACTION: Notice of meetings.

SUMMARY: This notice announces two workshops sponsored by the U.S. Environmental Protection Agency's (EPA) Risk Assessment Forum to obtain scientific peer-review for six ecological risk assessment cases studies.

DATES: The dates for the workshops are listed below. Members of the public may attend as observers.

Part 1. The workshop will begin on Wednesday, September 9, 1992, at 8:30 a.m. and end on Thursday, September 10, at 12:30 p.m.

Part 2. The workshop will begin on Tuesday, September 22, 1992, at 8:30 a.m. and end on Wednesday, September 23, at 12:30 p.m.

ADDRESSES: The locations for the workshops are listed below.

Part 1. The workshop will be held at the U.S. Environmental Protection Agency, Environmental Research Laboratory, 27 Tarzwell Drive, Narragansett, RI.

Part 2. The workshop will be held at the Gaithersburg Marriott Hotel, 620 Perry Parkway, Gaithersburg, MD.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend either workshop as an observer, call Eastern Research Group at (617) 674-7374 or call Deborah Kanter, Eastern Research Group, 110 Hartwell Avenue, Lexington, Massachusetts, 02173, telephone (617) 674-7320 by August 28, 1992, for the first workshop and September 9, 1992, for the second workshop. Space is limited.

FOR FURTHER INFORMATION CONTACT: Ms. Clare Stine, U.S. Environmental Protection Agency, (RD-672), 401 M Street, SW., Washington, DC, 20460, telephone (202) 260-6743.

SUPPLEMENTARY INFORMATION: The purpose of the workshops is to obtain scientific peer-review for six case studies that represent a wide range of ecological risk assessments. Each workshop will review both the scientific and risk assessment aspects of three case studies. The case studies will be used along with other information to provide a foundation for future Agency-wide ecological risk assessment guidelines.

After the workshops, a report containing the case studies and highlighting significant ecological risk assessment issues will be prepared. This report will be made available to the public in a future issue of the Federal Register.

Dated: August 17, 1992.

Peter W. Preuss,

Acting Assistant Administrator for Research and Development.

[FR Doc. 92-20205 Filed 8-24-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-51804; FRL 4161-6]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of 45 such PMNs and provides a summary of each.

DATES: Close of review periods:

P 92-1247, 92-1248, 92-1249, 92-1250, October 21, 1992.

P 92-1251, 92-1252, 92-1253, October 20, 1992.

P 92-1254, October 28, 1992.
P 92-1255, October 24, 1992.
P 92-1256, October 25, 1992.
P 92-1257, October 24, 1992.
P 92-1258, October 25, 1992.
P 92-1259, 92-1260, October 26, 1992.
P 92-1261, 92-1262, October 27, 1992.

P 92-1263, 92-1264, 92-1265, 92-1266, 92-1267, 92-1268, 92-1269, 92-1270, 92-1271, 92-1272, 92-1273, 92-1274, 92-1275, 92-1276, 92-1277, 92-1278, October 28, 1992.

P 92-1279, 92-1281, October 31, 1992.

P 92-1282, 92-1283, 92-1284, 92-1285, 92-1287, 92-1288, November 1, 1992.

P 92-1289, 92-1290, 92-1291, November 2, 1992.

P 92-1292, November 3, 1992.
P 92-1293, November 1, 1992.

Written comments by:

P 92-1247, 92-1248, 92-1249, 92-1250, September 21, 1992.

P 92-1251, 92-1252, 92-1253, September 20, 1992.

P 92-1254, September 28, 1992.
P 92-1255, September 24, 1992.
P 92-1256, September 25, 1992.
P 92-1257, September 24, 1992.
P 92-1258, September 25, 1992.
P 92-1259, 92-1260, September 28, 1992.
P 92-1261, 92-1262, September 27, 1992.

P 92-1263, 92-1264, 92-1265, 92-1266, 92-1267, 92-1268, 92-1269, 92-1270, 92-1271, 92-1272, 92-1273, 92-1274, 92-1275, 92-1276, 92-1277, 92-1278, September 28, 1992.

P 92-1279, 92-1281, October 1, 1992.

P 92-1282, 92-1283, 92-1284, 92-1285, 92-1287, 92-1288, October 2, 1992.

P 92-1289, 92-1290, 92-1291, October 3, 1992.

P 92-1292, October 4, 1992.
P 92-1293, October 2, 1992.

ADDRESSES: Written comments, identified by the document control number "(OPPTS-51804)" and the specific PMN number should be sent to: Document Processing Center (TS-790), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. 201ET, Washington, DC, 20460, (202) 260-3532.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-545, 401 M St., SW., Washington, DC, 20460 (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the TSCA Public Docket Office, NE-G004 at the above address between 8 a.m. and noon and 1 p.m. and 4 p.m., Monday through Friday, excluding legal holidays.

P 92-1247

Manufacturer. Confidential.
Chemical. (G) Alkylamidic acid salt.
Use/Production. (G) Open, nondispersive. Prod. range: Confidential.

P 92-1248

Manufacturer. Confidential.
Chemical. (G) Alkylamidic acid salt.
Use/Production. (G) Open, nondispersive aid. Prod. range: Confidential.

P 92-1249

Manufacturer. Confidential.
Chemical. (G) Tetra functional ketoximino silane.
Use/Production. (G) Formulation component. Prod. range: Confidential.

P 92-1250

Manufacturer. Confidential.
Chemical. (G) Tetra functional ketoximino silane.
Use/Production. (G) Formulation component. Prod. range: Confidential.

P 92-1251

Manufacturer. Elf Atochem North America.
Chemical. (S) 2,5-Furandione, polymer with ethenylbenzene,(1-methyl ethyl)benzene 6 bis (1-methyl-1-phenyl ethyl)pyroxide; aqueous ammonia.
Use/Production. (S) Pigment dispersing aid. Prod. range: Confidential.

P 92-1252

Manufacturer. Confidential.
Chemical. (G) Cyclocarbonate.
Use/Production. (G) Solidifier for epoxy formulation. Prod. range: Confidential.

P 92-1253

Manufacturer. Confidential.
Chemical. (G) Carbamate.
Use/Production. (G) Coating binder. Prod. range: Confidential.

P 92-1254

Manufacturer. E. I. Du Pont De Nemours & Company.
Chemical. (S) Polybrominated fluorobenzene mixture.
Use/Production. (S) Chemical intermediate. Prod. range: Confidential.

P 92-1255

Manufacturer. Confidential.
Chemical. (G) Carbamic acid ester.
Use/Production. (G) Reactive coating additive. Prod. range: Confidential.

P 92-1256

Manufacturer. Confidential.
Chemical. (G) Vinyl ester polymer.
Use/Production. (G) Paint vehicle. Prod. range: Confidential.

P 92-1257

Manufacturer. Confidential.
Chemical. (G) Vinyl ester acrylate polymer.
Use/Production. (G) Paint vehicle. Prod. range: Confidential.

P 92-1258

Manufacturer. Ashland Chemical, Inc.
Chemical. (G) Unsaturated polyester resin.
Use/Production. (S) Matrix resin for glass reinforced. Prod. range: Confidential.

P 92-1259

Importer. Confidential.
Chemical. (G) Polyurethane resin.
Use/Import. (G) Automotive refinish. Import range: Confidential.

P 92-1260

Importer. Wacker Chemicals (USA).
Chemical. (S) 4-Hexeneenitrile, 2-ethenyl-2,5-dimethyl-.
Use/Import. (S) Fragrance ingredient. Import range: Confidential.
Toxicity Data. Acute oral toxicity: 2.45 ml/kg species (rat). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit). Mutagenicity: negative. Skin sensitization: negative species (guinea pig).

P 92-1261

Manufacturer. Confidential.
Chemical. (G) Mixture of 1-Hydrox-4-alkylamino anthroquinones.
Use/Production. (G) Petroleum additive. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: > 2 g/kg species (rabbit). Skin irritation: moderate species (rabbit). Mutagenicity: positive.

P 92-1262

Importer. Hoechst Celanese Corporation.
Chemical. (G) Substituted heterocyclic compound.
Use/Import. (S) Pigment additive. Import range: Confidential.

P 92-1263

Manufacturer. Monsanto Company.
Chemical. (S) 1,3-Benzenedicarboxylic acid, compd. with 1,6-hexanediamine.
Use/Production. (G) Polymer intermediate. Import range: Confidential.
Toxicity Data. Acute oral toxicity: > 10,000 mg/kg species (rat). Acute dermal toxicity: > 7,940 mg/kg species (rabbit). Static acute toxicity: > 1.000 mg/L 96h species (rainbow trout). Eye irritation: minimal species (rabbit). Skin irritation: minimal species (rabbit).

P 92-1264

Manufacturer. Monsanto Company.
Chemical. (G) Random nylon terpolymer.
Use/Production. (S) Staple carpet yarn. Prod. range: Confidential.

P 92-1265

Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 92-1266

Manufacturer. Confidential.

Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 92-1267
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 92-1268
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Intermediate. Prod. range: Confidential.

P 92-1269
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1270
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1271
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1272
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1273
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1274
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1275
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1276
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylic copolymer.
Use/Production. (G) Paint. Prod. range: Confidential.

P 92-1277
Manufacturer. Eastman Kodak Company.
Chemical. (G) Bis(amidesubstituted thio benzene).
Use/Production. (G) Chemical intermediate. Prod. range: 3,700–15,000 kg/yr.
Toxicity Data. Acute oral toxicity: > 2,000 mg/kg species (rat). Acute dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: none species (rabbit). Skin irritation: none species (rabbit). Skin sensitization: negative species (guinea pig).

P 92-1278
Manufacturer. Confidential.
Chemical. (G) Copolymer of acrylic and methacrylic esters.
Use/Production. (S) Radiation cure coating. Prod. range: Confidential.

P 92-1279
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate polyester.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 15,000–30,000 kg/yr.

P 92-1280
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate methacrylate polyester.
Use/Production. (G) Component of dispersively applied coating. Prod. range: 15,000–30,000 kg/yr.

P 92-1281
Manufacturer. Confidential.
Chemical. (G) Styrenated acrylate/methacrylate polymer.
Use/Production. (G) Component of coating. Prod. range: 15,000–30,000 kg/yr.

P 92-1282
Importer. Harcros Chemicals Inc.
Chemical. (G) Propoxylated urethane acrylate.
Use/Import. (S) Radiation curing of varnishes. Import range: Confidential.

P 92-1283
Manufacturer. The P.D. George Company.
Chemical. (S) Par-tert-butylphenol paraformaldehyde flake; merichem company low-mid xylenols; merichem company meta-para cresols.
Use/Production. (S) Insulation varnish for coating of electrical equipment. Prod. range: 51,000 kg/yr.

P 92-1284
Manufacturer. Dow Corning Corporation.
Chemical. (G) Oximosilyl perfluoroalkylsulfonamide.
Use/Production. (S) Crosslinker for silicone sealants. Prod. range: Confidential.

P 92-1285
Importer. Charkit Chemical Corporation.
Chemical. (G) Thiazolinum photosensitizing dye.
Use/Import. (G) Dye for photo film. Import range: Confidential.

P 92-1287
Manufacturer. The P.D. George Company.
Chemical. (S) Fatty acids, tall oil polymers with isophthalic acid, trimellitic anhydride, trimethylolpropane, and 2-methyl-1,3-propanediol, reaction products with p-tert-butylphenol-formaldehyde polymer.
Use/Production. (S) Insulation varnish for coating of electrical equipment. Prod. range: 98,985 kg/yr.

P 92-1288
Manufacturer. The P.D. George Company.
Chemical. (S) Tall oil fatty acids; trimethylolpropane; isophthalic acid; trimethylolpropane, isophthalic acid; trimellitic anhydride; formaldehyde, polymer with 4-(1,1-dimethyl-ethyl)phenol.
Use/Production. (S) Insulating varnish for coating of electrical equipment. Prod. range: 75,000 kg/yr.

P 92-1289
Importer. Mitsubishi Yula America, Inc.
Chemical. (G) Alkyl methacrylates, aminoalkyl methacrylate copolymer, partial salt.
Use/Import. (S) Emulsifier for thermal transfer ink ribbon. Import range: 300–600 kg/yr.

P 92-1290
Manufacturer. E.I. Du Pont De Nemours & Company.
Chemical. (G) Amide/acrylate copolymer.
Use/Production. (G) Polymer for photoimageable film. Prod. range: Confidential.
Toxicity Data. Acute dermal toxicity: > 2,000 mg/kg species (rabbit). Eye irritation: severe species (rabbit). Skin irritation: severe species (rabbit).

P 92-1291
Manufacturer. Confidential.
Chemical. (G) Aminosilane mono urea adduct of the carbodiimide- modified homopolymer derivative mixture derived from methylene bis (isocyanate benzene).
Use/Production. (S) Polyether polyurethane sealants. Prod. range: Confidential.

P 92-1292
Manufacturer. Confidential.
Chemical. (S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, distn. lights.
Use/Production. (G) Collector in minerals froth flotation. Prod. range: Confidential.

P 92-1293
Manufacturer. Confidential.
Chemical. (G) Substituted benzoyl chloride.
Use/Production. (G) Additive in polymer production. Prod. range: Confidential.

Dated: August 18, 1992.
Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 92-20201 Filed 8-24-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 26, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Revision of 3067–0163.

Title: Individual and Family Grant (IFG) Program Information.

Abstract: The collection of information is necessary for effective monitoring and management of the IFG program. While States administer the program, FEMA regional office staff are responsible for monitoring States' performance and adherence to FEMA regulations and policy guidance during and subsequent to disaster declarations. Without the information, FEMA would not be able to determine if: IFG programs are being managed efficiently; standards of uniformity and consistency are being met; and taxpayers' money is being spent appropriately. This collection is comprised of six reporting forms—FEMA 76–27, Initial Report; 76–28, Status Report; 76–29, Final Statistical Report; 76–30, Environmental Review; 76–34, Checklist for IFG Program Review; and 76–38, Floodplain Management Analysis; and two recordkeeping reqirements—FEMA Form 76–32, Worksheet for Case File Reviews, and recordkeeping activities related to grant administration activities.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 4,703 Hours.

Number of Respondents: 27.

Estimated Average Burden Time per Response: Reporting forms—1.6 hours per response; Recordkeeping—approximately 80 hours per response.

Frequency of Response: Recordkeeping, on occasion, weekly, and monthly.

Dated: August 7, 1992.
Wesley C. Moore,
Director, Office of Administrative Support.

[FR Doc. 92-20296 Filed 8-24-92; 8:45 am]
BILLING CODE 6718-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 26, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0141.

Title: Reimbursement for Cost of Firefighting on Federal Property.

Abstract: Local fire services may submit claims for reimbursement of costs above normal operating expenses incurred for fighting fires on property under the jurisdiction of the United States, including federally owned buildings, bases, installations, forests, or other real federal property holdings. The information required by FEMA is contained in FEMA regulation 44 CFR part 151.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 240 Hours.

Number of Respondents: 10.

Estimated Average Burden Time per Response: 6 Hours.

Frequency of Response: Claims should be submitted within 90 days of a fire's occurrence. For fires of long durations, fire services may submit claims before a fire's conclusion, but only for the eligible costs actually incurred to date. Additional claims may be filed for costs later incurred.

Dated: August 14, 1992.
Wesley C. Moore,
Director, Office of Administrative Support.

[FR Doc. 92-20296 Filed 8-24-92; 8:45 am]
BILLING CODE 6718-01-M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for

review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before October 26, 1992.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Extension of 3067–0020.

Title: Application for Participation in the National Flood Insurance Program.

Abstract: The National Flood Insurance Program (NFIP) is a self-sustaining, nontaxpayer funded Federal flood insurance program that provides flood insurance to communities which apply for participation and make the commitment to adopt and enforce land use control measures that will guide land development away from flood-prone areas to avoid or reduce future flood damages and losses. The application form enables the Federal Emergency Management Agency (FEMA) to continue to process new community applications and to more quickly provide flood insurance protection to the residents of the communities.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 400 Hours.

Number of Respondents: 100.

Estimated Average Burden Time per Response: 4 Hours.

Frequency of Response: On occasion.

Dated: August 14, 1992.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 92–20297 Filed 8–24–92; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–954–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 19, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–954–DR), dated August 19, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3614.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 19, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows.

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and flooding on July 11–29, 1992, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Warren M. Pugh, Jr., of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

The counties of Jefferson, Johnson, Nemaha, Nuckolls, Otoe, Pawnee, Richardson, and Thayer for Public Assistance.

(Catalog of Federal Domestic Assistance No.83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92–20298 Filed 8–24–92; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

City of Los Angeles et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal

Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200226–003.

Title: City of Los Angeles/ Metropolitan Stevedore Terminal Agreement.

Parties:

The City of Los Angeles ("Port")
Metropolitan Stevedore Company ("MSC").

Synopsis: The amendment adjusts compensation from an annual to a monthly basis, reduces the land area MSC leases from the Port and retains Berths 145 and 146 for secondary use.

Agreement No.: 203–011038–015.

Title: Southeastern Caribbean Discussion Agreement.

Parties:

United States Atlantic and Gulf/ Southeastern Caribbean Conference
West Indies Shipping Corporation
Blue Caribe Line
Bernuth Lines
Sea Freight Line Ltd.

Synopsis: The proposed amendment will delete Blue Caribe Line as a party to the Agreement.

Dated: August 19, 1992.

By Order of the Federal Maritime Commission.

[FR Doc. 92–20248 Filed 8–24–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 080392 AND 081492

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Rohm and Haas Company, AtoHaas B.V., AtoHaas B.V	92-1231	08/03/92
Societe Nationale Elf Aquitaine, AtoHaas B.V., AtoHaas B.V	92-1232	08/03/92
Sam Fox and Marilyn Fox, Midland Detroit Tool L.P., Detroit Tool Group, Inc	92-1262	08/03/92
American Telephone and Telegraph Company, Crabtree Capital Corporation, Prospect Leasing Company	92-1263	08/03/92
Investment AB Cardo, REN Corporation—USA, REN Corporation—USA	92-1235	08/04/92
Mr. Robert R. Onsteed, Morgan Stanley Levered Equity Fund II, L. P., Cullum Companies, Inc	92-1253	08/04/92
Sonat Inc., Louisiana Land and Exploration Company, LLEC and Inexco Oil Company	92-1263	08/04/92
Eli Lilly and Company, Centocor, Inc., Centocor, Inc	92-1285	08/04/92
Corimon C. A. S.A.C.A., Grow Group, Inc., Grow Group, Inc	92-1287	08/04/92
Thermo Electron Corporation, Nicolet Instrument Corporation, Nicolet Instrument Corporation	92-1295	08/04/92
Equitable Companies Incorporated, Onyx Energy Company, Sun Operating Limited Partnership	92-1305	08/04/92
Jupiter Industries, Inc., West Point-Pepperell, Inc., Custom Fabrics Division	92-1298	06/05/92
Nesbitt Hospital Foundation, Wilkes-Barre General Health Corporation, Wilkes-Barre General Health Corporation	92-0912	08/07/92
Wilkes-Barre General Health Corporation, Nesbitt Hospital Foundation, Nesbitt Hospital Foundation	92-0913	08/07/92
Mr. Stephen P. Gottlieb, Panhandle Eastern Corporation, Lachmar, c/o Trunkline LNG Company	92-1260	08/07/92
Mayo Foundation, Luther Regional Health System, Inc., Luther Regional Health System, Inc	92-1278	08/07/92
General Electric company, JWP Inc., JWP Credit Corp	92-1297	08/07/92
Schlumberger Limited, Raytheon Company, GeoQuest Systems, Inc	92-1300	08/07/92
Cray Electronics Holdings Plc, TI Group plc, Dowty Group (19 companies)	92-1302	08/07/92
Michael Ittich and Marian Ittich, Thomas S. Monaghan, John E. Fetzer, Inc	92-1314	08/07/92
Theodore B. Baum and Ruth Baum, Steven J. Simmons, Simmons Communications Company, L.P	92-1318	08/07/92
Margaretten Financial Corporation, NationsBank Corporation, NationsBanc Mortgage Corporation of Virginia	92-1321	08/07/92
Cortec Group Fund, L.P., Tokheim Corporation, National Controls Corporation	92-1325	08/07/92
Younkers, Inc., H.C. Prange Company, Prange's Department Store Division	92-1293	08/10/92
JWP, Inc., George J. Gibbs, Gibbs-McAlister, Inc	92-1296	08/10/92
JWP Inc., Ernest W. McAlister, Gibbs-McAlister, Inc	92-1299	08/10/92
TECO Energy, Inc., Energen Corporation, Taurus Exploration, Inc	92-1301	08/10/92
AMERCO, James P. Shoen, Japal, Inc	92-1319	08/10/92
AMERCO, Mark V. Shoen, MVS, Inc	92-1320	08/10/92
S.A. Louis Dreyfus et Cie, DEKALB Energy Company, DEKALB Energy Company	92-1332	08/10/92
National Intergroup, Inc., Donald D. Beeler, Snyder's Drug Stores, Inc	92-1335	08/10/92
St. Francis Health System, Central Medical Health Corporation, Central Medical Health Corporation	92-1250	08/11/92
W.D. Company, Inc., W.D. Company, Inc., Higbee Associates Partnership	92-1304	08/11/92
IVAX Corporation, LuChem Pharmaceuticals, Inc., LuChem Pharmaceuticals, Inc	92-1289	08/12/92
American Home Products Corporation, Symbiosis Corporation, Symbiosis Corporation	92-1303	08/12/92
Ronald O. Perelman, Fleer Corp., Fleer Corp	92-1306	08/12/92
Ronald O. Perelman, Fleer Corp., Fleer Corp	92-1310	08/12/92
Aon Corporation, Reliance Group Holdings, Inc., Frank B. Hall & Co., Inc	92-1347	08/12/92
FPI Limited, National Sea Products Limited, National Sea Products Inc & Treasure Isle, Inc	92-1274	08/13/92
Avesta AB, British Steel plc, Tri-City Industrial Services, Inc	92-1349	08/13/92
Tyler Capital Fund, L.P., David J. Cohen, Daboco Inc	92-1272	08/14/92
Tyler Capital Fund, L.P., Abraham J. Cohen, Daboco Inc	92-1273	08/14/92
Southern Company (The), Donald L. Bren, La Jolla Village Center	92-1266	08/14/92
Oceaneering International, Inc., Eastport International, Inc., Eastport International, Inc	92-1315	08/14/92
Voting Trust dated 12/4/68, v/s of Hallmark Cards, Inc., Robert E. Tudek, Northeastern and TMC–NECT	92-1329	08/14/92
Voting Trust dated 12/4/68, v/s of Hallmark Cards, Inc., Everett I. Mundy, Northeastern and TMC–NECT	92-1330	08/14/92
Ronald J. Haan, Ronald J. Haan, International Telecharge, Inc	92-1342	08/14/92
Conseco, Inc., Bankers Life Holding Corporation, Bankers Life Holding Corporation	92-1363	08/14/92
Robert T. Shaw, Bankers Life Holding Corporation, Bankers Life Holding Corporation	92-1364	08/14/92
Blue Cross and Blue Shield of Virginia, Mutual Life Assurance Company of Canada (The), Association Life Insurance Company, Inc	92-1373	08/14/92

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 92–20318 Filed 8–24–92; 8:45 am]

BILLING CODE 6750–01–M

[File No. 892–3190]

Dollar Rent-A-Car Systems, Inc.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices of unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a California-based car-rental firm to disclose, in different communications media, applicable airport surcharges, fuel charges, charges based on driver's age, geographic limitations on unlimited mileage representations, and any other charges related to a contemplated car rental that are mandatory or that cannot reasonably be avoided by consumers.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom, New York Regional Office, Federal Trade Commission, 150 William St., suite 1300, New York, NY 10038. (212) 264-1200.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

[File No. 8923190]

In the Matter of Dollar Rent-A-Car Systems, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Dollar Rent-A-Car Systems, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed By and between Dollar Rent-A-Car Systems, Inc., by its duly authorized officers, and its attorneys and counsel for the Federal Trade Commission that:

1. Proposed respondent Dollar Rent-A-Car Systems, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its headquarters located at 6141 W. Century Boulevard, Los Angeles, California 90045.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For the purposes of this order, the following definitions apply:

A. Representation—means any communication made by respondent to consumers other than a "discussion or inquiry" under paragraph B of this section or a communication made through a CRS System.

B. Discussion or Inquiry—means any oral communication between respondent and consumers either via telephone or at any of respondent's rental locations.

C. "Charges that are mandatory" and "charges that are not reasonably avoidable" shall not include charges that are: (1) Levied by a taxing authority, (2) on a constant basis, (3) on all car renters (rather than on only some car renters or on rental car companies). For example, for purposes of this order a common sales tax is deemed neither a "mandatory charge" nor a "charge that is reasonably avoidable" because: It is imposed by a governmental authority; it is applied at a constant rate; and purchasers are liable to the taxing authority for payment of the charge (notwithstanding that merchants may act for the taxing authority with respect to the collection and remittance of the charges).

For the purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

It is ordered That respondent Dollar Rent-A-Car, Systems Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the promotion, offering for rental or rental of any vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all fuel charges that are applicable to the contemplated rental and are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges, or that fuel is "extra."

B. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

C. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

D. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

E. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all fuel charges that are applicable to the contemplated rental and are not reasonably avoidable by consumers.

F. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

G. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental.

H. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, all charges that are applicable to additional drivers in the contemplated rental.

I. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental where contemplated rentals come with unlimited mileage, all geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

J. Failing to disclose to consumers, in connection with any discussion or inquiry relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

K. Failing to disclose in proximity with any representation as to the price of a contemplated rental through its inputs in the "company-specific location" part of computer-accessed data bases (also known as "CRS" systems), such as "System One," "Apollo," and "PARS," all fuel charges that are applicable to the contemplated rental or are not reasonably avoidable by consumers or any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

II.

Notwithstanding anything contained in Part I hereof, respondent shall not be held liable for any failure to disclose information required to be disclosed under Part I provided that it establishes by a preponderance of evidence that:

A. Such failure to disclose resulted solely from franchisee failure to furnish respondent with timely, complete, and accurate information;

B. Respondent previously had adopted maintained, monitored, and enforced procedures reasonably calculated to ensure timely, complete, and accurate communication of disclosable information to respondent by its franchisees; and

C. Respondent shall have required its franchisees to adopt, maintain, and comply with procedures necessary to respondent's timely receipt of complete and accurate disclosable information, and shall have terminated all franchisees who continued, after notice, to fail to adopt, maintain, and comply with such procedures; provided, however, that if respondent's contract with any franchisee precludes termination, as described above, respondent shall have exercised all available disciplinary procedures, including termination, to induce and ensure franchisee adoption, maintenance, and compliance with procedures necessary to respondent's timely receipt of complete and accurate disclosable information. Further, respondent shall, as soon as it lawfully may, modify each franchisee's contract to provide that respondent may terminate each franchisee who continued, after notice, to fail to adopt, maintain, and comply with procedures necessary to respondent's timely receipt of complete and accurate disclosable information.

III.

It is further ordered That respondent shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to all present and future operating divisions, subsidiaries, franchisees, dealers, and all managerial employees that have or may have management responsibilities with respect to compliance with this order, including, but not limited to, all managerial employees having responsibilities relating to the communication of prices or other terms of car rentals, directly or indirectly, to the public.

IV.

It is further ordered That for three (3) years from the date of service of this Order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with this Order.

V.

It is further ordered That, for a period of ten years, respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate status that may affect compliance obligations arising out of this order, such as dissolution, assignment of its business, or the emergence of a successor corporation.

VI.

It is further ordered That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Dollar Rent-A-Car, Inc. ("Dollar").

The proposed consent order has been placed on the public record for sixty (60)

days for comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns price and policy representations made by Dollar to consumers making inquiries about rental car reservations. These price and policy representations are conveyed: (1) By Dollar's agents responding to telephone inquiries from consumers calling Dollar's 800-number; (2) through Dollar's advertisements; and (3) through Computerized Reservation Systems ("CRS systems").

The complaint charges that in oral presentations made by Dollar's agents in response to consumers' telephone inquiries to Dollar's 800-number, Dollar has, in numerous instances, stated prices for Dollar's car rental services without disclosing certain charges that are mandatory or not reasonably avoidable by consumers. Specifically, the complaint charges that Dollar, in numerous instances, failed to disclose through its 800-number the existence and amount: (1) Of a mandatory fuel charge; (2) of a mandatory airport surcharge or fee that is imposed on consumers who travel from certain airport locations to one of Dollar's rental stations in one of Dollar's shuttle vehicles; (3) of a charge based on a driver's age; and (4) of a charge for additional drivers. Additionally, the complaint also charges that through its 800-numbers, Dollar has, in numerous instances, stated that cars come with unlimited mileage without disclosing applicable geographic driving restrictions.

The complaint also charges that in advertisements, Dollar has, in numerous instances, stated prices for Dollar's car rental services without disclosing applicable airport surcharges, fuel charges, and charges based on a driver's age, or, in the alternative, that there are "additional" or "other" charges.

CRS systems, like 800-numbers, are a means of conveying rental car price and policy information to consumers. Rental car companies input rental car price and policy information is then conveyed to consumer through a CRS operator, typically a travel agent. Consumers then rely on the rental car price and policy information to make rental car reservations. The complaint charges that Dollar, in numerous instances, made price disclosures through CRS systems without disclosing a mandatory fuel charge

The complaint states that the representation of a price for a contemplated rental made through an 800-number, advertisement, or CRS system, without making the previously stated disclosures, is an unfair or deceptive act of practice. Similarly, the complaint states that the representation through an 800-number or advertisement that a contemplated rental comes with unlimited mileage without disclosing applicable geographic driving restrictions is an unfair or deceptive act or practice.

The consent order contains provisions designed to remedy each of the previously stated deceptive omissions. Specifically, part I of the consent order requires Dollar to cease and desist from failing to disclose to consumers, in connection with any rental car price representations made to consumers through telephone communications or at rental locations: Any applicable airport surcharges, fuel charges, charges based on a driver's age, additional driver charges, and any other charges that are mandatory or not reasonably avoidable.

Part I of the order also requires Dollar to cease and desist from failing to disclose to consumers, in connection with any unlimited mileage representations made to consumers through telephone communications or at rental locations, applicable geographic driving restrictions.

Part I further requires Dollar to cease and desist from failing to disclose to consumers, in connection with any rental car price representations made to consumers in advertisements: any applicable airport surcharges, fuel charges, charges based on a dirver's age, and any other charges that are mandatory or are not reasonably avoidable by consumers. However, part I of the consent order would not require Dollar to disclose in advertisements any of the charges described above if they instead disclose that there are "additional" or "other" charges.

With regard to Dollar rental car price information conveyed to consumers through CRS systems, part I of the consent order requires Dollar to cease and desist from failing to disclose all mandatory fuel charges and any other charges that are mandatory or not reasonably avoidable.

Part II of the consent order provides that Dollar, after adopting and adhering to reasonable procedures to ensure compliance with the consent order, will not be liable under the order for franchisee acts and omissions beyond its control.

Part III of the order requires Dollar, for a period of three (3) years, to distribute a copy of the order to certain present and future operation divisions, subsidiaries, franchisees, dealers, and managerial employees.

Part IV of the order requires Dollar, for a period of three (3) years to maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with the order.

Part V requires Dollar, for a period of ten years (10), to notify the Federal Trade Commission of proposed changes in corporate status.

Part VI requires Dollar to file a compliance report within sixty (60) days after service of this Order.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-20319 Filed 8-24-92; 8:45 am]

BILLING CODE 6750-01-M

[File No. 892-3189]

Value Rent-A-Car, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Florida car-rental firm to disclose, in different communications media, applicable airport surcharges, charges based on a driver's age, geographic limitations on unlimited mileage representations, and any other charges related to a contemplated car rental that are mandatory or that cannot reasonably be avoided by consumers.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Bloom, New York Regional Office, Federal Trade Commission, 150 William St., suite 1300, New York, NY 10038. (212) 264-1200.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C.

46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

[File No. 8923189]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Value Rent-a-Car, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Value Rent-a-Car, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of certain acts and practices being investigated,

It is hereby agreed By and between Value Rent-a-Car, Inc., by its duly authorized officers, and its attorneys and counsel for the Federal Trade Commission that:

1. Proposed respondent Value Rent-A-Car, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Florida and Georgia, with its headquarters located at 2500 N. Military Trail, #300, Boca Raton, Florida 33431.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondent waives: a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. Proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I.

For the purposes of this order, the following definitions apply:

A. Representation—means any communication made by respondent to consumers other than a "discussion or inquiry" under paragraph B of this section or a communication made through a CRS System.

B. Discussion or Inquiry—means any oral communication between respondent and consumers either via telephone or at any of respondent's rental locations;

C. "Charges that are mandatory" and "charges that are not reasonably avoidable" shall not include charges that are: (1) Levied by a taxing authority, (2) on a constant basis, (3) on all car renters (rather than on only some car renters or on rental car companies). For example, for purposes of this order a common sales tax is deemed neither a "mandatory charge" nor a "charge that is reasonably avoidable" because: it is imposed by a governmental authority; it is applied at a constant rate; and purchasers are liable to the taxing authority for payment of the charge (notwithstanding that merchants may act for the taxing authority with respect to the collection and remittance of the charges).

For the purposes of this order, all required disclosures shall be made in a clear and conspicuous manner.

It is ordered That respondent Value Rent-A-Car, Inc., a corporation, its successors and assigns, and it officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division, or any other device, in connection with the promotion, offering for rental or rental of any vehicle, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from:

A. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

B. Failing to disclose to consumers, in connection with any representative relating to the price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental, or in the alternative that there are "additional" or "other" charges.

C. Failing to disclose to consumers, in connection with any representative relating to the price of a contemplated rental, where contemplated rentals come with unlimited mileage, all geographic driving restrictions that are

applicable to the contemplated rental or are not reasonably avoidable by consumers, or in the alternative that there are restrictions regarding unlimited mileage.

D. Failing to disclose to consumers, in connection with any representation relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers, or in the alternative that there are "additional" or "other" charges.

E. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental, all airport surcharges or fees that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

F. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental, all charges resulting from a driver's age that are applicable to the contemplated rental.

G. Failing to disclose to consumers in connection with any discussion or inquiry relating to the price of a contemplated rental where contemplated rentals come with unlimited mileage, all geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

H. Failing to disclose to consumers in connection with any discussions or inquiry relating to the price of a contemplated rental, any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

I. Failing to disclose in proximity with any price representations of a contemplated rental made through inputs in the "details" (also known as "booking segment") section of the "comparative rate" screen or computer-accessed data bases (also known as "CRS" systems), such as "System One," "Apollo," and "PARS," all airport surcharges or fees, charges resulting from a driver's age, or any other charges that are applicable to the contemplated rental which are mandatory or which are not reasonably avoidable by consumers.

J. Failing to disclose in proximity with unlimited mileage representation made through inputs in the "details" (also known as "booking segment") section of the "comparative rate" screen of computer-accessed data bases (also known as "CRS" systems), such as "System One," "Apollo," and "PARS," geographic driving restrictions that are applicable to the contemplated rental or are not reasonably avoidable by consumers.

II.

It is further ordered That respondent shall for a period of three (3) years distribute, or cause to be distributed, a copy of this order to any present and future operating divisions, subsidiaries, franchisees, dealers, and all managerial employees that have or may have management responsibilities with respect to compliance with this order, including, but not limited to, all managerial employees having responsibilities relating to the communication of prices or other terms of car rentals, directly or indirectly, to the public.

III.

It is further ordered That for three (3) years from the date of service of this Order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with this Order.

IV.

It is further ordered That, for a period of ten years, respondent shall notify the Commission at least thirty (30) days prior to any proposed change in its corporate status that may affect compliance obligations arising out of this order, such as dissolution, assignment of its business, or the emergence of a successor corporation.

V.

It is further ordered That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Value Rent-A-Car, Inc. ("Value").

The proposed consent order has been placed on the public record for sixty (60) days for comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns price and policy representations made by Value to consumers making inquiries about rental car reservations. These price and policy representations are conveyed: (1) By Value's agents responding to telephone inquiries from consumers calling Value's 800-number to obtain information and to make reservations; (2) through Value's advertisements; and (3) through Computerized Reservation Systems ("CRS systems").

The complaint charges that in oral presentations made by Value's agents in response to consumers' telephone inquiries to Value's 800-number, Value has, in numerous instances, stated prices for Value's car rental services without disclosing certain charges that are mandatory or not reasonably avoidable by consumers. Specifically, the complaint charges that Value has, in numerous instances, failed to disclose through its 800-number the existence and amount: (1) Of a mandatory airport surcharge or fee that is imposed on consumers who travel from certain airport locations to one of Value's rental stations in one of Value's shuttle vehicles and (2) of a charge based on a driver's age. The compliant also states that through its 800-number, Value has, in numerous instances, stated that cars come with unlimited mileage without disclosing applicable geographic driving restrictions.

Similarly, the complaint also charges that in advertisements Value has, in numerous instances, stated prices for its car rental services without disclosing the existence and amount of a mandatory airport surcharge and of a charge based on a driver's age or, in the alternative, that there are "additional" or "other" charges. The complaint further states that in advertisements, Value has, in numerous instances, stated that car rentals come with unlimited mileage without disclosing applicable geographic driving restrictions or, in the alternative, that there are "additional" or "other" restrictions.

CRS systems, like 800-numbers, are a means of conveying rental car price and policy information to consumers. Rental car companies input rental car price and policy information into CRS systems. Rental car price and policy information is then conveyed to consumers through a CRS operator, typically a travel agent. Consumers then rely on the rental care price and policy information to make rental care reservations. With regard to Value rental car price information conveyed to consumers through particular CRS systems, Value has the ability to disclose mandatory or not reasonably avoidable charges in certain sections of a CRS system called a "comparative rate" screen. The complaint charges that with regard to disclosures made through certain sections of CRS systems' comparative rate screens, Value has, in numerous instances, stated prices for Value's care rental services without disclosing a mandatory airport surcharge and a surcharge based on a driver's age.

The complaint states that the representation of a price for a contemplated rental made through an 800-number, advertisement, or CRS system, without making the previously stated disclosures, is an unfair or deceptive act or practice. Similarly, the complaint states that the representation through an 800-number, advertisement, or CRS system that a contemplated rental comes with unlimited mileage without disclosing applicable geographic driving restrictions is an unfair or deceptive act or practice.

The consent order contains provisions designed to remedy each of the previously stated deceptive omissions. Specifically, Part I of the consent order requires Value to cease and desist from failing to disclose to consumers, in connection with any rental care price representations made to consumers through telephone communications or at rental locations: any applicable airport surcharges, charges based on a driver's age, and any other charges that are mandatory or not reasonably avoidable. Part I of the order also requires Value to cease and desist from failing to disclose to consumers, in connection with any unlimited mileage representations made to consumers through telephone communications or at rental locations, applicable geographic driving restrictions.

Part I further requires Value to cease and desist from failing to disclose to consumers, in connection with any rental car price representations made to consumers in advertisements: any applicable airport surcharges, charges based on a driver's age, and any other charges that are mandatory or are not reasonably avoidable. However, Part I of the consent order would not require Value to disclose in advertisements any of the charges described above if they instead disclose that there are "additional" or "other" charges. Part I also requires Value to cease and desist from failing to disclose to consumers, in connection with any unlimited mileage representations made to consumers in advertisements, applicable geographic driving restrictions. However, Part I of the consent order would not require Value to disclose applicable geographic driving restrictions in advertisements if they instead disclose that there are "additional" or "other" restrictions.

With regard to Value rental car price information conveyed to consumers through CRS systems, Part I of the order requires Value to cease and desist from failing to disclose in comparative rate screens: All airport surcharges, charges based on a driver's age, and any other charges that are mandatory or are not reasonably avoidable. Part I of the consent order also requires Value to cease and desist from failing to disclose in comparative rate screens, in connection with unlimited mileage representations, applicable geographic driving restrictions.

Part II of the order requires Value, for a period of three (3) years, to distribute a copy of the order to certain present and future operation divisions, subsidiaries, franchisees, dealers, and managerial employees.

Part III of the order requires Value, for a period of three (3) years to maintain and upon request make available to the Federal Trade Commission for inspection and copying all documents relating to compliance with the order.

Part IV requires Value, for a period of ten years (10), to notify the Federal Trade Commission of proposed changes in corporate status.

Part V requires Value to file a compliance report within sixty (60) days after service of this Order.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-20320 Filed 8-24-92; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

AGENCY: Office of Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of management and Budget (OMB) to renew expiring information collection 3090-0072, U.S. Government Lease for Real Property. This Information Collection is used to award leases of 10,000 square feet or more, and serves as the first page of leases.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

Annual Reporting Burden: Respondents: 3,200; annual responses: 3,200; hours per response: 7; total burden hours: 22,500.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, GSA Real Estate Policy Division (202-501-1508).

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th and F Street NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: August 17, 1992.

Mary Cunningham,

Acting Director, Information Management Division.

[FR Doc. 92-20235 Filed 8-24-92; 8:45 am]

BILLING CODE 6820-23-M

Agency Information Collection Activities Under OMB Review

AGENCY: Office of the Administration, GSA.

SUMMARY: Under the Paperwork Reduction Act of 1980 (44 U.S.C. ch. 35), the General Services Administration (GSA) requests the Office of Management and Budget (OMB) to renew expiring information collection 3090-0086, Description of Property for Possible Leasing, Lessor's Annual Cost Statement, and Proposal to Lease Space. This Information Collection is used to identify potential lease properties for government occupancy and to provide a means to describe and offer the property.

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary Cunningham, GSA Clearance Officer, General Services Administration (CAIR), Washington, DC 20405.

Annual Reporting Burden: Respondents: 800; annual responses: 800; hours per response: .5; total burden hours: 400.

FOR FURTHER INFORMATION CONTACT: Stanley C. Langfeld, GSA Real Estate Policy Division (202-501-1508).

COPY OF PROPOSAL: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), room 7102, GSA Building, 18th and F Street NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: August 17, 1992.

Mary Cunningham,

Acting Director, Information Management Division.

[FR Doc. 92-20235 Filed 8-24-92; 8:45 am]

BILLING CODE 6820-23-M

Dated: August 17, 1992.

Mary Cunningham,

Acting Director, Information Management Division.

[FR Doc. 92-20236 Filed 8-24-92; 8:45 am]

BILLING CODE 6820-23-M

Intent To Prepare an Environmental Impact Statement for a Proposed Air Quality Improvement Project Affecting the Central and West Heating Plants Currently Operated in the District of Columbia by the General Services Administration

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and the General Services Administration (GSA) guidelines PBS P 1095.4B, GSA announces its intent to prepare an environmental impact statement (EIS) for an air quality improvement project affecting the central and west heating plants.

GSA produces steam for ninety-nine (99) government and quasi-governmental buildings within the District of Columbia through its central and west heating plants. The plants operate a number of boilers that produce steam that is delivered to the buildings through an extensive series of interconnecting tunnels. The boilers are fired by combinations of coal, fuel oil and natural gas.

The Environmental Protection Agency, using computer modeling, has determined that the National Ambient Air Quality Standard (NAAQS) for sulfur dioxide (SO_2) is being violated within the vicinity of both plants due to a phenomenon called downwash. Downwash is created by low stack heights which cause plumes to be emitted nearly horizontally to the ground. The plume, depending upon existing conditions, may be brought to the ground causing high ground level concentrations of sulfur dioxide.

In order to comply with NAAQS, GSA is considering altenative courses of action which may include:

(1) Increasing the height of the stacks.
(2) Installing scrubbers and nox reduction equipment on existing facilities.
(3) Installing individual boilers in existing federal buildings, to replace the two plants.
(4) Employing various/different fuel mixes.
(5) Relocating the heating plants.

GSA has prepared a preliminary environmental assessment that presents initial data collection. This document is available from the GSA office listed below.

GSA will initiate a scoping process for the purpose of determining the scope of issues to be addressed in the environmental impact statement and for identifying the significant issues related to this proposed action. A public scoping meeting is scheduled to be held on:

Date: September 16, 1992 (Wednesday).
Location: The General Services Administration, National Capital Region, Regional Office Building Auditorium, 7th and D Streets, SW. (D Street entrance), Washington, DC.
Time: 7 p.m.

A short, formal presentation will preclude the request for public comments. GSA representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal and city agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed by the EIS. In the interest of available time, each speaker will be asked to limit his/her oral comments to five (5) minutes.

Agencies and the general public are also invited and encouraged to provide written comments in addition to, or in lieu of, comments at the public meeting. Scoping comments should clearly describe specific issues or topics which the commentator believes the EIS should address. Written statements concerning the project must be received no later than September 30, 1992, to be given adequate consideration in the formulation of the document. Please address comments to: Mr. Robert D. Harding, General Services Administration, National Capital Region, Planning Staff (WPL), room 7618, 7th and D Streets, SW., Washington, DC 20407, 202–708–5334.

Dated: August 18, 1992.

Daniel Neal,

Acting Director, Planning Staff, National Capital Region.

[FR Doc. 92-20277 Filed 8-24-92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) Announces the Following Meeting

Name: Airways Disease in Miners.
Time and Date: 8 a.m.–12 noon, September 25, 1992.

Place: Appalachian Laboratory, room 203, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia. 26505–2888.

Status: Open to the public, limited only by the space available. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Purpose: To conduct an open review of a NIOSH project entitled "Airways Disease in Miners."

Contact Person for Additional Information: Edward L. Petsonk, M.D., NIOSH, CDC, 944 Chestnut Ridge Road, Mailstop 240, Morgantown, West Virginia 26505–2888, telephone 304/291–4223.

Dated: August 18, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-20283 Filed 8-24-92; 8:45 am]

BILLING CODE 4160-19-M

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).
Time and Date: 8 a.m.–5 p.m., September 24–25, 1992.
Place: Holiday Inn Decatur Conference Plaza, Decatur Ballroom A, 130 Clairemont Avenue, Decatur, Georgia 30030.
Status: Open to the public, limited only by the space available.
Purpose: This council advises and makes recommendations to the Secretary, Department of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating tuberculosis.
Matters to be Discussed: CDC laboratory update; criteria for a model TB program; and guidelines for state TB laws and regulations. Agenda items are subject to change as priorities dictate.
Contact Person for More Information: Dixie E. Snider, Jr., M.D., Assistant Director for Science, and Executive Secretary, ACET, National Center for Prevention Services, CDC, 1600 Clifton Road, NE, Mailstop E–07, Atlanta, Georgia 30333, telephone 404/639–2766.

Dated: August 18, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 92-20217 Filed 8-24-92; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 92D-0287]

Generic Animal Drug Products Containing Fermentation-Derived Drug Substances; Draft Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guideline entitled "Guideline for Generic Animal Drug Products Containing Fermentation-Derived Drug Substances." The guideline describes the data and information that the sponsor of an abbreviated new animal drug application (ANADA) should submit to support the chemistry, manufacturing and control section of applications for generic animal drug products containing fermentation-derived drug substances. FDA invites interested persons to submit written comments on this draft guideline.

DATES: Written comments by October 26, 1992.

ADDRESSES: Submit written requests for single copies of the draft guideline to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the draft guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John M. Singer, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–295–8673.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guideline entitled "Guideline for Generic Animal Drug Products Containing Fermentation-Derived Drug Substances." Sponsors of new animal drug applications (NADA's) including applications for drug products containing fermentation-derived drug substances are required to furnish FDA with chemistry, manufacturing, and control information necessary to support their submissions. This information is outlined in 21 CFR 514.1 for original NADA's, and in 21 CFR 514.8 for supplements to approved NADA's. The requirements for ANADA's are identical to those for original NADA's and supplements to approved NADA's. Additionally, the manufacturing process must comply with current good manufacturing practice (CGMP) regulations. The CGMP requirements are described in 21 CFR 211 for pharmaceutical dosage forms and in 21 CFR 226 for Type A medicated articles.

The Center for Veterinary Medicine believes that the guideline will provide sponsors with information and guidance that will enable them to submit complete and well-organized chemistry, manufacturing, and control data and information for ANADA's for animal drug products containing fermentation-derived drug substances. In contrast to the general description of requirements in the cited regulations, the guideline provides specific manufacturing information for antibiotic new drug substances, biomass drug substances, and the finished drug product. In addition, it provides guidance for conducting comparison studies between the generic drug product and the pioneer drug product. The guideline also describes acceptable fermentation organisms, antibiotic new drug substances, and biomass drug substances.

Guidelines state procedures or practices that may be useful to the persons to whom they are directed, but are not legal requirements. Guidelines represent the agency's position on a procedure or a practice at the time of their issuance. A person may follow a guideline or may choose to follow alternate procedures or practices. If a person chooses to use alternate procedures or practices, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable to FDA. A guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person. When a guideline states a requirement imposed by statute or regulation, however, the requirement is law and its force and effect are not changed in any way by virtue of its inclusion in the guideline.

Interested persons may on or before October 26, 1992, submit written comments on the draft guideline to the Dockets Management Branch (address above). Additional comments will be considered in determining whether further amendments to, or revisions of, the guideline are warranted. Comments should be submitted in duplicate (except that individuals may submit one copy), identified with the docket number found in brackets in the heading of this document. The guideline and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 18, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-20278 Filed 8-24-92; 8:45 a.m.]

BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-92-3488; FR-3305-N-01]

Extension of CDBG Direct Homeownership Assistance Eligibility

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice extends the termination date for the direct homeownership provision at section 105(a)(20) of the Housing and Community Development Act of 1974 from October 1, 1992, to October 1, 1993, in accordance with section 907(b)(2) of the National Affordable Housing Act (NAHA).

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Cities Division (202) 708–1577, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device for hearing impaired persons (TDD) is available at (202) 708–0564. FAX inquiries may be sent to Mr. Broughman at (202) 708–3363. (These telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION: In accordance with section 907(b)(2) of the National Affordable Housing Act (NAHA), Public Law 101–625, approved November 28, 1990, the Secretary has determined that extension of the termination date for the direct homeownership provision at section

105(a)(20) of the Housing and Community Development Act of 1974, as amended, is necessary to continue to provide homeownership assistance until homeownership assistance is available under title II of NAHA, the HOME Investment Partnerships Program. Therefore, the termination date is hereby extended from October 1, 1992, to October 1, 1993.

For CDBG entitlement communities, HUD-administered Small Cities grantees in Hawaii, and for Insular Areas grantees, only CDBG funds that are obligated to a homebuyer before October 1, 1993, may be expended for any homeownership assistance under 24 CFR 570.201(n). [This interim rule was published June 17, 1992, 57 FR 27116.) For the State CDBG program, HUD-administered Small Cities program in New York, and the Indian CDBG program, no funds for homeowner assistance may be expended unless a grant for homeowner assistance has been made by the State or by HUD, as appropriate, before October 1, 1993, to a unit of general local government, and then only for amounts specifically approved for this assistance.

I. Basis for Extension

The basis for this extension is that the Department has determined that assistance to homebuyers would not be fully available under the HOME program by October 31, 1992. Under 24 CFR 92.150 of the HOME interim rule, a participating jurisdiction must prepared guidelines for HUD approval that describe how the jurisdiction will implement the resale provisions of § 92.254. In developing these guidelines, jurisdictions are forced to grapple with two difficult issues: (1) Defining a fair return on investment to the initial homebuyer, while (2) ensuring that the unit will continue to be affordable to a subsequent low-income homebuyer. Each jurisdiction must identify the subsidies and describe the legal mechanisms that will be used to ensure continued affordability. Based on numerous calls from the field and several program descriptions submitted to date, jurisdictions are having difficulty in preparing these resale guidelines. Until the Department can provide additional guidance in the form of a model program and direct technical assistance to participating jurisdictions, it appears unlikely that jurisdictions will be able to use HOME funds for homeownership assistance.

II. CDBG Rules Differ From HOME

The CDBG and HOME programs differ in such areas as resale guidelines, submission requirements, and availability of funds. Jurisdictions carrying out direct homeownership assistance activities under the CDBG program, and planning to continue such assistance under the HOME program, should make themselves familiar with the requirements of the two programs. For example, smaller CDBG entitlement communities that are not HOME participating jurisdictions may wish to determine whether HOME funds will be available from the State government to continue these activities. (CDBG entitlement communities may also wish to consider applications for assistance under the HOPE programs to support such activities.)

Dated: August 14, 1992.

Alfred A. DelliBovi,

Deputy Secretary.

[FR Doc. 92-20206 Filed 8-24-92; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Advisory Committee on Water Data for Public Use; Reestablishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Public Law 92-463). Following consultation with the General Services Administration, notice is hereby given that the Secretary of the Interior is reestablishing the Advisory Committee on Water Data for Public Use. The purpose of the Committee shall be to represent the interests of the non-Federal community of water-resources professionals and other water-information users in advising the Federal Government, through the U.S. Department of the Interior, on activities and plans related to water-information programs and the effectiveness of those programs in meeting the Nation's needs.

Further information regarding the Committee may be obtained from the Director, U.S. Geological Survey, Department of the Interior, 12201 Sunrise Valley Drive, Reston, Virginia 22092.

The certification of reestablishment is published below.

Certification

I hereby certify that reestablishment of the Advisory Committee on Water Data for Public Use is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 43 U.S.C. 31 and 457 (1888), 25 Stat. 618, authorizing the Irrigation Survey; by language in the annual Department of the Interior Appropriations Acts; and by Office of Management and Budget Memorandum No. M-92-01.

Dated: July 15, 1992.

Manuel Lujan, Jr.,

Secretary of the Interior.

[FR Doc. 92-20237 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-31-M

Bureau of Land Management

Protection of Alaska Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of supplementary rule.

SUMMARY: Pursuant to 43 CFR 8365.1-6, the following Supplementary Rule No. 92-01 is established to protect public lands administered by the Bureau of Land Management in Alaska.

Applicability of Federal and State Resource Protection Laws and Regulation—Alaska

On public and other lands under Bureau of Land Management control, within Alaska, any violation of any Federal or State laws or regulations concerning the conservation or protection of natural or cultural resources or the environment, including but not limited to, those relating to air and water quality, protection of fish and wildlife, plants, or the use of chemicals toxicants, is prohibited.

43 CFR 8360.0-7 Penalties

Under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) any person who knowingly and willfully violates the provisions of this Supplementary Rule issued pursuant to 43 CFR 8365.1-6 may be tried before a United States Magistrate and may be imprisoned not more than 12 months or fined in accordance with the applicable provisions of title 18 U.S.C. 3571 or both.

EFFECTIVE DATE: August 19, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gifford (907) 267-1435.

SUPPLEMENTARY INFORMATION: The Supplementary Rule was established to protect public lands and resources administered by the Bureau of Land Management in Alaska. The Bureau of Land Management has become increasingly involved in fish and wildlife enforcement issues in Alaska due to the requirements of the Alaska National Interest Lands Conservation Act (ANILCA) for enforcement of subsistence hunting regulations when not provided for by the state. State subsistence hunting regulations have been declared unconstitutional by the Alaska Supreme Court, leaving the federal agency responsible for such enforcement.

Edward F. Spang,

State Director, Alaska.

[FR Doc. 92-19800 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-JA-M

Bureau of Land Management

[ID-943-02-4212-13; IDI-28567]

Issuance of Land Exchange Conveyance Document; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and private lands.

SUMMARY: The United States has issued an exchange conveyance document to J.D. Lumber, Inc., of Priest River, Idaho, under section 206 of the Federal Land Policy and Management Act. The lands acquired by the United States in the exchange will remain closed to the public land, mining, and mineral leasing laws.

EFFECTIVE DATE: August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Sally Carpenter, BLM, Idaho State Office, 3380 Americana Terrace, Boise, Idaho, (208) 384-3163.

1. In an exchange made under the provisions of section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, the following described lands have been conveyed from the United States:

Boise Meridian

T. 48 N., R. 1 E.,
Sec. 6, lots 11, 14, and 15, SE¼SW¼, and NW¼SE¼.
T. 48 N., R. 1 W.,
Sec. 1, lots 10, and 11, N½SW¼, SE¼SW¼, and SE¼;
Sec. 8, S½NW¼;
Sec. 12, NE¼NW¼.
Comprising 613.58 acres of public land.

2. In exchange for these lands, the United States acquired the following described lands:

Boise Meridian

T. 56 N., R. 1 E.,
Sec. 7, lots 4 and 5, the east 790 feet of the SW¼SE¼, E½SE¼, and a portion of lot 1 and E½NE¼ lying southwesterly of the county road, more particularly described by metes and bounds.
Comprising 191.10 acres of private land.

The purpose of the exchange was to acquire non-Federal land which has high public values for recreation and access. The public interest was well served through completion of this exchange. The values of the Federal and private lands in the exchange were appraised at $650,000 and $490,000, respectively. The Bureau of Land Management received an equalization payment to compensate for the difference in land value.

3. The land has been and will remain closed to the public land, mining, and mineral leasing laws.

Dated: August 12, 1992.

Larry R. Lievsay,

Acting Chief, Realty Operations Section.

[FR Doc. 92-20238 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-GG-M

Bureau of Land Management

[WY-010-4212-14; WYW 123841]

Realty Action; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Sale of Public Land in Big Horn, Hot Springs, and Washakie Counties, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the lands described below are suitable for public sale by modified competitive sale procedures under sections 203 and 209 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713, 1719). BLM must receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land or interest on the land for sale if the sale would not be consistent with FLPMA or other applicable law.

The fair market values, planning document, environmental assessment, and other relevant information concerning the sale are available for review at the Bureau of Land Management, Grass Creek Resource Area Office, 101 South 23rd, Worland, Wyoming, 82401, (307) 347-9871.

Sixth Principal Meridian, Wyoming

Parcel No. 1

T. 51 N., R. 97 W.,
Sec. 14, lots 24, 26, 28, E½NE¼SW¼SW¼;
Sec. 23, lot 4, 6, N½NE¼NE¼NW¼.
The above land aggregates 26.89 acres.

Parcel No. 2

T. 51 N., R. 96 W.,
Sec. 20, lot 30, 37;
Sec. 21, lot 41, W½NE¼SW¼SW¼, NW¼SW¼SW¼.
The above land aggregates 28.43 acres.

Parcel No. 3

T. 51 N., R. 97 W.,
Sec. 11, lot 8, 9, 12;
Sec. 12, lot 39;
Sec. 13, lot 6.
The above land aggregates 15.83 acres.

Parcel No. 4

T. 51 N., R. 97 W.,
Sec. 13, lot 24.
The above land aggregates 4.97 acres.

Parcel No. 5

T. 51 N., R. 97 W.,
Sec. 14, lot 7, 9, 19.
The above land aggregates 2.90 acres.

Parcel No. 6

T. 47 N., R. 95 W.,
Sec. 29, lot 18, 20, 24.
The above land aggregates 33.96 acres.

Parcel No. 7

T. 51 N., R. 95 W.,
Sec. 26, lot 8, 18, 19, 24,25;
Sec. 35, lot 8, 19, 22.
The above land aggregates 45.08 acres.

Parcel No. 8

T. 51 N., R. 95 W.,
Sec. 19, lot 40, 42;
Sec. 20, lots 31-34;
Sec. 29, N½NW¼NE¼NE¼.
The above land aggregates 16.45 acres.

Parcel No. 9

T. 45 N., R. 95 W.,
Sec. 7, lot 22, 24;
Sec. 8, lot 18, 22;
Sec. 10, lot 17.
The above land aggregates 45.53 acres.

Parcel No. 10

T. 43 N., R. 95 W.,
Sec. 12, N½N½SW¼SW¼.
The above land aggregates 10.0 acres.

FOR FURTHER INFORMATION CONTACT: Joe Vessels, Area Manager, Grass Creek Resource Area Office, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, (307) 347-9871.

SUPPLEMENTARY INFORMATION: Sale of the above parcels will be conducted by modified competitive bidding to adjoining landowners. Adjoining landowners submitting a bid must provide evidence of adjoining landownership before the bid will be accepted. A bid will also constitute an application for conveyance of those mineral interests offered for conveyance in the sale. The mineral interests being offered have no known mineral values. At the time of the sale, the bidder will be required to pay a $50.00 nonreturnable filing fee (in addition to their bid) for all unreserved mineral interests.

It has been determined that disposal of the parcels will benefit BLM by resolving existing agricultural and occupancy use occurrences. The proposed sale is consistent with the Grass Creek Management Framework Plan. The lands are not required for other public purposes.

All bidders must be U.S. citizens, 18 years of age or older, corporations

authorized to own real estate in the state of Wyoming, a state, state instrumentality or political subdivision authorized to hold property, or an entity legally capable of conveying and holding land or interests in land in Wyoming.

Sealed bidding is the only acceptable method of bidding. All bids must be received in the Grass Creek Resource Area Office, 101 South 23d, Worland, Wyoming 82401, by 10 a.m. October 25, 1992, at which time the sealed bid envelopes will be opened and the high bid announced. The high bidder will be notified in writing within 30 days of whether or not the BLM can accept the bid. The sealed bid envelope must be marked in the front lower left-hand corner with the words "Public Land Sale, WYW 123841, Sale held October 25, 1992".

All sealed bids must be accompanied by a payment of net less than ten (10) percent of the total bid, plus a $50.00 nonreturnable filing fee for all unreserved mineral interests. Each bid and final payment must be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Department of the Interior-BLM.

Failure to pay the remainder of the full bid price within 180 days of the sale will disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of the sale. If the apparent high bidder is disqualified, the next highest qualified bid will be accepted or the land will be reoffered under competitive procedures. It two (2) or more envelopes containing valid bids of the same amount are received, supplemental sealed bidding will be used to determine the high bid. Additional sealed bids will be submitted to resolve all ties.

If any parcels fail to sell, they will be reoffered for sale under competitive procedures. For reoffered land, bids must be received in the Grass Creek Resource Area Office by 10 a.m., on the fourth (4th) Wednesday of each month, beginning November 25, 1992. Reoffered land will periodically be re-evaluated and will remain available for sale until sold or until the sale action is canceled or terminated. Reappraisals of the parcels will be made periodically to reflect the current fair market value. If the fair market value of a parcel changes, the land will remain open for competitive bidding according to the procedures and conditions of this notice.

Any patents issued will be subject to all valid existing rights. Specific patent reservations include:

Conveyance of the public land will be subject to:

1. Reservation of rights-of-way (ROWs) for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.
2. Reservation of oil and gas.
3. Reservation on the individual parcels:

a. Parcel No. 1.
1. German Ditch ROW—1866 Act.
2. BLM Access Road ROW WYW 126234.
3. Oil and Gas Lease WYW 82113.

b. Parcel No. 2.
1. St. Joe Canal ROW—1866 Act.
2. BLM Access Road ROW WYW 56418.
3. Oil and Gas Lease WYW 101655.

c. Parcel No. 3.
1. Colorado Interstate Gas Pipeline ROW WYW 33151.
2. Tri-County Telephone ROW WYW 119032.
3. Oil and Gas Lease WYW 104074.

d. Parcel No. 4.
1. St. Joe Canal ROW—1866 Act.
2. Oil and Gas Lease WYW 82113.

e. Parcel No. 5.
1. German Ditch ROW—1866 Act.
2. BLM Access Road WYW 126234.
3. Oil and Gas Lease WYW 104074.

f. Parcel No. 6.
1. Wyoming Department of Transportation Highway ROW WYW 022640.
2. Hot Springs REA, Inc., Powerline ROW WYW 47045.
3. Holly and Niccolls Ditch ROW—1866 Act.

g. Parcel No. 7.
1. Oil and Gas Lease WYW 99241.

h. Parcel No. 8.
1. Oil and Gas Lease WYW 104704.

i. Parcel No. 9.
1. Marathon Pipeline Co. ROW WYB 08525.
2. Marathon Pipeline Co. ROW WYW 023349.
3. Hot Springs REA, Inc., ROW WYW 45907.
4. Washakie County Road ROW WYW 78713.
5. Tenderfoot Ditch ROW—1866 Act.
6. BLM Fence Project No. 4166.
7. Oil and Gas Lease WYW 114231 and WYW 119451.
8. All Salable Minerals.

j. Parcel No. 10.
1. Hot Springs County Road ROW WYW 81665.
2. Mountain States Telephone and Telephone Buried Cable ROW WYW 68474.
3. Hot Springs REA, Inc., Powerline ROW WYW 76010.
4. BLM Access Road ROW WYW 126250.
5. South Side Ditch ROW—1866 Act.

The public sale parcels involve land within the following grazing allotments: (1) North Tatman Allotment No. 674, (2) New Burlington Group Allotment No. 509, (3) North Gooseberry Allotment No. 508, (4) Cannady Individual Allotment No. 543, (5) South Gooseberry Group Allotment No. 507, and (6) Harvay Common Allotment No. 506. Permittees holding livestock grazing privileges in the above allotments have either signed a waiver on the two-year grazing notice or are being served a two-year notice that the subject lands are being excluded from the grazing allotment. The notice is being sent with a copy of this Notice of Realty Action. Less than one animal unit of forage is being lost in each sale parcel and no reduction in grazing preference will be required.

Publication of this notice in the Federal Register shall segregate the land from all forms of appropriation under the public land laws, including the general mining laws. The segregative effect will terminate upon issuance of patent, 270 days from the date of publication of this notice, or upon publication in the Federal Register of a notice of termination of segregation, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Worland District Office, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401. Any adverse comments will be evaluated by the State Director, who may sustain, modify, or vacate this realty action. In the absence of any action by the State Director, this realty action will become final.

Dated: August 14, 1992.

Jamie Sellar-Baker,

Acting Grass Creek Resource Area Manager.

[FR Doc. 92-20239 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018-0066), Washington, DC 20503, telephone 202-395-7340.

Title: Migratory Bird Harvest Surveys Amendment

OMB Approval Number: 1018-0015

Abstract: Migratory bird hunting is authorized throughout the U.S. Information on magnitude and composition of the harvest is needed for sound management and to preclude over-harvest. This request amends the Waterfowl Harvest Survey to include a phased expansion to include other migratory bird species that are not currently surveyed. In addition, to solve non-response problems, hunter names and addresses would come from a required Migratory Bird Harvest Information Program instead of from voluntary cards distributed with a sample of Federal Duck Stamps.

Service Form Number(s): 3-2056I, 3-2056J, 3-2056K

Frequency: On Occasion

Description of Respondents: Migratory bird hunters

Estimated Completion Time: 8.5 minutes (0.01447 hours)

Annual Responses: 2,379,760 responses (2,224,300 respondents × 1.06989 responses per respondent × 0.01447 hours)

Revised Annual Burden Hours: 34,446 (+16,876 hours increase)

Service Clearance Officer: James E. Pinkerton, 703-358-1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: August 10, 1992.

John G. Rogers,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 92-20274 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, Massachusetts; Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. app. 1 section 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, September 17, 1992.

The Committee was established pursuant to Public Law 101-628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5(a)(110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will convene at 7:30 p.m. in the Carlisle Town Hall, Carlisle, Massachusetts (Carlisle Town is located on the south side of Route 225 in the town center, i.e., on the left hand side of Rte. 225 for westbound traffic. Town Hall is in the same building as the library—a reddish-brown structure with a flagpole and one-way drive out front. Parking for Town Hall business is in the second lot along the drive).

Agenda

I. Welcome, introductions, and comments—Bill Sullivan.
II. Approval of minutes from 8/27 meeting.
III. Subcommittee Reports—Subcommittee Chairs.
  A. River Conservation Planning Subcommittee.
  B. Instream Flow Study Subcommittee.
  C. Public Participation Subcommittee.
IV. Discussion—Issues of Local Concern.
V. Opportunity for public comment.
VI. Other Business.
  A. Next meeting dates and locations.

Dated: August 19, 1992.

John H. Davis,

Acting Deputy Director, National Park Service.

[FR Doc. 92-20249 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 15, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by September 9, 1992.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Pima County

Air Force Facility Missile Site 8 (571-7) Military Reservation. 1580 W. Duval Mine Rd., Green Valley, 92001234

CALIFORNIA

Sonoma County

Gould—Shaw House, 215 N. Cloverdale Blvd., Cloverdale, 92001244

FLORIDA

Monroe County

Adderley, George, House, 5550 Overseas Hwy., Marathon, 92001243

St. Johns County

St. Augustine Alligator Farm Historic District, 999 Anastasia Blvd., St. Augustine, 92001232

MARYLAND

Talbot County

Barnaby House, 212 N. Morris St., Oxford, 92001228

Baltimore Independent City

President Street Station, Jct. of President and Fleet Sts., Baltimore (Independent City), 92001229

OHIO

Miami County

Wheeling and Lake Erie RR Minerva Station, 301 Valley St., Minerva, 92001246

Stark County

Ideal Department Store Building, 55-59 Lincoln Way E., Massillon, 92001245

Putman, Walter S., House, 303 Lawnford Ave., Wilmot, 92001247

PUERTO RICO

Humacao Municipality

Central Playa Grande, Address Restricted, Barrio Llave, Vieques, 92001236

Laguna Jalova Archeological District, Address Restricted, Barrio Puerto Diablo, Vieques, 92001237

Paramayon 2, Address Restricted, Barrio Llave, Vieques, 92001241

Playa Vieja, Address Restricted, Barrio Punta Arenas, Vieques, 92001235

Punta Jalova, Address Restricted, Barrio Puerto Diablo, Vieques, 92001239

Punta Tapon, Address Restricted, Barrio Puerto Ferro, Vieques, 92001240

Resolucion Historic District, Address Restricted, Barrio Puerto Ferro, Vieques, 92001242

Ventana Archeological District, Address Restricted, Barrio Puerto Ferro, Vieques, 92001238

Toa Baja Municipality

Santa Elena Hacienda, N of Hwys. 2 and 165 jct., Toa Baja, 83004662

SOUTH CAROLINA

Kershaw County

Boykin Mill Complex, 8 mi. S of Camden at jct. of SC 261 and Co. Rd. 2, Camden vicinity, 92001230

Carter Hill, 10 mi. S of Camden, E of SC 521, Camden vicinity, 92001231

TEXAS

Hays County

Hays County Courthouse Historic Districts (San Marcos MRA), Roughly bounded by alleys behind N. Guadalupe, E. Hopkins, N. LBJ and E. San Antonio Sts., San Marcos, 92001233

WYOMING

Fremont County

CM Ranch and Simpson Lake Cabins, State Fish Hatchery Rd. S of Dubois off US 287. Dubois vicinity, 92001249.

[FR Doc. 92-20365 Filed 8-24-92; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-32 (Sub-No. 47X)]

Boston and Maine Corp. and Springfield Terminal Railway Co. Discontinuance of Trackage Rights Exemption—in Berkshire County, MA

Boston and Maine Corporation and Springfield Terminal Railway Company (applicants) have filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to discontinue trackage rights over 5.09 miles of line owned and operated by Consolidated Rail Corporation (Conrail). The segment extends between milepost 150.75 and milepost 148.16, and between milepost 0.00 and milepost 2.50 in Pittsfield, in Berkshire County MA.[1] Conrail will continue to operate the segment.

Applicants have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, which previously moved over the line has been rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government agency acting on behalf of such user) regarding cessation or any U.S. District Court or has been decided in favor of the complainant within the 2-year period. Applicants also have certified that they have complied with the notice requirements of 49 CFR 1152.50(d)(1).

As a condition to use of this exemption, any employee adversely affected by the discontinuance of trackage rights shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 24, 1992, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues [2] and formal expressions of intent to file offers of financial assistance under 49 CFR 1152.27(c)(2) [3] must be filed by September 4, 1992. Petitions to reopen must be filed by September 14, 1992, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: John R. Nadolny, Law Department, Boston and Maine Corporation, Iron Horse Park, No. Billerica, MA 01862.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Decided: August 18, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-20305 Filed 8-24-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 32130]

Burlington Northern Railroad Co.—Trackage Rights Exemption—Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant overhead trackage rights to Burlington Northern Railroad Company (BN) over approximately 2.4 miles of rail line, between NW milepost SL-5.1, at the division of ownership between BN and NW, North St. Louis (Luther), MO, and NW milepost SL-7.5, at Jennings, MO. The trackage rights will become effective on or after August 24, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Ethel A. Allen, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102-5384.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: August 17, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92-20304 Filed 8-24-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 4, 1992, a consent decree in *United States* v. *Speciality Systems, Inc.*, Civil Action No. IP91 351C, was lodged with the United States District Court for the Southern District of Indiana, Indianapolis Division.

The Complaint filed by the United States on March 29, 1991, and Amended Complaint proposed for filing on August 4, 1992, alleged violations of sections 112(c) and 114(a)(1) of the Clean Air Act (the "Act"), 42 U.S.C. 7412(C) AND 7414(a)(1), as amended by the Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399, and the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos, 40 CFR part 61, Subpart M. The United States sought civil penalties and injunctive relief pursuant to section 113 of the Act, 42 U.S.C. 7413.

The proposed consent decree requires Speciality Systems, Inc. to pay a civil penalty of $60,000 and comply with the asbestos NESHAP. The decree also includes stipulated penalties if Specialty Systems, Inc. fails to comply with the NESHAP requirements regarding submission of timely notification of intent to renovate or demolish asbestos, or for failure to comply with the NESHAP notification requirements by omitting any item required to be included in notifications of intent to renovate or demolish asbestos.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Specialty Systems, Inc.*, DOJ Ref. No. 90-5-2-1-1573. The proposed consent decree may be examined at the office of the United States Attorney, Southern District of Indiana, 46 E. Ohio Street, Indianapolis, Indiana 46204; at the Region V office of U.S. EPA, Records Center, Seventh Floor, 77 West Jackson Blvd., Chicago, Illinois 60604-3590; and at the Consent Decree Library, 601 Pennsylvania Avenue Building, NW., Washington, DC 20044. (202-347-7829). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $7.00 (twenty-five cents per page reproduction costs) payable to the "consent Decree Library."

John C. Cruden,

Chief, Environment Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 92-20240 Filed 8-24-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Application

Puruant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on April 14, 1992, Radian Corporation, P.O. Box 201088, 8501 Mopac Boulevard, Austin, Texas 78759, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug:	Schedule
4-Methylaminorex (cis isomer) (1590)	I
Methaqualone (2565)	I
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Penobarbital (2270)	II
Secobarbital (2315)	II
Pencyclidine (7471)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than 30 days from publication.

Dated: August 10, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-20225 Filed 8-24-92; 8:45 am]

BILLING CODE 4410-09-M

Office of Juvenile Justice and Delinquency Prevention

Meeting of the National Conference of State Juvenile Justice Advisory Groups

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of meeting.

SUPPLEMENTARY INFORMATION: A meeting of the National Coalition of State Juvenile Justice Advisory Groups will take place in Oklahoma City, Oklahoma, beginning at 9 a.m. on September 19, 1992, and ending at noon on September 21, 1992. This advisory committee, chartered as the National Conference of State Juvenile Justice Advisory Groups, will meet at the Lincoln Plaza Hotel and Conference Center, 4445 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105. The purpose of this meeting is to discuss and adopt recommendations from members with regard to the committee's responsibility to advise the Administrator, the President and the Congress concerning State perspectives on the operation of the Office of Juvenile Justice and Delinquency Prevention and Federal legislation pertaining to juvenile justice and delinquency prevention. This meeting will be open to the public.

Gerald (Jerry) P. Regier,

Administrator (Designate), Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 92-20258 Filed 8-24-92; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 523-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management

[1] Mileposts 148.16 and milepost 0.0 mark the same point on the line, hence, the 5.09 miles constitute a continuous segment.

[2] Ordinarily a stay will be routinely issued by the Commission in those instances where an informed decision on environmental issues, whether raised by a party or by the Commission's Section of Energy and Environment, cannot be made prior to the effective date of the notice of the exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Because trackage rights discontinuances are exempt from the Commission's environmental and historic reporting requirements, a stay would not be issued here for these reasons.

[3] See Exempt of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

and Budget, room 3001, Washington, DC 20503 (202—395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Employment Standards Administration
Operator Controversion; Operator Response
1215–0058; CM–970 and CM–970a
On occasion
Businesses or other for-profit; small businesses or organizations 3,600 respondents; 1,800 total hours; 15 minutes per response; 2 forms

The CM–970 and CM–970a are used by coal mine operators to controvert an Initial Finding or to agree or disagree with potential liability for payment of black lung benefits under the Act.

Extension

Employment Standards Administration
Maintenance of Receipts for Benefits Paid by a Coal Mine Operator (Recordkeeping)
1215–0124; CM–200
Businesses or other for-profit
150 recordkeepers; 1 total burden hour

20 CFR 725.531 requires self-insured operators or insurance carriers who make benefit payments to black lung beneficiaries to maintain receipts for those payments for five years. Cancelled checks will suffice.

Extension

Mine Safety and Health Administration
Noise Data Report Form and Calibration Records
1219–0037
Semi-annually; annually
Businesses and other for profit; small businesses or organizations
Periodic Surveys: 253,440 responses; 21 minutes per response 88,704 burden hours
Supplemental Surveys: 1,267 responses; 15 minutes per response; 317 burden hours
Survey/comal. Certification: 2,534 responses; 6 minutes per response; 253 burden hours
Survey Report: 1,267 responses; 6 minutes per response; 127 burden hours
Calibration Reports: 4,300 responses; 3 minutes per response; 215 burden hours
Total Burden: 89,616 hours

Requires coal mine operators to report to MSHA when noise exposure surveys show noncompliance with permissible levels. Records are also required to be kept at the mine of when and by whom noise dosimeters and acoustical calibrators are recalibrated.

Signed at Washington, DC this 14th day of August, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92–20306 Filed 8–24–92; 8:45 am]

BILLING CODE 4510–27–M

Office of the Assistant Secretary for Veterans' Employment and Training

Solicitation for Grant Applications

This notice announces the recent release of the Solicitation for Grant Applications (SGA) to operate the Federal Contractor Reporting System (FCRS) for Federal fiscal year 1993 (October 1, 1992—September 30, 1993).

Background

The Assistant Secretary for Veteran's Employment and Training has been tasked under 38 United States Code (U.S.C.) 4212 to provide data to Congress on an annual basis regarding Vietnam-era and special disabled veterans' employment. To accomplish this requirement, the Veterans' Employment and Training Service (VETS) has been collecting and compiling information provided by covered Federal contractors and subcontractors on their hiring and employment of Vietnam-era and special disabled veterans. As an additional function, information about contractors receiving awards of Federal contracts has been provided to each of the State employment security agencies (SESA) in the 50 States, the District of Columbia, Puerto Rico and the Virgin Islands. This information allows the SESAs to increase the awareness of the contractors covered by law regarding their obligations to consider hiring and advancing these veterans for available employment opportunities. Finally, the program provides contractors and veterans with toll-free access to operators that provide answers to questions about the VETS–100 reporting system, veterans' reemployment rights and other related programs for veterans.

Information Regarding the Solicitation

This solicitation (SGA 92–02) is open to any State entity capable of interfacing with all other State employment security agencies regardless of desired media, for communication of assembled data. The closing date of the solicitation is 4:45 p.m. e.d.t. on October 15, 1992. Copies of the solicitation may be obtained by contacting Mr. Skip MacLeod, who may be reached at (202) 523–6246.

Information regarding the Federal Contractor Program is available by contacting Hary Puente-Duany, who may be reached at (202) 523–9110. The award date for the operation of the Federal Contractor Reporting System is anticipated to be October 30, 1992.

Signed at Washington, DC, on August 19, 1992.

Robin L. Higgins,

Acting Assistant Secretary for Veterans Employment and Training.

[FR Doc. 92–20307 Filed 8–24–92; 8:45 am]

BILLING CODE 4510–79–M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92–60; Exemption Application No. D–8914, et al.]

Grant of Individual Exemptions, Publix Super Markets, Inc. Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Publix Super Markets, Inc. Profit Sharing Plan (the Plan), Located in Lakeland, Florida

[Prohibited Transaction Exemption 92–60; Exemption Application No. D–8914]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan to Publix Super Markets, Inc. (Publix), a party in interest with respect to the Plan, of four parcels of real property (the Properties), and the assignment to Publix by the Plan of a leasehold interest in a parcel that adjoins one of the Properties, provided the following conditions are satisfied: (1) The sale is a one-time transaction for cash; (2) The Plan pays no fees or commissions in connection with the sale; (3) The Plan will receive no less than the fair market value of the Properties as determined by a qualified, independent appraiser; and (4) The Plan's trustee has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 22, 1992 at 57 FR 27793.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

NCNB Stable Capital Fund (the Fund), Located in Charlotte, North Carolina

[Prohibited Transaction Exemption 92–61; Exemption Application No. D–8944].

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the retention by the Fund from December 31, 1991, through April 6, 1992, of a certain bank investment contract, provided that such retention was on terms at least as favorable to the Fund as those available in arm's-length transactions with unrelated parties.

EFFECTIVE DATE: This exemption is effective as of December 31, 1991.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 17, 1992, at 57 FR 27068.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Cappuccio, Inc. Defined Benefit Pension Trust (the Plan), Located in Monterey, California

[Prohibited Transaction Exemption 92–62; Exemption Application No. D–8960].

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of certain improved real property (the Property) to Frank Cappuccio, a party in interest with respect to the Plan; provided that the Plan receives the greater of either: (i) $1,100,000; (ii) the total costs the Plan has incurred with respect to the acquisition of the land and the construction of the improvements on the Property, plus any operational expenses which may exceed the rental income on the Property, as of the date of sale; or (iii) the fair market value of the Property as of the date of sale, as appraised by an independent, qualified real estate appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 11, 1992, at 57 FR 24820.

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

Telephone Real Estate Equity Trust (the Trust), Located in Boston, Massachusetts

[Prohibited Transaction Exemption 92–63; Exemption Application No. D–8974].

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 2975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) a certain lease (the Lease) of space in commercial real property (the Property) located at Piney Point Office Park in Houston, Texas to the Townsend Company, a party in interest with respect to the Trust; (2) the potential amendments, renewals, or extensions of the Lease; and (3) the proposed leasing by the Trust of space in the Property to any other persons that may be parties in interest with respect to the Trust or parties in interest with respect to any employee benefit plans participating in the Trust (except for fiduciaries with respect to the Property),[1] including the amendments, renewals, or extensions thereof; provided that the terms and conditions of any leases subject to this exemption, including any amendments, renewals, or extensions thereof are at least as favorable to the Trust as those which the Trust could obtain in arm's-length transactions with unrelated parties; and provided further that any such leases, including any amendments, renewals, or extensions thereof, are approved on behalf of the Trust by Eastdil Advisers, Inc.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 11, 1992, at 57 FR 24824.

EFFECTIVE DATE: The effective date of the exemption will be May 6, 1991, as to the Lease of the Property to Townsend Company.

FOR FURTHER INFORMATION CONTACT: Mr. C.E. Beaver of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

[1] Fiduciaries as used here include the American Telephone and Telegraph Company and its affiliates, Bell South Corporation and its affiliates, and Eastdil Advisers, Inc. and its affiliates.

S&C Pension Plan (the Plan), Located in Chicago, Illinois

[Prohibited Transaction Exemption 92–64; Exemption Application No. D–8985].

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The continued holding by the Plan on and after January 1, 1993, of stock (the Stock) of S&C Electric Company (S&C), the Plan sponsor and a party in interest with respect to the Plan; and (2) the acquisition, holding and exercise by the Plan of an irrevocable put option (the Put Option) which permits the Plan to sell the Stock to S&C at a price which is the greater of the appraised fair market value of the Stock as of December 31, 1992, or the appraised fair market value of the Stock at the time of the exercise of the Put Option, provided: (a) The Plan's continued holding of the Stock is monitored by a qualified, independent fiduciary; (b) the Plan's independent fiduciary will take whatever action is necessary to protect the Plan's rights, including, but not limited to, the exercising of the Put Option if the independent fiduciary, in his sole discretion, determines that such exercise is appropriate; and (c) S&C establishes an account for the benefit of the Plan, as described in the notice of proposed exemption, which will be maintained as long as the Plan continues to hold any shares of the Stock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 17, 1992 at 57 FR 27070.

EFFECTIVE DATE: This exemption will be effective January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Sun Bancorp, Inc. Retirement Plan (the Plan), Located in Selingsgrove, Pennsylvania

[Prohibited Transaction Exemption 92–65; Exemption Application Nos. D–9005 and D–9006].

Exemption

The restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective May 28, 1992, to the cash sale by the Plan of a group annuity contract (the GAC) to Sun Bancorp, Inc., a party in interest with respect to the Plan; provided that (1) the sale as a one-time transaction for cash, (2) the Plan received a purchase price for the GAC of no less than its fair market value as of the date of the sale, and (3) the Plan did not incur any costs or expenses related to the sale.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1992 at 57 FR 27797.

EFFECTIVE DATE: This exemption is effective as of May 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

TJX Companies, Inc. Savings/Profit Sharing Plan, and TJX Companies, Inc. General Savings/Profit Sharing Plan (Together, the Plans), Located in Framingham, Massachusetts

[Prohibited Transaction Exemption 92–66; Exemption Application Nos. D–9040 & D–9041].

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to 910 interest-free loans (the Loans) to the Plans by The TJX Companies, Inc., the sponsor of the Plans, with respect to guaranteed investment contracts number 1190 and number 1307A3A (the GICs) issued by Executive Life Insurance Company of California (Executive Life); and (2) the potential repayment of the Loans by the Plans (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with an unrelated party, (b) no interest and/or expenses are paid by the Plans, (c) the Loans are made only in lieu of payments due from Executive Life with respect to the GICs, (d) the Repayments are restricted to the amounts, if any, paid to the Plans by Executive Life or other responsible third parties with respect to the GICs (the GIC Proceeds), (e) the Repayments do not exceed the total amount of the Loans, and (f) the Repayments are waived to the extent the Loan amounts exceed the GIC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 22, 1992 at 57 FR 27798.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Willett of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 20th day of August, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 92–20333 Filed 8–24–92; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Cooperative Agreement for a Project on Learning Through Design

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement with a qualified individual or organization to increase the awareness of design as a catalyst for learning among educational leaders. The specific objectives of the initiative are: to search out and identify the best examples of learning through design; to profile these exemplary techniques for teaching and learning through design in a way that elucidates and emphasizes their pedagogical value; to convene a meeting of educational leaders to review this information and develop strategies on how best to further the integration of design into American teaching; to produce a succinct and visually-arresting document summarizing the findings and recommendations; and to disseminate the publication to a variety of educators and other leaders. Funding is limited to $117,500. Those interested in receiving the Solicitation package should reference Program Solicitation PS 92–11 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 92–11 is scheduled for release approximately September 1, 1992 with proposals due on October 1, 1992.

ADDRESSES: Requests for the Solicitation should be addressed to National Endowment for the Arts, Contracts Division, room 217, 1100 Pennsylvania Ave., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW., Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 92–20273 Filed 8–24–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SPACE COUNCIL

Meeting of the Space Industrial Base Capability Task Group

AGENCY: National Space Council.

ACTION: Notice of meeting closure.

SUMMARY: The Space Industrial Base Capability Task Group will meet in closed session on August 26 and 27, 1992.

DATES: August 26 and 27, 1992.

ADDRESSES: 2350 East El Segundo Boulevard, El Segundo, California.

FOR FURTHER INFORMATION CONTACT: Eva Czajkowski, (703) 685–3568, Joe Scifers, or Courtney Stadd, National Space Council, Executive Office of the President, Washington, DC (202) 395–6175.

SUPPLEMENTARY INFORMATION: As previously announced (57 FR 35855, August 11, 1992), the Space Industrial Base Capability Task Group of the Vice President's Space Policy Advisory Board will meet on August 26 and 27, 1992, at the Areospace Corporation, Building A1, 2350 East El Segundo Boulevard, El Segundo, California. The meeting times, however, have been changed; the group will meet between 8 a.m. and 6:15 p.m. on August 26, 1992, and between 8 a.m. and 12 noon on August 27, 1992. This meeting will be closed to the public in its entirety for both August 26 and 27, 1992, under exemption 4 (privileged or confidential commercial and financial information) of 5 U.S.C.S 552b(c) (the Sunshine Act). Persons interested in further information should contact Eva Czajkowski, ANSER, (703) 685–3568.

Joe Scifers,

Committee Action Officer.

[FR Doc. 92–20328 Filed 8–24–92; 8:45 am]

BILLING CODE 3128–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR part 34—Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses are submitted every five years.

5. *Who will be required or asked to report:* Persons holding or applying for a license for the use of radioactive byproduct material for purposes of industrial radiography.

6. *An estimate of the number of responses:* 19.

7. *An estimate of the total number of hours needed to complete the requirement or request:* An average of 2.1 hours per response, plus approximately 294.5 hours per recordkeeper. The total industry burden is approximately 63,938 hours annually.

8. *An indication of whether section 3504(h), Public Law 96–511 applies:* Not applicable.

9. *Abstract:* 10 CFR part 34 establishes rules governing the domestic licensing of radioactive byproduct material for use in industrial radiography. The information collected will be evaluated during licensing reviews or inspections to ensure that the performance of industrial radiography will not endanger health or pose a danger to life or property. The revision is an adjustment resulting from a decrease in the number of licensees, the addition of reporting requirements in a previous proposed rule, and a reevaluation of time estimates for licensee recordkeeping.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0007) NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 14th day of August 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–20282 Filed 8–24–92; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. *Type of submission, new, revision, or extension:* revision (Information collections contained in final rule are currently under review by OMB.)

2. *The title of the information collections:* 48 CFR chapter 20, Nuclear Regulatory Commission Acquisition Regulation (NRCAR): Organizational Conflicts of Interest.

3. *The form number of applicable:* N/A.

4. *How often the collection is required:* on occasion.

5. *Who will be required or asked to report:* contractors receiving task-order-type contract awards from NRC.

6. *An estimate of the number of responses:* 2.

7. *An estimate of the burden per response:* 1 hour.

8. *An estimate of the total number of hours needed to complete the requirement or request:* 2.

9. *An indication of whether section 3504(h), Public Law 96–511 applies:* Applicable.

10. *Abstract:* The NRC is proposing a revision to one provision, Organizational Conflicts of Interest (COI), contained in the Nuclear Regulatory Commission Acquisition Regulation. This revision would require a contractor to justify why the firm was unable to comply with the requirement to disclose all new work within 15 days of the proposed start date of such work.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0169), Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084. The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.Q04

Dated at Bethesda, Maryland this 17th day of August 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official For Information Resources Management.

[FR Doc. 92–20280 Filed 8–24–92; 8:45 am]

BILLING CODE 7590–01–M

Generic Reactor Pressure Vessel Integrity Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will meet with the staff of the Nuclear Management and Resources Council (NUMARC), DOE, and other industry representatives to discuss research and regulatory activities underway concerning generic reactor pressure vessel integrity issues.

DATE: September 2–3, 1992.

TIME: 8 a.m.–5 p.m.

ADDRESS: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Z. Serpan, Jr., Chief, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3835.

SUPPLEMENTARY INFORMATION: A significant amount of work is underway by NRC, DOE and others in the U.S. nuclear industry on research and regulatory activities related to generic reactor pressure integrity issues. Some information exchanges, round-robin comparison exercises and coordination have been underway between NRC and EPRI, as well as others in the industry. However, there has not been a concerted effort to exchange and coordinate all activities of all the parties. Therefore, on July 9, 1992, NRC wrote to EPRI, DOE, NUMARC and Yankee Atomic Electric proposing that NRC hold a meeting to coordinate generic reactor pressure vessel integrity efforts; the meeting described in this notice is a result of that invitation. The meeting will include statements of interest and activities by NRC, and by NUMARC acting as a coordinator for industry efforts, as well as descriptions of research programs and regulatory activities underway concerning reactor pressure vessel integrity. It is expected that overlap and open areas will be identified, and actions for future coordination between the parties will be started.

Dated at Rockville, Maryland, this 19th day of August, 1992.

For the Nuclear Regulatory Commission.

Robert J. Bosnak,

Deputy Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92–20279 Filed 8–24–92; 8:45 am]

BILLING CODE 7590–01–M

Final Memorandum of Understanding Between the U.S. Nuclear Regulatory Commission and the State of Georgia

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: This notice is to advise the public of the issuance of a Final Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the State of Georgia. The MOU provides the basis for mutually agreeable procedures whereby the Georgia Environmental Protection Division may utilize the NRC Emergency Response Data System (ERDS) to receive data during an emergency at a commercial nuclear power plant in the State of Georgia. Public comments were addressed in conjunction with the MOU with the State of Michigan published in the **Federal Register** Vol. 57, No. 28, February 11, 1992.

EFFECTIVE DATE: This MOU is effective July 22, 1992.

ADDRESSES: Copies of all NRC documents are available for public inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: John R. Jolicoeur or Eric Weinstein, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–4155 or (301) 492–7836.

This attached MOU is intended to formalize and define the manner in which the NRC will cooperate with the State of Georgia to provide data related to plant conditions during emergencies at commercial nuclear power plants in Georgia.

Dated at Rockville, Maryland, this 14th day of August, 1992.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

Agreement Pertaining to the Emergency Response Data System Between the State of Georgia and the U.S. Nuclear Regulatory Commission

I. Authority

The U.S. Nuclear Regulatory Commission (NRC) and the State of Georgia enter into this Agreement under the authority of section 274i of the Atomic Energy Act of 1954, as amended.

Georgia recognizes the Federal Government, primarily the NRC, as having the exclusive authority and responsibility to regulate the radiological and national security aspects of the construction and operation of nuclear production or utilization facilities, except for certain authority over air emissions granted to States by the Clean Air Act.

II. Background

A. The Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended, authorize the Nuclear Regulatory Commission (NRC) to license and regulate, among other activities, the manufacture, construction and operation of utilization facilities (nuclear power plants) in order to assure common defense and security and to protect the public health and safety. Under these statutes, the NRC is the responsible agency regulating nuclear power plant safety.

D. NRC believes that its mission to protect the public health and safety can be served by a policy of cooperation with State governments and has formally adopted a policy statement on "Cooperation with States at Commercial Nuclear Power Plants and Other Nuclear Production or Utilization Facilities (54 FR 7530, February 22, 1989). The policy statement provides that NRC will consider State proposals to enter into instruments of cooperation for certain programs when these programs have provisions to ensure close cooperation with NRC. This agreement is intended to be consistent with, and implement the provisions of the NRC's policy statement.

C. NRC fulfills its statutory mandate to regulate nuclear power plant safety by, among other things, responding to emergencies at licensee's facilities, monitoring the status and adequacy of the licensee's responses to emergency situations.

D. Georgia fulfills its statutory mandate to provide for preparedness, response, mitigation and recovery in the event of an accident at a nuclear power plant in part through the Georgia Environment Protection Division, as described in the State of Georgia Radiological Emergency Plan (REP) and the Georgia Natural Disaster Operations Plan (NDOP).

III. Scope

A. This Agreement defines the way in which the NRC and Georgia will cooperate in planning and maintaining the capability to transfer reactor plant data via the Emergency Response Data System during emergencies at nuclear power plants, in the State of Georgia.

B. It is understood by the NRC and the State of Georgia that ERDS data will only be transmitted by a licensee during emergencies classified at the Alert level or above, during scheduled tests, or during exercises when available.

C. Nothing in this Agreement is intended to restrict or expand the statutory authority of NRC, the State of Georgia, or to affect or otherwise alter the terms of any agreement in effect under the authority of section 274b of the Atomic Energy Act of 1954, as amended; nor is anything in this Agreement intended to restrict or expand the authority of the State of Georgia on matters not within the scope of this Agreement.

D. Nothing in this Agreement confers upon the State of Georgia authority to (1) interpret or modify NRC regulations and NRC requirements imposed on the licensee; (2) take enforcement actions; (3) issue confirmatory letters; (4) amend, modify or revoke a license issued by NRC; or (5) direct or recommend nuclear power plant employees to take or not to take any action. Authority for all such actions is reserved exclusively to the NRC.

IV. NRC's General Responsibilities

Under this agreement, NRC is responsible for maintaining the Emergency Response Data System (ERDS). ERDS is a system designed to receive, store and retransmit data from in-plant data systems at nuclear power plants during emergencies. The NRC will provide user access to ERDS data to one (1) user terminal for the State of Georgia during emergencies at nuclear power plants which have implemented an ERDS interface and for which any portion of the plant's 10-mile Emergency Planning Zone (EPZ) lies within the State of Georgia. The NRC agrees to provide unique software already available to NRC (not commercially available) that was developed under NRC contract for configuring an ERDS workstation.

V. Georgia's General Responsibilities

A. Georgia will, in cooperation with the NRC, establish a capability to receive ERDS data. To this end, Georgia will provide the necessary computer hardware and commercially licensed software required for ERDS data transfer to users.

B. Georgia agrees not to use ERDS to access data from nuclear power plants for which a portion of the 10-mile Emergency Planning Zone does not fall within its State boundary.

C. For the purpose of minimizing the impact on plant operators, clarification of ERDS data will be pursued through the NRC.

VI. Implementation

Georgia and the NRC agree to work in concert to assure that the following communications and information exchange protocol regarding the NRC ERDS are followed.

A. Georgia and the NRC agree in good faith to make available to each other information within the intent and scope of this Agreement.

B. NRC and Georgia agree to meet as necessary to exchange information on matters of common concern pertinent to this Agreement. Unless otherwise agreed, such meetings will be held in the NRC Operations Center. The affected utilities will be kept informed of pertinent information covered by this Agreement.

C. To preclude the premature public release of sensitive information, NRC and Georgia will protect sensitive information to the extent permitted by the Federal Freedom of Information Act, the Georgia Open Records Act (O.C.G.A. 50–18–70), 10 CFR 2.790 and other applicable authority.

D. NRC will conduct periodic tests of licensee ERDS data links. A copy of the test schedule will be provided to Georgia by the NRC. Georgia may test its ability to access ERDS data during these scheduled tests, or may schedule independent tests of the State link with the NRC.

E. NRC will provide access to ERDS for emergency exercises with reactor units capable of transmitting exercise data to ERDS. For exercises in which the NRC is not participating, Georgia will coordinate with NRC in advance to ensure ERDS availability. NRC reserves the right to preempt ERDS use for any exercise in progress in the event of an actual event at any licensed nuclear power plant.

VII. Contacts

A. The principal senior management contacts for this Agreement will be the

Director, Division of Operational Assessment, Office of Analysis and Evaluation of Operational Data, and the Environmental Radiation Program Manager, Georgia Environmental Protection Division. These individuals may designate appropriate staff representatives for the purpose of administering this Agreement.

B. Identification of these contacts is not intended to restrict communication between the NRC and Georgia staff members on technical and other day-to-day activities.

VIII. Resolution of Disagreements

A. If disagreements arise about matters within the scope of this Agreement, NRC and Georgia will work together to resolve these differences.

B. Resolution of differences between Georgia and NRC staff over issues arising out of this Agreement will be the initial responsibility of the NRC Division of Operational Assessment management.

C. Differences which cannot be resolved in accordance with Sections VIII.A and VIII.B will be reviewed and resolved by the Director, Office for Analysis and Evaluation of Operational Data.

D. The NRC's General Counsel has the final authority to provide legal interpretation of the Commission's regulations.

IX. Effective Date

This Agreement will take effect after it has been signed by both parties.

X. Duration

A formal review, not less than one (1) year after the effective date, will be performed by the NRC to evaluate implementation of this Agreement and resolve any problems identified. This Agreement will be subject to periodic reviews and may be amended or modified upon written agreement by both parties, and may be terminated upon thirty (30) days written notice by either party.

XI. Separability

If any provision(s) of this Agreement, or the application of any provision(s) to any person or circumstances is held invalid, the remainder of this Agreement and the application of such provisions to other persons or circumstances will not be affected.

For the U.S. Nuclear Regulatory Commission.

Dated: July 20, 1992.

James M. Taylor,

Executive Director for Operations.

For the State of Georgia.

Dated: July 20, 1992.

Harold F. Reheis,

Director, Georgia Environmental Protection Division.

[FR Doc. 92-20281 Filed 8-24-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Notice of Request for Reclearance of Form RI 25-7

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces a request for reclearance of an information collection. Form RI 25-7, Marital Status Certification, is used to determine whether widows and former spouses receiving survivor annuities from OPM have remarried before reaching age 55 and, thus, are no longer eligible for benefits from OPM.

Approximately 50,000 RI 25-7 forms are completed annually. It takes approximately 6 minutes to complete. The total annual burden is 5,000 hours.

For copies of this proposal, contact C. Ronald Trueworthy on (703) 908-8550.

DATES: Comments on this proposal should be received by September 24, 1992.

ADDRESSES: Send or deliver comments to—

Lorraine E. Dettman, Chief, Operations Support Division, Office of Retirement Programs, U.S. Office of Personnel Management, 1900 E Street, NW., room 3349, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mary Beth Smith-Toomey, Chief Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-20231 Filed 8-24-92; 8:45 am]

BILLING CODE 6325-01-M

Notice of Request for Expedited Review of DPRS-2809 Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, chapter 35), this notice announces the expedited review by OMB for a revised clearance of an information collection. Form DPRS-2809, Request to Change FEHB Enrollment or to Receive Plan Brochures for Spouse Equity and Temporary Continuation of Coverage Enrollees, is completed by the former spouse of employees, separated employees, or former spouses and children of separated employees who wish to change enrollment in the FEHB program during the annual open season. The instructions will be submitted for clearance in early September 1992.

Approximately 15,000 forms are completed annually, each requiring approximately 10 minutes to complete for a total public burden of 2,500 hours.

A draft copy of this proposal is appended to this notice.

DATES: Comments on this proposal should be received by September 1, 1992. OMB will act upon this clearance within 3 calendar days after the close of the comment period.

ADDRESSES: Send or deliver comments to—

Robert A. Yuran, Deputy Assistant Director, Office of Financial Control and Management, Retirement and Insurance Group, U.S. Office of Personnel Management, 1900 E Street, NW., room 4312, Washington, DC 20415,

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., room 3002, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Mary Beth Smith-Toomey, Chief, Administrative Management Branch, (202) 606-0623.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

The content of draft DPRS-2809 is set out below:

Federal Employees Health Benefits Program (FEHB)
Open Season
Draft DPRS-2809
Revised October 1992
Previous editions are not usable
Form Approved: OMB No. 3206-0202
Request To Change FEHB Enrollment or To Receive Plan Brochures for Spouse Equity and Temporary Continuation of Coverage Enrollees

Read the enclosed instructions before completing this form.

Return Form to USDA/OFM/NFC, DPRS, Billing Unit, P.O. Box 61760, New Orleans, LA 70161-1760.

Do not take any action to maintain your present coverage.

Section I-Action-Mark the appropriate block to indicate the action you are requesting. Please mark only ONE block.

—Change Enrollment. I want to change my FEHB enrollment and do not need to review further information. I have marked the block in Section II to indicate the plan I have selected OR entered the enrollment code and plan name for a prepaid plan.

—Receive Plan Brochures. I need to review additional information before making an Open Season election. Please send me the brochure(s) for the plan(s) I have marked in Section II or entered in the blocks for prepaid plans. A list of the prepaid plans is included in the comparison booklet. I understand that I may choose a total of 5 brochures.

Section II—Enrollment Codes and Plan Names—Mark the appropriate blocks.

Fee-for-Service Open Enrollment
Fee-for-Service Limited Enrollment

Enrollee must be a full member of the sponsoring organization to enroll in these plans.

Prepaid Plans
Enrollment code _____
Name of plan _____

Section III—Address Correction—I need to correct my address. The changes are indicated in the box below.

Section IV—Authorization—You must sign and date this form. Enter the daytime area code and telephone number where you can be contacted to answer questions.

Signature: _____
Date: _____

Area Code and Telephone Number

[FR Doc. 92-20232 Filed 8-24-92; 8:45 am]

BILLING CODE 6325-01-M

RAILROAD RETIREMENT BOARD

Computer Matching and Privacy Protection Act of 1988 RRB Records Used in Computer Matching Programs

AGENCY: Railraod Retirement Board (RRB).

ACTION: Notice of records used in Computer Matching Programs; notification to individuals who are receiving benefits under the Railroad Retirement Act.

SUMMARY: As required by the Computer Matching and Privacy Protection Act of 1988, the RRB is issuing a public notice of its use and intent to use, in ongoing computer matching programs, certain information obtained from state agencies with respect to individuals who received benefits under the Railroad Retirement Act. The information from state agencies will consist of Social Security Number, full name, address, and date of birth. The purpose of this notice is to advise individuals applying for or receiving benefits under the Railroad Retirement Act of the use made by the RRB of this information obtained from state agencies by means of a computer match.

DATES: Comments should be received on or before September 24, 1992.

ADDRESSES: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: Richard J. Erickson, Office of Inspector General, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092, telephone number (312) 751-4338.

SUPPLEMENTARY INFORMATION: Under certain circumstances, the Computer Matching and Privacy Protection Act of 1988, Public Law 100-503, requires a Federal agency participating in a computer matching program to publish a notice in the **Federal Register** regarding the establishment of the matching program. Such a notice must include information in the following first five categories:

Name of participating agencies: The Railroad Retirement Board and an agency of the State of Illinois, together with such other states with which the RRB may negotiate agreements in the future.

Purpose of the match: To identify certain individuals receiving benefits under the Railroad Retirement Act who may have married and failed to notify RRB to their marriage. For certain beneficiaries marriage may terminate entitlement to benefits or affect the amount of benefits paid.

Authority for conducting the match: 45 U.S.C. sections 231f(b) and 362(f); 42 U.S.C. section 503(c)(1); 5 U.S.C. app. 3, section 4(a)(4) of the Inspector General Act of 1978.

Categories of records and individuals covered: All recipients of spouse, widow, and child benefits under the Railroad Retirement Act. Records furnished the states are covered under Privacy Act system of records RRB-22, Railroad Retirement, Survivor, and Pensioner Benefit System.

Inclusive dates of the matching program: Agreements with the individual states will run for either 12 or 18 months. The number of matches conducted with each state during the period of the match may vary from state to state.

Procedure: The RRB will furnish the state agency a tape file. The data elements will consist solely of beneficiary identifying information, including surname and Social Security Number (SSN). The state agency will match on SSN and surname. For each record where there is an SSN match but a surname difference, the state agency will furnish the following information on its records: SSN, full name, address, and date of birth. The RRB will then write each such beneficiary requesting that he or she explain the reason for the change in surname and furnish a copy of the legal document that accounts for the surname change. Only if the beneficiary advises that the reason for the surname change is marriage or fails to timely respond to the letter will the RRB give notice that benefits will be terminated or adjusted.

Other information: The notice we are giving here is in addition to any individual notice.

A copy of this notice will be furnished to both Houses of Congress and the Office of Management and Budget.

Dated: August 12, 1992.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92-20241 Filed 8-24-92; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-18697; Release No. IA-1323; 813-85]

Partners Income Fund; Application

August 17, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act") and the Investment Advisers Act of 1940 (the "Advisers Act").

APPLICANT: Partners Income Fund (the "Initial Partnership").

RELEVANT 1940 ACT AND ADVISERS ACT SECTIONS: Applicant seeks an order under section 6(b) granting an exemption from all provisions of the 1940 Act except sections 7, 8(a), and 9, certain provisions of section 17, sections 36 through 53, and the rules and regulations related to those sections. Applicant also seeks an order under section 206A of the Advisers Act exempting Paul Harris Management Inc. ("Harris Management") and other subsidiaries (the "Advisory Subsidiaries") of McKinsey & Company, Inc. ("McKinsey") that may advise or manage the partnerships from section 203(c) of that Act and rule 203–1 thereunder so that such entities need not disclose one item of Form ADV.

SUMMARY OF APPLICATION: Applicant seeks an order that would grant an exemption from most provisions of the 1940 Act to the Initial Partnership and other existing and future partnerships sponsored by McKinsey, and would permit certain affiliated and joint transactions. Each partnership will be an employees' securities company within the meaning of section 2(a)(13) of the 1940 Act. Applicant also seeks an order exempting Harris Management and the Advisory Subsidiaries from one disclosure requirement of Form ADV under the Advisers Act.

FILING DATES: The application was filed on February 6, 1989 and amended on June 15, 1989, February 16, 1990, April 7, 1992, July 9, 1992, and will be amended during the notice period to reflect changes agreed to in a letter from Applicant's counsel dated August 14, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving the applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 11, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Interested persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o McKinsey & Company, Inc., Park Avenue Plaza, 55 East 52nd Street, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: C. Christopher Sprague, Senior Staff Attorney, at (202) 272–3035, or Nancy M. Rappa, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. McKinsey is an international business consulting and management firm that, with its affiliated companies, specializes in solving management problems for major industrial and financial institutions. It has 51 offices in 25 countries. McKinsey proposes to organize limited and general partnerships that will serve as an in-house investment program for its key employees, who will be able to pool their funds to acquire large-denomination and diversified investments that they might not be able to acquire individually.

2. The Initial Partnership was organized in 1987 as a New York general partnership. Certain existing partnerships that presently are excepted from the definition of investment company intend to rely instead on the requested order and register under the 1940 Act. McKinsey intends to organize additional general or limited partnerships (the "Subsequent Partnerships") from time to time. The Initial Partnership, such expected partnerships, and the Subsequent Partnerships are referred to collectively as the "Partnerships." Each Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the 1940 Act, and will operate as a closed-end management investment company. The affairs of each Partnership will be governed by a partnership agreement and related documents (the "Organizational Documents").

3. Only the following "Eligible Employees" of McKinsey may acquire Partnership interests: (a) Senior McKinsey professionals having the title "Director" or "Principal," and certain senior administrative personnel ("Administrative Shareholders"), each of whom owns McKinsey common shares; (b) Directors, Principals, and Administrative Shareholders who have "retired" from McKinsey by selling their common shares back to the company, but still are actively employed; (c) up to ten individuals who are not included within the "management group" of McKinsey, but are responsible for administering the Partnerships and McKinsey's employee benefit plans; and (d) up to ten other individuals who have sophistication, access to Partnership management, and financial resources comparable to the individuals described in clause (a). The Eligible Employees described in clauses (a) (b) above are referred to as "management group members" or "MGMs." Those in (c) and (d) are referred to as "Non-MGM Employees." MGMs and Non-MGM Employees also must meet the sophistication and financial standards set out in paragraphs 6 and 7 below to acquire interests in a Partnership.

4. The MGMs are experienced professionals in the consulting business, or in administrative, financial, accounting, legal, or operational activities related thereto. As of January 1, 1992, all MGMs had an undergraduate degree, and over 90% also had a graduate degree (usually in business or law). The MGMs will know or be known to a number of other management group members, and will have direct access to those directly responsible for managing the Partnerships' assets.

5. Currently, there are three Non-MGM Employees included within item (c) of paragraph 3 above, one of whom (the "Administrator") has undergraduate and masters degrees in business administration, and devotes a major portion of his time to the Partnerships' administrative affairs.

6. Each Eligible Employee must, at the time he or she becomes a partner of, or makes an additional contribution to, a Partnership: (a) be an "accredited investor" as defined in subdivision (5) or (6) of rule 501(a) of regulation D promulgated under the Securities Act of 1933 (the "1933 Act"); (b) have had income from all sources in the calendar year preceding the date of investment of at least $200,000 (or joint income with spouse of at least $300,000), and an expectation of reaching that income level in the current year; and (c) have a net worth of a least $250,000 (or joint net worth with spouse of at least that amount). If the Commission increases or decreases the $200,000 and $300,000 annual income levels of subdivision (6) of rule 501(a) in the future, the levels set out in clause (b) above shall be deemed to be changed correspondingly.

7. In addition to the financial standards, each Eligible Employee must: (a) Have a graduate degree (or foreign equivalent) in business, law, accounting, finance, economics, marketing, engineering, government, science, mathematics, or another business, scientific, technical or analytical field and at least five years of professional full-time work experience; or (b) have a college degree (or foreign equivalent) and at least ten years of professional full-time work experience in one of such fields; or (c) be one of up to ten Eligible Employees whom the Management Committee or Advisory Committee (as defined below), as the case may be, of the relevant Partnership has determined has an education and experience level equivalent to that in (a) or (b) above, provided that any such Eligible Employee must have at least a college degree (or foreign equivalent) or five years of professional full-time work experience in one of the above fields.

8. A person who ceases to be an Eligible Employee, through departure from McKinsey or otherwise, will not be permitted to invest in Subsequent Partnerships or to make additional capital contributions to Capital Contribution Partnerships (as defined below) or additional capital commitments to Capital Commitment Partnerships (as defined below) in which he or she is a partner. Such former Eligible Employees may retain their interests in a Partnership unless required to redeem under the circumstances discussed below.

9. The Partnerships will be managed in one of two ways, depending on whether the Partnership is a "commodity pool" as defined by the Commodity Exchange Act. The Initial Partnership, which is a commodity pool, is managed by Harris Management, a registered commodity pool operator ("CPO") and a registered investment adviser. Any other Partnership that is a commodity pool will, so long as required under the Commodity Exchange Act, be managed by Harris Management or another Advisory Subsidiary that is registered as a CPO. (As used hereafter, the term "Harris Management" includes any such other CPO.) Harris Management is and will be minimally capitalized, and will invest in the Partnerships only to the minimum extent required to satisfy Federal income tax requirements with respect to limited partnerships. Harris Management will not charge a fee to, or receive any other compensation from, the Partnerships for its management services, nor does it intend currently to seek expense reimbursement from the Partnerships. Its directors and officers, all of whom are McKinsey employees, will not invest in the Partnerships except in their capacity as Eligible Employees, and will not receive any compensation or expense reimbursement from the Partnerships.

10. Harris Management is advised by an "Advisory Committee" that, under the Initial Partnership's partnership agreement, has only administrative and consultative responsibilities. All of the members of the Advisory Committee currently are partners of the Initial Partnership. While serving as members of the Advisory Committee, these individuals will continue their duties as employees of McKinsey, and only the Administrator will devote a material portion of his time to managing the Partnerships' affairs. Subsequent Partnerships that are "commodity pools" also will have an Advisory Committee.

11. Harris Management or another Advisory Subsidiary will make all investment decisions for Subsequent Partnerships that are not commodity pools, and will be advised by a "Management Committee" or a single managing individual (the "Managing Person"). If the Managing Person or a member of the Management Committee makes investment decisions for, or furnishes general investment advice to, a Partnership, such individual would do so in his or her capacity as director, officer or employee of Harris Management or such other Advisory Subsidiary. If a Subsequent Partnership is managed by a Managing Person, rather than a Management Committee, that Partnership also will have an Advisory Committee.[1]

12. Applicant states that the need to create two distinct types of committees stems from regulations imposed by the Commodity Futures Trading Commission ("CFTC"). CFTC regulations stipulate that commodity pool Partnerships be managed exclusively by a CPO (such as Harris Management), and that such Partnerships have only an Advisory Committee. Non-commodity pool Partnerships are not subject to those requirements, and thus may be managed by a Management Committee that has a greater decisionmaking and administrative role than an Advisory Committee.

13. Most Subsequent Partnerships will be organized as general partnerships rather than limited partnerships. This preference stems primarily from the advice McKinsey has received from its tax counsel to the effect that a McKinsey subsidiary acting as sole general partner of a limited partnership generally would have to invest at least 1% of the total positive capital account balance of that partnership. Applicant states that such a capital investment requirement would be burdensome to McKinsey and its shareholders. The Organizational Documents and the investment program of any Partnership organized as a general partnership will seek to limit the maximum liability of each general partner in the following ways:

(a) The Partnership itself will not become a general partner in any entity in which it invests;

(b) The Partnership will not make any commitments, borrow money, or enter into any other obligations other than: (i) Those expressly made non-recourse to its general partners (provided that any Partnership Note referred to in paragraph 14 or 15 below may be severally guaranteed by the partner whose capital contribution or commitment is so financed); (ii) full-recourse borrowings and obligations, such as pursuant to securities margin accounts and margin deposits in commodity trading accounts, subject to an overall fixed dollar ceiling disclosed to the partners prior to their investment; (iii) capital commitments to limited partnerships and other entities in which it invests, provided such commitments in the aggregate do not at the time of commitment exceed the sum of the Partnership's net worth and any uncalled Capital Commitments (as defined below) from its own partners; and (iv) accounts payable and accrued expenses incurred in the ordinary course of its investment operations;

(c) With respect to many of the capital commitments referred to in (b)(iii) above, the Partnership's potential liability in the event of default would be limited to the forfeit of the Partnership's limited partnership or other interest therein, according to Applicant;

(d) The Partnership's Organizational Documents will provide that if, as a result of capital defaults by the Partnership's other partners or otherwise, a capital call on the Partnership by an investee entity or payment by the Partnership of a non-recourse obligation would subject a general partner to a capital call or other assessment by the Partnership of more than 200% in excess of such general partner's Capital Commitment or Capital Contribution, as the case may be (each as hereafter defined), the Partnership

[1] In the case of commodity pool partnerships, the term "Manager" refers to Harris Management, and in the case of other Partnerships, refers to Harris Management or the relevant Advisory Subsidiary having investment discretion for such Partnership, as well as the Management Committee or the Managing Person.

will elect to default on the capital call or other non-recourse obligation. Such election to default may be waived only by a unanimous vote of the Partnership's general partners; and

(e) The Organizational Documents will limit a general partner's liability as among the partners to such general partner's proportionate share of the Partnership's liabilities.

14. The Partnerships may obtain capital through capital contributions (the "Capital Contribution Partnerships"), or through capital commitments (the "Capital Commitment Partnerships"). The Initial Partnership is a Capital Contribution Partnership. At least 25% of the initial capital contribution to a Capital Contribution Partnership will be due on acceptance. A partner may finance the remaining portion of his or her initial capital contribution (currently 50% in the case of the Initial Partnership) and any additional capital contributions (collectively, "Capital Contributions") through a loan obtained by the Partnership (evidenced by a "Partnership Note") from an unrelated lender or lenders. Each Partnership Note will be obtained on the most advantageous terms the Partnership can negotiate, and will be non-recourse to the Partnership. Any partner who finances a portion of his or her Capital Contributions will be obligated to pay principal and interest to the Partnership on that Partnership Note at such time as the Partnership may request, and may be required to furnish a several guarantee to the lender relating to the Partnership Note.

15. In Capital Commitment Partnerships, an installment equal to at least 25% of the total agreed capital commitment will be due on acceptance, with all or a portion of the remainder payable from time to time upon notice by the Manager. At the discretion of the Manager, partners will satisfy calls for subsequent portions of their initial capital commitment either in cash or by severally guaranteeing Partnership Notes. Such Partnership Notes would be non-recourse to the Partnership, and otherwise would meet the same criteria discussed in paragraph 14 above. The Manager of Capital Commitment Partnerships could require the partners to make additional capital commitments in the event that (a) the Partnership makes investments requiring additional contributions, or with respect to which the Manager concludes that additional contributions would be in the Partnership's interest, or (b) such contributions are necessary to meet a shortfall as a result of default by a partner in meeting a capital call relating to such partner's initial capital commitment.

16. The Organizational Documents of the Initial Partnership provide that Partnership interests are non-transferable, except that a partner may, with the approval of Harris Management, transfer all or a portion of his or her interest to an immediate family member or to a trust or other entity that has as its sole beneficiaries or investors the transferring partner or members of his or her immediate family. Subsequent Partnerships will have restrictions on transfer substantially identical to, or more restrictive than, those of the Initial Partnership, except that the Organizational Documents may provide that partnership interests also may be transferred to another Eligible Employee, subject to the approval of the Manager.

17. Under the Organizational Documents of the Initial Partnership, partners have only limited rights to redeem their interests. At a partner's request, the Initial Partnership will redeem all or a portion of such partner's interest on January 2 of each year, and may permit redemptions on three other days during each year under certain circumstances. If, after giving effect to all redemptions, the aggregate capital available to the Initial Partnership to invest would be less than $250,000, the Initial Partnership may, in the discretion of Harris Management, either (a) limit redemptions to such amount as would result in the Partnership's having at least $250,000 in aggregate capital to invest, or (b) liquidate the Initial Partnership. In the event of the death, incompetency, or bankruptcy of any partner, Harris Management may, but is not obligated to, (a) make a special valuation of and purchase the partner's interest in the Initial Partnership, or (b) treat the death, incompetency, or bankruptcy as a request for redemption of all of such partner's interest, and redeem such interest on the next regularly scheduled date for redemptions. Subsequent Partnerships holding investments of equivalent or better marketability or liquidity to those of the Initial Partnership will have the same provisions concerning annual redemptions, and may allow more frequent periodic redemptions, subject to the consent of the Manager. The Organizational Documents of Partnerships that afford no redemption rights will provide that a partner may withdraw from the Partnership only upon specified notice to, and in the absolute discretion of, the Manager.

18. To determine the price of Partnership interests that are redeemed or repurchased, Partnership assets will be valued as follows: (a) Assets for which market quotations are readily available will be valued at market value as selected and determined by the Manager; (b) assets representing interests in investment pools will be valued based on the most recent financial statements or other net asset value reports received by the Manager from the manager of those pools, provided that Manager reasonably believes such net asset value information reasonably reflects the fair value of such interests; and (c) other illiquid assets will be valued based on the Manager's appraisal, taking into account all relevant factors, including costs of liquidation, brokerage, and restrictive agreements.

19. The Organizational Documents of a Subsequent Partnership also may provide that the Manager may, but is not obligated to, (a) require the estate of a deceased partner or a partner who is incompetent, permanently disabled, or who leaves the employ of McKinsey or its affiliates to withdraw from the Partnership in exchange for payment for such partner's interest at an amount equal to the redemption price discussed in paragraph 18, and on such other terms as the partner and the Manager agree, or (b) require the complete or partial withdrawal of a partner who is bankrupt, in default with respect to a capital call, or who fails to make payments on a Partnership Note guaranteed by him, in each case in exchange for payment of such partner's interest at an amount equal to (i) the redemption price discussed in paragraph 18 less (ii) the amount by which the Partnership has been damaged by such partner's bankruptcy, capital default, or failure to pay in respect of Partnership Notes, based on good faith estimates made by the Manager and approved by the Fairness Determining Body (as defined below). The application contains detailed guidelines to which the Manager will reduce in exercising its discretion to require a partner to withdraw.

20. The Manager may retain investment advisers for the Partnerships that are not affiliated with McKinsey without a prior vote of the partners; provided, that the terms of the arrangement with any such investment adviser will be set forth in a written contract that (a) has been approved by the Management Committee or Advisory Committee, and (b) provides that the Partnership may terminate such contract at any time, without payment of penalty, by action of the Manager or by vote of a majority in interest of the partners on not more than 60 days' written notice to the investment adviser.

21. The Partnerships may invest in new ventures, emerging private companies, leveraged buy-outs, troubled company situations, real estate, oil and gas oriented ventures, foreign currencies or foreign currency instruments, fixed income or equity securities, limited partnerships and other pooled investment vehicles (including those excepted from the 1940 Act by section 3(c)(1)), all or some of which may be "commodity pools" engaged in various investment strategies. The Partnerships also may invest in securities of registered investment companies, provided that a Partnership will not acquire any security issued by a registered investment company if immediately after such acquisition, it would own more than 3% of the total outstanding voting stock of such registered investment company based on the company's most recently distributed report to shareholders. There are no other limitations on the types of securities or other instruments in which the Partnerships may invest, and there is no limit on the amount or percentage of a Partnership's assets that may be invested in any single company, industry, or type of investment. The Initial Partnership has made equity investments in limited partnerships with low or moderate risk. Some or all of the investments made by Subsequent Partnerships may have a high degree of risk, no assurance of liquidity, and a low probability of current income, and may require long holding periods. The Partnerships will not acquire any investment sponsored or promoted by McKinsey or any Manager, and neither McKinsey nor any Manager will receive any sales commission or other compensation from any person in respect of a Partnership's investments.

22. The Partnerships will send investors annual reports and financial statements regarding their operations and assets. The Initial Partnership and any Subsequent Partnership that is a commodity pool will send other periodic reports as required by regulations governing commodity pools. In addition, after the end of each Partnership's tax fiscal year, and assuming that the Partnership has received all of the necessary information from the managers of its investments, a report will be transmitted to each investor setting forth information concerning his or her distributive share of income, gains, losses, credits, and other items for federal income tax purposes.

23. The Organizational Documents of the Partnerships will not require that statements of account be audited. However, the Manager may, in its discretion, determine that an audit of a Partnership's financial statements shall be conducted. In addition, pursuant to the terms of a letter of exemption from the staff of the CFTC (attached as Exhibit C to the application), if an audit is requested by any partner of the Initial Partnership Harris Management shall promptly notify the other partners of the Initial Partnership of such request and any reasons given therefor, and shall conduct a vote of the partners as to whether an audit should be performed. If 25% or more in number of the partners vote in the affirmative, Harris Management will cause an audit to be conducted promptly with respect to any prior fiscal year in question or as soon as practicable after the end thereof with respect to the then current fiscal year. Upon completion of any such audit, Harris Management will furnish copies of the audited financial statements to each partner of the Initial Partnership and to the CFTC. The same audit request procedure would apply to each Subsequent Partnership, whether or not it is subject to CFTC jurisdiction. As discussed in the application, Eligible Employees will be informed prior to investing if audited financial statements will not be provided routinely. Applicant states that the cost of an annual audit outweighs the marginal additional protection afforded thereby, especially given the fact that 25% of the partners will have the right to request an audit, and in any event the partners of each Partnership will have reasonable access under the Organizational Documents to all books of account. Furthermore, in cases where a Partnership has only one or a small number of investments, auditors may be unwilling to render an audit report without also auditing, or performing similar procedures with respect to, the underlying investment. Such an audit would most likely be outside of the Partnership's power to arrange and, in any event, would be prohibitively expensive. Applicants conclude that the disclosure, consent, and review procedures described above should provide adequate safeguards.

24. A Partnership's Organizational Documents will provide for the Partnership's dissolution under the following circumstances: (a) At the election of the Manager or the partners, but in either case only upon the affirmative vote to dissolve by partners whose capital contributions amount to a specified percentage (which will be more than 50%) of all the capital contributions of partners not in capital default; (b) by sale or disposition of substantially all of the assets or discontinuance of substantially all of the business of the Partnership; (c) by operation of law; (d) in the case of general partnerships, at such time as there are fewer than two general partners; or (e) at the expiration of any term stated in the Organizational Documents.

25. Each partner of a Partnership will have an aggregate contribution recorded in his or her capital account. A Partnership will make allocations of income, gain, loss, and expense which will, with certain exceptions, be reflected in the partner's capital account. There will be no special allocations for any partners other than special expense allocations for interest on Partnership Notes, and redemption and other expenses incurred by the Partnership at the behest of the partner. There will be no overrides for any partners. If a Manager or members of an Advisory Committee are partners of a Partnership, their respective general allocations of income, gain, loss, and expense will be made on the same basis as those of the other partners (*i.e.*, in proportion to capital contributions or commitments). Income, expenses, gains, and losses of the Partnerships will be determined in accordance with generally accepted accounting principles or tax accounting principles. The Organizational Documents will provide that accurate books of account shall be kept, and that each partner will have reasonable access thereto.

26. The timing and amount of any distributions of net income or net realized gains will be solely within the discretion of the Manager, except that the Organizational Documents of certain Subsequent Partnerships may require that at least a stated percentage of all cash realized from investments by distributed annually to the extent the Manager determines that such Partnership's cash resources are sufficient to make such distribution without any material adverse effect on the Partnership's ability to pursue its investment objectives.

Applicant's Legal Analysis

1. On behalf of itself and the Subsequent Partnerships, Applicant requests an exemption pursuant to section 6(b) of the 1940 Act from all the provisions of the 1940 Act except sections 7, 8(a), and 9, certain provisions of section 17, sections 36 through 53, and the rules and regulations related to these sections. Applicant requests exemptions from sections 17(a) and 17(d) as

discussed below, and also seeks limited exemptions from sections 17(f), 17(g), and 17(j) of the 1940 Act and rules 17f–2, 17g–1, and 17j–1 thereunder.

2. Harris Management also requests that the Commission enter an order pursuant to section 206A of the Advisers Act exempting Harris Management and any Advisory Subsidiary from certain provisions of section 203(c) of the Advisers Act, rule 203–1 thereunder and Form ADV to the extent that, in responding to question 2(b) of Schedule A of Form ADV (or the equivalent question of Schedule B for an Advisory Subsidiary organized as a partnership), it and any Advisory Subsidiary be permitted to omit the name of any individual owning 5% or more of a class of equity security of McKinsey (or of any future holding company of McKinsey), and instead be required to disclose only the name of any individual owning 5% or more of the voting securities of McKinsey (or any such holding company). As a private company managed by its shareholders, McKinsey believes that share ownership information is a sensitive and confidential subject more in the nature of internal compensation information, and that disclosure of this information would not benefit the partners in the Partnerships.

3. Section 17(a) of the 1940 Act would prohibit an affiliated person of a Partnership and affiliated persons of such persons ("Section 17 Persons") from engaging in purchases and sales of securities or other property with the Partnership, and from borrowing money or other property from the Partnership. For purposes hereof, Section 17 Persons of a Partnership are grouped as follows:

(a) the "McKinsey Significant Persons Group," consisting of (i) McKinsey (which term includes its majority owned subsidiaries, such as Harris Management and any Advisory Subsidiary, and any future holding company); (ii) any other entity (a "McKinsey-controlled Entity") of which McKinsey beneficially owns or McKinsey management group members acting as a group (as defined in the application) in the aggregate beneficially own more than 25% of the voting securities; (iii) McKinsey management group members acting as a group (as defined in the application) who in the aggregate control (as defined in the 1940 Act) McKinsey; (iv) individual members of McKinsey's Shareholders' Committee (*i.e.*, its corporate board of directors); (v) any management group member who singly owns 5% or more of the voting securities of McKinsey; and (vi) directors, officers, and employees of Harris Management or the Advisory Subsidiary, as the case may be, that acts as investment adviser of that Partnership (the persons in (iii)–(vi) being collectively referred to as "McKinsey Significant Persons");

(b) the "Fairness Determining Body," consisting of members of the Advisory Committee or Management Committee, as the case may be, of that Partnership;

(c) the "McKinsey Employees," consisting of partners of that Partnership and other Eligible Employees;

(d) the "McKinsey Investment Vehicles," consisting of other Partnerships, "Exempt Partnerships" (*i.e.*, McKinsey partnerships or employee investment vehicles currently excepted from the Act), and other investment vehicles advised or managed by the McKinsey Significant Persons Group or otherwise having the same investment adviser or manager as that Partnership; and

(e) "Remote Affiliates," consisting of Section 17 Persons not otherwise described in (a)–(d).

4. Applicant requests an exemption from the provisions of section 17(a) to the extent necessary to permit a Partnership (a) to purchase and dispose of interests in a company or other investment vehicle (other than in McKinsey or a McKinsey-controlled Entity) which is a Section 17 Person with respect to that Partnership, whether by virtue of ownership by affiliated persons of the Partnership of 5% or more of the voting securities of the company or vehicle, or otherwise; (b) to reimburse a partner from his or her own partnership account pursuant to the Organizational Documents for any amounts advanced by such partner pursuant to a several guarantee of the Partnership's borrowings under the Partnership Note relating to such partner's Capital Contribution or Capital Commitment; and (c) to acquire investments from McKinsey that McKinsey has, temporarily and as an accommodation to the Partnership, acquired on the Partnership's behalf; provided that the foregoing would not exempt transactions between a Partnership, on the one hand, and (a) any director, officer, or employee of Harris Management or the Advisory Subsidiary advising the Partnership (or any entity controlled by such person) or (b) any member of the Partnership's Fairness Determining Body (or any entity controlled by such person) on the other hand.

5. Applicant states that the requested exemption from section 17(a) is consistent with the policy and purpose of the Partnerships and with the protection of investors. The partners will have been fully informed of the possible extent of the Partnerships' dealings with McKinsey and its affiliates and, as successful professionals employed in the consulting business, will be able to evaluate any attendant risks. According to Applicant, the community of interest among McKinsey's partners is the best insurance against any risk of abuse with respect to affiliated principal transactions. Applicant acknowledges that any types of transactions otherwise subject to section 17(a) of the 1940 Act for which exemptive relief has not been requested would require specific approval by the Commission.

6. Section 17(d) of the 1940 Act and rule 17d–1 thereunder provide generally that it is unlawful for any affiliated person of a registered investment company and certain other entities, acting as principal, to effect any transaction in which the investment company is a joint or a joint and several participant with such person or entities. applicant requests an exemption from section 17(d) and rule 17d–1 to the extent necessary to permit a Partnership to engage in transactions in which a section 17 person with respect to the Partnership may participate as a co-investor. Applicant states that compliance with section 17(d) and rule 17d–1 may cause the Partnerships to forego many otherwise attractive investment opportunities simply because a partner or other affiliated person of McKinsey or a Partnership also had, or contemplated making, a similar investment. For example, McKinsey's Profit Sharing Retirement Plan ("PSRP") and McKinsey Employees may wish to invest in some of the same transactions as the Partnerships. According to Applicant, the concern that permitting joint investments might lead to disadvantageous treatment of the Partnership should be mitigated by the fact that McKinsey will be acutely concerned with its relationship with the management group members who are partners in the Partnerships. The Partnerships will not engage in any transaction that violates section 17(d) and rule 17d–1 without prior Commission approval if such transaction is not described in the application.

7. Each Partnership will be an "employees' securities company" as that term is defined in section 2(a)(13) of the 1940 Act. Under section 6(b) of the 1940 Act, the Commission is required, upon application, to exempt an employees' securities company if and to the extent that the exemption is consistent with the protection of investors. Applicant contends that in light of the criteria for evaluating such applications set out in section 6(b), the Commission should grant the requested exemptions.

8. Applicant asserts that the protections created by the 1940 Act are generally unnecessary with respect to the Partnerships for a number of reasons, including that (a) there will be a community of economic and other interests among McKinsey and the partners of the Partnerships; (b) the Partnerships will be conceived and organized by those investing in the Partnerships, and will not be promoted by persons outside McKinsey seeking to profit from fees for investment advice or the distribution of securities; and (c) those investing in the Partnerships will have a high level of sophistication and financial status, and will not require the benefit of regulatory safeguards. Each eligible employee must, among other things, meet the definition of "accredited investor" set out in paragraphs (5) or (6) of section 501(a) of regulation D under the 1933 Act. Paragraph (5) of that section categorizes as an accredited investor any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of purchase exceeds $1,000,000. Paragraph (6) of that section categorizes as an accredited investor any natural person who had an individual income in excess of $200,000 in each of the two most recent years or joint income with that person's spouse in excess of $300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year.

Applicant's Conditions

1. As a condition of the section 17(a) relief requested for a Partnership, applicant agrees that:

(a) the Partnership will not acquire any investment sponsored or promoted by McKinsey or any member of the Fairness Determining Body;

(b) the Partnership will not acquire any interest in McKinsey or a McKinsey-controlled Entity;

(c) any acquisition by the Partnership of an investment covered by the section 17(a) relief requested will be effected at value (as defined in section 2(a)(41) of the 1940 Act), as determined in good faith by the Fairness Determining Body, except that transfers from McKinsey will be effected at cost as described in (d) below; and

(d) any transfer of an investment from McKinsey to the Partnership will be effected as soon as reasonably practicable after McKinsey's acquisition, but in any event within one year, and will be effected at McKinsey's cost, which includes any actual interest charges, not to exceed the prevailing prime rate, incurred to purchase and hold the property in question.

2. As a condition of the section 17(d) relief requested for a Partnership, applicant agrees that:

(a) The Partnership will not make any investment in which McKinsey is participant or, to the knowledge of the Partnership, plans concurrently or otherwise to become a participant, other than (i) as general partner in a Partnership organized as a limited partnership, to the limited and *pro rata* extent described in the application; and (ii) to the extent McKinsey may make temporary investments on behalf of the Partnership as described in paragraph 4 of Applicant's Legal Analysis above;

(b) the Partnership will not knowingly make any investment in which a member of the Fairness Determining Body is a participant or plans concurrently or otherwise directly or indirectly to become a participant, other than (i) through an investment in or relationship with a Partnership or Partnerships or through the PSRP (or other employee benefit plan), (ii) with respect to securities issued by open-end registered investment companies, (iii) with respect to readily marketable securities, or (iv) with respect to any other investment as to which such member recuses himself or herself from determinations on behalf of the Partnership, including the fairness determinations referred to in condition 3 below. Any investments described in clauses (i)–(iv) that are made concurrently with a member of the Fairness Determining Body will be made by the Partnership on the same basis as, or on a basis better than, such person. Moreover, in the case of any such concurrent transaction described in clause (iv), the Manager will obtain a commitment from such member that such member will not dispose of his or her investment in such joint investment without giving sufficient, but not less than one day's, notice to the Manager so that the Partnership has the opportunity to dispose of its investment in the joint investment prior to or concurrently with such member and on the same terms as such member;

(c) a Partnership may knowingly make an investment in which a McKinsey-controlled Entity or a McKinsey Significant Person is a participant or plans concurrently or otherwise directly or indirectly to become a participant or plans concurrently or otherwise directly or indirectly to become a participant only if the commitment regarding notice of dispositions, as described in (b) immediately above, is obtained and, in the case of a McKinsey Significant Person that is a director, officer, or employee of Harris Management or the Advisory Subsidiary advising the Partnership, such Person recuses himself or herself from determinations on behalf of the Partnership with respect to such investment, including the fairness determinations referred to in condition 3 below. Any such investments that are made concurrently with such Entity or Person will be made by the Partnership on the same basis as, or on a basis better than, such Entity or Person. Such commitment regarding notice of dispositions shall not apply to, and the determinations described in condition 3 below shall not be required for (i) participation by MGMs in such investment through an investment in or relationship with a Partnership or Partnerships or through the PSRP (or other employee benefit plan), (ii) with respect to securities issued by open-end registered investment companies, or (iii) with respect to readily marketable securities;

(d) for purposes of (a)–(c) above, a Partnership will have knowledge of an event if the Manager has actual knowledge thereof after reasonable investigation, which will at a minimum include: (i) Prior to making any investment, the Manager will confirm with each member of the McKinsey Significant Persons Group, the Fairness Determining Body, and the McKinsey Investment Vehicles whether or not any such person or entity also is or contemplates participating in that investment. In the case of individuals who are McKinsey Significant Persons solely by virtue of being members of the McKinsey Shareholders' Committee (*i.e.*, McKinsey's corporate board of directors), this confirmation may be obtained through notification of proposed investments given by the Manager, explaining the reason for the notification, requesting a response within a reasonable period (not less than 7 days) if such individual is or contemplates becoming a participant, and stating that failure to respond will be deemed a confirmation that such individual is not and does not contemplate becoming a participant; in the case of all other members of the McKinsey Significant Persons Group, this confirmation will be obtained by the Manager through an affirmative response by the person in question; and (ii) prior to making any investment, the Manager will obtain an affirmative response from the investee entity or its sponsor as to whether it is aware of any current or proposed participation in such investment by any member of the

McKinsey Significant Persons Group, the Fairness Determining Body, or the McKinsey Investment Vehicles; and

(e) joint investments by a Partnership and other McKinsey Investment Vehicles will be subject to specified allocation procedures. These procedures are intended to give first priority to the broadest constituency of McKinsey Employees, with successively narrower employee classes receiving next priority. First, if one or more of the proposed investors is a Section 17 Person that is subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), such as the PSRP, this investor or these investors will, to the extent required by ERISA, by given priority over the Partnerships to purchase as much of the proposed investment as desired. Any such ERISA investor would have the broadest participant base of McKinsey Employees as compared with the other investing entities hereinafter discussed, since even non-Eligible Employees would be participants. Next priority will be given to the Partnerships and any other McKinsey partnerships or employee investment vehicles ("Exempt Partnerships") relying on an available exemption from the 1940 Act rather than the requested order. Typically, only a subset of Eligible Employees will be investors in any single Partnership. Allocation among the Partnerships and Exempt Patnerships will be made without distinction as to their status as Partnerships or Exempt Partnerships, but will, of course, be based on objective criteria deemed fair and equitable by the Fairness Determining Body. For example, the most likely allocation criteria would be made on the basis of the relative amount of funds available for investment in the proposed investment opportunity, after taking into account the Partnerships' and Exempt Partnerships' respective investment objectives and policies.

3. As a further condition to the Partnership's participating in Section 17(a) Transactions or Section 17(d) Transactions for which relief is requested, Applicant agrees that each such Transaction will be effected in compliance with section 57(f) of the 1940 Act as if Applicant were a business development company to the extent that the Fairness Determining Body of the Partnership (instead of the "required majority" as defined in section 57(o) of the 1940 Act) approves the Transaction on the basis hereinafter set forth: The Fairness Determining Body will be the Management Committee, or Advisory Committee, even if the Partnership is otherwise managed by a single individual. Also, the reporting relationship, if any, within McKinsey's management structure of any member of the Fairness Determining Body will not be junior to the Section 17 Person (if such person is a McKinsey Employee) involved in the Transaction in question. In the case of a Section 17(a) Transaction involving the transfer of an investment from McKinsey to a Partnership, prior to the original acquisition by McKinsey such fairness determination will also be made with respect to the terms of such original acquisition. The Fairness Determining Body must approve the Transaction on the basis that:

(a) The terms of such Transaction, including the consideration to be paid or received, are fair and reasonable to the partners of the Partnership and do not involve overreaching of the Partnership or its partners on the part of any person concerned;

(b) the proposed Transaction is consistent with the interests of the partners and consistent with the Partnership's Organizational Documents and its reports to partners; and

(c) the members of the Fairness Determining Body will record in their minutes and preserve in their records a description of such Transaction, their findings, the information or materials upon which their findings were based, and the basis therefor. All such records will be maintained for the life of the Partnership and for a period of at least six years [2] after the termination of the Partnership, and will be subject to examination by the Commission and its staff.

4. Applicant agrees that each Partnership will maintain and preserve, for the life of the Partnership and a period of at least six years after the termination of the Partnership, such accounts, books, and other documents as constitute the record forming the basis for the Partnership's financial statements that are to be provided to partners, and that all such records will be subject to examination by the Commission and its staff.

5. Applicant also agrees that each Partnership will comply with section 57(h) of the 1940 Act and will adopt, and periodically review and update, procedures reasonably designed to ensure that reasonable inquiry is made prior to the consummation of any Section 17(a) Transaction or Section 17(d) Transaction as if Applicant were a business development company, except that the directors or general partners of such Partnership shall for this purpose be the members of the Fairness Determining Body.

6. As a condition to a Partnership's reliance on the requested order, Harris Management or the Advisory Subsidiary acting as investment adviser or manager of that Partnership, as the case may be, will register as an investment adviser pursuant to the Advisers Act and remain so registered as long as it advises or manages the Partnership and the Partnership seeks to rely on the requested order, subject to the very limited Advisers Act exemption described above.

7. The Organizational Documents of the Partnerships will not require that statements of account be audited. However, the Manager may, in its discretion, determine that an audit of a Partnership's financial statements shall be conducted. In addition, pursuant to the terms of a letter of exemption from the staff of the CFTC (attached as Exhibit C to the application), if an audit is requested by any partner of the Initial Partnership, Harris Management shall promptly notify the other partners of the Initial Partnership of such request and any reasons given therefor, and shall conduct a vote of the partners as to whether an audit should be performed. If 25% or more in number of the partners vote in the affirmative, Harris Management will cause an audit to be conducted promptly with respect to any prior fiscal year in question or as soon as practicable after the end thereof with respect to the then current fiscal year. Upon completion of any such audit, Harris Management will furnish copies of the audited financial statements to each partner of the Initial Partnership and to the CFTC. Applicant further undertakes as a condition of the Order sought herein that the same audit request procedure will be applicable to each Subsequent Partnership, whether or not it is subject to CFTC jurisdiction. Furthermore, Applicant undertakes as a condition of the Order sought herein that with respect to each Partnership that will not be providing audited annual financial statements, (a) prior to any initial investment in the Partnership (or prior to such Partnership's seeking to rely on the Order sought herein) each partner will be notified in writing that (i) the Partnership will not provide audited financial statements (except pursuant to the aforementioned consent procedure) and (ii) (if such be the case) all or most of the Partnership's investee entities also will not provide audited financial statements to the Partnership, (b) no Eligible Employee will be admitted to a Partnership (or, in the case of a Partnership not previously seeking to rely on the Order sought herein, such Partnership will not seek to rely on the Order sought herein) unless prior thereto he or she consents specifically in writing to the absence of audits as described in clause (a), (c) before making any investment in an entity that will not provide the Partnership with audited financial statements at least annually, a Partnership will (unless it has previously made the disclosure described in (a)(ii) and obtained the consents described in (b) disclose to all of its partners such fact and obtain their specific written consent thereto, and (d) the chief financial officer of McKinsey (currently the Director of Finance) will conduct or supervise review procedures at least annually with respect to the Partnership's financial statements and accounting records as hereinafter described, and, if any exceptions or irregularities are found, will send a report thereon to each member of the Management Committee or Advisory Committee, as the case may be, of the Partnership. If for any reason that individual leaves the employ of McKinsey or otherwise ceases to be its chief financial officer, he will be asked to send a summary of the status of any reviews in process directly to the Managing Director of McKinsey, with copies to the Management Committee or Advisory Committee of each Partnership involved. The Managing Director of McKinsey will be responsible for ensuring that the new chief financial officer follows up. The procedures to be followed by or on behalf of the chief financial officer will include testing of cash receipts and disbursements.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20301 Filed 8-24-92; 8:45 am]

BILLING CODE 8010-01-M

[2] Consistent with rule 31a-2 of the 1940 Act, each Partnership will preseve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years. Retention of documents for six years conforms to the general document retention requirements applicable to investment companies and should afford the Commission and its staff ample time to review such retained documents.

[Release No. IC-18901/File No. 811-6319]

Tandem Variable Annuity Separate Account

August 18, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Tandem Variable Annuity Separate Account.

RELEVANT 1940 ACT SECTION: Application filed pursuant to section 8(f) of the 1940 Act and rule 8f-1 thereunder.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on June 10, 1992, and amended on August 6, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 14, 1992, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 800 Scudders Mill Road, Plainsboro, New Jersey 08536.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Michael V. Wible, Special Counsel, at (202) 272-2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch.

Applicant's Representations

1. The Applicant is a separate account that was established by Tandem Insurance Group, Inc. ("Tandem Insurance") under the insurance laws of the state of Illinois. On May 29, 1991, the Applicant filed a notification of registration on Form N-8A and a registration statement on Form N-4 under the 1940 Act.

2. On that same date, the Applicant filed two registration statements under the Securities Act of 1933 (File Nos. 33-40912 and 33-40913) for an indefinite number of variable annuity contracts (the "Contracts"). The registration statements became effective on August 19, 1991. The public offering of the Contracts commenced on September 1, 1991.

3. Effective October 1, 1991, and with the prior approval of their respective boards of directors and shareholders, Tandem Insurance, merged with and into Merrill Lynch Life Insurance Company ("MLLIC"). As the surviving corporation, MLLIC assumed legal ownership of all of the assets of Tandem Insurance, including the Applicant and its assets.

4. In addition, effective October 1, 1991, and in connection with the merger of Tandem Insurance and MLLIC, the Applicant ceased to exist under Illinois state law as a result of its combination with and into the Merrill Lynch Life Variable Annuity Separate Account (the "Merrill Lynch Separate Account"), a separate account established by MLLIC. The combination of the Applicant and the Merrill Lynch Separate Account was effected with the prior approval of the respective boards of directors of Tandem Insurance and MLLIC; no vote, consent, or exercise of any other right of owners of the Applicant and the Merrill Lynch Separate Account was required to consummate the combination of the Applicant and the Merrill Lynch Separate Account. As part of the Applicant's combination with and into the Merrill Lynch Separate Account, the Applicant transferred all of its assets to the Merrill Lynch Separate Account in exchange for the latter's assumption of all of the Applicant's liabilities. The transfers were effected at the net asset value of the shares or units involved, and no charges were imposed or other deductions made in connection with the transfers. The combination of the Applicant and Merrill Lynch Separate Account had no effect on the values under the variable annuity contracts offered by the Applicant.

5. All costs of the merger and the combination of the separate accounts was borne by Tandem Insurance and MLLIC. No brokerage commissions were incurred in connection with the transfer.

6. The Applicant made no distributions to its security holders in connection with its combination with and into the Merrill Lynch Separate Account.

7. The Applicant has no assets, debts or other liabilities or any security holders. The Applicant has not transferred any of its assets to a separate account.

8. The Applicant is not a party to any litigation or administrative proceedings (other than this deregistration proceeding).

9. The Applicant is not now engaged, nor does it propose to engage, in any business activity.

10. The Applicant filed a report on Form N-SAR for the year ended December 31, 1991, and Applicant represents that it will continue to make such filings as required until such time as the Commission issues an order granting deregistration of the Applicant under the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20302 Filed 8-24-92; 8:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Agency Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35):

SSS Form No. and Title:

SSS Form 152, Alternative Service Employment Agreement
SSS Form 153, Employer Data Sheet
SSS Form 156, Skills Questionnaire
SSS Form 157, Alternative Service Job Data Form
SSS Form 160, Request for Overseas Job Assignment
SSS Form 163, Employment Verification Form
SSS Form 164, Alternative Service Worker Travel Reimbursement Request
SSS Form 166, Claim for Reimbursement for Emergency Medical Care

Copies of the above identified forms can be obtained upon written request to: Selective Service System, Reports Clearance Officer, Washington, DC 20435.

No changes have been made to the above identified forms. OMB clearance is limited to requesting a three year extension of the current expiration dates.

Written comments should be sent within 60 days after the publication of this notice, to: Selective Service System, Reports Clearance Officer, Washington DC 20435.

Send a copy of the comments to: OMB Reports, Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: August 18, 1992.

Robert W. Gambino,

Director.

[FR Doc. 92-20242 Filed 8-24-92; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 34), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before September 24, 1992. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Office before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: Cleo Verbillis, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416, Telephone: (202) 205-6629.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Title: SBA Contract Requirements. *SBA Form No:* N/A. *Frequency:* On occasion. *Description of Respondents:* Contractors seeking SBA contracts. *Annual Responses:* 550. *Annual Burden:* 220,000.

Title: Application for Associate Development Company Designation. *SBA Form No.:* SBA Form 1849. *Frequency:* On occasion. *Description of Respondents:* Certified Development Companies. *Annual Responses:* 10. *Annual Burden:* 200.

Title: Associate Development Company Annual Report Guide. *SBA Form No.:* SBA Form 1850. *Frequency:* Annual. *Description of Respondents:* Associate Certified Development, Companies. *Annual Responses:* 100. *Annual Burden:* 100.

Dated: August 19, 1992.

Calvin Jenkins,

Director, Office of Administrative Services.

[FR Doc. 92-20217 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2583]

Kentucky; Declaration of Disaster Loan Area

Boyle and Fayette Counties and the contiguous counties of Bourbon, Casey, Clark, Garrard, Jessamine, Lincoln, Madison, Marion, Mercer, Scott, Washington, and Woodford in the State of Kentucky constitute a disaster area as a result of damages caused by severe storms and flooding which occurred on June 17 and 18, 1992. Applications for loans for physical damage may be filed until the close of business on October 13, 1992 and for economic injury until the close of business on May 12, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308; or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.500
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258306 and for economic injury the number is 768300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 12, 1992.

Patricia Saiki

Administrator.

[FR Doc. 92-20268 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2582]

Ohio; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on August 4, 1992, I find that the Counties of Franklin, Logan, Ross and Shelby in the State of Ohio constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding beginning on July 12, 1992 and continuing. Applications for loans for physical damage may be filed until the close of business on October 4, 1992, and for loans for economic injury until the close of business on May 4, 1993, at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, Georgia 30308; or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Auglaize, Champaign, Darke, Delaware, Fairfield, Fayette, Hardin, Highland, Hocking, Jackson, Licking, Madison, Mercer, Miami, Pickaway, Pike, Union, and Vinton in State of Ohio may be filed until the specified date at the above location.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.00
Others (including non-profit organizations) with credit available elsewhere)	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 258206 and for economic injury the number is 768200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 10, 1992.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 92-20216 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Areas #2580 & #2581]

South Dakota (and Contiguous Counties in Iowa); Declaration of Disaster Loan Area

Lincoln County and the contiguous counties of Clay, Minnehaha, Turner, and Union in the State of South Dakota, and Lyon and Sioux Counties in the State of Iowa constitute a disaster area as a result of damages caused by a fire on July 18, 1992 in downtown Canton, South Dakota. Applications for loans for physical damage may be filed until the close of business on October 8, 1992 and for economic injury until the close of business on May 7, 1993 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853-4795, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	6.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	8.500
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damage are 258005 for South Dakota and 258105 for Iowa.

For economic injury the numbers are 768000 for South Dakota and 768100 for Iowa.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: August 7, 1992.

Patricia Saiki,

Administrator.

[FR Doc. 92-20215 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting.

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Birmingham, will hold a public meeting from 9:30 a.m. to 12 noon on Friday, September 18, 1992, at First Alabama Bank, Training Center, 298 West Valley Avenue, Birmingham, Alabama, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. James C. Barksdale, District Director, U.S. Small Business Administration, 2121 8th Avenue, North, suite 200, Birmingham, Alabama 35203, (205) 731-1341.

Dated: August 18, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20220 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region IX Advisory Council; Public meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Santa Ana, will hold a public meeting from 10 a.m. to 12 noon on Tuesday, September 22, 1992 at Western Community Bank, 321 E. 6th Street, Corona, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John S. Waddell, District Director, U.S. Small Business Administration, 901 W. Civic Center Drive, suite 160, Santa Ana, California 92703, (714) 836-2494.

Dated: August 18, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20221 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region IV Advisory Council; Public Meeting

The U.S. Small Business Administration Region IV Advisory Council, located in the geographical area of Louisville, will hold a public meeting at 9:30 a.m. on Thursday, September 24, 1992 at Hazard Community College, Commodore Room, Hazard, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. William Federhofer, District Director, U.S. Small Business Administration, Room 188, 600 Dr. Martin Luther King, Jr. Place, Louisville, Kentucky 40202, (502) 582-5971.

Dated: August 18, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20218 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region VII Advisory Council; Public Meeting

The U.S. Small Business Administration Region VII Advisory Council, located in the geographical area of Omaha, will hold a public meeting from 10 a.m. to 12 noon on Friday, September 11, 1992, at the Small Business Administration Office, 11145 Mill Valley road, Omaha, Nebraska, to discuss such matters as may be

presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Glenn Davis, District Director, U. S. Small Business Administration, 11145 Mill Valley Road, Omaha, Nebraska 68154, (402) 221-3620.

Dated: August 14, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20222 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Oklahoma City, will hold a public meeting on Thursday, September 17, 1992, from 1:30 p.m. to 4:30 p.m. at the Business Assistance Center, 6715 East 41st Street, Tulsa, Oklahoma, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. W. Bruce Robinson, District Director, U.S. Small Business Administration, 200 N.W. 5th Street, suite 670, Oklahoma City, Oklahoma 73102, (405) 231-5237.

Dated: August 14, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20223 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

Region X Advisory Council; Public Meeting

The U.S. Small Business Administration Region X Advisory Council, located in the geographical area of Seattle, will hold a public meeting at 9 a.m. on Thursday, October 1, 1992, at the Henry M. Jackson Federal Building, room 1792, 915 Second Avenue, Seattle, Washington, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. Robert P. Meredith, District Director, U.S. Small Business Administration, room 1792, Jackson Federal Building, 915 Second Avenue, Seattle, Washington 98174, (206) 553-0704.

Dated: August 18, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-20219 Filed 8-24-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 1677]

Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 4 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting on September 16, 1992, at the Communications Satellite Corporation, 950 L'Enfant Plaza, SW., Washington, DC, from 9 to 12 a.m. in the 8th Floor Conference Room.

Study Group 4 deals with matters relating to the fixed satellite service. The purpose of the meeting is to deal with administrative matters, review the activities of the Working Parties and Task Groups, identify issues to be treated at the November 1992 Study Group 4 and Joint Study Group 4-9 meetings and finally to review the current and future work program.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. Hans Weiss, Communications Satellite Corporation, 22300 Comsat Drive, Clarksburg, MD 20871, phone (301) 428-4777.

Dated: August 14, 1992.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 92-20272 Filed 8-24-92; 8:45 am]

BILLING CODE 4710-45-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Orlando International Airport, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Orlando International Airport, under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 24, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Norman J. Glass, Executive Director of the Greater Orlando Aviation Authority, at the following address: Greater Orlando Aviation Authority, Orlando International Airport, One, Airport Boulevard, Orlando, Florida 32827-4399.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Greater Orlando Aviation Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Pablo G. Affant, Civil Engineer, Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Dr., Suite 130, Orlando, Florida 32827-5397, Telephone 407-648-6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Orlando International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 17, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Greater Orlando Aviation Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 5, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1993.

Proposed charge expiration date: December 31, 1997.

Total estimated PFC revenue: $171,000,000.00.

Brief description of proposed project(s):

Roadway to the Southern Connector (Airport Access Road Between the Airport Terminal Loop Road and the Southern Connector Portion of the Orange County Beltway Roadway System)

International Passenger Terminal

Airside 1 Expansion and Rehabilitation

Environmental Planning and Approvals for the North Crossfield Taxiway

West Ramp Rehabilitation

Runway 18L/36R Rehabilitation

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: NONE.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT."**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Orlando Aviation Authority.

Issued in Atlanta, Georgia, on August 17, 1992.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 92-20323 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pensacola Regional Airport, Pensacola, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 24, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, suite 130, Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Frank R. Miller, Airport Director, Pensacola Regional Airport, at the following address: Pensacola Regional Airport, 2430 Airport Boulevard, Pensacola, Florida 32504-8977.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Pensacola, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr Carlos Maeda, Airports Plans & Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397, Telephone 407-648-6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application to impose and use the revenue from a PFC at Pensacola Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 17, 1992, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Pensacola was substantially compelete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in parts, no later than November 28, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1993.

Proposed charge expiration date: March 31, 1996.

Total estimated PFC revenue: $4,912,000.00.

Brief description of proposed projects:

Projects to Impose and Use PFCs:

Provide Vegetation Barrier (Noise Barrier)

Land Acquisition

Construct a Midfield Service Road

Purchase Aviation Easements

Projects to Only Impose PFCs:

Extension Passenger Terminal Concourse

Conduct a Master Plan Drainage Study

Class of classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercal Operators.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pensacola.

Issued in Atlanta, Georgia, on August 17, 1992.

Stephen A. Brill,

Manager, Airports Division, Southern Region.

[FR Doc. 92-20324 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

National Motor Carrier Advisory Committee Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces that the National Motor Carrier Advisory Committee (NMCAC) will hold its next meeting on September 23-24, 1992, at 400 7th Street, SW., room 2201, Washington, DC. The meeting will be from 1:30 p.m. to 5 p.m. on September 23 and from 8:30 a.m. to 3 p.m. on September 24. The focus of the meeting will be on implementation of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA).

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, HIA-20, room 3104, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal Federal holidays. (23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 19, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92-20289 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Quarterly Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Public meeting; amendment.

SUMMARY: This is an amendment to the previous notice published in the **Federal Register** August 17, 1992 announcing a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs and at which NHTSA will briefly discuss its strategic planning activities.

DATES: The Agency's regular, quarterly public meeting relating to the agency's rulemaking, research, and enforcement programs will be held on September 18, 1992, beginning at 9:30 a.m. and ending at approximately 1 p.m. Questions relating to the agency's rulemaking, research, and enforcement programs, must be submitted in writing by September 10, 1992, to the address shown below. If sufficient time is available, questions received after the September 10 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by September 10, 1992, and the issues to be discussed will be mailed to interested personnel by September 14, 1992, and will be available at the meeting.

ADDRESSES: Questions for the September 18 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, room 5401, 400 Seventh Street SW., Washington, DC 20590. The meeting will be held at the Ramada Inn, 8270 Wickham Road, Romulus, Michigan 48174 (by the Detroit Metropolitan Airport.)

SUPPLEMENTARY INFORMATION: This notice amends a Federal Register notice of NHTSA quarterly meeting published August 17, 1992 (57 FR 37027). NHTSA will hold its regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's rulemaking, research and enforcement programs, on September 18, 1992. The meeting will be held at the Ramada Inn, 8270 Wickham Road, Romulus, Michigan. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street SW., Washington DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

At the end of the regularly scheduled quarterly meeting, an official from NHTSA's Office of Strategic Planning and Evaluation will briefly review the agency's strategic planning activities to improve traffic and motor vehicle safety into the next century. A particular focus will be the Federal Register notice that was published on July 28 announcing the agency's stragetic planning initiative and inviting comments from the public on a number of key issues. The issues that are particular relevance to the automotive industry will be highlighted during the session. Also, the agency will stress how important the auto industry's specific input is in crafting NHTSA's future direction.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366-1810, by COB September 9, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-19979 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-42; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Mercedes-Benz 300SEL Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Mercedes-Benz 300SEL passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Mercedes-Benz 300SEL that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATE: The closing date for comments on the petition is September 24, 1992.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1990 Mercedes-Benz 300SEL (Model ID 126.025) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1990 Mercedes-Benz 300SE (Model ID 126.024). Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1990 Mercedes-Benz 300SE, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that the 300SEL is substantially similar to the 300SE, and "differs mainly in minor options." In accounting for the differences between the two vehicles, the petitioner observed that manufacturers such as Daimler Benz A.G. "generally design only a few basic body shell designs which they then equip with a multitude of engine-size and cosmetic or comfort options." The petitioner further surmised that the 300SEL's absence from the United States market could be attributed to "salability considerations, or legislative restrictions such as the strict emission control requirements in the United States."

Champagne submitted information with its petition intended to demonstrate that the 1990 mode) 300SEL, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1990 model 300SE that was offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1990 model 300SEL is identical to the certified 1990 model 300SE with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *., 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the 1990 model 300SEL is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked "Brake" for a lens with a ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the seat belt symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of the passenger's outside rearview mirror, which is convex but does not bear the required warning statement.

Standard No. 114 *Theft Protection:* Installation of a buzzer microswitch in the steering lock assembly, and a warning buzzer.

Standard No. 115 *Vehicle Identification Number:* Installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the ignition switch is turned off.

Standard No. 208 *Door Locks and Door Retention Components:* Replacement of the rear door locks and locking buttons with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of either a U.S.-model seat belt in the driver's position or a belt webbing-actuated microswitch in the driver's seat belt retractor to activate the seat belt warning system; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer. The petitioner claims that the 1990 model 300SEL is equipped with a passive restraint system consisting of an airbag, control module, and knee bolster, which have identical part numbers to those found on the U.S. certified 1990 model 300SE.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* Installation of a rollover valve in the fuel tank vent line between the fuel and the evaporative emissions collection canister.

Additionally, the petitioner states that the bumpers on the 1990 model 300SEL must be reinforced to comply with the Bumper Standard found in 49 CFR part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: September 24, 1992.

Authority: 15 U.S.C. 1397(c)(3)(a)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on August 18, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-20252 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-18; Notice 2]

Determination That Nonconforming 1981 BMW 628CSi Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1981 BMW 628CSi passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1981 BMW 628CSi passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1981 BMW 628CSi), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) The motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) petitioned NHTSA to determine whether 1981 BMW 628CSi passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 8, 1992 (57 FR 19962) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #15 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1981 BMW 628CSi is substantially similar to a 1981 BMW 628CSi originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the 1981 BMW 628CSi is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 18, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-20253 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 92-19; Notice 2]

Determination That Nonconforming 1986 BMW 728i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1986 BMW 728i passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1986 BMW 728i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1986 BMW 735i), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective August 25, 1992.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that:

(I) the motor vehicle is * * *substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 (of the Act), and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R-90-009) petitioned NHTSA to determine whether 1986 BMW 728i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on May 8, 1992 (57 FR 19965) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS-7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #14 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1986 BMW 728i is substantially similar to a 1986 BMW 735i originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the 1986 BMW 728i is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 18, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-20254 Filed 8-24-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 19, 1992.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0085.

Form Number: IRS Form 1040A, Schedules 1, 2, 3, and EIC.

Type of Review: Resubmission.

Title: U.S. Individual Income Tax Return.

Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form is correct and are also for statistics use.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 33,591,448.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
Form 1040A	1 hr., 3 min.	2 hr., 8 min.	2 hr., 47 min.	35 min.
Sched. 1	20 min.	4 min.	10 min.	20 min.
Sched. 2	33 min.	11 min.	38 min.	28 min.
Sched. 3	13 min.	14 min.	28 min.	35 min.
Sched. EIC	39 min.	16 min.	33 min.	47 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 150,353,636 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-20244 Filed 8-24-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 19, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0024.

Form Number: ATF F 1 (AFT F 5320.1).

Type of Review: Extension.

Title: Application to Make and Register a Firearm.

Description: This form is used by the public when applying to make a firearm that falls within the purview of the National Firearms Act (NFA). The information supplied by the applicant on the form helps to establish the applicants eligibility for approval of the request.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 370.

Estimated Burden Hours Per Respondent: 4 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,480 hours.

OMB Number: 1512-0221.

Form Number: ATF F 5640.1.

Type of Review: Extension.

Title: Offer in Compromise of Liability Incurred Under the Internal Revenue Code.

Description: ATF F 5640.1 is used by persons who wish to compromise criminal and/or civil penalties for violations of the Internal Revenue Code. If accepted the offer in compromise is a settlement between the Government and the party in violation in lieu of legal proceedings or prosecution. ATF F 5640.1 identifies the person making the offer, violations, amount of offer and circumstances concerning the violations.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 40.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 80 hours.

Clearance Officer: Robert N. Hogarth (202) 927-8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-20245 Filed 8-24-92; 8:45 am]

BILLING CODE 4810-31-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 18, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980,

Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0086.
Form Number: IRS Form 1040C.
Type of Review: Extension.
Title: U.S. Departing Alien Income Tax Return.
Description: Form 1040C is used by aliens departing the U.S. to report income received or expected to be received for the entire tax year. The data collected are used to insure that the departing alien has no outstanding U.S. tax liability. Affected public are aliens departing the U.S.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping—2 hours, 5 minutes
Learning about the law or the form—44 minutes
Preparing the form—2 hours, 19 minutes
Copying, assembling and sending the form to the IRS—1 hour, 13 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 11,492 hours.

OMB Number: 1545-0197.
Form Number: IRS Form 5300.
Type of Review: Revision.
Title: Application for Determination for Employee Benefit Plan.
Description: IRS needs certain information on the financing and operating of employee benefit and employee contribution plans set up by employers. IRS uses Form 5300 to obtain the information needed to determine whether the plans qualify under Code sections 401(a) and 501(a).
Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeepers: 300,000.

Estimated Burden Hours Per Respondent/Recordkeeper

Recordkeeping—21 hours, 46 minutes
Learning about the law or the form—6 hours, 12 minutes
Preparing the form—8 hours, 41 minutes
Copying, assembling and sending the form to the IRS—32 minutes
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 11,157,000 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92-20246 Filed 8-24-92; 8:45 am]
BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 18, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Questionnaire to Small Boat Manufacturers (CF 418).
Description: This one-time survey is to ascertain availability of compartment and arrangement drawings, plans and profile, and line drawings of powerboats from 18 to 100 feet in length. These boats are commonly used by drug smugglers.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 79.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (one-time).
Estimated Total Reporting Burden: 79 hours.
Clearance Officer: Ralph Meyer (202) 927-1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 92-20247 Filed 8-24-92; 8:45 am]
BILLING CODE 4820-02-M

Internal Revenue Service

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on September 2, 1992. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue, NW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday, September 2, 1992. The agenda will include the following topics:

Wednesday, September 2, 1992

Ethics Survey Results
Report on State of Quality in IRS Field Offices
Status of Taxlink
Status of 1040 PC
Section 482: Task Force on 3rd Party Transfer Price Information
Automated Processing of Extensions (APEX)
Employee/Independent Contractor
Report on Penalty Handbook
New Deposit Regulations
100 Percent Penalty from a Small Business Perspective
Questions & Answers/News Items

Note: Last minute changes to the agenda or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Patti Andrews, Senior Program Analyst, no later than August 26, 1992. Ms. Andrews can be reached on (202) 622-6450 (not toll-free).

If you would like to have the committee consider a written statement, please call or write Ms. Andrews, Executive Secretariat, C:ES, Room 3308, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Patti Andrews, Senior Program Analyst, (202) 622-6450 (not toll-free).

Shirley D. Peterson,
Commissioner.
[FR Doc. 92-20257 Filed 8-24-92; 8:45am]
BILLING CODE 4830-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Establishment of Dispute Settlement Panel Concerning U.S. Import Restrictions on Certain Tuna

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR), responding to public interest in this matter, is providing notice that the Council of Representatives of the General Agreement on Tariffs and Trade (GATT), pursuant to a request by the European Community (EC), has decided to establish a dispute settlement panel to review the complaint by the EC against U.S. prohibitions on the importation of certain tuna under the Marine Mammal Protection Act of 1972.

FOR FURTHER INFORMATION CONTACT: Daniel Brinza, Senior Advisor and Special Counsel for Natural Resources, or Jeanne Davidson, Associate General Counsel, Office of the General Counsel, USTR, 600 17th Street, NW., Washington, DC 20506, (202) 395-7305 or (202) 394-3432, respectively.

SUPPLEMENTARY INFORMATION: In light of the extensive public interest in an earlier panel proceeding on this topic initiated by the Government of Mexico, USTR is providing notice of the request for, and establishment of, a second dispute settlement panel to examine the consistency of these U.S. tuna import prohibitions under the Marine Mammal Protection Act of 1972 (MMPA) with U.S. international trade obligations under the GATT.

Section 101(a)(2)(B) of the MMPA (16 U.S.C. 1371(a)(2)(B)) prohibits the importation of certain yellowfin tuna and tuna products from countries ("primary embargo countries") whose marine mammal mortality rates and programs are not comparable to those of the United States. Section 101(a)(2)(C) of the MMPA (16 U.S.C. 1371(a)(2)(C)) prohibits the importation of yellowfin tuna from any intermediary nation from which yellowfin tuna and tuna products will be exported to the United States that has not certified and provided reasonable proof that it has acted to prohibit the importation of such tuna and tuna products from any nation from which direct export to the United States is banned.

Pursuant to court order, the United States has, under the MMPA, prohibited the importation of certain yellowfin tuna and tuna products from several countries, including Mexico (as a "primary embargo country") and from a number of additional countries, including member states of the EC and the Netherlands Antilles (as "intermediary nations" or "secondary embargo countries").

In November 1990, the Government of Mexico requested consultations with the United States, contending that the U.S. tuna import embargo was inconsistent with U.S. obligations under the GATT. On January 25, 1991, Mexico requested the formation of a GATT dispute settlement panel to review its challenge to the U.S. import prohibitions. The dispute settlement panel issued its final report September 3, 1991, finding in part that the primary and intermediary nations embargoes, and the provisions of the MMPA under which they are imposed, are contrary to the GATT.

Specifically, the panel found that the primary and intermediary nation embargoes are import prohibitions that are impermissible under the GATT, and that the GATT's exceptions for import restrictions necessary to protect animal life or health (Article XX(b)) or relating to the conservation of exhaustible natural resources (Article XX(g)) are not available for measures to protect resources located outside the jurisdiction of the nation taking the measure.

The panel reasoned that each country remains free under the GATT to set its own environmental policies; if the exceptions were available for extrajurisdictional measures, then, in the panel's view, a country could take trade measures based on the fact that another country had different environmental policies from its own, thereby infringing that other country's right to establish its own environmental policies. The panel considered that if the exceptions were construed to apply extrajurisdictionally, then any GATT contracting party could unilaterally determine the life or health protection policies from which other contracting parties could not deviate without jeopardizing their rights under the GATT. There was widespread public interest in, and discussion of, this panel report. As a result, pursuant to the request of the United States, Mexico agreed with the U.S. to make the report public on September 13, 1991. Accordingly, copies of the panel's report are available upon request.

The Governments of the United States and Mexico have worked together since the issuance of the panel report to resolve their dispute without further proceedings in the GATT. The panel report has not been adopted by the GATT Council of Representatives and consequently is not an official determination of U.S. obligations under the GATT.

In the spring of 1992, the EC and the Netherlands, acting on behalf of the Netherlands Antilles, initiated a separate challenge to the United States actions under the MMPA as being inconsistent with U.S. obligations under the GATT, in particular with respect to the secondary embargo countries. The EC requested the formation of a GATT dispute settlement panel. The Netherlands, on behalf of the Netherlands Antilles, asked to join its complaint against the United States to the proceeding requested by the EC. On July 14, the GATT Council agreed to both requests.

Panelists are currently being selected for the panel.

Daniel M. Price,
Acting General Counsel.
[FR Doc. 92-20251 Filed 8-24-92; 8:45 am]
BILLING CODE 3190-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 165
Tuesday, August 25, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, August 27, 1992.

PLACE: Room, 600, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Southern Ohio Coal Co.*, Docket No. LAKE 91-650-R, etc. (Issues include whether the judge erred in concluding that Southern Ohio Coal Co. violated 30 CFR § 75.1704-2(a), which requires that escapeways follow the "safest direct practical route" out of the mine.)

Any person attending this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.1509 (a)(3) and § 2706.160(e).

TIME AND DATE: Immediately following oral argument.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Southern Ohio Coal Co.*, Docket No. LAKE 91-650-R, etc. (See Oral Argument Listing)

It was determined by unanimous vote of Commissioners that this meeting be held in closed session.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653-5629/(202) 708-9300 for TDD Relay/1-800-877-8339 for toll free.

Dated: August 20, 1992.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 92-20490 Filed 8-21-92; 3:33 pm]

BILLING CODE 6735-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, August 31, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 21, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20479 Filed 8-21-92; 3:31 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 24, 31, September 7, and 14, 1992.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 24

Wednesday, August 26

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of August 31—Tentative

Tuesday, September 1

3:00 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Thursday, September 3

1:00 p.m.
Briefing by EPRI on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (Public Meeting)

Week of September 7—Tentative

Tuesday, September 8

10:00 a.m.
Briefing on Advanced and Evolutionary Reactor Topics: Form and Content for a Design Certification Rule and Follow-up to SECY-90-016 (Public Meeting) (Contact: Dennis Crutchfield, 301/504-1199)

Wednesday, September 9

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, September 11

8:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 and 6)

8:30 a.m.
Briefing by Charlie Meinhold on 1990 Recommendations of the International Commission on Radiological Protection (ICRP Publication 60) (Public Meeting)

10:00 a.m.
Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: Raymond Fraley, 301/492-8049)

Week of September 14—Tentative

Thursday, September 17

2:00 p.m.
Status Briefing on Shutdown and Low Power Risk Issues (Public Meeting) (Contact: Mark Caruso 301/504-3235)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To Verify the Status of Meeting Call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: August 21, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-20482 Filed 8-21-92; 3:32 pm]

BILLING CODE 7590-01-M

federal register

Tuesday
August 25, 1992

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Housing Opportunities for Persons With AIDS; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-3481; FR-3306-N-01]

Notice of Funding Availability for Housing Opportunities for Persons With AIDS

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This notice announces the availability of $4,771,000 in funds to be allocated by competition for housing assistance and supportive services under the Housing Opportunities for Persons with AIDS (HOPWA) program. There will be two categories of assistance: (1) Grants to States and localities for projects of national significance; and (2) grants to: (A) States that do not qualify for HOPWA formula allocations; (B) localities outside of eligible metropolitan areas; and (C) localities inside of eligible metropolitan areas that do not have a HUD-approved Comprehensive Housing Affordability Strategy (CHAS). Approximately ten grants will be competitively awarded. The NOFA contains information concerning eligible applicants, the funding available, the application package, and its processing. An Interim Rule containing the requirements and other programmatic information for the HOPWA program was published in the Federal Register on July 20, 1992 (57 FR 32106).

DATES: Application packages will be available beginning September 1, 1992 from the HUD field offices listed at the end of this NOFA. Additional information regarding the submission of applications is included in the package.

Applications for HOPWA assistance must be received at HUD's national headquarters by 5:15 p.m. eastern time on October 26, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: The original application must be sent to the following: James N. Forsberg, Director, Office of Special Needs Assistance Programs, U.S. Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410-7000. A copy must also be sent to the HUD field office serving the area in which the applicant's project is located. A list of field offices appears at the end of this NOFA. A determination that an application was received on time will be made solely on receipt of the original application at the national office.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, room 7262, 451 Seventh Street, SW., Washington, DC 20410-7000; telephone (202) 708-4300, or for hearing- and speech-impaired persons, (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements for the HOPWA program have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506-0133.

I. Purpose and Substantive Description

(a) Purpose

The HOPWA competitive program will support and encourage the development of approximately five housing assistance and supportive services projects which, due to their unique or innovative nature, are likely to serve as effective models in addressing the housing and related needs of low-income persons living with acquired immunodeficiency syndrome and provide assistance for the development of approximately five additional projects that will address housing and supportive services made of persons with AIDS and related diseases. For the latter projects, assistance may be provided only to: (1) States that do not qualify for HOPWA formula grants; (2) localities outside of eligible metropolitan areas, as defined in 24 CFR 574.3; and (3) localities inside of eligible metropolitan areas that do not have a HUD-approved CHAS.

(b) Authority

The assistance made available under this NOFA is authorized by the AIDS Housing Opportunity Act (Pub. L. 101-625, approved November 28, 1990, 42 U.S.C. 12901-12912), which established the Housing Opportunities for Persons with AIDS (HOPWA) program. The funding was appropriated by the Department's appropriation act for fiscal year 1992 (Pub. L. 102-139, approved October 29, 1991). The Department's Interim Rule for the HOPWA program was published in the Federal Register on July 20, 1992 (57 FR 32106).

(c) Allocation Amounts

(1) This NOFA announces the availability of $2,385,000 for grants for projects of national significance.

(2) This NOFA also announces the availability of $2,386,000 for grants to: (i) States that do not qualify for HOPWA formula allocations; (ii) localities outside of eligible metropolitan areas; and (iii) localities inside of eligible metropolitan areas that do not have a HUD-approved CHAS.

(3) HUD expects to award approximately five grants in each of the two categories of assistance. The maximum amount that an applicant may receive is $500,000. HUD reserves the right, however, to make reductions in the amounts requested and, if there are too few applications in one category that rank sufficiently high to be funded, to transfer funds from that category of assistance to the other. Because of the limited number of grants to be awarded, HUD expects an extremely competitive process and strongly suggests that only applications likely to receive a high score under all the selection criteria be submitted.

(d) Eligibility

(1) All States and units of general local government, regardless of whether they qualify for a HOPWA formula allocation, may apply for grants for projects of national significance, as described in 24 CFR 574.250(b)(3).

(2) The only applicants that may apply for grants for other projects are the following:

(A) States that do not qualify for HOPWA formula grants;

(B) localities outside of eligible metropolitan areas; and

(C) localities inside of eligible metropolitan areas that do not have a HUD-approved CHAS. Nonprofit organizations may serve as project sponsors under contract with grantees to operate projects receiving funding under both categories of assistance.

(e) Threshold Review

The selection process for HOPWA includes a preliminary technical threshold review, provided by § 574.250 of the Interim Rule. HUD will conduct its review to determine:

(1) Whether the application is adequate in form, time of submission, and completeness;

(2) Whether the applicant, the population to be served and the proposed project sponsor(s), if any, are eligible;

(3) Whether the proposed activities are eligible for assistance under the program; and

(4) Whether the applicant is currently in compliance with the Federal requirements contained in subpart G (Other Federal Requirements) of the Interim Rule.

(f) Rating Criteria

(1) Applications for grants for projects of national significance that meet the threshold review requirements described in paragraph (e) of this NOFA will be rated based on the following selection criteria:

(i) Applicant Capacity (200 Points)

HUD will award up to 200 points based on the ability of the applicant and, if applicable, any project sponsor(s) to develop and operate the proposed assisted housing and supportive services program. With regard to both the applicant and the project sponsor(s), HUD will consider such factors as the quality of any ongoing programs; past experience in programs serving low-income persons with AIDS and related diseases, including minority persons; management and staffing plans; and other relevant factors.

(ii) Need for the Project in the Area to be Served (200) Points

HUD will award up to 200 points based on the extent of the urgent housing and supportive service needs of eligible persons that are not currently being addressed by available public and private resources within the intended service area, including the relative numbers of AIDS cases and per capita AIDS incidence.

(iii) Appropriateness of Housing and Supportive Services (300 Points)

HUD will award up to 300 points based on the extent to which the proposed activities to be carried out with HOPWA assistance will address the identified needs. In assessing an application under this criterion, HUD will consider the degree to which the applicant demonstrates that proposed activities will provide a continuum of housing and services to meet the changing needs of beneficiaries.

(iv) Extent of Leveraged Public and Private Resources for the Project (100 Points)

HUD will award up to 50 points based on the extent to which the applicant will leverage the amount of assistance requested with funds and other resources from other public or private sources, including the likelihood of the continuation of State and local efforts. HUD also will award up to 50 points based on the extent to which the applicant demonstrates local planning and coordination of housing programs for persons with AIDS.

(v) Innovative Nature of the Proposal (100 Points)

HUD will award up to 100 points based on the extent to which the project involves an exemplary program for, or alternative method of, meeting the needs of low-income persons with AIDS and related diseases, when compared to other applicants; and

(vi) Potential for Replication (100 Points)

HUD will award up to 100 points based on the extent to which the project design, management plan, and service descriptions are appropriate as a model for replication in other similar localities or nationally.

(2) Applications for grants under paragraph (c)(2) of this notice that meet the threshold review requirements described in paragraph (e) of this NOFA will be rated based on the following selection criteria:

(i) Applicant Capacity (200 Points)

HUD will award up to 200 points based on the ability of the applicant and, if applicable, any project sponsor(s) to develop and operate the proposed assisted housing and supportive services program. With regard to both the applicant and the project sponsor(s), HUD will consider such factors as the quality of any ongoing programs; past experience in programs serving low-income persons with AIDS and related diseases, including minority persons; management and staffing plans; and other relevant factors.

(ii) Need for the Project in the Area to be Served (200 Points)

HUD will award up to 200 points based on the extent of the urgent housing and supportive service needs of eligible persons that are not currently being addressed by available public and private resources within the intended service area, including the relative numbers of AIDS cases and per capita AIDS incidence.

(iii) Appropriateness of Housing and Supportive Services (400 Points)

HUD will award up to 400 points based on the extent to which the proposed activities to be carried out with HOPWA assistance will address the identified needs. In assessing an application under this criterion, HUD will consider the degree to which the applicant demonstrates that proposed activities will provide a continuum of housing and services to meet the changing needs of beneficiaries.

(iv) Extent of Leveraged Public and Private Resources for the Project (200 Points)

HUD will award up to 100 points based on the extent to which the applicant will leverage the amount of assistance requested with funds and other resources from other public or private sources, including the likelihood of the continuation of State and local efforts. HUD also will award up to 100 points based on the extent to which the applicant demonstrates local planning and coordination of housing programs for persons with AIDS.

(g) Ratings

Applicants for funds for both categories of assistance will be assigned a rating score and placed in ranked order within their category, based upon the criteria listed in paragraph (f) of this NOFA. The Department will consider the highest rated applicants for final selection in accordance with their ranked order within their category, to the extent that funds are available.

II. Application Submission Requirements

(a) Complete application submission requirements are contained in the application package. Any potential applicants who have questions about the preparation or submission of applications are urged to contact their HUD field office.

(b) Applicants not having a HUD-approved comprehensive housing affordability strategy (CHAS) must submit a CHAS meeting the requirements of 24 CFR part 91, except for applicants eligible under § 574.210(b)(3) of the interim rule.

III. Corrections to Deficient Applications

(a) HUD will notify an applicant, in writing, of any technical deficiencies in the application. The applicant must submit corrections in accordance with the information specified in HUD's letter within 14 calendar days from the date of HUD's letter notifying the applicant of any such deficiency.

(b) Curable technical deficiencies are items that are not necessary for HUD review under the selection criteria (e.g., failure to submit a required certification with the application). Items that would improve the substantive quality of the application may not be submitted after the application due date has expired.

IV. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment, in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, was made in connection with the interim rule authorizing this program that was published in the **Federal Register** on July 17, 1992 [Docket No. 92-1601]. That Finding of No Significant Impact applies to this NOFA, and it is available for public inspection between 7:30 a.m. to 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the Notice is not subject to review under the Order. The Notice announces the availability of funds and invites applications from eligible applicants for the Housing Opportunities for Persons with AIDS program.

Impact on the Family

The General Counsel, as the Designated Official for Executive Order 12606, the Family, has determined that this Notice, to the extent the funds provided under it are directed to families, has the potential for a beneficial impact on family formation, maintenance and general well-being. However, the statutory authority for the program requires that the funds be targeted to individuals with acquired immunodeficiency syndrome and related diseases. Any funding provided to projects which may through other funding sources be incidentally serving families can be expected to enable those families with a participating member who has HIV infection to live in decent, safe, and sanitary housing in connection with the supportive services necessary to live independently in mainstream American society. Since the impact on families, if any, is a beneficial one, no further review is necessary.

Documentation and Public Access Requirements; Applicant/Recipient Disclosures: HUD Reform Act. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period, beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Section 103 of HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708-3815 (TDD/voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters for the program to which the question pertains.

Section 112 of HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Urban Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule codified at 24 CFR part 86 (56 FR 22912, May 17, 1991). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions about the rule should be directed to Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-3000. Telephone: (202) 708-3815 (TDD/voice). This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Drug-Free Workplace Certification

In accordance with 24 CFR 24.630, an applicant must submit its Certification for a Drug-Free Workplace (Form HUD-50070).

HUD Field Offices

Telephone numbers for Telecommunications Devices for the Deaf (TDD machines) are listed for field offices; all HUD numbers may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDD or (1-800-877-8339) or (202) 708-9300.

Alabama: Jasper H. Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, suite 300, Birmingham, AL 35209-3144; (205) 731-1672; TDD (205) 290-7624

Alaska: Colleen Craig, Federal Bldg., 222 W. 8th Ave., #64, Anchorage, AK 99513-7537; (907) 271-3669; TDD (907) 271-4328

Arizona: Diane Domzalski, 400 N. Fifth St., suite 1600, Arizona Center, Phoenix, AZ 85004; (602) 379-4754; TDD (602) 379-4461

Arkansas: Billy M. Parsley, Lafayette Bldg., 523 Louisiana, suite 200, Little Rock, AR 72201-3707; (501) 324-6375; TDD (501) 324-5931

California: (Southern) Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015-3801; (213) 251-7235; TDD (213) 251-7038; (Northern) Gordon H. McKay, 450 Golden Gate Ave., P.O. 36003, San Francisco, CA 94102-3448; (415) 556-5576; TDD (415) 556-8357

Colorado: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811; TDD (303) 844-6158

Connecticut: Daniel Kolesar, 330 Main St., Hartford, CT 06106-1860; (203) 240-4508; TDD (203) 240-4522

Delaware: John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106-3392; (215) 597-2665; TDD (215) 597-5564

District of Columbia: James H. McDaniel, 820 First St., NE, Washington, DC 20002; (202) 275-0994; TDD (202) 275-0967

Florida: James N. Nichol, 325 W. Adams St., Jacksonville, FL 32202-4303; (904) 232-3587; TDD (904) 232-1291

Georgia: Charles N. Straub, Russell Fed. Bldg., room 688, 75 Spring St., SW, Atlanta GA 30303-3388; (404) 331-5139; TDD (404) 730-2654

Hawaii: Patti A. Nicholas, 7 Waterfront Plaza, suite 500, 500 Ala Moana Boulevard, Honolulu, HI 96813-4918; (808) 541-1327; TDD (808) 541-1356

Idaho: John G. Bonham, 520 SW 6th Ave., Portland, OR 97204-1596; (503) 326-7018; TDD (503) 326-3656

Illinois: Richard Wilson, 77 W. Jackson Blvd., Chicago, IL 60604-5760; (312) 353-1696; TDD (312) 353-7143

Indiana: Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204-2526; (317) 226-5169; TDD (317) 226-6951

Iowa: Gregory A. Bevirt, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102-1622; (402) 221-3703; TDD (402) 492-3102

Kansas: Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101-2406; (913) 236-2184; TDD (913) 236-3972

Kentucky: Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201-1044; (502) 582-5394; TDD (502) 582-5139

Louisiana: Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112-2887; (504) 589-7212; TDD (504) 589-7237

Maine: David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2467; (603) 666-7640; TDD (603) 666-7518

Maryland: Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202-1865; (301) 962-2417; TDD (301) 962-0106

Massachusetts: Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222-1092; (617) 565-5343; TDD (617) 565-5453

Michigan: Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226-2592; (313) 226-4343; TDD (313) 226-6898

Minnesota: Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401-2195; (612) 370-3019; TDD (612) 370-3186

Mississippi: Jeanie E. Smith, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269-1096; (601) 965-4765; TDD (601) 965-4171

Missouri: (Eastern) David H. Long, 1222 Spruce St., St. Louis, MO 63103-2836; (314) 539-6524; TDD (314) 539-6331; (Western) Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101-2406; (913) 236-2184; TDD (913) 236-3972

Montana: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811; TDD (303) 844-6158

Nebraska: Gregory A. Bevirt, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102-1622; (402) 221-3703; TDD (402) 492-3102

Nevada: (Las Vegas, Clark County) Diane Domzalski, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379-4754; TDD (602) 379-4461; (Remainder of State) Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102-3448; (415) 556-5576; TDD (415) 556-8357

New Hampshire: David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101-2467; (603) 666-7640; TDD (603) 666-7518

New Jersey: Frank Sagarese, Military Park Bldg., 60 Park Pl., Newark, NJ 07102-5504; (201) 877-1776; TDD (201) 645-6649

New Mexico: R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113-2905; (817) 885-5483; TDD (817) 885-5447

New York: (Upstate) Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203-1780; (716) 846-5768; TDD (716) 846-5787; (Downstate) Joan Debelko, 26 Federal Plaza, New York, NY 10278-0068; (212) 264-2885; TDD (212) 264-0927

North Carolina: Charles T. Ferebee, Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407-3707; (919) 547-4005; TDD (919) 547-4055

North Dakota: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202-2349; (303) 844-3811; TDD (303) 844-6158

Ohio: Jack E. Riordan, 200 North High St., Columbus, OH 43215-2499; (614) 469-6743; TDD (614) 469-6694

Oklahoma: Katie Worsham, Murrah Fed. Bldg., 200 NW. 5th St., Oklahoma City, OK 73102-3202; (405) 231-4973; TDD (405) 231-4181

Oregon: John G. Bonham, 520 SW. 6th Ave., Portland, OR 97204-1596 (503) 326-7018; TDD (503) 326-3656

Pennsylvania: (Western) Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219-1906; (412) 644-5493; TDD (412) 644-5747; (Eastern) John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106-3392; (215) 597-2665; TDD (215) 597-5564

Puerto Rico: Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR

00918–1804; (809) 766–5576; TDD (809) 766–5909

Rhode Island: Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5343; TDD (617) 565–5453

South Carolina: Louis E. Bradley, Acting, Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564; TDD (803) 253–3071

South Dakota: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811; TDD (303) 844–6158

Tennessee: Virginia Peck, 710 Locust St., Knoxville, TN 37902–2526; (615) 549–9422; TDD (615) 549–9372

Texas: (Northern) R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483; TDD (817) 885–5447; (Southern) Robert W. Hicks, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (512) 229–6820; TDD (512) 229–6885

Utah: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811; TDD (303) 844–6158

Vermont: David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640; TDD (603) 666–7518

Virginia: Joseph Aversano, Fed. Bldg., 400 N. 8th St., P.O. Box 10170, Richmond, VA 23240–9998; (804) 771–2824; TDD (804) 771–2820

Washington: John Peters, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101–2054; (206) 553–0374; TDD (206) 553–4351

West Virginia: Bruce Crawford, Old Post Office & Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493; TDD (412) 644–5747

Wisconsin: Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, WI 53203–2289; (414) 297–3113; TDD (414) 297–3123

Wyoming: Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811; TDD (303) 844–6158

Dated: August 17, 1992.

Randall H. Erben,

Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92–20207 Filed 8–24–92; 8:45 am]

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federal register

Tuesday
August 25, 1992

Part III

Environmental Protection Agency

40 CFR 260 et al.

Burning of Hazardous Waste in Boilers and Industrial Furnaces; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, and 266

[EPA/OSW-FR-92-SWH-FRL-4196-5]

Burning of Hazardous Waste in Boilers and Industrial Furnaces

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical clarification amendments and corrections.

SUMMARY: This action makes several technical clarification amendments and corrections to the final rule for boilers and industrial furnaces burning hazardous waste. The final rule was published on February 21, 1991 (56 FR 7134). These revisions provide clarification and correct unintended consequences of the rule.

EFFECTIVE DATE: August 11, 1992.

ADDRESSES: The documents are available for viewing at the RCRA Information Center (docket identification number F-92-BBC3-FFFFF), located at: EPA/RCRA Information Center, room M2427, 401 M Street, SW., Washington, DC 20460.

The RCRA Information Center is open from 9 a.m. to 4 p.m. Monday through Friday, except for federal holidays. The public must make an appointment to review docket materials. Call (202) 260-9327 for appointments. Copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at: (800) 424-9346 (toll free) or (703) 920-9810.

Shiva Garg, Office of Solid Waste (OS-322W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308-8459.

SUPPLEMENTARY INFORMATION:

Preamble Outline

A. Technical Clarification Amendments

1. The Definition of Baseline Hydrocarbon Level for Industrial Furnaces Complying with the Alternative Hydrocarbon Limits is Clarified to Require Consideration of Process Variability.
2. Industrial Furnaces Complying with the Alternative HC Limit May Comply with the Interim HC Limit Using a Conditioned Gas HC Monitoring System if They Demonstrate that a Heated System Is Impracticable.
3. Industrial Furnaces that Cannot Comply with the 20 ppmv HC Limit by Aug. 21, 1992, because of Organic Matter in Raw Materials May Apply for a Case-by-Case Time Extension to Make Physical Changes to the Facility in Order to Comply with that HC Limit.
4. The Metals and Total Chlorine and Chloride Feed Rate Operating Limits for Tier I or Adjusted Tier I Are Based on the Screening Limits, Not the Compliance Test.
5. Adjusted Tier I Feed Rate Screening Limits May Be Used in Dispersion Situations where the Tier I and Tier II Screening Limits Are Precluded.
6. Several Requirements Are Clarified to Account for Facilities that Comply with Adjusted Tier I Limits.
7. BIF Storage Units are Subject to the Air Emissions Standards of subparts AA and BB of parts 264 and 265.
8. The Definitions of Plasma Arc and Infrared Incinerators Are Clarified to Include Only those Devices that Use an Afterburner.
9. Facilities that Comply with the Tier I or Adjusted Tier I Metals and Chlorine Controls and that have Uncontrolled Emissions that Meet the Particulate Matter Standard Need Not Establish a Limit on Production Rate during Interim Status.
10. Halogen Acid Furnaces that Burn Hazardous Waste as an Ingredient Are Subject to the BIF Rule.
11. When Comparing Levels of Nonmetal Constituents in Residue to the Health-Based Limits for the Bevill Exclusion, the Levels Cannot Exceed the Health-Based Limits or the Level of Detection, whichever Is Higher.
12. The Applicability of part 266 Is Clarified.
13. Conforming Revisions Are Made to the Applicability Sections of parts 264 and 265.
14. A Conforming Revision Is Made to the Rulemaking Petitions Provision of part 260.

B. Technical Corrections

C. Immediate Effective Date

A. Technical Clarification Amendments

On February 21, 1991, the Agency published a final rule which regulates the burning of hazardous waste in boilers and industrial furnaces (BIFs). See 56 FR 7134. The rule controls emissions of toxic organic compounds, toxic metals, hydrogen chloride, chlorine gas, and particulate matter from BIFs that burn hazardous waste. In addition, the rules subject owners and operators of BIFs to the general facility and permitting standards applicable to hazardous waste treatment, storage, and disposal facilities.

After publication of the rule, the Agency received many questions and requests for clarification on certain provisions of the rule. In addition, in a number of cases, the Agency was questioned as to whether the rule as promulgated truly reflected the Agency's intent. As a result of these questions and as a result of the Agency's own review, the Agency published a technical amendment to the rule to clarify the operation of the regulation and to correct certain unintended consequences. Those amendments were published at 56 FR 42504 on August 27, 1991. (Note that EPA had previously published several other technical corrections and amendments to the February 21 final rule (56 FR 32688 (July 17, 1991).)

As facilities began to comply with the BIF rules, additional questions have been raised about the way various provisions of the rule are intended to work. Today's technical clarification amendments address those questions.

1. The Definition of Baseline Hydrocarbon Level for Industrial Furnaces Complying With the Alternative Hydrocarbon Limit Is Clarified To Require Consideration of Process Variability

The Cement Kiln Recycling Coalition (CKRC) has expressed concern to the Agency that the alternative hydrocarbon (HC) provision of the rule is problematic for furnaces that feed raw materials containing naturally-occurring organic matter.[1] See § 266.104(f). That provision was intended to allow furnaces that could not comply with the 20 ppmv HC limit because of organic matter in raw materials to comply with an alternative, higher HC limit. EPA's rationale for the 20 ppmb limit was to ensure good hazardous waste combustion conditions and, thus, control of emissions of products of incomplete combustion (PICs). However, because hydrocarbon emissions from organic matter in raw materials are not directly related to fuel-generated hydrocarbons (i.e., from burning normal fuels and hazardous waste fuels), the Agency believed that these hydrocarbon should not be counted toward the 20 ppmv HC limit. See 56 FR 7155-56. To implement the alternative HC limit, the final rule required such furnaces to establish an HC limit that would be applicable when burning hazardous waste as the HC level achieved when not burning hazardous waste and when the furnace is operated to "minimize" HC levels. See § 266.104(f)(1).

CKRC has noted that this provision could be read to limit fuel-generated hydrocarbons to approximately 2 to 5 ppmv—the HC levels that are achieved when cement kilns (and boilers, incinerators, and other industrial furnaces) are operated under conditions to absolutely minimize HC levels. Therefore, although the Agency limits combustion-generated hydrocarbons from other combustion devices to 20 ppmv, the rule could be read to limit fuel-related hydrocarbon levels from cement kilns to 2 to 5 ppmv. In particular, CKRC notes that the rule could be interpreted to limit hydrocarbons when burning hazardous waste to the levels achieved when not burning hazardous waste (i.e., baseline conditions) and when kiln is operated to absolutely minimize HC levels and would not allow the facility to account for normal transient combustion conditions that occur because of factors such as mechanically handling coal. These conditions are elements of normal operating variability. Although these transient conditions cause combustion perturbations and momentary increases (i.e., spikes) in HC levels, these combustion-related HC levels do not generally exceed the 20 ppmv hourly rolling average limit that the Agency has established to control PICs.

[1] See the BIF docket for documentation of meetings and phone conversations and copies of correspondence.

Nonetheless, the most literal-minded reading of the rule would preclude consideration of these normal combustion perturbations if the rule's requirement that baseline HC levels be established when the kiln is operated to minimize HC levels is read to mean to operate constantly at absolute peak performance.[2] This literal-minded reading would lead to the result—not intended by EPA—that whenever such a normal combustion perturbation would occur (when the kiln is burning hazardous waste) and there is a spike in the HC level that causes the baseline HC level to be exceeded, the kiln would be required to stop burning hazardous waste and not restart the hazardous waste feed until the HC level falls below the baseline limit. Nor did EPA intend that industrial furnaces operate at an absolutely optimized performance in establishing a baseline ignoring normal operating variability (i.e., a performance level analogous to a New Source Performance Standard rather than best available technology). Indeed, the rule refers to establishing a baseline when the industrial furnace "produces normal products under normal operating conditions" (see § 266.104(f)(1)), and the analogous 20 ppmv HC limit itself is an "indicator of good combustion conditions" (see 55 FR 7155), not absolutely optimized combustion.

Although EPA believes these readings take an unduly stringent view of the requirement that HC levels be minimized when establishing a baseline, we nevertheless think it best to clarify the text of the rule. Therefore, EPA is correcting the definition of the baseline HC level provided by § 266.104(f)(1) to make it clear that the measured baseline HC level must be adjusted as appropriate to consider the normal variability of hydrocarbon levels under good combustion operating conditions. Thus, the measured baseline level could be increased by a variability factor that considers normal transient combustion conditions (i.e., provided that the transient conditions do not result in combustion-generated HC that exceed the 20 ppmv limit provided by § 266.104(c)). Accordingly, today's clarification amends the definition of the baseline HC level in § 266.104(f)(1) to read as follows: "The baseline HC level is defined as the average over all valid test runs of the highest hourly rolling average value for each run, adjusted as appropriate to consider the variability of hydrocarbon levels under good combustion operating conditions."

This HC variability factor would be determined on a case-by-case basis by the Director. As guidance in determining what variability factor to apply, EPA believes that a factor of 10 ppmv would be appropriate in most situations.[3] As indicated previously, the Agency believes that combustion-generated HC levels from cement kilns (and other furnaces eligible for the alternative HC limit) should be limited to 20 ppmv to ensure good combustion conditions. This is the same HC limit that applies to boilers, other furnaces, and incinerators, and provides a "level playing field" with respect to control of combustion-generated hydrocarbons. Thus, we recommend that the alternative HC limit be established as 20 ppmv plus the raw material-generated HC level. We do not believe that it is feasible, however, to measure only raw material-generated hydrocarbons; the HC monitor in the stack measures both hazardous waste combustion-generated and raw material-generated hydrocarbons. Therefore, to estimate the level of raw material-generated hydrocarbons, it is conservative and reasonable to assume that 10 ppmv [4] of the HC measured under baseline conditions (when the kiln must be operated to minimize combustion-generated hydrocarbons) is attributable to hazardous waste combustion. (Note that when the kiln is operated to absolutely minimize hazardous waste combustion-generated hydrocarbons, HC levels should be in the range of 2 to 5 ppmv. Thus, the recommended assumption that combustion-generated hydrocarbons are 10 ppmv during baseline testing is conservative.[5] Under this approach, raw material-generated hydrocarbons are estimated to be the measured HC level during baseline testing minus 10 ppmv. The 20 ppmv combustion-generated HC allowance would then be added to the estimated raw material-generated hydrocarbons. The net effect would be simply to add 10 ppmv to the measured baseline HC level.

As discussed above, the rational for adding a variability factor to the measured baseline HC level assumes that the baseline level is determined when the device is operated under conditions that generally minimize combustion-generated hydrocarbon.[6] Therefore, combustion-generated hydrocarbon spikes causing a significant increase in the hourly rolling average HC level should not be allowed during baseline testing. To ensure that substantial variability is not already included in the baseline HC level, the hourly rolling average hydrocarbon level should not vary during baseline testing by more than 5 ppmv when measured HC levels are in the range of 10-30 ppmv. When measured HC levels exceed 30 ppmv, then a higher allowable range of HC levels (i.e., the difference

[2] Even if the rule were interpreted to allow normal combustion perturbations (i.e., perturbations that do not result in combustion-generated hydrocarbons exceeding 20 ppmv on an hourly rolling average, and thus, are within the Agency's definition of good combustion conditions) during baseline testing, establishing a baseline that includes such normal perturbations would be problematic. This is because the owner or operator cannot ensure that the perturbations that occur during the baseline testing are representative (i.e., in frequency, magnitude, and duration) of normal perturbations. The occurrence of normal perturbations cannot always be predicted, and it would be difficult for the owner or operator to demonstrate that perturbations that could be artificially induced during baseline testing are representative of normal perturbations.

[3] We note that, if a variability of 10 ppmv is used to adjust he measured baseline HC level, facilities with measured HC levels of 11 ppmv or greater would be eligible for the alternative HC limit. This is because the baseline HC level, when adjusted for the 10 ppmv variability factor, would be 21 ppmv or more and facilities with baseline HC levels exceeding 20 ppmv are eligible for the alternative HC limit.

[4] Note that the assumption that 10 ppmv of HC during baseline testing is attributable to hazardous waste combustion is not the basis for the recommended 10 ppmv variability factor. As discussed in the text, however, this assumption leads to the Agency's conclusion that a 10 ppmv variability factor is appropriate.

[5] The assumption that combustion-generated HC is 10 ppmv during baseline testing is conservative because if, for example, we assumed that combustion-generated HC is 5 ppmv, the variability factor would be 15 ppmv, not 10 ppmv. This is because, the lower that the combustion-generated HC is assumed to be, the higher the raw material-generated HC is estimated to be, and the 20 ppmv allowance for combustion-generated HC is added to the estimated raw material-generated HC.

[6] Although it is not practicable for an industrial furnace to operate continuously under conditions that minimize combustion-generated HC as discussed previously in the text, it is reasonable and necessary to require the facility to operate during baseline testing under conditions that generally minimize combustion-generated HC. This is because, otherwise, a variability factor would be added to a baseline HC level that may already include substantial variability.

between the highest and lowest hourly rolling average level) during baseline testing may be appropriate given that the absolute HC levels are higher and even minor perturbations could cause significant changes in HC levels.[7]

EPA is interested in obtaining further information on whether this recommended approach is reasonable to establish an alternative HC limit for devices that cannot meet the 20 ppmv HC limit because of organic matter in raw materials. EPA therefore invites all interested persons to submit any relevant information on this issue.

2. Industrial Furnaces Complying With the Alternative HC Limit May Comply With the Interim HC Limit Using a Conditioned Gas HC Monitoring System if They Demonstrate That a Heated System Is Impracticable

Section 266.103(c)(5) of the rule allows owners and operators of BIFs, other than those that obtain a time extension, to certify compliance with the 20 ppmv HC limit using a conditioned gas (i.e., cold) HC monitoring system rather than a heated monitoring system. Although the Agency prefers the heated system because a cold system may remove some hydrocarbons during gas conditioning (e.g., chilling the gas sample line to condense water vapor can also remove hydrocarbons), the Agency recognized that heated systems are not in widespread use on BIFs and modifications to the monitoring systems may be necessary to address operation and maintenance problems. See 56 FR 7162 (February 21, 1991). Consequently, the Agency reasoned that facilities that comply with the HC limit on Aug. 21, 1992, should be allowed to use a cold system. On the other hand, he Agency reasoned that those owners and operators who obtain a time extension should be required to certify compliance with a hot system given that the time extension should provide enough time to resolve operation and maintenance problems. (Note that facilities that elect to certify compliance with a cold system on Aug. 21, 1992, must use a hot system when they recertify compliance under interim status or obtain a RCRA operating permit. See § 266.103(c)(5).

The Agency did not anticipated the consequences that this requirement would have on cement kilns complying with the alternative hydrocarbon provision of §§ 266.104(f) and 266.103(c)(7)(ii)(B). Under those requirements, cement kilns must, prior to August 21, 1992, submit a complete Part B permit application that includes documentation of the baseline HC level, and obtain a time extension from the Director. Until the operating permit is issued, the facility must comply with an interim HC (and CO) limit effective no later than August 21, 1992, that is established as a condition of the time extension.

Consequently, although cement kilns complying with the alternative hydrocarbon provision must obtain a time extension, they must monitor hydrocarbons prior to August 21, 1992, in order to establish the baseline HC level, and must monitor hydrocarbons continuously beginning August 21, 1992. Thus, § 266.103(c)(5) has the unintended consequence of requiring such facilities to use a hot HC monitoring system on (and before) August 21, 1992.

As discussed above, the Agency has already determined that this is infeasible (and therefore provided a conditioned (i.e., cold) monitoring option). Therefore, to give such facilities the time they may need to resolve operating and maintenance problems with hot monitoring systems, today's technical correction revises § 266.103(c)(5) to enable the Director to approve on a case-by-case basis the use of a cold system for establishing the baseline HC level and complying with the alternative, interim HC limit. This correction is a logical and necessary adjunct to the existing regulation that allows the alternative use of cold HC monitoring systems. The Director's approval will be based on a demonstration by the facility that it has made a good faith effort to install and operate a heated system but that it has determined that continuous operation is not practicable at this time. The Agency does not believe that this demonstration will be a burden on owners and operators because they have known since February 21, 1991, that a hot monitoring system was required by the rule and should have been attempting to operate continuously such systems for some time.

In considering a request to use a conditioned gas monitor in lieu of a hot monitor, the Director may impose additional requirements on the owner and operator of the facility to ensure that a hot monitoring system is installed as soon as practicable. See § 266.103(c)(7)(ii)(A). For example, the Director may require the owner or operator to operate a hot monitoring system to the extent practicable concurrently with a conditioned gas monitoring system in order to meet specified milestones in activities designed to resolve operational problems with a heated HC monitoring system, and to report periodically on progress toward achieving sustained operation of the hot monitoring system.

This amendment does not extend the deadline for certification of compliance. Owners and operators requesting to comply with the alternative hydrocarbon limit are required to submit their request along with accompanying supporting materials in time to allow the Director to grant or deny the request by August 21, 1992.

3. Industrial Furnaces That Cannot Comply With the 20 PPMY HC Limit by August 21, 1992, Because of Organic Matter in Raw Materials May Apply for a Case-by-Case Time Extension To Make Physical Changes to the Facility in Order to Comply With That HC Limit

The Agency is clarifying the rule to make it clear that industrial furnaces that cannot comply with the 20 ppmv HC limit for reasons beyond the owner's or operator's control may request a time extension to certify compliance with the HC limit. The final rule allows facilities that elected to comply with the alternative hydrocarbon provisions of § 266.104(f) to obtain a time extension under § 266.103(c)(7)(ii)(B). However, the Agency inadvertently did not make it clear that owners and operators that elected to make physical changes to the facility to enable them to comply with the 20 ppmv HC limit (i.e., the usual HC limit, rather than an alternative limit established on a case-by-case basis) but who cannot do so by August 21, 1992, for reasons beyond their control are also eligible to request a time extension under § 266.103(c)(7)(ii).

EPA meant for § 266.103(c)(7)(ii) (B) to apply only to facilities that comply with the alternative HC limit, and believes that this intent is fairly clear in the existing regulatory language since the provision (§ 266.103(c)(7)(ii)(B)(2)) references the procedure for establishing CO and HC baseline levels (§ 266.104(f)(1)) applicable only to persons complying with the alternative HC limit. Conversely, the provisions make little sense for persons who intend to comply with the limit of 20 ppmv because the requirements in § 266.103(c)(7)(ii)(B) are related only to the alternative HC limit.

Accordingly, today's amendment revises § 266.103(c)(7)(ii)(B) to clarify that paragraph applies only to facilities that comply with the alternative HC limit. Thus, the general time extension provision of § 266.103(c)(7)(ii) applies to all other situations, including industrial furnaces that need time to modify the

[7] Baseline testing should consist of a minimum of three test runs, with each run having a minimum duration of three hours.

facility to comply with the 20 ppmv HC limit.

Industrial furnaces such as cement kilns may elect to make physical modifications to the facility to enable them to certify compliance with the 20 ppmv HC limit rather than to comply with the alternative HC provisions of § 266.104(f). If those modifications cannot be completed in time to enable the facility to certify compliance by August 21, 1992, for reasons beyond the facility's control, the owner or operator may request a time extension.

If a time extension is granted, the Director will use the authority of § 266.103(c)(7)(ii) to establish operating conditions as necessary to reasonably ensure that emissions of toxic organic compounds do not pose a threat to human health and the environment. Operating conditions that may be applied may include limits on the type, quantity, and method of firing hazardous waste, and limits on combustion parameters such as oxygen, carbon monoxide, and hydrocarbons.

Examples of physical changes that may be made to the facility in order to meet the 20 ppmv HC limit are: (1) Installation of a secondary combustion chamber to destroy organic compounds in the kiln off-gas; or (2) installation of a roaster to volatilize organic compounds from the raw material before feeding it to the kiln where hazardous waste is burned. These changes may enable the owner or operator to demonstrate that stack gas concentrations do not exceed the 20 ppmv limit. At this time, the Agency has not evaluated the practicability of installing a secondary combustion chamber or roaster to reduce HC emissions. The Agency is simply identifying these as conceivable changes that may enable a facility to meet the 20 ppmv HC limit.

4. The Metals and Total Chlorine and Chloride Feed Rate Operating Limits for Tier I or Adjusted Tier I Are Based on the Screening Limits, Not the Compliance Test

The final rule requires facilities that comply with the Tier I or Adjusted Tier I feed rate screening limits for metals and total chlorine and chloride to establish feed rate limits based on the feed rates used during the compliance test, and to establish feed rate limits on both pumpable and total hazardous waste feeds. In addition, the final rule requires the owner or operator to conduct a compliance test to document compliance with the particulate matter (PM) limit even though a facility may comply with the Tier I or Adjusted Tier I feed rate screening limits for metals and total chlorine and chloride.

As discussed in the preamble to the final rule (56 FR 7175 (February 21, 1991)), the Tier I or Adjusted Tier I feed rate screening limits are protective of human health and the environment because the limits are back-calculated from acceptable ambient levels using conservative dispersion scenarios, and because the limits are based on an assumption that all metals and chlorine feed to the BIF are emitted (i.e., metals and chlorine do not partition to ash or product and are not removed by an air pollution control system). Because of this, the Agency did not intend for facilities complying with Tier I or Adjusted Tier I to establish feed rate limits on metals or chlorine during a compliance test; rather, the feed rate limits on metals and chlorine are established by the reference tables in appendices I and II of part 266. Further, given that the Tier I or Adjusted Tier I compliance approaches assume that all metals or chlorine fed to the BIF are emitted, it is not necessary to establish a separate feed rate limit for these parameters on pumpable or total hazardous waste. The feed rate limits under Tier I or Adjusted Tier I are based on the total feed rate in total feed streams, and are limited to the levels established in appendices I and II of part 266. (Note, however, that in order to ensure and document compliance with the feed rate screening limits, the facility must nonetheless know the feed rate of metal or chlorine in each feed stream at all times.)

In addition, the Agency considered whether facilities complying with the Tier I or Adjusted Tier I limits for metals and total chlorine and chloride during the compliance test should be required to feed metals and chlorine at the maximum rate during the PM emissions test to ensure maximum PM emissions. As discussed in the preamble to the final rule (56 FR 7144), the Agency is not regulating PM emissions under RCRA per se, but rather as a secondary control on emissions of metals and organics that could be adsorbed on the PM. Given that the Tier I or Adjusted Tier I metals and chlorine feed rate screening limits ensure protection of human health and the environment, the Agency does not believe that it is necessary to spike metals and chlorine at the screening feed rate limits during the PM compliance test.

To make sure that these requirements are fully understood the Agency is amending §§ 266.103(c)(1), 266.103(c)(1)(ii)(A), and 266.103(c)(1)(iii) to clarify that the Tier I or Adjusted Tier I feed rate limits are based on the feed rate screening limits specified under §§ 266.106 (b) or (e) (for metals) and 266.107 (b)(1) or (e) (for chlorine) and are not based on the actual feed rates demonstrated during the compliance test. Further, the Agency is clarifying §§ 266.103(b)(3)(ii)(B) and 266.103(c)(1)(ii)(C) by deleting the requirements for metals feed rate limits in total hazardous waste feed and in total pumpable hazardous waste feed when the BIF complies with the Tier I or Adjusted Tier I metals feed rate screening limits.

5. Adjusted Tier I Feed Rate Screening Limits May Be Used in Dispersion Situations Where the Tier I and Tier II Screening Limits Are Precluded

Sections 266.106(b)(7) and 266.107(b)(3) of the rule preclude the use of the Tier I and Tier II Screening Limits for facilities located in areas where the dispersion characteristics would be worse than were used to calculate the screening limits. Facilities in such situations must conduct dispersion modeling to ensure that the ambient concentrations will not exceed allowable levels. In drafting the final rule, the Agency inadvertently precluded the use of Adjusted Tier I when dispersion characteristics precluded the use of the Tier I and Tier II Screening Limits. Therefore, the Agency is clarifying those paragraphs to allow facilities to apply either the Tier III or Adjusted Tier I feed rate screening limits to control metals and HC1/Cl_2 emissions.

As explained in the final rule, the Agency established the Tier I and Tier II Screening Limits using dispersion modeling; such modeling included a number of conservative assumptions. Despite the conservatism, several situations still existed whereby the Tier I or Tier II limits could result in exposure levels that exceed those established as acceptable in the rule. These specific situations are listed in § 266.106(b)(7). In these situations, facilities are required to conduct dispersion modeling to ensure that metals (or HC1/Cl_2) concentrations will not exceed allowable levels. Such dispersion modeling is required under both Tier III and Adjusted Tier I standards. However, the Agency inadvertently specified that facilities must comply with Tier III limits when the facility is located in one of the specified nonconservative dispersion situations. Because the same dispersion modeling is required for the Adjusted Tier I standards as for the Tier III standards, this correction makes it clear that facilities may comply with either Adjusted Tier I or Tier III in these situations.

6. Several Requirements Are Clarified to Account for Facilities That Comply With Adjusted Tier I Limits

When prescribing requirements for certification of precompliance in § 266.103(b), the Agency did not make it clear that the requirements in paragraphs (b)(2) (ii) and (iii) that apply to facilities that choose to comply with the Tier I controls also apply to facilities that elect to comply with the Adjusted Tier I controls for metals or total chlorine and chloride, although EPA believes this result is implicit since there is no logical reason for the requirements to apply in one case but not the other. Accordingly, today's amendments simply clarifies that these provisions also are applicable to facilities that comply with Adjusted Tier I controls.

Similarly, the Agency inadvertently did not require in § 266.106(d) that facilities complying with the Adjusted Tier I controls on metals emissions to also comply with most of the requirements applicable to facilities that comply with Tier III controls, although the February 21, 1991, preamble clearly indicates that these requirements do apply. See 56 FR 7175. Accordingly, the Agency is also clarifying paragraph (d) to add an introductory sentence and revise paragraphs (d) (1) and (5) to apply the appropriate requirements to facilities complying with the Adjusted Tier I controls.

7. BIF Storage Units Are Subject to the Air Emissions Standards of Subparts AA and BB of Parts 264 and 265

The final rule subjects storage units for hazardous waste burned in BIFs to the requirements of subparts A through L of parts 264 and 265. See § 266.101(c)(1). The Agency inadvertently omitted reference to subparts AA and BB of parts 264 and 265 that establish air emission standards for process vents and equipment leaks, respectively. Given that these air emissions standards apply to other hazardous waste storage units and are necessary to protect human health and the environment, they apply to storage units for hazardous waste burned in BIFs as well.

To implement this amendment, we are revising § 266.101(c)(1) to require compliance with the requirements of parts 264 and 265 that are applicable to storage units. This approach is preferable to adding a reference specifically to subparts AA and BB because the Agency may add over time other subparts that are applicable to storage units.

In addition, we are amending § 266.101(c)(2) for the same reasons. That paragraph conditionally exempts storage units for exempt small quantity burners from applicable regulations under parts 264, 265, and 270.

8. The Definitions of Plasma Arc and Infrared Incinerators Are Clarified To Include Only Those Devices That Use an Afterburner

In the February 21, 1991 final BIF rule, EPA modified the definition of incinerator in § 260.10 to explicitly include plasma arc and infrared devices as incinerators. See 56 FR 7206. The Agency added the devices to the incinerator definition to make it clear that they were to be regulated as incinerators because: "(1) Although these devices use nonflame sources of thermal energy to treat waste in the primary chamber, they *invariably employ controlled flame afterburners* to combust hydrocarbons * * *" (emphasis added); and "(2) the incinerator standards are workable and protective for these units."

Since promulgation of the final rule, a number of questions have been raised as to whether the Agency intended to classify as incinerators those plasma arc units that treat the off-gas by methods (e.g., condensation, catalytic converters) other than by combustion in a controlled flame afterburner.[a] As indicated above, the Agency made this modification based on the (incorrect) understanding that these units invariably use controlled flame combustion in the afterburner. Given that there are plasma arc or infrared units that do not use controlled flame combustion in an afterburner or other device—that is, they do not meet the definition of incinerator (i.e., before the Agency amended the definition to include plasma arc and infrared units)—and the incinerator regulations are not appropriate for devices not employing combustion, the Agency is today clarifying the definitions of these units to specifically refer to the use of such an afterburner (as stated in the February 21, 1991, preamble).

Plasma arc and infrared devices that are not incinerators because they do not use controlled flame combustion in an afterburner are subject to regulation under subpart P, part 265 (for units in interim status) and subpart X, part 264 (for units operating under a RCRA permit).

Finally, we note that the revisions to these definitions (being non-HSWA) do not take effect in an authorized state until the state becomes authorized for the rule change.

9. Facilities That Comply With the Tier I or Adjusted Tier I Metals and Chlorine Controls and That Have Uncontrolled Emissions That Meet the Particulate Matter Standard Need Not Establish a Limit on Production Rate During Interim Status

Sections 266.103(b)(3)(v) and 266.103(c)(vi) of the rule require BIFs to establish an operating limit during interim status on maximum production rate when producing normal product. The Agency required a limit on maximum production rate as a surrogate for gas flow rate through the air pollution control system (APCS) to ensure that the collection efficiency of the system would not be compromised at higher gas flow rates—and higher production rates—than occurred during the compliance test. In drafting the final rule, the Agency inadvertently required that a limit on maximum production rate be established during interim status in a situation where a limit is not needed—when an APCS is not needed to comply with the emissions standards for metals, HCl, Cl_2, or particulate matter (PM).

Consequently, EPA is correcting the rule to indicate that the requirement to establish a maximum production rate during interim status is not necessary when: (1) The BIF complies with Tier I or Adjusted Tier I feed rate limits for all metals and total chlorine and chloride (which are conservatively based on a reasonable, worst-case dispersion scenario and assume that all metals and chlorine fed to the BIF are emitted (i.e., no partitioning to bottom ash or product and no removal by an APCS)); and (2) uncontrolled stack emissions comply with the PM standard (i.e., when there is no APCS or when emissions at the inlet to an APCS meet the PM standard).

10. Halogen Acid Furnaces That Burn Hazardous Waste as an Ingredient Are Subject to the BIF Rule

In the BIF rule published on Feb. 21, 1991, the Agency amended § 261.2(d) to list as inherently waste-like any secondary material that is identified or listed as a hazardous waste and that is fed to a halogen acid furnace (HAF). See 56 FR 7141 for the reasons for this rule. By doing this, the Agency made clear that burning of secondary materials in HAFs that exhibit a characteristic or are specifically listed would subject those units to the BIF regulations. While the Agency revised § 261.2(d) by adding paragraph (d)(2), the Agency inadvertently did not make a conforming change to § 261.2(e)(2)(iv) that identifies materials that are solid wastes, even if the recycling involves use, reuse, or return to the original process. Accordingly, the Agency is today revising § 261.2(e)(2)(iv) to include a reference to paragraph (d)(2) to make it clear that inherently waste-like materials burned in a HAF are solid (and hazardous) wastes even if such burning is recycling by use, reuse, or return to the original process.

[a] See the memorandum from Sylvia Lowrance, Director, Office of Solid Waste, EPA, to Allyn M. Davis, Director, Region VI Hazardous Waste Management Division dated September 30, 1991, stating that the BIF rule unintentionally includes as incinerators plasma arc and infrared units not equipped with an afterburner, and that the Agency intends to issue a technical correction to the incinerator definition to address the error.

11. When Comparing Levels of Nonmetal Constituents in Residue to the Health-Based Limits for the Bevill Exclusion, the Levels Cannot Exceed the Health-Based Limits or the Level of Detection, Whichever Is Higher

Section 266.112 of the BIF rule prescribes requirements for determining whether residues from certain devices retain the Bevill exclusion. See 56 FR 7196–7200 (Feb. 21, 1991). Paragraph (b)(2)(i) of that section provides for a comparison of nonmetal constituents in the waste-derived residue to health-based limits established in the rule (see appendix VII, part 266) in determining whether the residue would retain the Bevill exclusion. This paragraph also indicates that if a health-based limit for a constituent was not included in appendix VII, then a default limit of 0.002 micrograms per kilogram or the level of detection, whichever is higher must be used. A number of questions have been raised to the Agency as to how an owner or operator is to make this determination if a health-based level is identified in appendix VII but the analytical detection level for that constituent(s) exceeds the health-based level.

As indicated above, the Agency addressed this issue for those constituents for which a health-based limit was not identified in appendix VII, part 266 (i.e., those constituents subject to the default limit of 0.002 micrograms per kilogram). In these circumstances, the owner or operator had to meet either a level of 0.002 micrograms per kilogram or the level of detection, whichever is higher. The Agency took this approach because of concern that the level of analytical detection for nonmetal constituents in kiln dust may be higher than the default limit of 0.002 micrograms per kilogram. In these situations, the owner or operator could not document compliance with the 0.002 micrograms per kilogram limit even when using the SW–846 analytical procedure providing the lowest level of detection.

For the same reason, the Agency also intended to cap the health-based limit by the level of detection for a constituent(s) for which a health-based limit (i.e., other than the default limit) is established in appendix VII, part 266. However, the rule inadvertently does not include that language. To clarify this provision, we are today modifying the rule to require that, for purposes of complying with paragraph (b)(2)(i), the concentration of each nonmetal constituent in the waste-derived residue cannot exceed the health-based limit established in appendix VII, part 266, or the level of detection, whichever is higher.

12. The Applicability of Part 266 Is Clarified

In the Technical Amendments to the final BIF rule published at 56 FR 42513 (Aug. 27, 1991), EPA amended § 266.100 (Applicability) to add paragraph (f) that exempted precious metal recovery furnaces from the BIF rule. The Agency also made a conforming revision to paragraph (a) of that section to add "and (f)" in the first sentence. The Agency subsequently made other changes to § 266.100 and published those changes at 56 FR 43877 (Sept. 5, 1991). In the September 5 notice, the Agency inadvertently neglected to include the earlier amendment by which "and (f)" was added to the first sentence of § 266.100. To correct this omission, we are reissuing in today's notice the amendment to paragraph (a) made on August 27.

13. Conforming Revisions are Made to the Applicability Sections of Parts 264 and 265

The BIF rule, which is codified as subpart H, part 266, replaced regulations for burning hazardous waste for energy recovery that were codified in subpart D, part 266. When the BIF rule was promulgated, the Agency inadvertently did not make conforming revisions to the applicability sections of parts 264 and 265. Consequently, the Agency is today revising §§ 264.1(g)(2) and 265.1(c)(6) (which exempt facilities managing recyclable materials except to the extent that requirements in those parts are referred to in subparts to part 266) to delete reference to (now reserved) subpart D, part 266, and to reference subpart H, part 266.

14. A Conforming Revision Is Made to the Rulemaking Petitions Provision of Part 260

When part 266 was established, the Agency inadvertently did not make a conforming revision to § 260.20(a) to allow rulemaking petitions to be submitted to the Administrator to modify or revoke any provisions of part 266. Section 260.20(a) already allows rulemaking petitions to parts 260 through 265 and 268. Accordingly, § 260.20(a) is amended today to also refer to part 266.

B. Technical Corrections

On July 17, 1992, and August 27, 1991, EPA published several technical corrections and amendments to the February 21 final rule (see 56 FR 32688 and 42504). Today's notice corrects several errors published in those notices.

C. Immediate Effective Date

EPA has determined to make today's action effective immediately. The Agency believes that the corrections being made in this notice are either interpretations of existing regulations which do not require prior notice and opportunity for comment (corrections 1, 3, and 11), or are technical corrections of obvious errors in the rule (for example, corrections of regulatory language that is inconsistent with the preamble or with otherwise clearly indicated Agency intent) for which comment is unnecessary (within the meaning of 5 U.S.C. 553(b)(3)(B)) (the remaining corrections).

List of Subjects

40 CFR Part 260

Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Energy, Hazardous waste, Petroleum, Recycling, Reporting and recordkeeping requirements.

Dated: August 11, 1992.

Don R. Clay,

Assistant Administrator for Solid Waste and Emergency Response.

For the reasons set out in the preamble, 40 CFR parts 260, 261, 264, 265, and 266 are amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

I. In part 260:

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. In § 260.10, the definitions for "Infrared incinerator" and "Plasma arc incinerator" are revised to read as follows:

§ 260.10 Definitions.

* * * * *

Infrared incinerator means any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

* * * * *

Plasma arc incinerator means any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

* * * * *

3. In § 260.20, the first sentence of paragraph (a) is revised to read as follows:

§ 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provision in parts 260 through 266 and 268 of this chapter. * * *

* * * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

II. In part 261:

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. Section 261.2 is amended by revising paragraph (e)(2)(iv) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(e) * * *

(2) * * *

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

III. In part 264:

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

2. In § 264.1, paragraph (g)(2) is revised to read as follows:

§ 264.1 Purpose, scope, and applicability.

* * * * *

(g) * * *

(1) * * *

(2) The owner or operator of a facility managing recyclable materials described in § 261.6(a) (2) and (3) of this chapter (except to the extent that requirements of this part are referred to in subparts C, F, G, or H of part 266 of this chapter).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

IV. In part 265:

1. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

2. In § 265.1, paragraph (c)(6) is revised to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(6) The owner and operator of a facility managing recyclable materials described in § 261.6(a) (2) and (3) of this chapter (except to the extent that requirements of this part are referred to in subparts C, F, G, or H of part 266 of this chapter).

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

V. In part 266:

1. The authority citation for part 266 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6924, and 6934).

2. In § 266.100, paragraph (a) is amended by revising the first sentence to read as follows, and paragraph (f) introductory text is amended by revising, "§ 261.111" to read "§ 266.111".

§ 266.100 Applicability.

(a) The regulations of this subpart apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in § 260.10 of this chapter) irrespective of the purpose of burning or processing, except as provided by paragraphs (b), (c), (d), and (f) of this section. * * *

* * * * * *

3. In § 266.101, the first sentence of paragraph (c)(1), and paragraph (c)(2) are revised to read as follows:

§ 266.101 Management prior to burning.

* * * * * *

(c) *Storage Facilities.* (1) Owners and operators of facilities that store hazardous waste that is burned in a boiler or industrial furnace are subject to the applicable provisions of parts 264, 265, and 270 of this chapter, except as provided by paragraph (c)(2) of this section. * * *

(2) Owners and operators of facilities that burn, in an onsite boiler or industrial furnace exempt from regulation under the small quantity burner provisions of § 266.108, hazardous waste that they generate are exempt from the regulations of parts 264, 265, and 270 of this chapter applicable to storage units for those storage units that store mixtures of hazardous waste and the primary fuel to the boiler or industrial furnace in tanks that feed the fuel mixture directly to the burner. Storage of hazardous waste prior to mixing with the primary fuel is subject to regulation as prescribed in paragraph (c)(1) of this section.

4. Section 266.103 is amended by revising paragraphs (b)(2)(ii) introductory text and (iii), (b)(3)(ii)(B), (b)(3)(v), (c)(1) introductory text, (c)(1)(ii) (A) and (C), (c)(1)(iii), (c)(1)(vi), (c)(5), and (c)(7)(ii)(B) to read as follows:

§ 266.103 Interim status standards for burners.

(b) * * *

(2) * * *

(ii) Except for facilities complying with the Tier I or Adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by §§ 266.106 (b) or (e) and 266.107 (b)(1) or (e), respectively, the estimated uncontrolled (at the inlet to the air pollution control system) emissions of particulate matter, each metal controlled by § 266.106, and hydrogen chloride and chlorine, and the following information to support such determinations:

* * * * *

(iii) For facilities complying with the Tier I or Adjusted Tier I feed rate screening limits for metals or total chlorine and chloride provided by §§ 266.106 (b) or (e) and 266.107 (b)(1) or (e), the feed rate (lb/hr) of total chloride and chlorine, antimony, arsenic, barium, beryllium, cadmium, chromium, lead, mercury, silver, and thallium in each feed stream (hazardous waste, other fuels, industrial furnace feedstocks).

* * * * *

(3) * * *

(ii) * * *

(B) Total hazardous waste feed, unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106 (b) or (e); and

* * * * *

(v) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or Adjusted Tier I feed rate screening limits for chlorine under § 266.107 (b)(1) or (e) and for all metals under § 266.106 (b) or (e), and the uncontrolled particulate emissions do not exceed the standard under § 266.105.

* * * * *

(c) * * *

(1) *Limits on operating conditions.* The owner or operator shall establish limits on the following parameters based on operations during the compliance test (under procedures prescribed in paragraph (c)(4)(iv) of this section) or as otherwise specified and include these limits with the certification of compliance. The boiler or industrial furnace must be operated in accordance with these operating limits and the applicable emissions standards of §§ 266.104 (b) through (e), 266.105, 266.106, 266.107, and 266.103(a)(5)(I)(D) at all times when there is hazardous waste in the unit.

* * * * *

(ii) * * *

(A) Total feedstreams, except that:

(*1*) Facilities that comply with Tier I or Adjusted Tier I metals feed rate screening limits may set their operating limits at the metals feed rate screening limits determined under § 266.106 (b) or (e); and

(*2*) Industrial furnaces that must comply with the alternative metals implementation approach under paragraph (c)(3)(ii) of this section must specify limits on the concentration of each metal in the collected particulate matter in lieu of feed rate limits for total feedstreams;

(B) * * *

(C) Total pumpable hazardous waste feed (unless complying with the Tier I or Adjusted Tier I metals feed rate screening limits under § 266.106 (b) or (e);

(iii) Total feed rate of chlorine and chloride in total feed streams, except that facilities that comply with Tier I or Adjusted Tier I feed rate screening limits may set their operating limits at the total chlorine and chloride feed rate screening limits determined under § 266.107 (b)(1) or (e).

* * * * *

(vi) Maximum production rate of the device in appropriate units when producing normal product, unless complying with the Tier I or Adjusted Tier I feed rate screening limits for chlorine under § 266.107 (b)(1) or (e) and for all metals under § 266.106 (b) or (e), and the uncontrolled particulate emissions do not exceed the standard under § 266.105.

* * * * *

(5) *Special requirements for HC monitoring systems.* When an owner or operator is required to comply with the hydrocarbon (HC) controls provided by § 266.104(c) or paragraph (a)(5)(i)(D) of this section, a conditioned gas monitoring system may be used in conformance with specifications provided in appendix IX of this part provided that the owner or operator submits a certification of compliance without using extensions of time provided by paragraph (c)(7) of this section. However, owners and operators of facilities electing to comply with the alternative hydrocarbon provision of § 266.104(f) and requesting a time extension under § 266.103(c)(7)(ii)(B) may establish the baseline HC level and comply with the interim HC limit established by the time extension using a conditioned gas monitoring system if the Director determines that the owner or operator has demonstrated that they have made a good faith effort to operate a heated monitoring system but found it to be impracticable.

* * * * *

(7) * * *

(ii) * * *

(B) When an owner or operator requests an extension of time to enable the facility to comply with the alternative hydrocarbon provisions of § 266.104(f) and obtain a RCRA operating permit because the facility cannot meet the HC limit of § 266.104(c) of this chapter:

* * * * *

5. Section 266.104 is amended by revising paragraph (f)(1) to read as follows:

§ 266.104 Standards to control organic emissions.

* * * * *

(f) * * *

(1) When the baseline HC (and CO) level is determined, the owner or operator must demonstrate that the facility is designed and operated to minimize hydrocarbon emissions from fuels and raw materials and that the facility is producing normal products under normal operating conditions feeding normal feedstocks and fuels. The baseline HC level is defined as the average over all valid test runs of the highest hourly rolling average HC value for each run when the facility does not burn hazardous waste, adjusted as appropriate to consider the variability of hydrocarbon levels under good combustion operating conditions. The baseline CO level is determined based on the test runs used to establish the baseline HC level and is defined as the average over all test runs of the highest hourly rolling average CO value for each run. More than one baseline level must be determined if the facility operates under different modes that may generate significantly lower HC (and CO) levels;

* * * * *

6. Section 266.106 is amended by revising paragraphs (b)(7) introductory text, (d)(1), (d)(5), and by revising the equation in paragraph (d)(3) to read as follows:

§ 266.106 Standards to control metals emissions.

* * * * *

(b) * * *

(7) *Criteria for facilities not eligible for screening limits.* If any criteria below are met, the Tier I and Tier II screening limits do not apply. Owners and operators of such facilities must comply with either the Tier III standards provided by paragraph (d) of this section or with the adjusted Tier I feed rate screening limits provided by paragraph (e) of this section.

* * * * *

(d) *Tier III and Adjusted Tier I site-specific risk assessment.* The requirements of this paragraph apply to facilities complying with either the Tier III or Adjusted Tier I controls, except where specified otherwise.

(1) *General.* Conformance with the Tier III metals controls must be demonstrated by emissions testing to determine the emission rate for each metal. In addition, conformance with either the Tier III or Adjusted Tier I metals controls must be demonstrated by air dispersion modeling to predict the maximum annual average off-site ground level concentration for each

dispersion modeling to predict the maximum annual average off-site ground level concentration for each metal, and a demonstration that acceptable ambient levels are not exceeded.

* * * * *

(3) * * *

$$\sum_{i=1}^{n} \frac{\text{Predicted Ambient Concentration}_{(i)}}{\text{Risk-Specific Dose}_{(i)}} < 1.0$$

* * * * *

(5) *Multiple stacks.* Owners and operators of facilities with more than one on-site stack from a boiler, industrial furnace, incinerator, or other thermal treatment unit subject to controls on metals emissions under a RCRA operating permit or interim status controls must conduct emissions testing (except that facilities complying with Adjusted Tier I controls need not conduct emissions testing) and dispersion modeling to demonstrate that the aggregate emissions from all such on-site stacks do not result in an exceedance of the acceptable ambient levels.

* * * * * *

7. Section 266.107 is amended by revising paragraph (a) to read as follows:

§ 266.107 Standards to control hydrogen chloride (HCl) and chlorine gas (Cl_2) emissions.

(a) General. The owner or operator must comply with the hydrogen chloride (HCl) and chlorine (Cl_2) controls provided by paragraph (b), (c), or (e) of this section.

* * * * *

8. Section 266.108(c) is amended by revising the equation to read as follows:

§ 266.108 Small quantity on-site burner exemption.

* * * * *

(c) * * *

$$\sum_{i=1}^{n} \frac{\text{Actual Quantity Burned}_{(i)}}{\text{Allowable Quantity Burned}_{(i)}} < 1.0$$

* * * * *

9. Section 266.112 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 266.112 Regulation of residues.

* * * * *

(b) * * *

(2) * * *

(i) *Nonmetal constituents.* The concentration of each nonmetal toxic constituent of concern (specified in paragraph (b)(1) of this section) in the waste-derived residue must not exceed the health-based level specified in appendix VII of this part, or the level of detection (using analytical procedures prescribed in SW–846), whichever is higher. If a health-based limit for a constituent of concern is not listed in appendix VII of this part, then a limit of 0.002 micrograms per kilogram or the level of detection (using analytical procedures prescribed in SW–846), whichever is higher, shall be used; and

* * * * * *

Appendix IX [Amended]

10. In appendix IX, § 5.0, Hazardous Waste Combustion Air Quality Screening Procedure, Table 5.0–3.—Clarification of Land Use Types, footnote 1, revise "EPA–450/2–78–027" to read "EPA–450/2–78–027R".

11. In appendix IX, § 5.0, Hazardous Waste Combustion Air Quality Screening Procedure, in the title to Table 5.0–4, revise "ISCT" to read "ISCST", revise "PREDICATED" to read "PREDICTED", and revise "8G/M ^{3}" to read "g/m^3".

12. In appendix IX, § 5.0, Hazardous Waste Combustion Air Quality Screening Procedure, in the title to Table 5.0–5, revise "ISCT" to read "ISCST", revise "PREDICATED" to read "PREDICTED", and revise "8G/M ^{3}" to read "g/m^3".

13. In appendix IX, § 6.0—Simplified Land Use Classification Procedure for Compliance with Tier I and Tier II Limits, Subsection 6.1 Introduction: second paragraph, add a footnote "1" after "(EPA 1986)"; in footnote 1, revise "EPA–450/2–78–027" to read "EPA–450/2–78–027R"; and in the third paragraph, revise "Auer 3978" to read "Auer 1978".

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federal register

Tuesday
August 25, 1992

Part IV

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 91N-0505]

RIN 0905-AA06

Status of Certain Additional Over-the Counter Drug Category II and III Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking stating that certain ingredients in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. FDA is issuing this notice of proposed rulemaking after considering the reports and recommendations of various OTC advisory review panels and public comments on the agency's proposed regulations, which were issued in the form of a tentative final monograph (proposed rule). Based on the absence of substantive comments in opposition to the agency's proposed nonmonograph status for these ingredients, as well as the failure of interested parties to submit new data or information to FDA pursuant to 21 CFR 330.10(a)(7)(iii), FDA has determined that the presence of these ingredients in an OTC drug product would result in that drug product not being generally recognized as safe and effective or would result in misbranding. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments, objections, or requests for oral hearing on the proposal before the Commissioner of Food and Drugs by October 26, 1992. Written comments on the agency's economic impact determination by October 26, 1992.

ADDRESSES: Written comments, objections, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 7, 1990 (55 FR 46914), FDA published under § 330.10(a)(7)(ii) (21 CFR 330.10(a)(7)(ii)), a final rule on the status of certain OTC drug Category II and III active ingredients. That final rule declared as not generally recognized as safe and effective certain Category II and Category III active ingredients for which, under the agency's OTC drug review, the periods for submission of comments and new data following the publication of a notice of proposed rulemaking had closed and for which no significant comments or new data to upgrade the status of these ingredients had been submitted. In each instance, a final rule for the class of ingredients involved had not been published to date.

At that time, there were other OTC drug review rulemakings for which the period for submission of comments and/or new data was still pending. Those periods have now closed, and there are a number of active ingredients for which no significant comments or new data were submitted. In each instance, a final rule for the class of ingredients involved has not been published to date. This proposal addresses the Category II and Category III active ingredients in those classes of ingredients, as discussed below.

This proposal also addresses a number of active ingredients that were considered in the rulemaking for OTC digestive aid drug products. In the advance notice of proposed rulemaking for those drug products (47 FR 454, January 5, 1982), a number of ingredients are listed for which the Advisory Review Panel on OTC Miscellaneous Internal Drug Products was neither able to locate nor was aware of any significant body of data demonstrating safety and effectiveness. These ingredients were not included in the final rule discussed above that was published on November 7, 1990. No comments or data have been submitted for any of these ingredients. Based on this lack of data, the agency is proposing these ingredients to be nonmonograph for safety and effectiveness and is adding them to the list already included in 21 CFR 310.545.

Under the OTC drug review administrative procedures (§ 330.10(a)(7)(ii)), the Commissioner of Food and Drugs (the Commissioner) may publish a separate tentative order covering active ingredients that have been reviewed and may propose that these ingredients be excluded from an OTC drug monograph on the basis of the Commissioner's determination that they would result in a drug product not being generally recognized as safe and effective or would result in misbranding. This order may include active ingredients for which no substantial comments in opposition to the advisory panel's proposed classification and no new data and information were received pursuant to § 330.10(a)(6)(iv) (21 CFR 330.10(a)(6)(iv)). While § 330.10(a)(7)(ii) authorizes the publication of a separate tentative order immediately following the close of the comment period and new data period for an advance notice of proposed rulemaking, the Commissioner has waited in the case of these ingredients until after proposed rulemakings were published and the periods for submission of comments and new data have ended, to allow for the fullest possible opportunity for public comment and receipt of new data in support of upgrading the status of these ingredients.

As mentioned, no substantive comments or new date were submitted to support reclassification of any of these ingredients to monograph status. Therefore, before a final rule on each respective drug category is published, the Commissioner is proposing that these ingredients be found not generally recognized as safe and effective and that any OTC drug product containing any of these ingredients not be allowed to continue to be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. FDA has elected to act on these ingredients in advance of finalization of other monograph conditions in order to expedite completion of the OTC drug review. Manufacturers are encouraged to comply voluntarily at the earliest possible date.

Table I below lists the titles and docket numbers of the specific rulemakings containing active ingredients that are addressed in this document, together with the publication dates of the advance notice of proposed rulemaking (ANPRM) and the notice of proposed rulemaking (NPRM), as well as the closing dates for comments and submission of new data for each rulemaking. This proposal does not constitute a reopening of the administrative record or an opportunity to submit new data to any of the specified rulemakings. A citizen petition to reopen the administrative record of any specific rulemaking, whether or not such petition is accompanied by new data, will not be accepted as a comment to this rulemaking. Should an interested person submit a comment indicating that substantive comments or new data were previously submitted to the administrative record for any of the specified rulemakings, the agency will review the record for that rulemaking and make a determination whether the affected ingredient shall continue to be evaluated under that specified rulemaking or be included in the final rule that will issue pursuant to this proposed rule.

FDA advises that the active ingredients discussed in this document (see Table II below) will not be included in the relevant final monographs because they have not been shown to be generally recognized as safe and effective for their intended use. The agency further advises that these ingredients should be eliminated from OTC drug products 6 months after the date of publication in the **Federal Register** of a final rule in this proceeding regarding their status, regardless of whether further testing is undertaken to justify future use, and regardless of whether the relevant OTC drug monographs have been finalized at that time. The OTC drug review administrative procedures provide that any new data and information submitted after the administrative record has closed following publication of a tentative final monograph (notice of proposed rulemaking), but prior to the establishment of a final monograph, will be considered by the Commissioner only after a final monograph has been published in the **Federal Register**, unless the Commissioner finds that good cause has been shown that warrants earlier consideration. (See 21 CFR 330.10(a)(7)(v).)

The agency points out that publication of a final rule under this proceeding does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of a new drug application (NDA) that may provide for prescription or OTC marketing status. (See 21 CFR part 314.) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend or establish a monograph, as appropriate. (See 21 CFR 10.30.)

TABLE I.—OTC DRUG RULEMAKINGS COVERED BY THIS NOTICE

Rulemaking and action	Publication date	Comment closing date	New data closing date
(1) Digestive Aid Drug Products: (Docket No. 81N-0106)			
ANPRM	January 5, 1982	July 5, 1982	Not Applicable (N/A).
NPRM	January 29, 1988	March 29, 1988	March 29, 1989.
(2) Topical Antifungal Drug Products:			
(i) Topical Antifungal Drug Products: (Docket No. 80N-0478)			
ANPRM	March 23, 1982	July 21, 1982	N/A.
NPRM	December 12, 1989	March 12, 1990	February 12, 1991.
(ii) Diaper Rash Drug Products: (Docket No. 80N-476D)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	June 20, 1990	December 17, 1990	August 20, 1991.
(3) External Analgesic Drug Products:			
(i) Diaper Rash Drug Products: (Docket No. 78N-301D)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	June 20, 1990	December 17, 1990	August 20, 1991.
(ii) Fever Blister and Cold Sore Treatment Drug Products: (Docket No. 78N-301F)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	January 31, 1990	May 31, 1990	April 1, 1991.
(iii) Insect Bite and Sting Drug Products: (Docket No. 78N-301P)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	October 3, 1989	January 31, 1990	December 3, 1990.
(iv) Poison Ivy, Poison Oak, and Poison Sumac Drug Products: (Docket No. 78N-301P)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	October 3, 1989	January 31, 1990	December 3, 1990.
(4) Internal Analgesic, Antipyretic Antirheumatic Drug Products: (Docket No. 77N-0094)			
ANPRM	July 8, 1977	February 6, 1978	N/A.
NPRM	November 16, 1988	May 16, 1989	January 16, 1990.
(5) Orally Administered Menstrual Drug Products: (Docket No. 82N-0165)			
ANPRM	December 7, 1982	April 6, 1983	N/A.
NPRM	November 16, 1988	March 16, 1989	January 16, 1990.
(6) Pediculicide Drug Products: (Docket No. 81N-0201)			
ANPRM	June 29, 1982	October 27, 1982	N/A.
NPRM	April 3, 1989	June 2, 1989	June 4, 1990.
(7) Skin Protectant Drug Products:			
(i) Astringent Drug Products: (Docket No. 78N-021A)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	April 3, 1989	June 2, 1989	June 4, 1990.
(ii) Diaper Rash Drug Products: (Docket No. 78N-021D)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	June 20, 1990	December 17, 1990	August 20, 1991.
(iii) Fever Blister and Cold Sore Treatment Drug Products: (Docket No. 78N-021F)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	January 31, 1990	May 31, 1990	April 1, 1991.
(iv) Insect Bite and Sting Drug Products: (Docket No. 78N-021P)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	October 3, 1989	January 31, 1990	December 3, 1990.
(v) Poison Ivy, Poison Oak, and Poison Sumac Drug Products: (Docket No. 78N-021P)			
ANPRM	September 7, 1982	January 5, 1983	N/A.
NPRM	October 3, 1989	January 31, 1990	December 3, 1990.

I. OTC Drug Category II and III Ingredients

Based on the criteria discussed above, FDA is proposing that the following ingredients are not generally recognized as safe and effective and are misbranded when labeled as OTC drugs for the following uses:

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
(1) Digestive aid drug products:		
Alcohol	II	II
Aluminum hydroxide	II	III
Amylase	II	II
Anise seed	II	II
Aromatic powder	II	II
Asafetida	II	II
Aspergillus oryza enzymes	II	II
Bacillus acidophilus	II	II
Bean	II	II
Belladonna alkaloids	II	II
Belladonna leaves, powdered extract.	II	II
Betaine hydrochloride	II	II
Bismuth subcarbonate	II	II
Bismuth subgallate	II	II
Black radish powder	II	II
Buckthorn	II	II
Calcium gluconate	II	II
Capsicum	II	II
Capsicum, fluid extract of	II	II
Carbon	II	II
Cascara sagrada extract	II	II
Catechu, tincture	II	II
Catnip	II	II
Chamomile flowers	II	II
Charcoal, wood	II	II
Chloroform	II	II
Cinnamon oil	II	II
Cinnamon tincture	II	II
Citrus pectin	II	II
Cnicus benedictus (blessed thistle).	II	II
Diastase	II	II
Diastase malt	II	II
Dog grass	II	II
Elecampane	II	II
Ether	II	II
Fennel acid	II	II
Galega	II	II
Ginger	II	II
Glycine	II	II
Hectorite	II	II
Horsetail	II	II
Huckleberry	II	II
Hydrastis canadensis (golden seal).	II	II
Hydrastis fluid extract	II	II
Hydrochloric acid	II	II
Iodine	II	II
Iron ox bile	II	II
Johnswort	II	II
Juniper	II	II
Kaolin, colloidal	II	II
Knotgrass	II	II
Lactic acid	II	II
Lactose	II	II
Lavender compound, tincture of.	II	II
Linden	II	II
Lipase	II	II
Lysine hydrochloride	II	II
Mannitol	II	II
Mycozyme	II	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Myrrh, fluid extract of	II	II
Nettle	II	II
Nickel-pectin	II	II
Nux vomica extract	II	II
Orthophosphoric acid	II	II
Papaya, natural	II	II
Pectin	II	II
Peppermint	II	II
Peppermint spirit	II	II
Phenacetin	II	II
Potassium bicarbonate	II	II
Potassium carbonate	II	II
Protease	II	II
Prolase	II	II
Rhubarb fluid extract	II	II
Senna	II	II
Sodium chloride	II	II
Sodium salicylate	II	II
Stem bromelain	II	II
Strawberry	II	II
Strychnine	II	II
Tannic acid	II	II
Trillium	II	II
Woodruff	II	
(2) Topical antifungal drug products.—(i) Topical antifungal drug products:		
Alcloxa	III	III
Alum, potassium	III	III
Aluminum sulfate	III	III
Amyltricresols, secondary	III	III
Basic fuchsin	III	III
Benzethonium chloride	III	III
Benzoic acid	III	III
Benzoxiquine	III	III
Boric acid	III	III
Camphor	II	II
Candicidin	III	III
Chlorothymol	III	III
Coal tar	II	II
Dichlorophen	III	III
Menthol	II	II
Methylparaben	III	III
Oxyquinoline	III	III
Oxyquinoline sulfate	III	III
Phenol	II	III
Phenolate sodium	II	III
Phenyl salicylate	III	III
Propionic acid	III	III
Propylparaben	III	III
Resorcinol	II	II
Salicylic acid	III	III
Sodium borate	III	III
Sodium caprylate	III	III
Sodium propionate	III	III
Sulfur	III	III
Tannic acid	II	II
Thymol	II	II
Tolindate	III	III
Triacetin	III	III
Zinc caprylate	III	III
Zinc propionate	III	III
(ii) Diaper rash drug products-Any ingredient	N/A	II
(3) External analgesic drug products.—(i) Diaper rash drug products: Any ingredient	N/A	II
(ii) Fever blister and cold sore treatment drug products:		
Allyl isothiocyanate	N/A	III
Aspirin	N/A	III
Bismuth sodium tartrate	N/A	III
Camphor	N/A	III
Capsaicin	N/A	III
Capsicum	N/A	III

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Capsicum oleoresin	N/A	III
Chloral hydrate	N/A	II
Chlorobutanol	N/A	III
Cyclomethycaine sulfate	N/A	III
Eucalyptus oil	N/A	III
Eugenol	N/A	III
Glycol salicylate	N/A	III
Hexylresorcinol	N/A	III
Histamine dihydrochloride	N/A	III
Menthol	N/A	III
Methapyrilene hydrochloride	N/A	II
Methyl nicotinate	N/A	III
Methyl salicylate	N/A	III
Pectin	N/A	III
Salicylamide	N/A	III
Strong ammonia solution	N/A	III
Tannic acid	N/A	III
Thymol	N/A	III
Tripelennamine hydrochloride.	N/A	III
Trolamine salicylate	N/A	III
Turpentine oil	N/A	III
Zinc sulfate	N/A	III
(iii) Insect bite and sting drug products:		
Alcohol	II	II
Alcohol, ethoxylated alkyl	II	II
Benzalkonium chloride	II	II
Calamine	II	II
Ergot fluidextract	II	II
Ferric chloride	II	II
Panthenol	N/A	III
Peppermint oil	II	II
Pyrilamine maleate	II	II
Sodium borate	II	II
Trolamine salicylate	III	III
Turpentine oil	II	II
Zinc oxide	II	II
Zirconium oxide	II	II
(iv) Poison ivy, poison oak, and poison sumac drug products:		
Alcohol	N/A	II
Aspirin	N/A	III
Benzethonium chloride	N/A	II
Benzocaine (0.5 to 1.25 percent).	N/A	III
Bithionol	N/A	II
Calamine	N/A	II
Cetalkonium chloride	N/A	II
Chloral hydrate	N/A	II
Chlorobutanol	N/A	III
Chlorpheniramine maleate	N/A	II
Creosote, beechwood	N/A	II
Cyclomethycaine sulfate	N/A	III
Dexpanthenol	N/A	III
Diperodon hydrochloride	N/A	II
Eucalyptus oil	N/A	III
Eugenol	N/A	III
Glycerin	N/A	II
Glycol salicylate	N/A	III
Hectorite	N/A	II
Hexylresorcinol	N/A	II
Hydrogen peroxide	N/A	II
Impatiens biflora tincture	N/A	II
Iron oxide	N/A	II
Isopropyl alcohol	N/A	II
Lanolin	N/A	II
Lead acetate	N/A	II
Merbromin	N/A	II
Mercuric chloride	N/A	II
Methapyrilene hydrochloride	N/A	II
Panthenol	N/A	III
Parethoxycaine hydrochloride.	N/A	II
Phenyltoloxamine dihydrogen citrate.	N/A	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Povidone-vinylacetate co-polymers.	N/A	II
Pyrilamine maleate	N/A	II
Salicylamide	N/A	III
Salicylic acid	N/A	II
Simethicone	N/A	II
Sulfur	N/A	II
Tannic acid	N/A	III
Thymol	N/A	III
Trolamine	N/A	II
Turpentine oil	N/A	II
Zirconium oxide	N/A	II
Zyloxin	N/A	II
(4) Internal analgesic drug products:		
Aminobenzoic acid [1]	II	II
Antipyrine	III	III
Aspirin, aluminum	III	III
Calcium salicylate	N/A	II
Codeine	II	II
Codeine phosphate	II	N/A
Codeine sulfate	II	N/A
Iodoantipyrine	II	II
Lysine aspirin	N/A	II
Methapyrilene fumarate [1]	III	II
Phenacetin	II	II
Pheniramine maleate [1]	III	III
Pyrilamine maleate [1]	III	III
Quinine	II	II
Salsalate	III	III
Sodium aminobenzoate [1]	II	II
(5) Orally administered menstrual drug products:		
Alcohol	II	II
Alfalfa leaves	II	II
Aloes	II	II
Asclepias tuberosa	II	II
Asparagus	II	II
Barosma	II	II
Bearberry (extract of uva ursi).	II	II
Bearberry fluidextract (extract of bearberry).	II	II
Blessed thistle (cnicus benedictus).	II	II
Buchu powdered extract (extract of buchu).	II	II
Calcium lactate	II	II
Calcium pantothenate	II	II
Capsicum oleoresin	II	II
Cascara fluidextract, aromatic (extract of cascara).	II	II
Chlorprophenpyridamine maleate.	II	II
Cimicifuga racemosa	II	II
Codeine	II	II
Collinsonia (extract stone root).	II	II
Corn silk	II	II
Couch grass	II	II
Dog grass extract	II	II
Ethyl nitrite	II	II
Ferric chloride	II	II
Ferrous sulfate	II	II
Gentiana lutea (gentian)	II	II
Glycyrrhiza glabra (licorice root).	II	II
Homatropine methylbromide	II	II
Hydrangea, powdered extract (extract of hydrangea).	II	II
Hydrastis canadensis (golden seal).	II	II
Hyoscyamine sulfate	II	II
Juniper oil (oil of juniper)	II	II
Magnesium sulfate	II	II
Methapyrilene hydrochloride	II	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Methenamine	II	II
Methylene blue	II	II
Natural estrogenic hormone	II	II
Niacinamide	II	II
Nutmeg oil (oil of nutmeg)	II	II
Oil of erigeron	II	II
Parsley	II	II
Peppermint spirit	II	II
Papsin, essence	II	II
Phenacetin	II	II
Phenindamine tartrate	II	II
Phenyl salicylate	II	II
Piscidia erythrina	II	II
Pipsissewa	II	II
Potassium acetate	II	II
Potassium nitrate	II	II
Riboflavin	II	II
Saw palmetto	II	II
Senecio aureus	II	II
Sodium benzoate	II	II
Sodium nitrate	II	II
Sucrose	II	II
Sulferated oils of turpentine	II	II
Taraxacum officinale	II	II
Theobromine sodium salicylate.	III	III
Theophylline	III	III
Thiamine hydrochloride	II	II
Triticum	II	II
Turpentine, venice (venice turpentine).	II	II
Urea	II	II
(6) Pediculicide drug products:		
Benzocaine	II	II
Benzyl alcohol	II	II
Benzyl benzoate	II	II
Chlorophenothane (dichlorodiphenyl trichloroethane).	II	II
Coconut oil soap, aqueous	II	II
Copper oleate	II	II
Docusate sodium	II	II
Formic acid [2]	N/A	N/A
Isobornyl thiocyanoacetate	II	II
Picrotoxin	II	II
Propylene glycol	II	II
Sabadilla alkaloids	II	II
Sulfur, sublimed	II	II
Thiocyanoacetate	II	II
(7) Skin protectant drug products.—(i) Astringent drug products:		
Acetone	II	II
Alcohol	II	II
Alum, ammonium	II	II
Alum, potassium	II	II
Aluminum chlorhydroxy complex.	II	II
Aromatics	II	II
Benzalkonium chloride	II	II
Benzethonium chloride	II	II
Benzocaine	II	II
Benzoic acid	II	II
Boric acid	II	II
Calcium acetate	II	II
Camphor gum	II	II
Clove oil	II	II
Colloidal oatmeal	II	II
Cresol	II	II
Cupric sulfate	II	II
Eucalyptus oil	II	II
Eugenol	II	II
Honey	II	II
Isopropyl alcohol	II	II
Menthol	II	II
Methyl salicylate	II	II
Oxyquinoline sulfate	II	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
P-t-butyl-m-cresol	II	II
Peppermint oil	II	II
Phenol	II	II
Polyoxyethylene laurate	II	II
Potassium ferrocyanide	II	II
Sage oil	II	II
Silver nitrate	II	II
Sodium borate	II	II
Sodium diacetate	II	II
Talc	II	II
Tannic acid glycerite	II	II
Thymol	II	II
Topical starch	II	II
Zinc chloride	II	II
Zinc oxide	II	II
Zinc phenolsulfonate	II	II
Zinc stearate	II	II
Zinc sulfate	II	II
(ii) Diaper rash drug products:		
Aluminum hydroxide	N/A	III
Cocoa butter	N/A	III
Cysteine hydrochloride	N/A	III
Glycerin	N/A	III
Protein hydrolysate	N/A	III
Racemethionine	N/A	III
Sulfur	N/A	II
Tannic acid	N/A	II
Zinc acetate	N/A	III
Zinc carbonate	N/A	III
(iii) Fever blister and cold sore treatment drug products:		
Bismuth subnitrate	N/A	II
Boric acid	N/A	II
Pyridoxine hydrochloride	N/A	II
Sulfur	N/A	II
Tannic acid	N/A	III
Topical starch	N/A	III
Trolamine	N/A	III
Zinc sulfate	N/A	III
(iv) Insect bite and sting drug products:		
Alcohol	II	II
Alcohol, ethoxylated alkyl	II	II
Ammonia solution, strong	II	II
Ammonium hydroxide	III	III
Benzalkonium chloride	II	II
Camphor	II	II
Ergot fluidextract	II	II
Ferric chloride	II	II
Menthol	II	II
Peppermint oil	II	II
Phenol	II	II
Pyrilamine maleate	II	II
Sodium borate	II	II
Trolamine	III	III
Turpentine oil	II	II
Zirconium oxide	II	II
(v) Poison ivy, poison oak, and poison sumac drug products:		
Alcohol	N/A	II
Anion and cation exchange resins buffered.	III	III
Benzethonium chloride	N/A	II
Benzocaine	N/A	II
Benzyl alcohol	N/A	II
Bismuth subnitrate	N/A	II
Bithionol	N/A	II
Boric acid	N/A	II
Camphor	N/A	II
Cetalkonium chloride	N/A	II
Chloral hydrate	N/A	II
Chlorpheniramine maleate	N/A	II
Creosote	N/A	II
Diperodon hydrochloride	N/A	II
Diphenhydramine hydrochloride.	N/A	II

TABLE II.—INGREDIENTS COVERED BY THIS NOTICE—Continued

Rulemaking and ingredients	Ingredient classification	
	ANPRM	NPRM
Eucalyptus oil	N/A	II
Ferric chloride	II	II
Glycerin	N/A	II
Hectorite	N/A	II
Hydrogen peroxide	N/A	II
Impatiens biflora tincture	N/A	II
Iron oxide	N/A	II
Isopropyl alcohol	N/A	II
Lanolin	N/A	II
Lead acetate	N/A	II
Lidocaine	N/A	II
Menthol	N/A	II
Merbromin	N/A	II
Mercuric chloride	N/A	II
Panthenol	N/A	II
Parethoxycaine hydrochloride.	N/A	II
Phenol	N/A	II
Phenyltoloxamine dihydrogen citrate.	N/A	II
Povidone-vinylacetate copolymers.	N/A	II
Salicylic acid	N/A	II
Simethicone	N/A	II
Tannic acid	N/A	II
Topical starch	N/A	III
Trolamine	N/A	III
Turpentine oil	N/A	II
Zirconium oxide	N/A	II
Zyloxin	N/A	II

N/A Means that the ingredient was either not classified by the Panel or was not included in the indicated (ANPRM/NPRM) document.

[1] Ingredient used as an analgesic-antipyretic adjuvant.

[2] This ingredient was not submitted to or previously classified in the OTC drug review, but has been observed in a marketed product.

II. The Agency's Tentative Conclusions on Certain OTC Drug Category II and III Ingredients

The agency has determined that no substantive comments or additional data have been submitted to the OTC drug review to support any of the ingredients listed above as being generally recognized as safe and effective for the OTC drug uses specified in Table II. Based on the agency's procedural regulations (§ 330.10(a)(7)(ii)), the agency has determined that these ingredients should be deemed not generally recognized as safe and effective for OTC use before a final monograph for each respective drug category is established. Accordingly, any drug product containing any of these ingredients and labeled for the OTC use identified above will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in a citizen petition to amend the appropriate monograph to include any of the above ingredients in OTC drug products. (See 21 CFR 10.30.) Any OTC drug product containing any of the above ingredients and labeled for the use identified above initially introduced or initially delivered for introduction into interstate commerce after the effective date of a final rule in this proceeding to remove these Category II and III ingredients from the market and that is not the subject of an approved application will be in violation of sections 502 and 505 of the act and, therefore, subject to regulatory action. Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the rule would be required to be in compliance with the rule regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

The agency has examined the economic consequences of this proposed rulemaking. The agency invited public comment in the notices of proposed rulemaking listed in Table I regarding any impact that those rulemakings would have on drug products containing the above specified OTC drug ingredients. No comments on economic impacts were received. Moreover, manufacturers of products containing these ingredients have not provided any substantive data to support their continued marketing. Accordingly, the agency concludes that there is no basis for the continued marketing of these ingredients for the indications listed in Table II. Further, in most cases, there are proposed rulemaking ingredients which manufacturers can use to reformulate affected products. In many instances, manufacturers have already reformulated their products to include monograph ingredients. As a result of this proposal, manufacturers may need to reformulate some products prior to promulgation of the applicable final monograph. However, there will be no additional costs because reformulation will be required, in any event, when the final monograph is published.

Early finalization of the nonmonograph status of the ingredients listed in this notice will benefit both consumers and manufacturers. Consumers will benefit from the early removal from the marketplace of ingredients for which safety and effectiveness have not been established. This will result in a direct economic savings to consumers. Manufacturers will benefit from being able to use alternative ingredients that have been found to be generally recognized as safe and effective without incurring additional expense of clinical testing for these ingredients. Based on the above, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

Any comments on the agency's initial determination of the economic consequences of this proposed rulemaking should be submitted by October 26, 1992. Such comments should be submitted to the Dockets Management Branch (address above) and identified with the docket number found in brackets in the heading of this document and not to the docket numbers appearing in Table I. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before October 26, 1992, submit to the Dockets Management Branch (address above) written comments, objections, or requests for oral hearing before the Commissioner on the proposed rulemaking. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before October 26, 1992. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the appropriate docket number found in brackets in the heading of this document and not the docket numbers appearing in Table I, and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announced in the **Federal Register**.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 310 be amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 376); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.545 is amended by redesignating paragraphs (a)(8) and (a)(18) as (a)(8)(i) and (a)(18)(i), respectively; by revising the heading of new paragraphs (a)(8)(i) and (a)(18)(i), (d) introductory text, and (d)(1); and by adding new (a)(8) heading and paragraphs (a)(8)(ii), (a)(10)(iv) through (a)(10)(vii), and (a)(18) heading, paragraphs (a)(18)(ii) through (a)(18)(vi), (a)(21)(i) and (a)(21)(ii), (a)(22) through (a)(24), and (d)(4) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(8) *Digestive aid drug products*—(i) *Approved as of May 7, 1991.* * * *

(ii) *Approved as of February 26, 1993.*

Alcohol
Aluminum hydroxide
Amylase
Anise seed
Aromatic powder
Asafetida
Aspergillus oryza enzymes
Bacillus acidophilus
Bean
Belladonna alkaloids
Belladonna leaves, powdered extract
Betaine hydrochloride
Bismuth subcarbonate
Bismuth subgallate
Black radish powder
Blessed thistle (cnicus benedictus)
Buckthorn
Calcium gluconate
Capsicum
Capsicum, fluid extract of
Carbon
Cascara sagrada extract
Catechu, tincture
Catnip
Chamomile flowers
Charcoal, wood
Chloroform
Cinnamon oil
Cinnamon tincture
Citrus pectin
Diastase
Diastase malt
Dog grass
Elecampane
Ether
Fennel acid
Galega
Ginger
Glycine
Golden seal (hydrastis canadensis)
Hectorite
Horsetail
Huckleberry
Hydrastis fluid extract
Hydrochloric acid
Iodine
Iron ox bile
Johnswort
Juniper
Kaolin, colloidal
Knotgrass
Lactic acid
Lactose
Lavender compound, tincture of
Linden
Lipase
Lysine hydrochloride
Mannitol
Mycozyme
Myrrh, fluid extract of
Nettle
Nickel-pectin
Nux vomica extract
Orthophosphoric acid
Papaya, natural
Pectin
Peppermint
Peppermint spirit
Phenacetin
Potassium bicarbonate
Potassium carbonate
Protease
Prolase
Rhubarb fluid extract
Senna
Sodium chloride
Sodium salicylate
Stem bromelain
Strawberry
Strychnine
Tannic acid
Trillium
Woodruff

* * * * *

(10) * * *

(iv) *Diaper rash drug products.* Any ingredient(s) labeled with claims or directions for use in the treatment and/or prevention of diaper rash.

(v) *Fever blister and cold sore treatment drug products.*

Allyl isothiocyanate
Asprin
Bismuth sodium tartrate
Camphor
Capsaicin
Capsicum oleoresin
Chloral hydrate
Chlorobutanol
Cyclomethycaine sulfate
Eucalyptus oil
Eugenol
Glycol salicylate
Hexylresorcinol
Histamine dihydrochloride
Menthol
Methapyrilene hydrochloride
Methyl nicotinate
Methyl salicylate
Pectin
Salicylamide
Strong ammonia solution
Tannic acid
Thymol
Tripelennamine hydrochloride
Trolamine salicylate
Turpentine oil
Zinc sulfate

(vi) *Insect bite and sting drug products.*

Alcohol
Alcohol, ethoxylated alkyl
Benzalkonium chloride
Calamine
Ergot fluidextract
Ferric chloride
Panthenol
Peppermint oil
Pyrilamine maleate
Sodium borate
Trolamine salicylate
Turpentine oil
Zinc oxide
Zirconium oxide

(vii) *Poison ivy, poison oak, and poison sumac drug products.*

Alcohol
Aspirin
Benzethonium chloride
Benzocaine (0.5 to 1.25 percent)
Bithionol
Calamine
Cetalkonium chloride
Chloral hydrate
Chlorobutanol
Chlorpheniramine maleate
Creosote, beechwood
Cyclomethycaine sulfate
Dexpanthenol
Diperodon hydrochloride
Eucalyptus oil
Eugenol
Glycerin
Glycol salicylate
Hectorite

Hexylrosorcinol
Hydrogen peroxide
Impatiens biflora tincture
Iron oxide
Isopropyl alcohol
Lanolin
Lead acetate
Merbromin
Mercuric chloride
Methapyrilene hydrochloride
Panthenol
Parethoxycaine hydrochloride
Phenyltoloxamine dihydrogen citrate
Povidone-vinylacetate copolymers
Pyrilamine maleateSalicylamide
Salicylic acid
Simethicone
Sulfur
Tannic acid
Thymol
Trolamine salicylate
Turpentine oil
Zirconicum oxide
Zyloxin

* * * * *

(18) *Skin protectant drug products*—(i) *Ingredients.* * * *

(ii) *Astringent drug products.*

Acetone
Alcohol
Alum, ammonium
Alum, potassium
Aluminum chlorhydroxy complex
Aromatics
Benzalkonium chloride
Benzethonium chloride
Benzocaine
Benzoic acid
Boric acid
Calcium acetate
Camphor gum
Clove oil
Colloidal oatmeal
Cresol
Cupric sulfate
Eucalyptus oil
Eugenol
Honey
Isopropyl alcohol
Menthol
Methyl salicylate
Oxyquinoline sulfate
P-t-butyl-m-cresol
Peppermint oil
Phenol
Polyoxytheylene laurate
Potassium ferrocyanide
Sage oil
Silver nitrate
Sodium borate
Sodium diacetate
Talc
Tannic acid glycerite
Thymol
Topical starch
Zinc chloride
Zinc oxide
Zinc phenolsulfonate
Zinc stearate
Zinc sulfate

(iii) *Diaper rosh drug products.*

Aluminum hydroxide
Cocoa butter
Cysteine hydrochloride
Glycerin
Protein hydrolysate
Racemethionine
Sulfur
Tannic acid
Zinc acetate
Zinc carbonate

(iv) *Fever blister and cold sore treotment drug products.*

Bismuth subnitrate
Boric acid
Pyridoxide hydrochloride
Sulfur
Tannic acid
Topical starch
Trolamine
Zinc sulfate

(v) *Insect bite and sting drug products.*

Alcohol
Alcohol, ethoxylated alkyl
Ammonia solution, strong
Ammonium hydroxide
Benzalkonium chloride
Camphor
Ergot fluidextract
Ferric chloride
Menthol
Peppermint oil
Phenol
Pyrilamine maleate
Sodium borate
Trolamine
Turpentine oil
Zirconium oxide

(vi) *Poison ivy, poison oak, and poison sumac drug products.*

Alcohol
Anion and cation exchange resins buffered
Benzethonium chloride
Benzocaine
Benzyl alcohol
Bismuth subnitrate
Bithionol
Boric acid
Camphor
Cetalkonium chloride
Chloral hydrate
Chlorpheniramine maleate
Creosote
Diperodon hydrochloride
Diphenhydramine hydrochloride
Eucalyptus oil
Ferric chloride
Glycerin
Hectorite
Hydrogen peroxide
Impatiens biflora tincture
Iron oxide
Isopropyl alcohol
Lanolin
Lead acetate
Lidocaine
Menthol
Merbromin
Mercuric chloride
Panthenol
Parethoxycaine hydrochloride
Phenol
Phenyltoloxamine dihydrogen citrate
Povidone-vinylacetate copolymers
Salicylic acid
Simethicone
Tannic acid
Topical starch
Trolamine
Turpentine oil
Zirconium oxide
Zyloxin

* * * * *

(21) *Topical antifungal drug products.*

(i) *Ingredients.*

Alcloxa
Alum, potassium
Aluminum sulfate
Amyltricresols, secondary
Basic fuchsin
Benzethonium chloride
Benzoic acid
Benzoxiquine
Boric acid
Camphor
Candicidin
Chlorothymol
Coal tar
Dichlorophen
Menthol
Methylparaben
Oxyquinoline
Oxyquinoline sulfate
Phenol
Phenolate sodium
Phenyl salicylate
Propionic acid
Propylparaben
Resorcinol
Salicylic acid
Sodium borate
Sodium caprylate
Sodium propionate
Sulfur
Tannic acid
Thymol
Tolindate
Triacetin
Zinc caprylate
Zinc propionate

(ii) *Dioper rosh drug products.* Any ingredient(s) labeled with claims or directions for use in the treatment and/or prevention of diaper rash.

(22) *Internal analgesic drug products.*

Aminobenzoic acid
Antipyrine
Aspirin, aluminum
Calcium salicylate
Codeine
Codeine phosphate

Codeine sulfate
Iodoantipyrine
Lysine aspirin
Methapyrilene fumarate
Phenacetin
Pheniramine maleate
Pyrilamine maleate
Quinine
Salsalate
Sodium aminobenzoate

(23) *Orally administered menstrual drug products.*

Alcohol
Alfalfa leaves
Aloes
Asclepias tuberosa
Asparagus
Barosma
Bearberry (extract of uva ursi)
Bearberry fluidextract (extract of bearberry)
Blessed thistle (cnicus benedictus)
Buchu powdered extract (extract of buchu)
Calcium lactate
Calcium pantothenate
Capsicum oleorisin
Cascara fluidextract, aromatic (extract of cascara)
Chlorprophenpyridamine maleate
Cimicifuga racemosa
Codeine
Collinsonia (extract stone root)
Corn silk
Couch grass
Dog grass extract
Ethyl nitrite
Ferric chloride
Ferrous sulfate
Gentiana lutea (gentian)
Glycyrrhiza (licorice)
Homatropine methylbromide
Hydrangea, powdered extract (extract of hydrangea)
Hydrastis canadensis
Hyoscyamine sulfate
Juniper oil (oil of juniper)
Magnesium sulfate
Methapyrilene hydrochloride
Methenamine
Methylene blue
Natural estrogenic hormone
Niacinamide
Nutmeg oil (oil of nutmeg)
Oil of erigeron
Parsley
Peppermint spirit
Pepsin, essence
Phenacetin
Phenindamine tartrate
Phenyl salicylate
Piscidia erythrina
Pipsissewa
Potassium acetate
Potassium nitrate
Riboflavin
Saw palmetto
Senecio aureus
Sodium benzoate
Sodium nitrate
Sucrose
Sulferated oils of turpentine
Taraxacum officinale
Theobromine sodium salicylate
Theophylline
Thiamine hydrochloride
Triticum
Turpentine, venice
Urea

(24) *Pediculicide drug products.*

Benzocaine
Benzyl alcohol
Benzyl benzoate
Chlorophenothane (Dichlorodiphenyl trichloroethane)
Coconut oil soap, aqueous
Copper oleate
Docusate sodium
Formic acid
Isobornyl thiocyanoacetate
Picrotoxin
Propylene glycol
Sabadilla alkaloids
Sulfur, sublimed
Thiocyanoacetate

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(4) of this section.

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(8)(i), (a)(9) through (a)(10)(iii), (a)(11) through (a)(18)(i), and (a)(19) of this section.

* * * * *

(4) February 26, 1993, for products subject to paragraphs (a)(8)(ii), (a)(10)(iv) through (a)(10)(vii), (a)(18)(ii) through (a)(18)(vi), (a)(21)(i) and (a)(21)(ii), and (a)(22) through (a)(24) of this section.

Dated: August 19, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-20209 Filed 8-24-92; 8:45 am]
BILLING CODE 4160-01-M

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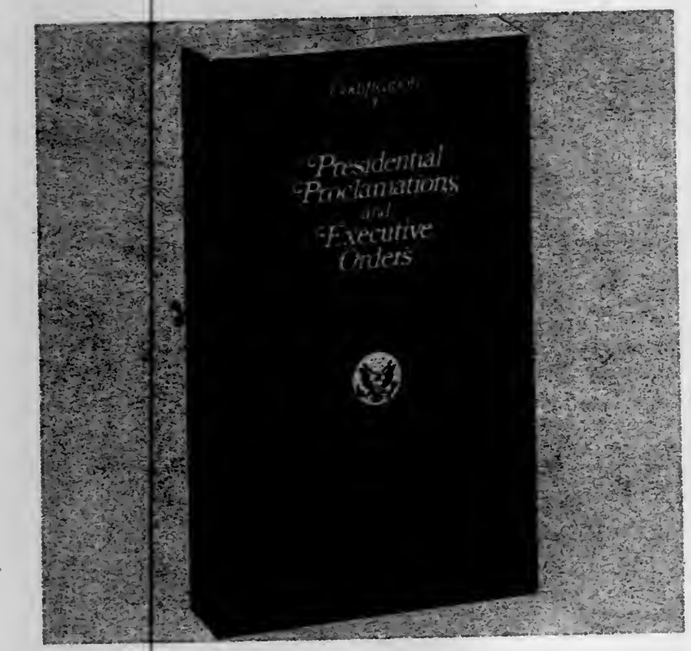
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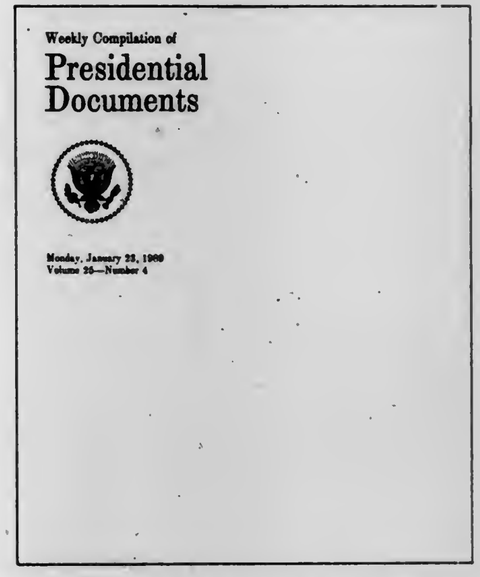
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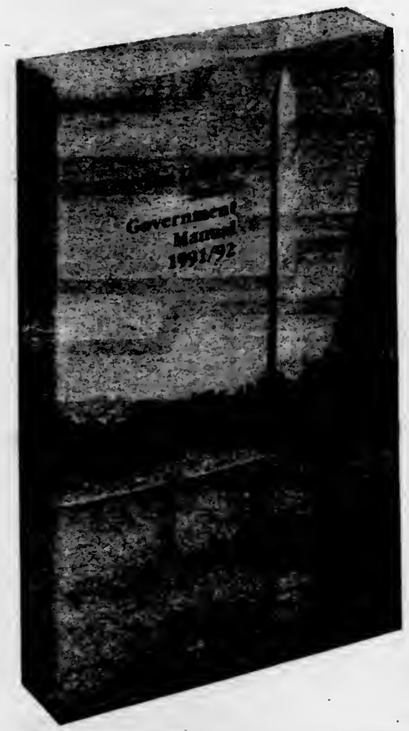
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Presidential Documents

Title 3—

The President

Presidential Determination No. 92–38 of August 11, 1992

Eligibility of Zambia To Be Furnished Defense Articles and Services Under the Foreign Assistance Act of 1961 and the Arms Export Control Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me by section 503(a) of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2311(a)), and section 3(a)(1) of the Arms Export Control Act (22 U.S.C. 2753(a)(1)), I hereby find that the furnishing of defense articles and services to Zambia will strengthen the security of the United States and promote world peace.

You are directed to report this finding to the Congress and to publish it in the **Federal Register.**

George Bush

THE WHITE HOUSE,
Washington, August 11, 1992.

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE
Food and Nutrition Service

7 CFR Parts 210, 215, 220

National School Lunch Program, Special Milk Program for Children, and School Breakfast Program: Coordinated Review Effort

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule modifies a number of provisions contained in the final regulation implementing the unified accountability system required by the Child Nutrition and WIC Reauthorization Act of 1989. The final regulation was published on July 17, 1991 (56 FR 32920). These modifications are intended to facilitate the review activities of the State agencies.

EFFECTIVE DATE: September 25, 1992.

Comments: Comments must be submitted or postmarked on or before October 26, 1992.

ADDRESSES: Comments should be mailed to Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, 3101 Park Center Drive, room 1007, Alexandria, Virginia 22302. All written submissions will be available for public inspection in room 1007, 3101 Park Center Drive, Alexandria, Virginia, during regular business hours (8:30 a.m. to 5:30 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Eadie or Mr. Charles Heise at the above address or phone 703–305–2620.

SUPPLEMENTARY INFORMATION:

Classification

This interim rule has been reviewed under Executive Order 12291 and has been classified as not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect State agencies and school food authorities. However, this rule is expected to facilitate the review activities of the State agencies and to provide an appeal process for school food authorities wishing to dispute the denial of all or a part of a Claim for Reimbursement or withholding of payment resulting from review activities.

This rulemaking further implements the legislative mandates of Public Law 101–147, enacted November 10, 1989. The Department published a proposed rule (55 FR 52754) on December 21, 1990, and a final rule (56 FR 32920) on July 17, 1991. In response to the proposed rule, the Department received and analyzed over 4,000 comments. Because comments on the matters to be amended pursuant to this interim rule have previously been considered, and because the amendments will relieve burdens on States and local school food authorities, the Administrator of FNS has determined that prior notice and comment on the provisions of this rule would be unnecessary and contrary to public interest. Prior notice and comment rulemaking would only delay the attendant burden relief and hinder the training activities scheduled for the Fall of 1992. For these reasons, the Administrator has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that good cause exists to waive the solicitation of public comments prior to implementation. However, the Department believes this rule may be improved by public comment based on actual operating experience. Therefore, comments solicited on this rule must be postmarked or submitted on or before October 26, 1992. All comments will be analyzed, and any appropriate changes to the rule will be incorporated in the subsequent publication of a final rule.

The National School Lunch Program, the Special Milk Program for Children and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.556, and 10.553, respectively, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

Information Collection

This interim rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, rule description and description of respondents for the information collections are shown below with an estimate of the annual reporting and recordkeeping burdens. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

Title: Coordinated Review Effort.

Description: This interim rule provides school food authorities with the opportunity to appeal the denial of all or a part of a Claim for Reimbursement or withholding of payment resulting from reviews conducted under § 210.18. If the review is conducted by the State agency, the school food authority would appeal directly to the State agency. If the review is conducted by FNS, the school food authority would appeal directly to FNS.

Description of respondents: State agencies and school food authorities.

DESCRIPTION OF RESPONDENT'S ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDENS

7 CFR part	Annual Number of respondents	Annual frequency	Average burden per response	Annual burden hours
210.18(j),(q)	57 SAs	1	7	399

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "**EFFECTIVE DATE**" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of a Coordinated Review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q). (2) School food authority appeals of FNS findings as a result of a Coordinated Review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3), and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Background

Section 110 of Public Law 101–147, enacted November 10, 1989, amended the National School Lunch Act (42 U.S.C. 1751–1769c) by adding a new section 22 which states: "There shall be a unified system prescribed and administered by the Secretary for ensuring that local food service authorities that participate in the school lunch program under this Act comply with the provisions of this Act * * *. [E]ach State educational agency shall—(A) require that local food service authorities comply with the provisions of this Act; and (B) ensure such compliance through reasonable audits and supervisory assistance reviews * * *. In carrying out this section, the Secretary shall—(1) assist the State educational agency in the monitoring of programs conducted by local food service authorities; and (2) through management evaluations, review the compliance of the State educational agency and the local school food service authorities with regulations issued under this Act * * *."

In response, the Department published a rule in the **Federal Register** (55 FR 52754) on December 21, 1990 which set forth a series of proposed revisions to Program monitoring regulations. The proposed monitoring system would have required State agencies to conduct supervisory assistance reviews of local school food authorities on a 3/5-year cycle. Following a 105-day public comment period, over 4,000 comments were received and analyzed. Based on that effort, the Department published a final rule in the **Federal Register** (56 FR 32920) on July 17, 1991 which set forth the Coordinated Review Effort, a monitoring system which requires State agencies to conduct supervisory assistance reviews on a 4-year cycle.

Subsequent to publication of the final rule, the Department solicited input individually from representatives of State and local agencies in the development of needed review instruments and guidance. These consultations enabled the Department to benefit from State and local experiences in the development of materials. From this effort, the Department developed a review instrument. In order to ensure that the review instrument is an effective monitoring tool, the Department field tested the instrument in November, made refinements, and field tested the refined version in March.

During this developmental process, concerns were expressed that several modifications would improve the final rule while maintaining the integrity of the Program. These modifications would reduce the burden on the State agency and establish procedures for school food authorities to appeal the denial of all or part of a Claim for Reimbursement or withholding of Program payment resulting from a review conducted under § 210.18. This interim rule makes those modifications to provide immediate relief. However, the Department believes this rule may be further improved by public comment; thus, comments are solicited on this interim rule.

These modifications are discussed by section citation. Commenters are urged to identify the section citation in their comments.

Section 210.18 Administrative Reviews

Implementation Dates

Under § 210.18(a) of the final rule, *Implementation dates*, State agencies were required to conduct reviews as prescribed under § 210.18 for the school year beginning July 1, 1992. At State agency discretion, State agencies were allowed to begin implementation as early as August 16, 1991, in lieu of conducting reviews under the Assessment, Improvement and Monitoring System.

Since publication of the final Coordinated Review Effort regulation on July 17, 1991, the American School Food Service Association (ASFSA), on behalf of a number of State agencies and school food authorities, has expressed concerns regarding the July 1, 1992 implementation date. ASFSA was concerned that additional time is needed to provide State agency staff additional training and to provide the opportunity to explain the new review structure to local school food authorities.

The Department firmly believes that training is the key to the successful implementation of the Coordinated Review Effort. The Department has conducted intensive training for all State agency personnel in a number of locations nationwide. The Department's training efforts focused on developing a shared understanding of the Coordinated Review Effort monitoring system, the review instrument and the guidance.

Given the Department's commitment to the successful implementation of the Coordinated Review Effort, this interim rule revises paragraph (a) to authorize FNS to approve a State agency's written request showing good cause to delay implementation of the Coordinated Review Effort from July 1, 1992 to January 1, 1993. Approval of a request to delay will be based on a demonstrated need for increased training activities, staffing difficulties, etc. A corresponding change has been made to the first sentence of paragraph (c).

In recognition of the fact that some State agencies began implementation of the Coordinated Review Effort prior to the July 1, 1992 mandatory implementation date, the Department will allow State agencies to count any review conducted in accordance with the Coordinated Review requirements specified in § 210.18 prior to July 1, 1992, towards meeting the review requirements of the first review cycle.

For those State agencies that receive FNS approval to delay the Coordinated Review Effort from July 1, 1992 to January 1, 1993, the first review cycle will end December 31, 1996. For all other State agencies, the review cycle began on July 1, 1992 and will end on June 30, 1996. State agencies are required to conduct reviews of all school food authorities at least once during each four year cycle. Regulations do not establish a per year minimum number of reviews to be conducted since staffing patterns, travel dollars, logistics, etc. must be considered. Therefore, each State agency may establish its own schedule of reviews and group those reviews to accommodate the special needs of the State agency. The Department would, however, like to remind State agencies that 7 CFR Part 235, State Administrative Expense Funds, does provide funding for monitoring activity. FNS will evaluate the level of monitoring activity on management evaluations.

Residential Child Care Institutions

In paragraph (e) of the final rule, *Number of schools to review*, State agencies were required to review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more, but not less than the minimum number of schools illustrated in Table A. This provision was intended to ensure that schools with the likelihood of a problem were reviewed; however, this provision had an unintended deleterious effect when applied to residential child care institutions which generally serve all children free and, therefore, would almost always meet the 100/100 school selection criteria.

For this reason, paragraph (e)(1) of this interim rule excludes residential child care institutions from the 100/100 school selection criteria. Paragraph (e)(1) states "Except for residential child care institutions, the State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event shall the State agency review less than the minimum number of schools in table A: * * *" Table A remains unchanged.

Application Review Procedures

Paragraph (g)(1) of the final rule, *Performance Standard 1*, required State agencies to determine that the free and reduced price eligibility determinations, effective for the review period, were correct. Paragraph (f)(2) of the final rule specified that the review period "shall cover, at a minimum, the most recent month for which a Claim for Reimbursement was submitted. * * *" The field tests conducted by the Department identified two complications with these provisions.

A review of applications effective for the review period results in a review of applications effective for a prior period of time, rather than of those applications effective for the day of the review. In a school food authority with a high degree of student mobility, it may be time consuming to reconstruct the pool of eligible students for a period of time likely to be one to two months before the State agency's visit.

To provide State agencies with additional flexibility in the review of applications in the reviewed schools, paragraph (g)(1)(i)(A)(*1*) of the interim rule allows the State agency to review (a) all approved free and reduced price applications effective for the review period, as required in the final rule, or (b) all approved free and reduced price applications back to the beginning of the school year, or (c) all approved free and reduced price applications effective on the day(s) the review is conducted. This interim rule also makes corresponding changes to accommodate this additional review flexibility. In the second sentence of paragraph (g)(1), reference to the review period is removed, and in paragraph (g)(1)(i)(B), the word "currently" is removed.

The second complication in paragraph (g)(1) of the final rule related to the number of free and reduced price applications to be reviewed. Under paragraph (g)(1)(i)(A)(*1*) of the final rule, the State agency was required to review either all of the free and reduced price applications effective for the review period, or a statistically valid sample.

Even though Program regulations allowed for a statistically valid sample to be reviewed, the sampling process was often perceived as too complex to offer relief to a State agency. During the test reviews, it became apparent that, in some cases, a State agency could determine if a school food authority was correctly approving applications without reviewing a statistically valid sample of applications.

To address this concern, the Department intends to propose a change to the regulations which would enable FNS, on a case-by-case basis, to authorize a State agency to limit its review of all applications, as required under paragraph (g)(1)(i)(A)(*1*), if a review of a substantial number of free and reduced price applications reveals that the school food authority consistently exercises its application approval activity in accordance with 7 CFR part 245.

In summary, paragraph (g)(1)(i)(A)(*1*) of the interim rule requires a review of all of the free and reduced price applications, effective for specified periods of time, in the reviewed schools. In lieu of reviewing all applications, paragraph (g)(1)(i)(A)(*2*) of the interim rule continues to allow State agencies to review a statistically valid sample of applications. To accommodate these changes, paragraphs (g)(1)(i)(A)(*2*) and (g)(1)(i)(A)(*3*) of the final rule are redesignated in the interim rule as paragraphs (g)(1)(i)(A)(*3*) and (g)(1)(i)(A)(*4*), respectively.

Notice of Fiscal Action or Withholding Payment

This interim rule offers school food authorities the opportunity to appeal the denial of all or a part of a Claim for Reimbursement or withholding of payments which result from a review required under § 210.18. While the actual appeal procedures are discussed later in this preamble under *Appeal Process*, paragraph (j), Exit conference and notification, has been expanded to address notification of fiscal action or withholding payment requirements.

Under paragraph (j) of this interim rule, State agencies are required to advise school food authorities in writing of the grounds for denial of all or a part of a Claim for Reimbursement or withholding of payment resulting from a review conducted under § 210.18. The "* * * notice, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FNS or State agency) to which the appeal should be directed."

The State agency shall notify the school food authority, in writing, of the appeal procedures as specified in § 210.18(q) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of § 210.30(d)(3) of the regulations.

Withholding Payment

Paragraph (l)(1) of the final rule, Withholding payment, required State agencies to withhold payment: (i) If the State agency found that corrective action was not completed and/or documented corrective action was not provided within the specified deadlines; or (ii) If, on a follow-up review, the State

agency found that corrective actions were not taken as specified in the documented corrective action in either the critical or general areas.

FNS has determined that the withholding of payment provision, as it appeared in the final rule, may be too exacting and broad in scope. Severe repercussions could result from non-compliance in areas that were not deemed "critical" to the operation of the Program. To remedy this situation, this interim rule limits mandatory withholding of payments to those school food authorities with critical area violations which exceed the review threshold(s) and/or where serious problems continue to exist in either of two aspects of the general areas of review, verification and recordkeeping.

Specifically, paragraphs (l)(1)(i)–(lii) of the interim rule require State agencies to withhold all Program payments to a school food authority: "(i) * * * if documented corrective action for critical area violation(s) which exceed the review threshold(s) is not provided within the deadlines specified in paragraph (k)(2) of this section; and/or (ii) * * * if, in the event that a follow-up review is not conducted, the State agency finds that corrective action for a critical area violation which exceeded the review threshold was not completed within the deadlines specified in paragraph [j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section; and/or (iii) * * * if, on a follow-up review, the State agency finds a critical area violation which exceeded the review threshold on a previous review and continues to exceed the review threshold on a follow-up review."

In addition, paragraphs (l)(1) (iv) and (v) of the interim rule state: "(iv) The State agency shall withhold a minimum of 10 percent of the Program payments to a school food authority if the State agency finds, on a follow-up review, that serious problems continue to exist in the school food authority's verification or recordkeeping activities. (v) The State agency may withhold payments at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (k)(2) of this section, that corrective action is not complete, or that corrective action was not taken as specified in the documented corrective action for a general area violation or for a critical area violation which did not exceed the review threshold."

Paragraph (1)(3) of the final rule stated that "Under extraordinary circumstances, FNS may authorize a State agency to limit withholding of funds to an amount less than the total Program payments." This provision was designed to allow FNS the opportunity to reduce the amount of withholding where the continued health of the Program would be threatened by the withholding of all Program funds.

This provision did not take into account the State agency's first-hand knowledge of mitigating circumstances, including the financial stability of the local school food service and the willingness of the school food authority to effect corrective action. The State agency's insight into local Program operations is a significant aspect of a successful monitoring system.

In recognition of this, the interim rule authorizes State agencies to reduce the amount required to be withheld from a school food authority by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. To withhold less than 40 percent would continue to require the approval of FNS.

Fiscal Action

Paragraph (m) of the final rule, Fiscal action, required fiscal action for all violations of Performance Standards 1 and 2. This provision, in conjunction with § 210.19(c), which required fiscal action to be extended back to the date of application approval, caused concern amongst the school food service community.

FNS has determined to allow State agencies to limit fiscal action for errors found on a first review related to certification, issuance of benefits and updating eligibility status. To this end, the interim rule continues to require fiscal action for all violations of Performance Standards 1 and 2; however, for first review errors related to certification, issuance of benefits and updating eligibility status, the State agency may limit fiscal action to the period from the point corrective action occurs back through the beginning of the review period, rather than back to the date of application approval, provided corrective action occurs. FNS anticipates that States will exercise this authority in non-egregious situations and FNS will assess the use of this flexibility during the on-going management evaluation process.

A new sentence has been added to paragraph (m) to effect this change—"Except that, on an administrative review, the State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors identified under paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this section, provided corrective action occurs." If corrective action does not occur, fiscal action is extended back to the beginning of the school year or to that point in time during the current school year when the infraction first occurred, as applicable. This interim rule also makes a corresponding change to § 210.19(c)(2) to acknowledge the exception language.

The Department would like to take this opportunity to clarify its position regarding fiscal action. When pursuing fiscal action, the Department is seeking to recover Federal funds that the school food authority did not earn. Program regulations direct the State agency to identify the school food authority's correct entitlement through accurate local school food authority data, to the extent it is available. Use of projections based on State or national percentages should be the last resort when calculating fiscal action.

Appeal Process

This interim rule offers school food authorities the opportunity to appeal the denial of all or a part of a Claim for Reimbursement or withholding of payments which result from a review required under § 210.18.

Commenters should note that appeals are limited to two areas, the denial of all or part of a Claim for Reimbursement and withholding of payments resulting from a review required under § 210.18; administrative appeals are not available for any other Program action, such as required corrective action.

If the review is a State agency-conducted review, the school food authority will appeal to the State agency. If the review is a Federally-conducted review, the school food authority will appeal to FNS. To ensure that the school food authority is properly apprised of the appeal procedures, § 210.18(j) has been revised as discussed earlier in this preamble.

School Food Authority Appeal of State Agency Findings

The final Coordinated Review Effort rule did not offer school food authorities a structured procedure to appeal the denial of all or a part of a Claim for Reimbursement or withholding of Program payments resulting from a Coordinated Review. An appeal process was deemed unnecessary since school food authorities have always been allowed to provide documentation challenging any review finding. Regardless, concerns continued to surface about the need for an appeal process.

In order to alleviate any concerns that may be caused by the denial of all or part of the Claim for Reimbursement or by withholding of payments as a result of administrative or follow-up review activity under § 210.18, FNS sets forth school food authority appeal procedures in this interim rule. The procedures for a school food authority's appeal to the State agency are very similar to the institution appeal procedures set forth in § 226.6(k) of the Child and Adult Care Food Program regulations (CFR part 226). To accommodate this addition, paragraph (q) of the final rule, *FNS review activity*, is redesignated as paragraph (r) and a new paragraph (q), *School food authority appeal of State agency findings*, is added.

New paragraph (q) of the interim rule requires State agencies to establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding of payments arising from administrative or follow-up review activity conducted by the State agency under § 210.18.

Under paragraph (q), State agencies are authorized to use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for a review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own procedures or if State agency-established procedures do not meet these criteria, then the State agency is required to follow the minimum procedures set forth in paragraph (q). These procedures are:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of a Claim for Reimbursement or withholding payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date, and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice sent by certified mail, return receipt requested, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process;

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

School Food Authority Appeal of FNS Findings

Section 210.30 of this interim rule also affords school food authorities the opportunity to appeal the denial of all or part of the Claim for Reimbursement or withholding of payment arising from administrative or follow-up review activity conducted by FNS in accordance with the provisions of § 210.18. To accommodate this change, paragraph (d)(3) of the final rule is redesignated as (d)(4) and a new paragraph (d)(3), School food authority appeal of FNS findings, which sets forth the procedures a school food authority must follow in order to appeal those findings to FNS, is added by this interim rule. These procedures parallel those in § 210.18(q) which a State agency must follow if it does not have its own procedures or if State agency-established procedures fail to meet the minimum standards in § 210.18 (q).

A school food authority wishing to request a review of FNS findings shall file a written request with the Chief, Administrative Review Branch, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia, 22302, in accordance with the appeal procedures. In summary, the appeal procedures are:

(1) The written request for a review of the record shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of a Claim for Reimbursement or withholding payment and the envelope containing the request shall be prominently marked "Request for Review". FNS will acknowledge the receipt of the request for appeal within 10 calendar days. The acknowledgement will include the name and address of the FNS Administrative Review Officer (ARO) reviewing the case. FNS will also notify the State agency of the request for appeal.

(2) The appellant may refute the action specified in the notice in person and by written documentation to the ARO. In order to be considered, written documentation must be filed with the ARO not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the ARO, unless the ARO agrees to reschedule the hearing. A representative of FNS shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the ARO;

(3) If the appellant has requested a hearing, the appellant shall be provided with at least 10 calendar days advance written notice, sent by certified mail,

return receipt requested, of the time, date, and place of the hearing;

(4) Any information on which FNS's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The ARO shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(6) The ARO shall make a determination based on information provided by FNS and the appellant, and on Program regulations;

(7) Within 60 calendar days of the receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the ARO shall inform FNS, the State agency and the appellant of the determination of the ARO. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The action being appealed shall remain in effect during the appeal process;

(9) The determination by the ARO is the final administrative determination to be afforded to the appellant.

This interim rule also amends 7 CFR 215.11(b) and 7 CFR § 220.13(f) to extend the State agency and the FNS appeal procedures to the School Breakfast Program and the Special Milk Program for Children insofar as those programs are reviewed under § 210.18 and, as a result of those reviews, the State agency denies all or a part of a Claim for Reimbursement or withholds payment.

§ 210.19 Additional Responsibilities

Overpayment Disregard

Paragraph (d) of the final rule, Management evaluations, authorized State agencies to disregard any overpayment if the total overpayment does not exceed $250 for any fiscal year. This provision was adopted to relieve State agencies (and FNS) of the burden associated with collecting very small overpayments.

Arguments have been made that the $250 figure did not adequately represent the cost of collecting an overpayment.

Thus, the interim rule allows State agencies, FNS and the Department's Office of Inspector General (OIG) to disregard any overpayment if the total overpayment does not exceed $600 in any fiscal year. This interim rule also amends 7 CFR 215.13(e) and 7 CFR 220.15(f) to extend this provision to overpayments in the School Breakfast Program and the Special Milk Program for Children. A corresponding technical amendment revises 7 CFR 215.2 and 7 CFR 220.2 to include the definition of "OIG".

Section 210.30 Management Evaluations

The appeal procedures set forth in § 210.30(d)(3) are described above under § 210.18 of this preamble in conjunction with the school food authority appeals to the State agency.

List of Subjects

7 CFR Part 210

Food assistance programs, National School Lunch Program, Commodity School Program, Grants program-social programs, Nutrition, Children, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Food assistance programs, Special Milk Program, Grant programs-social programs, Nutrition, Children, Milk, Reporting and recordkeeping requirements.

7 CFR Part 220

Food assistance programs, School Breakfast Program, Grant programs-social programs, Nutrition, Children, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 210, 215, and 220 are amended, as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: The provisions of part 210 issued under sec. 2–12, 60 Stat. 230, as amended; sec. 10, 80 Stat. 889, as amended; 84 Stat. 270; 42 U.S.C. 1751–1760, 1779.

2. In § 210.18,

a. Paragraph (a) is amended by adding a new sentence between the first and second sentences.

b. Paragraph (c) introductory text is amended by adding the words ", unless otherwise approved by FNS in accordance with paragraph (a) of this section" to the end of the first sentence.

c. Paragraph (e)(1) is amended by removing the words "The State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more, but not" and by adding in their place the words "Except for residential child care institutions, the State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event shall the State agency review" in their place.

d. Paragraph (g)(1) is amended by removing the phrase ", effective for the review period," for the first sentence after the title.

e. Paragraph (g)(1)(i)(A) introductory text is revised.

f. Paragraphs (g)(1)(i)(*A*)(*2*) and (g)(1)(i)(A)(*3*) are redesignated as (g)(1)(i)(A)(*3*) and (g)(1)(i)(A)(*4*), respectively; paragraph (g)(1)(i)(A)(*1*) is revised; and new paragraph (g)(1)(i)(A)(*2*) is added.

g. Paragraph (g)(1)(i)(B) is amended by removing the word "currently" from the first sentence.

h. Paragraph (j) is amended by adding three sentences to the end of the paragraph.

i. Introductory paragraph (l) is amended by removing the word "all", and paragraphs (l)(1) and (1)(3) are revised.

j. Paragraph (m) is amended by adding a new sentence between the first and second sentence.

k. Paragraph (q) is redesignated as paragraph (r) and new paragraph (q) is added.

§ 210.18 Administrative reviews.

(a) * * * However, FNS will approve a State agency's written request if FNS determines that the State agency has demonstrated good cause to delay implementation of the provisions specified under this section to January 1, 1993. * * *

* * * * * *

(g) * * *

(1) * * *

(i) * * *

(A) Determine the number of children eligible for free, reduced price and paid lunches, by type, for the review period. To make this determination:

(*1*) The State agency shall:

(*i*) Review all approved free and reduced price applications for children in the reviewed schools back to the beginning of the school year to determine whether each child's application is complete and correctly approved in accordance with all applicable provisions of 7 CFR Part 245; or

(*ii*) Review all approved free and reduced price applications effective for the review period for children in the reviewed schools; or

(*iii*) Review all approved free and reduced price applications effective on the day(s) the review is conducted for children in the reviewed schools.

(*2*) In lieu of reviewing all of the free and reduced price applications as required under paragraph (g)(1)(i)(A)(*1*) of this section, the State agency may review a statistically valid sample of those applications. If the State agency chooses to review a statistically valid sample of applications, the State agency shall ensure that the sample size is large enough so that there is a 95 percent chance that the actual error rate for all applications is not less than 2 percentage points less than the error rate found in the sample (i.e., the lower bound of the one-sided 95 percent confidence interval is no more than 2 percentage points less than the point estimate). In addition, the State agency shall determine the need for follow-up reviews and base fiscal action upon the error rate found in the sample.

* * * * * *

(j) * * * As a part of the denial of all or a part of a Claim for Reimbursement or withholding payment in accordance with the provisions of this section, the State agency shall provide the school food authority a written notice which details the grounds on which the denial of all or a part of the Claim for Reimbursement or withholding payment is based. This notice, which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FNS or State agency) to which the appeal should be directed. The State agency shall notify the school food authority, in writing, of the appeal procedures as specified in § 210.18(q) for appeals of State agency findings, and for appeals of FNS findings, provide a copy of § 210.3(d)(3) of the regulations.

* * * * * *

(l) * * *

(1) *Cause.* (i) The State agency shall withhold all Program payments to a school food authority if documented corrective action for critical area violation(s) which exceed the review threshold(s) is not provided within the deadlines specified in paragraph (k)(2) of this section; and/or

(ii) The State agency shall withhold all Program payments to a school food authority if, in the event that a follow-up review is not conducted, the State agency finds that corrective action for a critical area violation which exceeded the review threshold was not completed within the deadlines specified in paragraph (j) of this section or as otherwise extended by the State agency under paragraph (k)(1) of this section; and/or

(iii) The State agency shall withhold all Program payments to a school food authority if, on a follow-up review, the State agency finds a critical area violation which exceeded the review threshold on a previous review and continues to exceed the review threshold on a follow-up review; and/or

(iv) The State agency shall withhold a minimum of 10 percent of the Program payments to a school food authority if the State agency finds, on a follow-up review, that serious problems continue to exist in the school food authority's verification or recordkeeping activities.

(v) The State agency may withhold payments at its discretion, if the State agency finds that documented corrective action is not provided within the deadlines specified in paragraph (k)(2) of this section, that corrective action is not complete or that corrective action was not taken as specified in the documented corrective action for a general area violation or for a critical area violation which did not exceed the review threshold.

* * * * * *

(3) *Exceptions.* The State agency may, at its discretion, reduce the amount required to be withheld from a school food authority pursuant to paragraph (l)(1)(i) through (iii) of this section by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. FNS may authorize a State agency to limit withholding of funds to an amount less than 40 percent of the total Program payments, if FNS determines such action to be in the best interest of the Program.

* * * * * *

(m) * * * Except that, on an administrative review, the State agency may limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors identified under paragraphs (g)(1)(i)(A) and (g)(1)(i)(B) of this section, provided corrective action occurs. * *

* * * * * *

(q) *School food authority appeal of State agency findings.* Except for FNS-conducted reviews authorized under § 210.30(d)(2) of this part, each State agency shall establish an appeal procedure to be followed by a school food authority requesting a review of a denial of all or a part of the Claim for Reimbursement or withholding payment arising from administrative or follow-up review activity conducted by the State agency under § 210.18 of this part. State agencies may use their own appeal procedures provided the same procedures are applied to all appellants in the State and the procedures meet the following requirements: appellants are assured of a fair and impartial hearing before an independent official at which they may be represented by legal counsel; decisions are rendered in a timely manner not to exceed 120 days from the date of the receipt of the request for review; appellants are afforded the right to either a review of the record with the right to file written information, or a hearing which they may attend in person; and adequate notice is given of the time, date, place and procedures of the hearing. If the State agency has not established its own appeal procedures or the procedures do not meet the above listed criteria, the State agency shall observe the following procedures at a minimum:

(1) The written request for a review shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding of payment, and the State agency shall acknowledge the receipt of the request for appeal within 10 calendar days;

(2) The appellant may refute the action specified in the notice in person and by written documentation to the review official. In order to be considered, written documentation must be filed with the review official not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the review official in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the review official, unless the review official agrees to reschedule the hearing. A representative of the State agency shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the review official;

(3) If the appellant has requested a hearing, the appellant and the State agency shall be provided with at least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date and place of the hearing;

(4) Any information on which the State agency's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(5) The review official shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are

subject to appeal under the provisions of this section;

(6) The review official shall make a determination based on information provided by the State agency and the appellant, and on Program regulations;

(7) Within 60 calendar days of the State agency's receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the review official shall inform the State agency and the appellant of the determination of the review official. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(8) The State agency's action shall remain in effect during the appeal process;

(9) The determination by the State review official is the final administrative determination to be afforded to the appellant.

* * * * *

3. In § 210.19

a. Paragraph (c)(2)(ii) is amended by revising the first sentence.

b. Paragraph (d) is amended by revising the fourth sentence.

§ 210.19 Additional responsibilities.

* * * * *

(c) * * *

(2) * * *

(ii) Unless otherwise specified under § 210.18(m) of this part, fiscal action shall be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred, whichever is earlier. * * *

* * * * *

(d) * * * In conducting management evaluations, reviews and audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment if the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. * * *

* * * * *

4. In § 210.30, paragraph (d)(3) is redesignated as paragraph (d)(4) and new paragraph (d)(3) is added.

§ 210.30 Management evaluations.

* * * * *

(d) * * *

(3) *School food authority appeal of FNS findings.* When administrative or follow-up review activity conducted by FNS in accordance with the provisions of paragraph (d)(2) of this section results in the denial of all or part of a Claim for Reimbursement or withholding of payment, a school food authority may appeal the FNS findings by filing a written request with the Chief, Administrative Review Branch, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia, 22302, in accordance with the appeal procedures specified in this paragraph:

(i) The written request for a review of the record shall be postmarked within 15 calendar days of the date the appellant received the notice of the denial of all or a part of the Claim for Reimbursement or withholding payment and the envelope containing the request shall be prominently marked "REQUEST FOR REVIEW". FNS will acknowledge the receipt of the request for appeal within 10 calendar days. The acknowledgement will include the name and address of the FNS Administrative Review Officer (ARO) reviewing the case. FNS will also notify the State agency of the request for appeal.

(ii) The appellant may refute the action specified in the notice in person and by written documentation to the ARO. In order to be considered, written documentation must be filed with the ARO not later than 30 calendar days after the appellant received the notice. The appellant may retain legal counsel, or may be represented by another person. A hearing shall be held by the ARO in addition to, or in lieu of, a review of written information submitted by the appellant only if the appellant so specifies in the letter of request for review. Failure of the appellant school food authority's representative to appear at a scheduled hearing shall constitute the appellant school food authority's waiver of the right to a personal appearance before the ARO, unless the ARO agrees to reschedule the hearing. A representative of FNS shall be allowed to attend the hearing to respond to the appellant's testimony and to answer questions posed by the ARO;

(iii) If the appellant has requested a hearing, the appellant shall be provided with a least 10 calendar days advance written notice, sent by certified mail, return receipt requested, of the time, date, and place of the hearing;

(iv) Any information on which FNS's action was based shall be available to the appellant for inspection from the date of receipt of the request for review;

(v) The ARO shall be an independent and impartial official other than, and not accountable to, any person authorized to make decisions that are subject to appeal under the provisions of this section;

(vi) The ARO shall make a determination based on information provided by FNS and the appellant, and on Program regulations;

(vii) Within 60 calendar days of the receipt of the request for review, by written notice, sent by certified mail, return receipt requested, the ARO shall inform FNS, the State agency and the appellant of the determination of the ARO. The final determination shall take effect upon receipt of the written notice of the final decision by the school food authority;

(viii) The action being appealed shall remain in effect during the appeal process;

(ix) The determination by the ARO is the final administrative determination to be afforded to the appellant.

* * * * *

PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation continues to read as follows:

Authority: Secs. 3, 10, Child Nutrition Act of 1966, 80 Stat. 885, 889, as amended (42 U.S.C. 1772, 1779).

2. In § 215.2, new paragraph (s–1) is added.

§ 215.2 Definitions.

* * * * *

(s–1) *OIG* means the Office of the Inspector General of the Department.

* * * * *

3. In § 215.11, two new sentences are added at the end of paragraph (b)(2) to read as follows:

§ 215.11 Special responsibilities of State agencies.

* * * * *

(b) * * *

(2) * * * School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of payment arising from review activity conducted by the State agency under § 210.18 of this title or by FNS under § 210.30(d)(2) of this title. Any such appeal shall be subject to the procedures set forth under § 210.18(q) of this title or § 210.30(d)(3) of this title, as appropriate.

* * * * *

4. In § 215.13, paragraph (e) is revised as follows:

§ 215.13 Management evaluations and audits.

* * * * *

(e) In conducting management evaluations, reviews and audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment if the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

Authority: Secs. 4 and 10 of the Child Nutrition Act of 1966, 80 Stat. 886, 889 (42 U.S.C. 1773, 1779), unless otherwise noted.

2. In § 220.2, new paragraph (q–2) is added to read as follows:

§ 220.2 Definitions.

* * * * *

(q–2) OIG means the Office of the Inspector General of the Department.

* * * * *

3. In § 220.13, two new sentences are added at the end of paragraph (f)(2) to read as follows:

§ 220.13 Special responsibilities of State agencies.

* * * * *

(f) * * *

(2) * * * School food authorities may appeal a denial of all or a part of the Claim for Reimbursement or withholding of payment arising from review activity conducted by the State agency under § 210.18 of this title or by FNS under § 210.30(d)(2) of this title. Any such appeal shall be subject to the procedures set forth under § 210.18(q) of this title or § 210.30(d)(3) of this title, as appropriate.

* * * * *

4. In § 220.15, paragraph (f) is revised to read as follows:

§ 220.15 Management evaluations and audits.

* * * * *

(f) In conducting management evaluations, reviews and audits for any fiscal year, the State agency, FNS, or OIG may disregard any overpayment if the total overpayment does not exceed $600 or, in the case of State agency claims in State administered Programs, it does not exceed the amount established under State law, regulations or procedure as a minimum amount for which claim will be made for State losses but not to exceed $600. However, no overpayment is to be disregarded where there is substantial evidence of violations of criminal law or civil fraud statutes.

Dated: August 20, 1992.

George A. Braley,

Acting Administrator.

[FR Doc. 92–20400 Filed 8–25–92; 8:45 am]

BILLING CODE 3410–30–M

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV–92–049FR]

Oregon-California Irish Potatoes; Relaxation of Pack Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting, without modification, as a final rule the provisions of an interim final rule which relaxed the pack regulations for Oregon-California Irish potatoes to allow handlers to ship U.S. No. 2 grade Irish potatoes, weighing at least 10 ounces, in 50-pound cartons. This action will enable handlers to ship a substantial amount of this season's U.S. No. 2 grade potatoes in cartons, thus meeting customer demands and maximizing grower returns. This action was recommended by the Oregon-California Potato Committee (committee), which is the agency responsible for local administration of the order.

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S., P.O. Box 96456, Washington, DC 20090–0456; telephone: (202) 720–2170.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 947 [7, CFR part 947], as amended, regulating the handling of Irish potatoes grown in Oregon (except Malheur County) and certain counties in California. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Oregon-California potatoes subject to regulation under the marketing order and approximately 470 producers in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Oregon-California potato producers and handlers may be classified as small entities.

The handling requirements for fresh Oregon-California potatoes are specified in 7 CFR 947.340. Potatoes shipped to points within the continental United States are required to be at least 2 inches in diameter or 4 ounces in weight, and potatoes shipped to export

destinations must be at least 1½ inches in diameter. Also, red-skinned varieties of potatoes may be shipped without regard to a minimum size requirement, if they otherwise grade at least U.S. No. 1. Non-red-skinned varieties of potatoes that are 1¾ inches in diameter or less may be shipped if they grade at least U.S. No. 1. Prior to the interim final rule, potatoes shipped in 50-pound cartons had to meet a minimum grade of U.S. No. 1 except that potatoes that failed to meet the U.S. No. 1 grade only because of hollow heart and/or internal discoloration could be shipped provided that no more than ten percent hollow heart and/or internal discoloration was present or not more than five percent serious damage by internal defects.

Customers had been requesting U.S. No. 2 grade potatoes in 50-pound cartons because 50-pound burlap sacks and paper bags were messy, unsanitary and did not stack well on pallets. Some retail and restaurant trade buyers complained that burlap sacks were dirty and could shed fibers. Further, paper bags could tear before arriving at their destination.

Many customers had been purchasing potatoes from other areas where U.S. No. 2 grade potatoes are packed in 50-pound cartons. The committee responded to these changing market conditions so handlers would not lose sales.

This action continues to authorize Oregon-California potato handlers to ship U.S. No. 2 grade potatoes, weighing at least 10 ounces, in 50-pound cartons. This action will increase overall potato shipments from the production area, increase financial returns to the industry and satisfy customer needs.

An interim final rule relaxing the pack regulations was published in the **Federal Register** on June 10, 1992 [57 FR 24541]. A 30-day comment period was established to provide an opportunity for written comments. The comment period ended on July 10, 1992. No comments were received.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all available information, it is found that the continued relaxation of the pack regulations, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action continues in effect the relaxed pack requirements; (2) potato shippers will need no additional time to continue complying with the relaxed requirements; (3) the interim final rule provided a 30-day comment period and no comments were received; and (4) no useful purpose will be served by delaying the effective date until 30 days after publication.

List of Subjects in 7 CFR 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending the provisions of section 947.340, published in the **Federal Register** [56 FR 24541, June 10, 1992], is adopted as a final rule without change.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-20384 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 19 and 20

RIN 3150-AE21

Standards for Protection Against Radiation; Extension of Implementation Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is extending the implementation date for its revised standards for protection against radiation and making a conforming change to its regulation. See **SUPPLEMENTARY INFORMATION** for specific regulatory parts affected. This rule extends the date by which NRC licensees are required to implement the revised standards for protection against radiation to January 1, 1994. The 1-year extension provides licensees additional time to examine and implement the regulatory guidance developed to support the rule. It also establishes a concurrent implementation date for NRC licensees and Agreement State licensees.

EFFECTIVE DATE: September 25, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Donald A. Cool, Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Telephone (301) 492-3785.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 1990, the Commission approved the final revision of 10 CFR part 20, "Standards for Protection Against Radiation," which incorporated the recommendations of the International Commission on Radiological Protection (ICRP) issued in 1977 and implemented the recommendations contained in the Guidance to Federal Agencies for Occupational Exposure signed by the President in 1987. With the approval of the final rule, the Commission specified its desire to have the rule become effective 30 days following publication in the **Federal Register** with a provision that licensees would be permitted until January 1, 1993, to implement the revision. The Commission also stated that Agreement States should require that all Agreement State licensees comply with compatible State regulations on or before January 1, 1994, with early implementation encouraged.

When the Commission approved the revision to 10 CFR part 20, the Commission and the NRC staff expected that the revised standards for protection against radiation would be published in the **Federal Register** in early January 1991, giving licensees 2 full years to meet the required implementation date. The Commission also expected that the related draft regulatory guides would be published for public comment early in 1991 and published in final form by December 31, 1991. Unfortunately, difficulties arose with the publication of the final rule because of the need to satisfy the legal and procedural requirements necessary to accommodate concurrent enforcement of both the existing requirements contained in 10 CFR part 20, as well as the new standards for protection against radiation contained in §§ 20.1001-20.2401. Because of these problems and the need to revise the numbering system and implementation sections accordingly, the final rule was not published until May 21, 1991 (56 FR 23360). There was also a corresponding delay in the development and publication of the regulatory guides.

On October 16, 1991, the Nuclear Management and Resources Council (NUMARC) requested that the Commission extend the date for implementation of the revised 10 CFR part 20 from January 1, 1993, to January 1, 1994. NUMARC's basis for this request was that the regulatory guides

associated with the rulemaking had not been completed as indicated at the time the final rule was published. On October 24, 1991, and November 22, 1991, similar requests were filed by the Yankee Atomic Electric Company (YAEC) and the National Organization of Test, Research and Training Reactors (TRTR). In a letter dated December 12, 1991, NUMARC provided additional information regarding its position on the availability and importance of certain regulatory guidance documents to the implementation process of the final rule.

The Commission's discussion of the need for regulatory guidance, published as part of the Statement of Considerations, section IV, "Need for Additional Regulatory Guides" in the final rule, recognized that the incorporation of many new concepts into part 20 would require additional guidance and explanation of their application to practical problems in radiation protection. The discussion also included a listing of some of the guides that were being developed or revised, although no measure of importance or priority was provided with the listing. The December 12, 1991, letter stated NUMARC's position on the availability and importance of certain regulatory guides to the implementation process for the revision of 10 CFR part 20.

In response to the additional information provided by NUMARC and in consideration of the topics to be addressed, the NRC evaluated the regulatory guides which were under development and determined which guides would be especially useful for implementation of the revision. Regulatory guides covering new requirements or new concepts in the revised standards for protection against radiation have been issued in final form.

Comments on the Proposed Rule

The Commission received thirty-four (34) letters commenting on the proposed rule.

The majority of commenters stated agreement with the proposed rule, indicating that the additional time was needed to effectively implement the revisions to 10 CFR part 20. Many commenters were in favor of concurrent adoption of the rule by NRC licensees and Agreement States. However, several utilities, while indicating agreement with industry on delaying the rule stated that a delay would result in additional costs by extending the implementation effort for an additional year and emphasized that regulatory guidance should be available to support early implementation on January 1, 1993.

One comment was received opposing any delay, citing the need to move forward and adopt the newer international standards for worker protection rather than delay any longer the adoption of these revisions to 10 CFR part 20. While the Commission believes that adoption of these revisions is necessary, an additional year's delay should not result in any decrease in workers protection. The current practice of keeping radiation exposures as low as is reasonably achievable (ALARA), has resulted in the average radiation dose to occupationally exposed individuals to be well below the limits of the amended part 20 and also below the 2 rem average recently recommended as a limitation by the International Commission on Radiological Protection.

It is the Commission's goal to have a firm and consistent basis for enforcement at the time the final rule is fully implemented. In support of this goal, the Commission has considered and is granting a delay in the published January 1, 1993, implementation date, as requested by NUMARC, TRTR, and YAEC based on the following considerations. First, a delay in the implementation date will provide licensees with the opportunity to further study the rule and regulatory guides and, therefore, should result in a more orderly and efficient implementation. A delay will also provide additional time to obtain adequate resources for implementation actions and contracted assistance. Second, extending the implementation date for NRC licensees 1 year to January 1, 1994, will provide a uniform, concurrent implementation date for NRC licensees and Agreement States, thereby eliminating the period during which Agreement States could still be enforcing the existing part 20 while NRC would be requiring adherence to the revised part 20.

Environmental Impact: Categorical Exclusion

The NRC has determined that this rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2): An administrative action that will not result in any hardship. Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements, including requirements contained in §§ 20.1001-20.2401, published on May 21, 1991, were approved by the Office of Management and Budget, approval numbers 3150-0014, and 3150-0044.

Regulatory Analysis

The amendment is administrative and will not have a significant impact; therefore, the Commission has not prepared a regulatory analysis on this regulation. The final regulatory analysis for the final rule that was published on May 1, 1991, examined the costs and benefits of the alternatives considered by the Commission and is available for inspection in the NRC Public Document room, 2120 L Street, NW. (Lower Level), Washington, DC.

Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this is an administrative action that will not have a significant impact upon a substantive number of small entities. This action will apply to all NRC licensees. The final rule affects approximately 7,500 licensees, approximately one-quarter of which are classified as small entities under 10 CFR part 20.

The types of small entities that would be affected by this final rule include physicians, small hospitals, small laboratories, industrial applications in small industries, radiographers, and well loggers.

This administrative action will result in no increase in the burden on NRC licensees. Rather, it will provide licensees an additional year to implement the revisions to 10 CFR part 20. It will also reduce the Commission's administrative burden by providing a concurrent implementation date for all licensees and by facilitating publication of regulatory guidance.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to the final rule and, therefore, that a backfit analysis is not required for this rule. This amendment is administrative in nature and does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 19

Criminal penalties, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, and Sex discrimination.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR parts 19 and 20.

PART 19—NOTICES, INSTRUCTIONS, AND REPORTS TO WORKERS: INSPECTION AND INVESTIGATIONS

1. The authority citation for part 19 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841) * * *.

2. In § 19.13, paragraph (b) is revised to read follows:

§ 19.13 Notifications and reports to individuals.

* * * * *

(b) Each licensee shall advise each worker annually of the worker's dose as shown in records maintained by the licensee pursuant to part 20 (§ 20.401 and § 20.601 or, for licensees implementing the provisions of §§ 20.1001–20.2401, § 20.2106). Prior to January 1, 1994, licensees operating under §§ 20.1–20.601 are required to provide this information only upon request of the worker.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for part 20 continues to read as follows:

Authority: secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1248 (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

For the purposes of sec. 233, 68 Stat. 958, as amended (42 U.S.C. 2273): §§ 20.101, 20.102, 20.103 (a), (b), and (f), 20.104 (a) and (b), 20.105(b), 20.106(a), 20.201, 20.202(a), 20.205, 20.207, 20.301, 20.303, 20.304, 20.305, 20.1102, 20.1201–20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1501, 20.1502, 20.1601 (a) and (d), 20.1602, 20.1603, 20.1701, 20.1704, 20.1801, 20.1802, 20.1901(a), 20.1902, 20.1904, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005 (b) and (c), 20.2006, 20.2101–20.2110, 20.2201–20.2206, and 20.2301 are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); § 20.2106(d) is issued under the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a; and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b), 20.409, 20.1102(a) (2) and (4), 20.1204(c), 20.1206 (g) and (h), 20.1904(c)(4), 20.1905 (c) and (d), 20.2005(c), 20.2006(b)–(d), 20.2105–20.2108, and 20.2201–20.2207 are issued under sec. 1610, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

4. In § 20.1008, paragraph (a) is revised to read as follows:

§ 20.1008 Implementation.

(a) Licensees shall implement the provisions of §§ 20.1001–20.2401 on or before January 1, 1994. If a licensee chooses to implement the provisions of §§ 20.1001–20.2401 prior to January 1, 1994, the licensee shall implement all provision of these sections not otherwise exempted by paragraph (d) of this section, and shall provide written notification to either the Director of the Office of Nuclear Materials Safety and Safeguards or the Director of the Office of Nuclear Reactor Regulation, as appropriate, that the licensee is adopting early implementation of §§ 20.1001–20.2401 and associated appendices. Until January 1, 1994, or until the licensee notifies the Commission of early implementation, compliance will be required with §§ 20.1–20.601 of this part.

* * * * *

Dated at Rockville, Maryland, this 20th day of August 1992.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 92–20405 Filed 8–25–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM91–11–003]

In Re Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations; Order Granting, in Part, and Denying, in Part, Clarification, Rehearing, and Reconsideration

Issued August 20, 1992.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing, reconsideration, and clarification.

SUMMARY: On June 24, 1992, the Commission issued an order (59 FERC ¶ 61,351, 57 FR 29,302 (July 1, 1992)) granting, in part, Natural Gas Clearinghouse's motion for the establishment of generic discovery procedures applicable to all pipelines' individual Order No. 636 restructuring proceedings. Timely requests for rehearing of the June 24 order were filed by Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, Indiana Gas Company, United Distribution Companies, and Tennessee Gas Pipeline Company. Northern Natural Gas Company, Transwestern Pipeline Company, and Florida Gas Transmission Company jointly filed a timely request for clarification or, alternatively, rehearing. The Coastal Companies filed a request for reconsideration. This order grants, in part, and denies, in part, clarification, rehearing, and reconsideration.

FOR FURTHER INFORMATION CONTACT: Mary Benge, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1214.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

On June 24, 1992, the Commission issued an order granting, in part, Natural Gas Clearinghouse's (NGC) motion for the establishment of generic discovery procedures applicable to all pipelines' individual Order No. 636 restructuring

proceedings.[1] Timely requests for rehearing of the June 24 order were filed by Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company (Columbia), Indiana Gas Company (Indiana Gas), United Distribution Companies (UDC), and Tennessee Gas Pipeline Company (Tennessee). Northern Natural Gas Company, Transwestern Pipeline Company, and Florida Gas Transmission Company (Enron) filed a timely request for clarification or, alternatively, rehearing. On July 27, 1992, the Coastal Companies (Coastal) filed a request for reconsideration.

For the reasons discussed below, the Commission will grant, in part, and deny, in part, the requests for rehearing, clarification, and reconsideration.

The June 24, 1992 Order

The Commission's June 24 order responded to NGC's request that the Commission establish generic formal discovery procedures under Subpart D of the Commission's Rules of Practice and Procedure. The Commission's order did not establish formal discovery procedures as NGC requested. Instead, in keeping with the Commission's desire to avoid unnecessary litigation, we directed the Commission's staff to submit data requests to the pipeline in each restructuring proceeding, the responses to which would be served on all parties. The Commission explained that this procedure represents a compromise to serve both the needs of the parties to have sufficient information to participate meaningfully in the restructuring process, and the need for pipelines to expend their time and resources on meeting the timetable for filing in compliance with Order No. 636. In addition, using NGC's appended generic data request as an example, the June 24 order provided guidance to staff regarding the content of the data requests. Finally, the order informed the parties how the Commission will resolve any disputes that may arise among the parties regarding the need for information beyond staff's data requests. The Commission will discuss below each rehearing issue raised.

Discussion

1. Disputes Emanating From Pipelines' Objections to Staff's Data Requests

Enron, Coastal, and UDC complain that the June 24 order does not set forth any procedure for the resolution of disputes between pipelines and staff regarding staff's data requests. The June 24 order addresses disputes that may arise out of requests submitted to pipelines by other participants to the restructuring proceeding for information in addition to that requested by staff. The June 24 order encouraged pipelines to respond to such requests for additional data where possible and encouraged the parties to make every effort to resolve any disputes concerning such requests informally. However, the Commission stated that if such requests could not be resolved informally, the party seeking additional data should present its request to the Commission in its response to the pipeline's compliance filing. The Commission stated that it would not consider requests for more information until after the compliance filing is made so that the Commission can evaluate the relevance of the request and determine what, if any, further procedures must be established to acquire the relevant information.

The Commission believes that pipelines' objection to the staff's data requests should be dealt with in a similar manner. The time period between the submission of staff's data requests and the compliance filing dates is short, and the Commission does not wish to distract the parties' attention with disputes concerning data requests during that period. Accordingly, if a pipeline objects to a particular request, it should state its objection in an initial response to give staff an opportunity to revise its request, if possible. The parties are strongly encouraged to resolve disputes concerning staff's data requests informally. The Commission will look with disfavor upon any party's failure to comply and cooperate to the maximum extent possible with the data requests. However, if after good faith attempts to resolve the dispute are unsuccessful, then, and only then, may the pipeline withhold the requested information and submit the dispute to the Commission at the time it makes its Order No. 636 compliance filing. At the same time, however, as the Commission stated in Order No. 636, the "Commission staff will report to the Commission, if needed, the status of precompliance filing discussions at the public conference to assist the Commission in identifying early any problems that may be hindering the full and timely implementation of this rule." [2]

Enron requests the Commission to clarify that the June 24 order does not prejudge the merits of any dispute emanating from staff's data requests. Enron objects to several specific items contained in NGC's sample data requests, and urges the Commission to review the appropriateness of the request at the time it is brought to the Commission's attention for resolution. In the June 24 order, the Commission provided guidance to staff with respect to the content of the data requests to pipelines. The June 24 order should not be interpreted as an endorsement of each aspect of NGC's data request, nor as a directive to staff that it should adopt each aspect of NGC's data request on a generic basis. The Commission has directed staff to tailor its data requests to the individual pipelines and the particular circumstances of each case. As set forth above, the Commission will address the merits of disputes emanating from staff's data requests after the pipeline has made its compliance filing. However, the Commission will look with disfavor upon any party's failure to comply and cooperate to the maximum extent possible with the data exchange that is needed to facilitate the Order No. 636 compliance process.

2. Service of Data Request Responses

Enron, Columbia, Tennessee, and Coastal assert that it would be unduly onerous, burdensome, and costly to require the service on all parties of all data responses in these proceedings. For example, Enron asserts that it would be extremely costly and burdensome to attempt to reproduce such documents as large-scale system maps and flow diagrams for hundreds of participants. These parties suggest that as an altenative to formal service of all materials on all parties, the Commission should allow pipelines to otherwise make responses to data requests publicly available. Columbia, Tennessee, and Coastal submit that the Commission could ease the expenses associated with the reproduction and mailing of staff data requests by limiting service of responses to the data requests to Commission staff only, and by permitting pipelines to establish a centrally located repository for the responses. Columbia also suggests that the use of electronic media for transmitting the data could also be used, to the extent possible, in lieu of the requirement of service.

The Commission emphasizes the importance of giving every party the opportunity to participate in the restructuring proceedings. Further, it is

[1] 59 FERC ¶ 61,351 (1992).

[2] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939, at p. 30,465 (April 8, 1992).

consistent with the Commission's *ex parte* regulations to require that any material provided to the Commission's advisory staff be made available to all parties in the proceeding. The procedures established in the June 24 order are designed to be significantly less burdensome to pipelines than formal discovery, in which the pipeline would be obligated to respond to requests from more than one source, and the Commission has directed staff to minimize the burden where possible. However, the Commission recognizes that some materials requested by staff, such as system maps and flow diagrams, can be costly to reproduce and ship. Therefore, copies of these materials may be kept available as suggested by petitioners, in a readily accessible location, instead of being served on all parties. The Commission also encourages pipelines to make available to their customers materials that may be on file at the Commission but easier for customers to access at pipelines' headquarters. Pipelines must furnish to all parties copies of the remaining data requested by staff unless the parties can agree to alternative arrangements. For example, pipelines may develop lists identifying which intervenors are interested in receiving certain types of materials. As the Commission stated in the June 24 order, exchanges of data may be made by electronic mail or any other means acceptable to the parties.

3. The APA and Paperwork Reduction Act

Tennessee requests that Commission to withdraw the June 24 order and issue a new notice initiating a comment period to allow pipelines to present easier discovery procedures and reduce the paperwork resulting from the Commission's new procedures, or adopt a less burdensome alternative. Tennessee alleges that the procedures established in the June 24 order are invalid as a matter of law because the Commission did not follow the notice and comment procedures required by the Administrative Procedures Act (APA).[3] Tennessee further asserts that the June 24 order violates the Paperwork Reduction Act.[4] Tennessee submits that the procedures established by the Commission could easily require each pipeline to produce hundreds of thousands of pages to the parties in this restructuring proceeding, most of which will not be read. Tennessee argues that this contravenes the purpose of the Paperwork Reduction Act, as well as the Act's requirement that the Director of the Office of Management and Budget be provided with the required information necessary to approve or disapprove the Commission's data collection requirements.

The Commission disagrees with both arguments. The June 24 order is not subject to the notice and comment requirements of the APA because it merely delegates to the Commission's staff the authority to obtain the necessary information to implement Order No. 636. Such determinations of procedure are within the Commission's discretion under APA section 553(b)(A). Consistent with the Office of Management and Budget's regulations,[5] the Commission included in the NOPR and in Order No. 636 estimates of the public reporting burden associated with pipeline restructuring. The anticipated reporting burden in Order No. 636 allows for the typical reporting burdens associated with rate cases, including searching existing data sources, gathering and maintaining the data needed, and filing this information with the Commission. The June 24 order does not increase the substantive burden on the public beyond what was contemplated in Order No. 636; instead, it establishes procedures for the implementation of some of the rule's provisions. Furthermore, the Natural Gas Act provides the Commission with broad data collection authority in the administration of the Act.[6]

Commenters to NGC's motion and petitioners here have described an onslaught of thousands of data requests to pipelines from parties to restructuring proceedings. The Commission does not believe that this will be the case. The same basic information is needed by all parties to restructuring proceedings, and providing information to one will likely satisfy others. The Commission believes that it is in the public interest to bring order to this process so that restructuring can proceed according to schedule.

4. Need for Discovery

Coastal asserts that the Commission erred by not denying NGC's motion entirely on the basis that the discovery process is inappropriate at this stage of the restructuring proceedings. Coastal submits that the voluntary exchange of information currently occurring in restructuring proceedings is sufficient to accomplish the purpose of allowing interested parties to participate in the formation of the pipeline's tariff. Coastal argues that the imposition of the procedures set forth in the June 24 order unnecessarily compounds, complicates, and delays the pipeline's ability to comply with the procedural schedule mandated by Order No. 636. Coastal submits that since neither staff nor the parties to the restructuring proceedings have any procedural or substantive right to object, prior to filing, to anything the pipeline wants to put in into the tariff, there is no justification for the Commission's action in the June 24 order. Coastal also states that questions regarding the pipeline's methods of compliance with Order No. 636 cannot be answered because the terms of compliance will change as the pipeline discusses and negotiates with its customers and other interested parties.

The Commission agrees with Coastal that formal discovery is not necessary at this stage, and the Commission has not established formal discovery procedures here. The June 24 order simply establishes a procedure by which sufficient information can be exchanged and disseminated for parties to participate meaningfully in restructuring discussions to the extent a more formalized structure is needed in individual cases. While the voluntary exchange of information prior to the June 24 order may have been working well in some cases, it does not appear to have been efficient and orderly in others.

Coastal's assertion that neither staff nor the parties have any procedural or substantive right to object, prior to filing, to anything the pipeline wants to put into its tariff constitutes a collateral attack against Order No. 636 itself. The procedures established in Order No. 636 were structured in order to facilitate the Commission's intention "to rely initially on the parties in the restructuring proceedings on each pipeline system to work out the details of compliance with this rule."[7] To that end, the Commission instituted restructuring procedures for each pipeline in the final rule. The Commission stated that the "process of implementation thus begins with the issuance of this order and notice."[8] Interested parties were required to file motions to intervene in the individual pipeline proceedings. As parties, they are within their rights to request information from the pipeline in order to fully understand its proposal and to object to the pipeline's proposal during the restructuring discussions.

[3] 5 U.S.C. 553 (b) and (d).
[4] 44 U.S.C. 3501, *et seq.*
[5] 5 CFR part 1320.
[6] 15 U.S.C. 717(g), (l), and (m) (1988).
[7] Id. at 30,463.
[8] Id. at 30,462.

5. Hearing Requirement Under Section 7 of the NGA

Indiana Gas asserts that the order erroneously fails to provide for a hearing and formal discovery procedures which are necessary to provide parties the information required to effectively participate in the restructuring proceedings. Indiana Gas argues that an abandonment of sales service by an interstate pipeline requires the Commission, pursuant to section 7(b) of the NGA, to conduct a hearing and make findings that the public convenience and necessity permit the abandonment. Indiana Gas submits that formal discovery under Subpart D of the Commission's Rules of Practice and Procedure, which provides for discovery in proceedings set for hearing, is therefore also required in the restructuring proceedings.

Indiana Gas is incorrect. This argument constitutes a collateral attack on Order No. 636 with respect to the Commission's use of a rulemaking proceeding to authorize abandonment. The Commission has authority to generically authorize abandonment without trial-type hearings.[9] Moreover, it is not the Commission's practice to establish evidentiary hearings or formal discovery procedures in abandonment cases. Instead, the Commission frequently directs staff to submit data requests to applicants, much as it has done here. The Commission is required to reach decisions on the basis of an oral, trial-type evidentiary record only if material facts in dispute cannot be resolved on the basis of the written record; it is premature to assume that factual disputes exist at this stage of the proceedings.

6. Pending Section 4 Rate Cases

Tennessee submits that the Commission's requirement that staff prepare data requests and monitor pipeline responses will divert staff and pipeline resources from pending section 4 rate cases and jeopardize prompt resolution of those cases in violation of NGA section 4. While we appreciate Tennessee's concern for the allocation of Commission resources, the Commission rejects Tennessee's argument. Staff and pipelines would have been engaged in similar pursuits as part of the routine case load that, if not for Order No. 636, would otherwise have resulted from required rate proceedings. In any event, the Commission has sufficient staff available at this time to continue processing rate cases that examine cost of service, and restructuring cases that examine other issues, simultaneously.[10]

7. Data Requests Other Than Those Submitted to the Pipelines by Staff

UDC submits that the Commission erred in not requiring staff to accept and forward to the pipeline requests for discovery tendered by other parties. UDC asserts that if the staff does not transmit a party's questions, a party should have a right to request the information of the pipeline directly and to resolve any disputes through more formal means, if necessary. UDC suggests that the Commission designate its administrative law judges as discovery judges with a mandate to supervise expedited discovery, before and after the compliance filings.

The June 24 order allows parties to request information directly from the pipeline, and it also provides for the Commission to resolve disputes formally. The Commission does not find it necessary to designate administrative law judges to handle these disputes.

Enron expresses concern that parties to the restructuring proceedings could use their own data requests to hamper negotiations and impede the pipeline's ability to meet the procedural timetable set forth in Order No. 636. Enron submits that it is time-consuming to review and respond to hundreds, if not thousands, of data requests. Enron therefore requests the Commission to clarify that the participants' data requests to the pipeline must not be redundant with staff's data requests and that the Commission will scrutinize closely the relevancy and burden of data requests submitted by participants.

One of the objectives of the June 24 order was to streamline the restructuring process by providing all participants with the necessary relevant information is a timely fashion, and by requiring pipelines to respond to requests from only one source. The June 24 order establishes procedures and provides guidance for implementation as contemplated in Order No. 636, wherein the Commission stated that it "will use procedures designed to achieve the most expeditious resolution of any contested issues raised with respect to the restructuring filings"[11] and that it "will continue to provide direction and guidance for fully implementing the policies reflected by the requirements of this rule."[12] The Commission's direction to Staff in the June 24 order is that data requests be designed to elicit only the type of information that the Commission considers necessary to support the pipelines' proposals so that the parties can participate fully in the restructuring discussions. In addition, they are to be designed to allow pipelines and participants to proceed according to the procedural timetable established in Order No. 636. The Commission expects that the Staff's data requests will elicit responses which will provide sufficient support for pipelines' proposals. To the extent other participants require additional information which was not requested by Staff, the June 24 order encourages pipelines to respond to such additional data requests where possible and to attempt to resolve any disputes on an informal basis. The pipeline may also inform parties that certain requested information has already been produced. The Commission stated in the June 24 order that it does not intend the production of the data to be requested to provide a justification to delay compliance with Order No. 636. Nor does the Commission intend for participants to abuse the procedures established in that order in an attempt to delay the process of implementation. The Commission directed Staff to assist the parties in resolving any disputes. One way of providing such assistance would be to point out where the additional data request duplicates the Staff data request or is unnecessary or overly broad. As stated in the June 24 order, the Commission will review any data request disputes among parties to restructuring proceedings after the compliance filings have been made.

Enron further requests the Commission to clarify that pipelines may request data from other participants. Enron maintains that it may be necessary for pipelines to obtain data, such as operational information, from other participants in restructuring proceedings. The Commission agrees that pipelines may need certain information to proceed with restructuring, and nothing in the June 24

[9] See *Mobil Oil Exploration & Producing Southeast Inc.* v. *United Distribution Companies*, 111 S.Ct. 615 (1991); *Associated Gas Distributor* v. *FERC*, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied sub nom., Interstate Natural Gas Association of America* v. *FERC*, 485 U.S. 1006 (1988).
[10] See, *e.g.*, KN Energy, Inc., 60 FERC ¶61,042 (1992); Transcontinental Gas Pipeline Corporation, 59 FERC ¶61,232 (1992); Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, 59 FERC ¶61,261 (1992).
[11] Id. at p. 30,467.
[12] Id. at p. 30,468.

order precludes pipelines from requesting that information. However, that information is not of the detailed type needed by potential customers. Restructuring proceedings are not being litigated in a hearing, and hostile exchanges of discovery requests are not the appropriate model here. Instead, the restructuring process requires cooperation from all sides. Accordingly, the Commission will not establish procedures for such data requests.

Finally, the Commission expects all parties to the restructuring proceedings to participate promptly, fully, and in good faith, to meet the established compliance schedule. As the Commission stated in Order No. 636:

> To a large extent, the date by which each pipeline fully implements the restructuring required by this rule will depend on the diligence and good faith of the pipeline and interested parties. The Commission has established deadlines for filings and has provided direction for making those filings. The Commission will continue to provide direction and guidance for fully implementing the policies reflected by the requirements of this rule. The Commission respects the rights of pipelines and interested parties to differ over how these policies should best be implemented on a particular pipeline system. However, the Commission will not abide recalcitrance in the restructuring proceedings. If the pipeline's filings are not in compliance with the requirements of this rule, and the pipeline and interested parties cannot resolve differences over what is required to bring the pipeline into full compliance, the Commission will resolve the disputes on the merits. And once the Commission has determined how this rule must be implemented on a particular pipeline system, it will bring the full panoply of its enforcement resources to bear to ensure compliance with its decision.[13]

We hereby remind the pipelines and all interested parties that failure to participate promptly, meaningfully, and in good faith in the restructuring proceedings will not be tolerated.

The Commission Orders

The requests for clarification, rehearing, and reconsideration are granted, in part, and denied, in part, as discussed in the body of this order.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20436 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[13] Id. at p. 30,468.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8429]

RIN 1545-AO49

General Rule for Taxable Year of Inclusion—Election to Include Crop Insurance Proceeds in Gross Income in the Taxable Year Following the Taxable Year of Destruction or Damage

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document finalizes without change temporary regulations relating to the applicability of section 451(d) of the Internal Revenue Code (regarding the taxable year of inclusion for crop insurance proceeds) to certain federal payments made to farmers. The regulations implement the intent with which section 451(d) was initially enacted by treating qualifying disaster relief payments from the Federal Government as crop insurance proceeds for purposes of section 451(d).

DATES: This regulation is effective August 26, 1992 and § 1.451-6 applies to payments received after December 31, 1973.

FOR FURTHER INFORMATION CONTACT: Douglas Fahey, 202-535-5983 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1990, the Internal Revenue Service published in the **Federal Register** temporary regulations (T.D. 8289) and a notice of proposed rulemaking (IA-012-90) under section 451(d) of the Internal Revenue Code (Code). By cross-reference to the temporary regulations, the notice proposed to clarify that federal payments received as a result of (a) destruction or damage to crops caused by drought, flood, or any other natural disaster or (b) the inability to plant crops because of such a natural disaster, will be treated as insurance proceeds received as a result of destruction or damage to crops for purposes of section 451(d) of the Code. The Internal Revenue Service received one written public comment on the proposed regulations. After consideration of the written comment, the Service adopts the proposed regulations as final regulations in this Treasury decision. A more complete explanation of the policy reasons underlying the proposed and temporary regulations is set forth in the preamble to the temporary regulations.

Public Comment

The one public comment that was received on the proposed regulations indicated that many farmers filed their 1989 returns on or before March 1, 1990, and did not take the temporary and proposed regulations into account on those returns. The commentator requested that farmers be allowed an optional method of either including or deferring 1989 federal disaster payments.

The Service and the Treasury Department believe that Notice 90-28, 1990-1 C.B. 339, which provides farmers with guidance and procedures to follow with respect to 1989 federal disaster payments for taxable years ending before April 1, 1990, addresses this concern. Under Notice 90-28, taxpayers have the option for these taxable years of making an election under section 451(d) that either (i) covers crop insurance proceeds but does not cover payments received under the Disaster Assistance Act of 1989, or (ii) covers both crop insurance proceeds and payments received under the Disaster Assistance Act of 1989. The provisions of Notice 90-28 have not been incorporated into the final regulations to avoid any confusion for years to which the notice does not apply. Nevertheless, Notice 90-28 remains effective for the circumstances considered therein.

Special Analyses

It has been determined that these final rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 8) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking for the regulations was submitted to the Administrator of the Small Business Administration for comment on the impact of the regulations on small business.

Drafting Information

The principal author of these regulations is P. Val Strehlow of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, on matters of both substance and style.

List of Subjects in 26 CFR 1.451-1 Through 1.458-10

Accounting, Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.451-6 is amended by revising paragraph (a)(1) to read as follows:

§ 1.451-6 Election to include crop insurance proceeds in gross income in the taxable year following the taxable year of destruction or damage.

(a) *In general.* (1) For taxable years ending after December 30, 1969, a taxpayer reporting gross income on the cash receipts and disbursements method of accounting may elect to include insurance proceeds received as a result of the destruction of, or damage to, crops in gross income for the taxable year following the taxable year of the destruction or damage, if the taxpayer establishes that, under the taxpayer's normal business practice, the income from those crops would have been included in gross income for any taxable year following the taxable year of the destruction or damage. However, if the taxpayer receives the insurance proceeds in the taxable year following the taxable year of the destruction or damage, the taxpayer shall include the proceeds in gross income for the taxable year of receipt without having to make an election under section 451(d) and this section. For the purposes of this section only, federal payments received as a result of destruction or damage to crops caused by drought, flood, or any other natural disaster, or the inability to plant crops because of such a natural disaster, shall be treated as insurance proceeds received as a result of destruction or damage to crops. The preceding sentence shall apply to payments that are received by the taxpayer after December 31, 1973.

* * * * *

§ 1.451-6T [Removed]

Par. 3. Section 1.451-6T is removed.

Michael P. Dolan,

Acting Commissioner of Internal Revenue.

Approved: July 23, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-20068 Filed 8-25-92; 8:45 am]

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26 CFR Parts 1 and 602

[T.D. 8426]

RIN 1545-AB48

Certain Returned Magazines, Paperbacks or Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to a method of accounting for certain returns of magazines, paperbacks, or records. Changes were made in the applicable law by the Revenue Act of 1978. The regulations provide the public with guidance needed to comply with the Act and would affect all taxpayers that elect to use the method of accounting for their trades or businesses of selling magazines, paperbacks, or records (including videos).

DATES: This regulation is effective for taxable years beginning after August 31, 1984. However, taxpayers may rely on the provisions of § 1.458-1 (a) through (f) in taxable years beginning after September 30, 1979.

FOR FURTHER INFORMATION CONTACT: Grant Gabriel, (202) 622-4970 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) under control numbers 1545-0879 and 1545-0152. The estimated average annual burden per recordkeeper is 25 minutes.

This estimate is an approximation of the average time expected to be necessary for a collection of information. It is based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer T:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document amends the Income Tax Regulations (26 CFR part 1) under section 458 of the Internal Revenue Code. These amendments reflect the changes made by section 372 of the Revenue Act of 1978 (92 Stat. 2860) and are issued under the authority contained in sections 7805 and 458 (b)(8) and (e)(5) of the Internal Revenue Code (68A Stat. 917; 92 Stat. 2861-2; 26 U.S.C. 7805, 458 (b)(8) and (e)(5)). A public hearing was held on October 16, 1991.

In general, section 372 of the Revenue Act of 1978 permits a taxpayer in the trade or business of selling magazines, paperbacks, or records to use a special method of accounting for the return of magazines, paperbacks, or records sold before the end of the taxable year and returned before the close of the merchandise return period for that taxable year. This method of accounting is available only to those taxpayers that use the accrual method of accounting for the trade or business of selling magazines, paperbacks, or records and that make an election to use section 458. Under this section, a taxpayer may elect to exclude from gross income amounts attributable to the qualified sale of magazines, paperbacks, or records provided the merchandise was sold before the end of the taxable year and returned before the close of the merchandise return period. The exclusion is available only if the original sale was a qualified sale. In order to be a qualified sale, the taxpayer must have, at the time of the sale, a legal obligation to adjust the sales price of the merchandise because of the purchaser's failure to resell it. Section 458 also provides special accounting rules for treatment of the transitional adjustment resulting from the section 458 election. The regulations contain rules that determine how and when a suspense account established under section 458(e) must be taken into account by the transferee in the case of certain transactions where there is nonrecognition of gain or loss to either party because of the application of subchapter C of the Internal Revenue Code. These rules apply generally to

transactions where there is a transfer of substantially all the assets of a trade or business in which paperbacks or records are sold. In general, the principles of section 381 and § 1.381(c)(4)–1 will be applied. The regulations also require a cost of goods sold offset against sales revenue in determining the amount of income excluded from gross income under section 458.

Explanation of Changes

Definition of Magazine and Record

In response to suggestions from commentators, changes were made in the definitions of "magazine" and "record." First, the definition of magazine was revised to reflect the treatment of "annuals" or "oneshots"—supplements to monthly or weekly periodicals that are issued annually—as magazines. These annual supplements are issued in basically the same format and appearance as magazines issued at regular intervals. To be treated as a magazine under section 458 of the Code, the annual publications must relate by title or subject matter to a magazine and must otherwise qualify as a magazine under section 458. Second, the definition of "record" was expanded to include video cassettes in response to commentators' concerns that the definition of "record" was unduly restrictive by its exclusion of items that also contain a visual recording. There is no evidence of any Congressional intent to exclude video cassettes at the time of the enactment of section 458 and commentators indicated that the distribution of recordings with visual content is the same as for recordings without visual content. Finally, compact discs and laser discs are specifically included as examples of "records."

Cost of Goods Sold Adjustment

Commentators argued that there should be no cost of goods sold adjustment in determining the amount of gross income excludable under section 458 of the Code. These commentators argued that § 1.458–1(g) of the proposed regulations, requiring such an adjustment in certain situations, should be omitted from the final regulations. For the reasons explained below, the Service has not adopted the commentators' recommendations. The language in section 458(a) indicates that the section 458 exclusion is determined on the basis of gross income. Under § 1.61–3(a) of the regulations, gross income of a manufacturing or merchandising trade or business is determined by subtracting cost of goods sold from sales revenue. Thus, consistent with § 1.61–3(a) rules, in determining the amount of gross income that may be excluded under section 458, it is necessary in certain situations to make a corresponding adjustment to cost of goods sold. Finally, section 446(b) and its underlying regulations require that a method of accounting clearly reflect income. In the opinion of the Commissioner, for those situations prescribed in § 1.458–1(g), the cost of goods sold adjustment is necessary to clearly reflect income.

The regulations have been revised to provide examples illustrating the application of the § 1.458–1(g) cost of goods sold adjustment in determining the amount of gross income qualifying for exclusion under section 458. As in the proposed regulations, the cost of goods sold adjustment is only required in situations in which the taxpayer holds returned merchandise for resale or is entitled to a credit from its supplier. In the latter case, the amount of the required adjustment is equal to the amount of the taxpayer's credit from its supplier.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Section 7805(f) does not apply because the proposed regulations were issued prior to the effective date of section 7805(f).

Drafting Information

The principal author of these regulations is Grant Gabriel of the Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR 1.451–1 Through 1.458–10

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended in part by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.458–1 also issued under 26 U.S.C. 458. * * *

Par. 2. New § 1.458–1 is added to read as follows:

§ 1.458–1 Exclusion for certain returned magazines, paperbacks, or records.

(a) *In general*—(1) *Introduction.* For taxable years beginning after September 30, 1979, section 458 allows accrual basis taxpayers to elect to use a method of accounting that excludes from gross income some or all of the income attributable to qualified sales during the taxable year of magazines, paperbacks, or records, that are returned before the close of the applicable merchandise return period for that taxable year. Any amount so excluded cannot be excluded or deducted from gross income for the taxable year in which the merchandise is returned to the taxpayer. For the taxable year in which the taxpayer first uses this method of accounting, the taxpayer is not allowed to exclude from gross income amounts attributable to merchandise returns received during the taxable year that would have been excluded from gross income for the prior taxable year had the taxpayer used this method of accounting for that prior year. (See paragraph (e) of this section for rules describing how this amount should be taken into account.) The election to use this method of accounting shall be made in accordance with the rules contained in section 458(c) and in § 1.458–2 and this section. A taxpayer that does not elect to use this method of accounting can reduce income for returned merchandise only for the taxable year in which the merchandise is actually returned unsold by the purchaser.

(2) *Effective date.* While this section is generally effective only for taxable years beginning after August 31, 1984, taxpayers may rely on the provisions of paragraphs (a) through (f) of this section in taxable years beginning after September 30, 1979.

(b) *Definitions*—(1) *Magazine.* "Magazine" means a publication, usually paper-backed and sometimes illustrated, that is issued at regular intervals and contains stories, poems, articles, features, etc. This term includes periodicals, but does not include newspapers or volumes of a single publication issued at various intervals. However, volumes of a single publication that are issued at least annually, are related by title or subject matter to a magazine, and would otherwise qualify as a magazine, will be treated as a magazine.

(2) *Paperback.* "Paperback" means a paperback book other than a magazine. Unlike a hardback book, which usually has stiff front and back covers that enclose pages bound to a separate spine, a paperback book is characterized by a flexible outer cover to which the pages of the book are directly affixed.

(3) *Record.* "Record" means a disc, tape, or similar item on which music, spoken or other sounds are recorded. However, the term does not include blank records, tapes, etc., on which it is expected the ultimate purchaser will record. The following items, provided they carry pre-recorded sound, are examples of "records": audio and video cassettes, eight-track tapes, reel-to-reel tapes, cylinders, and flat, compact, and laser discs.

(4) *Qualified sale.* In order for a sale to be considered a qualified sale, both of the following conditions must be met:

(i) The taxpayer must be under a legal obligation (as determined by applicable State law), at the time of sale, to adjust the sales price of the magazine, paperback, or record on account of the purchaser's failure to resell it; and

(ii)The taxpayer must actually adjust the sales price of the magazine, paperback, or record to reflect the purchaser's failure to resell the merchandise. The following are examples of adjustments to the sales price of unsold merchandise: Cash refunds, credits to the account of the purchaser, and repurchases of the merchandise. The adjustment need not be equal to the full amount of the sales price of the item. However, a markdown of the sales price under an agreement whereby the purchaser continues to hold the merchandise for sale or other disposition (other than solely for scrap) does not constitute an adjustment resulting from a failure to resell.

(5) *Merchandise return period*—(1) *In general.* Unless the taxpayer elects a shorter period, the "merchandise return period" is the period that ends 2 months and 15 days after the close of the taxable year for sales of magazines and 4 months and 15 days after the close of the taxable year for sales of paperbacks and records.

(ii) *Election to use shorter period.* The taxpayer may select a shorter merchandise return period than the applicable period set forth in paragraph (b)(5)(i) of this section.

(iii) *Change in merchandise return period.* Any change in the merchandise return period after its initial establishment will be treated as a change in method of accounting.

(c) *Amount of the exclusion*—(1) *In general.* Except as otherwise provided in paragraph (g) of this section, the amount of the gross income exclusion with respect to any qualified sale is equal to the lesser of—

(i) The amount covered by the legal obligation referred to in paragraph (b)(4)(i) of this section; or

(ii) The amount of the adjustment agreed to by the taxpayer before the close of the merchandise return period.

(2) *Price adjustment in excess of legal obligation.* The excess, if any, of the amount described in paragraph (c)(1)(ii) of this section over the amount described in paragraph (c)(1)(i) of this section should be excluded in the taxable year in which it is properly accruable under section 461.

(d) *Return of the merchandise*—(1) *In general.* (i) The exclusion from gross income allowed by section 458 applies with respect to a qualified sale of merchandise only if the seller receives, before the close of the merchandise return period, either—

(A) The physical return of the merchandise; or

(B) Satisfactory evidence that the merchandise has not been and will not be resold (as defined in paragraph (d)(2) of this section).

(ii) For purposes of this paragraph (d), evidence of a return received by an agent of the seller (other than the purchaser who purchased the merchandise from the seller) will be considered to be received by the seller at the time the agent receives the merchandise or evidence.

(2) *Satisfactory evidence.* Evidence that merchandise has not been and will not be resold is satisfactory only if the seller receives—

(i) Physical return of some portion of the merchandise (e.g., covers) provided under either the agreement between the seller and the purchaser or industry practice (such return evidencing the fact that the purchaser has not and will not resell the merchandise); or

(ii) A written statement from the purchaser specifying the quantities of each title not resold, provided either—

(A) The statement contains a representation that the items specified will not be resold by the purchaser; or

(B) The past dealings, if any, between the parties and industry practice indicate that such statement constitutes a promise by the purchaser not to resell the items.

(3) *Retention of evidence.* In the case of a return of merchandise (described in paragraph (d)(1)(i)(A) of this section) or portion thereof (described in paragraph (d)(2)(i) of this section), the seller has no obligation to retain physical evidence of the returned merchandise or portion thereof, provided the seller maintains documentary evidence that describes the quantity of physical items returned to the seller and indicates that the items were returned before the close of the merchandise return period.

(e) *Transitional adjustment*—(1) *In general.* An election to change from some other method of accounting for the return of magazines, paperbacks, or records to the method of accounting described in section 458 is a change in method of accounting that requires a transitional adjustment. Section 458 provides special rules for transitional adjustments that must be taken into account as a result of this change. See paragraph (e)(2) of this section for special rules applicable to magazines and paragraphs (e) (3) and (4) of this section for special rules applicable to paperbacks and records.

(2) *Magazines: 5-year spread of decrease in taxable income.* For taxpayers who have elected to use the method of accounting described in section 458 to account for returned magazines for a taxable year, section 458(d) and this paragraph (e)(2) provide a special rule for taking into account any decrease in taxable income resulting from the adjustment required by section 481(a)(2). Under these provisions, one-fifth of the transitional adjustment must be taken into account in the taxable year of the change and in each of the 4 succeeding taxable years. For example, if the application of section 481(a)(2) would produce a decrease in taxable income of $50 for 1980, the year of change, then $10 (one-fifth of $50) must be taken into account as a decrease in taxable income for 1980, 1981, 1982, 1983, and 1984.

(3) *Suspense account for paperbacks and records*—(i) *In general.* For taxpayers who have elected to use the method of accounting described in section 458 to account for returned paperbacks and records for a taxable year, section 458(e) provides that, in lieu of applying section 481, an electing taxpayer must establish a separate suspense account for its paperback business and its record business. The initial opening balance of the suspense account is described in paragraph (e)(3)(ii)(A) of this section. An initial adjustment to gross income for the year

of election is described in paragraph (e)(3)(ii)(B) of this section. Annual adjustments to the suspense account are described in paragraph (e)(3)(iii)(A) of this section. Gross income adjustments are described in paragraph (e)(3)(iii)(B) of this section. Examples are provided in paragraph (e)(4) of this section. The effect of the suspense account is to defer all, or some part, of the deduction of the transitional adjustment until the taxpayer is no longer engaged in the trade or business of selling paperbacks or records, whichever is applicable.

(ii) *Establishing a suspense account*—(A) *Initial opening balance.* To compute the initial opening balance of the suspense account for the first taxable year for which an election is effective, the taxpayer must determine the section 458 amount (as defined in paragraph (e)(3)(ii)(C) of this section) for each of the three preceding taxable years. The initial opening balance of the account is the largest of the section 458 amounts.

(B) *Initial year adjustment.* If the initial opening balance in the suspense account exceeds the section 458 amount (as defined in paragraph (e)(3)(ii)(C) of this section) for the taxable year immediately preceding the year of election, the excess is included in the taxpayer's gross income for the first taxable year for which the election was made.

(C) *Section 458 amount.* For purposes of paragraph (e)(3)(ii) of this section, the section 458 amount for a taxable year is the dollar amount of merchandise returns that would have been excluded from gross income under section 458(a) for that taxable year if the section 458 election had been in effect for that taxable year.

(iii) *Annual adjustments*—(A) *Adjustment to the suspense account.* Adjustments are made to the suspense account each year to account for fluctuations in merchandise returns. To compute the annual adjustment, the taxpayer must determine the amount to be excluded under the election from gross income under section 458(a) for the taxable year. If the amount is less than the opening balance in the suspense account for the taxable year, the balance in the suspense account is reduced by the difference. Conversely, if the amount is greater than the opening balance in the suspense account for the taxable year, the account is increased by the difference, but not to an amount in excess of the initial opening balance described in paragraph (e)(3)(ii)(A) of this section. Therefore, the balance in the suspense account will never be greater than the initial opening balance in the suspense account determined in paragraph (e)(3)(ii)(A) of this section. However, the balance in the suspense account after adjustments may be less than this initial opening balance in the suspense account.

(B) *Gross income adjustments.* Adjustments to the suspense account for years subsequent to the year of election also produce adjustments in the taxpayer's gross income. Adjustments which reduce the balance in the suspense account reduce gross income for the year in which the adjustment to the suspense account is made. Adjustments which increase the balance in the suspense account increase gross income for the year in which the adjustment to the suspense account is made.

(4) *Example.* The provisions of paragraph (e)(3) of this section may be illustrated by the following example:

Example. (i) X corporation, a paperback distributor, makes a timely section 458 election for its taxable year ending December 31, 1980. If the election had been in effect for the taxable years ending on December 31, 1977, 1978, and 1979, the dollar amounts of the qualifying returns would have been $5, $8, and $6, respectively. The initial opening balance of X's suspense account on January 1, 1980, is $8, the largest of these amounts. Since the initial opening balance ($8), the larger than the qualifying returns for 1979 ($6), the initial adjustment to gross income for 1980 is $2 ($8–$6).

(ii) X has $5 in qualifying returns for its taxable year ending December 31, 1980. X must reduce its suspense account by $3, which is the excess of the opening balance ($8) over the amount of qualifying returns for the 1980 taxable year ($5). X also reduces its gross income for 1980 by $3. Thus, the net amount excludable from gross income for the 1980 taxable year after taking into account the qualifying returns, the gross income adjustment, and the initial year adjustment is $6 ($3+$5−$2).

(iii) X has qualifying returns of $7 for its taxable year ending December 31, 1981. X must increase its suspense account balance by $2, which is the excess of the amount of qualifying returns for 1981 ($7) over X's opening balance in the suspense account ($5). X must also increase its gross income by $2. Thus, the net income excludable for gross income for the 1981 taxable year after taking into account the qualifying returns and the gross income adjustment is $5 ($7–$2).

(iv) X has qualifying returns of $10 for its taxable year ending December 31, 1982. The opening balance in X's suspense account of $7 will not be increased in excess of the initial opening balance ($8). X must also increase gross income by $1. Thus, the net amount excludable from gross income for the 1982 taxable year is $9 ($10–$1).

(v) This example is summarized by the following table:

	Years Ending December 31					
	1977	1978	1979	1980 [1]	1981	1982
Facts:						
Qualifying returns during merchandise return period for the taxable year	$5	$8	$6	$5	$7	$10
Adjustment to suspense account:						
Opening balance				$8	$5	$7
Addition to account [2]					2	1
Reduction to account [3]				(*)		
Opening balance for next year				$5	$7	$8
Amount excludable from income:						
Initial year adjustment				$(*)		
Amount excludable as qualifying returns in merchandise return period				5	$7	$10
Adjustment for increase in suspense account					(*)	(1)
Adjustment for decrease in suspense account				3		
Net amount excludable for the year				$8	$5	$9

[1] Year of Change.
[2] Applies when qualifying returns during the merchandise return period exceed the opening balance; the addition is not to cause the suspense account to exceed the initial opening balance.
[3] Applies when qualifying returns during the merchandise return period are less than the opening balance.

(f) *Subchapter C transactions*—(1) *General rule.* If a transfer of substantially all the assets of a trade or business in which paperbacks or records are sold is made to an acquiring corporation, and if the acquiring corporation determines its basis in these assets, in whole or part, with reference to the basis of these assets in the hands of the transferor, then for the purposes of section 458(e) the principles of section 381 and § 1.381(c)(4)–1 will apply. The application of this rule is not limited to the transactions described in section 381(a). Thus, the rule also applies, for example, to transactions described in section 351.

(2) *Special rules.* If, in the case of a transaction described in paragraph (f)(1) of this section, an acquiring corporation acquires assets that were used in a trade or business that was not subject to a section 458 election from a transferor that is owned or controlled directly (or indirectly through a chain of corporations) by the same interests, and if the acquiring corporation uses the acquired assets in a trade or business for which the acquiring corporation later makes an election to use section 458, then the acquiring corporation must establish a suspense account by taking into account not only its own experience but also the transferor's experience when the transferor held the assets in its trade or business. Furthermore, the transferor is not allowed a deduction or exclusion for merchandise returned after the date of the transfer attributable to sales made by the transferor before the date of the transfer. Such returns shall be considered to be received by the acquiring corporation.

(3) *Example.* The provisions of paragraph (f)(2) of this section may be illustrated by the following example.

Example. Corporation S, a calendar year taxpayer, is a wholly owned subsidiary of Corporation P, a calendar year taxpayer. On December 31, 1982, S acquires from P substantially all of the assets used in a trade or business in which records are sold. P had not made an election under section 458 with respect to the qualified sale of records made in connection with that trade or business. S makes an election to use section 458 for its taxable year ending December 31, 1983, for the trade or business in which the acquired assets are used. P's qualified record returns within the 4 month and 15 day merchandise return period following the 1980 and 1981 taxable years were $150 and $170, respectively. S's qualified record returns during the merchandise return period following 1982 were $160. S must establish a suspense account by taking into account both P's and S's experience for the 3 immediately preceding taxable years. Thus, the initial opening balance of S's suspense account is $170. S must also make an initial year adjustment of $10 ($170—$160), which S must include in income for S's taxable year ending December 31, 1983. P is not entitled to a deduction or exclusion for merchandise received after the date of the transfer (December 31, 1982) attributable to sales made by the transferor before the date of transfer. Thus, P is not entitled to a deduction or exclusion for the $160 of merchandise received by S during the first 4 months and 15 days of 1983.

(g) *Adjustment to inventory and cost of goods sold.* (1) If a taxpayer makes adjustments to gross receipts for a taxable year under the method of accounting described in section 458, the taxpayer, in determining excludable gross income, is also required to make appropriate correlative adjustments to purchases or closing inventory and to cost of goods sold for the same taxable year. Adjustments are appropriate, for example, where the taxpayer holds the merchandise returned for resale or where the taxpayer is entitled to receive a price adjustment from the person or entity that sold the merchandise to the taxpayer. Cost of goods sold must be properly adjusted in accordance with the provisions of § 1.61–3 which provides, in pertinent part, that gross income derived from a manufacturing or merchandising business equals total sales less cost of goods sold.

(2) The provisions of this paragraph (g) may be illustrated by the following examples. These examples do not, however, reflect any required adjustments under paragraph (e)(3) of this section.

Example 1. (i) In 1986, P, a publisher, properly elects under section 458 of the Code not to include in its gross income in the year of sale, income attributable to qualified sales of paperback books returned within the specified statutory merchandise return period of 4 months and 15 days. P and D, a distributor, agree that P shall provide D with a full refund for paperback books that D purchases from P and is unable to resell, provided the merchandise is returned to P within four months following the original sale. The agreement constitutes a legal obligation. The agreement provides that D's return of the covers of paperback books within the first four months following their sale constitutes satisfactory evidence that D has not resold and will not resell the paperback books. During P's 1989 taxable year, pursuant to the agreement, P sells D 500 paperback books for $1 each. In 1990, during the merchandise return period, D returns covers from 100 unsold paperback books representing $100 of P's 1989 sales of paperback books. P's cost attributable to the returned books is $25. No adjustment to cost of goods sold is required under paragraph (g)(1) of this section because P is not holding returned merchandise for resale. P's proper amount excluded from its 1989 gross income under section 458 is $100.

(ii) If D returns the paperback books, rather than the covers, to P and these same books are then held by P for resale to other customers, paragraph (g)(1) of this section applies. Under paragraph (g)(1), P is required to decrease its cost of goods sold by $25, the amount of P's cost attributable to the returned merchandise. The proper amount excluded from P's 1989 gross income under section 458 is $75, resulting from adjustments to sales and cost of sales [(100×$1)—$25].

Example 2. (i) In 1986, D, a distributor, properly elects under section 458 of the Code not to include in its gross income in the year of sale, income attributable to qualified sales of paperback books returned within the specified statutory merchandise return period of four months and 15 days. D and R, a retailer, agree that D shall provide a full refund for paperback books that R purchases from it and is unable to resell. D and R also have agreed that the merchandise must be returned to D within four months following the original sale. The agreement constitutes a legal obligation. D is similarly entitled to a full refund from P, the publisher, for the same paperback books. In 1990, during the merchandise return period, R returns paperback books to D representing $100 of 1989 sales. D's cost relating to these sales is $50. Under paragraph (g)(1) of this section, D must decrease its costs of goods sold by $50. D's proper amount excluded from its 1989 gross income under section 458 is $50 resulting from adjustments to sales and costs of sales ($100—$50).

(ii) If D is instead only entitled to a 50 percent refund from P, D is required under paragraph (g)(1) of this section to decrease its costs of goods sold by $25, the amount of refund from P. D's proper amount excluded from its 1989 gross income under section 458 is $75, resulting from adjustments to sales and cost of sales ($100—$25).

Par. 3. Section 1.458–10 is redesignated as § 1.458–2.

PART 602—OMB CONTROL NUMBER UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 5. Section 602.101(c) is amended by removing the entry for "1.458–10" and adding the following entries in the table to read as follows:

§ 602.101 OMB Control Numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.458–1	1545–0879

CFR part or section where identified and described	Current OMB control No.
1.458-2	1545-0152
. . . . .	

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved: July 23, 1992.

Fred T. Goldberg, Jr.,
Assistant Secretary of the Treasury.

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BILLING CODE 4830-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket S-026A]

RIN 1218-AB20

Process Safety Management of Highly Hazardous Chemicals; Explosives and Blasting Agents

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; petition for administrative stay; effective date of stayed provisions.

SUMMARY: On June 1, 1992, OSHA published a Federal Register notice (57 FR 23060) administratively staying, until August 26, 1992, four provisions of the standard for Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.119). These provisions included paragraph (f)—operating procedures, paragraph (h)—contractors, paragraph (j)—mechanical integrity and paragraph (l)—management of change. The notice also requested comments on whether additional time is necessary to comply with these provisions. After careful consideration of the information contained in the record as a whole, OSHA has decided that the original compliance dates are feasible and an extended administrative stay of paragraphs (f), (h), (j), and (l) of 29 CFR 1910.119 is neither necessary nor appropriate.

DATES: Paragraphs (f), (h), (j), and (l) of 29 CFR 1910.119 will become effective on August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Room N3649, U.S. Department of Labor, Washington, DC 20210, (202) 523-8148.

SUPPLEMENTARY INFORMATION: On February 24, 1992, OSHA issued its final rule on Process Safety Management of Highly Hazardous Chemicals, 29 CFR 1910.119 (57 FR 6356). The final rule was scheduled effective on May 26, 1992. Since the publication of the final rule, OSHA has received a number of requests to reconsider the 90-day delayed effective date for certain provisions in the standard. Additionally, OSHA has received petitions requesting an administrative stay of certain provisions of the final rule.

A joint petition from the Chemical Manufacturers Association (CMA), the American Petroleum Institute (API), and the National Petroleum Refiners association (NPRA) (henceforth referred to as CMA, API and NPRA; Ex. 3), requested an administrative stay of the following paragraphs for the following periods of time:

(c), employee participation until August 26, 1992;
(f), operating procedures until February 26, 1994;
(h), contractors until February 26, 1993;
(i), pre-startup safety review until August 26, 1992;
(j), mechanical integrity until February 26, 1994;
(l), management of change until February 26, 1993; and
(n), emergency planning and response until August 26, 1992.

Additionally, a petition from Union Carbide Chemicals and Plastics Company Inc. (henceforth referred to as Union Carbide; Ex. 4), requested an administrative stay of paragraphs: (f)(2) and (f)(4) within the operating procedures section until December 31, 1993; (h)(2)(i) and (h)(2)(iv) within the contractor provisions until December 31, 1992; and (j)(2) through (j)(5) within the mechanical integrity section until December 31, 1993.

After review of the information submitted, OSHA decided that no extension of time was warranted for paragraph (c)—employee participation, paragraph (i)—pre-startup safety review, or paragraph (n)—emergency planning and response, and these paragraphs became effective as scheduled. However, OSHA did decide that more time was necessary to evaluate the petitions regarding the compliance dates for paragraph (f)—operating procedures, paragraph (h)—contractors, paragraph (j)—mechanical integrity, and paragraph (l)—management of change. Consequently, OSHA published a notice in the Federal Register (57 FR 23060) on June 1, 1992, announcing an administrative stay of these provisions until August 26, 1992.

The Agency also provided a 30-day comment period, ending June 30, 1992, to give the public an opportunity to comment on the need for OSHA to further stay the compliance dates of these provisions. The Agency sought detailed information on whether additional time was necessary for compliance with each of the stayed paragraphs and if so, how much additional time, with specific rationale to support such extension.

The Agency received 55 comments in response to the notice. Generally, commenters supported the position of the petitioners requesting a further stay of the effective date (e.g., Ex. 2: 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 19, 20, 22, 24, 28, 29, 32, 33, 34, 35, 38, 40, 47, 50, 51). For example, a commenter from Nalco Chemical Company (Ex. 2: 8) stated:

> NALCO agrees with the objectives of these four elements as well as the entire Process Safety Rule, but supports the petitioners request for revision of the effective dates. These revisions would allow NALCO and members of industry the time necessary to meet the specific requirements of the Process Safety Management Rule which involve efforts toward reorganizing limited resources and creating multifaceted management plans for applicability, evaluation, cultural acclimation, training, documentation systems, staffing, implementation and follow-up controls.

Additionally, a commenter from the United Refining Company (UFC; Ex. 2: 13) remarked:

> United Refining fully supports the petition submitted by API, NPRA, and CMA to delay the effective date of paragraphs (f) operating procedures, (h) contractors, (j) mechanical integrity, and (l) management of change. In our view, the petitioned effective dates give a reasonable time period for UFC to develop the procedures and management systems required to comply with the regulations.

A commenter from Taurus Energy Corp. (Ex. 2: 35) said:

> Process Safety Management makes good sense for our company. However, more time is needed to formally implement the four elements addressed in the notice.

Also, a commenter from Kerr-McGee Corporation (Ex. 2: 51) stated:

> We urge OSHA to extend compliance dates for the above noted paragraphs in order to keep from putting industry in the untenable position of striving to do the right thing but not having enough time to do it properly.

Many commenters, while supporting the need for added time, addressed additional provisions that should be stayed and, in some cases, believed fewer provisions needed to be stayed. Commenters also requested different amounts of time to comply with the stayed paragraphs. (E.g., Ex. 2: 3, 16, 18, 22, 23, 25, 26, 27, 31, 36, 37, 39, 42, 43, 44, 45, 46, 48, 49, 53, 54.)

Two commenters, the Building and Construction Trades Department, AFL-CIO (Ex. 2: 14), and the United Steelworkers of America, AFL-CIO (Ex. 2: 41), objected to the extension of the effective date of the standard.

For example, a commenter from the Building and Construction Trades Department (BCTD), AFL-CIO (Ex. 2: 14, p. 5) remarked:

> • • • The BCTD believes that the process safety management standard is a vital step toward protecting employees and the public from the dangers associated with industrial processes involving highly hazardous chemicals. The promulgated standard is capable of immediate implementation, and it should be given full effect upon the expiration of the administrative stay on August 26, 1992.

A commenter from the United Steelworkers of America (Ex. 2: 41, p. 2) stated:

> The United Steelworkers of America (USWA) strongly opposes any extension of time for any provision of standard 29 CFR 1910.119.

The Agency decision announced in this notice essentially reaffirms the original decision not to adopt phased-in effective dates for provisions of the Process Safety Management standard other than the requirements for process safety information—paragraph (d), and the process hazard analysis—paragraph (e).

At the time OSHA published the proposed Process Safety Management standard, the Agency specifically sought comments on what would be an appropriate timeframe in which to conduct a process hazard analysis. In addition, comments were specifically sought regarding whether other provisions should be delayed or phased in, as well as the reasons for any recommended delay (55 FR 29159). In the preamble to the final Process Safety Management standard, OSHA addressed these comments (57 FR 6360), and decided that:

> • • • With the exception of allowing a phase-in period for paragraph (d), process safety information, and paragraph (e), process hazards analysis, no other phase-in period is necessary or warranted. OSHA realizes, as it does with any other newly promulgated standard, that employers will be working toward implementation of the provisions contained in the standard as quickly as possible • • • OSHA believes this schedule is practical and feasible.

The Agency specifically considered whether grounds existed for phasing in implementation of any provisions other than paragraphs (d) and (e), and rejected that option. The Agency's present decision to adhere to its previous finding that extended implementation schedules for additional provisions of the standard are unnecessary, and to therefore deny the petitions seeking additional compliance time for the operating procedures, mechanical integrity, contractor, and management of change provisions of the standard, is based on several factors which were apparent at the time the final standard was published.

First, it must be emphasized that the requirements of the four administratively stayed provisions are not new, and OSHA does not believe that industry is "starting from scratch" in terms of compliance. The Process Safety Management standard is new only in the sense that its requirements are unified under an overall comprehensive approach to process safety management. For many firms, the standard will only require that the existing elements of their process safety management procedures be incorporated into a comprehensive and holistic program, integrating technologies, procedures, and management practices. Comments to the record clearly indicate that many firms have far more than a skeletal program in place (e.g., Ex. 2: 7B, 16, 20, 30, 50).

OSHA's Regulatory Impact Analysis (Ex. 156, p. IV-5, Docket S-026), found that, as of January 1992, "compliance rates [with the requirements of the process safety management standard] vary widely across industries and provisions, but are generally above 40 percent in most industries." Given this estimated compliance rate across industries, and widespread industry familiarity with the various elements of process safety management principles, OSHA reaffirms its conclusion that with the exception of allowing a phase-in period for paragraphs concerning process safety information and process hazards analysis, no other phase-in period is necessary or warranted. Indeed, the standard relies heavily on preexisting industry guidelines for its component parts and overall approach.

It should be noted that the provisions of the standard received widespread support from the regulated community. In fact, the final standard contained no new issues; most of the provisions of the final rule were contemplated by the Clean Air Act Amendments of 1990, as well as the American Petroleum Institute Recommended Practice 750, Management of Process Hazards (API's RP 750), the Chemical Manufacturers Responsible Care Process Safety Code of Management Practices (CMA's Process Safety Code) and, the American Institute of Chemical Engineers "Guidelines for Technical Management of Chemical Process Safety" (Ex. 2: 11 and Ex. 11: 25, 17, Docket S-026, respectively).

The recommendations contained in these industry documents played an integral role in the development of the Process Safety Management standard, and convinced the Agency that the concepts of process safety management have been widely recognized as essential for several years. Taken together with (1) its finding that a substantial percentage of covered industries are generally in compliance with the requirements of the standard, and (2) enforcement experience under the General Duty Clause that has produced rapid abatement, OSHA is convinced that a further extension of the effective date of the Process Safety Management standard is not warranted.

As already noted, at the time of the proposal, OSHA sought comments on appropriate effective dates for the various provisions of the final rule. After careful evaluation of the comments, the Agency still believes that the original effective dates were correct. The Agency decided (57 FR 6360):

> • • • With the exception of allowing a phase-in period for paragraph (d), process safety information, and paragraph (e), process hazards analysis, no other phase-in period is necessary or warranted. OSHA realizes, as it does with any other newly promulgated standard, that employers will be working toward implementation of the provisions contained in the standard as quickly as possible. The standard will become effective in 90 days, thereby giving employers a brief period to familiarize themselves with the provisions of the standard and begin its implementation. OSHA believes this schedule is practical and feasible.

Implicit in many of the commenters submissions is the idea that initial compliance must be perfect compliance. This, of course, ignores the continuing nature of the obligation and the on-going review and revision of efforts that is very much a part of the standard. The Process Safety Management standard requires employers to use an iterative process to improve the safety of the facility as well as to come into full compliance. The Agency agrees with the Building and Construction Trades Department of the AFL-CIO that the standard does not mandate a specific, "ideal" management system, and there is no corresponding need for an employer to "get it exactly right" the first time out before establishing any basic safety management practices and procedures as called for in the Process Safety Management standard (Ex. 2: 14, p. 3).

The Agency also agrees with commenters that employers are

expected to use available information in the employer's initial compliance efforts (e.g., Ex. 2: 7B, 11, 28). However, the standard contemplates continuing and on-going compliance efforts: Compliance audits, incident investigations, process hazard analysis recommendations, etc., will provide information with a view toward revising operating procedures as necessary to assure that they reflect proper current operating practice; employees will be provided with refresher training as necessary to safely do their job; and other safety practices and procedures called for under process safety management will be revised. That knowledge will improve and compliance will necessarily evolve under process safety management; however, this does not supply a basis for further delay.

The record shows that a large number of commenters already have in place written operating procedures (e.g., Ex. 2: 7B, 8, 11, 15, 16, 17, 19, 27, 41), mechanical integrity procedures (e.g., Ex. 2: 7B, 8, 11, 16, 17, 20, 26, 27, 29), management of change (e.g., Ex. 2: 7B, 8, 11, 15, 16, 20, 26, 27, 50), and provisions similar to the contractor provisions (e.g., Ex. 2: 16, 26, 29, 50, 51).

The following discussion will explain in more detail why the Agency has denied any further extension of these four provisions.

Operating Procedures, Paragraph (f)

Union Carbide asserts in its petition (Ex. 4) that the petrochemical industry as a whole needs more time in which to meet the specific requirements of the process safety standard. Noting that Union Carbide is still trying to bring its facilities into full compliance, it does not believe it is feasible to achieve full compliance with the provisions addressed in their petition. Specifically, Union Carbide requested a stay of paragraphs (f)(1) and (f)(4), operating procedures. Paragraphs (f)(1) and (f)(4) require the development and implementation of written operating procedures and the development and implementation of safe work practices. The operating procedures are to provide clear instructions for safely conducting activities involved in covered processes and the safe work practices are to provide for the control of hazards during operations such as opening process equipment or piping and for the control over entrance into a facility by maintenance, contractor, laboratory, or other support personnel.

Union Carbide (Ex. 4, p. 5) observed that while it already addresses virtually all of the issues most directly relevant to the safe operation of processes, changes will still be required and these changes will require a substantial amount of time. The petitioner noted that the process of revision requires a thorough review of thousands of procedures, their rewriting, their communication, training and implementation.

CMA, API and NPRA requested that paragraph (f), operating procedures, be stayed until February 26, 1994. The Petitioners observed that the development of operating procedures is one of the most important and demanding requirements of the standard. They noted that while many employers already had operating procedures, few of the procedures met the demanding requirements of the standard. Additionally, they claimed that some employers have relied upon apprentice-type training on certain operating jobs and written operating procedures may not exist.

Based on their experience implementing similar process safety management programs such as the API's RP 750 and the CMA's Process Safety Code, petitioners say they have gained an understanding of the resources and time required to implement process safety. CMA, API and NPRA concluded that there are limited human resources available, that significant time is required to effectively complete process safety, and that the activities must be carefully managed.

With regard to limited human resources, petitioners observed that few individuals at a facility are qualified or available to prepare or update operating procedures since special skills and knowledge are necessary. Oftentimes the best qualified to undertake the task is the operator of the process which means the operator may have to be away from process operation possibly for months. Thus, the employer may need to hire and train additional personnel. While some procedures can be developed on a shift, petitioners are concerned that the operator might be distracted from operating duties. If an operator is not available, then the employer must use a process engineer or a supervisor which again creates a void. Reassigning employees is not a simple thing to do and must be carefully managed and done over a significant period of time due to limited staff.

Additionally, petitioners believe that as a result of the amount of detailed knowledge and information required by paragraph (f), accomplishing the task will be a substantial effort. For example, they observed that it took one employer six months to develop quality operating procedures for one process. Even upgrading operating procedures is a substantial task.

Finally, petitioners indicated that the task must be carefully managed in order to minimize disruption to ongoing safe operations when experienced operators are reassigned, to assure a consistent high quality work product, and to complete the task within the time allowed. Petitioners contended that the task is significant, and time is needed to do it in an orderly fashion. The petitioners contend that operating procedures cannot be revised to reflect current process safety information until the process safety information package is compiled. OSHA would like to note, however, that it only expects current operating procedures to reflect current process safety information.

A comment from the Building and Construction Trades Department (Ex. 2: 14, p. 2), however, stressed that further delay of the standard would be inappropriate, and observed:

> Even under the terms and timetable of the final standard, an employer will not be required to fully comply with OSHA's process safety management standard for some time to come. This is a direct result of the fact the OSHA resolved to allow up to five years for employers to compile process safety information (section (d)) and to complete process hazard analyses (section (e)). As these sections are the critical building blocks of other components of the standard (such as the requirements for written operating procedures and training materials), these other components will necessarily be modified and augmented with later developed information and analysis.
>
> But recognizing that achievement of process safety will be an ongoing process does not justify delaying compliance with the specific components of OSHA's standard. The final standard is strongly * * * "performance oriented." The performance oriented approach to workplace safety militates for the early, rather than late, implementation of the standard. The standard does not mandate a specific, "ideal" management system, and there is no corresponding need for an employer to "get it exactly right" before establishing any safety management practices and procedures. Instead, employers have been given broad latitude to design and implement those systems and practices which are calculated to produce a safe workplace. Only within a functioning management system can employers and employees work together to test, improve, and enhance the form and content of particular safety practices. In order to create the structures through which employers, employees and third parties can act to improve safety practices in the industry, employers must begin immediately to comply with every component of the standards.

The United Steelworkers of America (Ex. 2: 41, p. 3) remarked:

> This paragraph (f) only requires employers to develop and implement operating procedures that provide clear instructions for safely conducting activities involved in each covered process. This section merely calls for procedures to operate the facility.
>
> It has been the experience of the USWA when dealing with chemical companies and others that all of them have "operating procedures" in writing detailing how to operate the facility. The industry comments * * * "Many employers had operating procedures, but few met the demanding requirements of the standard." In the first place, the USWA believes all had written operating procedures that have been utilized for years. Therefore additional time is not necessary.
>
> In the second place, the standard demands no more than clear instruction on how to safely operate the process. It is ludicrous for the industry to allege that they do not have "clear instructions" on how to operate their facilities. If they do not have them, then how have they been operating for the past 50 plus years? Further is it absolutely ridiculous for the industry to allege that some of them "have relied for years upon apprentice-type training on certain operating jobs, *and may not have written operating procedures* in all cases" (emphasis added). If they have nothing in writing, how did they train the first operators? How are they consistent in training new hires and retraining experienced operators?

OSHA agrees with these comments. The great majority of employers covered by the standard either already have basis standard operating procedures in place or could implement this provision without herculean effort. OSHA realizes that some operating procedures will change over time and will probably need revision when the process safety information is collected and the process hazard analysis is conducted. However, this does not warrant further delay. To allow processes involving highly hazardous chemicals to operate without any operating procedures until some future date would not be consistent with a safe and healthful working environment.

Contractors, Paragraph (h)

Petitioners and many commenters also requested additional time regarding the contractor provisions in the standard. CMA, API, and NPRA requested a stay of the entire paragraph and Union Carbide requested a stay of paragraphs (h)(2)(i) and (iv). Paragraph (h)(2)(i) requires that employers, when selecting a contractor, obtain and evaluate information regarding the contract employer's safety performance and programs. Paragraph (h)(2)(iv) requires employers to develop and implement safe work practices to control the entrance, presence and exit of contract employees in covered process areas.

Union Carbide inquired as to whether paragraph (h)(2)(i) applies to contractors already selected as of May 26, 1992. It observed that if it does apply to these current contractors, which in some cases may number in the hundreds, then the information cannot possibly be gathered until December 1992.

CMA, API, and NPRA observed that if employers are required to obtain and evaluate the safety performance and program of contract employers that are presently working at the site, it would take a significant amount of time since a typical refinery may have as many as 400 or more contract employers over a year. Developing an effective evaluation program and implementing it will require a considerable amount of time.

Petitioners contended that the contractor requirements are significant and will require both employers and contractors to develop and implement important new programs. These include the development of a communication package to inform contract employers of the known potential fire, explosion, or toxic release hazards. They stated that the package cannot be too detailed nor too simple; it will require careful design and testing; the use of modern communication tools will be needed; and, meetings will have to be scheduled to impart the information.

Petitioners also stated that contract employers will require a significant amount of time to comply with the training requirements. Contract employers will have to define job-specific training needs for all contract employees, then design and implement effective training programs and determine and document that contract employees understood the training. This may present a significant legal and labor management consideration.

The petitioners asserted that the training task which will require the most time is to review an employer's potential hazards and review work practices and procedures. Since documentation of training may be lacking, contract employees will need a significant amount of retraining since no grandfather clause is included. Small contractors may need to hire more personnel. For these reasons, it is important for OSHA to allow an additional 9 months to the effective date.

The Building and Construction Trades Department (Ex. 2:14, p. 4) remarked:

> It is both unnecessary and unwise to postpone the effective date of section (h) of the standard. That section of the standard attempts to clarify the interdependent safety and health obligations of owners and operators of covered processes and contractors who perform jobs on or near the processes.
>
> A contractor's obligations under section (h) could be said to be burdensome only for those contractors which have been grossly derelict in their health and safety responsibility to their employees * * * Contractors which lack effective training programs introduce significant dangers into the chemical process industry, so their poorly trained employees put themselves and all other employees at risk when working near the processes covered by the standard. It is precisely for this reason that immediate implementation of the contractor training requirements is imperative.
>
> The standard's requirements of owner/operators provide even less cause for delay. Shouldn't every owner or operator of a covered process begin now to evaluate a contractor's safety record and safety programs before entering into a new contract for services? The fact that the owner/operator may in the future be better able to gather and evaluate safety information in the bid process does not lessen the need for all owner/operators to comply with this step at the present time.
>
> Similarly, the owner/operator's obligation to communicate hazard information and safe work practices to contractors and their employees must not be delayed. The information required to be provided to contractors is largely a subset of information which an owner or operator must already communicate to its own employees under section (g) of the standard. Moreover, some of the hazard information which must be communicated to contractors and their employees is already mandated under the terms of OSHA's hazard communication standard. At sites where there is a potential for catastrophic releases of hazardous chemicals, the stakes are simply too high to delay the minimal exchange of information and coordination of effort between employers which is mandated by section (h) of the standard.

OSHA continues to believe that contractors working on or adjacent to a covered process, should be informed of the hazards associated with that process. The Process Safety Management standard requires contractors to be made aware of the applicable provisions of the emergency action plan before they begin such work. OSHA believes that this information is basic to the safety of contractor employees and site employees.

OSHA realizes that practices and procedures pertaining to contractor safety will continue to be enhanced and improved as the standard becomes fully implemented, but the Agency also believes that the requirements contained in this provision (paragraph (h)) need to be addressed immediately.

Regarding contractors who are already working at the site, it is not necessary to go back and evaluate their safety programs and accident history. OSHA did not intend for paragraph (h)(2)(i) to be retroactive; this provision would apply only when hiring or re-hiring a contractor.

Regarding paragraph (h)(2)(ii), which requires employers to impart hazard information to contract employers, OSHA believes that contract employers need to know the hazards relative to a process using a highly hazardous chemical sooner than later since absence of such knowledge can result in endangerment of all of those working on or near the process. Also, in paragraph (h)(2)(iii), OSHA is requiring employers to inform contractors of the emergency action procedures. While an employer may establish a program which includes enhancements such as videos etc., OSHA does not require this. OSHA merely wants employees to know what hazards they face, and what actions to take if an emergency occurs. Therefore, such information can be simply relayed to contractors without such enhancements as may later be developed.

With respect to paragraph (h)(2)(iv), the Agency agrees with the comments submitted to the final rule record by Organization Resource Counselors (ORC, Ex. 131, Docket S–026). As indicated in the Preamble to the final rule (57 FR 6387), ORC recommended that contractors be required to follow the safe work practices of the facility. ORC observed that safe work practices were to insure that those persons operating high hazard processes are cognizant of any nonroutine work that is occurring and to insure that those in responsible control of the facility are also in control of nonroutine work.

The opportunity to scrutinize and correct the performance of contractors, if necessary, is contained in paragraph (h)(2)(v) which requires an employer to periodically evaluate the performance of contract employers in fulfilling their obligations. OSHA believes that employers should evaluate contractors on site, and that some procedures must exist or could easily be developed to meet the needs right now.

Finally, OSHA sees no reason why the information required by paragraph (h)(2)(vi), regarding injuries and illnesses of contractors, cannot be collected now.

Regarding the provisions contained in (h)(3) that deal with the contract employer responsibilities, after carefully evaluating them, OSHA again does not agree with the requests for a stay. The first provision merely assures the site employer that trained individuals are working at their site on processes involving highly hazardous chemicals. This requirement does not mean a contract employer must train contract employees all over again, but rather, requires the assurance that the services offered can be delivered safely.

OSHA considers the instruction of contract employees in known potential fire, explosion, or toxic release hazards and the applicable provisions of the emergency action plan to be necessary immediately; that assurance be made that employees have understood the training that they have received; that contract employees follow the same safe work practices as site employees; and that contract employers advise the site employer of any unique hazards presented by the contract employer's work, or of any hazards found by the contract employer's work. The petitioner's statement that a typical refinery employs 400 contractors in any given year only underscores the need for promptly implementing the Process Safety Management standard's contractor provisions.

Mechanical Integrity, Paragraph (j)

Union Carbide noted in its petition that while its mechanical integrity program encompasses critical equipment, it does not cover the broad categories of equipment covered by the standard and as a consequence, it will need additional time to comply.

CMA, API and NPRA noted that developing and implementing mechanical integrity programs is as complex as developing and implementing operating procedures. It requires comprehensive programs with supporting documentation for maintenance procedures, training of maintenance personnel, equipment testing and inspection, correction of deficiencies and quality assurance. Refinery and chemical plant maintenance requires a multitude of procedures reflecting many different crafts and types of equipment. While a systematic effort has been started to identify and develop the procedures required, significant personnel resources will be needed.

Further, petitioners note that the mechanical integrity section does not provide a grandfather clause. Many employees learned their craft on the job but the documentation is not available to support their skill. Training will be based on the procedures, employers will have to evaluate where additional training is required, develop the training program, train the employees, and document the training.

While employers have inspection and testing procedures in place, most procedures will require enhancing to fully comply with the standard. These enhancements include developing or strengthening documentation of equipment inspection and test procedures, ensuring compliance with engineering practices or manufacturers recommendations, monitoring and tracking inspection and test results and strengthening systems to correct equipment deficiencies.

Finally, they observed that compliance with the quality assurance provision begins with the development or enhancement of quality assurance procedures and continues with training and the documentation of results. Petitioners concluded that the concerns expressed regarding compliance with paragraph (f), operating procedures, is also appropriate to the development and implementation of the provisions concerning mechanical integrity. That is, petitioners concluded that there are limited human resources available, that significant time is required to effectively complete process safety, and that the activity must be carefully managed.

Several commenters (e.g. Ex. 2: 7, 30, 45, 47, 49, 50, 51, 52) asserted that additional time is needed to fully implement all of the requirements contained in this provision, and that the effective date of this provision should be extended until February 28, 1994.

These commenters stated that this additional amount of time is necessary because this element of the standard contains extensive documentation requirements; formal written procedures may not exist for many tasks; test methods and inspection procedures must be specified, documented, and made a part of the written procedures; and, maintenance employees must be trained in the written maintenance procedures—some of which must yet be developed.

For example, a commenter from the American Petroleum Institute (Ex. 2: 52, p. 2) remarked:

> Like operating procedures, this is one of the most important and most demanding requirements of the standard. Complying with this element requires comprehensive programs complete with supporting documentation for maintenance procedures, training of maintenance personnel, equipment testing and inspection, correction of deficiencies, and quality assurance.

A commenter from DuPont (Ex. 2: 50, p. 5) stated:

> • • • formal written maintenance procedures do not exist for many tasks. In the past, maintenance personnel were trained to achieve a given level of basic skills.
>
> Effective mechanical integrity programs require training of maintenance personnel in both basic skills and task-specific skills, which in turn, begins with the establishment of maintenance procedures.
>
> • • • while mature equipment test and inspection programs are in place, the documentation of specific test methods and procedures needs to be strengthened. In both cases, development of procedures along with subsequently required training programs is a time and resource consuming task.

Additionally, a commenter from the Chemical Manufacturers Association (Ex. 2: 30, pp. 7, 8) said:

> Refinery and chemical plant maintenance requires a multitude of procedures reflecting many different crafts and types of equipment.
>
> Effective maintenance training will be based upon the maintenance procedures being developed above. Although some formal training programs have been developed, not all are completed. As a result, employers will have to evaluate where additional training is required, develop training programs, and then train employees with supporting documentation.
>
> While employers generally have inspection and testing programs in place, most will require enhancements to comply with the provisions of the rule.

Other commenters (e.g., Ex. 2: 14, 41) strongly opposed any further extension of the effective date for the mechanical integrity provision.

These commenters stated that the rulemaking record demonstrates that many employers have already implemented management practices and procedures that meet the requirements of the standard, and while improvement of these practices and procedures will be an ongoing process, it does not justify delaying compliance with the specific components of the OSHA standard.

For example, a commenter from the United Steelworkers of America (USWA, Ex. 2: 41, pp. 8, 9) remarked:

> Again, the industry is trying to give the impression that this subpart requires them to "start from scratch" and they have absolutely nothing in place at this time. This simply is not true. In virtually every facility, there are written procedures in place to maintain the on-going integrity of process equipment.
>
> The industry further makes a point that many of their maintenance persons learned their craft "on the job." I don't believe this standard prohibits this type of training, providing that it covers the process and the job procedures (and) skills necessary to maintain the integrity of the equipment. The USWA does not believe OSHA wants the industry to re-invent the wheel; that a lot of what industry is doing now would be acceptable.
>
> The requirements for inspecting and testing are generally being done in the industry by their own admission. All this provision requires is to follow recognized and generally accepted good engineering practices. Further, it requires that this information be documented and deficiencies in equipment that are outside acceptable limits be corrected.

A commenter from the Building and Construction Trades Department (Ex. 2: 14 p. 1–3), stated:

> The rulemaking record demonstrates that many firms already have implemented more far-reaching management reforms than those required by OSHA's standard. Voluntary industry guidelines, such as the American Petroleum Institute's Recommended Practices 750 and 2220, have been in effect for some time, and are essentially congruent with OSHA's final standard.
>
> Even under the terms and timetable of the final standard, an employer will not be required to fully comply with OSHA's process safety management standard for some time to come. This is a direct result of the fact that OSHA resolved to allow up to five years for employers to compile process safety information (section (d)) and to complete process hazard analyses (section (e)). As these sections are the critical building blocks of other components of the standard (such as the requirements for written operating procedures and training materials), these other components will necessarily be modified and augmented with later developed information and analysis. But recognizing that achievement of process safety will be an ongoing process does not justify delaying compliance with the specific components of OSHA's standard.

After analysis of the information contained in this rulemaking record, OSHA has concluded that employers have, or should have, implemented practices and procedures to maintain the on-going mechanical integrity of process equipment. Many of the mechanical integrity programs that employers have already implemented may comply with the standard.

For instance, most employers already have some type of program for testing and inspecting mechanical equipment, as well as programs that address quality assurance. Additionally, OSHA believes that most maintenance employees have already been trained in the hazards associated with the processes with which they will be working, and have the necessary training to perform their job tasks. OSHA did not expect employers to retrain all maintenance personnel. Rather, OSHA expects that as maintenance personnel take their skills from process to process, the employer will assure that these employees are aware of the necessary information pertaining to their work and the process.

Additionally, OSHA does not expect initial mechanical integrity programs to stay static. The Agency believes that process safety management is a dynamic process, and as a result of process hazard analyses and compliance audits, it may be determined that some mechanical integrity programs need to be updated or upgraded. However, the Agency believes that OSHA's recognition that process safety is an on-going process does not justify delaying compliance with this provision of the standard.

Management of Change, Paragraph (l)

The last paragraph of concern is paragraph (l), management of change. Petitioners indicate that the new ideas in the standard concerning management of change are difficult to place into practice since OSHA has defined change so broadly. CMA, API, and NPRA observed that while sites have always managed change, these long established systems will require change. They asserted that, based on experience with API's RP 750 and CMA's Process Safety Code, modifying present management of change systems is involved and takes time to accomplish. Petitioners suggested a schedule based on this experience illustrating a total elapsed time of 18 months.

Regarding the provision pertaining to management of change, many commenters (e.g., Ex. 2: 5, 9, 11, 20, 23, 30, 45, 49, 50, 51) stated that additional time is needed to implement management of change procedures because of the large number and diversity of changes that continually take place. These commenters remarked that implementing management of change procedures can be time-consuming for several reasons. These reasons include making a cultural change at facilities, the time necessary to obtain management and facility understanding and support, the time needed to define, list, and establish facility-specific management of change procedures and, the time needed to communicate/train affected personnel in the procedures.

Other commenters (Ex. 2: 14, 41) asserted that the effective date of this important provision should not be postponed any longer. These commenters stated that most employers have implemented management of change programs and, although they may not be "ideal," the considerations required by the management of change provision are currently being done by industry.

The United Steelworkers of America (Ex. 2: 41, p. 10) said:

> The above listed considerations (requirements of the management of change provision, paragraph (l)), in the opinion of the USWA, are currently being done by the industry. This not only makes sense for safety, it also makes good business sense. Again, the industry is attempting to give the impression that all of their requirements must now be developed and that they have absolutely nothing in place.

A commenter from the Building and Construction Trades Department; AFL–CIO (Ex. 2: 14, p. 3) stated:

The standard does not mandate a specific, "ideal" management system, and there is no corresponding need for an employer to "get it exactly right" before establishing any safety management practices and procedures. Instead, employers have been given broad latitude to design and implement those systems and practices which are calculated to produce a safe workplace.

In order to create the structures through which employers, employees and third parties can act to improve safety practices in the industry, employers must begin immediately to comply with every component of the standard.

The management of change provision of the final rule requires employers to implement procedures to assure that certain considerations are addressed before any change is made to a process. These considerations include the technical basis for the proposed change, the impact of the change on the safety and health of employees, modifications to operating procedures, the time period for the change and, authorization for the change.

OSHA believes that it is extremely important to address these considerations because many of the incidents that the Agency has reviewed resulted from some type of change to the process. Additionally, OSHA believes that these considerations are neither complex nor difficult to implement and, in fact, the record indicates that many employers already have management of change procedures in place (e.g. Ex. 2: 8, 11, 15, 16, 26).

As discussed previously, OSHA realizes that currently implemented procedures, such as management of change procedures, will change over time. As an example, the Agency believes that continual improvement in these procedures will evolve as a result of process hazard analyzes and compliance audits.

The Agency has concluded that most employers have implemented management of change procedures to some extent. OSHA believes that many of these procedures may already meet the requirements of the standard, and if improvements in these management of change procedures are needed, the improvements will be accomplished by following all of the elements of the process management program.

Since OSHA believes that the implementation of management of change procedures is such an important factor in preventing catastrophic incidents, the Agency has also concluded that those employers who have not yet implemented management of change procedures must do so, immediately.

List of Subjects in 29 CFR Part 1910

Explosive, Flammable liquids and gases, Hazard analysis, Highly hazardous chemicals, Hazardous materials, Occupational safety and health, Safety, Process hazard analysis, Pyrotechnics.

Authority

This document was prepared under the direction of Dorothy L. Strunk, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. It is issued under the authority of sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Section 304, Clean Air Act Amendments of 1990 (Publ. L. 101-549, Nov. 15, 1990, reprinted at 29 U.S.C. 655 Note (Supp. 1991)); Secretary of Labor's Order No. 1-90 (55 FR 9033); and 29 CFR part 1911.

Accordingly paragraph (f), paragraph (h), paragraph (j), and paragraph (l) of 29 CFR 1910.119 become effective August 27, 1992.

Signed at Washington, DC, this 21st day of August 1992.

Dorothy L. Strunk,

Acting Assistant Secretary.

[FR Doc. 92-20454 Filed 8-25-92; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 92-103]

Special Local Regulations: New Jersey Offshore Power Boat Race, Manasquan, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for the New Jersey Offshore Power Boat Race, a high speed offshore race which will take place in the Atlantic Ocean extending from Spring Lake, NJ to Seaside Heights, NJ. This regulation is necessary in order to control vessel traffic within the immediate vicinity of the event due to the hazards associated with power boat racing and the anticipated congestion at the time of the event. This regulation restricts access to the area of the race course and is needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: This temporary regulation is effective from 11 am to 6 pm on September 19, 1992. In case of inclement weather, the effective date will be September 20, 1992, from 12 pm to 6 pm.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Eric G. Westerberg, Chief Boating Safety Affairs Branch, (617) 223-8311.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG E.G. Westerberg, Project Officer, First Coast Guard District Boating Safety Affairs Branch, and LCDR J.D. STIEB, Project Attorney, First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold the event was not received until August 12, 1992 and there was not sufficient time remaining to publish rules in advance of the event or to provide for a delayed effective date. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to respond to any potential hazards associated with this type of marine event. The sponsor had previously received a Coast Guard permit to hold the event in coastal waters off Atlantic City, NJ, but substantial construction in the Atlantic City staging area made that location impractical for logistical purposes. The sponsor has requested that the event be shifted northward, to take place in the same location as the annual Jenkinsons Offshore Classic. Extensive planning, publicity and operational commitments have already been made in connection with the race. The event is of such local popularity that delay or cancellation to provide for an NPRM would be against the public interest.

Background and Purpose

The New Jersey Offshore Power Boat Race is a high speed power boat race which will be held in the Atlantic Ocean adjacent to the shoreline between the Towns of Manasquan and Seaside Heights, NJ. This event will include up to 90 power boats competing on a rectangular course at speeds approaching 100 M.P.H. The regulated area will be the race course and

spectator areas, which will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor provided patrols, state and local law enforcement officials. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard patrol commander shall enter the regulated area. The potential hazards to participants, spectators, and transiting vessels are such that in the interest of safety of life on the navigable waters of the United States, the Coast Guard District Commander is issuing a special local regulation governing the conduct of the regatta. This regulation is required to protect the maritime public from possible hazards associated with high speed power boat racing.

Regulatory Evaluation

This regulation is not major under Executive Order 12291 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The regulated area does not obstruct commercial shipping lanes or harbor entrances. The Coast Guard will attempt to minimize any delays for commercial vessels transiting the area. The economic impact of this regulation is expected to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Due to the limited duration of the event, the Coast Guard expects the impact of this regulation to be minimal. The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501).

Federalism

The Coast Guard has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this regulation and has concluded under section 2.B.2.c of Commandant Instruction M16475.1B that it will have no significant impact and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 USC 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.T01-103 is added to read as follows:

§ 100.T01-103 New Jersey Offshore Power Boat Race, Manasquan, NJ

(a) Regulated area. The regulated area is the coastal Atlantic waters of New Jersey between the towns of Spring Lake and Seaside Heights. Specifically, the boundaries of the regulated area are:

(1) Northerly: An east to west line at latitude 40-10-00 North.

(2) Southerly: An east to west line at latitude 39-55-00 North.

(3) Easterly: A line drawn parallel to, and one and one-half (1½) miles seaward from the New Jersey coast between the north and south boundaries of the regulated area.

(4) Westerly: The New Jersey shoreline between the north and south boundaries of the regulated area.

(b) Special local regulations. (1) Commander, Coast Guard Group Sandy Hook reserves the right to delay, modify or cancel the race as conditions or circumstances require.

(2) The regulated area will be closed to all traffic except participants, patrol craft, and those vessels authorized by the sponsor. The Coast Guard patrol commander may, at his discretion, allow vessels to enter the regulated area between races. Transiting and spectating vessels are exempted from this requirement as follows:

(i) *Transiting vessels.* Vessels exiting Manasquan Inlet may transit the regulated area in a northerly direction only: Navigation in any other direction is prohibited. Coast Guard patrol vessels will be present to direct transiting vessels to proceed north within one-quarter (¼) mile of the shore until clear of the regulated area in the vicinity of Spring Lake, NJ.

(ii) *Spectator vessels.* The spectator fleet will be held above (northeast of) the northern edge of the race course adjacent to Manasquan Inlet. The sponsor shall provide readily identifiable banners to mark the spectator area. Vessels will not be allowed to observe the race from any other location within the regulated area.

(3) No vessel shall proceed at a speed greater than six (6) knots while in Manasquan Inlet during the effective period of regulation.

(4) Race participants must remain on the course when racing. Any participating vessel straying from the race course must reduce speed and return to the course at headway speed. Only disabled race boats will be allowed to enter the spectator area. If a contestant enters the spectator area for any other reason, they will be automatically disqualified and the race may be terminated.

(5) All persons shall comply with the instructions of U.S. Coast Guard patrol personnel. Upon hearing five or more blasts from a U.S. Coast Guard vessel, the operator of a vessel shall stop immediately and proceed as directed. U.S. Coast Guard personnel include commissioned, warrant and petty officers of the Coast Guard. Members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation and other applicable laws.

(6) In the event of an emergency or as directed by the Coast Guard patrol commander, the sponsor shall immediately cease racing activities. At the discretion of the patrol commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate the event.

(7) For any violations of this regulation, the following maximum penalties are authorized by law:

(i) $500 for any persons in charge of the navigation of a vessel.

(ii) $500 for the owner of a vessel, if the owner is actually on board.

(iii) $250 for any other person.

(iv) Suspension or revocation of a license for a licensed officer.

(c) Effective dates. This regulation is effective between the hours of 11 am and 6 pm on September 19, 1992. In case of inclement weather, the regulation will

be effective between the hours of 12 pm and 6 pm on September 20, 1992.

Dated: August 17, 1992.

K.W. Thompson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 92-20349 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CCGD13-92-01]

Drawbridge Operation Regulations; Snake River, ID

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the drawspan of the Interstate Highway Bridge (U.S. Route 12) across the Snake River, mile 140.0, between Lewiston, Idaho, and Clarkston, Washington. This change requires that advance notice be given by 5 p.m. on Wednesday for any openings on the following Friday, Saturday, or Sunday. For openings on holidays, notice must be given by 5 p.m. two workdays preceding the day of requested opening. The bridge would open as soon as possible for the passage of emergency vessels. This action is being taken because of the marked decrease in requests for bridge openings on weekends and holidays. This action will relieve the bridge owner of the burden of having persons constantly available to open the draw and will still provide for the reasonable needs of navigation.

DATES: This regulation becomes effective on September 25, 1992.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 553-5864).

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are Austin Pratt, project officer, and Lieutenant Laticia J. Argenti, project attorney.

Discussion of Final Rule

On March 10, 1992, the Coast Guard published a proposed rule (53 FR 8428) concerning this amendment. The Commander, Thirteenth Coast Guard District, also published the proposal as a public notice dated March 25, 1992. In each notice interested persons were given until April 23, 1992, to submit comments. No objections to the proposed rule were received. The Fire Chief for the city of Lewiston, Idaho, desired assurance that the local fireboat would be accommodated by the bridge operator as before. This assurance has been given and will not be affected by this final rule.

Regulatory Evaluation

This final rule is considered to be not major under Executive Order 12291 and non significant under the Department of Transportation regulatory policies and procedures (44 FR 113044, February 26, 1979). The economic impact has been determined to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any substantial effect on commercial navigation or any businesses that depend on waterborne transportation for successful operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) the U.S. Coast Guard must consider whether rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act. Because this final rule imposes no new requirements on small businesses and will result in partial relief from a regulatory burden on the owner or operator of this bridge, the Coast Guard does not expect this temporary to have significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed and determined by the Coast Guard to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.385 is revised to read as follows:

§ 117.385 Snake River.

The drawspan of the U.S. 12 bridge, mile 140.0, between Lewiston, Idaho, and Clarkston, Washington, operates as follows:

(a) The draw need not open for the passage of vessels except at these hours:

(1) From March 15 through November 15 at 6 a.m., 10 a.m., 3 p.m., 7 p.m., and 9 p.m.

(2) From November 16 through March 14 at 9 a.m., 10 a.m., 2 p.m., and 3 p.m.

(b) Requests for openings shall be given to the Washington State Department of Transportation.

(1) Monday through Thursday of every week, except holidays, the draw shall open if at least two hours notice is given.

(2) Friday through Sunday of every week, except holidays, the draw shall open if notice is given by 5 p.m. of the preceding Wednesday.

(3) The draw shall open on holidays if notice is given by 5 p.m. two workdays, excluding Friday, preceding the holiday.

(4) The draw shall open at any time for the passage of vessels engaged in an emergency.

Dated: August 10, 1992.

J. E. Vorbech,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 92-20348 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-92-12]

Drawbridge Operation Regulations; Industrial Seaway Canal, Mississippi

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Harrison County Board of Supervisors, Gulfport, Mississippi, the Coast Guard is changing the regulation governing the operation of the double leaf bascule span drawbridge on Lorraine-Cowan Road, across the Industrial Seaway Canal, mile 11.3, near Handsboro, Harrison County, Mississippi. The change will permit the draw to remain closed to navigation from 7 a.m. to 8 a.m., from 12 noon to 1 p.m., and from 5 p.m. to 6 p.m., on weekdays only, except holidays. The draw will open on demand at all other times. This action will provide relief for congested vehicular traffic during these periods and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on September 25, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On May 19, 1992, the Coast Guard published a proposed rule (57 FR 21225) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated June 9, 1992. In each notice interested parties were given until July 10, 1992, to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Comments

Two letters were received in response to Public Notice No. CGD8-07-92 issued on June 9, 1992. The National Marine Fisheries Service offered no objection to the proposed rule. The other respondent expressed concern relating to congested vessel traffic which might be affected by the proposed rule since the waterway is a main evacuation route in the event of storm warnings including threats of hurricanes. The Final Rule states that in such an event the bridge shall open on demand should a temporary surge in waterway traffic occur. There were no other comments received in response to the Public Notice.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the regulated periods there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the regulated periods should involve little or no additional expense to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.680 is added to read as follows:

§ 117.680 Industrial Seaway Canal.

The draw of the Lorraine-Cowan Road Bridge across the Industrial Seaway Canal, mile 11.3, shall open on signal; except that, the draw need not be opened from 7 a.m. to 8 a.m., from 12 noon to 1 p.m. and from 5 p.m. to 6 p.m., Monday through Friday, except holidays. The draw shall open on signal at any time for a vessel in distress, and the draw shall open on demand should a temporary surge in waterway traffic occur.

Dated: July 30, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 92-20350 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1, 2, 3, 4, 6, 8, 13, 17, 18, 21, and 36

RIN 2900-AF95

Nomenclature Changes; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correction to Technical Amendments.

SUMMARY: This document contains corrections to the technical amendments/nomenclature changes which were published Monday, July 13, 1992, (57 FR 31006-31033). The changes made were to conform the statutory citations found throughout title 38 of the Code of Federal Regulations to the redesignation of sections of title 38, United States Code effected by Public Law No. 102-40, the "Department of Veterans Affairs Health-Care Personnel Act of 1991," and Public Law No. 102-83, the "Department of Veterans Affairs Codification Act."

EFFECTIVE DATE: August 6, 1991.

FOR FURTHER INFORMATION CONTACT: Frederic Conway, Deputy Assistant General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 523-3911.

SUPPLEMENTARY INFORMATION: As published, the technical amendments/nomenclature changes contain errors which may prove to be misleading and are in need of correction.

Approved: August 18, 1992.

B. Michael Berger,

Director Records Management Service.

Accordingly, the publication on July 13, 1992, of the technical amendment (FR Doc. 92-15752) is corrected as follows:

PART 1—GENERAL PROVISIONS

Page 31007, column 1, is corrected by adding to the list of changes: "55. Remove the citation "4132 records" and add in its place "7332 records", wherever it appears."

PART 2—DELEGATIONS OF AUTHORITY

1. Page 31007, column 2, change number 15 is corrected by removing the citation "38 U.S.C. 3301" and adding in its place the citation "38 U.S.C. 3301 and 3305".

2. Page 31007, column 2, change number 15 is corrected by removing the citation "38 U.S.C. 5701" and adding in

its place the citation "38 U.S.C. 5701 and 5705".

PART 3—ADJUDICATION

1. Page 31010, column 1, change number 163 is corrected by removing the citation "8 U.S.C." and adding in its place "38 U.S.C.".

2. Page 31012, column 3, is corrected by adding to the list of changes: "322. Remove the citation "38 U.S.C. 541(c)" and add in its place "38 U.S.C. 1541(c)", wherever it appears.

"323. Remove the citation 38 U.S.C. 521(b)(3) and (c)(3)" and add in its place "38 U.S.C. 1521(b)(3) and (c)(3)", wherever it appears."

"324. Remove the citation "38 U.S.C. 3010(f)" and add in its place "38 U.S.C. 5110(f)", wherever it appears."

PART 4—SCHEDULE FOR RATING DISABILITIES

Page 31012, column 3, change number 2 is corrected by removing the citation "38 U.S.C. 210c" and adding in its place "38 U.S.C. 210(c)".

PART 6—UNITED STATES GOVERNMENT LIFE INSURANCE

1. Page 31013, column 1, change number 15 is corrected by removing the citation "8 U.S.C. 761" and adding in its place "38 U.S.C. 761".

2. Page 31013, column 1, is corrected by adding to the list of changes: "31. Remove the citation "Sec. 3202(a)" and adding in its place "Sec. 5502(a)", wherever it appears."

PART 8—NATIONAL SERVICE LIFE INSURANCE

1. Page 31013, column 2, change 10 is corrected by adding ", (c), (d), and (e)" after the citations "section 704(b)" and "section 1904(b)".

2. Page 31013, column 2, change number 18 is corrected by adding ", (d), or (3)" after the citation "38 U.S.C. 704(b)" and adding ", (d), or (e)" after the citation "38 U.S.C. 1904(b)".

3. Page 31013, column 2, change number 20 is corrected by adding ", (d), or (e)" after the citations "38 U.S.C. 704(c)" and "38 U.S.C. 1904(c)".

4. Page 31013, column 3, change number 36 is corrected by removing it in its entirety and adding in its place "Remove the citation "section 704 (c), (d), and (e)" and adding in its place "section 1904 (c), (d), and (e)" wherever it appears."

5. Page 31013, column 3, change number 39 is corrected by removing it in its entirety.

6. Page 31013, column 3, change 43 is corrected by removing the citation "38 U.S.C. 704 (b)" and adding in its place "38 U.S.C. 704 (b) and (e)".

7. Page 31013, column 3, change number 43 is corrected by removing the citation "38 U.S.C. 1904(b)" and adding in its place "38 U.S.C. 1904 (b) and (e)".

8. Page 31013, column 3, change number 45 is corrected by removing it in its entirety.

9. Page 31014, column 2, change number 70 is corrected by removing the citation "38 U.S.C." and adding in its place "sections".

10. Page 31014, column 2, is corrected by adding to the list of changes: "72. Remove the citation "38 U.S.C. 704 (b), (d), or (e)" and add in its place "38 U.S.C. 1904 (b), (d), or (e)", wherever it appears."

"73. Remove the citation "38 U.S.C. 704 (b) or (e)" and add in its place "38 U.S.C. 1904 (b) or (e)", wherever it appears."

"74. Remove the citation "section (b), (d), and (e)" and add in its place "section 1904 (b), (d), and (e)", wherever it appears."

"75. Remove the citation "section 725(b)" and adding in its place "section 1925(b)", wherever it appears."

"76. Remove the citation "section 704 (b), (c), (d), and (e)" and add in its place the citation "section 1904 (b), (c), (d), and (e)", wherever it appears."

"77. Remove the citation "38 U.S.C. 704 (b) and (e)" and add in its place "38 U.S.C. 1904 (b) and (e)", wherever it appears."

"78. Remove the citation "38 U.S.C. 724(b)" and add in its place "38 U.S.C. 1924(b)", wherever it appears."

"79. Remove the citation "38 U.S.C. 704 (d)" and add in its place "38 U.S.C. 1904 (d)" wherever it appears."

"80. Remove the citation "section 718" and add in its place "section 1918", wherever it appears."

11. Page 31014, column 2, is corrected by adding immediately before "PART 9—SERVICEMEN'S GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE" the following new section:

"PART 8a—VETERANS MORTGAGE LIFE INSURANCE

1. Remove the citation "38 U.S.C. 210, 806" and add in its place "38 U.S.C. 501, 2106", wherever it appears.

2. Remove the citation "38 U.S.C. 806" and add in its place, "38 U.S.C. 2106", wherever it appears.

3. Remove the citation "section 1823 or 1824" and add in its place "section 3723 or 3724", wherever it appears.

PART 13—VETERANS BENEFITS ADMINISTRATION, FIDUCIARY ACTIVITIES

1. Page 31014, column 3, change number 5 is corrected by removing "3103" and adding in its place "3101".

2. Page 31014, column 3, change number 5 is corrected by removing "5303" and adding in its place "5301".

2. Page 31014, column 3 is corrected by adding to the list of changes: "14. Remove the citation "38 U.S.C. 210, 3202, 3203, 3311" and adding in its place "38 U.S.C. 501, 5502, 5503, 5711", wherever it appears."

PART 17—MEDICAL

1. Page 31017, column 3 is corrected by removing change number 154.

2. Page 31018, column 2 is corrected by adding to the list of changes: "191. Remove the citation "38 U.S.C. 5081–5083" and adding in its place "38 U.S.C. 8221–8223", wherever it appears."

"192. Remove the citation "39 U.S.C. 5034(2)" and add in its place "38 U.S.C. 8134(2)", wherever it appears."

PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Page 31018, column 3 is corrected by adding to the list of changes: "30. Remove the citation "38 U.S.C. 610" and adding in its place "38 U.S.C. 1710", wherever it appears."

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation Under 38 U.S.C. Chapter 31

1. Page 31019, column 1, change number 11, remove the number "510" and add in its place the number "501".

2. Page 31020, column 1, change number 68 is corrected by removing the citation "38 U.S.C. 1508, 1780(g)" and adding in its place "38 U.S.C. 1508(d), 1780(g)".

3. Page 31021, column 3 is corrected by adding to the list of changes: "171. Remove the citation "38 U.S.C. 1503(b)(1)" and adding in its place "38 U.S.C. 3103(b)(1)", wherever it appears."

"172. Remove the citation "38 U.S.C. 1501(8)" and add in its place "38 U.S.C. 3108(8)", wherever it appears."

"173. Remove the citation "38 U.S.C. 1508(b)" and add in its place "38 U.S.C. 3108(b)", wherever it appears."

Subpart B—Veterans' Education Assistance Under 38 U.S.C. Chapter 34

Page 31021, column 3, change number 13 is corrected by removing the citation "38 U.S.C. 1602, 1652" and adding in its place "38 U.S.C. 1602(1), 1652".

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

1. Page 31022, column 2, change number 18 is corrected by removing the citation "38 U.S.C. 101(a)(4)" and adding in its place "38 U.S.C. 101(4)(A)", wherever it appears.

2. Page 31022, column 3 is corrected by adding to the list of changes: "45. Remove the citation "38 U.S.C. 1701(a)(3) and (d), 1712(a)" and add in its place "38 U.S.C. 3501(a)(3) and (d), 3512(a)", wherever it appears."

Subpart D—Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36

1. Page 31023, column 1, change number 20 is corrected by removing the word "for".

2. Page 31023, column 3, change number 56 is corrected by removing "(2)" and adding in its place "(3)", wherever it appears.

3. Page 31025, column 2, change number 158 is corrected by removing "1684(d)" and adding in its place "1682(d)".

4. Page 31025, column 3, change number 174 is corrected by removing "38 U.S.C. 1788(b)" and adding in it place "38 U.S.C. 1788(a)".

[FR Doc. 92-20358 Filed 8-25-92; 8:45 am]
BILLING CODE 8320-01-M

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AF15

Veterans Education; Verification of Pursuit and VEAP

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulations.

SUMMARY: These regulations require most students eligible for benefits under VEAP (Post-Vietnam Era Veterans' Educational Assistance Program) to submit a monthly verification of pursuit in order to receive educational assistance. The intent of these regulations is to prevent overpayments to these students. The regulations also contain a change to the effective date for reductions in educational assistance under VEAP.

EFFECTIVE DATE: August 1, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-2092.

SUPPLEMENTARY INFORMATION: On pages 46140 through 46142 of the Federal Register of September 10, 1991, there was published a Notice of Intent to amend 38 CFR part 21 in order to require monthly verifications of pursuit from veterans pursuing a program of education under VEAP. Interested people were given 30 days to submit comments, suggestions or corrections. The Department of Veterans Affairs (VA) received two letters, one from an educational organization and one from a community college. Both letters contained objections.

At present, veterans pursuing a program of education under the Montgomery GI Bill–Active Duty have to submit a monthly verification of pursuit before receiving their monthly benefit payment. The letter writers examined this program in determining how they thought this same requirement would work in VEAP.

One letter writer pointed out that some overpayments in the Montgomery GI Bill–Active Duty are caused by VA error. Others are caused by veterans who do not verify their own pursuit correctly. The writer suggested that VA, in order to make monthly verifications of pursuit appear to be cost-effective for VEAP, was including the cost reductions caused by these errors.

VA and the Department of Defense wish to assure the public that this is not so. When VA did its study, it examined the complete records of many veterans. The department discovered that as of the time of the study 7.47% of the overpayments under the Montgomery GI Bill–Active Duty were due to VA error. Claimant error accounted for 10.27% of the overpayments. The study does not count the reductions in benefits made by these errors as part of the cost savings to be realized by implementing monthly verifications of pursuit for VEAP, because when VA discovers these errors it corrects them. Neither does the study suggest that monthly verifications of pursuit will eliminate all overpayments resulting from these or other causes. It does show that there will be substantial reductions in the amount of overpayments under VEAP.

The other letter suggested that monthly verification of pursuit not be implemented for VEAP, because it alleged that veterans receiving benefits under the Montgomery GI Bill–Active Duty either do not receive the form necessary to make the verification until mid-month or they do not receive the form at all. The writer stated that this causes a substantial delay in payment of benefits. The writer also stated that requiring the veteran to verify pursuit duplicated a report required from the school. Furthermore, the writer thought that requiring monthly verification of pursuit in VEAP would violate the Paperwork Reduction Act.

If, in fact, most veterans receiving benefits under the Montgomery GI Bill–Active duty either do not receive the form necessary to verify pursuit or receive it at mid-month, there would be a substantial delay in the payment of benefits. However, VA and Department of Defense do not believe that many veterans experience a substantial delay in payments from this cause.

VA monitors its programs to determine whether administrative procedures are causing delays in payments to eligible veterans. In 1989 the department studied whether the timing of monthly verification of pursuit forms was causing a delay in payment of Montgomery GI Bill–Active Duty payments. The study found that not only were two-thirds of the veterans receiving the necessary form within three or four days, but that 88% had returned the form and had it processed by VA within fourteen days. At that time the forms were sent to the veterans on the last day of the month. In order to assure that veterans would not only receive the form but would have it processed before mid-month, VA moved the date for release of the form to the fourth or fifth work day before the end of the month. The exact day depends upon the number of days in the month.

In order to eliminate delays when verification forms are lost VA permits veterans to telephone their verifications after the fifth day of a month. This is sufficient to release payments. However, the veterans are required to follow the telephone call with a written verification. VA will use this procedure for veterans receiving benefits under VEAP

Furthermore, VA is considering establishing a system which would permit veterans to verify their pursuit by using a telephone. This system, if adopted, would eliminate all delays, and would eliminate the need for written verifications.

VA and Department of Defense agree that a monthly verification of pursuit from the student duplicates the annual verification of pursuit which VA has required schools to submit. Consequently, on page 49737 of the **Federal Register** of October 1, 1991, VA proposed amending 38 CFR 21.4204(a) to eliminate the school's verification.

One of the purposes of the Paperwork Reduction Act of 1980 (chapter 35, title 44, U.S. Code) is to minimize the Federal paperwork burden for individuals. However, that law does not completely prevent the Federal Government from collecting information. The law requires Federal agencies to submit to the Office of Management and Budget requests for additional hours of information collection required by amended regulations. As indicated in the proposal of September 10, 1991, VA has done this. VA would not be violating the Paperwork Reduction Act by requiring monthly verifications of pursuit for veterans receiving benefits under VEAP.

VA and Department of Defense are making the amended regulations final. However, the authority citations printed in the proposal of September 10, 1991, reflected the way in which the sections of title 38, U.S. Code were numbered before the enactment of Public Law 102–83. Since Public Law 102–83 renumbered those cited sections, the authority citations reflect the numbering system introduced by that law. Furthermore, a word is added to the first sentence of § 21.5131 so that the sentence may make better sense.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibilty Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Paperwork Reduction Act

The amendment to § 21.5133 requires an increased information collecting burden for individuals. Currently, individuals who are enrolled in courses not leading to a standard college degree and those pursuing apprenticeships and other on-job training certify their continued pursuit to VA monthly. Those enrolled in courses leading to a standard college degree do not. Requiring all to submit a monthly certification will result in a public report burden of 5 minutes per response and a total of an additional 30,878 burden hours during fiscal year 1992. Since VA projects a small but steady decline in those receiving educational assistance under VEAP in subsequent fiscal years, the number of annual hours will decline also during those years.

All individuals receiving benefits under the Montgomery GI Bill—Active Duty must submit this monthly certification. The information collection has been approved under OMB number 2900–0465. As required by section 3504(h) of the Paperwork Reduction Act VA submitted to OMB (the Office of Management and Budget) a request that it modify its current approval to include the amended regulations. This request has been approved.

The Catalog of Federal Domestic Assistance number for the program affected by these amended regulations is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: April 27, 1992.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: July 1, 1992.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary, (Military Manpower & Personnel Policy), U.S. Department of Defense.

For the reasons set out in the preamble, 38 CFR part 21, is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

§ 21.5130 [Amended]

2. In § 21.5130, paragraph (e) is removed and reserved.

3. Section 21.5131 and its authority citation are revised to read as follows:

§ 21.5131 Educational assistance allowance.

VA will pay educational assistance allowance at the rate specified in §§ 21.5136 and 21.5138 of this part while the individual is pursuing either an approved program of education or a refresher or deficiency course or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA will make no payment for pursuit of any course which either is not part of the veteran's program of education, or is not a refresher, deficiency or other preparatory or special education or training course which is necessary to enable the individual to pursue an approved program of education. VA may withhold a payment until it receives verification or certification of the individual's continued enrollment and adjusts the individual's account. See § 21.5133.

(Authority: 38 U.S.C. 3241; Pub. L. 94–592, Pub. L. 99–576, Pub. L. 101–237)

4. Section 21.5133 is added to read as follows:

§ 21.5133 Certifications and release of payments.

An individual must be pursuing a program of education in order to receive payments. To ensure that this is the case, the provisions of this paragraph must be met.

(a) *General.* VA will pay educational assistance to a veteran or servicemember (other than one who qualifies for an advance payment, or one pursuing a program of apprenticeship, other on-job training, or a correspondence course) only after—

(1) The educational institution has certified his or her enrollment as provided in § 21.5200(d) of this part; and

(2) VA has received from the individual a verification of the enrollment. Generally, this verification will be required monthly, resulting in monthly payments.

(b) *Apprenticeship and other on-job training.* VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after—

(1) The training establishment has certified his or her enrollment in the training program as provided in § 21.5200(d); and

(2) VA has received from the veteran and the training establishment a certification of hours worked. Generally, this certification will be required monthly, resulting in monthly payments.

(c) *Correspondence training.* VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a combined correspondence-residence course only after—

(1) The educational institution has certified his or her enrollment;

(2) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution; and

(3) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution. Generally, this certification will be required quarterly, resulting in quarterly payments.

(Authority: 38 U.S.C. 3680(g))

(Approved by the Office of Management and Budget under control number 2900–0465)

5. In § 21.5200 paragraph (e) and its authority citation are revised to read as follows.

§ 21.5200 Schools.

* * * * *

(e) Section 21.4204 (except paragraphs (a) and (e))-Periodic certifications.

(Authority: 38 U.S.C. 3241, 3684)

* * * * *

[FR Doc. 92–20361 Filed 8–25–92; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AE45

Veterans Education; The Veterans Education and Employment Amendments of 1989 and the Post-Vietnam Era Veterans' Educational Assistance Program

AGENCY: Department of Veterans Affairs and Department of Defense.

ACTION: Final regulations.

SUMMARY: The Veterans Education and Employment Amendments of 1989 contain several provisions which affect the Post-Vietnam Era Veterans' Educational Assistance Program (VEAP). These include amendments to the work-study program; changes in the method for determining the end of a veteran's eligibility period; and a provision concerning duplication of benefits. These regulations will acquaint the public with the way in which the Department of Veterans Affairs (VA) is implementing these provisions of law.

EFFECTIVE DATES: The amendments to § 21.5145, like the provision of law they implement, are retroactively effective on May 1, 1990. The amendments to the remainder of the regulations, like the provisions of law they implement, are retroactively effective on December 18, 1989.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer (225), Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2092.

SUPPLEMENTARY INFORMATION: On pages 23823 through 23825 of the **Federal Register** of May 24, 1991, there was published a Notice of Intent to amend 38 CFR part 21 in order to implement those provisions of the Veterans Education and Employment Amendments of 1989 (title IV, Pub. L. 101–237) which affect VEAP. Interested people were given 30 days to submit comments, suggestions or objections. VA and the Department of Defense received no comments, suggestions or objections. Accordingly, they are making the amended regulations final.

As originally proposed, § 21.5041(a) contained a statement that VA in determining whether a veteran had been discharged due to a preexisting medical condition would be bound by a decision of a competent military authority. VA's administrative experience since the regulation was proposed has led the department to believe that such a restriction would conflict with VA's responsibility under 38 CFR 3.102 to resolve a reasonable doubt regarding a veteran's claim in favor of the veteran. Consequently, the final version of § 21.5041(a) does not contain this statement.

The Department of Veterans Affairs and the Department of Defense have determined that these amended regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs and the Secretary of Defense have certified that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. Pursuant to 5 U.S.C. 605(b), the amended regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulations directly affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

The Department of Veterans Affairs and the Department of Defense find that good cause exists for making the amendments to § 21.5145, like the provision of law they implement, retroactively effective on May 1, 1990. The Department of Veterans Affairs and the Department of Defense also find that good cause exists for making the amendments to the remainder of the regulations, like the provisions of law they implement, retroactively effective on December 18, 1989.

It is necessary to implement these provisions of law as soon as possible for two reasons. For those provisions which are intended to achieve a benefit for the individual, the maximum benefits intended in the legislation will be achieved through prompt implementation. For those provisions which are restrictive, prompt implementation will properly achieve the intent of the law. Hence a delayed effective date would be contrary to statutory design, would complicate administration of these provisions of law; might result in the denial of a benefit to someone who is entitled to it; or might result in the awarding of a benefit to someone who is not entitled to it.

The Catalog of Federal Domestic Assistance number for the program affected by these regulations is 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: December 13, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Approved: June 17, 1992.

Robert M. Alexander,

Lieutenant General, USAF, Deputy Assistant Secretary, (Military Manpower & Personnel Policy), U.S. Department of Defense.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

For the reasons set out in the preamble, 38 CFR part 21, subpart G is amended as set forth below.

1. The authority citation for part 21, subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a).

§ 21.5021 [Amended]

2. In § 21.5021, paragraph (u)(2) and its authority citation are revised and paragraph (w) is added to read as follows:

§ 21.5021 Definitions.

* * * * *

(u) * * *

(2) A course which permits an individual to update knowledge and skills or be instructed in the technological advances which have occurred in the individual's field of employment during and since the individual's active military service and which is necessary to enable the individual to pursue an approved program of education.

(Authority: 38 U.S.C. 3241(a); Pub. L. 100-689, Pub. L. 101-237).

* * * * *

(w) *Continuous service* means—

(1) Active duty served without interruption. A complete separation from active duty service will interrupt the continuity of active duty service.

(2) Time lost while on active duty will not interrupt the continuity of service. Time lost includes, but is not limited to, excess leave, noncreditable time and not-on-duty time.

(Authority: 38 U.S.C. 3232(a); Pub. L. 101-237)

§ 21.5022 [Amended]

3. In § 21.5022, at the end of paragraph (a), remove the punctuation ".", and in its place, add the punctuation ":"; paragraphs (a)(1) thru (a)(8) are added and the authority citation for paragraph (a) is revised to read as follows:

§ 21.5022 Eligibility under more than one program.

(a) * * *

(1) 38 U.S.C. chapter 31,

(2) 38 U.S.C. chapter 35,

(3) 10 U.S.C. chapter 107,

(4) Section 903 of the Department of Defense Authorization Act, 1981,

(5) The Hostage Relief Act of 1980, or

(6) The Omnibus Diplomatic Security and Antiterrorism Act of 1986.

(Authority: 38 U.S.C. 3681(b); Pub. L. 98-223, Pub. L. 101-237)

* * * * *

§ 21.5040 [Amended]

4. In § 21.5040, paragraph (g) introductory text is revised and paragraph (h) is added to read as follows:

§ 21.5040 Basic eligibility.

* * * * *

(g) *Election to receive educational assistance allowance under 38 U.S.C. chapter 32 instead of 38 U.S.C. chapter 34.* Some individuals who have eligibility under 38 U.S.C. chapter 34 may elect instead to receive educational assistance allowance under 38 U.S.C. chapter 32.

* * * * *

(h) *Election to receive educational assistance allowance under 38 U.S.C. chapter 32 instead of 10 U.S.C. chapter 106.* An individual who serves in the Selected Reserves may not receive credit for that service under both 38 U.S.C. Chapter 32 and 10 U.S.C. Chapter 106. If he or she wishes to receive educational assistance based upon this service, the veteran must elect the chapter under which he or she will receive benefits.

(1) This election must be in writing and submitted to VA.

(2) If a veteran elects to receive educational assistance under 38 U.S.C. Chapter 32, and negotiates an educational assistance check which is based upon the period of service for which the election was made, the election is irrevocable. Negotiation of an educational assistance check provided under either 38 U.S.C. chapter 32 or 10 U.S.C. chapter 106, but based upon a period of service which preceded the period for which an election was made, will not serve to make the election irrevocable.

(Authority: 38 U.S.C. 3221(f); Pub. L. 101-237)

§ 21.5041 [Amended]

5. In § 1.5041, paragraph (a) and its authority citation are revised to read as follows:

§ 21.5041 Periods of entitlement.

(a) *Ten-year delimiting period.* Except as provided in § 21.5042 no educational assistance shall be afforded an eligible individual under chapter 32 beyond the date of 10 years after the later of the following:

(1) His or her last discharge or release from a period of active duty of 90 days or more of continuous service; or

(2) His or her last discharge or release from a period of active duty of any length when the eligible individual is discharged or released—

(i) For a service-connected disability;

(ii) For a medical condition which preexisted such service and which VA determines is not service-connected;

(iii) For hardship; or

(iv) Involuntarily for convenience of the government after October 1, 1987, as a result of a reduction in force, as determined by the Secretary of the military department concerned in accordance with regulations prescribed by the Secretary of Defense or by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy.

(Authority: 38 U.S.C. 3231; Pub. L. 94-502, Pub. L. 99-576, Pub. L. 101-237)

* * * * *

§ 21.5065 [Amended]

6. In § 21.5065 paragraph (c) is added to read as follows:

§ 21.5065 Refunds without disenrollment.

* * * * *

(c) *Refunds following an election under § 21.5040(b).* If a veteran described in § 21.5040(h) makes an election to have a period of service credited toward his or her eligibility and entitlement under 10 U.S.C. Chapter 106, he or she will be required to receive a refund of any contributions he or she made to the fund during that period of service.

(Authority: 38 U.S.C. 3221(f); Pub. L. 101-237)

§ 21.5138 [Amended]

7. In § 21.5138 paragraph (b)(13) is revised and its authority citation is added to read as follows:

§ 21.5138 Computation of benefit payments and monthly rates.

* * * * *

(b) * * *

(13) If the veteran is pursuing certain courses which do not lead to a standard college degree, has excessive absences, and incurred those absences before December 18, 1989, reduce the amount on line 14 sufficiently to avoid paying for any excessive absence. Enter the result.	(16).....

(Authority: 38 U.S.C. 3233 (1989), 38 U.S.C. 3680(a)(2) (1974); Pub. L. 101-237)

§ 21.5145 [Amended]

8. In § 21.5145 the section heading and paragraph (a), (d) and (f) and their authority citations are revised to read as follows:

§ 21.5145 Work-study program.

(a) *Eligibility.* Veterans pursuing programs of education or training under chapter 32 on a three-quarter-time or greater basis are eligible to receive a work-study allowance.

(Authority: 38 U.S.C. 3241, 3485; Pub. L. 99-576, Pub. L. 101-237)

* * * * *

(d) *Rate of payment.* In return for the veteran's agreement to perform services for VA totaling not more than 25 hours times the number of weeks contained in an enrollment period, VA will pay an allowance in an amount equal to the higher of—

(1) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times the number of hours the veteran has agreed to work; or

(2) The hourly minimum wage under comparable law of the State in which the services are to be performed times the number of hours the veteran has agreed to work.

(Authority: 38 U.S.C. 3241, 3485; Pub. L. 99-576, Pub. L. 101-237)

* * * * *

(f) *Veteran reduces rate of training.* In the event the veteran reduces his or her training to less than three-quarter-time before completing an agreement, the veteran, with the approval of the Director of the VA field station, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be a three-quarter-time student.

(Authority: 38 U.S.C. 3241, 3681; Pub. L. 99-576, Pub. L. 101-237)

* * * * *

[FR Doc. 92-20362 Filed 8-25-92; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL12-19-5555; (FRL-4195-8)]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of stay and reconsideration.

SUMMARY: This action announces a 3-month stay of certain Federal rules requiring reasonably available control technology (RACT) to control the emission of volatile organic compounds (VOCs) in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). The effectiveness of the emission limitations and standards for coating operations only as they apply to the metal furniture painting operations at the Allsteel Incorporated facility located in Kane County (55 FR at 26868-26874), is stayed for three months, pending reconsideration. USEPA is issuing this stay pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator with authority to stay the effectiveness of a rule during reconsideration.

EFFECTIVE DATES: Effective August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886-6036.

SUPPLEMENTARY INFORMATION:

I. Background

On April 1, 1987, the State of Wisconsin filed a complaint in the United States District Court for the Eastern District of Wisconsin seeking that USEPA, among other actions, revise the Illinois and Indiana ozone State implementation plans (SIPs) under section 110(c) and in conformance with section 172 (b) and (c) of the CAA. (*Wisconsin* v. *Reilly*, No. 87-C-0395, E.D. Wis. Sept. 22, 1989). As a result of a court-approved settlement agreement, signed by USEPA and the States of Illinois and Wisconsin on September 22, 1989, USEPA agreed to reduce emissions of VOCs, an ozone precursor, by promulgating Federal VOC RACT rules. Federal VOC RACT rules were required because a number of Illinois' VOC rules were deficient.

The settlement agreement set a tight deadline for the completion of the rulemaking, requiring USEPA to promulgate final VOC RACT rules by March 18, 1990. While that date was later extended to June 8, 1990, it left USEPA with little time to complete an especially demanding task.[1] On June 29, 1990, USEPA promulgated final federal rules (55 FR 26814) requiring RACT to control the emission of VOCs in six counties in the Chicago metropolitan area: Cook, DuPage, Kane, Lake, McHenry, and Will.

Subsequently, ten Petitioners filed petitions for review of USEPA's June 29, 1990, revisions to the Illinois SIP in the United States Court of Appeals for the Seventh Circuit. Allsteel was one of the initial Petitioners. On September 13, 1990, the Court, on its own motion, consolidated the ten petitions as *Illinois Environmental Regulatory Group ("IERG"), et. al.* v. *Reilly*, No. 90-2778. Since then, based on various motions, the Court has severed seven petitions and part of one other petition from the consolidated case.[2]

Allsteel has requested that USEPA promulgate a source-specific RACT limit for its metal furniture painting operations in lieu of the limits in the June 29, 1990 rules. To this end, Allsteel has asserted and has attempted to demonstrate that the RACT limit applicable under the federal rules is not RACT for its metal furniture coating operation and that the source-specific limits are RACT. Allsteel has submitted to the Agency information in support of a source-specific limit. In addition, Allsteel has formally requested the Agency to reconsider the FIP rules in light of the new information they have presented since the rules were finalized. As a result, USEPA has determined to convene a proceeding for reconsideration to address Allsteel's request pursuant to section 307(d)(7)(B) of the CAA, 42 U.S.C. 7607(d)(7)(B).

II. Rules To Be Stayed and Reconsidered

On May 6, 1992, Allsteel filed a petition for reconsideration with the

[1] For example, the rulemaking established regulatory requirements governing the emissions of approximately 1000 sources. In addition, USEPA reviewed approximately four linear feet of public comments prior to promulgation of the final rule.

[2] On December 7, 1990, the Court severed the petitions of General Motors Corporation, Viskase Corporation and the portion of Allsteel's petition that concerned its adhesive lines; on March 1, 1991, the Court severed the petitions of Stepan and Duofast; on August 29, 1991, the Court severed the petitions of Riverside and Reynolds Metals Company; and on December 20, 1991, the Court severed the petition of Allsteel as to its metal furniture coating operation.

Agency in which it contends that the Federal rules are not RACT for its facility. In support of that contention, Allsteel has submitted new information to the Agency concerning its attempts to find compliant coatings. In accordance with section 307(d)(7)(B), USEPA believes that Allsteel has demonstrated that it was impracticable to submit the additional materials in support of this site-specific RACT during the comment period on the FIP rulemaking. Moreover, after initial review of the information submitted by Allsteel, USEPA has determined that the information is of central relevance to the outcome of the rule and raises questions about whether the existing limit is RACT for the Allsteel painting operations. Although USEPA has not completed review of this information, the Agency has determined that it provides a sufficient basis for reconsideration of the coating rule as it applies to Allsteel's metal furniture painting operation. Therefore, USEPA will grant Allsteel's request for reconsideration, and by today's action, USEPA is convening a proceeding for reconsideration of the coating rule as it applies to Allsteel's metal furniture painting operation.

III. Issuance of Stay

USEPA hereby issues a 3-month administrative stay of the effectiveness of the coating rule, 55 FR 26868–26874, codified at 40 CFR 52.741(e), which was promulgated as a final federal rule requiring RACT to control VOCs in the Illinois portion of the Chicago ozone nonattainment area, as this rule applies to the metal furniture painting operation at Allsteel. USEPA will reconsider this rule, as discussed above. If the reconsideration results in emission limitations and standards which are more stringent than the existing FIP rules, USEPA will propose an appropriate compliance period to follow the reconsideration. As a general matter, USEPA will provide an adequate period for compliance upon completion of its final action on reconsideration. In essence, USEPA will seek to ensure, as described above, that the affected parties are not unduly prejudiced by the Agency's reconsideration.

USEPA recognizes the interests of the State of Wisconsin in this matter. The regulatory requirements that will be stayed, pursuant to today's action, were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. In recognition of those obligations, USEPA will reconsider the rules in question as expeditiously as practicable.

IV. Authority for Stay and Reconsideration

The administrative stay and reconsideration of the rule announced by this notice is being undertaken pursuant to section 307(d)(7)(B) of the CAA, 42 U.S.C. 7607(d)(7)(B). That provision authorizes the Administrator to stay the effectiveness of a rule for up to three months during the reconsideration of the final rulemaking action.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Dated August 11, 1992.

William K. Reilly,

Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, subpart O is being amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Subpart O—Illinois

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.741 is amended by adding paragraph (2)(5) to read as follows:

§ 52.741 Control strategy: Ozone control measures for Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

* * * * *

(z) * * *

(5) The following rule is stayed from August 11, 1992 to November 12, 1992: 40 CFR 52.741(e) only as it applies to the metal furniture coating operations at the Allsteel Incorporated facility located in Kane County.

[FR Doc. 92-20448 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 403

[ORD-065-IFC]

Medicare Program; Beneficiary Counseling and Assistance Grants Program

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule establishes a minimum level of funding for grants made to States, for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under the Medicare program. This rule implements, in part, section 4360(a) of the Omnibus Budget Reconciliation Act of 1990.

DATES: *Effective Date*: This interim final rule with comment period is effective on September 25, 1992.

Comment Period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 26, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: ORD–065–IFC, P.O. Box 26678, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code ORD–065–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: Government Printing Office, Attn: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954.

Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783–3238 or by faxing to (202) 512–2250. The cost for each copy is $1.50. In addition, you may view and photocopy the **Federal Register** document at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register.** The order desk operator will be able to tell you the location of the U.S. Government Depository Library nearest to you.

FOR FURTHER INFORMATION CONTACT: Don Sherwood, (410) 966–6652.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4360 of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA 90), (42 U.S.C. 1395b–4), authorizes us to make grants to States for health insurance advisory service programs for Medicare beneficiaries. Grant funds are available to support information, counseling, and assistance (ICA) relating to Medicare, Medicaid, Medicare supplemental policies, long term care insurance, and other health insurance benefit information. To be eligible, States must have a Federally approved Medicare supplement regulatory program under section 1882 of the Social Security Act.

The Health Insurance ICA Grants Program is designed to develop and strengthen the capability of States to provide Medicare beneficiaries information, counseling, and assistance on adequate and appropriate health insurance coverage. Grant funding is available to States for projects to plan, implement, operate, and/or enhance a variety of ICA activities. States may request grant funds for 2 years to develop new ICA programs or to enhance existing ICA programs that meet the requirements specified in section 4360 of OBRA 90.

Section 4360(a) requires us to publish regulations to establish a minimum level of funding for a health insurance ICA grant. Section 4360(f) authorizes the appropriation of $10,000,000 each for fiscal years 1991 through 1993, in equal parts, from the Medicare Hospital Insurance Trust Fund and from the Medicare Supplementary Medical Insurance Trust Fund. Although section 4360(f) authorizes the appropriation of funds for fiscal years 1991 through 1993, funds in the amount of $10 million were first appropriated for fiscal year 1992. Information counseling and assistance grants are expected to be awarded from this appropriation in September 1992. No funds were requested in the President's fiscal year 1993 budget.

Section 4360(c) of OBRA 1990, recognizes that a number of States already have relatively extensive health insurance ICA programs in operation that are "substantially similar" to the scope of activities envisioned in this grant program. These States are encouraged to apply for grants funding under this program to enhance or expand their current efforts. An existing State health insurance counseling program would be deemed to meet the "substantially similar" criteria for a health ICA program described in section 4360(b)(2) of OBRA 90, if it meets certain requirements.

In accordance with the requirements of section 4360 of OBRA 90, we announced the availability of funding for health insurance ICA grants. On April 15, 1992, we mailed the solicitation and grant application package to the Governors or their designees of all the eligible States, Commonwealths, and Territories. The closing date for receipt of applications was July 10, 1992. Awards for health insurance ICA grants will be made before October 1, 1992.

II. Provisions of this Interim Final Rule

A. Availability and Duration of Funds for Grants

Congress has appropriated $10,000,000 for carrying out the grant program in fiscal year 1992. Grants will be approved for only the first year of the grant. Funds for the second year will be subject to satisfactory progress in each State's project and Congressional appropriations of funds for fiscal year 1993. The criteria by which progress will be evaluated, and the performance standards for determining whether satisfactory progress has been made, will be specified in the notice of grant award sent to each State.

B. Number and Size of Grants

1. Basic Grants.

Two types of basic grants will be made under this program: New program grants, and, in States with "substantially similar" ICA programs, existing program enhancement grants.

We are interested in establishing or enhancing ICA programs in all eligible States, Commonwealths, and Territories. Therefore, all eligible States, Commonwealths, and Territories that submit acceptable applications will receive a basic grant including a variable amount. The basic grant awards consist of two parts: a fixed amount and a variable amount. The minimum basic grant available to each State, Puerto Rico, and the District of Columbia will equal $75,000 plus an average of 10.75 cents per Medicare beneficiary residing in the State. Because of their limited populations, the minimum basic grant available to the territories of American Samoa, Guam, and the Virgin Islands will equal $25,000 plus an average of 10.75 cents per Medicare beneficiary residing in the territory.

Nationwide, the variable per capita amount is an average of 10.75 cents for each Medicare beneficiary. We based the variable portion of the minimum basic grant on a formula representing the percentage of nationwide Medicare beneficiaries residing in the State, the State's proportion of Medicare beneficiaries to its total population, and the percentage of the State's Medicare beneficiary population that resides in rural areas. States with a higher proportion of Medicare beneficiaries to their total State population and/or a higher proportion of rural Medicare beneficiaries will receive more variable funds per beneficiary under this grant program. Of the total variable portion of the award, 74 percent is based on the number of Medicare beneficiaries in the State, 11 percent is based on the proportion of Medicare beneficiaries to the total State population, and 15 percent is based on the percentage of the State's Medicare beneficiary population that resides in rural areas. We based population estimates on the U.S. Census estimates for 1990. The Medicare beneficiaries estimates came from the HCFA enrollment data base as of July, 1990. We consider "rural areas" to be counties located outside of metropolitan statistical areas.

This minimum basic grant amount is based on an assumption that all States and jurisdictions eligible for the program will apply and receive grants. If some States do not apply or do not satisfy the requirements for a grant in this solicitation, the remaining funds may be allocated among all States receiving minimum basic grants based on the variable portion of the basic grant formula. States that wish to receive an allocation of remaining funds will be required to submit revised budgets and project plans to receive additional funding under this grant program.

2. Supplemental Coordinated Care Grants

In order to encourage States with existing coordinated care programs to be more active in this area, supplemental grant awards will be available for intensive innovative approaches to making information, counseling and/or assistance with coordinated care benefits available to Medicare beneficiaries. All States eligible to apply for supplemental grant funding that submit acceptable proposals will receive awards. A State must receive a basic grant to qualify for consideration of supplemental coordinated care grant funding.

A pool of $1,000,000 has been set aside to fund the efforts of States in this

area. The amount awarded to States that have Medicare Coordinated Care plans will be based on: the budget submitted by the State; the number of States qualifying for funds under this supplemental grant program; the number of coordinated care plans in those States and/or being designated as a Medicare SELECT State; and the potential for implementation of the proposed approach. Any part of this pool not granted under the supplemental coordinated care program will be transferred to the basic grant funds and allocated among all States receiving basic grants based on the variable portion of the basic grant award formula. If the amount of the grant under the supplemental coordinated care program differs from the States' original budget request, States will be required to submit revised budgets and project plans to reflect the amount of the funding under this supplemental program.

C. Limitations

A State that receives a grant under this program may use the grant for any expenses incurred in planning, developing implementing and/or operating the program for which the grant is made, except that a State that receives a grant to supplement an existing (that is, "substantially similar") program must not use the grant to supplant funds for activities that were conducted immediately preceding the date of the award of this grant and funding through other sources (including in-kind contributions), but must maintain the activities of the program at least at the level that those activities were conducted immediately preceding that date. States will be required to provide the information to document their maintenance of effort and funding levels. Grants will be awarded through September 30, 1992, for all State applications approved by that date. A State that receives a grant under this program may, not later than 180 days after receiving the grant, and annually thereafter, submit a report to HCFA that includes information on: The number of individuals served by the program; an estimate of the amount of funds saved by the State and eligible individuals in the State, as a result of the program; and the problem that eligible individuals in the State encounter in procuring adequate and appropriate health care.

III. Collection of Information Requirements

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on documents published for comment, we are not able to acknowledge or respond to them individually. Nevertheless, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Prior Notice and Comment Period

We ordinarily publish a general notice of proposed rulemaking in the **Federal Register** and invite prior public comment on the proposed rule. This rule includes a reference to the legal authority under which it is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. However, this procedure can be waived when an agency finds good cause that a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued. In the case of this rule, funds appropriated for the grants will lapse and not be available if we allow for a prior notice and comment period. Therefore, we find that it would be against the public interest to delay publication of this rule pending completion of a prior public comment period, since that would prevent the distribution of grants for FY 1992.

VI. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States are not considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This rule simply establishes the terms and conditions of funding for grants. It has no independent or consequential effect on the economy. The activities conducted under the grant may improve competition by informing consumers of health insurance alternatives. Therefore, this is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

We are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this interim final rule with comment period will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 403

Health insurance, Hospitals, Intergovernmental relations, Medicare, Reporting and recordkeeping requirements.

42 CFR part 403 is amended as set forth below:

PART 403—SPECIAL PROGRAMS AND PROJECTS

A new subpart E is added to read as follows:

Subpart E—Beneficiary Counseling and Assistance Grants

Sec.

403.500 Basis, scope, and definition.
403.502 Availability and duration of funds for basic grants.
403.504 Number and size of basic grants.
403.506 Supplemental coordinated care grants.
403.508 Limitations.

Authority: Sec. 1882 of the Social Security Act (42 U.S.C. 1395k) and section 4360(a) of Public Law 100-508 (42 U.S.C. 1395b-4).

Subpart E—Beneficiary Counseling and Assistance Grants

§ 403.500 Basis, scope, and definition.

(a) *Basis.* This subpart implements, in part, the provisions of section 4360(a) of Public Law 100-508 by establishing a minimum level of funding for grants made to States for fiscal years 1992 and 1993, for the purpose of providing information, counseling, and assistance relating to the procurement of adequate and appropriate health insurance coverage to individuals who are eligible to receive benefits under the Medicare program.

(b) *Scope of subpart.* This subpart sets forth the minimum levels of funding for those States qualifying for the grants. There are separate minimum funding levels for basic grants and for supplemental coordinated care grants.

(c) *Definition.* For purposes of this subpart, the term "State" includes (except where otherwise indicated by the context) the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

§ 403.502 Availability and duration of funds for basic grants.

(a) *Availability of funds.* For fiscal year 1992, $10,000,000 was appropriated for purposes of carrying out the grants program. Of this amount, we have initially allocated $1,000,000 to funding supplemental coordinated care grants (see § 403.506(b)).

(b) *Duration of grants.* (1) HCFA awards grants to States for a 12-month period ending September 30, 1993, or later. Funds awarded will not be available for expenditures after January 1, 1994.

(2) Initially, HCFA allocates funds to States for the first year only.

(3) HCFA awards funds for 1993 subject to the satisfactory progress in each State's project and Congressional appropriations of funds for fiscal year 1993. The criteria by which progress will be evaluated, and the performance standards for determining whether satisfactory progress has been made, will be specified in the notice of grant award sent to each State.

§ 403.504 Number and size of basic grants.

(a) *General.* HCFA awards the following types of basic grants:

(1) New program grants.

(2) Existing program enhancement grants.

(b) *Minimum funding level.* Each eligible State that submits an acceptable application receives a basic grant including a variable amount. The minimum funding level for a basic grant consists of a——

(1) Basic portion, which is for——

(i) Each of the 50 States, $75,000;

(ii) District of Columbia, $75,000;

(iii) Puerto Rico, $75,000;

(iv) American Samoa, $25,000;

(v) Guam, $25,000;

(vi) Virgin Islands $25,000; and

(2) Variable portion, which consists of a variable per capita amount based on the number of Medicare beneficiaries residing in the State. The national average per capita amount is 10.75 cents. The per capita amount a particular State receives is based on the formula specified in paragraph (c) of this section.

(c) *Calculation of variable portion of grant.* (1) HCFA bases the variable portion of the basic grant on the following:

(i) The percentage of nationwide Medicare beneficiaries residing in the State.

(ii) The percentage of the State's total population who are Medicare beneficiaries.

(iii) The percentage of the State's Medicare beneficiary population that resides in rural areas.

(2) States with a higher proportion of Medicare beneficiaries to their total State population and/or a higher proportion of rural Medicare beneficiaries receive more variable funds per beneficiary.

(3) Of the total variable portion of the award, 74 percent is based on the number of Medicare beneficiaries in the State, 11 percent is based on the proportion of Medicare beneficiaries to the total State population, and 15 percent is based on the percentage of the State's Medicare beneficiary population that resides in rural areas.

(d) *Allocation of remaining funds.* (1) HCFA may transfer funds not awarded under this section to the basic grant funds described in § 403.502, and may allocate these funds to States that have been awarded basic grant funds under this section, using the calculation described in § 403.504(c) for the variable portion of basic grants.

(2) If the amount of a grant under this section differs from a State's original budget request, the State must submit a revised budget and project plan to reflect the amount of the funding under this section.

§ 403.506 Supplemental coordinated care grants.

(a) *General.* HCFA awards supplemental grants to States for intensive, innovative approaches to making information, counseling and/or assistance with coordinated care benefits available to Medicare beneficiaries. A State must receive a basic grant to qualify for a supplemental coordinated care grant. Each State eligible to apply for a supplemental grant that submits an acceptable proposal receives a grant.

(b) *Funding.* HCFA awards supplemental grants from a pool of $1,000,000. HCFA bases the amount awarded to States that have Medicare Coordinated Care plans on the following:

(1) The budget submitted by the State.

(2) The number of States qualifying for funds under this section.

(3) The number of coordinated care plans in those States qualifying for funds under this section.

(c) *Allocation of remaining funds.* (1) HCFA may transfer funds not awarded under this section to the basic grant funds described in § 403.502, and may allocate the funds to States that have been awarded basic grant funds under this section, using the calculation described in § 403.504(c) for the variable portion of basic grants.

(2) If the amount of a grant under this section differs from a State's original budget request, the State must submit a revised budget and project plan to reflect the amount of the funding under this section.

§ 403.508 Limitations.

(a) *Use of grants.* A State that receives a grant under this subpart may use the grant for any reasonable expenses incurred in planning, developing, implementing, and/or operating the program for which the grant is made.

(b) *Maintenance of effort.* A State that receives a grant to supplement an existing program (see § 403.504(a)(2) of this subpart) must not use the grant to supplant funds for activities that were conducted immediately preceding the date of the award of the grant and funded through other sources (including in-kind contributions), but must maintain the activities of the program at least at the level that those activities were conducted immediately preceding that date.

(c) *Awarding of grants.* Grants will be awarded by September 30, 1992 for all State applications approved by that date.

(d) *Annual report.* A State that receives a grant under this subpart E must, not later than 180 days after receiving the grant, and annually thereafter, submit a report to HCFA that includes information on:

(1) The number of individuals served by the program.

(2) An estimate of the amount of funds saved by the State and eligible individuals in the State, as a result of the program.

(3) The problem that eligible individuals in the State encounter in procuring adequate and appropriate health care.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 29, 1992.

William Toby,

Acting Deputy Administrator, Health Core Financing Administration.

Approved: August 10, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-20447 Filed 8-25-92; 8:45 am]

BILLING CODE 4120-01-M

Proposed Rules

Federal Register
Vol. 57, No. 166
Wednesday, August 26, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV-92-029]

Proposed Rule To Establish Pit and Pit Fragment Tolerances for Dried Prunes Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the establishment of pit and pit fragment tolerances for pitted and macerated dried prunes. Currently there is no required tolerance for pit or pit fragments under the marketing order. The Dried Fruit Association (DFA), the inspection agency established under the marketing order, inspects for pits and pit fragments only on handler request based on a 2 percent tolerance established by the Food and Drug Administration (FDA). The proposal would establish that no handler shall ship any lot of pitted prunes for human consumption as pitted prunes unless the pitted prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments, and any lot of pitted macerated prunes for human consumption as pitted macerated prunes unless the macerated prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments. The proposed tolerances should benefit prune producers, handlers, and consumers, and foster continued growth of the market for pitted and macerated prunes.

DATES: Comments which are received by September 10, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Sonia N. Jimenez, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456; telephone (202) 205-2830.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 993 [7 CFR 993], both as amended, hereinafter referred to as the "order", regulating the handling of dried prunes produced in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This proposed rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 17 handlers of prunes who are subject to regulation under the marketing order and approximately 1,400 producers in the regulated area. Small agricultural procedures have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This action would revise paragraph (f)(1) of section 993.150 of Subpart-Administrative Rules and Regulations (7 CFR 993.101-993.174) and is based on a unanimous recommendation of the Prune Marketing Committee (Committee) and other available information.

Paragraphs (a) and (b) of section 993.50 provide authority for the establishment of more restrictive regulations with respect to prunes that may be shipped or otherwise disposed of by a handler if such action tends to effectuate the declared policy of the Act. Section 993.150(f)(1) specifies minimum requirements for pitted prunes for human consumption as pitted prunes and for pitted prunes for use and used in prune products for human consumption.

Pitted dried prunes (with their shape maintained) are preferred for snacking by consumers due to their attractive appearance, but are also used for cooking and baking. Such prunes are characterized by a uniform depression and minimal skin break where the pit has been removed (punched-out). Pitted macerated prunes are characterized by a flattened appearance with slightly

more skin break where the pit has been removed because the pitting machine used employs rollers to squeeze the pits out. Such prunes are preferred as an ingredient for cooking and baking, where appearance and identity are not important, but can also be used for snacking. Well macerated prunes are pitted prunes which have lost their shape as prunes by being cut/diced into small pieces or by being block pressed into cakes of pitted flesh. Cut/diced prunes generally are used as ingredients for cooking and baking, and block pressed prunes are used in prune products, such as prune better, prune paste, and puree.

According to the Committee, pitted prunes offer consumers a high quality product and provide the industry with its best opportunity for future growth. California pitted dried prune shipments have increased by 10 percent annually over the last 10 years (91,512 tons in 1990–91 versus 34,314 tons in 1980–81), and currently represent nearly 49 percent of total dried prune shipments. Ten years ago pitted prune shipments represented less than 23 percent of total dried prune shipments.

Currently, the presence of pits and pit fragments in pitted and macerated prunes is not scored as defect when inspecting such prunes under the marketing order. The DFA, the inspection agency under the marketing order for prunes, currently inspects pitted prunes and macerated prunes for pits and pit fragments only on request of the handler. The tolerance imposed is the tolerance implemented by the U.S. Food and Drug Administration as a food defect action level. Pursuant to the FDA requirements, pitted prunes cannot contain more than an average of 2 percent by count with whole pits and/or pit fragments 2 mm or longer, and 4 of 10 subsamples of pitted prunes cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer.

The most common consumer complaints received by California prune handlers concern pitted prunes and macerated prunes containing pits and pit fragments. Nearly 2,000 such complaints are received annually, and the industry has information indicating that this figure significantly underestimates the magnitude of the problem. Many consumers finding pits and pit fragments simply discontinue purchasing a brand or all prune brands. Thus, the industry recommended the establishment of a tolerance for pits and pit fragments after pitting, differentiating between pitted prunes, macerated prunes, and well macerated prunes.

Because this appears to be the most likely reason to hinder the continued growth of this important market for dried prunes, the Committee recommended this proposal pursuant to the authority in paragraphs (a) and (b) of § 993.50. Experience has shown that the machines used to pit prunes for use as pitted prunes occasionally leave prunes with whole pits or large pit fragments, and that the machine used for macerated prunes occasionally leaves prunes with shattered pits.

Because pitted dried prunes are mostly eaten out-of-hand as snacks, there is a greater chance of consumer dental injury due to pits and pit fragments. Consequently, the Committee recommended that no handler shall ship any lot of pitted prunes unless the prunes contain no more than an average of 0.5 percent by count by prunes with whole pits and/or pit fragments 2 mm or longer and that 4 of 10 subsamples of pitted prunes cannot have more than 0.5 percent by count with whole pits and/or pit fragments 2 mm or longer.

For pitted macerated prunes, the Committee recommended that such prunes contain no more than an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer, and 4 of 10 subsamples of pitted macerated prunes cannot have more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. The Committee recommended a more lenient tolerance for macerated prunes because such prunes are used mostly as ingredients in cooking and baking and any pit or pit fragments are more easily noticed by the consumer. The latter tolerance is the same as that implemented by the Food and Drug Administration.

No tolerance was recommended for well macerated prunes because these prunes are only used in prune products and there is no apparent pit or pit fragment problem. When well macerated prunes are used in manufactured products, any pit fragments are generally so small that they cause no problems.

In order to obtain more information regarding pits and pit fragments, the DFA conducted a study between December, 1991, and January, 1992. The study revealed that 91 percent and 88 percent of the pitted prunes inspected met the 0.5 percent by count tolerance and that 99 percent of macerated prunes inspected met the 2 percent by count tolerance. On the basis of the information, the Committee believes that handlers may experience a slight increase in pitter maintenance and hand sorting costs in order to consistently meet the new tolerances, but that these costs should not disproportionately impact small entities.

The estimated increment inspection cost for these tests is $2.50 per ton. This cost was based on 1 sample taken from each 1,000 pounds of prunes in the lot. DFA indicated that the cost could be reduced to $1.25 per ton, if a 1 sample taken from each 2,000 pounds were adopted, without harming the validity of the inspection results.

The recommended tolerances would ensure a consistently higher quality product for consumers which would benefit all producers and handlers through increased prune sales, higher handler profits, and improved grower returns. The tolerances will be equitable because all handlers who market pitted prunes have similar equipment and are capable of meeting the proposed tolerances with proper equipment maintenance and hand sorting of pitted and macerated prunes. The tolerances will apply uniformly to all California pitted prune handlers.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for dried prunes under a domestic marketing order, imported dried prunes must meet the same or comparable requirements. Hence, pit and pit fragment tolerances must be established for imported pitted dried prunes and pitted macerated prunes in § 999.200. The import regulation change requires the concurrence of the United States Trade Representative (USTR). A proposal to change the import regulation will be issued as a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of 15 days is appropriate because: (1) This action, if adopted, should be implemented as soon as possible; August 1, 1992, the beginning of the season; and (2) this action was discussed at a public meeting.

All written comments received will be reviewed in making a final decision on the establishment of the proposed tolerances.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 993 be amended to read as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. In section 993.150, paragraph (f)(1) is redesignated as paragraph (f)(1)(i) and new paragraphs (f)(1)(ii) and (f)(1)(iii) are added to read as follows:

§ 993.150 Disposition of prunes by handlers.

* * * * *

(f) * * *

(1) *For human consumption as such.*

(i) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless the lot, before pitting, met (A) The applicable minimum standard set forth in § 993.97 (Exhibit A), or as such standards may be modified, for standard prunes or standard processed prunes, and (B) The requirements specified in § 993.50(c) and (d).

(ii) No handler shall ship or otherwise make final disposition of any lot of pitted prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 0.5 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(ii), pitted prunes means prunes with the pit removed that are characterized by a uniform depression and minimal skin break where the pit has been removed.

(iii) No handler shall ship or otherwise make final disposition of any lot of macerated prunes for human consumption as pitted prunes unless these prunes do not exceed an average of 2 percent by count of prunes with whole pits and/or pit fragments 2 mm or longer; and four of ten subsamples examined have no more than 2 percent by count with whole pits and/or pit fragments 2 mm or longer. For the purposes of this paragraph (f)(1)(iii), macerated prunes means prunes with the pit removed that are characterized by a flattened appearance with slightly more skin breaks where the pit has been removed than with pitted prunes.

* * * * *

Dated: August 19, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20383 Filed 8–25–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–NM–269–AD]

Airworthiness Directives; British Aerospace Model ATP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, that would have required placing a life limit on certain brake torque plates. That proposal was prompted by reports of fatigue cracks developing in brake unit torque plates. This action revises the proposed rule by changing the method required to place these life limits on the brake torque plates. The actions specified by this proposed AD are intended to prevent structural failure of the brake torque plates.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041–0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91–NM–269–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–269–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all British Aerospace Model ATP series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 23, 1992 (57 FR 2692). That NPRM would have required placing a life limit on certain brake unit torque plates. That NPRM was prompted by reports of fatigue cracks developing in brake unit torque plates. That condition, if not corrected, could result in structural failure of the brake torque plates.

Since the issuance of that NPRM, the FAA has received information that has prompted a reconsideration of the

proposed requirements. One commenter to the proposal asserts that the proposed AD is unnecessary, since mandatory life limits for brake torque plates are included in the Limitations Section of the FAA-approved Instructions for Continued Airworthiness (IFCA) for this airplane. The commenter contends that the issuance of an AD requiring life limits that are the same as those included in the ICFA would be redundant and would pose an added administrative burden on the operators.

The FAA concurs. The FAA has determined that compliance with the Limitations Section of the IFCA that is in effect when a new airplane is delivered from the factory is mandatory; however, compliance with later revisions of that document is not mandatory for U.S. operators unless the revision is added to the document by rulemaking procedures (including notice and opportunity for public comment).

Consequently, the FAA has revised the NPRM to change the method required to place life limits on the brake torque plates. The new method would add the Dunlop brake torque plate life limitations referenced in British Aerospace Service Bulletin ATP-32-36 to the FAA-approved Mandatory Life Limitations (Airframe) Section of the British Aerospace ATP Aircraft Maintenance Manual. As a result, operators would record compliance with this AD only once, and would continue to update maintenance records repetitively to show compliance with the Limitations Section of the ATP Aircraft Maintenance Manual.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Paragraph (c) of the NPRM [redesignated as paragraph (b) of this supplemental notice] has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 0.5 work hour per airplane to add the brake torque plate life limitations to the Maintenance Manual, and approximately 20 work hours per airplane to accomplish the initial parts change. The average labor rate is $55 per work hour. (If the proposed actions are implemented during normal maintenance, no additional work hours will be necessary.) Dunlop will provide new torque plates at normal brake overhaul at no cost to the airplane operator. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $275 (for the Maintenance Manual addition) and $11,000 (for the initial parts change). This total cost figure of $11,275 assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 91-NM-269-AD.

Applicability: All Model ATP series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of certain brake torque plates and accompanying brake failure, accomplish the following:

(a) Within 400 landings after the effective date of this AD, revise the FAA-approved Mandatory Life Limitations (Airframe) Section, Chapter 5, Section 05-10-11. Table 1, page 4, of the British Aerospace ATP Aircraft Maintenance Manual, by deleting the existing life limitations for brake torque plates, part numbers AHA 1777 and AHA 1650, and adding the component life limitations listed in Table 1 below. The Maintenance Manual revision may be accomplished by inserting a copy of this AD into the Mandatory Life Limitations (Airframe) Section of the ATP Aircraft Maintenance Manual. Once this revised page of the Maintenance Manual is available from British Aerospace and is inserted into the Maintenance Manual, the copy of this AD may be removed.

TABLE 1

MSI/SSI Item	Description	Part number	Life limitation
32-42-00-022...	Brake torque plate (Post Dunlop Mod 2541).	AHM8857 Assembly AHA 1777.	14,500 landings.
32-42-00-022...	Brake torque plate (Pre Dunlop Mod 2541).	AHM8857 Assembly AHA 1650.	10,000 landings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20396 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-141-AD]

Airworthiness Directives; CASA Model CN-235, CN-235-100, and CN-235-200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all CASA Model CN-235, CN-235-100, and CN-235-200 series airplanes. This proposal would require repetitive inspections of the flap track support structure to detect cracks and corrosion, and replacement of cracked or corroded parts. This proposal is prompted by reports of cracks due to corrosion found in the support lugs of the flap tracks. The actions specified by the proposed AD are intended to prevent flap separation and loss of roll control due to unsymmetrical wing surfaces.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-141-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Construcciones Aeronauticas S.A., Getafe, Madrid, Spain. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-141-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-141-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Dirección General de Aviación Civil (DGAC), which is the airworthiness authority for Spain, recently notified the FAA that an unsafe condition may exist on all CASA Model CN-235, CN-235-100, and CN-235-200 series airplanes. The DGAC advises that there have been reports of cracks due to corrosion found in the support lugs of the flap tracks on Model CN-235 series airplanes. Cracks in these areas, if not detected and corrected in a timely manner, could result in flap separation and loss of roll control due to unsymmetrical wing surfaces.

CASA has issued Maintenance Instructions 235-58, dated November 21, 1991, which describes procedures for repetitive detailed visual inspections of the flap track support structure to detect cracks and corrosion. The DGAC classified these maintenance instructions as mandatory and issued Spanish Airworthiness Directive Number 01/92 in order to assure the continued airworthiness of these airplanes in Spain.

This airplane model is manufactured in Spain and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive detailed visual inspections of the flap track support structure to detect cracks and corrosion in accordance with the maintenance instructions described previously. In addition, replacement of any cracked or corroded parts found would be required to be performed in accordance with a manner approved by the FAA.

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 20 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,100. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

CASA: Docket 92–NM–141–AD.

Applicability: All model CN–234, CN–235–100, and CN–235–200 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent flap separation and loss of roll control due to unsymmetrical wing surfaces, accomplish the following:

(a) Perform detailed visual inspections of the flap track support structure to detect cracks and corrosion in accordance with CASA Maintenance Instructions 235–58, dated November 21, 1991, at the intervals specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have accumulated 2,000 hours time-in-service or less as of the effective date of this AD: Within 12 months after the effective date of this AD, or at the next "C" check whichever occurs first, and thereafter at intervals not to exceed 12 months.

(2) For airplanes that have accumulated more than 2,000 hours time-in-service as of the effective date of this AD: Within 100 hours time-in-service after the effective date of this AD, and thereafter at intervals not to exceed 12 months.

(b) If cracks or corrosion are found as a result of the inspections required by paragraph (a) of this AD, prior to further flight, replace cracked or corroded parts in accordance with a manner approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20399 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–144–AD]

Airworthiness Directives; de Havilland, Inc., Model DHC–8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland Model DHC–8 series airplanes equipped with microwave landing system (MLS) provisions. This proposal would require a visual inspection to determine whether the vertical deviation wiring has been properly installed and/or connected to link the MLS with the ground proximity warning system (GPWS), and, if necessary, correction of the wiring and performance of a functional test. This proposal is prompted by reports that wiring in some airplanes has not been corrected to provide GPWS Mode 5 "Below Glideslope" warning when operating with the MLS. The actions specified by the proposed AD are intended to prevent the airplane from landing short of the runway.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE–173, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791–6427; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–144–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–144–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8 series airplanes equipped with microwave landing system (MLS) provisions. Transport Canada Aviation advises that reports have been received that on some of the affected airplanes, electrical wiring for the vertical deviation signal may not have been properly installed and/or connected to tie the MLS with the GPWS. As a result, when operating in the MLS mode, if the airplane is inadvertently flown below the proper glideslope, the appropriate GPWS Mode 5 "Below Glideslope" warning will not be given to the flight crew. This condition, if not corrected, could result in the airplane landing short of the runway.

De Havilland, Inc., has issued Service Bulletin 8–34–60, Revision C, dated November 1, 1991, which describes procedures for a visual inspection to determine whether the vertical deviation wiring has been properly installed and/or connected to link the MLS with the GPWS, and, if necessary, correction of the wiring and performance of a functional test. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF–89–18R1, dated May 11, 1992, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a visual inspection to determine whether the vertical deviation wiring has been properly installed and/or connected to link the MLS with the GPWS, and, if necessary, correction of the wiring and performance of a functional test. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimate that 8 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,320. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92–NM–144–AD.

Applicability: Model DHC–8 series airplanes equipped with microwave landing system (MLS) provisions, as listed in de Havilland Service Bulletin 8–34–60, Revision C, dated November 1, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from landing short of the runway, accomplish the following:

(a) Within 45 days after the effective date of this AD, perform a visual inspection to determine whether the vertical deviation wiring has been properly installed and/or connected to link the microwave landing system (MLS) with the ground proximity warning system (GPWS), in accordance with de Havilland Service Bulletin 8–34–60, Revision C, dated November 1, 1991.

(1) If any vertical deviation wiring has been found that has not been properly installed and/or connected to link the MLS with the GPWS, prior to further flight, correct the wiring and perform a functional test of the system in accordance with the service bulletin.

(2) If vertical deviation wiring has been found that has been properly installed and/or connected to link the MLS with the GPWS, no further action is necessary.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (AC), FAA Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20401 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–ANE–22]

Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Pratt & Whitney JT8D series turbofan engines. This proposal would require initial and repetitive inspections of installed third and fourth stage low pressure turbine (LPT) blade sets for blade shroud crossnotch wear, and removal of blade sets found with excessively worn blade shroud crossnotches. This proposal is prompted by reports of 19 uncontained LPT blade fracture events. The actions specified by the proposed AD are intended to

prevent inflight engine shutdown, engine cowl release, or uncontained engine debris penetrating the aircraft.

DATES: Comments must be received by October 13, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–22, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments may be inspected at this location, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, Technical Publications Department, M/S 132–30, 400 Main Street, East Hartford, Connecticut 06108. This information may be examined at the FAA, Office of Assistant Chief Counsel, New England Region, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: John E. Golinski, Engine Certification Office, ANE–140, FAA, New England Region, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, telephone (617) 273–7121; fax (617) 270–2412.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–22." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92–ANE–22, 12 New England Executive Park, Burlington, Massachusetts 01803–5299.

Discussion

The FAA has received reports of 19 uncontained third and fourth stage low pressure turbine (LPT) blade fracture events that have occurred in Pratt & Whitney (PW) Model JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R turbofan engines. Thirteen events were attributed to fractures of the third stage LPT blade, and 6 events to fractures of the fourth stage LPT blade. In one LPT blade fracture event, uncontained engine debris damaged another engine on the aircraft.

The FAA has determined that PW JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R engines are susceptible to third and fourth stage LPT blade fractures due to excessively worn blade shroud crossnotches. Blade shroud crossnotches are also known as blade shroud contract surfaces. Excessively worn shroud crossnotches significantly increase the operating stresses in the blade, which can result in a blade fracture. This condition, if not corrected, could result in an uncontained engine failure and damage to the aircraft.

This proposed rule would require inspections of the third and fourth stage LPT blade shroud crossnotches on blades that are assembled in a blade set and installed in an engine. A blade set is a complete assembly of LPT blades installed in a rotor stage. If the inspections indicate the blade sets have excessively worn blade crossnotches, the blade set must be removed and replaced with a serviceable blade set. Engines that incorporate the improved third and fourth stage LPT containment hardware would not require these inspections. The containment hardware has been shown to be effective in containing third and fourth stage LPT blade fractures due to excessive blade shroud crossnotch wear.

Engines with a third stage blade set that contain improved third stage turbine blades installed in accordance with PW Service Bulletin (SB) No. 5331, dated October 27, 1982, do not require third stage blade set inspection. These blades are less susceptible to shroud crossnotch wear and have experienced no failures due to excessive crossnotch wear.

Engines that contain fan exhaust inner front duct segment assemblies that were installed in accordance with the requirements of PW Alert Service Bulletin (ASB) No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039, do not require fourth stage blade set inspections. This hardware has been shown to be effective in containing fourth stage blade fractures due to excessive blade shroud crossnotch wear.

The FAA has reviewed and approved the technical contents of PW ASB No. 5913, Revision 5, dated August 10, 1992, that describes the third and fourth stage LPT blade set inspection procedures and replacement requirements.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, the proposed AD would require repetitive inspections for excessive LPT blade shroud crossnotch wear, and replacement as necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 9,600 PW JT8D series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that approximately 6,000 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per engine to accomplish the proposed inspection at $55 per work hour. The estimated cost for performing the inspection is $330,000. The FAA also estimates that approximately 260 engines would be removed from service within 20 cycles or hours in service as a result of the initial inspection results, which will require approximately 123 workhours per engine at $55 per work hour for removal, repair and reinstallation. The estimated labor cost for the 260 engines would be $1,758,900. These engines would also incur an additional cost of $11,538 per engine for the repair and replacement of the third and fourth stage turbine blades. The estimated total cost for the repair and replacement would be $2,999,880. Based on these figures, the estimated total cost impact of this AD is approximately $5,088,780.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 92–ANE–22.

Applicability: Pratt & Whitney (PW) JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –17, and –17R turbofan engines except those engines containing fan exhaust inner front duct segment assemblies that are installed in accordance with the requirements of PW Alert Service Bulletin (ASB) No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039, and either (a) PW honeycomb third stage outer airseal Part Number (P/N) 601931, 802097, 797594, or 798279; or (b) Pyromet Industries, Inc., honeycomb third stage outer airseal P/N PI9338; or (c) McClain International, Inc., P/N M2433; or (d) a turbine case shield assembly installed in accordance with PW ASB No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039. These engines are installed on but not limited to Boeing 737 and 727 series aircraft, and McDonnell Douglas DC–9 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent third and fourth stage low pressure turbine (LPT) blade fractures that can result in an inflight engine shutdown, engine cowl release, or uncontained engine debris penetrating the aircraft, accomplish the following:

(a) Conduct initial and repetitive inspections on installed third and fourth stage LPT blade sets, and remove and replace with serviceable blade sets, as necessary, in accordance with the requirements of Part 1 of the Accomplishment Instructions of PW ASB No. 5913, Revision 5, dated August 10, 1992, as follows:

(1) Initially inspect the blade shroud crossnotches of the third stage LPT blade set when specified in paragraphs (a)(1)(i) or (a)(1)(ii) of this AD, whichever occurs later. Engines that contain a third stage blade set that have third stage turbine blades that were installed per the requirements specified in PW Service Bulletin No. 5331, dated October 27, 1982, do not require the third stage blade set inspection.

(i) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–12 of PW JT8D Engine Manual P/N 481672; or

(ii) Inspect within 1,000 cycles or 1,000 hours time in service, whichever occurs first, after the effective date of this AD.

(2) Initially inspect the blade shroud crossnotches of the fourth stage LPT blade set when specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, whichever occurs later. Engines that contain fan exhaust inner front duct segment assemblies that were installed per the requirements of PW ASB No. 6039, Revision 2, dated May 4, 1992, or earlier revisions of PW ASB No. 6039, do not require the fourth stage blade set inspection.

(i) Inspect within 6,000 cycles or 6,000 hours time in service, whichever occurs first, since new, since the last blade shroud crossnotch inspection specified Section 72–53–13 of PW JT8F Engine Manual P/N 481672, or since last blade shroud crossnotch repair that was accomplished per the requirements specified in Section 72–53–13 of PW JT8D Engine Manual P/N 481672; or

(ii) Inspect within 1,000 cycles or 1,000 hours time in service, whichever occurs first, after the effective date of this AD.

(3) Thereafter, reinspect the third and fourth stage LPT blade sets in accordance with the procedures and intervals specified in PW ASB No. 5913, Revision 5, dated August 10, 1992.

(b) An alternative method of compliance or adjustment of the compliance times that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office, Engine & Propeller Directorate. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on August 14, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92–20396 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 91–NM–99–AD]

Airworthiness Directives; Aerospatiale Model SN 601 Corvette Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model SN 601 series airplanes. This proposal would require inspection of the skins on the upper and lower passenger door frames to detect cracking and damage, and repair, if necessary. This proposal is prompted by reports of fatigue cracking in the upper and lower passenger door frame skin. The actions specified by the proposed AD are intended to prevent damage to the fuselage passenger door frame skin at the hinge axis.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 91–NM–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-99-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-99-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model SN 601 Corvette series airplanes. The French DGAC advises that it has received reports of fatique cracking in the skin plating of the upper and lower passenger door frame. Such cracking, if not detected and corrected in a timely manner, could lead to damage to the fuselage passenger door frame skin at the hinge axis.

Aerospatiale has issued the following Corvette Service Bulletins:

a. Service Bulletin 53-21, dated June 25, 1990, describes procedures for inspection to detect cracks in the upper and lower frames of the passenger doors.

b. Service Bulletin 53-22, dated July 20, 1990, contains procedures for installing Modification 1291, which involves strengthening the passenger door frame by increasing the blend radii.

c. Service Bulletin 53-23, Revision 2, dated November 6, 1991, describes procedures for inspection of the upper and lower frames of the passenger doors following the incorporation of Modification 1291.

d. Service Bulletin 53-8, Revision 1, dated August 20, 1990, contains procedures for installing 1368, which involves reinforcement of the passenger door upper frame.

The French DGAC classified these service bulletins as mandatory and issued Airworthiness Directives 91-046-011(B) and 91-047-012(B) in order to assure the contained airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the French DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the French DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection of the skins on the upper and lower passenger door frames to detect cracking and damage, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 1 airplane of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $220. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects of the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 91-NM-99-AD

Applicability: All Model SN 601 Corvette series airplanes on which Modifications 1291 and 1368 have been incorporated, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the fuselage passenger door frame skins at the hinge axis, accomplish the following:

(a) Prior to the accumulation of 8,100 landings, or within 100 landings after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,300 landings, perform a high frequency eddy current inspection of the skins on the upper and lower frames at the level of the passenger door hinge pins to detect cracks, in accordance with Aerospatiale Corvette Service Bulletin 53-21, dated June 25, 1990.

(1) If no crack is found as a result of the inspections required by paragraph (a) of this AD, repeat the inspections at intervals not to exceed 3,300 landings.

(2) If any crack is found as a result of the inspections required by paragraph (a) of this AD, prior to further flight, accomplish Modification 1291, in accordance with Aerospatiale Corvette Service Bulletin 53-22, dated July 20, 1990. Accomplishment of this modification constitutes terminating action for the inspections required by paragraph (a) of this AD.

(b) Prior to the accumulation of 9,100 landings or within 100 landings after incorporation of Modification 1291, whichever occurs later, and thereafter at intervals not to exceed 3,600 landings, perform a low frequency eddy current inspection of the upper door frame and a high frequency eddy current inspection of the lower door frame to detect damage to the fuselage passenger door frame skins at the hinge axis between Frames 11 and 12, in accordance with Aerospatiale Corvette Service Bulletin 53-23, Revision 2, dated November 6, 1991.

(1) If no damage is found as a result of the inspections required by paragraph (b) of this AD, repeat the inspections at intervals not to exceed 3,600 landings.

(2) If any damage is found as result of the inspections required by paragraph (b) of this AD, prior to further flight, accomplish Modification 1368, in accordance with Aerospatiale Corvette Service Bulletin 53-8, Revision 1, dated August 20, 1990. Accomplishment of this modification constitutes terminating action for the low frequency eddy current inspection of the upper door frame required by paragraph (b) of this AD; however the high frequency eddy current inspection of the lower door frame required by paragraph (b) of this AD must continue to be performed.

(c) An alternative method of compliance or adjustment of the compliance time that provides as acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20407 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-CE-40-AD]

Airworthiness Directives; Beech Models 58 and 58A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would be applicable to certain Beech Models 58 and 58A airplanes. The proposed action would require replacement of the fuel crossfeed check valves. The Federal Aviation Administration (FAA) has received several reports of the operators of the affected airplanes using excessive force to operate the fuel selector valves because of pressure buildup in the crossfeed lines. The actions specified by the proposed AD are intended to prevent fuel selector valve failure caused by such a pressure buildup, which could result in the inability to control the fuel flow to the engines.

DATES: Comments must be received on or before November 10, 1992.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-40-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Peterson, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946-4145; Facsimile (316) 946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-CE-40-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-CE-40-AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

The FAA has received several reports of the operators of certain Beech Models 58 and 58A airplanes using excessive force to operate the fuel selector valves because of pressure buildup in the crossfeed lines. Investigation has revealed that temperature changes have caused the fuel selectors to bind.

In the referenced reports, the fuel selector valves, part numbers 58-380109-1 and 58-380109-3, are a design change that is currently utilized on certain Beech Models 58 and 58A airplanes. These rotating plate type fuel selector valves were inadvertently designed without inherent pressure relief. As a result, the pressure increase that results from temperature increase and fuel expansion is trapped between the selector valves. As the pressure increases, the valves could become locked or the crossfeed lines may rupture, which could cause fuel leaks in the area under the floorboards of the cabin.

Beech has issued Service Bulletin (SB) No. 2454, dated May 1992, which specifies procedures for replacing the fuel crossfeed check valves with new valves that provide pressure relief.

After examining the circumstances and reviewing all available information related to the incidents described above,

the FAA has determined that AD action should be taken to prevent fuel selector valve failure caused by pressure buildup in the crossfeed lines, which could result in the inability to control the fuel flow to the engines.

Since the condition described is likely to exist or develop in other Beech Models 58 and 58A airplanes of the same type design, the proposed AD would require replacement of the fuel crossfeed check valves with new valves that provide pressure relief in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech SB No. 2454, dated May 1992.

The FAA estimates that 33 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 5 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $175 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $14,850.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13—[Amended]

2. Section 39.13 is amended by adding the following new AD:

Beech: Docket No. 92-CE-40-AD.

Applicability: Models 58 and 58A airplanes (serial numbers TH-1488, TH-1600, TH-1613 through TH-1635, and TH-1638 through TH-1662, certificated in any category.

Compliance: Required within the next 50 hours TIS after the effective date of this AD, unless already accomplished.

To prevent fuel selector valve failure caused by pressure buildup in the crossfeed lines, which could result in the inability to control the fuel flow to the engines, accomplish the following:

(a) Replace both existing crossfeed check valves with new valves, part number 50-380170-39, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Beech Service Bulletin No. 2454, dated May 1992.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(d) Service information that is applicable to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201-0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

Issued in Kansas City, Missouri, on August 20, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20412 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-145-AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 series airplanes. This proposal would require inspection to detect cracking of the upper main fitting of the nose landing gear, and replacement, if necessary. This proposal is prompted by reports of cracking in the main fittings of the nose landing gear on two airplanes. The actions specified by the proposed AD are intended to prevent failure of the main fitting, which could lead to collapse of the nose landing gear during landing.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-145-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-145-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-145-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on British Aerospace Model BAe 146 series airplanes. The CAA advises that the manufacturer has reported that cracking has been detected in two nose landing gear main fittings. These two landing gear assemblies were early modification standard items. Such cracking, if undetected, could lead to failure of the main fitting, which could cause collapse of the nose landing gear.

British Aerospace has issued Service Bulletin 32-131, dated December 6, 1991, which describes procedures for conducting a one-time eddy current or ultra high sensitivity penetrant inspection to detect cracking of the nose landing gear main fitting, and repair or replacement, if necessary. (This British Aerospace service bulletin references Dowty Aerospace Gloucester Service Bulletin 146-32-108, dated November 6, 1991, for additional information.) The CAA classified this British Aerospace service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require conducting a one-time eddy current or ultra high sensitivity penetrant inspection to detect cracking of the nose landing gear main fitting, and replacement, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2.5 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,050. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 11 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness director:

British Aerospace: Docket 92-NM-145-AD.

Applicability: Model BAe 146 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main fitting, which could lead to collapse of the nose landing gear, accomplish the following:

(a) For airplanes on which nose landing gear part numbers 200876001 or 200876003 have been installed: Prior to the accumulation of 4,000 landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the nose landing gear, in accordance with British Aerospace Service Bulletin 32-131, dated December 6, 1991.

(1) If cracking is detected, prior to further flight, replace the currently installed nose landing gear with a serviceable unit or repair the crack in a manner approved by the Manager, Standardization Branch, ANM-113.

(2) If no cracking is detected, no further action is required by this AD.

(b) For airplanes on which nose landing gear part numbers 200876002, 200876004, or 201138002 have been installed: Prior to the accumulation of 16,000 landings or within 30 days after the effective date of this AD, whichever occurs later, conduct an eddy current or ultra high sensitivity penetrant inspection of the nose landing gear, in accordance with British Aerospace Service Bulletin 32-131, dated December 6, 1991.

(1) If cracking is detected, prior to further flight, replace the currently installed nose landing gear with a serviceable unit or repair the crack in a manner approved by the Manager, Standardization Branch, ANM-113.

(2) If no cracking is detected, no further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be

used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.97 and 21.199 to operate the airplane to a location where the requirement of this AD can be accomplished.

Issued in Renton, Washington, on August 17, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20402 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ASW-11]

Proposed Revision of Transition Area: Fairview, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the transition area located at Fairview, OK. An amendment to the Non-directional Radio Beacon (NDB) Runway (RWY) 17 standard instrument approach procedure (SIAP), utilizing the Fairview NDB, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the amended NDB RWY 17 SIAP.

DATES: Comments must be received on or before October 15, 1992.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92-ASW-11, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin E. DeVane, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone (817) 624-5535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92-ASW-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the transition area located at Fairview, OK. An amendment to the Non-directional Radio Beacon (NDB) Runway (RWY) 17 standard instrument approach procedure (SIAP), utilizing the Fairview NDB, has made this proposal necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the amended NDB RWY 17 SIAP. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore,—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration, proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulation, published April 30, 1991, and effective November 1, 1991, is proposed to be amended.

Section 71.181 Designation

* * * * *

Fairview, OK. [Revised]

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Fairview Municipal Airport (latitude 36°17'24"N., longitude 98°28'32"W.), and within 2.5 miles each side of the 006° bearing of the Fairview NDB (Latitude 36°17'14"N., longitude 98°28'39"W.), extending from the 6.3-mile radius to 7 miles north of the Fairview Municipal Airport.

* * * * *

Issued in Fort Worth, TX on July 7, 1992.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 92-17347 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 920786-2186]

RIN 0691-AA19

International Services Surveys: BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Economic Analysis is proposing to amend reporting requirements for the BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons.

The BE-22 survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act. It is the annual follow-on survey to the quinquennial BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons. Together, the two surveys produce a continuous annual time series of data on major types of services that are out of scope of other international services surveys.

The data from the BE-22 survey, together with the data from the related quinquennial BE-20 benchmark survey, are used to formulate U.S. international trade policy on services, support bilateral and multilateral trade negotiations, compile the U.S. balance of payments and the national income and product accounts, develop U.S. international price indexes for services, assess U.S. competitiveness in international trade in services, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

DATE: Comments on these proposed rules will receive consideration if submitted in writing on or before October 13, 1992.

ADDRESSES: Comments may be mailed to the Office of the Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230, or hand delivered to room 1008, Tower Building, 1401 K Street, NW., Washington, DC 20005. Comments will be available for public inspection in room 1006, Tower Building, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE-50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0659.

SUPPLEMENTARY INFORMATION: BEA is proposing to amend 15 CFR part 801 by revising § 801.9 to set forth reporting requirements for the BE-22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons. The survey is conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (Pub. L. 94-472, 90 Stat. 2059, 22 U.S.C. 3101-3108, as amended by Public Law 98-573 and Pub. L. 101-533). Section 4(a) of the Act provides that "The President shall, to the extent he deems necessary and feasible—(1) conduct a regular data collection program to secure current information * * * related to international investment and trade in services * * *; and (5) publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection * * *" In section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated it to BEA.

The survey updates, on an annual basis, summary data from the BE-20 Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons, which is taken once every 5 years. The most recent BE-20 survey covered 1991. The final rule implementing the 1991 BE-20 benchmark survey was published in the November 29, 1991 **Federal Register**, Volume 56, No. 230 (56 FR 60916). To provide continuity from that survey, the first year of coverage of the proposed BE-22 annual survey will be 1992.

Three major changes to the BE-22 survey since it was last conducted for 1990 are set forth in these proposed rules: (1) The exemption criteria for the survey would be changed to significantly improve the coverage of the survey and the accuracy of the geographic detail obtained for critical services.

BEA proposes changing the exemption level for the 1992 BE-22 survey to require respondents to report sales of a given service if total sales of that service exceed $1 million, and to report purchases of the service if total purchases of that service exceed $1 million. For the 1991 BE-20 benchmark survey, BEA required respondents to report sales of a given covered service if total sales of that service exceeded $500,000, and to report purchases if total purchases of that service exceeded $500,000.

In contrast to the exemption levels used in the 1991 BE-20 survey and proposed for the 1992 BE-22 survey, the exemption level used in the 1986 BE-20 and 1987-90 BE-22 surveys was based upon the size of individual, rather than overall, transactions, in a given service. Individual transactions of $250,000 or more during the year were required to be reported; smaller transactions were requested to be reported voluntarily. That exemption level did not provide adequate coverage of services that were large in total but comprised of many individual transactions of less than $250,000 each. Thus, a large proportion—over one-half—of the data for many types of services was reported only voluntarily by type, without any country detail, or were not reported at all. The 1991 and the proposed 1992 exemption levels assure that the largest transactors in a given service are required to report.

For both the 1991 BE-20 and proposed BE-22 surveys, respondents with transactions less than the threshold for mandatory reporting are *requested* to provide, on a voluntary basis, information on the total amount of transactions in each type of service. Both the voluntary and mandatory data may be estimated based upon the judgment of knowledgeable persons rather than on an exhaustive search of records.

To assess the likely effects of using a $1 million exemption level on the BE-22, BEA reviewed the data that were reported or estimated in 1990. In its calculations, sales of telecommunications services, and purchases of construction, primary insurance, and telecommunications services, were excluded; for these services, transactions with foreign persons tend to be so large that, even under a very high exemption level, reporting would still be required.

BEA estimates that, for sales (excluding telecommunications), approximately 30 percent of the firms in its 1990 universe estimate would be exempt under the proposed $1 million

exemption level, and 70 percent of the firms would continue to report. The firms that report would probably account for more than 95 percent of total sales of covered services, although reporting would be significantly lower than this for some individual foreign countries.

For purchases (except primary insurance, construction, and telecommunications), approximately 57 percent of the firms would be exempt under the proposed $1 million exemption level, and 43 percent of the firms would continue to report. The reporting firms would probably account for about 90 percent of total purchases of covered services, but reporting for some individual services and countries would be much lower.

In selecting the $1 million cutoff, BEA examined other alternative cutoffs (i.e., $2 million, $3 million, $4 million, and $5 million). For sales, reporting for most individual types of services is relatively high for all foreign countries combined under these alternative exemption levels. However, for purchases, reporting drops relatively sharply; less than 85 percent of the total data would be reported at the $2 million level, and well under 80 percent at the $3 million level. For some important services, such as computer and data processing services, legal services, and performing arts, reporting for all foreign countries combined drops especially sharply as exemption levels are raised above $1 million. For purchases of computer and data processing services, for example, only 52 percent of the total data would be reported under a $2 million exemption level. It should also be noted that the reporting of purchases and, to a lesser extent, sales of individual services cross-classified by individual foreign country—the level of detail required for the purpose of trade negotiations—drops particularly sharply as exemption levels are raised above $1 million. (2) Coverage of several small types of services would be eliminated.

During the review and OMB clearance of the 1991 BE–20 benchmark survey, BEA agreed to consider dropping the smallest types of services from the BE–22, assuming results of the 1991 and subsequent benchmark surveys show that these services continued to be small. The five smallest services then were: Agricultural services; management of health care facilities; mailing, reproduction, and commercial art; employment agencies and temporary help supply services; and accounting, auditing, and bookkeeping services.

Of these services, accounting services were relatively large in both 1990 and 1991, while the other services continued to be small. In 1991, transactions in accounting services were roughly $230 million (preliminary estimate), four times as large as employment agency services, the largest of the other four services considered for elimination in 1992. Also, the Bureau of Labor Statistics (BLS), a user of the BE–20/22 data, wrote BEA favoring continued coverage of accounting services, because they "appear to have significant figures." As a result, BEA is proposing to continue to cover accounting services but eliminate the other four services from the BE–22. (3) Several services not previously included on the survey would be added.

Except for the four services discussed above that would be dropped from coverage, BEA proposes to include all other services covered by the 1991 BE–20 on the BE–22, but without any detail by subtype. BEA also proposes to cover certain financial services on the BE–22 for the first time.

Under this proposal, three services covered for the first time in the 1991 BE–20 would also be covered in the BE–22. These services are losses recovered on purchases of primary insurance (prior to 1991, only primary insurance premiums were covered); receipts and payments for the purchase, sale, or use of rights to natural resources; and certain "miscellaneous" disbursements, consisting of outlays to fund news-gathering costs of broadcasters and the print media, production costs of motion picture companies and companies engaged in the production of broadcast material other than news, and costs of maintaining tourist, business promotion, sales, or representative offices, and for participating in foreign trade shows. Transactions in each of these services are significant and, from year to year, volatile. Continued collection of these data is particularly necessary for estimating transactions by individual foreign country.

Regarding financial services, BEA proposes covering direct purchases from foreigners of certain financial services—mainly those for which an explicit fee was paid—by U.S. firms that are not financial services intermediaries or providers. For example, certain financial services purchased directly from foreigners by a U.S. manufacturing firm would be covered, but the same services purchased by or through a U.S. bank or other financial services provider would not be covered. Thus, BEA is proposing to cover only a small part of the universe of financial services transactions on the BE–22. We plan to study further the best method of estimating the fees of financial services providers and the nonexplicit fees paid by firms that are not financial services providers before making proposals to cover these other types of financial services transactions. Those transactions may be included on a separate survey in the future, rather than on the BE–22.

Specifically, BEA proposes to obtain data on the BE–22 for the following types of services purchased directly from foreigners by nonfinancial U.S. companies.

- *Certain credit-related fees*—Fees for arranging credits, letters of credit, bankers acceptances, mortgages, factoring services, loan guarantees, etc., that are commonly provided by foreign banking establishments.
- *Explicit fees on securities transactions*—Explicit fees for securities (equities and derivatives) or futures trading, syndication, brokerage, etc., that are commonly provided by foreign investment banks and securities brokers or dealers.
- *Explicit fees for other financial services*—Explicit fees for asset/liability management, debt renegotiation, actuarial services, property management and other real estate services, etc. The type of service accounting for the largest portion of the data must be specified.

The burden on most U.S. firms from having to report these data is thought to be relatively small because most nonfinancial U.S. firms do not engage in these types of transactions directly with unaffiliated foreign persons every year. Also, many of the U.S. firms that do engage in such transactions will not be required to report because their transactions will be below the exemption level for mandatory reporting. For example, because credit-related fees normally are less than 1 percent of the principal amount of a line of credit would be in the range of $100 million to $200 million for the $1 million BE–22 exemption level for mandatory reporting to be exceeded. (The $1 million exemption level would be applied to total purchases of financial services in all three categories combined.)

Note that, for a consolidated U.S. enterprise that is comprised of both financial and nonfinancial subsidiaries, only transactions of the subsidiaries that are not financial services providers are covered. For example, an auto manufacturer that owns an auto finance company would respond to the financial services questions only for the manufacturing part of the firm. (As in the past, the other BE–22 questions would apply to both parts of the firm.)

BEA proposes to define financial services providers to include depository institutions, nondepository credit institutions; security and commodity brokers, dealers, exchanges, and services; insurance carriers and pension funds; insurance agents, brokers, and services providers; real estate services providers; investment office, trusts, and miscellaneous investors (comprised of oil royalty traders, patent owners and lessors, and real estate investment trusts); and holding companies of financial services providers. This list is similar to Division H in the 1987 Standard Industrial Classification Manual, except that Division H includes all holding companies, not just holding companies of financial services intermediaries or providers.

Note that, with the exception of certain credit-related fees, BEA is *not* now proposing to cover purchases of financial services by firms that are not financial services providers where the fee for the service is not explicit. Examples of fees that would not be covered are those for purchases and sales of bonds, those required under swaps, and nonexplicit fees to foreign underwriters (where the underwriting fee is explicit, it would be covered under "explicit fees on security transactions" above).

BEA also proposes a minor change in the reporting of lease bonus payments. BEA proposes that these transactions be reported with purchases and sales of rights to natural resources to conform to the treatment in the U.S. national income and product accounts. Previously, these payments were reported with receipts and payments for the use of rights to natural resources.

BEA intends to mail the survey forms to respondents in January 1993, and either a completed form or a valid claim for exemption must be returned to BEA by March 31, 1993.

Copies of the proposed survey forms may be obtained from: Chief, Special Surveys Branch, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 523-0632.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act.

The public reporting burden for this collection of information is estimated to vary from 4 to 500 hours per response, with an average of 11.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Comments regarding the burden estimate, including suggestions for reducing this burden, may be sent to the Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project 0608–0060, Washington, DC 20503.

Executive Order 12291

BEA has determined that these final rules are not "major" as defined in E.O. 12291 because they are not likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. The exemption level for the survey excludes most small businesses from mandatory reporting. Reporting is required only if total sales or total purchases transactions in a given type of service with unaffiliated foreign persons exceed $1,000,000 during the year. In addition, international business, whether in goods or services, tends to be conducted mainly by the larger companies in a given industry. Finally, small businesses tend to have specialized operations and activities, so those that do have reportable transactions will likely have to report only one type of service; therefore, the burden on them should be relatively small.

List of Subjects in 15 CFR Part 801

Economic statistics, Balance of payments, Foreign trade, Reporting and recordkeeping requirements, Services.

Dated: August 13, 1992.

Carol S. Carson,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR part 801 as follows:

PART 801—[AMENDED]

1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301, 22 U.S.C. 3101–3108, and E.O. 11961, as amended.

§ 801.9 [Amended]

2. Section 801.9(b)(6) is revised to read as follows:

* * * * *

(b) * * *

(6) BE–22, Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons:

(i) *Who must report.* (A) Mandatory reporting—A BE–22 report is required from each U.S. person who had transactions (either sales or purchases) in excess of $1,000,000 with unaffiliated foreign persons in any of the covered services during the U.S. person's fiscal year. The determination of whether a U.S. person is subject to this mandatory reporting requirement may be judgmental, that is, based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty without conducting a detailed manual records search.

(B) Voluntary reporting—If, during the U.S. person's fiscal year, the U.S. person's total transactions (either sales or purchases) in any of the covered services is $1,000,000 or less, the U.S. person is requested to provide an estimate of the total for each type of service. Provision of this information is voluntary. The estimates may be judgmental, that is, based on recall, without conducting a detailed manual records search.

(C) Any U.S. person receiving a BE–22 survey form from BEA must complete all relevant parts of the form and return the form to BEA. A person that is not subject to the mandatory reporting requirement in paragraph (b)(6)(i)(A) of this section and is not filing information on a voluntary basis must only complete the "Determination of reporting status" and the "Certification" sections of the survey. This requirement is necessary to ensure compliance with the reporting requirements and efficient administration of the survey by eliminating unnecessary followup contact.

(ii) *Covered services.* With the exceptions given below, the services covered by this survey are the same as those covered by the BE-20, Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—1991, as listed in § 801.10(c) of this part. The exceptions are the elimination of coverage of four small types of services—agricultural services; management of health care facilities; mailing, reproduction, and commercial art; and temporary help supply services—and the addition of coverage of purchases of certain financial services. The financial services covered are those directly purchased from or sold to foreigners by U.S. companies (or by domestic subsidiaries of consolidated U.S. companies) that are not financial services intermediaries or providers. Finally, lease bonus payments are to be reported with purchases or sales of rights to natural resources, rather than with receipts or payments for the use of rights to natural resources.

* * * * *

[FR Doc. 92-20073 Filed 8-25-92; 8:45 am]
BILLING CODE 3510-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[Docket No. CGD8-92-16]

Drawbridge Operation Regulations; Lower Grand River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering a change to the regulation governing the operation of the swing span bridge on LA 77 across the Lower Grand River (Intracoastal Waterway, Morgan City to Port Allen, Alternate Route), mile 47.0 at Grosse Tete, Iberville Parish, Louisiana. The requested regulation would permit the draw to remain closed to navigation from 6 a.m. to 7:30 a.m. and from 3 p.m. to 4:30 p.m. on weekdays only, except holidays, and only during the months when local schools are in session. The primary purpose of this regulation is to provide school bus traffic undelayed use of the bridge during the school year. Presently, the draw opens on signal at all times.

This action will accommodate the needs of local school bus traffic and should still provide for the reasonable needs of navigation.

DATES: Comments must be received on or before October 13, 1992.

ADDRESSES: Comments should be mailed to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396. The comments and other materials referenced in this notice will be available for inspection and copying in room 1313 at this address. Normal office hours are between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulation may be changed in the light of comments received.

Drafting Information:

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Proposed Regulation

Vertical clearance of the draw in the closed position is 2 feet above high tide. Navigation through the bridge consists of tugs with tows, commercial fishing vessels and recreational craft. Data submitted by LDOTD show that from 6 a.m. to 7:30 a.m. and from 3 p.m. to 4:30 p.m., Monday through Friday, about 1.5 vessels pass the bridge daily during each proposed regulated period. Originally, the bridge owner had requested a longer closure period. After studying the provided school bus traffic data, the Coast Guard felt that the buses should be able to tighten their scheduled runs enough to fit into each of the one-and-one-half-hour time frames. The bridge owner and the school officials concurred after recognizing the greater inconvenience that a longer closure would impose upon the mariner. Thus, the shortened proposed closure periods were agreed upon. The Coast Guard feels that vessel operators can easily become accustomed to the scheduled closures and will be able to adjust their arrival at the bridge to avoid the closure periods with little or no inconvenience or additional expense to themselves. This new annual regulation would become effective each year on or about August 15 (first day of the school year), and would remain in effect through about June 5 (last day of the school year). During the summer months the regulation would not be in effect. The proposed regulation will be of great benefit to the local schools, the school bus operators, the children that ride the buses to and from the schools, and should have no significant impact on navigation.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034: February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that during the proposed regulated periods there will be very little inconvenience to vessels using the waterway. In addition, mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrivals to avoid the proposed regulated periods should involve little of no additional expense to them. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This proposed rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.478 is revised to read as follows:

§ 117.478

(a) The draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that, from about 15 August to about 5 June (the school year) the draw need not be opened from 6 a.m. to 7:30 a.m. and from 3 p.m. to 4:30 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

(b) The draw of the S997 bridge, mile 41.5 (Landside Route) at Pigeon, shall open on signal; except that, from 10 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given. During the advance notice period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

Dated: July 30, 1992.

J. C. Card,

Reor Admiral, U.S. Coast Guord Commander, Eighth Coast Guard District.

[FR Doc. 92-20357 Filed 8-25-92; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

The Higher Education Amendments of 1992

AGENCY: Department of Education.

ACTION: Notice of regional meetings to obtain public involvement in the development of proposed regulations for Parts B, G, and H of Title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992.

SUMMARY: The Secretary of Education will convene four public meetings, each to last for two days, to obtain public comment for use in developing proposed regulations for parts B (Federal Family Education Loan Program, formerly Guaranteed Student Loans), G (General Provisions Relating to Student Assistance Programs), and H (Program Integrity Triad) of Title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992 that were signed into law July 23, 1992.

DATES: See Supplementary Information.

ADDRESSES: See Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Persons wishing to register or who wish other logistical information about the regional meetings or who wish to indicate their preferences for a location and for issue discussion groups should call (404) 768-3091. Persons wishing to obtain other information about these regional meetings should call either Mr. Chris Johnson or Ms. Opral Walker at (202) 708-5547.

SUPPLEMENTARY INFORMATION: The Secretary invites individuals and representatives of each of the groups involved in student financial assistance programs to attend these meetings. The Secretary particularly encourages students, legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies to attend and participate in these meetings. These regional meetings are convened to discuss only parts B (Federal Family Education Loans, formerly Guaranteed Student Loans), G (General Provisions Relating to Student Assistance Programs), and H (Program Integrity Triad) of Title IV of the Higher Education Act of 1965, as amended by the Higher Education Amendments of 1992 (Public Law 102-325). The issues to be discussed at the regional meetings will be those where the Secretary has the authority to set policy. To facilitate a full discussion of all the regulatory issues related to these parts of the statute, the Secretary has divided each regional meeting into 12 issue discussion groups and invites the public to participate in one or more of these groups, as listed below.

Title IV, Part B: Issue Discussion Groups for Federal Family Education Loans (Formerly Guaranteed Student Loans)

Group I: Simplification and Standardization Issues

Standard forms and procedures for the origination of loans, electronic funds transfer, guaranty of loans, deferment forms, forbearance, servicing, claims filing, borrower status change, and cures.

Standardization issues, including computer formats, form design, and guaranty agency procedures relating to origination, servicing, and collection of loans; alternative means of document retention; use of computers or related methods for maintaining records; implementing electronic data linkages for the exchange of information; rules and procedures for common reporting of data (including the definition of all relevant terms); and the common loan application form and promissory note for all programs under Part B.

Group II: Issues Related to the General Administration of the Loan Programs

Definition of adverse credit for the PLUS program; loan limits and interest rates; loan forgiveness demonstration program; loan forgiveness for closed schools; fraudulent loan-certification; income contingency loan repayment; graduated and income-sensitive loan repayment; debt management options that might include alternative repayment options for borrowers considered to be at high risk of default; new deferment provisions; definition of economic hardship for deferments; loan access and lender of last resort (LLR) service, including rules and procedures for ensuring efficient service and conditions after agencies notify the Secretary they believe the Student Loan Marketing Association (Sallie Mae) needs to begin providing LLR services; and limitation, suspension, and termination (LST) of lenders and schools.

Group III: Performance Standards for the Loan Program

Special insurance and reinsurance rules for the designation of lenders, servicers, and guaranty agencies for exceptional performance; regulations for third-party servicers; subrogation requirements related to developing criteria for determining whether an agency has made adequate collection efforts; standards for service and collection of loans; and guaranty agency and lender due diligence.

Group IV: Guaranty Agency Oversight

Guaranty agency agreement with the Secretary; guaranty agency solvency and minimum reserve levels; annual financial reporting; guaranty agency solvency and reserve levels; and guaranty agency management plans when (a) the agency falls below the required reserve levels for two consecutive years, (b) when reinsurance is reduced to 80 percent, (c) the Secretary determines that the agency's administrative or financial condition jeopardizes its ability to perform its

responsibilities, and (d) the Secretary assumes an agency's management.

Group V: Institutional Issues

Loan certification; loan delivery and refunds; determining borrower eligibility; entrance and exit counseling and other default reduction measures; and required reports and record retention.

Group VI: Lender Issues.

Lender audits; unconsummated loans; restrictions on interest and special allowance; loan disbursement; borrower defenses; loan origination; forbearance; and standardized lender agreements.

Title IV, Part G: Issue Discussion Groups for the General Provisions Relating to Student Assistance Programs

Group VII: Institutionol Eligibility

Definitions of eligible institutions, eligibility of foreign institutions, and procedures for establishing and maintaining eligibility.

Group VIII: Participation in the Title IV Programs

Definitions of academic year and eligible program; program participation agreements; quality assurance program; refunds; consumer information; clock hour/credit hour conversions; audits; hearings; third-party servicers; sharing information; transferring allotment; and administrative expenses.

Group IX: Student Eligibility

Delivery system; ability to benefit; eligible noncitizens and Immigration and Naturalization Service (INS) match; Selective Service compliance; Social Security match; and verification.

Title IV, Part H: Issue Discussion Groups for Program Integrity Triad

Group X: State Postsecondary Review Program

Agreements between the department and the states for state review of postsecondary institutions; allocating federal funds among the states; effect of a state's nonparticipation; reimbursable expenses; substance of state review standards; and procedures and standards for adverse actions.

Group XI: Accrediting Agency Approval

New standards for recognizing accrediting agencies; "separate and independent" requirement; unannounced site visits; and limitation of recognition to agencies affecting student aid eligibility.

Group XII: Institutional Eligibility and Certification Procedures

Standards of financial responsibility; cash reserves; financial guarantees from school owners; administrative capability; on-site reviews of institutions; and provisional certification. If you wish to attend and participate in these regional meetings, you are requested to telephone 404/768–3091. Indicate which of the regional meetings you wish to attend and, for the meeting you select, indicate, in priority order, three issue discussion groups in which you wish to participate. As space for these meetings is limited by the conference room arrangements we have been able to make, we encourage you to telephone as soon as possible, but no later than five days prior to the regional meeting you wish to attend. We will be able to accommodate those interested in attending these meetings only to the extent space permits, so we encourage you to register early. If you register to attend a regional meeting at least 10 days prior to the date the meeting is scheduled to begin, we will mail you an information packet about the meeting. However, if you register later than this, you will need to get this packet at the meeting site at the conference check-in desk.

Meeting Information:

The dates and locations of the four regional meetings appear below. Each meeting will begin at 9 a.m. and conclude at 5 p.m. for each of the two days. We have included telephone numbers for the hotels where the meetings are scheduled should you wish to make hotel reservations. To receive the hotel's conference room rate, please inform the hotel that you are participating in the U.S. Department of Education's regional meeting.

(a) September 14 and 15, 1992, San Francisco, California, San Francisco Airport Marriott, 1800 Old Bayshore Highway, Burlingame, California 94010, Hotel telephone: 415/692–9100.

(b) September 17 and 18, 1992, New York, New York, Holiday Inn Crowne Plaza, 1605 Broadway at 49th Street, New York, New York 10019, Hotel telephone: 212/977–4000 or 1–800–243–NYNY.

(c) September 21 and 22, 1992, Atlanta, Georgia, The Westin Peachtree Plaza, 210 Peachtree Street, NW., Atlanta, Georgia 30303, Hotel telephone: 404/659–1400.

(d) September 29 and 30, 1992, Kansas City, Missouri, The Westin Crown Center, One Pershing Road, Kansas City, Missouri 64108, Hotel telephone: 816/474–4400.

Note: Early conference check-in will be available 6–8 p.m. the evening preceding each of the regional meetings. Check-in will also be available from 7:30 to 9 a.m. on the first day of the conference. You will find additional information for each meeting at the conference check-in desk.

(Authority: Section 492 of the Higher Education Act of 1965, as amended)

Dated: August 21, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–20471 Filed 8–25–92; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, and 3

[Docket No. 920666–2166]

RIN 0651–AA59

Changes in Practice Relating to Filing Patent Applications

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking; Extension of comment period.

SUMMARY: The Patent and Trademark Office (Office) is extending the comment period for the changes in Practice Relating to Filing Patent Applications to September 10, 1992.

DATES: Comments must be received by the Office of the Assistant Commissioner for Patents, by September 10, 1992.

ADDRESSES: Address written comments to Office of the Assistant Commissioner for Patents, Box DAC, Washington, DC 20231, marked to the attention of Jeffrey V. Nase. Correspondence may be sent by FAX to the attention of Jeffrey V. Nase at (703) 305–8825

FOR FURTHER INFORMATION CONTACT: Jeffrey V. Nase by telephone at (703) 305–9282 or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box DAC, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office published a Notice of proposed rulemaking in 57 FR 31344 (July 15, 1992) proposing to amend the rules of practice in patent cases to provide a uniform practice with respect to an oath or declaration and filing fees in continuing applications. The comment period was set to close on August 14, 1992. The comment period is being extended to September 10, 1992 to ensure that all comments are considered.

Dated: August 21, 1992.

Douglas B. Comer,

Acting Assistant Secretary and Acting Commissioner of Patents and Trademarks.

[FR Doc. 92–20466 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–16–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY2–143–5111; FRL–4199–2]

Approval and Promulgation of State Implementation Plans; Wyoming; Revision to Section 3 Particulates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, EPA is proposing to approve, with conditions, a revision to section 3 Particulates of the Wyoming Air Quality Standards and Regulations (WAQSR) of the Wyoming State Implementation Plan (SIP). The revision to Section 3, which adds subsection (d), defines "ambient air" for surface coal mines located in Wyoming's Powder River Basin (PRB). This definition of ambient air is applicable to lands in the PRB that the State determines to be necessary to conduct surface coal mining operations, thereby making the air over these lands "non-ambient" with respect to emissions from the coal mining operation being conducted on a particular parcel of land, and, to that extent, not subject to the PM–10 National Ambient Air Quality Standards (NAAQS) or the Prevention of Significant Deterioration (PSD) particulate increments.

The Administrator of the Wyoming Air Quality Division originally submitted a SIP revision containing the revised Section 3 Particulates on September 6, 1988. Additional SIP materials have been submitted in the interim, and on September 4, 1990, EPA notified the State that SIP submittal was considered to be complete.

EPA's proposed approval of the revision begins the process of updating the Wyoming SIP and making the adopted State regulation federally enforceable.

DATES: Comments must be received on or before September 25, 1992.

ADDRESSES: Written comments on this action should be addressed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Copies of the applicable documentation are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday, at the following locations:

Environmental Protection Agency, Region VIII, Air Programs Branch, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Wyoming Department of Environmental Quality, Air Quality Division, Herschler Building, 4th Floor, 122 West 25th Street, Cheyenne, Wyoming 82002.

FOR FURTHER INFORMATION CONTACT: Michael Silverstein, Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405, (303) 293–1769, (FTS) 330–1769.

SUPPLEMENTARY INFORMATION: The Wyoming ambient air definition has been under review by EPA (which includes extensive discussions with the State and numerous State submittals) for a significant period of time. This definition has implications for SIP/regulation implementation and stationary source enforcement efforts in the PRB. As outlined below, the first section generally discusses the issues and EPA's conclusions, and detailed information is provided in the second section.

A. Overview

B. Background

1. State Definition Development.
2. State-issued Permits to PRB Surface Coal Mines.
3. Wyoming's Initial SIP Revision Submittals. A. The September 6, 1988, Submittal, B. The December 22, 1988, Submittal, C. The March 14, 1989, Submittal.
4. Ambient Air Dispersion Modeling Requirements and the Adequacy of EPA's Modeling Tools.
5. Demonstrating Short-term Attainment of the PM–10 Standards Utilizing Monitoring.
6. Wyoming's March 1990 SIP Submittals.
7. Impacts of the Clean Air Act Amendments of 1990.

C. EPA Action

A. Overview

On April 30, 1987, the State of Wyoming adopted a definition for ambient air specific to the PRB. Prior to adoption of this definition, the State had not defined ambient air by regulation but had been applying the concept to mean that portion of the atmosphere which is external to buildings, regardless of land ownership or control and whether or not public access was excluded. As applied to surface coal mining operations, all air resources outside of buildings were considered to be ambient.

Wyoming's application of the ambient air concept resulted in permit disputes involving the State and coal companies. Because dispersion modeling indicated exceedances of EPA's former primary and secondary NAAQS for total suspended particulates (TSP), the State determined that some coal mines might not be allowed to operate according to the existing mine plans and the associated desired production rates. The State chose a definitional change as a solution, seeking to create areas which would not be subject to the NAAQS but which would satisfy EPA requirements.

On April 30, 1987, Wyoming adopted the following definition:

(d) Ambient air, for the area bounded by Townships 40 through 52 North, and Ranges 69 through 73 West, inclusive, of the Sixth Principal Meridian, Campbell and Converse Counties, in the Powder River Coal Basin, is defined as that portion of the atmosphere, external to buildings, to which the public has access. For surface mining operations, the application of this definition will be limited to only those lands that are necessary to conduct mining operations as determined by the Administrator of the Wyoming Air Quality Division.

Following adoption, the State began to issue permits to PRB surface mines, applying the newly adopted definition of ambient air in these permit actions. The permits allowed maximum coal production for any given year in the life of each mine. In applying the new definition of ambient air, Wyoming treated the 30-year mine plan areas as "• • • lands that are necessary to conduct mining operations • • •" and exempt from ambient air with respect to each mine's own emissions. The State also required that public access be prevented to these lands. By these means, previously modeled exceedances were avoided since each mine's emissions could be subtracted from the total emissions impacting that mine's ambient air quality.

Upon receipt of these permits, EPA observed that: (1) Wyoming was implementing the new definition of ambient air before submitting the regulation revision to EPA for approval, (2) there was the possibility of TSP PSD increment and NAAQS violations, and (3) there was need for clarification regarding the enforceability of limits to public access.

On September 6, 1988, Wyoming submitted to EPA, as a SIP revision, the definition of "ambient air." EPA concluded that the adopted definition is acceptable. However, EPA had concerns with the dispersion modeling analysis for selected "worst case years" in the PRB, the protection of PSD increments,

and the limits on public access. First, the model utilized by the State in the modeling analysis had not been approved for use by EPA and was determined to be non-guideline. Therefore, the submitted modeling results for the annual TSP NAAQS might not be valid or reliable. Also, Wyoming did not include in the submittal modeling information for short-term (24-hour) TSP impacts on ambient air quality. Second, there was no indication in the submittal that the State tracks TSP increment consumption in the PRB. Thus, an adequate demonstration of protection of the TSP increments was not made. Third, EPA notes that the permits issued under the adopted regulation require that public access will be limited to the lands defined as necessary to conduct mining operations. Yet, neither these permits nor the SIP submittal contain language concerning how public access will be limited. (This is necessary since limitation on public access is essential to the concept of ambient/non-ambient air.)

EPA notified the State that the submittal was not complete and that Wyoming must commit to re-model the PRB for the next 30-year period. Wyoming must utilize an EPA approved guideline model to verify compliance with the PSD increments and NAAQS for particulates and include in all permits explicit language specifying the measures for prevention of public access. Wyoming committed to accomplish these measures, although opposition to utilizing EPA's approved modeling tools applicable to western surface coal mining operations was expressed.

After consideration of the State's position that EPA's approved modeling tools (guideline models and approved emission factors) did not accurately predict the impacts of emissions from surface coal mining operations on ambient air quality, EPA revised the modeling requirements as follows: (1) A short-term modeling study utilizing EPA-approved modeling tools must be conducted for the particulate NAAQS and PSD increments for the next three-year period; (2) the State would have the opportunity to develop (for EPA approval) modeling tools which could more accurately predict the impacts from surface coal mining operations in the PRB; and (3) within three years, Wyoming would conduct a 30-year "life of the mine" study for the applicable ambient air quality standards in the PRB utilizing EPA-approved models and emission factors. If the 30-year study demonstrated attainment, final action would be taken on the SIP.

While committing to accomplish the above, the State and the coal mining industry expressed dissatisfaction with EPA's requirement to utilize the existing approved modeling tools for the three-year modeling study. The two parties requested that EPA make a determination that the available modeling tools were not adequate and that an exemption be granted to Wyoming delaying the modeling requirements until adequate modeling tools exist. The State proposed that the three-year modeling study requirement be eliminated since there was no "on the ground" problem, as demonstrated by existing ambient air monitoring. EPA committed to consider the request to eliminate the three-year modeling requirement if it could be demonstrated, through monitoring, that the NAAQS were being protected.

On December 15, 1989, EPA concluded that processing the "ambient air" SIP revision could proceed without a formal modeling demonstration. While EPA did not share the State's and coal companies' belief that the EPA guideline model overpredicted the impacts of emissions from the PRB's surface coal mining operations, EPA acknowledged that the differences of opinion on the suitability and performance of the approved modeling tools were great enough to warrant a revision to the PRB attainment demonstration. For such a change to occur, the State had to commit to the following: (1) Demonstrate that the particulate NAAQS have been protected in the recent past—if the data show no violations, EPA will proceed with a proposed approval of the "ambient air" SIP action; if the data show violations, remedial action must be initiated; (2) submit a schedule to develop adequate modeling tools; (3) develop and implement an adequate monitoring network to adequately assess the ambient air quality around each mine during the next three-year period, with a commitment by the State to initiate expeditious remedial action if an exceedance of the NAAQS is detected by the monitoring network; and (4) submit a schedule to perform the 30-year modeling study utilizing EPA-approved modeling tools and to initiate expeditious remedial action if the modeling predicts exceedances of the applicable ambient air quality standards. On March 28 and March 29, 1990, Wyoming submitted information which would satisfy these requirements. (One revision to these commitments is the result of the Clean Air Act Amendments of 1990, which requires EPA, not the State, to develop adequate modeling tools.)

EPA has determined that the submitted ambient air monitoring data demonstrate past attainment of the particulate NAAQS in the PRB and that the "ambient air" SIP submittal was administratively and technically complete. EPA is satisfied that the applicable ambient air quality standards have been and will continue to be protected in the PRB and, thus, is proposing to approve, with conditions, the "ambient air" SIP revision. Unless EPA receives comments that demonstrate the inappropriateness of this approach, EPA will publish an approval, with conditions, in the **Federal Register**. If the State fails to achieve the conditions listed above, EPA will consider a SIP Call or other regulatory process to ensure attainment in the PRB. The basis for this proposal is that violations of the PM–10 standards will be mitigated in the interim period and that dispersion modeling to demonstrate long-term attainment will be performed following issuance of modeling procedures by EPA.

B. Background

1. State Definition Development

On April 30, 1987, the Wyoming Environmental Quality Council (EQC) adopted a definition for "ambient air" specific to approximately 2,340 square miles of Campbell and Converse Counties in northeast Wyoming, commonly referred to as the PRB. Eighteen surface coal mines are located in this region. This revision to Section 3 Particulates of the WAQSR became effective on June 5, 1987.

Prior to adoption of this revision, the NAQSR contained no definition of "ambient air." However, since the inception of its air program in the early 1970's, the State had been applying the term to mean that portion of the atmosphere which is external to buildings, regardless of land ownership or control and whether or not public access was excluded. As applied to surface coal mining operations, all air resources outside of buildings were considered to be ambient. This was a more stringent application than that of the EPA definition (see 40 CFR 50.1(e)). Wyoming's application of the ambient air concept resulted in permit disputes involving the State and coal companies. Wyoming proceeded to conduct dispersion modeling to investigate the resulting impacts of maximum production at surface coal mines in the PRB, measuring the cumulative impacts of each mine's emissions. The modeling

for certain "worst case" years predicted ambient concentrations as high as 85 micrograms per cubic meter (ug/m³) of TSP within certain mine plan boundaries to which the public potentially had access. The modeling thus indicated exceedances of the EPA approved Wyoming Ambient Air Quality Standard (WAAQS) for TSP, which was 60 ug/m³ on an annual basis. The modeled concentrations also exceed EPA's former primary and secondary NAAQS for TSP, which, on an annual basis, were 75 ug/m³ and 60 ug/m³, respectively.

As a consequence of the modeling, the State determined that some coal mines might not be allowed to operate according to the existing mine plans and the associated desired production rates. The State faced possible extensive litigation to sort out which mines had "grandfathered" rights to continue production, in the event of allowed increases in production at other mines. The State chose a definitional change as a solution, seeking to create areas which would not be subject to the WAAQS or NAAQS.

On March 16, 1987, EPA received a notice of public hearing from the State of Wyoming which contained a draft revision to Section 3 Particulates of the WAQSR. EPA responded to the State on April 23, 1987, stating:

(1) The definition of "ambient air" proposed in section 3(d) of the WAQSR, as it now reads, is overly broad and is not consistent with EPA's definition of ambient air. EPA noted that by including contiguous properties with common boundaries under control of more than one company, the proposed definition would incorrectly broaden the definition of ambient air since employees at one company's mine are included in the term "general public" with respect to any other mine.

(2) Public access must be effectively excluded, for example, by "fencing around the outer perimeter" and by assuring that the public does not have a right of access.

(3) The definition should be limited in effect to only those lands "necessary to conduct mining operations" in order to avoid the prohibition of unlawful dispersion techniques (see section 123(a)(2) of the Clean Air Act).

(4) PSD increments for particulate matter have been triggered in the PRB, and "* * * PAD TSP increments may be more constraining than the NAAQS."

(5) It would be acceptable for the State to adopt EPA's definition of ambient air in the PRB.

On April 29–30, 1987, the Wyoming EQC held a public hearing to consider the proposed regulation. After discussion of EPA's April 23, 1987, comments, the State's analysis of the issue, and public statements, the Wyoming EQC voted to revise the proposed regulation as described in the summary above. This regulation was adopted by the Wyoming EQC into the WAQSR on April 30, 1987, and become effective on June 5, 1987.

Under the adopted definition, air emissions from each mine are to be modeled utilizing receptor locations both on and surrounding leased areas. For receptor locations located on leased areas, and assuming that public access is prevented, the emissions attributed to that mine will be subtracted from the total pollution. Only the emissions from neighboring mines will "count" in determining whether an exceedance occurs at that location.

2. State-Issued Permits to PRB Surface Coal Mines

On November 12, 1987, the State issued permits MD–75 through MD–78 which modified the coal mine plans for four PRB surface mines. The State also modified two permits, MD–64A and CT–450A2, which provided interpretation of existing permits for two area surface mines. Wyoming applied the newly adopted definition of "ambient air" in these six permit actions.

The permits allowed maximum coal production for any given year in the life of each mine. In applying the new definition of "ambient air," Wyoming treated the 30-year mine plan area for each of the six mines (extending from 7.9 up to 22.0 square miles) as exempt from ambient air with respect to that particular mine. The State also required that public access be prevented to these lands. By these means, previously modeled WAAQS exceedances were avoided since each mine's emissions could be subtracted from the total emissions impacting that mine's ambient air quality.

Upon receipt of these permits, which were submitted on November 30, 1987, EPA identified some potential issues regarding the permit actions, as follows:

(1) Lack of a SIP submittal (Wyoming was implementing the new definition of "ambient air" before submitting the regulation revision to EPA for approval);

(2) Anticipated PSD increment violations (as indicated by the State on an earlier occasion);

(3) Anticipated TSP WAAQS violations (as determined by the State through dispersion modeling);

(4) Violation of requirements for the fiscal year 1988 (FT88) State/EPA Agreement (SEA), which provided for EPA review and comment prior to issuing final permits; and

(5) Need for clarification and enforceability of limits to public access.

These issues were documented in a January 26, 1988, EPA memorandum and discussed with the State during the FY88 SEA Staff Midyear review held in Cheyenne, Wyoming on February 3, 1988. Wyoming committed at that time to submit in the near future the definition of "ambient air" to EPA as a SIP revision and to address those issues listed above.

On August 24, 1988, the State issued Permit No. MD–91 which modified the coal mine plan for one surface coal mine, and on January 24, 1989, the State interpreted the lands necessary to conduct mining operations for Permit No. MD–60. These permit actions also took place prior to EPA approval of the regulation as part of the SIP.

Wyoming has interpreted "lands that are necessary to conduct mining operations" to be the land area equivalent to the "life of the mine," or approximately 30 years of expected coal mining at maximum production. In applying the new definition of ambient air, Wyoming has treated the 30-year mine plan area for each of the eight mines as exempt from ambient air with respect to that particular mine. By excluding each mine's emissions within its own mine plan area, the State was able to permit increased production at each mine up to the maximum possible in any one year, without showing exceedances of WAAQS or NAAQS. The State also required that public access be limited to these lands. By these means, the State has excluded the atmosphere above these lands from the State's particulate ambient air quality standards, and the modeled exceedances were avoided.

The eight permits issued by Wyoming under its new regulatory definition raised the following concerns:

(1) The permits include the condition that the coal companies will limit public access to the lands defined by the Administrator of the Wyoming Air Quality Division as necessary to conduct mining operations. EPA, in the April 23, 1987, letter to Wyoming, put the State on notice that EPA's definition of ambient air requires that public access be effectively excluded, by fence or other physical barrier. Yet, the coal mine permits do not contain language concerning how public access will be limited. In view of the amount of land involved, as well as the proximity of the mines to public highways and settlements, the permit condition as it stands is unenforceably vague. The permits should be required at least fencing and marking of lease boundaries

or excluded areas. The condition of restricting public access has been similarly interpreted in previous EPA SIP approvals (see 50 FR 7056, February 20, 1985).

(2) The permits do not specifically require adherence to the mine plans contained in the permit applications. Deviations from the mine plan could result in emission 'hot spots' if the working pits of adjacent mines come within close proximity. Because the dispersion modeling based on the current mine plans could be greatly affected if deviations occur, the State should require that the companies (a) adhere to mine plans, or (b) (If deviations are necessary) request to modify permits, update dispersion modeling, and update mine plans to mitigate the 'hot spots'.

(3) There are no enforceable permit conditions to restrict the area of stripped land within the 30-year lease boundaries, or to require fugitive dust control measures for stripped areas and topsoil and overburden stockpiles. this is not consistent with the State's modeling of fugitive emissions for these permit actions, which assumes that the company will limit the area of stripped land and implement dust control measures as represented in the permit application. However, if the company deviates from its mine plan, such that large areas are stripped of topsoil and some overburden in preparation for mining but are left idle for long periods of time, or if the company does not implement the dust control measures, then more fugitive emissions would result, possibly threatening or exceeding the ambient particulate standards and PSD increment.

PSD permits issued by EPA for PRB surface coal mines in the late 1970's typically incorporate enforceable permit conditions in the form of appendices and require adherence to mine plans. (At that time, surface coal mines were considered major sources and subject to PSD regulations.) These appendices include, among other requirements, dust control measures for topsoil stripping, topsoil and overburden stockpiles to prevent wind erosion from disturbed areas, as well as a limit on the average topsoil stripping advance. Such measures are not found in the State permits. Wyoming has contended that these activities, which are included in State permit applications, are an enforceable part of the final State permits, even if the permits do not specify these conditions or make specific reference to the permit application. In addition, the State would treat any deviation from a mine plan as a permit violation, which would result in an appropriate enforcement action. It has been EPA's position, however, that such implied restrictions on activity are not federally enforceable.

EPA and the State reached an agreement regarding these issues on March 14, 1989, when Wyoming committed to include in all permits (both existing and future) the following explicit language specifying the measures for prevention of public access:

(1) Fencing the entire permit boundary;

(2) Placing security guards at mine entrances;

(3) Posting "No Trespassing" signs at regular intervals along the fence; and

(4) Patrolling boundaries.

Additionally, Wyoming committed to:

(1) Include in all permits (both existing and future) explicit language identifying the terms and conditions of each permit, including a description of the mine plan, measures equivalent to best available work practices for dust control, and any other air pollution control activities; or

(2) Incorporate by reference all commitments and descriptions set forth in the permit application, unless superseded by a specific condition of the permit.

Wyoming's adherence to these conditions is evident in permits MD–103, MD–104, MD–102, MD–108, MD–114, and MD–122, which were issued on June 2, 1989, June 2, 1989, June 7, 1989, August 7, 1989, December 6, 1989, and April 6, 1990, respectively.

3. Wyoming's Initial SIP Revision Submittals

A. The September 6, 1988, Submittal

On September 6, 1988, Wyoming submitted to EPA, as a SIP revision, revised Section 3 particulates of the WAQSR containing the definition of "ambient air." This submittal also contained Wyoming's analysis of permit applications and permits issued based on the subject regulation change, and ambient air modeling for selected "worst case years" in the PRB. EPA's analysis of these permits is discussed above.

Regarding the adopted definition (as described above), the operative part of the first sentence tracks the language in EPA's definition of ambient air (see 40 CFR 50.1(e)). EPA concludes that the State's regulatory definition is valid on its face, although the second sentence is not clear. (The confusing wording in the second sentence in the definition creates problems in comprehensibility. The State defines "ambient air" and then states that the definition "will be limited to only those lands that are necessary to conduct mining operations * * *" The sentence makes it appear that the atmosphere over the mining operations is to be included in "ambient air," when just the opposite was intended.)

The subject definition, as written, appears to be acceptable. However, EPA had concerns with Wyoming's modeling analysis, the protection of PSD increments, and the limits on public access.

(1) *Wyoming's modeling analysis.* EPA noted that the model utilized by the State for surface coal mining applications was a non-guideline, rural version of the Climatological Dispersion Model (CDM), named CDM Wyoming (CDMW). CDMW has been employed principally in coal mining permit application reviews by the State and by many other non-State modelers since the late 1970's. No review or approval for use of this model had been obtained from EPA. Therefore, the submitted modeling results for the annual TSP WAAQS which were generated using CDMW may not be valid or reliable. Also, Wyoming did not include in the submittal modeling information or results for short-term (24-hour) TSP impacts on ambient air quality.

(2) *Protection of PSD increment.* There is no indication in this submittal that the State tracks increment consumption for the primary pollutant, TSP, in the PRB. The SIP submittal lacks any data about PSD increment consumption. EPA's regulations for PSD require that a SIP revision must "include a demonstration that it will not cause or contribute to a violation of the applicable increment(s)" (40 CFR 51.166(a)(2)). If a SIP is "substantially inadequate to prevent significant deterioration" or if "an applicable increment is being violated," the plan must be revised to correct the inadequacy or the violation (40 CFR 51.166(a)(3)). The submittal lacks both an annual and 24-hour TSP increment consumption analysis for the PRB and thus does not demonstrate adequate protection of the TSP increment.

Increment consumption includes not only emissions from PSD-permitted sources, but also emissions from all other sources in the area, including fugitive emissions. Fugitive emissions from minor sources such as the surface coal mines are increment-consuming and must be included (see 45 FR 52718, August 7, 1980, which states, "Any emissions not included in the baseline are counted against the increment").

The State has publicly acknowledged that the prospect of Class II TSP increment exceedances is a concern. In an April 27, 1987, memorandum to the EQC, the Wyoming Air Quality Division acknowledged a concern about consumption of TSP increment, but advised the EQC to adopt the proposed ambient air definition anyway, stating, "The [Wyoming Air Quality] Division believes that the reclassification of this area to a Class III should be undertaken by the coal companies immediately." To EPA's knowledge, no effort has been made to reclassify the area.

As described in public hearing transcripts sent to EPA on November 18, 1988, the EQC voted on April 30, 1987, to initiate "at the greatest speed * * * an investigation into correcting the problem of allowing operations (at surface coal mines) so that we may result in de facto Class III air areas without having the opportunity to consider that in advance * * *" Such an investigation would not be necessary unless there were some expectation on the part of the EQC that Class II increment violations would occur. EPA has not received word of any State follow-up to the EQC's mandate.

The prospect of increment violations contradicts the EQC's "Statement of Principal Reasons for Adoption," which states, "Adoption of this regulation will not cause a significant change in the ambient air quality adjacent to coal company properties." The prospect of violations also suggests that the SIP revision is deficient per 40 CFR 51.166(a)(3). According to that section, "[i]f the Administrator determines that a plan is substantially inadequate to prevent significant deterioration or that an applicable increment is being violated, the plan shall be revised to correct the inadequacy or the violation."

(3) *Prevention of public access to the lands necessary to conduct mining operations.* EPA notes that the permits issued under the adopted regulation require that public access will be limited to the lands defined by the Administrator of the Wyoming Air Quality Division as necessary to conduct mining operations. Yet, as indicated above, neither these permits nor the September 6, 1988, submittal contain language concerning how public access will be limited.

Thus, on December 14, 1988, EPA notified the State that the submittal was not complete and requested that Wyoming submit the following additional information:

(1) A description of the CDMW model for review;

(2) Any additional ambient air modeling analysis applicable to the permitting of surface coal mines in the PRB;

(3) An analysis of PSD Class II TSP increment consumption in the PRB; and

(4) An analysis of the restriction of public access from "the lands necessary to conduct mining operations" as described in the State-issued permits.

B. The December 22, 1988, Submittal

On December 22, 1988, Wyoming submitted to EPA the information requested on December 14, 1988. This submittal consisted of the following:

(1) A description of CDMW;

(2) An analysis of PSD increment consumption in the PRB;

(3) An updated tabulation of the total permitted coal production in the PRB broken down into background and increment consuming rates; and

(4) A description of how the public is denied access to "the lands necessary to conduct mining operations."

EPA reviewed CDMW and found that CDMW is a Wyoming-modified version of the EPA-approved CDM dispersion model. Some of Wyoming's changes to CDM attempted to update the antiquated model to more modern capabilities. In fact, the newest guideline version of CDM, or CDM 2.0, includes some, but not all, of the Wyoming changes. However, EPA cannot consider CDMW and CDM to be comparable.

Wyoming also attempted to demonstrate that modeling results which utilized CDMW compare favorably with those utilizing the EPA-approved Industrial Source Complex Long Term (ISCLT) dispersion model. However, Wyoming's comparison between CDMW and ISCLT was not sufficient to satisfy the EPA requirements for use of a non-guideline model.

Thus, any dispersion modeling efforts (whether related to NAAQS or PSD increment consumption) utilizing the non-guideline CDMW model may not be valid or reliable. This determination is described in a February 20, 1989, EPA memorandum.

Wyoming's analysis of PSD Class II TSP annual increment consumption indicated two potential violators in the year 1994 in the South Gillette area. Thus, the proposed revision does not demonstrate "* * * that it will not cause or contribute to a violation of the applicable increment(s)," as required by 40 CFR 51.166(a)(2). (EPA notes that this increment analysis was performed using the non-guideline model CDMW, and that the State intends to re-model using an EPA-approved guideline model.)

Additionally, the increment analysis did not contain a review of 24-hour PSD Class II increment consumption. Without such an analysis, the proposed revision again lacks a "demonstration that it will not cause or contribute to a violation of the applicable increment(s)," as required by 40 CFR 51.166(a)(2). All sources, both point and fugitive, must be modeled for increment consumption once baseline has been triggered (see 45 FR 52718, August 7, 1980). Therefore, Wyoming's PSD Class II TSP increment analysis is inadequate. This determination is also described in the February 20, 1989, EPA memorandum.

Finally, Wyoming indicated in the submittal that the minimum requirements to restrict public access will include fencing the entire permit boundary, placing security guards at mine entrances, posting "No Trespassing" signs at regular intervals along the fence, and patrolling boundaries. As stated in a January 18, 1989, EPA memorandum, these measures seem to comport with national guidance on "ambient air" (see Douglas M. Costle's December 19, 1980, letter to Senator Jennings Randolph). However, Wyoming did not explicitly state that the subject requirements will be part of all State permits for surface coal mining operations in the PRB. The State must include these requirements in all permits in order to assure federal enforceability and protection of the public.

In a March 2, 1989, letter, EPA determined that the State must commit to accomplishing the following in order for EPA to propose to approve the subject SIP revision:

(1) Wyoming must model again using an EPA approved guideline model to verify compliance with the PSD Class II TSP increments, PM–10 NAAQS, and TSP WAAQS (since the State's adopted PM–10 Standards had not yet been approved by EPA as part of the State's SIP) for the 30-year "life of the mine" period. Ambient air dispersion modeling is the only method to predict future impacts on ambient air quality. EPA's authority for requiring such demonstrations of compliance is found in 40 CFR 51.166(a)(2) and 40 CFR 51.105. EPA's regulations for PSD require that a SIP revision must include a demonstration that it will not cause or contribute to a violation of the applicable increments (40 CFR 51.166(a)(2)). EPA's regulations for SIP approval state that EPA will approve a SIP revision if EPA determines that the revision meets the requirements of the Clean Air Act (Act). One purpose of the Act is to protect and enhance the quality of air resources (see Section 101(b)(1) of the Act, 42 U.S.C. 7401(b)(1)), for which the Act provides national ambient air quality standards to protect the public's health and welfare (see Section 109 of the Act, 42 U.S.C. 7409). Thus, a SIP

revision must protect the NAAQS (40 CFR 51.105).

(2) Wyoming must compile an analysis of PSD increment consumption in the PRB to date. Wyoming must submit the modeling methodology to EPA for approval before performing this increment analysis.

(3) Wyoming must include in all permits (both existing and future) explicit language specifying the measures for prevention of public access identified in the December 22, 1988, submittal.

(4) Wyoming must include in all permits (both existing and future) explicit language identifying the terms and conditions of each permit, including a description of the mine plan, dust control measures equivalent to best available work practices, and any other air pollution control activities. Alternatively, EPA suggested that if the State did not wish to specifically list those terms and conditions, the following language may be added to each permit: "All commitments and descriptions set forth in the application for this permit, unless superseded by a specific condition of this permit, are incorporated herein by this reference and are enforceable as conditions of this permit."

(5) It is EPA's interpretation that the second sentence in the subject revision applies solely to surface coal mines (*i.e.*, Section 3 Particulates (d) " * * * For surface mining operations, the application of this definition will be limited to only those lands that are necessary to conduct mining operations as determined by the Administrator of the Wyoming Air Quality Division"). EPA requested that the State confirm that this sentence of the subject revision can be applied only to surface coal mines and no other industry, including surface mining operations for other minerals.

EPA had stated that the State must commit, by March 15, 1989, to accomplishing these items by mid May 1989.

C. The March 14, 1989, Submittal

On March 14, 1989, Wyoming submitted a commitment to accomplish the items contained in EPA's March 2, 1989, letter by mid May 1989. EPA responded on March 17, 1989, that, based on the State's March 14th commitment, EPA would proceed with a proposal to approve the "ambient air" SIP revision. Once the above commitments were accomplished, attainment of all applicable standards was demonstrated, and all comments received during the proposed rulemaking comment period was addressed, EPA would then proceed with final action on the SIP submittal.

EPA also stated that Wyoming must perform an increment analysis for all future permits issued to PRB surface coal mines. Wyoming took issue with the increment analysis requirement, stating that neither the WAQSR nor the federal PSD regulations require an analysis of increment consumption when permitting non-PSD sources. EPA took the position that, with each new permit issued in the PRB, the possibility for exceedances of the PSD particulate increments becomes more likely. On April 13, 1989, Wyoming's Assistant Attorney General responded in a letter to EPA, indicating that the State will review the ambient air quality in Wyoming's attainment areas at least every five years and, if necessary, implement a corrective program if an area is in noncompliance with ambient air quality standards or allowable increment. EPA is satisfied with this alternative.

4. Ambient Air Dispersion Modeling Requirements and the Adequacy of EPA's Modeling Tools

With submittal of modeling information in the September 6, 1988, SIP submittal, it became apparent to EPA that Wyoming was not utilizing EPA-approved modeling tools to determine the air quality impacts from surface coal mining activities. As discussed previously, Wyoming had been using the CDMW model to determine the impacts of emissions (mostly fugitive emissions) from surface coal mining activities in Wyoming. CDMW was used to determine compliance with the annual TSP WAAQS and NAAQS only; the State did not model for the 24-hour particulate standards, claiming that an appropriate method of modeling for the 24-hour standards was not available.

This issue was discussed with the State during the FY89 SEA Midyear review, held in Cheyenne, Wyoming on February 14, 1989. EPA pointed out that the appropriate emission factors for this application were available and could be found in EPA's "Compilation of Air Pollution Emission Factors" (commonly referred to as "AP-42"), and that the appropriate dispersion model for determining both the 24-hour and annual impacts was the Industrial Source Complex (ISC) model. EPA reaffirmed this position in the March 2, 1989, letter to Wyoming which required that dispersion modeling be conducted utilizing an approved EPA guideline model.

On April 12, 1989, EPA notified the State that Wyoming must perform 24-hour modeling and utilize an EPA-approved model for future surface coal mining permitting actions or potentially face a withholding of grant funds. A meeting was held on April 27, 1989, to discuss this issue and all PRB modeling activities.

The results of this meeting, as summarized in a May 9, 1989 letter from Wyoming to EPA, are as follows:

(1) Wyoming must conduct a short-term modeling study for the TSP NAAQS, TSP PSD increments, and PM-10 NAAQS utilizing EPA-approved modeling tools to determine the ambient air impacts of surface coal mining operations over the next three-year period. This satisfied Wyoming's concerns since the coal companies would not all be at full production during this period and there would be less of a chance of a modeled exceedance using tools which the State and the coal companies claim overpredict—especially for the 24-hour period. EPA was satisfied since Wyoming would determine the impacts of mining activities utilizing EPA-approved methods and it could be demonstrated that the applicable ambient standards were being protected. If the modeling demonstrated attainment, EPA could begin taking action on the "ambient air" SIP submittal.

(2) Wyoming could proceed with issuing permits to coal companies without performing 24-hour modeling for each. The results of the modeling studies would determine the impacts of mining operations on ambient air quality, and the permits could be reconsidered and reissued if corrective measures were necessary to address any modeled exceedances.

(3) Recognizing the concerns of the State and coal companies regarding the adequacy of EPA's approved modeling tools (models and emission factors), there would be an opportunity for the State, the coal companies, and EPA to develop modeling tools which could more accurately predict the impacts from surface mining operations in the PRB.

(4) There would also be an opportunity for the State to revise its PSD regulations and the Section 107 designated area boundaries (referred to as the air quality control region or "AQCR" in the letter) in Wyoming to eliminate the requirement to calculate PSD increment consumption in the PRB. Wyoming would solicit EPA guidance and support for this process.

(5) Within three years, Wyoming would conduct a 30-year "life of the mine" study for the applicable ambient air quality standards in the PRB utilizing EPA-approved models and emission factors. If attainment were demonstrated, final action would be taken on the SIP.

EPA followed up with a July 25, 1989, letter to Wyoming which reiterated the above elements and provided additional detail, as follows:

(1) If the three-year modeling study indicated exceedances, corrective action (*i.e.*, more stringent control measures or limits on production) would be necessary.

(2) Wyoming was to perform a preliminary life of the mine modeling study and assume that favorable conditions existed, such as an approved PM-10 SIP to eliminate TSP from consideration and a redesignation of the State's Section 107 areas to eliminate the requirement for a PRB PSD increment analysis. If attainment was demonstrated, this preliminary analysis would provide added support to EPA's proposed approval of the ambient air SIP action.

(3) The 30-year demonstration could differ from the three-year study in several ways. First, the State's PM-10 SIP would likely be approved, thus eliminating the need to model for the TSP NAAQS. Second, new models and emission factors could be approved and utilized. Third, the Clean Air Act could be amended which may change the modeling requirements for surface coal mines. Finally, the State could improve the best available work practices applicable to surface coal mines in order to reduce emissions from mining activities.

(4) The mid May due-date for modeling activities was revised as follows: (1) the State must commit to carry-out the above described work by August 7, 1989, and also provide to EPA a workplan for this work over the next two to four months.

Wyoming submitted such a commitment to EPA on August 8, 1989.

In a September 5, 1989, letter, the Wyoming Mining Association (WMA) expressed dissatisfaction with EPA's requirement to utilize the ISC model and AP-42 emission factors in the three-year modeling study. The WMA also expressed support for Wyoming's use of CDMW and State emission factors, claiming they were more appropriate for use in the PRB than EPA's. Other areas of concern stated by the WMA and with which the State agreed are as follows:

(1) The State's regulatory activities, including past modeling exercises, have ensured excellent air quality in the PRB while the mining industry has produced large volumes of coal.

(2) EPA is withholding approval of the "ambient air" SIP revision pending completion of the modeling exercise that Wyoming disagrees with, even though Wyoming's adopted definition of ambient air is consistent with EPA's.

(3) EPA is requiring Wyoming to model for TSP, which no longer exists at the State and federal level, adding additional costs to the project.

(4) There is no accurate model available for predicting compliance with the 24-hour particulate standards at surface coal mines.

(5) If inappropriate modeling resulted in restricted production levels, potential expansion could be limited and opportunities missed to provide low sulfur coal to reduce acid deposition (as required in proposed amendments to the Act).

EPA responded to item (2) above in a September 12, 1989, letter to Wyoming, stating that the adoption of a regulation which is as stringent as the federal requirements in no way implies automatic SIP approval. Wyoming had verbally asserted that the *Alabama Power Co.* v. *Costle* opinion so implied, which EPA refutes. EPA also cited federal regulations which provides EPA the authority to require demonstrations of compliance with the PSD increments and NAAQS, found in 40 CFR 51.166(a)(2) and 40 CFR 51.105, respectively. EPA's regulations for PSD require that a SIP revision must include a demonstration that it will not cause or contribute to a violation of the applicable increments. EPA's regulations for SIP approval states that EPA will approve a SIP revision if EPA determines that the revision meets the requirements of the Act, which includes protection of the increments and NAAQS.

On October 11, 1989, EPA met with the State and representatives from Peabody Holding Company (Peabody) to discuss the WMA's concerns listed above. Peabody reiterated the position that the ISC model and EPA's emission factors do not adequately predict the ambient air impacts from Wyoming's surface coal mines, and, in fact, overpredicted by a factor of four to five times. Peabody proceeded to request that EPA make a determination that the available modeling tools are not adequate and an exemption be granted to Wyoming delaying the modeling requirements until adequate modeling tools exist. Wyoming argued that the requirement to model for the TSP NAAQS was unnecessary since the State had adopted the federal PM-10 standards and EPA was preparing to grant SIP approval to the State's PM-10 program. The State of Wyoming concurred with Peabody's position and proposed that the three-year modeling study requirement be eliminated since there was no "on the ground" problem, as demonstrated by existing ambient air monitoring. EPA agreed to drop the requirement to model for the TSP NAAQS and committed to consider the request to eliminate the three-year modeling requirement if it could be demonstrated, through monitoring, that the PM-10 NAAQS were being protected. In the interim, however, EPA required the State to continue its modeling efforts and submit a modeling protocol by December 1, 1989, and submit the three-year and preliminary 30-year modeling results by May 1, 1990. If these dates were not adhered to, EPA would return the "ambient air" SIP revision to the State and issue a SIP Call, which would require an evaluation of the PRB with respect to the applicable ambient air standards.

On October 27, 1989 (52 FR 48827), EPA proposed to approve the Wyoming PM-10 program, which includes the federal 24-hour and annual ambient standards, as part of the SIP. On July 10, 1990 (55 FR 28197), EPA issued final approval of Wyoming's PM-10 SIP.

EPA reaffirmed its position regarding the necessity to perform the modeling studies (as described in the July 25, 1989, letter) in a November 9, 1989, letter to Wyoming. EPA emphasized that timely completion of each step of the study was necessary so that action could be taken on the SIP submittal, which would result in permits issued to the PRB coal companies becoming consistent with the federally approved SIP.

EPA, the State, and the WMA met on November 21, 1989, to discuss the necessity of the three-year and the preliminary life of the mine modeling studies. The WMA and the State again took issue the EPA's insistence on utilizing EPA guideline modeling tools for these studies, the results of which could require limitations on coal mining activities. Wyoming discussed the actual "on the ground" air quality in the PRB, stating that air quality in the Gillette, Wyoming area (which is located in the center of the PRB) is in attainment of the PM-10 NAAQS and has actually improved during the past 10 years, even with increased mining production. Both parties again implored EPA to reconsider these modeling requirements.

5. Demonstrating Short-term Attainment of the PM–10 Standards Utilizing Monitoring

In a December 15, 1989, letter to Wyoming, EPA concluded that, because of the special circumstances described above, processing the "ambient air" SIP revision could proceed without a formal modeling demonstration. While EPA did not share the State's and coal companies' belief that ISC overpredicted the impacts of emissions from the PRB's surface coal mining operations, EPA acknowledged that the differences of opinion on the suitability and performance of the ISC model utilizing the EPA-approved emission factors were great enough to warrant a revision to the PRB attainment demonstration.

For such a change to occur, the State had to assure that the short- and long-term PM–10 NAAQS were being protected. Such assurance could be based on monitoring utilizing quality-assured ambient data for the most recent 12-month period (preferably calendar year 1989) from monitors which represent ambient air in the PRB. If it is determined that the PM–10 NAAQS are, in fact, being protected, EPA would have a sound environmental basis for proposing to approve the SIP revision, subject to conditions described below. EPA believes that these conditions will ensure ongoing protection of the PM–10 NAAQS.

The first condition would require Wyoming to commit, over a three-year period, to expeditiously develop an appropriate model and emission factors for western surface coal mines, in accordance with EPA-approved guidelines. The second condition would require that, for the interim period, the mining companies conduct extensive monitoring in the PRB and employ best available work practices to ensure that the PM–10 NAAQS are being protected. Such monitoring must be established in a manner consistent with current quality assurance guidance and the networks must be approved by EPA. Such monitoring networks must be established around the boundaries of each mine (even when contiguous with other mines) to ensure that the PM–10 concentrations in ambient air surrounding each mine are adequately assessed. If an exceedance of the PM–10 NAAQS occurs during monitoring, the mining companies must immediately institute remedial action necessary to prevent further exceedances. The third condition would require that once modeling tools are developed and approved by EPA, Wyoming must conduct the 30-year modeling study as described above. If necessary, Wyoming must use the results of this study to develop whatever control strategies may be necessary to protect the appropriate short- and long-term ambient air quality standards.

EPA requested that if the State chose to implement the above-described process, the following must be submitted to EPA by January 15, 1990:

(1) A schedule to provide to EPA all available quality assured ambient monitoring data in the Basin for calendar year 1989; if the data show no PM–10 NAAQS violations, and after the data have been properly quality assured, EPA will proceed with a proposed approval of the "ambient air" SIP action. If the data show violations that are caused by one or more mines, legally binding remedial action must be initiated by the State to eliminate these violations before EPA can take action on the SIP;

(2) A schedule to expeditiously determine the appropriate model and emission factors for surface coal mines in the PRB—this could entail comparing ISC to other available models or developing a new model and demonstrating its appropriateness in place of ISC using the "Interim Procedures for Evaluating Air Quality Models (Revised)"; (EPA–450/4–84–023);

(3) A monitoring network description and a schedule to develop and implement such a monitoring network to adequately assess the PM–10 ambient air quality around each mine;

(4) A commitment by the State to initiate expeditious remedial action if an exceedance of the PM–10 NAAQS is detected by the monitoring network;

(5) A commitment and schedule to perform the 30-year modeling study utilizing the modeling tools as determined in item 2 above;

(6) A commitment by the State to initiate expeditious remedial action if the modeling outlined in item 5 above shows exceedances of the applicable ambient air quality standards and, if appropriate, the PSD increment; and

(7) A schedule for other State efforts (i.e., a Section 107 redesignation, changes to the State regulations defining "baseline area" and "baseline date", etc.).

In conclusion, EPA stated that if the above proposal was not acceptable and an agreeable solution could not be reached, EPA would then require that the measures previously identified in the July 25, 1989 and November 9, 1989 letters be carried out.

On January 11, 1990, the State responded with a commitment to accomplish item 1 by April 1, 1990, and to develop a schedule to do work in support of items 2, 3, and 5 before April 1, 1990. The State also indicated that the EPC had scheduled a public hearing to consider the revisions identified in item 7.

Regarding the topic of establishing an extensive monitoring network for the three-year monitoring period, Wyoming had stated that this was not practical or necessary due to the vast area of the coal mining areas and the minimum severity of the problem. First, Wyoming stated that establishing such a network would be extremely expensive because it required getting power over vast areas to new samplers. Second, if monitors were placed between contiguous mining areas and exceedances were recorded, it would not be possible to determine which mine's emissions were causing the exceedances. Only modeling can determine source contribution, while the purpose of the monitoring proposal was to provide an alternative to the EPA-required modeling that the State had questioned.

On March 20, 1990, EPA responded to the State and retracted the statement, "Such monitoring networks must be established around the boundaries of each mine (even when contiguous with other mines) * * *," in favor of the position that monitors need be located only at the first and second maximum concentration sites for each active area of each mine, as determined by modeling, during each of the three years. EPA also agreed that it was not necessary for the State to make an additional commitment to initiate expeditious remedial action in the event that the monitoring network or the 30-year modeling study detect an exceedance. Such action is already a part of the State's enforcement role as outlined in permits issued to the mines, as mandated by regulation, and as committed to in the State's modeling protocol. Finally, EPA defined the milestone for performing the 30-year modeling study as April 1, 1993.

6. Wyoming's March 1990 SIP Submittals

On March 28 and March 29, 1990, Wyoming submitted information which would satisfy all outstanding requirements for information. Included in this submittal were the following:

(1) Ambient air monitoring data for calendar year 1989, the State's analysis of the data, a description of the existing company-operated monitoring network, and the quality assurance documentation for each coal company's network of samplers.

(2) A schedule and description of work to initiate the development of modeling tools for fugitive dust emissions from PRB surface coal mines—Wyoming has already begun the process of validating various EPA models and State and EPA emission factors;

(3) A description of work and a schedule to develop and implement an approvable monitoring network for the PRB—a final monitoring protocol and network description will be submitted to EPA in January 1991;

(4) A commitment to initiate remedial action if an exceedance of the PM–10 NAAQS is monitored;

(5) A commitment to perform the 30-year life of the mine modeling study by April 1, 1993;

(6) A commitment to initiate remedial action if an exceedance of the PM–10 NAAQS or PSD increments (if applicable) is indicated by the 30-year modeling study; and

(7) An update on activities to revise the State's Section 107 designated area boundaries (to create a separate area for the PRB) and to revise the State's PSD regulations, to eliminate the need to determine PSD increment consumption in the PRB.

Wyoming also expressed concern regarding EPA's requirement to establish a maximum concentration network, based on modeling, in the PRB for each of the next three years. In a July 12, 1990, response to the March 28th and 29th submittals, EPA expressed satisfaction with all submitted information and commitments, but indicated that there was a need to resolve the issue of siting samplers for future monitoring efforts.

EPA and the State met on July 24, 1990, to discuss this issue. Wyoming indicated that this would not be practical or achievable since there was no existing modeling available for the three years in question, and the State did not have the resources to perform new modeling to determine first and second maximum concentration sites for each mine. Wyoming indicated a preference for determining maximum concentration sites utilizing best engineering practices. This would entail examining wind roses for predominant wind speed and direction, examining the proximity of each actively worked area with site boundaries, and then locating monitors in the area of estimated highest impact. Wyoming had been siting monitors in the PRB for the last ten years using this method, and expressed confidence that the existing network provided adequate coverage throughout the PRB. However, Wyoming did agree to re-examine the network to determine if it could be improved. EPA, satisfied that the State was committed to protect the PM–10 NAAQS, approved this method for siting monitors. The State committed to provide EPA with this methodology when submitting the revised network for EPA approval.

In a memorandum dated August 15, 1990, EPA determined that the PRB ambient air monitoring data for calendar year 1989 demonstrated past attainment of the PM–10 NAAQS, with some reservations. Those concerns regard the quality assurance procedures utilized by the coal companies. EPA informed the State of these deficiencies on October 9, 1990, and requires that they be corrected for future monitoring efforts.

7. Impacts of the Clean Air Act Amendments of 1990

On November 15, 1990, President Bush signed into law the Clean Air Act Amendments of 1990. Section 234 "Fugitive Dust" of Title II of the Amendments contains the following provisions:

"* * * the Administrator shall analyze the accuracy of the ISC model and AP–42 emission factors and make revisions as may be necessary to eliminate any significant over-prediction of air quality effect of fugitive particulate emissions from [surface coal mines]. Such revisions shall be completed not later than three years after the date of enactment * * *"

Thus, Wyoming's commitment to initiate the development of modeling tools for fugitive dust emissions from PRB surface coal mines is no longer applicable. This responsibility is now EPA's.

The schedule for performing the 30-year model study by May 1993 (as described above) is also impacted by the Amendments. Because EPA is required to analyze and revise (if necessary) the modeling tools within three years of the date of enactment, or November 15, 1993, the schedule for performing and submitting the 30-year study is revised such that Wyoming must submit the modeling protocol and schedule for completion of the study following discussions of the guidance EPA develops regarding the appropriate modeling tools for surface coal mining operations.

C. EPA Action

With the receipt of the March 28 and 29, submittals and the information and commitments contained with them, and the determination that the 1989 monitoring data demonstrate attainment of the PM–10 NAAQS, the "ambient air" SIP submittal was determined to be administratively and technically complete on September 4, 1990. EPA is satisfied the applicable ambient air quality standards have been and will continue to be protected in the PRB.

EPA is proposing to approve, with conditions, the "ambient air" SIP revision. These conditions and the associated milestones are summarized as follows:

Activity	Responsible agency	Milestone
Operate existing monitoring network in the Powder River Basin (PRB)	State	Ongoing.
Initiate remedial action if monitoring indicates exceedances of the PM–10 NAAQS	State	Ongoing.
Replace each TSP sampler that detects an exceedance with a PM–10 Sampler	State	Ongoing.
Initiate action if State submits to EPA a request to approve a PRB section 107 redesignation and revisions to the State's PSD "Basoline Definitions".	EPA	Ongoing.
Develop PRB maximum concentration ambient monitoring network and implementation schedule and submit to EPA for approval.	State	Spring '92.
Operate PRB maximum concentration monitoring network	State	Fall 1992.
Initiate final ambient air SIP action (in response to this proposed SIP action)	EPA	After monitoring network operational and comments on proposed rulemaking compiled.
Provide to EPA scope of work and schedule for completion of the PRB 30-year modeling study	State	Following issuance of EPA guidance.
Provide to the State comments on the scope of work and schedule for the 30-year modeling study	EPA	1 month after receipt.
Perform 30-year modeling study and submit results to EPA	State	Following EPA's approval of the modeling scope of work and schedule.

Activity	Responsible agency	Milestone
Initiate remedial action if modeling indicates exceedances of the applicable PM-10 standards	State	Ongoing.
Review 30-year modeling study results, determine attainment, and initiate final ambient air SIP action	EPA	45 days after receipt of results.

If these milestones cannot be attained, Wyoming must provide adequate justification and new milestones will be negotiated.

At the conclusion of the public comment period for this proposed rulemaking, EPA will consider all comments submitted and evaluate the progress made in attaining the above milestones. Unless EPA receives comments that demonstrate the inappropriateness of this approach, EPA will publish an approval, with conditions, in the **Federal Register**. If the State fails to achieve the conditions listed above, EPA will consider a SIP Call or other regulatory process to ensure attainment in the PRB.

Proposed Action

In this action, EPA is proposing to approve, with conditions, a revision to Section 3 Particulates of the WAQSR mining operations in the PRB. EPA's proposed approval of the SIP revision is based on the following criteria. First, Wyoming has demonstrated through ambient air monitoring that the PM-10 NAAQS in the PRB have been protected in the past. Second, Wyoming is to improve the PRB particulate monitoring network and continue to monitor in order to ensure that that the PM-10 NAAQS will be protected. Third, Wyoming must initiate remedial action if monitoring indicates an exceedance of the PM-10 NAAQS. Fourth, Wyoming is to perform a 30-year modeling study after issuance of EPA procedures and discussions on such procedures in order to demonstrate attainment of the PM-10 NAAQS or, if applicable, PSD particulate increments, over the permitted life of the surface coal mines in the PRB. Fifth, Wyoming must initiate remedial action if this modeling effort indicates exceedances of the applicable standards.

Additional information and detail on State submittals, EPA analysis of submitted information, and the correspondence referred to above can be found in the technical support document.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment. Approval of this specific revision to the SIP does not indicate EPA approval of the SIP in its entirety.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to any state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relations to relevant statutory and regulatory requirements.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Interested parties are invited to comment on all aspects of this proposed action.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401–7642.

Dated: January 28, 1991.

Jack McGraw,

Acting Regional Administrator.

Editorial Note: This document was receved at the Office of the Federal Register on August 21, 1992.

[FR Doc. 92–20458 Filed 8–25–92; 8:45 am]

BILLING CODE 6560–50–M

40 CFR PART 52

[IL12–18–5554; FRL–Y195–7]

Reconsideration of Certain Federal RACT Rules for Illinois

AGENCY: United States Environmental Protection Agency.

ACTION: Proposed stay.

SUMMARY: In the Rules section of today's **Federal Register**, USEPA is announcing a 3-month stay based on USEPA's decision to reconsider certain Federal rules requiring Reasonably Available Control Technology (RACT) to control volatile organic compound (VOC) emissions in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). That action stays the effectiveness of the emission limitations and standards for metal furniture painting operations only as they apply to Allsteel Incorporated (55 FR at 26868–874, codified at 42 CFR 52.741(e)). USEPA is issuing that stay pursuant to Clean Air Act (CAA) section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), which provides the Administrator with authority to stay the effectiveness of a rule for up to 3 months during reconsideration.

This action proposes, pursuant to CAA sections 110(c), 301(a)(1) and 307(d)(1)(B), 42 U.S.C. 7410(c), 7601(a)(1) and 7607(d)(1)(B), to temporarily stay the effectiveness of this rule as it applies to Allsteel's metal furniture painting operation, beyond the three months expressly provided in section 307(d)(7)(B), but only if and as long as necessary to complete reconsideration (including any appropriate regulatory action) of the rule in question. Pursuant to the rulemaking procedures set forth in CAA section 307(d), 42 U.S.C. § 7607(d), USEPA hereby requests public comment on this proposed temporary extension of the three-month stay.

DATES: Comments on this proposal must be received by [September 25, 1992] at the address below. A public hearing, if requested, will be held in Chicago, Illinois. Requests for a hearing should be submitted to J. Elmer Bortzer by September 25, 1992 at the address below.

ADDRESS: Written comments on this proposed action should be addressed to J. Elmer Bortzer, Chief, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed in supplementary information. Interested persons may call Hattie Geisler at (312) 886–3199 to see if a hearing will be held and the date and location of any hearing. Any hearing will be strictly limited to the subject matter of this proposal, the scope of which is discussed in supplementary information.

DOCKET: Pursuant to section 307(d)(1) of the CAA, 42 U.S.C. 7607(d)(1), this action is subject to the procedural requirements of section 307(d). Therefore, USEPA has established a public docket for this action, 5AR92–8, which is available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the following addresses. We recommend that you contact Randolph O. Cano before visiting the Chicago location and Gloris Butler before visiting the Washington, DC location. A reasonable fee may be charged for copying.

U.S. Environmental Protection Agency, Region 5, Regulation Development Branch, Eighteenth Floor, Southwest, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

U.S. Environmental Protection Agency, Docket No. 5AR92–8, Air Docket (LE–131), room M1500, Waterside Mall, 401 M. Street SW., Washington, DC 20460, (202) 245–3639.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: In the Rules section of today's **Federal Register**, USEPA announces that, pursuant to CAA section 307(d)(7)(B), 42 U.S.C. 7607(d)(7)(B), it is convening a proceeding for reconsideration of certain Federal rules requiring RACT to control VOC emissions in the Illinois portion of the Chicago ozone nonattainment area (55 FR 26814, June 29, 1990). Readers should refer to that notice for a complete discussion of the background and rules affected.[1] In that notice, USEPA also announces a 3-month stay of those rules during reconsideration. However, USEPA may not be able to complete reconsideration (including any appropriate regulatory action) of the rules within the 3-month period expressly provided by CAA section 307(d)(7)(B). If USEPA does not complete reconsideration in this timeframe then it will temporarily extend the stay of the emission limitations until USEPA completes final rulemaking action upon reconsideration. By this action, USEPA proposes a temporary extension of the stay beyond the 3 months provided in section 307(d)(7)(B), only if and as long as necessary to complete reconsideration of the rules in question. If USEPA takes final action to impose this stay, the stay would extend until the effective date of USEPA's final action following reconsideration of these rules.

By this notice USEPA hereby proposes, pursuant to CAA sections 110(c), 301(a) and 307(d)(1)(B), a temporary administrative stay of the effectiveness of the coating rule, (55 FR at 26868–874, codified at 40 CFR 52.741(e)), as it applies to Allsteel's metal furniture painting operation. USEPA hereby requests comment on such a proposed extension of the stay.

USEPA is proposing this temporary administrative stay of the rules in order to complete reconsideration of these rules, as discussed above. USEPA intends to complete its reconsideration of the rules and, following notice and comment procedures of section 307(d) of the CAA, take appropriate action. If the reconsideration results in emission limitations and standards which are more stringent than the existing FIP rules, USEPA will propose an appropriate compliance period following reconsideration. As a general matter, USEPA will provide an adequate period of compliance upon completion of its final action on reconsideration. In essence, USEPA will seek to ensure that the affected parties are not unduly prejudiced by the Agency's reconsideration. Note that, like the rules themselves, any USEPA proposal regarding the appropriate compliance period would be subject to the notice and comment procedures of CAA section 307(d).

USEPA recognizes the interests of the State of Wisconsin in this matter. The regulatory requirements that will be stayed, pursuant to today's action, were undertaken in the context of a settlement agreement between USEPA and the States of Wisconsin and Illinois. In recognition of those obligations, USEPA will reconsider the rules in question as expeditiously as practicable.

Under Executive Order 12291, this action is not "major." It has been submitted to the Office of Management and Budget for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 11, 1992.

William K. Reilly,

Administrator.

[FR Doc. 92–20449 Filed 8–25–92; 8:45 am]

BILLING CODE 6560–50–M

[1] In that discussion and as incorporated by reference here, USEPA makes expressly clear that, by its actions today, including this proposal, USEPA in no matter concedes that it violated any provision of the CAA or Administrative Procedure Act.

40 CFR Part 80

[AMS–FRL–4199–1]

Regulation of Fuels and Fuel Additives: Standards for Reformulated Gasoline and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public workshop.

SUMMARY: This notice announces the time and place for a public workshop intended to help establish certification criteria and develop enforcement alternatives for the reformulated gasoline complex emissions model.

DATES: The public workshop will be held on September 10, 1992. It will start at 10 a.m. and will continue as long as necessary to complete the agenda.

ADDRESSES: The public workshop will be held at the Ramada Inn near the Detroit Metropolitan Airport. The address of the hotel is 8270 Wickham Road, Romulus, Michigan and the telephone number is (313) 729–6300. Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–12, at: Air Docket Section (LE–131), U.S. Environmental Protection Agency, Attention: Docket No. A–92–12, First Floor, Waterside Mall, rm. M–1500, 401 M Street, SW., Washington, DC 20460.

Materials related to this rulemaking, including documents distributed at earlier workshops, have been placed in Dockets A–91–02 and A–92–12 by EPA. These dockets are located at the above address and may be inspected between 8:30 a.m. and noon and between 1:30 p.m. and 3:30 p.m., Monday through Friday. EPA may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. George Lawrence, Chief for the Eastern Field Office, Field Operations and Support Division, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, telephone: (202) 233–9070, or Ms. Joann Jackson Stephens, Fuel Studies and Standards Branch, Regulation Development and Support Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, telephone: (313) 668–4278.

SUPPLEMENTARY INFORMATION:

Background

Section 211(k) of the Clean Air Act, as amended in 1990, requires that EPA promulgate regulations establishing certification and enforcement requirements for a reformulated gasoline program. The reformulated gasoline

program has been developed in part through a process known as negotiated rulemaking. The agreement provided refiners with two modeling options for determining whether fuels meet the reformulated gasoline requirements. The first modeling option is the simple model which would be used to certify reformulated gasoline during 1995 and 1996. (See 57 FR 13416 (April 16, 1992) for a comprehensive review). Under the terms of the agreement, EPA is to develop a more sophisticated model (the complex model) which can be used in 1995 and will be required for use beginning in 1997 through a rulemaking to be completed by March 1, 1993. EPA is holding this workshop to expedite the development of the complex model enforcement regulations and promulgation of a final rule for the reformulated gasoline program. The workshop will be open to the public.

Public Workshop

The September workshop will include the following topics:

Review of Non-linear Parameters and Interactive Effects

This topic will include a review of available data regarding parameters showing non-linear emission responses and interactive effects with other parameters. The purpose of this review is to provide examples of real-world scenarios involving such effects which may require modifications to the enforcement certification measures outlined for the "simple model" rulemaking.

Proposal of Certification and Enforcement alternatives

This topic will focus on approaches to ensure appropriate certification and enforcement of requirements of the reformulated gasoline program, despite the existence of interactive/non-linear effects as discussed above. Of special concern are ways to assure gasoline fungibility while meeting the required in-use benefits of reformulated gasoline, without impairing the ability of the Agency to enforce the program. Workshop participants are encouraged to comment on the feasibility and practicality of proposed certification and enforcement options.

Other presentations regarding possible reformulated gasoline certification and enforcement methods are encouraged. Those interested in making such presentations should notify Joann Jackson Stephens at (313) 668–4276 or George Lawrence at (202) 233–9307 of such intent at least seven days before the workshop. Interested speakers should also provide an estimate of the time required for the presentations and any need for audio/visual equipment. Questions will be taken after each presentation.

Public Participation

EPA strongly encourages full public participation in the development and assessment of information that will be used in developing the proposed complex model. This workshop will help determine the methods used by the Agency in certifying and enforcing reformulated gasoline under the proposed complex model. EPA welcomes public input regarding the methods most appropriate for use in certifying reformulated gasoline and enforcing the RFG program.

EPA suggests that enough copies of the material for presentation be brought to the workshop for distribution to the audience. EPA anticipates attendance of approximately 80 people. In addition, it will be helpful for EPA to receive an advance copy of any material for presentation before the scheduled workshop date so as to allow EPA staff to give such material full consideration.

Mr. Richard Rykowski, Chief for the Fuel Studies and Standards Branch in the Regulation and Support Division and Ms. Mary Smith, Director of the Field Operations and Support Division of EPA's Office of Mobile Sources will co-chair the workshop. The workshop will be conducted informally, and technical rules of evidence will not apply.

Dated: August 18, 1992.

Thomas Kiernan,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92–20459 Filed 8–25–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87–268; FCC 92–332]

Advanced Television Systems and Their Impact on the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing policies, procedures and technical criteria to be used in allotting channels for advanced television (ATV) service. Included in this action is a "draft" proposal for an ATV Table of Allotments. The goal of this allotment effort is to provide a 6 MHz ATV channel for each existing broadcast TV station. This is the sixth in a series of actions leading to the implementation of ATV service for the American public.

DATES: Comments must be submitted on or before October 13, 1992 and reply comments on or before November 12, 1992.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202–653–8162) or Robert Eckert (202–653–8163), Office of Engineering and Technology, or Gordon Godfrey (202–653–9660), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rule Making in GEN Docket No. 87–268, FCC 92–332, adopted July 16, 1992 and released August 14, 1992. The full text of this decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1990 M Street, NW., Washington, DC 20036, (202) 452–1422.

Summary of the Second Further Notice of Proposed Rule Making

1. The Commission is proposing policies, procedures and technical criteria to be used in allotting channels for advanced television (ATV) service. Included in this action is a "draft" proposal for an ATV Table of Allotments. The goal of this allotment effort is to provide a 6 MHz ATV channel for each existing broadcast station in a manner that will maximize the coverage of ATV stations, while at the same time taking into account interference to existing NTSC stations and between ATV stations. This is the sixth in a series of Commission actions leading to the implementation of ATV service for the American public.

2. This Second Further Notice of Proposed Rule Making (Further Notice) is the first step towards the adoption of an ATV Table of Allotments. The next step will be to finalize the allotment policies and procedures and to issue a proposal for the "final" ATV Table. After that Notice is issued, there will be a period for broadcasters to conduct negotiations among themselves on allotment and pairing arrangements and to submit any such arrangements to the Commission. To the extent possible, broadcaster agreements would then be included in the final Table. This plan is intended to provide industry and other interested parties with the maximum opportunity to participate in the formulation of ATV allotment and assignment policy and to negotiate agreements for both allotments and assignments.

3. The Commission will consider information from the comments filed in response to this Further Notice and other sources, such as data from the testing of the proponents' technical systems, in finalizing its ATV allotment policies and preparing its proposal for a final ATV Table. Interested parties are also advised that the Commission intends to consider alternative proposals for the underlying principles set forth herein that will guide the development of the ATV Table, and request interested parties to submit specific proposals for such alternative approaches.

4. The purpose of the draft Table of ATV Allotments included in the Further Notice is to aid broadcasters and other interested parties in focusing their comments on the allotment policy proposals. Interested parties are asked to examine the draft Table in formulating comments and alternative proposals regarding ATV allotment and assignment policy issues. The Commission emphasizes that the final ATV Table may change significantly from the draft Table due to factors such as changes to its ATV allotment policy proposals, the final performance characteristics of the ATV technical system, and the results of its international coordination of ATV allotments with Canada and Mexico. The Commission therefore does not seek comments on the specific channel allotments indicated on the draft Table attached to this Further Notice. Rather, the Commission plans, at the time it propose the final ATV Table, to provide opportunity for comment on individual channel allotments as well as a specified period of time for broadcasters to negotiate and submit allotment/pairing plans for ATV.

5. The Commission proposes four broad ATV allotment objectives. The first of these objectives is to provide all existing broadcasters with a channel for ATV service. This will benefit the public by preserving the service of all of the existing TV broadcast stations. It will also ensure that all existing broadcasters have an opportunity to participate fully in the transition to ATV service.

6. The second objective is to maximize the service areas of all ATV stations. Along with a general maximization of service area objective, it is important to enable ATV stations to serve geographic areas that encompass their communities of license and the surrounding market areas. The Further Notice therefore also proposes to establish a minimum ATV service area objective. This objective is to provide ATV stations the capability to serve the area within a 55 mile radius of their transmitter sites. The Commission also requests comment on an alternative service area allotment objective suggested by its Advisory Committee on Advanced Television Service and several others. This alternative objective would seek to pair ATV allotments with existing NTSC stations, using a process that would attempt to replicate the coverage areas of existing stations.

7. The Commission observes stated that its spectrum studies indicate that the majority of ATV channels will have to be allotted to UHF frequencies. These studies also show that relatively few VHF channels could be made available for ATV in television markets in the more densely populated areas of the country. Further, the Commission believes there would be substantial public interest benefits in locating all ATV channels in the same area of the spectrum. The third objective therefore is to allot all ATV channels to the UHF band.

8. Because ATV will be the medium of the future, the fourth objective is to prefer new ATV operations over NTSC operations in the allotment process. This preference is intended for allotment purposes only. The Commission stated that it would take into account protection of any affected existing NTSC service in actual ATV operations during the transition period.

9. The draft ATV Table of Allotments included in the Further Notice meets these proposed objectives.

10. The Commission also presents a number of proposals for other policies, procedures and technical criteria to be used in allotting ATV channels. These proposals are to: (1) Use geographical separation standards to regulate the allotment of ATV channels; (2) attempt to optimize the distances between ATV allotments and between ATV allotments and existing NSTC stations; (3) adopt minimum spacing requirements consistent with available information on expected ATV system performance; (4) attempt to allot channels at distances that meet or exceed the minimum spacings necessary to meet the 85–90 km service area objective and, where this is not possible, allot channels at short-spaced distances to achieve full accommodation; (5) after the initial implementation, delete all short-spaced ATV allotments that have not been activated by an eligible broadcaster; (6) specify the reference points of ATV allotments as the coordinates of the transmitter sites of existing NTSC stations; (7) use vacant existing non-commercial NSTC allotments for ATV allotments, but only where necessary; (8) if it is decided to use the VHF band or ATV channels, refrain from using channels 3 and 4 in the same community except where no alternative exists, and avoid using TV channel 6 wherever possible; and, (9) protect land mobile authorizations on channels 14–20.

Procedural Matters

11. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR §§ 1.415 and 1.419, interested parties may file comment on or before October 13, 1992 and reply comments on or before November 12, 1992. To file formally in this proceeding, you must file an original and five copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

12. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the Commission's initial regulatory flexibility analysis (IRFA) is as follows:

Reason for Action

In this rule making action the Commission presents proposals for the policies, procedures and technical criteria that it will use in allotting channels for broadcast ATV service.

Objectives

The objectives of this action is to obtain comment and information that will assist the Commission in allotting ATV channels. The Commission's objective is to allot ATV channels in a manner that is most efficient for broadcasters and the public and least disruptive to broadcast televisions service during the period of transition from NTSC to ATV service.

Legal Basis

The proposed action is authorized under sections 4(i), 7, 301, 302, 303 and 307 of the Communications Act of 1934,

as amended, 47 U.S.C. 154(i), 157, 301, 302, 303 and 307.

Reporting, Recordkeeping and Other Compliance Requirements

The proposals set forth in this action would involve no changes to reporting, recordkeeping and other compliance requirements beyond what is already required under the current regulations.

Federal Rules Which Overlap, Duplicate or Conflict With These Rules

None.

Description, Potential Impact and Number of Small Entities Involved

The ATV Table of Allotments that will ultimately be developed through the series of activities beginning with this action will affect all of the 1886 commercial and noncommercial broadcast television stations eligible for an ATV channel in the initial transition phase. Many of these stations are small entities. It is expected that these allotments will constitute the population of channels on which broadcasters will operate ATV service in the future. The individual ATV channels that appear on the final Table may not all offer the potential for the same degree of geographic coverage broadcasters will seek to serve. Allotment of these channels is therefore expected to be very important to the broadcast community. All of the affected stations will have to obtain new transmission facilities and to a varying extent, production equipment to operate on the new ATV channels. The cost of equipment to operate on these new channels is expected to vary from $750,000 upward to $10 million. The actual cost of equipment is expected to vary in accordance with the degree to which the station becomes involved in ATV programming and origination.

Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives

The process of allotting the ATV channels is an optimization task that offers a great number of possible alternative "mixes" of channel allotments for each community. In evaluating the merits of allotment alternatives, the Commission intends to make every effort to accommodate the needs and concerns of all affected parties. The ATV Table of Allotments proposed herein is a "first draft" intended to provide broadcasters with a view of how channels might be allotted across the individual TV markets. The Commission fully expects that the final Table that is adopted will contain many revisions of the allotments proposed herein.

13. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Further Notice, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Further Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq* (1981).

14. This action is being taken pursuant to authority contained in sections 4(i), 7, 301, 302, 303 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 157, 301, 302, 303 and 307. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

List of Subjects in 47 CFR Part 73

Television broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92–20368 Filed 8–25–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–43; Notice 01]

RIN 2127–AE56

Federal Motor Vehicle Safety Standards; Brake Hoses

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to exclude coiled brake hose assemblies from the oil resistance requirement of Standard 106, *Brake Hoses*. Coiled assemblies are designed for use between the vehicle frame and axle or between a towed and a towing vehicle. The agency has tentatively concluded that the oil resistance requirement is unnecessary for coiled tubing, because such tubing is apparently not exposed to significant amounts of oil and to hot temperatures during normal vehicle operations. The proposal responds to a petition for rulemaking from Philatron International. The notice also proposes other minor amendments.

DATES: Comments on this proposal must be received by NHTSA no later than September 25, 1992. If adopted in a final rule, these amendments would take effect 30 days after publication of the final rule in the **Federal Register.**

ADDRESSES: Comments should refer to the docket and notice numbers and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m., Monday through Friday. Telephone: (202) 366–4949.

FOR FURTHER INFORMATION CONTACT: Richard Carter, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–5274.

SUPPLEMENTARY INFORMATION:

Petition for Rulemaking

This notice responds to a petition for rulemaking submitted by Philatron International, a California-based company that has recently expanded its operations and entered the brake hose (tubing) industry. (Brake "hose" and "tubing" are used synonymously in this notice. Tubing such as that manufactured by Philatron is considered brake hose under Standard 106; see, S4 of the standard for the definition of "brake hose.")

Philatron has developed a "new" type of coiled air brake tubing for use between a truck tractor and trailer. What is different about Philatron's coiled tubing is its composition. The industry has traditionally manufactured coiled tubing from virgin polyamide nylon. Philatron's tubing is made from ethylene vinyl acetate, a type of plastic material used in the past only for manufacturing industrial-type hoses.

Philatron believes that its tubing has safety advantages over nylon tubing, which the petitioner claims is "routinely plagued by kinking, snagging and constriction safety failures." According to Philatron, its tubing is superior to nylon in "durability, flexibility and coil memory." The petitioner believes that because of these features, fewer linear feet of Philatron tubing are needed than of nylon tubing for a given installation. "Because the air does not need to go as far to actuate the brakes," Philatron states, "vehicles can stop faster." Philatron claims that the slightly shorter lengths of tubing result in "increased braking efficiency of between and 16 and 23 percent over nylon tubing." The petitioner also believes the shorter lengths of tubing lessen the possibility the tubing will become tangled with vehicle parts.

Despite its alleged safety advantages in these areas of performance, Philatron's tubing does not comply with Standard 106 in another area of performance. The particular requirement with which the tubing fails to comply is the oil resistance requirement in S7.3.4 of the standard. S7.3.4 states: "After immersion in ASTM No. 3 oil for 70 hours at 212 °F, the volume of a specimen prepared from the inner tube and cover of an air brake hose shall not increase more than 100 percent * * *." In NHTSA's compliance test of the tubing, the specimen liquified during the high temperature oil exposure, and did not re-solidify after cooling. (Final Report No. 106–ETL–92–001–513158, May 13, 1992). The tubing met all other requirements of the standard.

Philatron believes there is no safety need to apply the oil resistance requirement to its tubing. In support of its petition, Philatron argues that its tubing is not exposed to any oil or heat source when used on a vehicle. According to Philatron, the vehicle's wet tank and/or air drying system removes any oil from the air that will be contained in the tubing. Also, the tubing is used between a towing and a towed vehicle, "at a significant distance from any sources of hot or non-heated oil."

Philatron argues further that there is information that shows that its tubing performs adequately when exposed to oil under conditions other than those of S7.3.4 (70 hours, 212 °F). Under Standard 106's burst strength requirement (S7.3.9), a brake hose assembly must withstand hydrostatic pressure of 800 psi, without being subjected to oil immersion. Philatron tested its tubing for burst strength after the tubing, with couplings plugged at the end, was immersed in ASTM No. 3 oil for 3,310 hours in temperatures ranging from 33 °F to 90 °F. According to Philatron, the tubing burst at 1,200 pounds per square inch (psi). Philatron also tested the burst strength of the tubing, without the couplings, after the tubing was immersed in oil for 70 hours at 134 °F. Philatron said the tubing burst at 1050 psi. Philatron said this test temperature was chosen to match the highest temperature recorded in this country, 134 °F., in Death Valley, California on July 10, 1913.

The petitioner also refers to other information to support its belief that the tubing performs safely. Philatron states that it sold approximately forty-five thousand four hundred (45,400) hose assemblies before determining that the tubing did not comply with S7.3.4. According to the petitioner, not a single Philatron air brake hose has failed for any reason.

Based on these facts and arguments, Philatron requested NHTSA to amend the oil resistance requirement so that it does not apply to coiled brake tubing. Adopting that amendment would permit Philatron to manufacture and sell its tubing in the future.

In a related action, Philatron notified NHTSA in January 1992 that it had determined that its hoses did not comply with the oil resistance requirement. It also filed a petition with NHTSA for a determination that the noncompliance was inconsequential as it related to motor vehicle safety. On June 15, 1992, NHTSA published a notice granting the petition (57 FR 26687). As a result, Philatron is not required to conduct a notification and remedy campaign with respect to the hoses that it manufactured prior to January 1992. However, in the absence of an amendment to the Standard, under section 108(a) of the Safety Act, Philatron may not manufacture or sell any of its hoses which do not comply with the S7.3.4 requirements.

Comments by Parker Hannifin on Rulemaking Petition

Parker Hannifin, another air brake hose manufacturer, has written to the agency objecting to the relief sought by Philatron in its petitions. Parker Hannifin believes that coiled tubing is exposed to hot oil during normal vehicle operations. In this comments on Philatron's petition for inconsequentiality, Parker Hannifin states that coiled tubing could contact oil leaking from the air brake compressors that are used on all heavy duty air-braked trucks, and from splashing and spilling during vehicle refueling or servicing. Parker Hannifin also argued that the tubing is exposed to oil in the environment in which coiled tubing is commonly used. In support of those arguments, that manufacturer produced photographs of vehicles in use, taken at a truck stop, that appeared to show the coiled tubing on the vehicles covered with oil.

Parker Hannifin believes that the oil resistance requirements should be retained because coiled tubing assembly made from material that can withstand oil under the conditions described in S7.3.4 is better able to resist abrasion, retain its coiled shape and resist heat. That company is concerned that excluding coiled tube assemblies from the oil resistance requirement could lead to the manufacture and sale of tubing that does not perform so well as nylon tubing in these areas.

Parker Hannifin argues that these three areas of performance are important for safety. Abrasion resistance is important because the tubing is used in proximity to abrasive surfaces, such as the deck plate and frame rail, and an unabraded hose is less likely to fail than an abraded one. Coil retention is important so that the tubing does not become slack and prone to abrasion and contamination. High temperature resistance is important because the tubing is used in proximity to exhaust stacks. Parker Hannifin believes coiled tubing is used in areas on the vehicle that are shielded by the cab from the cooling effects of wind and air flow. According to Parker Hannifin, the effect of this and the exposure to continuous heating from the truck engine and from the hot air generated by the cooling system on the truck are such that the tubing could be exposed to temperatures as high as 250 °F.

Parker Hannifin supports its argument that the oil resistance test acts as a "surrogate" for regulating other aspects of performance by referring to the industry standard for nonmetallic air brake system tubing, J844 (June 1990) published by the Society of Automotive Engineers (SAE). SAE J844 does not have an oil resistance requirement, but does require tubing to be made of one hundred percent virgin nylon. According to Parker Hannifin, the material specification obviates the need for an oil resistance requirement because nylon tubing is impervious to oil. Stated differently, Parker Hannifin claims that an oil resistance test and a material specification for nylon serve the same purpose: to ensure that superior materials are used in the manufacture of coiled tubing.

Agency Response to Rulemaking Petition

The agency granted Philatron's petition to commence a rulemaking proceeding after determining there is a reasonable possibility that the order requested would be issued at the conclusion of a rulemaking proceeding. The agency took this action because its policy is to review and revise the FMVSS's if they unnecessarily inhibit innovation.

While the agency is proposing to exclude coiled tube assemblies from the oil resistance requirement, it wished to

explore whether any safety problems may arise from the exclusion. As noted above, Parker Hannifin has stated that it believes that there would be safety problems. To aid it in reaching conclusions about the competing claims of these manufacturers, the agency invites the public to answer the questions set forth below.

Questions

In responding to a particular question, NHTSA requests that commenters refer to the question by number, and provide any data supporting their answers, and the source of such data.

1. Is coiled tubing exposed to hot oil during normal vehicle operations?

NHTSA notes that coiled assemblies sometimes end in the engine compartment of cab-over tractors. Is such tubing exposed to hot oil when used in that environment?

What temperatures are coiled brake hose assemblies exposed to in normal operation, including the time spent idling at truck stops?

2. Does the oil resistance requirement have the effect of indirectly regulating (i.e., require a level of performance relating to) the tubing's abrasion resistance, coil retention and/or heat resistance? (Standard 106 does not currently contain any requirements directly related to abrasion resistance or coil retention.) If the oil resistance requirement does have that effect, and if the agency decides to exclude coiled tube assemblies from the oil resistant requirement, should it adopt requirements concerning abrasion resistance, coil retention and heat resistance? If so, what specific requirements should it adopt?

3. Is there a "kinking" problem with nylon coiled tubing? Should some type of "anti-kinking" performance requirement be added to Standard 106?

4. Comments are requested on an additional proposed amendment. NHTSA proposes amending S7.3.6 and 7.3.10 of Standard 106. These sections set forth performance requirements for limiting the amount a hose may change in length under specified conditions (S7.3.6), and for the tensile strength of an assembly (S7.3.10). These sections exclude certain items from the requirement. S7.3.6 excludes "coiled nylon" tubes for use in an assembly that meet the requirements of Federal Highway Administration (FHWA) regulation 393.45 (49 CFR 393.45). S7.3.10 excludes "coiled nylon tube" assemblies that meet § 393.45.

NHTSA proposes to remove the word "nylon" from each of these references. The amendment is intended to remove an apparent design restriction from the standard. It is noted that a similar exclusion, in S7.3.11, does not specify nylon. NHTSA requests comments on what purpose, if any, is served by limiting the exclusions of S7.3.6 and 7.3.10 to nylon tubes. Does the nylon requirement act, in effect, as a surrogate for other performance concerns?

NHTSA proposes to consolidate the references to exclusion of coiled tubing assemblies from the requirements of S7.3.4, S7.3.6, S7.3.10 and S7.3.11 into one sentence, in S7.3. In so doing, the agency also proposes to update the references to FHWA and SAE standards incorporated therein. The current references in S7.3.6., S7.3.10 and S7.3.11 refer to § 393.45, which in turn refers to the SAE J844 standard. However, § 393.45 has been amended since reference to it was incorporated into FMVSS No. 106 (53 FR 49400), and the requirements of Standard No. 106 were thereby inadvertently changed. The new proposed wording clarifies which portion of § 393.45 was intended to be referenced.

The new proposed wording also references the most recent versions of the SAE standards covering nonmetallic brake tubing, and explicitly excludes the specification of nylon material in those standards.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. The proposed exclusion of coiled tubing assemblies from the oil resistance requirement would have a positive affect on Philatron by enabling the manufacturer to resume production and sale of its product. However, the agency does not know if and to what extent other brake hose manufacturers would also produce hose assemblies from similar materials.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Any manufacturer of brake hose or assemblies that might qualify as a small entity under the Regulatory Flexibility Act could have a slight benefit as a result of the proposed amendment because it would be permitted to produce hoses that do not meet the oil resistance requirement. However, NHTSA does not know and has no reason to believe that there are a substantial number of small entities that would undertake such production. There would be no significant impact on the cost of vehicles, and small organizations and governmental jurisdictions that purchase vehicles would not be significantly affected by the proposed amendment.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Notional Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Comments on the Proposal

Interested persons are invited to submit comments on the proposal. A comment period of 30 days is provided. NHTSA is providing a relatively short comment period because it previously provided opportunity for public comment on the related issues raised by the inconsequentiality petition and because of the economic impacts on the petitioner. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.106 [Amended]

2. S7.3 would be revised to read as follows:

S7.3 *Test requirements.* Except as specified in this paragraph, each air brake hose assembly or appropriate part thereof shall be capable of meeting any of the requirements set forth under this heading, when tested under the conditions of S11 and the applicable procedures of S8. However, a particular hose assembly or appropriate part thereof need not meet further requirements after having met the constriction requirement (S7.3.1) and then having been subjected to any one of the requirements specified in S7.3.2 through S7.3.13. A coiled nonmetallic air brake tubing assembly that meets the requirements of § 393.45(c) of this title, and either SAE J844 Jun 90, Nonmetallic Air Brake System Tubing, or SAE J1394 May 89, Metric Nonmetallic Air Brake System Tubing (except for the material specific construction requirements in paragraph 5 of those standards), is not subject to the test requirements of S7.3.4, S7.3.6, S7.3.10 and S7.3.11.

3. S7.3.6 would be revised to read as follows:

S7.3.6 *Length change.* An air brake hose shall not contract in length more than 7 percent nor elongate more than 5 percent when subjected to air pressure of 200 psi (1380 kPa) (S8.5).

4. S7.3.10 would be revised to read as follows:

S7.3.10 *Tensile strength.* An air brake hose assembly designed for use between frame and axle or between a towed and a towing vehicle shall withstand, without separation of the hose from its end fittings, a pull of 250 pounds if it is ¼ inch or less or 6 mm or less in nominal internal diameter, or a pull of 325 pounds if it is larger than ¼ inch or 6 mm in nominal internal diameter. An air brake hose assembly designed for use in any other application shall withstand, without separation of the hose from its end fitting, a pull of 50 pounds if it is ¼ inch or 6 mm or less in nominal internal diameter, 150 pounds if it is ⅜ or ½ inch or 10 mm to 12 mm in nominal internal diameter, or 325 pounds if it is larger than ½ inch or 12 mm in nominal internal diameter (S8.9).

5. The first sentence of S7.3.11 would be revised to read as follows:

S7.3.11 *Water absorption and tensile strength.* After immersion in distilled water for 70 hours (S8.10), an air brake hose assembly designed for use between frame and axle or between a towed and towing vehicle shall withstand, without separation of the hose from its end fittings, a pull of 250 pounds if it is ¼ inch or 6 mm or less in nominal internal diameter, or a pull of 325 pounds if it is larger than ¼ inch or 6 mm in nominal internal diameter. * * *

Issued on August 20, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-20392 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 662

[Docket No. 920809-2209]

Northern Anchovy Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Preliminary determination of harvest quotas; request for comments.

SUMMARY: NMFS announces the estimated spawning biomass and preliminary determination of harvest quotas for the northern anchovy fishery in the exclusive economic zone (EEZ) south of Point Reyes, California, for the 1992–93 fishing season. The harvest quotas have been determined by application of the formulas in the Northern Anchovy Fishery Management Plan (FMP) and its implementing regulations. The optimum yield is set at 4,900 metric tons (mt), which includes a 4,900-mt non-reduction quota, plus an unspecified amount for use as live bait. There is no reduction quota for the 1992–93 fishing season. Final determination of the harvest quotas will be announced shortly after the comment period closes.

DATES: Comments must be received on or before September 24, 1992.

ADDRESSES: Comments should be addressed to E.C. Fullerton, Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213. Underlying data and other information relevant to this notice (Southwest Fisheries Center Administrative Report LJ–92–24), has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS, Southwest Regional Director.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Fisheries Operations, Southwest Region, NMFS, Long Beach, California, (301) 980–4036.

SUPPLEMENTARY INFORMATION: In consultation with the California

Department of Fish and Game and the NMFS Southwest Fisheries Center, the Director of the Southwest Region, MNFS, (Regional Director) has estimated that the spawning biomass of the central subpopulation of northern anchovy, *Engraulis mordax*, is 167,000 mt; almost half (51 percent) of the 1991–1992 biomass estimate of 329,000 mt. The biomass estimate is derived from a stock synthesis model using spawning biomass estimated by the egg production method for calendar years 1980 to 1985, and egg production index, fish spotter data, total landings and catch data, and mean January to February sea surface temperatures.

The Regional Director has made the following preliminary determinations for the 1992–1993 fishing season by applying the formulas in the FMP and in § 662.20 of the implementing rules.

1. The total U.S. harvest quota for northern anchovy is 4,900 mt, plus an unspecified amount for use as live bait. The total U.S. harvest quota is equivalent to 70 percent of the overall optimum yield (70 percent of 7,000 mt) available for harvest by the United States and Mexico.

2. The total U.S. harvest quota for reduction purposes is zero. No reduction quota is permitted when the spawning biomass is 300,000 mt or less.

3. The U.S. harvest allocation for non-reduction fishing (i.e., fishing for anchovy for use as dead bait and human consumption) is 4,900 mt (as set by the Federal anchovy regulations at § 662.20).

4. There is no U.S. harvest limit for the live bait fishery.

5. The domestic annual processing capacity (DAP) is 4,202 mt. The FMP states that this amount is the maximum level of reduction plus non-reduction processing during the previous 3 years.

6. The amount allocated to joint venture processing (JVP) is zero because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 4,202 mt. DAH is the sum of DAP and JVP.

8. The total allowable level of foreign fishing (TALFF) is zero. The TALFF in the EEZ is based on the U.S. portion of the OY (4,900 mt) minus the DAH (4,202 mt), then minus that amount of the expected harvest in the Mexican fishery zone that is in excess of the amount allocated to Mexico by the FMP (78,723 mt). The expected harvest in the Mexican fishery zone is 80,832 mt, which is the largest Mexican harvest in the past 3 years. The amount allocated to Mexico by the FMP (2,100 mt) is 30 percent of the optimum yield.

A summary of the information on which this preliminary determination is based has been provided to the Pacific Fishery Management Council (Council). Consultations with the Council will continue through early August.

Classification

This action is authorized by 50 CFR part 662 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 662

Fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-20326 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 57, No. 166
Wednesday, August 26, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

August 21, 1992.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

• Cooperative State Research Service
Food Agricultural Sciences National Needs Graduate Fellowship.
Grant Program, *Application Guidelines*
Forms CSRS–701, 702, 703, 706, 707, 708, 709
Annually
Individuals or households; State or local governments; Non-profit institutions; 463 responses; 9,375 hours
Lois Davis (202) 720–7854

Extension

• Food and Nutrition Service
Supplemental to Financial Status Report—Administrative Costs in Nutrition Education and Training Program
FNS–665
Quarterly
State or local governments; responses 95; 24 hours;
Lynn Rodgers (703) 305–2048

• Forest Service
Grazing Permit Administration Forms—36 CFR 222, Subpart A and E
FS–2200–1, –2, –12, –13, –15, –16, –17, R–1–2230–5, R–2–2200–6, R–3–2200–1 and R–8–2200–23
On occasion
Farms; 4,950 responses; 1,455 hours
Janette Kaiser (202) 205–0647

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 92-20394 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-01-M

National Agricultural Statistics Service

Cotton Trading Rule Changes

Recent changes in the trading rules for cotton in some markets will affect the price received by farmers for cotton. In order to (1) prevent future changes in trading rules from unduly affecting the farm price, (2) retain a farm price consistent with historical determinations, and (3) maintain the farm price of cotton used to determine the deficiency rate at an equitable level, the United States Department of Agriculture (USDA) will change its definition of the price received by farmers for cotton. Based on discussions with the cotton industry and comments submitted in response to a proposed change, USDA concludes that the definition for the average farm price which most nearly achieves the above objectives is "f.o.b. warehouse."

Done in Washington, DC, this 21st day of August 1992.

Donald M. Bay,

Acting Administrator.

[FR Doc. 92-20998 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-20-M

Animal and Plant Health Inspection Service

[Docket 92-143-1]

Availability of an Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing of genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the

environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

	Permit number	Permittee	Date issued	Field test location
92-164-02	Michigan State University	07-30-92	Cantaloupe plants genetically engineered to express the coat protein genes of zucchini yellow mosaic virus (ZYMV) and tobacco etch virus (TEV) for resistance to ZYMV and TEV.	Michigan.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 20th day of August 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–20442 Filed 8–25–92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92–131–1]

Availability of an Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to allow the field testing a genetically engineered organisms. The environmental assessment provides a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsvile, MD 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit number listed below when order documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing the permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued a permit for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessment and finding of no significant impact, which are based on data submitted by the applicant and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impact associated with conducting the field tests.

An environmental assessment and finding of no significant impact have been prepared by APHIS relative to the issuance of a permit to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
92-174-01, renewal of permit 91-346-02, issued on 02-07-92.	Pioneer Hi-Bred International, Incorporated.	07-21-92	Soybean plants genetically engineered to express methionine- and cysteine-rich seed storage proteins from Brazil nut.	Salinas, Puerto Rico.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 20th day of August 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–20443 Filed 8–25–92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92–130–1]

Receipt of Permit Application for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an application for a permit to release genetically engineered organisms into the environment is being reviewed by the Animal and Plant Health Inspection Service. THe application has been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: A copy of the application referenced in this notice, with any confidential business information deleted, is available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain a copy of the document by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 320, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following application for a permit to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
92-203-01	Pioneer Hi-Bred International, Incorporated.	07-21-92	Soybean plants genetically engineered to express either the enzyme 5-enol-pyruvyl shikimate-3-phosphate synthase (EPSPS) and a metabo-lizing enzyme for tolerance to the herbicide glyphosate; or methionine- and cysteine-rich seed storage proteins from Brazil nut.	Salinas, Puerto Rico.

Done in Washington, DC, this 20th day of August 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–20444 Filed 8–25–92; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 92–142–1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that six applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. You may obtain copies of the documents by writing to the person listed under "**FOR FURTHER INFORMATION CONTACT.**"

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organisms	Field test location
92-209-01 renewal of permit 91-197-01, issued on 09-24-91.	Pioneer Hi-Bred International Incorporated.	07-27-92	Corn plants genetically engineered to express a wheat germ agglutinin (WGA), for resistance to European corn borer.	Hawaii.
92-209-02	Monsanto Agricultural Company	07-27-92	Corn plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects, or genes for tolerance to the herbicide glyphosate, or a beta-glucuronidase (GUS) gene as a marker.	Hawaii.
92-209-03	Monsanto Agricultural Company	07-27-92	Corn plants genetically engineered to express a gene from *Bacillus thuringiensis* subsp. *kurstaki* (Btk) for resistance to lepidopteran insects, or genes for tolerance to the herbicide glyphosate, or a beta-glucuronidase (GUS) as a marker.	Hawaii.
92-212-01	Pioneer Hi-Bred International Incorporated.	07-30-92	Corn plants genetically engineered to express the marker genes phosphinothricin acetyl transferase (PAT) and beta-glucuronidase (GUS) and a gene for male sterility.	Hawaii.
92-218-01 renewal of permit 91-042-02, issued on 04-26-91.	Auburn University	08-05-92	*Xanthomonas campestris* pv. *campestris* genetically engineered to express a bioluminescence gene as a marker.	Alabama.
92-219-01 renewal of permit 89-320-01, issued on 02-12-90.	Calgene, Incorporated	08-06-92	Tomato plants genetically engineered to express an anti-sense poly-galacturonase (PG) gene to delay ripening.	Florida.

Done in Washington, DC, this 20th day of August 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-20445 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Exemption of Cyclone, Flurry, Twister, and Vortex Salvage Timber Sales From Appeal, Mt. Hood National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decisions from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Cyclone, Flurry, Twister, and Vortex Salvage Timber Sales in the Clackamas River Drainage on the Mt. Hood National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the January 23, 1989 **Federal Register** (54 FR 3342).

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Judith E. Levin, Forest Supervisor, Mt. Hood National Forest, 2955 N.W. Division St., Gresham, Oregon 97030.

SUPPLEMENTARY INFORMATION: In January of 1990 a windstorm in the Mt. Hood National Forest caused extensive damage to stands of timber in the Clackamas River Drainage. The area involved in this proposal totals approximately 440 acres and 7.2 MMBF of merchantable timber. All of the area is suitable lands for timber production.

In the spring and summer of 1990 an interdisciplinary team (IDT) surveyed much of the impacted area to assess the amount of timber volume that was blown down as a result of the storm. The IDT identified the need to salvage the timber which had fallen over in as short a time as possible for the following reasons: (1) The wood in down trees decays rapidly causing reductions in value and merchantable volume; (2) in a number of stands a majority of trees have blown down leaving the stand in an understocked condition necessitating reforestation; (3) damaging insect populations have increased in the down trees and are currently spreading to adjacent stand.

Early in 1990, the Clackamas District Ranger proposed the salvage harvest of the windthrown timber. The environmental analysis of this action began in the summer of 1990 but was delayed several times due to events surrounding the listing of the Northern Spotted Owl as a Threatened species and litigation concerning the management of the Northern Spotted Owl on National Forest System lands. After publication in planning newsletters, and contacts with individuals and State and Federal agencies, major issues were identified. These were:

1. Whether to harvest windthrown timber to reduce insect infestation and minimize loss of commercial timber value to decay?
2. Whether harvest will impact soil productivity?
3. How much down Large Woody Debris (LWD) should be left for wildlife and nutrient recycling?
4. Whether removing the down timber would effect Northern Spotted Owls or their habitat?
5. Whether Salvage activities will affect water quality and fisheries?
6. How would salvage operations be designed to provide habitat for snag dependant wildlife species?

The IDT developed five alternatives to analyze, including the No Action Alternative. The effects of these alternatives are disclosed in an environmental assessment (EA) which was prepared for the proposal. The Proposed Action (Alternative C) would harvest approximately 7.2 MMBF on 440 acres. Approximately 1 mile of logging road would be constructed and approximately 0.5 miles of road would be reconstructed. There are no roadless areas involved in this proposal. Structural diversity would be maintained thru the retention of adequate quantities of LWD, wildlife trees, intact mature forest, and forage and riparian areas. This proposal has been determined to have "no effect" on the Northern Spotted Owl. The harvest areas do not contain suitable habitat for the Northern Spotted Owl and no owls were found in any of the units.

The sales and accompanying work are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this project and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR 217.4(a)(11) is being followed. Under this Regulation the following is exempt from appeal:

> Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Based on the environmental analysis documented in the Cyclone EA and the Forest Supervisor's Decision Notice for this project, I have determined that good cause exist to exempt this project decision from administrative review. Therefore, upon publication of this notice, this project will not be subject to review under 36 CFR part 217.

Dated: August 19, 1992.

Michael S. Edrington,

Acting Deputy Regional Forester.

[FR Doc. 92-20428 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-11-M

Exemption of Bergan Fire Salvage Timber Sale From Appeal, Ochoco National Forest, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice to exempt decision from administrative appeal.

SUMMARY: This is a notification that the decision to implement the Bergan Fire Salvage Timber Sale and Other Fire Recovery Projects (hereafter referred to as the Silver Creek analysis) located on the Snow Mountain Ranger District, Ochoco National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published in the January 23, 1989 **Federal Register** (54 FR 3342).

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmidt, Forest Supervisor, Ochoco National Forest, P.O. Box 490, Prineville, Oregon 97754; or James Keniston, District Ranger, Snow Mountain Ranger District, Ochoco National Forest, Hines, Oregon 97738 (503) 573-7292.

SUPPLEMENTARY INFORMATION: During August, 1990, an extensive area on the Snow Mountain Ranger District of the Ochoco National Forest in Oregon was burned by wildfire and was found to need resource restoration. Proposed projects include the recovery of National Forest System lands damaged by the wildfire, and the salvage harvest of dead and dying timber. Any further delay in the activities necessary to restore these damaged lands or remove this salvageable timber will result in unacceptable degradation of the physical and biological condition of National Forest System lands and a substantial deterioration of the merchantable fire-damaged timber. Deterioration of fire-killed and damaged timber will result in economic losses to county and United States treasuries. Further delays will also significantly increase the risk of severe forest insect and pest infestation of the affected area as well as the undamaged trees adjacent to, and within, the affected area.

The Forest Supervisor had determined through an environmental analysis, which is documented in the Silver Creek analysis final environmental impact statement (EIS), that there is good cause to expedite this project. Expediting this project is necessary for prompt rehabilitation of the fire-affected area, and for the salvage of dead and dying timber. The final EIS, which documents the expected environmental effects of the action, also documents extensive public involvement and addressed issues raised by the public.

Due to the length of time it has taken to develop an acceptable salvage and recovery program, and to properly evaluate the potential environmental effects, the time remaining for program accomplishment has become critical. Additional delay would result in further damage to area resources, and could result in a complete loss of the salvageable timber resource.

Pursuant to 36 CFR 217.4(a)(11), it is my decision as Regional Forester of the Pacific Northwest Region of the Forest Service to exempt from appeal the decision dealing with the salvage and fire recovery projects for the Silver Creek analysis final EIS. The decision to rehabilitate the area affected by the Buck Springs fire and offer salvage timber for sale in Segment 3 of the Silver Creek analysis area will not be subject to administrative appeal.

The decisions pertaining to wild and scenic river suitability determination will remain subject to appeal pursuant to 36 CFR 217.

The Buck Springs Fire burned approximately 1,243 acres of public land within the Silver Creek River corridor. A large portion of the recovery area is located within the Silver Creek roadless area. An estimated 2.68 million board feet (MMBF) of salvageable timber on an estimated 477 acres of National Forest System lands is proposed for harvest under the proposed action in the Silver Creek analysis final EIS. These lands need to be promptly rehabilitated through fire recovery projects, and timber killed or damaged beyond recovery needs to be expeditiously removed through low-impact salvage harvest.

On December 27, 1990 the Forest Supervisor of the Ochoco National Forest published a Notice of Intent to prepare an EIS for a proposal to determine the suitability of Silver Creek for wild and scenic river designation, rehabilitate burned National Forest System lands, and salvage timber killed or damaged beyond recovery by the Buck Springs Fire of 1990. Sloping was conducted by the Snow Mountain Ranger District of the Ochoco National Forest, pursuant to 40 CFR 1501.7, to determine the issues to be addressed, and for identifying the significant issues related to the specific proposed action. Key issues relating to the Silver Creek analysis were derived through scoping from letters soliciting comments, newsletters, newspaper articles, phone calls, field trips, meetings and open houses held in Burns, Oregon in February of 1991 and in Prineville, Oregon in March of 1991. The information from these sources and the scoping process that followed is documented in the final EIS and associated planning records. These documents are located at the Snow Mountain Ranger District Office in Hines, Oregon.

The Ochoco National Forest analyzed the effects of seven alternatives on the environment within and adjacent to the Silver Creek analysis area. In compliance with the National Environmental Policy Act, the analysis was documented in the Silver Creek analysis draft EIS, which was issued for public review on June 14, 1991. The Notice of Availability for the draft EIS was published in the **Federal Register** on

June 14, 1991. The Record of Decision for the final EIS will be issued in September, 1992. The analysis for this exemption is documented in the final EIS planning record files which are available at the Snow Mountain Ranger District Office in Hines, Oregon.

The analysis of the rate of deterioration of the dead and damaged timber indicates that approximately 1.82 MMBF, with an estimated stumpage value of $637,000, would be lost to insects and decay resulting from delay caused by resolving potential administrative appeals. This would result in an estimated loss of $159,250 to county governments which share in twenty-five percent of National Forest receipts. Fire recovery activities of affected resources, scheduled for implementation during the 1993 field season, would also be delayed resulting in future resource impacts. Additionally, the reforestation of an estimated 755 acres of suitable lands as a part of the recovery of the affected area would be delayed by at least one year, further reducing the opportunity for successful reforestation.

The Bergan Fire Salvage Timber Sale and other fire recovery projects are designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work and to prevent delays by appeals the process according to 36 CFR Part 217 is being followed. Under this regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from national disasters or other natural phenomena, such as wildfires * * * when the Regional Forester * * * determines and gives notice in the **Federal Register** that good cause exists to exempt such decisions from review under this part.

Upon publication of this notice, and at least 30 days after the final EIS is available to the public, the Record of Decision for the Silver Creek analysis will be signed by the Forest Supervisor, and the decisions pertaining to the salvage timber sale and other fire recovery projects will not be subject to review under 36 CFR Part 217.

Dated: August 19, 1992.

Michael S. Edrington,

Acting Deputy Regional Forester.

[FR Doc. 92-20429 Filed 8-25-92; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Application and Reports for Scientific Research, Public Display, and Enhancement Permits Under the Marine Mammal Protection Act (MMPA), the Fur Seal Act, and the Endangered Species Act (ESA).

Agency Form Number: None.

OMB Approval Number: 0648-0084.

Type of Request: Reinstatement of a previously approved collection.

Burden: 6,134 reporting hours, 518 recordkeeping hours.

Number of Respondents: 487 reporting respondents, 259 recordkeepers.

Avg Hours Per Respondent: 12.6 hours for reporting respondents, 2 hours for recordkeepers.

Needs and Uses: Respondents will be applicants for and holders of scientific research, public display, or enhancement permits. The MMPA and ESA prohibit the taking of marine mammals with certain exceptions. Applicants wanting authorization to take or import must provide certain information to be used as a basis for determining whether a permit should be issued. Permit holders are required to report periodically on the status of their permit.

Affected Public: State or local governments, businesses or other for-profit organizations, non-profit institutions, Federal agencies or employees, small businesses or organizations.

Frequency: On occasion, annually, recordkeeping.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Ron Minsk, (202) 395-3084.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377-3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Ron Minsk, OMB Desk Officer, room 3019, New Executive Office Building, Washington, DC 20503.

Dated: August 20, 1992

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 92-20435 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-CW-F

Bureau of Export Administration

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held September 23 & 24, 1992, in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. On September 23, the Executive Session will convene at 9 a.m. and adjourn at 10 a.m. The General Session will convene at 10 a.m. and adjourn at 1 p.m. The Executive Session will then convene at 2 p.m. and adjourn at 5 p.m. On September 24, the Executive Session will convene at 3 p.m. and adjourn at 5 p.m. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems/peripherals or technology.

Agenda

Executive Session September 23, 1992, 9 a.m.-10 a.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session September 23, 1992, 10 a.m.-1 p.m.

2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Discussion of the supercomputer regulation.

Executive Session September 23, 1992, 2 p.m.-5 p.m.; September 24, 1992, 3 p.m.-5 p.m.

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, OTPA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: August 20, 1992.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 92-20467 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee will be held September 24, 1992, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda

1. Opening remarks by the Chairwoman.
2. Presentation of papers or comments by the public.
3. Discussion of the draft Export License Application Form.
4. Discussion of the Automated Export System.
5. Status reports on EMS, GLV, and SED.
6. Industry recommendations for streamlining the Export Administration Regulations.
7. Procedure for end user checks.
8. Discussion on licensing impacts of the EPCI controls.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date of the following address: Lee Ann Carpenter, TSS/ODAS-EA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: August 20, 1992.

Betty Anne Ferrell,

Director, Technical Advisory Committee Staff.

[FR Doc. 92-20468 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DT-M

Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held September 18, 1992, 9:30 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Approval of minutes.
3. Presentation of papers or comments by the public.
4. Report on status of U.S. implementation of Core List.
5. Status of COCOM negotiations, including Segment A proposals.
6. Consideration of technology control proposals from the Militarily Critical Technologies List.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Lee Ann Carpenter, Technical Support Staff, ODAS/EA/BXA, room 1621, U.S. Department of Commerce, 14th & Pennsylvania Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 377-2583.

Dated: August 21, 1992.

Betty Anne Ferrell,

Director, Technicol Advisory Committee Unit.

[FR Doc. 92-20472 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DT-M

Economic Development Administration

Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), DOC.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

Firm name	Address	Date petition accepted	Product
King Wood Turning Co., Inc	5370 Alhambra Avenue, Los Angeles, CA 90032	07/22/92	Wood Auto Accessories (Knobs, Handles, Levers) and Light Fixtures.
Craneveyor Corporation	1524 North Portrero Avenue, South El Monte, CA 91733.	07/22/92	Crane/Hoist System for Material Handling.
Able Enterprises, Inc	1500 Jack McKay Blvd., Ennis, TX 75119	07/22/92	Van and Bus Window Frames and Mini-Blinds/ Pleated Shades.
Bell Manufacturing Company, Inc	P.O. Box 1079/900 W. Wise, Bowie, TX 76230	07/22/92	Radiators and Pumping Engines.
Full Vision, Inc	P.O. Box 647, Newton, KS 67114	07/24/92	Accessories and Parts for Agricultural Tractors and Construction Equipment.
Eagle Convex Glass Specialty Company	P.O. Box 1340, 415 Tuna Street, Clarksburg, WV 26302-1340.	07/24/92	Appliance Panels, Flat Etched Glass for Computer Screens, Platters of Convexed, Edged Glass.
M.D. Machine Company, Inc	602 7th Avenue, Trafford, PA 15085	07/24/92	Machine Tooled Accessories and Parts Pressed or Cut From Metal in Semi-Automated Process.
Town and Country Research and Development, Inc.	Route 1, Box 81A, Marion, ND 58461	07/24/92	Weed Badger.
Beall Manufacturing, Inc	P.O. Box 70, East Alton, IL 62024	07/24/92	Leaf Springs.
Lyntone Belts, Inc	P.O. Box 5110, Edmond, OK 73083-5110	07/28/92	Men's and Boy's Belts, Charro and Miscellaneous Belts, and Men's Suspenders.
Gulf Coast Wire Products, Inc	P.O. Box 68, Kaplan, LA 70548	07/28/92	PVC Fluidized Wire With Plastic.
Shadowdancer, Inc	85 Olean Street, Angelica, NY 14709	07/28/92	Statuettes (Made of Tin).
Loubella Extendables, Inc	5540 Harbor Street, City of Commerce, CA 90040	08/04/92	Women's Garments: Slacks, Skirts, Blouses and Jackets.
Conneaut Leather, Inc	525 W. Adams Street, Conneaut, OH 44030	08/04/92	Leather for Upholstery, Desktops, and Bookbinding.
Comptec, Incorporated	7837 Custer School Road, Custer, WA 98240	08/04/92	Plastic Components and Keytops for Keyboards, Phones, Calculators or Computer Keyboards.
American Coating Technology, Inc	186 County Road U, River Falls, WI 54022	08/07/92	Coated Paper for Pressure Sensitive Applications and Scrap Paper.
Coin Concept's, Inc	16 Edgeboro Road, Unit 4, E. Brunswick, NJ 08816.	08/07/92	Coin or Token Operated Games of the Types Used in Arcades, Made of Metal and Wood.
Commercial Doors, Inc	230 East 16th Street, Paterson, NJ 07524	08/07/92	Hollow Metal Doors and Frames.
Eletro Sprayer Systems, Inc	1090 Fargo Avenue, Elk Grove Village, IL 60007	08/07/92	Machines for Uses as Accessories to Printing Presses.
M.S. Company, Inc	61 School Street, Attleboro, MA 02703	08/07/92	Karat Gold Findings, Chains and Sterling Silver Chains.
Trio Manufacturing Company	2 N. Jackson St., Drawer 270, Forsyth, GA 31029	08/07/92	Yarn of Cotton Fiber, Twine of Cotton Fiber and Yarn of Cotton and Man-Made Fiber.
M.A.P. Acquisitions	5144 West McKinley, Phoenix, AZ 85043	08/07/92	Metal Electronic Components for Computers, Aircraft Body Parts and Auto Parts.
Steffes & Son Manufacturing, Inc	Hwy #22 S., Dickinson, ND 58601	08/10/92	Storage Bins.
DeVlieg-Bullard, Inc	3100 W. End Ave., Suite 880, Nashville, TN 37203	08/13/92	Machine Tools.
Griffin Industries, Inc	43900 Highway 13, Meeker, CO 81641	08/13/92	Reamers of High Speed Steel and Drills of High Speed Steel.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business on the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 19, 1992.

Kathleen W. Lawrence,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 92-20473 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-24-M

Foreign-Trade Zones Board

[Docket 63-91]

Foreign-Trade Zone 61, San Juan, Puerto Rico; Application for Subzone, Searle Pharmaceutical Plant, Caguas, Puerto Rico; Amendment to Application

Notice is hereby given that the application submitted by the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of FTZ 61, requesting special-purpose subzone status for the pharmaceutical products manufacturing facilities of Searle & Company (Searle) (subsidiary of Monsanto Co.) in Caguas, Puerto Rico (56 FR 56187, 11/1/91) has been amended to modify the boundaries of the proposed site and to include additional finished products within the scope of its manufacturing request.

The original application listed the following products that would be manufactured under zone procedures: cardiovascular, antihistamine, antiasthmatic, hormonal, antimicrobial, anticholinergic, antipsychotic, gastrointestinal, and antidiarrheal products as well as anabolic steroids. The amendment adds the following to the list of products that could be manufactured under zone procedures: Fertility, antiinfective, antibacterial, antitumor, immunologic, antiinflammatory, anti-arthritic, respiratory, alimentary, analgesic, antiallergic, chemotherapeutic, anesthetic, and vitamin products, as well as drugs affecting the central nervous system, including anticonvulsants, hypnotics and sedatives.

The amendment also modifies the description of the site to include within the proposed subzone boundaries a local road that the Municipality of Caguas has transferred to the company in exchange for other property. The application remains otherwise unchanged.

The comment period is reopened until October 13, 1992.

Dated: August 20, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92-20475 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 26-92]

Foreign-Trade Zone 84, Houston, TX; Application for Subzone, Shell Oil Co., Refinery and Petrochemical Complex; Harris County, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting special-purpose subzone status for the "Deer Park" oil refinery and petrochemical complex of Shell Oil Company, located in Harris County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 14, 1992.

The refinery complex consists of 2 sites located north of the town of Deer Park and 7 miles east of Houston, alongside the Houston Ship Channel: *Site 1* (1,427 acres)—225,000 barrels per day refinery and petrochemical manufacturing complex, including barge and tanker loading and unloading facilities, on the south side of the Channel; and, *Site 2*—three crude oil storage tanks (total 732,000 barrel capacity) and pipelines leading to and from the tanks, leased from the Houston Fuel Oil Terminal Company, 2 miles northeast of the refinery complex, on the north side of the Channel. The terminals, storage facilities and pipelines operate as an integral part of the refinery.

The refinery (2,400 employees) is used to produce gasoline, fuel oil, jet fuels, middle distillates, lube oil, and naptha. Various chemical products include epoxy resins, Bis-Phenol-A, thermoplastic rubbers, ethylene, propylene, benzene, butadiene, and glycols. Approximately one-third of the refinery inputs (crude oil, feedstocks, and blendstocks) are sourced abroad. Certain chemical feedstocks such as syngas, sulphuric acid, propylene, methyl mercaptan, and anhydrous hydrochloride may also be sourced abroad in the future. Some 8 percent of the products are exported.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company is seeking to avoid duties on fuel used in the refinery and to choose the finished-product duty rate in certain circumstances. For example, the company plans to choose the zero duty rate that applies to certain petrochemical products, such as ethylene, propylene, MEP (a methane/ethane/propane/ hydrogen mix), butalene, butadiene, benzene, propane, asphalt, and petroleum coke. (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.)

MTBE (methyl tertiary butyl ether) is one of the blendstocks sourced from abroad. On MTBE, which is blended with gasoline at the refinery and then sold in the U.S., Shell is seeking to apply the finished gasoline duty rate (1.25 cents/gallon) to the MTBE (duty rate—5.6%). The components of MTBE are butylene (a byproduct of refining at the Shell plant) and methanol, some of which may be sourced abroad (duty rate—18%).

Foreign merchandise would also be exempt from state and local *ad valorem* taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations (as revised, 56 FR 50790-50808, 10-8-91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 26, 1992. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 9, 1992).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the District Director, U.S. Department of Commerce, 515 Rusk Street, Houston, Texas 77002.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 3716, Washington, DC 20230.

Dated: August 21, 1992.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 92-20474 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with July anniversary dates. In accordance with the Commerce

Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Roland L. MacDonald, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce ("the Department") has received timely requests, in accordance with § 353.22(a)(1) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements, with July anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than July 31, 1993.

Antidumping duty proceedings and firms	Periods to be reviewed
Brazil:	
Silicon Metal A–351–806	
Companhia Brasileira Carbureto de Calcio, Companhia Ferroligas Minas Gerais Minasligas, Eletroita, S.A., Rima Eletrometalurgia S.A.	3/29/91–6/30/92
Industrial Nitrocelluiose A–351–804	
Companhia Nitro Quimica Brasileira	7/1/91–6/30/92
Japan:	
Polyethylene Terephthalate Film, Sheet, and Strip * A–588–814	
Diafoil Co., Ltd. Teijin, Ltd.	11/30/90–5/31/92
Countervailing duty proceedings:	
None	

* Toray Plastics (America), Inc. (Toray America) has requested that the Department conduct an administrative review of two Japanese producers, Teijin, Ltd. and Diafoil Co., Ltd., under § 353.22(a)(1) of the Department's regulations. Both Teijin and Diafoil have questioned Toray America's "interested party" status as a U.S. producer under § 353.2(k)(3). The Department is proceeding with the review of Teijin and Diafoil, but intends to resolve the issue of Toray America's interested party status promptly. Interested parties should submit comments on this issue within ten days of the publication of this notice.

Interested parties must submit applications for administrative protective orders in accordance with § 353.34(b) and section 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930 (19 U.S.C. 1675(a)) and 19 CFR 353.22(c) and 355.22(c) (1989).

Dated: August 20, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–20478 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will hold a public meeting of its Texas Habitat Protection Advisory Panel (Panel) on September 3, 1992, from 9 a.m. until 3 p.m., at the Holiday Inn, Hobby Airport, 9100 Gulf Freeway, Houston, TX; telephone: 713–943–7979.

The Panel will discuss the Houston-Galveston Ship Channel Project, the Mesquite Bay-Oil Well Mitigation Project with Dredged Material, the West Galveston Bay Bank Stabilization and Berm Rebuilding Project, and the Texas Coastal Management Plan. The Panel will also hear an update of issues from previous panel meetings including the Channel to East Matagorda Bay, Breaux Bill Activities, and Section 216 Studies.

For more information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 331, Tampa, FL; telephone: (813) 228–2815.

Dated: August 20, 1992.

Ricahrd H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–20456 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Change in Public Meeting Date and Location

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date and location of a public meeting of the North Pacific Fishery Management Council's Gulf of Alaska Rockfish Committee, originally published in the **Federal Register** at 57 FR 36385, on August 13, 1992, has been rescheduled. The changes are noted below; all other information originally published at 57 FR 36385, remains unchanged.

CHANGE: September 14, 1992, meeting in Juneau, Alaska.

TO: September 20–21, 1992, meeting in Anchorage, Alaska, beginning at 10:30 a.m. on September 20.

CHANGE LOCATION OF MEETING TO: The Portage Room, Anchorage Hilton Hotel, Anchorage, Alaska.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: August 20, 1992.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 20445 Filed 8–25–92; 8:45 am]

BILLING CODE 3510–22–M

International Trade Administration

[A–549–502]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of final results of Antidumping Duty Administrative Review.

SUMMARY: On June 10, 1991, the Department of Commerce published in the **Federal Register** the preliminary results of an administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand. The review covers shipments of pipe and tube to the United States by one exporter during the period March 1, 1988 through February 28, 1989. We preliminarily found that dumping margins exist with respect to this exporter.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from the petitioners and the respondent. Based on our analysis of comments received, the dumping margin has changed from that presented in the preliminary results.

EFFECTIVE DATE: August 26, 1992.

FOR FURTHER INFORMATION CONTACT: Alain Letort or Richard Weible, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3793 or telefax (202) 377–1388.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 1991, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain circular welded carbon steel pipes and tubes from Thailand for the period March 1, 1988 through February 28, 1989 (56 FR 26648). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by the review are shipments of certain circular welded carbon steel pipes and tubes with an outside diameter of 0.375 inch or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipe and tube." Until January 1, 1989, this merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the Tariff Schedules of the United States, Annotated ("TSUSA"). Pipe and tube is now classifiable under item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090 of the Harmonized Tariff Schedule ("HTS"). As with the TSUSA numbers, the HTS numbers are provided for convenience and customs purposes. The written product description remains dispositive.

This review covers shipments made by Saha Thai Steel Pipe Co., Ltd. ("Saha Thai") from Thailand to the United States during the period March 1, 1988 through February 28, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results of the review. We received timely comments from the petitioners, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and its individual members, and Saha Tahai.

Comment 1: Petitioners argue that the Department erred in accepting Saha Thai's calculation of production costs, which include revenues from sales of flat bar made from coil scrap. Citing our notice of Final Determination of Sales at Less than Fair Value; Titanium Sponge from Japan (48 FR 38687—October 1, 1984), where similar situation occurred, petitioners claim that revenues from sales of flat bar should be excluded from Saha Thai's production costs because (a) flat bar is not a by-product of the manufacturer of pipe and tube, but rather is an intermediate product, since it is manufactured on separate machinery not used in producing pipe and tube, (b) the quantity of production of flat bar is decided by management independent from the production of pipe and tube, and (c) the production of flat bar is not an unavoidable consequence of manufacturing pipe and tube (Saha Thai could, like others, simply dispose of the steel scrap on the open market). Petitioners assert, therefore, that the Department should treat the scrap transferred to Saha Thai's flat-bar department as sold to that department and substitute this revenues from sales of flat bar in Saha Thai's production-cost calculations.

Saha Thai replies that (a) flat bar is produced on a machine directly adjacent to the slitting machine used in producing pipe and tube, (b) the production of flat bar is determined entirely by the production of pipe and tube, and (c) the excess material used for flat bar is an unavoidable consequence of slitting narrow steel coils for the production of pipe and tube.

Department's Position: We agree with petitioners. Flat bar is not a by-product of the manufacture of pipe and tube; rather, it is the product of further processing of the steel scrap resulting from the manufacture of pipe and tube. Therefore, the revenues from the scrap used in the production of flat bar should not be based on the price of the finished flat bar, but rather on the revenues from the sale of scrap to unrelated purchasers. We have adjusted Saha Thai's production costs accordingly, substituting for finished flat-bar revenues the revenues from scrap sales to unrelated purchasers in Saha Thai's production-cost calculations.

Comment 2: Petitioners assert that the Department should have calculated the amount of coil in one ton of galvanized threaded and coupled ("GTC") pipe by deducting the weight of the coupling and zinc in one ton of GTC pipe. Instead, petitioners claim, the Department unquestioningly used the production costs submitted by Sana Thai, in which Saha Thai deducted from one ton of steel the entire weight of the zinc consumed in one ton of pipe, rather than the amount of zinc actually on the pipe.

Petitioners point out that a substantial portion of the zinc consumed in the production of galvanized pipe does not end up as part of the coating on the pipe. Saha Thai admitted as much, petitioners suggest, when it deducted zinc dross and ash from its zinc costs. Petitioners argue, however, that Saha Thai has ignored the excess zinc which, during the finishing process, is blown off both the outside and the inside of the pipe by means of compressed air or steam, and which is known in the industry as "coarse dust" or "fine dust." Typically, petitioners claim, this dust constitutes a higher amount of zinc scrap than does dross and ash.

During the verification conducted as part of the preceding administrative review, the Department only verified Saha Thai's total zinc usage and dross and ash collection. Petitioners claim that the zinc usage rates Saha Thai reported for the current review period are not credible because they would have resulted in inferior quality pipe. Therefore, petitioners request that the Department reject Saha Thai's zinc application rates and use, as best information otherwise available pursuant to section 776(c) of the Act, the standard use of zinc on GTC pipe manufactured to British Standard ("BS") and American Society for Testing Materials ("ASTM") specifications in order to determine the weight and cost of coil.

Saha Thai replies that, in calculating the coil cost for one ton of GTC pipe, it made an adjustment to reflect the fact that there is in one ton of GTC pipe a certain amount of weight associated with the zinc actually on the pipe and the weight of the couplings. Saha Thai denies petitioners' assertion that it deducted the entire weight of the zinc consumed in the production of one ton of pipe rather than the amount of zinc actually on the pipe. Saha Thai states that it did not include the weight of zinc dross and ash consumed in the production of GTC pipe in its coil weight adjustment. With respect to petitioners' assertions that Saha Thai failed to account for excess zinc or "dust" blown off the pipe during the galvanizing process, Saha Thai argues that this claim is based on factual information untimely submitted after the publication of the preliminary results. Saha Thai requests that this information be stricken from the record, in accordance with § 353.31(a) of the Commerce Department's regulations (19 CFR 353.31(a)).

Department's Position

The issue of whether to use, in calculating coil costs for GTC pipe, the actual consumption of zinc used in the galvanizing process or the amount of zinc actually on the pipe presented the Department with two options.

The first option was to base the calculation on standard zinc usage, which is the minimum coating level required in the industry specification. This approach, while it reflects the

industry's requirements, does not reflect the quantity of zinc actually on the pipe, because in practice pipe producers always apply a zinc coating heavier than what the specifications call for. The second option was to base the calculation on zinc consumption after deduction of dross and ash.

Although we agree with petitioners that the latter option does not take into account fine dust blown off the pipe, petitioners did not raise this issue until their case brief, filed well after the publication of the preliminary results. In accordance with § 353.31(a)(1)(ii) of Commerce Regulations (19 CFR 353.31(a)), the Department declined to take into account new factual information submitted at such a late date in the proceeding. Accordingly, we removed petitioners' case brief from the official record of this proceeding on August 6, 1991 and asked petitioners to resubmit their case brief after deletion of this new and untimely factual information. Based on the factual information which is on the record of this proceeding, the Department cannot possibly measure, or even approximate, the amount of fine dust blown off the pipe.

Under the circumstances, the Department believes the respondent's methodology for calculating actual zinc usage is the most reasonable approach. Moreover, we used this methodology in calculating coil costs in the prior administrative review. Therefore, we used it again for purposes of the final results of this administrative review.

Comment 3: Petitioners contend that the Department erred in applying Saha Thai's production costs for British Standard Medium ("BS–M") pipe to pipe meeting British Standard Light ("BS–L"), British Standard Heavy ("BS–H"), and British Standard Special ("BS–S") specifications. Petitioners claim that the forming and galvanizing costs of BS–S, BS–L, and BS–H pipe differ from those of BS–M pipe. Petitioners have calculated differences in production costs between those grades of pipe on the basis of information supplied by Saha Thai, and request that the Department adjust production costs to account for those differences. With regard to those types of pipe or time periods for which no cost data was available, petitioners have suggested that we use the most contemporaneous BS–M pipe costs as the best information otherwise available.

Saha Thai points out that petitioners erred in recalculating the cost of coils used in producing BS–H, BS–L, and BS–S pipe. Saha Thai requests that, should the Department choose to recalculate Saha Thai's costs for BS–S, BS–L, BS–M, and BS–H pipe, it should do so using actual cost data provided in Saha Thai's response. Saha Thai notes that it provided no cost data for BS–H and BS–L pipe in certain quarters because it did not manufacture any such pipe during those quarters. In those cases, Saha Thai urges the Department to use the cost data provided for earlier quarters. Where no cost data is available for a particular kind of pipe, *e.g.*, BS–S pipe, Saha Thai concurs with petitioners that BS–M costs should be used as a substitute.

Department's Position: We agree with petitioners that an adjustment to production costs is warranted in order to reflect differences in labor, factory overhead, and zinc costs between BS–L, BS–H, and BS–S pipe on the one hand, and BS–M pipe on the other hand. We do agree, however, with Saha Thai that petitioners' methodology and calculations are erroneous. We recalculated production cost differences between the grades of pipe noted above based on Saha Thai's own information. In those where no cost data was available for particular types of pipe or for particular time periods, we used the most contemporaneous BS–M pipe costs as the best information otherwise available, as petitioners have suggested and respondent has concurred.

Comment 4: Petitioners argue that the Department erred in comparing galvanized fence tubing ("GFT") sold by Saha Thai in the United States to BS–S or BS–L pipe sold in the home market, because there are significant differences in wall thickness and galvanized surface area between BS–S or BS–L pipe and GFT. Petitioners claim the Department should have recalculated production costs for GFT and adjusted those costs to account for differences in the quantity of zinc required to coat GFT and either BS–S or BS–L pipe.

Department's Position: We agree with petitioners that comparing GFT sold in the United States to BS–L or BS–S sold in the home market was incorrect, since BS–M pipe is more similar to GFT than either BS–L or BS–S pipe. We disagree, however, with petitioners' view that it is necessary to calculate differences in production costs between GFT and BS–S or BS–L pipe, since, in the prior segment of this proceeding, petitioners advocated comparing GFT to BS–M pipe, and making an adjustment to foreign market value to account for differences in physical characteristics ("diffmers") between GFT and BS–M pipe. In this segment of the proceeding, responding to petitioners' previously expressed concerns, Saha Thai submitted all the data required to adjust for diffmers between GFT and BS–M pipe. Therefore, we compared GFT sold in the United States to BS–M pipe sold in the home market, using the diffmers submitted by Saha Thai, in calculating the final results of this administrative review.

Comment 5: Petitioners argue that the Department erred in calculating the indirect tax liability that the exported merchandise would have incurred, had it been taxed, by applying the rate of business tax in Thailand to the c. & f. or c.i.f. packed value of the merchandise sold in the United States, since merchandise sold in the home market does not normally incur ocean freight and marine insurance charges. Therefore, petitioners claim, the Department should have calculated the business tax after, rather than before, deducting ocean freight and marine insurance from United States price.

Saha Thai contends that the Department acted properly since the business tax is calculated in Thailand on gross sales receipts, including revenues related to transportation services provided by the seller. Saha Thai argues that the statute directs the Department to adjust United States price for the amount of tax that would have been charged on U.S. sales had they not been exempted from taxation by reason of exportation, and not for the amount of tax borne by home-market sales or by U.S. sales adjusted to some basis equivalent to that of home-market sales.

Saha Thai argues further that, should the Department adopt petitioners' suggestion, a parallel modification in the calculation of foreign market value is necessary, since the same amount of business tax is added to both U.S. price and foreign market value. Saha Thai believes that foreign market value would artificially be inflated if this change were not made.

Department's Position: We agree with respondent. Section 772(d)(1)(C) of the Act provides that the Department must increase United States price by:

> [T]he amount of any taxes imposed in the country of exportation directly upon the exported merchandise which have not been collected by reason of the exportation of the merchandise to the United States, but only to the extent that such taxes are added to or included in the price of such or similar merchandise when sold in the country of exportation.

The amount to be added to United States price is the amount of business tax that the government of Thailand would have assessed against the exported goods had they been subject to the tax. Because Thailand does not, in practice, assess a business tax against exports, this inquiry is unavoidably

hypothetical. The most reasonable assumption we can make in imputing a business unavoidably hypothetical. The most reasonable assumption we can make in imputing a business tax on U.S. sales, however, is that the government of Thailand would calculate such a tax using a tax base equivalent to that used for calculating the business tax on goods sold in the home market. Therefore, we essentially attempt to apply the home-market tax law to the export sales.

To the extent possible, we attempt to calculate the U.S. tax base in the manner most comparable to the tax base for home-market sales, including in the U.S. tax base the same level of expenses (rather than the same expenses) included in the home market tax base. Therefore, if the foreign law charges the business tax against an ex-factory price, we use a U.S. ex-factory price as the U.S. tax base. Conversely, if the home-market tax is charged against a delivered price, we should use a delivered U.S. price as the U.S. tax base. Such a U.S. tax base would include home-market inland movement charges, ocean freight, the value added to the merchandise in the United States, and so forth. Once the U.S. tax base is determined, we multiply it by the home-market tax rate and add the product to United States price. We then make a circumstance-of-sale adjustment to foreign market value for differences between the home-market and the U.S. business tax.

In the instant case, in accordance with the Department's policy, we have calculated the business tax on U.S. sales based on the c. & f. or f.o.b. value of the imported merchandise, as appropriate, because the Thai business tax is calculated on gross sales receipts.

We agree with Saha Thai that the amount of business tax added to foreign market value should be calculated on the same basis as that added to U.S. price, because otherwise foreign market value would artificially be inflated.

Comment 6: Petitioners claim that the retroactive application to ongoing administrative reviews of the Department's new policy of calculating only one duty deposit rate for "all other" shippers, that rate being equal to the highest rate for any individual shipper in the most recently completed segment of a proceeding, is improper, since it materially affects the rights of parties without their knowledge and without their having had an opportunity to comment on this change.

Since this policy change results, in the instant case, in a significant lowering of the "all other" duty deposit rate, petitioners allege that the decision of interested parties to request or refrain from requesting an administrative review would have been different had they known that the policy was about to change. Petitioners speculate that this new policy, if maintained, might lead to abusive manipulation by respondents of the administrative review process, as it encourages respondents to coordinate individual responses in each segment of a proceeding and to take a chance on receiving the rate assigned to the individual respondent with the highest margin. Alternatively, petitioners suggest, respondents may request unnecessary reviews of low-margin producers in order to seek a second, third, or fourth opportunity to achieve lower "all other" rates.

For these reasons, petitioners claim, petitioners will now have an incentive to include in their review requests high-margin named respondents and other producers not likely to respond, thereby compelling the Department to resort to the best information otherwise available. Because this greater focus on individual firms is likely to strain the Department's already limited resources, petitioners suggest that the Department revert to its previous policy of calculating one "all other" duty deposit rate for producers that were shipping at the time of the original investigation and another duty deposit rate for new shippers based on the weighted-average duty deposit rate calculated for all respondents in the most recent segment of a proceeding.

Saha Thai takes no position on this policy change, except to suggest that the Department clarify its policy and specify whether the "all other" rate is a liquidation and cash deposit rate or a cash deposit rate only. Saha Thai also suggests that the Department clarify to which producers/exporters the "all other" rate applies.

Department's Position: We disagree with petitioners that the Department's recent change in practice concerning the calculation of "all other" and "new shippers" rates in administrative reviews in any way denied interested parties the opportunity to comment on this change in practice. We also disagree that the new practice will enable petitioners or respondents to manipulate the administrative review process.

Prior to March 6, 1991, the Department's practice in administrative reviews was to assign a "new shippers" rate for deposit of estimated antidumping duties by those firms who began to export to the United States after the last day of the period reviewed, based on the highest duty deposit rate calculated (*i.e.*, not based on best information otherwise available, or "BIA") for any respondent in the most recent segment of a proceeding. The U.S. Customs Service informed the Department that it did not have the means to determine when a given exporter's first shipment occurred. Therefore, the previous practice could not be implemented and the Department needed to change it. Our new practice is to assign one rate to all exporters not having an individual rate. This rate is equal to the highest rate for any firm in the administrative review, other than those receiving a rate based entire on BIA.

There is no reference in the statute or regulations concerning the method of calculating an "all other" or "new shippers" rate. This practice had simply evolved through the publication of notices and is an interpretive rule which is not subject to the notice and comment requirements of the Administrative Procedures Act [*see Timken Co.* v. *United States*, 673 F. Supp. 495,514 (Ct. Int'l Trade 1987)]. Therefore, the Department was not required to publish a notice of proposed rulemaking. Nevertheless, we did provide an opportunity for interested parties to comment on this change in practice through the normal comment procedure following the publication of the notice of preliminary results.

Petitioners claim that the current policy may lead to abusive manipulation of the administrative review process through selective request for review and/or respondents coordinating questionnaire responses. We believe this is extremely unlikely since the "all other" rate applies only to producers or exporters, whether or not they are new shippers, who have never received an individual rate, either in the original investigation or in any previous review. All major producers or exporters are likely to have individual rates, and petitioners are free to request reviews of any other exporters. Further, the Department's decision to initiate an administrative review is based solely on a timely request made pursuant to § 353.22 of the Department's Regulations (19 CFR 353.22). The intent or motivation behind the request is not relevant to the initiation of an administrative review. This practice also does not change the responsibility of respondents to provide the Department with accurate and timely information. If respondents fail to provide information, or provide inaccurate or incomplete information, the Department will assign a duty deposit rate based on BIA.

For administrative reasons, the Department does not have the option of reverting to the previous practice of

assigning a separate "new shippers" rate. In response to the issue raised by Saha Thai, the new "all other" rate is for cash deposit purposes only.

Comment 7: Saha Thai argues that the Department acted improperly in denying the upward adjustment it claimed to purchase price, pursuant to section 772(d)(1)(D) of the Act, in the amount of estimated countervailing duties collected upon entry of the subject merchandise in the United States.

Petitioners support the Department's position that no adjustment can be made to United States price for countervailing duties until after those duties have been finally assessed. Petitioners point out that the Department's interpretation has been upheld by the Court of International Trade in several decisions, notably *Serampore Industries Pvt. Ltd.* v. *United States* (C.I.T. 1987, 675 F. Supp. 1345).

Department's Position: We agree with petitioners that such an adjustment can only be made to offset countervailing duties imposed, *i.e.*, assessed at the time of liquidation (and not to offset a cash deposit for estimated countervailing duties). Because the Department published a notice of "Final Results of Countervailing Duty Administrative Review" with respect to the subject merchandise on October 9, 1991 in the **Federal Register** (56 FR 50852), we have made an upward adjustment to purchase price to offset countervailing duties imposed as a result of that notice, in accordance with section 772(d)(1)(D) of the Act.

Comment 8: Saha Thai contends that the Department should base the upward adjustment to purchase price for indirect tax rebates on exported merchandise on that portion of the rebate found not to have been excessive in the most recent administrative review of the companion countervailing duty order, rather than on that portion of the rebate found not to have been excessive in the original investigation.

Department's Position: We agree with respondent. We used the portion of the indirect tax rebate found not to have been excessive in the original investigation for purposes of the preliminary notice only because the final results of the countervailing duty administrative review had not yet been published. In the interval, however, on October 9, 1991, the Department published in the **Federal Register** a notice of "Final Results of Countervailing Duty Administrative Review" with respect to the subject merchandise and covering the calendar 1988 review period (56 FR 50852). Therefore, as Saha Thai suggested, we have based the upward adjustment to purchase price for indirect tax rebates on exported merchandise on that portion of the rebate found not to have been excessive in the 1988 review.

Comment 9: Saha Thai asks that the Department base the upward adjustment to purchase price for both indirect taxes rebated and countervailing duties imposed on the *preliminary* results of the most recent countervailing duty administrative review, which covers the calendar year 1988.

Petitioners argue that these adjustments should be based on the *final* results of the most recently *completed* countervailing duty administrative review, which covers the calendar year 1987. Unless the 1988 countervailing duty administrative review is completed before the Department's final determination in this review, the Department should base these adjustments on the final results of the 1987 review.

Department's Position: On October 9, 1991, the Department published in the **Federal Register** its final results of the countervailing duty administrative review for 1988 [*Certain Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Results of Countervailing Duty Administrative Review* (56 FR 50852)].

Therefore, we based the upward adjustments to purchase price for both indirect taxes rebated and countervailing duties on the final results of the 1988 administrative review.

Comment 10: Saha Thai argues that the Department acted improperly in comparing the 216 U.S. sales observations for which there were no matching contemporaneous home-market sales ("sales out of time and space") to a foreign market value based on the weighted-average value of all home-market sales during the review period of the relevant product-comparison group. Respondent claims that this methodology unjustly distorts dumping margins because production costs and prices increased steadily and substantially during the period of review. Saha Thai contends that the Department should calculate foreign market value for sales "out of time and space" by comparing such sales with home-market sales of the same grade in the closest size range that were made within the relevant contemporaneous time frame.

Petitioners support the Department's methodology and point out that all of the world's economies are experiencing inflation, to a greater or lesser extent. A respondent's production costs will also always be higher at the end of a review period than at the beginning. Furthermore, the cost increases experienced by Saha Thai during the review period were not nearly of the same magnitude as the five percent or more monthly price and cost increases for which the Department traditionally makes an adjustment in cases involving hyper-inflationary economies. Therefore, petitioners assert, it is no more unjust to use a weighted-average price for the entire review period than to use a weighted-average cost of production in cases involving moderately inflationary economies.

Department's Position: We agree with respondent. The Department has implemented its 90-day backward/60-day forward guideline in order to fulfill the statutory requirement in section 773(a)(1) of the Act that foreign market value be based on the home-market price of such or similar merchandise at the time such merchandise is sold in the United States (emphasis added). [See, *e.g.*, Final Results of Antidumping Duty Administrative Review; Certain Values and Connections, of Brass, for Use in Fire Protection Systems from Italy (56 FR 5388; February 11, 1991), comment 4; Final Results of Antidumping Duty Administrative Review; Certain Iron Construction Castings from Brazil (55 FR 26238; June 27, 1990), comment 15; Final Results of Antidumping Duty Administrative Review; Brass Sheet and Strip from the Republic of Korea (54 FR 33257; August 14, 1989), comment 3.] Therefore, for purposes of these final results, and in order to adhere to the principle of contemporaneity, we have followed our normal practice of comparing those U.S. sales observations for which there were no contemporaneous, matching home-market sales with contemporaneous sales of the next most similar merchandise in the home-market, and made the appropriate adjustment for differences in the physical characteristics in the merchandise based on information submitted by Saha Thai.

Comment 11: Saha Thai claims that the Department applied an incorrect diffmer adjustment to 1¼-inch black threaded-and-coupled pipe sold in the United States in the first quarter of 1988. Saha Thai requests that the Department correct this mistake in the final results of the administrative review.

Department's Position: We agree with respondent and have corrected this typographical error in our final calculations.

Comment 12: Saha Thai claims that the Department applied an incorrect diffmer for threading and coupling in observations 457, 2014, 2120, and 2121 of the transaction margin data set. Saha Thai requests that the Department correct this error in the final results of the administrative review.

Department's Position: We agree with respondent, and have corrected this programming error in our final calculations.

Comment 13: Saha Thai states that it made a clerical error in reporting the tonnage and gross unit price for sales observation 422 in its home-market sales listing. Since this error distorted the foreign market value for observation 40 of the transaction margin data set and for all sales falling under home-market group 27, Saha Thai requests that the Department correct this error in its final calculations.

While not disputing that a clerical error occurred, petitioners argue that Saha Thai has inappropriately rounded upward the weight per piece of the product, resulting in a lower unit price and a lower margin than would otherwise be the case. Since Saha Thai rounded off the standard per-piece weights throughout the sales listing, thereby affecting the margin calculations, petitioners request that the Department multiply the number of pieces in each home-market sale observation by the standard length of 6 meters per piece, and then by the theoretical weight per meter listed in the questionnaire response. The resulting figure, unrounded, should be divided into the gross unit sale price to obtain a valid per-ton home-market sale price.

Department's Position: We cross-checked respondent's claim with other contemporaneous transactions of the same merchandise and agree that a keypunch error was made when the tape was being prepared. We have, therefore, corrected this error in our final calculations, but we calculated the home-market sale price using the weight calculation advocated by petitioners because Saha Thai's rounding does, in fact, result in an artificially lower unit price.

Final Results of the Review

After analysis of the comments received, we determine that the following weighted-average margin exists for the period March 1, 1988 through February 28, 1989:

Manufacturer/producer/exporter	Margin (percent)
Saha Thai	0.45

The Department shall determine, and the United States Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements shall be effective, upon publication of this notice of final results of administrative review, for all shipments of the subject merchandise from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) Because Saha Thai's dumping margin is de minimis, the Customs Service shall waive the deposit requirement for all entries of the subject merchandise from that producer during the review period; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this administrative review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate shall be that established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will be zero. Pursuant to the application of our rule regarding de minimis margins, this rate represents the highest rate for any firm with shipments in the administrative review, other than those firms receiving a rate based entirely on the best information otherwise available.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with § 353.34(d) of the Commerce Department's regulations (19 CFR 353.34(d)). Failure to comply is a violation of the APO. This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Commerce Department's regulations (19 CFR 353.22).

Dated: August 18, 1992.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20351 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in China

August 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 340 and 617 are being increased, variously, for swing and carryforward. The limit for Category 607, the donor category for the swing being applied, is being reduced in a separate directive. As a result of the increases, the limits for Categories 340 and 617, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 21, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 28, 1992, you are directed to amend further the directive dated November 22, 1991, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
340	826,219 dozen of which not more than 424,640 dozen shall be in Category 340-Z [2].
617	16,115,482 square meters.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.
[2] Category 340-Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-20469 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in China

August 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 21, 1992.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 60976, published on November 29, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 21, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 22, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 21, 1992, you are directed to amend further the directive dated November 22, 1991, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
218	11,093,315 square meters.
314	47,450,041 square meters.
334	307,902 dozen.
338/339	2,399,014 dozen of which not more than 1,809,096 dozen shall be in Categories 338-S/339-S [2].
359-C [3]	529,244 kilograms.
607	2,245,095 kilograms.
835	120,490 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.
[2] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.
[3] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-20470 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

August 20, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6705. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 341 is being increased by application of swing and special shift, reducing the limits for Categories 641 and 647/648.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 1905, published on January 16, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 13, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 27, 1992, you are directed to amend further the directive dated January 13, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
341	3,485,437 dozen of which not more than 1,935,095 dozen shall be in Category 341-Y [2].
641	891,180 dozen.
647/648	407,277 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.
[2] Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-20478 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in Malaysia

August 20, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6712. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58369, published on November 19, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and Memorandum of Understanding dated October 12, 1991, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 13, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 24, 1992, you are directed to amend further the directive dated November 13, 1991 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement, as amended, between the Governments of the United States and Malaysia:

Category	Adjusted twelve-month limit [1]
218, 219, 220, 225-227, 313-315, 317, 326 and 613/614/615/617, as a group.	77,585,976 square meters equivalent.
Sublevels within the group	
218	4,967,670 square meters.
219	24,162,490 square meters.
220	24,162,490 square meters.
225	24,162,490 square meters.
226	24,162,490 square meters.
227	24,162,490 square meters.
313	28,817,649 square meters.
314	31,034,391 square meters.
315	24,162,490 square meters.
317	24,162,490 square meters.
326	3,325,113 square meters.
613/614/615/617	24,162,490 square meters.

Category	Adjusted twelve-month limit [1]
Other specific limits	
237	299,166 dozen.
300/301	1,050,519 kilograms.
331/631	1,618,594 dozen pairs.
333/334/335/835	185,680 dozen of which not more than 92,839 dozen each shall be in Categories 333, 334, 335 and 835.
336/636	324,774 dozen.
338/339	701,788 dozen.
340/640	1,084,279 dozen.
341/641	1,349,257 dozen of which not more than 481,348 dozen shall be in Category 341.
342/642/842	337,735 dozen.
345	123,926 dozen.
347/348	329,735 dozen.
351/651	189,693 dozen.
369-S [2]	271,509 kilograms.
435	15,995 dozen.
445/446	32,336 dozen.
604	1,080,810 kilograms.
634/635	595,698 dozen of which not more than 259,950 dozen shall be in Category 635.
638/639	296,995 dozen.
647/648	1,263,050 dozen.
Group II	
201, 222-224, 229, 239, 330, 332, 349, 350, 352-354, 359-362, 369-O [3], 400-434, 436, 438-O [4], 439, 440, 443, 444, 447, 448, 459, 464-469, 600-603, 608, 607, 611, 618-622, 624-630, 632, 633, 643, 644, 649, 650, 652-654, 659, 665-670, 831-834, 836, 838, 839, 840 and 843-859, as a group.	35,622,623 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 369-S: only HTS number 6307.10.2005.

[3] Category 369-O: all HTS numbers except 6307.10.2005 (Category 369-S).

[4] Category 438-O: only HTS numbers 6103.21.0050, 6103.23.0025, 6105.20.1000, 6105.90.1000, 6105.90.3020, 6109.90.1520, 6110.10.2070, 6110.30.1550, 6110.90.0072, 6114.10.0020 and 6117.90.0023.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-20477 Filed 8-25-92; 8:45 am]

BILLING CODE 3510-DR-F

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information; Survey of Pool Cover Industry for Conformance With Labeling Provisions of Voluntary Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a survey of manufacturers of covers for swimming pools, spas, and hot tubs. The purpose of this survey is to determine the extent of conformance with the labeling provisions of a voluntary standard published by ASTM designated "Standard Performance Specification for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs, ASTM F 1346-91." The requested expiration date is March 15, 1993.

Since 1973, the Commission has received 86 reports of drownings associated with pool, spa, and hot tub covers in which the accident victim was five years of age or younger. During the years 1988 through 1991, members of the Commission staff participated in the development of a voluntary standard to address risk of drowning associated with pool, spa, and hot tub covers. The voluntary standard contains performance requirements for safety covers, and labeling requirements for all covers for swimming pools, spas, and hot tubs.

Provisions of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2056) direct the Commission to monitor industry conformance with voluntary standards which were developed with the participation of the Commission. In its Operating Plan for Fiscal Year 1992, the Commission included a project for monitoring compliance with the labeling provisions of the voluntary standard for swimming pool, spa, and hot tub covers.

The Commission plans to send a written questionnaire to each manufacturer of covers for swimming pools, spas, and hot tubs, requesting information about the firm's conformance with the labeling provisions of the voluntary standard. The Commission has information that approximately 150 firms manufacture products subject to the labeling provisions of the voluntary standard. Establishment inspections will be conducted in cases where manufacturers do not make a timely response to the questionnaire.

Information received from completed questionnaires and reports of inspections will be used by the Commission to determine the level of conformance with the labeling provisions of the voluntary standard by manufacturers of pools, spa, and hot tub covers. If the Commission determines that conformance with the labeling provisions of the voluntary standard is not adequate, it will consider whether to issue mandatory labeling requirements or initiate proceedings to order corrective action with respect to products which present a "substantial product hazard" as that term is used in section 15 of the CPSA (15 U.S.C. 2064).

Additional Details About the Request for Approval of a Collection of Information

Agency Address: Consumer Product Safety Commission, Washington, DC 20207.

Title of Information Collection: Voluntary Standard Monitoring Program for Labeling on Covers for Swimming Pools, Spas, and Hot Tubs.

Type of Request: Approval of a new plan.

Frequency of Collection. One time.

General Description of Respondents: Manufacturers and distributors of covers for swimming pools, spas, and hot tubs.

Total Number of Respondents: 150.

Number of Responses per Respondent: 1.

Hours per Response: 8.

Total Hours for all Respondents: 1,200.

Comments: Comments about this request for approval of a collection of information should be addressed to Shawn Canter, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504-0416.

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000-0001]

OMB Clearance Request for SF 28, Affidavit of Individual Surety

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0001).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement concerning SF 28, Affidavit of Individual Surety.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Affidavit of Individual Surety (Standard Form (SF) 28) will be used by all executive agencies, including the Department of Defense, to obtain information from individuals wishing to serve as sureties to Government bonds. In order to qualify as a surety on a Government bond, the individual must show a net worth not less than the penal amount of the bond on the SF 28. It is an elective decision on the part of the maker to use individual sureties instead of other available sources of surety or sureties for Government bonds. We are not aware if other formats exist for the collection of this information.

The information on SF 28 will be used to assist the contracting officer in determining the acceptability of individuals proposed as sureties.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: *Respondents,* 500; *responses per respondent,* 1.43; *total annual responses,* 715; *preparation hours per response,* .4; and *total response burden hours,* 286.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from the General Services Administration, FAR Secretariat (VRS), room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0001, SF 28, Affidavit of Individual Surety (SF 28).

Dated: August 18, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-20428 Filed 8-25-92; 8:45 am]

BILLING CODE 6820-34-M

[OMB Control No. 9000-0045]

OMB Clearance Request for Bid, Performance, and Payment Bonds

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000-0045).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve of an information collection requirement concerning Bid, Performance, and Payment Bonds.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, (202) 501-4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

"Bond" means a written instrument executed by the contractor (the "principal") and a second party (the "surety" or "sureties") to assure fulfillment of the principal's obligations to a third party (the "obligee" or "Government") identified in the bond. If the principal's obligations are not met, the bond assures payment, to the extent stipulated, of any loss sustained by the obligee.

The Miller Act (40 U.S.C. 270a-270e) requires performance and payment bonds for any construction contract exceeding $25,000, unless it is impracticable to require bonds for work performed in a foreign country, or it is otherwise authorized by law. Bonds may be required for other contracts when it is deemed appropriate.

The bond(s) are retained by the obligee (the Government) until the principal's (the contractor's) obligation is fulfilled.

This submission requests a revision of OMB approval of an information collection requirement in the Federal Acquisition Regulation (FAR). The information collection requirement in the FAR remains unchanged. However, the burden estimated has been decreased because of the revisions of estimates of usage Governmentwide based upon decreased use by individual sureties since only one individual surety need comply in lieu of the current requirement for two (applies to SF's 24, 25, 25-A, 34, 35, and 1416).

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *19,075*; responses per respondent, *4.87*; total annual responses, *92,895*; preparation hours per response, *.42*; and total response burden hours, *39,016*.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0045, Bid, Performance, and Payment Bonds.

Dated: August 18, 1992.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 92-20425 Filed 8-25-92; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Advisory Committee on the Air Force History Program; Meeting

August 14, 1992.

The Advisory Committee on the Air Force History Program will hold a meeting on September 17, 1992 from 8:30 a.m. to 4 p.m. and September 18, 1992 from 8:30 a.m. to 12 noon at Bolling Air Force Base (AFB), DC, Building 5681, Office of the Air Force Historian's 2d floor conference room. The purpose of the meeting is to examine the mission, scope, progress, and productivity of the Air Force History Program and make recommendations thereon for the consideration of the Secretary of the Air Force. The meeting will be open to the public. Topics to be discussed include: organization and personnel, current status of historical projects, and the status of the field history program.

For further information, contact Colonel George K. Williams, Deputy Air Force Historian, Bolling AFB DC, telephone (202) 767-5764.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-20374 Filed 8-25-92; 8:45am]

BILLING CODE 3910-01-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.017]

International Research and Studies Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Purpose of Program: The International Research and Studies Program provides grants to public and private agencies, organizations, institutions, and individuals to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and related fields needed to provide full understanding of the places in which the modern foreign languages are commonly used. This program supports the AMERICA 2000 strategy's efforts to move the nation in the direction of achieving the six National Education Goals, especially Goal 3—increasing the academic achievement levels of all students; and Goal 5—creating an educated citizenry capable of competing in a global economy.

Eligible Applicants: The following are eligible for new awards under this program: Public and private agencies, organizations, institutions, and individuals.

Deadline for Transmittal of Applications: November 2, 1992.

Applications Available: September 25, 1992.

Available Funds: $1,035,000.

Estimated Range of Awards: $30,000 to $170,000.

Estimated Average Size of Awards: $69,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86, and (b) The regulations for this program in 34 CFR parts 655 and 660.

Priorities: Under 34 CFR 75.105(c)(2)(i) and 34 CFR 660.10 and 660.34 the Secretary gives preference to applications that meet one or more of the following competitive priorities. The Secretary awards up to 5 points to an application that meets one or more of these competitive priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority 1

Applications that focus on the development for elementary and secondary education levels of language or area studies materials, or both, about one or more of the following regions: East Asia, Europe, Latin America, Middle East, South Asia, Southeast Asia, and Sub-Saharan Africa.

Competitive Preference Priority 2

Research and studies on more effective methods of instruction in the less-commonly taught languages at the elementary and secondary school levels in the United States.

Competitive Preference Priority 3

Research projects that further the purposes of the International Education Program authorized by part A of title VI of the Higher Education Act.

For Applications or Information Contact: Jose L. Martinez, U.S. Department of Education, 400 Maryland Avenue, SW., room 3053, ROB-3, Washington, DC 20202-5331. Telephone: (202) 708-9297. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1125.

Dated: August 20, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-20371 Filed 8-25-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER92-671-000, et al.]

Florida Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 19, 1992.

Take notice that the following filings have been made with the Commission:

1. Florida Power Corp.

[Docket No. ER92-671-000]

Take notice that on August 13, 1992, Florida Power Corporation filed a supplement to its filing in this docket to comply with a request by the Staff for additional information.

Comment date: **September 2, 1992,** in accordance with Standard Paragraph E at the end of this notice.

2. Maine Public Service Co.

[Docket No. ER92-774-000]

Take notice that on August 11, 1992, Maine Public Service Company (Maine Public) tendered for filing revisions to its wholesale electric tariff rate 0-1. The revised tariff sheets will increase annual revenues under Maine Public's wholesale rate by $705,923, based on a 1991 test year. Maine Public has requested that the rate schedule become effective on October 11, 1992.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Tampa Electric Co.

[Docket No. ER92-783-000]

Take notice that on August 14, 1992, Tampa Electric Company (Tampa Electric) tendered for filing a Letter Agreement with the Seminole Electric Cooperative, Inc. (Seminole). The Letter Agreement amends an existing Letter of Commitment between Tampa Electric and Seminole to add a delivery point and make related changes.

Tampa Electric proposes an effective date of September 1, 1992, for the Letter Agreement, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Northern Indiana Public Service Co.

[Docket No. ER92-649-000]

Take notice that on August 3, 1992, Northern Indiana Public Service Company (NIPSCO) tendered for filing Amendment No. 1 to its filing which was made on June 17, 1992, in Docket No. ER92-649-000.

This filing was made in order to extend facilities to Indiana Municipal Power Agency's (IMPA) customer, Rensselaer, and to make available to them several new Service Schedules for their operations.

During staff's review of this filing, they have asked several questions about the cost of the proposed project and the derivation of proposed recovery of cost by NIPSCO from IMPA.

This filing is being made to respond to staff's questions.

Copies of this filing have been served upon all of the parties and the Indiana Utility Regulatory Commission.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Power, Inc.

[Docket Nos. ER92-612-000 and ER92-665-000]

Take notice that Entergy Power, Inc. (EPI), on August 14, 1992, tendered for filing amendments to Service Schedules RE, E and ES in Entergy Power interchange agreements with City Utilities of Springfield, Missouri (filed in Docket No. ER92-611-000) and East Kentucky Power Cooperative, inc. (filed in Docket No. ER92-664-000) and a commitment on costing emission allowances in Docket No. ER92-611-000. Entergy Power requests an effective date of May 22, 1992 for Docket No. ER92-611-000, and an effective date of June 1, 1992 for Docket No. ER92-664-000. Entergy Power also requests waiver of the Commission's notice requirements under § 35.11 of the Commission's regulations.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Co.

[Docket No. ER92-776-000]

Take notice that on August 11, 1992, Public Service Electric and Gas Company (PSE&G) tendered for filing, under its existing Rate Schedule in Docket No. ER92-776-000, information to reflect an alternate delivery point and associated transmission service rate for delivery of a portion of the net electrical energy output of Continental Energy Associates, A Limited Partnership (CEA) qualifying facility located in Hazelton, Pennsylvania to Consolidated Edison Company of New York, Inc. (Con-Ed).

The alternate delivery point will permit CEA to deliver electrical energy to Con-Ed on an interruptible basis via the Branchburg-Rampapo 500 kV intertie as an alternate to the Waldwick-Ramapo intertie.

PSE&G seeks approval of the alternate delivery point and associated rate. PSE&G also requests a shortened comment period and waiver of § 35.3(a) of the Commission's Regulations so that the alternate delivery point can be made effective within forty-eight hours of the date of this filing, subject to refund.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Co.

[Docket No. ER92-778-000]

Take notice that on August 13, 1992, Southern California Edison Company (Edison) tendered for filing the following amendment, executed on July 24, 1992, by the respective parties:

Amendment No. 1 (Amendment) Pasadena-Edison 230 kV Interconnection and Transmission Service Agreement between city of Pasadena and Southern California Edison Company

On August 4, 1990, the Parties entered into the Pasadena-Edison 230 kV Interconnection and Transmission Service Agreement. The Agreement provides that the initial 230 kV facilities within T.M. Goodrich Receiving Station will be constructed by Pasadena subject to Edison's written approval and Edison will operate and maintain the facilities.

On July 24, 1992, the Parties executed the Amendment which provides for certain new 230-kV facilities added to the T.M. Goodrich Receiving Station by Pasadena to be subject to Edison's written approval and Edison will operate and maintain those new facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Northeast Utilities Service Co.

[Docket No. ER92-782-000]

Take notice that on August 14, 1992, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO), and Holyoke Water Company (HWP), tendered for filing an Agreement between CL&P, WMECO, and HWP and Fitchburg Gas & Electric Light Company and Harris Energy and Realty Corporation providing for an extension in service under existing rate schedules.

NUSCO requests that the Commission waive its standard notice periods and filing regulations to the extent necessary to permit the rate schedule change to become effective August 4, 1992.

NUSCO states that copies of this rate schedule have been mailed or delivered to each of the parties.

NUSCO further states that the filing is in accordance with section 35 of the Commission's regulations.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Electric and Gas Co.

[Docket No. ER92-781-000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on August 14, 1992, tendered for filing an agreement for the sale of firm capacity and energy to Orange and Rockland Utilities, Inc. (O&R).

Copies of the filing have been served upon Orange and Rockland, the New York State Public Service Commission and the New Jersey Board of Regulatory Commissioners.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Co.

[Docket No. ER92-651-000]

Take notice that on August 3, 1992, Idaho Power Company (Idaho) tendered for filing a letter and attachments regarding amendment of its request for a temporary rate increase for the period May 6, 1993 to the following wholesale contracts:

1. Idaho Power-Sierra Pacific Company Agreement for a supply of Energy & Power, dated March 10, 1960, FERC Rate Schedule No. 30;

2. The City of Weiser-Idaho Power Company Agreement for Supply of Power, dated April 4, 1963, FERC Rate Schedule No. 42;

3. Idaho Power-Utah Associated Municipal Power Systems Agreement for Supply of Power & Energy, dated February 10, 1988, FERC Rate Schedule No. 75; and

4. Idaho Power Company-Washington City, Utah, Agreement for Supply of Power & Energy, dated July 6, 1987, FERC Rate Schedule No. 74.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. Montaup Electric Co.

[Docket No. ER92-773-000]

Take notice that on August 11, 1992, Montaup Electric Company (Montaup) filed a Notice of Cancellation of its Rate Schedule FERC No. 96. The Notice of Cancellation provides that the effective date of cancellation of the rate schedule is April 30, 1992.

Rate Schedule FERC No. 96 was an agreement effective November 1, 1991 pursuant to which Montaup agreed to sell to Consolidated Edison Company of New York, 100 MW of capacity and associated energy from Montaup's Canal Unit No. 2 Rate Schedule FERC No. 96 was accepted for filing by letter order issued February 28, 1992 in Docket

No. ER92-202-000 and expired by its own terms on April 30, 1992.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Co.

[Docket No. ER92-780-000]

Take notice that on August 13, 1992, New England Power Company (NEP) tendered for filing an amendment to its Service Agreement with Fitchburg Gas & Electric Light Company under NEP's FERC Electric Tariff, Original Volume No. 3. According to NEP, the amendment would allow NEP to provide additional non-firm transmission for Fitchburg.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Pacific Gas and Electric Co.

[Docket No. ER92-491-000]

Take notice that on August 14, 1992, Pacific Gas and Electric Company (PG&E) tendered for filing an amended filing in FERC No. ER92-491-000. FERC Docket No. ER92-491-000 initially submitted to the Commission a settlement agreement resolving disputes regarding the nature of transmission service provided by PG&E to the Lawrence Livermore National Laboratory (LLNL). This settlement agreement was between United States Department of Energy, San Francisco Field Office (DOE/SF).

Subsequent to the filing, FERC Staff contacted PG&E and requested that PG&E amended its filing by submitting a page of the settlement agreement which had been omitted from the filed copies. After reviewing PG&E's amended filing, FERC Staff contacted PG&E and FERC requested that certain components and a factor used as part of the "Annual Transmission Rate Adjustment Factor" (ATRAF) in Exhibit B of the LLNL Settlement Agreement either not be used or explained further as to why they are appropriate. Accordingly, PG&E has submitted an amended copy of the settlement agreement.

Copies of this filing have been served upon DOE/SF, Western the CPUC and the parties on the Service List to FERC Docket No. ER92-491-000.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Carolina Power & Light Co.

[Docket No. ER92-777-000]

Take notice that on August 12, 1992, Carolina Power & Light Company (CP&L) tendered for filing with the Commission the changes outlined below to its agreements with French Broad EMC, Lumbee River EMC, Piedmont EMC, and the City of Camden.

1. *City of Camden—Dusty Bend 115 kV*—Installation of new point of delivery including special provisions for providing facilities for metering pulse information.

2. *French Broad EMC—Weaverville 115 kV*—Installation of a new point of delivery.

3. *French Broad EMC—Burnsville 115 kV*—Increase in metered voltage from 69 kV to 115 kV.

4. *Lumbee River EMC—Hog Swamp 115 kV*—Addition of special provisions for providing facilities for metering pulse information.

5. *Lumbee River EMC—Rockfish 115 kV*—Change in metered voltage from 12 kV and 69 kV to 115 kV and adjusted the additional facilities to reflect the addition of pulses at the 115 kV meter and removal at the 12 kV and 69 kV meters.

6. *Piedmont EMC—Hyco 138 kV*—Installation of a new point of delivery including special provisions for providing facilities for metering pulse information.

7. *Tri-County EMC—Granthom 115 kV*—Change in delivery voltage from 69 kV to 115 kV.

The Company requests that the notice period be waived and that these supplements be made effective coincident with the effective dates set forth in the Exhibit A's and the contract amendment.

A copy of this filing has been sent to the affected parties, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: September 2, 1992, in accordance with Standard Paragraph E at the end of this notice.

15. Lake Cogen, Ltd.

[Docket No. QF92-198-000]

On August 14, 1992, Lake Cogen, Ltd., c/o North Canadian Power Incorporated, 1100 Town & Country Road, Suite 800 Orange, California 92668, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 39017 Golden Gem Drive, Umatilla, Florida 32784. The facility will include two combustion turbine generators, two supplementary fired heat recovery boilers, an extraction/condensing steam turbine generator (STG), step-up transformer, switch yard, and a 69 kV interconnecting transmission line to Florida Power Corporation. Heat recovered from the facility will be used in the Host's citrus/food processing and chilling operations. The maximum net electric power production capacity of the facility will be 106 MW. The primary energy source will be natural gas. The installation of the facility commenced on February 1992 with an expected commercial operation in July 1993.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20481 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER92-284-000, et al.]

Vermont Electric Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

August 20, 1992.

Take notice that the following filings have been made with the Commission:

1. Vermont Electric Power Co.

[Docket No. ER92-284-000]

Take notice that on July 30, 1992, Vermont Electric Power Company tendered for filing additional information requested by Commission staff in the above-referenced docket.

Comment date: September 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Green Mountain Power Corp.

[Docket No. ER92-460-000]

Take notice that on July 28, 1992, Green Mountain Power Corporation (GMP) tendered for filing a letter requesting that the proceedings in the above-referenced docket be terminated concurrently with Docket Nos. ER92-103-000 through ER92-108-000.

Comment date: September 1, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corp.

[Docket No. ER92-786-000]

Take notice that on August 17, 1992, Florida Power Corporation (Florida Power) filed a contract for the provision of interchange service between itself and Oglethorpe Power Corporation. Florida Power requests that the contract become effective on October 17, 1992, which is 60 days after the contract was tendered for filing.

Florida Power states that a copy of the filing has been posted as required by the Commission's regulations, and a copy has been mailed to the customer affected by the filing and to the Florida Public Service Corporation.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Midwest Power System Inc.

[Docket No. ER92-784-000]

Take notice that on August 17, 1992, Midwest Power Systems Inc., 666 Grand Avenue, Des Moines, Iowa 50309, a wholly owned subsidiary of Midwest Resources Inc., tendered for filing notice that it is the successor to Iowa Power Inc. (IPR) and Iowa Public Service Company (IPS) and that it adopts, ratifies, and makes its own, in every respect all applicable rate schedules, and supplements thereto previously filed with the Federal Energy Regulatory Commission and the Federal Power Commission by IPR and IPS.

The notice of succession was filed as a result of the merger on July 22, 1992, of IPR and IPS, with and into Midwest Power Systems Inc.

Copies of the filing were served upon Midwest Power System Inc.'s jurisdictional customers and the Iowa Utilities Board, Minnesota Public Utilities Commission and the South Dakota Utilities Commission.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Co.

[Docket No. ER92-785-000]

Take notice that on August 17, 1992, Florida Power & Light Company (FPL) filed Amendment Number One to the Long-Term Agreement to Provide Capacity and Energy Florida Power & Light Company to Florida Keys Electric Cooperative Association, Inc.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Co.

[Docket No. ER92-788-000]

Take notice that on August 14, 1992, Florida Power & Light Company (FPL) filed Supplement No. 1 to the Agreement for Purchases or Sales of Electric Power and Energy Between Florida Power & Light Company and Oglethorpe Power Corporation. FPL requests an effective date of July 1, 1992.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

7. Idaho Power Co.

[Docket No. ER92-787-000]

Take notice that on August 17, 1992, Idaho Power Company (IPC) tendered for filing a Firm Transmission Services Agreement dated April 9, 1992, between Idaho Power Company and Sierra Pacific Power Company.

Idaho Power has requested an effective date for the Firm Transmission Services Agreement of October 20, 1992.

Comment date: September 3, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. Lake Cogen, Ltd.

[Docket No. QF92-198-000]

On August 13, 1992, as supplemented on August 14, 1992, Lake Cogen, Ltd., c/o North Canadian Power Incorporated, 1100 Town & Country Road, Suite 800 Orange, California 92668, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at 39017 Golden Gem Drive, Umatilla, Florida 32784. The facility will include two combustion turbine generators, two supplementary fired heat recovery boilers, an extraction/condensing steam turbine generator (STG), step-up transformer, switch yard, and a 69 kV interconnecting transmission line to Florida Power Corporation. Heat recovered from the facility will be used in the Host's citrus/food processing and chilling operations. The maximum net electric power production capacity of the facility will be 106 MW. The primary energy source will be natural gas. The installation of the facility commenced on February 1992 with an expected commercial operation in July 1993.

Comment date: September 25, 1992, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20480 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-221-000]

Distrigas Corp.; Proposed Changes in FERC Gas Tariff

August 20, 1992.

Take notice that Distrigas Corporation (Distrigas), on August 18, 1992, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of September 17, 1992:

First Revised Sheet No. 8
First Revised Sheet No. 9
First Revised Sheet No. 10
First Revised Sheet No. 11

Distrigas states that the proposed tariff sheets would modify the Special Rate Schedule under which Distrigas sells imported LNG to Distrigas of Massachusetts Corporation (DOMAC). Distrigas states that the proposed changes reflect the addition of Nigeria LNG Limited as a source of LNG supply to Distrigas, which supply, in turn, will be available to DOMAC for sale to gas utilities, interstate pipelines and end users. Distrigas also states that the revised tariff sheet adjust the transfer pricing terms between Distrigas and

DOMAC to reflect the expanded nature of its LNG supply arrangements. The new pricing structure will set the transfer price between the two companies as a percentage (85%) of DOMAC's average sales price in each calendar year.

Distrigas states that copies of the filing were served upon DOMAC's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20437 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-119-024]

Tennessee Gas Pipeline Co.; Tariff Filing

August 20, 1992.

Take notice that on August 17, 1992, Tennessee Gas Pipeline Company (Tennessee) filed the following revised sheet to its Fourth Revised Vol. 1 of its FERC Gas Tariff.

First Revised Sheet No. 22

Tennessee states that the purpose of this filing is to state the maximum TGIC gas rate for the month of August.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 27, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20438 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-12-000]

Williams Natural Gas Co.; Conference

August 20, 1992.

Take notice that a prefiling conference will be convened in this proceeding on September 9, 1992, at 10 a.m., in Washington, DC at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC. If necessary, the conference will continue through September 10, 1992.

The purpose of the conference is to address how Williams' Natural Gas Company proposes to comply with the requirements of Order Nos. 636 and 636-A.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene pursuant to the Commission's regulations (18 CFR 385.214). For additional information, interested persons may call Lorna J. Hadlock at (202) 208-0917.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20439 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-13-000]

Williston Basin Interstate Pipeline Co.; Prefiling Conference

August 20 1992.

Take notice that on September 3, 1992, at 9 a.m., a conference will be convened in the above-captioned docket to discuss Williston Interstate Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call Warren C. Wood at (202) 208-2091 or Thomas E. Gooding at (202) 208-0831.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20440 Filed 8-25-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4199-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 25, 1992.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Verification of Test Parameters and Parts Lists for Light-Duty Vehicles and Light-Duty Trucks (EPA ICR #0167.04; OMB #2060-0094). This ICR requests renewal of the existing clearance.

Abstract: In order to enforce compliance with the emission standards, under the emission recall program, EPA tests in-use vehicles using Federal Test Procedures (FTP). The FTP specify parameters and parts list that vary with manufacturer and model. Therefore, EPA needs to verify with manufacturers that the specified parameters and parts lists are current for, and appropriate to, the vehicles being tested.

Burden Statement: The public reporting burden for this collection of information is estimated to average 2 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Motor vehicle manufacturers.

Estimated Number of Respondents: 15.

Estimated Total Annual Burden on Respondents: 150 hours.

Frequency of Collection: On occasion.

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street SW., Washington, DC 20460.

and

Troy Hillier, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20530.

Dated: August 20, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-20461 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4199-3]

Constituent Meeting To Discuss the Cumulative Burden of Environmental Regulations on Local Governments and Small Communities

On September 10, 1992 EPA will meet with local and state officials and representatives from public interest and environmental groups to discuss the cumulative burden of federal environmental regulations on local governments and small communities.

This meeting is being convened by EPA's Office of Regional Operations and State/Local Relations as an organizational meeting intended to gather information concerning the nature and extent of future work with constituents on this issue. The purpose is to identify constituents' specific issues, interests and goals for working with EPA on the cumulative burden issue, and to identify additional constituent groups who should be involved. The Agency anticipates that subsequent work may be chartered under the Federal Advisory Committee Act.

The meeting will be held from 10:30-4:30 at the National Rural Electric Cooperative Association, 1800 Massachusetts Ave. NW., Washington, DC 20036.

All interested persons and organizations are invited to attend. Because meeting space is limited, the Agency asks that interested parties contact Lou Kerestesy, Office Of Regional Operations and State/Local Relations, H-1501, U.S. EPA, 401 M Street SW., Washington, DC 20460, or call at 202-260-4719 to inform the Agency of their intent to attend the meeting. Meeting minutes will be available and can be obtained upon written request to the Agency in care of Mr. Kerestesy at the address provided above.

Gerald A. Fill,

Acting Associate Administrator, Office of Regional Operations and State/Local Relations.

[FR Doc. 92-20457 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4198-9]

Meeting of the Grand Canyon Visibility Transport Commission Technical Committees

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing meetings of the Technical, Alternatives Assessment and Communications Committees, referred to as the Technical Committees, of the Grand Canyon Visibility Transport Commission on September 9 and 10, 1992, in Santa Fe, New Mexico. The Technical Committees were established by the Commission to carry out tasks within the workplan approved by the Commission June 21, 1992. The Commission was established on November 13, 1991 (see 56 FR 57522) (November 12, 1991) under section 169B of the Clean Air Act Amendments of 1990 (Act). The primary purposes of these meetings are for the Committees to organize and assign workplan tasks to participating state, federal, private and non-governmental organizations. These meetings are not subject to the provisions of the Federal Advisory Committee Act, Public Law 92-463, as amended.

DATES: The meetings will be held as follows:

Technical Committee—Wednesday, September 9, 8 a.m.-noon;

Alternatives Assessment Committee—Wednesday, Sept. 9, 1-5 p.m.;

Communications Committee—Thursday, Sept. 10, 8 a.m.-noon.

ADDRESS: The meetings will be held in Santa Fe, New Mexico, in the Aspen Room of the Hilton of Santa Fe Hotel, 100 Sandoval Street, Santa Fe, NM 87501.

FOR FURTHER INFORMATION CONTACT: James M. Souby, Executive Director, Western Governors' Association, 600 17th Street, Suite 1705 South Tower, Denver, Colorado 80202. Phone number (303) 623-9378 and fax number (303) 534-7309. Persons wishing to serve on one of the Technical Committees should mail or fax a letter of interest and a resume to Mr. Souby.

SUPPLEMENTARY INFORMATION: The commission is charged with assessing currently available studies and information pertaining to visibility impairment at the Grand Canyon National Park from sources in the transport region (including potential or projected growth) and is to issue a report to U.S. EPA within four years recommending what measures, if any, should be taken under the Clean Air Act to remedy such impairment. The Administrator of EPA has used his broad discretionary authority under section 169B of the Act to Expand the scope of the Commission to include additional class 1 areas in the vicinity of Grand Canyon National Park—what is sometimes referred to as "Golden Circle" of parks and wilderness areas. This includes most of the national parks and wilderness areas of the Colorado Plateau. The Administrator established the visibility transport region to include all or part of the following states: Arizona, California, Colorado, New Mexico, Nevada, Oregon, and Utah, and invited the Governors of those States or their designees to participate as members of the Commission. The Administrator also invited the Chief of the U.S. Forest Service and the Directors of the Bureau of Land Management, U.S. Fish And Wildlife Service and National Park Service to represent their Federal Agencies on the Commission.

Three Technical Committees have been established: the Technical, Alternatives Assessment and Communications Committees. The Technical Committee is charged with helping the Commission in (1) the review of currently available studies in order to answer as many questions of concern to the Commission as possible by examining existing analyses of existing data or conducting additional analysis of existing data; (2) the identification of new data needs if questions cannot be answered using existing data and the acquisition of data through ongoing or planned research and monitoring programs sponsored by a variety of entities or, where feasible, filling other data gaps through new, highly focused data gathering efforts; and, (3) the projection of future haze conditions in the Golden Circle by characterizing emissions and resulting visibility based on what is likely to occur due to growth, the effects of the Clean Air Act, and other area-specific emission changes.

The Alternatives Assessment Committee is charged with assisting the Commission to: (1) Identify emission management Options. The management alternatives assessment will examine options for making reasonable progress toward remedying existing and

preventing future visibility impairment in the Golden Circle; (2) Assess the Technical Feasibility of Selected Management Options, Costs and Socioeconomic Costs and Benefits. Based on guidance regarding options to be studied from the Commission, additional information will be generated on the technical feasibility, direct cost and estimates of the socioeconomic costs and benefits of management options developed to protect/improve visibility. Based on input obtained in public workshops, criteria for evaluating management options will be developed and the full range of options will be screened to assess their relative "acceptability". The Commission will develop a consensus on the most promising management options (with input from the public) for making reasonable progress toward remedying existing and preventing future visibility impairment in the Golden Circle; and, (3) conduct integrated assessment of preferred management options based on selected case studies. This subset of preferred options will be subjected to more detailed analysis.

The Communications Committee has been charged with helping the Commission: (1) To assess mechanisms for ensuring that the public has adequate input and opportunity to comment on Commission activities; (2) to ensure that all workshops and other public input opportunities are structured in such a way as to be fair to all; (3) to take responsibility for internal editing of all public communications to ensure that they simply and understandably synthesize all issues; (4) to facilitate external communications (from the commission or committees to the public), including developing proposals on how to convey messages to the public; (5) to make sure activities of the Commission are adequately communicated to hard to reach publics, especially those that might be appointed to the Public Advisory Committee; (6) to propose efficient and effective ways to communicate with the public; (7) to develop mechanisms for involving Mexico in Commission activities; and (8) to develop a media communications plan or strategy.

Dated: August 18, 1992.

Daniel W. McGovern,

Regional Administrator, U.S. Environmental Protection Agency, Region 9.

John Wise,

Acting Regional Administrator.

[FR Doc. 92-20460 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

Science Advisory Board

[FRL-4198-6]

Radiation Advisory Committee, High-Level Waste/Carbon-14 Release Subcommittee, Open Meeting, September 9-10, 1992

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the High-Level Waste/Carbon-14 Release Subcommittee of the Science Advisory Board's (SAB) Radiation Advisory Committee (RAC) will meet September 9-10, 1992 at the U.S. Environmental Protection Agency Headquarters, Waterside Mall Conference Center, room 3-North, 401 M Street, SW., Washington, DC 20460. The Subcommittee meeting will begin at 9 a.m. September 9 and adjourn no later than 5 p.m. on Thursday, September 10. The meeting is open to the public and seating is limited.

This is the final meeting of the Subcommittee. At this meeting the Subcommittee plans to complete its review of issues relating to the gaseous release of carbon-14 from high-level radioactve waste disposal. The charge for this review appeared in the May 29, 1992 **Federal Register** at 57 FR 22747-22748. The Subcommittee will consider, revise, and edit a first draft of the Subcommittee's report on the questions raised in the charge. Copies of this draft will be made available to the Agency and the public no earlier than Thursday, September 3. Individuals who want copies should call Mrs. Clark. The Radiation Advisory Committee plans to consider the Subcommittee's report at a public meeting on October 29-30, 1992. The SAB's Executive Committee will consider the report in January 1993 before it is transmitted to the Administrator.

Availability of Documents

The primary documents under Subcommittee review are, (1) "Office of Radiation Programs' Position on the Potential for Gaseous Release from a High-Level Waste Repository" and (2) the June 10, 1992 draft "Issues Associated with Gaseous Releases of Radionuclides for a Repository in the Unsaturated Zone" prepared by SC&A Inc. and Rogers & Associates Engineering Corp for EPA's Office of Radiation Programs. Copies of the review documents and other materials provided to the Subcommittee will be maintained in EPA Docket R-89-01 as announced in the **Federal Register** May 29, 1992. They are *not* available from the Science Advisory Board.

Opportunity for Public Comments

Opportunity for public comments on this issue will be provided at the Subcommittee meeting. Written comments may be of any length. Individuals who wish their materials sent to the Subcommittee before the September meeting should provide 20 copies to Mrs. Conway before Friday, September 4; individuals who wish to provide materials at the meeting should bring at least 50 copies so that there will be some for the audience as well as the Subcommittee.

The total time for oral public comments will be limited to approximately one-half hour. If many requests to present oral comments are received, each individual or group will be limited to five minutes. Members of the public who wish to make brief oral presentations to the Subcommittee should write or fax Mrs. Conway no latter than noon Friday, September 4. Requests for time for oral comments must include the name and affiliation of the speaker and the topic(s) to be addressed. Both an overhead projector and a 35 mm slide projector will be available. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written comments.

For details concerning this meeting, including a draft agenda, please contact Mrs. Kathleen Conway or Mrs. Dorothy Clark, Science Advisory Board (A-101F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Telephone 202/260-6552. Fax 202/260-7118.

Dated: August 11, 1992.

A.R. Flaak,

Acting Director Science Advisory Board.

[FR Doc. 92-20327 Filed 8-25-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL TRADE COMMISSION

[File No. 902 3031]

Inter-Fact, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, an Ohio corporation and two of its officers to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information for any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished; or from furnishing any consumer report under any other circumstances not permitted by section 604 of the Fair Credit Reporting Act. In addition, respondents would be required to notify the consumer whenever a consumer report is furnished for employment purposes and contains information that may adversely affect the consumer's ability to obtain employment

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S-4429, Washington, DC 20580. (202) 326-3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at it principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Inter-Fact, Inc., a corporation, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease to and desist from the use of the acts and practices being investigated,

It is hereby agreed By and between Inter-Fact, Inc., by its duly authorized officers, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Inter-Fact, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Ohio, with its office and principal place of business located at 20676 Southgate Park Boulevard, Maple Heights, Ohio 44137.

Proposed respondents James Polgar and Bruce R. Marks are officers of said corporation. They formulate, direct and control the policies, acts and practices of said corporation and their business address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions apply:

"Person," "consumer," "consumer report," "consumer reporting agency," and "employment purposes" are defined as set forth in Sections 603(b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

"Subscriber" means any person who is approved for or obtains a consumer report from respondents;

"Mixed-used subscriber" means a subscriber who is the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

"Permissible purpose" means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

It is Ordered That respondents, Inter-Fact, Inc., a corporation, its successors and assigns, and its officers, and James Polgar and Bruce R. Marks, individually and as officers of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the

furnishings of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report under any circumstances not permitted by Section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA, as required by section 607(a) of the FCRA. Such procedures shall include:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current subscribers, within six months after the date of this Order:

(i) Obtaining from each subscriber a written certification stating the nature of the subscriber's business, the projected number of consumer reports the subscriber expects to obtain from respondents on a monthly basis, and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a written record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not verified through other means (*e.g.*, through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under section 604 of the FCRA that is substantially identical to the summary attached to this Order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers:

(i) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to section 604(3)(E) of the FCRA, that the subscriber identify and certify that purpose, unless the subscriber has previously certified that purpose to respondents, pursuant to subparagraph 2.a.(i) above, as the only purpose for which it requests consumer reports.

(ii) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. For example, a landlord requesting such a report in connection with rental of an apartment must specify that as his or her purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv)(A) Conducting periodic checks, not announced to the subscriber, to verify that each mixed-use subscriber is using consumer reports solely for permissible purposes. Such checks will be conducted using one of the following methods:

(1) By conducting annual checks at least once every twelve months. For each such subscriber, such checks will be performed on the greater of five reports or ten percent (10%) of the first 300 consumer reports furnished chronologically to that subscriber during the previous six-month period and two percent (2%) of all additional reports furnished to that subscriber during the same six-month period. Respondents shall check the first report within that period and every tenth report thereafter of the first 300 reports furnished chronologically within that period and then every fiftieth report of all additional reports furnished to the subscriber during that same period; or

(2) By conducting monthly checks for at least six months of each year. For each such subscriber, such checks will be performed on the greater of one report or ten percent (10%) of the total number of consumer reports furnished to that subscriber during the previous one-month period. Respondents shall check the first report within that period and every tenth report furnished chronologically thereafter until the requisite number of reports has been checked.

(iv)(B) Respondents shall conduct these checks by:

(1) Sending a questionnaire by first class mail, postage prepaid, to the report subject stating that a consumer report was furnished to a subscriber who shall be identified by name and address, the date of the report, and the purpose certified by the subscriber for obtaining it. The questionnaire shall ask whether the subscriber had such a purpose and, if not, whether the report subject knows of any other purpose for which the subscriber may have sought the report. Respondents shall provide a self-addressed, postage prepaid envelope and request that the questionnaire be returned therein; or by

(2) providing and obtaining the information set forth in subparagraph (1) above through an in-person or telephone interview, and by recording such information in written form.

(v) Respondents are not required to conduct the procedure set forth in subparagraph I.2.b.(iv)(B) with respect to any consumer report for which respondents have received:

(a) A copy of a court order or a federal grand jury subpoena ordering the release of such report;

(b) Documentation signed by the consumer on whom the report was furnished expressly authorizing the release of such report;

(c) In the case of a report for which the purpose certified was the collection of a judgment, a copy of the court judgment; or

(d) In the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention, a copy of an official business record (for example, W–2 Form) clearly identifying the subscriber or the subscriber's principal as the employer of the consumer on whom the report was furnished.

(vi) Requiring each subscriber to provide on an annual basis written certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents, and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports and any substantial change in the number of consumer reports expected to be obtained.

(vii) Desisting from furnishing consumer reports to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(iv)(A) and (B), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error—i.e., a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in section 613(1) of the FCRA. Respondents are not required to provide this notification if they have received written confirmation directly or indirectly from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer or, alternatively, have received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in section 613(2) of the FCRA.

II

It is further ordered That respondents, their successors, and assigns shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this Order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, all documents pertaining to respondents' annual checks on mixed-use subscribers' purposes for obtaining consumer reports, instructions given to employees regarding compliance with the provisions of this Order, and any notices provided to subscribers in connection with the terms of this Order.

III

It is further ordered That respondents shall deliver a copy of this Order, or a synopsis thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV

It is further ordered That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that might affect compliance obligations arising out of the order.

V

It is further ordered That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or furnishing consumer reports or access to consumer reports to third parties, or of his affiliation with a new business or employment in which his own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VI

It is further ordered That respondents shall, within sixty (60) days of service of this Order upon them, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Exhibit A—Important Notice for Subscribers

The federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that Section 604 of the Act permits.

(1): Pursuant to court order, or a subpoena issued by a federal grand jury.

(2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate the consumer for possible employment, promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to

rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit employment, or insurance—those purposes are permissible only if they meet the standards of (3)(A)–(C).

Consumer Reports Will be Provided Only for These Purposes

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Inter-Fact Inc., a corporation, and its officers, James Polgar and Bruce R. Marks ("the respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents' business involves the purchase of information on individual consumers from credit reporting agencies and the resale of that information to third parties. Firms engaged in this type of business are sometimes called "information brokers," or "superbureaus." The complaint accompanying the proposed order alleges that in connection with their buying and selling of consumer reports, the respondents engaged in acts and practices violating sections 604, 607(a), and 613 of the Fair Credit Reporting Act and section 5(a) of the Federal Trade Commission Act.

The FCRA requires that consumer reporting agencies, such as superbureaus, maintain procedures designed to protect consumers' privacy. According to the complaint, the respondents have violated section 604 of the Fair Credit Reporting Act by regularly furnishing consumer reports to persons under circumstances in which the respondents have no reason to believe that the reports will be used for any of the purposes permitted under that section of the Act. Two of the circumstances cited in the complaint are (1) respondents' furnishing of consumer reports to new customers without having made a reasonable effort to verify the identities of these customers and the purposes for which they will use the reports and (2) respondents' furnishing of consumer reports to new customers without having them certify the permissible purpose for which the reports will be used and that the reports will be used for no other purpose.

The complaint also alleges that respondents furnish consumer reports to certain types of subscribers, such as attorneys and private investigators, who typically have impermissible as well as permissible purposes for the consumer reports they obtain. Such subscribers are known as "mixed use" users. According to the complaint, in many instances, respondents do not have reason to believe that these reports have been requested for a permissible purpose. The complaint also charges that respondents make no effort to verify that consumer reports are being used only for the purposes stated by the customers for obtaining the reports.

The complaint further alleges that, through the conduct discussed above, respondents have violated section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 and by furnishing consumer reports to persons when they have reasonable grounds for believing that the consumer reports will not be used for a purpose listed in section 604.

Additionally, the complaint alleges that the respondents regularly furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, but when furnishing these reports, the respondents do not notify the subject consumers that respondents are reporting public record information about them, nor do they tell the consumers the names and addresses of the persons to whom the respondents have furnished the reports. Because, the complaint alleges, the respondents do not have procedures to insure that the public record information they are reporting is complete and up to date, the respondents' failure to provide the notice violates section 613 of the Fair Credit Reporting Act.

The consent order contains provisions designed to ensure that the respondents do not engage in similar unlawful acts and practices in the future.

Part I of the order requires the respondents to cease and desist from furnishing any consumer report under any circumstances not permitted by section 604 of the Fair Credit Reporting Act.

Part I also requires the respondents to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed in section 604, as required by section 607(a) of the Fair Credit Reporting Act, and mandates specific procedures that must be followed to accomplish this objective. These include measures to verify the identities of new customers, the nature of their business, and the purposes for which they seek to obtain consumer reports and a procedure for conducting periodic audits to verify that mixed-use users are using consumer reports solely for permissible purposes. The specific procedures set forth in Paragraph 2 of Part I are not necessarily mandated by the FCRA's "reasonable procedures" requirement but are considered by the Commission to be appropriate remedial relief in this case to prevent recurrence of the alleged violations.

Part I further requires that any time respondents furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, they must notify the consumer, at the time the report is furnished, that public record information about the consumer is being reported and provide the name and address of the person to whom the report is being furnished, as is required by section 613(1) of the Fair Credit Reporting Act. The order permits the respondents to forego providing this notification if they have either received written confirmation from the consumer reporting agency that complied the consumer report that the agency provides such notification to the consumer, or have received written confirmation from the agency that it maintains strict procedures designed to ensure that the public record information it reports is complete and up to date, as required by section 613(2).

Part II of the order requires the respondents and their successors and assigns to maintain documents demonstrating compliance with the order for (5) years and to make such documents available to the Commission upon request.

Part III of the order requires the respondents to deliver a copy of the order to all present and future employees, agents, or representatives having responsibilities related to the respondents' compliance with the order.

Part IV of the order requires the respondents to notify the Commission at least thirty (30) days before any proposed change in the structure of the respondent corporation that might affect compliance with the order.

Part V of the order requires the individual respondents to promptly notify the Commission of the discontinuance of their present business or employment and of their affiliation with a new one. Also, for ten (10) years from the date the order is served, the individual respondents must promptly notify the Commission of their affiliation with a new business or employment whose activities include the assembling or evaluating of consumer information or the furnishing of consumer reports or access to consumer reports to third parties, or in which their own duties or responsibilities involve such activities.

Part VI of the order requires the respondents to file a written report with the Commission within sixty (60) days after service of the order detailing the manner and form in which they have complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92–20413 Filed 8–25–92; 8:45 am]

BILLING CODE 6750–01–M

[File No. 902 3030]

I.R.S.C., Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a California corporation and one of its officers to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information for any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished; or from furnishing any consumer report under any other circumstances not permitted by section 604 of the Fair Credit Reporting Act. In addition, respondents would be required to notify the consumer whenever a consumer report is furnished for employment purposes and contains information that may adversely affect the consumer's ability to obtain employment.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S–4429, Washington, DC 20580. (202) 326–3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order to Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of I.R.S.C., Inc., a corporation doing business as Information Resource Service Company, and Jack H. Reed, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease to and desist from the use of the acts and practices being investigated,

It is hereby agreed By and between I.R.S.C., Inc., by its duly authorized officer, Jack H. Reed, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent I.R.S.C., Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 3777 North Harbor Boulevard, Fullerton, California 92365.

Proposed respondent Jack H. Reed is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts alleged in the attached draft complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions apply:

"Person," "consumer," "consumer report," "consumer reporting agency," and "employment purposes" are defined as set forth in Sections 603 (b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act "FCRA"), 15 U.S.C. § § 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

"Subscriber" means any person who is approved for or obtains a consumer report from respondents;

"Mixed-use subscriber" means a subscriber who in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

"Permissible purpose" means any of the purposes listed in Section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

I

It is ordered that respondents, I.R.S.C., Inc., a corporation, its successors and assigns, and its officers, and Jack H. Reed, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the furnishing of any consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report to any person that they have reason to believe intends to use the information in connection with the evaluation of an insurance claim or in connection with any insurance purpose other than the underwriting of insurance involving the consumer, unless furnishing the consumer report is otherwise permitted under sections 604(1) or 604(2) of the FCRA, or furnishing any consumer report under any other circumstances not permitted by section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA, as required by Section 607(a) of the FCRA. Such procedures shall include:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current subscribers, within six months after the date of this Order:

(i) Obtaining from each subscriber a written certification stating the nature of the subscriber's business, the projected number of consumer reports the subscriber expects to obtain from respondents on a monthly basis, and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a written record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not verified through other means (*e.g.*, through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under section 604 of the FCRA that is substantially identical to the summary attached to this Order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers: (i) Requiring, any time a subscriber requests a consumer report for employment purposes pursuant to section 604(3)(B) of the FCRA, that the subscriber identify and certify that purpose.

(ii) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. For example, a landlord requesting such a report in connection with rental of an apartment must specify that as his or her purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv) Disclosing the following message, or one substantially identical to it, on the computer screen each time a subscriber transmits a request by computer for a consumer report: "The federal Fair Credit Reporting Act imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses."

(v)(A) Conducting periodic checks, not announced to the subscriber, to verify that each mixed-use subscriber is using consumer reports solely for permissible purposes. Such checks will be conducted using one of the following methods:

(1) By conducting annual checks at least once every twelve months. For each such subscriber, such checks will be performed on the greater of five reports or ten percent (10%) of the first 300 consumer reports furnished chronologically to that subscriber during the previous six-month period and two percent (2%) of all additional reports furnished to that subscriber during the same six-month period. Respondents shall check the first report within that period and every tenth report thereafter of the first 300 reports furnished chronologically within that period and then every fiftieth report of all additional reports furnished to the subscriber during that same period; or

(2) By conducting monthly checks for at least six months of each year. For each such subscriber, such checks will be performed on the greater of one report or ten percent (10%) of the total number of consumer reports furnished to that subscriber during the previous one-month period. Respondents shall check the first report within that period and every tenth report furnished chronologically thereafter until the requisite number of reports has been checked.

(v)(B) Respondents shall conduct these checks by: (1) Sending a questionnaire by first class mail, postage prepaid, to the report subject stating that a consumer report was furnished to a subscriber who shall be identified by name and address, the date of the report, and the purpose certified by the subscriber for obtaining it. The questionnaire shall ask whether the subscriber had such a purpose and, if not, whether the report subject knows of any other purpose for which the subscriber may have sought the report. Respondents shall provide a self-addressed, postage prepaid envelope and request that the questionnaire be returned therein; or by

(2) Providing and obtaining the information set forth in subparagraph (1) above through an in-person or telephone interview, and by recording such information in written form.

(vi) Respondents are not required to conduct the procedure set forth in subparagraph I.2.b.(v)(B) with respect to any consumer report for which respondents have received:

(a) A copy of a court order or a federal grand jury subpoena ordering the release of such report;

(b) Documentation signed by the consumer on whom the report was furnished expressly authorizing the release of such report;

(c) In the case of a report for which the purpose certified was the collection of a judgment, a copy of the court judgment; or

(d) In the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention, a copy of an official business record (for example, a W–2 Form) clearly identifying the subscriber or the subscriber's principal as the employer of the consumer on whom the report was furnished.

(vii) Requiring each subscriber to provide on an annual basis written certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents, and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports and any substantial change in the number of consumer reports expected to be obtained.

(viii) Desisting from furnishing consumer reports to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(v) (A) and (B), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error—i.e., a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in section 613(1) of the FCRA. Respondents are not required to provide this notification if they have received written confirmation directly or indirectly from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer or, alternatively, have received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in section 613(2) of the FCRA.

II

It is further ordered That respondents, their successors, and assigns shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this Order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, all documents pertaining to respondents' annual checks on mixed-use subscribers' purposes for obtaining consumer reports, instructions given to employees regarding compliance with the provisions of this Order, and any notices provided to subscribers in connection with the terms of this Order.

III

It is further ordered That respondents shall deliver a copy of this Order, or a synopsis thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV

It is further ordered That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that might affect compliance obligations arising out of the order.

V

It is further ordered That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or furnishing consumer reports or access to consumers reports to third parties, or of his affiliation with a new business or employment in which his own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VI

It is further ordered That respondents shall, within sixty (60) days of service of this Order upon them, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Exhibit A—Important Notice for Subscribers

The federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for us to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that section 604 of the Act permits.

(1): Pursuant to court order, or a subpoena issued by a federal grand jury.

(2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate the consumer for possible employment, promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and its amount and terms. Consumer reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit, employment, or insurance—those purposes are permissible only if they meet the standards of (3)(A)–(C).

Consumer Reports Will be Provided Only for These Purposes

Anolysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from I.R.S.C., Inc., a corporation, and its Chief Executive Officer, Jack H. Reed ("the respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents' business involves the purchase of information on individual consumers from credit reporting agencies and the resale of that information to third parties. Firms engaged in this type of business are sometimes called "information brokers," or "superbureaus." The complaint accompanying the proposed order alleges that in connection with their buying and selling of consumer reports, the respondents engaged in acts and practices violating sections 604, 607(a), and 613 of the Fair Credit Reporting Act and section 5(a) of the Federal Trade Commission Act.

The FCRA requires that consumer reporting agencies, such as superbureaus, maintain procedures designed to protect consumers' privacy. According to the complaint, the respondents have violated section 604 of the Fair Credit Reporting Act by regularly furnishing consumer reports to persons under circumstances in which the respondents have no reason to believe that the reports will be used for any of the purposes permitted under that section of the Act. One of the circumstances cited in the complaint is respondents' furnishing of consumer reports in connection with insurance claims investigations, even though section 604 sets forth underwriting (*i.e.*, determining one's eligibility for insurance) as the only insurance-related purpose permitted under the Fair Credit Reporting Act.

The complaint also alleges that respondents furnish consumer reports to certain types of subscribers, such as attorneys and private investigators, who typically have impermissible as well as permissible purposes for the consumer reports they obtain. Such subscribers are known as "mixed use" users. According to the complaint, in many instances, respondents do not have reason to believe that these reports have been requested for a permissible purpose. The complaint also cites as a violation of section 604 respondents' furnishing of consumer reports to new customers without having made a reasonable effort to verify the purposes for which these customers will use the reports.

The complaint further alleges that through the conduct discussed above, respondents have violated section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 and by furnishing consumer reports to persons when they have reasonable grounds for believing that the consumer reports will not be used for a purpose listed in section 604.

Additionally, the complaint alleges that the respondents regularly furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, but when furnishing these reports, the respondents do not notify the subject consumers that respondents are reporting public record information about them, nor do they tell the consumers the names and addresses of the persons to whom the respondents have furnished the reports. Because, the complaint alleges, the respondents do not have procedures to insure that the public record information they are reporting is complete and up to date, the respondents' failure to provide the notice violates Section 613 of the Fair Credit Reporting Act.

The consent order contains provisions designed to ensure that the respondents do not engage in similar unlawful acts and practices in the future.

Part I of the order requires the respondents to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information in connection with any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished. The respondents are further required to cease and desist from furnishing any consumer report under any other circumstances not permitted by section 604 of the Fair Credit Reporting Act.

Part I also requires the respondents to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed in section 604, as required by section 607(a) of the Fair Credit Reporting Act, and mandates specific procedures that must be followed to accomplish this objective. These include measures to verify the identities of new customers, the nature of their business, and the purposes for which they seek to obtain consumer reports and a procedure for conducting periodic audits to verify that mixed-use users are using consumer reports solely for permissible purposes. The specific procedures set forth in Paragraph 2 of Part I are not necessarily mandated by the FCRA's "reasonable procedures" requirement but are considered by the Commission to be appropriate remedial relief in this case to prevent recurrence of the alleged violations.

Part I further requires that any time respondents furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, they must notify the consumer, at the time the report is furnished, that public record information about the consumer is being reported and provide the name and address of the person to whom the report is being furnished, as is required by section 613(1) of the Fair Credit Reporting Act. The order permits the respondents to forego providing this notification if they have either received written confirmation from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer, or have received written confirmation from the agency that it maintains strict procedures designed to ensure that the public record information it reports is complete and up to date, as required by section 613(2).

Part II of the order requires the respondents and their successors and assigns to maintain documents demonstrating compliance with the order for five (5) years and to make such documents available to the Commission upon request.

Part III of the order requires the respondents to deliver a copy of the order to all present and future employees, agents, or representatives having responsibilities related to the respondents' compliance with the order.

Part IV of the order requires the respondents to notify the Commission at least thirty (30) days before any proposed change in the structure of the respondent corporation that might affect compliance with the order.

Part V of the order requires the individual respondent to promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new one. Also, for ten (10) years from the date the order is served, the individual respondent must promptly notify the Commission of his affiliation with a new business or employment whose activities include the assembling or evaluating of consumer information or the furnishing of consumer reports or access to consumer reports to third parties, or in which his own duties or responsibilities involve such activities.

Part VI of the order requires the respondents to file a written report with the Commission within sixty (60) days after service of the order detailing the manner and form in which they have complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92-20427 Filed 8-25-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF INTERIOR

Bureau of Land Management

Montana; Notice of Off-Road Vehicle Designation

AGENCY: Bureau of Land Management, Miles City District Office, Interior (MT-020-02-4333-10).

ACTION: Notice of Off-Road Vehicle Designation Decision.

SUMMARY: Notice is hereby given that after a 30 day comment period and no adverse comments are received, off-road vehicle use is limited on some public land within the Graves Ranch Cooperative Management Area. The decision will be in effect during the State-designated big game hunting season of each year. This designation is located in Musselshell County, Montana, and is in accordance with the authority and requirements of Executive Orders 11644 and 11989 and Regulations 43 CFR 8340.

DATES: This designation will be in effect only during the State-designated big game hunting season of each year, or until rescinded by the authorized officer.

FOR FURTHER INFORMATION CONTACT:

The following BLM office or the Montana Department of Fish, Wildlife and Parks office:

BLM Billings Resource Area, 810 E. Main, Billings, Montana, 59105, Telephone: (406) 657-6262.

MDFW&P, Region 5, 2300 Lake Elmo Road, Billings, Montana, 59105, Telephone: (406) 252-4654.

SUPPLEMENTARY INFORMATION: The Graves Ranch Cooperative Management Area consists of 20,000 acres, including approximately 5,000 acres of public land. Of this 5,000 acres, vehicular use will not be allowed on approximately 280 acres (T.11 N.,R.24 E., S. 35, N½ NW¼, SE¼ NW¼, and SW¼) during the big game hunting season. The area affected by the designation is administered in a cooperative effort involving Bureau of Land Management, Miles City District, Billings Resource Area; Gary and Alan Graves, owners of the Graves Ranch; and Montana Department of Fish, Wildlife and Parks. The purpose of this designation is to prevent further damage to soil and vegetative resources, open additional private lands to hunting, reduce user conflicts, and provide a higher quality hunt to the public user.

Graves Ranch Cooperative Management Area is located 14 miles north of Roundup, Montana. Approximate boundaries are: to the south is the Snowy Mountain Road, to the east is State Highway 87, to the north is the Musselshell County line, and to the west is Jones Creek. Some area is closed to shooting, some is walk-in only, and some has no restrictions.

This designation is in accordance with the final Billings RMP-EIS, thus no additional EIS or EAR is needed.

Darrel G. Pistorius,

Acting District Manager.

[FR Doc. 92-20421 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-DN-M

DEPARTMENT OF THE INTERIOR

[OR-943-4214-10; GP2-399; OR-48432(WASH)]

Public Meeting; Proposed Withdrawal and Initiation of Resource Management Plan Amendment; Washington; Correction

AGENCY: Bureau of Land Management (BLM).

ACTION: Notice.

SUMMARY: A District Resource Management Plan (RMP) Amendment-Environmental Assessment will be prepared to address the U.S. Department of the Army, Corps of Engineers application to withdraw public lands to expand the Yakima Firing Center. This

notice announces the schedule and agenda for a forthcoming public meeting that will provide an opportunity for public involvement regarding both the proposed RMP amendment and the proposed withdrawal.

DATES: The public meeting will be held September 23, 1992.

FOR FURTHER INFORMATION CONTACT: Jim Fisher, BLM, Wenatchee Resource Area Office, 1133 N. Western Ave., Wenatchee, Washington 98801, telephone 509-662-4223.

SUPPLEMENTARY INFORMATION: Notice is hereby given that a meeting will be held to provide an opportunity for public involvement regarding the application by the U.S. Department of the Army, Corps of Engineers to withdraw 9,745.82 acres of public lands within the Yakima Firing Center expansion area. Public involvement is also needed for the concurrent proposal to amend the BLM Spokane District Resource management Plan to allow the subject withdrawal. The public lands are mostly checkerboard tracts, and are located in the portion of BLM's Saddle Mountain Management Area west of the Columbia River, extending south from I-90 to the present boundary of the Yakima Firing Center. These lands are currently managed for wildlife habitat, range, and recreation. The proposed withdrawal would close the lands to settlement, sale location, and entry under the general land laws, including the U.S. mining laws (30 U.S.C. ch. 2), and from applications and offers under the mineral leasing laws, subject to valid existing rights. This proposal will be evaluated by an interdisciplinary team of natural resource specialists, including a wildlife biologist, range conservationist, botanist, archaeologist, recreation specialist and realty specialist.

The meeting will begin at 7 p.m., Wednesday, September 23, 1992, at the Hal Holmes Center, 201 N. Ruby Street, Ellensburg, Washington. The agenda will include (1) information briefings by both the BLM and the U.S. Army Corps of Engineers, (2) oral statements by interested parties; and (3) a question and answer period.

The meeting is open to the public. Interested parties may make oral statements at the meeting and/or may file written statements with the Bureau of Land Management, Spokane District Office. Oral statements will be limited to five minutes per party. All statements received will be considered by the Bureau of Land Management and the Corps of Engineers before any recommendation concerning the proposed withdrawal is submitted to the Secretary of the Interior of final action under the authority of section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714. Documents relative to the plan amendment may be obtained from the BLM Spokane District Office (E. 4217 Main, Spokane, WA 99202), the BLM Wenatchee Resource Area Office (address given above), and the U.S. Army Corps of Engineers, Seattle District (P.O. Box 3755, Seattle, WA 98124-2255).

Dated: August 14, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92-20378 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-33-M

Fish and Wildlife Service

International Introductions Policy Review Committee Meetings

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meetings.

SUMMARY: This notice announces two meetings of the Intentional Introductions Policy Review Committee, a committee of the Aquatic Nuisance Species (ANS) Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*). The purpose of both meetings will be to discuss the findings and conclusions of the intentional introductions policy review and to develop recommendations for reducing the risk of adverse consequences associated with introductions of aquatic organisms. The meetings are open to the public.

TIMES AND DATES: Public meetings are scheduled for September 9 (10:30 a.m. to 4 p.m. and October 5 (10 a.m. to 4 p.m.), 1992 in Arlington, Virginia.

ADDRESSES: Both meetings will be held at the U.S. Fish and Wildlife Service Office Building at 4401 North Fairfax Drive, Arlington, Virginia. The September 9 meeting will be held in the third floor conference room (rm. 300); the October 5 meeting in the second floor conference room (room 200).

FOR FURTHER INFORMATION CONTACT: Dr. Dennis Lassuy at (703) 358-1718.

Dated: August 20, 1992.

Gary Edwards,

Alternate Co-Chair, ANS Task Force. Assistant Director, Fisheries.

[FR Doc. 92-20367 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 10:30 a.m. (PDT) on Saturday, September 26, 1992, at West Marin School, Point Reyes Station, California. The Advisory Commission was established by Public Law 92-589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco, and San Mateo Counties.

Members of the Commission are as follows: Mr. Richard Bartke, Chairman, Ms. Amy Meyer, Vice Chair, Mr. Ernest Ayala, Dr. Howard Cogswell, Brig. Gen. John Crowley, USA (ret), Mr. Margot Patterson Doss, Mr. Neil D. Eisenberg, Mr. Jerry Friedman, Mr. Steve Jeong, Ms. Daphne Greene, Ms. Gimmy Park Li, Mr. Gary Pinkston, Mr. Merritt Robinson, Mr. R. H. Sciaroni, Mr. John J. Spring, Dr. Edgar Wayburn, Mr. Joseph Williams, Mr. Mel Lane.

The first agenda item at this public meeting will be a briefing on the Point Reyes National Seashore interpretive programs. The briefing will include programs at the Ken Patrick Visitor Center at Drakes Beach, the Bear Valley Visitor Center, and the Kule Loklo Coastal Miwok Cultural Exhibit.

The second agenda item at this meeting will be a briefing on the Marin Agricultural Land Trust (MALT) Program. MALT is a private nonprofit membership land conservation organization established by a coalition of local ranchers and environmentalists to help protect and preserve Marin County's productive agricultural land. MALT acquires agricultural conservation easements by gift and purchase, provides technical information and assistance to landowners on land conservation techniques and alternatives and promotes public awareness of the importance of Marin County's agricultural land and the need to preserve it.

The third agenda item will be a presentation of the Environmental Assessment for Management of the Tule Elk. The Environmental Assessment addresses issues relating to management of the elk herd which will be exceeding the carrying capacity of the land it now populates. The Preferred Alternative in the Environmental Assessment is to cull the herd using park ranger staff. A Draft Environmental Assessment on the Control of the Tule Elk Population at Point Reyes National Seashore was presented at two Point Reyes Committee meetings of the Advisory Commission, and the comments of the committee members were incorporated in the assessment which is released to the public.

Copies of the Environmental Assessment on the Control of the Tule Elk Population at Point Reyes National Seashore can be obtained by writing to Superintendent, Point Reyes National Seashore, Point Reyes, California 94956. Comments will be accepted through October 14, 1992.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after October 23, 1992. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: August 13, 1992.

W.H. Patton,

Acting Regional Director, Western Region.

[FR Doc. 92-20364 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-70-M

Vancouver Historical Study Commission; Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings and public hearing for the Vancouver Historical Study Commission.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), of the forthcoming scheduled meetings of the Vancouver Historical Study Commission. The next three monthly management meetings will be held on Tuesday, September 15, 1992, Tuesday, October 13, 1992, and Tuesday, December 8, 1992. The three meetings will be held in the Vancouver City Council Chambers, 210 East 13th Street, Vancouver, Washington. Commission meetings are scheduled from 1 to 5 p.m.

The monthly management meetings are open to the public. Seating space and facilities at the Vancouver City Council Chambers to accommodate members of the public are somewhat limited, and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Commission a written statement concerning matters to be discussed. At the meeting, the public will be provided an opportunity to provide both written and verbal comment to the Commission. However, the Commission Chairman may restrict the length of public statements as necessary to allow the Commission to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit written statements, may contact Mr. Keith Dunbar, Chief of Planning and Environmental Compliance, Pacific Northwest Region, National Park Service, 83 S. King St., Suite 212, Seattle, Washington 98104, or by telephone at (206) 553-4579.

Final approved Commission meeting minutes from the previous month will be available for public inspection approximately two months after each meeting in Park Headquarters, Fort Vancouver National Historic Site, 612 E. Reserve St., Vancouver, Washington 98661.

A public hearing will be held on Tuesday, November 17, 1992, from 7 to 10 p.m. The meeting will be held at the Wy' East Junior High School Auditorium, 1112 SE 136 Avenue, Vancouver, Washington. The hearing is to provide for public review and comment on the draft Vancouver National Historical Reserve Feasibility Study/Environmental Assessment for the Vancouver study area in accordance with Public Law 101-523.

The purpose of the public hearing is for the Vancouver Historical Study Commission to receive public comment on the draft Vancouver National Historical Reserve Feasibility Study report for Congress which, among other provisions, will make recommendations regarding:

(1) The preservation, protection, enhancement, enjoyment, and utilization of the historic, cultural, natural, and recreational resources of the Area,

(2) The feasibility of establishing a Vancouver National Historical Reserve,

(3) The continued operation of Pearson Airpark in a manner that will preserve and promote historic aviation and interpretation of the Area, and compatible with other historic and cultural resources of the Area, including Fort Vancouver National Historic Site. Copies of the draft Feasibility Study and Environmental Assessment can be viewed at the Fort Vancouver Regional Library and Park Headquarters Fort Vancouver National Historic Site beginning on Monday, November 2, 1992. Anyone wishing a copy of the draft Feasibility Study may request one by contacting, Fort Vancouver National Historic Site, 612 E. Reserve St., Vancouver, Washington 98661-3811 or by telephone at (206) 696-7655.

Comments on the draft Feasibility Study and Environmental Assessment should be addressed to: National Park Service, Fort Vancouver National Historic Site, 612 E. Reserve St., Vancouver, Washington 98661-3811.

Written public comment on the draft Feasibility Study will be received until Friday, December 4, 1992.

Dated: August 14, 1992.

William C. Walters,

Acting Regional Director.

[FR Doc. 92-20363 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-70-M

Meeting; Committee for Preservation of the White House

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, DC at 2 p.m., Friday, September 25, 1992. It is expected that the agenda will include discussion of policies, goals and refurbishing plans. The meeting will be open, but subject to appointment and security clearance requirements, including clearance information by September 18, 1992.

Inquiries may be made by calling the Committee for the Preservation of the White House between 9 a.m. and 4 p.m. weekdays at (202) 619-6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive SW., Washington, DC, 20242.

Dated: August 17, 1992.

James I. McDaniel,

Executive Secretary, Committee for the Preservation of the White House.

[FR Doc. 92-20393 Filed 8-25-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-329]

Global Competitiveness of U.S. Advanced-Technology Industries; Cellular Communications

AGENCY: International Trade Commission.

ACTION: Rescheduling of public hearing.

EFFECTIVE DATE: August 19, 1992.

SUMMARY: The Commission has rescheduled from January 20, 1993, to January 27, 1993, the public hearing in the above captioned investigation. The hearing will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on January 27, 1993. All persons will have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, January 13, 1993. Any prehearing briefs (original and 14 copies) should be filed not later than noon, January 13, and any posthearing briefs should be filed by February 10.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

The investigation was instituted by the Commission on July 23, 1992, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) following receipt of a request on June 11, 1992, from the Senate Committee on Finance. Notice of institution of the investigation and scheduling of a public hearing was published in the **Federal Register** of July 31, 1992 (57 FR 33971).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. Richard Brown (202–205–3438) or Ms. Susan Kollins (202–205–3441). For information on the legal aspects of this investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1107.

Issued: August 20, 1992.
By order of the Commission.

Paul Bardos,
Acting Secretary.

[FR Doc. 92–20419 Filed 8–25–92; 8:45 am]
BILLING CODE 7020–02–M

[Inv. No. 332–330]

Sulfanilic Acid; Probable Economic Effect of Removal From the List of Eligible Articles Under the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt of a request on August 5, 1992, from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission instituted investigation No. 332–330 in order that it might provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of sulfanilic acid, provided for in subheading 2921.42.24 of the Harmonized Tariff schedule, from eligibility for duty-free treatment under the Generalized System of Preferences (GSP).

In her letter the USTR said that the request was made following acceptance by the Trade Policy Staff Committee (TPSC) of a petition from R–M Industries, Inc., for expedited removal of sulfanilic acid from GSP.

As requested by USTR, the Commission will seek to provide its advice not later than October 5, 1992.

EFFECTIVE DATE: August 20, 1992.

FOR FURTHER INFORMATION CONTACT: With respect to information on the designated product, Mr. David Michels of the Commission's Office of Industries (202–205–3352); and for information on legal aspects of the investigation, Mr. William Gearhart of the Commission's Office of the General Counsel (202–205–3091).

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements concerning the matters to be addressed in the investigation. Commercial or financial information that a party desires the Commission to treat as confidential must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6)—that is, it must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. (Generally, submission of separate confidential and public versions of the submission would be appropriate.) All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted to the Commission at the earliest practical date and should be received no later than September 9, 1992. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on 202–205–1810.

Issued: August 20, 1992.

By order of the Commission.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92–20418 Filed 8–25–92; 8:45 am]
BILLING CODE 7020–02–M

[Investigations Nos. 701–TA–309 and 731–TA–528 (Final)]

Magnesium from Canada

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Canada of magnesium,[3] provided for in subheadings 8104.11.00 and 8104.19.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Governments of Canada and Quebec and to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted countervailing duty investigation No. 701–TA–309 (Final), effective December 4, 1991, following a preliminary determination by the Department of Commerce that imports of pure and alloy magnesium from Canada were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). The Commission instituted antidumping investigation No. 731–TA–528 (Final), effective February 18, 1992, following a preliminary determination by the Department of Commerce that imports of pure and alloy magnesium from Canada were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Brunsdale dissenting with respect to ultra-pure magnesium.

[3] The products covered by these investigations are pure and alloy magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Alloy magnesium contains less than 99.8 percent magnesium by weight, with magnesium being the largest metallic element in the alloy by weight, and is sold in various ingot and billet forms and sizes. Excluded from the scope of the investigations are secondary magnesium and granular magnesium.

the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of December 26, 1992 (56 FR 66875), March 4, 1992 (57 FR 7790), and May 20, 1992 (57 FR 21429). The hearing was held in Washington, DC, on July 14, 1992, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 19, 1992. The views of the Commission are contained in USITC Publication 5220 (August 1992), entitled "Magnesium from Canada: Determinations of the Commission in Investigations Nos. 701–TA–309 and 731–TA–528 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

Issued: August 20, 1992.
By order of the Commission.

Paul R. Bardos,
Acting Secretary.

[FR Doc. 92–20420 Filed 8–25–92; 8:45 am]
BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated July 7, 1992, and published in the **Federal Register** on July 14, 1992, (57 FR 31214), High Standard Products, 1100 West Florence Avenue, #B, Inglewood, California 90301, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Heroin (9200)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Methadone (9250)	II
Morphine (9300)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 18, 1992.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–20386 Filed 8–25–92; 8:45 am]
BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated June 11, 1992, and published in the **Federal Register** on June 22, 1992 (57 FR 27791), Smithkline Beecham Chemicals, Division of Smithkline Beecham Corporation, 900 River Road, Mail Stop L–11, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-Methoxyamphetamine (7411)	I
Amphetamine (1100)	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control At of 1970 and title 21, Code of Federal Regulations § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: August 18, 1992.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–20385 Filed 8–25–92; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Native American Programs' Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1), notice is hereby given of a meeting of the Job Training Partnership Act Native American Programs' Advisory Committee.

Time and Date: The meeting will begin at 9 a.m. on September 23, 1992 and continue until close of business that day; and will reconvene at 9 a.m. on September 24, 1992, and adjourn at 12 noon that day. The final hour of the meeting on September 23 will be reserved for participation and presentations by members of the public.

Place: Rooms 3437 B, C and D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Status: The meeting will be open to the public.

Matters To Be Considered: The agenda will focus on the most recent version of the Employment and Training Administration's (ETA) draft paper on enhancing the quality of the Section 401 program. The Committee's draft response to ETA's paper and any comments received from the grantee community on both papers will also be considered.

Contact Person for More Information: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, room N–4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0500 (this is not a toll-free number).

Signed at Washington, DC 19 day of August, 1992.

Roberts T. Jones,
Assistant Secretary of Labor.

[FR Doc. 92–20450 Filed 8–25–92; 8:45 am]
BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment

Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20201.

Any complaints regarding attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and House Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process:
Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–535–0163 (this is not a toll-free number).

Regarding the Compliant Process:
Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 188(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 7th day of August 1992.

Robert J. Litman,

Acting Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[07/01/92 TO 7/31/92]

CEO-Name/Facility Name/Address	State	Approval Date
Mr. Robert P. Atkinson, Jefferson Reg'l Med. Ctr., 1515 West 42nd, Pine Bluff, 71603, 501–541–7771	AR	07/09/92
Ms. Mary Anne Moreno, Miami-Inspiration Hospital, M–1 Miami Gardens, Miami, 85539, 602–425–3261	AZ	07/09/92
Ms. Judy Williams, Int'l Nurses Who Care, Inc., 1747 Brown Avenue, Woodland, 95695, 916–661–1493	CA	07/01/92
Mr. A. Jocson, Nursing Care Providers, Inc., 2419 Ocean Avenue, San Francisco, 94127, 415–469–0431	CA	07/01/92
Mr. Bruce Blomstrom, CiniShare Inc., 20600 Nordhoff Street, Chatsworth, 91311, 818–709–4221	CA	07/01/92
Mr. Kaldeep Brar, STAT Medical Services, Inc., 6430 Sunset Boulevard, Hollywood, 90028, 213–465–1134	CA	07/15/92
Mr. William A. Benbassat, Reliable Health Care Services, 5705 S. Sepulveda Blvd., Culver City, 90230, 310–397–2229	CA	07/15/92
Mr. Ephraim Barsam, Nursing Mgmt. Services (USA), 1875 Century Park East, Los Angeles, 90067, 310–553–6024	CA	07/15/92
Sr. Elizabeth Joseph Keaveney, St. Francis Med. Ctr., 3630 East Imperial Highway, Lynwood, 90262, 310–603–6085	CA	07/22/92
Mr. Suwaran Brar, White Cap Nursing Agency, 2500 Marconi Avenue, #108, Sacramento, 95821, 916–484–0144	CA	07/22/92
Mr. Les Beard, East Pointe Hospital, 1500 Lee Boulevard, Lehigh Acres, 33936, 813–369–2101	FL	07/02/92
Mr. Edward J. Golfinett, Metropolitan General Hospital, 7950 66th St. N., Pinellas Park, 45665, 813–546–9871	FL	07/02/92
Mr C. Scott Campbell, Highlands Reg'l Med. Ctr., P.O. Drawer 2066, Sebring, 33871, 813–385–6101	FL	07/09/92
Mr. Brian E. Keeley, Baptist Hospital of Miami, 8900 North Kendall Drive, Miami, 33176, 305–596–6585	FL	07/09/92
Ms. Judi Buxo, Harbour's Edge, 401 East Linton Boulevard, Delray Beach, 33483, 407–272–7979	FL	07/15/92
Mr. Louis Menzo, Bayshore Conval. Ctr., 16650 West Dixie Highway, North Miami, 33160, 305–945–7447	FL	07/15/92
Mr Richard S. Freeman, West Boca Medical Center, 21644 State Road #7, Boca Raton, 33428, 407–488–8000	FL	07/15/92
Mr. Tom E. Fitz, Palms of Pasadena Hospital, 1501 Pasadena Ave. South, Petersburg, 33707, 813–341–7774	FL	07/22/92
Mr R.B. Hubbard/T.H. Hill, Cobb Hospital & Medical Center, 3950 Austell Rd., Austell, 30001, 404–944–5030	GA	07/09/92
Mr. Edward J. Fechtel, Saint Mary's Hosp. of Athens, 1230 Baxter Street, Athens, 30606, 706–548–7581	GA	07/09/92
Ms. Yvonne Willis, Bowdon Area Hosp. & Rehab., 501 Mitchell Avenue, Bowdon, 30108, 404–258–7207	GA	07/22/92
Mr. Joseph G. Brum, Henry General Hospital, 1133 Eagle's Landing Parkway, Stockbridge, 30281, 404–389–2200	GA	07/22/92
Mr. Daryl Plager, Arcadia Retirement Residence, 1434 Punahou Street, Honolulu, 96822, 808–941–0941	HI	07/09/92
Mardith Wood, Greenwood Manor Conval. Ctr., 605 Greenwood Drive, Iowa City, 52246, 319–338–7912	IA	07/31/92
Mr. Tali Tzur, Maple Hill Nursing Ctr., Inc., Box 2308 R.F.D., Long Grove, 60047, 708–438–8275	IL	07/01/92
Mr. Gary L. Callahan, Loretto Hospital, 645 South Central Avenue, Chicago, 60644, 312–626–4300	IL	07/01/92
Mr. Taliz Tzur, Royal Terrace Healthcare Ctr., 803 Royal Drive, McHenry, 60050, 815–344–2600	IL	07/01/92
Mr. Sidney Glenner, Glen Oaks Nursing Home, Inc., 270 Skokie Hwy., Northbrook, 60062, 708–498–9320	IL	07/02/92
Mr. Sidney Glenner, Glen Crest Nursing & Rehab. Ctr., 2451 W. Touhy, Chicago, 60646, 312–338–6800	IL	07/02/92
Mr. Sheldon Wolfe, Fox Valley Healthcare Center, 759 Kane Street, South Elgin, 60177, 708–697–3310	IL	07/02/92
Mr. Sidney Glenner, Elston Nursing Home, 4340 No. Keystone, Chicago, 60641, 312–545–8700	IL	07/02/92
Mr Robert Nataupsky, Walnut Ridge Healthcare & Reh Ctr., Inc., Springfield, 62702, 217–525–1880	IL	07/09/92
Mr Sam Gorenstein, Metro. Nursing Ctr. of Oak Park Inc., Oak Park, 60302, 708–848–5966	IL	07/09/92
Mr. Morris Esformes, Bourbonnais Terrance, 133 Mohawk Drive, Bourbonnais, 60914, 815–937–4790	IL	07/09/92
Mr. Sam Gorenstein, Metro. Nursing Ctr. of Elgin, 50 N. Jane Drive, 60123, 708–697–3750	IL	07/09/92
Mr Sam Gorenstein, Metro. Nursing Ctr. of Joliet, 222 N. Hammes, Joliet 60435, 815–715–9443	IL	07/15/92

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[07/01/92 TO 7/31/92]

CEO-Name/Facility Name/Address	State	Approval Date
Mr. Tali Tzur, Wellington Plaza Nursing Ctr., 504 W. Wellington, Chicago, 60657, 312–281–6200	IL	07/15/92
Mr. Sam Gorenstein, Edgewater Nursing & Geriatric, 5838 N. Sheridan Road, Chicago, 60660, 312–769–2230	IL	07/16/92
Mr. Malka Mermelstein, Lake Front Healthcare Ctr., I, 7818 N. Sheridan, Chicago, 60626, 312–743–7711	IL	07/22/92
Mr. Peter Rogan, Edgewater Medical Center, Edgewater Operating Co.:d/b/a Chicago, 60660, 312–878–6000	IL	07/22/92
Mr. John Harper, South Shore Hospital, 8012 S. Crandon Avenue, Chicago, 60617, 312–768–0810	IL	07/23/92
Mr. Charles E. Windsor, St. Mary's Hospital, Inc., 129 North 8th Street, East St. Louis, 62201, 618–274–1900	IL	07/31/92
Mr. John Gracey, Lemuel Shattuck Hospital, 170 Morton Street, Jamaica Plain, 02130, 617–522–8110	MA	07/01/92
Mr. L. Barney Johnson, Harbor Hospital Ctr., 3001 South Hanover Street, Baltimore, 21225, 410–347–3566	MD	07/09/92
Mr. Paul L. Broughton, Harper Hospital, 3990 John R. Street, Detroit, 48201, 313–745–9053	MI	07/29/92
Mr. Richard L. Myers, Durham County Hospital Corp., 3643 N. Roxboro Rd., Durham, 27704, 919–470–7267	NC	07/22/92
Mr. Michael E. Gilstrap, Halifax Memorial Hospital, P.O. Box 1089, Roanoke Rapids, 27870, 919–535–8011	NC	07/31/92
Mr. A. Jason Geisinger, Greenbriar Terrace Healthcare, The Hillhaven Corporation, Nashua, 03062, 603–888–1573	NH	07/09/92
Mr. R.C. Lemire, Epsom Manor, R.C. Lemire Enterprise, Inc., dba Epsom, 03234, 603–736–4772	NH	07/16/92
Ms. Janice Marchelle, Whiting Healthcare Center, 3000 Hilltop Road, Whiting, 08759, 908–849–4400	NJ	07/01/92
Mr. George Cannata, Dover Christian Nursing Home, 65 N. Sussex Street, Dover, 07801, 201–361–5200	NJ	07/01/92
Mr. Ulrich J. Rosa, St. Francis Hospital, Franciscan Health System of NJ., Inc., Jersey City, 07302, 201–714–8900	NJ	07/02/92
Mr Ulrich Rosa, St. Mary Hospital, Franciscan Health System of NJ., Inc., Hoboken, 07030, 201–714–8900	NJ	07/02/92
Ms. Elizabeth Miller, Burnt Tavern Conval. Center, 1049 Burnt Tavern Rd., Brick, 08724, 908–840–3700	NJ	07/02/92
Ms. Kay Henning, Northfield Manor Conval. Home, 787 Northfield Avenue, West Orange, 07052, 201–731–4500	NJ	07/09/92
Mr. Robert Zupe, CentraState Medical Center, West Main Street, Freehold, 07728, 908–431–2000	NJ	07/31/92
Mr. William Watt, St. Joseph's Hospital Health, 301 Prospect Avenue, Syracuse, 13203, 315–448–5836	NY	07/01/92
Mr. John S.T. Gallagher, North Shore University Hosp., 300 Community Drive, Manhasset, 11030, 516–562–0100	NY	07/23/92
Mr. Stanley F. Hupfeld, Baptist Med. Ctr. of Oklahoma, 3300 Northwest Expwy., Oklahoma City, 73112, 405–949–3112	OK	07/02/92
Mr. James Seward, Hillside Hospital, 1265 E. College Street, Pulaski, 38478, 615–363–7531	TN	07/09/92
Mr. Duane K. Rossmann, Doctors Hospital, 3205 West Davis, Conroe, 77304, 409–756–0631	TX	07/01/92
George A. Hurst, M.D., The U. of Texas Health Ctr., Highway #271 No. 155, Tyler, 75710, 903–877–7740	TX	07/09/92
Mr. Kenneth Jewell, Sweetbriar Nursing Home, 401 Horton, Brenham, 77833, 409–836–6611	TX	07/09/92
Mr. Thomas B. Symonds, Mission Hospital, 900 South Bryan Road, Mission, 78752, 512–580–9000	TX	07/22/92
Mr. Luis G. Silva, AMI Hospitals of Texas, LTD., P.O. Box 1648, Port Arthur, 77641, 409–985–0470	TX	07/22/92
Mr. William Burns, HCA Rio Grande Regional Hosp., 101 E. Ridge Road, McAllen, 78503, 512–632–6000	TX	07/31/92
Mr. A. Jason Geisinger, Birchwood Terrace Healthcare, The Hillhaven Corporation, Burlington, 05401, 802–863–6384	VT	07/01/92
Total Attestations: 67		

[FR Doc. 92–20451 Filed 8–25–92; 8:45 am]

BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Grant Award for Provision of Civil Legal Services Needs of Migrant Farmworkers

AGENCY: Legal Services Corporation.

ACTION: Announcement of grant award.

SUMMARY: The Legal Services Corporation hereby announces its intention to award a grant to provide civil legal assistance to LSC-eligible migrant farmworker clients in Mississippi. Pursuant to the Corporation's announcement of funding availability published in 56 FR 10577 (March 13, 1991), a total of $125,250 will be awarded to Central Mississippi Legal Services.

This one-time, non-recurring grant is awarded pursuant to authority conferred by section 1006(a)(1)(B) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice. The grant award will become effective and grant funds will be distributed only after expiration of this 30-day period.

DATES: All comments and recommendations must be received on or before 5 p.m. on September 25, 1992.

ADDRESSES: Comments should be sent to the Office of Field Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Ressie Walker, Grants Specialist, Grants & Budget Division, Office of Field Services, (202) 336–8826.

Dated: August 24, 1992.

Ellen J. Smead,

Director, Office of Field Services.

[FR Doc. 92–20620 Filed 8–25–92; 8:45 am]

BILLING CODE 7050–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: Simulation Facility Certification.
3. The form number if applicable: NRC Form 474.
4. How often the collection is required: One time requirement.
5. Who will be required or asked to report: All power reactor licensees and applicants for an operating license.
6. An estimate of the number of responses: 10 annually.
7. An estimate of the total number of hours needed to complete the requirement or request: 1200 annually (approximately 120 hours per response).
8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable.
9. Abstract: Licensed power facilities which propose the use of a simulation facility consisting solely of a plant-referenced simulator for the conduct of NRC licensing

operating tests are to submit NRC Form 474.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0138), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 19th day of August 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–20430 Filed 8–25–92; 8:45 am]

BILLING CODE 7590–01–M

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 36).

1. Type of submission, new, revision, or extension: Revision.
2. The title of the information collection: 10 CFR part 61—Licensing Requirements for Land Disposal of Radioactive Waste
3. The form number if applicable: Not applicable.
4. How often the collection is required: Applications for licenses are submitted once. Applications for renewals or amendments are submitted as needed. Other reports are submitted annually and as other events require.
5. Who will be required or asked to report: Applicants for and holders of an NRC license for land disposal of low-level radioactive waste.
6. An estimate of the number of responses: 91.
7. An estimate of the total number of hours needed to complete the requirement or request: The average burden is estimated to be approximately 153 hours per response, and 3,040 recordkeeping hours per licensee for two licensees annually. The total industry burden is estimated to be 20,020 hours annually.
8. An indication of whether section 3504(h) Public Law 96–511 applies: Not applicable.
9. Abstract: 10 CFR part 61 establishes the procedures, criteria, and license terms and conditions for the land disposal of low-level radioactive waste. The information collected in the applications, reports and records is evaluated by the NRC to ensure that the licensee's or applicant's physical plant, equipment, organization, training, experience, procedures and plans provide an adequate level of protection of public health and safety, common defense and security, and the environment.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, N.W. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0135), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 18th day of August 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–20431 Filed 8–25–92; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, 50–287]

Duke Power Co., Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–38, DPR–47, and DPR–55 issued to Duke Power Company (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed amendments would revise the provisions in the Technical Specification (TS) to allow a one-time extension of outage time to 7 days for a single string of the switchyard 125 volt dc (VDC) batteries to be inoperable to permit the replacement of the 59-cell battery with a new 60-cell battery.

The proposed action is in accordance with the licensee's application for amendment dated May 20, 1992.

The Need for the Proposed Action

The proposed changes to the TS are required to allow replacement of switchyard 125 VDC batteries which are nearing end-of-life.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revision would allow one string of 125 VDC batteries to be inoperable for 7 days during the battery replacement. The other string of 125 VDC batteries and several other sources of emergency power would remain available. Therefore, the probability of accidents would be only slightly increased, and the consequences of the accidents are within the bounds of those analyzed in the FES for operation. After the modification, the probability of accidents will be reduced due to increased reliability. Also, no changes are being made in the types of any effluents that may be released offsite and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

Although the proposed changes to the TS involve systems not located within the restricted area as defined in 10 CFR part 20, there are no environmental effects. These changes do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 24, 1992 (57 FR 28199). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would prevent implementation of the modification which would provide increased reliability of the overhead emergency power path.

Alternative Use of Resources

The proposed amendments do not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of the Oconee Nuclear Station, Units 1, 2, and 3 dated March 1972.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated May 20, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 19th day of August 1992.

For the Nuclear Regulatory Commission

David B. Matthews,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–20932 Filed 8–25–92; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Plant Operations; Meeting

The ACRS Subcommittee on Plant Operations will hold a meeting on September 9, 1992, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 9, 1992—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the NRC staff and industry programs to address the issue of risk from low power/shutdown operations at U.S. nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the nuclear industry, their respective consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Paul Boehnert (telephone 301/492–8558) between 7:30 a.m. and 4:15 p.m. (e.s.t.). persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 19, 1992.

M. Dean Houston,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 92–20404 Filed 8–25–92; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 9, 1992, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that will be closed to discuss the qualifications of candidates nominated for appointment to the ACRS. This session will be closed to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

The agenda for the subject meeting shall be as follows:

Wednesday, September 9, 1992—3 p.m. until 5:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. Qualifications of candidates nominated for appointment to the ACRS will also be discussed.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff engineer, Mr. Raymond F. Fraley (telephone 301/492–4516) between 7:30

a.m. and 4:15 p.m., e.s.t. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: August 19, 1992.

Richard Savio,

Assistant Executive Director for Nuclear Reactors and Nuclear Waste.

[FR Doc. 92-20403 Filed 8-25-92; 8:45 am]

BILLING CODE 7590-01-M

Holders of Operating Licenses or Construction Permits for Nuclear Power Plants; Receipt of Petition for Director's Decision Under 10 CFR 2.206 Regarding the Use of Thermo-Lag 330 Fire Barrier Material

Notice is hereby given that the Nuclear Information and Resource Service and other organizations (Petitioners) have submitted to the U.S. Nuclear Regulatory Commission (NRC) on July 21, 1992, as supplemented by the addenda of August 12, 1992, a Petition pursuant to 10 CFR 2.206. Joining with the Nuclear Information and Resources Service in filing the Petition are the Alliance for Affordable Energy, Citizens Organized to Protect our Parish, Citizens for Fair Utility Regulation, Don't Waste New York, Citizens Against Radioactive Dumping, Coalition for Alternatives to Shearon Harris, Conservation Council for North Carolina, Safe Energy Coalition of Michigan, Steve Langdon, Essex County Citizens Against Fermi-2, Natural Guard, and Northwest Environmental Advocates.

The Petitioners alleged a number of deficiencies with Thermo-Lag material including failure of Thermo-Lag fire barriers during 1- and 3-hour fire endurance tests, deficiencies in procedures for installation, nonconformance with NRC quality assurance and qualification test regulations, the combustibility of the material, ampacity miscalculations, the lack of seismic tests, the failure to pass hose stream tests, the high toxicity of substances emitted from the ignited material, and the declaration by at least one utility, Gulf States Utilities Company, of the material as inoperable at its River Bend Station. The Petition also alleged that fire watches cannot substitute for an effective fire barrier indefinitely and that the NRC staff has not adequately analyzed the use of fire watches.

Based on these allegations, the Petitioners request that the NRC immediately suspend the operating licenses for the River Bend, Comanche Peak Unit 1, Shearon Harris, Fermi-2, Ginna, WNP-2, and Robinson facilities pending a demonstration that the facilities meet NRC fire protection requirements. The Petitioners also request the issuance of an order to stop the installation of Thermo-Lag a Comanche Peak Unit 2 or a suspension of the facility's construction permit. The Petitioners seek the NRC to issue a generic letter before September 5, 1992, requiring licensees to submit information to the NRC demonstrating compliance with fire protection requirements. Where facilities cannot demonstrate compliance, the Petitioners request immediate suspension of the operating licenses for the affected facilities until such time as compliance with NRC protection requirements can be shown. In a letter of August 19, 1992, I have determined that immediate action is not necessary regarding the matters raised in the Petition.

The Petition has been referred to the Director of the Office of Nuclear Reactor Regulation pursuant to 10 CFR 2.206. As provided by 10 CFR 2.206, the NRC will take appropriate action on the specific issues raised by the Petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 19th day of August 1992.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 92-20433 Filed 8-25-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8064]

Rio Algom Mining Corp., Lisbon Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to amend Source Material License SUA-1119 for the Lisbon Facility to incorporate reclamation schedules.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend Source Material License SUA-1119, Rio Algom Mining Corp., Lisbon Facility, to incorporate a revised reclamation schedule and to add a new license condition.

DATES: The comment period expires October 13, 1992.

ADDRESSES: Copies of the response from Rio Algom Mining Corp. and the staff evaluation of the licensee's request are available for inspection at the Uranium Recovery Field Office, 730 Simms Street Suite 100, Golden, CO, and the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Comments should be mailed to David L. Meyer, Chief, Rules and Directives Review Branch, Office of Administration, P-223, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Director, Uranium Recovery Field Office, P.O. Box 25325, Denver, CO, 20555.

Comments may be hand-delivered to room P-223, 7920 Norfolk Avenue, Bethesda, MD, between 7:30 a.m. and 4:15 p.m., Federal workdays.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, Box 25325, Denver, CO. Telephone: 303-231-5800.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA) entered into a Memorandum of Understanding (MOU) which was published in the Federal Register on October 25, 1991 (56 FR 55434). The MOU requires that the NRC incorporate enforceable reclamation schedules for specific uranium mill sites into the corresponding licenses. The MOU also listed expected dates for completion of placement of a final earthen cover for each site.

The NRC requested by letter dated October 22, 1991, that Rio Algom Mining Corp. submit a proposed schedule for reclamation milestones for NRC review and incorporation into the license. The licensee provided responses on November 22, 1991, and July 10, 1992.

The proposed schedule calls for placement of the final cover by December 31, 1996, which is the same date as in the MOU for this mill. The NRC staff reviewed the reclamation schedule and determined that it is reasonable, and adherence to the schedule should assure satisfactory progress toward placement of the final cover by the specified date.

The NRC intends to amend Source Material License SUA-1119 to incorporate the schedules proposed by the licensee by adding License Condition No. 55 as follows:

55. The licensee shall complete site reclamation in accordance with an approved reclamation plan. The ground-water corrective action plan shall be conducted as authorized by License Condition No. 53 in accordance with the following schedules.

A. To ensure timely compliance with target completion dates established in the Memorandum of Understanding with the Environmental Protection Agency (56 FR 55432, October 25, 1991), the licensee shall complete reclamation to control radon emissions as expeditiously as practicable, considering technological feasibility, in accordance with the following schedule:

(1) Windblown tailings retrieval and placement on the pile—September 30, 1993.

(2) Placement of the interim cover to decrease the potential for tailings dispersal and erosion—December 31, 1992.

(3) Placement of a final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m2/s above background—December 31, 1996.

B. Reclamation, to ensure required longevity of the covered tailings and ground-water protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of appendix A of 10 CFR part 40—December 31, 2015.

(2) Projected completion of ground-water corrective actions to meet performance objectives specified in the ground-water corrective action plan—December 31, 2015.

C. Any license amendment request to revise the completion dates specified in Section A must demonstrate that compliance was not technologically feasible (including inclement weather, litigation which compels delay to reclamation, or other factors beyond the control of the licensee).

D. Any license amendment request to change the target dates in Section B above must address added risk to the public health and safety and the environment, with due consideration to the economic costs involved and other factors justifying the request such as delays caused by inclement weather, regulatory delays, litigation, and other factors beyond the control of the licensee.

Dated at Denver, Colo., this 18th day of August 1992.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office.

[FR Doc. 92-20434 Filed 8-25-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

[Rescission of Office of Management and Budget (OMB) Circular No. A-18]

Policies on Construction of Family Housing, Dated October 18, 1957

AGENCY: Office of Management and Budget.

ACTION: The Office of Management and Budget (OMB) has rescinded Circular No. A-18, Policies on Construction of Family Housing, dated October 18, 1957.

SUMMARY: Pursuant to OMB's simplification of its system of circulars, the general policy provisions of OMB Circular No. A-18 have been incorporated in the revised version of OMB Circular No. A-11, Preparation and Submission of Annual Budget Estimates, dated July 2, 1992. The remaining provisions of Circular No. A-18 will be incorporated into OMB Circular No. A-45, Policy Governing Charges for Rental Quarters and Related Facilities, March 28, 1984. This circular is currently under revision and the revised version is to be published soon.

DATE: The effective date of this action is the date of the OMB Circular No. A-18 Transmittal Memorandum No. 2.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., Washington, DC 20503. Telephone (202) 395-7209.

SUPPLEMENTARY INFORMATION: Notice of this action was given in 56 FR 49,824 on October 1, 1991.

Dated: August 19, 1992.

Allan V. Burman,

Administrator.

[FR Doc. 92-20409 Filed 8-25-92; 8:45 am]

BILLING CODE 3110-01-M

THE PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

Meeting

SUMMARY: The Presidential Commission on the Assignment of Women in the Armed Forces will hear testimony August 27th through August 29th in Dallas, Texas. Presentations will be made by experts on sociological and cultural issues, theologians, and representatives from the Army, Navy, and Marines, on policies pertaining to the assignment of women in the military. Additionally, panels of the Commission's four Fact Finding Panels will meet in Dallas to discuss women's roles in the Armed Forces.

Locotion: Fairmont Hotel/Parisian Room-Banquet Level At the Dallas Arts District, 1717 North Akard Street, Dallas, Texas 75201, (214) 720-2020.

Dates: Thursday, August 27th & Friday August 28th 8 a.m. to 5:30 p.m./General Session Saturday, August 29th 8 a.m. to 9:15 a.m./General Session 9:30 a.m. to 12 p.m./panel meetings (rooms to be announced)

Note: In addition to the Dallas hearing, the Presidential Commission on the Assignment of Women in the Armed Forces has scheduled the next hearing in Washington, D.C. Please call the Commission office for further details.

Status: Open to Public.

Contact: Please call for more information and possible schedule changes: Contact: Magee Whelan or Kevin Kirk, (202) 376-6905.

The Presidential Commission on the Assignment of Women in the Armed Forces was established by Congress in the National Defense Authorization Act of 1992 (Pub. L. 102-190). The 15-member commission shall assess the laws and policies governing the assignment of women in the military and shall make recommendations on such matters to the President by November 15, 1992.

W. S. Orr,

Staff Director.

[FR Doc. 92-20424 Filed 8-25-92; 8:25 am]

BILLING CODE 6820-CD-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31049; File No. S7-29-92]

Options Price Reporting Authority; Filing and Immediate Effectiveness of Amendment to the OPRA Plan Revising Certain Access Fees

August 17, 1992.

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on July 27, 1992, the Options Pricing Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan") for the purpose of revising certain access fees charged by OPRA.

OPRA has designated this proposal as establishing or changing a fee or other charge collected on behalf of all the OPRA participants in connection with access to or use of OPRA facilities.

permitting it to become effective upon filing, pursuant to the terms of Rule 11Aa3–2(c)(3)(i) under the Act. OPRA, however, does not intend to put the new fees into effect until September 1, 1992, in order to provide notice to persons subject to the fees. The Commission is publishing this notice to solicit comments from interested persons on the amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to increase the fees charged by OPRA to persons who receive a bulk, data-feed transmission of current options market information by means of direct or indirect access to OPRA's central processor, the Securities Industry Automation Corporation ("SIAC"). This fee increase is necessitated by recent and scheduled increases in OPRA's expenses, including very substantial increases in the processor charges imposed by SIAC.

Pursuant to its agreements with vendors, new services and direct-connect subscribers, the access fees charged by OPRA to these persons are established at a level that permits the recovery of OPRA's operating costs (*i.e.*, costs imposed by SIAC for its services as OPRA's central processor, as distinguished from system development costs, OPRA's general overhead and administration costs, and costs incurred by participant exchanges in collecting current options market information and transmitting it to OPRA's central processor). These access fees are adjusted at least annually by dividing OPRA's total processor costs by the number of persons paying these fees. At the time of the last review in September 1991, total monthly processor costs were $71,000, which, divided by the 50 persons then paying these fees, resulted in the current monthly access fee of $1,400.

During 1992, major additions and improvements have been and will be made by SIAC, at OPRA's request, to the facilities dedicated to performing the central processor function for OPRA, each of which will cause SIAC's processor costs to increase. The most significant of these changes, and the one that will account for most of the cost increase (approximately 70% of the increase) is the implementation by SIAC of an independent, back-up, second site facility, made at OPRA's request in response to concerns raised by the General Accounting Office and the Commission in order to assure uninterrupted operation of the OPRA system in the event of a major catastrophe at SIAC's primary site. In addition, SIAC has provided for a substantial increase in OPRA's message handling capacity—from a maximum capacity of 150–160 messages per second to 240–300 messages per second—in order to accommodate significantly greater projected message traffic and to prevent bottlenecks in the OPRA network, and a major upgrade of the computer equipment used to process OPRA data. Reflecting these additions and improvements to SIAC's facilities, OPRA's monthly processor costs will soon increase by almost 100% (from $71,000 to $139,000) when price changes scheduled for the third and fourth quarter of 1992 are put into effect by SIAC.

In order to be able to recover these increases in processor charges from the access fees paid by vendors, news services and direct-connect subscribers, OPRA proposes to increase these fees to $2,800 per month, which is somewhat less than the amount that results by dividing the new, higher processor charges by the 48 persons currently paying these fees.

OPRA also proposes to increase the access fee paid by indirect data-feed subscribers, who receive data-feed directly from OPRA's central processor. This fee was initially established several years ago at the nominal rate of $100 per month, in order to recover a portion of the higher costs of administration associated with this category of subscribers. In order more fairly to allocate a greater share of OPRA's costs to this category of data-feed subscribers, taking into account the higher access fees proposed to be charged to vendors, news services and direct-connect subscriber, OPRA proposes to increase this fee to $600 per month.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3) under the Act, the amendment became effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 553, will be available for inspection and copying in the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing also will be available at the principal office of OPRA. All submissions should refer to the file number in the caption above and should be submitted by September 16, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(29).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20387 Filed 8–25–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31011; File No. SR–CSE–92–10]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange Relating to the Preferencing of Public Agency Market and Marketable Limit Orders by Approved Dealers and Other Proprietary Members

August 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), on July 27, 1992, the Cincinnati Stock Exchange (the "CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is granting accelerated approval of, and publishing this notice to solicit comments from interested persons on, the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will extend for nine months the CSE's preferencing rule pilot, which the Commission approved temporarily on February 7, 1991, and which was most recently extended on February 7, 1992, and modified on June 15, 1992.[1] The preferencing rule, as amended, modifies the Exchange's time priority rules to permit a market maker to act as Dealer of the Day and have priority over same-priced market maker or professional agency interest entered prior in time to his bid or offer when the market maker is interacting with public agency market and marketable limit orders which he represents as agent.

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purposes of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items V below. The Exchange has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CSE has sought in various ways, outlined in its initial rule filing, to increase the amount of retail business transacted on the Exchange.[2] As noted in the Commission's February 1991 order initially approving the preferencing pilot, the CSE's preferencing proposal is an attempt to achieve improvements in efficiency and liquidity of CSE-traded securities.[3] Although CSE share volume attributable to preferencing has increased since its introduction in April 1991, the great majority of the Exchange's total share volume continued, as of June, 1992, to be nonpreferenced trading. The CSE is requesting another extension of the preferencing pilot so that the Exchange and the Commission can continue to evaluate the impact of preferencing on the national market system. To expand the pilot in a controlled manner with ample opportunity for Commission review, the Exchange also proposes to increase the number of issues any one Dealer may preference from 250 to 350.

[1] See Securities Exchange Act Release Nos. 30353 (Feb. 7, 1992), 57 FR 5978; and 30809 (June 15, 1992), 57 FR 27990. See also Securities Exchange Act Release Nos. 28866 (Feb. 7, 1991), 56 FR 5854; 29524 (Aug. 5, 1991), 56 FR 38160; and 29885 (Oct. 30, 1991), 56 FR 56876.

[2] See Securities Exchange Act Release No. 28866 (February 7, 1991), 56 FR 5854.

[3] *Id.*

Originally, to prevent the use of preferencing to facilitate program trading, the CSE agreed to limit to 60 the number of issues that a Designated Dealer could preference.[4] On October 31, 1991, and June 15, 1992, the Commission issued orders granting CSE requests to increase the limit on the number of issues a Designated Dealer could preference from 60 to 125, and from 125 to 250.[5] As a condition, however, of granting these orders, the CSE agreed to provide the Commission with the following information: (1) A list indicating how many Designated Dealers are preferencing in more than sixty issues; (2) a list identifying, in each such case, the issues being preferenced; and (3) reports indicating the volume of preferenced trades in each issue. Further, the CSE agreed that, if the Commission so requested, it would provide available information relating to specific time intervals, and that it would not use dealer preferencing for index arbitrage purposes until permitted by the Commission.[6]

The proposed rule change is consistent with the provisions of section 6(b) of the Act in general and, in particular, furthers the objective of section 6(b)(5) because it will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange solicited comments on the proposed rule change from other Intermarket Trading System participants prior to its initial filing.[7]

[4] *Id.*

[5] See Securities Exchange Act Release Nos. 29885 (October 30, 1991), 56 FR 56876; and 30809 (June 15, 1992), 57 FR 27990.

[6] *Id.* To date, the CSE has provided the Commission with confidential information regarding the number of Designated Dealers preferencing in more than sixty issues, the total preferenced share and transaction volume, and what percentage of total share and transaction volume the preferenced volume represents.

[7] See File No. SR–CSE–90–6.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated approval pursuant to section 19(b)(2). The Exchange believes that the issues raised by this filing were addressed prior to the initiation of the preferencing pilot, and experience under the pilot has raised no new issues. Moreover, the CSE wishes to continue its preferencing program without interruption to participating dealers.

IV. Discussion

The Commission finds that the proposal to extend the CSE's preferencing rule for nine months, and to increase the limit on the number of issues any one Dealer may preference to 350, is consistent with the Act and the rules and regulations thereunder applicable to the Exchange. Specifically, extension of the pilot and expansion of the number of eligible securities will enable the CSE to conduct a broader study of the effect of preferencing. Approval, however, is contingent upon the CSE abiding by the conditions set out above and to providing the information described above. In this regard, by May 7, 1993, the CSE will provide: (1) The CSE's list indicating the Designated Dealers that are preferencing in more than sixty issues; (2) a list identifying, in each such case, the issues being preferenced; and (3) reports indicating the volume of preferenced trades in each such issue. Approval also is conditioned upon the CSE providing the Commission, for each moth of the pilot program, with information on the total preferenced share and transaction volume and what percentage of total CSE share and transaction volume the preferenced volume represents.

The Commission finds good cause for approving the extension of the pilot for an additional nine months and increasing the limit on the number of issues any one dealer may preference from 250 to 350, upon termination of the extension of the pilot on August 7, 1992, which is prior to the thirtieth day after the date of publication and notice of filing. The Commission believes that accelerated approval will help the CSE continue its preferencing program without interruption to participating dealers. The Commission also believes that accelerated approval will help the CSE to continue to expand the pilot in a controlled manner with greater opportunity for Commission review.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commissions, and all written communications relating to the proposed rule change between the Commission and any other person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above (see also Files SR–CSE–90–06, 91–03, –92–01, –92–04) and should be submitted by September 16, 1992.

VI. Conclusion

Based on the foregoing, the Commission has concluded that the proposal to extend the pilot for nine months and increase the limit on the number of issues any one Dealer may preference from 250 to 350, is consistent with the requirements of the act and that it is appropriate to approve the proposal.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act, that the proposal to extend the pilot for a nine-month period until May 7, 1993, commencing upon termination of the extensions of the original pilot, on August 7, 1992, and to increase the limit on the number of issues any one Dealer may preference from 250 to 350, be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20390 Filed 8–25–92; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

August 17, 1992.

On August 3, 1992, the Midwest Stock Exchange, Inc. ("MSE") submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–8890	ADPT	Adaptec, Inc., Common Stock, $.001 par value.

The above-referenced issue is being applied for as a replacement for the following security for which OTC/UTP application was made on July 14, 1992.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following issue:

File No.	Symbol	Issuer
7–8891	TSQM	T [2] Medical, Inc., Common Stock, $.01 par value.

A replacement issue is being requested as the common stock of T[2] Medical, Inc. will be listed on the New York Stock Exchange, rendering it ineligible for the OTC/UTP program.

Comments

Interested persons are invited to submit, on or before September 7, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20388 Filed 8–25–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31048; File No. SR–NYSE–92–03]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendment To Rule 411(b) Regarding the Entry of Odd-Lot Orders

August 18, 1992.

I. Introduction

On February 20, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the entry of odd-lot orders on the Exchange.

The proposed rule change was noticed in Securities Exchange Act Release No. 30453 (March 9, 1992), 57 FR 9299 (March 17, 1992). No comments were received on the proposal.

II. Description of the Proposal

Pursuant to current Rule 411(b), when a person enters multiple odd-lot orders in the same stock which aggregate to 100 shares or more, and such person enters these orders for his own account or for accounts in which he has an actual monetary interest, he is obligated to aggregate such orders into round-lots where possible for execution in the round-lot auction market. Conversely, if the multiple odd-lot orders are entered at the same time by a person who merely manages, or makes investment decisions for, a number of accounts, current Rule 411(b) does not require the aggregation of such orders into round-lots.

The Exchange believes that the aggregation obligation applicable to persons who enter odd-lot orders for their own accounts, or for accounts in which they have a monetary interest, should apply equally to persons making a single investment decision as to the entry of multiple odd-lot orders for accounts over which they have investment discretion. For example, a money manager may make a single investment decision on behalf of multiple managed accounts which involve the purchase or sale of hundreds or thousands of shares utilizing odd-lots in the same security. The Exchange states that in the absence of an aggregation requirement, such orders are not exposed to the auction market, even though the orders may total multiple round-lots, and even though there may be contra side buying or selling interest in the round-lot market.[3]

The proposed amendment to Rule 411(b), however, would provide an exception to the proposed aggregation requirement. Under the exception, odd-lot orders which total less than 300 shares entered by a person with investment discretion over multiple accounts would not be required to be aggregated. This exception could be utilized once per training day by any person exercising investment discretion.[4]

III. Commission's Findings and Conclusion

After careful consideration, the Commission finds that the NYSE's proposed rule change to apply the current aggregation obligations set forth in Rule 411(b) to persons making a single investment decision as to the entry of multiple odd-lot orders for accounts over which they have investment discretion is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. More specifically, the Commission believes that the amendments are consistent with the section 6(b)(5) [5] requirement that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Commission believes that a transaction involving the entry of odd-lot orders for accounts in which a person has investment discretion is substantially similar to a transaction in which such person enters these odd-lot orders for his own account or for accounts in which he has a monetary interest. In such situations, investment advisers often are making a single investment decision in regard to all the accounts they manage which results in the entry of multiple odd-lot orders. Taken individually, the odd-lot orders are not eligible for auction market trading, but viewed as a whole, as individual parts of one investment decision, such orders should be aggregated into round-lots just as if these orders had been initially entered as one round-lot transaction. Because the entry of such odd-lot orders can be viewed as one investment decision, therefore, the Commission believes that these orders should be subject to the same auction market trading principles applicable both to multiple odd-lot orders entered by a person for his own account or for an account in which he has a monetary interest, and to round-lot transactions.

The Commission believes, however, that the exception to the proposed Rule 411(b) consolidation requirement for odd-lot orders which total less than 300 shares also is consistent with the Act. This exception, allowed only once per trading day to persons exercising investment discretion over accounts, should enable a person who infrequently enters such multiple odd-lot orders from being subject to the rules applicable to the round-lot market. The Commission believes that this exception is appropriate because persons with investment discretion over a small number of accounts who enter multiple-odd lots for *de minimis* amounts should not be required to enter such orders in the auction market. Such a requirement could prove overburdensome given the infrequency of order entry and the *de minimis* amount of such trades. Thus, the Commission believes that it is appropriate to exempt these *de minimis* transactions, once per trading day, from the proposed odd-lot aggregation requirements set forth herein.

For the reasons set forth above, the Commission has determined to approve the NYSE's proposed rule change. The Exchange's auction market trading system for round-lot orders provides a live forum for the convergence between the supply of and demand for a security. While most odd-lot orders currently receive the Best Pricing Quote ("BPQ") in the national market system,[6] the proposal would provide an opportunity for the aggregated orders to receive a better price through the use of the NYSE's auction market system. In addition, the proposal should result in enhancing liquidity on the NYSE by bringing more orders down to the floor to interact with each other. Because the Commission believes that auction market trading increases the overall efficiency of the marketplace by providing numerous benefits to market participants such as narrower quotes and better, more accurate prices, the Commission supports the NYSE's initiative to make auction market trading principles applicable to the additional situations involving the entry of multiple odd-lot orders by a person exercising investment discretion over multiple accounts.

It is Therefore Ordered, Pursuant to section 19(b)(2) [7] of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20389 Filed 8–25–92; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] Generally, odd-lot orders that are transmitted for execution to a NYSE member organization or its agent engaged in the odd-lot business are executed automatically at the price of the adjusted Intermarket Trading System ("ITS") bid (in the case of an order to sell) or adjusted ITS offer (in the case of an order to purchase) in the security at the time the order is received by the Exchange's odd-lot system. See NYSE Rule 124 for further information regarding the method of executing odd-lot orders on the Exchange.

[4] Subsequent to the notice of this proposal appearing in the Federal Register, the NYSE amended the language of the proposed rule change to clarify that this exception applies to orders entered by someone known to have investment discretion over multiple accounts, and is not applicable to those individuals who enter odd-lot orders for their own accounts, or for accounts in which they have a monetary interest. These individuals still must aggregate multiple odd-lot orders of 100 shares or more into round-lots where possible. See letter from Brian M.M. McNamara, Managing Director, Market Surveillance, NYSE, to Laurie Petrelli, Division of Market Regulation, SEC, dated June 29, 1992.

[5] 15 U.S.C. 78f(b)(5) (1988).

[6] See Securities Exchange Act Release No. 27981 (May 2, 1990), 55 FR 19407 (May 9, 1990) (Order approving File No. SR–NYSE–90–06).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

DEPARTMENT OF STATE

[Public Notice 1679]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea, Working Group on Carriage of Dangerous Goods; Meeting

The Working Group on Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on October 8, 1992, in room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 44th Session of the Subcommittee on the Carriage of Dangerous Goods of the International Maritime Organization (IMO) which is scheduled for October 19–23, 1992, at the IMO Headquarters in London. The agenda items include:

a. Amendments to the International Maritime Dangerous Goods (IMDG) Code.

b. Amendments to the IMDG Code for harmonization with The United Nations Recommendations on the Transport of Dangerous Goods.

c. Amendments to section 13 of the General Introduction to the IMDG Code

to cover transport in tanks of solid dangerous substances including molten substances in solidified form, and the transport of dangerous substances under heated conditions.

d. Implementation of the IMDG Code.

e. Development of criteria for the hermetic sealing of receptacles, packages and Intermediate Bulk Containers.

f. Development of new glossary and illustrations of packaging for Annex I to the IMDG Code.

g. Revision of Class 4.1, self-reactive [and related] substances.

h. Amendments to the Emergency Procedures for Ships Carrying Dangerous Goods (EmS) and the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).

i. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended, and amendments to the IMDG Code to cover pollution aspects.

j. Establishment of criteria for immersion testing of packages containing marine pollutants for the purposes of Annex III of MARPOL 73/78.

k. Matters relating to SOLAS regulations II–2/53 and 54.

l. Requirements for ships' stores of a hazardous nature.

m. Transboundary movement of wastes by sea.

n. Relations with other organizations.

o. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

p. Updating of the Recommendations on the Safe Transport, Handling and Storage of Dangerous Substances in Port Areas.

q. Review of existing ships' safety standards.

r. Role of the human element in maritime casualties.

s. Use of radio beacons on containers and packages.

t. Criteria for inclusion of substances in the list annexed to the 1973 Protocol.

u. Stowage and segregation in open-top container ships.

v. Requirements for the safe carriage of irradiated nuclear fuel (INF).

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR K. J. Eldridge, U.S. Coast Guard (G–MTH–1), 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: August 17, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–20416 Filed 8–25–92; 8:45 am]

BILLING CODE 4710–7–M

[Public Notice 1680]

Shipping Coordinating Committee, Subcommittee on Standards of Training and Watchkeeping, Meeting

The Shipping Coordinating Committee (SHC) will conduct open meetings at 9:30 a.m. on October 28, 1992, and on January 26, 1993, in room 4315 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meetings is to review the agenda items for the twenty-fourth session of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW), scheduled for March 8–12, in London.

These SHC meetings will also include a review of the matters to be discussed by the Joint International Maritime Organization and International Labor Organization (IMO/ILO) Group of Experts on Fatigue which will meet concurrently with the twenty-fourth session of STW to consider matters relating to the investigation of marine accidents in which fatigue may be a contributing factor.

Items of particular interest on the agenda for the twenty-fourth session of STW include:

—Fatigue factor in manning and safety
—Draft Protocol to the International Convention on Standards of Training Certification and Watchkeeping for Seafarers, 1978 (STCW) on the training and certification of crews of fishing vessels
—Officer of the navigational watch acting as the sole look-out in periods of darkness
—Role of the Human Element in Maritime Casualties (including on-board communication problems)
—Special training requirements for personnel on tankers
—Training in cargo stowage and securing
—International eyesight standards
—Simulator training
—Drug and alcohol abuse
—Minimum training requirements for personnel nominated to assist in emergency situations on passenger ships
—Training and qualifications for personnel responsible for repairs and maintenance of on-board electrical installations
—Training of all personnel on mobile offshore units (MOUs)
—Incorporation of modern training and certification arrangements in the STCW Convention
—Safe and efficient bridge procedures
—Issuance of GMDSS radio operator certificates to holders of non-GMDSS certificates
—Training for vital systems failures.

The Joint IMO/ILO Group of Experts which was established to draw up a uniform framework of procedures for the investigation of marine accidents to identify the extent to which fatigue was a contributory factor will hold its second meeting concurrently with STW.

The SHC meeting in October will focus primarily on the following subjects: Fatigue; officer of the navigational watch acting as the sole look-out in periods of darkness; the human element; special training for personnel on tankers; international eyesight standards; drug and alcohol abuse; training of personnel responsible for maintenance of on-board electrical installations; bridge procedures; and incorporation of modern training and certification arrangements in the STCW Convention.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: August 14, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92–20915 Filed 8–25–92; 8:45 am

BILLING CODE 4710–7–M

Office of Defense Trade Controls

[Public Notice 1678]

Rescission of Suspended Exports Regarding Delft Instruments, N.V. and Related Entities

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that Public Notice 1354, effective January 25, 1991, suspending all existing licenses and other approvals, granted by the Department of State pursuant to § 38 of the Arms Export Control Act (AECA), that authorized the export or transfer of defense articles or defense services by, for or to, Delft Instruments, N.V , (Delft) its operating divisions, and its subsidiaries is rescinded.

License applications or other requests for approval for the defense related entities within Delft will be denied until the export privileges of Delft are reinstated in accordance with section 38(g)(4) of the AECA

EFFECTIVE DATE: July 17, 1992.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant, Jr., Chief, Compliance Analysis Division, Office of Defense Trade Controls, Center for Defense Trade, Bureau of Politico-Military Affairs, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: On January 25, 1991, the Office of Defense Trade Controls, Department of State, suspended all existing licenses and other approvals, granted pursuant to section 38 of the AECA, that authorized the export or transfer by, for or to, Delft Instruments, N.V., and any other subsidiaries or associated companies, of defense articles or defense services. That suspension action was taken pursuant to sections 38 and 42 of the AECA (22 U.S.C. 2778 & 2791) and §§ 126.7(a)(1) and 126.7(a)(2) of the ITAR (22 CFR 126.7(a) (1) & (2)).

An indictment was returned, on July 15, 1992, in the U.S. District Court, District of Columbia charging Delft Instruments, N.V. (Delft), with one count of conspiracy (18 U.S.C. 371) to violate section 38 of the Arms Export Control Act (AECA, 22 U.S.C. § 2778) and the implementing International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130, and three substantive counts of violating the AECA and the ITAR. The indictment charges that the defendants conspired to violate, and did violate, the retransfer provisions of the ITAR, in that they transferred, or caused to be transferred, (1) to Iraq in April of 1990 one thermal imaging system, containing U.S.-origin components, (2) to Jordan in December of 1990 one thermal imaging system, containing U.S.-origin components, and (3) to Iraq in December of 1989 one thermal night-viewing camera, all without the prior written approval of the Department of State. On July 17, 1992, Delft entered a guilty plea to conspiring to violate and violating § 38 of the AECA.

Pursuant to a Consent Agreement, between Delft Instruments, N.V. and the Department of State, and an Order signed by the Assistant Secretary of State for Politico-Military Affairs, the Department of State's suspension imposed on January 25, 1991, (noticed in the March 1, 1991 **Federal Register**), relating to Delft Instruments, N.V. and its operating divisions, and its subsidiaries of defense articles or defense services, is rescinded, effective July 17, 1992.

The defense related entities within Delft Instruments, N.V. are the following: Delft Instruments Defense, BV, Netherlands; Delft Instruments Electro-Optics, BV (DIEO), Netherlands; Oldelft Electronic Instruments, Srl, Italy; Instrubel, NV, Belgium; Franke Systemtechnik, GmbH, Germany; OIP, NV, Belgium; and the defense related activities of BV Delft Electronische Producten, (DEP), Netherlands. DEP may receive United States-origin defense articles covered by Category XII (e) and (f) of the U.S. Munitions List, 22 CFR 121.1, for civil applications.

Dated: August 14, 1992.

William B. Robinson,

Director, Office of Defense Trade Controls, Department of State.

[FR Doc. 92–20417 Filed 8–25–92; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Reissuance of Certificate of 40-Mile Air, Ltd.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (order 92–8–32) docket 41972.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not reissue a certificate of public convenience and necessity to 40-Mile Air, Ltd., authorizing it to engage in interstate and overseas air transportation of persons, property, and mail, subject to a new condition prohibiting operations with aircraft having more than 30 passenger seats or a 7,500-pound payload capacity until the company has been found fit to do so.

DATES: Persons wishing to file objections should do so no later than September 4, 1992.

ADDRESSES: Objections and answers to objections should be filed in Docket 41972 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: August 20, 1992.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–20411 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–62–M

Applications of Viscount Air Service, Inc., for Domestic and Foreign Charter Certificates

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause, (order 92–8–33) dockets 47607 and 47608.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Viscount Air Service, Inc., fit and awarding it certificates of public convenience and necessity to engage in interstate, overseas, and foreign charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than August 31, 1992.

ADDRESSES: Objections and answers to objections should be filed in Dockets 47607 and 47608 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: August 20, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–20410 Filed 8–25–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Aviation Administration

Intent To Prepare an Environmental Document and To Conduct Scoping by Meeting for Establishing and Operating a Terminal Doppler Weather Radar (TDWR) To Serve the Port Columbus International Airport, Columbus, OH

AGENCY: Federal Aviation Administration (FAA); Department of Transportation.

ACTION: Notice of intent to conduct public scoping by meeting.

SUMMARY: The FAA is issuing this notice to advise the public that an environmental document will be prepared for establishing and operating a TDWR at Port Columbus International Airport. To ensure that all significant issues related to the proposed action are identified, scoping comments are requested.

DATES: Written comments must be received on or before October 6, 1992.

ADDRESSES: Send written comments on the proposal to: Federal Aviation Administration, Resource and Planning Branch, AGL-420, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Mr. Orlando Alers, Airway Facilities Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018, telephone (312) 694-7584.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) will prepare an Environmental Assessment (EA) for the establishment and operation of a Terminal Doppler Weather Radar (TDWR) to serve the Port Columbus International Airport, Columbus, Ohio. The following work needs to be performed to establish the TDWR facility:

- Land acquisition
- Erect a building structure to enhouse the electronic equipments
- Antenna tower structure
- Utility services
- Access Road
- Perimeter fencing

Efforts to minimize environmental impacts are to be given consideration on the siting of the TDWR facility. Impacts which cannot be avoided in the site selection process will be mitigated when practicable and reasonable. Upon FAA environmental approval, the proposed TDWR facility will be constructed and operated to serve the Port Columbus International Airport.

Also, the FAA is seeking comments and suggests from Federal, State, and local agencies, and other interested parties to ensure that full range of issues related to the proposed action are addressed and all significant issues are identified. Other sites not identified in the Candidate Site Survey Report may be offered for consideration. A copy of the scoping document and a Candidate Site Survey Report are available at the following locations;

- Newark Public Library, 88 W. Church Street, Newark OH 43055,
- Miller Branch Library, 990 W. Main Street, Newark OH 43055,
- Pataskala Public Library, 101 S. Vine, Pataskala, OH 43062,
- Pataskala Standard Library, 350 S. Main, Pataskala, OH 43062,
- Lima Township House, Mrs. Margaret Patrick, Lima Township Clerk, 3093 Patterson Road, Pataskala, OH 43062,
- Mr. Orlando Alers, Airway Facilities Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018.

The FAA plans to conduct a scoping meeting on September 8, 1992 at 7 p.m. in the Licking Height School, 6539 Summit Road, Summit Station, Ohio 43073. An advertisement will be placed in the newspaper advising the community of the date, time, and location of this meeting, thirty days in advance of the actual meeting date.

Russell P. Williams,

Manager, Resource and Planning Branch, AGL-420, Airway Facilities Division, Great Lakes Region.

[FR Doc. 92-20406 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

Aviation Security Advisory Committee; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of aviation security advisory committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

DATES: The meeting will be held September 10, 1992, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue SW., Washington, DC 20591, telephone 202-267-7416.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. app. II), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held September 10, 1992, in the MacCracken Room, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC.

The agenda for the meeting will include a report from the Threat Analysis and Communication Subcommittee, the implementation status on ASAC recommendations previously reviewed by the FAA Administrator, an update on several domestic security programs, and a report on FAA research and development programs. Attendance at the September 10, 1992, meeting is open to the public but limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time.

Persons wishing to present statements or obtain information should contact the Office of the Assistant Administrator for Civil Aviation Security, 800 Independence Avenue SW., Washington, DC 20591, telephone 202-267-7416.

Issued in Washington, DC on August 20, 1992.

Jack L. Gregory,

Deputy Assistant Administrator for Civil Aviation Security.

[FR Doc. 92-20397 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capitol Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under section 607 of the Act shall be 8.07 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1992.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying eight percent by the ratio which (a) the average yield on 5-year Treasury securities for the calendar year

immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined was computed to the nearest one-hundredth of one percent.

So ordered by: Maritime Administrator, Maritime Administrator. Administrator, National Oceanic and Atmospheric Administration. Assistant Secretary for Tax Policy, Department of the Treasury.

Dated: August 19, 1992.

Warren G. Leback,

Maritime Administrator.

John A. Knauss,

Administrator, National Oceanic and Atmospheric Administration.

F.T. Goldberg, Jr.

Assistant Secretary for Tax Policy.

[FR Doc. 92-20250 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

This notice sets forth the reasons for the denial of a petition submitted to the National Highway Traffic Safety Administration (NHTSA) under section 124 of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (15 U.S.C. 1381 *et seq.*).

Ms. Frances J. Darpino petitioned NHTSA, requesting that the agency conduct a defect investigation of rapid acceleration in 1987 Nissan Maxima vehicles to determine whether a notification and remedy recall campaign is warranted. The petitioner alleged that when she placed the automatic transmission in reverse, the vehicle experienced a rapid acceleration, resulting in an accident. Specifically, the petitioner requested that NHTSA investigate "rapid acceleration" in 1987 Nissan Maxima vehicles and order a recall of these vehicles.

Based on NHTSA's analysis of all available information, the petition is denied. NHTSA has concluded that there is no reasonable possibility that further investigation would lead to a determination of the existence of a safety-related defect with respect to any of the allegations referred to in the petition.

NHTSA's Office of Defects Investigation (ODI) has prepared a full report that describes in detail the alleged defect, the agency's analysis of the allegations presented in the petition, and the basis for its decision to deny the petition. Interested persons may obtain copies of that report by contacting the Technical Reference Division, NAD-52, room 5108B, 400 Seventh Street SW., Washington, DC 20590, (202) 366-2768. A brief summary of this report is presented below.

No specific component or vehicle subsystem was identified in the analysis associated with this petition as potentially defective in design or performance. The analysis considered all components of the ignition control, exhaust emissions control, automatic speed control, and fuel delivery and injection systems as potential contributors to alleged incidents of unintended vehicle acceleration described in the vehicle owner/operator complaints.

The 1987 Nissan Maxima is a front wheel drive vehicle. It is powered by a 3-liter, fuel injected V-6 engine that utilizes engine controls typical of contemporary "closed loop" designs. The engine is equipped with an array of sensors which measure various engine operating parameters and performance data. This information is transmitted to an electronic engine control device, which responds by adjusting idle speed, ignition control, and fuel mixture components and settings to achieve maximum fuel economy and minimum exhaust emissions. The petitioner's 1987 Nissan Maxima was equipped with an automatic transmission and cruise control.

Analysis of the available information revealed the following:

1. On May 8, 1992, NHTSA inspected the petitioner's vehicle. Based on this inspection, no problems with the transmission gear selector, accelerator linkage, throttle, engine and cruise control system, or brake system were found. The brakes would hold the vehicle with the throttle fully opened and the transmission in Drive or Reverse. At no time during the inspection, which included engine operation, did a sudden acceleration event occur. The agency's inspection of the vehicle did not demonstrate a problem or defect with the vehicle.

While the petitioner stated that the transmission cannot be moved from the Park position to Reverse unless the brake pedal is applied, NHTSA's inspection revealed that the vehicle's transmission could be moved out of Park, regardless of whether the brake pedal was applied. This fact is important in that the agency has found a substantial reduction in consumer reports of unintended sudden vehicle acceleration in vehicles equipped with such transmission/brake pedal shift locks. Transmission shift interlocks where installed as standard original equipment in Nissan Maxima vehicles with automatic transmissions, beginning with 1989 model year production. A reduction in the number of complaints in the later model Maxima vehicles indicates the effectiveness of the shift interlock system in preventing pedal misapplications.

2. A search of NHTSA's complaint database indicated that the 1987 Nissan Maxima has a rate of alleged unintended acceleration reports much lower than that for many other vehicles that are not equipped with a transmission/brake interlock system. These data indicate that consumers are not reporting a high incidence of this problem.

3. In 1989, NHTSA commissioned an independent study of vehicle sudden acceleration by the Transportation Systems Center (TSC). This study concluded that the only electrical component which can cause an unwanted sudden acceleration is the cruise control system. However, cruise control does not engage when the vehicle is in Reverse or if the vehicle is at a stop. The petitioner's vehicle accelerated from a stop in reverse. Thus, a defective cruise control system could not have caused the incident. Mr. Graham S. Thompson, who investigated Ms. Darpino's vehicle after the accident, stated in his report "* * * it is my opinion that this phenomenon (sudden vehicle acceleration) is caused in the electronic circuitry that causes the throttle to be fully opened, and results in the engine racing." NHTSA examined this report and discussed it with the author. Mr. Thompson stated that since he could not find any problem with the mechanical components in Ms. Darpino's car, he suspected that the electrical components may have caused sudden acceleration. He did not, however, find any evidence to support this speculation. Further, Mr. Thompson could not identify a specific component or phenomenon that would have caused the sudden acceleration.

Based on the information available, no defect trend has been observed and identified for any component or device in the subject vehicles which could cause unwanted acceleration. Analysis of the available information indicates low complaint/incident rates in the subject vehicles. Examination of the petitioner's vehicle and the circumstances of the accident indicate that the vehicle itself did not contain any defects that would have caused sudden acceleration. Further expenditure of resources to attempt to establish a safety defect trend is not

warranted. Accordingly, this petition is denied.

Authority: Sec. 124, Pub. L. 93-492; 88 Stat. 1470 (15 U.S.C. 1401e); delegations of authority at 49 CFR 1.50 and 501.8.

Issued on : August 20, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-20406 Filed 8-25-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Customs Service

Country of Origin Marking Trade Forums

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of trade forums on country of origin marking.

SUMMARY: The U.S. Customs Service is sponsoring three Trade Forums on Country of Origin Marking. These sessions will be of particular interest to importers, brokers, sureties and others, but domestic manufacturers and members of the public are also welcome to participate. Trade Forums will take place in Seattle on September 16, 1992; in New York City on October 2, 1992; and in Washington on October 5, 1992. Seating will be on a first-come, first-served basis in Seattle. For the New York and Washington Forms reservations should be made through the offices designated below. Customs requests that attendance be limited to no more than two persons for each organization represented.

FOR FURTHER INFORMATION CONTACT:

Seattle: 9/16/92, Mark Peterson, U.S. Customs Service, 1000 2d Ave., Suite 2000, Seattle, WA 98104-1049, (206) 553-4993; fax (206) 553-2466. Forum to be held at Red Lion Hotel Seatac, 18740 Pacific Highway South, Seattle, WA 98188.

New York: 10/2/92, Jim Rohan, U.S. Customs Service, 6 World Trade Center, room 737, New York, NY 10048, (212) 466-4507; fax (212) 466-4507. Forum to be held at New York Marriott Financial Center, 85 West Street, New York, NY 10006.

Washington: 10/5/92, Sherri Lewis, U.S. Customs Headquarters, 1301 Constitution Ave., NW., Washington, DC 20229, (202) 927-6748; fax (202) 927-1669. Forum to be held at Hyatt Regency Hotel Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

DATES: There is no deadline for registration, but Customs expects a significant number of attendees and space may be limited.

SUPPLEMENTARY INFORMATION:

Background

Customs previously announced its plans for these Trade Forums in a notice published in the **Federal Register** on April 27, 1992 (57 FR 15355). In response to the opportunity offered in that Notice, numerous written comments have been submitted addressing various aspects of the marking laws and their enforcement.

The Trade Forums will be conducted on an open-ended basis intended to elicit the fullest possible public participation and input. During the morning session the full range of marking issues will be open for examination. It is anticipated that in the afternoon a number of working groups will be formed to draft proposals on specific topics identified as being of greatest interest. The Forums will begin at approximately 9:00 a.m. and conclude at approximately 4 p.m.

The proposals developed at the Trade Forums, together with the comments already received, will be the basis for a report to the Commissioner of Customs. A copy of this report will be provided to every participant.

Dated: August 19, 1992.

John B. O'Loughlin,

Acting Assistant Commissioner, Commercial Operations.

[FR Doc. 92-20391 Filed 8-25-92; 8:45 am]

BILLING CODE 4820-02-M

Application for Recordation of Trade Name: "Modular Computer Systems, Inc."

ACTION: Notice of Application for Recordation of Trade Name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "MODULAR COMPUTER SYSTEMS," used by Modular Computer Systems, Inc., a/k/a Modcomp, a Florida corporation located at 1650 West McNab Road, P.O. Box 6099, Fort Lauderdale, Florida 33340.

The application states that the trade name is used in connection with computers, computer peripherals, computer programs and computer systems. The merchandise is manufactured in the United States.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before October 26, 1992.

ADDRESS: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Room 2104). Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Robert L. Knapp, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202) 566-6956.

Dated: August 21, 1992.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 92-20452 Filed 8-25-92; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

General Counsel; Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), and pursuant to the Civil Service Act, I hereby appoint the following persons to the Legal Division Performance review Board, Internal Revenue Service Panel:

1. Dennis I. Foreman, Deputy General Counsel.
2. David L. Jordan, Deputy Chief Counsel.
3. Robert E. Culbertson, Jr., Associate Chief Counsel (International).
4. Roger Rhodes, Southwest Regional Counsel.
5. Paul F. Kugler, Assistant Chief Counsel (Passthroughs and Special Industries).
6. Joseph F. Maselli, Manhattan District Counsel.

This publication is required by 5 U.S.C. 4314(c)(4).

Abraham N. M. Shashy, Jr.,

Chief Counsel.

[FR Doc. 92-20375 Filed 8-25-92; 8:45 am]

BILLING CODE 4830-01-M

Office of Thrift Supervision

[AC-46: OTS No. 3157]

American Federal Bank, a Federal Savings Bank, Madison, South Dakota; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of American Federal Bank, a federal savings bank, Madison, South Dakota, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20377 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-50: OTS No. 2285]

Conservative Bank, a Federal Savings Bank, St. Louis, Missouri; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Conservative Bank, a Federal Savings Bank, St. Louis, Missouri, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20381 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-48: OTS No. 1581]

First Federal Savings and Loan Association of Moline, Moline, Illinois; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Moline, Moline, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suit 800, Chicago, Illinois 60601-4360.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20379 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-51: OTS No. 1884]

First Granite City Savings and Loan, Granite City, Illinois; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of First Granite City Savings and Loan, Granite City, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 E. Wacker Drive, suite 800, Chicago, Illinois 60601-4360.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20382 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-49; OTS No. 1799]

The First Savings and Loan Association of Little Falls, Little Falls, New Jersey; Approval of Conversion Application

Notice is hereby given that on August 6, 1992, the designee of the Chief Counsel, Office of Thrift Supervision, acting pursuant to the authority delegated to him, approved the application of The First Savings and Loan Association of Little Falls, Little Falls, New Jersey, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20380 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

[AC-47: OTS No. 5901

Pekin Savings and Loan Association Pekin, Illinois; Approval of Conversion Application

Notice is hereby given that on August 13, 1992, the Deputy Director for Washington Operations, Office of the Thrift Supervision, or his designee, acting pursuant to delegated authority, approved the application of Pekin Savings and Loan Association, Pekin, Illinois for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1776 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Chicago, Illinois 60601-4360.

Dated: August 20, 1992.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 92-20378 Filed 8-25-92; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INSTITUTE OF PEACE

Solicited Grant Projects; Call for Applications

AGENCY: United States Institute of Peace.

ACTION: Notice, Call for Applications.

SUBJECT HEADING: 1993 Solicited Grants.

DATES: Applications must be received by January 2, 1993 to be considered in the current cycle. Announcements of awards will be made on or about May 1, 1993.

ADDRESSES: United States Institute of Peace; 1550 M Street, NW, Suite 700; Washington, DC 20005–1708.

FOR FURTHER INFORMATION CONTACT: Solicited Grant Projects: Grant program (202) 429–3844.

SUPPLEMENTARY INFORMATION: The United States Institute of Peace announces the 1993 cycle of its Solicited Grant competition. Solicitation A invites proposals addressing the following: (1) the relationship between democratization and peacebuilding in Africa; (2) the role of African regional institutions in maintaining peace; and (3) the future course of civil-military relations on the continent. Solicitation B invites proposals on: (1) The regional impact of Kurdish political and political-military activities within and between Iraq, Turkey, Syria, and Iran, including the effects upon Iraq and its neighbors of growing Kurdish political autonomy; (2) Iranian and Turkish involvement in the Armenia-Azerbaijan confrontation, and their competition for influence in Central Asia, particualrly when viewed from the perspective of their relations with other powers (e.g. Russia, the United States, the European Community); and (3) the effect of Iranian-Syrian relationships upon Israel-Arab relations and the peace process, particularly upon the government of Lebanon and militant groups in Lebanon, but also upon the attitudes of Palestinian organizations both inside the Occupied Territories and oustide Israel, etc. Solicitation C invites proposals for training programs to enhance the ability of local actors, whether in Eastern Europe, the former Soviet Union, or parts of Africa, Asia and Latin America, both to reduce the potential for conflict and to sharpen peacemaking and peacebuilding skills. Project objectives should include the development of new training materials and innovative models or the modification of existing training materials and models to new contexts. Project activity may include how to use Track II and similar efforts in informal diplomacy and dispute resolution; the training of individuals in conflict management and resolution techniques; and the development of indigenous institutional capabilities to carry out such skills training.

Most solicited grants are open to two years in duration. In this cycle of competition, the Institute expects to award several grants in the range of $40,000 to $60,000 for research projects on Africa or the Middle East. Several grants of up to $100,000 each will be made in support of conflict resolution training projects. It is the Institute's strong preference that grants be made to institutions rather than to individuals. The Institute accepts applications from nonprofit organizations, official public institutions, and individuals. Detailed information and application material are available upon request. For further information and application forms, please write or call: Solicited Grants, United States Institute of Peace, 1550 M Street, NW, Washington, DC 20005–1708, Phone (202) 429–3844. The closing date for receipt of solicited grant applicants in the current review cycle is January 2, 1993.

Dated: August 18, 1992.

Bernice J. Carney,

Director of Administration.

[FR Doc. 92–20414 Filed 8–25–92; 8:45 am]

BILLING CODE 3155–01–M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 166

Wednesday, August 26, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9:15 a.m., September 21, 1992.

PLACE: Hyatt Regency Washington, 400 New Jersey Avenue, NW., Washington, DC 20001.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c)(1) and (9)(B) and 22 CFR 1302.4 (a) and (h).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government as they relate to international shortwave radio broadcasting into Eastern Europe and the Soviet Union.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue, NW., Washington, DC 20036.

Mark G. Pomar,

Executive Director.

[FR Doc. 92–20543 Filed 8–24–92; 1:53 pm]

BILLING CODE 6155–01–M

SECURITIES AND EXCHANGE COMMISSION.

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [57 FR 37188, August 18, 1992.]

STATUS: Closed meetings.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Wednesday, August 12, 1992.

CHANGE IN THE MEETING: Additional item/cancellation.

The following additional item was considered at a closed meeting on Tuesday, August 18, 1992, at 2:30 p.m.

Litigation matter.

Closed meetings scheduled for Thursday, August 20, 1992, at 2:30 p.m., and for Friday, August 21, 1992, at 10:00 a.m., have been cancelled.

Commissioner Schapiro, as duty officer, determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any matters have been added, deleted or postponed, please contact: Walter Stahr at (202) 272–2000.

Dated: August 20, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20506 Filed 8–21–92; 5:01 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 24, 1992.

A closed meeting will be held on Wednesday, August 26, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, August 26, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.

Settlement of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

Settlement of administration proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2100.

Dated: August 21, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20507 Filed 8–21–92; 5:01 pm]

BILLING CODE 8010–01–M

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federal register

Wednesday
August 26, 1992

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Protective Breathing Equipment Training; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Notice No. 92-11]

RIN 2120-AD76

Protective Breathing Equipment Training

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise the current regulations requiring part 121 crewmembers to perform an approved firefighting drill using protective breathing equipment (PBE). The proposal would allow part 121 air carriers to choose one of two options to meet the one-time firefighting training requirement presently in the regulation. This action was prompted by a letter from the Association of Flight Attendants (AFA) and petitions for exemption from Pan American World Airways (Pan Am) and United Airlines, Inc. The objective of the proposal is to ensure that each crewmember accomplishes a firefighting drill in which the crewmember combats an actual fire in addition to, or combined with, a PBE drill.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Comments on this notice should be mailed, in triplicate, to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC10), Docket No. 24792, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 24792. Comments may be examined in room 915G on weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, 304B, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, opinions, or arguments, and by commenting on the potential environmental, economic, federalism, or energy impact of this proposal. Comments about the proposed implementation and the effective date of the rule are specifically requested.

Comments should carry the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking will be filed in the docket. The docket is available for public inspection before and after the closing date for receiving comments.

Before taking any final action on this proposal, the Administrator will consider all comments made on or before October 26, 1992, and the proposal may be changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter includes a self-addressed, stamped postcard with the comment. The postcard should be marked "Comments to Docket No. 24792." When the FAA receives the comment, the postcard will be dated, time stamped, and returned to the commenter.

Availability of the NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future FAA NPRMs should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes application procedures.

Background

The requirement for part 121 crewmembers to perform an approved firefighting drill using PBE is prescribed in § 121.417(c)(1)(i) of the Federal Aviation Regulations (FAR). The regulation requires that each crewmember perform a one-time, approved firefighting drill with an actual fire during initial training, using at least one type of installed hand fire extinguisher appropriate for the type of fire to be fought and the type of installed PBE required by § 121.337. This proposal would amend the current training requirements and would clarify the methods for air carrier compliance.

The current requirement is contained in Amendment No. 121-193, Protective Breathing Equipment, issued on May 26, 1987 (52 FR 20950, June 3, 1987). The amendment was based on National Transportation Safety Board (NTSB) recommendations and on information received from investigations of accidents in which smoke and noxious fumes may have impeded crewmembers fighting cabin fires. In addressing these safety concerns, the rule included a training requirement for crewmembers to perform an approved firefighting drill, fighting an actual fire, using PBE. The preamble to the final rule addressed concerns raised by commenters who objected to the training requirement that flight attendants fight an actual fire while wearing PBE. The commenters cited potential hazards for flight attendants and endorsed the use of realistic training aids in place of fighting an actual fire. The FAA disagreed with the commenters and responded that demonstrations and realistic training aids cannot replace the training benefits and confidence that the experience of fighting an actual fire provides. The FAA encouraged carriers to supplement firefighting training with realistic training aids in order to reinforce the experience of fighting an actual fire.

On March 14, 1989, the FAA issued Advisory Circular (AC) 121-31, Training on Protective Breathing Equipment, which provided guidance for crewmember training using PBE. AC 121-31 made recommendations of fire control procedures, operation of PBE, firefighting drills, and equipment standardization. Paragraph (d) of the guidance material suggested methods of carrier compliance with § 121.417(c)(l)(i) and offered two options for meeting the firefighting drill requirements. In the first option, a carrier could require each crewmember to perform a firefighting drill by fighting an actual fire using an appropriate fire extinguisher while wearing PBE. The second option, known as a "split drill," allowed crewmembers to perform the firefighting drill by fighting a simulated fire using an appropriate fire extinguisher while wearing PBE. However, the crewmember was required to perform an additional drill, which did not have to include the use of PBE, but which had to include the fighting of an actual fire using an appropriate fire extinguisher.

The FAA received a number of inquiries about the recommended firefighting drills described in AC 121-31. In order to address these inquiries, the FAA issued Action Notice 8430.40, Training on Protective Breathing Equipment, on June 7, 1989. The notice stated that if a carrier elects to have crewmembers fight a simulated fire in a firefighting drill while wearing PBE, the carrier's training program must provide for crewmembers to fight an actual fire in an additional firefighting drill. It directed carriers whose training programs did not include firefighting drills in which crewmembers fought actual fires to amend their training programs to include firefighting drills with actual fires. However, the notice also stated that the FAA would consider requests for the use of a simulated fire during both of the firefighting drills described in AC 121-31, and that all requests for use of "fire simulation" should be forwarded to the Air Transportation Division for approval.

In a January 26, 1990, letter to the FAA, AFA requested enforcement of § 121.417(c)(l)(i). AFA's letter states that some flight attendant trainees are not fighting an actual fire while wearing PBE in the firefighting drill, as required by the regulation. AFA maintains that several carriers are not in compliance with the regulation and that any deviation from the requirements should be handled through the exemption process.

The FAA, in response to AFA's letter, stated that an actual fire must be fought during the drill required by § 121.417(c)(l)(i) and that PBE must be worn while fighting an actual fire in that drill. Therefore, any carrier who is not using an actual fire during the drill required in § 121.417(c)(1)(i) is not complying with the regulation.

Subsequently, Pan Am filed a petition for exemption, dated July 27, 1990. The petition requests an exemption from § 121.417(c)(l)(i) in order to allow firefighting training already completed by their flight attendants to suffice under the regulation. The petition states that Pan Am began PBE training in October 1988. Each flight attendant completed a firefighting drill with a simulated fire while wearing PBE in recurrent training. The fire simulation included the use of three separate aircraft fire scenarios and reduced visibility. Pan Am's petition says that, after AC 121-31 was issued, Pan Am followed its guidance, and, in the next recurrent training, each flight attendant completed an approved firefighting drill in which the flight attendant combatted an actual fire with an appropriate extinguisher but without wearing PBE. The petition states that the training was conducted under an approved training program and met the requirements set forth in Action Notice 8430.40 and AC 121-31. The petition seeks credit for the firefighting training described above, because of the cost of retraining thousands of flight attendants in addition to what the petition describes as the potentially hazardous exposure of those flight attendants to an additional actual firefighting drill.

United Airlines, Inc., filed a petition for exemption dated September 17, 1990. The petition requested exemption from § 121.417(c)(l)(i) in order to permit the one-time firefighting drill to be accomplished using "fire simulation." The petition stated that the use of training aids was not evaluated in the preamble to Amendment No. 121-193 and that an appropriate course of action is to improve training aids and apply them to carefully developed training objectives. The petition also stated that, with the exception of the preamble language of Amendment No. 121-193, the language of the final rule appears to allow a firefighting drill using simulated fires instead of actual fires. In addition, the petitioner expresses environmental concerns about the use of actual fires, the discharge of Halon fire extinguishers during firefighting training, and possible bans or restrictions of such training imposed by political jurisdictions.

Review of Industry Practices

An FAA review of Part 121 air carrier firefighting training programs disclosed that more than one-half of all of Part 121 air carrier training programs require crewmembers to fight an actual fire while wearing PBE during firefighting drills. Additionally, even United Airlines now requires its crewmembers to perform two firefighting drills—one in which they fight a simulated fire while wearing PBE and another in which they fight an actual fire without using PBE.

Subsequent to this review, the FAA issued Amendment No. 121-220 (Docket No. 24792) (55 FR 51078) on December 11, 1990, which extends the compliance date of the current rule to July 31, 1992. In the preamble to Amendment No. 121-220, the FAA states that AC 121-31's recommended method of PBE training using fire simulation was inconsistent with the language of the current rule and that it has been rescinded.

Intent of the Proposed Amendment

Based on its review of current industry practices, Pan Am and United Airlines' petitions for exemption, and letters from AFA, the FAA has reevaluated the requirements of the current regulation and proposes to amend the rule. The objective of the current regulation is to train crewmembers on the use of PBE and firefighting equipment available on aircraft in which they are assigned duties. This training includes the activation of PBE and fire extinguishers. Currently, crewmembers are required to meet these training objectives by performing an approved firefighting drill in which they fight an actual fire with an appropriate fire extinguisher while wearing PBE. The FAA has determined, however, that air carriers should be allowed to separate this training into two categories: training on PBE and training on firefighting equipment. The FAA has also determined that simulated fires should be allowed during training on PBE, but that it is essential that crewmembers complete a one-time firefighting drill in which they combat an actual fire with an appropriate fire extinguisher as a part of training on firefighting equipment.

Under this proposal, air carriers may continue to combine the training on PBE and firefighting equipment training into one drill if an actual fire is used during the training. However, if simulated fires are used during PBE training, each crewmember must complete a separate firefighting drill with an actual fire using a fire extinguisher appropriate to the type of fire. The FAA believes that the proposed amendment better implements the intent of the current regulation. Crewmembers would still be required to have knowledge and skill relating to firefighting techniques and the operation and use of PBE, as well as first-hand knowledge of how fire retardants react with an actual fire.

General Discussion of the Proposed Amendment

Section 121.417

Proposed § 121.417(c)(1)(i) would require crewmembers to combat an actual or simulated fire using at least one type of installed hand fire extinguisher appropriate for the type of fire, while wearing the appropriate type of PBE. This requirement would be designated as a PBE drill, and it would emphasize the correct use of PBE in a firefighting scenario. The crewmember would perform the drill using PBE while combatting an actual or simulated fire.

The FAA acknowledges the training benefits of simulation and the various firefighting scenarios that may be enacted when using a simulated fire in combination with a mock-up of an aircraft cabin, galley, oven, lavatory, or passenger seat. In addition to demonstrating proper operation of the emergency firefighting equipment, crewmembers can be trained in proper crew coordination, communication, and decision-making. Many major air carriers currently conduct PBE training in sophisticated cabin trainers that are equipped with various types of devices that simulate smoke and fire. The FAA recognizes that training with simulated fires, in conjunction with a fire

extinguishing drill that includes an actual fire, is beneficial because it allows various aircraft firefighting situations to be created in the environments in which they are likely to take place. The FAA also recognizes that many air carriers may choose not to use simulator devices. These carriers would then require their crewmembers to perform the PBE drill using an actual fire, as currently prescribed by § 121.417(c)(1)(i). In such a combined drill, crewmembers still demonstrate the proper use of PBE and fight an actual fire using an appropriate type of fire extinguisher wearing PBE.

Proposed Section 121.417(c)(1)(ii)

This proposed new subparagraph would require air carriers to conduct approved firefighting drills in which crewmembers fight an actual fire using an installed hand fire extinguisher appropriate for the type of fire. The proposed requirement would not apply to crewmembers whose PBE drill under proposed § 121.417(c)(1)(i) is conducted with an actual fire. The FAA acknowledges that this firefighting drill is a one-time requirement; therefore, if a crewmember fights an actual fire during the PBE drill, the crewmember need not perform another drill. Furthermore, crewmembers would not be required to fight an actual fire in the additional initial or recurrent training drills set forth in current § 121.417(c)(2).

This proposed new section emphasizes the importance of firefighting training that includes a drill in which a crewmember fights an actual fire. The psychological effect of facing an actual fire can not be achieved through simulation. The National Fire Protection Agency's (NFPA) Bulletin 408, Aircraft Hand Fire Extinguishers, states that "live fire training provides flight crews with psychological conditioning, firefighting techniques, and knowledge of extinguishing agent capabilities and limitations under actual fire situations." The bulletin also recommends that firefighting training with an actual fire be reinforced by classroom instruction using manipulative skills training (simulation). Recommended fire simulation scenarios include galley, lavatory, flight deck, closed compartment, and flammable liquid fires.

The FAA's primary goal in drafting this proposal is to clarify and reinforce the present requirement that crewmembers undergo a one-time training drill in which they combat an actual fire. This was stated in the preambles to Amendments No. 121–193 and Amendment 121–220. By permitting air carriers to allow crewmembers to perform the currently required PBE firefighting drill with a simulated fire, the FAA would allow air carriers additional flexibility in providing quality training for various types of situations.

One of AFA's primary concerns is that there are crewmembers working in the industry who have not fought an actual fire in training. This proposal modifies the current requirement by providing an alternative to the current regulation. However, each crewmember would still be required to fight an actual fire in initial training. The FAA recognizes that, although not all firefighting situations require the use of PBE, they usually require the use of a fire extinguisher. Therefore, the FAA believes that the proposed change in the structure of the current regulation enhances firefighting training objectives.

Section 121.417(d)

Proposed § 121.417(d) would require any crewmember who serves in Part 121 operations to have completed the PBE drill and the firefighting drill in proposed subparagraphs (c)(1)(i) and (c)(1)(ii) by July 31, 1992, the compliance date set by Amendment 121–220. Because the proposal provides two methods of compliance, it is not necessary to adjust the compliance period. The proposed drills would be completed during a crewmember's initial training. All crewmembers who have not received training which complies with subparagraphs (c)(1)(i) and (c)(1)(ii) must be given that training by July 31, 1992. If it is not given in initial training it will be necessary for the air carrier to give that training in recurrent training sessions or in specially scheduled sessions. It will be necessary for air carriers to schedule sessions efficiently.

This section also contains a provision that would credit crewmembers who have performed the proposed PBE and firefighting drills described in subparagraphs (c)(1)(i) and (c)(1)(ii) with meeting the requirements of the regulation if the firefighting training was performed after May 26, 1987, and prior to the effective date of this proposal. However, to receive credit, the carrier would have to present to the Director of Flight Standards Service information or documentation showing that the crewmember accomplished firefighting training in a manner that would meet the requirements of the proposed regulation.

The May 26, 1987, date corresponds to the date of adoption of Amendment No. 121–193. The FAA believes that it is not feasible for credit to be given for firefighting drills performed prior to May 26, 1987, because requirements for firefighting drills involving an actual fire, simulated fire, or PBE training did not exist in the FAR prior to that date.

Section 121.417(f)

The proposal would amend § 121.417(f) by defining the terms "actual fire," "simulated fire," "combats," and "PBE drill" to this section. For the purposes of this proposed rule, "actual fire" means an ignited combustible material, in controlled conditions, of a sufficient magnitude and duration to accomplish the training objectives outlined in subparagraphs (c)(1)(i) and (c)(1)(ii) of the proposed rule. The FAA is not proposing to require exact dimensions and types of materials to be used for actual fires in the firefighting drills. To do so would mean that crewmembers might have to be retrained because their previous training might not meet these specific requirements. This additional training could impose an additional cost on air carriers.

A review of current industry practice shows that air carriers frequently contact local or airport fire departments prior to conducting any type of firefighting training, and, in some cases, fire department personnel are present during training. Many local fire departments provide training course outlines on the use of small, hand fire extinguishers, and they also typically provide training on the operation of hand fire extinguishers to employees of local businesses and organizations. These employees are given the opportunity to extinguish an actual fire under fire department supervision.

Among the materials used by fire departments and air carriers in creating actual fires are kerosene or diesel fuel floating on water in a metal pan or drum. These types of fires are ignited outdoors in an open area. Some air carriers and fire departments have constructed indoor fire rooms or fire pits in which they ignite materials such as seat cushions and use exhaust fans to eliminate smoke.

The proposal defines a "simulated fire" as an artificial replication of a fire used to create the various firefighting situations that could occur on an aircraft. The FAA provided guidance material on fire simulation in AC 121–31, now rescinded. The AC recommended the use of electric lights that the instructor could control by turning them on and off to show that the crewmember has extinguished the fire correctly. Smoke simulation is a component of the fire simulation described in the guidance material. Artificial smoke may be used to simulate smoke coming from a galley oven, under a lavatory door, or under a passenger seat.

Under the proposal, "combats," used in this context, means fighting an actual or simulated fire until such fire is extinguished. In the case of a simulated fire, extinguishment would be determined by the instructor.

The proposal defines "PBE drill" as an emergency drill in which a crewmember demonstrates the proper use of protective breathing equipment while fighting an actual or simulated fire.

If this proposal is adopted as a final rule, the FAA will issue an AC or Operations Bulletin providing additional detailed guidance on the proper use of PBE, actual fires, and adequate simulation of a fire. The guidance will be based on industry practices that experience has shown to be adequate.

Section 121.417(c)(1)(iii)

The proposal would redesignate § 121.417(c)(1)(ii) as § 121.417(c)(1)(iii). The emergency evacuation drill requirements listed in this section would remain unchanged.

Paperwork Reduction Act

Information collection requirements for Part 121 have been previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB Control Numbers as follows: for Part 121, OMB Control Number 2120–0008.

Economic Assessment

The proposed amendment does not impose any additional costs to operators. This proposal allows air carriers to choose one of two options to meet the one-time firefighting training requirement in the present regulation. The FAA is providing a training option that is equivalent in terms of safety and training effectiveness to what the original rule requires. Therefore, a full Regulatory Evaluation is not warranted.

International Trade Impact Analysis

The FAA has determined that the proposed amendments to Part 121, if adopted, would not have a significant impact on international trade. The proposal is expected to have no impact on trade opportunities for U.S. firms doing business overseas or foreign firms doing business in the United States. The proposed rule would primarily affect U.S. operators of aircraft for hire that provide both domestic and international service. Furthermore, the proposed amendments are consistent with section 1102(a) of the Federal Aviation Act of 1958, as amended, which requires the FAA to exercise and perform its power and duties consistently with any obligation assumed by the United States in any agreement that may be in force between the United States and any foreign country or countries.

Regulatory Flexibility Determination

Congress enacted the Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354) to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rules that may have a significant impact on a substantial number of small entities. The proposed rule would impose no additional costs on air carriers; therefore, it would not have a significant economic impact on small business entities.

Federalism Implications

The proposed amendment would not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons set forth above, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not be a significant economic impact on a substantial number of small entities under the criteria of the RFA. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 121

Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Aviation safety, Common carriers, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 121 of the Federal Aviation Regulations (14 CFR part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. App 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

2. Section 121.417 is amended by revising paragraphs (c)(1)(i), (d), and (f), redesignating current paragraph (c)(1)(ii) as (c)(1)(iii), and adding a new paragraph (c)(1)(ii) to read as follows:

§ 121.417 Crewmember emergency training.

* * * * *

(c) * * *

(1) * * *

(i) At least one approved protective breathing equipment (PBE) drill in which the crewmember combats an actual or simulated fire using at least one type of installed hand fire extinguisher that is appropriate for the type of actual fire or simulated fire to be fought while using the type of installed PBE required by § 121.337 of this part for combatting fires aboard airplanes;

(ii) At least one approved firefighting drill in which the crewmember combats an actual fire using at least one type of installed hand fire extinguisher that is appropriate for the type of fire to be fought. This firefighting drill is not required if the crewmember performs the PBE drill of subparagraph (c)(1)(i) by combatting an actual fire; and

(iii) An emergency evacuation drill with each person egressing the airplane or approved training device using at least one type of installed emergency evacuation slide. The crewmember may either observe the airplane exits being opened in the emergency mode and the associated exit slide/raft pact being deployed and inflated, or perform the tasks resulting in the accomplishment of these actions.

* * * * *

(d) After July 31, 1992, no crewmember may serve in operations under this part unless that crewmember has performed the PBE drill and the firefighting drill prescribed by subparagraphs (c)(1)(i) and (c)(1)(ii) of this section. Any crewmember who performs the PBE drill and the firefighting drill prescribed in subparagraphs (c)(1)(i) and (c)(1)(ii) of this section after May 26, 1987, and prior to the effective date of this requirement, is deemed to be in compliance with this regulation upon presentation of information or documentation, in a form or manner acceptable to the Director,

Flight Standards Service, showing that the appropriate drills have been accomplished.

* * * * *

(f) For the purposes of this section the following definitions apply:

(1) *Actual fire* means an ignited combustible material, in controlled conditions, of sufficient magnitude and duration to accomplish the training objectives outlined in subparagraphs (c)(1)(i) and (c)(1)(ii) of this section.

(2) *Combats*, in this context, means to fight an actual or simulated fire using an appropriate type of fire extinguisher until such fire is extinguished.

(3) *Observe* means to watch without participating actively in the drill.

(4) *PBE drill* means an emergency drill in which a crewmember demonstrates the proper use of protective breathing equipment while fighting an actual or simulated fire.

(5) *Perform* means to satisfactorily accomplish a prescribed emergency drill using established procedures that stress the skill of the persons involved in the drill.

(6) *Simulated fire* means an artificial duplication of smoke or flame used to create various aircraft firefighting scenarios, including, but not limited to, lavatory, galley oven, and aircraft seat fires.

Issued in Washington, DC on August 18, 1992.

William J. White,

Acting Director, Flight Standards Service.

[FR Doc. 92-20321 Filed 8-25-92; 8:45 am]

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Wednesday
August 26, 1992

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 91

Proposed Alteration of the Denver Terminal Control Area, CO; Proposed Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 71 and 91

[Airspace Docket No. 91-AWA-3]

Proposed Alteration of the Denver Terminal Control Area; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to alter the Denver, CO, Terminal Control Area (TCA) to coincide with the scheduled October 1993 opening date of the new Denver International Airport (DVX). DVX replaces the Denver Stapleton International Airport (DEN) and will be located 8 miles northeast of DEN. The proposed action would enable air traffic control (ATC) to provide terminal ATC service to turbojet aircraft in a TCA environment throughout transition to and from the en route structure. This proposal would extend the lateral limits of the TCA to 30 nautical miles from DVX to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. This proposal would raise the upper limits of the TCA to 12,000 feet mean sea level (MSL). The proposal would enhance air traffic procedures and simplify visual flight rules (VFR) transient operations outside TCA airspace. An objective of this proposal is to increase safety substantially while accommodating the legitimate concerns of airspace users.

DATES: Comments must be received on or before October 26, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 91-AWA-3, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91-AWA-3." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by falling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's also should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published Amendment No. 91-78 to part 91 of the Federal Aviation Regulations (FAR) which provided for establishment of TCA's (35 FR 7762).

On June 21, 1988, the FAA published a final rule which required aircraft to have Mode C equipment when operating within 30 nautical miles of any designated TCA primary airport from the surface up to 10,000 feet MSL, except aircraft not originally certified with an engine driven electrical system, or which had not subsequently been certified with such a system installed (53 FR 23356).

On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Established a single-class TCA; (b) required the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, or be a student pilot who had received certain documented training; and (c) eliminated the helicopter exception from the minimum navigational equipment requirement.

Background

TCA Operations

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements. The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between general aviation (GA) aircraft and air carrier, military, or other GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of mixed IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

To date, the FAA has established a total of 29 TCA's. The FAA is proposing to take action to modify or implement additional TCA's to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

TCA Rule

Section 91.131 of the FAR (14 CFR part 91) prescribes operating rules and pilot and equipment requirements in airspace designated as a TCA. The rule provides, in part, that a person must: (1) Obtain appropriate authorization from ATC prior to operation of his aircraft in the TCA; (2) operate large turbine engine-powered aircraft to or from a primary airport at or above the designated floors while within the lateral limits of the TCA, unless otherwise authorized by ATC; (3) comply with applicable procedures established by ATC for pilot training operations at an airport within a TCA; and (4) hold at least a private pilot certificate, or, if the aircraft is operated by a student pilot, meet the requirements of § 61.95 of the FAR (14 CFR part 61).

Unless otherwise authorized by ATC, no person may operate an aircraft within a TCA unless that aircraft is equipped with: (1) For IFR operations—an operable VOR or TACAN receiver; (2) For all operations—an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and (3) the applicable operating transponder and automatic altitude-reporting equipment specified in paragraph (a) of § 91.215 of the FAR, except as provided in paragraph (d) of that section.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions. However, the TCA rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation, or more efficient use of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may be conducted only under the terms of an ATC authorization.

Definitions and operating requirements applicable to TCA's may be found in §§ 71.12, 91.1, 91.117, 91.131, 91.215, SFAR No. 62, and appendix D to part 91 of the FAR (14 CFR parts 71 and 91). Specific airspace designations for TCA's are published in § 71.401(b) of FAA Order 7400.7, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The TCA listed in this document would be published subsequently in the Handbook.

The standard configuration of a TCA consists of three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles, respectively. The standard TCA vertical limits normally should not exceed 12,000 feet MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent on terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Suspension of Certain Aircraft Operations From the Mode C Transponder Requirement

On December 5, 1990, the FAA published Special Federal Aviation Regulation (SFAR) No. 62 which suspends, until December 30, 1993, certain provisions of the regulation which requires the installation and use of automatic altitude-reporting (Mode C) transponders (55 FR 50302). SFAR No. 62 provides access to specified outlying airports within 30 miles of a TCA-primary airport (Mode C veil) for aircraft without Mode C transponders. The FAA believes that the operation of an aircraft without a Mode C transponder can be safely accommodated provided that the operation is conducted in areas not currently within ATC radar coverage and not used predominantly by aircraft required to install and use traffic alert and collision avoidance systems (TCAS) equipment.

Paragraph (7), section 2 of SFAR No. 62 identifies airports within a 30 NM radius of the Denver Stapleton International Airport where aircraft not equipped with Mode C transponders can operate at and below 1,200 feet above ground level (AGL): (1) Within a 2-nautical-mile radius, or, if directed by ATC, within a 5-nautical-mile radius, of a listed airport; and (2) along the most direct and expeditious routing, or a routing directed by ATC between that airport and the outer boundary of the Mode C veil, consistent with established traffic patterns, noise abatement procedures, and safety.

The designation of DVX as a TCA-primary airport would create a new Mode C veil located within a 30-nautical-mile radius of DVX. Thirteen additional airports are proposed to be added to paragraph 7, section 2 of SFAR No. 62, as a result of the proposed DVX Mode C veil. The airports located approximately 25 to 30 miles from DVX and outside the current Denver Stapleton TCA Mode C veil are identified as follows:

(1) Air Dusters Inc., Airport, Roggen, CO.
(2) Bijou Basin Airport, Byers, CO.
(3) Bowen Farms No. 1 Airport, Littleton, CO.
(4) Chaparral Airport, Byers, CO.
(5) Dead Stick Ranch Airport, Kiowa, CO.
(6) Horseshoe Landings Airport, Keenesburg, CO.
(7) Kostroski Airport, Franktown, CO.
(8) Lemons Private Strip Airport, Boulder, CO.
(9) Reid Ranches Airport, Roggen, CO.
(10) Singleton Ranch Airport, Byers, CO.
(11) Sky Haven Airport, Byers, CO.
(12) Tri-County Airport, Erie, CO.
(13) Westberg-Rosling Farms Airport, Roggen, CO.

Additionally, the FAA proposes to remove five airports from paragraph 7, section 2 of SFAR 62 because they are located beyond the proposed DVX 30-mile TCA mode C veil. These airports are:

(1) Athanasiou Valley Airport, Blackhawk, CO.
(2) Flying J Ranch Airport, Evergreen, CO.
(3) Marshdale STOL, Evergreen, CO.
(4) Meyer Ranch Airport, Conifer, CO.
(5) Vance Brand Airport, Longmont, CO.

Pre-NPRM Public Input

Informal airspace meetings were held in the Denver area September 11-13, 1990. These meetings allowed local aviation interests and airspace users an opportunity to provide input to the proposed alteration of the Denver TCA. Fourteen written comments were received from private citizens, local government agencies, user groups, and local airport authorities during the public comment period following the informal airspace meetings.

The State of Colorado, Division of Aviation, organized a user committee consisting of members of users groups and other general aviation representatives that submitted recommendations to the FAA for consideration. With few exceptions, the proposed TCA contains the recommendations submitted by the user committee.

Both the verbal and written comments, along with the FAA's findings, are summarized as follows:

1. Several commenters suggested lowering the ceiling of the proposed TCA from 12,500 to 10,000 feet MSL. This suggestion was not adopted. However, the ceiling is now proposed to be 12,000 feet. The TCA is designed to allow arriving turbojets at 12,000 feet MSL airspace to become aligned for simultaneous parallel triple instrument landing system (ILS) precision approaches. Many turbojet aircraft would be operating normally on the downwind leg of the traffic pattern in the maneuvering phase of flight at and above 10,000 feet MSL. Under the proposed rule, turbojet departures would be protected through an altitude of 12,000 feet MSL. These operating practices would allow arriving and departing aircraft to enter and exit through the top of the TCA and would

decrease the inadvertent mixture of controlled and uncontrolled aircraft during critical phases of flight.

2. Three commenters suggested the use of geographical landmarks to define the TCA boundaries in lieu of lines derived from navigational aids. Other commenters requested that the FAA combine geographical landmarks with points and boundaries derived from navigational aids. The FAA agrees with these commenters, and to the extent practical, has used geographical landmarks and geographic coordinates in this proposed rule to delineate the boundaries of the TCA.

3. Many commenters opposed the FAA's proposal of a 30-mile radius of the DVX VOR as the western boundary of the TCA. They suggested that such a boundary would compress VFR operations and would not permit adequate airspace to transition the mountains west of Denver. The FAA agrees and, to accommodate this concern, proposes to establish the western boundary of the TCA along Wadsworth Boulevard and State Highways 75 and 287.

4. Several commenters were concerned about the lack of a "cutout" for the Buckley Air National Guard (ANG) Base, Aurora, Front Range, and Brighton Van Aire Airports. The FAA agrees and proposes to exclude these airports from the inner core of the TCA.

5. One commenter suggested inclusion of Buckley ANG Base, Aurora, and Front Range Airports in the surface area of the TCA to prevent inadvertent restraints placed on the operations at DVX. The FAA disagrees. With the proposed establishment of a control tower at Front Range Airport, and with the issuance of appropriate letters of agreement between facilities, an equivalent level of safety and access to Front Range Airport and Buckley ANG Base can be maintained without applicable TCA restrictions. Also, the cutouts proposed for the Aurora and Brighton Van Aire Airports would not adversely affect the operations at DVX. If the Aurora Airport closes, the exclusion for Aurora would be reevaluated.

6. One commenter suggested that the floor of the TCA over Buckley ANG Base should be established at 7,200 feet MSL in lieu of 7,500 feet MSL. The FAA disagrees. A floor of 7,500 feet MSL was established over Buckley ANG Base to accommodate the training requirements of the high performance A–7 military turbojets and the future training requirements of the F–16 military turbojets. Situations requiring aircraft departing DVX to cross Buckley ANG Base will be addressed in a letter of agreement between Denver Terminal Radar Approach Control and Buckley Tower.

7. Several commenters indicated that a 30-mile boundary for the proposed TCA was excessive and unnecessary. The FAA disagrees. The boundary of the proposed TCA would extend to 30 miles only in areas necessary to ensure that turbojets enter and exit through the top of the TCA. The western boundary was adjusted to allow additional airspace for VFR operation outside TCA airspace.

8. One commenter suggested that the eastern boundary be "chopped off," similar to the western boundary, to permit an alternative route for aircraft not participating in the TCA. This suggestion was not adopted. The western boundary was moved eastward to provide additional airspace for aircraft circumnavigating the Denver area to the west. The terrain and topographical features to the east of the proposed TCA are lower than the mountain ranges to the west and would permit aircraft circumnavigating the TCA ample airspace to transition beneath the floor of the TCA. Consequently, the proposed floor of the TCA east of DVX is 10,000 feet MSL.

The Proposal

The FAA proposes to amend parts 71 and 91 of the FAR (14 CFR parts 71 and 91) to modify the TCA at Denver, CO, to coincide with the establishment of the new Denver International Airport (DVX). DVX will be located 8 miles northeast of the present Denver Stapleton International Airport. The new airport ultimately will replace Denver Stapleton International Airport. This alteration would better serve the users, as well as the FAA, by providing airspace configured to handle the new procedures that will be put in place at DVX. The FAA has determined that modifying the TCA to coincide with the relocation of the Denver International Airport is in the interest of flight safety and would result in a greater degree of protection for the greatest number of people during flight in the terminal area. The proposed alteration is depicted on the attached chart.

The proposed configuration considers the present terminal area flight operations and terrain as follows:

1. The inner core of the proposed TCA includes airspace 10 nautical miles from the DVX VOR from the surface to and including 12,000 feet MSL. Cutouts are proposed for five airports in the inner core of the TCA: Aurora, Buckley ANG Base, Front Range, Heckendorf, and Brighton Van Aire Airports. The floor of the TCA in these areas varies from 6,000 to 7,500 feet MSL. This airspace would contain instrument approach/departure procedures for DVX and would allow adequate airspace for operations at the above airports without affecting aircraft transitioning to final approach visually or on radar vectors for an instrument approach into DVX. Bromley Lane is used to depict the northern boundary of the inner core of the proposed TCA. The vertical limit of the entire TCA is proposed to be 12,000 feet MSL.

2. The intermediate area includes airspace between 10 and 20 nautical miles from the DVX VOR, including airspace extending west to Wadsworth Boulevard and Colorado Highway 287, bounded on the north by Colorado Highway 7 and on the south by Hampden Avenue. The intermediate area contains subarea floors that vary from 6,000 to 8,000 feet MSL. This airspace would provide a stepdown profile to contain aircraft in the radar traffic pattern transitioning to the final approach course from their downwind and base legs for the primary airport. It also would provide airspace for departures transitioning to the en route environment.

3. The outer area, proposed between the 20- and 30-nautical-mile radius from the DVX VOR, contains floors varying from 8,000 to 10,000 feet MSL. This airspace would provide an area to contain aircraft during climb and descent profiles to transition between the terminal and en route structure, and it would allow VFR aircraft to circumnavigate the TCA. Arriving turbojet and turboprop aircraft would enter terminal airspace from four designated areas. The configuration of the outer area is designed to allow sufficient airspace for departures while allowing arriving aircraft to be vectored and sequenced to the final approach courses. This configuration also would preserve airspace below the TCA for nonparticipating aircraft.

The preceding summary of the proposed alteration of the TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at the Denver International Airport. ATC would provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ATC authorization is required for aircraft operations within that airspace. Modifying this TCA would greatly enhance the safety of flight within the congested airspace overlying the Denver metropolitan area by facilitating the separation of controlled and uncontrolled flight operations.

Environmental Review

FAA Handbook 1050.1D, Policies and Procedures for Considering Environmental Impacts, excludes the establishment or modification of TCA's from the requirements of an environmental assessment. However, in accordance with the National Environmental Policy Act of 1969, the FAA conducted an environmental assessment to determine the effect the establishment of a new airport would have on the quality of the human environment. Included in the scope of the assessment was the proposed modification of the Denver TCA, the routing of aircraft, and the change in air traffic procedures associated with the relocation of a major airport. The FAA concluded in the Environmental Impact Statement, which was issued in September 1989, that the new airport and the non-specific changes associated with modifying the TCA would have no significant impact on: Noise; land use; air or water quality; historic, architectural, archeological, or cultural resources; endangered or threatened species; wetlands; flood plains or coastal zones; wild and scenic rivers; or farmlands.

Paperwork Reduction Act

In accordance with the paperwork Reduction Act of 1980 (Pub. L. 96–511), there are not requirements for information collection associated with this proposed rule.

Regulatory Evaluation Summary

Introduction

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this proposal. This summary and the evaluation quantify, to the extent practicable, the estimated costs and anticipated benefits of the proposal to the private sector, consumers, and Federal, State, and local governments.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A major rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this proposal is not major as defined in the executive order. Therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the proposal, has not been prepared. Instead, the agency has prepared a more concise document, termed a "regulatory evaluation," which analyzes only this proposed rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section contains an initial regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If the reader desires more detailed economic information than this summary contains, then he or she should consult the regulatory evaluation contained in the docket.

Benefit-Cost Analysis

This proposal would extend the lateral limits of the TCA to 30 nautical miles from DVX to provide an area wherein ATC can provide TCA control and services throughout critical maneuvering phases of flight operations in the terminal area. This proposal would raise the upper limits of the TCA to 12,000 feet mean sea level (MSL). To a lesser extent, the proposed rule would eliminate airspace by 4 nautical miles in the western boundaries. Replacement and relocation of the primary airport would coincide with the scheduled October 1993 opening date of the new DVX Airport. DVX replaces DEN, and it would be located 8 miles northeast of DEN.

The proposal is intended to enhance aviation safety by lowering the risk of midair collisions through the use of increased capability by ATC to separate all aircraft in terminal airspace in and around the Denver area, while accommodating the legitimate concerns of airspace users.

Costs

The FAA has determined that no costs would be associated with implementation of the proposed modification to the Denver TCA to either the agency or aircraft operators for the reasons discussed below.

Costs to the FAA

The proposed rule would not impose any additional administrative cost to the FAA for either personnel or equipment. The additional operations workload generated by the proposed rule would be absorbed by current personnel and equipment resources which are already in place at the Denver TCA. According to FAA air traffic personnel, the proposed rule would not require any additional air traffic control, radar control, or handoff positions at the TCA.

The potential costs of revising aeronautical charts to reflect the change of the airspace around the Denver TCA would be incorporated when the charts are routinely updated and printed. Therefore, all costs associated with printing aeronautical charts are assumed to be a normal cost of doing business.

Costs to Aircraft Operators

The proposed rule would not impose any additional cost to aircraft operators in the form of either avionics equipment or circumnavigation. Potential costs to aircraft operators without Mode C transponders have already been accounted for by the Mode C rule. The potentially affected GA aircraft operators are assumed to already have other types of avionics equipment (such as operable two-way radio and VOR) required for entering a TCA. The only aircraft without Mode C transponders would be aircraft not originally certificated with an engine-driven electrical system, or which have not subsequently been certified with such a system installed. Costs to these types of aircraft have already been accounted for by the Mode C rule.

The proposed rule would not adversely impact aircraft operators who routinely operate under IFR, primarily large air carriers, business jets, commuters, and air taxis. Aircraft operators who routinely operate under VFR, however, would potentially be impacted by the proposed rule: operators of small general aviation (GA) airplanes and other GA aircraft operators, such as glider pilots and balloonists. Other airspace user groups, such as sport parachutists and some student pilots, who operate within the proximity of the Denver TCA also would be potentially impacted by the proposed rule.

As the result of the proposed rule, segments of the TCA lateral boundaries would be expanded from 20 to 30 nautical miles. The expanded segments of the TCA lateral boundaries would be proposed with floors that range from 8,000 to 10,000 feet MSL. This proposed action would allow small GA airplane operators, glider pilots, and balloonists to circumnavigate the Denver TCA in a manner that would not require much deviation from current flying practices. Operators would be permitted to operate beneath the floors in the expanded segments of the TCA lateral

boundaries primarily to the east of DVX. Because the existing floors (primarily to the west of DVX) take into account high terrain, sufficient airspace for sports parachutists to conduct jumps would still be available without TCA involvement. The proposed rule would not have an adverse impact on GA student pilots because they rarely fly in airspace above 10,000 feet MSL. In nearly all instances, a floor of 10,000 feet MSL is considered to be sufficient space to allow GA student pilots to conduct their flying below the proposed expanded segments of the TCA lateral boundaries.

Balloonists, parachutists, ultralight and sailplane pilots, or fixed-base operators would not be affected significantly by the proposal. Letters of agreement and cutouts are expected to be executed, where advisable, to ensure minimum affect on these operators.

In view of the aforementioned discussion, the total cost of the proposed rule is estimated to be zero.

Benefits

The proposed rule is expected to generate benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced aviation fatalities and property damages as the result of a lowered risk of midair collisions.

This proposed action also would generate benefits in the form of eliminating from the current TCA design 4 nautical miles of airspace west of the Jefferson County Airport. The reduction in TCA airspace is intended to provide two types of benefits. First, the proposal would reduce the distance aircraft operators flying under VFR would have to circumnavigate the TCA without concerns related to high terrain. The existing floor in this section of airspace is 7,000 feet MSL, which is not easy to transit in high terrain areas. Second, the proposal would align areas near and in the TCA with better visual landmarks so that aircraft operators flying under VFR can stay clear of the TCA.

The proposed Denver TCA would create more controlled airspace by increasing the ceiling from 11,000 to 12,000 feet MSL and extending the northern, southern, and eastern lateral boundaries from 20 to 30 nautical miles. Because the nature of the proposed rule is proactive, that is the FAA is taking action to prevent a safety problem based on an early symptom, the potential safety benefits are extremely difficult to quantify in monetary terms. In this case, the symptom is increased complexity (or density) of aircraft operations in the vicinity of the present ceiling and lateral boundaries of the Denver TCA. As the result of this increased complexity, the regulatory airspace is to be expanded in the aforementioned areas of the TCA.

Up to now, safety has been maintained in the vicinity of the existing Denver TCA in the face of steady activity growth by such measures as procedural and aircraft metering changes. These measures have been successful in the past as evidenced by a record of no midair collisions in the TCA. However, these measures would not be adequate in the future. Without documented evidence of midair collisions in the Denver TCA, estimating the probability of a potential occurrence in the absence of this proposed rule cannot be determined with a reliable degree of certainty. In the absence of this proposed rule, the FAA recognizes there is an incipient safety problem in the subject TCA that could become critical and could lead to potentially catastrophic consequences, such as a midair collision between a large air carrier airplane and a GA airplane. This proposed action is intended to reduce significantly the risk of those consequences.

It it important to note that many of these potential safety benefits would not occur as predicted because the Mode C and TCAS rules are in effect. Consequently, the safety benefits of the proposal and the Mode C and TCAS rules are inseparable and cannot be estimated independently from each other.

Conclusion

In view of the estimated zero cost of compliance and enhanced aviation safety, the FAA has determined that the proposed rule is cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review proposed rules which may have "a significant economic impact on a substantial number of small entities." The small entities which could be affected potentially by the implementation of this proposed rule are unscheduled operators of aircraft for hire owning nine or fewer aircraft. Only those unscheduled aircraft operators without the capability to operate under IFR would be potentially impacted by the proposed rule. The FAA believes that all of the potentially impacted unscheduled aircraft operators already are equipped to operate under IFR. Such operators regularly fly in airports where radar approach control services have been established. Therefore, the FAA believes this proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. The proposed rule would neither impose costs on aircraft operators nor aircraft manufacturers (U.S. or foreign).

Federalism Implication

Tne regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contracting the person identified under "**FOR FURTHER INFORMATION CONTACT**."

List of Subjects

14 CFR Part 71

Aviation safety, General operating and flight rules, Incorporation by reference, Terminal control areas.

14 CFR Part 91

Aircraft, Air traffic control, Automatic altitude reporting equipment, Mode C veil, Transponder.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 14 CFR part 71 and part 91 as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

Section 71.401(b)—Terminal Control Areas

* * * * *

ANM CO TCA Denver, CO [Revised]

Primary Airport

Denver International Airport (lat. 39°51'38"N., long. 104°40'22"W.)
Watkins VOR (lat. 39°48'44"N., long. 104°39'34"W.)

Boundaries.

Area A. That airspace extending upward from the surface to and including 12,000 feet MSL beginning at the intersection of Bromley Lane and the 10-mile arc of the Watkins VOR, thence clockwise along the 10-mile arc until the Watkins 090° radial, extending west on the Watkins 090° radial until Imboden Mile Road, thence south along Imboden Mile Road until I–70, extending west along I–70 until intercepting the 10-mile arc of the Watkins VOR, extending clockwise along the 10-mile arc until Bromley Lane, and thence east along Bromley Lane to the point of beginning; excluding that airspace within a 1-mile radius of Heckendorf Airport.

Area B. That airspace extending upward from 7,500 feet MSL to and including 12,000 feet MSL within a 10-mile radius of the Watkins VOR, bounded on the north by I–70 and bounded on the east by a line parallel to and 2 miles east of the Buckley Air National Guard Base Runway 14/32 centerline.

Area C. That airspace extending upward from 6,200 feet MSL to and including 12,000 feet MSL within a 10-mile radius of the Watkins VOR bounded on the north by I–70, bounded on the east by Imboden Mile Road, and bounded on the west by a line parallel to and 2 miles east of Buckley Air National Guard Base Runway 14/32 centerline.

Area D. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL within a 10-mile radius of the Watkins VOR bounded on the north by the Watkins 090° radial, and bounded on the west by Imboden Mile Road.

Area E. That airspace extending upward from 8,000 feet MSL to and including 12,000 feet MSL beginning at the Watkins VOR 025° radial 15-mile DME fix, extending northeast along the Watkins 025° radial until intercepting the Watkins VOR 20-mile arc, extending clockwise along the 20-mile arc until I–25, thence north along I–25 until Hampden Avenue, extending west along Hampden Avenue until Wadsworth Boulevard, thence north along Wadsworth Boulevard and the Colorado Highway 287 until Colorado Highway 7, extending east along Colorado Highway 7 to I–25, thence north along I–25 until intercepting the Watkins VOR 20-mile arc, extending clockwise along the 20-mile arc until intercepting the Watkins VOR 329° radial, thence southeast along the Watkins VOR 329° radial until intercepting the 15-mile arc, extending counterclockwise along the 15-mile arc until I–70 thence east along I–70 until intercepting the 10-mile arc, extending counterclockwise along the 10-mile arc until the Watkins VOR 090° radial, extending east on the Watkins 090° radial until intercepting the Watkins 15-mile arc, and thence counterclockwise to the point of beginning.

Area F. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL between the 10- and 15-mile radius of the Watkins VOR, bounded on the north by the Watkins VOR 025° radial and bounded on the south by the Watkins VOR 090° radial.

Area G. That airspace extending upward from 6,000 feet MSL to and including 12,000 feet MSL beginning at the Watkins VOR 329° radial 10-mile fix; extending northeast on the Watkins 329° radial until the 15-mile arc, thence clockwise along the 15-mile arc until the Watkins 025° radial, extending south on the 025° radial until the 10-mile arc, and extending counterclockwise on the 10-mile arc until Bromley Lane, and thence west along Bromley Lane until the Watkins VOR 10-mile arc thence to the point of beginning; including that airspace within a 1-mile radius of Heckendorf Airport.

Area H. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL between the 10- and 15-mile radius of the Watkins VOR, bounded on the north by the Watkins 329° radial and bounded on the south by I–70.

Area J. That airspace extending upward from 7,000 feet MSL to and including 12,000 feet MSL between the 15- and 20-mile radius of the Watkins VOR, bounded on the west by the Watkins VOR 329° radial and bounded on the east by the Watkins VOR 025° radial.

Area K. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL beginning at the intersection of Hampden Avenue and I–25, extending south along I–25 until intercepting the Watkins VOR 30-mile arc, extending clockwise along the 30-mile arc until a point 3 miles south of Waterton, CO (lat. 39°26'25"N., long. 105°05'40"W.) extending north to Waterton and Canyon Road (lat. 39°29'40"N., long. 105°05'40"W.), extending north along Canyon Road (Colorado Highway 75) until Wadsworth Boulevard, extending north along Wadsworth Boulevard until Hampden Avenue and extending east along Hampden Avenue to the point of beginning.

Area L. That airspace extending upward from 9,000 feet MSL to and including 12,000 feet MSL between the 20- and 30-mile radius of the Watkins VOR bounded on the west by I–25 and bounded on the east by the Watkins VOR 156° radial.

Area M. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL between the 20- and 30-mile radius of the Watkins VOR, bounded on the north by the Watkins VOR 025° radial and bounded on the south by the Watkins VOR 156° radial.

Area N. That airspace extending upward from 8,000 feet MSL to and including 12,000 feet MSL between the 20- and 30-mile radius of the Watkins VOR, bounded on the west by the Watkins VOR 329° radial and bounded on the east by the Watkins VOR 025° radial.

Area P. That airspace extending upward from 10,000 feet MSL to and including 12,000 feet MSL beginning at the Watkins VOR 329° radial 20-mile DME fix, extending counterclockwise along the Watkins VOR 20-mile arc until I–25, extending south along I–25 until Colorado Highway 7, thence west along Colorado Highway 7 until Colorado Highway 287, thence north along Colorado Highway 287 until intercepting the Watkins VOR 30-mile arc, extending clockwise along the 30-mile arc until the Watkins VOR 329° radial, and extending southeast along the Watkins VOR 329° radial to the point of beginning.

* * * * *

PART 91—[AMENDED]

3. The authority citation for 14 CFR part 91 continues to read as follows:

Authority: 49 U.S.C. app. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E. O. 11514, 35 FR 4247, 3 CFR, 1966–1970 Comp., p. 902; 49 U.S.C. 106(g).

4. Special Federal Aviation Regulation No. 62, section 2, paragraph (7) would be revised to read as follows:

Special Federal Aviation Regulation No. 62—Suspension of Certain Aircraft Operations from the Transponder with Automatic Pressure Altitude Reporting Capability Requirement

* * * * *

Section 2. * * *

(7) Airports within a 30-nautical-mile radius of the Denver International Airport.

Airport name	Airport ID	Altitude (AGL)
Air Dusters Inc., Airport, Roggen, CO.	49CO	1,200
Bijou Basin Airport, Byers, CO	CD17	1,200
Boulder Municipal Airport, Boulder, CO.	1V5	1,200
Bowen Farms No. 1 Airport, Littleton, CO.	CO98	1,200
Bowen Farms No. 2 Airport, Strasburg, CO.	3CO5	1,200

Airport name	Airport ID	Altitude (AGL)
Carrera Airpark Airport, Mead, CO.	93CO	1,200
Cartwheel Airport, Mead, CO	0CO8	1,200
Chaparral Airport, Byers, CO	CO18	1,200
Colorado Antique Field Airport, Niwot, CO.	8CO7	1,200
Comanche Livestock Airport, Strasburg, CO.	59CO	1,200
Dead Stick Ranch Airport, Kiowa, CO.	18CO	1,200
Frederick-Firestone Air Strip Airport, Frederick, CO.	CO58	1,200
Frontier Airstrip Airport, Mead, CO.	84CO	1,200
Horseshoe Landings Airport, Keenesburg, CO.	CO60	1,200
Hoy Airstrip Airport, Bennett, CO.	76CO	1,200
J & S Airport, Bennett, CO	CD14	1,200
Kostroski Airport, Franktown, CO.	43CO	1,200
Kugel-Strong Airport, Platteville, CO.	27V	1,200
Land Airport, Keenesburg, CO	CO82	1,200
Lemons Private Strip Airport, Boulder, CO.	CO10	1,200
Lindys Airpark, Hudson, CO	7CO3	1,200
Parkland Airport, Erie, CO	7CO0	1,200
Pine View Airport, Elizabeth, CO.	02V	1,200
Platte Valley Airport, Hudson, CO.	18V	1,200
Rancho De Aereo Airport, Mead, CO.	05CO	1,200
Reid Ranches Airport, Roggen, CO.	7CO6	1,200
Singleton Ranch Airport, Byers, CO.	68CO	1,200
Sky Haven Airport, Byers, CO	CO17	1,200
Spickard Farm Airport, Byers, CO.	5CO4	1,200
Tri-County Airport, Erie, CO	48V	1,200
Westberg-Rosling Farms Airport, Roggen, CO.	74CO	1,200
Yoder Airstrip Airport, Bennett, CO.	CD09	1,200

* * * * *

Issued in Washington, DC, on August 19, 1992.

Harold W. Becker,

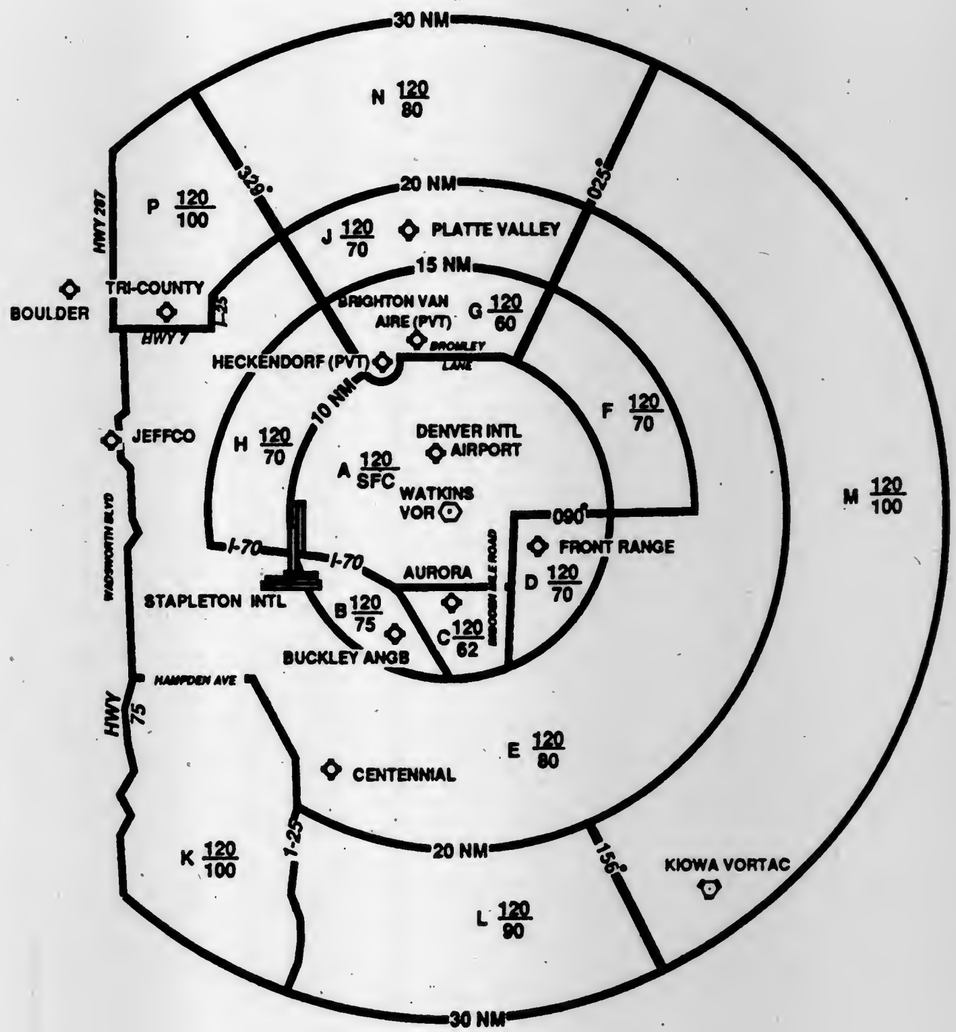
Manager, Airspace-Rules and Aeronautical Information Division.

Appendix—Denver International Airport, Terminal Control Area

Note: This appendix will not appear in the Code of Federal Regulations:

BILLING CODE 4910-13-M

DENVER INTERNATIONAL AIRPORT
TERMINAL CONTROL AREA
(NOT TO BE USED FOR NAVIGATION)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-220

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federal register

Wednesday
August 26, 1992

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions Under the *NIH Guidelines for Research Involving Recombinant DNA Molecules.*

SUMMARY: This notice sets forth six actions to be taken by the Director, National Institutes of Health (NIH), under the May 7, 1986, *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Legislation, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today six actions are being promulgated under the *NIH Guidelines for Research Involving Recombinant DNA Molecules.* These six proposed actions were published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512) and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on June 1–2, 1992.

I. Background Information and Decisions on Actions Under the NIH Guidelines

A. Addition of Appendix D–XXVIII to the NIH Guidelines

In a letter dated January 21, 1992, Dr. Malcolm Brenner of St. Jude Children's Research Hospital, Memphis, Tennessee, indicated his intention to submit a human gene therapy protocol to the RAC for formal review and approval. The title of this protocol is: "Phase I Study of Cytokine-Gene Modified Autologus Neuroblastoma Cells for Treatment of Relapsed/Refractory Neuroblastoma." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1–2, 1992, with the following modifications: (1) The informed consent document will include a statement regarding protection of the patient from publicity, (2) the informed consent document will include a request for autopsy in the event of death, and (3) the Interleukin-2 (IL–2) viral vector will be assayed in human neuroblastoma cell lines to verify that no oncogenic virus is rescued.

The RAC, by a vote of 19 in favor, 0 opposed, and no abstentions, approved the protocol. The following section may be added to Appendix D:

Appendix D–XXVIII

"Dr. Malcolm Brenner of St. Jude Children's Research Hospital, Memphis, Tennessee, can conduct gene therapy experiments on twelve patients with relapsed/refractory neuroblastoma who have relapsed after receiving autologus bone marrow transplant. In an attempt to stimulate the patient's immune response, the gene coding for Interleukin-2 (IL–2) will be used to transduce tumor cells, and these gene-modified cells will be injected subcutaneously in a Phase I dose escalation trial. Patients will be evaluated for evidence of possible toxicity and immunologic efficacy."

I accept this recommendation and Appendix D–XXVIII of the *NIH Guidelines* will be added accordingly.

B. Addition of Appendix D–XXIX to the NIH Guidelines

In a letter dated February 14, 1992, Dr. Edward H. Oldfield indicated his intention to submit a human gene therapy protocol in collaboration with Drs. Kenneth Culver, Zvi Ram, and R. Michael Blaese of the National Institutes of Health, Bethesda, Maryland, to the RAC for formal review and approval. The title of this protocol is: "Gene Therapy for the Treatment of Brain Tumors Using Intra-Tumoral Transduction with the Thymidine Kinase Gene and Intravenous Ganciclovir." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1–2, 1992, with the following modifications: (1) Animal model toxicity data will be submitted in a tabulated format, and (2) a section will be included in the protocol that describes a well devised plan detailing the criteria for stopping the protocol in the event that untoward effects are observed, and (3) revisions in the Informed Consent document regarding the retroviral vector. The RAC, by a vote of 19 in favor, 0 opposed, and 1 abstention, approved the protocol. The following section may be added to appendix D:

Appendix D–XXIX

"Drs. Edward Oldfield, Kenneth Culver, Zvi Ram, and R. Michael Blaese of the National Institutes of Health, Bethesda, Maryland, can conduct gene therapy experiments on ten patients with malignant primary brain tumors and ten patients with lung cancer, breast cancer, malignant melanoma, or renal cell carcinoma who have brain metastases. The patient population will be limited to adults over the age of 18.

"Patients will be divided into two groups based on the surgical accessibility of their lesions. Both surgically accessible and surgically inaccessible lesions will receive intra-tumoral injections of the retroviral Herpes simplex thymidine kinase (HS-tk) vector-producer cell line, G1TkSvNA, using a guided stereotaxic approach. Surgically accessible lesions will be excised seven days after stereotaxic injection, and the tumor bed will be infiltrated with the HS-tk producer cells. The removed tumor will be evaluated for the efficiency of transduction. Ganciclovir (GCV) will be administered beginning on the fifth postoperative day. In the case of surgically inaccessible lesions, the patients will receive intravenous therapy with GCV seven days after receiving the intra-tumoral injections of the retroviral HS-tk vector-producer cells."

I accept this recommendation and Appendix D–XXIX of the NIH Guidelines will be added accordingly.

C. Addition of Appendix D–XXX to the NIH Guidelines.

In a letter dated February 28, 1992, Dr. Albert D. Deisseroth of MD Anderson Cancer Center, Houston, Texas, indicated his intention to submit a human gene transfer protocol to the RAC for formal review and approval. The title of this protocol is: "Use of Two Retroviral Markers to Test Relative Contribution of Marrow and Peripheral Blood Autologous Cells to Recovery After Preparative Therapy (in Patients with Chronic Myelogenous Leukemia)." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1–2, 1992. The RAC, by a vote of 20 in favor, 0 opposed, and no abstentions, approved the protocol. The following section may be added to Appendix D:

Appendix D–XXX

"Dr. Albert D. Deisseroth of MD Anderson Cancer Center, Houston, Texas, can conduct gene transfer experiments on ten patients who have developed blast crisis or accelerated phase chronic myelogenous leukemia (CML). The retroviral vectors G1Na and LNL6 which code for neomycin resistance will be used to transduce autologous peripheral blood and bone marrow cells respectively; these are cells that have been removed and stored at the time of cytogenetic remission or re-induction of chronic phase in Philadelphia chromosome positive CML patients. Following reinduction of the chronic phase of CML and preparative chemotherapy, patients will be infused with the transduced autologous cells.

"This protocol is designed to determine the source of relapse of CML. If polyclonal CML neomycin marked blastic cells appear at the time of relapse, their presence will indicate that relapse arises from the leukemic CML blast cells present in the autologous cells infused following chemotherapy. If residual systemic disease contributes to relapse, the neomycin resistance gene will not be detected in the CML leukemic blasts at the time of relapse.

"By using two separate vectors detectable by the polymerase chain reaction assay (PCR), this study will compare the relative contributions of the peripheral blood and marrow to generate hematopoietic recovery after bone marrow transplantation and evaluate purging and selection of peripheral blood or bone marrow as a source of stem cells for transplant. The percentage of neomycin resistant CML cells which are leukemic will be determined by PCR analysis and detection of bcr-abl messenger RNA."

I accept this recommendation and Appendix D–XXX of the NIH Guidelines will be added accordingly.

D. Addition of Appendix D–XXXI to the NIH Guidelines

In a letter dated April 14, 1992, Dr. Cynthia Dunbar of the National Institutes of Health, Bethesda, Maryland, indicated her intention to submit three human gene transfer protocols to the RAC for formal review and approval. The titles of these protocols are: "Genetic Marking with Retroviral Vectors to Study the Biology of Hematopoietic Reconstitution after Autologous Transplantation for Multiple Myeloma," "Genetic Marking with Retroviral Vectors to Study the Biology of Hematopoietic Reconstitution after Autologous Transplantation for Breast Cancer," and "Genetic Marking with Retroviral Vectors to Study the Biology of Hematopoietic Reconstitution after Autologous Transplantation for Chronic Myelogenous Leukemia." This request was published for comment in the **Federal Register** of May 6, 992 (57 FR 19512).

These protocols were reviewed and recommended for approval during the RAC meeting on June 1–2, 1992. The RAC, by identical votes of 19 in favor, 0 opposed, and no abstentions, approved the protocols. The following section may be added to Appendix D:

Appendix D–XXXI

"Dr. Cynthia Dunbar of the National Institutes of Health, Bethesda, Maryland, can conduct gene transfer experiments on up to 48 patients with multiple myeloma, breast cancer, or chronic myelogenous leukemia. The retroviral vectors G1N and LNL6 will be used to transfer the neomycin resistance marker gene into autologous bone marrow and peripheral blood stem cells in the presence of growth factors to examine hematopoietic reconstitution after bone marrow transplantation. The efficiency of transduction of both short and long term autologous bone marrow reconstituting cells will be examined.

"Autologous bone marrow and CD34+ peripheral blood stem cells will be enriched prior to transduction. Myeloma and CML patients will receive both autologous bone marrow and peripheral blood stem cell transplantation. These separate populations will be marked with both the G1N and LNL6 retroviral vectors. If short and long term marking experiments are successful, important information may be obtained regarding the biology of autologous reconstitution, the feasibility of retroviral gene transfer into hematopoietic cells, and the contribution of viable tumor cells within the autograft to disease relapse."

I accept this recommendation and Appendix D–XXXI of the NIH Guidelines will be added accordingly.

E. Addition of Appendix D–XXXII to the NIH Guidelines

In a letter dated January 16, 1992, Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, indicated his intention to submit a human gene therapy protocol to the RAC for formal review and approval. The title of the protocol is: "Immunization with HLA–A2 Matched Allogeneic Melanoma Cells that Secrete Interleukin–2 (IL–2) in Patients with Metastatic Melanoma." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1–2, 1992, with the following modifications: (1) the patient eligibility criteria will be defined as those who have a life expectancy of greater than four months and who have failed one course of conventional therapy, and (2) a revised statement will be included in the Informed Consent document regarding the description of research procedures. The RAC, by a vote of 20 in favor, 0 opposed, and no abstentions, approved the protocol. The following section may be added to Appendix D:

Appendix D–XXXII

"Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, can conduct gene therapy experiments on twelve patients over 18 years of age with metastatic melanorma who are HLA–A2 positive and who have failed conventional therapy. This Phase I study will examine whether allogeneic HLA–A2 matched melanoma cells expressing recombinant human Interleukin–2 (IL–2) can be injected subcutaneously and used to create a potent tumor-specific immune response without producing toxicity. By allowing the tumor cells to present the MHC Class I molecule as well as the secreted IL–2, a clonal expansion of tumor-specific effector cells is expected. The effector populations may access residual tumor at distant sites via the systemic circulation."

I accept this recommendation and Appendix D–XXXII of the *NIH Guidelines* will be added accordingly.

F. Addition of Appendix D–XXXIII to the NIH Guidelines

In a letter dated January 16, 1992, Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, indicated his intention to submit a human gene therapy protocol to the RAC for formal review and approval. The title of this protocol is: "Immunization with IL–2 Secreting Allogeneic HLA–A2 Matched Renal Cell Carcinoma Cells in Patients with Advanced Renal Cell Carcinoma." This request was published for comment in the **Federal Register** of May 6, 1992 (57 FR 19512).

The protocol was reviewed and recommended for approval during the RAC meeting on June 1–2, 1992, with a modification to the patient's Informed Consent regarding the description of research procedures. The RAC, by a vote of 20 in favor, 0 opposed, and no abstentions, approved the protocol. The following section may be added to appendix D:

Appendix D–XXXIII

"Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, can

conduct gene therapy experiments on twelve patients over 18 years of age with renal cell carcinoma who are HLA-A2 positive and who have failed conventional therapy. This Phase I study will examine whether allogeneic HLA-A2 matched renal cell carcinoma cells expressing recombinant human Interleukin-2 (IL-2) can be injected subcutaneously and used to create a potent tumor specific immune response without producing toxicity. By allowing the tumor cells to present the MHC Class I molecule as well as the secreted IL-2, a clonal expansion of tumor specific effector cells is expected. These effector populations may access residual tumor at distant sites via the systemic circulation."

I accept this recommendation and Appendix D-XXXIII of the *NIH Guidelines* will be added accordingly.

II. Summary of Actions

A. Addition of Appendix D-XXVIII to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Malcolm Brenner of St. Jude Children's Research Hospital, Memphis, Tennessee, can conduct gene therapy experiments on twelve patients with relapsed/refractory neuroblastoma who have relapsed after receiving autologous bone marrow transplant. In an attempt to stimulate the patient's immune response, the gene coding for Interleukin-2 (IL-2) will be used to transduce tumor cells, and these gene-modified cells will be injected subcutaneously in a Phase 1 dose escalation trial. Patients will be evaluated for an anti-tumor response."

B. Addition of Appendix D-XXIX to the NIH Guidelines

The following section is added to Appendix D:

"Drs. Edward Oldfield, Kenneth Culver, Zvi Ram, and R. Michael Blaese of the National Institutes of Health, Bethesda, Maryland, can conduct gene therapy experiments on ten patients with primary malignant brain tumors and ten patients with lung cancer, breast cancer, malignant melanoma, or renal cell carcinoma who have brain metastases. The patient population will be limited to adults over the age of 18.

"Patients will be divided into two groups based on the surgical accessibility of their lesions. Both surgically accessible and surgically inaccessible lesions will receive intra-tumoral injections of the retroviral Herpes simplex thymidine kinase (HS-tk) vector-producer cell line, G1TkSvNa, using a guided stereotaxic approach. Surgically accessible lesions will be excised seven days after sterotaxic injection, and the tumor bed will be infiltrated with the HS-tk producer cells. The removed tumor will be evaluated for the efficiency of transduction. Ganciclovir (GCV) will be administered beginning on the fifth postoperative day. In the case of surgically inaccessible lesions, the patients will receive intravenous therapy with GCV seven days after receiving the intra-tumoral injections of the retroviral HS-tk vector-producer cells."

C. Addition of Appendix D-XXX to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Albert D. Deisseroth of MD Anderson Cancer Center, Houston, Texas, can conduct gene transfer experiments on ten patients who have developed blast crisis or accelerated phase chronic myelogenous leukemia (CML). The retroviral vectors G1N and LNL6 which code for neomycin resistance will be used to transduce autologous peripheral blood and bone marrow cells that have been removed and stored at the time of cytogenetic remission or re-duction of chronic phase in Philadelphia chromosome positive CML patients. Following reinduction of the chronic phase of CML and preparative chemotherapy, patients will be infused with the transduced autologous cells.

"This protocol is designed to determine the cause of relapse of CML. If polyclonal CML neomycin marked blastic cells appear at the time of relapse, their presence will indicate that relapse arises from the leukemic CML blast cells present in the autologous cells infused following chemotherapy. If residual systemic disease contributes to relapse, the neomycin resistance gene will not be detected in the CML leukemic blasts at the time of relapse.

"This study will compare the relative contributions of the peripheral blood and bone marrow to generate hematopoietic recovery after bone marrow transplantation and evaluate purging and selection of peripheral blood or bone marrow as a source of stem cells for transplant. The percentage of neomycin resistant CML cells which are leukemic will be determined by PCR analysis and detection of bcr-abl mRNA."

D. Addition of Appendix D-XXXI to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Cynthia Dunbar of the National Institutes of Health, Bethesda, Maryland, can conduct gene transfer experiments on up to 48 patients with multiple myeloma, breast cancer, or chronic myelogenous leukemia. The retroviral vectors G1N and LNL6 will be used to transfer the neomycin resistance marker gene into autologous bone marrow and peripheral blood stem cells in the presence of growth factors to examine hematopoietic reconstitution after bone marrow transplantation. The efficiency of transduction of both short and long term autologous bone marrow reconstituting cells will be examined.

"Autologous bone marrow and CD34+ peripheral blood stem cells will be enriched prior to transduction. Myeloma and CML patients will receive both autologous bone marrow and peripheral blood stem cell transplantation. These separate populations will be marked with both the G1N and LNL6 retroviral vectors. If short and long term marking experiments are successful, important information may be obtained regarding the biology of autologous reconstitution, the feasibility of retroviral gene transfer into hematopoietic cells, and the contribution of viable tumor cells within the autograft to disease relapse."

E. Addition of Appendix D-XXXII to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, can conduct gene therapy experiments on twelve patients over 18 years of age with metastatic melanoma who are HLA-A2 positive and who have failed conventional therapy. This is a phase I study to examine whether allogeneic HLA-A2 matched melanoma cells expressing recombinant human Interleukin-2 (IL-2) can be injected subcutaneously and used to create a potent tumor specific immune response without producing toxicity. By allowing the tumor cells to present the MHC Class I molecule as well as the secreted IL-2, a clonal expansion of tumor specific effector cells is expected. These effector populations may access residual tumor at distant sites via the systemic circulation."

F. Addition of Appendix D-XXXIII to the NIH Guidelines

The following section is added to Appendix D:

"Dr. Bernd Gansbacher of the Memorial Sloan-Kettering Cancer Center, New York, New York, can conduct gene therapy experiments on twelve patients over 18 years of age with renal cell carcinoma who are HLA-A2 positive and who have failed conventional therapy. This Phase I study will examine whether allogeneic HLA-A2 matched renal cell carcinoma cells expressing recombinant human Interleukin-2 (IL-2) can be injected subcutaneously and used to create a potent tumor specific immune response without producing toxicity. By allowing the tumor cells to present the MHC Class I molecule as well as the secreted IL-2, a clonal expansion of tumor specific effector cells is expected. These effector populations may access residual tumor at distant sites via the systemic circulation."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Effective date: August 14, 1992.

Bernadine Healy,

Director, National Institutes of Health.

[FR Doc. 92-20369 Filed 8-25-92; 8:45 am]

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Part V

Department of Education

34 CFR Parts 76 and 80

State-Administered Programs Under the Rehabilitation Act of 1973; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 76 and 80

RIN 1880-AA41

State-Administered Programs under the Rehabilitation Act of 1973

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the administrative responsibilities of grantees and subgrantees under State-administered programs authorized under the Rehabilitation Act of 1973 (Rehabilitation Act). On October 1, 1988, new regulations became effective, establishing government-wide regulations implementing OMB Circular A-102 (Administration of Grants and Cooperative Agreements to State and Local Governments). Those regulations contain a rule requiring liquidation of obligations within 90 days after the end of the funding period, unless the State requests a waiver from the liquidation rule or program regulations provide for a different deadline. This proposed amendment to the Education Department General Administrative Regulations (EDGAR) would extend the liquidation period for State-administered programs under the Rehabilitation Act so that, in most cases, States and subgrantees would not have to request waivers under these programs.

DATES: All comments on the proposed regulations must be received on or before October 13, 1992.

ADDRESSES: Comments should be addressed to: Sherlyn Williams, Chief, Policy and Support Staff, Grants Division, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 3636, ROB-3), Washington, DC 20202-4700.

FOR FURTHER INFORMATION CONTACT: Sherlyn Williams, Chief, Policy and Support Staff, Grants Division, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 3636, ROB-3), Washington, DC 20202-4700, (202) 708-5580. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On October 1, 1988, the regulations in new 34 CFR part 80 became effective. The Secretary promulgated part 80 as part of a government-wide initiative to establish common regulations implementing OMB Circular A-102. Section 80.23, *Availability of funds,* provides that a grantee must liquidate obligations no later than 90 days after the end of the funding period or other period specified in program regulations, unless the grantee requests and receives a waiver. The Secretary has determined that this period for liquidation of obligations places an inappropriate and burdensome restriction on grantees and subgrantees under State-administered programs authorized under the Rehabilitation Act of 1973 (Rehabilitation Act).

At the Education Summit held in Charlottesville, Virginia in September, 1989, the President and the governors agreed "to examine Federal regulations under current law and to move in the direction of greater flexibility." The Secretary is committed to providing regulatory flexibility, wherever possible, to allow States and localities to make decisions on how best to operate Federally-funded education programs to meet program objectives. The regulatory flexibility that would be provided by these proposed regulations is in furtherance of this objective.

Most programs of the Department are funded on a forward funded basis. That is, Congress appropriates funds for these programs in the fiscal year before the fiscal year the funds are available for obligation by the Department, States, and subgrantees. Also, under forward funded programs, Congress makes the funds available for obligation on July 1, rather than on October 1, as is the case for programs funded on a current year basis. These programs are also subject to the Tydings Amendment of the General Education Provisions Act (GEPA section 412(b), 20 U.S.C. 1225(b)), which makes funds available for obligation for an additional year after the fiscal year for which the funds were appropriated. Thus, programs that are subject to the Tydings Amendment and are forward funded have funds available for obligation for a period of 27 months.

In contrast to the forward funded programs, State-administered programs authorized under the Rehabilitation Act make funds available on a current fiscal year basis; Congress appropriates the funds for Rehabilitation Act State-administered programs in the same fiscal year that they are made available for obligation by the Department, States, and subgrantees. Also, Rehabilitation Act programs are not subject to the carry-over provisions of the Tydings Amendment. Thus, funds are made available under Rehabilitation Act State-administered programs for a maximum period of only 12 months, commencing on October 1.

The nature of these ongoing Rehabilitation Act programs frequently requires contracts with performance periods that fall, at least in part, in the succeeding fiscal year. Provided the original obligation by a State or subgrantee is allowable under the cost principles in OMB Circular A-87, there may be good reasons for extending the liquidation period for these programs beyond 90 days after the period for obligation ends. States and their subgrantees must, under part 80, either liquidate obligations before the contract periods for performance expire or obtain waivers for extension of the period for liquidation. In the first case, the State or subgrantee may lose valuable leverage to ensure proper performance under the contract. In the second case, the State and its subgrantees would be forced to use limited resources requesting waivers from the rule, which, if the requests fall within the scope of this proposed rule, the Department would uniformly grant.

In order to eliminate the undesirable effects of the liquidation rule in 34 CFR 80.23(b) on the various State-administered programs authorized under the Rehabilitation Act, the Secretary proposes to add a new § 76.708 to EDGAR. In general, the new section would extend the period for liquidation of certain types of obligations.

Under § 76.707, some obligations occur at the time services are delivered or utilities are provided. Other obligations occur at the time the State or subgrantee makes a binding written agreement to obtain services or property. If the obligation is based on the date of a written commitment, obligations made near the end of the fiscal year may involve performance or delivery, and the liquidation of obligations, more than 90 days after the end of the fiscal year. (See § 76.707(a), (c), and (d).) The proposed rule would extend the liquidation period if performance or delivery could occur after the end of the fiscal year in which the funds must be obligated, i.e., the end of the funding period under § 80.23(b).

Specifically, under § 76.707(a), an obligation for acquisition of real or personal property takes place on the date on which the grantee or subgrantee enters into a binding written commitment to acquire the property. In many cases equipment purchased under this obligation rule takes longer than 90 days for delivery. The rule in proposed § 76.708 would permit liquidation up to 90 days after the date for delivery of the equipment or 455 days after obligation, (365 days for performance plus 90 days for liquidation), whichever is earlier. The same problem exists for closing on real property transactions, and the new rule would permit liquidation up to 90 days after closing or 455 days after obligation, whichever is earlier.

Under § 76.707(c), an obligation for personal services of a contractor who is not an employee of the State or subgrantee takes place on the date that the State or subgrantee makes a binding written commitment to obtain the services. Under proposed § 76.708, the liquidation period for these kinds of obligations would end 90 days after the end of the performance period under the contract or 455 days after the date that the obligation was made, whichever is earlier. Under the proposed rule, this same outcome would apply under § 76.707(d).

As a general matter, State-administered programs other than those authorized under the Rehabilitation Act were not affected by the Part 80 liquidation rule until September 30, 1991, because these other programs are forward funded and subject to the Tydings Amendment. At this time the Secretary does not see a need to establish an extended liquidation period for these programs because States and their subgrantees have a significantly longer period under these programs to arrange their obligations.

The State-administered program authorized under the Library Services Construction Act (LSCA) is in a slightly different position than the other State-administered programs. While this program has authority to receive funds on a forward funded basis, as a matter of practice, Congress has funded the LSCA on a current year basis. However, funds appropriated for use under the LSCA are subject to the Tydings Amendment. Thus, like other non-Rehabilitation Act State-administered programs, funds are available for an additional year after the year for which they are appropriated. Depending upon when in the year Congress appropriates the funds, States have from between 12 and 24 months to obligate LSCA funds.

There are no data at this time indicating that the rule proposed in this document should be applied to other State-administered programs, and the Secretary seeks comments about whether there is any need to apply the extended liquidation rule to those programs. If a commenter supports extension of the rule in this NPRM to other State-administered programs, the Secretary is interested in comment about the hardships, if any, that the current liquidation rule creates for a State in meeting educational objectives for students.

Finally, while the Secretary proposes to make a limited extension of the liquidation rule, the Secretary does not have authority to extend the statutory period for obligation under the programs that would be affected by this proposed rule.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Although the regulations would affect some small entities that are subgrantees under one of the State-administered programs authorized under the Rehabilitation Act, the regulations would not have a significant impact on these entities because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would allow greater flexibility while retaining minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1980

The proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations, including comments about whether the Secretary should apply the extended liquidation period to State-administered programs other than those authorized under the Rehabilitation Act of 1973.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3636, Regional Office Building 3, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 76

Education Department, Grant programs—education, Grants administration, Intergovernmental relations, State-administered programs.

34 CFR Part 80

Accounting, Administrative practice and procedure, Grant programs—education, Grants administration, Insurance, Reporting and recordkeeping requirements.

Dated: June 10, 1992.

(Catalog of Federal Domestic Assistance Number does not apply.)

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend parts 76 and 80 of title 34 of the Code of Federal Regulations as follows:

PART 76—STATE-ADMINISTERED PROGRAMS

1. The authority citation for Part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

2. A new § 76.708 is added to read as follows:

§ 76.708 Liquidation of obligations under certain programs.

(a)(1) Notwithstanding 34 CFR 80.23(b), grantees and subgrantees under the programs listed in paragraph (a)(2) of this section shall liquidate obligations as specified in this section.

(2) The programs subject to this section are—

(i) The State Vocational Rehabilitation Services Program implemented at 34 CFR part 361;

(ii) The State Supported Employment Services Program implemented at 34 CFR part 363;

(iii) The State Independent Living Rehabilitation Services Program implemented at 34 CFR part 365; and

(iv) The Client Assistance program implemented at 34 CFR part 370.

(b)(1) The following obligations must be liquidated within 90 days after the end of the period for obligation of funds:

(i) Personal services by an employee of the State or subgrantee.

(ii) Public utility services.

(iii) Travel.

(iv) Rental of real or personal property.

(2) The following obligations must be liquidated within 90 days after the end of the period for performance under the binding written commitment, or within 455 days after the date the funds were obligated, whichever is earlier:

(i) Acquisition of real or personal property.

(ii) Personal services by a contractor who is not an employee of the State or subgrantee.

(iii) Performance of work other than personal services.

(c)(1) The Secretary may extend for good cause the period for liquidation of obligations by a grantee or subgrantee at the request of the grantee.

(2) A grantee may extend for good cause the period for liquidation of obligations of a subgrantee if—

(i) The subgrantee requests the extension, in writing; and

(ii) The Secretary has authorized the extension under paragraph (c)(1) of this section.

(Authority: 20 U.S.C. 1221e-3(a)(1) and 3474)

PART 80—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS

3. The authority citation for part 80 continues to read as follows:

Authority: 20 U.S.C. 1221e-3(a)(1), 3474, and OMB Circular A-102, unless otherwise noted.

4. A cross reference is added after § 80.23 to read as follows:

§ 80.23 Period of availability of funds.

* * * * *

Cross Reference: 34 CFR 76.708 contains the liquidation requirements for programs authorized under the Rehabilitation Act of 1973.

[FR Doc. 92-20370 Filed 8-25-92; 8:45 am]

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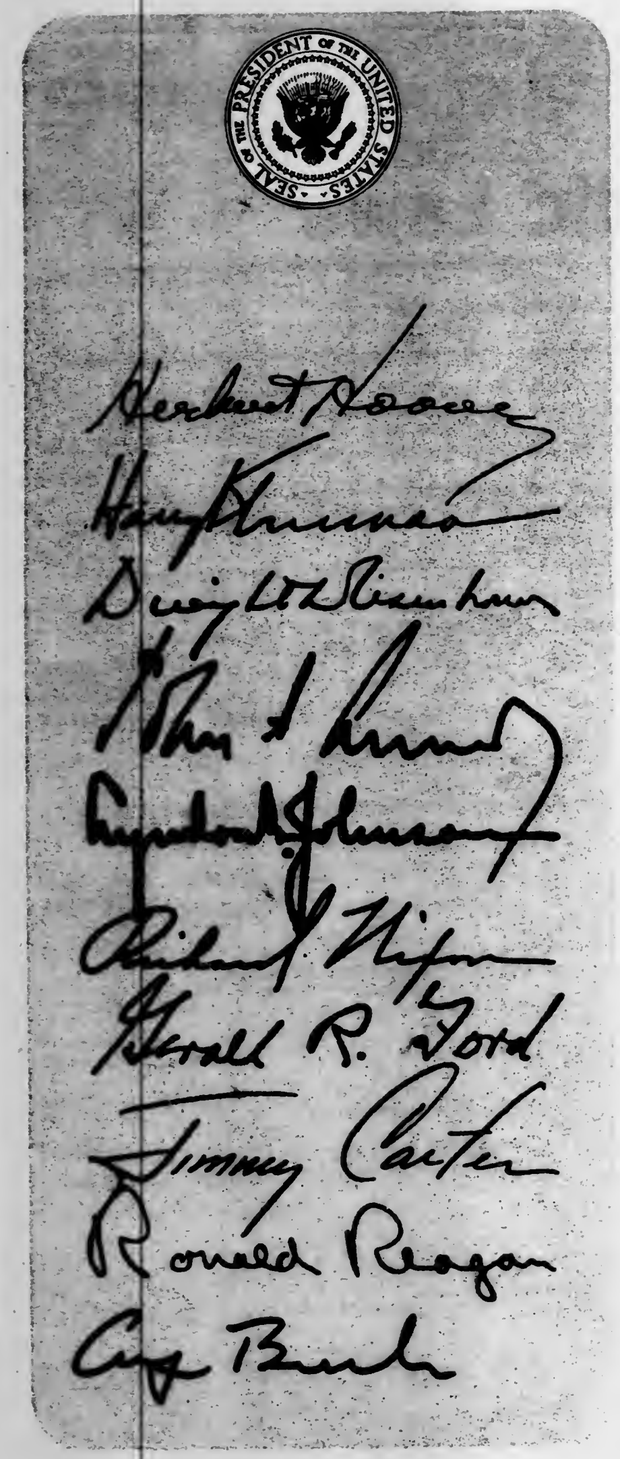
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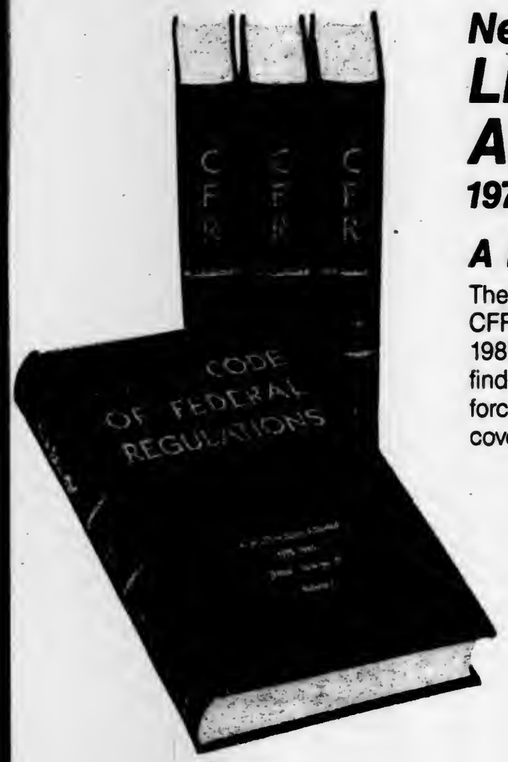
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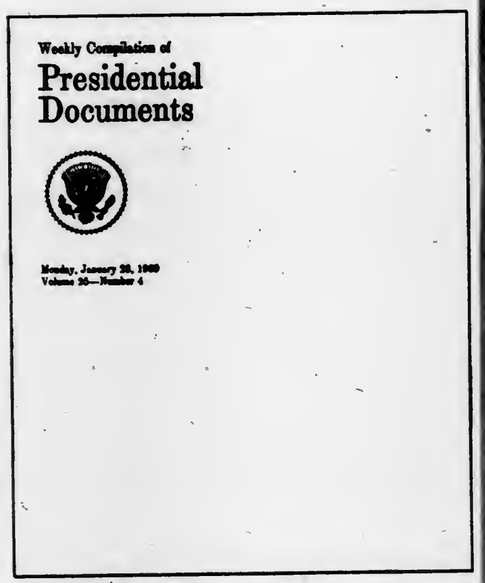
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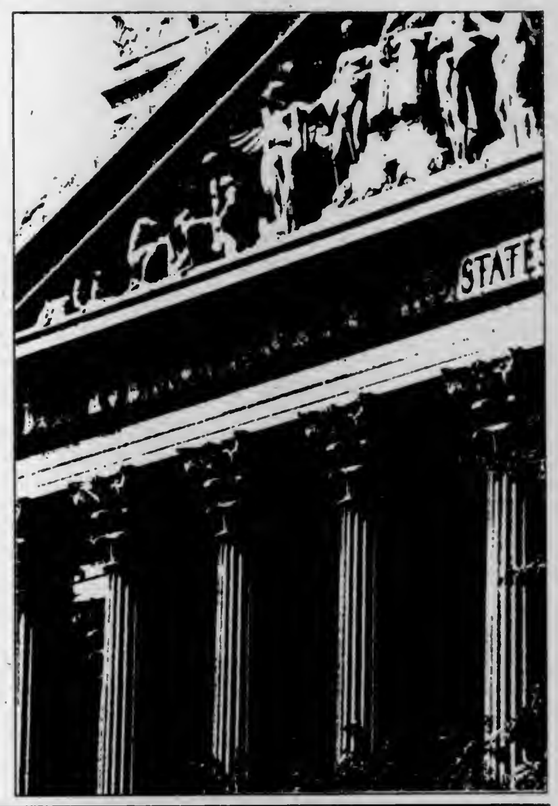
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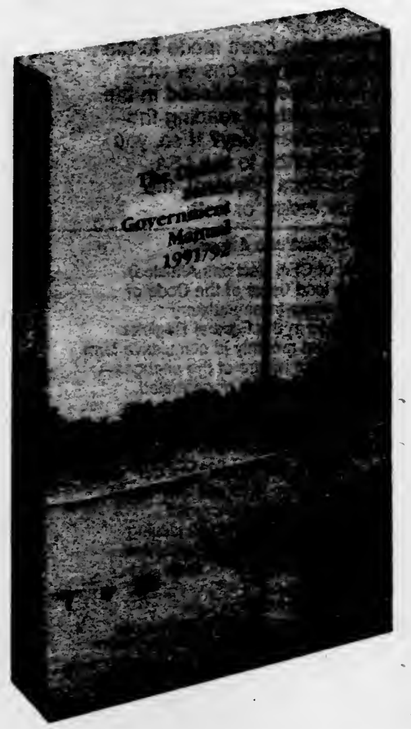
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Federal Register
Vol. 57, No. 167
Thursday, August 27, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

RIN 3206-AD58

Civil Service Retirement System; Employees Covered by Both Civil Service Retirement System and Social Security

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing rules required to implement certain provisions (5 U.S.C. 8334(k) and 8349) added by section 201 of the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99-335, effective January 1, 1987. The regulations add a subpart J to 5 CFR part 831, implementing these provisions. They provide the rules applicable to employees covered by the Civil Service Retirement System (CSRS) who are also subject to full Social Security taxes on their wages deriving from that Federal employment.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: H.T. Newland, (202) 606-0299.

SUPPLEMENTARY INFORMATION: On December 6, 1991, OPM published (56 FR 63879) proposed regulations and requested comments on those proposed regulations to implement the provisions of the Federal Employees' Retirement System (FERS) Act of 1986, Public Law 99-335, effective January 1, 1987, applicable to employees covered by CSRS who are also subject to full Social Security taxes on their wages deriving from Federal employment.

We received no timely comments on the proposed regulations. However, we believe that minor clarification on two points would be useful.

In the case of an offset from an employee annuitant, a portion of the employee's earned Social Security benefit is deducted from the employee annuity. However, in the case of a survivor annuitant, it is a portion of the Social Security survivor benefit based upon the CSRS Offset service of the deceased employee that is deducted from the CSRS Offset survivor annuity.

In the case of disability annuitants, both the CSRS Offset law and Social Security law (42 U.S.C. 424a) provide for setoff from the other benefit. However, the law is specific that the unreduced CSRS benefit is the basis for the reduction of the Social Security benefit, and the reduced Social Security benefit is then used as the basis for the CSRS Offset computation.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that, within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal employees and retirees.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Alimony, Claims, Disability Benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending 5 CFR part 831 as follows:

PART 831—RETIREMENT

1. The authority for part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2); § 831.201(b)(6) also issued under 5 U.S.C. 7701(b)(2); § 831.204 also issued under section 7202(m)(2) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 105-508, 104 Stat. 1388-339, § 831.303 also issued under 5 U.S.C. 8334(d)(2); § 831.502 also issued under 5 U.S.C. 8337; § 831.502 also issued under section 1(3), E.O. 11228, 3 CFR 1964-1965 Comp.; § 831.621 also issued under section 201(d) of the Federal Employees Benefits Improvement Act of 1986, Pub. L. 99-251, 100 Stat. 23; subpart J also issued under 5 U.S.C. 8349; subpart S also section 6001 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, 101 Stat. 1330-275; § 831.2203 also issued under section 7001(a)(4) of the Omnibus Budget Reconciliation Act of 1990, Pub. L. 101-508; 104 Stat. 1388-328.

2. Subpart J, consisting of §§ 831.1001 through 831.1006, is added to read as follows:

Subpart J—CSRS Offset

Sec.
831.1001 Purpose.
831.1002 Definitions.
831.1003 Deductions from pay.
831.1004 Agency contributions.
831.1005 Offset from nondisability annuity.
831.1006 Offset from disability or survivor annuity.

Subpart J—CSRS Offset

§ 831.1001 Purpose.

This subpart sets forth the provisions concerning employees and Members who are simultaneously covered by the Old Age, Survivors, and Disability Insurance (OASDI) tax and the Civil Service Retirement System (CSRS). Except as provided under this subpart, these employees and Members are treated the same as other covered employees and Members under the CSRS.

§ 831.1002 Definitions.

Contribution and benefit base means the contribution and benefit base in effect with respect to the tax year involved, as determined under section 230 of the Social Security Act (42 U.S.C. 430).

CSRS means the Civil Service Retirement System established under subchapter III of chapter 83 of title 5, United States Code.

Employee means an employee subject to CSRS.

Federal service means service covered under CSRS and subject to the OASDI tax by operation of section 101 of Public Law 98-21 (42 U.S.C. 410(a)). "Federal service" does not include—

(1) Service performed before January 1, 1984;

(2) Service subject to the OASDI tax only (that is, no simultaneous CSRS deductions), except in the case of an employee or Member who elected not to have any CSRS deductions withheld

from salary pursuant to section 208(a)(1)(A) of Public Law 98–168, 97 Stat. 1111, or section 2206(b) of Public Law 98–369, 98 Stat. 1059, (relating to certain senior officials; and

(3) Service subject to the full rate of CSRS deductions (7, 7½, or 8 percent) and the OASDI tax, pursuant to an election under section 208(a)(1)(B) of Public Law 98–168, 97 Stat. 1111, except in the case of an employee or Member who elects to become subject to this subpart under section 301(b) of Public Law 99–335, 100 Stat. 599.

Federal wages means basic pay, as defined under 5 U.S.C. 8331(4), of an employee or Member performing Federal service.

Member means a Member of Congress as defined by 5 U.S.C. 8331(2).

OASDI tax means, with respect to Federal wages, the Old Age, Survivors, and Disability Insurance tax imposed under section 3101(a) of the Internal Revenue Code of 1986 (31 U.S.C. 3101(a)).

§ 831.1003 Deductions from pay.

(a) Except as otherwise provided in this section, the employing agency, the Secretary of the Senate, or the Clerk of the House of Representatives must withhold 7 percent of an employee's Federal wages to cover both the OASDI tax and the CSRS deduction. The difference between the OASDI tax and the full amount withheld under this paragraph is the CSRS deduction.

(b) For a Congressional employee as defined by 5 U.S.C. 2107 and a law enforcement officer or firefighter as defined by 5 U.S.C. 8331, the appropriate percentage under paragraph (a) of this section is 7½ percent.

(c) For a Member, a judge of the United States Court of Military Appeals, a United States magistrate, and a bankruptcy judge as defined by 5 U.S.C. 8331(22), the appropriate percentage under paragraph (a) of this section is 8 percent.

(d) For any amount of Federal wages paid after reaching the contribution and benefit base calculated including all wages, but before reaching the contribution and benefit base calculated using only Federal wages, the amount withheld under this section is the difference between 7, 7½, or 8 percent, as appropriate, and the OASDI tax rate, even though the Federal wages in question are not subject to the OASDI tax.

(e) For any amount of Federal wages paid after reaching the contribution and benefit base calculated on the basis of Federal wages only, the full percentage required under paragraph (a), (b), or (c) of this section (7, 7½, or 8 percent) must be withheld from Federal wages.

§ 831.1004 Agency contributions.

The employing agency, the Secretary of the Senate, and the Clerk of the House of Representatives must submit to OPM, in accordance with instructions issued by OPM, a contribution to the CSRS equal to the amount required to be contributed for the employee or Member under 5 U.S.C. 8334(a)(1) as if the employee or Member were not subject to the OASDI tax.

§ 831.1005 Offset from nondisability annuity.

(a) OPM will reduce the annuity of an individual who has performed Federal service, if the individual is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(b) The reduction required under paragraph (a) of this section is effective on the 1st day of the month during which the employee—

(1) Is entitled to an annuity under CSRS; and

(2) Is entitled, or on proper application would be entitled, to old-age benefits under title II of the Social Security Act.

(c) Subject to paragraphs (d) and (e) of this section, the amount of the reduction required under paragraph (a) of this section is the lesser of—

(1) The difference between—

(i) The Social Security old-age benefit for the month referred to in paragraph (b) of this section; and

(ii) The old-age benefit that would be payable to the individual for the month referred to in paragraph (b) of this section, excluding all wages from Federal service, and assuming the annuitant was fully insured (as defined by section 215(a) of the Social Security Act (42 U.S.C. 414(a)); or

(2) The product of—

(i) The old-age benefit to which the individual is entitled or would, on proper application, be entitled; and

(ii) A fraction—

(A) The numerator of which is the annuitant's total Federal service, rounded to the nearest whole number of years not exceeding 40 years; and

(B) The denominator of which is 40.

(d) Cost-of-living adjustments under 5 U.S.C. 8340 occurring after the effective date of the reduction required under paragraph (a) of this section will be based on only the annuity remaining after reduction under this subpart.

(e) The amounts for paragraphs (c)(1)(i), (c)(1)(ii), and (c)(2)(i) of this section are computed without regard to subsections (b) through (l) of section 203 of the Social Security Act (42 U.S.C. 403) (relating to reductions in Social Security benefits), and without applying the provisions of the second sentence of section 215(a)(7)(B)(i) or section 214(d)(5)(ii) of the Social Security Act (42 U.S.C. 415(a)(7)(B)(i) or 415(d)(5)(ii) (relating to part of the computation of the Social Security windfall elimination provisions).

(f) OPM will accept the determination of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to Social Security benefits and the date thereof.

§ 831.1006 Offset from disability or survivor annuity.

(a) OPM will reduce the disability annuity (an annuity under 5 U.S.C. 8337) of an individual who performed Federal service, if the individual is (or would on proper application be) entitled to disability payments under section 223 of the Social Security Act (42 U.S.C. 423).

(b)(1) Before an application for disability retirement under 5 U.S.C. 8337 can be finally approved in the case of an employee who has Federal service, the applicant must provide OPM with—

(i) Satisfactory evidence that the applicant has filed an application for disability insurance benefits under section 223 of the Social Security Act; or

(ii) An official statement from the Social Security Administration that the individual is not insured for disability insurance benefits as defined in section 223(c)(1) of the Social Security Act.

(2) A disability retirement application under 5 U.S.C. 8337 will be dismissed when OPM is notified by the Social Security Administration that the application referred to in paragraph (b)(1)(i) of this section has been withdrawn unless the evidence described in paragraph (b)(1)(ii) of this section has been provided.

(c) OPM will reduce a survivor annuity (an annuity under 5 U.S.C. 8341) based on the service of an individual who performed Federal service, if the survivor annuitant is entitled, or on proper application would be entitled, to survivor benefits under section 202 (d), (e), or (f) (relating to children's, widow's, and widowers' benefits, respectively) of the Social Security Act (42 U.S.C. 202 (d), (e), or (f)).

(d) The reduction required under paragraphs (a) and (c) of this section begins (or is reinstated) on the 1st day of the month during which the disability or survivor annuitant—

(1) Is entitled to disability or survivor annuity under CSRS; and

(2) Is entitled, or on proper application would be entitled, to disability or survivor benefits under the Social Security Act provisions mentioned in paragraphs (a) and (c) of this section, respectively.

(e) The reduction under paragraphs (a) and (c) of this section will be computed and adjusted in a manner consistent with the provisions of § 831.1005(c) through (e).

(f) A reduction under paragraph (a) or (c) of this section stops on the date entitlement to the disability or survivor benefits under title II of the Social Security Act terminates. In the case of a disability or survivor annuitant who has not made proper application for the Social Security benefit, the reduction under paragraph (a) or (c) of this section stops on the date entitlement to such disability or survivor benefits would otherwise terminate. If a Social Security benefit is reduced under any provision of the Social Security Act, even if reduced to zero, entitlement to that benefit is not considered to have terminated.

(g) OPM will accept the determination or certification of the Social Security Administration, submitted in a form prescribed by OPM, concerning entitlement to Social Security disability or survivor benefits and the beginning and ending dates thereof.

(h) If a disability annuitant who is not entitled to disability benefits under title II of the Social Security Act subsequently becomes entitled to old-age benefits under the Social Security Act, a reduction under § 831.1005 will begin on the 1st day of the month during which the annuitant becomes entitled, or on proper application would be entitled, to Social Security old-age insurance benefits.

[FR Doc. 92–20500 Filed 8–26–92; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR 929

[Docket No. A0–341–A5; FV–89–109]

Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing agreement and order for cranberries grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The amendments were recommended by the Cranberry Marketing Committee (Committee), the agency responsible for local administration of the marketing order, and were favored by cranberry growers and processors in a referendum held from January 13–31, 1992. The amendments will: (1) Authorize the Committee to conduct production research and development projects; (2) provide a method whereby annual allotments are calculated on the basis of sales histories and add provisions regarding excess cranberries; (3) limit tenure for Committee members; (4) require handlers to pay assessments on the weight of acquired cranberries; (5) add a definition of barrel; and (6) make other miscellaneous changes that would be consistent with the amendments. These changes will improve the administration, operation and functioning of the marketing agreement and other program.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, DC 20090–6456, telephone (202) 720–5127.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on January 2, 1990, and published in the **Federal Register** on January 4, 1990 (55 FR 295). Recommended Decision and Opportunity to File Written Exceptions issued on January 15, 1991, and published in the **Federal Register** on January 18, 1991 (56 FR 1938). Reopening of the period for filing written exceptions issued on March 5, 1991, and published in the **Federal Register** on March 11, 1991 (56 FR 10189). The exception period was reopened until March 15, 1991. Secretary's Decision and Referendum Order issued on December 18, 1991, and published in the **Federal Register** on December 27, 1991 (56 FR 67003).

This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291 and Departmental Regulation 1512–1.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601 *et. seq.*) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to any order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Preliminary Statement

This final rule was formulated on the record of a public hearing held in Plymouth, Massachusetts, on January 17, 1990; Cherry Hill, New Jersey, on February 6, 1990; Wisconsin Rapids, Wisconsin, on February 13, 1990; and Portland, Oregon, on February 15, 1990, to consider the proposed amendment of Marketing Agreement and Order No. 929, regulating the handling of cranberries grown in 10 States, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Act and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR part 900). The Notice of Hearing contained several amendment proposals submitted by the Committee established under the order to assist in local administration of the marketing order.

This final rule: (1) Authorizes the Committee to conduct production research and development projects; (2) provides a method whereby annual allotments are calculated on the basis of sales histories and add provisions regarding excess cranberries; (3) limits tenure provisions for Committee members; (4) requires handlers to pay assessments on the weight of acquired cranberries; and (5) adds a definition of barrel. The final rule also makes necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on January 15, 1991, filed with the Hearing Clerk, Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 19, 1991. The Department of Agriculture (Department) received a request that it provide more time for interested persons to analyze the recommended decision and file exceptions. Therefore, the Department reopened the period for filing written exceptions until March 15, 1991 (56 FR 10189). One exception was received from Mr. David M. Farrimond, Manager of the Committee, who raised the following concerns regarding: (1) The inclusion of reporting and accounting requirements under the authority for production research and development; (2) the submission of a grower report by January 15; (3) an agreement between growers and handlers on the disposition of unused annual allotment; (4) the calculation of sales histories on leased or transferred acreage; (5) established cranberry acreage; and (6) staggered terms of office for Committee members. The exception was discussed and noted upon in the Secretary's decision.

A Secretary's Decision and Referendum Order was issued on December 18, 1991, directing that a referendum be conducted during the period January 13–31, 1992, among cranberry growers and processors to determine whether they favored the proposed amendments to the order. In that referendum, growers and processors voted in favor of all five of the amendment proposals listed on the referendum ballot.

The amended marketing agreement was subsequently mailed to all cranberry handlers throughout the production area for their approval. The marketing agreement was approved by cranberry handlers representing more than 50 percent of the volume of cranberries handled by all handlers during the representative period of September 1, 1990, through August 31, 1991.

Small Business Considerations

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $500,000. Small agricultural service firms, which include handlers under this order, are defined as those with annual receipts of less than $3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act have small entity orientation and compatibility. Interested persons were invited to present evidence at the hearing on the probable impact that the proposed amendments to the order would have on small businesses.

During the 1990–91 crop year, approximately 30 handlers were regulated under Marketing Order No. 929. In addition, there are about 950 growers of cranberries in the regulated area. The Act provides for the application of uniform rules on regulated handlers. Since handlers covered under the cranberry marketing order are predominantly small businesses, the order itself is tailored to the size and nature of these small businesses. Marketing orders, and amendments thereto, are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

This final rule amends the cranberry marketing agreement and order to include a provision authorizing the Committee to conduct production research and development projects. Presently, the cranberry marketing order authorizes only marketing research and development projects which are designed to assist, improve or promote the distribution and consumption of cranberries. Production-related research conducted on cranberries is usually performed through agricultural extension stations of state universities and colleges. Recent cutbacks in state funding to universities have caused concern within the cranberry industry that production research could be jeopardized, severely restricted or delegated to a lower priority in the future.

Cranberry growers today are encountering increased problems related to production yields. These include not only weather-related problems and diseases caused by fungi and insects, but also increasing environmental concerns, e.g., water and chemical usage and expansion into wetlands. More and more, Federal and state laws have been implemented which restrict the use of chemicals and oversee water use. In addition, it is becoming more difficult to expand production in wetlands which are protected by Federal and state laws. Research projects which address these concerns would benefit all cranberry growers and could help ensure adequate supplies and increased quality of cranberries to consumers.

The change to replace the current allotment base program with a sales history program is intended to reduce values currently associated with allotment base and reduce barriers to entry to cranberry production and sales. The changes which are intended to reduce barriers to entry are consistent with the Department's 1982 Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders (Guidelines). Also included under this issue are definitions of sales history, established cranberry acreage and the term handle; modification of the sections of the marketing order regarding transfers, interhandler transfers, and annual allotment; and the addition of new order sections concerning excess cranberries.

Under this provision, a grower's sales history will be calculated based on such grower's sales, expressed as an average of the best four of the previous six years. Each year, a grower's sales history will be automatically recalculated by the Committee with the newest crop year's sales being added and the oldest crop year's sales being dropped from the six-year period. Sales history will be transferred with the acreage on which it was earned, thus ensuring that a buyer or lessee receives sales history on acreage which is bought or leased. If there is no sales history or less than four years for sales history, sales history will be computed based on the number of years of actual sales until four years of sales is reached or the Committee will use the state average yield multiplied by the grower's cranberry acreage to calculate the grower's allotment. There are also provisions to not penalize a grower who loses a crop for three consecutive years because of natural disasters.

Under the allotment program, when a marketable quantity and an allotment percentage have been established, growers would deliver all of their cranberries to handlers. Handlers could handle only the total of the annual allotments of all growers delivering cranberries to them. Cranberries in excess of those received under allotment would be called excess cranberries and would be able to be used only in noncommercial and/or noncompetitive markets.

The provision to limit tenure for Committee members will allow for different and more contemporary ideas to be represented on the Committee and is consistent with the Department's Guidelines. Currently, Committee members may serve for unlimited terms of office. This action limits the terms of office that Committee members may serve to three consecutive two-year terms of office. The terms of alternate members will not be limited. Members serving three consecutive terms will again become eligible to serve on the Committee by not serving for one full term as either a member or an alternate member. This action is expected to encourage and foster, to the maximum extent possible, broad-based participation by all industry members of the regulated community in the administration of the marketing order.

The change to add a requirement for handlers to pay assessments on the weight of acquired cranberries will require that all cranberries delivered to a handler, with the exception of excess cranberries, be assessed. Currently an assessment rate per 100-pound barrel is applied to the total barrels of cranberries a handler handled, i.e., canned, frozen, or dehydrated. However, fresh cranberries usually experience a loss in weight, called shrinkage, between the time they are received by the handler and the time they are actually handled. Therefore, the weight lost to shrinkage is not assessed. The Committee recommended that cranberries be assessed based on their weight when acquired by the handler prior to shrinkage. Thus, handlers will be assessed on all cranberries received, with the exception of excess cranberries, and assessments due to shrinkage would not be lost.

The change to add a definition of barrel will reflect current usage of this term in the industry. The marketing order does not include a definition of the term barrel. The term "barrel," which is equal to 100 pounds of cranberries, is used and understood by growers, processors, and handlers. Growers report their sales on a yearly basis in barrels and handlers report the number of cranberries acquired from growers and the disposition of such cranberries during the crop year in barrels.

Miscellaneous changes that are consistent with the adopted amendments are necessary so that all sections of the order are consistent. These changes include deleting and redesignating certain sections of the order.

All of these changes are designed to enhance the administration and functioning of the marketing agreement and order to the benefit of the industry. Accordingly, it is determined that the revisions of the agreement and order will not have a significant economic impact on handlers and growers.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 35), the reporting and recordkeeping provisions that are included in the adopted amendments have been submitted to the Office of Management and Budget (OMB). Any forms associated with these provisions could not be used prior to OMB approval.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Order Amending the Order Regulating the Handling of Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and determinations upon the basis of the hearing record.* Pursuant to provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing and was held upon the proposed amendments to the Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in 10 States.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of cranberries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act; and

(4) All handling of cranberries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.*—It is necessary and in the public interest to make all of the amendatory provisions effective upon publication in the **Federal Register.** Any delay beyond that date would interfere with effective order administration.

This action should be expedited so that the tenure requirements can be implemented as soon as possible because the next new term of office begins on August 1 and the sales history program and other changes can become effective for the next crop year which begins on September 1. In view of the foregoing, it is hereby found and determined that good cause exists for making this amendatory order effective upon publication in the **Federal Register,** and that it would be contrary to the public interest to delay the effective date of this order for 30 days after publication in the **Federal Register** (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559).

(c) *Determinations.* It is hereby determined that:

Handlers (excluding cooperative associations of growers who are not engaged in processing, distributing, or shipping cranberries covered by the said order, as hereby amended) who, during the period September 1, 1990, through August 31, 1991, handled 50 percent or more of the volume of such cranberries covered by the said order as hereby amended have signed an amended marketing agreement;

(2) The issuance of this amendatory order, amending the aforesaid order, is favored or approved by at least two-thirds of the growers who participated in a referendum on the question of its approval or produced for market at least two-thirds of the volume of such commodity represented in the referendum, all of such growers during the period September 1, 1990, through August 31, 1991 (which has been deemed to be a representatives period), having

been engaged within the production area in the production of cranberries for fresh market; and

(3) The issuance of this amendatory order, amending the aforesaid order, is favored or approved by processors who processed more than 50 percent of the volume of cranberries marketed during the representative period.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of cranberries grown in 10 States shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions of the proposed marketing agreement and order amending the order contained in the Secretary's Decision issued on December 18, 1991, and published in the Federal Register on December 27, 1991, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.10 is revised to read as follows:

§ 929.10 Handle.

(a) Handle means:

(1) To can, freeze, or dehydrate cranberries within the production area or;

(2) To sell, consign, deliver, or transport (except as a common or contract carrier of cranberries owned by another person) fresh cranberries or in any other way to place fresh cranberries in the current of commerce within the production area or between the production area and any point outside thereof in the United States or Canada.

(b) The term handle shall not include:

(1) The sale of non harvested cranberries;

(2) The delivery of cranberries by the grower thereof to a handler having packing or processing facilities located within the production area;

(3) The transportation of cranberries from the bog where grown to a packing or processing facility located within the production area; or

(4) the cold storage or freezing of excess cranberries for the purpose of temporary storage during periods when an annual allotment percentage is in effect prior to their disposal, pursuant to § 929.59.

3–4. Section 929.13 is revised to read as follows:

§ 929.13 Sales history.

Sales History means the number of barrels of cranberries established for a grower by the committee pursuant to § 929.48.

5. Section 929.15 is revised to read as follows:

§ 929.15 Annual allotment.

A grower's annual allotment for a particular crop year is the number of barrels of cranberries determined by multiplying such grower's sales history by the allotment percentage established pursuant to § 929.49 for such crop year.

§ 929.16 [Reserved]

6. Section 929.16 is removed and reserved.

7. A new § 929.17 is added to read as follows:

§ 929.17 Barrel.

Barrel means a quantity of cranberries equivalent to 100 pounds of cranberries.

8. Section 929.21 is revised to read as follows:

§ 929.21 Term of office.

The term of office for each member and alternate member of the committee shall be for two years, beginning on August 1 of each even-numbered year and ending on the second succeeding July 31. Members and alternate members shall serve the term of office for which they are selected and have been qualified or until their respective successors are selected and have been qualified. Beginning on August 1 of the even-numbered year following the adoption of this amendment, committee members shall be limited to three consecutive terms: *Provided*, That committee members representing Districts 1 and 2 shall be limited to two consecutive terms of office for the initial period following adoption of this amendment. The consecutive terms of office for alternate members shall not be limited. Members serving three consecutive terms may become eligible to serve on the committee by not serving for one full term as either a member or an alternate member, unless specifically exempted by the Secretary.

9. Section 929.41 is revised to read as follows:

§ 929.41 Assessments.

(a) As a handler's pro rate share of the expenses which the Secretary finds are reasonable and likely to be incurred by the committee during a fiscal period, a handler shall pay to the committee assessments on all cranberries acquired as the first handler thereof during such period, except as provided in § 929.55: *Provided*, That no handler shall pay assessments on excess cranberries as provided in § 929.57. The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect, irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the rate of assessment to be paid by each handler during a fiscal period in an amount designated to secure funds sufficient to cover the expenses which may be incurred during such period and to accumulate and maintain a reserve fund equal to approximately one fiscal period's expenses. At any time during or after the fiscal period, the Secretary may increase the assessment rate in order to secure funds sufficient to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cranberries acquired during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal year, before sufficient operating income is available from assessments, the committee may accept the payment of assessments in advance and may also borrow money for such purposes.

(c) If a handler does not pay such assessment within the period of time prescribed by the committee, the assessment may be increased by either a late payment charge, or an interest charge, or both, at rates prescribed by the committee, with the approval of the Secretary.

10. Section 929.45 is revised to read as follows:

§ 929.45 Research and development.

(a) The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and market development projects designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of cranberries. The expense of such projects shall be paid from funds collected pursuant to § 929.41, or from such other funds as approved by the Secretary.

(b) The committee may, with the approval of the Secretary, establish rules and regulations as necessary for the implementation and operation of this section.

11–12. Section 929.48 is revised to read as follows:

§ 929.48 Sales history.

(a) Determination of sales history.

(1) The initial sales history shall be computed by the committee for each grower using the best four out of six years of such grower's sales history, which shall include all commercial sales from the first complete crop year following adoption of this amendment, plus the prior five years' history of commercial sales, except as otherwise provided in paragraph (a)(5) of this section. For a grower with four years or less of commercial sales history, the initial sales history shall be computed by the committee using all available years of such grower's commercial sales history.

(2) A new sales history shall be computed for each grower after each crop year during which no volume regulation was established, in the same manner as for the initial sales history, except that the most recent crop year shall be used instead of the earliest crop year, and except as otherwise provided in paragraph (a)(4) of this section. The committee, with the approval of the Secretary, may, by regulation, alter the number and identity of years to be used in computing these subsequent sales histories.

(3) A new sales history shall be calculated for each grower after each crop year, during which a volume regulation has been established, using a formula determined by the committee, with the approval of the Secretary.

(4) Beginning with the first complete crop year following the adoption of this section, if a grower has no commercial sales from such grower's cranberry acreage for three consecutive crop years due to forces beyond the grower's control, the committee shall compute a level of commercial sales for the fourth year for that acreage using an estimated production, obtained by crediting the grower with the average sales from the preceding three years during which sales occurred. Any and all relevant factors regarding the grower's lost production may be considered by the committee prior to establishing a sales history for such acreage.

(5) The committee shall compute a sales history for a grower who has no history of sales associated with such grower's cranberry acreage during a crop year when a volume regulation has been established, using the greater of the following:

(i) The total estimated commercial sales from a grower's cranberry acreage, or

(ii) The state average yield per acre multiplied by the grower's cranberry producing acreage. *Provided*, That a grower having unused allotment and received a sales history computed under either of these methods shall forfeit such unused allotment.

(b) Grower report. Each grower shall file a report with the committee by January 15 of each crop year, indicating the total acreage harvested, the total commercial cranberry sales in barrels from such acreage, and the amount of any new or renovated acreage planted, to allow the committee to compute a sales history for each grower.

(c) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

13. Section 929.49 is amended by revising paragraphs (a), (b), (c), and (d), and adding paragraphs (e), (f), (g), and (h) to read as follows:

§ 929.49 Marketable quantity, allotment percentage and annual allotment.

(a) Marketable quantity and allotment percentage. If the Secretary finds, from the recommendation of the committee or from other available information, that limiting the quantity of cranberries purchased from or handled on behalf of growers during a crop year would tend to effectuate the declared policy of the Act, the Secretary shall determine and establish a marketable quantity for that crop year.

(b) The marketable quantity shall be apportioned among growers by applying the allotment percentage to each grower's sales history, established pursuant to § 929.48. Such allotment percentage shall be established by the Secretary and shall equal the marketable quantity divided by the total of all growers' sales histories. Except as provided in paragraph (f) of this section, no handler shall purchase or handle on behalf of any grower cranberries not within such grower's annual allotment.

(c) In any crop year in which the production of cranberries is estimated by the committee to be equal to or less than its recommended marketable quantity, the committee may recommend and the Secretary may increase or suspend the allotment percentage applicable to that year. In the event it is found that market demand is greater than the marketable quantity previously set, the committee may recommend and the Secretary may increase such quantity.

(d) Issuance of annual allotments. The committee shall require all growers to qualify for that allotment by filing with the committee, on or before April 15 of each year, a form wherein growers include the following information: The location of their cranberry producing acreage from which their annual allotment will be produced; the amount of acreage which will be harvested; changes in location, if any, of annual allotment; and such other information, including a copy of any lease agreement, as is necessary for the committee to administer this part. On or before June 1, the committee shall issue to each grower an annual allotment determined by applying the allotment percentage established pursuant to paragraph (b) of this section to the grower's sales history.

(e) On or before June 1 of any year in which an allotment percentage is established by the Secretary, the committee shall notify each handler of the annual allotment that can be handled for each grower whose total crop will be delivered to that handler. In cases where a grower delivers a crop to more than one handler, such grower's annual allotment will be apportioned equitably among the handlers.

(f) Growers who do not produce cranberries equal to their computed annual allotment shall transfer their unused allotment to such growers' handlers. The handler shall equitably allocate the unused annual allotment to growers with excess cranberries who deliver to such handler. Unused annual allotment remaining after all such transfers have occurred shall be transferred to the committee pursuant to paragraph (g) of this section.

(g) Handlers who receive cranberries more than the sum of their growers' annual allotments have "excess cranberries," pursuant to § 929.59, and shall so notify the committee. Handlers who have remaining unused allotment pursuant to paragraph (f) of this section are "deficient" and shall so notify the committee. The committee shall equitably distribute unused allotment to all handlers having excess cranberries.

(h) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

14. Section 929.50 is revised to read as follows:

§ 929.50 Transfers.

(a) Transfers to another grower. A grower who owns cranberry acreage on which a sales history has been

established may transfer the acreage and sales history to another grower. When transfers of acreage occur, transfers of sales history will be made under the following conditions:

(1) A lease agreement between the owner of the cranberry producing acreage and a lessee: Terms of such lease agreement shall be filed with the committee prior to the committee recognizing such transfer. The lease agreement filed with the committee shall include the following information:

(i) Name of owner and lessee;

(ii) Starting and ending dates of the lease; (iii) Amount of acreage transferred; and

(iv) The amount of sales history transferred.

(2) Total sale of cranberry acreage. When there is a sale of a grower's total cranberry producing acreage, the seller and buyer shall file a completed transfer form with the committee and the buyer will have immediate access to the sales history computation process.

(3) Partial sale or lease of cranberry acreage. When less than the total cranberry producing acreage is sold or leased, sales history associated with the portion of the acreage being sold or leased shall be transferred with the acreage. The seller and lessor shall provide the committee with a completed transfer or lease form outlining such distribution of acreage and sales history between the parties. Such transfer or lease form shall include that percentage of the sales history, as defined in § 929.49(a)(1), attributable to the acreage being transferred or leased.

(4) No transfer shall be recognized by the committee unless the transferee and transferor notify the committee in writing: *Provided That*, if unusual circumstances exist, the Committee may recognize a transfer when only one form from the transferee or transferor is filed with the committee.

(5) In a year of nonregulation, in the absence of any sales history associated with the cranberry acreage being transferred or leased, the committee shall determine the buyer's or lessee's sales history pursuant to § 929.48 of the order.

(6) During a year when a volume regulation has been established, no transfer or lease of cranberry producing acreage, without accompanying sales history, shall be recognized until the committee is in receipt of a completed transfer or lease form.

(b) The committee may establish, with the approval of the Secretary, rules and regulations, as needed, for the implementation and operation of this section.

15. Section 929.52 is amended by revising paragraph (a) to read as follows:

§ 929.52 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cranberries whenever the Secretary finds, from the recommendations and information submitted by the committee, or from other available information, that such regulation will tend to effectuate the declared policy of the Act. Such regulation shall limit the total quantity of cranberries which may be handled during any fiscal period either by fixing the free and restricted percentages, which percentages shall be applied to cranberries acquired by handlers during such fiscal period in accordance with § 929.54, or by establishing an allotment percentage in accordance with § 929.49.

* * * * *

16. Section 929.55 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 929.55 Interhandler transfer.

(a) Transfer of cranberries from one handler to another may be made without prior notice to the committee, except during a period when a volume regulation has been established. If such transfer is made between handlers who have packing or processing facilities located within the production area, the assessment and withholding obligations provided under this part shall be assumed by the handler who agrees to meet such obligation. If such transfer is to a handler whose packing or processing facilities are outside of the production area, such assessment and withholding obligation shall be met by the handler residing within the production area.

(b) All handlers shall report all such transfers to the committee on a form provided by the committee four times a year or at other such times as may be recommended by the committee and approved by the Secretary.

(c) The committee may establish, with the approval of the Secretary, rules and regulations necessary for the implementation and operation of this section.

17. A new § 929.59 is added to read as follows:

§ 929.59 Excess cranberries.

(a) Whenever the Secretary establishes an allotment percentage pursuant to § 929.52, handlers shall be notified by the committee of such allotment percentage and shall withhold from handling such cranberries in excess of the total of their growers' annual allotments obtained during such period. Such withheld cranberries shall be defined as "excess cranberries" after all unused allotment has been allocated.

(1) Excess cranberries received by a handler shall be made available for inspection by the committee or its representatives from the time they are received until final disposition is completed. Such excess cranberries shall be identified in such manner as the committee may specify in its rules and regulations with the approval of the Secretary.

(2) All matters dealing with handler-held excess cranberries shall be in accordance with such rules and regulations established by the committee, with the approval of the Secretary.

(b) Prior to January 1, or such other date as recommended by the committee and approved by the Secretary, handlers holding excess cranberries shall submit to the committee a written plan outlining procedures for the systematic disposal of such cranberries in the outlets prescribed in § 929.61.

(c) Prior to March 1, or such other date as recommended by the committee and approved by the Secretary, all excess cranberries shall be disposed of pursuant to § 929.61.

§ § 929.60—929.63 and 929.66—929.75 [Redesignated as § § 929.62—929.76]

18. Sections 929.60 through 929.63 and § § 929.66 through 929.75 are redesignated as follows:

Old section	*New section*
929.60	929.62
929.61	929.63
929.62	929.64
929.63	929.65
929.65	929.66
929.66	929.67
929.67	929.68
929.68	929.69
929.69	929.70
929.70	929.71
929.71	929.72
929.72	929.73
929.73	929.74
929.74	929.75
929.75	929.76

19. A new § 929.60 is added to read as follows:

§ 929.60 Handling for special purposes.

Regulations in effect pursuant to § § 929.10, 929.41, 929.47, 929.48, 929.49, 929.51, 929.52, or 929.53 or any combination thereof, may be modified, suspended, or terminated to facilitate handling of excess cranberries for the following purposes:

(a) Charitable institutions;

(b) Research and development projects described pursuant to § 929.61;

(c) Any nonhuman food use;

(d) Foreign markets, except Canada; and

(e) Other purposes which may be recommended by the committee and approved by the Secretary.

20. A new § 929.61 is added to read as follows:

§ 929.61 Outlets for excess cranberries.

(a) Noncommercial outlets. Excess cranberries may be disposed of only in the following noncommercial outlets that the committee finds, with the approval of the Secretary, meet the requirements outlined in paragraph (c) of this section:

(1) Charitable institutions; and

(2) Research and development projects approved by the U.S. Department of Agriculture for the development of foreign and domestic markets, including, but not limited to, dehydration, radiation, freeze drying, or freezing of cranberries.

(b) Noncompetitive outlets. Excess cranberries may be sold to outlets that the committee finds, with the approval of the Secretary, are noncompetitive with established markets for regulated cranberries and meet the requirements outlined in paragraph (c) of this section. These outlets include:

(1) Any nonhuman food use; and

(2) Foreign markets, except Canada.

(c) Requirements for diversion. The following requirements, as applicable, shall be met by the handler diverting excess cranberries into noncompetitive or noncommercial outlets:

(1) Diversion to charitable institutions. A statement from the charitable institution shall be submitted to the committee showing the quantity of cranberries received and certifying that the cranberries will be utilized by the institution;

(2) Diversion to research and development projects. A report shall be given to the committee describing the project, quantity of cranberries diverted, and date of disposition;

(3) Diversion to a nonhuman food use. Notification shall be given to the committee at least 48 hours prior to such disposition; and

(4) Diversion to foreign markets, except Canada. A copy of the on-board bill of lading shall be submitted to the committee showing the amount of cranberries loaded for export.

(d) The storage and disposition of all excess cranberries withheld from handling shall be subject to the supervision and accounting control of the committee.

(e) The committee, with the approval of the Secretary, may establish as needed rules and regulations for the implementation and operation of this section.

Dated: August 20, 1992.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92-20441 Filed 8-26-92; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Parts 101, 112, and 113

[Docket 91-184]

Viruses, Serums, Toxins, and Analogous Products; Autogenous Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations concerning autogenous biologics by: Specifying data that are required to be submitted to the Animal and Plant Health Inspection Service in support of a request to use an autogenous biologic in a herd that is adjacent to the herd of origin; specifying data that are required to use such autogenous biologics in herds which are not adjacent to the herd of origin; specifying that autogenous biologics are prepared for use by or under the direction of a veterinarian under a veterinarian-client-patient relationship; specifying that each serial of product other than the first serial or subserial of product from an isolate, shall not be released before completion of identification, sterility, and safety tests and general requirements for bacterins, toxoids, bacterin-toxoids, bacterial extracts, and killed virus vaccines; specifying that after 15 months from the date of isolation, or 12 months from the date of harvest, whichever comes first, release of additional serials of product require the attending veterinarian's assessment of the continued involvement of the herd with the originally isolated microorganism, evidence of satisfactory protection from previous use of the autogenous biologic, and any other information the Administrator may require in order to determine the need to make additional serials; specifying that after 24 months from the date of isolation, antigenicity of immunogenicity and potency data must be provided in support of a request to use an organism for the production of additional serials of an autogenous biologic; and removing the limitation that autogenous products be used only in emergency situations.

This action ensures that persons seeking approval to use an autogenous biologic or an isolate under the circumstances described above are apprised of the data that must be submitted in support of their request, and that the Agency is provided sufficient information to properly evaluate the use of autogenous biologics in a herd other than the herd of origin. It also provides additional safeguards concerning autogenous biologics.

EFFECTIVE DATE: September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8245.

SUPPLEMENTARY INFORMATION:

I. Background

The regulations concerning the production of autogenous biologics are found in 9 CFR 113.113.

Autogenous biologics (vaccines, bacterins, and toxoids) are prepared from cultures of microorganisms which are inactivated and non-toxic. The seed organisms used to produce such autogenous biologics are isolated from sick or dead animals in the herd of origin and which there is reason to believe are the causative agents of the diseases affecting such animals.

On April 23, 1990, we published in the **Federal Register** a proposed rule on autogenous biologics (See 55 FR 15233-15238, Docket No. 89-200). A public hearing on autogenous biologics was held in Ames, Iowa, a August 23, 1990 (See 55 FR 32264, Docket No. 90-159). On August 23, 1991, APHIS published in the **Federal Register** a reproposed rule on autogenous biologics (See 56 FR 38352, Docket No. 90-146). We solicited comments for 60 days with the comment period ending October 15, 1991. A public meeting on veterinary biologics in Ames, Iowa, on August 15, 1991, was announced in 56 FR 31368 (July 10, 1991, Docket No. 91-087). The agenda for this public meeting included a discussion of the reproposed rule.

II. Summary and Analysis of Comments

Eleven oral comments and 33 written comments were received for the reproposed rule. Based on these comments, our responses thereto, and the rationale set forth in the reposed rule, APHIS is issuing this final rule on autogenous biologics.

Comments regarding the reproposed rule were received from biologics producers, practicing veterinarians, two trade associations, a professional organization, pork and poultry producers, and biologics consultants. The comments received addressed the following issues: (1) The definition of "herd" under § 101.2; (2) the label statement under § 112.7(m); (3) the producer's requirement for a veterinarian-client-patient relationship for the preparation of an autogenous biologic; (4) identification, sterility, and safety tests, and general testing requirements for each serial or subserial other than the first serial or subserial produced from an isolate; (5) the length of time a culture of microorganisms can be used to prepare an autogenous biologic; (6) the number of serials of product which may be produced before 15 months from the date of isolation of the microorganisms used to prepare autogenous biologics; (7) 4-day test reporting; (8) antigenicity or immunogenicity and potency testing after 24 months from the date of isolation; (9) the number of antigens in an autogenous product; (10) a request for an exemption from the regulations for small serials of autogenous biologics; (11) Executive Order 12291; (12) exemption for products produced in a veterinarian's clinic; and (13) circumvention of the licensing requirements for nonautogenous veterinary biologics by producers of autogenous biologics. The comments are discussed in the order of the issues addressed.

III. Changes Made in Response to the Comments Received

In response to the comments, three changes are being made to reproposed rule. (1) Proposed § 112.7(m), redesignated § 112.7(l) in the final rule, is revised to indicate that potency and efficacy of autogenous biologics have not been established and that the product is prepared for use only by or under the direction of a veterinarian or approved specialist. (2) Under § 113.113(c)(2)(iv) of the final rule, the time allowed for the use of a culture of microorganisms for the preparation of an additional serial of autogenous biologic before antigenicity or immunogenicity and potency testing are required is increased from 15 to 24 months from the date of isolation. (3) Finally, in § 113.113(c)(2)(iv)(A) of the final rule, APHIS has added a parenthetical explanation of when a biologic is not deemed to the antigenic.

IV. Detailed Discussion of Comments and the Agency's Response Thereto

1. Definition of Herd

One commenter requested that the definitions of "herd" and "herd of origin" in § 101.2 be amended to include poultry flocks in a common poultry operation or complex. The commenter requested that when the principal birds within the poultry complex are moved to a different location within the same complex, the group should still be considered as the same flock. Moreover, the same commenter requested that progeny from breeding flocks transferred within a common poultry operation be considered part of the same flock. Also, birds under the same ownership should be considered as the same flock.

APHIS does not agree with the commenter that birds or progeny within the same poultry operation or under the same ownership should necessarily be considered within the same flock. It is anticipated that different premises within the same poultry operation may harbor organisms different from those in the herd or flock of origin. Moreover, an epidemiological link with the herd or flock of origin, and not just common ownership, is required in order to use an isolate in the treatment of separate herds or flocks (*See* § 113.113(a)(3)(iii)). Such an epidemiological link may be established by a common source of birds in situations in which the same disease is transmitted by contact. Therefore, no change is made to the regulations in response to this commenter.

2. Labeling the Autogenous Biologics

One commenter indicated that the proposed labeling under § 112.7(m), which requires, in part, the labeling to read: "Potency and efficacy of this product have not been established", might be found alarming and misleading by farmers. The commenter requested that the language under proposed § 112.7(m) be amended to read: "This product is an autogenous biologic and as such, its potency and/or its efficacy have not been established. It is only for use by or under the direction of a veterinarian under a veterinarian-client-patient relationship and only in specific herds (flocks)." The commenter indicated that the statement informs the consumer that the product's lack of potency testing and/or efficacy results are characteristic of autogenous biologics as a class and also clarifies that his/her veterinarian is involved in product usage.

APHIS agrees in part with the commenter. With respect to that aspect of the comment which relates to efficacy and potency, APHIS believes it is reasonable to inform users that potency and efficacy of autogenous products have not been demonstrated. Thus APHIS has revised the labeling for such products in § 112.7(m) (redesignated § 112.7(l) in the final rule) to read: "Potency and efficacy of autogenous products have not been established."

With respect to that part of the comment which pertains to the use of autogenous biologics by or under the direction of a veterinarian, APHIS has revised redesignated § 112.7(l) to read: "The product is prepared for use only by or under the direction of a veterinarian of approved specialist."

A second commenter stated that since autogenous biologics are not subject to the same testing requirements as other licensed products, the label instructions should remain as proposed.

APHIS does not agree with the comment for the reasons which have been stated in APHIS' response to the previous comment.

3. Producer's Requirement for a Veterinarian-Client-Patient Relationship to Prepare an Autogenous Biologic in a Licensed Establishment

Three oral and six written comments were received regarding the requirement that autogenous biologics be prepared for use by or under the direction of a veterinarian under a veterinarian-client-patient relationship. One commenter indicated that fish aquaculture currently does not employ the services of veterinarians and the requirement would not be feasible because of the unavailability of fish veterinarians.

Two commenters indicated, however, that there are in fact veterinarians trained to treat fish diseases and that the veterinarian-client-patient-relationship requirement in aquaculture, while novel, was not impractical.

A third comment was received from the poultry industry indicating that commercial poultry and small game bird operations often lacked adequate veterinary services.

A fourth comment indicated that many poultry operations, especially small ones, do not employ their own staff veterinarian. The commenter proposed, however, that a veterinarian's assessment be substituted for a veterinarian-client-patient relationship for continued use of a seed microorganism in the production of an autogenous biologic after 15 months from the date of isolation, or 12 months from the date of harvest, whichever comes first.

Yet another commenter expressed approval of the requirement for such a relationship. The commenter explained that there are over 600 veterinarians specializing in poultry. Moreover, there are university programs for training veterinarians in fish pathology. The commenter concluded that veterinarians are available in both the poultry and aquaculture areas to meet the demands of these industries.

In response to these comments, APHIS reaffirms the requirement in § 113.113(a)(4) that there be some professional judgment to determine the need for continued use of a microorganism for production of an autogenous biologic after 15 months from the date of isolation, or 12 months from the harvest date of the first serial, whichever comes first. APHIS believes that a veterinary assessment that provides the requisite disease history, the recommendation for continued use of the autogenous biologic after 15 months from the date of isolation, and subsequent followup should be required for the preparation of an autogenous biologic.

Under a veterinarian-client-patient relationship, there is an expectation that the veterinarian assumes professional responsibility for making medical judgments regarding the health of the animals and the need for medical treatment. APHIS believes that the need for sound professional judgment concerning the prudent use of autogenous biologics under the final rule can be attained when the product is used by or under the direction of a veterinarian under a veterinarian-client-patient relationship. Thus no change in the regulations is made in response to the comments regarding the requirement for a veterinarian-client-patient relationship.

With respect to the comment concerning fish and aquaculture, APHIS recognizes that special circumstances may exist in which non-veterinarians with expertise in special areas serve as the primary health specialists. For example, fisheries pathologists certified after examination by the Fish Health Section of American Fisheries Society are recognized as experts in the field. APHIS believes that a diagnosis of a fish disease and a recommendation by these individuals will meet the intent of the regulations relating to professional judgment in the use of autogenous biologics. Therefore, § 113.113 of the regulations is revised to include such specialists.

4. Identification, Sterility, and Safety Tests, and General Requirements

If a person seeks to use a particular culture of microorganisms beyond 24 months from the date of isolation, then tests for antigenicity or immunogenicity as well as potency tests must be performed. As set forth in the reproposed rule, this final rule requires, that after 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, all microorganisms must be identified at least to genus and species, or to family, in the case of viruses. Sterility and safety tests must be completed before release of the second and subsequent serials, and general requirements under § 113.100 and § 113.200 for bacteria and viruses, respectively, must be completed in order to continue to use a culture of microorganisms to produce an autogenous biologic.

The final rule also specifies that the use of microorganisms for production beyond 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product, whichever comes first, requires: (1) characterization of the microorganism(s) as to strain under § 113.113(c)(2)(iii) and (2) a veterinarian's current assessment of the continued involvement of the herd with the originally isolate microorganism(s). This assessment includes a summary of the diagnostic work that has been done to support this assessment, evidence of satisfactory protection from the use of the autogenous biologic produced from the microorganism(s) involved, and any other information the Administrator may require in order to determine the need to use the microorganism(s) to make additional serials (See § 113.113(a)(4)).

5. The length of Time That an Isolate may be Used for the Preparation of an Autogenous Biologic

Five oral and 22 written comments were received regarding the length of time an isolate can be used to prepare an autogenous biologic. These comments requested that the period of time allowed for the use of a culture of microorganisms for production of an autogenous biologic be extended from 15 to 24 months from the date of isolation. The rationale provided was that use of an autogenous biologic may be required, after 15 months from the date of isolation, for reemergence of infection, or in order to generate the "hard" production or economic data needed to justify continued used of the autogenous biologic. The commenter argued that a 24 month period in which to use a culture of microorganisms for production would also allow time to judge the effect of the autogenous biologic and determine if the results justify the expenditure to perform the antigenicity or immunogenicity and potency testing required for the production of additional serials. One commenter expressed concern about the cost of antigenicity or immunogenicity and potency testing. Another commenter argued that different organisms produce varying courses of disease, some being more difficult to eliminate and thus requiring use of the autogenous biologic beyond 15 months from the date of isolation or 12 months from the date of harvest of the first serial, whichever comes first.

Five of these commenters argued specifically for an extension of time permitted for use of a culture of microorganisms to 24 months from the date of isolation. The reasons were that a female pig is productive for two years; antigenic drift will cause emergence of disease and the need to reisolate after 18–24 months; 24 months are required to generate statistically significant data regarding the clinical effectiveness of a product; autogenous biologics are needed to replace the removal of feed grade Neomycin and all nitrofurazones for use in food animals, because there is no other effective means of control available; the requirements for identifying and type testing of new isolates alone are cost prohibitive when spread over the normal yearly volume of doses of autogenous biologics; autogenous biologics are used when licensed commercial products with established efficacy fail to give adequate protection; determination of future use of an autogenous biologic should be left to the attending veterinarian.

One other commenter said that the reproposed rule was fair and workable as proposed. One year of use of a culture of microorganisms, beginning from the date of harvest of the first serial of product, allowed revaccination of the herd in the second year and time for testing to prove that the autogenous biologic was needed, without waiting for a disease outbreak to occur.

Three additional commenters supported the reproposal as written.

APHIS agrees, in part, with the commenters requesting that an isolated by allowed to be used for a longer period of time. Therefore, § 113.113(c)(2)(iv) is revised to require antigenicity or immunogenicity and potency tests only when additional serials are sought to be prepared from

microorganisms that are older than 24 months from the date of isolation.

It should be noted that APHIS is removing the emergency restriction on the use of autogenous biologics, provided that data related to identification, sterility, and general requirements are submitted after 15 months from the date of isolation of the culture of microorganisms, or 12 months after the date of harvest of the first serial of product, whichever comes first. Moreover, the attending veterinarian's current assessment of the continued involvement of the herd with the originally isolated microorganisms, evidence of satisfactory protection from the previous use of the autogenous biologic, and any other information the Administrator may require are required for authorization to prepare additional serials from a culture of microorganisms older than the above stated time periods. Data concerning antigenicity or immunogenicity and potency are required to prepare additional serials from a culture of microorganisms older than 24 months from the date of isolation. APHIS believes that these are the minimum data that is required in order to justify continued use of a culture of microorganisms for the production of autogenous biologics.

6. Number of Serials that May Be Prepared Before 15 Months

Two comments expressed some confusion about the requirements for additional testing after the first serial of product. One comment requested that two serials be allowed during the 15 month period of time that a culture of microorganisms may be used for production without additional requirements for identification and testing for antigenicity or immunogenicity and potency. Another comment expressed concern about the costs of potency and efficacy studies for second serials.

In response to these comments, APHIS wishes to clarify that the reproposed rule did not restrict the number of serials of autogenous product that may be produced during the first 15 month period of time that a microorganism may be used for production. The final rule continues to require identification, completion of safety and sterility testing prior to release, and general testing after the first serial of product. In the final rule, since antigenicity or immunogenicity and potency testing need not be performed until a culture of microorganisms is older than 24 months, there should be minimum additional cost for preparation of a second serial of product during the first 24 months from the date of isolation.

7. Four Day Test Reporting

Two commenters requested that the requirement under § 113.113(c)(1)(iv) that test results be reported within 4 days after test completion was unjustified and burdensome.

APHIS does not agree that the requirement that such test results be reported within 4 days of test completion is either unjustified or burdensome. In response to the comments, however, the regulations have been amended to clarify APHIS' intent that the requirement refers only to the results of sterility and safety test observations under § 113.113(c)(1) (See § 113.113(c)(1)(iv)). Given the possible risk to animal health, this requirement is neither unjustified nor burdensome. APHIS believes that this requirement provides a measure of safety for first serials of autogenous biologics released after only a third day observation of sterility and safety tests. Thus summaries of tests under paragraph (c)(1) must be reported to APHIS within 4 days after test completion in order to protect animal health.

8. Antigenicity or Immunogenicity and Potency Testing

Two oral and three written comments addressed the requirement in § 113.113(c)(2)(iv) for additional testing of product produced from cultures of microorganisms that are older than 15 months from the date of isolation, or 12 months from the date of harvest, whichever comes first. The commenters indicated that additional time and expense were required to generate the data required to continue to use cultures of microorganisms beyond this time period. In response to these comments, APHIS believes that it is consistent with the Act to require minimum data on antigenicity or immunogenicity and potency in order to continue to use such a culture. In order to allow additional time for evaluation of the autogenous biologic for continued use, the regulations have been amended in the final rule to allow the use of a culture of microorganisms for two years before antigenicity or immunogenicity and potency testing is required.

APHIS believes that the continued use of a culture of microorganisms after 24 months must be justified by the submission of data which demonstrates a reasonable expectation of product efficacy. The data requirements are tiered to the length of time that a culture of microorganisms is used after the date of isolation. The rationale is that with increasing time after isolation, the chances are that the microorganism(s) causing disease(s) in the herd will change due to movement or replacement of animals, antigenic drift, or a change in the disease status of the herd. With such a change in the microorganisms(s) causing disease in the herd, the risk that an autogenous biologic will no longer provide satisfactory protection in the herd increases proportionately.

After 24 months from the date of isolation, the user has the option to obtain a new isolate if the disease status of the herd has changed; or to do antigenicity or immunogenicity and potency testing to continue use of the original microorganisms isolated.

9. Number of Antigens Used in an Autogenous Biologic

One oral comment was received regarding the number of different microorganisms that may be used in an autogenous biologic. The commenter expressed concern regarding the limit on the number of different microorganisms before interference becomes a problem.

In response to this comment, APHIS has set no limit on the number of different microorganisms that may be included in an autogenous biologic, so long as the person requesting the autogenous biologic can show some relationship between the microorganisms and the diseases in the herd. Thus, no change in the regulations is made in response to this comment.

10. Exemption for Small Serials

A comment was received requesting that small serials produced under the conditions of the reproposed rule be considered for exemption from the requirements of the rule.

APHIS does not agree with this comment. Thus no change has been made in response to this comment. Since the time period for the use of a culture of microorganisms for the production of an autogenous biologic, without testing of product for antigenicity or immunogenicity and potency, is extended from 15 to 24 months from the date of isolation in the final rule, APHIS believes that an exemption for small serials is unnecessary.

APHIS wishes to note that antigenicity testing requires a showing of a significant serological response to the autogenous biologic in animals when administered as recommended. APHIS has added a parenthetical explanation in § 113.113(c)(2)(iv)(A) to clarify when a biologic is not deemed to be antigenic.

11. Executive Order 12291 and Request for Regulatory Flexibility

One comment was received which took issue with the Agency's analysis that was prepared under Executive Order 12291, which is entitled "Federal Regulation Requirements". The commenter argued that it was contradictory to say that because the impact on the economy of complying with the rule is less than 100 million dollars, that one could conclude the rule would not have a significant effect on consumers, individuals, and various governments. The commenter further urged APHIS to be flexible in its approach to regulation.

Under the provision of the Executive Order, a rule is deemed to be not a "major rule" if the impact on the economy as a whole, is less than 100 million dollars. Because the autogenous biologics rule is deemed not a major rule, the Agency need not prepare a regulatory impact analysis under the Executive Order. The Agency must, however, still demonstrate that the provisions of the rule are reasonable and that the benefit to society outweighs the cost. For the autogenous rule, APHIS estimates that the cost of compliance to the industry as a whole will be approximately $50,000. This assumes that there will be approximately 20 requests to produce autogenous biologics beyond 24 months after the date of isolation at a cost of approximately $2500 per request.

APHIS believes that an industry wide cost of $50,000 over that required by the current regulations is reasonable in terms of the benefits that will be derived from using an autogenous biologic that has been shown to be purse, safe, potent, and antigenic or immunogenic. APHIS notes that the most significant costs associated with the production of an autogenous biologic are not incurred until after a culture of microorganisms is used for 24 months. APHIS believes that it is consistent with the Act to require the submission of certain potency and efficacy data if a producer wishes to continue to produce an autogenous biologic beyond two years from the time the causative agent has been isolated. APHIS believes that allowing this two year "grace" period illustrates that the Agency is being reasonable and flexible in its regulation.

12. Exemption for Products Produced in a Veterinarian's Clinic

One comment confused the requirement under the reproposed rule of a veterinarian-client-patient relationship for autogenous biologics with the relationship under § 107.1(a)(1), which provides an exemption from the regulations for unlicensed biological products produced by a veterinarian for use in his or her own practice. The commenter expressed concern that the reproposed rule would restrict licensed facilities from producing autogenous biologics in emergency situations, while allowing unlicensed facilities to produce such autogenous products.

The reproposed rule would permit licensed facilities to prepare autogenous biologics in both emergency and non-emergency situations. The restriction of the use of autogenous biologics to a veterinarian-client-patient relationship under the reproposed rule, would not preclude preparation of an autogenous biologic by a licensed facility. Although not covered by the reproposed rule, a veterinarian is free to choose to make autogenous biologics in his or her own clinic facility for the treatment of client's animals.

13. Circumvention of the Regulations

A final comment was received describing situations in which autogenous biologics were used to circumvent the use of a licensed non-autogenous product. The commenter remarked that no provision was made in the reproposed rule to prevent the use of an autogenous product when a licensed non-autogenous product with established efficacy exists.

APHIS does not agree with this comment. The final rule, based upon the reproposed rule, provides certain safeguards. It provides that autogenous biologics be used by or under the direction of a licensed veterinarian under a veterinarian-client-patient relationship. The rule also requires the submission of additional data, after 15 months and after 24 months from the date of isolation, in order to continue use of a culture of microorganisms for production of autogenous biologics. Moreover, use of an autogenous biologic is herd-specific, unless authorized for use in adjacent or non-adjacent herds by the Administrator, and the product is thus not widely distributed. APHIS believes that the requirements in the final rule will provide the necessary oversight to assure the proper use of autogenous biologics. Thus, no change is made to the regulations in response to this comment.

Based on the rationale set forth in the reproposed rule (August 13, 1991, 56 FR 38352) and this document, APHIS is adopting, with amendments based on the comments and minor nonsubstantive editorial changes, the reproposed rule as a final rule.

In order to reflect organizational changes within APHIS, part 112.7(k) is also amended by removing the word "Veterinary Services" and adding the term "the Animal and Plant Health Inspection Service" in their places.

Executive Order 12291, Executive Order 12778, and Regulatory Flexibility Act

We are issuing this final rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule". Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Currently, the regulations provide that, when authorization is obtained from the Administrator, an autogenous biologic can be used in an adjacent or non-adjacent herd, and microorganisms that are older than 12 months from the date of isolation can be used to make an additional serial of an autogenous biologic. The regulations, however, do not specify the data that are required to be submitted in support of such authorization. The final rule codifies the data that APHIS has been requiring when the Agency receives requests to use an autogenous biologic in an adjacent or non-adjacent herd. It also specifies that autogenous biologics are prepared for use by or under the direction of a veterinarian or approved specialist, and that testing is required: (1) After production of the first serial of product, (2) for use of a culture of microorganisms for production of an autogenous biologic older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial or subserial, whichever comes first, and (3) after 24 months from the date of isolation in order to continue to use the culture of microorganisms to produce product.

Thus, the effect of the final rule is to codify in the regulations the type of data that the Agency requires in support of the above referenced requests by practitioners and licensees. The data that are required to be submitted in support of such requests to use autogenous biologics in herds other than the herd of origin are data that an applicant should already have readily available. Thus, there is no additional

cost in generating such data. For continued use of an isolate beyond 24 months from the date of isolation, a firm is required to generate data and information similar to that which is currently required for veterinary biological products when one is applying for a conditional license. In response to a comment received on the reproposed rule, APHIS has extended the period of time before significant testing is required from 15 to 24 months after the date of isolation of the microorganisms used to prepare autogenous biologics and attempted to tier its regulatory requirements to the needs of small businesses and consumers. Thus there should be minimum cost to the consumer using the autogenous biologic during the first two years. Based on information supplied by APHIS' Veterinary Biologics Field Operations in Ames, Iowa, the current number of requests to produce an autogenous product beyond 12 months from isolation of the microorganism have been relatively few. Only about 20 out of some 8000 autogenous products produced each year are subject to such requests.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative proceedings which must be exhausted prior to any judicial challenge to the regulations under this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the information collection provisions that are included in the final rule were submitted to the Office of Management and Budget (OMB), were approved by OMB, and assigned OMB control no. 0579–0013.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (See 7 CFR part 3015, subpart V).

List of Subjects

9 CFR Part 101

Animal biologics.

9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, title 9 of the Code of Federal Regulations is amended as follows:

PART 101—DEFINITIONS

1. The authority citation for part 101 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 101.2, the following definitions are added in alphabetical order to read as follows:

§ 101.2 Administrative terminology

* * * * *

Adjacent herd. Adjacent herds are herds physically contiguous to the herd of origin; there are no herds between an adjacent herd and the herd of origin.

Herd. Any group of animals, including birds, fish, and reptiles, maintained at a common location (e.g. lot, farm or ranch) for any purpose. The herd (or flock) includes all animals subsequently housed at the common location. If the principal animals of a group are moved to a different location, the group is still considered the same herd.

Herd of origin. The herd from which the microorganism used as seed for production of an autogenous biologic is isolated. Offspring and excess breeding stock (not the principal animals) moved or sold from one group of animals to another have changed herds and are no longer considered part of the herd they originated from. Groups of animals under the same ownership but at different locations are separate herds.

Nonadjacent herd. Nonadjacent herds are all herds other than the herd of origin and other than herds adjacent to the herd of origin. Herds adjacent to the herd of origin but in a different State from the herd of origin are also considered nonadjacent herds.

* * * * *

PART 112—PACKAGING AND LABELING

3. The authority citation for 9 CFR part 112 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

§ 112.7 [Amended]

4. In § 112.7, paragraph (k), the words "Veterinary Services" are removed and the words "Animal and Plant Health Inspection Service" are added in their place; and the "Editorial Note" at the end of § 112.7 is removed.

5. In § 112.7, paragraph (l) is added to read as follows:

§ 112.7 Special additional requirements.

* * * * *

(l) All labels for autogenous biologics shall bear the following statement: "Potency and efficacy of autogenous biologics have not been established. This product is prepared for use only by or under the direction of a veterinarian or approved specialist."

PART 113—STANDARD REQUIREMENTS

6. The authority citation for 9 CFR part 113 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d)

7. Section 113.113 is revised to read as follows:

§ 113.113 Autogenous biologics

Autogenous biologics shall be prepared from cultures of microorganisms which have been inactivated and are nontoxic. Such products shall be prepared only for use by or under the direction of a veterinarian under a veterinarian-client-patient relationship, *Provided*, That, such products may be prepared for use under the direction of a person of appropriate expertise in specialized situations such as aquaculture, if approved by the Administrator.

Each serial of an autogenous biologic shall meet the requirements in this section, and if found unsatisfactory by any prescribed test shall not be used.

(a) *Seed requirements.* The microorganisms used as seed to prepare autogenous biologics shall be microorganisms which are isolated from sick or dead animals in the herd of origin and which there is reason to believe are the causative agent(s) of the current disease affecting such animals.

(1) More than one microorganism isolated from the same herd may be used as seed.

(2) Under normal circumstances, microorganisms from one herd shall not be used to prepare an autogenous biologic for another herd. The Administrator, however, may authorize preparation of an autogenous biologic for use in herds adjacent to the herd of origin, when adjacent herds are considered to be at risk. The following information must be submitted to the Administrator by the establishment seeking authorization (in c/o the Deputy Director, VBFO, 223 South Walnut Avenue, Ames, Iowa 50010) to request authorization to prepare a product for use in herds adjacent to the herd of origin. (If any of the data are unavailable, the applicant for authorization should indicate that such data are unavailable and why.)

(i) Name, address, and phone number of the owner of the herd of origin.

(ii) Attending veterinarian's name, address, and phone number.

(iii) Animal species and number in herd of origin.

(iv) Identification of microorganism(s), at least to genus.

(v) Diagnosis or clinical signs of the disease observed.

(vi) Name and address of the person who isolated the microorganism(s) and the date of isolation.

(vii) Number of doses of autogenous biologic requested and vaccination schedule.

(viii) Each adjacent herd owner's name, address, and phone number.

(ix) Number of animals and species in each adjacent herd.

(x) The attending veterinarian's or approved specialist's assessment of the involvement of the adjacent herd(s) with the disease observed.

The applicant shall give notice to the State Veterinarian or other appropriate State Official in writing when an autogenous biologic is to be used in adjacent herds.

(3) The Administrator may authorize preparation of an autogenous biologic for use in herds which are not adjacent to the herd of origin, but which he or she considers to be at risk of infection with the same microorganism(s). Except as provided below, the same information which is required for preparation of such product for use in herds adjacent to the herd of origin must be submitted to the Administrator (in c/o the Deputy Director, VBFO, 223 South Walnut Avenue, Ames, Iowa 50010) for authorization to prepare a product for use in herds not adjacent to the herd of origin. Because the recipient herd involved may not be known when autogenous biologics are to be used in other geographic areas, the following data may be used in place of the data required in paragraphs (a)(2)(viii) and (a)(2)(ix) of this section.

(i) Names and addresses of practitioners in the area in place of the name, address, and phone number of the adjacent herd owner.

(ii) The geographic designations of the area involved.

(iii) A summary of the epidemiology of the disease situation that links the designated geographic areas with the herd of origin.

In addition, an applicant for authorization under this paragraph (a)(3) shall provide written approval from the State Veterinarian or other appropriate State Official in the State in which the autogenous biologic is to be used in nonadjacent herds.

(4) Under normal circumstances, microorganism(s) used for the production of autogenous biologics may not be older than 15 months from the date of isolation, or 12 months from the date of harvest of the first serial of product produced from the microorganism(s), whichever comes first. The Administrator, however, may authorize production of additional serials from microorganism(s) older than the above stated time periods, *Provided*, That, the person requesting such authorization submits the following supporting information to the address listed in paragraph (a)(3):

(i) The attending veterinarian's or approved specialist's current assessment of the continued involvement of a herd with the originally isolated microorganism(s), including a summary of the diagnostic work that has been done to support this assessment.

(ii) Evidence of satisfactory protection from the previous use of the autogenous biologic produced from the microorganisms involved.

(iii) Any other information the Administrator may require in order to determine the need to use the microorganism to make additional serials.

(b) *Restrictions.* Unless otherwise authorized by the Administrator, each serial of an autogenous biologic shall be subject to the following restrictions:

(1) Microorganisms used to prepare autogenous biologics shall not be maintained in the licensed establishment beyond the time authorized for use in production.

(2) The expiration date of the autogenous biologic shall not exceed 18 months from the date of harvest.

(c) *Testing requirements for autogenous biologics.* (1) Final container samples of completed product from the first serial or subserial of an autogenous biologic produced from an isolate shall be tested for purity as prescribed in § 113.26, and for safety as prescribed in § 113.33(b) or § 113.38 except that:

(i) When the number of final containers in a serial or subserial is 50 or less, two final container samples from each serial and subserial shall be tested as prescribed in § 113.26(b): *Provided*, That, 1 ml aliquots from each sample may be inoculated into five corresponding individual test vessels of each of the test media required.

(ii) Serials which are satisfactory after the third day of observation of purity test cultures and of safety test animals may be released for shipment to the customer and the tests continued throughout the required period; and

(iii) Serials released on the basis of satisfactory results of third day observations shall be immediately recalled if evidence of contamination occurs in test cultures or if any of the test animals used to demonstrate product safety, sicken, or die during the observation period.

(iv) Summaries of test results shall be submitted to APHIS in accordance with § 116.7 within 4 days after the completion of required testing.

(2) Each serial or subserial of autogenous bacterial product other than the first serial or subserial produced from an isolate shall meet the applicable general requirements prescribed in § 113.100 and the special requirements prescribed in this section. Each serial or subserial of autogenous viral product other than the first serial or subserial produced from an isolate shall meet the applicable general requirements prescribed in § 113.200 and the special requirements prescribed in this section. A serial or subserial found unsatisfactory by any prescribed test shall not be released.

(i) *Purity test.* Final container samples of completed product from each serial and subserial shall be tested for viable bacteria and fungi as provided in § 113.26. When the number of final containers in a serial or subserial is 50 or less, two final container samples from each serial and subserial shall be tested as prescribed in § 113.26(b): *Provided*, That, 1 ml aliquots from each sample may be inoculated into five corresponding individual test vessels of each of the test media required.

(ii) *Safety test.* Bulk of final container samples of completed product from each serial shall be tested for safety as provided in § 113.33 (b) or § 113.38.

(iii) *Identification.* All microorganisms used for the production of autogenous biologics shall be identified as follows:

Bacteria, fungi, and mycoplasma shall be identified at least to genus and species. Viruses shall be identified at least to family. After 15 months from the date of isolation, or 12 months from the harvest date of the first serial of autogenous product produced from a

microorganism, whichever comes first, characterization and identification shall be completed to strain and/or serotype before such microorganism may be used for production.

(iv) *Antigenicity, or immunogenicity, and potency.* Persons seeking authorization to prepare additional serials of autogenous biologics from microorganisms that are older than 24 months from the date of isolation, shall be required to conduct the following additional tests:

(A) Completed product shall be tested for antigenicity or immunogenicity in the species for which the product is recommended or in another animal species whose immunological response has been shown in the scientific literature to correlate with the response of the species for which the product is recommended. Such tests shall be conducted in accordance with a protocol developed by the licensee and approved by the Administrator and the results submitted to the Deputy Director, Veterinary Biologics, BBEP, APHIS, 6505 Belcrest Road, Hyattsville, MD 20782 for review. Microorganisms not shown to be antigenic (that is, not shown to induce a significant serological response) or immunogenic by such approved tests shall not be used for the preparation of such product.

(B) Bulk of final container samples of completed product from each serial of such autogenous biologics containing fractions for which standard requirement potency test procedures have been established shall be tested for potency in accordance with applicable standard requirement potency tests provided in 9 CFR part 113. If the culture of microorganisms used to produce such fractions is shown to be of a different strain or serotype than the reagent or challenge microorganisms used in the standard requirement potency test, reagents or challenges of the same strain or serotype as the microorganism used for production may be used.

(C) If no standard requirement potency test procedures have been established for a fraction(s) in the autogenous biologic, such fraction(s) of each serial of product shall be tested for potency using a developmental potency test described in the filed outline of production or shall at least be standardized to contain an antigenic mass for such fraction(s) that has been shown to be antigenic or immunogenic in accordance with paragraph (c)(2)(iv)(A) of this section.

Done in Washington, DC, this 24th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-20617 Filed 8-26-92; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 102

[Docket No. 88-187-2]

Viruses, Serums and Toxins and Analogous Products; Restrictions on Distribution and Use

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations pertaining to restrictions which may be imposed by States on the distribution and use of veterinary biological products. It also provides a procedure whereby any person may request that Federal restrictions be imposed on such products. The purpose of the final rule is to clarify the regulations with respect to State restrictions on the use and distribution of veterinary biological products, and to specify how a person can request that Federal restrictions be imposed on such products.

EFFECTIVE DATE: This rule is effective September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics, BBEP, APHIS, USDA, room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, telephone number (301) 436-8245.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule was published on October 19, 1990 (55 FR 42392, Docket No. 88-187), to clarify APHIS' position that restrictions on the distribution and use of Federally licensed veterinary biological products may be imposed by a State or other jurisdiction when such restrictions are based on local disease conditions. Moreover, the proposed rule provided a procedure whereby any person, including a State or other jurisdiction, may request that Federal restrictions be imposed on such products. A 60-day comment period, which ended December 18, 1990, was provided for in that proposal.

The Animal and Plant Health Inspection Service (APHIS) received seventeen comments regarding the proposed rule. Comments were received from State animal health authorities, trade associations, a professional association, veterinary hospitals, universities, a biologics manufacturer, and a biologics consultant. APHIS has carefully considered all comments concerning the proposed rule.

Based on the rationale set forth in the proposed rule and this document, APHIS is adopting the provisions of the proposed rule with two minor changes as discussed below for the purposes of clarity.

Fourteen comments were generally in favor of the rule as proposed. Two comments took exception to the rule. One comment indicated that the proposed rule should be strengthened to require States to seek APHIS approval prior to imposing restrictions on distribution and use of veterinary biologics. The comments are discussed in greater detail below.

Twelve comments agreed that, based on local disease conditions, States should have the authority to impose restrictions on the distribution and use of veterinary biological products.

Nine of these comments indicated that because vaccines used in disease control programs require careful tracking, vaccines in these categories should be administered by or under the direction of a veterinarian. APHIS has the authority to require label statements that certain biological products be used under the supervision of veterinarians and has imposed such requirements (see 9 CFR 102.5(e)).

Several commenters requested that the wording in 9 CFR 102.5(e) which currently reads in relevant part "* * * the biological product is restricted to use by veterinarians, or under the *supervision* of veterinarians, or both" be changed to "* * * by or under the *direction* of a veterinarian" (emphasis added). The commenter argued that the change would be consistent with the language used under labeling requirements in accordance with 9 CFR 112.2(d)(1).

This comment is beyond the scope of this rulemaking and therefore will not be considered in this docket. However, the agency will consider whether it is appropriate to make the suggested changes in future rulemaking.

Several commenters also requested that the language in 9 CFR 102.5 (e) and (f) be amended to read that restrictions be based on "the protection of animal or human health and safety," rather than the language currently used: "the protection of domestic animals or the public health, interest, or safety, or both". The commenters stated that "use of the term 'interest' is vague and unacceptable."

The regulation will not be amended based on these comments because the purpose of the Act is to assure that biologics used in the treatment of animals are pure, safe, potent, and efficacious. The public benefits as a result of the successful protection of animals from various diseases, including those which are of great public concern such as rabies. Since safe and effective vaccines and other biologics are in the public interest, APHIS has used this term in the regulations.

Seven commenters indicated that States should have the authority to add to Federal restrictions, as appropriate, based on a need to protect animal or human health and safety so long as such restrictions do not lessen the effect of Federal regulations. APHIS agrees with the comment that States should not be allowed to lessen the effect of Federal restrictions on the distribution and use of veterinary biological products. APHIS, however, does not agree that States should be allowed to add various restrictions, as appropriate, based upon a need to protect domestic animals or the public health, interest, or safety. Any restrictions, other than those which are necessary to address a local disease condition, should be Federally imposed so that they are uniform nationwide.

The legislative history relating to the 1985 amendments to the Act, which extends USDA's authority over veterinary biologics, clearly expresses Congressional intent that Federal regulation of veterinary biologics is needed to prevent and eliminate burdens on commerce and that there is a need for uniform national standards regarding these products. Therefore, States are not free to impose requirements which are different from, or in addition to, those imposed by USDA regarding the safety, efficacy, potency, or purity of a product. Similarly, labeling requirements which are different from or in addition to those in the regulations under the Act may not be imposed by the States. Such additional or different requirements would thwart the Congressional intent regarding uniform national standards, and would usurp USDA's authority to determine which biologics are pure, safe, potent, and efficacious. However, it has been APHIS' consistent position that individual States may impose certain restrictions on the distribution and use of biological products licensed by USDA based on local disease conditions when such restrictions are made on a product-by-product basis. For example, a State is permitted to restrict distribution of a biological product where a particular disease does not exist in the State and where use of the biological product would make it difficult to distinguish between exposed and vaccinated animals.

Likewise, a State is permitted to restrict use of a product to licensed veterinarians when a disease exists in the State and the State has an active eradication program. In this case, such a restriction may be necessary to ensure the effectiveness of the eradication program.

Other commenters asked that only States and not other jurisdictions should be allowed to impose the restrictions in § 102.5(d)(2), and that the restrictions be imposed on a case-by-case basis. The term "other jurisdiction" must remain in the regulations because the term "States" does not include places under Federal jurisdiction. Insofar as other localities are concerned, it is APHIS' position that any restrictions based on local disease conditions within a State should be imposed by or in conjunction with State authorities in order to prevent a proliferation of conflicting restrictions.

Two commenters disagreed that any person should be able to request that Federal restrictions be imposed on biologics. The commenters were concerned that such a provision in the rules might encourage individuals to attempt to restrict unnecessarily the use and availability of veterinary biological products. With respect to the provision in the final rule which allows any person to request APHIS to impose a Federal restriction on biologics, we do not believe that such requests should be limited to State agencies. The commenters' concern is unwarranted because APHIS would be making the decision regarding such requests, and unnecessary restrictions would not be imposed on products.

Two minor changes are made to § 102.5(d)(2) for clarity. The term "Deputy Administrator" is changed to "Administrator" to be consistent with APHIS administrative policy and the term "shall" is changed to "may".

Executive Order 12291, Executive Order 12778, and Regulatory Flexibility Act

We are issuing this final rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, it has been determined that this final rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, where they are necessary to address local disease conditions or eradication programs. However, where safety, efficacy, purity, and potency of biological products are concerned, it is the agency's intent to occupy the field. This includes but is not limited to the regulation of labeling. Under the Act, Congress clearly intended that there be national uniformity in the regulation of these products. There are no administrative proceedings which must be exhausted prior to any judicial challenge to the regulations under this rule. Under certain circumstances, States may restrict the distribution and use, within their own borders, of veterinary biological products licensed by APHIS. The current regulation, however, has caused some confusion regarding the extent of such restrictions. The final rule clarifies the regulation. It also provides a procedure whereby any person can request that Federal restrictions be imposed on a veterinary biologic.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection provisions that are included in the final rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control No. 0579-0013.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR part 3015, subpart V).

List of Subjects in 9 CFR Part 102

Animal biologics.

Accordingly, title 9 of the Code of Federal Regulations is amended as follows:

PART 102—LICENSES FOR BIOLOGICAL PRODUCTS

1. The authority citation for 9 CFR part 102 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17 2.51, and 371.2(d).

§ 102.5 [Amended]

2. In § 102.5, paragraph (d)(2) is revised and paragraph (f) is added to read as follows:

§ 102.5 U.S. Veterinary Biological Product License.

* * * * *

(d) * * *

(2) In addition to restrictions imposed by the Administrator pursuant to paragraph (e) of this section, biological products may be subject to restrictions which are imposed by any State or other jurisdiction pertaining to the distribution and use of such products, based on local disease conditions.

* * * * *

(f) Any person may request that the distribution and use of a veterinary biological product be restricted if the restriction pertains to the protection of domestic animals or the public health, interest, or safety, or both. All requests must be sent, in writing, to the Director, Biotechnology, Biologics and Environmental Protection, USDA, APHIS, c/o Deputy Director, Veterinary Biologics, room 838, Federal Building, 6505 Belcrest Road, Hyattsville MD 20782. Requests must specify the restriction(s) being requested and must explain why the restrictions are needed. Copies of any supporting documents, such as scientific literature, published or unpublished articles, or data from tests, should be attached to the request. When a decision is reached regarding the request, the person submitting the request will be sent written notification of such decision.

Done in Washington, DC, this 24th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-20618 Filed 8-26-92; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-CE-09-AD; Amendment 39-8366; AD 92-19-08]

Airworthiness Directives; Fairchild Aircraft (Formerly Swearingen Aviation Corporation) SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 81-02-01, which currently requires repetitive inspections of the rudder pedal links at the attachment bolts for elongated holes on certain Fairchild SA226 series airplanes, replacement of links where elongated holes are found, and replacement of the rudder pedal link attachment bolts and bushings. The Federal Aviation Administration (FAA) has determined that certain SA227 series airplanes should be affected by the actions currently required by AD 81-02-01. This AD will retain these actions but extend the applicability to include the SA227 series airplanes. The actions specified by this AD are intended to prevent failure of the rudder cable to rudder pedal link attachments, which could result in loss of control of the airplane.

DATES: Effective October 16, 1992.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 16, 1992.

ADDRESSES: Service information that is applicable to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490; Telephone (512) 824-9421. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bob D. May, Aerospace Engineer, Airplane Certification Office, FAA, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas 76193-0150; Telephone (817) 624-5156.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD that is applicable to certain Fairchild Aircraft SA226 and SA227 series airplanes was published in the Federal Register on April 29, 1992 (57 FR 18119). The action proposed to supersede AD 81-02-01, Amendment 39-4009 (46 FR 867, January 5, 1981), with a new AD that would (1) retain the inspection and modification of the rudder cable to rudder pedal link attachments, which is required by AD 81-02-01 on Fairchild SA226 series airplanes; and (2) extend the effectivity of that AD to certain Fairchild SA227 series airplanes. The proposed actions would be accomplished in accordance with the instructions in either Swearingen Aviation Corporation Service Bulletin (SB) 27-027, issued: July 17, 1980; or Fairchild SB 27-09, issued: June 6, 1991, whichever is applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the proposed rule. No comments were received on the FAA's determination of the cost to the public. After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 310 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 2 workhours per airplane to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $25 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $42,260. Since AD 81-02-01 required the same actions as this AD on 236 airplanes, this action only poses an additional cost impact on the operators of 74 airplanes. Therefore, the cost impact of this AD is only $9,990 over that currently required by AD 81-02-01.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 81-02-01, Amendment 39-4009 (46 FR 867, January 5, 1981), and by adding the following new airworthiness directive:

92-19-08 Fairchild Aircraft (formerly Swearingen Aviation Corporation): Amendment 39-8366; Docket No. 92-CE-09-AD. Supersedes AD 81-02-01, Amendment 39-4009.

Applicability: The following model and serial numbered airplanes, certificated in any category:

Model	Serial No.
SA226-T	All serial numbers.
SA226-T(B)	All serial numbers.
SA226-AT	All serial numbers.
SA226-TC	All serial numbers.
SA227-TT	TT421 through TT444.
SA227-AT	AT423 through AT440.
SA227-AC	AC406, AC415, AC416, and AC420 through AC448.

Note 1: The only SA227 series airplanes affected by this AD are those manufactured before the production change that incorporated rudder pedal links with bushings that more efficiently prevent wear.

Compliance: Required upon the accumulation of 5,000 hours time-in-service (TIS) or within the next 50 hours TIS after the effective date of this AD, whichever occurs later, unless already accomplished within the last 5,000 hours TIS (superseded AD 81-02-01, Amendment 39-4009), and thereafter at intervals not to exceed 5,000 hours TIS.

To prevent failure of the rudder cable to rudder pedal link attachments, which could result in loss of control of the airplane, accomplish the following:

(a) Remove and discard the rudder cable to rudder pedal link attachment bolts and bushings, and prior to further flight, accomplish the following in accordance with the instructions in either Swearingen Aviation Corporation Service Bulletin (SB) 27-027, issued: July 17, 1980; or Fairchild SB 27-09, issued: June 6, 1991, whichever is applicable, and the applicable maintenance manual:

(1) Inspect the rudder pedal links, part number 26-72016, for elongated holes.

(2) Replace any rudder pedal links that have elongated holes.

(3) Install new rudder pedal link attachment bolts and bushings.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office, FAA, 4400 Blue Mound Road, Fort Worth, Texas 76193-0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth Airplane Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth Airplane Certification Office.

(d) The inspections and modifications required by this AD shall be done in accordance with either Swearingen Aviation Corporation Service Bulletin 27-027, issued: July 17, 1980; or Fairchild Service Bulletin 27-09, issued: June 6, 1991, whichever is applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279-0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-8366) supersedes AD 81-02-01, Amendment 39-4009.

(f) This amendment (39-8366) becomes effective on October 16, 1992.

Issued in Kansas City, Missouri, on August 20, 1992.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20525 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

Office of the Secretary

14 CFR Parts 201, 202, 204, 291, and 302

[Docket No. 47582]

RIN 2105-AB82

Procedures and Evidence Rules for Air Carrier Authority Applications

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is revising certain regulatory provisions to consolidate and make more consistent the fitness data requirements and filing procedures for all carriers (certificated, all-cargo, and commuter). This will update requirements to reflect our existing needs as they have evolved over the past few years, provide better guidance for carriers, expedite the processing of fitness applications, and make administrative changes to update organizational references.

EFFECTIVE DATE: The rule shall become effective on September 28, 1992.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, P-56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1991, the Department of Transportation issued a notice of proposed rulemaking (NPRM) (56 FR 27696, June 17, 1991) to revise 14 CFR parts 201, 202, 204, 291, and 302 so as to: (a) Eliminate obsolete references to the Civil Aeronautics Board, its organizational units and forms, and substitute applicable references to the Department, its organizational units and forms; (b) eliminate requirements for applicants to submit evidence that is no longer necessary for fitness determinations; (c) include section 418 domestic all-cargo carriers among those subject to part 204 evidentiary requirements and dormancy provisions and part 201 and part 302 subpart Q procedural regulations; (d) revise and consolidate the procedural and evidentiary requirements applicable to filings for new commuter, domestic all-cargo, and section 401 certificate authority; (e) clarify the meaning of "substantial change"; (f) conform and consolidate the list of evidentiary requirements in support of continuing fitness with the list of evidentiary requirements for initial fitness applications; (g) extend the filing

exception for carriers proposing a nonsubstantial change to those proposing only minor changes in key personnel, operations or ownership; (h) make all applicants proposing recommencement of operations subject to the same evidentiary requirements of part 204 that are applicable to carriers filing for new authority; and (i) eliminate the language distinguishing between carriers found fit before and after the dormancy rule amendment was adopted.

Two comments were received, one from Mr. David J. Aronofsky, an attorney with the Washington, DC law firm of Arent Fox Kintner Plotkin & Kahn, and the other from the Air Line Pilots Association (ALPA). Mr. Aronofsky supported the changes proposed in the NPRM, but stated that the Department did not go far enough in the areas of substantial change and continuing fitness. ALPA also supported the revisions in fitness evidence and application procedures proposed in the NPRM, but questioned certain specific changes. These comments are discussed in more detail below.

Discussion of Comments

In the NPRM, the Department proposed to add in new § 204.2(n) more examples of events that would constitute substantial changes that must be reported by carriers under new § 204.5 so that we could assess whether these changes warranted a fitness reevaluation. One of the events to be reported was a filing for protection under chapter 11 of the U.S. Bankruptcy Code or a filing of a plan of reorganization under those laws. We also stated in the preamble to the NPRM that carriers are not prohibited from implementing substantial changes pending our review; *i.e.*, prior Department approval of the change is not required.

Mr. Aronofsky urges the Department to begin examining the continuing financial fitness of air carriers at an earlier stage, *i.e.*, before financial problems have progressed to the point that a Chapter 11 filing has become necessary. Toward that end, he recommends that carriers be required to report as substantial changes events that could lead eventually to a loss of financial fitness, such as significant increases in debt, material financial losses, and dispositions of major assets. Furthermore, so that the Department can have an opportunity to assess the possible impact of such changes on the carrier's fitness, Mr. Aronofsky advocates that the Department should require carriers to report major financial changes immediately upon occurrence and, if possible, well in advance of making the changes.

We did not through our proposal intend to convey the impression that the Department has been doing nothing to reevaluate a carrier's fitness until the carrier itself reported a substantial change. Over the past years of assessing air carrier fitness, the Department's staff has developed many sources of information on air carrier activities. These sources include FAA and other government officials, aviation trade and other press accounts, reports from passengers and individuals in the industry, financial reporting services, carrier traffic and financial reports filed with the Department, and more. When we receive reports that a carrier is having serious financial or other difficulties, we initiate an informal continuing fitness review and request the carrier to supply information. In fact, more than 90 percent of the continuing fitness reviews conducted by the Department are undertaken on our own initiative.

The Department generally does not wish to interfere in the business decisions of airline managers, nor do we intend our regulatory oversight to divert them from their managerial responsibilities while they wonder whether they should report a particular financial event, and at what level of detail. Thus, we have attempted to keep changes that must be reported by carriers to a minimum number that are truly substantial changes, while relying on other sources to provide an early warning of potential fitness problems. As described above, this system has proven effective. We also note that both current § 204.4 and new § 204.5 specifically state that updated fitness information is to be supplied by carriers proposing a substantial change. While carriers making substantial changes are not required to obtain prior approval from the Department, carriers should bear in mind that if the Department's fitness reevaluation finds that the carrier can no longer be considered fit as a result of a substantial change, the Department has the authority under section 401(r) of the Act to suspend, modify, or revoke the carrier's authority for lack of continuing fitness. Such a possibility provides an incentive to carriers to advise the Department in advance of implementing substantial changes.

Mr. Aronofsky also counsels the Department to develop a definition of continuing fitness, applicable uniformly to all sizes of carriers. He believes that such fitness "guidelines" could be useful to interested parties, such as the traveling public and the airline industry, in assessing whether a carrier's particular financial difficulties render it no longer financially fit.

The idea of having specific standards to measure air carrier fitness or assure continuing fitness is not a new one. Some believe it would be desirable for the Department to devise a formula based on a set of financial ratios which could be used to determine financial fitness. Our experience has been, however, that such a simplistic approach could cause us to find some carriers unfit when they do continue to have access to sufficient resources to operate safely and reliably and are, in fact, doing so. We have found that some carriers with weak balance sheets have access to substantial funds through their ability to rely on financially healthy parent corporations or individual owners, through the financial market's recognition of substantial off-balance-sheet assets, or through its recognition of a company's future profit potential. Thus, because a variety of factors must be considered in determining whether a carrier remains fit, the use of standard continuing fitness criteria is precluded.

ALPA questioned whether we intended to eliminate the requirement in § 204.5(t)(3) that a carrier file a forecast income statement whenever it added aircraft to its fleet. We do not normally consider the addition of aircraft to an operating carrier's fleet to be a substantial change in operations, except in the case of a certificated carrier going from small-aircraft to large-aircraft, or from cargo to passenger operations. There are certain cases, however, usually involving very small companies, where the addition of aircraft could represent a very substantial change. In such cases, we specifically state in the order making the fitness determination that our findings are based on a particular set of operational circumstances and that we would consider an increase in the number of aircraft operated of, for example, more than 100 percent, to be a substantial change calling for a notification to be filed with the Department. Upon receipt of such a notice, we would inform the carrier what additional information, perhaps including a forecast income statement, will be required. Otherwise, we believe that the business decisions of a carrier's managers with regard to adding aircraft ordinarily do not need to be monitored by the Department, and that it would be placing an unnecessary burden on carriers to require them to furnish a forecast income statement each time they add aircraft.

ALPA also noted that in new § 204.3(t)(2), we omitted the requirement contained in current § 204.5(t)(3) that applicants must include in their forecast income statements an estimate of revenue miles by type of aircraft. The omission of this measure, which is needed to calculate forecast revenue passenger miles and load factor, was an oversight and we are restoring this requirement to the rule in new § 204.3(t)(2).

ALPA questioned whether we intended to include in the new rule a request for applicants to provide pre-operating balance sheets as evidence of their financial position before the proposed operations are undertaken. In the past, we asked applicants to furnish pre-operating balance sheets as evidence that they had sufficient funds to start or resume their proposed operations. We have discontinued that practice, and we did not include a request for this evidence in the revised rule for two reasons: First, because pre-operating balance sheets do not provide the verified evidence of funding that we require; and second, a pre-operating balance sheet presented at the time an application is filed is often considerably obsolete after the months-long fitness and FAA certification processes have been completed and the applicant is finally ready to begin flying operations.

Presently, in our order finalizing the fitness determination of an applicant for new authority or for one whose authority has been dormant for an extended period, we state that the award of effective authority to the applicant is conditioned upon our having received independent verification that the company has available to it the required funds to cover the start-up of operations. We have found such third-party verification to represent more accurately the current state of the company's finances than documents prepared by the applicant at the time of its initial filing. In addition, operating carriers that are undergoing fitness redeterminations because substantial changes have been made, or that are seeking additional authority, are subject to the requirements of new § 204.3(j)(2) to furnish balance sheets and income statements current to within three months of the date of filing. A balance sheet submitted under such circumstances would serve the purpose of a pre-operating balance sheet.

ALPA disagreed with the Department's proposal to eliminate the requirement currently contained in § 291.11(c)(2) that applicants for domestic all-cargo authority must furnish a cash-flow statement; rather, ALPA recommends that this requirement be extended to applicants for section 401 and commuter authority.

We agree with ALPA that cash flow statements contain useful information on the sources and uses of cash and the timing of cash movements to meet certain obligations. We have found cash flow statements to be useful in certain cases, such as those involving acquisitions and mergers, and on those occasions we will rely on the authority contained in new § 204.3 to request that cash flow statements or any other data be provided. However, in the majority of fitness cases, we have found that the evidence provided by cash flow statements generally is not as meaningful as that found in forecast income statements in calculating an applicant's ability to cover its operating costs on an on-going basis, and we do not wish to burden applicants with this obligation unnecessarily.

ALPA commented on our omission in new § 204.2(n)(1) of an example of a substantial change contained in current § 204.2(m)—a large increase in the number of markets served by a carrier. As in the case discussed above of a carrier adding aircraft to its fleet, we do not ordinarily consider a carrier's decision to move into additional markets to represent a substantial change in operations. Some cases, of course, require closer inspection, such as when the new markets are geographically distant from the carrier's present operational area and perhaps necessitate the acquisition of new or large aircraft. In most circumstances, however, we believe that, as long as their actions do not place in jeopardy public safety or funds, carriers should be free to operate and grow.

ALPA recommended that the Department reconsider its proposal to raise the threshold of "substantial interest" from 5 percent, as contained in current § 204.2(n), to 10 percent, as proposed in new § 204.2(o). ALPA asserted the 5 percent figure is consistent with SEC requirements mandating the filing of certain documents when an individual has acquired as least 5 percent of a corporation's voting stock. ALPA further maintained that control of an air carrier, especially one whose stock is widely held, can be exercised with less than 10 percent ownership. In addition, whether the Department declares that a substantial interest is characterized by ownership of 5 percent or 10 percent of a company's voting stock, ALPA believed that we should incorporate the same threshold in the definition of "relevant corporation" in new § 204.2(m)(2).

We appreciate ALPA's argument that the SEC appears to view a 5 percent ownership interest as significant since that agency requires that certain reports be filed by individuals who become holders of 5 percent of the stock of publicly held companies. Of course, the Department's objectives differ from those of the SEC. The great majority of the carriers whose fitness the Department monitors are not large or publicly held. We are principally concerned about the effects on a carrier's fitness and U.S. citizenship stemming from the influence of those holding a substantial interest in the company and those that can be considered relevant corporations. However, stock ownership by itself may not equate with influence or control. We thus find that requiring carriers to report ownership interests amounting to less than 10 percent would be overly burdensome without providing a concomitant benefit for the Department's fitness purposes.

New § 204.2(n)(4) provides, in part, that if the individuals holding certain key management positions were to change, the carrier would be required to file a notice of substantial change in management. APLA noted that certain of these key managers, i.e., Chief Executive Officer and Chief Operating Officer, were not found among the examples of "key personnel" in new § 204.2(k) and recommended that they be added to that list. We agree that these two positions should be considered key personnel and accordingly are including them in § 204.2(k).

In addition, ALPA recommended that we also include partners and trustees among key personnel (ALPA noted that current § 291.11(a)(4) includes such individuals among those having the power to influence an applicant for domestic all-cargo authority). We consider "partners" to be "owners," that is, persons having a substantial interest in the applicant, and not key personnel. Information on persons having a substantial interest in the applicant is required in new § 204.3(g), and information on substantial changes in ownership is required in new § 204.5. When a carrier is being managed by a trustee because of a bankruptcy proceeding or because we had required that an owner's stock be placed in a non-voting trust, we direct the carrier to notify the Department of any change in trustee. Because it is a rather unusual occurrence for a carrier to be operating under a trusteeship, and since such situations are monitored individually, we consider it unnecessary to include

the position of trustee among the ordinary key personnel that a carrier might be expected to have.

Finally, ALPA recommended that we require that the certification as to the truthfulness and accuracy of the applicant's submissions (§ 204.3(v)) be signed by an officer or owner of the applicant rather than by an attorney employed to prepare the filing, since an outside preparer is already bound by § 302.4(b), which provides that the signature of such a person constitutes a certification that he or she has read the document and that the information therein is true and not misleading to the best of his or her knowledge. More important, ALPA pointed out, the preparer is relying on the assertions made by the applicant, which, unknown to the preparer, may be incorrect; thus, it is more appropriate that an officer or owner of the applicant attest to the accuracy of the submissions.

We agree that the veracity of the statements made in a filing are the representations, and thus the responsibility, of the applicant. Thus, it is appropriate that a high-level representative of the applicant, that is, an owner, senior officer or internal counsel, attest to the accuracy of the submissions. Therefore, we will modify the certification to indicate that the attestation is being made by such a person.

Conclusion

After carefully weighing the comments provided in response to the Notice of Proposed Rulemaking, and for the reasons discussed above, we have decided to adopt the revisions as set forth in the NPRM, with the following additional changes to the revised version:

1. The authority citation for part 201 is amended to add a reference to 5 U.S.C. 1008.

2. At the end of the sections setting forth filing or recordkeeping requirements (§§ 201.1, 201.4, 204.3, 204.4, 204.5, 204.7, and 291.10), the OMB control number 2106–0023 is being added.

3. The parenthetical phrase in § 201.5(b) is amended as follows:

* * * (but before all authority issued by DOT, including the FAA, becomes effective) * * *

4. § 204.2(n)(2) is amended as follows:

(2) the filing of a petition for reorganization or a plan of reorganization under Chapter 11 of the federal bankruptcy laws;

5. § 204.2(k) is amended as follows:

(k) *Key personnel* shall include the directors, president, chief executive officer, chief operating officer, all vice presidents, * * *

6. § 204.2(m)(2) is amended by adding the words "for example" before the words "by 25 percent representation".

7. In § 204.3, the introductory text is revised as follows:

An applicant for a type of certificate authority it does not currently hold or for commuter air carrier authority shall file the data set forth in paragraphs (a) through (v) of this section. In addition, the Department may require an applicant to provide additional data if necessary to reach an informed judgment about its fitness. If the applicant has previously formally filed any of the required data with the Department or with another Federal agency and they are available to the Department, and those data continue to reflect the current state of the carrier's fitness, the applicant may instead identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the applicant may contact the Air Carrier Fitness Division to ascertain what data required by this section are already available to the Department and need not be included in the filing.

Note: If the applicant intends to use as evidence data it has previously filed pursuant to part 241 reporting requirements and those data contain errors, the applicant must first file corrected reports in accordance with § 241.22(g).

8. § 204.3(k)(5) is amended by replacing the semicolon at the end of the section with a period.

9. The second sentence of § 204.3(t)(2) is amended as follows:

* * * Such Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators) and revenue miles by type of aircraft, number of passengers and * * *

10. The first sentence of § 204.3(v) is amended as follows:

Pursuant to title 18 United States Code 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, * * *

11. In § 204.4, the last sentence of the introductory text is amended by replacing the word "Department" with the words "Air Carrier Fitness Division".

12. § 204.5(a)(1) is amended by replacing the word "and" with the word "or".

13. The fourth sentence in § 204.7(b) is amended as follows: * * * the carrier shall file a sworn statement * * *

14. The authority citation for part 291 is being revised as follows:

Authority: 49 U.S.C. 1301, 1302, 1324, 1371, 1377, 1378, 1386, 1388, unless otherwise noted.

15. § 291.42(a)(2) is being amended by adding the words "Office of Airline Statistics" after the words "Room 4125".

16. The authority citation for part 302 is being revised as follows:

Authority: 5 U.S.C. 551 *et seq.*, 39 U.S.C. 5402; 42 U.S.C. 4321, 49 U.S.C. Subtitle I, 1301, 1302, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989.

Executive Order 12291, Federalism Assessment, Regulatory Flexibility Act Analysis and Paperwork Reduction Act of 1980

This action has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this rule will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, a preliminary regulatory impact analysis is not required. The regulation amendments are not significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because they do not involve important Departmental policies.

The projected economic and regulatory impact of these amendments was discussed in the Regulatory Evaluation, which was placed in the public docket at the time of publication of the NPRM. No comments have been received concerning matters covered in that evaluation, and none of the changes being made in the rule as a result of comments received on the NPRM affect the findings and conclusions reached in that evaluation. Therefore, since there have been no changes in the economic or regulatory impact of this rule, no revisions to the Evaluation are necessary. A copy of that evaluation may be obtained by contacting the person identified above under the caption "For Further Information Contact."

The Department has considered the implications of this rulemaking under the requirements of Executive Order 12612, Federalism, and has determined that the preparation of a Federalism Assessment is not warranted. The regulations herein will not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibility among the various levels of government.

For purposes of its aviation economic regulations, Departmental policy categorizes air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The ability of such entities to engage in air carrier operations essentially will be unaffected by the proposed regulation amendments.

The reporting and recordkeeping requirements associated with this rule were approved by the Office of Management and Budget on August 27, 1991, for use through June 30, 1993, under OMB Control No. 2106–0023.

List of Subjects

14 CFR Parts 201, 202 and 204

Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 291

Administrative practice and procedure, Air carriers, Reporting and recordkeeping requirements.

14 CFR Part 302

Administrative practice and procedure, Air carriers.

Final Rule

For the reasons set out in the preamble, title 14, chapter II of the Code of Federal Regulations is amended as follows:

1. Part 201 is revised to read as follows:

PART 201—AIR CARRIER AUTHORITY UNDER TITLE IV OF THE FEDERAL AVIATION ACT

Subpart Application Procedures

Sec.
201.1 Formal requirements.
201.2 Amendments.
201.3 Incorporation by reference.
201.4 General provisions concerning contents.
201.5 Advertising and sales by applicants.

Subpart B—Certificate Terms, Conditions, and Limitations

201.6 Applicability.
201.7 General certificate conditions.

Authority: 5 U.S.C. 1008, 49 U.S.C. 1324, 1371, 1372, 1373, 1377, 1381, 1386, 1389.

Subpart A—Application Procedures

§ 201.1 Formal requirements.

(a) Applications for certificates of public convenience and necessity under section 401 of the Federal Aviation Act and for domestic all-cargo air service certificates under section 418 of the Act, or amendments thereof, shall meet the requirements set forth in part 302 of this chapter as to general requirements, execution, number of copies, service, and formal specifications of papers.

(b) Any person desiring to provide air transportation as a commuter air carrier must comply with the registration provisions of part 298 of this chapter and submit data to support a fitness determination in accordance with part 204 of this chapter. An executed original plus two (2) true copies of the registration form and fitness data shall be filed with the Chief, Air Carrier Fitness Division.

(Approved by the Office of Management and Budget under control number 2106–0023)

§ 201.2 Amendments.

If, after receipt of any application, the Department asks the applicant to supply additional information, such information shall be furnished in the form of a supplement to the original application.

§ 201.3 Incorporation by reference.

Incorporation by reference shall be avoided. However, where two or more applications are filed by a single carrier, lengthy exhibits or other documents attached to one may be incorporated in the others by reference if that procedure will substantially reduce the cost to the applicant.

§ 201.4 General provisions concerning contents.

(a) All pages of an application shall be consecutively numbered, and the application shall clearly describe and identify each exhibit by a separate number or symbol. All exhibits shall be deemed to constitute a part of the application to which they are attached.

(b) All amendments to applications shall be consecutively numbered and shall comply with the requirements of this part.

(c) Requests for authority to engage in interstate and overseas air transportation shall not be included in the same application with requests for authority to engage in foreign air transportation. Similarly, requests for authority to engage in scheduled air transportation under section 401 shall not be included in the same application with requests for authority to engage in charter air transportation under section 401 or with requests for authority to engage in domestic all-cargo air transportation under section 418.

(d) Each application shall specify the type or types of service (passengers, property or mail) to be rendered and whether such services are to be rendered on scheduled or charter operations.

(e) Each application for foreign scheduled air transportation shall include an adequate identification of each route for which a certificate is desired, including the terminal and intermediate points to be included in the certificate for which application is made.

(f) Each application shall give full and adequate information with respect to each of the relevant filing requirements set forth in part 204 of this chapter. In addition, the application may contain such other information and data as the applicant shall deem necessary or appropriate in order to acquaint the Department fully with the particular circumstances of its case; however, the statements contained in an application shall be restricted to significant and relevant facts.

(Approved by the Office of Management and Budget under control number 2106–0023)

§ 201.5 Advertising and sales by applicants.

(a) An applicant for new or amended certificate or commuter air carrier authority shall not:

(1) Advertise, list schedules, or accept reservations for the air transportation covered by its application until the application has been approved by the Department; or

(2) Accept payment or issue tickets for the air transportation covered by its application until the authority or amended authority has become effective or the Department issues a notice authorizing sales.

(b) An applicant for new or amended certificate or commuter air carrier authority may not advertise or publish schedule listings for the air transportation covered by its application after the application has been approved by the Department (but before all authority issued by DOT, including the FAA, becomes effective) unless such advertising or schedule listings prominently state: "This service is subject to receipt of government operating authority."

Subpart B—Certificate Terms, Conditions, and Limitations

§ 201.6 Applicability.

Unless the certificate or the order authorizing its issuance shall otherwise

provide, such terms, conditions and limitations as are set forth in this part, and as may from time to time be prescribed by the Department, shall apply to the exercise of the privileges granted by each certificate issued under section 401 or section 418 of the Act.

§ 201.7 General certificate conditions.

(a) It shall be a condition upon the holding of a certificate that any intentional failure by the holder to comply with any provision of title IV of the Act or any order, rule, or regulation issued thereunder or any term, condition, or limitation of such certificate shall be a failure to comply with the terms, conditions, and limitations of the certificate within the meaning of section 401(g) of the Act even though the failure to comply occurred outside the territorial limits of the United States, except to the extent that such failure shall be necessitated by an obligation, duty, or liability imposed by a foreign country.

(b) Failure to file the reports required by part 241, 291, or 298 of this chapter shall be sufficient grounds to revoke a certificate.

(c) The authority to transport U.S. mail under a certificate is permissive, unless the Department, by order or rule, directs a carrier or class of carriers to transport mail on demand of the U.S. Postal Service; such certificate confers no right to receive subsidy, for the carriage of mail or otherwise.

(d) An all-cargo air service certificate shall confer no right to carry passengers, other than cargo attendants accompanying a shipment, or to engage in any air transportation outside the geographical scope of domestic cargo transportation. Such certificate shall not, however, restrict the right of the holder to provide scheduled, charter, contract, or other transportation of cargo, by air, within that geographical scope.

(e) It shall be a condition upon the holding of a certificate that the holder have and maintain in effect and on file with the Department a signed counterpart of Agreement 18900 (OST Form 4523), and a tariff (for those carriers otherwise generally required to file tariffs) that includes its terms, and that the holder comply with all other requirements of part 203. OST Form 4523 may be obtained from the Office of Aviation Analysis, Regulatory Analysis Division.

PART 202—[REMOVED]

2. Part 202 is removed.

3. Part 204 is revised to read as follows:

PART 204—DATA TO SUPPORT FITNESS DETERMINATIONS

Subpart A—General Provisions

Sec.
204.1 Purpose.
204.2 Definitions.

Subpart B—Filing Requirements

204.3 Applicants for new certificate or commuter air carrier authority.
204.4 Carriers proposing to provide essential air transportation.
204.5 Certificated and commuter air carriers undergoing or proposing to undergo a substantial change in operations, ownership, or management.
204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.
204.7 Revocation for dormancy.

Authority: 49 U.S.C. 1324, 1371, 1377, 1389.

Subpart A—General Provisions

§ 204.1 Purpose.

This part sets forth the fitness data that must be submitted by applicants for certificate authority, by applicants for authority to provide service as a commuter air carrier to an eligible point, by carriers proposing to provide essential air transportation, and by certificated air carriers and commuter air carriers proposing a substantial change in operations, ownership, or management. This part also contains the procedures and filing requirements applicable to carriers that hold dormant authority.

§ 204.2 Definitions.

As used in this part:

(a) *Act* means the Federal Aviation Act of 1958, as amended.

(b) *All-cargo air carrier or section 418 carrier* means an air carrier holding an all-cargo air service certificate issued under section 418 of the Act to provide domestic cargo transportation. *All-cargo air service* means domestic cargo transportation performed by any air carrier holding a certificate issued under section 418 of the Act.

(c) *Certificate authority* means authority to provide air transportation granted by the Department of Transportation or Civil Aeronautics Board in the form of a certificate of public convenience and necessity under section 401 of the Act or a certificate to perform all-cargo air service under section 418 of the Act. *Certificated carriers* are those that hold certificate authority.

(d) *Citizen of the United States* means:

(1) An individual who is a citizen of the United States or one of its possessions, or

(2) A partnership of which each member is such an individual, or

(3) A corporation or association created or organized under the laws of the United States or of any State, Territory, or possession of the United States, of which the president and two-thirds of the board of directors and other managing officers are such individuals and in which at least 75 percent of the voting interest is owned or controlled by persons who are citizens of the United States or of one of its possessions.

(e) *Commuter air carrier* means an air carrier holding or seeking authority under part 298 of this Chapter that carries passengers on at least five round trips per week on at least one route between two or more points according to its published flight schedules that specify the times, days of the week, and places between which those flights are performed.

(f) *Domestic cargo transportation* means the carriage by aircraft in interstate or overseas air transportation of property or mail, or both.

(g) *Eligible point* is one that was on a certificated carrier's authorized route as of October 24, 1978 (Type A point), or was deleted from a certificate between July 1, 1968, and October 24, 1978, and has been designated as "eligible" (Type B point).

(h) *Essential air transportation* is that transportation which the Department has found to be essential under Section 419 of the Act.

(i) *FAA* means the Federal Aviation Administration, U.S. Department of Transportation.

(j) *Fit* means fit, willing and able to perform the air transportation in question properly and to conform to the provisions of the Act and the rules, regulations and requirements issued under the Act.

(k) *Key personnel* include the directors, president, chief executive officer, chief operating officer, all vice presidents, the directors or supervisors of operations, maintenance, and finance, and the chief pilot of the applicant or air carrier, as well as any part-time or full-time advisors or consultants to the management of the applicant or air carrier.

(l) *Normalized operations* are those which are relatively free of start-up costs and temporary barriers to full-scale operations posed by the carrier's limited experience.

(m) *Relevant corporations* are the applicant or air carrier, any subsidiary thereof, any predecessor thereof (i.e., any air carrier in which any directors, principal officers or persons having a substantial interest have or once had a substantial interest), and any company (including a sole proprietorship or partnership) which has a significant financial or managerial influence on the applicant or air carrier. The latter includes:

(1) Any company (including a sole proprietorship or partnership) holding more than 50 percent of the outstanding voting stock of the applicant or air carrier; and

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier as indicated, for example, by 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial personnel with common responsibilities in both companies.

(n) *Substantial change in operations, ownership, or management* includes, but is not limited to, the following events:

(1) Changes in operations from charter to scheduled service, cargo to passenger service, short-haul to long-haul service, or (for a certificated air carrier) small-aircraft to large-aircraft operations;

(2) The filing of a petition for reorganization or a plan of reorganization under Chapter 11 of the federal bankruptcy laws;

(3) The acquisition by a new shareholder or the accumulation by an existing shareholder of beneficial control of 10 percent or more of the outstanding voting stock in the corporation; and

(4) A change in the president, chief executive officer or chief operating officer, and/or a change in at least half of the other key personnel within any 12-month period or since its latest fitness review, whichever is the more recent period.

(o) *Substantial interest* means beneficial control of 10 percent or more of the outstanding voting stock.

Subpart B—Filing Requirements

§ 204.3 Applicants for new certificate or commuter air carrier authority.

An applicant for a type of certificate authority it does not currently hold or for commuter air carrier authority shall file the data set forth in paragraphs (a) through (v) of this section. In addition, the Department may require an applicant to provide additional data if necessary to reach an informed judgment about its fitness. If the applicant has previously formally filed any of the required data with the Department or with another Federal agency and they are available to the Department, and those data continue to reflect the current state of the carrier's fitness, the applicant may instead identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the applicant may contact the Air Carrier Fitness Division to ascertain what data required by this section are already available to the Department and need not be included in the filing.

Note: If the applicant intends to use as evidence data it has previously filed pursuant to part 241 reporting requirements and those data contain errors, the applicant must first file corrected reports in accordance with § 241.22(g).

(a) The name, address, and telephone number of the applicant.

(b) The form of the applicant's organization.

(c) The State law(s) under which the applicant is organized.

(d) If the applicant is a corporation, a statement provided by the Office of the Secretary of State, or other agent of the State in which the applicant is incorporated; certifying that the applicant corporation is in good standing.

(e) A sworn affidavit stating that the applicant is a citizen of the United States.

(f) The identity of the key personnel who would be employed by the applicant, including:

(1) Their names and addresses;

(2) The experience, expertise, and responsibilities of each;

(3) The number of shares of the applicant's voting stock held by each and the percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(4) The citizenship of each; and

(5) A description of the officerships, directorships, shares of stock (if 10 percent or more of total voting stock outstanding), and other interests each holds or has held in any air carrier, foreign air carrier, common carrier, person substantially engaged in the business of aeronautics or persons whose principal business (in purpose or fact) is the holding of stock in or control of any air carrier, common carrier or person substantially engaged in the business of aeronautics.

(g) A list of all persons having a substantial interest in the applicant. Such list shall include:

(1) Each person's name, address and citizenship;

(2) The number of shares of the applicant's voting stock held by each such person and the corresponding percentage of the total number of such shares issued and outstanding, and the citizenship and principal business of any person for whose account, if other than the holder, such interest is held;

(3) If any two or more persons holding a substantial interest in the applicant are related by blood or marriage, such relationship(s) shall be included in the list; and

(4) If any person or subsidiary of a person having a substantial interest in the applicant is or has ever been

(i) An air carrier, a foreign air carrier, a common carrier, or

(ii) Substantially engaged in the business of aeronautics, or

(iii) An officer or director of any such entity, or

(iv) A holder of 10 percent or more of total outstanding voting stock of any such entity, the list shall describe such relationship(s).

(h) A list of the applicant's subsidiaries, if any, including a description of each subsidiary's principal business and relationship to the applicant.

(i) A list of the applicant's shares of stock in, or control of, any air carrier, foreign air carrier, common carrier, or person substantially engaged in the business of aeronautics.

(j) To the extent any relevant corporation has been engaged in any business prior to the filing of the application, each applicant shall provide:

(1) Copies of the 10K Annual Reports filed in the past 3 years by any relevant corporation required to file such reports with the Securities and Exchange Commission, and

(2) Copies of recently filed 10Q Quarterly Reports, as necessary, in order to show the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application.

(k) If 10K Reports are not filed with the Securities and Exchange Commission, the following, for the 3 most recent calendar or fiscal years, reflecting the financial condition and results of operations of the enterprise current to within 3 months of the date of the filing of the application:

(1) The Balance Sheet of each relevant corporation;

(2) The Income Statement of each relevant corporation;

(3) All footnotes applicable to the financial statements, including:

(i) A statement as to whether the documents were prepared in accordance with Generally Accepted Accounting Principles, and

(ii) A description of the significant accounting policies of each relevant corporation, such as for depreciation, amortization of intangibles, overhauls, unearned revenues, and cost capitalization;

(4) A statement of significant events occurring subsequent to the most recent Balance Sheet date for each relevant corporation; and

(5) A statement identifying the person who has prepared the financial statements, his or her accounting qualifications, and any affiliation he or she has with the applicant.

(l) A list of all actions and outstanding judgments for more than $5,000 against any relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, including the amount of each judgment, the party to whom it is payable, and how long it has been outstanding.

(m) The number of actions and outstanding judgments of less than $5,000 against each relevant corporation, key personnel employed (or to be employed) by any relevant corporation, or person having a substantial interest in any relevant corporation, and the total amount owed by each on such judgments.

(n) A description of the applicant's fleet of aircraft, including:

(1) The number of each type of aircraft owned, leased and to be purchased or leased;

(2) Applicant's plans, including financing plans, for the purchase or lease of additional aircraft; and

(3) A sworn affidavit stating that each aircraft owned or leased has been certified by the FAA and currently complies with all FAA safety standards.

(o) A description of the current status of all pending investigations, enforcement actions, and formal complaints filed by the Department, including the FAA, involving the applicant or any relevant corporation, any personnel employed (or to be employed) by any relevant corporation or person having a substantial interest in any relevant corporation, regarding compliance with the Act or orders, rules, regulations, or requirements issued pursuant to the Act, and any corrective actions taken. (If an applicant has a compliance history that warrants it, additional information may be required.)

(p) A description of all charges of unfair or deceptive or anticompetitive business practices, or of fraud, felony or antitrust violation, brought against any relevant corporation or person having a substantial interest in any relevant corporation, or member of the key personnel employed (or to be employed) by any relevant corporation in the past 10 years. Such descriptions shall include the disposition or current status of each such proceeding.

(q) A description of any aircraft accidents or incidents (as defined in the National Transportation Safety Board Regulations, 49 CFR 830.2) experienced by the applicant, its personnel, or any relevant corporation, which occurred either during the year preceding the date of application or at any time in the past and which remain under investigation by the FAA, the NTSB, or by the company itself, including:

(1) The date of the occurrence;

(2) The type of flight;

(3) The number of passengers and crew on board and an enumeration of any injuries or fatalities;

(4) A description of any damage to the aircraft;

(5) The FAA and NTSB file numbers and the status of the investigations, including any enforcement actions initiated against the carrier or any of its personnel; and

(6) Positive actions taken to prevent recurrence. (If an applicant's history of accidents or incidents warrants it, additional information may be required.)

(r) A brief narrative history of the applicant.

(s) A description of all Federal, State and foreign authority under which the applicant has conducted or is conducting transportation operations, and the identify of the local FAA office and personnel responsible for processing an application for any additional FAA authority needed to conduct the proposed operations.

(t) A description of the service to be operated if the application is granted, including:

(1) A forecast Balance Sheet for the first normal year ending after the initially proposed operations have been incorporated, along with the assumptions underlying the accounts and amounts shown; and

(2) A forecast Income Statement, broken down by quarters, for the first year ending after the initially proposed operations are normalized, and an itemization of all pre-operating and start-up costs associated with the initiation of the proposed service. Such Income Statement shall include estimated revenue block hours (or airborne hours, for charter operators) and revenue miles by type of aircraft, number of passengers and number of tons of mail and cargo to be carried, transport revenues and an estimate of the traffic which would be generated in each market receiving the proposed service. Such statements shall also include a statement as to whether the statements were prepared on the accrual or cash basis, an explanation of how the estimated costs and revenues were developed, a description of the manner in which costs and revenues are allocated, how the underlying traffic forecasts were made, and what load factor has been assumed for the average and peak month. Pre-operating and start-up costs should include, but are not limited to, the following: Obtaining necessary government approval; establishing stations; introductory advertising; aircraft, equipment and space facility deposits and rent; training; and salaries earned prior to start-up.

(u) A signed counterpart of Agreement 18900 (OST Form 4523) as required by part 203 of this chapter.

(v) The following certification, which shall accompany the application and all subsequent written submissions filed by the applicant in connection with its application:

Pursuant to title 18 United States Code section 1001, I [the individual signing the application, who shall be a principal owner, senior officer, or internal counsel of the applicant], in my individual capacity and as the authorized representative of the applicant, have not in any manner knowingly and willfully falsified, concealed or covered up any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation; filing or prosecution of the application. I understand that an individual who is found to have violated the provisions of 18 U.S.C. section 1001 shall be fined nor more than $10,000 or imprisoned not more than five years, or both.

(The reporting requirements contained in this section were approved by the Office of Management and Budget under control number 2106–0023.)

§ 204.4 Carriers proposing to provide essential air transportation.

Applicants proposing to provide essential air transportation have been divided into two categories, and are subject to differing data submission requirements as set forth in paragraphs (a) and (b) of this section. However, if a carrier has previously filed any of the required data with the Department or other Federal agency and they are available to the Department, and these data continue to reflect the current state of the carrier's fitness, the carrier may instead identify the data and provide a citation for the date and place of filing. All carriers may contact the Air Carrier Fitness Division to ascertain what information is already available to the Department and thus may not need to be resubmitted.

(a) Carriers who propose to begin or expand non-subsidized essential air service when the incumbent leaves the market must file the following information:

(1) All of the information required under § 204.3 of this part.

(2) A description of the back-up aircraft available to the applicant, including:

(i) The number of each type of such aircraft;

(ii) The conditions under which such aircraft will be available to the carrier;

(iii) The carrier's plans for financing the acquisition or lease of such additional aircraft; and

(iv) A sworn affidavit stating that all such aircraft have been certified by the FAA and currently comply with all FAA safety standards.

(3) A description of the fuel available to perform the proposed essential air services and the carrier's contracts with fuel suppliers.

(4) The carrier's systemwide on-time and completion record for the preceding year and, if applicable, in the subject market(s).

(5) A list of the markets the carrier serves and the number of weekly round trips it provides in each.

(6) A description of the average number of block hours each type of aircraft is currently flown per day.

(7) An estimate of the impact the proposed essential air service would have on the carrier's utilization of its aircraft fleet.

(8) A detailed schedule of the service to be provided, including times of arrivals and departures, the aircraft to be used for each flight, and the fares to be charged.

(9) A pro-forma income statement for the proposed operation for the first annual period.

(b) Carriers filing proposals to provide subsidized service in response to an order inviting proposals shall file:

(1) All of the information required under § 204.3 of this part.

(2) All of the information required under paragraph (a) of this section.

(3) A forecast Income Statement covering the operations conducted in essential air service for the first year following the initiation of the proposed essential services. Such statement shall include:

(i) Subsidy needed;

(ii) Estimated block hours and revenue miles by type of aircraft;

(iii) Total projected revenue including volumes of passengers and freight by essential air service market and the associated fares and rates;

(iv) An explanation of the derivation of estimates of operating expenses; and

(v) A description of the manner in which costs and revenues are allocated.

(4) A traffic forecast including a load factor analysis on all segments between the small community and the hub; and an estimate of the number of seats available to and from the eligible point each day.

(Approved by the Office of Management and Budget under control number 2106–0023)

§ 204.5 Certificated and commuter air carriers undergoing or proposing to undergo substantial change in operations, ownership, or management.

(a) A certificated or commuter air carrier proposing a substantial change in operations, ownership or management shall file the data set forth in § 204.3. These data must be submitted in cases where:

(1) The proposed change requires new or amended authority, or

(2) Although the carrier's existing certificate or commuter authority is adequate for the performance of its planned services, the change substantially alters the factors upon which its latest fitness finding is based.

(b) Information which a carrier has previously formally filed with the Department, or with another Federal agency where they are available to the Department, which continues to reflect the current state of the carrier's fitness may be omitted. The carrier instead should identify the data and provide a citation for the date(s) and place(s) of filing. Prior to filing any data, the carrier may contact the Department (Air Carriers Fitness Division) to ascertain what data required by this section, if any, are already available to the Department or are not applicable to the substantial change in question and need not be included in the filing.

(c) Information filings pursuant to this section made to support an application for new or amended certificate authority shall be filed with the application and addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Information filed in support of a certificated or commuter air carrier's continuing fitness to operate under its existing authority in light of substantial changes in its operations, ownership or management shall be addressed to the Chief, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(Approved by the Office of Management and Budget under control number 2106–0023)

§ 204.6 Certificated and commuter air carriers proposing a change in operations, ownership, or management which is not substantial.

Carriers proposing to make a change which would not substantially affect their operations, management, or ownership, such as certificated carriers applying for additional authority which would not substantially change their operations, will be presumed to be fit and need not file any information relating to their fitness at time of the change. However, if the Department concludes, from its own analysis or based on information submitted by third parties, that such change may bring the carrier's fitness into question, the Department may require the applicant carrier to file additional information.

§ 204.7 Revocation for dormancy.

(a) An air carrier that has not commenced any type of air transportation operations for which it was found fit, willing, and able within one year of the date of that finding, or an air carrier that, for any period of one year after the date of such a finding, has not provided any type of air transportation for which that kind of finding is required, is deemed no longer to continue to be fit to provide the air transportation for which it was found fit and, accordingly, its authority to provide such air transportation shall be revoked.

(b) An air carrier found fit which commences operations within one year after being found fit but then ceases operations, shall not resume operations without first filing all of the data required by § 204.3 at least 45 days before it intends to provide any such air transportation. Such filings shall be addressed to the Documentary Services Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. The Department will entertain requests for exemption from this 45-day advance filing requirement for good cause shown. If there has been no change in fitness data previously formally filed with the Department, the carrier shall file a sworn statement to that effect signed by one of its officers. The carrier may contact the Department (Air Carrier Fitness Division) to ascertain which data are already available to the Department and need not be refiled. A carrier to which this paragraph applies shall not provide any air transportation for which it is required to be found fit, willing, and able until the Department decides that the carrier continues to be fit, willing, and able to perform such air transportation. During the pendency of the Department's consideration of a

data submission under this paragraph, the expiration period set out in paragraph (a) of this section shall be stayed. If the decision or finding by the Department on the issue of the carrier's fitness is favorable, the date or that decision or finding shall be the date considered in applying paragraph (a) of this section.

(c) For purposes of this section, the date of a Department decision or finding shall be the service date of the Department's order containing such decision or finding, or, in cases where the Department's decision or finding is made by letter, the date of such letter.

(d) For purposes of this section, references to operations and to the providing of air transportation shall refer only to the actual performance of flight operations under an operating certificate issued to the carrier by the FAA.

(Approved by the Office of Management and Budget under control number 2106-0023)

PART 291—[AMENDED]

4. The authority citation for part 291 is revised to read as follows:

Authority: 49 U.S.C. 1301, 1302, 1324, 1371, 1377, 1378, 1386, 1388, unless otherwise noted.

5. Subpart B of part 291 is revised to read as follows:

PART 291—DOMESTIC CARGO TRANSPORTATION

Subpart B—All-Cargo Air Service Certificates

Sec.
291.10 Applications.

Subpart B—All-Cargo Air Service Certificates

§ 291.10 Applications.

Applications for all-cargo air service certificates shall comply with the provisions of part 201 and subpart Q of part 302 of this chapter with regard to filing procedures, and with the provisions of part 204 of this chapter with regard to evidentiary requirements.

(Approved by the Office of Management and Budget under control number 2106-0023)

6. Subparts C, D, E, and F of part 291 are amended as follows:

§§ 291.20, 291.23, 291.24, 291.34, 291.50 [Amended]

(a) In §§ 291.20, 291.23(b), 291.24, 291.34, and 291.50, remove the word "Board" and add, in its place, the word "Department".

§ 291.42 [Amended]

(b) In § 291.42(a)(2), remove the words "Office of the Comptroller, Information Management Division, B-46a, Civil Aeronautics Board, Washington, DC 20428" and add, in their place, the words "Data Administration Division, DAI-20, room 4125, Office of Airline Statistics, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001".

PART 302—[AMENDED]

7. The authority citation for part 302 is revised to read as follows:

Authority: 5 U.S.C. *et seq.*, 39 U.S.C. 5402; 42 U.S.C. 4321, 49 U.S.C. Subtitle I, 1301, 1302, 1324, 1371, 1372, 1373, 1374, 1376, 1382, 1471, 1481, 1482, 1485; Reorganization Plan No. 3 of 1961, 75 Stat. 837, 26 FR 5989.

8. In § 302.1701 of subpart Q, paragraph (d) is added to read as follows:

§ 302.1701 Applicability.

* * * * *

(d) Applications for all-cargo air service certificates, and renewals, alterations, amendments, modifications, suspensions, and transfers of such certificates under section 418 of the Act.

Issued in Washington, DC, on August 20, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92-20423 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1220

[Docket No. 92N-0304]

Regulations Under the Tea Importation Act; Tea Standards

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of tea standards for the year beginning May 1, 1992, and ending April 30, 1993. The tea standards are provided for under the Tea Importation Act (the Act). The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

DATES: Effective May 1, 1992; written comments by September 28, 1992.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5106.

SUPPLEMENTARY INFORMATION: Because of the unique nature of the decisionmaking process for establishing annual standards for tea, the procedural protections that are part of this process, and the short period within which a standard must be set, FDA has never, since the enactment in 1897 of the Act (21 U.S.C. 41), used notice and comment rulemaking for tea standards.

Each final rule setting the standards is based on the recommendations of the Board of Tea Experts (the board), which is comprised of tea experts who are representative of the tea trade. The board selects standards each year according to the provisions of the Act. The board bases its selection on tea samples submitted by members of the tea trade to the board. Relying primarily on organoleptic examination, the board selects one tea to represent the standard for each major type of tea imported into the United States. In choosing a standard, the board tries to select one at least equal in quality to that of the previous year. The Act prohibits the importation of a tea that is inferior to the annual tea standard. Under the Act, the importation of a tea may be withheld until FDA examines the tea and is sure that it complies with the annual standard.

The annual meeting of the board is open to the public and is announced in advance in the Federal Register. At the annual meeting any interested person may present data, information, or views orally or in writing regarding new standards.

The annual tea standards are prepared and submitted to the Secretary of Health and Human Services by the board (21 CFR 1220.41).

Should a tea importer be dissatisfied with an FDA tea examiner's rejection of a shipment of tea, the importer can refer its complaint to the U.S. Board of Tea Appeals and then to the U.S. Court of Appeals. FDA is unaware of any complaints or arguments having ever occurred concerning a designated

standard, despite the many years since the enactment of the Act.

FDA concludes that notice and comment rulemaking to set tea standards is impracticable, contrary to the public interest, and unnecessary by virtue of the factors discussed above, i.e., the unique, longstanding procedures that apply to establishing a standard, the fact that standards are based principally on organoleptic examinations by tea experts, the public participation opportunities already provided, and the timeframes required for issuing annual standards. Hence, the agency is not following notice and comment rulemaking procedures in establishing the final tea standards for 1992.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(1) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

The impact of this rule on small entities, including small businesses, was reviewed in accordance with the Regulatory Flexibility Act (Pub. L. 96-354) (5 U.S.C. 601). This rule announces the establishment of tea standards for the year beginning May 1, 1992, and ending April 30, 1993. Only teas that meet or exceed the standards will be permitted entry into the United States. These standards protect industry and consumers from acceptance of unfit tea. FDA has concluded that this action will not result in a significant economic impact on a substantial number of small entities. Therefore, FDA certifies, in accordance with section 605(b) of the Regulatory Flexibility Act, that no significant economic impact on a substantial number of small entities will derive from this action.

Interested persons may, on or before September 28, 1992, submit to the Dockets Management Branch (address above) written comments regarding this regulation. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

List of Subjects in 21 CFR Part 1220

Administrative practice and procedure, Customs duties and inspection, Imports, Public health, Tea.

Therefore, under the authority delegated to the Secretary of Health and Human Services by the Tea Importation Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR Part 1220 is amended as follows:

PART 1220—REGULATIONS UNDER THE TEA IMPORTATION ACT

1. The authority citation for 21 CFR Part 1220 continues to read as follows:

Authority: 21 U.S.C. 41-50; 19 U.S.C. 1311.

2. Section 1220.40 is amended by revising paragraph (a) to read as follows:

§ 1220.40 Tea standards.

(a) Samples for standards of the following teas, prepared, identified, and submitted by the Board of Tea Experts on March 20, 1992, are hereby fixed and established as the standards of purity, quality, and fitness for consumption under the Tea Importation Act for the year beginning May 1, 1992, and ending April 30, 1993:

(1) Black Tea (for all teas except those from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, Turkey, and Argentina).

(2) Black Tea (for Argentina teas).

(3) Black Tea (for teas from the People's Republic of China (China), Taiwan (Formosa), Iran, Japan, Russia, and Turkey).

(4) Green Tea (of all origins).

(5) Formosa Oolong.

(6) Canton Oolong (for all Canton types from the People's Republic of China (China) and Taiwan (Formosa)).

(7) Scented Black Tea.

(8) Spiced Tea.

These standards apply to tea shipped from abroad on or after May 1, 1992.

* * * * *

Dated: August 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-20504 Filed 8-26-92; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[AG Order No. 1617-92]

Delegations of Authority; Bureau of Prisons

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order updates the delegations of authority to the Director of the Bureau of Prisons (Director) to reflect changes made by the Comprehensive Crime Control Act of 1984, the recodification of title 31 of the United States Code, and an increase in the dollar value amount of settlement authority delegated to the Director to settle claims brought under the Federal Tort Claims Act. This order also adds specific reference to provisions regarding Federal prisoners boarded in state institutions, and deletes reference to certain authority over the provision of pretrial services no longer vested by statute in the Attorney General. Overall, this order is necessary to clarify and update the general statement of delegated authority to the Director.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street NW., Washington, DC 20534, telephone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984, Public Law 98-473, 98 Stat. 1976-2193, vested certain authority in the Director regarding the confinement of convicted persons with respect to offenses committed on or after November 1, 1987. This authority previously had been vested in the Attorney General and delegated to the Director. This order revises 28 CFR 0.96 to indicate those delegations of authority made before the passage of the Comprehensive Crime Control Act of 1984, and now applicable only to offenses committed prior to November 1, 1987.

This order also clarifies the general statement of delegated authority to the Director relating to the commitment, control, or treatment of persons charged with or convicted of offenses against the United States by adding a paragraph (v) which contains specific reference to the authority for contracting with the proper authorities of any state, territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of persons convicted of offenses against the United States.

In addition, this order makes minor editorial changes and updates references to recodified sections contained in title 31 of the United States Code and deletes reference (contained in old subsection (o)) to authority to approve certain contracts for the operation of pretrial services facilities no longer vested by statute in the

Attorney General. Prior to its amendment in 1982 by Public Law 97–267, 96 Stat. 1137, 18 U.S.C. 3154 provided that pretrial services agencies had to obtain the approval of the Attorney General to operate, or to contract for the operation of, "facilities for the custody or care of persons released" pending judicial proceedings. 18 U.S.C. 3154 (1976).

Finally, the order eliminates the redundant reference in § 0.96(1) to the dollar value amount of settlement authority delegated to the Director to settle claims brought under the Federal Tort Claims Act. This amount is specified in 28 CFR 0.172, and was raised to $10,000 in an order published in the Federal Register, 56 FR 48734, September 26, 1991.

This order is a matter of internal department management. In accordance with 5 U.S.C. 605(b) the Attorney General certifies that this rule will not have a significant economic impact on a substantial number of small entities. It is not a major rule within the meaning of or subject to Executive Order 12291, and does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of E.O. 12612.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in the Attorney General by law, including 5 U.S.C. 301 and 28 U.S.C. 509–510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for 28 CFR part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Section 0.96 is revised to read as follows:

§ 0.96 Delegations.

The Director of the Bureau of Prisons is authorized to exercise or perform any of the authority, functions, or duties conferred or imposed upon the Attorney General by any law relating to the commitment, control, or treatment of persons (including insane prisoners and juvenile delinquents) charged with or convicted of offenses against the United States, including the taking of final action in the following-described matters:

(a) Requesting the detail of Public Health Service officers for the purpose of furnishing services to Federal penal and correctional institutions (18 U.S.C. 4005).

(b) Consideration, determination, adjustment, and payment of claims in accordance with 31 U.S.C. 3722.

(c) Designating places of imprisonment or confinement where the sentences of prisoners shall be served and ordering transfers from one institution to another, whether maintained by the Federal Government or otherwise, pursuant to 18 U.S.C. 4082 as it existed before the enactment of Pub. L. 98–473 (applicable to offenses committed prior to November 1, 1987).

(d) Extending the limits of the place of confinement of prisoners for the purposes specified, and within the limits established, by 18 U.S.C. 4082(c) as it existed before the enactment of Public Law 98–473, and otherwise performing the functions of the Attorney General under that section (applicable to offenses committed prior to November 1, 1987).

(e) Designation of agents for the transportation of prisoners (18 U.S.C. 4008).

(f) Accepting gifts or bequests of money for credit to the "Commissary Funds, Federal Prisons" (31 U.S.C. 1321 and 18 U.S.C. 4043).

(g) Prescribing regulations for the use of surplus funds in "Commissary Funds, Federal Prisons" to provide advances not in excess of $150 to prisoners at the time of their release pursuant to 18 U.S.C. 4284 as it existed before the enactment of Public Law 98–473 (applicable to offenses committed prior to November 1, 1987).

(h) Allowance, forfeiture, and restoration of all good time pursuant to 18 U.S.C. 4161, 4162, 4165, and 4166 as those sections existed before the enactment of Public Law 98–473 (applicable to offenses committed prior to November 1, 1987).

(i) Release of prisoners held solely for nonpayment of fine as provided in 18 U.S.C. 3569 as it existed before the enactment of Public Law 98–473 (applicable to offenses committed prior to November 1, 1987).

(j) Furnishing transportation, clothing, and payments to released prisoners pursuant to 18 U.S.C. 4281 as it existed before the enactment of Public Law 98–473 (applicable to offenses committed prior to November 1, 1987).

(k) Performing the functions of the Attorney General under the provisions of 18 U.S.C. Chapter 313, Offenders with Mental Disease or Defect (18 U.S.C. 4241–4247).

(l) Settlement of claims arising under the Federal Tort Claims Act as provided in 28 CFR 0.172.

(m) Entering into reciprocal agreements with fire organizations for mutual aid and rendering emergency assistance in connection with extinguishing fires within the vicinity of a Federal correctional facility, as authorized by sections 2 and 3 of the Act of May 27, 1955 (42 U.S.C. 1856a, 1856b).

(n) Deciding upon requests by states for temporary transfers of custody of inmates for prosecution under Article IV of the Interstate Agreement on Detainers (84 Stat. 1399) and pursuant to other available procedures; and receiving and reviewing requests by the executive authority of states or the District of Columbia for, and authorizing the transfer of, inmates pursuant to 18 U.S.C. 4085 as it existed before the enactment of Public Law 98–473 (applicable to offenses committed prior to November 1, 1987).

(o) Prescribing rules and regulations applicable to the carrying of firearms by Bureau of Prisons officers and employees (18 U.S.C. 3050).

(p) Promulgating rules governing the control and management of Federal penal and correctional institutions and providing for the classification, government, discipline, treatment, care, rehabilitation, and reformation of inmates confined therein (18 U.S.C. 4001, 4041, and 4042).

(q) Establishing and designating Bureau of Prisons institutions (18 U.S.C. 4001, 4042).

(r) Granting permits to states or public agencies for rights-of-way upon lands administered by the Director in accordance with the provisions of 43 U.S.C. 931c and 43 U.S.C. 961 (18 U.S.C. 4001, 4041, 4042, 43 U.S.C. 931c, 961).

(s) Authority to accept donations for use by the Bureau of Prisons, including Federal Prison Industries, and to promulgate rules concerning these donations (18 U.S.C. 4044).

(t) Authority under the provisions of 18 U.S.C. 4082(b) to provide law enforcement representatives with information on Federal prisoners who have been convicted of felony offenses and who are confined at a residential community treatment center located in the geographical area in which the requesting agency has jurisdiction (18 U.S.C. 4082).

(u) Approving inmate disciplinary and good time regulations (18 U.S.C. 4624).

(v) Contracting, for a period not exceeding three years, with the proper authorities of any State, Territory, or political subdivision thereof, for the imprisonment, subsistence, care, and proper employment of persons convicted of offenses against the United States (18 U.S.C. 4002).

Dated: August 20, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–20552 Filed 8–26–92; 8:45 am]

BILLING CODE 4410–01–M

28 CFR Part 40

[AG Order No. 1618–92]

Standards for Inmate Grievance Procedures

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This final rule modifies the minimum standards for state prison inmate grievance procedures promulgated by the Attorney General pursuant to section 7 of the Civil Rights of Institutionalized Persons Act. The regulations had required states that wished to be certified pursuant to section 7 to permit inmates to participate in an advisory capacity in the disposition of grievances challenging general policy and practices, and in certain cases, to have an opportunity for such participation before the initial adjudication of the grievance. Some have incorrectly construed the regulations to require that inmates sit on panels adjudicating other inmate grievances, and have therefore concluded that the regulations go beyond the strict language of the statute. This amendment is intended to clarify that the regulations do not contain such a requirement.

EFFECTIVE DATE: September 28, 1992.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: John Megathlin, Administrator, National Inmate Appeals, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, telephone (202) 514–6655.

SUPPLEMENTARY INFORMATION:

Background

Section 7(b)(1) of the Civil Rights of Institutionalized Persons Act, 42 U.S.C. 1997e(b)(1), provides that "the Attorney General shall, after consultation with persons, State and local agencies, and organizations with background and expertise in the area of corrections, promulgate minimum standards for the development and implementation of a plain, speedy, and effective system for the resolution of grievances of adults confined in any jail, prison, or other correctional facility." Pursuant to section 7(c)(1) of the Act, 42 U.S.C. 1997e(c)(1), the Attorney General "shall develop a procedure for the prompt review and certification of [grievance] systems." In accordance with these provisions, the Department of Justice promulgated 28 CFR part 40 on October 1, 1981, 46 FR 46186.

On May 7, 1992, the Department of Justice published a proposed rule in order to amend the foregoing regulations to clarify that the states need not permit inmates to sit on panels adjudicating the grievances of other inmates. At the same time, the proposed amendment was designed to ensure inmate participation in the formulation, implementation, and operation of the grievance system in a manner that would encourage state and local authorities to develop grievance procedures pursuant to section 7 of the Act.

The Department received one response to the published proposed rule. That response came from a state's Department of Justice and was "wholeheartedly in agreement with the proposed revisions." Upon due consideration and in light of the comment received, the Department is adopting the proposed rule as a final regulation without change.

Regulatory Process Matters

This rule is not a major rule within the meaning of section 1(b) of Executive Order 12291, and it does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of Executive Order 12612. The Attorney General certifies that this rule, for purposes of the Regulatory Flexibility Act (Pub. L. 96–354), 5 U.S.C. 605(b), does not have a significant impact on a substantial number of small entities. The standards for inmate grievance procedures serve only as a model for the development of grievance systems by state and local authorities. While some local jurisdictions may come under the definition of small entity, adoption of the standards by any entity remains voluntary.

List of Subjects in 28 CFR Part 40

Administrative practice and procedure, Civil rights, Inmate grievance procedures, Prisoners.

Accordingly, by virtue of the authority vested in the Attorney General by law, including 5 U.S.C. 301 and 28 U.S.C. 509–510, part 40 of Chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 40—STANDARDS FOR INMATE GRIEVANCE PROCEDURES

1. The authority citation for part 40 is revised to read as follows:

Authority: 42 U.S.C. 1997e.

2. Section 40.7 is amended by revising paragraph (b) to read as follows:

§ 40.7 Operation and decision.

* * * * *

(b) *Inmate and employee participation.* The institution shall provide for an advisory role for employees and inmates in the operation of the grievance system. In-person hearings and committees consisting of either inmates or employees or both are not required by this paragraph, but they are permitted so long as no inmate participates in the resolution of any other inmate's grievance over the objection of the grievant.

* * * * *

Dated: August 20, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–20551 Filed 8–26–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service; Bureau of the Public Debt

31 CFR Part 357

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills [Department of the Treasury Circular, Public Debt Series No. 2–86]

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This amendment sets forth the forms of registration that have been authorized in the TREASURY DIRECT Book-Entry Securities System ("TREASURY DIRECT") (a) for Individual Retirement Accounts ("IRA's"), and (b) for owners who wish to provide, upon their death, that the proceeds of their Treasury securities be used to reduce the public debt of the United States. In addition, the amendment removes from the regulations duplicate provisions relating to direct deposit payments, which are now contained in 31 CFR part 370, Regulations Governing Payments by Automated Clearing House Method on Account of United States Securities ("ACH"); adds a provision that refers the investor to part 370; and, revises the

ACH prenotification provision that takes into account the fact that check payments are made under special circumstances.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon Separ, Attorney-Adviser, Washington, DC, Office of the Chief Counsel, Bureau of the Public Debt, (202) 874–4123.

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt has received a number of inquiries about the possibility of placing Individual Retirement Accounts in TREASURY DIRECT. The Bureau of the Public Debt, under the governing regulations, has always permitted registration in the name of an IRA trustee where the trustee was named, and where the agreement or document, pursuant to which the trust was established, was identified. In doing so, it was made clear that the issue as to whether the beneficiary of the IRA would receive the desired tax benefits was dependent on whether the Internal Revenue Service's ("IRS") IRA requirements has been met. These include a written agreement and approval by the Internal Revenue Service for trustees other than banks (as defined at 26 U.S.C. 408(n)) seeking to hold such accounts.

Section 357.21 of Title 31, Code of Federal Regulations, provides that, with the exception of partnership nominees, the TREASURY DIRECT registration of a security conclusively establishes its ownership. Although the Internal Revenue Service has also permitted an IRA to be held in the name of a custodian, the Bureau of the Public Debt had not permitted such registration, as custodians are usually bailees, not owners. However, since, under the IRS regulations, both IRA trustees and custodians are deemed to be fiduciaries, and given the fact that the trust and custodial agreements published by the IRS are virtually identical, like treatment of IRA trustees and custodians appears appropriate. Moreover, it is recognized that the custodian agreements permit those that cannot qualify as trustees to nevertheless hold IRA accounts. Also, under the Internal Revenue Code, any would-be IRA trustee or custodian, other than banks, as defined in section 408(n), must obtain IRS approval.

Investor inquiries have also been received from time to time asking how they might register their TREASURY DIRECT accounts so that upon their death the account balance could be used to reduce the public debt of the United States. A form of registration to accomplish this result has been authorized. Specific reference is made in the registration to the statute which authorizes the United States Government to accept gifts made subject to the condition that they be used to reduce the public debt.

In addition, with the adoption of regulations, i.e., 31 CFR part 370, governing ACH payments made in connection with United States securities, many of the provisions relating to direct deposit, or ACH payments, in part 357 have become redundant. This amendment removes such duplicative provisions, retaining only those that apply solely to the securities covered by this part. A change has also been made to refer the investor to the part 370 regulations. Finally, the paragraph dealing with ACH prenotification has been revised to take into account situations where there is insufficient time to respond to a prenotification message. In such event, payment is made by check.

Special Analysis

Because this amendment relates to the terms and conditions of marketable Treasury securities, the notice and public procedures, and the delayed effective date requirements of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) are inapplicable. It has been determined that the rule does not constitute a "major rule" for purposes of Executive Order No. 12291. A regulatory impact analysis, therefore, is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply to this rule.

List of Subjects in 31 CFR Part 357

Banks, Banking, Bonds, Electronic funds transfer, Government securities.

Accordingly, part 357 is amended, as follows:

PART 357—[AMENDED]

1. The authority citation for part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter 31; 12 U.S.C. 391.

2. Section 357.21 is amended by adding 3 new paragraphs to the end of paragraph (c), and by adding a new paragraph (f) at the end of the section, to read as follows:

§ 357.21 Registration.

* * * * *

(c) * * *

An organization (other than a bank) or individual seeking to act as trustee or custodian of an Individual Retirement Account ("IRA"), must be authorized to so act by the Internal Revenue Service. As appropriate, registration of the security should be in the form shown below:

Examples: ABC Bank, trustee for John Doe IRA, under agreement dated December 21, 1990.

EFG Broker, Inc., custodian for Mary Smith IRA, under agreement dated September 4, 1991.

* * * * *

(f) *The United States Treasury.* A security may be registered in the name of an individual, with the United States Treasury as beneficiary, provided a reference to the statute which authorizes gifts to be made to the United States to reduce the public debt, is included.

Example: John S. Green, payable on death (or P.O.D.) to U.S. Treasury to reduce the public debt (31 U.S.C. 3113).

3. In § 357.26, paragraphs (b)(1) (vii), (viii), (b)(4), (b)(5), (b)(6), (d), and (e), are removed, paragraph (f) is redesignated as paragraph (d) and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 357.26 Payments.

* * * * *

(b) * * *

(2) *Rules.* Direct deposit (electronic funds transfer) payments are governed by the regulations at 31 CFR part 370.

(3) *Prenotification.* Prenotification messages will be sent and responses will be received in accordance with the provisions in 31 CFR 370.5. Where the circumstances indicate that there is insufficient time to effect the change received in response to the prenotification message, payment will be made by check, in accordance with paragraph (c) of this section.

* * * * *

Dated: August 21, 1992.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 92–20526 Filed 8–26–92; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

32 CFR Part 292

[DIA Regulation 12–39]

Defense Intelligence Agency (DIA) Freedom of Information Act

AGENCY: Defense Intelligence Agency, DoD.

ACTION: Final rule.

SUMMARY: As a result of a reorganization of the Defense Intelligence Agency (DIA) as well as various substantive changes to the Department of Defense Freedom of Information Act Program contained at 32 CFR part 292, guidelines pertaining to DIA and other DoD components, this document revises the DIA Freedom of Information Act Program. It informs the public of revised procedures by which for obtaining information under the Freedom of Information Act.

DATES: The effective date of this rule will be October 26, 1992 unless comments are received which result in a contrary determination.

Comments should be received no later than September 28, 1992.

ADDRESSES: Forward comments to: Defense Intelligence Agency, Attention: DSP–1A (FOIA), Washington, DC 20340–3299.

SUPPLEMENTARY INFORMATION: DIA Regulation 12–39 is not a major rule which will have an economic impact on the U.S. economy or require submission of information by the general public. The purpose of the revised DIA regulation is to inform the public of the procedures for obtaining information maintained in DIA record systems under the Freedom of Information Act. Delaying publication of this regulation will impede public access to DIA information which is releasable by law to the general public and will interfere with the public's access and understanding of military operations and activities.

List of Subjects in 32 CFR Part 292

Freedom of information.

Accordingly, 32 CFR part 292 is revised to read as follows:

PART 292—DEFENSE INTELLIGENCE AGENCY (DIA) FREEDOM OF INFORMATION ACT

Sec.

292.1 Purpose.
292.2 Applicability.
292.3 Basic policy.
292.4 Specific policy.
292.5 How the public submits requests for records.
292.6 FOIA exemptions.
292.7 Filing an appeal for refusal to make records available.
292.8 Responsibilities.
Appendix A to Part 292—Uniform Agency Fees for Search and Duplication Under the Freedom of Information Act (as Amended)

Authority: 5 U.S.C. 552.

§ 292.1 Purpose.

This document implements the "Freedom of Information Act (FOIA)," 5 U.S.C., as amended, with the Defense Intelligence Agency (DIA) and outlines policy governing release of records to the public.

§ 292.2 Applicability.

This part applies to all DIA elements, and governs the public release of records of these elements.

§ 292.3 Basic policy.

(a) Upon receipt of a written request, the DIA will release to the public, records concerning its operations and activities which are rightfully public information. Generally, information, other than that exempt in § 292.6, will be provided to the public. The following policy will be followed in the conduct of this program.

(1) The provisions of the FOIA, as implemented by 32 CFR part 286 and this part, will be supported in both letter and spirit.

(2) Requested records will be withheld only when a significant and legitimate governmental purpose is served by withholding them. Records which require protection against unauthorized release in the interest of the national defense or foreign relations of the United States will not be provided.

(3) Official requests from Members of Congress, acting in their official capacity, will be governed by DoD Directive 5400.4,[1] (see DoD 5400.7–R,[2] paragraph 5–103); from the General Accounting Office by DoD Directive 7650.1; [3] and from private parties, and officials of state or local governments by DoD 5400.7–R, paragraphs 5–101 and 102.

(4) Records will not be withheld solely because their release might result in criticism of the Department of Defense or this Agency.

(5) The applicability of the FOIA depends on the existence of an "identifiable record" (5 U.S.C. 552(a)(3)). Accordingly, if the DIA has no record containing information requested by a member of the public, it is under no obligation to compile information to create or obtain such a record.

(6) The mission of the DIA does not encompass regulatory or decision-making matters in the sense of a public use agency; therefore, extensive reading room material for the general public is not available.

(7) Pursuant to 5 U.S.C. 552 (a)(4)(A) fees may apply with regard to services rendered the public under the Freedom of Information Act (See appendix A to this part). With regard to fees, the specific guidance of DoD, as set forth in DoD 5400.7–R will be followed.

(b) This basic policy is subject to the exemptions recognized in 5 U.S.C. 552 (b) and discussed in section 292.6.

§ 292.4 Specific policy.

(a) *Definition of a Record.* The products of data compilation, such as all books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by the DIA in connection with the transaction of public business and in the DIA's possession and control at the time the FOIA request is made.

(b) The following are not included within the definition of the word "record:"

(1) Objects or articles, such as structures, furniture, paintings, sculptures, three-dimensional models, vehicles and equipment, whatever their historical value or value as evidence.

(2) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in paragraph (b)(2)(i) of this section.

(1) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(A) When the data are embedded within the software and cannot be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(B) When the software itself reveals information about organizations, policies, functions, decisions, or procedures of the Agency, such as computer models used to forecast budget outlays, calculate system costs, or optimization models on travel costs.

(3) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

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[1] Copies may be obtained at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 292.3(a)(3).

[3] See footnote 1 to § 292.3(a)(3).

(4) Personal notes of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(5) Information stored within a computer for which there is no existing computer program or printout for retrieval of the requested information.

(c) The prior application of FOR OFFICIAL USE ONLY (FOUO) markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it will be evaluated to determine whether, under current circumstances, FOIA exemptions apply and whether a significant and legitimate Governmental purpose is served by withholding the record or portions of it.

(d) A record must exist and be in the possession or control of the DIA at the time of the request to be considered subject to this regulation. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(e) *Identification of the Record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record that enables the DIA to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When the DIA receives a request that does not "reasonably describe" the requested record, it will notify the requester of the deficiency. The deficiency should be highlighted in a distinctive letter, asking the requester to provide the type of information outlined below. This Agency is not obligated to act on the request until the requester responds to the distinctive letter. When practicable, the DIA will offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the Agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non-random search based on the DIA's filing arrangements and existing retrieval systems, or unless the record contains enough Category II information to permit inference of the Category I elements needed to conduct such a search.

(f) Requests for records may be denied only when the official designated in § 292.8 determines that such denial is authorized by the FOIA.

(g) When an initial request is denied, the requester will be apprised of the following:

(1) The basis for the refusal shall be explained to the requester, in writing, identifying the applicable statutory exemption or exemptions invoked under provisions of this part.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester with regard to denied information whether or not any reasonably segregable portions were found.

(5) The response shall advise the requester of the right to appeal within 60 days of the date of the initial denial letter.

(h)(1) Initial availability, releasability, and cost determinations will normally be made within 10 working days of the date on which a written request for an identifiable record is received by the DIA. If, due to unusual circumstances, additional time is needed, a written notification of the delay will be forwarded to the requester within the 10 working day period. This notification will briefly explain the circumstances for the delay and indicate the anticipated date for a substantive response. The period of delay, by law, may not exceed 10 additional working days.

(2) Requests shall be processed in order of receipt. However, this does not preclude DIA from completing action on a request which can easily be answered, regardless of its ranking within the order of receipt. DIA may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of DIA.

§ 292.5 How the public submits requests for records.

(a) Requests to obtain copies of records must be made in writing. The requests should contain at least the following information:

(1) Reasonable identification of the desired record as specified in § 292.4(e), including (if known) title or description, date, and the issuing office.

(2) With respect to matters of official records concerning civilian or military personnel, the first name, middle name or initial, surname, date of birth, and social security number of the individual concerned, if known.

(b) Persons desiring records should direct inquiry to: Defense Intelligence Agency, ATTN: DSP-1A (FOIA), Washington, DC 20340-3299.

§ 292.6 FOIA exemptions.

The following type of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

(a) *Exemption (b)(1).* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations, such as DoD 5200.1-R.[4] Although material may not be classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures outlined in DIAR 50-2 [5] regarding classification apply. In addition, this exemption shall be invoked when the following situations are apparent:

(1) The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DIA shall neither confirm or deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(2) Information that concerns one or more of the classification categories established by Executive Order and DoD 5200.1-R shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(b) *Exemption (b)(2).* Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of the DIA if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense, and they do not impose requirements directly on the general public. This exemption has two profiles, high (b)(2) and low (b)(2).

(1) Records qualifying under high (b)(2) are those containing or constituting, rules, regulations, orders, manuals, directives, and instructions the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the Department of Defense.

(2) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records.

(c) *Exemption (b)(3).* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld.

(d) *Exemption (b)(4).* (1) Those containing trade secrets or commercial or financial information that the DIA receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the Government's ability to obtain necessary information in the future, or impair some other legitimate Governmental interest.

(2) When a request is received for a record that was obtained or provided by a non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data) shall be notified promptly of that request and afforded reasonable time (e.g. 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). For further guidance, see DoD 5400.7-R, paragraph 5-207.

(e) *Exemption (b)(5).* Those concerning internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies or within or among DoD components. Also exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

(f) *Exemption (b)(6).* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act system of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(g) *Exemption (b)(7).* Records or information compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law, but only to the extent that the production of such law enforcement records or information

(1) Could reasonably be expected to interfere with enforcement proceedings.

(2) Would deprive a person of a right to a fair trial or an impartial adjudication.

(3) Could constitute an unwarranted invasion of the personal privacy of others (also see DoD 5400.7-R, paragraph 3-200, Number 7 a. 3. (a)-(c)).

(4) Could disclose the identity of a confidential source.

(5) Would disclose investigative techniques and procedures, or

(6) Could endanger the life or physical safety of law enforcement personnel.

This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for, law enforcement purposes.

§ 292.7 Filing an appeal for refusal to make records available.

(a) A requester may appeal an initial decision to withhold a record. Further, if a requester determines a "no record" response in answer to a request to be adverse, this determination may also be appealed. Appeals should be addressed to: Defense Intelligence Agency, ATTN: DSP-1A (FOIA), Washington, DC 20340-3299.

(b) The requester shall be advised that the appellate authority must receive an appeal no later than 60 calendar days after the date of the initial denial letter.

(c) Final determination on appeals normally will be made within 20 working days of receipt of the appeal at the above address. If additional time is needed to decide the appeal because of unusual circumstances, the final determination may be delayed for the number of working days, not to exceed 10, which were not utilized as additional time for responding to the initial request. Appeals shall be processed in order of receipt. However, this does not preclude DIA from completing action on an appeal request which can easily be answered, regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of DIA.

(d) When an appeal is denied, the requester will be apprised of the following:

(1) The basis for the refusal shall be explained to the requester, in writing, identifying the applicable statutory exemption or exemptions invoked under provisions of this part.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester with regard to denied information whether or not any reasonably segregable portions were found.

(5) The response shall advise the requester of the right to judicial review.

§ 292.8 Responsibilities.

When a request for information or records is received, the following will apply:

(a) *DSP-1A.* (1) Receives requests and assigns tasking.

(2) Maintains appropriate suspenses and authorizes all extensions of response time.

(3) Acts as the responsible operating office for all Agency actions related to the FOIA.

(4) Drafts and transmits responses on:

[4] See footnote 1 to § 292.3(a)(3).

[5] Forward requests to: Defense Intelligence Agency, ATTN: DSP-1A (FOIA), Washington, DC 20340-3299.

(i) The release of records and/or information.
(ii) Obtaining supplemental information from the requester.
(iii) Informing the requester of any fees required.
(iv) The transfer to another element or agency of the initial request.
(5) Fulfills the annual reporting requirement and maintains appropriate records.
(6) Acts as the responsible official for all initial denials of access to the public.
(b) All DIA elements:
(1) When identified by DSP-1A as the Office of Primary Responsibility (OPR) will:
(i) Search files for any relevant records, and/or
(ii) Review records for possible public release within the time constraints assigned, and
(iii) Prepare a documented response in any case of nonrelease.
(2) All employees are required to read this part to ensure familiarity with the requirements of the FOIA as implemented.
(c) *The General Counsel.* (1) Ensures uniformity in the FOIA legal positions within the DIA and with the Department of Defense.
(2) Secures coordination when necessary with the General Counsel, DoD, on denials of public requests.
(3) Acts as the focal point in all judicial actions.
(4) Reviews all final denials.
(d) The Director, and on his behalf, the Chief of Staff:
(1) Exercises overall staff supervision of the FOIA activities of the Agency.
(2) Acts as the responsible official for all denials of appeals.

Appendix A to Part 292—Uniform Agency Fees for Search and Duplication Under the Freedom of Information Act (as Amended)

Search + Review (only in the case of commercial requesters)
a. Manual search or review—

Type	Grade	Hourly rate
Clerical	E9/GG-08 and below	$12.00
Professional	01-06/GG-09-GG-15	25.00
Executive	07/GG-16/ES1 and above.	45.00

b. Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph a. above) for the computer/operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.
c. Actual time spent traveling to a search site, conducting the search and return may be charged as FOIA search costs.

General

Pre-Printed material, per printed page	.02
Office copy, per page	.15
Microfiche, per page	.25

Aerial Photography Reproduction

Per Print	$2.50

d. See Chapter VI of DoD 5400.7-R for further guidance on fees.

Dated: August 20, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-20288 Filed 8-26-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 117

[CGD2-92-12]

Drawbridge Operation Regulations; Mississippi River, Illinois and Iowa

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: Notice is hereby given that the Coast Guard has approved a request from the Department of the Army, Rock Island Arsenal, to temporarily deviate from the opening requirements governing the Rock Island Railroad and Highway Drawbridge at Mile 482.9 Upper Mississippi River.

DATES: Drawspan will be secured in the closed to navigation position, Monday through Friday, from 6:30 a.m. to 7:55 a.m. and from 3:10 p.m. to 4:40 p.m., August 3 through August 26, 1992. Drawspan will open on signal at all other times.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 314-539-3724.

SUPPLEMENTARY INFORMATION: The Rock Island Railroad and Highway Drawbridge spans the Mississippi River between Davenport, Iowa and the Rock Island Arsenal, Rock Island, Illinois. The Arsenal is located on an island in the river adjacent to the city of Rock Island on the Illinois bank. There are three bridges which provide means of ingress and egress to the Arsenal; the Rock Island Viaduct, the drawbridge, and the Moline Bridge. Of the three, only the drawbridge provides direct access to the Arsenal from the State of Iowa.

The Rock Island Viaduct is presently undergoing major rehabilitation and is closed to vehicular traffic. The Moline Bridge is the only means of access to the Island from Illinois. To facilitate the arrival/departure of Arsenal employees, the Moline Bridge is designated for one-way traffic during peak traffic hours, and the drawspan of the Rock Island Railroad and Highway Drawbridge is secured in the closed to navigation position, except for emergencies, from 6:30 a.m. to 7:55 a.m., and from 3:10 p.m. to 4:40 p.m., Monday through Friday, from August 3 through August 26, 1992.

Additional information may be obtained from Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, Room 2.207b, 1222 Spruce Street, St. Louis, MO 63103-2832, telephone 314-539-3724.

Dated: 10 August 1992.

James J. Lantry,

Capt., U.S. Coast Guard, Commander, Second Coast Guard District, Acting.

[FR Doc. 92-20465 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB-35-F]

RIN: 0938-AE36

Medicaid Program; Medicaid Management Information System (MMIS) Performance Review; Notification Procedures for Changes in Requirements, Performance Standards, and Reapproval Conditions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule eliminates the requirement in the Medicaid regulations that HCFA meet certain Federal Register notification requirements for any changes in performance standards and other conditions for reapproval of State Medicaid Management Information Systems (MMISs), even if such Federal Register notice would not otherwise be required. An independent Federal Register publication requirement will remain in place with respect to changes in system requirements and other conditions for approval of MMISs. We believe that a revised process for notifying States and other concerned parties of changes in performance standards and other conditions of reapproval is appropriate and will facilitate the efficient issuance of revised MMIS review requirements and methodologies each year.

EFFECTIVE DATE: This final rule is effective October 26, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Friedman, (301) 966-3292.

SUPPLEMENTARY INFORMATION:

I. Background

Under the authority of section 1903(a)(3) of the Social Security Act (the Act), HCFA requires most States with a Medicaid program to operate an approved mechanized claims processing and information retrieval system. The mechanized claims processing and information retrieval system (referred to as the Medicaid Management Information System (MMIS) is a system of software and hardware used to process Medicaid claims, and to retrieve and produce utilization data and management information about Medicaid recipients and services. These data and information are required by the Medicaid agency and by the Federal Government for administrative and audit purposes.

Federal financial participation (FFP) is available at the 75 percent rate for operation of an approved MMIS. Section 1903(r)(4)(A) of the Act requires reviews of each MMIS at least once every 3 years to determine whether it meets performance standards, system requirements, and other conditions and continues to qualify for FFP. Other limited or full reviews also may be conducted. Sections 1903(r)(1)(C) and 1903(r)(4)(B) of the Act require reductions in FFP otherwise due a State under section 1903(a) if a State fails to meet certain deadlines for operating the system or if the system fails to meet certain conditions for approval or reapproval.

On June 30, 1981, we published in the **Federal Register** (46 FR 33653) a notice containing the initial performance standards and "elements" that would be used to evaluate State MMISs. In that notice, we indicated that the standards and elements would be published in the **Federal Register** but copies of the detailed supporting procedures concerning the application of these standards and elements (sampling, scoring, evaluation methodologies, etc.) would be issued timely to all MMIS States. We provide these detailed instructions and supporting procedures, including the sampling, scoring, and evaluation methodologies that will be used to review each State's MMIS. They are included as part of the System Performance Review (SPR) Guide which is issued to every State by June 30 of each year preceding the review period that begins October 1.

Section 1903(r)(6)(F) of the Act requires HCFA to periodically update the performance standards, systems requirements, review criteria, and other requirements, when appropriate, that are used in conducting reviews for reapproval of the MMIS. While the performance standards and elements for reapproval of MMISs remained mostly unchanged ("elements" were eliminated, in accordance with **Federal Register** notice and comment procedures, on September 5, 1990 (55 FR 36319)), the supporting procedures described earlier generally have been updated from year to year.

Although not required by statute, in July 1985 (50 FR 30838), we promulgated a regulation at § 433.123 which requires publication of a **Federal Register** notice describing proposed revisions to system requirements, performance standards, and other conditions for approval or reapproval without regard to whether such **Federal Register** publication is required under the Administrative Procedure Act. In that regulation, we specified that we would issue a subsequent notice responding to public comments on revisions making substantive changes and issue the new or modified performance standards or conditions for reapproval in the State Medicaid Manual. Section 433.123(b) specifies that we will allow a reasonable period of time before the applicable review period for States to meet changes in systems requirements and conditions for approval. Section 433.123(c) specifies that we will notify Medicaid agencies at least one calendar quarter before the applicable review period for new or modified standards or conditions of reapproval.

In accordance with § 433.123, we have published changes in the performance standards and elements in the **Federal Register**, but we have not published all methods of evaluation and supporting procedures. As we indicated earlier, we have issued annually the detailed instructions, methods of evaluation, and supporting procedures for conducting MMIS reviews for reapprovals as part of the SPR Guide. (For informational purposes, we repeat the standards in the guide.)

II. State Involvement in Developing Updated Measures

Section 1903(r)(6)(E) of the Act requires us to notify all States of any revision in procedures, standards, and other requirements at least one quarter before they are to be used for conducing reviews for MMIS reapprovals. It does not mandate the form or the content of the notification. Since 1981, we have developed acceptable performance levels and specific methodologies for conducting reviews and evaluating State MMIS operations each fiscal year and issued them in the SPR Guide after consultation with and opportunity to comment by State representatives through established HCFA administrative procedures. We have involved State representatives in this development, including the Systems Technical Advisory Group (S-TAG). The S-TAG is a component of the State Medicaid Directors Association (SMDA)). The SMDA is an organization affiliated with the American Public Welfare Association (APWA). The existing S-TAG consists of seven State representatives and a representative from the APWA who provide technical assistance to HCFA on the systems operations of the Medicaid program, especially the MMIS.

HCFA holds meetings or teleconferences, or both, with the S-TAG to obtain their advice on proposed changes to the existing procedures and conditions of reapproval in the SPR Guide. In addition, HCFA frequently sends copies of the draft SPR Guide to State representatives and the S-TAG for further comment and input. This is done before the final distribution of the guide on or before June 30 preceding each fiscal year review period that begins on October 1. HCFA central office staff monitors this program and coordinates the changes from the States. As a result of this administrative process, the final SPR Guide that HCFA issues each year incorporates the States' input and addresses their concerns.

Based on our past experience, we believe that the opportunity offered to State representatives by this administrative process to make recommendations and changes concerning the SPR requirements and to comment on specific proposals has proven to be an effective, efficient, and expeditious process in view of the frequency (at least once a year) with which we update and reissue the SPR Guide. We believe that this process of distributing the SPR Guide to all States by June 30 of each year preceding the review period that begins October 1 meets the requirements of section 1903(r)(6)(E) of the Act for notice to States.

III. Notice Changes

Since the inception of the MMIS program, HCFA has published in the

Federal Register only one set of standards for reviewing the performance of the States' MMISs for reapprovals. In the June 30, 1981 notice cited earlier, standards and elements were specified; factors were included for illustrative purposes only. In the September 5, 1990, Federal Register final notice cited earlier, we revised the performance standards, procedures, and methodologies published in the June 1981 notice. We made these changes because, based on our experience, the prior SPR Guide had a number of shortcomings. In some instances, specific activities we wanted to measure as indicative of the performance of the MMIS could not be logically classified under the standards or elements as they were formatted, or could arguably be placed under more than one of the standards and elements. In other instances, we felt it inappropriate to review activities under a particular standard or elements because shifting program emphasis indicated that priorities be placed in other areas.

On the basis of our experience in overseeing the administration of the MMIS and conducting the required performance reviews since 1981, we have concluded that the independent Federal Register notice requirements of § 433.123 concerning the performance standards and conditions of reapproval are constrictive, inflexible, and unnecessary. We have in place the previously discussed flexible and efficient procedures for making changes to the factors, methods of evaluation, and supporting materials, which provide ample notice to the States, allow for appropriate input by the States, and conform with provisions of the Act.

Publication of revisions in the Federal Register generally requires a minimum lead time of 18 to 24 months. This lead time takes into account the approximate time for developing and clearing appropriate changes within HCFA and the Department, the process of publishing a proposed notice, a period of time for public comments, and issuance of a subsequent notice. As a result, we believe that the assessment data gathered from the reviews conducted under this lengthy publication process of changes would no longer be timely or relevant to current MMIS concerns.

We also believe that our notification process, through issuance of the SPR Guide following consultation and cooperative development with the States and the S–TAG, satisfies the requirement for appropriate notice in section 1903(r)(6)(E) of the Act. That requirement concerns timely notification to the States on the changes to the performance standards and other conditions used for the reapproval of State MMISs.

As indicated earlier, we obtain input from State representatives and respond to their comments. In addition, the advance release time of the SPR Guide (at least one quarter before the date that it will be used for reapproval reviews) meets the notification period required in the Act. All of the standards, factors, methods of evaluation, and scoring and sampling methodologies are included in the guide which is issued to the States 3 months before the affected review period (by June 30 before the October 1 implementation date). Therefore, we have concluded that publication of a notice of proposed changes, a final notice addressing public comments in the Federal Register, and a subsequent issuance in the State Medicaid Manual as a prerequisite for issuing final changes on all conditions for reapproval are not the most appropriate, efficient mechanisms for notifying MMIS States of proposed changes and allowing them opportunity for comment. The SPR Guide is a more expeditious means of providing States with notice of changes and opportunity for comment where Federal Register notice and comment is not required by the Administrative Procedure Act.

IV. Issuance of Notice of Proposed Rulemaking

On June 28, 1991, we issued a notice of proposed rulemaking (NPRM) in the Federal Register (56 FR 29612) in which we proposed to delete those provisions of § 433.123 which specify that notification of changes concerning performance standards or other conditions of reapproval must take place through publication of a proposed notice, a subsequent notice addressing public comments in the Federal Register, and publication in the State Medicaid Manual. In place of that language, we proposed to revise § 433.123 to reflect the notice requirements in section 1903(r)(6)(E) of the Act; that is, we will notify Medicaid agencies directly at least one calendar quarter before the review period to which the new or modified performance standards or other conditions of reapproval apply. As a result, we will be able to develop or modify the reapproval requirements more effectively. We also will be able to conduct system performance reviews of MMISs under a performance review mechanism that is more timely, easier to work with, and more reflective of the current concerns in MMIS State operations, with more relevant and timely assessment data being derived from the reviews as well.

In response to the June 28, 1991 NPRM, we received comments timely from two States. A summary of the comments and the Department's responses follow:

Comment: One commenter was critical of our discussion in the preamble of the NPRM which indicated that States have sufficient input through current HCFA processes to support elimination of the existing Federal Register notice publication requirements. The commenter felt that the S–TAG, upon which we indicated that we depend partially for input on MMIS matters from States, was only an ad hoc group with the purpose of providing informal guidance to HCFA staff prior to publication of the SPR requirements, and that the group has never been recognized as a replacement for State MMIS staff comments. The commenter concluded that the Federal Register publication requirements should continue as they now exist.

Response: We disagree with the commenter's reference to the S–TAG as an ad hoc group. The S–TAG is not a component with a singular mission, but is a group that provides technical assistance to HCFA on many facets of systems operations within the Medicaid program, especially the MMIS area. We view the input received from the S–TAG as technical advice, not merely informal guidance as suggested by the commenter. All S–TAG comments are given careful consideration and many are accepted for use in the SPR Guide.

We agree that the S–TAG was never intended to be a replacement for State MMIS staff comments, but we regard S–TAG's comments as an important part of States' input.

Our notification process through issuance of the SPR guide follows consultation and cooperative development not only with the S–TAG, but also with representative MMIS State staff. Both the S–TAG and the States which are subject to the SPR review are frequently sent copies of the draft SPR Guide for their respective input. This is done before the final distribution of the guide on or before June 30 preceding each fiscal year review period that begins on October 1. We monitor this process and coordinate the comments and concerns from both the S–TAG and State representatives.

Additionally, all MMIS States will continue to receive the finalized SPR requirements at least one quarter prior to the quarter they are to become effective. This has been the case since the inception of the program in 1981. Therefore, we believe that all involved State MMIS staff will continue to have sufficient opportunity and appropriate time to comment under the revised SPR notice requirements.

Comment: One commenter suggested forming a coordinating group composed of members chosen by each State Medicaid Director for the purpose of reviewing and commenting on the SPR/MMIS regulations and issues. The commenter added that a Bulletin Board System could be used on which to comment and exchange ideas. If needed, the commenter suggested that HCFA prepare a new regulation which recognizes and establishes the purpose of this group.

Response: We agree with the commenter's suggestion on the proposed use of a Bulletin Board System on which comments and the exchange of ideas could be made among the MMIS States, the S–TAG, and HCFA. We established such a bulletin board in October 1991. Shortly thereafter, we notified all State Medicaid Directors of this action. We continue to invite comments from any interested source on ways the system can best be used.

We disagree with the commenter's suggestion for having another group (that is, a coordinating group) set up for a purpose that has been amply fulfilled by the S–TAG and representative State MMIS staff. It would be redundant to establish the type of group proposed, as not only the MMIS State representatives but the S–TAG have had the opportunity, past and present, to timely review and comment on changes to the SPR/MMIS regulations, requirements, and issues prior to their implementation. This policy will continue in the future.

Comment: One commenter agreed that notice of changes in the Federal Register is not required, and that opportunity to comment on proposed changes through contact with the S–TAG appears to be sufficient. However, the commenter requested that when future versions of the SPR requirements are issued in the SPR Guide, HCFA should include some usable identification of any addition, change, or deletion from the previous year. Suggested identifiers included a separate list of specifics and the use of underlining or brackets.

Response: We agree with the commenter's suggestion to identify changes in the SPR requirements. Beginning with the next SPR Guide that is issued after the publication of this final rule, we will provide identifiers such as those suggested by the commenter to highlight any changes from the preceding year.

V. Provisions of the Final Regulations

We are adopting as final, without modifications, the changes to § 433.123 as proposed on June 28, 1991.

VI. Paperwork Burden

Section 433.123 does not contain information collection requirements that are subject to review by the Office of Management and Budget under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

VII. Regulatory Impact Statement

1. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises in domestic or export markets.

This final rule deletes the requirements from § 433.123 of the regulations that we publish the performance standards and other conditions for reapproval of MMISs in the Federal Register and in the State Medical Manual: These requirements are not dictated by statute and are considered unnecessary at this time. Under current requirements of the regulations, flexibility and efficiency for making changes are greatly limited. For example, publication of a proposed and final change in the Federal Register in accordance with § 433.123 ordinarily requires a minimum lead time of 18 to 24 months.

The objective of this final rule is to increase efficiency in implementing needed changes in MMIS operations and administration by eliminating the need for publication in the Federal Register or the State Medicaid Manual as a prerequisite for our making changes to the SPR Guide. States will continue to receive notice and an opportunity to comment. Therefore, any effect on States due to this final regulation will be minimal.

We do not expect this final rule to meet any of the criteria for a major rule under E.O. 12291. Therefore, we are not including an initial regulatory impact analysis.

2. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider States to be small entities.

Also, section 1102(b) of the Social Security Act requires the Secretary to prepare a regulatory impact analysis if a final regulation may have a significant impact on the operation of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Since States are not considered small entities, we have determined, and the Secretary certifies, that this final regulation will not have a significant economic impact on a substantial number of small entities. As discussed above, States will still be given notice and an opportunity to comment on proposed changes. In addition, this final regulation will not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared analyses for either the RFA or section 1102(b) of the Act.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Child support, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR part 433 is amended as follows:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1903(d)5, 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act; 42 U.S.C. 1302, 1320b–7, 1396(a)(4), 1396(a)(25), 1396a(a)(45), 1396b(a)(3), 1396b(d)(2), 1396b(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. Section 433.123 is revised to read as follows:

§ 433.123 Notification of changes in system requirements, performance standards or other conditions for approval or reapproval.

(a) Whenever HCFA modifies system requirements or other conditions for approval under § 433.112 or § 433.116, HCFA will—

(1) Publish a notice in the **Federal Register** making available the proposed changes for public comment;

(2) Respond in a subsequent **Federal Register** notice to comments received; and

(3) Issue the new or modified requirements or conditions in the State Medicaid Manual.

(b) For changes in system requirements or other conditions for approval, HCFA will allow an appropriate period for Medicaid agencies to meet the requirement determining this period on the basis of the requirement's complexity and other relevant factors.

(c) Whenever HCFA modifies performance standards and other conditions for reapproval under § 433.119, HCFA will notify Medicaid agencies at least one calendar quarter before the review period to which the new or modified standards or conditions apply.

(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Programs)

Dated: January 20, 1992.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: May 5, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92-20523 Filed 8-26-92; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6942

[AK-932-4214-10; F-019601]

Partial Revocation of Public Land Order No. 547 and Public Land Order No. 5187; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two public land orders insofar as they affect approximately 1.98 acres of public land withdrawn for use by the military, and for classification and protection of the public interest at Clear Air Force Station, Alaska. The land is no longer needed for the purposes for which it was withdrawn. The land is not available for State selection as it does not meet the criteria of "vacant, unappropriated, and unreserved." The land has been determined to be excess property available for disposal according to provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471, et seq.), and applicable regulations, and will be administered or disposed of under regulations of the General Services Administration. This action is for record-clearing purposes only.

EFFECTIVE DATE: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 22(h)(4) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(h)(4) (1988), it is ordered as follows:

1. Public Land Order No. 547, which withdrew public land for use by the military, and Public Land Order No. 5187, which withdrew public land for classification and for protection of the public interest, are hereby revoked insofar as they affect the following described land:

Fairbanks Meridian

T. 7 S., R. 8 W. (Partly Surveyed);

Beginning at the common corner of secs. 15, 16, 21, and 22, thence east 660 feet, thence south 1,470 feet, thence N. 56°47'12" W., approximately 20 feet to corner No. 1 on the centerline of the Anderson Road, the point of beginning.

From corner No. 1, by metes and bounds,

S. 56°47'12" E., 330 feet to corner No. 2 at the southwest corner of the off-loading area of the Anderson Airport, from which the southwest corner of a 28'x112' terminal building bears northerly approximately 115 feet;

N. 33°12'48" E., 260 feet on common boundary with the off-loading area to corner No. 3;

N. 56°47'12" W., 331 feet to corner No. 4 on the centerline of the Anderson Road;

S. 30°01'16" W., 281 feet to corner No. 1, the point of beginning. The area described contains approximately 1.98 acres.

Dated: August 1, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-20539 Filed 8-26-92; 8:45 am]

BILLING CODE 4310-JA-M

Proposed Rules

Federal Register
Vol. 57, No. 167
Thursday, August 27, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Amendment No. 72; Doc. No. 0399s]

General Crop Insurance Regulations; Rice Endorsement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby proposes to amend the General Crop Insurance Regulations, effective for the 1993 and succeeding crop years, by adding new definitions for "planted," "controlled flood," "aerial seeding," and "broadcast seeding" to the Rice Endorsement. The intended effect of this proposed rule is to eliminate confusion for both insured rice producers and insurance companies, created by the lack of a clear definition of these terms in the rice crop insurance policy, and to remove the possibility of restrictions for non-compliance with the terms of the policy because of misinterpretation.

DATES: Written comments, data, and opinions on this proposed rule must be submitted not later than September 28, 1992, to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (703) 235-1168.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1992.

James E. Cason, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million of more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; of (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

The Manager, FCIC, has certified to the Office of Management and Budget (OMB) that these proposed regulations meet the applicable standards provided in section 2(a) and 2(b)(2) of Executive Order 12728.

Background

FCIC has received several questions regarding the interpretation of the term "planted" in the Rice Crop Insurance Endorsement. Because of the unique requirements in the planting of rice, FCIC has determined that the term "planted" shall be defined. Requests have also been received from insureds to acknowledge aerial seeding practices.

The Rice Crop Insurance Endorsement, published in the **Federal Register** on December 1, 1987, at 52 FR 45604, refers to rice planted for harvest as grain. The terms "planted" and "planting" are used throughout the rice policy. There is, however, no definition of the term "planted," nor is there a clarification of the conditions under which planting by aerial seeding is permissible for insurance purposes. An additional definition of the term "broadcast seeding" is also necessary to cover those practicing such method.

It has become clear that the currently accepted interpretation of "planted," as being the proper placement of the seed in the soil, is no longer adequate.

FCIC has determined that a definition of the term "planted" for the rice policy is necessary. Further, definitions of "aerial seeding", "broadcast seeding", and "controlled flood", are necessary to define planting for the rice crop.

Insured producers must be provided with an insurance policy that is clear and easy to understand, and such clarification must be provided as quickly as possible. FCIC administratively determined to accept the definition of the term "planted" as it is outlined in this rule for all 1992 crop year rice insurance policies, and has communicated its intention and instructions to all insured, agents, and reinsured companies.

FCIC herein proposes to amend the Rice Endorsement (7 CFR 401.120), effective for the 1993 and succeeding crop years, to add definitions for the terms "planted," "aerial seeding," "broadcast seeding," and "controlled flood." FCIC is soliciting written public comment on this proposed rule for 30 days following its publication in **Federal Register**.

All written comments should be sent to Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250. All written comments received pursuant to this proposed rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, 21st and L Streets NW., suite 502, Washington, DC 20037, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 401

Crop insurance, Rice.

Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.* the Federal Crop Insurance Corporation proposes to amend the General Crop Insurance Regulations (7 CFR part 401), proposed to be effective for the 1993 and succeeding crop years, in the following instances:

PART 401—[AMENDED]

1. The authority citation for 7 CFR part 401 continues to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. § 401.120 is amended by revising section 10 of the Rice Crop Insurance Endorsement, to read as follows:

§ 401.120 Rice Endorsement

* * * * *

10. Meaning of Terms;

(a) *Aeriol seeding*— distribution of pre-soaked rice seed onto a prepared seedbed covered by water under controlled flooding conditions by use of an airplane specifically modified for this purpose. The modification must ensure a sufficient distribution of the rice seed in the seed bed to assure a normal crop.

(b) *Broodcost seeding*—distribution of the seed by the use of equipment that mechanically delivers the seed to the prepared soil surface (such as a fan type seeder), and then mechanically incorporating the seed into the soil at the proper depth; provided that such practice is considered to be a recognized good planting practice for the unit involved.

(c) *Controlled flood*—intentional covering of the prepared seedbed with water that is under the control of the insured, free of movement and is contained by properly constructed levees and gates.

(d) *Harvest*—the completion of combining or threshing of rice on the unit.

(e) *Mill center*—any location in which two or more mills are engaged in milling rough rice.

(f) *Planted*—the proper placement of the seed in a prepared seedbed by use of a drill, broadcasting, or by aerial seeding. Drill seeding, and broadcast seeding other than aerial seeding, requires mechanical incorporation of seed into the soil at the proper depth. Aerial seeding pre-soaked seed onto the seedbed will be considered planted if a controlled flood of the seedbed exists at the time of planting and a uniform distribution of seed exists after removal of flood water. Planting in any other manner will be considered as a failure to follow recognized good farming practices for rice and any loss of production resulting will not be insured under the policy.

(g) *Replanting*—the performing of cultural practices necessary to replant insured acreage to rice.

(h) *Second crop rice*—regrowth of a stand of rice originating from the initially insured rice crop following harvest and which can be harvested in the same crop year.

Done in Washington, DC on July 6, 1992.

David S. Bracht,

Acting Monoger, Federal Crop Insurance Corporation.

[FR Doc. 92-20514 Filed 8-26-92; 8:45 am]

BILLING CODE 3410-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-91-AD]

Airworthiness Directives; Boeing Model 737-100, -200, -300, and -400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737-100, -200, -300, and -400 series airplanes. This proposal would require replacement of plastic flight control cable guards with aluminum cable guards, relocation of previously-installed cable guards, and verification that grommets are properly installed. This proposal is prompted by a report of locked elevator controls and horizontal stabilizer trim caused by cable guards that had melted onto the control cables. The actions specified by the proposed AD are intended to prevent the loss of primary and secondary pitch control.

DATES: Comments must be received by October 13, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-91-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Rodriguez, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2779; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-91-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-91-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

There has been a report of locked elevator controls and horizontal stabilizer trim on a Boeing Model 737 series airplane. Hot air was released when a clamp that was used to connect an auxiliary power unit duct to the power unit fell off or broke. The hot air melted the plastic elevator and horizontal stabilizer trim cable guards onto the cables, thus restricting cable movement and locking the elevator control and horizontal stabilizer trim. In addition, a cable guard that had been installed in accordance with Boeing Alert Service Bulletin 737-27A1164, dated September 13, 1990, was found to be incorrectly located. This condition, if not corrected, could result in the loss of primary and secondary pitch control.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-27A1164, Revision 1, dated November 14, 1991, that describes procedures for replacement of plastic flight control cable guards with aluminum cable guards and relocation of previously-installed cable guards. It also describes procedures to verify that grommets on the guards are properly installed in order to prevent the guards from turning.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require replacement of plastic flight control cable guards with aluminum cable guards, relocation of previously-installed cable guards, and verification that grommets are properly installed. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,851 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 636 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 21 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,753 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,849,488, or $2,908 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 92-NM-91-AD.

Applicability: Model 737-100, -200, -300, and -400 series airplanes, through line number 1866; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of primary and secondary pitch control, accomplish the following:

(a) Within 18 months after the effective date of this AD, replace plastic flight control cable guards with aluminum cable guards, in accordance with Boeing Alert Service Bulletin 737-27A1164, Revision 1, dated November 14, 1991.

(b) Within 18 months after the effective date of this AD, remove any previously-installed aluminum cable guards located at right buttock line (RBL) 6.60, between body stations (BS) 947.5 and 967, and relocate the aluminum cable guards to RBL 14.75, between BS 947.5 and 967; and verify that grommets are properly installed at all locations; in accordance with Boeing Alert Service Bulletin 737-27A1164, Revision 1, dated November 14, 1991.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 12, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20576 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 91-NM-65-AD]

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that would have required inspection of certain fuselage frames for cracks, and repair, if necessary. That proposal was prompted by reports of cracked frames. This action revises the proposed rule by adding an inspection of an additional fuselage frame for cracks, and repair, if necessary; and by adding a requirement to perform a one-time visual inspection at certain body stations to detect open pilot holes, and repair, if necessary. This action would also add optional modifications to the frames at certain body stations, which, if accomplished, would terminate certain inspection requirements. The actions specified by this proposed AD are intended to prevent frame failures and consequent rapid decompression of the cabin.

DATES: Comments must be received by September 23, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-65-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Satish Pahuja, Aerospace Engineer, Seattle Aircraft Certification Office, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2781; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 91-NM-65-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 91-NM-65-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 24, 1991 (56 FR 18781). That NPRM would have required inspection of certain fuselage frames for cracks, and repair, if necessary. That NPRM was prompted by reports of cracked frames. That condition, if not corrected, could result in frame failures and consequent rapid decompression of the cabin.

Since the issuance of that NPRM, there have been eight reports of open pilot holes found in the inboard flange and strap of the frames at Body Stations (BS) 760.95 and 783.95. Consequently, Boeing has issued Revision 1 to Service Bulletin 727-53-0197, dated April 9, 1992, which:

(1) Describes procedures to perform a one-time visual inspection of the inner flange of the frames and the strap on the inner flange at Body Stations (BS) 760.95 and 783.95 to detect open pilot holes, and repair, if necessary;

(2) Adds procedures to perform an eddy current inspection of the fastener holes and a close visual inspection of the frame flange and web to detect cracks at BS 825.95 for certain airplane groups;

(3) Adds procedures to perform preventive modifications to the frames at BS 760.95, 783.95, and 848.95, which involves cold working certain fastener holes and installing new straps, fillers, and repair angles; these modifications serve as terminating action for the inspections of these areas; and

(4) Rearranges the list of affected airplanes into five groups. Groups 1 and 2 airplanes are Model 727-100 series airplanes; Groups 3, 4, and 5 airplanes are Model 727-200 series airplanes.

The FAA has reviewed and approved this latest service bulletin revision and has determined that, in order to adequately address the unsafe condition identified as frame failures and consequent rapid decompression of the cabin; the proposed rule must be revised to add the new inspection requirements and the optional terminating modifications described previously. The NPRM is also revised to cite the latest revision of the service bulletin as the appropriate source of service information.

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The proposed rule has also been revised based on comments submitted by the public in response to the NPRM:

In one comment to the NPRM, Boeing requests that the inspections for frame cracks at BS 848.95 be applicable only to Model 727-100 series airplanes, as described in the latest service bulletin revision. The commenter explains that the BS 848.95 frame design on Model 727-200 series airplanes is different from that on Model 727-100 series airplanes. The BS 848.95 frame on Model 727-200 series airplanes has a strap that is bonded to the inner flange of the frame and does not have any fasteners. In addition, there have been no reports of cracks at this frame on Model 727-200 series airplanes. The FAA concurs, and has revised the proposed AD accordingly.

Two commenters request that the proposal be revised to include an alternative that permits oversizing the fasteners by 1/32 inch and extending the repetitive inspection interval from 6,000 to 12,000 flight cycles. Although the commenters provide no justification for this request, the FAA recognizes that oversizing the holes would reduce the probability of crack initiation. The FAA's analysis has revealed that the initial inspection threshold can be increased to 12,000 flight cycles without compromising safety if fastener holes were oversized by 1/32 inch. However, subsequent inspection thresholds cannot be increased. The proposal has been revised to include this alternative.

Two commenters request that the FAA allow credit for inspections accomplished within 3,000 flight cycles prior to the effective date of the AD. However, the commenters do not provide specific data concerning the inspection programs performed prior to the effective date of the AD.

These commenters may wish to provide such details to the FAA for consideration prior to the closing date of the comment period for this supplemental notice. In addition, the phrase "unless accomplished previously" will be retained in the rule to provide credit if an operator has accomplished the required actions prior to the effective date of the final rule for this action.

One commenter requests that the FAA clarify whether the cracked frame or the repair must be inspected following the visual and eddy current inspections required by paragraph A.1.b. of the NPRM. Accordingly, the FAA has revised the supplemental notice to specify that, once the repair (referred to as the "applicable preventive modification") is accomplished, no further inspection of the cracked frame is required.

Paragraph (b) of the supplemental notice has been revised to clarify the procedure for requesting alternative methods of compliance with this AD.

The format of the supplemental notice has been restructured to be consistent with the standard **Federal Register** style.

The economic analysis paragraph, below, has been revised to increase the specified work hours necessary to accomplish the actions required by this proposed AD from 30 (as was cited in the preamble to the NPRM) to 53. The revised estimate accounts for 23 additional work hours needed to accomplish the additional inspection requirements proposed by this supplemental notice.

There are approximately 1,695 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,172 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 53 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,416,380.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 91-NM-65-AD.

Applicability: All Model 727 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of fuselage frames and depressurization of the airplane, accomplish the following:

(a) Prior to the accumulation of 12,000 flight cycles since manufacture, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, as applicable, in accordance with Boeing Service Bulletin 727-53-0197, Revision 1, dated April 9, 1992:

(1) For airplanes identified as Group 1 or 2 in the service bulletin: Perform an eddy current inspection of the fastener holes and a close visual inspection of the frame flange and web to detect cracks at body stations (BS) 760.95, 783.95, 825.95, and 848.95 in accordance with Part I of the Accomplishment Instructions of the service bulletin.

(i) If cracks are found, prior to further flight, install the applicable preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin. Once this modification is installed, no further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(ii) If no cracks are found, prior to further flight, accomplish one of the following three procedures in accordance with Part I, paragraph E. of the Accomplishment Instructions of the service bulletin:

(A) Oversize the hole by 1/32 inch and install an oversized fastener. Prior to the accumulation of 12,000 flight cycles after oversizing the hole, and thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (a)(1) of this AD. If cracks are found, prior to further flight, install the applicable preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by this paragraph.

(B) Install the same size fastener that was removed. Thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (a)(1) of this AD. If cracks are found, prior to further flight, install the applicable preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by this paragraph.

(C) Install the applicable preventive modification in accordance with Part III of the Accomplishment Instructions of the service bulletin.

(2) For airplanes identified as Group 3, 4, or 5 in the service bulletin: Perform an eddy current inspection of the fastener holes and a close visual inspection of the frame flange and web to detect cracks at body stations (BS) 760.95 and 783.95 in accordance with Part II of the Accomplishment Instructions of the service bulletin.

(i) If cracks are found, prior to further flight, install the applicable preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. No further eddy current inspections of the fastener holes or close visual inspections of the frame flange and web are required by this AD.

(ii) If no cracks are found, prior to further flight, accomplish one of the following three procedures in accordance with part II, paragraph E. of the Accomplishment Instructions of the service bulletin:

(A) Oversize the hole by 1/32 inch and install an oversized fastener. Prior to the accumulation of 12,000 flight cycles after oversizing the hole, and thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (a)(2) of this AD. If cracks are found, prior to further flight, install the applicable preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by this paragraph.

(B) Install the same size fastener that was removed. Thereafter at intervals not to exceed 6,000 flight cycles, continue to accomplish the inspections required by paragraph (a)(2) of this AD. If cracks are found, prior to further flight, install the applicable preventive modification in accordance with part IV of the Accomplishment Instructions of the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspections required by this paragraph.

(C) Install the applicable preventive modification in accordance with Part IV of the Accomplishment Instructions of the service bulletin.

(3) For airplanes identified as Group 1, 2, 3, or 4 in the service bulletin: Perform a close visual inspection to detect cracks in the frame gussets at BS 825.95 in accordance with part V (for Group 1 and 2 airplanes) or part VI (for Group 3 and 4 airplanes) of the Accomplishment Instructions of the service bulletin. Repeat these inspections thereafter at intervals not to exceed 6,000 flight cycles.

(i) If cracks are found, prior to further flight, replace the gusset in accordance with Figure 10 (for Groups 1 and 2 airplanes) or Figure 11 (for Groups 3 and 4 airplanes) of the service bulletin.

(ii) Replacement of the gusset in accordance with paragraph (a)(3)(i) of this AD constitutes terminating action for the repetitive inspections required by paragraph (a)(3) of this AD.

(4) For airplanes identified as Group 1, 2, 3, 4, or 5 in the service bulletin: Perform a one-time visual inspection of the inner flange of the frames and the strap on the inner flange at BS 760.95 and 783.95 to detect open pilot holes in accordance with Part VII of the Accomplishment Instructions of the service bulletin.

(i) If open pilot holes are found in the shaded area, prior to further flight, plug the holes in accordance with Part VII, paragraph C., of the service bulletin.

(ii) If open pilot holes are found outside the shaded area, prior to further flight, plug the holes in a manner approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 7, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20577 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-146-AD]

Airworthiness Directives; Boeing Model 757 and 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757 and 767 series airplanes. This proposal would require examination of the smoke detectors in the cargo compartment and equipment cooling systems to determine if the correct caution decal is installed, and replacement of the caution decal, if necessary. This proposal would also require inspection for the installation of proper smoke detector lamps. This proposal is prompted by reports of incorrectly installed caution decals on the equipment cooling and cargo compartment smoke detectors. The actions specified by the proposed AD are intended to prevent a reduction in sensitivity of the smoke detector to a level that would make it incapable of detecting smoke.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-146-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124; or from Autronics Corporation, 314 East Live Oak Avenue, Arcadia, California 91006-5617. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton R. Morris, Aerospace Engineer, ANM-130S, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate, 1601 Lind Avenue, W., Renton, Washington 98055-4056; telephone (206) 227-2794; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-146-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-146-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

Several Autronics Model 2156-204A smoke detectors installed on Boeing Model 757 and 767 series airplanes have been found with the incorrect caution decal affixed to the smoke detector cover. The caution decal lists the replacement lamp part number that must be used in the smoke detector. One operator found Model 2156-204A smoke detectors (which use a 14 volt lamp) with the caution decal used on Model 2156-206, 2156-556A, and 2156-556HS smoke detectors (which use a 28 volt lamp). Incorrect caution decals were found on six equipment cooling and cargo compartment smoke detectors. If a 28 volt lamp is installed in a smoke detector that requires a 14 volt lamp, the sensitivity of the smoke detector is reduced. This condition, if not corrected, could prevent the flight crew from taking timely action in the event of a fire in the lower lobe of the airplane.

The FAA has reviewed and approved Boeing Alert Service Bulletin 757-26A0028, Revision 1, dated April 23, 1992; and Boeing Alert Service Bulletin 767-26A0081, dated February 13, 1992; that describe procedures for examining the smoke detectors of the cargo compartment and equipment cooling systems, repairing discrepancies found in the smoke detectors, and conducting a functional test of the smoke detector system, if necessary.

The FAA has also reviewed and approved Autronics Service Bulletin 2156204A-26-02, dated January 17, 1992, that describes procedures for inspecting the smoke detector cover to determine if the correct caution decal is installed, and inspecting smoke detectors found with incorrect caution decals to ensure that proper lamps are installed.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require examining the smoke detectors in the cargo compartment and equipment cooling systems to determine if the correct caution decal is installed, and replacement of the caution decal, if necessary. In addition, if incorrect caution decals are installed, inspection of smoke detector lamps would be required to determine if the correct lamp is installed, as well as replacement of the lamp, if necessary. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 401 Model 757 and 408 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 Model 757 and 142 Model 767 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $64,845 ($41,415 for Model 757 series airplanes and $23,430 for Model 767 series airplanes). This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 92-NM-146-AD.

Applicability: Model 757 series airplanes, as listed in Boeing Alert Service Bulletin 757-26A0028, Revision 1, dated April 23, 1992; and Model 767 series airplanes, as listed in Boeing Alert Service Bulletin 767-26A0081, dated February 13, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent reduced sensitivity of the smoke detector, accomplish the following:

(a) Within 24 months after the effective date of this AD, examine the smoke detectors in the cargo compartment and equipment cooling systems to determine if the correct caution decal is installed, in accordance with Autronics Service Bulletin 2156204A-26-02, dated January 17, 1992. If the caution decal is incorrect, prior to further flight, apply a correct caution decal over the existing decal and inspect the lamp inside the smoke detector to determine its part number, in accordance with the Autronics Service Bulletin. If the incorrect lamp is installed, prior to further flight, replace it with one having the correct part number.

Note: Boeing Alert Service Bulletin 757-26A0028, Revision 1, dated April 23, 1992; and Boeing Alert Service Bulletin 767-26A0081, dated February 13, 1992; describe procedures for gaining access to the smoke detectors in the cargo compartment and equipment cooling systems.

(b) If it is necessary to remove any smoke detector during the inspection required by paragraph (a) of this AD, immediately after reinstalling the smoke detector, perform a functional test in accordance with Boeing Alert Service Bulletin 757-26A0028, Revision 1, dated April 23, 1992; or Boeing Alert Service Bulletin 767-26A0081, dated February 13, 1992; as applicable.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20578 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-153-AD]

Airworthiness Directives; British Aerospace Model DH/BH/HS/BAe 125 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model DH/BH/HS/BAe 125 series airplanes. This proposal would require installing a placard on the hydraulic box cover, confirming that hydraulic accumulators have been charged with nitrogen; and recharging the accumulators, if necessary. This proposal is prompted by a report indicating that, in the event of hydraulic fluid leaking past the accumulator piston, compression ignition (dieseling) could occur in the accumulators due to an air/hydraulic fluid mixture; this could lead to an explosion. The actions specified by the proposed AD are intended to prevent rupture of the hydraulic accumulator, failure of one or more hydraulic systems, fire in the tailcone area, and possible structural damage to the aft fuselage.

DATES: Comments must be received by October 19, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-153-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from

British Aerospace, PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041-0414. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-153-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-153-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all British Aerospace Model DH/BH/HS/BAe 125 series airplanes. The CAA advises that in the event of hydraulic fluid leaking past the accumulator piston, compression ignition (dieseling) could occur in the accumulators due to an air/hydraulic fluid mixture. Dieseling could lead to an explosion of the air/hydraulic fluid mixture. This condition, if not corrected, could result in rupture of the hydraulic accumulator, failure of one or more hydraulic systems, fire in the tailcone area, and possible structural damage to the aft fuselage.

British Aerospace has issued Service Bulletin 29-89-3269A, dated May 22, 1992, which describes procedures for installing a placard (label) on the hydraulic box cover, confirming that hydraulic accumulators have been charged with nitrogen, and recharging the accumulators, if necessary. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require installing a placard on the hydraulic box cover, confirming that hydraulic accumulators have been charged with nitrogen; and recharging the accumulators, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 452 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost for required parts would be minimal. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $24,860. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace: Docket 92-NM-153-AD.

Applicability: All Model DH/BH/HS/BAe 125 series airplanes, excluding Model BAe 125-1000A, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent rupture of the hydraulic accumulator, failure of one or more hydraulic systems, fire in the tailcone area, and possible structural damage to the aft fuselage, accomplish the following:

(a) Within 6 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD, in accordance with British Aerospace Service Bulletin 29-89-3269A, dated May 22, 1992.

(1) Install a placard on the hydraulic box front cover, stating that accumulators must be charged with nitrogen.

(2) Review the airplane maintenance records to confirm that the hydraulic accumulators are charged with nitrogen. If these records do not indicate that the accumulators are charged with nitrogen, prior to further flight, discharge the accumulators and recharge them with nitrogen.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 18, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20579 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-99-AD]

Airworthiness Directives; de Havilland, Inc., Model DHC-8-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain de Havilland, Inc., Model DHC-8-300 series airplanes, that currently requires repetitive external and internal inspections to detect fuel leaks in the wing dry bay. Such leaking, if not corrected, could result in the accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike. This action would require modification of the wing dry bay which, when accomplished, would constitute terminating action for the requirements of this AD. This action would also add airplanes to the applicability statement of the AD. This proposal is prompted by the development of a modification that eliminates potential sources of combustible vapors within the wing dry bay.

DATES: Comments must be received by October 13, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-99-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Raymond Reinhardt, Aerospace Engineer, Propulsion Branch, ANE-174, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-99-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-99-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On August 28, 1991, the FAA issued AD 91-19-04, Amendment 39-8031 (56 FR 46228, September 11, 1991), to require repetitive external and internal inspections to detect fuel leaks in the wing dry bay. That AD also provides an optional terminating action for the required repetitive inspections. That action was prompted by fuel leaking into the dry bays in board of the wing fuel tanks. Such leaking, if not corrected, could result in the accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike.

Since the issuance of that AD, de Havilland, Inc., has issued Service Bulletin 8-57-20, Revision A, dated January 31, 1992, that describes procedures for installing a modification of the wing dry bay area by introducing fastener, drain, and venting changes. Accomplishment of this modification would provide lightning strike protection by eliminating potential sources of combustible vapors within the wing dry bay. The service bulletin also identifies additional airplanes that may be subject to the unsafe condition.

In addition, de Havilland, Inc., has issued Revision C to Service Bulletin A8-28-16, dated March 30, 1992, which also adds airplanes to the service bulletin effectivity and identifies the modification discussed previously as terminating action for the inspections specified in the service bulletin.

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, classified these service bulletins as mandatory and issued Canadian Airworthiness Directive CF-91-15R2 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has

examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 91-19-04 to continue to require repetitive external and internal inspections to detect fuel leaks in the wing dry bay. The proposed AD would also require accomplishment of the improved modification described previously, which, when accomplished, would constitute terminating action for the requirements of this AD. The actions would be required to be accomplished in accordance with the service bulletins described previously. In addition, the proposed AD would also remove the optional terminating action referenced in the existing AD, since that modification does not provide lightning strike protection, which the new modification provides. The proposed AD would also add airplanes to the applicability of the AD.

The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 136 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. The FAA has confirmed that all 6 airplanes of U.S. registry have been modified with the terminating modification specified in paragraph (d) of this proposal. Based on this information, the proposed AD would impose no cost impact on U.S. operators.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8031(56 FR 46228, September 11, 1991), and by adding a new airworthiness directive (AD), to read as follows:

De Havilland, Inc.: Docket 92-NM-99-AD. Supersedes AD 91-19-04, Amendment 39-8031.

Applicability: Model DHC-8-300 series airplanes; serial numbers 202, 210, 216, 221, 224, 230, 232, 234, 236, 238, 240, 242, 244, 246, 248, 250, 252, 254, 256, 257, 259, 261, 262, 264, 266, 267, 269, 271, 272, 274, 276, 278, 279, 281, 283, 284, 286, 288, and 307; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the accumulation of fuel vapors in the dry bay area, presenting a potential risk of an in-flight explosion in the event of a lightning strike, accomplish the following:

(a) For those airplanes listed in de Havilland Alert Service Bulletin A8-28-16, dated May 30, 1991, accomplish the following:

(1) Within 24 hours after August 26, 1991 (the effective date of AD 91-12-51, Amendment 39-7076), and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in accordance with the service bulletin. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the Accomplishment Instructions of the service bulletin.

(2) Within 24 hours after August 26, 1991, and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with the service bulletin.

(3) Within 7 days after August 26, 1991, unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (a)(2) of this AD; perform an internal visual inspection of the wing dry bay in accordance with the service bulletin.

(i) If no leakage is found as a result of the inspection required by paragraph (a)(3) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (a)(3) of this AD at intervals not to exceed 14 days.

(ii) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the Accomplishment Instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(A) Perform the internal visual inspection of the wing dry bay required by paragraph (a)(3) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(B) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM:

"Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(iii) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the Accomplishment Instructions of the service bulletin.

(iv) Application of a fuel vapor barrier coating in accordance with paragraph D. of the Accomplishment Instructions of the service bulletin constitutes terminating action only for the repetitive internal visual inspections required by paragraph (a)(3)(i) of this AD.

(b) For those airplanes listed in de Havilland Alert Service Bulletin A8-28-16, Revision B, dated June 24, 1991, that are not subject to paragraph (a) of this AD, accomplish the following:

(1) Within 24 hours after September 26, 1991 (the effective date of AD 91-19-04, Amendment 39-8031), and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in accordance with the service bulletin. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the Accomplishment Instructions of the service bulletin.

(2) Within 24 hours after September 26, 1991, and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with the service bulletin.

(3) Within 7 days after September 26, 1991, unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (b)(2) of this AD; perform an internal visual inspection of the wing dry bay in accordance with the service bulletin.

(i) If no leakage is found as a result of the inspection required by paragraph (b)(3) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (b)(3) of this AD at intervals not to exceed 14 days.

(ii) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the Accomplishment Instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(A) Perform the internal visual inspection of the wing dry bay required by paragraph (b)(3) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(B) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM:

"Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(iii) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the Accomplishment Instructions of the service bulletin.

(iv) Application of a fuel vapor barrier coating in accordance with paragraph D. of the Accomplishment Instructions of the service bulletin constitutes terminating action only for the repetitive internal visual inspections required by paragraph (b)(3)(i) of this AD.

(c) For airplane serial numbers 279, 281, 283, 284, 286, 288, and 307, accomplish the following in accordance with de Havilland Alert Service Bulletin A8-28-16, Revision C, dated January 31, 1992:

(1) Within 7 days after the effective date of this AD, and thereafter at intervals not to exceed 300 hours time-in-service or 30 days, whichever occurs first, perform an external visual inspection of the wing dry bay drains for blockage in accordance with the service bulletin. If drain blockage is found, prior to further flight, repair in accordance with paragraph B.1. of the Accomplishment Instructions of the service bulletin.

(2) Within 7 days after the effective date of this AD, and thereafter at daily intervals, perform an external visual inspection of the wing dry bay drains to detect evidence of fuel leaks in accordance with the service bulletin.

(3) Within 7 days after the effective date of this AD, unless accomplished within the previous 14 days; or prior to further flight if evidence of fuel leaks is detected at the wing dry bay drains as a result of the inspection required by paragraph (c)(2) of this AD; perform an internal visual inspection of the wing dry bay in accordance with the service bulletin.

(i) If no leakage is found as a result of the inspection required by paragraph (b)(3) of this AD, repeat the internal visual inspection of the wing dry bay required by paragraph (b)(3) of this AD at intervals not to exceed 14 days.

(ii) If the leakage is within the limits specified in the service bulletin, within 14 days, perform the local re-sealing repair procedure described in paragraph C.7. of the Accomplishment Instructions of the service bulletin. The airplane may be returned to service within this 14-day period, subject to the following conditions:

(A) Perform the internal visual inspection of the wing dry bay required by paragraph (c)(3) of this AD at intervals not to exceed 7 days to ensure that the leakage remains within the specified limit; and

(B) Prior to further flight, incorporate the following into the Limitations Section of the Airplane Flight Manual (AFM), which may be accomplished by including a copy of this airworthiness directive in the AFM:

"Flight is prohibited in areas where lightning or thunderstorms are observed or reported within 5 nautical miles of the flight path, or when the existing weather conditions may reasonably be expected to result in a lightning strike."

(iii) If leakage exceeds the limit specified in the service bulletin, prior to further flight, repair in accordance with paragraph C.7. of the Accomplishment Instructions of the service bulletin.

(iv) Application of a fuel vapor barrier coating in accordance with paragraph D. of the Accomplishment Instructions of the service bulletin constitutes terminating action only for the repetitive internal visual inspections required by paragraph (c)(3)(i) of this AD.

(d) Within 6 months after the effective date of this AD, accomplish Modification No. 8/1776 in accordance with de Havilland Service Bulletin 8-57-20, Revision A, dated January 31, 1992. Accomplishment of this modification constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 13, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20580 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-120-AD]

Airworthiness Directives; de Havilland, Inc., Model DHC-8-100 and DHC-8-300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain de Havilland, Inc., Model DHC-8-100 and -300 series airplanes. This proposal would require inspection of the inboard flaps for free play and roller rattle; re-rigging of the inboard flap system; and, for certain airplanes, repetitive inspections of significant structural items in the vicinity of the re-rigged inner flap. This proposal is prompted by results of tests conducted by the manufacturer which revealed that flap loads may not be evenly distributed to the flap ballscrews. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane.

DATES: Comments must be received by September 23, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-120-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Danko Kramar, Aerospace Engineer, Systems and Equipment Branch, ANE-173, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-120-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-120-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland, Inc., Model DHC-8-100 and -300 series airplanes. TCA advises that results of tests conducted by the manufacturer have revealed that flap loads may not be evenly distributed to the flap ballscrews. Unevenly distributed flap loads could lead to accelerated wear, reduced fatigue life, and possible overloading of certain components of the flap structure. Failure of the flap structure could result in an asymmetric flap condition. These conditions, if not corrected, could result in reduced controllability of the airplane.

De Havilland, Inc., has issued Service Bulletin 8-27-53, dated May 11, 1990, which describes procedures for inspection of the inboard flaps for free play and roller rattle; re-rigging of the inboard flap system; and, for certain airplanes, repetitive inspections of significant structural items in the vicinity of the re-rigged inner flap. Evidence of free play and roller rattle, as defined in the service bulletin, is a desirable condition. If no roller rattle is found as a result of the inboard flaps inspection, this would indicate that the flaps are binding. In this case, it would be necessary to re-rig the inboard flap system sooner than if roller rattle had been evident during the inspection. TCA classified this service bulletin as mandatory and issued Canadian Airworthiness Directive CF-91-34 in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require inspection of the inboard flaps for free play and roller rattle, and re-rigging of the inboard flap system. All airplanes would be required to be re-rigged, but the compliance time for doing so varies according to whether discrepancies are found as a result of the inspection. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This proposal would also require that, after re-rigging is accomplished, repetitive inspections of "significant structural items" in the vicinity of the re-rigged inner flap be conducted on certain airplanes. These inspections would be required to be performed in accordance with the FAA-approved maintenance program, and are related to the aging airplane program that has been established for de Havilland Model DHC-8 series airplanes. This proposed requirement references maintenance program documents that are available to operators and interested persons from the airplane manufacturer through normal distribution channels.

The FAA estimates that 80 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $44,000. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92-NM-120-AD.

Applicability: Model DHC-8-100 and DHC-8-300 series airplanes; serial numbers 3 through 216, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 50 hours time-in-service after the effective date of this AD, inspect the inboard flaps for free play and roller rattle, in accordance with the Accomplishment Instructions, Paragraph A., of de Havilland Service Bulletin 8-27-53, dated May 11, 1990.

Note: Evidence of free play and roller rattle, as defined in the service bulletin, is a desirable condition.

(b) If free play and roller rattle are found as a result of the inspection required by paragraph (a) of this AD: Within 1,000 hours time-in-service after the effective date of this AD, re-rig the flap system, in accordance with the Accomplishment Instructions, Paragraph B., of de Havilland Service Bulletin 8-27-53, dated May 11, 1990. After accomplishment of this procedure, no further action is required by this AD.

(c) If free play and roller rattle are not found as a result of the inspection required by paragraph (a) of this AD: Within 250 hours time-in-service after the effective date of this AD, re-rig the flap system, in accordance with the Accomplishment Instructions, Paragraph B., of de Havilland Service Bulletin 8-27-53, dated May 11, 1990.

(1) If the airplane has accumulated more than 5,000 landings when the flap system is re-rigged in accordance with this paragraph: Within 250 hours time-in-service after the effective date of this AD, begin repetitive inspections of the structurally significant items (SSI) in the vicinity of the re-rigged inner flap (identified in the following table) and repeat at the intervals specified in the applicable FAA-approved maintenance program.

Airplane	Maintenance program	DHC SSI task identification No.
DHC-8 Series 100, All Models....	DHC-8 Series 100 Maintenance Program PSM 1-8-7, Part 2, Airworthiness Limitations Listings.	WF01, WF02, WF03, WF05, WF06, WF07, WF08, WF09, WF10, WF28, WF29, WF30, and WF31.
DHC-8 Series 300, Model 301 ...	DHC-8 Series 300 Maintenance Program PSM 1-83-27, Part 2, Airworthiness Limitations Listings.	WF01, WF02, WF03, WF05, WF06, WF07, WF08, WF09, WF10, WF28, WF29, WF30, and WF31.

(2) If the airplane has accumulated 5,000 or fewer landings when the flap system is re-rigged in accordance with this paragraph, no further action is required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 24, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20581 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-ANE-10]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6 series turbofan engines. This proposal would require a one-time inspection of high pressure turbine (HPT) thermal shields, removal from service of certain HPT thermal shields, and replacement with serviceable parts. This proposal is prompted by a report of an HPT thermal shield separation. The actions specified by the proposed AD are intended to prevent an uncontained engine failure.

DATES: Comments must be received by September 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-10, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Engine Certification Office, ANE-140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5299, telephone (617) 272-5047; fax (617) 270-2412.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 92-ANE-10". The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

Discussion

This proposed AD is applicable to General Electric company (GE) CF6

series turbofan engines. The FAA has received a report that a high pressure turbine (HPT) thermal shield separated from a GE CF6-50 engine. The shield separated due to a stress rupture failure located between the third and fourth seal teeth. A groove or undercut in the catenary wall of the shield reduced the wall thickness to less than the minimum required. Other GE CF6 engine models have the same design. This condition, if not corrected, could result in an uncontained engine failure.

The FAA has reviewed and approved the technical contents of GE CF6-6 Service Bulletin (SB) No. 72-983, Revision 1, dated October 10, 1991, applicable to CF6-6 engines; GE CF6-50 SB No. 72-1021, Revision 1, dated October 10, 1991, applicable to CF6-45 and CF6-50 engines; GE CF6-80A SB No. 72-596, Revision 1, dated October 10, 1991, applicable to CF6-80A engines; and GE CF6-80C2 SB No. 72-565, Revision 1, dated October 10, 1991, applicable to CF6-80C2 engines. These service bulletins describe procedures for the inspection of, and contain removal criteria for, HPT thermal shields. Additionally, these service bulletins list the part numbers and serial numbers of affected HPT thermal shields.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require a one-time inspection of HPT thermal shields, removal from service of certain HPT thermal shields, and replacement with serviceable parts, in accordance with the service bulletins previously described.

There are approximately 560 GE CF6 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that approximately 100 of those engines are installed on aircraft of U.S. registry and would be affected by this proposed AD, that it would take approximately 100 work hours per engine to accomplish the required inspection and replacement actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $50,000 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,550,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 92-ANE-10.

Applicability: General Electric Company (GE) CF6-6/-45/-50/-80A/-80C2 series turbofan engines that contain high pressure turbine (HPT) thermal shields as listed in the applicable service bulletins that are referenced in this AD, installed on but not limited to Airbus A300 and A310, Boeing 747 and 767, and McDonnell Douglas DC-10 and MD-11 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained engine failure, accomplish the following:

(a) Perform either an impression and optical comparitor inspection or an ultrasonic inspection of the HPT thermal shield at the next HPT module exposure, or by December 12, 1995, whichever occurs first, as follows:

(1) For GE CF6-6 engines, in accordance with GE CF6-6 Service Bulletin (SB) No. 72-983, Revision 1, dated October 10, 1991.

(2) For CF6-45/-50 engines, in accordance with GE CF6-50 SB No. 72-1021, Revision 1, dated October 10, 1991.

(3) For CF6-80A engines, in accordance with GE CF6-80A SB No. 72-596, Revision 1, dated October 10, 1991.

(4) For CF6-80C2 engines, in accordance with GE CF6-80C2 SB No. 72-565, Revision 1, dated October 10, 1991.

(b) Remove from service prior to further flight, and replace with a serviceable part, HPT thermal shields that do not meet the service criteria contained in the applicable service bulletins as specified in paragraph (a) of this AD.

(c) For the purpose of this AD, module exposure is defined as the removal of the HPT module from the engine for any reason.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on August 17, 1992.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 92-20587 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-159-AD]

Airworthiness Directives; Short Brothers, PLC, Model SD3-60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3-60 series airplanes. This proposal would require modification of the power supply to the emergency lighting system and a subsequent functional test of the system. This proposal is prompted by reports which indicate that the emergency lighting system will not illuminate automatically if normal airplane power is interrupted or lost. The actions specified by the proposed AD are intended to prevent failure of the emergency lights to illuminate during an emergency.

DATES: Comments must be received by October 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-159-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, PLC, 2011 Crystal Drive, suite 713, Arlington, Virginia 22202-3719. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Hank Jenkins, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-159-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-159-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

The United Kingdom Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Short Brothers Model SD3-60 series airplanes. The CAA advises that there have been reports which indicate that the emergency lighting system will not illuminate automatically if normal airplane power is interrupted or lost. This condition, if not corrected, could result in failure of the emergency lights to illuminate during an emergency.

Short Brothers, PLC, has issued Service Bulletin SD360-33-23, dated June 1, 1992, which describes procedures for modification of the power supply to the emergency lighting system and a subsequent functional test of the system. This modification involves installing three new relays with associated wiring and diodes between circuit breaker 243 and the left and right generator line contractor slave relays to ensure the system will automatically illuminate under all conditions if normal airplane power is interrupted or lost. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the power supply to the emergency lighting system and a subsequent functional test of the system. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 86 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 28 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $132,440. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Short Brothers, PLC: Docket 92-NM-159-AD.

Applicability: Model SD3-60 series airplanes; as listed in Short Brothers Service Bulletin SD360-33-23, dated June 1, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the emergency lights to illuminate during an emergency, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the power supply to the emergency lighting system and perform a functional test of the system, in accordance with paragraph 2.A., part A, B, C, or D, as applicable, of the Accomplishment Instructions of Short Brothers Service Bulletin SD360-33-23, dated June 1, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20565 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-42-AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that would have required modification of the passenger address (PA) system in the aft passenger compartment. That proposal was prompted by systems evaluation test results indicating that messages delivered over the PA system from the forward passenger compartment are not sufficiently audible in the aft passenger compartment. This action revises the proposed rule by requiring additional wiring changes. The actions specified by this proposed AD are intended to prevent inaudible communications between the forward and aft passenger compartments, a situation that could hamper emergency evacuation.

DATES: Comments must be received by September 28, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-42-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-42-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-42-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 23, 1992 (57 FR 14801). That NPRM would have required modification of the passenger address (PA) system in the aft passenger compartment. That NPRM was prompted by systems evaluation test results indicating that messages delivered over the PA system from the forward passenger compartment are not sufficiently audible in the aft passenger compartment. That condition, if not corrected, could result in inaudible communications between the forward and aft passenger compartments, a situation that could hamper emergency evacuation.

Since the issuance of that NPRM, Fokker has issued Revision 1 to Service Bulletin F100-23-017, dated April 3, 1992. The revised service bulletin describes additional wiring changes that were omitted from the original issue of the service bulletin. Accomplishment of these additional procedures is necessary to accurately complete the modification described in the service bulletin. The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, issued a revised Netherlands Airworthiness Directive, BLA 91-071, Issue 2, in order to assure the continued airworthiness of these airplanes in the Netherlands.

The FAA has revised paragraph (a) of the NPRM to cite the latest revision to the service bulletin as the appropriate service information source.

Since this change expands the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that 27 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $2,057 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $76,329. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 92-NM-42-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11339, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inaudible communications between the forward and aft passenger compartments, which could potentially hamper emergency evacuation procedures, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the passenger address system in accordance with Fokker Service Bulletin SBF100-23-017, Revision 1, dated April 3, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 13, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20582 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 92-NM-129-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to McDonnell Douglas Model DC-10 series airplanes. This proposal would require inspections to detect fatigue cracking in the area of the pressure bulkhead at fuselage station Y=595.00, and repair, if necessary. This proposal is prompted by reports of cracking found in the web and tee cap of the pressure bulkhead at fuselage station Y=595.00. The actions specified by the proposed AD are intended to prevent failure of the pressure bulkhead at fuselage station Y=595.00, which could reduce the structural integrity of the airplane.

DATES: Comments must be received by October 9, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-129-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5238; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-129-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-129-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

The FAA has received reports of four instances of cracks found in the web and two instances of cracks found in the tee cap of the pressure bulkhead at fuselage station Y=595.00 on three Model DC-10 series airplanes. One of the cracks was nine inches long. Subsequent investigation revealed that the cracks developed due to fatigue. The affected airplanes had accumulated between 16,549 and 25,315 landings.

Several of the cracks were found during inspections conducted in accordance with AD 92-02-08, Amendment 39-8144, (57 FR 3931, February 3, 1992). That AD requires inspections of various Principal Structural Elements (PSE) in accordance with McDonnell Douglas Report Number L26-012, "DC-10 Supplemental Inspection Document (SID)." (A PSE is defined as structure, the failure of which, if it remained undetected, could lead to reduced structural integrity of the airplane.) The subject area is designated as PSE numbers 53.10.037 and 53.10.038. AD 92-02-08 requires inspection of these PSE's on a sampling basis. Such inspections are conducted under the "fleet leader operator sampling criteria," as specified in the SID, with a fatigue life threshold (N_{th}) as 34,849 landings. The "fatigue life threshold" corresponds to the service life of a PSE "when the probability of failure per flight reaches 10^{-9}," i.e., failure is extremely improbable. Sampling inspections began in September 1989 for those airplanes in the candidate fleet that had accumulated more than 17,424 landings (that is, $N_{th}/2$).

Since cracking in the area of these PSE's has occurred on airplanes that have accumulated less than 17,424 landings, the FAA has determined that additional inspections of this area are warranted on airplanes at the accumulation of 10,000 landings. Such inspections would ensure that fatigue cracking is detected before it reaches a critical length.

Fatigue cracking, if not detected and corrected in a timely manner, could result in failure of the pressure bulkhead at fuselage station Y=595.00, which could reduce the structural integrity of the airplane.

The FAA has reviewed and approved McDonnell Douglas DC-10 Alert Service Bulletin A53-158, dated May 29, 1992, that describes procedures for inspection of the web and tee cap of the pressure bulkhead at fuselage station Y=595.00, and repair, if necessary. Inspection of the affected area will determine whether fatigue cracks exist. A final design modification that will positively address the cracking problem is under development.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspections to detect fatigue cracking of the web and tee cap of the pressure bulkhead at fuselage station Y=595.00, and repair, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

There are approximately 404 McDonnell Douglas Model DC-10 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 231 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $50,820. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 92-NM-129-AD.

Applicability: Model DC-10-10, -15, -30, and -40 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pressure bulkhead at fuselage station Y=595.00, which could reduce the structural integrity of the airplane, accomplish the following:

(a) Unless accomplished within the last 4,350 landings: Prior to the accumulation of 10,000 landings, or within 6 months after the effective date of this AD, whichever occurs later, conduct a visual and eddy current inspection of the fuselage station Y=595.00 pressure bulkhead web and conduct an eddy current inspection of the fuselage station Y=595.00 pressure bulkhead tee cap, PSE 53.10.037 (left side and 53.10.038 (right side), in accordance with McDonnell Douglas Alert Service Bulletin A53-158, dated May 29, 1992.

(1) If any crack is detected that is within the limits specified in McDonnell Douglas Alert Service Bulletin A53-158, dated May 29, 1992, prior to further flight, repair the crack in accordance with that service bulletin. After repair, repeat the inspections at intervals not to exceed 4,350 landings, in a manner approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any crack is detected that exceeds the limits specified in McDonnell Douglas Alert Service Bulletin A53-158, dated May 29, 1992, prior to further flight, repair the crack in a manner approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(3) If no cracking is detected, repeat the inspections at intervals not to exceed 4,350 landings.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 7, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20583 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 92-NM-105-AD]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-10 and (Military) KC-10 series airplanes. This proposal would require visual inspection of the left and right main landing gear (MLG) pistons to detect inward buckling, and replacement of the MLG piston, if necessary. This proposal would also require either modification or replacement of the rebound check valve. This proposal is prompted by several incidents of MLG piston failure. The actions specified by the proposed AD are intended to prevent failure of the MLG piston and subsequent reduced controllability of the airplane during landing.

DATES: Comments must be received by October 5, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-105-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846-0001, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1-L5B. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Maureen Moreland, Aerospace Engineer, Los Angeles Aircraft Certification Office, ANM-121L, FAA Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5238; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92-NM-105-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 92-NM-105-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

Four operators of McDonnell Douglas Model DC-10-10 series airplanes have reported seven incidents of failure of the main landing gear (MLG) piston. One of these incidents resulted in loss of the MLG. The MLG piston failures were reported on Model DC-10-10 series airplanes that had accumulated between 19,000 and 40,000 flight hours. Subsequent investigation of these airplanes revealed that the piston had buckled and failed as a result of excessive rebound chamber pressures. Piston buckling failures, if not corrected, could result in failure of the MLG piston and subsequent reduced controllability of the airplane during landing.

The FAA has reviewed and approved McDonnell Douglas DC-10 Service Bulletin 32-227, Revision 1, dated April 30, 1992, that describes procedures for conducting a visual inspection to detect inward buckling of the left and right MLG pistons, replacement of the MLG pistons, and modification and replacement of the rebound check valves. The modification involves increasing the number of orifices in the rebound check valves from three to nine. This will reduce rebound pressure during piston extension, which will reduce the risk of piston buckling. (The procedures described in this service bulletin differ between airplanes that have been modified in accordance with McDonnell Douglas Service Bulletin 32-60, and those that have not been modified. Service Bulletin 32-60 describes a modification of the MLG shock strut that involves replacement of the rebound check valve.)

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require visual inspection of the left and right main landing gear (MLG) pistons to detect inward buckling, and replacement of the MLG piston, if necessary. This proposal also would require the eventual modification or replacement of the rebound check valve. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 423 McDonnell Douglas Model DC-10 and KC-10 (Military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 195 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $1,205 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $299,325. The total cost figure assumes that no operator has yet accomplished

the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 92–NM–105–AD.

Applicability: Model DC–10–10, –15, –30, –40, and KC–10 (Military) series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG piston and subsequent reduced controllability of the airplane during landing, accomplish the following:

(a) For Model DC–10–10 and DC–10–15 series airplanes that have not been modified in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, dated January 21, 1991: Within two years after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD:

(1) Conduct a visual inspection of the right and left main landing gear (MLG) pistons to detect inward buckling. If inward buckling of the MLG piston is detected, prior to further flight, replace the MLG piston, in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, Revision 1, dated April 30, 1992.

(2) Determine if the rebound check valve previously has been replaced in accordance with McDonnell Douglas Service Bulletin 32–60, Revision 3, dated August 7, 1974; or Revision 4, dated November 6, 1974; or Revision 5, dated May 1, 1975; or Revision 6, dated June 20, 1975; (hereafter referred to as "SB 32–60").

(i) If the rebound check valve has not been replaced in accordance with SB 32–60: Within two years after the effective date of this AD, replace the rebound check valve in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, Revision 1, dated April 30, 1992, or,

(ii) If the rebound check valve has been replaced in accordance with SB 32–60: Within two years after the effective date of this AD, rework or replace the rebound check valve in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, Revision 1, dated April 30, 1992.

(b) For Model DC–10–10 and DC–10–15 series airplanes that have been modified in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, dated January 21, 1991; and for all Model DC–10–30 and DC–10–40 and KC–10 series airplanes: Within five years after the effective date of this AD, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD:

(1) Conduct a visual inspection of the right and left main landing gear (MLG) pistons to detect inward buckling, in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, Revision 1, dated April 30, 1992. If inward buckling of the MLG piston is detected, prior to further flight, replace the MLG piston in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, Revision 1, dated April 30, 1992.

(2) Determine if the rebound check valve previously has been replaced in accordance with SB 32–60.

(i) If the rebound check valve has not been replaced in accordance with SB 32–60: Within five years after the effective date of this AD, replace the rebound check valve in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, Revision 1, dated April 30, 1992, or,

(ii) If the rebound check valve has been replaced in accordance with SB 32–60: Within five years after the effective date of this AD, rework or replace the rebound check valve in accordance with McDonnell Douglas DC–10 Service Bulletin 32–227, Revision 1, dated April 30, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 4, 1992.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20584 Filed 8–26–92; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 92–NM–122–AD]

Airworthiness Directives; SAAB-Scania Models SAAB SF–340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Model SAAB-Scania Models SF–340A and SAAB 340B series airplanes. This proposal would require visual inspections to detect corrosion on the wing upper panel in the fuel tank access door area, and modification of the fuel tank access door area. This proposal is prompted by reports of corrosion caused by moisture and contact between the conductive paint on the fuel tank access door and aircraft structure. The actions specified by the proposed AD are intended to prevent reduction of strength of the upper wing panel and possible fuel leakage.

DATES: Comments must be received by September 14, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–122–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from **ADDRESSES:** The service information referenced in this AD may be obtained from SAAB-Scania AB, Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All comments received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–122–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–122–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket, which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on Model SAAB-Scania Models SF–340A and SAAB 340B series airplanes. The Luftfartsverket advises that cases have been reported of corrosion found on the wing upper panel in the fuel tank access door area. The corrosion was caused by moisture and contact between the conductive paint on the fuel tank access door and wing structure. If uncorrected, this condition could result in the reduction of strength of the wing upper panel and possible fuel leakage.

SAAB-Scania AB has issued SAAB Service Bulletin 340–57–020, Revision 1, dated April 3, 1992, which describes procedures for performing visual inspections to detect corrosion on the wing upper panel in the fuel tank access door area, corrosion removal, surface treatment, and the installation of protection plates on the fuel tank access hole doublers. The Luftfartsverket classified this service bulletin as mandatory and issued Swedish Airworthiness Directives (SAD) No. 1–052 in order to assure the continued airworthiness of these airplanes in Sweden.

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Luftfartsverket has kept the FAA informed of the situation described above. The FAA has examined the findings of the Luftfartsverket, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require visual inspections to detect corrosion on the wing upper panel in the fuel tank access door area, corrosion removal, surface treatment, and the installation of protection plates on the fuel tank access hole doublers. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 172 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 96 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by SAAB-Scania AB at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $908,160. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab-Scania: Docket 92–NM–122–AD.

Applicability: Models SAAB SF–340A and SAAB 340B series airplanes; as listed in SAAB Service Bulletin 340–57–020, Revision 1, dated April 3, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the reduction of strength of the wing upper panel and possible fuel leakage, accomplish the following:

(a) Within 6 months after the effective date of this AD, perform a visual inspection for corrosion on the wing upper panel in the fuel tank access door area, in accordance with SAAB Service Bulletin 340–57–020, Revision 1, dated April 3, 1992.

(1) If corrosion is detected, prior to further flight, blend or grind it out, and measure the thickness of the blended or ground part, in accordance with the service bulletin.

(i) If the thickness of the blended or ground part is within the tolerances specified in the service bulletin, apply surface treatments in accordance with the service bulletin.

(ii) If the blended or ground part is outside the tolerances specified in the service bulletin, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(2) If corrosion is not found, apply surface treatments in accordance with the service bulletin.

(b) Within 6 months after accomplishing paragraph (a) of this AD, perform a second visual inspection to detect corrosion on the wing upper panel in the fuel tank access door area, in accordance with SAAB Service Bulletin 340-57-020, Revision 1, dated April 3, 1992.

(1) If corrosion is detected, prior to further flight, blend or grind it out, and measure the thickness of the blended or ground part, in accordance with the service bulletin.

(i) If the thickness of the blended or ground part is within the tolerances specified in the service bulletin, apply surface treatments in accordance with the service bulletin.

(ii) If the blended or ground part is outside the tolerances specified in the service bulletin, prior to further flight, repair in a manner approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate.

(2) If corrosion is not found, apply surface treatments in accordance with the service bulletin.

(3) Following the visual inspection and repairs required by paragraph (b) of this AD, prior to further flight, install protection plates on all fuel tank access hole doublers, and apply surface treatments, in accordance with the service bulletin.

(c) Installation of protection plates on all fuel tank access hole doublers and application of surface treatments, in accordance with SAAB Service Bulletin 340-57-020, Revision 1, dated April 3, 1992, that is accomplished prior to further flight following the visual inspection required by paragraph (a) of this AD, constitutes terminating action for the visual inspection required by paragraph (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on July 13, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92-20585 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Inspector General

24 CFR Part 2003

[Docket No. R-92-1611; FR-3259-P-01]

RIN 2508-AA07

Implementation of the Privacy Act of 1974

AGENCY: Office of the Inspector General, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement the requirements of the Privacy Act of 1974 in the Office of the Inspector General by creating a new part 2003 to 24 CFR chapter XII. It is intended to supplement the Department's existing Privacy Act regulations at 24 CFR part 16.

DATES: Comment due date: October 26, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Philip A. Kesaris, Deputy Assistant General Counsel, Inspector General and Administrative Proceedings Division, Office of General Counsel, room 10251, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 708-2350. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Background

The Inspector General Act of 1978 (5 U.S.C. App.) was enacted to create independent and objective units to perform various investigative and monitoring functions in several Executive agencies of the Federal Government, including the Department of Housing and Urban Development ("HUD"). This Act confers broad authority upon the Inspector General to conduct independent investigations and audits. Consistent with its statutory independence, the Inspector General of HUD has adopted separate regulations at 24 CFR chapter XII which are applicable only to the Office of Inspector General ("OIG"). Currently, chapter XII concerns such OIG matters as organization, functions, and delegations of authority (part 2000), availability of information to the public (part 2002), and production in response to subpoenas or demands of courts or other authorities (part 2004). See 57 FR 2225, January 21, 1992.

The Inspector General of HUD proposes to establish a new part 2003 to chapter XII, for the purpose of implementing the requirements of the Privacy Act of 1974 (5. U.S.C. 552a) in the OIG. This new part 2003 generally incorporates the Department's existing Privacy Act regulations (24 CFR part 16) with some modifications of a mostly technical nature.

However, §§ 2003.8 (General Exemptions) and 2003.9 (Specific Exemptions) of the proposed rule constitute a significant revision to the OIG's exemption regulations currently found at 24 CFR 16.14 and 16.5. The proposed §§ 2003.8 and 2003.9 clarify the scope of the exemptions applicable to the OIG system of records entitled "Investigative Files of the Office of Inspector General" by providing reasons for exemptions from particular subsections of the Privacy Act that are more detailed than those currently found at 24 CFR 16.14 and 16.15. In addition, the proposed §§ 2003.8 and 2003.9 set forth the exemptions that are applicable to two new OIG systems of records, "Hotline Complaint Files of the Office of Inspector General" and "Name Indices System of the Office of Inspector General."

Other Matters

Environmental review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act of 1969. Accordingly, a Finding of No Significant Impact is not required.

Impact on Economy

This proposed rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities because there are no anti-competitive discriminatory aspects of the proposed rule with regard to small entities nor are there any unusual procedures that would need to be complied with by small entities.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family, maintenance, and general well-being, and, thus, is not subject to review under the Order.

Regulatory Agenda

This proposed rule did not appear in the Department's Semiannual Agenda of Regulations published on April 27, 1992 (57 FR 16804).

List of Subjects in 24 CFR Part 2003

Privacy Act of 1974.

Accordingly, 24 CFR Chapter XII is proposed to be amended by adding a new part 2003, to read as follows:

PART 2003—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

2003.1 Scope of the part and applicability of other HUD regulations.
2003.2 Definitions.
2003.3 Requests for records.
2003.4 Officials to receive requests and inquiries.
2003.5 Initial denial of access to records.
2003.6 Disclosure of a record to a person other than the individual to whom it pertains.
2003.7 Authority to make law enforcement-related requests for records maintained by other agencies.
2003.8 General Exemptions.
2003.9 Specific Exemptions.

Authority: 5 U.S.C. 552a; 5 U.S.C. App. (Inspector General Act of 1978); 42 U.S.C. 3535(d).

§ 2003.1 Scope of the part and applicability of other HUD regulations.

(a) *General.* This part contains the regulations of the Office of Inspector General ("OIG") implementing the Privacy Act of 1974 (5 U.S.C. 552a). The regulations inform the public that the Inspector General has the responsibility for carrying out the requirements of the Privacy Act and for issuing internal OIG orders and directives in connection with the Privacy Act. These regulations apply to all records that are contained in systems of records maintained by the OIG and that are retrieved by an individual's name or personal identifier.

(b) *Applicability of part 16.* In addition to these regulations, the provisions of 24 CFR part 16 apply to the OIG, except that appendix A to part 16 is not applicable. The provisions of this part shall govern in the event of any conflict with the provisions of part 16.

§ 2003.2 Definitions.

Certain terms used in 24 CFR part 16 have the following meanings for purposes of this part:

Department. The term "Department," as used in 24 CFR part 16, means the OIG for purposes of this part, except that, as used in §§ 16.1(d), 16.11(b)(1), (3), and (4) and 16.12(e), the term means the Department of Housing and Urban Development.

Privacy Act Officer. The term "Privacy Act Officer," as used in 24 CFR part 16, means the Assistant Inspectors General described in § 2000.5 of this part.

Privacy Appeals Officer. The term "Privacy Appeals Officer," as used in 24 CFR part 16, means the Inspector General for purposes of this part. The Secretary of HUD has delegated to the Inspector General the authority to act as the Privacy Appeals Officer for denials of requests for records maintained by the OIG.

§ 2003.3 Requests for records.

(a) A request from an individual for an OIG record about that individual which is not contained in an OIG system of records will be considered to be a Freedom of Information Act (FOIA) request and will be processed under 24 CFR part 2002.

(b) A request from an individual for an OIG record about that individual which is contained in an OIG system of records will be processed under both the Privacy Act and the FOIA in order to ensure maximum access under both statutes. This practice will be undertaken regardless of how an individual characterizes the request.

(1) The procedures for inquiries and requirements for access to records under the Privacy Act are more specifically set forth in 24 CFR part 16, except that appendix A to part 16 does not apply to the OIG.

(2) An individual will not be required to state a reason or otherwise justify his or her request for access to a record.

§ 2003.4 Officials to receive requests and inquiries.

Officials to receive requests and inquiries for access to, or correction of, records in OIG systems of records are the Privacy Act Officers described in § 2003.2 of this part. Written requests may be addressed to the appropriate Privacy Act Officer at: Office of Inspector General, Department of Housing and Urban Development, Washington, DC 20410, or to a particular Regional Office listed in § 2000.6(d) of this part, for referral to the appropriate Privacy Act Officer.

§ 2003.5 Initial denial of access to records.

(a) Access by an individual to a record about that individual which is contained in an OIG system of records will be denied only upon a determination by the Privacy Act Officer that:

(1) The record was compiled in reasonable anticipation of a civil action or proceeding; or the record is subject to a Privacy Act exemption under § 2003.8 or § 2003.9 of this part; and

(2) The record is also subject to a FOIA exemption under § 2002.21(b) of this part.

(b) If a request is partially denied, any portions of the responsive record that can be reasonably segregated will be provided to the individual after election

of those portions determined to be exempt.

(c) The provisions of 24 CFR 16.6(b) and 16.7, concerning notification of an initial denial of access and administrative review of the initial denial, apply to the OIG, except that:

(1) The final determination of the Inspector General, as Privacy Appeals Office for the OIG, will be in writing and will constitute final action of the Department on a request for access to a record in an OIG system of records; and

(2) If the denial of the request is in whole or in part upheld, the final determination of the Inspector General will include notice of the right to judicial review.

§ 2003.6 Disclosure of a record to a person other than the individual to whom it pertains.

(a) The OIG may disclose an individual's record to a person other than the individual to whom the record pertains in the following instances:

(1) Upon written request by the individual, including authorization under 24 CFR 16.5(e);

(2) With the prior written consent of the individual;

(3) To a parent or legal guardian of the individual under 5 U.S.C. 552a(h); or

(4) When permitted by the provisions of 5 U.S.C. 552a(b)(1) through (12).

§ 2003.7 Authority to make law enforcement-related requests for records maintained by other agencies.

(a) The Inspector General is authorized by written delegation from the Secretary of HUD and under the Inspector General Act to make written requests under 5 U.S.C. 552a(b)(7) for transfer of records maintained by other agencies which are necessary to carry out an authorized law enforcement activity under the Inspector General Act.

(b) The Inspector General delegates the authority under paragraph (a) of this section to the following OIG officials:

(1) Deputy Inspector General;

(2) Assistant Inspector General for Audit;

(3) Assistant Inspector General for Investigation; and

(4) Assistant Inspector General for Management and Policy.

(c) The officials listed in paragraph (b) of this section may not redelegate the authority described in paragraph (a) of this section.

§ 2003.8 General exemptions.

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General," and "Name Indices System of the Office of Inspector General" consist, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in these systems falls within the scope of Exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment of correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(5) From subsection (e)(2), because in a law enforcement investigation it is usually counterproductive to collect information to the greatest extent practicable directly from the subject thereof. It is not always feasible to rely upon the subject of an investigation as a source for information which may implicate him or her in illegal activities. In addition, collecting information directly from the subject could seriously compromise an investigation by prematurely revealing its nature and scope, or could provide the subject with an opportunity to conceal criminal activities, or intimidate potential sources, in order to avoid apprehension.

(6) From subsection (e)(3), because providing such notice to the subject of an investigation, or to other individual sources, could seriously compromise the investigation by prematurely revealing its nature and scope, or could inhibit cooperation, permit the subject to evade apprehension, or cause interference with undercover activities.

§ 2003.9 Specific exemptions.

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General" and "Name Indices System of the Office of Inspector General" consist, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

(1) From subsection (c)(3), because release of an accounting of disclosures to an individual who is the subject of an investigation could reveal the nature and scope of the investigation and could result in the altering or destruction of evidence, improper influencing of witnesses, and other evasive actions that could impede or compromise the investigation.

(2) From subsection (d)(1), because release of investigative records to an individual who is the subject of an investigation could interfere with pending or prospective law enforcement proceedings, constitute an unwarranted invasion of the personal privacy of third parties, reveal the identity of confidential sources, or reveal sensitive investigative techniques and procedures.

(3) From subsection (d)(2), because amendment or correction of investigative records could interfere with pending or prospective law enforcement proceedings, or could impose an impossible administrative and investigative burden by requiring the OIG to continuously retrograde its investigations attempting to resolve questions of accuracy, relevance, timeliness and completeness.

(4) From subsection (e)(1), because it is often impossible to determine relevance or necessity of information in the early stages of an investigation. The value of such information is a question of judgment and timing; what appears relevant and necessary when collected may ultimately be evaluated and viewed as irrelevant and unnecessary to an investigation. In addition, the OIG may obtain information concerning the violation of laws other than those within the scope of its jurisdiction. In the interest of effective law enforcement, the OIG should retain this information because it may aid in establishing patterns of unlawful activity and provide leads for other law enforcement agencies. Further, in obtaining evidence during an investigation, information may be provided to the OIG which relates to matters incidental to the main purpose of the investigation but which may be pertinent to the investigative jurisdiction of another agency. Such information cannot readily be identified.

(b) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General" and "Name Indices System of the Office of Inspector General" consist in part of investigatory material compiled by the OIG for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems falls within the coverage of Exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are exempt from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: August 21, 1992.

John J. Connors,

Deputy Inspector General.

[FR Doc. 92-20562 Filed 8-26-92; 8:45 am]

BILLING CODE 4210-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 571

[Docket No. 92-46]

Unpaid Freight Charges

AGENCY: Federal Maritime Commission.

ACTION: Proposed interpretive rule.

SUMMARY: The Federal Maritime Commission proposes to add to its regulations in "Interpretations and Statements of Policy" a statement that the Commission does not have jurisdiction to adjudicate a complaint brought by an ocean common carrier against a shipper over unpaid ocean freight bills. Under this proposed jurisdictional ruling, such a complaint would be required to be brought in an appropriate court, similar to a suit for breach of a service contract. All pending Commission proceedings involving such complaints will be held in abeyance pending final action in this proceeding.

DATES: Comments due September 28, 1992.

ADDRESSES: Comments (original and 15 copies) are to be submitted to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573-0001, (202) 523-5740.

SUPPLEMENTARY INFORMATION:

Background

In recent years, a series of complaints has been filed with the Federal Maritime Commission ("FMC" or "Commission") by ocean common carriers seeking to recover unpaid freight from shippers. These complaints have been brought under section 10(a)(1) of the Shipping Act of 1984 ("1984 Act"), which provides that no person may * * *

* * * knowingly and wilfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable * * *.

46 U.S.C. app. 1709(a)(1).

As described in more detail below, the passage of the 1984 Act removed a long-standing procedural barrier to complaints of any kind against shippers. The subsequent carrier freight collection complaints typically have not been defended by the shipper respondents, and default judgments have resulted. However, an issue exists as to whether the Commission has substantive (as distinguished from procedural) jurisdiction over such complaints. As a general matter, the Commission may raise at any time an issue regarding its own jurisdiction, if it does so in an appropriate manner. *See, e.g., Judice* v. *Vail*, 430 U.S. 327, 331 (1977); *Liberty Mutual Insurance Co.* v. *Wetzel*, 414 U.S. 737, 740 (1976). In order to give interested persons a full opportunity to state their views, the Commission is raising this jurisdictional issue in the form of a proposed interpretive rule. Pending receipt of comments and issuance of a final rule, all current FMC proceedings involving unpaid freight allegations under section 10(a)(1) have been placed in hiatus.

A. Procedural History

Section 22 of the old Shipping Act, 1916 ("1916 Act"), allowed complaints that alleged violations by three specified classes: carriers and "other persons subject to the Act," which section 1 of the Act defined to mean freight forwarders and terminal operators. 46 U.S.C. 801, 821 (1982). Originally, the substantive prohibitions of the 1916 Act did not include shippers.

In 1936, section 16 of the 1916 Act was expanded to include a specific proscription against certain behavior by shippers.[1] A new initial paragraph stated:

That it shall be unlawful for any shipper, consignor, consignee, forwarder, broker, or other person, or any officer, agent, or employee thereof, knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, or by any other unjust or unfair device or means to obtain or attempt to obtain transportation by water for property at less than the rates or charges which would otherwise be applicable.

Id. 815 (1982). However, no change was made in section 22 regarding private complaints. Shipper transgressions against the new provision of section 16 created only a public remedy, *i.e.*, criminal penalties which were to be sought in the courts by the Department of Justice ("DOJ").[2] both before [3] and

[1] Pub. L. No. 74-685, 49 Stat. 1516.

[2] Section 16 originally stated: "Whoever violates any provision of this section shall be guilty of a misdemeanor punishable by a fine of not more than $5,000 for each offense." Enforcement actions could be initiated either by DOJ originally, *United States* v. *American Union Transport, Inc.*, 232 F.Supp. 700 (D.N.J. 1962), or by an initial investigation by the Commission and a later referral to DOJ, *e.g., In Re: Rubin, Rubin and Rubin Corp.*, 6 F.M.B. 235 (1961).

[3] *Prince Line, Ltd.* v. *American Paper Products, Inc.*, 55 F.2d 1053, 1056 (2d Cir. 1932).

after [4] the 1936 amendment to section 16, complaints by carriers seeking reparations from shippers were held to be unauthorized by the 1916 Act. This applied to any private reparations complaint against a shipper, not just carrier complaints seeking reparations for unpaid freight; a shipper simply was not liable for reparations under the old 1916 Act.

In 1972, Congress decriminalized the provision of section 16 addressed to shippers, changing the criminal penalty to a civil penalty in the same amount.[5] Enforcement authority remained with DOJ until 1979, when the penalties were increased substantially and the Commission was given authority to assess or compromise penalties in the context of a Commission investigation.[6] Nonetheless, no provision was made for private reparations actions against shippers. This did not occur until passage of the 1984 Act, section 11(a) of which authorizes complaints for reparations for any injury caused by any violation of the Act, 46 U.S.C. app. 1710(a), without the former restriction to violations by carriers, terminal operators and freight forwarders. A few years after the enactment of this new complaint provision, FMC Docket No. 89-10, *Safbank Line Limited* v. *The Hairlox Co., Inc.*, began a steady stream of carrier actions before the Commission seeking to collect freight charges from shippers.[7]

The 1984 Act freight collection cases have been filed under section 10(a)(1), but that part of the new Shipping Act simply carried forward in essentially unchanged language, without comment of any kind from Congress,[8] the initial paragraph added in 1936 to section 16. Also, there is no indication in the legislative history or elsewhere that Congress meant to expand the Commission's substantive jurisdiction in enacting section 11(a)'s complaint-filing provision.[9] Thus, the legislative history and the subsequent case law interpretations of the original section 16, initial paragraph, are the best available guides to the proper scope of section 10(a)(1).

B. Substantive Jurisdiction

The addition in 1936 of the shipper prohibitions to section 16 was urged by carriers, which complained that deceptive practices by shippers during the first twenty years of the 1916 Act could not be reached under the Act as it then stood.[10] The House Committee stated that the amendment was meant to protect carriers (and honest shippers) from dishonest shippers seeking to cheat on their freight bills:

> The purpose of this legislation is to extend to the common carriers by water protection similar to that extended to common carriers by land against the use of false billing, false labeling, false or misclassification of freight, or other means or devices used by shippers for the purpose of securing from the carrier a lower rate for the transportation of property by water than that currently in force by the carrier.

False Billing, H.R. Rep. No. 2205, 74th Cong., 2d Sess. 1 (1936). An important benefit of the legislation, in the carriers' view, was that such shipper practices were made subject to a uniform federal standard rather than varying state fraud laws, which were viewed as an unsatisfactory deterrent.[11]

However, the carriers did not also seek to expand the jurisdiction of the Commission's predecessor (at the time, the United States Shipping Board Bureau) to include private complaints seeking recovery of unpaid freight. It appears that the carriers expected to continue to pursue unpaid freight through civil litigation in the courts, while any underlying deception or concealment would be subject to a separate (and perhaps parallel) criminal prosecution under the new provision of section 16. One of the carrier witnesses before the House Committee had stated:

> Insofar as it lies in our power, we, of course, for purely selfish reasons wish to get our proper charges. But Congress has not gone far enough. It must make it a misdemeanor on the part of the shipper to indulge in those practices forbidden in that act. Naturally, any time that we catch a shipper using false billing, we call upon him for the additional freight charges, but there is no punishment to the man involved.

False Billing, Hearings on S. 3467 before the House Committee on Merchant Marine and Fisheries, 74th Cong., 2d Sess. 5 (1936) (testimony of Daniel H. Walsh, General Secretary, Gulf Associated Freight Conferences). In recommending passage of the bill, the House Committee quoted a similar statement from the same witness that, with respect to existing cases of shippers obtaining transportation at improperly low rates, carriers had "already collected certain amounts [of the charges underpaid] and will enforce the collection of the existing amount due if the assets of offending shipper permit." *False Billing*, H.R. Rep. No. 2598, 74th Cong., 2d Sess. 3 (1936).[12]

There is no indication in the legislative history of the 1936 amendment that a simple failure by a shipper to pay ocean freight charges was to be considered a chargeable offense under the original criminal penalties attached to section 16, or, later, a violation subject to civil penalties under the 1972 and 1979 amendments. The hearings and the House Reports were concerned exclusively with active subterfuges, especially false declarations and false weighing. H.R. Rep. No. 2598 at 2-4; H.R. Rep. No. 2205 at 1-2; Hearings at 2-3, 5, 16-18, 21-23.[13] For the most part, administration of the statute by the Commission and its predecessors was similarly focused. In *Pacific Far East Lines—Alleged Rebates*, 11 F.M.C. 357 (1968), *aff'd*, 410 F.2d 257 (D.C. Cir. 1969), the Commission stated that section 16 was "aimed at protecting competing shippers and carriers from shippers who attempt to obtain (or succeed in obtaining) transportation at reduced rates through devices or representations involving fraud, falsehood, or concealment." 11 F.M.C. at 362. The Commission further advised that the statute's secondary reference to "unjust or unfair device or means" did not broaden its scope:

> These words have a restrictive meaning derived from their proximity to the words "false billing," etc. * * * Applying the principles of *ejusdem generis*, the Commission and the courts have uniformly held that the act forbidden must be similar to those specifically proscribed in order to be an unjust or unfair device or means. In other words, the unjust or unfair device or means must partake of some element of falsification, deception, fraud, or concealment, in order to satisfy the legal requirements of these subsections.

Id. at 364 (footnotes omitted).[14]

[4] *Maritime Service Corp.* v. *Plozo Provision Co., Inc.*, 13 S.R.R. 524 (1973).

[5] Pub. L. No. 92-416, 86 Sta. 653.

[6] Pub. L. No. 96-25, 93 Stat. 71.

[7] The current 1916 Act, which applies to the domestic offshore trades, continues to limit complaints to those against carriers; freight forwarders and terminal operators. 46 U.S.C. app. 801, 821. This proposed interpretive rule thus concerns only the Commission's foreign commerce jurisdiction under the 1984 Act.

[8] See H.R. Rep. No. 53 (Part I), 98th Cong., 1st Sess. 35-36 (1983), reprinted in 1984 U.S. Code Cong. & Admin. News 167, 200-201.

[9] See n.12 *supra*, at 36-37.

[10] *False Billing*, Hearings on S. 3467 before the House Committee on Merchant Marine and Fisheries, 74th Cong., 2d Sess. 5 (1936).

[11] N. 14 *supra*, at 2.

[12] The House Committee issued two reports on the bill.

[13] In order to show what practices were targeted by the new statute, the Committee quoted extensively from "war story" testimony by a witness who had been employed at a bureau established by several carriers to police against false description of merchandise and incorrect weights. H.R. Rep. No. 2598 at 4.

[14] *Accord, United States* v. *Open Bulk Carriers*, 727 F.2d 1061, 1064-65 (11th Cir. 1984); *Levatino & Sons, Inc.* v. *Prudential-Grace Lines*, 16 F.M.C. 82, 113 (1974).

Capitol Transportation, Inc. v. *United States*, 612 F.2d 1312 (1st Cir. 1979), presented facts bearing some similarities to the current freight collection complaints. The Commission found that Capitol Transportation, Inc. ("Capitol"), and seven other non-vessel-operating common carriers had violated section 16 by refusing to pay demurrage charges billed to them in their capacity as cargo consignees by various complaining ocean carriers.[15] Capitol had continually asserted baseless defenses to longstanding demurrage claims even after its own auditor had verified the amounts of the claims, conspired with the other respondents to boycott the ocean carrier's collection agent and to seek illegal concessions, and raised other objections to paying its bills that the Commission found were essentially tactical maneuvers.[16]

On appeal, Capitol cited the Commission's *Pacific Far East Lines* decision and argued that section 16 did not apply to an open refusal to pay demurrage because the statute required fraud or concealment. The First Circuit noted that the Commission had rejected that proposition in its decision; saying without elaboration that "section 16 is not so limited." [17] The court then stated:

> If by this the Commission meant to say that a carrier's mere stubborn but good faith refusal to pay a disputed rate or charge constitutes an "unjust or unfair device or means," we disagree. The language of Section 16, language which speaks in terms of both wilfull and knowing conduct and false billing, false classification, false weighing and other unjust or unfair mechanisms, cannot be read so broadly.

612 F.2d at 1323. The court proceeded to accept the Commission's finding that, in any event, fraud or concealment was established:

> * * * The Commission could properly find on this record that Capitol's refusal to pay had never been based upon a good faith legal defense, but simply reflected a calculated judgment to fight [the collection agent] to the end, forcing it to pay in blood, sweat and treasure for every penny eventually collected. On the merits of the demurrage claim, Capitol failed to present a legal defense of any substance, and belatedly raised a variety of every-changing contentions after the time for discovery or hearing was over. Those facts, coupled with earlier correspondence indicating an adamant and legally unexplained resistance to the notion of [the collection agent's] centralized demurrage billing procedures entitled the Commission to conclude that Capitol was not only knowing and wilfull in its refusal to pay, but that its policies, conducted as they were in bad faith, were tantamount to an unjust or unfair means of obtaining transportation by water at lower than applicable rates. Although it would not be proper to extend this rationale to cases involving refusal to pay based on honest differences, we think the conduct reflected in the present record was sufficiently egregious to support the Commission's finding that the requisite element of fraud or concealment was here established. * * * A calculated effort in bad faith to avoid the payment of demurrage legitimately owing would, if successful, allow shippers and consigneees to accomplish what Section 16 was intended to prevent—the receipt of carrier service at less than applicable rates and at less than rates charged to competitors.

Id. at 1323-24 (emphasis supplied). However, the court ended this discussion by warning that Capitol's conduct, "egregious" though it was, "undoubtedly nears the outer limits of section 16 * * *." *Id.* at 1324.

c. The Recent Collection Complaints

Against that backdrop, the freight collection complaints filed under section 10(a)(1) over the last three years raise serious jurisdictional concerns. These complaints have not alleged the bedrock section 10(a)(1) requirements of fraud, deception, misclassification, false weighing or similar malpractices. Instead, they have typically pleaded only that the respondent shipper failed to pay ocean freight, that this by itself amounted to a violation of section 10(a)(1), and that reparations should be awarded in the amount of the unpaid freight. Based on the relevant case law and especially the legislative history of the 1936 amendment, it appears, however, that the act of failing to pay a freight bill is not, in and of itself, an "unjust or unfair device or means" within the meaning of that phrase intended by Congress. Sound policy reasons may exist as to why carrier complaints seeking to collect unpaid freight from a shipper should be brought under the Commission's jurisdiction. Under present law, however, it appears that such complaints do not state a case under section 10(a)(1) of the 1984 Act and should henceforth return to the courts.[18]

As previously noted, the shipper respondent in the recent freight collection cases has often failed to answer the complaint or to respond to procedural orders from the administrative law judge, and default judgments have been entered. *E.g., Deppe Line GmbH & Co.* v. *Total Tank Distribution Inc.*, 25 S.R.R. 837, *administratively final*, No. 89-28 (F.M.C. Apr. 9, 1990); *Safbank Line Limited* v. *Royale International Transport, Inc.*, 25 S.R.R. 951, *administratively final*, No. 90-5 (F.M.C. June 6, 1990). However, when the shipper has defended, uncertainties as to Commission jurisdiction have been clearly present. *See China Ocean Shipping Co.* v. *DMV Ridgeview, Inc., motion to dismiss granted*, 26 S.R.R. 50 (A.L.J.), *administratively final*, No. 91-37 (F.M.C. Dec. 23, 1991), *reconsideration denied on other grounds*, 26 S.R.R. 200 (1992). As a basic principle of administrative law, if the Commission cannot regulate freight disputes under the terms of the 1984 Act, it may not do so by reference to agency rules of procedure. Substantive jurisdiction under the 1984 Act is created by Congress in writing the statute and delegating administrative authority to the Commission; it is not created as a result of procedural failings before the Commission by private persons. It is, after all, at least theoretically possible that a shipper might ignore a freight collection complaint because it believes that the Commission has no jurisdiction over the matter. By operation of Commission Rule 64(a), 46 CFR 502.64(a), silence on the part of a shipper respondent to a complaint might mean that the shipper can be deemed to have admitted that it failed to pay lawfully assessed ocean freight charges, but a rule of practice cannot create Commission authority to give legal significance—in the form of a reparations award—to such an admission if no such authority exists in the Shipping Act itself.

Because carrier complaints seeking reparations for unpaid freight continue to be filed regularly with the commission, the Commission believes that it would provide useful guidance for the ocean shipping industry to promulgate an interpretive rule which, for the reasons set forth above, states the FMC's view that section 10(a)(1) does not apply to such complaints.

[15] The Commission's decision is reported at 21 F.M.C. 194, *reconsideration denied*, 21 F.M.C. 561 (1978), under the title *Sea-Land Service, Inc.* v. *Acme Fast Freight of Puerto Rico*. The Commission could hear this complaint under the 1916 Act because the respondents were carriers as well as cargo consignees and thus covered by former section 22.

[16] See 21 F.M.C. at 204-206.

[17] 21 F.M.C. at 196 (footnote omitted).

[18] The precedent of *Capitol Transportation* makes it theoretically possible for the Commission to assert section 10(a)(1) jurisdiction over situations where overt failure to pay freight is part of a larger pattern that includes covert attempts to subvert the tariff system and cause the carrier harm compounded beyond the owed freight charges. However, no complaints similar to *Capitol Transportation* have been brought before the Commission in the intervening thirteen years, and the case may turn out to be *sui generis*. There is certainly little apparent resemblance between the wide-ranging conspiracy to avoid demurrage in *Capitol Transportation* and the one-count, single-respondent freight collection complaints now being filed under section 10(a)(1).

Interested members of the public are invited to comment on the legal analysis set forth above.

List of Subjects in 46 CFR Part 571

Administrative practice and procedure, Antitrust, Maritime carriers.

Therefore, pursuant to 5 U.S.C. 553 and section 17 of the Shipping Act, 1984, 46 U.S.C. app. 1716, part 571 of title 46, Code of Federal Regulations, is proposed to be amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1706, 1707, 1709 and 1716.

2. Part 571 is amended by adding a new § 571.2 to read as follows:

§ 571.2 Interpretation of Shipping Act of 1984—unpaid ocean freight charges.

Section 10(a)(1) of the Shipping Act of 1984 states that it is unlawful for any person to obtain or attempt to obtain ocean transportation for property at less than the properly applicable rates, by any "unjust or unfair device or means." The Federal Maritime Commission interprets this provision as not applying to a simple failure by a shipper to pay ocean freight bills for transportation rendered by a common carrier, in the absence of additional conduct constituting an unjust or unfair device or means, such as false measurement or false commodity description. By the Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 92-20529 Filed 8-26-92; 8:45 am]
BILLING CODE 6730-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1201 and 1262

[Ex Parte No. 512]

Uniform System of Records of Property Changes for Railroad Companies

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is seeking public comment on a proposal to eliminate 49 CFR part 1262, Uniform System of Record of Property Changes for Railroad Companies, from the Code of Federal Regulations. Because the instructions contained in 49 CFR part 1201 provide sufficient guidelines to support accounting entries in the property accounts, it is no longer necessary to require railroads to maintain records in the format specified in part 1262. The requirement for submission of property data in the Annual Report Form R-1 would still exist and is sufficient for our needs. We also propose to delete the reference to part 1262 contained in part 1201 Instruction 1(g).

DATES: We propose that this action would be effective for the reporting year beginning January 1, 1993. Comments are due by September 28, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 512 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 927-6187 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To receive a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone (202) 927-7428. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Initial Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603, we are required to examine the impact of a proposed action on small entities. We preliminarily conclude that the action proposed in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the proposed action is to reduce regulation. No new reporting or other requirements are imposed, directly or indirectly, on small entities. The impact, if any, will be to reduce the amount of records that must be kept by railroad companies.

List of Subjects in 49 CFR

Part 1201

Railroads, Reporting and recordkeeping requirements, Uniform system of accounts.

Part 1262

Railroads, Reporting and recordkeeping requirements.

Decided: August 18, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Anne K. Quinlan,
Acting Secretary.

For the reasons set forth in the preamble, title 49, chapter X, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1201—RAILROAD COMPANIES

1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 553 and 49 U.S.C. 11166.

Subpart A—[Amended]

2. In subpart A under the heading "General Instructions," Instruction 1-3 is amended by removing paragraph (g).

PART 1261—[REMOVED]

3. Under the authority 49 U.S.C. 10784, part 1262 is proposed to be removed.

[FR Doc. 92-20603 Filed 8-26-92; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 920810-2210]

RIN 0648-AE23

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS) NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues this proposed rule to implement Amendment 6 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would: Allow the earned income requirement for a commercial vessel permit for king or Spanish mackerel to be met in any one of the 3 years preceding the permit application; change the fishing year for recreational bag limits to the calendar year; remove the provisions for reducing a recreational bag limit to zero during a fishing year; increase the minimum size limit for king mackerel to 20 inches (50.8 cm); implement commercial vessel trip limits for Atlantic migratory group Spanish mackerel; and make corrections and clarifications to the regulations to conform them to current usage. In addition, Amendment 6 would: Revise the problems and objectives of the FMP; specify periods for rebuilding overfished stocks; change the required frequency of stock assessments from annual to biennial; add to the management measures that may be implemented or modified by the framework procedure; and provide for the establishment of separate subgroups and allocations of the Gulf migratory group of king mackerel, divided at the Florida/Alabama boundary, when the assessment panel is able to provide ranges of acceptable biological catch for the subgroups. This rule and Amendment 6 are intended to protect the coastal migratory pelagic resources from overfishing, continue stock rebuilding programs of king and Spanish mackerel while allowing catches by important recreational and commercial fisheries dependent on them, improve management of the resources, and clarify the regulations.

DATES: Written comments must be received on or before October 8, 1992.

ADDRESSES: Copies of Amendment 6, which includes an environmental assessment/regulatory impact review/initial regulatory flexibility analysis may be obtained from the Gulf of Mexico Fishery Management Council, 5401 W. Kennedy Boulevard, suite 331, Tampa, FL 33609, or from the South Atlantic Fishery Management Council, Southpark Building, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

Comments on the proposed rule should be sent to Mark F. Godcharles, NMFS, Southeast Regional Office, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 6 Changes to the Regulations

In accordance with Amendment 6 to the FMP, this proposed rule would allow the earned income requirement for a commercial vessel permit for king or Spanish mackerel to be met in any one of the 3 years preceding the permit application. Currently, the owner or operator of a vessel must document that at least 10 percent of his or her earned income during the calendar year preceding the application was derived from commercial fishing, that is, sale of catch. An earned income requirement based solely on the previous year's earned income has caused undue hardship on some individuals who qualify as long-term commercial fishermen but who were unable to fish because of illness or temporary loss of vessel during the preceding year. This rule would alleviate these hardship cases while still restricting non-commercial fishermen to the bag limits.

This proposed rule would change the fishing year for recreational bag limits to the calendar year. Currently, the fishing year for recreational allocations and bag limits commences on July 1 for Gulf group king mackerel and on April 1 for all other groups of king a Spanish mackerel. In recent years, the Councils have recommended bag limits in April but they have not been implemented until July or August, after the fishing years have started. Fishing years for the recreational bag limits commencing on January 1 will provide ample time for Federal implementation, will provide the states an opportunity to adopt compatible regulations applicable to their waters, and will provide a standard date on which recreational fishermen may expect any changes in bag limits.

This proposed rule would also remove the procedure whereby a bag limit for king or Spanish mackerel is reduced to zero when the recreational allocation for an overfished migratory group is reached. In lieu thereof, the recreational fishery would be managed by bag limits that would remain unchanged through the fishing year. Allowing a bag limit to remain unchanged provides equal opportunity and access to anglers in all geographic areas through which king and Spanish mackerel may migrate during that year. The Councils believe this change would encourage states to set bag limits applicable to their waters that are consistent with the bag limits in the exclusive economic zone.

With reliance on the bag limits for management of the recreational mackerel fisheries, the recreational allocations would no longer be specified in the regulations. However, the Councils would continue to propose recreational allocations and bag limits via the framework procedure. Amendment 6 proposes that, if the Director Southeast Region, NMFS, determines that a Council-proposed bag limit for an overfished group of Gulf king mackerel would result in exceeding the approved recreational allocations for such group, the Council-proposed bag limit for that group will be disapproved and a bag limit of one per person per day will be implemented in its place.

This proposed rule would increase the minimum size limit for king mackerel to 20 inches (50.8 cm), fork length, from the current minimum size limit of 12 inches (30.5 cm), fork length. The proposed change would increase the yield per recruit and allow more king mackerel to reach sexual maturity. The commercial fishery would be relatively unaffected because few small fish are taken with commercial gear. Catch in the recreational fishery would be expected to be reduced, thereby reducing the likelihood that the recreational allocations would be exceeded under the management regime of controlling recreational catch solely by the bag limits. To prevent confusion and enhance enforceability, this rule would remove the equivalent total lengths for the prescribed fork lengths.

This proposed rule would establish commercial vessel trip limits, expressed as possession and landing limits, for Atlantic group Spanish mackerel. In the northern zone, north of the Florida/Georgia boundary, the limit would be 3,500 pounds (1,588 kg). In the southern zone, south of the Florida/Georgia boundary, the limits would vary depending on the season and the amount of Spanish mackerel caught relative to the commercial allocation. (The specific trip limits for the southern zone are located in the proposed codified text under § 642.27(a)(2)). Trip limits in the southern zone would be expected to be compatible with similar limits applicable to Florida's waters. The commercial vessel trip limits in the southern zone are intended to extend the harvest season and to allocate fairly the available resource among users. Under ideal weather conditions and availability of Spanish mackerel, the Florida east coast gillnet fishery has the capacity to harvest over 400,000 pounds (181,439 kg) per day. Unlimited, gillnet fishermen could take most of the commercial allocation within a week.

The adjusted allocation of Atlantic migratory group Spanish mackerel upon which the trip limit segments would be based would be 3.25 million pounds (1.47 million kg). This adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by a revised amount calculated to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 pounds (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. The Assistant Administrator

for Fisheries, NOAA (Assistant Administrator), by publication of a notice in the **Federal Register**, would announce when 90 percent and 100 percent of the adjusted allocation is reached or is projected to be reached, thus initiating a new trip limit segment.

Additional Changes in Amendment 6

Amendment 6 would change the FMP's list of problems in the fishery by revising three of the problems and adding three additional problems. An additional management objective would be added.

Amendment 6 would establish recovery periods not to exceed 12 years, starting in 1985, and 7 years, starting in 1987, for rebuilding overfished stocks of king and Spanish mackerel, respectively. These proposed recovery periods are slightly more than the generation time for each species. The Councils believe the proposed recovery periods are appropriate time frames for remedial management measures to be effective without closing the fisheries or otherwise having a severe economic or social impact on participants in the fisheries.

Under Amendment 6, an assessment group appointed by the Councils would normally reassess the condition of each stock of king mackerel, Spanish mackerel, and cobia in alternate years, rather than annually. The Councils believe that annual assessments are unnecessarily frequent and that changes over such a brief time span are difficult to measure.

Amendment 6 would add to the management measures that may be established or modified via the framework procedure of the following: size limits, vessel trip limits, adjusted allocations applicable to vessel trip limits, closed seasons or areas, and gear restrictions. These additions would provide the Councils and NMFS greater flexibility in responding efficiently to management needs to restore overfished stocks and achieve optimum yield.

Under Amendment 6, when the Councils' stock assessment panel is able to provide ranges of acceptable biological catch for separate subgroups within the Gulf migratory group of king mackerel, the subgroups will be separated at the Florida/Alabama boundary. Within each subgroup, recreational/commercial allocations would continue at 68/32 percent of the total allowable catch. The Councils believe separation of Gulf migratory group king mackerel could provide a better opportunity to address the management requirements of each subgroup.

A more detailed discussion of these measures and of the revised problems and objectives of the FMP is contained in Amendment 6, the availability of which was announced in the **Federal Register** on August 17, 1992 (57 FR 36972).

Additional Changes Proposed by NMFS

NMFS proposes to remove definitions and figures that are no longer used or needed. The definition for "charter vessel," which includes a headboat, is revised to conform to current usage. To conform the regulations to current standards and to incorporate the changes in Amendment 6, NMFS proposes to restate the prohibitions (§ 642.7) and the management measures (subpart B) in their entirety. In general, the management measures would progress from general to specific provisions. Sale of undersized fish not lawfully possessed would be prohibited as would attempts to sell such fish or fish taken from a closed species/migratory group/zone. In addition, NMFS proposes to remove the specifics of (1) the procedures and restrictions to prevent gear conflicts in the area off the east coast of Florida, and (2) the procedures and limitations applicable to the framework procedure for establishing or modifying certain management measures. In both cases, the specifics apply to the Councils and NMFS but are not regulatory in nature; that is, they do not control the behavior of fishermen. The procedures restrictions and limitations, and the Councils' definition of "conflict," would remain in effect as part of the FMP, as amended. The framework procedure, as it would apply if Amendment 6 is approved, is succinctly presented in Appendix I of Amendment 6.

Under the current framework procedures, NMFS proposed changes in certain of the allocations, quotas, and bag limits for king and Spanish mackerel (57 FR 33924, July 31, 1992). Those framework changes are expected to be approved or disapproved prior to decisions on approval, disapproval, or partial disapproval of Amendment 6. The bag limits in § 642.24(a)(1) and the commercial allocations and quotas in § 642.25(a) and (b) of this proposed rule are those proposed at 57 FR 33924. In the event all or part of the framework changes are disapproved, concomitant changes in the allocations, quotas, and bag limits in this proposed rule may be required.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act requires the Secretary of Commerce (Secretary) to publish regulations proposed by a council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 6, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rules is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The Assistant Administrator has initially determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a regulatory impact review (RIR) that concludes that this rule is expected to have the economic effects summarized as follows. Allowing the earned income requirement for a commercial vessel permit for mackerels to be met in any one of the 3 years preceding the permit application would have positive benefits in terms of equity to fishermen and the quality of the permits issued. Changing the fishing year for recreational fisheries to the calender year would not have directly measurable effects but would reduce enforcement costs if the January 1 implementation of changes in Federal bag limits enables states to enact compatible bag limits in their waters. Removing the provision for reversion of a bag limit to zero when a recreational allocation is reached would have positive benefits for recreational fishermen and would reduce enforcement costs. Increasing the minimum size limit for king mackerel may increase the angler consumer surplus. Commercial trip limits for Atlantic group Spanish mackerel would increase enforcement costs but would have positive benefits for the commercial sector. A copy of the RIR, which also evaluates the economic effects of the other measures contained in Amendment 6, is available from the Councils (see **ADDRESSES**).

The Councils prepared an initial regulatory flexibility analysis (IRFA) as part of the RIR, which concludes that this proposed rule, if adopted, would have significant economic effects on a substantial number of small entities. Specifically, commercial trip limits for Atlantic group Spanish mackerel are likely to decrease gross revenues for large vessels and increase gross revenues for small vessels. A copy of the IRFA is available from the Councils (see **ADDRESSES**).

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA is available and comments on it are requested (see **ADDRESSES**).

NMFS conducted a consultation under section 7 of the Endangered Species Act (ESA) and prepared a biological opinion concerning this rule. As a result of the review of information available on the biology and ecology of the endangered and threatened species (listed species) in the area of management of coastal migratory pelagic resources, NMFS determined that: (1) Amendment 6 does not contain any regulatory changes that would adversely affect listed species of sea turtles, marine mammals, or fish, or their respective habitats; (2) the fisheries for coastal migratory pelagic resources will not jeopardize the continued existence of any listed species; (3) the gillnet fisheries may adversely affect the recovery of listed species of sea turtles; and (4) additional information on the extent of incidental take of listed species of sea turtles by gillnets is needed. The conservation recommendations of the biological opinion are that NMFS should: (1) Continue to collect and evaluate stranding and entanglement data as an additional means of determining trends in fishery interactions; and (2) encourage states to adopt necessary management measures that will reduce the potential for endangered species entanglements in inshore fishing gear. In compliance with ESA requirements for actions that may involve a take of listed species, NMFS issued an Incidental Take Statement (ITS) specifying the impact of the incidental takings and specifying reasonable and prudent measures necessary to minimize impacts of the fisheries for coastal migratory pelagic resources. Those reasonable and prudent measures include: (1) NMFS should implement a regional observer program to document incidental capture, injury, and mortality of listed species, with emphasis on gillnet and longline fisheries; (2) regulations should be implemented to reduce/eliminate mortalities in any fisheries where the take of listed species exceeds levels specified in the ITS; (3) all incidents of take of listed species must be reported to NMFS within 10 days of the take; and (4) any sea turtle incidentally taken must be handled with due care to prevent injury, observed for activity, and returned to the water, as specified in 50 CFR 227.72(e)(1)(i).

The Councils have determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Alabama, Florida, Delaware, Maryland, Louisiana, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia. Georgia and Texas do not participate in the coastal management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 21, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.1 [Amended]

2. In § 642.1, in paragraph (a), the word "developed" is revised to read "prepared".

3. In § 642.2, the definitions for "*Acceptable biological catch (ABC)*", "*Allocation*", "*Charter vessel crew*", "*Conflict*", "*Overfished*", "*Overfishing*", "*Recreational fishery*", "*Species*", "*Total allowable catch (TAC)*", and "*Total length*" are removed; in the definition for "*Councils*", paragraphs (a) and (b) are redesignated as paragraphs (1) and (2), and in newly designated paragraph (2), "Suite 881" is revised to read "Suite 331"; in the definition for "*EEZ*", paragraphs (a), (b), and (c) are redesignated as paragraphs (1), (2), and (3); in the definition for "*Science and Research Director*", the phrase "Southeast Fisheries Center" is revised to read "Southeast Fisheries Science Center"; in the definition for "*Statistical area*", the reference "Figure 3" is revised to read "Figures 1 and 2 of this part"; and the definitions for "*Charter vessel*" and "*Migratory group*" are revised to read as follows:

§ 642.2 Definitions.

* * * * *

Charter vessel (includes a headboat) means a vessel—

(1) Less than 100 gross tons (90.8 metric tons) that meets the requirements of the Coast Guard to carry six or fewer passengers for hire and that carries a passenger for hire at any time during the calendar year; or

(2) That holds a valid Certificate of Inspection issued by the Coast Guard to carry passengers for hire.

A charter vessel with a permit to fish under a commercial allocation for king or Spanish mackerel is considered to be operating as a charter vessel when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

* * * * *

Migratory group means a group of fish that may or may not be a separate genetic stock but which may be treated as a separate stock for management purposes. (See § 642.21(a) for the seasonal, geographical boundaries between migratory groups of king mackerel and § 642.21(b) for the geographical boundary between migratory groups of Spanish mackerel.)

* * * * *

4. In § 642.4, paragraphs (a)(1)(i), (a)(1)(ii), and (b)(2)(vi) are revised to read as follows:

§ 642.4 Permits and fees.

(a) * * *

(1) * * *

(i) For a person who fishes aboard a vessel in the EEZ to be eligible for the incidental catch allowance for undersized king and Spanish mackerel specified in § 642.23(b), to be eligible for exemption from the bag limits specified in § 642.24(a), and to fish under a commercial allocation specified in § 642.2 (a) or (b), a vessel permit for king

and Spanish mackerel must be issued to the vessel and be on board.

(ii) A vessel permit for king and Spanish mackerel may be obtained by a qualifying owner or operator of a charter vessel. However, a person aboard such vessel must adhere to the bag limits when the vessel is operating as a charter vessel.

* * * * *

(b) * * *

(2) * * *

(vi) A sworn statement by the applicant certifying that, during one of the 3 calendar years preceding the application, at least 10 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch;

* * * * *

5. In § 642.5, in paragraph (a) introductory text, the phrase "under § 642.4(a)(1)" is revised to read "for king and Spanish mackerel"; in paragraph (a)(3), the parenthetical phrase "(see figure 3)" is revised to read "(see figures 1 and 2 of this part)"; in paragraph (b) introductory text, the phrase "permit under § 642.4(a)(2)" is revised to read "charter vessel permit for coastal migratory pelagic fish"; and in paragraphs (e) and (f) are revised to read as follows:

§ 642.5 Recordkeeping and reporting.

* * * * *

(e) *Availability of fish for inspection.* An owner or operator of a vessel, a dealer, or a processor must make any coastal migratory pelagic fish, or parts thereof, available, upon request, for inspection by the Science and Research Director for the collection of additional information or by an authorized officer.

(f) *Alternate Science and Research Director.* For the purposes of paragraphs (c) and (e) of this section, in the states from New York through Virginia, or in the waters off those states, the term "Science and Research Director" means the Science and Research Director, Northeast Fisheries Science Center, NMFS, Woods Hole, MA 02543, telephone 508–548–5123, or a designee.

* * * * *

6. Section 642.7 is revised to read as follows:

§ 642.7 Prohibitions.

In addition to the general prohibitions specified in § 620.7 of this chapter, it is unlawful for any person to do any of the following:

(a) Fish for coastal migratory pelagic fish in the EEZ, or possess a coastal migratory pelagic fish in or from the EEZ, aboard a charter vessel that does not have a permit, as specified in § 642.4(a)(2).

(b) Falsify information specified in § 642.4(b)(2) or (c)(2) on an application for a permit.

(c) Fail to display a permit, as specified in § 642.4(h).

(d) Falsify or fail to maintain, submit, or provide information required to be maintained, submitted, or provided, as specified in § 642.5(a) through (d).

(e) Fail to make a coastal migratory pelagic fish, or parts thereof, available for inspection, as specified in § 642.5(e).

(f) Falsify or fail to display and maintain vessel identification, as specified in § 642.6.

(g) Fish in the EEZ for coastal migratory pelagic fish with prohibited gear or possess any coastal migratory pelagic fish in or from the EEZ aboard a vessel with prohibited gear aboard, as specified in § 642.22(a).

(h) Fish in the EEZ for king or Spanish mackerel with a gillnet with a mesh size less than the minimum allowable, or possess king or Spanish mackerel in or from the EEZ on a vessel that has aboard a gillnet with a mesh size less than the minimum allowable, as specified in § 642.22(b).

(i) Possess a king mackerel, Spanish mackerel, or cobia smaller than the minimum size limits, as specified in § 642.23(a)(1), except for the incidental catch allowance specified in § 642.23(b).

(j) Sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter a king mackerel, Spanish mackerel, or cobia smaller than the minimum size limits, as specified in § 642.23(a)(2), except for such undersized king and Spanish mackerel that may be lawfully possessed under § 642.23(b).

(k) Possess a king mackerel, Spanish mackerel, or cobia without its head and fins intact, as specified in § 642.23(c).

(l) Operate a vessel with king mackerel, Spanish mackerel, or cobia aboard that are smaller than the minimum size limits, do not have head and fins intact, or are in excess of the cumulative bag limit, as specified in § 642.23(d) and § 642.24(d).

(m) Retain or possess king mackerel, Spanish mackerel, or cobia in or from the EEZ in excess of the bag and possession limits specified in § 642.24(a)(1), (a)(2), and (b).

(n) Transfer at sea a king mackerel, Spanish mackerel, or cobia taken under a bag or possession limit, as specified in § 642.24(e).

(o) Aboard a vessel in the commercial fishery, fish for king or Spanish mackerel in the EEZ or retain a king or Spanish mackerel in or from the EEZ after a closure, as specified in § 642.26(b)(1), except as may be allowed aboard a charter vessel, as specified in § 642.26(b)(2), and except as may be authorized under § 642.22(c).

(p) After a closure specified in § 642.26(a), sell, purchase, trade, or barter, or attempt to sell, purchase, trade, or barter a king or Spanish mackerel of the closed species/migratory group/zone, as specified in §§ 642.22(c), 642.24(a)(4), and 642.26(b)(3).

(q) Exceed a commercial trip limit for Atlantic group Spanish mackerel, as specified in § 642.27(a).

(r) Transfer at sea an Atlantic group Spanish mackerel subject to a commercial trip limit, as specified in § 642.27(e).

(s) Violate any prohibitions or restrictions for the prevention of gear conflicts that may be specified in accordance with § 642.28.

(t) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

7. Subpart B of part 642 is revised to read as follows:

Subpart B—Management Measures

Sec.

642.20 Fishing years.
642.21 Area and time separation.
642.22 Vessel, gear, and equipment limitations.
642.23 Harvest limitations.
642.24 Bag and possession limits.
642.25 Commercial allocations and quotas.
642.26 Closures.
642.27 Commercial trip limits for Atlantic group Spanish mackerel.
642.28 Prevention of gear conflicts.
642.29 Adjustment of management measures.
642.30 Specifically authorized activities.

Subpart B—Management Measures

§ 642.20 Fishing years.

(a) *Commercial mackerel fisheries.* The fishing year for the Gulf migratory group of king mackerel for commercial allocations and quotas begins on July 1 and ends on June 30. The fishing year for all other groups of king and Spanish mackerel for commercial allocations begins on April 1 and ends on March 31.

(b) *All other fisheries.* The fishing year for the recreational mackerel fisheries, and for coastal migratory pelagic fish other than king and Spanish mackerel, begins on January 1 and ends on December 31.

§ 642.21 Area and time separation.

(a) *King mackerel—*(1) *Summer separation.* From April 1 through October 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly west from the Monroe/Collier County, Florida boundary (25°48'N. latitude) to the outer limit of the EEZ.

(2) *Winter separation.* From November 1 through March 31, the boundary separating the Gulf and Atlantic migratory groups of king mackerel is a line extending directly east from the Volusia/Flagler County, Florida boundary (29°25'N. latitude) to the outer limit of the EEZ.

(b) *Spanish mackerel.* The boundary separating the Gulf and Atlantic migratory groups of Spanish mackerel is a line extending directly east from the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) to the outer limit of the EEZ.

§ 642.22 Vessel, gear, and equipment limitations.

(a) *Prohibited gear—*(1) *Drift gillnets.* The use of a drift gillnet to fish in the EEZ for coastal migratory pelagic fish is prohibited. A vessel in the EEZ or having fished in the EEZ with a drift gillnet aboard may not possess any coastal migratory pelagic fish.

(2) *Other gear.* (i) Fishing gear is prohibited for use in the EEZ for migratory groups of king and Spanish mackerel as follows:

(A) King mackerel Gulf migratory group—all gear other than hook and line and run-around gillnets.

(B) Spanish mackerel Gulf and Atlantic migratory groups—purse seines.

(ii) Except for the purse seine incidental catch allowance specified in paragraph (c) of this section, a vessel in the EEZ in an area specified in § 642.21 for a migratory group or having fished in the EEZ in such area with prohibited gear aboard may not possess any of the species for which that gear is prohibited.

(b) *Gillnets—*(1) *King mackerel.* The minimum allowable mesh size for a gillnet used to fish in the EEZ for king mackerel is 4¾ inches (12.1 cm), stretched mesh. A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 4¾ inches (12.1 cm), stretched mesh, may possess an incidental catch of king mackerel that does not exceed 10 percent, by number, of the total lawfully possessed Spanish mackerel aboard.

(2) *Spanish mackerel.* The minimum allowable mesh size for a gillnet used to fish in the EEZ for Spanish mackerel is 3½ inches (8.9 cm), stretched mesh. A vessel in the EEZ or having fished in the EEZ with a gillnet aboard that has a mesh size less than 3½ inches (8.9 cm), stretched mesh, may not possess any Spanish mackerel.

(c) *Purse seine incidental catch allowance.* A vessel in the EEZ or having fished in the EEZ with a purse seine aboard will not be considered as fishing or having fished for king or Spanish mackerel in violation of a prohibition of purse seines under paragraph (a)(2) of this section, or, in the case of king mackerel from the Atlantic migratory group, in violation of a closure effected in accordance with § 642.26(a), provided the catch of king mackerel does not exceed 1 percent or the catch of Spanish mackerel does not exceed 10 percent of the catch of all fish aboard the vessel. Incidental catch will be calculated by both number and weight of fish. Neither calculation may exceed the allowable percentage. Incidentally caught king or Spanish mackerel are counted toward the allocations and quotas provided for under § 642.25(a) or (b) and are subject to the prohibition of sale under § 642.26(b)(3).

§ 642.23 Harvest limitations.

(a) *Minimum sizes.* (1) Except for the incidental catch allowance for undersized king and Spanish mackerel under paragraph (b) of this section, the minimum size limits for the possession of king mackerel, Spanish mackerel, and cobia in or from the EEZ are—

(i) King mackerel—20 inches (50.8 cm), fork length;

(ii) Spanish mackerel—12 inches (30.5 cm), fork length; and

(iii) Cobia—33 inches (83.8 cm), fork length.

(2) Except for such undersized king and Spanish mackerel that may be unlawfully possessed under paragraph (b) of this section, a king mackerel, Spanish mackerel, or cobia smaller than the minimum size limits of paragraph (a)(1) of this section may not be sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered.

(b) *Incidental catch allowance.* Aboard a vessel in the commercial fishery, provided such vessel is not operating as a charter vessel—

(1) The possession of king mackerel under the minimum size limit is allowed equal to 5 percent by weight of the total catch of king mackerel aboard; and

(2) The possession of Spanish mackerel under the minimum size limit is allowed equal to 5 percent by weight of the total catch of Spanish mackerel aboard.

(c) *Head and fins intact.* A king mackerel, Spanish mackerel, or cobia in or from the EEZ must have its head and fins intact through off-loading. Such king mackerel, Spanish mackerel, or cobia may be eviscerated but must otherwise be maintained in a whole condition.

(d) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for ensuring that king mackerel, Spanish mackerel, and cobia possessed aboard that vessel comply with the minimum sizes specified in paragraph (a) of this section, except for such undersized king and Spanish mackerel that may be lawfully possessed under paragraph (b) of this section; and are maintained with head and fins intact as specified in paragraph (c) of this section.

§ 642.24 Bag and possession limits.

(a) *King and Spanish mackerel—*(1) *Daily bag limits.* A person who fishes for king or Spanish mackerel in the EEZ, except a person in the commercial fishery and fishing under a commercial allocation specified in § 642.25(a) or (b), or possessing the purse seine incidental catch allowance specified in § 642.22(c), may not retain or possess king or Spanish mackerel in or from the EEZ exceeding the following daily limits:

(i) *King mackerel Gulf migratory group*—two per person.

(ii) *King mackerel Atlantic migratory group.*

(A) *Northern area*—five per person.

(B) *Southern area*—the limit specified by Florida in Rule 46–12.004, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed five per person.

(iii) *Spanish mackerel Gulf migratory group.*

(A) *Eastern area*—the limit specified by Florida in Rule 46–23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed ten per person.

(B) *Central area*—ten per person.

(C) *Western area*—the limit specified by Texas in Rule 31–65.72, Texas Administrative Code, but not to exceed ten per person.

(iv) *Spanish mackerel Atlantic migratory group.*

(A) *Northern area*—ten per person.

(B) *Southern area*—the limit specified by Florida in Rule 46–23.005, Rules of the Department of Natural Resources, Florida Marine Fisheries Commission, Florida Administrative Code, but not to exceed ten per person.

(2) *Multi-day possession limit.* A person subject to a bag limit specified in paragraph (a)(1) of this section may not possess in or from the EEZ during a single day, regardless of the number of trips or the duration of a trip, any king or Spanish mackerel in excess of such bag limit, except that a person who is on a trip that spans more than 24 hours may possess no more than two daily bag limits, provided—

(i) Such trip is aboard a charter vessel;

(ii) The vessel has two licensed operators aboard as required by the U.S. Coast Guard for trips of over 12 hours; and

(iii) Each passenger is issued and has in possession a receipt issued on behalf of the vessel that verifies the length of the trip.

(3) *Areas.* For the purpose of paragraph (a)(1) of this section—

(i) The boundary between the northern and southern areas is a line extending directly east from the Georgia/Florida boundary (30°42'45.6"N. latitude) to the outer limit of the EEZ;

(ii) The boundary between the eastern and central areas is a line extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ; and

(iii) The boundary between the central and western areas is an extension of the boundary between Louisiana and Texas, namely, a line from point A (on the seaward limit of Texas' waters) at 29°32.1'N. latitude, 93°47.7'W. longitude to point B (on the outer limit of the EEZ) at 26°11.4'N. latitude, 92°53'W. longitude.

(4) *Fishing after a closure.* After a closure under § 642.26(a) is invoked for a commercial allocation or quota specified in § 642.25 (a) or (b)(1), for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a), the sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel in or from the closed area is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

(b) *Cobia.* The daily bag and possession limit for cobia in or from the EEZ is two fish per person, regardless of the number of trips or duration of a trip and without regard to whether the cobia are taken aboard a vessel in the commercial fishery.

(c) *Combination of bag limits.* A person who fishes in the EEZ may not combine a bag or possession limit of this part with any bag or possession limit applicable to state waters.

(d) *Operator responsibility.* The operator of a vessel that fishes in the EEZ is responsible for the cumulative bag limit, based on the number of persons aboard, applicable to that vessel.

(e) *Transfer of fish.* A person for whom a bag or possession limit specified in this section applies may not transfer at sea a king mackerel, Spanish mackerel, or cobia—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such king mackerel, Spanish mackerel, or cobia was taken.

§ 642.25 Commercial allocations and quotas.

A fish is counted against the commercial allocation or quota for the area where it is caught when it is first sold.

(a) *Commercial allocations and quotas for king mackerel.* (1) The commercial allocation for the Gulf migratory group of king mackerel is 2.50 million pounds (1.13 million kg) per fishing year. This allocation is divided into quotas as follows:

(i) 1.73 million pounds (0.78 million kg) for the eastern zone; and

(ii) 0.77 million pounds (0.35 million kg) for the western zone.

(2) The commercial allocation for the Atlantic migratory group of king mackerel is 3.90 million pounds (1.77 million kg) per fishing year. No more than 0.4 million pounds (0.18 million kg) may be harvested by purse seines.

(b) *Commercial allocations for Spanish mackerel.* (1) The commercial allocation for the Gulf migratory group of Spanish mackerel is 4.90 million pounds (2.22 million kg) per fishing year.

(2) The commercial allocation for the Atlantic migratory group of Spanish mackerel is 3.50 million pounds (1.59 million kg) per fishing year.

(c) *Zones.* For the purposes of paragraph 9a)(1) of this section, the boundary between the eastern and western zones is a lien extending directly south from the Alabama/Florida boundary (87°31'06"W. longitude) to the outer limit of the EEZ.

§ 642.26 Closures.

(a) *Notice of closure.* The Assistant Administrator, by publication of a notice in the **Federal Register**, will close the commercial fishery in the EEZ for king mackerel from a particular migratory group or zone and for Spanish mackerel from the Gulf migratory group when the allocation or quota under § 642.25(a) or (b)(1) for that migratory group or zone has been reached or is projected to be reached. The commercial fishery for Atlantic group Spanish mackerel is managed under the commercial trip limits specified in § 642.27 in lieu of the closure provisions of this section.

(b) *Fishing after a closure.* After a closure under paragraph (a) of this section is invoked, for the remainder of the appropriate fishing year for commercial allocations specified in § 642.20(a):

(1) A person aboard a vessel in the commercial fishery may not fish for king or Spanish mackerel in the EEZ or retain fish in or from the EEZ under a bag limit specified in § 642.24(a)(1) for the closed species/migratory group/zone, except as provided for under paragraph (b)(2) of this section.

(2) A person aboard a vessel the permit for which indicates both king and Spanish mackerel and charter vessel for coastal migratory pelagic fish may continue to retain fish under a bag and possession limit specified in § 642.24(a)(1) and (a)(2) provided the vessel is operating as a charter vessel.

(3) The sale, purchase, trade, or barter or attempted sale, purchase, trade, or barter of king or Spanish mackerel of the closed species/migratory group/zone, is prohibited. This prohibition does not apply to trade in king or Spanish mackerel harvested, landed, and sold, traded, or bartered prior to the closure and held in cold storage by dealers or processors.

§ 642.27 Commercial trip limits for Atlantic group Spanish mackerel.

(a) Commercial trip limits are established for Atlantic group Spanish mackerel as follows:

(1) In the northern zone, that is, north of a line extending directly east from the Georgia/Florida boundary (30° 42'45.6"N. latitude) to the outer limit of the EEZ, Spanish mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day in amounts exceeding 3,500 pounds (1,588 kg).

(2) In the southern zone, that is, south of a line extending directly east from the George/Florida boundary (30° 42'45.6" N. latitude) to the outer limit of the EEZ, Spanish mackerel in or from the EEZ may not be possessed aboard or landed from a vessel in a day—

(i) From April 1 through November 30, in amounts exceeding 1,500 pounds (680 kg).

(ii) From December 1 until 80 percent of the adjusted allocation is taken, in amounts as follows:

(A) Mondays, Wednesdays, and Fridays—unlimited.

(B) Tuesdays and Thursdays—not exceeding 1,500 pounds (680 kg).

(C) Saturdays and Sundays—not exceeding 500 pounds (227 kg).

(iii) After 80 percent of the adjusted allocation is taken until 100 percent of the adjusted allocation is taken, in amounts not exceeding 1,000 pounds (454 kg).

(iv) After 100 percent of the adjusted allocation is taken until the fishery is closed in accordance with § 642.26(a), in amounts not exceeding 500 pounds (227 kg).

(b) For the purpose of paragraph (a)(2) of this section, the adjusted allocation of Atlantic migratory group Spanish mackerel is 3.25 million pounds (1.47 million kg). The adjusted allocation is the commercial allocation for Atlantic migratory group Spanish mackerel reduced by an amount calculated to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 pounds (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached. The Assistant Administrator, by publication of a notice in the **Federal Register**, will announce when 80 percent and 100 percent of the adjusted allocation is reached or is projected to be reached.

(c) For the purpose of paragraph (a)(2) of this section, a day starts at 6 a.m., local time, and extends for 24 hours. For example, Monday starts at 6 a.m. on Monday and extends to 6 a.m. on Tuesday. A vessel that terminates a trip prior to 6 a.m., but retains Spanish mackerel aboard after that time, will not be considered to possess Spanish mackerel in excess of the daily limits provided the vessel is not underway after 6 a.m. and such Spanish mackerel are unloaded prior to 6 p.m. following termination of the trip.

(d) A person who fishes in the EEZ may not combine a trip limit of this section with any trip or possession limit applicable to state waters.

(e) A person for whom a trip limit specified in this section applies may not transfer at sea a Spanish mackerel—

(1) Taken in the EEZ; or

(2) In the EEZ, regardless of where such Spanish mackerel was taken.

§ 642.28 Prevention of gear conflicts.

In accordance with the procedures and restrictions of the Fishery Management Plan for Coastal Migratory Pelagic Resources, when the Regional Director determines that a conflict exists in the king mackerel fishery between hook-and-line and gillnet fishermen in an area of the EEZ off the east coast of Florida between 27°00.6'N. latitude and 27°50.0'N. latitude, the Regional Director may prohibit or restrict the use of hook-and-line and/or gillnets in all or a portion of that area. Necessary prohibitions or restrictions will be published in the **Federal Register.**

§ 642.29 Adjustment of management measures.

In accordance with the procedures and limitations of the Fishery Management Plan for Coastal Migratory Pelagic Resources, the Regional Director may establish or modify for cobia or for king or Spanish mackerel, and migratory groups of king or Spanish mackerel, the following: maximum sustainable yield, total allowable catch, allocations, adjusted allocations, quotas, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and initial permit requirements.

§ 642.30 Specifically authorized activities.

The Assistant Administrator may authorize, for the acquisition of information and data, activities otherwise prohibited by these regulations.

8. The two grids constituting Figure 3 of appendix A are transferred out of appendix A and redesignated as Figure 1 to part 642 and Figure 2 to part 642, respectively; the heading for newly designated Figure 1 is revised to read "FIGURE 1 TO PART 642—STATISTICAL GRIDS FOR THE GULF OF MEXICO" and the title at the bottom of the figure is removed; a heading is added to newly designated Figure 2 to read "FIGURE 2 TO PART 642—STATISTICAL GRIDS FOR THE SOUTH ATLANTIC AND MID-ATLANTIC" and the title at the bottom of the figure is removed; and Appendix A is removed.

[FR Doc. 92-20496 Filed 8-24-92; 1:30 pm]

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Notices

Federal Register
Vol. 57, No. 167
Thursday, August 27, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Agricultural Science and Technology Review Board; Meeting Cancellation

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), as amended, the Office of Grants and Program Systems, Cooperative State Research Service, announces the cancellation of the following meeting:

Name: Agricultural Science and Technology Review Board.
Date: August 31, 1992.
Time: 8 a.m.–4 p.m.
Place: One Washington Circle Hotel, Washington, DC.
Action: This meeting is cancelled.
Contact Person for More Information: Dr. Mark R. Bailey, Executive Secretary, Joint Council on Food and Agricultural Sciences, room 3M12, Annex Building, U.S. Department of Agriculture, Washington, DC 20250–2200; Telephone (202) 401–4662.

Done in Washington, DC, this 21st day of August 1992.

William D. Carlson,
Associate Administrator.

[FR Doc. 92–20594 Filed 8–26–92; 8:45 am]
BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants; Draft Recovery Plans for Southeastern U.S. and Caribbean Populations of Hawksbill Turtles

AGENCIES: National Marine Fisheries Service, NOAA, Commerce, U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability and request for comments.

SUMMARY: The draft Recovery Plan for the hawksbill sea turtle (*Eretmochelys imbricata*) is now available for review and comment by interested parties prior to final approval and adoption by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS). The plan was developed by the Leatherback/Hawksbill Sea Turtle Recovery Team which was appointed in 1989 by NMFS and USFWS. The recovery team is jointly supported by USFWS and NMFS. These agencies share the responsibility for sea turtle recovery under the authority of the Endangered Species Act of 1973. Recovery team membership includes biologists and resource managers from the Virgin Islands Division of Fish and Wildlife, the Wider Caribbean Sea Turtle Recovery Team, the University of Georgia, the National Park Service, and USFWS.

DATES: Comments on the draft recovery plans must be received on or before October 13, 1992.

ADDRESSES: Comments should be addressed to Director, Office of Protected Resources, NMFS, 1335 East-West Highway, Silver Spring, MD 20910. Copies of the Draft Hawksbill Recovery Plan are available upon request from Charles Oravetz, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, or Phil Williams, Office of Protected Resources, NMFS, 1335 East-West Highway, room 8256, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Charles Oravetz, NMFS, (813) 893–3366, or Jack Woody, USFWS, (505) 766–8062.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et seq.) requires that the agencies responsible for listed species develop and implement recovery plans for the conservation and survival of threatened and endangered species, unless it is determined that such plans will not promote the conservation of the species. Accordingly, NMFS and USFWS appointed a Leatherback/Hawksbill Sea Turtle Recovery Team to assist in the development of the Draft Hawksbill Sea Turtle Recovery Plan. The Recovery Plans discuss the natural history, current status of the populations, and the known and potential impacts on the species. Actions that would promote the recovery of the leatherback turtle are identified and discussed in the draft plan. The Recovery Plan will be used to direct U.S. activities to promote the recovery of this endangered sea turtle.

Dated: August 20, 1992.

Nancy Foster,
Director, Office of Protected Resources.

[FR Doc. 92–20547 Filed 8–26–92; 8:45 am]
BILLING CODE 3510–22–M

National Marine Fisheries Service; Endangered Species; Application for Modification to a Scientific Research Permit; David Nelson, Coastal Ecology Group, Environmental Laboratory, Waterways Experiment Station, U.S. Army Corps of Engineers (P#777)

Notice is hereby given that an applicant has applied in due form for a Modification to a Scientific Research Permit to take an endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

1. *Applicant:* David Nelson, Coastal Ecology Group, Environmental Laboratory, USAE Waterways Experiment Station, Vicksburg, MS 39180.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Species:* 50 Loggerhead Sea Turtles, *Caretta caretta*, 5 Kemp's Ridley Sea Turtles, *Lepidochelys kempi*.

4. *Type of Take:* The applicant proposes to conduct an assessment of sea turtle behavior in King Bay Channel, Georgia for baseline and trawling efficiency studies. Specifically, it is the objective to determine: (1) Baseline behavior of sea turtles in the Kings bay Entrance Channel, (2) to evaluate the effectiveness of trawling as a survey method, and (3) to refine methods for additional studies. A maximum of 50 loggerhead turtles will be caught and tagged with sonic and radio tags. Kemp's ridley turtles will also be tagged and monitored as a secondary purpose of the studies. It is expected that a maximum of 5 Kemp's ridley turtles will be captured and tagged.

5. *Location and Duration of Activity:* Telemetry baseline behavior studies and trawling tests will be conducted in the summer and fall of 1992. All of the research activities during this period will take place at Kings Bay, Georgia.

Written data or views, or requests for a public hearing on this modification application should be submitted to the U.S. Department of Commerce, NMFS, 1335 East-West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this modification application are summaries of those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above modification application are available for review by interested persons in the following offices: Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, SSMC#1, room 8268, Silver Spring, Maryland 20910, (301/713–2289); and Director, Southeast Region, NOAA, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

Dated: August 20, 1992.

Nancy Foster,
Director, Office of Protected Resources.

[FR Doc. 92–20548 Filed 8–26–92; 8:45 am]
BILLING CODE 3510–22–M

National Marine Fisheries Service; Endangered Species; Application for Scientific Research Permit; Dr. Isadore Barrett, Southwest Fisheries Science Center, National Marine Fisheries Service (P#77262)

Notice is hereby given that an applicant has applied in due form for a Scientific Research Permit to take an endangered species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service (NMFS) regulations governing endangered fish and wildlife permits (50 CFR part 217–222).

1. *Applicant:* Dr. Izadore Barrett, Southwest Fisheries Science Center, P.O. Box 271, La Jolla, CA 92038.

2. *Type of Permit:* Scientific Research.

3. *Name and Number of Species:* 5 Leatherback Sea Turtles, *Dermochelys coriacea*.

4. *Type of Take:* The applicant proposes to investigate the movement of leatherback turtles through radiotracking in the Monterey Bay, California area. Five turtles will be caught and tracked as a test of the capture/tracking protocol. The turtles will be tagged with VHF radio tags and tracked via a mobile shore-based receiver. One turtle will be equipped with a satellite transmitter capable of reporting both dive behavior and location. Each turtle will also be measured, weighed, tagged, and a small blood sample will be taken from the cervical sinus, or a flipper.

5. *Location and Duration of Activity:* The turtles with VHF transmitters will be monitored for a period of from one month to three months, at which time the transmitter and attachment package will self-release. The PTT-equipped turtle will be monitored for approximately six months at which time the PTT and attachment package will self-release. All tagging activities during this period will take place in Monterey Bay, California.

Written data or views, or requests for a public hearing on this application should be submitted to the U.S. Department of Commerce, NMFS, 1335 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the applicant and do not necessarily reflect the views of the NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources, NOAA, NMFS, 1335 East-West Highway, SSMC#1, room 8268, Silver Spring, Maryland 20910, (301/713–2289); and Director, Southwest Region, NOAA, NMFS, 300 S. Ferry St., Terminal Island, CA 90713–7415.

Dated: August 19, 1992.

Nancy Foster,
Director, Office of Protected Resources.

[FR Doc. 92–20549 Filed 8–26–92; 8:45 am]
BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of a Sublimit for Certain Cotton Textile Products Produced or Manufactured in Egypt

August 21, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing a sublimit.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current sublimit for Category 301 is being reduced for carryforward used during 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 56 FR 58556, published on November 20, 1991.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 21, 1992

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 15, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Egypt and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 28, 1992, you are directed to amend the November 15, 1991 directive to reduce the sublimit for Category 301, as provided under the terms of the bilateral agreement between the Governments of the United States and the Arab Republic of Egypt, as follows:

Category	Adjusted twelve-month limit [1]
300/301	6,376,834 kilograms of which not more than 1,992,830 kilograms shall be in Category 301.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1991.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-20533 Filed 8-26-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DoD Government-Industry Technical Data Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition), DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 807 of Public Law 102-120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320, "Rights in Technical Data."

The committee is scheduled to meet on October 8 and October 28-29, 1992 from 9:30 a.m. to 4 p.m. at The Herman Lay Room, The U.S. Chamber of Commerce, 1615 H Street NW., Washington, DC 20062-2000. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693-5639.

Dated: August 21, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-20491 Filed 8-26-92; 8:45 am]

BILLING CODE 3810-01-M

Availability of Change 2 to DoD 5025.1-I, "DoD Directives System Annual Index"

AGENCY: Office of the Secretary, DoD.

ACTION: Notice.

SUMMARY: This document is to inform the public and Government Agencies of the availability of Change 2 to DoD 5025.1-I, "DoD Directives System Annual Index," dated January 1992. It is available, at cost, from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone (703) 487-4650. The NTIS accession number for Change 2 to the Index is PB92-959530.

FOR FURTHER INFORMATION CONTACT: Ms. P. Toppings, Directivea Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155, telephone (202) 697-4111.

Dated: August 21, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-20494 Filed 8-26-92; 8:45 am]

BILLING CODE 3810-01-M

Office of The Secretary of Defense

Meeting

AGENCY: Office of The Under Secretary of Defense (Acquisition), DoD.

ACTION: Cancellation.

SUMMARY: The DoD Government-Industry Technical Data Committee meeting scheduled for September 16, 1992 (57 FR 34913, August 7, 1992) is hereby cancelled. The meeting scheduled for September 17 is not affected by this change.

Dated: August 21, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-20492 Filed 8-26-92; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Scientific Advisory Group on Effects (SAGE) Meeting

SUMMARY: The Scientific Advisory Group on Effects announces a closed session meeting.

DATES: Tuesday, Wednesday, Thursday, 20-22 October 1992.

ADDRESSES: U.S. Air Force Conference Center at Homestead AFB, Florida.

FOR FURTHER INFORMATION CONTACT: Elizabeth Marcellino, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310 (telephone AV 221-2813 or (703) 325-2813).

SUPPLEMENTARY INFORMATION: The mission of the SAGE is to provide the Director, Defense Nuclear Agency, with technical advice on matters related to nuclear weapons effects. The group reviews and evaluates long-range plans for the development and improvement of nuclear weapons effects data and the adequacy of current DNA RDT&E programs. In accordance with section 10(d) of Public Law 92-463, as amended (5 U.S.C. app. II 10(d) (1988), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988) and that, accordingly, this meeting will be closed to the public.

Dated: August 21, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-20493 Filed 8-26-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Soliciting Suggestions Relevant to the Reauthorization of the Technology-Related Assistance for Individuals With Disabilities Act of 1988, Public Law 100-407

AGENCY: Department of Education.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Secretary of Education announces a public hearing to afford the public an opportunity to comment and make suggestions concerning the reauthorization of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100-407) (Act). The Secretary also requests written comments from those who do not testify. The comments and suggestions will be used by the Department in formulating its proposal for the reauthorization of the Act.

The current Act, which expires on October 1, 1993, has two titles. Title I establishes a competitive grant program designed to assist each participating State to develop and implement a consumer-responsive statewide program of technology-related assistance for individuals with disabilities. A State that receives a three-year development grant is eligible for an extension grant, which provides two additional years of funding. The statute also requires that the Secretary conduct an evaluation of the State grant programs and report on the findings to Congress not later than October 1, 1992.

Title II mandates a variety of discretionary activities and studies, including a study of the financing of assistive technology and services and a study of the feasibility and desirability of establishing a national information and referral network on technology-related assistance, both of which are near completion. It also requires the Secretary to make public awareness grants to increase the knowledge about and effective use of assistive technology devices and services; training projects to prepare professionals, paraprofessionals, and consumers to provide assistive technology services; demonstration and innovative projects on models for the delivery of assistive technology devices and services; assistive technology development; and a demonstration loan program for assistive technology services.

The first nine State grants were awarded in fiscal year 1989, and a total of 41 States have received development grants to date. The Department anticipates that all States will have received three-year development grants by the end of fiscal year 1993.

Issues for Consideration

The Secretary solicits comments and suggestions from interested parties regarding reauthorization of the Act. This request for comments is not intended to express views on any issues or to represent the intention of the Secretary to propose any changes in the provisions of the Act.

Title I—Grants to States

The Department is particularly interested in comments and suggestions on whether the Act should be extended through fiscal year 1988 to permit all States that received development grants with initial funding in fiscal years 1991-1993 to complete a five-year grant period.

A second major issue is whether there is a need for continued Federal assistance to States for carrying out the purposes of title I of this Act beyond the current authorized maximum of five years. If this need exists, how should funding be provided and for how long? In addition, if there is a need to continue funding of title I beyond the five-year period contemplated in the original Act, what should be the minimum components of the statewide systems required by the new statute?

Given that the Individuals with Disabilities Education Act (IDEA), the Rehabilitation Act, and other laws provide authority for the provision, purchase, and distribution of assistive technology devices and services, is there a need to maintain an authority under title I of the Act for the direct provision of devices and services, as opposed to authority for training, technical assistance, coordination, dissemination, and other activities aimed at capacity building?

Are there changes needed in this program that would improve coordination regarding the provision and financing of assistive technology across State and Federal programs? How could coordination with programs supported by the Rehabilitation Act and the IDEA, in particular, be improved? What are the obstacles and potential solutions to successful coordinated systems within the States? Should the Act require financial maintenance of effort or matching from the States, and if so, at what levels?

Title II—Programs of National Significance

Given that the IDEA and the Rehabilitation Act provide authority for training, public awareness, and research and demonstration projects, including projects dealing with assistive technology, is there a continuing need for a separate authority for those programs presently under title II of the Act?

If there is a need to continue authorization of title II of the Act, what are the specific needs for training for service providers at various levels or in various specialties? What specific areas of consumer training are needed?

Other Cross-Cutting Issues

What types of assistive technology are more needed? Are some needs for technology-related assistance routinely better met than others?

How successful have programs funded under the Act been in ensuring consumer-responsiveness in all of the activities sponsored by the Act? Are changes needed in the Act to improve consumer-responsiveness, including meeting the needs of minorities with disabilities.

What are the significant issues in financing assistive technology that should be addressed by the Act? Should loan programs be authorized or mandated?

Meeting Information: The public hearing is scheduled to be held from 9:30 a.m. to 4:30 p.m. on Friday, September 25, 1992, in the National Aeronautics and Space Administration's (NASA) Auditorium, 400 Maryland Avenue, SW., room 6104, Federal Office Building #6, Washington, DC 20202. The meeting will be accessible to individuals with disabilities.

The Secretary encourages interested parties to attend the public meeting and requests that those parties participating provide a written copy of their comments or suggestions.

The Secretary also encourages speakers to be as specific as possible in their recommendations.

COMMENTS: The Secretary also invites written comments and suggestions concerning issues in the reauthorization of Public Law 100-407, from interested parties who do not attend the meeting. The Department will consider written comments received within 15 days of the public meeting. The Secretary requests each respondent to identify his or her involvement in the field of technology-related assistance. Respondents may address issues raised in this notice as well as other reauthorization issues. The Secretary requests that respondents identify, where applicable, the specific sections of the Act, IDEA, or the Rehabilitation Act, that are addressed. Respondents are urged to include, if possible, specific legislative language changes that they propose for the Act.

ADDRESSES: Written comments should be addressed to Joyce Y. Caldwell, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue, SW., room 3419, Switzer Building, Washington, DC 20202-2601.

FOR FURTHER INFORMATION CONTACT: Persons desiring to participate or seeking additional information should contact Joyce Y. Caldwell, National Institute on Disability and Rehabilitation Research, Department of Education, 400 Maryland Avenue, SW., room 3419, Switzer Building, Washington, DC 20202-2601 Telephone: (202) 205-8187; deaf and hearing impaired individuals may call (202) 205-5516 for TDD services.

Dated: August 24, 1992.

Michael E. Vader,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 92-20593 Filed 8-26-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Justification for Acceptance of an Unsolicited Application

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.14, it intends to award on a noncompetitive basis a Cooperative Agreement to Purdue University for Midwest Plant Biotechnology Consortium. The purpose of this program is to foster and facilitate promising basic research investigations that will lead to industrial applications. The MPBC initiative will encompass applications of plant biotechnology to develop and improve alternative renewable energy sources (biofuels) and other products that can lessen U.S. reliance on petrochemicals and other non-renewable energy sources. As industrial needs and opportunities are identified, MPBC will consider not only the biomass crops, conversion technologies and applications of today, but will also work to envision the biomass crops and create the technologies and applications of the future. Eligibility for this award is restricted to Purdue University.

FOR FURTHER INFORMATION CONTACT: Mary Harris, ER-11, Energy Programs Division, U.S. Department of Energy, Oak Ridge, Tennessee 37831-6269, (615) 576-4507.

Issued in Oak Ridge, Tennessee, on August 17, 1992.

Don Sloan,

Acting Director, Procurement and Contracts Division, Field Office, Oak Ridge.

[FR Doc. 92-20627 Filed 8-26-92; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award; Financial Energy Management, Inc.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Acceptance of an Unsolicited Application for Award of a Financial Assistance Instrument.

SUMMARY: The Department of Energy (DOE) Denver Support Office announces that, pursuant to the DOE Financial Assistance Rules, 10 CFR 600.6(a)(2), it intends making a discretionary cooperative agreement award, based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1), to Financial Energy Management, Inc. for "Improving Energy Efficiency in Public Housing". The primary objective of this cooperative agreement is to stimulate interest and momentum within the Public Housing Administrations (PHAs) to undertake energy conservation projects. Four PHA buildings will be used in this project to determine which method, or combination of methods, is most effective in conserving energy now and in the future. This will be accomplished by demonstrating, to the PHA managers, techniques to obtain non-federal funding for energy efficiency projects, the impact of energy conservation measures, and the benefits of energy efficiency education for maintenance personnel and tenants.

The determination to make this award is based on the following information: A technical evaluation of the proposed project was performed pursuant to 10 CFR 600.14 (d) and (e). DOE determined that the proposed project represents an innovative approach to accomplishing a public purpose of support or stimulation and such project is meritorious since it emphasizes achievement of conservation through energy efficiency, multi-level education, new financing methods, and cooperation between federal and state/local agencies. The probability of achieving the anticipated objectives is extremely high. The facilities and qualifications of the key personnel are more than adequate. The proposed project is unique in that it offers an innovative approach to evaluating the method or combination of methods which are most effective in conserving energy in multi-family housing; and DOE knows of no other entity that is conducting or planning to conduct such an effort. This proposal would not be eligible for financial assistance under a recent, current, or planned solicitation and a competitive solicitation would be inappropriate.

The DOE share for co-funding the first year of the proposal is estimated at $75,000 and these funds will be used to support project activities during Phase I and II. The anticipated budget period of the first two phases of the project is July 1992 through June 1993. Depending on the availability of funds and satisfactory first year progress, a second one-year continuation award may be funded.

FOR FURTHER INFORMATION CONTACT: Margaret Learmouth, Denver Support Office, U.S. Department of Energy, 1075 South Yukon St., Lakewood, CO. 80228. (303) 969-7000 extension 230.

Issued in Chicago, Illinois on August 18, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-20631 Filed 8-26-92; 8:45 am]

BILLING CODE 6450-01-M

Chicago Field Office; Intent To Award Financial Assistance Grant to Wallace Energy Systems

AGENCY: Department of Energy.

ACTION: Notice of unsolicited application financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Atlanta Support Office, announces that pursuant to 10 CFR 600.6(a)(2), it is making a discretionary financial assistance award based on acceptance of an unsolicited application meeting the criteria of 10 CFR 600.14(e)(1) to Wallace Energy Systems under Grant Number DE-FG44-92CE15371. The proposed grant will provide funding in the estimated amount of $90,000 to Wallace Energy Systems for the purpose of developing an improved air-conditioning/water heater, heat pump system. Assuming a reasonable market penetration, the technology could have a significant impact on energy conservation.

SUPPLEMENTARY INFORMATION: The Department of Energy has determined that, in accordance with 10 CFR 600.14(f) that the application submitted by Wallace Energy Systems, is meritorious based on the general evaluation required by 10 CFR 600.14(d) and that the proposed project represents a unique idea that would not be eligible for financial assistance under a recent, current or planned solicitation. The technology is an air-conditioning/heat pump water heater capable of operating efficiently in ambient conditions from 5° F to 115° F. The proposed project is not eligible for financial assistance under a recent, current or planned solicitation because the funding program, the Energy-Related Inventions Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the authorizing legislation directs ERIP to provide support for worthy ideas submitted by the public. The program has never issued and has no plans to issue a competitive solicitation.

The anticipated term of the proposed grant is 24 months from the date of the award.

FOR FURTHER INFORMATION CONTACT: James R. Powell, U.S. Department of Energy, Atlanta Support Office, 730 Peachtree Street, NE., Atlanta, Georgia 30308, (404) 347-2868.

Issued in Chicago, Illinois on August 18, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-20633 Filed 8-26-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP92-654-000, et al.]

Williams Natural Gas Co., et al.; Natural Gas Certificate Filings

August 20, 1992.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP92-654-000]

Take notice that on August 13, 1992, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-654-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate a delivery point for service to Mid-Gulf, Inc. (Mid-Gulf), under Williams' blanket certificate issued in Docket No. CP82-479-000, all as more fully described in the request which is on file with the Commission and open to public inspection.

Williams proposes to add a delivery point for the transportation of natural gas for Mid-Gulf in Leavenworth County, Kansas, for subsequent delivery to Greenley Gas Company. It is stated that the delivery point consists of existing receipt facilities which Williams would reverse to use for deliveries. It is stated that Williams will deliver approximately 4,000 Mcf of natural gas on a peak day and 340,000 Mcf on an annual basis to Mid-Gulf. It is asserted that the cost of reversing the facilities would be $1,857, for which Williams would be reimbursed by Mid-Gulf. Williams states that it has sufficient capacity to accomplish the proposed deliveries without detriment or disadvantage to its other customers.

Comment date: October 5, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP92-650-000]

Take notice that on August 12, 1992, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-654-000 a prior notice request with the Commission pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) to abandon the transportation of natural gas for direct sale to Leland D. Meairs (Meairs) in Haskell County, Kansas, and the facilities necessary to make the sale, under the blanket certificates issued in Docket Nos. CP82-479-000 and CP88-631-000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Specifically, WNG proposes to abandon the transportation of natural gas for direct sale to Meairs and to reclaim measuring, regulating, and appurtenant facilities at two locations in Haskell County. WNG states that Meairs requested the termination of the service because he no longer needs the gas for irrigation. WNG estimates that it will cost $1,100 to reclaim the appurtenant facilities.

Comment date: October 5, 1992, in accordance with Standard Paragraph G at the end of this notice.

3. Northwest Pipeline Corporation

[Docket No. CP92-655-000]

Take notice that on August 14, 1992, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP92-655-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reallocate firm service among certain delivery points under its Rate Schedule ODL-1 and SGS-1 Service Agreements with Intermountain Gas Company (Intermountain) and to provide deliveries to an additional point under Intermountain's SGS-1 Service Agreement under its blanket certificate issued in Docket No. CP92-433-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that, at Intermountain's request, it proposes a reallocation of firm Maximum Daily Delivery Obligations (MDDO) among twelve delivery points under its ODL-1 Service Agreement in order to better satisfy current and projected firm service requirements in Intermountain's distribution areas. Also, at Intermountain's request, Northwest proposes to add the Twin Falls No. 1 delivery point and to reallocate firm Maximum Daily Quantities (MDQ) among three delivery points under Intermountain's SGS-1 Service Agreement. Northwest states that total volumes authorized to be delivered to Intermountain under that affected service agreements will not change as a result of the proposed delivery point changes and that each of Northwest's existing meter stations at the involved delivery points has adequate capacity to accommodate the proposed delivery reallocations.

Northwest also states that it requests that the approvals previously received in Docket No. CP91-3040-000 be amended to conform with Northwest's subsequent construction activities which slightly deviated from the scope of the approved upgrades for the meter facilities at the Meridian, Caldwell, Idaho State Penitentiary and Soda Springs Meter Stations. Subsequent to the docket No. CP91-3040-000 approval, Northwest indicates that it determined that major modifications to the proposed upgrade designs were necessary to provide better control of deliveries over a wider range of potential flow rates. Northwest says that, as actually constructed, the subject modifications generally resulted in retention, instead of replacement, of one of the existing regulator sets to ensure continued accurate pressure control at existing flow rates, with the remainder of the authorized facility changes being adequate to meet Intermountain's projected, increased future flow requirements. Further, Northwest avers that the modified upgrades of these meter stations did not significantly change the design capacities or the construction costs originally estimated.

Comment date: October 5, 1992, in accordance with standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP92-656-000]

Take notice that on August 17, 1992, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP92-656-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to reverse an existing meter station to enable United to transport an estimated 733,600 MMBtu of natural gas per day for MidCon Marketing Corp. (MidCon) to serve USA Gas Company (USA Gas) under United's Rate Schedule ITS, under the authorization issued in Docket No. CP82-430-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to reverse the meter tube, check valve and tap valve at an existing receipt side meter station located in Caddo Parish, Louisiana. It is estimated that the cost for revising these metering facilities is $1,400, which will be reimbursed to United by USA Gas.

United states that it is authorized to provide natural gas transportation service to MidCon under its Transportation agreement dated April 30, 1986. United further states that the service provided to MidCon will be

interruptible and will therefore have no impact on United's curtailment plan.

According to United, it will revise, construct and operate the proposed facilities in compliance with Par 157 of the Commission's Regulations and that the proposed activities will not affect United's ability to serve its other customers.

Comment date: October 5, 1992, in accordance with Standard Paragraph G at the end of this notice.

5. Williston Basin Interstate Pipeline Company

[Docket No. CP92-658-000]

Take notice that on August 18, 1992, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP92-658-000, a request to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act, to construct and operate a tap, metering station and appurtenant facilities in Campbell County, Wyoming, at a cost of $7,320, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Williston Basin intends to construct and operate the facilities for use in providing up to 500 Mcf per day of interruptible transportation volumes under its Rate Schedule IT-1 to J.N. Oil and Gas, Inc. (J.N.) for its oil field operations in Campbell County, Wyoming. Williston Basin states that the facilities constructed will be located on existing right-of-way, the installation will have no significant effect on Williston Basin's gas requirements, and the cost of the facilities will be reimbursed by J.N.

Comment date: October 5, 1992, in accordance with Standard Paragraph G at the end of this notice.

6. CNG Transmission Corporation

[Docket No. CP92-653-000]

Take notice that on August 13, 1992, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP92-653-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate a new meter run and appurtenant facilities at CNG's existing Herkimer Meter and Regulation Station under CNG's blanket certificate issued in Docket No. CP82-537-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

CNG proposes to construct minimal facilities which would involve (1) adding one new meter run and meter (13,980 dekatherms equivalent per day maximum capacity); (2) adding two regulation runs; and (3) replacing an existing 6' x 8' dekatherm building with an 8' x 10' dekatherm building. CNG explains that the proposed facilities would make possible deliveries of natural gas, owned by Indeck-Ilion Limited Partnership (Indeck-Ilion), to Niagara Mohawk Power Corporation (Niagara Mohawk) for final delivery by Niagara Mohawk to Indeck-Ilion's 55 megawatt cogeneration plant near the City of Ilion, Herkimer County, New York. CNG advises that CNG's transportation service for Indeck-Ilion is part of CNG's Lebanon to Leidy (ANR Phase II) project, which the Commission certificated on June 11, 1991 (55 FERC ¶ 61,415), and amended on August 4, 1992 (60 FERC ¶ 61,120). CNG states that Indeck-Ilion would reimburse the total cost of the proposed facilities, which would amount to approximately $361,083.

Comment date: October 5, 1992, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20636 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP92-636-000, et al.]

Williams Natural Gas Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP92-636-000]

August 18, 1992.

Take notice that on August 7, 1992, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP92-636-000, a request pursuant to sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act, to abandon by reclaim measuring, regulating and appurtenant facilities serving the manufacturing portion of the Bonner Springs Lone Star Cement Plant (Lone Star) in Wyandotte County, Kansas, under its blanket certificate authorization issued in Docket No. CP82-479-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Williams states that the affected customer is dismantling the manufacturing portion of the plant and has requested that Williams reclaim its facilities. Facilities serving the shipping terminal will remain in place. The reclaim cost is estimated to be $6,132 with no salvage value.

Comment date: October 2, 1992, in accordance with Standard Paragraph G at the end of this notice.

2. Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company

[Docket No. CP92-648-000]

August 18, 1992.

Take notice that on August 11, 1992, Columbia Gas Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325-1273, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houstong, Texas 77001-0683, filed in Docket No. CP92-648-000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas service between Columbia Gas, Columbia Gulf and Trunkline Gas Company (Trunkline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gas and Columbia Gulf propose to abandon the transportation service provided under the exchange agreement (agreement) between Columbia Gas, Columbia Gulf and Trunkline dated March 28, 1978, as amended May 16, 1979, under Columbia Gas' Rate Schedule X-79 and Columbia Gulf's Rate Schedule X-58 to be effective June 20, 1992. Columbia Gas and Columbia Gulf state that Columbia Gas delivers, pursuant to Columbia Gas' Rate Schedule X-79, up to 35,000 Mcf of natural gas per day to Stingray Pipeline Company in West Cameron 565 for the account of Trunkline. Columbia Gas and Columbia Gulf state that Trunkline redelivers equivalent quantities to Columbia Gulf, pursuant to Columbia Gulf's Rate Schedule X-58 at: (1) Exxon Company, U.S.A.'s (Exxon) existing "A" platform located in Eugene Island Block 314; (2) the jointly owned C-N-T line of Columbia Gulf, Tennessee Gas Pipeline Company (Tennessee) and Natural Gas Pipeline Company located in the Eugene Island area; (3) Texaco, Inc., *et al.*'s existing "A" platform located in Eugene Island Block 313; (4) Shell Oil Company's existing "A" platform located in Eugene Island Block 331; and, (5) Columbia Gulf and Tennessee's jointly owned 30-inch pipeline located in West Cameron Block 601. Balancing points are located at Exxon's existing platforms located in West Cameron Block 616 and 630 at which points either party has the capability of causing gas to be delivered to the other, it is indicated.

Columbia Gas and Columbia Gulf state that pursuant to article IV of the agreement, Columbia Gulf has requested, by written request dated June 21, 1991, termination of the agreement effective June 20, 1992.

Comment date: September 8, 1992, in accordance with Standard Paragraph F at the end of this notice.

3. Trunkline Gas Company

[Docket No. CP92-652-000]

August 19, 1992.

Take notice that on August 12, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-652-000, a request pursuant to §§ 157.205 and 157.216 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon four sales taps and the related sales service to four farm tap customers, under blanket certificate issued in Docket No. CP86-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that it has received termination letters from two farm tap customers which states that they no longer desire such sales service; and the third customer signed a letter agreement consenting to abandonment of sales service and facilities by Trunkline. The fourth farm tap customer, Cattle Feeders Association, no longer exists as a company; therefore, it is not possible to obtain a termination letter from that entity.

Comment date: October 5, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20648 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-1-000]

ANR Pipeline Company; Conference

August 21, 1992.

Take notice that on September 10, 1992, a conference will be convened in the above-captioned docket to discuss ANR Pipeline Company's summary of its proposed plan for implementation of Order No. 636.

The conference will be held in a hearing or conference room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 10 a.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Cecilia Desmond at (202) 208-2280.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20649 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-91-000]

ANR Storage Company; Proposed Changes in FERC Gas Tariff

August 21, 1992.

Take notice that ANR Storage Company (ANR Storage), on August 14, 1992, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Fourth Revised Sheet No. 1(a), with a proposed effective date of October 1, 1992.

ANR Storage states that Fourth Revised Sheet No. 1(a), reflects the new Annual Charge Adjustment (ACA) rate as required under the ACA provisions of Order No. 472 issued May 29, 1987. ANR Storage states that the new ACA rate of $.0023 per Mcf, to be charged by ANR Storage is per the Commission's notice given on July 27, 1992 and is to be effective October 1, 1992.

ANR Storage states that copies of the filing are being served on all of ANR Storage's customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington.

DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20644 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-647-000]

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company; Application

August 20, 1992.

Take notice that on August 11, 1992, Columbia Transmission Corporation (Columbia Gas), P.O. Box 1273, Charleston, West Virginia 25325-1273 and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001-0683, filed in Docket No. CP92-647-000 an application pursuant to section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a transportation and exchange service provided to Trunkline Gas Company (Trunkline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia Gas and Columbia Gulf state that by order issued August 6, 1982, in Docket No. CP82-236-000, *et. al.*, Columbia Gas and Columbia Gulf were authorized to provide an interruptible transportation and exchange service for Trunkline under a transportation and exchange agreement (Agreement) dated December 29, 1981, as amended, and filed with the Commission as Rate Schedule X-108 of Columbia Gas' FERC Gas Tariff, Original Volume No. 2, and Rate Schedule Z-83 of Columbia Gulf's FERC Gas Tariff, Original Volume No. 2. Columbia Gas and Columbia Gulf further state that under this Agreement, Trunkline agreed to transport on behalf of Columbia Gulf up to 20,000 Mcf of natural gas per day from Eugene Island Block 392, Offshore Louisiana, and Columbia Gas agreed to transport on behalf of Trunkline up to 20,000 Mcf of natural gas from West Cameron Block 624, offshore Louisiana. The balancing point is the interconnection between the facilities of Trunkline and Columbia Gulf located near Centerville, St. Mary Parish, Louisiana, it is stated.

On December 19, 1990, Columbia Gas and Columbia Gulf state that they gave written notice of their election to terminate the Agreement at the end of its primary term, December 31, 1991, pursuant to the termination agreement provisions. As a result, Columbia Gas now requests authority to abandon Rate Schedule X-108 and Columbia Gulf now requests authority to abandon its Rate Schedule X-83, both effective December 31, 1991.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the National Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia Gas and Columbia Gulf to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20637 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RS92-5-000, et al., and RS92-6-000, et al.]

Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company; Prefiling Conference

August 21, 1992.

Take notice that prefiling conference will be convened in these proceedings on September 2 and 3, 1992. The conference will convene at 10 a.m. on September 2 at the United States Department of Labor auditorium. The entrance to the Department of Labor building is on Third Street at C Street, NW., Washington, DC. The conference will address proposals of Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company to comply with Order Nos. 636 and 636-A. All parties and Commission staff are invited to attend.

For additional information contact Donald A. Heydt at (202) 208-0740.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20642 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-661-000]

Freeport-McMoRan, Inc., and Aquila Energy Marketing Corporation, Complainants v. K N Energy, Inc., Respondent; Complaint

August 21, 1992.

Take notice that on August 18, 1992, Freeport-McMoRan, Inc. (FMI), 1615 Poydras Street, New Orleans, Louisiana 70160, and Aquila Energy Marketing Corporation (Aquila), 2533 North 117th Avenue, Suite 300, Omaha, Nebraska 68164, filed in Docket No. CP92-661-000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), a complaint against K N Energy, Inc., (K N) for potential violation of section 7(b) of the Natural Gas Act (NGA), all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

FMI states that it is a corporation organized under the laws of the State of Delaware, with its principal place of business in New Orleans, Louisiana. FMI states further that it operates a processing plant (Tyrone Plant) downstream from K N's Tyrone System.

Aquila states that it also is a corporation organized under the laws of the State of Delaware, and its principal place of business is in Omaha, Nebraska. Aquila is party to a number of longterm contracts with producers who are connected to the Tyrone System.

FMI and Aquila submit this complaint against the imminent transfer by K N of certain certificated jurisdictional transportation facilities (Tyrone System) in Beaver County and Texas County, Oklahoma, to GPM Gas Corporation (GPM), a subsidiary of Phillips Petroleum Company (Phillips), without K N first obtaining approval of the abandonment under section 7(b) of the NGA.

FMI and Aquila conclude from evidence gathered by their field employees that GPM is currently scheduled to acquire the Tyrone System on September 1, 1992, in exchange for facilities in Douglas, Wyoming owned by Phillips. Because K N plans to implement the exchange in the very near future and has not yet sought abandonment authorization, FMI and Aquila believe that K N plans to implement the exchange without prior approval from the Commission. As a result, K N will be in violation of section 7(b) of the NGA. Also, FMI and Aquila assert that consummation of the exchange as proposed will result in the abandonment by K N of jurisdictional open-access transportation facilities and the continued open-access transportation of gas by GPM for third parties.

FMI and Aquila are also concerned that, prior to the exchange, K N may construct new delivery facilities on the Tyrone System without prior Commission authorization [1]. Because of K N's latest action, FMI and Aquila are convinced that K N intends either to proceed with construction under the pretense that the facilities are not jurisdictional or, because the exchange is imminent, to delay construction until the facilities are owned by GPM.

FMI and Aquila assert that the Commission should require K N to seek abandonment of the Tyrone System through a formal section 7(b) proceeding, and that abandonment should not be granted unless Phillips agrees: (1) To seek a certificate of public convenience and necessity under section 7(c); and (2) to operate the Tyrone System as an open-access transportation system subject to the Commission's open-access regulations under part 284.

[1] K N, on May 27, 1992, filed a Request Under the Blanket Certificate to construct three new delivery points to deliver gas to Phillips on behalf of K N's affiliate, K N Gas Marketing, Inc. FMI and Aquila protested the Request, and on August 3, 1992, K N filed a Notice of Withdrawal of its Request. Simultaneously with this complaint, FMI and Aquila are parties to a Motion in Opposition to K N's Notice of Withdrawal.

Any person desiring to be heard or to make any protest with reference to said complaint should, on or before September 21, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR (385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Respondent's answer to the complaint shall be due on or before September 21, 1992.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20639 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-649-000]

Kansas Public Service Division of UtiliCorp United Inc. v. Williams Natural Gas Company; Complaint

August 18, 1992.

Take notice that on August 10, 1992, Kansas Public Service Division of UtiliCorp United Inc. (KPS), 110 East 9th Street, Lawrence, Kansas 66044, filed in Docket No. CP92-649-000 pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) a complaint, and request for injunction, prohibiting the construction by Williams Natural Gas Company (WNG) of tap and pipeline facilities in Douglas County, Kansas, for service to The Lawrence Paper Company (Lawrence Paper) and to prohibit WNG from providing interstate transportation of natural gas to Lawrence Paper, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

KPS avers that WNG proposes to construct a line from WNG's interstate pipeline to plant facilities of Lawrence Paper in Douglas County, Kansas, and to utilize those facilities to provide firm and interruptible interstate transportation of natural gas directly to Lawrence Paper under the authority of section 311 of the Natural Gas Policy Act of 1978. KPS also avers that WNG proposes to commence this construction during August 1992.

KPS alleges that the construction and transportation should be enjoined immediately and permanently because, *inter alia*, the proposed facilities duplicate existing, available facilities that could be used to provide the proposed service; WNG has not filed the advance notice of section 311 construction mandated by Commission Regulations; WNG's proposal is contrary to the policy of the State of Kansas; and WNG does not have capacity available for the proposed service.

KPS requests an immediate injunction prohibiting construction.

Any person desiring to be heard or to make any protest with reference to said complaint should on or before September 8, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. Answers to the complaint shall be due on or before September 17, 1992.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20638 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-47-000]

MIGC, Inc.; Compliance Filing

August 21, 1992.

Take notice that on August 14, 1992, MIGC, Inc. (MIGC) tendered for filing Sixty-Second Revised Sheet No. 32 to MIGC's FERC Gas Tariff, Original Volume No. 1. This tariff sheet is proposed to become effective October 1, 1992.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to transportation services during the fiscal year commencing October 1, 1992.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All such petitions or

protests should be filed on or before August 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20643 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-44-000]

Moraine Pipeline Company; Conference

August 21, 1992.

Take notice that on September 17, 1992, a conference will be convened in the above-captioned docket to discuss Moraine Pipeline Company's summary of its proposed plan for implementation of Order Nos. 636 and 636-A.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The conference will begin at 2 p.m. All interested persons are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons can call Whit Holden at (202) 208-1118 or Frank Knight at (202) 208-0525.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20641 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL89-55-002]

New England Power Co.; Filing

August 21, 1992.

Take notice that on August 6, 1992, New England Power Company (NEP) tendered for filing its compliance refund report in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 2, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20634 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-86-000]

Pacific Gas Transmission Company; Annual Charge Adjustment

August 21, 1992.

Take notice that on August 19, 1992, Pacific Gas Transmission Company (PGT) tendered for filing a notice of a revision in the Annual Charge Adjustment (ACA) for jurisdictional sales and transportation customers in accordance with Paragraph 2 of the General Terms and Conditions in PGT's FERC Gas Tariff, Second Revised Volume No. 1 and Paragraph 22 of the Transportation General Terms and Conditions in PGT's FERC Gas Tariff, Original Volume No. 1-A.

PGT submits for filing and acceptance Sixteenth Revised Street No. 4, Fourth Revised Sheet No. 5, of Second Revised Volume No. 1, and Seventh Revised Sheet No. 4 of Original Volume No. 1-A of its FERC Gas Tariff to become effective October 1, 1992.

PGT states that the above tariff sheets have been revised to reflect a modification to the ACA fee, in accordance with the Commission's most recent Annual Charge billing to PGT.

PGT states that copies of the filing are being served on all affected jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 28, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20645 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-7-021]

Transcontinental Gas Pipe Line Corp.; Compliance Filing

August 18, 1992.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on July 28, 1992 certain tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2, which tariff sheets are proposed to be effective as indicated in appendix A attached to the filing.

Transco states that the purpose of its July 29, 1992 filing is to comply with the Commission's June 29, 1992 letter order (June 29 Order) in Docket Nos. CP89-7-013 *et al.* in which the Commission accepted certain tariff sheets, rejected certain tariff sheets and required Transco to file certain other tariff sheets reflecting certain modifications related to Transco's System Expansion and Niagara Cogen Projects. Transco also submitted in the filing revised tariff sheets to incorporate revised fuel retention factors effective April 1, 1992 which were determined based on incremental fuel retention factors for the System Expansion and Niagara Cogen Projects. Such fuel retention factors are the same as those reflected in the alternate tariff sheets included as part of Transco's filing of March 3, 1992 in Docket No. TM92-8-29-000.

Transco served copies of the instant filing to its System Expansion and Niagara Cogen shippers and interested State Commissions. In accordance with provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before August 25, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 92-20635 Filed 8-26-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[Case No. F-052]

Energy Conservation Program for Consumer Products: Bard Manufacturing Co.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Bard Manufacturing Company (Bard) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's DCH series of condensing furnaces.

Today's notice also publishes a "Petition for Waiver" from Bard. Bard's Petition for Waiver requests DOE to grant relief from the DOE test procedure relating to the blower time delay specification. Bard seeks to test using a blower delay time of 60 seconds for its series condensing furnaces instead of the specified 1.5-minute delay between burner on-time and blower on-time. DOE is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: DOE will accept comments, data, and information not later than September 28, 1992.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Conservation and Renewable Energy, Case No. F-052, Mail Stop CE-90, room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8757.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waive when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determined that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On July 29, 1992, Bard filed an Application for an Interim Waiver regarding blower time delay. Bard's Application seeks an Interim Waiver from the DOE test provision that requires a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Bard requests the allowance to test using a 60-second blower time delay when testing its DCH series of condensing furnaces. Bard states that the 60-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 1.0 percent. Since current DOE test procedures do not address this variable blower time delay, Bard asks that the Interim Waiver be granted.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, 56 FR 2930, January 25, 1991, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 899, January 9, 1992, and 57 FR 10160, March 24, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the petition for waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is the public's interest to have the similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Bard an Interim Waiver for its DCH series of condensing furnaces. Pursuant to paragraph (e) of § 430.27 of

the Code of Federal Regulation part 430, the following letter granting the Application for Interim Waiver to Bard was issued.

Pursuant to paragraph (b) of 10 CFR part 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, August 24, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Department of Energy Washington, DC 20585

Mr. Dick Hanna, Manager, Heating and Application Engineering
Bard Manufacturing Company, 1914 Randolph Drive, Bryan, Ohio 43506.

Dear Mr. Hanna: This is in response to your July 29, 1992, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for the Bard Manufacturing Company (Bard) DCH Series of condensing furnaces.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 55 FR 3253, January 31, 1990, 56 FR 2920, January 25, 1991, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19228, May 4, 1989, 56 FR 6021, February 14, 1991; Lennox Industries, 55 FR 50224, December 5, 1990; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991; Inter-City Products Corporation, 55 FR 51487, December 14, 1991, and 56 FR 63945, December 6, 1991; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, and 56 63940, December 6, 1991; Snyder General Corporation, 56 FR 45060, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, and 57 FR 10160, March 24, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; and The Ducane Company, 56 FR 63943, December 6, 1991.

Bard's Application for Interim Waiver regarding blower time delay on start-up does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Bard will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Bard's Application for an Interim Waiver from the DOE test procedure for its DCH series of condensing furnaces regarding blower time delay is granted.

Bard shall be permitted to test its DCH Series of condensing furnaces on the basis of the test procedures specified in 10 CFR Part 430, Subpart B, Appendix N, with the modification set forth below.

(i) Section 3.0 in Appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up delay the blower start-up by 1.5 minutes (t-), unless: (1) the furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ± 0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

J. Michael Davis, P.E.,

Assistant Secretary, Conservation and Renewable Energy.

Subject: Blower On-Delay Waiver

July 29, 1992

Assistant Secretary, Office of Conservation and Renewable Energy
United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Gentlemen: Please consider this Petition for Waiver and Application for Interim Waiver pursuant to Title 10 CFR Part 430.27.

Waiver is requested from the test procedures covering gas furnaces found at Appendix N to Subpart B of Part 430. The current heat-up test procedure requires a 90 second delay between burner on and blower on conditions, and a 90 second blower cool down period after main burner is turned off.

Bard Manufacturing Company will be producing a "DCH" Series of condensing gas upflow furnaces that employ an electronic furnace control that starts the blower 60 seconds after main burner start. Our testing indicates that these furnaces have a one to one and one-half percent AFUE increase compared to the standard test procedure.

Bard believes that a one to one and one-half percent increase in AFUE is a worthwhile energy savings. Current test procedures do not give credit for the saved energy, thus providing inaccurate comparative data that is not representative of actual furnace operation.

Bard requests an interim waiver to permit calculation based actual timed blower operation because it is likely that our waiver will be granted. Similar waivers have been granted to other manufacturers in the past.

Confidential comparative test data which verify the results above are available upon your request.

A copy of this Petition for Waiver and Application for Interim Waiver is being sent to other manufacturers who market similar products.

Sincerely,

Dick Hanna,

Manager, Heating and Application Engineering.

[FR Doc. 92-20628 Filed 8-26-92; 8:45 am]

BILLING CODE 6450-01-M

[Case No. F-050]

Energy Conservation Program for Consumer Products; Carrier Corporation

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-050) granting a Waiver to Carrier Corporation (Carrier) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Carrier its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAW, GB1A, and GB3A series of induced draft furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Carrier has been granted a Waiver for its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, August 21, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order

In the matter of: The Carrier Corporation (Case No. F-050).

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Carrier filed a "Petition for Waiver," dated March 4, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on June 3, 1992, Carrier's petition and solicited comments, data and information respecting the petition. 57 FR 23394. Carrier also filed an "Application for Interim Waiver" under section 430.27(g) which DOE granted on May 27, 1992. 57 FR 23394, June 3, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with The Federal Trade Commission (FTC) concerning the Carrier Petition. The FTC did not have any objections to the issuance of the waiver to Carrier.

Assertions and Determinations

Carrier's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Carrier requests the allowance to test using a 45-second blower time delay when testing its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces. Carrier states that since the 45-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.6 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Carrier indicates that it is unable to take advantage of any of these exceptions for its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces.

Since the blower controls incorporated on the Carrier furnaces are designed to impose a 45-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 45-second blower time delay when testing the Carrier 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces. Accordingly, with regard to testing the 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces, today's Decision and Order exempts Carrier from the existing provisions regarding blower controls and allows testing with the 45-second delay.

It is, therefore, ordered that: (1) The "Petition for Waiver" filed by Carrier Corporation (Case No. F-050) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Carrier Corporation shall be permitted to test its 58WAV/395CAV, 58ZAV/376CAV, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph: 3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103-82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows: 3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103-82. After equilibrium conditions are achieved following the cooldown test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Carrier Corporation shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the 58WAV/395CAV, 58ZAV/376CAV/, 58PAV/383KAV, 58RAV/373LAV, GB1A, and GB3A series of induced draft furnaces manufactured by Carrier Corporation.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Wavier may be revoked or modified at any time upon a determination

that the factual basis underlying the petition is incorrect.

(5) Effective August 21, 1992, this Waiver supersedes the Interim Waiver granted the Carrier Corporation on May 27, 1992, 57 FR 23394, June 3, 1992 (Case No. F-050).

Issued in Washington, DC, August 21, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-20618 Filed 8-26-92; 8:45 am]

BILLING CODE 6450-01-M

Conservation and Renewable Energy

[CE-Support Office Boston]

Financial Assistance Award; Intent To Award Grant Massachusetts Institute of Technology

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: Pursuant to 10 CFR 600.14, the Department of Energy, Chicago Field Office, through the Boston Support Office, intends to award a grant to the Massachusetts Institute of Technology. The grant will provide funding in the amount of $300,000 for a program entitled: Research and Assessment Studies in Support of DOE Programs Related to Improved Resource Conservation and Environmental Quality. The review of the proposed project has assured DOE that the work proposed will allow CE to benefit from work being done on related R&D programs. The results will contribute to the ultimate goal of assessing, understanding and communicating technology, economic, energy and environmental impacts to program stakeholders and to the nation.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

The budget period of this grant shall be twelve (12) months from the effective date of award, and the project period will be for a term of five years from the effective date of award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office; Attn: Mr. Hugh Saussy, Jr.; One Congress Street, Boston, MA 02114-2021.

Issued in Chicago, Illinois on August 18, 1992.

Timothy S. Crawford,

Assistant Manager for Administration.

[FR Doc. 92-20632 Filed 8-26-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-56-NG]

Unocal Canada Ltd.; Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Unocal Canada Limited authorization to import up to 100 Bcf of natural gas, including liquefied natural gas, from Canada, Mexico, and other countries over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 21, 1992.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs Fossil Energy.

[FR Doc. 92-20630 Filed 8-26-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ECAO-CD-92-0746; FRL-4199-9]

Air Quality Criteria for Ozone and Related Photochemical Oxidants

AGENCY: U.S. Environmental Protection Agency.

ACTION: Call for Information.

SUMMARY: The Environmental Criteria and Assessment Office, Office of Health and Environmental Assessment, of the U.S. Environmental Protection Agency (U.S. EPA) is undertaking to update and revise, where appropriate, the *Air Quality Criteria for Ozone and Other Photochemical Oxidants* (EPA-600/8-84-020a-eF) published in August, 1986.

Since completion of the 1986 ozone criteria document, the U.S. EPA has continued to collect scientific information that may be particularly relevant to a review of the National Ambient Air Quality Standards for ozone. A summary of selected literature published from 1986 through early 1989 on the health and vegetation effects of ozone exposure was published as a supplement to the criteria document (EPA/600/8-88/105F).

As part of this continuing review, interested parties are invited to assist the U.S. EPA in developing and refining a scientific information base for further updating of the air quality criteria for ozone. While EPA has continued to follow the literature and compile appropriate studies since early 1989, identification of new information in the following areas will be particularly useful: effects of exposure in laboratory animals and humans; effects on vegetation, agroecosystems (crops), and natural ecosystems; effects on nonbiological materials; effects on global climate; chemistry and physics; sources and emissions; analytical methodology; transformation and transport in the environment; and ambient concentrations. To be considered for inclusion in the criteria document, submitted information should be published, be accepted for publication, or have been presented at a public, scientific meeting.

DATES: All communications and information must be submitted by October 26, 1992, and addressed to the Project Manager for Ozone and Related Photochemical Oxidants, Environmental Criteria and Assessment Office (MD-52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

Dated: August 18, 1992.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 92-20598 Filed 8-26-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-00123; FRL-4161-1]

Announcement of Public Meeting and Solicitation of Public Comment; Chemical Processing Under TSCA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces a 1-day public meeting and the opportunity to provide comments on EPA's interpretation of the definition of "process" under the Toxic Substances Control Act (TSCA) and regulations promulgated thereunder. This Notice also announces the public availability of a comprehensive background information document on chemical processing activities subject to TSCA and TSCA regulations.

DATES: The public meeting will be held on Tuesday, September 22, 1992, from 9 a.m. to 12 noon and 1 p.m. to 4 p.m. All written comments (including written transcripts of oral remarks presented at the public meeting) should be received by EPA in triplicate no later than September 30, 1992.

ADDRESSES: The public meeting will be held at: The Holiday Inn, 550 C St., SW., Washington, DC 20024, (202) 479-4000. Requests for the public meeting registration package, the background information document, and the scheduling of oral remarks should be sent to: TSCA Assistance Information Service, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551, FAX: (202) 554-5603 (document requests only). Written comments (including written transcripts of oral remarks made at the public meeting) should be submitted in triplicate to: TSCA Document Processing Center (TS-793), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Attn: TSCA Process Definition (OPPTS Docket 00123).

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS-799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

SUPPLEMENTARY INFORMATION: Since TSCA was enacted in 1977, EPA has received numerous inquiries concerning the scope of the definition of the term "process" under section 3(10) of TSCA and the coverage of chemical processors under various TSCA regulations. In order for EPA to address this subject in a comprehensive and organized manner and to ensure broad public participation, EPA is soliciting public comment and sponsoring a 1-day public meeting to allow all interested persons the opportunity to present their views on this subject. In addition, EPA has assembled a comprehensive background information document on chemical processing as used in EPA's TSCA regulations, policies, and related documents (e.g., Question and Answer (Q&A) documents, formal EPA correspondence) that is available upon request. Following the public meeting and a review of all written comments received, EPA will examine and address as appropriate specific issues in priority order starting with those that are determined to be of the greatest concern to the regulated community and others. Any person interested in receiving the background information document and/or a meeting registration package, as well as those persons interested in making oral presentations at the meeting, should contact EPA's TSCA Assistance Information Service at the above address prior to September 22, 1992. Considering that EPA expects a large number of participants at the meeting, each speaker will be allowed no more than 15 minutes for the presentation of oral remarks. All written comments (including written transcripts of oral remarks presented at the public meeting) should be received in triplicate by EPA's TSCA Document Processing Center at the above address no later than September 30, 1992.

An official public record has been established (OPPTS Docket 00123) and is available for public viewing in EPA's TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. The TSCA Public Docket Office is located in Rm. NE-G004, 401 M St., SW., Washington, DC 20460.

Dated: August 17, 1992.

Mark A. Greenwood

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92-20595 Filed 8-26-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4199-6]

Public Water Supply Supervision Program; Program Revisions for the States of Alaska and Washington

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Alaska and the State of Washington are revising their approved State Public Water Supply Supervision Primacy Programs. Both States have adopted (1) drinking water regulations for eight volatile organic chemicals that correspond to the National Primary Drinking Water Regulations for eight volatile organic chemicals promulgated by EPA on July 8, 1987 at 52 FR 25690 and (2) public notice regulations that correspond to the revised EPA public notice requirements promulgated on October 28, 1987 at 52 FR 41534. EPA has determined that these two sets of State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve both States' program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted September 28, 1992 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 28, 1992, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become effective September 28, 1992.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

For the State of Alaska:

Department of Environmental Conservation (DEC), 410 West Willoughby, Suite 105, Juneau, Alaska 99801-1795.

DEC South Central Regional Office, 3601 C Street, Suite 1334, Anchorage, Alaska 99503.

DEC Northern Regional Office, 1001 Noble Street, Suite 350, Fairbanks, Alaska 99701.

For the State of Washington:

Department of Health (DOH), Division of Drinking Water, Airdustrial Center Building #3, Olympia, Washington 98504.

DOH Northwest Regional Office, 1511 Third Avenue, #719, Seattle, Washington 98101.

DOH Eastern Regional Office, West 924 Sinto Avenue, Spokane, Washington 99201.

For either state:

Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA, Region 10, Drinking Water Programs Branch, at the Seattle address given above; telephone (206) 553-1890.

Dated: August 3, 1992.
Dana A. Rasmussen,
Regional Administrator.
[FR Doc. 92-20597 Filed 8-26-92; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1903]

Petitions for Reconsideration and Clarification Applications for Review and Motions for Stay of Actions in Rule Making Proceedings

August 21, 1992.

Petitions for reconsideration and clarification, applications for review and motions for stay have been filed in the Commission rule making proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC., or may be purchased from the Commission's copy contractor Downtown Copy Center (202) 452-1422. Opposition to these petitions, applications and motions must be filed September 11, 1992. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Southampton Bridgehampton, Westhampton, and Calverton-Roanoke, New York) (MM Docket No. 90-283, RM Nos. 7222, 7313, 7485 & 7486). Number of Petitions Filed: 3.

Subject: Bundling of Cellular Customer Premises Equipment and Cellular Service. (CC Docket No. 91-34). Number of Petitions Filed: 1.

Subject: Amendment of Part 90 Concerning Secondary Fixed Operations in the 450-470 MHz Band. (PR Docket No. 91-66). Number of Petitions Filed: 2.

Application for Review

Subject: Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Southampton, Bridgehampton, Westhampton, and Calverton-Roanoke, New York) (MM Docket No. 90-283, RM Nos. 7222, 7313, 7485 & 7486). Number of Applications Filed: 1.

Motion for Stay

Subject: Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. (Southampton, Bridgehampton, Westhampton, and Calverton-Roanoke, New York) (MM Docket No. 90-283, RM Nos. 7222, 7313, 7485 & 7486). Number of Motions Filed: 1.

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 89-20484 Filed 8-26-89; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

American President Lines, Ltd., et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-010099-011.
Title: International Council of Containership Operators.
Parties:
American President Lines, Ltd.
A.P. Moller (Maersk Line)
Blue Star Line Ltd.
Compagnie Generale Maritime
Compagnie Maritime Belge S.A.
Crowley Maritime Corporation
Hamburg-Sudamerikanische Dampfschiffahrt-Gesellschaft Eggert & Amsinck (Columbus Line)
Hapag-Lloyd AG
Kawasaki Kisen Kaisha, Ltd.
Koninklijke Nedlloyd Group N.V.
Lykes Bros. Steamship Co., Inc.
Mitsui OSK Lines, Ltd.
Neptune Orient Lines Ltd.
Nippon Yusen Kaisha
Orient Overseas Container Line Ltd.
P & O Containers Ltd.
Sea-Land Service, Inc.
Societa Finanziari Marittima (Finmare)
South African Marine Corp., Ltd.
The Australian National Line
Transatlantic Shipping Co., Ltd.
Transportacion Maritima Mexicana, S.A. de C.V.
United Arab Shipping Company (S.A.G.)
Wilh. Wilhelmsen
Zim Israel Navigation Co., Ltd.

Synopsis: The proposed amendment will add Senator Linie as a party to the Agreement. The parties have requested a shortened review period.

Dated: August 21, 1992.
By Order of the Federal Maritime Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 92-20528 Filed 8-26-92; 8:45 am]
BILLING CODE 6730-01-M

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Frontier Cruises Limited, 600 Corporate Drive, Suite 410, Fort Lauderdale, Florida 33334.
Vessel: FRONTIER SPIRIT.

Dated: August 21, 1992.
Joseph C. Polking,
Secretary.
[FR Doc. 92-20527 Filed 8-26-92; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[File No. 902 3100]

CDB Infotek, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a California corporation and one of its officers to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information for any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished; or from furnishing any consumer report under any other circumstances not permitted by section 604 of the Fair Credit Reporting Act. In addition, respondents would be required to notify the consumer whenever a consumer report is furnished for employment purposes and contains information that may adversely affect the consumer's ability to obtain employment.

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: David Medine, FTC/S-4429, Washington, DC 20580. (202) 326-3224.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of CDB Infotek, a corporation, and Rick L. Rozar, individually and as an officer of said corporation.

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of CDB Infotek, a corporation, and Rick L. Rozar, individually and as an officer of said corporation, hereinafter sometimes referred to as proposed respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease to and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between CDB Infotek, by its duly authorized officer, and Rick L. Rozar, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondents CDB Infotek is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 701 South Parker Avenue, Suite 4500, Orange, California 92668.

Proposed respondent Rick L. Rozar is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondents waive: (a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 50 *et seq.*

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached, or that the facts alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purpose of this Order, the following definitions apply:

"Person," "consumer," "consumer report," "consumer reporting agency," and "employment purposes" are defined as set forth in sections 603 (b), (c), (d), (f), and (h), respectively, of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. 1681a(b), 1681a(c), 1681a(d), 1681a(f), and 1681a(h);

"Subscriber" means any person who is approved for or obtains a consumer report from respondents;

"Mixed-use subscriber" means a subscriber who in the ordinary course of business typically has both permissible and impermissible purposes for ordering consumer reports; and

"Permissible purpose" means any of the purposes listed in section 604 of the FCRA, 15 U.S.C. 1681b, or as it might be amended in the future, for which a consumer reporting agency may lawfully furnish a consumer report.

I.

It is ordered That respondents, CDB Infotek, a corporation, its successors and assigns, and its officers, and Rick L. Rozar, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the furnishing of any

consumer report, do forthwith cease and desist from:

1. Furnishing any consumer report to any person that they have reason to believe intends to use the information in connection with the evaluation of an insurance claim or in connection with any insurance purpose other than the underwriting of insurance involving the consumer, unless furnishing the consumer report is otherwise permitted under sections 604(1) or 604(2) of the FCRA, or furnishing any consumer report under any other circumstances not permitted by section 604 of the FCRA.

2. Failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 of the FCRA, as required by section 607(a) of the FCRA. Such procedures shall include:

a. With respect to prospective subscribers, before furnishing a consumer report to any such subscriber, and with respect to current subscribers, within six months after the date of this Order:

(i) Obtaining from each subscriber a written certification stating the nature of the subscriber's business, the projected number of consumer reports the subscriber expects to obtain from respondents on a monthly basis, and all purposes for which the subscriber plans to obtain consumer reports from respondents. Each certification under this provision must be dated and signed, must bear the printed or typed name of the person signing it, and must state that the person signing it has direct knowledge of the facts certified and supervisory responsibility for obtaining consumer reports from respondents.

(ii) Determining, based on the information in the subscriber's written certification, and any other factors of which respondents are aware or, under the circumstances, should reasonably ascertain, that each subscriber has a permissible purpose under section 604 for the types of reports the subscriber plans to obtain. Respondents shall create and maintain a written record of the basis for this determination.

(iii) Verifying (1) the business identity of the subscriber; (2) that the subscriber is engaged in the business certified and has a permissible purpose for obtaining consumer reports; and (3) that the subscriber maintains reasonable procedures designed to prevent access to consumer reports by unauthorized persons. Respondents shall conduct an on-site visual inspection of the business premises of each subscriber that respondents have not verified through other means (*e.g.*, through business directories, state or local regulatory authorities, or other reliable sources) to be a legitimate business having a "permissible purpose" for the information reported.

(iv) Providing each subscriber a summary of the permissible purposes for obtaining consumer reports under section 604 of the FCRA that is substantially identical to the summary attached to this Order as Exhibit A.

(v) Informing each subscriber in writing that the FCRA imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses.

b. With respect to both current and prospective subscribers:

(i) Requiring, any time a subscriber requests a consumer report for employment purposes pursuant to section 604(3)(B) of the FCRA, that the subscriber identify and certify that purpose.

(ii) Requiring, any time a subscriber requests a consumer report for a "legitimate business need" pursuant to section 604(3)(E) of the FCRA, that the subscriber identify and certify that business need. Such identification must be made in specific terms. For example, a landlord requesting such a report in connection with rental of an apartment must specify that as his or her purpose.

(iii) Requiring each mixed-use subscriber to identify and certify the applicable purpose(s) each time it requests a consumer report. For example, to identify the specific credit purpose for requesting a report under section 604(3)(A) of the FCRA, it would suffice for an attorney subscriber collecting a debt for a client to specify that as his or her purpose.

(iv) Disclosing the following message, or one substantially identical to it, on the computer screen each time a subscriber transmits a request by computer for a consumer report: "The federal Fair Credit Reporting Act imposes criminal penalties up to $5,000 and a year in prison against anyone who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses."

(v)(A) Conducting periodic checks, not announced to the subscriber, to verify that each mixed-use subscriber is using consumer reports solely for permissible purposes. Such checks will be conducted using one of the following methods:

(1) By conducting annual checks at least once every twelve months. For each such subscriber, such checks will be performed on the greater of five reports or ten percent (10%) of the first 300 consumer reports furnished chronologically to that subscriber during the previous six-month period and two percent (2%) of all additional reports furnished to that subscriber during the same six-month period. Respondents shall check the first report within that period and every tenth report thereafter of the first 300 reports furnished chronologically within that period and then every fiftieth report of all additional reports furnished to the subscriber during that same period; or

(2) By conducting monthly checks for at least six months of each year. For each such subscriber, such checks will be performed on the greater of one report or ten percent (10%) of the total number of consumer reports furnished to that subscriber during the previous one-month period. Respondents shall check the first report within that period and every tenth report furnished chronologically thereafter until the requisite number of reports has been checked.

(B) Respondents shall conduct these checks by: (1) Sending a questionnaire by first class mail, postage prepaid, to the report subject stating that a consumer report was furnished to a subscriber who shall be identified by name and address, the date of the report, and the purpose certified by the subscriber for obtaining it. The questionnaire shall ask whether the subscriber had such a purpose and, if not, whether the report subject knows of any other purpose for which the subscriber may have sought the report. Respondents shall provide a self-addressed, postage pre-paid envelope and request that the questionnaire be returned therein; or by

(2) providing and obtaining the information set forth in subparagraph (1) above through an in-person or telephone interview, and by recording such information in written form.

(vi) Respondents are not required to conduct the procedure set forth in subparagraph I.2.b.(v)(B) with respect to any consumer report for which respondents have received:

(a) A copy of a court order or a federal grand jury subpoena ordering the release of such report;

(b) Documentation signed by the consumer on whom the report was furnished expressly authorizing the release of such report;

(c) In the case of a report for which the purpose certified was the collection of a judgment, a copy of the court judgment; or

(d) In the case of a report for which the purpose certified was the evaluation of an employee for promotion, reassignment, or retention, a copy of an official business record (for example, a W–2 Form) clearly identifying the subscriber or the subscriber's principal as the employer for the consumer on whom the report was furnished.

(vii) Requiring each subscriber to provide on an annual basis written certification updating the information previously provided on the nature of the subscriber's business and all purposes for which the subscriber plans to obtain consumer reports from respondents, and also requiring the subscriber to explain the reasons for any change in the stated purposes for obtaining consumer reports and any substantial change in the number of consumer reports expected to be obtained.

(viii) Desisting from furnishing consumer reports to any subscriber who:

(1) Respondents learn, through the procedures described in subparagraphs I.2.b.(v) (A) and (B), or otherwise, has obtained, after the effective date of this order, a consumer report for any purpose other than a permissible purpose, unless that subscriber obtained such report through inadvertent error—i.e., a mechanical, electronic, or clerical error that the subscriber demonstrates was unintentional and occurred notwithstanding the maintenance of procedures reasonably designed to avoid such errors; or

(2) Respondents have reasonable grounds to believe will not use the report solely for permissible purposes.

3. Furnishing any consumer report for employment purposes that contains public record information on a consumer that is likely to have an adverse effect upon the consumer's ability to obtain employment without notifying the consumer, at the time such report is furnished, that public record information concerning the consumer is being reported, and providing the name and address of the person to whom such report is being furnished, as provided in section 613(1) of the FCRA. Respondents are not required to provide this notification if they have received written confirmation directly or indirectly from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer or, alternatively, have received written confirmation from the consumer reporting agency that it maintains strict procedures designed to insure that such public record information is complete and up to date, as provided in section 613(2) of the FCRA.

II.

It is further ordered That respondents, their successors, assigns shall maintain for five (5) years and upon request make available to the Federal Trade Commission for inspection and copying, documents demonstrating compliance with the requirements of this Order. Such documents shall include, but are not limited to, all subscriber applications and certifications, all reports prepared in connection with on-site investigations of subscribers' businesses, all written records of respondents' determinations that its subscribers have permissible purposes for obtaining consumer reports, all documents pertaining to respondents' annual checks on mixed-use subscribers' purposes for obtaining consumer reports, instructions given to employee regarding compliance with the provisions of this Order, and any notices provided to subscribers in connection with the terms of this Order.

III.

It is further ordered That respondents shall deliver a copy of this Order, or a synopsis thereof approved by the Federal Trade Commission, to all present and future personnel, agents, or representatives having sales, advertising, or policy responsibilities with respect to the subject matter of this order.

IV.

It is further ordered That respondents shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that might affect compliance obligations arising out of the order.

V.

It is further ordered That each individual respondent named herein promptly notify the Federal Trade Commission of the discontinuance of his present business or employment and of his affiliation with a new business or employment. In addition, for a period of ten (10) years from the date of service of this order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment whose activities include assembling or evaluating information on consumers or furnishing consumer reports or access to consumer reports to third parties, or of his affiliation with a new business or employment in which his own duties and responsibilities involve such activities. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of his duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

VI.

It is further ordered That respondents shall, within sixty (60) days of service of this Order upon them, file with the Federal Trade Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

Exhibit A—Important Notice for Subscribers

The federal Fair Credit Reporting Act permits consumer reporting agencies to provide consumer reports only for certain purposes. Any subscriber who uses false pretenses to obtain a consumer report may be the subject of criminal prosecution. It is also a law violation for use to give you a consumer report unless your purpose for obtaining it is permissible under the Act. This means that you must always tell us the true reason for requesting a consumer report. If the reason is not a permissible one under the Act, we are required by law to deny your request. Listed below are the only purposes that section 604 of the Act permits.

(1): Pursuant to court order, or a subpoena issued by a federal grant jury.

(2): Pursuant to the written instructions of the consumer on whom the report is sought.

(3)(A): For use in connection with a credit transaction involving the consumer. Evaluating a consumer's credit application or reviewing or collecting on a credit account are all permissible purposes for obtaining a consumer report. It is not permissible for a creditor to obtain a report on a consumer unless the consumer has applied for credit or has an existing credit relationship with the creditor. Location or litigation purposes are never permissible unless they involve collection of the consumer's credit account.

(3)(B): For use in employment decisions involving the consumer. An employer (or its agent) may obtain a consumer report in order to evaluate the consumer for possible employment, promotion, reassignment or retention.

(3)(C): For use in connection with underwriting of insurance involving the consumer. Underwriting includes issuance or renewal of insurance, and

its amount and terms. Consumers reports may not be obtained for insurance claims purposes.

(3)(D): For use in connection with a consumer's eligibility for a license or benefit granted by a governmental agency that is required to consider the applicant's finances in the process.

(3)(E): For use in connection with a business transaction involving the consumer. This section provides a strictly limited basis for obtaining a consumer report. To qualify, the business transaction must involve some benefit for which the consumer has applied. A consumer's application to rent an apartment or open a checking account would qualify, as would a consumer's request to pay for goods by check. The business transaction must not involve credit, employment, or insurance—those purposes are permissible only if they meet the standards of (3)(A)–(C).

Consumer reports will be provided only for these purposes.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from CDB Infotek, a corporation, and its President, Rick L. Rozar ("the respondents").

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents' business involves the purchase of information on individual consumers from credit reporting agencies and the resale of that information to third parties. Firms engaged in this type of business are sometimes called "information brokers," or "super bureaus." The complaint accompanying the proposed order alleges that in connection with their buying and selling of consumer reports, the respondents engaged in acts and practices violating sections 604, 607(a), and 613 of the Fair Credit Reporting Act and sections 5(a) of the Federal Trade Commission Act.

The FCRA requires that consumer reporting agencies, such as super bureaus, maintain procedures designed to protect consumers' privacy. According to the complaint, the repondents have violated section 604 of the Fair Credit Reporting Act by regularly furnishing consumer reports to persons under circumstances in which the respondents have no reason to believe that the reports will be used for any of the purposes permitted under that section of the Act. One of the circumstances cited in the complaint is respondents' furnishing of consumer reports in connection with insurance claims investigations, even though section 604 sets forth underwriting (*i.e.*, determining one's eligibility for insurance) as the only insurance-related purpose permitted under the Fair Credit Reporting Act. The complaint also alleges that respondents furnish consumer reports to certain types of subscribers, such as attorneys and private investigators, who typically have impermissible as well as permissible purposes for the consumer reports they obtain. Such subscribers are known as "mixed use" users. According to the complaint, in many instances, respondents do not have reason to believe that these reports have been requested for a permissible purpose.

The complaint also cites as violations of section 604 respondent's furnishing of consumer reports to new customers without having made a reasonable effort to verify the purposes for which these customers will use the reports, and that in certain instances, respondents furnished their customers who requested consumer reports on particular individuals with the reports of other consumers who had similar names.

The complaint further alleges that through the conduct discussed above, respondents have violated section 607(a) of the Fair Credit Reporting Act by failing to maintain reasonable procedures designed to limit the furnishing of consumer reports to the purposes listed under section 604 and by furnishing consumer reports to persons when they have reasonable grounds for believing that the consumer reports will not be used for a purpose listed in section 604.

Additionally, the complaint alleges that the respondents regularly furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, but when furnishing these reports, the respondents do not notify the subject consumers that respondents are reporting public record information about them, nor do they tell the consumers the names and addresses of the persons to whom the respondents have furnished the reports. Because, the complaint alleges, the respondents do not have procedures to insure that the public record information they are reporting is complete and up to date, the respondents' failure to provide the notice violates section 613 of the Fair Credit Reporting Act.

The consent order contains provisions designed to ensure that the respondents do not engage in similar unlawful acts and practices in the future.

Part I of the order requires the respondents to cease and desist from furnishing any consumer report to any person that they have reason to believe intends to use the information in connection with any insurance-related purpose other than the underwriting of insurance involving the consumer on whom the report is furnished. The respondents are further required to cease and desist from furnishing any consumer report under any other circumstances not permitted by section 604 of the Fair Credit Reporting Act.

Part I also requires the respondents to maintain reasonable procedures to limit the furnishing of consumer reports to the purposes listed in section 604, as required by section 607(a) of the Fair Credit Reporting Act, and mandates specific procedures that must be followed to accomplish this objective. These include measures to verify the identities of new customers, the nature of their business, and the purpose for which they seek to obtain consumer reports and a procedure for conducting periodic audits to verify that mixed-use users are using consumer reports solely for permissible purposes. The specific procedures set forth in paragraph 2 of part I are not necessarily mandated by the FCRA's "reasonable procedures" requirements but are considered by the Commission to be appropriate remedial relief in this case to prevent recurrence of the alleged violations.

Part I further requires that any time respondents furnish consumer reports for employment purposes that contain public record information that is likely to adversely affect a consumer's ability to obtain employment, they must notify the consumer, at the time the report is furnished, that public record information about the consumer is being reported and provide the name and address of the person to whom the report is being furnished, as is required by section 613(1) of the Fair Credit Reporting Act. The order permits the respondents to forego providing this notification if they have either received written confirmation from the consumer reporting agency that compiled the consumer report that the agency provides such notification to the consumer, or have received written confirmation from the agency that it maintains strict procedures designed to ensure that the public record information it reports is complete and up to date, as required by section 613(2).

Part II of the order requires the respondents and their successors and assigns to maintain documents demonstrating compliance with the order for five (5) years and to make such documents available to the Commission upon request.

Part III of the order requires the respondents to deliver a copy of the order to all present and future employees, agents, or representatives having responsibilities related to the respondents' compliance with the order.

Part IV of the order requires the respondents to notify the Commission at least thirty (30) days before any proposed change in the structure of the respondent corporation that might affect compliance with the order.

Part V of the order requires the individual respondent to promptly notify the Commission of the discontinuance of his present business or employment and of his affiliation with a new one. Also, for ten (10) years from the date the order is served, the individual respondent must promptly notify the Commission of his affiliation with a new business or employment whose activities include the assembling or evaluating of consumer information or the furnishing of consumer reports or access to consumer reports to third parties, or in which his own duties or responsibilities involve such activities.

Part VI of the order requires the respondents to file a written report with the Commission within sixty (60) days after service of the order detailing the manner and form in which they have complied with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 92–20596 Filed 8–26–92; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Business, Industry, and Governmental Affairs Business Advisory Board

MEETING NOTICE: Notice is hereby given that the General Services Administration (GSA) Business Advisory Board will meet September 22, 1992, from 10 a.m. to 4 p.m. at GSA's Central Office, 18th and F Streets, NW., room 5141A, Washington, DC. Notice is required by the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the implementing regulation, 41 CFR 101–6.

The purpose of the meeting is to provide a forum for discussion on key business and industry trends, emerging technologies and products, and other issues that may affect GSA's future policy and program formulation. The agenda for this meeting will include discussion on: Alternative dispute resolution (ADR), partnering, and minority contracting.

The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Patricia Jones (202/501–0838) of the Office of Business, Industry, and Governmental Affairs, GSA/AL, Washington, DC 20405.

Dated: August 20, 1992.

Donald C.J. Gray,

Associate Administrator for Business, Industry, and Governmental Affairs, GSA.

[FR Doc. 92–20554 Filed 8–26–92; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

AGENCY: Administration for Children and Families, Office of Family Assistance.

Notice

Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for approval of an existing information collection entitled "Streamlined State Plan for Air to Families with Dependent Children", OMB Control Number 0970–0016. This request for OMB clearance is made by the Office of Family Assistance (OFA) of the Administration on Children and Families (ACF).

ADDRESSES: Copies of the information collection request may be obtained from Steve Smith, Office of Information Systems Management, by calling (202) 401–8235.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Kristina Emanuels, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, Room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Streamlined State Plan for Aid to Families with Dependent Children (AFDC).

OMB No.: 0970–0016.

Description: Authority to require a title IV–A State Plan by States administering the Aid to Families with Dependent Children (AFDC) program is contained in sections 402 and 1102 of the Social Security Act and at 45 CFR 201.3, 204.2 and 205.5.

The State plan constitutes an agreement between the State and the Administration for Children and Families (ACF) as to how the AFDC program will be administered and operated within the State. It provides assurances that the AFDC program will be administered in accordance with provisions of title IV–A of the Social Security Act and other applicable statutes, rules, regulations, judicial interpretations, instructions and guidelines issued by ACF. The primary use of the information contained in the State plan is to determine whether the plan can be approved as a basis for federal financial participation in the AFDC program. A second major use of information contained in the plan will be to evaluate the efficacy and cost efficiency of the various State plan characteristics, innovations and options for consideration of new policy implications. A related function entails use of the information to determine if the State agency is operating the AFDC program in accordance with its plan and federal rules and regulations.

Annual Number of Respondence: 55.

Annual Frequency: 4.

Average Burden Hours Per Response: 15.

Total Burden Hours: 3,300.

Dated: August 12, 1992.

Larry Guererro,

Deputy Director, Office of Information Systems Management.

[FR Doc. 92–20542 Filed 8–26–92; 8:45 am]

BILLING CODE 4130–01–M

Agency for Toxic Substances and Disease Registry

Workshop on Toxicological Data Quality and the Usefulness of Databases; Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR), in association with the International Programme on Chemical Safety (IPCS) of the World Health Organization, announces the following meeting:

Name: Workshop on Toxicological Data Quality and the Usefulness of Databases.

Times and Dates: 8:15 a.m.–5:30 p.m., September 16, 1992. 8 a.m.–5:30 p.m., September 17, 1992. 8:30 a.m.–12 noon, September 18, 1992.

Place: ATSDR, Executive Park, Executive Park Drive, Building 4, Suite 2400, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 40 people.

Purpose: This workshop will provide a forum for an in-depth exchange of views on the feasibility of setting criteria to assess the quality of data. The implementation of criteria could lead to the development of scoring systems with quality indicators that could be used in information systems.

Matters To Be Considered: Participants will review and critique historical and current criteria under which reports/studies on health and environmental effects of chemicals could be assessed for reliability. Issues of science in the development and application of data quality indicators will be identified and discussed by the participants. A plan of work will be developed that will contribute to the use in environmental health databases of data quality/completeness indicators by IPCS participating institutions in support of further progress.

Contact Person for More Information: Charles Xinteras, Sc.D., Science Administrator, ATSDR, Mailstop E–28, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0708.

Dated: August 21, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 92–20535 Filed 8–26–92; 8:45 am]

BILLING CODE 4160–70–M

Food and Drug Administration

[Docket No. 92F–0290]

ICI Americas, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that ICI Americas, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyetheretherketone resins for use as articles or components of articles intended to contact food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 2B4333) has been filed by ICI Americas, Inc., Concord Pike and Murphy Rd., Wilmington, DE 19897. The petition proposes to amend the food additive regulations to provide for the safe use of polyetheretherketone resins as articles or components of articles intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 17, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92–20503 Filed 8–26–92; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Biological Response Modifiers Advisory Committee

Date, time, and place. September 17, 1992, 4 p.m., Food and Drug Administration, Bldg. 29, Conference rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the open session of the meeting. Open committee discussion, 4 p.m. to 4:30 p.m.; closed committee deliberations, 4:30 p.m. to 5 p.m.; open public hearing, 5 p.m. to 6 p.m., unless public participation does not last that long; Anna J. Baldwin, Center for Biologics Evaluation and Research (HFB–5), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–295–8226.

General function of the committee. The committee reviews and evaluates data relating to the safety, effectiveness, and appropriate use of biological response modifiers which are intended for use in the prevention and treatment of a broad spectrum of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 10, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the intramural scientific programs of the Laboratory of Immunology and the Laboratory of Cell Biology of the Division of Cytokine Biology, Center for Biologics Evaluation and Research.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Arthritis Advisory Committee

Date, time, and place. September 22 and 23, 1992, 8:30 a.m., Potomac Inn, Ballroom A, Three Research Court, Rockville, MD.

Type of meeting and contact person. Closed committee deliberations, September 22, 1992, 8:30 a.m. to 5 p.m.; open public hearing, September 23, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 11:30 a.m.; closed committee deliberations, 11:30 a.m. to 5 p.m.; Isaac F. Roubein, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3741.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in arthritic conditions.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 10, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss general principles for scleroderma protocols.

Closed committee deliberations. The committee will review trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Antiviral Drugs Advisory Committee

Date, time, and place. September 23 and 24, 1992, 8 a.m., Marriott Hotel, Grand Ballroom, 620 Perry Pkwy., Gaithersburg, MD.

Type of meeting and contact person. Open committee discussion, September 23, 1992, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 6 p.m.; open committee discussion, September 24, 1992, 8 a.m. to 11:30 a.m., open public hearing, 11:30 a.m. to 12 m., unless public participation does not last that long; closed committee deliberations, 12 m. to 4 p.m.; Lee L. Zwanziger, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or Valerie M. Mealy, Advisors and Consultants Staff, 301–443–4695.

General function of the committee. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of acquired immune deficiency syndrome (AIDS), AIDS-related complex (ARC), and other viral, fungal, and mycobacterial infections.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 17, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, and the names and addresses of proposed participants. Comments will be limited to 5 minutes.

Open committee discussion. On September 23, 1992, the committee will discuss new drug application (NDA) 20–259 Metrone (Atovaquone), Burroughs Wellcome, for the treatment of pneumocystic carinii pneumonia. On September 24, 1992, the committee will discuss NDA 50–689 Mycobutin (rifabutin), Adria Laboratories, for use as prophylaxis against mycobacterium avium infections in persons with AIDS.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational NDA's. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Blood Products Advisory Committee

Date, time, and place. September 24 and 25, 1992, 8:30 a.m., Ramada Inn, Embassy Ballrooms I, II, and III, 8400 Wisconsin Ave., Bethesda, MD.

Type of meeting and contact person. Open public hearing, September 24, 1992, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 5 p.m.; open committee discussion, September 25, 1992, 8:30 a.m. to 2:30 p.m.; closed committee deliberations, 2:30 p.m. to 3:30 p.m.; Linda A. Smallwood, Division of Transfusion Science (HFB–902), Center for Biologics Evaluation and Research, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301–227–6700.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 14, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On September 24, 1992, the committee will: (1) Hear and have followup discussion on invalidation of test results when screening donor blood using licensed viral marker test kits; (2) discuss recommendations on a proposed revision of donor suitability regarding a history of hepatitis; and (3) hear an update on HIV antibody-negative acquired immune deficiency syndrome. On September 25, 1992, the committee will hear discussion and recommendations on the issue of postdonation callback regarding information that affects donor suitability and the report of the scientific site visit review for the Laboratory of Plasma Derivatives, Division of Hematology.

Closed committee deliberations. The committee will discuss information relevant to the scientific site visit review. This portion of the meeting will be closed to prevent disclosure of information which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Oncologic Drugs Advisory Committee

Date, time, and place. September 25, 1992, 8 a.m., Conference rm. M, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; closed committee deliberations, 9 a.m. to 4 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 15, 1992, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Closed committee deliberations. The committee will discuss trade secret and/or confidential commercial information relevant to pending investigational new drug applications. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting

involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting will be available from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting will be available from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: August 21, 1992.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 92–20532 Filed 8–26–92; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of October 1992:

Name: National Advisory Council on Migrant Health

Date and Time: October 22–25, 1992—8 a.m.

Place: Jantzen Beach Red Lion Hotel, 909 North Hayden Island Drive, Portland, Oregon 97217.

The meeting is open to the public.

Purpose: The Council is charged with advising, consulting with, and making recommendations to the Secretary and the Administrator, Health Resources and Services Administration, concerning the organization, operation, selection, and funding of Migrant Health Centers and other entities under grants and contracts under section 329 of the Public Health Service Act.

Agenda: The agenda includes a overview of Council general business activities and priorities; the development of 1993 National Advisory Council on Migrant Health Recommendations. A Farmworker Public Hearing is scheduled for Friday, October 23, 2 p.m.–6 p.m. and a workshop for migrant health center staff and other is scheduled for Saturday, 1:30 p.m.–3:30 p.m., at the above hotel.

The Council is soliciting oral and written comments from farmworkers and organizations serving farmworkers specific to migrant/seasonal farmworker health and migrant health program issues for the above scheduled Public Hearing and workshop.

The Council meeting is being held in conjunction with the Second Annual Western Stream Migrant Forum, October 23–25.

Anyone requiring information regarding the subject Council should contact Mr. Jack Egan, Acting Executive Secretary, National Advisory Council on Migrant Health, room 7A–55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1153.

Agenda Items are subject to change as priorities dictate.

Dated: August 21, 1992.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 92–20502 Filed 8–26–92; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Grants and Contracts Activities for Applicants and Recipients of Awards; Training Course

AGENCY: Office of the Assistant Secretary for Health, PHS.

ACTION: Notice.

SUMMARY: The Office of the Assistant Secretary for Health is announcing a training course entitled "Orientation to PHS Grants and Contracts Activities for Applicants and Recipients of Awards" which will be presented 12 times at locations around the country during FY 1993. Complete information as to locations and dates is provided below under **SUPPLEMENTARY INFORMATION.**

DATES: To receive consideration for a particular course session, applications must be received by the close of business on the deadline date specified under **SUPPLEMENTARY INFORMATION** below.

SUPPLEMENTARY INFORMATION: Course Title—"Orientation to PHS Grants and Contracts Activities for Applicants and Recipients of Awards."

Note: This is not a course on grant-writing. Rather, it is designed to provide a broad overview of how to conduct business with PHS using the grant and contract mechanisms.

Course Description: This is a 2-day course which is designed to provide applicants for and recipients of PHS grants and contracts a better understanding of the procedures and expectations in applying for funding and administering an award from PHS. Day one of the course concentrates on the grants process; day two is devoted to contracting. Students will be provided with a broad overview of conducting business with PHS including how it is organized, when the grant or contract mechanism is used, how the PHS contracts and grants processes are structured, how to identify grant and contract funding opportunities, how to submit effective proposals, and how to properly administer a contract or grant once it has been awarded.

Targeted Population: Grant and contract staff of organizations which are presently doing business with PHS or which plan to submit applications for grants or proposals for contracts. The course is intended for staff who are inexperienced with the grant and contract mechanisms.

Dates	Locations	Application deadlines
1992:		
October 13–14	Winston-Salem, NC	September 10.
November 9–10	Atlanta, GA	October 10.
December 7–8	Rockville, MD	October 10.
1993:		
January 25–26	San Diego, CA	October 10.
February 22–23	Kansas City, MO	January 10.
March 17–18	Dallas, TX	January 10.
April 19–20	San Francisco, CA	January 10.
May 17–18	Seattle, WA	January 10.
June 15–16	Rockville, MD	May 10.
July 12–13	Boston, MA	May 10.
August 16–17	Chicago, IL	May 10.
September 20–21	Denver, CO	May 10.

All courses will be held from 8:30 a.m. to 5 p.m. both days.

Selection will be made on a first-come, first-served basis. Early application is encouraged as these offerings are filled rapidly.

Course Outline

Day 1

Introduction to PHS Assistance (Grants/Cooperative Agreements) and Acquisition (Contracts)

PHS Mission and Organizational Structure; Assistance vs. Acquisition (The Federal Grant and Cooperative Agreement Act); PHS Grant and Contract Expenditures and Recipients; Introduction to Types and Purposes of PHS Grants; Roles of PHS Grants and Program Management Staff.

Seeking and Applying for PHS Grants/Cooperative Agreements

Sources of Information; Understanding Program Announcements; The Application Package; The Complete, Effective Application; Competition and Objective Review.

Negotiation and Award Process for Grants/Cooperative Agreements

Cost Analysis and Preaward Review; Negotiating—Clarifying and Revising Proposed Activities; Funding Outcomes; Contents of a Grant Award Document; General and Special Conditions.

Grant/Cooperative Agreement Post-Award Issues and Concerns

Monitoring; Audit; Appeals; Progress Reports; Drawdowns; Financial Status Reports; Grant Budget Control; Cost Principles and Unallowable Costs; Purchasing; Property Management.

Day 2

Seeking PHS Contracts

Identifying PHS Contracting Opportunities; The Legal Framework of PHS Contracting; Small Business Contracting Programs; Roles of PHS Contracting and Project Staff.

Responding to Contract Solicitations

Small Purchases—$25,000 or Less; Purchases Greater Than $25,000; Preparing the Technical Proposal; Preparing the Business Proposal.

Proposal Submission, Contract Negotiation, and Award

Proposal Submission and Evaluation; Negotiation and Award.

Contract Administration

Initial Contract Administration Steps; Significant Contract Administration Concerns.

Class Size: Limited to 30 participants per session to maximize interaction and only one individual per institution, per session.

Attendance: Those accepted will be expected to attend both full days of the course. A Certificate of Attendance will

be issued to all participants who attend for both days.

Cost: There will be no charge for this course. Travel and accommodations will be the responsibility of participants.

Notification of Applicants: Applicants selected will be notified of their acceptance approximately one month in advance of the course and provided with information on the exact training location and suggested accommodations. Persons not selected will not be notified.

To Apply: Submit a letter on the employing organization's letterhead which provides all of the following information. Incomplete applications cannot be considered: Name of applicant, Employing organization: name, address, and telephone number, Position title of applicant, Years of experience with PHS grants, contracts, or both, Principal area of interest (grants, contracts, or both), Reason for wanting to take this course (100 words or less), Course session desired.

Send Letter of Application and Requests for Information to: Training Coordinator, Grants Policy Branch, Division of Grants and Contracts, Office of the Assistant Secretary for Health, Room 17A–45, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: August 17, 1992.

Wilford Forbush,

Director, Office of Management.

[FR Doc. 92–20522 Filed 8–26–92; 8:45 am]

BILLING CODE 4160–17–M

Office of the Assistant Secretary for Health; Statement of Organization, Functions and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 57 FR 31717–18, July 17, 1992) is amended to reflect changes for the Office of Organization and Management Systems, Office of Management, Office of the Assistant Secretary for Health (OOMS/OM/OASH).

Office of the Assistant Secretary for Health

Under Part H, Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions, make the following changes:

Under the title and statement for the Office of Management HAU), delete the statement for the Office of Organization and Management Systems (HAU2) and add the following:

Office of Organization and Management Systems (HAU2). The Director of the Office of Organization and Management Systems serves as the principal advisor to the Director, Office of Management, and the Deputy Assistant Secretary for Health Management Operations on PHS information resources management, organization, and on management analysis and systems activities.

The Office: (1) Provides PHS-wide leadership and direction for the development, implementation and oversight of management systems involved in: (a) Information resources management (IRM) with primary focus on information technology, privacy, records and systems security management; (b) organization and management; and, (c) management operations designed to improve efficiency and economy in PHS; (2) develops and disseminates PHS policies for IRM collaborating with the Office of Health Planning and Evaluation, as appropriate; (3) evaluates or directs the review of PHS-wide information resources and other management systems, procedures and activities; (4) serves as the focal point for coordinating agency IRM and management activities with the Office of the Secretary and other Federal agencies and offices; (5) provides staff support to the Senior PHS IRM Official; and (6) serves as the Executive Director of and provides Executive Secretariat for the Board for Corrections of PHS Commissioned Corps Personnel Records.

Following the title for the Division of ADP and Telecommunications Management (HAU22), delete the statement and add the following:

Division of ADP and Telecommunications Management (HAU22). (1) Provides leadership and guidance to PHS in the: (a) areas affecting the development and implementation of IRM policies with primary focus on information technology management; (b) planning relating to ADP and telecommunications (TC) resources; and, (c) management of the IRM strategic planning process; (2) reviews, coordinates and assesses IRM systems, activities, plans, proposals and information technology budgets collaborating with the Office of Health Planning and Evaluation, as appropriate; (3) coordinates the integration of IRM data to support a PHS-wide IRM program and administrative goals and objectives; (4) conducts IRM oversight reviews and surveys as appropriate; (5) provides leadership in supporting computer accommodation for the handicapped; and (6) maintains liaison with the Office of the Secretary and other Federal agencies in areas affecting IRM.

Following the title of the Division of Systems Management and Improvement (HAU25), delete the statement and add the following:

Division of Systems Management and Improvement (HAU25). (1) Develops, coordinates, implements, and interprets PHS policies, standards, and procedures in the management of PHS information systems for: (a) Delegations of authority; (b) interagency agreements; (c) forms management; (d) directives management; (e) records management; (f) automated information systems security; and (g) Privacy Act of 1974; (2) conducts studies and implements approved recommendations in the above administrative areas for the purpose of applying new legislation, administrative requirements, and technology; (3) develops and implements new approaches and opportunities for cost containment and improved productivity in these areas; (4) establishes PHS cost/performance standards for the management of forms, and records; (5) develops periodic profiles of performance and evaluates overall effectiveness of information systems under the Division's purview; (6) maintains controls to assure adherence to PHS policy, and serves as a clearance point to assure appropriate and timely development of: (a) PHS forms; (b) record control schedules; (c) issuances in PHS staff manuals; (d) delegations of authority; (e) certain interagency agreements and computer matching agreements; (f) security plans for sensitive automated systems; (g) systems of records subject to the Privacy Act; (7) provides consultation and assistance to PHS officials in the development of authorities, directives and agreements in relation to enacted legislation, regulations, and policies; (8) provides technical assistance and training to staff and specialists at various agency levels supporting management information systems, procedures, and activities; and (9) maintains liaison with the Office of the Secretary, and other Federal agencies in the above areas.

Following the title for the Division of Management Planning and Analysis (HAU26), delete the statement and add the following:

Division of Management Planning and Analysis (HAU26). (1) Develops, coordinates and implements PHS policies, standards, and procedures governing the establishment, maintenance, and evaluation of: (a) Organization structures and functional alignments within PHS, and (b) the administration of the Standard Administrative Code system; (2) initiatives, reviews and/or conducts studies of proposals to establish or modify PHS organizations and functions, and negotiates solutions to problems at issue within PHS and with the Department; (3) provides management consultant assistance to PHS elements, conducts management improvement studies, staffing assessments, and special management problem analyses; (4) directs or provides support to task forces and study groups addressing organization and management problems and issues; (5) implements PHS management improvement and productivity initiatives in accordance with departmental or Office of Management and Budget (OMB) requirements; (6) coordinates the PHS Interagency Reports Management Program; (7) processes PHS Employee Suggestions requiring Office of the Secretary approval; (8) works with the Office of Resource Management, OM, to assure that the OMB management issue agenda is reflected in PHS budget guidance; and (9) maintains liaison with the Office of the Secretary in the above areas.

Following the title of the Division of OASH Information Technology Management (HAU27), delete the statement and add the following:

Division of OASH Information Technology and Management (HAU27). (1) Formulates, recommends for approval and implements Information Resources Management (IRM) policy for OASH; (2) develops OASH IRM strategic and tactical plans; (3) develops the OASH component of the PHS Information Technology Systems Budget; (4) develops an OASH purchasing timetable for ADP/TC equipment; (5) reviews all OASH purchase requests for ADP/TC equipment, software, ADP support services and maintenance and prepares OASH delegations of procurement authority; (6) manages the OASH Systems Security Program; (7) manages the end-user computer support activities for OASH employees; (8) projects and coordinates OASH ADP/IRM training requirements; (9) manages the OASH Local Area Networks; (10) coordinates OASH activities with the Parklawn Computer Center/FDA and the Division of Computer Research and Technology/NIH; (11) provides IRM technical assistance, network planning and needs assessment to OASH offices and expedites the planning and procurement processes for priority OASH activities; (12) maintains an inventory of OASH information technology equipment and systems and provides a central interface with OASH Property Management Officials; (13) coordinates the integration of program and management data to support OASH information management systems; and (14) provides assistance to OASH in the development and implementation of information systems.

Dated: August 17, 1992.

Anthony L. Itteilag,

Deputy Assistant Secretary for Health Management Operations.

[FR Doc. 92–20524 Filed 8–26–92; 8:45 am]

BILLING CODE 4160–17–M

Agency for Health Care Policy and Research; Privacy Act of 1974; New System of Records

AGENCY: Public Health Service, HHS.

ACTION: Notification of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a new system of records, 09–35–0004, "Agency for Health Care Policy and Research, Medical Treatment Effectiveness Program (MEDTEP) Research, HHS/AHCPR/CMER." We are also proposing routine uses for this new system.

DATES: PHS invites interested parties to submit comments on the proposed internal and routine uses on or before September 28, 1992 PHS has sent a Report of a New System to the Congress and to the Office of Management and Budget (OMB) on August 10, 1992. This system of records will be effective 60 days from the date of publication unless PHS receives comments on the routine uses which would result in a determination and notice proposing to rescind or modify certain routine uses set forth in this notice.

ADDRESS: Please submit comments to: Privacy Act Officer, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, Suite 601, Rockville, Maryland 20852–4908, (301) 227–8445. Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, MEDTEP Statistical Analysis and Data Modeling Group, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Executive Office Center, 2101 E. Jefferson Street, Suite 605, Rockville, Maryland 20852–4908, (301) 227–8485. The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: The Agency and Health Care Policy and Research (AHCPR) proposes to establish a new system of records: 09–35–0004, "Agency for Health Care Policy and Research, Medical Treatment Effectiveness Program (MEDTEP) Research, HHS/AHCPR/CMER." This system of records will be used by AHCPR/CMER researchers to: (1) Investigate the validity and reliability of claims data (i.e., Medicare claims and other insurance claims data) for effectiveness and outcomes research; (2) investigate the completeness of recorded comorbidities on claims data; (3) investigate the possibility of differentiating comorbidities from complications in claims data; (4) estimate the error of coding conditions and procedures for payment purposes in claims data to develop methods to better use these data for clinical research; (5) develop new methods of effectiveness and outcomes research by combining clinical and administrative/claims data; (6) test coding systems for diagnoses and procedures that provide more clinical detail; (7) test linking different sources of data to track and adjust outcomes over time; (8) to support or conduct other clinical research to formulate data standardization and development of data sources for effectiveness, outcomes, quality of care, and clinical practice guideline research; (9) test new diagnosis grouping schemes that incorporate clinical as well as payment considerations; (10) test feasibility of pooling private and public entities' data for research purposes; (11) develop new data bases for effectiveness and outcomes research, or (12) develop methods to evaluate impact of AHCPR-sponsored and other clinical practice guidelines.

Copies of complete health care/medical records and related documents, such as claims forms, patient surveys and assessments of satisfaction with care provided, functional status, quality of life, activities of daily living, instrumental activities of daily living, or records of vital statistics (birth and death certificates) are in the system of records.

Examples of information in the various records are: Name, address, health insurance claim number or other individual identifying number, demographic data on patients, socioeconomic data, diagnoses, procedures, tests, examinations, x-rays, images, and results of tests and other studies, reports of consultations,

physician, nurses and other health care provider notes, name and address of provider, characteristics of the provider (i.e., for hospitals: principal funding source—county, for-profit, not-for-profit, Federal, religious; for health care providers: specialty, group practice).

The amount of information recorded on each individual will be only that which is necessary to accomplish the purposes of the system.

The records in this system will be maintained in a secure manner commensurate with their use and sensitivity. In addition to 42 U.S.C. 299a–1(c), the statute protecting the confidentiality of AHCPR research records, AHCPR/CMER and its contractors will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. Records will be maintained in accordance with Chapter 45–13 of the HHS General Administration Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Handbook, and the Federal Information Examples of information in the various records are: Name address, health insurance claim number or other individual identifying number, demographic data on patients, socioeconomic data, diagnoses, procedures, tests, examinations, x-rays, images, and results of tests and other studies, reports of consultations, physician, nurses and other health care provider notes, name and address of provider, characteristics of the provider (i.e., for hospitals: principal funding source—county, for-profit, not-for-profit, Federal, religious; for health care providers: specialty, group practice).

The amount of information recorded on each individual will be only that which is necessary to accomplish the purposes of the system.

The records in this system will be maintained in a secure manner commensurate with their use and sensitivity. In addition to 42 U.S.C. 299a–1(c), the statute protecting the confidentiality of AHCPR research records, AHCPR/CMER and its contractors will be required to adhere to the provisions of the Privacy Act and the HHS Privacy Act Regulations. Records will be maintained in accordance with Chapter 45–13 of the HHS General Administratin Manual, "Safeguarding Records Contained in Systems of Records," supplementary Chapter PHS hf: 45–13, the Department's Automated Information System Security Handbook, and the Federal Information Processing Standards (FIPS Pub. 41 and FIPS Pub. 31) published by the National Institute of Standards and Technology.

The AHCPR Automated Systems Security Officer will conduct a risk analysis and assure that a system security plan is in place for the system of records. The system managers will control access to these data. Only authorized users whose official duties require the use of the data will have access to the records in this system.

The routine uses proposed for this system are compatible with the stated purposes of the system and are restricted by 42 U.S.C. 299a–1(c). Disclosures will only be made to Agency officials or Agency contractors and grantees carrying out AHCPR supported research described above. Further disclosures may only be made with the consent of the individuals identified in the system of records.

The following notice is written in the present, rather than future tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system becomes effective.

Dated: August 12, 1992.

Wilford J. Forbush,

Director, Office of Management.

09–35–0004

SYSTEM NAME:

Agency for Health Care Policy and Research, Medical Treatment Effectiveness Program (MEDTEP) Research, HHS/AHCPR/CMER.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Agency for Health Care Policy and Research,
Center for Medical Effectiveness Research,
MEDTEP Statistical Modeling and Data Analysis Group,
Executive Office Center,
2101 E. Jefferson Street, Suite 605,
Rockville, Maryland 20852–4908.
The Health Care Financing Administration,
Bureau of Data Management and Strategy,
Office of Computer Operations,
6325 Security Blvd.,
Baltimore, Maryland 21218.
Division of Computer Research and Technology (DCRT),
National Institutes of Health,
Building 12A, Room 4037,
9000 Rockville Pike,
Bethesda, Maryland 20892.
Parklawn Computer Center (PCC),
Public Health Service,
Parklawn Computer Center,
Rockville, Maryland 20857.

Inactive records will be stored at:
Washington National Records Center,
Room 125, 4205 Suitland Road,
Suitland, Maryland 20409.

A current list of contractor sites is available by writing to the System Manager at the address below:

Director, MEDTEP Statistical Analysis and Data Modeling Group,
Agency for Health Care Policy and Research,
Center for Medical Effectiveness Research,
Executive Office Center,
2101 E. Jefferson Street, Suite 605,
Rockville, Maryland 20852–4908.
(301) 227–8485.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received health care and/or their providers are selected because of: (1) Year in which care is provided; (2) condition (diagnosis) for which care is provided; and/or (3) procedure/treatment provided. Individuals who have not received care are included as controls for some of the individuals in case/control studies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of complete health care/medical records and related documents, such as claims forms, patient surveys and assessments of satisfaction with care provided, functional status, quality of life, activity of daily living, instrumental activities of daily living, and records of vital statistics (birth and death certificates).

Examples of information in the various records are: Name, address, health insurance claim number of other individual identifying number, demographic data on patients, socioeconomic data, diagnoses, procedures, tests, examinations, x-rays, images, and results of tests and other studies, reports of consultations, medication orders, physician, nurses and other health care provider notes, name and address of provider, characteristics of the provider (i.e., for hospitals: Principal funding source—county, for-profit, not-for-profit, Federal, religious; for health care providers: Specialty, group practice).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for collecting the requested information is contained in secs. 902, and 923 of the Public Health Service Act, and sec. 1142 of the Social Security Act (42 U.S.C. 299a, 299c–2 and 1320b–12).

PURPOSE(S) OF THE SYSTEM:

(1) To investigate the validity and reliability of claims data (i.e., Medicare claims and other insurance claims data) for effectiveness and outcomes research.

(2) To investigate the completeness of recorded comorbidities on claims data.

(3) To investigate the possibility of differentiating comorbidities from complications in claims data.

(4) To estimate the error of coding conditions and procedures for payment purposes in claims data to develop methods to better use these data for clinical research.

(5) To develop new methods of effectiveness and outcomes research by combining clinical and administrative/claims data.

(6) To test coding systems for diagnoses and procedures that provide more clinical detail.

(7) To test linking different sources of data to track and adjust outcomes over time.

(8) To support or conduct other clinical research to formulate data standardization and development of data sources for effectiveness, outcomes, quality of care, and clinical practice guideline research.

(9) To test new diagnosis grouping schemes that incorporate clinical as well as payment considerations.

(10) To test the feasibility of pooling private and public entities' data for research purposes.

(11) To develop new data bases for effectiveness and outcomes research, or

(12) To develop methods to evaluate clinical practice guidelines.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

The routine uses proposed for this system are compatible with the stated purposes of the system, and are restricted by 42 U.S.C. 299a–1(c). Therefore, disclosures will be made to contractors and grantees carrying out AHCPR-supported health services research. Any further disclosures can only be made with the consent of the individuals identified in the system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSITION OF RECORDS IN THE SYSTEM:

STORAGE:

Complete sets of records are maintained in file folders or on magnetic media. Abstractions from the categories of records in the system are maintained on discs and computer tape with encrypted identifiers.

RETRIEVABILITY:

Records are retrieved by name, special identification number, State, hospital, or condition/procedure.

SAFEGUARDS:

1. *Authorized Users:* These records will be maintained on the Health Care Financing Administration's (HCFA) computer in Baltimore, Maryland, National Institute of Health's (NIH)–DCRT mainframe computer in Bethesda, Maryland, at the Parklawn Computer Center (PCC) in Rockville, Maryland, or on AHCPR contractor computers, and access is by password known only to authorized users who are AHCPR/CMER staff or contractors or their employees responsible for the conduct of authorized research, and who are authorized access to these data.

2. *Physical Safeguards:* Access to computer systems where data are stored electronically is restricted to individuals with special identification codes and accounts. The data set names are known only to those individuals with a need to know for authorized research. Inactive records in hard copy or on magnetic media are stored at the Federal Records Storage Facility with Records Management approval and with the safeguards and security provided by the facility. Rooms where records are stored are double locked when not in use. During regular business hours rooms are unlocked but access is controlled by on-site personnel.

3. *Procedural and Technical Safeguards:* Approval for access and use of the HCFA, NIH, PCC and contractors mainframe computers is required prior to issuing a user ID and account. A password is required to access the terminal and a data set name controls the release of data only to authorized users. All users of confidential information in connection with the performance of their research (see Authorized Users, above) protect information from public view and from unauthorized personnel entering an unsupervised office. Records maintained at the Federal Records Storage Facility can not be released without proper procedure and only to authorized individuals in AHCPR/CMER.

AHCPR staff monitors contractor compliance with the provisions of the Privacy Act, as well as compliance with the confidentiality protection in 42 U.S.C. 299a–1(c). Contractor system security must be commensurate with the use and sensitivity of the records.

RETENTION AND DISPOSAL:

After completion of the proposed studies, AHCPR/CMER staff and contractors will retire hard copy records and/or records on magnetic media to a Federal Records Center. Contractors will delete all record from their computer systems upon completion of the specified studies and retain no copies of any of these records. Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the AHCPR Records Control Schedule. The records control schedule and disposal standard for these records may be obtained by writing to the system manager at the address below.

Policy-Coordinating Official:

Director, MEDTEP Statistical Analysis and Data Modeling Group, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, Suite 605, Rockville, Maryland 20852–4908, (301) 227–8485.

SYSTEM MANAGERS AND ADDRESS:

Director, MEDTEP Statistical Analysis and Data Modeling Group, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Executive Office Center, 2101 E. Jefferson Street, Suite 605, Rockville, Maryland 20852–4908, (301) 227–8485.

Project Officer, Pediatric Gastroenteritis Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Executive Office Center, 2101 E. Jefferson Street, Suite 605, Rockville, Maryland 20852–4908, (301) 227–8485.

Project Officer, C-Section Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Executive Office Center, 2101 E. Jefferson Street, Suite 605, Rockville, Maryland 20852–4908, (301) 227–8485.

Project Officer, Schizophrenia Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Executive Office Center, 2101 E. Jefferson Street, Suite 605, Rockville, Maryland 20852–4908, (301) 227–8485.

Project Officer, Low Birth Weight Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Executive Office Center, 2101 E. Jefferson Street, Suite 605, Rockville, Maryland 20852–4908, (301) 227–8485.

Project Officer, Stroke Research, Agency for Health Care Policy and Research, Center for Medical Effectiveness Research, Executive Office Center, 2101 E. Jefferson Street, Suite 605, Rockville, Maryland 20852–4908, (301) 227–8485.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the Systems Manager listed above. The requester must also verify his or her identify by providing either a notarization of the request or a written certification that the requester is who he or she claims to be. The request should include: (a) Full name, (b) appropriate dates of health care services, (c) place of service to include state and provider name, and (d) condition for which treatment was provided. The requester must also understand that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

Furthermore, an individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

A parent or guardian who requests notification of, or access to, a child's/incompetent person's medical records shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child/incompetent as well as his/her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought and the reason(s) for requesting the correction, along with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Subject individuals, family members, health care providers, hospitals, State vital statistic records, administrative and claims records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 92-19734 Filed 8-26-92; 8:45 am]

BILLING CODE 4160-90

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-92-3490]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708-0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 18, 1992.

John T. Murphy,

Director, Information Resources Management Policy and Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Requirement for Repurchase Agreements for Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs).

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This information collection requests that Public Housing Agencies/Indian Housing Authorities (PHAs/IHAs) provide written certification to HUD on repurchase agreements. Financial Management Handbook 7475.1 REV dated December 1987 permits PHAs to invest funds on deposit in the General Fund in repurchase agreements.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Certification	30		1		2		60

Total Estimated Burden Hours: 60.

Status: Reinstatement.

Contact: Stephanie Avery-Boyd, (202) 708-1872, Angela Antonelli, OMB, (202) 395-6880.

Dated: August 18, 1992.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Annual Contributions for Operating Subsidies Performance Funding System; Modification to the Performance Funding System.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: The information is used by Public Housing Agencies (PHAs) for inclusion in budget submissions which are reviewed and approved by HUD Field Offices as the basis for obligating operating subsidies. The information collection is necessary to assure that a PHA is not provided more subsidy than is needed for effective operation of the PHA.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Estimating and Reporting	1,900		1		2		3,800
Recordkeeping	1,900		1		5		9,500

Total Estimated Burden Hours: 13,300.

Status: Extension.

Contact: John T. Comerford, HUD, (202) 708-1872, Angela Antonelli, OMB, (202) 395-6880.

Dated: August 18, 1992.

Notice of Submission of Proposed Information Collection to OMB

Proposal: American Housing Survey (AHS)—1993 Metropolitan Sample (MS).

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: The 1993 AHS-MS is a longitudinal study that collects current information on the quality, availability, and cost of housing in seven selected metropolitan areas. It also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issues.

Form Number: AHS-61, 62, 63, 64, 65, 66, 67, 68 and 590.

Respondents: Individuals or Households.

Frequency of Submission: Annually.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	31,500		1		.543		17,105

Total Estimated Burden Hours: 17,105.

Status: Revision.

Contact: Duane T. McGough, HUD, (202) 708-1060, Daniel Weinberg, Census Bureau (301) 763-8550, Angela Antonelli, OMB, (202) 395-6880.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for Approval as a Mortgage-Backed Securities Issuer.

Office: Government National Mortgage Association.

Description of the Need for the Information and its Proposed Use: This form is provided for use by applicants proposing to become Mortgage-Backed Securities issuers. It is designed to summarize their business background and experience. The information is necessary in order for GNMA to determine whether the applicant meets all GNMA eligibility requirements contained in 24 CFR part 390.

Form Number: HUD-11701.

Rspondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD-11701	50		1		.75		38

Total Estimated Burden Hours: 38.

Status: Reinstatement.

Contact: Charles Clark, HUD, (202) 708-2234, Brenda Countee, HUD, (202) 708-2234, Angela Antonelli, OMB, (202) 395-6880.

Dated: August 18, 1992.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Development Program for Indian Housing Authority and Indian Low-Income House Program Development Cost Budget.

Office: Public and Indian Housing.

Description of the Need for the Information and its Proposed Use: This information is needed by HUD to assure that legal, administrative, or programmatic requirements are met. The information will be used to control the cost of housing units, their design, and total project cost.

Form Number: HUD-53045 and HUD-53045A.

Respondents: State or Local Governments.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Budget and Administrative Statement	130		1		12		1,560

Total Estimated Burden Hours: 1,560.
Status: Reinstatement.
Contact: Ralph Gonzales, HUD (202) 708–0596, Angela Antonelli, OMB, (202) 395–6880.

Dated: August 18, 1992.

[FR Doc. 92–20580 Filed 8–26–92; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–92–3340; FR–3133–N–02]

Shelter Plus Care Program; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Shelter Plus Care NOFA. The announcement contains the names and addresses of the award winners and the amounts of the awards.

DATES: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: James N. Forsberg, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–4300. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to award grants to be used for rental assistance for homeless persons with disabilities. Grants are matched by the recipients with supportive services equal in value to the amount of rental assistance.

The 1991 awards announced in this Notice were selected for funding in a competition under the Shelter Plus Care program, which is authorized by title IV of the Stewart B. McKinney Homeless Assistance Act. The competition was announced in a **Federal Register** Notice published on December 5, 1991 (56 FR 63842). Applications were scored and selected for funding on the basis of selection criteria contained in that Notice.

A total of $76.6 million was awarded to 30 communities, for a total of 34 projects nationwide. Grants were available for two of the three components of Shelter Plus Care: $37 million for sponsor-based rental assistance (SRA), which are five-year grants; and $39.6 million for Moderate Rehabilitation for Single Room Occupancy Dwellings (SRO), which are ten-year grants. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15 1989), the Department is publishing the grantees and amounts of the awards as follows:

Shelter Plus Care Program

City of Tucson, AZ Community Service Dept	$3,116,160
City of Bakersfield, CA/Kern County Hsq. Auth	4,082,400
City of Los Angeles, CA	3,709,560
City of San Diego, CA Housing Commission	1,555,500
Alameda County, CA/Oakland Hsq. Auth	5,481,840
Alameda County, CA	3,664,380
Santa Clara County, CA	947,340
State of Connecticut Dept. of Mental Health	1,063,200
Metropolitan Dade County, FL Dept. of Human Resources	3,436,200
Metropolitan Dade County, FL Dept. of Human Resources/ Dept. of Housing	1,600,000
City of Peoria, IL/Peoria Hsq. Auth	1,220,400
State of Indiana Family and Social Services Administration	525,900
Commonwealth of Massachusetts Dept. of Public Health	793,800
City of Boston, MA/Boston Hsq. Auth	2,463,760
City of Cambridge, MA/Cambridge Hsq. Auth	2,044,800
City of Baltimore, MD/Baltimore Hsq. Auth	945,120
City of Baltimore, MD	873,000
City of Portland, ME	771,760
Kent County, MI/Grand Rapids Hsq. Comm	1,108,800
State of Michigan Dept. of Mental Health	661,320
State of Minnesota/Housing Finance Agency	1,727,280
Wake County, NC/Raleigh Housing Authority	252,840
State of North Carolina Dept. of Human Resources	1,158,840
City of Paterson, NJ Housing Div./State of NJ	6,744,000
City of New York, NY/Dept. of Hsq. Preservation and Development	6,922,200
Westchester County, NY Dept. of Comm. Health	2,153,160
New York State Office of Mental Health	3,437,220
Franklin County, OH	2,171,400
City of Cincinnati, OH/Metropolitan Hsq. Auth	712,800
City of Philadelphia, PA/Philadelphia Hsq. Auth	2,396,160
City of Philadelphia, PA	3,701,400
City of Dallas, TX/Hsq. Auth. of Dallas	2,626,560
City of Burlington, VT/Burlington Hsq. Auth	759,600
King County, WA	2,650,320

Dated: August 18, 1992.

Randall H. Erben,
Acting Assistant Secretary for Community Planning and Development.

[FR Doc. 92–20559 Filed 8–26–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–02–4760–10; WYW–125681]

Public Notice of a Site Possibly Containing Hazardous Waste

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency Closure of Public Lands.

SUMMARY: Notice is hereby given that effective August 27, 1992, all public lands north of the Dewar Ranch access road in the area described as follows:

T. 16 N., R.114 W., 6th P.M.
Sec. 22, NW¼SE¼NE¼,
Uinta County, Wyoming.
are closed to the public because of the discovery of possible hazardous waste on public lands.

EFFECTIVE DATE: August 27, 1992. The closure will remain in effect until February 24, 1993.

FOR FURTHER INFORMATION CONTACT: Mark R. Hatchel, Realty Specialist, Kemmerer Resource Area, Rock Springs District, Bureau of land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, (307) 877–3933.

SUPPLEMENTARY INFORMATION: This is a renewal of the closure that was issued on April 15, 1992. The purpose of this closure is to protect the health and safety of the public while all materials suspected to contain hazardous substances are removed from the described public land. The authority for this closure is contained in 43 CFR 8364. Any person who fails to comply with this closure may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: August 20, 1992.

John Pecor,
Acting Area Manager.

[FR Doc. 92–20586 Filed 8–26–92; 8:45 am]
BILLING CODE 4310–22–M

[CO–920–02–4120–14; COC 53356]

Public Hearing and Request for Comments on Environmental Assessment Maximum Economic Recovery Report, and Fair Market Value, Application for Competitive Coal Lease COC 53356; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery, and fair market value of federal coal to be offered. An application for coal lease was filed by Cyprus Orchard Valley Coal Corporation requesting the Bureau of Land Management offer for competitive lease 401.78 acres of Federal coal in Delta County, Colorado. An additional 120 acres of coal has been added in order to lease all of the recoverable coal in the area.

DATES: The public hearing will be held 7–9 p.m., September 22, 1992. Written comments should be received no later than October 1, 1992.

ADDRESSES: The public hearing will be held in the Paonia Town Hall, Paonia Community Center Room, 214 Grand Avenue, Paonia, Colorado. Written comments should be addressed to the Bureau of Land Management, Uncompahgre Basin Resource Area Office, 2505 South Townsend Avenue, Montrose, Colorado 81401.

FOR FURTHER INFORMATION CONTACT: Allen Belt, Area Manager, Uncompahgre Basin Resource Area Office at the address above, or by telephone at (303) 249–7791.

SUPPLEMENTARY INFORMATION: Bureau of Land Management, Colorado State Office, Lakewood, Colorado, hereby gives notice that a public hearing will be held on September 22, 1992, at 7 p.m., in the Paonia Town Hall, 214 Grand Avenue, Paonia, Colorado.

An application for coal lease was filed by Cyprus Orchard Valley Coal Corporation requesting the Bureau of Land Management offer for competitive lease Federal coal in the lands outside established coal production regions described as:

T. 13 S., R 92 W., 6th P.M.
Sec. 10, lots 1 to 3, inclusive; and lots 6 to 9, inclusive;
Sec. 11, NW¼ and N½SW¼.
Containing 521.78 acres.

The coal resource to be offered is limited to coal recoverable by underground mining methods.

The purpose of the hearing is to obtain public comments in the environmental assessment and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining the coal in the proposed leasehold may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the September 22, 1992, public hearing should be received at the Uncompahgre Basin Resource Area Office prior to the close of business September 22, 1992. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Comments should address specific factors related to fair market value including, but not limited to:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area, and

8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the environmental assessment, maximum economic recovery, and fair market value should be sent to the Uncompahgre Basin Resources Area Office at the above address prior to close of business on October 1, 1992.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The Draft Environmental Assessment and Maximum Economic Recovery Report are available from the Uncompahgre Basin Resource Area office upon request.

A copy of the Draft Environmental Assessment, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado.

Dated: August 18, 1992.

Richard D. Tate,
Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 92–20536 Filed 8–26–92; 8:45 am]
BILLING CODE 4310–JB–M

[CA–050–282–3110–10–B006; CACA 30114]

Realty Action; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Exchange of public and private lands in Shasta and Tehama Counties, California.

SUMMARY: The following described public lands are being considered for exchange to American Land Conservancy, under section 206 of the

Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Note: Not all lands identified below may be involved in the exchange. Some may be deleted to eliminate possible conflicts that could arise during processing. The final selection of properties will be make to achieve comparable values between the offered and selected lands.

Selected Public Land

T. 32 N., R. 5 W.,
Sec. 32, Lots 155, 164, 165, 167–170, 173–176, 178–182, 184, 186–196, 198–208, 212–215, 218–229.
T. 31 N., R. 5 W.,
Sec. 5, Lots 6, 7, 9, 12, 14, 15, 17–19, 21–23, 26–32, 44–46, 48–50, 52–54, 56, 58–62, 81, 82, 84.
T. 31 N., R. 5 W.,
Sec. 6, Lots 8–10, 17–20, 22, 26, 28.
T. 31 N., R. 5 W.,
Sec. 28, E½W½NW¼, W½SW¼S W¼NW¼, NW¼SW¼NW¼, SW¼NW¼NW¼, N½NW¼N W¼NW¼;
Sec. 29, SE¼NE¼NE¼.
T. 31 N., R. 5 W.,
Sec. 10, SW¼.
T. 31 N., R. 6 W.,
Sec. 24, W½SE¼SE¼SW¼, SW¼SE¼S W¼, W½NW¼SE¼SW¼.
T. 31 N., R. 5 W.,
Sec. 6, Lots 6–20.
T. 31 N., R. 5 W.,
Sec. 9, N½NW¼NE¼, N½SE¼N W¼NE¼, N½SE¼SE¼NW¼NE¼, SW¼SE¼NW¼NE¼, SW¼NW¼NE¼, S½NE¼NE¼SW¼NE¼, S½NE¼S W¼NE¼, NW¼NE¼SW¼NE¼, SE¼SW¼NE¼, S½SW¼SW¼NE¼, W½NW¼SE¼, NW¼SW¼SE¼, N½NE¼SW¼SE¼, N½SE¼N E¼SW¼SE¼, SW¼NE¼SW¼SE¼.
T. 32 N., R. 5 W.,
Sec. 21, SE¼ (portion of);
Sec. 33, Lot 5.

All within the Mount Diablo Meridian. Containing 1383.47 acres, more or less.

In exchange for these lands, the Federal Government will acquire private lands within the Sacramento River Management Area.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire historic riparian habitat for wildlife and fisheries enhancement, and recreation opportunities, and to block up public lands along the Sacramento River. This exchange is consistent with Bureau planning for the lands involved.

Lands to be transferred from the United States will be evaluated in accordance with the National Environmental Protection Act, and will be subject to the following reservations, terms and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

(2) A reservation to the United States for a right-of-way for an access road in the vicinity of M.D.M., T. 31 N., R. 5 W., Sec. 5, NW¼, by authority of the Act of October 21, 1976.

(3) Any authorized land uses, such as rights-of-ways, will be identified as prior existing rights.

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange. These lands were previously segregated for exchange by CA 22703; this notice supersedes that action. By publication of this notice, these vacant, unappropriated and unreserved public lands described above are segregated from settlement, location, and entry under the public lands and minerals laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the **Federal Register** of a termination of the segregation, or two years from the date of this notice, whichever occurs first.

This notices also serves to terminate the following withdrawal classifications:

M.D.M., T. 31 N., R. 5 W., Sec. 9
S 1760 BLM Order Classifying for R&PP Act
M.D.M., T. 31 N., R. 5 W., Sec. 5
3–26–63 BLM Order Classifying for Small Tract C3–3; affects Lots 6, 7, 9, 12, 14, 15, 17–19, 21–23, 26–31, 44–46, 48–50, 52–54, 56, 58–62, 82.
M.D.M., T. 31 N., R. 5 W., Sec. 6
3–26–63 BLM Order Classifying for Small Tract Act C3–3; affects Lot 26 and E½ of Lot 22.

EFFECTIVE DATE: The public is invited to comment on the proposed exchange on or before October 13, 1992. Comments may be sent to the Area Manager, Redding Resource Area, 355 Hemsted Drive, Redding, California 96002. Any comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this action will become the final determination.

FOR FURTHER INFORMATION CONTACT: Patricia Cook, Realty Specialist, at the address above.

Mark T. Morse,
Area Manager.

[FR Doc. 92–20541 Filed 8–26–92; 8:45 am]
BILLING CODE 4310–40–M

[ES–030–2–4212–18]

Realty Action; Sale of Public Land in Itasca County, MN

AGENCY: U.S. Department of the Interior, Bureau of Land Management.

ACTION: Realty action noncompetitive sale.

SUMMARY: The following land has been found suitable for direct sale under section 205 of the Minnesota Public Lands Improvement Act of 1990 (104 Stat. 1019) at the estimated fair market value less equities presented by the applicant. The land will not be offered for sale until at least 60 days after the date of this notice.

Fourth Principal Meridian

T. 60 N., R. 22 W.,
Sec. 25, Lot #4.

Containing approximately 0.75 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Edward E. Sixberry. It has been determined that the subject parcel contains no known mineral values; therefore, mineral interest may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests under section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713).

The patent, when issued, will contain certain reservations to the United States. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203.

DATES: Interested parties may submit comments to the District Manager, Milwaukee District, at the above address on or before October 13, 1992. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this sale is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203 or by calling Larry Johnson at 414–297–4413.

Gary D. Bauer,
District Manager.

[FR Doc. 92–20286 Filed 8–26–92; 8:45 am]
BILLING CODE 4310–GJ–M

[WY–040–02–4212–11; WYW–122556]

Lease for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, recreation and public purposes classification and application for lease in Uinta County.

SUMMARY: The following public lands have been identified and examined and are classified as suitable for lease under the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq.

Sixth Principal Meridian, Uinta County, Wyoming

T. 16 N., R. 113 W.,
Sec. 6, Lots 1, 2, 13, 14;
Sec. 7, W½NE¼, E½NW¼.

The above land aggregates 33.91 acres.

FOR FURTHER INFORMATION CONTACT: Mark R. Hatchel, Realty Specialist, Kemmerer Resource Area, Rock Springs District, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming 83101, (307) 877–3933.

SUPPLEMENTARY INFORMATION: The purposes of this classification and application for lease of these lands is for Uinta County to construct and operate a recreational chariot racing site. The lease is subject to existing prior rights. The proposed lease is consistent with the Kemmerer Resource Management Plan. The land is not required for any Federal purpose.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

The lands will not be offered for lease until at least October 26, 1992.

The lease will have no effect on the South Monument grazing lease permittee. For a 45 day period ending on October 13, 1992 interested parties may submit comments to the Bureau of Land Management, District Manager, P.O. Box 1869, Rock Springs, Wyoming 82902–1869. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: August 20, 1992.

John Pecor,
Acting Area Manager.

[FR Doc. 92–20565 Filed 8–26–92; 8:45 am]
BILLING CODE 4310–22–M

[OR–930–02–6350–08: GP2–342]

Draft Resource Management Plan/ Environmental Impact Statement; Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft Resource Management Plan/ Environmental Impact Statement for the Eugene District, Oregon, on or about August 28, 1992.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1970, section 202(f) of the Federal Land Policy and Management Act of 1976, and 43 CFR part 1610, a draft Resource Management Plan/ Environmental Impact Statement (RMP/ EIS) for the Engene District, Oregon, has been prepared and is available for review and comment. The draft RMP/ EIS describes and analyzes future options for managing approximately 316,592 acres of mostly forested public land and 1,299 acres of nonfederal surface ownership with Federal mineral estate administered by the Bureau of Land Management in Lane, Linn, Benton and Douglas Counties in western Oregon.

Decisions generated during this planning process will supersede land use planning guidance presented in the 1983 Management Framework Plan (MFP) as well as land use guidance for the Engene District Off-Road Vehicle Designation Plan, 1976 Upper Willamette and Siuslaw Environmental Analysis Records for Oil and Gas Leasing, and the 1978 Noti-Lorane and Mohawk-Dorena Environmental Assessments for Oil and Gas Leasing.

Copies of the draft RMP/EIS and a summary of it may be obtained from the Eugene District Office. Public reading copies will be available for review at the public libraries in Eugene, the Lane County Office Building, all government document depository libraries, and at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240.
Public Room, Oregon State Office, 1300 NE 44th Avenue, Portland, Oregon 97213.
Eugene District Office, 2890 Chad Drive, Eugene, Oregon 97401.

All Other BLM Offices in Western Oregon

An open house with opportunity to discuss the draft RMP/EIS will be held on September 30, 1992, at the Eugene District Office, 2890 Chad Drive, Eugene, Oregon from 2 p.m. until 4 p.m. and 6 p.m. until 8 p.m. Additional open houses will be scheduled as needed.

DATES: Written comments on the draft RMP/EIS must be submitted or postmarked no later than December 21, 1992.

ADDRESSES: Written comments should be addressed to Ronald Kaufman, District Manager, Eugene District, Bureau of Land Management, P.O. Box 10226, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Jon Strandjord, RMP Team Leader, Eugene District Office; Phone (503) 683–6994.

SUPPLEMENTARY INFORMATION: The draft RMP/EIS describes and analyses seven alternatives to resolve the following issues: (1) Timber production practices; (2) Old growth forests and habitat diversity; (3) Threatened and endangered and other special status species habitat; (4) Special areas; (5) Visual resources; (6) Stream/riparian/ water quality; (7) Recreation resources; (8) Wild and scenic rivers; (9) Land tenure; and (10) Rural Interface Areas. The issues are analyzed in seven distinct alternatives.

In the BLM's preferred alternative, water quality would be maintained or improved primarily by a combination of Best Management Practices and exclusion of selected areas from planned timber harvest. Particularly important exclusion areas would be the riparian zones of perennial streams and other streams that carry fish.

About 142,000 acres would be managed to maintain and strengthen a system of old growth ecosystem areas, which are expected to increase the amount of old growth stands in the planning area from about 41,000 acres to about 54,000 acres over the next 100 years.

About 141,000 acres would be managed for timber production, including 52,000 acres managed under substantial restrictions to protect or enhance other resource values. The annual allowable timber sale quantity would be 19.9 million cubic feet. To contribute to biological diversity, standing trees, snags, and down, dead woody material would be retained.

In addition to protecting listed or proposed threatened and endangered species as required by the Endangered Species Act, BLM would manage habitats of Federal Candidate, State Listed, and Bureau Sensitive species to maintain their populations at a level that would avoid endangering the species.

Management would provide for a wide variety of recreation opportunities with particular emphasis on

enhancement of opportunities for camping, day-use areas, and various trails.

Three river segments covering 66 miles could be found suitable for designation by Congress under the Wild and Scenic River Act. About 35 other miles of river found eligible for designation and studied by BLM would be found not suitable for designation.

All BLM administered lands would remain available to leasing for oil and gas and geothermal resources. Most BLM administered lands would remain available for the location of mining claims but 13,350 acres would be closed to entry under the mining laws.

The RMP/EIS proposes continuation of designation of seven Areas of Critical Environmental Concern (ACEC) and designation of five new ACECs. The preferred alternative would designate or redesignate the following ACECs with the noted restrictions.

Area name	Acres	Vegetation harvest	ORV use	Mining location	Mineral leasing	Rights-of-way
Horse Rock Ridge ACEC (proposed ACEC/RNA)	378	P	P	P	R	R
Long Tom ACEC	7	P	P	P	R	R
Lake Creek Falls ACED (proposed ACEC/ONA)	58	P	P	P	R	R
Mohawk ACEC/RNA	292	P	P	P	R	R
Camas Swale ACEC/RNA	314	P	P	P	R	R
Fox Hollow ACEC/RNA	160	P	P	P	R	R
Upper Elk Meadows ACEC/RNA	242	P	P	P	R	R
Cannery Dunes (proposed ACEC/ONA)	40	NA	P	P	R	R
Heceta Sand Dunes (proposed ACEC/ONA)	218	P	P	P	R	R
Hult Marsh (proposed ACEC)	167	P	P	P	R	R
Cougar Mountain (proposed ACEC)	9	P	P	P	R	R
Grassy Mountain (proposed ACEC)	74	P	P	P	R	R

P = Use is prohibited.
R = Use is allowed but with restrictions.
NA = Use is not applicable to this area.

There were 11 potential ACEC areas identified, which met the Bureau ACEC criteria of relevance and importance, that are not included in the preferred alternative. They include: Coburg Hills BEHA, Fall Creek Reservoir BEHA, McKenzie River BEHA, Dorena Reservoir BEHA, Siuslaw River BEHA, Fern Ridge BEHA, Triangle Lake BEHA, Triangle Lake RFI, Coburg Hills RFI, Cottage Grove Reservoir RFI, and Dorena Reservoir RFI (BEHA=Bald Eagle Habitat Area; RFI=Relict Forest Islands).

This Notice meets the requirements of 43 CFR 1610.7–2 for designation of ACECs and the requirements of the final revised Department of the Interior-Department of Agriculture Guidelines for Eligibility, Classification, and Management of Rivers (FR Vol. 47, No. 173, page 39454).

Dated: August 20, 1992.

Bonnie Hogan,

Associate District Manager.

[FR Doc. 92–20540 Filed 8–26–92; 8:45 am]

BILLING CODE 4310–33–M

[AZ–930–4214–10; AZA 26553]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed application AZA 26553 to withdraw, for a period of 20 years, approximately 4,220.00 acres of National Forest System land for the Highway 87 Strip withdrawal. The purpose of the withdrawal is to protect the foreground area along the route of this major State highway. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all applicable uses other than those under the mining laws.

DATES: Comments and requests for a meeting should be received on or before November 25, 1992.

ADDRESSES: Comments and meeting requests should be sent to the Arizona State Director, BLM, 3707 N. 7th Street, Phoenix, AZ 85014 or P.O. Box 16563, Phoenix, AZ 85011–6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM Arizona State Office, 602–640–5509.

SUPPLEMENTARY INFORMATION: On August 3, 1992, the U.S. Department of Agriculture, Forest Service, filed application AZA 26553 to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian, Arizona (Tonto National Forest)

T. 9 N., R. 10 E., (A strip of land 1,320 feet wide located along both sides of the centerline of State Highway 87).
Sec. 3, lots 3 and 4, S½NW¼;
Sec. 4, lots 1 thru 4, S½N½;
Sec. 5, lots 1 and 2, S½NE¼, SE¼;
Sec. 8, N½, SW¼;
Sec. 9, E½, E½SW¼;
Sec. 10, NW¼;
Sec. 16, N½, NW¼SW¼;
Sec. 17, W½, SE¼SE¼NE¼;
Sec. 20, N½.
T. 10 N., R. 10 E.,
Sec. 9, SE¼SW¼, SW¼SE¼;
Sec. 16, E½, E½E½W½;
Sec. 21, E½, E½E½W½;
Sec. 22, W½SW¼NW¼, W½NW¼SW¼;
Sec. 28, NE¼, S½;
Sec. 33, NW¼, S½;
Sec. 34, SW¼.

The areas described approximate 4,220.00 acres in Gila County, Arizona.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the subject must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon a determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with regulations as set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless an application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are all those applicable to U.S. Forest Service administered lands except those under the mining laws.

The temporary segregation of the land in connection with this application shall not affect the administrative jurisdiction over it.

Beaumont C. McClure,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 92–20537 Filed 8–26–92; 8:45 am]

BILLING CODE 4310–32–M

[AZ–930–4214–10; AZA 26586]

Proposed Withdrawal and Opportunity for Public Meeting; Arizona; Correction

August 18, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: This notice corrects two errors published in the **Federal Register** on August 3, 1992 (57 FR 34141); Proposed Withdrawal and Opportunity for a Public Meeting; Arizona. On page 34141, column 2, line 21, in the **SUMMARY** section there should be a semicolon (;) between the words "location" and "the." The second error is in the **SUPPLEMENTARY INFORMATION** section, column 2, line 54, remove the word "Sitgreaves" and replace with the word "Apache."

Philip D. Moreland,

Acting Deputy State Director, Lands and Renewable Resources.

[FR Doc. 92–20567 Filed 8–26–92; 8:45 am]

BILLING CODE 4310–32–M

[OR–943–4214–10; GP2–394; OR–48510 (WASH)]

Proposed Withdrawal and Opportunity for Public Meeting; Washington; Correction

Notice document 92–17466, published on page 33006, in the issue of Friday, July 24, 1992, is hereby corrected as follows:

On page 33007, first column, delete the last sentence of the notice which reads, "The sites will be fenced to prevent other uses being made of this area," and insert the omitted sentence which reads, "The temporary uses which may be permitted during this segregative period are other National Forest management activities, including permits, licenses, cooperative agreements, mineral leases, and mineral material permits that are compatible with the intended use under the discretion of the authorized officer."

Dated: August 14, 1992.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 92–20538 Filed 8–26–92; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–770837.

Applicant: New York Zoological Society, Bronx, NY.

The applicant requests a permit to import 25 captive-bred aquatic box turtles (*Terrapene coahuila*) from Jersey Wildlife Preservation, Channel Islands for captive breeding.

PRT–769988.

Applicant: Anita's Bird House, Chattanooga, TN.

The applicant requests a permit to export 3 captive-bred Queen of Bavaria's (*Aratinga guarouba*) to Picton N. Yorks, England, for the purpose of captive breeding.

PRT–771403.

Applicant: New York Zoological Society, Bronx, NY.

The applicant requests a permit to import blood samples collected from three male and three female wild caught pandas (*Ailuropoda melanoleuca*) for genetic and nutritional studies. Pandas are now being held at the Woolong Nature Reserve, China.

PRT–770361.

Applicant: Helen Michaels, Bowling Green State University, Bowling Green, OH.

The applicant requests a permit to take (remove and reduce to possession) leaf tissue samples of *Geranium multiflorum* and *Geranium arboreum* collected in Haleaka National Park, Maui, Hawaii for DNA isolation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to, or by appointment during normal business hours (7:45–4:15) in, the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 21, 1992.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 92–20495 Filed 8–26–92; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–337]

Commission Determination not To Review an Initial Determination Amending the Complaint and Notice of Investigation To Add a Respondent

In the Matter of Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation amending the complaint and notice of investigation to name Tranbon of Taipei, Taiwan as an additional respondent.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW.,

Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On June 15, 1992, complainant SGS-Thompson Microelectronics, Inc. filed a motion to amend its complaint to name Tranbon as an additional respondent. Neither the existing respondents nor Tranbon opposed the motion. The Commission investigative attorneys supported ST's motion. On July 23, 1992, the presiding ALJ issued an ID (Order No. 47) amending the complaint and notice of investigation to add Tranbon as an additional respondent in this investigation. No petitions for review of the ID or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

By order of the Commission.
Issued: August 21, 1992.

Paul R. Bardos,
Acting Secretary.
[FR Doc. 92–20530 Filed 8–26–92; 8:45 am]
BILLING CODE 7020–02–M

[Investigation No. 337–TA–337]

Certain Integrated Circuit Telecommunication Chips and Products Containing Same, Including Dialing Apparatus; Commission Determination not to Review an Initial Determination Granting in Part Complainant's Motion for Summary Determination on the Issue of Domestic Industry

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) granting-in-part complainant's motion for partial summary determination on the existence of a domestic industry.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Daniel Hopen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3108.

Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On June 2, 1992, Complainant SGS-Thomson Micorelectronics, Inc. ("ST") filed a motion for partial summary determination on the issue of the existence of a domestic industry. The motion was opposed by respondents United Microelectronics Corporation and Hualon Microelectronics Corporation (collectively, "respondents"). The Commission investigative attorneys filed a response in support of the partial summary determination. On July 22, 1992, the presiding ALJ issued an ID granting ST's motion in part. The ID found that there was no genuine issue of fact as to whether the economic activity in the United States with respect to two of the three patents in issue was sufficient to establish the economic prong of the domestic industry requirement. Respondents filed a petition for review on August 3, 1992. ST and the Commission investigative attorney filed oppositions to the petition on August 7, 1992, and August 10, 1992, respectively. No agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53).

Issued: August 21, 1992.

By order of the Commission.

Paul R. Bardos,
Acting Secretary.
[FR Doc. 92–20531 Filed 8–26–92; 8:45 am]
BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–211]

Rahway Valley Railroad Co.; Abandonment, Between Aldene and Summit in Union County, NJ; Findings

The Commission has issued a certificate authorizing the Rahway Valley Railroad Company (RVRC) to abandon its entire line of railroad, consisting of 7.8 miles of rail line extending between milepost 0.0 at Aldene and milepost 7.1 at Summit and from milepost 2.8 near Branch Junction to the terminus of the former Jaeger Industrial Branch at Morris Avenue, in Union County, NJ. The abandonment certificate will become effective September 28, 1992, unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and RVRC no later than 10 days from the date of publication of this Notice. The following notation shall be typed in bold face in the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: August 21, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Anne K. Quinlan,
Acting Secretary.
[FR Doc. 92–20602 Filed 8–26–92; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, and section 113(g) of the Clean Air Act, 42 U.S.C. 7413(g), notice is hereby given that on August 12, 1992, a proposed Consent Decree in *United States and State of Colorado* v. *Public Service Company of Colorado*, Civil Action No. 92–1572, was lodged with the United States District Court for the District of Colorado. The Consent Decree resolves a complaint, filed simultaneously with the lodging of the Consent Decree, by the United States and the State of Colorado against Public Service Company of Colorado ("Public Service"). The Complaint alleges that Public Service violated the Standards of Performance for New Stationary Sources, promulgated under section 111 of the Clean Air Act, 42 U.S.C. 7411, and analogous provisions of the Colorado Air Quality Control Act.

Public Service, a gas and electric power utility, owns and operates two fossil fuel-fired steam generating plants in Colorado, the Comanche Power Generation Station No. 2 and the Pawnee Power Generation Station. The complaint alleges that Public Service failed to maintain and operate both facilities in a manner consistent with good air pollution control practice for minimizing emissions, in violation of 40 CFR 60.11(d), by failing to begin timely construction of a fabric filter dust collector or a cold-side electrostatic precipitator ("ESP") to replace its malfunctioning hot-side ESPs. The Consent Decree requires Public Service to pay a civil penalty of $600,000, of which $440,000 would be paid to the United States and $160,000 to the State, and to install a fabric filter dust collector under a compliance schedule enforceable by the State.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environmental and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States and State of Colorado* v. *Public Service Co. of Colorado*, D.J. No. 90–5–2–1–1404.

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of Colorado, 633 17th Street, suite 1600, Denver, Colorado 80202, and the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202. The proposed Consent Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 2004, 202–347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $3.25 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Roger Clegg,
Acting Assistant Attorney General, Environmental and Natural Resources Division.
[FR Doc. 92–20555 Filed 8–26–92; 8:45 am]
BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Steiner, et al.*, Civ. No. 90–00364–ACK, was lodged with the United States District Court for the District of Hawaii on August 14, 1992. That action was brought against defendants pursuant to the Clean Air Act for violations of the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for asbestos, which occurred during asbestos removal from a condominium unit in Waikiki, Honolulu, Hawaii.

Under the consent decree, Defendant Randall Steiner is required to pay a civil penalty of $5000 and to comply with the NESHAP in the future. (Two previous decrees similarly resolved the case against the other two defendants.) The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530. All comments should refer to *United States* v. *Steiner, et al.*, D.J. Ref. 90–5–2–1–1443.

The proposed consent decree may be examined at the office of the United States Attorney, room C–242, U.S. Courthouse, 300 Ala Moana Blvd., Honolulu, Hawaii 96850; at the Region IX office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94103; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, 202–347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $5.50 for the Steiner decree plus its attachments (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Steiner, et al.*, D.J. Ref. 90–5–2–1–1443.

John C. Cruden,
Chief, Environmental Enforcement Section, Environment and Natural Resources Division.
[FR Doc. 92–20556 Filed 8–26–92; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–9067]

Proposed Exemptions; J.J. Johnson & Associates Employees Profit Sharing Trust

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section

408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

J.J. Johnson & Associates Employees Profit Sharing Trust (the Plan) Located in Rochester, New York

[Application No. D-9067]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed payment by The Sear-Brown Group, Inc. (SB) of certain legal expenses incurred by the Plan, and the repayment of those expenses by the Plan to SB, provided the following conditions are met: (a) The Plan pays no interest or other expenses in connection with the transaction; (b) the Plan will reimburse SB for the expenses solely from the proceeds of any recovery awarded to the Plan in connection with the litigation; and (c) to the extent the amount of the recovery, if any, is less than the amount of the legal expenses paid by SB, the Plan shall not be liable to SB for the difference.

Summary of Facts and Representations

1. The Plan was established on October 1, 1978, by J.J. Johnson & Associates. Jack J. Johnson, (the Original Trustee) was appointed to act as sole trustee for the Plan. In December, 1985, Metro Equipment, Inc. (Metro) acquired 40% of the stock of Johnson. By September, 1988, Metro had become the owner of all of the stock of Johnson. On October 1, 1988, Johnson ceased doing business and its employees became the employees of SB, a corporation which is a member of the same group of controlled corporations as Metro.

2. The Original Trustee was removed by the Board of Directors of Metro, effective May 2, 1988. Leon Clary, the President of SB, and Anthony Maletta, Chairman of SB's Board of Directors, were appointed as trustees on that date. Effective May 1, 1990, Michael Triassi, Executive Vice President of SB, and Douglas Rosecrans, SB's Engineering Manager (the Plaintiff Trustees), were appointed as additional co-trustees.

3. Upon examination of the records of the Plan, the Plaintiff Trustees discovered what they believed to be breaches of fiduciary duty by the Original Trustee. Accordingly, the Plaintiff Trustees have brought a lawsuit [1] (the Litigation) against the Original Trustee to recover on behalf of the Plan the against the Original Trustee to recover on behalf of the Plan the amounts believed to have been lost by the Plan as a result of the alleged breaches of fiduciary duty. In their complaint, the Plaintiff Trustees made a demand for reimbursement of attorneys' fees and costs. The Original Trustee has filed a counterclaim in which he has alleged that the payment of $20,000 in legal fees by the Plan (see Rep. 4, below) was improper.[2]

4. On September 30, 1989, the Plan was terminated and all of the assets were distributed to the Plan participants, except for a reserve of $20,000 which was to be used to pay attorneys' fees and costs incurred in connection with the Litigation. The $20,000 reserve has now been disbursed to the Plan's attorneys. SB wishes to enter into an agreement with the Plan pursuant to which SB will pay all of the costs and attorneys' fees incurred through the conclusion of the Litigation. If there is a recovery on behalf of the Plan, the Plan and SB wish to agree that the Plan will reimburse SB for the costs and attorneys' fees that SB has incurred in connection with the Litigation.[3] As of February 15, 1992, approximately $78,614 in attorneys' fees and costs have been incurred that remain unpaid.

5. The applicant represents that if the exemption proposed herein is not granted, the Plan would not be able to proceed with the Litigation, and thus the Plan participants would lose the opportunity to share in the amount that may be recovered on behalf of the Plan. Furthermore, the applicant represents that the Plan will reimburse SB only if the Plan obtains a recovery, and in no event will the reimbursement exceed the amount of the recovery. If there is no recovery, the Plan will be under no obligation to reimburse SB. Accordingly, the Plan is not exposed to incurring a loss with respect to the transaction.

6. The Plaintiff Trustees estimate that the amount of damages that may be recovered is approximately $420,000 (which does not include attorneys' fees), plus prejudgment interest accrued since 1988. Approximately $78,000 in legal fees have been incurred to date, which amount may be adjusted. It is estimated that an additional $50,000 may be incurred in legal fees. Thus, if the Plan is successful in the Litigation, the Plan could receive approximately $420,000 or $548,000, depending on whether attorneys' fees are awarded.

7. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The Plan will pay no interest or other expenses in connection with the transaction; (b) the transaction will permit the Plan to pursue the Litigation and thus provide the Plan with an opportunity to recover funds which may be shared by its participants; (c) SB will be reimbursed for attorneys' fees and costs only if the Plan obtains a recovery; and (d) the reimbursement to SB by the Plan will in no event exceed the amount of the recovery.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[1] *Michael Triassi and Douglas Rosecrans, Trustees of J.J. Johnson and Associates Profit Sharing Trust* versus *Jack J. Johnson and John Does 1-10, Inclusive*, Civil No. 90-C-560A, filed August 3, 1990 in the United States District Court, District of Utah, Central Division.

[2] In this proposed exemption, the Department expresses no opinion regarding the merits of the Litigation or the counterclaim.

[3] The applicant represents that it has considered the applicability of section 408(b)(2) of the Act to the proposed transaction, and is unable to conclude that the transaction would be exempt from the restrictions of section 406 of the Act under that section.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 21st day of August, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-20485 Filed 8-26-92; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 92-67; Exemption Application No. D-8878, 8879]

Grant of Individual Exemptions; Old Kent Bank and Trust Co.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary for facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Old Kent Bank and Trust Company (the Bank) Located In Grand Rapids, Michigan

[Prohibited Transaction Exemption 92-67; Exemption Application Nos. D-8878 and D-8879].

Exemption

The restrictions of section 406 (b)(2) and (b)(3) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(F) of the Code, shall not apply to the proposed receipt of fees by the Bank from the Kent Funds (the Funds), an open-end investment company registered under the Investment Company Act of 1940, for acting as the investment adviser for the Funds in connection with the investment by certain plans to which the Bank, or any of its affiliates, serves as a trustee with investment management responsibility (the Client Plans), as well as plans covering employees of the Bank or its affiliates (the Bank Plans) where the Bank or any affiliate is a trustee or directed trustee, provided that the following conditions are met:

(a) No sales commissions are paid by either the Client Plans or the Bank Plans (collectively, the Plans) in connection with the purchase or sale of shares of the Funds and no redemption fees are paid in connection with the sale of shares by the Plans to the Funds;

(b) Each Client Plan, as well as each Bank Plan, receives a rebate, either through cash or the purchase of additional shares of the Funds pursuant to an annual election made by the Plan, of such Plan's proportionate share of all fees charged to the Funds by the Bank within no more than one business day of the receipt of such fees by the Bank;

(c) With respect to the Client Plans, a second fiduciary who is independent of and unrelated to the Bank or any of its affiliates (the Second Fiduciary), receives full written disclosure of information concerning the Funds (including a current prospectus for the Funds and a statement describing the fee structure) and, on the basis of such information, authorizes in writing the investment of assets of the Client Plan in the Funds, the fees to be paid by the Funds to the Bank, and the purchase of additional shares of the Funds by the Client Plan with the fees rebated to the Client Plan by the Bank;

(d) The authorization referred to in paragraph (c) is terminable at will by the Client Plan, without penalty to the

Client Plan, upon receipt by the Bank of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (c) with instructions on the use of the form must be supplied to the Second Fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the Client Plan, without penalty to the Client Plan, upon receipt by the Bank of written notice from the Second Fiduciary; and

(2) Failure to return the form will result in continued authorization of the Bank to engage in the transactions described in paragraph (c) on behalf of the Client Plan;

(e) With respect to the Bank Plans, no fees will be charged by the Bank or any of its affiliates to the Bank Plans for serving as either a trustee, directed trustee, or investment manager of the Bank Plans;

(f) All dealings between the Plans and the Funds are on a basis no less favorable to the Plans than dealings with other shareholders of the Funds;

(g) The Bank maintains for a period of six years the records necessary to enable the persons described below in section (h) to determine whether the conditions of this exemption have been met, except that a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Bank or its affiliates, the records are lost or destroyed prior to the end of the six-year period; and

(h)(1) Except as provided in paragraph (2) of this section (h) and notwithstanding any provisions of subsection (a)(2) and (b) of section 504 of the Act, the records referred to in section (g) are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(ii) Any fiduciary of the Plans who has authority to acquire or dispose of shares of the Funds owned by the Plans, or any duly authorized employee or representative of such fiduciary, and

(iii) Any participant or beneficiary of the Plans or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in section (h)(1)(ii) and (iii) shall be authorized to examine trade secrets of the Bank, any of its affiliates, or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on May 8, 1992 at 57 FR 19945.

Written Comments: The Department received one written comment regarding the proposed exemption (the Proposal).

The commenter is a participant in the Bank Plans and the Old Kent Employees Medical Benefits Plan (the Bank Medical Plan). The commenter states that an officer of Old Kent Financial Corporation who performs certain administrative services for the Bank Plans and the Bank Medical Plan (the Bank Officer) has engaged in violations of the Act by wrongfully denying benefits to the commenter under the terms and conditions of the Bank Medical Plan. The commenter represents that the Bank Officer has also violated certain reporting and disclosure provisions of the Act relating to these medical benefit claims and questions the integrity and competence of the Bank Officer to administer the Bank Plans regarding the proposed transactions with the Funds and to provide the Bank Plan participants with timely and accurate disclosure of information as discussed in the Proposal.

By letters dated July 2 and 28, 1992, the Bank responded to the commenter. The Bank states that the Department's exemption application process is not an appropriate forum for the resolution of the issues raised by the commenter's medical benefit claims. In this regard, the Bank represents that a civil action filed by the commenter in Michigan state court involving these benefit claims has been removed by the Bank to federal court and will be resolved by the court. The Bank states that the Bank Officer will not be involved in any way with the transactions by either the Client Plans or the Bank Plans that are the subject of the Proposal. Specifically, the Bank states that the Bank Officer will not be involved in any of the functions which the Bank will perform for the Bank Plans under the conditions of the Proposal, including the decisions made by the Bank or its affiliates regarding investments by the Bank Plans in the Funds, the rebate of investment advisory fees by the Bank to the Bank Plans, and the posting of notices and the provision of prospectuses and other information to employees of the Bank and its affiliates that participate in the Bank Plans. The Bank represents further that despite the allegations made by the commander, the Bank and its affiliates have met and will continue to meet all their fiduciary obligations to the Bank Plans and will fully comply with the conditions of the Proposal relating to the Bank Plans as well as the Client Plans.

Since the Bank represents that the Bank Officer will not be involved with either the functions to be performed by the Bank under the Proposal or the transactions by either the Bank Plans or the Client Plans that are the subject of the Proposal, the Department does not believe it appropriate to delay granting the requested exemption. Accordingly, after consideration of the entire record, the Department has determined to grant the exemption.[1]

FOR FURTHER INFORMATION CONTACT: Mr. E.F. Williams of the Department, telephone (202) 523–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

[1] The Department expresses no opinion herein as to the court proceedings noted above and the commenter's allegations regarding fiduciary violations by the Bank Officer, or to the processing of the commenter's benefit claims and the Bank Medical Plan's reporting and disclosure obligations.

Signed at Washington, DC, this 21st day of August, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92–20486 Filed 8–26–92; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL ENDOWMENT FOR THE ARTS

Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge/Advancement Advisory Panel (Presenting and Commissioning Challenge Section) to the National Council on the Arts (published August 12, 1992, No. 57 FR 36112) originally scheduled to be held on September 2–3, 1992 from 9 a.m.–5:30 p.m. will be held on September 29–30, 1992 from 9 a.m.–5:30 p.m.

The portion of the notice which read "Portions of this meeting will be open to the public on September 2 from 9 a.m.–10 a.m. and September 3 from 5 p.m.–5:30 p.m." should read "Portions of this meeting will be open to the public on September 29 from 9 a.m.–10 a.m. and September 30 from 5 p.m.–5:30 p.m."

The first part of the third paragraph which read "The remaining portions of this meeting on September 2 from 10 a.m.–5:30 p.m. and September 3 from 9 a.m.–5 p.m. are for the purpose of * * *" should read "The remaining portions of this meeting on September 29 from 10 a.m.–5:30 p.m. and September 30 from 9 a.m.–5 p.m. are for the purpose of * * *."

Further information in reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: August 20, 1992.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 92–20604 Filed 8–26–92; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

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(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: 1991 Survey of Doctorate Recipients—Modified Questionnaire.

Affected Public: Individuals.

Respondents/Reporting Burden: No change from previous submission: 19,750 respondents; 14 minutes per response.

Abstract: The data collected in this survey enables NSF to partially fulfill the requirement to serve as a clearinghouse for information on the scientific and technical population of the U.S. That information allows for policy and planning activities by officials of government, private industry, and academic institutions.

Dated: August 21, 1992.

Herman G. Fleming,

NSF Reports Clearance Officer.

BILLING CODE 7555–01–M

COMPARISON OF ORIGINAL 1991 SDR QUESTIONS WITH PROPOSED MODIFIED QUESTIONS

ORIGINAL QUESTION(S)

EMPLOYMENT PROFILE

1. During SEPTEMBER 1991, what was your employment status? (Please circle the number of your response below.)

(CIRCLE ONE NUMBER)

1	Employed full-time	→ Skip to Question 6 (Page 3)
2	Employed part-time	→ Go to Question 2
3	Postdoctoral appointment*—Full-time	→ Skip to Question 6 (Page 3)
4	Postdoctoral appointment*—Part-time	→ Go to Question 2
5	Unemployed and seeking full-time or part-time employment	→ Skip to Question 4
6	Not employed and not seeking employment	→ Skip to Question 5
7	Retired and not employed	→ Skip to Question 25a (Page 7)
8	Other, specify (_____)	→ Skip to Question 25a (Page 7)

*Postdoctoral appointment is defined as a temporary appointment in academia, industry, or government, the primary purpose of which is to provide for continued education or experience in research.

REVISED QUESTION(S)

A1. Were you working for pay or profit during the week of [DATE] 1992? This includes being self-employed or temporarily absent from a job (e.g., illness, vacation or parental leave), even if unpaid.

1 ☐ Yes → SKIP TO A8

2 ☐ No

A2. Did you look for work at any time during the five weeks between [DATE] and [DATE] 1992?

1 ☐ Yes

2 ☐ No

A8. Counting hours worked from any job held during the week of [DATE] 1992, were you working full-time or part-time that week?

1 ☐ Full-time (usually worked a total of 35 or more hours per week) → SKIP TO A11

2 ☐ Part-time (usually worked less than 35 hours per week)

A15. Was this job a POSTDOCTORAL appointment, that is, a temporary appointment in academic, industry or government, primarily for providing continued education or experience in research?

1 ☐ Yes

2 ☐ No

ORIGINAL QUESTION(S)

2. *IF YOU HELD A PART-TIME POSITION DURING SEPTEMBER 1991:*

A. Were you seeking a full-time position? *(CIRCLE ONE NUMBER)*

1 Yes
2 No

B. How many part-time positions did you hold in September 1991? *(ENTER NUMBER IN BOX)*

☐ Positions

C. On average, how many hours per week did you work in September 1991? *(ENTER NUMBER IN BOX)*

☐☐ Hours

3. What was your MOST important reason for holding a part-time position during September 1991? *(CIRCLE ONLY ONE NUMBER)*

1 Part-time position preferred
2 Full-time position not available
3 Family responsibilities
4 Other, specify _____

NOW, PLEASE SKIP TO QUESTION 6 (PAGE 3)

REVISED QUESTION(S)

A9. Were you seeking full-time work during the week of [DATE] 1992?

1 ☐ Yes
2 ☐ No

A37. During the week of [DATE] 1992, did you hold more than one job? (This includes consulting work)

1 ☐ Yes
2 ☐ No → SKIP TO PART B

A28a. On approximately how many hours of work per week was your annual salary in A28 based?

|__|__| Hours Per Week

A10. What was your MOST important reason for holding a part-time position during the week of [DATE] 1992?

MARK ONE

1 ☐ Full-time position not available
2 ☐ Worked part-time to accommodate spouse/partner's job or career
3 ☐ Worked part-time for other family-related reasons
4 ☐ Worked part-time for other reason (*Specify:*

ORIGINAL QUESTION(S)

4. If you were unemployed but seeking employment during September 1991, which of the following factors MOST restricted your job search. *(CIRCLE ONLY ONE NUMBER)*

1 Geographic location
2 Family responsibilities
3 Need for part-time employment
4 Other, specify _____
5 No restrictions

NOW, PLEASE SKIP TO QUESTION 16 (PAGE 6)

5 If you were not employed and not seeking work during September 1991, what was your MOST important reason for not seeking work? *(CIRCLE ONLY ONE NUMBER)*

1 Temporarily absent for health or personal reasons
2 Family responsibilities
3 Suitable job not available
4 Other, specify _____

NOW, PLEASE SKIP TO QUESTION 16 (PAGE 6)

REVISED QUESTION(S)

A3. What was your MAIN reason for not working during the week of April 12, 1992]:

MARK ONE

01 ☐ Retired → SKIP TO A5
02 ☐ On layoff from a job
03 ☐ My work is seasonal
04 ☐ Student
05 ☐ Family responsibilities
06 ☐ Chronic illness or permanent disability
07 ☐ Could not find work or believed no suitable jobs available in my field
08 ☐ Waiting for new job to begin within 30 days
09 ☐ Waiting for school to begin
10 ☐ Did not need or want to work
11 ☐ Other (*Specify:*
_____)

ORIGINAL QUESTION(S)

6. Please write the name of your principal employer (company, organization, postdoctoral institution, etc.) and actual place of employment during SEPTEMBER 1991.

(IF YOU WERE SELF-EMPLOYED, WRITE "SELF")

_____
Name of employer

_____
City County

_____
State or Foreign Country ZIP

7. Which category best describes the type of your principal employment OR postdoctoral appointment during SEPTEMBER 1991? *(CIRCLE ONLY ONE)*

00 Self-employed
01 Business or industry
→ *Go to Q. 8*

02 Junior college, 2-year college, technical institute
03 Medical school (including university affiliated hospital or medical center)
04 4-year college
05 University, other than medical school
06 Elementary, middle, or secondary school system
07 Private foundation
08 Hospital or clinic
09 U.S. military service, active duty, or Commissioned Corps, e.g., USPHS, NOAA
10 U.S. government, civilian employee
11 State government
12 Local or other government, specify _____
13 Nonprofit organization, other than those listed above
14 Other, specify _____

Skip to Q. 9 (Page 4)

REVISED QUESTION(S)

A13. For whom did you work during the week of April 12, 1992? (If you had more than one job that week: Please answer for the job you considered your principal employment)

Employer Name: _____
Street: _____
City/Town: _____
State/Foreign Country: _____
Zip Code: |__|__|__|__|__|

☐ MARK (X) HERE IF YOU WERE SELF-EMPLOYED

A16. Was your employer an educational institution?

1 ☐ Yes
2 ☐ No → SKIP TO A18

A17. Was the educational institution...

MARK ONE

1 ☐ An elementary, middle, or secondary school system
2 ☐ A 2-year college, junior college, technical institute
3 ☐ A 4-year college or university, other than a medical school
4 ☐ A medical school (including university affiliated hospital or medical center)
5 ☐ A university-affiliated research institute
6 ☐ Other (*Specify:*
_____)

ORIGINAL QUESTION(S)

(cont'd #7)

A18. IF NOT EDUCATIONAL INSTITUTION: Was your employer...

MARK ONE

01 ☐ A Private for Profit company, business or individual, working for wages, salary or commissions

02 ☐ A Private Not-for-Profit, tax-exempt, or charitable organization

03 ☐ Self-Employed in own NOT INCORPORATED business, professional practice, or farm

04 ☐ Self-Employed in own INCORPORATED business, professional practice, or farm

05 ☐ Local government (city, county, etc.)

06 ☐ State government

07 ☐ U.S. military service, active duty or Commissioned Corps (e.g., USPHS, NOAA)

08 ☐ U.S. government, civilian employee

09 ☐ Other government (*Specify:*

_____)

10 ☐ Working without pay in family business or farm

REVISED QUESTION(S)

(cont'd #7)

ORIGINAL QUESTION(S)

8. *IF YOU ANSWERED CODE 01 OR 00 TO QUESTION 7 (EMPLOYED IN BUSINESS/INDUSTRY OR SELF-EMPLOYED):*

From the Business/Industry Classification List in the next column, how would you classify the organization you wrote in question 6?
If your organization conducts its activities at different locations, enter the code for the activity conducted at the location where you were employed.

☐☐ Business/Industry Classification Code
(See next column for listing)

9. From the Employment Specialties List on page 5, select and enter both the number and the title of the employment field most closely related to your principal employment or postdoctoral appointment during SEPTEMBER 1991. Write in your employment field if it is not on the list.

☐☐☐ Number _____ Employment Field
(See page 5 for listing)

REVISED QUESTION(S)

NO REVISED QUESTION

A19a. Write the occupation that BEST describes the kind of work you were doing on this job.

_____

A19b. Please turn to Page 13 for List A: OCCUPATION CODES and pick the occupation code that BEST describes your job as recorded in A19a.

|__|__|__| CODE

ORIGINAL QUESTION(S) REVISED QUESTION(S)

10. *IF YOU ANSWERED CODES 800-938 TO QUESTION 9 (EMPLOYED IN A HUMANITIES, EDUCATION, PROFESSIONAL, OR OTHER FIELD):*

What was the MOST important reason for your decision to take a position in a field other than science/engineering? *(CIRCLE ONLY ONE)*

1 Better pay
2 More attractive career options
3 Preferred specific geographic location
4 Constraints due to family status
5 Position in Ph.D. field not available
6 Change in career/professional interests
7 Other, specify _____

A20. To what extent was your work on this job related to your first doctoral degree awarded in the U.S.?

MARK ONE

1 ☐ Closely related → SKIP TO A23
2 ☐ Somewhat related → SKIP TO A23
3 ☐ Not related

A21. Did these factors influence your decision to work in an area outside the field of your first U.S. doctoral degree?

MARK YES OR NO FOR EACH

	YES	NO
a. Job in highest degree field not available	1 ☐	2 ☐
b. Took only job available	1 ☐	2 ☐
c. More attractive career options outside highest degree field	1 ☐	2 ☐
d. Had a change in career or professional interests	1 ☐	2 ☐
e. Pay better outside highest degree field	1 ☐	2 ☐
f. Preferred job in a particular location	1 ☐	2 ☐
g. Spouse's/partner's job or career	1 ☐	2 ☐
h. Other family-related responsibilities or reasons	1 ☐	2 ☐
i. Promoted out of position in highest degree field	1 ☐	2 ☐
j. Other reason (*Specify:* _____)	1 ☐	2 ☐

A22. Which factor in A21 represents your MOST important reason for working in an area outside the field of your first U.S. doctoral degree?

¦___¦ ENTER LETTER OF MOST IMPORTANT REASON FROM A21

ORIGINAL QUESTION(S) REVISED QUESTION(S)

11. *IF YOU WERE EMPLOYED BY AN INSTITUTION OF HIGHER EDUCATION (THAT IS, YOU CIRCLED CODES 02-05 TO QUESTION 7):*

A. What was your faculty rank? *(CIRCLE ONLY ONE)*

1 Professor
2 Associate professor
3 Assistant professor
4 Instructor
5 Lecturer
6 Adjunct faculty
7 Other, specify _____
8 Does not apply

B. What was your tenure status? *(CIRCLE ONLY ONE)*

1 Tenured, in 19☐☐
2 Not tenured, in tenure track
3 Not tenured, not in tenure track
4 Tenure not applicable

9. What was your tenure status? (CIRCLE ONE NUMBER)
1. Tenured
2. Not applicable: no tenure system at this institution
3. Not applicable: no tenure system for my faculty status
4. On tenure track but not tenured
5. Not on tenure track

10. What was the duration of your contract or appointment at this institution?

1. One academic term
2. One academic/calendar years
3. Two or more academic/calendar years
4. Unspecified duration
5. Other (WRITE IN) _____

11. Which of the following best describes your faculty rank? (CIRCLE ONE NUMBER)

1. Not applicable: no ranks designated for this position
2. Professor
3. Associate Professor
4. Assistant Professor
5. Instructor
6. Lecturer
7. Adjunct Faculty
8. Other (WRITE IN) _____

ORIGINAL QUESTION(S) REVISED QUESTION(S)

12. From the activities listed below, select your primary and secondary work activities for your principal job (as reported in question 6), in terms of time devoted during a typical week.

ENTER THE APPROPRIATE CODE (01-16) FOR EACH IN THE BOXES PROVIDED.

☐☐ Primary activity ☐☐ Secondary activity

01 Teaching
02 Basic research (i.e., study directed toward gaining scientific knowledge primarily for its own sake)
03 Applied research (i.e., study directed toward gaining scientific knowledge in an effort to meet a recognized need)
04 Development of equipment, products, systems
05 Design of equipment, processes, models
06 Management/administration of R&D
07 Management/administration of educational/other programs
08 Report and technical writing, editing
09 Professional service to individuals, clinical diagnosis, psychotherapy
10 Consulting
11 Operations-production, maintenance, construction, installation
12 Quality control, testing, evaluation
13 Sales, marketing, purchasing, customer and public relations
14 Statistical work-survey work, forecasting, statistical analysis
15 Computer applications
16 Other, specify _____

A23. Did you routinely perform these activities as part of this job?

MARK YES OR NO FOR EACH

	YES	NO
a. Accounting, finance, contracts	1 ☐	2 ☐
b. Applied research - study directed toward gaining scientific knowledge to meet a recognized need	1 ☐	2 ☐
c. Basic research - study directed toward gaining scientific knowledge primarily for its own sake	1 ☐	2 ☐
d. Clerical or administrative support--typing, filing, data entry, etc.	1 ☐	2 ☐
e. Computer applications, programming, systems development	1 ☐	2 ☐
f. Development - using knowledge gained from research for the production of materials, devices	1 ☐	2 ☐
g. Design of equipment, processes, structures, models	1 ☐	2 ☐
h. Employee relations - including recruiting, personnel development, training	1 ☐	2 ☐
i. Maintenance and repairs	1 ☐	2 ☐
j. Management and administration	1 ☐	2 ☐
k. Operations/production (e.g., truck driver, machinist)	1 ☐	2 ☐
l. Professional services to individuals or organizations (health care, financial services, legal services, etc.)	1 ☐	2 ☐
m. Purchasing	1 ☐	2 ☐
n. Public relations, advertising	1 ☐	2 ☐
o. Sales, customer service, marketing	1 ☐	2 ☐
p. Quality or productivity management	1 ☐	2 ☐
q. Teaching	1 ☐	2 ☐
r. OTHER (*Specify:* _____)	1 ☐	2 ☐

A24. On which TWO activities in A23, did you work the MOST hours during a typical week on this job? ENTER LETTER OF APPROPRIATE ACTIVITY FROM A23

¦__¦ PRIMARY work activity

¦__¦ SECONDARY work activity (If none: Enter (X))

ORIGINAL QUESTION(S) REVISED QUESTION(S)

13. During a typical week, what percentage of your professional work time did you devote to the items listed in question 12?
ENTRIES SHOULD TOTAL 100%

PERCENT OF TIME

_____ % Primary work activity

_____ % Secondary work activity

_____ % Other work activities

100% = TOTAL

PLEASE CONTINUE ON PAGE 6

14. What was the basic annual salary associated with your principal employment during SEPTEMBER 1991? By basic salary we mean your annual salary before deduction for income tax, social security, retirement, etc., but do not include bonuses, overtime, summer teaching, or other payment for professional work.

If you were on a postdoctoral appointment (see question 1 for definition), what was your stipend plus allowances?

$_____.00 Basic Annual Salary

15. Circle whether this salary was for:

1 9-10 months
2 11-12 months

16. Since receiving your doctorate, how many full-time equivalent (FTE) years of professional work experience have you had?

☐☐ Year(s)

NO REVISED QUESTION

A28. What was your ANNUAL salary (or postdoctoral stipend) BEFORE deductions on this principal job during the week of April 12, 1992? [Do NOT include bonuses, overtime, or additional compensation for summertime teaching or research]

If you did not receive a salary: Please estimate your annual earned income, excluding business expenses.

$ _____
ANNUAL SALARY DURING WEEK OF April 12, 1992

A29. Was your annual salary in A28 based on...

MARK ONE

1 ☐ A less than 9 month work schedule?
2 ☐ A 9 or 10 month work schedule?
3 ☐ An 11 or 12 month work schedule?

B8. How many years of professional work experience have you had since receiving your doctorate?

YEARS: ¦__¦__¦

☐ NONE OR LESS THAN ONE YEAR

ORIGINAL QUESTION(S)

17a. Was any of the work in which you were engaged during the past year supported or sponsored by U.S. Government funds?

1 Yes
2 No → *Skip to Question 18a*
3 Don't know → *Skip to Question 18a*

17b. If YES, which of these agencies or departments were supporting your work? *(CIRCLE ALL THAT APPLY)*

01 AID (Agency for International Development)
02 Department of Agriculture
03 Department of Commerce
04 Department of Defense
05 Department of Energy
06 Department of Education
07 National Institutes of Health (DHHS)
08 Other DHHS
09 Department of Housing and Urban Development
10 Department of the Interior
11 Department of Justice
12 Department of Labor
13 Department of Transportation
14 EPA (Environmental Protection Agency)
15 NASA (National Aeronautics and Space Administration)
16 NSF (National Science Foundation)
17 Nuclear Regulatory Commission
18 Other, specify _____
19 Don't know source agency

REVISED QUESTION(S)

A30. Was any of your work on this job supported by contracts or grants from the U.S. government during the week of April 12, 1992? FEDERAL EMPLOYEES PLEASE ANSWER "NO".

MARK ONE

1 ☐ Yes
2 ☐ No → SKIP TO A32
3 ☐ Don't Know → SKIP TO A32

A31. Which of the following federal agencies or departments were supporting your work?

MARK ALL THAT APPLY

01 ☐ Agency for International Development (AID)
02 ☐ Agriculture Department
03 ☐ Commerce Department
04 ☐ Defease Department (DOD)
05 ☐ Education Department (include NIE, NCES)
06 ☐ Energy Department (DOE)
07 ☐ Environmental Protection Agency (EPA)
08 ☐ Health and Human Services Department (excluding NIH)
09 ☐ Housing and Urban Development Department (HUD)
10 ☐ Interior Department
11 ☐ Justice Department
12 ☐ Labor Department
13 ☐ National Aeronautics and Space Administration (NASA)
14 ☐ National Institutes of Health (NIH)
15 ☐ National Science Foundation (NSF)
16 ☐ Nuclear Regulatory Commission (NRC)
17 ☐ State Department
18 ☐ Transportation Department (DOT)
19 ☐ Veterans Administration
20 ☐ OTHER (*Specify:* _____)
21 ☐ DON'T KNOW SOURCE AGENCY

ORIGINAL QUESTION(S)

18a. Since you received your doctorate, have you ever spent three months or more conducting research in a country other than the United States?

1 Yes → *Skip to Question 19*
2 No

18b. If NO, from the list below, select the primary and secondary factors that would encourage you to conduct research in a country other than the United States.
(ENTER NUMBER IN THE BOXES PROVIDED)

☐ Primary factor ☐ Secondary factor

1 Better sabbatical leave policy
2 More financial support
3 Better foreign language training opportunities
4 Greater access to information on foreign research opportunities (e.g. funding sources, research activities)
5 Other, specify _____
6 I would not consider conducting research outside the United States at this time.

NO REVISED QUESTION

B6. Would you ever consider conducting research in a country other than the United States?

MARK ONE

1 ☐ Yes
2 ☐ No, my work does not lend itself to conducting research in or outside the United States → SKIP TO B8
3 ☐ No, not interested in conducting research outside the U.S. → SKIP TO B8

B7. How much would the following changes increase, if at all, your interest in conducting research outside the U.S.?

MARK ONE FOR EACH

	A Great Deal	Some-what	Not At All
a. Better financial support?	1 ☐	2 ☐	3 ☐
b. Better foreign language training opportunities?	1 ☐	2 ☐	3 ☐
c. Better access to information on foreign research opportunities (e.g., funding sources, research opportunities)	1 ☐	2 ☐	3 ☐
d. Better sabbatical leave policy?	1 ☐	2 ☐	3 ☐
e. Other (*Specify:* _____)	1 ☐	2 ☐	3 ☐

ORIGINAL QUESTION(S) REVISED QUESTION(S)

19. From this list of selected areas of national interest, indicate the ONE area to which you devoted the MOST professional time during a typical week at the job reported in question 6.
(CIRCLE ONLY ONE)

01 Energy and fuel
02 Health
03 Environment
04 Education
05 National defense
06 Food or Agriculture
07 Biotechnology
08 Mineral resources
09 Housing (planning, design, construction)
11 Transportation
12 Communications
13 Space
14 Other, specify _____

20. What percent of your professional time did you devote to the area listed in question 19 during a typical week?

_____ Percent

A32. From the list of selected areas below, indicate the ONE area, if any, to which you devoted the MOST hours during a typical week on this job.

MARK ONE

01 ☐ Energy/Fuel
02 ☐ Environment
03 ☐ Health/Safety
04 ☐ National Defense
05 ☐ NONE OF THE ABOVE

→ SKIP TO A35

NO REVISED QUESTION

ORIGINAL QUESTION(S) REVISED QUESTION(S)

21. PLEASE READ BEFORE CONTINUING:
If you answered code 01 to question 19 (energy and fuel), please answer questions 22-24. Otherwise, please skip to question 25a.

22. From the list below, circle the ONE energy source that involved the LARGEST proportion of your energy-related work during SEPTEMBER 1991.
(CIRCLE ONLY ONE)

1 Coal and coal products
2 Petroleum (including oil shale and tar sands) or natural gas
3 Fission
4 Fusion
5 Hydroenergy
6 Direct solar (including space and water heating, thermal, electric)
7 Indirect solar (winds, tides, biomass, etc.)
8 Geothermal
9 Other, specify _____

23. Please read the following list of energy-related activities and mark the activity(ies) in which you were engaged during SEPTEMBER 1991.
(CIRCLE ALL THAT APPLY)

01 Exploration
02 Extraction (gas, oil, mining)
03 Manufacture of energy-related components or products
04 Fuel processing (including refining and enriching)
05 Electric power generation
06 Transportation, transmission, distribution of fuel or energy
07 Energy storage
08 Energy utilization, management
09 Fuel reprocessing or disposal
10 Energy conservation
11 Environmental impact (health, economic, etc.)
12 Education, training
13 Research and development
14 Other, specify _____

24. Please enter the number (01-14) from question 23 that BEST describes the activity in which you spent MOST of your energy-related time.

☐☐ Number

A33. From the list below, check the ONE ENERGY SOURCE that involved the largest proportion of your energy-related work during the past year.

MARK ONE

01 ☐ Coal
02 ☐ Petroleum and natural gas
03 ☐ Nuclear fission
04 ☐ Nuclear fusion
05 ☐ Hydroenergy
06 ☐ Other Renewables (such as solar, biomass, wind, geothermal)
07 ☐ Other energy source (*Specify:*
_____)

A34. From the list below, check the ONE ENERGY-RELATED ACTIVITY that involved the largest proportion of your energy-related work during the past year.

MARK ONE

01 ☐ Exploration and extraction
02 ☐ Manufacture of energy-related equipment
03 ☐ Fuel processing (include refining and enriching)
04 ☐ Electric power generation and transmission
05 ☐ Transportation and distribution of fuel
06 ☐ Waste management or decommissioning
07 ☐ Conservation, utilization, management, or storage of energy/fuel
08 ☐ Environment, health, and safety
09 ☐ Other energy-related activity, (*Specify:*
_____)

ORIGINAL QUESTION(S) REVISED QUESTION(S)

GENERAL INFORMATION

25a. What is your citizenship status? *(CIRCLE ONLY ONE)*

1 U.S. Native Born → *Skip to Question 26*
2 U.S. Naturalized → *Skip to Question 26*
3 Non-U.S. Immigrant (Permanent Resident)
4 Non-U.S. Non-Immigrant (Temporary Resident)
5 Non-U.S. with no U.S. residency or citizenship

25b. If NON-U.S., of which country are you a citizen?

26. What is your racial background? *(CIRCLE ONLY ONE)*

1 American Indian or Alaskan Native
2 Asian or Pacific Islander
3 Black
4 White

C16. As of April 12, 1992 were you a:

MARK ONE

U.S. Citizen

1 ☐ Native Born → SKIP TO C19 (PAGE 11)
2 ☐ Naturalized → SKIP TO C18

Non-U.S. Citizen

3 ☐ With a Permanent U.S. Resident Visa
4 ☐ With a Temporary U.S. Resident Visa
5 ☐ Living outside the United States

C17. IF NON-U.S. CITIZEN: Of which country are you a citizen?

COUNTRY: _____

OFFICE USE: |__|__|__|

C14. Are you:

MARK ONE

1 ☐ White
2 ☐ Black/African American
3 ☐ Asian or Pacific Islander
4 ☐ American Indian, Eskimo, Aleut
5 ☐ Other (*Specify:*

_____

ORIGINAL QUESTION(S) REVISED QUESTION(S)

27a. Is your ethnic heritage Hispanic?

1 Yes
2 No → *Skip to Question 28*

27b If YES, is it: *(CIRCLE ONLY ONE)*

1 Mexican American
2 Puerto Rican
3 Other Hispanic

C12. Are you of Spanish/Hispanic origin or descent?

1 ☐ Yes
2 ☐ No → SKIP TO C14

C13. Which of the following categories BEST describes your Spanish/Hispanic descent? (If more than one category applies, please select the one you consider the most important part of your background)

MARK ONE

1 ☐ Mexican, Mexican-American, Chicano
2 ☐ Puerto Rican
3 ☐ Cuban
4 ☐ Other Spanish/Hispanic (*Specify:*

_____)

28. What is your marital status? *(CIRCLE ONLY ONE)*

1 Never Married
2 Married
3 Separated, Divorced
4 Widowed

C21. As of April 12, 1992 were you:

MARK ONE

1 ☐ Married
2 ☐ Widowed
3 ☐ Separated
4 ☐ Divorced
5 ☐ Never Married

→ SKIP TO C25

29. How many children do you have living with you in each of the following age categories: *(ENTER NUMBER, IF NONE, WRITE "0".)*

Number ☐ Under 6 years of age

Number ☐ Between 6 to 17 years of age

C25. As of April 12, 1992, how many children did you have living with you in each of the following age categories? IF NONE: ENTER ZERO

NUMBER

|___| Under the age of 6
|___| Aged 6-17
|___| 18 or older

ORIGINAL QUESTION(S)

30 What is the usual degree of difficulty you have with seeing words or letters in ordinary newsprint (while wearing glasses or contact lenses if you usually wear them)? *(CIRCLE ONLY ONE)*

1 No Difficulty
2 Slight Difficulty
3 Moderate Difficulty
4 Severe Difficulty
5 Unable to do

31. What is the usual degree of difficulty you have with hearing what is normally said in a conversation with another person (while wearing a hearing aid if you usually wear one)? *(CIRCLE ONLY ONE)*

1 No Difficulty
2 Slight Difficulty
3 Moderate Difficulty
4 Severe Difficulty
5 Unable to do

32. What is the usual degree of difficulty you have with walking without assistance (human or mechanical) or using stairs? *(CIRCLE ONLY ONE)*

1 No Difficulty
2 Slight Difficulty
3 Moderate Difficulty
4 Severe Difficulty
5 Unable to do

33. What is the usual degree of difficulty you have with lifting and carrying something as heavy as 10 pounds, such as a bag of groceries? *(CIRCLE ONLY ONE)*

1 No Difficulty
2 Slight Difficulty
3 Moderate Difficulty
4 Severe Difficulty
5 Unable to do

REVISED QUESTION(S)

C19. What is the usual degree of difficulty you have with...

	MARK ONE FOR EACH				
	None	Slight	Moderate	Severe	Unable to Do
a. Seeing words or letters in ordinary newsprint (with glasses/contact lenses if you usually wear them)	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
b. Hearing what is normally said in conversation with another person (with hearing aid, if you usually wear one)	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
c. Walking without assistance (human or mechanical) or using stairs	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐
d. Lifting or carrying something as heavy as 10 pounds, such as a bag of groceries	1 ☐	2 ☐	3 ☐	4 ☐	5 ☐

C20. ☐ MARK (X) HERE IF YOU ANSWERED "NONE" TO ALL ACTIVITIES IN C19 — THEN SKIP TO C21

What is the earliest age at which you first began experiencing difficulties in any of these areas?

AGE: |__|__| OR ☐ SINCE BIRTH

ORIGINAL QUESTION(S)

34. In the event it is necessary to contact you to clarify some of the information you provided, what is the telephone number at which you can be reached?

Daytime: _____
(Area code) (Number)

Evenings: _____
(Area code) (Number)

REVISED QUESTION(S)

C27. In case we need to clarify some of the information you have provided, please list a phone number where you can be reached.

Area Code Number
|_|_|_|-|_|_|_|-|_|_|_|_| Daytime

Area Code Number
|_|_|_|-|_|_|_|-|_|_|_|_| Evenings

ORIGINAL QUESTION(S)

35. Because of recent and continuing changes in domestic and world employment markets, policymakers are interested about employment opportunities and career paths of the doctoral population.

Consequently, we may be recontacting you in 1993. In case we cannot locate you then, please provide the name, address, and telephone number of a person who is likely to know where you can be reached. *DO NOT INCLUDE SOMEONE WHO LIVES IN YOUR HOUSEHOLD.*

Name

Number and street

City or town

State or foreign country Zip code

(Area code) (Number)

THANK YOU FOR YOUR PARTICIPATION. PLEASE RETURN THE COMPLETED QUESTIONNAIRE IN THE ENCLOSED POSTAGE PAID ENVELOPE TO THE:

NATIONAL RESEARCH COUNCIL
ROOM GR 415
2101 CONSTITUTION AVENUE, N.W.
WASHINGTON, D.C. 20418

REVISED QUESTION(S)

C28. Since policymakers are interested in how education and employment change over time, we may be recontacting you again in 1995. To help us find you, please provide the name, address, and telephone number of two people who are likely to know where you can be reached. DO NOT INCLUDE SOMEONE WHO LIVES IN YOUR Hhousehold

- As with all the information provided in this questionnaire, complete confidentiality will be provided. These people will only be contacted if we cannot find you in 1995.

Name

Number and Street

City/Town State Zip Code

Area Code Number

Name

Number and Street

City/Town State Zip Code

Area Code Number

[FR Doc. 92-20605 Filed 8-26-92; 8:45 am]
BILLING CODE 7555-01-C

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On March 13, 1992, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to Gerald L. Kooyman on August 18, 1992.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-20497 Filed 8-26-92; 8:45 am]
BILLING CODE 7555-01-M

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Division of Popular Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On July 16, 1992, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to G.A. McFeters on August 18, 1992.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-20498 Filed 8-26-92; 8:45 am]
BILLING CODE 7555-01-M

Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On March 5, 1992, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to Warren M. Zapol on August 18, 1992.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-20499 Filed 8-26-92; 8:45 am]
BILLING CODE 7555-01-M

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 24, 1992. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan at the above address or (202) 357-7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designated Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. Applicant

Wayne Z. Trivelpiece, Old Dominion University, P.O. Box 955, Bolinas, CA 94924.

Activity for Which Permit Requested

Taking, Import into the U.S.A. Enter Site of Special Scientific Interest. The applicant is continuing a long-term study of the behavioral ecology and population biology of the Adelie, Gentoo, and Chinstrap penguins as well as their principal avian competitors. The request is to band from 500 to 2000 penguins of each species to meet research goals. The applicant also requests to attach radio transmitters and time depth recorders to a maximum of 50 adult penguins of each species. All birds are released unharmed after capture. The research area is within the borders of a Site of Special Scientific Interest, and permitted entry to this area is also requested. The applicant also requests approval to import skeletons and other materials salvaged from dead antarctic penguins and antarctic flying birds to the U.S. for educational and scientific study.

Location

South Shetland Islands, Antarctica

Dates

10/1/92-4/1/93

2. Applicant

Arthur L. DeVries, Physiology Department, University of Illinois, 407 South Goodwin, Urbana, IL 61801.

Activity for Which Permit Requested

Introduction of Non-Indigenous Species into Antarctica. Specimens of the New Zealand black cod (Family Nototheniidae) will be cold acclimated in a closed seawater system in the aquarium at McMurdo Station. The cold acclimated specimens will be used in experiments to determine the role of the antifreeze glycopeptides in freezing avoidance and for isolating DNA. Upon completion of the experiments the black cod will be sacrificed and preserved in formalin.

Location

McMurdo Station, Antarctica and surrounding region

Dates

10/1/1992–2/27/1993

3. Applicant

Arthur L. DeVries, Physiology Department, University of Illinois, 407 South Goodwin, Urbana, IL 61801.

Activity for Which Permit Requested

Introduction of Non-Indigenous Species into Antarctica. Fifteen specimens of adult male and female wetas, *Hemideina maori* (flightless insects) will be transported from New Zealand to the Crary Science and Engineering Center at McMurdo Station Antarctica. The wetas are a freeze tolerant insect which will be used in experiments to determine if small amounts of fish antifreeze glycopeptides can enhance freezing tolerance. The insects will be kept inside a controlled temperature walk-in freezer laboratory during the experiments, and then will be returned to New Zealand.

Location

McMurdo Station, Antarctica

Dates

10/1/1992–2/15/1993

4. Applicant

Bill J. Baker, Department of Chemistry, Florida Institute of Technology, 150 W. University Blvd, Melbourne, FL 32901.

Activity for Which Permit Requested

Introduction of non-indigenous species into Antarctica. The applicant requests a permit to bring samples of four non-pathogenic microorganisms to McMurdo: Escherichia coli, Bacillus subtillus, Saccharomyces cerevisae, and Aspergillus niger. The sampels will be used to perform antimicrobial assays on extracts from marine invertebrates. Microorganisms will be handled using sterile techniques and will be disposed of by sterilization at the conclusion of the study.

Location

McMurdo Station, Antarctica

Date

10/1/92–2/28/93

5. Applicant

Joesph F. Ustach, Duke University Marine Laboratory, Beaufort, NC 28516.

Activity for Which Permit Requested

Taking. Import into U.S.A. Introduction of non-indigenous species. Benthic protozoans will be taken by box coring samples to make feeding estimates. Fluorescent labled bacteria will be brought to Antarctica to serve as feeding material for the protozoans. After allowing the protozoans to feed, they are fixed with formalin, and returned to the U.S. for staining and microscopic counting.

Location

Bellinghausen Sea, Geralche Strait, Antarctica

Date

11/2/92–11/23/92

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92–20501 Filed 8–26–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Chemistry; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 17–18, 1992; 8 a.m. to 6 p.m.

Place: Marvel Hall D, American Chemical Society, 1155 16th Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Henry Blount, Program Manager, rm. 340, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–7960.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–20610 Filed 8–26–92; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Education and Human Resources; Committee of Visitors; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 24, 1992; 8 a.m. to 4 p.m.

Place: Room 523, 1800 G St. NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Susan W. Duby, Program Director, Graduate Education and Research Development, rm. 1202, National Science Foundation, Washington, DC 20550. Telephone: (202) 357–7856.

Purpose of Meeting: To provide oversight review of the Graduate Research Fellowship Program.

Agenda: To carry out Committee of Visitors (COV) review, including examination of decisions on applications, reviewer comments, and other privileged materials.

Reason for Closing: These meetings are closed to the public because the Committee will be reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(C) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: August 24, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–20606 Filed 8–26–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Elementary, Secondary and Informal Science Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub.L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Date and Time: September 14, 1992; 2 p.m. to 5 p.m.; September 15, 1992; 8:30 a.m. to 5 p.m.

Place: Rooms 500 B and C, 1110 Vermont Avenue NW., Washington, DC

Contact Person: Dr. Sara Nerlove, Program Manager, Industrial Innovation Interface, rm. V502, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 653–5335.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (Phase I) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92–20612 Filed 8–26–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Industrial Innovation Interface; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 14, 1992; 2 p.m. to 5 p.m.; September 15, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500V, 1110 Vermont Avenue, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Sara Nerlove, Program Manager, Industrial Innovation Interface, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 653–5335.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–20611 Filed 8–26–92; 8:45 am]

BILLING CODE 7555-01-M

Committee of Visitors of the Advisory Committee for Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

Date and Time: September 17, 1992; 8:30 a.m. to 5 p.m.

Place: Room 563, 1800 G Street, NW., Washington, DC.

Contact Person: Dr. Devendra P. Garg, Program Director, National Science Foundation, 1800 G St. NW., room 1108, Washington, DC 20550. Telephone: (202) 357–9542.

Agenda: To provide oversight review of the Dynamics Systems and Control Program.

Date and Time: September 18, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, 1800 G Street, NW., Washington, DC.

Contact Person: Dr. Jerry Sackman or Huseyin Sehitoglu, Program Directors, National Science Foundation, 1800 G St. NW., room 1108, Washington, DC 20550. Telephone: (202) 357–9542.

Agenda: To provide oversight review of the Mechanics and Materials Program.

Date and Time: September 22, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, 1800 G Street, NW., Washington, DC.

Contact Person: Dr. Ken Chong or John Scalzi or Mehmet Tumay, Program Directors, National Science Foundation, 1800 G St. NW., room 1108, Washington, DC 20550. Telephone: (202) 357–9542.

Agenda: To provide oversight review of the Structures, Geomechanics and Building Systems Program.

Type of Meeting: Closed.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act be improperly disclosed.

Dated: August 24, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–20607 Filed 8–26–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Molecular and Cellular Biosciences, Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting: Special Emphasis Panel in Molecular and Cellular biosciences

Date and Time: September 25, 1992; 8:30 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G. Street NW. Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Brenda C. Flam, Program Manager for Special Projects, Division of Molecular & Cellular Biosciences, room 325, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–9400.

Purpose of Meeting: To provida advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Small Business Innovation Research Program (SBIR) as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–20609 Filed 8–26–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: September 17–18, 1992; 8:30 a.m. to 5 p.m.

Place: Room 118, St. James Hotel, 950 24th Street NW., Washington, DC.

Type of Meeting: Closed.

Contact person: Dr. Polly A. Penhale, Program Manager, DPP, rm. 620, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–7894.

Purpose of Meeting: to provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Polar Biology and Medicine proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92–20608 Filed 8–26–92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 14, 1992; 2 p.m. to 5 p.m.; September 15, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500 D, 1110 Vermont Avenue NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Sara Nerlove, Program Manager, Industrial Innovation Interface, rm. V502, National Science Foundation, 1800 G

Street NW., Washington, DC 20550. Telephone: (202) 653–5335.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (Phase I) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 24, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92–20613 Filed 8–26–92; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information collection:
   —DOE/NRC Forms 741 and 741A, "Nuclear Material Transaction Report," and NUREG/BR–0006, "Instructions for completing forms 741, 741A, and 740M"
   —DOE/NRC Form 740M, "Concise Note"
3. The form number if applicable: Same as item 2 above.
4. How often the collection is required:
   —NOE/NRC Form 741/741A: As occasioned by special nuclear material or source material transfers, receipts, or inventory changes that meet certain criteria.
   —DOE/NRC Form 740M: When specified in Facility Attachments or Transitional Facility Attachments, or as necessary to inform the U.S. or IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the US/IAEA Safeguards Agreement.
5. Who will be required or asked to report: Persons licensed to possess specified quantities of special nuclear material or source material, and in the case of IAEA Form N–71, licensees of facilities on the U.S. eligible list who have been notified in writing by the Commission to submit the form.
6. An estimate of the number of responses annually:
   —DOE/NRC Form 741/741A: 20,000
   —DOE/NRC Form 740M: 1,140
7. An estimate of the total number of hours needed to complete the requirement or request:
   —DOE/NRC Form 741/741A: 20,000 (1 hour per response)
   —DOE/NRC Form 740M: 1,140 (1 hour per response)
8. An indication of whether section 3504(h), Pub. L. 96–511 applies: Not applicable.
9. Abstract:
   —NRC and Agreement State licensees are required to make inventory and accounting reports on DOE/NRC Form 741/741A for certain source or special nuclear material inventory changes, for transfers or receipts of special nuclear material, or for transfer or receipt of 1 kilogram or more of source material.
   —Licensees affected by 10 CFR parts 75 and related sections of parts 40, 50, 70, and 150 are required to submit DOE/NRC Form 740M to inform the U.S. or IAEA of any qualifying statement or exception to any of the data contained in any of the other reporting forms required under the U.S./IAEA Safeguards Agreement.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0003 & –0057), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 19th day of August 1992.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Informotion Resources Management.

[FR Doc. 92–20570 Filed 8–26–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–445]

TU Electric Utilities Company; Comanche Peak Steam Electric Station, Unit No. 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of appendix E, Section VI(4)(d) of 10 CFR part 50 to TU Electric (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Unit 1, located in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirement of appendix E, Section VI(4)(d) of 10 CFR part 50 to complete installation of the Emergency Response Data System (ERDS) by February 13, 1993. By letter dated June 1, 1992, the licensee requested an exemption from appendix E, Section VI(4)(d) of 10 CFR part 50 that would defer the installation of the ERDS because of a planned replacement of CPSES Unit 1 computer system. The computer replacement will be completed during the third refueling outage currently scheduled during the fourth quarter of 1993.

The Need for the Proposed Action

Section VI(4)(d) of appendix E, 10 CFR part 50, requires the licensee to complete implementation of the ERDS by February 13, 1993, or before initial escalation to full power, whichever comes later. The proposed exemption is required in order to allow the licensee to complete a change-out of the computer system which drives the ERDS. The change-out is to be completed during the third refueling outage scheduled for the fourth quarter of 1993.

Environmental Impacts of the Proposed Action

The proposed exemption affects only the licensee's required date for implementing its ERDS. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require an earlier date for the implementation of the ERDS. Such an action would not enhance the protection of the environment. The exemption will allow for the licensee to complete a change-out of the computer system which drives the ERDS. The change-out is to be completed during the third refueling outage scheduled for the fourth quarter of 1993.

Alternate Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Comanche Peak Steam Electric Station, Unit No. 1, dated September 1981 and Supplement dated October 1989.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's letter dated June 1, 1992. The letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 20th day of August 1992.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Director, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92–20571 Filed 8–26–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–01179]

Environmental Assessment: Finding of No Significant Impact and Notice of Opportunity for Hearing Related to Amendment of Material License 50–02430–07, University of Alaska Fairbanks

AGENCY: Nuclear Regulatory Commission.

ACTION: NRC plans to issue an amendment to NRC License No. 50–02430–07, authorizing the University of Alaska Fairbanks to use gold-198 for placer gold radiotracer studies at Valdez Creek Mine placer gold mine in Alaska.

FOR FURTHER INFORMATION CONTACT: Dr. Donna-Beth Howe, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301–504–2636.

Environmental Assessment

Identification of the Proposed Action

The proposed action is to amend NRC Byproduct Material License 50–02430–07, issued to the University of Alaska Fairbanks, under review for renewal. The license currently authorizes personnel from University of Alaska Fairbanks to use byproduct material. The proposed amendment would authorize University of Alaska Fairbanks personnel to use gold-198 in flakes and nuggets in sluice box studies at a temporary job site at the Valdez Creek Mine placer gold mine. The purpose of the studies is to evaluate the effects of sluice box design and performance characteristics on gold recovery efficiency during sluicing processes. The placer gold mine is located adjacent to the active stream in the historic Valdez Creek stream bed. The mine is 50 miles east of Cantwell, Alaska, and 5 miles northwest of Susitna Lodge. The proposed study involves adding gold-198 to stream bed gravel as it is being loaded into the feed stream, at the top end of the sluice box, retrieving the radioactive gold flakes and nuggets from the sluice box at the end of the run, and releasing gold-198 directly into the environment (i.e., the gravel mine tailings at the bottom of the sluice box) if it is not captured in the sluice box. Accordingly, pursuant to 10 CFR 51.21, NRC has prepared this assessment of the resulting environmental impact.

The non-site-specific aspects of gold-198 placer studies (i.e., possession of the gold-198 flakes and nuggets, laboratory use, waste disposal, and radiation health and safety aspects of gold-198 use at University of Alaska Fairbanks) are performed under the authority of University of Alaska Fairbanks' license.

Background

By letter dated April 17, 1992 (and attachments), the University of Alaska Fairbanks (applicant) Radiation Safety Office representative requested in NRC amendment to perform gold-198 placer studies at a remote mining site in Alaska. University personnel have experience using gold-198 in laboratory settings. The Valdez Creek Mine will be the University of Alaska Fairbanks' first gold-198 placer gold study at a field site. The mine, operated by Cambior Alaska, Inc., is located on land under the administrative control of the U.S. Bureau of Land Management. Both Cambior Alaska, Inc., and the Bureau of Land Management conditionally authorized the performance of the studies at Valdez Creek Mine, pending NRC approval of the amendment request. The gold-198 studies cannot begin unless NRC amends University of Alaska Fairbanks' license to authorize the study.

Placer gold ore consists of preformed gold particles (flakes or nuggets) that are deposited with rock formations. Mining the gold and rock from the floor of stream beds is a form of surface strip mining. Pacer gold mining is the process of separating the gold from the stream bed gravel. The process uses centrifugal and gravitational forces and differences in density and particle sizes to separate the gold from the gravel and drive the gold into a collection mat. Since the gravel contains very little gold, a large volume of gravel and a simple, cheap, and efficient method is needed to recover the gold.

At Valdez Creek Mine, a 45-foot-long and 18-foot-wide sluice box, with seven individual channels running the length of the box, is used to separate the gold from the gravel. Each channel consists of a flume, containing riffles, with removable matting between each riffle. Each riffle is lower in elevation than the previous one. The seven channels are all fed gravel, at the top of the box, from a common source, and all channels are diverted, at the bottom, to a common tailings pile. Gravity carries the slurry of water and alluvial gravel containing the gold down the riffles of the sluice box. Each riffle overturns ribbons of slurry to form vortices, and the centrifugal and gravitational forces at the bottom of the vortices separate the gold from the gravel and drive the gold particles into the matting. To recover the gold, the water is stopped approximately every 24 hours, the mats are removed, and the gold is washed out of the mats in 20-to-30-gallon water containers.

The initial sluicing process requires a great deal of water, approximately 2000 gallons per minute for a 10-foot-wide sluice box. Initial and make-up water is usually pumped from a diversion reservoir upstream from the sluice box and permitted to flow through the gravel tailings to a settling pond downstream. Approximately 85 percent of the water used is recycled from the tailings pond. The majority of the gravel passes through the sluice box and is deposited in the tailings pile. The water used to wash the mats is also dumped on the gravel tailings pile. A single tailings pile may contain from 10,000 to 50,000 cubic yards (or 11,000 or 57,000 tons) of gravel and be approximately 150 feet long, 110 feet wide, and 50 feet high. Typically, a mine site will have many such tailings piles.

The field studies are expected to run over a 3-year period. Each shipment of gold has four different-size nuggets and flakes (i.e., 0.15 to 0.21 millimeters(mm), 0.3 to 0.42 mm, 0.6 to 0.84 mm, and 1.4 to 1.7 mm). If the total activity of 100 gold particles is 4 millicuries and each gold particle has the same activity, the activity of each gold flake and nugget is expected to be 40 microcuries before decay. Ten measurements are expected to be made using one shipment of gold-198; three shipments are expected to be used per year. The maximum total activity used for a measurement is 5 millicuries; the maximum total activity used in a year will be 100 millicuries.

The procedure to make a measurement is as follows: (1) 100 gold-198 nuggets and flakes, having up to four different sizes, are added to the stream bed gravel containing non-radioactive placer gold at the head of a single channel of the sluice box; (2) the sluice box channel is operated as normal; (3) the channel is shut down 24 hours later; (4) each mat in the channel is then examined and washed to recover both the radioactive and non-radioactive gold; and (5) the radio-labeled particles are identified and separated from the non-labeled gold. The number and size of the radio-labeled gold particles recovered from each riffle are used to determine the run's recovery efficiency (how many particles were trapped) and effectiveness (whether the operating parameters selectively missed nuggets or small flakes).

Need for the Proposed Action

Alaska has approximately 200 placer gold mines. These mines are a major social and economic force in the State's developing economy. Placer gold ore is usually low grade. Inefficient recovery processes can result in the situation where more gold is lost than recovered. The purpose of the studies is to determine the efficiency and effectiveness of individual sluice box operations in recovering different-size gold particles. Using radio-labeled gold permits the identification of individual gold particles. This results in a rapid quantitative determination of the recovery or loss of the individual particles and the calculation of the effectiveness and efficiency of the sluice run.

Although the operation of a sluice box appears simple, a number of minor parameter adjustments or equipment modifications can have a significant effect on optimizing gold recovery and minimizing gold loss. Initial measurements are used to quantify the gold-recovery rate at the particular mine. Subsequent measurements provide feedback on the consequences of changes made to optimize gold recovery. Similar radio-labeled gold studies were performed by another group at 24 placer mines in Canada's Yukon Territory. These studies resulted in identifying only a few efficient mining operations and making recommendations to improve operations at the majority of the mines. Implementing technical change and equipment modification recommendations such as screening the pay gravel to remove larger gravel particles, replacing the matting material, and changing the types of riffles resulted in significant improvements in gold recovery at some mines.

Environmental Impacts of the Proposed Action

The Affected Environment. The study site, Valdez Creek Mine, is located in the Valdez Creek drainage area. The active mine consists of an open pit mine approximately one-half mile long, 700 feet wide at the bottom, 1200 feet wide at the top, and 200 feet deep. The Valdez Creek project exploits two paleochannels adjacent to the Tammany Channel, a previously mined paystreak. All three paystreaks are ancestral drainage incisions located in the historic creek bed. A dam at the head of the valley forms a 5-acre diversion reservoir that is used for initial and replacement water for the sluicing operation (gold-wash plant) and enables the active creek to be diverted a half mile from the gold-wash plant. The 15-acre settling pond, located below the gold-wash plant, not only receives the runoff from the gravel tailings piles and the sluicing operation, but also serves as the main source of slurry water. This water is continually being pumped back up to the gold-wash plant.

The mine is formed by removing the original ground surface (the overburden) from the historic creek bed, until the pay gravel is reached. Approximately 6 million cubic yards of overburden are removed each year. The pay gravel from the active cut is bulldozed to the sluice box. Once the pay gravel from a cut has been run through the sluice box, the sluice box is moved and a new cut is started. Approximately 400,000 cubic yards of pay gravel are processed each year and 40,0000 to 70,000 ounces of gold retrieved each year. Water in the tailings pond is eventually released to the creek.

The Valdez Creek Mine, in operation since 1984, is one of Alaska's largest gold mines. It is run on a year-round basis with limited mining activity during the winter. The sluicing operation takes place in two 12-hour shifts per day. Because the sluice box being studied has seven channels, a channel can be closed without having to stop the overall operations. Breaks in the operations usually occur for shift changes and maintenance. The wash plant is never left unattended.

There are approximately 100 employees at the mine. The employees and their families live at the mine approximately a mile southwest of the gold-wash plant. The mine is located north of the Denali Highway, just east of the Susitna River. Access to the mine is by a private road that passes through the historic mining site of Denali, consisting of several vacant log cabins. A security gate and mine security personnel control access to the mine, for safety and economic reasons. Usually only four to six employees work at the sluicing area at a time. Employees not directly involved in the sluicing operation and children are not allowed near the sluicing area for safety reasons. Cantwell, the closest community, is 55 miles away and has a population of 100 people. The nearest permanent residence is near Cantwell. The nearest temporary residence, Susitna Lodge, is 5 miles away and only operates from June to August.

There are two candidate species, one threatened species, and one endangered species that may live in the vicinity of the mine. The endangered species is the American peregrine falcon (*Falco peregrinus anatum*); the threatened species is the Arctic peregrine falcon (*Falco peregerinus tundrius*); and the two candidate species are the lynx (*Felis lynx*) and the Swainson's hawk (*Buteo swainsoni*). The candidate status of the lynx indicates that it may be put on the threatened or endangered list and the status of the Swainson's hawk

indicates that it is becoming more abundant.

Study Protocol. The University of Alaska Fairbanks' personnel will sort nonradioactive gold into four different-size particles and send the sorted particles to Oregon State University, for neutron activation in its reactor. Gold-198, the activation product, has a half life of 2.7 days, a primary gamma ray energy of 412 kiloelectron volt, and a gamma ray exposure constant of 2.35 roentgen per hour per millicurie at 1 centimeter (0.23 milliroentgen per hour per millicurie at 1 meter). The gold samples returned from Oregon State University are expected to have total activities of less than 40 millicuries.

One hundred gold-198 particles, with a total activity of approximately 4 millicuries, will be added to the pay gravel, as it is being loaded into the sluice box channel. Assuming that the total activity of the particles is 4 millicuries, the radiation dose levels 1 centimeter from each individual particle are expected to be 94 millirad per hour. Approximately 5,000 to 10,000 cubic yards of pay gravel will be processed through the channel at a rate of 150 cubic yards per hour. Radio-labeled gold particles will be identified in the washings from each mat and separated from the non-labeled gold.

The researchers will be able to account either directly or indirectly for all the gold-198 particles used per measurement in the sluice box area. All personnel exiting the "radiation control" area at the sluice box will be checked with appropriate radiation detection instruments, to ensure that no one either deliberately or inadvertently picks up any radioactive gold particles. The detectability of the primary gamma rays makes it possible to find and directly account for the gold particles deposited in the sluice box or picked up by the workers. Since both the number and size of the radio-labeled gold particles introduced and recovered are known, and no one can remove any radioactive gold from the sluice box area without detection, the licensee will be able to indirectly account for the gold-198 in the tailings pile. No attempt will be made to recover the gold-198 particles from the gravel tailings.

Recovered gold-198 particles can be used again for later measurement. If subsequent sluicing changes improve gold recovery, less gold-198 will be lost to the gravel trailings pile, in future measurements. The minimum time interval between test measurements is expected to be 24 hours. During that time, in addition to the routine worker exit surveys, University of Alaska Fairbanks personnel will be processing the mats; recovering the gold-198 from the mats; and measuring the sluice box channel and adjacent areas, to ensure that all the recoverable gold-198 is removed, before releasing the channel to unrestricted use.

Pathways to the Environment. The natural dynamics of sun, wind, and rain are not factors in determining the gold-198 pathways to the environment. Gold, a nobel metal, is chemically inert, essentially insoluble in water, and heavier than air, water, or gravel. The gold-198 does not present either an inhalation or absorption hazard. Chemicals, solvents, and harsh environments are not used in the placer gold recovery process. Gold-198 has a radioactive half life of 2.7 days. All the radio-labeled gold particles should either be recovered from the mats or lost to the gravel tailings pile.

It is unlikely that the gold particles deposited in the tailings will leave the tailings pile. To do so would require the gold particles to be carried from the gravel tailings by the water percolating through the gravel pile. Neither the nuggets nor the fines will migrate through the tailings pile. Even if the radioactive gold particles could migrate out of the tailings pile—a highly unlikely event—they would rapidly settle out of the water to the bottom of the stream or pond and be buried by incoming sediment. Gold nuggets will settle out faster than the gold fines. The settling velocities for the fines are expected to be approximately 2 inches per second (a relatively fast settling velocity, compared to other materials).

Radioactive gold is not soluble in water, and therefore will not enter either underground potable water supplies or plants in the food chain. Since the water used in the mining operations is physically separated from the active creek, no radioactive gold will enter surface water sources at Valdez Creek.

To enter the animal portion of the food chain, an animal on or in the tailings pile would have to ingest a complete radioactive gold nugget or fine. If ingested by an animal, the gold-198 could be both an internal radiation hazard to the animal and an external radiation hazard in the vicinity of the animal. The radioactive gold particle may reside for some time in the gizzard of a bird, before it passes intact through the digestive tract. For other animals, it would be expected to just pass through the digestive track. The extent of the radiation hazard would depend on the activity of the gold at the time and the size of the animal. For song birds, peregrine falcons, or mice, the volume of tissue within 1 centimeter of an ingested gold particle would constitute a significant part of the body and, in some cases, the whole body. If a song bird or mouse ingested a gold particle (40 microcuries)—an unlikely event—the maximum radiation field at the surface of the animal would be 94 milliroentgen per hour, which would decrease with radioactive decay.

Although the maximum activity used per measurement is 5 millicuries and the maximum used in a year is 100 millicuries, the total lost to the environment is expected to be much less. The design and implementation of the study affect the total amount lost to the environment. If the mine is quite efficient (90 to 99 percent recovery), only one measurement will be needed, and only a few particles (one to ten particles) will be lost to the environment. If the mine is inefficient, multiple measurements and experimental periods will be needed, as "improvements" are tried. However, once it is clear that no progress is made, the measurements will be halted. If the mining efficiency is improving, the number of gold particles lost to the environment should decrease with each measurement, until no further progress is obtained. Another factor that keeps the total number of gold particles used to a minimum is the fact that the recovered gold-198 particles can be reused in later measurements.

Pathway to Humans. Several factors, such as geographic isolation of the Valdez Creek Mine and restricted access to the mine site, make it unlikely that the gold-198 will come in direct contact with the general public.

The most significant hazard to humans is the external radiation hazard associated with exposure to the gamma rays. The most probable route of exposure is direct contact with the radioactive gold particles. Assuming that the total activity of the particles in a run is 4 millicuries, the radiation levels 1 centimeter from each individual particle are expected to be 94 milliroentgen per hour. A worker intentionally or unintentionally picking up a flake or nugget in his/her clothing at the beginning of a 12-hour shift could receive a maximum dose of 1100 millirad, for a small volume of tissue. Potential direct contact with the workers is restricted to the licensee's personnel at the site and the few miners working directly with the sluice and the mat washing. The licensee will provide radiation safety training to these workers and conduct frequent radiation measurements, to ensure that radioactive gold particles are not deliberately or inadvertently picked up by these workers. Frequent monitoring

of the workers as they leave the site for breaks and work-related duties will reduce the potential maximum significantly (monitoring at 3-hour intervals reduces the dose to 270 millirads for the small volume of tissue). Other workers and family members are not permitted access to the wash plant.

Additional miners may work in the area of the tailings piles containing gold-198 particles. In the Canadian studies, the gravel in the tailings piles provided sufficient shielding to make the radiation from the gold-198 in the piles undetectable. Because the Alaskan and the Canadian placer mine procedures are essentially the same, the levels of detectable radiation at the Canadian tailings piles are expected to be essentially the same at Valdez Creek Mine.

The internal hazards are not as significant because the probability of internal exposure is very low. To be an internal radiation hazard, the gold-198 has to either be inhaled or ingested. Nuggets and fines are not airborne and, thus, not an inhalation hazard. The possible ingestion routes include deliberately swallowing the nuggets and fines and inadvertently ingesting them with contaminated water, plants, or animals. It is unlikely that an adult would intentionally swallow gold nuggets or fines. Children living at the mine are not permitted near the tailings, and thus are not given an opportunity to eat the gold particles lost to the tailings. It is unlikely that the gold particles will get into either potable water or the plant food-chain.

With the first three routes eliminated, the only remaining internal hazard pathway is through the animal food path. In this case, the entire animal or the contents of the digestive tract would have to be eaten by humans. Although it is possible to have small animals that are eaten whole, it is very unlikely to find them or harvest them from the gravel tailings pile. Further, the gravel tailings are off limits to the mine residents. Although larger animals could eat the small animals and they in turn could be eaten, the larger animals would probably be cleaned and gutted first. Therefore they do not present an ingestion hazard.

University of Alaska Fairbanks' personnel who handle the gold-198 have procedures and equipment to monitor and minimize their exposure to the radiation from gold-198 to below the 10 CFR Part 20 limits. Instructions and written procedures address proper receipt, survey, transportation, and handling of gold-198 and how to handle emergency situations.

Effects On Plant and Animal Species. Individual plants and animals may be adversely affected by their exposure to the gold-198 gamma rays, if they are in close proximity to radioactive particles for a prolonged period of time. The probability and consequences of effects will diminish with time, as the particles decay. Few plants or animals are expected to live in the gravel tailings piles; therefore, few acute or long-term effects are expected for species in the study area.

Effects on Endangered or Threatened Species. Although there are four endangered or threatened species that could live in the vicinity of the mine, the University of Alaska Fairbanks has not indicated that specific individuals have home ranges that include the mine site. If these species do not live or hunt in the mine area, they will not be affected by the gold studies. All these species are predators. If any one of the species lives or hunts in the mine area, the most probable—but still highly unlikely—exposure to the radioactive gold would be through eating either a bird or other small animal that previously ingested the gold.

Neglecting radioactive decay before uptake and biological half-life, the maximum activity of a gold particle would be 40 microcuries, the maximum radiation field would be 94 milliroentgen per hour at 1 centimeter, and the maximum life-time dose to a volume of tissue 1 centimeter from the gold particle would be 9 rads. The theoretical whole body dose to one of the endangered species would be much less, once the initial radioactive decay of the particle before ingestion, the biological half-life in the predator, and the relationship between the volume of tissue and the size of the animal were factored in. Reproductive potential may be reduced with whole body exposure as low as 30 roentgen, for mammals exposed to external gamma radiation. In the worst-case situation, there may be some localized cell damage in the immediate vicinity of a radioactive gold particle, but there should not be short- or long-term whole body effects to the endangered species in the area.

Conclusions

Based on the foregoing assessment, the NRC staff concludes that the environmental effects of using gold–198 for the placer gold studies are expected to be extremely small. The gold–198 particles released to the environment will be confined to the gravel tailings piles. The tailings piles will be designated as a "controlled area" for at least nine half-lives before the licensee surveys and releases these areas to unrestricted use. The final concentrations of gold–198 released by the placer gold studies will be well below the limits specified in 10 CFR part 20. Thus, the estimated doses to residents and the general public at the Valdez Creek Mine are insignificant. Based on these considerations, this action will not result in significant effects on the quality of the human environment.

The probability of an endangered or threatened species coming into contact with a radioactive gold particle is quite small. Further, the theoretical dose to one of the endangered species, after correcting for initial radioactive decay of the particle, before contact, and biological half-life in the predator, is below levels that would have short- or long-term adverse effects on the animal.

Therefore, in accordance with 10 CFR 51.31, a Finding of No Significant Impact is considered appropriate for this proposed action.

Alternatives to the Proposed Action

As required by Section 102(2)E of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4322(2)E), possible alternatives to the proposed action have been considered. One alternative is conventional sampling. In this technique, hundreds of tailings sample increments are collected in duplicate across the full width of each sluice box discharge over a 2- to 4-day mining period. Each sample is screened and processed several times to determine gold losses. This method involves large samples, many increments, and extreme design and implementation care. The technique is time-consuming and problematic. "Nugget effects," that is, the presence or absence of nuggets in the recovered samples, can lead to high unpredictable errors. Even with large sample volumes consisting of hundreds of increments, the unpredictable standard errors could still range from 7 to 50 percent. The conventional sampling method is more time-consuming, more expensive, and less accurate. Therefore, this alternative should not be used in this study to quantitate the effectiveness and efficiency of the placer mining operations.

Various indicators, such as the presence of fine gold, the presence of nuggets, a high concentration of gold in the first few feet of the sluice run, and gold-pan samples, are also used to predict recovery efficiency. They may provide erroneous and misleading information. Most sluice boxes will recover some proportion of fines or nuggets, while very inefficient sluice boxes recover gold in the first few feet where sample sizes may be too small. These indicators are not quantitative and do not address the effectiveness of the sluice boxes.

The only other alternative to the proposed action is the denial of the license amendment request. In that event, the University of Alaska Fairbanks would have to abandon its attempt to use gold-198 to study the effectiveness and efficiency of the Valdez Creek Mine placer gold recovery procedures and the effects of changes to these procedures. Currently, there are no available alternatives for quantifying the gold particle recovery determinations with the same level of accuracy obtained from the gold-198 study.

The benefits to be gained from denial—no release of radioactive material into the environment—would be minimal. The estimated concentrations of gold-198 in unrestricted areas and resulting doses to humans or endangered species from the studies would be insignificant. The additional radiation exposure has to be weighed against the scientific information needed to manage and improve the production of the placer gold mine.

Agencies and Persons Contacted

In performing this assessment, the staff contacted University of Alaska Fairbanks.

Finding of No Significant Impact

The Commission has determined, under NEPA and the Commission's regulations in 10 CFR part 51, that this proposed amendment to amend Byproduct Material License 50–02430–07, to permit possession, use, and storage of gold-198 in the form of nuggets and particles, at the Valdez Creek Mine (as a temporary job site, while performing studies to quantitate the effectiveness and efficiency of the sluice box operations) if granted, would not have a significant effect on the quality of the human environment or endangered species in the area. Therefore, an environmental impact statement is not required. This determination is based on the foregoing environmental assessment, performed in accordance with the procedures and criteria in Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

For further details of this action, see the application for license amendment, dated April 17, 1992, and other related correspondence. The documents (in Docket No. 030–20457) may be examined or copied, for a fee, in the Commission's Region V Public Document Room, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596.

References

Clarkson, R., "Placer Gold Recovery Research—Final Summary," prepared for Klondike Placer Miners Association.

Walsh, D.E., "Evaluation of the Four Inch Compound Water Cyclone as a Fine Gold Concentrator Using Radiotracer Techniques," Mineral Industry Research Laboratory Report No. 70, September 1985.

Walsh, D.E., "Placer Gold Unit Investigations with Radiotracers (AU–198)." *Marine Mining*, Vol. 8, pp. 405–424, 1989.

Notice of Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 10 days of publication of this notice in the **Federal Register** and must be served on the NRC staff by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852; and must be served on the applicant by mail or delivery to University of Alaska Fairbanks, Radiation Safety Officer, Institute of Arctic Biology, Fairbanks, Alaska 99775–0180. The request for a hearing must comply with the requirements set forth in the Commission's regulations, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Material Licensing Proceedings." Subpart L of 10 CFR part 2 may be examined or copied, for a fee, in the Commission's Region V Public Document Room, 1450 Maria Lane, Suite 210, Walnut Creek, California 94596, or in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

As required by 10 CFR part 2, subpart L (10 CFR 2.1205), the request for hearing must describe in detail: (1) The interest of the requestor in the proceeding; (2) how that interest may be affected by the results of the proceedings, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in paragraph (g) of 10 CFR 2.1205; (3) the requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and (4) the circumstances establishing that the request for a hearing is timely in accordance with paragraph (c) of 10 CFR 2.1205.

The factors in 10 CFR 2. 1205(g) that must be addressed in the request for hearing include: (1) The nature of the requestor's right under the Atomic Energy Act of 1954 to be made a party to the proceeding; (2) the nature and extent of the requestor's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland this 21st day of August 1992.

John E. Glenn,

Chief, Medical, Academic, and Commercial Use Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 92–20572 Filed 8–26–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–338]

Virginia Electric and Power Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of appendix A to 10 CFR part 50 to Virginia Electric and Power Company (the licensee), for the North Anna Power Station, Unit No. 1 (NA–1) located in Louisa County, Virginia.

Environmental Assessment

Identificotion of Proposed Action

The proposed exemption would allow temporary relief from the requirements of General Design Criterion–2 (GDC–2) for NA–1 with regard to a portion of the tornado missile protection for the NA service water restoration project. The proposed exemption would permit the temporary removal of the earth which provides missile protection for portions of the service water system piping, electrical system duct banks, and the emergency diesel generators' fuel oil supply piping.

The Need for the Proposed Action

The proposed exemption is needed in order to permit completion of highly desirable upgrades to the servive water system without unduly extending the next several scheduled refueling outages. The proposed exemption would permit part of the preparatory work to be accomplished 30 days prior to the beginning of the presently scheduled 1993 NA–1 steam generator outage until 30 days after the outage.

Environmental Impacts of the Proposed Action

The proposed exemption does not involve any measurable environmental impacts during normal operation since the plant configuration is changed only minimally and plant operation is not changed. The likelihood of tornado missile damage during the time the exemption would be in effect which would affect equipment required to operate to avoid radiological impact is low. Thus, the proposed exemption would not significantly affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant affluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect nonradiological plant affluents and has no other environmental impact. Therefore, the staff concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the staff has concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require strict compliance with GDC–2. Such action would not significantly enhance the protection of the environment, and would result in a significant loss of power generation to the licensee, as the next several refueling outages for NA–1&2 would have to be extended considerably.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the North Anna Power Station.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the staff concludes that the proposed action would not have a significant effect on the quality of the human environment and has determined, therefore, not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application dated July 16, 1992, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22991.

Dated at Rockville, Maryland, this 20th day of August, 1992.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Divison of Reactor Projects—I/II, Office of Nucleor Reactor Regulation.

[FR Doc. 92–20573 Filed 8–26–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–08719; License No. 35–15194–01 EA 92–068]

Globe X-Ray Services, Inc., Tulsa, OK; Order Imposing Civil Monetary Penalty

I

Globe X-Ray Services, Inc. (Licensee) is the holder of NRC Materials License No. 35–15194–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on April 4, 1990, and scheduled to expire on April 30, 1995. The license authorizes the Licensee to possess sealed sources of radioactive iridium-192 and cobalt-60 for use in conducting industrial radiography in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on March 23 and March 25–26, 1992. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated April 30, 1992. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice on May 28, 1992. In its response, the Licensee admitted that a violation may have occurred, but denied that the violation occurred as represented in the Notice of Violation.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is Hereby ordered* That:

The Licensee pay a civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated at Rockville, Maryland this 18th day of August 1992.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On April 30, 1992, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for a violation identified during an NRC inspection. Globe X-Ray Services, Inc. (Globe) responded to the Notice on May 28, 1992. In its response, Globe admitted that a violation may have occurred, but denied that the violation occurred as represented in the Notice of Violation. The Licensee also requested an opportunity to depose the inspector who found the violation and requested a hearing. The NRC's evaluation and conclusion regarding the licensee's response are as follows:

Restotement of Violation

10 CFR 34.23 states that locked radiographic exposure devices and storage containers shall be physically secured to prevent tampering or removal by unauthorized personnel.

Contrary to the above, on March 23, 1992, the licensee did not physically secure a locked radiographic exposure device (Serial No. 64, containing 31.9 curies of iridium–192) to prevent tampering or removal by unauthorized personnel. Specifically, on this date the door to a darkroom in Building 6 of the Dresser-Rand Company facility in Broken Arrow, Oklahoma, was unlocked, permitting unfettered access to the radiographic exposure device by unauthorized personnel.

This is a Severity Level III violation (Supplement VI). Civil Penalty—$2,500.

Summary of Licensee's Response

Globe admitted that a "technical violation" occurred by its leaving the key to the X-ray room (darkroom) in an accessible location that was known to at least one Dresser-Rand employee. However, Globe denied that any Globe or Dresser-Rand employee unlocked the door to the darkroom on this occasion.

Globe stated that at 4 p.m., when the two NRC inspectors were escorted to the X-Ray Building, the door to the darkroom was properly secured and locked. Globe further stated, that the evening guards on duty at 6 p.m. indicated that the inspector returned shortly after they came on duty and that the inspector said that he wanted to inspect the vault, however, he was going to meet someone first. Globe stated that as the inspector waited, an old pickup pulled down the road not coming up to the guard shack, and that the inspector then went to talk to the person in the pickup. According to Globe, at 6:07 p.m., the inspectors returned and requested to examine the X-ray facilities. Globe then stated that at 7:30 p.m., the inspectors phoned the Globe radiation safety officer to inform him that the darkroom had the key in the lock and the door was unlocked.

Globe also stated that within the darkroom there is a locked metal box weighing 80 to 100 pounds which contains the Camera, "to which is attached a 25 foot cable, " " "" and "within this box is a camera, which also has a lock."

Globe requested an opportunity to obtain a deposition from the inspector who found the violation and requested a hearing. Globe stated in its response that its purpose in questioning the inspector was to "investigate the possibility that Globe X-Ray Services, Inc.'s good past performance record with the U.S. Nuclear Regulatory Commission has been sabotaged by a former Globe employee who was disgruntled by reason of the fact that he was terminated." In addition, Globe stated that it did not object to the $2,500 fine but objected to having "on the record" the suggestion that it was not a very careful and safe licensee.

NRC Evaluation of Licensee's Response

The NRC holds its licensees responsible for meeting all requirements associated with the safekeeping of licensed radioactive material in its possession. 10 CFR 34.23 requires that locked radiographic exposure devices be physically secured to prevent tampering or removal by unauthorized personnel. In this case, the licensee admitted that it left a key to the room where licensed material was stored in a location that was known to and accessible to at least one individual who was not authorized access to the licensed material. The NRC does not dispute that at 4 p.m. on March 23, 1992, the door to the darkroom was secured. However, at approximately 7 p.m. on March 23, 1992, the inspectors observed that the darkroom containing licensed material was unlocked and that the padlock on the darkroom door still had the key inserted in the locking mechanism. Further, although the radiographic exposure device. Although the lock on the radiographic exposure device was in a heavy metal storage box, the storage box was not locked, and, therefore, the storage box did not function to physically secure the radiographic exposure device was engaged, 10 CFR 34.23 requires that the locked radiographic exposure device be physically secured. Merely locking the radiographic exposure device does not fulfill the requirement to physically secure the locked radiographic exposure device. Therefore, the NRC has concluded that the violation occurred as stated in the Notice of Violation. The fact that neither Globe nor the NRC has been able to determine who left the door unlocked does not change the fact that the violation occurred.

Globe's statement concerning the NRC inspector talking with an individual in a vehicle *prior* to the second inspection is not correct. The inspectors indicated that *after* the second inspection, upon finding the key in the lock to the darkroom door, the inspectors secured the door and then called Globe's radiation safety officer (RSO) to inform him that they secured the darkroom door and that they needed to return the key to an authorized Globe employee. Shortly thereafter, a Globe employee arrived at the Dresser-Rand facility in a vehicle to retrieve the key from the inspectors, and the three revisited the darkroom to discuss the unsecured door. Globe has not presented any evidence to support either its assertion that a former Globe employee was involved in committing the violation, or its inference that the NRC inspectors had knowledge of how the violation occurred. Nonetheless, the suggestion of inappropriate behavior on the part of NRC employees was forwarded to the NRC Office of the Inspector General (IG) for review as appropriate, and after consultations, the IG determined that no further actions were needed. NRC Region IV senior managers have also reviewed this matter and concluded that Globe's inferences are not supported by the information presented nor by the facts in this case.

Furthermore, Globe's request to obtain a deposition from the inspector and request for a hearing are premature. The opportunity for hearing in accordance with 10 CFR 2.205, and the attendant discovery rights in accordance with and subject to 10 CFR 2.740–2.744 and 2.720(h), occur after a civil penalty is imposed by Order, not at the time that a civil penalty is proposed.

With regard to Globe's concern about the suggestion that it was not a very careful and safe licensee, as noted in the cover letter transmitting the Notice of Violation, the NRC considered Globe's relatively good past performance as a mitigating factor in deriving the civil penalty amount.

NRC Conclusion

NRC has concluded that the violation did occur as stated in the Notice of Violation. Consequently, the proposed civil penalty in the amount of $2,500 should be imposed.

[FR Doc. 92–20574 Filed 8–26–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–29]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station)

Exemption

I

The Yankee Atomic Electric Company (YAEC or the licensee), is the holder of Operating License No. DPR–3 which authorizes possession, operation and maintenance of the Yankee Nuclear Power Station (facility or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a pressurized water reactor, currently in the process of being decommissioned, and located at the licensee's site in Franklin County, Massachusetts. The plant is shut down and the reactor is defueled.

II

In a letter dated February 27, 1992, from the licensee, we were informed that YAEC had permanently ceased power operations, removed the fuel from the reactor to the fuel pool and begun to develop detailed plans to decommission the facility. The staff subsequently issued a Confirmatory Action Letter (CAL) dated April 7, 1992, which confirmed these commitments. By letter dated June 19, 1992, the licensee requested an exemption to the requirements of 10 CFR 50.71(e) in accordance with 10 CFR 50.12. 10 CFR 50.71(e) requires submittal of an annual update of the Final Safety Analysis Report (FSAR) from each person licensed to operate a nuclear power reactor. This exemption is required

despite the permanently shutdown and defueled status of the facility as the Operating License has not yet been amended to a Possession Only License (POL).

III

In the licensee's letter of June 19, 1992, the justification presented for the exemption request was that the licensee's letter of February 27, 1992, and the staff's CAL of April 7, 1992, ensure that the plant is no longer authorized to operate. In addition, the licensee stated that the staff is in the final stages of issuing a POL. The staff confirms the licensee's statements.

The Commission will not consider granting an exemption unless special circumstances are present. In the licensee's letter of June 19, 1992, these special circumstances were addressed as follows:

10 CFR 50.12(a)(2)(ii)—"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule * * *"

Licensee's response: The purpose of 10 CFR 50.71(e) is to ensure that a facility that is authorized to operate submits to the NRC an annual FSAR update. For all intents and purposes, YNPS is no longer authorized to operate. On February 27, 1992, YAEC informed the NRC of its decision to permanently cease power operation at YNPS. The NRC subsequently issued a Confirmatory Action Letter which acknowledged the commitment made by YAEC to permanently cease power operation and begin developing plans to decommission the facility. NRC is in the final stages of approving the YNPS possession-only license amendment which would remove the authority to operate YNPS at any power level. Therefore, implementation of 10 CFR 50.71(e) for YNPS would not serve the underlying purpose of the rule. Furthermore, an exemption to 10 CFR 50.71(e) will not present an undue risk to the public health and safety because the potential risks associated with a permanently shutdown facility are substantially less than those of a facility in power operation. The exemption request is also consistent with the common defense and security.

IV

The staff agrees with the licensee's analyses as presented in Section III above and concludes that sufficient bases have been presented for our approval of the exemption request. In addition, the staff finds that there are special circumstances presented that satisfy the requirements of 10 CFR 50.12(a)(2)(ii). In the event that the licensee seeks to resume operation, this exemption will terminate.

V

Based on the above evaluation, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption to all the requirements contained within 10 CFR 50.71(e) for the Yankee Nuclear Power Station. However, this exemption will terminate in the event the licensee seeks to resume operating the facility.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (57 FR 30513).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 23rd day of July 1992.

For the Nuclear Regulatory Commission.

Bruce A. Boger,

Director, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-20575 Filed 8-26-92; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Protected Areas Amendments

August 19, 1992.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of final protected areas amendments to the Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan.

SUMMARY: On November 15, 1982, pursuant to the Pacific Electric Power Planning and Conservation Act (the Northwest Power Act, 16 U.S.C. 839, et seq.) the Pacific Northwest Electric Power and Conservation Planning Council (Council) adopted a Columbia River Basin Fish and Wildlife Program (program). The Council adopted the Northwest Conservation and Electric Power Plan (power plan) on April 27, 1983. The program and the power plan have been amended from time to time since then. In August, 1988, the Council incorporated into the program and the plan "protected areas" measures to protect critical fish and wildlife habitat from new hydropower development. The protected areas provisions provided processes for amending protected areas on various grounds. In November, 1991, in response to an announcement by the Council, the Council received a number of petitions to amend protected areas. On the basis of these petitions, at its February 11–12, 1992 meeting, the Council voted to initiate rulemaking pursuant to section 4(d)(1) of the Northwest Power Act to consider amending certain protected areas provisions of the program and the power plan. This notice contains a brief description of the final amendments, describes how to obtain a full copy of the amendments and background information concerning them. Approximately 100 written and oral comments were received. The Council held public hearings in each of the four northwest states. At its June 10–11, 1992 meeting, the Council adopted the final amendments. At its August 12–13, 1992 meeting, the Council concluded the rulemaking by adopting its response to comments.

SUPPLEMENTARY INFORMATION: Thirteen petitions were received. Eight of the petitions sought removal of protected status so that hydro projects can proceed. Three of the eight were approved, four were deferred for later consideration, and one was withdrawn. Five petitions sought to add protected status to various reaches or subbasins. Two of the five were approved and three were deferred to later consideration. No petitions were received for protected areas in Montana or Oregon.

One of the petitions proposed protected area status based on a decision of the Idaho Legislature that the reach should be protected. On its own motion, the Council also included other Idaho river reaches with a similar status. The proposed amendment to include these reaches was approved.

FOR FURTHER INFORMATION CONTACT: Those wishing to receive the final amendments, a list of affected river reaches, or the response to comments, should contact the Public Affairs Division at the address or telephone numbers listed above.

Edward Sheets,

Executive Director.

[FR Doc. 92-20545 Filed 8-26-92; 8:45 am]

BILLING CODE 0000-00-M

Proposed Amendment and Extension of Time for Review of Council Statement of Policy Implementing Section 6(C)

August 20, 1992.

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council, Council).

ACTION: Proposed amendment to Statement of Policy Implementing Section 6(c) of the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (16 U.S.C. 839 *et seq.*) (Northwest Power Act, Act).

SUMMARY: On November 13, 1986, the Northwest Power Planning Council, in conjunction with the Bonneville Power Administration (Bonneville), published a Statement of Policy Implementing section 6(c) of the Northwest Power Act. (51 FR 42028, November 20, 1986). The Council agreed to initiate, at least every five years, a public policymaking regarding its section 6(c) consistency criterion "to evaluate evolving understandings of resource acquisitions and to assess the need for changes in interpretation." (Council's Statement of Policy at 4.)

During the five years since the adoption of the original section 6(c) Policy, the Council has made only one consistency determination under the policy. In early 1987, the Council found that Bonneville's Conservation/Modernization Program for Aluminum Smelters was consistent with the plan. (Letter to Mr. James J. Jura from Robert Duncan, Council Chairman, March 18, 1987.)

In December of 1990 and January of 1991, the Council exchanged letters of understanding with Bonneville regarding the applicability of section 6(c) to Bonneville's Billing Credits Solicitation. The Council believes it would be appropriate to incorporate that understanding into its section 6(c) Policy at this time.

In light of the resource acquisition activity that Bonneville may be expected to undertake over the next few years, it seems appropriate to address the application of section 6(c) to the payment or reimbursement of investigation and preconstruction expenses of the sponsors of major resources. Such payments are expressly mentioned in the Act as one Bonneville activity that calls for section 6(c) review if associated with a major resource.

Because there has been such limited experience in the use of section 6(c) review to date, the staff proposes leaving the section 6(c) Policy unchanged, except with respect to necessary editorial changes and the two activities mentioned below, unless commentors during this policymaking exercise raise significant issues that call for reconsideration at this time. The staff also proposes renewing the original five year review period for an additional five years. While the policy that results from this public process will become a final action for purposes of judicial review under the Act, the Council would commit, as it did in the adoption of the original section 6(c) Policy, to consider revising the policy whenever experience demonstrates a need for change. The two proposed modifications to the policy are described below, followed by proposed changes in the language of the policy itself.

SUPPLEMENTARY INFORMATION: Section 6(c) of the Act provides that: "[f]or each proposal under subsection (a), (b), (f), (h) or (l) of this section to acquire a major resource, to implement a conservation measure which will conserve an amount of electric power equivalent to that of a major resource, to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, or to grant billing credits or services involving a major resource * * *" the Administrator is to undertake a public review process. The review requires, among others, a finding by the Administrator that a proposal is either consistent or inconsistent with the Council's power plan. The Administrator's determination is then sent to the Council, and the Council may thereafter make its own consistency determination. The Administrator may not implement any inconsistent proposal unless such a resource is determined to be necessary for Bonneville to meet its obligations under the Act and then only if Congress specifically authorizes an expenditure of funds.

PROPOSED AMENDMENTS: Because the Council is developing this statement as a matter of general Council policy, setting forth the Council's procedures and practice for section 6(c), it is not bound to the procedural requirements of the federal Administrative Procedure Act. Therefore, the Council will be free to hold consultations or receive oral comment up to the time it makes its final decision. The Council will consider revising its section 6(c) policy in the following areas.

(1) The Council proposes making necessary editorial changes so that the Council's section 6(c) policy will refer to the relevant portions of the current Power Plan. The Council also renews its commitment to review this policy at least every five years, and commits to consider revising the policy whenever experience demonstrates a need for change.

(2) The Council proposes amending the scope of its section 6(c) policy statement so that the policy would encompass all four Bonneville actions made subject to review for plan consistency, adding the actions that were not covered in the 1986 policy: Payment or reimbursement of investigation and preconstruction expenses and billing credits or services associated with a major resource.

The following paragraph would replace Paragraph B. of the current policy.

B. Scope of Policy Statement

This policy statement applies to all the activities made subject to review under the Act, a Bonneville proposal to acquire a major resource, a Bonneville proposal to implement a conservation measure that will conserve an amount of electric power equivalent to that of a major resource, a Bonneville proposal to pay or reimburse investigation and preconstruction expenses of the sponsors of a major resource, and a Bonneville proposal to grant billing credits or services involving a major resource. The Council understands that Bonneville will review for consistency with the power plan proposed payment of investigation and preconstruction expenses for those major resources identified in its biennial Resource Program. Resources in the Resource Program will be generally described by technologies, fuel types, size ranges, total numbers of megawatts, approximate costs, environmental characteristics, and general geographic locations. This description should allow a meaningful determination of consistency for payment of investigation and preconstruction expenses. The Council understands that if Bonneville proposes to reimburse the sponsors of a major resource for investigation and preconstruction expenses, it will make a finding of probable consistency with the plan. This is the same standard the Council will apply, pursuant to section 6(c)(1)(D)(iii). The Council understands that if Bonneville offers billing credits, the section 6(c) determination will not be made at the time the Billing Credits Solicitation is published. If, however, a major resource is offered to Bonneville as a result of the solicitation, and the Administrator proposes to pay a billing credit for that resource, the Administrator will first undertake the required section 6(c) review. The Council is not determining any issue related to the consistency required pursuant to section 4(h)(1)(A) or any other provision of the Act.

The Council proposes to extend the time within which it will initiate a review of this policy to a maximum of five years from the date this revised policy is adopted. At the same time, the Council commits to reconsidering this policy before that time if experience demonstrates needed changes.

ADDRESSES AND OPPORTUNITY FOR COMMENT: Written comment may be submitted either to Bonneville or to the Council, but must be received no later than 5 p.m., October 16, 1992. The Council may hold consultations and receive oral comment up to the time it makes its final decision, which will probably happen at the Council's regularly scheduled meeting to be held at the Sheraton Hotel in Billings,

Montana on November 18–19, 1992. Bonneville and the Council will exchange copies of all comments received during the comment period, so there is no need to submit duplicate copies.

To submit written comment to the Council, please note that you are commenting on Council Document Number 92–10 and send your comment to Mr. Steve Crow, Director of Public Affairs, Northwest Power Planning Council, 851 SW. 6th Avenue, Suite 1100, Portland, OR 97204–1348. Oral comment will be taken at the Council's regularly scheduled meeting to be held at the Westwater Hotel, Olympia, Washington on October 14–15, 1992. To request a copy of the Council's 1986 Statement of Policy Implementing section 6(c) or related documents, please call the Council's Public Affairs division at (503) 222–5161 or (800) 222–3355.

Edward W. Sheets,

Executive Director.

[FR Doc. 92–20544 Filed 8–26–92; 8:45 am]

BILLING CODE 0000–00–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–31057; File No. SR–AMEX–92–33]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange, Inc., Relating to an Extension by Five Minutes of the Exercise Cut-Off Time for American-Style Stock Index Options

August 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 20, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Exchange Rule 980C to extend the daily exercise cut-off time for (1) receipt or preparation by member firms of memoranda to exercise American-style index options and (2) the submission of exercise advice notices for the exercise of 25 or more American-style index options. Specifically, the Exchange proposes to extend the daily cut-off time for the receipt or preparation of exercise memoranda and exercise advices for American-style index options to five (5) minutes after the close of trading, generally establishing a 4:15 p.m. Eastern Standard Time ("EST") cut-off time. In addition, the Amex proposes to clarify Exchange Rule 980C by deleting references to the Amex's Major Market Index ("XMI") option, which no longer has an American-style exercise.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organizations included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Exchange Rule 980C requires all member firms to receive or prepare a memorandum to exercise any American-style stock index option contract by 4:10 p.m. EST.[1] In addition, for any account exercising 25 or more such contracts in any one series, the firm must also submit an exercise advice form to the Exchange by 4:10 p.m. EST. The exercise advice form is an Exchange reporting form indicating the quantity of options being exercised, their options series, and the clearing number and account number of acronym for the entity submitting the advice. These procedures apply to the exercise of American-style stock index options on every business day except expiration Fridays.

Presently, two American-style stock index options trade on the Amex: The Oil Index and the Computer Technology Index. These narrow/based indexes trade until 4:10 p.m. EST, the same time as the deadline for member firms to (i) receive or prepare memoranda to exercise such options and (ii) submit exercise advice forms to the Exchange (if the account is exercising 25 or more contracts in the same series). The practical impact of the simultaneous cut-off time of 4:10 p.m. EST for the procedures set forth in Exchange Rule 980C and the close of trading is that market participants are required to adhere to Exchange Rule 980C's procedures prior to the close of trading of such options.

The Amex proposes to amend Exchange Rule 980C to extend the daily cut-off time for the receipt of preparation of exercise memoranda and exercise advices for American-style index options to five (5) minutes after the close of trading, effectively establishing a 4:15 p.m. EST cut-off time. The Amex believes that its proposal will provide market participants with the ability to make exercise decisions based upon their final positions, after having completed trading for the day. Furthermore, the Amex believes that the proposal will enable traders and specialists to devote their attention to market making and specialist activities until 4:10 p.m. EST without having to be concerned about the preparation and submission of exercise advices. The Amex notes that the Chicago Board Options Exchange ("CBOE") and the Pacific Stock Exchange ("PSE") recently have adopted similar rules which have been approved by the Commission.[2]

Lastly, the Amex proposes several nonsubstantive changes to clarify certain provisions of Exchange Rule 980C. These changes include the deletion of all references to the XMI, which no longer has an American-style exercise.

The Amex believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and the national market system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will not impose a burden on competition.

[1] As proof that the memorandum to exercise was received or prepared prior to the 4:10 p.m. deadline, the memorandum must be time stamped by the member firm at the time it is prepared or received.

[2] See Securities Exchange Act Release Nos. 29860 (October 25, 1991), 56 FR 56254 (order approving File No. SR–CBOE–91–28) and 30152 (January 6, 1992), 57 FR 1778 (order approving File No. SR–PSE–91–46).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Amex has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[3] Specifically, the Commission believes that the proposal will allow market participants to make investment decisions based upon the evaluation of their final positions after having completed trading for the day.

The Commission also believes that the proposal will benefit the market in general by fostering higher quality markets at the close of the trading day. First, market makers will not be preoccupied with the process of submitting exercise advice forms prior to the actual close of the market and, therefore, can concentrate more fully on providing a quality market at the close. Second, market participants will be able to determine whether or not their orders on other related markets were executed, such as orders intended to hedge their options positions. If their hedging transactions in other markets are not executed by 4:15 p.m. EST, then market participants, under the proposal, will still be able to exercise their options positions and not remain in an unhedged position overnight. Third, the proposal will give market participants additional time to evaluate the closing prices of the stocks that are used to calculate the indexes and determine whether or not to exercise their positions. Finally, the proposal will structure the Amex's rule to coincide with those of the CBOE, the PSE and the Chicago Mercantile Exchange ("CME").[4] As a result, the Commission believes that extending the Amex's exercise notice cut-off time for American-style index options will make the Exchange's options markets more competitive with other derivative markets.

In addition, the Commission believes that the proposal to delete references to the XMI from Exchange Rule 980C will help to clarify the application of the rule.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission finds that the Amex's proposal to extend the deadline for submitting exercise advice forms and preparing exercise memoranda is identical to the CBOE and PSE proposals previously approved by the Commission and raises no new issues.[5] The Commission notes that it received no comments on either the CBOE or the PSE proposal. In addition, as discussed above, the change will provide a variety of benefits to market participants. Finally, the Commission believes that approving the Amex's proposal on an accelerated basis will allow the Amex to compete with the CBOE and the PSE on an equal basis, and that the deletion of references to the XMI will facilitate the orderly application of the rule. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 17, 1992.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–Amex–92–33) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20505 Filed 8–26–92; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78f(b)(5) (1988).

[4] See CBOE Rule 11.1, Interpretations and Policies .03, PSE Rule 7.15, and CME Rule 550. Under CME rules, market participants have an additional five minutes to settle trades after 3:15 p.m. Central Time.

[5] See *supra* note 2.

[6] 15 U.S.C. 78s(b)(2) (1982).

[Release No. 34–31062; File No. SR–Amex–92–24]

Self-Regulatory Organizations; Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Cabinet Trading of Certain Equity and Derivative Securities

August 20, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is amending Amex Rule 25 to clarify that a "designated" security under the rule is defined as any equity or derivative security, other than a bond or option, in which there is no bid or buying interest at a price equal to or higher than the minimum transaction price that may be reported through the Exchange's market data system [1] and the Consolidated Quotation System.

The following is the text of the proposed rule change with italics indicating material to be added and brackets indicating material to be deleted:

Rule 25—Cabinet Trading of Equity and Derivative Securities

(a)–(b)—No change.

Commentary

.01 For the purposes of this rule, a "designated" security is defined as any

[1] MDS is the Amex's system for the collection and reporting of market information operated by the Securities Industry Automation Corporation ("SIAC"), which processes and disseminates trade information to the Consolidated Tape.

equity or derivative [2] security, other than a bond or option, in which there is no bid or buying interest at a price equal to or higher than the minimum price [at which such a security may trade on] *which can be disseminated in a defined computer-readable format by* the Exchange's *equity market data system to the facilities of the Consolidated Tape System/Consolidated Quotation System* (currently 1/256 of $1.00).

/.02 No change.

.03 Should buying interest develop which would cause the "designated" security to trade at or above the minimum [fraction] *reportable price referred to in Commentary .01 above.* [(1/256 of $1.00) at which securities trade on the Exchange,] the security will revert to the regular trading procedures.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Commentary .01 and .03 to Rule 25 to clarify that a "designated" security pursuant to the rule is defined as any equity or derivative security, other than a bond or option, in which there is no bid or buying interest at a price equal to or higher than the minimum price that may be reported through the Exchange's market data system to the facilities of the Consolidated Quotation System (currently 1/256 of $1.00). The rule currently refers to that price as the minimum price at which a security may trade on the Exchange, and strictly speaking, as a technical matter that is not accurate. Transactions may be effected on the Exchange below such price, and such transactions could even be reported to the Consolidated Tape as administrative messages. However, at the present time, only prices at or over 1/256 of $1.00 may be disseminated in a defined, computer-readable format by the Exchange's equity market data system to the facilities of the Consolidated Tape or Consolidated Quotation System. Accordingly, this amendment will not effect any substantive change at all, but will more accurately describe the benchmark price which the Exchange is using to determine when a security is appropriate for the cabinet.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-24 and should be submitted by September 17, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20513 Filed 8-26-92; 8:45 am]

BILLING CODE 8010-01-M

[2] The Exchange added the words "equity or derivative" which were omitted in the original filing. *See* letter from Claudia Crowley, Special Counsel, Amex to Edith Hallahan, Attorney, SEC, dated July 30, 1992.

[Release No. 34-31058; File No. SR-MBS-92-02]

Self-Regulatory Organizations; MBS Clearing Corporation; Filing of Proposed Rule Change Relating to Major Systems Enhancements

August 19, 1992.

Pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 ("Act"),[1] notice hereby is given that on March 27, 1992, the MBS Clearing Corporation ("MBS") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-MBS-92-02) as described in Items I, II, and III below, which items have been prepared by MBS, a self-regulatory organization ("SRO"). The Commission is publishing this notice to solicit comments on the proposed rule changes from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MBS proposes to add a variety of major operational enhancements, including: (1) Two new systems for processing Eligible Securities,[2] *i.e.*, a Comparison and Clearing System ("CCS") [3], and a Comparison-Only System ("COS"); [4] (2) a new category of Limited Purpose Participants [5] that will use COS; (3) a revised Account Structure, which will permit the processing of different types of transactions within a single account and the netting of Cash Settlement obligations [6] and Market Margin Differential Deposit requirements; [7] (4) revised procedures regarding "Broker Give-Up Trades"; [8] (5) revised systems relating to the clearance and settlement of "SBO-Destined Trades"; [9] (6) expanded requirements for "reporting of clearance"; (7) expanded "Cash Balance" netting [10] on aggregated Participant's accounts; (8) revised procedures for the computation and payment of Market Margin Differential Deposits; (9) revised standards for Participants' electronic equipment and reports; and (10) revised procedures for SBO-Destined Trades of a Participant in liquidation.

[1] 15 U.S.C. 78s(b)(2) (1988).

[2] The term "Eligible Security," in this context, means a security that MBS has determined is eligible for services provided by one or more MBS systems. Proposed MBS Rules, Art. I, Rule 1.

[3] The term "CCS" means MBS's proposed system for comparing trade input, margining, and comparing clearance information concerning transactions in eligible securities between Participants. *Id.*

[4] The term "COS" means MBS's proposed system for comparing trade input concerning transactions in eligible securities, but does not involve margining or comparing clearance information. *Id.*

[5] The term "Limited Purpose Participant" means any person qualified to participate in COS or, to the extent permitted by MBS procedures, any other MBS system except CCS. *Id.*

[6] The term "Cash Settlement" refers to the payment each business day by MBS to a Participant or by a Participant or Limited Purpose Participant to MBS. *Id.*

[7] The term "Market Margin Differential Deposit" means the amount a Participant is required to deposit to MBS's Participant Fund under Article IV, Rule 2 of MBS's Rules. Existing MBS Rules, Art. I, Rule 1.

[8] In this context, the term "Broker Give-Up Trade" means an SBO-Destined Trade or Trade-for-Trade transaction in which a broker acting on behalf of selling and purchasing Dealers temporarily is identified in Purchase and Sales Reports and Open Commitment Reports initially delivered by MBS as the Original Contra-Side Participant with respect to each Dealer, with the Dealers to be substituted on the Broker Give-Up Date. Proposed MBS Rules, Art. I, Rule 1.

[9] "SBO" or a "Settlement Balance Order" is one of MBS's basic processing services. SBO allows participants to reduce, by about 90%, eligible clearing obligations and related expenses via a netting cycle. An "SBO-Destined Trade" refers to a transaction in CCS intended for netting in accordance with MBS's Rules. *Id.*

[10] The term "Cash Balance" means the net amount computed by the MBS each business day with respect to each Participant or Limited Purpose Participant under MBS's Rules. *Id.*

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(a) Purpose

The purpose of the proposed rule changes is to accommodate ten fundamental enhancements to MBS's systems for comparing, margining, and clearing transactions in Eligible Securities as set forth in detail below. Additionally, the proposal includes numerous changes of a technical and conforming nature of MBS's Rules.

1. Systems. Under its current rules, MBS processes transactions through one of two systems: (i) The "SBO System," where settlement obligations result from the netting of transactions in a given Settlement Class; or (ii) the "Trade-for-Trade System," where settlement obligations remain on a Trade-for-Trade basis at the contract price. The proposed rules replace references to those two procedures with the term "Systems." Each MBS System, including SBO and Trade-for-Trade, will provide a specific set of services to MBS Participants or Limited Purpose Participants (as described below) who elect and are qualified to participate in that System. While initially, the proposed Rules provide for only two Systems (*i.e.*, CCS and COS), MBS may establish other systems from time to time as specified in its Procedures.

CCS is the System previously operated by MBS for comparing trade input, computing margin, and comparing clearance information with respect to transactions in Eligible Securities between Participants. Trade-for-Trade transactions, SBO-Destined Trades, and Option Contracts all may be processed through CCS. The proposed COS is a System for comparing trade input with respect to transactions in Eligible Securities. Transactions processed through COS will not be margined and will not be eligible for netting. No broker [11] transactions will be permitted in COS.[12]

2. Participants and limited purpose participants—(i) Participants. MBS Participants are eligible to participate in either the CCS or the COS. CCS includes netting and, as a result of netting of SBO-Destined Trades, may pair firms that did not originally trade with one another. CCS, however, is designed to protect against market risk and Participants in CCS are required to satisfy specific minimum financial requirements based on net worth or regulatory capital, as determined by MBS. Existing minimum net worth and regulatory capital requirements remain unchanged by this proposal,[13] except the proposal eliminates the credit formerly given to mortgage bankers for mortgage servicing rights.[14]

(ii) Limited purpose participants. The proposed rules authorize a new category of Participants, designated as ' 'Limited Purpose Participants," who may not participate in CCS but who may participate in COS or such other Systems allowed by the MBS Procedures. Limited Purpose Participants, however, are subject to all MBS rules except those rules that relate specifically to CCS.[15] Because participation by Limited Purpose Participants in COS does not involve the same risks as participation in CCS, they are not subject to specific net worth or regulatory capital requirements or Clearing Fund requirements.

3. Account structure. Under the current rules, MBS maintains for each Participant a "Dealer Account Group" or, if the Participant acts as a Broker, a "Broker Account Group." Within each such Account Group, MBS maintains one or more of the following Accounts, as directed by the Participant: (1) A Trade-for-Trade Account for processing transactions through the Trade-for-Trade System; (2) an SBO Account for processing transactions through the SBO System and the Trade-for-Trade system; and (3) an Option Account for recording Option Contracts.

The proposed rules eliminate the concept of separate Account Groups for Trade-for-Trade Accounts, SBO Accounts, and Option Accounts. Instead, a Participant may use a single Account in CCS for the processing of: (1) Trade-for-Trade Transactions, (2) SBO-Destined Trades, (3) SBO Trades, and (4) Option Contracts. Nevertheless, Participants may elect to maintain more than one Account, provided MBS approves the accounts. Dealer transactions [16] and broker transactions [17] must be processed through separate "Dealer Accounts" and "Broker Accounts." Nonetheless, a Participant may elect to have some or

[11] The term "broker," in this context, means an MBS Participant that is in the business of buying and selling securities as an agent for Dealers. Existing MBS Rules, Art. I, Rule 1.

[12] Proposed MBS Rules, Art. II, Rule 2, § 1.

[13] The minimum net worth is $5,000,000 for mortgage bankers and $10,000,000 for other categories of Participants. *Id.*, Art. III, Rule 1, section 2, 1.

[14] *Id.*, Art. III, Rule 1, section 2, ¶ 2.

[15] *Id.*, Art. III, Rule 1, sections 1–3.

[16] The term "Dealer," in this context, means an MBS Participant that is in the business of buying and selling securities as principal, either directly or through a Broker. MBS Rules, Art. 1, Rule 1.

[17] *Supra*, note 11.

all of its Dealer Accounts or some or all of its Broker Accounts aggregated for purposes of computing its daily Cash settlement obligations and Market Margin Differential Deposit requirements.[18]

4. Broker give-up trades—(i) Trade submission. Under current MBS rules, trade input with respect to transactions involving a Broker is submitted only by the Broker acting on behalf of the selling and purchasing Dealers. Such pre-compared transactions are reported to the Broker in an Audit Report and to the participating Dealers by means of a Purchase and Sale Report,[19] in which the Broker is temporarily identified as the Original Contra-Side Participant [20] with respect to both the purchasing and the selling Dealers. The Dealers are substituted for the Broker on the Broker Give-Up Date,[21] and such substitution is reflected in the Dealers' Open Commitment Reports [22] for that date and a Broker Give-Up Report delivered to the Broker.

5. SBO trades—(i) Netting. Under the current Rules, SBO Trades are netted by Settlement Class in an SBO Netting Chain [30] to the maximum amount possible to produce an SBO Trade, without regard to whether the SBO Trade will be effected between Original Contra-Side Participants. Under the existing netting procedure, MBS: (1) Offsets purchase and sale transactions between the Participant and the Original Contra-Side Participant to such transactions (Netted Positions); (2) to the extent that any purchase and sale transactions cannot be so offset, MBS offsets purchase and sale transactions among the Participant and any of its Original Contra-Side Participants (*i.e.*, Net-Out Positions); [31] and (3) to the extent that any purchase and sale transactions still cannot be offset (Net Open Positions),[32] MBS assigns the Participant one or more SBO Trades offsetting such Net Open Positions in that particular Settlement Class. The Settlement Price of each SBO-Trade is the Class Average Price.[33]

Under the proposed rules, all parties to a transaction involving a Broker are required to submit trade input. Trade input submitted by each Dealer on whose behalf the Broker is acting must: (1) Identify the Broker as the Original Contra-Side Participant, and (2) specify the contract price payable to or by the Dealer, net of commission. Trade input submitted by the Broker must identify: (1) Each Dealer on whose behalf the Broker is acting, (2) the contract price inclusive of commission, (3) the amount of the commission, and (4) the Dealer(s) responsible for payment of the commission. Commissions on fully matched trades will be included in the Cash Settlement at predetermined intervals.[23]

(ii) *Trade comparison.* Under the proposed Rules, transactions involving a Broker will be considered "Fully Compared" if the trade input submitted by the Broker matches the trade input submitted by each Dealer in accordance with the "Match Mode" elected by the Dealer. Such transactions will be considered "Partially Compared" if trade input submitted by the Broker matches the trade input submitted by one but not both of the Dealers. Any SBO-Destined Trade that is Partially Compared on the netting date in the applicable settlement cycle will automatically be covered to a Trade-for-Trade transaction.[24]

(iii) *Match modes.* Dealers may elect one of the three Match Modes with respect to transactions involving a Broker: (1) An Exact Match Mode, in which trade input that matches in all other respects will be compared only if the Par Amount of Eligible Securities reported to have been sold or purchased by the Dealer for a particular transaction is identical to the Par Amount for a particular transaction reported by the Broker; (2) a Net Position-Match Mode, in which trade input that matches in all other respects will be compared only if the Par Amount of Eligible Securities reported to have been sold or purchased by the Dealer equals the aggregate Par Amount for one or more transactions reported by the Broker; or (3) a Maximum Match Mode, in which trade input that matches in all other respects will be compared to the extent that the Par Amount of Eligible Securities reported to have been sold or purchased by the Dealer does not exceed the aggregate Par Amount for one or more transactions reported by the Broker, with transactions reported by the Broker in any excess Par Amount remaining uncompared. Regardless of the Match Mode elected by a Dealer, MBS will first attempt to compare each transaction using the Exact Match Mode, applying another Match Mode only to the extent necessary to effect a comparison.[25]

(iv) *Dealer responsibility.* The current rules provide that if any Dealer identifies a discrepancy in the information contained in the Purchase and Sale Report, the Dealer must notify the Broker. Following such notification, the Broker is responsible for resolving the discrepancy and submitting the corrected trade input to MBS.

Under the proposed Rules, any transaction as to which trade input submitted by a Dealer has compared with trade input submitted by a Broker will be listed in the Dealer's Purchase and Sale Report and Open Commitment Report, and the Dealer will be fully responsible for the transaction.[26] Any transaction as to which trade input submitted (or not submitted) by a Dealer does not compare with trade input submitted by a Broker will be listed in the Dealer's Unmatched Margin Report.[27] Unless and until a Dealer submits a DK of a transaction listed in the Dealer's Unmatched Margin Report, the Dealer will be responsible for any Market Margin Differential debits arising from such transaction and may, in the event of a liquidation, be fully responsible for the transaction.[28] The foregoing provisions essentially replicate the effect of pre-compared trade input by Brokers under the current MBS Rules.[29]

Under the proposed Rules, SBO-Destined Trades are netted by Class according to essentially the same procedures. (In the proposed Rules, the term "Class" replaces the former term "Settlement Class.") The proposed Rules, however, distinguish netting to produce SBO Trades between Original Contra-Side Participants ("SBOO Trades") [34] and netting to produce SBO Trades between Non-Original Contra-Side Participants ("SBON Trades").[35] This distinction requires a change in computation of the Settlement Price for SBO Trades. The Settlement Price of SBOO Trades will be the Firm Class Average Price ("FCAP").[36] The Settlement Price of SBON Trades will be the Class Average Price ("CAP") of all SBO-Destined Trades in the Class that have been netted to produce the SBON Trade.[37] As a result of this change, only SBON Trades will be subject to SBO Market Differential and Cash Adjustments.[38]

(ii) *SBO market differential.* Under the current Rules, MBS computes SBO Market Differential for all Accounts of a Participant within each of its Account Groups. On the Settlement Date, the current Rules require any Participant with a positive SBO Market Differential to pay such amount to MBS by Federal funds wire transfer, and MBS to pay to the account of any Participant with a negative SBO Market Differential such amount by Federal funds wire transfer. In actual practice, to insure MBS's ability on the Settlement Date to make required payments to Participants with negative SBO Market Differential, MBS has required Participants with positive SBO Market Differential to pay MBS the day before the Settlement Date.

The proposed Rules are intended to conform the Rules with current practice. The proposed Rules, therefore, provide that any net negative SBO Market Differential with respect to any Account or set of Aggregated Accounts of a Participant will be charged against the Participant's Cash Balance for that Account or set of Aggregated Accounts on the day preceding the Settlement Date, and any net positive SBO Market Differential will be credited to such Account or set of Aggregated Accounts on the Settlement Date. Interest on the amount of any payment charged against a Participant's Cash Balance will be credited to the Participant on a date that will be specified in MBS's Procedures, at a rate to be determined from time to time by MBS.[39]

(iii) *Cash adjustment.* The current Rules require MBS to calculate an "SBO Cash Adjustment," which is owed by or to a delivering or receiving Participant, in order to compensate for any differences between the amortized value of securities that was originally reported to MBS following the Trade Date and the amortized value of securities actually delivered at settlement. For SBO Trades involving a Broker, MBS also calculates a "Broker Adjustment" that is included in SBO Cash Adjustment to be paid by or the delivering and receiving dealers on whose behalf the Broker has acted.

The proposed Rules provide that the Cash Adjustment for SBON Trades will be equal to a Participant's SBO Market Differential in the Class multiplied by the percentage by which the amortized value of Eligible Securities delivered or received by the Participant on the Clearance Date if greater or less than the Par Amount. For a Participant with a Net-Out Position in any Class, the Cash Adjustment will be an amount equal to: (1) The amount by which the total Cash Adjustments payable by the delivering and receiving Participants in SBON Trades in such Class is greater or less than the amount payable by MBS to such Participants, multiplied by (2) the percentage that such Participant's Net-Out Units in the Class constitutes the Net-Out Units of all Participants in the Class. The term "Net-Out Unit" refers to an SBO-Destined purchase transaction and an SBO-Destined sale transaction that have been offset through netting. Because Dealers will automatically be substituted for Brokers in any Fully Compared Broker Give-Up Trade prior to netting, the reference to "Broker Adjustments" in the current Rules has been deleted from the proposed rules as unnecessary.[40]

6. *Reporting of clearance.* The current Rules provide separate procedures for the reporting of clearance of Trade-for-Trade transactions and SBO Trades. Upon clearance of a Trade-for-Trade transaction, both the selling and the purchasing Participant are required to submit a cancellation of the transaction to MBS. If a notice of cancellation is received from only one Participant, SBO will so indicate on each Participant's Uncompared Advisory List. Each Participant is then required to determine whether clearance actually occurred and to submit a corrected report to MBS. In the case of SBO Trades, Participants are required to report clearance of a transaction by providing MBS and SBO Notification of Settlement. If the information submitted by each SBO Contra-Side Participant compares in whole or in part, the SBO Trade (or that portion of the SBO Trade for which information compares) will be deleted from the Participants' respective Open Commitment Reports. If the information does not compare, or compares only in part, MBS will so indicate in each Participant's Uncompared Advisory List.[41]

The proposed Rules provide for two-sided comparison of settlement information submitted by Participants in connection with both SBO Trades and Trade-for-Trade transactions. In the case of an SBO Trade, both the delivering and the receiving Participant must submit a Notification of Settlement. In the case of a Trade-for-Trade transactions, the delivering and receiving Participants must submit a Notification of Settlement unless both Participants agree to submit a cancellation of the transactions or a combination of a Notification of Settlement and a cancellation.[42]

To the extent that information in a Notification of Settlement does not compare (or, in the case of a Trade-for-Trade transaction, any uncompared portion of the transactions has not been cancelled), the trade (or uncompared or uncancelled portion thereof) will continue to be reflected on each Participant's Open Commitment Report and will remain subject to Market Margin Differential Deposit requirements.[43]

7. *Cash balance.* The proposed Rules provide for the daily computation of "Cash Balance" payable to or receivable from MBS for each Account maintained by a Participant or Limited Purpose Participant. For Participants in CCS, the Cash Balance is the net positive or negative amount resulting from the computation of SBO Market Differential obligations, Cash Adjustment obligations, commissions owed or earned, fees, fines and interest payable or owed. For Participants or Limited Purpose Participants in COS, the Cash Balance will be a net negative amount resulting from the computation of charges for services rendered and any fines payable or interest owed.[44]

With respect to those Accounts that a Participant or Limited Purpose Participant has requested to be

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[18] Proposed MBS Rules, Art. II, Rule 1, section 2.

[19] The term "Purchase and Sale Report" means the report furnished by MBS that reflects compared transactions in Eligible Securities by a Participant or Limited Purpose Participant. *Id.*, Art. I, Rule 1.

[20] The term "Original Contra-Side Participant" means the Participant with whom another Participant has entered into a contract for the purchase or sale of an Eligible Security or an Option Contract. Existing MBS Rules, Art. I, Rule 1.

[21] The term "Broker Give-Up Date" means the date on which Dealers, for which a Broker has acted in a Give-Up Trade, are substituted for the Broker. Existing MBS Rules, Art. I, Rule 1.

[22] The term "Open Commitment Report" means the report furnished by MBS to its Participants reflecting Participants' open commitments in CCS. Proposed MBS Rules, Art. I, Rule 1.

[30] The term "SBO Netting Chain" refers to a series of purchases and sales of securities in a particular settlement class that have been offset in the SBO netting process. *Id.*, Art. I, Rule 1.

[31] The term "Net-Out Positions" means the result of offsetting purchase and sale SBO-Destined Trades among different Original Contra-Side Participants under MBS Rules. *Id.*, Art. I, Rule 1.

[32] The term "Net Open Positions" mean any open positions that cannot be offset under MBS's Rules. *Id.*, Art. I, Rule 1.

[33] *Id.*, Art. II, Rule 5, sections 4.

[23] *Id.*, Art. II, Rule 3, 1; *see also* Rule 3, section 4.

[24] *Id.*, Art. II, Rule 3, section 2.

[25] *Id.*, Art. II, Rule 3, section 3.

[26] *Id.*, Art. II, Rule 4, section 3–5.

[27] The term "Unmatched Margin Report" means the report furnished by MBS to Dealers listing transactions by Brokers that have not compared. *Id.*, Art. I, Rule 1.

[28] *Id.*, Art. II, Rule 4, section 5.

[29] Existing MBS Rules, Art. II, Rule 4.

[34] The term "SBOO Trade" means an SBO trade that MBS directs a Participant to effect with an SBOO Contra-Side Participant. Proposed MBS Rules, Art. I, Rule 1.

[35] The term "SBON Trade" means a trade that MBS directs a Participant to effect with an SBON Contra-Side Participant. *Id.*, Art. I, Rule 1.

[36] The term "FCAP" means the average purchase or sale contract price of a Participant's SBO-Destined Trades with a particular Original Contra-Side Participant in a particular Class. *Id.*, Art. I, Rule 1.

[37] *Id.*, Art. I, Rule 1.

[38] *Id.*, Art. II, Rule 5, sections 4–5.

[39] Id., Art. II, Rule 5, section 4, ¶ 3.

[40] Existing MBS Rules, Art. II, Rule 5, section 5.

[41] Proposed MBS Rules, Art. II, Rule 7.

[42] *Id.*, Art. II, Rule 7, section 1.

[43] *Id.*, Art. II, Rule 7, section 2.

[44] *Id.*, Art. II Rule 5, sections 4–5.

aggregated, MBS will net the positive or negative Cash Balance for each Account to produce a single Cash Settlement obligation for that set of Aggregated Accounts.[45]

8. *Daily market margin differential deposits.* Under the current Rules, Market Margin Differential is computed each Business Day for each account maintained by a Participant. Market Margin Differential for each Account is calculated by determining with respect to each Settlement Class the net amount by which the current market value of the Participant's obligations exceeds the original contract price with respect to such obligations for all transactions other than those with a Impending Settlement Date or an Impending Expiration Date. A separate calculation is made with respect to those transactions with an Impending Settlement Date or an Impending Expiration Date. The sum of these amounts is "Market Margin Differential."[46]

The proposed Rules eliminate the concepts of Impending Settlement Date and Impending Expiration Date. Under the proposed Rules, transactions are designated as: (1) Forward Transactions (transactions for which the Settlement Date or, in the case of Option Contracts, the expiration date has not occurred); (2) Fails (transactions for which clearance or, in the case of Options Contracts, exercise has not been reported to MBS between the Settlement Date and a cut-off date specified in the Procedures); or (3) Aged Fails (transactions for which clearance or exercise has not been reported to the Corporation after the specified cut-off date). A separate computation of Market Margin Differential is made daily for each Forward Transaction, Fail and Aged Fail in each Class in each Account maintained by a Participant.

For Forward Transactions, Profits and Losses (positive or negative differences between current market value and original contract price or, in the case of Option Contracts, strike price) are netted by Class and across Classes. For Fails, Profits and Losses are netted within a particular Class, but Profits in one Class do not offset Losses in another Class. For Aged Fails, only Losses are taken into account. The result is increasingly stringent margin requirements as a transaction ages.

Computations of Market Margin Differential are based on transactions in which a Participant has either a Long Position or a Short Position. In the case of a transaction involving a Broker, a Long Position or Short Position may exist for a Dealer either if trade input with respect to the transaction has compared for that Dealer or if trade input has not compared but the Dealer has failed to DK (*i.e.*, don't know) the transaction as reported on its Unmatched Margin Report. These provisions are necessary to assure that adequate margin is maintained in the event of a liquidation.[47]

9. *Communications and reports*—(i) *Communications.* Each Participant and Limited Purpose Participant will be required to maintain such data processing and communications equipment as MBS may specify to process transactions through the facilities of MBS and to receive reports, notices and other communications relating to such transactions prepared by MBS. Provisions in the current Rules relating to physical delivery of trade input and reports have been eliminated.[48]

(ii) *Reports.* The Uncompared/Advisory List,[49] which currently is provided to purchasing and selling Participants that have submitted inconsistent trade input, is being eliminated. The proposed Rules provide that transactions that have not compared will be reported on a new Transaction Summary Report.

The Audit Report and Broker Give-Up Report currently used in connection with transactions involving a Broker have also been eliminated. Under the proposed Rules, all Fully Compared and Partially Compared transactions as to which the transactions have compared will be reported on the Purchase and Sale Report of each Dealer and Broker. The Purchase and Sale Report serves as the sole confirmation of, and evidences a binding and enforceable obligation of the parties to, the transaction.[50]

Any transaction involving a Broker which has not compared as to a particular Dealer will be reflected in a new Unmatched Margin Report.[51] Until the Dealer submits a DK of such transaction, the transaction will be subject to the payment of Market Margin Differential Deposits with respect to the transaction the same as if the transaction had been listed on the Dealer's Open Commitment Report.[52]

(iii) *Processing passes.* The current rules reflect MBS's existing practice of "batch processing" trade input overnight and delivering reports at the opening of the following Business Day. The proposed Rules will introduce the concept of Processing Passes. The first processing pass will occur overnight and result in availability of reports at the opening of the next Business Day. The second processing pass will occur the same Business Day as reports initially become available following a cut-off time specified in the Procedures. The second processing pass will afford Participants and Limited Purpose Participants the opportunity, among other things to cancel trades that they may have reported in error and afford Dealers the opportunity to DK trades appearing on their Unmatched Margin Reports.[53]

10. *Liquidation.* The current Rules state that, in the event of liquidation of a Participant for which MBS has ceased to act, SBO Trades will be reprocessed as Trade-for-Trade transactions prior to liquidation. MBS has determined that, from an administrative standpoint, this is impractical and had previously advised Participants that the Rules would be changed to require SBO Contra-Side Participants to liquidate SBO Trades. The proposed Rules implement this change and make it clear that an SBO Contra-Side Participant that follows the liquidation procedures specified in the Rules in good faith will not thereby incur any liability to Original Contra Side Participants.[54]

The proposed Rules also expand provisions for the payment of claims. In the event that available funds are more than sufficient to cover all other losses incurred by Contra-Side Participants, MBS will apply any excess funds pro rata to cover principal and interest claims for transactions that failed to settle prior to the record date.[55]

(b) *Statutory basis of the proposal.* MBS believes that the proposed systems enhancements are consistent with the Act, particularly: (1) Sections 17A(b)(3)(A) and (F) of the Act [56] in that the enhancements will facilitate the prompt and accurate comparison, clearance, and settlement of securities transactions; and (2) Section 17A(a)(1) of the Act [57] in that the enhancements will help eliminate inefficient clearance and settlement procedures that impose unnecessary costs on investors and persons facilitating transactions by and on behalf of investors.

[45] *Id.*, Art. II, Rule 1, section 2.
[46] Existing MBS Rules, Art. IV, Rule 2.
[47] Proposed MBS Rules, Art. IV, Rule 2.
[48] *Id.*, Art. V, Rule 4.
[49] Existing MBS Rules, Art. II, Rule 7, section 1.
[50] Proposed MBS Rules, Art. II, Rule 7.
[51] The "Unmatched Margin Report" refers to uncompared trades.
[52] Proposed MBS Rules, Art. II, Rule 4, section 5.
[53] *Id.*, Art. II, Rule 4, section 1.
[54] *Id.*, Art. III, Rule 3, section 5.
[55] *Id.*, Art. III, Rule 3, section 5(g).
[56] 15 U.S.C. section 78q-1(b)(3)(A) and (F) (1988).
[57] 15 U.S.C. section 78q-1(a)(1) (1988).

B. Self-Regulatory Organization's Statement on Burden on Competition

MBS believes that no burden will be placed on competition as a result of the proposed rule changes.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

MBS has kept its Participants informed of the proposed enhancements by a series of information bulletins, and MBS has distributed to its Participants the text and summary thereof of the proposed rule change. MBS has received no substantive comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the SRO consents, the Commission will:

(A) By order approve such proposed rule changes, or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of MBS. All submissions should refer to the File No. SR-MBS-92-02 and should be submitted by September 17, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[58]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20508 Filed 8-26-92; 8:45 am]

BILLING CODE 8010-01-M

[58] 17 CFR section 200.30-3(a)(12) (1991).

[Release No. 34-31061; International Series Release No. 438; File No. SR-NSCC-92-06]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of a Proposed Rule Change by the National Securities Clearing Corporation Relating to NSCC's Foreign Securities Comparison and Netting Service

August 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 8, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Change NSCC's Procedures, Section VI.C. as follows:

[Brackets] indicate deletion, *itolic* indicates addition, _____ indicates previously underscored material.

C. Netted Member-to-Member Receive and Deliver Instructions

Transactions in Foreign Securities will net only on a Member-to-Member basis. Netted Member-to-Member receive and deliver instructions are produced representing the netted positions of each Member with respect to its transactions with another Member in each Foreign Security issue in which it had activity on the morning following comparison. Unless specified otherwise by the Corporation, [issuance of netted Member-to-Member receive and deliver instructions,] establishment of a uniform Settlement Price, and calculation of a Foreign Security Clearance Cash Adjustment will be conducted in the same manner as with respect to Net Balance Orders, as provided in Section V.C. above; provided, however, that both the settlement of the underlying transaction and payment of the Foreign Security Clearance Cash Adjustment will not be guaranteed by the Corporation, and in the event a Member fails to make settlement with the Corporation, the Corporation will reverse all Foreign Security Clearing Cash Adjustment debits and credits with respect to that Member, and the netted Member-to-Member Foreign Securities receive and deliver instructions issued that day with respect to that Member will be null and void.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's Foreign Comparison and Netting Service (FSCN) allows NSCC members to submit trades in foreign securities for comparison and broker-to-broker netting. NSCC produces receive and deliver orders for settlement of these trades. Securities are normally settled in the local country. NSCC currently produces receive and deliver orders on T+4. For FSCN trades, this is too late to allow the settling parties to instruct their foreign agent in sufficient time for timely movement of the securities abroad. The proposed rule change will permit the production of these receive and deliver orders on the morning following comparison, instead of T+4.

Since the proposed rule change will permit the prompt and accurate clearance of foreign securities transactions, it is consistent with the requirements of Section 17A(b)(3)(F) of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

[1] 15 U.S.C. § 78s(b)(1).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934 and Subparagraph (e) of rule 19b–4 thereunder because the proposed rule change is effecting a change in an existing service that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to file number SR–NSCC–92–06 and should be submitted by September 17, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20509 Filed 8–26–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31056; File No. SR–NASD–92–31]

Self-Regulatory Organizations; Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Designation of Public Arbitrators Under the NASD Code of Arbitration Procedure

August 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 2, 1992, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is herewith filing a proposed rule change to Article III, section 19 of the Code of Arbitration Procedure. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Code of Arbitration Procedure

* * * * *

Part III Uniform Code of Arbitration

* * * * *

Designation of Number of Arbitrators

Sec. 19. (a) and (b) Unchanged.

(c) An arbitrator will be deemed as being from the securities industry if he or she:

(1), (2), (3) and (4) Unchanged.

(5) Is an attorney, accountant, or other professional who has devoted twenty (20) percent or more of his or her professional work effort to securities industry clients within the last two years [.] , *or*

(6) Is an individual who is registered under the Commodity Exchange Act or is a member of a registered futures association or any commodities exchange or is associated with any such person(s).

(d) Unchanged.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule change was previously adopted by the Securities Industry Conference on Arbitration ("SICA"). In general, proposed subparagraph (6) to section 19(c) is intended to designate individuals who are associated with the futures industry as being from the securities industry for the purpose of serving on an arbitration panel. This would include individuals who are registered under the Commodity Exchange Act, who are members of a registered futures association or any commodities exchange, or who are associated with any such persons. Such individuals would, therefore, be excluded from the definition of "public arbitrator" contained in section 19(d) of the Code.

This proposed rule change developed from a report by the Commodity Futures Trading Commission ("CFTC") which was reviewed by SICA. The report was the result of a study of arbitration facilities that had been used to resolve disputes involving commodities and futures products. Arbitration awards rendered under the rules of the National Futures Association ("NFA") and securities industry self-regulatory organizations were reviewed in connection with the study. The report concluded that while the number of futures-related arbitration cases handled outside the NFA was very low, the other forums' arbitration rules were adequate to qualify them as alternative forums under CFTC Regulation 180.3. Since some futures-related disputes are handled under the Uniform Code, SICA determined that the Uniform Code should be amended to exclude as public arbitrators any individuals who have close ties with the futures industry. The amendment would parallel other exclusions from the definition of public arbitrator for individuals who have close ties with the securities industry. SICA recommended that all self-regulatory organizations adopt this provision.

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act [2] in that the proposed rule change will facilitate the arbitration process in the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 17, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20512 Filed 8–26–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31059; File No. SR–NSCC–92–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Modification of the Fee Schedule To Include Foreign Securities Netting Fee for Trades Submitted on a Locked-In Basis

August 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 8, 1992, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC proposes to amend its Fee Schedule by adding a fee for trades submitted through the Automated Confirmation Transaction Service ("ACT Service") of the National Association of Securities Dealers, Inc. ("NASD"). The text of the Fee Schedule is set forth below with the proposed modifications italicized:

C. Trade recording fees will be charged as follows on those items originally compared by other parties, but cleared through NSCC: (FN 2)

1. Each side of each stock, warrant or right item entered for settlement, but not compared by NSCC—$.02 per 100 shares, with a minimum fee of $.08 and a maximum fee of $1.50 being applicable.

2. Each side of each bond item entered for settlement, but not compared by NSCC—$.30 per side.

3. Each side of a foreign security trade entered for settlement, but not compared by NSCC—$.75 per side.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's Board of Directors previously approved a Foreign Securities Clearance and Netting fee of $.75 for each side of a compared trade. With the implementation of the ACT Service by the NASD, trades are now being submitted to NSCC via the ACT Service. These trades now by-pass comparison and are captured for trade recording fees. The purpose of the proposed rule change is to amend the fee schedule in order to include this fee for trades submitted from the ACT Service, as well as via the comparison method.

Since the proposed rule change provides for the equitable allocation of fees among members, it is consistent with the requirements of section 17A of the Act, as amended,[2] and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

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[1] On July 31, 1992, the NASD filed Amendment No. 1 to the proposed rule change. Amendment No. 1 replaces the phrase "designated contract market", as originally proposed in section 19(c)(6) of the Code of Arbitration Procedure with the phrase "commodities exchange." The amendment conforms the language proposed by the NASD with language previously adopted by the Securities Industry Conference on Arbitration ("SICA"). The following notice contains the language proposed by the NASD as amended in Amendment No. 1.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder because it establishes or changes a due, fee, or other charge of the self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–NSCC–92–07 and should be submitted by September 17, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20515 Filed 8–26–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31064; File No. SR–NASD–92–12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Extension of Public Comment Period for Proposed Rule Change

August 21, 1992.

On April 9, 1992, the National Association of Securities Dealers, Inc. submitted a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), that would prohibit members from effecting short sales at or below the bid, for themselves or their customers, when the current "inside" or best bid is below the previous bid. The proposed amendment contains an exemption for transactions by "qualified" NASDAQ market makers. Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 31003, August 6, 1992) and by publication in the **Federal Register** (57 FR 36421, August 13, 1992).

Due to the expectation that a substantial number of parties may be interested in submitting comments to the Commission, and the fact that the initial comment period falls during a period of time when many interested parties have scheduled vacation, the Commission hereby extends the period for public comment on the proposed rule change until Friday, October 2, 1992.[1]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20568 Filed 8–26–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31066; File No. SR–PTC–92–08]

Self-Regulatory Organizations; Participants Trust Company; Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Definition of Eligible Securities

August 21, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 7, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change eliminates specific references currently contained in PTC's rules to securities issued by the Government National Mortgage Association ("GNMA") and references to the Federal Home Loan Mortgage Corporation ("FHLMC") and Federal National Mortgage Association ("FNMA") in order to clarify that PTC may act as a depository for other securities issued or guaranteed by other instrumentalities of the United States government.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to eliminate specific references currently contained in PTC's rules to GNMA securities and to the FHLMC, FNMA, and GNMA in order to clarify that PTC may act as depository for other securities issued or guaranteed by other instrumentalities of the United States government.

Article I, Rule 2 of PTC's rules states that PTC "shall from time to time determine which securities or pools included within securities are eligible for deposit with the Corporation."

Article I, Rule 1 of PTC's rules states that:

"The term 'securities' means all participation interests in pools of mortgage loans issued or guaranteed by instrumentalities of the United States government, including, without limitation, pass-through and modified pass-through certificates guaranteed by GNMA, mortgage participation certificates and Guarantee Mortgage Certificates issued by FHLMC, and pass-through certificates issued by FNMA." (emphasis added)

Although historically GNMAs have been the only securities designated as eligible securities, PTC's rules provide the authority for it to designate as eligible for deposit other securities which meet the definition. On June 10, 1992, the Commission approved a PTC proposed rule change that designated certain securities guaranteed by the United States Department of Veterans Affairs (the "VA securities") as eligible securities as permitted by Article I, Rule 2 of PTC's rules.[2] The VA securities meet PTC's definition of securities because those securities are participation interests in pools of mortgage loans represented by pass-through certificates guaranteed by the United States Department of Veterans Affairs, an instrumentality of the United States government.

Although PTC's rules enable it to designate securities other than GNMAs as depository eligible, it recognized in preparing for the deposit of VA securities that certain rules refer specifically to GNMA, FNMA, and FHLMC (securities or the instrumentality). The subject rule change conforms those rules to the broader definition in PTCs rules of securities and issuers or guarantors of the permitted securities.[3]

(b) Since the proposed rule change reflects the fact that securities issued or guaranteed by instrumentalities other than GNMA, FNMA, and FHLMC may be eligible for deposit in PTC and the availability of PTC's settlement services with respect to those securities, it is consistent with the requirement of section 17A(b)(3)(F) of the Act because it is designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to the prompt and accurate settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b–4 thereunder because it is effecting a change in an existing service of a registered clearing agency that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR–PTC–92–08 and should be submitted by September 17, 1992.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20569 Filed 8–26–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–31060; File No. SR–PTC–92–09]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Participants Trust Company Relating to a Modification of PTC's Fees

August 19, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on July 28, 1992, Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Full Service Participants & Limited Purpose Participants.

Schedule of Fees

Service	Fee—*italics* indicate additions [brackets] indicate deletions
• • • • •	
Book-Entry Delivery/Receipt (includes all DK's and FTX Transactions between participants).	
• • • • •	
P & I Disbursement Deposits	[2.00] *1.65/* pool/month.
Manual	[7.75] *6.15/* cert.[1]
Automated Bulk (200–1,000 pools)	[5.00] *4.00/* cert.[1]
Automated Bulk (more than 1,000 pools).	[3.75] *3.00/* cert.[1]
Withdrawals	[7.75] *15.00/* cert.[1]
• • • • •	
Repo Movements	[6.00] *5.15* each.
• • • • •	

[1] Plus GNMA transfer fee.

[1] By letter, dated August 20, 1992, the NASD consented to an extension of the period of time for comment until October 2, 1992. See letter from Stephen D. Hickman, Secretary, NASD to Katherine England, Branch Chief, SEC, dated August 20, 1992.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 30792 (June 10, 1992), 57 FR 27495.

[3] Prior to making any other securities eligible for deposit, PTC understands that it must file with the Commission a proposed rule change under section 19 of the Act.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set fourth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to modify PTC's fees for five of its services: Book-Entry Delivery and Receipt of Securities, P&I Disbursements, Deposits, Withdrawals, and Repo Movements. The new fees will be effective August 1, 1992.

PTC believes that the modification is appropriate based on the Corporation's 1992 net income to-date, projected earnings and expenses, the desirability of paying dividends on its outstanding stock, and its level of capital.

(b) Since the proposed rule change relates to the equitable allocation of dues, fees and other charges among Participants, it is consistent with the requirement of Section 17A(b)(3)(D) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from Participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because it establishes or changes a due, fee, or other charge of the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to SR–PTC–92–09 and should be submitted by September 17, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20510 Filed 8–26–92; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18902; 812–7948]

North American Security Life Insurance Co., et al.

August 19, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or the "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: North American Security Life Insurance Company ("Security Life"), NASL Variable Account (the "Variable Account"), NASL Financial Services, Inc. ("NASL Financial") and Wood Logan Associates Inc. ("Wood Logan").

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 26(a)(2)(C) and 27(c)(2).

SUMMARY OF APPLICATION: Applicants seek an order to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Variable Account with respect to certain fixed and variable annuity contracts.

FILING DATE: The application was filed on June 23, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested person may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 pm., on September 14, 1992 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington DC 20549. Applicants: Johen D. DesPrez, III, Esq., North American Security Life Insurance Company, 116 Huntington Avenue, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Cindy J. Rose, Financial Analyst, or Michael V. Wible, Special Counsel, at (202) 272–2060, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Security Life is stock life insurance company organized under the laws of Delaware in 1979. Security Life is the depositor of the Variable Account.

2. The Variable Account was registered under the 1940 Act as a unit investment trust and was established to fund variable annuity contracts. Assets of the Variable Account are invested in shares of the NASL Series Trust (the "Trust"), a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. The Variable Account is divided into subaccounts which invest in corresponding portfolios of the Trust.

3. NASL Financial is the principal underwriter of the contracts and certificates. It is a broker-dealer registered under the Securities Exchange Securities Dealers, Inc. NASL Financial also serves as investment adviser to the Trust and is registered as an investment adviser under the Investment Advisers Act of 1940.

4. Wood Logan, a Connecticut corporation registered as a broker-dealer under the 1934 Act, serves as the exclusive promotional agent for the contracts and certificates.

5. The contracts are flexible purchase payment deferred combination fixed and variable group annuity contracts which will provide for the accumulation of values and the payment of annuity benefits on a fixed and/or variable basis. The application pertains only to the variable basis. The application pertains only to the variable portion of the contract. Security Life is relying on certain exemptive provisions from the registration requirements under the Securities Act of 1933 and the 1940 Act to offer the fixed portion of the contracts.

6. As compensation for providing administrative services under the contracts and certificates, Security Life charges certificate owners an annual administration fee of $30 and deducts from the subaccounts each valuation period an administration charge equal to .15% of the subaccount assets on an annualized basis. Applicants represent that the fees are based upon Security Life's current estimates of the administrative costs attributable to the contracts and certificates over their lifetime and are not designed or expected to generate a profit.

7. No sales charge will be deducted from purchase payments as they are made. Instead, prior to the maturity date, a withdrawal charge (contingent deferred sales charge) will be addressed in some circumstances where complete or partial withdrawals are attributed to purchase payments made for a certificate owner within six years of the date of the withdrawal. The withdrawal charge declines 6–6–5–4–3–2% over the first six years that a purchase payment has been in the contract for a certificate owner. There is no withdrawal charge with respect to withdrawals of investment earnings for a certificate owner and certain other free withdrawal amounts. Applicants represent that the withdrawal charge is intended to reimburse Security Life for compensation paid to cover selling concessions to broker-dealers, preparation of sales literature and other expenses relating to sales activity.

8. To compensate it for assuming mortality and expense risks under the contracts and certificates, Security Life currently deducts from each subaccount a charge each valuation period at an effective annual rate of 1.25%, consisting of .80% for the mortality risks and .45% for the expense risks. Security Life reserves the right to issue contracts and certificates with a mortality and expense risk charge at rates less than those set out above in circumstances where it concludes that the mortality and expense risks of the group involved are less than the risks it has determined for persons for whom the contracts and certificates have been generally designed.

9. The mortality risk assumed by Security Life under the contracts and certificates is the risk that annuitants may live for a longer period of time than estimated. Security Life assumes this mortality risk by virtue of annuity rates incorporated into the contract and certificate which cannot be changed as to outstanding certificates. This assures each annuitant that his longevity will not have an adverse effect on the amount of annuity payments. Also, Security Life guarantees that if the annuitant dies before the maturity date, it will pay a minimum death benefit. The expense risk assumed by Security Life is the risk that the administration fees, which fees cannot be increased as to outstanding certificates, may be insufficient to cover actual expenses. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk undertaking, Security Life will bear the loss. Conversely, if the charge proves more than sufficient, the excess will be profit to Security Life and will be available for any proper corporate purpose including, among other things, payment of distribution expenses.

Applicants' Legal Analysis and Conditions

1. Applicants seek an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent necessary to permit the issuance and sale of the contracts providing for the deduction of a mortality and expense risk charge. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amount as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

2. Applicants represent that the 1.25% mortality and expense risk charge is within the range of industry practice for comparable annuity products. Applicants state that this representation is based upon an analysis of publicly available information about selected similar industry products, taking into consideration such factors as the method used in charging sales loads, any contractual right to increase charges above current levels and the existence of charges against separate account assets for other than mortality and expense risks. Security Life will maintain at its principal office, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, the comparative survey made.

3. Applicants acknowledge that the withdrawal charge will be insufficient to cover all costs relating to the distribution of the contracts and certificates and that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be offset by distribution expenses not reimbursed by the withdrawal charge. Security Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements made with respect to the contracts and certificates will benefit the Variable Account and the certificate owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Security Life at its principal office and will be available to the Commission.

4. Finally, Security Life represents that the Variable Account will invest only in an underlying mutual fund which undertakes, in the event it should adopt any plan under Rule 12b–1 to finance distribution expenses, to have such plan formulated and approved by a board of directors, a majority of the members of which are not "interested persons" of such fund within the meaning of section 2(a)(19) of the 1940 Act.

Conclusion

Applicants conclude that for the reasons and upon the facts set forth in the application, the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20511 Filed 8-26-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1681]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea and Associated Bodies; Working Group on Stability and Load Lines and on Fishing Vessels Safety; Meeting

The Working Group on Stability and Load Lines and on Fishing Vessels Safety of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on September 21, 1992, at 9 a.m. in room 6319 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of this Working Group meeting is to discuss the preparations for the 37th Session of the International Maritime Organization (IMO) Subcommittee on Stability and Load Lines and on Fishing Vessels Safety (SLF), which is scheduled for January 11 to 15, 1993.

Items of discussion will include the following: subdivision and damage stability standards of passenger ships; harmonization of probabilistic damage stability provisions for all ship types; the new Code of Intact Stability; technical revisions to the 1966 Load Line Convention; stability aspects of open-top container ships; and probabilistic oil outflow.

Members of the public may attend this meeting up to the seating capacity of the room.

For further information on this SLF Working Group meeting, contact Mr. H.P. Cojeen or Mr. W.M. Hayden at (202) 267-2988; U.S. Coast Guard Headquarters (G-MTH), 2100 Second Street, SW., Washington, DC 20593-0001.

Dated: August 19, 1992.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 92-20519 Filed 8-26-92; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Computer Matching Program

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of computer matching program.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Public Law 100-503), and the Computer Matching and Privacy Protection Amendments of 1990 (Public Law 101-508), and the Office of Management and Budget's Guidelines on the Conduct of Matching Programs, notice is hereby given that the Tennessee Valley Authority (TVA) proposes to conduct a program matching TVA records with Office of Workers' Compensation Programs (OWCP) records. The purpose of the program is to identify former or current TVA employees who received prohibited concurrent workers' compensation benefits and state unemployment benefits.

EFFECTIVE DATE: This proposed action will become effective September 28, 1992, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or the Congress objects thereto. Any public comment must be received before the effective date.

ADDRESS: Any interested party may submit written comments to Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (MR 2F), Chattanooga, TN 37402-2801. As a convenience to commenters, TVA will accept public comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (615) 751-2902. Receipt of FAX transmittals will not be acknowledged.

FOR FURTHER INFORMATION CONTACT: Mark R. Winter, (615) 751-2523.

SUPPLEMENTARY INFORMATION: TVA and OWCP intend to conduct a computer matching program for the purposes stated below. This notice meets the publication requirements under subsection (e)(12) of the Privacy Act of 1974, as amended. A copy of the computer matching agreement and a copy of this notice have been transmitted to the Office of Management and Budget, the Committee on Governmental Affairs of the Senate, and the Committee on Government Operations of the House of Representatives.

Set forth below is a description of the matching program.

Report of Computer Matching Program between TVA and OWCP

A. Participating Agencies

TVA is the recipient agency and will perform the computer match with records provided by OWCP for the purpose of the match.

B. Purposes of the Match

This match will permit TVA to identify former or current TVA employees who received prohibited concurrent workers' compensation benefits and state unemployment benefits to prevent erroneous payments by TVA under the unemployment compensation program. Information obtained from the match will also be furnished to OWCP for the purpose of verifying entitlement to disability compensation benefits.

C. Authority for Conducting Matching Program

The authority for undertaking this match is found in Federal Employees' Compensation Act (5 U.S.C. 8101 et seq.), the Unemployment Compensation For Federal Employees program (5 U.S.C. 8501 et seq.), the TVA Act (16 U.S.C. 831-831dd), and the Inspector General Act (5 U.S.C. Appendix A).

D. Categories of Individuals and Identification of Records to be Matched

OWCP, as the source agency, will provide TVA with information on current and former TVA employees from its "Office of Workers' Compensation Programs, Federal Employees' Compensation Act File" (DOL/ESA-13) system of records. This system of records contains information on individuals receiving benefits under the Federal Employees' Compensation Act. This information will be matched against information on former or current TVA employees who have received state unemployment compensation which is maintained in TVA's "Payroll Records" (TVA-11) system of records. Initially the records to be matched will cover the period April 1, 1989 through March 31, 1992, and then semiannually.

E. Inclusive Date of the Matching Program

This computer matching program is subject to review by the Office of Management and Budget and the Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective on the date specified above. By agreement between TVA and OWCP, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

Michael L. Scalf,

TVA Archivist.

[FR Doc. 92-20546 Filed 8-26-92; 8:45 am]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Application to impose a passenger facility charge (PFC) at the Alexander Hamilton Airport, St. Croix, VI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Alexander Hamilton Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CRF Part 158).

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office 9677 Tradeport Drive, suite 130 Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gordon Finch, Executive Director of the Virgin Islands Port Authority, at the following address: P.O. Box 1707 St. Thomas, VI 00803-1707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Virgin Islands Port Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mrs. Ilia A. Quinones, Airports Plans & Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, FL 32827-5397, telephone (407) 648-6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Alexander Hamilton Airport under the provision of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 1992 the FAA determined that the application to impose a PFC submitted by the Virgin Islands Port Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 10, 1992.

The following is a brief overview of the application:

Level of the proposed PFC:—$3.00.
Proposed charge effective date:—
January 1, 1993.
Proposed charge expiration date:—
December 31, 1997.
Total estimated PFC revenue:—
$5,621,990.
Brief description of proposed projects:
1. Master Plan Update.
2. Real Property Acquisition.
3. Airport Security System.
4. Airfield Improvement-Apron Expansion.
5. Passenger Terminal Improvements.
6. Aircraft Rescue and Firefighting Equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT."**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Virgin Islands Port Authority, Alexander Hamilton Airport, St. Croix, Virgin Islands.

Issued in Atlanta, Georgia, on August 20, 1992.

Dell T. Jernigan,

Acting Manager, Airports Division Southern Region.

[FR Doc. 92-20588 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

Application To Impose a Passenger Facility Charge (PFC) at the Cyril E. King Airport, St. Thomas, VI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Cyril E. King Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub.L. 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airport District Office 9677 Tradeport Drive, Suite 130 Orlando, Florida 32827-5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gordon Finch, Executive Director of the Virgin Islands Port Authority, at the following address: P.O. Box 1707 St. Thomas, VI 00803-1707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Virgin Islands Port Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mrs. Ilia A. Quinones, Airports Plans & Programs Manager, FAA, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, FL 32827-5397, telephone (407) 648-6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at the Cyril E. King Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub.L. 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 1992 the FAA determined that the application to impose a PFC submitted by the Virgin Island Port Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 10, 1992.

The following is a brief overview of the application:

Level of the proposed PFC:—$3.00.
Proposed charge effective date:—
January 1, 1993.
Proposed charge expiration date:—
December 31, 1997.
Total estimated PFC revenue:—
$10,719,000.
Brief description of proposed projects:
1. Airfield Improvement-Runway Completion.

2. Airport Security System Installation.
3. Aircraft Rescue and Firefighting Facilities Building.
4. Aircraft Rescue and Firefighting Equipment.
5. Airfield Improvement-Runway Resurfacing.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may insect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT."**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Virgin Islands Port Authority, Cyril E. King Airport, St. Thomas, VI 00803-1707.

Issued in Atlanta, Georgia, on August 20, 1992.

Dell T. Jernigan,

Acting Manager, Airports Division Southern Region.

[FR Doc. 92-20589 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Brunswick and New Hanover Counties, North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is insuring this notice to advise the public that an environmental impact statement will be prepared for the proposed highway project in Brunswick and New Hanover Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Roy C. Shelton, Operations Engineer, Federal Highway Administration, P.O. Box 26806, Raleigh, North Carolina 27611, Telephone: (919) 856-4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposal to relocate US 17 in Brunswick and New Hanover Counties, North Carolina. The proposed improvement would involve the relocation of the existing US 17 from Interstate 40 to existing US 17 south of Wilmington. The proposed action is considered necessary to provide for the existing and projected traffic demand.

Alternatives under consideration include:

1. No-build.
2. Two build alternatives for constructing a four-lane, full control of access freeway on new location.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies. A series of public meetings and a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment at the time of the hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations Implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 19, 1992.

Roy C. Shelton,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 92-20553 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement; Washtenaw County, MI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for reconstruction of US-12, from Saline East City limit to Munger Road in Washtenaw County, Michigan.

FOR FURTHER INFORMATION CONTACT: Thomas A. Fort, Jr., District Engineer, Federal Highway Administration, 315 W. Allegan Street, room 211, Lansing, Michigan 48933, Telephone: (FTS) 374-1879 or (Commercial) (517) 377-1879 or Mr. Andrew J. Zeigler, Environmental Coordinator, Bureau of Transportation Planning, Michigan Deparment of Transportation, P.O. Box 30050, Lansing, Michigan 48909, Telephone: (517) 373-3251.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for reconstruction of US-12, an existing state trunkline, from Saline East City limits to Munger Road in Washtenaw County, Michigan. The proposed project is approximately 7 miles in length and is needed to make capacity improvements in this two-lane section to improve service in this rapidly-developing area in south central Washtenaw County, Michigan. The limits for the study extend along the existing state trunkline between the East City limits of Saline to Munger Road to the northeast. Alternatives under consideration include (1) taking no action to improve this section of US-12 other than routine maintenance; (2) a five-lane cross section reconstruction of existing two-lane roadway with two travel lanes in each direction and a center left-turn lane; (3) a divided cross section reconstruction of existing roadway to a boulevard consisting of two 24-foot pavements separated by an 84-foot median; (4) a combination divided and five-lane cross section; and (5) a transit alternative to assess the feasibility of expanding the existing bus system and reduce projected highway travel demand in the corridor.

Scoping of this project began in 1991 and included: requests for review and comment by federal, state, and local planning agencies on December 30, 1991 concerning the project and preliminary issues identified; field surveys; meetings with the Ann Arbor—Ypsilanti Urban Area Transportation Study Committee (UATS) on June 20, 1991, February 19 and July 22, 1992. Two public information meetings have been held on the project. The first was held on February 19, 1992, and the second on July 22, 1992 to provide the public with an overview of the project scope and schedule, public and agency involvement process, and an opportunity to discuss the proposed action.

This project began with the intent of preparing an Environmental Assessment (EA). However, discovery of significant environmental issues, and local controversy concerning potentially significant impacts of the project, establish this project as a Class I action, necessitating preparation of an Environmental Impact Statement (EIS). Letters and updated scoping document describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interests in this proposal. A public hearing will be held. Public notice will be given of the time and place of the hearing. The Draft Environmental Impact Statement (EIS) is scheduled for completion in August, 1993, and will be made available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time. The U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service and the Michigan Department of Natural Resources are requested to be cooperating agencies on this project.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 20, 1992.

A. George Ostensen,

Division Administrator, Lansing, Michigan.

[FR Doc. 92-20557 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-22-M

Intelligent Vehicle-Highway Society of America; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold meetings of its Coordinating Council on September 30 and October 1 and of its Board of Directors on October 15, 1992. IVHS AMERICA provides a forum for national discussion and recommendations on IVS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) when it provides advice or recommendations to DOT officials on IVHS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of IVHS AMERICA will meet on September 30, from 1 p.m. to 5 p.m., and on October 1, 1992, from 8:30 a.m. to 4 p.m., e.t. The session is expected to focus on: (1) Status report of the Coordinating Council Committee Review (Sunset/Sunrise) Task Group, (2) Intermodal Surface Transportation Efficiency Act Implementation Issues, (3) Status report from the Tactical Planning Group, and (4) Other technical activities of IVHS AMERICA.

The Board of Directors (formerly the Executive Committee) will meet on October 15, 1992, from 9 a.m. to 4 p.m., e.t. The session is expected to focus on: (1) Review, discussion, and approval of Tactical Planning Advice to the United States Department of Transportation, (2) Report on International Conference planning, (3) Report of the International Liaison Committee, (3) Review, discussion, and approval of IVHS AMERICA Four Year Program Plan, and (4) Review, discussion, and approval of the Charter for the Executive Committee of the Board of Directors. All of the meetings are open to the general public.

ADDRESSES: Doubletree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle Saxton, FHWA HSR-1, 6300 Georgetown Pike, McLean, VA 22101, (703) 285-2021, office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal holidays; or Dr. James Costantino, IVHS AMERICA, 1776 Massachusetts Avenue, NW., fifth floor, Washington, DC 20036, (202) 857-1202.

Authority: 23 U.S.C. 315; 49 CFR 1.4.

Issued on: August 20, 1992.

T. D. Larson,

Administrator.

[FR Doc. 92-20516 Filed 8-26-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 21, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Community Development Information Collection.
Description: The OCC needs hard data to determine the level and type of national bank activity in local community development. The OCC will use the information collected from national banks to determine the effectiveness of its program to encourage national banks to continue and expand their community development efforts.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 3,750.
Estimated Burden Hours Per Response: 2 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 7,500 hours.
OMB Number: 1557-0140.
Form Number: None.
Type of Review: Extension.
Title: Fiduciary Powers of National Banks and Collective Investment Funds (19 CFR part 9).
Description: The written plan for a Collective Investment Fund provides the operating framework for the fund. The Financial Report reflects, on an annual basis, the investment status; including investment changes. Both documents serve as the basic disclosure document for fund participants.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 27,000.
Estimated Burden Hours Per Response: 3 hours.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 14,600 hours.
Clearance Officer: John Ference (202) 874-4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-20600 Filed 8-26-92; 8:45 am]

BILLING CODE 4810-33-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: August 21, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0747.

Form Number: IRS Form 5498.

Type of Review: Extension.

Title: Individual Retirement Arrangement Information.

Description: Form 5498 is used by trustees and issuers to report contributions to and the fair market value of an individual retirement arrangement.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 45,300.

Estimated Burden Hours Per Respondent: 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 6,686,640 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 92-20301 Filed 8-26-92; 8:45 am]

BILLING CODE 4830-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-88]

Proposed Determinations Regarding Certain Market Access Barriers of the People's Republic of China: Request for Public Comment and Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed determinations pursuant to section 304(a)(1) of the Trade Act of 1974, as amended, 19 U.S.C. 2414 (Trade Act); request for public comment; and notice of public hearing pursuant to section 304(b)(1)(A) of the Trade Act.

SUMMARY: The United States Trade Representative (USTR) seeks public comment concerning a proposed determination that certain acts, policies and practices of the People's Republic of China (China) that are barriers to market access are unreasonable or discriminatory and impose a burden or restriction upon United States commerce. USTR also seeks public comment and will hold a public hearing concerning proposed determinations to impose increased duties of up to 100 percent *ad valorem* upon certain products of China to be drawn from the list of products set forth in the Annex to this notice.

DATES: Written comments from interested persons are requested by September 18, 1992; requests to testify at the public hearing are due on or before noon, Friday, September 11, 1992; written testimony is due on or before noon, Wednesday, September 16, 1992; the public hearing will be held on September 23, 1992, and will continue on September 24-25, 1992, if necessary; and rebuttal submissions are due on or before noon, Tuesday, September 29, 1992.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Daniel Leahy, Deputy Executive Director for Policy Coordination (202) 395-7210, for general information; Christopher Allen, Director of Press Relations (202) 395-6120, for media inquiries; Jeanne Davidson, Chairman, Section 301 Committee (202) 395-3432, for legal questions; and Dorothy Balaban, Special Assistant to the Section 301 Committee (202) 395-3432, for information concerning filing procedures and scheduling.

SUPPLEMENTARY INFORMATION: On October 10, 1991, at the direction of the President, USTR initiated an investigation pursuant to section 302(b) of the Trade Act to determine whether specific market access barriers in China are unreasonable or discriminatory and burden or restrict United States commerce. No later than October 10, 1992, USTR must determine whether the acts, policies, and practices under investigation are unreasonable or discriminatory and burden or restrict U.S. commerce. If that determination is affirmative, USTR must determine what action, if any, is appropriate in response.

The investigation included the following practices, which affected major United States export interests: (1) Failure to publish, among other things, laws, regulations, judicial decisions, and administrative rulings of general application pertaining to customs requirements, or to requirements, restrictions or prohibitions upon imports or affecting their sale or distribution in China; (2) selected product-specific and sector-specific import prohibitions and quantitative restrictions; (3) selected restrictions upon imports made effective through restrictive import licensing requirements; and (4) selected technical barriers to trade, including standards, testing, and certification requirements, and policy toward veterinary and phytosanitary standards that create unnecessary obstacles to trade.

These barriers were selected for investigation because they appeared to be inconsistent with the multilateral rules and trade liberalization principles of the General Agreement on Tariffs and Trade (GATT) and to the multilateral codes negotiated under GATT auspices, which would apply if China were a contracting party to the GATT and its related codes, or otherwise constituted significant barriers to U.S. trade.

Proposed Determinations and Action

Although officials of USTR and other United States agencies have conducted extensive consultations with Chinese government officials concerning these market access barriers, negotiations have failed to resolve all of the issues under investigation. Consequently, USTR proposes to determine pursuant to section 304(a)(1)(A)(ii) of the Trade Act that these market access barriers maintained by China are unreasonable or discriminatory and burden or restrict United States commerce.

If USTR makes an affirmative determination pursuant to section 304(a)(1)(A)(ii), USTR also must determine whether action by the United States is appropriate. If USTR determines that action is appropriate, section 301(b) of the Trade Act directs USTR to take all appropriate and feasible action to obtain the elimination of the unreasonable or discriminatory act, policy or practice.

Therefore, USTR proposes to take the following action, pursuant to the authority provided by section 301(c)(1)(B) of the Trade Act: To increase duties up to 100 percent *ad valorem* upon certain products of China. The products to be subjected to the increased tariffs will be drawn from the list of products set forth in the Annex to this notice. In making this determination, USTR will consider public comments submitted in accordance with the requirements set forth below.

Public Comment: Requirements for Submissions

USTR invites all interested persons to provide written comments concerning the proposed action. Specifically, interested persons may provide comments regarding: (1) The appropriateness of imposing increased duties upon the particular products listed in the annex to this notice; (2) the levels to which duties should be increased upon particular items and the appropriate effective date for the increased duties; and (3) the degree to which increased duties might have an adverse effect upon United States consumers of the products listed in the Annex.

Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) and are requested by September 18, 1992. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Office of the General Counsel, room 223, USTR, 600 17th Street, NW., Washington, DC 20506.

All comments submitted to the Section 301 Committee will be placed in a file (Docket 301-88) open to public inspection pursuant to 15 CFR 2006.13, except for comments containing confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Confidential business information submitted in accordance with 15 CFR 2006.15 must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of 20 copies, and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the file that is open to public inspection.

Public Hearing

A public hearing concerning the proposed action will be held on September 23, 1992, commencing at 9:30 a.m. and continuing on September 24-25, 1992, if necessary. The hearing will be held at the U.S. International Trade Commission, Courtroom A, room 100, 500 E Street, SW., Washington, DC 20436.

Interested persons desiring to testify orally must submit a written request by noon, on September 11, 1992, to Chairman, Section 301 Committee, room 223, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506. In their request they must provide the following information: (1) Name, address, telephone number, and firm or affiliation; and (2) a summary of their presentation. After consideration of a request to present oral testimony at the public hearing, the Chairman will notify the applicant of the approximate time of his or her testimony, if the request conforms to the requirements of 15 CFR 2006.8(a).

Additionally, persons presenting oral testimony must submit 20 copies of their complete written testimony, in English, by Wednesday, September 16, 1992, to the Chairman, Section 301 Committee, at the address listed above. All written submissions must be filed in accordance with 15 CFR 2006.8.

Testimony, both written and oral, shall be limited to the following subjects: (1) The appropriateness of imposing increased duties upon the particular products listed in the annex to this notice; (2) the levels to which duties should be increased upon particular items and the appropriate effective date for the increased duties; and (3) the degree to which increased duties might have an adverse effect upon United States consumers of the products listed in the Annex. Remarks at the hearing will be limited to five minutes.

To allow each party an opportunity to respond to information provided at the hearing by other parties, USTR will entertain rebuttal submissions filed by any interested party, in accordance with 15 CFR 2006.8(c) by noon on September 29, 1992.

Jeanne E. Davidson,

Chairman, Section 301 Committee.

BILLING CODE 3190-01-M

Annex

HTS Provision	Article
	[The bracketed language in this list has been included only to clarify the scope of the numbered provisions which will be subject to increased duties. Articles described in the bracketed language will not be subject to increased duties.]
	Natural honey:
	[Packaged for retail sale]
	Other:
0409.00.0040	Extra light amber and lighter
0410.00.00	Edible products of animal origin, not elsewhere specified or included
	Guts, bladders and stomachs of animals (other than fish), whole and pieces thereof:
	Prepared for use as sausage casings:
0504.00.0020	Hog
	Vegetables (uncooked or cooked by steaming or boiling in water), frozen:
	Leguminous vegetables, shelled or unshelled:
	Peas (Pisum sativum):
	[If entered during the period from July 1 to September 30, inclusive, in any year]
0710.21.40	Other
	Dried vegetables, whole, cut, sliced, broken or in powder, but not further prepared:
	[Potatoes whether or not cut or sliced but not further prepared; onions]
	Mushrooms and truffles:
	Mushrooms:
0712.30.10	Air dried or sun dried
	Other vegetables; mixtures of vegetables:
	[Carrots; olives; garlic; fennel, marjoram, parsley, savory, tarragon; tomatoes]
	Other vegetables; mixtures of vegetables:
	[Sweet corn seeds of a kind used for sowing]
0712.90.8090	Other
	Other nuts, fresh or dried, whether or not shelled or peeled:
	Other:
	Pignolia:
0802.90.25	Shelled

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HTS Provision	Article
	Tea:
	[Green tea (not fermented) in immediate packings of a content not exceeding 3 kg; other green tea (not fermented); black tea (fermented) and partly fermented tea, in immediate packings of a content not exceeding 3 kg]
0902.40.00	Other black tea (fermented) and other partly fermented tea
	Pepper of the genus Piper; dried or crushed or ground fruits of the genus Capsicum (peppers) or of the genus Pimenta (e.g., allspice):
	Fruits of the genus Capsicum or of the genus Pimenta (including allspice), dried or crushed or ground:
	Of the genus Capsicum (including cayenne pepper, paprika and red pepper):
	[Paprika; anaheim and ancho pepper]
	Other:
0904.20.60	Not ground
	Ginger, saffron, turmeric (curcuma), thyme, bay leaves, curry and other spices:
	Ginger:
0910.10.20	Not ground
	Seeds, fruits and spores, of a kind used for sowing:
	Other:
	Vegetable seeds:
	Other:
1209.91.8070	Tomato
	Hop cones, fresh or dried, whether or not ground, powdered or in the form of pellets; lupulin:
1210.10.00	Hop cones, neither ground nor powdered nor in the form of pellets
	Plants and parts of plants (including seeds and fruits), of a kind used primarily in perfumery, in pharmacy or for insecticidal, fungicidal or similar purposes, fresh or dried, whether or not cut, crushed or powdered:
1211.10.00	Licorice roots
	Ginseng roots:
1211.20.0020	Cultivated

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HTS Provision	Article
	Plants and parts of plants etc. (con.):
	Other:
	[Mint leaves; tonka beans]
	Other:
	Substances having anesthetic, prophylactic or therapeutic properties and principally used as medicaments or as ingredients in medicaments:
	[Cocoa leaves; psyllium seed husks]
1211.90.8030	Other
	[Basil; sage]
	Other:
1211.90.8080	Herbal teas and herbal infusions (single species, unmixed)
1211.90.8090	Other
	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
	Vegetable saps and extracts:
	[Opium]
1302.12.00	Of licorice
	[Of hops; of pyrethrum or of the roots of plants containing rotenone]
	Other:
	Ginseng; substances having anesthetic, prophylactic or therapeutic properties:
	[Poppy straw extract]
	Other:
	[Ginseng]
1302.19.4040	Other
	Vegetable products not elsewhere specified or included:
	[Raw vegetable materials of a kind used primarily in dyeing or tanning; cotton linters]
1404.90.00	Other
	Sugar confectionery (including white chocolate), not containing cocoa:
	[Chewing gum, whether or not sugar-coated]
	Other:
	Confections or sweetmeats ready for consumption:
	[Candied nuts]
	Other:
1704.90.2005	Put up for retail sale

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HTS Provision	Article
1804.00.00	Cocoa butter, fat and oil
	Pasta, whether or not cooked or stuffed (with meat or other substances) or otherwise prepared, such as spaghetti, macaroni, noodles, lasagna, gnocchi, ravioli, cannelloni; couscous, whether or not prepared:
	Uncooked pasta, not stuffed or otherwise prepared:
	[Containing eggs]
	Other:
1902.19.20	Exclusively pasta
	Mushrooms and truffles, prepared or preserved otherwise than by vinegar or acetic acid:
	Mushrooms:
	[Straw mushrooms]
	Other:
	In containers each holding not more than 255 g:
	[Whole (including buttons); sliced]
2003.10.0037	Other
	In containers each holding more than 255 g:
	[Whole (including buttons); sliced]
2003.10.0053	Other
	Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen:
	Other vegetables and mixtures of vegetables:
	Water chestnuts:
2005.90.4020	Whole
2005.90.60	Bamboo shoots in airtight containers
	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included:
	Citrus fruit:
	[Peel; pulp]
	Other:
	Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids:
	Mandarins:
2008.30.52	Satsumas, in airtight containers, for an aggregate quantity entered in any calendar year not to exceed 40,000 metric tons
	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:
2103.10.00	Soy sauce

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HTS Provision	Article
	Petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by weight 70 percent or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations:
	Motor fuel:
	Gasoline:
2710.00.1515	Unleaded
	Lubricating oils and greases, with or without additives:
	Oils:
	[Aviation engine lubricating oils]
2710.00.3020	Automotive, diesel or marine engine lubricating oils
	[Turbine lubricating oil, including marine; automotive gear oils; steam cylinder oils; quenching or cutting oils]
2710.00.3080	Other
	Petroleum jelly; paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes and similar products obtained by synthesis or by other processes, whether or not colored:
2712.20.00	Paraffin wax containing by weight less than 0.75 percent of oil
	Provitamins and vitamins, natural or reproduced by synthesis (including natural concentrates), derivatives thereof used primarily as vitamins, and intermixtures of the foregoing, whether or not in any solvent:
	Vitamins and their derivatives, unmixed:
2936.27.00	Vitamin C (Ascorbic acid) and its derivatives
	Vegetable alkaloids, natural or reproduced by synthesis, and their salts, ethers, esters and other derivatives:
2939.30.00	Caffeine and its salts
	Ephedrines and their salts:
2939.40.10	Pseudoephedrine and its salts
2939.40.50	Other
	Essential oils (terpeneless or not), including concretes and absolutes; resinoids; concentrates of essential oils in fats, in fixed oils, in waxes or the like, obtained by enfleurage or maceration; terpenic by-products of the deterpenation of essential oils; aqueous distillates and aqueous solutions of essential oils:
	Essential oils other than those of citrus fruit:
	[Of geranium; of jasmine; of lavender or of lavandin; of peppermint (Mentha piperita); of other mints; of vetiver]

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HTS Provision	Article
	Essential oils etc. (con.):
	Essential oils other than those of citrus fruit (con.):
	Other:
	[Of eucalyptus; of orris]
	Other:
	[Of anise; of caraway; of cassia; of cedarwood; of citronella; of clove; of lemongrass; of linaloe or bois de rose; of nutmeg; of onion or garlic; of patchouli; of petitgrain; of rose (attar of roses); of rosemary; of sandalwood; of sassafras including Ocotea cymbarum; of ylang ylang or cananga]
3301.29.5050	Other
3406.00.00	Candles, tapers and the like
	Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics:
3923.10.00	Boxes, cases, crates and similar articles
	Sacks and bags (including cones):
	[Of polymers of ethylene]
3923.29.00	Of other plastics
	Tableware, kitchenware, other household articles and toilet articles, of plastics:
	Tableware and kitchenware:
	[Salt, pepper, mustard and ketchup dispensers and similar dispensers]
3924.10.20	Plates, cups, saucers, soup bowls, cereal bowls, sugar bowls, creamers, gravy boats, serving dishes and platters
	[Trays]
3924.10.50	Other
	Other:
3924.90.10	Curtains and drapes, including panels and valances; napkins, table covers, mats, scarves, runners, doilies, centerpieces, antimacassars and furniture slipcovers; and like furnishings
3924.90.20	Picture frames
	Other articles of plastics and articles of other materials of headings 3901 to 3914:
3926.10.00	Office or school supplies
	Articles of apparel and clothing accessories (including gloves):
	[Gloves]
	Other:
	[Aprons]
3926.20.5050	Other

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HTS Provision	Article
	Other articles of plastics etc. (con.):
	[Fittings for furniture, coachwork or the like]
3926.40.00	Statuettes and other ornamental articles
	Other:
	[Buckets and pails; nursing nipples and pacifiers; ice bags; douche bags, enema bags, colostomy bags, hot water bottles, and fittings therefor; invalid and similar nursing cushions; crutch tips and grips; dress shields; finger cots; pessaries; prophylactics; sanitary belts; bulbs for syringes; syringes (other than hypodermic syringes) and fittings therefor, not in part of glass or metal; handles and knobs, not elsewhere specified or included, of plastics; parts for yachts or pleasure boats of heading 8903; parts of canoes, racing shells, pneumatic craft and pleasure boats which are not of a type designed to be principally used with motors or sails]
	Beads, bugles and spangles, not strung (except temporarily) and not set; articles thereof, not elsewhere specified or included:
	[Handbags]
3926.90.35	Other
	[Imitation gemstones; gaskets, washers and other seals; frames or mounts for photographic slides; belting and belts, for machinery; clothespins]
3926.90.75	Pneumatic mattresses and other inflatable articles, not elsewhere specified or included
	[Waterbed mattresses and liners, and parts of the foregoing; empty cartridges and cassettes for typewriter and machine ribbons; fasteners, in clips suitable for use in a mechanical attaching device; flexible plastic document binders with tabs, rolled or flat]
	Other:
	[Laboratory ware; reflective triangular warning signs for road use]
3926.90.9090	Other
	Articles of apparel and clothing accessories (including gloves), for all purposes, of vulcanized rubber other than hard rubber:
	Gloves:
4015.11.00	Surgical and medical

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HTS Provision	Article
	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of plastic sheeting, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials:
	Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:
	With outer surface of leather, of composition leather, or of patent leather:
	[Attache cases, brief cases, school satchels, occupational luggage cases and similar containers]
4202.11.0090	Other
	[Handbags, whether or not with shoulder strap, including those without handle; articles of a kind normally carried in the pocket or in the handbag]
	Other:
	With outer surface of leather, of composition leather or of patent leather:
	[Golf bags; travel, sports and similar bags]
4202.91.0090	Other
	With outer surface of plastic sheeting or of textile materials:
	Travel, sports and similar bags:
	With outer surface of textile materials:
	Of vegetable fibers and not of pile or tufted construction:
4202.92.15	Of cotton
	[Musical instrument cases]
	Other:
	Other:
	With outer surface of textile materials:
	Other:
4202.92.9020	Of man-made fibers

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HTS Provision	Article
	Articles of apparel and clothing accessories, of leather or of composition leather:
	Gloves, mittens and mitts:
	[Specially designed for use in sports]
	Other:
	Gloves of horsehide or cowhide (except calfskin) leather:
	Wholly of leather:
4203.29.05	With fourchettes or sidewalls which, at a minimum, extend from fingertip to fingertip between each of the four fingers
	Other articles of leather or of composition leather:
	[Shoelaces; straps and strops]
	Other:
	[Of reptile leather]
4205.00.80	Other
	Articles of apparel, clothing accessories and other articles of furskin:
	Articles of apparel and clothing accessories:
4303.10.0030	Of mink
	Wood marquetry and inlaid wood; caskets and cases for jewelry or cutlery and similar articles, of wood; statuettes and other ornaments, of wood; wooden articles of furniture not falling within chapter 94:
4420.10.00	Statuettes and other ornaments, of wood
	Other:
	Jewelry boxes, silverware chests, cigar and cigarette boxes, microscope cases, tool or utensil cases and similar boxes, cases and chests, all the foregoing of wood:
	[Cigar and cigarette boxes]
	Other:
4420.90.60	Lined with textile fabrics
	Basketwork, wickerwork and other articles, made directly to shape from plaiting materials or made up from articles of heading 4601; articles of loofah:
	Of vegetable materials:
	[Fishing baskets or creels]
	Other baskets and bags, whether or not lined:
	[Of bamboo; of willow]
4602.10.13	Of rattan or of palm leaf
4602.10.19	Other
	[Luggage, handbags and flatgoods, whether or not lined]

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HTS Provision	Article
	Basketwork, wickerwork and other articles, etc. (con.):
	Of vegetable materials (con.):
	Other:
	[Of one or more of the materials bamboo, rattan, willow or wood]
4602.10.50	Other
	Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like:
	[Sacks and bags, having a base of a width of 40 cm or more]
	Other sacks and bags, including cones:
	[Shipping sacks and multiwall bags, other than grocers' bags]
4819.40.0040	Other
	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles, exercise books, blotting pads, binders (looseleaf or other), folders, file covers, manifold business forms, interleaved carbon sets and other articles of stationery, of paper or paperboard; albums for samples or for collections and book covers (including cover boards and book jackets) of paper or paperboard:
	Registers, account books, notebooks, order books, receipt books, letter pads, memorandum pads, diaries and similar articles:
	Diaries, notebooks and address books, bound; memorandum pads, letter pads and similar articles:
4820.10.2010	Diaries and address books
4820.50.00	Albums for samples or for collections
	Printed or illustrated postcards; printed cards bearing personal greetings, messages or announcements, whether or not illustrated, with or without envelopes or trimmings:
	[Postcards]
	Other:
4909.00.4020	Greeting cards
	T-shirts, singlets, tank tops and similar garments, knitted or crocheted:
	Of other textile materials:
	Other:
	Women's or girls':
6109.90.2020	Containing 70 percent or more by weight of silk or silk waste

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HTS Provision	Article
	Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:
	Of other textile materials:
	Sweaters:
	Men's or boys':
	Other:
	Of silk:
6110.90.0016	Containing 70 percent or more by weight of silk or silk waste
	Women's or girls':
	Other:
	Of silk:
6110.90.0032	Containing 70 percent or more by weight of silk or silk waste
	Men's or boys' suits, ensembles, suit-type jackets, blazers, trousers, bib and brace overalls, breeches and shorts (other than swimwear):
	Suit-type jackets and blazers:
	Of other textile materials:
	Other:
	Other:
	Of silk:
6203.39.4040	Containing 70 percent or more by weight of silk or silk waste
	Trousers, bib and brace overalls, breeches and shorts:
	Of other textile materials:
	Other:
	Trousers and breeches:
	Other:
	Of silk:
6203.49.3035	Containing 70 percent or more by weight of silk or silk waste
	Women's or girls' suits, ensembles, suit-type jackets and blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):
	Skirts and divided skirts:
	Of other textile materials:
	Other:
	Other:
	Of silk:
6204.59.4040	Containing 70 percent or more by weight of silk or silk waste
	Men's or boys' shirts:
	Of other textile materials:
	Of silk or silk waste:
	Other:
6205.90.2040	Containing 70 percent or more by weight of silk or silk waste

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HTS Provision	Article
	Handkerchiefs:
	Of silk or silk waste:
6213.10.10	Containing 70 percent or more by weight of silk or silk waste
	Footwear, with outer soles of rubber, plastics, leather or composition leather and uppers of leather:
	[Sports footwear; footwear with outer soles of leather, and uppers which consist of leather straps across the instep and around the big toe; footwear made on a base or platform of wood, not having an inner sole or a protective metal toe-cap]
	Other footwear, incorporating a protective metal toe-cap:
	Welt footwear:
	[With pigskin uppers]
6403.40.3090	Other
	[Other footwear with outer soles of leather]
	Other footwear:
	Covering the ankle:
	Welt footwear:
	[Work footwear]
	Other:
	For men:
	[With pigskin uppers]
6403.91.3060	Other
	Other:
	For men, youths and boys:
	[Work footwear]
	Other:
	Tennis shoes, basketball shoes, gym shoes, training shoes and the like for men:
	[With pigskin uppers]
6403.91.6040	Other
	For other persons
	[Work footwear]
	Other:
	For women:
	[With pigskin uppers]
6403.91.9040	Other
6403.91.9070	For infants

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HTS Provision	Article
	Footwear with outer soles of rubber, plastics, etc. (con.):
	Other footwear (con.):
	Other:
	[Footwear made on a base or platform of wood]
	Other:
	[Welt footwear]
	Other:
	For men, youths and boys:
	[House slippers; work footwear]
	Other:
	Tennis shoes, basketball shoes, gym shoes, training shoes and the like for men:
	[With pigskin uppers]
6403.99.6040	Other
	For other persons:
	Valued over $2.50/pair:
	[House slippers; footwear]
	Other:
	Tennis shoes, basketball shoes, and the like for women and misses:
	[With pigskin uppers]
6403.99.9030	Other
	[Tennis shoes, basketball shoes, and the like for children and infants]
	Other:
	For women:
	[With pigskin uppers]
6403.99.9060	Other
6403.99.9070	For misses
6403.99.9080	For children
6403.99.9090	For infants

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HTS Provision	Article
	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:
	Footwear with outer soles of rubber or plastics:
	Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like:
	Having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to chapter 64 of the HTS) is leather:
6404.11.2030	For men
6404.11.2060	For women
	Other:
	Valued over $6.50 but not over $12/pair:
6404.11.8030	For men
	Other:
	Footwear having uppers of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as those mentioned in note 4(a) to chapter 64 of the HTS) is leather:
6404.19.1520	For men
	Footwear with outer soles of leather or composition leather:
	Not over 50 percent by weight of rubber or plastics and not over 50 percent by weight of textile materials and rubber or plastics with at least 10 percent by weight being rubber or plastics:
	Valued over $2.50/pair:
6404.20.4060	For women
	Parts of footwear; removable insoles, heel cushions and similar articles; gaiters, leggings and similar articles, and parts thereof:
	Uppers and parts thereof, other than stiffeners:
	[Formed uppers]
	Other:
	[Of rubber or plastics; of leather; of textile materials of which over 50 percent of the external surface area (including any leather accessories or reinforcements such as mentioned in note 4(a) to chapter 64 of the HTS) is leather]

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HTS Provision	Article
	Parts of footwear; removable insoles, etc. (con.):
	Uppers and parts thereof, etc. (con.):
	Other (con):
	Other:
	Of cotton:
	[Uppers of which less than 50 percent of the external surface area (including any leather, rubber or plastics accessories or reinforcements such as mentioned in note 4(a) to chapter 64 of the HTS) is textile materials]
6406.10.77	Other
	Umbrellas and sun umbrellas (including walking-stick umbrellas, garden umbrellas and similar umbrellas):
6601.10.00	Garden or similar umbrellas
	Tableware, kitchenware, other household articles and toilet articles, of porcelain or china:
	Tableware and kitchenware:
	[Hotel or restaurant ware and other ware not household ware]
	Other:
	[Of bone chinaware]
	Other:
	Available in specified sets:
	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is over $56:
6911.10.3910	Plates not over 27.9 cm in maximum dimension; teacups and saucers; mugs; soups, fruits and cereals, the foregoing not over 22.9 cm in maximum dimension
	Other:
	[Steins with permanently attached pewter lids, candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers and salt and pepper shaker sets]

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HTS Provision	Article
	Tableware, kitchenware, other household articles, etc. (con.):
	Tableware and kitchenware (con.):
	Other (con.):
	Other (con.):
	Other (con.):
6911.10.45	Mugs and other steins
	[Cups valued over $8 per dozen; saucers valued over $5.25 per dozen; soups, oatmeals and cereals valued over $9.30 per dozen; plates not over 22.9 cm in maximum diameter and valued over $8.50 per dozen; plates over 22.9 but not over 27.9 cm in maximum diameter and valued over $11.50 per dozen; platters or chop dishes valued over $40 per dozen; sugars valued over $23 per dozen; creamers valued over $20 per dozen; beverage servers valued over $50 per dozen; serviette rings]
6911.10.80	Other
	Other:
	[Toilet articles]
6911.90.0050	Other

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HTS Provision	Article
	Ceramic tableware, kitchenware, other household articles and toilet articles, other than of porcelain or china:
	Tableware and kitchenware:
	[Of coarse-grained earthenware, or of coarse-grained stoneware; of fine-grained earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze which, on teapots, may be any color, but which, on other articles, must be mottled, streaked or solidly colored brown to black with metallic oxide or salt]
	Other:
	[Hotel or restaurant ware and other ware not household ware]
	Other:
	Available in specified sets:
	In any pattern for which the aggregate value of the articles listed in additional U.S. note 6(b) of chapter 69 of the HTS is over $38:
6912.00.3910	Plates not over 27.9 cm in maximum dimension; teacups and saucers; mugs; soups, fruits and cereals, the foregoing not over 22.9 cm in maximum dimension
	Other:
	[Steins with permanently attached pewter lids; candy boxes, decanters, punch bowls, pretzel dishes, tidbit dishes, tiered servers, bonbon dishes, egg cups, spoons and spoon rests, oil and vinegar sets, tumblers and salt and pepper shaker sets]
6912.00.44	Mugs and other steins
	[Cups valued over $5.25 per dozen; saucers valued over $3 per dozen; soups, oatmeals and cereals valued over $6 per dozen; plates not over 22.9 cm in maximum diameter and valued over $6 per dozen; plates over 22.9 but not over 27.9 cm in maximum diameter and valued over $8.50 per dozen; platters or chop dishes valued over $35 per dozen; sugars valued over $21 per dozen; creamers valued over $15 per dozen; beverage servers valued over $42 per dozen; serviette rings]
6912.00.48	Other
6912.00.50	Other

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HTS Provision	Article
	Statuettes and other ornamental ceramic articles:
	Of porcelain or china:
	[Statues, statuettes and handmade flowers, valued over $2.50 each and produced by professional sculptors or directly from molds made from original models produced by professional sculptors]
	Other:
	[Of bone chinaware]
6913.10.50	Other
	Other:
	[Statues, statuettes and handmade flowers, valued over $2.50 each and produced by professional sculptors or directly from molds made from original models produced by professional sculptors]
	Other:
	[Of ceramic tile; of earthenware, whether or not decorated, having a reddish-colored body and a lustrous glaze, and mottled, streaked or solidly colored brown to black with metallic oxide or salt]
6913.90.50	Other
	Other ceramic articles:
6914.10.00	Of porcelain or china
	Glass mirrors, whether or not framed, including rear-view mirrors:
	[Rear-view mirrors for vehicles]
	Other:
	Framed:
7009.92.10	Not over 929 cm^2 in reflecting area
	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal:
	Of precious metal whether or not plated or clad with precious metal:
	[Of silver, whether or not plated or clad with other precious metal]
	Of other precious metal, whether or not plated or clad with precious metal:
	[Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles provided for in heading 7113 of the HTS]

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HTS Provision	Article
	Articles of jewelry and parts thereof etc. (con.):
	Of precious metal whether or not plated etc. (con.):
	Of other precious metal etc. (con.):
	Other:
	[Necklaces and neck chains, of gold; clasps and parts thereof]
7113.19.50	Other
	Imitation jewelry:
	Of base metal, whether or not plated with precious metal:
	[Cuff links and studs]
	Other:
	[Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pearls or imitation gemstones, suitable for use in the manufacture of articles provided for in heading 7117 of the HTS; religious articles of a purely devotional character designed to be worn on apparel or carried on or about or attached to the person]
7117.19.50	Other
	Other:
	[Necklaces, valued not over 30 cents per dozen, composed wholly of plastic shapes mounted on fiber string; religious articles of a purely devotional character designed to be worn on apparel or carried on or about or attached to the person]
	Other:
7117.90.50	Valued over 20 cents per dozen pieces or parts
	Coin:
	[Coin (other than gold coin), not being legal tender]
	Other:
	Gold:
	[Canadian maple leaf]
7118.90.0019	Other
	[Platinum]
7118.90.0055	Other

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HTS Provision	Article
	Tube or pipe fittings (for example, couplings, elbows, sleeves), of iron or steel:
	[Cast fittings; other, of stainless steel]
	Other:
	Flanges:
	[Not machined, not tooled and not otherwise processed after forging]
	Other:
	With an inside diameter of less than 360 mm:
7307.91.5010	Of iron or nonalloy steel
	With an inside diameter of 360 mm or more:
7307.91.5050	Of iron or nonalloy steel
	Butt welding fittings:
	With an inside diameter of less than 360 mm:
7307.93.30	Of iron or nonalloy steel
	Cloth (including endless bands), grill, netting and fencing, of iron or steel wire; expanded metal of iron or steel:
	[Grill, netting and fencing, welded at the intersection, of wire with a maximum cross-sectional dimension of 3 mm or more and having a mesh size of 100 cm^2 or more]
	Other grill, netting and fencing, welded at the intersection:
	[Wire fencing coated or plated with zinc, whether or not covered with plastic material]
7314.30.50	Other
	Chain and parts thereof, of iron or steel:
	Articulated link chain and parts thereof:
7315.11.00	Roller chain
	Screws, bolts, nuts, coach screws, screw hooks; rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:
	Threaded articles:
	[Coach screws; other wood screws; screw hooks and screw rings; self-tapping screws]
	Other screws and bolts, whether or not with their nuts or washers:
	Bolts and bolts and their nuts or washers entered in the same shipment:
	Having shanks or threads with a diameter of 6 mm or more:
	[Track bolts; structural bolts; bent bolts]
	Other:
7318.15.2060	With hexagonal heads

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HTS Provision	Article
	Screws, bolts, nuts, coach screws, screw hooks, etc. (con.):
	Threaded articles (con.):
	Other screws and bolts, etc. (con.):
7318.15.40	Machine screws 9.5 mm or more in length and 3.2 mm or more in diameter (not including cap screws)
	Non-threaded articles:
	[Spring washers and other lock washers]
7318.22.00	Other washers
	Table, kitchen or other household articles and parts thereof, of iron or steel; iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like, of iron or steel:
	[Iron or steel wool; pot scourers and scouring or polishing pads, gloves and the like]
	Other:
	[Of cast iron, not enameled; of cast iron, enameled]
	Of stainless steel:
	Cooking and kitchen ware:
	[Teakettles]
	Other:
7323.93.0060	Kitchen ware
	[Of iron (other than cast iron) or steel, enameled]
	Other:
	Coated or plated with precious metal:
7323.99.10	Coated or plated with silver
	Not coated or plated with precious metal:
7323.99.50	Of tinplate
	Other:
	[Cookingware]
7323.99.90	Other
	Other cast articles of iron or steel:
	Of nonmalleable cast iron:
	[Manhole covers, rings and frames]
7325.10.0050	Other

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HTS Provision	Article
	Other articles of copper:
	[Chain and parts thereof]
	Other:
	[Cast, molded, stamped or forged, but not further worked]
	Other:
	[Containers of a kind normally carried on the person, in the pocket or in the handbag]
	Other:
	[Coated or plated with precious metal]
	Other:
	[Brass plumbing goods not elsewhere specified or included]
7419.99.5050	Other
	Table, kitchen or other household articles and parts thereof, of aluminum; pot scourers and scouring or polishing pads, gloves and the like, of aluminum; sanitary ware and parts thereof, of aluminum:
	Table, kitchen or other household articles and parts thereof; pot scourers and scouring or polishing pads, gloves and the like:
	Cooking and kitchen ware:
	Enameled or glazed or containing nonstick interior finishes:
	[Cast]
7615.10.30	Other
	Other articles of aluminum:
	[Nails, tacks, staples (other than those of heading 8305 of the HTS), screws, bolts, nuts, screw hooks, rivets, cotters, cotter-pins, washers and similar articles]
	Other:
	[Ladders; venetian blinds and parts thereof; hangers and supports for pipes and tubes]
	Other:
	[Castings; forgings]
	Other:
	[Articles of wire]
7616.90.0080	Other
	Unwrought tin:
8001.10.00	Tin, not alloyed
	Tin alloys:
8001.20.0010	Containing, by weight, 5 percent or less of lead

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HTS Provision	Article
	Files, rasps, pliers (including cutting pliers), pincers, tweezers, metal cutting shears, pipe-cutters, bolt cutters, perforating punches and similar handtools, and base metal parts thereof:
	Pliers (including cutting pliers), pincers, tweezers and similar tools, and parts thereof:
	[Tweezers]
	Other:
	[Slip joint pliers]
	Other (except parts):
8203.20.6030	Pliers
	Hand-operated spanners and wrenches (including torque meter wrenches but not including tap wrenches); socket wrenches, with or without handles, drives or extensions; base metal parts thereof:
	Hand-operated spanners and wrenches, and parts thereof:
8204.11.00	Nonadjustable, and parts thereof
8204.12.00	Adjustable, and parts thereof
	Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal-operated grinding wheels with frameworks; base metal parts thereof:
	Hammers and sledge hammers, and parts thereof:
8205.20.30	With heads not over 1.5 kg each
8205.40.00	Screwdrivers, and parts thereof
	Other handtools (including glass cutters) and parts thereof:
	Household tools, and parts thereof:
	Of iron or steel:
	[Carving and butcher steels, with or without handles]
	Other (including parts):
8205.51.3030	Kitchen and table implements
	Vises, clamps and the like, and parts thereof:
	Vises:
	[Pipe]
8205.70.0060	Other

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HTS Provision	Article
	Knives with cutting blades, serrated or not (including pruning knives), other than knives of heading 8208 of the HTS, and blades and other base metal parts thereof:
	[Sets of assorted articles]
	Other:
	Table knives having fixed blades, and parts thereof:
	[Knives with silver-plated handles]
	Knives with stainless steel handles:
	[With handles containing nickel or containing over 10 percent by weight of manganese]
	Other:
	[Valued under 25¢ each, not over 25.9 cm in overall length]
8211.91.40	Other
	Knives having other than fixed blades, and parts thereof (except blades):
8211.93.0030	Pen knives, pocket knives and other knives which have folding blades
	Other articles of cutlery (for example, hairclippers, butchers' or kitchen cleavers, chopping or mincing knives, paper knives); manicure or pedicure sets and instruments (including nail files); base metal parts thereof:
8214.10.00	Paper knives, letter openers, erasing knives, pencil sharpeners (nonmechanical) and blades and other parts thereof
	Spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs, and similar kitchen or tableware; and base metal parts thereof:
	[Sets of assorted articles containing at least one article plated with precious metal; other sets of assorted articles]
	Other:
	[Plated with precious metal]
	Other:
	Forks:
	With stainless steel handles:
	[With handles containing nickel or containing over 10 percent by weight of manganese]
	Other:
8215.99.10	Valued under 25¢ each
	Spoons and ladles:
	With stainless steel handles:
8215.99.30	Spoons valued under 25¢ each

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HTS Provision	Article
	Padlocks and locks (key, combination or electrically operated), of base metal; clasps and frames with clasps, incorporating locks, of base metal; keys and parts of any of the foregoing articles, of base metal:
	Padlocks:
	Of cylinder or pin tumbler construction:
8301.10.80	Over 3.8 cm but not over 6.4 cm in width
	[Locks of a kind used on motor vehicles; locks of a kind used for furniture]
	Other locks:
	[Luggage locks]
	Other:
8301.40.6030	Door locks, locksets and other locks suitable for use with interior or exterior doors (except garage, overhead or sliding doors)
	Fittings for looseleaf binders or files, letter clips, letter corners, paper clips, indexing tags and similar office articles, and parts thereof, of base metal; staples in strips (for example, for offices, upholstery, packaging), of base metal:
	Fittings for looseleaf binders or files:
8305.10.0010	Ring binder mechanisms
	Bells, gongs and the like, nonelectric, of base metal; statuettes and other ornaments, of base metal; photograph, picture or similar frames, of base metal; mirrors of base metal; and base metal parts thereof:
	Statuettes and other ornaments, and parts thereof:
	[Plated with precious metal, and parts thereof]
8306.29.00	Other
8306.30.00	Photograph, picture or similar frames; mirrors; and parts thereof
	Air or vacuum pumps, air or other gas compressors and fans; ventilating or recycling hoods incorporating a fan, whether or not fitted with filters; parts thereof:
	[Vacuum pumps; hand- or foot-operated air pumps; compressors of a kind used in refrigerating equipment (including air conditioning); air compressors mounted on a wheeled chassis for towing]
	Fans:
	Table, floor, wall, window, ceiling or roof fans, with a self-contained electric motor of an output not exceeding 125 W:
	For permanent installation:
8414.51.0030	Ceiling fans
8414.51.0090	Other

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HTS Provision	Article
	Air or vacuum pumps, air or other gas compressors etc. (con.):
	[Hoods having a maximum horizontal side not exceeding 120 cm]
	Other, except parts:
	Air compressors:
	Portable:
8414.80.1085	Under 0.57 cubic meters per minute
	Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps, other than the air conditioning machines of heading 8415 of the HTS; parts thereof:
	Refrigerators, household type:
	Compression type:
8418.21.0010	Having a refrigerated volume of under 184 liters
	Pulley tackle and hoists other than skip hoists; winches and capstans; jacks:
	Jacks; hoists of a kind used for raising vehicles:
	[Built-in jacking systems of a type used in garages]
8425.42.00	Other jacks and hoists, hydraulic
8425.49.00	Other
	Lathes for removing metal:
	Horizontal lathes:
	[Numerically controlled]
	Other:
	[Used or rebuilt; other, valued under $3,025 each]
	Other:
8458.19.0030	Engine or toolroom lathes
	Calculating machines; accounting machines, cash registers, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device:
8470.10.00	Electronic calculators capable of operation without an external source of power
	Other electronic calculating machines:
8470.21.00	Incorporating a printing device
8470.29.00	Other
	Machinery for sorting, screening, separating, washing, crushing, grinding, mixing or kneading earth, stone, ores or other mineral substances, in solid (including powder or paste) form; machinery for agglomerating, shaping or molding solid mineral fuels, ceramic paste, unhardened cements, plastering materials or other mineral products in powder or paste form; machines for forming foundry molds of sand; parts thereof:
8474.20.00	Crushing or grinding machines

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HTS Provision	Article
	Electric motors and generators (excluding generating sets):
	Motors of an output not exceeding 37.5 W:
	Of under 18.65 W:
	[Synchronous, valued not over $4 each]
	Other:
8501.10.4020	AC
	DC:
	[Brushless]
8501.10.4060	Other
	Of 18.65 W or more but not exceeding 37.5 W:
	DC:
	[Brushless]
8501.10.6060	Other
	Other DC motors; DC generators:
	Of an output not exceeding 750 W:
	Motors:
8501.31.40	Exceeding 74.6 W but not exceeding 735 W
	Other AC motors, single-phase:
	Of an output exceeding 74.6 W but not exceeding 735 W:
	[Gear motors]
8501.40.4040	Other
	Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:
8504.10.00	Ballasts for discharge lamps or tubes
	[Liquid dielectric transformers]
	Other transformers:
	Having a power handling capacity not exceeding 1 kVA:
8504.31.20	Unrated
	Static converters:
	Rectifiers and rectifying apparatus:
	Power supplies:
8504.40.0004	With a power output not exceeding 50 W
	[With a power output exceeding 50 W but not exceeding 500 W]
8504.40.0015	Other
8504.40.0025	Other
	[Inverters]
8504.40.0060	Other
	Electromagnets; permanent magnets and articles intended to become permanent magnets after magnetization; electromagnetic or permanent magnet chucks, clamps and similar holding devices; electromagnetic couplings, clutches and brakes; electromagnetic lifting heads; parts thereof:
	Permanent magnets and articles intended to become permanent magnets after magnetization:
8505.11.00	Of metal
8505.19.00	Other

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HTS Provision	Article
	Electromechanical domestic appliances, with self-contained electric motor; parts thereof:
	Food grinders, processors and mixers; fruit or vegetable juice extractors:
8509.40.0030	Juice extractors
	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545 of the HTS; parts thereof:
	Electric space heating apparatus and electric soil heating apparatus:
	Other:
	Portable space heaters:
	[Fan-forced]
8516.29.0060	Other
	Electric flatirons:
8516.40.20	Travel type
8516.40.40	Other
	Other electrothermic appliances:
	Coffee or tea makers:
	Coffee makers:
8516.71.0020	Automatic drip and pump type
	[Percolator]
8516.71.0060	Other
8516.71.0080	Other
	Electric heating resistors:
	[Assembled only with simple insulated former and electrical connections, used for anti-icing or deicing]
8516.80.80	Other
	Microphones and stands therefor; loudspeakers, whether or not mounted in their enclosures; headphones, earphones and combined microphone/speaker sets; audio-frequency electric amplifiers; electric sound amplifier sets; parts thereof:
	Microphones and stands therefor:
8518.10.0020	Microphones
	Loudspeakers, whether or not mounted in their enclosures:
	[Single loudspeakers, mounted in their enclosures; multiple loudspeakers, mounted in the same enclosure]
8518.29.00	Other
	Headphones, earphones and combined microphone/speaker sets:
	[Telephone handsets]
8518.30.20	Other
	Audio-frequency electric amplifiers:
	[For use as repeaters in line telephony]
8518.40.20	Other

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HTS Provision	Article
	Turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device:
	[Coin- or token-operated record players; other record players; turntables; transcribing machines]
	Other sound reproducing apparatus:
	Cassette type:
	[Designed exclusively for motor vehicle installation]
	Other:
8519.91.0040	AC only
	Other:
8519.91.0060	Without speakers, other than headphones, ear phones or headsets
8519.91.0080	Other
	Other:
8519.99.0045	Audio laser disc players (compact disc)
	Magnetic tape recorders and other sound recording apparatus, whether or not incorporating a sound reproducing device:
	[Dictating machines not capable of operating without an external source of power]
8520.20.00	Telephone answering machines
	Other magnetic tape recorders incorporating sound reproducing apparatus:
	Cassette type:
8520.31.0020	Microcassette type
	Other:
	[AC only]
	Other:
8520.31.0070	Without speakers other than headphones, earphones or headsets
8520.31.0090	Other
8520.90.00	Other
	Parts and accessories of apparatus of headings 8519 to 8521 of the HTS:
	[Pickup cartridges]
	Other:
	[Assemblies and subassemblies of articles provided for in subheading 8520.90 of the HTS, consisting of two or more pieces fastened or joined together; parts of telephone answering machines]
	Other:
	[Magnetic recording and reproducing heads]
8522.90.9080	Other

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HTS Provision	Article
	Prepared unrecorded media for sound recording or similar recording of other phenomena, other than products of chapter 37 of the HTS:
	Magnetic tapes:
8523.11.00	Of a width not exceeding 4 mm
	Of a width exceeding 6.5 mm:
	Suitable for video recording:
8523.13.0040	In cassettes
8523.20.00	Magnetic discs
	Transmission apparatus for radiotelephony, radiotelegraphy, radiobroadcasting or television, whether or not incorporating reception apparatus or sound recording or reproducing apparatus; television cameras:
	Transmission apparatus:
	Television:
8525.10.2020	Converters, decoders, preamplifiers, line amplifiers, distribution amplifiers and other amplifiers; directional couplers and other couplers; all the foregoing designed for cable or closed-circuit television applications
	Transmission apparatus incorporating reception apparatus:
	Transceivers:
	Citizens Band (CB):
	[Hand-held]
8525.20.15	Other
	Other:
8525.20.50	Cordless handset telephones
	Other:
8525.20.6020	Radio telephones designed for installation in motor vehicles for the Public Cellular Radiotelecommunication Service
	Reception apparatus for radiotelephony, radiotelegraphy or radiobroadcasting, whether or not combined, in the same housing, with sound recording or reproducing apparatus or a clock:
	Radiobroadcast receivers not capable of operating without an external source of power, of a kind used in motor vehicles, including apparatus capable of receiving also radiotelephony or radiotelegraphy:
	Combined with sound recording or reproducing apparatus:
	Radio-tape player combinations:
	Cassette type:
8527.21.1010	Stereo
8527.21.1020	Other

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HTS Provision	Article
	Television receivers (including video monitors and video projection television receivers), whether or not combined, in the same housing, with radiobroadcast receivers or sound or video recording or reproducing apparatus:
	Color:
	[Video recording or reproducing apparatus incorporating a television tuner]
	Other television receivers:
	Having a picture tube:
	[Combined with radiobroadcast receivers or sound or video recording or reproducing apparatus]
	Other:
	Television receivers containing in a single housing apparatus for receiving and displaying from off-the-air each standard U.S. broadcast channel, with or without external speakers, having a single picture tube intended for direct viewing, with a video display diagonal:
8528.10.8015	Exceeding 26 cm but not exceeding 33 cm
8528.10.8020	Exceeding 33 cm but not exceeding 35 cm
	Black and white or other monochrome:
	Combined with radiobroadcast receivers or sound or video recording or reproducing apparatus, having a video display diagonal:
8528.20.0005	Not exceeding 16 cm
	Other:
	Television receivers containing in a single housing apparatus for receiving and displaying from off-the-air each standard U.S. broadcast channel, with or without external speakers, having a single picture tube intended for direct viewing, with a video display diagonal:
8528.20.0020	Not exceeding 17 cm
8528.20.0035	Exceeding 26 cm but not exceeding 33 cm
	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528 of the HTS:
	Antennas and antenna reflectors of all kinds; parts suitable for use therewith:
	[Television; radar, radio navigational aid and radio remote control]
8529.10.60	Other

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HTS Provision	Article
	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528 of the HTS (con.):
	Other:
	Of television apparatus:
	[Tuners; printed circuit boards and ceramic substrates with components assembled thereon, for color television receivers; subassemblies containing one or more of such boards or substrates, except tuners or convergence assemblies]
	Other:
	[Parts of television cameras]
	Other:
	[Convergence assemblies, flybacks, focus coils and degaussing coils]
8529.90.3580	Other
	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530 of the HTS; parts thereof:
	Burglar or fire alarms and similar apparatus:
	Other:
8531.10.0035	Burglar alarms
	[Indicator panels incorporating liquid crystal devices (LCD's) or light emitting diodes (LED's)]
	Other apparatus:
	[Horns; paging alert devices; radar detectors of a kind used in motor vehicles]
8531.80.0040	Other sound signaling apparatus
	Printed circuits:
	Plastics impregnated, not flexible type:
	Having a base wholly of impregnated glass:
	[With 3 or more layers of conducting materials]
8534.00.0040	Other
	Electrical apparatus for switching or protecting electrical circuits, or for making connections to or in electrical circuits (for example, switches, relays, fuses, surge suppressors, plugs, sockets, lamp-holders, junction boxes), for a voltage not exceeding 1,000 V:
	[Fuses; automatic circuit breakers]
8536.30.00	Other apparatus for protecting electrical circuits
	[Relays]
	Other switches:
	[Motor starters]
	Other:
	[Rotary; push-button; snap-action, other than limit; knife; slide; limit]
8536.50.0060	Other

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HTS Provision	Article
	Electrical apparatus for switching or protecting etc. (con.):
	Lamp-holders, plugs and sockets:
8536.61.00	Lamp-holders
	Other:
	[Coaxial connectors; cylindrical multicontact connectors; rack and panel connectors; printed circuit connectors; ribbon or flat cable connectors]
8536.69.0060	Other
	Other apparatus:
	[Electrical distribution ducts; junction boxes; terminals, electrical splices and electrical couplings]
8536.90.0090	Other
	Boards, panels (including numerical control panels), consoles, desks, cabinets and other bases, equipped with two or more apparatus of heading 8535 or 8536 of the HTS, for electric control or the distribution of electricity, including those incorporating instruments or apparatus of chapter 90 of the HTS, other than switching apparatus of heading 8517 of the HTS:
	For a voltage not exceeding 1,000 V:
	[Switchgear assemblies and switchboards; numerical controls for controlling machine tools; motor control centers]
	Other:
	[Panel boards and distribution boards; programmable controllers]
8537.10.0070	Other
	Electrical filament or discharge lamps, including sealed beam lamp units and ultraviolet or infrared lamps; arc lamps; parts thereof:
	[Sealed beam lamp units]
	Other filament lamps, excluding ultraviolet or infrared lamps:
	[Tungsten halogen]
	Other, of a power not exceeding 200 W and for a voltage exceeding 100 V:
	[Christmas-tree lamps]
	Other:
	Of a power not exceeding 150 W:
	[3-way; decorative]
	Other, including standard household:
8539.22.8040	Of a power 15 W or more but not exceeding 150 W

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HTS Provision	Article
	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in chapter 85 of the HTS; parts thereof:
	[Particle accelerators; signal generators; machines and apparatus for electroplating, electrolysis or electrophoresis]
	Other machines and apparatus:
	[Electric synchros and transducers; flight data recorders; defrosters and demisters with electric resistors for aircraft; articles designed for connection to telegraphic or telephonic apparatus or instruments or to telegraphic or telephonic networks; electric luminescent lamps]
	Other:
	[Resistor/capacitor networks; electric fence controllers; amplifiers; special effects pedals for use with musical instruments]
8543.80.9080	Other
	Insulated (including enameled or anodized) wire, cable (including coaxial cable) and other insulated electric conductors, whether or not fitted with connectors; optical fiber cables, made up of individually sheathed fibers, whether or not assembled with electric conductors or fitted with connectors:
	[Winding wire]
8544.20.00	Coaxial cable and other coaxial electric conductors
8544.30.00	Ignition wiring sets and other wiring sets of a kind used in vehicles, aircraft or ships
	Other electric conductors, for a voltage not exceeding 80 V:
8544.41.00	Fitted with connectors
	Other electric conductors, for a voltage exceeding 80 V but not exceeding 1,000 V:
	Fitted with connectors:
8544.51.40	Fitted with modular telephone connectors
8544.51.80	Other
	Parts and accessories of the motor vehicles of headings 8701 to 8705 of the HTS:
	[Bumpers and parts thereof; other parts and accessories of bodies (including cabs); brakes and servo-brakes and parts thereof; gear boxes; drive axles with differential, whether or not provided with other transmission components; non-driving axles and parts thereof; road wheels and parts and accessories thereof; suspension shock absorbers]

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HTS Provision	Article
	Parts and accessories of the motor vehicles of headings 8701 to 8705 of the HTS (con.):
	Other parts and accessories:
	[Radiators; mufflers and exhaust pipes; clutches and parts thereof; steering wheels, steering columns and steering boxes]
	Other:
	[Parts of tractors suitable for agricultural use; parts of other tractors (except road tractors)]
	Other:
	[Of cast-iron]
	Other:
8708.99.5005	Brake hoses of plastics, with attached fittings
	[Steering shaft assemblies incorporating universal joints; double flanged wheel hub units; beam hanger brackets]
8708.99.5045	Slide-in campers
	[Radiator cores; cable traction devices]
8708.99.5085	Other
	Bicycles and other cycles (including delivery tricycles), not motorized:
8712.00.15	Bicycles having both wheels not exceeding 63.5 cm in diameter
	Bicycles having both wheels exceeding 63.5 cm in diameter:
8712.00.25	If weighing less than 16.3 kg complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding 4.13 cm
8712.00.35	Other
	Parts and accessories of vehicles of headings 8711 to 8713 of the HTS:
	[Of motorcycles (including mopeds); of invalid carriages]
	Other:
8714.95.00	Saddles
	Baby carriages (including strollers) and parts thereof:
8715.00.0020	Baby carriages (including strollers)

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HTS Provision	Article
	Trailers and semi-trailers; other vehicles, not mechanically propelled; and parts thereof:
	[Trailers and semi-trailers for housing or camping; self-loading or self-unloading trailers and semi-trailers for agricultural purposes; other trailers and semi-trailers for the transport of goods; other trailers and semi-trailers]
	Other vehicles:
	[Farm wagons and carts]
	Other:
	[Industrial hand trucks]
	Other:
8716.80.5020	Portable hand carts
8716.80.5090	Other
	Spectacles, goggles and the like, corrective, protective or other:
	[Sunglasses]
9004.90.00	Other
	Drawing, marking-out or mathematical calculating instruments (for example, drafting machines, pantographs, protractors, drawing sets, slide rules, disc calculators); instruments for measuring length, for use in the hand (for example, measuring rods and tapes, micrometers, calipers), not specified or included elsewhere in chapter 90 of the HTS; parts and accessories thereof:
	[Drafting tables and machines, whether or not automatic; other drawing, marking-out or mathematical calculating instruments; micrometers, calipers and gauges]
9017.80.00	Other instruments
	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
	Other instruments and appliances and parts and accessories thereof:
	Other:
	Sphygmomanometers, tensimeters and oscillometers; all the foregoing and parts and accessories thereof:
9018.90.5040	Sphygmomanometers and parts and accessories thereof
	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; ozone therapy, oxygen therapy, aerosol therapy, artificial respiration or other therapeutic respiration apparatus; parts and accessories thereof:
	Mechano-therapy appliances; massage apparatus; psychological aptitude-testing apparatus; parts and accessories thereof:

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HTS Provision	Article
	Mechano-therapy appliances; massage apparatus etc. (con.):
	Mechano-therapy appliances; massage apparatus etc. (con.):
9019.10.20	Mechano-therapy appliances and massage apparatus; parts and accessories thereof
	Hydrometers and similar floating instruments, thermometers, pyrometers, barometers, hygrometers and psychrometers, recording or not, and any combination of these instruments; parts and accessories thereof:
	Thermometers, not combined with other instruments:
	Liquid-filled, for direct reading:
9025.11.20	Clinical
	Other:
	[Clinical]
9025.19.0080	Other
	Wrist watches, pocket watches and other watches, including stop watches, other than those of heading 9101 of the HTS:
	Wrist watches, battery powered, whether or not incorporating a stop watch facility:
	With mechanical display only:
	Having no jewels or only one jewel in the movement:
	[With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated]
	Other:
	[With gold- or silver-plated case]
9102.11.45	Other
	With opto-electronic display only:
	[Straps, bands or bracelets entered with watches of subheading 9102.12.80 of the HTS and classifiable therewith pursuant to additional U.S. note 2 to chapter 91 of the HTS; all the foregoing whether or not attached to such watches at the time of entry]
9102.12.80	Other
	Other wrist watches, whether or not incorporating a stop watch facility:
	[With automatic winding]
	Other:
	Having no jewels or only one jewel in the movement:
	[With strap, band or bracelet of textile material or of base metal, whether or not gold- or silver-plated]
9102.29.10	Other
	Other:
	Battery powered:
9102.91.20	With opto-electronic display only

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HTS Provision	Article
	Other clocks:
	[Alarm clocks]
	Wall clocks:
	[Battery or AC powered]
	Other:
	[With movement measuring not over 50 mm in width or diameter]
	Other:
9105.29.50	Valued over $5 each
	Other:
	Battery or AC powered:
9105.91.40	With opto-electronic display only
	Music boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of chapter 92 of the HTS; decoy calls of all kinds; whistles, call horns and other mouth-blown sound signalling instruments:
9208.10.00	Music boxes
	Other firearms and similar devices which operate by the firing of an explosive charge (for example, sporting shotguns and rifles, muzzle-loading firearms, Very pistols and other devices designed to project only signal flares, pistols and revolvers for firing blank ammunition, captive-bolt humane killers, line-throwing guns):
	[Muzzle-loading firearms; other sporting, hunting or target-shooting shotguns, including combination shotgun-rifles]
	Other sporting, hunting or target-shooting rifles:
	[Valued over $25 but not over $50 each]
	Other:
	[Telescopic sights imported with rifles]
	Rifles:
	Centerfire:
9303.30.8010	Autoloadihg
	Bombs, grenades, torpedoes, mines, missiles and similar munitions of war and parts thereof; cartridges and other ammunition and projectiles and parts thereof, including shot and cartridge wads:
	[Cartridges for riveting or similar tools or for captive-bolt humane killers and parts thereof; shotgun cartridges and parts thereof; air gun pellets]
	Other cartridges and parts thereof:
	Cartridges and empty cartridge shells:
	Cartridges containing a projectile:
	For rifles or pistols:
	[.22 caliber]
9306.30.4020	Other

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HTS Provision	Article
	Seats (other than those of heading 9402 of the HTS), whether or not convertible into beds, and parts thereof:
	[Seats of a kind used for aircraft; seats of a kind used for motor vehicles; swivel seats with variable height adjustment; seats other than garden seats or camping equipment, convertible into beds]
	Seats of cane, osier, bamboo or similar materials:
9401.50.0040	Of rattan
	Other seats, with metal frames:
	[Upholstered]
	Other:
	Outdoor:
	[With textile covered cushions or textile seating or backing material]
	Other:
	[Household]
9401.79.0035	Other
	Other:
	[Household]
9401.79.0050	Other
	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
	Chandeliers and other electric ceiling or wall lighting fittings, excluding those of a kind used for lighting public open spaces or thoroughfares:
	Of base metal:
	Of brass:
9405.10.4010	Household
	Other:
9405.10.8010	Household
	Electric table, desk, bedside or floor-standing lamps:
	Of base metal:
	[Of brass]
	Other:
9405.20.6010	Household
	Other:
9405.20.8010	Household
	[Lighting sets of a kind used for Christmas trees]
	Other electric lamps and lighting fittings:
	Of base metal:
9405.40.40	Of brass
9405.40.60	Other
9405.40.80	Other

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HTS Provision	Article
	Lamps and lighting fittings including searchlights etc. (con.):
	Non-electrical lamps and lighting fittings:
	[Incandescent lamps designed to be operated by propane or other gas, or by compressed air and kerosene or gasoline]
	Other:
	[Of brass]
9405.50.40	Other
	Dolls representing only human beings and parts and accessories thereof:
	Parts and accessories:
	[Garments and accessories thereof, footwear and headgear]
	Other:
	[Skins for stuffed dolls; artificial eyes, except prosthetic articles]
9502.99.30	Other
	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
	Electric trains, including tracks, signals and other accessories thereof; parts thereof:
	[Assembly kits with construction units prefabricated to an essentially uniform scale of the actual article]
	Other, except parts:
9503.10.0020	Made to a scale of the actual article at the ratio of 1 to 85 or smaller
	Other:
	[Made to a scale of the actual article at a ratio larger than 1 to 85]
9503.10.0040	Other
	Toys representing animals or non-human creatures (for example, robots and monsters) and parts and accessories thereof:
	Stuffed toys and parts and accessories thereof:
	Parts and accessories:
	[Artificial eyes, except prosthetic articles]
9503.41.30	Other
	Puzzles and parts and accessories thereof:
	[Crossword puzzle books]
9503.60.20	Other

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HTS Provision	Article
	Other toys: reduced-size ("scale") models etc. (con.):
	Other toys and models, incorporating a motor, and parts and accessories thereof:
	Models:
	[Made to a scale of the actual article at the ratio of 1 to 85 or smaller]
9503.80.6020	Other
	Other:
	Other:
9503.90.50	Inflatable toy balls, balloons and punchballs
	Articles for arcade, table or parlor games, including pinball machines, bagatelle, billiards and special tables for casino games; automatic bowling alley equipment; parts and accessories thereof:
	[Video games of a kind used with a television receiver and parts and accessories thereof; articles, parts and accessories for billiards, including pocket billiards]
	Other games, coin- or token-operated, other than bowling alley equipment; parts and accessories thereof:
9504.30.0010	Video
	[Playing cards]
	Other:
	[Game machines, other than coin- or token-operated; parts and accessories thereof]
	Other:
9504.40.60	Chess, checkers, parchisi, backgammon, darts and other games played on boards of a special design, all the foregoing games and parts thereof (including their boards); mah-jong and dominoes; any of the foregoing games in combination with each other, or with other games, packaged together as a unit in immediate containers of a type used in retail sales; poker chips and dice
	Other:
	[Bowling balls; bowling equipment and parts and accessories thereof]
9504.90.9080	Other
	Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof:
	Articles for Christmas festivities and parts and accessories thereof:
	Christmas ornaments:
	Other:
9505.10.15	Of wood

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HTS Provision	Article
	Festive, carnival or other entertainment articles etc. (con.):
	Other:
	[Magic tricks and practical joke articles; parts and accessories thereof]
9505.90.40	Confetti, paper spirals or streamers, party favors and noisemakers; parts and accessories thereof
9505.90.60	Other
	Articles and equipment for gymnastics, athletics, other sports (including table-tennis) or outdoor games, not specified or included elsewhere in chapter 95 of the HTS; swimming pools and wading pools; parts and accessories thereof:
	[Snow-skis and other snow-ski equipment; parts and accessories thereof]
	Water skis, surf boards, sailboards and other water-sport equipment; parts and accessories thereof:
	[Sailboards and parts and accessories thereof]
	Other:
	[Water skis]
9506.29.0040	Other
	Golf clubs and other golf equipment; parts and accessories thereof:
	[Golf clubs, complete; balls]
	Other:
9506.39.0060	Parts of golf clubs
	[Articles and equipment for table-tennis, and parts and accessories thereof]
	Tennis, badminton or similar rackets, whether or not strung; parts and accessories thereof:
	Lawn-tennis rackets, whether or not strung, and parts and accessories thereof:
9506.51.20	Rackets, strung
9506.51.40	Rackets, not strung
	Balls, other than golf balls and table-tennis balls:
	Other:
9506.69.20	Baseballs and softballs
	Ice skates and roller skates, including skating boots with skates attached; parts and accessories thereof:
9506.70.20	Roller skates and parts and accessories thereof
	Other:
	Gymnasium or other exercise articles and equipment; parts and accessories thereof:
	[Exercise cycles; exercise rowing machines]
9506.91.0030	Other

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HTS Provision	Article
	Articles and equipment for gymnastics, athletics etc. (con.):
	Other (con.):
	Other:
	[Archery articles and equipment and parts and accessories thereof; badminton articles and equipment, except rackets, and parts and accessories thereof; baseball articles and equipment, except balls, and parts and accessories thereof; football, soccer and polo articles and equipment, except balls, and parts and accessories thereof; ice-hockey and field-hockey articles and equipment, except balls and skates, and parts and accessories thereof; lacrosse sticks; lawn-tennis articles and equipment, except balls and rackets, and parts and accessories thereof; skeet targets; sleds, bobsleds, toboggans and the like and parts and accessories thereof; snowshoes and parts and accessories thereof]
9506.99.55	Swimming pools and wading pools and parts and accessories thereof
	Other:
	[Nets not elsewhere specified or included]
9506.99.6080	Other
	Fishing rods, fish hooks and other line fishing tackle; fish landing nets, butterfly nets and similar nets; decoy "birds" (other than those of heading 9208 or 9705 of the HTS) and similar hunting or shooting equipment; parts and accessories thereof:
	Fishing rods and parts and accessories thereof:
9507.10.0040	Fishing rods
	Fishing reels and parts and acessories thereof:
9507.30.40	Fishing reels:
	Valued over $2.70 but not over $8.45 each
	Brooms, brushes (including brushes constituting parts of machines, appliances or vehicles), hand-operated mechanical floor sweepers, not motorized, mops and feather dusters; prepared knots and tufts for broom or brush making; paint pads and rollers; squeegees (other than roller squeegees):
	Tooth brushes, shaving brushes, hair brushes, nail brushes, eyelash brushes and other toilet brushes for use on the person, including such brushes constituting parts of appliances:
	[Toothbrushes]
	Other:
9603.29.40	Valued not over 40¢ each
9603.29.80	Valued over 40¢ each

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HTS Provision	Article
9605.00.00	Travel sets for personal toilet, sewing or shoe or clothes cleaning (other than manicure and pedicure sets of heading 8214 of the HTS)
	Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating styli; propelling or sliding pencils (for example, mechanical pencils); pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609 of the HTS:
9608.10.00	Ball point pens
	Pencils (other than those pencils of heading 9608 of the HTS), crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks and tailors' chalks:
9609.10.00	Pencils and crayons, with leads encased in a rigid sheath
	[Pencil leads, black or colored]
	Other:
	[Tailors' chalks]
9609.90.80	Other
	Cigarette lighters and other lighters, whether or not mechanical or electrical, and parts thereof other than flints and wicks:
9613.10.00	Pocket lighters, gas fueled, non-refillable
	Combs, hair-slides and the like; hairpins, curling pins, curling grips, hair-curlers and the like, other than those of heading 8516 of the HTS, and parts thereof:
	Combs, hair-slides and the like:
	Of hard rubber or plastics:
	[Combs]
	Other:
9615.11.40	Not set with imitation pearls or imitation gemstones
	Other:
	[Combs]
	Other:
9615.19.6010	Of textile materials

[FR Doc. 92-20521 Filed 8-26-92; 8:45 am]
BILLING CODE 3190-01-C

Sunshine Act Meetings

Federal Register
Vol. 57, No. 167
Thursday, August 27, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, September 2, 1992.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20805 Filed 8-25-92; 3:08 pm]

BILLING CODE 6210-01-M

NATIONAL HERITAGE CORRIDOR COMMISSION

Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, September 24, 1992.

The Commission was established pursuant to Public Law 99-647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene at 7 p.m. at the Grafton Memorial Municipal Center, 30 Providence Road, Grafton, MA for the following reasons:

1. Election of Officers.
2. Approval of FY 93 Budget.

It is anticipated that about twenty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: James Pepper, Executive Director, Blackstone River Valley National Heritage Corridor Commission, P.O. Box 730, Uxbridge, MA 01569. Telephone: (508) 278-9400.

Further information concerning this meeting may be obtained from James Pepper, Executive Director of the Commission at the address noted on this letterhead.

Nancy Brittain,

Acting Executive Director, Blackstone River Valley National Heritage Corridor Commission.

[FR Doc. 92-20732 Filed 8-25-92; 3:07 pm]

BILLING CODE 4310-70-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 57 FR 37866, August 20, 1992.

PREVIOUSLY ANNOUNCED DATE OF MEETING: August 31, 1992.

CHANGE: Delete the following items from the closed meeting agenda:

1. Consideration of a Filing with the Postal Rate Commission to Establish a Bulk Small Parcel Service.
3. Consideration of the Postal Rate Commission Opinion and Recommended Decision in Docket No. MC91-3, Second-Class Pallet Discount, 1991.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 92-20809 Filed 8-25-92; 3:30 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 57, No. 167
Thursday, August 27, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BPD-757-NC]

RIN 0938-AF80

Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1992

Correction

In notice document 92-15496 beginning on page 29410 in the issue of Wednesday, July 1, 1992, make the following correction:

On page 29416, in the first column, under **IX. Wage Indexes**, the heading for the table should read "Table IIIa. - Wage Index for Urban Areas"; in the table: the heading "Urban Area (Constiuent Counties or County Equivalents)" should appear at the top of the first column and "Wage Index" should appear at the top of the second column.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[PS-7-92]

Continuity of Life—Limited Partnerships

Correction

In proposed rule document 92-17086 beginning on page 32472 in the issue of Wednesday, July 22, 1992, make the following corrections:

1. On page 32472, in the third column, under **EXPLANATION OF PROVISIONS**, in the fifth line, "Section" should read "Sections".
2. On page 32473, in the first column, in the second full paragraph, in the fifth line, "conform the" should read "conform to".

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Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Terminal Airspace Reconfiguration; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 26852; Amendment No. 71-16]

RIN 2120-AE18

Terminal Airspace Reconfiguration

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Aviation Regulations (FAR) by revising all control zones and transition areas and specific terminal control areas (TCAs) and airport radar service areas (ARSAs). The revisions will modify the lateral and vertical dimensions of the control zones and transition areas; revise the lateral dimension of the surface area of the Anchorage, Alaska ARSA; lower the ceiling of the Chicago, Midway Airport, Illinois ARSA so it does not overlap the Chicago, O'Hare International Airport TCA; replace the El Toro, California Special Air Traffic Rules Area with a Class D airspace area; and modify the names and the language in the airspace descriptions of specific TCAs and ARSAs. This amendment will ease the conversion from existing control zones and transition areas to the new airspace designations established under the Airspace Reclassification final rule, which is effective September 16, 1993, and is consistent with the primary intention of airspace reclassification to simplify airspace designations.

EFFECTIVE DATES: The amendment to § 71.1, which is currently in effect, becomes effective October 15, 1992. The amendment to § 71.1, which is effective September 16, 1993, becomes effective September 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Mosley, Air Traffic Rules Branch, ATP-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone 202-267-9251.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1991, the final rule for Airspace Reclassification was published (56 FR 65638). The new airspace classes are effective September 16, 1993. The final rule amends Federal Aviation Regulations (FAR) part 71 (14 CFR part 71) to reclassify U.S. airspace in accordance with the airspace classes adopted by the International Civil Aviation Organization (ICAO).

Under the amended part 71 effective September 15, 1993, positive control areas (PCAs), jet routes, and area high routes are classified as Class A airspace areas; TCAs are classified as Class B airspace areas; ARSAs are classified as Class C airspace areas; control zones and airport traffic areas for airports with operating control towers that are not associated with the primary airport of a TCA or an ARSA are classified as Class D airspace areas; all other controlled airspace areas are classified as Class E airspace areas; and airspace that is not otherwise designated as a controlled airspace area is classified as Class G airspace.

The implementation of the Airspace Reclassification final rule includes reviews of certain existing airspace areas to ensure that they meet the new airspace classifications. The reviews of certain existing airspace areas focus on control zones, transition areas, and offshore airspace. The first of these reviews, which is addressed in this amendment, focuses on control zones and transition areas. Soon to be published, the Notice of Proposed Rulemaking (NPRM) entitled "Offshore Airspace Reconfiguration; Additional Control Areas; Continental Control Area; Area Low Routes; Control Areas Associated with Jet Routes Outside the Continental Control Area; Reporting Points; Flushing (New York) Airport Traffic Rule; and Valparaiso, Florida Terminal Area," will address offshore airspace and any supplementary airspace matters. The FAA expects that the proposals in this subsequent NPRM, if promulgated, would be effective no later than September 16, 1993, the effective date of the Airspace Reclassification final rule.

Because this amendment is issued after the publication of the Airspace Reclassification final rule, but before the effective date of September 16, 1993, both existing and future terminologies are used. The actual airspace area descriptions are the same whether the airspace area is called: (1) A control zone and an airport traffic area for an airport with an operating control tower that is not associated with the primary airport of a TCA or an ARSA (current terminology), or a Class D airspace area (future terminology); (2) a control zone for an airport without an operating control tower (current terminology) or a Class E airspace area (future terminology); or (3) a transition area (current terminology) or a Class E airspace area (future terminology). These reviews do not change any requirements for operations under visual flight rules (VFR) or instrument flight rules (IFR).

Discussion of the Amendments and Public Comments

This final rule is based on NPRM No. 92-5 (57 FR 18954; May 1, 1992). The rule amends part 71 by revising all control zones and transition areas as well as specific TCAs and ARSAs described in FAA Order 7400.7, Compilation of Regulations, effective November 1, 1991 ("Handbook"), which is incorporated by reference in 14 CFR 71.1. This final rule also modifies the corresponding Class B, Class C, Class D, and Class E airspace descriptions in FAA Order 7400.9, Airspace Reclassification, effective September 16, 1993, which is also incorporated by reference in 14 CFR 71.1. When the Airspace Reclassification final rule becomes effective on September 16, 1993, each airspace description in section 171 of FAA Handbook 7400.7 will be changed as follows: (1) Deleted, if a control zone is associated with a TCA or an ARSA; (2) redesignated as a Class D airspace area, if a control zone is at an airport with an operating control tower that is not associated with a TCA or an ARSA; or (3) redesignated as a Class E airspace area, if a control zone is at an airport without an operating control tower. On the same date, each airspace description in sections 181, 401, and 501 of FAA Handbook 7400.7 will be redesignated as Class E, Class B, and Class C airspace areas, respectively. These changes are based on a review of each control zone and transition area using the revised criteria in Change 4 to FAA Order 7400.2C, Procedures for Handling Airspace Matters.

These changes supersede the listings in subparts F, G, K, and L of Handbook 7400.7, and subparts B, C, D, and section 71.71(b), subpart E, of Handbook 7400.9. The descriptions of control zones, transition areas, terminal control areas, and airport radar service areas as amended by this rule will be published in a supplement to the Handbook (Handbook 7400.7—Supplement).

The control zones and transition areas addressed in this final rule are classified into four basic categories:

(1) Control zones for the primary airports of TCAs or ARSAs;
(2) Control zones for airports with operating control towers not associated with the primary airports of TCAs or ARSAs;
(3) Control zones for airports without operating control towers; and
(4) Transition areas.

Comments to Docket Number 26852

Four comments on the NPRM were submitted to Docket Number 26852.

These comments were by the Air Line Pilots Association (ALPA), the Experimental Aircraft Association (EAA), and two individuals. No comments were submitted to the FAA regions.

EAA and ALPA concur with the proposal. The two individuals oppose certain provisions of the NPRM. The issues addressed by the commenters include the education of the pilot community and the integration of airport traffic areas and control zones into Class D airspace areas.

Pilot Education

EAA expresses concern about educating pilots on Airspace Reclassification. EAA indicates that it will participate in pilot education. As part of EAA's participation in the Aviation Rulemaking Advisory Committee, EAA will distribute information through publications, documents, and safety forums to aid the transition to the new airspace classifications.

The FAA commends EAA's commitment to pilot education. As the FAA stated in the Airspace Reclassification final rule, educational material such as pocket guides, a video, and posters will be issued to instruct the aviation public on airspace reclassification.

Comments on Class D Airspace Requirements

On September 16, 1993, control zones and airport traffic areas for airports with operating control towers not associated with the primary airports of TCAs or ARSAs will become Class D airspace areas.

The two individual commenters express concern about integrating the airport traffic areas and control zones into Class D airspace areas. According to the commenters, integrating these areas will affect operational safety and usage. The commenters also state that a requirement to establish two-way radio communication between pilots and air traffic control beyond the current lateral boundaries of an airport traffic area is an operational burden to VFR flights, creates a hazard to aviation safety, reaches beyond the intent of airspace reclassification, and imposes a greater risk to flights conducted under IFR.

The commenters note that airport traffic areas and control zones exist for two different reasons. According to the commenters, airport traffic areas require pilots to establish two-way radio communication with air traffic control in airport traffic areas to "manage and conduct orderly and safe flight operations within the vicinity of the airport and airport traffic pattern." The commenters believe that pilots and air traffic controllers will experience increased workloads and unwarranted radio congestion if pilots who are operating under VFR, neither within the airport traffic pattern nor departing or arriving at the airport, must communicate with air traffic control.

The commenters state that the requirement for two-way radio communication in Class D airspace areas could be a detriment to safety. For example, each commenter notes instances when he was not able to communicate important and timely information to an air traffic controller in a tower facility. In these instances, pilots operating under VFR outside of the airport traffic area in activities not related to or affecting the airport traffic pattern, airport departures, or airport arrivals was attempting to establish two-way radio communication with air traffic control to fly through airspace beyond the perimeter of the airport traffic area.

The commenters also state that pilot workload would be increased by an integrated airport traffic area and control zone that has non-standard dimensions. They state that pilots would be required to expend additional effort in the cockpit to determine whether two-way radio communication is required for a flight. The commenters use the example of a pilot who spends time analyzing charts for the size and shape of approach extensions and has less time available to scan for traffic.

Both commenters oppose a requirement for a pilot to establish two-way radio communication with air traffic control in arrival extensions. They agree with the FAA's proposal to designate the extension areas as Class E airspace areas, which do not require the establishment of two-way radio communication with air traffic control. However, the commenters suggest that extension areas of 2 miles or less also be designated as Class E airspace areas. The commenters state that the designation of all extension areas as Class E airspace areas would help standardize and simplify airspace and would not clutter aeronautical charts.

The FAA believes that the concerns of the commenters regarding the integration of airport traffic areas and control zones into Class D airspace areas are addressed in the amendments and will be emphasized in pilot and air traffic controller education.

The commenters are correct in their belief that airport traffic areas and control zones exist for different yet complementary reasons. Both are designed to ensure that simultaneous operations under VFR and IFR near an airport are conducted safely.

The airport traffic area requirements ensure that a pilot and air traffic control establish two-way radio communication in the vicinity of an airport with an operating control tower. With the exception of those areas described in part 93, "Special Air Traffic Rules and Airport Traffic Patterns," an airport traffic area is defined in part 1 of the FAR as "that airspace within a horizontal radius of 5 statute miles from the geographical center of any airport at which a control tower is operating, extending from the surface up to, but not including, an altitude of 3,000 feet above the elevation of the airport." Airport traffic areas are not depicted on aeronautical charts and will cease to exist after September 16, 1993.

A control zone ensures that aircraft arriving at an airport under IFR remain within controlled airspace when an instrument approach procedure could place that aircraft within 1,000 feet above the surface. A control zone also ensures that aircraft departing an airport under IFR remain within controlled airspace between the surface and the base of the adjacent controlled airspace. According to FAR § 71.11, effective until October 14, 1992, a control zone is "normally a circular area with a radius of 5 (statute) miles and any extensions necessary to include instrument approach and departure paths." Control zones are depicted on aeronautical charts by a blue segmented line.

Because 5 statute miles was used as the basis for airport traffic areas and control zones, many of these areas included airspace that is not necessary for air traffic control. For example, under the Terminal Airspace Reconfiguration NPRM, the FAA reviewed each control zone to ensure that the control zones were designed to contain intended terminal operations under IFR. Of the control zones that will become Class D airspace areas, 62 percent are either reduced in lateral dimensions or retain equivalent lateral dimensions. The remaining 38 percent are expanded in lateral dimensions. Of the control zones that will become Class D airspace, only 7 percent increase in lateral dimensions by more than 1 mile; the remaining 31 percent increase by 1 mile or less. The FAA believes that prescribing a standard dimension for Class D airspace areas, which may include airspace not necessary for air traffic control, is a burden to the pilot population. All Class D airspace areas will be depicted on aeronautical charts by a blue segmented line.

In the Airspace Reclassification final rule, the FAA stated it has determined that to meet safety standards, two-way radio communication with air traffic control must be established in Class D airspace areas. Class D airspace will have a ceiling, which, in most cases, will be 2,500 feet above the surface. This is lower than the current ceiling for airport traffic areas or control zones. Pilots operating under VFR who do not desire to establish two-way radio communications with air traffic control may fly above the Class D airspace areas at altitudes lower than those currently permitted to fly above an airport traffic area.

In the Terminal Airspace Reconfiguration NPRM, the FAA proposed that all extensions will be designated as Class E airspace if the control zone has at least one arrival extension that extends more than 2 miles from the airspace necessary for aircraft operating under IFR to depart within controlled airspace. This Class E airspace will extend upward from the surface to the overlying or adjacent controlled airspace. By designating these extension areas as Class E airspace, pilots who operate in the extension areas will not be required to contact the air traffic control facility having jurisdiction in those areas. The FAA also wishes to designate each arrival extension to this control zone as Class E airspace, so that a control zone will not have one arrival extension designated as Class E airspace and another arrival extension designated as Class D airspace. As in any Class E airspace area, the extensions terminate at the adjacent or overlying airspace and will be indicated on visual charts by a magenta segmented line.

The FAA has determined that, in the case of control zones where all extensions are 2 miles or less, the best course is to designate the entire control zone as Class D airspace. Sixty-four control zones adopted in this final rule have all extensions 2 miles or less. If these control zones are revised to designate the airspace necessary for aircraft operating under IFR to depart the airport within controlled airspace as Class D airspace and the airspace in the arrival extension is designated as Class E airspace, the FAA believes that depicting such small areas on aeronautical charts would be confusing and increase chart clutter.

Control Zones for the Primary Airport of a TCA or an ARSA

Reconfiguration of Airspace Areas for the Primary Airport of a TCA

In NPRM Number 92–5, the FAA proposed to revise the control zones for the primary airport of a TCA to become congruent with the associated TCA. In addition, the FAA proposed to modify the control zone for the Seattle-Tacoma International Airport, Washington, a description of which is contained in section 171 of FAA Handbook 7400.7, to be within a 4-mile radius of the Seattle VORTAC. No comments were received on these proposals.

With the exception of an amendment to the Houston, Texas TCA and corrections to geographic positions and editorial revisions, the FAA will adopt the revisions to the following control zones as proposed. Descriptions of control zones are contained in section 171 of FAA Handbook 7400.7. The control zones listed in this document will subsequently be published, as amended, in the Handbook 7400.7—Supplement. On September 16, 1993, the effective date of the Airspace Reclassification final rule, these control zones will no longer exist.

FAA Region: Central

Kansas City, Kansas City International Airport, MO
Saint Louis, Saint Louis International Airport, MO

FAA Region: Eastern

Baltimore, Baltimore Washington International Airport, MD Newark, NJ
New York, John F. Kennedy International Airport and LaGuardia Airport, NY
Philadelphia, PA
Pittsburgh, Pittsburgh International Airport, PA
Chantilly, Washington Dulles International Airport, VA

FAA Region: Great Lakes

Detroit, Detroit Metropolitan Wayne County Airport, MI

FAA Region: New England

Boston, MA

FAA Region: Northwest Mountain

Denver, Stapleton International Airport, CO
Seattle, Seattle-Tacoma International Airport, WA

FAA Region: Southern

Miami, Miami International Airport, FL
Orlando, Orlando International Airport, FL
Tampa, Tampa International Airport, FL
Atlanta, Hartsfield International Airport, GA
Charlotte, NC
Memphis, Memphis International Airport, TN

FAA Region: Southwest

New Orleans, New Orleans International Airport, LA
Dallas, Dallas-Fort Worth International Airport and Dallas Love Field, TX

FAA Region: Western-Pacific

Phoenix, Sky Harbor International Airport, AZ
Los Angeles, Los Angeles International Airport, CA
San Diego, San Diego International/Lindberg Field, CA
Honolulu, Honolulu International Airport, HI

The Houston, Texas TCA has been amended by Airspace Docket Number 90–AWA–12 since the FAA's review of control zones. Therefore, the FAA adopts for this rule the control zone associated with the Houston, Texas TCA to be congruent with lateral and vertical boundaries of the revised Houston, Texas TCA. The FAA also adopts as proposed the control zones listed below, with minor modifications and additional editorial revisions. Because this action does not change the boundaries and configuration of controlled airspace, with respect to the Houston control zone and the following areas the rule is insignificant in nature and impact and inconsequential to the industry and public. Therefore, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

Revisions to proposed airspace areas by including technical corrections and airspace changes:

FAA Region: Eastern

Washington, National Airport and Andrews Air Force Base, D.C.: The airspace description is revised by replacing the reference to the "Washington VOR" with "Washington VOR/DME."

FAA Region: Great Lakes

Chicago, O'Hare International Airport, IL: The airspace description is revised by replacing references to the "Chicago O'Hare International Airport" with "Chicago-O'Hare International Airport."

Minneapolis, Minneapolis-Saint Paul International Airport, MN: The airspace description is revised by changing the name of "Minneapolis-St. Paul International Airport" to "Minneapolis-St. Paul International (Wold-Chamberlain) Airport."

FAA Region: Northwest

Salt Lake City, UT: The airspace description is revised by replacing "Salt Lake City, UT, International Airport TCA" with "Salt Lake City, UT TCA."

FAA Region: Western-Pacific

San Francisco, San Francisco International Airport, CA: The airspace description is revised by eliminating the proposed airspace area beyond the surface area of the San Francisco, CA TCA.

Las Vegas, McCarren International Airport and Nellis Air Force Base, NV: The airspace description is revised by changing the name of "Henderson Sky Harbor Airport" to "Las Vegas-Henderson Sky Harbor."

Revisions to proposed airspace areas by updating a geographic position:

FAA region	Proposed geographic position	Revised geographic position
Great Lakes		
Name and airport or facility: Cleveland, Cleveland-Hopkins International Airport, OH: Cleveland-Hopkins DME Antenna.	Lat. 41°24'15" N., long., 81°51'44" W.	Lat. 41°24'01" N., long. 81°52'03" W.

Reconfiguration of Airspace Areas for the Primary Airport of an ARSA

In NPRM Number 92–5, the FAA proposed to revise the control zones for the primary airport of an ARSA to become congruent with the associated ARSA. No comments were received on this proposal.

With the exception of the modifications listed below, the FAA will adopt the revisions to the following control zones as proposed. These control zones are contained in section 171 of FAA Handbook 7400.7 and will subsequently be republished, as amended, in the Handbook 7400.7.—Supplement. On September 16, 1993, the effective date of the Airspace Reclassification final rule, these control zones will no longer exist.

FAA Region: Central

Des Moines, IA
Wichita, Mid-Continent Airport, KS
Lincoln, NE
Omaha, Eppley Airfield, NE

FAA Region: Eastern

Atlantic City, Atlantic City International Airport, NJ
Albany, NY
Buffalo, NY
Islip, NY
Rochester, NY
Syracuse, NY
Allentown, PA
Norfolk, Norfolk International Airport, VA
Richmond, VA
Roanoke, VA
Charleston, WV

FAA Region: Great Lakes

Champaign-Urbana, IL
Moline, IL
Peoria, IL
Springfield, IL
Indianapolis, Indianapolis International Airport, IN
South Bend, IN
Flint, MI
Grand Rapids, MI
Lansing, MI
Akron, Akron-Canton Regional Airport, OH
Columbus, Port Columbus International Airport, OH
Green Bay, WI
Madison, WI
Milwaukee, General Mitchell International Airport, WI

FAA Region: New England

Portland, Portland International Jetport, ME
Manchester, NH
Providence, RI
Burlington, VT

FAA Region: Northwest Mountain

Colorado Springs, Colorado Springs Municipal Airport, CO
Oak Harbor, Whidbey Island Naval Station, WA
Spokane, International Airport, WA

FAA Region: Southern

Birmingham, AL
Huntsville, AL
Mobile, Bates Field, AL
Daytona Beach, FL
Fort Myers, Southwest Florida Regional Airport, FL
Jacksonville, Jacksonville International Airport, FL
Milton Naval Air Station Whiting Field, FL
Pensacola Naval Air Station, FL
Pensacola, Pensacola Regional Airport, FL
Sarasota, FL
Tallahassee, FL
Columbus, Metropolitan Airport, GA
Savannah, Savannah International Airport, GA
Covington, Cincinnati-Northern Kentucky International Airport, KY
Lexington, KY
Louisville, Staniford Field, KY
Columbus Air Force Base, MS
Jackson, Jackson International Airport MS
Fayetteville, NC
Fort Bragg, Pope Air Force Base, NC
Raleigh, NC
San Juan, San Juan International Airport, PR
Charleston, SC
Columbia, SC
Greer, SC
Chattanooga, TN
Knoxville, TN
Nashville, TN

FAA Region: Southwest

Baton Rouge, LA
Shreveport, Shreveport Regional Airport, LA
Albuquerque, NM
Tulsa, Tulsa International Airport, OK
Abilene, Dyess Air Force Base, TX
Amarillo, TX
Austin, Robert Mueller Municipal Airport, TX
Corpus Christi, Corpus Christi International Airport, TX
Del Rio, Laughlin Air Force Base, TX
Lubbock, Lubbock International Airport, TX
San Antonio, San Antonio International Airport, TX

FAA Region: Western-Pacific

Tucson, Tucson International Airport, AZ
El Toro, CA
Marysville, Beale Air Force Base, CA
Monterey, CA
Oakland, CA
Ontario, CA
Riverside, March Air Force Base, CA
Sacramento, Mather Air Force Base, CA
Sacramento, McClellan Air Force Base, CA
Sacramento, Metropolitan Airport, CA
San Jose, San Jose International Airport, CA
Santa Ana, John Wayne Airport/Orange County, CA
Santa Barbara, CA
Kahului, HI
Reno, Cannon International Airport, NV

The Houston, William P. Hobby Airport, Texas ARSA has been revoked by Airspace Docket Number 90–AWA–12 since FAA's review of control zones. Therefore, the FAA will not adopt the proposal to revise the control zone associated with the Houston, William P. Hobby Airport, Texas ARSA to be congruent with lateral and vertical boundaries of the Houston, William P. Hobby Airport, Texas ARSA.

The FAA adopts as proposed the control zones listed below, with minor modifications and technical corrections.

Revisions to proposed airspace areas by including technical corrections and airspace changes:

FAA Region: Alaskan

Anchorage, Anchorage International Airport, AK: The airspace description is revised by replacing the references to the "Anchorage VOR" with the "Anchorage VOR/DME."

FAA Region: Central

Cedar Rapids, IA: The airspace description is revised by deleting the reference to the Cedar Rapids VORTAC. This navigation aid does not appear in the airspace description.

FAA Region: Great Lakes

Evansville, IN: The airspace description is revised by adding the geographic positions for the Pocket City VORTAC and Skylane Airport, IN, and including editorial revisions for the area to be congruent with the surface area of the Evansville, IN ARSA.

Fort Wayne, IN: The airspace description is revised by changing the name of "Fort Wayne Municipal Airport, Baer Field" with "Fort Wayne International Airport."

Dayton, James M. Cox-Dayton International Airport, OH: The airspace description is revised by changing the name of "James M. Cox-Dayton International Airport" to "James M. Cox Dayton International Airport."

FAA Region: New England

Windsor Locks, Bradley International Airport, CT: The airspace description is revised by replacing all references to "Skylark Airport" with "Skylark Airpark."

FAA Region: Northwest Mountain

Spokane, Fairchild Air Force Base, WA: The airspace description is revised by clarifying the description of the arrival extension for Spokane International Airport and the boundary with the control zone for Spokane International Airport.

FAA Region: Southern

Greensboro, NC: The airspace description is revised by changing the name of "Greensboro/Piedmont Triad International Airport" with "Piedmont International Airport."

FAA Region: Southwest

Little Rock, Adams Field, AR: The airspace description is revised by replacing the references to "Adams Field" with "Little Rock, Adams Field."

Oklahoma City, Will Rogers World Airport, OK: The airspace description is revised by adding an exclusion for the Downtown Airpark.

Oklahoma City, Tinker Air Force Base, OK: The airspace description is revised by clarifying the portion of the area excluded.

Abilene, Abilene Regional Airport, TX: The airspace description is revised by including an exclusion for the area to be congruent with the surface area of the Abilene, TX ARSA. The airspace description is revised by replacing all references to the "Tuscola VOR" with the "Tuscola VOR/DME" and replacing all references to the "Abilene ILS Localizer" with the "Abilene Regional Localizer."

Harlingen, TX: The airspace description is revised by including an exclusion for the area to be congruent with the surface area of the Harlingen, TX ARSA. The airspace description is revised by replacing all references to the "Harlingen VOR" with the "Harlingen VOR/DME."

FAA Region: Western-Pacific

Burbank-Glendale-Pasadena, CA: The airspace description is revised by replacing the area excluded from the control zone for Whiteman Airpark from 1.75 miles to 1.8 miles.

Fresno, CA: The airspace description is revised to make it congruent with the Fresno, CA ARSA.

Merced, Castle Air Force Base, CA: The airspace description is revised by changing the name of "Atwater Airport" to "Atwater Municipal Airport."

San Bernardino, Norton Air Force Base, CA: The airspace description is revised to make it congruent with the San Bernadino, CA ARSA.

Revisions to proposed airspace areas by updating a geographic position:

FAA Region	Proposed geographic position	Revised geographic position
Central		
Name and airport or facility: Offutt Air Force Base, NE: Offutt Air Force Base.	Lat. 41°07'06" N., Long. 95°54'42" W.	Lat. 41°07'06" N., Long. 95°54'44" W.
Great Lakes		
Chicago, Midway Airport, IL: Chicago Midway Airport.	Lat. 41°47'09" N., Long. 87°45'07" W.	Lat. 41°47'10" N., Long. 87°45'08" W.
Toledo, OH: Toledo Express Airport.	Lat. 41°35'15" N., Long. 83°48'19" W.	Lat. 41°35'12" N., Long. 83°48'26" W.
Northwest Mountain		
Boise, ID: Boise VOR/TAC.	Lat. 43°33'11" N., Long. 116°11'29" W.	Lat. 43°33'11" N., Long. 116°11'28" W.
Portland, OR: Portland International Airport.	Lat. 45°36'20" N., Long. 122°35'47" W.	Lat. 45°35'26" N., Long. 122°35'47" W.
Evergreen Airport.	Lat. 45°37'20" N., Long. 122°31'15" W.	Lat. 45°37'20" N., Long. 122°31'41" W.
OM	Lat. 45°37'28" N., Long. 122°41'43" W.	Lat. 45°37'25" N., Long. 122°41'44" W.
Spokane, Fairchild Air Force Base, WA: Spokane Fairchild Air Force Base.	Lat. 47°36'55" N., Long. 117°39'17" W.	Lat. 47°36'54" N., Long. 117°39'25" W.
Southern		
Fort Lauderdale, Fort Lauderdale-Hollywood International Airport, FL: Lauderdale VOR/DME.	Lat. 26°04'19" N., Long. 80°09'13" W.	Lat. 26°04'28" N., Long. 80°09'10" W.
Palm Beach, FL: Palm Beach County Park Airport.	Lat. 26°35'36" N., Long. 80°05'06" W.	Lat. 26°35'33" N., Long. 80°05'08" W.
Southwest		
Little Rock, Adams Field, AR: Adams Field.	Lat. 34°43'48" N., Long. 92°13'27" W.	Lat. 34°43'44" N., Long. 92°13'27" W.
Shreveport, Barksdale Air Force Base, LA: Barksdale Air Force Base.	Lat. 32°30'00" N., Long. 93°40'00" W.	Lat. 32°30'06" N., Long. 93°39'45" W.
El Paso, TX: Biggs Army Air Field.	Lat. 31°51'00" N., Long. 106°23'00" W.	Lat. 31°50'56" N., Long. 106°22'46" W.
Midland, TX: Midland International Airport.	Lat. 31°56'33" N., Long. 102°12'06" W.	Lat. 31°56'33" N., Long. 102°12'05" W.

FAA Region	Proposed geographic position	Revised geographic position
Western-Pacific		
Tucson, Davis-Monthan Air Force Base, AZ: Davis Monthan TACAN.	Lat. 32°09'36" N., Long. 110°52'48" W.	Lat. 32°09'36" N., Long. 110°52'49" W.
Merced, Castle Air Force Base, CA: Castle Air Force Base TACAN.	Lat. 37°23'42" N., Long. 120°34'36" W.	Lat. 37°23'40" N., Long. 120°34'36" W.
San Bernardino, CA: Norton Air Force Base.	Lat. 34°05'43" N., Long. 117°14'02" W.	Lat. 34°05'43" N., Long. 117°14'12" W.

Extensions of Airspace Areas

In NPRM Number 92–5, the FAA proposed: (1) To revise certain control zones for airports associated with a TCA or an ARSA to include an area that extends upward from the surface beyond the surface area of the TCA or ARSA; (2) to amend subpart E of FAA Order 7400.9, effective September 16, 1993, by establishing those areas that extend beyond the surface area of the TCAs or ARSAs as separate Class E airspace areas; and (3) to amend subpart D of FAA Order 7400.9, effective September 16, 1993, by establishing the area that extends beyond the surface area of the El Paso, Texas ARSA, and the portion of the Seattle, Washington control zone that extends beyond the surface area of the Seattle, Washington TCA as separate Class D airspace areas. No comments were received on these proposals.

The FAA has decided not to adopt the proposal to establish an extension to the San Francisco, California TCA. With the exception of the modifications made to the corresponding control zones, the FAA will adopt: (1) The revisions to the following control zones in section 171 of FAA Handbook 7400.7 as proposed; (2) the amendment to subpart E of FAA Order 7400.9, effective September 16, 1993, to establish certain Class E airspace areas; and (3) the amendment to Subpart D of FAA Order 7400.9, effective September 16, 1993, to establish certain Class D airspace areas.

FAA Region: Alaskan

Anchorage, Anchorage International Airport, AK

FAA Region: Eastern

Atlantic City, Atlantic City International Airport, NJ

FAA Region: Great Lakes

Champaign-Urbana, IL
Fort Wayne, IN
Toledo, OH
Madison, WI

FAA Region: New England

Windsor Locks, Bradley International Airport, CT
Providence, RI
Burlington, VT

FAA Region: Northwest Mountain

Colorado Springs, Colorado Springs Municipal Airport, CO
Boise, ID
Portland, Portland International Airport, OR
Seattle, WA
Spokane, Fairchild Air Force Base, WA

FAA Region: Southern

Birmingham, AL
Huntsville, AL
Fort Lauderdale, FL
Palm Beach, FL
Sarasota, FL
Tallahassee, FL
Fayetteville, NC
Greensboro, NC
Raleigh, NC
Nashville, TN

FAA Region: Southwest

Little Rock, Adams Field, AR
Baton Rouge, LA
Albuquerque, NM
Abilene, Abilene Regional Airport, TX
Abilene, Dyess Air Force Base, TX
Corpus Christi, Corpus Christi International Airport, TX
Del Rio, Laughlin Air Force Base, TX
El Paso, TX
Harlingen, TX
San Antonio, San Antonio International Airport, TX

FAA Region: Western-Pacific

Tucson, Davis-Monthan Air Force Base, AZ
Tucson, Tucson International Airport, AZ
Burbank-Glendale-Pasadena, CA
Fresno, CA
Marysville, Beale Air Force Base, CA
Merced, Castle Air Force Base, CA
Monterey, CA
Ontario, CA
Riverside, March Air Force Base, CA
Sacramento, Mather Air Force Base, CA
Sacramento, Metropolitan Airport, CA
San Bernadino, Norton Air Force Base, CA
San Diego, San Diego International/Lindberg Field and Miramar Naval Air Station, CA
San Jose, San Jose International Airport, CA
Santa Barbara, CA
Honolulu, Honolulu International Airport, HI
Kahului, HI
Reno, Cannon International Airport, NV

Control Zones for Airports With Operating Control Towers That are not the Primary Airport Within a TCA or an ARSA

The FAA proposed in NPRM Number 92–5 to modify the control zones for airports with operating control towers that are not the primary airport within a TCA or an ARSA. These proposed modifications included: (1) Converting the lateral unit of measurement from statute miles to nautical miles; (2) redesignating the control zones to contain intended operations under IFR; (3) redesignating the ceiling to extend upward from the surface of the earth to a specified altitude; (4) excluding satellite airports to the extent practicable and consistent with instrument procedures and safety; (5) replacing departure extensions with transition areas; and (6) designating each arrival extension for aircraft operating under IFR as Class E airspace, if at least one extension is more than 2 miles from the airspace necessary for aircraft operating under IFR to depart within controlled airspace.

As stated in the Airspace Reclassification final rule and NPRM Number 92–5, the FAA will observe a policy to exclude satellite airports without an operating control tower from the control zones to the extent practicable and consistent with instrument procedures and safety. NPRM Number 92–5 proposed to exclude 15 satellite airports from 14 control zones. During the further review of control zones, the FAA has discovered two control zones that encompass satellite airports. The FAA has determined to exclude Derby, Hamilton Field, Kansas from the control zone for Wichita, McConnell Air Force Base, Kansas, and to exclude Falmouth Airpark, Massachusetts, from the control zone for Falmouth, Massachusetts. The FAA believes that the exclusion of these satellite airports from control zones is consistent with FAA policy and invites the public to provide supplementary comment on the exclusions.

Except as discussed below, the FAA will adopt as proposed the revisions to the following control zones for airports with operating control towers that are not the primary airport of a TCA or an ARSA, and corresponding Class D airspace areas, as proposed. The FAA will amend those control zones in section 171 of FAA Handbook 7400.7 and the corresponding Class D airspace areas found in Subpart D of FAA Order 7400.9, which is effective September 16, 1993.

FAA Region: Alaskan

Anchorage, Elmendorf Air Force Base, AK
Anchorage, Lake Hood, AK
Anchorage, Merrill Field, AK
Fairbanks, Eielson Air Force Base, AK
Fairbanks, Fairbanks International Airport, AK
King Salmon, AK

FAA Region: Central

Dubuque, IA
Sioux City, IA
Waterloo, IA
Hutchinson, KS
Manhattan, KS
Olathe, Johnson County Industrial Airport, KS
Salina, KS
Topeka, Forbes Airfield, KS
Cape Girardeau, MO
Columbia, MO
Kansas City, Downtown Airport, MO
Kansas City, Richards-Gebaur Airport, MO
Knob Noster, Whiteman, MO
Saint Joseph, MO
Saint Louis, Spirit of Saint Louis Airport, MO
Springfield, MO
Grand Island, NE

FAA Region: Eastern

Wilmington, DE
Baltimore, Glenn Martin Airport, MD
Hagerstown, MD
Caldwell, NJ
Morristown, NJ
Teterboro, NJ
Trenton, NJ
Wrightstown, McGuire Air Force Base, NJ
Elmira, NY
Farmingdale, NY
Ithaca, NY
Newburgh, NY
Niagara Falls, NY
Poughkeepsie, NY
Utica, NY
Wheeler Sack, NY
White Plains, NY
Harrisburg, Capital City Airport, PA
Harrisburg, International Airport, PA
Lancaster, PA
Latrobe, PA
North Philadelphia, PA
Pittsburg, Allegheny Airport, PA
Reading, PA
Wilkes-Barre, PA
Williamsport, PA
Willow Grove, PA
Charlottesville, VA
Chincoteague, VA
Fort Belvoir, VA
Fort Eustis, VA
Lynchburg, VA
Newport News, VA
Norfolk, Naval Air Station, VA
Oceana, Naval Air Station, VA
Clarksburg, WV
Lewisburg, WV
Martinsburg, WV
Morgantown, WV
Wheeling, WV

FAA Region: Great Lakes

Bloomington, IL
Carbondale, IL
Chicago, Merrill C. Meigs Field, IL
Chicago, Waukegan Regional Airport, IL
Decatur, IL
Quincy, IL
Anderson, IN
Bloomington, IN
Columbus, IN
Elkhart, IN
Gary, IN
Grissom Air Force Base, IN
Lafayette, Purdue University Airport, IN
Terre Haute, IN
Alpena, MI
Battle Creek, W.K. Kellogg Airport, MI
Detroit, Detroit City Airport, MI
Detroit, Willow Run Airport, MI
Pontiac, MI
Saginaw, Tri-City Airport, MI
Traverse City, MI
Duluth, Duluth International Airport, MN
Minneapolis, Crystal Airport, MN
Minneapolis, Flying Cloud Airport, MN
Rochester, MN
Bismarck, ND
Fargo, ND
Grand Forks, Grand Forks International Airport, ND
Columbus, Bolton Field Airport, OH
Columbus, Ohio State University, OH
Columbus, Rickenbacker Airport, OH
Springfield, OH
Youngstown, Youngstown Municipal Airport, OH
Sault Sainte Marie, ON
Rapid City, Regional Airport, SD
Sioux Falls, SD
Appleton, WI
Janesville, WI
LaCrosse, WI
Milwaukee, Lawrence J. Timmerman Field, WI
Oshkosh, WI
Waukesha, WI

FAA Region: New England

Bridgeport, CT
Danbury, CT
New Haven, CT
Bangor, ME
Bedford, MA
Chicopee Falls, MA
Lawrence, MA
Martha's Vineyard, MA
Nantucket, MA
New Bedford, MA
Norwood, MA
Westfield, MA
Worcester, MA
Lebanon, NH

FAA Region: Northwest Mountain

Aspen, CO
Broomfield, CO
Fort Carson, CO
Grand Junction, CO
Pueblo, CO
Coeur d'Alene, ID
Idaho Falls, ID
Lewiston, ID
Pocatello, ID
Twin Falls, ID
Billings, MT
Great Falls, International Airport, MT
Helena, MT
Missoula, MT
Klamath Falls, OR
Medford, OR
Pendleton, OR
Portland, Hillsboro, OR
Portland, Troutdale, OR
Salem, OR
Bellingham, WA
Fort Lewis, WA
Moses Lake, WA
Olympia, WA
Pasco, WA
Tacoma, Narrows Airport, WA
Walla Walla, WA
Casper, WY
Cheyenne, WY
Gillette, WY

FAA Region: Southern

Dothan, AL
Troy, AL
Tuscaloosa, AL
Bartow, FL
Fort Lauderdale, Executive Airport, FL
Fort Myers, Page Field, FL
Fort Pierce, FL
Gainesville, FL
Hollywood, FL
Jacksonville, Naval Air Station-Cecil Field, FL
Key West, FL
Lakeland FL
Melbourne, FL
Miami, Opa Locka Airport, FL
Naples, FL
Orlando, Orlando Executive Airport, FL
Panama City, FL
Saint Petersburg, Albert-Whitted Airport, FL

Saint Petersburg, Saint Petersburg-Clearwater International Airport, FL
Titusville, FL
Tyndall Air Force Base, FL
Vero Beach, FL
White House Navy Outlying Field, FL
Albany, Southwest Georgia Regional Airport, GA
Atlanta, Dekalb Peachtree Airport, GA
Atlanta, Dobbins Air Force Base, GA
Augusta, GA
Columbus, Lawson Army Air Field, GA
Fort Stewart, GA
Macon, GA
Valdosta, Regional Airport, GA
Louisville, Bowman Field, KY
Owensboro, KY
Paducah, Barkley Regional Airport, KY
Columbus, Golden Triangle Airport, MS
Greenville, MS
Gulfport, MS
Meridian, Key Field, MS
Asheville, NC
Elizabeth City, NC
Kinston, NC
Wilmington, NC
Winston-Salem, NC
Florence, SC
Myrtle Beach Air Force Base, SC
North Myrtle Beach, SC
Smyrna, TN
Tri-City, TN
Charlotte Amalie, Cyril E. King Airport, VI
Christiansted-St. Croix, VI

FAA Region: Southwest

Blytheville, AR
Fayetteville, AR
Fort Smith, AR
Springdale, AR
Texarkana, AR
Alexandria, Esler Regional Airport, LA
Fort Polk, LA
Houma, LA
Lake Charles, Chennault Industrial Airpark, LA
Lake Charles, Lake Charles Regional Airport, LA
Monroe, LA
New Iberia, LA
New Orleans, Lakefront Airport, LA
Clovis, NM
Farmington, NM
Roswell, NM
Santa Fe, NM
Ardmore, OK
Oklahoma City, Wiley Post Airport, OK
Tulsa, Richard Lloyd Jones, Jr. Airport, OK
Beaumont, TX
Brownsville, TX
College Station, TX
Dallas, Addison Airport, TX
Fort Worth, Alliance Airport, TX
Greenville, TX
Houston, David Wayne Hooks Memorial Airport, TX
Houston, Ellington Air Force Base, TX
Laredo, TX
Longview, TX
San Angelo, TX
San Antonio, Stinson Municipal Airport, TX
Tyler, TX
Waco, TX

FAA Region: Western-Pacific

Chandler, AZ
Flagstaff, AZ
Fort Huachua, AZ
Glendale, AZ
Grand Canyon, AZ
Phoenix, Deer Valley Municipal Airport, AZ
Phoenix, Goodyear Municipal Airport, AZ
Scottsdale, AZ
Yuma, AZ
Bakersfield, CA
Camarillo, CA
Carlsbad, McClellan-Palomar, CA
Chico, CA
Chino, CA
El Monte, CA
Fairfield, Travis Air Force Base, CA
Fort Ord, Fritzsche Army Air Field, CA
Fullerton, CA
Hayward, CA
La Verne, CA
Lancaster, CA
LeMoore Naval Air Station, CA
Livermore, CA
Long Beach, CA
Los Angeles, Hawthorne Municipal Airport, CA
Modesto City, CA
Napa, CA
Palm Springs, CA
Palmdale, CA
Palo Alto, CA
San Carlos, CA
San Diego, Montgomery Field, CA
San Luis Obispo, CA
Santa Maria, CA
Santa Monica, CA
Santa Rosa, CA
South Lake Tahoe, CA
Torrance, CA
Van Nuys, CA
Barbers Point Naval Air Station, HI
Hilo International Airport, General Lyman Field, HI
Honolulu, Wheeler Air Force Base, HI
Kailua-Kona, HI
Molokai, HI
Kwajalein Island, MQ

The airspace areas listed below have been amended by separate rulemaking since the review of control zones by the FAA regions and these amendments were not proposed in NPRM Number 92-5. Because this action does not change the boundaries and configuration of any of these areas, with respect to these areas it is insignificant in nature and impact and inconsequential to the industry and public. Therefore, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

FAA Region: Eastern

Rome, NY: The airspace description is revised according to Airspace Docket Number 91-AEA-21.

Johnstown, PA: The airspace description is revised according to Airspace Docket Number 91-AEA-18.

Manassas, VA: The airspace description for this area, which was established by Airspace Docket Number 91-AEA-01, is added to this final rule.

FAA Region: New England

Stratford, CT: The airspace description is revised according to Airspace Docket Number 91-ANE-31.

FAA Region: Great Lakes

Chicago, DuPage Airport, IL: The airspace description for this area is revised according to Airspace Docket Number 91-AGL-14.

FAA Region: Northwest Mountain

Renton, WA: The airspace description is revised according to Airspace Docket Number 91-ANM-07.

FAA Region: Western-Pacific

Stockton, CA: The airspace description is revised according to Airspace Docket Number 91-AWP-1.

Kaneohe Marine Corps Air Station, HI: The airspace description is revised according to Airspace Docket Number 92-AWP-5.

Revisions to proposed airspace areas by including technical corrections and airspace changes:

FAA Region: Alaskan

Anchorage, Bryant Army Heliport, AK: The airspace description is revised to include editorial modifications that are necessary to a revision to a geographic position.

Fairbanks, Fort Wainwright Army Air Field, AK: The airspace description is revised by replacing "Wainwright AAF Airport" with "Walnwright AAF" and other editorial modifications.

Galena, AK: The airspace description is revised by renaming the title of the area from "Galena Airport, AK" to "Galena, AK."

Juneau, AK: The airspace description is revised by ensuring the ceiling is at 2,500 feet MSL, which is the equivalent of 2,500 feet above the surface, and including editorial modifications.

Kenai, AK: The airspace description is revised by replacing references to the "Kenai VOR" with the "Kenai VOR/DME" and by including editorial modifications.

Ketchikan, AK: The airspace description is revised by changing the name of the "Ketchikan Airport" as the "Ketchikan International Airport;" by replacing references to the "Ketchikan LOC" with the "Ketchikan Localizer;" and by including editorial modifications.

Kodiak, AK: The airspace description is revised by including editorial modifications.

Shemya, AK: The airspace description is revised for clarity.

FAA Region: Central

Fort Leavenworth, KS: The airspace description is revised by changing the name of "Sherman Army Airfield" to "Sherman Army Air Field."

Fort Riley, KS: The airspace description is revised by changing the name of "Marshall Army Airfield" to "Marshall Army Air Field."

Topeka, Phillip Billard Airport, KS: The airspace description is revised by replacing the name of the name of the Phillip Billard Airport" to the "Phillip Billard Municipal Airport."

Wichita, McConnell Air Force Base, KS: The airspace description is revised by adding an exclusion for Derby, Hamilton Field, KS. This airport does not have an operating control tower.

Jefferson City, MO: The airspace description is revised by changing the title of the area from "Jefferson, MO," to "Jefferson City, MO."

FAA Region: Eastern

Aberdeen, MD: The airspace description is revised by eliminating the arrival extension based on the 033° radial from the Phillips VOR and by including editorial modifications.

Lakehurst, NJ: The airspace description is revised by changing the name of "Lakehurst Naval Air Experimental Center Airport" with the "Lakehurst Naval Air Experimental Center Airport/Maxfield Field."

Westhampton Beach, NY: The airspace description is revised by changing the airport name from "Suffolk County Airport" to "Francis S. Gabreski Airport."

Schenectady, NY: The airspace description is revised by adding a ceiling of 2,900 feet mean sea level (MSL), which is the equivalent of 2,500 feet above the surface. The area will become Class D airspace on September 16, 1993, not Class E airspace as identified in NPRM No. 92–5.

Huntington, WV: The airspace description is revised by changing the name of the "Tri State/Milton J. Ferguson Field Airport" with the "Tri State/Milton J Ferguson Field Airport."

Parkersburg, WV: The airspace description is revised by changing the name of the "Wood County (Gill Robb Wilson Field) Airport" to the "Wood County Airport-Gill Robb Wilson Field."

FAA Region: Great Lakes

Alton, IL: The airspace description is revised by adding the provision for the control zone to operate part-time.

Belleville, IL: The airspace description is revised by changing the name of the "Scott AFB TACAN" as the "Scott TACAN."

Cahokia, IL: The airspace description is revised by including editorial modifications.

Chicago, Aurora Municipal Airport, IL: The airspace description is revised by replacing references to the "DuPage VOR" with the "DuPage VOR/DME."

Chicago, DuPage Airport, IL: The airspace description is revised by replacing references to the "DuPage VOR" with the "DuPage VOR/DME."

Glenview, IL: The airspace description is revised by replacing all references to the "Northbrook VOR" with the "Northbrook VORTAC;" all references to "Chicago O'Hare International Airport" with "Chicago-O'Hare International Airport;" and all references to "O'Hare VORTAC" with "Chicago-O'Hare VOR/DME."

Rockford, IL: The airspace description is revised by adding the geographic positions of the Greater Rockford ILS Localizer and the Gilmy LOM.

Jackson, MI: The airspace description is revised by adding the geographic position of the Jackson VOR/DME and including editorial revisions.

Kalamazoo, Battle Creek International Airport, MI: The airspace description is revised by replacing "Austin LOM" with "Austn LOM" and by clarifying that the extension to the southeast of an airport extends to the Austn LOM.

Muskegon, MI: The airspace description is revised by moving the proposed arrival extension from west of the Muskegon County Airport to east of the Muskegon County Airport, which is the location of the existing arrival extension.

Oscada, MI: This airspace description was placed in Docket Number 26852, but was mistakenly omitted from NPRM Number 92–5. The area is adopted as proposed with a ceiling at 3,100 feet MSL, which is the equivalent of 2,500 feet above the surface, and the current radius is expanded by less than 1 mile.

Cincinnati, Municipal-Luken Field Airport, OH: The airspace description is revised by replacing the reference to the "Greater Cincinnati International Airport" with the "Cincinnati/Northern Kentucky International Airport." The airspace description is revised by changing the name of "Cincinnati Municipal-Lunken Field Airport" to "Cincinnati Municipal Airport-Lunken Field."

Cleveland, Burke-Lakefront, OH: The airspace description is revised by changing the name of "Burke-Lakefront" to "Burke Lakefront" and by adding the geographic positions for the Tabey LOM and the Burke Lakefront ILS Localizer.

Cleveland, Cuyahoga County Airport, OH: The airspace description is revised by replacing the reference to the Willoughby, Lost Nation Airport, OH Control Zone, to the Willoughby, OH Control Zone and by deleting the proposed exclusion of the Cleveland, Burke Lakefront, OH control zone.

Mansfield, OH: The airspace description is revised by changing the name of "Mansfield-Lahm Airport" to "Mansfield Lahm Airport."

Willoughby, OH: The airspace description is revised by excluding the Cleveland, Cuyahoga County Airport, OH Control Zone.

FAA Region: New England

Groton, CT: The airspace description is revised by eliminating the unnecessary reference to the Trumbull VOR. The airspace description is revised by replacing all references to "Elizabeth Airport" with "Elizabeth Field."

Hartford, CT: The airspace description is revised excluding that airspace in the Bradley International Airport, Windsor Locks, CT ARSA.

Stratford, CT: The airspace description is revised by replacing the reference to the "Igor I. Sikorsky Memorial Airport, CT Control Zone" with the "Bridgeport, CT Control Zone."

Brunswick, ME: The airspace description is revised by replacing all references to the "Brunswick Naval Air Station" with the "Brunswick NAS" and by replacing all references to the "Brunswick VOR" with the "Brunswick VORTAC."

Beverly, MA: The airspace description is revised by replacing all references to "Lawrence VOR" with "Lawrence VOR/DME."

Falmouth, MA: The airspace description is revised by updating the airport from the "Otis Air Force Base" to the "Otis Air National Guard Base." It is also revised to exclude that airspace within 1 mile of Falmouth Airpark, MA, which does not have an operating control tower.

Fort Devens, MA: The airspace description is revised by replacing the arrival extension based on the 307° bearing of the Moore Army Air Field with an arrival extension based on the 310° bearing of the Moore Army Air Field.

Hyannis, MA: The airspace description is revised by updating the airport name from the "Hyannis, Barnstable Municipal Airport" to the "Hyannis, Barnstable Municipal Airport-Boardman/Polando Field."

South Weymouth, MA: The airspace description is revised by clarifying that the arrival extension based on the 162° bearing from the South Weymouth Naval Air Station extends southeast, not southwest.

Nashua, NH: The airspace description is revised by clarifying the description of the arrival extensions and replacing the reference to the "Manchester/Grenier County Industrial Airpark, NH Control Zone" with the "Manchester, NH Control Zone."

Portsmouth, NH: The airspace description is revised by replacing the name of an airport from "Pease Air National Guard Base" to "Pease International Tradeport."

North Kingston, RI: The airspace description is revised by correcting the ceiling to be 2,500 feet MSL and eliminating the arrival extensions on the 354° and 325° bearing from the Quonset State Airport.

FAA Region: Northwest Mountain

Abottsford, BC: The airspace description is not revised. The area was mistakenly identified in NPRM No. 92–5. The area was proposed and is adopted with a ceiling of 3,000 feet MSL, which is the same ceiling as the adjoining airspace that overlies Canada. This is more than 2,500 feet above the surface.

Aurora, CO: A separate airspace area is established for this airport, which is currently included in the control zone for Denver International Airport, CO.

Colorado Springs, United States Air Force Academy, CO: The airspace description is revised by excluding that airspace in the Colorado Springs, CO ARSA.

Denver, Centennial Airport, CO: The airspace description is revised by excluding the airspace in the Denver, CO TCA.

Eugene, OR: The airspace description is revised by changing the name of "Mahlon Sweet Field" to "Mahlon Sweet Field Airport."

Renton, WA: The airspace description is revised by replacing references to geographic positions with distances from the Renton Municipal Airport and the Seattle VORTAC.

Seattle, Boeing Field, King County International Airport, WA: The airspace description is revised by replacing the references to geographic positions with distances from the Boeing Field/King County International Airport, Nolla NDB, Renton Municipal Airport, and the Seattle VORTAC.

Spokane, Felts Field, WA: The airspace description is revised to delete the proposed extension area west of Felts Field.

Yakima, WA: The airspace description is revised by changing the name of "Yakima Municipal Airport" to "Yakima Air Terminal."

FAA Region: Southern

Huntsville, Redstone Army Air Field, AL: A separate airspace area is established for this airport, which is currently included in the control zone for Huntsville International-Carl T. Jones Field, AL.

Mobile, Downtown Airport, AL: The airspace description is revised by replacing the name "Brookley Airport" with "Downtown Airport" and adding a ceiling of 2,500 feet MSL, which is the equivalent of 2,500 feet above the surface. The area was misidentified in NPRM Number 92–5 and will become Class D airspace on September 16, 1993, not Class E airspace as identified in NPRM No. 92–5.

Jacksonville Naval Air Station, FL: The airspace description is revised by adding the geographic position for Cecil Field NAS.

Jupiter, FL: The airspace description is revised by changing the name of "Gwinn Airport" to "William P Gwinn Airport."

MacDill Air Force Base, FL: The airspace description is revised by changing the name of "St. Petersburg Albert-Whitted Airport" to "Albert-Whitted Airport."

Mayport, FL: The airspace description is revised by replacing all references to the "Mayport TACAN" with the "Mayport (Navy) TACAN."

Miami, Tamiami Airport, FL: The airspace description is revised by adding an exclusion from the Miami, FL TCA.

Greenwood, MS: The airspace description is revised by adding a ceiling of 2,700 feet MSL, which is the equivalent of 2,500 feet above the surface. The area will become Class D airspace on September 16, 1993, not Class E airspace as identified in NPRM No. 92–5.

Jackson, Hawkins Field, MS: The airspace description is revised by clarifying the exclusion from the Jackson, MS ARSA.

Meridian Naval Air Station, MS: The airspace description is revised by changing the name of "NAS Meridian" to "Meridian NAS, McCain Field."

Bogue, NC: The airspace description is revised by changing the name of "Bogue MCALF" with "Bogue Field MCALF."

Simmons Army Air Field, NC: The airspace description is revised to ensure the area meets adjoining controlled airspace.

Roosevelt Roads, PR: The airspace description is revised by changing the name of "Roosevelt Roads NS" to "Roosevelt Roads NS (Ofstie Field)."

San Juan, Isla Grande Airport, PR: The airspace description is revised by changing the airport name from "Isla Grande Airport" to "Fernando Luis Ribas Dominicci Airport."

Beaufort, SC: The airspace description is revised by changing the name of "Beaufort MCAS" to "Beaufort MCAS/Merritt Field."

Eastover, McEntire Air National Guard Base, SC: The airspace description is revised by adding a ceiling of 2,600 feet MSL, which is the equivalent of 2,500 feet above the surface. The area will become Class D airspace on September 16, 1993, not Class E airspace as identified in NPRM No. 92–5.

Greenville, SC: The airspace description is revised by clarifying that the area excludes the airspace within the Greer, SC ARSA.

North, SC: The airspace description is revised by changing the name of "North AFAF" to "North AF Aux."

FAA Region: Southwest

Little Rock, Air Force Base, AR: This airspace description was placed in Docket Number 26852, but was mistakenly omitted from NPRM Number 92–5. The area is adopted as proposed with a ceiling at 2,800 feet MSL, which is the equivalent of 2,500 feet above the surface, and the current radius is reduced by more than 1 mile and less than 2 miles.

New Orleans, Naval Air Station, LA: The airspace description is revised by adding an exclusion from the New Orleans, LA TCA.

Shreveport, Downtown Airport, LA: The airspace description is revised by clarifying that the area excludes the airspace in Shreveport, Regional Airport, LA ARSA and the Barksdale Air Force Base, LA ARSA. The airspace description is revised to lower the ceiling to 1,600 feet MSL so it does not overlap the overlying Shreveport, Barksdale Air Force Base, LA ARSA.

Alamogordo, NM: The airspace description is revised by replacing the proposed arrival extension to the southeast of Holloman Air Force Base with an arrival extension that is northwest of the airport.

Hobbs, NM: The airspace description is revised by changing the name of "Lea

County Airport" to "Lea County (Hobbs) Airport."

Clinton, OK: The airspace description is revised by adding a ceiling of 4,400 feet MSL, which is the equivalent of 2,500 feet above the surface. The area will become Class D airspace on September 16, 1993, not Class E airspace as identified in NPRM No. 92–5.

Enid, Vance Air Force Base, OK: The airspace description is revised by replacing the references to the "Woodring VOR" with the "Woodring VOR/DME."

Enid, Woodring Municipal Airport, OK: The airspace description is revised by replacing all references to the "Woodring VOR" to the "Woodring VOR/DME."

Lawton, OK: The airspace description is revised by replacing references to the Lawton VOR with the Lawton VOR/DME and replacing references to the Trail RBN with the Trail NDB.

Norman, OK: The airspace description is revised by adding a ceiling of 3,700 feet MSL, which is the equivalent of 2,500 feet above the surface. The area will become Class D airspace on September 16, 1993, not Class E airspace as identified in NPRM No. 92–5.

Austin, Bergstrom Air Force Base, TX: The airspace description is revised by replacing the references to the Bergstrom VORTAC with the Bergstrom TACAN.

Corpus Christi, Naval Air Station, TX: The airspace description is revised by eliminating the proposed arrival extensions based on the 154° bearing from Navy Corpus RBN and the 158° radial from the Truax VORTAC. It is also revised by replacing references to the "Navy Corpus VORTAC" with the "Truax VORTAC;" deleting references to the Navy Corpus RBN and the Corpus Christi VORTAC; and replacing reference to "Corpus Christi, TX ARSA" with "Corpus Christi International, TX ARSA."

Dallas, Naval Air Station, TX: The airspace description is revised by including modifications made to the Dallas, TX TCA.

Dallas, Redbird Airport, TX: The airspace description is revised by including modifications made to the Dallas, TX TCA.

Fort Worth, Carswell Air Force Base, TX: The airspace description is revised by replacing references to the "Carswell ILS localizer" with references to the "Carswell ILS North localizer;" adding the Carswell ILS South localizer; and replacing references to the "Carswell VORTAC" with the "Carswell TACAN."

Fort Worth, Meacham Field, TX: The airspace description is revised by changing the name of "Fort Worth Meacham Field" to "Fort Worth Meacham Airport."

Hood Army Air Field, TX: The airspace description is revised by clarifying the airspace excluded from the area for charting purposes. It is also revised by replacing all references to the "Gray VOR" with the "Gray VOR/DME."

McAllen, TX: The airspace description is revised by replacing all references to the "McAllen VOR" with the "McAllen VOR/DME."

Robert Gray Army Air Field, TX: The airspace description is revised by replacing all references to the "Gray VOR" with the "Gray VOR/DME."

San Antonio, Kelly Air Force Base, TX: The airspace description is revised by replacing the proposed arrival extension based on the 159° radial from the Kelly VORTAC with an arrival extension based on the 339° radial from the Kelly TACAN. The new extension is similar to the current arrival extension, which is based on the 341° radial of the Kelly TACAN.

Wichita Falls, TX: The airspace description is revised by eliminating the proposed exclusion for Wichita Valley Airport, which is beyond the boundary of the Wichita Falls, TX Control Zone. The area was identified as having a ceiling less than 2,500 feet above the surface. However, the airspace area is proposed and adopted with a ceiling at 3,500 feet MSL, which is the equivalent of 2,500 feet above the surface.

FAA Region: Western-Pacific

Falcon Field, AZ: The airspace description is revised by changing the name of "Falcon Field Airport" to "Falcon Field."

Prescott, AZ: The airspace description is revised by adding the geographic position of the Ernest A Love Field Localizer.

Alameda Naval Air Station, CA: The airspace description is revised by changing the name of "Alameda NAS" to "Alameda NAS (Nimitz Field)."

Camp Pendleton, CA: The airspace description is revised by changing the name of "Camp Pendleton MCAS" to "Camp Pendleton MCAS (Munn Field)."

Concord, CA: The airspace description is revised by replacing all references to the "Concord VOR" with the "Concord VOR/DME."

Crows Landing, CA: The airspace description is revised by replacing all references to "Patterson Field" with "Patterson Airport."

El Centro Naval Air Station, CA: The airspace description is revised by adding R–2510 to the airspace excluded from the area.

Imperial Beach, CA: The airspace description is revised by changing the name of "Brown Field" to "Brown Field Municipal."

LeMoore, CA: The airspace description is revised by changing the name of "LeMoore NAS" to "LeMoore NAS (Reeves Field)."

Miramar Naval Air Station, CA: The airspace description is revised by clarifying that the area meets the boundaries of the San Diego, CA TCA. It is also revised by changing the name of "Miramar NAS" to "Miramar NAS (Mitscher Field)."

Mountain View, Moffet Field, CA: The airspace description is revised by excluding the area from the San Jose, CA ARSA at all times. It is also revised by replacing "Palo Alto Airport, CA Control Zone" with "Palo Alto, CA Control Zone."

Oxnard, CA: The airspace description is revised by changing the name of "Oxnard/Ventura County Airport" to "Oxnard Airport."

Point Mugu, CA: The airspace description is revised by changing the name of "Point Mugu NAS" to "Point Mugu NAWS."

Redding, CA: The airspace description is revised by replacing all references to the "Redding VORTAC" with the "Redding VOR/DME."

Riverside, Municipal Airport, CA: The airspace description is revised by changing the name of "Riverside Flabob Airport" to "Flabob Airport." It is also revised by replacing the proposal to include the airspace within a 2.6-mile radius of Riverside Municipal Airport with airspace within a 3.5-mile radius. This will permit the airspace within a 3.5-mile radius of Riverside Municipal Airport to be designated as Class D airspace and the rest of the area to be designated as Class E airspace.

Salinas, CA: The airspace description is revised by replacing "Fort Ord Fritzche AAF, CA Control Zone" with "Fort Ord, CA Control Zone" and replacing "Monterey Peninsula Airport, CA Control Zone" with "Monterey, CA Control Zone."

San Clemente Island, CA: The airspace description is revised by ensuring the ceiling is at 2,700 feet MSL, which is the equivalent of 2,500 feet above the surface. The airspace description is revised by changing the name of "San Clemente Island NALF" to "San Clemente Island NALF (Frederick Sherman Field)."

San Diego, Brown Field, CA: The airspace description is revised by changing the name of "Brown Field" to "Brown Field Municipal."

San Diego, North Island Naval Air Station, CA: The airspace description is not revised. The area was misidentified in NPRM No. 92–5. The area was proposed and is adopted with a ceiling of 2,800 feet MSL, which will meet the airspace from the San Diego, CA TCA that overlies the area. The airspace description is revised by changing the name of "North Island NAS" to "North Island NAS (Halsey Field)."

San Jose, Reid-Hillview Airport, CA: The airspace description is revised by changing the name of "Reid-Hillview Airport" to "Reid Hillview of Santa Clara County Airport."

Guam Island, Agana Naval Air Station, GU: The airspace description is revised by replacing all distances that were proposed in statute miles with the nearest nautical mile equivalents and by ensuring the area is aligned with adjacent controlled airspace.

Guam Island, Anderson Air Force Base, GU: The airspace description is revised by replacing all distances that were proposed in statute miles with the nearest nautical mile equivalent.

Fallon Naval Air Station, NV: The airspace description is revised by changing the name of "Fallon NAS" to "Fallon NAS (Van Voorhis Field)."

North Las Vegas, NV: The airspace description is revised by deleting a reference to the Las Vegas International Airport and to the airport's geographic position.

Revisions to proposed airspace areas by updating a geographic position:

FAA region	Proposed geographic position	Revised geographic position
Name and airport or facility:		
Alaskan		
Adak, AK:		
Adak Naval Air Station Airport	Lat. 51°52'46" N., Long. 176°38'37" W	Lat. 51°52'58" N., Long. 176°38'41" W.
Adak NDB	Lat. 51°55'01" N., Long. 178°33'09" W	Lat. 51°55'06" N., Long. 178°33'52" W.
Anchorage, Bryant Army Heliport, AK:		
Bryant Army Heliport	Lat. 61°15'08" N., Long. 149°39'02" W	Lat. 61°15'47" N., Long. 149°39'09" W.
Bethel, AK:		
Bethel Airport	Lat. 60°46'50" N., Long. 161°50'08" W	Lat. 60°46'50" N., Long. 161°50'09" W.
Galena, AK:		
Galena Airport	Lat. 64°44'13" N., Long. 156°56'06" W	Lat. 64°44'12" N., Long. 156°56'06" W.
Juneau, AK:		
Juneau Localizer	Lat. 58°21'33" N., Long. 134°36'08" W	Lat. 58°21'33" W., Long. 134°38'09" W.
Shemya, AK:		
Shemya VORTAC	Lat. 52°43'13" N., Long. 174°03'51" E	Lat. 52°43'12" N., Long. 174°03'55" E.
Central		
Olathe, Johnson County Executive Airport, KS:		
Johnson County Executive Airport	Lat. 38°50'51" N., Long. 94°44'15" W	Lat. 38°50'51" N., Long. 94°44'14" W.
Fort Leonard Wood, MO:		
Forney Army Air Field	Lat. 37°44'33" N., Long. 92°08'20" W	Lat. 37°44'31" N., Long. 92°08'24" W.
Joplin, MO:		
Joplin Regional Airport	Lat. 37°08'58" N., Long. 94°29'54" W	Lat. 37°09'02" N., Long. 94°29'53" W.
Eastern		
Dover, DE:		
Dover TACAN	Lat. 39°07'54" N., Long. 75°28'06" W	Lat. 39°07'56" N., Long. 75°28'04" W.
Aberdeen, MD:		
Phillips Army Air Field	Lat. 39°28'00" N., Long. 76°10'12" W	Lat. 39°27'58" N., Long. 76°10'12" W.
Patuxent River, MD:		
Patuxent River Naval Air Station	Lat. 38°17'18" N., Long. 76°25'00" W	Lat. 38°17'30" N., Long. 76°25'00" W.
Patuxent VORTAC	Lat. 38°17'18" N., Long. 76°24'00" W	Lat. 38°17'16" N., Long. 76°24'02" W.
Patuxent River NDB	Lat. 38°17'15" N., Long. 76°24'22" W	Lat. 38°17'09" N., Long. 76°24'12" W.
Chesapeake Ranch Airpark	Lat. 38°21'40" N., Long. 76°24'15" W	Lat. 38°21'40" N., Long. 76°24'20" W.
Binghamton, NY:		
Edwin A. Link Field/Broome County	Lat. 42°12'27" N., Long. 75°58'48" W	Lat. 42°12'30" N., Long. 75°58'48" W.
Calverton, NY:		
Calverton Naval Weapons Industrial Reserve Plant (Peconic Field).	Lat. 40°54'24" N., Long. 72°47'30" W	Lat. 40°54'54" N., Long. 72°47'33" W.
Plattsburgh, NY:		
Plattsburgh Air Force Base	Lat. 44°39'06" N., Long. 73°28'06" W	Lat. 44°39'03" N., Long. 73°28'06" W.
Clinton County Airport	Lat. 44°41'14" N., Long. 73°31'23" W	Lat. 44°41'15" N., Long. 73°31'30" W.
Rome, NY:		
Griffiss Air Force Base	Lat. 43°14'00" N., Long. 75°24'24" W	Lat. 43°14'02" N., Long. 75°24'27" W.
Beaver Falls, PA:		
Ellwood City VORTAC	Lat. 40°49'30" N., Long. 80°12'42" W	Lat. 40°49'31" N., Long. 88°12'42" W.
Erie, PA:		
Erie International Airport	Lat. 42°04'54" N., Long. 80°10'38" W	Lat. 42°04'55" N., Long. 80°10'35" W.
Fort Indiantown Gap, PA:		
Muir Army Air Field	Lat. 40°26'06" N., Long. 76°34'12" W	Lat. 40°26'05" N., Long. 76°34'11" W.
Hampton Roads, VA:		
Langley Army Air Field	Lat. 37°05'00" N., Long. 76°21'42" W	Lat. 37°04'58" N., Long. 76°21'39" W.
Quantico, VA:		
Quantico Marine Corps Air Field (Turner Field)	Lat. 38°30'15" N., Long. 77°18'24" W	Lat. 38°30'06" N., Long. 77°18'21" W.
Quantico NDB	Lat. 38°30'12" N., Long. 77°18'36" W	Lat. 38°29'52" N., Long. 77°18'35" W.
Great Lakes		
Cahokia, IL:		
Cahokia-St. Louis Downtown Parks Airport	Lat. 38°34'17" N., Long. 90°09'26" W	Lat. 38°34'14" N., Long. 90°09'22" W.
Chicago, Dupage Airport, IL:		
Chicago, Dupage Airport	Lat. 41°54'52" N., Long. 88°14'47" W	Lat. 41°54'24" N., Long. 88°14'54" W.
Glenview, IL:		
Glenview TACAN	Lat. 42°05'08" N., Long. 87°49'20" W	Lat. 42°05'08" N., Long. 87°49'21" W.

FAA Region	Proposed geographic position	Revised geographic position
Marion, IL:		
Marion VOR/DME	Lat. 37°45'16" N., Long. 89°00'42" W	Lat. 37°45'15" N., Long. 89°00'42" W.
Muncie, IN:		
Muncie VOR/DME	Lat. 40°14'14" N., Long. 85°23'37" W	Lat. 40°14'14" N., Long. 85°23'39" W.
Ann Arbor, MI:		
Ann Arbor Municipal Airport	Lat. 42°13'22" N., Long. 83°44'40" W	Lat. 42°13'23" N., Long. 83°44'44" W.
K.I. Sawyer Air Force Base, MI:		
K.I. Sawyer Air Force Base	Lat. 46°21'13" N., Long. 87°23'43" W	Lat. 46°21'13" N., Long. 87°23'44" W.
Mount Clemens, MI:		
Selfridge Air National Guard Base	Lat. 42°36'48" N., Long. 82°49'55" W	Lat. 42°36'03" N., Long. 82°50'14" W.
Oscoda, MI:		
Oscoda, Wurtsmith Air Force Base	Lat. 44°27'06" N., Long. 83°23'39" W	Lat. 44°27'05" N., Long. 83°23'39" W.
Saint Paul, MN:		
South St. Paul Municipal Richard E. Fleming Field.	Lat. 44°51'30" N., Long. 93°02'00" W	Lat. 44°51'26" N., Long. 93°01'58" W.
Grand Forks Air Force Base, ND:		
Grand Forks Air Force Base	Lat. 47°57'41" N., Long. 97°24'02" W	Lat. 47°57'40" N., Long. 97°24'03" W.
Minot Air Force Base, ND:		
Minot Air Force Base	Lat. 48°24'57" N., Long. 101°21'26" W	Lat. 48°24'56" N., Long. 101°21'26" W.
Minot, Minot International Airport, ND:		
Minot International Airport	Lat. 48°15'34" N., Long. 101°16'50" W	Lat. 48°15'34" N., Long. 101°16'51" W.
Dayton, Wright-Patterson Air Force Base, OH:		
Dayton, Wright-Patterson Air Force Base	Lat. 39°49'30" N., Long. 84°02'48" W	Lat. 39°49'34" N., Long. 84°02'54" W.
Rapid City, Ellsworth Air Force Base, SD:		
Ellsworth Air Force Base	Lat. 44°08'42" N., Long. 103°06'11" W	Lat. 44°08'20" N., Long. 103°06'11" W.
Camp Douglas, WI:		
Volk Field Airport	Lat. 43°56'25" N., Long. 90°15'20" W	Lat. 43°56'18" N., Long. 90°16'06" W.
New England		
Limestone, ME:		
Loring Air Force Base	Lat. 46°57'02" N., Long. 67°53'09" W	Lat. 46°57'01" N., Long. 67°53'10" W.
Falmouth, MA:		
Otis ANGB	Lat. 41°39'33" N., Long. 70°31'24" W	Lat. 41°39'30" N., Long. 70°31'19" W.
Otis TACAN	Lat. 41°39'36" N., Long. 70°30'54" W	Lat. 41°39'34" N., Long. 70°30'52" W.
Fort Devens, MA:		
Shirley Airport	Lat. 42°31'30" N., Long. 71°39'55" W	Lat. 42°31'38" N., Long. 71°39'54" W.
Hyannis, MA:		
Hyannis, Barnstable Municipal Airport-Boardman/Polando Field, MA.	Lat. 41°40'07" N., Long. 70°16'48" W	Lat. 41°40'09" N., Long. 70°16'51" W.
Nashua, NH:		
Manchester VORTAC	Lat. 42°52'06" N., Long. 71°41'11" W	Lat. 42°52'06" N., Long. 71°22'12" W.
Portsmouth, NH:		
Pease International Tradeport	Lat. 43°04'39" N., Long. 70°49'26" W	Lat. 43°04'40" N., Long. 70°49'26" W.
Northwest Mountain		
Mountain Home, ID:		
Mountain Home Air Force Base	Lat. 43°02'37" N., Long. 115°52'15" W	Lat. 43°02'26" N., Long. 115°52'18" W.
Great Falls, Malmstrom Air Force Base, MT:		
Malmstrom Air Force Base	Lat. 47°30'21" N., Long. 111°11'02" W	Lat. 47°30'18" N., Long. 111°11'14" W.
Ogden, Hill Air Force Base, UT:		
Hill Air Force Base	Lat. 41°07'26" N., Long. 111°58'20" W	Lat. 41°07'25" N., Long. 111°58'20" W.
Ogden-Hinckley Airport, UT:		
Hill Air Force Base	Lat. 41°07'26" N., Long. 111°58'20" W	Lat. 41°07'25" N., Long. 111°58'20" W.
Everett, WA:		
Paine VOR/DME	Lat. 47°54'11" N., Long. 122°17'12" W	Lat. 47°55'12" N., Long. 122°16'35" W.
Tacoma, McChord Air Force Base, WA:		
McChord Air Force Base	Lat. 47°08'18" N., Long. 122°28'31" W	Lat. 47°08'18" N., Long. 122°28'30" W.
Southern:		
Fort Rucker, AL:		
Cairns Army Air Field	Lat. 31°16'36" N., Long. 85°42'12" W	Lat. 31°16'36" N., Long. 85°42'36" W.
Cairns VOR	Lat. 31°16'06" N., Long. 85°43'36" W	Lat. 31°16'06" N., Long. 85°43'35" W.
Montgomery, AL:		
Maxwell Air Force Base	Lat. 32°22'48" N., Long. 86°21'48" W	Lat. 32°22'45" N., Long. 86°21'45" W.
Cocoa, Patrick Air Force Base, FL:		
Patrick Air Force Base	Lat. 28°14'24" N., Long. 80°36'30" W	Lat. 28°14'21" N., Long. 80°36'28" W.
Melbourne Regional	Lat. 28°06'06" N., Long. 80°38'46" W	Lat. 28°06'09" N., Long. 80°38'46" W.
Eglin Air Force Base, FL:		
Eglin Air Force Base	Lat. 30°29'12" N., Long. 86°31'36" W	Lat. 30°29'12" N., Long. 86°31'34" W.
Duke Field	Lat. 30°39'06" N., Long. 86°31'24" W	Lat. 30°39'06" N., Long. 86°31'23" W.
Hurlburt Field	Lat. 30°25'44" N., Long. 86°41'20" W	Lat. 30°25'43" N., Long. 86°41'20" W.
Eglin AF AUX No. 3 Duke Field, FL:		
Eglin Air Force Base	Lat. 30°29'12" N., Long. 86°31'36" W	Lat. 30°29'12" N., Long. 86°31'34" W.
Duke Field	Lat. 30°39'06" N., Long. 86°31'24" W	Lat. 30°39'06" N., Long. 86°31'23" W.
Eglin, Hurlburt Field, FL:		
Hurlburt Field	Lat. 30°25'44" N., Long. 86°41'20" W	Lat. 30°25'43" N., Long. 86°41'20" W.
Eglin Air Force Base	Lat. 30°29'12" N., Long. 86°31'36" W	Lat. 30°29'12" N., Long. 86°31'34" W.
Homestead, FL:		
Homestead Air Force Base	Lat. 25°29'15" N., Long. 80°23'00" W	Lat. 25°29'17" N., Long. 80°23'02" W.
Jacksonville, Craig Municipal Airport, FL:		
Mayport Naval Air Station	Lat. 30°23'30" N., Long. 81°25'24" W	Lat. 30°23'30" N., Long. 81°25'26" W.
Jacksonville, Naval Air Station, FL:		
Jacksonville Naval Air Station	Lat. 30°14'06" N., Long. 81°40'30" W	Lat. 30°14'04" N., Long. 81°40'36" W.

FAA Region	Proposed geographic position	Revised geographic position
MacDill Air Force Base, FL:		
MacDill Air Force Base	Lat. 27°51'00" N., Long. 82°31'18" W	Lat. 27°50'56" N., Long. 82°31'18" W.
Mayport, Naval Air Station, Mayport, FL:		
Mayport Naval Air Station	Lat. 30°23'30" N., Long. 81°25'24" W	Lat. 30°23'30° N., Long. 81°25'26" W.
Pompano Beach, FL:		
Pompano Beach VOR	Lat. 26°14'51" N., Long. 80°06'31" W	Lat. 26°14'52" N., Long. 80°06'31" W.
Sanford, FL:		
Central Florida Regional Airport	Lat. 28°46'43" N., Long. 81°14'17" W	Lat. 28°46'43" N., Long. 81°14'19" W.
Atlanta, Fulton County Airport-Brown Field, GA:		
Dobbins Air Force Base	Lat. 33°54'54" N., Long. 84°31'00" W	Lat. 33°54'55" N., Long. 84°30'59" W.
Savannah, Hunter Army Air Field, GA:		
Hunter Army Air Field	Lat. 32°00'36" N., Long. 81°08'48" W	Lat. 32°00'34" N., Long. 81°08'45" W.
Valdosta, Moody Air Force Base, GA:		
Moody Air Force Base	Lat. 30°58'06" N., Long. 83°11'36" W	Lat. 30°58'06" N., Long. 83°11'35" W.
Fort Campbell, KY:		
Campbell Army Air Field	Lat. 36°40'18" N., Long. 87°29'36" W	Lat. 36°40'22" N., Long. 87°29'30" W.
Fort Knox, KY:		
Godman Army Air Field	Lat. 37°54'24" N., Long. 85°58'24" W	Lat. 37°54'24" N., Long. 85°58'23" W.
Biloxi, Keesler Air Force Base, MS:		
Keesler Air Force Base	Lat. 30°24'42" N., Long. 88°55'24" W	Lat. 30°24'40" N., Long. 88°55'25" W.
Cherry Point Marine Corps Air Station, NC:		
Cherry Point Marine Corps Air Station	Lat. 34°54'12" N., Long. 76°52'54" W	Lat. 34°43'09" N., Long. 76°52'53" W.
Goldsboro, NC:		
Seymour Johnson Air Force Base	Lat. 35°20'24" N., Long. 77°57'36" W	Lat. 35°20'23" N., Long. 77°57'36" W.
Jacksonville, New River Marine Corps Air Station, NC:		
Jacksonville, New River Marine Corps Air Station.	Lat. 34°42'30" N., Long. 77°26'30" W	Lat. 34°42'38" N., Long. 77°26'22" W.
New River TACAN	Lat. 34°42'24" N., Long. 77°26'24" W	Lat. 34°42'25" N., Long. 77°26'26" W.
Mackall Army Air Field, NC:		
Mackall Army Air Field	Lat. 35°02'12" N., Long. 79°29'54" W	Lat. 35°02'11" N., Long. 79°29'52" W.
Mackall NDB	Lat. 35°01'42" N., Long. 79°29'12" W	Lat. 35°01'40" N., Long. 79°29'09" W.
Oak Grove, NC:		
Oak Grove HOLF	Lat. 35°01'15" N., Long. 77°15'12" W	Lat. 35°02'00" N., Long. 77°15'00" W.
Simmons Army Air Field, NC:		
Simmons Army Air Field	Lat. 35°07'54" N., Long. 78°56'06" W	Lat. 35°07'54" N., Long. 78°56'13" W.
Simmons VOR	Lat. 35°08'00" N., Long. 78°66'00" W	Lat. 35°07'58" N., Long. 78°65'01" W.
Roosevelt Roads, PR:		
Roosevelt Roads NS	Lat. 18°15'05" N., Long. 65°38'35" W	Lat. 18°15'00" N., Long. 65°38'00" W.
Beaufort, SC:		
Beaufort Marine Corps Air Station	Lat. 32°28'36" N., Long. 80°43'24" W	Lat. 32°28'38" N., Long. 80°43'24" W.
Eastover, SC:		
McEntire Air National Guard Base	Lat. 33°55'06" N., Long. 80°48'00" W	Lat. 33°55'05" N., Long. 80°48'00" W.
Memphis, Naval Air Station, TN:		
Memphis Naval Air Station	Lat. 35°21'18" N., Long. 89°52'06" W	Lat. 35°21'19" N., Long. 89°52'08" W.
Southwest		
Little Rock, Air Force Base, AR:		
Jacksonville ILS Localizer	Lat. 34°54'36" N., Long. 92°09'27" W	Lat. 34°54'36" N., Long. 92°10'12" W.
Alexandria, England Air Force Base, LA:		
England Air Force Base	Lat. 31°19'38" N., Long. 92°32'53" W	Lat. 31°19'27" N., Long. 92°32'49" W.
New Orleans Naval Air Station, LA:		
New Orleans Naval Air Station Alvin Callender Field.	Lat. 29°49'33" N., Long. 90°01'32" W	Lat. 29°49'30" N., Long. 90°02'06" W.
Alamogordo, NM:		
Holloman Air Force Base	Lat. 32°51'00" N., Long. 106°06'25" W	Lat. 32°51'05" N., Long. 106°06'06" W.
Holloman Localizer	Lat. 32°50'36" N., Long. 106°06'11" W	Lat. 32°49'48" N., Long. 106°06'29" W.
Midway Airport	Lat. 32°52'04" N., Long. 105°59'26" W	Lat. 32°52'00" N., Long. 106°00'00" W.
Altus, OK:		
Altus Air Force Base	Lat. 34°39'50" N., Long. 99°16'24" W	Lat. 34°39'50" N., Long. 99°16'25" W.
Enid, Vance Air Force Base, OK:		
Vance VORTAC	Lat. 36°20'42" N., Long. 98°55'05" W	Lat. 36°20'44" N., Long. 97°55'07" W.
Beeville, TX:		
Chase Field Naval Air Station	Lat. 28°21'55" N., Long. 97°39'16" W	Lat. 28°21'33" N., Long. 97°39'38" W.
Chase TACAN	Lat. 28°21'24" N., Long. 97°39'48" W	Lat. 28°21'23" N., Long. 97°39'46" W.
Corpus Christi Naval Air Station, TX:		
Corpus Christi Naval Air Station	Lat. 27°41'35" N., Long. 97°17'26" W	Lat. 27°42'00" N., Long. 97°17'00" W.
Truax VORTAC	Lat. 27°41'09" N., Long. 97°17'41" W	Lat. 27°41'09" N., Long. 97°17'40" W.
Dallas, Naval Air Station, TX:		
Grand Prairie Municipal Airport	Lat. 32°41'54" N., Long. 96°52'02" W	Lat. 32°41'54" N., Long. 97°02'47" W.
Dallas Naval Air Station/Henseley Field	Lat. 32°44'01" N., Long. 96°58'08" W	Lat. 32°44'04" N., Long. 96°58'02" W.
Dallas, Redbird Airport, TX:		
Redbird Airport	Lat. 32°40'49" N., Long. 96°52'02" W	Lat. 32°40'51" N., Long. 96°52'05" W.
Kingsville, TX:		
Kingsville Naval Air Station	Lat. 27°30'15" N., Long. 97°46'29" W	Lat. 27°30'25" N., Long. 97°48'34" W.
Lubbock, Reese Air Force Base, TX:		
Lubbock Reese Air Force Base	Lat. 33°35'55" N., Long. 102°02'35" W	Lat. 33°35'47" N., Long. 102°02'31" W.
San Antonio, Kelly Air Force Base, TX:		
San Antonio Kelly Air Force Base	Lat. 29°23'02" N., Long. 98°34'51" W	Lat. 29°22'48" N., Long. 98°35'02" W.
San Antonio, Randolph Air Force Base, TX:		
Randolph Air Force Base	Lat. 29°31'43" N., Long. 98°16'40" W	Lat. 29°31'46" N., Long. 98°16'43" W.

FAA Region	Proposed geographic position	Revised geographic position
Western-Pacific		
Falcon Field, AZ:		
Falcon Field Mesa	Lat. 33°27'39" N., Long. 111°43'40" W	Lat. 33°27'39" N., Long. 111°43'39" W.
Phoenix, Luke Air Force Base, AZ:		
Luke Air Force Base TACAN	Lat. 33°32'42" N., Long. 112°22'54" W	Lat. 33°32'41" N., Long. 112°22'52" W.
Alameda Naval Air Station, CA:		
Alameda Naval Air Station (Nimitz Field)	Lat. 37°47'21" N., Long. 122°19'10" W	Lat. 37°47'26" N., Long. 122°19'28" W.
China Lake Naval Air Facility, CA:		
China Lake NWC	Lat. 35°41'18" N., Long. 117°41'24" W	Lat. 35°41'16" N., Long. 117°41'23" W.
Crows Landing Naval Auxiliary Landing Facility, CA:		
Crows Landing NALF	Lat. 37°24'30" N., Long. 121°06'30" W	Lat. 37°24'29" N., Long. 121°06'30" W.
Edwards Air Force Base, CA:		
Edwards Air Force Base	Lat. 34°54'20" N., Long. 117°52'58" W	Lat. 34°54'18" N., Long. 117°52'58" W.
Imperial Beach Naval Outlying Landing Facility, CA:		
Imperial Beach Naval Outlying Landing Facility TACAN.	Lat. 32°33'54" N., Long. 117°06'30" W	Lat. 32°33'51" N., Long. 117°06'32" W.
Lompoc, Vandenberg Air Force Base, CA:		
Lompoc, Vandenberg Air Force Base	Lat. 34°44'14" N., Long. 120°35'00" W	Lat. 34°43'47" N., Long. 120°34'33" W.
Vandenberg TACAN	Lat. 34°44'00" N., Long. 120°34'54" W	Lat. 34°43'57" N., Long. 120°34'55" W.
Los Alamitos, Army Air Field, CA:		
Los Alamitos Army Air Field	Lat. 33°27'24" N., Long. 118°03'00" W	Lat. 33°47'24" N., Long. 118°03'04" W.
Miramar Naval Air Station, CA:		
Miramar, Naval Air Station (Mitscher Field)	Lat. 32°52'09" N., Long. 117°08'37" W	Lat. 32°52'06" N., Long. 117°08'30" W.
Mountain View, CA:		
Moffett Field Naval Air Station	Lat. 37°24'54" N., Long. 122°02'55" W	Lat. 37°24'55" N., Long. 122°02'50" W.
Oxnard, Ventura, CA:		
Point Mugu Naval Air Station	Lat. 34°07'09" N., Long. 119°07'03" W	Lat. 34°07'13" N., Long. 119°07'12" W.
Sacramento, Executive Airport, CA:		
Mather Air Force Base	Lat. 38°32'53" N., Long. 121°18'23" W	Lat. 38°33'23" N., Long. 121°17'44" W.
San Clemente Island, CA:		
San Clemente Island Naval Auxiliary Landing Facility.	Lat. 33°01'22" N., Long. 118°35'15" W	Lat. 33°01'24" N., Long. 118°35'14" W.
San Clemente Island TACAN	Lat. 33°01'36" N., Long. 118°34'42" W	Lat. 33°01'37" N., Long. 118°34'43" W.
San Diego, San Diego-Gillespie Field, CA:		
Miramar Naval Air Station	Lat. 32°52'04" N., Long. 117°08'27" W	Lat. 32°52'09" N., Long. 117°08'37" W.
San Diego, North Island Naval Air Station, CA:		
North Island TACAN	Lat. 32°42'12" N., Long. 117°12'54" W	Lat. 32°42'09" N., Long. 117°12'55" W.
San Nicolas Island Naval Outlying Field, CA:		
San Nicolas Island Naval Outlying Field	Lat. 33°14'23" N., Long. 119°27'27" W	Lat. 33°14'23" N., Long. 119°27'26" W.
Tustin Marine Corps Air Station, CA:		
Tustin Marine Corps Air Station	Lat. 33°42'24" N., Long. 117°49'36" W	Lat. 33°42'22" N., Long. 117°49'35" W.
El Toro Marine Corps Air Station	Lat. 33°40'23" N., Long. 117°43'50" W	Lat. 33°40'03" N., Long. 117°43'06" W.
Twentynine Palms, Expeditionary Air Field, CA:		
Twentynine Palms, Expeditionary Air Field Marine Corps Base.	Lat. 34°17'48" N., Long. 116°09'42" W	Lat. 34°17'00" N., Long. 116°10'00" W.
Victorville, George Air Force Base, CA:		
George Air Force Base	Lat. 34°35'36" N., Long. 117°23'43" W	Lat. 34°35'03" N., Long. 117°23'00" W.
Guam Island, Agana Naval Air Station, GU:		
Agana Naval Air Station	Lat. 13°29'00" N., Long. 144°47'42" E	Lat. 13°28'54" N., Long. 144°47'36" E.
Anderson TACAN	Lat. 13°35'24" N., Long. 144°56'42" E	Lat. 13°35'23" N., Long. 144°56'39" E.
Nimitz VORTAC	Lat. 13°27'16" N., Long. 144°43'59" E	Lat. 13°27'11" N., Long. 144°43'51" E.
Guam Island, Anderson Air Force Base, GU:		
Anderson Air Force Base	Lat. 13°35'18" N., Long. 144°55'30" E	Lat. 13°34'52" N., Long. 144°55'28" E.
Agana Naval Air Station	Lat. 13°29'00" N., Long. 144°47'42" E	Lat. 13°28'54" N., Long. 144°47'36" E.
Kaneohe Marine Corps Air Station, HI:		
Marine Corps Air Station	Lat. 21°27'13" N., Long. 157°46'15" W	Lat. 21°27'17" N., Long. 157°46'20" W.
Lihue, HI:		
Lihue Airport	Lat. 21°58'45" N., Long. 159°20'29" W	Lat. 21°58'45" N., Long. 159°20'30" W.
Pohakuloa, Bradshaw Army Air Field, HI:		
Bradshaw Army Air Field	Lat. 19°45'47" N., Long. 155°33'24" W	Lat. 19°45'49" N., Long. 155°33'23" W.
Fallon Naval Air Station, NV:		
Fallon Naval Air Station (Van Voorhis Field)	Lat. 39°24'59" N., Long. 118°41'57" W	Lat. 39°25'00" N., Long. 118°42'00" W.

As stated in NPRM Number 92–5, the FAA reviewed all control zones that will become Class D airspace to identify those with a minimum of one arrival extension more than 2 miles from the airspace necessary for aircraft operating under IFR to depart within controlled airspace. During this review, the FAA found some of these areas are designed in complex shapes and cannot be separated. These complex shapes result from adjoining airspace areas or occur because the control zone only includes that airspace necessary to contain intended terminal operations under IFR. The FAA has attempted to ensure that any airspace that could be designated as Class E airspace is so designated.

The FAA will amend subpart D of FAA Order 7400.9, which is effective September 16, 1993, by establishing that portion, which is necessary for aircraft operating under IFR to depart within controlled airspace, of the airspace areas listed below as Class D airspace areas. The FAA will amend subpart E of FAA Order 7400.9, which is effective September 16, 1993, by establishing the airspace that extends beyond the area necessary for departures as Class E airspace areas.

Name	State
FAA Region: Alaskan	
Adak	AK

Name	State
Bethel	AK
Fairbanks, Eielson Air Force Base	AK
Fairbanks, Fairbanks International Airport.	AK
Fairbanks, Wainwright Army Air Field	AK
Juneau	AK
Kenai	AK
King Salmon	AK
Kodiak	AK
FAA Region: Central	
Dubuque	IA
Sioux City	IA
Waterloo	IA
Fort Riley	KS
Manhattan	KS
Olathe, Johnson County Executive Airport.	KS
Salina	KS
Topeka, Forbes Field	KS
Topeka, Phillip Billard Airport	KS
Wichita, McConnell Air Force Base	KS
Cape Girardeau	MO
Fort Leonard Wood	MO
Jefferson City	MO
Kansas City, Downtown Airport	MO
Kansas City, Richard-Gebaur Airport	MO
Saint Joseph	MO
Springfield	MO
Grand Island	NE
FAA Region: Eastern	
Dover	DE
Aberdeen	MD
Baltimore, Glenn Martin State	MD
Hagerstown	MD
Patuxent River	MD
Caldwell	NJ
Lakehurst	NJ
Wrightstown, McGuire Air Force Base	NJ
Binghamton	NY
Elmira	NY
Ithaca	NY
Plattsburgh	NY
Poughkeepsie	NY
Rome	NY
Schenectady	NY
Utica	NY
Beaver Falls	PA
Erie	PA
Fort Indiantown Gap	PA
Harrisburg, Capital City Airport	PA
Johnstown	PA
Lancaster	PA
Latrobe	PA
Reading	PA
Wilkes-Barre	PA
Williamsport	PA
Willow Grove	PA
Charlottesville	VA
Fort Eustis	VA
Lynchburg	VA
Oceana Naval Air Station	VA
Quantico	VA
Clarksburg	WV
Lewisburg	WV
FAA Region: Great Lakes	
Alton	IL
Belleville	IL
Chicago, Aurora Municipal Airport	IL
Marion	IL
Bloomington	IN
Muncie	IN
Terre Haute	IN
Alpena	MI
Battle Creek, W.K. Kellogg Airport	MI
Jackson	MI
Kalamazoo/Battle Creek International Airport.	MI
Muskegon	MI
Duluth, Duluth International Airport	MN
Rochester	MN
Fargo	ND
Grand Forks, Grand Forks International Airport.	ND
Minot, Minot International Airport	ND
Cleveland, Burke Lakefront	OH
Cleveland, Cuyahoga County Airport	OH
Columbus, Ohio State University	OH
Springfield	OH
Willoughby	OH
Sault Sainte Marie	ON
Rapid City, Regional Airport	SD
Oshkosh	WI
Waukesha	WI
FAA Region: New England	
Hartford	CT
Bangor	ME
Brunswick	MA
Limestone	MA
Beverly	MA
Falmouth	MA
Fort Devens	MA
Martha's Vineyard	MA
South Weymouth	MA
Lebanon	NH
Nashua	NH
Portsmouth	NH
FAA Region: Northwest Mountain	
Aspen	CO
Denver, Centennial Airport	CO
Grand Junction	CO
Pueblo	CO
Coeur D'Alene	ID
Idaho Falls	ID
Lewiston	ID
Mountain Home	ID
Pocatello	ID
Twin Falls	ID
Great Falls, International Airport	MT
Great Falls, Malmstrom Air Force Base	MT
Missoula	MT
Eugene	OR
Klamath Falls	OR
Medford	OR
Portland, Hillsboro	OR
Salem	OR
Bellingham	WA
Everett	WA
Moses Lake	WA
Olympia	WA
Pasco	WA
Tacoma, Narrows Airport	WA
Walla Walla	WA
Yakima	WA
Casper	WY
Gillette	WY
FAA Region: Southern	
Dothan	AL
Fort Rucker	AL
Mobile, Downtown Airport	AL
Troy	AL
Fort Pierce	FL
Gainsville	FL
Jupiter	FL
Key West	FL
Lakeland	FL
Mayport	FL
Melbourne	FL
Naples	FL
Panama City	FL
Sanford	FL
Vero Beach	FL
Albany, Southwest Georgia Regional Airport.	GA
Atlanta, Dobbins Air Force Base	GA
Columbus, Lawson Army Air Field	GA
Valdosta, Regional Airport	GA
Fort Campbell	KY
Fort Knox	KY
Louisville, Bowman Field	KY
Owensboro	KY
Biloxi, Kessler Air Force Base	MI
Greenville	MI
Greenwood	MI
Gulfport	MI
Meridian, Key Field	MI
Meridian, Naval Air Station	MI
Elizabeth City	NC
Jacksonville, New River Marine Corps Air Station.	NC
Mackall Army Air Field	NC
Simmons Army Air Field	NC
Florence	SC
North Myrtle Beach	SC
Tri-City	TN
FAA Region: Southwest	
Houma	LA
Altus	OK
Ardmore	OK
Enid, Vance Air Force Base	OK
Enid, Woodring Municipal Airport	OK
Corpus Christi Naval Air Station	TX
McAllen	TX
FAA Region: Western-Pacific	
Flagstaff	AZ
Fort Huachuca	AZ
Grand Canyon	AZ
Tucson, Ryan Field	AZ
Yuma	AZ
Camarillo	CA
Camp Pendleton	CA
Carlsbad, McClellan, Palomar	CA
Chico	CA
Crows Landing Naval Air Facility	CA
Fairfield, Travis Air Force Base	CA
Lancaster	CA
LeMoore Naval Air Station	CA
Lompac	CA
Los Angeles, Hawthorne Municipal Airport.	CA
Miramar Naval Air Station	CA
Modesto City	CA
Mountain View, Moffett Field	CA
Oxnard/Ventura	CA
Palm Springs	CA
Palmdale	CA
Point Mugu Naval Air Station	CA
Redding	CA
Riverside, Riverside Municipal Airport	CA
Salinas	CA
San Clemente Island	CA
San Diego, Montgomery Field	CA
San Diego, North Island Naval Air Station.	CA
San Luis Obispo	CA
San Nicholas Island	CA
Torrance	CA
Twentynine Palms Expeditionary Air Field.	CA
Van Nuys	CA
Guam Island, Agana Naval Air Station	GU
Guam Island, Anderson Air Force Base	GU
Barbers Point Naval Air Station	HI
Hilo International Airport, General Lyman Field.	HI
Lihue	HI
Kailua-Kona	HI
Molokai	HI
Kwajalein Island	MQ
Fallon Naval Air Station	NV

Control Zones for Airports Without Operating Control Towers

The FAA proposed in NPRM Number 92–5 to modify control zones for airports without operating control towers. These proposed modifications included: (1) Converting the lateral unit of measurement from statute miles to nautical miles; (2) redesignating the control zones to contain intended

operations under IFR; (3) redesignating the ceiling to extend upward from the surface of the earth to an overlying or adjacent controlled airspace (e.g., a transition area); and (4) replacing departure extensions with transition areas. No comments were received on this proposal.

With the exception of the modifications listed below, the FAA will adopt the proposal to modify the following control zones, which are contained in section 171 of FAA Handbook 7400.7. The FAA also adopts the proposal to amend the corresponding airspace descriptions of Class E airspace areas in Subpart E of FAA Order 7400.9, which become effective September 16, 1993.

FAA Region: Alaskan

Bettles, AK
Cordova, Smith Airport, AK
Deadhorse AK
Gulkana, AK
Iliama, AK
Sitka, AK
Unalakleet, AK

FAA Region: Central

Burlington, IA
Clinton, IA
Davenport, IA
Fort Dodge, IA
Mason City, IA
Ottumwa, IA
Chanute, KS
Dodge City, KS
Emporia, KS
Garden City, KS
Goodland, KS
Liberal, KS
Kirksville, MO
Rolla/Vichy, Rolla National Airport, MO
Alliance, NE
Chadron, NE
Columbus, NE
Hastings, NE
Kearney, NE
McCook, NE
Norfolk, NE
North Platte, NE
Sidney, NE

FAA Region: Eastern

Salisbury, MD
Millville, NJ
Glens Falls, NY
Jamestown, NY
Massena, NY
Watertown, NY
Altoona, PA
Bradford, PA
Franklin, PA
Philipsburg, PA
State College, PA
Danville, VA
Hot Springs, VA
Staunton, VA
Beckley, WV
Bluefield, WV
Elkins, WV

FAA Region: Great Lakes

Danville, IL
Mount Vernon, IL
Benton Harbor, MI
Escanaba, MI
Hancock, MI
Iron Mountain, MI
Marquette, MI
Pellston, MI
Sault Sainte Marie, Chippewa County Airport, MI
Bemidji, MN
Fairmont, MN
Hibbing, MN
Mankato, MN
Worthington, MN
Devils Lake, ND
Dickinson, ND
Jamestown, ND
Akron, Fulton International Airport, OH
Findlay, OH
Aberdeen, SD
Brookings, SD
Huron, SD
Mitchell, SD
Pierre, SD
Watertown, SD
Eau Claire, WI
Mosinee, WI
Rhinelander, WI
Wausau, WI

FAA Region: New England

Augusta, ME
Houlton, ME
Concord, NH

FAA Region: Northwest Mountain

Cortez, CO
Durango, CO
Hayden, CO
Montrose, CO
Burley, ID
Bozeman, MT
Coppertown, MT
Cutbank, MT
Glasgow, MT
Havre, MT
Kalispell, MT
Lewistown, MT
Livingston, MT
Miles City, MT
Astoria, OR
Baker, OR
Redmond, OR
Cedar City, UT
Provo, UT
Vernal, UT
Ephrata, WA
Hoquiam, WA
Oak Harbor, WA
Port Angeles, WA
Pullman, WA
Wenatchee, WA
Cody, WY
Laramie, WY
Rawlins, WY
Riverton, WY
Rock Springs, WY

FAA Region: Southern

Anniston, AL
Muscle Shoals, AL
Miami, Dade-Collier Training and Transition Airport, FL
Tampa, Peter O'Knight Airport, FL
Alma, GA
Athens, GA
Brunswick, Glynco Jetport, GA
Brunswick, Malcolm/McKinnon Airport, GA
London, KY
Hattiesburg, MS
Jackson, Bruce Campbell Field, MS
McComb, MS
Tupelo, MS
Hickory, NC
Jacksonville, Albert J. Ellis, NC
New Bern, NC
Rocky Mount, NC
Aguadilla, PR
Ponce, PR
Anderson, SC
Spartanburg, SC
Crossville, TN
Dyersburg, TN
Jackson, TN

FAA Region: Southwest

El Dorado, AR
Harrison, AR
Hot Springs, AR
Jonesboro, AR
Pine Bluff, AR
Carlsbad, NM
Deming, NM
Gallup, NM
Las Vegas, NM
Tucumcari, NM
Bartlesville, OK
Gage, OK
Hobart, OK
McAlester, OK
Ponca City, OK
Alice, TX
Childress, TX
Dalhart, TX
Galveston, TX
Lufkin, TX
Mineral Wells, TX
Palacios, TX
Victoria, TX
Wink, TX

FAA Region: Western-Pacific

Douglas, AZ
Winslow, AZ
Arcata, CA
Blythe, CA
Crescent City, CA
Marysville, Yuba County, CA
Merced, Macready Field, CA
Needles, CA

Paso Robles County, CA
Thermal, CA
Kapalua, West Maui Airport, HI
Lanai, HI
Waimea Kohala, HI
Tonopah, NV

The airspace areas listed below have been amended by separate rulemaking since the review of control zones by the FAA regions and these amendments were not proposed in NPRM Number 92–5. The FAA adopts as proposed the control zones listed below, with minor modifications and technical corrections. Because this action does not change the boundaries and configuration of controlled airspace, with respect to these areas it is insignificant in nature and impact and inconsequential to the industry and public. Therefore, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

FAA Region: Central

Hayes, KS: The airspace description for this area, which was established by Airspace Docket Number 92–ACE–02, is added to this final rule.

FAA Region: Northwest Mountain

Jackson Hole, WY: The airspaces description for this area, which was established by Airspace Docket Number 92–ANM–7, is added to this final rule.

Sheridan, WY: The airspace description for this area is revised according to Airspace Docket Number 92–ANM–4.

Worland, WY: The airspace description for this area is revised according to Airspace Docket Number 92–ANM–5.

FAA Region: Southern

Greenville, NC: The airspace description for this area, which was established by Airspace Docket Number 92–ASO–05, is added to the final rule.

FAA Region: Western-Pacific

Red Bluff, CA: The airspace description for this area is revised according to Airspace Docket Number 91–AWP–5.

Revisions to proposed airspace areas by including technical corrections and airspace changes:

FAA Region: Alaskan

Amchitka Island, AK: The airspace description is revised to delete unnecessary language.

Barrow, Barrow/Wiley Post-Will Rogers Memorial Airport, AK: The airspace description is revised by including editorial modifications.

Cold Bay, AK: The airspace description is revised to delete unnecessary language.

Dillingham, AK: The airspace description is revised by including editorial modifications.

Homer, AK: The airspace description is revised to delete unnecessary language.

Kotzebue, AK: The airspace description is revised by replacing references to the "Kotzebue/Ralph Wien Memorial Airport" with "Ralph Wien Memorial Airport" and by including editorial modifications.

McGrath, AK: The airspace description is revised by including editorial modifications.

Nome, AK: The airspace description is revised to delete unnecessary language.

Northway, AK: The airspace description is revised by adding the geographic position of the Northway VORTAC and by including editorial modifications.

Talkeetna, AK: The airspace description is revised by replacing references to the "Talkeetna VOR" with the "Talkeetna VOR/DME" and by including editorial modifications.

Tanana, AK: The airspace description is revised by changing the name of the "Tanana/Ralph M. Calhoun Memorial Airport" with the "Ralph M. Calhoun Memorial Airport."

Yakutat, AK: The airspace description is revised by including editorial modifications.

FAA Region: Eastern

Du Bois, PA: The airspace description is revised by changing the width of the northeast arrival extension from 5.4 miles to 5.2 miles.

FAA Region: Great Lakes

Galesburg, IL: The airspace description is revised by replacing all references to the "Galesburg VOR" with the "Galesburg VOR/DME."

Brainerd, MN: The airspace description is revised by changing the name of "Brainerd-Crow Wing County/ Walter F. Wieland Field" to "Brainerd-Crow Wing County Airport."

Grand Rapids, MN: The airspace description is revised by changing the name of "Grand Rapids, Itasca County-Gordon Newstrom Field" to "Grand Rapids/Itasca County Gordon Newstrom Field Airport."

International Falls, MN: The airspace description is revised by changing the name of "International Falls Airport" to "Falls International Airport."

Williston, ND: The airspace description is revised by changing the name of "Sloulin International Airport" to "Sloulin Field International Airport."

Wilmington, OH: The airspace description is revised by replacing all references to the "Midwest VOR" to the "Midwest VOR/DME" and by adding an extension based on the 041° radial of the Midwest VOR/DME.

Yankton, SD: The airspace description is revised by replacing all references from "Yankton VOR" to "Yankton VOR/DME."

Minocqua-Woodruff, WI: The airspace description is revised by changing the name of "Noble F. Lee Memorial Field Airport" to "Lakeland/ Noble F. Lee Memorial Field Airport."

FAA Region: New England

Presque Isle, ME: The airspace description is revised by changing the name of "Northern Maine Regional" to the "Northern Maine Regional Airport at Presque Isle."

Montpelier, VT: The airspace description is revised by updating an airport name from "Montpelier, Edward F. Knapp State Airport" to the "Barre-Montpelier, Edward F. Knapp State Airport."

FAA Region: Northwest Mountain

Montrose, CO: The airspace description is revised by changing the name of "Montrose County Airport" to "Montrose Regional Airport."

Trinidad, CO: The airspace description is revised by changing the name of "Las Animas County Airport" to "Perry Stokes Airport."

Newport, OR: The airspace description is not revised. The control zone will become Class E airspace on September 16, 1993, not Class D airspace as identified in NPRM No. 92–5.

North Bend, OR: The airspace description is revised by replacing all references to the "Emire LOM" with the "Emire LOM/NDB."

FAA Region: Southern

Bowling Green, KY: The airspace description is revised by changing the name of "Bowling Green-Warren County Airport" to "Bowling Green-Warren County Regional Airport."

Mayaguez, PR: The airspace description is revised by replacing all references to the "Mayaguez VOR" with the "Mayaguez VOR/DME."

FAA Region: Southwest

Temple, TX: The airspace description is revised by replacing all references to the "Temple VOR" with the "Temple VOR/DME" and by eliminating the proposed extension from the Temple ILS localizer.

FAA Region: Western-Pacific

El Centro, Imperial County Airport, CA: The airspace description is revised by deleting the reference to a ceiling.

This control zone will become Class E airspace on September 16, 1993, and will extend upward from the surface to the overlying or adjacent controlled airspace.

Visalia, CA: The airspace description is revised by deleting an exclusion for the Green Acres Airport. The airport no longer exists.

Midway Island, Midway Naval Air Facility, MO: The airspace description is revised by eliminating the proposed arrival extension based on the Midway Island NDB, which is decommissioned.

Elko, NV: The airspace description is revised by changing the name of "Elko Municipal Airport" to "Elko Municipal-J.C. Harris Field."

Revisions to proposed airspace areas by updating a geographic position:

FAA Region	Proposed geographic position	Revised geographic position
Name and Airport or facility		
Alaskan		
Amchitka Island, AK: Amchitka Island Airport.	Lat. 51°22'43" N., Long. 179°15'32" E.	Lat. 51°22'48" N., Long. 179°16'24" E
Amchitka VORTAC.	Lat. 51°23'02" N., Long. 179°17'02" E.	Lat. 51°22'37" N., Long. 179°16'37" E.
Barrow, AK: Barrow/Wiley Post-Will Rogers Memorial Airport.	Lat. 71°17'09" N., Long. 156°47'25" W.	Lat. 71°17'09" N., Long. 156°45'45" W.
Big Delta, AK: Allen Army Air Field Airport.	Lat. 63°59'42" N., Long. 145°43'05" W.	Lat. 63°59'07" N., Long. 145°43'01" W.
Dillingham, AK: Dillingham VOR/DME.	Lat. 58°59'42" N., Long. 158°33'02" W.	Lat. 58°59'42" N., Long. 158°33'00" W.
Central		
Scottsbluff, NE: Scottsbluff, William B. Heilig Field.	Lat. 41°52'34" N., Long. 103°35'53" W.	Lat. 41°52'27" N., Long. 103°35'43" W.
Great Lakes		
Alexandria, MN: Alexandria, Chandler Field.	Lat. 45°51'59" N., Long. 95°23'35" W.	Lat. 45°51'59" N., Long. 95°23'40" W.
Redwood Falls, MN: Redwood Falls Municipal Airport.	Lat. 44°32'45" N., Long. 95°04'50" W.	Lat. 44°32'50" N., Long. 95°04'55" W.
Thief River Falls, MN: Thief River Falls Regional.	Lat. 48°03'53" N., Long. 96°11'01" W.	Lat. 48°03'56" N., Long. 96°10'59" W.
Zanesville' OH: Riverside Airport.	Lat. 39°59'10" N., Long. 81°59'00" W.	Lat. 39°59'10" N., Long. 81°59'02" W.
Lone Rock, WI: Tri-County Regional Airport	Lat. 43°12'36" N., Long. 90°11'06" W.	Lat. 43°12'41" N., Long. 90°10'54" W.
Northwest Mountain		
Akron, CO: Akron-Washington County Airport.	Lat. 40°10'18" N., Long. 103°12'54" W.	Lat. 40°10'32" N., Long. 103°13'18" W.
Alamosa, CO: San Luis Valley Regional/Bergman Field.	Lat. 37°26'10" N., Long. 105°51'56" W.	Lat. 37°26'06" N., Long. 105°51'59" W.
Eagle, CO: Eagle County Regional Airport.	Lat. 39°38'37" N., Long. 106°54'50" W.	Lat. 39°38'33" N., Long. 106°55'02" W.
Burns, OR: Wildhorse VOR/DME.	Lat. 43°35'36" N., Long. 118°57'15" W.	Lat. 43°35'36" N., Long. 118°57'14" W.
Bremerton, WA: Bremerton National Airport.	Lat. 47°29'34" N., Long. 122°45'28" W.	Lat. 47°29'35" N., Long. 122°45'40" W.
Southern		
Crestview, FL: Duke Field ...	Lat. 30°39'06" N., Long. 86°31'24" W.	Lat. 30°39'06" N., Long. 86°31'23" W.
Southwestern		
Truth or Consequences, NM: Truth or Consequences Municipal Airport.	Lat. 33°14'07" N., Long. 107°16'08" W.	Lat. 33°14'10" N., Long. 107°16'13" W.
Western-Pacific		
Imperial County, CA: El Centro Naval Air Field.	Lat. 32°49'32" N., Long. 115°40'28" W.	Lat. 32°49'45" N., Long. 115°40'15" W.
Saipan Island, CO: Saipan RBN.	Lat. 15°06'48" N., Long. 145°42'42" E.	Lat. 15°06'46" N., Long. 145°42'42" E.

Transition Areas

In NPRM Number 92-5, the FAA proposed to modify transition areas by: (1) Converting the lateral unit of measurement from statute miles to nautical miles; (2) redesignating the areas to contain intended operations under IFR; and (3) replacing control zone departure extensions with transition areas. No comments were received on this proposal.

With the exception of the modifications listed below, the FAA will adopt the proposal to modify the following transition areas. Transition areas are published in Section 71.181 of the FAA Handbook 7400.7. The descriptions of the transition areas listed in this document will be published subsequently in the Handbook 7400.7—Supplement and the corresponding Class E airspace areas in subpart E of FAA Order 7400.9, which becomes effective September 16, 1993.

FAA Region: Alaskan

Annette Island, AK
Anvik, AK
Bettles, AK
Big Lake, AK
Biorka Island, AK
Farewell, AK
Homer, AK
Huslia, AK
Iliama, AK
Johnstone Point, AK
Kenai, AK
Mekoryuk, AK
Middleton Island, AK
Moses Point, AK
Quinhagak, AK
Sand Point, AK
Selawik, AK
Yakataga, AK

FAA Region: Central

Albia, IA
Algona, IA
Atlantic, IA
Bloomfield, IA
Burlington, IA
Carroll, IA
Cedar Rapids, IA
Centerville, IA
Cherokee, IA
Clarinda, IA
Clarion, IA
Clinton, IA
Corning, IA
Cresco, IA
Creston, IA
Decorah, IA
Denison, IA
Des Moines, IA
Dubuque, IA
Eagle Grove, IA
Emmetsburg, IA
Estherville, IA

Fairfield, IA
Forest City, IA
Fort Dodge, IA
Fort Madison, IA
Greenfield, IA
Grinnell, IA
Hampton, IA
Harlan, IA
Iowa, IA
Iowa City, IA
Iowa Falls, IA
Jefferson, IA
Keokuk, IA
Knoxville, IA
Le Mars, IA
Mapleton, IA
Maquoketa, IA
Mason City, IA
Milford, IA
Monticello, IA
Muscatine, IA
Newton, IA
Oelwein, IA
Orange City, IA
Osceola, IA
Oskaloosa, IA
Ottumwa, IA
Pella, IA
Perry, IA
Pocahontas, IA
Red Oak, IA
Rock Rapids, IA
Sac City, IA
Sheldon, IA
Sibley, IA
Sioux Center, IA
Spencer, IA
Storm Lake, IA
Tipton, IA
Waverly, IA
West Union, IA
Winterset, IA
Abilene, KS
Anthony, KS
Atchison, KS
Belleville, KS
Beloit, KS
Benton, KS
Chanute, KS
Coffeyville, KS
Colby, KS
Concordia, KS
Dodge City, KS
El Dorado, KS
Emporia, KS
Eureka, KS
Fort Scott, KS
Garden City, KS
Great Bend, KS
Harper, KS
Hays, KS
Herington, KS
Hutchinson, KS
Independence, KS
Iola, KS
Johnson, KS
Kansas, KS
Kingman, KS
Lawrence, KS
Liberal, KS
Marysville, KS
McPherson, KS
Meade, KS
Neodesha, KS
Newton, KS
Norton, KS
Oakley, KS
Oberlin, KS
Olathe, Johnson County Industrial Airport, KS
Ottawa, KS
Parsons, KS
Phillipsburg, KS
Pratt, KS
Russell, KS
Saint Francis, KS
Smith Center, KS
Topeka, Forbes Airfield, KS
Ulysses, KS
Wellington, KS
Winfield/Arkansas City, KS
Aurora, MO
Cabool, MO
Cameron, MO
Cassville, MO
Charleston, MO
Chesterfield, MO
Clinton, MO
Columbia, MO
Creve Coeur, MO
Cuba, MO
Dexter, MO
Excelsior Springs, MO
Farmington, MO
Festus, MO
Fredericktown, MO
Gideon, MO
Grain Valley, MO
Grandview, MO
Hannibal, MO
Higginsville, MO
Jefferson City, MO
Kaiser, MO
Kansas City, Kansas City International Airport, MO
Kansas City, Richards-Gebaur Airport, MO
Kennett, MO
Kirksville, MO
Lake Winnebago, MO
Lamar, MO
Lebanon, MO
Macon-Fower, MO
Malden, MO
Marshall, MO
Missouri, MO
Monett, MO
Mountain Grove, MO
Mountain View, MO
Neosho, MO
Nevada, MO
New Madrid, MO
Ozark, MO
Perryville, MO
Point Lookout, MO
Poplar Bluff, MO
Rolla, Downtown Airport, MO
Rolla/Vichy, Rolla National Airport, MO
Saint Joseph, MO
Sikeston, MO
Springfield, MO
Stockton, MO
West Plains, MO
Ainsworth, NE
Albion, NE
Alliance, NE
Aurora, NE
Bassett, NE
Beatrice, NE
Broken Bow, NE
Burwell, NE
Cambridge, NE
Chadron, NE
Chappell, NE
Cozad, NE
Crete, NE
Fairbury, NE
Fairmont, NE
Falls City, NE
Fremont, NE
Gordon, NE
Gothenburg, NE
Grand Island, NE
Grant, NE
Hastings, NE
Hebron, NE
Holdrege, NE
Imperial, NE
Kearney, NE
Kimball, NE
Lexington, NE
Lincoln, NE
McCook, NE
Minden, NE
Nebraska, NE
Norfolk, NE
North Platte, NE
O'Neill, NE
Ogallala, NE
Omaha, Eppley Field, NE
Omaha, Millard Airport, NE
Ord, NE
Oshkosh, NE
Plattsmouth, NE
Seward, NE
Sidney, NE
Superior, NE
Tekamah, NE
Thedford, NE
Valentine, NE
Wahoo, NE
Wayne, NE
York, NE

FAA Region: Eastern

District of Columbia, DC
Delaware, DE
Georgetown, DE
Cambridge, MD
College Park, MD
Cumberland, MD
Gaithersburg, MD
Hagerstown, MD
Leonardtown, MD
Maryland, MD
Oakland, MD

Salisbury, MD
Westminster, Carroll County Airport, MD
Andover, NJ
Atlantic City, Atlantic City International Airport, NJ
Blairstown, NJ
Linden, NJ
Manahawkin, NJ
Manville, NJ
Matawan, NJ
New Jersey, NJ
Old Bridge, NJ
Pitman, NJ
Pittstown, NJ
Princeton, NJ
Readington, NJ
Somerville, NJ
Sussex, NJ
Vincentown, NJ
West Milford, NJ
Wildwood, NJ
Woodbine, NJ
Albany, NY
Albion, NY
Batavia, NY
Buffalo, NY
Cortland, NY
Dunkirk, NY
Durhamville, NY
East Hampton, NY
Elmira, NY
Endicott, NY
Fort Drum, NY
Fulton, NY
Glens Falls, NY
Hamilton, NY
Hornell, NY
Hudson, NY
Islip, NY
Ithaca, NY
Jamestown, NY
LeRoy, NY
Massena, NY
New York State, NY
Norwich, NY
Ogdensburg, NY
Olean, NY
Oneonta, NY
Palmyra, NY
Penn Yan, NY
Poughkeepsie, NY
Rochester, NY
Saranac Lake, NY
Schenectady, NY
Shirley, NY
Sidney, NY
Skaneateles, NY
Syracuse, NY
Watertown, NY
Wellsville, NY
Williamson, NY
Wurtsboro, NY
Allentown, PA
Altoona, PA
Annville, PA
Bedford, PA
Bloomsburg, PA
Bradford, PA
Butler, PA
Chambersburg, PA
Clarion, PA
Clearfield, PA
Coatesville, PA
Doylestown, PA
East Stroudsburg, PA
Ebensburg, PA
Factoryville, PA
Farmington, PA
Fort Indiantown Gap, PA
Franklin, PA
Galeton, PA
Greenville, PA
Grove City, PA
Harrisburg, PA
Hershey, PA
Honesdale, PA
Indiana, PA
Johnstown, PA
Lancaster, PA
Latrobe, PA
Leighton, PA
Marietta, PA
Meadville, PA
Monongahela, PA
Mount Pocono, PA
New Castle, PA
North Philadelphia, PA
Pennsylvania Furnace, PA
Perkasie, PA
Philadelphia, PA
Philipsburg, PA
Pittsburgh, PA
Pottstown, PA
Pottsville, PA
Punxsutawney, PA
Quakertown, PA
Reading, PA
Reedsville, PA
Saint Marys, PA
Selinsgrove, PA
Shamokin, PA
Somerset, PA
State College, PA
Titusville, PA
Toughkenamon, PA
Washington, PA
Wilkes-Barre, PA
Williamsport, PA
York, PA
Ashland, VA
Birch Hollow, VA
Blacksburg, VA
Brookneal, VA
Charlottesville, VA
Chase City, VA
Chesterfield, VA
Chincoteague, VA
Culpeper, VA
Danville, VA
Dublin, VA
Emporia, VA
Farmville, VA
Franklin, VA
Fredericksburg, VA
Galax, VA
Gloucester, VA
Gordonsville, VA
Hot Springs, VA
Louisa, VA
Luray, VA
Lynchburg, VA
Marion, VA
Martinsville, VA
Melfa, VA
Midland, VA
Moneta, VA
Orange, VA
Pennington Gap, VA
Petersburg, VA
Portsmouth, VA
Quinton, VA
Richmond, VA
Roanoke, VA
South Boston, VA
South Hill, VA
Staunton, VA
Suffolk, VA
Tangier, VA
Upperville, VA
Virginia, VA
Wakefield, VA
West Point, VA
Williamsburg, VA
Wise, VA
Beckley, WV
Bluefield, WV
Charleston, WV
Elkins, WV
Fairmont, WV
Martinsburg, WV
Milton, WV
Moundsville, WV
Petersburg, WV
Pineville, WV
Point Pleasant, WV
Ravenwood, WV
Summersville, WV
West Virginia, WV

FAA Region: Great Lakes

Bloomington, IL
Cairo, IL
Casey, IL
Champaign-Urbana, IL
Chicago, IL
Danville, IL
Decatur, IL
Galesburg, IL
Illinois City, IL
Lansing, IL
Lincoln, IL
Macomb, IL
Mattoon, IL
Monticello, IL
Olney, IL
Peoria, IL
Pickneyville, IL
Robinson, IL
Springfield, IL
Taylorville, IL
Anderson, IN
Angola, IN
Atterbury, IN
Auburn, IN
Bloomington, IN

Columbus, IN
Connersville, IN
Crawfordsville, IN
Elkhart, IN
Evansville, IN
Frankfort, IN
French Lick, IN
Goshen, IN
Greencastle, IN
Greenwood, IN
Huntingburg, IN
Indiana, IN
Indianapolis, Indianapolis International Airport, IN
Jeffersonville, IN
Kentland, IN
Knox, IN
Kokomo, IN
La Porte, IN
Lafayette, Aretz Airport, IN
Lafayette, Purdue University Airport, IN
Logansport, IN
Lowell, IN
Madison, IN
Marion, IN
Monticello, IN
Mount Comfort, IN
Muncie, IN
Nappanee, IN
North Vernon, IN
Peru, IN
Plymouth, IN
Portland, IN
Rensselaer, IN
Richmond, IN
Rochester, IN
Shelbyville, IN
Sheridan, IN
Sullivan, IN
Tell City, IN
Terre Haute, IN
Warsaw, IN
Washington, IN
Winchester, IN
Adrian, MI
Alpena, MI
Bellaire, MI
Benton Harbor, MI
Big Rapids, MI
Clare, MI
Deckerville, MI
Detroit, MI
Dowagiac, MI
Eaton Rapids, MI
Escanaba, MI
Frankfort, MI
Fremont, MI
Gaylord, MI
Grand Ledge, MI
Grand Rapids, MI
Hancock, Houghton County Memorial Airport, MI
Harbor Springs, MI
Hastings, MI
Howell, MI
Iron Mountain, MI
Ironwood, MI
Jackson, MI
K.I. Sawyer Air Force Base, MI
Kalamazoo/Battle Creek International Airport, MI
Lansing, MI
Manistee, MI
Marquette, MI
Menominee, MI
Michigan, MI
Pellston, MI
Roscommon, MI
Sault Sainte Marie, Chippewa County Airport, MI
Standish, MI
Sturgis, MI
Traverse City, MI
Watersmeet, MI
Aitkin, MN
Baudette, MN
Bemidji, MN
Brainerd, MN
Caledonia, MN
Cloquet, MN
Dodge Center, MN
Duluth, Duluth International Airport, MN
Ely, MN
Eveleth-Virginia Municipal Airport, MN
Fairmont, MN
Fergus Falls, MN
Hallock, MN
Hawley, MN
Hibbing, MN
Litchfield, MN
Mankato, MN
Minnesota, MN
Mora, MN
Orr, MN
Ramsey, Gateway North Industrial Airpark, MN
Rochester, MN
Roseau, MN
Saint Cloud, MN
Winona, MN
Worthington, MN
Bowman, ND
Casselton, ND
Devils Lake, ND
Dickinson, ND
Grand Forks, ND
Hettinger, ND
Jamestown, ND
Litchville, ND
Mandan, ND
Mohall, ND
New Town, ND
Watford City, ND
Williston, ND
Alliance, OH
Ashland, OH
Ashtabula, OH
Athens-Albany, Ohio University Airport, OH
Beach City, OH
Bellefontaine, OH
Bryan, OH
Bucyrus, OH
Cadiz, OH
Cambridge, OH
Carrollton, OH
Celina, OH
Circleville, OH
Coshocton, OH
Dayton, Green County Airport, OH
Defiance, OH
Delaware, OH
East Liverpool, OH
Elyria, OH
Findlay, OH
Fostoria, OH
Fremont, OH
Gallipolis, OH
Georgetown, OH
Harrison, OH
Hillsboro, OH
Jackson, OH
Kenton, OH
Lebanon, OH
London, OH
Marion, OH
Marysville, OH
Medina, OH
Middlefield, OH
Middletown, OH
Millersburg, OH
Mount Gilead, OH
Mount Vernon, OH
Napoleon, OH
New Lexington, OH
New Philadelphia, OH
Newark, OH
Ohio, OH
Ottawa, OH
Oxford, OH
Phillipsburg, OH
Port Clinton, OH
Portsmouth, OH
Saint Clairsville, OH
Salem, OH
Sidney, OH
Tiffin, OH
Upper Sandusky, OH
Urbana, OH
Van Wert, OH
Versailles, OH
Wadsworth, OH
Washington Court House, OH
West Union, OH
Woodsfield, OH
Wooster, OH
Youngstown, Youngstown Municipal Airport, OH
Zanesville, OH
Thunder Bay, ON
Aberdeen, SD
Britton, SD
Madison, SD
Mitchell, SD
Mobridge, SD
Philip, SD
Pierre, SD
Spearfish, SD
Vermillion, SD
Wagner, SD
Winner, SD
Yankton, SD
Amery, WI
Antigo, WI
Ashland, WI

Baraboo, WI
Black River Falls, WI
Boscobel, WI
Burlington, WI
Cable, WI
Clintonville, WI
Cumberland, WI
Eagle River, WI
Eau Claire, WI
Grantsburg, WI
Green Bay, WI
Hayward, WI
Janesville, WI
Juneau, WI
Kenosha, WI
LaCrosse, WI
Ladysmith, WI
Land O'Lakes, WI
Lone Rock, WI
Madison, WI
Manitowoc, WI
Marshfield, WI
Medford, WI
Merrill, WI
Milwaukee, WI
Mineral Point, WI
Monroe, WI
Mosinee, WI
Neillsville, WI
New Holstein, WI
New Richmond, WI
Oconto, WI
Osceola, WI
Oshkosh, WI
Phillips, WI
Platteville, WI
Prairie DuChien, WI
Pulaski, WI
Rhinelander, WI
Sheboygan, WI
Shell Lake, WI
Siren, WI
Solon Springs, WI
Stevens Point, WI
Sturgeon Bay, WI
Superior, WI
Waupaca, WI
Wausau, WI
West Bend, WI
Wisconsin, WI

FAA Region: New England

Bozrah, CT
Bridgeport, CT
Chester, CT
Connecticut, CT
Danbury, CT
Madison, CT
Meriden, CT
New Haven, CT
Oxford, CT
Willimantic, CT
Windsor Locks, Bradley International Airport, CT
Augusta, ME
Bangor, ME
Belfast, ME
Biddeford, ME
Fryeburg, ME
Greenville, ME
Houlton, ME
Lincoln, ME
Machias, ME
Maine, ME
Millinocket, ME
Norridgewock, ME
Old Town, ME
Sanford, ME
Wiscasset, ME
Boston, MA
Fall River, MA
Fitchburg, MA
Gloucester, MA
Great Barrington, MA
Haverhill, MA
Marshfield, MA
Nantucket, MA
New Bedford, MA
Newburyport, MA
Northampton, MA
Palmer, MA
Pittsfield, MA
Provincetown, MA
Southbridge, MA
Taunton, MA
Westfield, MA
Worcester, MA
Berlin, NH
Keene, NH
Laconia, NH
Lebanon, NH
New Hampshire, NH
North Conway, NH
Rochester, NH
Whitefield, NH
Newport, RI
North Kingstown, RI
Pawtucket, RI
Rhode Island, RI
Bennington, VT
Highgate, VT
Lydonville, VT
Newport, VT
Rutland, VT
Vermont, VT
West Dover, VT

FAA Region: Northwest Mountain

Alamosa, CO
Aspen, CO
Blue Mesa, CO
Burlington, CO
Colorado Springs, CO
Cortez, CO
Denver, Centennial Airport, CO
Erie, CO
Fort Collins, CO
Fort Morgan, CO
Grand Junction, CO
Greeley, CO
Hayden, CO
Holyoke, CO
Hugo, CO
Kremmling, CO
La Junta, CO
Lamar, CO
Meeker, CO
Pueblo, CO
Rifle, CO
Sterling, CO
Telluride, CO
Tobe, CO
Boise, ID
Burley, ID
Dubois, ID
Gooding, ID
Hailey, ID
Idaho Falls, ID
Malad City, ID
McCall, ID
Mullan Pass, ID
Pocatello, ID
Rexburg, ID
Bozeman, MT
Butte, MT
Chouteau, MT
Conrad, MT
Coppertown, MT
Cutbank, MT
Dillon, MT
Forsyth, MT
Glasgow, MT
Great Falls, MT
Havre, MT
Helena, MT
Kalispell, MT
Lewistown, MT
Missoula, MT
Polson, MT
Shelby, MT
Wolf Point, MT
Baker, OR
Bend, OR
Burns, OR
Klamath Falls, OR
La Grande, OR
Lakeview, OR
Medford, OR
North Bend, OR
Ontario, OR
Redmond, OR
Roseburg, OR
Salem, OR
Tillamook, OR
Bonneville, UT
Brigham City, UT
Bryce Canyon, UT
Cedar City, UT
Delta, UT
Duchesne, UT
Huntington, UT
Logan, UT
Lucin, UT
Milford, UT
Moab, UT
Ogden, UT
Price, UT
Roosevelt, UT
Salt Lake City, UT
Tooele, UT
Vernal, UT
Wendover, UT
Ellensburg, WA
Kelso, WA
Omak, WA
Pasco, WA

Quincy, WA
Seattle, WA
Walla Walla, WA
Big Piney, WY
Buffalo, WY
Casper, WY
Cheyenne, WY
Cody, WY
Cowley, WY
Douglas, WY
Evanston, WY
Fort Bridger, WY
Gillette, WY
Greybull, WY
Jackson, WY
Laramie, WY
Rawlins, WY
Riverton, WY
Sheridan, WY
Torrington, WY
Worland, WY

FAA Region: Southern

Alabama, AL
Alabaster, AL
Alexander City, AL
Anniston, AL
Auburn, AL
Bay Minette, AL
Brewton, AL
Butler, AL
Centre, AL
Clanton, AL
Clayton, AL
Cullman, AL
Demopolis, AL
Dothan, AL
Eufaula, AL
Evergreen, AL
Fayette, AL
Foley, AL
Gadsden, AL
Greensboro, AL
Greenville, AL
Gulf Shores, AL
Haleyville, AL
Hamilton, AL
Huntsboro, AL
Huntsville, AL
Jasper, AL
Lanett, AL
Mobile, AL
Montgomery, AL
Muscle Shoals, AL
Selma, AL
Sylacauga, AL
Troy, AL
Tuscaloosa, AL
Tuskegee, AL
Vernon, AL
Wetumpka, AL
Brooksville, FL
Bunnell, FL
Daytona Beach, FL
Deland, FL
Eglin Air Force Base, FL
Fernandina Beach, FL
Florida, FL
Fort Myers, FL
Gainesville, FL
Immokalee, FL
Keystone Heights, FL
Lake City, FL
Leesburg, FL
Marathon, FL
Marco Island, FL
Marianna, FL
Melbourne, FL
Miami, Dade-Collier Training and Transition Airport, FL
Naples, FL
New Port Richey, FL
New Smyrna Beach, FL
Ocala, FL
Pahokee, FL
Palatka, FL
Perry, FL
Saint Augustine, FL
Sarasota, FL
Sebring, FL
Titusville, FL
Venice, FL
West Palm Beach, FL
Williston, FL
Zephyrhills, FL
Albany, GA
Alma, GA
Americus, GA
Athens, GA
Augusta, GA
Baxley, GA
Brunswick, GA
Cairo, GA
Camilla, GA
Carrollton, GA
Cartersville, GA
Cedartown, GA
Claxton, GA
Cochran, GA
Columbus, GA
Cordele, GA
Covington, GA
Dalton, GA
Donalsonville, GA
Douglas, GA
Dublin, GA
Eastman, GA
Elberton, GA
Fitzgerald, GA
Fort Stewart, GA
Gainesville, GA
Greensboro, GA
Griffin, GA
Hazlehurst, GA
Hinesville, GA
Homerville, GA
Jasper, GA
Jefferson, GA
Jesup, GA
La Grange, GA
Lawrenceville, GA
Madison, GA
McRae, GA
Metter, GA
Milledgeville, GA
Moultrie, GA
Nashville, GA
Newnan, GA
Peachtree City, GA
Pine Mountain, GA
Plains, GA
Rome, GA
Saint Mary's, GA
Sandersville, GA
Statesboro, GA
Swainsboro, GA
Sylvania, GA
Tifton, GA
Toccoa, GA
Valdosta, GA
Vidalia, GA
Washington, GA
Waycross, GA
Winder, GA
Ashland, KY
Bardstown, KY
Campbellsville, KY
Danville, KY
Elizabethtown, KY
Flemingsburg, KY
Frankfort, KY
Glasgow, KY
Greenville, KY
Hawesville, KY
Henderson, KY
Hopkinsville, KY
Jackson, KY
Kentucky, KY
Madisonville, KY
Mayfield, KY
Monticello, KY
Mount Sterling, KY
Owensboro, KY
Paducah, Barkley Regional Airport, KY
Paducah, Farrington Airport, KY
Richmond, KY
Russellville, KY
Springfield, KY
Sturgis, KY
Bay Saint Louis, MS
Booneville, MS
Brookhaven, MS
Cleveland, MS
Columbia, MS
Corinth, MS
Drew, MS
Fulton, MS
Greenville, MS
Greenwood, MS
Hattiesburg, MS
Holly Springs, MS
Indianola, MS
Jackson, MS
Kosciusko, MS
Laurel, MS
Louisville, MS
Marks, MS
McComb, MS
Natchez, MS
Okolona, MS
Oxford, MS
Philadelphia, MS
Picayune, MS
Prentiss, MS
Ripley, MS
Starkville, MS

Tupelo, MS
Vicksburg, MS
Yazoo City, MS
Ahoskie, NC
Albermarle, NC
Asheboro, NC
Asheville, NC
Aurora, NC
Beaufort, NC
Clinton, NC
Edenton, NC
Elizabeth City, NC
Elkin, NC
Erwin, NC
Hatteras, NC
Jacksonville, Albert J. Ellis, NC
Kenansville, NC
Kinston, NC
Lexington, NC
Liberty, NC
Lumberton, NC
Manteo, NC
Maxton, Laurinburg-Maxton Airport, NC
Mocksville, NC
Monroe, NC
Morganton, NC
Mount Airy, NC
New Bern, NC
Ocracoke, NC
Oxford, NC
Plymouth, NC
Raeford, NC
Roanoke Rapids, NC
Rockingham, NC
Rocky Mount, NC
Roxboro, NC
Rutherfordton, NC
Sanford, NC
Shelby, NC
Smithfield, NC
Southern Pines, NC
Southport, NC
Statesville, NC
Wadesboro, NC
Wallace, NC
Walnut Cove, NC
Washington, NC
Waxhaw, NC
West Jefferson, NC
Whiteville, NC
Wilkesboro, NC
Williamston, NC
Wilmington, NC
Wilson, NC
Winston-Salem, NC
Ponce, PR
Puerto Rico, PR
San Juan, PR
San Juan, Isla Grande Airport, PR
Aiken, SC
Allendale, SC
Barnwell, SC
Beaufort, SC
Bennettsville, SC
Camden, SC
Charleston, SC
Cheraw, SC
Chester, SC
Clemson, SC
Conway, SC
Darlington, SC
Dillon, SC
Florence, SC
Georgetown, SC
Greenwood, SC
Greer, SC
Hartsville, SC
Hemingway, SC
Hilton Head Island, SC
Kingstree, SC
Lake City, SC
Lancaster, SC
Laurens, SC
Loris, SC
Manning, SC
Marion, SC
Moncks Corner SC
Myrtle Beach, SC
Newberry, SC
Orangeburg, SC
Saint George, SC
Spartanburg, SC
Sumter, Shaw Air Force Base, SC
Union, SC
Walterboro, SC
Winnsboro, SC
Athens, TN
Bolivar, TN
Camden, TN
Centerville, TN
Clifton, TN
Cookeville, TN
Crossville, TN
Dayton, TN
Dickson, TN
Dyersburg, TN
Fayetteville, TN
Greeneville, TN
Humbolt, TN
Huntingdon, TN
Jacksboro, TN
Jackson, TN
Jamestown, TN
Jasper, TN
Knoxville, TN
Lafayette, TN
Lawrenceburg, TN
Lexington, TN
Livingston, TN
Morristown, TN
Mount Pleasant, TN
Oneida, TN
Paris, TN
Parsons, TN
Pulaski, TN
Rockwood, TN
Savannah, TN
Shelbyville, TN
Smithville, TN
Sparta, TN
Tennessee, TN
Trenton, TN
Tullahoma, TN
Union City, TN
Charlotte Amalie, Cyril E. King Airport, VI
Christiansted-St. Croix, VI

FAA Region: Southwest

Almyra, AR
Arkansas, AR
Batesville, AR
Brinkley, AR
Camden, AR
Carlisle, AR
Cherokee Village, AR
Clarksville, AR
Conway, AR
Corning, AR
DeQueen, AR
Dumas, AR
El Dorado, AR
Fayetteville, AR
Forrest City, AR
Hampton, AR
Heber Springs, AR
Hope, AR
Lake Village, AR
Magnolia, AR
Malvern, AR
McGehee, AR
Mena, AR
Monticello, AR
Morrilton, AR
Mountain View, AR
Newport, AR
Ozark, AR
Paragould, AR
Pine Bluff, AR
Russellville, AR
Searcy, AR
Stuttgart, AR
Texarkana, AR
Walnut Ridge, AR
Warren, AR
West Helena, AR
Bastrop, LA
Baton Rouge, LA
Bogalusa, LA
Cameron, LA
Coushatta, LA
Covington, LA
De Quincy, LA
De Ridder, LA
Fort Polk, LA
Grande Isle, LA
Hammond, LA
Homer, LA
Houma, LA
Jennings, LA
Jonesboro, LA
Lake Charles, Lake Charles Regional Airport, LA
Lake Providence, LA
Leeville, LA
Mansfield, LA
Many, LA
Marksville, LA
Minden, LA
Morgan City, LA
Natchitoches, LA
New Orleans, LA
Opelousas, LA
Port Sulphur, LA
Rayville, LA
Shreveport, LA
Slidell, LA
Springhill, LA

Tallulah, LA
Thibodaux, LA
Venice, LA
Welsh, LA
Winnfield, LA
Alamogordo, NM
Artesia, NM
Belen, NM
Clovis, NM
Crownpoint, NM
Deming, NM
Gallup, NM
Las Cruces, NM
Las Vegas, NM
Lovington, NM
New Mexico, NM
Raton, NM
Roswell, NM
Ruidoso, NM
Santa Fe, NM
Silver City, NM
Socorro, NM
Taos, NM
Tucumcari, NM
Ada, OK
Afton, OK
Altus, OK
Alva, OK
Antlers, OK
Ardmore, OK
Boise City, OK
Bristow, OK
Buffalo, OK
Burns Flat, OK
Chickasha, OK
Clinton, OK
Cushing, OK
Duncan, OK
Durant, OK
Elk City, OK
Fairview, OK
Fortsill, OK
Gage, OK
Grove, OK
Guthrie, OK
Guymon, OK
Henryetta, OK
Hobart, OK
Holdenville, OK
Idabel, OK
Madill, OK
Medford, OK
Miami, OK
Mooreland, OK
Muskogee, OK
Oklahoma, OK
Okmulgee, OK
Pauls Valley, OK
Perry, OK
Ponca City, OK
Poteau, OK
Pryor, OK
Sallisaw, OK
Tahlequah, OK
Watonga, OK
Weatherford, OK
Woodward, OK
Abilene, Dyess Air Force Base, TX
Alpine, TX
Anahuac, TX
Andrews, TX
Athens, TX
Atlanta, TX
Austin, Robert Mueller Municipal Airport, TX
Ballinger, TX
Bay City, TX
Beaumont, TX
Berclair, TX
Big Lake, TX
Big Sandy, TX
Big Spring, TX
Bonham, TX
Borger, TX
Bowie, TX
Breckenridge, TX
Brenham, TX
Brownfield, TX
Caddo Mills, TX
Caldwell, TX
Canadian, TX
Carrizo Springs, TX
Carthage, TX
Center, TX
Childress, TX
Cleveland, TX
Coleman, TX
College Station, TX
Commerce, TX
Corsicana, TX
Cotulla, TX
Crosbyton, TX
Dalhart, TX
Devine, TX
Dumas, TX
Eastland, TX
Edna, TX
Fairfield, TX
Falfurrias, TX
Fort Stockton, TX
Franklin, TX
Fredericksburg, TX
Gainesville, TX
Georgetown, TX
Giddings, TX
Graford, TX
Graham, TX
Granbury, TX
Greenville, TX
Gruver, Cluck Ranch Airport, TX
Gruver, Municipal Airport, TX
Hamilton, TX
Henderson, TX
Hereford, TX
Hondo, TX
Jasper, TX
Johnson City, TX
Jonestown, TX
Junction, TX
Katy, TX
Kenedy, TX
Kountze-Silsbee, TX
La Pryor, TX
Lake Jackson, TX
Lamesa, TX
Lampasas, TX
Levelland, TX
Liberty, TX
Littlefield, TX
Llano, TX
Lone Star, TX
Longview, TX
Madisonville, TX
Marble Falls, TX
Marfa, TX
Marshall, TX
Mason, TX
McAllen, TX
Mexia, TX
Mineola, TX
Monahans, TX
Mount Pleasant, TX
Muleshoe, TX
Navasota, TX
New Braunfels, TX
Oakwood, TX
Olney, TX
Orange, TX
Paducah, TX
Palacios, TX
Pampa, TX
Paris, TX
Pearsall, TX
Pecos, TX
Perryton, TX
Plainview, TX
Pleasanton, TX
Port Isabel, TX
Port Lavaca, TX
Port O'Connor, TX
Presidio, TX
Refugio, TX
Robstown, TX
Rocksprings, Four Square Ranch Airport, TX
San Marcos, TX
Seminole, TX
Sherman, TX
Sinton, TX
Sonora, TX
Spearman, TX
Spofford, TX
Stephenville, TX
Stratford, TX
Sweetwater, TX
Taylor, TX
Terrell, TX
Uvalde, TX
Vernon, TX
Waco, TX
Waller, TX
Waring, TX
Wheeler, TX
Wink, TX
Winnsboro, TX
Yoakum, TX

FAA Region: Western-Pacific

Cameron, AZ
Casa Grande, AZ
Cochise, AZ
Douglas, AZ
Flagstaff, AZ
Fort Huachua, AZ
Gila Bend, AZ
Grand Canyon, AZ

Kingman, AZ
Lake Havasu, AZ
Nogales, AZ
Prescott, AZ
Saint Johns, AZ
San Simon, AZ
Show Low, AZ
Window Rock, AZ
Winslow, AZ
Alturas, CA
Burbank, CA
Columbia, CA
Colusa, CA
Crescent City, CA
Daggett, CA
Edwards Air Force Base, CA
El Centro, Imperial County Airport, CA
El Rico, CA
Firebaugh, CA
Fort Jones, CA
Fortuna, CA
Gorman, CA
Half Moon Bay, CA
Klamath, CA
LeMoore Naval Air Station, CA
Little River, CA
Livermore, CA
Lodi, CA
Lompac, Lompac Airport, CA
Los Angeles, CA
Los Banos, CA
Madera, CA
Marysville, CA
Marysville, Beale Air Force Base, CA
Maxwell, CA
Merced, CA
Modesto City, CA
Mojave, CA
Montague, CA
Needles, CA
Oakdale, CA
Oceanside, CA
Ontario, CA
Orland, CA
Palm Springs, CA
Parker, CA
Paso Robles County, CA
Placerville, CA
Porterville, CA
Priest, CA
Ramona, CA
Red Bluff, CA
Rio Vista CA
Riverside, CA
Salyer Farms, CA
San Diego, CA
San Rafael, CA
Santa Barbara, CA
Santa Catalina, CA
Santa Rosa, CA
Santa Ynez, CA
Stockton, CA
Sunol, CA
Thermal, CA
Tracy, CA
Twentynine Palms, CA
Vacaville, CA
Vandenberg Air Force Base, CA
Victorville, George Air Force Base, CA
Willows, Glen County Airport, CA
Woodland, CA
Hilo International Airport, General Lyman Field, HI
Kahului, HI
Kailua-Kona, HI
Kaneohe Marine Corp Air Station, HI
Kapalua, West Maui Airport, HI
Lanai, HI
Molokai, HI
Pohakuloa, Bradshaw Air Force Base, HI
Kwajalein Island, MQ
Midway Island, Midway Naval Air Facility, MQ
Battle Mountain, NV
Coaldale, NV
Elko, NV
Ely, NV
Hawthorne, NV
Indian Springs, NV
Lovelock, NV
Reno, Cannon International Airport, NV
Wells, NV
Winnemucca, NV
Yerlington, NV

The airspace areas listed below have been amended since the review of transition areas by the FAA regions and these amendments were not proposed in NPRM Number 92–5, or they are being revised to include technical corrections or minor modifications. Because this action does not change the boundaries and configuration of any of these areas, with respect to these areas it is insignificant in nature and impact and inconsequential to the industry and public. Therefore, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

FAA Region: Central

Ames, IA: The airspace description for this area is revised according to Airspace Docket Number 91–ACE–4.

FAA Region: Eastern

Chantilly, VA: The airspace description for this area is revised according to Airspace Docket Number 91–AEA–01.

FAA Region: Great Lakes

Grayling, MI: The airspace description for this area, which was established by Airspace Docket Number 91–AGL–10, is added to this final rule.

Anoka, MN: The airspace description for this area, which was revoked by Airspace Docket Number 92–AGL–3 , is not included in this final rule.

Austin, MN: The airspace description for this area is revised according to Airspace Docket Number 91–AGL–12.

Cook, MN: The airspace description for this area, which was established by Airspace Docket Number 91–AGL–7, is added to this final rule.

Motley, MN: The airspace description for this area is revised according to Airspace Docket Number 91–AGL–16.

Warroad, MN: The airspace description for this area is revised according to Airspace Docket Number 91–AGL–13.

Willmar, MN: The airspace description is revised according to Airspace Docket Number 91–AGL–8.

Gwinner, ND: The airspace description for this area, which was established by Airspace Docket Number 92–AGL–4, is added to this final rule.

Belle Fourche, SD: The airspace description for this area, which was established by Airspace Docket Number 91–AGL–9, is added to this final rule.

Delavan, WI: The airspace description for this area is revised according to Airspace Docket Number 92–AGL–1.

Lake Geneva, WI: The airspace description for this area, which was revoked by Airspace Docket Number 92–AGL–1; is not included in this final rule.

Rice Lake, WI: The airspace description for this area is revised according to Airspace Docket Number 91–AGL–11.

FAA Region: Northwest Mountain

Salmon, ID: The airspace description for this area, which was established by Airspace Docket Number 92–ANM–1, is added to this final rule.

Anaconda, MT: The airspace description for this area, which was established by Airspace Docket Number 91–ANM–1, is added to this final rule.

Enterprise, MT: The airspace description for this area, which was established by Airspace Docket Number 92–ANM–6, is added to this final rule.

Albany, OR: The airspace description for this area, which was established by Airspace Docket Number 91–ANM–8, is added to this final rule.

The Dalles, OR: The airspace description for this area is revised according to Airspace Docket Number 91–ANM–11.

Sun River, OR: The airspace description for this area, which was established by Airspace Docket Number 91–ANM–12, is added to this final rule.

Hanksville, UT: The airspace description for this area, which was revoked by Airspace Docket Number 92–ANM–12, is not included in this final rule.

Pullman, WA: The airspace description for this area is revised according to Airspace Docket Number 90–ANM–08.

Kemmerer, WY: The airspace description for this area, which was established by Airspace Docket Number 91–ANM–3, is added to this final rule.

FAA Region: Southern

Punta Gorda, FL: The airspace description for this area is revised according to Airspace Docket Number 91–ASO–13.

FAA Region: Southwest

Los Alamos, NM: The airspace description for this area, which was established by Airspace Docket Number 91–ASW–22, is added to this final rule.

FAA Region: Western-Pacific

Mesquite, NV: The airspace description for this area, which was established by Airspace Docket Number 91–AWP–17, is added to this final rule.

Revisions to proposed airspace areas by including technical corrections and airspace changes:

FAA Region: Alaskan

Adak, AK: The airspace description is revised to delete the extension area that begins 2 miles south of the ADAK TACAN 062° radial and extends from the 7-mile radius of the Adak NAS Airport to 7.7 miles northeast of the airport. It is also revised to replace the reference to the "Adak, NAS Airport, AK Control Zone," with the "Adak, AK Control Zone."

Ambler, AK: The airspace description is revised to include editorial changes.

Amchitka Island, AK: The airspace description is revised to include editorial changes; to replace the transition area title "Amchitka, AK" with "Amchitka Island, AK" to match the control zone title; and to replace the reference to the "Amchitka Island Airport, AK Control Zone" with "Amchitka Island, AK Control Zone." It is also revised to delete the extension area based on the 056° radial of the Amchitka VORTAC in the portion of the transition area that extends upward from 1,200 feet above the surface.

Anchorage, AK: The airspace description is revised to replace all references to the "Anchorage VOR" with "Anchorage VOR/DME," and to replace all references to "mean sea level" with "MSL."

Aniak, AK: The airspace description is revised to include editorial changes and to clarify that the portion of the transition area that extends upward from 1,200 feet above the surface within 8 miles north and 4 miles south of the Aniak localizer front course extends from the Aniak Airport to 22.4 miles west of the airport.

Barrow, Barrow/Wiley Post-Will Rogers Memorial Airport, AK: The airspace description is revised to include editorial changes and to delete the reference to the airspace within 1.3 miles each side of the 065° radial of the Barrow VORTAC extending from the 6.6-mile radius of the Barrow/Wiley Post-Will Rogers Memorial Airport to 8.8 miles northeast of the airport. This airspace is already covered by the two radii surrounding the Barrow/Wiley Post-Will Rogers Memorial Airport and the localizer extension.

Bethel, AK: The airspace description is revised to include editorial changes and to replace the reference to the "Aniak Airport, AK Transition Area" with "Aniak, AK Transition Area" and the reference to the "Bethel Airport, AK Control Zone" with "Bethel, AK Control Zone."

Big Delta, AK: The airspace description is revised to redefine the parameters of the transition area surrounding Allen AAF Airport. It is also revised to replace the reference to the "Big Delta, Allen AAF Airport, AK Control Zone," with the "Big Delta, AK Control Zone."

Cold Bay, AK: The airspace description is revised to include editorial changes, to clarify that the airspace that extends from the Elfee NDB to 21.7 miles northwest of the Cold Bay Airport is within 4.5 miles west and 8 miles east of the Elfee NDB 318° bearing, and to clarify that the extension area based on the Cold Bay Localizer back course extends from the Cold Bay Airport to 15.7 miles south of the airport. In addition, the airspace description is revised to replace the reference to the "Cold Bay Airport, AK Control Zone," with the "Cold Bay, AK Control Zone."

Cordova, AK: The airspace description is revised to include editorial changes, and to replace all references to the "Cordova Localizer" with "Merle K. (Mudhole) Smith Localizer."

Deadhorse, AK: The airspace description is revised to replace the reference to the "Deadhorse Airport, AK Control Zone," with the "Deadhorse, AK Control Zone."

Dillingham, AK: The airspace description is revised to include editorial changes and to replace the reference to the "Dillingham Airport, AK Control Zone," with "Dillingham, AK Control Zone."

Emmonak, AK: The airspace description is revised to include editorial changes.

Fairbanks, Eielson Air Force Base: AK: The airspace description is revised to include editorial changes, to replace all references to the "Eielson AFB Airport" with "Eielson AFB," and to replace the reference to the "Eielson AFB Airport, AK Control Zone" with "Fairbanks, Eielson AFB, AK Control Zone."

Fairbanks, International Airport, AK: The airspace description is revised to include editorial changes.

Fairbanks, Wainwright Army Air Field. AK: The airspace description is revised to include editorial changes, to replace all references to the "Wainwright AAF Airport" with "Wainwright AAF," and to replace the reference to "Eielson AFB Airport, AK" with "Fairbanks, Eielson AFB, AK" and "Wainwright AAF Airport, AK" with "Fairbanks, Wainwright AAF, AK."

Fort Yukon, AK: The airspace description is revised to include editorial changes.

Galena, AK: The airspace description is revised to include editorial changes.

Gambell, AK: The airspace description is revised to include editorial changes.

Gulkana, AK: The airspace description is revised to include editorial changes.

Gustavus, AK: The airspace description is revised to include editorial changes, and to replace all references to "mean sea level" with "MSL."

Hooper Bay, AK: The airspace description is revised to include editorial changes.

Juneau, AK: The airspace description is revised to include editorial changes, to replace all references to the "Juneau Airport" with "Juneau International Airport," and to replace the reference to the "Juneau Airport, AK Control Zone," with "Juneau, AK Control Zone." It is also revised to delete the extension area based on the 271° bearing of the Coghilan Island NDB in the portion of the transition area that extends upward from 1,200 feet above the surface. In addition, it is revised to delete the exclusion for the airspace more than 12 miles from the shoreline.

Ketchikan, AK: The airspace description is revised to include editorial changes; replace the reference to the "Ketchikan Airport, AK Control Zone" with "Ketchikan, AK Control Zone;" to change the distance each side of the Ketchikan Localizer east course from 1.8 miles to 1.9 miles; to change the floor of the airspace within 13.2 miles east and 10.5 miles west of the 165° radial from 1,200 feet above the surface to 4,700 feet MSL; and to replace the reference from "(and that airspace extending upward from 1,200 feet above the surface) within 9 miles east and 14 miles west of the Ketchikan Airport to 42.7 miles west of the Ketchikan Airport and within 15.8 miles west of the 311° radial of the Annette Island VORTAC extending from 15.8 miles west of the Annette Island VORTAC to 56.8 miles

west of the Annette Island VORTAC and within 4 miles east of the 353° radial of the Annette Island VORTAC extending from the 12-mile radius of the Annette Island VORTAC to the Ketchikan Localizer east course" with "and that airspace extending upward from 5,700 feet MSL within 15.6 miles west of the VORTAC to 56.8 miles west of the VORTAC and within 9 miles north and 14 miles south of the Ketchikan Localizer west course extending from 4.3 miles west of the airport to 42.7 miles west of the airport".

King Salmon, AK: The airspace description is revised to include editorial changes.

Kipnuk, AK: The airspace description is revised to include editorial changes.

Kodiak, AK: The airspace description is revised to include editorial changes, to replace all references to "mean sea level" with "MSL," and to replace the reference to the "Kodiak Airport, AK Control Zone" with "Kodiak, AK Control Zone."

Kotzebue, AK: The airspace description is revised to include editorial changes, to replace all references to the "Kotzebue/Ralph Wien Memorial Airport" with "Ralph Wien Memorial Airport," and to replace the reference to the "Kotzebue/Ralph Wien Memorial Airport, AK Control Zone" with "Kotzebue, AK Control Zone."

McGrath, AK: The airspace description is revised to include editorial changes, and to replace the reference to the "McGrath Airport, AK Control Zone" with "McGrath, AK Control Zone."

Nenana, AK: The airspace description is revised to include editorial changes, and to replace all references to the "Nenana Airport" with "Nenana Municipal Airport."

Nome, AK: The airspace description is revised to include editorial changes, and to replace the reference to the "Nome Airport, AK Control Zone" with "Nome, AK Control Zone."

Northway, AK: The airspace description is revised to include editorial changes.

Petersburg, AK: The airspace description is revised to include editorial changes, to replace all references to mean sea level" with "MSL," and to replace the reference to the "Sitka Airport, AK Transition Area" with "Sitka, AK Transition Area."

Point Hope, AK: The airspace description is revised to include editorial changes.

Port Heiden, AK: The airspace description is revised to include editorial changes.

Saint Marys, AK: The airspace description is revised to include editorial changes.

Saint Paul Island, AK: The airspace description is revised to include editorial changes, and to replace the reference to the "197° bearing from the St. Paul NDB/DME" with "018° bearing from the St. Paul NDB/DME."

Savoonga, AK: The airspace description is revised to include editorial changes.

Shemya, AK: The airspace description is revised to replace all references to the "Shemya AFB Airport" with "Shemya AFB," to clarify the perimeter of the airspace that extends upward from 1,200 feet above the surface, and to replace the reference to the "Shemya AFB Airport, AK Control Zone" with "Shemya, AK Control Zone."

Shishmaref, AK: The airspace description is revised to include editorial changes, and to replace all references to the "Shishmaref Airport" with "Shishmaref/New Airport."

Sitka, AK: The airspace description is revised to expand the extension area based on the 029° radial of the Biorka Island VORTAC to 1 mile south of the VORTAC, and to revise the airspace area surrounding the Sitka Localizer front course. This area now extends from the Sitka localizer to 13.5 miles southeast, not 13.5 miles west as proposed, of the Sitka Airport. The airspace description is also revised to include editorial changes, to replace the reference to the "Juneau Airport, AK, and Ketchikan Airport, AK Transition Areas" with "Juneau, AK, and the Ketchikan, AK Transition Areas," and to replace the reference to the "Sitka Airport, AK Control Zone" with "Sitka, AK Control Zone."

Soldotna, AK: The airspace description is revised to include editorial changes.

Talkeetna, AK: The airspace description is revised to include editorial changes, and to replace the references to: "Anchorage International Airport, AK" with "Anchorage, AK" and "Talkeetna Airport, AK Control Zone" with "Talkeetna, AK Control Zone."

Tanana, AK: The airspace description is revised to include editorial changes, to replace all references to the "Tanana Airport" with "Ralph M. Calhoun Memorial Airport," and to replace the reference to the "Tanana Airport, AK Control Zone" with "Tanana, AK Control Zone."

Togiak, AK: The airspace description is revised to include editorial changes.

Umiat, AK: The airspace description is revised to include editorial changes.

Unalakleet, AK: The airspace description is revised to include editorial changes, and to replace the reference to the "Unalakleet Airport, AK Control Zone" with "Unalakleet, AK Control Zone."

Unalaska, AK: The airspace description is revised to include editorial changes.

Valdez, AK: The airspace description is revised to include editorial changes, and to replace all references to "mean sea level" with "MSL."

Wrangell, AK: The airspace description is revised to include editorial changes; to replace all references to "mean sea level" with "MSL;" and to clarify that the extension based on the Wrangell Localizer front course is southeast of the Wrangell Airport.

Yakutat, AK: The airspace description is revised to include editorial changes, and to replace the reference to the "Yakutat Airport, AK Control Zone" with the "Yakutat, AK Control Zone."

FAA Region: Central

Independence, IA: The airspace description is revised to replace all references to the "Wapsi NDB" with "Wapsie NDB."

Mount Pleasant, IA: The airspace description is revised to replace all references to "Mt." with "Mount."

Sioux City, IA: The airspace description is revised to replace the reference to the "Sioux Gateway Airport, IA Control Zone," with the "Sioux City, IA Control Zone."

Vinton, IA: The airspace description is revised to replace all references to "Veterans Memorial Airpark" with "Vinton Veterans Memorial Airpark."

Washington, IA: The airspace description is revised because the Washington NDB has been decommissioned.

Waterloo, IA: The airspace description is revised to include the geographic position for the Waterloo Municipal Localizer.

Atwood, KS: The airspace description is revised to replace all references to the "Rawlins County, City-County Airport" with "Atwood-Rawlins City-County Airport."

Elkhart, KS: The airspace description is revised to replace all references to the "Morton County Airport" with "Elkhart-Morton County Airport."

Goodland, KS: The airspace description is revised to include the geographic position for the Goodland VORTAC. It is also revised to replace the reference to the "Goodland ILS localizer course" with "Renner Field-Goodland Municipal localizer course."

Larned, KS: The airspace description is revised to replace all references to the "Pawnee County Airport" with "Larned-Pawnee County Airport."

Liberal, KS: The airspace description is revised to include the geographic position for the Liberal Municipal Localizer.

Lyons, KS: The airspace description is revised to replace all references to the "Rice County Municipal Airport" with "Lyons-Rice County Municipal Airport."

Minneapolis, KS: The airspace description is revised to replace all references to the "City County Airport" with "Minneapolis City County Airport."

Salina, KS: The airspace description is revised to replace the reference to the "Salina Airport ILS localizer" with "Salina Municipal ILS localizer."

Topeka, Phillip Billard Municipal Airport, KS: The airspace description is revised to replace all references to the "Phillip Billard Airport" with "Phillip Billard Municipal Airport."

Washington, KS: The airspace description is revised to replace all references to the "County Memorial Airport" with "Washington County Memorial Airport."

Brookfield, MO: The airspace description is revised to replace all references to the "General John J. Pershing Municipal Airport" with "General John J. Pershing Memorial Airport."

Cape Girardeau, MO: The airspace description is revised to delete the statement "excluding that portion which overlies the Sikeston, MO Transition Area." The Cape Girardeau, MO Transition Area no longer overlies the Sikeston, MO Transition Area.

Knob Noster, Whiteman, MO: The airspace description is revised to replace the reference to the "Whiteman AFB Airport, MO Control Zone," with "Knob Noster, MO, Control Zone," and to delete the geographic position for the Whiteman TACAN. The Whiteman TACAN is deleted because the TACAN is not referenced in the airspace description.

Columbus, NE: The airspace description is revised to delete the extension area based on the 317° radial of the Columbus VOR/DME.

FAA Region: Eastern

Dover, DE: The airspace description is revised to delete the extension area based on the 013° radial of the Dover TACAN.

Washington, DC: The airspace description is revised to replace all references to "Davidson AAF" with "Davison AAF."

Aberdeen, MD: The airspace description is revised to delete the extension area based on the 033° radial of the Phillips VOR and to delete the geographic position for the Phillips VOR. In addition, the redundant reference to the airspace surrounding the 029° bearing from the Aberdeen NDB is deleted from the airspace description and the width of the extension area based on the 029° bearing of the Aberdeen NDB is revised from 4.4 miles each side of the bearing to 4.5 miles each side of the bearing.

Baltimore, MD: The airspace description is revised to delete the extension area based on the 298° radial of the Martin TACAN and to delete the geographic position for the Martin TACAN. The description of the airspace surrounding Martin State airport is also revised to include that airspace within an 8.7-mile radius of Martin State airport extending clockwise from a 239° bearing to a 270° bearing from the airport and within a 10.7-mile radius of Martin State Airport extending clockwise from a 270° bearing to a 320° bearing from the airport. The airspace description is revised to change the width of the extension based on the Runway 10 centerline from 6.2 miles to 7.2 miles.

Frederick, MD: The airspace description is revised to delete the geographic position for the Frederick Municipal Airport ILS runway 23 localizer, because the localizer is not referenced in the airspace description.

Ocean City, MD: The airspace description is revised to delete the geographic position for the Salisbury VORTAC, because the VORTAC is not referenced in the airspace description.

Westminster, Clearview Airpark, MD: The airspace description is revised by replacing "This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory" with "This transition area is effective from sunrise to sunset, daily."

Berlin, NJ: The airspace description is revised by replacing "This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory" with "This transition area is effective from sunrise to sunset, daily."

Cross Keys, NJ: The airspace description is revised to delete the extension area based on the 071° radial of the Woodstown VORTAC and to delete the geographic position for the Woodstown VORTAC.

Hammonton, NJ: The airspace description is revised to delete the extension area based on the 051° radial of the Cedar Lake VORTAC and to delete the geographic position for the Cedar Lake VORTAC.

Wrightstown, NJ: The airspace description is revised to replace all references to the "Navy Lakehurst TACAN" with "Lakehurst (Navy) TACAN."

Brockport, NY: The airspace description for this area, which was established by Airspace Docket Number 89–AEA–04, is added to this final rule.

Dahlgren, NY: The airspace description is revised by replacing "This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory" with "This transition area is effective from 0600 to 2300, daily."

Dansville, NY: The airspace description is revised by replacing "This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory" with "This transition area is effective from sunriae to sunset, daily."

Johnstown, NY: The airspace description for this area, which was established by Airspace Docket Number 89–AEA–17, is added to this final rule.

Malone, NY: The airspace description is revised to delete the extension area based on the 118° radial of the Massena VORTAC and to delete the geographic position for the Massena VORTAC. It is also revised to replace the reference to "Malone-Dufort, Malone, NY" with "Malone-Dufort Airport, Malone, NY."

Monticello, NY: The airspace description is revised to include editorial changes and to replace the radius around the Monticello Airport from a 6.6-mile radius to a 6.5-mile radius.

New York Metropolitan, NY: The airspace description is revised to replace all references to the "Moree NDB" with "Moree LOM."

Newburgh, NY: The airspace description is revised to delete the airspace 3.1 miles north of the 081° bearing from the OTIMS NDB (LOM).

Westhampton Beach, NY: The airspace description is revised to replace all references to the "Suffolk County Airport" with "Francis S. Gabreski Airport."

White Plains, NY: The airspace description is revised to replace all references to the "Westchester County Airport localizer northwest course" with "Hestr LOM."

Beaver Falls, PA: The airspace description is revised to replace all references to the "Elwood City VORTAC" with "Ellwood City VORTAC."

Connellsville, PA: The airspace description is revised to replace all references to the "Camor NDB" with "Camor LOM/NDB."

Corry, PA: The airspace description is revised to replace all references to the "Lawrence Airport" with "Corry-Lawrence Airport."

Danville, PA: The airspace description is revised to replace all references to the "Geisinger Hospital Helipad" with "Geisinger Rooftop Heliport."

Downingtown, PA: The airspace description is revised by replacing "This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory" with "This transition area is effective from sunrise to sunset, daily."

Du Bois, PA: The airspace description is revised by ensuring the area includes that airspace within an 8.5 mile radius of Du Bois-Jefferson County Airport and replacing the extension based on the DUBOI NDB with an extension based on the outer marker. The DUBOI NDB has been decommissioned.

Easton, PA: The airspace description is revised by replacing "This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory" with "This transition area is effective from sunrise to sunset, daily."

Seven Springs, PA: The airspace description is revised by replacing "This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory" with "This transition area is effective from sunrise to sunset, daily."

Wellsboro, PA: The airspace description is revised by replacing "This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory" with "This transition area is effective from sunrise to sunset, daily."

Blackstone, VA: The airspace description is revised by replacing "This transition area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory" with "This transition area is effective from sunrise to sunset, daily."

Berkeley Springs, WV: The airspace description is revised to eliminate the exclusion of the airspace within the Martinsburg, WV Transition Area, because the Berkeley Springs, WV Transition Area no longer overlaps the Martinsburg, WV Transition Area.

Clarksburg, WV: The airspace description is revised to include the geographic position for the Clarksburg VOR/DME, and to replace all references to the "Clarksburg VOR" with "Clarksburg VOR/DME."

Huntington, WV: The airspace description is revised to replace all references to "Tri State/Milton J. Ferguson Field Airport" with "Tri State/Milton J Ferguson Field Airport."

Morgantown, WV: The airspace description is revised to replace all references to the "Morgantown Municipal-Walter L. Hart Field Airport" with "Morgantown Municipal-Walter L. Bill Hart Field Airport."

Parkersburg, WV: The airspace description is revised to replace all references to the "Wood County (Gill Robb Wilson Field) Airport" with "Wood County Airport-Gill Robb Wilson Field" and to replace all references to the "Versi NDB" with the "Versi LOM."

Wheeling, WV: The airspace description is revised to replace all references to the "Dorch NDB" with "Dorch LOM."

FAA Region: Great Lakes

Belleville, IL: The airspace description is revised to delete the exclusion for the Cahokia, IL Transition Area.

Belvidere, IL: The airspace description is revised to replace all references to the "Belvidere Airport" with "Belvidere LTD Airport."

Cahokia, IL: The airspace description is revised to replace the reference to the "Cahokia-St. Louis Downtown Parks Airport, IL Control Zone," with the "Cahokia, IL Control Zone." It is also revised to replace the reference to the "Cahokia-St. Louis Downtown-Parks Airport" in the description header with "Cahokia, St. Louis Downtown-Parks Airport," and to replace all references to the "Cahokia-St. Louis Downtown-Parks Airport" in the body of the description with "St. Louis Downtown-Parks Airport."

Dixon, IL: The airspace description is revised to replace all references to the "Charles R. Walgreen Field" with "Dixon Municipal-Charles R. Walgreen Field."

Marion, IL: The airspace description is revised to include an exclusion for the airspace within the Marion, IL Control Zone during the specific dates and times it is effective.

Mount Vernon, IL: The airspace description is revised to replace all references to the "Mount Vernon-Outland Airport" with "Mount Vernon/Outland Airport."

Quincy, IL: The airspace description is revised to replace all references to the "Quincy LOM" with "Quincy LOM/NDB."

Rochelle, IL: The airspace description is revised to replace all references to the "Rochelle Municipal Airport" with "Airport-Koritz Field."

Rockford, IL: The airspace description is revised to clarify that the Rockford, IL Transition Area overlies the Greater Rockford Airport when the Rockford, IL Control Zone is not in effect. It is also revised to replace the reference to the "Greater Rockford Airport, IL Control Zone," with the "Rockford, IL Control Zone."

Sparta, IL: The airspace description is revised to replace all references to the "Sparta Community Hunter Field" with "Sparta Community-Hunter Field."

Sterling, IL: The airspace description is revised to replace all references to the "Whiteside County Airport" with "Whiteside County Airport-Jos H. Bittorf Field."

Alexandria, IN: The airspace description is revised to correct the reference to the airspace surrounding the 269° radial of the Muncie VOR/DME and clarify that the airspace extends east from the 6.7-mile radius of the Alexandria Airport to the Muncie VOR/DME. In addition, the reference to the "Anderson Municipal Airport, IN, and Delaware County-Johnson Field, IN Control Zones" is replaced with the "Anderson, IN, and Muncie, IN Control Zones." The reference to the "Anderson Municipal Airport, IN, and Delaware County-Johnson Field, IN Transition Areas" is replaced with the "Anderson, IN, and Muncie, IN Transition Areas."

Bedford, IN: The airspace description is revised to replace all references to the "Virgil I. Grissom Municipal Airport" with "Virgil I Grissom Municipal Airport."

Fort Wayne, IN: The airspace description is revised to replace all references to the "Fort Wayne Municipal Airport" with "Fort Wayne International Airport."

Greensburg, IN: The airspace description is revised to replace all references to the "Decatur County Airport" with "Greensburg-Decatur County Airport."

Indianapolis, Brookside Airpark, IN: The airspace description is revised to replace all references to "Indianapolis Brookside Airport" with "Indianapolis Brookside Airpark."

Michigan City, IN: The airspace description is revised to replace all references to the "Michigan City Indiana Airport" with "Michigan City Airport."

New Castle, IN: The airspace description is revised to replace the reference to the "New Castle, Henry County Municipal" and the reference to the "Henry County Municipal Airport" with "New Castle-Henry County Municipal Airport."

Seymour, IN: The airspace description is revised to replace all references to the "Freeman Field" with "Freeman Municipal Airport."

Valparaiso, TN: The airspace description is revised to replace all references to the "Porter County Airport" with "Porter County Memorial Airport."

Vincennes, IN: The airspace description is revised to delete the reference in the exclusion to the airspace in the Mt. Carmel, IL Transition Area.

Winamac, IN: The airspace description is revised to replace all references to "Arens Field Airport" with "Arens Field."

Battle Creek, MI: The airspace description is revised to replace all references to the "Batol LOM" with "Batol LOM/NDB."

Flint, MI: The airspace description is revised to replace all references to the "Petli NDB" with "Petli LOM."

Gladwin, MI: The airspace description is revised to include editorial changes and to replace all references to the "Gladwin Airport" with "Charles C. Zettel Memorial Airport."

Hillsdale, MI: The airspace description is revised to replace all references to the "Hillsdale Airport" with "Hillsdale Municipal."

Houghton Lake, MI: The airspace description is revised to replace all references to the "Roscommon County Memorial Airport" with "Roscommon County Airport."

Oscada, MI: The airspace description is revised to replace the reference to the "Wurtsmith Air Force Base, MI Control Zone," with the "Oscoda, MI Control Zone."

Sault Sainte Marie, Sanderson Field Airport, MI: The airspace description is revised to replace all references to the "Sanderson Field Airport" with "Sault Sainte Marie Municipal/Sanderson Field."

Albert Lea, MN: The airspace description is revised to replace all references to the "Albert Lea Airport" with "Albert Lea Municipal Airport."

Crookston, MN: The airspace description is revised to replace all references to the "Crookston Municipal Kirkwood Field Airport" with "Crookston Municipal Kirkwood Field."

Detroit Lakes, MN: The airspace description is revised to replace all references to the "Detroit Lakes Municipal Airport" with "Detroit Lakes Airport."

Grand Rapids, MN: The airspace description is revised to replace the reference to the "Grand Rapids, Itasca County.Gordon Newstrom Field" and the reference to the "Itasca County-Gordon Newstrom Field" with "Grand Rapids/Itasca County Gordon Newstrom Field."

International Falls, MN: The airspace description is revised to replace all references to the "International Falls Airport" with "Falls International Airport."

Little Falls, MN: The airspace description is revised to replace all references to the "Little Falls-Morrison Airport" with "Little Falls-Morrison County Airport."

Madison, MN: The airspace description is revised to replace all references to the "Madison-Lac Qui Parle County Airport" with "Madison-Lac Qui Parle Airport."

Minneapolis, MN: The airspace description is revised to replace all references to the "Minneapolis-St. Paul International Airport" with "Minneapolis-St. Paul International (Wold-Chamberlain) Airport," and to replace all references to the "Anoka County Airport" with "Anoka County-Blaine Airport (Janes Field)."

Montevideo, MN: The airspace description is revised to replace the reference to the "Montevideo, Chippewa County Airport" and the reference to the "Chippewa County Airport" with "Montevideo-Chippewa Airport."

Olivia, MN: The airspace description is revised to replace all references to the "Olivia Municipal Airport" with "Olivia Regional Airport."

Ortonville, MN: The airspace description is revised to replace all references to the "Ortonville Municipal Airport" with "Ortonville Municipal Airport-Martinson Field."

Bismark, ND: The airspace description is revised to clarify the description, replace the reference to the "ILS Localizer northeast course" with "ILS Localizer northwest course" and replace the reference to the "Bismark Municipal Airport, ND Control Zone" with the "Bismark, ND Control Zone."

The airspace description is revised to replace all references to the "Colij NDB" with "Colij LOM/NDB."

Fargo, ND: The airspace description is revised to delete the extension area based on the 009° radial of the Fargo VORTAC. It is also revised to clarify the portion of the transition area that extends upward from 1,200 feet above the surface. In addition, the reference to the "Hector International Airport, ND Control Zone," is replaced with the "Fargo, ND Control Zone."

Minot, ND: The airspace description is revised to add the Minot VORTAC geographic position, because the Navaid is used throughout the description.

Pembina, ND: The airspace description is revised to replace the reference to the "Humbolt VORTAC 312° radial" with the "Humbolt VORTAC 132°/312° radials." It is also revised to redefine the portion of the transition area that extends upward from 1,200 feet above the surface.

Wahpeton, ND: The airspace description is revised to clarify that the airspace within a 25-mile radius of the Harry Stern Airport is between the Minnesota state border and V–181.

Akron, OH: The airspace description is revised to include the geographic position for the Akron-Canton Regional ILS Localizer.

Barnesville, OH: The airspace description is revised to replace all references to the "Bradfield Airport" with "Barnesville Bradfield Airport."

Batavia, Clermont County Airport, OH: This transition area will not be adopted as a separate airspace area. It is encompassed in the Covington, KY transition area.

Cleveland, OH: The airspace description is revised to delete the extension based on the 230° bearing from the Harri LOM. It is also revised to replace the reference to the "Willoughby, Lost Nation Airport, OH Control Zone" with "Willoughby, OH Control Zone" and to replace all references to the "Lost Nation Airport" with "Willoughby Lost Nation Municipal Airport."

Columbus, OH: The airspace description is revised to replace all references to the "Rickenbacker ANGB" with "Rickenbacker Airport."

Dayton, General Airport South, OH: The airspace description is revised to replace the reference to the "Dayton, General Airport South" and the reference to the "General Airport South" with "Dayton General Airport South."

Dayton, OH: The airspace description is revised, because the McGuire VOR has been decommissioned and was used to define two extensions. It is also

revised to replace all references to the "James M. Cox-Dayton International Airport" with "James M Cox Dayton International Airport."

Hamilton, OH: The airspace description is revised to clarify that the extension based on the 280° bearing from the Hamilton NDB extends from the 6.4-mile radius of the Hamilton-Fairfield Airport to 10 miles west of the NDB. In addition, the reference to the "Cincinnati, OH Transition Area" is replaced with the "Covington, KY Transition Area." There is no Cincinnati, OH Transition Area, the airspace is included in the Covington, KY Transition Area.

Lima, OH: The airspace description is revised to replace the reference to the "Lima, Allen County Airport" and the reference to the "Allen County Airport" with "Lima Allen County Airport."

Mansfield, OH: The airspace description is revised to replace all references to the "Mansfield-Lahm Municipal Airport" with "Mansfield Lahm Municipal Airport."

Peebles, OH: The airspace description is revised to replace the reference to the "Salamon, OH Transition Area" with "West Union, OH Transition Area." There is no Salamon, OH Transition Area. The West Union, OH Transition Area covers the airspace surrounding the Alexander Salamon Airport.

Piqua, OH: The airspace description is revised to replace all references to the "Dayton VORTAC" with "Dayton VOR/DME."

Sandusky, OH: The airspace description is revised to replace all references to the "Griffing-Sandusky Airport" with "Griffing Sandusky Airport."

Wapakoneta, OH: The airspace description is revised to replace all references to the "Neil Armstrong Field" with "Neil Armstrong Airport."

Wilmington, OH: The airspace description is revised to replace all references to the "Midwest VOR" with "Midwest VOR/DME."

Sault Sainte Marie, ON: Each distance, which is expressed in statute miles are converted to the nearest nautical mile equivalent. Under this conversion, 8.5 statute miles is converted to 7.4 nautical miles; 1.75 statute miles is converted to 1.5 nautical miles; and 12 statute miles is converted to 10.5 nautical miles. An exclusion is added for the airspace outside the United States and that airspace within the Sault Sainte Marie, Ontario Control Zone within the United States.

Brookings, SD: The airspace description is revised to replace all references to the "Midwest VOR" with "Midwest VOR/DME."

Huron, SD: The airspace description is revised to replace the reference to the "Huron Regional Airport, SD Control Zone" with "Huron, SD Control Zone."

Miller, SD: The airspace description is revised to replace the reference to the "V-15W" with "V-15."

Sioux Falls, SD: The airspace description is revised to replace the reference to the "Joe Foss Field, SD Control Zone" with "Sioux Falls, SD Control Zone."

Watertown, SD: The airspace description is revised to delete the extension area based on the north localizer course of Watertown Municipal Airport and to reduce the size of the airspace area that extends upward from 1,200 feet above the surface. It is also revised to replace the reference to the "Watertown Municipal Airport, SD Control Zone" with "Watertown, SD Control Zone."

Minocqua-Woodruff, WI: The airspace description is revised to replace all references to the "Noble F. Lee Memorial Field Airport" with "Lakeland/Noble F. Lee Memorial Field Airport."

Sparta, WI: The airspace description is revised to replace the reference to the "Sparta, Fort McCoy Airport" and the reference to the "Fort McCoy Airport" with "Sparta/Fort McCoy Airport."

Wisconsin Rapids, WI: The airspace description is revised to replace all references to "Southwood" with "South Wood."

FAA Region: New England

Hartford, CT: The airspace description is revised to replace all references to the "Hartford, Brainard Airport" with "Hartford-Brainard Airport" and to replace all references to the "6.6-mile radius" of the Rentschler Airport with "7.1-mile radius."

Auburn, ME: The airspace description is revised to replace all references to the "Auburn-Lewiston Municipal Airport" with "Auburn/Lewiston Municipal Airport," and to replace all references to the "LEWIE NDB" with "LEWIE LOM."

Bar Harbor, ME: The airspace description is revised to replace all references to the "Bar Harbor, Hancock County Airport" with "Hancock County-Bar Harbor Airport," and to replace all references to the "SURRY NDB" with "SURRY LOM/NDB."

Brunswick, ME: The airspace description is revised to replace all references to the "Brunswick Naval Air Station" with "Brunswick NAS," and to replace all references to the "Brunswick VORTAC" with "Brunswick Navy VORTAC."

Kennebunkport, ME: The airspace description is revised to replace all references to the "Kennebunkport Heliport" with "Walkers Point Heliport."

Portland, ME: The airspace description is revised to replace all references to the "ORHAM NDB" with "ORHAM LOM."

Presque Isle, ME: The airspace description is revised to replace the reference to the "EXCAL OM" with "EXCAL LOM," the reference to the "Caribou, ME Municipal Airport" with "Caribou Municipal Airport," the reference to the "Northern Maine Regional Airport, ME Control Zone" with "Presque Isle, ME Control Zone," and the reference to the Loring Air Force Base, ME Control Zone" with "Limestone, ME Control Zone.

Princeton, ME: The airspace description is revised to include editorial changes. In addition, because the Machias NDB is not referenced in the airspace description, the description is revised to delete the geographic position for the Machias NDB.

Rangeley, ME: The airspace description is revised to replace all references to "Rangely" with "Rangeley."

Waterville, ME: The airspace description is revised to replace the reference to the "Waterville, Robert LaFleur Airport" with "Waterville Robert LaFleur Airport."

Chicopee Falls, MA: The airspace description is revised to include editorial changes.

Falmouth, MA: The airspace description is revised to replace all references to the "Otis AFB" with "Otis ANGB," all references to the "Hyannis VOR" with "Hyannis VORTAC," and all references to the "Martha's Vineyard VOR" with "Martha's Vineyard VOR/DME." In addition, the description is revised to clarify that the airspace that overlies the Hyannis, MA and the Martha's Vineyard, MA Control Zones is excluded from the transition area only during the specific dates and times those control zones are effective. It is also revised to replace all references to the "Barnstable Municipal Airport" with "Barnstable Municipal Airport-Boardman/Polando Field."

Hopedale, MA: The airspace description is revised to replace all references to the "Hopedale Industrial Airpark" with "Hopedale Industrial Park Airport."

Claremont, NH: The airspace description is revised to replace the reference to the "Lebanon Municipal Airport, NH transition Area and the Hartness State Airport, VT Transition Areas" with "Lebanon, NH, and the Springfield, VT Transition Areas."

Concord, NH: The airspace description is revised to include editorial changes, and to clarify that the airspace within 8 miles south and 4 miles north of the Concord VORTAC 300° radial extends from the VORTAC to 16 miles northwest of the VORTAC. In addition, the airspace description is revised to replace the reference to the "Manchester Airport, NH Control Zone and 700 foot Transition Area" with "Manchester, NH Control Zone and Transition Area," and the reference to the "Nashua/Boire Field, NH 700 foot Transition Area" with "Nashua, NH Transition Area."

Manchester, NH: The airspace description is revised to replace the reference to the "Manchester/Grenier Industrial Airpark, NH; Boire Field, NH; Laurence G. Hanscom, Bedford, MA and Lawrence Municipal, MA Control Zones" with "Manchester, NH; Nashua, NH; Bedford MA; and Lawrence, MA Control Zones," and the reference to the "Boston, MA and Newburyport/Plum Island, MA 700 foot Transition Areas" with "Boston, MA, and Newburyport, MA Transition Areas."

Nashua, NH: The airspace description is revised to replace the reference to the "Boire Field, NH; Manchester/Grenier Industrial Airpark, NH, and Lawrence Municipal, MA Control Zones" with "Nashua, NH; Manchester, NH; and Lawrence, MA Control Zones," and the reference to the "Manchester/Grenier Industrial Airpark, NH, and Boston, MA 700 foot Transition Areas" with "Manchester, NH, and Boston, MA Transition Areas."

Portsmouth, NH: The airspace description is revised to replace all references to the "Pease ANGB" with "Pease International Tradeport" and to replace the reference to the "700 foot Transition Areas" with "Transition Areas."

Block Island, RI: The airspace description is revised to replace all references to the "Block Island Airport" with Block Island State Airport," and all references to the "Sandy Point VORTAC" with "Sandy Point VOR/DME."

Providence, RI: The airspace description is revised to replace all references to "Theodore Francis Green Airport" with "Theodore Francis Green State Airport."

Burlington, VT: The airspace description is revised to replace the reference to "the Burlington International Airport, VT and the Clinton County Airport, NY Control Zones" with "the Burlington, VT and the Plattsburgh, NY Control Zones," and the reference to the "Clinton County, NY 700 foot Transition Area" with "Plattsburgh, NY Transition Area."

Montpelier, VT: The airspace description is revised to include editorial changes, to replace the reference to the "Montpelier, Edward F. Knapp State Airport, VT" with "Barre-Montpelier, Edward F. Knapp State Airport, VT," to replace all references to the "Montpelier VOR" with "Montpelier VOR/DME, and to replace the reference to the "Edward F. Knapp State Airport, VT Control Zone" with "Montpelier, VT Control Zone."

Morrisville, VT: The airspace description is revised to replace all references to the "Stowe State Airport" with "Morrisville-Stowe State Airport, and to replace the reference to the "Morrisville NDB" with "Morrisville-Stowe NDB."

Springfield, VT: The airspace description is revised to replace all references to the "Hartness State Airport" with "Hartness State (Springfield) Airport."

FAA Region: Northwest Mountain

Denver, Stapleton International Airport, CO: The airspace description is revised to replace the reference to "lat. 41°00'00" N." with "the Colorado-Nebraska State Boundary" and to replace the reference "by the Colorado-Nebraska State Boundary" with "along the Colorado-Nebraska State Boundary."

Durango, CO: The airspace description is revised to amend the geographic position for the airspace boundary for charting purposes. In addition, the description is revised to replace the reference "excluding other airspace which overlaps" with "excluding the airspace within the Farmington, NM Control Zone and Transition Area, the Durango, CO Control Zone during the specific dates and times it is effective, and all Federal Airways."

Montrose, CO: The airspace description is revised to replace all references to the "Montrose County Airport" with "Montrose Regional Airport."

Trinidad, CO: The airspace description is revised to replace all references to the "Las Animas County Airport" with "Perry Stokes Airport."

Lewiston, ID: The airspace description is revised to amend the geographic position for the point that connects to the 14.4-mile radius of the Lewiston VOR/DME, because the current point of measurement is ⅓ of a mile from the 14.4-mile radius.

Twin Falls, ID: The airspace description is revised by ensuring the extension based on the Twin Falls 086° and 281° radials meets the associated control zone.

Anaconda, MT: The airspace description is revised to replace all references to the "Anaconda Airport" with "Bowman Field."

Billings, MT: The airspace description is revised to replace the reference "excluding the portion that overlies V-2;" with "excluding the portions that overlie Federal Airways;" and to replace the reference "excluding those portions of V-187 and V-19 that have 1,200-foot AGL floors." with "excluding that portion within the Powell, WY Transition Area, and those portions of V-187 and V-19 that have 1,200-foot AGL floors."

Livingston, MT: The airspace description is revised to clarify that the Livingston, MT Transition Area overlies the Mission Field when the Livingston, MT Control Zone is not in effect. Due to the addition of the airspace area within a 4.3-mile radius of Mission Field, an exclusion is also added that excludes that airspace within the Livingston, MT Control Zone during the specific dates and times the control zone is effective.

Sidney, MT: The airspace description is revised to begin the extension area based on the 356° bearing from the Sidney NDB at the NDB, to begin the extension area based on the 215° bearing from the Sidney NDB at the NDB, and to add an exclusion for the airspace within the Wolf Point, MT Transition Area.

West Yellowstone, MT: The airspace description is revised to replace all references to the "West Yellowstone Airport" with "West Yellowstone, Yellowstone Airport."

Astoria, OR: The airspace description is revised by reducing the length of a radius from the Port of Astoria Airport from 4.3 miles to 4 miles, which is used in the airspace description for the Astoria, OR Control Zone. The airspace description is revised to replace all references to the "Seaside Airport" with "Seaside Municipal Airport."

Eugene, OR: The airspace description is revised to replace all references to "Mahlon Sweet Field" with "Mahlon Sweet Field Airport," because there is a heliport by the same name. In addition, all references to "Corvallis Airport" are replaced with "Corvallis Municipal Airport."

Newport, OR: The airspace description is revised by reducing the length of a radius from the Newport Municipal Airport from 4.3 miles to 4 miles, which is used in the airspace description for the Newport, OR Control Zone.

Pendleton, OR: The airspace description is revised to replace all references to "Foris NDB" with "Foris LOM/NDB."

Portland, OR: The airspace description is revised to include the airspace within a 4.3-mile radius of McMinnville Municipal Airport in the portion of the transition area that extends upward from 700 feet above the surface. The geographic position for McMinnville Municipal Airport is also added to the airspace description. The airspace description is also revised to clarify the area based on the 215° radial of the Newburg VORTAC that extends from the southern boundary, lat. 45°10'00" N, to 19.8 miles southwest of the Newburg VORTAC.

Saint George, UT: The airspace description is revised to replace the reference to the "St. George VOR/DME 131° radial" with "St George VOR/DM 131° and 311° radials."

Hoquiam, WA: The airspace description is revised to include editorial changes, and to clarify that the Hoquiam, WA Transition Area overlies Bowerman Airport when the Hoquiam, WA Control Zone is not in effect. The description of the transition area contains airspace within a 4-mile radius of Bowerman Field to correspond with the distance used in the airspace description for the Hoquiam, WA Control Zone. In addition, due to the inclusion of the airspace area surrounding Bowerman Airport, an exclusion is added that excludes that airspace within the Hoquiam, WA Control Zone during the specific dates and times it is effective.

Port Angeles, WA: The airspace description is revised by changing the length of a radius from the William R. Fairchild International Airport from 4.3 miles to 4.1 miles, which is used in the airspace description for the Port Angeles, WA Control Zone. The airspace description is revised to replace all references to the "CGAS Port Angeles" with "Port Angeles CGAS."

Pullman, WA: The airspace description is revised to replace all references to "Pullman-Moscow Regional Airport" with "Pullman/Moscow Regional Airport," and to add an exclusion for the Pullman, WA Control Zone during the specific dates and times it is effective.

Spokane, WA: The airspace description is revised to replace all references to "Mullen Pass" with "Mullan Pass," and to replace the reference "excluding the Pullman Moscow Regional Airport, WA Transition Areas" with "excluding the Pullman, WA Transition Area."

Wenatchee, WA: The airspace description is revised by adding the airspace within a 4-mile radius of Pangborn Memorial Airport. The 4-mile radius is used to correspond with the distance used in the airspace description for the Wenatchee, WA Control Zone. The airspace description is revised to add an exclusion for that airspace within the Wenatchee, WA Control Zone. In addition, the reference to "and that airspace between the 4.3-mile radius of the Pangborn Memorial Airport and the 9.6-mile radius of the Wenatchee VOR/DME bounded by the north edge of V–120 clockwise to the Wenatchee VOR/DME 327° radial," is replaced with "and within a 9.6-mile radius of the Wenatchee VOR/DME extending from 1.2 miles southeast of and parallel to the VOR/DME 304° radial clockwise to the VOR/DME 327° radial." The airspace description is also revised to include editorial changes.

Whidbey Island, WA: The airspace description is revised to make geographic position changes to align the transition area with the adjoining controlled airspace areas.

Yakima, WA: The airspace description is revised to replace all references to the "Yakima Airport" with "Yakima Air Terminal," and to amend the distance of the radius from the Yakima Air Terminal from "4.3 miles" to "4.2 miles." The radius change is made in order to correspond with the radius from Yakima Air Terminal used in the airspace description for the Yakima, WA Control Zone.

Pinedale, WY: The airspace description is revised to replace the reference to the "Big Piney, Marbleton Airport, WY 1,200 foot Transition Area" with "Big Piney, WY 1,200 foot Transition Area."

Powell, WY: The airspace description is revised to make geographic position changes for charting purposes, and to replace the reference to the "Worland Municipal Airport, WY 1,200 foot Transition Area" with "Worland, WY 1,200 foot Transition Area."

Rock Springs, WY: The airspace description is revised to replace the reference to "Rock Springs, Sweetwater County Airport" with "Rock Springs-Sweetwater County Airport."

FAA Region: Southern

Birmingham, AL: The airspace description is revised to delete the exclusion of the airspace within 2.3 miles each side of the ILS localizer northeast course and that airspace within the Birmingham Airport, AL Control Zone.

Fort Rucker, AL: The airspace description is revised to delete the reference to the airspace within a 5-mile radius of Blackwell Field, Ozark, AL.

Monroeville, AL: The airspace description is revised to replace all references to the "Monroeville County Airport" with "Monroe County Airport."

Crestview, FL: The airspace description is revised to replace all references to the "Kobra NDB" with "Kobra LOM."

Jacksonville, FL: The airspace description is revised to replace all references to the "Jacksonville NAS" with "Jacksonville NAS/Towers Field."

Jupiter, FL: The airspace description is revised to replace all references to the "Gwinn Airport" with "William P Gwinn Airport."

Lakeland, FL: The airspace description is revised to replace all references to the "Lakeland Regional Airport" with "Lakeland Linder Regional Airport."

Miami, FL: The airspace description is revised to replace all references to the "Pompano Beach Airport" with "Pompano Beach Airpark."

Miami, Miami International Airport, FL: The airspace description is revised to add the TM LOM. It is also revised to delete the reference to the Perrine NDB and the extension area based on the Perrine NDB 274° bearing. An extension area 2.4 miles each side of the 267° bearing from the TM LOM is added to the description, which extends from the 7-mile radius of the Miami International Airport to 7 miles west of the LOM.

Pensacola, FL: The airspace description is revised to replace all references to the "Forrest Sherman Field" with "NAS Pensacola, Forrest Sherman Field."

Tampa, FL: The airspace description is revised to replace all references to the "Peter O. Knight Airport" with "Peter O. Knight Airport."

Bainbridge, GA: The airspace description is revised to replace the reference to the "Bainbridge, Decatur County Industrial Airport" and the reference to the "Decatur County Industrial Airport" with "Decatur County Industrial Airpark."

Cedar Springs, GA: The airspace description is revised to replace the reference to the "Great Southern Airport" with "Georgia-Pacific Airport."

Georgia, GA: The airspace description is revised to include only the airspace within the boundary of the State of Georgia and the airspace within 12 miles from and parallel to the shoreline.

Monroe, GA: The airspace description is revised to replace all references to the "Monroe County NDB" with "Monroe NDB."

Bowling Green, KY: The airspace description is revised to replace all references to the "Bowling Green-Warren County Airport" with Bowling Green-Warren County Regional Airport."

Covington, KY: The airspace description is revised to replace all references to the "Cincinnati Municipal-Lunken Field Airport" with "Cincinnati Municipal Airport-Lunken Field", to replace all references to the "Lunken NDB" with "Cincinnati NDB," and to replace all references to the "Blue Ash Airport" with "Cincinnati-Blue Ash Airport."

Falmouth, KY: The airspace description is revised to delete the exclusion of the airspace within the Covington, KY Transition Area. These transition areas no longer overlap.

Fort Campbell, KY: The airspace description is revised to replace all references to the "Snuff NDB" with "Snuff LOM."

Fort Knox, KY: A separate airspace description is added for Godman Army Air Field. The same airspace is currently encompassed in the transition area for Louisville, KY.

Lexington, KY: The airspace description is revised to replace all references to the "Blayd NDB" with "Blayd LOM/NDB."

London, KY: The airspace description is revised to replace all references to the "London-Corbin Airport Magee Field" with "London-Corbin Airport-Magee Field."

Prestonburg, KY: The airspace description was mistakenly omitted from Docket Number 26852 but was listed in NPRM Number 92–5. The airspace description is added to the airspace descriptions in Docket Number 26852.

Somerset, KY: The airspace description is revised to delete the exclusion of the airspace within the Monticello, KY Transition Area. These transition areas no longer overlap.

Lexington, MS: The airspace description is revised to add the geographic position for the Greenwood VORTAC.

Meridian, MS: The airspace description is revised to replace all references to the "NAS Meridian" with "Meridian NAS, McCain Field."

Mississippi, MS: The airspace description is revised to include only the airspace within the boundary of the State of Mississippi and the airspace within 12 miles from and parallel to the shoreline.

Pascagoula, MS: The airspace description is revised to replace all the references to the "Pascagoula, Jackson County Airport" with "Pascagoula, Trent Lott International."

Bogue, NC: The airspace description is revised to replace all references to the "Bogue MCALF" with "Bogue Field MCALF."

Burlington, NC: The airspace description is revised to replace all references to the "Burlington Municipal Airport" with "Burlington Alamance Regional Airport."

Charlotte, NC: The airspace description is revised to replace all references to the "Bryant Field" with "Rock Hill Municipal/Bryant Field," to replace all references to the "Tryon NDB LOM" with "Tryon LOM," and to replace all references to the "Charlotte ILS Localizer" with "Charlotte/Douglas International ILS Localizer."

Fayetteville, NC: The airspace description is revised to clarify that the Pope AFB ILS localizer extension area is within 8 miles northeast (not northwest as proposed) and 4 miles southeast of the Pope AFB ILS localizer northeast course.

Goldsboro, NC: The airspace description is revised to replace all references to the "Seymour-Johnson AFB" with "Seymour Johnson AFB."

Greensboro, NC: The airspace description is revised to replace all references to the "Greensboro/Piedmont Triad International Airport" with "Piedmont Triad International Airport."

North Carolina, NC: The airspace description is revised to include only that airspace within the boundary of the State of North Carolina and the airspace within 12 NM of and parallel to the shoreline.

Reidsville, NC: The airspace description is revised to replace all references to the "Rockingham County-Shiloh Airport" with "Rockingham County North Carolina Shiloh Airport."

Siler City, NC: The airspace description is revised to replace all references to the "Blair Municipal Airport" with "Siler City Municipal Airport."

Aquadilla, PR: The airspace description is revised to replace all references to the "Mayaguez Airfield" with "Eugenio Maria de Hostos Airfield."

Roosevelt Roads, PR: The airspace description is revised to replace all references to the "Roosevelt Roads NS" with "Roosevelt Roads NS (Ofstie Field)."

Columbia, SC: The airspace description is revised to replace all references to the "Owens Field" with "Columbia Owens Downtown."

Greenville, SC: The airspace description is revised to replace all references to the "Greenville Municipal Downtown Airport" with "Greenville Downtown Airport."

North, SC: The airspace description is revised to replace all references to the "North AFAF" with "North AF AUX."

South Carolina, SC: The airspace description is revised to include only that airspace within the boundary of the State of South Carolina and the airspace within 12 miles of and parallel to the shoreline.

Springfield, TN: The airspace description is revised to replace the reference to the "Springfield Municipal Airport" with "Springfield Robertson County."

FAA Region: Southwest

Crossett, AR: The airspace description is revised to replace all references to "Crossett Municipal Airport" with "Z M Jack Stell Field."

Flippin, AR: The airspace description is revised to replace all references to the "Flippin VOR" with "Flippin VOR/DME."

Fort Smith, AR: The airspace description is revised to delete the reference to the Fort Smith VORTAC since it is not used in the description.

Harrison, AR: The airspace description is revised to replace all references to the "Harrison VOR" with "Harrison VOR/DME," to replace all references to the "Bakky RBN" with "Bakky NDB."

Hot Springs, AR: The airspace description is revised to replace all references to the "Hot Springs VOR" with "Hot Springs VOR/DME," and to replace all references to the "Hossy RBN" with "Hossy NDB."

Jonesboro, AR: The airspace description is revised to replace all references to the "Jonesboro VOR" with "Jonesboro VOR/DME."

Alexandria, LA: The airspace description is revised to replace the reference to "Esler Regional Airport" with "Alexandria Esler Regional."

Bunkie, LA: The airspace description is revised to amend the radius around the Bunkie Municipal Airport from a 6.3-mile radius to a 6.4-mile radius.

Eunice, LA: The airspace description is revised to amend the radius around the Eunice Airport from a 6.3-mile radius to a 6.4-mile radius.

Intracoastal City, LA: The airspace description is revised to replace all references to the "White Lake VORTAC" with "White Lake VOR/DME."

Lafayette, LA: The airspace description is revised to amend the radius around the Lafayette Regional Airport from a 6.3-mile radius to a 6.4-mile radius. In addition, the radius

around the Abbeville Municipal Airport is amended from a 6.5-mile radius to a 6.4-mile radius.

Louisiana, LA: The airspace description is revised to replace all references to State lines and other boundary markers with the phrase "within the boundary of the State of Louisiana, including that airspace within 12 nautical miles from and parallel to the shoreline of Louisiana."

Monroe, LA: The airspace description is revised to delete the reference to the Monroe ILS localizer because it is not used in the description. The reference to the "Sabar RBN," is replaced with "Sabar LOM."

New Roads, LA: The airspace description is revised to replace all references to the "False River Airport" with "False River Air Park."

Ruston, LA: The airspace description is revised to replace all references to the "Lincoln Parrish RBN" with "Lincoln Parish NDB."

Vivian, LA: The airspace description is revised to replace all references to the "Vivian Municipal Airport" with "Vivian Airport."

Carlsbod, NM: The airspace description is revised to replace all references to the "Cavern City ILS Localizer" with "Cavern City Air Terminal Localizer."

Farmington, NM: The airspace description is revised to delete the exclusion of the airspace within the state of Arizona because the transition area does not extend into the state.

Hobbs, NM: The airspace description is revised to replace the reference to the "Hobbs, Lea County Airport" and the reference to the "Lea County Airport" with "Lea County (Hobbs) Airport."

Zuni, NM: The airspace description is revised to replace the reference to the "Zuni Pueblo, Black Rock Airport" with "Black Rock Airport," and to add the geographic position for the Zuni VORTAC.

Ardmore, OK: The airspace description is revised to delete the Ardmore VORTAC 056° extension area.

Bartlesville, OK: The airspace description is revised to replace all references to the "Bartlesville VOR" with "Bartlesville VOR/DME."

Lawton, OK: The airspace description is revised to replace the reference "Lawton VOR" with "Lawton VOR/DME."

McAlester, OK: The airspace description is revised to replace the reference to the "Wampa RBN" with "Wampa LOM."

Shawnee, OK: The airspace description is revised to extend the radius around the Shawnee Municipal Airport from 6.7 miles to 7.0 miles. The radius around the Prague Municipal Airport is extended from 6.3 miles to 6.5 miles. The radius around the Chandler Municipal Airport is extended from 6.1 miles to 6.4 miles. The Prague RBN 360° extension is revised to extend from the 6.5-mile radius of the Seminole Municipal Airport. The Tilghman RBN 352° extension is revised to extend from the 6.4-mile radius of the Chandler Municipal Airport.

Stillwater, OK: The airspace description is revised to replace all references to the "Stillwater VOR" with "Stillwater VOR/DME."

Alice, TX: The airspace description is revised to delete the Kingsville TACAN 332° extension area, and replace the reference to the "Orange Grove TACAN" with "Navy Orange Grove TACAN."

Amarillo, TX: The airspace description is revised to replace the reference to the "Pande RBN" with "Pande LOM/NDB."

Beeville, TX: The airspace description is revised to delete the Beeville RBN 136° extension area.

Brady, TX: The airspace description is revised to replace the reference to the "Brady RBN" with "Brady NDB."

Brownsville, TX: The airspace description is revised to replace the reference to the "Brownsville International Airport" with "Brownsville/South Padre Island International Airport." The airspace description is revised to replace all references to the "Brownsville International Airport" with "Brownsville/South Padre Island International Airport."

Brownwood, TX: The airspace description is revised to delete the Brownwood VOR 359° extension area.

Burnet, TX: The airspace description is revised to replace all references to the "Burnet Municipal-Kate Craddock Field" with "Burnet Municipal Kate Craddock Field."

Clarendon, TX: The airspace description is revised to clarify that the Clarendon RBN 209° extension area begins at the airport.

Dallas-Fort Worth, TX: The airspace description is revised to delete the Acton VORTAC 024° extension area.

Eagle Lake, TX: The airspace description is revised to replace all references to the "Eagle Lake VOR" with "Eagle Lake VOR/DME."

El Campo, TX: The airspace description is revised to replace all references to the "Eagle Lake VOR" with "Eagle Lake VOR/DME."

Evadale, TX: The airspace description is revised to replace all references to the "Evadale Airport" with "Evadale Landing Strip."

Follett, TX: The airspace description is revised to clarify that the Gage VORTAC 296° and 117° extension areas begin at the airport. The Follett RBN 189° extension area is specified to extend from the RBN.

Freeport, TX: The airspace description is revised by deleting the proposed extensions based on the Scholes VORTAC 220° and 233° radials and establishing extensions based on the Scholes VORTAC 237° and 249° radials. The extension based on the 237° radial will extend from 19 miles southwest of the VORTAC to 25.4 miles southwest of the VORTAC. The extension base on the 249° radial will extend from 15 miles southwest of the VORTAC to 28 miles southwest of the VORTAC.

Harlingen, TX: The airspace description is revised to delete the Rio Grande Valley ILS extension area. The airspace description is revised to replace the reference to the "Sebas RBN" with "Sebas LOM/NDB."

Haskell, TX: The airspace description is revised to clarify that the Haskell RBN 015° extension area extends from the airport.

Hebbronville, TX: The airspace description is revised to replace all references to the "Wyatt Ranch Airport" with "O.S. Wyatt Airport."

Higgins, TX: The airspace description is revised to clarify that the Gage VORTAC 207° and 025° extension areas extend from the airport.

Houston, TX: The airspace description is revised to exclude the airspace within the Anahuac, TX Transition Area. In addition, the description of the southwest boundaries of the transition area are clarified.

Jacksonville, TX: The airspace description is revised to replace all references to the "Frankston VOR" with "Frankston VOR/DME ," and to replace all references to the "Cherokee RBN" with "Cherokee County RBN."

Kerrville, TX: The airspace description is revised to delete the geographic position for the Kerrville Localizer, because it is not used in the airspace description. In addition, the airspace description is revised to replace all references to the "Shein LOM" with "Shein LOM/NDB."

Killeen, TX: The airspace description is revised to replace all references to the "Killeen NDB" with "Iresh NDB." The airspace description is revised to replace all references to the "Gray VOR" with "Gray VOR/DME."

Larado, TX: The airspace description is revised to change the airspace surrounding Rancho Blanco Airport from a 6.3 mile radius to a 6.6 mile radius.

Lubbock, TX: The airspace description is revised to replace the reference to the "Lubbi RBN" with "Lubbi LOM."

Lufkin, TX: The airspace description is revised to replace all references to the "Lufkin ILS Localizer" with "Angelina County ILS Localizer."

Newgulf, TX: The airspace description is revised to delete the Eagle Lake VORTAC 163° extension area. The airspace description is revised to delete the geographic position for the Eagle Lake VORTAC.

Palestine, TX: The airspace description is revised to replace all references to the "Frankston VOR" with "Frankston VOR/DME."

Rockport, TX: The airspace description is revised to delete the exclusion of the airspace more than 12 miles from a parallel to the shoreline.

Sabine Pass, TX: The airspace description is revised to replace all references to the "Sabine Pass VOR" with "Sabine Pass VOR/DME."

San Angelo, TX: The airspace description is revised to replace all references to the "San Angelo ILS Localizer" with "Mathis Field ILS Localizer."

San Antonio, San Antonio International Airport, TX: The airspace description is revised to clarify that the Castroville RBN 170° extension area extends from the RBN.

Stamford, TX: The airspace description is revised to clarify that the Stamford RBN 176° extension area extends from the airport.

Sulphur Springs, TX: The airspace description is revised to clarify that the Brashear RBN 002° extension area extends from the airport.

Temple, TX: The airspace description is revised to replace all references to the "Temple ILS Localizer" with "Draughon-Miller Localizer."

Texas, TX: The airspace description is revised to replace all references to geographic positions, and other boundary markers with the phrase "within the boundary of the State of Texas, including that airspace within 12 nautical miles from and parallel to the shoreline of Texas." No changes are made to the airspace overlying the State of Texas and excluded from the transition area.

Tyler, TX: The airspace description is revised to replace all references to the "Tyler VOR" with "Tyler VOR/DME," and to replace all references to the "Tyler ILS Localizer" with "Tyler Pounds Field Localizer."

Van Horn, TX: The airspace description is revised to clarify that the Van Horn RBN 053° extension area extends from the airport.

Victoria, TX: The airspace description is revised to replace all references to the "Victoria VOR" with "Victoria VOR/DME."

Weslaco, TX: The airspace description is revised to delete the exclusion of the Mexican airspace.

Wichita Falls, TX: The airspace description is revised to replace all references to the "Sheppard AFB/Wichita Falls Municipal Airport" with "Sheppard AFB-Wichita Falls Municipal Airport."

FAA Region: Western-Pacific

Globe, AZ: The airspace description is revised to replace all references to the "Globe San Carlos Regional Air Facility Radio Beacon" with "Globe NDB."

Heber, AZ: The airspace description is revised to ensure the area meets the boundaries of adjoining airspace areas.

Peach Springs, AZ: The airspace description is revised to include the geographic position for the Grand Canyon VOR/DME.

Portal, AZ: The airspace description for this area is eliminated. The same airspace is encompassed in the transition area entitled New Mexico, NM.

Sedona, AZ: The airspace description is revised to replace all references to the "Sedona RBN" with "Sedona NDB."

Tucson, AZ: The airspace description is revised to ensure the area is aligned with the adjoining controlled airspace.

Yuma, AZ: The airspace description is revised by replacing boundaries based on geographic positions with boundaries based on references to V–135, R–2306C, and R–2306A.

Arcato, CA: The airspace description is revised by replacing the name of the Arcata/Eureka NDB with Abeta NDB. The airspace description is revised to replace all references to the "Murray Airport" with "Murray Field."

Bakersfield, CA: The airspace description is revised to delete the "airspace extending upward from the surface and above within the 5-mile radius of Meadows Field."

Bishop, CA: The airspace description is revised to change the distance from the Bishop VOR 337° radial from 4.3 miles to 4 miles.

Blythe, CA: The airspace description is revised by replacing the boundary based on a 15.6-mile radius from the Blythe Airport with a 15.8-mile radius.

Brawley, CA: The airspace description is revised to delete the reference to NAF El Centro, CA, Airport because the airport is not referenced in the airspace description. The airspace description is revised to replace all references to "Brawley Airport" with "Brawley Municipal Airport."

Chico, CA: The airspace description is revised by reducing the length of a radius from the Chico Municipal Airport from 4.3 miles to 4.1 miles, which is the distance found in the Chico, CA Control Zone. The airspace description is revised to replace all references to the "Chico VOR" with "Chico VOR/DME."

China Lake Naval Air Weapons Station, CA: The airspace description is revised to replace all references to the "China Lake NWC" with "China Lake NAWS/Armitage Field," and all references to the "China Lake NWC TACAN" with "China Lake (Navy) TACAN."

Crows Landing Naval Auxiliary Landing Facility, CA: The airspace description is revised to replace all references to "Patterson Field" with "Patterson Airport."

Davis, CA: The airspace description is revised to replace all references to the "Davis University Airport" with "University Airport."

Delano, CA: The airspace description is deleted because the same airspace is included in the northern section of the Bakersfield, CA Transition Area.

El Centro Naval Air Station, CA: The airspace description is revised to clarify that the floor extends from 700 feet above the surface.

Grass Valley, CA: The airspace description is revised to replace all references to "Marysville VOR" with "Marysville VOR/DME."

Hanford, CA: The airspace description is revised to replace all references to "Visalia VOR" with "Visalia VOR/DME," and to replace all references to "Blair Airport" with "Blair Strip Airport."

Herlong, CA: The airspace description is revised to replace all references to "Amedee VOR" with "Amedee VOR/DME."

Monterey, CA: The airspace description is revised to ensure the boundaries meet each adjoining control zone. It is also revised to clarify the area bounded by V–113.

Oxnard, CA: The airspace description is revised to replace all references to the "Point Mugu NAS" with "Point Mugu NAWS."

Palmdale, CA: The airspace description is revised to delete the reference to the Lancaster NDB, and the airspace that extends upward from the surface.

Point Reyes, CA: The airspace description is revised by specifying that the airspace west of the Point Reyes VORTAC is bounded on the east by the "western edge" of V–199.

Redding, CA: The airspace description is revised to replace the reference to the

"Lassen NDB," and all references to the "Redding NDB" with "Lassn NDB."

Sacramento, CA: The airspace description is revised to replace all references to the "Sacramento McClellan AFB" with "McClellan AFB," and to replace all references to the "Sacramento Mather AFB" with "Mather AFB."

San Francisco, CA: The airspace description is revised to replace all references to "Alameda NAS" with "Alameda NAS (Nimitz Field)."

San Jose, CA: The airspace description is revised to replace all references to the "San Jose Reid-Hillview Airport" with "Reid-Hillview of Santa Clara County Airport."

San Luis Obispo, CA: The airspace description is revised by redefining the extension southwest of the San Luis Obispo County-McChesney Field.

Santa Maria, CA: The airspace description is revised for charting purposes.

Ukiah, CA: The airspace description is revised to include airspace between 17.4 and 20.9 miles from the Red Bluff VORTAC.

Visalia, CA: The airspace description is revised to replace all references to the "Ianni Airport" with "Ianni Strip," and to replace all references to the "Swanson Ranch Airport" with "Swanson Ranch NR1 Airport."

Guam Island, GU: The airspace description is revised by replacing references to geographic positions with references to the 243° bearing of Anderson Air Force Base.

Barking Sands, HI: The airspace description is revised by deleting the reference to the South Kauai VORTAC, which is not used in the airspace description.

Hawaiian Islands, HI: The airspace description is revised by clarifying the area for charting purposes.

Honolulu, Honolulu International Airport, HI: The airspace description is revised to align the area with the control zone for Honolulu International Airport.

Fallon, NV: The airspace description is revised to replace all references to the "Fallon NAS" with "Fallon NAS (Van Voorhis Field," and to replace all references to the "Fallon TACAN" with "Fallon Navy TACAN."

Las Vegas, NV: The airspace description is revised to replace all references to the "Grand Canyon VOR" with "Grand Canyon VOR/DME."

Mercury, NV: The airspace description is revised to exclude the airspace in restricted area R-4808N.

Tonopah, NV: The airspace description is revised to clarify that the southern area is bounded by the 083° and 263° radials.

Revisions to proposed airspace areas by updating a geographic position:

FAA region	Proposed geographic position	Revised geographic position
Alaskan		
Name and airport or facility:		
Adak, AK:		
Adak NAS Airport	Lat. 51°52'46" N., Long. 176°38'37" W	Lat. 51°52'58" N., Long. 176°38'41" W.
Adak TACAN	Lat. 51°52'31" N., Long. 176°40'42" W	Lat. 51°52'22" N., Long. 176°40'18" W.
Adak NDB	Lat. 51°55'01" N., Long. 176°33'09" W	Lat. 51°55'06" N., Long. 176°33'52" W.
Adak Localizer	Lat. 51°52'72" N., Long. 176°39'49" W	Lat. 51°52'43" N., Long. 176°39'41" W.
Amchitca Island, AK:		
Amchitka Island Airport	Lat. 51°22'43" N., Long. 179°15'32" E	Lat. 51°22'48" N., Long. 179°18'24" E.
Amchitka VORTAC	Lat. 51°23'02" N., Long. 179°17'12" E	Lat. 51°22'37" N., Long. 179°16'37" E.
Bethel, AK:		
Bethel Airport	Lat. 60°46'50" N., Long. 161°50'06" W	Lat. 60°46'50" N., Long. 161°50'09" W.
Emmonak, AK:		
Emmonak Airport	Lat. 62°46'00" N., Long. 164°30'00" W	Lat. 62°47'10" N., Long. 164°29'19" W.
Emmonak VOR/DME	Lat. 62°47'01" N., Long. 164°29'01" W	Lat. 62°47'03" N., Long. 164°29'07" W.
Fairbanks, Eielson Air Force Base, AK:		
Eielson Air Force Base	Lat. 64°39'58" N., Long. 147°05'56" W	Lat. 64°39'54" N., Long. 147°05'50" W.
Eielson TACAN	Lat. 64°41'03" N., Long. 147°07'07" W	Lat. 64°41'18" N., Long. 147°06'40" W.
Galena, AK:		
Galena Airport	Lat. 64°44'13" N., Long. 156°56'06" W	Lat. 64°44'12" N., Long. 156°56'06" W.
Bishop NDB	Lat. 64°44'17" N., Long. 156°48'23" W	Lat. 64°44'17" N., Long. 156°48'23" W.
Central		
Name and airport or facility:		
Audubon, IA:		
Audubon County Airport	Lat. 41°42'08" N., Long. 94°55'15" W	Lat. 41°42'05" N., Long. 94°55'13" W.
Boone, IA:		
Boone Municipal Airport	Lat. 42°02'58" N., Long. 93°50'51" W	Lat. 42°02'59" N., Long. 93°50'50" W.
Boone NDB	Lat. 42°03'17" N., Long. 93°51'06" W	Lat. 42°03'16" N., Long. 93°51'10" W.
Chariton, IA:		
Chariton Municipal Airport	Lat. 41°01'11" N., Long. 93°21'35" W	Lat. 41°01'11" N., Long. 93°21'34" W.
Chariton NDB	Lat. 41°01'00" N., Long. 93°21'37" W	Lat. 41°01'00" N., Long. 93°21'42" W.
Charles City, IA:		
Charles City Municipal Airport	Lat. 43°04'22" N., Long. 92°36'37" W	Lat. 43°04'21" N., Long. 92°36'38" W.
Charles City NDB	Lat. 43°04'18" N., Long. 92°36'35" W	Lat. 43°04'07" N., Long. 92°36'29" W.
Marshalltown, IA:		
Marshalltown NDB	Lat. 42°06'37" N., Long. 92°55'00" W	Lat. 42°06'36" N., Long. 92°55'00" W.
Shenandoah, IA:		
Shenandoah Municipal Airport	Lat. 40°45'09" N., Long. 95°24'53" W	Lat. 40°45'08" N., Long. 95°24'53" W.
Webster City, IA:		
Webster City NDB	Lat. 42°26'25" N., Long. 93°52'00" W	Lat. 42°26'29" N., Long. 93°52'09" W.
Clay Center, KS:		
Clay Center NDB	Lat. 39°22'50" N., Long. 97°09'40" W	Lat. 39°22'51" N., Long. 97°09'39" W.
Hugoton, KS:		
Hugoton NDB	Lat. 37°09'49" N., Long. 101°22'25" W	Lat. 37°09'49" N., Long. 101°22'27" W.
Olathe, Johnson County Executive Airport, KS:		
Johnson County Executive Airport	Lat. 38°50'51" N., Long. 94°44'15" W	Lat. 38°50'51" N., Long. 94°44'14" W.
Pittsburg, KS:		
Atkinson Municipal Airport	Lat. 37°26'48" N., Long. 94°43'50" W	Lat. 37°26'51" N., Long. 94°43'51" W.

FAA region	Proposed geographic position	Revised geographic position
Wichita Mid Continent Airport, KS:		
Wichita McConnell Air Force Base	Lat. 37°37'26" N., Long. 97°15'51" W	Lat. 37°37'23" N., Long. 97°16'02" W.
Ava, MO:		
Bilmart NDB	Lat. 36°58'11" N., Long. 92°40'58" W	Lat. 36°58'11" N., Long. 92°40'38" W.
Boonville, MO:		
Jesse Viertel Memorial Airport	Lat. 38°56'50" N., Long. 92°41'19" W	Lat. 38°56'45" N., Long. 92°40'57" W.
Bowling Green, MO:		
Bowling Green Municipal Airport	Lat. 39°22'11" N., Long. 91°13'06" W	Lat. 39°22'12" N., Long. 91°13'09" W.
Brookfield, MO:		
General John J. Pershing Memorial Airport	Lat. 39°45'40" N., Long. 93°06'15" W	Lat. 39°45'45" N., Long. 93°06'19" W.
Butler, MO:		
Butler Memorial Airport	Lat. 38°17'13" N., Long. 94°20'24" W	Lat. 38°17'23" N., Long. 94°20'24" W.
Chillicothe Municipal Airport	Lat. 39°48'45" N., Long. 93°30'00" W	Lat. 39°46'55" N., Long. 93°29'46" W.
Fort Leonard Wood, MO:		
Forney Army Air Field	Lat. 37°44'30" N., Long. 92°08'26" W	Lat. 37°44'31" N., Long. 92°08'24" W.
Fulton, MO:		
Elton Hensley Memorial Airport	Lat. 38°50'22" N., Long. 92°00'17" W	Lat. 38°50'23" N., Long. 92°00'15" W.
Joplin, MO:		
Joplin Regional Airport	Lat. 37°08'58" N., Long. 94°29'54" W	Lat. 37°09'02" N., Long. 94°29'53" W.
Lee's Summit, MO:		
Lee's Summit Municipal Airport	Lat. 38°57'50" N., Long. 94°22'25" W	Lat. 38°57'37" N., Long. 94°22'14" W.
Lexington, MO:		
Lexington Municipal Airport	Lat. 39°12'36" N., Long. 93°55'37" W	Lat. 39°12'35" N., Long. 93°55'40" W.
Maryville, MO:		
Maryville Memorial Airport	Lat. 40°21'00" N., Long. 94°54'45" W	Lat. 40°21'09" N., Long. 94°54'55" W.
Mexico, MO:		
Mexico Memorial Airport	Lat. 39°09'28" N., Long. 91°49'07" W	Lat. 39°09'27" N., Long. 91°49'05" W.
Moberly, MO:		
Omar N. Bradley Airport	Lat. 39°27'50" N., Long. 92°25'35" W	Lat. 39°27'50" N., Long. 92°25'39" W.
Monroe City, MO:		
Monroe City Regional Airport	Lat. 39°38'05" N., Long. 91°43'40" W	Lat. 39°38'04" N., Long. 91°43'37" W.
Sedalia, MO:		
Sedalia Memorial Airport	Lat. 38°42'15" N., Long. 93°11'00" W	Lat. 38°42'15" N., Long. 93°10'33" W.
Saint Louis, MO:		
St. Charles County Smartt Airport	Lat. 38°55'43" N., Long. 90°25'41" W	Lat. 38°55'47" N., Long. 90°25'47" W.
Trenton, MO:		
Trenton Municipal Airport	Lat. 40°05'03" N., Long. 93°35'26" W	Lat. 40°05'01" N., Long. 93°35'26" W.
Warrensburg, MO:		
Skyhaven Airport	Lat. 38°46'55" N., Long. 93°48'09" W	Lat. 38°47'03" N., Long. 93°48'06" W.
Washington, MO:		
Washington Memorial Airport	Lat. 38°35'32" N., Long. 90°59'52" W	Lat. 38°35'30" N., Long. 90°59'51" W.
Wentzville, MO:		
Wentzville Airport	Lat. 38°49'15" N., Long. 90°50'05" W	Lat. 38°49'17" N., Long. 90°50'02" W.
Scottsbluff, NE:		
William B. Heilig Field Airport	Lat. 41°52'34" N., Long. 103°35'53" W	Lat. 41°52'27" N., Long. 103°35'43" W.
Eastern		
Name and airport or facility:		
Dover, DE:		
Dover TACAN	Lat. 39°07'54" N., Long. 75°26'06" W	Lat. 39°07'56" N., Long. 75°26'04" W.
Delaware Airpark	Lat. 39°13'06" N., Long. 75°35'50" W	Lat. 39°13'06" N., Long. 75°35'48" W.
Laurel, DE:		
Laurel Airport	Lat. 38°32'30" N., Long. 75°35'30" W	Lat. 38°32'30" N., Long. 75°35'40" W.
Wilmington, DE:		
New Castle County Airport	Lat. 39°40'42" N., Long. 75°36'25" W	Lat. 39°40'43" N., Long. 75°36'25" W.
Summit Airpark	Lat. 39°31'17" N., Long. 75°43'17" W	Lat. 39°31'13" N., Long. 75°43'15" W.
Aberdeen, MD:		
Phillips Army Air Field	Lat. 39°26'00" N., Long. 76°10'12" W	Lat. 39°27'58" N., Long. 76°10'12" W.
Easton, MD:		
Easton Municipal Airport	Lat. 38°48'19" N., Long. 76°04'06" W	Lat. 38°48'15" N., Long. 76°04'10" W.
Easton NDB	Lat. 38°48'16" N., Long. 76°04'11" W	Lat. 38°48'17" N., Long. 76°04'11" W.
Edgewood, MD:		
Weide Army Air Field	Lat. 39°23'30" N., Long. 76°17'30" W	Lat. 39°23'31" N., Long. 76°17'29" W.
Frederick, MD:		
Frederick Municipal Airport	Lat. 39°24'56" N., Long. 77°22'34" W	Lat. 39°25'03" N., Long. 77°22'29" W.
Patuxent River, MD:		
Patuxent VORTAC	Lat. 38°17'26" N., Long. 76°24'03" W	Lat. 38°17'16" N., Long. 76°24'02" W.
Millville, NJ:		
Millville Municipal Airport	Lat. 39°22'05" N., Long. 74°04'28" W	Lat. 39°22'05" N., Long. 74°04'26" W.
Ocean City, NJ:		
Ocean City Municipal Airport	Lat. 38°15'49" N., Long. 74°36'28" W	Lat. 39°15'49" N., Long. 74°36'28" W.
Babylon, NY:		
Republic Airport	Lat. 40°43'43" N., Long. 72°24'50" W	Lat. 40°43'43" N., Long. 73°24'50" W.
Grumman-Bethpage Airport	Lat. 40°44'48" N., Long. 73°29'36" W	Lat. 40°44'45" N., Long. 73°29'30" W.
Binghamton, NY:		
Edwin A. Link Field/Broome County Airport	Lat. 42°12'27" N., Long. 75°58'46" W	Lat. 42°12'30" N., Long. 75°58'48" W.
Brockport, NY:		
Ledgedale Airpark	Lat. 43°10'52" N., Long. 77°54'49" W	Lat. 43°10'52" N., Long. 77°54'50" W.
Calverton, NY:		
Calverton Naval Weapons Industrial Reserve Plant (Peconic).	Lat. 40°55'46" N., Long. 72°47'58" W	Lat. 40°55'54" N., Long. 72°47'33" W.

FAA region	Proposed geographic position	Revised geographic position
Plattsburgh, NY:		
Plattsburgh Air Force Base	Lat. 44°39'06" N., Long. 73°28'06" W.	Lat. 44°39'03" N., Long. 73°28'06" W.
Valcour TACAN	Lat. 44°36'30" N., Long. 73°26'36" W.	Lat. 44°36'31" N., Long. 73°26'39" W.
Potsdam, NY:		
Potsdam Municipal Airport (Damon Field)	Lat. 44°40'34" N., Long. 74°56'59" W.	Lat. 44°40'36" N., Long. 74°56'56" W.
Red Hook, NY:		
Skypark Airport	Lat. 41°59'05" N., Long. 73°50'11" W.	Lat. 41°59'10" N., Long. 73°50'14" W.
Romulus, NY:		
Seneca Army Air Field	Lat. 42°42'54" N., Long. 76°53'00" W.	Lat. 42°42'55" N., Long. 76°52'57" W.
Utica, NY:		
Griffiss Air Force Base	Lat. 43°14'00" N., Long. 75°24'24" W.	Lat. 43°14'02" N., Long. 75°24'27" W.
Downington, PA:		
Bob Shannon Memorial Field Airport	Lat. 39°56'53" N., Long. 75°44'27" W.	Lat. 39°56'56" N., Long. 75°44'28" W.
Erie, PA:		
Erie International Airport	Lat. 42°04'54" N., Long. 80°10'38" W.	Lat. 42°04'55" N., Long. 80°10'35" W.
Chesapeake, VA:		
Chesapeake Municipal Airport	Lat. 36°39'47" N., Long. 76°19'21" W.	Lat. 36°39'51" N., Long. 76°19'20" W.
Dahlgren, VA:		
Dahlgren NSWC	Lat. 38°19'58" N., Long. 77°02'14" W.	Lat. 38°19'57" N., Long. 77°02'15" W.
Norfolk, VA:		
Norfolk Naval Air Station (Chambers Field)	Lat. 36°56'15" N., Long. 76°17'23" W.	Lat. 36°56'14" N., Long. 76°17'26" W.
Langley Air Force Base	Lat. 37°05'00" N., Long. 76°21'42" W.	Lat. 37°04'58" N., Long. 76°21'39" W.
Oceana Naval Air Station (Apollo Soucek Field)	Lat. 36°49'24" N., Long. 76°01'54" W.	Lat. 36°49'14" N., Long. 76°02'02" W.
Felker Army Air Field	Lat. 37°08'00" N., Long. 76°36'36" W.	Lat. 37°07'57" N., Long. 76°36'33" W.
Felker NDB	Lat. 37°08'18" N., Long. 76°37'06" W.	Lat. 37°08'19" N., Long. 76°37'08" W.
Quantico, VA:		
Quantico Marine Corps Air Field (Turner Field)	Lat. 38°30'15" N., Long. 77°18'24" W.	Lat. 38°30'06" N., Long. 77°18'21" W.
Winchester, VA:		
Winchester Regional	Lat. 39°08'33" N., Long. 78°08'36" W.	Lat. 39°08'36" N., Long. 78°08'41" W.
Lewisburg, WV:		
Greenbriar Valley Airport	Lat. 37°51'30" N., Long. 80°23'59" W.	Lat. 37°51'29" N., Long. 80°23'59" W.
Great Lakes		
Belvidere, IL:		
Belvidere LTD Airport	Lat. 42°19'17" N., Long. 88°50'14" W.	Lat. 42°19'22" N., Long. 88°50'11" W.
Cahokia, IL:		
Cahokia, St. Louis Downtown-Parks Airport	Lat. 38°34'17" N., Long. 90°09'26" W.	Lat. 38°34'14" N., Long. 90°09'22" W.
Carmi, IL:		
Carmi Municipal Airport	Lat. 38°05'22" N., Long. 88°07'23" W.	Lat. 38°05'23" N., Long. 88°07'23" W.
Centralia, IL:		
Centralia Municipal Airport	Lat. 38°30'40" N., Long. 89°05'35" W.	Lat. 38°30'53" N., Long. 89°05'32" W.
Dixon, IL:		
Dixon Municipal Airport-Charles R. Walgreen Field.	Lat. 41°50'04" N., Long. 89°26'38" W.	Lat. 41°50'01" N., Long. 89°26'46" W.
Dwight, IL:		
Dwight Airport	Lat. 41°08'02" N., Long. 88°26'20" W.	Lat. 41°08'00" N., Long. 88°26'27" W.
Effingham, IL:		
Effingham County Memorial Airport	Lat. 39°04'29" N., Long. 88°32'12" W.	Lat. 39°04'13" N., Long. 88°31'59" W.
Fairfield, IL:		
Fairfield Municipal Airport	Lat. 38°23'00" N., Long. 88°25'00" W.	Lat. 38°22'43" N., Long. 88°24'41" W.
Flora, IL:		
Flora Municipal Airport	Lat. 38°39'55" N., Long. 88°27'10" W.	Lat. 38°39'57" N., Long. 88°27'09" W.
Freeport, IL:		
Albertus Airport	Lat. 42°14'48" N., Long. 89°34'55" W.	Lat. 42°14'48" N., Long. 89°34'54" W.
Gibson City, IL:		
Gibson City Municipal Airport	Lat. 40°29'00" N., Long. 88°16'00" W.	Lat. 40°29'09" N., Long. 88°16'02" W.
Greenville, IL:		
Greenville Airport	Lat. 38°50'09" N., Long. 89°22'51" W.	Lat. 38°50'10" N., Long. 88°22'42" W.
Harrisburg, IL:		
Harrisburg-Raleigh Airport	Lat. 37°48'45" N., Long. 88°33'00" W.	Lat. 37°48'41" N., Long. 88°32'56" W.
Jacksonville, IL:		
Jacksonville Municipal Airport	Lat. 39°48'30" N., Long. 90°14'15" W.	Lat. 39°46'27" N., Long. 90°14'18" W.
Kankakee, IL:		
Greater Kankakee Airport	Lat. 41°04'20" N., Long. 87°50'48" W.	Lat. 41°04'17" N., Long. 87°50'46" W.
Kewanee, IL:		
Kewanee Municipal Airport	Lat. 41°12'25" N., Long. 89°57'33" W.	Lat. 41°12'19" N., Long. 89°57'50" W.
Lacon, IL:		
Marshall County Airport	Lat. 41°01'05" N., Long. 89°23'08" W.	Lat. 41°01'09" N., Long. 89°23'11" W.
Lawrenceville, IL:		
Lawrenceville-Vincennes International Airport	Lat. 38°45'35" N., Long. 87°36'27" W.	Lat. 38°45'51" N., Long. 87°36'20" W.
Mount Carmel Municipal Airport	Lat. 38°36'24" N., Long. 87°43'34" W.	Lat. 38°36'23" N., Long. 87°43'36" W.
Litchfield, IL:		
Litchfield Municipal Airport	Lat. 39°09'50" N., Long. 89°40'36" W.	Lat. 39°09'59" N., Long. 89°40'29" W.
Marion, IL:		
Williamson County Regional Airport	Lat. 37°45'13" N., Long. 89°00'45" W.	Lat. 37°45'11" N., Long. 89°00'42" W.
Moline, IL:		
MOLLI LOM	Lat. 41°27'04" N., Long. 90°37'16" W.	Lat. 41°26'57" N., Long. 90°37'06" W.
Monee, IL:		
Sanger Airport	Lat. 41°22'39" N., Long. 87°40'55" W.	Lat. 41°22'39" N., Long. 87°40'53" W.
Paris, IL:		
Edgar County Airport	Lat. 39°42'00" N., Long. 87°40'17" W.	Lat. 39°42'00" N., Long. 88°40'14" W.

FAA region	Proposed geographic position	Revised geographic position
Paxton, IL:		
Paxton Airport	Lat. 40°26'55" N., Long. 88°07'40" W.	Lat. 40°26'56" N., Long. 88°07'40" W.
Peru, IL:		
Illinois Valley Regional-Walter A. Duncan Field	Lat. 41°21'18" N., Long. 89°09'08" W.	Lat. 41°21'07" N., Long. 89°09'11" W.
Pittsfield, IL:	Lat. 39°38'22" N., Long. 90°46'51" W.	Lat. 39°38'22" N., Long. 90°46'46" W.
Pittsfield Penstone Municipal Airport		
Pontiac Municipal Airport	Lat. 40°51'30" N., Long. 88°38'15" W.	Lat. 40°51'31" N., Long. 88°38'16" W.
Rochelle, IL:		
Airport-Koritz Field	Lat. 41°53'37" N., Long. 89°04'33" W.	Lat. 41°53'35" N., Long. 89°04'42" W.
Saint Jacob, IL:		
Shafer Metro East Airport	Lat. 38°44'00" N., Long. 89°48'24" W.	Lat. 38°43'58" N., Long. 89°48'23" W.
Salem, IL:		
Salem-Leckrone Airport	Lat. 38°38'36" N., Long. 88°57'50" W.	Lat. 38°38'34" N., Long. 88°57'51" W.
Salem NDB	Lat. 38°38'38" N., Long. 88°58'03" W.	Lat. 38°38'36" N., Long. 88°58'02" W.
Shelbyville, IL:		
Shelby County Airport	Lat. 39°24'38" N., Long. 88°50'43" W.	Lat. 39°24'37" N., Long. 88°50'43" W.
Sparta, IL:		
Sparta Community—Hunter Field	Lat. 38°08'57" N., Long. 89°41'55" W.	Lat. 38°08'56" N., Long. 89°41'55" W.
Vandalia, IL:		
Vandalia Municipal Airport	Lat. 38°59'32" N., Long. 89°09'54" W.	Lat. 38°59'28" N., Long. 89°09'58" W.
Huntington, IN:		
Huntington Municipal Airport	Lat. 40°51'12" N., Long. 85°27'37" W.	Lat. 40°51'11" N., Long. 85°27'34" W.
Indianapolis Terry Airport, IN:		
Indianapolis Terry Airport	Lat. 40°01'53" N., Long. 86°15'05" W.	Lat. 40°01'50" N., Long. 86°15'05" W.
Kendallville, IN:		
Kendallville Municipal Airport	Lat. 41°28'22" N., Long. 85°15'46" W.	Lat. 41°28'22" N., Long. 85°15'39" W.
South Bend, IN:		
Jerry Tyler Memorial Airport	Lat. 41°50'30" N., Long. 86°13'30" W.	Lat. 41°50'09" N., Long. 86°13'31" W.
Wabash, IN:		
Wabash County Airport	Lat. 40°45'43" N., Long. 85°47'57" W.	Lat. 40°45'43" N., Long. 85°47'56" W.
Allegan, MI:		
Allegan, Padgham Field	Lat. 42°31'45" N., Long. 85°49'00" W.	Lat. 42°31'50" N., Long. 85°49'27" W.
Alma, MI:		
Alma, Gratiot Community Airport	Lat. 43°19'15" N., Long. 84°41'12" W.	Lat. 43°19'20" N., Long. 84°41'17" W.
Bad Axe, MI:		
Bad Axe, Huron County Memorial Airport	Lat. 43°47'01" N., Long. 82°59'10" W.	Lat. 43°47'02" N., Long. 82°59'11" W.
Baldwin, MI:		
Baldwin Municipal Airport	Lat. 43°52'35" N., Long. 85°50'25" W.	Lat. 43°52'32" N., Long. 85°50'27" W.
Boyne Falls, MI:		
Boyne Falls, Boyne Mountain Airport	Lat. 45°10'03" N., Long. 84°55'30" W.	Lat. 45°09'57" N., Long. 84°55'27" W.
Cadillac, MI:		
Cadillac, Wexford County Airport	Lat. 44°16'33" N., Long. 85°25'17" W.	Lat. 44°16'31" N., Long. 85°25'06" W.
Caro, MI:		
Caro Municipal Airport	Lat. 43°27'33" N., Long. 83°26'40" W.	Lat. 43°27'33" N., Long. 83°26'43" W.
Charlevoix, MI:		
Charlevoix Municipal Airport	Lat. 45°16'17" N., Long. 85°16'18" W.	Lat. 45°16'16" N., Long. 85°16'20" W.
Charlotte, MI:		
Charlotte, Fitch H. Beach Airport	Lat. 42°34'30" N., Long. 84°48'45" W.	Lat. 42°34'28" N., Long. 84°48'41" W.
Cheboygan, MI:		
Cheboygan City-County Airport	Lat. 45°39'15" N., Long. 84°31'08" W.	Lat. 45°39'13" N., Long. 84°31'07" W.
Coldwater, MI:		
Coldwater, Branch County Memorial Airport	Lat. 41°56'05" N., Long. 85°02'55" W.	Lat. 41°56'00" N., Long. 85°03'09" W.
Drummond Island, MI:		
Drummond Island Airport	Lat. 46°00'40" N., Long. 83°44'45" W.	Lat. 46°00'31" N., Long. 83°44'47" W.
East Tawas, MI:		
East Tawas, Iosco County Airport	Lat. 44°18'48" N., Long. 83°25'24" W.	Lat. 44°18'46" N., Long. 83°25'20" W.
Flint, MI:		
Linden, Prices Airport	Lat. 42°48'25" N., Long. 83°46'20" W.	Lat. 42°48'27" N., Long. 83°46'29" W.
Gladwin, MI:		
Charles C. Zettel Memorial Airport	Lat. 43°56'07" N., Long. 84°28'26" W.	Lat. 43°56'14" N., Long. 84°28'30" W.
Grayling, MI:		
Grayling Army Air Field	Lat. 44°40'49" N., Long. 84°43'49" W.	Lat. 44°40'49" N., Long. 84°43'44" W.
Greenville, MI:		
Greenville Municipal Airport	Lat. 43°08'30" N., Long. 85°15'15" W.	Lat. 43°08'32" N., Long. 85°15'16" W.
Hillsdale, MI:		
Hillsdale Municipal Airport	Lat. 41°55'15" N., Long. 84°35'10" W.	Lat. 41°55'18" N., Long. 84°35'08" W.
Holland, MI:		
Holland, Park Township Airport	Lat. 42°47'46" N., Long. 86°09'41" W.	Lat. 42°47'45" N., Long. 86°09'43" W.
Houghton Lake, MI:		
Houghton Lake, Roscommon County Airport	Lat. 44°21'00" N., Long. 84°40'00" W.	Lat. 44°21'36" N., Long. 84°40'15" W.
Ionia, MI:		
Ionia County Airport	Lat. 42°56'15" N., Long. 85°04'00" W.	Lat. 42°56'16" N., Long. 85°03'39" W.
Lapeer, MI:		
Lapeer, Dupont-Lapeer Airport	Lat. 43°04'01" N., Long. 83°18'16" W.	Lat. 43°04'01" N., Long. 83°18'21" W.
Ludington, MI:		
Ludington, Mason County Airport	Lat. 43°57'50" N., Long. 86°24'31" W.	Lat. 43°57'45" N., Long. 86°24'28" W.
Mackinac Island, MI:		
Mackinac Island Airport	Lat. 45°51'55" N., Long. 84°38'13" W.	Lat. 45°51'54" N., Long. 84°38'14" W.
Manistique, MI:		
Manistique, Schoolcraft County Airport	Lat. 45°58'30" N., Long. 86°10'36" W.	Lat. 45°58'29" N., Long. 86°10'18" W.
Marlette, MI:		
Marlette Airport	Lat. 43°18'48" N., Long. 83°05'30" W.	Lat. 43°18'43" N., Long. 83°05'28" W.

FAA region	Proposed geographic position	Revised geographic position
Marshall, MI: Brooks Field	Lat. 42°15'04" N., Long. 84°57'19" W.	Lat. 42°15'04" N., Long. 84°57'20" W.
Mason, MI: Mason-Jewett Field	Lat. 42°33'57" N., Long. 84°25'31" W.	Lat. 42°33'57" N., Long. 84°25'27" W.
Monroe, MI: Monroe, Custer Airport	Lat. 41°56'24" N., Long. 83°26'04" W.	Lat. 41°56'24" N., Long. 83°26'05" W.
Mount Pleasant, MI: Mount Pleasant Municipal Airport	Lat. 43°37'15" N., Long. 84°44'00" W.	Lat. 43°37'18" N., Long. 84°44'15" W.
Muskegon, MI: Grand Haven Memorial Airpark	Lat. 43°02'00" N., Long. 86°12'00" W.	Lat. 43°02'03" N., Long. 86°11'53" W.
Newberry, MI: Newberry, Luce County Hale Airport	Lat. 46°18'39" N., Long. 85°27'22" W.	Lat. 46°18'38" N., Long. 85°27'22" W.
Ontonagon, MI: Ontonagon County Airport	Lat. 46°50'47" N., Long 89°21'29" W.	Lat. 46°50'44" N., Long 89°22'01" W.
Oscoda, MI: Wurtsmith Air Force Base	Lat. 44°27'06" N., Long. 83°23'39" W.	Lat. 44°27'05" N., Long. 83°23'39" W.
Rogers City, MI: Presque Isle County Airport	Lat. 45°24'27" N., Long. 83°48'46" W.	Lat. 45°24'26" N., Long. 83°48'46" W.
Saginaw, Harry W. Browne Airport, MI: Harry W. Browne Airport	Lat. 43°25'58" N., Long. 83°51'43" W.	Lat. 43°26'00" N., Long. 83°51'50" W.
Saginaw, Harry W. Browne Airport, MI: Harry W. Browne Airport	Lat. 43°25'56" N., Long. 83°51'43" W.	Lat. 43°26'00" N., Long. 83°51'50" W.
Saginaw, Tri-City Airport, MI: James Clemens Municipal Airport	Lat. 43°32'49" N., Long. 83°53'42" W.	Lat. 43°32'47" N., Long. 83°53'44" W.
Jack Barstow Airport	Lat. 43°39'45" N., Long. 84°15'45" W.	Lat. 43°39'46" N., Long. 84°15'41" W.
South Haven, MI: South Haven Area Regional Airport	Lat. 42°21'15" N., Long. 86°15'45" W.	Lat. 42°21'06" N., Long. 86°15'19" W.
Sparta, MI: Sparta Airport	Lat. 43°07'43" N., Long. 85°40'26" W.	Lat. 43°07'43" N., Long. 85°40'37" W.
Tecumseh, MI: Tecumseh, Al Meyers Airport	Lat. 42°01'32" N., Long. 83°56'26" W.	Lat. 42°01'30" N., Long. 83°56'21" W.
Three Rivers, MI: Three Rivers Municipal Airport DR Haines	Lat. 41°57'31" N., Long. 85°35'40" W.	Lat. 41°57'35" N., Long. 85°35'36" W.
West Branch, MI: West Branch Community Airport	Lat. 44°14'41" N., Long. 84°10'48" W.	Lat. 44°14'41" N., Long. 84°10'47" W.
Albert Lea, MN: Albert Lea Municipal Airport	Lat. 43°41'00" N., Long. 93°22'00" W.	Lat. 43°40'54" N., Long. 93°22'01" W.
Alexandria, MN: Chandler Field	Lat. 45°51'59" N., Long. 95°23'35" W.	Lat. 45°51'59" N., Long. 95°23'40" W.
Austin, MN: Austin Municipal Airport	Lat. 43°40'00" N., Long. 92°56'00" W.	Lat. 43°39'54" N., Long. 92°56'00" W.
Benson, MN: Benson Municipal Airport	Lat. 45°19'56" N., Long. 95°39'00" W.	Lat. 45°19'55" N., Long. 95°39'01" W.
Blue Earth, MN: Blue Earth Municipal Airport	Lat. 43°35'42" N., Long. 94°05'35" W.	Lat. 43°35'43" N., Long. 94°05'33" W.
Buffalo, MN: Buffalo Municipal Airport	Lat. 45°09'32" N., Long. 93°50'33" W.	Lat. 45°09'33" N., Long. 93°50'35" W.
Cambridge, MN: Cambridge Municipal Airport	Lat. 45°33'30" N., Long. 93°15'52" W.	Lat. 45°33'31" N., Long. 93°15'52" W.
Camp Riley, MN: Ray S. Miller Army Air Field	Lat. 46°05'24" N., Long. 94°21'30" W.	Lat. 46°05'00" N., Long. 94°21'00" W.
Cook, MN: Cook Municipal Airport	Lat. 47°49'30" N., Long. 92°41'30" W.	Lat. 47°49'19" N., Long. 92°41'21" W.
Crookston, MN: Crookston Municipal Kirkwood Field	Lat. 47°50'30" N., Long. 96°37'15" W.	Lat. 47°50'30" N., Long. 96°37'17" W.
Detroit Lakes, MN: Detroit Lakes Airport	Lat. 46°49'34" N., Long. 95°53'06" W.	Lat. 46°49'31" N., Long. 95°53'07" W.
Duluth, MN: Sky Harbor Airport	Lat. 46°43'18" N., Long. 92°02'36" W.	Lat. 46°43'19" N., Long. 92°02'36" W.
Faribault, MN: Faribault Municipal Airport	Lat. 44°19'30" N., Long. 93°18'30" W.	Lat. 44°19'29" N., Long. 93°18'38" W.
Fosston, MN: Fosston Municipal Airport	Lat. 47°35'35" N., Long. 95°46'30" W.	Lat. 47°35'34" N., Long. 95°48'24" W.
Glenwood, MN: Glenwood Municipal Airport	Lat. 45°38'38" N., Long. 95°19'15" W.	Lat. 45°38'42" N., Long. 95°19'14" W.
Grand Marais, MN: Devils Track Municipal Airport	Lat. 47°49'45" N., Long. 90°23'00" W.	Lat. 47°49'38" N., Long. 90°22'46" W.
Hutchinson, MN: Hutchinson Municipal Airport-Butler Field	Lat. 44°51'33" N., Long. 94°22'54" W.	Lat. 44°51'32" N., Long. 94°22'54" W.
Jackson, MN: Jackson Municipal Airport	Lat. 43°39'00" N., Long. 94°59'00" W.	Lat. 43°39'00" N., Long. 94°59'11" W.
Little Falls, MN: Little Falls-Morrison County Airport	Lat. 45°56'56" N., Long. 94°20'44" W.	Lat. 45°56'58" N., Long. 94°20'49" W.
Madison, MN: Madison-Lac Qui Parle Airport	Lat. 44°59'11" N., Long. 96°10'43" W.	Lat. 44°59'11" N., Long. 96°10'39" W.
Maple Lake, MN: Maple Lake Municipal Airport	Lat. 45°14'10" N., Long. 93°59'05" W.	Lat. 45°14'10" N., Long. 93°59'07" W.
Marshall, MN: Marshall Municipal Airport-Ryan Field	Lat. 44°27'01" N., Long. 95°49'25" W.	Lat. 44°27'00" N., Long. 95°49'19" W.
Montevideo, MN: Montevideo-Chippewa Airport	Lat. 44°56'30" N., Long. 95°42'15" W.	Lat. 44°58'09" N., Long. 95°42'36" W.
Morris, MN: Morris Municipal Airport	Lat. 45°34'00" N., Long. 95°58'00" W.	Lat. 45°34'00" N., Long. 95°58'02" W.

FAA region	Proposed geographic position	Revised geographic position
New Ulm, MN: New Ulm Municipal Airport	Lat. 44°19'10" N., Long. 94°30'06" W.	Lat. 44°19'11" N., Long. 94°30'07" W.
Olivia, MN: Olivia Regional Airport	Lat. 44°46'44" N., Long. 95°01'58" W.	Lat. 44°46'43" N., Long. 95°01'57" W.
Owatonna, MN: Owatonna Municipal Airport	Lat. 44°07'15" N., Long. 93°15'16" W.	Lat. 44°07'16" N., Long. 93°15'20" W.
Park Rapids, MN: Park Rapids Municipal Airport	Lat. 46°54'05" N., Long. 95°04'23" W.	Lat. 46°54'02" N., Long. 95°04'22" W.
Pipestone, MN: Pipestone Municipal Airport	Lat. 43°59'15" N., Long. 96°18'30" W.	Lat. 43°59'00" N., Long. 96°18'00" W.
Red Wing, MN: Red Wing Municipal Airport	Lat. 44°35'25" N., Long. 92°29'18" W.	Lat. 44°35'25" N., Long. 92°29'10" W.
Redwood Falls, MN: Redwood Falls Municipal Airport	Lat. 44°32'45" N., Long. 95°04'50" W.	Lat. 44°32'50" N., Long. 95°04'55" W.
Rushford, MN: Rushford Municipal Airport	Lat. 43°48'57" N., Long. 91°49'49" W.	Lat. 43°48'57" N., Long. 91°49'48" W.
Springfield, MN: Springfield Municipal Airport	Lat. 44°13'53" N., Long. 94°59'54" W.	Lat. 44°13'52" N., Long. 94°59'55" W.
Staples, MN: Staples Municipal Airport	Lat. 46°22'48" N., Long. 94°48'08" W.	Lat. 46°22'51" N., Long. 94°48'23" W.
Thief River Falls, MN: Thief River Falls Regional Airport	Lat. 48°03'53" N., Long. 96°11'01" W.	Lat. 48°03'56" N., Long. 96°10'59" W.
Two Harbors, MN: Two Harbors Municipal Airport	Lat. 47°03'02" N., Long. 91°44'40" W.	Lat. 47°02'59" N., Long. 91°44'44" W.
Waseca, MN: Waseca Municipal Airport	Lat. 44°04'24" N., Long. 93°33'10" W.	Lat. 44°04'25" N., Long. 93°33'10" W.
Wheaton, MN: Wheaton Municipal Airport	Lat. 45°46'48" N., Long. 96°32'40" W.	Lat. 45°46'50" N., Long. 96°32'36" W.
Willmar, MN: Willmar Municipal Airport-John L. Rice Field	Lat. 45°07'00" N., Long. 95°05'24" W.	Lat. 45°07'00" N., Long. 95°05'19" W.
Windom, MN: Windom Municipal Airport	Lat. 43°54'48" N., Long. 95°06'37" W.	Lat. 43°54'48" N., Long. 95°06'33" W.
Bismarck, ND: Bismarck Municipal Airport	Lat. 46°46'37" N., Long. 100°45'03" W.	Lat. 46°46'27" N., Long. 100°44'51" W.
Fargo, ND: Fargo VORTAC	Lat. 45°45'12" N., Long. 96°51'03" W.	Lat. 46°45'12" N., Long. 96°51'04" W.
Minot, ND: Minot International Airport	Lat. 48°15'34" N., Long. 101°16'50" W.	Lat. 48°15'34" N., Long. 101°18'51" W.
Minot Air Force Base	Lat. 48°24'57" N., Long. 101°21'28" W.	Lat. 48°24'56" N., Long. 101°21'28" W.
Pembina, ND: Humbolt VORTAC	Lat. 48°52'09" N., Long. 97°07'03" W.	Lat. 48°52'09" N., Long. 97°07'00" W.
Rugby, ND: Rugby NDB	Lat. 48°23'17" N., Long. 100°01'36" W.	Lat. 48°23'16" N., Long. 100°01'36" W.
Valley City, Barnes County Municipal Airport, ND: Barnes County Municipal Airport	Lat. 46°58'30" N., Long. 98°00'54" W.	Lat. 46°56'28" N., Long. 98°01'02" W.
Wahpeton, ND: Harry Stern Airport	Lat. 46°14'47" N., Long. 96°36'23" W.	Lat. 46°14'42" N., Long. 96°36'26" W.
Caldwell, OH: Noble County Airport	Lat. 39°48'02" N., Long. 81°32'12" W.	Lat. 39°48'03" N., Long. 81°32'11" W.
Cleveland, OH: Cleveland Hopkins DME Antenna	Lat. 41°24'15" N., Long. 81°51'44" W.	Lat. 41°24'01" N., Long. 81°52'03" W.
Toledo, OH: Toledo Express Airport	Lat. 41°35'15" N., Long. 83°48'19" W.	Lat. 41°35'12" N., Long. 83°48'28" W.
Youngstown Elser, OH: Youngstown Elser Metro Airport	Lat. 40°57'37" N., Long. 80°40'56" W.	Lat. 40°57'37" N., Long. 80°40'36" W.
Belle Fourche, SD: Belle Fourche Municipal Airport	Lat. 44°44'28" N., Long. 103°51'40" W.	Lat. 44°44'04" N., Long. 103°51'41" W.
Huron, SD: Huron Regional Airport	Lat. 44°23'07" N., Long. 98°13'43" W.	Lat. 44°23'07" N., Long. 98°13'44" W.
Rapid City, SD: Rapid City Regional Airport	Lat. 44°02'43" N., Long. 103°03'24" W.	Lat. 44°02'43" N., Long. 103°03'25" W.
Sioux Falls, SD: Joe Foss Field	Lat. 43°38'53" N., Long. 96°44'29" W.	Lat. 43°34'53" N., Long. 96°44'29" W.
Sioux Falls VORTAC	Lat. 43°38'59" N., Long. 96°46'51" W.	Lat. 43°38'58" N., Long. 96°46'51" W.
Watertown, SD: Watertown Municipal Airport	Lat. 44°54'50" N., Long. 97°09'15" W.	Lat. 44°54'50" N., Long. 97°09'16" W.
Camp Douglas, WI: Volk Field Airport	Lat. 43°56'25" N., Long. 90°15'20" W.	Lat. 43°56'18" N., Long. 90°16'06" W.
Chetek, WI: Rice Lake VOR/DME	Lat. 45°28'33" N., Long. 91°43'30" W.	Lat. 45°28'47" N., Long. 91°43'16" W.
Hartford, WI: Hartford Municipal Airport	Lat. 43°20'55" N., Long. 88°23'30" W.	Lat. 43°20'58" N., Long. 88°23'28" W.
Watertown, WI: Watertown Municipal Airport	Lat. 43°10'17" N., Long. 88°43'14" W.	Lat. 43°10'11" N., Long. 88°43'23" W.
New England		
Danielson, CT: Danielson Airport	Lat. 41°49'10" N., Long. 71°54'04" W.	Lat. 41°49'11" N., Long. 71°54'05" W.
Groton, CT: Groton-New London Airport	Lat. 41°19'47" N., Long. 72°02'49" W.	Lat. 41°19'47" N., Long. 72°02'44" W.
Brunswick, ME: Brunswick Naval Air Station	Lat. 43°53'32" N., Long. 69°56'22" W.	Lat. 43°53'32" N., Long. 69°56'21" W.
Frenchville, ME: Northern Aroostook Regional Airport	Lat. 47°17'06" N., Long. 68°18'44" W.	Lat. 47°17'06" N., Long. 68°18'48" W.

FAA region	Proposed geographic position	Revised geographic position
Frenchville NDB	Lat. 47°16'09" N., Long. 68°15'25" W	Lat. 47°16'05" N., Long. 68°15'26" W.
Pittsfield, ME:		
Pittsfield Municipal Airport	Lat. 47°46'07" N., Long. 69°22'30" W	Lat. 44°46'06" N., Long. 69°22'30" W.
Presque Isle, ME:		
Caribou Municipal Airport	Lat. 46°52'14" N., Long. 68°01'06" W	Lat. 46°52'17" N., Long. 68°01'06" W.
Loring Air Force Base	Lat. 46°57'02" N., Long. 67°53'09" W	Lat. 46°57'01" N., Long. 67°53'10" W.
Rockland, ME:		
Knox County Regional Airport	Lat. 44°03'36" N., Long. 69°06'01" W	Lat. 44°03'37" N., Long. 69°06'01" W.
Falmouth, MA:		
Otis Air National Guard Base	Lat. 41°39'33" N., Long. 70°31'24" W	Lat. 41°39'30" N., Long. 70°31'19" W.
Fort Devens, MA:		
Dickenson NDB	Lat. 42°38'48" N., Long. 71°43'42" W	Lat. 42°38'46" N., Long. 71°43'39" W.
Mansfield, MA:		
Mansfield Airport	Lat. 42°00'03" N., Long. 71°11'56" W	Lat. 42°00'00" N., Long. 71°11'50" W.
Mansfield NDB	Lat. 42°00'09" N., Long. 71°11'48" W	Lat. 42°00'10" N., Long. 71°11'51" W.
Plymouth, MA:		
Plymouth Airport	Lat. 41°54'35" N., Long. 70°43'45" W	Lat. 41°54'35" N., Long. 70°43'46" W.
Portsmouth, NH:		
Pease International Tradeport	Lat. 43°04'39" N., Long. 70°49'26" W	Lat. 43°04'40" N., Long. 70°49'26" W.
Block Island, RI:		
Block Island NDB (BID)	Lat. 41°09'56" N., Long. 71°34'46" W	Lat. 41°09'58" N., Long. 71°34'48" W.
Westerly, RI:		
Westerly NDB (RLS)	Lat. 41°20'42" N., Long. 71°48'55" W	Lat. 41°20'40" N., Long. 71°48'53" W.
Northwest Mountain		
Akron, CO:		
Akron-Washington County Airport	Lat. 40°10'18" N., Long. 103°12'54" W	Lat. 40°10'32" N., Long. 103°13'18" W.
Eagle, CO:		
Eagle County Regional Airport	Lat. 39°38'37" N., Long. 106°54'50" W	Lat. 39°38'33" N., Long. 106°55'02" W.
Steamboat Springs, CO:		
Steamboat Springs/Bob Adams Field	Lat. 40°30'55" N., Long. 106°51'54" W	Lat. 40°30'57" N., Long. 106°51'56" W.
Jerome, ID:		
Jerome County Airport	Lat. 42°43'36" N., Long. 114°27'22" W	Lat. 42°43'36" N., Long. 114°27'23" W.
Mountain Home, ID:		
Mountain Home Air Force Base	Lat. 43°02'37" N., Long. 115°52'15" W	Lat. 43°02'37" N., Long. 115°52'18" W.
Billings, MT:		
Billings Logan International Airport	Lat. 45°48'29" N., Long. 108°32'25" W	Lat. 45°48'30" N., Long. 108°32'35" W.
Glendive, MT:		
Dawson Community Airport	Lat. 47°06'16" N., Long. 104°48'18" W	Lat. 47°06'19" N., Long. 104°48'24" W.
Miles City, MT:		
Horton NDB	Lat. 46°24'44" N., Long. 105°56'15" W	Lat. 46°24'44" N., Long. 105°56'18" W.
Pendleton, OR:		
Hermiston Airport	Lat. 45°49'41" N., Long. 119°15'33" W	Lat. 45°49'42" N., Long. 119°15'29" W.
Blanding, UT:		
Blanding Municipal Airport	Lat. 37°35'00" N., Long. 109°29'00" W	Lat. 37°34'59" N., Long. 109°28'57" W.
Blanding NDB	Lat. 37°31'03" N., Long. 109°29'31" W	Lat. 37°31'03" N., Long. 109°29'32" W.
Moses Lake, WA:		
Fairchild Air Force Base	Lat. 47°36'55" N., Long. 117°39'20" W	Lat. 47°36'54" N., Long. 117°39'25" W.
Spokane, WA:		
Fairchild Air Force Base	Lat. 47°36'55" N., Long. 117°39'17" W	Lat. 47°36'54" N., Long. 117°39'25" W.
Wenatchee, WA:		
Fancher Field	Lat. 47°26'55" N., Long. 120°16'40" W	Lat. 47°27'00" N., Long. 120°17'00" W.
Newcastle, WY:		
Ellsworth Air Force Base	Lat. 44°08'45" N., Long. 103°06'15" W	Lat. 44°06'42" N., Long. 103°06'11" W.
Powell, WY:		
Powell Municipal Airport	Lat. 44°52'10" N., Long. 108°47'06" W	Lat. 44°52'05" N., Long. 108°47'32" W.
Powell NDB	Lat. 44°51'52" N., Long. 108°47'06" W	Lat. 44°52'01" N., Long. 108°47'08" W.
Southern		
Albertville, AL:		
Albertville Municipal Airport-Thomas J. Brumlik Field.	Lat. 34°13'45" N., Long. 86°15'21" W	Lat. 34°13'44" N., Long. 86°15'21" W.
Fort Payne, AL:		
Isbell Field Airport	Lat. 34°28'20" N., Long. 85°43'25" W	Lat. 34°28'22" N., Long. 85°43'20" W.
Bonifay, FL:		
Tri-County Airport	Lat. 30°50'45" N., Long. 85°36'05" W	Lat. 30°50'43" N., Long. 85°36'06" W.
Choctaw Outlaying Field, FL:		
OLF Choctaw Airport	Lat. 30°30'26" N., Long. 86°57'20" W	Lat. 30°30'00" N., Long. 86°57'00" W
Cross City, FL:		
Cross City Airport	Lat. 29°38'03" N., Long. 83°06'22" W	Lat. 29°38'04" N., Long. 83°06'21" W.
Jacksonville, FL:		
Jacksonville Naval Air Station	Lat. 30°14'06" N., Long. 81°40'30" W	Lat. 30°14'04" N., Long. 81°40'36" W.
Cecil Field Naval Air Station	Lat. 30°13'00" N., Long. 81°52'30" W	Lat. 30°12'58" N., Long. 81°52'30" W.
Mayport Naval Air Station	Lat. 30°23'30" N., Long. 81°25'24" W	Lat. 30°23'30" N., Long. 81°25'26" W.
Whitehouse NOLF	Lat. 30°21'00" N., Long. 81°52'00" W	Lat. 30°21'00" N., Long. 81°53'00" W.
Jupiter, FL:		
Gwinn Airport	Lat. 26°54'28" N., Long. 80°19'15" W	Lat. 26°54'29" N., Long. 80°19'45" W.
Key West, FL:		
Key West Naval Air Station (Boca Chica)	Lat. 24°34'30" N., Long. 81°21'24" W	Lat. 24°34'31" N., Long. 81°41'21" W.
Lake Wales, FL:		
Lake Wales Municipal Airport	Lat. 27°53'37" N., Long. 21°37'14" W	Lat. 27°53'37" N., Long. 81°37'14" W.

FAA region	Proposed geographic position	Revised geographic position
Lakeland, FL:		
Winter Haven's Gilbert Airport	Lat. 28°03'44" N., Long. 81°45'15" W	Lat. 28°03'45" N., Long. 81°45'13" W.
Miami, FL:		
Miami International Airport	Lat. 25°37'34" N., Long. 80°17'26" W	Lat. 25°47'34" N., Long. 80°17'26" W.
Homestead Air Force Base	Lat. 25°29'15" N., Long. 80°23'00" W	Lat. 25°29'17" N., Long. 80°23'02" W.
Fort Lauderdale-Hollywood International Airport	Lat. 26°04'19" N., Long. 80°09'13" W	Lat. 26°04'20" N., Long. 80°09'11" W.
Milton, FL:		
OLF Santa Rosa (Navy) Airport	Lat. 30°36'00" N., Long. 86°56'00" W	Lat. 30°38'00" N., Long. 86°57'00" W.
Orlando, FL:		
Kissimmee Municipal Airport	Lat. 28°17'23" N., Long. 81°26'14" W	Lat. 28°17'23" N., Long. 81°26'15" W.
Panama City, FL:		
Tyndall Air Force Base	Lat. 30°04'12" N., Long. 85°34'36" W	Lat. 30°04'11" N., Long. 85°34'34" W.
Pensacola, FL:		
Forrest Sherman Field	Lat. 30°21'12" N., Long. 87°19'12" W	Lat. 30°21'10" N., Long. 87°19'13" W.
Naval Air Station Pensacola TACAN	Lat. 30°21'30" N., Long. 87°19'00" W	Lat. 30°21'29" N., Long. 87°19'00" W.
Sanford, FL:		
Central Florida Regional Airport	Lat. 28°46'43" N., Long. 81°14'17" W	Lat. 28°46'43" N., Long. 81°14'19" W.
Tallahassee, FL:		
Tallahassee Regional Airport	Lat. 30°23'45" N., Long. 84°21'02" W	Lat. 30°23'47" N., Long. 84°21'02" W.
Vero Beach, FL:		
St. Lucie County International Airport	Lat. 27°29'41" N., Long. 80°22'08" W	Lat. 27°29'41" N., Long. 80°22'07" W.
Atlanta, GA:		
Dobbins Air Force Base	Lat. 33°54'54" N., Long. 84°31'00" W	Lat. 33°54'55" N., Long. 84°30'59" W.
Macon, GA:		
Robins Air Force Base	Lat. 32°38'24" N., Long. 83°35'30" W	Lat. 32°38'24" N., Long. 83°35'31" W.
Montezuma, GA:		
Dr. CP Savage Sr. Airport	Lat. 32°18'15" N., Long. 84°00'27" W	Lat. 32°18'06" N., Long. 84°00'27" W.
Savannah, GA:		
Savannah International Airport	Lat. 32°07'39" N., Long. 81°12'09" W	Lat. 32°07'38" N., Long. 81°12'09" W.
Hunter Army Air Field	Lat. 32°00'36" N., Long. 81°08'46" W	Lat. 32°00'34" N., Long. 81°06'45" W.
Thomaston, GA:		
Reginald Grant Memorial Airport	Lat. 32°56'26" N., Long. 84°20'25" W	Lat. 32°56'26" N., Long. 84°20'26" W.
Covington, KY:		
Cincinnati Municipal Airport-Lunken Field	Lat. 39°06'12" N., Long. 84°25'06" W	Lat. 39°06'12" N., Long. 84°25'08" W.
Clermont County Airport	Lat. 39°04'42" N., Long. 84°12'38" W	Lat. 39°04'41" N., Long. 84°12'38" W.
Louisville, KY:		
Standiford Field Airport	Lat. 38°10'29" N., Long. 85°44'11" W	Lat. 38°10'29" N., Long. 85°44'11" W.
Murray, KY:		
Kyle-Oakley Field Airport	Lat. 36°39'53" N., Long. 88°22'20" W	Lat. 36°39'56" N., Long. 88°22'16" W.
Calloway NDB	Lat. 36°39'49" N., Long. 88°22'06" W	Lat. 36°39'47" N., Long. 88°22'05" W.
Clarksdale, MS:		
Fletcher Field Airport	Lat. 34°17'50" N., Long. 90°30'48" W	Lat. 34°17'59" N., Long. 90°30'44" W.
Columbus, MS:		
Columbus Air Force Base	Lat. 33°38'38" N., Long. 88°26'39" W	Lat. 33°38'37" N., Long. 88°26'38" W.
Grenada, MS:		
Grenada Municipal Airport	Lat. 33°49'54" N., Long. 89°47'52" W	Lat. 33°49'57" N., Long. 89°47'53" W.
Gulfport, MS:		
Kessler Air Force Base	Lat. 30°24'42" N., Long. 88°55'24" W	Lat. 30°24'40" N., Long. 88°55'25" W.
Meridian, MS:		
Joe Williams OLF	Lat. 32°47'33" N., Long. 88°49'40" W	Lat. 32°47'46" N., Long. 88°49'54" W.
Meridian Naval Air Station	Lat. 32°33'06" N., Long. 88°33'18" W	Lat. 32°33'07" N., Long. 88°33'20" W.
Cherry Point, NC:		
Cherry Point Marine Corps Air Station	Lat. 34°54'12" N., Long. 76°52'54" W	Lat. 34°54'09" N., Long. 76°52'53" W.
Fayetteville, NC:		
Fayetteville Regional/Grannis Field	Lat. 34°59'26" N., Long. 78°52'50" W	Lat. 34°59'29" N., Long. 78°52'49" W.
Pope Air Force Base	Lat. 35°09'58" N., Long. 79°01'03" W	Lat. 35°10'15" N., Long. 79°00'23" W.
Greensboro, NC:		
Greensboro/Piedmont Triad International Airport	Lat. 36°05'47" N., Long. 79°56'21" W	Lat. 36°05'51" N., Long. 79°56'15" W.
Hickory, NC:		
Hickory Regional Airport	Lat. 35°44'30" N., Long. 81°23'20" W	Lat. 35°44'28" N., Long. 81°23'23" W.
Jacksonville, NC:		
New River Marine Corps Air Station	Lat. 34°42'30" N., Long. 77°26'30" W	Lat. 34°42'38" N., Long. 77°26'22" W.
Lincolnton, NC:		
Lincolnton County Airport	Lat. 35°29'01" N., Long. 81°09'39" W	Lat. 35°29'01" N., Long. 81°09'40" W.
Mackall Army Air Field, NC:		
Mackall Army Air Field	Lat. 35°02'12" N., Long. 79°29'54" W	Lat. 35°02'11" N., Long. 79°29'52" W.
Mackall NDB	Lat. 35°01'42" N., Long. 79°29'12" W	Lat. 35°01'40" N., Long. 79°29'09" W.
Oak Grove, NC:		
Oak Grove HOLF (Navy)	Lat. 35°01'15" N., Long. 77°15'12" W	Lat. 35°02'00" N., Long. 77°15'00" W.
Raleigh, NC:		
Raleigh-Durham International Airport	Lat. 35°52'39" N., Long. 78°47'15" W	Lat. 35°52'39" N., Long. 78°47'16" W.
Horace Williams Airport	Lat. 35°56'05" N., Long. 79°04'02" W	Lat. 35°56'06" N., Long. 79°03'58" W.
Salisbury, NC:		
Rowan County Airport	Lat. 35°38'39" N., Long. 80°31'16" W	Lat. 35°38'45" N., Long. 80°31'14" W.
Tarboro, NC:		
Tarboro-Edgecombe Airport	Lat. 35°56'13" N., Long. 77°32'49" W	Lat. 35°56'11" N., Long. 77°32'49" W.
Anderson, SC:		
Anderson County Airport	Lat. 34°29'42" N., Long. 82°42'33" W	Lat. 34°29'41" N., Long. 82°42'33" W.
Greenville, SC:		
Greenville-Spartanburg Airport	Lat. 34°53'47" N., Long. 82°13'07" W	Lat. 34°53'56" N., Long. 82°12'50" W.
Pageland, SC:		
Pageland Airport	Lat. 34°44'32" N., Long. 80°24'43" W	Lat. 34°44'32" N., Long. 80°20'32" W.

FAA region	Proposed geographic position	Revised geographic position
Chattanooga, TN:		
Lovell Field Airport	Lat. 35°02'07" N., Long. 85°12'15" W.	Lat. 35°02'07" N., Long. 85°12'14" W.
Covington, TN:		
Covington Municipal Airport	Lat. 35°35'05" N., Long. 89°35'13" W.	Lat. 35°35'00" N., Long. 89°35'14" W.
McMinnville, TN:		
Warri NDB	Lat. 35°45'07" N., Long. 85°45'51" W.	Lat. 35°45'08" N., Long. 85°45'51" W.
Memphis, TN:		
Memphis International Airport	Lat. 35°02'51" N., Long. 89°58'43" W.	Lat. 35°02'45" N., Long. 89°58'41" W.
Memphis Naval Air Station, TN:		
Memphis Naval Air Station	Lat. 35°21'19" N., Long. 89°52'09" W.	Lat. 35°21'19" N., Long. 89°52'08" W.
Nashville, TN:		
Nashville International Airport	Lat. 36°07'37" N., Long. 86°40'53" W.	Lat. 36°07'31" N., Long. 86°40'35" W.
Sumner County Regional Airport	Lat. 36°22'37" N., Long. 86°24'31" W.	Lat. 36°22'36" N., Long. 86°24'32" W.
Portland, TN:		
Portland Municipal Airport	Lat. 36°35'39" N., Long. 86°28'36" W.	Lat. 36°35'34" N., Long. 86°28'37" W.
Selmer, TN:		
Robert Sibley Airport	Lat. 35°12'17" N., Long. 88°29'56" W.	Lat. 35°12'14" N., Long. 88°29'55" W.
Sibley NDB	Lat. 35°14'15" N., Long. 88°31'03" W.	Lat. 35°14'13" N., Long. 88°30'58" W.
Tri-City, TN:		
Virginia Highlands Airport	Lat. 36°41'10" N., Long. 82°02'06" W.	Lat. 36°41'13" N., Long. 82°02'01" W.
Waverly, TN:		
Humphreys County Airport	Lat. 36°07'02" N., Long. 87°44'17" W.	Lat. 36°07'00" N., Long. 87°44'17" W.
Southwest		
Arkadelphia, AR:		
Arkadelphia Municipal Airport	Lat. 34°06'03" N., Long. 93°03'54" W.	Lat. 34°05'59" N., Long. 93°03'57" W.
Blytheville, AR:		
Eaker Air Force Base	Lat. 35°57'51" N., Long. 89°56'36" W.	Lat. 35°57'51" N., Long. 89°56'45" W.
Harrison, AR:		
Boone County Localizer	Lat. 36°16'08" N., Long. 93°09'18" W.	Lat. 36°16'09" N., Long. 93°09'18" W.
Little Rock, AR:		
Adams Field	Lat. 34°43'48" N., Long. 92°13'27" W.	Lat. 34°43'44" N., Long. 92°13'28" W.
Alexandria, LA:		
England Air Force Base	Lat. 31°19'38" N., Long. 92°17'44" W.	Lat. 31°19'27" N., Long. 92°32'49" W.
Patterson, LA:		
Patterson RBN	Lat. 29°42'52" N., Long. 91°29'12" W.	Lat. 29°42'52" N., Long. 91°20'12" W.
Albuquerque, NM:		
Double Eagle II Airport	Lat. 35°08'42" N., Long. 106°47'41" W.	Lat. 35°08'42" N., Long. 106°47'40" W.
Truth or Consequences, NM:		
Truth or Consequences Municipal Airport	Lat. 33°14'07" N., Long. 107°16'08" W.	Lat. 33°14'10" N., Long. 107°16'13" W.
Ardmore, OK:		
Ardmore VORTAC	Lat. 34°12'14" N., Long. 97°10'05" W.	Lat. 34°12'41" N., Long. 97°10'05" W.
Arbuckle RBN	Lat. 34°09'02" N., Long. 07°07'28" W.	Lat. 34°09'02" N., Long. 97°07'28" W.
Enid, OK:		
Woodring Municipal Airport	Lat. 36°20'42" N., Long. 97°47'27" W.	Lat. 36°22'45" N., Long. 97°47'27" W.
Lawton, OK:		
Henry Post Army Air Field	Lat. 34°39'03" N., Long. 98°24'00" W.	Lat. 34°39'00" N., Long. 98°24'06" W.
Oklahoma City, OK:		
Tinker Air Force Base	Lat. 35°25'06" N., Long. 97°22'60" W.	Lat. 35°25'06" N., Long. 97°23'23" W.
University of Oklahoma Westheimer Airport	Lat. 35°15'00" N., Long. 97°27'60" W.	Lat. 35°14'44" N., Long. 97°28'19" W.
Shawnee, OK:		
Shawnee Municipal Airport	Lat. 35°16'26" N., Long. 96°40'29" W.	Lat. 35°21'16" N., Long. 96°56'33" W.
Seminole Municipal Airport	Lat. 35°16'23" N., Long. 96°40'28" W.	Lat. 35°16'26" N., Long. 96°40'29" W.
Prague Municipal Airport	Lat. 35°28'45" N., Long. 96°43'06" W.	Lat. 35°28'55" N., Long. 96°43'06" W.
Prague RBN	Lat. 35°31'00" N., Long. 96°43'00" W.	Lat. 35°31'00" N., Long. 96°43'06" W.
Tilghman RBN	Lat. 35°43'10" N., Long. 96°49'06" W.	Lat. 35°43'20" N., Long. 96°49'06" W.
Tulsa, OK:		
William R. Pogue Municipal	Lat. 36°10'22" N., Long. 96°09'05" W.	Lat. 36°10'31" N., Long. 96°09'06" W.
Alice, TX:		
Orange Grove NALF	Lat. 27°54'00" N., Long. 98°03'00" W.	Lat. 27°54'03" N., Long. 96°03'05" W.
Beeville, TX:		
Chase Field Naval Air Station	Lat. 28°21'55" N., Long. 97°39'16" W.	Lat. 28°21'33" N., Long. 97°39'38" W.
Brownsville, TX:		
Brownsville/South Padre Island International	Lat. 25°54'23" N., Long. 97°25'32" W.	Lat. 24°54'24" N., Long. 97°25'33" W.
Brownwood, TX:		
Brownwood Localizer	Lat. 31°47'03" N., Long. 98°57'16" W.	Lat. 31°47'04" N., Long. 98°57'16" W.
Corpus Christi, TX:		
Corpus Christi Naval Air Station	Lat. 27°41'35" N., Long. 97°17'26" W.	Lat. 27°42'00" N., Long. 97°17'00" W.
Nueces County Airport	Lat. 27°46'41" N., Long. 97°41'27" W.	Lat. 27°46'41" N., Long. 97°41'24" W.
Dallas Fort Worth, TX:		
Phil L. Hudson Localizer	Lat. 32°44'20" N., Long. 96°31'39" W.	Lat. 32°44'20" N., Long. 96°31'49" W.
Lancaster Airport	Lat. 32°34'40" N., Long. 96°43'16" W.	Lat. 32°34'45" N., Long. 96°43'08" W.
Lancaster RBN	Lat. 32°34'40" N., Long. 96°43'16" W.	Lat. 32°34'39" N., Long. 96°43'17" W.
Dallas/Ft. Worth VORTAC	Lat. 32°50'51" N., Long. 96°51'42" W.	Lat. 32°51'57" N., Long. 97°01'40" W.
Fort Worth Spinks Airport	Lat. 32°34'30" N., Long. 97°18'34" W.	Lat. 32°33'51" N., Long. 97°18'34" W.
Del Rio, TX:		
Laughlin Air Force Base	Lat. 29°21'34" N., Long. 100°46'38" W.	Lat. 29°21'35" N., Long. 100°46'38" W.
Eagle Lake, TX:		
Eagle Lake VOR/DME	Lat. 29°39'45" N., Long. 96°18'59" W.	Lat. 29°39'45" N., Long. 96°19'00" W.
El Campo, TX:		
Eagle Lake VOR/DME	Lat. 29°39'45" N., Long. 96°18'59" W.	Lat. 29°39'45" N., Long. 96°19'00" W.

FAA region	Proposed geographic position	Revised geographic position
El Paso, TX:		
Biggs Army Air Field	Lat. 31°51'00" N., Long. 106°23'00" W.	Lat. 31°50'58" N., Long. 106°22'46" W.
Ennis, TX:		
Ennis Municipal Airport	Lat. 32°19'43" N., Long. 96°39'47" W.	Lat. 32°19'42" N., Long. 96°39'48" W.
George West, TX:		
Live Oak County Airport	Lat. 28°21'48" N., Long. 98°06'59" W.	Lat. 28°21'45" N., Long. 98°06'58" W.
Guthrie, TX:		
6666 Ranch Airport	Lat. 33°38'28" N., Long. 100°21'18" W.	Lat. 33°38'28" N., Long. 100°20'50" W.
Haskell, TX:		
Haskell RBN	Lat. 23°11'27" N., Long. 99°43'11" W.	Lat. 33°11'27" N., Long. 99°43'11" W.
Houston, TX:		
Covey Trails Airport	Lat. 29°41'00" N., Long. 95°50'00" W.	Lat. 29°41'23" N., Long. 95°50'22" W.
Huntsville, TX:		
Huntsville RBN	Lat. 30°44'26" N., Long. 95°35'26" W.	Lat. 30°44'26" N., Long. 95°35'27" W.
Killeen, TX:		
Robert Gray Army Air Field	Lat. 31°04'01" N., Long. 97°49'43" W.	Lat. 31°03'53" N., Long. 97°48'39" W.
Hood Army Air Field	Lat. 31°08'17" N., Long. 97°42'51" W.	Lat. 31°08'15" N., Long. 97°42'50" W.
Gray VOR/DME	Lat. 31°01'58" N., Long. 97°48'48" W.	Lat. 31°01'58" N., Long. 97°48'49" W.
Kingsville, TX:		
Kingsville Naval Air Station	Lat. 27°30'15" N., Long. 97°48'29" W.	Lat. 27°30'25" N., Long. 97°48'34" W.
Laredo, TX:		
Rancho Blanco Airport	Lat. 27°18'29" N., Long. 99°25'02" W.	Lat. 27°18'30" N., Long. 99°26'52" W.
Midland, TX:		
Midland International Airport	Lat. 31°57'33" N., Long. 102°12'18" W.	Lat. 31°56'33" N., Long. 102°12'05" W.
Mineral Wells, TX:		
Mineral Wells RBN	Lat. 32°42'06" N., Long. 98°03'25" W.	Lat. 32°47'06" N., Long. 98°03'25" W.
Nacogdoches, TX:		
A.L. Mangham Jr. Regional Airport	Lat. 31°34'40" N., Long. 94°42'34" W.	Lat. 31°34'40" N., Long. 94°42'33" W.
Newgulf, TX:		
Newgulf Airport	Lat. 29°18'23" N., Long. 95°53'12" W.	Lat. 29°18'35" N., Long. 95°53'15" W.
Eagle Lake VORTAC	Lat. 29°39'44" N., Long. 96°19'01" W.	Lat. 29°39'45" N., Long. 96°19'00" W.
Rockport, TX:		
San Jose Island Airport	Lat. 27°56'30" N., Long. 96°59'30" W.	Lat. 27°56'39" N., Long. 96°59'03" W.
Rocksprings, Edwards County Airport, TX:		
Edwards County Airport	Lat. 29°56'48" N., Long. 100°10'24" W.	Lat. 29°56'48" N., Long. 100°10'25" W.
Rosanky, TX:		
Double D Ranch Airport	Lat. 29°52'36" N., Long. 97°17'23" W.	Lat. 29°52'24" N., Long. 97°17'17" W.
San Antonio, TX:		
San Antonio VORTAC	Lat. 29°38'38" N., Long. 98°27'49" W.	Lat. 29°38'38" N., Long. 98°27'40" W.
Randolph VOR	Lat. 29°31'08" N., Long. 98°17'06" W.	Lat. 29°31'08" N., Long. 98°17'05" W.
Santa Elena, TX:		
Diamond "O" Ranch Airport	Lat. 26°43'12" N., Long. 98°33'35" W.	Lat. 26°43'00" N., Long. 98°33'30" W.
Snyder, TX:		
Snyder RBN	Lat. 32°42'05" N., Long. 100°56'45" W.	Lat. 32°42'04" N., Long. 100°56'49" W.
Stamford, TX:		
Arledge Field	Lat. 32°54'37" N., Long. 99°44'01" W.	Lat. 32°54'36" N., Long. 99°44'02" W.
Stamford RBN	Lat. 32°52'07" N., Long. 99°33'58" W.	Lat. 32°52'07" N., Long. 99°43'58" W.
Wharton, TX:		
Wharton RBN	Lat. 29°15'17" N., Long. 96°09'11" W.	Lat. 29°15'13" N., Long. 96°09'17" W.
Winters, TX:		
Winters RBN	Lat. 31°56'45" N., Long. 99°59'13" W.	Lat. 31°57'12" N., Long. 99°59'00" W.
Western-Pacific		
Page, AZ:		
Page Municipal Airport	Lat. 36°55'29" N., Long. 111°27'00" W.	Lat. 36°55'34" N., Long. 111°26'52" W.
Phoenix Sky Harbor International Airport, AZ:		
Williams Air Force Base	Lat. 33°18'36" N., Long. 111°39'22" W.	Lat. 33°18'36" N., Long. 111°39'20" W.
San Carlos, AZ:		
Williams Air Force Base	Lat. 33°18'27" N., Long. 111°39'21" W.	Lat. 33°18'36" N., Long. 111°39'22" W.
Arcata, CA:		
Abeta NDB	Lat. 40°57'53" N., Long. 124°05'52" W.	Lat. 40°57'53" N., Long. 124°05'51" W.
Camp Pendelton, CA:		
Camp Pendelton TACAN	Lat. 33°18'06" N., Long. 117°21'06" W.	Lat. 33°18'04" N., Long. 117°21'03" W.
Sacramento, CA:		
McClellan Air Force Base	Lat. 38°39'35" N., Long. 121°23'58" W.	Lat. 38°40'04" N., Long. 121°23'58" W.
Mather Air Force Base	Lat. 38°32'53" N., Long. 121°16'23" W.	Lat. 38°33'23" N., Long. 121°17'44" W.
San Francisco, CA:		
Alameda Naval Air Station	Lat. 37°47'21" N., Long. 122°19'10" W.	Lat. 37°47'26" N., Long. 122°19'28" W.
Guam Island, GU:		
Anderson Air Force Base	Lat. 13°35'16" N., Long. 144°55'30" E.	Lat. 13°34'52" N., Long. 144°56'26" E.
Rota International Airport, GU	Lat. 14°10'30" N., Long. 145°14'30" E.	Lat. 14°10'24" N., Long. 145°14'20" E.
Saipan RBN	Lat. 15°06'48" N., Long. 145°42'42" E.	Lat. 15°06'46" N., Long. 145°42'42" E.
Nimitz VORTAC	Lat. 13°27'18" N., Long. 144°43'59" E.	Lat. 13°27'11" N., Long. 144°43'51" E.
Saipan International Airport	Lat. 15°07'18" N., Long. 145°44'00" E.	Lat. 15°07'13" N., Long. 145°43'49" E.
Barking Sands, HI:		
Barking Sands PMRF Airport	Lat. 22°01'18" N., Long. 159°47'12" W.	Lat. 22°01'29" N., Long. 159°47'22" W.
Barking Sands TACAN	Lat. 22°02'18" N., Long. 159°47'06" W.	Lat. 22°02'27" N., Long. 159°47'17" W.
Hawaiian Islands, HI:		
Hilo VORTAC	Lat. 19°43'18" N., Long. 155°00'42" W.	Lat. 19°43'28" N., Long. 155°00'49" W.
South Kauai VORTAC	Lat. 21°54'00" N., Long. 159°31'42" W.	Lat. 21°54'13" N., Long. 159°31'54" W.
Honolulu, HI:		
Honolulu International Airport	Lat. 21°19'06" N., Long. 157°55'24" W.	Lat. 21°19'19" N., Long. 157°56'31" W.

FAA region	Proposed geographic position	Revised geographic position
Barbers Point Naval Air Station	Lat. 21°18'35" N., Long. 158°04'27" W	Lat. 21°18'32" N., Long. 158°04'30" W.
Honolulu VORTAC	Lat. 21°18'30" N., Long. 157°55'48" W	Lat. 21°18'41" N., Long. 157°55'59" W.
Honolulu, Wheeler Air Force Base, HI: Koko Head VORTAC	Lat. 21°15'54" N., Long. 157°42'12" W	Lat. 21°16'06" N., Long. 157°42'21" W.
Lihue, HI: Lihue Airport	Lat. 21°58'45" N., Long. 159°20'29" W	Lat. 21°58'45" N., Long. 159°20'30" W.
Waimea-Kohala, HI: Waimea-Kohala Airport	Lat. 20°00'06" N., Long. 155°40'15" W	Lat. 20°00'16" N., Long. 155°40'15" W.
Indian Springs, NV: Indian Springs Air Force Auxiliary Field	Lat. 36°34'59" N., Long. 115°40'32" W	Lat. 36°35'14" N., Long. 115°40'21" W.
Mercury, NV: Desert Rock Airport	Lat. 36°39'16" N., Long. 116°00'54" W	Lat. 36°37'10" N., Long. 116°01'55" W.

Class D Airspace Areas

In NPRM Number 92–5, the FAA proposed to amend subpart D of FAA Order 7400.9, which becomes effective September 16, 1993, by establishing Tucson, Ryan Field, Arizona; Mojave Airport, California; and Whiteman, California, as Class D airspace areas. No comments were received on this proposal.

Airspace Docket Number 90–AWP–11 established a control zone at Tucson, Ryan Field, Arizona; therefore the FAA will adopt the airspace area for Tucson, Ryan Field, Arizona, by amending section 171 of FAA Handbook 7400–7 and subpart D of FAA Order 7400.9, which becomes effective September 16, 1993.

The FAA will adopt the proposed Class D airspace areas for Mojave Airport, California, and Whiteman, California, as proposed by amending subpart D in FAA Order 7400.9, which is effective September 16, 1993.

NPRM Number 92–5 also proposed to replace the El Toro, California Special Air Traffic Rules Area with Class D airspace. The FAA received no comments on this proposal. The FAA will establish the El Toro, California, Class D airspace area as proposed by amending subpart D of FAA Order 7400.9, which becomes effective September 16, 1993.

TCAs and ARSAs

NPRM Number 92–5 proposed modifications to certain TCAs and ARSAs. These changes were generally minor in nature and update the airspace descriptions. No comments were received on these proposed modifications.

With the exception of the modifications listed below, the FAA will revise the following TCAs as proposed. TCAs are published in section 71.401 of FAA Handbook 7400.7. The descriptions of the TCAs listed in this document will be published subsequently in the Handbook 7400.7—Supplement. The FAA also adopts the proposal to amend the corresponding Class B airspace areas in subpart B of FAA Order 7400.9, which becomes effective September 16, 1993.

FAA Region: Central

Kansas City, MO

FAA Region: Eastern

New York, NY
Philadelphia, PA
Pittsburgh, PA

FAA Region: Great Lakes

Detroit, MI

FAA Region: New England

Boston, MA

FAA Region: Southern

Atlanta, GA
Memphis, TN

FAA Region: Southwest

Houston, TX

FAA Region: Western-Pacific

Phoenix, Arizona
San Francisco, CA
Las Vegas, NV

The FAA adopts as proposed the TCA descriptions for the areas listed below, with minor modifications and technical corrections. Because this action does not change the boundaries and configuration of controlled airspace, with respect to these areas it is insignificant in nature and impact and inconsequential to the industry and public. Therefore, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

Revisions to proposed airspace areas by including technical corrections and airspace changes:

FAA Region: Eastern

Washington Tri-Area, DC: The airspace description is revised by replacing the phrase "northwest of the Manassas Municipal/Harry P. Davis Field" to "northeast of the Manassas Municipal/Harry P. Davis Field."

FAA Region: Great Lakes

Chicago, O'Hare International Airport, IL: The airspace description is revised by changing name of the "Chicago International Airport" to the "Chicago-O'Hare International Airport" and by clarifying that the airspace in Area B excludes the airspace in Area A.

Minneapolis, MN: The airspace description is revised by changing the name of "Minneapolis-St. Paul International Airport" to "Minneapolis-St. Paul International (Wold-Chamberlain) Airport."

FAA Region: Southern

Charlotte, NC: The airspace description is revised by replacing all references to the "Charlette VOR" with the "Charlotte VOR/DME."

FAA Region: Southwest

New Orleans, LA: Area C of the airspace description is revised by replacing the reference to "Sellers Field Runway 16/34 extended centerline" with "St. Charles Airport 17/35 extended centerline."

FAA Region: Western-Pacific

Los Angeles, CA: The airspace description is revised by replacing references to the Ontario VORTAC with Paradise VORTAC and by ensuring that the southwestern corner of Area F matches the current lines on visual aeronautical charts. Due to more sophisticated charting methods, if the airspace description is not revised, the lines on the chart will move.

San Diego, CA: Area F of the airspace description is revised by replacing the reference to the "interchange of I–5 and I–805" with the "interchange of I–8 and I–805."

Honolulu, HI: Area D of the airspace description is revised by replacing the phrase "then northeast on the Honolulu VORTAC 146° radial to 5 miles" with "then northwest on the Honolulu VORTAC 146° radial to 5 miles."

Revisions to proposed airspace areas by updating a geographic position:

FAA Region	Proposed geographic position	Revised geographic position
Great Lakes		
Name and airport or facility: Cleveland, OH: Cleveland-Hopkins DME Antenna.	Lat. 41°24'15" N., Long. 81°51'43" W.	Lat. 41°24'01" N., Long. 81°52'03" W.
Northwest Mountain		
Denver, CO: Denver VORTAC.	Lat. 39°48'02" N., Long. 104°53'12" W.	Lat. 39°48'02" N., Long. 104°53'13" W.
Southern		
Miami, FL: Biscayne Bay VORTAC.	Lat. 25°40'17" N., Long. 80°10'40" W.	Lat. 25°40'18" N., Long. 80°10'40" W.

With the exception of the modifications listed below, the FAA will revise the following ARSAs as proposed. ARSAs are published in section 71.501 of FAA Handbook 7400.7. The ARSAs listed in this document will be published subsequently in the Handbook. The FAA also adopts the proposal to amend the corresponding Class C airspace areas in subpart C of FAA Order 7400.9, which becomes effective September 16, 1993.

FAA Region: Central

Cedar Rapids, IA
Omaha, NE

FAA Region: Eastern

Atlantic City, NJ
Buffalo, NY
Rochester, NY
Syracuse, NY
Norfolk, VA
Roanoke, VA

FAA Region: Great Lakes

Champaign-Urbana, IL
Moline, IL
Peoria, IL
Indianapolis, IN
South Bend, IN
Lansing, MI
Akron, OH
Columbus, OH
Dayton, OH
Green Bay, WI
Milwaukee, WI

FAA Region: New England

Providence, RI

FAA Region: Northwest Mountain

Colorado Springs, CO
Portland, OR
Spokane, Fairchild Air Force Base, WA
Whidbey Island, WA

FAA Region: Southern

Mobile, AL
Huntsville, AL
Fort Lauderdale, FL
Palm Beach, FL
Tallahassee, FL
Milton Naval Air Station, Whiting Field, FL
Savannah, GA
Covington, KY
Columbus, MS
Jackson, MS
Pope Air Force Base, NC
Columbia, SC
Greer, SC
Shaw Air Force Base, SC
Chattanooga, TN

FAA Region: Southwest

Barksdale Air Force Base, LA
Baton Rouge, LA
Lafayette, LA
Shreveport, Shreveport Regional Airport, LA
Albuquerque, NM
Oklahoma City, Tinker Air Force Base, OK
Tulsa, OK
Amarillo, TX
Del Rio, TX
El Paso, TX

FAA Region: Western-Pacific

Tucson Davis-Monthan Air Force Base, AZ
Tucson, Tucson International Airport, AZ
El Toro, CA
Fresno, CA
Marysville, Beale Air Force Base, CA
Monterey, CA
Oakland, CA
Riverside, March Air Force Base, CA
Sacramento, Mather Air Force Base, CA
Sacramento, McClellan Air Force Base, CA
Sacramento, Sacramento Metropolitan Airport, CA
Santa Ana, CA
Santa Barbara, CA
Kahului, HI
Reno, NV

The FAA adopts as proposed the ARSA descriptions listed below, with minor modifications and technical corrections. Because this action does not change the boundaries and configuration of controlled airspace, with respect to these areas it is insignificant in nature and impact and inconsequential to the industry and public. Therefore, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

Revisions to proposed airspace areas by including clean up items and airspace changes:

FAA Region: Central

Offutt Air Force Base, NE: The airspace description is revised by changing the name of "South Omaha (Papillion) Airport" to "South Omaha Airport."

FAA Region: Great Lakes

Evansville, IN: The airspace description is revised by replacing the name "Evansville Dress Regional Airport" with "Evansville Regional Airport."

Fort Wayne, IN: The airspace description is revised by changing the "Fort Wayne Municipal Airport" to the "Fort Wayne International Airport."

Flint, MI: The airspace description is revised by changing the name of the "Flint Bishop International Airport" to "Bishop International Airport."

Toledo, OH: The airspace description is revised by changing the name of the "Toledo-Express Airport" to the "Toledo Express Airport."

FAA Region: New England

Windsor Locks, CT: The airspace description is revised by replacing all references to "Skylark Airport" with "Skylark Airpark."

FAA Region: Southern

Pensacola Naval Air Station, FL: The airspace description is revised by replacing the name "Navy Pensacola Airport, Forrest Sherman Field" with "Pensacola NAS, Forrest Sherman Field."

Lexington, KY: The airspace description is revised by changing the name of "Lexington Blue Grass Airport" to "Blue Grass Airport."

Fayetteville, NC: The airspace description is revised by changing the name of "Fayetteville Municipal/Grannis Field" to "Fayetteville Regional/Grannis Field."

Greensboro, NC: The airspace description is revised by changing the name of "Greensboro/Piedmont Triad International Airport" with "Piedmont International Airport."

Nashville International Airport, TN: The airspace description is revised by replacing the one remaining reference to "Nashville Metropolitan Airport" to "Nashville International Airport."

FAA Region: Southwest

Little Rock, AR: The airspace description is revised by replacing the name "Adams Field, Little Rock" with "Little Rock, Adams Field."

Dyess Air Force Base, TX: The airspace description is revised by replacing the name "Abilene Municipal

Airport, TX ARSA" with "Abilene Regional Airport, TX ARSA."

FAA Region: Western-Pacific

Burbank-Glendale-Pasadena, CA: The airspace description is revised by replacing the area excluded from the ARSA for Whiteman Airpark from 1.75 miles to 1.8 miles.

Merced, Castle Air Force Base, CA: The airspace description is revised by changing the name of "Atwater Airport" to "Atwater Municipal Airport."

Ontario, CA: The airspace description is revised by changing the name of "Upland Cable Airport" to "Cable Airport."

San Bernardino, Norton Air Force Base, CA: The airspace description is revised by changing the name of "Redlands Airport" to "Redlands Municipal Airport."

San Jose, CA: The airspace description is revised by replacing references to "Oakland VOR" with "Oakland VORTAC."

Revisions to proposed airspace areas by updating a geographic position:

FAA region	Proposed geographic position	Revised geographic position
Great Lakes		
Name and airport or facility: Toledo, OH: Toledo Express Airport.	Lat. 41°35'15" N., long. 83°48'19" W.	Lat. 41°35'12" N., long. 83°48'28" W.
Southern		
Raleigh-Durham, NC: Raleigh-Durham International Airport.	Lat. 35°52'39" N., long. 78°47'15" W.	Lat. 35°52'39" N., long. 78°47'18" W.
Southwest		
Little Rock, AR: Little Rock Adams Field.	Lat. 34°44'48" N., long. 92°13'27" W.	Lat. 34°43'44" N., long. 92°13'28" W.
Will Rogers World Airport, OK: Downtown Airpark.	Lat. 36°26'57" N., long. 97°31'58" W.	Lat. 35°25'57" N., long. 97°31'58" W.
Midland, TX: Midland International Airport.	Lat. 31°56'33" N., long. 102°12'06" W.	Lat. 31°56'33" N., long. 102°11'05" W.

In addition, the FAA proposed to modify the airspace descriptions of the Anchorage International Airport, Alaska ARSA by combining: (1) the Anchorage International Airport Control Zone; (2) the Anchorage International Airport ARSA; and (3) the International Segment of the Anchorage Special Air Traffic Rules Area. The FAA received no comments on this proposal. The FAA will revise the Anchorage International Airport, Alaska ARSA as proposed by amending section 501 of FAA Handbook 7400.7 and the corresponding airspace description in subpart C of FAA Order 7400.9, which is effective September 16, 1993.

The FAA also proposed to modify the Chicago, Midway Airport, Illinois ARSA by lowering the ceiling so that it does not overlap the floor of the Chicago, O'Hare International Airport, Illinois TCA. No comments were received on this proposal. The FAA will revise the Chicago, Midway Airport, Illinois ARSA, as proposed by amending section 501 of FAA Handbook 7400.7 and the corresponding airspace description in subpart C of FAA Order 7400.9, which is effective September 16, 1993.

Incorporation by Reference

The FAA amends the airspace descriptions of all control zones and transition areas. These descriptions are not listed in the Code of Federal Regulations (CFR) and are not set forth in the full text of this final rule. The full listing for all control zones and transition areas is contained in sections 171 and 181 of FAA Handbook 7400.7, Compilation of Regulations, effective November 1, 1991 ("the Handbook"), which is incorporated by reference in 14 CFR 71.1. The amended descriptions will subsequently be published in the Handbook 7400.7—Supplement. Copies of FAA Handbook 7400.7 and Handbook 7400.7—Supplement are located at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Under the Airspace Reclassification final rule, the airspace descriptions for control zones and transition areas are set forth as Class D and Class E airspace areas in subparts D and E of FAA Order 7400.9, Airspace Reclassification, effective September 16, 1993, which is also incorporated by reference in 14 CFR 71.1. These descriptions are not listed in the CFR and are not set forth in the full text of this final rule.

Subsequent to the final agency coordination resulting in the issuance of the final rule for Airspace Reclassification (56 FR 65638), the FAA reviewed various airspace descriptions for TCAs and ARSAs. As a result of this review, the FAA made editorial, non-substantive revisions to those airspace descriptions. With the exception of the revisions to the surface area of the Anchorage, Alaska ARSA, these revisions either changed the name of the airspace description, the language of the legal description of the airspace, or the language for charting purposes. These revisions did not change the dimensions of the affected airspace areas, nor did they alter the substantive provisions of the final rule. The FAA intends, therefore, to include these revisions as part of this rulemaking action. This action is necessary to correct expeditiously the final rule issued on December 17, 1991, and to clarify regulatory requirements.

The airspace descriptions for TCAs and ARSAs are not found in the CFR and were not set forth in the full text of the final rule. The complete listing for all TCAs and ARSAs can be found in sections 401 and 501 of FAA Handbook 7400.7, Compilation of Regulations, effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The amended airspace descriptions will subsequently be published in the Handbook 7400.7—Supplement. The airspace descriptions for TCAs and ARSAs are set forth as Class B and Class C airspace areas in Subparts B and C of FAA Order 7400.9, Airspace Reclassification, which is also incorporated by reference in 14 CFR 71.1.

Paperwork Reduction Act

No approval pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96.511) is needed for this rule, because there are no requirements for information collection associated with this rule.

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed information on estimates of the potential economic consequences of this final rule. This summary and the evaluation quantify, to the extent practicable, the estimated costs of the rule to the private sector, consumers, and Federal, State, and local governments, and also the anticipated benefits.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition.

The FAA has determined that this rule is not "major" as defined in the executive order; therefore, a full regulatory impact analysis, which includes the identification and evaluation of cost-reducing alternatives to the rule, has not been prepared. Instead, the agency has prepared a more concise document termed a "regulatory evaluation," that analyzes only this rule without identifying alternatives. In addition to a summary of the regulatory evaluation, this section contains a final regulatory flexibility determination required by the 1980 Regulatory Flexibility Act (Pub. L. 96–354) and an international trade impact assessment. If readers desire more detailed economic information than this summary contains, then they should consult the regulatory evaluation contained in the docket.

This rule and the final rule for Airspace Reclassification are essentially part of the general rulemaking effort by the FAA to reclassify U.S. airspace. The Airspace Reclassification final rule represents the policy action and this rule represents the procedural action of accomplishing the airspace reclassification for terminal airspace. The Airspace Reclassification final rule was implemented first, and it has accounted for the costs of modifying the charts (including symbol changes) and the benefits of enhanced safety and airspace simplification that otherwise would have been reflected in this rule. The FAA recognizes that part of those benefits (largely, enhanced safety and simplification of U.S. airspace) and costs ($1.9 million) estimated for the Airspace Reclassification final rule are due in part to this rule, though it is difficult to estimate to what extent separately. Therefore, a brief discussion of the types of costs and benefits this shares with the Airspace Reclassification final rule is presented in the following sections.

Costs

This rule will impose additional administrative duties on the FAA. The costs required to perform those duties have already been accounted for in the Airspace Reclassification Rule. The administrative costs imposed on the FAA by this rule is part of the $1.9 million (discounted) estimate derived for the Airspace Reclassification Rule. However, this rule is not expected to impose costs on either aircraft operators (in terms of the inconvenience of having to engage in two-way radio communications with Air Traffic Control or additional circumnavigation) or on society (in terms of lowered safety). This assessment of no costs imposed on either aircraft operators or society is based on an evaluation of each of the four areas that this rule will affect. These four areas are discussed below.

(1) Control Zones and Associated Transition Areas for the Primary Airports of TCAs or ARSAs

This requirement will not impose any additional requirements for aircraft operators in either TCAs or ARSAs. The adjustments of the lateral boundaries and vertical limits of control zones and associated transition areas for the primary airports of TCAs or ARSAs will be essentially the same as what exists today.

(2) Control Zones and Associated Transition Areas for Airports With Operating Control Towers Not Associated With the Primary Airports of TCAs or ARSAs

This requirement will not impose any additional requirements for aircraft operators in either TCAs or ARSAs. Control zones for airports with operating control towers not associated with TCAs or ARSAs have been reviewed according to the revised criteria to ensure that terminal IFR operations are contained within the control zones. The modifications include provisions for satellite airports without operating control towers to be excluded from control zones as long as aviation safety is not jeopardized.

This component of the rule will add relief to aircraft operators. Under existing rules, there is a communication requirement when operating within an airport traffic area which extends from the surface up to but not including 3,000 feet above the airport. The FAA is requiring that control zones terminate at an altitude that will accommodate terminal operations under IFR. In most cases, this is 2,500 feet above the surface, rounded to the nearest 100-foot increment, and expressed in MSL. This component of the rule will relieve operators of the need to circumnavigate or the inconvenience of having to engage in two-way radio communications with Air Traffic Control because 500 feet of additional airspace will be available to VFR operators without two-way radio communication requirements. These control zones still will be indicated on aeronautical charts by a segmented blue line.

(3) Control Zones and Associated Transition Areas for Airports Without Operating Control Towers

As noted previously for the other components of the rule, this action will not impose any additional costs on either aircraft operators or society. This component is procedural in nature. The control zones will extend upward from the surface and terminate at the overlying or adjacent controlled airspace.

(4) Transition Areas Not Associated With Control Zones

This component of the rule is procedural in nature and will not impose additional costs on either aircraft operators or society. Transition areas that are not associated with control zones have been reviewed under the revised criteria to ensure that terminal IFR operations are contained in the transition areas.

The cost to the FAA associated with this Terminal Airspace Reconfiguration rule is included in the $1.9 million cost estimate of the Airspace Reclassification Rule. As discussed above, this is because the FAA's administrative costs, which include modification of manuals, charts, and training materials, have already been accounted for in the Airspace Reclassification Rule. For a detailed discussion of how these costs were derived, the reader is directed to the final regulatory evaluation of the Airspace Reclassification final rule. A brief discussion explaining each of these costs is presented below.

(1) Aeronautical Charts

The Terminal Airspace Reconfiguration rule will result in modifications to the aeronautical charts because of lateral and vertical boundaries of control zones with towers will be modified and shown on the charts, whereas control zones without towers will be deleted from the charts. All of these changes have already been included as part of the estimated $1.2 million for the Airspace Reclassification final rule.

(2) Air Traffic Training Courses

The cost of revising the courses used to instruct air traffic controllers in terminal airspace reconfigured areas is part of an estimated $52,000 (discounted) in controller training costs. This includes developing and conducting a one-week seminar for FAA student controllers ($9,000) and revising lesson plans, visual aids, handouts, laboratory exercises, and tests ($43,000).

(3) Pilot Re-Education

The cost of re-educating the pilot community of the modifications in the terminal airspace reconfiguration rule is part of an estimated $618,000 (discounted). This includes the publication and mailing of an advisory circular ($550,000) and the production of a video tape documenting the new airspace classifications ($68,000).

(4) Conversion of Statute Miles to Nautical Miles

The statute mile designations in part 71 and FAA Handbook 7400.6, Compilation of Regulations, are being converted to nautical miles as part of the Airspace Reclassification Rule. The terminal airspace reconfiguration rule will share some of the $1,200 (discounted) cost to complete this conversion.

Benefits

The rule is expected to generate total incremental benefits in the form of enhanced safety and operational efficiency to the aviation community by ensuring that the potential benefits of the Airspace Reclassification final rule materialize as expected. A brief discussion of most of those safety and operational efficiency benefits is provided below.

The FAA believes that the simplified classification in this rule and the Airspace Reclassification final rule will reduce airspace complexity and thereby enhance safety by reducing a possible source of confusion to pilots. This airspace reclassification mirrors the new ICAO airspace designations, except there will be no Class F in the United States. This rule and the Airspace Reclassification final rule will also increase safety in the United States because foreign pilots operating aircraft in U.S. airspace will be familiar with the airspace designations and classification system.

Another simplification that is expected to help increase airspace safety is the change to correlate the class of controlled airspace currently termed a control zone to the airspace of the surrounding area. Presently, there are several types of designated airspace around an airport which makes it difficult for pilots and controllers to determine how the areas are classified and which requirements apply. After the reclassification the terminology will be simplified.

The conversion of statute mile designations to nautical mile designations is intended to further simplify operations. Because the instruments on board the aircraft are calibrated in nautical miles and aviation charts have representations in nautical miles, this change will eliminate the need for pilots to convert between nautical and statute miles. This simplification will help pilots and controllers to improve their understanding of the airspace designations in part 71.

Conclusion

This final rule is not expected to impose costs on either aircraft operators (in terms of additional equipment or additional circumnavigation) or society (in terms of lowered safety). This rule will impose additional administrative duties on the FAA. However, the costs required to perform those duties have already been accounted for in the Airspace Reclassification Rule. The FAA administrative costs imposed by this rule are part of the $1.9 million (discounted) estimate derived for the Airspace Reclassification Rule. The rule will ensure that a simpler, more efficient, and more uniform airspace system materializes as prescribed under the Airspace Reclassification final rule. This action in turn will ultimately result in increased safety to the aviation community. Thus, the FAA contends that the benefits of the rule are greater than its costs.

International Trade Impact Assessment

This rule will only affect airspace inside of the United States, and it will not impose any adverse operating requirements on foreign aircraft operators. A number of foreign aircraft operators are already operating under airspace requirements similar to those contained in this rule and those requirements in the U.S. Airspace Reclassification Rule. By September 16, 1993, virtually all foreign aircraft operators will be operating in airspace classified similar to those requirements in this rule and those requirements outlined in the U.S. Airspace Reclassification Rule (based largely, if not entirely, on ICAO's airspace reclassification). Also, this rule will have no affect on the sale of foreign aviation products or services in the United States, nor will it affect the sale of United States products or services in foreign countries.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." The small entities that could be potentially affected by the implementation of this rule are pilot schools (SIC 8299).

As discussed in the Airspace Reclassification rule, training materials used in the courses offered by the pilot schools will have to be modified to reflect the changes of the airspace reclassification. However, these training materials are updated regularly as a normal course of business. The FAA contends that pilot schools can make the modifications required by the rule during these regular updates at little, if any, additional cost. Therefore, the rule will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The regulations herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Evaluation Determination and the International Trade Impact Analysis, the FAA has determined that this regulation is not a major rule under Executive Order 12291. In addition, the FAA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the criteria of the Regulatory Flexibility Act. This regulation is not considered significant under Order DOT 2100.5, Policies and Procedures for Simplification, Analysis, and Review of Regulations. A regulatory evaluation of the regulation, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 71

Airport radar service areas, Airspace, Control zones, Incorporation by reference, Navigation (air), Terminal control areas, Transition areas.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

The following amendments are to part 71 currently in effect:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, REPORTING POINTS, JET ROUTES, AND AREA HIGH ROUTES

The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a); 1510; Executive Order 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

The complete listing for all Federal airways, area low routes, controlled airspace, reporting points, jet routes, and area high routes can be found in FAA Order 7400.7, Compilation of Regulations, which was last published as of April 30, 1991, and effective November 1, 1991. Superseding Subparts F, G, K, and L of FAA Order 7400.7, the descriptions of control zones, transition areas, terminal control areas, and airport radar service areas can be found in FAA Order 7400.7—Supplement, effective October 15, 1992. The incorporation by reference of FAA Order 7400.7 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.7 and subsequent updates is effective as of December 17, 1991 through September 15, 1993. During the incorporation by reference period, proposed individual changes to the listings of Federal airways, area low routes, controlled airspace, reporting points, jet routes, and area high routes will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Federal airways, area low routes, controlled airspace, reporting points, jet routes, and area high routes will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the compilation and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.7 and 7400.7—Supplement may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–3484. Copies of FAA Order 7400.7 and 7400.7—Supplement may be inspected in Docket Numbers 24456 and 26852, respectively, at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue SW., Washington, DC 20591, weekdays between 8:30 a.m. and 5:00 p.m., or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC. This section is effective as of December 17, 1991, through September 15, 1993.

The following amendments are to part 71 in effect as of September 16, 1993:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The introductory text to § 71.1, effective September 16, 1993, is revised to read as follows:

§ 71.1 Airspace classification.

The complete listing of these airspace designations can be found in FAA Order 7400.9, Airspace Reclassification, which is effective September 16, 1993. Superseding subparts B, C, and D, and § 71.71(b), subpart E, of FAA Order 7400.9, the descriptions of Class B, C, and D airspace and of control zones without air traffic control towers (Class E) can be found in FAA Order 7400.7—Supplement. The incorporation by reference of FAA Order 7400.9 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9 and subsequent updates is effective as of September 16, 1993, through September 15, 1994. During the incorporation by reference period, proposed individual changes to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and airways, routes, and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, Class B, Class C, Class D, and Class E airspace areas and airways, routes, and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the compilation and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9 and 7400.7—Supplement may be obtained from the Document Inspection Facility, APA–220, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–3484. Copies of FAA Order 7400.9 and 7400.7—Supplement may be inspected in Docket Numbers 24456 and 26852, respectively, at the Federal Aviation Administration, Office of the Chief Counsel, AGC–10, room 915G, 800 Independence Avenue SW., Washington, DC 20591, weekdays between 8:30 a.m. and 5 p.m. or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

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Issued in Washington, DC on August 18, 1992.

Harold W. Becker

Manager, Airspace—Rules and Aeronautical Information Division.

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Part III

Office of Management and Budget

Proposed Revision of Circular A-110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Learning Education, Hospitals, and Other Non-Profit Organizations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Proposed Revision of Circular No. A-110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations"

AGENCY: Office of Management and Budget.

ACTION: Proposed Revision of Circular No. A-110.

SUMMARY: This notice offers interested parties an opportunity to comment on proposed revisions to OMB Circular No. A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

OMB issued Circular No. A-110 in 1976 and, except for a minor revision in February 1987, the Circular contains its original provisions. In 1987, an interagency task force reviewed the Circular and recommended that its requirements be consolidated in a common rule with the requirements Federal agencies impose on State and local governments. The task force published a proposed, consolidated common rule for public comment in a Federal Register notice on November 4, 1988 (53 FR 44716). Because of concerns by certain university groups and some Federal agencies, OMB did not finalize this consolidated common rule.

In November 1990, OMB convened an interagency task force to review the provisions of Circular No. A-110. This Notice contains the task force recommendations.

The task force prepared the proposed revised Circular in common rule format to facilitate regulatory adoption by the executive departments and agencies. Agencies should adopt the provisions of the Circular word for word to the maximum extent possible.

DATES: To be assured of consideration, comments on this proposed Circular must be in writing and must be received on or before October 26, 1992. Send comments to the Office of Federal Financial Management, Office of Management and Budget, 725-17th Street, NW., room 10235, Washington, DC 20503. Comments should refer to the title of this notice, "Proposed Revision of Circular No. A-110."

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, (202) 395-3993. A copy of the current Circular may be obtained by calling the OMB Publications Office at (202) 395-7332.

SUPPLEMENTARY INFORMATION: The Circular has been restructured from 20 attachments to four subparts with sections.

Subpart A—General

Sec.
- ____.1 Purpose.
- ____.2 Definitions.
- ____.3 Applicability.
- ____.4 Effect on other issuances.
- ____.5 Deviations.
- ____.6 Subawards.

Subpart B—Pre-Award Requirements

- ____.10 Purpose.
- ____.11 Pre-award policies.
- ____.12 Forms for applying for Federal assistance.
- ____.13 Debarment and suspension.
- ____.14 Special award conditions.
- ____.15 Metric system of measurement.
- ____.16 Awards and adjustments.

Subpart C—Post-Award Requirements

Financial and Program Management

- ____.20 Purpose of financial and program management.
- ____.21 Definitions.
- ____.22 Standards for financial management systems.
- ____.23 Payment.
- ____.24 Cost sharing and matching.
- ____.25 Program income.
- ____.26 Revision of budget and program plans.
- ____.27 Non-Federal audits.
- ____.28 Allowable costs.
- ____.29 Carryover balances.

Property Standards

- ____.30 Purpose of property standards.
- ____.31 Definitions.
- ____.32 Insurance coverage.
- ____.33 Real property.
- ____.34 Federally-owned and exempt property.
- ____.35 Transfers of title or other interests in property to private parties.
- ____.36 Equipment.
- ____.37 Supplies and other expendable property.
- ____.38 Intangible property.
- ____.39 Property trust relationship.

Procurement Standards

- ____.40 Purpose of procurement standards.
- ____.41 Recipient responsibilities.
- ____.42 Codes of conduct.
- ____.43 Competition.
- ____.44 Procurement procedures.
- ____.45 Cost and price analysis.
- ____.46 Procurement records.
- ____.47 Contract administration.
- ____.48 Contract provisions.

Reports and Records

- ____.50 Purpose of reports and records.
- ____.51 Monitoring and reporting program performance.
- ____.52 Financial reporting.
- ____.53 Retention and access requirements for records.

Termination and Enforcement

- ____.60 Purpose of termination and enforcement.
- ____.61 Termination and enforcement.

Subpart D—After Award Requirements

- ____.70 Purpose.
- ____.71 Definitions.
- ____.72 Closeout procedures.
- ____.73 Subsequent adjustments and continuing responsibilities.
- ____.74 Collection of amounts due.

The substantive differences between the current and proposed updated Circular are listed under their former attachments. The locations of these requirements in the proposed, updated Circular are stated after the title of the current attachment.

Attachment A, Cash Depositories, requirements are now in subpart C, "Post-Award Requirements," Financial and Program Management. No substantive changes.

Attachment B, Bonding and Insurance, requirements are now in subpart C, "Post-Award Requirements," Property and Procurement Standards. No substantive changes.

Attachment C, Retention and Custodial Requirements for Records, requirements are now in subpart C, "Post-Award Requirements," Reports and Records. A proposed revision clarifies the right of Federal agencies to have access to recipient personnel and records.

Attachment D, Program Income, requirements are now in subpart C, "Post-Award Requirements," Financial and Program Management. The proposed revisions:

- Allow costs incident to the generation of program income to be deducted from gross income to determine program income,
- Require excess program income to be deducted from total project costs, and
- Exempt program income earned after the project period.

Attachment E, Cost Sharing and Matching, requirements are now in subpart C, "Post-Award Requirements," Financial and Program Management. The proposed revisions:

- Allow the fair market value of real property to be used for matching share when approved by the Federal awarding agency, and
- Allow a reasonable amount of fringe benefits to be used for valuing donated services.

Attachment F, Standards for Financial Management Systems, requirements are now in subpart C, "Post-Award Requirements," Financial and Program Management. Previous audit

requirements are deleted and replaced by the provisions of Circular No. A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions." Certain bonding and insurance provisions which previously appeared in Attachment B, Bonding and Insurance, are added to this Subpart.

Attachment G, Financial Reporting Requirements, requirements are now in subpart C, "Post-Award Requirements," Reports and Records. The proposed revision increases the threshold for waiving the requirement for the submission of cash reports from $10,000 to $25,000.

Attachment H, Monitoring and Reporting Program Performance, requirements are now in subpart C, "Post-Award Requirements," Reports and Records. Proposed is a new section describing recipient responsibilities for monitoring sub-recipients.

Attachment I, Payment Requirements, requirements are now in subpart C, "Post-Award Requirements," Financial and Program Management.

Attachment J, Revisions of Financial Plans, requirements are now in subpart C, "Post-Award Requirements," Reports and Records. The proposed revisions:

- Raise the threshold for restricting fund transfers among direct cost categories from 5 to 10 percent,
- Add a provision to authorize Federal agencies to waive certain prior approval and certain other administrative and programmatic requirements, and
- Add a new section concerning carryover balances.

Attachment K, Close-out Procedures, requirements are now in subpart D, "After Award Requirements." Proposed is a new subparagraph to require recipients to liquidate obligations 90 days after the funding period or the date the project is completed.

Attachment L, Suspension and Termination Procedures, requirements are now in subpart C, "Post-Award Requirements," Termination and Enforcement. The definition of "suspension" is clarified.

Attachment M, Standard Forms for Applying for Federal Assistance, requirements are now in subpart B, "Pre-Award Requirements." The proposed revisions:

- Add a provision authorizing Federal agencies to use application forms other than the SF-424, and
- Add a new section covering use of assistance agreements and contracts and a new section dealing with advance public notice and priority setting.

Attachment N, Property Management Standards, requirements are now in subpart C, "Post-Award Requirements," Property Standards. The proposal raises the threshold for defining equipment (formerly nonexpendable personal property) from $300 to $5000. Governmentwide patent regulations are incorporated into this section. The nature of Federal interest in property is clarified.

Attachment O, Procurement Standards requirements are now in subpart C, "Post-Award Requirements," Procurement Standards. The proposed revisions:

- Promote the use of small, minority-owned and women's business enterprises,
- Authorize recipients to establish certain standards for defining conflicts of interest,
- Increase the small purchase threshold from $10,000 to $25,000, and
- Add contract clauses for Anti-Lobbying and Debarment and Suspension.

With respect to paragraph ____.23(l) which contains methods for making payments to recipients, interest earned on advances shall be returned to the Federal agencies. Some recipients suggested that all interest payments be directly returned to the Treasury of the United States. OMB is interested in comments from Federal agencies and recipients on whether interest payments should continue to be made to Federal agencies or made directly to the Treasury of the United States.

Federal agencies are expected to revise all program regulations which are inconsistent with the provisions of this Circular, except to the extent they are required by legislation or approved by OMB. All grants administration provisions of non-codified program manuals, handbooks, and other materials which are inconsistent with the provisions of this Circular will be revised, except to the extent they are required by legislation or approved by OMB.

James Murr,

Associate Director for Legislative Reference and Administration.

Office of Management and Budget

Circular No. A-110

Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

Uniform Administrative Requirements

To the Heads of Executive Departments and Agencies

Subject: Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

1. Purpose. This Circular sets forth standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations.

2. Authority. Circular A-110 is issued under the authority of 31 U.S.C. 1111, 31 U.S.C. 503, Reorganization Plan No. 2 of 1970, and Executive Order No. 11541.

3. Applicability and Scope. Except as provided herein, the standards set forth in this Circular are applicable to all Federal agencies. If any statute expressly prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the statute shall govern.

The provisions of the sections of this Circular shall be applied to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient if such subrecipients are organizations described in paragraph 1.

This Circular does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments covered by OMB Circular No. A-102, "Grants and Cooperative Agreements with State and Local Governments," and the Federal agencies' grants management common rule which standardized and codified the administrative requirements Federal agencies impose on State and local grantees, formerly in Circular No. A-102. In addition, subgrants to State or local governments are not covered by this Circular.

4. Requirements and Responsibilities. The specific requirements and responsibilities of Federal agencies and institutions of higher education, hospitals, and other non-profit organizations are set forth in the sections of this Circular. Federal agencies responsible for awarding and administering grants to and other agreements with organizations described in paragraph 1 shall implement the provisions of this Circular by adopting the text of the Circular unless different provisions are required by Federal statute or are approved by OMB.

5. Effective Date. The standards set forth in this Circular which affect Federal agencies will be effective 30 days after publication of the final revision in the **Federal Register**. Those standards which Federal agencies impose on grantees will be adopted by agencies in codified regulations within

six months after publication of the final revision in the Federal Register.

6. Policy Review. This Circular will have a policy review three years from date of issuance.

7. Inquiries. Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, Telephone (202) 395–3993.

Richard G. Darman,

Director.

Attachment

Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

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Subpart A—General

____.1 Purpose. This Part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in paragraph ____.5, or unless specifically required by Federal statute or executive order.

____.2 Definitions.

(a) *Award* means a legal instrument that provides financial assistance or provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; and, direct payments of any kind to individuals.

(b) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(c) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior fiscal years when permitted by law or agency regulations.

(d) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(e) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(f) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term does not include foreign or international organizations (such as agencies of the United Nations) and government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designed as federally-funded research and development centers.

(g) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

(h) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

(i) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement purchases, nor does it include any form of assistance which is excluded from the definition of "award" in this subpart.

____.3 Applicability. Except as provided in this Part, the standards set forth herein are applicable to all Federal agencies. If any statute expressly prescribes policies or specific requirements that differ from the standards provided in this Part, the provisions of the statute shall govern. This Part does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments covered by OMB Circular No. A–102 and the Federal agencies' grants management common rule which standardized and codified administrative requirements Federal agencies imposed on State and local grantees, formally in Circular No. A–102. In addition, subgrants to State or local governments are not covered by this Part.

____.4 Effect on other issuances. For awards subject to this Part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this Part are superseded, except to the extent they are required by statute, or authorized in accordance with the deviation provision in paragraph ____.5.

____.5 Deviations. The Office of Management and Budget (OMB) may grant exceptions from the requirements of this Part when exceptions are not prohibited by law. However, in the interest of maximum uniformity, exceptions from the requirements of this Part shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB.

____.6 Subawards. The provisions of this Part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations.

Subpart B—Pre-Award Requirements

____.10 Purpose. Subpart B prescribes forms and instructions to be used in applying for grants and other agreements.

____.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). Sections 6301–08, title 31, United States Code govern the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement."

(b) Advance Public Notice and Priority Setting.

(1) Agencies shall provide the public with an advance notice in the Federal Register, or by other appropriate means, of intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute. These priorities shall be approved by a policy level official.

(2) Whenever time permits, agencies shall provide the public an opportunity to comment on intended funding priorities.

(3) All discretionary grant awards in excess of $25,000 shall be reviewed by a policy level official for consistency with agency priorities.

____.12 Forms for applying for Federal assistance.

(a) Applicants shall use the SF–424 or those forms and instructions prescribed by the Federal awarding agency. Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR 1320.

(b) For Federal programs covered by Executive Order 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate section of the SF–424 indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(c) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

____.13 Debarment and suspension. Federal awarding agencies, recipients, and subrecipients shall comply with the nonprocurement common rule implementing Executive Order 12549, "Debarment and Suspension." In certain circumstances, the common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal nonprocurement programs or activities.

____.14 Special award conditions. If an applicant or recipient has a history of poor performance, is not financially stable, or has a management system that does not meet the standards prescribed in this Part, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: (a) why the additional requirements are being imposed, and (b) what corrective action is needed.

____.15 Metric system of measurement. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418), states a policy preference for the use of the metric system of measurement, except where the use of that system is impractical or likely to cause significant ineffectiveness in the accomplishments of federally-funded activities. Accordingly, it is national policy to encourage recipients of Federal awards to use the metric system of measurement in their federally-related activities. Recipients of Federal funds are encouraged to take similar appropriate actions to use the metric system of measurement.

____.16 Awards and adjustments. Agencies shall notify recipients immediately of any anticipated adjustments in the amount of a grant. This notice shall be provided as early as possible. Reductions in funding shall apply only to periods after notice is provided. Whenever an agency adjusts the amount of a grant, it shall also make an appropriate adjustment to the amount of any required cost sharing or matching.

Subpart C—Post-Award Requirements

____.20 Purpose of financial and program management. Paragraphs ____.21 through ____.29 prescribe standards for financial management systems, methods for making payments, rules for satisfying cost sharing and matching requirements, and procedures to be used in accounting for program income.

____.21 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subrecipients, and other payees; and, (3) other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of: (1) earnings during a given period from (i) services performed by the recipient, and (ii) goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are

made by the recipient or through the use of predetermined payment schedules.

(d) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(e) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(f) *In-kind contributions* means the value of non-cash contributions provided by the recipient and non-Federal third parties. Only when authorized by Federal legislation may property purchased with Federal funds be considered as the recipient's or a third party's in-kind contribution. In-kind contributions may be in the form of charges for real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(g) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(h) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(i) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(j) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the in-kind contributions made by the recipient or third parties in accomplishing the objectives of the award during the project period.

(k) *Reimbursement* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon request for reimbursement from the recipient.

(l) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient or subrecipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(m) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

____.22 Standards for financial management systems.

(a) Federal agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Federal awarding agencies are encouraged to make suggestions and assist recipients in establishing or improving financial management systems when such assistance is needed or requested.

(c) Recipients' financial management systems shall provide for:

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in paragraph ____.51. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally- sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, and income.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Procedures to minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipient, whenever funds are advanced by the Federal Government.

(6) Procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient has no or inadequate coverage and the bond is needed to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

____.23 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the U.S. Treasury and the disbursement by the recipients.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: (1) Procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and (2) financial management systems that meet the standards for fund control and accountability as established in paragraph ____.22.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient. Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer. Advance payment mechanisms are subject to the provisions of the "Intergovernmental Funds Transfer Procedures" (31 CFR 205).

(d) Requests for Treasury check advance payment shall be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in subparagraph (c) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project. When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(f) If a recipient cannot meet the criteria for advance payments and the awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements.

Treasury Circular 1075 authorizes the working capital advance basis. This is a procedure whereby funds are advanced to the recipient organization to cover its estimated disbursement needs for a given initial period. The working capital advance method of payment shall not be used by recipients if the reason for using such method is the unwillingness or inability of the recipient to provide timely advances to the subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income (when income is required to be deducted from total project costs), rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by law, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless: (1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements; or (2) the recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular No. A–129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows:

(1) Except for situations described in subparagraph (2), Federal awarding agencies shall neither require physical segregation of cash depositories for funds which are provided to a recipient nor establish any eligibility requirements for cash depositories for funds which are provided to a recipient.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for minority-owned business enterprises, recipients shall be encouraged to use women owned and minority-owned banks (a bank which is owned at least 50 percent by minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless the recipient receives total Federal advances under awards of less than $120,000 per year; or the best reasonably available interest bearing account which would not earn interest in excess of $250 per year on Federal cash balances or require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) Interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to the Federal awarding agencies that provide funding. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. Universities and hospitals that are entities of a State government shall comply with the provisions of the public law 101–453, the Cash Management Improvement Act of 1990, as it applies to interest.

(m) Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations during the funding period unless: (1) Carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the previous or subsequent funding period; or (2) pre-award costs were authorized by the Federal awarding agency.

(n) Except as noted elsewhere in this Part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement.

(i) Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(ii) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic funds transfers are not used.

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs.

(i) Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. A Federal awarding agency may, however, have the option of substituting the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

(ii) Recipients shall be authorized to submit requests for reimbursement at least monthly when electronic funds transfers are not used.

____.24 Cost sharing and matching.

(a) All contributions, including cash and in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

(1) Are verifiable from the recipient's records;

(2) Are not included as contributions for any other federally-assisted program;

(3) Are necessary and reasonable for proper and efficient accomplishment of project objectives;

(4) Are types of charges that are allowable under the applicable cost principles;

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching;

(6) Are provided for in the approved budget when required by the Federal agency; and

(7) Conform to other provisions of this Part, as applicable.

(b) Values for recipient in-kind contributions shall be established in accordance with the applicable cost principles. If a Federal award authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of:

(1) The certified value of the property recorded in the recipient's accounting records at the time of donation, or

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property even if it exceeds the certified value at the time of donation to the project.

(c) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, a reasonable amount of fringe benefits may be included in the valuation.

(d) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus a reasonable amount of fringe benefits, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(e) Donated supplies and other expendable property includes such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to supplies and other expendable personal property included in the cost or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(f) The method used for charging cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, as follows:

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching; or

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(g) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

____.25 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this paragraph in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Program income earned during the project period shall be retained by the recipient and, in accordance with agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in (1) through (3):

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives;

(2) Used to finance the non-Federal share of the project; or

(3) Deducted from the total project costs in determining the net costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in subparagraphs (b)(1) or (b)(2), program income in excess of any limits stipulated shall be used in accordance with subparagraph (b)(3).

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, subparagraph (b)(3) shall apply automatically to all programs except research. For awards that support research, subparagraph (b)(1) shall apply automatically.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property standards in paragraphs ____.33 and ____.36.

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, 35 U.S.C. chapter 18, "Patent Rights in Inventions Made with Federal Assistance," applies to inventions made under an experimental, developmental, or research award.

____.26 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to: (1) report deviations from budget and program plans, and (2) request approvals for budget and program plan revisions, in accordance with this paragraph.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for the following program or budget related reasons:

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior approval);

(2) Change in a key person specified in the application or award document;

(3) The absence for more than three months, or any substantial reduction in time devoted to the project, by the approved project director or principal investigator;

(4) The need for additional Federal funding;

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct cost, or vice versa, if approval is required by the awarding Federal agency;

(6) The inclusion, unless waived by the Federal agency, of costs that require prior approval in accordance with OMB Circular No. A-21, "Cost Principles for Institutions of Higher Education," or OMB Circular No. A-122, "Cost Principles for Non-Profit Organizations." No other approval requirements for specific items may be imposed unless a deviation has been approved by OMB;

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense; or

(8) The subaward, transfer or contracting out of any substantive programmatic work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) Except for requirements listed in subparagraphs (c)(1) and (c)(4), Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior approvals required by this Part and OMB Circulars Nos. A-21 and A-122. Such waivers may include authorization to:

(1) Incur pre-award costs up to 90 days prior to award at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs);

(2) Initiate a one-time extension of expiration date of the award up to 12 months provided: (A) the terms and conditions of award do not prohibit the extension, (B) the extension does not require additional Federal funds, (C) the extension does not involve any changes in the approved objectives or scope of the project, and (D) the recipient notifies the Federal awarding agency in writing with the supporting reasons at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances; or

(3) Carry forward unobligated balances to subsequent funding periods without prior Federal awarding agency approval.

(e) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(f) All other changes to nonconstruction budgets, except for the changes described in subparagraph (h), do not require prior approval.

(g) For construction awards, recipients shall request prior approval promptly from Federal awarding agencies for budget revisions whenever:

(1) The revision results from changes in the scope or the objective of the project or program,

(2) The need arises for additional Federal funds to complete the project, or

(3) A revision is desired which involves specific costs for which prior approval requirements may be imposed consistent with OMB Circulars Nos. A-21, "Cost Principles for Educational Institutions," or A-122, "Cost Principles for Non-Profit Organizations."

(4) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(h) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(i) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuing award.

(j) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(k) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

____.27 Non-Federal audits.

(a) Subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular No. A-133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

(b) State and local government recipients shall be subject to the audit requirements contained in the Single Audit Act of 1984 (31 U.S.C. 7501-7) and Federal awarding agency regulations implementing OMB Circular No. A-128, "Audits of State and Local Governments."

(c) Hospitals not covered by the audit provisions of OMB Circular No. A-133 shall be subject to the audit requirements of the Federal awarding agencies.

____.28 Allowable costs. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the organizations incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal government is determined in accordance with the provisions of OMB Circular No. A-87, "Cost Principles for

State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular No. A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular No. A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR Part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR), Part 31.

____.29 Carryover balances. Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations of the funding period unless: (1) carryover of unobligated balances is permitted, in which case the carryover balances may be charged for costs resulting from obligations of the previous funding period; or (2) pre-award costs were authorized by the awarding agency. When required by OMB, agencies shall gather data to identify to OMB the amounts of balances available for carryover into subsequent grant periods. This presentation shall detail the fiscal and programmatic (level of effort) impact in the following period.

____.30 Purpose of property standards. Paragraphs ____.30 through ____.39 set forth uniform standards governing management and disposition of property furnished by the Federal Government or whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal law. The recipient may use its own property management standards and procedures provided it observes the provisions of paragraphs ____.30 through ____.39.

____.31 Definitions.

(a) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(b) *Equipment* means tangible nonexpendable personal property having a useful life of more than one year and an acquisition cost of $5000 or more per unit. A recipient may use its own definition of equipment provided that such definition would at least include all equipment criteria defined in paragraph ____.36.

(c) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(d) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, and title to which is vested in the recipient without further obligation to the Federal Government, except as provided in paragraph ____.34. Such unconditional vesting of title is pursuant to any Federal legislation that provides the Federal awarding agency with adequate authority.

(e) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications (except for a subject invention, as the term is used in 37 CFR Part 401, "Rights to Inventions Made by Non-Profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements") and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(f) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(g) *Real property* means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

(h) *Supplies and other expendable personal property* means all tangible personal property other than equipment.

(i) *Suspension* means an action by a Federal awarding agency that temporarily suspends Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal agency. Suspension of an award is a separate action from suspension under agency regulations implementing E.O. 12549, "Debarment and Suspension."

(j) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

____.32 Insurance coverage. Recipients shall, at a minimum, provide the same insurance coverage as provided to other property owned by the recipient.

____.33 Real property. Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired partly or wholly under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed.

(b) The recipient shall obtain approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in subparagraphs (a) and (b), the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe the rules herein in the disposition instructions:

(1) The recipient may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the current fair market value of the property;

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return; or

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation computed by applying the recipient's percentage of participation in the cost of the program or project to the current fair market value of the property.

____.34 Federally-owned and exempt property.

(a) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(b) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration. Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(c) When statutory authority exists (e.g., 31 U.S.C. 6306, "Authority to Vest Title in Tangible Personal Property for Research"), title to nonexpendable personal property acquired with award funds, shall be vested in the recipient upon acquisition, unless it is determined that to do so is not in furtherance of the objectives of the Federal awarding agency. When title is vested in the recipient, the recipient shall have no other obligation or accountability to the Federal Government for its use or disposition, except as provided in subparagraph ____.36(e)(1)(iv).

____.35 Transfers of title or other interests in property to private parties. Notwithstanding any other provision of this Part, real property and assets subject to Executive Order 12803, "Infrastructure Privatization" (57 FR 19063, May 4, 1992), shall be transferred in accordance with the provisions of the Order.

____.36 Equipment.

(a) When equipment is acquired by a recipient with award funds, title shall not be taken by the Federal Government but shall vest in the recipient.

(b) The recipient shall use the property in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the property in connection with its other federally-sponsored activities, in the following order of priority: (i) activities sponsored by the Federal awarding agency which funded the original project, then (ii) activities sponsored by other Federal agencies.

(c) During the time that non-exempt equipment is held for use on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the property; second preference shall be given to projects or programs sponsored by other Federal agencies. If the property is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal agency. User charges shall be treated as program income.

(d) The recipient's property management standards for equipment and government-furnished property shall include the following procedural requirements:

(1) Property records shall be maintained accurately and shall include the following information:

(i) A description of the property;

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number;

(iii) Source of the property, including the award number;

(iv) Whether title vests in the recipient or the Federal Government;

(v) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost;

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the property (not applicable to property furnished by the Federal Government);

(vii) Location, use and condition of the property and the date the information was reported;

(viii) Unit acquisition cost;

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Property owned by the Federal Government shall be marked to indicate Federal ownership.

(3) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented; if the property was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(6) Where the recipient is authorized or required to sell the property, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(e) When the recipient no longer needs the property, the property may be used for other activities in accordance with the following standards:

(1) For equipment with a unit acquisition cost of $5000 or more, the recipient may retain the property for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the recipient has no need for the property and the property has further use value, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the property exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 days after the recipient's request and the following procedures shall govern:

(i) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the property and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in

the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(ii) If the recipient is instructed to ship the property elsewhere, the recipient shall be reimbursed by the benefiting Federal awarding agency an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(iii) If the recipient is instructed to otherwise dispose of the property, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(iv) For items of equipment, the Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards:

(A) The property shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(B) The Federal awarding agency shall issue disposition instructions within 120 calendar days after the end of the Federal support of the project for which it was acquired. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this paragraph, as appropriate.

(C) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

(D) When title is transferred either to the Federal Government or to a third party, the provisions of this paragraph shall be followed.

____.37 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual unused inventory of such property exceeding $5000 in total aggregate value upon termination or completion of the award, and the property is not needed for any other federally-sponsored project or program, the recipient shall retain the property for use on non-Federal sponsored activities or sell it, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as equipment.

(b) The recipient shall not use equipment acquired with Federal funds to provide services for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

____.38 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Non-Profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient, respectively. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not dispose of or encumber the intangible property and debt instruments. When no longer needed for the originally authorized purpose, disposition transfer of the intangible property shall occur in accordance with the provisions of subparagraph ____.36(e).

____.39 Property trust relationship. Real property, equipment, and intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

____.40 Purpose of procurement standards. Paragraphs ____.40 through ____.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal law and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order.

____.41 Recipient responsibilities. The standards contained in this paragraph do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurement entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of law are to be referred to such Federal, State or local authority as may have proper jurisdiction.

____.42 Codes of conduct. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection or in the award or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards governing when the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

____.43 Competition. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for his bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

____.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures that provide for, as a minimum, the following procedural requirements:

(1) Proposed procurement actions shall follow a procedure to avoid purchasing unnecessary or duplicative items. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical and practical procurement.

(2) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition. "Brand name or equal" descriptions may be used as a means to define the performance or other salient requirements of a procurement, and, when so used, the specific features of the named brand which shall be met by bidders or offerors shall be clearly specified.

(3) Whenever practicable, descriptions of technical requirements shall be stated in terms of functions to be performed or performance required, including the range of acceptable characteristics or of the minimum acceptable standards. Although not preferred, "brand name or equal" descriptions may be used as a means to define the performance or their salient requirements of a procurement. When so used, the specific features of the named brand that bidders or offerors are required to meet shall be clearly specified.

(4) To the extent practicable and economically feasible, products and services dimensioned in the metric system of measurement shall be accepted without prejudice, and acquisition planning shall consider metric requirements.

(5) Products and services acquired by recipients should be environmentally sound and energy efficient. To the extent practicable and economically feasible, recipients shall give preference to acquiring products and services that conserve natural resources and protect the environment.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises whenever possible. Recipients of Federal awards shall take the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises;

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises;

(4) Encourage contracting with consortiums of small businesses, minority-owned businesses, and women's business enterprises when a contract is too large for one of these firms to handle individually; and

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned business enterprises, and women's business enterprises.

(c) The type of procuring instruments used, e.g., fixed price contracts, cost reimbursable contracts, purchase orders, incentive contracts, shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O. 12549, Debarment and Suspension.

(e) Recipients shall, on request, make available for the Federal awarding agency pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions listed apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this subpart;

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product;

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

____.45 Cost and price analysis. Some form of price or cost analysis shall be made in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

____.46 Procurement records. Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

____.47 Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of

all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

____.48 Contract provisions. The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. These provisions shall also be applied to subcontracts:

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by law, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 C.F.R. 223, Surety Companies Doing Business with the United States.

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors or subrecipients shall comply with the provisions of Appendix A to this Part, as applicable.

____.50 Purpose of reports and records. Paragraphs ____.50 through ____.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and promulgates the necessary standard reporting forms. They also set forth record retention requirements.

____.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing the operations of activities carrying out awards and monitoring subaward activities. Recipient monitoring shall cover each program, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements of OMB Circular No. A-133, "Audits of Institutions of Higher Education and other Non-Profit Institutions," and Circular No. A-128, "Audits of State and Local Governments," as applicable.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in subparagraph ____.51 (f), performance reports shall not be required more frequently than quarterly or, generally, less frequently than annually.

(c) Where inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall contain, for each award, brief information on the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 C.F.R. Part 1320, "Controlling Paperwork Burdens on the Public," when requesting performance data from recipients.

____.52 Financial reporting.

(a) Only the following forms are authorized for obtaining financial information from recipients:

(1) SF-269 or 269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF-269 or 269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF-269 or 269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF-269 or 269A shall be required at the completion of the project when the SF-270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual

information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) Federal awarding agencies shall require recipients to submit the SF-269 or 269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients through electronic funds transfer, Federal awarding agencies shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances in excess of three days requirements in the hands of subrecipients. Recipients shall provide short narrative explanations of actions taken by the recipients to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 working days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF-272 when monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this paragraph or if, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances.

(b) When the Federal awarding agencies need additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in paragraph ____.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard.

(3) The Federal awarding agency in obtaining information, as provided in subparagraphs ____.52(b)(1) and ____.52(b)(2), shall comply with report clearance requirements of 5 C.F.R. Part 1320.

(c) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(d) Federal awarding agencies shall accept the identical information from the recipients in machine readable format or computer printouts in lieu of prescribed formats.

(e) Federal awarding agencies may provide computer outputs to recipients when it expedites or contributes to the accuracy of reporting.

____.53 Retention and access requirements for records.

(a) This paragraph sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients and subrecipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are as follows:

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal agency, the 3-year retention requirement is not applicable to the recipient.

(c) Copies of original records may be substituted for the original records if authorized by the Federal agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long-term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, including the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by law, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal agency.

____.60 Purpose of termination and enforcement. Paragraphs ____.60 and ____.61 set forth uniform suspension and termination procedures for awards to recipients and subrecipients.

____.61 Termination and enforcement.

(a) Federal awarding agencies shall provide procedures to be followed when a recipient has failed to comply with the terms and conditions of an award. When that occurs, the Federal awarding agency may, on reasonable notice to the recipient, suspend the award, withhold

further payments, or prohibit the recipient from incurring additional obligations of funds, pending corrective action by the recipient, or a decision to terminate. The Federal awarding agency shall allow all necessary and proper costs that the recipient could not reasonably avoid during the period of suspension, provided that the costs meet the provisions of the applicable Federal cost principles.

(b) Federal awarding agencies shall provide for the systematic settlement of terminated awards including the following:

(1) The Federal awarding agency may terminate any award in whole or in part at any time before the date of completion, whenever it is determined that the recipient has failed to comply with the terms and conditions of an award. The Federal awarding agency shall promptly notify the recipient in writing of the determination and the reasons for the termination together with the effective date. Payments made to recipients or recoveries by Federal awarding agencies under awards so terminated shall be in accordance with the legal rights and liabilities of the parties.

(2) The Federal awarding agency or recipient may terminate awards in whole or in part when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in the case of a partial termination, the portion to be terminated. However, if the awarding agency determines in the case of a partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, it may terminate the award in its entirety under either subparagraphs ____.61 (b)(1) or ____.61 (b)(2). The recipient shall not incur new obligations for the terminated portion after the effective date and shall cancel as many outstanding obligations as possible. The Federal awarding agency shall allow full credit to the recipient for the Federal share of the noncancellable obligations, properly incurred by the recipient prior to termination.

(3) If costs are allowed under an award, the responsibilities of the recipient referred to in paragraph ____.72, including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

Subpart D—After Award Requirements

____.70 Purpose. Paragraphs ____.70 through ____.74 contain closeout procedures and other procedures for subsequent disallowments and adjustments.

____.71 Definitions.

(a) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal agency.

(b) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(c) *Disallowed* costs means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

____.72 Closeout procedures.

(a) The Federal awarding agency shall obtain from the recipient within 90 calendar days after the date of completion of the award all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may grant extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 days after the funding period or the date of completion as specified in the award or in agency regulations.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular No. A–129, "Managing Federal Credit Programs," governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after these reports are received.

(f) The recipient shall account for any property acquired with Federal funds or received from the Federal Government in accordance with paragraphs ____.30 to ____.39.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

____.73 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect:

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review;

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions;

(3) Audit requirements in paragraph ____.27;

(4) Property management requirements in paragraphs ____.332–39;

(5) Records retention as required in paragraph ____.53;

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in subparagraph ____.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

____.74 Collections of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements,

(2) Withholding advance payments otherwise due to the recipient, or

(3) Taking other action permitted by law.

(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency shall charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (4 CFR Ch. II).

Appendix A—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by Department of Labor regulations (41 CFR part 60).

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Invention Made by Non-Profit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Anti-Lobbying (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file a certification with the recipient stating that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Such contractors shall also disclose any lobbying that takes place in connection with obtaining any Federal award.

8. *Debarment and Suspension (E.O. 12549)*—No contracts shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with Executive Order 12549, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 18 and 75

Electric Motor-Driven Mine Equipment and Accessories and High-Voltage Longwall Equipment Standards for Underground Coal Mines; Proposed Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 18

Electric Motor-Driven Mine Equipment and Accessories; High-Voltage Longwalls

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule would address the Mine Safety and Health Administration's (MSHA) approval requirements for electric motor-driven mine equipment and accessories. Specifically, the proposal would add approval requirements in 30 CFR part 18 for high-voltage electrical equipment operated in longwall faces areas of underground mines. These additional requirements would update the existing part 18 provisions consistent with advances in mining technology and would reduce paperwork requirements where possible.

DATES: All comments and information should be submitted by October 26, 1992.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

Manufacturers seeking approval for longwall equipment would continue to be required to submit applications for approval including related drawings, drawing lists, specifications, wiring diagrams, and descriptions. However, the paperwork burden for this application process is included in existing § 18.6 which is approved under OMB control number 1219-0066.

II. Background

The Mine Safety and Health Administration (MSHA) is proposing to revise its existing part 18 electric motor-driven mine equipment and accessories approval requirements by adding specific requirements for high-voltage longwall equipment in underground mines. These revisions are proposed pursuant to section 508 of the Federal Mine Safety and Health Act of 1977, (30 U.S.C. 957).

This high-voltage longwall approval proposal is being published in conjunction with proposed part 75 safety standards regarding high-voltage longwall equipment. Some elements of both proposals were contained in electrical proposal for part 75 which was published on December 4, 1989 (54 FR 50062). The new part 75 proposal would provide maintenance, installation, and use requirements for high-voltage longwalls in underground coal mines. The new part 18 proposal would provide for additional high-voltage specifications that must be met in order for the manufacturer to obtain MSHA approval of high-voltage longwall equipment.

III. Discussion of Proposed Rule

A. General Discussion

The design of safe high-voltage electric equipment has improved dramatically in recent years. It is practical to build a high-voltage longwall system that is both efficient and safe. This proposal would provide improved design requirements for longwall equipment in part 18 consistent with existing requirements in part 18. The safety criteria supporting this proposal are based on research conducted over the past 18 years.

In 1974, the Mining Enforcement and Safety Administration (MESA) received a request for approval of a tunnel boring machine incorporating a 7200/480 volt transformer. At that time, the Agency was concerned that the explosion-proof enclosure housing the transformer would not withstand the internal pressure generated by a short circuit phase-to-phase fault. Tests designed to determine if the enclosure would maintain its integrity during a short circuit fault were conducted on the enclosure at the Westinghouse High Power Laboratory. During one of the tests, the enclosure lid sustained a permanent distortion of approximately three inches and fire was observed coming from the joint between the lid and the case. Testing was repeated with a new enclosure lid. Five bolts on a side cover plate broke and the plate sustained a permanent distortion.

In 1976, tests were conducted on a redesignated transformer enclosure with current-limiting fuses incorporated to limit the energy during a fault. The enclosure contained the fault with no detectable distortion.

Under the provisions of 30 CFR 18.82, an experimental permit incorporating conditions of use was issued after successful completion of further tests. One of the conditions of use required current-limiting fuses in each phase of the circuit supplying power to the enclosure housing the high voltage transformer.

Several years later the Department of Energy issued a contract to evaluate high-voltage permissible load centers. The responsibility of the research was later transferred to the U.S. Bureau of Mines (BOM). There were four major phases of the program: (1) A comprehensive industry survey, literature search and state-of-the-art review; (2) development of a high energy arc testing program; (3) development of a recommended permissible loadcenter approval criteria; and (4) design, construction and testing of a high-voltage permissible loadcenter.

Under a BOM research contract, a test program was conducted to evaluate the pressure rise caused by a high-energy fault with and without a simultaneous methane-air explosion inside an enclosure. Based upon this research, a recommended set of criteria for approval of high-voltage permissible loadcenters was developed.

MSHA concluded that several refinements were needed to the recommended approval criteria. MSHA also decided that the criteria should be expanded to include design and testing requirements used in evaluating equipment that contain on-board high-voltage switchgear. The work carried out in these contracts lasted from about 1980 to 1986.

Near the completion time of this research, MSHA evaluated equipment incorporating on-board switching of high-voltage circuits. Based on the completed research and the use of vacuum contactors, this equipment was granted experimental permits under § 18.82 for an initial period of 6 months.

The first MSHA experimental permit for high-voltage on-board switching was granted for a 2400 volt longwall system in July, 1985. Ten additional 2400 volt longwall systems and two 4160 volt continuous (boring) miners received permits enabling operation of on-board switching. The longwall systems were located in underground mines; the continuous miners were in trona mines. MSHA conducted follow-up inspections on five high-voltage machines and systems operating under experimental permits as a part of its internal research relating to explosion-proof enclosures which contain high-voltage switching. Based upon these experiences, comments and input obtained from the mining community, experimental work at the Canadian Explosive Atmospheres Laboratory and the BOM, and MSHA engineering reports, MSHA developed an approval criteria for high-voltage equipment incorporating on-board switching of high-voltage circuitry.

The developed criteria was applied to high-voltage longwalls through § 18.47(d)(8) which provides for recognition of improved technology. Using these criteria, MSHA has issued more than 40 approvals to permissible equipment incorporating on-board switching of high-voltage circuitry. These approvals include the conversion of the experimental permits that were issued originally to approvals. MSHA is proposing in this rulemaking action to revise part 18 to incorporate these criteria.

This proposal addresses only those areas where MSHA believes specific additions to part 18 are necessary for the approval of high voltage longwalls. Where the existing requirements of part 18 can address this equipment, those sections have not been modified. Examples of these types of requirements are for the general construction requirements of the enclosures and the short circuit and overload protection to be provided. The overload and short circuit protective device settings, while not specifically identified in the present requirements would continue to be evaluated as to their adequacy as has been done under the present policy.

The main concerns addressed in this proposal can be summarized into four areas: (1) Prevention of a high-voltage arc from occurring; (2) prevention of the resulting heat or flame from igniting a methane-air mixture surrounding the machine, if an arc or methane explosion occurred; (3) prevention of enclosure failure from an increased pressure rise, if an arc or methane explosion occurred within the explosion-proof enclosure; and (4) personnel protection for miners working in or around the high-voltage equipment. The proposal would address these concerns as discussed in the following section-by-section discussion.

B. Section-By-Section Discussion

Section 18.53 High-Voltage Longwall Mining Systems (Nameplate Ratings From 1001 Volts Through 4160 Volts)

Paragraph (a) would require the separation of compartments containing low and medium voltage circuits from those with high voltage circuits in each motor starter enclosure by location, partitions or barriers. Barriers and partitions would be specified to be constructed of grounded metal or non-conductive insulating board. The separation of high voltage circuits from low and medium voltage circuits should prevent inadvertent contact with high voltage conductors by personnel during trouble shooting of low and medium voltage circuits.

Compliance with this section would result in the components within each enclosure being segregated into separate compartments by the classification of their function. The installation of the barriers and partitions would provide for the separation of components in each motor-starter enclosure within a control and communication, motor contractor, or disconnect device compartment. Since complete separation of voltage classifications is not possible with barriers or partitions where both high and medium or low voltage circuits are connected to a component or device, that component would be located in the motor contractor or disconnect device compartment. The low or medium voltage circuits used to operate or monitor components or devices located in the motor contractor or disconnect device compartment would be separated as much as possible by routing and location within these enclosures.

Paragraph (b) would require cover interlocks to be installed on the cover of any compartment containing high-voltage components of a motor starter enclosure. These interlock switches would assure that personnel entering enclosures would be protected from accidental contact with energized circuits should the wrong circuit be disconnected. This paragraph would further specify that a minimum of two interlocks per cover be required if switches of the plunger-operated type are used to meet this requirement. These two switches, which rely on movement of a shaft to operate, would be required to be wired into the circuitry so that operation of either switch would deenergize the high voltage circuits. This provision would be consistent with existing MSHA policy that has required the installation of a second switch as a back-up on the high voltage longwalls that have been approved using plunger-operated switches for cover interlocks. This policy is based on MSHA's experience in follow-up inspections of high voltage equipment operating under experimental permits with plunger-operated switches. These inspections have shown that this type of switch may stick and not operate effectively after exposure to the mine environment. The Agency believes that a second switch coupled with required maintenance would provide the necessary protection to ensure that the high-voltage circuits are deenergized whenever a cover is removed.

Paragraph (c) would stipulate that circuit interrupting devices be designed and installed to prevent automatic reclosure. Automatic reclosing of circuit breakers has the potential of placing personnel in hazardous situations due to unanticipated reenergization of the circuit.

Paragraph (d) would specify that control transformers have electrostatic (Faraday) shielding, grounded by at least a #12 AWG grounding conductor, incorporated between the primary and secondary windings. The Faraday shielding provides electrical isolation between the high voltage primary and low voltage secondary windings of these transformers. Faraday shielding of control transformers assures that transients occurring on the primary circuit are not transferred to the secondary circuit.

Paragraph (d) would also provide for the secondary nominal voltage of the control transformer to be no more than 120 volts, line-to-line. This provision is consistent with the existing policy interpretation of part 18 control voltage limitations under § 18.47.

Paragraph (e) would require test circuits to be provided to verify the integrity and proper operation of the ground wire monitors and ground fault protective devices. Providing test circuits for ground wire monitors and ground fault circuits would assure that the protective devices in these circuits could be tested frequently in a manner that minimizes the personnel hazards of conducting the tests. Providing these test circuits incorporated in the longwall circuitry would eliminate the need to test these protective devices by other means that could place personnel in close proximity to exposed energized conductors.

Paragraph (f) would require each longwall motor starter enclosure, with the exception of a controller on a shearer, to be equipped with a disconnect device (isolator switch). Opening of the device would deenergize all high voltage power conductors extending from the enclosure, except the conductors supplying power to the enclosure.

Paragraph (f)(1) would specify that a single handle provide for simultaneous operation through a mechanical connection of multiple switches located within an enclosure. The simultaneous operation of multiple switches by the use of a single handle would ensure that all high voltage conductors within the enclosure are deenergized. This arrangement would ensure that personnel entering enclosures would be protected from accidental contact with energized circuits in the event the wrong circuit was disconnected.

Paragraph (f)(2) would further define the requirements of a disconnect device. The switch would be required to be rated for the maximum phase-to-phase voltage of the circuit in which it is installed. The ability to verify, by visual observation, whether the switch's contacts are opened would also be required. This verification would be required to be achievable without the removal of any enclosure cover. The removal of an enclosure cover to verify opening of the contacts would present the increased possibility of personnel exposure to energized high voltage components.

Also included under this paragraph would be the requirements that all load-side power conductors be grounded and the device be provided with a means to be locked when the device is in the "open" position. These requirements would guard against the hazard of maintenance personnel being exposed to high voltage energized parts due to residual voltage or inadvertent energization of the circuit.

The final requirements of this paragraph address the interrupting capability of the disconnect device. When the device is installed in an explosion-proof enclosure, the device would be required to be designed and installed to cause the current to be interrupted automatically prior to the opening of the device. This would address the concern of preventing failure of an explosion-proof enclosure from an increased pressure rise, if an arc or methane explosion occurred within the explosion-proof enclosure. When the enclosure is not explosion-proof, as in outby switching, the device would be required to either be installed in the circuit so that the circuit is automatically interrupting prior to the opening of the device or the device would be required to be capable of interrupting the full-load current of the circuit.

Paragraph (g) would address the interlocking of the disconnect device. The proposed interlocking would prevent the control circuit for the high voltage motor starters from being energized when the disconnect device is open except through an auxiliary switch with the load power conductors of the high voltage circuit in the grounded position. A further requirement would be that the disconnect device cannot be closed without deenergizing the incoming high-voltage circuit unless the auxiliary switch is in the normal operating position. These interlocking requirements would increase the probability that the high voltage circuits will be isolated and deenergized prior to performing testing and troubleshooting on the low and medium voltage circuits.

Paragraph (h) would clarify that the electrical protection is to be set at an appropriate value to provide protection for the size and length of the longwall motor and shearer cable used, based on the available fault current. Existing part 18 includes trailing cable length restrictions as specified in Table 9, Appendix 1 that have, in the past, been used as guidance in evaluating cables on longwalls rated at less than 1000 volts. These length restrictions do not apply to longwall motor and shearer cables. The procedures used in evaluating high voltage longwalls include a review of the study submitted by the applicant to determine the minimum expected short circuit currents available for the electrical system at the projected installation.

Paragraph (i) would require all longwall motor and shearer cables with nominal voltages greater than 660 volts to be of a shielded construction with a grounded metallic shield around each power conductor. The use of these cables is very similar to that of trailing cables on all permissible equipment. This proposal would parallel the existing part 18 requirements for trailing cables, except for the present option that allows the use of a shielded construction with a grounded metallic shield around the entire assembly. The incorporation of the grounded shield around each power conductor provides added personnel protection against shock and electrocution hazards because any cable faults would cause phase-to-ground short circuit currents to flow. An extra level of protection is achieved since the phase-to-ground short circuit currents, unlike the phase-to-phase short circuit currents that may flow from faults in other cable constructions, are limited in magnitude by the grounding circuit components.

Paragraph (j) would specify that high-voltage motor and shearer circuits are to be provided with instantaneous ground-fault protection set at not more than 0.125 amperes. The current transformers (CT) used for ground-fault protection shall be of the single window type and installed to encircle all three power conductors. The 0.125 ampere setting for the ground fault protection would provide a level of protection that guards against shock and electrocution hazards. Although the fault has been shunted to ground potential, the possibility would still exist for touch potentials to be present on frames of faulted equipment. This potential could be due to system impedances that include, but are not limited to, contact resistance, and conductor impedances.

The use of the single window type current transformer encircling all three power conductors is the most reliable method for detection of ground faults in mine power systems. This type of relaying (zero-sequence) is not affected by CT error and gives very sensitive tripping. This scheme is widely used in mining at all voltages. Requiring all three phase conductors to be encircled by the CT would prohibit the equipment safety grounding conductors from passing through or being connected in series with the CT. If the safety grounding conductor passed through or was connected in series with the CT, it would be possible for the fault currents to flow through parallel paths, thereby reducing the reliability of the ground fault protection.

Paragraph (k) would require safeguards against corona to be provided on all 4160 volt circuits in explosion-proof enclosures. One danger inherent with high-voltage equipment is that excessive electrical stress can cause premature breakdown of insulating materials. The BOM and MSHA research has resulted in the determination that corona does not present a problem on 2400 volt systems, but may effect 4160 volt systems. Adequately and properly prepared corona protection minimizes the stresses placed on insulation and acts to reduce stress related insulation failures.

Paragraph (l) would require a means of safely limiting the maximum explosion pressure rise within an enclosure to 0.83 times the design pressure for any explosion-proof enclosure containing high-voltage switchgear. This proposed requirement is based on BOM and MSHA research on effects of high-voltage arcing in explosion-proof enclosures. This research concluded that the effects of a sustained high-voltage-arcing fault significantly contributes to the pressure rise created in an explosion-proof enclosure during an internal methane-air explosion. This potential increased pressure rise can be safely addressed through a combination of designing the enclosure for the increased pressure and providing electrical protective devices set to deenergize the incoming circuit before the pressure rise resulting from the arcing fault becomes excessive. The proposal would require the maximum explosion pressure rise to be limited to a value that can be safely contained within the explosion-proof enclosure (83% of the design pressure) with performance-oriented language to permit compliance through any achievable means. Protective methods that have been used in the previously issued approvals and experimental permits consisted of electrical devices with rapid clearing times, however, the proposal would permit alternative methods that may provide equal protection, such as pressure switches or special pressure release devices.

Paragraph (m) would specify that high-voltage electrical components located in high-voltage explosion-proof enclosures are not to be coplanar with a single-plane flame-arresting path. This protective measure would further prevent the heat or flame from an arc or methane explosion in an explosion-proof enclosure from igniting a methane-air mixture surrounding the enclosure. This requirement would address the possibility of particles of conductor material being expelled from the enclosure through the flame-arresting path. Particles of molten material are emitted from the conductors whenever a short-circuit occurs between electrodes. Expulsion of these particles from the enclosure can occur if their source is in the same plane as the flame-arresting path, and a pressure rise coincides with the short circuit. Once these particles are expelled from the explosion-proof enclosure, they can ignite an explosive atmosphere should one be present. This possibility does not arise with multi-plane flame-arresting path surfaces since a deflection in the path would prevent ignitions by expelled particles.

Paragraph (n) would address MSHA's concern with the decomposition of insulating materials due to tracking. Tracking can allow a normally undetectable level of current to flow in and across the surface layer of the insulation. Using insulation with an adequate comparative tracking index (CTI) rating can prevent tracking. Proposed paragraph (n) would require rigid insulation between high-voltage terminals or between high-voltage terminals and ground to be designed with creepage distances in accordance with the table included in this section. The required creepage distances would be determined based upon the phase-to-phase voltage to be addressed and the CTI of the insulation to be used. Creepage distance is based in part on the CTI of the electrical insulating material. An appropriate method of determining the CTI of the electrical insulating material is described in the American Society for Testing and Materials Standard, ASTM D3638–85 "Standard Test Method For Comparative Tracking Index of Electrical Insulating Materials". The MSHA derived creepage distances contained in the table are consistent with most commercially available high voltage components to which this provision would apply.

Paragraph (o) addresses a requirement for Minimum Free Distance (MFD) within an explosion proof motor-starter enclosure. An MSHA technical investigation determined that, if phase-to-phase arcing occurred, there may be adequate arc energy to heat the walls of the enclosure beyond the safe working temperature. Distances between the wall or cover of an enclosure and uninsulated electrical conductors inside the enclosure were established to prevent wall or cover damage due to phase-to-phase arcing.

Paragraph (p) would require a static pressure test to be performed on each prototype design of explosion-proof enclosure housing high-voltage switchgear prior to explosion tests. The manufacturer would also be required to use this test as a routine test on every explosion-proof enclosure housing high-voltage switchgear, at the time of manufacture, or follow an MSHA accepted quality assurance procedure covering welding and inspection of the enclosure.

The test procedure would specify that the enclosure be internally pressurized to a pressure no less than the design pressure, with the pressure maintained for a minimum of 10 seconds. Following the pressure hold, the pressure would be removed and the pressurizing agent removed from the enclosure.

The criteria upon which acceptable performance is to be based would also be provided in this paragraph. Acceptable performance would be achieved if the enclosure, during pressurization, does not exhibit leakage through welds or casting or rupture of any part that affects the explosion-proof integrity of the enclosure. Further, the enclosure following removal of the pressurizing agents would be required to not exhibit visible cracks in welds, permanent deformation exceeding 0.040 inches per linear foot, or excessive clearances along flame-arresting paths following retightening of fastenings, as necessary. The occurrence of any of the above conditions would constitute unacceptable performance.

MSHA is concerned about the specified design pressure of an enclosure. Presently, an enclosure that is designed for 150 psig is tested with a methane explosion. Normally, these pressures do not exceed 100 psi. Since the protective method to prevent overpressurization in these enclosures would be directly related to the design pressure, MSHA has developed the static pressure test with its acceptable performance criteria to insure each enclosure design would be capable of withstanding its design pressure. By requiring static pressure testing on each enclosure prototype, MSHA believes that the adequacy of the enclosures' design would be verified. Additionally, requiring either subsequent static pressure testing on each enclosure manufactured or an acceptable quality assurance program guarantees the integrity of later manufactured units.

IV. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a Regulatory Impact Analysis (RIA) be performed for any rule that would have a $100 million or more annual effect on the economy or a major increase in costs or prices for consumers or individual industries. The Assistant Secretary has determined that this proposed rule would not result in these effects. In order to justify this determination, MSHA has provided a preliminary RIA (PRIA) which determines the cost impact of requirements in proposed parts 75 and 18. In its PRIA the agency states that since the proposed rule for part 18 is based on existing § 18.47(d)(6), and as manufacturers are already in compliance with this requirement, there would be no compliance costs associated with this part 18 proposal. The PRIA is available for MSHA upon request.

Under the Regulatory Flexibility Act of 1980, MSHA is required to analyze the impact of the proposed rule upon small mining operations. There would be no economic impact upon small mining operations since no small mines operate longwall equipment and since no compliance costs are associated with proposed part 18.

V. Metric Measurements

In accordance with section 5164 of the Omnibus Trade and Competitiveness Act of 1988, MSHA at some time in the future, intends to begin to provide both metric and English specifications in rules. Such an approach should assist industry in converting to metric measurements where appropriate. However, current applications under part 18 can be and are submitted with metric measurements. MSHA is considering the development of metric equivalents for high-voltage longwall systems that would be incorporated during the development of a separate metric approval schedule. MSHA requests comments on the availability of metric equipment and supplies and

metric nominal safety equivalences of the English inch-pound measurements in this proposed rule.

List of Subjects in 30 CFR Part 18

Approval regulations, Electric motor-driven mine equipment and accessories, Mine safety and health.

Dated: August 20, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, subpart B of part 18, chapter I, title 30 of the Code of Federal Regulations is proposed to be amended as follows:

PART 18—ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES

1. The authority citation for part 18 continues to read as follows:

Authority: U.S.C. 957 and 961.

2. A new § 18.53 is added to part 18 to read as follows:

§ 18.53 High-voltage longwall mining systems.

(a) Each disconnect device compartment, control communications compartment, and motor contactor compartment, shall be separated by location, barriers, or partitions to prevent exposure of personnel to energized high-voltage conductors or parts. Barriers or partitions shall be constructed of grounded metal or non-conductive insulating board.

(b) Each cover of a compartment in the high-voltage motor-starter enclosure containing high-voltage components shall be equipped with interlock switches arranged to automatically deenergize the high-voltage components within that compartment when the cover is removed. When the switches are of the plunger-operated type a minimum of two per cover shall be used and installed so that operation of either will deenergize the high-voltage circuits.

(c) Circuit interrupting devices shall be designed and installed to prevent automatic reclosure.

(d) Transformers with high-voltage primary windings that supply control voltages shall incorporate grounded electrostatic (Faraday) shielding between the primary and secondary windings. The shielding shall be connected to equipment ground by a minimum No. 12 AWG grounding conductor. The secondary nominal voltage shall not exceed 120 volts line to line.

(e) Test circuits shall be provided for checking the condition of ground wire monitors and ground-phase protection without exposing personnel to energized circuits.

(f) Each motor-starter enclosure, with the exception of a controller on a shearer, shall be equipped with a disconnect device (isolator switch) installed to deenergize all high-voltage power conductors extending from the enclosure when the device is in the "open" position.

(1) When multiple switches located in the same enclosure are used to satisfy the above requirement they shall be mechanically connected to provide simultaneous operation by one handle.

(2) The disconnect device shall be rated for the maximum phase-to-phase voltage and the full load current of the circuit in which it is located, and installed so that—

(i) It can be determined by visual observation that the contacts are open without removing any cover;

(ii) The load-side power conductors are grounded when the device is in the "open" position;

(iii) The device can be locked in the "open" position;

(iv) When located in an explosion-proof enclosure, the device shall be designed and installed to cause the current to be interrupted automatically prior to the opening of the contacts; and

(v) When located in a non-explosion-proof enclosure, the device shall be designed and installed to cause the current to be interrupted automatically prior to the opening of the device or is capable of interrupting the full-load current of the circuit.

(g) Control circuits for the high-voltage motor starters shall be interlocked with the disconnect device so that—

(1) The control circuit can be powered through an auxiliary switch in the test position only when the disconnect device is in the open and grounded position; and

(2) Neither the main circuit interrupting device, nor the disconnect device can be closed without deenergizing the incoming high-voltage circuit unless the auxiliary switch is in the normal operating position.

(h) A study to determine the minimum available fault current shall be submitted for use to ensure adequate protection for the length and conductor size of the longwall motor and shearer cables.

(i) Longwall motor and shearer cables with nominal voltages greater than 660 volts shall be of a shielded construction with a grounded metallic shield around each power conductor.

(j) High-voltage motor and shearer circuits shall be provided with instantaneous ground-fault protection set at not more than 0.125 amperes. Current transformers used for this protection shall be of the single-window type and shall be installed to encircle all three phase conductors.

(k) Safeguards against corona shall be provided on all 4160 voltage circuits in explosion-proof enclosures.

(l) The maximum pressure rise within an explosion-proof enclosure containing high-voltage switchgear shall be limited to .83 times the design pressure.

(m) High-voltage electrical components located in high-voltage explosion-proof enclosures shall not be coplanar with a single plane flame-arresting path.

(n) Rigid insulation between high-voltage terminals or high-voltage terminals and ground shall be designed with creepage distances in accordance with the following table:

MINIMUM CREEPAGE DISTANCES

Phase-to-phase voltage	Points of measure	Minimum creepage distances (inches) for CTI range*			
		CTI≧500	380≦CTI<500	175≦CTI<380	CTI<175
2,400	0–0	1.50	1.95	2.40	2.90
	0–G	1.00	1.25	1.55	1.85
4,160	0–0	2.40	3.15	3.90	4.65
	0–G	1.50	1.95	2.40	2.90

*Assumes that all insulation is rated for the applied voltage or higher.

(o) Explosion-proof motor-starter enclosures shall be designed to establish the minimum free distance (MFD) in accordance with the following table:

HIGH-VOLTAGE MINIMUM FREE DISTANCES (MFD)

Wall/cover thickness (in)	Steel MFD (in)		Aluminum MFD (in)	
	A	B	A	B
¼	2.8	5.8	—	—
⅜	1.6	3.9	8.6	16.1
½	*1.2	2.7	6.5	13.0
⅝	*.9	2.1	5.1	10.4
¾	*.6	1.6	4.1	8.6
1	(*)	*1.0	2.9	6.2

*The minimum electrical clearances must still be maintained.

Column A specifies the MFD for enclosures that have available 3 phase bolted short circuit currents of 10,000 amperes rms or less.

Column B specifies the MFD for enclosures that have a maximum available 3 phase bolted short circuit currents greater than 10,000 and less than or equal to 20,000 amperes rms.

The minimum free distance shown in the above table shall be increased by 1.5 inches for 4160 volt systems and 0.7 inches for 2400 volt systems when the adjacent wall area is the top of the enclosure. If a steel shield is mounted in conjunction with an aluminum wall or cover, the thickness of the steel shield is used to determine the minimum free distances.

(p) The following static pressure test shall be performed on each prototype design of explosion-proof enclosure housing high-voltage switchgear prior to the explosion tests. The static pressure test shall also be performed on every explosion-proof enclosure housing high-voltage switchgear, at the time of manufacture, unless the manufacturer uses an MSHA accepted quality assurance procedure covering welding and inspection of the enclosure.

(1) *Test procedure.* (i) The enclosure shall be internally pressurized to a minimum of the design pressure, maintaining the pressure for a minimum of 10 seconds.

(ii) Following the pressure hold, the pressure shall be removed and the pressurizing agent removed from the enclosure.

(2) *Acceptable performance.* (i) The enclosure during pressurization shall not exhibit—

(A) Leakage through welds or casting; or

(B) Rupture of any part that affects the explosion-proof integrity of the enclosure.

(ii) The enclosure following removal of the pressurizing agents shall not exhibit—

(A) Visible cracks in welds;

(B) Permanent deformation exceeding 0.040 inches per linear foot; or

(C) Excessive clearances along flame-arresting paths following retightening of fastenings, as necessary.

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DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

RIN 1219-AA75

High-Voltage Longwall Equipment Standards for Underground Coal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposed rule addresses the Mine Safety and Health Administration's (MSHA) safety standards that are applicable to high-voltage longwall equipment. The proposal would allow the use of high-voltage electrical equipment in longwall face areas of underground coal mines and would set out electrical safety standards, in addition to those already contained in 30 CFR, for the use of this equipment. The proposed revisions would upgrade existing provisions consistent with advances in mining technology and reduce paperwork requirements where possible.

DATES: All comments and information should be submitted by October 26, 1992.

ADDRESSES: Send comments to Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains an information collection requirement in § 75.821(d). This paperwork requirement has been submitted to the Office of Management and Budget (OMB) for review under section 3504(d) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511. Comments on the proposed paperwork provision should be sent directly to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for MSHA (see address at the end of this discussion). The respondents in the paperwork provision would be mine operators. The following public burden hour estimation includes the time for examination and testing of equipment, and completing and reviewing the collection information. In this instance, the resultant information collection would be used by MSHA to assess compliance with the proposed requirement. The information collection requirement contained in the proposal is discussed below.

Section 75.821(d) would require persons who perform weekly examinations and tests to certify by signature and date that they have been conducted. A record would be required of any unsafe condition found and any corrective action taken. Certifications and records would be required to be kept for at least one year and made available at the mine for inspection by authorized representatives of the Secretary and representatives of miners at the mine.

Currently, each piece of equipment is required to be examined and tested on a weekly basis and the results are required to be recorded regardless of the findings of the examiner. Proposed § 75.821(d) would continue to require weekly examination and testing. However, records would be required only when an unsafe condition is found. MSHA estimates that the average time required to document the results of weekly examinations and tests on high voltage longwall equipment would decrease from 30 to 10 minutes. Thus, the per mine reporting burden would be reduced by 20 minutes a week for 50 weeks (about 17 hours per year), and the total reduction would be 680 hours.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, Room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203, and to the Office of Information and Regulatory Affairs of OMB, Attention: Steve Semenuk; Desk Officer for the Mine Safety and Health Administration.

II. Background

The Mine Safety and Health Administration (MSHA) is proposing to revise its existing safety standards for high-voltage longwall equipment in underground coal mines. These revisions are proposed pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 811). This proposed rule is being published in conjunction with proposed revisions to 30 CFR part 18.

On December 4, 1989 (54 FR 50062), a proposed rule was published in the **Federal Register** that contained within it the essential elements of this proposed rule. It would have allowed the use of high-voltage electricity in longwall face areas and would have eliminated the need for operators to seek petitions for modification of 30 CFR 75.1002 when they wished to use high-voltage cable to supply their longwall mining operations. Since this proposed rule specifically focuses on the safety issues related to use of high-voltage with longwall mining systems and is not incorporated within the context of an overall revision to the electrical safety standards, the Agency believes that a new proposed rule, as opposed to final promulgation of the previously proposed safety standards, is appropriate. Comments from interested parties concerning the 1989 proposal and this proposal will be considered following the comment period for this proposal.

Agency experience with responding to objections to the granting of some high-voltage longwall petitions indicates that some commenters will be of the view that safety standards addressing high-voltage longwalls should also include precautions for methane and dust control, the location of SCSRs, and limitations on the size of longwalls. At this time, MSHA anticipates that the concerns related to these issues can be addressed through the appropriate application of existing 30 CFR standards.

III. Discussion of Proposed Rule

A. General Discussion

MSHA's existing standard in 30 CFR 75.1002 requires that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located inby the last open crosscut and be kept at least 150 feet from pillar workings. Currently, a petition for modification of § 75.1002 must be submitted and approved before high-voltage longwall equipment can be used.

The modern development of longwall mining systems and the widespread desire to use them in the industry has resulted in a consistent influx of petitions to modify existing § 75.1002 to allow high-voltage cables to supply power to high-voltage long-wall units. The proposal would restructure the existing standard to allow use of this technology and would also set out additional safety precautions to be followed. Safety considerations related to the use of high-voltage longwall equipment in face areas would be addressed through the incorporation of newly proposed provisions which, in the past, have been included in petitions for modification. It is expected that the proposed rules should result in several safety improvements for underground coal mining. Most of these improvements are derived from stipulations that have been incorporated into petitions for modification.

In general, the risk of injury related to lifting and handling of cable should be reduced since allowing for the use of high-voltage cables should result in the use of smaller and lighter cables. In some cases, the use of high-voltage cables can reduce the weight and size of a cable to less than one third.

The proposal would also provide for: Improved short-circuit and ground fault protection; a means of conveniently testing the effectiveness of ground fault protection; use of manufactured cable support systems for cables extending from the power center to the headgate; use of insulated cable-handling equipment; use of rubber gloves to troubleshoot and test low and medium voltage circuits associated with high voltage circuits; use of additional protection for cables at points where cables leave support systems; use of more convenient disconnect devices for the purpose of performing work; and the use of barriers and interlock switches to help guard against contact with energized circuits. Adoption of the proposal would also result in the required regular use of cables containing metallic shielding around each power conductor (SHD).

All of the above benefits, with the exception of the requirements for gloves when troubleshooting and testing, and the use of test circuits for ground fault protection, have been made available through the petition progress. These two additional proposed requirements are not derived from petitions for modification but would be incorporated into the proposed rules.

MSHA began to grant petitions for modification to § 75.1002 to allow the use of high-voltage longwalls approximately seven years ago. To date, there have been no fatal electrical accidents attributable to the use of the high-voltage longwall equipment allowed by petitions. The proposed rule would permit the mining industry to take advantage of a useful modern mining method without the need for utilizing the petition process.

The elimination of the need to file petitions for modification in order to use high-voltage longwalls will result in the elimination of many costs associated with the petition process. Legal costs are incurred by industry in order to submit the appropriate documentation to support a petition. Agency costs are also associated with publication, processing and investigation of petitions. In addition, petitions for modification of § 75.1002 have been regularly granted when established stipulations have been agreed upon and included in the petitions. It is expected that a general safety benefit associated with elimination of the need to process and investigate petitions would include increased time made available to agency personnel that can be directed to the inspection process.

The petition for modification process is analogous to the rulemaking process but results in safety procedures that are applicable to an individual mine. Once a final written decision pertaining to a petition has been issued, the governing stipulations contained in the decision become mandatory for the installation described in the petition. Following issuance of a final decision, the Agency continues to monitor compliance with the stipulations. Petitions granted to date contain basic stipulations pertaining to the proper installation, electrical and mechanical protection, handling, and disconnecting of circuits and equipment. The proposed rules would include the basic requirements contained in petitions and MSHA would monitor compliance with these requirements. Therefore, revision of existing § 75.1002, removal of existing § 75.1002–1 and promulgation of the new proposed standards would not reduce the protection currently afforded miners.

B. Section-by-Section Discussion

Since § 75.1002 on the installation of electric equipment, conductors, and permissibility is a key section to this proposal, it is discussed first in this preamble although it appears in appropriate numerical order in the rule section of this document.

Section 75.1002 Installation of Electric Equipment and Conductors; Permissibility

This proposed standard would revise requirements for conductors used in or inby the last open crosscut and electric equipment and conductors used within 150 feet of pillar workings. This section would replace the requirements in existing §§ 75.1002 and 75.1002–1 which prohibit the use of trolley wire, trolley feeder wire, nonpermissible equipment and high-voltage cables inby the last open crosscut and within 150 feet of pillar workings or longwall faces.

Paragraph (a) would continue to require that only permissible electric equipment be located within 150 feet of pillar workings or longwall faces.

Paragraph (b) would limit the types of electric conductors and cables permitted in areas where permissible equipment is required. This section of the proposal would continue to prohibit the installation of conductors such as trolley wires and trolley feeder wires in areas where permissible equipment is required. Such electric conductors could provide a ready ignition source and therefore should not be used where permissible equipment is required. One purpose for the existing prohibition of high-voltage cables in face areas was to limit the types of equipment used in these areas. Some equipment requiring high-voltage power cables such as transformers was not permissible. Therefore, prohibiting the use of high-voltage cables had the effect of prohibiting the use of such non-permissible equipment in areas where permissible equipment is required. The proposal would continue to prohibit the use of such non-permissible equipment.

The proposal would revise the existing standard to allow cables extending to permissible high-voltage longwall equipment to be used in longwall face areas. Under the proposal, only shielded high-voltage cables supplying power to permissible longwall equipment, interconnecting conductors and cables of permissible longwall equipment, conductors and cables of intrinsically safe circuits, and cables and conductors supplying power to low- and medium-voltage permissible equipment would be allowed in or inby the last open crosscut and within 150 feet of pillar workings or longwall faces.

All the above conductors and cables, with the exception of shielded high-voltage cables supplying power to permissible longwall equipment, are currently allowed to be used under existing standards. The use of shielded high-voltage cables supplying power to permissible longwall equipment would not pose increased risks of fire or explosion in face areas since these cables have equivalent or superior mechanical and electrical protective characteristics as cables currently being used in conjunction with medium voltage. In addition, shielded high-voltage cables supplying power to permissible longwall equipment are currently being used through the petition process and offer other improved safety features such as improved short-circuit and ground-fault protection and reduction in size due to less current (amperes) demand from equipment.

The modern development of longwall mining systems and the widespread desire to use them in the industry have resulted in an influx of petitions to modify existing § 75.1002 to allow high-voltage cables to supply power to high-voltage longwall equipment. Under the proposal the use of such modern technological advances would be permitted.

Section 75.2 Definitions

The definitions in this proposed section consist of terms used in the proposed rules and would represent important information for the interpretation of the electrical safety standards. Upon review of these definitions, the Agency has decided to propose that they also be used to describe the terms wherever they appear in existing part 75. Such an approach should offer clarity and consistency in the use of these terms where they appear in the electrical safety standards. MSHA is interested in comment on this proposed approach.

The definitions of the electrical terms used are derived from sources commonly accepted by the mining industry and electrical and electronics engineers; including the Institute of Electronic and Electrical Engineers (IEEE) Standard Dictionary of Electrical and Electronics Terms, and the National Electrical Code (NEC). Definitions found in part 18 of MSHA's regulations were also used as a source for this proposal. In some instances, definitions taken from these sources were modified to apply to electric circuits and equipment used in the coal mining industry.

The term "adequate interrupting capacity" is defined by the proposal as the ability of an electrical protective device to safely interrupt all values of current which can occur at its location in excess of its trip setting or melting point. Under this definition, adequate interrupting capacity would be determined by comparing the interrupting rating of the device with the actual characteristics of the circuit to be protected. These characteristics would include the circuit's voltage, impedance, and power factor or time constant. For example, proposed § 75.814(a) would require longwall high-voltage circuits to be protected by circuit interrupting devices of adequate interrupting capacity.

"Approval documentation" is defined by the proposal to mean formal documents issued by the Mine Safety and Health Administration which document the complete assembly of electrical machinery or accessories which have met the applicable design and use requirements of 30 CFR. This wording is used in proposed paragraph (a) of § 75.814 and is intended to establish through the approval process parameters for the current (amperes) and time delay settings of circuit protective devices.

"Circuit interrupting device" is defined to mean a device designed to open and close a circuit by non-automatic means and to open the circuit automatically at a predetermined overcurrent value without damage to the device when operated within its rating. This definition would clarify that circuit interrupting devices be equipped to be closed manually rather than automatically in order to guard against safety hazards related to the automatic energization of equipment. Conversely, the device should be equipped to open the circuit automatically upon the occurrence of an electrical fault. The rating of the device should be such that it would not experience damage during the automatic deenergization of the circuit.

The definitions for "low voltage", "medium voltage", and "high voltage" are unchanged from the existing rule.

"Motor starter enclosure" is defined to mean an enclosure containing motor starting circuits and equipment. This term is used in several standards in the proposal and would describe equipment commonly used to house longwall motor starting equipment.

The term "nominal voltage" is defined by the proposal to mean the phase-to-phase or line-to-line root-mean-square value assigned to a circuit or system to conveniently designate its voltage class, such as 480 or 4,160 volts. The definition would clarify that the actual operating voltage of a system or circuit may vary from its nominal voltage within a range that permits satisfactory operation of equipment.

"Ground fault or grounded phase" is defined to mean an unintentional connection between an electric circuit and the grounding system. The proposal defines "short circuit" to mean an abnormal connection of relatively low impedance, whether made accidentally or intentionally, between two points of different potential. These terms are used in the proposal and existing standards and would offer clarity so as to assist in the proper application of electrical protective equipment.

Section 75.813 High-Voltage Longwalls; Scope

Section 75.813 is a scope section that identifies §§ 75.814 through 75.821 as electrical safety standards that are applicable only to the use of high-voltage longwall circuits and equipment. This section also clarifies that all other existing standards in 30 CFR that are applicable to the use of high-voltage longwall circuits and equipment would

continue to apply. For example, safety standards, such as grounding and ground monitor requirements contained in subparts H and I of part 75 that are currently applicable to high-voltage installations would also be applicable to high-voltage longwall equipment.

Section 75.814 Electrical Protection

This proposed standard is derived in part from existing §§ 75.518–1, 75.800, and 75.800–2 and would address methods of providing electrical protection for longwall equipment supplied by high-voltage systems. The effects of ground faults, electrical arcing, heating of conductors, and short circuits, can have adverse consequences to the safety of miners. Effective electrical protection for longwall equipment would reduce the potential for ignitions, fires, and miner exposure to energized equipment frames.

This section would specify the requirements for short-circuit, overload, ground fault, and undervoltage protection for the high-voltage trailing cables extending from the section power center, the shearer motor cable, and the remaining motor cables. Short-circuit and overload protection would prevent cables and motors from overheating. Ground-fault protection would minimize the risk of shock injuries to miners. Undervoltage protective devices would prevent automatic restarting of equipment following a loss of power.

Paragraph (a) of the proposed standard would require a circuit interrupting device for high-voltage circuits serving longwall equipment to be properly applied to safely interrupt current to which it may be exposed. The adequacy of the circuit interrupting device would assure that it will remain undamaged by overcurrents and thus be able to clear faults in the system.

Paragraph (a)(1) specifies a current setting for short-circuit protective devices. The devices, whether located in the section power center or the longwall motor starter enclosure, would be required to be set at the lower value of either, the setting specified in the approval documentation pertaining to the longwall system, or 75 percent of the minimum available phase-to-phase short-circuit current. The short-circuit current setting specified during the approval process would be based on the calculation of fault currents at various key locations in the system. A study of fault current levels in the 33 existing high-voltage longwall systems indicates that phase-to-phase short-circuit currents range between 4,000 and 6,000 amperes at the various motor locations. Therefore, a current setting of 75 percent of the minimum phase-to-phase short-circuit current would establish a maximum limit for the setting of short-circuit current devices.

As equipment is used and moved from one location to another in a mine, changes take place in both the characteristics of the equipment and electrical system which may indicate a need for either increased or decreased settings for short-circuit protective devices. By establishing a minimum and maximum limit on the required settings of the devices, a range would be provided which could be used to accommodate these changes. The Agency Field Modification Program would be utilized to provide a formal investigative and approval process involving necessary changes of short-circuit device settings. Investigation, documentation, and subsequent approval authority pertaining to these changes would involve work on the part of both agency inspection and technical support personnel.

Paragraph (a)(2) would specify time delay settings for short-circuit protective devices. The short-circuit protective device located in the section power center would be required to have the time delay setting specified in approval documentation or 0.25-second, whichever is less. The purpose of permitting a time delay would be to help eliminate nuisance tripping during motor starting. When high-voltage longwall equipment was introduced to the mining industry, problems were experienced with proper starting of the equipment due to nuisance tripping caused by motor starting currents. In order to solve this problem, it became necessary to incorporate time delays into the short-circuit protective devices. Currently, electronic relays that have a time delay to override motor inrush currents are commonly used to provide short-circuit protection for high-voltage longwall circuits. As an alternative, inverse time or discriminating devices probably could be used to accomplish the same objective. To date, it has not been necessary for time delays of short-circuit devices to exceed 0.25-second; however, as longwall systems continue to evolve and higher efficiency motors are used, it is anticipated that time delays greater than 0.25-second may be necessary in order to allow motor starting nuisance tripping.

This requirement would also establish a range between minimum and maximum allowable time delay settings. The Agency Field Modification Program would also be used to provide a formal investigative and approval process involving agency inspection and technical support personnel for necessary changes in time delay settings.

It is emphasized that the previous discussion pertaining to paragraphs (a)(1) and (2) specifically apply to current and time delay settings of short-circuit devices protecting cables between the section power center and motor starter enclosures. Because of the higher levels of short-circuit current available in high-voltage longwall circuits, it may be appropriate to increase the current settings of short-circuit protective devices for these circuits with a subsequent elimination of time delay without a loss of safety. Although the proposal would incorporate time delays along with the settings currently provided for in 30 CFR, the agency is also considering the elimination of time delays and allowing higher short-circuit settings based on system capacity. The Agency believes that these issues need to be given consideration, and specifically solicits comments regarding these matters.

The proposal would, however, require that devices providing short-circuit protection for circuits extending from the motor starter enclosure to the individual motors and shearer motors contain no intentional time delays. For these circuits, protective device settings would be based on available short-circuit currents determined during the approval process.

Paragraph (a)(3) would require ground-fault currents to be limited by a neutral grounding resistor to not more than 6.5 amperes when the nominal voltage of the power circuit is 2,400 volts or less, and 3.75 amperes when the power circuit voltage is greater than 2,400 volts. Grounding resistors are employed in resistance-grounded systems to limit the level of ground-fault current in a circuit. The levels specified in the proposed standard would reduce shock hazards and prevent the grounding resistor from overheating and becoming an ignition source.

Paragraph (a)(4)(i) would require high-voltage circuits extending from the section power center to have ground-fault protection set at no more than 40 percent of the current rating of the neutral grounding resistor. These protective devices would assure that faults occurring in a circuit extending from the section power source will not energize the frames of the equipment it supplies. The proposed standard would use the current ratings for grounding resistors, specified in paragraph (a)(3), as a basis for setting ground fault devices. For example, if a 6.5 ampere grounding resistor is used, the ground-fault device would have to operate to deenergize the circuit at 2.6 amperes or less. A 40 percent trip level would provide adequate protection which would assure that faults in circuits extending from the power center would not expose miners to the potential hazards of fire or electrocution.

Paragraph (a)(4)(ii) would require backup ground-fault protection to detect an open grounding resistor. The ground-fault protective device can be a combination of a potential transformer and voltage relay, or another device(s) that detects an open neutral resistor. Once an open neutral resistor is detected, it must cause the circuits extending form the power center to be deenergized.

Paragraph (a)(4)(iii) would require that the high-voltage neutral grounding resistor be provided with overtemperature protection that will open the ground-check circuit for the high-voltage circuit supplying the section power center if the grounding resistor is subjected to a sustained ground-fault current. The overtemperature rating or setting of the device would have to be 50 percent of the maximum temperature rise of the grounding resistor or 150° Celsius (302° Fahrenheit), whichever is less. Grounding resistors generate heat when subjected to sustained ground-faults. An overtemperature device would cause interruption of the high-voltage circuit supplying the section power center by opening the ground-wire monitor circuit before extreme heat causes the grounding resistor to fail in the open mode. Failure of the resistor could leave the circuit unprotected against ground-faults and would increase the possibility of fire and shock hazards. The 50 percent or 150° Celsius overtemperature setting would assure that the affected circuit is quickly deenergized under a sustained fault, but the setting would be high enough to prevent operational problems. It would not cause deenergization of the circuit when exposed to non-hazardous amounts of heat generated by equipment during normal use in the system.

Paragraph (a)(5) would require high-voltage motor and shearer circuits to be provided with instantaneous ground-fault protection set at not more than 0.125 amperes. This would provide for a highly sensitive and responsive ground-fault detection system for high-voltage circuits supplying electric face equipment. The protective devices would have to operate instantaneously when exposed to 0.125 amperes, or less under the standard. Therefore, compliance with the standard would greatly reduce the likelihood of fires and shock hazards which result from energizing the frames of longwall equipment.

Paragraph (a)(6) would require that time delay settings of ground-fault protective devices used to provide coordination with the instantaneous ground-fault protection of motor and shearer circuits not exceed 0.25-second. This provision would limit the time lapses between actuation of the section power center ground-fault protective device and those located in the motor starter enclosure. This time delay would allow coordination and selective tripping of circuit protective devices as well as assure that the entire circuit would deenergize in a rapid manner to prevent exposure to shock hazards.

Paragraph (a)(7) would require that undervoltage protection be provided by a device that operates on loss of voltage to cause and maintain the interruption of power to a circuit to prevent automatic restarting of the equipment. The proposed standard would reduce miners' exposure to the risk of being pinned or crushed by the sudden movement of equipment.

Paragraph (b) would require that a single window-type current transformer be used to encircle the three-phase conductors for ground-fault protection specified in paragraph (a)(4)(i) for circuits extending from the section power center to the motor starter enclosures and paragraph (a)(5) for high-voltage motors extending from the motor starter enclosures or for the shearer motor extending from the section power center or motor enclosures. The equipment safety grounding conductors would be prohibited from being passed through or connected in series with ground-fault current transformers. Such a configuration could defeat ground-fault protection and result in hazardous voltages existing on equipment frames.

Paragraph (c) would require a ground-fault test circuit for each ground-fault current device to inject a current of 50 percent or less of the current rating of the grounding resistor to verify that a ground-fault condition will cause the corresponding circuit interrupting device to open. This testing procedure would help determine whether ground-fault current devices are functioning properly. It would also test the sensitivity of the device to ground-fault currents.

Paragraph (d) would prohibit the use of circuit interrupting devices that automatically reclose after operation. Automatic reclosure of the circuit interrupting device would allow immediate reenergization of a circuit which has sustained a fault. Faults occur in underground electrical systems as a result of damage from roof falls or equipment. Under such circumstances, the use of automatic reclosing circuit breakers could create shock and fire hazards in that the devices could reclose automatically when a short-circuit, or ground-fault condition exists in the circuit.

Section 75.815 Disconnect Devices

This section addresses the requirements for disconnecting devices used to deenergize the circuits and components of high-voltage longwall equipment.

Paragraph (a) would require a disconnecting device in addition to the circuit breaker in the power center that supplies power to longwall equipment. The purpose of this device would be to provide evidence that the circuit is deenergized. The proposed language would permit the use of either a disconnecting switch or cable coupler. Requiring the disconnect in the power center would facilitate the deenergization process prior to performance of electrical work. Figures I–1 and I–2 in Appendix A would illustrate compliance with the requirement.

Paragraph (b) would set maintenance requirements for disconnecting devices in motor-starter enclosures. This requirement would be implemented through a cross reference to proposed 30 CFR § 18.53(f). This proposed new part 18 provision is being published in conjunction with this proposed rule for part 75. This provision should guard against the occurrence of electrical accidents that could result from failure of a high-voltage disconnecting device to operate properly. The proposal would assure that a properly maintained safe means of deenergizing longwall circuits and equipment is readily available for use during routine operation or in the event of an emergency. Additionally, compliance with the proposed rule would allow for convenient safe deenergization of high-voltage circuits in the motor-starter enclosure, or equipment supplied power through the enclosure during testing and troubleshooting work.

Paragraph (b) would also require a caution label on the cover of each starter enclosure compartment containing the main disconnecting device. This caution label would be required to warn miners against entering the compartment before deenergizing the incoming high-voltage circuits to the compartment. This provision would help to warn miners that the line side of the disconnect device may be energized when the device is opened. It would also

help to assure that miners deenergize power to starter enclosures before removing any of the covers.

Paragraph (c) would require disconnecting devices to have voltage and current ratings compatible with the circuits in which they are used. This requirement would ensure safe operation of these devices during normal use.

Paragraph (d)(1) would require that disconnecting devices be designed to provide visual evidence that all ungrounded power conductors are disconnected when the device is open. Visual evidence would mean the ability to observe the physical opening of the controls and the separation of the power conductors without removing any covers.

Paragraph (d)(2) would require that disconnecting devices be equipped with means to ground all power conductors when the device is "open". This requirement would allow discharging of any existing capacitance between the power conductors and ground and would assure that the circuit is grounded prior to the performance of work.

Paragraph (d)(3) would require each device to be equipped with a means for locking the device in the open position. This would help to ensure that the circuit being worked on remains deenergized until work is completed.

Paragraph (e) would require that disconnecting devices, except those installed in explosion-proof enclosures, be capable of interrupting load currents without creating hazardous conditions. If the device is not designed for load interruption, the proposal would require the device to be installed so that a circuit breaker would deenergize the incoming power circuit before the disconnecting device opens. Use of devices improperly rated could result in the destruction of the device and danger of injuries due to flash burns or flying parts.

Paragraph (e) would further require that disconnecting devices installed in explosion-proof enclosures be maintained in accordance with the approval requirements of § 18.53(f)(2)(iv) of proposed part 18 which is being simultaneously published with this proposal. This provision would specify that such disconnecting devices be designed and installed to cause the current to be interrupted automatically prior to the opening of the contacts of the device.

Section 75.816 Guarding of Cables

This proposed standard is partially derived from existing § 75.807. It would set guarding requirements for high-voltage cables supplying longwall equipment. Paragraph (a)(1) would require the cables to be guarded where persons regularly work or travel over or under the cables. This would prevent miners from coming in contact with cables.

Paragraph (a)(2) would require guarding where the cables leave cable handling or support systems to extend to electric components. The effect of this provision would be to reduce flexing and stress on cables and to prevent physical damage which might pose shock and fire hazards.

Paragraph (b) would set requirements for guarding to prevent miner contact and to protect high-voltage cables from physical damage. Guarding would be required to be constructed of grounded metal or nonconductive flame-resistant material. This standard would assure that the physical and electrical protective characteristics of guarding are adequate to perform its function.

Section 75.817 Cable Support Systems

This section of the proposal is derived from existing requirements in § 75.807. It would address the handling and support systems of high-voltage cables serving longwall equipment. The standard would require longwall mining systems to be equipped with cable handling systems and support systems that are constructed, installed, and maintained to protect high-voltage cables from damage and to minimize the possibility of miners inadvertently contacting the cables. High-voltage cables used to supply longwall equipment could present shock and fire hazards if they are damaged or defective. The handling and support systems that would be required by the proposal would assist in providing the necessary protection to cables to assure minimum exposure to physical damage or stress.

Section 75.818 Use of Insulated Cable Handling Equipment

Paragraph (a) would prohibit handling of energized high-voltage cables, except in rare cases when cables need to be trained. For example, a cable may need to be trained when it inadvertently comes out of the cable trough. Under such circumstances, the proposal would require the use of protective handling equipment to reinstall the cable. In addition, that proposal would require the the insulated personal protective equipment used be capable of protecting miners against shock hazard when such energized high-voltage cables are trained.

Paragraph (b) would require personal protective equipment to have insulation rated for at least 20,000 volts which would provide proper protection for the high voltage involved. The required protective equipment would have to be examined before each use for visible signs of damage or defects and removed from the underground area of the mine when found to be damaged or defective. Compliance with this standard would place responsibility on the user of protective equipment to inspect it for hazardous conditions. For example, a simple test commonly used to detect damage in insulating gloves is to fill them with air and observe if there is any leakage. This provision would help ensure that persons do not rely on equipment that may be ineffective for protection against shock while handling cables.

The proposal would also require that insulated handling equipment for use with high-voltage cables be electrically tested every six months. This more formal testing procedure for cable handling equipment would ensure that defective equipment will not go undetected.

Section 75.819 Motor-Starter Enclosures; Barriers and Interlocks

This proposed standard would set maintenance requirements for compartment separation and interlock switches for motor starter enclosures. This requirement would be implemented through a cross reference to proposed 30 CFR 18.53 paragraphs (a) and (b). This proposed new part 18 provision is being published in conjunction with this proposed rule for part 75. This provision should help guard against miners coming in contact with energized internal components of high-voltage electric equipment through proper maintenance of safety devices. Maintenance of compartment separation would assure that in gaining access to control and communication, and motor contactor compartments, persons would not be exposed to energized components of adjacent compartments.

The standard would also require maintenance of motor-starter enclosure cover interlock switches to assure deenergization when any cover that provides access to energized high-voltage is removed. Implementation of this provision would provide automatic protection for miners who may inadvertently remove a cover exposing energized high-voltage circuits.

Section 75.820 Electrical Work; Troubleshooting and Testing

This section is derived from existing §§ 75.509, 75.511 and 75.705. It would set forth requirements for performing work on all circuits and equipment associated with high-voltage longwalls. The scope of this section would include all low-medium- and high-voltage circuits and equipment associated with high-voltage longwalls. The requirements would be similar to the general requirements in existing §§ 75.509 and 75.511 for work on electric circuits and equipment, with additional standards specifically applicable to work with circuits and equipment associated with high-voltage longwall installations.

Paragraph (a) would require that work on all circuits and equipment associated with the longwall be performed by persons having high-voltage qualification. This is due to the fact that a high-voltage longwall contains many low- and medium-voltage circuits, in addition to high-voltage circuits. In many cases, enclosures contain circuits having a variety of voltages that are intermingled. The agency presently requires that for a person to have high-voltage qualification, they must also have low- and medium-voltage qualification. This provision would assure that all persons who work on low- and medium-voltage circuits are qualified to identify any hazards that may exist on associated high-voltage circuits. Such persons would also be qualified to perform work on high-voltage circuits.

Paragraph (b) would require safety precautions to be taken by a qualified electrician prior to performing electrical work. The qualified electrician would be responsible for assuring proper deenergization, that the contacts of the circuit disconnecting device are open, and that the disconnecting device is locked out with a padlock, and tagged. These precautions would assure that the affected circuit has been properly deenergized and disconnected so that persons performing work would not be exposed to shock, electrocution, or burn hazards. Without taking precautions, such as properly locking out and tagging the affected circuit, qualified electricians would be exposed to the risk of electrocution resulting from someone inadvertently reenergizing the circuit being worked on.

Paragraph (b)(3) would further require that in the case of work on high-voltage circuits, the conductors be grounded until work is completed. This is necessary to guard against the effects of accidental reenergization of the circuit prior to the completion of work.

Paragraph (b)(c) would require that disconnecting devices be locked with an individual padlock for each person performing work. Individual padlocks, removable only by the persons who installed them, would place responsibility on the persons performing work to assure their personal safety. This would help prevent accidental reenergization of equipment or circuits before all persons have completed work. The danger and accident history of reenergization of circuits before work has been completed make such measures necessary for the protection of miners against electrocution or electric shock. For similar reasons, paragraph (b)(4) would require tags used on deenergized circuits and equipment to identify each person performing work and the circuit or equipment being worked on.

Paragraph (c) would require that only the persons who installed a padlock and tag be permitted to remove them. This proposed provision would provide for an exception under which an operator could authorize someone else to remove the lock and tag provided that the person who installed them is unavailable at the mine. Such authorized person would be required to be qualified to perform high-voltage work. Additionally, the person who had originally installed the lock and tag would be required to be informed of their removal prior to recommencing work on the affected circuit or equipment.

Paragraph (d) would address safety procedures to be used when troubleshooting and testing energized circuits. This proposal would recognize that in some instances it is necessary for circuits or equipment to remain energized for troubleshooting and testing. For example, in order to understand the nature of problems within a circuit, it may be necessary to take voltage or current readings while the circuit is energized.

The proposal would limit troubleshooting and testing only to low- and medium-voltage energized circuits. In addition, only high-voltage qualified electricians wearing properly rated rubber gloves would be permitted to perform this work and only for the purpose of determining voltages and currents. Since troubleshooting and testing energized circuits is known to be inherently hazardous work, the skills and training of a qualified electrician would be necessary for performance of these tasks. Troubleshooting and testing would be limited to low- and medium-voltage energized circuits, primarily due to insulation ratings of available troubleshooting and testing equipment. Insulation ratings on equipment commonly used to troubleshoot and test are insufficient to protect persons if such equipment were used to troubleshoot and test high-voltage circuits.

The proposal would also require qualified electricians to wear rubber insulating gloves while troubleshooting and testing. This provision should help to prevent accidents related to contact with energized circuits while troubleshooting and testing without the benefit of gloves. Rubber gloves would provide the insulation protection necessary in the event of inadvertent contact with energized circuits by a miner during troubleshooting and testing.

Paragraph (e) would require high-voltage circuits contained in the same compartment as the low-voltage circuit being tested to be deenergized, grounded, locked out, and tagged before troubleshooting or testing the circuit. This method of preventing contact with the uninvolved circuit would minimize an electrician's exposure to electric shock, electrocution, and burns from arcing.

Paragraph (f) would require that high-voltage cables located in conveyor belt entries be deenergized prior to the removal of the conveyor belt structure. Movement of energized cables while removing entry conveyor belt structures could lead to the occurrence of faults in the circuit, which would pose risks of fire and electrocution to miners. The standard would address these dangers by requiring deenergization of the cables prior to movement of belt structures.

§ 75.821 Testing, Examination, and Maintenance

This standard is derived in part from existing §§ 75.512, 75.512–2, 75.800–3, 75.800–4. It would be used in conjunction with proposed § 75.1002 which would allow the use of high-voltage cables in face areas to supply high-voltage longwall equipment. Proper testing, examination, and maintenance of high-voltage longwall systems would assure that they would not pose increased hazards to miners.

Paragraph (a) would require an electrician qualified for high-voltage work in accordance with existing § 75.153 to test and examine high-voltage longwall equipment and circuits to determine that the electrical protection, equipment grounding, permissibility, cable insulation, and control devices are properly maintained to prevent fire, electric shock, ignition or operational hazards from existing on the equipment. Keeping equipment free from these hazards would be assured by the training and expertise of high-voltage qualified electricians. Testing and examination of high-voltage equipment used in face areas on a regular basis would assure that hazardous conditions are discovered and addressed before they can cause injuries to miners.

The proposal would require examinations and tests of high-voltage longwall equipment at least once every seven days. Examinations and tests would include actuation of the ground-fault test circuit which would be required by proposed § 75.814(c). The standard would assure that problems which arise during normal use of mining equipment would be identified and corrected, so that miners would not be exposed to hazards. Actuation of the ground-fault test circuit would help identify any damage or defects in the ground-fault circuit and therefore protect miners from being exposed to energized frames of longwall equipment.

Paragraph (b) would require that each ground-wire monitor and corresponding circuit be examined and tested at least once each 30 days to verify that it is operating properly and will cause the corresponding circuit interrupting device to open. This procedure would assure that ground monitors and corresponding circuitry interrupting devices will operate properly to deenergize the circuits that they monitor and protect. Testing every 30 days would be, in MSHA's view, an appropriate interval for evaluating the effectiveness of these devices.

Under paragraph (c), the equipment would be required to be removed from service or repaired when examinations or tests reveal a fire, electric shock, ignition, or operational hazard. This provision would assure that equipment which poses any danger to miners would not be used before the hazardous condition is corrected.

Paragraph (d) would require the person who performs examinations and tests to certify by signature and date that they have been conducted. A record would be required of any unsafe condition found and any corrective action taken. In addition, certifications and records would be required to be kept for at least one year and made available at the mine for inspection by authorized representatives of the Secretary and representatives of miners at the mine. Records and certifications of testing and repairs would be valuable tools for mine operators and could be used to point out patterns of equipment defects and facilitate improvements in equipment maintenance and design. These records and certifications would also assist in identifying that the required examinations have been conducted, and in the investigation of mine accidents.

Petitions for Modifications

MSHA anticipates that when a final rule is developed and becomes effective, all existing petitions for modification of 30 CFR 75.1002 would be superseded in total. Operators would then be required to comply with the new provisions in the final rules.

Derivation Table

The following derivation table lists: (1) Each section number of the proposed rule and (2) the number of the existing standard from which the proposal is derived.

DERIVATION TABLE

Proposal	Existing standard
75.2(j)(1) to (4)	New.
75.2(j)(5)	75.2(j).
75.2(j)(6) to (8)	New.
75.813	New.
75.814(a)(1)	75.518–1 & 75.800.
75.814(a)(2)	New.
75.814(a)(3)	75.802.
75.814(a)(4)	75.800.
75.814(a)(5) & (6)	New.
75.814(a)(7)	75.800.
75.814(b), (c) & (d)	New.
75.815(a) & (b)	75.808.
75.815(c	75.520.
75.815(d)(1)	75.601 & 75.808.
75.815(d)(2)	75.705.
75.815(d)(3)	75.511.
75.815(e)	75.520.
75.816 & 75.817	75.807.
75.818(a)	75.705–6.
75.818(b)	75.705–7 & 75.705–8.
75.819	New.
75.820	75.509, 75.511 & 75.705.
75.821	75.512, 75.512–1, 75.800–3 & 75.800–4.
75.1002	75.1002, 75.1002–1.

Distribution Table

The following distribution table lists: (1) Each standard number of the existing standards; and (2) the section number of the proposed rule which contains provisions derived from the corresponding existing section.

DISTRIBUTION TABLE

Existing standard	Proposal
75.2(j)	75.2(j)(5).
75.1002 & 75.1002–1	75.1002.

IV. Executive Order 12291 and Regulatory Flexibility Act

Executive Order 12291 requires that a Regulatory Impact Analysis (RIA) be performed for any rule that would have a $100 million or more annual effect on the economy or a major increase in costs or prices for consumers or individual industries. MSHA has performed a preliminary RIA (PRIA) that estimates the cost impact of requirements in proposed parts 75 and 18. The Agency has determined that the proposed part 75 would not be a major action. The PRIA is available from MSHA upon request and is summarized as follows.

A. Population-at-Risk

The proposed rule would affect the existing 33 operating longwalls in 29 large underground coal mines (approximately 1.5 percent of all underground coal mines). These 29 mines employ 11,113 miners (about 14.5 percent of all underground coal miners) and employment at these 29 mines ranges from a minimum of 118 miners to a maximum of 710 miners, with the average number being 383 miners. No small mines would be affected by this proposal.

In addition, MSHA anticipates that more mines in the future will utilize high-voltage longwalls because there are mining conditions in which their use would substantially increase productivity. Based on about a 3 year period from 1989 through November 1991, MSHA estimates that 7 petitions for modification to use high-voltage cables in longwall operations would be filed annually. MSHA requests comments on whether the introduction of 7 new longwalls annually is a reasonable assumption for the near future.

B. Benefits

The use of high-voltage in longwall mining operations reduces the number of power cables running between various pieces of longwall equipment. Also, high voltage power cables are smaller and weigh less than do low or medium-voltage power cables. As a result of fewer and lighter power cables, the number of injuries that result from the handling of power cables may be reduced.

The possibility of explosion exists when there is an electrical arc in power cables. Reduction in power cable size, resulting from the use of high-voltage, would make power cables more flexible and less likely to be damaged by the repeated bending which can lead to potential arcing faults.

In addition, high-voltage cables are required to be shielded around each conductor (SHD type) as opposed to shielding around the cable (SHC). The SHD cable is safer because its ground-fault system is substantially more reliable than that of SHC cable.

Proposed § 75.820(c)(3) would require that qualified electricians wear properly rated rubber gloves in order to perform troubleshooting and testing on low and medium-voltage circuits associated with high-voltage longwalls. This provision would reduce the risk of miners' exposures to electrical hazards.

Proposed § 75.818(b)(4) would require that insulated personal protective equipment be electrically tested every six months in order to determine any damage or defects. Equipment would be removed from the mine area if found to be damaged or defective. Proposed § 75.818(b)(4) would ensure that such protective equipment can be relied upon to protect miners from electrical shocks while handling cables.

Finally, the proposed rule would incorporate safety requirements that have been developed as a result of petitions for modifications to use high-voltage longwalls. No miner fatalities or injuries have resulted while the use of these requirements have been applied to high-voltage longwall operations. Thus, the proposed rule is expected to improve miner safety.

Increased productivity gains can be realized when using high-voltage rather than medium voltage. High-voltage longwall equipment is more reliable and efficient than is low- and medium-voltage longwall equipment because there is less power consumption by the cable resistance, less failure of motors due to overheating, and easier motor start-up. This increased reliability would reduce the amount of longwall equipment downtime and, thus, enhance coal productivity.

C. Compliance Costs

The baseline used to estimate the costs of compliance is the present requirements contained in petitions for modification granted by MSHA governing the use of high-voltage cables in longwall operations. This baseline is compare to the requirements under the proposed rule to ascertain expected compliance cost increases. On that basis, MSHA determined that there would be no initial compliance cost as a result of this rule. The proposed requirements would result in net annual cost savings of $11,060,300.

With respect to the additional 7 mines each year that would use high-voltage in the future, direct legal and administrative cost savings of $250,000 would be realized from the fact that petitions for modification would no longer need to be filed. In addition, the proposed rule would eliminate the existing delay in installing and operating high-voltage until MSHA has reviewed and approved petitions for modification. Thus, mines would more quickly obtain higher productivity yields from high-voltage under the proposed rule than under the current procedures. MSHA estimates that production related to delaying installation of high-voltage while awaiting petition approval would have a net value of about $10.8 million for the 7 mines or $1.5 million per mine.

With respect to individual proposed provisions, cost savings of $16,500 results from proposed § 75.821(d), which would reduce the recordkeeping requirements concerning the documentation of examinations and tests of longwall equipment. Annual cost increases would result from §§ 75.818(b)(4) and 75.820(c)(3). Proposed § 75.818(b)(4), which relates to twice a year electrical testing of high-voltage gloves, would cost about $650 annually. Proposed § 75.820(c)(3), which pertains to the cost of purchasing low-voltage rubber gloves that would be needed to perform the troubleshooting and testing required by the proposal, would cost about $5,550 annually.

D. Economic Impact

The proposed rule would enhance productivity in those affected mines because it would allow more efficient high-voltage longwall equipment to be established more rapidly in the relatively few underground coal mines in which it can be profitably employed. Consequently, MSHA has concluded that the proposed rule would have only a small effect on coal output price or profitability.

E. Regulatory Flexibility Certification

Under the Regulatory Flexibility Act of 1980, MSHA analyzed the impact of the proposed rule upon small mining operations. The Assistant Secretary has preliminarily determined that although this proposed rule would increase the productivity of a few large mines, it would not have significant adverse economic impact upon a substantial number of small mining operations.

List of Subjects in 30 CFR Part 75

High-voltage longwall, Mandatory safety standards, Mine safety and health, Underground coal mines.

Dated: August 20, 1992.

William J. Tattersall,

Assistant Secretary for Mine Safety and Health.

Accordingly, part 75, subchapter O, chapter I, title 30 of the Code of Federal Regulations is proposed to be amended under 30 U.S.C. 811 as follows:

PART 75—MANDATORY SAFETY STANDARDS—UNDERGROUND COAL MINES

1. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811, 957, and 961.

2. Section 75.2 is revised by adding the following definitions:

§ 75.2 Definitions.

* * * * *

Adequate interrupting capacity. The ability of an electrical protective device to safely interrupt all values of current which can occur at its location in excess of its trip setting or melting point.

* * * * *

Approval documentation. Formal document issued by the Mine Safety and Health Administration which documents the complete assembly of electrical machinery or accessory which has met the applicable design and use requirements of 30 CFR.

* * * * *

Circuit interrupting device. A device designed to open and close a circuit by nonautomatic means and to open the circuit automatically at a predetermined overcurrent value without damage to the device when operated within its rating.

* * * * *

Ground fault or grounded phase. An unintentional connection between an electric circuit and the grounding system.

Low Voltage. Up to and including 660 volts; medium voltage means voltages from 661 to 1,000 volts; and high voltage means more than 1,000 volts.

Motor starter enclosure: An enclosure containing motor starting circuits and equipment.

Nominal voltage. The phase-to-phase or line-to-line root-mean-square value assigned to a circuit or system for designation of its voltage class, such as 480 or 4,160 volts. Actual voltage at which the circuit or system operates may vary from the nominal voltage within a range that permits satisfactory operation of equipment.

* * * * *

Short circuit. An abnormal connection of relatively low impedance, whether made accidentally or intentionally, between two points of different potential.

* * * * *

3. Part 75 is amended by adding §§ 75.813 through 75.821 under the undesignated center heading *High-Voltage Longwalls* to read as follows:

High-Voltage Longwalls

75.813 High-voltage longwalls; scope.
75.814 Electrical protection.
75.815 Disconnect devices.
75.816 Guarding of cables.
75.817 Cable handling and support systems.
75.818 Use of insulated cable handling equipment.
75.819 Motor starter enclosures; barriers and interlocks.

75.820 Electrical work; troubleshooting and testing.
75.821 Testing, examination and maintenance.

High-Voltage Longwalls

§ 75.813 High-voltage Longwalls; scope.

Sections 75.814 through 75.821 of this part are electrical safety standards that apply to high-voltage longwall circuits and equipment. All other appropriate standards in Chapter I of Title 30 of the Code of Federal Regulations also apply to this equipment.

§ 75.814 Electrical protection.

(a) High-voltage circuits shall be protected against short circuits, overloads, ground faults, and undervoltages by circuit interrupting devices of adequate interrupting capacity as follows:

(1) Current settings of short-circuit protective devices shall not exceed the setting specified in approval documentation, or seventy-five percent of the minimum available phase-to-phase short-circuit current, whichever is less.

(2) Time-delay settings of short-circuit protective devices used to protect any cable extending from the section power center to a motor-starter enclosure shall not exceed the settings specified in approval documentation, or 0.25-second, whichever is less. Short-circuit protective devices used to protect motor and shearer circuits shall contain no intentional time delay.

(3) Ground-fault currents shall be limited by a neutral grounding resistor to not more than—

(i) 6.5 amperes when the nominal voltage of the power circuit is 2,400 volts or less; or

(ii) 3.75 amperes when the nominal voltage of the power circuit exceeds 2,400 volts.

(4) High-voltage circuits extending from the section power center shall be provided with—

(i) Ground-fault protection set to cause deenergization at not more than 40 percent of the current rating of the neutral grounding resistor;

(ii) A backup ground-fault detection device to cause deenergization when a ground fault occurs with the neutral grounding resistor open; and

(iii) Overtemperature protection that will open the ground wire monitor circuit for the high-voltage circuit supplying the section power center if the grounding resistor is subjected to a sustained ground fault. The overtemperature protection shall operate at either 50 percent of the maximum temperature rise of the grounding resistor, or 150°C (302° F), whichever is less.

(5) High-voltage motor and shearer circuits shall be provided with instantaneous ground-fault protection set at not more than 0.125 ampere.

(6) Time-delay settings of ground-fault protective devices used to provide coordination with the instantaneous ground-fault protection of motor and shearer circuits shall not exceed 0.25 seconds.

(7) Undervoltage protection shall be provided by a device which operates on loss of voltage to cause and maintain the interruption of power to a circuit to prevent automatic restarting of the equipment.

(b) Current transformers used for the ground-fault protection specified in paragraphs (a)(4)(i) and (5) of this section shall be single-window type and shall be installed to encircle all three phase conductors. Equipment safety grounding conductors shall not pass through or be connected in series with ground-fault current transformers.

(c) Each ground-fault current device shall be provided with a test circuit that will inject a current of 50 percent or less of the current rating of the grounding resistor and cause each corresponding circuit interrupting device to open.

(d) Circuit interrrupting devices shall not reclose automatically.

§ 75.815 Disconnect devices.

(a) The section power center shall be equipped with a main disconnecting device installed to deenergize all cables extending to longwall equipment when the device is in the "open" position. See Figures I–1 and I–2 in appendix A.

(b) Disconnecting devices for motor-starter enclosures shall be maintained in accordance with the approval requirements of paragraph (f) of § 18.53 of this chapter. The compartment for the disconnect device shall be provided with a caution label to warn miners against entering the compartment before deenergizing the incoming high-voltage circuits to the compartment.

(c) Disconnecting devices shall be rated for the maximum phase-to-phase voltage of the circuit in which they are installed, and for the full load current of the circuit that is supplied power through the device.

(d) Each disconnecting device shall be designed and installed so that—

(1) It can be determined by visual observation that the contacts are open without removing any cover;

(2) All load power conductors can be grounded when the device is in the "open" position; and

(3) The device can be locked in the "open" position.

(e) Disconnecting devices, except those installed in explosion-proof enclosures, shall be capable of interrupting the full-load current of the circuit or designed and installed to cause the current to be interrupted automatically prior to the opening of the contacts of the device. Disconnecting devices installed in explosion-proof enclosures shall be maintained in accordance with the approval requirements of paragraph (f)(2)(iv) of § 18.53 of this chapter.

§ 75.816 Guarding of cables.

(a) High-voltage cables shall be guarded at the following locations:

(1) Where persons regularly work or travel over or under the cables.

(2) Where the cables leave cable-handling or support systems to extend to electric components.

(b) Guarding shall prevent miners from contacting the cables and protect the cables from damage. The guarding shall be made of grounded metal or nonconductive flame-resistant material.

§ 75.817 Cable handling and support systems.

Longwall mining equipment shall be provided with cable handling and support systems that are constructed, installed and maintained to prevent miners from contacting the cables and to protect the high-voltage cables from damage.

§ 75.818 Use of insulated cable handling equipment.

(a) Energized high-voltage cables shall not be handled except when motor or shearer cables need to be trained. When cables need to be trained, high-voltage insulated gloves, hooks, tongs, slings, mitts, aprons, or other personal protective equipment capable of providing protection against shock hazard shall be used to prevent direct contact with the cable.

(b) Insulated personal protective equipment shall be—

(1) Rated for a minimum of 20,000 volts;

(2) Examined before each use for visible signs of damage;

(3) Removed from the underground area of the mine when damaged or defective; and

(4) Electrically tested every 6 months.

§ 75.819 Motor starter enclosures; barriers and interlocks.

Compartment separation and cover interlock switches for motor-starter enclosures shall be maintained in accordance with the approval requirements of paragraphs (a) and (b) of § 18.53 of this chapter.

§ 75.820 Electrical work; troubleshooting and testing.

(a) Electrical work on all circuits and equipment associated with high-voltage longwalls shall be performed only by persons qualified under § 75.153 to perform electrical work on high-voltage circuits and equipment.

(b) Prior to performing electrical work, except for troubleshooting and testing of energized circuits and equipment as provided for in paragraph (d) of this section, a qualified person shall do the following:

(1) Deenergize the circuit or equipment with a circuit interrupting device.

(2) Open the circuit disconnecting device. On high-voltage circuits, ground the power conductors until work on the circuit is completed.

(3) Lock out the disconnecting device with a padlock. When more than one qualified person is performing work each person shall install an individual padlock.

(4) Tag the disconnecting device to identify each person working and the circuit or equipment on which work is being performed.

(c) Each padlock and tag shall be removed only by the person who installed them, except that, if that person is unavailable at the mine, the lock and tag may be removed by a person authorized by the operator, provided—

(1) The authorized person is qualified under paragraph (a) of this section; and

(2) The operator ensures that the person who installed the lock and tag is aware of the removal before that person resumes work on the affected circuit or equipment.

(d) Troubleshooting and testing of energized circuits shall be performed only—

(1) On low- and medium-voltage circuits;

(2) When the purpose of troubleshooting and testing is to determine voltages and currents; and

(3) By persons qualified to perform electrical work on high voltage and who wear rubber insulated gloves rated for the nominal voltage of the circuit.

(e) Before troubleshooting and testing a low- or medium-voltage circuit contained in a compartment with a high-voltage circuit, the high-voltage circuit shall be deenergized, disconnected, grounded, locked out and tagged in accordance with paragraph (b) of this section.

(f) High-voltage cables located in conveyor belt entries shall be deenergized prior to the removal of the conveyor belt structure.

§ 75.821 Testing, examination and maintenance.

(a) At least once every 7 days, a person qualified in accordance with § 75.153 to perform electrical work on high-voltage circuits and equipment shall test and examine each unit of high–voltage longwall equipment and circuits to determine that electrical protection, equipment grounding, permissibility, cable insulation, and control devices are being properly maintained to prevent fire, electrical shock, ignition, or operational hazards from existing on the equipment. Tests shall include actuation of the ground-fault test circuit required by § 75.814(c).

(b) Each ground-wire monitor and associated circuits shall be examined and tested at least once each 30 days to verify proper operation and that it will cause the corresponding circuit interrupting device to open.

(c) When examinations or tests of equipment reveal a fire, electrical shock, ignition, or operational hazard, the equipment shall be removed from service or repaired.

(d) At the completion of examinations and tests required by this section, the person who makes the examinations and tests shall certify by signature and date that they have been conducted. A record shall be made of any unsafe condition found and any corrective action taken. Certifications and records shall be kept for at least one year and shall be made available at the mine for inspection by authorized representatives of the Secretary and representatives of miners at the mine.

§ 75.1002–1 [Removed]

4. Section 75.1002–1 is removed and § 75.1002 is revised to read as follows:

§ 75.1002 Installation of electric equipment and conductors; permissibility.

(a) Electric equipment shall be permissible and maintained in a permissible condition when such equipment is located within 150 feet of pillar workings or longwall faces.

(b) Only the following electric conductors and cables shall be installed in or inby the last open crosscut or within 150 feet of pillar workings.

(1) Shielded high-voltage cables supplying power to permissible longwall equipment.

(2) Interconnecting conductors and cables of permissible longwall equipment.

(3) Conductors and cables of intrinsically safe circuits.

(4) Cables and conductors supplying power to low- and medium-voltage permissible equipment.

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Part V

Department of Transportation

Federal Highway Administration

Request for Information Regarding Development of a System Architecture for a Nationwide Intelligent Vehicle Highway System; Notice

DEPARTMENT OF TRANSPORTATION

Request for Information Regarding Development of a System Architecture for a Nationwide Intelligent Vehicle Highway System

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for information.

SUMMARY: The U.S. Department of Transportation (DOT) is requesting information from all sources regarding the development of a comprehensive nationwide open system architecture for Intelligence Vehicle Highway Systems (IVHS). The national IVHS program is a dynamic public/private partnership involving DOT, State and local governments, private industry, and academia. The program involves research, development, operational testing, and deployment of IVHS technology applications and system concepts. This request for information (RFI) requests comments on IVHS technical issues and the procedural process that DOT intends to follow in awarding multiple contracts to engage in parallel developmental efforts for an open, national IVHS architecture. Included are: (1) A proposed Statement of Work for the effort including project schedule and deliverables (attachment 1); (2) a proposed list of user services for the system to deliver (attachment 2); (3) a matrix table of proposed architecture evaluation criteria (attachment 3); and (4) a list of specific questions to respondents regarding this RFI (attachment 4).

DATES: Responses to this request for information must be received on or before October 13, 1992.

ADDRESSES: Responses to this request for information should be submitted directly to the Federal Highway Administration, Office of Contracts and Procurement (HCP–41), 400 Seventh St. SW., room 4410, Washington, DC 20590, Attention: Mr. Rick Murray.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Murray, FHWA Office of Contracts and Procurement (HCP–41), at (202) 366–4250.

SUPPLEMENTARY INFORMATION: IVHS applies surveillence, communication, data management, control software, and display technologies to help solve congestion, safety, and productivity problems associated with the transportation of people and goods. The national IVHS program is a dynamic public/private partnership involving the DOT, State and local governments, private industry, and academia. The program involves research, development, operational testing, and deployment of IVHS technology applications and system concepts. Actual deployment responsibility lies with the State and local units of government and the private sector; accordingly, these and other stakeholders will be heavily involved in the early-on process for determining the national architecture. An organization called the Intelligent Vehicle Highway Society of America (IVHS AMERICA) has been established to provide a forum for the public and private sectors and academia to discuss and resolve IVHS related topics and issues. It is also chartered as a Federal advisory committee to the DOT on IVHS matters.

The process of awarding contracts to multiple teams to engage in parallel efforts directed towards the initial definition of an open, national IVHS architecture is intended to allow the best possible architecture to be developed. Since the architectural definition process should take place wholly in the public domain, the DOT will fund the entire effort. This RFI is the first step in that process.

For ease of reference, the following listing of acronyms used throughout this document is provided:

ACRONYMS

AASHTO American Association of State Highway Transportation Officials
ATA American Trucking Associations
APTA American Public Transportation Association
CB Consensus builder
COTR Contracting Officer Technical Representative
DOT United States Department of Transportation
FHWA Federal Highway Administration
FPR Final program review
FTA Federal Transit Administration
IPR Interim program review
ITE Institute of Transportation Engineers
IVHS Intelligent Vehicle Highway System
NHTSA National Highway Traffic Safety Administration
OST Office of the Secretary, Department of Transportation
RFI Request for information
RFP Request for proposal
RSPA Research and Special Programs Administration
SAE Society of Automotive Engineers
SOW Statement of Work
TBD To be determined
TRT Technical Review Team

Introduction

This RFI will be used in developing a subsequent RFP for awarding multiple contracts to engage in parallel developmental efforts to define and evaluate alternative IVHS system architectures. Responses are requested on any and all aspects of this RFI. Please note that these responses will be considered non-proprietary, with the exception of company-sensitive RFI/RFP cost data which will be held proprietary. No payment or preparation costs are authorized in the compilation and submission of response information. This RFI shall also provide presolicitation information to prospective sources in a fair and equal manner. Information in this presolicitation notice is preliminary and will be superseded by information provided in subsequent competitive procurement packages.

A draft Statement of Work (SOW), a list of IVHS user services, and a matrix table of architecture evaluation criteria are provided as attachments 1, 2, and 3, respectively. Attachment 4 is a list of specific questions addressing certain fundamental issues regarding this RFI and attachments. The thorough resolution of many of these issues will be crucial to the success of the program. Frank and detailed responses to the questions, and comments on the draft SOW, are highly encouraged.

Goals and Objectives

The following is a description of the process that the DOT intends to follow in conducting a program that will result in the design of a single open system architecture for a nationwide IVHS.

The process as outlined below is intended to achieve the following primary goals:

1. To encourage innovation in the candidate architectures, in order to allow for the broadest possible range of concepts to be considered initially;

2. To ensure development of a technically sound architecture that will favorably accommodate immediate product development, integration of new technologies as they mature, and future expansion of the system;

3. To allow for substantial input in the development process from a majority of IVHS-concerned parties, so as to achieve a wide base of support for the eventual chosen architecture.

Team Selection

A DOT/FHWA source selection panel will be responsible for evaluating proposals and awarding contracts to multiple teams. In addition to the typical proposal evaluation criteria such as quality of team, quality and content of proposal, cost, etc., the proposals will be based on a "uniqueness of approach" criteria. That is, the DOT intends to develop a variety of architectural approaches prior to selecting a system for implementation. Funding of multiple proposals that will result in similar systems and redundant efforts will be avoided. This will provide an opportunity for the entire spectrum of system concepts to surface, and for the most promising ones to be chosen for further in-depth study.

There exists a large pool of potential partners from which teams might arise. It is expected that these teams will have a diverse constituency reflecting the broad range of disciplines that may be brought to bear on the development and evaluation of an IVHS architecture.

Tasking Summary

The architecture development contract will be for a period of 34 months. This will consist of a basic contract with an option, each consisting of 17 months.

In accordance with the draft SOW, the architecture development will proceed in two phases. The first phase will produce a set of fully defined architectures in terms of the system and subsystem descriptions, and information and data flow. These will be derived from analysis of desired IVHS user services, breakdown of the system functions proposed to deliver these services, suggested distribution of these functions, and the sequencing of their deployment. Each architecture will encompass the full set of IVHS user services. A preliminary set is included in this RFI as attachment 2; a final set will be defined in the RFP. Teams may suggest other services that they feel are necessary for the system design. Other products of the first phase efforts will include summaries of the studies and technical analyses performed, and a proposed plan for full evaluation of the architecture during the program's second phase.

The second phase will involve the detailed analysis and system modeling needed to fully evaluate the alternative architectures. The primary product of the second phase will be a final report, detailing the results of system-level simulations of the proposed architectures using a set of common scenarios (to be supplied by FHWA).

Program Management Structure

Figure 1 is the IVHS architecture development management scheme. Individual roles and responsibilities are briefly described, as are relationships among entities.

DOT IVHS Coordinating Committee: Responsible for overall policymaking.

DOT IVHS Working Group: Overall technical direction/oversight; DOT program management and decisions; path of information to DOT Coordinating Committee.

IVHS AMERICA: Provides technical guidance to the DOT regarding development of a national plan for implementing IVHS; provides advice and recommendations on the overall program to the DOT IVHS Coordinating Committee and Working Group.

DOT Architecture Team: Comprised of technical representatives from all appropriate modal administrations (FHWA, FTA, NHTSA, RSPA, OST); responsible for technical oversight and coordination among DOT agencies; makes recommendations to the DOT IVHS Working Group.

IVHS AMERICA Architecture Advisor: An IVHS AMERICA staff representative who provides expert advice to the DOT Architecture Team.

MITRE Corporation: Provides engineering support to DOT Architecture Team through FHWA; conducts special studies that cut across contract team efforts.

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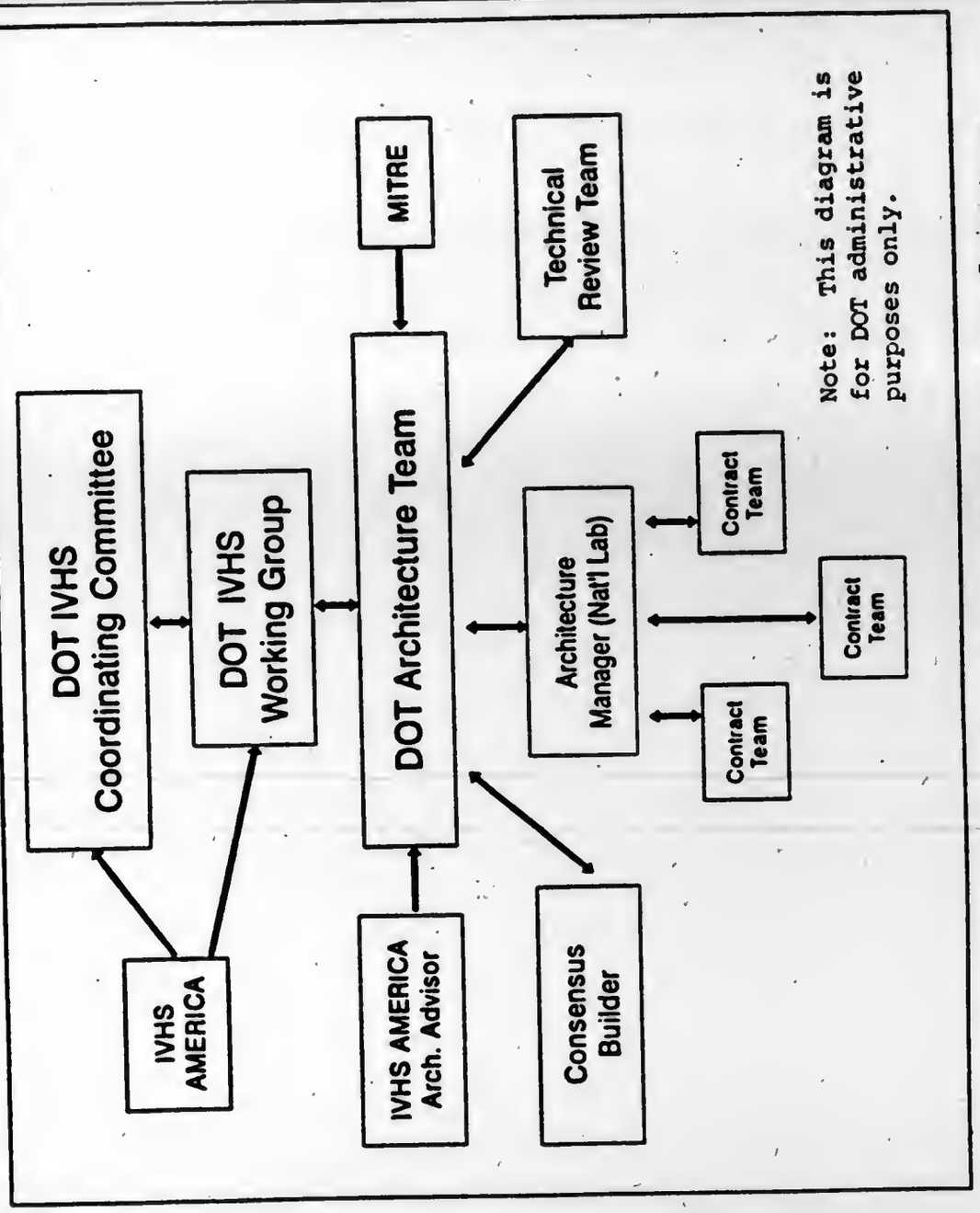


Figure 1: IVHS Architecture Program Management Structure

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Consensus Builder (CB): Competitive contract—works with public and private sector organizations (IVHS AMERICA, ATA, APTA, SAE, ITE, AASHTO, etc.) in an aggressive outreach effort; explains IVHS Architecture effort and makes progress briefings to these groups to build consensus and receive comments/concerns.

Architecture Manager: National Laboratory activity—day-to-day technical contract management activities (COTR); manages flow of information among IVHS Architecture contractor teams, Technical Review Team (TRT), Consensus Builder, and DOT Architecture Team; schedules and coordinates all review meetings with the IVHS Architecture contractor teams.

Contract Teams: Multi-disciplinary contract teams that perform the technical work needed to develop and analyze the architecture alternatives.

Technical Review Team: Expert group—supports the DOT Architecture Team; comprised of technical experts from outside of DOT, including private industry, academia, State and local public agencies, universities, IVHS AMERICA members, etc.—helps the DOT Architecture Team at specific times (i.e., technical reviews) throughout the development process (2 to 3 times/year).

The Review and Evaluation Process

A number of reviews will take place during the architecture development process. To facilitate these reviews, all materials produced under the contracts will be considered non-proprietary. In the spirit of producing the best possible open architecture in an open environment, the reviews will be in a forum in which all contractor teams will be in attendance during the others' presentations. Each contractor team will be expected to comment on the other approaches.

Bimonthly briefings by the contractor teams to the DOT Architecture Team and Architecture Manager will be held for progress updates.

The Interim Program Review, a more formal review, will take place approximately halfway through each phase. The contractors will present their architectures to the CB, TRT, Architecture Manager, and DOT Architecture Team for a preliminary technical assessment and will receive additional guidance where appropriate.

At the end of each phase there will be a three month review period, during which the TRT and Architecture Manager will perform a final technical assessment of the architectures based upon predetermined criteria. The TRT results and recommendations will be supplied to the DOT Architecture Team and passed on to the CB and IVHS AMERICA. The CB, along with the contractor teams, will aggressively conduct a series of briefings, to stakeholder organizations (ATA, APTA, SAE, ITE, AASHTO, etc.) and State and local governments during the remainder of the three month period so as to inform/elaborate/clarify the submitted architectures. The DOT will consider the feedback from these stakeholders in making a decision as to which architectures should continue into Phase II (in the case of the first review period) and which architecture should be selected as the national architecture (in the case of the second review).

The implementation of a system (not part of this proposed contract effort) based on the selected architecture will be guided through the establishment of standards, regulations, and Federal-aid eligibility requirements.

All architectures will be evaluated against the same set of criteria as listed in attachment 3. This matrix shows the criteria that will be used to evaluate the various architectures throughout the development effort, in addition to guiding the down selection process.

Attachment 1: IVHS Architecture Development Statement of Work

Introduction

The effort to define a national IVHS system architecture will be performed in two phases. As part of the source selection process, multiple architecture "teams" will be selected to participate in Phase I. During Phase I, the contractor teams shall each develop a comprehensive, "high end-state" IVHS architecture; this is, a long range, fully-implemented architecture capable of supporting all IVHS user services listed in attachment 2 at their greatest functional level. In addition to the high end-state IVHS architecture, the contractor teams shall develop an evolutionary strategy that addresses the implementation of the architecture over time, and discusses the range of services that can be provided at each intermediate time period. The contractor teams will provide discussion showing how selected services/capabilities may be initially implemented at a lower level of service and, over time, evolve to support the high end-state architecture. This will be done as snapshot descriptions at 5, 10, and 20 year timeframes. Additionally, the contractor teams will discuss how various capability levels of the architecture could be supported, up to the high end-state, based on the availability of resources to support IVHS technology in the vehicle and within the infrastructure, and on jurisdictional preferences as IVHS is deployed. That is, the contractor team will provide a range of functionality that can be supported by the architecture, from a low end-state to the high end-state.

At the end of Phase I, each contractor team will formally submit its architecture for evaluation. Using a set of evaluation criteria (attachment 3), a decision will be made as to which contractor teams will continue on with Phase II of the project. During Phase II, the remaining contractor teams will refine and rigorously evaluate their architectures. At the end of Phase II, through a consensus building process, one of these architectures will be selected as the national IVHS architecture.

Phase I—Architecture Definition and Initial Analysis

Task A: Project Management (Across Phases I and II)

1. This task will support performance of program management activities. Each contractor team selected for the Phase I effort will participate in a kickoff meeting to introduce the teams and discuss the strategy for proceeding into Phase I. The contractor teams will be required to develop project work plans for Phases I and II, providing additional detail on their individual technical approaches and allocation of resources. Each contractor team will be required to deliver a monthly progress report detailing all activities being conducted, including progress towards each of the deliverables, travel, and visits to any IVHS operational test sites. Also, each contractor team will be required to prepare a detailed work plan for Phase I and, if accepted for continued participation in Phase II, will be required to prepare a detailed Phase II work plan.

2. Task A will also support preparation for and participation in an Interim Program review (IPR) and a Final Program Review (FPR) to be held during Phase I. During these reviews, the contractor teams will meet with the Architecture Manager and the COTR for each contractor team, the DOT Architecture Team, Technical Review Team, and Consensus Builder representatives and will present a technical briefing of their efforts to define and evaluate a IVHS architecture (see Deliverables). The reviews will be open meetings in that each contractor team will attend the presentations of the other contractor teams. Material to be presented at the reviews will cover all

the items listed (see Deliverables). For areas where an initial analysis has been completed, preliminary results will be presented. For areas where analysis has not been initiated (e.g., cost analysis), discussion will be presented as to the methodologies to be followed in conducting the analysis. The briefing material presented during the Interim Program Review should include significant technical detail (e.g., dataflow diagrams depicting major subsystems, inputs, and outputs) and should track closely with the draft documents (see Deliverables) to be delivered at the Interim Program Review. The documents identified as drafts to be delivered at the Interim Program Review should be fairly complete (i.e., no major sections/diagrams identified as TBD).

3. The individual contractor teams will be responsible for the preparation of briefing materials and reports to be distributed to the Architecture Manager and to those attending other technical meetings (other than the IPR and FPR) that may arise during the course of the project. Primarily, these will occur at the end of Phase I and will be needed to brief the stakeholder organizations on the results of the Phase I architecture development and analysis. These briefings will be held in an open meeting and each contractor team will attend the presentations of the other contractor teams.

4. Travel requirements for each contractor team will be identified under this task. This will include both common travel requirements for attending the IPR and other meetings with the Architecture Manager and the DOT, as well as other travel considered necessary for the conduct of the study. For example, a kickoff meeting will be held at the beginning of the project to define the objectives and deliverables and to acquaint the various contractor teams with each other and with other project participants. Each contractor team will be expected to participate in this meeting. Additionally, bimonthly review meetings will be held between each contractor team, the DOT Architecture Team, and the COTR for that team. (Note: Although there is only one Architecture Manager, there are multiple COTRs supplied by the Architecture Manager contractor, each COTR working with a different contractor team.)

Task B: Architecture Development

1. Each contractor team will describe its architecture using a standard framework of commonly accepted system engineering tools. In addition to defining an IVHS architecture, each contractor team will provide a discussion of the methodology and tools to be used in developing and evaluating the architecture. A detailed discussion of methodology will be included in the IPR and as part of the final documentation of Phase I. The Phase I architecture definition should consist of the following components:

(a) Description of all required subsystems (inputs, outputs, functions) including functional block diagrams;

(b) Description of all data paths including all interfaces between subsystems and/or databases, including a data dictionary (sample to be provided);

(c) Preliminary message definition;

(d) List of constraints and assumptions which were used as the basis of developing the architecture (e.g., traffic loads, maximum vehicle speeds). This refers, primarily, to any constraints or assumptions that differ from or augment the operational scenarios discussed in Task B3;

(e) Snapshots of the IVHS architecture (high end-state with discussion of interim capabilities) at several points in time (5, 10, 20 years).

Additionally, the contractor team should discuss the approach to be used for:

(f) Defining evolutionary deployment strategy;

(g) Analyzing data loading requirements.

Draft reports discussing these two areas are required later in Phase I.

2. The contractor teams will remain aware of on-going IVHS activities, including research and development studies, operational tests, institutional issues studies, and product developments in the private sector. Team members are encouraged to review documentation of ongoing and planned operational tests including designs, evaluation plans, and test results. Additionally, contact with key personnel involved in the operational tests is encouraged as are visits to the test sites. Unplanned visits will be approved by the COTR and documented in the contractor's monthly progress report.

3. The contractor team will review government-furnished IVHS operational scenarios which describe urban, interurban, and rural IVHS operations (to be provided by FHWA). These scenarios identify general IVHS operating characteristics for each of these three environments and are based on specific geographic locations, with some modifications to generalize the scenario. Parameters identified for each of these three general scenarios include:

(a) Traffic parameters—estimates of peak traffic flows (duration, distribution of traffic load across the peak period, congestion throughout the network, hot spots), recurrent versus non-recurrent congestion, capacity, size of region, average trip specifications, and trucking routes;

(b) Incident parameters—estimates of numbers of incidents, average duration, and effect on throughput;

(c) Infrastructure parameters—estimates of total road miles of various types of roads, numbers (and types) of intersections, relative locations of Changeable Message Signs (CMS) and the Traffic Management Center(s) (TMC), types of signaling systems, and distribution of key infrastructure components, number of jurisdictions which must coordinate, network structure (grid versus random, parallel arterials, available alternate routes);

(d) Institutional restrictions—estimates of percentages of traffic that can be routed from freeways onto arterials, trucking restrictions, inter-jurisdictional or inter-agency communication (e.g., how many organizations must interact to handle an incident);

(e) Multi-modal aspects—percentage of commuters using transit versus cars, extent and types of transit networks and level of service, support for High Occupancy Vehicle (HOV) lanes, parking availability (ratio of slots to cars) at public/private lots and at intermodal facilities;

(f) Environmental factors—estimated rainfall, snowfall, number of days below freezing, average height and distribution of buildings (multi-path interference), geographical barriers (e.g., rivers with limited crossings, bridges, tunnels).

The contractor team must follow these operational scenarios, as a minimum, but is free to add to or enhance these scenarios. The contractor team must be prepared to present a rationale for modifying them. Any changes to the operational scenarios (other than additions) require Contracting Officer approval and, if the change is accepted, will be required of all of the other contractor teams. The contractor team will also base the requirements definition on the defined list of user services (attachment 2). The contractor team must address each user service in each of the operational scenarios, either including it in the architecture or presenting a rationale as to why the service is not needed or is only optionally needed in that particular operational scenario. The contractor team is free to add user services to the list and must be prepared to present its rationale for these additions. As with the operational scenarios, any changes to the user services list (other than additions) will require Contracting Officer approval and, if the change is accepted, will be required of all of the other contractor teams. Attachment 2 represents a fundamental list of IVHS services.

Task C: Architecture Analysis

Each contractor team will conduct an initial evaluation of their architecture. The primary analyses to be conducted are:

(a) Technical analysis,
(b) Feasibility/risk analysis,
(c) Initial cost analysis, and
(d) Institutional issues analysis.

These analyses shall be conducted in the framework of the evolutionary architecture, as defined under Task B1 as snapshots at 5, 10, and 20 years, specifically looking at the high end-state architecture at these development stages. The Phase I evaluation criteria listed in attachment 3 will be used both by the contractor teams to evaluate their architectures and by the Technical Review Team to rate each contractor teams' architecture. Phase I analysis activities include:

Technical Analysis—This will be a primarily technical analysis of each architecture snapshot, looking at various options to implement user services. The purpose of this analysis is to determine, and document, the pros and cons of various architecture design choices.

Feasibility/Risk Analysis—The purpose of this analysis will be to determine how feasible it will be to implement the architecture, taking into account factors such as technical risk (e.g., which approaches depend on less mature technologies), user acceptance, and changes required in standard operations (for either the user or the infrastructure). This analysis will also attempt to determine if a reasonable deployment strategy can be developed (e.g., deployment should not require long periods of consumer/infrastructure investment without noticeable benefit).

Initial cost analysis—During Phase I, the contractor team will perform a rough cost estimate of the architecture. Areas of cost analysis will include consumer cost and infrastructure costs and, under each category, the cost analysis will explore capital costs, operations costs, and maintenance costs. While cost factors (evaluation criteria) are the same for phase 1 and 2, the Phase I cost analysis will be more of a high-level analysis with the Phase II analysis going into more depth.

Institutional issues—During Phase I, the contractor team will begin to evaluate how well the architecture addresses institutional issues. The primary institutional issues to be addressed in Phase I include allocations of costs and benefits, first user benefits (i.e., initial users will receive immediate benefit without having to wait for massive infrastructure development or for large numbers of vehicles to be similarly equipped), and the degree to which the architecture supports/encourages interjurisdictional cooperation.

Task D: Evaluation Model Refinement and Calibration

Under this task, the contractor team will conduct modeling and simulation activities to validate the soundness of the proposed architecture. During Phase I, the following activities will take place:

1. Definition of simulation parameters and determination of a simulation methodology, ready for the Interim Program Review;

2. Preliminary simulation results for a subset of evolutionary architecture definitions and operational scenarios (Note: Currently we are considering using an urban scenario simulating a snapshot of the architecture at the 5 year timeframe);

3. Detailed planning for continuing the simulation activity into Phase II.

Deliverables (Phase I)

Following are the deliverables for Phase I indicating due dates for both draft and final versions of the material. Any date marked IPR means that the material is due at the time the Interim Program Review is held. The IPR will be held 5 months after contract award. P2 indicates that an item will be delivered in Phase II (but is included here because an initial draft was required in Phase I). All deliverable dates are expressed as months after contract award.

Deliverable	Draft	Final
Workplan	1	2.
Prepare meeting minutes	n/a	As required.
Progress reports	n/a	Monthly.
Interim Program Review	n/a	5.
Progress reviews	n/a	Bimonthly.
IVHS architecture:		
1. Description of all required subsystems (form, fit, and function).	IPR	10.
2. Architecture development methodology.	IPR	10.
3. Description of all data paths (data flow) diagrams or equivalent.	IPR	10.
4. Preliminary message definition.	IPR	10.
5. Analysis of data loading requirements.	10	12.
6. List of constraints and assumptions used as basis for developing the architectures (e.g., traffic loads, maximum vehicle speeds).	IPR	10.
7. Snapshots of the IVHS architecture at several points in time (5, 10, 20).	10	12.
Feasibility study including risk analysis.	10	12.
Evolutionary deployment strategy.	12	P2.
Rough cost analysis	10	12
Simulation studies:		
1. Simulation methodology and parameters.	IPR	12.
2. Preliminary simulation results.	12	n/a.
3. Detailed Phase II simulation plan.	12	P2.

Phase II—Architecture Evaluation and Implementation Plans Task A (continued): Project Management (across Phases I and II)

1. Each contractor team selected to continue working in Phase II will participate in a Phase II kickoff meeting. This meeting will inform the winning teams of the results of the selection process and discuss the strategy for proceeding into Phase II. The DOT Architecture Team will make recommendations regarding changes to the contractor teams' architectures based upon comments received from the Technical Review Team, the Consensus Builder, and the Architecture Manager. This meeting will also serve to clarify objectives for Phase II and will lead to discussions of the expected content of the Phase II deliverables and the Phase II delivery schedule. Based upon the discussions at this meeting, the contractor teams will prepare updated workplans for Phase II.

2. A Phase II Interim Program Review will be conducted approximately halfway through Phase II. This review will be open to each contractor team participating in Phase II and will follow the same format as the Phase I IPR. The contractor team briefings will discuss, in detail, any deliverable which is identified as due by the time of the Phase II IPR (see Deliverables) and will provide methodologies and initial results for deliverables which are only in a draft stage at the time of the Phase II IPR. A Phase II FPR will be held at the end of the Phase II effort.

3. The individual contractor teams will be responsible for the preparation of briefing materials and reports to be

distributed to the Architecture Manager and to those attending other technical meetings (other than the IPR and FPR) that may arise during the course of the project. These briefings will primarily occur at the end of Phase II. The contractor teams will be required to support the Consensus Builder in briefing the architecture to the stakeholders (i.e., public) on a wide basis. These will be open briefings attended by all contractor teams.

Task E: Architecture Refinement

Based upon material received during the Phase II kickoff meeting, each contractor team will incorporate necessary changes to its architecture and to each of the deliverables originally provided in Phase I. This Task supports the efforts of each contractor team in updating these deliverables and will be carried out in parallel with other Phase II Tasks. Activities to be conducted under this Task regarding updating the Phase I deliverables are listed below.

1. Final description of all required subsystems (inputs, outputs, functions) including functional block diagrams.
2. Final description of all data paths including all interfaces between subsystems and/or databases, including a data dictionary.
3. Final message definition.
4. Final analysis of data loading requirements.
5. List of constraints and assumptions which were used as the basis for developing the architecture (e.g., traffic loads, maximum vehicle speeds).
6. Snapshots of the IVHS architecture (high end-state with discussion of interim capabilities) at several points in time (5, 10, 20 years).

Task F: Detailed Evolutionary Deployment Strategy

Each contractor team will develop an evolutionary deployment strategy discussing how the high end-state architecture will be deployed under the three scenarios.

The contractor teams will provide discussion showing how some services/capabilities may be initially implemented at a lower level of service and, over time, evolve to support the high end-state architecture. This will be done as snapshot descriptions at 5, 10, and 20 year timeframes. Additionally, the contractor teams will discuss how, at each of these three timeframes, various levels of service could be supported by partial deployment of the architecture, up to the high end-state, based on the availability of resources to support IVHS technology in the vehicle and within the infrastructure, and on jurisdictional preferences as IVHS is deployed. That is, the contractor team will provide a range of functions that can be supported by the architecture, from a low end-state (i.e., minimum capability) to the high end-state.

In developing the evolutionary deployment strategy, the contractor teams will include the following perspectives in their analyses:

1. Deployment under the architecture as a function of time: the issue of availability and affordability of technology will be considered in determining how IVHS will be incrementally deployed, following the contractor team's architecture. This will require some forecasting as to the state of technology and will require the contractor team to analyze the architecture to insure that incremental additions, as technology matures, are backward compatible with installed and operating equipment and that sufficient modularity exists that only components of the system, and not the entire system, need to be replaced to use the new capability (e.g., as an analogy, as compact disks (CD) became available as a music media, one could upgrade to use this new media by merely adding a CD player to an existing stereo system and not have to replace the entire stereo system).

2. Deployment under the architecture as a function of capability: this requires the contractor team to analyze its architecture to insure that, at any given point in time, the architecture will support various functional levels for a particular capability. For example, if vehicle route guidance is supported in the architecture, its implementation at any one geographic location should support low end capabilities (e.g., a text readout listing streets and turns) to a high end capability (e.g., route overlay displayed on a map).

3. Deployment under the architecture as a function of operational scenario: this requires the contractor team to review each of the three operational scenarios to determine, both from the time and capability perspectives, how IVHS should be deployed under the team's architecture to ensure the capability to upgrade and to vary the functions at various geographic locations, while still maintaining a nationally compatible system. IVHS will not be implemented exactly the same way at exactly the same time everywhere in the United States. However, despite these geographic variations in IVHS deployment, the architecture must allow national compatibility between the vehicle and the infrastructure.

Task G: Detailed Architecture Evaluation

Under this Task, each contractor team will take the architecture cost/benefit analysis to a greater level of detail than in Phase I, using the three scenarios as a basis for evaluation. The contractor team will also analyze the actual or perceived benefit of the various services offered under the architecture taking into account the evolutionary deployment strategy developed under Task F (e.g., Does the architecture offer a significant first user benefit?).

During Phase II, each contractor team will conduct simulation studies and other analyses of its architecture in each of the three scenarios (urban, interurban, and rural). The contractor teams will deliver detailed simulation and analysis plans at the Phase II Interim Program Review which will be reviewed and discussed with the Architecture Manager, the DOT Architecture Team, Technical Review Team, and Consensus Builder representatives. For the remainder of Phase II, the contractor teams will carry out the simulation studies and other analyses based upon these plans and will deliver intermediate results 10 months into Phase II. Based upon final comments from the Technical Review Team, the contractor teams will complete their simulation studies and deliver the results at the end of Phase II.

Detailed architecture evaluation criteria are discussed in attachment 3.

Task H: Analysis of Institutional Issues

Under this task, the contractor teams will investigate institutional issues under each of the three operational scenarios. Institutional issue evaluation criteria to be considered in this evaluation are listed in attachment 3.

The contractor teams will treat these issues as evaluation criteria, looking at advantages and disadvantages of their architecture for each of these issues and looking at worst-case situations.

Deliverables (Phase II)

The following is the schedule for Phase II. All dates are in terms of months after the beginning of Phase II. Any date marked IPR means that the material is due at the time the Phase II Interim Program Review is held. The Phase II IPR will be held 6 months after the start of Phase II.

Deliverable	Draft	Final
Workplan (update for Phase II).	1	2.
Prepare meeting minutes	n/a	As required.

Deliverable	Draft	Final
Progress reports	n/a	Monthly.
Interim Program Review	n/a	6.
Progress reviews	n/a	Bimonthly.
Architecture:		
1. Final description of all required subsystems (form, fit, function).	4	IPR.
2. Final description of all data paths (data flow diagrams or equivalent).	4	IPR.
3. Final message definition.	4	IPR.
4. Final analysis of data loading requirements.	4	IPR.
5. List of constraints and assumptions used as basis for developing the architecture (e.g., traffic loads, maximum vehicle speeds).	4	IPR.
6. Snapshots of the IVHS architecture at several points in time (5, 10, 20 years).	4	IPR.
Feasibility study including risk analysis (update).	5	IPR.
Evolutionary deployment strategy.	IPR	15.
Detailed cost analysis	IPR	12.
Simulation studies:		
1. Detailed simulation plan.	n/a	IPR.
2. Simulation results	10	15.
Institutional issues	IPR	15.

Attachment 2: IVHS User Services

Following are IVHS User Services that are considered desirable and achievable within the 20-year period, for the purpose of deriving an IVHS architecture. The architecture eventually agreed upon for implementation may in fact provide other, additional services.

Comments are requested regarding the services listed, and any additional services that should be required of a comprehensive IVHS architecture.

Vehicle Position Determination

Route/Trip Planning

1. Based on real-time travel conditions.
2. Based on predicted travel conditions (travel times, transit schedules, action of other vehicles and travelers in network).

Routing Instructions

1. Private vehicles.
2. Commercial vehicles.
3. Transit vehicles.
4. Emergency vehicles.

In-Vehicle Presentation of Information

1. Incidents/congestion.
2. Road/traction condition.
3. Roadway signing.

In-Vehicle Monitoring and Alerts/Alarms

1. Vehicle condition and performance.
2. Loss-or-traction warning.
3. Lane departure warning.
4. Intersection hazard warning.
5. Object detection and collision avoidance.
6. Driver condition and performance.
7. Special roadway conditions (height clearance, grade, curvature).

Assisted and Automated Vehicle Control

1. Headway keeping.
2. Lane following.
3. Lane changing.
4. Merge/demerge.
5. Transition from manual to automatic control.
6. Intersection safety management.
7. Collision avoidance.
8. Vehicle "check-in" to automated lanes.

Automated (Electronic) Tolls

1. Debiting and crediting.
2. Account processing and collection.

Automated (Electronic) Billing for Transit Fares, Parking and Other Services

1. Smart cards.
2. Third party billing.
3. Account review and updating.

Traveler Information Services Outside of Private Vehicles (at Home, in Office, on-Board Transit, Kiosks, Portable Personal Devices)

1. Multi-modal information (real-time ride-sharing and transit schedules; predicted arrival times).
2. Routing determination (multi-modal, current traffic and transit information).
3. Business locations and routing information ("Yellow Pages").
4. Emergency services (police, hospital) locations and routing information.
5. Parking location and status.

Assistance Requests and Automated MAYDAY Transmission (Automatic Vehicle Identification and Position Reporting)

1. Traveler initiated (road service and medical requests, accident/incident reporting).
2. Automated/vehicle initiated (accident report and assistance request).

Traffic and Network Monitoring/Control

1. Traffic flow monitoring.
2. Transit schedule and status monitoring.
3. Construction/work zone scheduling, monitoring, and management.
4. Police, EMS, etc. information processing.
5. Roadway (environmental, surface condition) status.
6. Monitor and coordinate incident detection and response.
7. Predicted traffic conditions.
8. Coordinated real-time, area-wide traffic control (signals, ramps, signs).
9. Priority treatment of special vehicles (police, EMS, transit, HOV).

Real-Time Information Dissemination

1. Manage cross-mode fee collection.
2. Travel information (routing, travel times) to vehicles.
3. Travel information (schedule adherence, travel times) to non-mobile locations (home, office, kiosk).

Commercial Vehicle Services

1. Automatic vehicle location (fleet management).
2. Automated tax charge/collection.
3. Electronic cargo monitoring/tracking.
4. Weigh-in-motion.
5. Electronic recording/verification of bill-of-lading, driver's license, permit issuance, driver's hours, mileage and roadway use.
6. HAZMAT monitoring and control.

Attachment 3: Architecture Evaluation Criteria

This attachment includes the detailed architecture evaluation criteria. These criteria will be used for the following purposes:

1. To guide the contractor teams in evaluating their own architectures during Phase I. Each team's analyses must address these criteria and the contractor teams' deliverables must address how well their architectures meet these criteria.

2. To guide the TRT and the Architecture Manager in evaluating the contractor teams' architectures.

3. To select which contractor teams will participate in Phase II.

4. To guide the final work of the contractor teams during Phase II in evaluating, refining, and documenting their architectures.

5. To select the final national IVHS architecture.

The following table lists the specific evaluation criteria and has been arranged in a matrix indicating, for each criterion, whether it will be applied predominantly in Phase I, Phase II, or both Phases. If a criterion is marked for both Phase I and Phase II, this means that only preliminary data will be required at the end of Phase I, with final data being delivered in Phase II.

	Phase I architecture evaluation/phase II downselect	Phase II architecture evaluation
Technical/performance:		
Support of IVHS user services across the three operational scenarios	X	
System flexibility and expandability (modular design)	X	
Performance of variously equipped vehicle		X
Support for multiple levels of functions—the architecture should support a range of designs, both in function and cost.	X	
Incremental installation and evolutionary growth	X	X
System safety—both in-vehicle and among infrastructure		X
Operational characteristics	X	X
Accuracy of traffic prediction models.		
Efficiency of traffic control systems.		
Efficiency of route calculations.		
Accuracy of position location.		
Effectiveness of information delivery methods.		
Adequacy of communications system capacity.		
Level of detail of map data bases/accuracy.		
Security safeguards—both system security and information security		X
Operational:		
System reliability and maintainability	X	X
Performance in diverse terrain/structures. Performance in poor weather.		
Ease of updating databases (maps, historical data, etc.).		
Ability to upgrade system while it remains operational (is there sufficient redundancy to avoid losing critical system capabilities during upgrades?).		
System safety and availability during degraded mode operation	X	X
Capability during invehicle failure.		
Capability during communication failure.		
Capability during TMC failure.		
Cost:		
Vehicle capital	X	X
Vehicle operating/maintenance	X	X
Communication system capital	X	X
Communication system operating/maintenance	X	X
Traffic management capital	X	X
Traffic management operating/maintenance	X	X
Potential methods of distributing capital costs (i.e., who pays for equipment and services)	X	X
Risk:		
Equipment or service not being provided	X	
Communication system risks.		
Other system risks.		X
Service not implemented by traffic managers		
Complexity of TMC risk.		
Timeliness of information.		
Failing to meet jurisdictional interest risk.		X
Service not purchased or used by vehicle operators	X	
Technology places limits on size of market		
Outbound communications.		
Inbound communications.		X
Potential market acceptance		X
Penetration levels for effective performance		
Human factors:	X	X
Ease of use	X	X
User acceptance		
Benefits:	X	X
Travel time reduction	X	X
Congestion reduction		X
Net safety improvements		X
Reduction in vehicle miles traveled		X
Automobile emissions reduction		X
Reduction in energy consumption		
Ability to provide benefits to all levels of market penetration	X	
Institutional issues:		X
Potential user acceptance of IVHS technology	X	X
Equitable allocation of costs and benefits		
Ability to support pay for use	X	
First user benefits		X
Expected market penetration		X
Legal issues (liability, anti-trust, etc.)		X
Privacy issues		X
Inter-jurisdictional issues—does architecture support interjurisdictional communication/coordination	X	

Attachment 4: Critical Issues and Questions

The following paragraphs identify some major issues regarding the system architecture development process that need resolution before the eventual Request for Proposal is published. Although your responses to any and all aspects of this RFI are welcomed and encouraged, the following represent the more critical outstanding issues. We request that your responses to these specific questions be as frank and detailed as possible.

1. Should joint reviews be held in which all contractor teams are present or should each contractor present its material separately so as to maintain confidentiality? What material is considered acceptable/unacceptable for sharing?

2. With respect to the sharing of information among contractors please address the following concerns:

(a) Contractors may be hesitant to share their best ideas for fear they will be absorbed into another team's approach.

(b) Contractors may not be frank in pointing out weaknesses of other teams' work until nearing the down-selection phase.

3. Please provide comments on the proposed Statement of Work.

(a) Are there other task areas other, than those listed that should be considered?

(b) Are the architecture definition and evaluation tasks focused at the proper level of detail?

(c) Is the scope of the study proper for the time allocated on the schedule?

(d) Should the SOW identify performance parameters? If so, to what level?

4. With regard to the user services:

(a) Should the user services provide the sole basis for architecture definition and evaluation?

(b) Is the list of services reasonable and complete?

(c) Should there be any changes, such as additions, deletions, or more detailed descriptions? Include a brief justification for any proposed modification to the draft list.

5. It is intended that the government-furnished scenarios and/or performance parameters will be based on actual specific metropolitan, rural, and inter-urban areas.

(a) What level of "real-world" detail is considered necessary and sufficient to allow the individual study teams to work from a common basis for architecture definition and quantitative evaluation?

(b) How many unique scenarios do you envision will be needed to characterize a full range of IVHS applications in urban and rural settings?

(c) A common simulation scenario should be used by each team in evaluating its architecture, so as to allow reasonable comparison of results. We are considering using an urban scenario, simulating a snapshot of the architecture at the 5 year time frame. Do you have any suggestions or recommendations for an alternative common simulation scenario?

(d) Which parameters other than those listed in Task B3 should be in the scenarios?

6. During the project, each contractor team will be required to define a representative IVHS system design that will be used to validate elements of the architecture and to provide a basis for detailed performance evaluations and cost studies during the second year of the project. Which specific areas (or elements) of the architecture should be modeled? How? To what level of detail?

7. Would the use of a standard reference model architecture (as discussed in some IVHS technical papers) be useful? If so, for what should it be used and who should define it?

8. Inputs are solicited regarding the availability of performance and cost models (or evaluation frameworks) that may be applicable to support analysis of key elements of the architectures in both Phase I and Phase II. Please identify the specific areas of applicability, the strengths and weaknesses of the models as well as the amount of modification or enhancement needed to apply them to this effort.

9. What government-furnished information needs to be provided?

10. Is the set of Phase I and II evaluation criteria complete? Is the breakdown between the phases appropriate?

11. Would a DOT technical reference center be adequate for providing contractors access to relevant reference materials such as technical papers and studies?

12. What would be the expected level of effort for each phase in terms of person-months?

13. Are the deliverables, as listed, considered to be a comprehensive set? What others should be included?

14. All data developed under this government-funded effort will be considered public domain. Does this raise any concerns?

15. Address any other area(s) of concern.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 20, 1992.

T. D. Larson,

Administrator.

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Part VI

Department of Education

34 CFR Part 200
Chapter 1 Program in Local Educational Agencies; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN: 1810-AA61

Chapter 1—Program in Local Educational Agencies

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The U.S. Secretary of Education (Secretary) amends the regulations governing part A of chapter 1 of title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (Chapter 1). The regulations will (1) assist a local educational agency (LEA) in implementing Chapter 1 programs that serve children in local institutions for neglected or delinquent (N or D) children, including those in adult correctional institutions; (2) allow an LEA to serve non-Chapter 1 children on an incidental basis in its Chapter 1 project; and (3) assist an LEA in implementing Chapter 1 programs to serve educationally deprived homeless children.

These provisions support the President's AMERICA 2000 strategy for achieving the National Educational Goals in two important ways. By providing guidance on how better to serve the needs of N or D children and homeless children, these provisions will help ensure that all children are afforded the educational opportunities needed to reach the high levels of achievement envisioned in the National Education Goals. In addition, the provisions to allow non-Chapter 1 students to participate in Chapter 1 programs under certain circumstances will enhance the ability of schools to operate programs and use resources more effectively to raise achievement levels of educationally deprived students and, in some instances, to better coordinate Chapter 1 with the regular program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**"

FOR FURTHER INFORMATION CONTACT: Wendy Jo New, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 2043), Washington, DC 20202-6132. Telephone: (202) 401-0701. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On May 26, 1992, the Secretary published a notice of proposed rulemaking (NPRM) in the **Federal Register** (57 FR 21916-21918), which proposed changes to the Chapter 1 regulations in three significant areas-services to children in institutions for N or D children; services to homeless children; and incidental inclusion of non-Chapter 1 children. These changes were proposed to increase flexibility for LEAs operating Chapter 1 programs. Except for a minor revision to § 200.20(a)(10)(i)(B), which makes clear the persons identified are merely examples of institutional staff with whom it may be appropriate to consult regarding local N or D children, the final regulations include all changes proposed in the NPRM.

Local N or D Children

With respect to services for children in local institutions for N or D children, the regulations amend the definition of "educationally deprived children" in § 200.6 to include children who reside in local institutions for N or D children and in adult correctional institutions; amend § 200.20 to require an LEA to assure in its project application that Chapter 1 services are designed and implemented in consultation with staff in local institutions for N or D children, such as instructional and support staff and staff serving as parents; amend § 200.34 pertaining to parental involvement to clarify that an LEA that provides Chapter 1 services to children who reside in local N or D institutions shall comply, to the extent feasible, with the requirements for the involvement of those children's parents; and amend the evaluation requirements in § 200.35 to clarify that an LEA shall comply, to the extent feasible, with those requirements when evaluating the achievement of local N or D children served by Chapter 1 and, if compliance is not feasible, shall base its evaluation on the desired outcomes established for those children.

Incidental Inclusion of Non-Chapter 1 Children

The Secretary recognizes that, because of the instructional method, setting, or time of a particular Chapter 1 service, it is not always reasonable or desirable for an LEA to serve only children who have been selected to participate in a Chapter 1 project. This may be particularly true if an LEA is providing Chapter 1 services in the regular classroom. Therefore, these regulations allow an LEA to provide, on an incidental basis, Chapter 1 services to children who have not been selected to participate in the LEA's Chapter 1 program. This would be allowable only if the Chapter 1 project is designed to meet the special educational needs of educationally deprived children and is focused on those children, and only if the inclusion on non-Chapter 1 children does not decrease the amount, duration, or quality of Chapter 1 services for Chapter 1 children, increase the cost of providing the services, or result in the exclusion of children who would otherwise receive Chapter 1 services. This provision is added in § 200.31(d).

The Secretary believes that this provision will allow LEAs to take advantage of a wider range of instructional options in order to meet the educational needs of educationally deprived children more effectively. Incidental inclusion will also allow LEAs to align the Chapter 1 program more closely with the regular program of instruction and reduce the isolation of Chapter 1 children from their peers.

Homeless Children

Under section 722(e)(5) of the Stewart B. McKinney Homeless Assistance Act, a State receiving funds under that Act is required to include in its State plan a provision to ensure that "[e]ach homeless child shall be provided services comparable to services offered other students in the school * * * including educational services for which the child meets the eligibility criteria, such as compensatory educational programs for the disadvantaged. * * *" Homeless children, by definition, do not have a fixed, regular, and adequate night-time residence. Those children, therefore, cannot meet the basic Chapter 1 eligibility requirement that they reside in a project area to receive Chapter 1 services. To remedy this problem, the regulations amend § 200.31 of the Chapter 1 regulations to make educationally deprived homeless children eligible for Chapter 1 services without regard to their area of residence. In addition, the regulations require an LEA to identify all educationally deprived homeless children in the LEA. If those children attend Chapter 1 project schools, they would be selected for services on the same basis as other educationally deprived children in those schools. Because of the extraordinary needs of homeless children, the regulations also allow an LEA to provide Chapter 1 services to educationally deprived homeless children who do not attend Chapter 1 project schools.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 40 parties submitted comments on the proposed regulations. An analysis of the comments is published as an appendix to these final regulations. Except for the minor revision previously summarized, there are no differences between the NPRM and these final regulations.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Education of disadvantaged, Elementary and secondary education, Grant programs—education, Juvenile delinquency, Neglected, Private schools, Reporting and recordkeeping requirements, State-administered programs.

Dated: August 11, 1992.

Lamar Alexander,

Secretary of Education.

(Catalog of Federal Domestic Assistance Numbers: 84.010 Chapter 1 Program in Local Educational Agencies; and 84.012 Chapter 1 Program—State Administration)

The Secretary amends part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—CHAPTER 1 PROGRAM IN LOCAL EDUCATIONAL AGENCIES

1. The authority citation for part 200 continues to read as follows:

Authority: 20 U.S.C. 2701-2731, 2821-2838, 2851-2854, 2891-2901, unless otherwise noted.

2. Section 200.6 is amended by revising the definition of "*Educationally deprived children*" in paragraph (c) to read as follows:

§ 200.6 What definitions apply to the Chapter 1 LEA Program?

* * * * * *

(c) * * *

Educationally deprived children means children—

(1) Whose educational attainment is below the level that is appropriate of children of their age; or

(2) Who reside in local institutions for neglected or delinquent children, including adult correctional institutions.

* * * * * *

3. Section 200.20 is amended by revising paragraph (a)(10)(i)(B), removing the word "and" at the end of paragraph (a)(10)(i)(D), and adding a new paragraph (a)(10)(i)(F) to read as follows:

§ 200.20 How does an LEA apply for a subgrant?

(a) * * *

(10) * * *

(i) * * *

(B) Are designed and implemented in consultation with teachers (including early childhood professionals, pupil services personnel, and librarians, if appropriate) and, for children residing in local institutions for neglected or delinquent children, with institutional officials (such as instructional and support staff, and staff serving as parents);

* * * * * *

(F) Provide Chapter 1 services to homeless children, if appropriate; and

* * * * * *

4. Section 200.31 is amended by revising paragraphs (b) (1) and (2), by adding new paragraphs (c)(6) and (d) and a parenthetical statement at the end of the section to read as follows:

§ 200.31 How does an LEA identify and select children to participate?

* * * * * *

(b) * * *

(1) Identify educationally deprived children, as defined in § 200.6(c), including educationally deprived children in private schools, in all eligible school attendance areas, and educationally deprived homeless children regardless of their residence.

(2) On the basis of information obtained under paragraph (b)(1) of this section, including information concerning educationally deprived children in private schools and educationally deprived homeless children, identify the general instructional areas and grade levels on which the program will focus. Instructional areas and grade levels may vary among and within school attendance areas if the needs assessment data support those variations.

* * * * * *

(c) * * *

(6) An LEA may use funds available under this part to serve educationally deprived homeless children who do not attend Chapter 1 project schools.

(d) *Incidental inclusion of non-Chapter 1 children.* An LEA may provide, on an incidental basis, Chapter 1 services to children who have not been selected to participate in the LEA's Chapter 1 project if—

(1) The Chapter 1 project is designed to meet the special educational needs of Chapter 1 children and is focused on those children; and

(2) The LEA is able to demonstrate that the inclusion of non-Chapter 1 children on an incidental basis does not—

(i) Decrease the amount, duration, or quality of Chapter 1 services received by the children who have been selected;

(ii) Increase the cost of providing the services; or

(iii) Result in the exclusion of children who would otherwise receive Chapter 1 services.

* * * * * *

(Approved by the Office of Management and Budget under control number 1810-0504)

* * * * * *

5. Section 200.34 is amended by adding a new paragraph (a)(4) to read as follows:

§ 200.34 How does an LEA involve parents?

(a) * * *

(4) An LEA that provides Chapter 1 services to children who reside in local institutions for neglected or delinquent children shall comply, to the extent feasible, with the requirements in this section.

* * * * * *

6. Section 200.35 is amended by redesignating paragraph (a)(3) as (a)(4) and by adding a new paragraph (a)(3) to read as follows:

§ 200.35 What are the requirements for evaluating and reporting project results?

(a) * * *

(3)(i) An LEA that provides Chapter 1 services to children who reside in local institutions for neglected or delinquent children shall comply, to the extent feasible, with the evaluation requirements in paragraph (a) of this section.

(ii) If compliance is not feasible, the LEA shall base its evaluation on the success in meeting desired outcomes the LEA established for the neglected or delinquent children.

* * * * * *

Appendix—Analysis of Comments and Changes

(Note: This appendix will not be codified in the Code of Federal Regulations.)

Incidental Inclusion of Non-Chapter 1 Children

Comments: Of the 35 comments on this provision, 31 supported the incidental inclusion of non-Chapter 1 children. Many of the commenters suggested that this change would

facilitate the implementation of Chapter 1 programs operating within regular classrooms. Other commenters supported the change because labeling and isolation of Chapter 1 children would be reduced; a variety of instructional methods could be employed; team-teaching or collaborative teaching arrangements would be less constrained; Chapter 1 could be better aligned with services in the regular classroom; children who do not need full Chapter 1 services could benefit from occasional Chapter 1 lessons; and those students who are no longer eligible to participate in Chapter 1 could be provided a transition period.

Several commenters requested that the regulations be revised to include examples of situations in which incidental inclusion would be acceptable.

Discussion: The Secretary agrees that examples of situations in which it would be appropriate to include non-Chapter 1 children on an incidental basis would be helpful and has provided several examples below. These examples have not been added to the regulations, however, because they do not—and cannot—cover all possible scenarios. The Secretary is concerned that codifying the examples could limit the flexibility afforded by this provision. Additional guidance will be provided in the Chapter 1 Policy Manual.

Example A: A Chapter 1 resource teacher works in the regular classroom to assist individual Chapter 1 students during class. The Chapter 1 teacher who works extensively with the Chapter 1 students may answer questions of non-Chapter 1 students if occasional questions arise (many of which the Chapter 1 children probably share).

Example B: A non-Chapter 1 student who normally does not require additional assistance but is having difficulty grasping a concept may participate in the Chapter 1 program for the period of time that it addresses that particular concept or until the student no longer requires this assistance.

Example C: If a Chapter 1 teacher is working with Chapter 1 students on a particular concept and believes the best instructional approach for teaching this concept would be cooperative learning, it would be acceptable to include non-Chapter 1 participants on the learning teams.

Example D: Eligible private school children are receiving Chapter 1 services in a van parked near the private school. The Chapter 1 program in the van is designed to serve eight children at a time. In the grades to be served, the number of eligible private school children varies from six to eight. The Chapter 1 teacher is aware of other educationally deprived private school children who do not reside in eligible project areas who could benefit from the Chapter 1 services and fills the program, on an incidental basis, with these children.

Changes: None.

Comment: One commenter opposed to this provision suggested that it would cause a decrease in the amount, duration, or quality of Chapter 1 services received by the children who have been selected, increase the cost of providing the services, and result in the exclusion of children who would otherwise receive Chapter 1 services.

Discussion: Section 200.31(d) specifically prohibits the inclusion of non-Chapter 1 children if that inclusion would cause these results. Furthermore, since the provision first requires the Chapter 1 project to be designed to meet the special educational needs of Chapter 1 children and to be focused on those children, the Secretary believes it sufficiently protects Chapter 1 children from suffering a loss of services due to the incidental inclusion of non-Chapter 1 children.

Changes: None.

Comment: Two commenters suggested that the regulations be revised to clarify that the intent of including non-Chapter 1 children on an incidental basis is only to benefit the Chapter 1 children and improve the Chapter 1 program. One commenter suggested adding another qualifier to § 200.31(d)(2) that would require an LEA to demonstrate that incidental inclusion of non-Chapter 1 children does not result in a reduction of performance gains by Chapter 1 children. Another commenter suggested that participation of non-Chapter 1 children be limited to situations that are solely initiated by the non-Chapter 1 student.

Discussion: As stated in the preamble to these regulations, the intent of permitting incidental inclusion of non-Chapter 1 children is to allow LEAs to take advantage of a wider range of instructional options in order to meet more effectively the educational needs of educationally deprived children, to allow LEAs to align the Chapter 1 program more closely with the regular program of instruction, and to reduce the isolation of Chapter 1 children from their peers. Section 200.31(d) requires, first and foremost, that the Chapter 1 project must be designed to meet the special educational needs of Chapter 1 children and must be focused on those children. Although in many situations the inclusion of non-Chapter 1 children will be designed to benefit the Chapter 1 children, the Secretary does not believe this will always be the case. (*See, e.g.*, the first, second, and fourth examples above.) Likewise, the Secretary believes that limiting incidental inclusion to student-initiated participation would limit flexibility. The Secretary also believes that § 200.31(d)(2)(i) addresses the issue of performance by requiring the LEA to be able to demonstrate that incidental inclusion of non-Chapter 1 children does not decrease the quality of Chapter 1 services for Chapter 1 participants.

Changes: Nones.

Comment: One commenter requested that the regulations make clear that non-Chapter 1 children are not to be included in the Chapter 1 program evaluation.

Discussion: Section 200.35 of the Chapter 1 regulations already makes clear that only Chapter 1 children are to be included in Chapter 1 evaluation activities.

Changes: None.

Comment: One commenter opposed the incidental inclusion provision, stating that children enjoy being pulled out for Chapter 1 services and special activities and that Chapter 1 children actually feel more isolated from their peers in the regular classroom when they are not achieving as quickly as their peers.

Discussion: The Secretary believes that the flexibility in this provision allows for a variety of Chapter 1 instructional approaches to address the various needs of Chapter 1 students and complement the regular program. Although many of these approaches may be accomplished within the regular classroom, this provision is not intended to benefit only in-class programs. Rather, if appropriate, non-Chapter 1 children may also be included on an incidental basis in a pull-out program. Further, LEAs are not required under this provision to include non-Chapter 1 children, but are merely allowed to do so if appropriate.

Changes: None.

Comment: One commenter requested that the incidental inclusion provision also apply to Chapter 1 equipment and non-consumable materials.

Discussion: The allowable use of Chapter 1 equipment for non-Chapter 1 activities is addressed in the Chapter 1 Policy Manual. The Secretary recognizes that under some circumstances, equipment purchased as part of a properly designed Chapter 1 project may, without constituting an improper expenditure, be used on a less than full-time basis. If the equipment could be made available for other educational uses without interfering with its use in the Chapter 1 project or significantly shortening its useful life, the Secretary would have no objection to the non-Chapter 1 use. Absent actual evidence to the contrary, the use of Chapter 1 equipment in non-Chapter 1 activities is presumed to be proper if that use does not exceed 10 percent of the time the equipment is used in Chapter 1 activities. However, use above that amount may be reasonable if the other standards are met on a case-by-case basis.

Changes: None.

Local N or D Children

Comment: One commenter interpreted the changes in § 200.35(a)(3) as adding unrealistic expectations for evaluating Chapter 1 services provided to children in local institutions for N or D children and suggested the evaluation standards for the Chapter 1 States neglected or delinquent program be used.

Discussion: Section 200.35(a)(3) was added to address the difficulty LEAs may have evaluating local N or D children in accordance with § 200.35(a), which requires the use of nationally normed pre- and post-tests. As a result, § 200.35(a)(3)(i) requires LEAs to comply, to the extent feasible, with the evaluation requirements in § 200.35(a). Section 200.35(a)(3)(ii) makes clear, however, that LEAs that cannot comply must still evaluate N or D children based on their success in meeting the desired outcomes established for those children.

Changes: None.

Comment: One commenter expressed concern about the proposed changes in the parental involvement regulations, stating that many N or D children are under protective custody, and parental involvement may not always be in the best interest of the child.

Discussion: Section 200.34(a)(4) was added because of the difficulty LEAs may have in complying with the Chapter 1 parental involvement requirements for the reasons cited by the commenter. Thus, with respect to local N or D children, LEAs are required under § 200.34(a)(4) to comply, only to the extent feasible, with the parental involvement requirements.

Changes: None.

Comment: One commenter suggested that § 200.20(a)(10)(i)(B) not specify with whom the LEA must consult in the design and implementation of Chapter 1 services for children in local N or D institutions. The commenter interpreted the proposed change as mandating consultation with certain staff of N or D institutions. The commenter suggested that this decision is best left to local agencies.

Discussion: The Secretary did not intend to mandate consultation with specific persons. Rather, the Secretary intended to include examples of institutional staff with whom consultation may be appropriate. To eliminate any confusion, the Secretary has modified the parenthetical phrase in § 200.20(a)(10)(i)(B) to make clear that the persons identified are merely examples of institutional staff with whom it may be appropriate to consult.

Changes: The parenthetical phrase in § 200.20(a)(10)(i)(B) has been changed by replacing "including" with "such as" and now reads "(such as instructional and support staff, and staff serving as parents)."

Homeless Children

Comment: One commenter suggested that the regulations specifically require LEAs to assess homeless children to determine if they are educationally deprived.

Discussion: The Secretary has amended § 200.31(b)(1) specifically to require LEAs to identify educationally deprived homeless children in all school attendance areas of the LEA.

Changes: None.

Comment: The commenter suggested that the definition of homeless children is subject to various interpretations at the State and local levels.

Discussion: The definition of homeless individuals is included in section 103(a) of the Stewart B. McKinney Homeless Assistance Act. The term "homeless" is defined as including—

(1) An individual who lacks a fixed, regular, and adequate nighttime residence; and

(2) An individual who has a primary nighttime residence that is—

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Section 103(c) excludes from the definition of homeless "any individual imprisoned or otherwise detained pursuant to an Act of Congress or a State law." To promote consistent interpretation of the definition across the States, the Secretary , in August, 1989, issued guidance on this issue. Copies of this guidance are available from each State coordinator for the education of homeless children and youth.

Changes: None.

Comment: Two commenters suggested deleting the references to homeless children in § 200.31(b) (1) and (2). One of the commenters recommended that the language in the application assurances was sufficient; the other commenter recommended that the language in § 200.31(c)(6) be revised to encompass the language regarding homeless children's lack of residence.

Discussion: The Secretary recognizes that an LEA may not take advantage of the flexibility to provide Chapter 1 services to homeless children if the LEA is unaware of which homeless children are educationally deprived or where they attend school. As a result, the Secretary believes it is necessary to include the requirement in § 200.31(b)(1)–(2) that LEAs identify educationally deprived homeless children and consider their needs in planning Chapter 1 programs.

Changes: None.

Comment: One commenter asked what the purpose of the count of homeless children is and whether that count justifies the burden of collecting this information.

Discussion: The purpose of § 200.31(b)(1), which requires LEAs to identify educationally deprived homeless children in all school attendance areas, is not to get a count of homeless children. Rather, it is to identify homeless children who are educationally deprived and therefore eligible for Chapter 1 services. This requirement should not entail additional burden for LEAs since section 722(d) of the Stewart B. McKinney Homeless Assistance Act requires a State to gather data on the number and location of homeless children and youth in the State, and section 722(e) requires a State to ensure that homeless children are provided services that are comparable to services offered to other students in its schools.

Changes: None.

Comment: One commenter asked whether, similar to children in local neglected or delinquent institutions, the transiency of homeless children would make it difficult for LEAs to comply with the Chapter 1 evaluation requirements.

Discussion: Although there is transiency among homeless children, this is also true of non-homeless children. So long as Chapter 1 homeless children remain in the same LEA, the LEA must assess their progress.

Changes: None.

Comment: One commenter suggested that homeless shelters, like local

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institutions for neglected or delinquent children, be classified as institutions so that the needs assessment procedures would not be necessary and all homeless students could immediately receive Chapter 1 services.

Discussion: The Secretary is not authorized by the statute to designate homeless shelters as suggested.

Changes: None.

[FR Doc. 92-20591 Filed 8-24-92; 5:03 pm]
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federal register

Thursday
August 27, 1992

Part VII

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule will permit taking of designated species during the 1992–93 season.

EFFECTIVE DATES: August 27, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas J. Dwyer, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634—Arlington Square, Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1992

On May 8, 1992, the Service published for public comment in the **Federal Register** (57 FR 19865) a proposal to amend 50 CFR part 20, with comment periods ending July 20, 1992, for early-season proposals and August 31, 1992, for late-season proposals. On June 19, 1992, the Service published for public comment a second document (57 FR 27672) which provided supplemental proposals for early- and late-season migratory bird hunting regulations frameworks. On June 25, 1992, a public hearing was held in Washington, DC, as announced in the May 8 and June 19 **Federal Registers** to review the status of migratory shore and upland game birds. Proposed hunting regulations were discussed for these species and for other early seasons. On July 10, 1992, the Service published in the **Federal Register** (57 FR 30884) a third document in the series of proposed, supplemental, and final rulemaking documents which dealt specifically with proposed early-season frameworks for the 1992–93 season. On August 6, 1992, a public hearing was held in Washington, DC, as announced in the **Federal Registers** of May 8, June 19, and July 10, 1992, to review the status of waterfowl. Proposed hunting regulations were discussed for these late seasons. On August 21, 1992, the Service published a fourth document (57 FR 38202) containing final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits for 1992–93. The fifth document in the series, published August 21, 1992 (57 FR 38215), dealt specifically with proposed frameworks for the 1992–93 late-season migratory bird hunting regulations. The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR 20 to set hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14)," filed with EPA on June 9, 1988. Notice of Availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582). The Service's Record of Decision was published on August 16, 1988 (53 FR 31341). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESSES.**

Endangered Species Act Consideration

On July 2, 1992, the Division of Endangered Species concluded that the proposed action is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of their critical habitats. Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats. The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Division of Endangered Species and the Office of Migratory Bird Management.

Regulatory Flexibility Act; Executive Orders 12291, 12612, 12630, and 12778; and the Paperwork Reduction Act

In the May 8 **Federal Register**, the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and Executive Order 12291. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publishing a summary of the latter. These regulations have been determined to be major under Executive Order 12291 and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that these rules will not involve the taking of any constitutionally protected property rights, under Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These determinations are detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634—Arlington Square, Department of the Interior, Washington, DC 20240. These regulations contain no information collections subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980.

Memorandum of Law

The Service published its Memorandum of Law, required by Section 4 of Executive Order 12291, in the **Federal Register** dated August 21, 1992 (57 FR 38202).

Authorship

The primary authors of this rule are David F. Caithamer and William O. Vogel, Office of Migratory Bird Management.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, the Service intends that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that when the comment period closed time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States and Territories would have insufficient time to establish and publicize the necessary regulations and procedures to implement their decisions. The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now to be prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 18, 1992.

Mike Hayden,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K, is amended as follows.

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act of July 3, 1918, as amended, (16 U.S.C. 703—712) and the Fish and Wildlife Service Act of August 8, 1956, as amended, (16 U.S.C. 742 a—d and e—j).

BILLING CODE 4310-55-F

Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

(a) Puerto Rico

	Season Dates	Limits	
		Bag	Possession
Doves and Pigeons		10	10
Zenaida, white-winged, and mourning doves	Sept. 5-Nov. 2	10	10
Scaly-naped pigeons	Sept. 5-Nov. 2	5	5
Ducks	Nov. 7-Dec. 21 &	3	6
	Jan. 16-Jan. 25	3	6
Common Moorhens	Nov. 7-Dec. 21 &	6	12
	Jan. 16-Jan. 25	6	12
Common Snipe	Nov. 7-Dec. 21 &	6	12
	Jan. 16-Jan. 25	6	12

Restrictions: In Puerto Rico, the season is closed on the ruddy duck *(Oxyura jamaicensis)*, white-cheeked (Bahama) pintail *(Anas bahamensis)*, West Indian whistling (tree) duck *(Dendrocygna arborea)*, fulvous whistling (tree) duck *(Dendrocygna bicolor)*, masked duck *(Oxyura dominica)*, purple gallinule *(Porphyrula martinica)*, American coot *(Fulica americana)*, and Caribbean coot *(Fulica caribaea)*.

Closed Areas: Closed areas are described in the August 21, 1992, Federal Register (57 FR 38202).

(b) Virgin Islands

	Season Dates	Limits	
		Bag	Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	Jan. 1-Jan. 31	3	6

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck *(Oxyura jamaicensis)*, white-cheeked pintail *(Anas bahamensis)*, West Indian whistling (tree) duck *(Dendrocygna arborea)*, fulvous whistling (tree) duck *(Dendrocygna bicolor)*, masked duck *(Oxyura dominica)*, and purple gallinule *(Porphyrula martinica)*.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the August 21, 1992, Federal Register (57 FR 38202).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Area	Season Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits

Area	Ducks(1)	Geese(2)	Emperor Geese	Brant	Common Snipe	Sandhill Cranes(3)
North Zone	8-24	6-12	Closed	2-4	8-16	3-6
Gulf Coast Zone	6-18	6-12	Closed	2-4	8-16	2-4
Southeast Zone	5-15	6-12	Closed	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	5-15	6-12	Closed	2-4	8-16	2-4
Kodiak Zone	5-15	6-12	Closed	2-4	8-16	2-4

(1) In State Game Management Units (Units) 1-26 (Statewide), the basic bag limits may include not more than 2 pintails daily and 6 in possession, and 1 canvasback daily and 3 in possession. In addition to the basic daily bag and possession limits, a daily bag limit of 15 and a possession limit of 30 is permitted singly or in the aggregate of the following species: scoter, king and common eider, oldsquaw, harlequin ducks, and common and red-breasted mergansers. The season is closed for Steller's and spectacled eiders. In Units 6(D) and 7, the season for harlequin ducks will not open until October 1.

(2) No more than 4 daily, or 8 in possession, may be any combination of Canada and/or white-fronted geese, provided that: in Units 1-9 and 14-18, no more than 2 daily, or 4 in possession, may be white-fronted geese. In Units 5 and 6, the taking of Canada geese is only permitted from September 21 through December 16. In Units 8, 9(E), 10 (except Unimak Island) and 18, the taking of Canada geese is prohibited. In Unit 1(C), the taking of snow geese is prohibited. In Units 1-26 (Statewide), the taking of Aleutian and cackling Canada geese and emperor geese is prohibited.

(3) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day and 6 in possession and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Unit 22, there will be a tundra swan season from September 1 through October 30 with a season limit of 1 tundra swan per hunter. This season is by registration permit only. Up to 300 permits may be issued.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for mourning and white-winged doves and wild pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 21, 1992, Federal Register (57 FR 38202).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits: Bag	Possession
EASTERN MANAGEMENT UNIT			
Alabama			
North Zone			
12 noon to sunset	Sept. 19-Nov. 1 &	15	15
	Dec. 26-Jan. 10	15	15
South Zone			
12 noon to sunset	Oct. 10-Nov. 27 &	12	12
	Dec. 26-Jan. 15	12	12
Delaware			
12 noon to sunset	Sept. 5-Sept. 26	12	24
1/2 hour before sunrise to sunset	Oct. 12-Oct. 24 &	12	24
	Dec. 10-Jan. 13	12	24
Florida (1)			
12 noon to sunset	Oct. 3-Oct. 25	12	24
1/2 hour before sunrise to sunset	Nov. 21-Dec. 6 &	12	24
	Dec. 12-Jan. 10	12	24

	Season Dates	Limits Bag	Limits Possession
Georgia			
Zone 1			
12 noon to sunset	Sept. 5	12	24
1/2 hour before sunrise to sunset	Sept. 6-Oct. 19 &	12	24
	Nov. 26-Nov. 28 &	12	24
	Dec. 25-Jan. 15	12	24
Zone 2			
12 noon to sunset	Sept. 26	12	24
1/2 hour before sunrise to sunset	Sept. 27-Oct. 25 &	12	24
	Nov. 26-Nov. 28 &	12	24
	Dec. 10-Jan. 15	12	24
Illinois			
12 noon to sunset	Sept. 1-Oct. 30	15	30
Indiana	Sept. 1-Oct. 16 &	15	30
	Nov. 6-Nov. 15 &	15	30
	Nov. 26-Nov. 29	15	30
Kentucky			
11 a.m. to sunset	Sept. 1-Sept. 30 &	15	30
	Oct. 10-Nov. 2	15	30
sunrise to sunset	Nov. 28-Dec. 3	15	30
Louisiana			
12 noon to sunset	Sept. 5-Sept. 6 &	12	24
	Oct. 10-Oct. 11 &	12	24
	Dec. 12-Dec. 13	12	24
1/2 hour before sunrise to sunset	Sept. 7-Sept. 13 &	12	24
	Oct. 12-Nov. 8 &	12	24
	Dec. 14-Jan. 11	12	24
Maryland			
12 noon to sunset	Sept. 1-Oct. 24	12	24
1/2 hour before sunrise to sunset	Nov. 18-Nov. 27 &	12	24
	Dec. 21-Dec. 26	12	24
Mississippi	Sept. 5-Sept. 20 &	15	30
	Oct. 17-Nov. 9 &	15	30
	Dec. 26-Jan. 14	15	30
North Carolina			
12 noon to sunset	Sept. 5	12	24
1/2 hour before sunrise to sunset	Sept. 6-Oct. 3 &	12	24
	Nov. 23-Nov. 28 &	12	24
	Dec. 12-Jan. 15	12	24
Pennsylvania			
12 noon to sunset	Sept. 1-Oct. 10	12	24
1/2 hour before sunrise to sunset	Oct. 31-Nov. 28	12	24
Rhode Island			
12 noon to sunset	Sept. 21-Oct. 4	12	24
1/2 hour before sunrise to sunset	Oct. 17-Nov. 22 &	12	24
	Dec. 26-Jan. 13	12	24
South Carolina	Sept. 6-Oct. 10 &	12	24
	Nov. 21-Nov. 28 &	12	24
	Dec. 19-Jan. 13	12	24
Tennessee			
12 noon to sunset	Sept. 1	15	30
1/2 hour before sunrise to sunset	Sept. 2-Sept. 27 &	15	30
	Oct. 10-Oct. 24 &	15	30
	Dec. 23-Jan. 9	15	30
Virginia			
12 noon to sunset	Sept. 5-Nov. 4	12	24
1/2 hour before sunrise to sunset	Dec. 14-Dec. 22	12	24
West Virginia			
12 noon to sunset	Sept. 1	12	24
1/2 hour before sunrise to sunset	Sept. 2-Oct. 10 &	12	24
	Oct. 26-Nov. 7 &	12	24
	Dec. 21-Jan. 6	12	24

	Season Dates	Limits Bag	Limits Possession
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 5-Sept. 27 &	15	30
	Oct. 3-Oct. 18 &	15	30
	Dec. 5-Dec. 25	15	30
Colorado	Sept. 1-Oct. 30	15	30
Kansas	Sept. 1-Oct. 30	15	30
Missouri	Sept. 1-Oct. 30	15	30
Montana	Sept. 1-Oct. 30	15	30
Nebraska	Sept. 1-Oct. 30	15	30
New Mexico (2)	Sept. 1-Sept. 30 &	15	30
	Dec. 1-Dec. 30	15	30
North Dakota	Sept. 1-Oct. 30	15	30
Oklahoma	Sept. 1-Oct. 30	15	30
South Dakota (3)	Sept. 1-Oct. 16	15	30
Texas (4)			
North Zone	Sept. 1-Nov. 9	12	24
Central Zone	Sept. 1-Oct. 31 &	12	24
	Jan. 2-Jan. 10	12	24
South Zone			
Special Area	Sept. 20-Nov. 8 &	12	24
	Jan. 2-Jan. 17	12	24
(special season)	Sept. 5-Sept. 6 &	10	20
	Sept. 12-Sept. 13	10	20
Remainder of the South Zone	Sept. 20-Nov. 12 &	12	24
	Jan. 2-Jan. 17	12	24
Wyoming	Sept. 1-Oct. 15	15	30
WESTERN MANAGEMENT UNIT			
Arizona (5)	Sept. 1-Sept. 10 &	10	20
	Nov. 22-Jan. 10	10	20
California (6)	Sept. 1-Sept. 15 &	10	20
	Nov. 14-Dec. 28	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (6)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah	Sept. 1-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
OTHER POPULATIONS			
Hawaii (7)	Nov. 7-Jan. 17	10	20

(1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.

(2) In New Mexico, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves in the aggregate.

(3) In South Dakota, shooting hours are from sunrise to sunset.

(4) In Texas, the daily bag limit is 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 6 may be white-winged doves and 2 may be white-tipped doves; except in Cameron, Hidalgo, Starr, and Willacy Counties, where the daily bag limit may include no more than 2 white-winged doves. Possession limits are twice the daily bag limit.

During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 10 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(5) In Arizona, during September 1 through 10, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 22 through January 10, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(6) In the white-winged dove open areas of California and Nevada, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(7) In Hawaii, the season is only open on the Island of Hawaii. The daily bag limit is 10 mourning and laced doves in the aggregate. The possession limit is twice the daily bag limit. Shooting hours are from one-half hour before sunrise through one-half hour after sunset.

(b) Band-tailed Pigeons

	Season Dates	Limits Bag	Limits Possession
Arizona (1)	Oct. 13-Oct. 22	5	10
California			
North Zone	Sept. 19-Sept. 27	2	2
South Zone	Dec. 19-Dec. 27	2	2
Colorado	Sept. 1-Sept. 30	5	10
New Mexico			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon (2)	Sept. 15-Sept. 23	2	2
Utah	Sept. 1-Sept. 30	5	10

(1) In Arizona, each hunter must have a special bird permit stamp issued by the State.

(2) In Oregon, a State permit is required.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 21, 1992, Federal Register (57 FR 38202).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	5 (3)	8
Possession limit	25 (1)	30 (2)	10 (3)	16
ATLANTIC FLYWAY				
Connecticut (4)	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 17-Nov. 30	Oct. 17-Nov. 30
Delaware	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 23-Jan. 6	Nov. 23-Jan. 31
Florida	Sept. 1-Sept. 30 & Nov. 25-Jan. 3	Sept. 1-Sept. 30 & Nov. 25-Jan. 3	Dec. 12-Jan. 25	Nov. 1-Feb. 15
Georgia	Sept. 26-Dec. 4	Sept. 26-Dec. 4	Nov. 28-Jan. 11	Nov. 16-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16
Maryland	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 14-Nov. 21 & Dec. 7-Dec. 12	Sept. 28-Nov. 27 & Dec. 7-Jan. 20
Massachusetts	Sept. 1-Nov. 9	Closed	Oct. 10-Nov. 23	Sept. 1-Dec. 16
New Hampshire	Closed	Closed	Oct. 1-Nov. 14	Sept. 15-Nov. 30
New Jersey (5)				
North Zone	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 10-Nov. 13	Oct. 2-Jan. 16
South Zone	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 7-Nov. 28 & Dec. 12-Dec. 24	Oct. 2-Jan. 16
New York (6)	Sept. 1-Nov. 9	Closed	Oct. 1-Nov. 14	Sept. 1-Dec. 16

	Rails (Sora & Virginia)	Rails (Clapper & King)	Woodcock	Common Snipe
North Carolina	Sept. 5-Nov. 13	Sept. 5-Nov. 13	Dec. 10-Jan. 23	Nov. 13-Feb. 27
Pennsylvania	Sept. 1-Nov. 7	Closed	Oct. 23-Nov. 7	Oct. 23-Nov. 14
Rhode Island	Sept. 14-Nov. 22	Sept. 14-Nov. 22	Oct. 17-Nov. 30	Sept. 14-Nov. 29 & Dec. 14-Jan. 12
South Carolina	Sept. 23-Sept. 30 & Oct. 12-Dec. 12	Sept. 23-Sept. 30 & Oct. 12-Dec. 12	Nov. 26-Dec. 12 & Dec. 24-Jan. 20	Nov. 13-Feb. 27
Vermont	Closed	Closed	Oct. 1-Nov. 14	Sept. 26-Dec. 4
Virginia	Sept. 19-Nov. 27	Sept. 19-Nov. 27	Nov. 2-Nov. 28 & Dec. 16-Jan. 2	Oct. 17-Jan. 31
West Virginia	Sept. 1-Nov. 8	Closed	Oct. 17-Nov. 30	Sept. 1-Dec. 16
MISSISSIPPI FLYWAY				
Alabama (7)	Nov. 12-Jan. 20	Nov. 12-Jan. 20	Nov. 28-Jan. 31	Nov. 14-Feb. 28
Arkansas	Sept. 1-Nov. 8	Closed	Oct. 31-Dec. 13 & Jan. 2-Jan. 22	Nov. 14-Feb. 28
Illinois	Sept. 1-Nov. 9	Closed	Oct. 1-Dec. 4	Sept. 1-Dec. 16
Indiana	Sept. 1-Nov. 9	Closed	Sept. 26-Nov. 29	Sept. 1-Dec. 16
Iowa	Sept. 5-Nov. 13	Closed	Sept. 12-Nov. 15	Sept. 5-Dec. 20
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 17-Dec. 20	Sept. 16-Oct. 30 & Nov. 26-Jan. 25
Louisiana	Sept. 19-Sept. 27 & Nov. 21-Jan. 20	Sept. 18-Sept. 27 & Nov. 21-Jan. 20	Nov. 28-Jan. 31	Nov. 7-Feb. 21
Michigan (8)	Sept. 15-Nov. 14	Closed	Sept. 15-Nov. 14	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 1-Nov. 4	Sept. 1-Nov. 4
Mississippi	Oct. 12-Dec. 20	Oct. 12-Dec. 20	Nov. 28-Jan. 31	Nov. 14-Feb. 28
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Dec. 18	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Sept. 26-Nov. 28	Sept. 1-Nov. 28 & Dec. 7-Dec. 24
Tennessee	Deferred	Closed	Oct. 10-Dec. 13	Nov. 14-Feb. 28
Wisconsin	Deferred	Closed	Sept. 12-Nov. 15	Deferred
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 10-Dec. 13	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (9)	Sept. 1-Nov. 9	Closed	Sept. 15-Nov. 18	Sept. 1-Dec. 16
New Mexico (10) Zone 1	Oct. 17-Nov. 6 & Dec. 19-Jan. 17	Closed	Closed	Oct. 17-Nov. 6 & Dec. 19-Jan. 17
Zone 2	Nov. 28-Jan. 17	Closed	Closed	Nov. 28-Jan. 17
North Dakota	Closed	Closed	Closed	Oct. 3-Nov. 29
Oklahoma	Sept. 1-Nov. 9	Closed	Oct. 26-Dec. 29	Oct. 1-Jan. 15
South Dakota (11)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Deferred	Deferred
Wyoming	Sept. 13-Nov. 21	Closed	Closed	Sept. 13-Dec. 16
PACIFIC FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho (12)	Closed	Closed	Closed	Sept. 19-Jan. 3
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
New Mexico (10)	Deferred	Closed	Closed	Deferred
Wyoming	Sept. 13-Nov. 21	Closed	Closed	Sept. 13-Dec. 16

Note: For all other States in the Pacific Flyway, snipe seasons have been deferred and no seasons are prescribed for woodcock and rails.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, New Jersey, and Rhode Island, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In States of the Atlantic Flyway, the woodcock bag limit is 3 daily and 8 in possession.

(4) In Connecticut, the daily bag limit is 10 and the possession limit is 20 clapper and king rails in the aggregate, of which no more than 1 may be a king rail.

(5) In New Jersey, the season for king rails is closed by State regulation.

(6) In New York, the seasons for sora and Virginia rails and common snipe are statewide except on Long Island.

(7) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(8) In Michigan, the season opens concurrently with the duck season in certain areas.

(9) In Nebraska, the rail limits are 10 daily and 20 in possession.

(10) In New Mexico, the rail limits are 10 daily and 10 in possession.

(11) In South Dakota, the snipe limits are 5 daily and 15 in possession.

(12) In Idaho, in the Fort Hall Reservation Zone, the snipe season is October 24 through December 21.

6. Section 20.105 is amended by revising paragraphs (a) through (d) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 21, 1992, Federal Register (57 FR 38202).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Delaware	Sept. 1-Nov. 9	15	30
Florida (1)	Sept. 1-Sept. 30 &	15	30
	Nov. 25-Jan. 3	15	30
Georgia	Deferred	--	--
Maine	Sept. 1-Nov. 9	15	30
New Jersey	Sept. 1-Nov. 9	15	30
New York			
Long Island	Closed	--	--
Remainder of State	Sept. 1-Nov. 9	15	30
North Carolina	Sept. 5-Nov. 13	15	30
Pennsylvania	Sept. 1-Nov. 7	15	30
Rhode Island	Sept. 14-Nov. 22	15	30
South Carolina	Sept. 23-Sept. 30 &	15	30
	Oct. 12-Dec. 12	15	30
Virginia	Deferred	--	--
West Virginia	Deferred	--	--
MISSISSIPPI FLYWAY			
Alabama	Nov. 12-Jan. 20	15	15
Arkansas	Sept. 1-Nov. 9	15	30
Indiana	Sept. 1-Nov. 9	15	30
Kentucky	Sept. 1-Nov. 9	15	30
Louisiana	Sept. 19-Sept. 27 &	15	30
	Nov. 21-Jan. 20	15	30

	Season Dates	Limits Bag	Possession
Michigan	Deferred	--	--
Minnesota	Deferred	--	--
Mississippi	Oct. 12-Dec. 20	15	30
Ohio	Sept. 1-Nov. 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	--
CENTRAL FLYWAY			
New Mexico (1)			
Zone 1	Oct. 17-Nov. 6 &	1	2
	Dec. 19-Jan. 17	1	2
Zone 2	Nov. 28-Jan. 17	1	2
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 1-Nov. 9	15	30
Wyoming	Deferred	--	--
PACIFIC FLYWAY			
All States	Deferred		

(1) In Florida and New Mexico, the season applies to the common moorhen only. There is no open season on the purple gallinule.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway)

Within the special sea duck areas, the daily bag limit is 7 and the possession limit is 14 scoter, eider, and oldsquaw ducks, singly or in the aggregate. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Possession
Connecticut	Deferred	--	--
Delaware	Sept. 26-Jan. 9	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	--
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Oct. 2-Jan. 16	7	14
New York	Deferred	--	--
North Carolina	Deferred	--	--
Rhode Island	Deferred	--	--
South Carolina	Deferred	--	--
Virginia	Deferred	--	--

Note: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(c) Early (September) Duck Seasons

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Florida (1)	Sept. 26-Sept. 30	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 12-Sept. 20	4	8
Arkansas (2)	Sept. 12-Sept. 20	4	8
Illinois (3)	Sept. 5-Sept. 13	4	8
Indiana	Sept. 1-Sept. 9	4	8
Kentucky (4)	Sept. 16-Sept. 20	4	8
Louisiana	Sept. 19-Sept. 27	4	8
Mississippi	Sept. 19-Sept. 27	4	8
Missouri (2)	Sept. 12-Sept. 20	4	8
Ohio	Sept. 12-Sept. 20	4	8
Tennessee (4)	Sept. 12-Sept. 16	4	8
CENTRAL FLYWAY			
Colorado	Sept. 5-Sept. 13	4	8
Kansas	Sept. 12-Sept. 20	4	8
New Mexico	Sept. 5-Sept. 13	4	8
Oklahoma	Sept. 12-Sept. 20	4	8
Texas	Sept. 12-Sept. 20	4	8

(1) In Florida, the daily bag limit is 4 wood ducks and teal in the aggregate. The possession limit is twice the daily bag limit.

(2) In Arkansas and Missouri, shooting hours are from sunrise to sunset.

(3) In Illinois, shooting hours are from 7 a.m. until 4 p.m.

(4) In Kentucky and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(d) Early (September) Canada Goose Seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Massachusetts (1)	Sept. 8-Sept. 10	5	10
New York			
St. Lawrence Area	Sept. 1-Sept. 10	3	6
Erie Area	Sept. 1-Sept. 10	3	6
North Carolina (1)	Sept. 8-Sept. 10	2	4
Pennsylvania			
Northwestern Counties	Sept. 1-Sept. 10	3	6
Southeastern Counties	Sept. 1-Sept. 10	5	10
MISSISSIPPI FLYWAY			
Indiana (1)	Sept. 1-Sept. 10	5	10
Michigan	Sept. 1-Sept. 10	5	10
Minnesota (2)	Sept. 1-Sept. 10	4	8
Ohio	Sept. 1-Sept. 10	3	6
Wisconsin (3)	Sept. 1-Sept. 10	5	10

	Season Dates	Limits Bag	Possession
PACIFIC FLYWAY			
Oregon (1)	Sept. 1-Sept. 10	2	4
Washington (1)	Sept. 1-Sept. 10	2	4
Wyoming (1)	Sept. 5-Sept. 7	2 per season	

(1) State permit required.

(2) In Minnesota, the bag and possession limits for Canada geese will be 2 and 4, respectively, in the Fergus Falls/Alexandria Zone and Southwest Border Zone.

(3) In Wisconsin, the season is closed from September 5 through September 7.

* * * * *

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 21, 1992, Federal Register (57 FR 38202).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits Bag	Possession
CENTRAL FLYWAY			
Colorado (1)	Oct. 3-Nov. 29	3	6
Montana			
Regular season (1)	Sept. 26-Nov. 22	3	6
Special season (2)	Sept. 12-Sept.13 &	1 per season	
	Sept. 19-Sept. 20	1 per season	
New Mexico			
Regular season (1)(3)	Oct. 17-Jan. 17	3	6
Middle Rio Grande Valley Special Season Area (2)(3)(4)	Oct. 16-Oct. 18 &	3	3
	Oct. 23-Oct. 25	3	3
Hatch-Deming Special Season Area (2)(3)(4)	Jan. 22-Jan. 24 &	3	3
	Jan. 29-Jan. 31	3	3
North Dakota (1)	Sept. 5-Nov. 1	3	6
Oklahoma (1)	Deferred		
South Dakota (1)	Sept. 26-Nov. 1	3	6
Texas (1)	Deferred		
Wyoming			
Regular Season (1)	Sept. 15-Nov. 11	3	6
Riverton-Boysen Unit (2)	Sept. 26-Sept. 27	2 per season	
PACIFIC FLYWAY			
Arizona (2)	Nov. 2-Nov. 4 &	2 per season	
	Nov. 6-Nov. 8 &	2 per season	
	Nov. 10-Nov. 12 &	2 per season	
	Nov. 14-Nov. 16	2 per season	
Wyoming			
Bear River Area (2)	Sept. 5-Sept. 7	2 per season	
Salt River Area (2)	Sept. 5-Sept. 7	2 per season	
Eden-Farson Area (2)	Sept. 5-Sept. 7	2 per season	

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) Hunting in the special seasons is by State permit only.

(3) The seasonal bag limit is 9.

(4) Shooting hours are sunrise to sunset.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 21, 1992, Federal Register (57 FR 38202).

CHECK STATE REGULATIONS FOR ADDITIONAL RESTRICTIONS, INCLUDING AREA DESCRIPTIONS.

Daily bag limit ..... 3 migratory game birds, singly or in the aggregate.

Possession limit ..... 6 migratory game birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons as unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Florida	
Mourning and white-winged doves	Oct. 26-Nov. 20 & Dec. 7-Dec. 11 & Jan. 11-Jan. 17
Rails and common moorhens	Oct. 19-Nov. 24
Woodcock	Nov. 24-Dec. 11 & Jan. 26-Mar. 10
Maryland	
Mourning doves	Oct. 25-Nov. 17 & Dec. 8-Dec. 20
Rails	Nov. 10-Dec. 16
Woodcock	Oct. 5-Oct. 13 & Nov. 22-Dec. 6 & Dec. 13-Jan. 19
Pennsylvania	
Mourning doves	Oct. 11-Oct. 30 & Nov. 29-Dec. 18
Virginia	
Doves	Dec. 23-Jan. 28
Rails	Dec. 14-Jan. 19
Woodcock	Dec. 14-Dec. 15 & Jan. 3-Mar. 3
MISSISSIPPI FLYWAY	
Illinois	
Mourning doves	Oct. 31-Dec. 16
Rails	Nov. 10-Dec. 16
Woodcock	Sept. 1-Sept. 30 & Dec. 5-Dec. 16

	Extended Falconry Dates
Indiana	
Mourning doves	Oct. 17-Nov. 5 & Jan. 1-Jan. 27
Woodcock	Sept. 1-Sept. 25
Iowa:	
Rails	Sept. 1-Sept. 4 & Nov. 14-Dec. 16
Woodcock	Sept. 1-Sept. 11 & Nov. 16-Dec. 16
Ducks and mergansers (1)	Sept. 1-Sept. 30
Geese (1)	
Southwest Zone	Sept. 13-Sept. 30
Rest of State	Sept. 6-Sept. 30
Michigan	
Rails, snipe, and woodcock	Sept. 7-Sept. 14 & Nov. 15-Dec. 22
Ducks, mergansers, coots, and moorhens (1)	
North Zones	Sept. 7-Sept. 30
Middle Zones	Sept. 7-Sept. 30
South Zone	Sept. 7-Sept. 30
Minnesota	
Rails, snipe, and woodcock	Nov. 5-Dec. 16
Ducks, mergansers, coots, and moorhens (1)	Sept. 1-Sept. 30
Missouri	
Mourning doves	Oct. 31-Dec. 16
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 30
Woodcock	Sept. 1-Sept. 11
Ducks, mergansers, and coots (1)	Sept. 1-Sept. 30
CENTRAL FLYWAY	
Colorado	
Ducks, mergansers, and coots (1)	Sept. 1-Sept. 4 & Sept. 14-Sept. 30
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 12-Sept. 30
New Mexico	
Doves	Oct. 1-Nov. 4 & Nov. 29-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Sandhill cranes	
Regular Season Area	Jan. 18-Jan. 31
North Dakota	
Ducks, mergansers, coots, and snipe (1)	Sept. 1-Sept. 30
South Dakota	
Ducks, mergansers, and coots (1)	Sept. 4-Sept. 30
Texas	
Mourning and white-winged doves	Nov. 14-Dec. 20
Rails and gallinules	Nov. 14-Dec. 20

	Extended Falconry Dates
Wyoming	
Rails	Sept. 1-Sept. 12
Ducks, mergansers, and coots (1)	Sept. 1-Sept. 30
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 11-Oct. 27
Ducks and mergansers (1)	
North Zone	Sept. 1-Sept. 30
Colorado	
Ducks, mergansers, and coots (1)	Sept. 19-Sept. 30
Idaho	
Mourning Doves	Oct. 1-Nov. 30 & Feb. 23-Mar. 10
Ducks, mergansers, and coots (1)	Sept. 1-Sept. 30
Geese	Sept. 1-Sept. 14
Montana (2)	
Geese (1)	Sept. 26-Sept. 30
New Mexico	
Doves	Oct. 1-Nov. 4 & Nov. 29-Nov. 30
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Oregon (3)	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Sept. 1-Oct. 16 & Dec. 1-Dec. 31
Wyoming	
Rails and snipe	Sept. 1-Sept. 12
Ducks, mergansers, and coots (1)	Sept. 1-Sept. 30

(1) Additional days occurring after Sept. 30 will be published with the late-season selections.

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

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Part VIII

Department of Education

34 CFR Part 668

Student Assistance General Provisions; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 668

RIN: 1840-AB07

Student Assistance General Provisions

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the verification regulations contained in subpart E of the Student Assistance General Provisions regulations, 34 CFR part 668, to make two changes necessary to have them conform to certain provisions in the Higher Education Technical Amendments Act of 1987 (Pub. L. 100-50) and the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239) and to correct errors and omissions in the current regulations.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments, with the exception of § 668.61. Section 668.61 will become effective after the information collection requirements contained in that section have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, Program Analyst, Verification Development Section, Student Verification Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue, SW., Regional Office Building 3, room 4613, Washington, DC 20202-5451. Telephone: (202) 708-4601. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC 202 area code, telephone 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: On October 31, 1989, the Secretary published a Notice of Proposed Rulemaking (NPRM) for part 668 in the **Federal Register.** The Secretary published final verification regulations for Part 668 in the **Federal Register** on December 2, 1991 (56 FR 61330). The verification regulations contained in subpart E of the Student Assistance General Provisions regulations (34 CFR part 668) govern the verification of information used to calculate an applicant's expected family contribution (EFC) as part of determining an applicant's need for student financial assistance. The EFC is the amount that an applicant and the applicant's family reasonably can be expected to contribute towards the applicant's cost of attendance at an institution of higher education.

The verification regulations seek to improve the efficiency of Federal student aid programs and, by so doing, to improve their capacity to enhance opportunities for postsecondary education. Encouraging students to graduate from high school and to pursue high quality postsecondary education are important elements of the President's AMERICA 2000 strategy to move the Nation toward achieving the National Education Goals.

The changes in these regulations are being made to correct errors and omissions in the text of the current regulations and to have §§ 668.56(c) and 668.61 conform to the requirements of the Higher Education Technical Amendments Act of 1987 (Pub. L. 100-50) and the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), respectively.

Section 668.56 has been amended to change the references in § 668.56(a) from § 668.54(a) (1) or (2) to read § 668.54(a) (2) or (3) to correct a numbering error. This is a technical change. Also, the reference to independent student status has been deleted from § 668.56(c) because, under the Higher Education Technical Amendments Act of 1987 (Pub. L. 100-50), the Secretary is no longer permitted to prescribe requirements for verifying independent student status.

Section 668.57 has been amended to include a provision that requires applicants to verify the number of family members enrolled in postsecondary education institutions even though there was no change in the information verified in the previous award year. This provision was discussed in the NPRM published in the **Federal Register** on October 31, 1989, and also in the preamble to the final verification regulations published in the **Federal Register** on December 2, 1991, but the provision was inadvertently omitted from the regulatory text.

Section 668.57(d)(1) has been amended to change the references from § 668.56(a)(5) (iii), (iv), (v) and (vi) to read § 668.56(a)(5) (iii), (iv), (v), (vi) and (vii) to correct a numbering error. This is a technical change.

Section 668.58(a)(1)(i) has been amended to add a reference to the need-based Income Contingent Loan Program, which was inadvertently omitted in the final verification regulations published in the **Federal Register** on December 2, 1991.

Sections 668.59(a)(3)(ii) and (c)(2)(ii) have been amended to remove the phrase "reflecting a net change," which would permit institutions to allow offset errors in dollar items in income and assets with expenses, instead of recalculating the applicant's EFC. This phrase has been deleted because it was not the intent of the Secretary in publishing the final verification regulations to change the methodology for computing errors in dollar items from absolute value to net value. The policy set forth in § 668.59 of the NPRM that was published in the **Federal Register** on October 31, 1989 has been retained.

Section 668.61(b) has been amended to delete the $200 overaward provision for the Stafford Loan Program. This provision permitted institutions to determine, as a result of the verification process, that the borrower is ineligible to receive proceeds of $200 or more in excess of need. This provision was rendered obsolete by the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), which no longer permits institutions to hold any Stafford Loan proceeds in excess of the student's financial need for the loan amount. Institutions now must withhold the loan proceeds and promptly return to the lender or escrow agent any disbursement not yet delivered to the student that exceeds the amount of assistance the student is eligible to receive.

Waiver of Notice of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act, 5 U.S.C. 553, it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the regulatory changes in this document are necessary to correct minor technical errors and to implement mandatory statutory provisions. The changes in this document do not establish any new policy. Therefore, the Secretary has determined that publication of a proposed rule is unnecessary and contrary to the public interest under 5 U.S.C. 553(b)(B).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education. These regulations contain technical amendments designed to clarify and correct current regulations. The changes will not have a significant economic impact on the institutions affected.

Assessment of Educational Impact

The Secretary has determined that regulations in this document would not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 668

Administrative practice and procedure, Colleges and universities, Consumer protection, Loan programs—education, Grant programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: July 20, 1992.

Lamar Alexander,

Secretary of Education.

The Secretary amends part 668 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 668.56 is amended by revising paragraph (a) introductory text and paragraph (c) to read as follows:

§ 668.56 Items to be verified.

(a) Except as provided in paragraphs (b), (c), (d), and (e) of this section, an institution shall require an applicant selected for verification under § 668.54(a)(2) or (3) to submit acceptable documentation described in § 668.57 that will verify or update the following information used to determine the applicant's EFC:

* * * * * * *

(c) If the number of family members in the household or the amount of child support reported by an applicant selected for verification is the same as that verified by the institution in the previous award year, the institution need not require the applicant to verify that information.

* * * * * * *

3. Section 668.57 is amended by revising paragraph (c)(1) introductory text and paragraph (d)(1) introductory text to read as follows:

§ 668.57 Acceptable documentation.

* * * * * * *

(c) * * *

(1) Except as provided in § 668.56 paragraphs (b), (c), (d) and (e), an institution shall require an applicant selected for verification to verify annually information included on the application regarding the number of household members in the applicant's family enrolled on at least a half-time basis in postsecondary institutions. The institution shall require the applicant to verify that information by submitting a statement signed by the applicant and the applicant's parents if the applicant is a dependent student, or by the applicant and the applicant's spouse if the applicant is an independent student, listing—

* * * * * * *

(d) * * *

(1) Untaxed income and benefits described in § 668.56(a)(5)(iii), (iv), (v), (vi), and (vii) by submitting to it—

* * * * * * *

4. Section 668.58 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 668.58 Interim disbursements.

(a) * * *

(1) * * *

(i) Disburse any Pell Grant, Campus-based, or need-based ICL program funds to the applicant;

* * * * * * *

5. Section 668.59 is amended by revising paragraphs (a)(3)(ii) and (c)(2)(ii) to read as follows:

§ 668.59 Consequences of a change in application information.

(a) * * *

(3) * * *

(ii) No errors in dollar items or errors in dollar items of less than $200.

* * * * * * *

(c) * * *

(2) * * *

(ii) No errors in dollar items or errors in dollar items of less than $800; or

* * * * * * *

6. Section 668.61 is amended by revising paragraph (b) to read as follows:

§ 668.61 Recovery of funds.

* * * * * * *

(b) If the institution determines as a result of the verification process that an applicant received Stafford Loan proceeds for an award year in excess of the student's financial need for the loan, the institution shall withhold and promptly return to the lender or escrow agent any disbursement not yet delivered to the student that exceeds the amount of assistance for which the student is eligible, taking into account other financial aid received by the student. However, instead of returning the entire undelivered disbursement, the school may choose to return promptly to the lender only the portion of the disbursement for which the student is ineligible. In either case, the institution shall provide the lender with a written statement describing the reason for the returned loan funds.

* * * * * * *

[FR Doc. 92-20599 Filed 8-26-92; 8:45 am]

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Part IX

Department of Education

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study and Federal Supplemental Educational Opportunity Grant Programs; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of closing date for filing the fiscal operations report and application to participate in the Perkins Loan, College Work-Study (CWS), and Supplemental Educational Opportunity Grant (SEOG) programs. These programs have been renamed the Federal Perkins Loan, the Federal Work-Study (FWS), and the Federal Supplemental Educational Opportunity Grant (FSEOG) programs, respectively, by the Higher Educational Amendments of 1992.

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 1993 funds—for use in the 1993–94 award year—under the Federal Perkins Loan, FWS, and FSEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. Institutions will be notified of the closing date for establishing institutional eligibility to participate in the Federal Perkins Loan, FWS, and FSEOG programs in the 1993–94 award year through a separate notice in the Federal Register.

The Secretary further gives notice that an institution that had a Perkins Loan fund or expended CWS or SEOG funds during the 1991–92 award year is required to submit a Fiscal Operations Report to report its program expenditures as of June 30, 1992, to the Secretary.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E, C, and part A subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

Authority: (20 U.S.C. 1087aa–1087hh; 42 U.S.C. 2751–2756a; and 20 U.S.C. 1070b–1070b–3.)

Closing Date: An institution may submit its 1991–92 Fiscal Operations Report and 1993–94 Application to Participate (FISAP) in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant programs (FISAP–ED FORM 646–1; OMB No. 1840–0073) by—

(1) Submitting the completed data on a data diskette provided by the Department of Education;

(2) Creating a tape from data stored on a mainframe computer, and submitting that tape in a format defined by the Department of Education; or

(3) Transmitting the data from a personal or mainframe computer through a modem.

First-time applicants will be required to submit data for the application portion of the FISAP only. Therefore, the Department is mailing only that portion of the FISAP to first-time applicants.

To ensure consideration for 1993–94 funds, an institution must submit an electronic FISAP either by data diskette, tape, or modem, by October 1, 1992.

FISAPs Delivered by Mail: A diskette or tape containing FISAP data must be addressed to FISAP, c/o Universal Automation Leasing Corp. (UAL), 5th Floor, 8300 Colesville Road, Silver Spring, Maryland 20910.

An institution must show proof of mailing its FISAP. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If a FISAP is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

FISAPs Delivered by Hand: A diskette or tape containing FISAP data must be taken to Universal Automation Leasing Corp. (UAL), 5th Floor, 8300 Colesville Road, Silver Spring, Maryland.

Hand-delivered FISAP diskettes or tapes will be accepted between 9 a.m. and 5 p.m. daily (Eastern Daylight Time), except Saturdays, Sundays, and Federal holidays. A FISAP that is hand-delivered will not be accepted after 5 p.m. on the closing date.

FISAPs Delivered Electronically: A FISAP that is delivered electronically must be transmitted by either a personal or mainframe computer to the host ED computer using a modem. In addition, one original completed signature page must be mailed to Electronic FISAP, c/o Universal Automation Leasing Corp. (UAL), 5th Floor, 8300 Colesville Road, Silver Spring, Maryland 20910, by October 1, 1992.

FISAP Information: FISAP materials were mailed by the Campus-Based Programs Branch in late July. An institution must prepare and submit its FISAP in accordance with the information included in the package.

The program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations: The following regulations are applicable to these programs: Perkins Loan—34 CFR parts 674 and 668. College Work-Study—34 CFR parts 675 and 668. Supplemental Educational Opportunity Grant—34 CFR parts 676 and 668.

Further Information: For further information or to request FISAP materials, contact Ms. Gloria Easter, Chief, Financial Management Section, Campus-Based Programs Branch, Division of Program Operations and Systems, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4621, ROB–3), Washington, DC 20202–5452. Telephone (202) 708–7741.

Authority: (20 U.S.C. 1087aa et seq.; 42 U.S.C. 2751 et seq.; and 20 U.S.C. 1070b et seq.)

Dated: August 21, 1992.

John B. Childers,

Acting Assistant Secretary for Postsecondary Education.

(Catalog of Federal Domestic Assistance Nos. 84.038, Perkins Loan Program; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grant Program)

[FR Doc. 92–20592 Filed 8–26–92; 8:45 am]

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Part X

The President

Proclamation 6465—To Amend the Generalized System of Preferences

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Presidential Documents

Title 3—

The President

Proclamation 6465 of August 25, 1992

To Amend the Generalized System of Preferences

By the President of the United States of America

A Proclamation

1. Pursuant to sections 501 and 502 of the Trade Act of 1974, as amended (the 1974 Act) (19 U.S.C. 2461 and 2462), and having due regard for the eligibility criteria set forth therein, I have determined that it is appropriate to designate each of the former republics of the Socialist Federal Republic of Yugoslavia, other than Serbia and Montenegro, under the first sentence of section 502(a)(1) for purposes of the Generalized System of Preferences (GSP).

2. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the provisions of that Act, and of other acts affecting import treatment, and actions thereunder.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, do proclaim that:

(1) General note 3(c)(ii)(A) to the HTS, is modified by inserting "Each of the former republics of the Socialist Federal Republic of Yugoslavia other than Serbia and Montenegro" after "Zimbabwe" in the list contained therein.

(2) General note 3(c)(ii)(D) to the HTS is modified by:

(a) deleting the following:

"9401.30.40 Yugoslavia"

"9401.61.40 Yugoslavia"

"9401.69.60 Yugoslavia"

"9401.90.40 Yugoslavia"

(b) inserting, in numerical sequence, the following:

"9401.30.40 Croatia; Slovenia"

"9401.61.40 Croatia; Slovenia"

"9401.69.60 Croatia; Slovenia"

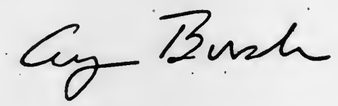
"9401.90.40 Croatia; Slovenia"

(3) Any provisions of previous proclamations and Executive orders inconsistent with the provisions of this proclamation are hereby superseded to the extent of such inconsistency.

(4) The amendment made by this proclamation shall be effective with respect to articles both: (i) imported on or after January 1, 1976, and (ii) entered, or withdrawn from warehouse for consumption, on or after 15 days after the date of publication of this proclamation in the Federal Register.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

[FR Doc. 92-20847
Filed 8-26-92; 10:12 am]
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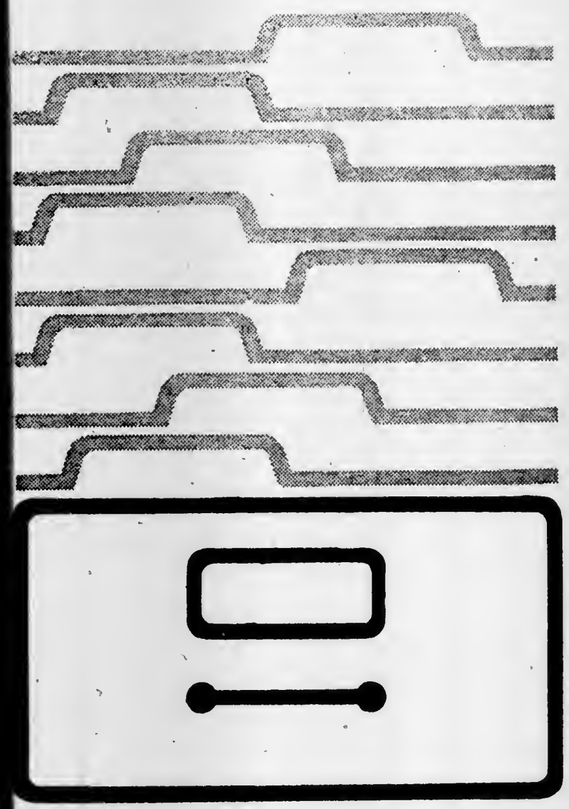
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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

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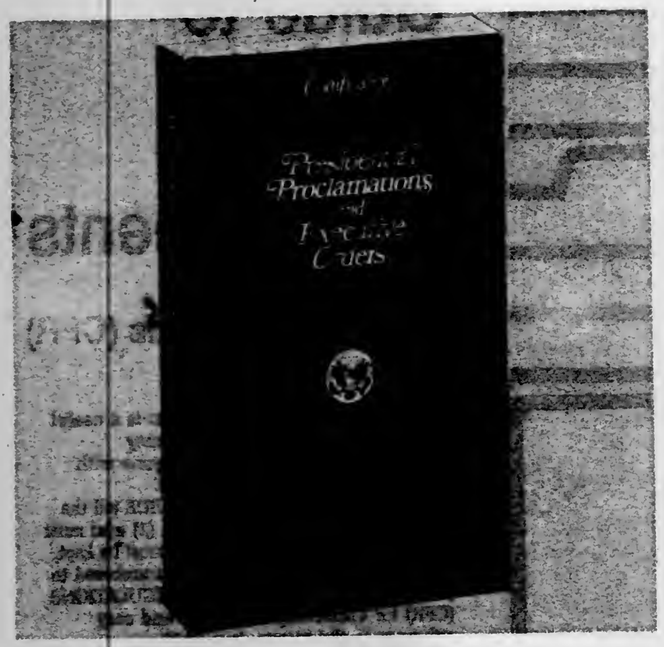
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August 28, 1992

Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
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Title 3—

The President

Proclamation 6466 of August 26, 1992

National D.A.R.E. Day, 1992

By the President of the United States of America

A Proclamation

Millions of young Americans who have wisely decided to stay off drugs, out of gangs, and in school are living testimony to the effectiveness of Drug Abuse Resistance Education (Project D.A.R.E.). Together with their parents, teachers, and teams of dedicated law enforcement personnel, these children are taking a firm stand against illicit drug use while also demonstrating their determination to make the most of their God-given talent and potential. At the same time, by setting examples of personal responsibility and respect for authority, graduates of Project D.A.R.E. are making an important contribution to the success of our National Drug Control Strategy.

Led by experienced law enforcement officers, Project D.A.R.E. equips students with basic facts about drugs and alcohol and about the devastating effects that these substances can have on the mind and body. In order that children might avoid the dangers of trying drugs and alcohol, D.A.R.E. also equips participants with practical decision-making skills, helping them to recognize that actions have consequences and that personal accountability and self-control are signs of strong moral character and maturity.

By befriending students and by helping them to grow in self-confidence, the law enforcement officers who conduct the D.A.R.E. program build strong bonds of mutual understanding and trust between themselves and young people in their communities. Yet the success of Project D.A.R.E. also depends on the cooperation of parents, who are encouraged to talk with, and to listen to, their children—and to set positive examples for them. This partnership among parents, children, law enforcement officers, and educators continues to change lives for the better in all 50 States and at Department of Defense Dependent Schools around the world.

Through innovative public-private partnerships such as Project D.A.R.E., our Nation has made significant progress in reducing the demand for drugs—a priority of our National Drug Control Strategy. Since we launched this strategy in 1989, overall drug use in the United States has dropped by more than 10 percent. Statistics cited by the Partnership for a Drug-Free America show a decline of 48 to 56 percent in drug use by juveniles between the ages of 13 and 17, and three separate studies indicate that adolescent use of cocaine dropped even more dramatically—by 63 percent—between 1988 and 1991. These trends are encouraging, and they offer reason to believe that our National Drug Control Strategy will continue to bear fruit.

Because Project D.A.R.E. brings drug abuse prevention to the classroom, it not only meets a key objective of our National Drug Control Strategy but also complements America 2000, our national strategy to achieve excellence in our schools. One of the six National Education Goals that form the basis of America 2000 calls for every school in the United States to be free of drugs and violence. If we are to achieve that goal, all Americans must work together to create safe, drug-free communities where learning can happen. Reaching an estimated 25 million young Americans every year, Project D.A.R.E. provides an outstanding example of cooperation among parents, educators, law enforcement personnel, business owners, and civic and religious leaders. On this

occasion, we celebrate their efforts and congratulate each of the young Americans who have chosen to say "No!" to drugs and "Yes!" to opportunity through education.

The Congress, by Senate Joint Resolution 295, has designated September 10, 1992, as "National D.A.R.E. Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim September 10, 1992, as National D.A.R.E. Day. I encourage all Americans to observe this day with appropriate programs and activities in celebration of Drug Abuse Resistance Education and in honor of the many dedicated professionals and volunteers who have made it possible. I also invite Americans to observe this occasion by joining in community-based partnerships in support of America 2000 and our National Drug Control Strategy.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.

George Bush

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Rules and Regulations

Federal Register
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Friday, August 28, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905, 911, 915, 921, 922, 923, 924, 947, 958, 982, and 985

[Docket No. FV-92-086]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 905, 911, 915, 921, 922, 923, 924, 947, 958, 982, and 985 for the 1992–93 fiscal period. Authorization of these budgets enables the Citrus Administrative Committee, the Florida Lime Administrative Committee, the Avocado Administrative Committee, the Washington Fresh Peach Marketing Committee, the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, the Washington-Oregon Fresh Prune Marketing Committee, the Oregon-California Potato Committee, the Idaho-Eastern Oregon Onion Committee, the Filbert/Hazelnut Marketing Board, and the Spearmint Oil Administrative Committee (Committees and Board) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: April 1, 1992, through March 31, 1993 (§ 911.231, § 915.231, § 921.231, § 922.231, § 923.232, and § 924.232); June 1, 1992, through May 31, 1993 (§ 985.312), July 1, 1992, through June 30, 1993 (§ 947.243, § 958.236, and § 982.337); and August 1, 1992, through July 31, 1993 (§ 905.231).

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 905 (7 CFR part 905), both as amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; Marketing Agreement and Order No. 911 (7 CFR part 911), both as amended, regulating the handling of limes grown in Florida; Marketing Agreement and Order No. 915 (7 CFR part 915), both as amended, regulating the handling of avocados grown in South Florida; Marketing Agreement and Order No. 921 (7 CFR part 921) regulating the handling of fresh peaches grown in designated counties in Washington; Marketing Agreement and Order No. 922 (7 CFR part 922) regulating the handling of apricots grown in designated counties in Washington; Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of cherries grown in designated counties in Washington; Marketing Agreement and Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon; Marketing Agreement No. 114 and Order No. 947 (7 CFR part 947), both as amended, regulating the handling of Irish potatoes grown in Oregon-California; Marketing Agreement No. 130 and Order No. 958 (7 CFR part 958), both as amended, regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon; Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington; and Marketing Order No. 985 (7 CFR part 985) regulating the handling of spearmint oil produced in the Far West. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges, grapefruit, tangerines, tangelos, limes, avocados, peaches, apricots, cherries, fresh prunes, Irish potatoes, onions, filberts/hazelnuts, and spearmint oil are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable limes, avocados, peaches, apricots, cherries, and fresh prunes handled during the 1992–93 fiscal period, which began April 1, 1992, through March 31, 1993, all assessable spearmint oil handled during the 1992–93 fiscal period, which began June 1, 1992, through May 31, 1993, all assessable Irish potatoes, all assessable onions, and all assessable filberts/hazelnuts handled during the 1992–93 fiscal period, which began July 1, 1992, through June 30, 1993, and all assessable oranges, grapefruit, tangerines, and tangelos handled during the 1992–93 fiscal period, which begins August 1, 1992, through July 31, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 citrus handlers of fresh oranges, grapefruit, tangerines, and tangelos grown in Florida under Marketing Order No. 905, and approximately 10,200 producers of these fruits. There are approximately 20 handlers of Florida limes under Marketing Order No. 911, and approximately 260 lime producers. There are approximately 40 handlers of Florida avocados under Marketing Order No. 915, and approximately 300 avocado producers. There are approximately 65 handlers of Washington peaches under Marketing Order No. 921, and approximately 890 producers. There are approximately 59 handlers of Washington apricots under Marketing Order No. 922, and approximately 190 producers. There are approximately 63 handlers of Washington cherries under Marketing Order No. 923, and approximately 1,100 producers. There are approximately 32 handlers of Washington-Oregon prunes under Marketing Order No. 924, and approximately 350 producers. There are approximately 40 handlers of Oregon-California potatoes under Marketing Order No. 947, and approximately 550 producers. There are approximately 35 handlers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 450 producers. There are approximately 20 handlers of Oregon-Washington filberts/hazelnuts under Marketing Order No. 982, and approximately 1,000 producers. Also, there are approximately 9 handlers of spearmint oil produced in the Far West under Marketing Order No. 985, and approximately 253 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1992–93 fiscal period were prepared by the Citrus Administrative Committee, the Florida Lime Administrative Committee, the Avocado Administrative Committee, the Washington Fresh Peach Marketing Committee, the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, the Washington-Oregon Fresh Prune Marketing Committee, the Oregon-California Potato Committee, the Idaho-Eastern Oregon Onion Committee, the Filbert/Hazelnut Marketing Board, and the Spearmint Oil Administrative Committee, the agencies responsible for local administration of the orders, and submitted to the Department for approval. The members of these Committees are handlers and producers of Florida citrus, Florida limes, Florida avocados, Washington peaches, Washington apricots, Washington cherries, Washington-Oregon fresh prunes, Oregon-California potatoes, Idaho-Eastern Oregon onions, Oregon-Washington filberts/hazelnuts, and Far West spearmint oil. They are familiar with the Committees' and Board's needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the Committees and Board were derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, tangerines, tangelos, limes, avocados, peaches, apricots, cherries, prunes, Irish potatoes, onions, filberts/hazelnuts, and spearmint oil. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the Committees' and Board's expenses.

The Citrus Administrative Committee met March 5, 1992, and unanimously recommended a budget with expenses of $200,000 for the 1992–93 fiscal period, compared with budgeted expenses of $216,000 for 1991–92. The expense items in the 1992–93 budget are for administration of the marketing order, and include such major expenditure items as employee salaries, benefits, and travel; office operations expenses; and the purchase of shipping information. These administrative expense items for 1992–93 are $10,000 higher than those approved for 1991–92, reflecting inflationary pressures. However, overall expenses for 1992–93 are $16,000 lower than those approved for 1991–92, because the 1991–92 budget contained an additional budget item of $26,000 to fund Committee travel expenses relating to member attendance at the Texas-Mexico Citrus Conference in 1992.

The Committee also recommended a 1992–93 assessment rate of $0.003 per ⅘ bushel carton of fresh fruit shipped, compared with $0.0025 established for 1991–92. Assessment income for 1992–93 is expected to total $187,500, based on estimated shipments of 60,500,000 cartons of assessable fruit. Interested income for 1992–93 is estimated at $4,000, compared with $8,000 estimated for 1991–92. The estimated $8,500 deficit for 1992–93 will be drawn from the Committee's reserve fund.

The Florida Lime Administrative Committee met January 8, 1992, and unanimously recommended a 1992–93 budget of $226,310. Last season's budget was $269,000. Major expense items include employee benefits ($21,500), salaries ($50,000), travel ($14,000), research ($49,060), and marketing activities ($45,000). The Committee recommended a reduced budget for the 1992–93 fiscal year from the last fiscal year's budget based on decreases in expenditures for travel, research, and contingencies.

The Committee also unanimously recommended an assessment rate of $0.16 per bushel (55 pounds), a decrease of $0.02 from last season. Anticipated shipments of 1.4 million 55-pound bushels of limes would yield $224,000 in assessment income. This, along with $10,310 in interest income on savings would be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1991–92 fiscal period, estimated at $219,192, were within the maximum permitted by the order of three fiscal periods' expenses.

The Avocado Administrative Committee met January 8, 1992, and unanimously recommended a 1992–93 budget with expenditures of $180,000 and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados shipped under the marketing order. Budgeted expenditures for 1991–92 were $187,000, while the assessment rate was $0.16. Committee assessment income for 1992–93 is estimated at $176,000, based on shipments of 1,100,000 bushels of assessable avocados, and interest income is estimated at $7,000. The Committee plans to place the projected $3,000 surplus in its reserve fund, which is currently well within the maximum authorized under the marketing order.

Major expenditure items in the Committee's budget for the 1992–93 fiscal year, compared with those budgeted in 1991–92 (in parentheses), are $130,750 ($143,000) for program administration, $45,250 ($34,000) for production research, and $5,000 ($10,000) for marketing research and development. The program administration expenditures include employee salaries and benefits, office operations, a financial audit, marketing order enforcement, committee travel, a contingency reserve, and miscellaneous expenses. The production research expenditures include $25,000 for water table research by Ghioto, Inc.; $2,750 for grove maintenance research; $2,500 for tree topping and thinning research; $10,000 for pollution biology research, and $5,000 for avocado variety research. The marketing expenditures include $5,000 for projects to be considered later by the Committee.

The Stone Fruit Executive Committee (SFEC) met on January 30, 1992, and unanimously recommended 1992–93 fiscal year expenditures and assessment rates for each of these marketing orders. The SFEC is made up of officers of the four stone fruit marketing Committees established under these orders. The SFEC is authorized to take this action under the by-laws of the stone fruit marketing Committees. The SFEC's recommendations are based on preseason projections of 1992 season shipments, expenses, and reserve fund levels under these orders.

The 1992–93 budgeted expenditures for these marketing orders are higher than those for 1991–92. Most of the higher expenditures reflect salary increases and the addition of a new line item, "Contingency." Contingency funds will be used for payment of accrued vacation and/or sick leave when an employee is terminated or if any of the Committees leave the joint office management. The assessment rates for the 1992 season, however, remained consistent. In addition, each stone fruit Committee has adequate reserves to fund any expenditures in excess of income for 1992–93.

The expenditures are all for administration of these orders, except for cherry market development activities. Administrative expenses include those for salaries, travel, and office operations. The stone fruit marketing Committees share office expenses, based on an agreement among the committees.

The Washington Fresh Peach Marketing Committee met on May 12, 1992, and recommended a slight decrease in the audit category for total expenditures of $23,565 and a $1.00 per ton assessment rate, $2.00 less than the rate in the proposed rule. In comparison, 1991–92 budgeted expenditures were $21,394, and the assessment rate was $3.00 per ton.

The Washington Apricot Marketing Committee met on May 12, 1992, and recommended slight revisions in the travel and audit categories for total expenditures of $8,691 and a $2.00 per ton assessment rate, $2.00 less than the rate in the proposed rule. In comparison, 1991–92 budgeted expenditures were $7,760, and the assessment rate was $4.00 per ton.

The Washington Cherry Marketing Committee met on May 5, 1992, and recommended slight revisions in the audit and market development categories for total expenditures of $114,469 and a $2.00 per ton assessment rate, $3.00 less than the rate in the proposed rule. In comparison, 1991–92 budgeted expenditures were $104,130, and the assessment rate was $5.00 per ton.

The Washington-Oregon Fresh Prune Marketing Committee met on May 20, 1992, and recommended a slight decrease in the audit category for total expenditures of $18,275 and a $2.00 per ton assessment rate, $1.00 less than the rate in the proposed rule. In comparison, 1991–92 budgeted expenditures were $18,115, and the assessment rate was $3.00 per ton.

The Oregon-California Potato Committee met March 4, 1992, and unanimously recommended a 1992–93 budget of $44,750, $500 less than the previous year. Slight increases in the inspection fees, miscellaneous, office supplies, postage, and telephone categories will be offset by a $2,000 decrease in the equipment category.

The Committee also unanimously recommended an assessment rate of $0.005 per hundredweight, $0.001 more than last season. This rate, when applied to anticipated shipments of 7,350,000 hundredweight, will yield $36,750 in assessment income. This, along with $8,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $12,000, were within the maximum permitted by the order of one fiscal period's expenses.

The Idaho-Eastern Oregon Onion Committee met March 24, 1992, and unanimously recommended a 1992–93 budget of $954,312, $62,747 more than the previous year. Major increases include $1,000 for Committee expenses, $3,055 for management salary, $2,107 for office salaries, $1,000 for miscellaneous, $41,000 for promotion/advertising, and $5,000 for contingencies, plus the addition of a $10,000 compliance survey category.

The Committee also unanimously recommended an assessment rate of $0.11 per hundredweight, $0.01 less than last season. This rate, when applied to anticipated shipments of 7,600,000 hundredweight, will yield $836,000 in assessment income. This, along with $30,000 in interest income and $88,312 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the beginning of the 1992–93 fiscal period, estimated at $800,000 to $900,000, were within the maximum permitted by the order of one fiscal period's expenses.

The Filbert/Hazelnut Marketing Board conducted a telephone vote on March 13, 1992, and unanimously recommended 1992–93 marketing order expenditures of $387,605 and an assessment rate of $14.00 per ton of assessable filberts/hazelnuts. In comparison, 1991–92 marketing year budgeted expenditures were $388,050 and the assessment rate was $14.00 per ton.

Major expenditure categories in the 1992–93 budget, compared to those budgeted for 1991–92 (in parentheses), are $73,355 ($72,350) for administration, $200,000 ($200,000) for promotion, and $98,000 ($100,000) for emergency reserve fund. The emergency reserve fund will only be used if the crop exceeds 20,000 merchantable tons and an unforeseen emergency occurs during the marketing year. In 1991–92, only $35,900 of the $100,000 emergency fund was used for promotion and marketing and computer services.

Assessment income for 1992–93 is expected to total $378,000 based on a crop estimate of 27,000 tons of assessable filberts/hazelnuts. Interest and incidental income for 1992–93 is estimated at $7,000. Operating reserve funds at the beginning of the 1992–93 fiscal period, estimated at $205,539, were well within the maximum permitted by the order of one fiscal period's expenses.

The Spearmint Oil Administrative Committee met on February 13, 1992, and unanimously recommended 1992–93 marketing order expenditures of $183,972 and an assessment rate of $0.08 per pound of spearmint oil. Assessment income for the 1992–93 marketing year is estimated at $166,000 based on shipments of 2,075,000 pounds of spearmint oil. Additionally, interest and incidental income for the 1992–93 marketing year is estimated at $10,000. In comparison, the 1991–92 marketing year budgeted expenditures were $199,000 and the assessment rate was $0.08 per pound of spearmint oil.

Major expenditure categories in the 1992–93 budget are $72,000 for program administration, $89,972 for salaries, and

$22,000 for Committee travel and compensation. Comparable budgeted expenditures for the 1991–92 marketing year were $86,100, $90,600, and $22,000, respectively.

The Committee may expend operational reserve funds of $7,972 to meet budgeted expenses and additional reserve funds may be used to meet any deficit in assessment income. Also, any unexpended funds may be carried to the next marketing year as a reserve.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Proposed rules were published in the **Federal Register** on June 9, 1992, for 7 CFR part 905 (57 FR 24384); 7 CFR part 911 (57 FR 24385); 7 CFR part 915 (57 FR 24386); 7 CFR parts 921, 922, 923, and 924 (57 FR 24388), 7 CFR part 958 (57 FR 24390); and 7 CFR part 985 (57 FR 24391); and on June 10, 1992, for 7 CFR part 947 (57 FR 24562) and 7 CFR part 982 (57 FR 24563). Those documents contained proposals to add § 905.231, § 911.231, § 915.231, § 921.231, § 922.231, § 923.232, § 924.232, § 947.243, § 958.236, § 982.337, and § 958.312, to authorize expenses and establish assessment rates for the Committees and Board. Those rules provided that interested persons could file comments through June 19, 1992, for 7 CFR parts 905, 911, 915, 921, 922, 923, 924, 958, and 985, and through June 22, 1992, for 7 CFR parts 947 and 982. Comments were received from the Washington Fresh Peach, Washington Apricot, Washington Cherry, and Washington-Oregon Fresh Prune Marketing Committees forwarding revised expenses and assessment rates for each Committee. These changes have been incorporated in this final rule.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committees and Board need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1992–93 fiscal period for the Florida Lime Administrative Committee, the Avocado Administrative Committee, the Washington Fresh Peach Marketing Committee, the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Marketing Committee began on April 1, the 1992–93 fiscal period for the Spearmint Oil Administrative Committee began on June 1, the 1992–93 fiscal period for the Oregon-California Potato Committee, the Idaho-Eastern Oregon Onion Committee, and the Filbert/Hazelnut Marketing Board began on July 1, and the 1992–93 fiscal period for the Citrus Administrative Committee begins on August 1. The marketing orders require that the rates of assessment for the fiscal period apply to all assessable oranges, grapefruit, tangerines, tangelos, limes, avocados, peaches, apricots, cherries, fresh prunes, Irish potatoes, onions, filberts/hazelnuts, and spearmint oil handled during the fiscal period. In addition, handlers are aware of these actions which were recommended by the Committees and Board at public meetings.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

7 CFR Part 911

Limes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 921

Marketing agreements, Peaches, Reporting and recordkeeping requirements.

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR parts 905, 911, 915, 921, 922, 923, 924, 947, 958, 982, and 985 are hereby amended as follows:

1. The authority citation for 7 CFR parts 905, 911, 915, 921, 922, 923, 924, 947, 958, 982, and 985 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

2. A new § 905.231 is added to read as follows.

Note: This section will not appear in the Code of Federal Regulations.

§ 905.231 Expenses and assessment rate.

Expenses of $200,000 by the Citrus Administrative Committee are authorized, and an assessment rate of $0.003 per ⅘ bushel carton of assessable fruit is established for the fiscal period ending July 31, 1993. Any unexpended funds from the 1991–92 fiscal period may be carried over as a reserve.

PART 911—LIMES GROWN IN FLORIDA

3. A new § 911.231 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 911.231 Expenses and assessment rate.

Expenses of $226,310 by the Florida Lime Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable limes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

4. A new § 915.231 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 915.231 Expenses and assessment rate.

Expenses of $180,000 by the Avocado Administrative Committee are authorized, and an assessment rate of $0.16 per bushel (55 pounds) of assessable avocados is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

5. A new § 921.231 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 921.231 Expenses and assessment rate.

Expenses of $23,565 by the Washington Fresh Peach Marketing Committee are authorized and an assessment rate of $1.00 per ton of assessable peaches is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

6. A new § 922.231 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 922.231 Expenses and assessment rate.

Expenses of $8,691 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of $2.00 per ton is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

7. A new § 923.232 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 923.232 Expenses and assessment rate.

Expenditures of $144,469 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of $2.00 per ton is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

8. A new § 924.232 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations

§ 924.232 Expenses and assessment rate.

Expenses of $16,275 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of $2.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

9. A new § 947.243 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 947.243 Expenses and assessment rate.

Expenses of $44,750 by the Oregon-California Potato Committee are authorized, and an assessment rate of $0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

10. A new § 958.236 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 958.236 Expenses and assessment rate.

Expenses of $954,312 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of $0.11 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1993. Unexpended funds from the 1991–92 fiscal period may be carried over as a reserve.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

11. A new § 982.337 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 982.337 Expenses and assessment rate.

Expenses of $387,605 by the Filbert/Hazelnut Marketing Board are authorized and an assessment rate payable by each handler in accordance with § 982.61 is fixed at $14.00 per ton of assessable filberts/hazelnuts for the 1992–93 marketing year ending June 30, 1993. Unexpended funds may be carried over as a reserve.

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

12. A new § 985.312 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.312 Expenses and assessment rate.

Expenses of $183,972 by the Spearmint Oil Administrative Committee are authorized and an assessment rate payable by each handler, in accordance with § 985.41, is established at $0.08 per pound of salable spearmint oil for the 1992–93 marketing year ending May 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 24, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20659 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 910

[FV–92–078IFR]

Expenses and Assessment Rate for Lemons Grown in California and Arizona

AGENCY: Agricultural Marketing Service, USDA

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate for the 1992–93 fiscal year under Marketing Order No. 910 for lemons produced in California and Arizona. Funds to administer this program are derived from assessments on handlers. This action is needed in

order for the Lemon Administrative Committee (Committee), the agency responsible for the administration of the order, to have sufficient funds to meet the expenses of operating the program. This facilitates program operations. An annual budget of expenses is prepared by the Committee and submitted to the U.S. Department of Agriculture (Department) for approval.

DATES: Effective beginning August 1, 1992 through July 31, 1993. Comments received by September 28, 1992, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: (202) 690–3670.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, California-Arizona lemons are subject to assessments. It is intended that the assessment rate will be applicable to all assessable California-Arizona lemons handled during the 1992–93 fiscal year (August 1–July 31). This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, and handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona who are subject to regulation under the lemon marketing order and approximately 2,000 producers of lemons in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual revenues of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of lemon producers and handlers may be classified as small entities.

The lemon marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable California-Arizona lemons handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The Committee consists of handlers, producers, and a non-industry member. They are familiar with the Committee's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of lemons. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committee will have funds to pay its expenses.

The Committee met on June 2, 1992, and unanimously recommended 1992–93 marketing order expenditures of $875,000 and an assessment rate of $0.045 per carton of lemons. In comparison, 1991–92 marketing year budgeted expenditures were $825,000 and the assessment rate was $0.045 per carton. Assessment income for 1992–93 is estimated to total $798,750 based on anticipated fresh domestic shipments of 17,750,000 cartons of lemons. This, along with $20,000 in interest income and $56,250 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the reserve at the end of the 1992–93 fiscal year, estimated at $399,750, will be within the maximum permitted by the order of one-half of one fiscal year's expenses.

Major budget categories for 1992–93 are $253,100 for field and compliance expenses, $479,900 for administrative and office salaries, and $118,000 for Committee member expenses. Comparable expenditures for the 1991–92 fiscal year were $209,500, $459,500, and $118,000, respectively.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendation, and other available information, it is found that this interim final rule, as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) The committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1992–93 fiscal year begins August 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable lemons handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the committee at a public meeting; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 910.230 is added to read as follows:

§ 910.230 Expenses and assessment rate.

Note: This section will not appear in the Code of Federal Regulations

Expenses of $875,000 by the Lemon Administrative Committee are authorized, and an assessment rate of $0.045 per carton of assessable lemons is established for the 1992–93 fiscal year ending on July 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 24, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20700 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 926, 948, and 953

[Docket No. FV–92–090]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes assessment rates under Marketing Orders 926, 948, and 953 for the 1992–93 fiscal period. Authorization of these budgets enables the Tokay Grape Industry Committee, the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), and the Southeastern Potato Committee (Committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: April 1, 1992, through March 31, 1993 (§ 926.231); June 1, 1992, through May 31, 1993 (§ 953.249); and July 1, 1992, through June 30, 1993 (§ 948.208).

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456, telephone 202–720–9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 926 [7 CFR part 926], both as amended, regulating the handling of Tokay grapes grown in San Joaquin, County, California; Marketing Agreement No. 97 and Order No. 948 [7 CFR part 948], both as amended, regulating the handling of Irish potatoes grown in Colorado; and Marketing Agreement No. 104 and Order No. 953 [7 CFR part 953], both as amended, regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina). The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Tokay grapes and Irish potatoes are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Tokay grapes handled during the 1992–93 fiscal period, which began April 1, 1992, through March 31, 1993, all assessable Southeastern potatoes handled during the 1992–93 fiscal period, which began June 1, 1992, through May 31, 1993, and all assessable Colorado Area III potatoes handled during the 1992–93 fiscal period, which began July 1, 1992, through June 30, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 30 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 3 handlers of Tokay grapes grown in San Joaquin, County, California, under Marketing Order No. 926, and approximately 40 producers. There are approximately 17 handlers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 120 producers. Also, there are approximately 60 handlers to Southeastern potatoes under Marketing Order No. 953, and approximately 150

producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1992–93 fiscal period were prepared by the Tokay Grape Industry Committee, the Colorado Potato Administrative Committee, Northern Colorado Office (Area III), and the Southeastern Potato Committee, the agencies responsible for local administration of the orders, and submitted to the Department for approval. The members of these Committees are handlers and producers of Tokay grapes, Colorado Area III potatoes, and Southeastern potatoes. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the Committees were derived by dividing anticipated expenses by expected shipments of Tokay grapes and Irish potatoes. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the Committees' expenses.

The Tokay Grape Industry Committee met on April 24, 1992, and unanimously recommended a 1992–93 fiscal year budget and assessment rate for this marketing order. The Committee's recommendations are based on preseason projections of 1992 season shipments, expenses, and reserve fund levels under the order.

The 1992–93 budget expenditures for this marketing order are lower than those for 1991–92. The decrease in the budget reflects a reduction in auditing expenses. The assessment rate for the 1992 season, however, remained constant. In addition, the Committee has adequate reserves to fund any expenditures in excess of income for 1992–93.

The expenditures are all for administration of this order. Administrative expenses include those for salaries and office operations.

The Committee recommended a 1992–93 budget of $5,275 and an assessment rate of $0.07 per 23 pound lug of Tokay grapes shipped under M.O. 926. In comparison, the 1992–92 budgeted expenditures were $5,375 and the assessment rate was $0.07 per 23 pound lug.

The Colorado Potato Administrative Committee, Northern Colorado Office (Area III) met on April 9, 1992, and unanimously recommended a 1992–93 budget of $15,134, $10,799 more than the previous year. In Colorado, both a State and Federal marketing order operate simultaneously. The State order authorizes promotion, including paid advertising, which the Federal order does not. In previous years administrative expenses that were shared were divided so that 85 percent was paid under the State and 15 percent under the Federal order. Management has concluded that the jointly operated programs consume about equal administrative time, so it was recommended that the two orders split the administrative costs equally. Major increases include almost $5,300 for manager's salary, $800 for office supplies, $1,700 for rent, $510 for utilities, and $525 for compliance. All promotion and advertising expenses are financed under the State order.

The Committee also unanimously recommended an assessment rate of $0.02 per hundredweight, $0.0175 more than last season's rate. This rate, when applied to anticipated shipments of 824,200 hundredweight will yield $16,485, which will be adequate to cover expected expenses. Interest income of $1,250 and $1,200 received from the Federal-State Inspection Service for rent will provide additional income of $2,450. Funds in the Committee's authorized reserve at the beginning of the 1992–93 fiscal period, estimated at $6,918, were within the maximum permitted by the order of two fiscal periods' expenses.

The Southeastern Potato Committee met on April 16, 1992, and unanimously recommended a 1992–93 budget of $11,000, the same as last year. Major expense items include Committee staff salaries and travel expense.

The Committee also recommended an assessment rate of $0.0050 per hundredweight, $0.0025 more than last season's rate. Production figures for the 1992–93 season are not yet available. However, the Committee anticipates shipments will be about the same as last year, approximately 1.3 million hundredweight. The $17,829 reserve will be adequate to cover the expenses incurred. Funds remaining at the end of the 1992–93 fiscal period should be within the maximum permitted by the order of one fiscal period's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Proposed rules were published in the **Federal Register** on June 19, 1992, for 7 CFR part 926 (57 FR 27373); 7 CFR part 948 (57 FR 27375); and 7 CFR part 953 (57 FR 27376). Those documents contained proposals to add § 926.231, § 948.208, and § 953.249, to authorize expenses and establish assessment rates for the Committees. Those rules provided that interested persons could file comments through June 29, 1992. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1992–93 fiscal year for the Tokay Grape Industry Committee began on April 1, the 1992–93 fiscal period for the Southeastern Potato Committee began on June 1, and the 1992–93 fiscal period for the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) began on July 1. The marketing orders require that the rates of assessment for the fiscal period apply to all assessable Tokay grapes and Irish potatoes handled during the fiscal period. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings.

List of Subjects

7 CFR Part 926

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Parts 948 and 953

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 926, 948, and 953 are hereby amended as follows:

1. The authority citation for 7 CFR parts 926, 948, and 953 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

2. A new § 926.231 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 926.231 Expenses and assessment rate.

Expenses of $5,275 by the Tokay Grape Industry Committee are authorized, and an assessment rate of $0.07 per 23 pound lug of assessable California Tokay grapes is established for the fiscal year ending March 31, 1993. Any unexpended funds from the 1991–92 fiscal year may be carried over as a reserve.

PART 948—IRISH POTATOES GROWN IN COLORADO

3. A new § 948.208 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 948.208 Expenses and assessment rate.

Expenses of $15,134 by the Colorado Potato Administrative Committee, Northern Colorado Office (Area III) are authorized, and an assessment rate of $0.02 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1993. Unexpended funds may be carried over as a reserve.

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

4. A new § 953.249 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 953.249 Expenses and assessment rate.

Expenses of $11,000 by the Southeastern Potato Committee are authorized, and an assessment rate of $0.0050 per hundredweight of assessable potatoes is established for the fiscal period ending May 31 1993. Unexpended funds may be carried over as a reserve.

Dated: August 24, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20697 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Parts 927 and 931

[Docket No. FV–92–085]

Expenses and Assessment Rates for Marketing Orders Covering Winter Pears Grown in Oregon, Washington, and California and Fresh Bartlett Pears Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes assessment rates under Marketing Order Nos. 927 and 931 for the 1992–93 fiscal period (July 1–June 30). Authorization of these budgets enables the Northwest Fresh Bartlett Pear Marketing Committee (NFBPMC) and the Winter Pear Control Committee (WPCC) to incur expenses that are reasonable and necessary to administer these programs. Funds to administer these programs are derived from assessments on handlers.

DATES: Effective beginning July 1, 1992 through June 30, 1993. Comments received by September 28, 1992 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Candace Mintz, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–3923.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order Nos. 927 (7 CFR part 927) regulating the handling of winter pears grown in Oregon, Washington, and California, and 931 (7 CFR part 931) regulating the handling of fresh Bartlett pears grown in Oregon and Washington. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1973, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, shipments of winter pear grown in Oregon, Washington, and California, and fresh Bartlett pears in Oregon and Washington are subject to assessment. It is intended that the assessment rates specified herein will be applicable to all assessable winter pears and Bartlett pears handled during the 1992–93 fiscal year, beginning July 1, 1992, through June 30, 1993. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statues have small entity orientation and compatibility.

There are approximately 85 handlers of winter pears and 60 handlers of fresh Bartlett pears regulated under these marketing orders each season. There are approximately 1,850 winter pear

producers in Washington, Oregon and California and approximately 1,800 Bartlett pear producers in Washington and Oregon. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The winter pear and Bartlett pear marketing orders, administered by the Department, require that the assessment rates for a particular fiscal year apply to all assessable pears handled from the beginning of such year. Annual budgets of expenses are prepared by the committees, the agencies responsible for local administration of these marketing orders, and submitted to the Department for approval. The members of the committees are pear handlers and producers. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local area, and are thus in a position to formulate appropriate budgets. The committees' budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the committees are derived by dividing the anticipated expenses by expected shipments of pears (in standard boxes). Because those rates are applied to actual shipments, they must be established at rates which will provide sufficient income to pay the committees' expected expenses.

The WPCC met May 29, 1992, and unanimously recommended 1993–93 fiscal period expenditures of $6,039,367 and an assessment rate of $0.415 per standard box or equivalent of assessable pears shipped under M.O. 927. In addition, the WPCC also unanimously approved an additional assessment rate of $0.03 per standard box equivalent for Anjou pears for a total assessment rate of $0.445 per standard box of Anjou pears. This additional assessment on Anjou pears will be used to fund Ethoxyquin research. The WPCC's 1991–92 fiscal period budgeted expenditures were $5,130,616 and the assessment rate was $0.38.

These expenditures are primarily for paid advertising and promotion, production research projects, and program administration. Aside from the major budget increases in expenditures for production research projects, Ethoxyquin research, paid advertising, and contingency line items, most of the expenditure items are budgeted at about last year's amounts.

Assessment income for the 1992–93 fiscal period is expected to total $5,572,034 based on shipments of 12,716,350 packed boxes of pears at $0.415 per standard box or equivalent plus an additional $0.03 per standard box of Anjou pears. Other available funds include $150,000 of voluntary payments on assessments of intrastate shipments, $10,000 of prior year assessments, a reserve of $282,333 carried into this fiscal period, and $25,000 of miscellaneous income from interest bearing accounts and additions to assessment income in the event the crop is larger than estimated. Total funds available equal $6,039,367, the same as the recommended budget.

The NFBPMC met May 28, 1992, and unanimously recommended 1992–93 fiscal period expenditures of $116,390 and an assessment rate of $0.025 per standard box or equivalent of assessable pears shipped under M.O. 931. In comparison, 1991–92 fiscal period budgeted expenditures were $91,062 and the assessment rate was $0.03.

These expenditures are primarily for program administration. Most of the expenditure items are budgeted at about last year's amounts with the exception of increases in salaries, and reserve for contingencies. Salaries were increased from $35,550 to $37,330, and reserve for contingencies was increased from $14,230 to $36,065.

Assessment income for the 1992–93 fiscal period is expected to total $67,200 based on shipments of 2,688,000 packed boxes of pears at $0.025 per standard box or equivalent. Other available funds include a reserve of $38,090 carried into this fiscal period, $100 of prior year assessments, and $11,000 in miscellaneous income from interest bearing accounts and additions to assessment income in the event the crop is larger than estimated. Total funds available equal $116,390, the same as the recommended budget.

Both committees also unanimously recommended that any unexpended funds or excess assessments from the 1991–92 fiscal period be placed in their reserve. The reserves are within the limits authorized under the marketing orders.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committees and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis; (2) the fiscal year for both committees begins July 1, 1992, and the marketing orders require that the rates of assessment for the fiscal year apply to all assessable pears handled during the fiscal year; (3) handlers are aware of this action which was unanimously recommended by the committees at their respective public meetings and which are similar to budgets issued in past years; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Parts 927 and 931

Marketing agreements, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 927 and 931 are amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON, WASHINGTON, AND CALIFORNIA

1. The authority citation for 7 CFR parts 927 and 931 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. New § 927.232 is added to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 927.23 Expenses and assessment rate.

Expenses of $6,039,367 by the Winter Pear Control Committee are authorized and an assessment rate of $0.415 per standard box, or equivalent, of pears is established for the fiscal period ending June 30, 1993. In addition, a supplemental assessment rate of $0.03 per standard box, or equivalent, of Anjou variety pears is established for the same period for research. Unexpended funds may be carried over as a reserve.

PART 931—FRESH BARTLETT PEARS GROWN IN OREGON AND WASHINGTON

3. New § 931.227 is added to read as follows:

Note: This section will not appear in annual Code of Federal Regulation.

§ 931.227 Expenses and assessment rate.

Expenses of $116,390 by the Northwest Fresh Bartlett Pear Marketing Committee are authorized, and an assessment rate of $0.025 per standard box or equivalent of assessable pears is established, for the fiscal period ending June 30, 1993. Unexpended funds from the 1992–93 fiscal period may be carried over as a reserve.

Dated: August 24, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-20695 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 929

[FV-92-089IFR]

Expenses and Assessment Rate for Cranberries Grown in States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule authorizes expenditures and establishes an assessment rate under the cranberry marketing order for the 1992–93 fiscal year. This action is needed for the Cranberry Marketing Committee (Committee), which is responsible for local administration of the order, to incur operating expenses during the 1992–93 fiscal year and to collect funds during that year to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

DATES: This interim final rule becomes effective on September 1, 1992. Comments which are received by September 28, 1992 will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2522–S, Washington, D.C. 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 929 (7 CFR part 929), regulating the handling of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, cranberries grown in 10 States are subject to assessments. It is intended that the assessment rate specified herein be made applicable to all assessable cranberries during the 1992–93 fiscal year, beginning on September 1, 1992. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of cranberries grown in Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, and approximately 950 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of cranberry handlers and producers may be classified as small entities.

The cranberry marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable cranberries handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The Committee members are cranberry producers. They are familiar with the Committee's needs and with the costs of goods, services, and personnel in their local areas and are in a position to formulate appropriate budgets.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of cranberries. Because that rate is applied to actual shipments, it must be established at a rate which will

produce sufficient income to pay the Committee's expected expenses. The recommended budget and rate of assessment are usually acted upon by the Committee before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so the Committee will have funds to pay its expenses for the 1992–93 fiscal year beginning on September 1, 1992.

The Committee conducted a mail vote and recommended 1992–93 marketing order expenditures of $146,600 and an assessment rate of $0.03 per 100-pound barrel of cranberries shipped. Assessment income for 1992–93 is estimated at $120,540 based on a crop of 4,018,000 barrels. Interest income expected to be received is estimated at $5,500, bringing total income to $126,040. The Committee plans to transfer $20,560 from its reserve account to meet the deficit between income and expenditures. Major budget categories for 1992–93 remain the same as in past years: $64,935 for salaries, $30,000 for travel and meeting expenses, and $34,355 for administrative expenses.

In comparison, the 1991–92 fiscal year budgeted expenditures were $167,730, and the assessment rate was $0.037 per 100-pound barrel of cranberries shipped. Corresponding budgeted expenditures for the 1991–92 season were $67,640 for salaries, $37,500 for travel and meeting expenses, and $44,245 for administrative expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal year for the Committee begins on September 1, 1992, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable cranberries handled during the fiscal year; and (3) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR part 929 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 929.233 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 929.233 Expenses and assessment rate.

Expenses of $146,600 by the Cranberry Marketing Committee are authorized, and an assessment rate of $0.03 per 100-pound barrel of assessable cranberries is established for the fiscal year ending on August 31, 1993. Unexpended funds may be carried over as a reserve.

Dated: August 24, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20693 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 987

[FV–92–069IFR]

Addition of California Certified Farmers' Markets as an Exempted Outlet for Domestic Dates Produced or Packed in Riverside County, California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the administrative rules and regulations of the California date marketing order to add California certified farmers' markets to the list of outlets to which date producers may sell dates of their own production exempt from certain requirements under the marketing order. Date producers who qualify under this rule will be exempt from inspection, volume control, container and assessment requirements issued under the marketing order. The purpose of this action is to facilitate the marketing of dates by producers. This revision was unanimously recommended by the California Date Administrative Committee (Committee), which is responsible for local administration of the order.

EFFECTIVE DATE: Interim final rule effective August 28, 1992. Comments received by September 28, 1992 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments received will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2020.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 987 (7 CFR part 987), both as amended, regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 25 handlers of California dates subject to regulation under the order each season and approximately 135 date producers in the regulated area. The majority of the date handlers and producers may be classified as small entities. This action will not impose a significant impact on the small entities involved.

This interim final rule revises § 897.152 of the administrative rules of the order. This action was unanimously recommended by the Committee at its April 23, 1992, meeting.

Section 987.152(a) provides that producers who sell their own product through direct mail services, at date shops, or directly to consumers at roadside stands within a 25-mile radius of Indio, California, may be exempt from inspection, volume control, container, and assessment regulations under the marketing order. The Committee grants producers permission to sell dates through these outlets only if the producer files with the Committee a form wherein the producer describes how the dates are to be sold, sells only dates meeting modified U.S. Grade B or better standards, and reports such sales to the Committee.

Producers who sell dates of their own production at farmers' market outlets, however, are not provided the same exemptions. Generally, only the very small date producers sell their own production at farmers' markets. Therefore, the Committee recommended exempting dates sold by producers at California certified farmers' markets from inspection, volume control, container and assessment requirements. The recommended change would reduce marketing costs for producers so marketing their own production. The exemption will provide those producers with the same exemption given to producers utilizing other direct-to-consumer outlets.

Industry members stated that the costs associated with the inspection, container and assessment regulations represent a larger percentage of a small producer's total revenue. For example, they pointed out that the sequential sampling method of inspection damages a portion of the fruit. Sequential sampling inspections requires that a sample be taken from each size of container packed. However, producers who sell their product at California certified farmers' markets pack small quantities of fruit in several different container sizes, allowing consumers a choice when purchasing the fruit. Thus, the industry members claimed that small producers who market dates of their own production lose proportionately more fruit than handlers who pack dates in only a few, different sized, large containers.

Because of the small amount of production so marketed, this additional regulatory exemption is not expected to have a negative effect on program objectives. The Committee estimates that less than one percent of California dates produced in the production area are marketed through certified farmers' markets.

Under this action, California date producers who intend to market their own production, or a portion thereof, at farmers' markets are required to file CDAC Form No. 9 before such exemption would be granted. CDAC Form No. 9 specifies that dates sold at exempted outlets set forth in § 987.152(a) be at least modified U.S. Grade B. This helps to insure that producers are not using exempted outlets to market substandard fruit. In addition, producers who produce dates for which an exemption is being sought would be required to be certified, by the State of California or the local county government organization, that the producer adheres to applicable state certification standards. A copy of the certification documents would be submitted with the exemption application (CDAC Form No. 9) to the Committee.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection requirements that are being added by this action have been approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 0581–0077.

On the basis of the foregoing, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes requirements on producers handling dates; (2) this action was recommended at a public meeting; (3) it is desirable to have this action in place as soon as possible so producers handling dates can take advantage of the relaxed requirements; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 987 is amended to read as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Subpart—Administrative Rules

2. Section 987.152 is amended by revising paragraph (a) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 987.152 Exemption from regulation.

(a) *Producer exemption.* The Committee may permit any producer to sell dates from such producer's own production free of the requirements of §§ 987.41, 987.45, 987.48, and 987.72 when sold directly to consumers through a roadside stand or date shop owned or operated by the producer within 25 miles of the city limits of Indio, California, through shipments by parcel post or express, or by certified producers at certified farmers' markets, as these terms are defined by the State of California. Permission to so sell dates shall be granted only upon the producer filing with the Committee a completed CDAC Form No. 9 wherein the producer describes how the producer plans to sell such dates and agrees to sell only dates of DAC date quality of the producer's own production in direct sales; and to report such sales to the Committee. If the producer fails to comply with this agreement, the Committee may revoke any or all exemptions granted the producer.

* * * * *

Dated: August 24, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-20694 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 997

[Docket No. FV-92-074IFR]

Changes in the Provisions Regulating the Quality of Domestically Produced Peanuts Not Subject to the Peanut Marketing Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the outgoing quality regulations which regulate the quality of peanuts handled by persons who are not signatory to the Peanut Marketing Agreement. The outgoing regulations are changed: To allow commingling of peanut lots of different quality levels at the request of the buyer after the lots have passed quality and aflatoxin inspection and have been positive lot identified (PLI); and to provide handlers with the option of selling failed peanut lots to second handlers for blanching. These actions will facilitate the movement of peanuts to market and, thus, increase the volume of peanuts placed in marketing channels. These changes are intended to bring the quality requirements into conformity with those specified in the Agreement.

DATES: This interim final rule is effective August 28, 1992. Comments received by September 28, 1992 will be considered prior to finalization of the rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, D.C. 20090-6456. Comments should reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523-S, Washington, DC 20090-6456, telephone 202-720-3610.

SUPPLEMENTARY INFORMATION: This interim final rule is issued pursuant to requirements of the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], and as further amended December 12, 1989, Public Law 101-220, section 4 (1), (2), 103 Stat. 1878, hereinafter referred to as the "Act."

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 60 handlers of peanuts who have not signed the Agreement and thus, are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration [13 CFR 121.601] as those whose annual receipts are less than $3,500,000. It is estimated that most of the handlers are small entities. Most producers doing business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than $500,000.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1991 totalled 4.94 billion pounds, a 37 percent increase from 1990. The 1991 crop value is $1.4 billion, up 12 percent from 1990.

Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. The Agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965. Approximately 5 percent of the crop is marketed by handlers who are not signatory to the Agreement.

Requirements established pursuant to the Agreement provide that farmers' stock peanuts with visible *Aspergillus flavus* mold (the principal source of aflatoxin) must be diverted to non-edible uses. Each lot of shelled peanuts, destined for edible channels, must be officially sampled and chemically tested for aflatoxin by the Department or in laboratories approved by the Peanut Administrative Committee (Committee). The Committee, established under the Agreement, works with the Department in administering the marketing agreement program. Inspection and chemical analysis programs are administered by the Department.

Public Law 101-220, enacted December 12, 1989, amended section 608b of the Act to require that all peanuts handled by persons who have not entered into the Agreement (non-signers) be subject to quality and inspection requirements to the same extent and manner as are required under the Agreement. Under the amendment, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. Regulations to implement Public Law 101-220 were issued and made effective on December 4, 1990 [55 FR 49980], amended on October 31, 1991 [56 FR 55988], and are published in 7 CFR part 997. Violation of those regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108b of the Agricultural Act of 1949 (7 U.S.C. 1445c-2) for the crop year during which the violation occurs. The intent of Public Law 101-220 and the objective of the Agreement is to insure that only wholesome peanuts of good quality enter edible market channels.

The first change will amend § 997.30(d) to allow commingling of peanut lots of different grade categories at the request of a buyer, after the lots have passed quality and aflatoxin inspection and have been PLI. Some buyers do not have commingling equipment at their facilities. This rule will allow handlers to satisfy the occasional request received from buyers that multiple lots be mixed prior to shipment to the buyer. Because such commingled lot will lose its original identity, the commingled load will no longer be considered PLI and the peanuts comprising the load will no longer be eligible for an appeal inspection. A transfer certificate will be issued on the entire, commingled load certifying that, prior to commingling, the individual lots were PLI and had met all program requirements. Loss of the handler's right to an appeal inspection should not represent a significant concern to handlers as lots that pass quality and aflatoxin inspection normally do not need an appeal inspection.

The change is beneficial to the industry because it facilitates movement of peanuts and helps handlers meet their customers' needs. The change is affected by adding the following at the end of § 997.30(d): "* * * except that lots which are commingled at the request of the buyer will require a transfer certificate to be issued designating that the lots were positive lot identified prior to commingling. All such commingled lots will no longer be considered positive lot identified, and, therefore, no longer eligible for appeal inspection."

The second change clarifies that handlers can sell peanut lots failing to meet outgoing quality and aflatoxin requirements to other handlers for blanching or further handling. Section 997.40(a)(1) provides the first handler with the option of selling a lot of failed peanuts to a second handler for remilling or further handling. This rule provides the same opportunity with regards to blanching; i.e., that a first handler may sell a failed lot of peanuts to a second handler for blanching or for further handling. Such peanuts shall be blanched pursuant to paragraph (a)(2) of § 997.40. Blanching is one of the most commonly used methods of making peanuts which fail quality and/or aflatoxin requirements suitable for human consumption. It was not the intention of the Department, when promulgating Part 997, to exclude blanching from disposition options available to second handlers.

As noted in paragraph (a)(1) with regards to remilling, second handlers may be either handlers who are not signatory to the Agreement or are signatory handlers as defined in 7 CFR part 998.8. The same definition of handler is applied under paragraph (a)(2) for blanching.

This action is implemented by inserting one sentence in paragraph (a)(2) of § 997.40 specifying that a handler may sell failed peanuts to another handler, or a handler as defined in the Agreement (7 CFR 998.8), for blanching or further handling. To be eligible for disposal into human consumption outlets, peanuts blanched by a second handler must meet the requirements listed in § 997.30(a) and be accompanied by a negative aflatoxin certificate. Movement of such peanut lots must conform to requirements of paragraphs (a)(3) and (a)(4) of § 997.40. That is, lots must be accompanied by a valid grade inspection certificate and be PLI; title to the lots for custom remilling or blanching must be retained by the handler until certified for human consumption; peanuts which continue to fail quality requirements must be reported to the Department; and, residual peanuts continuing to fail quality and aflatoxin requirements must be disposed of by crushing or export, or be disposed of according to provisions in paragraph (b)(3) of § 997.40.

Similar changes have been made in the outgoing quality regulation of the Agreement (7 CFR 998.200), effective for the 1992-93 crop year.

Both of the actions in this rulemaking will facilitate the movement of peanuts to market and, thus, may increase the volume of peanuts placed in the channels of commerce. The commingling change should help some smaller handlers meet load specifications for buyers who had previously only dealt with large handlers.

There are no changes applicable to the incoming quality requirements. Therefore, the incoming quality regulation applicable to 1991-92 crop peanuts continues to be effective for 1992-93 crop peanuts.

Based on available information, the Administrator of the AMS has determined that the issuance of this interim final rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements that are contained in the sections of these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0163.

After consideration of all available information, it is found that this action will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes restrictions on peanut handlers not subject to the Agreement; (2) the new crop year begins on July 1, 1992, and handlers need to know the regulations applicable to handling the 1992 peanut crop; (3) both actions will ease the movement of peanuts to market and, thus, increase the volume of peanuts placed in marketing channels; (4) this action brings the quality requirements under Part 997 into conformity with those under the Agreement as required by the Act; and (5) this action provides a 30-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 997

Food grades and standards, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 997 is amended as follows:

Note: This section will be published in the annual Code of Federal Regulations.

PART 997—PROVISIONS REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS HANDLED BY PERSONS NOT SUBJECT TO THE PEANUT MARKETING AGREEMENT

1. The authority citation for 7 CFR part 997 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674; sec. 4, 103 Stat. 1878, 7 U.S.C. 608b.

2. Section 997.30 is amended by adding two sentences at the end of paragraph (d) to read as follows:

§ 997.30 Outgoing regulation.

* * * * *

(d) * * * All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures, except that lots which are commingled at the request of the buyer will require a transfer certificate to be issued designating that the lots were positive lot identified prior to commingling. All such commingled lots will no longer be considered positive lot identified, and, therefore, no longer be eligible for appeal inspection.

* * * * *

3. In § 997.40, the first sentence of paragraph (a)(2) is republished and a new sentence is added immediately after it to read as follows:

§ 997.40 Reconditioning and disposition of peanuts failing quality requirements.

* * * * *

(a) * * *

(2) Handlers may blanch or cause to have blanched positive lot identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for human consumption specified in § 997.30(a) because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin. Handlers may sell such peanuts to another handler, or to a handler as defined in 7 CFR 998.8, for blanching or further handling. * * *

* * * * *

Dated: August 24, 1992.

Ronald L. Cioffi,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20699 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1007

[DA–92–14]

Milk in the Georgia Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This docket makes inoperative the requirement that producers be paid on the basis of a base and excess payment plan for the month of August 1992. The suspension was requested by a cooperative association because the current provisions tend to discourage milk production at a time when milk production is declining. In addition any needed supplemental milk supplies could be obtained by handlers on a direct-shipped basis from producers in nearby markets.

EFFECTIVE DATE: August 1 through August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 15, 1992; published June 19, 1992 (57 FR 27377).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action would tend to encourage milk production during the month of August which is a month of declining milk production.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained therein.

This suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and of the order regulating the handling of milk in the Georgia marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 19, 1992, (57 FR 27377) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. Several comments were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. In § 1007.32, paragraph (a).
2. In § 1007.61(a), the words "of September through January".
3. In § 1007.61, paragraph (b).

Statement of Consideration

This action makes inoperative the requirement that producers be paid on the basis of the base and excess plan for the month of August 1992. Dairymen, Inc. (DI), a cooperative association of producers having a substantial amount of milk pooled on the Georgia milk market; requested the suspension. The cooperative asked for the suspension in order to remove a conflict which currently exists between the order provisions and the need for additional milk in this market for the month of August.

DI stated that the current order provisions provide that producers be paid a base and excess price for the months of February through August. The cooperative said that this plan was designed to encourage milk production during the base-building months of September through January when a greater volume of milk is needed for fluid use, and to discourage additional production (excess milk) during the months of February through August when the additional milk production is not needed for fluid use.

DI stated that marketing conditions have changed since those provisions were adopted in the Georgia order. In recent years, milk production during the month of August has been in short supply. DI believes that production should not be discouraged through the payment of the excess price for additional production during the month of August.

Interested parties were given an opportunity to submit written data, views, and arguments concerning the proposed suspension. One producer indicated that presumably the majority of producers would be producing less than their base in August and that, compared to the base price under the base and excess plan, the blend price is likely to be lower than the price if any producers are producing excess milk. Another producer indicated that the payment of the blend price in August of 1990 and 1991 did not result in any increase in milk production.

As indicated by proponent cooperative, the market is likely to be short of milk during August. In the recent past, supplemental milk supplies have been needed in the market during August. Accordingly, any milk production in excess of base milk is needed to serve the fluid Class I market, which is the highest price use of milk. In the absence of this suspension action, producers with excess milk would be encouraged to shift off the market in August and thereby detract from the basic function of the order in assuring an adequate supply of milk. In addition, the base plan, if continued in August, would tend to be an impediment to fluid milk handlers' ability to attract supplemental milk supplies on a direct-shipped basis from producers in nearby markets. Under the plan, such producers would be credited only with the excess price because of not having a base on this market.

This action should contribute to an increase in the amount of milk available for fluid use during August. As explained above, the market is likely to be short of fluid milk during that month. Suspending the base and excess plan provisions may very well result in a blend price which is lower than the base price, as indicated by the producers opposing this action. However, the needs of the market are such that it is appropriate to suspend the aforesaid provisions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that this action should make more milk available for fluid use in the market in August 1992.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Only a few producers filed comments in opposition to the suspension.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1007

Milk marketing orders.

It is therefore ordered, That the following provisions in § 1007.32(a), § 1007.61 (a) and (b) of the Georgia order are hereby suspended from August 1 through August 31, 1992.

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. The authority citation for 7 CFR part 1007 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1007.32 [Suspended in Part]

2. In § 1007.32, paragraph (a) is suspended.

§ 1007.61 [Suspended in Part]

3. In § 1007.61(a) the following words: "of September through January" are suspended.

4. In § 1007.61, paragraph (b) is suspended.

Dated: August 24, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–20680 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 103

[Docket No. R–92–1425; FR–2565–F–04]

Fair Housing Complaint Processing

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule; technical amendment.

SUMMARY: This document makes a technical amendment to 24 CFR part 103, which sets forth the complaint processing procedures under the Fair Housing Act, to correct an omission in § 103.200 which occurred in the publication of a final rule on December 28, 1990 (55 FR 53293).

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Jonathan Strong, Deputy Assistant General Counsel for Fair Housing Litigation, Fair Housing Division, Office of the General Counsel, room 9238, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone (202) 708–1207 or (202) 9300 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On January 23, 1989 (54 FR 3232), the Department published a final rule that adopted regulations to implement the changes made in title VIII of the Civil Rights Act of 1968 by the Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988) (title VIII as amended by the Fair Housing Amendments Act of 1988 is referred to as the Fair Housing Act). The final rule created a new part 103, which codifies the Department's procedures for the investigation and conciliation of complaints under section 810 of the Fair Housing Act.

Under § 103.400 of the January 23, 1989 final rule, the General Counsel of HUD was delegated exclusive authority to make determinations of whether or not reasonable cause exists to believe that discrimination has occurred under the Fair Housing Act. On December 28, 1990 (55 FR 53293), the Department published a final rule that amended § 103.400 to delegate authority to the Assistant Secretary for Fair Housing and Equal Opportunity to make determinations of *no* reasonable cause. The General Counsel retained sole authority to make determinations that reasonable cause exists, and also retained authority, concurrent with that

of the Assistant Secretary, to make determinations of no reasonable cause. In addition to the amendment to § 103.400, the December 28, 1990 final rule made conforming amendments to 24 CFR 103.200(a)(3), 103.300(a), and 109.16(a).

The Department recently discovered certain editorial errors in § 103.200. In § 103.200(a), the word "purpose" should be "purposes." In § 103.200(a)(3), several words were inadvertently omitted, which rendered the meaning of that provision unclear. Paragraphs (a) and (a)(3) of § 103.200 should read as follows (the bracketed language indicates the letters and words that were inadvertently omitted):

§ 103.200 Investigations.

(a) Upon the filing of a complaint under § 103.40, the Assistant Secretary will initiate an investigation. The purpose[s] of an investigation are:

* * * * *

(3) To develop factual data necessary for the General Counsel to make a determination under § 103.400 whether [reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur], and [for] the Assistant Secretary to make a determination under § 103.400 that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

This document therefore corrects the editorial omissions found in 24 CFR 103.200(a) and (a)(3).

List of Subjects in 24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Handicapped, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and Recordkeeping requirements.

Accordingly, the following amendment is made to 24 CFR part 103:

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

1. The authority citation for 24 CFR part 103 continues to read as follows:

Authority: 42 U.S.C. 3600–3619; 42 U.S.C. 3535(d).

2. Section 103.200 is amended by revising paragraphs (a) introductory text and (a)(3) to read as follows:

§ 103.200 Investigations.

(a) Upon the filing of a complaint under § 103.40, the Assistant Secretary will initiate an investigation. The purposes of an investigation are:

* * * * *

(3) To develop factual data necessary for the General Counsel to make a determination under § 103.400 whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and for the Assistant Secretary to make a determination under § 103.400 that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, and to take other actions provided under this part.

* * * * *

Dated: August 19, 1992.

Leonora L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 92–20561 Filed 8–27–92; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 92–13]

Special Local Regulations: Big River World Finals—Dragboat Races

AGENCY: Coast Guard, DOT.

ACTION: Temporary Final Rule.

SUMMARY: Special local regulations are being adopted for the Big River World Finals—Dragboat Races. This event will be held on the Wheeler Lake at Tennessee River, from mile 276.5 to mile 277.5 on August 29 & 30, 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective daily 8 a.m. to 7 p.m., August 29 & 30, 1992.

FOR FURTHER INFORMATION CONTACT: Ensign D. R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax: (314) 539–2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Discussion of Regulations

The Big River World Finals consist of ¼ mile drag boat races. Regulation is required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during portions of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (Water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section 100.35–T0213 is added, to read as follows:

§ 100.35–T0213 Big River World Finals—Drag Boat Races.

(a) *Regulated Area.* The Wheeler Lake at Tennessee River, mile 276.5 to mile 277.5.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations are effective: 8 a.m. to 7 p.m. on August 29 & 30, 1992.

Dated: August 20, 1992.

J.J. Lantry,

Captain, U.S. Coast Guard Commander, Second Coast Guard District, Acting.

[FR Doc. 92–20748 Filed 8–27–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD2 92–07]

Special Local Regulations: 22nd Annual Charleston Sternwheel Regatta

AGENCY: Coast Guard, DOT.

ACTION: Temporary Final Rule.

SUMMARY: Special local regulations are being adopted for the 22nd Annual Charleston Sternwheel Regatta. This event will be held on the Kanawha River, from mile 57.5 to mile 61.5 from August 28 through September 6, 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations will be effective: 8 p.m. to 10 p.m. on August 28, 1992; 12 noon to 6 p.m. daily August 29 and 30, 1992; 7 p.m. to 11 p.m. daily August 31–September 4, 1992; 1 p.m. to 10 p.m. daily September 5 and 6, 1992.

FOR FURTHER INFORMATION CONTACT: Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, Fax: (314) 539–2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. There was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafter of these regulations is Ensign D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division.

Discussion of Regulations

The 22nd Annual Charleston Sternwheel Regatta includes sternwheel races, a power boat race, a parade from C&P ramp to levee, towboat shoving contest, fireworks, and a lighted boat parade. Regulation is required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during portions of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35. They supersede the regulations concerning the same event at 33 CFR 100.201.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.325.

2. A temporary section 100.35–T0207 is added, to read as follows:

§ 100.35–T0207 2nd Annual Charleston Sternwheel Regatta.

(a) *Regulated Area.* The Kanawha River, mile 57.5 to mile 61.5.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander. The above restriction shall not apply to patrol vessels performing assigned duties.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations are effective: 8 p.m. to 10 p.m. on August 28, 1992; 12 noon to 6 p.m. daily August 29 and 30, 1992; 7 p.m. to 11 p.m. daily August 31–September 4, 1992; 1 p.m. to 10 p.m. daily September 5 and 6, 1992.

Dated: August 18, 1992.

N.T. Saunders,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 92–20745 Filed 8–27–92; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 100

[CGD 09–92–19]

Special Local Regulations: The CAN-AM Challenge, 92 COBRA Race Against Drugs, Buffalo Outer Harbor, Lake Erie, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special Local Regulations are being adopted for The Can-Am Challenge, 92 COBRA "Race Against Drugs". This event will be held on the Buffalo Outer Harbor and Lake Erie on the 19th of September 1992 from 11 a.m. (e.d.s.t.) until 2:30 p.m. (e.d.s.t.). The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective from 11 a.m. (e.d.s.t.) until 2:30 p.m. (e.d.s.t.) on September 19, 1992. If the weather on September 19, 1992 is inclement, the race will be held on September 20, 1992.

FOR FURTHER INFORMATION CONTACT: William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, Search and Rescue Branch, Ninth

Coast Guard District, 1240 East 9th Street, Cleveland, Ohio 44199–2060, (216) 522–4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received until 7 August 1992, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are William A. Thibodeau, Marine Science Technician Third Class, U.S. Coast Guard, project officer, Search and Rescue Branch and M. Eric Reeves, Commander, U.S. Coast Guard, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Can-Am Challenge, 92 COBRA "Race Against Drugs" will be conducted on the Buffalo Outer Harbor and Lake Erie, Buffalo, NY, on the 19th of September 1992. This event will have an estimated 40, 24 to 40 foot, offshore race boats, which could pose hazards to navigation in the area. Any vessel desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer in Charge, U.S. Coast Guard Station Buffalo, NY).

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectators into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary section 100.35–T0919 to read as follows:

§ 100.35–T0919 The CAN-AM Challenge, 92 COBRA Race Against Drugs, Buffalo Outer Harbor, Lake Erie, Buffalo, NY.

(a) *Regulated Area:* That area enclosed by the following lines:

(1) From the Black Rock Canal Breakwall Light 17 (LLNR 2800), south along the Black Rock Canal Breakwall to the southern end of the breakwall.

(2) The southern end of the Black Rock Canal Breakwall due east to the main shore.

(3) From a point due east of the south end of the Black Rock Canal Breakwall, southward along the main shore, westward along the main shore, and northward along the main shore to the South Buffalo Dike Disposal Light Number 2 (LLNR 2840).

(4) From the South Buffalo Dike Disposal Light Number 2 (LLNR 2840) westward to a point defined as the intersection of a bearing 248 degrees true from the South Buffalo Dike Disposal Light Number 2 (LLNR 2840) and 197 degrees true from the Black Rock Canal Breakwall Light 17 (LLNR 2800).

(5) From a point defined as the intersection of a bearing 248 degrees true from the South Buffalo Dike Disposal Light Number 2 (LLNR 2840) and 197 degrees true from the Black Rock Canal Breakwall Light 17 (LLNR 2800), northward to the Black Rock Canal Breakwall Light 17 (LLNR 2800).

(b) *Special Local Regulations:* (1) The above area will be closed to vessel navigation and anchorage, except when expressly authorized by the Coast Guard Patrol Commander, from 11 a.m. (e.d.s.t.) until 2:30 p.m. (e.d.s.t.) on the 19th of September 1992.

(2) If the weather on the 19th of September 1992 is inclement, the race and the regulated area will be postponed until 11 a.m. (e.d.s.t.) to 2:30 p.m. (e.d.s.t.) on the 20th of September 1992. If postponed, notice will be given on the 19th of September 1992 over the U.S. Coast Guard Radio Net.

(3) The Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander". Any vessel, not authorized to participate in the event, desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(4) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Any vessel so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) The Patrol Commander may establish vessel size and speed limitations, and operating conditions.

(6) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(7) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: August 20, 1992.

G.A. Penington,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 92–20747 Filed 8–27–92; 8:45 am]

BILLING CODE 4910–14–M#

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33 CFR Part 117

[CGD13–92–11]

Drawbridge Operation Regulations; Willamette River, OR

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule with request for comments.

SUMMARY: At the request of the Union Pacific Railroad Company, the Coast Guard is establishing temporary regulations governing the liftspan of the Steel Bridge, mile 12.1, at Portland, Oregon. This temporary rule is being tested because infrequent requests for openings of the upper lift span have removed the need for constant attendance by gatetenders at this bridge. This action should provide information concerning the feasibility of proposing a permanent change to the operating regulations. Depending on the nature of comments received on this action the Coast Guard may propose making this change permanent.

DATES: This temporary final rule is effective from September 13, 1992, through November 11, 1992, unless sooner terminated. Comments must be received on or before November 11, 1992.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments received will be available for inspection and photocopying at the above address between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to this address. Persons wishing written confirmation of receipt of their comments should enclose a stamped, pre-addressed envelope or postcard.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch at (206) 553–5864.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are: Austin Pratt, project officer, Bridge Section and Lieutenant Laticia J. Argenti, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Temporary Rule

A notice of proposed rule making has not been published for this regulation. The bridge owner has requested the Coast Guard to authorize a test period for these regulations. A comment period is being provided during the entire period that the temporary regulations are in force. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for their support or opposition to the change.

The main vertical lift span of the Steel Bridge is a 211-foot steel double-deck through-truss designed so that the lower deck can be raised without effecting the upper deck. This is achieved by the telescoping of the lower deck's vertical girders into those of the upper deck. This design permits elevation of the lower deck for the passage of vessels without disrupting the roadway traffic on the upper deck. The lower deck supports a rail line. Both decks can be lifted when it is necessary to provide greater vertical clearance for the passage of vessels.

The Union Pacific Railroad Company is the owner of the entire structure. The upper deck is leased to the Oregon Department of Transportation which in turn leases part of the corridor for the light rail line for passenger transport.

Under present operation procedures, the Union Pacific is responsible for controlling the vertical lift spans. The Oregon Department of Transportation posts gate tenders at all hours on the upper deck. These tenders have the responsibility of closing the traffic gates whenever it is necessary to elevate both decks of the bridge. This seldom occurs. The lower deck alone is lifted for vessels more often than both.

This change requires one hour notice for openings of the upper deck lift Monday through Friday from 8 a.m. to 4:30 p.m. At all other times two hours notice shall be given. Notice shall be by marine radio, telephone, or other reliable means to the Union Pacific drawtender at the bridge. In order to relieve the state from the burden of having gate keepers in constant attendance on the upper deck, these temporary regulations are being put into effect for a period of sixty days beginning September 13, 1992. If the temporary regulations continue to adequately serve the reasonable needs of navigation, the Coast Guard will consider proposing this modification as a permanent change to the operating regulations for this bridge.

Regulatory Evaluation

This temporary rule is considered to be not major under Executive Order 12291 and non significant under the Department of Transportation regulatory policies and procedures (44 FR 11304, February 26, 1979). The economic impact has been determined to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are temporary and may be withdrawn earlier than scheduled. They are not expected to have any substantial effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) the U.S. Coast Guard must consider whether proposed rules will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and the otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because this temporary rule imposes no new requirements on small business and will result in partial relief from a regulatory burden on the owner or operator of this bridge, the Coast Guard does not expect this temporary rule to have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the temporary rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed and determined by the Coast Guard to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is temporarily amended to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); 33 CFR 117.43.

2. Section 117.897 is temporarily amended by suspending paragraph (a)(1)(ii) and adding a new paragraph (a)(5) to read as follows: (This is a temporary rule and will not appear in the Code of Federal Regulations.)

§ 117.897 Willamette River.

(a) * * *

* * * * *

(5) The draw for Steel Bridge, Portland, mile 12.1, need not be opened for the passage of vessels from 7 a.m. to

8:30 a.m. and 4 p.m. to 5:30 p.m. except Saturdays, Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day or other days observed instead of these days under state law. On weekdays, Monday through Friday, from 8 a.m. to 4:30 p.m., at least one hour notice shall be given for openings of the Steel Bridge. At all other times, at least two hours notice shall be given. Notice shall be given by marine radio, telephone, or other means to the drawtender at the Steel Bridge. During Rose Festival Week or when the water elevation reaches and remains above +12 feet, the draw will open on signal without advance notice, except during the normal closed periods identified above.

* * * * *

Dated: August 10, 1992.

J. E. Vorbach,

Rear Admiral, U.S. Coast Guard, Commander, 13th Coast Guard District.

[FR Doc. 92-20742 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 92-109]

Safety Zone: New Bedford Harbor, New Bedford, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in New Bedford Harbor, specifically the main ship channel south of the New Bedford/Fairhaven Bridge in the vicinity of New Bedford Channel Lighted Bell Buoy 16 (LLNR 15460), during the New Bedford Labor Day fireworks display. This safety zone is needed to protect vessels in the vicinity of the display as well as personnel onboard these vessels from potential hazards associated with the fireworks display.

EFFECTIVE DATE: This regulation is effective between the hours of 8 p.m. and 10 p.m. on September 5, 1992, unless terminated sooner by the Captain of the Port Providence. The rain date for this event is September 6, 1992.

FOR FURTHER INFORMATION CONTACT: LTJG Burke of Marine Safety Office Providence at (401) 528-5335.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are Lieutenant (junior grade) Tina Burke, Project Manager for the Coast Guard Captain of the Port Providence, and Lieutenant Commander J. Astley, Project Counsel for the First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 533, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessels and personnel in the vicinity of the fireworks display. In addition, the Coast Guard was informed of this event on July 29, 1992, by the sponsor, which is insufficient notice to provide for full public participation in this rulemaking effort. Since the event is centered on a national holiday, postponing the event to allow for the full rule making process would cause the event to be either meaningless or cancelled. Therefore, good cause exists for not making this temporary final rule effective thirty days after publication.

Background and Purpose

On September 5, 1992, the city of New Bedford is sponsoring a fireworks display in celebration of Labor Day. The fireworks will be launched from a barge anchored in New Bedford Channel in the vicinity of New Bedford Channel lighted bell buoy 16 (LLNR 15460), between the hours of 9 p.m. and 10 p.m. on September 5, 1992. The raindate is September 6, 1992.

The purpose of this rulemaking is to prohibit is to prohibit vessels from transiting or anchoring in the area of New Bedford Harbor over which the fireworks will be launched, in order to protect these vessels and the persons onboard from potential damage, fire, or personal injury due to sparks and falling debris. This safety zone will be established within a 350 yard radius around the fireworks barge which will be anchored in the vicinity of New Bedford Channel lighted buoy 16 (LLNR 15460). The safety zone will be in effect between the hour of 8 p.m. and 10 p.m. on September 5, 1992, with a rain date set for 8 p.m. to 10 p.m. on September 6, 1992, and will effectively close New Bedford Channel in the vicinity of New Bedford Channel lighted buoy 16 (LLNR 15460) to all vessel traffic during this period.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact to be minimal on all entities. The entities most likely to be affected are pleasure craft wishing to view the fireworks from the water as well as fishing vessels and other commercial vessel traffic wishing to transit the area. Spectator vessels will still be able to view the fireworks from the water but will be required to do so at a distance more than 350 yards from the barge, which will not cause them undue hardship. Fishing vessels will be prohibited from transiting through the area while the zone is in effect. This will not have a significant economic impact on them because of the short duration of the zone. In addition, most of the fishermen who work out of New Bedford expect and are aware that the fireworks and accompanying safety zone will be in place the evening of September 5, 1992, because the Labor Day fireworks display is an annual event. Lastly, only one to two commercial ships transit New Bedford Channel each week. Because of the infrequency of commercial ship transits, these vessel will not experience undue hardship due to this rule. Thus, this safety zone will not cause undue hardship to any entity.

Small Entities

For the reasons discussed in the Regulatory Evaluation, the Coast Guard expects the economic impact of this rule to be minimal on all entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. et seq.) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principals and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this final rule will have no significant impact and is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available under "**ADDRESSES.**"

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.2.

2. A new section 165.T01-109 is added to read as follows:

§ 165.T01-109 Safety Zone: New Bedford Harbor, New Bedford, MA.

(a) *Location.* The following area is a safety zone: A 350 yard radius around the fireworks barge anchored in New Bedford Harbor, MA, in the vicinity of New Bedford Channel lighted bell buoy 16 (LLNR 15460).

(b) *Effective Date.* This regulation becomes effective between the hours of 8 p.m. and 10 p.m. on September 5, 1992, unless terminated sooner by the Captain of the Port. If the fireworks display is postponed due to inclement weather, the safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on September 6, 1992.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: August 20, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 92-20743 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-14-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101-42, 101-43, 101-44, 101-45, 101-46, 101-48, and 101-49

[FPMR Amendment H-183]

RIN 3090-AA42

Utilization and Disposal of Hazardous Materials and Certain Categories of Property

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation adds a new regulatory part to the Federal Property Management Regulations (FPMR) to consolidate policies and methods governing the utilization, donation, sale, and abandonment or destruction of certain types of personal property, specifically hazardous materials and other categories of property with special utilization and disposal requirements. This addition provides Federal property managers with a single FPMR part dealing exclusively with the disposition of such property.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Lester D. Gray, Jr., Director, Property Management Division (703-305-7240).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 101-42, 101-43, 101-44, 101-45, 101-46, 101-48, and 101-49

Government property management, Hazardous substances, Reporting and recordkeeping requirements, Surplus Government property.

Accordingly, 41 CFR part 101-42 is added and 41 CFR parts 101-43, 101-44, 101-45, 101-46, 101-48, and 101-49 are amended as follows:

1. Part 101-42 is added to Subchapter H, Utilization and Disposal, to read as follows:

PART 101-42—UTILIZATION AND DISPOSAL OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

Sec.

101-42.000 Scope of part.
101-42.001 Definitions of terms.
101-42.002 Requests for deviations.

Subpart 101-42.1—[Reserved]

Subpart 101-42.2—Utilization of Hazardous Materials and Certain Categories of Property

101-42.200 Scope of subpart.
101-42.201 [Reserved]
101-42.202 Identification of hazardous materials.
101-42.203 Reassignment of hazardous materials.
101-42.204 Reporting requirements.
101-42.205 Exceptions to reporting.
101-42.206 Special requirements for utilization of hazardous materials and certain categories of property.
101-42.207 Transfer of hazardous materials and certain categories of property.
101-42.208 Custody of hazardous materials.
101-42.209 Cost of care and handling of hazardous materials and certain categories of property.

Subpart 101-42.3—Donation of Hazardous Materials and Certain Categories of Property

101-42.300 Scope of subpart.
101-42.301 General.
101-42.302 Responsibilities for donation of hazardous materials.
101-42.303 Hazardous materials distributed to donees by State agencies.
101-42.304 Special requirements for donation of certain hazardous materials.

Subpart 101-42.4—Sale, Abandonment, or Destruction of Surplus Hazardous Materials and Certain Categories of Property

101-42.400 Scope of subpart.
101-42.401 Sales responsibilities for hazardous materials.
101-42.402 Reporting hazardous materials for sale.
101-42.403 Sales methods and procedures.
101-42.404 Special requirements for the sale of hazardous materials.
101-42.405 Transportation of hazardous materials.
101-42.406 Abandonment or destruction of surplus hazardous materials and certain categories of property.

Subparts 101-42.5—101-42.10—[Reserved]

Subpart 101-42.11—Special Types of Hazardous Materials and Certain Categories of Property

101-42.1100 Scope of subpart.
101-42.1101 Federal supply classification (FSC) groups and classes which contain hazardous materials.
101-42.1102 Special requirements for utilization, donation, sale, and abandonment or destruction of hazardous materials and certain categories of property.
101-42.1102-1 Asbestos.
101-42.1102-2 Polychlorinated biphenyls.
101-42.1102-3 Controlled substances.
101-42.1102-4 Nuclear Regulatory Commission—controlled materials.
101-42.1102-5 Drugs, biologicals, and reagents other than controlled substances.
101-42.1102-6 Noncertified and certified electronic products.

101–42.1102–7 Lead-containing paint and items bearing lead-containing paint.
101–42.1102–8 United States Munitions List items which require demilitarization.
101–42.1102–9 Acid contaminated and explosive contaminated property.
101–42.1102–10 Firearms.

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

§ 101–42.000 Scope of part.

This part prescribes the special policies and procedures governing the utilization, donation, sale, exchange, or other disposition of hazardous materials, dangerous property, and other categories of property with special utilization and disposal requirements, located within the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

§ 101–42.001 Definitions of terms.

For the purposes of this part 101–42, the following terms shall have the meaning set forth below:

Acid contaminated property means property that may cause burns or toxicosis when improperly handled due to acid residues adhering to or trapped within the material.

Biologicals means hazardous materials which are of or pertain to the products and operations of applied biology, or any biochemical products, especially serums, vaccines, etc., produced from microorganisms.

Certified electronic product means any electronic product which bears the manufacturer's certification label or tag (21 CFR 1010.2) indicating that the product meets applicable radiation safety performance standards prescribed by the Food and Drug Administration under 21 CFR part 1020.

Controlled substances means:

(a) Any narcotic, depressant, stimulant, or hallucinogenic drug, or any other drug, other substance, or immediate precursor included in Schedules I, II, III, IV, or V of section 202 of the Controlled Substance Act (21 U.S.C. 812) except exempt chemical preparations and mixtures, and excluded substances listed in 21 CFR part 1308;

(b) Any other drug or substance that the Attorney General determines to be subject to control pursuant to Subchapter I of the Controlled Substance Act (21 U.S.C. 801 et seq.); or

(c) Any other drug or substance that by international treaty, convention, or protocol is to be controlled by the United States.

Explosive contaminated property means property that may ignite or explode when exposed to shock, flame, sparks, or other high temperature sources due to residual explosive material in joints, angles, cracks, or around bolts.

Extremely hazardous material means:

(a) Those materials which are hazardous to the extent that they generally require special handling such as licensing and training of handlers, protective clothing, and special containers and storage.

(b) Those materials which, because of their extreme flammability, toxicity, corrosivity or other perilous qualities, could constitute an immediate danger or threat to life and property and which usually have specialized uses under controlled conditions.

(c) Those materials which have been determined by the holding agency to endanger public health or safety or the environment if not rendered innocuous before release to other agencies or to the general public.

Firearms means any weapons (including flare and starter guns) which will, or are designed to, or may be readily converted to expel a projectile by the action of an explosive, the frame or receiver of any such weapons, or any muffler or silencer for such purposes. For purposes of this Part 101–42, firearms are considered to be dangerous property.

Hazardous material means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA), the Resource Conservation and Recovery Act (RCRA), or the Toxic Substances Control Act (TSCA). Generally, hazardous materials have one or more of the following characteristics:

(a) Has a flash point below 200 F (93.3 C), closed cup, or is subject to spontaneous heating;

(b) Is subject to polymerization with the release of large amounts of energy when handled, stored, or shipped without adequate controls;

(c) In the course of normal operations, may produce fibers, dusts, gases, fumes, vapors, mists, or smokes which have one or more of the following characteristics:

(1) Causes 50 percent fatalities to test animals below 500 mg/kg of test animal weight when a single oral dose LD50 is used;

(2) Is a flammable solid or a strong oxidizing or reducing agent;

(3) Causes first degree burns to skin in a short time exposure, or is systematically toxic by skin contact;

(4) Has a permissible exposure limit (PEL) below 1000 p/m for gases and vapors, below 500 mg/mm3 for fumes, below 30 mmppcf (10 mg/m3), or 2 fibers/CM3 for dust;

(5) Causes occupational chemical dermatitis, which is any abnormality of the skin induced or aggravated by the work environment which includes but is not limited to primary irritant categories, allergic sensitizers, and photo sensitizers;

(d) Is radioactive to the extent it requires special handling;

(e) Is a recognized carcinogen according to Occupational Safety and Health Administration regulations at 29 CFR part 1910; or

(f) Possesses special characteristics which in the opinion of the holding agency could be hazardous to health, safety, or the environment if improperly handled, stored, transported, disposed of, or otherwise improperly used.

Hazardous waste means those materials or substances, the handling and disposal of which are governed by 40 CFR part 261.

(a) In general, hazardous materials are hazardous wastes when one or both of the following is true:

(1) They have passed through the disposal cycle without having successfully been reutilized, transferred, donated, or sold, and the holding agency declares an intent to discard.

(2) They are no longer usable for their intended purpose, a valid alternate purpose, or resource recovery.

(b) In general, solid (non-hazardous) wastes, as defined at 40 CFR 261.2, become hazardous wastes when:

(1) They exhibit one or more of the characteristics of ignitability, corrosivity, reactivity, or EP toxicity; or

(2) They are predetermined hazardous wastes upon generation as listed in 40 CFR part 261, subpart D.

(c) Hazardous materials having an expired shelf life shall be reclassified as hazardous wastes if required by Federal and/or State environmental laws or regulations. Before such reclassification, the shelf life may be extended if supported by results of tests and recertification performed by authorized personnel in accordance with applicable regulations.

(d) The transportation of hazardous wastes is governed by the regulations issued by the Department of Transportation, codified in 49 CFR part 171 *et seq.*

Lead-containing paint means paint or other similar surface coating material that contains lead or lead compounds in excess of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

Noncertified electronic product means any electronic product for which there is an applicable radiation safety performance standard prescribed or hereafter prescribed by the Food and Drug Administration (FDA) under 21 CFR part 1020, and which the manufacturer has not certified as meeting such standard. The noncertification may be due to either (a) manufacture of the product before the effective date of the standard or (b) the product was exempted from the applicable standard and is so labeled.

Nuclear Regulatory Commission—controlled materials means those materials the possession, use, and transfer of which are subject to the regulatory controls of the Nuclear Regulatory Commission (NRC) pursuant to the Energy Reorganization Act of 1974. The materials are defined as follows:

(a) *Byproduct materials* means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material. (See 10 CFR part 30.)

(b) *Source material* means uranium or thorium, or any combination thereof, in any physical or chemical form, or ores which contain by weight one-twentieth of one percent (0.05%) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material. (See 10 CFR part 40.)

(c) *Special nuclear material* means plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, any other materials which the NRC, pursuant to the Atomic Energy Act of 1954 (68 Stat. 919), including any amendments thereto, determines to be special nuclear material, or any material artificially enriched by any of the foregoing, but does not include source material. (See 10 CFR part 70.)

Reagent means any hazardous material which is used to detect or measure another substance or to convert one substance into another by means of the reactions it causes.

§ 101–42.002 Requests for deviations.

Deviations from the regulations in this part shall only be granted by the Administrator of General Services (or designee). Requests for deviations shall be made in writing to the General Services Administration (FB), Washington, DC 20406, with complete justification. A copy of the authorizing statement for each deviation, including the nature of the deviation, the reasons for such special action, and the Administrator's or designee's approval, will be available for public inspection under Subpart 105–60.3 of this title.

Subpart 101–42.1—[Reserved]

Subpart 101–42.2—Utilization of Hazardous Materials and Certain Categories of Property

§ 101–42.200 Scope of subpart.

This subpart prescribes the special policies and methods for the utilization and transfer of hazardous materials and other certain categories of property within the Government in addition to the requirements of part 101–43.

§ 101–42.201 [Reserved]

§ 101–42.202 Identification of hazardous materials.

(a) Current acquisition standards (Fed. Std. No. 313 and Fed. Std. No. 123) and the Federal Acquisition Regulation require that manufacturers identify and document potential hazards on material safety data sheets (MSDSs) as part of the acquisition process. Acquisition of MSDSs is also prescribed by the Occupational Safety and Health Administration (OSHA) regulations found in 29 CFR part 1910 and paragraph 1–602(c) of Executive Order 12196, Occupational Safety and Health Programs for Federal Employees, dated February 26, 1980. GSA's Federal Supply Service (FQ) maintains an automated data base, accessible via modem and computer terminal, that contains MSDSs for all GSA-procured hazardous materials. In addition to display of the MSDS on the terminal screen, the system allows for the addition of the MSDS to the user's local data base and the transmission of the MSDS via facsimile to the user's site. Detailed instructions on how to access this system may be obtained by sending a self-addressed envelope to General Services Administration, Federal Supply Service, Attn: MSDS Coordinator, 401 W. Peachtree St., NE, suite 3021, Atlanta, Georgia 30365.

(b) The Hazardous Materials Information System (HMIS) is a collection of MSDS information, transportation information, and disposal information that was established by the Department of Defense to assist personnel who handle, store, ship, use or dispose of hazardous materials. Each record in the data base is defined by a stock number (either national stock number or local numbers), the manufacturer's contractor and Government entity (CAGE) code, and a part number indicator which is linked to the manufacturer's part number or trade name. The data base (DoD 6050.5L) is available on microfiche and compact disc-read only memory (CD–ROM) through the Naval Computer and Telecommunication Area Master Station, Atlantic (NCTAMS LANT), Attn.: Code 911.3, Norfolk, VA 23511–5355.

(c) For items not listed or adequately described in the HMIS or on a MSDS, contact the procuring agency, the manufacturer, or your technical staff for information as to the potential hazards of the item.

(d) Some hazardous items were acquired by Federal agencies prior to implementation of the standards requiring identification of potential hazards. Identification and documentation of the hazardous nature of such items is the responsibility of the owning or holding agency. Hazardous materials are found in most Federal supply classification (FSC) classes. Section 101–42.1101 contains a table of FSC classes composed predominantly of hazardous items and a table of FSC groups and classes which contain a significant number of hazardous items. These tables are designed to assist Federal agencies in reviewing personal property inventories to identify hazardous materials.

(e) When an item has been determined hazardous, the owning Federal agency shall document the accountable inventory record accordingly. If the item has not been appropriately labeled by the manufacturer or distributor, the owning agency shall appropriately label, mark, or tag the item in accordance with OSHA requirements (29 CFR 1910.1200) regarding the actual or potential hazard associated with the handling, storage, or use of the item to include hazardous chemical(s) contained and the name of the chemical manufacturer, importer, or responsible party as defined at 29 CFR 1910.1200(c). Such information shall be maintained in the item record for use in preparation of reports of excess property, reassignment or transfer documentation, and other documentation requirements that may arise.

§ 101–42.203 Reassignment of hazardous materials.

When hazardous materials are reassigned within an executive agency, information on the actual or potential hazard shall be included in the documentation effecting the reassignment, and the recipient organization shall perpetuate in the inventory or control records visibility of

the nature of the actual or potential hazard.

§ 101-42.204 Reporting requirements.

(a) Except as set forth in this 101-42.204, excess personal property which has been identified as hazardous shall be reported promptly in accordance with this part and § 101-43.4801, with a complete description of the actual or potential hazard associated with the handling, storage, or use of the item.

(b) If the hazardous characteristics of the item are adequately described on a MSDS or HMIS record (or equivalent), the reporting document should so indicate, and a copy of the MSDS or HMIS record shall be included. If no MSDS or HMIS is available, information must be obtained by the reporting activity and furnished with the reporting document. A certification by a duly authorized agency official that the item has been clearly labeled as prescribed in § 101-42.202(e) should be included in the description of the hazard. The agency official must also certify that the containers and/or packaging meet or exceed Department of Transportation specifications for a hazardous material container (49 CFR parts 178-180).

(c) Hazardous wastes shall not be reported to GSA for disposal, and shall be disposed of by the holding agency or the reporting activity only under the Environmental Protection Agency (EPA) and State and local regulations. Holding agencies shall contact the manufacturer, the agency's technical staff, or the local State EPA office for assistance in this matter if needed.

§ 101-42.205 Exceptions to reporting.

(a) When the actual or potential hazard is such that an item is determined by the holding agency to be extremely hazardous property, the item shall not be reported on Standard Form (SF) 120, Report of Excess Personal Property, unless so directed by a GSA regional office or GSA Central Office. Other items identified as hazardous shall be reported to GSA on SF 120 unless otherwise excepted by §§ 101-43.304 and 101-43.305.

(b) When an item determined to be extremely hazardous property becomes excess, the holding agency shall notify the appropriate GSA regional personal property office, identify the item, and describe the actual or potential hazard associated with the handling, storage, or use of the item. On a case-by-case basis, the GSA regional office will determine the utilization, donation, sales, or other disposal requirements, and provide appropriate guidance to the holding agency.

(c) When EPA, under its authorities, transfers accountability for hazardous materials to Federal, State, and local agencies, to research institutions, or to commercial businesses to conduct research or to perform the actual cleanup of a contaminated site, the item is not required to be reported.

§ 101-42.206 Special requirements for utilization of hazardous materials and certain categories of property.

Special utilization requirements for certain categories of property are provided in § 101-42.1102. Many hazardous materials require special storage and handling. It is the responsibility of the holding agency to properly store hazardous materials and ensure the use of appropriate safeguards such as warning signs, labels, and use of protective clothing and equipment by utilization screeners who are inspecting excess hazardous materials.

§ 101-42.207 Transfer of hazardous materials and certain categories of property.

(a) Excess hazardous materials may be transferred among Federal agencies under § 101-43.309-5, except that the Standard Form (SF) 122, Transfer Order Excess Personal Property, or any other transfer order form approved by GSA, shall contain a complete description of the actual or potential hazard associated with the handling, storage, or use of the item. Such description shall consist either of a written narrative, complying with the requirements of 29 CFR 1910.1200, in block 13c or as an addendum, or an MSDS or HMIS data. In the absence of an MSDS, the HMIS data which fulfills the MSDS requirements must be attached if the receiving activity does not have the HMIS readily available. Otherwise, citation to the HMIS shall be provided. A certification by a duly authorized official that the item has been clearly labeled and its packaging meets OSHA and DOT requirements as set forth in §§ 101-42.202(e) and 101-42.204 respectively, shall be included in the description of the hazard. The transferee shall prepare the SF 122, or any other transfer order form approved by GSA, under § 101-43.4901-122.

(b) The transferee agency shall document the inventory or control record of the transferred hazardous item to clearly reflect the actual or potential hazard associated with the handling, storage, or use of the item. If available, an MSDS or a citation or copy of the HMIS data must be filed with the SF 122 or automated requisitions on approved forms. Such visibility shall be maintained in the item record and on the property (labeled) to the extent required by Federal regulations to ensure the continued identification of the item as hazardous material.

§ 101-42.208 Custody of hazardous materials.

Custody of extremely hazardous materials shall be the responsibility of the owning or holding Federal agency. Custody of other hazardous materials may be transferred in whole or in part to another Federal agency with that agency's consent.

§ 101-42.209 Cost of care and handling of hazardous materials and certain categories of property.

The special handling requirements associated with many hazardous materials often increase the cost of core and handling of hazardous materials well above the usual costs incurred while holding excess personal property pending disposition. As provided in § 101-43.310-1, each holding agency shall be responsible for, and bear the cost of, care and handling of excess property pending disposition, including those special costs associated with hazardous materials. Only the cost of transportation and handling incurred incident to the transfer of hazardous materials are borne by the transferee agency if billed by the holding agency in accordance with § 101-43.309-3.

SUBPART 101-42.3—DONATION OF HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

§ 101-42.300 Scope of subpart.

This subpart prescribes the special policies and methods governing the donation of hazardous materials and certain categories of property in addition to the requirements of part 101-44.

§ 101-42.301 General.

Surplus personal property identified as hazardous material not required for transfer as excess personal property to Federal agencies shall normally be made available for donation. However, State agencies shall not acquire hazardous materials without first ensuring that there are eligible known donees for such property. Surplus property identified as hazardous may be donated provided the donee:

(a) Is informed, via MSDS, HMIS data, or written narrative, that the item is hazardous and is furnished special handling and/or other appropriate information; and

(b) Signs the following certification:

I (We) hereby certify that the donee has knowledge and understanding of the hazardous nature of the property hereby donated and will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, and disposal of the hazardous material(s). The donee agrees and certifies that the Government shall not be liable for personal injuries to, disabilities of, or death of the donee or the donee's employees, or any other person arising from or incident to the donation of the hazardous material(s) or its final disposition. Additionally, the donee agrees and certifies to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the hazardous material(s), its use, or final disposition.

§ 101-42.302 Responsibilities for donation of hazardous materials.

(a) *Holding agencies.* Holding agencies shall be responsible for the identification and reporting of hazardous materials as set forth in §§ 101-42.202 and 101-42.203. Pending transfer for donation, each holding agency shall be responsible for performing, and shall bear the cost of, care and handling of its hazardous materials.

(b) *State agencies.* State agencies or the donee when applicable, shall prepare Standard Form (SF) 123, Transfer Order Surplus Personal Property, under § 101-44.4901-123-1. A full description of the actual or potential hazard associated with handling, storage, or use of the item must be made available by providing an MSDS, HMIS data, or a narrative description in block 12c or included as an addendum to the SF 123. Such description shall comply with the requirements of 29 CFR 1910.1200. The State agency and/or donee shall sign the certification in § 101-42.301(b). Any applicable requirements and restrictions shall be forwarded with the SF 123 to the GSA regional office.

(c) *General Services Administration.* GSA, through its regional offices, shall be responsible for approving the transfer for donation of hazardous materials. Before approving any donation of a hazardous material, the GSA regional office shall make sure all required certifications and agreements accompany the SF 123.

§ 101-42.303 Hazardous materials distributed to donees by State agencies.

Donation of surplus personal property designated as hazardous material shall be accomplished by the use of State agency distribution document as set forth in § 101-44.208. In addition to the terms, conditions, and restrictions in the distribution document, the donee shall certify to the conditions in § 101-42.301(b).

§ 101-42.304 Special requirements for donation of certain hazardous materials.

Special donation requirements for specific hazardous materials are provided in § 101-42.1102. Many hazardous materials require special storage and handling. It is the responsibility of the Federal holding agency or State agency to properly store hazardous materials, ensure the use of appropriate safeguards, and provide instructions for personal protection to donation screeners who are inspecting surplus hazardous materials. It is the responsibility of the State agency and/or donee to comply with DOT regulations (49 CFR part 171 *et seq.*) when transporting hazardous materials. Any costs incident to repacking or recontainerization will be borne by the State agency and/or donee. State agencies and/or donees will comply with EPA's Resource Conservation and Recovery Act (40 CFR part 261 *et seq.*) including its application to transporters, storers, users, and permitting of hazardous wastes. Such requirements may be administered by various States instead of the EPA.

SUBPART 101-42.4—SALE, ABANDONMENT, OR DESTRUCTION OF SURPLUS HAZARDOUS MATERIALS AND CERTAIN CATEGORIES OF PROPERTY

§ 101-42.400 Scope of subpart.

This subpart prescribes the special policies and procedures governing the sale, abandonment, or destruction of hazardous materials and certain categories of property in addition to the requirements of part 101-45.

§ 101-42.401 Sales responsibilities for hazardous materials.

(a) *General Services Administration.* GSA, through its regional offices, shall be responsible for the sale of hazardous materials for holding agencies except for the Department of Defense, which is delegated authority to sell property under its control, and agencies granted approval by GSA. Holding agency sales of hazardous materials conducted in accordance with § 101-45.304 must meet or exceed the requirements in § 101-42.403.

(b) *Holding agencies.* Holding agencies shall be responsible for preparation of hazardous materials for sale as provided for in § 101-45.103-2. Pending disposal, each holding agency shall be responsible for performing and bearing the cost of care and handling of its hazardous materials, including posting appropriate warning signs and rendering extremely hazardous property innocuous, or providing adequate safeguards.

§ 101-42.402 Reporting hazardous materials for sale.

Holding agencies shall report hazardous materials to be sold by GSA to the appropriate GSA regional office for the region in which the property is physically located in the manner outlined below:

(a) *Reportable property.* Hazardous materials are required to be reported to the GSA regional offices for utilization screening as set forth in subparts 101-42.2 through 101-42.4 and 101-42.11. If the hazardous materials are not transferred or donated, the hazardous materials will be programmed for sale by the GSA regional office without further documentation from the holding agency.

(b) *Nonreportable property.* Under § 101-42.202, Federal holding agencies are required to identify and label hazardous materials. Hazardous materials not required to be reported for utilization screening, and for which any required donation screening has been completed, shall be reported to the appropriate GSA regional office on Standard Form (SF) 126, Report of Personal Property for Sale, as provided in § 101-45.303.

(c) *Description and certification.* The SF 126 shall contain a certification, executed by a duly authorized agency official, in block 16c or as an addendum, that the item has been clearly labeled and packaged as required in §§ 101-42.202(e) and 101-42.204. The SF 126 shall also contain or be accompanied by a full description of the actual or potential hazard associated with handling, storage, or use of the item. Such description shall be furnished by providing:

(1) An MSDS or copy thereof; or

(2) A printed copy of the record, corresponding to the hazardous material being reported, from the automated HMIS; or

(3) A written narrative, included in either block 16c or as an addendum, which complies with the requirements of 29 CFR 1910.1200.

§ 101-42.403 Sales methods and procedures.

Hazardous materials are sold in accordance with the provisions of § 101-45.304 and the following special methods and procedures.

(a) Sales which offer hazardous materials shall be conducted separately from other sales. Sale catalogs or listings which offer hazardous materials

shall not be mailed to all persons on the general sales mailing list but shall be sent to only those persons and entities which have expressed an interest in purchasing such materials.

(b) Sale catalogs, listings, and invitations for bids, with respect to hazardous materials, shall:

(1) Limit the materials in each lot for sale to a single Federal supply group;

(2) Indicate, in the item description, if an MSDS has been issued for the property being sold; and

(3) Indicate, in the item description, if an item is being sold only for its material content.

(c) For a bid to be considered for award, the bidder must sign the following certification:

The bidder hereby certifies that if awarded a contract under this invitation for bids, the bidder will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, resale, export, or other use of the material hereby purchased. The bidder will hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or other claims of any nature arising from or incident to the handling, use, storage, shipment, resale, export, or other disposition of the hazardous items purchased.

(d) MSDSs, printed HMIS records, where applicable, or a written description in compliance with the requirements of 29 CFR 1910.1200 shall be sent to purchasers of hazardous materials with their notice of award.

(e) Unless authorized by the appropriate GSA regional office, a holding agency shall not sell extremely hazardous property unless the property is rendered innocuous or adequate safeguards are provided. Such property shall be rendered innocuous in a manner so as to preserve the utility or commercial value of the property.

§ 101–42.404 Special requirements for the sale of hazardous materials.

Special sales requirements for certain hazardous materials are provided in § 101.42.1102. Hazardous items generally require special storage and handling. It is the responsibility of the holding agency to properly store hazardous items, to provide all necessary information to ensure that prospective bidders are informed of hazards, and to list the precautions bidders should take to protect themselves.

§ 101–42.405 Transportation of hazardous materials.

The transportation of hazardous materials is governed by the hazardous materials regulations (49 CFR parts 170–180) issued by the Department of Transportation. Except as otherwise provided below, an agency official, prior to the transportation of hazardous materials, shall certify on the shipping document, based on his/her own examination, that the materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation in accordance with the hazardous materials regulations. The shipper shall provide such certification in duplicate and give one copy to the originating carrier and retain the other for no less than 1 year. Hazardous materials sold by the Department of Defense (DOD) in packings not marked under the hazardous materials regulations may be shipped from DOD installations, provided DOD certifies in writing on a certificate or equivalency (COE) that the packing meets or exceeds requirements of the hazardous materials regulations.

§ 101–42.406 Abandonment or destruction of surplus hazardous materials and certain categories of property.

In addition to the requirements for the abandonment or destruction of surplus property prescribed in subpart 101–45.9, hazardous materials, including empty hazardous material containers, shall be abandoned or destroyed under Federal, State, and local waste disposal and air and water pollution control standards. Additional requirements for the abandonment and destruction of certain specific hazardous materials are contained in § 101–42.1102.

Subparts 101–42.5—101–42.10—[Reserved].

Subpart 101–42.11—Special Types of Hazardous Materials and Certain Categories of Property

§ 101–42.1100 Scope of subpart.

This subpart prescribes disposal procedures for certain hazardous items and lists specific Federal supply classes which may contain hazardous items.

§ 101–42.1101 Federal supply classification (FSC) groups and classes which contain hazardous materials.

(a) Hazardous material identification is required for all material which, by virtue of its potentially dangerous nature, requires controls to assure adequate safety to life, property, and the environment, and which is therefore defined as a hazardous material.

(b) The tables in paragraph (c) of this section list those FSC classes composed predominantly of hazardous materials and those FSC classes which contain a significant number of hazardous materials. Those classes that contain munitions list items (MLI) which require demilitarization are not identified in the tables because the items in those classes must be identified by the appropriate demilitarization code and processed under the procedures in § 101–42.1102–8.

(c) The tables as listed in Federal standard 313 are as follows:

Federal Supply Classes Composed Predominantly of Hazardous Items

Federal Supply Class (FSC)

6810 Chemicals
6820 Dyes
6830 Gases: Compressed and liquified
6840 Pest control agents and disinfectants
6850 Miscellaneous chemical specialties
7930 Cleaning and polishing compounds and preparations
8010 Paints, dopes, varnishes, and related products
8030 Preservative and sealing compounds
8040 Adhesives
9110 Fuels, solid
9130 Liquid propellants and fuels, petroleum case
9135 Liquid propellant fuels and oxidizers, chemical base
9140 Fuel oils
9150 Oils and greases: Cutting, lubricating, and hydraulic
9160 Miscellaneous waxes, oils, and fats

Federal Supply Classes and Groups Which Contain a Significant Number of Hazardous Items

Note: If an item is determined to be hazardous as defined in § 101–42.001, a material safety data sheet (or equivalent) should accompany the item even though the Federal supply class is not listed in this table.

Federal supply class/grp	Title	Examples of hazardous materials requiring identification
1370	Pyrotechnics	Warning fuse, fire starter.
1375	Demolition materials	Explosive device.
2520	Vehicular power transmission components	Items containing asbestos.
2530	Vehicular brake steering, axle, wheel, and track components.	Items containing asbestos.
2540	Vehicular furniture and accessories	Items containing asbestos.
2640	Tire rebuilding and tire and tube repair materials	Items containing flammable or toxic compounds.

Federal supply class/grp	Title	Examples of hazardous materials requiring identification
Group 26	Engines, turbines, and components	Engine valves containing metallic sodium.
Group 28	Engine accessories	Engine valves containing metallic sodium.
Group 30	Mechanical power transmission equipment	Equipment containing hazardous hydraulic fluids including PCBs.
Group 34	Metalworking machinery	Equipment containing hazardous hydraulic fluids including PCBs.
3433	Gas welding, heat cutting, and metalizing equipment	Compressed gases.
3439	Miscellaneous welding, soldering and brazing supplies and accessories.	Hazardous items such as cleaners, acids, flux and supplies that contain or produce hazardous fumes.
3610	Printing, duplicating, and bookbinding equipment	Flammable or toxic lithographic solutions.
3655	Gas generating and dispensing systems, fixed or mobile	Items that produce hazardous fumes.
3680	Foundry machinery, related equipment and supplies	Flammable or toxic casting compounds.
4240	Safety and rescue equipment	Items which involve oxygen, or compressed gases, or contain emitting charges.
5610	Mineral construction materials, bulk	Hazardous items such as cutback asphalt, deck and floor covering, deck and surface underlay compound, sealing compound, flight deck compound.
5660	Wallboard, building paper, and thermal insulation materials	Asbestos cloth which has loose fibers or particles that may become airborne and materials containing formaldehyde.
5820	Radio and television communication equipment, except airborne.	Circuit cooler items that contain gases that are regarded as hazardous to the earth's ozone layer.
5835	Sound recording and reproducing equipment	Recording tape cleaners that contain hazardous cleaning fluids.
5910	Capacitors	Items that contain polychlorinated biphenyls (PCBs) or sulfuric acid.
5915	Filters and networks	Items that contain polychlorinated biphenyls (PCBs).
5920	Fuses and lightning arresters	Items that contain radioactive material.
5925	Circuit breakers	Items that contain radioactive material.
5930	Switches	Items containing radioactive materials.
5935	Connectors, electrical	Kits that contain flammable chemicals.
5950	Coils and transformers	Items containing polychlorinated biphenyls (PCBs).
5960	Electron tubes and associated hardware	Tubes which contain radioactive isotopes and require warning labels and magnetron tubes which require special precautions when being prepared for air shipment.
5965	Headsets, handsets, microphones, and speakers	Items containing magnetic material.
5970	Electrical insulators and insulating materials	Items containing flammable solvents.
5975	Electrical hardware and supplies	Items containing asbestos.
5985	Antennas, waveguide, and related equipment	Kits that contain flammable chemicals.
5999	Miscellaneous electrical and oxide electronic components	Contact plates that contain beryllium..
Group 61	Electric wire and power and distribution equipment	Power factor capacitors containing PCBs.
6120	Transformers: Distribution and power station	Transformers containing PCBs.
6135	Batteries, primary	Lead-acid, lithium and mercury batteries and alkaline (with electrolyte).
6140	Batteries, secondary	Items that are wet or moist containing corrosive or other hazardous compounds.
6145	Wire and cable, electrical	Insulated wire containing asbestos.
6220	Electric vehicular lights and fixtures	Items that contain mercury.
6230	Electric portable and hand lighting equipment	Items that contain wet batteries.
6240	Electric lamps	Items that contain mercury.
6260	Nonelectrical lighting fixtures	Items that contain mercury.
6350	Miscellaneous signal and security detection systems	Items that contain wet batteries or radioactive material.
6505	Drugs, biologicals and official reagents	Hazadous items as defined in § 101–42.001.
6508	Medicated cosmetics and toiletries	Hazardous items as defined in § 101–42.001 subject to DOT Hazardous Materials Regulations.
6510	Surgical dressing materials	Items containing flammable solvents.
6520	Dental instruments, equipment, and supplies	Items containing flammable solvents, mercury, or asbestos.
6525	X-ray equipment and supplies: medical, dental, veterinary	Items containing hazardous chemicals, solvents.
6625	Electrical and electronic properties measuring and testing instruments.	Items containing radioactive materials.
6640	Laboratory equipment and supplies	Items containing flammable compounds, mercury, or asbestos.
6685	Pressure, temperature, and humidity and measuring and controlling instruments.	Items containing mercury or compressed gases.
6740	Photographic	Items containing radioactive compounds.
6750	Photographic supplies	Items containing hazardous chemicals, solvents, thinners, and cements.
6780	Photographic sets, kits and outfits	Items containing hazardous chemicals, solvents, thinners, and cements.
7360	Sets, kits, and outfits; food preparation and serving	Items containing compressed gases such as fire extinguishers.
7510	Office supplies	Hazardous items, such as thinners, cleaning fluids, flammable inks, and varnishes.
8405	Outerwear, men's	Maintenance kits containing flammable solvents.
8410	Outerwear, women's	Maintenance kits containing flammable solvents.
8415	Clothing, special purpose	Maintenance kits containing flammable solvents.
8465	Individual equipment	Maintenance kits containing flammable solvents.
8510	Perfumes, toilet preparations, and powders	Shipping containers, and pressurized containers with flammable or nonflammable propellants.
8520	Toilet soap, shaving preparations, and dentifrices	Shipping containers, pressurized containers with flammable or nonflammable propellants.
8720	Fertilizers	Items containing weed and pest control or other harmful ingredients or because of their composition, are hazardous.
9390	Miscellaneous fabricated nonmetallic materials	Items containing flammable solvents or asbestos.
9920	Smokers' articles and matches	Lighter fuel and matches only.
9930	Memorials; cemeterial and mortuary equipment and supplies.	Items containing formaldehyde or its solutions.

§ 101–42.1102 Special requirements for utilization, donation, sale, and abandonment or destruction of hazardous materials and certain categories of property.

§ 101-42.1102-1 Asbestos

(a) *General.* (1) Asbestos is the common name for a group of natural minerals that occur as masses of compact or relatively long silky fibers. The Environmental Protection Agency classified asbestos as a hazardous air pollutant in 1972.

(2) Friable asbestos materials contain more than one percent asbestos by weight and can, by hand pressure, be crumbled, pulverized, or reduced to powder, thus allowing for potential release of asbestos fibers into the air.

(3) Nonfriable asbestos materials cannot, when dry, be crumbled, pulverized, or reduced to powder by hand pressure and contain asbestos which is bonded or otherwise rendered unavailable for release into the atmosphere through normal usage. However, cutting, sanding, crushing, or performing some other disruptive action on items containing nonfriable asbestos can release asbestos fibers into the air.

(4) As noted in this § 101-42.1102-1, property containing friable asbestos normally shall not be transferred, donated, or sold. Notwithstanding these provisions, holding agencies may, on a case-by-case basis, request approval from the GSA Central Office (which will consult with EPA) to transfer, donate, or sell such property if, in the judgement of the holding agency, special circumstances warrant such action.

(b) *Utilization requirements.* (1) Excess personal property known to contain friable asbestos shall not be reported to GSA nor transferred among Federal agencies except as noted in § 101-42.205(c) or paragraph (a)(4) of this section. GSA regional offices shall return any reports of excess property containing friable asbestos to the holding agency with instructions to dispose of the property under paragraph (e) of this section.

(2) Excess personal property containing nonfriable asbestos shall be reported and processed in the normal manner, as provided for in part 101-43, except that:

(i) The Standard Form (SF) 120, Report of Excess Personal Property, and SF 122, Transfer Order, Excess Personal Property, and any other appropriate documentation shall include the following warning:

Warning

This property contains asbestos. Inhaling asbestos fibers may cause cancer. Do not release fibers by cutting, crushing, sanding, disassembling, or otherwise altering this property. End users and new owners, if transferred, should be warned. OSHA standards for personnel protection are codified at 29 CFR 1910.1001. EPA disposal standards are codified at 40 CFR part 763.

(ii) Immediately after excess determination, all items of personal property known to contain nonfriable asbestos shall be labeled with a warning substantially as follows:

Warning

This property contains asbestos. Inhaling asbestos fibers may cause cancer. Do not release fibers by cutting, crushing, sanding, disassembling, or otherwise altering this property.

(c) *Donation requirements.* (1) Surplus personal property containing friable asbestos shall not be donated. Such property shall be disposed of under paragraph (e) of this section.

(2) Surplus personal property containing nonfriable asbestos may be donated in the normal manner as provided for in part 101-44, except that:

(i) The Standard Form (SF) 123, Transfer Order Surplus Personal Property, and any other appropriate documentation shall include the warning as provided by paragraph (b)(2)(i) of this section.

(ii) All items of personal property to be donated which contain nonfriable asbestos shall be labeled as provided by paragraph (b)(2)(ii) of this section.

(d) *Sales requirements.* (1) Surplus personal property containing friable asbestos shall not be sold. Such property shall be disposed of under paragraph (e) of this section.

(2) Surplus personal property containing nonfriable asbestos may be sold as provided for in part 101-45, except that:

(i) Any documentation which lists the property to be sold and which is prepared incident to the sale, and any printed matter which advertises the sale of personal property containing nonfriable asbestos shall include the warning as provided by paragraph (b)(2)(i) of this section.

(ii) All items of personal property to be sold which contain nonfriable asbestos shall be labeled as provided by paragraph (b)(2)(ii) of this section.

(e) *Abandonment and destruction.* (1) Excess or surplus personal property which contains friable asbestos shall be disposed of by burial in a site which meets the requirements of 40 CFR 61.156. Holding agencies should contact the nearest office of the Environmental Protection Agency for assistance with regard to disposal of asbestos containing materials (with the exception of Department of Defense activities which should contact the Defense Logistics Agency).

(2) Personal property containing nonfriable asbestos which is not transferred, donated, or sold shall be abandoned or destroyed as provided for in subpart 101-45.9. However, if the holding agency judges that the nonfriable asbestos contained in the property has the potential of becoming friable for any reason during the process of abandonment or destruction, such property shall be disposed of as provided in paragraph (e)(1) of this section.

§ 101-42.1102-2 Polychlorinated biphenyls.

(a) *General.* (1) Polychlorinated biphenyls (PCBs) are one member of a class of chlorinated aromatic compounds which have been determined to be hazardous to health and the environment. They are used, among other things, as insulators and coolants for electric cables and components such as transformers and capacitors, as additives for extreme pressure lubricants, and as coatings in foundry use.

(2) Substances containing PCBs are divided into three classes according to the concentration of PCBs present, as measured by parts per million (ppm).

(i) Zero through 49 ppm is classified as an *excluded PCB product.*

(ii) Fifty through 499 ppm PCB is classified as *PCB item.*

(iii) Five hundred or greater ppm PCB is classified as *PCB.*

(3) Excluded PCB products (0-49 ppm PCB) are not subject to Federal restrictions and may be transferred, donated, sold, or otherwise processed under parts 101-43 through 101-46 of this chapter provided such processing conforms to the provisions of this section and all applicable State and local laws. Some States regulate PCB concentrations at a stricter level than does the Federal Government.

(4) All PCBs and PCB items to be transferred, donated, or sold shall be labeled or marked conspicuously with a warning substantially as follows:

Caution—This item contains PCBs (polychlorinated biphenyls), a toxic environmental contaminant requiring special handling and disposal in accordance with the U.S. Environmental Protection Agency regulation (40 CFR 761), applicable State laws, and 41 CFR 101-42.1102-2. For proper disposal information, contact the nearest EPA office. For transportation requirements, see 49 CFR Parts 171-180.

(5) Unmarked or unlabeled items containing PCBs or PCB items with an unknown level of concentration of PCBs shall not be transferred, donated, or sold.

(b) *Utilization requirements.* (1) PCBs and PCB items are reported for utilization screening in accordance with § 101-42.204.

(2) Transfers of excess PCBs or PCB items shall not be approved by GSA unless:

(i) The items are intact, non-leaking, and totally enclosed.

(ii) The SF 122, Transfer Order Excess Personal Property, or other transfer document cites the specific provision in 40 CFR Part 761 that permits continued use of the item, and contains a certification that the property has been inspected by the transferee and complies with all the use, inspection, labeling, and other provisions of 40 CFR part 761.

(3) When a PCB or PCB item is transferred as excess to another agency, the receiving agency shall annotate its property accountability records to reflect the nature and extent of the PCB content and shall list the provisions of 40 CFR part 761 authorizing use of the item. If tests are conducted to ascertain the nature and extent of PCB contamination, the receiving agency shall furnish the GSA regional office with a copy of the test results. Such information shall be perpetuated on any notification or release documents when the agency disposes of the property.

(c) *Donation requirements.* (1) No PCB or PCB-contaminated items shall be approved by GSA for donation under part 101-44 unless:

(i) The certification required by § 101-42.1102(a)(4) appears on the SF 123, Transfer Order Surplus Personal Property;

(ii) The specific donee has been determined; and

(iii) A justification from the recipient is attached stating the proposed use of the property and citing the specific provision in 40 CFR part 761 that permits continued use of the item.

(2) All PCBs and PCB items must be in usable condition and in working order to be eligible for donation. Such items that are not in usable condition will not be approved for donation.

(3) Items to be donated must be intact, totally enclosed, and non-leaking.

(4) If PCBs or PCB items are donated to service educational activities or to public airports, the Department of Defense or the Federal Aviation Administration, respectively, shall obtain the following signed warning and certification from the donee. State agencies for surplus property shall have the warning and certification typed or stamped on the face of each copy of the distribution document and signed and dated by the authorized representative of the donee organization at the time the property is issued.

Warning and certification:

The donee is aware that the item(s) listed as containing polychlorinated biphenyls (PCBs), a toxic environmental contaminant, require(s) special handling and disposal in accordance with U.S. Environmental Protection Agency regulation (40 CFR part 761) and U.S. Department of Transportation regulations codified in 49 CFR parts 171-180. The donee certifies that this item will be handled and disposed of in accordance with applicable Federal statutes and regulations and applicable State laws.

(d) *Sales requirements.* (1) Surplus PCBs or PCB items normally shall not be sold by GSA or holding agencies. These items are regarded as extremely hazardous and are to be disposed of by the holding agency under the Environmental Protection Agency regulations.

(2) Agencies may request the authority to sell, or that GSA sell, a specific PCB or PCB item. Such requests shall cite the provision in 40 CFR part 761 that authorizes sale and continued use of the specific item. Any such requests shall also include a justification for sale of the item rather than disposal under the EPA regulations.

(3) If PCBs or PCB items are to be sold, the corresponding invitation for bids (IFB), any Standard Form (SF) which lists such items, and any printed matter which advertises the sale of such items shall contain the warning as provided in paragraph (a)(4) of this section.

(e) *Abandonment and destruction.* (1) PCBs and PCB items of personal property not disposed of via utilization, donation, or sale shall be destroyed or otherwise disposed of in accordance with the Environmental Protection Agency regulation (40 CFR part 761) and applicable State laws.

(2) Holding agencies shall contact the nearest office of the EPA for assistance in complying with the provisions of 40 CFR part 761.

§ 101-42.1102-3 Controlled substances.

(a) *Utilization requirements.* (1) Excess controlled substances are not required to be reported to GSA, but are subject to the utilization screening requirements of § 101-43.311-2. Holding agencies shall make reasonable efforts to obtain utilization of excess controlled substances by offering them to those Federal agencies which certify that they are registered with the Drug Enforcement Administration (DEA), Department of Justice, and are authorized to procure the particular controlled substances requested for transfer. The certification shall include the registration number on the DEA Form 223, Certificate of Registration, issued by DEA.

(2) Holding agencies shall arrange for transfers of controlled substances under §§ 101-43.309-5 and 101-42.207.

(3) All controlled substances that a holding agency determines to be excess shall become surplus after the holding agency has complied with the utilization requirements of paragraph (a)(1) of this section.

(b) *Donation requirements.* Controlled substances shall not be donated.

(c) *Sales requirements.* Surplus controlled substances which are not required to be destroyed as provided in paragraph (d) of this section may be offered for sale by sealed bid under subpart 101-45.3 provided:

(1) The invitation for bids (IFB):

(i) Consists only of surplus controlled substances;

(ii) Requires the normal bid deposit prescribed in § 101-45.304-10;

(iii) Is distributed only to bidders who are registered with the DEA, Department of Justice, to manufacture, distribute, or dispense the controlled substances for which the bid is being submitted; and

(iv) Contains the following special condition of sale:

The bidder shall complete, sign, and return with his/her bid the certificate as contained in this invitation. No award will be made or sale consummated until after this agency has obtained from the Drug Enforcement Administration, Department of Justice, verification that the bidder is registered to manufacture, distribute, or dispense those controlled substances which are the subject of the award.

(2) The following certification shall be made a part of the IFB (and contract) to be completed and signed by the bidder and returned with the bid:

The bidder certifies that he/she is registered with the Drug Enforcement Administration, Department of Justice, as a manufacturer, distributor, or dispenser of the controlled substances for which a bid is submitted and that the registration number is _____.

_____

Name of bidder (print or type)

_____

Signature of bidder

_____

Address of bidder (print or type)

_____

City, State, Zip code

(3) As a condition precedent to making an award for surplus controlled substances, the following shall be submitted to the Drug Enforcement Administration (DEA), Department of Justice, Washington, DC 20537, Attn: Regulatory Support Section (ODR):

(i) The name and address of the bidder(s) to whom an award is proposed

to be made and the bidder(s) registration number(s);

(ii) The name and address of both the holding activity and the selling activity;

(iii) A description of the controlled substances, how those substances are packaged, and the quantity of substances proposed to be sold to the bidder;

(iv) The identification of the IFB by its number, and date on which such bid(s) expire(s); and

(v) A request for advice as to whether the bidder is a registered manufacturer, distributor, or dispenser of controlled substances.

(d) *Destruction of controlled substances.* Controlled substances shall not be abandoned, and destruction of controlled substances must be accomplished in accordance with the terms and conditions applicable to drugs, biologicals, and reagents under § 101–42.1102–5(d).

(1) The following shall be destroyed by the holding agency or State agency:

(i) Controlled substances determined surplus at one time and one place with an acquisition cost of less than $500;

(ii) Controlled substances in a deteriorated condition or otherwise unusable;

(iii) Controlled substances for sale in accordance with § 101–42.1102–3(c) but for which no satisfactory or acceptable bids were received.

(2) In addition to the requirements set forth herein, each executive agency and State agency shall comply with the DEA regulations, 21 CFR 1307.21, which provide procedures for disposing of controlled substances, or with equivalent procedures approved by DEA.

(3) Destruction of controlled substances shall be performed by an employee of the holding agency or State agency in the presence of two additional employees of the agency as witnesses to that destruction unless the special agent in charge (SAC) of the DEA Divisional Office directs otherwise.

§ 101–42.1102–4 Nuclear Regulatory Commission-controlled materials.

(a) *General.* The Nuclear Regulatory Commission (NRC) has exclusive control over licensing, use, transfer, and disposition of NRC-controlled materials.

(b) *Transfer of NRC-controlled materials.* NRC-controlled materials shall not be reported to GSA as excess personal property, nor shall they be made available for excess and surplus screening as nonreportable property. Transfer and disposition of such materials do not require GSA approval and shall be accomplished only under the applicable regulations of the NRC (see 10 CFR parts 30 through 35, 40, and 70).

(c) *Information and inquiries.* All inquiries for further information or specific instructions regarding the licensing, use, transfer, or disposition of NRC-controlled materials shall be directed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555.

§ 101–42.1102–5 Drugs, biologicals, and reagents other than controlled substances.

In addition to the requirements of subparts 101–42.2 through 101–42.4, drugs, biologicals, and reagents which are fit for human use shall be reported as provided in this § 101–42.1102–5. Drugs, biologicals, and reagents that are controlled substances are subject to the provisions of § 101–42.1102–3.

(a) *Utilization requirements.* Excess drugs, biologicals, and reagents shall be reported or otherwise made available to GSA as provided in § 101–42.204 and subpart 101–43.3. Drugs, biologicals, and reagents other than controlled substances may be separately packaged or may be components of a drug kit. Drug kits shall be clearly labeled to identify components unfit for human use. The holding agency shall destroy, as provided in paragraph (d) of this section, both separately packaged items and kit components which have been determined by the holding agency to be unfit for human use. However, items determined unfit because of expired shelf life may be transferred for animal experimental use on a case-by-case basis subject to prior approval by GSA.

(b) *Donation requirements.* Surplus drugs, biologicals, and reagents other than controlled substances which are not required to be destroyed as provided in paragraph (d) and which are not transferred pursuant to paragraph (a) of this section may be donated to eligible organizations as provided in subpart 101–42.3 and part 101–44. Drugs, biologicals, and reagents which are unfit for human use will not be offered for donation. However, items determined unfit because of expired shelf life may be donated for animal experimental use on a case-by-case basis subject to prior approval by GSA.

(1) When surplus drugs, biologicals, and reagents are considered for donation, a letter of clearance shall be obtained by the State agency or designated donee from the Food and Drug Administration (FDA) indicating that the items requested may be safely donated. The letter of clearance must accompany the SF 123. Items which do not fall within the purview of FDA, or which FDA indicates are unsuitable, will not be considered by GSA for donation.

(2) For purposes of obtaining the letter of clearance from FDA, the State agency or designated donee shall be responsible for obtaining samples from the holding agency, providing these samples to FDA, and ensuring the security of the samples while in transit. Before laboratory examinations are undertaken by FDA, an estimate of the expected cost of the quality assurance examination shall be furnished by FDA to the State agency or donee. Payment of any costs for laboratory examinations for quality assurance of samples shall be arranged by the State agency or donee.

(3) Surplus drugs, biologicals, and reagents requested for donation by State agencies shall not be transported by the State agency or stored in its warehouse prior to distribution to donees. Arrangements will be made by the State agency for the donee to make direct pickup at the holding agency after approval by GSA and after notification by the holding agency that the property is ready for pickup.

(4) Standard Forms 123 from a State agency requesting surplus drugs, biologicals, and reagents for donation shall not be processed or approved by GSA until it has been determined by the GSA donation representative that the specific donee is legally licensed to administer, dispense, store, or distribute such property.

(5) The SF 123 shall also contain a statement that:

(i) The property is being requested for donation to a specific donee whose complete name and address, including the name and telephone number of the donee's authorized representative, appear on the front of the SF 123 in block 12, and that a copy of the donee's license, registration, or other legal authorization to administer, dispense, store, or distribute such property is attached and made a part of the SF 123;

(ii) The items will be distributed only to institutions licensed and authorized to administer and dispense such items or to organizations authorized to store such items; and

(iii) In addition to the normal certifications required to be executed by authorized representatives of donee institutions or organizations when property is acquired by donation, the State agency shall obtain a certification from the donee indicating that:

(A) The items transferred to the donee institution or organization will be safeguarded, dispensed, and administered under competent supervision;

(B) Adequate facilities are available to effect full accountability and proper storage of the items under the Federal, State, and local statutes governing their acquisition, storage, and accountability;

(C) The administration or use of the items requested shall be in compliance with the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301–394).

(c) *Sales requirements.* Surplus drugs, biologicals, and reagents other than controlled substances which are not required to be destroyed as provided in paragraph (d) and which are not transferred pursuant to paragraph (a) or (b) of this section may be offered for sale by sealed bid under the provisions of subparts 101–45.3 and 101–42.4. The following safeguards and instructions shall be observed to ensure stability, potency, and suitability of the product and its labeling for use in civilian channels:

(1) Before reporting the surplus drugs, biologicals, and reagents to the selling agency pursuant to the provisions of §§ 101–45.303 and 101–42.402, holding agencies shall request that an examination be made by the Field Scientific Coordination Staff, ACFA–CF–30, located in the appropriate FDA district office, of surplus unexpired drugs and reagents, having an acquisition cost of $500 or more per manufacturer's lot/batch number.

(i) When requesting such an examination, FDA requires the submission of a list and one sample of each of the drugs to be examined.

(ii) Additional samples may be requested if necessary for laboratory examination. Reimbursement for examination of the surplus drugs or reagents may be required by FDA. Before laboratory examinations are undertaken, FDA will give the inquiring agency an estimate of the expected costs. If, under subpart 101–45.9, the cost of the quality assurance is not justified by the value of the material involved, the lot or lots may be destroyed.

(iii) The reporting document prescribed in § 101–45.303(b) shall have attached to it a copy of the letter received by the reporting agency from FDA stating that the articles offered have been reviewed and may appropriately be distributed or sold, subject when necessary to specified limitations.

(2) Surplus drugs, biologicals, and reagents normally shall not be physically transferred to the selling agency but should remain at the holding agency for precautionary and safety measures.

(3) Surplus drugs, biologicals, and reagents shall be sold only to those entities which are legally qualified to engage in the sale, manufacture, or distribution of such items.

(4) Sales of surplus drugs, biologicals, and reagents other than controlled substances shall be processed as follows:

(i) The invitation for bids (IFB) shall:

(A) Consist only of surplus drugs, biologicals, and reagents;

(B) Contain the expiration date of material being offered for sale;

(C) Describe the composition of the material being offered for sale;

(D) Require the normal bid deposit prescribed in § 101–45.304–10; and

(E) Contain the following special condition of sale:

The bidder shall complete, sign, and return with his/her bid the certification as contained in this invitation. No award will be made or sale consummated until after this agency has determined that the bidder is legally licensed to engage in the manufacture, sale, or distribution of drugs.

(ii) The following certification shall be made a part of the invitation for bids (and contract), to be completed and signed by the bidder, and returned with the bid with a copy of his/her license. Failure to sign the certification may result in the bid being rejected as nonresponsive.

The bidder certifies that he/she is legally licensed to engage in the manufacture, sale, or distribution of drugs, and proof of his/her license to deal in such materials is furnished with this bid.

Name of bidder (print or type)

Signature of bidder

Address of bidder (print or type)

City, State, ZIP code

(d) *Destruction of surplus drugs, biologicals, and reagents.* (1) Surplus drugs, biologicals, and reagents shall not be abandoned under any circumstances. The following shall be destroyed by the holding agency under the provisions of this paragraph (d):

(i) Surplus drugs, biologicals, and reagents determined by the holding agency to be unsafe because of deterioration or overage condition, in open or broken containers, recommended for destruction by FDA, unfit for human consumption, or otherwise unusable; and

(ii) Surplus drugs, biologicals, and reagents which have been offered for sale under the provisions of paragraph (c) of this section but for which no satisfactory or acceptable bid or bids have been received.

(2) When surplus drugs, biologicals, and reagents are required to be destroyed by the holding agency or State agency, they shall be destroyed in such a manner as to ensure total destruction of the substance to preclude the use of any portion thereof. When major amounts are to be destroyed, the action shall be coordinated with local air and water pollution control authorities.

(3) Destruction of surplus drugs, biologicals, and reagents shall be performed by an employee of the holding agency or State agency in the presence of two additional employees of the agency as witnesses to that destruction.

(i) Disposal of Resource Conservation and Recovery Act (RCRA) regulated, noncontrolled, condemned hazardous substances in Federal supply class (FSC) 6505 shall be destroyed without the witnessing by two employees of the agency. The controls which the Environmental Protection Agency places upon the disposal of RCRA regulated noncontrolled drugs, 40 CFR part 260 *et seq.*, are sufficiently stringent to ensure that these drugs will be destroyed without agency witnessing.

(ii) It is the holding agency's responsibility to take all necessary measures to ensure that contractor performance is in accordance with the provisions of this § 101–42.1102–5.

(4) When surplus drugs, biologicals, and reagents have been destroyed, the fact, manner, and date of the destruction and type and quantity destroyed shall be so certified by the agency employee charged with the responsibility for that destruction. The two agency employees who witnessed the destruction shall sign the following statement, except as noted in paragraph (d)(3) of this section, which shall appear on the certification below the signature of the certifying employee:

I have witnessed the destruction of the (drugs, biologicals, and reagents) described in the foregoing certification in the manner and on the date stated herein:

Witness Date

Witness Date

(5) Items mentioned parenthetically in the statement contained in paragraph (d)(5) of this section which are not applicable at the time of destruction shall be deleted from the statement. The signed certification and statement of destruction shall be made a matter of record and shall be retained in the case files of the holding agency or State agency.

§ 101-42.1102-6 Noncertified and certified electronic products.

(a) *Utilization requirements.* (1) Excess electronic items for which radiation safety performance standards are prescribed by FDA under 21 CFR Part 1000 shall be reported or otherwise made available for transfer to Federal agencies under subparts 101-43.3 and 101-42.2. Excess reports shall identify noncertified electronic products and shall contain a statement that the items may not be in compliance with applicable radiation safety performance standards prescribed by FDA under 21 CFR Part 1000. Certified electronic products may be reported and transferred under the procedures in part 101-43.

(2) Transfers of noncertified electronic products among Federal agencies shall be accomplished as set forth in §§ 101-42.207, 101-43.309, and paragraph (a) of this section. The transfer order must contain a certification that the transferee is aware of the potential danger in using the item without a radiation test to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR Part 1000 and agrees to accept the item from the holding agency under these conditions.

(b) *Donation requirements.* (1) Surplus noncertified and certified electronic products not required for transfer as excess personal property to Federal agencies under paragraph (a) of this section shall be made available for donation screening as provided in subpart 101-42.3 and part 101-44 and as follows:

(i) Under paragraph (b)(2) of this section in the case of:

(A) Noncertified color television receivers;

(B) Certified and noncertified diagnostic X-ray systems and their major components;

(C) Certified and noncertified cabinet X-ray systems;

(D) Noncertified laser products; or

(E) Any other electronic products subject to an FDA performance standard.

(ii) Only under conditions of destructive salvage in the case of noncertified cold-cathode gas discharge tubes, noncertified black and white television receivers, and noncertified microwave ovens.

(2) Donation of electronic products designated in paragraph (b)(1)(i) of this section shall be accomplished as provided in § 101-44.109 provided the State agency, Department of Defense (DOD), or Federal Aviation Administration (FAA):

(i) Provides the applicable State radiation control agency (see § 101-45.4809) with a copy of the SF 123 and the name and address of the donee; and

(ii) Requires the donee to certify on the SF 123 that it:

(A) Is aware of the potential danger in using the product without a radiation test to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR part 1000, and agrees to accept the item from the holding agency for donation under those conditions;

(B) Agrees the Government shall not be liable for personal injuries to, disabilities of, or death of the donee or the donee's employees, or any other person arising from or incident to the donation of the item, its use, or its final disposition; and

(C) Agrees to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the donation of the item, its use, or its final disposition.

(c) *Sales requirements.* (1) The sale of the following certified and noncertified surplus electronic products which are not required for transfer or donation shall be accomplished under § 101-45.304, subpart 101-42.4, and the special conditions of sale in this paragraph (c).

(i) Noncertified color and black and white television receivers;

(ii) Noncertified microwave ovens;

(iii) Noncertified and certified diagnostic X-ray systems and their major components;

(iv) Noncertified and certified cabinet X-ray systems;

(v) Noncertified laser products;

(vi) Noncertified cold-cathode gas discharge tubes under conditions of scrap or destructive salvage; and

(vii) Any other noncertified electronic product for which FDA may promulgate a performance standard.

(2) The IFB shall contain a notice to bidders substantially as follows:

Purchasers are warned that the item purchased herewith may not be in compliance with Food and Drug Administration radiation safety performance standards prescribed under 21 CFR part 1000, and use may constitute a potential for personal injury unless modified. The purchaser agrees that the Government shall not be liable for personal injuries to, disabilities of, or death of the purchaser, the purchaser's employees, or to any other persons arising from or incident to the purchase of this item, its use, or disposition. The purchaser shall hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to purchase or resale of this item. The purchaser agrees to notify any subsequent purchaser of this property of the potential for personal injury in using this item without a radiation survey to determine the acceptability for use and/or modification to bring it into compliance with the radiation safety performance standard prescribed for the item under 21 CFR part 1000.

(3) Within 30 calendar days following award, the selling agency shall provide the State radiation control agency for the State in which the buyer is located (see § 101-45.4809) with a written notice of the award that includes the name and address of the purchaser and the description of the item sold.

(d) *Abandonment or destruction.* Noncertified and certified electronic products shall be abandoned under the provisions of subpart 101-45.9 and § 101-42.406.

§ 101-42.1102-7 Lead-containing paint and items bearing lead-containing paint.

(a) *General—(1) Health hazard.* Lead is a cumulative toxic heavy metal which, in humans, exerts its effects on the renal, hematopoietic, and nervous systems. Lead poisoning occurs most commonly when lead-containing paint chips in the environment are chewed or ingested by children or when lead-containing paint is burned off.

(2) *Banned hazardous products.* The following consumer products, in accordance with 16 CFR part 1303 and exemptions stated therein unless exempted by 16 CFR part 1303, are banned hazardous products:

(i) Paint and other similar surface coating materials for consumer use which are included within the definition of lead-containing paint.

(ii) Toys and other articles intended for use by children that bear lead-containing paint.

(iii) Furniture articles that bear lead-containing paint.

(3) *Disposal of banned hazardous products.* When a banned hazardous product described in paragraph (a)(2) of this section becomes excess to a holding agency, it shall be destroyed under paragraph (e) of this section except that those furniture articles that bear lead-containing paint may be stripped and refinished with a nonhazardous coating in lieu of destruction. Stripping shall be in conformance with Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1910.1025 which specify maximum permissible levels of exposure to airborne concentrations of lead particles and set forth methods of protection.

(4) *Exemptions.* (i) The categories of products listed in paragraph (a)(4)(ii) of this section are exempted from the scope of the ban established by 16 CFR Part 1303, provided that before any utilization, donation, or sales action:

(A) These products bear on the main panel of their label, in addition, to any labeling that may be otherwise required, the signal word *Warning* and the following statement: *Contains Lead. Dried Film of This Paint May be Harmful If Eaten or Chewed.*

(B) These products also bear on their label the following additional statement or its practical equivalent:

Do not apply on toys and other children's articles, furniture, or interior surfaces of any dwelling or facility which may be occupied or used by children. Do not apply on exterior surfaces of dwelling units, such as window sills, porches, stairs, or railings, to which children may be commonly exposed.

Keep Out of Reach of Children

(C) The additional labeling requirements contained in 16 CFR 1303.3 and 16 CFR 1500.121 are followed.

(ii) The following products are exempt from the scope of the ban established by 16 CFR part 1303, provided they comply with the requirements of paragraph (a)(4)(i) of this section:

(A) Agricultural and industrial equipment refinish coatings.

(B) Industrial (and commercial) building and equipment maintenance coatings, including traffic and safety marking coatings.

(C) Graphic art coatings (i.e., products marketed solely for application on billboards, road signs, and similar uses and for identification marking in industrial buildings).

(D) Touchup coatings for agricultural equipment, lawn and garden equipment, and appliances.

(E) Catalyzed coatings marketed solely for use on radio-controlled model-powered aircraft.

(iii) The following products are exempt from the scope of the ban established by 16 CFR part 1303 (no cautionary labeling is required):

(A) Mirrors which are part of furniture articles to the extent that they bear lead-containing backing paint.

(B) Artists' paints and related materials.

(C) Metal furniture articles (but not metal children's furniture) bearing factory-applied (lead) coatings.

(b) *Utilization requirements.* (1) Excess lead-containing paint and consumer products bearing lead containing paint which are exempt from the scope of the ban and are properly labeled as required by 16 CFR part 1303 and paragraph (a)(4) of this section shall be reported or otherwise made available to GSA under §§ 101-43.311 and 101-42.204.

(2) Lead-containing paint and consumer products bearing lead-containing paint available for further Federal use as provided in paragraph (b)(1) of this section may be transferred under §§ 101-43.309 and 101-42.207. The warning statement on the transfer order shall be substantially the same as the label statements required by paragraphs (a)(4)(i) (A) through (C) of this section, and such information shall be made a part of the accountable record of the transferee agency.

(c) *Donation requirements.*

(1) Surplus lead-containing paint and consumer products bearing lead-containing paint which are exempt from the scope of the ban, and are properly labeled as required by 16 CFR part 1303 and paragraph (a)(4) of this section may be donated.

(2) The hazardous warning statement on the SF 123 shall be the same as the label statements required by paragraphs (a)(4)(i) (A) through (C) of this section. The recipient shall maintain the hazardous warning statements in the inventory records for the property and furnish appropriate warning information to subsequent recipients. The SF 123 and any other transaction documentation for such property shall contain a certification substantially as follows:

The property requested herein shall be used only as specified in 16 CFR 1303.3 and in no case shall be contacted by children. I agree the Government shall not be liable for personal injuries to, disabilities of, or death of the donee's employees, or any other person arising from or incident to the donation of this property, its use, or its final disposition; and to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions or claims of any nature arising from or incident to the donation of this property, its use, or its final disposition.

(d) *Sales requirements.* (1) Lead-containing paint and consumer products bearing lead-containing paint which are exempt from the scope of the ban and are properly labeled as required by 16 CFR part 1303 and paragraph (a)(4) of this section may be sold under § 101-45.304, Subpart 101-42.4, and the special requirements of this paragraph (d).

(2) IFBs for such property shall clearly state the hazardous warning statements contained in paragraphs (a)(4)(i) (A) through (C) of this section and appropriate agreement clauses. The bid page shall contain a certification substantially as follows which must be properly executed. Failure to sign the certification may result in the bid being rejected as nonresponsive.

I certify that I have read and fully comprehend the aforementioned terms and conditions of this sale. I shall comply with the applicable Consumer Product Safety Commission regulations set forth in 16 CFR part 1303 if I am the successful bidder. I further agree the Government shall not be liable for personal injuries to, disabilities of, or death of any persons arising from or incident to the sale of this property, its uses, or its final disposition; and to hold the Government harmless from any or all debts, liabilities, judgments, costs, demands, suits, actions, or claims of any nature arising from or incident to the sale of this property, its use, or its final disposition.

(3) Lead-containing paint and consumer products bearing lead-containing paint shall not be sold under the limited sales by holding agencies authority in § 101-45.304.

(e) *Abandonment and destruction.* In no case shall lead-containing paint or consumer products bearing lead-containing paint be abandoned in a manner that would allow acquisition and use of such property. Such products shall be disposed of under § 101-42.406. Empty cans/drums in which lead-containing paint was stored shall also be disposed of in accordance with this § 101-42.1102-7.

§ 101-42.1102-8 United States Munitions List items which require demilitarization.

(a) *General.* The United States Munitions List is located in 22 CFR part 121. A system of demilitarization codes has been developed and an appropriate code assigned to each Munitions List Item (MLI) to describe what, if any, restrictions or actual demilitarization requirements apply to each item. These codes, in addition to demilitarization policy and procedures for all surplus military items which are owned, procured by, or under the control of the Department of Defense, are contained in the Defense Demilitarization Manual (DoD 4160.21-M-1). This § 101-42.1102-8 applies only to MLIs and is to be used in conjunction with guidance in parts 101-42, 101-44, and 101-45.

(b) *Utilization requirements.* (1) Federal agencies acquiring MLIs which require demilitarization shall perpetuate the demilitarization codes in their property records and on subsequent reports of excess personal property submitted to GSA. Demilitarization shall be a condition of transfer of excess MLIs.

(2) Utilization without demilitarization of other than classified material is authorized only under the conditions cited in the Defense Demilitarization Manual, DoD 4160.21-M-1.

(c) *Donation requirements.* (1) Donation without demilitarization of

other than classified material is authorized only under the conditions cited in the Defense Demilitarization Manual, DoD 4160.21–M–1.

(2) A State agency requesting the transfer of donation of MLIs identified as requiring demilitarization shall include the appropriate demilitarization code on the SF 123, and a statement that the State agency will obtain from the donee a certification that prior to further disposition, demilitarization of the property shall be performed by the donee under the demilitarization instructions for the code as set forth in the Defense Demilitarization Manual, DoD 4160.21–M–1. In the case of MLIs requested for donation by service educational activities or public airports pursuant to the provisions of subparts 101–44.4 and 101–44.5 respectively, the donee shall include a statement on the SF 123 certifying that appropriate demilitarization of the property will be accomplished under the requirements of the codes before further disposition.

(3) Before disposing of MLIs identified as requiring demilitarization, donees may request demilitarization instructions from GSA through the State agency if the donation was made pursuant to subpart 101–44.2. Demilitarization instructions for such items donated to public airports, under subpart 101–44.5, may be requested through the Federal Aviation Administration. Demilitarization instructions for such items donated to service educational activities under subpart 101–44.4 may be obtained directly from the Item Technical Manager within DOD for the item involved.

(4) Demilitarization of property to be donated to public bodies under subpart 101–44.7 shall be accomplished in a manner to preserve so far as possible any civilian use or commercial value of the property, as prescribed in the minimum demilitarization requirements of the Defense Demilitarization Manual, DoD 4160.21–M–1.

(d) *Sales requirements.* (1) Except for sales authorized by statute, sales of "explosives" and "ammunition components" authorized by paragraphs (d) (2) and (3) of this section, or specialized sales authorized by the Secretary of Defense, MLIs identified as requiring demilitarization shall not be reported for public sale without first being demilitarized under the requirements of the assigned code in the Defense Demilitarization Manual, DoD 4160.21–M–1 or requiring demilitarization under the terms and conditions of sale. GSA will, as necessary, refer technical questions on demilitarization to the Department of Defense.

(2) *Explosives.* For the purpose of this section, the term *explosive* means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion. The term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, igniters, and any other items appearing in the explosives list issued by the Secretary of the Treasury (18 U.S.C. 841(d)). The explosives list is published and revised at least annually in the Federal Register by the Director, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, as required by 27 CFR 55.23. The following procedures shall apply in any disposal of explosives:

(i) All explosives offered for sale shall be properly identified in the offering with respect to their hazardous characteristics.

(ii) All explosives shall be labeled by the holding agency before shipment so that their hazardous or dangerous character will be immediately evident upon inspection.

(iii) Purchasers of explosives shall be required, as a condition of sale, to execute the following certification:

It is hereby certified that the purchaser will comply with all applicable Federal, State, and local laws, ordinances, and regulations with respect to the care, handling, storage, shipment, resale, export, and other use of the materials, hereby purchased, and that he/she is a user of, or dealer in, said materials and will comply with all applicable Federal, State, and local laws. This certification is made in accordance with and subject to the penalties of Title 18, Section 1001, the United States Code, Crime and Criminal Procedures.

(3) *Ammunition components.* The term "ammunition components" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm. The transportation of primers or propellent powder is governed by the Hazardous Materials Regulations (49 CFR parts 170–189) promulgated by the Department of Transportation. Purchasers of such materials are responsible to certify, based on their own examination, that the materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation in accordance with the Hazardous Materials Regulations. So that bidders will be notified of the special requirements concerning the purchase and transportation of usable ammunition components, the following statement shall be included in the IFBs and shall be made a part of the contract by including in it the bid form to be submitted by the bidders:

Item No. _____ contains ammunition components offered for sale in this invitation. The undersigned certifies that he/she will comply with all applicable local, State, and Federal laws and regulations concerning ammunition components.

(4) *Scrap ammunition components.* Ammunition components not usable or suitable for reuse as components of ammunition shall be reported and may be sold as scrap (for basic material content). With regard to such sale, the following statement shall be included in the invitation for bid and shall be made a part of the contract:

I, _____, certify that ammunition components purchased by me as Item No. _____, will not be used for the original manufactured purpose.

(e) *Abandonment and destruction requirements.* Besides the requirement of subpart 101–45.9, surplus munitions list items which require demilitarization shall be abandoned or disposed of under the requirements of § 101–42.406, but only after performance of demilitarization under the requirements of the assigned code in the Defense Demilitarization Manual, DoD 4160.21–M–1.

§ 101–42.1102–9 Acid contaminated and explosive contaminated property.

(a) *Utilization requirements.* (1) Acid contaminated or explosive contaminated property shall be considered extremely hazardous property, and as such is not to be reported to GSA as excess personal property. Such property may be available for transfer to qualified recipients; i.e., those who are able to submit valid justifications as required by paragraph (a)(3) of this section.

(2) Excess acid contaminated or explosive contaminated property shall be properly labeled under the labeling requirements of § 101–42.204.

(3) With the authorization of the appropriate GSA regional office, holding activities may transfer acid contaminated or explosive contaminated property in conformance with the requirements of §§ 101–43.309–5 and 101–42.207. In addition, the requesting agency must submit a written justification with the transfer order explaining the specific need for and the anticipated uses of the requested acid or explosive contaminated property, and certify that personnel in contact with the property shall be informed of the hazard and shall be qualified to safely handle or use it.

(4) The degree of decontamination and the responsibility for performance and costs of any decontamination shall be upon such terms as agreed to by the owning agency and the receiving agency.

(5) The receiving agency is responsible for all transportation arrangements and costs of acid contaminated or explosive contaminated property approved for transfer. Such property shall be transported in compliance with § 101–42.405.

(b) *Donation requirements.* Acid contaminated and explosive contaminated property may be donated only with the authorization of the appropriate GSA regional office.

(c) *Sales requirements.* (1) With the authorization of the appropriate GSA regional office, holding activities may sell acid contaminated or explosive contaminated property under § 101–45.304, subpart 101–42.4, and the additional special requirements of this paragraph (c). Agencies shall include in reports of such property for sale on SF 126, a statement of the degree of contamination and any decontamination that has been performed, such as a washdown.

(2) Acid or explosive contaminated property shall be considered extremely hazardous property as defined in § 101–42.001, and shall be described as such in sales offerings. Normally, acid or explosive contaminated property shall be sold with a condition that the purchaser sufficiently decontaminate the property to the degree that it is no longer extremely hazardous.

(3) IFBs for acid or explosive contaminated property shall clearly state the specific hazards associated with the items offered, along with known special handling, transportation, and personnel protection requirements. The bid page shall contain a certification substantially as follows which must be properly executed by the bidder in order for the bid to be responsive:

CERTIFICATION: It is hereby certified that the purchaser will comply with all the applicable Federal, State, and local laws ordinances and regulations with respect to the care, handling, storage, and shipment, resale, export, and other use of the materials, hereby purchased, and that he/she is a user of, or dealer in, said materials and will comply with all applicable Federal, State, or local laws and regulations. This certification is made in accordance with and subject to the penalties of Title 18, Section 1001, the United States Code, Crime and Criminal Procedures.

(d) *Abandonment and destruction.* Acid contaminated or explosive contaminated property shall not be abandoned, and when destroyed, such destruction shall be accomplished under the provisions of subparts 101–45.9 and § 101–42.406.

§ 101–42.1102–10 Firearms.

(a) *Utilization requirements.* (1) Excess firearms shall be reported or otherwise made available to GSA following the requirements of subpart 101–43.3.

(2) Firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. Such transfers shall be executed under §§ 101–43.309–5, 101–42.207, and, when applicable, 101–42.1102–8(b). Transfer requests for firearms will be carefully reviewed by the GSA regional offices before approval, and additional written justification from the requesting agency may be required.

(b) *Donation requirements.* Surplus firearms, and firearms ammunition shall not be donated.

(c) *Sales requirements.* Surplus firearms may be sold only for scrap after total destruction by crushing, cutting, breaking, or deforming to be performed in a manner to ensure that the firearms are rendered completely inoperative and to preclude their being made operative. Such sale shall be conducted under subpart 101–45.3.

(d) *Foreign gifts of firearms.* Firearms reported to GSA as foreign gifts may be offered for transfer to Federal agencies, including law enforcement activities. Foreign gifts of firearms shall not be donated. Such gifts not required for Federal use may be sold only to the gift recipient at the discretion of GSA. A certification that the purchaser shall comply with all State and local laws regarding purchase and possession of firearms must be received by GSA prior to release of such firearms to the purchaser. Firearms not transferred to a Federal agency or sold to the recipient shall be disposed of in accordance with paragraph (c) or (e) of this section.

(e) *Abandonment and destruction of firearms.* Firearms shall not be abandoned. Destruction of firearms is subject to the requirements set forth in paragraph (c) of this section. Such destruction shall also be accomplished under the provisions of subpart 101–45.9, § 101–42.406 and, when applicable, § 101–42.1102–8.

(f) *Abandoned and forfeited firearms.* In addition to the requirements of this part 101–42, forfeited or voluntarily abandoned firearms shall be subject to the provisions of part 101–48.

PART 101–43—UTILIZATION OF PERSONAL PROPERTY

2. The authority citation for part 101–43 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

3. Section 101–43.000 is revised to read as follows:

§ 101–43.000 Scope of part.

This part prescribes the policies and methods governing the economic and efficient utilization of personal property located within and outside the United States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands, except that part 201–23 of the Federal Information Resources Management Regulations (FIRMA) (41 CFR part 201–23) prescribes the policies and procedures governing the worldwide utilization of excess automatic data processing equipment (ADPE) by the Federal Government. Additional guidelines regarding reutilization of hazardous materials are prescribed in part 101–42.

§ 101–43.001–3 [Reserved]

4. Section 101–43.001–3 is removed and reserved.

§ 101–43.001–22 [Reserved]

5. Section 101–43.001–22 is removed and reserved.

Subpart 101–43.3—Utilization of Excess

6. Section 101–43.305 is revised to read as follows:

§ 101–43.305 Property not required to be formally reported.

(a) Excess property which is not required to be formally reported to GSA under § 101–43.304 is a valuable source of supply for Federal agencies. Regional offices and area utilization officers of GSA are responsible for local screening of such property, for making it available to Federal agencies, and for its expeditious transfer. Holding agencies shall cooperate with GSA representatives in making information available and in providing access to the nonreportable excess personal property. Federal agency employees shall be permitted access to holding installations for screening purposes upon presentation of a valid Federal agency employee's identification card. Holding agencies shall make reasonable efforts to obtain utilization among other

Federal agencies of property not covered by GSA utilization screening processes. In the case of controlled substances, solicitation shall be limited to those agencies authorized for transfer under § 101–42.1102–3 provisions.

(b) Unless otherwise directed by GSA, the following excess personal property shall not be reported:

(1) Perishables, defined for purposes of this section as any foodstuffs which are subject to spoilage or decay;

(2) Property dangerous to public health and safety (see paragraph (d) of this section);

(3) Scrap and/or salvage, provided the property strictly conforms to the definitions for scrap and/or salvage (§§ 101–43.001–38 and 101–43.001–29);

(4) Property determined by competent authority to be classified or otherwise sensitive for reasons of national security;

(5) Other items excepted from the requirement to be reported as listed in § 101–43.4801;

(6) Otherwise reportable property which, prior to reporting as required in § 101–43.304, is transferred directly between Federal agencies as provided in § 101–43.308–5(a) or by prearrangement with GSA to fill a known need;

(7) Trading stamps and bonus goods (see § 101–25.103–4); and

(8) Nonappropriated fund property (see § 101–43.307–7).

(c) Nuclear Regulatory Commission-controlled materials are exempt from reporting to GSA as excess personal property. Transfers of such materials shall be made under provisions under § 101–42.1102–4 and applicable NRC regulations. (See 10 CFR parts 30, 40, and 70.)

(d) In the case of hazardous materials, all the restrictions, limitations, and guidelines prescribed in part 101–42 shall apply.

7. Section 101–43.307–2 is revised to read as follows:

§ 101–43.307–2 Hazardous materials.

Special handling requirements for hazardous materials and certain other categories of property are prescribed in part 101–42.

§ 101–43.307–8 [Reserved]

8. Section 101–43.307–8 is removed and reserved.

§ 101–43.307–11 [Reserved]

9. Section 101–43.307–11 is removed and reserved.

10. Section 101–43.311–4 is added to read as follows:

§ 101–43.311–4 Hazardous materials.

Hazardous materials shall be reported to GSA in accordance with part 101–42.

PART 101–44—DONATION OF PERSONAL PROPERTY

11. The authority citation for part 101–44 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

12. Section 101–44.000 is revised to read as follows:

§ 101–44.000 Scope of part.

This part prescribes policies and methods governing the donation of surplus personal property located within the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and the donation of foreign excess personal property designated for return to the United States. Additional guidelines regarding the donation of hazardous materials and certain categories of property are prescribed in part 101–42.

Subpart 101–44.1—General Provisions

13. Section 101–44.108–1 is revised to read as follows:

§ 101–44.108–1 Medical materials and supplies and shelf-life items.

(a) Medical materials and supplies consisting of drugs, biologicals, reagents, or controlled substances shall be donated in accordance with the provisions of §§ 101–42.1102–3 and 101–42.1102–5.

(b) Non-restricted medical materials and supplies may be donated in accordance with the provisions of this part 101–44.

(c) In the case of restricted medical materials and supplies (medical items that must be dispensed or used only by a licensed, registered, or certified individual) requested by a State agency, the SF 123 shall contain a statement that:

(1) The listed property will be transferred from the holding agency directly to the designated donee;

(2) The intended donee is licensed and authorized to administer and dispense such items or is authorized to store the items; and

(3) The State agency will obtain a certification from the donee indicating that:

(i) The items transferred to the donee institution or organization will be safeguarded, dispensed, and administered under competent supervision;

(ii) Adequate facilities are available to effect full accountability and proper storage of the items in accordance with Federal, State, and local statutes governing their acquisition, storage, and accountability; and

(iii) The administration or use of the items requested will comply with the provisions of the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. 301–394).

(d) A State agency shall not pick up or store in its distribution center, surplus restricted medical materials and supplies. This property shall be transferred from the holding agency directly to the designated donee.

(e) Shelf-life items and medical materials and supplies held for national emergency purposes, and determined to be surplus in accordance with § 101–43.307–13, shall be made available for donation screening as provided in § 101–44.109.

§ 101–44.108–4 [Reserved]

14. Section 101–44.108–4 is removed and reserved.

§ 101–44.108–8 [Reserved]

15. Section 101–44.108–8 is removed and reserved.

§ 101–44.108–10 [Reserved]

16. Section 101–44.108–10 is removed and reserved.

Subpart 101–44.7—Donations of Property to Public Bodies

17. Section 101–44.700 is amended by revising paragraph (b) to read as follows:

§ 101–44.700 Scope of subpart.

* * * * *

(b) Controlled substances (as defined in § 101–42.001) and combat material (as defined in § 101–46.001–2).

18. Section 101–44.702–3 is revised to read as follows:

§ 101–44.702–3 Hazardous materials.

When hazardous materials as defined in part 101–42 are donated to a public body in accordance with this subpart, the head of the agency or designee authorized to make the donation shall be responsible for the safeguards, notifications, and certifications required by part 101–42, and compliance with all other requirements therein.

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

19. The authority citation for part 101–45 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c), §§ 101–45.400 to 101–45.405 also issued under Sec. 307, 49 Stat. 880; 40 U.S.C. 304*l*.

20. Section 101–45.000 is revised to read as follows:

§ 101–45.000 Scope of part.

This part prescribes policies and methods governing the disposal by public sale, or abandonment or destruction of personal property (including salvage, scrap, and waste materials) owned by the Government except foreign excess property and the recovery of precious metals. Additional guidelines regarding the sale, abandonment, or destruction of hazardous materials are prescribed in part 101–42.

§ 101–45.001–3 [Reserved]

21. Section 101–45.001–3 is removed and reserved.

Subpart 101–45.3—Sale of Personal Property

22. Section 101–45.309–2 is revised to read as follows:

§ 101–45.309–2 Hazardous materials.

In addition to the requirements of this part 101–45, the sale of hazardous materials shall be accomplished in accordance with the provisions of part 101–42.

§ 101–45.309–4 [Reserved]

23. Section 101–45.309–4 is removed and reserved.

§ 101–45.309–6 [Reserved]

24. Section 101–45.309–6 is removed and reserved.

§ 101–45.309–7 [Reserved]

25. Section 101–45.309–7 is removed and reserved.

§ 101–45.309–11 [Reserved]

26. Section 101–45.309–11 is removed and reserved.

Subpart 101–45.9—Abandonment or Destruction of Surplus Property

27. Section 101–45.900 is revised to read as follows:

§ 101–45.900 Scope of part.

This subpart prescribes the policies and methods governing the disposition of personal property by abandonment or destruction by executive agencies and by a State agency. Additional guidelines regarding the abandonment or destruction of hazardous materials are prescribed in part 101–42.

§ 101–45.903 [Removed]

28. Section 101–45.903 is removed.

§ 101–45.4809 [Removed]

29. Section 101–45.4809 is removed.

PART 101–46—UTILIZATION AND DISPOSAL OF PERSONAL PROPERTY PURSUANT TO EXCHANGE/SALE AUTHORITY

30. The authority citation for part 101–46 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

31. Section 101–46.000 is revised to read as follows:

§ 101–46.000 Scope of part.

This part prescribes policies and methods governing the use by executive agencies of the exchange/sale authority of section 201(c) of the Federal Property and Administrative Services Act of 1949, 63 Stat. 384, as amended (40 U.S.C. 481(c)). It is applicable to all U.S. Government-owned personal property worldwide. In addition to the requirements of this part 101–46, the exchange/sale of hazardous materials shall be accomplished in accordance with the procedures in part 101–42.

Subpart 101–46.2—Authorization

32. Section 101–46.202 is amended by revising paragraphs (b)(6) and adding (b)(7) as follows:

§ 101–46.202 Restrictions and limitations.

* * * * *

(b) * * *

(6) The transfer, exchange, or sale of Nuclear Regulatory Commission-controlled materials except in accordance with § 101–42.1102–4.

(7) The sale or exchange of controlled substances, except in accordance with § 101–42.1102–3.

* * * * *

PART 101–48—UTILIZATION, DONATION, OR DISPOSAL OF ABANDONED AND FORFEITED PROPERTY

33. The authority citation for part 101–48 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

34. Section 101–48.000 is revised to read as follows:

§ 101–48.000 Scope of part.

This part prescribes the policies and methods governing the utilization, donation, and disposal of abandoned and forfeited personal property under the custody or control of any Federal agency in the United States, the Commonwealth of Puerto Rico, American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands. In addition to the requirements of this part 101–48, the disposition of abandoned and forfeited hazardous materials shall be accomplished in accordance with part 101–42.

PART 101–49—UTILIZATION, DONATION, AND DISPOSAL OF FOREIGN GIFTS AND DECORATIONS

35. The authority citation for part 101–49 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)); sec. 515, 91 Stat. 862 (5 U.S.C. 7342).

§ 101–49.108 Hazardous materials.

Subpart 101–49.1—General Provisions

36. Section 101–49.108 is revised to read as follows:

§ 101–49.108 Hazardous materials.

In addition to the requirements of this part 101–49, the disposition of foreign gifts and decorations that are hazardous materials shall be accomplished in accordance with the provisions of subparts 101–42.2 through 101–42.4.

Dated: January 29, 1992.

Richard G. Austin,

Administrator of General Services.

Editorial note: This document was received at the Office of the Federal Register August 19, 1992.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 920520–2120]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule; extension of effective date.

SUMMARY: An emergency rule that implements management measures to

control Pacific halibut bycatch in the Bering Sea and Aleutian Islands area (BSAI) pollock fishery is in effect through August 25, 1992. NMFS extends the emergency rule for an additional 90-day period (through November 23, 1992) to maintain Pacific halibut bycatch within the bycatch limit established for the BSAI trawl fisheries. This action is intended to further the goals and objectives contained in the fishery management plans for the groundfish fisheries off Alaska.

EFFECTIVE DATES: The interim regulations published on May 27, 1992 (57 FR 22182) are extended from August 26, 1992, through November 23, 1992.

FOR FURTHER INFORMATION CONTACT: Susan J. Salveson, Fisheries Management Division, NMFS, 907/586-7228.

SUPPLEMENTARY INFORMATION: On May 21, 1992, the Secretary of Commerce (Secretary) implemented an emergency interim rule (57 FR 22182, May 27, 1992) under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The emergency rule implemented the following measures for a 90-day period (through August 25, 1992):

1. Included the BSAI pollock fishery under the vessel incentive program to reduce halibut bycatch rates in this fishery when directed fishing for pollock with non-pelagic trawl gear is prohibited; and

2. Prohibited the use of non-pelagic trawl gear by vessels participating in the directed fishery for BSAI pollock.

These measures are intended to control halibut bycatch in the 1992 BSAI pollock fishery and to maintain total bycatch amounts within the bycatch limit established for the 1992 trawl gear fisheries. Public comment has been received on a proposed rule (57 FR 22695, May 29, 1992) that would implement a final rule controlling halibut bycatch in the BSAI pollock fishery. A final rule might not be effective until late in 1992. Therefore, the Secretary, with the agreement of the North Pacific Fishery Management Council, extends the effectiveness of the emergency rule for an additional 90 days under section 305(c)(3)(B) of the Magnuson Act. Additional information is contained in the preamble of the original emergency rule.

The emergency rule is exempt from the normal review procedures of Executive Order 12291, as provided in section 8(a)(1) of that order. This rule was reported to the Director of the Office of Management and Budget with an explanation of why following the usual procedures of that order was not possible.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 24, 1992.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 92-20648 Filed 8-24-92; 3:31 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Prohibition of fishing.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear other than pelagic trawl gear (non-pelagic trawl gear) and vessels using hook-and-line gear in the Aleutian Islands subarea (AI). This action is necessary because the overfishing level for the shortraker/rougheye species group (SRRE) has been reached.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), August 25, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Fisheries Management Division, NMFS, 907/586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Overfishing is defined at § 602.11(c)(1) to be a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce its maximum sustainable yield on a continuing basis. The 1992 overfishing level for SRRE in the AI is established by the final notice of specifications (57 FR 3952, February 3, 1992) as 1,220 metric tons (mt). The directed fishery for SRRE in the AI was closed on June 29, 1992 (57 FR 27710, June 22, 1992). Retention of SRRE in the AI was prohibited effective June 29, 1992 (57 FR 29656, July 6, 1992). Groundfish fisheries since June 29, 1992, have caught 154 mt of SRRE as bycatch, for a total harvest of 1,213 mt as of August 16, 1992.

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(10), that directed fishing for groundfish, other than SRRE, will lead to overfishing of SRRE. The Regional Director has further determined that closing all directed fisheries for groundfish by vessels using non-pelagic trawl gear and hook-and-line gear is the least restrictive measure that will prevent overfishing of SRRE. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using non-pelagic trawl gear and vessels using hook-and-line gear in the AI effective from 12 noon, A.l.t., August 25, 1992, through 12 midnight, A.l.t., December 31, 1992.

Classification

This action is taken under 50 CFR 675.20 and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: August 25, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-20789 Filed 8-25-92; 4:22 pm]

BILLING CODE 3510-22-M

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50 CFR Part 675

[Docket No. 911172-2021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for rock sole and "other flatfish" by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1992 secondary bycatch allowance of Pacific halibut for the rock sole/"other flatfish" fishery in the BSAI has been caught.

EFFECTIVE DATES: Effective 12 noon, Alaska local time (A.l.t.), August 25, 1992, through 12 midnight, A.l.t., December 31, 1992.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907/586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1992 secondary bycatch allowance of Pacific halibut to the rock sole/"other flatfish" fishery, which is defined at § 675.21(g)(4)(ii)(B), was set at 755 metric tons by emergency rule (57 FR 11433, April 3, 1992, and extended 57 FR 29223, July 1, 1992).

The Regional Director, Alaska Region, NMFS, has determined, in accordance with § 675.21(h)(1)(iv), that U.S. vessels fishing with trawl gear have caught the 1992 secondary bycatch allowance of Pacific halibut for the rock sole/"other flatfish" fishery. Therefore, NMFS is prohibiting directed fishing for rock sole and "other flatfish" in the aggregate by vessels using trawl gear in the BSAI from 12 noon, A.l.t., August 25, 1992, until 12 midnight, A.l.t., December 31, 1992.

After the effective date of this closure, in accordance with §§ 675.21(h)(1)(iv) and 675.20(h)(8), operators of vessels fishing with trawl gear, other than pelagic trawl gear, in the BSAI may not retain rock sole and "other flatfish" in the aggregate at any time during a trip in an amount equal to or greater than 20 percent of the amount of other fish species retained at the same time on the vessel during the same trip as measured in round weight equivalents.

Vessels fishing with pelagic trawl gear in the BSAI may not retain rock sole and "other flatfish" in the aggregate at any time during a trip in an amount equal to or greater than 7 percent of the amount of other fish or fish products retained on the vessel at the same time during a trip as measured in round weight equivalents.

Classification

This action is taken under 50 CFR 675.21 and complies with E.O. 12291.

List of Subjects in 50 CFR 675

Fisheries, Reporting and recordkeeping requirements.

(Authority: 16 U.S.C. 1801 *et seq.*)

Dated: August 24, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-20683 Filed 8-25-92; 4:21 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 168
Friday, August 28, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

[7 CFR Part 68]

United States Standards for Whole Dry Peas, Split Peas, and Lentils

AGENCY: Federal Grain Inspection Service, USDA.[1]

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Standards for Whole Dry Peas, Split Peas, and Lentils are currently under review. The Federal Grain Inspection Service (FGIS) believes these standards are meeting the needs of producers, warehouse managers, shippers, and all others who handle or market peas and lentils. No changes to these standards are planned. Public comments are being requested before a final decision is made.

DATES: Comments must be received by October 27, 1992.

ADDRESSES: Written comments must be submitted to George Wollam, FGIS, USDA, room 0632 South Building, P.O. Box 96454, Washington, DC, 20090–6454; FAX (202) 720–4628.

All comments received will be made available for public inspection in room 0632 USDA South Building, 1400 Independence Avenue SW., Washington, DC, during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION: The review of the United States Standards for Whole Dry Peas, Split Peas, and Lentils, found at 7 CFR 68.401 through 68.611, is being conducted according to the requirements of Executive Order 12291. No changes to these standards are planned. Comments including data, views, and arguments concerning this review are solicited from interested persons.

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*).

David R. Galliart,
Acting Administrator.

[FR Doc. 92–20615 Filed 8–27–92; 8:45 am]
BILLING CODE 3410–EN–M

[1] The authority to exercise the functions of the Secretary of Agriculture contained in the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), concerning inspection and standardization activities related to grain and similar commodities and products thereof has been delegated to the Administrator, Federal Grain Inspection Service (7 U.S.C. 75a; 7 CFR 68.5).

Agricultural Marketing Service

7 CFR Part 1065

[DA–92–21]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Revision of Supply Plant Shipping Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rules.

SUMMARY: This action invites written comments on a proposal to revise certain provisions of the Nebraska-Western Iowa Federal milk marketing order for an indefinite period beginning with September 1992. The proposed revision would reduce the percentage of supply plant receipts that must be transferred or diverted to pool distributing plants in order for the supply plant to maintain pool plant status. The shipping standard would be 20 percent in all months. The action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. Mid-Am contends that the action is necessary to prevent uneconomical and inefficient movements of milk.

DATES: Comments are due no later than September 4, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed revision has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c (15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1065.7(b) of the order, the revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for an indefinite period beginning with the month of September 1992.

All persons who want to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures to make the action effective for September 1992.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the supply plant shipping percentages set forth in § 1065.7(b). The revision would lower the shipping percentage for supply plants by either 10 or 20 percentage points, depending on the month, to 20 percent of receipts for an indefinite period, beginning with the month of September 1992. The revision would continue the current application of a 20 percent shipping standard for supply plants that is due to expire after August 1992.

Pursuant to the provisions of § 1065.7(b)(3) of the Nebraska-Western Iowa milk order, the Director of the Dairy Division may increase or decrease the supply plant shipping percentage as set forth in § 1065.7(b) by up to 20 percentage points during any month. The adjustment can be made to help encourage additional milk shipments or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order.

Under the Nebraska-Western Iowa order, the stated supply plant shipping percentage is 40 percent or more of the total receipts of Grade A milk received from dairy farmers and cooperative associations. A revision signed October 3, 1989 (54 FR 41240) reduced the supply plant shipping percentage by 10 percentage points (from 40 percent to 30 percent of receipts) indefinitely for the months of September through March. A more recent revision, signed January 29, 1992 (57 FR 4150), reduced the shipping standard for just the months of January through August 1992 to 20 percent. This action would set the shipping standard at 20 percent of receipts for an indefinite period for all months, beginning September 1992.

This action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am has projected that there will be ample supplies of direct-ship producer milk located in the general area of the Nebraska-Western Iowa distributing plants to meet the fluid needs of such plants. Absent a revision, Mid-Am contends that costly and inefficient movements of milk would have to be made in order to maintain pool status of the milk of its members who have historically supplied the fluid needs of the market.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.7(b) for an indefinite period beginning with the month of September 1992 to prevent uneconomic shipments of milk, and to assure that dairy farmers long associated with the fluid milk market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674).

Dated: August 24, 1992.

W.H. Blanchard,
Director, Dairy Division.

[FR Doc. 92–20662 Filed 8–27–92; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 1065

[DA–92–22]

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend certain provisions of the Nebraska-Western Iowa Federal milk marketing order for an indefinite period beginning with the month of September 1992. The proposed suspension would continue a current suspension that reduces the amount of milk that must be transferred from supply plants to pool distributing plants and removes the requirement that a producer's milk be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. Continuation of the suspension was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk for the market. Mid-Am contends that the action is necessary to prevent uneconomical and inefficient movements of milk.

DATES: Comments are due no later than September 4, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 6456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1366.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c (15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has

jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for an indefinite period beginning with the month of September 1992:

In § 1065.6, the words "during the month";

In § 1065.7(b)(1), the words "not more than one half of"; and,

In § 1065.13, paragraph (d)(1).

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures for September 1992.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed action would suspend certain provisions of the order for an indefinite period beginning with September 1992. The action would continue a suspension that reduces the amount of milk that must be transferred from supply plants to pool distributing plants and allows milk to be diverted to a nonpool plant without being physically received at a pool plant during the month. The current suspension expires August 1992.

The order defines a supply plant as a plant from which Grade A milk is shipped to a pool distributing plant. The order provides that to qualify as a pool supply plant, the supply plant must transfer or divert a specified percentage of its receipts of milk to pool distributing plants. The order further provides that a supply plant must ship milk to a distributing plant each month and that not more than one-half of the qualifying shipments may be met through the direct shipment of milk from farms to pool distributing plants. The order also provides that a dairy farmer's milk is not eligible for diversion during a month unless at least one day's production is physically received at a pool plant. The current suspension removes the requirement that milk be transferred from a supply plant to a distributing plant each month, allows all direct-shipped milk to count as a qualifying shipment, and removes the requirement that a dairy farmer's milk be physically received at a pool plant each month.

A continuation of the action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents producers who supply milk to the market. Mid-Am contends that the marketing conditions that led to the current suspension will continue to exist for some time. Mid-Am projects that there will be ample supplies of direct-ship producer milk located in the proximity of the distributing plants to meet the fluid milk needs of the market. As a result, Mid-Am contends that it is impractical to require producer milk located some distance from pool plants to be physically received once during the month, when the milk can more economically be diverted directly to manufacturing plants in the production area. In addition, Mid-Am contends that it would be inefficient to require that milk be transferred from supply plants to distributing plants when the fluid milk needs of the market can be supplied by the direct shipment of milk from farms to distributing plants. Absent a continuation of the suspension, Mid-Am contends that costly and inefficient movements of milk would have to be made to maintain pool status of producers who have historically supplied the fluid milk needs of the market.

In view of the expressed uncertainty over the anticipated duration of the supply/demand situation, consideration should be given to whether the action should be taken for a fixed period of time or for an indefinite period as proposed.

List of Subjects in 7 CFR Part 1065

Milk marketing orders.

PART 1065—[AMENDED]

The authority citation for 7 CFR part 1065 continues to read as follows:

Authority: (Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: August 24, 1992.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 92–20666 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1124

[DA-92-19]

Milk in the Pacific Northwest Marketing Area; Proposed Temporary Revision of Diversion Limitation Percentage

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites public comments on a proposal to temporarily ease a supply plant shipping requirement that at least 30 percent of producer milk physically received be shipped to a distributing (bottling) plant in order to qualify the supply plant for pooling under the Pacific Northwest order. The proposed revision would reduce the shipping requirement to 20 percent during the months of September 1992 through February 1993. This action was requested in order to prevent the uneconomic movement of milk by a cooperative association that represents producers regularly associated with the market.

DATES: Comments are due no later than September 14, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4829.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed temporary revision of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the provisions of § 1124.7(c) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Pacific Northwest marketing area is being considered for the months of September 1992 through February 1993.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 15th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to fifteen days because a longer period would not provide the time needed to complete the required procedures and include September in the revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

In order for a supply plant to maintain its pool status, the Pacific Northwest order requires, as set forth in § 1124.7(b), such plants to ship to pool distributing plants a minimum of 30 percent of the total quantity of milk physically received at the supply plant. The order also, in § 1124.7(c), provides authority for the Director of the Dairy Division to increase or decrease this supply plant shipping requirement by up to 10 percentage points if such a revision is necessary to obtain needed shipments or to prevent uneconomic shipments.

The supply plant shipping standard was reduced to 20 percent for all milk marketed during September 1991 through February 1992. This temporary revision was issued because it was determined that market conditions would have resulted in uneconomic shipments of milk for the purpose of maintaining pool supply plant status. The order provides in § 1124.7(b)(2) that a supply plant which qualifies as a pool plant in each month of September through February shall be a pool plant in each of the following months of March through August.

The Tillamook County Creamery Association (TCCA), a cooperative association that represents a number of the market's producers, has requested that the temporary easing of the total minimum quantity of milk that a supply plant must ship to a distributing (bottling) plant in order for the supply plant to maintain pool plant status be continued. TCCA has asked in essence that the Director of the Dairy Division repeat last year's temporary revision. This temporary revision would be effective from September 1992 through February 1993.

TCCA asserts that due to continuing supply/demand conditions, it continues to be uneconomic to move adequate quantities of milk to the market in order to maintain the delivery percentages under the order. They maintain that this reduction in shipping requirements will not affect TCCA's willingness to supply spot loads of milk to the Portland bottling market as has been traditionally done. Under current market conditions, TCCA contends that it would be impossible for them to qualify as a pool supply plant at the present shipping percentages without uneconomic and quality deteriorating movements of milk between plants solely for the purpose of meeting those requirements.

Therefore, it may be appropriate to again reduce the pool supply plant shipping percentages.

List of Subjects in 7 CFR Part 1124

Milk marketing orders.

The authority citation for 7 CFR part 1124 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed: August 24, 1992.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 92–20698 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1126

[DA-92-20]

Milk in the Texas Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would continue the suspension of segments of the pool plant and producer milk definitions of the Texas order, for the months of August 1992 through July 1993. Associated Milk Producers, Inc. and Mid-America Dairymen, Inc., cooperative associations that represent a substantial proportion of the producers who supply milk to the market, have requested the continuation of the suspension. The cooperatives assert that continuation of this suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from pooling.

DATES: Comments are due no later than September 4, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4829.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

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This proposed suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Texas marketing area is being considered for the months of August 1992 through July 1993.

1. In 1126.7(d) introductory text, the words "during the months of February through July" and the words "under paragraph (b) or (c) of this section".

2. In 1126.7(e) introductory text, the words "and 60 percent or more of the producer milk of members of the cooperative association (excluding such milk that is received at or diverted from pool plants described in paragraphs (b), (c), and (d) of this section) is physically received during the month in the form of a bulk fluid milk product at pool plants described in paragraph (a) of this section either directly from farms or by transfer from plants of the cooperative association for which pool plant status under this paragraph has been requested".

3. In 1126.13(e)(1), the words, "and further, during each of the months of September through January not less than 15 percent of the milk of such dairy farmer is physically received as producer milk at a pool plant".

4. In 1126.13(e)(2), the paragraph references "(a), (b), (c) and (d)".

5. In 1126.13(e)(3), the sentence, "The total quantity of milk so diverted during the month shall not exceed one-third of the producer milk physically received at such pool plant during the month that is eligible to be diverted by the plant operator;".

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The comment period is limited in order to facilitate completion of the required procedures in time to include August 1992 in the suspension period if it is concluded that the proposal should be adopted.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would continue the current suspension of segments of the pool plant and producer milk definitions for the Texas order. This proposed suspension would be in effect from August 1992 through July 1993. The current suspension will expire in July 1992. The proposed action would continue the suspension of: (1) The 60 percent delivery standard for pool plants operated by cooperatives; (2) the restrictions on the types of pool plants at which milk must be received to establish the maximum amount of milk that a cooperative may divert to nonpool plants; (3) the limits on the amount of milk that a pool plant operator may divert to nonpool plants; (4) the shipping standards that must be met by supply plants to be pooled under the order; and (5) the individual producer performance standards that must be met in order for a producer's milk to be eligible for diversion to a nonpool plant.

The order permits a cooperative association plant located in the marketing area to be a pool plant, if at least 60 percent of the producer milk of members of the cooperative association is physically received at pool distributing plants during the month. In addition, a cooperative association may divert to nonpool plants up to one-third of the amount of milk that the cooperative causes to be physically received during the month at handlers' pool plants. The order also provides that the operator of a pool plant may divert to nonpool plants not more than one-third of the milk that is physically received during the month at the handler's pool plant. The proposed action would continue to inactivate the 60 percent delivery standard for plants operated by a cooperative association, allow a cooperative's deliveries to all types of pool plants to be included as a basis from which the diversion allowance would be computed, and remove the diversion limitation applicable to the operator of a pool plant.

The order also provides for regulating a supply plant each month in which it ships a sufficient percentage of its receipts to distributing plants. The order provides for pooling a supply plant that ships 15 percent of its milk receipts during August and December and 50 percent of its receipts during September through November and January. A supply plant that is pooled during each of the immediately preceding months of September through January is pooled under the order during the following months of February through July without making qualifying shipments to distributing plants. The requested action would continue the current suspension of these performance standards for an additional twelve months for August 1992 through July 1993 for supply plants that were regulated under the Texas order during each of the immediately preceding months of September through January.

The order also specifies that the milk of each producer must be physically received at a pool plant each month in order to be eligible for diversion to a nonpool plant. During the months of September through January, 15 percent of a producer's milk must be received at a pool plant for diversion eligibility. The proposed action would continue to keep these requirements suspended.

The continuation of the current suspension was requested by Associated Milk Producers, Inc., and Mid-America Dairymen, Inc., cooperative associations that represent a substantial share of the dairy farmers who supply the Texas market. The cooperatives assert that the continuation of the current suspension is necessary to insure that dairy farmers who have historically supplied the Texas market will continue to have their milk priced under the Texas order, thereby receiving the benefits that accrue from such pooling. The cooperatives maintain that the suspension would also continue to provide handlers the flexibility needed to move milk supplies in the most efficient manner and to eliminate costly and inefficient movements of milk that would be made solely for the purpose of pooling the milk of dairy farmers supplying the market.

List of Subjects in 7 CFR Part 1126

Milk marketing orders.

The authority citation for 7 CFR part 1126 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 24, 1992.

Kenneth C. Clayton,

Deputy Administrator for Marketing Programs.

[FR Doc. 92–20661 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1137

[DA–92–26]

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal that would continue the suspension of certain provisions of the Eastern Colorado Federal milk order. These provisions have been suspended for the same periods for the previous six years. This proposal would suspend for September 1992 through February 1993, the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February period. The "touch-base" requirement that each member-producer's milk be received at least three times each month at a pool distributing plant to be eligible for diversion would be suspended from September 1992 through August 1993. The percentage limits on the amount of milk that a cooperative may divert to surplus milk outlets would also be suspended from September 1992 through August 1993. The request for the continued suspension of these provisions was made by Mid-America Dairymen, Inc. (Mid-Am). Mid-Am is a cooperative association which represents producers who have been historically associated with the Eastern Colorado order. Mid-Am requested this suspension in order to prevent the uneconomic movement of milk under the order.

DATES: Comments are due no later than September 4, 1992.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–4829.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lesson the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed suspension of rules has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

This proposed rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule. Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colorado marketing area is being considered:

1. For the months of September 1992 through February 1993: In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and the words "of March through August"; and

2. For the months of September 1992 through August 1993: In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence "30% in the months of March, April, May, June, July, and December and 20 percent in order months of", as well as the word "distributing".

All persons who desire to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 7th day after publication of this notice in the **Federal Register**. The comment period is limited in order to facilitate completion of the required procedures in time to include September 1992 in the suspension period if it is concluded that the proposal should be adopted.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension was requested by Mid-America Dairymen, Inc. (Mid Am). Mid-Am is a cooperative association that has pooled milk from producers located in western Kansas and western Nebraska on the Eastern Colorado order for several years. Mid-Am has requested the continued suspension of certain provisions in order to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers historically associated with the Eastern Colorado order.

Mid-Am requests for the months of September 1992 through February 1993, that the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during the previous September through February period be suspended. Mid-Am also requests the suspension of the touch-base and diversion limitation requirements during the months of

September 1992 through August 1993. These latter requirements have been suspended since September 1985.

These provisions have been suspended previously in order to maintain the pool status of producers who have historically supplied the fluid needs of Eastern Colorado distributing plants. Mid-Am asserts that it has made a commitment to Western Dairymen Cooperative, Inc., that milk pooled by Mid-Am will be available to meet the fluid requirements of fluid distributing plants if the suspension action is issued. Without the suspension action, Mid-Am contends that it would be necessary to ship milk from western Nebraska and western Kansas to Denver area distributing plants. This would displace locally produced milk that would then have to be shipped from the Denver area to surplus handling plants.

Mid-Am maintains that the suspension of the touch-base provisions of the Eastern Colorado order will not allow additional milk supplies to be pooled, but rather will provide for more efficient disposition of producer milk not needed for fluid requirements of Eastern Colorado distributing plants. By suspending the touch-base provision, producer milk would not be required to be delivered to pool plants for the sole purpose of meeting provisions of the Eastern Colorado order.

Mid-Am contends that the conditions that existed when the provisions were suspended previously still continue. Mid-Am projects that there will be ample supplies of locally produced milk to meet the requirements of Eastern Colorado distributing plants without requiring that each producer's milk be received at least three times each month at a pool distributing plant and without restricting the amount of milk that can be diverted to non-pool plants.

Therefore, it may be appropriate to suspend the aforesaid provisions for the months requested.

Lsit of Subjects in 7 CFR Part 1137

Milk marketing orders.

The authority citation for 7 CFR part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: August 24, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92–20701 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 1139

[Docket No. AO–309–A31; DA–90–21]

Milk in the Great Basin Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and To Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends changes in the Great Basin order. It would relax the diversion provisions and would lower the amount of milk that a cooperative association would have to deliver to a distributing plant in order to pool its manufacturing plant. The decision would relax the limit on the amount of milk that producer-handlers may receive from pool plants and other order plants. Other revisions would change the due date for payments to the producer-settlement fund, make several technical changes to component pricing provisions and change the application of location adjustments on diverted milk. The recommended changes are based on the record of a public hearing held in Salt Lake City, Utah, on August 27–28, 1990. These changes are warranted due to changes in marketing conditions and to assure orderly marketing in the area.

DATES: Comments are due on or before , September 28, 1992.

ADDRESSES: Comments (four copies) should be filed with the Hearing Clerk, room 1081, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments would promote orderly marketing of milk by producers and regulated handlers.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect. This proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Prior document in this proceeding:

Notice of Hearing: Issued August 14, 1990; published August 20, 1990 (55 FR 33915).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Great Basin marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC, 20250, by the 30th day after publication of this decision in the **Federal Register**. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Salt Lake City, Utah, on August 27–28, 1990, pursuant to a notice of hearing issued August 14, 1990 (55 FR 33915).

The material issues on the record of hearing relate to:

1. Pooling standards for a cooperative's reserve milk supply;
2. Pooling standards for a cooperative manufacturing plant;
3. Limits on producer-handler receipts from pool plants and other order plants;
4. Application of location adjustments in determining the obligation of a partially-regulated distributing plant;
5. Application of location adjustments in paying producers for milk that is diverted;
6. Due date for payment of handler obligations to the producer-settlement fund;
7. Handler payments to cooperative associations for plant milk and bulk tank receipts from producer-members; and
8. Technical changes in order provisions relative to component pricing:
   (a) Handler protein price.
   (b) Location and zone differentials.
   (c) Protein accounting by plant operators.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards for a Cooperative's Reserve Milk Supply

The order should not be amended to provide an additional option for pooling a cooperative association's milk supply. This decision provides, as an alternative, that the order's diversion limitations for cooperatives be relaxed. The diversion limitations are increased from 60 percent for the period of April through August and 50 percent in all other months to 75 percent during all months of the year.

Western Dairymen Cooperative, Inc. (WDCI), proposed the "cooperative reserve supply unit" as an additional option in pooling a cooperative's milk supply. Their proposal, modified at the hearing, would have required a cooperative to meet the following requirements:

(1) The cooperative must file an application with the market administrator for a "cooperative reserve supply unit status" no less than 15 days prior to the first day of the month such status is requested;

(2) The cooperative must qualify as a handler of bulk tank milk or diverted milk of its member producers during the month and as a handler of producer milk during each of the 12 preceding months;

(3) Each member producer of the cooperative must deliver at least one day's production each month to a pool distributing plant;

(4) The cooperative must be qualified to receive payments for producer milk;

(5) The cooperative has producer members, the majority of whom are producing milk or farms located within 175 miles of a pool distributing plant located within the market area;

(6) The cooperative has not entered into an agreement with another cooperative association to have its allowable diversions computed on a combined basis;

(7) The cooperative would not be able to operate a pool plant located in the marketing area (initially WDCI proposed that a cooperative not operate a milk plant;

(8) The cooperative must ship milk to pool distributing plants during the month in an amount equal to not less than 25 percent of its producer milk (initially WDCI proposed a 35 percent requirement);

(9) The cooperative reserve supply unit supplies fluid milk products to a distributing plant located within 175 miles (initially 100 miles) of the majority of the cooperatives member producers in accordance with instructions from the market administrator calling for a minimum level of shipments to pool distributing plants; and

(10) The market administrator may require shipments of bulk fluid milk from the reserve supply unit whenever the market administrator determines, as the result of an investigation, that additional milk supplies are needed to any pool distributing plant(s) in order to serve the fluid needs of the market.

The WDCI proposal provided that an investigation may be undertaken either at the market administrator's own initiative or on the basis of a request from a pool distributing plant. If the market administrator finds that the investigation that it is necessary to issue an instruction requiring shipments of milk, the market administrator shall issue a notice stating that a shipping instruction is being considered and inviting data, views and arguments with respect thereto, which will be considered in making his determination.

A cooperative association, after qualifying as a reserve supply unit, shall continue to have that status until it fails to meet all of the previously described conditions, or until it applies for termination thereof, in which case such status shall be withdrawn on the first day of the month following the application.

If a cooperative association holding such reserve supply unit status fails to comply with any shipping requirements or takes any action which evades the intent of any shipping requirements, the market administrator shall report these facts to the Director of the Dairy Division who may suspend the cooperative from qualification. The suspension would cover a period of not more than 12 months during which the association has qualified as a handler of bulk tank milk or of diverted milk of its members.

The first witness for WDCI testified that the association is a marketing cooperative with members located in 10 states. He said that the association is operating four manufacturing plants and three fluid milk plants in the Great Basin marketing area.

The spokesman for WDCI said that milk production is increasing and commercial use remains flat. He said that because of the increase in milk production, cheese plants are interested in acquiring manufacturing plants. WDCI, he contended, will be committed more to manufacturing operations and utilizing these manufacturing facilities at optimum levels of production.

The WDCI witness said that the association has signed a letter of intent with another company which could result in a significant change in the status of WDCI's manufacturing plants and in the use of its member milk for manufacturing. He said the association wants to see that the fluid needs of the market are served from the closest possible supply source. The witness indicated the cooperative's proposal would accomplish that objective.

At the hearing the WDCI witness requested that the Department waive a recommended decision on this issue. In their post-hearing brief, however, they withdrew this request.

At the hearing WDCI made several modifications to its proposal. Under the first modification a cooperative would not be permitted to operate a pool plant located in the marketing area. Initially, WDCI has proposed that a cooperative may not operate a milk plant. Another modification provided for shipments to pool distributing plants of not less than 35 percent of the cooperative's member-producer monthly milk production instead of 25 percent. A third modification would require that a member producer deliver at least one day's production each month to a pool distributing plant.

The second witness for WDCI said the proposal is similar to a provision in the Pacific Northwest order. He said that the proposed standards assure that the association will not "ride" the pool but is there to serve the needs of the market.

At the hearing a witness for two cooperative associations, Magic Valley Milk Producers, Inc. (MVMP), and Quality Milk Producers, Inc. (QMP), and witnesses for Gossner Foods (Gossner), a proprietary handler, presented testimony in opposition to the WDCI proposal.

The witness for MVMP said that the WDCI proposal would not benefit MVMP. He said that for June and July 1990, MVMP was only able to ship about 21 percent of its grade A milk to pool distributing plants located in the Great Basin marketing area (monthly production of members for June and July 1990 approximately 21 million pounds).

The MVMP spokesman said that the proposed 75-mile limitation by WDCI would eliminate MVMP from qualifying under the proposed "cooperative reserve supply unit" even though about 30 percent of their members are located within the Great Basin marketing area. He testified that MVMP has been serving this market for about three years. MVMP, he said, delivers a substantial amount of milk to the Meadow Gold distributing plant at Pocatello, Idaho. If that plant were to close, the cooperative's members' farms would be located about 240 to 270 miles from a pool distributing plant in the marketing area.

The witness for MVMP proposed several modifications to the WDCI proposal. He said that a cooperative in order to qualify under this proposal should (1) not operate a pool distributing plant rather than a milk plant within the marketing area (2) have producers whose milk is currently pooled on the Great Basin order or are located within 175 miles of a pool distributing plant located within the marketing area and (3) ship to pool distributing plants 25 percent during the months of September through April and 20 percent during the months of May through August of the cooperative associations members' monthly milk production. Also, the qualified cooperative association should not lose its status as a "cooperative reserve supply unit" because of the closing of the closest pool distributing plant to the majority of its producers.

Two witnesses for Gossner testified in opposition to the WDCI proposal. The second Gossner witness said his testimony was also presented on behalf of KDK Dairy, Banquet Foods and Chappel Cheese.

The first Gossner witness said that the present provisions are adequate for WDCI to pool its members' milk on the Great Basin order without operating a bottling plant or a cheese plant. He said that if WDCI is going out of the fluid milk business, then this proposal would encourage WDCI to sign on as many new producers as possible with the intent of controlling the entire milk supply.

This Gossner witness testified, that even though they have their own independent producers, they are concerned about the possibility of other sources of milk not being available because of the adverse effect that WDCI's proposal would have on the market. He said that Gossner operates an aseptic milk plan that engages substantially in supplying military contracts. The witness indicated that this type of business requires that milk always be available at a reasonable price. Gossner, he said, would have less objection to the WDCI if the monthly shipping percentages were increased from 25 to 35 percent.

The second witness for Gossner and other handlers said that the WDCI proposal will further increase the dominance of WDCI as the principal buyer of milk in the Great Basin market. He said that Gossner and other handlers are all heavily dependent upon Grade B milk and that the WDCI 25 percent shipping standard will accelerate the conversion of Grade B milk to Grade A milk.

This spokesman for Gossner and other handlers said that the proprietary cheese plants are already operating at less than capacity and any further reduction in milk supplies could result in the closing of some cheese plants in the marketing area. He said that if the cheese plants were to close, this could result in the closure of bottling operators because of their dependence on the cheese plants to take their diverted milk.

A witness for QMP said that the association supports the modifications proposed by MVMP. He said that members of the association produce approximately 11 to 12 million pounds of milk per month and the milk pooled by the association goes to a distributing plan at Pocatello, Idaho. The members of the association, he said, are located within the southern Idaho counties of Twin Falls, Gooding, and Jerome and, therefore, the proposed mileage standards by WDCI would eliminate their organization from qualifying under the WDCI proposal.

As indicated previously, the "cooperative reserve supply unit" proposed as modified, should not be adopted. The relaxation of the diversion provisions as provided for in this decision will enable the proponent of the "cooperative reserve supply unit" proposal to efficiently provide for the fluid needs of the market, and, at the same time, accommodate the movement of more milk for manufacturing in recognition of changes in supply and demand for milk in this market.

The 75 percent diversion limitation provision provided for in this decision, will enable WDCI to move milk directly from the farm to manufacturing plants in amounts equal to WDCI's proposed 25 percent monthly shipping requirements contained in their proposal. The 75 percent diversion provision would require (reciprocal) shipments to pool plants of 25 percent.

The 75 percent diversion provision, coupled with the provision that authorizes the Director of the Dairy Division to increase or decrease these limitations by 10 percentage points, should provide flexibility in the event that market conditions substantially change.

As indicated previously, there was substantial opposition to the WDCI proposal even with the proposed modifications. The modified proposal leaves some doubt as to whether other cooperatives, besides WDCI, would be able to meet all the requirements of this provision. The relaxation of the diversion provisions should accommodate the changed marketing conditions that WDCI was concerned about and at the same time provide other cooperative associations with the ability to more efficiently move milk supplies where needed.

2. Pooling Standards for a Cooperative Manufacturing Plant

The order should provide that a cooperative association must ship 25 percent of its member producer milk to a pool distributing plant to qualify its manufacturing plant for a pool status. The order should also continue to provide that the Director of the Dairy Division may increase or decrease such percentage by 10 percentage points.

Currently, the order provides that a cooperative association must ship 35 percent of its member-producer milk to a pool distributing plant to qualify its manufacturing plant for pool status. However, when the Great Basin and Lake Mead orders were merged on April 1, 1988, the order provided for a 45 percent shipping requirement. The 45 percent standard was lowered to 40 percent effective May 1, 1989—official notice is taken of a **Federal Register** document, Revision of Cooperative Manufacturing Plant Shipping Requirements (54 FR 30881). The standard was further lowered to 35 percent effective June 1, 1989—official notice is taken of a **Federal Register** document, Revision of Cooperative Manufacturing Plant Shipping Requirements (54 FR 25446). Both of the reductions were made by the Director of the Diary Division at the request of WDCI.

A witness for MVMP said that a decrease in the shipping requirements to 25 percent is necessary to reflect the fact that Class I milk movements on the Great Basin order have decreased about 14 percent when compared to the first 7 months of 1989. He said that if the shipping standard had been 25 percent rather than 35 percent the association would have saved about $132,000 for the period of March 1990 through July 1990.

The MVMP proposal was opposed by WDCI and Gossner. The witness for WDCI said that the association is delivering approximately 40 percent of its milk supply to pool distributing plants. The WDCI witness said the association does not want this shipping provision to be established any lower than 35 percent.

The witness for Gossner said that the company's opposition to this proposal is similar to their opposition to the WDCI proposal to establish a cooperative reserve supply unit. He said that the MVMP proposal could result in the elimination of proprietary manufacturing plants because this proposal would increase the conversion of Grade B milk to Grade A milk.

As previously noted, the shipping requirement for a cooperative association to pool its manufacturing plant should be 25 percent. This comports with the level of shipment that WDCI would have to make under the diversion allowance adopted for cooperative associations. Such level of shipments should enable MVMP to pool the milk of its member producers according to the testimony by the MVMP's witness. If marketing conditions change to warrant a higher shipping percentage, this can be done under the Director's authority provided in the order.

3. Limits on Producer-Handler Receipts From Pool Plants and Other Order Plants.

The order should be amended to provide a producer-handler with more flexibility in acquiring fluid milk products from pool plants or other order plants in order to supplement the producer-handler's own production. The amended order would allow a producer-handler to acquire unlimited quantities of fluid milk products during the months of December through August provided the producer-handler met the following requirements during the months of September through November. During the period of September through November, the producer-handler's purchases of fluid milk products (excluding flavored and cultured fluid milk products) would be limited to 15,000 pounds (3 month total) or 5 percent of the producer-handler's disposition (3 month total), whichever in greater. The order would also provide that if the producer-handler exceeded this limitation during the months of September through November, the producer-handler's purchases of fluid milk products (excluding flavored or cultured milk products) could not exceed 5,000 pounds each month or 5 percent of the producer-handler's monthly disposition, whichever is greater.

The order presently provides that a producer-handler may purchase fluid milk products each month from pool plants or there order plants in an amount not in excess of the larger of 5,000 pounds or 5 percent of the producer-handler's Class I disposition.

At the hearing, WDCI abandoned a proposal that would have permitted a producer-handler to purchase from a pool plant or other order plant during each of the months of May through August fluid milk products amounting to 10,000 pounds or 5 percent of its Class I disposition, whichever is larger, and during the months of September through April, the larger of 5,000 pounds a month or 5 percent of its monthly Class I disposition.

At the hearing, Mr. Glen Brown who is part owner and the manager of Brown Dairy, Inc. (Brown), located at Coalville, Utah, testified in support of the change in the producer-handler provision that is adopted herein.

Mr. Brown said that the present order provisions make it unreasonably difficult to manage his operation in an orderly manner. He said that anyone who has had any experience with cows knows that a cow's production will vary more than 5 percent per day and per month with month-to-month variations of more than 5 percent. Therefore, he said, that the only logical way to provide a producer-handler a means to market his production is to remove the unreasonable restrictions contained in the order.

Mr. Brown said that a three-month qualifying period during the historically low production period should alleviate the market disruption concerns that producers and handlers may have. He said that his proposal would, for the most part, eliminate the need to dump onto the market surplus milk.

A producer-handler, according to Brown, does not know what his Class I sales will be until the month is over. As a consequence, the producer-handler does not know until the month is over, the volume of milk that can be purchased under the 5 percent allotted under the order. He said that his proposed three-month qualifying period should help solve this problem. In addition, the current provision, he says, make it very difficult at times to provide fluid milk products to special groups such as the Boy Scouts in their own immediate area. He said the fluid milk demands of the Boy Scouts and other youth groups, exceed the current 5 percent of Class I sales that producer-handlers are permitted to obtain from pool plants or other order plants.

Mr. Brown said that the amount of milk attributable to producer-handlers in this market has declined from previous decades and has stayed very stable during the last few years. He said also that at least two-thirds of the Federal orders have no limitations on purchases of fluid milk products by producer-handlers.

Mr. Brown testified that the prices he obtains for his packaged fluid milk do not adversely affect the market. His prices, he says, when taking all products into consideration, are not the lowest or the highest in the market. He said, too, that he has to pay the Class I price for his purchases. For this reason he believed that no producer in the market would be adversely affected by his purchases of supplemental milk.

Mr. Brown said that his proposal would have a positive impact on small entities, especially in rural areas where the economy and employment are struggling. He said that a suspension of this provision for the period of December 1989 through August 1990, to the best of his knowledge, did not have an adverse effect on this market.

Mr. Brown also proposed that the limitation on the quantity of fluid milk products that a producer-handler may purchase should not include flavored and cultured fluid milk products. He said that today's high technology and capital-intensive machinery dictate that processors cooperate in order to accommodate the consumer.

At the hearing another producer-handler (Ideal Dairy) briefly testified in support of the Brown proposal. Winder Dairy, in a brief, stated that it also supports the Brown proposal.

The witness for Ideal Dairy said that in his operation he has to have a surplus averaging about 30 percent of the dairy farm's milk production. Some months it can vary from a low of 5 percent to a high of 40 percent. He said that his demand for milk is higher during the 8 or 9 months that the schools are operating rather than in the summer. He indicated that his own production and purchases from pool plants are higher than last year.

In its brief, Winder Dairy stated that the prior suspension of the limitations on purchases by producer-handlers has not been disruptive and that this greater flexibility in purchases can be useful to the market.

At the hearing a witness for WDCI testified in opposition to the Brown proposal. He said that before the merger of the Great Basin and Lake Mead orders the producer-handler limitation in the Great Basin order was the higher of 3,000 pounds or 5 percent of its Class I sales. He said that the cooperative proponent of the merger proposed the increase to 5,000 pounds per month in recognition of the general trend towards higher milk production.

The spokesman for WDCI said that the Department of Agriculture (Department) has always taken the position that producer-handlers are small volume farmers marketing their own milk and carrying the burden of their own reserve supply. Producer-handlers, he said, are allowed to market their own milk for Class I purposes without sharing it with the producers so long as they market their own reserve supply and do not transfer the burden of carrying the reserve supply to other producers.

The WDCI witness said that the Department has permitted producer-handlers to acquire limited quantities of milk from pool sources so that they could supplement their own farm production during the low production months and make other Class I products available to customers. He said that it is unfair to require regulated handlers to pay the Class I price for all fluid milk distribution while their competitors, the producer-handlers, can offer milk for sale without regard to the Class I price.

The WDCI spokesman said that during the suspension for the period of December 1989 through August 1990, substantial quantities of reserve milk were shifted from producer-handlers to other producers and that fully regulated handlers lost sales. He said that purchases of fluid milk products by producer-handlers increased from 67,000 pounds a year ago to 430,000 pounds and that these purchases displaced sales by fully regulated handlers.

A limit should apply on purchases of supplemental milk by producer-handlers during the months of September through November. A producer-handler should be permitted to purchase fluid milk products (excluding flavored and cultured fluid milk products) from pool plants and other order plants during the months of September through November in an amount not to exceed 15,000 pounds for the 3-month period or 5 percent of the producer-handler's Class I disposition during such 3-month period, whichever is greater.

A limit on supplemental milk purchases by producer-handlers is needed to preclude a producer-handler from shifting to pool producers the burden of carrying the producer-handler's reserve milk supply. Without any limit on purchases a producer-handler could be expected to obtain Class I sales accounts in an amount equal to the volume of milk produced in the seasonally high production months. During seasonally low production months, a producer-handler could supplement its lack of production with purchases from pool sources.

By limiting a producer-handler's purchases during the months of seasonally low production, September through November, other producers in the Great Basin market will have some assurance that a producer-handler is responsible for producing enough milk to supply 95 percent of the producer-handler's Class I sales during such 3-month period.

The producer-handler's request that flavored fluid milk products and cultured fluid milk products not be included in the purchase limits during the months of September through November should also be granted. This will enable a producer-handler to offer a more complete line of milk products to customers without the capital outlay that would otherwise be required to process and package such items.

The application of a limit on purchases of supplemental milk supplies by producer-handlers during the months of December-August tends to impose an unnecessary burden on certain producer-handler operations in the market. Some producer-handler plants are located within close proximity to summer camps and winter recreational facilities that have a short-duration demand for milk in the months of seasonally high production. The limit on supplemental purchases tends to either effectively preclude producer-handlers from serving such accounts or encourage producer-handlers to produce an unnecessary surplus of milk to serve such accounts.

Removal of the limit on purchases of supplemental milk by producer-handlers during the market's seasonally high production months would tend to provide an incentive for producer-handlers to shift their production pattern so that it would peak during the market's low production months of September through November in order to service their year-round sales accounts and retain producer-handler status.

4. Application of Location Adjustments in Determining the Obligation of a Partially Regulated Distributing Plant

No change should be made in computing the obligation of the operator of a partially-regulated distributing plant.

Under the present provisions of the Great Basin order, a partially-regulated distributing plant operator regulated under a State order has two options under which the operator's pool obligation may be determined:

(a) The plant operator incurs no payment obligation if the operator purchases from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area. Such purchases, however, may not be used to offset any obligation under another order.

(b) The plant operator may choose to pay to the producer-settlement fund the value of the fluid milk products distributed in the marketing area determined by the difference between the appropriate class prices applicable at the location of the partially-regulated distributing plant (but not to be less than zero) as announced by the State order and the value of such milk as determined pursuant to the class prices and component prices established under the Great Basin milk order.

A witness for WDCI, who also represented the Borden Company, proposed that the obligations of a handler operating a partially-regulated distributing plant be revised to eliminate the location adjustment on packaged fluid milk products distributed in the Great Basin marketing area. In describing the proposal to eliminate location adjustments, proponent stated that the proposal retains all of the provisions of section 76 (obligation of a handler operating a partially regulated distributing plant) with the exception that the location adjustment on packaged fluid milk products distributed in the Great Basin marketing area by partially regulated distributing plants subject to State regulation would be eliminated. Proponent contended that elimination of the location adjustment from section 76 will place the partially-regulated distributing plants on an equal footing with plants subject to full regulation by the Great Basin order or any other Federal milk marketing order with respect to fluid milk product disposition in the Great Basin market.

The brief submitted on behalf of WDCI makes it clear that the cooperative association is proposing the elimination of the location adjustment in computing the obligation of a partially-regulated distributing plant that is regulated under a State order.

Proponent indicated that location adjustments in Federal milk marketing orders are designed to equalize the cost of transporting milk from farms to fluid milk processing plants, whether shipped directly from farms or through supply plants. Location adjustments are not intended, according to proponents, to underwrite the cost of transporting packaged fluid milk products from one location to another.

Proponents contended that the purpose of the payment to the market administrator by the operator of the partially-regulated distributing plant is to equate the cost of packaged fluid milk products distributed in the Great Basin marketing area by such partially-regulated distributing plants with that of plants subject to full regulation by the Great Basin order. The witness for WDCI indicated that the price (cost) determined under the State program at the location of the partially regulated distributing plant should be equated with the Great Basin zone price in which packaged fluid milk products are distributed, rather than such zone price minus the Great Basin location differential.

The WDCI witness said that the use of location adjustments to determine the obligation of a partially-regulated distributing plant was never intended by the Department and is inconsistent with the treatment afforded other plants regulated by other Federal marketing orders. He said that the proper basis for determining the obligation of a partially-regulated distributing plant is the cost difference established under the terms of the Great Basin order and the cost established by the State government at the plant location. This, he said, is consistent with the decision of the Supreme Court in the Lehigh Valley Farmers Cooperative vs. the Secretary court case.

The spokesman for WDCI on cross-examination indicated that there are times when the California Class I price at Los Angeles is lower than the Great Basin Class I price and this is when the partially-regulated distributing plants would be required to make a compensatory payment. He said that he could not conceive of any circumstances when there could be a pool plant in Los Angeles fully regulated under the Great Basin order with a location adjustment back to Los Angeles that could in any way compete with other plants regulated under the State program.

At the hearing there was no testimony in opposition to the WDCI proposal. Winder Dairy in its brief only indicated that they were opposed to the proposal and that the provision has worked well. In a brief, MVMP and Quality indicated that they supported the WDCI proposal.

The two options that are available to the operator of a partially-regulated distributing plant that is also regulated under a State order in payment of the plant's obligation to the Great Basin pool for sales of fluid milk products in the Great Basin marketing area attempt to equalize the costs of the raw milk utilized in such sales that are incurred by the unregulated handler with the costs incurred by the fully regulated handler. The option of purchasing from any Federal milk order source an amount of milk classified and priced as Class I milk that is equivalent to such operator's fluid milk sales in the marketing area assures that a partially-regulated distributing plant has no competitive advantage over a fully regulated handler.

Under the second option, the operator of the partially regulated distributing plant is required to pay to the producer-settlement fund the difference in the value under the State order and the value under the Great Basin order of the raw milk f.o.b. the plant on the fluid milk products distributed in the Great Basin marketing area by the partially-regulated plant. This option also attempts to assure that the operator of the partially regulated distributing plant pays as much for the plant's raw product as the operator of a distributing plant that is fully regulated by the Great Basin milk order and is located at the site of the partially regulated distributing plant. To accomplish this, it is necessary that the operator of the partially-regulated distributing plant pay to the producer-settlement fund the amount by which the value of the raw product under the State order is less than the value of the raw product under the Great Basin order at the location of the plant. In determining the value of the raw milk under the Great Basin order at the plant's location, it is necessary to look at the value of such milk under the Great Basin order at the central market location that is nearest to the partially regulated distributing plant (Las Vegas or Salt Lake City) and then deduct the location adjustment applicable under the Great Basin order to establish the value of the raw milk at such plant's location.

The proponents who are advocating that a location adjustment not apply in computing the obligation of a partially-regulated distributing plant are, in effect, proposing that one ignore the location of the plant and determine the value of the raw milk at its point of sale in the marketing area.

Under proponent's assessment of what constitutes competitive equity, a handler fully regulated under a Federal milk order who is selling packaged fluid milk in a no-location adjustment zone but whose plant is located in a minus location adjustment zone should have to pay into the producer-settlement fund the difference in zone prices on the volume of milk that is sold in the higher-priced areas. Likewise, a handler fully regulated under a Federal milk order who is selling packaged fluid milk products in another Federal order marketing area in which handlers are required to pay a higher Class I differential on fluid milk sales should have to pay into the producer-settlement fund the difference in Class I differentials on the volume of milk that is sold in the higher-priced zone.

For the reasons previously set forth, the operator of a partially-regulated distributing plant should continue to pay to the producer-settlement fund on the plant's sales of fluid milk products in the Great Basin market the amount by which the value of raw milk under the Great Basin order f.o.b. the plant exceeds the value of the raw milk f.o.b. the plant under the State order. Accordingly, the proposal that location adjustments not be applicable in computing the obligation of a handler operating a partially-regulated distributing plant that is regulated by a State order which provides for marketwide pooling is hereby denied.

5. Application of Location Adjustments in Paying Producers for Milk That Is Diverted

The order should be amended to provide that the weighted average differential payable to a producer shall be adjusted based on the location of the plant to which the milk is delivered but should not be adjusted below the weighted average differential based on the location of the county seat or the county courthouse of the county in which the producer's farm is located.

The order currently provides that the weighted average differential payable to producers shall be adjusted based on the location of the plant to which the milk is diverted.

WDCI proposed that the order be amended to place a floor on the amount of location adjustment to be deducted from the weighted average differential payable to a producer. Under WDCI's proposal, the amount of the location adjustment would be floored by the location of the producer's farm even though a greater location adjustment applies at the location of the plant to which the milk is diverted.

A witness for WDCI said that the expected consolidation of WDCI manufacturing plants from many small and inefficient country plants to a few large volume plants will substantially change the operation of the cooperative in many ways. He said that the pressures of the market will increase transportation costs on some of the milk produced in the outlying areas. Producers, he said may be forced at times to ship their milk to distant plants in order to minimize WDCI losses on the milk.

The spokesman for WDCI said that their proposal would place a maximum location adjustment based on the location of the dairy farm. This proposal, he said, should lessen the need to incur the extra costs of transferring milk through supply plants or transfer facilities. He said that many of WDCI members are located substantial distances from a market and the provision would apply mostly to "distress" milk.

In briefs, Winder Dairy, MVMP and QMP stated that they were opposed to the proposal. Winder Dairy stated only that the present provisions have worked well.

The joint brief filed by MVMP and QMP stated that the WDCI proposal would provide that any producer whose farm is located in a zero location zone could have his milk shipped to the most remote plant and incur no location differential. The brief stated that the proposal would require other cooperatives to subsidize the increased costs of transportation for the cooperative shipping milk in this manner.

Location adjustments are designed primarily to equalize the net return received by a producer who transports milk from the farm to a distributing plant located in the market center or to a distributing plant located between the producer's farm and the market center. Location adjustments, however, are an impediment to the movement of producer milk when it is necessary to transport such milk to a manufacturing plant that is located in the opposite direction of the market-center plants from the farm. In such instance, the producer or the producer's cooperative association incurs the cost of moving the milk from the farm location to the manufacturing plant but also receives a price that is reduced by the amount of the location differential applicable at the manufacturing plant's location.

What WDCI's proposal attempts to accomplish is to limit the costs incurred by the producer (or cooperative association) in shipping milk to a distant manufacturing plant. The producer (or cooperative association) will have to pay the cost of transporting the milk from the farm to the manufacturing plant. under WDCI's proposal, the adjustment to the producer's pay price will be limited to the location adjustment applicable at the farm's location rather than the distant manufacturing plant.

The proposal by WDCI is designed to assist cooperative associations in marketing "distress" milk and is a marketing tool that should be adopted in the Great Basin market. For the most part, producers and cooperative associations will continue to ship milk to local plants whenever possible to obtain the higher pay prices. In the event that there is not a sufficient demand for milk locally, then those producers whose milk must be shipped to a more distant market outlet would be assured by the adoption of WDCI's proposal that their pay price will not be depressed below the pay price that would apply at a plant located in the same county as the individual producer's farm.

The location adjustment structure of the Great Basin order provides for three price zones within the marketing area. A zero location adjustment zone applies to the northern two-thirds of Utah. A minus 25 cent location adjustment is applicable in southern Idaho and northeastern Nevada. A minus 30 cents is applicable in the remainder of the marketing area. Outside the marketing area a location adjustment is applicable at a rate of minus 1.5 cents per hundredweight for each 10 miles of distance from the nearer of Salt Lake City, Utah or Las Vegas, Nevada.

The record reflects that from time to time, WDCI has incurred loses in diverting milk from a producer located in the Meridian area of Idaho to a manufacturing plant in Chehalis, Washington. Also, milk is diverted from producers in the area of Mesquite, Nevada and from a producer in the area of Kingman, Arizona to manufacturing plants in California. This milk is diverted away from the market centers where the milk is pooled and in the case of the Meridian producer, results in a minus location adjustment of approximately $1.50.

WDCI is diverting this milk, is providing an economic service of handling reserve milk supplies (balancing) for the market which benefits all producers associated with the Great Basin order. WDCI incurs significant hauling costs in diverting milk to distant manufacturing outlets for Class III use. No location adjustment applies to the Class III price. Producer milk diverted to nonpool plants should not receive an order pay price that is depressed below the order pay price that would apply at a plant located in the same county as the individual producer's farm.

6. Due Dote for Payment of Handler Obligations to the Producer-Settlement Fund

The order should be amended to provide that a handler's payment to the producer-settlement fund must be received by the market administrator by the 14th day of the month. The order presently provides that if the payment by a handler is postmarked by the 14th day of the month, the payment date has been met. The order should also provide that if the 14th day of the month falls on a Saturday or Sunday or on any Monday that is a national holiday, the monthly payment would have to be received on the next day on which the market administrator's office is open for public business. A similar conforming change should be made in the section of the order dealing with the market administrator's payments to handlers from the producer-settlement fund.

The market administrator testified in support of WDCI's proposal that would require the monthly handler obligation to the producer-settlement fund to be received by the market administrator on or before the second day after the handler has been notified of the handler's obligation, but in any event no later than the 14th day of the month. The witness said that currently, handlers are required to pay the producer-settlement fund on or before the 14th day after the end of the month, but if the payment is in the mail on the 14th, the order requirement has been met. If the 14th falls on a holiday, or a Saturday or Sunday, then handlers may wait until the next business day to mail the payment.

The witness said that it takes at least two days for a payment mailed by a Utah or Idaho handler to reach his office in Phoenix, Arizona. In addition, Arizona banks will not permit the withdrawal against any out-of-state check until a minimum of two-days' deposit has been met. For March 1990 milk, he said, the money paid by handlers to the producer-settlement fund was not available until April 20. However, the order requires his office to make payment on or before the 15th day after the end of the month to those handlers who are due payments out of the producer-settlement fund.

The witness said that the monthly handler obligations to producers and to the producer-settlement fund are computed by the 12th day of the month and that handlers are immediately informed of their obligation to the producer-settlement fund. He said that with the modern way of transmitting payments such as express mail and by wire, the WDCI proposal is not likely to cause any hardship to any handler.

The witness testified that at the present time some handlers are paying their obligation by wire transfer. He said that very month he cannot make timely payments out of the producer-settlement fund because not all the monies received are free to be withdrawn.

The witness said that handlers are notified of their producer-settlement fund obligation between the 9th and the 12th of the month. He testified that his office could compute the handler obligations and notify them by the 10th day of the month 90 percent of the time.

There appears to be no other alternative to requiring that payment to the market administrator must be in the form of spendable funds and must be received by the market administrator by the 14th day of the month. Under the current provisions, the market administrator is required to make payments to cooperatives and certain handlers the day after the payments are due to him from all handlers. Time will not permit the clearance of out-of-state checks through the Phoenix, Arizona, bank prior to the withdrawal of money from the producer-settlement fund on the 15th of the month if such checks are deposited on the 14th day of the month. If a handler insists on making payment by check, such check should be submitted enough in advance of the 14th of the month so that a withdrawal may be made against such check on the 15th of the month. Another alternative that handlers may want to consider is the use of wire transfers for payment of handler obligations.

7. Handler Payments to Cooperative Associations for Plant Milk and Bulk Tank Receipts From Producer-Members

The order should be amended to provide that each handler shall pay a cooperative association for milk received from a pool plant operated by such association or by transfer from such association based on the value of such milk at class prices under the order. The dates for making the partial payment and the final payment should be the 3rd day prior to the last day of the month and the 16th day after the end of the month, respectively.

The order should also provide that such handler shall pay a cooperative association for milk received from its member producers at the producer prices, i.e., the weighted average differential and the butterfat and producer protein prices.

Currently, the order provides that a handler who buys milk from a pool plant operated by a cooperative association or who buys bulk tank milk from members producers of a cooperative association shall make payment for such milk at the rate of payment specified for producer milk.

In paying for bulk tank receipts from a cooperative association, the order should continue to provide for payment at the Class III price (or basic formula price) times 1.2 for milk received from producers during the first 15days of the month. However, payment for plant milk from a cooperative during the first 15 days of the month should be at the Class III price (or basic formula price). In most instances, transfers from the cooperative's pool plant appears to be made for Class III uses. Hence, payment at the Class III prices times 1.2 would represent an overpayment in most instances for milk received during the first 15 days of the month.

The payment procedures adopted herein were proposed by WDCI. The principal change in the payment for milk received from a cooperative association deals with milk received from a pool plant operated by a cooperative association. Payment for such milk should be based on the value at class prices under the order to assure that the cooperative is neither overpaid or underpaid by the handler receiving such milk. As previously noted, transfers from the cooperative's pool plant appear to be made primarily for Class III uses. Hence, payment for such milk at the prices due for producer milk would result in an over-payment to the cooperative association. The payment procedure adopted herein will also assure that cooperatives receive the full value for milk that is utilized in Class I uses.

The current dates for partial and final payment for milk received from a cooperative's pool plant should be advanced by one day in order for cooperatives to make payment to their member producers on the same date that other producers are paid for their milk.

8. Technical Changes in Order Provisions Relative to Component Pricing

(a) Handler protein price. The order should be amended to provide for the computation of a "handler protein price" based upon the protein content of producer milk for the current month. The "handler protein price" would be announced by the 12th day after the end of the month.

The order presently provides for the computation of a "milk protein price" which is based upon the average percentage of protein in all producer milk for the preceding month. This price is announced by the 5th day after the end of each month.

The spokesman for WDCI said the proposed changes to the section of the order dealing with class prices and component prices of the order would fix the price charged handlers for protein in producer milk assigned to Class II and III in a manner that will cause it to be aligned more directly each month with skim milk values reflected in the Minnesota-Wisconsin (M–W) price. This change will mean that the price charged Great Basin handlers for protein will follow along with the costs incurred for the nonfat component of milk by handlers elsewhere throughout much of the nation. He said that the present provisions are deficient in this respect.

The WDCI witness said that at the time component pricing was adopted in this market, the market administrator had to use the average protein test for the prior month in lieu of the current month. He said that the one month lag was not expected to make a great deal of difference in most months. It was expected that the pluses and minuses would cancel out each other with a small degree of error.

The witness for WDCI said that this approach has not worked out as well as assumed. He said that variations in protein tests have averaged out quite well over the years, except for a possible trend upward, but the effect on handler costs for individual months has varied more from the revenue neutral figures than was expected. It is now obvious that the industry underestimated the problem associated with price distortions caused by using the previous month's protein tests. Also, the industry overestimated the need to announce the handler protein price concurrently with butterfat and skim milk prices.

The WDCI witness said that monthly differences in handler costs of plus $100,000 to minus $250,000 in using a protein price based upon the percent of protein content in the prior month's receipts versus the percent of protein content in the current month's receipts are the result of more than one factor. One factor is the seasonal variation and the other is the month-to-month variations in the average protein tests. He said that a second factor is the larger and more frequent fluctuations in the basic milk prices during the past two or three years in comparison to the prices the industry has been accustomed to

receiving in the past decades. He said that the distortion in the cost to Great Basin handlers tends to be cumulative over a period of months because of the seasonal nature of the variation in the protein content of producer milk. Protein tests tend to increase in the fall and decrease in the spring and this means that the use of the previous month's protein tests may increase the handler protein price during the fall months of the year and decrease it in the spring.

The spokesman for WDCI said that the timing of the price announcement is not critical to handlers. He said that WDCI is the handler for a substantial majority of Class II and III milk pooled on the Great Basin order. WDCI will not be seriously inconvenienced if the announcement of the "handler protein price" is not announced until the weighted average differential price has been computed.

The witness for WDCI said that at a prior hearing involving Federal Orders 33, 36, and 49, proponents for component pricing said the Department should announce the protein content in the milk received in the Minnesota-Wisconsin plants that is used in computing the monthly basic formula price. He said that WDCI requests a similar amendment and that this would avoid the need to call a separate hearing in order to make such a procedure effective in the Great Basin order. He said that this would expedite the realization of equity in setting the level of protein prices here based directly on central market values. Also, the protein price could then be announced on the 5th day after the end of the month.

Proponent's arguments for computing the current month protein price and announcing such price on or before the 12th of the month are persuasive. As proponent points out, such procedure will cause the protein price to be more directly aligned with the skim milk values reflected in the Minnesota-Wisconsin price. WDCI's request that the protein price for the Great Basin market be based upon the protein content of the milk received at the plants that are included in determining the Minnesota-Wisconsin price should not be adopted. It appears at this time that the M-W price will be subject to revision in the near future. Accordingly, the use of a protein price based directly upon the Minnesota-Wisconsin price series appears to be premature at this time.

(b) Location and zone differentials. The section of the order dealing with location and zone differentials for producer and nonpool milk should be amended to provide that the weighted average differential at any location shall not be less than zero. Under the provision, as amended, the market administrator in adjusting the weighted average differential price by the amount of the plant location adjustment would not end up with a negative weighted average differential for producers.

WDCI proposed the change to assure that the price to be paid any producer would not be less than the basic formula price for the month.

The proposed change is appropriate and is adopted herein. The basic formula price represents the value of manufacturing grade milk f.o.b. plants in Minnesota and Wisconsin. Grade A milk that is delivered to a pool plant under the Great Basin order and classified as Class III milk is priced to the handler at the Class III price. Accordingly, any producer who delivers milk to a pool plant should not be required to receive any less than the basic formula price (or Class III price) for such milk.

(c) Protein accounting by plant operators. WDCI's proposal to require complete protein accounting in plants operated by fully regulated handlers should not be adopted.

The WDCI witness said that the cooperative's proposal would provide the market with needed additional assurance that the valuable ingredients in producer milk are being measured accurately and that the volume of milk disposed of in fluid milk products by handlers will be fully accounted for.

The spokesman for WDCI spoke at great length on the origin of the present system, the need for improvement in plant accounting and the importance of accounting for concentrated milk items. He said the additional testing necessary under this proposal is nothing more than any prudent plant operator should want to know in any case. He said that there will be no need under this proposal for any additional collection of samples in any plant for which a proper butterfat testing program is in place. In most cases the only additional testing activity will be nothing more than a simple matter of reading and recording protein contents of the samples which are being tested for butterfat content.

At the hearing, witnesses for KDK and Gossner Foods testified in opposition to the proposal. Winder Dairy filed a brief and stated that this proposal will be very detrimental to their ability to remain profitable.

Both witnesses in opposition to this proposal said that they object to the added cost that would occur in testing and accounting for the protein in all receipts and utilizations of milk and milk products.

The Gossner witness said that they cannot extract the protein from receipts of milk and that they assume that the percentage of protein in the bulk milk that they receive from the farm will remain relatively constant and be uniformly distributed throughout the milk receipts. He said that automated in-plant accounting of milk components, especially finished products, is still not economically available to small businesses.

The need for plant accounting for protein as a separate component was not sufficiently demonstrated on this record. As opponents pointed out, handlers have no means of separating protein from milk. As a consequence, the protein content of the finished products is not expected to differ from the protein content of the incoming milk supply.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Great Basin order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended, regulating the handling of milk in the Great Basin marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1139

Milk marketing orders.

PART 1139—[AMENDED]

1. The authority citation for 7 CFR part 1139 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Revise § 1139.7(d) to read as follows:

§ 1139.7 Pool plant.

* * * * *

(d) Any manufacturing plant, or other plant not defined in paragraphs (a), (b), or (c) of this section, located within the marketing area at which milk is received from producers and which is owned and operated by a cooperative association or federation which delivers at least 25 percent of its producer milk (including that in fluid milk products transferred from its own plant pursuant to this paragraph that is not in excess of the amount in producer milk actually received at such plant) to pool distributing plants during the current month or the 12-month period ending with the current month, if the cooperative association or federation requests pool plant status for such plant in writing before the first day of any month for which such status is to be effective.

* * * * *

3. Revise § 1139.10(b)(1)(ii) to read as follows:

§ 1139.10 Producer-handler.

* * * * *

(b) * * *

(1) * * *

(ii) From pool plants by transfer or diversion, or from other order plants, excluding flavored and cultured fluid milk products in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month except, such monthly limit shall not apply during the following months of December through August to a producer-handler who received an amount excluding flavored and cultured fluid milk products not in excess of the larger of 15,000 pounds or 5 percent of such person's Class I disposition during the previous period of September through November.

* * * * *

4. § 1139.13, paragraphs (d)(1) and (2) are revised to read as follows:

§ 1139.13 Producer milk.

* * * * *

(d) * * *

(1) The weighted average differential applicable to such milk shall be adjusted based on the location of the plant to which delivered, but it shall not be adjusted to a lower figure than is applicable at the location determined pursuant to § 1139.52 (a) or (b) based on the location of the county seat or the county courthouse of the county in which such producer's farm is located.

(2) A cooperative association or federation may divert for its account the milk of any of its producers from whom at least one day's milk production is received during the month at a pool plant. The total quantity of milk diverted by a cooperative association during any month may not exceed 75 percent of the producer milk that the cooperative association causes to be delivered to or diverted from pool plants during the month. Two or more cooperative associations may have their allowable diversions computed on the basis of their combined deliveries of the producer milk which the cooperative associations cause to be delivered to pool plants or diverted pursuant to this section if each association has filed a request in writing with the market administrator before the first day of the month the agreement is effective. This request shall specify the basis for assigning over-diverted milk to the producer deliveries of each cooperative association according to a method approved by the market administrator.

5. Revise § 1139.50 (d), (e) and (f) to read as follows:

§ 1139.50 Class prices and component prices.

* * * * *

(d) The skim milk price per hundredweight shall be the basic formula price for the month less an amount computed by multiplying the butterfat differential computed pursuant to § 1139.51(a) by 35.

(e) The butterfat price per pound shall be the total of:

(1) The skim milk value per hundredweight for the month, computed pursuant to paragraph (d) of this section, divided by 100; and

(2) the butterfat differential for the month, computed pursuant to § 1139.51(a) multiplied by 10.

(f) Handler protein price. The handler protein price shall be computed by multiplying the total hundredweight of skim milk in producer milk received during the month by the skim milk price, and dividing the value so arrived at by the total pounds of protein in such milk.

6. Revise § 1139.53 to read as follows:

§ 1139.53 Announcement of class and component prices.

The market administrator shall announce publicly on or before:

(a) The 5th day of each month, the Class I price for the following month;

(b) The 15th day of each month, the Class II price for the following month;

(c) The 5th day after the end of each month, the Class III price, and the prices for skim milk and butterfat computed pursuant to § 1139.50(d) and (e) respectively; and

(d) The 12th day after the end of each month the handler protein price computed pursuant to § 1139.50(f) for such month.

7. Amend § 1139.71 by revising paragraph (a) introductory text and adding a new paragraph (c) to read as follows:

§ 1139.71 Payments to the producer-settlement fund.

(a) Each handler whose obligation computed pursuant to paragraph (a)(1) of this section exceeds such handler's credit computed pursuant to paragraph (a)(2) of this section shall pay to the market administrator on or before the second day after the handler has been notified of its obligation, but no later than the 14th of the month, an amount equal thereto:

* * * * *

(c) The following conditions shall apply with respect to the payment prescribed in paragraph (a) of this section:

(1) Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator's office, or deposited into the market administrator's bank account; and

(2) If the date by which the payment must be received by the market administrator falls on a Saturday or Sunday or on any Monday that is a national holiday, payments shall not be due until the next day on which the market administrator's office is open for public business.

8. Revise § 1139.72 to read as follows:

§ 1139.72 Payments from the producer-settlement fund.

On or before the 15th day after the end of the month, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1139.71(a)(2) exceeds the amount computed pursuant to § 1139.71(a)(1). If the date by which such payments are to be made falls on a Saturday or Sunday or any Monday that is a national holiday, such payments need not be made until the next day on which the market administrator's office is open for public business. If at such time the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete such payments as soon as funds are available.

9. In § 1139.74, revise paragraph (c) introductory text and paragraph (e) to read as follows:

§ 1139.74 Payments to producers and to cooperative associations.

* * * * *

(c) Payment shall be made in the manner set forth in paragraphs (c)(1) and (2) of this section to a cooperative association for milk received from such association pursuant to § 1139.13(a)(2) or from its member producers pursuant to § 1139.13(a)(1) and notifies the handler and the market administrator in writing of its desire to make such collection:

* * * * *

(e) Each handler shall pay a cooperative association for milk received from a pool plant operated by such association or by transfer from such association on the basis of the classification thereof assigned by the market administrator as follows:

(1) On or before the 3rd day prior to the last day of the month for milk received during the first 15 days of the month at the Class III price (or basic formula price) for the previous month; and

(2) On or before the 16th day after the end of the month for milk received during the month at the following rates:

(i) The butterfat price per pound for the butterfat contained in such milk, plus

(ii) The milk protein price per pound for the protein contained in such milk; plus

(iii) The difference between the Class I adjusted pursuant to § 1139.52 and Class III prices multiplied by the hundredweight of such milk classified as Class I; plus

(iv) The difference between the Class II and Class III prices multiplied by the hundredweight of such milk classified as Class II; plus

(v) The amount assessed by the market administrator with respect to such milk pursuant to 1139.85; less

(vi) Payments made pursuant to paragraph (e)(1) of this section.

10. Revise 1139.75(a) to read as follows:

§ 1139.75 Location and zone differentials for producers and nonpool milk.

(a) In making payments computed pursuant to § 1139.72 and in crediting handlers for payment due pursuant to § 1139.71(a)(2)(i) the market administrator shall adjust the weighted average differential price by an amount equal to the plant location adjustment specified in § 1139.52 applicable at the plant where the milk was first received from producers, except that the weighted average differential applicable at any location shall not be less than zero.

* * * * *

Dated: August 24, 1992.

Kenneth C. Clayton,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 92-20665 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92-ASO-10]

Proposed Revision of Transition Area, Wilkesboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Wilkesboro, NC Transition Area. The existing 700-foot transition area is centered on the Wilkes County Airport and overlies the Swan Creek Airport located approximately 11 miles east. The airport manager of Swan Creek Airport has requested the airspace in vicinity of the airport be excluded from the transition area since it unnecessarily restricts aircraft in the traffic pattern and local training flights. This action proposes to exclude the airspace within a 2.5-mile radius of Swan Creek Airport from the transition area.

DATES: Comments must be received on or before October 13, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92-ASO-10, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Wilkesboro, NC Transition Area. This proposed action would exclude that airspace within a 2.5-mile radius of the Swan Creek Airport from the existing 700-foot transition area. This proposed action is taken at the request of the Swan Creek Airport Manager in order to minimize impact on local aircraft operations and aircraft operating in the traffic pattern. Transition areas are published in Section 71.181 of Handbook 7400.7 effective November 1, 1992, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition area.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

§ 71.181 Designation

* * * * *

ASO NC TA Wilkesboro, NC [Revised]
Wilkesboro, Wilkes County Airport, NC (lat. 36°13'21" N. long. 81°05'56" W)
Swan Creek Airport (lat. 36°12'08" N, long. 80°52'06" W)
Wilki NDB (lat. 36°06'46" N, long. 81°05'54' W)

The airspace extending upward from 700 feet above the surface within an 11-mile radius of Wilkes County Airport and within 3 miles each side of the Runway 1 localizer course, extending from the 11-mile radius to 8 miles south of the Wilki NDB; excluding that airspace within the West Jefferson, NC, and Elkin, NC, Transition Areas, and that airspace within a 2.5-mile radius of Swan Creek Airport.

* * * * *

Issued in East Point, Georgia, on August 18, 1992.

James G. Walters,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 92-20717 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 92-ASO-11]

Proposed Revision of Transition Area, Elkin, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Elkin, NC Transition Area. The existing 700-foot transition area is centered on the Elkin Municipal Airport and partially overlies the Swan Creek Airport located approximately 6.1 miles south. The airport manager of Swan Creek Airport has requested the airspace in vicinity of the airport be excluded from the transition area since it unnecessarily restricts aircraft in the traffic pattern and local training flights. This action proposes to exclude the airspace within a 2.5-mile radius to Swan Creek Airport from the transition area.

DATES: Comments must be received on or before: October 23, 1992.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 92-ASO-11, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344; telephone (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92-ASO-11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530),

Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Elkin, NC Transition Area. This proposed action would exclude that airspace within a 2.5-mile radius of the Swan Creek Airport from the existing 700-foot transition area. This proposed action is taken at the request of the Swan Creek Airport Manager in order to minimize impact on local aircraft operations and aircraft operating in the traffic pattern. Transition areas are published in § 71.181 of Handbook 7400.7 effective November 1, 1991, which is incorporated by reference in 14 CFR 71.1. The transition area listed in this document would be published subsequently in the Handbook.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Transition areas.

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.7, Compilation of Regulations, published April 30, 1991, and effective November 1, 1991, is amended as follows:

§ 71.181 Designation

* * * * *

Elkin NC TA Elkin, NC [Revised]

ASO NC TA Elkin, NC
Elkin Municipal Airport, NC (lat. 36°16'48"N, long. 80°47'11"W)
Swan Creek Airport (lat. 36°12'08"N, long. 80°52'06"W)
Zephyr NDB (lat. 36°18'47"N, long. 80°43'25"W)

That airspace extending upward from 700 feet above surface within a 6.3-mile radius of Elkin Municipal Airport and within 2.7 miles each side of the 057° bearing from Zephyr NDB, extending from the 6.3-mile radius to 7 miles northeast of the NDB, excluding that airspace within a 2.5-mile radius of Swan Creek Airport.

* * * * *

Issued in East Point, Georgia, on August 21, 1992.

James G. Walters,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 92-20716 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

Receipt of Domestic Interested Party Petition Concerning Classification of Load Roller Products for Fork Lift Trucks

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of receipt of domestic interested party petition; solicitation of comments.

SUMMARY: Customs has received a petition submitted on behalf of a domestic interested party concerning the classification of certain load roller products for fork lift trucks. Customs has held that the products were classified as parts of fork lift trucks subject to a free rate of duty. The petitioner contends that the products should be classified as ball bearings subject to a rate of duty of 11 per cent, *ad valorem*. This document invites comments concerning the correctness of the determination that the products are classified as parts of fork lift trucks.

DATES: Comments must be received on or before September 29, 1992.

ADDRESSES: Comments (preferably in triplicate) may be addressed to and inspected at the Regulations and Disclosure Law Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., room 2119, Washington, DC 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: Christopher M. Schmitt, Metals and Machinery Classification Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-2938).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), a petition has been filed by a domestic interested party concerning the classification of certain load roller products for fork lift trucks in subheading 8431.20.00, HTSUS, subject to a Column 1 free rate of duty.

In HQ 087775 (January 17, 1991), Customs held that certain load roller products for fork lift trucks were classified as parts of fork lift trucks in subheading 8431.20.00, HTSUS, subject to a Column 1 free rate of duty. HQ 088888 (March 25, 1992), affirmed HQ 087775. The products were described in HQ 088888 as steel tires into which assemblies containing rolling elements are incorporated. The tires are designed to turn in the channels of fork lift mast uprights. The products are manufactured in two configurations. The first configuration is comprised of a separate, reinforced tire into which inner and outer rings containing rolling elements are installed. The steel tire of the second configuration is manufactured integrally with the outer ring section it incorporates.

In HQ 088888, Customs noted that the products are referred to by many names including "load rollers", "wheels", "bearings", "guide wheels", "mast guide bearings" and "rollers". Customs found that the products are similar in form and function to certain lifting and handling equipment components which are not described as ball bearings. Customs also noted that the products may incorporate bearing components, but as a whole the products are not mere ball bearings.

The petitioner contends that the products are classified as ball bearings in subheading 8482.10.50, HTSUS, subject to a Column 1 rate of duty of 11 per cent, *ad valorem*. The petitioner's arguments include that the products are ball bearings of special configuration described by Heading 8482, that Customs placed undue emphasis on the outer tire component of the products, and that the products are excluded from Heading 8431 by HTSUS Chapter XVI Note 2.

Comments

Pursuant to § 175.21(a), Customs Regulations (19 CFR 175.21(a)), before making a determination on this matter, Customs invites written comments from interested parties on this issue. The petition of the domestic interested party, as well as all comments received in response to this notice, will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch, room 2119, Customs Headquarters, 1301 Constitution Ave., NW., Washington, DC 20229.

Authority

This notice is published in accordance with § 175.21(a), Customs Regulations (19 CFR 175.21(a)).

Drafting Information

The principal author of this document was Christopher M. Schmitt, Metals and Machinery Classification Branch, U.S. Customs Service. Personnel from other Customs offices participated in its development.

Michael H. Lane,

Acting Commissioner of Customs.

Dated: August 13, 1992.

Approved:

Peter K. Nunez,

Assistant Secretary of the Treasury.

[FR Doc. 92-20664 Filed 8-27-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 51

[Public Notice 1682]

Passports

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations at 22 CFR part 51, subpart B in two different respects. First, it generally narrows the categories of persons who are eligible to apply for passports without personal appearance by raising the generally applicable age limit to 18. The amendment is proposed because we have found that the generally applicable age limit of 16 introduced in 1986 has caused some inefficiencies and confusion in service to the public. Second, however, the proposed rule will in certain circumstances permit use of mail-in procedures for persons under the age of 18 residing abroad.

DATES: Comments must be submitted on or before September 28, 1992.

ADDRESSES: Mail public comments to William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, Passport Office, 1425 K Street NW., room 300, Washington, DC 20522-1705.

FOR FURTHER INFORMATION CONTACT: William B. Wharton, Director, Office of Citizenship Appeals and Legal Assistance, telephone (202) 326-6172.

SUPPLEMENTARY INFORMATION: Until 1986, paragraphs (c) and (d) of 22 CFR 51.21 specified that personal appearance was not required when applying for a renewal of a U.S. passport if: (i) The most recently issued passport was issued when the citizen was 18 years of age or older; (ii) the renewal application was made within 8 years from the date on which the previous passport was issued; and, (iii) the citizen presented that passport with his or her application for a new passport.

Present regulations allow a U.S. citizen to apply for a renewal of a U.S. passport without appearing in person before a person authorized to accept such applications if: (i) The most recent passport was issued when the citizen was 16 years of age or older; (ii) the application is made within 12 years from the date on which the previous passport was issued; and, (iii) the citizen presents that passport with his or her application for a new passport. The revised regulations will partially reinstate the pre-1986 rules, allowing a person who has previously been issued a passport to use the mail-in procedure within 12 years of the date on which the passport was issued if the expired passport was issued when the applicant was 18 years of age or older.

This change is proposed because: (i) The Department did not experience significant use of the mail-in procedures by individuals whose previous passports were issued when they were between 16 and 18 years of age; (ii) the Department did, however, experience an increase in inefficiency and administrative costs when processing the forms, in that use of the form by those between the ages of 16 and 18 introduces additional decisions about fees and the passport validity period (which is longer for persons over 18 than for persons 16-18) resulting in increased use of personnel resources to determine eligibility; and, (iii) because age 18 is the age of majority, the Department believes that use of 18 is more sensible. Under limited conditions, an exception to the requirement of personal appearance by minors is provided for an application made abroad by a person under 18 years of age. The proposed regulation would establish the Secretary's authority to select certain foreign service posts to waive entirely the requirement for personal appearance of minors on a carefully controlled individual basis. This waiver is deemed necessary to enhance consular efficiency at those posts.

List of Subjects in 22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and visas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 22 CFR part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 22 U.S.C. 211a, as amended, 22 U.S.C. 2658, 3926; sec. 122(d)(3), Pub. L. 98-164, 97 Stat. 1017; E.O. 12295, 36 FR 10603; 3 CFR 1966-70 Comp. p. 507; Pub. L. 100-690; sec. 129, Pub. L. 102-138, 105 Stat. 661; sec. 503, Pub. L. 102-140, 105 Stat. 820, unless otherwise noted.

2. Section 51.21 is amended by revising paragraphs (c) introductory text, (c)(1), (d)(1) and paragraph (d)(4) is added to read as follows:

§ 51.21 Execution of passport application.

* * * * *

(c) Persons in the United States who have previously been issued a full validity passport. A person in the United States who has been issued a passport in his or her own name may obtain a new passport by filling out and mailing a specially prescribed application together with his or her previous passport, two recent photographs, and the established fee to the nearest U.S. passport agency, provided:

(1) The most recently issued previous passport was issued when the applicant was 18 years of age or older;

* * * * *

(d) * * *

(1) The most recently issued passport was issued when the applicant was 18 years of age or older;

* * * * *

(4) In a Consular district specifically authorized by the Secretary to waive personal appearance of minors in accordance with this subsection, a U.S. consular officer may waive the age requirement established for use of the

mail application, where the consular officer determines that:

(i) the minor and, if applicable, the U.S. citizen parent(s) or legal guardian are registered in that consular district;

(ii) the minor is not subject to the provisions of sections 51.27 (c) or (d);

(iii) the waiver of the age requirement is otherwise in the interest of consular efficiency; and

(iv) the waiver will not otherwise compromise the integrity of the passport application process.

Dated: August 11, 1992.

For the Secretary of State.

James L. Ward,

Acting Assistant Secretary, Bureau of Consular Affairs.

[FR Doc. 92-20520 Filed 8-27-92; 8:45 am]

BILLING CODE 4710-06-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket RM91-1]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Postal Rate Commission is proposing a new subpart I of its rules of practice, to implement a four-year strategic rate cycle approach to recommending changes in postal rates and fees under 39 U.S.C. ch. 36. The new rate-case format would facilitate rates keyed to long-range plans of the Postal Service, provide smaller, albeit more frequent rate changes, and would make possible a new rate format ("band rates") for categories of mail designated as "competitive," allowing limited price changes without further Commission action when needed to preserve net revenue in the face of changes in the competitive situation. The proposed rules also incorporate improvements in periodic data reporting by the Postal Service.

DATES: Comments responding to this document must be submitted on or before October 13, 1992.

ADDRESSES: Comments and correspondence should be sent to Charles L. Clapp, Secretary of the commission, Suite 300, 1333 H Street, NW., Washington, DC 20268-0001 (telephone: (202) 789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: By Order No. 926, June 2, 1992, the Commission invited preliminary comments on two aspects of Postal Ratemaking in a Time of Change, the report of the Joint Task Force on Postal Ratemaking: the four-year strategic rate cycle and the concept of band rates for certain categories of mail facing competition. A conference was held on June 12, 1992, at which interested parties presented views orally; at the request of several participants the date for submission of written preliminary comments was changed from June 15 to June 24, 1992. Twenty-three comments were filed.

The Commission has been greatly assisted by both the conference presentations and the written submissions. Despite the tight schedule on which we asked participants to present their views, the comments have for the most part been candid, detailed, and specific in identifying and describing both the features the commenters approve and those to which they object. Their assistance has made it a great deal easier to isolate the major themes that seem likely to shape the dialogue during this phase of Docket RM91-1 and to draft the present proposed rules with those themes in mind.

Four-Year Strategic Rate Cycle

The relationship of the four-year strategic rate cycle to the problem of Postal Service cost control is one important concern emerging from the comments. It is shared by commenters who approve of the four-year cycle and commenters who do not: the former warn that even though superior in concept it will not justify the hopes placed in it unless it leads to greater accountability for cost incurrence, and the latter reject it because it contains no explicit incentives (e.g., indexation) to control costs. Several comments make the related argument that the four-year cycle should reduce or even eliminate the need for a contingency provision, and is promising for that reason.

Of the individual features of the four-year cycle proposal, the midcycle case has drawn the most comment. Discussion has focused on its scope and the nature of the rate adjustments that would be made. The comments are divided on the first issue: some commenters argue that as proposed by the Joint Task Force it covers too little to yield a satisfactory result, while others warn that if it is allowed to expand it will become an additional omnibus case and create a more costly and unwieldy process than we have now. In particular, comments have raised issues regarding how far we will go in reviewing attributable-cost changes and the related question of institutional-cost contribution.

We believe the realistic choices—given the nature and purpose of the midcycle case—are (i) to treat it as a "pure" revenue requirement adjustment, in which the earlier-projected rates are moved up or down as a unit in the interest of ultimate breakeven, and (ii) to move one step further, recognizing experienced attributable costs in the projection of such costs (calculated as they were in the initial omnibus case), but maintaining the existing profile of institutional-cost contributions (i.e., the existing markup indices). To make the midcycle case more inclusive may seem—as several commenters have observed—to endanger one of its major purposes: Simplification and expedition. Alternative (i) above would produce the simplest type of midcycle case achievable. However, while it would promote one key policy of the Postal Reorganization Act, breakeven operation, we believe it unduly neglects another: assurance against cross-subsidy. The program would be troublesome if there were disproportionate changes in the attributable cost of one or a few classes.[1] We are proposing a rule reflecting alternative (ii) because we are not prepared, when we are making a recommended rate decision under section 3624 of the Act, to risk including in it below-cost rates.

We have considered and rejected the possibility of expanding the midcycle agenda still further, in order to accommodate arguments that, for example, a sharply increased attributable cost level demands a moderation of the markup for reasons of equity or avoidance of undue impact. While we recognize that such arguments might be responsibly made, it does not follow that the limited-purpose midcycle case is the appropriate forum. As the Task Force report points out (page 37), changes of this kind "could conceivably undermine the pattern set in the omnibus case * * *. A responsive rate process needs to be flexible enough to adapt." For that reason, the Task Force recommended recognition of, and special procedures for, limited-scope rate cases filed by the Service during the rate cycle but separately from the midcycle proceeding. We are inclined to agree, and to add to the Task Force's expressed reasons the need to keep the midcycle case suitably limited and expeditious.

[1] If all such costs rose or fell in an equal proportion, alternative (i) would evidently be an adequate response.

Testimony by a Policy Witness

Another controversial suggestion has been the policy witness mechanism—particularly the Task Force's proposal for limited questioning. Some commenters objected strenuously, on due process grounds, to the possibility of untested, or insufficiently tested, evidence finding its way into the record.

We have taken these diverse comments into account in preparing our proposed rules defining the four-year strategic rate cycle. In our view, that mechanism cannot be expected to do more than create the climate for improved control of Postal Service costs; but this it can do, and we expect that it will. Current procedures provide no detailed benchmark other than the test year for evaluation of performance during the life of a rate schedule; and, because it is a somewhat specialized and even artificial rate-case mechanism, even the test year is not as much used for this purpose as it might be. We believe that a rate case not only providing data for the entire multi-year life of the rates but also explicitly tied to the Service's operating, investment, financial, and other plans will be much more satisfactory in this respect. For that reason, we have drafted proposed rules that do not merely require four years of estimated data, but also:

1. Call for filing of "such officially adopted or approved documents describing the Postal Service's financial, operational, investment, and other relevant plans for the period covered by the request (or any part of such period), as will materially aid in the understanding of such plans, of the request, or of the relationship between the two" [see proposed § 3001.124(p)(ii)]; and

2. Provide for the appearance of a policy witness to clarify the relation of these plans to the matters presented in the rate request [see proposed § 3001.123(b)].

We agree in large measure with the warnings of some commenters that insulating a policy witness from examination is impermissible, at least if the utterances of the witness are thought of as possibly grounding findings of fact. Our proceedings are subject to 5 U.S.C. 556(d), which confers the right "to conduct such cross-examination as may be required for a full and true disclosure of the facts." We also find considerable merit, however, in the Task Force's suggestion that the policy witness would for the most part offer clarification of policy matters whose factual aspects would be subject to on-the-record testing via the appearance of other witnesses. Reconciling the requirement of cross-examination with the explanatory purpose of the presentation seems to require making it clear that the policy witness's presentation, to the extent not subject to section 556(d) cross-examination, is not a foundation for findings of fact. Proposed § 3001.30(i) will help achieve this clarification. While we naturally hope for a comprehensive "fit" between the policy witness' presentation and the testimony forming the Service's regular direct case, we recognize that some issues raised by the former may require additional testimony from others before they are ripe for decision. We have provided for this eventuality in our proposed new § 3001.30(i).

The question of how far the Commission could change its rate-case processes to bring about stricter cost control is hardly one that can be settled in this rulemaking. As one commenter, speaking from a position of critical support for many of the Task Force's suggestions, remarked:

> Unfortunately, in our view the principal defect in the ratemaking mechanism is beyond the power of this Task Force or the PRC to change. That defect is simply that there is no device by which the Commission can design rate recommendations that will create the incentive for the Postal Service to operate more efficiently * * *.

We would agree that we cannot, by rulemaking, amend the breakeven requirement of 39 U.S.C. 3621 or reapportion the responsibility for financial management and investment decisions. However, given that these decisions, and the monitoring of their implementation in the field, are postal management's responsibility, we believe we can eliminate certain disincentives to sound, economical decisionmaking and effective implementation of the decisions made. The indeterminate nature of the present rate cycle, and the tenuity of the connections between the Service's actual plans and results and the test year data we analyze in a rate case, can be corrected by an explicitly plan-linked rate change request tied to an equally explicit cycle of years. If it is clear to all concerned—postal managers and employees, mailers, and outside observers—that by filing a rate case the Service has committed itself to achieving certain planned results and has suggested specific future rate levels tied to that plan, there will be an incentive to achieve the plan which is largely lacking in today's ratemaking practice.

Test Periods in Midcycle Cases

The main underlying tenet of the four-year rate cycle proposal for improving postal ratemaking is that establishing a general schedule for smaller and more predictable albeit more frequent rate adjustments will be in the best interests of both the Postal Service and its customers. It contemplates a schedule which involves setting rates which are identified initially as likely to be in effect for two years. Under this plan, there would be an omnibus rate case every fourth year, and a mid-cycle case half way through each four-year period, resulting in rate recommendations at approximately the same time every other year. Additionally, the task force contemplated that the Postal Service might seek authority to adjust certain rates annually; that is, to request two annual increases in omnibus or midcycle filings.

The advantages to mailers of such a program include both improved rate predictability, and more even and easily absorbable rate increases. The Postal Service will benefit from having increased rate flexibility, especially in areas where its services face direct competition that may endanger their contribution to institutional costs. These rules provide the Postal Service with the ability to make short-term, limited rate adjustments for its competitive services. This new authority is permissible since the fact that rates in these areas will be reviewed at regular intervals in formal public rate proceedings provides adequate safeguards to both mailers and competitors. Finally, both the Postal Service and mailers should benefit from a more efficient and less expensive rate setting process.

On the other hand, there are certain aspects of the four-year rate cycle approach which will tend to limit the Postal Service's flexibility. The Postal Service, or more precisely its Board of Governors, may see as an important problem the reduction in its currently unfettered authority to initiate rate requests at times of its choosing. The statute clearly vests the Board with exclusive discretion as to when to file rate cases and when to implement rate changes. Nothing in the Commission's rulemaking authority can limit the Board's prerogatives in this area; and the Commission has no intention of acting, or appearing to act, in any way which might be viewed as encroaching on those prerogatives in the way it goes forward with this rulemaking docket. Nonetheless, the four-year rate cycle does imply a regularity somewhat at odds with the Board's present modes of exercising its discretion.

We are, on the other hand, aware that the Board does not exercise its discretion arbitrarily or in random fashion. The Postal Service operates

according to certain long-range plans and policies which contemplate at least an approximate schedule for rate proceedings. One of the key features of the four-year rate cycle is the integration of such long-range plans into the ratemaking process itself. This is the reason for including in proposed subpart I explicit provision for filing of plan documents and presentation of a "policy witness." Thus Postal Service discretion concerning the timing of section 3622 cases becomes a known rather than an imponderable factor in the case.

This rulemaking is proceeding in developing rules implementing a four-year rate cycle approach in recognition of the fact that the unanimous task force recommendations were analyzed and then supported by the two former Governors who sat on the Task Force. The current Board of Governors has also expressed support for the goals of this initiative. Whether they will view the four-year rate cycle as an improvement in postal ratemaking which warrants their agreement to regularize rate filings remains to be seen. Certainly this concept can not be effectuated without the Board's cooperation. The proposed rules published in this notice will enable the Board and all other interested parties to understand how the four-year rate cycle might work, and to engage in a dialogue on whether this concept is likely to improve the ratemaking process.

The Commission is publishing these rules in the form of a new subpart I of the Rules of Practice and Procedure. These rules would exist in addition to current subpart B—Rules Applicable to Requests for Changes in Rates or Fees, which need not be repealed, since it is possible that the Postal Service might choose not to submit a Request pursuant to subpart I.

The fact that these rules contemplate rate adjustments on a more regular schedule does not mean that the Commission is unaware that the Board of Governors must react to actual circumstances. It is obvious that unusual events might occur which would require the Board to move forward or delay a request for an omnibus case, or an implementation date for rate changes after they have been recommended by the Commission. Thus, they might reasonably decide not to implement a major rate change while the Postal Service is operating at better than break even levels. If operating results are better than projected during the initial years following an omnibus case, the Board of Governors might be able to delay the mid-cycle case; and if results continue better than expected the mid-cycle rates also could remain in effect for longer than two years.

Also, the inclusion in this Notice of proposed rules for limited scope rate cases assumes an occasional request outside the regular four-year rate cycle schedule. But the establishment of a general schedule for rate requests and rate changes implies a willingness by the Board to circumscribe the exercise of its authority to schedule requests and implementation dates for new rates.

If, notwithstanding a lack of adequate justification for the change in plans, the Board were to decide to defer the implementation of rates recommended in a mid-cycle case so that large deficits were incurred, and subsequent increases would have to be so large as to risk significant mailer dislocations, much of the expected benefits to mailers from the four-year rate cycle would be lost. Similarly, a delay in requesting a mid-cycle rate case might undermine financial improvements expected to result from shrinking and eventually eliminating the outstanding balance of prior years' losses.

Therefore, when the Board of Governors authorizes the Postal Service to file a request for a recommended omnibus decision under subpart I, it would be expected to affirm its commitment to facilitating the swift, reliable adjustments contemplated in mid-cycle cases. Recognition could be expressed in many different ways, including amendments to bylaws, a formal resolution, or a separate statement included with the request. If the Board of Governors is unwilling to contemplate expressing its intention to follow the contemplated, regular cycle of rate adjustments in this way, the impact of that uncertainty on mailers and other interested participants should be addressed in this rulemaking.

Once rates have been developed in the context of a four year rate cycle schedule, rate adjustments would be expected to come generally at regular intervals; and participants, including the Postal Service, will be better able to develop budgets and program their allocation of resources necessary for conducting rate cases. The four-year rate cycle is not directly modeled on the practice of some other ratemaking administrative agency, and the Postal Service's experience in presenting requests under this program should be quite instructive. The Commission intends to review and revise these rules after the Postal Service and participants have had experience in litigating actual four-year rate cycle proceedings, so that these expected benefits can be fully realized.

A potential difficulty in actually implementing a four-year rate cycle may arise from proposed rule 121(b)(3)(vi), which indicates that the base period for projections in a mid-cycle case should be an entire audited fiscal year during which the rates established in the omnibus rate case have been in effect. The Commission received several comments emphasizing the desirability of basing mid-cycle rates on actual operating experience, and projections of costs, volumes, and revenues will be most accurate if they begin with audited data reflecting recent experience when existing rates are in effect. However, this circumstance will only be feasible if mid-cycle rate cases are filed some period after the close of a fiscal year.

For example, if a mid-cycle case is filed in March or April, with the expectation that mid-cycle rates will be implemented in July, costs, volumes, and revenues from the preceding fiscal year will be readily available. Any filing made after the middle of November should be able to reflect actual experience in the preceding fiscal year, subject to a limited amount of subsequent audit or other adjustments. While the Board of Governors is free to implement recommended rates at any time, it is widely believed that increasing rates in the holiday season (October 1–January 1) would cause a strongly negative public reaction, so the likelihood of a mid-cycle filing in June, July, or August seems slight. Thus, for practical purposes, this rule may be troublesome only should the Board determine to file a rate request in early autumn.

The preference for an audited fiscal year base period is not an absolute prerequisite, since requests for waivers are permitted. However, projections for future fiscal years are subject to other considerations. They are beneficial because they can be compared with actual experience—also reported in fiscal year terms—quite easily, enabling the Postal Service and the Commission to identify and correct faulty estimating techniques. Waiving the rules calling for fiscal year projections would likely occur only when circumstances made it necessary for preserving the benefits of the four-year strategic rate cycle. In establishing effective dates for rates recommended in omnibus cases under these rules, some consideration should be given to the effect of implementation dates on the ability to accurately project costs and revenues in a request for a recommended decision on mid-cycle rate adjustments. The Postal Service may wish to consider ways it can, for the most part, assure that its requests

are timed to reflect reliable cost, volume and revenue projections.

In comments on this notice, participants should address the impact of the timing of rate changes on the availability of reliable revenue, volume, and cost projections. One area which the Postal Service could usefully explore and discuss in its comments on this notice would be the ease or difficulty of adjusting current Postal Service data collection systems so that reliable projections of costs, revenues, and volumes could be developed assuming a broad variety of filing dates.

Pursuant to § 3001.102, the Postal Service currently provides the public with information on its volumes, revenues, and costs which are developed from several different data collection systems. In particular, the Postal Service currently produces systemwide cost data by class and subclass only in its annual CRA Report. It may be possible to alter some data analysis practices in a way which will facilitate hybrid year projections in rate cases. Information on whether such changes are feasible, and the time and money required to implement such changes, would provide useful context for comments on the reliability of using currently available data to develop hybrid year projections.

Band Rates

Some commenters suggested that the complexity of the issues involved implied that we should postpone consideration of the band rate mechanism for competitive categories. We agree that the issues (or at least the legal issues) are more novel, and seem more difficult to resolve, than those implicit in the four-year rate cycle. However, we do not believe we should at this early stage abandon the effort to develop a workable rule. In seeking a design one, we have examined carefully the comments arguing that bond rates are a statutory impossibility.

Subject to the further comments we expect to receive, we are inclined to believe that if a recommended band meets every material legal requirement for being a *rate*, many of the objections would be overcome. The purely legal objection to the proposal is, in summary, that it would allow the Postal Service to "change rates" unilaterally. Such unilateral changes would appear foreclosed by the language of *United Parcel Service, Inc.* v. *U.S. Postal Service*, 455 F. Supp. 857 (E.D. Pa. 1978), *affirmed*, 604 F.2d 1370 (3d Cir. 1979), *cert. denied*, 446 U.S. 9578 (1980).[2] On the other hand, if by selecting a different value within the band the Postal Service were merely applying a rate already recommended and accepted by the Governors (i.e., the band as a whole), there would be no unilateral change in the UPS sense.

For this to be the case, of course, it would be necessary that both extremes of the band, as well as the "baseline" level [3] on which volume, cost, and revenue calculations were made in the omnibus case, would have to be evaluated for compliance with the statute. If, for example, the Commission had not made the requisite findings with respect to the lower limit of a band, it could be argued that in moving toward that limit the Service was effectuating prices that the Commission had not evaluated under the standards of the Act. It is, in our view, of the highest importance to recognize that the reason for expediting still further [4] the process of responding to competitive price changes is to preserve as far as possible the ability of a competitive category to make its appropriate contribution to institutional costs.[5] As has been pointed out in comments, the Commission is responsible for recommending rates to produce a contribution satisfying the various (and sometimes conflicting) statutory criteria. There are several reasons why this contribution might not be achieved in actual practice. Relevant here is the possibility that competition may reduce volume (with the same result). To the extent that expeditious price changes may reduce net revenue loss from this cause, they should help to reduce the shifting of institutional cost burdens to noncompetitive categories. As long as we keep maintenance of the established contribution to institutional costs steadily in view as our essential theoretical foundation (as we expect the Service to do in practice), we believe rules can be developed which will avoid the risk of predation, exploitation of monopoly customers, and evasion of the statutory requirements. To help assure this result, our proposed rules on this subject include not only provisions of the normal kind but also a Statement of General Policy explaining the objects of the procedure, and the way in which we would expect to administer that procedure.

Data Reporting Requirements

Tying section 3622 rate cases to an explicit four-year plan implies a special need for easy, unambiguous comparisons between the rate case decisions and the operating results subsequently registered by the Service. For this reason, we do not believe that ad hoc inquiries will suffice to secure reports of these results that are compatible with the preceding rate decisions. In particular, as the Task Force observed, the Cost and Revenue Analysis ("CRA") report, which among other things presents actual attributable costs on an annual basis, should be available in a form which tracks the cost attribution and other relevant determinations made in the rate case.

For this reason we are proposing to amend § 3001.102(a)(1) to provide for the furnishing of a pro forma CRA report tracking the determinations made in the preceding rate decision. We recognize, of course, that the CRA is a management document and that Postal Service managers may wish to collect this information in a form different from that implied by the rate decision. Our proposal does not interfere with that option. Its objects are (i) to allow direct comparison of actual results with rate case projections, and (ii) during rate cases, to avoid the loss of time and certainty inherent in "translating" a CRA that does not conform to Commission attributions.

Similar considerations apply to the Cost Segments and Components report, and we are proposing similar changes there [§ 3001.102(a)(2)].

Besides these changes, we are also including a proposal for reporting of billing determinants on a quarterly rather than an annual basis. The continuous comparison of rate-case predictions with actual experience would be facilitated by having these data—which we understand are generated primarily through the Revenue, Pieces, and Weight System of the Postal Service—on a more frequent basis than the current § 3001.102(a)(10) requires.

List of Subjects in 39 CFR Part 3001

Administrative Practices and Procedure, Postal Service.

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[2] This case arose on different facts, but contains a broad discussion of the meaning of sections 3622 and 3623.

[3] The "baseline" level, in a Postal Service rate filing, is the level at which the Postal Service would propose to place the affected rate when the new rates are first implemented.

[4] Sections 3001.57 et seq. of our rules of practice provide a special mechanism for trying and deciding market-driven Express Mail rate change requests within about 90 days.

[5] The Postal Service, in the case of Express Mail, has also advanced steps to maintain the institutional-cost contribution. *See*, for example, U.S. Postal Service Petition for a Rulemaking to Establish a New Procedure for Adjusting Rates for Express Mail, Docket No. RM88–2, at 5–6, 11–12; Testimony of George A. Shipman, Docket RM88–2, at 31–32.

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(B), 3603, 3622–3624, 3661, 3662, 84 Stat. 759–762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Add a new paragraph (i) to § 3001.30 to read as follows:

§ 3001.30 Hearings.

* * * * *

(i) *Policy presentation; special procedures.* The policy presentation required by § 3001.123(b) shall be the subject of a non-trial conference proceeding in which the officer sponsoring the presentation will appear for the purpose of explaining the content of the presentation and responding to questions from participants and the Commission. The presiding officer will limit and direct all questioning to matters that are both germane to the policy presentation and more appropriately directed to the officer sponsoring it than to a Postal Service witness who will be subject to normal trial-type hearing procedures. It will be the Commission's policy to schedule the policy presentation conference as early in the omnibus rate case process as is consistent with the need of participants to prepare for it. Where the conference demonstrates the existence of material questions apparently requiring trial-type procedures for their resolution but not addressed in the prepared testimony submitted by the Postal Service, the Commission will take appropriate steps to elicit such testimony on an expeditious basis.

3. Section 3001.102 is amended by revising the introductory text to the section, paragraph (a) introductory text, paragraph (a)(1) and (a)(2) and paragraph (b) introductory text; removing paragraph (a)(10) and adding paragraph (b)(4) to read as follows:

§ 3001.102 Filing of reports.

Each report listed in this section shall be filed with the Secretary of the Commission within two weeks of its presentation for use by postal management unless otherwise noted; except that where a report is required in a form not routinely prepared for postal management, it shall be filed within [TO BE DETERMINED] weeks of the presentation to management of the report on which it is based. The reports and information required to be provided by this subpart need not include matters exempt from disclosure by law. Whenever a specific source is cited in this section, that citation includes any successor or substituted source.

(a) *Annual reports.* The following information will be filed by the Postal Service annually.

(1) Cost and Revenue Analysis Report which will identify each change in attribution assumptions from the previous year's report. In case the report as presented to postal management does not employ the attribution assumptions used in the Commission decision in the preceding omnibus rate case, there shall also be filed a pro forma report using those assumptions. The Postal Service will file concurrently portions of LIOCATT used in the report, transportation workpapers 31 and 57 and, if changed from the previous year, data collection forms (including written formats or instructions for collection of data by electronic means) and corresponding training handbooks.

(2) *Cost Segments and Components.* In case the report as presented to postal management does not employ the attribution assumptions used in the Commission decision in the preceding omnibus rate case, there shall also be filed a pro forma report using those assumptions.

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(b) *Quarterly reports.* The following information will be filed by the Postal Service quarterly:

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(4) Billing determinants, at the level of detail employed in the most recent formal request for a change in rates or fees, except that the filing of billing determinant information for categories designated as competitive pursuant to § 3001.128 may be delayed for up to one year.

4. Add a new subpart I to read as follows:

Subpart I—Rules Applicable to Requests for Changes in Rates and Fees (Four-Year Rate Cycle)

Sec.

3001.121 General policy and description of principal types of proceedings; Applicability.
3001.122 Filing of formal requests.
3001.123 Filing of prepared direct evidence and policy presentation.
3001.124 Contents of requests in omnibus rate cases.
3001.124a Contents of formal requests in midcycle rate cases.
3001.124b Limited-scope rate cases.
3001.125 Service by the Postal Service.
3001.126 Failure to comply.
3001.127 [RESERVED]
3001.128 Designation of categories as competitive.

Appendix A to Subpart I to Part 3001—Statement of General Policy Regarding Competitive Categories and Band Rates

Subpart I—Rules Applicable to Requests for Changes in Rates and Fees (Four-Year Rate Cycle)

§ 3001.121 General policy and description of principal types of proceedings; Applicability.

This subpart governs the procedure for requests of the Postal Service pursuant to section 3622 of the Act that the Commission submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal service. This section provides a general description of the principal types of proceedings conducted by the Commission pursuant to section 3622 of the Act and specifies their applicability.

(a) *Omnibus rate cases.* An omnibus rate case is a proceeding based on a request by the Postal Service for a recommended decision on changes in rates and fees that:

(1) Incorporates an explicit four-year Postal Service planning cycle;

(2) Relates that cycle to the changes in rates and fees to be recommended;

(3) Contemplates rate and fee changes on a more frequent schedule than once at the conclusion of the rate case; and

(4) Contemplates that rates be recommended for the first two years of the cycle and projected, but not formally recommended, for the remaining two.

An omnibus rate case is an appropriate forum for the litigation and decision of all issues (other than § 3001.128) relevant to a request for a change in rates and fees under section 3622 of the Act. It is distinguished from a midcycle rate case, described in paragraph (b) of this section, and from a limited-scope rate case, described in paragraph (c) of this section.

(b) *Midcycle rate cases.* (1) A midcycle rate case is a proceeding to adjust postal rates and fees so that total estimated income and appropriations will equal as nearly as practicable total estimated costs in the final two years of the four-year cycle. Consistent with that purpose, projections in such cases will utilize, to the greatest extent feasible, audited data reflecting experience after implementation of rates recommended in the preceding omnibus rate case. It is initiated by the filing of a request for changes in rates and fees under section 3622 of the Act. As its purpose is, in part, to allow the Commission to recommend new rates and fees sufficiently soon to allow the Governors to exercise their implementation discretion as nearly as possible two years after the preceding changes, a midcycle request should be filed approximately 18 to 20 months following the implementation of rate changes resulting from an omnibus rate case.

(2) Expeditious treatment is of particular importance in the processing of midcycle cases. Accordingly, all participants in the preceding omnibus rate case shall be deemed to have retained their status as full or limited participant, pursuant to §§ 3001.20 or 3001.20a, in a midcycle case. The Postal Service shall, on the day that it files its midcycle request, serve complete copies of its request, including its supporting evidence, on all such participants, and, in addition, on any person who has filed with the Commission and served on the Postal Service a Notice of Intervention, or Advance Notice of Intervention, in the midcycle rate case. The filing of an Advance Notice of Intervention is permitted beginning 12 months following the implementation of rate changes resulting from the preceding omnibus rate case.

(3) In the interest of expedition, the following rules for the definition of issues shall control:

(i) Cost attributions and assignments shall utilize the methodology employed by the Commission in the preceding omnibus rate case.

(ii) Cost projections shall utilize the methodology employed by the Commission in the preceding omnibus rate case, although inputs may vary to reflect revised expectations and the occurrence of events not previously reflected.

(iii) Volume projections shall utilize the methodology employed by the Commission in the preceding omnibus rate case, although inputs may vary to reflect revised expectations and the occurrence of events not previously reflected.

(iv) Revenue projections shall utilize the methodology employed by the Commission in the previous omnibus rate case, although inputs may vary to reflect revised expectations and the occurrence of events not previously reflected.

(v) The markup indices employed by the Commission in the preceding omnibus rate case shall be utilized to the extent practicable to distribute institutional cost among classes, subclasses, and services.

(vi) Subject to § 3001.124a(a)(2), the base year from which costs, volumes, and revenues are to be projected shall consist of the most recent entire audited fiscal year during which the rates established in the preceding omnibus rate case were in effect.

(vii) Projections of costs, volumes, and revenues will be adjusted to achieve consistency with rate or classification decisions implemented since the preceding omnibus rate case. Adjustments will be made to reflect any mail subject either to market test rates or to new service introduction rates during the midcycle period, using the convention that such mail recovers attributable costs.

(c) *Limited-scope rate cases.* A limited-scope rate case is a case filed under section 3622 of the Act which does not involve the initiation or midcycle adjustment of a four-year rate cycle but instead request a limited change or changes in one or a small number of rate categories or special services or in individual rates or fees within such a classification. Procedures will be appropriately varied in such cases to limit issues to those directly related to the subject matter of the request or in order to expedite consideration of such cases.

(d) *Special provisions regarding competitive categories.* Some categories of mail are designated as competitive under § 3001.128. In such categories, the Postal Service may, in filing a request under section 3622 of the act, suggest "band rates" and the Commission may, as appropriate, recommend such rates. A bank rate comprises a baseline rate value and a stated range of values above and below the baseline rate value.

§ 3001.122 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on changes in rates or fees subject to this subpart, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11, 3001.121, and 3001.124, 3001.124a, or 3001.124b. Within five days after the Postal Service has filed a formal request for a recommended decision in accordance with this section, the Secretary shall file a notice with the Office of the Federal Register for publication in the **Federal Register.**

§ 3001.123 Filing of prepared direct evidence and policy presentation.

Simultaneously with the filing of the formal request for a recommended decision under this subpart:

(a) The Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed changes or adjustments in rates or fees are in the public interest and are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) In omnibus cases and midcycle cases as defined in § 3001.121, the Postal Service shall also file a policy presentation by an officer of the Postal Service generally conversant with all substantive matters raised in the case and with the policies underlying the request and the proposed changes contained therein. The presentation shall specifically relate the request and the proposed changes to the operational, financial, and other relevant plans adopted by the Postal Service for the period covered by the rate cycle initiated in the omnibus case. The purpose of the policy presentation is to illuminate the record with respect to these plans and their relation to the particular matters presented by the other witnesses for the Postal Service. It shall include as exhibits all directives, resolutions, and other written evidences or embodiments of these plans. The policy presentation should follow to the extent feasible the form of written testimony, but shall be subject to the procedures set forth in § 3001.30(i) and, to the extent subjected only to those procedures, shall be treated as an official statement of Postal Service positions rather than as evidence of matters of fact.

§ 3001.124 Contents of requests in omnibus rate cases.

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (r) of this section is not available and cannot be made

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available without undue burden, the request shall provide where reference is made to this paragraph, in lieu of such information, a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether reliable estimates are available where such information cannot be furnished and, if so, the specifics of such estimates.

(3) The provisions of paragraph (a)(2) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (r) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(4) The Commission may request information in addition to that required by paragraphs (b) through (r) of this section.

(b) *Rates and standards information.* (1) Every formal request shall include schedules of the then-effective rate or rates of postage and fee or fees for all postal services, and, arranged in legislative format, schedules of the rate or rates of postage and fee or fees for all postal services proposed by the Postal Service, as they would appear in the Domestic Mail Classification Schedule. The schedules shall show the full rate and any proposed adjustment to such phased rates under section 3627 of the Act indicated by circumstances known at the time of filing.

(2) The schedules required by paragraph (b)(1) of this section shall, for all classes and subclasses of mail and service, be in summary fashion and tariff-like form. (For example, there shall be a specification of those rules, regulations and practices which establish the conditions of mailability and the standards of service.) As a part thereof, the schedules shall specifically be addressed to such functions as mail pick-up and delivery, pressuring and other similar functions.

(3) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of his section shall also contain a statement identifying the degree of economic substitutability between the various classes and subclasses, e.g., a description of cross-elasticity of demand as between various classes of mail.

(4) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of this section shall be accompanied by an identification of all nonpostal services.

(c) *Mail characteristics.* Subject to paragraph (a)(2) of this section, every formal request shall include an identification of the characteristics of the mailer and recipient, and a description of the contents of items mailed within the various classes and subclasses of mail and service.

(d) *Physical attributes of mail.* Subject to paragraph (a)(2) of this section, every formal request shall include an identification of the physical attributes of the items mailed by class and subclass, including shape, weight, and distance.

(e) *Special service arrangements.* Subject to paragraph (a)(2) of this section, every formal request shall contain, to the extent the following information is not expressly included under paragraph (b)(2) of this section, a summary statement describing special service arrangements provide to, or requested or required of, mailers by the Postal Service which bear upon the cost of service or the value of the mail service to both the sender and the recipient, e.g., services relating to mailer preparations in excess of requirements specified by the Postal Service Manual, pick-up and delivery, expedited or deferred processing, and other similar activities performed.

(f) *Total functionalized accrued costs.* (1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the total actual accrued costs during the most recent fiscal year for which they are reasonably available. In the event final total actual accrued costs are not yet available for the fiscal year immediately preceding the fiscal year in which the filing is made, a preliminary or pro forma statement of such actual accrued costs shall be furnished. Any preliminary statement shall use, as appropriate, quarterly or accounting period reports for the preceding fiscal year. A final complete statement shall be substituted for any preliminary statement when the former becomes available.

(2) Subject to paragraph (a)(2) of this section, every formal request shall also set forth the estimated total accrued costs of the Postal Service for the fiscal year in which the filing is made, and the estimated total accrued costs of the Postal Service as specified in section 3621 of the Act which form the basis for proposed change in rates or fees. Estimated accrued costs referred to in paragraph (f)(2)(ii) of this section shall be for four consecutive fiscal years. The first fiscal year shall begin not more than 24 months subsequent to the filing date of the formal request. Each estimate of accrued costs called for in paragraph (f)(2) of this section shall be calculated on two bases: First, assuming the prefiling rates and fees and, second, assuming the suggested rates and fees, including, in the case of band rates suggested pursuant to § 3001.121(d), the baseline, minimum, and maximum rate values suggested. Estimated accrued costs shall be accompanied by an explanation of the methods and procedures used for cost projections. The analyses of estimated costs shall include, but need not be limited to:

(i) An explanation of the project of total volumes;

(ii) An explanation of the effect of the projected volume levels on estimated total costs;

(iii) The specification of the cost savings which will be realized from gains and improvements in total productivity, indicating such factors as operational and technological advances and innovations; and

(iv) The identification of abnormal costs which are expected to be incurred in the forecasted test period.

(3) Each cost presentation required by paragraphs (f) (1) and (2) of this section shall, subject to paragraph (g)(2) of this section:

(i) Show operating costs in sufficient detail as to the accounting and functional classifications and with such reasonable explanation so that the actual or estimated amount for each item of expense may be readily understood;

(ii) State and fully explain the amounts included for:

(A) Depreciation on capital facilities and equipment;

(B) Dept service;

(C) Contingencies; and

(D) Extraordinary or nonrecurring expenses;

(iii) Assign and distribute costs to each of the functions comprising the mail process. Such presentations shall include:

(A) an itemization of costs by the major accounts as reflected by the Service's books of accounts for all cost segments, such as postmasters, supervisors, etc.;

(B) An itemization of costs by functions such as collection, acceptance, general overheads, etc.;

(C) An assignment and distribution of the costs by account, exemplified in paragraph (f)(3)(iii)(A) of this section, together with related mail volumes, to the functions exemplified in paragraph (f)(3)(iii)(B) of this section;

(D) An assignment and distribution of the costs by account, together with related mail volumes, to such subfunctions within each category for which information is available or can be developed; and

(E) An explanation of the method by which the costs by accounts are assigned and distributed to functions.

(g) *Costs of prior fiscal years.* Subject to paragraph (a)(2) of this section, every formal request shall present the total actual accrued costs for each fiscal year since the last filing pursuant to this section. Such submission should be in a form as nearly consistent as possible with the filing under paragraph (f) of this section, together with explanations of any departures from such form and the effect of such departures.

(h) Separation, attribution, and assignment of certain costs. (1) Every formal request shall separate the Service's actual and estimated total costs, for the fiscal years specified in paragraph (f) of this section, as between postal services (including international mail) and nonpostal services. The presentation shall show the methodology for separating postal costs as between postal services and nonpostal services, and shall be in sufficient detail to allow a determination that no nonpostal costs have been assigned or allocated to postal services.

(2) Subject to paragraph (a)(2) of this section, the costs for postal services, as set forth by functions pursuant to paragraph (f) of this section, shall be separated as between:

(i) Those direct costs which can be attributed to each class of mail or type of mail service;

(ii) Those indirect costs which can be attributed to each class of mail or type of mail service;

(iii) Any other costs of the Service which can be reasonably assigned to each class of mail or type of mail service; and

(iv) Any costs which cannot be attributed or reasonably assigned.

(3) The methodology used to derive the costs requested in paragraphs (h)(2)(i) through (iv) of this section shall be set forth in detail.

(4) The attributable and other costs reasonably assignable as provided in paragraphs (h)(2) (i) through (iii) of this section shall separately be attributed to mail classes, subclasses, special services, and, to the extent practical, rate categories of mail service. The submission shall identify the methodology used to attribute or assign each type of such costs and, subject to paragraph (a)(2) of this section, shall also include an analysis of the effect on costs of:

(i) Volume;

(ii) Peaking patterns;

(iii) Priority of handling;

(iv) Mailer preparations;

(v) Quality of service;

(vi) The physical nature of the item mailed;

(vii) Expected gains in total productivity, indicating such factors as operational and technological advances and innovations; and

(viii) Any other factor affecting costs.

(5) The cost forecasting or "roll-forward" model shall be provided. It shall include the following items:

(i) For each cost segment component, a listing of all forecasting factors used in the cost level, mail volume, nonvolume workload, additional workday, productivity and other programs effects.

(ii) For each "ripple-affected"[1] cost segment component, a listing of those segments and components that determine its level of attribution or its distribution to mail class, subclass, rate category and service.

(iii) For each longer-run cost segment component:

(A) A listing of all factors used in determining its overall level of attribution, and

(B) A listing of the specific cost segment components used in determining its level of attribution, and its distribution to mail class, subclass, rate category and service.

(iv) Workpapers showing the application of the forecasting factors and procedures to each cost segment component for each time period used in the forecasting process. Such workpapers shall include the quantification, and distribution to mail class, subclass, rate category, and service, of each cost segment component, separating the short-run from the longer-run portions. Such workpapers shall conform to the requirements of paragraph (o) of this section. Compliance with the citation requirements of paragraph (o)(4) of the section shall be achieved by providing citations in "roll-forward" workpapers in the following cases:

(A) Workpapers showing the application of the forecasting factors and computational procedures (i.e., computer subroutines described in paragraph (h)(5)(iv)(B) of this section) to representative short run cost segment components and to representative longer run cost segment components for representative time periods used in the forecasting process.

(B) Workpapers showing the application of a computational procedure to a cost segment component, if the application of a forecasting factor or computational procedure to a particular cost segment component deviates from the application of that forecasting factor or computational procedure as presented in the workpapers required by paragraph (h)(5)(iv)(A) of this section.

(v) If the "roll-forward" model is submitted in the form of a computer generated model, it shall include:

(A) An annotated glossary of input data files, to include, for each time period

(*1*) The name of each input data file,

(*2*) A general description of each file in relation to the "roll-forward" process,

(*3*) The format for each kind of data record in the file,

(*4*) For each distinct format type used in the file, a brief description of each data item included in the format.

(B) A hard-copy description, in the form of a mathematical equation, of each subroutine in the program.

(C) A copy of the Base Year attributable cost matrix on a 5-inch floppy diskette in MS–DOS format.

(6) Attributable cost final adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(7) "Other services" adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(8) An overall summary cost table shall be provided. It shall show by mail class, subclass, rate category and service, short-run attributable costs, longer-run attributable costs, assignable costs by category, and all adjustments made to each of the foregoing.

(9) For each cost segment, base-year amounts for each included account and subaccount shall be provided.

(10) The minimum level of disaggregation required for presenting evidence on a cost segment or component is that employed by the Commission in its most recently completed section 3624 proceeding

[1] A cost component whose absolute value or level of attributability is determined in part or in whole by a change in another cost component or group of components is said to be a "ripple effect."

establishing a methodological precedent for that segment or component. This requirement shall not apply:

(i) To presentations that propose to define, attribute, assign, or distribute to mail classes segment or component costs by a method not employed or recommended by the Commission in such proceeding, and the Postal Service has demonstrated that the proposed methodological departure makes the level of disaggregation most recently employed or recommended by the Commission inappropriate;

(ii) Where the Postal Service has demonstrated that changes in mail operations make the level of disaggregation most recently employed or recommended by the Commission inappropriate.

(11) Any nonattributed or unassigned costs specified in paragraph (h)(2)(iv) of this section shall be clearly and separately identified. An explanation shall be furnished as to why such costs cannot be attributed or assigned. To the extent possible, the presentation shall identify all such costs which benefit more than one class of mail or type of service (but not all classes or types), together with the mail classes or types of services so benefited.

(12) The Service shall furnish the data relevant to its analysis of the effect on costs of the factors specified in paragraph (h)(4) (i) through (viii) of this section.

(i) *Criteria for rate schedule.* There shall be included in every formal request a statement of the criteria employed in constructing the proposed rate schedule. The submission shall include:

(1) The identification of the relationship between the revenues derived from the rates and fees for a particular class and subclass of mail or service and the costs attributed or assigned to that class and subclass or service;

(2) The identification of the procedures and methods used to apportion (to postal services) that part of the total revenue requirement, if any, which is in excess of costs attributed or assigned;

(3) Such other studies, information and data relevant to the criteria established by section 3622 of the Act with appropriate explanations as will assist the Commission in determining whether or not the proposed rates or fees are in accordance with such criteria.

(j) *Revenues and volumes.* (1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the actual and estimated revenues of the Postal Service from the then effective postal rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraphs (f) and (g) of this section. With respect to categories for which band rates are suggested, pursuant to § 3001.121(d), the request shall also set forth a description of each change made within that band since the implementation of the then effective rates and fees and a statement of the rationale (including quantitative estimates of volume and revenue) underlying the Postal Service's decision to make the change.

(2) Subject to paragraph (a)(2) of this section, every formal request shall set forth the estimated revenues based on the suggested rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraph (f)(2) of this section, including, for all classes for which the Postal Service is suggesting band rates, pursuant to § 3001.121(d), estimates of revenues at the minimum and maximum suggested rate as well as the baseline rate value, together with a statement of the method used for estimating revenue at any rate value within the band.

(3) Subject to paragraph (a)(2) of this section, the actual and estimated revenues referred to in paragraphs (j) (1) and (2) of this section shall be shown in total and separately for each class and subclass of mail and postal service and for all other sources from which Postal Service collects revenues.

(4) Each revenue presentation required by paragraphs (j) (1), (2), and (3) of this section shall, subject to paragraph (a)(2) of this section, be supported by an identification of the methods and procedures employed.

(5) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request, for each class and subclass of mail and postal service, the following:

(i) An econometric demand study relating postal volumes to their economic and noneconomic determinants including postal rates, discounts and fees, personal income, business conditions, competitive and complementary postal services, competitive and complementary nonpostal activities, population, trend, seasonal patterns and other factors.

(ii) The actual or estimated volume of mail at the prefiled rates for each postal quarter beginning with the first quarter of the most recent complete fiscal year and ending one year beyond the last quarter of the future fiscal year.

(iii) The estimated volume of mail assuming the effectiveness of the suggested rates for each postal quarter beginning with the quarter in which the rates are assumed to become effective and ending one year beyond the last quarter of the future fiscal year.

(6) The estimated volumes and revenues referred to in paragraphs (j)(2), (j)(3), and (j)(5) of this section shall be derived from the econometric demand study referred to in paragraph (j)(5)(i) of this section. Any departure from the assumptions and specifications in the demand study made in estimating volumes of any class or subclass of mail shall be explained.

(i) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast volumes for each class and subclass of mail and postal service. Representative derivations may be summarized, except where their derivations of these forecasts from the econometric demand study shall be presented in detail for two major mail classes, showing each intermediate value or factor employed. For remaining classes and subclasses of mail, such derivations may be summarized, except where their derivations depart from the representative methods presented.

(ii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast changes in revenues for each class and subclass of mail and postal service resulting from changes in rates and fees.

(iii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a computer implementation of the methodology employed to forecast volumes and revenues for each class and subclass of mail and postal service.

(iv) The computer implementation described in paragraph (j)(6)(iii) of this section shall be able to compute forecasts of volumes and revenues compatible with those referred to in paragraphs (j)(2), (j)(3), and (j)(5) of this section for:

(A) Any set of rates and fees within a reasonable range of the prefiled and suggested rates,

(B) Any date of implementation within the range spanned by the assumed date and the start of the future fiscal year,

(C) Alternative forecasts of the economic determinants of postal volumes other than postal rates and fees, and

(D) Alternative values of any parameters with assigned values that are based upon unverifiable judgments.

(v) The computer implementation described in paragraph (j)(6)(iii) of this section shall comply with § 3001.31(k)(3).

(7) Subject to paragraph (a)(2) of this section, there shall be made available at the offices of the Commission with every formal request, in a form that can be read directly by a standard digital computer, the following:

(i) All of the input files and programs needed to replicate the econometric demand study referred to in paragraph (j)(5)(i) of this section;

(ii) Any input files and programs employed to derive a price index for any class or subclass of mail or postal service from postal rates, discounts and fees;

(iii) Any input files and programs used to prepare data for use in the econometric demand study referred to in paragraph (j)(5)(i) of this section.

(k) *Financial statements and related information.* (1) Subject to paragraph (k)(3) of this section, every formal request shall include, for the two fiscal years immediately preceding the fiscal year in which the date of formal filing occurs, the Balance Sheet, the Statement of Income and Expense, basic statistical information and the Statement of Income and Expense by budget categories of the Postal Service. This information shall include data with respect to:

(i) Balance Sheet and a supporting schedule for each item appearing thereon;

(ii) Statement of Income and Expense and a supporting schedule for each item appearing thereon;

(iii) As appropriate, statistical data with respect to revenue, pieces (by physical attributes, showing separately amounts of mail identified as stamped, metered, and imprinted, or other), weight, distance, postal employees (number, total payroll, productivity, etc.), postal space, post offices (number, classes, etc.), and any other pertinent factors which have been utilized in the development of the suggested rate schedule;

(iv) Statement of Income and Expense by cost segment.

(2) A reconciliation of the budgetary information with actual accrued costs shall be provided for the most recent fiscal year.

(3) If the fiscal information for the immediately preceding fiscal year is not fully available on the date of filing, a preliminary or pro formal submittal shall be made and upon final completion an updated report shall be filed in substitution therefor.

(l) *Billing determinants.* (1) A statement, which can be in workpaper form, indicating for each class and subclass of mail and postal service the relevant billing determinants (e.g., the volume of mail related to each rate element in determining revenues) separately for the current rates and the proposed rates. Proposed changes in rate design and the related adjustments of billing determinants should be explained in detail.

(2) For third-class bulk mail, subject to paragraph (a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort level, the base year volume by ounce increment for each shape (letter-size, flat, irregular parcels, parcels).

(m) *Continuing appropriations.* A statement, which can be in workpaper form, presenting detailed calculations of continuing appropriations pursuant to 39 U.S.C. 2401(c) and any proposed adjustment to such reduced rates under 39 U.S.C. 3627 indicated by circumstances known at the time of the filing.

(n) *Performance goals.* (1) Every formal request shall identify any performance goals which have been established for the classes and subclasses of mail.

(2) Subject to paragraph (a)(2) of this section, the request shall identify the achieved levels of service for those classes and subclasses of mail and mail services for which performance goals have been set. This information may be provided by reference to published documents or otherwise.

(o) *Workpapers.* (1) Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (n) of this section in such fashion and content so as to permit independent analysis of each cost segment and an independent attribution or assignment of costs to classes and subclasses and the assignment of nonattributed or unassigned costs to classes and subclasses;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(V) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions supplied in response to paragraphs (b) through (n) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a crossreference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by anology.

(p) *Certification by officials; planning documents.* Every formal request shall include:

(1) One or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books; and

(2) Such officially adopted or approved documents describing the Postal Service's financial, operational, investment, and other relevant plans for the period covered by the request (or any part of such period), as will materially aid in the understanding of such plans, of the request, or of the relationship between the two.

(q) *Opinion of independent public accountant.* Every formal request shall include an opinion from an independent public accountant to the extent required by 39 U.S.C. 2008(e).

(r) *Special waiver provision for minor rate cases.* The Commission may, upon the filing of a proper motion by the Postal Service, together with a showing of good cause therefor, waive certain of the filing requirements of paragraphs (b) through (q) of this section if in the Commission's judgment it has been demonstrated that the proposed change in a rate or rates of postage and a fee or fees for postal service does not significantly change the then effective rates and fees or alter the cost-revenue relationships of the various classes and types of postal services.

(s) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with any requirements of this subpart.

§ 3001.124a Contents of formal requests in midcycle rate cases.

(a) *General requirements.* (1) Each formal request to which this section applies shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (m) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (m) of this section is not available and cannot be made available without undue burden, the request shall provide where reference is made to this paragraph, in lieu of such information, a statement of explanation as required by § 3001.124(a)(2).

(3) The provisions of paragraph (a)(2) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (m) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(4) The Commission may request information in addition to that required by paragraphs (b) through (m) of this section.

(b) *Rates and standards information.* (1) Every formal request shall include schedules of the then-effective rate or rates of postage and fee or fees for all postal services, and, arranged in legislative format, schedules of the rate or rates of postage and fee or fees for all postal services proposed by the Postal Service, as they would appear in the Domestic Mail Classification Schedule. The schedules shall show the full rate and any proposed adjustment to rates under section 3627 of the Act indicated by circumstances known at the time of filing.

(2) The schedules required by paragraph (b)(1) of this section shall, for all classes and subclasses of mail and service, be in summary fashion and tariff-like form. (For example, there shall be a specification of those rules, regulations and practices which establish the conditions of mailability and the standards of service.) As part thereof, the schedules shall specifically be addressed to such functions as mail pick-up and delivery, processing and other similar functions.

(3) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of this section shall be accompanied by an identification of all nonpostal services.

(c) *Total functionalized accrued costs.* (1) Subject to paragraph (a)(2) of this section, every formal request to which this section applies shall set forth the total actual accrued costs during the most recent complete fiscal year for which rates established by the preceding omnibus rate case were in effect. In the event final total actual accrued costs are not yet available for that fiscal year, a preliminary or pro forma statement of such actual accrued costs shall be furnished. Any preliminary statement shall use, as appropriate, quarterly or accounting period reports for the preceding fiscal year. A final complete statement shall be substituted for any preliminary statement when the former becomes available.

(2) Subject to paragraph (a)(2) of this section, every formal request shall also set forth:

(i) The estimated total accrued costs of the Postal Service for the fiscal year in which the filing is made and

(ii) The estimated total accrued costs of the Postal Service as specified in section 3621 of the Act which form the basis for proposed change in rates or fees.

Estimated accrued costs referred to in paragraph (c)(2)(ii) of this section shall be for the final 24 months of the planning cycle considered in the previous omnibus rate case. These two estimates of accrued costs shall be calculated on two bases: First, assuming the prefiling rates and fees and, second, assuming the suggested rates and fees. Estimated accrued costs shall be developed by the methods and procedures used by the Commission for cost projections in the preceding omnibus rate case. The analyses of estimated costs shall include, but need not be limited to:

(A) The projection of total volumes;

(B) The effect of the projected volume levels on estimated total costs;

(C) The specification of the cost savings which will be realized from gains and improvements in total productivity, indicating such factors as operational and technological advances and innovations; and

(D) The identification of abnormal costs which are expected to be incurred in the forecasted test period.

(3) Each cost presentation required by paragraphs (c)(1) and (2) of this section shall, subject to paragraph (a)(2) of this section:

(i) Show operating costs in sufficient detail as to the accounting and functional classifications and with such reasonable explanation so that the actual or estimated amount for each item of expense may be readily understood;

(ii) State and fully explain the amounts included for:

(A) Depreciation on capital facilities and equipment;

(B) Debt service;

(C) Contingencies; and

(D) Extraordinary or nonrecurring expenses;

(iii) Assign and distribute costs to each of the functions comprising the mail process. Such presentations shall include:

(A) An itemization of costs by the major accounts as reflected by the Service's books of accounts for all cost segments, such as postmasters, supervisors, etc.;

(B) An assignment and distribution of the costs by account, together with related mail volumes, to such subfunctions within each category for which information is available or can be developed; and

(d) *Costs of prior fiscal years.* Subject to paragraph (a)(2) of this section, every formal request shall present the total actual accrued costs for each fiscal year since the last filing pursuant to this section. Such submission should be in a form as nearly consistent as possible with the filing under paragraph (c) of this section, together with explanations of any departures from such form and the effect of such departures.

(e) *Separation, attribution, and assignment of certain costs.* (1) Every formal request shall separate the Service's actual and estimated total costs, for the fiscal years specified in paragraph (c) of this section, as between postal services (including international mail) and nonpostal services. The presentation shall show the methodology for separating postal costs as between postal services and nonpostal services, and shall be in sufficient detail to allow a determination that no nonpostal costs have been assigned or allocated to postal services.

(2) Subject to paragraph (a)(2) of this section, the costs for postal services, as set forth by functions pursuant to paragraph (c) of this section, shall be separated in the manner used by the Commission in the preceding omnibus rate case as between:

(i) Those direct costs which can be attributed to each class of mail or type of mail service;

(ii) Those indirect costs which can be attributed to each class of mail or type of mail service;

(iii) Any other costs of the Service which can be reasonably assigned to each class of mail or type of mail service; and

(iv) Any costs which cannot be attributed or reasonably assigned.

(3) The attributable and other costs reasonably assignable as provided in paragraphs (e)(2) (i) through (iii) of this section shall separately be attributed to mail classes, subclasses, special services, and, to the extent practical, rate categories of mail service.

(4) The cost forecasting or "roll-forward" model shall be provided. It shall include workpapers as specified in § 3001.124(h)(5)(iv).

(5) Attributable cost final adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(6) "Other services" adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(7) An overall summary cost table shall be provided. It shall show by mail class, subclass, rate category and service, short-run attributable costs, longer-run attributable costs, assignable costs by category, and all adjustments made to each of the foregoing.

(8) For each cost segment, base-year amounts for each included account and subaccount shall be provided.

(f) *Criteria for rate schedule.* There shall be included in every formal request a statement of the criteria employed in constructing the proposed rate schedule. The submission shall include such other studies, information and data relevant to the criteria established by section 3622 of the Act with appropriate explanations as will assist the Commission in determining whether or not the proposed rates or fees are in accordance with such criteria.

(g) *Revenues and volumes.* (1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the actual and estimated revenues and volumes of the Postal Service from the then effective postal rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraphs (c) and (d) of this section, and the estimated revenues and volumes based on the suggested rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraph (c)(2) of this section.

(2) Subject to paragraph (a)(2) of this section, the actual and estimated revenues and volumes referred to in paragraph (g)(1) of this section shall be shown in total and separately for each class and subclass of mail and postal service and for all other sources from which Postal Service collects revenues.

(3) Subject to paragraph (a)(2) of this section the actual and estimated revenues and volumes referred to in paragraphs (g)(1) and (2) of this section shall be prepared using the methods and procedures employed by the Commission in the previous omnibus rate case, although the most recent available actual and estimated input values should be utilized.

(4) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a computer implementation of the methodology employed to forecast volumes and revenues for each class and subclass of mail and postal service.

(i) This computer implementation shall be able to compute forecasts of volumes and revenues compatible with those referred to in paragraphs (g)(1), and (g)(2) of this section.

(ii) This computer implementation shall be able to compute the range and variety of forecasts of volumes and revenues specified in § 3001.24(j)(6)(iv).

(h) *Financial statements and related information.* (1) Every formal request made under this section shall include, for the two fiscal years immediately preceding the fiscal year in which the date of formal filing occurs, the Balance Sheet, the Statement of Income and Expense, basic statistical information and the Statement of Income and Expense by budget categories of the Postal Service, with supporting schedules. If the fiscal information for the immediately preceding fiscal year is not fully available on the date of filing, a preliminary or pro forma submittal shall be made and upon final completion an updated report shall be filed in substitution therefor.

(2) A reconciliation of actual results for the base year identified in § 3001.121(b)(3)(vi) with the project for that year relied on by the Commission in the preceding omnibus rate case.

(3) A comparison of expected costs, volumes, and revenues for the final 24 months of the planning cycle considered in the previous omnibus rate case, *see* § 3001.124a(c)(2)(ii) with the projections of costs and revenues for that period projected by the Postal Service in that case. This comparison should be accompanied by a discussion of the reasons for all significant variations between the previous and current projections.

(i) *Billing determinants.* (1) A statement, which can be in workpaper form, indicating for each class and subclass of mail and postal service the relevant billing determinants (e.g., the volume of mail related to each rate element in determining revenues) separately for the current rates and the proposed rates.

(2) For third-class bulk mail, subject to paragraph (a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort level, the base year volume by ounce increment for each shape (letter-size, flat, irregular parcels, parcels).

(j) *Expected appropriations.* A statement, which can be in workpaper form, presenting detailed calculations of expected appropriations pursuant to 39 U.S.C. 2401(c) and any proposed adjustment to reduced rates under 39 U.S.C. 3627 indicated by circumstances known at the time of the filing.

(k) *Workpapers.* Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices. Workpapers shall comply in form and content with the requirements of § 3001.124(o).

(l) *Certification by officials.* (1) Every formal request shall include one or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books.

(2) The certificates required by paragraph (l)(1) of this section shall be signed by one or more representatives of the Postal Service authorized to make such certification. The signature of the official signing the document constitutes a representation that the official has read the document and that, to the best of his/her knowledge, information and belief, every statement contained in the instrument is proper.

(m) *Opinion of independent public accountant.* Every formal request shall include an opinion from an independent public accountant to the extent required by 39 U.S.C. 2008(e).

(n) *Rejection of requests.* The Commission may reject any request

under this subpart that patently fails to substantially comply with any requirements of this subpart.

§ 3001.124b Limited-scope rate cases.

The Commission intends that limited-scope rate cases as defined in § 3001.121(c) be processed and decided with special attention to securing a high degree of expedition and to simplification of issues and avoidance of unnecessary controversy. Accordingly, upon filing of a proper motion by the Postal Service showing good cause therefor, the Commission will waive filing requirements of § 3001.54 (b) through (r) if it is satisfied that the proposed changes in a rate or rates of postage and a fee or fees for postal service falls within the policy of § 3001.121(c), and in particular does not significantly alter the cost-revenue relationships of the various classes and types of postal service as reflected in the decisions establishing the then-effective rates and fees.

§ 3001.125 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public or granting petitions to intervene in a proceeding before the Commission under this subpart, or, with respect to a midcycle rate case, in the circumstances described in § 3001.121(b)(2), the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the parties permitted to intervene as provided in § 3001.12. Such service shall also be made on persons who have been granted limited participation.

§ 3001.126 Failure to comply.

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

§ 3001.127 [Reserved]

§ 3001.128 Designation of categories as competitive.

(a) The provisions of this subpart which govern the use of band rates shall apply, in accordance with their terms and the evidence of record, only to categories of mail listed in this section as competitive. A category is deemed competitive if it:

(1) Is not subject to the Private Express Statutes as interpreted and administered by the Postal Service (39 U.S.C. 601–606; 18 U.S.C. 1693–1699; 39 CFR parts 310, 320); and

(2) Is subject to direct competition by enterprises not subject to regulation of rates, routes, or service, but providing substantially the same service as that offered by the Postal Service.

A competitive category may comprise all or less than all of a class of mail. The Commission will entertain appropriately supported requests for additions to or deletions from the list of competitive classes. The designation of a category as competitive permits but does not require the Postal Service to suggest rates in band form when it files a request under this subpart.

(b) The competitive categories are:

(1) Express Mail;

(2) Priority Mail over [TO BE DETERMINED] pounds; and

(3) Parcel post.

Appendix A to Subpart I to Part 3001—Statement of General Policy Regarding Competitive Categories and Band Rates

Adoption of § 3001.121(d) reflects the Commission's intention that future rate proceedings will allow substitution of band rates for unitary rates in competitive service offerings identified in § 3001.128. Band rates imply a limited opportunity for selection of values within the band during the rate cycle without formal rate proceedings. This contrasts with unitary rates, which generally remain unchanged absent a new rate request. The band rate option offers the Service an opportunity to act more expeditiously to preserve the prescribed contribution of these services to net revenue than might be possible if it were required to prepare an entirely new rate request, filed under customary procedures, and more quickly than it has chosen to act under § 3001.57 et seq.

The Commission provides the following additional explanatory material for parties who will be participating in omnibus rate cases under the new rules and for others with an interest in postal ratemaking. The policy statement:

(i) Briefly reviews practical aspects of the procedure described in the rules,

(ii) Identifies the conceptual and statutory basis for the change; and

(iii) Explains why the Commission considers categories designated in § 3001.128 especially suitable for this treatment.

Practical aspects of band rate recommendations and administration. As the provisions of § 3001.121(d) indicate, the Commission's band rate model entails three main elements: a baseline rate, a minimum value (the floor) and a maximum value (the ceiling). The band rate subsumes all values within the upper and lower boundaries. The choice of the baseline rate for any eligible category need not be the midpoint of the maximum and minimum rate values, but is to reflect the Service's considered judgment on an appropriate rate (in the case of an initial rate filing or midcycle case) and the Commission's decision thereon (in its recommended decision). The Service's request and the Commission's recommended decision must address the band's compliance with applicable section 3622(b) of the Act rate criteria.

Assuming the Governors' acceptance of a Commission-recommended band rate in the ordinary course of an omnibus rate proceeding, the rule allows selection, prior to a midcycle case, of another rate value within the band without invoking section 3622 proceedings. Selection is subject to two constraints:

(i) The value selected must fall within the Commission's previously recommended minimum and maximum values and

(ii) The market circumstance(s) triggering the adjustment must be clearly identified in a written document filed with the Commission and published in the **Federal Register**.

As explained below, this adjustment occurs without the need for a new rate filing because the band rate operates as the legal equivalent of the unitary rate it replaces. Assuming that the minimum and maximum band values satisfy the relevant statutory criteria, any rate within the band has the legal status of "a previously recommended rate."

Conceptual and statutory basis for band rates. A review of cost, revenue and volume experience under the Postal Reorganization Act has led us to conclude that the standard approach to recommending rates has not served the statutory breakeven goal as well as might be hoped in the designated competitive service categories. For example, PRC Op. R87–1, paras. 5995–6010.

The reason the standard rate-setting approach for competitive offerings falls short of expectations appears to be that its inflexibility hinders timely Postal Service reaction to competitors' actions. For example, under the standard approach, a competitor can reduce the price of a comparable service offering immediately after new rates take effect. Absent preparation of a new filing, the Service clearly stands to lose volume in that category, along with the associated institutional cost contribution. Similarly, competitors' ability to raise rates quickly in response to sudden or unexpected marketwide cost increases might leave the Service with volume, but with a distorted cost/revenue relationship and impaired institutional cost contribution.

In light of the Commission's responsibilities under the Act, the financial consequences attendant to market realities present a live concern about the adequacy of our longstanding approach to § 3001.128 offerings, and not simply an abstract lesson on competitiveness. Accordingly, it strikes us that it would be more in line with the statutory breakeven mandate if the Commission's ratemaking procedures incorporated a mechanism that would minimize the potential for reduction in the institutional cost contribution expected to be generated by the designated competitive categories over the rate cycle. This process is appropriate in the context of the four-year rate cycle when the Commission and the public will know that the level of rates for competitive service will always be revisited within two years, so that possibility for abuse is minimal.

We have considered whether we are under a statuatory obligation to continue the approach that has been the norm for all service offerings since reorganization, even though we find it unsatisfactory in important statute-linked respects for certain offerings, or whether the band rate concept is an acceptable legal alternative for these categories. Our conclusion, based on a review of the statute, is that the controlling provisions (in sections 3621, 3622, 3624, and 3625 of the Act) do not place us under a legal compulsion to do so. The pertinent references are to "rate or rates" of postage and the cornerstone of rate implementation is a previous Commission recommended decision. Thus, the main requirement is that any rate that is put into effect must have been previously recommended by the Commission. As the Commission intends that every value within the band will meet relevant statutory criteria, the band rate stands on the same legal footing as the standard unitary rate. Thus, it seems clear that subsequent adjustment is not a unilateral—and thus illegal [1]—action. It is an administrative action implementing a rate previously recommended by the Commission and thus fully based on the Commission's expert judgment.

Accordingly, we believe there is no statutory necessity that we adhere to the normal practice of unitary rate recommendations when, as here, the band rate alternative appears to offer a superior way of meeting the statutory breakeven mandate. We therefore believe we are justified in adopting it as a better way of discharging our responsibilities under the Act.

Types of services. Section 3001.128 identifies several eligible categories of competitive offerings and holds out the possibility for designation of additional categories. The limitation to competitive service offerings that are not subject to the Private Express Statutes is based on the premise that this provides the most clear evidence that the market circumstances that give rise to the most need for pricing flexibility—and are a condition precedent to band rate adjustment—are likely to exist. In addition, the Commission believes the pricing flexibility associated with band rates is especially well-suited to non-core, non-traditional postal services, whose contribution to net revenues (i.e., to covering institutional costs) should be encouraged.

Section 3001.128 provides for changes in the scope of its coverage on the basis of "appropriately supported requests for additions to or deletions from the list of competitive categories." Because these rules are intended to guide the preparation of requests to change § 3001.128, the Commission strongly prefers that these requests be submitted independent of rate or classification filings. While all such requests would have to be evaluated on their individual merits, it is likely that some issues would be common to most if not all of them. In addition, the Commission believes these generic issues would include (without limitation) product or service definition (and possible substitutes), data and information on competing firms and industry structure, and relevant pricing practices and trends.

Summary. The optional band rate procedure set out in § 3001.121(d) imposes important responsibilities on the Commission and the Postal Service, especially in establishing minimum band rate values, but it is not a depature from the legal requirements of the statute. Instead, it adapts longstanding practice to modern market realities, and thereby provides pricing flexibility that can minimize the possibility of a diminution in institutional cost contribution from these categories and any ensuing impairment of the financial breakeven goal.

Issued by the Commission on August 18, 1992.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 92–20395 Filed 8–27–92; 8:45 am]

BILLING CODE 7710–FW–M

[1] There is a broadly-based discussion of unilateral action (albeit in a different factual setting) in *United Parcel Service* v. *U.S. Postal Service*, 455 F. Supp. 857 (E.D. Pa. 1978), *affirmed*, 604 F.2d 1370 (3d Cir. 1979), *cert. denied*, 446 U.S. 957 (1980).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Public Hearing on Proposed Endangered or Threatened Status for Five Florida Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rules; reopening of comment period and notice of public hearing.

SUMMARY: The Service gives notice that the comment period is reopened on three separate proposals to list five Florida plants as endangered or threatened pursuant to the Endangered Species Act of 1973 (Act), as amended. These proposals were published in the **Federal Register** on May 20, 1992 (57 FR 21369, 21377, and 21381). A public hearing will allow all interested parties to orally submit comments on these proposals.

DATES: The comment period on these proposals is reopened until September 28, 1992. The public hearing will be held from 4 p.m. to 6 p.m. on September 16, 1992, in Orlando, Florida.

ADDRESSES: Written comments and materials concerning the proposals should be sent directly to the Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, Suite 120, Jacksonville, Florida 32216. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The public hearing will be held at the auditorium, Florida Fruit and Vegetable Association, 4401 East Colonial Drive, Orlando, Florida.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904/232–2580, fax 904/232–2404).

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1992, the Service published three separate proposals (57 FR 21369, 21377, and 21381) to add five Florida plant species to the list of endangered and threatened plants. The plants proposed for listing as endangered species are: *Conradina glabra* (Apalachicola rosemary), of Liberty County; native to ravine edges, threatened by habitat modification due to forestry practices. *Conradina brevifolia* (short-leaved rosemary), of Highlands and Polk Counties; native to Florida scrub vegetation, threatened by habitat destruction for agricultural or residential purposes. *Conradina etonia* (Etonia rosemary), of Putnam County, native to Florida scrub vegetation, threatened by residential development. *Cucurbita okeechobeensis* senso strictu (Okeechobee gourd), native to the southern shore of Lake Okeechobee in Palm Beach County, is vulnerable to vegetation management measures and to the consequences of water level management. The one plant proposed for listing as a threatened species is *Pinguicula ionantha* (Godfrey's butterwort), native to bogs and flatwoods ponds in Bay, Franklin, Gulf, and Liberty counties, from roughly Panama City east to the southern part of Apalachicola National Forest. It is threatened by habitat degradation due to lack of prescribed fire and shading by planted pines.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. On July 2, 1992, the Service received a request for a public hearing on the proposal to list Okeechobee gourd from Ms. Cindy L. Bartin, an attorney representing the

Florida Sugar Cane League. On July 6, 1992, the Service received a letter from Mr. Michael W. Mingea, Executive Director of the Florida Native Plant Society, requesting a public hearing.

Because the Native Plant Society's request covers plants from much of Florida (with the Okeechobee gourd the southernmost of the five species), the Service has arranged to conduct the public hearing in Orlando, Florida, at the Florida Fruit and Vegetable Association's auditorium at 4401 East Colonial Drive. Parking is available at the site, and the auditorium is clearly marked. The public hearing is scheduled for September 16, 1992, from 4 p.m. to 8 p.m. Those parties wishing to make statements for the record should bring a copy of their statements to present to the Service at the start of the hearing. Oral statements may be limited in length if the number of parties present at the hearing necessitates such a limitation. There are, however, no limits to the length of written comments or materials presented at the hearing or mailed to the Service. The comment period for this proposal closes on September 28, 1992. Written comments should be submitted to the Service office in the **ADDRESSES** section.

Author

The primary author of this notice is David Martin, Jacksonville Field Office, U.S. Fish and Wildlife Service, 3100 University Boulevard South, suite 120, Jacksonville, Florida 32216 (904/232-2580 or fax 904/232-2404).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531-1544).

Dated: August 19, 1992.

James W. Pulliam, Jr.,

Regional Director.

[FR Doc. 92-20564 Filed 8-27-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 57, No. 168

Friday, August 28, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Judicial Review; Committee on Rulemaking; Public Meetings

This notice of committee meetings is given pursuant to the Federal Advisory Committee Act (Pub. L. 92-463). Attendance at each meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman, (202) 254-7020, at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request. The contact persons' mailing address is: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037. Telephone: 202-254-7020.

Committee on Judicial Review

Date: Thursday, September 10, 1992.

Time: 2:30 p.m.

Location: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037 (Library, 5th Floor).

Agenda: The committee will meet to discuss: (1) A study of the availability and scope of judicial review of prompt corrective action decisions by federal banking agencies under the Federal Deposit Insurance Corporation Improvement Act of 1991; and (2) past Conference recommendations that have originated in the Committee on Judicial Review.

Contact: Mary Candace Fowler, 202-254-7020.

Committee on Rulemaking

Date: Wednesday, September 9, 1992.

Time: 9 a.m.

Location: Administrative Conference of the United States, 2120 L Street NW., Suite 500, Washington, DC 20037 (Library, 5th Floor).

Agenda: The committee will meet to discuss a draft report by Professor Mashaw on the rulemaking process.

Contact: Kevin L. Jessar, (202) 254-7020.

Dated: August 26, 1992.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 92-20842 Filed 8-27-92; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

National Organic Standards Board Committees; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), as amended, the Agricultural Marketing Service announces the forthcoming meetings of the National Standards Board (NOSB) Committees.

DATES: September 17-18, 1992.

ADDRESSES: The Crops Standards Committee and the National Material List Committee of the National Organic Standards Board will be meeting at the Red Lion Inn, 2001 Pointwest Way, Sacramento, CA on Thursday, September 17 and Friday, September 18, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, National Organic Standards Board, Room 4006—South Building P.O. Box 96456, Washington, DC 20090-6456. Telephone: (202) 720-2704.

SUPPLEMENTARY INFORMATION: Section 2119 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Fact Act), Public Law 101-624 (7 U.S.C. 6501 *et seq*), requires establishment of a National Organic Standards Board. The purpose of the Board is to assist in the development of standards for substances to be used in organic production and handling and to advise the Secretary on any other aspects of the implementation of title XXI of the Fact Act. The NOSB met for the first time in Washington, DC, in March and formed six committees to work on various aspects of the Program. The committees are: Crops Standards, Processing, Labeling and Packaging, Livestock Standards, Accreditation, National Materials List, and International Issues. The full Board will meet in plenary sessions and the six committees will meet in separate sessions.

The purpose of the Crops Standards Committee is to work on draft documents and position papers for presentation to the full Board at a future meeting and to receive input on crop standards issues from individuals and organizations in California. Issues to be discussed include: An organic farm plan, pesticide residue testing, spray drift policy, audit trail, and planting stock. The Crops Committee will meet on Thursday, September 17, from 1 p.m. to 5 p.m.

The National Materials List Committee is working to develop recommendations for the National List of approved and prohibited substances for organic production and processing and is seeking input on: materials needed for fruit and vegetable production, materials needed for livestock health and feeding, and materials needed in production and processing that may not be available in natural form. The Materials Committee will meet at the Red Lion Inn on Friday, September 18 from 8 a.m. to 5 p.m. Both committees also are interested in other concerns as they related to the organic program.

A final agenda will be available on August 28, 1992, which will include detailed agendas for each committee. Persons requesting copies should contact Mrs. Fox at the above address or phone number.

The meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Harold S. Ricker at the above address or FAX to (202) 690-0338 by September 10, 1992, in order to be scheduled. The committees will schedule time for public input on Thursday, September 17, beginning at 8 a.m. and continuing until noon at the Red Lion Inn. Each individual or organization will be allocated 10 minutes for presenting orally the key issues of concern and should provide copies of written material elaborating on those issues for the Committees.

Dated: August 24, 1992.

Daniel Haley,

Administrator.

[FR Doc. 92-20663 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-02-M

Federal Grain Inspection Service

Evaluation of Fumonisin (FUM) Test Kits

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Federal Grain Inspection Service (FGIS) is considering providing Fumonisin (FUM) testing in grains and commodities under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621, *et seq.*). FUM is a chemical substance resulting from the metabolic process of certain molds in grains. This notice announces that FGIS will be examining commercially available test kits for qualitatively determining the presence of FUM in grains and commodities under field conditions.

DATES: Comments must be submitted on or before September 28, 1992.

ADDRESSES: Comments must be submitted to Dr. Chuan Kao, Chemist, Quality Assurance and Research Division, USDA/FGIS Technical Center, 10383 N. Executive Hills Blvd., Kansas City, Missouri 64153.

FOR FURTHER INFORMATION CONTACT: Dr. Chuan Kao, address as above, telephone (816) 891-7150.

SUPPLEMENTARY INFORMATION: The objective of this study is to provide FGIS with information about and experience with commercially available test kits for the qualitative determination of Fumonisin in certain grains and commodities under field conditions. Grains and commodities to be considered are corn, corn gluten feed, corn meal, milled rice, sorghum, wheat, and products therefrom with primary emphasis on corn and wheat. The general requirements for a test kit to be acceptable for testing are:

(a) The time for completion, including extraction of a single test, shall not be more than 30 minutes, and

(b) The test shall not require the use of recognized or suspect human carcinogens.

Manufacturers are requested to notify FGIS of the commercial availability of test kits for Fumonisin and to provide information on the performance of these test kits.

Authority: 7 U.S.C. 1621, *et seq.*

David R. Galliart,

Acting Administrator.

[FR Doc. 92-20616 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-EN-M

Food and Nutrition Service

Food Stamp Program, Recipient Claims Collection; Expansion of Test of Offsetting Federal Income Tax Refunds

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The Department hereby gives notice that it intends to expand the test of the feasibility and effectiveness of offsetting Federal income tax refunds to collect claims against households for overissued food stamp benefits. The offsets are made from Federal income tax refunds payable to individuals liable for those claims. This notice identifies additional States where this procedure will be tested.

EFFECTIVE DATE: This notice will be effective September 14, 1992. Comments will be accepted until November 27, 1992. Implementation of the expansion of this test will begin September 14, 1992.

ADDRESS: Comments should be addressed to Joseph H. Pinto, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, room 905, Alexandria, Virginia 22302. Comments can be reviewed at that address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Joseph H. Pinto, Chief, State Administration Branch, Program Accountability Division, Food Stamp Program, 3101 Park Center Drive, room 905, Alexandria, Virginia 22302, telephone (703) 305-2384.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Secretary's Memorandum 1512-1

This proposed action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The action will affect the economy by less than $100 million a year. The action will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the notice as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice to 7 CFR 3015, subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This Notice has been reviewed under Executive Order 12778, Civil Justice Reform. This notice is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This notice is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this Notice or the application of its provisions all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or part 284 (for rules related to QC liabilities); (3) for program retailers and wholesalers—7 U.S.C. 2023 set out at 7 CFR 278.8.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). Betty Jo Nelsen, Administrator of the Food and Nutrition Service, has certified that this notice does not have a significant economic impact on a substantial number of small entities. This notice will affect the State and local agencies which administer the Food Stamp Program, and individuals who have received excess food stamp benefits.

Paperwork Reduction Act

This notice does not contain reporting or record keeping requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

Background

The Department published a General Notice on August 20, 1991 (56 FR 41325-31) which gave notice that it intended to test the offset of Federal income tax refunds as a means of collecting Food Stamp Program recipient claims for overissued benefits. That Notice described the test procedures, including notices to individuals, appeal rights and related requirements for State agencies. Readers are directed to that Notice for information about those matters.

In section (a) of the above referenced Notice, the Department advised that the initial test of the offset procedures would be conducted in the States of Alabama and California and might be expanded to other States and extended for subsequent years. The Notice also advised that if other test States were added, appropriate Notice would be published. Accordingly, the Department hereby gives notice that, subject to their meeting certain Internal Revenue Service (IRS), resource and technical requirements, it plans to add the following States to the test: Arkansas, Colorado, Kentucky, Louisiana, Maine, Oregon, and Tennessee. This expanded test will be conducted through calendar year 1993. In all other respects the test will continue to be conducted according to the terms contained in the August 20, 1991 General Notice, which by reference is incorporated here.

The Department also wants to clarify the scope of the offset procedure as described in the third paragraph of section (a) of the August 20, 1991 Notice. As explained below, tax offset may affect certain persons who now reside outside of the States participating in this test if such persons formerly resided in a participating State.

All claims which are subject to collection under this test were established by one of the nine participating States listed in this Notice. However, some members of the households liable for the claims may have moved out of State since these claims were established. Individuals liable for claims for overissued food stamp benefits remain liable for those debts even though they may have moved out of the State which established the claims. The IRS maintains a file of current addresses for taxpayers, and it is these addresses which the IRS provides State agencies and which State agencies must use to notify debtors of their intent to refer the claims to the IRS for offset. Addresses which the IRS provides to States participating in the test may locate individuals who are liable for claims and who are residing in States other than the nine listed in this notice. Accordingly, some individuals whose tax refunds are offset may not reside in one of the States participating in this test.

In section (a) of the prior Notice the Department indicated its intent to evaluate the feasibility and cost-effectiveness of collecting food stamp recipient claims from Federal income tax refunds. From the initial year's operation it is clear that: (1) This procedure may prove feasible for both State agencies and the Department; (2) the start up phase has involved relatively limited resources; and (3) thus far collections have significantly exceeded costs. The Department believes that a second test with additional States participating is necessary to determine if this procedure would be beneficial on a program wide basis. As indicated in the prior Notice, if this test proves successful, the Department intends to incorporate the offset procedures into Food Stamp Program regulations by proposing appropriate regulations in the near future.

The previous Notice provided a period for public comments, and the Department received six comments. Three comments came from State agencies, one from a municipality, one from a Member of Congress, and one from a National advocacy group. Of the six commenters, four supported the test; and of these four, three asked questions about operational matters. These operational matters involved such things as how collections would be reported on Form FNS-209, Status of Claims Against Households, and communications between the Food and Nutrition Service and State agencies about appeals. These matters are technical in nature and are being dealt with in operational guidelines and in training provided State agencies as they begin participating.

The other two comments addressed general Food Stamp Program recipient claims policies which were not modified by the August 20, 1991 Notice. Both expressed concern about referring for offset claims which are delinquent for several years. The provision in the Notice governing the age of claims meets IRS requirements and, the Department believes, is consistent with existing Food Stamp Program policy for collecting established claims. Both commenters also expressed concern that the procedures contained in the Notice did not provide adequate due process to debtors prior to offset. However, all claims to be collected by tax offset have first been established using existing Food Stamp Program procedures, including those relating to notice of the opportunity for a fair hearing on the claim. In addition, as reflected in the Notice, the IRS also requires that notice and an opportunity to appeal the offset be given the debtor prior to the actual offset. This procedure is in addition to those available to debtors when the claim is first established by the State agency.

The Department believes that the tax refund offset program described in the prior Notice is consistent with the requirements of the Food Stamp Act, current Program regulations on claims collection, and pertinent IRS regulations. For these reasons, the Department is not, at this time, modifying the policies or procedures set forth in the prior Notice.

As noted above, the Department plans to publish proposed rules for tax offset in the near future and will provide an additional opportunity for public comment on these policies and procedures at that time. Moreover, the Department is accepting public comment on this Notice for 90 days.

Dated: August 24, 1992.

Phyllis R. Gault,

Acting Administrator.

[FR Doc. 92-20682 Filed 8-27-92; 8:45 am]

BILLING CODE 3410-30-M

Forest Service

Exemption

AGENCY: Forest Service, USDA.

ACTION: Notice of exemption from appeal, Duncan/Sunflower Timber Sale Environmental Impact Statement, Tahoe National Forest.

SUMMARY: The Forest Service is exempting from appeal the decision to sell dead and dying trees that are being killed by the combined effects of severe drought and bark beetles. The environmental analysis for this decision will be documented in the Duncan/Sunflower Timber Sale Environmental Impact Statement. The project objectives are to reduce the fire hazard, to recover the value of the timber, and to rehabilitate the affected area. This area is east of the small rural community of Foresthill, California.

These are higher than normal levels of tree mortality occurring on the Tahoe National Forest due to six years of below-normal precipitation. The greatest effect of the drought has been reduced vigor and weakening of the natural defense mechanisms of over-stocked, young sawtimber stands and older, mature trees, which predisposes them to bark beetle attack. White fir and red fir

makes up between 80 to 95 percent of the present timber stands and are experiencing the greatest mortality. This project area includes the true fir and mixed conifer forest types located between approximately 5,600 and 7,200 feet elevation. The rapid rate of deterioration of true fir requires that it be removed as soon as possible if the timber is to be used, its value recovered and the fire hazard reduced.

The Forest Supervisor determined through preliminary environmental analysis, including public scoping that there is good cause to expedite this project. Signs of mortality are visible on approximately 3,500 acres of the analysis area. The analysis is proposing one timber sale in 1992 using both tractor and helicopter harvest systems. The proposal to salvage in the project area is consistent with the direction provided in the Tahoe National Forest Land and Resources Management Plan, approved by the Regional Forester on June 14, 1990, which includes intensive management practices on commercial forest lands.

There will be no new road construction or reconstruction of existing roads.

Spotted owl surveys have been conducted using the current Regional owl-calling protocol in areas considered to be potential California spotted owl habitat. The salvage proposal does not include any harvest within Spotted Owl Habitat Areas.

Regional entomologists have visited the area and have stated that with the current drought conditions, the over-stocked stands and the numerous acres involved, there is no economical or practical means to control the insect damage. Although salvage harvesting will not control the mortality caused by insects, it would recover valuable timber that would otherwise deteriorate and create a severe fire hazard. The excessive numbers of dead trees produce heavy fuel concentrations, which makes wildfire control extremely difficult.

It is important to remove the dead and dying timber before it deteriorates and causes a value loss. Through timber sales, fuels can be treated (or deposits collected to treat it) to a degree that could not be funded otherwise. It is important to harvest the dead and dying timber when there is the potential to get the highest return to the government and to collect Knutsen-Vandenburg (K–V) funds to restore forest values being affected by extensive tree mortality. The salvage sales will also stimulate the local rural economy that has been impacted by reduced timber harvests.

The Record of Decision is expected to be signed the latter part of August 1992. If the proposed salvage timber sale is delayed because of appeals (delays can go from 100 days up to six months with an additional 15–20 days for discretionary review by the Chief of the Forest Service), it is unlikely that the project could be implemented during the 1992 normal operating season and access would be difficult for a portion of the winter operating season. This would result in substantial monetary loss to the Government and reduced monies returned to the Counties. Any unnecessary delays of the proposed salvage sales could delay a portion of the harvesting until the 1993 logging season. Because of the small-sized timber involved and its deterioration rate, any unnecessary delays could cause the value of the timber to decrease.

Pursuant to 36 CFR 217.4(a)(11), it is my decision to exempt from appeal the decision to harvest and restore lands affected by drought-induced timber mortality that will be documented in the Record of Decision for the Duncan/Sunflower Timber Sale Environmental Impact Statement on the Foresthill Ranger District, Tahoe National Forest. The environmental document being prepared will address the effects of the proposed actions on the environment, document public involvement, and address the issues raised by the public.

Revised 36 CFR 217 appeal regulations have been proposed. Project decisions made after revised regulations become effective would be subject to the revised regulations.

EFFECTIVE DATE: This decision will be effective August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Questions about this decision should be addressed to Ed Whitmore, Timber Management Staff Director, Pacific Southwest Region, USDA Forest Service, 630 Sansome Street, San Francisco, CA 94111, (415) 705–2648; or to John H. Skinner, Forest Supervisor, Tahoe National Forest, PO Box 6003, Nevada City, CA 95959, (916) 265–4531.

SUPPLEMENTARY INFORMATION: Pursuant to 40 CFR 1501.7, scoping was conducted to determine the issues and concerns to be addressed in the Final Environmental Impact Statement and Record of Decision. Letters were mailed to various agencies, permittees, environmental organizations, timber industry, local private property owners, and other known interested parties. Notices were sent to the local newspapers discussing the project proposal. Copies of the public involvement letters and responses are on file at the Foresthill Ranger District Office. The project files and related maps also are available for public review at Foresthill Ranger District Office, 22830 Foresthill Road, Foresthill, CA 95631.

The proposal is not expected to adversely affect snag-dependent wildlife species. Sufficient numbers of hard snags of appropriate size for wildlife and protection of soft snags from potential damage during harvest activities will occur in compliance with management requirements. No Wild and Scenic Rivers or Wildernesses would be affected by salvage harvesting. Harvesting would occur in a former RARE II area; the area was released for multiple-use management in 1984 with the passage of the California Wilderness Act. Mitigation measures for streamside management zones, meadows, soil productivity, and fuels will follow the Forestwide Standards and Guidelines. Rehabilitation and restoration measures will be implemented for watershed protection, erosion prevention, and fuels reduction. Sensitive areas such as archaeological sites, California spotted owl nest sites, should they be found, or sensitive plant areas, should they be identified, will be avoided.

Dated: August 21, 1992.

Dale N. Bosworth,

Reviewing Officer, Deputy Regional Forester.

[FR Doc. 92–20681 Filed 8–27–92; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Export Administration Bureau

[Docket Number 0120–01]

Iran Air, Mehrabad Airport Tehran, Iran, Respondent; Final Order

On July 22, 1992, Administrative Law Judge Hugh J. Dolan (ALJ) issued an Order (Recommended Order) in this proceeding. In accordance with section 13(c) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2420 (1991)) (the Act),[1] and section 788.23 of the Export Administration Regulations (currently codified at 15 C.F.R. parts 769–799 (1991)) (the Regulations), the Recommended Order must be affirmed, modified, or vacated by the Acting Under Secretary for Export

[1] The Act expired on September 30, 1990. Executive Order 12730 (55 F.R. 40373, October 2, 1990) invoked the International Emergency Economic Powers Act (50 U.S.C.A. 1701–1706 (1991)) (IEEPA), continuing in effect the Export Administration Regulations and to the extent permitted by law, the provisions of the Act.

Administration (Under Secretary) within 30 days from her receipt of the Recommended Order.

Statement of the Case

On October 18, 1990, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce (Department), issued, and filed with the Office of the Administrative Law Judge, a one-count charging letter against Iran Air. The charging letter alleged that, on October 21, 1985, Iran Air caused U.S.-origin Fluke signal generators and frequency counters [2] to be reexported from the Federal Republic of Germany to Iran without obtaining from the Department the reexport authorization required by § 774.1 of the Regulations. The charging letter alleged that, in causing the unauthorized reexport of U.S.-origin equipment, Iran Air violated § 787.2 of the Regulations.[3]

Following its receipt of the charging letter, Iran Air conducted extensive discovery of the Department, several aspects of which led to disagreements between counsel for Iran Air and counsel for the Department, requiring the intervention of the Administrative Law Judge (ALJ).[4] When discovery and other preliminary matters were concluded, the ALJ set the matter for a hearing, as Iran Air had requested and to which it was entitled.

The hearing was held on May 8, 1991, in Washington, DC. After the hearing, the parties filed post-hearing briefs and replies. After considering the record, the ALJ issued his Recommended Order on October 31, 1991 (First Recommended Order). The ALJ made several findings of fact with which the Department agreed, but also found that the Department did not meet its burden of proof that Iran Air committed the violation alleged and therefore recommended dismissal of the charge against the company. In making that decision, the ALJ reached certain findings of fact and conclusions of law with which the Department took issue. In particular, the Department disagreed with the ALJ's conclusion that "knowledge" is an essential element of proof for the imposition of civil penalties in a case brought pursuant to § 787.2 of the Regulations.

The Department urged the Under Secretary to vacate much of the First Recommended Order, and to remand the matter to the ALJ for further proceedings. On November 26, 1991, I issued an Order that was, for the most part, consistent with the views of the Department. Among other things, I specifically ruled that "knowledge" is not a required element of proof in establishing a violation of § 787.2 of the Regulations. I remanded the matter to the ALJ, directing him to determine the charge against Iran Air "in a matter not inconsistent with" my determination concerning the "knowledge" issue.

Despite that explicit instruction, the ALJ, on June 15, 1992, issued a Decision and Order on Remand from the Order of the Acting Under Secretary for Export Administration (Recommended Order on Remand), wherein the ALF held again that "knowledge" is an element of proof for allegations of violations of § 787.2 of the Regulations.

In the ALJ's Recommended Order on Remand, the ALJ also commented on his authority and the authority of the Under Secretary to act in enforcement cases in light of the lapse of the Act. He opined that the use of an ALJ is no longer statutorily mandated and that, because IEEPA does not provide for or authorize review by an Under Secretary, the actions of a person purporting to act in that capacity "would appear to be" *ultra vires*.

In its Initial Submission Concerning Recommended Order on Remand, the Department objected to the ALJ's Recommended Order on Remand, and urged the Under Secretary to vacate the entire Recommended Order. By order of July 14, 1992, I vacated the entire Recommended Order on Remand, and remanded the case to the ALJ with explicit instructions to rule on whether the facts that have been established are sufficient to sustain the allegation of the charging letter, *i.e.*, that Iran Air violated § 787.2 of the Regulations, a strict liability provision.

In response, on July 22, 1992, the ALJ issued a cryptic, one-page Order, ruling that "the record is made. The case should promptly be the subject of final Agency action." The ALJ stated:

> [T]he statement of facts set forth at pp. 2–4 in the Decision and Order of October 31, 1991, with the other findings of record • • • and in footnote 15 of the Decision and Order After Remand, constitute a complete fulfillment of this adjudication officer's responsibilities. Further dialogue or consideration of the case would only serve to unnecessarily postpone the already excessive belaboring of the essentially legal, not the *factual dispositive issues which have been considered and decided* (emphasis added).

In view of the ALJ's most recent Order, this case has now reached an unsatisfactory procedural posture. Despite my *two* orders setting forth the law that the ALJ must apply in this case concerning the strict liability nature of the Regulations, and despite my instructions that the ALJ must apply that law to the facts as found by the ALJ,[5] and despite *three* recommended orders from the ALJ, the ALJ is apparently unwilling to state clearly and directly whether Iran Air violated the Regulations, as charged, as is required of him under section 788.16(b)(2) of the Regulations, which states:

> The [recommended] decision shall include recommended findings of fact, *conclusions of law, and findings as to whether there has been a violation of the Act*, the regulations or any order, license or other authorization issued under the Act (emphasis added).

Essentially, it appears that I have but two options. My first option is to remand, yet again, the case to the ALJ, with instructions. I find that this course of action would be futile. The ALJ has already stated that, in his view, he has completely fulfilled his "adjudication officer's responsibilities."

The other option is for me to review the entire record and to apply the law—as I have set it forth in this proceeding—to the ALJ's findings of fact, all of which have either been affirmed in my November 26, 1991 Order or stood uncontested by Iran Air.

I choose the latter option. Indeed, the ALJ himself has urged that "the case should promptly be the subject of final agency action." It is true that, in *Dart* v. *United States*, 848 F.2d 217 (D.C. Cir. 1988), the Court of Appeals for the District of Columbia Circuit held that, pursuant to section 13(c)(1) of the Act, the Under Secretary may only "affirm, modify or vacate" the recommended orders of the ALJ.[6] And, in this case, the recommended order of the ALJ that is before me for review is incomplete.

Even so, in view of all of the above, I find that the second option is the only reasonable alternative. In his most recent order, the ALJ has specifically referred to the findings of fact he made in the October 31, 1991 Recommended Order at pp. 2–4, and has therefore

[2] During the course of discovery, the Department decided not to pursue the claim concerning the frequency counters.

[3] At the time the alleged violation occurred, the Regulations appeared in part 300 of title 15 of the Code of Federal Regulations.

[4] The ALJ made findings that the Department failed to comply with certain discovery orders. I have carefully reviewed the entire record of the proceedings. I find, as I have previously found, that there is simply no evidence in the record that the Department failed to comply with discovery orders. To the extent that the ALJ made findings to the contrary, they were, in my Orders of November 26, 1991 and July 14, 1992, and hereby are, expressly vacated.

[5] It should be emphasized that my instructions to the ALJ on remand left him unfettered to determine the ultimate question of whether or not the alleged violation occurred.

[6] This statutory provision is reflected in § 788.23(c) of the Regulations. 15 CFR 788.23(c)

effectively incorporated them into his July 22, 1992 Order. I choose to accept the findings of fact that the ALJ made based on the evidence of record and apply the law as set forth by me to those facts. Thus, I will not "vacate" the Recommended Order; however, I will "modify" the Recommended Order in regards to the sanctions. Although perhaps not the ideal solution, case law suggests that this approach is justifiable:

> [A]lthough the Administrative Procedure Act requires an agency to include in its decision a statement of "findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented," * * * we are not disposed to overturn a sound decision if the agency's path, although not ideally clear, may reasonably be discerned.

Benmar Transport & Leasing Corp. v. *Interstate Commerce Commission*, 623 F.2d 740, 748 (2d Cir. 1980).[7]

This being said, and turning to the merits of the case, the charging letter alleged that Iran Air caused U.S.-origin Fluke signal generators to be reexported from the Federal Republic of Germany to Iran without the reexport authorization required, in violation of § 787.2 of the Regulations. Following a full hearing on the merits and the taking of the parties' evidence, in the Decision and Order of October 31, 1991, at pp. 2–4, the ALJ made these findings:

1. Iran Air is an international air carrier with its principal place of business in Tehran, Iran.
2. Iran Air placed a purchase order with Fluke (Germany) for signal generators. The purchase order contained the language "Please ship to Iran Air Frankfurt Airport for reforwarding to Tehran, Iran."
3. Fluke (Germany) acknowledged receipt of the order and set forth final terms of price and delivery.
4. Iran Air accepted the counteroffer of Fluke (Germany) by telex dated September 12, 1985.
5. Fluke (Germany), however, did not have the requested signal generators in stock and therefore requested the items from Fluke (Holland).
6. Because Fluke (Holland) also did not have the requested items, it transmitted the order to John Fluke Mfg. Co. in Everett, Washington, U.S.A. (Fluke USA).
7. To fill the order, Fluke USA sent three signal generators to Fluke (Holland), which then sold and shipped them to Fluke (Germany).
8. The invoices from Fluke USA to Fluke (Holland) and from Fluke (Holland) to Fluke (Germany) each contained destination control statements that read as follows: "These commodities were licensed for ultimate destination Fed. Rep. Germany. Diversion contrary to United States law is prohibited."
9. On October 17, 1985, Fluke (Germany) delivered the signal generators to Iran Air.
10. The invoice from Fluke (Germany) to Iran Air did not contain the destination control statement that diversion contrary to U.S. law was prohibited.
11. Shortly thereafter, Iran Air shipped the items from Germany to Tehran, Iran.
12. Iran Air acknowledged the receipt of the signal generators in Iran.
13. At the time the signal generators were shipped by Iran Air from Germany to Iran they were classified under Commodity Control Classification Number (ECCN) 1531A for national security reasons.
14. No reexport authorization was granted for this shipment from Germany to Iran.

While the ALJ made the foregoing findings of fact,[8] he is apparently unwilling to clearly and directly apply the law as given by the Under Secretary to the facts that he has found, and has not made the statement that, "I find the violation alleged in the charging letter has been proven." Nevertheless, the numerous findings of fact that the ALJ actually did make based upon the evidence of record, the law given by me on the issue of the strict liability nature of the Regulations, and the ALJ's own statements that "the record is made" and that the "case should promptly be the subject of final Agency action," point to a simple conclusion: the ALJ has found that Iran Air caused an unauthorized reexport of U.S.-origin Fluke signal generators from West Germany to Iran, in violation of § 787.2 of the Regulations, as alleged in the charging letter. I affirm this conclusion.

Section 787.2 of the Regulations provides: "No person may cause * * * the doing of any act prohibited, or the omission of any act required by the Export Administration Act, or any regulation, order or license issued under the Act." I have already expressly ruled that "knowledge" is not an element of a violation under § 787.2. Therefore, the Department was not required to allege or prove that Iran Air had any particular knowledge of the Regulations, that Iran Air had any particular knowledge of the ECCN status of Fluke model 6060A signal generators, or that Iran Air had "knowing" intent to violate the Regulations, in order to sustain the allegations of the charging letter. Thus, the only consideration is whether, based upon the facts of record, Iran Air caused the unlawful reexport, as the Department alleged.

"Cause" is not specifically defined in the Act or the Regulations, but is a word of very broad import and its meaning is generally known. In the absence of a regulatory definition, general rules of construction instruct the tribunal to apply the plain, common, or ordinary definition. See 73 Am. Jur. 2d, *Statutes*, section 206 (1974). The word "cause" in its simplest sense means "to bring about." *United States* v. *Kenofskey*, 243 U.S. 440 (1917).

I find that the facts established inescapably lead to the conclusion that Iran Air did cause an unauthorized reexport: Iran Air's Head Supply Office in Tehran originated the purchase order for the Fluke signal generators, calling for them to be shipped to Iran, thereby setting in motion the entire chain of events that brought about the unauthorized reexport, and Iran Air carried the signal generators on an Iran Air aircraft from Germany to Iran. All of this took place without the U.S. reexport authorization that was required, but that had not been obtained by, or on behalf of, Iran Air.

The reference in the ALJ's most recent order to footnote 15 of his Recommended Order on Remand lends further support to this conclusion. In that earlier order, although the ALJ was not willing to reach the conclusion of law urged by the Department—that Iran Air violated § 787.2 of the Regulations—he did state that, "under the Agency's theory" of the case, "Respondent would have warranted no more than a warning * * *." In effect—given the legal standard that I have articulated to the ALJ—the ALJ stated that the case should be disposed of with a warning letter.

I agree with the ALJ's implicit acceptance of the "Agency's theory." However, I disagree with his statement that the case deserves no more than a warning, and I modify it as hereinafter set forth.

Discussion

Because several pivotal issues were raised during the course of this proceeding, I am setting forth for the public record key holdings that I made during the course of this proceeding.[9]

1. "Knowledge" is not an essential element of proof for the imposition of civil penalties pursuant to § 787.2 of the Regulations.

The Department argued, prior to the first remand in this case, that the plain language of § 2410 describes three different types of export violation; the first two ("knowing" and "willful") have state of mind requirements, while the third ("civil") has no state of mind requirement. This view, the Department argued, is the only view which is consistent with all of the following: the plain language of § 2410; the Department's 1981 regulatory amendments, wherein "knowledge" was eliminated as an element in § 787.2 cases; and the Department's practice in charging violations pursuant to § 787.2. I expressly agreed with this view in my first remand order, and I expressly reaffirmed it in my second remand order. In support thereof, I have made the following points.

First, the plain language of the Act is directly contrary to the position taken by the ALJ. Section 11 of the Act establishes the various penalties that apply to violations of the Act. Section 11(a) of the Act provides:

> Except as provided in subsection (b) of this section, whoever *knowingly* violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both (emphasis added).

Section 11(b)(1) provides, in pertinent part:

> Whoever *willfully* violates or conspires to or attempts to violate any provision of this Act or any regulation, order, or license issued thereunder, with *knowledge* that the exports involved will be used for the benefit of or that the destination or intended destination of the goods or technology involved is any controlled country or any country to which exports are controlled for foreign policy purposes—
>
> (A) except in the case of an individual, shall be fined not more than five times the value of the exports involved or $1,000,000, whichever is greater; and
>
> (B) in the case of an individual, shall be fined not more than $250,000, or imprisoned not more than 10 years, or both (emphasis added).

Section 11(c)(1) (entitled "Civil Penalties; Administrative Sanctions") provides, in pertinent part:

> The Secretary of Commerce * * * may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order, or license issued under this Act, either in addition to or in lieu of any other liability or penalty which may be imposed, except that the civil penalty for each violation involving national security controls imposed under section 5 of this Act * * * may not exceed $100,000.

Section 11 demonstrates congressional intent to provide for an array of penalties against persons who have violated the Act.[10] Anyone who "knowingly violates" the Act is subject to one criminal fine; anyone who "willfully violates," with "knowledge" of certain uses and destinations, is subject to another, more severe, criminal fine; and administrative sanctions are applicable to anyone who violates the Act or the Regulations. Significantly, Congress did not include any *scienter* requirement in order for the Secretary to impose an administrative sanction. Despite the unambiguous language of the Act, however, the ALJ interpreted the "knowingly violates" language in section 11(a) as also applying to the civil penalty provisions of section 11(c). In part, the ALJ's confusion may result from the fact that Congress has provided for separate criminal penalties under the Act. There simply is no basis for concluding that section 11(a) or section 11(b) establishes a knowledge requirement for the imposition of administrative sanctions pursuant to section 11(c)(1) of the Act.

Second, the ALJ's reliance on *Spawr Optical Research, Inc.* v. *Baldrige*, 649 F. Supp. 1366 (D.D.C. 1986), was misplaced. Simply put, *Spawr* did not turn on the question of the proof necessary to establish an administrative violation. Rather, *Spawr* dealt with how and whether a prior *criminal* conviction that necessarily encompassed an element of "knowledge" could be used against a respondent in a subsequent administrative proceeding by way of collateral estoppel.

Third, section 11(b)(5) of the Act (50 U.S.C.A. app. 2410(b)(5)) provides: "Nothing in this subsection [Section 2410(b)] or subsection (a) [Section 2410(a)] shall limit the power of the Secretary to define by regulations violations under this Act." Thus, it is within the Secretary's express statutory authority, notwithstanding the knowing or willfulness elements contained in section 11(a) and 11(b)(1) of the Act, to define, by regulation, what activities constitute administrative violations of the Act. The Secretary has carried out this responsibility in part 787 of the Regulations.

Before 1981, § 387.2 of the Regulations (the predecessor section to § 787.2)[11] contained a "knowing" element. See, 15 CFR 387.2 (1980). In 1980, however, the word "knowingly" was deleted from § 387.2 of the Regulations when then-part 387 of the Regulations was amended. 45 FR 84021 (1980).

The deletion of the word "knowingly" from section 387.2 of the Regulations in 1980 was not an inadvertent mistake. This is demonstrated by the fact that, at the same time, the Department also deleted any knowledge requirement from then-section 387.6 of the Regulations (compare 15 CFR 387.6 (1980) with 15 CFR § 387.6 (1981)) and then-section 387.10 of the Regulations (compare 15 CFR 387.10 (1980) with 15 CFR 387.12 (1981)).[12]

The clear intent and effect of these several amendments to then-part 387 (now part 787) of the Regulations was to delete any requirement that "knowledge" be proven as an element of the offense, thereby making now—§§ 787.2, 787.6 and 787.12 of the Regulations strict liability offenses in administrative proceedings conducted before an ALJ. As is made clear in section 11(b)(5) of the Act, it was well within the Secretary's prerogatives to do so.

Fourth, this result is consistent with the long-standing judicial acknowledgement that even criminal acts can be prosecuted without a "knowledge" element. At common law, the concept of "crime" embraced an element of an evil-meaning intent, known as *mens rea*. In more recent times, a completely different category of crimes has arisen under modern

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[7] "[T]he requirement of factual findings is met if the written decision of the hearing panel or the record of the hearing sets out clearly the grounds for its action so that appellate bodies and reviewing courts are able to ascertain whether the decision is arbitrary, capricious or not supported by the reasonable, substantial and probative evidence on the record considered as a whole." *Farrett* v. *Matthews*, 474 F. Supp. 594, 599 (N.D. Ala. 1979). See also, *Gilbertville Trucking Company* v. *United States*, 196 F. Supp. 351 (D. Mass. 1961), *aff'd* 371 U.S. 115 (1962).

[8] The ALJ found that Iran Air shipped the signal generators from Germany to Iran. However, he did not specify the date of that shipment. I find that the shipment occurred on October 21, 1985, as evidenced by Iran Air air waybill —096–8222–5813, referencing Iran Air's purchase order —81591. (Gov. Ex. 10.) This finding establishes that the commencement of this proceeding, initiated by the October 18, 1990 charging letter, was timely, *i.e.*, within the five-year statute of limitations that applies to the enforcement of the Act and Regulations.

Although the ALJ found that "no reexport authorization was granted for this shipment from Germany to Iran," the ALJ did not expressly find that reexport authorization was required, in October 1985, to reexport Fluke signal generators, model 6060A, to Iran. In a certified licensing determination made a part of the record (Gov. Ex. 1), William L. Clements, Director of the Office of Technology and Policy Analysis, stated that Fluke signal generators, model 6060A, were classified as ECCN 1531A and "required a validated license for export or reexport authorization to Iran in October 1985." This was the only fact specifically contested by Iran Air before me. The other facts found by the ALJ were not contested by Iran Air, and I find each of them to have been established.

[9] While other decisions were made in this case, they generally involve the admissibility of certain evidence or the exclusion of certain testimony. Because these decisions do not have general applicability, they are not repeated in my final order.

[10] It is not at all unusual for Congress to provide for both criminal and administrative penalties in the same statute. See, *e.g.*, International Emergency Economic Powers Act, 50 U.S.C.A. 1705 (a) and (b).

[11] In 1988, the Regulations were renumbered from parts 368–399 to parts 768–799 of title 15 of the Code of Federal Regulations.

[12] Section 387.10 was renumbered section 387.12 by the 1980 amendments to part 387. See, 45 FR 84021 (1980).

statutes. *Morissette* v. *United States*, 342 U.S. 246 (1952). These are crimes that include no mental element, such as knowledge or intent, but consist only of forbidden acts or omissions.

Finally, § 787.2 of the Regulations, on its face and as applied, does not require that the Department allege or prove that Iran Air had any particular knowledge of the Regulations, that Iran Air had any particular knowledge of the ECCN status of the Fluke model 6060A signal generators, or that Iran Air had intent to violate the Regulations, in order to sustain the allegations of the charging letter. The Department has long maintained that, with the 1980 amendments to the referenced sections, the violations defined in those sections are strict liability offenses. The record of administrative proceedings initiated by the Department since the 1980 amendments clearly establishes that, contrary to the assertions of the ALJ, the Iran Air case is only one of many cases where the Department has chosen to charge a respondent administratively for a violation under section 787.2 of the Regulations and has not alleged that the action was taken with knowledge.

For example, in *In the Matter of Hermon Kluever*, 56 FR 14916 (April 12, 1991), the Department charged an administrative violation of § 787.2 of the Regulations, and did not allege or prove "knowledge." In fact, the Department's practice has been to charge violations on a strict liability basis, except in those instances in which the Department is also alleging that the respondent had the requisite knowledge to sustain a separate administrative charge under § 787.4(a) of the Regulations.[13]

It is entirely consistent with the provisions of the Act for the Secretary to provide, by regulation, for strict liability offenses. It is not inconsistent with this authority for the Department, in appropriate cases, to charge that a particular violative act was also taken with "knowledge," thereby subjecting the offender to a charge of violating section 787.4(a) of the Regulations, in addition to any other charge. Accordingly, the Act does not require proof of knowledge in order to impose civil sanctions and the Regulations properly establish certain strict liability offenses in administrative proceedings heard by the ALJ.

2. The ALJ correctly determined that the statute of limitations does not bar this proceeding.

The ALJ held that the statute of limitations did not bar this proceeding concerning the Fluke signal generators. The ALJ ruled on this issue in response to arguments by Iran Air that the October 18, 1990 charging letter was not served on Iran Air until October 24, 1990.

The charging letter alleged:

> On October 21, 1985, Iran Air caused U.S.-origin Fluke signal generators and frequency counters to be reexported from the Federal Republic of Germany to Iran without obtaining from the Department the reexport authorization required by § 774.1 of the Regulations. In causing the doing of an act prohibited by the Regulations, Iran Air violated § 787.2 of the Regulations with respect to this shipment.

As a general matter, the Department applies the five-year statute of limitations contained in 28 U.S.C. § 2462 to enforcement of the Act and Regulations. The charging letter alleged that, on October 21, 1985, Iran Air caused U.S.-origin Fluke signal generators to be reexported from the Federal Republic of Germany to Iran without obtaining from the Department the reexport authorization required. The statute of limitations would bar this proceeding if it were brought after October 21, 1990. However, the Department commenced this proceeding by filing a charging letter with the ALJ on October 18, 1990, within the five-year period.

Iran Air argued that this action was not timely commenced by "service" on Iran Air because Iran Air was not "served" until October 24, 1990. Iran Air's position is erroneous because this administrative action is not deemed commenced at the time of "service." Rather, section 788.4(a) of the Regulations provides that "The Office of Export Enforcement * * * may begin administrative proceedings under this part by issuing a charging letter in the name of the Department * * *." This rule is analogous to Rule 3 of the Federal Rules of Civil Procedure, which states: "A civil action is commenced by filing a complaint with the court."

Filing a complaint in federal district court tolls the statute of limitations where the action is to enforce a federally-created right, even though process is not effected until after expiration of the statutory period. *West* v. *Conrail*, 481 U.S. 35 (1987). *See generally*, Moore's Federal Practice, Vol. 2, § 3.09[2], Matthew Bender (1991).

Accordingly, Iran Air's defense that this proceeding was brought too late is erroneous insofar as the Fluke signal generators are concerned, because the Department both issued, and filed with the ALJ, the charging letter making that allegation on October 18, 1990. The Department conceded that the statute of limitations was a defense to the charged violation as to the frequency counters which, it appears, were flown to Iran by Iran Air on or about February 7, 1985, more than five years before the commencement of this proceeding. I affirm the ALJ's finding that this proceeding was timely brought insofar as the Fluke signal generators are concerned, and that this proceeding is not barred by the statute of limitations.

3. The ALJ correctly concluded that this proceeding is not contrary to the Algiers Accords.

Iran Air maintained that the imposition and enforcement of export controls upon Iran Air by the United States, such as the one at issue in this case, is contrary to the United States's declared international obligations to Iran under the General Principles of the Algiers Declaration. The ALJ concluded that the Algiers Accords do not preclude the United States Government's right to bring an action against those who allegedly violate the Act; I affirm the ALJ's conclusion.

4. Effect of the lapse of the Export Administration Act.

The ALJ's Recommended Order on Remand comments on his authority and the authority of the Under Secretary to act in enforcement cases in light of the lapse of the Act. He opines that the use of an ALJ is no longer statutorily mandated and that, because IEEPA does not provide for or authorize review by an Under Secretary, the actions of a person purporting to act in that capacity "would appear to be" *ultra vires*.

On May 15, 1992, the General Counsel of the Department of Commerce responded to the ALJ's inquiries concerning both the ALJ's and the Under Secretary's authority to act in enforcement proceedings in light of the lapse of the Act on September 30, 1990. The General Counsel affirmed the authority of both the ALJ and the Under Secretary to act in cases arising under the Act and Regulations despite the lapse of the Act. I concur with the General Counsel's opinion. Accordingly, all references in this proceeding made by the ALJ which purport to question either the ALJ's or the Under Secretary's authority to act during the lapse of the Act, or the legitimacy of proceedings brought or pending under Part 788 of the Regulations, are hereby expressly vacated.

[13] Section 787.4(a) of the Regulations specifically requires "knowledge" to establish a violation of the section. There have been a number of proceedings in which the Department alleged that a respondent committed a particular violation and that the violation was committed with knowledge or reason to know that a violation had occurred, was about to occur, or was intended to occur in connection with the transaction. In such instances, the Department charges that the respondent violated two separate regulatory provisions, *e.g.*, that a violation of both § 787.2 and § 787.4(a) occurred in the same transaction.

Sanctions

Having found that Iran Air committed the violation alleged, I cannot accept the ALJ's recommended sanction of a "warning" and so modify it as described below.

The Department has consistently sought the imposition of significant sanctions against Iran Air for its violation of the Regulations. Specifically, the Department has continued to urge that Iran Air be assessed a civil penalty of $100,000 for the violation of national security controls that it committed, the maximum civil penalty available under § 788.3(a)(4) of the Regulations. In addition, the Department recommends that all of Iran Air's export privileges be denied for a period of 24 months, with 21 months suspended. I agree with the Department's recommendation.

Moreover, the Department recommends that, to assure full and timely payment of the civil penalty, which is to be due within 30 days after the entry of this Order, the suspension of 21 months of the denial period be expressly made contingent upon Iran Air's timely payment of the full civil penalty imposed. Thus, if Iran Air should fail or refuse to pay, in a timely manner, the full amount of the civil penalty imposed against it, the suspended portion of the denial period would be reinstated.[14] I agree with this recommendation, as well.

In view of the foregoing,

Therefore, it is ordered:

1. A civil penalty in the amount of $100,000 is assessed against Iran Air, to be paid in full within 30 days from the date of entry of this Order. Payment shall be made to the Department in the manner specified in the attached instructions.

2. All outstanding individual validated licenses in which Iran Air appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Iran Air's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

3. Iran Air, with its main office located at Mehrabad Airport, Tehran, Iran, and all its successors, assigns, officers, partners, representatives, agents and employees, for a period of 24 months from the date of entry of this Order, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

4. As authorized by § 788.3(b) and 788.16(c) of the Regulations, the denial period herein provided for against Iran Air shall be suspended for a period of 21 months beginning three months from the date of entry of this Order, and shall thereafter be waived, provided that, during the period of suspension, Iran Air has committed no violation of the Act or any regulation, order or license issued under the Act. The suspension of this 21-month portion of the denial period is contingent upon Iran Air's timely payment to the Department of the full amount of the civil penalty, as provided for herein. If Iran Air fails or refuses to pay the civil penalty imposed against it, the suspended portion of the denial period will be reinstated.

5. After notice and opportunity for comment, any person, firm, corporation, or business organization related to Iran Air by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

6. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

7. Pursuant to § 788.20(c)(1) of the Regulations, the charging letter, Iran Air's answer, and this final Order disposing of the case shall be made available to the public. A copy of this Order shall be served upon Iran Air and published in the **Federal Register**.

The Recommended Order of the ALJ dated July 22, 1992, is modified as set forth in this Final Order. This constitutes the final agency action in this matter.

Dated: August 21, 1992.

James M. LeMunyon,

Acting Under Secretary for Export Administration.

In the Matter of Iran Air, Respondent; Order

[Docket Nos. 0120-01]

The statement of facts set forth at pp. 2-4 in the Decision and Order of October 31, 1991, with the other findings of record and the alternative dispositions set forth therein and in footnote 15 of the Decision and Order After Remand, constitute a complete fulfillment of this adjudication officer's responsibilities. Further dialogue or consideration of the case would only serve to unnecessarily postpone the already excessive belaboring of the essentially legal, not the factual dispositive issues which have been considered and decided.

Dilatory action, resulting in multi-year delays, such as is involved *In the Matter of Town & Country Plastics*, Docket No. AB-1-89, which has been awaiting Secretarial action since September 21, 1990, should not be repeated here. The Secretarial citation to, and reliance

[14] Iran Air is an Iranian entity. The Department's ability to collect a civil penalty against Iran Air is questionable. Therefore, conditioning the continuation of Iran Air's U.S. export privileges on the complete and timely payment of any civil penalty is appropriate.

upon, provisions of the expired Export Administration Act is incomprehensible. (See Recommended Decision, Docket Numbers OEE–1–92 and OEE–2–92 of this date.) The record is made. The case should promptly be the subject of final Agency action.

Dated: July 22, 1992.

Hugh J. Dolan,

Administrative Law Judge.

[FR Doc. 92–20534 Filed 8–27–92; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Project I.D. No. 06–10–93001–01]

Business Development Center Applications: Oklahoma City MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate an MBDC for approximately a 3-year period, subject to Agency priorities, recipient performance and the availability of funds. The cost of performance for the first budget period (12 months) is estimated as $165,000 in Federal funds. An audit fee of $4,125 has been added to the Federal amount. The total funding breakdown is as follows: $169,125 Federal and $29,846 non-Federal for a total of $198,971. The period of performance will be from January 1, 1993 to December 31, 1993. The MBDC will operate in the Oklahoma City, Oklahoma geographic service area.

The funding instrument for the MBDC will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program is designed to provide business development services to the minority business community for the establishment and operation of viable minority businesses. To this end, MBDA funds organizations that can identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated initially by regional staff on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. The selection of an application for further processing by MBDA will be made by the Director based on a determination of the application most likely to further the purpose of the MBDC Program. The application will then be forwarded to the Department for final processing and approval, if appropriate. The Director will consider past performance of the applicant on previous Federal awards.

MBDCs performing satisfactorily may continue to operate after the initial competitive year for up to 2 additional budget period. MBDCs with year-to-date "commendable" and "excellent" performance ratings may continue to be funded for up to 3 or 4 additional budget periods, respectively. Under no circumstances shall an MBDC be funded for more than 5 consecutive budget periods without competition. Periodic reviews culminating in year-to-date quantitative and qualitative evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

Awards under this program shall be subject to all Federal and Departmental regulations, policies, and procedures applicable to Federal assistance awards.

In accordance, with OMB Circular A–129, "Managing Federal Credit Programs," applicants who have an outstanding account receivable with the Federal Government may not be considered for funding until these debts have been paid or arrangements satisfactory to the Department of Commerce are made to pay the debt.

Applicants are subject to Governmentwide Debarment and Suspension (Nonprocurement) requirements as stated in 15 CFR part 26. The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the MBDC has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements; and reporting inaccurate or inflated claims of client assistance or client certification. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

On November 18, 1988, Congress enacted the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, title V, subtitle D). The statute requires contractors and grantees of Federal agencies to certify that they will provide a drug-free workplace. Pursuant to these requirements, the applicable certification form must be completed by each applicant as a precondition for receiving Federal grant or cooperative agreement awards.

"Certification for Contracts, Grants, Loans, and Cooperative Agreement" and CD–511, the "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying" is required in accordance with section 319 of Public Law 101–121, which generally prohibits recipients of Federal contracts, grants, and loans from using Legislative Branches of the Federal Government in connection with a specific contract, grant or loan.

CLOSING DATE: The closing date for applications is September 30, 1992. Applications must be postmarked on or before September 30, 1992.

Note: Please mail completed application to the following address: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75227.

FOR APPLICATION KIT OR OTHER INFORMATION CONTACT: Dallas Regional Office, 1100 Commerce Street, room 7B23, Dallas, Texas 75242, Attn: Yvonne Guevara, (214) 767–8001.

Requests for application kit must be in writing.

A pre-bid conference will be held on September 14, 1992 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: August 21, 1992.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 92–20602 Filed 8–27–92; 8:45 am]

BILLING CODE 3510–21–M

National Institute of Standards and Technology

[Docket No. 920534–2134]

RIN 0693–AA73

Approval of Federal Information Processing Standards Publication 173, Spatial Data Transfer Standard (SDTS)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a new standard, which will be published as FIPS publication 173, Spatial Data Transfer Standard.

SUMMARY: On April 11, 1991, notice was published in the **Federal Register** (56 FR 14686) that a Federal Information Processing Standard for SDTS was being proposed for Federal use.

NIST reviewed written comments submitted by interested parties and other available material. On the basis of this review, NIST recommended that the Secretary approve the standard as a Federal Information Processing Standard (FIPS), and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary, and which includes an analysis of the written comments received, is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section, which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective February 15, 1993. The transition period begins on the effective date and continues for twelve (12) months thereafter. Use of FIPS SDTS is mandatory for Federal agencies one year from the effective date.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for this standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Henry Tom, (301) 975–3271, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Dated: August 24, 1992.

John W. Lyons,

Director.

Federal Information Processing Standards Publication 173

(Date)

Announcing the Standard for Spatial Data Transfer Standard (SDTS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Spatial Data Transfer Standard (SDTS) (FIPS PUB 173).

2. Category of Standard. Software Standard, Information Interchange.

3. Explanation. This standard provides specifications for the organization and structure of digital spatial data transfer, definition of spatial features and attributes, and data transfer encoding. The purpose of the standard is to promote and facilitate the transfer of digital spatial data between dissimilar computer systems.

Work on a national spatial data transfer standard was initiated by the National Committee for Digital Cartographic Data Standards, American Congress on Surveying and Mapping in 1982 to develop a comprehensive set of data exchange standards for the profession. In 1985, the Standards Working Group of the Federal Interagency Coordinating Committee on Digital Cartography also began work on spatial data exchange standards. During 1987, the results of these parallel efforts were merged by the Digital Cartographic Data Standards Task Force into the proposed Digital Cartographic Data Standard, published as a special issue of The American Cartographer in January 1988. Subsequent testing, modification, and refining of the specifications were done by the Spatial Data Transfer Standard Technical Review Board. These efforts have resulted in this Federal Information Processing Standard (FIPS) for Spatial Data Transfer Standard (SDTS).

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. U.S. Department of Interior, United States Geological Survey (USGS), National Mapping Division.

Questions concerning this standard are to be addressed to the Maintenance Agency: SDTS Program, National Mapping Division, United States Geological Survey (USGS), 510 National Center, Reston, VA 22092. National Mapping Division, USGS maintains a FIPS Spatial Features Register for part 2 of SDTS. Users of this standard who need to be notified of changes that occur prior to the next publication of the standard must complete the Change Request Form provided in this publication and send it to: Standards Processing Coordinator (ADP), Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899. The NIST will issue Change Notices on an as-needed basis.

6. Related documents. A list of references is contained in section 1.3 and annex F of part 1 of the specifications.

7. Objectives. The objectives of the SDTS are to:

—Provide a common mechanism for transferring digital spatial information between dissimilar computer systems, while preserving information meaning, and minimizing the need for information external to this standard;

—Provide, for the purpose of transfer, a set of clearly specified spatial objects and relationships to represent real world spatial entities, and to specify the ancillary information necessary to accomplish the transfer;

—Provide a transfer model that will facilitate the conversion of user-defined to standardized set of objects, relationships, and information.

8. Applicability.

a. This standard is for use in the acquisition and development of government applications and programs involving the transfer of digital spatial data between dissimilar computer systems.

b. The use of the FIPS SDTS applies when the transfer of digital spatial data occurs or is likely to occur within and/or outside of the Federal government.

c. The use of the FIPS SDTS does not apply to the transfer of digital geocoded data files which are not intended to represent spatial entities as digital geographic or cartographic features.

d. FIPS SDTS is not intended to facilitate product distribution of spatial data in a form designed for direct access by application software specific to a particular data structure, class of computer platform, or distribution media.

e. Nonstandard features should be used only when the needed operation or function cannot be reasonably implemented with standard features alone. Although nonstandard features can be very useful, it should be recognized that the use of these or any other nonstandard elements may make the interchange of digital spatial data and future conversions more difficult and costly.

9. Specifications. The FIPS SDTS, in three parts, provides specifications for the organization and structure of digital spatial data transfer, definition of spatial features and attributes, and data transfer encoding. All three parts are required for Federal Government implementations of this standard.

FIPS SDTS implementations not requiring full functionality are designated as application profiles. Application profiles, requiring all three parts of the FIPS SDTS, are limited subsets designed for use with a specific type of data and/or application.

The SDTS Profile for Geographic Topological Vector Data, is currently under development by the Standards Working Group, Federal Geographic Data Committee (FGDC), formerly the Federal Interagency Coordinating Committee on Digital Cartography (FICCDC).

Specifications of this FIPS have the following characteristics:

a. Ability to transfer vector, raster, grid and attribute data and other ancillary information;

b. Common set of terminology and definitions for spatial features;

c. Internal description of the data types, formats, and data structures such that the information items can be readily identified and processed in the recipient system; and

d. Media independence and extendibility to encompass new spatial information as needed.

10. Implementation. The implementation of this standard involves three areas of consideration: Acquisition of FIPS SDTS implementations, validation, and interpretations of the standard.

10.1 Acquisition of FIPS SDTS implementations. This publication is effective February 15, 1993. Federal applications, requiring the transfer of digital spatial data, are encouraged to start using FIPS SDTS.

A transition period provides time for industry to produce implementations conforming to the standard. The transition period begins on the effective date and continues for twelve (12) months thereafter. Use of FIPS SDTS is mandatory for Federal agencies one year from the effective date.

10.2 Validation. Conformance to FIPS SDTS is applicable whether implementations are developed internally, acquired as part of an automated data processing (ADP) procurement, acquired by separate procurement, used under an ADP leasing arrangement, or specified for use in contracts for programming services.

Conformance criteria, based on application profiles, will be used for validating the conformance of FIPS SDTS implementations. Validations of implementations for conformance to FIPS SDTS, conformance criteria, policy, and procedures are under the authority of the FIPS program.

10.3 Interpretation of FIPS SDTS. Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS SDTS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899, Telephone: (301) 975–2490.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings. Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Where to obtain copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the United States Geological Survey (USGS).) When ordering, refer to Federal Information Processing Standards Publication 173 (FIPSPUB173), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 92– 20737 Filed 8–27–92; 8:45 am]
BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Western Pacific Regional Fishery Management Council; Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearing and request for comments.

SUMMARY: The Western Pacific Regional Fishery Management Council will convene a public hearing on Tuesday, September 1, 1992, to discuss the management of bottomfish in the Northwestern Hawaiian Islands. The hearing agenda includes limiting entry into the Mau Zone; transferability of Federal bottomfish permits; reducing effort or size of the harvest, and other business.

DATES: The public hearings are scheduled to begin at 6:30 p.m., local time, on September 1, 1992, and September 3, 1992.

ADDRESSES: The hearings will be held on September 1, 1992, at Paki Hale, 3840 Paki Avenue, Honolulu, Hawaii 96815, and on September 3, 1992, at Kalaheo Neighborhood Center, 4480 Papalina Street, Kalaheo, Hawaii 96741. Send written comments to Western Pacific Fishery Management Council, 1164 Bishop Street #1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Regional Fishery Management Council, 1164 Bishop Street #1405, Honolulu, HI 96813, Telephone (808) 523–1368, Fax (808) 526–0824.

Dated: August 24, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–20650 Filed 8–27–92; 8:45 am]
BILLING CODE 3510-22-M

National Telecommunications and Information Administration

Comprehensive Study of the Use of Competitive Bidding as a Means of Assigning Spectrum in the United States

AGENCY: National Telecommunications and Information Administration ("NTIA"), Commerce.

ACTION: Notice, request for funding.

SUMMARY: In a recent major report on spectrum management policy, NTIA recommended that the Federal Communications Commission (FCC) employ "competitive bidding" to assign electromagnetic spectrum licenses to private sector users.[1] The intellectual underpinnings of this recommendation were provided by the 1991 Nobel Prize Winner in Economics, Ronald Coase, over three decades ago.[2] The power of Coase's analysis has been appreciated by many in the communications field and by other Federal agencies as well, most notably the Federal Trade Commission (FTC) [3] and the Department of Justice.[4]

Because of this research and the shortcomings of current FCC assignment methods, Congress has recently considered various legislative proposals that would permit the FCC to assign spectrum licenses through "competitive bidding." [5] As the term implies, under competitive bidding, prospective spectrum users would submit bids to the Government in exchange for a set of rights that identify the terms and conditions for use of such spectrum. The competitive bidding process would assign and establish the price for the spectrum license based upon the submitted bids.

Despite the frequent use of competitive bidding in other instances where the U.S. Government distributes natural resources (*e.g.*, sales of mineral and timber rights on Federal lands, oil leases on the continental shelf), its use as a means of assigning spectrum has sparked considerable debate. Such debate stems, in large measure, from a lack of detailed research on the merits of different types of competitive bidding, as well as the absence of a detailed competitive bidding proposal. In an effort to clarify these issues, NTIA is proposing to conduct a detailed research project on competitive bidding mechanisms. The objectives of this study are: (a) To analyze the merits of different forms of competitive bidding; and (b) to identify in implementation-specific terms the "best" competitive bidding mechanism for assigning spectrum licenses for the United States. The project team will be comprised of investigators from the California Institute of Technology (CALTECH), FTC, NTIA, University of Amsterdam, and the University of Arizona.

By this notice, NTIA is soliciting funds no later than Friday, October 9, 1992 to help defray the cost of this project. Subject to Department of Commerce regulations, NTIA will accept all contributions up to the maximum amount of $25,000. Although the set of sponsoring entities will be duly recognized in the final report, editorial and analytic control will remain with NTIA and CALTECH.

On or about October 30, 1992, NTIA will publish a "post-deadline notice" in the **Federal Register** that will announce the set of firms and other entities that are sponsoring the project. NTIA intends to issue a report, in conjunction with its collaborators, within a year following receipt of funding. The scope of the report, described below, will depend upon the extent of private funding.

DATES: Contributions should be received no later than Friday, October 9, 1992.

ADDRESSES: Checks should be made out to the Department of Commerce/NTIA and should be sent to Ms. Gay Shrum, Budget Officer, National Telecommunications and Information Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., room 4890, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Mark M. Bykowsky, NTIA, Office of Policy Analysis and Development, room 4725, 202–377–1880.

Authority: 15 U.S.C. 1525; Exec. Order No. 12046, § 2–409, *reprinted in* 47 U.S.C. 305.

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I. Introduction

1. The FCC is charged with the responsibility of managing private sector use of the electromagnetic spectrum. To this end, the FCC determines *how* a particular frequency shall be used, and also decides, through a "lottery," "comparative hearing," or on a first-come first-served basis, who may use the frequencies allocated. These two functions, commonly referred to as "allocation" and "assignment," respectively, have been subject to criticism over the years. Critics of current spectrum management procedures have recently focused their attention on reforming the assignment process. According to them, the non-market-based mechanisms used in this process are too costly to the government and prospective licensees, as well as unfair to taxpayers since the revenues not collected must be replaced with tax revenue.

[1] National Telecommunications and Information Administration, U.S. Dep't of Commerce, NTIA Special Pub. No. 91–23, U.S. Spectrum Management Policy: Agenda for the Future 115 (Feb. 1991) (hereinafter Spectrum Report).

[2] Coase, The Federal Communications Commission, 2 J.L. & Econ. 1 (Oct. 1959).

[3] Comments of the Staff of the Bureau of Economics of the Federal Trade Commission, Amendment of the Commission's Rules With Regard to the Establishment and Regulation of New Digital Audio Radio Services, Gen. Docket No. 90–357 (filed Jan. 25, 1991).

[4] Comments of the United States Department of Justice Antitrust Division, Comprehensive Policy Review of Use and Management of the Radio Frequency Spectrum, NTIA Notice of Inquiry and Request for Comments, 54 FR 50694 (filed Feb. 23, 1990).

[5] See H.R. 1407, 102d Cong., 1st Sess. (1991); Congressional Budget Office, Auctioning Radio Spectrum, 102d Cong., 2d Sess. (1992).

2. Economists have been particularly critical of current spectrum assignment mechanisms. In their view, because lotteries and comparative hearings distribute spectrum at a price below its true market value, current assignment mechanisms encourage users to acquire incremental quantities of spectrum whose worth to them is less than their incremental cost to society.[6] These incremental costs represent the telecommunications or broadcast services that are sacrificed because spectrum is being employed for other uses. Prices that are below such incremental costs will not guide the nation's scarce resources to those uses that would maximize the economic welfare of producers and consumers.

3. In addition, current assignment mechanisms induce applicants to spend considerable resources (*e.g.*, fee for legal consultants) in applying for or, if they fail to win the lottery, acquiring a spectrum license in the open market. These resource expenditures, to some extent, represent a loss to society.[7] Finally, because lotteries attract a large number of applicants, it takes considerable time to assign spectrum via a lottery, thereby delaying the benefits consumers obtain from spectrum-using services. Comparative hearings traditionally have caused even greater delays than lotteries in providing consumers these services.

4. In part because of these and other criticisms, Congress has begun to consider legislation that would, among other things, permit the FCC to assign spectrum through a "competitive bidding mechanism," (*i.e.*, a market mechanism with an explicit set of rules for determining resource apportionment and price based upon bids from market participants).[8]

5. Although concerns have been expressed about the use of competitive bidding in spectrum licensing,[9] competitive bidding appears to be superior to current assignment mechanisms in promoting the public and private gains associated with spectrum use. For instance, by forcing providers of spectrum-based services to pay a fee equal to the opportunity costs these providers impose upon society for using the spectrum, competitive bidding will promote the efficient use of society's resources and overall economic welfare. In addition, competitive bidding will likely reduce considerably the FCC's administrative cost of assigning spectrum and the resources firms use up in private pursuit of a valuable license.

II. Background on Auctions

6. Economists classify auctions according to the different rules that govern the asset's exchange. These rules are important because they can affect bidding incentives and, therefore, the terms and the efficiency of an exchange. The two most general classification categories are continuous or "oral" auctions and static or "sealed-bid" auctions.[10] A continuous auction is one in which the bidder may alter its bid in response to the bids of others, or the failure of a bid to be accepted. The term "continuous" is used to convey the fact that the auction process continuously makes available bid information so as to allow bidders to either update or place an initial bid. A static auction is one in which the bidder submits one bid to a center that processes all bids according to publicized rules, and announces summary information describing the outcome.

7. A large number of auctions fall within each of these two categories. For instance, the two principal continuous auctions are the oral ascending-bid auction ("English" auction) and the oral descending-bid auctions ("Dutch" auction).[11] In the English auction, a prospective buyer begins by announcing a bid. Bidders successively raise the standing bid until no more bids are elicited. The item is then awarded to the highest bidder at the price bid. In the Dutch auction, the seller begins by asking a price judged to be well in excess of what the highest bidder is willing to pay, and lowers the price until the first buyer accepts. The item is then awarded to that buyer at the price accepted.

8. Similarly, the two primary static auctions are the first price sealed-bid auction and the second price sealed-bid (or "Vickrey") auction.[12] In a first price sealed-bid auction, the government would collect sealed bids, arrange them in descending order and award the asset to the highest bidder at a price equal to its bid. In a second price sealed-bid mechanism, the government would follow the same procedures, but would award the asset to the highest bidder at a price equal to the second highest bid.

9. The four primary auction forms can be altered to generate numerous different auction forms. The auction specialist's ability to develop such forms has been enhanced by the computational power provided by computers.[13] One auction form made possible by computers, and which could be suitable for use in assigning spectrum, is the "combinatorial" auction. This is an auction that allows bidders to submit bids for one or more combinations of non-identical items. A combinatorial auction may be useful in assigning spectrum because the value that a bidder places on one spectrum license may depend on what other licenses it has also won. For instance, a bidder that wishes to create a cellular telephone network that encompasses two adjoining urban areas may place a relatively moderate value on each separate license, but may place a high value on the combination.

10. Identifying the most appropriate method for assigning spectrum is a complicated matter. While economic theory permits a ranking of auctions under simplified conditions, the superiority of any one auction form becomes less clear under conditions that are likely to exist in an FCC spectrum assignment process. For instance, differences among bidders may cause them to have different valuations for spectrum.[14] If these valuations are unknown to the respective bidders, theory suggests that both a second price sealed-bid and an English auction always assign the resource to the proper bidder, but the first price sealed-bid auction may not.

11. Therefore, while existing theoretical work sheds some light on which auction is the best under certain conditions, it does not clearly identify the "best" mechanism under conditions that could exist in an actual spectrum auction. Furthermore, some of the predictions of auction theory are not supported by empirical evidence.[15] Because of this, the study proposes to use, in addition to competitive bidding theory, "experimental methods" to analyze the performance of the various assignment mechanisms.

III. Criteria for Evaluating Assignment Mechanisms

12. The objective of the proposed research is to provide an assessment of the relative merits of different competitive bidding mechanisms for assigning spectrum licenses and to identify, in implementation-specific terms, the most "appropriate" mechanism. The first step in achieving this objective is to establish the criteria by which the alternative mechanisms will be compared.

13. This research will employ a criterion that emphasizes the efficiency characteristics of alternative competitive bidding mechanisms. These mechanisms will be ranked according to their ability to promote economic efficiency (both distributional and allocative).[16] The use of economic efficiency as the basis for ranking alternative assignment mechanisms can be justified on many grounds. An economically efficient competitive bidding mechanism assigns spectrum to the entity with the highest valuation for spectrum, given the current use restrictions imposed by the FCC. This ensures that spectrum is being used in its most highly valued use, given existing use restrictions.

14. Likewise, substantial benefits are derived from selecting an assignment mechanism that promotes "allocative efficiency." Allocative efficiency is promoted when the price a user pays for spectrum reflects the opportunity cost society incurs in having spectrum used in that manner as opposed to its next best use, given existing use restrictions. Assigning spectrum to users at prices that are below society's opportunity cost of spectrum will induce firms to obtain incremental quantities of spectrum that are worth less to them than their incremental cost to society. This results in an economic loss to society in exactly the same way as would withdrawing millions of dollars from peoples' incomes.

15. Although the ability to generate revenue is one method of ranking alternative assignment mechanisms, it may not maximize the total welfare gain (*i.e.*, the sum of the consumer surplus and Treasury Department's receipts) associated with the assignment. Moreover, competitive bidding mechanisms that maximize expected receipts are not employed even by auction specialists (*e.g.*, auction houses). This is because of the complexity of designing such competitive bidding mechanisms and the simplicity and robustness (*i.e.*, ability to work well in a variety of bidding environments) of the common auction forms.

IV. Research Issues

16. To some degree, the problem of identifying the best competitive bidding mechanism is due to the nature of the resource itself. The physical properties of spectrum allow it to be assigned in varying units (*i.e.*, hertz) and permit the same frequency to be used in different geographic areas. These characteristics raise the issues of the appropriate geographic scope of a license, as well as the "right" amount of spectrum to be assigned to each licensee. With respect to the former, the geographic scope of a spectrum license can range from one that is national to one that is local in scope. Theory suggests that the geographic scope of license may affect the performance characteristics of any assignment mechanism. In addition, it can be shown that society incurs a welfare loss by offering either too little or too much spectrum, per license, for assignment.

17. The research will examine various forms of competitive bidding, using the criteria discussed above. It will also examine the most common criticisms of competitive bidding. For instance, it will analyze the soundness of the argument that an auction would unfairly discriminate against firms with limited financial resources. It will also study the degree to which bidders have the incentive to "warehouse" spectrum to increase the value of their remaining spectrum holdings. Research will also investigate whether competitive bidding is ill-suited to deal with the public service aspects of spectrum use. Moreover, the study will examine how changes in the duration of the assigned terms and conditions affect the performance of the various assignment mechanisms.

18. The study will examine the potential for "illicit" profits in competitive bidding as a result of strategic behavior on the part of bidders. In particular, it will analyze the possibility that bidders may conspire to lower the cost of acquiring a license by agreeing not to freely compete for the license. The study will also examine the possibility that individual bidders may acquire spectrum for the purpose of obtaining excessive market power in the provision of a specific spectrum-based service.

V. Methodology

19. Because the research project involves the analysis of market mechanisms that do not already exist and for which theoretical work provides insufficient guidance, we propose to evaluate the different mechanisms via a "laboratory" approach. Thus, the project team will create experimental markets using computerized trading, volunteer subjects, and cash incentives to parallel the markets being studied. Under this approach, human subjects will be paid according to how successful they are in achieving their economic goals under the market and other rules specified by the "experiment." [17] By changing the rules, researchers can effectively examine a wide variety of assignment mechanisms.

20. This laboratory approach has a number of advantages over a non-laboratory approach. Identifying the "best" competitive bidding mechanism involves identifying the separate influences of numerous factors that determine a mechanism's ability to promote economic efficiency. This process can only be performed under the carefully controlled conditions found in a laboratory. Moreover, these carefully controlled conditions allow one to investigate whether the results are replicable and, therefore, reliable.

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[6] Incentives to "overconsume" spectrum exist when the price of spectrum is too low. Impediments to the free exchange of spectrum may cause such a price by preventing existing spectrum users from transferring spectrum to higher value users. For instance, the FCC's cellular renewal "anti-trafficking" rules are likely to have such an effect. See Considerations Involving Transfer of Assignment Applications (to be codified at 47 CFR 22.40 (b)(2)); Amendment of Part 22 of the Commission's Rules Relating to License Renewals in the Domestic Public Cellular Radio Telecommunications Service, CC Docket No. 90-358, 7 FCC Rcd 719, 725, 729-30 (1992).

[7] See E. Kwerel & A. Felker, Office of Plans and Policy, Federal Communications Commission, Working Paper No. 16, Using Auctions to Select FCC Licenses 13-14 (1985).

[8] See S. 2217, H.R. 4150, 102d Cong., 2d Sess. (1992). In the present context, the phrase "competitive bidding" can be used interchangeably with the term "auction."

[9] For example, opponents have expressed concern that a competitive bidding mechanism could: discriminate against firms with limited financial resources; allow firms to "warehouse" spectrum in an effort to enhance the financial value of their other spectrum holdings; and allow financially powerful firms to obtain excessive market power by obtaining spectrum rights for competing services. See Spectrum Report, *supra* note 1, at 102-114 for a discussion of these and related issues.

[10] See Vernon Smith, Auctions, In The New Palgrave: A Dictionary of Economic Theory and Doctrine 138 (J. Eatwell, M. Milgate, P. Newman eds., 1987) (hereinafter Smith).

[11] *Id.* at 139.

[12] *Id.* at 138-39.

[13] The Federal Reserve System is currently developing a computer-based system that will enable it to sell government securities using an oral, iterative, ascending-bid auction. See U.S. Dept. of the Treasury, U.S. Securities and Exchange Commission, and Board of Governors of the Federal Reserve System, Joint Report on the Government Securities Market B-43 (Jan. 1992).

[14] Bidders may also be uncertain as to the value of a spectrum license, due to, for instance, uncertainty surrounding the extent of interference, or the commercial viability of a new spectrum-based service.

[15] See, *e.g.*, Smith *supra* note 10, at 141.

[16] In this context, the term "allocative" refers to the distribution of resources among industries. This distribution is optimal (*i.e.*, yields the most satisfaction compared to all available resource distributions) when product prices are equal to marginal cost. It should not be confused with the administrative process of "allocating" spectrum.

[17] A monetary reward is a necessary component of any laboratory experiment involving market behavior. See, *e.g.*, V. Smith, Microeconomic Systems as an Experimental Science, 72 Am. Econ. Rev. 923 (1982).

21. Experiments will examine the performance characteristics of the current assignment mechanisms—lotteries and comparative hearings. In this analysis, the winner of a simulated comparative hearing or lottery will be permitted to exchange its spectrum license for payment made by an FCC-approved buyer. This analysis will serve as a benchmark by which to compare the performance characteristics of the various competitive bidding mechanisms.

22. Subsequent experiments will identify the performance characteristics of the various competitive bidding mechanisms, given specific assumptions regarding the expected attributes of bidders (*e.g.*, uncertainty regarding spectrum value, recognizably different bidders). Given these attributes, experiments will analyze the entire array of research issues listed previously. For instance, experiments will be conducted to analyze the effect of changing the geographic scope of the spectrum license. Experiments will also analyze the effect of unequal financial power (*i.e.*, "deep pockets") on the ability of the competitive bidding mechanism to satisfy the adopted criteria.

VI. Finished Product

23. The study team will complete a written report that includes: (1) A justification for the adopted performance criteria; (2) a discussion of the applicability of "experimental methods;" (3) a discussion of the experimental design; (4) an analysis of the results of the experiments; (5) a detailed description of the recommended assignment mechanism.

Gregory F. Chapados,

Assistant Secretary of Commerce for Communications and Information and Director of NTIA.

[FR Doc. 92-20738 Filed 8-27-92; 8:45 am]

BILLING CODE 3510-60-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 28, 1992.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O' Day Act (41 U.S.C. 46-48c) in connection with the commodity and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodity and services to the Procurement List:

Commodity

Cap, Knit
8405-01-006-1074
Nonprofit Agency: Seneca County Chapter, NYSARC, Waterloo, New York

Services

Administrative Services
Automated Dispatch System
Hill Air Force Base, Utah
Nonprofit Agency: Pioneer Adult Rehabilitation Center, Clearfield, Utah
Janitorial/Custodial, Emanual Celler Federal Building, 225 Cadman Plaza, Brooklyn, New York
Nonprofit Agency: Federation of the Handicapped, New York, New York
Janitorial/Custodial, Federal Building #111, JFK International Airport, Jamaica, New York
Nonprofit Agency: Federation of the Handicapped, New York, New York
Janitorial/Grounds Maintenance for the following locations in Calexico, California:
Truck Inspection Building, 1 East First Street
U.S. Border Inspection Station Building, 200 First Street
Shop Building, 1 East First Street
U.S. Border Patrol Station, 8th and Andrade Street
Commercial Hazmat Office, 1 East First Street
Commercial Operations Office, 1 East First Street
Nonprofit Agency: Association for Retarded Citizens of Imperial Valley, El Centro, California.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92-20739 Filed 8-27-92; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 28, 1992.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 12, 26, July 6 and 10, 1992, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (57 FR 25023, 28658, 29712 and 30727) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities and provide the services, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities or services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities or services.

3. The action will result in authorizing small entities to furnish the commodities or services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodities or services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Brake Pad Assembly
2530-01-255-4215
Parts Kit, Automatic Transmission Filter
2940-01-121-6350
Air Freshener Deodorant, General Purpose
6840-00-721-6055
Dustpan, Short Handle
7290-00-616-0109

Services

Commissary Shelf Stocking & Custodial, Naval Construction Battalion Center, Gulfport, Mississippi
Commissary Shelf Stocking, Custodial & Warehousing, Beale Air Force Base, California
Convert IRS Documents to Braille (Excluding VersaBraille), Internal Revenue Service, Washington, DC (20% of the Government's Requirement)
Janitorial/Custodial, Federal Building and U.S. Courthouse, 701 C Street, Anchorage, Alaska
Janitorial/Custodial, Naval Air Station Commissary, Cecil Field, Florida
Janitorial/Custodial, Portsmouth Naval Shipyard, Buildings 153 & 170, Kittery, Maine
Switchboard Operation, Patrick Air Force Base, Florida.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

E.R. Alley, Jr.,

Deputy Executive Director.

[FR Doc. 92-20740 Filed 8-27-92; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Operations Policy Advisory Group, Meeting

The Special Operations Policy Advisory Group (SOPAG) will meet on Tuesday, September 15, 1992, at the United States Special Operations Command, MacDill Air Force Base, FL, to discuss sensitive, classified topics.

The mission of the SOPAG is to advise the Office of the Secretary of Defense on key policy issues related to the development and maintenance of effective Special Operations and Low-Intensity Conflict Forces.

In accordance with section 10(d) of Public Law 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1) of title 5, United States Code, this meeting will be closed to the public.

Dated: August 24, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-20656 Filed 8-27-92; 8:45 am]

BILLING CODE 3810-01-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 92-5]

Discipline of Operation in a Changing Defense Nuclear Facilities Complex

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice; recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a concerning the Discipline of Operation in a Changing Defense Nuclear Facilities Complex. The Board requests public comments on this recommendation.

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before September 28, 1992.

ADDRESSES: Send comments, data, views or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Carole J. Council, at the address above or telephone (202) 208-6400.

Dated: August 24, 1992.

John T. Conway,

Chairman.

Discipline of Operation in a Changing Defense Nuclear Facilities Complex

[Recommendation 92-5]

Dated: August 17, 1992.

The changes in defense-related plans in the Department of Energy are beginning to have a profound effect on the activities directed to systematic upgrading of the conduct of operations at defense nuclear facilities, plans that have often been discussed between the Board and its staff, on the one hand, and members of your staff on the other.

The Rocky Flats Plant presents an excellent example of the major changes being made by DOE while reconfiguring the nuclear weapons complex. It had been planned that as the Rocky Flats Plant moved toward resumption of production of plutonium components of nuclear weapons, a succession of facilities would be readied for renewed operation, beginning with Building 559 (the analytical chemistry laboratory), and followed by Building 707 and then others. This process was to include systematic upgrading of the quality of operations in each case, including Operational Readiness Reviews by the contractor and by DOE to verify that the desired improvements had been accomplished by line management. Resumption of operations is now proceeding in Building 559, in accordance with this process and following the path proposed in your Implementation Plan for the Board's Recommendations 90-4 and 91-4.

You have announced, however, that in light of international developments, plutonium production operations will not be resumed at the Rocky Flats Plant, and future activities there will be confined to cleanup and decontamination of the site, decommissioning of some facilities and parts of others, and placing of some facilities and parts of others in a state of readiness for resumption of operations in the future in the event such a step should be needed. Thus for most facilities at Rocky Flats there is now a major change from the mission and activities previously planned and for which the Board's Recommendations and your implementation plans specific to the Rocky Flats Plant were to be applied, for those recommendations were predicated upon resumption of plutonium production.

At a number of other defense nuclear facilities, similar changes are taking effect. Many facilities are now scheduled for

cleanout, shutdown, and decommissioning. Some are to be devoted to aspects of cleanup and decommissioning of sites and of facilities located within sites. Some are slated to be placed in a standby mode, available for restart at a later date if needed. Some are to be continued in operation either in reduction of the stockpile of nuclear weapons or in the maintenance of a reduced stockpile an improvement of its safety.

Some of these facilities have been inactive for long periods of time. Some are to become involved in operations that differ from past usage. Experience shows that when operations are resumed at a facility that has been idle for an extended period, or a facility is operated in a new mode, there is in an above-average possibility of mistakes, equipment failures, and violations of safety requirements, that could cause accidents. We believe that special attention is needed at such times. The appropriate measures to be followed depend on specific features of the facility, the nature of the planned campaign of use, and the long-term plan for the facility. For example, one needs to know if further campaigns are likely, of the same or different kinds; if the facility is to be decommissioned after the planned use; or if it is to be placed in a standby mode.

The Board has found, through experience at the Savannah River Sites and the Rocky Flats Plant and other defense nuclear facilities, that an extended period of time has been required at major facilities to develop an acceptable style and level of conduct of operations. Accomplishing the cultural changes you have required and meeting safety standards comparable to those required of the civilian nuclear industry remains an ongoing challenge. Major improvements have been necessary including development of configuration control, revised and acceptable safety analysis, revised Limiting Conditions of Operation derivative from the safety analysis, operating procedures consistent with the configuration and the safety analysis, and training and qualification of operators for the new mode of operation. Continued improvement has been sought by the Board.

The Board has been informed that DOE does not intend to devote equivalent time and resources to improving the quality of operation at a facility being restarted only for a short campaign or intended for use only in a short campaign in a different mode, but would on a cost-benefit basis use a graded approach, always being sure, however, to take whatever compensatory and other measures are needed to ensure the acceptable level of safety.

The definition and exposition of a graded approach as it is meant to be used in ordering the conduct of operations have not been provided. In discharging its responsibilities in the context of the new defense-related plans of the Department of Energy, the Board intends to carefully review future operations at defense nuclear facilities on a case-by-case basis, starting in each instance from the best information as to the intended future use of the facility. Any proposals to use special measures or controls to compensate for deviations from those ordinarily used to achieve high quality conduct of operations will be closely scrutinized.

Therefore, it is requested that as you decide the future status of individual defense nuclear facilities you inform the Board, designating which ones are to continue in operation and their mission, which are to be shut down for decommissioning within a short time period, which are to be used for an extended time period and then shut down for decommissioning, and which are to be moved to a standby mode (along with the schedule for this).

Regardless of the category, the Board believes that operation and maintenance of defense nuclear facilities in all modes should be in accordance with the Nuclear Safety Policy statement that you issued on September 9, 1991 as SEN-35-91, and the safety goals stated therein.

The Board also believes that, to the extent practicable, facilities that are to be shut down and decommissioned should be cleaned up, and hazards from radiological exposures sufficiently reduced that access can be made freely without need for precautions against radioactivity, and facilities meant for standby status should be placed in such a condition that sudden need to reactivate them would not subject a new operating group to unacceptable radiation hazards.

In furtherance of this view it is recommended that:

1. For defense nuclear facilities scheduled for long term continued programmatic defense operations.[1] or for other long term uses such as in cleanup of radioactive contamination or in storage of nuclear waste or other nuclear material from programmatic defense operations, the Department of Energy should institute a style and level of conduct of operations comparable to that toward which DOE has been working at Building 559 at the Rocky Flats Plant and the K-Reactor at the Savannah River Site, and which is at least comparable to that required for commercial nuclear facilities, addressing at a minimum the areas referred to above in connection with style of conduct of operations.

2. Where a facility, after a long period of idleness for whatever reason, is being readied for new use or reuse, special care should be taken to ensure that the line organization, both DOE and contractor, has the technical and managerial capability needed to carry out its responsibilities. Appropriate and effective Operational Readiness Reviews should be conducted by the contractor and by DOE before restart of the facility, to establish confidence that line management has provided satisfaction of safety requirements. Where national security requirements lead to urgent need to restart such facilities before necessary upgrades can be fully completed, compensatory measures should be instituted and their adequacy in ensuring the desired level of safety should be confirmed through appropriate independent review.

3. For facilities designated for the various other future modes of use (such as standby), DOE should undertake to develop specific criteria and requirements that ensure meeting the safety goals enunciated in your Nuclear Policy Statement (SEN-35-91). Accomplishment of these criteria and requirements by line management should be confirmed by appropriate independent review.

John T. Conway,
Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

Defense Nuclear Facilities Safety Board

August 17, 1992.

The Honorable James D. Watkins,
Secretary of Energy, Washington, DC 20585.

Dear Mr. Secretary: On August 17, 1992, the Defense Nuclear Facilities Safety Board, in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 92-5 which is enclosed for your consideration. Recommendation 92-5 deals with Discipline of Operation in a Changing Defense Nuclear Facilities Complex.

42 U.S.C. 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's regional public reading rooms. The Board believes the recommendation contains no information which is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161-68, as amended, please arrange to have this recommendation promptly placed on file in your regional public reading rooms.

The Board will publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,
Chairman.

[FR Doc. 92-20590 Filed 8-27-92; 8:45 am]
BILLING CODE 6820-KD-M

[1] This term is meant to encompass research, development, and production for defense purposes, and operations related to testing, assembly, disassembly, and storage of nuclear weapons and nuclear weapons components.

DEPARTMENT OF ENERGY

Office of the Deputy Secretary

U.S. Alternative Fuels Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: United States Alternative Fuels Council.

Date and Time: Wednesday, September 9, 1992, 9 a.m.-5 p.m.

Location: National Renewable Energy Laboratory, Golden, Colorado, Building 17.

Contact: Mark Bower, Office of Energy Demand Policy, U.S. Department of Energy, Mail Stop EP-50, Washington, DC 20585, Phone: (202) 586-3891.

Purpose of the Council: To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. ". . . coordinate Federal agency efforts to develop and implement a national alternative motor fuels policy."
2. ". . . ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."
3. ". . . ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."
4. ". . . provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

Agenda: To be published later.

Public Participation: The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on August 25, 1992.

Howard H. Raiken,
Advisory Committee Management Officer.

[FR Doc. 92-20864 Filed 8-26-92; 11:31 am]
BILLING CODE 6450-01-M

Office of Fossil Energy

[FE Docket No. 92-62-NG]

SDS Petroleum Products, Inc.; Order Granting Blanket Authorization To Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting SDS Petroleum Products, Inc. a blanket authorization to export up to 98.5 Bcf of natural gas to Mexico over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 24, 1992

Charles F. Vacek,
Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-20735 Filed 8-27-92; 8:45 am]
BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

[Case No. F-051]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Armstrong Air Conditioning, Inc.

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-051) granting a Waiver to Armstrong Air Conditioning, Inc. (Armstrong) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Armstrong its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its GHC series of gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127,

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestral Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Armstrong has been granted a Waiver for its GHC series of gas furnace, permitting the company to use an alternative test method in determining AFUE.

Issued in Washington, DC, August 21, 1992.

J. Michael Davis,
Assistant Secretary Conservation and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is

sooner, and may be extended for an additional 180 days, if necessary.

Armstrong filed a "Petition for Waiver," dated March 20, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on June 22, 1992, Armstrong's petition and solicited comments, data and information respecting the petition. 57 FR 27765. Armstrong also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on June 16, 1992. 57 FR 27765, June 22, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." Doe consulted with The Federal Trade Commission (FTC) concerning the Armstrong Petition. The FTC did not have any objections to the issuance of the waiver to Armstrong.

Assertions and Determinations

Armstrong's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Armstrong requests the allowance to test using a 30-second blower time delay when testing its GHC series of gas furnaces. Armstrong states that since the 30-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency of approximately 0.6 percent, the petition should be granted.

Under specific circumstances, the DOE test procedure contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Armstrong indicates that it is unable to take advantage of any of these exceptions for its GHC series of gas furnaces.

Since the blower controls incorporated on the Armstrong furnaces are designed to impose a 30-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 30-second blower time delay when testing the Armstrong GHC series of gas furnaces. Accordingly, with regard to testing the GHC series of gas furnaces, today's Decision and Order exempts Armstrong from the existing provisions regarding blower controls and allows testing with the 30-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Armstrong Air Conditioning, Inc. (Case No. F-051) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of Appendix N of 10 CFR part 430, subpart B, Armstrong Air Conditioning, Inc. shall be permitted to test its GHC series of gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t-), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, Armstrong Air Conditioning, Inc. shall comply in all respects with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the GHC series of gas furnaces manufactured by Armstrong Air Conditioning, Inc.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective August 21, 1992, this Waiver supersedes the Interim Waiver granted Armstrong Air Conditioning, Inc. on June 16, 1992. 57 FR 27765, June 22, 1992 (Case No. F-051).

Issued in Washington, DC, August 21, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-20625 Filed 8-27-92; 8:45 am]

BILLING CODE 6450-01-M

[Case No. F-047]

Energy Conservation Program for Consumer Products: Decision and Order Granting a Waiver From the Furnace Test Procedure to Clare Brothers

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Decision and order.

SUMMARY: Notice is given of the Decision and Order (Case No. F-047) granting a Waiver to Clare Brothers (Clare) from the existing Department of Energy (DOE) test procedure for furnaces. The Department is granting Clare its Petition for Waiver regarding blower time delay in calculation of Annual Fuel Utilization Efficiency (AFUE) for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-431, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9127,

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-41, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order as set out below. In the Decision and Order, Clare has been granted a Waiver for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces, permitting the company to use an alternate test method in determining AFUE.

Issued in Washington, DC, August 21, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Background

The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95-619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100-12, and the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100-357, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

DOE amended the prescribed test procedures by adding 10 CFR 430.27 to create a waiver process. 45 FR 64108, September 26, 1980. Thereafter, DOE further amended its appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Assistant Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

Clare filed a "Petition for Waiver," dated January 30, 1992, in accordance with § 430.27 of 10 CFR part 430. DOE published in the **Federal Register** on June 3, 1992, Clare's petition and solicited comments, data and information respecting the petition. 57 FR 23396. Clare also filed an "Application for Interim Waiver" under § 430.27(g) which DOE granted on May 20, 1992. 57 FR 23396, June 3, 1992.

No comments were received concerning either the "Petition for Waiver" or the "Interim Waiver." DOE consulted with the Federal Trade Commission (FTC) concerning the Clare Petition. The FTC did not have any objections to the issuance of the waiver to Clare.

Assertions and Determinations

Clare's Petition seeks a waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and the starting of the circulating air blower. Clare requests the allowance to test using a 60-second blower time delay when testing its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces. Clare states that since the 60-second delay is indicative of how these models actually operate and since such a delay results in an improvement in efficiency the petition should be granted.

Under specific circumstances, the DOE test procedure contain exceptions which allow testing with blower delay times of less than the prescribed 1.5-minute delay. Clare indicates that it is unable to take advantage of any of these exceptions for its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

Since the blower controls incorporated on the Clare furnaces are designed to impose a 60-second blower delay in every instance of start up, and since the current provisions do not specifically address this type of control, DOE agrees that a waiver should be granted to allow the 60-second blower time delay when testing the Clare MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces.

Accordingly, with regard to testing the MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces, today's Decision and Order exempts Clare from the existing provisions regarding blower controls and allows testing with the 60-second delay.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by Clare Brothers (Case No. F-047) is hereby granted as set forth in paragraph (2) below, subject to the provisions of paragraphs (3), (4), and (5).

(2) Notwithstanding any contrary provisions of appendix N of 10 CFR part 430, subpart B, Clare Brothers shall be permitted to test its MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces on the basis of the test procedure specified in 10 CFR part 430, with modifications set forth below:

(i) Section 3.0 of appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 to appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. The following paragraph is in lieu of the requirement specified in section 9.3.1 of ANSI/ASHRAE 103–82. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnaces and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t−), unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulating blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay, (t−), using a stopwatch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

(iii) With the exception of the modifications set forth above, The Clare Brothers shall comply in all respects

with the test procedures specified in appendix N of 10 CFR part 430, subpart B.

(3) The Waiver shall remain in effect from the date of issuance of this Order until DOE prescribes final test procedures appropriate to the MEMC, HEDF, HEHF, HEG, and HEMB lines of gas furnaces manufactured by Clare Brothers.

(4) This Waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the petitioner. This Waiver may be revoked or modified at any time upon a determination that the factual basis underlying the petition is incorrect.

(5) Effective August 21, 1992, this Waiver supersedes the Interim Waiver granted the Clare Brothers on May 20, 1992. 57 FR 23396, June 3, 1992 (Case No. F-047).

Issued In Washington, DC, August 21, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-20624 Filed 8-27-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RS92-4-000]

Colorado Interstate Gas Co.; Conference

August 24, 1992.

Take notice that on September 1, 1992, beginning at 9 a.m., a conference will be convened in the above-captioned restructuring docket. The conference will be held at the Grand Hotel, located at 2350 M Street, NW., Washington, DC.

The purpose of the conference is to address with the Staff of the Federal Energy Regulatory Commission and the intervenors in this proceeding the summary of Colorado Interstate Gas Company's (CIG) Order No. 636 restructuring proposal provided to all parties on July 7, 1992, together with any changes in that proposal that CIG may submit before September 1, 1992 or at the time of the conference.

All parties are invited to attend. Attendance at the conference, however, will not confer party status. For additional information, interested persons may call James A. Pederson at (202) 208-2158 or Edith A. Gilmore at (202) 208-1093.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20706 Filed 8-27-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-1-000]

Northern Natural Gas Co.; Informal Settlement Conference

August 24, 1992.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10 a.m. on September 2, 1992, at the offices of the Federal Energy Regulatory Commission, in the Commission Meeting Room, 825 North Capitol Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket. The conference will continue through Friday, September 4, 1992, if necessary.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Michael D. Cotleur, at (202) 208-1076 or John J. Keating, at (202) 208-0762.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20705 Filed 8-27-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of July 24 Through July 31, 1992

During the Week of July 24 through July 31, 1992, the appeals and applications for other relief listed in the appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20583.

Dated: August 21, 1992.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of July 24 through July 31, 1992]

Date	Name and Location of Applicant	Case No.	Type of submission
July 28, 1992	Albuquerque Journal, Albuquerque, NM	LFA-0228	Appeal of an information request denial. *If granted:* The June 19, 1992 Freedom of Information Request Denial issued by the Office of the Inspector General would be rescinded, and the Albuquerque Journal would receive access to DOE information.
Do	Energy Research Foundation, Columbia, SC	LFA-0227	Appeal of an informational request denial. *If granted:* The June 23, 1992 Freedom of Information Request Denial issued by the Savannah River Operations Office would be rescinded, and the Energy Research Foundation would receive access to copies of records relating to Mr. Barr's alleged occupational exposure to radiation while employed at the DOE Savannah River Plant.
July 29, 1992	Gulf/Nicklon's Gulf, Woodbridge, VA	RR300-193	Request for modification/rescission in the Gulf refund proceeding. *If granted:* The July 1, 1992 letter (Case No. RF300-14795) to Nicklon's Gulf dismissing the firm's Application for Refund in the Gulf refund proceeding would be reconsidered.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of July 24 through July 31, 1992]

Date	Name and Location of Applicant	Case No.	Type of submission
July 30, 1992	ARCO/USA Petroleum Corporation, Washington, DC.	RR304-44 RR304-45 RR304-46	Request for modification/rescission in the ARCO refund proceeding. *If granted:* The July 7, 1992 Decision & Order (Case Nos. RF304-9236, RF304-9237, and RF304-9238) issued to USA Petroleum Corp. regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be reconsidered.

Refund Applications Received

Date received	Name of refund proceeding/name of refund applicant	Case No.
7/24/92 thru 7/31/92.	Crude Oil Applications Received.	RF272-93779 thru RF272-93792.
7/24/92 thru 7/31/92.	Texaco Refund Applications Received.	RF321-18986 thru RF321-19057.
7/24/92 thru 7/31/92.	Gulf Oil Refund Applications Received.	RF300-20397 thru RF300-20422.
7/24/92 thru 7/31/92.	Apex/Clark Refund Applications Received.	RF342-267 thru RF342-291.
7/24/92 thru 7/31/92.	Citronelle/Refiners Applications Received.	RF345-13 thru RF345-25.
7/27/92	United Medical Laboratories.	RF304-13233.
7/27/92	Derelandra, Inc	RF304-13234.
7/27/92	John T. Lease Relaters.	RF304-13235.
7/28/92	Budget Car Wash	RF304-13236.
7/28/92	Fred's Service Center.	RF304-13237.
7/28/92	Foothill Car Wash	RF304-13238.
7/28/92	Chao's Arco	RF304-13239.
7/28/92	Carnival Cruise Lines, Inc.	RF307-10215.
7/28/92	Gainesville Regional Utilities.	RF307-10216.
7/28/92	Midlothian Butane Gas Co., Inc.	RF340-174.
7/31/92	Transamerica Natural Gas Corp.	RF339-13.

[FR Doc. 92-20736 Filed 8-27-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4200-4]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before September 28, 1992.

For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Quality Control Sample Request Form (EPA No. 941.04; OMB No. 2080-0016).

Abstract: This ICR is for an extension of an existing information collection in support of the Agency's Quality Assurance (QA) and Quality Control (QC) program. The Clean Water Act at 40 CFR part 136, and the Safe Drinking Water Act at 40 CFR part 141 and 142 requires the establishment of QA/QC procedures for sample analysis. Included in these procedures, described in the Manual for Certification of Laboratories Analyzing Public Drinking Water Supplies, is the use of standardized samples to periodically perform QA/QC checks. The information collected from this ICR will be used by the EPA to process requests for QA sample support from laboratories participating in the EPA's QA/QC program.

Laboratories completing this form are requested to provide EPA with: (1) Identification information (name, address, telephone number), (2) date of request, and (3) type of sample requested (consisting of a check-list of all available microbiological/biological samples). There are no recordkeeping requirements for the respondent.

Burden Statement: Public reporting burden for laboratories subject to this collection of information is estimated to average less than 0.2 hours per response including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the collection of information.

Respondents: State, local, and private laboratories participating in the EPA QA program.

Estimated Number of Respondents: 1000.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 700 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street SW., Washington, DC 20460,

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503.

Dated: August 21, 1992.

Paul Lapsley,

Director, Regulatory Monagement Division.

[FR Doc. 92-20725 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4199-8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 10, 1992 through August 14, 1992 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1992 (57 FR 12499).

Draft EISs

ERP No. D-AFS-L65170-WA Rating EC2, Grouse Meadows Timber Sale and Road Construction, Implementation,

Wenatchee National Forest, Naches Ranger District, Yakima County, WA.

Summary: EPA had environmental concerns based on the potential for adverse air quality effects to class I airsheds, removal of habitat of a Federally listed threatened species (Northern Spotted Owl), and the potential for adverse effects to water quality and fish habitat. Additional information is requested to: clarify whether state water quality standards will be violated; describe project monitoring; describe the effectiveness of mitigation measures; clarify the future access and maintenance of new roads; and describe and fully evaluate cumulative effects.

ERP No. D-AFS-L65172-WA Rating EC2, County Timber Sale and Road Construction, Implementation, South Fork and Middle Fork, Little Naches River, Wenatchee National Forest, Naches Ranger District, Yakima and Kittitas Counties, WA.

Summary: EPA had environmental concerns based on the potential for adverse air quality effects to class I airsheds, removal of habitat of a Federally listed threatened species (Northern Spotted Owl), and the potential for adverse effects to water quality and fish habitat. Additional information is requested to: clarify whether state water quality standards will be violated; describe project monitoring; describe the effectiveness of mitigation measures; clarify the future access and maintenance of new roads; and describe and fully evaluate cumulative effects.

ERP No. D-AFS-L67030-WA Rating EC2, Kettle River Key Open-Pit Gold Mining Expansion Project, Construction and Operation, Plan of Operation Approval and NPDES Permit, Colville National Forest, Republic Ranger District, Ferry County, WA.

Summary: EPA had environmental concerns based on the potential for adverse air quality effects associated with the use of the proposed diesel generators. Additional information is requested to clarify what material will be used for haul road construction, describe how stormwater runoff will be segregated from waste rock pile runoff, describe contingency plans if acid drainage is detected, explain the basis for the groundwater flow patterns, describe if the sedimentation ponds can be used for water quality treatment, and clarify the nature of cumulative impacts.

ERP No. D-COE-E36171-NC Rating EC2, Great Coharie Creek Flood Damage Reduction Plan, Implementation, Sampson County, NC.

Summary: EPA raised concerns regarding the impacts of this project on the aquatic resource, the specifics of certain elements of the proposed mitigation, and the possibility of induced flooding resulting from the ring levee around the Clinton Wastewater Treatment Plant. These issues will require additional clarification/explanation in the final document.

ERP No. D-FHW-E40743-NC Rating EC2, US 29A/70A (High Point Road) from US 311 Bypass to the Greensboro Western Urban Loop near Hill Top Road, Improvement, Funding and Section 404 Permit, Guilford, Randolph and Davidson Counties, NC.

Summary: EPA expressed concerns that the project will degrade wetland and upland habitats and cause noise problems for residents along the highway. Additional information on habitat quality, air modeling and wetland mitigation was required.

ERP No. D-FHW-J40125-MT Rating LO, Shiloh Road Interchange Project, Construction, I-90 in the vicinity of the existing Shiloh Road Overpass (I-90 milepost 443) and Improvements to the South Frontage Road, Funding and Section 404 Permit, between the Cities of Laurel and Billing, Yellowstone County, MT.

Summary: EPA had no objection to the preferred alternative. ERP No. DS-BLM-L65158-OR Rating LO, Lower Deschutes Wild and Scenic River Management Plan, Implementation, Addresses Alternatives for Access to Public Lands Upstream from the Deschutes Club Locked Gate, Wasco County, OR.

Summary: EPA had no objections to the preferred alternative in the supplemental draft EIS.

Final EISs

ERP No. F-AFS-L65163-ID, Far East Salvage Project, Rehabilitation and Recovery of Insect Damaged Timber Resource Management Plan, Implementation, Upper South Fork Payette River, Boise National Forest, Lowman Ranger District, Boise County, ID.

Summary: EPA had environmental concerns with the proposed action since the final EIS was unresponsive to the concerns EPA raised on the draft EIS. These concerns focused primarily on water and air quality issues.

ERP No. F-COE-E32074-KY, Lower Cumberland and Tennessee Rivers Navigation Improvements, Kentucky Lock Addition, Implementation, Nashville District, Marshall and Livingston Counties, KY.

Summary: EPA determined that significant issues raised on the draft document have been satisfactorily resolved. Unavoidable wetland losses resulting from construction of the Kentucky Lock have been greatly minimized. Mitigation will be accomplished by planting appropriate wetland species and monitoring to determine success.

ERP No. F-COE-E36167-FL, Everglades National Park Modified Water Deliveries, Implementation, Central and Southern Florida Project, Dade County, FL.

Summary: EPA acknowledged the difficulties of achieving an ideal operational strategy for modifying the water deliveries into the Everglades National Park. The Corps' structural plan coupled with the eventual implementation of the Modified Rain-Driven Operational strategy appeared to be the best overall approach.

ERP No. F-FHW-L40174-OR, Sunnyside Road/I-205 Interchange Expansion and Sunnybrook Road Extension, Sunnybrook Road to 108th Avenue or Valley View Terrace, Funding and COE Section 404 Permit, Clackamas County, OR.

Summary: EPA had no objections to the proposed action as described in the final EIS as long as the issue of stormwater treatment is clarified in the ROD.

ERP No. F-NOA-E90013-SC, North Inlet/Winyah Bay National Estuarine Research Reserve Management Plan, Site Designation and Funding, Georgetown County, SC.

Summary: EPA recommended a stronger public outreach program, using workshops and brochures, to describe the North-Inlet Winyah Bay National Estuarine Research Reserve activities. Environmental and Public health risks of dioxin need to be identified.

ERP No. F-VAD-C99008-NY, Albany New York Area National Cemetery Development, Construction and Operation, Site Selection, Town of Florida, Montgomery County, Town of Saratoga or Town of Waterford, Saratoga County, NY.

Summary: EPA had no objections to the implementation of the project.

Dated: August 25, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-20733 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-4199-7]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075.

Availability of Environmental Impact Statements Filed August 17, 1992 Through August 21, 1992 Pursuant to 40 CFR 1506.9.

EIS No. 920336, Final EIS, AFS, CA, Lassen National Forest, Land and Resource Management Plan, Implementation, Several Counties, CA, Due: September 28, 1992, Contact: Leonard Atencio (916) 257-2151.

EIS No. 920337, Final EIS, AFS, MT, Halfmoon Timber Harvest Sale, Road Construction and Reconstruction, Implementation, Flathead National Forest, Hungry Horse Ranger District, Flathead County, MT, Due: September 28, 1992, Contact: Ed Lieser (406) 387-5243.

EIS No. 920338, Final EIS, AFS, MT, Smeads-Rice Timber Sale, Implementation, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT, Due: September 28, 1992, Contact: Dave Wischer (406) 827-3533.

EIS No. 920339, Draft EIS, COE, CA, Bel Marin Key Unit 5 (BMK5), Residential Community Construction and Development, Master Plan and Rezoning Application Approvals and Permits, Novato Creek, Marin County, CA, Due: October 13, 1992, Contact: Susan Ryan (415) 744-3322.

EIS No. 920340, Draft EIS, BLM, OR, Coos Bay District Resource Management Plan, Implementation, Coos Bay District, Coos, Curry and Douglas Counties, OR, Due: December 21, 1992, Contact: Melvin Chase (503) 756-0100.

EIS No. 920341, Draft EIS, BLM, OR, Medford District Resource Management Plan, Implementation, Medford District, Douglas, Jackson, Coos and Curry, OR, Due: December 21, 1992, Contact: David Jones (503) 770-2200.

EIS No. 920342, Final Supplement, USA, AZ, Fort Huachuca Base Realignment, Implementation, Cochise County, AZ Due: September 28, 1992, Contact: Alex Watt (213) 894-5088.

EIS No. 920343, Draft EIS, BLM, OR, Roseburg District Resource Management Plan, Implementation, Roseburg District, Coast Range, Benton, Curry, Douglas, Jackson, Josephine and Linn Counties, OR, Due: December 21, 1992, Contact: James Moorhouse (503) 672-4491.

EIS No. 920344, Draft EIS, FAA, CA, Lindbergh Field Facilities Improvements, San Diego International Airport, Plan Approval, San Diego County, CA, Due: October 13, 1992, Contact: Bill Johnstone (310) 297-1621.

EIS No. 920345, Final EIS, FHW, AL, Corridor X Construction, U.S. 78 Eight Miles West of Jasper near the Walker/Jefferson County Line, Funding, U.S. Coast Guard Permit and COE Section 404 Permit, Walker County, AL, Due: September 28, 1992, Contact: Joe D. Wilkerson (205) 832-7370.

EIS No. 920346, Final EIS, UAF, MO, Whiteman Air Force Base (AFB) Minuteman II of the 351st Missile Wing Deactivation, Implementation, Johnson County, MO, Due: September 28, 1992, Contact: Douglas Hulings (804) 764-3056.

EIS No. 920347, Draft EIS, AFS, CO, Grand Mesa, Uncompahagre and Gunison National Forests Land and Resource Management Plan Amendment, Availability of Lands for Oil and Gas Leasing, Garfield, Deta, Gunnison, Mesa, Montrose, Ouray and San Miguel Counties, CO, Due: October 13, 1992, Contact: Robert Storch (303) 874-7691.

EIS No. 920348, Draft EIS, BLM, OR, Eugene District Resource Management Plan, Implementation, Lane, Linn, Douglas and Benton Counties, OR, Due: December 21, 1992, Contact: Ronald Kaufman (503) 683-6600.

EIS No. 920349, Final EIS, AFS, WA, Grouse Meadows Timber Sale and Road Construction, Implementation, Wenatchee National Forest, Naches Ranger District, Yakima County, WA, Due: September 29, 1992, Contact: Don Rotell (509) 653-2205.

EIS No. 920350, Draft Supplement, COE, MS, Upper Steele Bayou Flood Control Plan, Proposed Changes to the Unconstructed Portion of the Project, Boliver, Washington and Greenville Counties, MS, Due: October 13, 1992, Contact: Steve Reed (601) 631-5439.

EIS No. 920351, Draft EIS, BLM, OR, Salem District Resource Management Plan, Implementation, Several Counties, OR, Due: December 21, 1992, Contact: Bob Saunders (503) 375-5646.

Amended Notices

EIS No. 920219, Draft EIS, BLM, ID, Southwest Intertie Project, Construction and Operation, 500kV Transmission Line from the existing Midpoint substation near Shoshone, ID to a new substation site in the Dry Lake Valley of Las Vegas, NV area to a point near Delta, UT, Funding, Section 10 and 404 Permits and Permits Approval, Several Counties, NV, ID, UT, Due: September 18, 1992, Contact: Karl Simonson (208) 678-5514. Published FR—06-19-92—Due Date Correction

EIS No. 920255, Draft EIS, SFW, OR, South Tongue Point Land Exchange and Marine Industrial Park Development Project, Control and Management, Land Acquisition and Possible COE Section 10 and 404 Permits, Lewis and Clark National Wildlife Refuge, Clatsop County, OR, Due: September 1, 1992, Contact: Ben Harrison (503) 231-2231. Published FR 07-02-92—Due Date Correction

EIS No. 920265, Draft EIS, FAA, CA, Burbank-Glendale-Pasadena Airport Land Acquisition and Replacement Terminal Project, Improvement, Construction and Operation, Approval and Funding, Airport Layout Plan, Cities of Burbank, Glendale and Pasadena, Los Angeles County, CA, Due: October 10, 1992, Contact: William Johnstone (310) 297-1621. Published FR—07-10-92—Review period extended.

Dated: August 25, 1992.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 92-20734 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4200-6]

Clean Air Act Advisory Committee; Open Meeting

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR 46993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990.

OPEN MEETING DATE: Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on September 23, 1992 from 8:30 a.m. to 2:30 p.m., at the J.W. Marriott Hotel, 1313 Pennsylvania Avenue N.W., Washington, DC. Seating will be available on a first come, first served basis.

The meeting will discuss a number of current topics and issues related to the implementation of the Clean Air Act. These include: a discussion of a pollution prevention study of a refinery in Yorktown, Virginia; a discussion of developing effective air quality communication strategies at the state and local level, and a report and discussion of follow-up actions being developed as a result of the United Nations Conference on the Environment that was recently held in Rio de Janeiro. In addition, a report on the status of

EPA's Clean Air Act Regulatory development and other implementation efforts will be presented.

INSPECTION OF COMMITTEE DOCUMENTS: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents, together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket No. A–90–39 in room 1500 of EPA Headquarters 401 M Street, SW., Washington DC. Hours of inspections are 8:30 a.m. to 12 noon and 1:30 to 3:30 p.m. Monday through Friday.

FOR FURTHER INFORMATION: Concerning this meeting of the CAAAC please contact Mr. Paul Rasmussen, Office of Air and Radiation, US EPA (202) 260–7430, FAX (202) 260–8509, or by mail at US EPA, Office of Program Management Operations (ANR–443), Office of Air and Radiation, Washington, DC 20460.

Dated: August 24, 1992.

Thomas Kiernan,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 92–20728 Filed 8–27–92; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4200–1]

Workshop on Developmental Neurotoxic Effects and PCBs

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a workshop sponsored by the U.S. Environmental Protection Agency's (EPA) Risk Assessment Forum to develop expert scientific consensus on risk assessment issues, principles, and research recommendations regarding neurotoxic effects associated with prenatal and perinatal exposure to polychlorinated biphenyls (PCBs).

DATES: The workshop will begin on Monday, September 14, 1992, at 9 a.m. and end on Tuesday, September 15 at 3 p.m. Members of the public may attend as observers.

ADDRESSES: The meeting will be held in Research Triangle Park, North Carolina.

Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, call Eastern Research Group at (617) 674–7273 or call Kate Schalk, Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, Massachusetts, 02173, telephone (617) 674–7324 by Friday, September 4, 1992. Space is limited.

FOR FURTHER INFORMATION CONTACT: Mrs. Clare Stine, U.S. Environmental Protection Agency, (RD–672), 401 M Street SW., Washington, DC. 20460, telephone (202) 260–6743.

SUPPLEMENTARY INFORMATION: Recent studies in rodents and monkeys have demonstrated that prenatal and perinatal PCB exposure results in neurotoxicity in the offspring. Related effects have been reported in human studies. For example, human poisonings have led to developmental delays and impairment in neurobehavioral indices in offspring of exposed women. Also, relatively low levels of exposures to PCBs in cohorts in Michigan and North Carolina have suggested neurobehavioral deficits in infants and young children.

Experts on PCB toxicity and mechanisms of action, epidemiology, neurotoxicology, and analytical methods for measuring PCBs in human samples will participate in the workshop. Information from the workshop will contribute to Risk Assessment Forum recommendations on the use of information on the developmental neurotoxic effects of PCBs for risk assessment purposes, and on related recommendations regarding new information and research needs.

Dated: August 24, 1992.

Peter W. Preuss,

Acting Assistant Administrator for Research and Development.

[FR Doc. 92–20727 Filed 8–27–92; 8:45 am]

BILLING CODE 6560–50–M

[OPP–68013C; FRL–4161–7]

Final Notice for Applications for Federal Dinoseb Disposal Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the closure of the Dinoseb Disposal Program.

SUMMARY: This notice announces the end of the Dinoseb Disposal Program. Those individuals still holding dinoseb product have until December 31, 1992, to complete shipment of their product to Chemical Waste Management, Inc. in Millington, Tennessee. After that date, anyone still holding dinoseb will not be able to participate in the EPA program and will need to arrange disposal of their stocks privately.

DATES: December 31, 1992, is the last day that EPA will accept approved shipments of dinoseb for disposal at Chemical Waste Management, Inc.

FOR FURTHER INFORMATION CONTACT: By mail: Donald E. Eckerman, Chief, Disposal and Analysis Section (H7506C), Office of Pesticide Programs, Environmental Protection Agency, EPA, 401 M St., SW., Washington, DC 20460, Telephone: (703–305–5062).

SUPPLEMENTARY INFORMATION:

I. Background

The registrations of all dinoseb pesticides were suspended in October 1986 and finally canceled in 1988. Based on information about the adverse human health and environmental risks posed by dinoseb-containing pesticide products, on October 7, 1986, the Administrator issued an Emergency Suspension Order for all registrations of pesticides containing the active ingredient dinoseb. The order immediately prohibited all further sale, distribution, and use of dinoseb products. Notice of this action was published in the **Federal Register** of October 14, 1986 (51 FR 36634). All registrations of dinoseb were finally canceled on September 25, 1988.

Dinoseb was an extensively used pesticide during the time it was registered. Dinoseb was used primarily as a herbicide on such crops as cotton, caneberries, lentils, orchard crops, peanuts, peas, potatoes, snap beans, and soybeans. It was also used as a pre-harvest desiccant, insecticide, and fungicide. Common trade names include: Ancrack, Dinitro, Dyanap, Dynamite, General Weed Killer, Hel-Fire, and Premerge.

Section 19 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), prior to the 1988 amendments, required EPA to accept for disposal any pesticide product that was suspended and subsequently canceled upon request of the owner. Since beginning the acceptance of dinoseb products in 1989, EPA has accepted over 2.5 million gallons of dinoseb product for disposal at Chemical Waste Management, Inc. and is 99 percent complete with the disposal of the known stocks of dinoseb.

II. Dinoseb Disposal Program End

Those individuals still holding dinoseb product have until December 31, 1992, to complete shipment of their product to Chemical Waste Management, Inc. in Millington, Tennessee. After that date, anyone still holding dinoseb will not be able to participate in the EPA program and will need to arrange disposal of their stocks privately.

Holders who have previously applied for disposal assistance and have not completed delivery to Chemical Waste Management, Inc. or holders who have not previously applied for disposal assistance are encouraged to immediately contact EPA at the address referenced under FOR FURTHER INFORMATION CONTACT. After EPA confirms eligibility, holders will need to make arrangements for shipment. This process will take some time, as holders will need to complete the necessary paperwork, including a manifest and waste profile sheet, and to prepare their containers for shipment. For these reasons, holders should not delay applying for disposal assistance.

After EPA completes disposal of any remaining dinoseb stocks received between now and December 31, 1992, EPA's contract with Chemical Waste Management, Inc. will end, and EPA will have fulfilled its obligation under FIFRA section 19 to safely dispose of suspended and canceled dinoseb pesticides.

Dated: August 25, 1992.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 92–20899 Filed 8–27–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4200–2]

Sole Source Aquifer Determination for the Ramapo Aquifer Systems, NJ and NY

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In response to a petition from the Township of Mahwah and the Passaic River Coalition in New Jersey, notice is hereby given that the Region II Regional Administrator of the U.S. Environmental Protection Agency has determined that the Ramapo River Basin Aquifer Systems within the Ramapo River Basin satisfy all determination criteria as a Sole Source Aquifer pursuant to section 1424(e) of the Safe Drinking Water Act. Satisfying the designation criteria resulted in the following findings: The Ramapo River Basin Aquifer Systems are the sole source of drinking water for the Aquifer Service Area; there are no viable alternative drinking water sources of sufficient supply; and if contamination were to occur, it would pose a significant hazard to the public health. As a result of this action, all Federal financially assisted projects for the area will be subject to EPA review to ensure that these projects are designed and constructed such that they do not bring about, or in any way contribute to, conditions creating a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1 p.m. Eastern time on September 14, 1992.

ADDRESSES: The data upon which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region II, Ground Water Management Protection Section, Drinking/Ground Water Protection Branch, room 842, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Walter Andrews, Chief, Drinking/Ground Water Protection Branch, Region II, 26 Federal Plaza, room 845, New York, NY 10278, (212) 264–1800.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300h–3(e), Pub. L. 93–523 of December 16, 1974) states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish a notice of the determination in the **Federal Register**. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

On September 8, 1990, EPA received a petition from the Township of Mahwah and the Passaic River Coalition in New Jersey requesting the designation of the Ramapo River Basin as a Sole Source Aquifer. EPA determined that the petition, after receipt and review of additional information requested on November 26, 1990 and on September 9, 1991 was complete. A public hearing was held on March 10, 1992 at the Council Chambers of the Municipal Offices in Mahwah in Mahwah, New Jersey, in accordance with all applicable notification and procedural requirements. All comments received at the hearings, and the majority of the written comments received during the comment period were in favor of the designation.

II. Basis for Determination

Among the factors considered by the Regional Administrator as part of the technical review process for designating an area under Section 1424(e) were: (1) That the aquifer is the sole or principal source (more than 50%) of drinking water for the defined Aquifer Service Area, and that the volume of water available from all alternative sources is insufficient to replace the petitioned aquifer; and (2) that contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to EPA at this time, the Regional Administrator has made the following findings in favor of designating the Ramapo River Basin Aquifer Systems as a Sole Source Aquifer:

1. The Ramapo River Basin Aquifer Systems are the sole source of drinking water to approximately 180,000 residents of the Aquifer Service Area.

2. There are no reasonable alternative sources capable of supplying a sufficient quantity of drinking water to the population served by the petitioned Ramapo River Basin Aquifer Systems.

3. Although all public water supply wells meet or exceed the appropriate Federal and State drinking water standards, there have been several documented incidents of ground water contamination within the Ramapo River Basin.

III. Description of the Ramapo River Basin Aquifer Systems, Sole Source Aquifer Designated Area, Aquifer Service Area, and Project Review Area

The Ramapo River Basin is an area of 161 square miles within the Passaic River drainage system. Thirty percent of the Basin is in New Jersey and includes parts of Passaic and Bergen Counties. Seventy percent of the Basin is in New York and includes parts of Orange and Rockland Counties.

The Ramapo River Basin Aquifer Systems within the Ramapo River Basin include the highly productive valley-fill aquifer in the Ramapo and Mahwah River valleys and the Newark Group bedrock aquifer. The Newark Group underlies the eastern portion of Ramapo River Basin, east of the Ramapo River Basin Great Border Fault. The trend of the Great Border Fault follows Ramapo River valley in New Jersey and the Mahwah River valley in New York.

The U.S. Environmental Protection Agency designated Sole Source Aquifer includes the Ramapo River Basin Aquifer Systems. In New York, the Sole Source Aquifer includes the New York Department of Conservation designated Ramapo—Mahwah Primary Aquifer as illustrated in the U.S. Geological Survey Water Resources Investigations Report 87–4274 Potential Yields in

Unconsolidated Aquifers in Upstate New York—Lower Hudson Sheet, Scale 1:250,000. The aquifer is delineated in detail on the U.S. Geological Survey Open File Report 82-114, Geohydorlogy of the Valley-Fill Aquifer in the Ramapo and Mahwah Rivers Area, Rockland County, New York, Scale 1:24,000. In New Jersey the designated Sole Source Aquifer includes the valley-fill aquifer in the Mahwah and Ramapo River valleys. The Ramapo River valley-fill aquifer is described and profiled in the New Jersey Geological Survey Map Series 88-6, Bedrock Topography and Profiles of Valley-Fill Deposits in the Ramapo River Valley, New Jersey, Scale 1:24,000. The designated Sole Source Aquifer area extends from the Great Border Fault, east to the Ramapo River Basin boundary to encompass the Newark Group bedrock aquifer.

The Aquifer Service Area includes the Townships of Mahwah and Wayne and the Boroughs of Ramsey, Oakland, Franklin Lakes, Allendale and Pomptom Lakes in New Jersey. In New York, the Aquifer Service Area includes the Towns of Ramapo, Haverstraw, Orangetown and Clarkstown and the Villages of Hillburn, Suffern and Spring Valley and the Township of Stony Point.

Because the U.S. Environmental Protection Agency determined that contaminants introduced in any of these areas have the potential to adversely affect the Ramapo River Basin Aquifer Systems, the designated Sole Source Aquifer includes the aquifer recharge areas and streamflow source areas encompassed by the Ramapo River Basin boundaries. The Project Review Area is defined as coincident with the boundaries of the Ramapo River Basin.

A map delineating the designated areas is available and may be obtained by contacting the person listed previously.

IV. Information Utilized in Determination

The information utilized in this determination included the petition submitted by the Township of Mahwah and the Passaic River Coalition, various U.S. Geological Survey and New Jersey Geological Survey reports, information contained in the U.S. Environmental Protection Agency files, and written and verbal comments from the public. In addition, consultation was held with other U.S. Environmental Protection Agency Branches to achieve a regional consensus on the decision. These materials are available to the public and may be inspected during normal business hours at the address listed previously.

V. Project Review

As per this determination the U.S. Environmental Protection Agency will review proposed projects with Federal financial assistance in order to ensure that such projects do not have the potential to contaminate the Ramapo River Basin Aquifer Systems through its recharge zone and streamflow source areas as to create a significant hazard to public health. In many cases, those projects may also be analyzed in an Environmental Impact Statement under the National Environmental Policy Act (NEPA), 42 U.S.C. section 4332(2)(c). All Environmental Impact Statements, as well as any other proposed Federal actions affecting the U.S. Environmental Protection Agency program, are required by Federal law (under the "NEPA/309" process) to be reviewed and commented upon by the U.S. Environmental Protection Agency Administrator.

In order to streamline the U.S. Environmental Protection Agency review of the possible environmental impacts on designated Sole Source Aquifers, when an action is to be analyzed in an Environmental Impact Statement, the two reviews will be consolidated and both authorities cited. The U.S. Environmental Protection Agency review under section 1424(e) will be therefore included in the U.S. Environmental Protection Agency review of the Environmental Impact Statement under NEPA.

VI. Summary and Discussion of Public Comment

The public comments received expressed strong support for the designation of the Ramapo River Aquifer Basin as a Sole Source Aquifer. Seventeen persons, representing local governments, environmental and civic organizations, and purveyors presented statements of support at the public hearings. Fifteen written statements in favor of designation were received representing local governments, congress and the New Jersey Department of Environmental Protection and Energy.

The New York Department of Environmental Conservation and the Villages of Hillburn and Harriman in New York only supported the designation of the existing NYSDEC designated Ramapo—Mahwah Primary Aquifer and did not support the inclusion of aquifer recharge areas and streamflow source areas in New York.

The U.S. Environmental Protection Agency's response to the above concern is that, wherever possible, the boundaries of Sole Source Aquifers are based on hydrogeologic criteria. The designated Sole Source Aquifer includes the highly productive valley-fill aquifer in the Ramapo and Mahwah River valleys. It has been documented that the Ramapo River is a major source of recharge for the valley-fill aquifer. Hence any incident of surface water contamination may potentially impact wells tapping the aquifer. On that basis, the Ramapo River Basin, which encompasses the recharge areas and streamflow source areas for the Ramapo River Basin Aquifer Systems is designated as a Sole Source Aquifer.

VII. Summary

Today's action affects the Ramapo River Basin located in Passaic and Bergen Counties in New Jersey and Orange and Rockland Counties in New York. Projects with Federal financial assistance proposed for portions of Passaic, Bergen, Orange and Rockland Counties within the Ramapo River Basin will be reviewed to ensure that their activities will not endanger public health through contamination of the aquifer.

Dated: August 11, 1992.

Constantine Sidamon-Eristoff,

Regional Administrotor, Environmental Protection Agency Region II.

[FR Doc. 92-20729 Filed 8-27-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Citizens Holding Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 21, 1992.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Citizens Holding Corporation, Clearwater, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Ctiizens Bank of Clearwater, Clearwater, Florida.

2. Georgia Bank Financial Corporation, Augusta, Georgia; to merge with FCS Financial Corporation, Martinez, Georgia, and thereby indirectly acquire First Columbia Bank, Martinez, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Fairmount Banking Company, Fairmount, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Fairmount State Bank, Fairmount, Indiana.

2. First Midwest Corporation of Delaware, Elmwood Park, Illinois; to acquire 100 percent of the voting shares of West Central Illinois Bancorp, Inc., Monmouth, Illinois, and thereby indirectly acquire National Bank of Monmouth, Monmouth, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Interstate BancSystem of Montana, Inc., Billings, Montana; to acquire 100 percent of the voting shares of First Interstate Bank of South Missoula, N.A., Missoula, Montana, a *de novo* bank.

2. St. Stephen BanGroup, Inc., Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of St. Stephen Bancorporation, Inc., St. Stephen, Minnesota, and thereby indirectly acquire St. Stephen State Bank, St. Stephen, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Resource One, Ulysses, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Grant County State Bank, Ulysses, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. American Capital Corporation, Katy, Texas; to acquire 72.03 percent of the voting shares of Crosby Bancshares, Inc., Crosby, Texas, and thereby indirectly acquire Crosby State Bank, Crosby, Texas.

2. First Fabens Bancorporation, Inc., Fabens, Texas; to merge with Bancshares of Ysleta, Inc., El Paso, Texas, and thereby indirectly acquire Bank of Ysleta, El Paso, Texas.

3. Olney Bancorp of Delaware, Inc., Wilmington, Delaware; to acquire 99.96 percent of the voting shares of First Coleman National Bank of Coleman, Coleman, Texas.

2. Olney Bancshares, Inc., Olney, Texas; to acquire 99.96 percent of the voting shares of First Coleman National Bank of Coleman, Coleman, Texas.

Board of Governors of the Federal Reserve System, August 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20675 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

GNB Bancorporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. GNB Bancorporation, Grundy Center, Iowa; to merge with Ackley Bancorporation, Ackley, Iowa, and thereby indirectly acquire Ackley State Bank, Ackley, Iowa.

In connection with this application, Applicant also proposes to acquire Ackley Insurance Agency, Ackley, Iowa, and thereby engage in general insurance activities in Ackley, Iowa, pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; to merge with Bank Shares, Inc., Minneapolis, Minnesota, and thereby indirectly acquire Marquette Bank Minneapolis, N.A., Minneapolis, Minnesota, and Marquette Bank Rochester, Rochester, Minnesota. In the alternative, First Bank System also proposes to acquire 24.9 percent of the voting shares of Bank Shares, Inc., Minneapolis, Minnesota, and thereby indirectly acquire Marquette Bank Minneapolis, N.A., Minneapolis, Minnesota; Marquette Bank Rochester, Rochester, Minnesota; Marquette Bank Lakeville, Lakeville, Minnesota; and Marquette Bank Brookdale, Brooklyn Center, Minnesota.

In connection with this application, Applicant also proposes to acquire Marquette Information Services, Minneapolis, Minnesota, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y; and Marquette Insurance

Services, Minneapolis, Minnesota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Liberty Bancorp, Inc., Oklahoma City, Oklahoma; to acquire 6.03 percent of the voting shares of F & M Bancorporation, Tulsa, Oklahoma, and thereby indirectly acquire The F & M Bank and Trust Company, Tulsa, Oklahoma.

In connection with this application, Applicant also proposes to acquire 5.85 percent of the voting shares of American Trustcorp, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Trust Company of Oklahoma of Tulsa, and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20674 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

Mid Am, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 21, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am, Inc., Bowling Green, Ohio; to acquire Apollo Savings and Loan Company, Cincinnati, Ohio, and thereby engage in permissible savings and loan activities pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to acquire First Federal Savings Bank of Kentucky, Madisonville, Kentucky ("First Federal"), and thereby engage in operating a savings association pursuant to § 225.25(b)(9). Applicant also seeks approval for the acquired First Federal's subsidiary, First Home Services Corporation, Madisonville, Kentucky, to continue to engage in underwriting, selling and issuing credit life insurance and credit accident and health insurance in connection with loans and extensions of credit by Thrift pursuant to § 225.25(b)(8); and performing appraisals of real and personal property which will secure loans mae by Thrift, pursuant to § 225.25(b)(13) of the Board's Regulation Y.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. BOK Financial Corporation, Tulsa, Oklahoma; to acquire Southwest Trustcorp, Oklahoma City, Oklahoma, and thereby indirectly acquire Trust Company of Oklahoma, Oklahoma City, Oklahoma, and thereby engage in trust company activities pursuant to § 225.25(b)(2) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20673 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

Marguerite Sevde, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 16, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marguerite Sevde, to acquire an additional 7.08 percent of the voting shares of Elcho Bancorporation, Inc., Venice, Florida, for a total of 30.89 percent and thereby indirectly acquire State Bank of Elcho, Elcho, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Gladden A. Redding Revocable Trust, Windom, Minnesota; to acquire an additional 2.34 percent of the voting shares of Windom State Investment Company, Windom, Minnesota, for a total of 25.27 percent, and thereby indirectly acquire Southwest State Bank, Windom, Minnesota.

2. Mary Jane Redding Revocable Trust, Windom, Minnesota; to acquire an additional 2.34 percent of the voting shares of Windom State Investment Company, Windom, Minnesota, for a total of 25.27 percent, and thereby indirectly acquire Southwest State Bank, Windom, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Gary Dickinson, Chillicothe, Missouri; to acquire an additional 11.45 percent of the voting shares of CNB Financial Corporation, Kansas City, Kansas, for a total of 21.44 percent, and thereby indirectly acquire Commercial National Bank of Kansas City, Kansas City, Kansas; and City National Bank, Atchison, Kansas; and United Kansas Bancshares, Inc., Kansas City, Kansas; and thereby indirectly acquire First Bank and Trust, Concordia, Kansas. **Comments on this application must be received by September 10, 1992.**

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Philip J. Rocco, Santa Ana, California; to acquire an additional 26.23 percent of the voting shares of Orange Bancorp, Fountain Valley, California, for a total of 49 percent, and thereby indirectly acquire The Bank of Orange County, Fountain Valley, California.

Board of Governors of the Federal Reserve System, August 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20672 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

Signet Banking Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Signet Banking Corporation, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Strategic Capital Corporation, Richmond, Virginia, in providing investment advice as a commodity trading advisor for institutional and other financially sophisticated customers with respect to the purchase and sale of futures and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit, and other money market instruments that a bank may buy or sell in the cash market for its own account, and providing foreign exchange and transactional services pursuant to §§ 225.25(b)(17) and (b)(19) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Midstate Financial Corp., Brownsburg, Indiana; to engage *de novo*, through its subsidiary, Freedom Mortgage Company, Brownsburg, Indiana, in the making, acquiring, and servicing of loans or otehr extensions of credit as a mortgage company, which will make both residential and commercial mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Indiana.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Arvest Bank Group, Inc., Bentonville, Arkansas; to engage *de novo* through its subsidiary, Arvest Bank Group, Inc., Bentonville, Arkansas, in making, acquiring, and servicing loans or other extensions of credit, including acquiring participations in loans originated by others, for the account of the notificant or for the account of others, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20671 Filed 8-27-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3390]

Debes Corporation, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, six Rockford, Illinois-area nursing homes and two corporations that own and operate nursing homes from entering into agreements to boycott temporary nurses registries or to fix, stabilize, or otherwise interfere or tamper with the prices charged by such registries. In addition, the order prohibits, for ten years, any agreement with any other respondent to purchase or use the services of any particular temporary nurses registry, and for five years prohibits each respondent from communicating to any other respondent any information concerning the use of temporary nurses registry services for any Rockford-area nursing home.

DATES: Complaint and Order issued August 4, 1992.[1]

FOR FURTHER INFORMATION CONTACT: C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, suite 1437, Chicago, IL 60603, (312) 353-8156.

SUPPLEMENTARY INFORMATION: On Wednesday, January 15, 1992, there was published in the **Federal Register**, 57 FR 1736, a proposed consent agreement with analysis In the Matter of Debes Corporation, et al., for the purpose of soliciting public comment. Interested parties are given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 35 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-20730 Filed 8-27-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N-0338]

Drug Export; Amplicor™ HIV PCR Test

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Roche Molecular Systems, Inc., has filed an application requesting approval for the export of the biological product Amplicor™ HIV PCR Test to Belgium, Denmark, Federal Republic of Germany, Ireland, Japan, The Netherlands, Norway, Spain, Sweden and Switzerland.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Frederick W. Blumenschein, Center for Biologics Evaluation and Research (HFB-124), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8191.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Roche Molecular Systems Inc., 1060 U.S. Hgwy. 202, Branchburg, NJ 08876, has filed an application requesting approval for the export of the biological product Amplicor™ HIV PCR Test to Belgium, Denmark, Federal Republic of Germany, Ireland, Japan, The Netherlands, Norway, Spain, Sweden and Switzerland. The Roche Amplicor™ HIV PCR Test is a DNA Probe diagnostic test kit that utilizes the Polymerase Chain Reaction technique for the detection of HIV infection. The application was received and filed in the Center for Biologics Evaluation and Research on July 30, 1992, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 8, 1992, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: August 19, 1992.

Michael P. Dubinsky,

Deputy Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 92-20653 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committee Meetings; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 19, 1992 (57 FR 37548), announcing upcoming advisory committee meetings. The deadline for persons interested in making a formal presentation before the Veterinary Medicine Advisory Committee was inadvertently stated as August 7, 1992. It should have stated September 7, 1992.

FOR FURTHER INFORMATION CONTACT: Alicia Abbott, Office of Policy (HF-26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

In FR Doc. 92-19801, appearing on page 37548 in the **Federal Register** of Wednesday, August 19, 1992, the following correction is made: on page 37549 in the 2d column, in the 4th paragraph, under the heading "*Agenda—Open public hearing.*", in the 6th line, "August 7, 1992," is corrected to read "September 7, 1992,".

Dated: August 21, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92-20652 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-01-F

Health Resources and Services Administration

Program Announcement and Proposed Funding Priorities and Special Consideration for Grants for Predoctoral Training in Family Medicine

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1993 for Grants for Predoctoral Training in Family Medicine are being accepted under the authority of section 786(a), title VII, of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, title VI of Public Law 100-607. Comments are invited on the proposed funding priorities and special consideration stated below.

This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds. The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should authority and funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. FY 1992 grant cycle data are not yet available.

In FY 1991, HRSA reviewed 48 applications for Grants for Predoctoral Training in Family Medicine. Of those applications, 69 percent were approved and 31 percent were not recommended for further consideration. Thirty-three projects, or 69 percent of the applications, were funded.

In FY 1990, HRSA reviewed 53 applications. Of those applications, 68 percent were approved and 32 percent were not recommended for further consideration. Thirty-six projects, or 68 percent of the applications, were funded.

Purpose

Section 786(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR part 57, subpart Q. The period of Federal support will not exceed 5 years.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Grants for Predoctoral Training in Family Medicine Program is related to the priority area of Educational and Community-Based Programs.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report; Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402-9325 (Telephone (202) 783-3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 786(a) of the Act;
2. The degree to which the proposed project adequately provides for the project requirements;
3. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and
4. The potential of the project to continue on a self-sustaining basis after the period of grant support.

Other Considerations

In addition, the following funding factors may be applied in determining the funding of approved applications:

1. Funding Preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuation project ahead of new projects.
2. Funding priorities—favorable adjustment of aggregate review scores when applications meet specified objective criteria.
3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for a funding factor will be reviewed and given full consideration for funding.

Established Funding Preference

The following funding preference was established in FY 1992 after public comment (56 FR 55504) dated October 28, 1991 and is continued in FY 1993.

A funding preference will be given to applicants that have an established, required third year family medicine clerkship or preceptorship (at least 4 weeks in duration); or provide credible evidence that such a clerkship or preceptorship will be initiated no later than academic year 1994-95.

Proposed Funding Priorities and Special Consideration for FY 1993

It is proposed to give a funding priority to:

1. Applicants that provide substantial training experience in:

(1) Inpatient or outpatient health care facilities located in a Health Professional Shortage Area (HPSA), PHS Act, section 332 or in a Medically Underserved Area (MUA) designated under provisions of PHS Act, section 330(b)(3);

(2) Health care facilities that have a substantial portion of their patient visits/hospital admissions that are uncompensated or are compensated under the State Medicaid program and/or other State and local health services assistance programs; or

(3) Community Health Centers currently supported under PHS Act, section 330, Migrant Health Centers currently supported under PHS Act, section 329, Homeless Health Centers supported under PHS Act, section 340, facilities that have formal arrangements to provide primary health services to public housing communities, facilities operated by state or local health departments, and/or hospitals and other health care facilities of the Indian Health Service.

This priority is designed to continue HRSA's strategy to enhance primary medical care training in the above areas and to provide training experiences to underserved populations.

2. Applicants that have a required primary care preceptorship with community-based physicians (family physicians, general internists, or general pediatricians) in ambulatory care settings which (a) occurs in the 1st or 2nd year and is at least 4 weeks duration or (b) is a longitudinal experience of at least 5 days per semester in both the 1st and 2nd years, AND have an active family medicine student interest group with active support from the predoctoral coordinator.

This priority supports the concept that medical students who are exposed early to primary care preceptorships are more likely to choose careers in family medicine.

3. Applicants that document that 20 percent or more of the previous medical school graduating class or of the combined last three graduating classes entered accredited family medicine residency training programs or internship training programs in osteopathic medicine which emphasize family medicine and are approved by the American Osteopathic Association.

This priority will reward those schools with proven track records and encourage others to improve their percentages.

4. Applications that can demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in influencing graduates from those minority or low-income populations identified as at risk of poor

health outcomes to enter family medicine residency training.

This priority is consistent with a HRSA strategy to increase the number of health professionals from minority and other at risk populations, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

Special Consideration

Special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

This special consideration is intended to recognize programs that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Additional Information

Interested persons are invited to comment on the proposed funding priorities and special consideration. All comments received on or before September 28, 1992 will be considered before the final funding priorities and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating whether the final funding priorities and special consideration will be applied.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professionals, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C–25, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professionals, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Mrs. Donna Nash, Grants Management Specialist (D–15), Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 8C–26, Rockville, Maryland 20857, Telephone: (301) 443–6960.

Completed applications should be returned to the Grants Management Office at the above address.

If additional programmatic information is needed, please contact: Mrs. Betty Ball, Resources Development Section, Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 4C–04, Parklawn Building, Rockville, Maryland 20857, Telephone: (301) 443–3614.

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

Public Law 100–607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for fiscal year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately 6 months from the first deadline.

The deadline date for receipt of applications is October 6, 1992. Applications shall be considered as meeting the deadline date if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.896 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, (as implemented through 45 CFR part 100).

Dated: July 16, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92–20707 Filed 8–27–92; 8:45 am]

BILLING CODE 4160–15–M

Program Announcement and Proposed Funding Priorities and Special Consideration for Special Project Grants to Schools of Public Health for Fiscal Year 1993

The Health Resources and Services Administration (HRSA) announces acceptance of applications for fiscal year (FY) 1993 Special Project Grants to Schools of Public Health. This grant program is authorized under section 790A, Title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Reauthorization Act of 1988, Title VI of Public Law 100–607. Comments are invited on the proposed funding priorities and special consideration. This program announcement is subject to reauthorization of this legislative authority and to the appropriation of funds.

The Administration's budget request for FY 1993 does not include funding for this program. Applicants are advised that this program announcement is a contingency action being taken to assure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding application does not reflect any change in this policy.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1992 there was no competitive grant cycle. In FY 1991, HRSA reviewed 32 applications for this grant program. Of those applications, 53 percent were approved and 47 percent were not recommended for further consideration. Seventeen grant projects, or 100 percent of the approved grant applications, were funded.

Section 790A of the Public Health Service Act (the Act), as amended, authorizes the Secretary to award grants to schools of public health for the costs of planning, developing, demonstrating, operating, and evaluating projects: (1) for preventive medicine; (2) for health promotion and disease prevention; (3) for increasing the enrollment in such schools of public health of individuals from disadvantaged backgrounds; and (4) to improve access and quality in health care.

The period of initial Federal support should not exceed 3 years. Grants will be awarded on a competitive basis.

Eligibility

Eligible applicants for this program are schools of public health. "A school of public health" means a school as defined in section 701(4) of the PHS Act which has been accredited by the Council on Education for Public Health pursuant to section 701(5) of the Act and which is located in a State as defined in section 701(11) of the Act.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit proposals that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The following review criteria were established in FY 1990 after public comment and the Administration is again extending these criteria in FY 1993.

The review of applications will consider:

- The degree to which the proposed project adequately meets legislative intent;
- The background and rationale for the proposed project;
- Whether the project contains clearly stated realistic and achievable national or regional objectives which are described in: The Institute of Medicine study titled The Future of Public Health; Healthy People 2000: National Health Promotion and Disease Prevention Objectives; the Seventh Report to the President and Congress on the Status of Health Professions in the United States; and the recommendations and action steps in the Public Health Faculty/Agency Forum Final Report.
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- Evaluation plans and procedures for program and trainees, if applicable;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Proposed Funding Priorities

It is proposed that a funding priority will be given to projects that provide for linkages between schools of public health and State/local official public health departments in the following areas: (1) Implementation of the Public Health Faculty/Agency Forum Final Report recommendations and action steps, (2) technical assistance, (3) shared teaching responsibilities by agency staff and schools of public health faculty, (4) provision of public health students to perform practicums (internships), (5) continuing professional development, and (6) education and training efforts in direct support of public health services. This funding priority is responsive to the Institute of Medicine Report, The Future of Public Health, the Seventh Report to the President and Congress on the Status of Health Personnel, Healthy People 2000, and the Public Health Faculty/Agency Forum Final Report.

It is also proposed that a funding priority will be given to programs which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or lower-income populations identified as at risk of poor health outcomes. This priority is consistent with a HRSA strategy to increase the number of minority health professionals, to assure equal access to health professions education for all population groups, and ultimately, to provide a greater volume of health care in underserved areas.

It is also proposed that a funding priority will be given to grantees offering substantial training experiences in underserved areas. This priority is consistent with HRSA's long-range plan to strengthen linkage between Public Health Service supported education programs and programs which provide comprehensive primary care services to the underserved.

Proposed Special Consideration

Special consideration will be given to the extent to which applicants enroll and graduate trainees from underserved areas.

This special consideration is intended to recognize programs that enroll and graduate trainees from underserved areas because health professionals who come from underserved areas are more likely to return there upon completion of training to provide needed health services.

Additional Information

Interested persons are invited to comment on the proposed funding priorities and special consideration. The comment period is 30 days. All comments received on or before September 28, 1992 will be considered before the final funding priorities and special consideration are established. No funds will be allocated or final selections made until a final notice is published stating when the final funding priorities and special consideration will be applied. Written comments should be addressed to: Neil Sampson, M.P.H., Director, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Application materials and questions regarding business management-issues and grants policy should be directed to: Ms. Sandra Bryant (D38), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6915.

Questions concerning the programmatic aspects of Special Project Grants to Schools of Public Health should be directed to: Ms. Elizabeth Coleman-Santucci, Public Health Branch, Division of Associated, Dental, and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, room 8C-09, Rockville, Maryland 20857, Telephone: (301) 443-6896.

The application deadline date is October 26, 1992. Completed applications should be returned to the Grants Management Officer at the above address.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline and received in time for submission to an independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

The *Catalog of Federal Domestic Assistance* number for Special Project Grants to Schools of Public Health is 93.188. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: July 6, 1992.

Robert G. Harmon,

Administrator.

[FR Doc. 92-20708 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, August 7, 1992. (Call PHS Reports Clearance Officer on 202-690-7100 for copies of package.)

1. Regulation—42 CFR 83.3-1: Contents of a Request for Health Hazard Evaluation—0920-0102—This data collection is an application for Health Hazard Evaluation as described in 42 CFR 85.3-1. Employers or authorized representatives of employers in general industry or mining may request an evaluation to determine whether any substances normally found in the place of employment has potentially toxic effect. Respondents: Individuals or households; Businesses or other for-profit; Non-profit institutions, Small businesses organizations; Number of Respondents: 500; Number of Responses per Respondent: 1; Average Burden per Response: .20 hours; Estimated Annual Burden: 100 hours.

2. Tuberculosis Statistics and Program Evaluation—0920-0026—Data are submitted to the Centers for Disease Control from tuberculosis programs using the forms contained in this information collection. This is a request to revise one of the forms to collect surveillance data on additional items such as HIV status, drug susceptibility results, occupation, drug use, initial drug therapy and type of health care provider. These new data will enable us to study and devise control programs for target populations. Respondents: Individuals or households; Number of Respondents: 117; Number of Responses per Respondent: 224; Average Burden per Response: .117 hours; Estimated Annual Burden: 4,641 hours.

3. 1990 Fluoridation Census and Annual Updates—0920-0195—A detailed, published census of fluoridated community and school water systems, followed by annual summary update will be conducted. The data will provide current information on status of fluoridation; location and status of water systems and places that use optimally adjusted or naturally occurring fluoridated water; and population served. Respondents: State or local governments; Number of Respondents: 59; Number of Responses Per Respondent: 1; Average Burden per Response: 8 hours; Estimated Annual Burden: 472 hours.

4. Medicated Feed Application—0920-0011—This form provides the Agency with the information required to aid in the assurance that medicated feeds will be manufactured in accordance with the FD&C Act and regulations concerning proper manufacture of new animal drug containing products. The applications are used to determine whether the feeds manufactured are safe and effective for labeled claims. Respondents: Farms; Businesses or other for-profit; Small businesses or organizations; Number of Respondents: 6,000; Number of Responses per Respondent: 1; Average Burden per Response: 2 hours; Estimated Annual Burden: 12,000 hours.

5. Loan Repayment Program for Service on Faculties of Certain Health Professions Schools-Application—0915-0150—Health professionals applying to the Loan Repayment program for Service on Faculties of Certain Health Professions Schools provide information needed to determine eligibility. Applicants provide information that identifies that they are a disadvantaged health professions graduate, have a contract to serve as full-time faculty, and have creditable loans. Respondents: Individual or households; Businesses or other for-profit; small businesses or organizations.

Title	No. of respondents	No. of responses for respondent	Average burden per response
FLRP application.	100	1	1 hr.
Lender's confirmation of loan.	180	1	.5 hrs.

Estimated Total Annual Burden..... 190 hours.

6. Regulations Under The Federal Import Milk Act—0910-0212—The Import Milk Act prohibits the exportation of milk and cream to this country unless the shipper of such products holds a valid import permit from FDA. The Act requires documentation that all cows are healthy, dairy farms/plants are in good sanitary condition. Respondents: State or local governments; Farms; Businesses or other for-profit.

Title	No. of respondents	No. of responses per respondent	Average burden per response
Application for permit to ship/transport milk/cream, form FDA 1993.	1	1	.5 hrs.
Certification/transmittal for an application, form FDA 1815 [1].	1	2	.25 hrs.
Sanitary inspection of dairy farms, form FDA 1996.	1	200	1.5 hrs.
Sanitary inspection of milk plants, form FDA 1997.	1	2	2 hrs.
Time and temperature recordings, recordkeeping.	1	200	.05 hrs.

[1] Submitted in lieu of Forms FDA 1994 and 1995, Report of Tuberculin Test of Cattle and Physical Examination of Cows.

Estimated Total Annual Burden..... 315 hours.

Desk Officer: Shannah Koss.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated above at the following address: Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: August 18, 1992.

Phyllis M. Zucker,

Acting Director, Office of Health Planning and Evaluation.

[FR Doc. 92-20091 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-17-M

Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity

AGENCY: Public Health Service, HHS.

ACTION: Notice with comment period.

SUMMARY: The Clinical Laboratory Improvement Amendments of 1988, Public Law 100-578, requires that the Secretary provide for the categorization of specific laboratory test systems, assays and examinations by level of complexity. 42 CFR 493.17, published in the **Federal Register** on February 28, 1992 established criteria for such categorization.

It is the Department's intention to complete the categorization of all currently available clinical laboratory test systems, assays and examinations prior to the effective date of 42 CFR 493 (September 1, 1992). This notice announces the third of a series of lists containing specific clinical laboratory test systems, assays and examinations, categorized by complexity. Additional lists of test systems, assays and examinations by complexity will be published periodically. A complete list of all laboratory test systems, assays and examinations, categorized by complexity, will be published in the form of a compilation of these Notices. Any clinical laboratory test system, assay or examination that is not on the compilation list will be considered high complexity, until categorized otherwise as provided under 42 CFR 493.17. After publication of the compilation list, categorization or recategorization of laboratory test systems, assays and examinations will follow the procedures delineated in 42 CFR 493.17(c). After the effective date of 42 CFR 493, notices will be published periodically in the **Federal Register** to announce any additional test system, assay or examination that has been categorized (or re-categorized) during the preceding interval.

This notice also contains a list of waived procedures. 42 CFR 493.15 (b), published in the **Federal Register** on February 28, 1992 established the criteria for a certificate of waiver test and 493.15 (c) contains a list of the certificate of waiver tests. This notice lists those waived tests by manufacturer and product name.

DATES: *Effective date:* This list is effective September 1, 1992.

Comment date: Written comments on this list of tests will be considered if they are received at the address indicated below, no later than 5 p.m. on September 28, 1992.

ADDRESSES: Comments on the content of this Notice—only—should be addressed to: Public Health Service, Attention: CLIA **Federal Register** Notice, 1600 Clifton Rd. NE., (Mail Stop MLR5), Atlanta GA 30333.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. Nor can we accept comments by telephone.

FOR FURTHER INFORMATION CONTACT: Miley A. Robinson, (404) 639-1701.

SUPPLEMENTARY INFORMATION: As described in 42 CFR 493.17, seven criteria were used to classify laboratory test systems, assays or examinations as moderate or high complexity using a grading scheme for level of complexity that assigned scores of 1, 2 or 3 for each of the seven criteria. Test systems, assays or examinations receiving total scores of 12 or less were categorized as moderate complexity, while those receiving total scores of 13 through 21 were categorized as high complexity. As provided under 42 CFR 493.17, the following laboratory test systems, assays and examinations have been either categorized as moderate or high complexity or are waived procedures as noted.

Dated: August 19, 1992.

James O. Mason,

Assistant Secretary for Health.

Additions to the Specific List for Categorization of Laboratory Test Systems, Assays and Examinations by Complexity Published as a Notice in the Federal Register on February 28, 1992

Complexity: Moderate

Speciality/Subspeciality: General Chemistry

Analyte: Acid Phosphatase

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:

Dupont ACA II
Dupont ACA III

Analyte: Alanine Aminotransferase (ALT) (SGPT)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:

Ames Clinistat
Ames Seralyzer
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Albumin

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:

Ames Clinistat
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Alkaline Phosphatase (ALP)

Category: Automated procedures that do not require operator intervention during the analytic process

Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Abbott VP
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 737
Dupont ACA II
Dupont ACA III
Electronucleonics Gem-Profiler
Electronucleonics Gemini
Electronucleonics Gemstar
Instrumentation Laboratory IL Monarch
Roche Cobas FARA
Roche Cobas Mira
Technicon RA 1000

Analyte: Ammonia

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum
Abbott Spectrum EPX
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Dupont ACA II
Dupont ACA III

Analyte: Amylase

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Apolipoprotein A1

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Olympus AU 800

Analyte: Apolipoprotein B

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Olympus AU 800

Analyte: Asparate Aminotransferase (AST) (SGOT)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Clinistat
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Bilirubin, Direct

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Bilirubin, Neonatal

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Bilirubin, Total

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K

Analyte: Blood Gases With pH

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 947
Ciba Corning 238 pH/Blood Gas Analyzer

Analyte: Calcium, Ionized

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 9140
Radiometer ICA 1
Radiometer ICA2 Ionized Calcium Analyzer

Analyte: Calcium, Total

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Carbon Dioxide, Total (CO_2)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Carboxyhemoglobin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ciba Corning 2500 CO-oximeter
Ciba Corning 270 CO-oximeter
Instrumentation Laboratory IL 482

Analyte: Cerebrospinal Fluid Protein (CSF)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 800

Analyte: Chloride

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223

Olympus AU 5231
Olympus AU 800

Analyte: Cholesterol

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
ChemTrak AccuMeter
Medical Technology Corp. QuikRead

Analyte: Cholinesterase

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Electronucleonics Gemstar II

Analyte: Cortisol

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

Analyte: Creatine Kinase (CK)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Creatine Kinase MB Fraction (CKMB)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Creatinine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Folate (Folic acid)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S

Analyte: Follicle Stimulating Hormone (FSH)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Cirrus Diagnostics Immulite

Analyte: Gamma Glutamyl Transferase (GGT)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum EPX
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Glucose

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Spectrum Series II
Abbott Spectrum Series II CCX
Beckman System One
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K
HemoCue B-Glucose System

Analyte: Glycosylated Hemoglobin (Hgb A1C)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Ames DCA 2000 Analyzer

Analyte: HCG, Serum, Qualitative

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson Directigen 1-2-3 hCG
Becton Dickinson QTest Pregnancy Combo
Disease Detection International ImmunoCard hCG Test

Analyte: HCG, Serum, Quantitative

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Cirrus Diagnostics Immulite

Analyte: HCG, Urine, Qualitative (non-waived procedures)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Ampcor Monoclonal Pregnancy beta-HCG Liquid Card Test
Ampcor Quik-Dot Pregnancy beta-HCG Dry Card Test
Carter Products Answer Pregnancy Test
Stanbio Fertiter Pregnancy Slide Test
Stanbio QuickTell

Analyte: HDL Cholesterol (no manual precipitation VLDL/LDL)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Medical Technology Corp. QuikRead

Analyte: Iron

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Ketone, Blood

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Ames Acetest

Analyte: Lactate Dehydrogenase (LDH)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Lactate Dehydrogenase Heart Fraction (LDH-1)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Lactate Dehydrogenase Liver Fraction (LLDH)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Lactic Acid (Lactate)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Lipase

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Electronucleonics Gemstar II

Analyte: Luteinizing Hormone (LH)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Cirrus Diagnostics Immulite

Analyte: Magnesium

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott VP
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Oxyhemoglobin/Oxygen Saturation

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ciba Corning 2500 CO-oximeter
Ciba Corning 270 CO-oximeter
Instrumentation Laboratory IL 482

Analyte: Phosphorus

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Potassium

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 9140
Dupont ACA II
Dupont ACA III
Dupont ACA IV
Dupont ACA V
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K

Analyte: Protein, Total

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Clinistat
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Pseudocholinesterase

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Sodium

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
AVL 9140
Dupont ACA II
Dupont ACA III
Dupont ACA IV
Dupont ACA V
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Thyroid Stimulating Hormone—high sens. (TSH-HS)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Baxter Stratus II
Cirrus Diagnostics Immulite

Analyte: Thyroxine (T4)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Cirrus Diagnostics Immulite
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Dupont ACA II
Dupont ACA III
Instrumentation Laboratory IL Monarch
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira

Roche Cobas Mira S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Access Medical Systems dChem
Medical Technology Corp. d-CHEM
Photest Diagnostics dChem

Analyte: Thyroxine, Free (FT4)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson Affinity

Analyte: Triglyceride

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Medical Technology Corp. QuikRead

Analyte: Triiodothyronine (T3)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Cirrus Diagnostics Immulite
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S

Analyte: Triiodothyronine Uptake (T3U)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Cirrus Diagnostics Immulite
Coulter Optichem 100
Coulter Optichem 120
Coulter Optichem 180
Dupont ACA II
Dupont ACA III
Instrumentation Laboratory IL Monarch
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Access Medical Systems dChem
Medical Technology Corp. d-CHEM
Photest Diagnostics dChem

Analyte: Urea (BUN)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Beckman System One
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K

Analyte: Uric Acid

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800

Analyte: Vitamin B12

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Becton Dickinson Affinity
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S

Analyte: Zinc Protoporphyrin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Helena ProtoFluor-Z Hematofluorometer
Speciality/Subspeciality: General Immunology

Analyte: Allergen specific IgE

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Abbott Matrix Aero Plus
In Vitro Technologies Central Allergy Screen
In Vitro Technologies Northeast Allergy Screen
In Vitro Technologies Southeast Allergy Screen
In Vitro Technologies Southwest Allergy Screen
In Vitro Technologies Western Allergy Screen

Analyte: Anti-DNP Antibodies

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
NCS SLE—Slide Latex Test
V-Tech V-Trend Kit LE

Analyte: Anti-Nuclear Antibodies (ANA)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Baxter ImmunoSCAN SLE Test

Analyte: Anti-Streptolysin O (ASO)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Instrumentation Laboratory IL Monarch
Roche Cobas FARA
Roche Cobas Mira
Technicon RA 1000
Technicon RA XT
Category: Manual or semi-automated procedures with limited steps and limited sample or reagent preparation
Test System, Assay or Examination:
Ampcor ASO Card Test
Baxter ImmunoSCAN ASO Test
NCS ASO Slide Test

Stanbio ASO Quicktest
V-Tech Target ASO

Analyte: C-Reactive Protein (CRP)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Instrumentation Laboratory IL Monarch
Roche Cobas FARA
Roche Cobas Mira
Roche Cobas Mira S
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Ampcor CRP Card Test
Becton Dickinson BBL CRP Precipitin Test
Difco Bacto CRP Capillary Tube Test
Gamma C-Reactive Protein Latex Test
V-Tech V-Trend Kit CRP

Analyte: Cytomegalovirus Antibodies (IgG/IgM)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
General Biometrics ImmunoDot Infectious Mono Syndrome Panel
General Biometrics ImmunoDot T.E.C.H. Test

Analyte: Epstein-Barr virus Antibodies

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
General Biometrics ImmunoDot Infectious Mono Syndrome Panel
General Biometrics ImmunoDot T.E.C.H. Test

Analyte: HIV Antibodies

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Cambridge BioScience Recombigen HIV-1 LA Test
Murex SUDS HIV-1 Test

Analyte: Helicobacter pylori Antibodies

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Wellcome Pyloriset

Analyte: Hepatitis B Core Antibody—IgM

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott IMX

Analyte: Herpes simplex I and/or II Antibodies

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
General Biometrics ImmunoDot T.E.C.H. Test

Analyte: Immunoglobulins IgA

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Immunoglobulins IgE

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Abbott Matrix Aero Plus
Biomerica CAST Color Allergy Screening Test
In Vitro Technologies Central Allergy Screen
In Vitro Technologies Northeast Allergy Screen
In Vitro Technologies Southeast Allergy Screen
In Vitro Technologies Southwest Allergy Screen
In Vitro Technologies Western Allergy Screen
MAST Total IgE Test

Analyte: Immunoglobulins IgG

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Immunoglobulins IgM

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Infectious Mononucleosis Antibodies (Mono)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Ampcor IM Card Test
Baxter MicroScan Cards O.S. Mono
Gamma Slide Test for Infectious Mononucleosis
NCS Infectious Mononucleosis Test
Organon Teknika Monosticon Dri-Dot
Stanbio IM Quicktest
Wampole Mono-Plus
Wampole Mono-Test (FTB)

Analyte: Lyme Disease Antibodies (Borrelia burgdorferi Abs)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Vitek Systems Vidas (antibodies)
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
General Biometrics ImmunoDot Borrelia w/Recombinant Protein

Analyte: Rheumatoid Factor (RA)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Instrumentation Laboratory IL Monarch
Roche Cobas FARA
Roche Cobas Mira
Technicon RA 1000
Technicon RA XT
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Ampcor RF Card Test
Gamma RF-Latex Test
Isolab Rapid-RF
NCS RA Latex Test
V-Tech Target RF
V-Tech V-Trend Kit RF
V-Tech V-Trend Kit Red Cell RF

Analyte: Rickettsia conorii (Mediterranean Spotted Fvr Ab)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
INDX Latex—Rickettsia conorii (MSF) Kit

Analyte: Rickettsia rickettsii (Rocky Mt. Spotted Fever Ab)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
INDX DIP-S-TICKS Rocky Mt. Spotted Fever (RMSF) Test
INDX Latex—Rickettsia rickettsii (RMSF) Kit

Analyte: Rickettsia typhi (Typhus Antibodies)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
INDX Latex—Rickettsia typhi Kit

Analyte: Rubella Antibodies—IgG/IgM

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Vitek Systems Vidas (antibodies)
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Baxter ImmunoSCAN Rubella Latex Test
Wellcome Rubalex

Analyte: Toxoplasma gondii Antibodies—IgG/IgM

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Vitek Systems Vidas (antibodies)
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
General Biometrics ImmunoDot Infectious Mono Syndrome Panel
General Biometrics ImmunoDot T.E.C.H. Test

Analyte: Treponema pallidum Antibodies

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Baxter ImmunoSCAN RPR Card Test
Difco Bacto USR
Gamma Biologicals RPR/USR Antigen
NCS RPR CARD TEST—manual
Remel RPR CARD Test Kit
Stanbio Syphilis (RPR) Quicktest
V-Tech V-Trend RPR Raindrop Card Test

Analyte: Trichinella Antibodies

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Difco Latex Flocculation Test—Trichinosis
Speciality/Subspeciality: Hematology

Analyte: Activated Clotting Time (ACT)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
HemoTec ACT
HemoTec Automated Coagulation Timer
HemoTec Hepcon/HMS
HemoTec Hepcon/System A-10
HemoTec Hepcon/System B-10
HemoTec Hepcon/System Four

Analyte: Activated Partial Thromboplastin Time (APTT)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
HemoTec Automated Coagulation Timer
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Boehringer Manneheim Unimeter CA-600
Lancer Coagulyzer Jr. III
Logos elvi 818 Digiclot
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Ortho KoaguLab M
Sherwood Medical Coagulizer Jr.

Analyte: Antithrombin III (ATIII)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
DuPont ACA SX
Dupont ACA II
Dupont ACA III

Analyte: Bleeding Time

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Ivy/Template Bleeding Time
Simplate Bleeding Time

Analyte: Body Fluid Microscopic Elements

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
IRIS The Yellow IRIS model 250
IRIS The Yellow IRIS model 450

Analyte: Erythrocyte Sedimentation Rate (non-waived proced)

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Hi Chem-Vega Ves-Matic ESR System

Analyte: Fibrin Split Products (Fibrin Degradation)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
DuPont ACA SX
Dupont ACA II
Dupont ACA III
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Biopool Minutex D-dimer
Diagnostica Stago D-Di
Diagnostica Stago F.S. Test
Diagnostica Stago Spli-Prest

Analyte: Fibrinogen

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
DuPont ACA SX
Dupont ACA II
Dupont ACA III
Roche Cobas Mira
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Sigma AccuStasis 1000
Sigma AccuStasis 2000

Analyte: Hematocrit

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 4300 Cell Counter
Roche Cobas HELIOS 5 DIFF
Sysmex CC-108
Sysmex CC-120
Sysmex CC-170
Sysmex CC-800
Sysmex F-500
Sysmex F-800
Sysmex M-2000
Sysmex NE-1500
Sysmex NE-5500

Wampole STAT-CRIT

Analyte: Hemoglobin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Clinistat
Electronucleonics Gemstar II
Roche Cobas HELIOS 5 DIFF
Sysmex CC–108
Sysmex CC–120
Sysmex CC–170
Sysmex CC–800
Sysmex F–300
Sysmex F–500
Sysmex F–800
Sysmex M–2000
Sysmex NE–1500
Sysmex NE–5500
Wampole STAT-CRIT
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
BMS Hemoglobinometer 10–101
BMS Hemoglobinometer 10–101D
Becton Dickinson QBC
Becton Dickinson QBC Plus
Becton Dickinson QCA Analyzer
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K
Cambridge Instruments Hb-Meter Hemoglobinometer
Coulter Hemoglobinometer
Coulter Hemoglobinometer W
Isolab Hb-Direct
Sysmex Hemoglobinometer HB–100
Sysmex Hemoglobinometer HB–110

Analyte: Hemoglobin S

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Ampcor Sickle Cell—HbS Screening Kit
Chembio Sickle-STAT
Key Scientific Sickle-Screen Test Kit
Organon Teknika Sicklequik

Analyte: Heparin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
DuPont ACA SX
Dupont ACA II
Dupont ACA III

Analyte: Heparin Dose Response (HDR)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
HemoTec Hepcon/HMS
HemoTec Hepcon/System A–10
HemoTec Hepcon/System B–10
HemoTec Hepcon/System Four

Analyte: Heparin/Protamine Titration (HPT)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
HemoTec Hepcon/HMS
HemoTec Hepcon/System A–10
HemoTec Hepcon/System B–10
HemoTec Hepcon/System Four

Analyte: Plasminogen

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
DuPont ACA SX
Dupont ACA II
Dupont ACA III

Analyte: Platelet Count

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Roche Cobas HELIOS 5 DIFF
Sysmex CC–800
Sysmex F–800
Sysmex M–2000
Sysmex NE–1500
Sysmex NE–5500
Sysmex PL–100
Sysmex PL–110

Analyte: Prothrombin Time (PT)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
HemoTec Automated Coagulation Timer
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Boehringer Manneheim Unimeter CA–600
Boehringer Manneheim Unimeter CU–500
DuPont Coumatrak
Lancer Coagulyzer Jr. III
Logos elvi 818 Digiclot
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Ortho KoaguLab M
Sherwood Medical Coagulizer Jr.

Analyte: Red Blood Cell Count (Erythrocyte Count)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 4300 Cell Counter
Roche Cobas HELIOS 5 DIFF
Sysmex CC–108
Sysmex CC–110
Sysmex CC–120
Sysmex CC–170
Sysmex CC–800
Sysmex F–300
Sysmex F–500
Sysmex F–800
Sysmex M–2000
Sysmex NE–1500
Sysmex NE–5500
Sysmex PL–110
Sysmex R–3000

Analyte: Thrombin Time

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Logos elvi 818 Digiclot
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Sigma AccuStasis 1000
Sigma AccuStasis 2000

Analyte: White Blood Cell (WBC) Differential

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Roche Cobas HELIOS 5 DIFF
Sysmex NE–1500
Sysmex NE–5500

Analyte: White Blood Cell Count (Leukocyte Count)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Bio-Chem Laboratory Systems ATAC 4300 Cell Counter
Roche Cobas HELIOS 5 DIFF
Sysmex CC–108
Sysmex CC–110
Sysmex CC–120
Sysmex CC–170
Sysmex CC–800
Sysmex F–300
Sysmex F–500
Sysmex F–800
Sysmex M–2000
Sysmex NE–1500
Sysmex NE–5500
Sysmex PL–110
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Becton Dickinson QBC II Plus

Speciality/Subspeciality: Immunohematology

Analyte: RBC Antigen Type Other Than A or B

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
American Red Cross Bld Group Reagents—Indirect Antiglobulin
American Red Cross Blood Grouping Reagents—direct Ag
Speciality/Subspeciality: Toxicology/TDM

Analyte: Acetaminophen

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 800

Analyte: Amikacin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Amphetamines

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus

Analyte: Barbiturates

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT

Analyte: Benzodiazepines

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT

Analyte: Benzodiazepines, Urine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Syva Emit ETS Plus

Analyte: Cancer Antigen 125 (CA 125)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 717

Analyte: Cannabinoids (THC)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT

Analyte: Carbamazepine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Seralyzer
Dupont ACA II
Dupont ACA III
Olympus AU 800

Analyte: Cocaine Metabolites

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5000
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT

Analyte: Digitoxin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Roche Cobas Mira
Roche Cobas Mira S
Technicon RA 1000
Technicon RA 2000
Technicon RA 500
Technicon RA XT

Analyte: Digoxin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Seralyzer
Beckman Synchron CX 7
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Cirrus Diagnostics Immulite
Roche Cobas FARA
Roche Cobas FARA II
Roche Cobas Mira
Roche Cobas Mira S

Analyte: Ethanol (Alcohol)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Dupont ACA II
Dupont ACA III
Olympus AU 800
Syva Emit ETS Plus
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
Enzymatics Q.E.D. A150 Saliva Alcohol Test
Enzymatics Q.E.D. A350 Saliva Alcohol Test

Analyte: Ethosuximide

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Gentamicin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Dupont Dimension
Olympus AU 800

Analyte: Lidocaine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Methadone

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus

Analyte: Methaqualone

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus

Analyte: Methotrexate

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: N-Acetylprocainamide (NAPA)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Opiates

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
V-Tech Target Opiates-R (Reader)
V-Tech Target Opiates-V (Visual)

Analyte: Phencyclidine (PCP)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 717
Dupont ACA II
Dupont ACA III
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus
Technicon RA 1000
Technicon RA XT

Analyte: Phenobarbital

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Dupont ACA II
Dupont ACA III
Olympus AU 800
Roche Cobas Mira
Roche Cobas Mira S

Analyte: Phenytoin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Dupont ACA II
Dupont ACA III
Olympus AU 800
Roche Cobas Mira
Roche Cobas Mira S

Analyte: Primidone

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 800

Analyte: Procainamide

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Propoxyphene

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Syva Emit ETS Plus
Technicon Chem 1
Technicon Chem 1 Plus

Analyte: Quinidine

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 800

Analyte: Salicylates

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Olympus AU 800

Analyte: Theophylline

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Boehringer Mannheim Hitachi 704
Boehringer Mannheim Hitachi 705
Boehringer Mannheim Hitachi 717
Boehringer Mannheim Hitachi 736
Boehringer Mannheim Hitachi 747
Ciba Corning 550 Express
Dupont ACA II
Dupont ACA III
Olympus AU 800
Roche Cobas Mira
Roche Cobas Mira S

Analyte: Tobramycin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Dupont Dimension
Olympus AU 800

Analyte: Tricyclic Antidepressants

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Syva Emit ETS Plus

Analyte: Valproic Acid

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III

Analyte: Vancomycin

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Speciality/Subspeciality: Urinalysis

Analyte: Total Solids (Specific Gravity)

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Biovation Model 300 Digital Urinometer
Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
All Manual Specific Gravities by Urinometers
American Optical TS Meter
Reichert TS Meter

Analyte: Urinary Protein, Qualitative

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
All Manual Acid Precipitation Urine Protein Screening Tests
Sclavo Albumin Screen

Analyte: Urinary Sediment Microscopic Elements

Category: Manual or semi-automated procedures with limited steps and with limited sample or reagent preparation
Test System, Assay or Examination:
IRIS The Yellow IRIS model 250
IRIS The Yellow IRIS model 450

Analyte: Urine Qualitative Dipstick Chemistries

Category: Automated procedures that do not require operator intervention during the analytic process
Test System, Assay or Examination:
Ames Clinitek 10
Ames Clinitek 200
IRIS The Yellow IRIS model 250
IRIS The Yellow IRIS model 450
Complexity: High
Speciality/Subspeciality: General Chemistry

Analyte: 17 OH Progesterone

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems 17alpha-OH Progesterone RIA Kit

Analyte: Acid Phosphatase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Adrenocorticotropic Hormone (ACTH)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems ACTH RIA Kit

Analyte: Alanine Aminotransferase (ALT) (SGPT)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Technicon SMA 12/60
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Albumin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Helena Laboratories Low Level Quiplate System for RID
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Alkaline Phosphatase (ALP)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Technicon SMAC
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Alpha-Hydroxybutyrate Dehydrogenase (HBDH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM

Analyte: Ammonia

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Amylase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Androstanediol Glucuronide (3 alpha-diol G)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Androstanediol Glucuronide RIA Kit

Analyte: Androstenedione

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Active Androsteindione RIA Kit
Diagnostic Systems Androsteindione RIA Kit

Analyte: Apolipoprotein B

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Behring M-partigen Kit

Analyte: Asparate Aminotransferase (AST) (SGOT)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Bilirubin, Direct

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Bilirubin, Total

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: C-Peptide

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems C-Peptide RIA Kit

Analyte: Calcitonin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Calcitonin RIA Kit
Diagnostic Systems Ultra-Sensitive Calcitonin RIA Kit

Analyte: Calcium, Total

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Carbon Dioxide, total (CO2)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Chloride

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Cholesterol

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Ki

Analyte: Cholinesterase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Cortisol

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia
Diagnostic Systems Active Cortisol EIA Kit
Diagnostic Systems Active Cortisol RIA Kit
Diagnostic Systems Cortisol RIA Kit
Kallestad Quanticoat

Analyte: Cortisol, Urine

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Active Cortisol EIA Kit
Diagnostic Systems Active Cortisol RIA Kit

Analyte: Creatine Kinase (CK)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Creatine Kinase BB Fraction (CKBB)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems CK-B Protein RIA Kit

Analyte: Creatine Kinase MB Fraction (CKMB)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems CK-B Protein RIA Kit

Analyte: Creatinine

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50
Boehringer Mannheim Biodynamics Unimeter 250
Boehringer Mannheim Biodynamics Unimeter 300
Boehringer Mannheim Biodynamics Unimeter 330K
Electronucleonics FLEXIGEM

Analyte: Dehydroepiandrosterone Sulfate (DHEA-SO4)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Active DHEA-Sulfate EIA Kit
Diagnostic Systems Active DHEA-Sulfate RIA Kit
Diagnostic Systems DHEA-Sulfate RIA Kit

Analyte: Erythropoletin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Erythropoletin (EPO) RIA Kit

Analyte: Estradiol

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia
Diagnostic Systems Estradiol RIA Kit

Analyte: Estriol-Total

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Total Estriol RIA Kit

Analyte: Estriol-unconjugated

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Ultra-Sens. Unconjugated Estriol RIA Kit

Analyte: Ferritin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson MAb Solid Phase Component System
Diagnostic Products Corp. Milenia
Diagnostic Systems Active Ferritin IEMA Kit
Diagnostic Systems Active Ferritin IRMA Kit

Analyte: Follicle Stimulating Hormone (FSH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson SimulTRAC
Diagnostic Products Corp. Milenia

Analyte: Gamma Glutamyl Transferase (GGT)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Glucose

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: HCG, Serum, Qualitative

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia
Hybritech Tandem-E

Analyte: HCG, Serum, Quantitative

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:

Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia

Analyte: HDL Cholesterol (post-precipitation VLDL & LDL)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Electronucleonics FLEXIGEM
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Insulin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Corning Medical IMMO PHASE RIA
Diagnostic Systems Insulin RIA Kit

Analyte: Insulin-like Growth Factor-1 (IGF-1)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Active Insulin-Like Growth Factor-1

Analyte: Iron

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Iron Binding Capacity (post saturation/separation)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Dupont ACA II
Dupont ACA III
Electronucleonics FLEXIGEM
Olympus AU 5211
Olympus AU 5221
Olympus AU 5223
Olympus AU 5231
Olympus AU 800
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Lactate Dehydrogenase (LDH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Lactate Dehydrogenase Heart Fraction (LDH-1)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50

Analyte: Lactate Dehydrogenase Liver Fraction (LLDH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50

Analyte: Lipase

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Luteinizing Hormone (LH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Becton Dickinson SimulTRAC
Diagnostic Products Corp Milenia

Analyte: Magnesium

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Parathyroid Hormone—C-Terminal

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems C-Parathyroid Hormone RIA Kit

Analyte: Parathyroid Hormone—Intact

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Active Intact Parathyroid Hormone

Analyte: Parathyroid Hormone—Mid-molecule (PTH-M)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination.
Diagnostic Systems Mid-Molecule Parathyroid Hormone RIA Kit

Analyte: Phosphorus

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Potassium

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50

Analyte: Progesterone

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Cotube
Diagnostic Products Corp. Milenia
Diagnostic Systems Active Progesterone RIA Kit
Diagnostic Systems Progesterone RIA Kit

Analyte: Prolactin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia

Analyte: Prostatic Acid Phosphatase

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia

Analyte: Protein, Total

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Retinol binding protein

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Behring LC-partigen Kit

Analyte: Sex Hormone Binding Globulin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Systems Sex Hormone Binding Globulin RIA Kit

Analyte: Sodium

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50

Analyte: Testosterone

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Cotube
Diagnostic Systems Active Testosterone RIA Kit
Diagnostic Systems Testosterone RIA Kit

Analyte: Thyroid Stimulating Hormone (TSH)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia

Analyte: Thyroid Stimulating Hormone (TSH) (Neonatal)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus

Analyte: Thyroid Stimulating Hormone—high sens. (TSH-HS)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Hybritech PHOTON Era Automated Immunoassay Analyzer
Hybritech PHOTON Immunoassay Analyzer
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus

Analyte: Thyroxine (T4)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Quanta-Count
Diagnostic Products Corp. Milenia
Kallestad Quanticoat

Analyte: Thyroxine (T4), Neonatal

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus

Analyte: Thyroxine, Free (FT4)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Bio-Rad Cotube
Bio-Rad Quantimune

Analyte: Triglyceride

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Bichromatic ABA 100
Abbott Bichromatic ABA 200
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Triiodothyronine (T3)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:

Ciba Corning Magic Lite
Kallestad Quanticoat

Analyte: Triiodothyronine Uptake (T3U)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Kallestad Quanticoat

Analyte: Urea (BUN)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Uric Acid

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Abbott Biochromatic ABA 100
Abbott Biochromatic ABA 50
Electronucleonics FLEXIGEM
Technicon SMA 12/60
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Urinary Calculi

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Oxford Qualitative Stone Analysis Set
Speciality/Subspeciality: General Immunology

Analyte: Allergen specific IgE

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Dexall Biomedical AllergEns ActiTip System
Diagnostic Products Corp. AlaTOP Allergy Screen
Diagnostic Products Corp. Milenia AlaSTAT
In Vitro Technologies IVT RAST Tracer Unit
Pharmacia CAP System RAST FEIA
Pharmacia CAP System RAST RIA
Pharmacia Phadebas RAST
Pharmacia Phadebas RAST Penicilloyl G/Penicilloyl V
Pharmacia Phadezym RAST
Pharmacia Phadiatop EIA
Pharmacia Phadiatop RIA
Ventrex Specific IgE EIA
Ventrex Specific IgE RAST Isotope Unit
Ventrex TURBO-RAST Specific IgE Isotope Unit

Analyte: Allergen specific IgG

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Pharmacia IgG RAST EIA
Pharmacia IgG RAST RIA

Analyte: Anti-Cardiolipin Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biopool Imulyse ACA
General Biometrics ImmunoWELL Cardiolipin Ab (IgG) Test
General Biometrics ImmunoWELL Cardiolipin Ab (IgM) Test
Immuno Concepts Anti-cardiolipin Ab Semi-quant. Test System

Analyte: Anti-DNA Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL dsDNA Ab Test
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Immuno Concepts Colorzyme nDNA Test System
Immuno Concepts Fluorescent nDNA Ab Test System

Analyte: Anti-Mitochondrial Antibodies (AMTA)

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Zeus Autoantibody Screen (AAS) Test System

Analyte: Anti-Nuclear Antibodies (ANA)

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Behring AFT System HEp
Immuno Concepts Colorzyme ANA Test System
Incstar Fluoro-Kit
Zeus ANA HEp-2 Cell Culture IFA Test System
Zeus Autoantibody Screen (AAS) Test System

Analyte: Anti-Parietal Cell Antibodies

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Zeus Autoantibody Screen (AAS) Test System

Analyte: Anti-RNP (Ribonucleoprotein)

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Immuno Concepts Sm/RNP Ab Test System
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL RNP/Sm AB Test
Shield Diagnostics DIASTAT ENA Profile Kit

Analyte: Anti-SS-A/Ro

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Immuno Concepts SS-A/SS-B Autoantibody Test System
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL SS-A (Ro) Antibody Test
Shield Diagnostics DIASTAT ENA Profile Kit

Analyte: Anti-SS-B/La

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Immuno Concepts SS-A/SS-B Autoantibody Test System
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL SS-B (La) Antibody Test
Shield Diagnostics DIASTAT ENA Profile Kit

Analyte: Anti-Sm (Smith)

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Immuno Concepts Sm/RNP Ab Test System

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
BioWhittaker RheumElisa Plus Microwell Assay
General Biometrics ImmunoWELL RNP/Sm AB Test
Shield Diagnostics DIASTAT ENA Profile Kit

Analyte: Anti-Smooth Muscle Antibodies (ASMA)

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Zeus Autoantibody Screen (AAS) Test System

Analyte: Anti-Thyroglobulin Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
General Biometrics ImmunoWELL Thyroglobulin Ab Test

Analyte: Anti-Thyroid Microsomal Antibodies (AMA)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
General Biometrics ImmunoWELL Microsome (TPO) Ab Test

Analyte: Aspergillus Antibodies

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Immuno-Mycologics Aspergillus Antigens and Control Sera

Analyte: Beta-2 microglobulin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia
Diagnostic Systems Beta2-Microglobin (IEMA)
Diagnostic Systems Beta2-Microglobin (RIA)

Analyte: C-Reactive Protein (CRP)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Cancer Antigen 125 (CA 125)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Abbott CA 125 RIA

Analyte: Coccidioides Antibodies

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Meridian Diagnostics Coccidioides Immunodiffusion System

Analyte: Complement C3

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Complement C4

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Complement, Total

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Kallestad Quantiplate RID

Analyte: Cryptococcus Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immuno-Mycologics YA-Crypto Ab Tube Agglutination Test

Analyte: Cytomegalovirus Antibodies (IgG/IgM)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Olympus PK7100 Automated Pretransfusion Blood Test System
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Pharmacia CMV IgG ELISA
Syva MicroTrak CMV-M EIA
Syva MicroTrak CMV-TA EIA
Zeus CMV IgM ELISA Test System
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Immuno Concepts CMV IgG Ab Test System
Immuno Concepts CMV IgM Ab Test System

Analyte: DNase-B Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Wampole Streptonase-B

Analyte: Entamoebia histolytica Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
LMD Laboratories Amebiasis Microtiter ELISA

Analyte: Epstein-Barr virus Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Amico Amizyme EB-VCA Virus Antigen IgM Test
Pharmacia Epstein Barr Virus Viral Capsid Antigen IgG ELISA
Pharmacia Epstein Barr Virus Viral Capsid Antigen IgM ELISA
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Hillcrest Biologicals EBNA Ab IFA Test
Hillcrest Biologicals EBV Early Antigen IFA Test
Hillcrest Biologicals EBV VCA(IgG) IFA Test
Hillcrest Biologicals EBV VCA(IgM) IFA Test
Immuno Concepts Colorzyme EA Ab Test System
Immuno Concepts Colorzyme EBNA Ab Test System
Immuno Concepts Colorzyme EBV-VCA IgG Ab Test System
Immuno Concepts Colorzyme EBV-VCA IgM Ab Test System
Immuno Concepts EBNA Ab Test System
Immuno Concepts EBV-EA Ab Test System
Immuno Concepts EBV-VCA IgG Ab Test System
Immuno Concepts EBV-VCA IgM Ab Test System
Zeus EBV-VCA IFA Test System
Zeus EBV-VCA IgM Antibody IFA Test System

Analyte: HIV Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Abbott HIVAB HIV-1/HIV-2 (rDNA) EIA

Analyte: HTLV Antibody

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Cambridge Biotech HTLV-1 ELISA

Analyte: Helicobacter pylori Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica Helicobacter pylori Antibody Test (IgG ELISA)
Hycor PYLORAGEN H. pylori Test Kit
Meridian Premier Helicobacter pylori HM-CAP
Quidel Helicobacter pylori Microwell EIA Test

Analyte: Hepatitis A Antibody (HAVAb)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Syva MicroTrak II Total Anti-HAV EIA

Analyte: Hepatitis B Surface Antibody

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
ADI Heprofile Anti-HBs

Analyte: Hepatitis B Surface Antigen (HBS Ag)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
ADI Heprofile HBsAg
ADI Heprofile HBsAg Specificity Test Kit

Analyte: Hepatitis Be Antibody

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Syva MicroTrak II Anti-HBe EIA

Analyte: Hepatitis Be Antigen

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Syva MicroTrak II HBeAg EIA

Analyte: Herpes simplex I and/or II Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Pharmacia Herpes simplex Virus, Type 1 IgG ELISA
Pharmacia Herpes simplex Virus, Type 2 IgG ELISA
Zeus HSV–1 and HSV–2 ELISA Test Systems

Analyte: Histamine

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biomerica Histamine RIA

Analyte: Immunoglobulins—monoclonal/polyclonal

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Helena Laboratories Titan Gel ImmunoFix Plus
Helena Laboratories Titan IV Immunoelectrophoresis

Analyte: Immunoglobulins IgA

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Behring S-partigen Kit
Kallestad Endoplate Low Level Immunoglobulin Test Kit
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Helena Laboratories Low Level Quiplate System for RID
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Immunoglobulins IgE

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Dexall Biomedical AllergE ActiTip System
Diagnostic Products Corp. Milenia
Kallestad QuantiCLONE
Kallestad Quantizyme IgE
MAST CLA Allergy Systems (chemiluminescence
Medix Biotech IgE Enzyme Immunoassay Test
Pharmacia CAP System IgE FEIA
Pharmacia CAP System IgE RIA
Pharmacia IgE EIA
Pharmacia IgE EIA Ultra
Pharmacia IgE RIA
Pharmacia IgE RIA Ultra
Pharmacia IgE RIACT
Pharmacia Phadebas IgE PRIST
Pharmacia Phadezym IgE PRIST
Ventrex PD IgE RIA
Ventrex Total IgE EIA Extended Range
Ventrex Total IgE RIA Extended Range

Analyte: Immunoglobulins IgG

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Helena Laboratories Quiplate RID Mid-Level IgG
Kallestad Endoplate Low Level Immunoglobulin Test Kit
Kallestad Endoplate Ultra Low Level IgG Test Kit
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Helena Laboratories Low Level Quiplate System for RID
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Immunoglobulins IgM

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Behring S-partigen Kit
Kallestad Endoplate Low Level IgM Test Kit
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Helena Laboratories Low Level Quiplate System for RID
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Kappa Light Chains

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Helena Laboratories Titan IV Double Diffusion

Analyte: Lambda Light Chains

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Helena Laboratories Titan IV Double Diffusion

Analyte: Leptospira Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Hillcrest Biologicals Leptospirosis IHA

Analyte: Lyme Disease Antibodies (Borrelia burgdorferi Abs)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diamedix Lyme IgM Microassay
Hillcrest Biologicals Lyme Disease ELISA
Sanofi Pasteur Platelia Lyme
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Hillcrest Biologicals Lyme Disease IFA (IgG) Test

Analyte: Lysozyme

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Kallestad Quantiplate RID

Analyte: Mumps Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Pharmacia Mumps IgG ELISA

Analyte: Protein Fractions

Category: Electrophoretic separations
Test System, Assay or Examination:
Helena Lab. Titan Gel Multi-Slot SP Electrophoresis System
Helena Laboratories REP SPE
Helena Laboratories REP SPE Plus
Helena Laboratories REP SPE Template (Ponceau S) Proced.
Helena Laboratories REP SPE Template Procedure
Helena Laboratories Titan Gel Serum Protein System

Analyte: Rickettsia rickettsil (Rocky Mt. Spotted Fever Ab)

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Hillcrest Biologicals Rickettsia IFA (IgG) Test
Hillcrest Biologicals Rickettsia IFA (IgM) Test

Analyte: Rickettsia typhi (Typhus Antibodies)

Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Hillcrest Biologicals Rickettsia IFA (IgG) Test
Hillcrest Biologicals Rickettsia IFA (IgM) Test

Analyte: Rubella Antibodies—IgG/IgM

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Pharmacia Rubella IgG ELISA
Sanofi Pasteur Platelia Rubella IgG
Syva MicroTrak Rubella-G EIA
Syva MicroTrak Rubella-M EIA

Analyte: Rubeola Antibodies (measles)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Pharmacia Measles IgG ELISA
Pharmacia Measles IgM ELISA

Analyte: Staphylococcus aureus Antibodies

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Meridian Diagnostics Endo-Staph

Analyte: Taenia solium Antibodies (Cysticercosis)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
LMD Laboratories Cysticercosis (T. solium) Microtiter ELISA

Analyte: Toxoplasma gondii Antibodies—IgG/IgM

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
LMD Laboratories Toxoplasma IgG Microtiter ELISA
Pharmacia Toxoplasma gondii IgG ELISA
Sanofi Pasteur Platelia Toxo IgG
Sanofi Pasteur Platelia Toxo IgM
Syva MicroTrak Toxo-G EIA
Syva MicroTrak Toxo-M EIA
Wampole TPM-TEST

Analyte: Transferrin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Reagents Applications RAICHEM SPIA Test Kit

Analyte: Treponema pallidum Antibodies

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Olympus PK7100 Automated Pretransfusion Blood Test System
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Ames Sera-tek
Becton Dickinson BBL Syphilis Serology Reagents (VDRL)
Diagnostic Chemicals Syphilis-G Test Kit
Diagnostic Chemicals Syphilis-M Test Kit
Gamma Biologicals VDRL
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Becton Dickinson BBL Reagents for Syphilis Serol. (FTA-ABS)
Difco Bacto FTA-ABS
Roach Laboratories FTA-ABS
Zeus FTA-ABS Double Stain Test System

Analyte: Trichinella Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
LMD Laboratories Trichinella Microtiter ELISA

Analyte: Trypsin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Sorin Biomedica Trypsik

Analyte: Varicella-Zoster Virus Antibodies

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Pharmacia Varicella-Zoster Virus IgG ELISA
Pharmacia Varicella-Zoster Virus IgM ELISA
Category: Test kits requiring microscopic evaluations
Test System, Assay or Examination:
Gull Laboratories VZV IgM IFA Test
Speciality/Subspeciality: Hematology

Analyte: Alpha-2-Antiplasmin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Organon Teknika Chromostrate Alpha-2-Antiplasmin Assay

Analyte: Antiplasmin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago STACHROM Antiplasmin

Analyte: Antithrombin III (ATIII)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago LIATEST AT III
Organon Teknika Chromostrate Antithrombin III Assay

Analyte: Beta-Thromboglobulin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago ASSERACHROM B-TG

Analyte: Coagulation Factors

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Sigma AccuStasis 1000
Sigma AccuStasis 2000

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biopool Spectrolyse Factor VIII:C
Diagnostica Stago Stachrom VIII:C
Lancer Coagulyzer Jr. III
Logos elvi 818 Digiclot
Logos elvi 819 Multi Clot
Logos elvi 820 Digiclot II
Ortho KoaguLab M
Sherwood Medical Coagulizer Jr.

Analyte: Factor IX Antigen

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Diagnostica Stago Assera-Plate IX:Ag
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago ASSERACHROM IX:Ag

Analyte: Factor VIII Related Antigen

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Helena Laboratories Factor VIII Related Antigen Rocket Sys.

Analyte: Factor VIII:C

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biopool Spectrolyse Factor VIII:C
Diagnostica Stago Stachrom VIII:C

Analyte: Fibrin Split Products (Fibrin Degradation)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago ASSERACHROM D-Di
Organon Teknika Fibrinostika FbDP Microelisa System

Analyte: Fibrinopeptide A

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago ASSERACHROM FPA

Analyte: Hemoglobin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Electronucleonics FLEXIGEM

Analyte: Hemoglobin A2

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Helena Laboratories Beta-Thal HbA2 Quik Column
Helena Laboratories Sickle-Thal Quik Column

Analyte: Hemoglobin Barts

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Isolab Quik-Sep Alpha-Thal Screen

Analyte: Hemoglobin F

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Isolab Quik-Sep Hemoglobin F Assay
Isolab Quik-Sep Sickle-Cell F Test

Analyte: Hemoglobin S

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Isolab HemoCard Hb A and S
Isolab HemoCard Hemoglobin S Assay

Analyte: Heparin

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago Stachrom Heparin
Organon Teknika Chromostrate Heparin Anti-Xa Assay

Analyte: Plasminogen

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago Stachrom PLG
Organon Teknika Chromostrate Plasminogen Assay

Analyte: Platelet Aggregation

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Chrono-log Aggregometer 400VS
Chrono-log Aggregometer 430VS
Chrono-log Aggregometer 440VS
Chrono-log Aggregometer 460VS
Chrono-log Aggregometer 470VS
Chrono-log Aggregometer 500Ca
Chrono-log Aggregometer 500VS
Chrono-log Aggregometer 530VS
Chrono-log Aggregometer 540VS
Chrono-log Aggregometer 560Ca
Chrono-log Aggregometer 560VS
Chrono-log Aggregometer 570VS
Chrono-log P.I.C.A.
Helena PACKS4
Logos elvi 840 Aggregometer
Sienco Platelet Aggregation Meter (DP-247)

Analyte: Platelet Factor IV

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago ASSERACHROM PF4

Analyte: Protein C

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Diagnostica Stago Assera-Plate Protein C
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Biopool Spectrolyse Protein C
Diagnostica Stago ASSERACHROM Protein C
Diagnostica Stago Stachrom Protein C
Ramco Spectro C

Analyte: Protein S

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Biopool Protein S EID Kit
Diagnostica Stago Assera-Plate Protein S
Helena Laboratories Protein S Antigen Rocket EID
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago ASSERACHROM Protein S
Diagnostica Stago LIATEST Protein S

Analyte: Prothrombin Fragment 1.2 (F1.2)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Organon Teknika Thrombonostika

Analyte: Red Blood Cell Count (Erythrocyte Count)

Category: Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in unstained preparations
Test System, Assay or Examination:
All Manual Red Blood Cell Count Procedures

Analyte: White Blood Cell Count (Leukocyte Count)

Category: Microscopic evaluation and/or enumeration of cells, formed elements, or microorganisms in unstained preparations
Test System, Assay or Examination:
All Manual White Blood Cell Count Procedures

Analyte: von Willebrand Factor

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Diagnostica Stago Assera-Plate vWF
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostica Stago ASSERACHROM vWF
General Diagnostics von Willebrand Factor Assay
Ramco Spectro vWF

Analyte: von Willebrand Multimers

Category: Immunoprecipitation procedures
Test System, Assay or Examination:
Ramco vWF Multimer Immunoblot
Speciality/Subspeciality: Immunohematology

Analyte: D(Rho) Type

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
All Immunohem. Absorption/Elution Procedures-Ag confirma.

Analyte: Du (Weak D RBC antigen)

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Gamma STS-M Automated Blood Grouping Instrument

Analyte: Fetal RBCs—Maternal Blood (fetal-maternal bleed)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Manual Modified Kleihauer-Betke Acid Elution Stain
Sigma Diagnostics Fetal Hemoglobin Kit
Simmler, Inc. Fetal Cell Stain Kit

Analyte: Isohemagglutinins

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
All Manual Isohemagglutinin Titrations, untreated serum

Analyte: Platelet Antibody—detection

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Immucor Capture-P
Immucor Capture-P Ready-Screen
Immucor MCP (Modified Capture-P)

Analyte: RBC antigen type other than A or B

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Dade Lectin-H—RBC, quantitative
Speciality/Subspeciality: Toxicology/TDM

Analyte: Acetaminophen

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Amphetamines

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia Sigma SIA Test Kit (ELISA)

Analyte: Cannabinoids (THC)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia Sigma SIA Test Kit (ELISA)

Analyte: Cocaine Metabolites

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Coat-A-Count
Diagnostic Products Corp. Milenia Sigma SIA Test Kit (ELISA)

Analyte: Digoxin

Category: Automated or semi-automated procedures that do require operator intervention during the analytic process
Test System, Assay or Examination:
Micromedic Systems CONCEPT 4
Micromedic Systems Concept 4 Plus
Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Amersham Amerlite
Kallestad Quanticoat
Organon NML Digi-Tab RIA

Analyte: Ethanol (Alcohol)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Analyte: Methamphetamines

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia

Analyte: Opiates

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia Sigma SIA Test Kit (ELISA)

Analyte: Phencyclidine (PCP)

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Products Corp. Milenia Sigma SIA Test Kit (ELISA)

Analyte: Salicylates

Category: Manual procedures with multiple steps in sample/reagent preparation or analytic process
Test System, Assay or Examination:
Diagnostic Chemicals Ltd. Assay Kit

Waived tests listed by manufacturer and product name includes but is not limited to the following:

Analyte: Erythrocyte Sedimentation Rate, nonautomated

Test System, Assay, or Examination: All procedures

Analyte: Fecal Occult Blood

Test System, Assay, or Examination:
ABCO Test for Fecal Occult Blood
Ames Hema-Chek
Ames Hematest
Biomerica EZ Detect Stool Blood Test
CIDA ColoCheck
Cambridge Diagnostic CAMCO GUAIAC-TABS
Cambridge Diagnostic CAMCO PAK GUAIAC
Gamma FE-Cult Plus
Helena ColoCARE
Helena ColoScreen
LMI Medical DigiWipe II System
LMI Medical HemaWipe System
Labsystems FECATWIN
Labsystems FECATWIN SENSATIVE
Smith Kline Hemoccult
Smith Kline Hemoccult SENSA

Analyte: Glucose by Monitoring Devices Cleared by the FDA Specifically for Home Use

Test System, Assay, or Examination:
- Ames Dextrostix Blood Glucose Reagent Strips
- Ames Glucofilm Blood Glucose Test Strips
- Ames Glucometer 3 Blood Glucose Meter
- Ames Glucometer Blood Glucose Meter
- Ames Glucometer GX Blood Glucose Meter
- Ames Glucometer II Blood Glucose Meter
- Ames Glucometer M Blood Glucose Meter
- Ames Glucometer M+ Blood Glucose Meter
- Ames Glucostix Blood Glucose Reagent Strips
- Boehringer Mannheim Accu-Chek II
- Boehringer Mannheim Accu-Chek II Freedom
- Boehringer Mannheim Accu-Chek III
- Boehringer Mannheim Accu-Chek IIm
- Boehringer Mannheim Accu-Chek bG Monitor
- Boehringer Mannheim Chemstrip bG
- Boehringer Mannheim Tracer II
- Boehringer Mannheim Tracer bG Monitor
- Boehringer Mannheim Tracer bG Test Strips
- British American SUPREME bG Monitor
- British American SUPREME bG Test Strips
- Cascade Medical CheckMate Blood Glucose Monitor
- Cascade Medical CheckMate Blood Glucose Test Strips
- Home Diagnostics DIASCAN Blood Glucose Reagent Strips
- Home Diagnostics DIASCAN Blood Glucose Self Monitor
- Home Diagnostics DIASCAN-S Blood Glucose Monitor
- Home Diagnostics ULTRA Blood Glucose Monitor
- Home Diagnostics ULTRA Blood Glucose Reagent Strips
- Lifescan GLUCOSCAN 2000
- Lifescan GLUCOSCAN 3000
- Lifescan GLUCOSCAN Test Strips
- Lifescan GLUCOSCAN Test Strips (modified)
- Lifescan ONE TOUCH Blood Glucose Meter
- Lifescan ONE TOUCH Blood Glucose Test Strips
- Lifescan ONE TOUCH II Blood Glucose Meter
- Lifescan ONE TOUCH II Hospital Blood Glucose Meter
- MediSense Companion 2 Sensor
- MediSense ExacTech Blood Glucose Test Strips
- MediSense ExacTech Companion Blood Glucose Sensor
- MediSense ExacTech Pen Blood Glucose Sensor
- MediSense Pen 2 Sensor
- MediSense Pen 2/Companion 2 Sensor Electrodes

Analyte: Hemoglobin by Copper Sulfate, Nonautomated

Test System, Assay, or Examination: All Procedures

Analyte: Ovulation Test (Luteinizing Hormone) by Visual Color Comparison

Test System, Assay, or Examination:
- Becton Dickinson QTest Stick Ovulation Test
- BioGenex OvuGen Ovulation Prediction Test
- Biomerica COT Color Ovulation Test
- Biomerica Fortel Home Ovulation Test
- Carter Products ANSWER Ovulation Test
- Carter Products FIRST RESPONSE Ovulation Predictor Test
- Monoclonal Antibodies OvuKIT Self-Test
- Monoclonal Antibodies OvuQUICK Self-Test
- NMS Pharmaceuticals COT Color Ovulation Test
- NMS Pharmaceuticals Fortel Home Ovulation Test
- Quidel Concieve 1-Step Ovulation Predictor
- Quidel OvuKIT Self-Test for Ovulation Prediction
- Quidel OvuQUICK Self-Test for Ovulation Prediction
- Vanguard Biomedical HomeClinic Ovulation Prediction
- Whitehall Labs CLEARPLAN Easy Ovulation Predictor

Analyte: Spun Microhematocrit

Test System, Assay, or Examination: All Procedures

Analyte: Urine Dipstick or Tablet Analytes, Nonautomated

Test System, Assay, or Examination:
- Ames ACETEST
- Ames ALBUSTIX
- Ames BILI-LABSTIX
- Ames CLINISTIX
- Ames CLINITEST
- Ames COMBISTIX
- Ames DIASTIX
- Ames HEMA-COMBISTIX
- Ames HEMASTIX
- Ames ICTOTEST
- Ames KETO-DIASTIX
- Ames KETOSTIX
- Ames LABSTIX
- Ames MICRO-BUMINTEST
- Ames MULTISTIX
- Ames MULTISTIX 10 SG
- Ames MULTISTIX 2
- Ames MULTISTIX 7
- Ames MULTISTIX 8 SG
- Ames MULTISTIX 9 SG
- Ames MULTISTIX SG
- Ames MUTLISTIX 9
- Ames N-MULTISTIX
- Ames N-MULTISTIX SG
- Ames URISTIX 4
- Ames UROBILISTIX
- Behring Rapignost Total Screen L
- Biomerica EZ Detect Urine Blood Test
- Boehringer Mannheim Chemstrip 10 UA
- Boehringer Mannheim Chemstrip 10 with SG
- Boehringer Mannheim Chemstrip 2 GP
- Boehringer Mannheim Chemstrip 2 LN
- Boehringer Mannheim Chemstrip 4 The OB
- Boehringer Mannheim Chemstrip 6
- Boehringer Mannheim Chemstrip 7
- Boehringer Mannheim Chemstrip 8
- Boehringer Mannheim Chemstrip 9
- Boehringer Mannheim Chemstrip K
- Boehringer Mannheim Chemstrip Micral
- Boehringer Mannheim Chemstrip uG
- Boehringer Mannheim Chemstrip uGK
- Wako Pretest 5A
- Wako Pretest 6A
- Wako Pretest 8A

Analyte: Urine HCG by Visual Color Comparison Tests

Test System, Assay, or Examination:
- AMPCOR QuickDIP Pregnancy Test
- Abbott TESTPACK PLUS hCG COMBO
- Abbott TESTPACK PLUS hCG-URINE
- Access Medical Systems ImmunoCLONE hCG Test
- Advanced Care Products ADVANCE Pregnancy Test
- Advanced Care Products FACT PLUS Pregnancy Test
- Becton Dickinson Directigen 1-2-3 hCG
- Becton Dickinson Precise hCG
- Becton Dickinson QTest Pregnancy
- Becton Dickinson QTest Pregnancy Combo
- Becton Dickinson QTest Stick Pregnancy Test
- Carter Products ANSWER PLUS Pregnancy Test
- Carter Products ANSWER QUICK & SIMPLE Pregnancy Test
- Carter Products FIRST RESPONSE 1-Step Pregnancy Test
- Carter Products FIRST RESPONSE Pregnancy Test
- Disease Detection ImmunoCARD hCG
- Disease Detection ImmunoCARD hCG One Step
- Hybritech Concise HCG-Urine Test
- Hybritech ICON II HCG (urine)
- Hybritech ICON II HCG (urine/serum)
- Kodak SURECELL hCG-Urine
- Medical Technology Corp OPTITEC HCG
- Medical Technology Corp OPTITEC UniStep HCG
- Meridian Diagnostics ImmunoCard hCG
- Monoclonal Antibodies RAMP Urine hCG Assay
- Pacific Biotech CARDS O.S. HCG-Urine
- Pacific Biotech CARDS Early Pregnancy Test
- Pacific Biotech CARDS HCG-SERUM/URINE
- Pacific Biotech CARDS HCG-URINE
- Pacific Biotech PERFECT ONE STEP Early Pregnancy Test
- Parke-Davis E.P.T. Early Pregnancy Test
- Quidel RAMP Urine hCG Assay
- V-Tech TARGET HCG
- V-Tech TARGET HCG ONE STEP
- Vanguard Biomedical HomeClinic One-Step Pregnancy
- Vanguard Biomedical HomeClinic Pregnancy Test
- Vanguard Biomedical ProClinic One-Step Urine HCG Test
- Vanguard Biomedical ProClinic Urine HCG Pregnancy
- Wampole Clearview hCG
- Whitehall Labs CLEARBLUE Easy Pregnancy Test
- Whitehall Labs CLEARBLUE Pregnancy Test

[FR Doc. 92-20614 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-16-M

Health Resources and Services Administration; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services is amended to reflect the following changes in the Bureau of Health Resources Development: 1. Assign the functions of Special Projects of National Significance Program to the Office of Science and Epidemiology.

Under HB-10, Organization and Functions amend the functional statements for the Bureau of Health Resources Development (HBB), Health Resources and Services Administration (HB), the *Office of Science and Epidemiology (HBB 15):* Change the period at the end of item # (9) to a semicolon; and add the following "and (10) administers and coordinates AIDS-related grants programs of National Significance".

Dated: August 17, 1992.

John H. Kelso,

Administrator.

[FR Doc. 92-20651 Filed 8-27-92; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-92-1917; FR-2934-93]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact James N. Forsberg, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1-800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (may 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411) as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A-10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to James N. Forsberg at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address),

providers should contact the appropriate landholding agencies at the following addresses: Corps of Engineers: Gary B. Paterson, Chief, Base Realignment and Closure Office, Directorate of Real Estate, 20 Massachusetts Ave., NW., rm. 4133, Washington, DC 20314–1000; (202) 272–0520; (This is not a toll-free number).

Dated: August 21, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program; Federal Register Report for 08/28/92

California—Fort Ord

Fort Ord is located 7 miles north of the City of Monterey and 120 miles southeast of San Francisco, California 93941–5000. The installation is scheduled for closure on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 26,720 acres and 14 million square feet of permanent facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include various types of housing; office and administrative buildings; recreational, maintenance and storage facilities; and other more specialized structures.

For specific information concerning Fort Ord, please contact Commander, 7th ID, ATTN: AFZW–RM (LTC Anderson), Fort Ord, California 93941–5000.

Suitable/Available Properties

Property Number: 329210039
Type Facility: Housing—1431 family houses; majority are 2-story.

Property Number: 329210040
Type Facility: Temporary Living Quarters—254 buildings; wood, concrete and concrete block structures including barracks.

Property Number: 329210041
Type Facility: Office/Administration—311 buildings; wood, concrete, concrete block and steel structures including personnel bldgs. and general purpose bldgs.

Property Number: 329210042
Type Facility: Recreation—53 facilities including bowling center, guest houses, community and youth centers, library, gym and recreation bldgs.

Property Number: 329210043
Type Facility: Aircraft/Airport Facilities—18 facilities including hangars, runway, taxiways aprons, fire station, maintenance bldg. and control tower.

Property Number: 329210044
Type Facility: Maintenance/Engineering Facilities—24 buildings; wood, concrete block and steel structures.

Property Number: 329210045
Type Facility: Mess/Dining Halls—95 buildings; wood; concrete and concrete block dining facilities.

Property Number: 329210046
Type Facility: Child Care—7 buildings; wood and concrete child care centers.

Property Number: 329210047
Type Facility: Stores and Services—23 buildings; wood, concrete, concrete block and steel structures including stores, snack bars, commissary and service station exchange.

Property Number: 329210048
Type Facility: Hospital Facilities—10 buildings; wood, concrete and concrete block structures including a hospital, clinics and vet. facilities.

Property Number: 329210049
Type Facility: Chapels—10 buildings; wood, concrete, concrete block chapels and chapel center facilities.

Property Number: 329210050
Type Facility: Fire Facilities—2 fire stations.

Property Number: 329210051
Type Facility: Audio Visual Facilities—8 buildings; wood, concrete and steel structures including photo labs and training centers.

Property Number: 329210052
Type Facility: Communications/Electronics Facilities—6 buildings; concrete, concrete block and steel structures including a communication center and radio bldgs.

Property Number: 329210053
Type Facility: Warehouses—224 buildings; wood, concrete, concrete block and steel structures including storage bldgs. and sheds.

Property Number: 329210054
Type Facility: Vehicle Shops—84 buildings; wood, concrete, concrete block and steel structures including maintenance shops and oil storage bldgs.

Property Number: 329210055
Type Facility: Miscellaneous Facilities—440 facilities including hdqts. bldgs., reserve centers, classrooms, day rooms, roads, vehicle parks and training areas.

Property Number: 329210056
Type Facility: Multi-Purpose Facilities—27 facilities.

Property Number: 329210057
Type Facility: Fuel Facilities—31 buildings; concrete, concrete block and steel structures including gas station bldgs.

Property Number: 329210058
Type Facility: Hazardous Storage Facilities—6 buildings; concrete, concrete block and steel structures.

Property Number: 329210059
Type Facility: Explosives/Munitions Facilities—31 buildings; concrete and steel structures including igloo storages and magazine storages.

Suitable/Available Properties

Connecticut

15 Family Houses
Portland CT 36
Portland Co: Middlesex, CT 06484
Landholding Agency: COE–BC
Property Numbers: 319011218–319011232
Status: Excess
Base Closure
Comment: 1000–1300 sq. ft., 1 story wood frame residences.

Unsuitable Properties

Land (by State)

Florida

Cape St. George Reservation
Fort Rucker, Alabama Installation #12050
Apalachicola Co: Franklin GC FL 32320
Landholding Agency: COE–BC
Property Number: 329140001
Status: Unutilized
Reason: Floodway; inaccessible.

Hawaii—Kapalama Military Reservation Phase III

Kapalama Military Reservation is located in the Harbor district in the City of Honolulu. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 30, 1994. Properties shown below as suitable will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base comprises 21.22 acres and contains nine buildings which are currently being used for storage.

Suitable/Unavailable Properties

Property Numbers: 329210003–329210011
Type Facility: Nine buildings currently used for storage; 116 to 39854 sq. ft.; one story wood frame; needs minor rehab.

Suitable/Available Properties

Illinois

12 Worth Family Houses
Fort Sheridan
Worth Co: Cook IL 60482
Landholding Agency: COE–BC
Property Number: 329210002
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, off-site use only, scheduled to be vacated 05/93.

Suitable/Unavailable Properties

Illinois

12 Addison Family Houses
Fort Sheridan
Addison Co: DuPage IL 60101
Landholding Agency: COE–BC
Property Number: 329210001
Status: Excess
Base closure
Comment: 1-story residences, possible asbestos, scheduled to be vacated 05/93.

Indiana—Fort Benjamin Harrison

Fort Benjamin Harrison is located northeast of Indianapolis in the City of Lawrence 46216–5000. All the properties will be excess to the needs of the Army Corps of Engineers on or about September 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The base covers 2,501 acres and has 4.7 million square feet of facilities. The properties that HUD has determined suitable and which are available include family housing residences, temporary living quarters, office/administration buildings, various types of recreational facilities, child care centers and chapels, dining halls, a hospital, warehouses, miscellaneous and other specialized structures. More specific information concerning properties at the base can be obtained by contacting LTC Gregory Miller, US Army Soldier Support Center, Attn: ATZI–IS, Fort Benjamin Harrison, Indiana 46216–5000; (317) 542–5382.

Suitable/Available Properties

Property Numbers: 329210068–329210069
Type Facility: Housing—90 family residences, 1 and 2 story brick frame; 29 temporary living quarters (barracks), brick or concrete frame.

Property Number: 329210070
Type Facility: Office/Administration—26 buildings; wood, brick, concrete or concrete block frame; includes personnel and general purpose buildings.

Property Number: 329210071
Type Facility: Recreational Facilities—28; wood, brick, concrete or concrete block frame; includes gym, canteen, golf course, swimming pool, riding stable, tennis court, bowling center, recreation buildings, basketball and handball courts, baseball fields, tract, and playgrounds.

Property Number: 329210072
Type Facility: Child Care Centers—2 buildings; brick frame; 5,818 & 14,457 sq. ft.

Property Number: 329210073
Type Facility: Dining Halls—4; brick frame; 11,075 to 31,439 sq. ft.

Property Number: 329210074
Type Facility: Stores/Services—12 buildings; 140 to 66,899 sq. ft.; brick, wood, concrete or concrete block frame; includes restaurant, commissary, sales stores, exchange branches, and service outlet.

Property Number: 329210075
Type Facility: Hospital, brick frame.

Property Number: 329210076
Type Facility: 2 Chapels; 3,747 & 16,587 sq. ft., brick and aluminum frame.

Property Number: 329210078
Type Facility: 2 Fire Facilities; 2,243 & 3,835 sq. ft.; includes fire station and hose house.

Property Numbers: 329210079, 329210083
Type Facility: 2 Vehicle Shops and Fuel Facility; concrete/asbestos frame; 1 gas station building, 327 sq. ft.

Property Number: 329210080
Type Facility: Maintenance Engineering—6 buildings; 168 to 14,074 sq. ft.; wood, brick or concrete block frame.

Property Numbers: 329210081, 329210082
Type Facility: Explosives/Munitions and Hazardous Storage—10 buildings; 103 to 1,138 sq. ft.; brick, steel, concrete or wood frame; includes ammo magazines and flammable materials storage.

Property Number: 329210084
Type Facility: 23 Warehouses; 960 to 56,650 sq. ft.; brick, concrete or steel frame.

Property Number: 329210085
Type Facility: 150 Miscellaneous Buildings; 31 to 211,364 sq. ft.; includes headquarters & general instruction buildings; training centers and detached garages.

Property Number: 329210086
Type Facility: 5 Multipurpose Buildings.

Land

Property Number: 329210077
Type Facility: 2 Aircraft/Airport Facilities; 938 sq. yds.

Unsuitable Properties

Property Number: 329210087
Type Facility: 1 Recreational Facility; within a floodway.

Suitable/Available Properties

Land (by State)

Indiana

Land—Plant II
Indiana Army Ammunition Plant
Charlestown Co: Clark IN 47111
Landholding Agency: COE–BC
Property Number: 329220004
Status: Excess
Base Closure
Comment: 858.63 acres; 34 acres subject to flooding; access over private property by easement of a roadway; manufacturing facility for black powder not operative for 20 years; environmentally protected; scheduled to be vacated 11/92.

Massachusetts—Fort Devens

Fort Devens military base is located at Fort Devens, Massachusetts 01433–5000. It is approximately 45 miles west of Boston. All the properties will be excess to the needs of the Army Corps of Engineers on or about October 31, 1995. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation covers 9,283 acres and has approximately 7.4 million square feet of facilities. The properties that HUD determined suitable and which are available include over 550 single family and multifamily housing units; office and administration buildings, indoor and outdoor recreational facilities; warehouses and multi-use buildings; hospital facilities; stores and service facilities; dining facilities; a chapel; a child care facility; and other miscellaneous and specialized structures.

For specific information concerning Fort Devens, please contact Commander, Fort Devens, Attn: AFZD–T (Mr. Carter Hunt), Fort Devens, Massachusetts 01433–5000.

Suitable/Available Properties

Property Number: 329210012
Type Facility: 54 Office/Administration Buildings; 1,174 to 71,781 sq. ft.; wood, brick or concrete block frame including personnel bldgs., general purpose and support services bldgs.

Property Number: 329210029
Type Facility: 404 Housing units; 1,200 to 4,380 sq. ft.; wood or brick frame; single and duplex residences, multifamily residences—up to 14 units per bldg.

Property Number: 329210015
Type Facility: 150 Temporary Living Quarters; 1,028 to 19,120 sq. ft.; wood, brick or concrete block structures including barracks.

Property Number: 329210013
Type Facility: 27 Recreational Facilities; 155 to 30,000 sq. ft.; wood, brick, steel or concrete block construction including a gym, library, swimming pool, golf clubhouse, and bowling center.

Property Numbers: 329210016, 329210025
Type Facility: Aircraft/Fuel Facilities—7; six gas station bldgs. and pump stations; wood, steel or concrete block structures.

Property Numbers: 329210017, 329210021
Type Facility: Maintenance Engineering/Vehicle Shops—34 buildings; 120 to 20,310 sq. ft.; wood, brick, steel or concrete block frame including maintenance shops, entomology facility, vehicle maintenance bldgs., oil storage bldgs.

Property Number: 329210018
Type Facility: 11 Stores/Service Buildings; 271 to 107,208 sq. ft.; wood, concrete block or brick frame including commissary, sales store, exchange service station, exchange retail stores.

Property Number: 329210019
Type Facility: 7 Hospital Facilities; 493 to 126,835 sq. ft.; wood, concrete, concrete block or brick frame including clinics, hospital, veterinarian facility, and dental clinic.

Property Number: 329210022
Type Facility: 4 Audio Visual/Photo Labs; 480 to 10,812 sq. ft.; wood or concrete block construction.

Property Number: 329210027
Type Facility: 24 Mess/Dining Halls; 2,403 to 2,717 sq. ft.; wood frame.

Property Number: 329210024
Type Facility: 2 Communication Buildings; 1,322 to 1,749 sq. ft.; concrete block or brick frame; communication centers.

Property Number: 329210026
Type Facility: 92 Warehouses; 49 to 85,790 sq. ft.; wood, concrete, concrete block or steel construction including sheds, storehouse, medical supply, vehicle storage, general purpose bldgs.

Property Number: 329210014
Type Facility: Child Care Facility; 6,012 sq. ft.; wood frame.

Property Number: 329210020
Type Facility: Chapel; 22,250 sq. ft.; brick frame.

Property Number: 329210023
Type Facility: 8 Hazardous Storage Buildings; 64 to 8,000 sq. ft.; concrete, steel or concrete block structures including oxygen storage facilities and flammable materials storage.

Property Number: 329210028
Type Facility: 172 Miscellaneous Facilities; 320 to 114,000 sq. ft.; wood, concrete block, brick or steel construction including general purpose bldgs., training facilities, RC houses, reserve centers, garages.

Property Number: 329210030
Type Facility: 4 Multi-purpose buildings.

Unsuitable Properties

Property Number: 329210032
Type Facility: 3 Recreation Facilities; within 2,000 feet from flammable or explosive material.

Property Numbers: 329210033, 329210038

Type Facility: One Temporary Living Quarters and 2 housing residences; within 2,000 feet from flammable or explosive material.
Property Number: 329210031
Type Facility: One Office/Administration Building; within 2,000 feet from flammable or explosive material.
Property Numbers: 329210034, 329210037
Type Facility: 8 Miscellaneous Buildings—including stores, service facilities, etc.
Property Number: 329210035
Type Facility: One Vehicle Shop; within 2,000 feet from flammable explosive material.
Property Number: 329210036
Type Facility: One Warehouse; within 2,000 feet from flammable explosive material.

New Jersey—Fort Dix

Fort Dix is located in the eastern edge of Burlington County, and part of the western edge of Ocean County, New Jersey. It is approximately 17 miles southeast of Trenton, New Jersey. The installation is scheduled for closure on or about October 1, 1993. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

In particular, the Sheridanville Family Housing complex will be available on or about December 31, 1992. The Sheridanville complex is located on Sailors Pond Road, approx. 1 mile east of State Highway 68.

The Kennedy Courts Family Housing complex is located at the corner of Pemberton-Pointville and Juliustown Roads, approx. 1 mile southeast of County Route 616 (Pemberton-Wrightstown Road). It is not available for homeless assistance use at this time. The majority of the base is being retained for Federal use.

Both complexes contain various types of housing, service stores, maintenance buildings, miscellaneous buildings and other more specialized structures.

For specific information concerning Fort Dix, please contact U.S. Army Training Center, Attn: ATZD–EHP, Jean M. Johnson, Fort Dix, NJ 08640–5506.

Suitable/Available Properties

Sheridanville Family Housing Complex

Property Number: 329220014
Type Facility: Housing—25, 6-unit buildings; 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220015
Type Facility: Housing—one, 8-unit building, 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220016
Type Facility: Housing—one, 10-unit building; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220017
Type Facility: Housing—11, 12-unit buildings; 2 story, 1, 2 or 3 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220018
Type Facility: 33 detached sheds; 1 story, wood frame.
Property Number: 329220020
Type Facility: Maintenance Engineering—3 buildings.
Property Number: 329220021
Type Facility: Service Store—1 building, most recent use—PX, wood frame.
Property Number: 329220022
Type Facility: Miscellaneous—3 buildings; waiting shelters.
Property Number: 329220019
Type Facility: Recreational/land—basketball court and softball field.

Suitable/Unavailable Properties

Kennedy Courts Family Housing Complex

Property Numbers: 329220005–329220009
Type Facility: Housing—2, 4, 6, 8 & 10-unit buildings; 1 to 4 bedrooms, wood frame w/brick veneer facing.
Property Number: 329220010
Type Facility: Detached Sheds—48; wood frame, needs rehab.
Property Numbers: 329220023, 329220035, 329220043
Type Facility: Office/Administration—42 buildings; concrete or cinderblock w/brick veneer facing, 1, 2 or 3 story, includes classrooms, instructional bldgs., administration & supplies, regimental headquarters, personnel-supply services.
Property Numbers: 329220024, 329220036, 329220044
Type Facility: Recreational—12 facilities; includes gym, theater, tennis court, recreation center, museums, community centers.
Property Numbers: 329220025, 329220045
Type Facility: Maintenance Engineering—5 buildings; wood, concrete or cinderblock, 1 or 2 story, includes generator and gas meter house.
Property Numbers: 329220026, 329220037, 329220046
Type Facility: Service Stores—3 PXs.
Property Numbers: 329220027, 329220038
Type Facility: Hospitals—2 buildings; 1 story, concrete or cinderblock w/brick veneer facing.
Property Numbers: 329220028, 329220039
Type Facility: Chapels—2; 1 story.
Property Numbers: 329220029–329220030, 329220047, 329220050
Type Facility: Vehicle/Fuel—10 facilities; includes gas stations, oil storage bldgs., vehicle greaser, automotive shop.
Property Numbers: 329220031, 329220040
Type Facility: Dining Halls—8 facilities; includes enlisted personnel dining, 1 story, concrete or cinderblock w/brick veneer facing.
Property Numbers: 329220032, 329220041
Type Facility: Housing—22 buildings; enlisted barracks, 3 story.
Property Number: 329220048
Type Facility: Hazardous storage—3 buildings; 1 story.
Property Number: 329220049
Type Facility: Communications/Electronics—2; 1 & 2 story.
Property Numbers: 329220012–329220013, 329220033, 329220042, 329220051–329220052
Type Facility: Miscellaneous—30 buildings; includes heat plant, waiting shelters, warehouses, and other specialized structures.
Property Number: 329220053
Type Facility: Area Confinement Facility; 109,668 sq. ft., 2 story concrete & block frame.
Property Number: 329220011
Type Facility: Recreational/land—2; basketball courts.

Unsuitable Properties

Property Number: 329220034
Type Facility: Sewage Pump.

Suitable/Unavailable Properties

New Jersey

24 Family Houses
Franklin Lakes
Patrick Brems Court
Mahwah Co: Bergen NJ 07430
Landholding Agency: COE–BC
Property Numbers: 319010734–319010757
Status: Excess
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences.

32 Family Houses
Livingston Family Housing
Hornung Court
East Hanover Co: Morris NJ 07936
Landholding Agency: COE–BC
Property Numbers: 319010758–319010789
Status: Surplus
Base Closure
Comment: 1196 sq. ft., 1 story wood frame residences, possible asbestos in floor tiles.

New York

37 Nike Houses
New York 01
Tappan Co: Rockland NY
Landholding Agency: COE–BC
Property Numbers: 319011049, 319011070–319011105
Status: Excess
Base Closure
Comment: 697 sq. ft., 1 story wood frame residences on concrete slab.

27 Dry Hill Family Housing
Route 3
Watertown Co: Jefferson NY 13601
Landholding Agency: COE–BC
Property Numbers: 319030015–319030041
Status: Excess
Base Closure
Comment: 816–1300 sq. ft., 1 story wood frame residences.

Suitable/Unavailable Properties

Pennsylvania

12 Family Houses
C.E. Kelly Support Facility
Finleyville Area Site 52, S–101–Q
Finleyville Co: Washington PA 15332
Location: Route 88 to Mineral Beach and turn left
Landholding Agency: COE–BC
Property Numbers: 319011407, 319011409–319011419
Status: Excess
Base Closure
Comment: 1 story frame residences, possible asbestos.

12 Family Houses
Monroeville Area Site 25
C.E. Kelly Support Facility
Lindsey Lane R.D. #2
Monroeville Co: Allegheny PA 15239
Landholding Agency: COE–BC
Property Numbers: 319030051–319030062
Status: Excess
Base Closure
Comment: 1 story frame residences with playground area, possible asbestos.

Land (by State)

Pennsylvania

C.E. Kelly Support Facility
Finleyville Area Site 452
Finleyville Co: Washington PA 15332
Landholding Agency: COE–BC
Property Number: 319011408
Status: Excess
Base Closure
Comment: 11.63 acres, potential utilities, most recent use—playground area.

Virginia—Harry Diamond Laboratories

Harry Diamond Laboratories, Woodbridge Facility is located in Prince William County, Virginia, 22191. The installation is scheduled for closure on or about September 1994. Properties shown below as suitable/available will be available at that time. The Army Corps of Engineers has advised HUD that some properties may be available for interim lease for use to assist the homeless prior to that date.

The installation consists of approximately 76,000 square feet of facilities that have been reviewed by HUD for suitability for use to assist the homeless. The properties that HUD has determined suitable and which are available include a warehouse, communications facilities and miscellaneous facilities.

For specific information concerning Harry Diamond Laboratories, please contact Commander, U.S. Army Laboratory Command, ATTN: AMSLC–MC (Ms. Ann Barnett), 2800 Powder Mill Road, Adelphi, Maryland 20783–1145.

Suitable/Available Properties

Property Number: 329210060
Type Facility: Communications/Electronic Facilities—3 brick structures.
Property Number: 329210061
Type Facility: Warehouse—1 brick storehouse.
Property Number: 329210062
Type Facility: Miscellaneous Facilities—3 facilities including roads and a vehicle park.
Property Number: 329210063
Type Facility: Multi-Purpose Facilities—2 brick structures including an administrative building.

[FR Doc. 92–20563 Filed 8–27–92; 8:45 am]
BILLING CODE 4210–29–M

[Docket No. N–92–3388; FR–3189–N–02]

Funding Availability for Technical Assistance for Economic Development in the Community of West Dallas; Announcement of Funding Awards

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of the funding decision made by the Department in a competition for funding under a Notice of Funding Availability for Technical Assistance for Economic Development in the Community of West Dallas, published on March 2, 1992 (57 FR 7460). The announcement contains the name and address of the award winner and the amount of the award.

DATES: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: David Sowell, Office of Economic Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3484. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to make available $475,000 in Community Development Block Grant Technical Assistance program funds for a cooperative agreement with an eligible applicant to promote economic development activities in the West Dallas community of Dallas, Texas. The competition was the result of the Department's commitment to address issues arising out of a case entitled *Debra Walker* v. *HUD*, No. CA–3–85–1210–R (N.D. Texas).

The award announced in this Notice was selected for funding in a competition announced in a **Federal Register** Notice published on March 2, 1992 (57 FR 7460). Only one application was received. After review of the application and scoring under the criteria contained in the Notice, the Department determined that the proposal warranted the award.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the name, address, and amount of that award as follows: $475,000 to the Southern Dallas Development Corporation, Dallas, Texas.

Dated: August 21, 1992.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 92–20669 Filed 8–27–92; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–940–02–4212–22]

Filing of Plat of Survey; Nevada

August 14, 1992.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plat of Survey in Nevada.

EFFECTIVE DATES: Filing was effective at 10 a.m. on August 10, 1992.

FOR FURTHER INFORMATION CONTACT: John S. Parrish, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–785–6543.

SUPPLEMENTARY INFORMATION: The Plat of Survey of lands described below was officially filed at the Nevada State Office, Reno, Nevada on August 10, 1992:

Mount Diablo Meridian, Nevada

T. 22 N., R. 21 E.—Dependent Resurvey.

This survey was accepted July 22, 1992, and was executed to meet certain administrative needs of the Bureau of Land Management.

The above-listed survey is now the basic record for describing the lands for all authorized purposes.

This survey will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the survey and related field notes may be furnished to the public upon payment of the appropriate fees.

Marla B. Bohl,

Acting Deputy State Director, Nevada.

[FR Doc. 92–20649 Filed 8–27–92; 8:45 am]
BILLING CODE 4310–HC–M

Fish and Wildlife Service

Availability of a Draft Recovery Plan for the Pallid Sturgeon (Scaphirynchus albus) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the pallid sturgeon (*Scaphirhynchus albus*). This fish occurs

in the Mississippi, Missouri, and Yellowstone Rivers. The Service solicits review and comment from the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before October 27, 1992 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, 1500 East Capitol Avenue, Bismarck, North Dakota 58501. Written comments and materials regarding this draft recovery plan should be sent to the Field Supervisor at the Bismarck address given above. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mark Dryer, Biologist (See ADDRESSES above) at telephone (701) 250–4491.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatening animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies also will take these comments into account in the course of implementing approved recovery plans.

The pallid sturgeon is a large, ancient-looking fish which can weigh up to 85 pounds. It has a flat, shovel-shaped snout and a long slender tail. Pallid sturgeon require large, free-flowing, turbid, riverine habitat with sandy or rocky substrate. The pallid sturgeon occurs in the Missouri River, in the Yellowstone River in Montana and North Dakota, and in the Mississippi River downstream of the confluence with the Missouri River. It may also occur in the lower reaches of the major tributaries of these rivers.

The pallid sturgeon was listed under the Act as a threatened species on September 6, 1990 (55 FR 36641), primarily due to extensive modifications to its habitat from dam construction and channelization. Such activities have blocked the species movements, reduced its food sources or its ability to obtain food, altered water temperatures, and destroyed or altered spawning areas. Overfishing, pollution, and hybridization may have also led to the species dramatic decline.

Recovery efforts for this species include measures to protect the pallid sturgeon and its habitat, such as reducing take, restoring habitats, and clean-up of contaminant sources. Recovery will also be accomplished through implementing an artificial propagation program, obtaining additional information on the species biology and ecology, and establishing a nationwide network for coordinating recovery efforts.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified in the **DATES** section above will be considered prior to approval of the recovery plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 20, 1992.

Robert A. Karges,

Acting Regional Director.

[FR Doc. 92–20680 Filed 8–27–92; 8:45 am]

BILLING CODE 4310-55-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32011]

Union Pacific Corporation—Control—Skyway Freight Systems, Inc.; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission accepts for consideration the application filed July 31, 1992, by Union Pacific Corporation (UPC) and Skyway Freight Systems, Inc. (Skyway), (collectively applicants). UPC seeks to purchase all outstanding shares of Skyway common stock for a payment per share determined by a formula, but at a minimum total price of $10 million. The Commission has previously found this a minor transaction under 49 CFR part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than September 28, 1992, and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and the Attorney General must be filed by October 13, 1992. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list have been properly served. Applicants' reply is due by October 27, 1992.

ADDRESSES: Send original and 10 copies of all documents to: Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32011, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicants' representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 8201, 400 Seventh St. SW. Washington, DC 20590.

Attorney General of the United States, United States Department of Justice, 10th & Constitution Ave., NW. Washington, DC 20530.

Richard J. Ressler, Union Pacific Corporation, Martin Tower, Eighth and Eaton Avenues, Bethlehem, PA 18018.

Malcolm M. B. Sterrett, Pepper, Hamilton & Scheetz, 1300 19th Street, NW. Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. (TDD for hearing impaired: (202 927–5721)

SUPPLEMENTARY INFORMATION: Applicants seek Commission approval under 49 U.S.C. 11343, *et seq.*, for UPC to purchase all of Skyway's issued and outstanding stock for a minimum purchase price of $10 million. The exact price will be determined by a formula based on Skyway's average annual operating income and the average price/operating income ratio for a number of named motor transportation companies, adjusted by Skyway's outstanding indebtedness and the number of outstanding Skyway common stock equivalents. UPC intends to finance the purchase price through public/private long/short term borrowings or equity issuances. To the extent borrowings are evidenced by securities, UPC requests that the Commission exempt the security issuances from the requirements of 49 U.S.C. 11301, pursuant to 49 U.S.C. 10505. Applicants intend to consummate the transaction on or before June 30, 1993, but the Commission's approval of this application is a condition to closing.

UPC controls two class I rail carriers, Union Pacific Railroad Company (UPRR) and Missouri Pacific Railroad Company (MoPac), as well as a motor common carrier, Overnite Transportation Company (Overnite). Skyway is a multimodal transportation and logistics management company that arranges transportation for its customers and also conducts motor common carrier operations under authority issued by this Commission.

In 1987, UPC bought a 30-percent interest in Skyway's convertible preferred non-voting stock for $7.5 million and paid $3.5 million to Skyway's founders for the right to establish a formula for the future acquisition of Skyway. Applicants have submitted an application in accordance with the railroad consolidation procedures, 49 CFR part 1180. By decision served March 6, 1992, we found that, although section 1180 does not specifically apply to a rail/motor transaction, those regulations provide suitable guidance for this proposal and that it would be treated as a minor transaction as defined in § 1180.2(c).

Applicants contend that, with the proposed purchase of Skyway, UPC can offer shippers additional customer services. UPC's acquisition of Skyway assertedly will result in enhanced motor and multimodal service and lead to greater use of UPC's rail service. Applicants contend that the proposed transaction will also lead to operational efficiency and cost savings with respect to certain logistical services and provide Skyway access to additional capital to develop more sophisticated transportation information systems. In their view, Skyway would also benefit from access to UPC's rail lines and rolling stock and from expanded service options and the more efficient use of stack train technology.

Applicants believe the effects on competition will be minimal in that Skyway and UPC do not currently compete to any significant degree and less than 28 percent of Skyway's $46.8 million 1990 revenue came from regulated motor carrier operations. Applicants contend further, that numerous transportation alternatives exist and there is pervasive competition by other motor carriers.

Applicants expect no material impact on UPC or Skyway employees for the foreseeable future; rather, if traffic volumes increase in later years as applicants expect, additional jobs will be created. For rail employees, any authority granted will be subject to the conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.*, 6 I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n* versus *ICC*, 930 F.2d 511 (6th Cir. 1991).

In our prior decision served March 6, 1992, we found the proposal should be processed as a minor transaction under section 1180.2(c). Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Office of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicant's representatives named above.

Any interested person or government entity may participate in this proceeding by submitting written comments. Any person or entity who files timely written comments shall be considered a party of record if the comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.*, whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing minor transactions are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is Ordered: 1. This application is accepted for consideration as a minor transaction under 29 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective August 27, 1992.

Decided: August 21, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92–20704 Filed 8–27–92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *J&D Enterprises, Inc.* (D.N.D.), (Civil Action number A3–92–143) was lodged on August 17, 1992 with the United States District Court for the District of North Dakota. The decree provides for J&D Enterprises, Inc. to pay a civil penalty of $5,500 pursuant to the provision of section 113(b) of the Clean Air Act, 42 U.S.C. 7513(b), in effect in 1989. The civil penalty is for a violation occurring in late 1989 of the National Emission Standard for Hazardous Air Pollutants ("NESHAP") promulgated for asbestos pursuant to sections 112 and 114 of the Clean Air Act, 42 U.S.C. 7412 and 7414. The decree further requires defendant J&D Enterprises, Inc. to ensure that all inspectors, supervisors, and those handling or removing asbestos have successfully completed specified training courses, and to allow access to EPA for inspection of J&D demolition or renovation operations. It likewise requires compliance with the

asbestos NESHAP and provides for stipulated penalties for future violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *J&D Enterprises, Inc.*, DOJ reference #90–5–2–1–1427.

The proposed consent decree may be examined at the Office of the United States Attorney for the District of North Dakota, 219 Federal Building, 655 First Avenue North, Fargo, North Dakota, 58102, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $4.25 (25 cents per page reproduction costs), payable to "Consent Decree Library".

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–20550 Filed 8–27–92; 8:45 am]

BILLING CODE 4410–01–M

Foreign Claims Settlement Commission

AGENCY: Foreign Claims Settlement Commission of the United States, DOJ.

ACTION: Notice.

SUMMARY: This notice announces the commencement by the Foreign Claims Settlement Commission of a program for registration of claims of United States nationals (U.S. citizens, corporations and other legal entities) against the Governments of Estonia, Latvia, and Lithuania for losses resulting from uncompensated nationalization, expropriation, confiscation, or other taking of real property and other property rights and interests by those governments, by the governments of the former Estonian Soviet Socialist Republic ("S.S.R."), Latvian S.S.R., and Lithuanian S.S.R., or by the government of the former Soviet Union acting within the territory of those countries, after July 28, 1922. The program is intended to cover real property and other property rights and interests owned by United States nationals at the time of such taking.

DATES: The deadline for registration of claims is November 30, 1992

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 601 D Street NW., room 10430, Washington, DC 20579, (202) 208–7730 or FAX (202) 208–2816.

Notice of Commencement of Claims Registration Program, and of Program Completion Date

The Foreign Claims Commission of the United States (FCSC), an independent, quasi-judicial agency within the U.S. Department of Justice, has begun a program which will enable United States nationals (private citizens, corporations, and other legal entities) to register claims against the Governments of Estonia, Latvia, and Lithuania for losses resulting from uncompensated nationalization, expropriation, confiscation, and other taking of real property and other property rights and interests by those governments, by the governments of the former Estonian S.S.R., Latvian S.S.R., and Lithuanian S.S.R., or by the government of the former Soviet Union acting within the territory of those countries, after July 28, 1922. The program is intended to cover real property and other property rights and interests owned by United States nationals at the time of such taking.

Diplomatic relations between the Government of the United States and the independent Governments of Estonia, Latvia, and Lithuania were established on September 2, 1991. Memoranda of Understanding signed by the parties provide that, at the request of any of the respective Governments, negotiations will be undertaken to achieve prompt settlement of claims and other financial and property matters that remain unresolved.

The information collected in the FCSC's claims registration program will be turned over to the U.S. Department of State for use in determining whether to pursue claims settlement agreements with the Government of Estonia, Latvia, or Lithuania, and to serve as the possible basis for negotiation, should the U.S. Government pursue any such claims settlement agreements. The information will otherwise remain confidential.

Requests for claim registration forms should be directed to the following address: Foreign Claims Settlement Commission, Attn: Baltic States Claims Registration, Washington, DC 20579.

Forms may also be requested in person at the offices of the FCSC, 601 D Street, Northwest, room 10430, Washington, DC, or by telephone at 202–208–7730.

The deadline for filing a registration form is November 30, 1992.

Note: The registration of a claim in this program will not constitute the filing of a formal claim against Estonia, Latvia, or Lithuania. Nor will it ensure that a claim will be covered by any future agreement that may be concluded. Should a government-to-government settlement be pursued, provisions for the formal filing of claims will be made at a later date. However, failure to file will lessen the amount of information available to the Department of State in deciding whether to pursue such claims agreements and in satisfactorily concluding any future claims negotiations. This could reduce the amount of any recovery available to pay claims.

Approval has been obtained from the Office of Management and Budget for the collection of this information. Approval No. 1105–0053, expiration date August 31, 1993.

Stanley J. Glod,

Chairman.

[FR Doc. 92–20679 Filed 8–27–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–27, 384]

BTS, Broadcast Television Systems, Inc., Salt Lake City, UT; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on June 15, 1992 in response to a worker petition which was filed on June 15, 1992 on behalf of workers at BTS, Broadcast Television Systems Inc., Salt Lake City, Utah.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 17th day of August, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92–20710 Filed 8–27–92; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of August 1992.

In order for an affirmative determinations to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,209; Doehler-Jorvis, Pottstown, PA

TA–W–27,242; Newell Stamping & Mfg., Poplar Bluff, MO

TA–W–27,572; Quebec Sports, Allentown, PA

TA–W–27,339; All Fab Corp., Everett, WA

TA–W–27,340; Certified Aerospace, Inc., Shelton, WA

TA–W–27,396; Wm. F. Surgi Equipment Corp., Harahan, LA

TA–W–27,367; D S Squared Computer Sales, Robbinsville, NJ

TA–W–27,426; Ashland Forge & Machine, Ashland, WI

TA–W–27,426A; Ashland Scissors, Inc., Ashland, WI

TA–W–27,196; Emco Wheaton, Inc., Conneaut, OH

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–27,296; Valley Steel Products, Centralia, IL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,341; Quiltex Co., Inc., New York, NY

U.S. imports of women's, girls', men's and boys' coats and jackets decreased absolutely in full year period from April 1991 to March 1992 compared to same 1990–1991 period and decreased absolutely and relative in 1991 compared to 1990.

TA–W–27,375; Conemaugh & Black Lick Railroad, Co., Johnstown, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–27,418; Tobin-Hamilton Co., Inc., Mansfield, MO

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,407; Trojan Yacht Co., Lancaster, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–27,320; Mobil Pipeline Co., Dallas, TX

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA–W–27,262; Morrison Bershire, Inc., North Adams, MA

A certification was issued covering all workers separated on or after May 5, 1991.

TA–W–27,278; Codence Technologies, Inc., Tucson, AZ

A certification was issued covering all workers separated on or after April 30, 1991.

TA–W–27,321; Hercules, Inc., Vero Beach Plant, Vero Beach, FL

A certification was issued covering all workers separated on or after May 21, 1991.

TA–W–27,357; Sterling Oil of Oklahoma City, Tulsa, OK

A certification was issued covering all workers separated on or after May 26, 1991.

TA–W–27,419; A.C. Leather Co., Inc., Danvers, MA

A certification was issued covering all workers separated on or after June 15, 1991 and before March 31, 1992.

TA–W–27,325; Schoolhouse Togs, Inc., Rockland, ME

A certification was issued covering all workers separated on or after May 20, 1991.

TA–W–26,201; Tru-Tag Systems, Inc., Houston, TX

A certification was issued covering all workers separated on or after April 24, 1991.

TA–W–26,534; Snows Cards & Gift Shop, Inc., Birmingham, AL

A certification was issued covering all workers separated on or after December 7, 1991.

TA–W–27,324; Wire Rope Corp. of America, Inc., Kansas City, MO

A certification was issued covering all workers separated on or after April 13, 1991.

TA–W–27,319; Mobil Corp., Headquarters, Fairfox, VA

A certification was issued covering all workers separated on or after May 20, 1991.

TA–W–27,389, TA–W–27,390, TA–W–27,391 & TA–W–27,392; NOWSCO Well Service, Wooster, OH, Cottondole, AL, Clarksburg, WV and Brookville, PA

A certification was issued covering all workers separated on or after May 18, 1991.

TA–W–27,393, TA–W–27,394, TA–W–27,395; NOWSCO Well Service, Dunbar, WV, Williamstown, WV and Gaylord, MI

A certification was issued covering all workers separated on or after May 18, 1991.

TA–W–27,381; Mountain Fir Lumber Co., Independence, OR

A certification was issued covering all workers separated on or after June 3, 1991.

TA–W–27,387; Coastal Oil and Gas Corp., Jackson, MS

A certification was issued covering all workers separated on or after June 6, 1991.

TA–W–27,410, TA–W–27,411 & TA–W–27,412; Mitchell Energy Corp., Denver, CO, Oklahoma City, OK and Woodland, TX

A certification was issued covering all workers separated on or after June 6, 1991.

TA–W–27,343; The Jade Corp., Huntingdon Valley, PA

A certification was issued covering all production workers separated on or after May 18, 1991.

TA–W–27,504; Coastal Oil & Gas Corp., Jackson, MS and Operating at Various Locations in the Following States A; AL, B; CA, C; CO, D; KS, E; LA, F; MI, G; MS, H; MT, I; NE, J; ND, K; OK, L; TX, M; UT, N; VA, O; WY

A certification was issued covering all production workers separated on or after June 21, 1991.

TA–W–27,405; Atlantic Pacific Marine Corp., Houma, LA

A certification was issued covering all workers separated on or after June 9, 1991.

I hereby certify that the aforementioned determinations were issued during the month

of August 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: August 24, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20711 Filed 8-27-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-26,944]

Manville Sales Corp., Denver, CO; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Manville Sales Corporation, Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-26,944; Manville Sales Corporation

Denver, Colorado (August 18, 1992)

Signed at Washington, DC, this 24th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-20712 Filed 8-27-92; 8:45 am]

BILLING CODE 7510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, and instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 8, 1992.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 8, 1992.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 17th day of August 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Tekgraphics, Div. of Tektronix (Wkrs)	Beaverton, OR	8/17/92	8/28/92	27,604	Printed manuals.
Teleco Oilfield Services, Inc(Co)	Meriden, CT	8/17/92	7/29/92	27,605	Oil services.
Frigidaire Co., Distribution Center (Workers)	Ontario, OH	8/17/92	8/6/92	27,606	Distribution, warehouse for Frigidaire.
NCR Corp. (UAW)	Dayton, OH	8/17/92	8/5/92	27,607	Point of sales terminals.
Clarostat, Inc. (Workers)	Norway, ME	8/17/92	7/29/92	27,608	Potentiometers.
Eastman Teleco (Workers)	Broussard, LA	8/17/92	8/13/92	27,609	Oilfield service.
Baker Oil Tools (Workers)	Houston, TX	8/17/92	7/22/92	27,610	Oil field equipment.
Sunstrand ATG (Workers)	Denver, CO	8/17/92	8/4/92	27,611	Aerospace parts.
Garry Screw Machine, Inc (Workers)	N. Brunswick, NJ	8/17/92	7/27/92	27,612	Contact connectors.
Sure Fit Products (Workers)	El Paso, TX	8/17/92	8/4/92	27,613	Women's apparel, bedspreads & comforters.
Brown Shoe Co (Workers)	ST. Louis, MO	8/17/92	8/4/92	27,614	Administrative office.
Banner Elk Glove Co (Workers)	Banner Elk, NC	8/17/92	8/7/92	27,615	Industrial gloves.
Sunbeam Outdoor Products (PIC)	Baraboo, WI	8/17/92	8/4/92	27,616	Patio furniture.
Fujitsu Imaging Systems of America (Workers)	Danbury, CT	8/17/92	6/22/92	27,617	Fax machines.
Compaq Computer Corp. (Workers)	Houston, TX	8/17/92	7/12/92	27,618	Computers
Armco Steel Co., L.P. (USWA)	Ashland, KY	8/17/92	8/7/92	27,619	Carbon steel sheets and coils.
Endicott Johnson (Co)	Endicott, NY	8/17/92	8/3/92	27,620	Rubber boots & footwear.
Central Plastics Co (Workers)	Shawnee, OK	8/17/92	7/23/92	27,621	Plastic pipe connectors.
White GMC Trucks of Baltimore (Workers)	Baltimore, MD	8/17/92	7/10/92	27,622	Retail truck dealership.
Unocal Corp. (Co)	Sugar Land, TX	8/17/92	8/11/92	27,623	Oil and gas.
Unocal Corp (Co)	Surfside, TX	8/17/92	8/11/92	27,624	Oil and gas.
Unocal Corp (Co)	Ganado, TX	8/17/92	8/11/92	27,625	Oil and gas.
Unocal Corp (Co)	Van, TX	8/17/92	8/11/92	27,626	Oil and gas.
Unocal Corp (Co)	Lovelady, TX	8/17/92	8/11/92	27,627	Oil and gas.
Unocal Corp (Co)	Mobile, AL	8/17/92	8/11/92	27,628	Oil and gas.
Unocal Corp. (Co)	Chunchula, AL	8/17/92	8/11/92	27,629	Oil and gas.
Unocal Corp. (Co)	Vicksburg, MS	8/17/92	8/11/92	27,630	Oil and gas.
Hollytex Carpet Mills, Inc (Co)	Anadarko, OK	8/17/92	8/3/92	27,631	Carpet.
Rupe Oil Co., Inc (Workers)	Wichita, KS	8/17/92	8/13/92	27,632	Oil and gas.
Teleco Oilfield Services, Inc. (Co)	Houston, TX	8/17/92	7/29/92	27,633	Oil services.
Teleco Oilfield Services, Inc. (Co)	Casper, WY	8/17/92	7/29/92	27,634	Oil services.
Teleco Oilfield Services, Inc. (Co)	Lafayette, LA	8/17/92	7/29/92	27,635	Oil services.
Teleco Oilfield Services, Inc. (Co)	Anchorage, AK	8/17/92	7/29/92	27,636	Oil services.
Teleco Oilfield Services, Inc. (Co)	Ventura, CA	8/17/92	7/29/92	27,637	Oil services.
Dunham Brothers Co (Co)	Brattleboro, VT	8/17/92	7/28/92	27,638	Distribution & sales of footwear, boots.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Dunham Footwear Outlet (Co)	Bennington, VT	8/17/92	7/28/92	27,639	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Brattleboro, VT	8/17/92	7/28/92	27,640	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Manchester Center, VT	8/17/92	7/28/92	27,641	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Rutland, VT	8/17/92	7/28/92	27,642	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Shelburne, VT	8/17/92	7/28/92	27,643	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Concord, NH	8/17/92	7/28/92	27,644	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Keene, NH	8/17/92	7/28/92	27,645	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Keene, NH	8/17/92	7/28/92	27,646	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Laconia, NH	8/17/92	7/28/92	27,647	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Manchester, NH	8/17/92	7/28/92	27,648	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Nashua, NH	8/17/92	7/28/92	27,649	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	North Conway, NH	8/17/92	7/28/92	27,650	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Salem, NH	8/17/92	7/28/92	27,651	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Kittery, ME	8/17/92	7/28/92	27,652	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	South Portland, ME	8/17/92	7/28/92	27,653	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Cranston, RI	8/17/92	7/28/92	27,654	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	East Providence, RI	8/17/92	7/28/92	27,655	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	North Kingstown, RI	8/17/92	7/28/92	27,656	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Mystic, CT	8/17/92	7/28/92	27,657	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Norwalk, CT	8/17/92	7/28/92	27,658	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Branford, CT	8/17/92	7/28/92	27,659	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Matawan, NJ	8/17/92	7/28/92	27,660	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Brockton, MA	8/17/92	7/28/92	27,661	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Burlington, MA	8/17/92	7/28/92	27,662	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Fall River, MA	8/17/92	7/28/92	27,663	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Falmouth, MA	8/17/92	7/28/92	27,664	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Fitchburg, MA	8/17/92	7/28/92	27,665	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Franklyn, MA	8/17/92	7/28/92	27,666	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Hadley, MA	8/17/92	7/28/92	27,667	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Lenox, MA	8/17/92	7/28/92	27,668	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Plymouth, MA	8/17/92	7/28/92	27,669	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Quincy, MA	8/17/92	7/28/92	27,670	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Sagamore, MA	8/17/92	7/28/92	27,671	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Saugus, MA	8/17/92	7/28/92	27,672	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Somerville, MA	8/17/92	7/28/92	27,673	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Sturbridge, MA	8/17/92	7/28/92	27,674	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	West Springfield, MA	8/17/92	7/28/92	27,675	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Yarmouth, MA	8/17/92	7/28/92	27,676	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Albany, NY	8/17/92	7/28/92	27,677	Distribution & sales of footwear/ boots.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Dunham Footwear Outlet (Co)	Amsterdam, NY	8/17/92	7/28/92	27,678	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Colonie, NY	8/17/92	7/28/92	27,679	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	East Greenbush, NY	8/17/92	7/28/92	27,680	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Lake George, NY	8/17/92	7/28/92	27,681	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Latham, NY	8/17/92	7/28/92	27,682	Distribution & sales of footwear/ boots.
Dunham Footwear Outlet (Co)	Saratoga Springs, NY	8/17/92	7/28/92	27,683	Distribution & sales of footwear/ boots.

[FR Doc. 92-20713 Filed 8-27-92; 8:45am]
BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Addition to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: This addition to the annual list of labor surplus areas is effective September 1, 1992.

SUMMARY: The purpose of this notice is to announce an addition to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, Employment and Training Administration, 200 Constitution Avenue, NW., room N-4470, Attention: TEESS, Washington, DC 20210. Telephone: 202-535-0189.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 25, 1991 (56 FR 55339).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary of Labor as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is effective September 1, 1992.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on August 18, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

Addition to the Annual List of Labor Surplus Areas

(September 1, 1992)

Labor Surplus Areas, Civil Jurisdictions Included

Kentucky: Pendleton County

[FR Doc. 92-20714 Filed 8-27-92; 8:45 am]
BILLING CODE 4510-30-M

Advisory Panel for The Dictionary of Occupational Titles (APDOT); Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Advisory Panel for the Dictionary of Occupational Titles (APDOT) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) on August 28, 1990, and renewed on August 7, 1992.

The APDOT was established as part of the Secretary of Labor's Workforce Quality Agenda to improve the quality of the work force. The APDOT will assist the Department of Labor in meeting the goals of the Secretary's Agenda by providing a diversified range of user prespectives on the Dictionary of Occupational Titles (DOT). The DOT is a document which is used extensively in business, education and government. It defines, classifies and describes occupations in the labor market. A revised fourth edition of the DOT was published in September 1991. The APDOT will provide advice on a new, fifth edition.

The APDOT will report to and advise the Assistant Secretary for Employment and Training on the development, publication and dissemination of the DOT.

TIME: The meeting will begin at 9 a.m. on September 24, 1992, and adjourn at 12 p.m. that day.

PLACE: The Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024.

AGENDA: Matters to be considered as part of the agenda for the APDOT meeting include:

- Subcommittee on Purpose and Uses status report
- Subcommittee on Skills Issues status report
- Staff reports on status of User Survey, status of responses to APDOT Interim Report and status of other project activities
- Status report on related DOL activities
- Public Comment

PUBLIC PARTICIPATION: The meeting will be open to the public. A half hour (9 a.m.-9:30 a.m.) will be set aside for public comments. Individuals wishing to speak to the panel should call Dr. Marilyn Silver at 202-535-0161. Seating will be available for the public on a first-come, first-serve basis.

Individuals or organizations wishing to submit written statements should send 14 copies to Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Dr. Marilyn B. Silver, Executive Director, Advisory Panel for the Dictionary of Occupational Titles, Room N4470, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 535-0161.

Signed at Washington, DC this 19th day of August, 1992.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 92-20715 Filed 8-27-92; 8:45 am]
BILLING CODE 4510-30-M

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

VOLUME I

South Carolina:
SC91-27 (Aug. 28, 1992).... p. all
SC91-28 (Aug. 28, 1992).... p. all
SC91-29 (Aug. 28, 1992).... p. all
SC91-30 (Aug. 28, 1992).... p. all
SC91-31 (Aug. 28, 1992).... p. all
SC91-32 (Aug. 28, 1992).... p. all
SC91-33 (Aug. 28, 1992).... p. all
SC91-34 (Aug. 28, 1992).... p. all

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

VOLUME I

Connecticut:
CT91-1 (Feb. 22, 1991)..... p. 63, pp. 64-65, 67
CT91-3 (Feb. 22, 1991)..... p. 78a, p. 78b
CT91-4 (Feb. 22, 1991)..... p. 78g, pp. 78h-78i
District of Columbia, DC91-1 (Feb. 22, 1991). p. all
Georgia:
GA91-3 (Feb. 22, 1991)..... p. all
GA91-22 (Feb. 22, 1991).... p. all
GA91-31 (Feb. 22, 1991).... p. all
GA91-32 (Feb. 22, 1991).... p. all
Maryland:
MD91-2 (Feb. 22, 1991)..... p. all
MD91-15 (Feb. 22, 1991)..... p. all
MD91-19 (Feb. 22, 1991)..... p. all
MD91-21 (Feb. 22, 1991)..... p. all
MD91-22 (Feb. 22, 1991)..... p. all
MD91-23 (Feb. 22, 1991)..... p. all
New York:
NY91-7 (Feb. 22, 1991)..... p. 837, pp. 838, 849-856b
NY91-9 (Feb. 22, 1991)..... p. 869, p. 870
Virginia, VA91-34 (Feb. 22, 1991). p. all

VOLUME II

Illinois:
IL91-1 (Feb. 22, 1991)..... p. 69, p. 73
IL91-8 (Feb. 22, 1991)..... p. 145, p. 147
IL91-11 (Feb. 22, 1991)..... p. 163, p. 164
IL91-12 (Feb. 22, 1991)..... p. 171, p. 172
IL91-13 (Feb. 22, 1991)..... p. 183, p. 184
IL91-14 (Feb. 22, 1991)..... p. 195, pp. 196, 198

IL91-15 (Feb. 22, 1991) ..... p. 205, p. 208
IL91-18 (Feb. 22, 1991) ..... p. all
Indiana:
IN91-2 (Feb. 22, 1991)..... p. 259, p. 260
IN91-3 (Feb. 22, 1991)..... p. 279, pp. 280, 285
Nebraska, NE91-2 (Feb. 22, 1991). p. all
Wisconsin:
WI91-18 (Feb. 22, 1991) .... p. all
WI91-19 (Feb. 22, 1991) .... p. 1285, pp. 1290, 1298

VOLUME III

Alaska, AK91-1 (Feb. 22, 1991). p. all
California, CA91-4 (Feb. 22, 1991). p. all
Idaho, ID91-1 (Feb. 22, 1991). p. all
Washington, WA 91-9 (Feb. 22, 1991). p. all

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 21st Day of August 1992.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 92-20462 Filed 8-27-92; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 92-47]

NASA Advisory Council (NAC), Commercial Programs Advisory Committee (CPAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a meeting of the NAC, Commercial Programs Advisory Committee.

DATES: September 16, 1992, 8:30 a.m. to 2:30 p.m.

ADDRESSES: Fairmont Hotel, Orleans Room, 123 Barrone Street, New Orleans, LA 70140.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Stone, Office of Commercial Programs, National Aeronautics and Space Administration, Washington, DC 20546, 202/358-0692.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Communications and Remote Sensing Division Overview.
—Space Remote Sensing Center Overview.

Dated: August 21, 1992.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 92-20658 Filed 8-27-92; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by September 24, 1992. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357-7335, and to

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, Room 3208, NEOB, Washington, DC 20503.

Title: Antarctic Conservation Act Application and Permit Form.

Affected Public: Individuals, Businesses or other for profit, Federal agencies or employees, Non-profit institutions, and Small businesses or organizations.

Respondents/Reporting Burden: 20 respondents, 20 minutes per response.

Abstract: The National Science Foundation, pursuant to the Antarctic Conservation Act of 1978 (P.L. 95-541), regulates via a permit system certain activities in Antarctica. The subject form is used by NSF to collect information needed in permit administration.

Dated: August 25, 1992.

Herman G. Fleming,

Reports Clearance Officer.

[FR Doc. 92-20753 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

Committee Management; Establishment

The Chairman of the National Science Board and the Director of the National Science Foundation have determined that the establishment of the National Science Board Commission on the Future of the National Science Foundation is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: National Science Board Commission on the Future of the National Science Foundation.

Purpose: The Nation increasingly looks to science and engineering for the innovation and advanced training necessary for economic prosperity and improved quality of life. The importance of continued U.S. scientific and technological progress requires that NSF's future role and direction be given thoughtful examination.

The Commission will report its recommendations to the National Science Board within 75 days after the initial meeting of the Commission.

Balanced Membership Plan: The Commission will be composed of about 15 persons whose wisdom, knowledge and abilities can promote an objective examination of NSF's role in contributing to major national objectives, such as research excellence, education and human resource development, economic and international competitiveness, and quality of life.

Responsible NSF Official: Dr. Charles N. Brownstein, Director, Office of Planning and Assessment, room 546, National Science Foundation, Washington, DC 20550, telephone; (202) 357-1201.

Dated: August 25, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-20702 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Biological and Critical Systems; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Dote & Time: September 14, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1133, NSF, 1800 G Street NW., Washington, DC.

Contact Person: Fred Heineken, Program Director, Division of Biological and Critical Systems, Rm. 1132, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7218.

Dote & Time: September 16 and 23, 1992; 8:30 a.m. to 5 p.m.

Place: Room 1130, NSF, 1800 G Street NW., Washington, DC.

Contact Person: Karen Mudry, Program Director, Division of Biological and Critical Systems, Rm. 1132, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7217.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 25, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-20751 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Environmental Biology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Dote and Time: September 9-11, 1992; 8 a.m. to 5 p.m.

Place: Room 1243, 1800 G Street NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. James E. Rodman, Program Director, Division of Environmental Biology, rm. 215, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9588.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Difficulty in arranging for a suitable meeting time for full committee.

Dated: August 25, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-20703 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel in Information, Robotics and Intelligent Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

Date and Time: September 11, 1992; 8:30 a.m. to 5 p.m.

Place: Ramada Renaissance Hotel, 950 North Stafford Street, Arlington, VA

Type of Meeting: Closed

Contact Person: Dr. Laurence Rosenberg, Deputy Division Director, Division of Information, Robotics and Intelligent Systems, Rm. 310, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-9592.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Inadvertently missed the proper publication date.

Dated: August 25, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-20752 Filed 8-27-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 70-2910 and 70-2928]

Finding of No Significant Impact and Notice of Opportunity for a Hearing Renewal of Special Nuclear Material License Nos. SNM-1861 and SNM-1873, Tennessee Valley Authority, Watts Bar Nuclear Plant Units 1 and 2, Spring City, TN

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Material License Nos. SNM-1861 and SNM-1873 for the continued storage of fuel assemblies for the Tennessee Valley Authority (TVA), Watts Bar Nuclear Plant, Unit 1 (WBN 1) and Unit 2 (WBN 2), located in Spring City, Tennessee.

Summary of the Environmental Assessment

Identification of the Proposed Action: The proposed action is the renewal of special nuclear material licenses SNM-1861 and SNM-1873 until September 30, 1997. This action will allow TVA to continue to receive, possess, inspect, and store fuel assemblies at each of the two units. The proposed action also authorizes TVA to receive, possess, inspect, and store up to 100 individual fuel rods at each unit.

Additionally, TVA is seeking procedural and administrative changes to modify the existing radiological controls in the licenses to reflect current industry practices during handling of new fuel, revise the responsible manager's position title, and use the new distance unit (meter) for radiation surveys.

The Need for the Proposed Action: The proposed action of extending the

two licenses is needed so TVA can continue to store the unirradiated fuel rods and assemblies onsite until operating licenses have been issued for the two units.

Environmental Impacts of the Proposed Action: WBN 1 and WBN 2 are located approximately 50 miles northeast of Chattanooga is Spring City, Rhea County, Tennessee. The two units are on an approximately 1,770-acre aite, just south of the Watts Bar Dam. Each unit is a pressurized water reactor, designed to produce 3,411 mega-watts, thermal.

In December 1978, a Final Environmental Statement was issued by the NRC which described the expected impacts from construction and operation of the two units. Based on this evaluation, the environmental impact from all plant operations is expected to be small. Since new fuel receipt, handling, and storage are only a very small part of the overall operations, the environemental impacts resulting from the handling and storage of new fuel are expected to be insignificant.

Fuel storage licenses were originally issued to WBN 1 on September 5, 1979, and to WBN 2 on February 17, 1980. Due to construction delays, the expiration dates for two licenses have been extended several times.

The new fuel is stored in the Auxiliary Building. Criticality safety in the storage locations is maintained by limiting interaction between adjacent fuel assemblies. In addition, the design of these storage locations, combined with plant procedures, will ensure acceptable protection of the general public and plant personnel either under normal or abnormal conditions.

Since the fresh fuel assemblies are essentially sealed sources, the principal exposure pathway to an individual is via external radiation. For the low-enriched uranium fuel assembly (<4 percent U-235 enrichment), the exposure rate at 1 foot from the surface is normally less than 1 mR/hr; therefore, it is estimated that the exposure level to an individual from unirradiated fuel would be less than 25 percent of the maximum permissible exposure specified in 10 CFR part 20. Because of the low radiation exposure levels associated with the requested materials and activities and TVA's radiation protection procedures, the staff concludes that fuel handling and storage activities can be carried out without any significant occupational dose to workers or impact to the environment.

In the event that assemblies must be returned to the fuel fabricator, all packaging and transport of fuel will be in accordance with 10 CFR part 71.

The package will meet NRC approval requirements for normal conditions of transport and hypothetical accident conditions. No significant external radiation hazards are associated with the unirradiated assemblies because the radiation level from the clad fuel pellets is low and because the shipping packages must meet the external radiation standards in 10 CFR part 71. Therefore, any shipment of unirradiated fuel is expected to have an insignificant impact.

TVA has installed redundant engineered-safety features on equipment intended for use in fuel handling and storage handling operations. The safety features combined with administrative controls minimize the likelihood of an accident situation occurring during fuel handling activities. In addition, TVA has analyzed the possible consequences that may result from various postulated accidents, the worst being an assembly (either within or outside its shipping container) dropped during transfer. The fuel cladding is not expected to rupture. Even if the cladding were breached and the pellets were released, an insignificant environmental impact would result. The fuel pellets are composed of ceramic UO_2 that has been pelletized and sintered to a very high density. In this form, release of UO_2 aerosol is highly unlikely except under conditions of deliberate grinding. Additionally, UO_2 is soluble only in acid solution so dissolution and release to the environment are extemely unlikely.

Conclusion: Based upon the information presented above, the environmental impacts associated with new fuel storage at WBN 1 and WBN 2 are expected to be insignificant. Essentially no effluents, liquid or airborne, will be released, and acceptable controls are in place to prevent a radiological accident. Therefore, the staff concludes that there will be no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action: There are essentially two alternatives to the proposed action. One alternative is to deny the proposed license action entirely. The other alternative is to reduce the amount of radioactive material authorized for the sites. These alternatives would not provide any environmental advantage because as already discussed, no environmental impacts are expected from the proposed action.

Agencies and Persons Consulted: The staff utilized the application dated May 1, 1992, and NUREG-0498, The Final Environmental Statement Related to the Operation of Watts Bar Nuclear Plant, Units Nos. 1 and 2, dated December 1978 in the completion of this review.

Finding of No Significont Impact: The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License Nos. SNM-1861 and SNM-1873. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publications of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the license (Tennessee Valley Authority, 5N 157B Lookout Place, Chattanooga, TN 37401); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 20th day of August 1992.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 92-20677 Filed 8-27-92; 8:45 am]

BILLING CODE 7590-01-M

Systematic Assessment of Licensee Performance (SALP) Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing its plans to conduct a public meeting to discuss proposed changes to its Systematic Assessment of Licensee Performance (SALP) Program. The purpose of the meeting is to provide a forum for obtaining input from interested members of the public on these and other possible changes to the program. Proposed changes to the SALP Program guidance are contained in the draft of Management Directive 8.6, "Systematic Assessment of Licensee Performance". Once approved, Management Directive 8.6 will replace the current program guidance contained in Manual Chapter 0516, "Systematic Assessment of Licensee Performance".

DATES: The meeting will be held on September 29, 1992, from 9 a.m. to 5 p.m. Persons planning to attend the meeting should submit a completed registration form (see below) by September 18, 1992. Interested persons unable to attend the meeting may submit written comments by September 29, 1992.

ADDRESSES: The meeting will be held at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Md.

Send completed registration forms to: Mr. Cornelius Holden, M/S 10-A-19, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Submit written comments to: Chief, Rules and Directives Review Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A draft copy of Management Directive 8.6 is available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cornelius Holden, M/S 10-A-19, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone (301) 504-1037.

SUPPLEMENTARY INFORMATION:

The SALP Program is an integrated agency effort to collect and evaluate available agency insights, data, and information in a structured manner to assess and better understand licensee performance.

The NRC is considering making changes to its SALP Program. These changes are contained in the draft NRC Management Directive 8.6, "Systematic Assessment of Licensee Performance." Operators of commercial nuclear power plants, holders of construction permits, interested State parties, and interested members of the public are invited to participate in a public meeting to discuss these and other possible changes to the program.

The NRC staff intends to make a brief presentation on the contents of the SALP Program at the meeting. However, the main focus of the meeting will be to solicit public and industry comments on the proposed changes. The NRC staff will consider comments received during this public meeting as well as written comments on the proposed changes in finalizing its recommendations to the Commission on the SALP Program.

Dated at Rockville, Maryland, this 24th day of August, 1992.

For the Nuclear Regulatory Commission.

Anthony J. Mendiola,

Section Chief, Quality Assurance Section, Performance and Quality Evaluation Branch, Division of Licensee Performance, and Quality Evaluation, Office of Nuclear Reactor Regulation.

Registration Form United States Nuclear Regulatory Commission Systematic Assessment of Licensee Performance Program Holiday Inn Crowne Plaza Hotel September 29, 1992

Name _____
Title _____
Company/Organization _____
_____
_____
Address _____
_____
_____
Telephone Number _____
Suggested Topics Related to the SALP Program To Be Considered for Discussion:
_____
_____
_____

Send registration form to: Cornelius Holden, M/S 10 A 19, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

[FR Doc. 92-20676 Filed 8-27-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on September 10-12, 1992, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on August 20, 1992.

Thursday, September 10, 1992

8:30 a.m.-8:35 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest.

8:35 a.m.-9:30 a.m.: Meeting with Thomas E. Murley, Director, Office of Nuclear Reactor Regulation (Open)—The Committee will discuss items of mutual interest, including use of PRA in the regulatory process, staff action regarding Individual Plant Examination for the James A. FitzPatrick Nuclear Plan, status of implementation of the Regulatory Impact Survey, and the policy implications of the NRC staff decision on the use of Bayesian statistical methodology in the evaluation of the Watts Bar nuclear plant quality assurance records.

9:30 a.m.-9:45 a.m.: Priorities for ACRS Reports (Open)—The Committee will discuss the priorities for preparation of ACRS reports.

9:45 a.m.-12 Noon: Policy Issues for Evolutionary and Passive Plant Designs (Open)—The Committee will meet with representatives of the NRC staff to discuss policy issues identified by the NRC staff regarding certification of evolutionary and passive LWR nuclear plants. Representatives of the nuclear industry will participate, as appropriate.

1 p.m.-2 p.m.: Use of Probabilistic Risk Assessment in the Regulatory Process (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding use of PRA in the regulatory process. Representatives of the nuclear industry will participate, as appropriate.

2 p.m.-3 p.m.: Environmental Qualification of Safety Grade Digital Computer Protection and Control System (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff to discuss the NRC research program regarding this matter. Representatives of the nuclear industry will participate, as appropriate.

3:15 p.m.–4:15 p.m.: Implementation of NRC Safety Goal Policy (Open)—The Committee will discuss proposed ACRS activities regarding use of the NRC Safety Goal in determining where unnecessary regulations exist.

4:15 p.m.–5 p.m.: Compatibility of NRC reactor Safety Goals with Risk Analysis Results Regarding Core Melt (Open)—The Committee will discuss a report by an Ad Hoc group of ACRS members.

5 p.m.–6 p.m.: Preparation for Meeting with NRC Commissioners (Open)—The Committee will discuss ACRS position/comments regarding items of mutual interest, including implementation of NRC Safety Goals, Use of Design Acceptance Criteria, and Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) in the certification process, status of ACRS reviews and recommendations regarding advanced LWRs, and the impact of the regulatory process on reactor safety.

6 p.m.–6:30 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed Committee positions and recommendations regarding matters considered during this session.

Friday, September 11, 1992

8:30 a.m.–9:30 a.m.: Impact of the Regulatory Process (Open)—The Committee will hold a briefing by and discussion with representatives of NUMARC on the impact of the regulatory process on reactor safety.

10 a.m.–11:30 a.m.: Meeting with NRC Commissioners (Open)—The Committee will discuss items of mutual interest regarding the NRC regulatory process and reactor safety.

1 p.m.–1:30 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss the scope and content of selected (high-priority) ACRS reports.

1:30 p.m.–3 p.m.: Evaluation of Risk During Shutdown and Low-Power Operation of Nuclear Power Plants (Open)—The Committee will review and report on the NRC staff evaluation of risk associated with shutdown and low-power operations at nuclear power plants. Representatives of the nuclear industry will participate, as appropriate.

3:15 p.m.–4:15 p.m.: GE Generic Power Uprate Program/Fermi Unite 2 Power Increase (Open/Closed)—The Committee will review and report on the GE Nuclear Energy generic power uprate program and the proposed power level increase for the Fermi Unit 2 nuclear power plant. Representatives of the NRC staff and the licensee will participate, as appropriate.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this station.

4:15 p.m.–5 p.m.: Future Activities (Open)—The Committee will discuss the report of the ACRS Planning and Procedures Subcommittee regarding matters proposed for consideration by the full Committee.

5 p.m.–6 p.m.: Proposed ACRS Reports (Open)—The Committee will discuss proposed Committee positions and recommendations regarding matters considered during this session.

Saturday, September 12, 1992

8:30 a.m.–11 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding matters considered during this meeting.

11 a.m.–11:45 a.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss the status of members' appointments and qualifications of candidates proposed for appointment to the Committee.

This session will be closed to discuss information of a personal nature, the release of which would represent a clearly unwarranted invasion of personal privacy.

11:45 a.m.–12:30 p.m.—Subcommittee Activities—(Open/Closed)—The Committee will hear a report and recommendations of the ACRS Planning and Procedures Subcommittee regarding conduct of Committee activities, including the Subcommittee's recommendations as to the qualifications of prospective candidates for ACRS membership.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

12:30 p.m.–1 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss NRC Executive Director for Operations responses to ACRS comments and recommendations.

1 p.m.–1:30 p.m.: Miscelloneous (Open)—The Committee will complete discussion of matters considered during this meeting, administrative matters regarding Committee and agency activities and matters which were not completed at previous meetings, as time and availability of information permit.

Procedures for the conduct of any participation in ACRS meetings were published in the **Federal Register** on October 1, 1991 (56 FR 49800). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss Proprietary Information applicable to the matters being considered in accordance with 5 U.S.C. 552(c)(4) and information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepared telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301–492–8049), between 8 a.m. and 4:30 p.m. E.s.t.

Dated: August 24, 1992.

John C. Hoyle,

Advisory, Committee Management Officer.

[FR Doc. 92–20678 Filed 8–27–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–413 and 50–414]

Duke Power Co., et al.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–35 issued to the Duke Power Company, et al. (the licensee), for operation of the Catawba Nuclear Station, Unit 1 located in York County, South Carolina.

The proposed amendment would change Technical Specification (TS) Sections 3/4.4.5 Steam Generators, and 3/4.4.6 Reactor Coolant System Leakage along with their associated Bases to revise the repair criteria for Unit 1 Steam Generators for Catawba Unit 1 Cycle 7 operation. The proposed change would allow the use of an interim tube plugging criteria, which will utilize a bobbin voltage-based plugging criteria.

The licensee is requesting that this amendment be processed on an exigent or, if necessary, emergency basis pursuant to 10 CFR 50.91(a) (5) or (6). The licensee states that during the Unit 1 end of cycle 6 refueling outage, which is currently underway, Catawba began its inspection of Unit 1 steam generators. The following was provided by the licensee in support of their request:

Bobbin coil inspections of the steam generator tubes were completed by August 8, 1992. [Approximately 7000 indications were found which affected approximately 4500 tubes.] When an indication is found using the bobbin coil technique, the Motorized Rotating Pancake Coil (MRPC) is used to confirm the existence of the indication. Use of the MRPC on a sample population of Catawba Unit 1 tubes confirmed the presence of indications in approximately 23% of those tubes sampled. This effort was completed, and the data was available, on August 10, 1992. Using this confirmation [sic] data and the current criteria required by the Catawba Technical Specifications, Catawba has projected that approximately 1020 tubes would require repair.

With this data available, and after balancing these considerations, Catawba management decided on August 11, 1992, to pursue the possibility of amending Unit 1's Tech Specs to permit the use of interim plugging criteria. On August 11, 1992, Duke requested Westinghouse to begin its analyses to support such a change. That same day, Duke also contacted the NRC Staff to inform them of the results of the steam generator inspection and analyses.

During the August 11, 1992, conversation, Duke and the Staff discussed a preliminary schedule for development and submittal of the proposed Tech Spec change and its justification. A date of August 14, 1992, was tentatively set for submittal of the application, to include the proposed Tech Spec pages and a No Significant Hazards analysis. Because of the complexity of the analyses involved, Duke and Westinghouse were unable to meet this schedule and on August 14, 1992, Duke so informed the Staff. Late the afternoon of August 19, 1992, Duke received draft analyses and submittals for review from Westinghouse. Since that time Duke and Westinghouse have been engaged in an iterative process of reviewing and developing the pertinent documents and analyses to assure, among other things, that the assumptions made by Westinghouse in its analyses are consistent with the accident and dose analyses used by Duke in the licensing of Unit 1. During this entire process, Catawba has been in a daily telephone contact with NRC Staff to keep the Staff informed on the progress of this Tech Spec submittal.

In sum, grant of the proposed amendments to the Unit 1 Tech Specs to allow implementation of the Interim Tube Plugging Criteria will, by decreasing the inspection and repair requirements under the existing Tech Specs:

- Save about 100 days in unplanned refueling outage time
- Reduce projected personnel exposures by approximately 45 person-rem
- Save approximately 8 million dollars, and
- Maintain a larger Reactor Coolant flow margin

Therefore, for the reasons set out above, Duke requests that this amendment be processed on an exigent or, if necessary, an emergency basis as provided in 10 CFR 50.91(a) (5) or (6). The steam generator tube inspections and repairs required during the current outage under existing Tech Specs could not have been projected by Duke based on the plant-specific and industry-wide data available prior to the outage. When, during the outage, actual inspections showed that the number of needed inspections and repairs could significantly exceed its projections, Duke took immediate action to develop the Interim Tube Plugging Criteria for Unit 1. The proposed amendment is necessary to meet the schedule for return to operation of Unit 1. This requested Tech Spec amendment has been pursued in a timely manner and in full consultation with the NRC Staff. The need for exigent or, if necessary, emergency processing of this Tech Spec amendment was not because of dilatory behavior on the part of Duke Power Company.

The licensee transmitted their application to the NRC on August 25, 1992. Catawba Unit 1 is currently scheduled to enter Mode 4 on or about September 12, 1992, and this amendment will be necessary to declare the Steam Generators operable at that time. Consequently, it will be necessary to issue this amendment in order not to delay startup of the unit. This schedule does not provide the requisite time for the publication of the appropriate Notice in the **Federal Register** for the 30-day period pursuant to 10 CFR 50.91(a)(2)(ii). The staff has reviewed the schedular information and the actions undertaken by the licensee and has decided to process the amendment on an exigent basis because a failure to do so would result in a delay in the startup of the unit past the currently scheduled date. Based on the information provided, it appears that the licensee's actions have reflected their best efforts to make a timely application for the needed changes to the TSs.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the three factor test of 10 CFR 50.92(c), implementation of the proposed license amendment is analyzed using the following standards and found not to: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in margin of safety.

Conformance of the proposed amendment to the standards for a determination of no significant hazard as defined in 10 CFR 50.92 (three factor test) is shown in the following:

(1) Operation of Catawba Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free span tubing (no tube support plate restraint) at room temperature conditions show burst pressures in excess of 5475 psi for indications of outer diameter stress corrosion cracking with voltage measurements as high as 11 volts (Reference 1). Burst testing performed on pulled tubes from Catawba Unit 1 with up to a 1.5 volt indications show measured burst pressures in excess of 4800 psi at room temperature. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature, tube burst capability significantly exceeds the R.G. 1.121 criterion requiring the maintenance of a margin of 3 times normal operating pressure differential on tube burst. The 3 times normal operating pressure differential for the Catawba Unit 1 steam generators corresponds to 3750 psi. Based on the existing data base, this criterion is satisfied with ¾" diameter tubing with bobbin coil indications with signal amplitudes less than 4.1 volts, regardless of the indicated depth measurement. This structural limit is based on a lower 95% confidence level limit of the data. A 1.0 volt plugging criterion compares favorable with the structural limit considering the calculated growth rates for ODSCC within the Catawba Unit 1 steam generators. Considering a voltage increase of 0.58 volts, and adding 20% NDE uncertainty of 0.2 volts (90% Cumulative Probability) to the interim plugging criterion of 1.0 volts results in an EOC voltage of 1.78 volts. The growth rate used to determine the projected EOC voltage is based on the review of growth rates for 541 TSP intersections. These indications were selected by Duke Power Company based on their largest amplitudes from the original analyses. The 541 indications were made up of 90, 117, 197, and 137 from steam generators A, B, C and D, respectively. This end of cycle voltage compares favorably with the Structural Limit 4.1 volt. The corresponding safety margin to the tube structural limit at end of cycle 7 upon implementation of the 1.0 volt steam generator tube interim plugging limit is 2.3 volts. The necessary plugging limit to meet tube structural limits is 2.5 volts.

Only three indications of ODSCC have been reported to have operating leakage—all three have been in European plants. No field leakage has been reported at other plants from tubes with indications with a voltage level of under 6.2 volts (from ¾" tubing). Relative to the expected leakage during

accident condition loadings, the accidents that are affected by primary to secondary leakage and steam release to the environment are: Feedwater System Malfunction, Loss of External Electrical Load and/or Turbine Trip, Loss of All AC Power to Station Auxiliaries, Uncontrolled Single Rod Withdrawal at Power, Major Secondary System Pipe Failure, Steam Generator Tube Rupture, Reactor Coolant Pump Locked Rotor, and Rupture of a Control Rod Drive Mechanism Housing. In support of implementation of the interim plugging criterion, it has been determined that the distribution of cracking indications at the tube support plate intersections at the end of cycle 7 are projected to be such that primary to secondary leakage would result in site boundary doses within a small fraction of the 10 CFR 100 guidelines.

Monte Carlo analyses methods are used to calculate the potential SLB leakage at the EOC–7 at Catawba Unit 1. The Monte Carlo analyses methods utilize the distributions for indications left inservice, NDE uncertainties, voltage growth and SLB leak rate. The methods account for the tails of the distribution and yield eddy current voltages with an associated probability of occurrence and the cumulative probability of EOC voltages. The SLB leak rates applied to the Monte Carlo voltage distribution are 0.0 gpm for volts less than or equal to 1.8 volts, 1 liter/hr for 1.8 to 3.5 volts, and 10 liter/hr for greater than 3.5 volts. Applying these leak rates to the projected EOC voltage distribution leads to a projected SLB leak rate of 0.54 gpm for steam generator D, the most limiting steam generator (3492 TSP elevation indications). The 0.54 gpm SLB leak rate compares favorably with the accident analyses assumptions of 1.0 gpm in the affected steam generator identified in Table 15.3 of the Catawba Unit 1 Safety Evaluation Report. The projection indicates a maximum EPC–7 of 3.1 volts (90% cumulative probability). The analyses yields a negligible likelihood of tube exceeding the 3.5 volt threshold for a 10 liter/hr SLB leak rate.

Upon application of the interim plugging criterion, only a negligible increase in leakage above normal operating leakage would be expected during plant transients, other than steam line break, which have lower peak differential pressures.

Therefore, as steam generator tube burst capability and leaktightness during Cycle 7 operation following implementation of the proposed 1.0 volt interim plugging criterion remains consistent with the current licensing basis, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated with the Catawba Unit 1 FSAR.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed interim tube support plate elevation steam generator tube plugging criterion does not introduce any significant changes to the plant design basis. Use of the criterion does not provide a mechanism which could result in an accident outside of the region of the tube support plate elevations; no ODSCC is occurring outside the thickness of the tube support plates. A tube rupture event would not be expected in a steam generator in which the plugging criterion has been applied (during all plant conditions).

Upon application of the interim plugging criterion, no primary to secondary leakage during normal operating is anticipated during all plant conditions due to degradation at the tube support plate elevations in the Catawba Unit 1 steam generators. However, additional conservatism is built into the operating leakage limit with regard to protection against the maximum permissible single crack length which may be achieved during Cycle 7 operation due to the potential occurrence of through wall cracks at locations other than the tube support plate intersections.

Specifically, Duke Power Company will implement a maximum leakage rate limit of 150 gpd (0.1 gpm) per steam generator to help preclude the potential for excessive leakage during all plant conditions. The currently proposed Cycle 7 Reload Technical Specification limits on primary to secondary leakage at operating conditions is a maximum of 0.5 gpm (720 gpd) for all steam generators, or, a maximum of 200 gpd for any one steam generator. The R.G. 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leak-before-break considerations to detect a free span crack before potential tube rupture. The 150 gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. R.G. 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a factor of safety of 3 against bursting at normal operating pressure differential. A voltage amplitude of 4.1 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95% uncertainty limit on the burst correlation. Alternate crack morphologies can correspond to 4.1 volts so that a unique crack length is not defined by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

The single through-wall crack lengths that result in tube burst at 3 times normal operating pressure differential and SLB conditions are 0.48 inch and 0.76 inch, respectively. Nominal leakage for these crack lengths would range from about 0.10 gpm to 3 gpm, respectively, while lower 95% confidence level leak rates would range from about 0.015 gpm to 0.4 gpm, respectively. A leak rate of 150 gpd will provide for detection of 0.40 inch long cracks at nominal leak rates and 0.60 inch long cracks at the lower 95% confidence level leak rates.

Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for SLB conditions at leak rates less than a lower 95% confidence level and for three times normal operating pressure differential at less than nominal leak rates.

Application of the 1.0 volt interim steam generator tube plugging criterion at Catawba Unit 1 is not expected to result in tube burst during all plant conditions during Cycle 7 operation. Tube burst margins are expected to meet R.G. 1.121 acceptance criteria. The limiting consequence of the application of the interim plugging criterion is a potential for primary to secondary leakage of approximately 0.54 gpm. This amount of leakage does not result in unacceptable radiological consequences. No unacceptable leakage is anticipated at normal operating or RCP locked rotor conditions. Therefore, as the existing tube integrity criteria and accident analyses assumptions and results continue to be met, the proposed license amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed license amendment does not involve a significant reduction in margin of safety.

Based on the analysis which shows the new leakage values proposed and the leakage characteristics expected during accidents creating high differential pressures across the steam generator tubes (main steam line break) new dose analyses were run to determine offsite dose consequences. A new analysis of the Main Steam Line Break accident using pre-existing leakage's of 0.1 gpm per steam generator and leakage growth of 1.1 gpm in the faulted generator determined that the EAB and Low Population Zone doses remain well within 10% of the allowed 10 CFR100 values of 25 Rem whole body and 300 Rem thyroid. The most restrictive dose analysis is the Reactor Coolant Pump Locked Rotor accident which requires that total steam generator leakage remains less than 0.7 gpm. This is a new analysis which has been submitted to support Unit 1 Cycle 7. This accident does not create excessive differential pressure conditions across the steam generator tubes and by limiting the initial allowed primary to secondary leakage to 0.4 gpm total, 10% of 10 CFR100 dose limits are again not exceeded. Reruns of the above accident dose analyses show that there is no significant increase in dose consequences.

The use of the voltage based bobbin probe interim tube support plate elevation plugging criterion at Catawba Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121. R.G. 1.21 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criterion, even under the worst case conditions, the Occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The end of cycle distribution of crack indications at the tube support plate elevations is calculated to result in minimal primary to secondary leakage during all plant conditions and radiological consequences are not adversely impacted.

In addressing the combined effects of LOCA + SSE on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the tube support plates may become deformed as a result of lateral loads at the wedge supports at the periphery of the plate due to the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction in flow area increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase Peak Clad Temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Analyses results show that for the Catawba Unit 1 steam generators several tubes near wedge locations may significantly deform or collapse and secondary to primary inleakage may result. These tubes have been precluded from application of interim plugging criterion (Reference 3). For all other steam generator tubes, the possibility of secondary to primary leakage in the event of a LOCA + SSE event is not significant. In actuality, the amount of secondary to primary leakage in the event of a LOCA + SSE is expected to be less than that associated with the application of this criterion, i.e., 150 gpd per steam generator. Secondary to primary inleakage would be less than primary to secondary leakage for the same pressure differential since the cracks would tend to close under a secondary to primary pressure differential. Additionally, the presence of the tube support plate is expected to reduce the amount of in-leakage.

Addressing R.G. 1.83 considerations, implementation of the bobbin probe voltage based interim tube plugging criterion of 1.0 volt is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection sample size at the tube support plate elevations, and rotating pancake coil inspection requirements for the larger indications left inservice to characterize the principal degradation as ODSCC.

As noted previously, implementation of the tube support plate elevation plugging criterion will decrease the number of tubes which must be repaired or taken out of service by plugging the installation of steam generator tube plugs or sleeves reduces the RCS flow margin. Thus, implementation of the alternate plugging criterion will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any BASES of the plant Technical Specifications.

Conclusion

Based on the preceding analysis, it is concluded that using the TSP elevation bobbin coil probe voltage-based interim steam generator tube plugging criterion for removing tubes from service at Catawba Unit 1 is acceptable and the proposed license amendment does not involve a Significant Hazards Consideration Finding as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within fifteen (15) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 28, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the

petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of 30-days, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 24, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Rockville, Maryland, this 25th day of August 1992.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-20859 Filed 8-27-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

August 24, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities and Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Jacobs Engineering Group, Inc.
Common Stock, $1.00 Par Value (File No. 7-8927)

Praxair, Inc.
Common Stock, $.01 Par Value (File No. 7-8928)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1992, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20689 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31065; File Nos. SR-GSCC-92-04; SR-GSCC-92-05; and SR-GSCC-92-06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving, on a Temporary Basis, Proposed Rule Changes Relating to the Netting of Zero Coupon Government Securities; the Netting of Forward-Settling Trades in Government Securities; and the Clearing Fund Formula

August 21, 1992.

I. Introduction

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule changes relating to the netting of zero coupon government securities (File No. SR-GSCC-92-04); the netting of forward-settling trades in government securities (File No. SR-GSCC-92-05); and the clearing fund formula (File No. SR-GSCC-92-06).[2] GSCC has requested that these proposed rule changes be made permanent by the Commission or, in the alternative, that the Commission further extend these proposed rule changes on a temporary basis. Notices of the proposed rule changes were published in the **Federal Register** on June 5, 1992.[3] No comments were received. This order approves the proposed rule changes on a temporary basis through October 30, 1992.

II. Discussion

As discussed in more detail in the orders temporarily approving the proposed rule changes, the Commission preliminarily believes that GSCC's proposed rule changes are consistent with the requirements of the Act. In particular, the Commission believes the proposals are consistent with sections 17A(b)(3)(A) and (F).[4] These Sections require a clearing agency to be so organized and its rules designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

GSCC has filed a proposed rule change, File No. SR-GSCC-91-04, that will have a substantial impact on GSCC's risk reduction program,[5] including various aspects of GSCC's clearing fund and forward mark allocation payments. The Commission believes it is prudent to complete its review process of File No. SR-GSCC-91-04 before granting permanent approval to these proposals. Thus the Commission is extending the proposed rule changes for an additional period of sixty days.

III. Conclusion

For the reasons discussed above, the Commission preliminarily finds that the proposals are consistent with the requirements of the Act, in particular with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule changes (File Nos. SR-GSCC-92-04; SR-GSCC-92-05; and SR-GSCC-92-06) be, and hereby are, approved on a temporary basis through October 30, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20668 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b) (1990).

[2] The Commission previously granted temporary approval of these rule changes through April 30, 1992 (Securities Exchange Act Release No. 28842 (January 31, 1991), 56 FR 5032; Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066; and Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798). Subsequently, the Commission granted temporary approval of the proposals through July 31, 1992 (Securities Exchange Act Release No. 30661 (April 30, 1992), 57 FR 19654).

[3] Securities Exchange Act Release No. 30754 (May 28, 1992), 57 FR 24071 [File No. SR-GSCC-92-04]; Securities Exchange Act Release No. 30755 (May 28, 1992), 57 FR 24072 [File No. SR-GSCC-92-05]; and Securities Exchange Act Release No. 30748 (May 28, 1992), 57 FR 24069 [File No. SR-GSCC-92-06].

[4] 15 U.S.C. 78q-1(b)(3) (A) and (F).

[5] See Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942, publishing notice of the proposed rule change. The proposal would: (1) Authorize GSCC to sue its own price volatility data to determine margin requirements; (2) allow GSCC to include in the calculation of a netting member's required margin deposit the weighted average of the netting member's forward net settlement positions over the most recent 20 business days; (3) remove the 75% limitation on forward mark allocation payments; (4) establish new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocation payments; and (5) make certain other changes to the margin fund collection process.

[6] 17 CFR 200.30-3(a)(12).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 24, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Computervision Corporation
Common Stock, $.01 Par Value (File No. 7-8923)

Japan Equity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-8924)

PHP Healthcare Corporation
Common Stock, $.01 Par Value (File No. 7-8925)

T2 Medical, Inc.
Common Stock, $.01 Par Value (File No. 7-8926)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20690 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31063; File No. SR-PSE-92-27]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Extension of the Exchange's Lead Market Maker System Pilot Program

August 21, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1992, the Pacific Stock Exchange, Inc. ("PSE" or

"Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend for three months its Lead Market Maker ("LMM") System pilot program through October 31, 1992. The Exchange's LMM System supplements the standard PSE options trading pit by establishing LMMs for certain options classes. In a separate filing, the Exchange has proposed amendments to its LMM system,[1] but the Commission at this time only is considering an extension of the existing LMM system pilot program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 17, 1990, the Commission approved, on a pilot basis, a PSE proposal to establish an LMM system in order to enhance the ability of the Exchange to compete in a multiple trading environment.[2] The Exchange's LMM system is designed primarily for new options classes and option classes with comparatively low volume. Under the existing pilot program, members appointed as LMMs assume responsibilities and acquire rights in their appointed options classes beyond the obligations and rights of market makers that trade in the same options class. In addition to the normal obligations of a market maker, an LMM must assume additional obligations designed to strengthen the market making in his designated options class. The LMM, among other things, is responsible for ensuring the accurate dissemination of market quotations, determining the algorithm for the PSE's Auto-Quote System, assuring that each market quotation is honored consistent with minimum obligations established by Exchange rules, and must participate in applicable automatic execution systems. Moreover, an LMM must be present at the trading post for his LMM-designated options class throughout every trading day.

The PSE believes, based on the pilot's performance, that the LMM system is viable and effective and that an uninterrupted continuation of the pilot program is warranted based on the importance of maintaining the quality and efficiency of the Exchange's Markets. The Exchange, rather than seeking permanent approval of the pilot program, however, proposes a three month extension of the pilot program in order to be able to evaluate better the effectiveness, impact, and merits of the LMM program as well as any benefits to the public that may inure from the operation of the pilot program.

The PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will facilitate securities transactions, enhance competition, and promote the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act so that the LMM pilot program can continue uninterrupted. The Commission finds that the proposed rule change to extend the pilot program for three months is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 and the rules and requirements thereunder.[3] The Commission concludes, as it did when approving the commencement of the pilot program, that the PSE proposal may enhance the market-making mechanism on the PSE, thereby improving the markets for listed options on the Exchange. Specifically, the Commission believes the LMM pilot may improve the PSE's market making capabilities by creating long-term commitments to options classes. Moreover, the pilot program will continue with adequate due process safeguards in the LMM selection and termination procedures and retain procedures that prevent the misuse of material non-public LMM information by either an LMM or a broker-dealer affiliated with an LMM. The Commission notes, however, that before the pilot program can be approved on a permanent basis, or extended again on a pilot basis, that the PSE must provide the Commission with a report on the operation of the pilot program by September 15, 1992.

Specifically, before requesting permanent approval or further extension the pilot program the PSE must submit by September 15, 1992, a pilot program report that addresses: (1) Whether there have been any complaints regarding the operation of the pilot; (2) whether the PSE has taken any disciplinary or performance action against any member due to the operation of the pilot; (3) the number of LMM's involved in the pilot; (4) the extent to which the pilot has been used on the PSE; (5) whether the PSE has terminated or replaced an LMM and the reasons therefore; (6) the impact of the pilot on the bid/ask spreads, depth and continuity in PSE options markets; and (7) whether the PSE has taken any action or there has been any complaints against LMMs or associated broker-dealers relating to improper activity as a result of LMM affiliations with upstairs firms.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the PSE has indicated that there have not been any problems associated with the operation of the LMM systems.[4] In addition, because the Commission has not received any adverse comments concerning the Exchange's LMM pilot program, the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis to allow it to continue uninterrupted.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 18, 1992.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[5] that the proposed rule change (JR-PSE-92-27) is approved and, accordingly, that the Lead Market Maker pilot program is extended until October 31, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20686 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

[1] See Securities Exchange Act Release No. 29055 (April 5, 1991), 56 FR 14959 (File No. SR-PSE-91-08).

[2] See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462. Subsequently, the Commission extended the pilot program to July 31, 1992. See Securities Exchange Act Release No. 29475 (July 23, 1991), 56 FR 36183.

[3] 15 U.S.C. 78f(b)(5)(1982).

[4] Telephone conversation between David Semek, Vice President Regulation, PSE and Mark McNair, Attorney, Division of Market Regulation, August 20, 1992.

[5] 15 U.S.C. 78s(b)(2) (1982).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

August 24, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Computervision Corporation
Common Stock, $.01 Par Value (File No. 7-8937)
T2 Medical, Inc.
Common Stock, $.01 Par Value (File No. 7-8938)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20687 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

August 24, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

T2 Medical, Inc.
Common Stock, $.01 Par Value (File No. 7-8929)
TJX Companies, Inc.
Common Stock, $1.00 Par Value (File No. 7-8930)
Japan Equity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7-8931)
Public Service Electric and Gas Company
$7.44 Cum. Pfd Stock, $1.00 Par Value (File No. 7-8932
Computervision Corporation
Common Stock, $.01 Par Value (File No. 7-8933
PHP Healthcare Corporation
Common Stock, $0.01 Par Value (File No. 7-8934
Alabama Power Company
7.60 PC Class A Pfd Stock, Second 1992 Series, $1.00 Par Value (File No. 7-8935)
Duke Power Company
7.72 Cum. Pfd Stock, $25 Par Value (File No. 7-8936)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 15, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20688 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-18903; 811-5146]

The Fortius III Fund, Inc.; Notice of Application

August 21, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: The Fortius III Fund, Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on July 31, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a

copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 15, 1992, and should be received by the SEC by 5:30 p.m. on September 15, 1992, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o BV Capital Management, Inc., 575 Fifth Avenue, 17th Floor, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3023, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Prior to its dissolution under state law, Applicant was a Maryland corporation, registered as an open-end non-diversified management investment company under the Act. Applicant filed a notification of registration pursuant to section 8(a) of the Act on May 8, 1987 and a registration statement pursuant to the Securities Act of 1933 on August 6, 1987. The registration statement was never declared effective, and Applicant never commenced a public offering of its shares. Applicant's shares were privately placed with one institutional shareholder.

2. On February 15, 1991, Applicant's shareholder received an extraordinary dividend of net taxes in the amount of $384,059.67. On February 20, 1991, the shareholder redeemed all of its 1,906,214.110 shares and received a final distribution of $18,097,155.97. Such amount represented Applicant's net asset value at that time, less a redemption fee of $45,384.79 and cash in the amount of $11,374.24 which was held in escrow to pay liquidation expenses. Expenses of the liquidation were subsequently paid and the balance of the escrow account was distributed to Applicant's shareholder.

3. At the time of filing of this application, Applicant had no outstanding debts or liabilities.

4. Applicant has filed Articles of Dissolution in Maryland. Applicant is not a party to any litigation or administrative proceeding. Applicant has no remaining shareholders and does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20692 Filed 8–27–92; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25611]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 21, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 14, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Consolidated Natural Gas Co. (70–7909)

Consolidated Natural Gas Co. ("Consolidated"), a registered holding company, and its wholly-owned, nonutility subsidiary, CNG Energy Company ("CNG Energy"), both at the CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, and Lakewood Cogeneration, L.P. ("Partnership"), 100 Clinton Square, Syracuse, New York 13202–1049, (collectively, "Applicants") have filed a post-effective amendment to their application-declaration under sections 6(a), 6(b), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50(a)(5) thereunder. An original notice of the application-declaration was issued by the Commission on August 7, 1992 (HCAR No. 25602).

By supplemental order dated December 3, 1986 (HCAR No. 24253) ("1986 Order"), CNG Energy was authorized to invest up to $100 million in qualifying cogeneration facilities ("QFs") under the Public Utility Regulatory Policies Act of 1978 and the rules promulgated thereunder by the Federal Energy Regulatory Commission. By supplemental order dated June 13, 1989 (HCAR No. 24902) ("1989 Order"), CNG Energy was authorized to invest in a QF project in Lakewood, New Jersey ("Lakewood Project"). Pursuant to the 1986 Order and the 1989 Order, CNG Energy entered into the Partnership with two nonaffiliates (collectively, "Partners"), which took over the development, financing, construction, ownership and operation of the Lakewood Project. The authority under both supplemental orders expired on December 31, 1991.

The Applicants now propose to fund up to $50 million, through December 31, 1996, to the Lakewood Project. The Applicants propose to channel such funding from Consolidated to CNG Energy, from CNG Energy to CNG Lakewood, Inc. ("CNG Lakewood") (to be formed as a wholly-owned, special-purpose subsidiary of CNG Energy), from CNG Lakewood to the Partnership, and from the Partnership to the Project, as described below. (Alternatively, CNG Energy may bypass CNG Lakewood and invest directly in the Partnership.) The funds will be passed from entity to entity through any one or a combination of (i) common stock acquisitions, (ii) open account advances ("Advances"), or (iii) long-term loans ("Long-Term Loans"), also as described below. The amount of financings and other obligations, as described below, will not exceed $50 million at any one level. In order to facilitate such financing methods, it is also requested that Consolidated, CNG Energy and CNG Lakewood be authorized to make guarantees, obtain letters of credit and deliver accommodation letters (requiring the parent to provide its subsidiary with sufficient capital to fulfill its obligations) ("Keep Well Letter") (collectively, "Support Arrangements") with respect to the obligations of CNG Energy and/or CNG Lakewood and the Partnership, as

the case may be, as necessary to support debt service obligations (through the maintenance of the debt reserve requirements of the Partnership), equity contribution commitments and other Lakewood Project obligations. The Support Arrangements would be up to an amount that, when combined with equity contributions and investments in subordinated long-term notes (to be issued by the Partnership as part of a third-party financing facility, described below), will not exceed $50 million. It is estimated that a fee in an amount not exceeding one percent per annum would be paid with respect to the letters of credit, and the letters of credit may require recourse to Consolidated, CNG Energy or CNG Lakewood, as the case may be.

Each and every Advance and Long-Term Loan made pursuant to this application-declaration will have these same effective terms and interest rates ("Financing Terms"):

(1) Advances may be made to provide working capital and to finance the activities authorized by the Commission. Advances will be made under letter agreement and will be repaid on or before a date not more than one year from the date of the first Advance with interest at the same effective rate of interest as Consolidated's weighted average effective rate for commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

(2) Long-Term Loans shall be evidenced by long-term non-negotiable notes (documented by book entry only) maturing over a period of time (not in excess of 30 years) to be determined by the officers of the lender (Consolidated, CNG Energy or CNG Lakewood, as the case may be), with the interest predicated on and equal to the effective cost of money to Consolidated obtained through the most recent of its long-term debt financings. In the event Consolidated does not issue long-term debt during the period June 1, 1992 through December 31, 1996, the proceeds of which are allocable to CNG Energy, long-term borrowing rates will be tied to the Salomon Brothers indicative rate for comparable debt issuances published in Salomon Brothers Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown. Such rate will be adjusted to match Consolidated's cost of borrowing if Consolidated subsequently issues long-term debt within one year of the date of takedown. Should Consolidated not issue long-term debt during the subsequent twelve-month period the proceeds of which are allocable to the borrower (CNG Energy, CNG Lakewood or the Partnership, as the case may be), the indicative rate at the time of takedown will be used for the life of the note.

It is proposed that: (i) CNG Energy obtain funds, through December 31, 1996, for the Lakewood Project and the Partnership through any one or a combination of (a) selling shares of CNG Energy common stock, $1,000 par value per share, to Consolidated, (b) taking out Advances from Consolidated, or (c) taking out Long-Term Loans from Consolidated; and (ii) Consolidated make Support Arrangements ("Consolidated Support Arrangements").

CNG Energy proposes to make, from time to time through December 31, 1996: (i) Capital contributions to the Partnership; (ii) Long-Term Loans to the Partnership and/or (iii) Support Arrangements (collectively, "CNG Energy Commitments").

CNG Energy also proposes to create and capitalize CNG Lakewood which may, in turn, make all or a part of the investments in the Lakewood Project. It is proposed that, from time to time through December 31, 1996, CNG Lakewood obtain funds through: (i) The sale of up to 5,000 shares of CNG Lakewood common stock, $10,000 par value per share, to CNG Energy; (ii) Advances from CNG Energy; and/or (iii) Long-Term Loans from CNG Energy.

It is also proposed that CNG Lakewood make, from time to time through December 31, 1996: (i) Capital contributions to the Partnership; (ii) Long-Term Loans to the Partnership and/or (iii) Support Arrangements (collectively, "CNG Lakewood Commitments").

It is stated that CNG Energy expects that its return on its equity investment in the Lakewood Project will not be lower than 12%.

It is also proposed that the Partnership enter into financing with third parties for the construction and development of the Lakewood Project. The construction and development of the Lakewood Project during the construction phase will be financed by up to $262 million in construction financing ("Construction Financing") through non-recourse construction loans made to the Partnership pursuant to a credit facility ("Facility") with a group of banks and an institutional lender. The Facility will provide for Construction Financing during a construction phase of up to 28 months. Of the total $262 million in Construction Financing, $187 million will be provided by the bank lenders and $75 million by the institutional lender. A portion of the proceeds from the Construction Financing will be used to reimburse the Partners for previously made expenditures with respect to the Lakewood Project.

At the inception of the permanent phase under the Facility, (i) $136 million of the bank portion of the Construction Financing and the entire $75 million of the institutional lender portion of the Construction Financing will be converted into non-recourse long-term loans having a term not exceeding 19 years ("Permanent Financing"), (ii) the Partnership will obtain from the Facility banks as $2 million revolving credit facility ("Working Capital Financing"), for an initial term of five years, for working capital, and (iii) the Partners will make their respective capital contributions to the Partnership (estimated to be an aggregate of $51 million or approximately $17.85 million in the case of CNG Energy or CNG Lakewood, as the case may be). Any difference between the final cost of the Lakewood Project and the sum of the Permanent Financing loans and the Partner equity contributions may be covered by long-term loans from the Partners, for which the Partnership will issue subordinated long-term notes having a maturity not exceeding 30 years and bearing an interest rate not in excess of 15% per annum. To the extent that CNG Energy and/or Lakewood provide any such loans, the amount of such loans would not, when aggregated with the other investments in and obligations to the Partnership, exceed the $50 million authorization requested herein.

The interest rate on the bank borrowings will fluctuate at a set percentage spread over LIBOR (London Interbank Offered Rate), certificate of deposit or prime rates. The interest rate on institutional lender borrowings will be a fixed rate set at a percentage over the rate of U.S. Treasury securities having a maturity not in excess of 2 years in the case of Construction Financing, and a term not in excess of 15 years in the case of Permanent Financing, with the spread over the base rate in both case not exceeding 3.25%. Additionally, the Partnership's power agreement contains a provision allowing for adjustment in the capital charge based upon 15 year U.S. Treasury bond rates at the date of conversion from Construction Financing to Permanent Financing. The interest rate on the Working Capital Financing will fluctuate

at a set percentage over prime rate. In on event will be set percentage over the base rate exceed 3.25% for the Construction Financing, Permanent Financing and Working Capital Financing.

As a condition to the conversion of the bank Construction Financing to Permanent Financing, the Partnership must hedge the interest rate in at least 75% of the $136 million of the bank long-term debt. The applicants propose that the Partnership entering into variable to fixed interest rate swap agreements ("Swaps") from time to time through December 31, 1996, in notational amounts that in the aggregate will not exceed $102 million (75% of $136 million). Under a Swap, the Partnership would agree to make payments to a counter-party, payable periodically in arrears, at a fixed rate of interest calculated on the notional amount. The counter-party would agree to make payments to the Partnership at a variable rate of interest calculated on the notional amount. The Swaps will be for terms that will not exceed 20 years. The Swaps will have a fixed maximum interest rate of 13% per annum and generally would provide that the Partnership could terminate the agreement with the consent of the counter-party, with respect to which the Partnership may incur early termination payments which could be substantial under certain market conditions. The Partnership could be required to pay various fees and other expenses in connection with the Swaps and, in the event that an intermediary between the Partnership and the counter-party is required for the guarantee of payment obligations, the intermediary would require a fee, which would, however, not exceed 1% per annum on the notional amount. The Partnership believes it will be able to acquire the most favorable terms for the Swaps through negotiation with the counter-parties. It is consequently requested that the Swaps be exempt from the competitive bidding requirements of Rule 50 under the exception set forth in subsection (a)(5) thereof.

The Applicants request that the Construction Financing, Permanent Financing, Working Capital Financing and Swap transactions by the Partnership be exempt from Section 6(a) of the Act pursuant to the provisions of Section 6(b), with such exemption for the Working Capital Financing to terminate on the fifth anniversary of the date of the initial take-down of such financing.

The Applicants also propose, through December 31, 1992, that CNG Energy and/or CNG Lakewood acquire ("Acquisition") up to a 1% general partnership interest in the Partnership and up to an additional 33% limited partnership interest in the Partnership, in such amounts that the combined total partnership interests held by CNG Energy and/or CNG Lakewood will exceed neither 1% of total general partnership interests nor 34% total limited partnership interests. CNG Energy currently has a 1% limited partnership interest in the Partnership. Thus, following the Acquisition, CNG Energy's and/or CNG Lakewood's total partnership interests will not exceed 35% of the aggregate partnership interests (including general and limited partnership interests) ("Interests") in the Partnership. On July 10, 1991, CNG Energy, pursuant to the Partnership agreement of August 31, 1990, exercised an option ("Option") and incurred a legally binding obligation to acquire the Interests. The Acquisition will be effected without any additional payment of consideration. CNG Energy will assume the increased obligations to (and will receive the additional potential benefits from) the Partnership that accompanies the Acquisition. The current Partnership agreement will be restated to reflect the changed ownership composition prior to the closing date on the Lakewood Project financing. It is stated that the Acquisition will close on or before December 31, 1992. The Interests will be acquired from HYDRA-CO, a wholly owned subsidiary of Niagara Mohawk Power Corporation, a public-utility holding company exempt from the Act pursuant to section 3(a)(2) and Rule 2 thereunder.

The Southern Company (70-8045)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a declaration under section 12(b) of the Act and Rule 45 thereunder.

Southern proposes to act as a guarantor of the obligations of its subsidiary company, Southern Company Services, Inc. ("SCSI"), in regard to its lease agreement ("Lease") with Metropolitan Life Insurance Company ("Lessor") for the lease of three existing office buildings ("Buildings") in Birmingham, Alabama, on a site already leased and wholly occupied by SCSI. As a condition to entering into the transaction, Lessor is requiring the guaranty by Southern of the obligations of SCSI. The Buildings have approximately 450,000 leased square feet in the aggregate. Lessor is not affiliated with Southern or any of its subsidiaries.

The Lease runs for a term of fifteen years commencing on April 1, 1992 and terminating on March 31, 2007, with SCSI having the right to extend the term for two five-year extension periods to run from April 1, 2007 through March 31, 2012 and from April 1, 2012 through March 31, 2017. The rent payable by SCSI under the terms of the Lease commenced on April 1, 1992, and is composed of a base annual rental component and an additional rental component. The base annual rental initially is $8.65 per leased square foot per annum (approximately $2,975,163.45 per annum, assuming 450,000 square feet). The additional rental component of the Lease consists of: (i) An escalation to the base rental rate of $0.25 per leased square foot per annum beginning April 1, 1993; and (ii) a charge for taxes and operating and maintenance expenses, which in the first year of the Lease is set at $3.41 per leased square foot per annum and which is subject to escalation each year during the term of the Lease in accordance with an audited operating statement, which SCSI has the right to audit and protest on an annual basis.

It is stated that the Lease entered into by SCSI is at a below market rate for a 15 year term, because it is to be supported by the guaranty of Southern, and that the Lessor would not have given the low rate or the long lease term without the credit enhancement of Southern. SCSI is also entitled to use up to $3.5 million of Lessor's funds, and repay such funds over the entire lease term, on an interest-free basis, for the purpose of generally improving the leased premises or otherwise paying for bills with respect to the leased premises, upon the issuance and delivery of the guaranty of Southern.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20685 Filed 8-27-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18904; 812-7892]

Van Eck Funds, et al.; Application

August 21, 1992.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Van Eck Funds, Van Eck Trust, Van Eck Associates Corporation (the "Adviser"), and Van Eck Securities Corporation (the "Distributor").

RELEVANT ACT SECTIONS: Conditional order requested under section 6(c) of the Act for an exemption from the provisions of sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order that would permit certain series of the Van Eck Funds and the Van Eck Trust (a) to issue two classes of shares representing interests in the same portfolio of securities, one of which would convert into the other class after a specified period permitting investors to benefit from lower rule 12b-1 distribution fees, and (b) to assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares of one of the classes and to waive the CDSC under certain circumstances. The order would apply only to those series that invest substantially all of their assets in another registered investment company.

FILING DATE: The application was filed on March 24, 1992, and amended on July 24, 1992 and August 21, 1992.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 15, 1992, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 122 East 42d Street, New York, New York 10168.

FOR FURTHER INFORMATION CONTACT: Robert A. Robertson, Staff Attorney, at (202) 504-2283, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

A. The Dual Distribution System

1. Van Eck Trust and Van Eck Funds are open-end management investment companies registered under the Act, and each is organized as a Massachusetts business trust in series form. Van Eck Trust consists of one series: The Short-Term World Income Fund. Van Eck Funds consists of seven separate investment series, including the International Growth Fund. Each of the Short-Term World Income Fund and the International Growth Fund (collectively, the "Funds") invests substantially all of its assets in another investment company registered under the Act. This structure is referred to as a "hub & spoke" arrangement.[1] Each Fund is the spoke fund and the investment company in which it invests is the hub fund. The hub fund for the Short-Term World Income Fund is the Worldwide Short-Term Trust, and the hub fund for the International Growth Fund is the International Growth Trust. Each of these hub funds is advised by the Adviser.

2. Applicants request that any relief granted in accordance with this application also apply to any open-end management investment company that (a) hereafter becomes part of the same "group of investment companies" as that term is defined in rule 11a-3 under the Act, (b) invests substantially all of its assets in another registered investment company, and (c) issues and sells two classes of shares with characteristics that are identical to the Class A and Class B shares described in the application.[2]

3. Under the hub & spoke arrangements, all portfolio management services are provided, and related costs are incurred, at the hub fund level. These services and associated costs include portfolio management, custody, portfolio transaction, and accounting—the hub fund does not incur distribution or shareholder servicing expenses. Distribution and shareholder services and related costs are lodged at the spoke fund level. These spoke level services and expenses include those incurred for transfer agency services, and under a rule 12b-1 plan for shareholder servicing and distribution expenses. Each Fund has entered into or will enter into an administrative agreement with the Adviser under which the Adviser provides administrative services, and each hub fund has entered into or will enter into an investment advisory agreement with the Adviser for portfolio management services. The Distributor acts as principal underwriter of the Funds' shares.

4. Shares of the International Growth Fund currently are offered to investors at net asset value plus a front-end sales load and are charged a rule 12b-1 distribution fee. These shares are proposed to be designated as "Class A" shares, as described below. Shares of Van Eck Trust currently are not offered to the public.[3]

5. Applicants propose to establish a dual distribution arrangement (the "Dual Distribution System") to enable the Funds to offer investors the option of purchasing two classes of shares, designated respectively as "Class A" shares and "Class B" shares. Class A shares will be subject to a conventional front-end sales load and a rule 12b-1 distribution fee at an expected annual rate of up to .30% of the average daily net asset value of the Class A shares. Class B shares will be subject to a CDSC and a rule 12b-1 distribution fee at an annual rate of up to 1.00% of the average daily net asset value of the Class B shares.

6. Each class of shares will represent interests in the same portfolio of investments of a Fund and will differ only in the following respects: (a) the fees charged to the Class A shares and Class B shares under the rule 12b-1 plan applicable to each such class will be applied only against each such class; (b) a higher transfer agency fee may be imposed on the Class B shares than on the Class A shares; (c) shareholders of each of the Class A and Class B shares will have exclusive voting rights with respect to the rule 12b-1 plan applicable to their respective class of shares; (d) only the Class B shares will have a conversion feature providing for the automatic conversion to Class A shares within a specified period of years from issuance, which will be at least two years but will not exceed eight years; (e) the designation of each class of shares of a Fund; and (f) each class will have different exchange privileges.

7. The Fund's rule 12b-1 plan will provide that payments will be made only to reimburse the distributor for expenses incurred in providing distribution-related services. Each Fund

[1] Hub and Spoke ® is a registered service mark of Signature Financial Group, Inc.

[2] An application for exemptive relief that is similar to the relief sought in the present application has been filed on behalf of the other investment portfolios of the Van Eck Funds. These investment portfolios are not organized in a hub & spoke arrangement, *i.e.*, they do not invest all of their assets in other registered investment companies.

[3] The Van Eck Trust registration statement has been filed with the SEC; however, it is not yet effective.

will accrue expenses and pay the distribution fee at a rate fixed by the Fund's Board of Trustees (but not in excess of the applicable maximum percentage rate). Such rate is intended to result in payments that will not exceed the amounts actually expended for distribution by the Distributor on behalf of a Fund. If, for any fiscal year of a Fund, the amount paid to the distributor would exceed the amount of distribution expenses incurred by the Distributor during the past fiscal year (plus, in the case of Class B shares, prior unreimbursed commission-related expenses), then the amount of the distribution fee paid to the Distributor will be reduced accordingly.

8. The Distributor will furnish the Trustees of the Funds with quarterly and annual statements of distribution revenues and expenditures for each respective class of shares in accordance with the requirements of paragraph (b)(3)(ii) of rule 12b–1. These statements are intended to enable the Trustees to make the findings required by paragraphs (d) and (e) of the rule. Only distribution expenditures properly attributable to the sale of a particular class will be used to justify the distribution fee charged to that class.

9. Class B shares, including shares attributable thereto that were purchased through the reinvestment of dividends and distributions, will automatically convert to Class A shares at net asset value in a specified number of years (not less than two nor more than eight) after the end of the calendar month in which the shares were purchased. The conversion of Class B shares to Class A shares is subject to the continuing availability of an opinion of counsel or a ruling of the Internal Revenue Service that payment of different dividends on Class A and Class B shares does not result in the Funds' dividends and distributions constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended (the "IRC"), and that the conversion of shares does not constitute a taxable event under then current federal income tax law. The conversion of Class B shares to Class A shares may be suspended if such an opinion or ruling is no longer available. In the event that the conversion of Class B shares does not occur, Class B shares would continue to be subject to the higher distribution fee and any higher transfer agent costs associated with the Class B shares.

10. Class A shares and Class B shares will have different exchange privileges. A holder of shares of any Fund sponsored by the Adviser that is sold subject to a front-end sales load (including Class A shares) may exchange his or her shares for Class A shares of another Fund without the payment of any sales or service charge. It is contemplated that Class B shares of one Fund only will be exchangeable for Class B shares of other Funds. The exchange privileges applicable to both classes will be made in reliance on rule 11a–3.

11. Under the Dual Distribution System, the net asset value will be calculated separately for each class of shares because the classes will have different expenses—Class B shares will be subject to a higher rule 12b–1 fee and possibly higher transfer agency fees than that of Class A shares. Income and expenses (except for class specific expenses) will be allocated on a daily basis among the classes based on the ratio of relative net asset values of each class to the total net assets of both classes combined. Class specific expenses will be allocated to the class to which they are attributable. Realized and unrealized gains and losses will be allocated on a daily basis among the classes based upon relative net assets. Based on this allocation of income, expenses, and realized and unrealized gains and losses between the two classes of shares, the Fund will compute the daily net asset value of Class A shares and Class B shares, respectively.

B. The CDSC

1. Applicants also propose that the Funds be permitted to assess a CDSC on redemptions of Class B shares and waive the CDSC under certain circumstances. The amount of the CDSC to be imposed will depend on the number of years since the investor purchased the shares being redeemed. Each Fund's particular CDSC schedule may vary, but the CDSC will comply with the National Association of Securities Dealers' sales load limitations and the provisions of proposed rule 6c–10 under the Act.

2. The CDSC will not be imposed on redemptions of Class B shares purchased a specified period of time prior to the redemptions (the "CDSC Period") or on Class B shares derived from reinvestment of distributions. The CDSC Period will not exceed six years. Furthermore, no CDSC will be imposed on an amount that represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for shares purchased during the CDSC Period. In determining the applicability and rate of any CDSC, it will be assumed that a redemption is made first of shares representing capital appreciation, next of shares derived from reinvestment of dividends and capital gain distributions, and finally of other shares held by the shareholder for the longest period of time.

3. Applicants also seek the ability to waive the CDSC (a) on redemptions following the death or disability, as defined in section 72(m)(7) of the IRC, of a shareholder if redemption is made within one year of death or disability; (b) in connection with certain distributions from an Individual Retirement Account, or other qualified retirement plan as described in the application; and (c) in connection with redemptions of shares purchased by active or retired officers, directors or trustees and employees of the Fund, Adviser, Distributor or affiliated companies, by members of the immediate families of such persons and by dealers having a sales agreement with the Distributor. If a Fund waives or reduces the CDSC, such waiver or reduction will be uniformly applied to all offerees in the class specified.

Applicants' Legal Analysis

A. The Dual Distribution System

1. Applicants are requesting an exemptive order under section 6(c) to the extent that the proposed issuance and sale of Class A and Class B shares representing interests in the Funds might be deemed: (a) to result in the issuance of a "senior security" within the meaning of section 18(g) and thus be prohibited by section 18(f)(1), and (b) to violate the equal voting provisions of section 18(i). Section 18(f)(1) provides in relevant part that "it shall be unlawful for any registered open-end company to issue any class of senior security or to sell any senior security of which it is the issuer," and section 18(g) defines a "senior security" as any "stock of a class having priority over any other class as to distribution of assets or payment of dividends." Section 18(i) provides in relevant part that every share of stock issued by a registered management company shall be "a voting stock and have equal voting rights with every other outstanding voting stock."

2. The creation of Class A and Class B shares may result in shares of a class having priority over another class as to payment of dividends because under the proposed arrangement the holders of Class B shares would pay a higher distribution fee than the holders of Class A shares, and Class B shareholders may pay a higher transfer agency fee than the holders of Class A shares. In addition, the creation of the two classes may result in the shares of a class having unequal voting rights because the Class A shares and the Class B shares would be entitled to exclusive voting rights with respect to the matters concerning their respective rule 12b–1 plans.

3. Section 6(c) provides in part that, upon application, the SEC may conditionally exempt any class of transactions from the provisions of the Act to the extent the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested exemption from section 18 meets the standards of section 6(c).

4. Applicants assert that the Dual Distribution System does not raise any of the legislative concerns that section 18 was designed to ameliorate. The proposal does not involve borrowing and does not affect a Fund's existing assets or reserves. The proposed arrangement also will not increase the speculative character of the shares of a Fund since all such shares will participate *pro rata* in a Fund's appreciation, income, and expenses with the exception of the differing distribution fees and any different transfer agency costs payable by each class. In this way, mutuality of risk will be preserved with respect to each class of shares of a Fund.

5. No class of shares will have any preference or priority over any other class in a particular Fund in the usual sense (that is, no class will have distribution or liquidation preferences with respect to particular assets and no class will be protected by any reserve or other account). Moreover, the proposed allocation of expenses and voting rights relating to the rule 12b–1 plans is equitable and would not discriminate against any group of shareholders.

6. In addition, unlike the "multi-class" funds where each class is available to or targeted at a limited group, the Dual Distribution System will offer the same group of investors the choice of two classes with relatively simple fee structures. Applicants believe that the Dual Distribution System will both facilitate the distribution of shares by the Funds and provide investors with a broader choice as to the method of purchasing shares in a Fund. Applicants also believe owners of each class of shares may be relieved of a portion of the fixed costs normally associated with investing in mutual funds since such costs would, potentially, be spread over a greater number of shares than would otherwise be the case. Finally, the conversion feature will benefit long-term Class B shareholders by relieving them of most of the burden of distribution expenses after a period of time sufficient for the Distributor to be compensated for the expenses incurred in connection with the distribution of shares.

7. Applicants recognize that the Dual Distribution System could be implemented under the hub and spoke structure without exemptive relief from section 18—one spoke could offer shares subject to a front-end sales charge and a different spoke could offer shares subject to a CDSC. Applicants believe, however, that the structure as proposed in the application offers several distinct benefits to the investors. Under the Dual Distribution System, the conversion of Class B shares to Class A shares would not be a taxable event under the IRC. A conversion from one spoke fund to another spoke fund would be a taxable event, however, thereby causing shareholders who have not changed the nature of their investment to incur a tax liability in order to benefit from the lower 12b–1 fee and possibly lower transfer agency fees.

B. The CDSC

1. Applicants also are requesting an exemptive order under section 6(c) from the provisions of section 2(a)(32), 2(a)(35), 22(c), and 22(d) and rule 22c–1 thereunder to the extent necessary to permit the Funds to assess a CDSC on certain redemptions of Class B shares and to waiver the CDSC with respect to certain types of redemptions.

2. Section 2(a)(32) defines a "redeemable security" as "any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer * * * is entitled (whether absolutely or only out of surplus) to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof." In addition, section 5(a)(1) defines an "open-end company," in relevant part, as a management company that offers for sale any redeemable security of which it is the issuer. Applicants contend that the CDSC will in no way restrict a shareholder from receiving his or her proportionate share of the current net assets of any Fund, but merely will defer the deduction of a sales charge and make it contingent upon an event that may never occur. However, to avoid any question regarding whether the CDSC would cause shares of any Fund not to be "redeemable securities;" thereby jeopardizing the Fund's status as an open-end management company, applicants seek relief from section 2(a)(32) to the extent necessary to impose the CDSC.

3. Section 2(a)(35) defines the term "sales load" as the difference between the price of a security to the public and that portion of the proceeds from the sale of the security that is received and invested or held for investment by the issuer. Applicants believe that the CDSC is consistent with the intent of the section 2(a)(35) definition to describe charges used to pay for sales of an investment company's shares. Nevertheless, in view of the possibility that the section might be construed to apply only to sales load charged at the time of purchase, applicants seek an exemption from the provisions of section 2(a)(35) to the extent necessary to implement the CDSC.

4. Section 22(c) and rule 22c–1 thereunder require a registered investment company issuing redeemable securities to redeem those securities at a price based on the current net asset value of the securities that is next computed after receipt of the tender of the securities for redemption. When a redemption of Fund shares subject to the CDSC is effected, the price of the shares on redemption will be based on their current net asset value. The CDSC merely will be deducted from the redemption proceeds in arriving at the shareholder's net proceeds payable on redemption. However, to avoid any possible questions about whether such a redemption would be at a price based on current net asset value, applicants seek relief from section 22(c) and rule 22c–1 to the extent necessary to permit the implementation of the CDSC.

5. Section 22(d) prohibits an investment company registered under the Act from selling its redeemable securities other than at a current public offering price described in the company's prospectus. Rule 22d–1 exempts a registered investment company from the provisions of section 22(d) to the extent necessary to permit the sale of those securities to particular classes of investors or in various kinds of transactions at prices that reflect scheduled variations in, or elimination of, the sales load. The requested exemptive relief would be consistent with the policies underlying rule 22d–1 because the Funds will disclose fully the CDSC and associated waivers in their prospectus. Applicants seek an exemption from section 22(d) to the extent necessary to implement the CDSC and waivers thereof as described above.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

A. Conditions Relating to the Dual Distribution System

1. The Class A and Class B shares will represent interests in the same portfolio of investments of a Fund and be identical in all respects, except as set forth below. The only differences between the two classes of shares of the same Fund will relate solely to: (a) The impact of the respective Rule 12b–1 plan payments made by each of the Class A shares and Class B shares of a Fund, any higher incremental transfer agency costs attributable solely to the Class B shares of a Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order, (b) voting rights on matters which pertain to Rule 12b–1 plans, (c) the different exchange privileges of the two classes of shares as described in the prospectuses (and as more fully described in the statements of additional information) of the Funds, (d) the conversion feature applicable only to the Class B shares, and (e) the designation of each class of shares of a Fund.

2. The Trustees of each Fund, including a majority of the Independent Trustees, shall have approved the Dual Distribution System prior to the implementation of the Dual Distribution System by a particular Fund. The minutes of the meetings of the Trustees of each Fund regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Dual Distribution System will reflect in detail the reasons for determining that the proposed Dual Distribution System is in the best interests of both the Funds and their respective shareholders and such minutes will be available for inspection by the Commission staff.

3. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the Investment Company Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the two classes of shares. The Trustees, including a majority of the Independent Trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. Any Rule 12b–1 plan adopted or amended to permit the assessment of a Rule 12b–1 fee on any class of shares which has not had its Rule 12b–1 plan approved by the public shareholders of that class will be submitted to the public shareholders of such class for approval at the next meeting of shareholders after the initial issuance of the class of shares. Such meeting will be held within sixteen months of the date that the registration statement relating to such class first becomes effective, or if applicable, the date that the amendment to the registration statement necessary to offer such class of shares first becomes effective.

5. The Trustees of the Funds will receive quarterly and annual Statements complying with paragraph (b)(3)(ii) of Rule 12b–1, as it may be amended from time to time. In the Statements, only distribution expenditures properly attributable to the sale of one class of shares will be used to support the reimbursement of such expenditures through the Rule 12b–1 fee charged to shareholders of such class of shares. Expenditures not related to the sale of a specific class of shares will not be presented to the Trustees to support the reimbursement of such expenditures through Rule 12b–1 fees charged to shareholders of such class of shares. The Statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties under Rule 12b–1.

6. Dividends paid by a Fund with respect to each class of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that fee payments made under the Rule 12b–1 plans relating to the Class A and Class B shares, respectively, will be borne exclusively by each such class and except that any higher incremental transfer agency costs attributable solely to Class B or Class A shares will be borne exclusively by such class.

7. The methodology and procedures for calculating the net asset value and dividend/distributions of the two classes and the proper allocation of income and expenses between the two classes has been reviewed by an expert (the "Expert"). The Expert has rendered a report to the Applicants, which has been included as Exhibit E to the application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner, subject to the conditions and limitations in that report. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1). The work papers of the Expert with respect to such reports, following request by the Funds which the Funds agree to make, will be available for inspection by the Commission staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System," and the ongoing reports will be "Special Purpose" reports on the "Design of a System and Certain Compliance Tests" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions between the two classes and proper allocation of expenses between such classes and this representation has been concurred with by the Expert in the initial report referred to in condition (7) above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition (7) above. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

9. The prospectus of the Funds will include a statement to the effect that a salesperson and any other person entitled to receive compensation for selling Fund shares may receive different levels of compensation for selling one particular class of shares over another in a Fund.

10. The Distributor will adopt compliance standards as to when Class A and Class B shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to these standards.

11. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Dual Distribution System will be set forth in guidelines which will be furnished to the Trustees as part of the materials setting forth and duties and responsibilities of the Trustees.

12. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, and exchange privileges applicable to each class of shares offered through the prospectus. Class A and Class B shares will be offered and sold through a single prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. The Fund's per share data, however, will be prepared on a per class basis with respect to the two classes of shares of the Funds. To the extent any advertisement or sales literature describes the expenses or performance data applicable to Class A or B shares, it will disclose the expenses and/or performance data applicable to both classes. The information provided by Applicants for publication in any newspaper or similar listing of the Funds' net asset values and public offering prices will separately present Class A and Class B shares.

13. Applicants acknowledge that the grant of the exemptive order requested by this application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Funds may make pursuant to Rule 12b–1 plans in reliance on the exemptive order.

14. Class B shares will convert to Class A shares on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee or other charge.

B. Condition Relating to the CDSC

Applicants will comply with the provisions of proposed Rule 6c–10 under the Investment Company Act, IC–16619 (November 2, 1988), as such Rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–20691 Filed 8–27–92; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Dane County Regional Airport, Madison, WI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Dane County for Dane County Regional Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Dane County Regional Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before January 25, 1993.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is July 29, 1992. The public comment period ends September 28, 1992.

FOR FURTHER INFORMATION CONTACT: William J. Flanagan, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4463. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Dane County Regional Airport are in compliance with applicable requirements of part 150, effective July 29, 1992. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before January 25, 1993. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

Dane County submitted to the FAA on August 8, 1991 noise exposure maps, descriptions and other documentation which were produced during the F.A.R. part 150 Noise Compatibility Study from September 1989 to August 1991. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Dane County. The specific maps under consideration are the 1989 existing Noise Exposure Map and the 1995 future Noise Exposure Map. The FAA has determined that these maps for Dane County Regional Airport are in compliance with applicable requirements. This determination is effective on July 29, 1992. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours

depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Dane County Regional Airport, also effective on July 29, 1992. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 25, 1993.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Minneapolis Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450.

Dane County Regional Airport, Airport Administration, 4000 International Lane, Madison, Wisconsin 53704.

Dane County Building, County Clerks Office, room 112, 210 Martin Luther King Boulevard, Madison, Wisconsin 53709.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Minneapolis, Minnesota, July 29, 1992

Franklin D. Benson,

Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 92-20719 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

Termination of Review of Noise Compatibility Program, Space Center Executive Airport ; Titusville, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces it has terminated its review of the noise compatibility program, at the request of the Titusville-Cocoa Airport Authority, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150.

EFFECTIVE DATE: The effective date of the FAA's termination of its review of the Space Center Executive Airport noise compatibility program is August 20, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy J. Pickering, P.E., Federal Aviation Administration, Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827-5397, (407) 648-6583.

SUPPLEMENTARY INFORMATION: On November 28, 1992, the FAA determined that the noise exposure maps submitted by the Titusville-Cocoa Airport Authority were in compliance with applicable requirements and began its review of the noise compatibility program. On August 17, 1992, the Titusville-Cocoa Airport Authority requested that FAA suspend its review and processing of the noise compatibility program for immediate project closure.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, August 19, 1992.

John W. Reynolds,

Assistant Manager, Orlando Airports District Office.

[FR Doc. 92-20720 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

Intent To Prepare an Environmental Impact Statement and To Hold Environmental Scoping Meetings; New Runway, Pittsburgh International Airport, Pittsburgh, PA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Public Environmental Scoping Meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposal by the County of Allegheny, Pennsylvania to construct a new, parallel, air carrier runway at Pittsburgh International Airport. To ensure that all significant issues related to the proposed action are identified, a public scoping meeting will be held.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Environmental Specialist, Federal Aviation Administration, Eastern Region, Airports Division, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York, (718) 553-0902.

SUPPLEMENTARY INFORMATION: In June 1990, Allegheny County began preparation of a Master Plan Update for Pittsburgh International Airport. A new air carrier runway was identified as needed in the short term (5 year). Allegheny County prepared an environmental assessment to assess the impacts of the new runway. The assessment concluded that the potential exists for significant adverse environmental effects, particularly in the areas of noise, wetlands, water quality, biotic communities, construction and visual impacts. Consequently, the FAA determined the need to prepare an EIS. Comments and suggestions are invited from Federal, state, and local agencies, and other interested parties, in order to ensure that a full range of issues related to the proposed project is identified and addressed in the scope of work for the project. Copies of the EA may be obtained by contacting FAA at the above address or telephone number. Comments and suggestions may be mailed to the same address.

PUBLIC SCOPING MEETINGS: In order to provide public input, a scoping meeting for Federal, state and local agencies will be held on **Thursday, October 8, 1992** at 9:30 a.m., at the Conference Room in the FAA Air Traffic Control Tower at Pittsburgh International Airport, Pittsburgh, Pennsylvania.

An additional meeting to receive citizen input will be held on Thursday, October 8, 1992 at 7 p.m. at the Conference Room in the FAA Air Traffic Control Tower at Pittsburgh International Airport, Pittsburgh, Pennsylvania. Federal, state and local agency representatives are encouraged to attend. Information about these meetings may be obtained by contacting Richard Belotti at Pittsburgh International Airport, Terminal Building, Pittsburgh, PA (412) 778-2585.

Issued in Jamaica, New York, on August 17, 1992.

Louis P. DeRose,

Eastern Region.

[FR Doc. 92-20721 Filed 8-27-92; 8:45 am]

BILLING CODE 3910-13-M

Aviation Rulemaking Advisory Committee; Aircraft Certification Procedures Subcommittee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Aircraft Certification Procedures Subcommittee.

SUMMARY: Notice is given of the establishment of an Aircraft Certification Procedures Subcommittee under the FAA Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the Aviation Rulemaking Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Mr. William J. (Joe) Sullivan, Executive Director, Aircraft Certification Procedures Subcommittee, Aircraft Certification Service (AIR-3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267-9554; FAX: (202) 267-5364.

SUPPLEMENTARY INFORMATION: On January 14, 1991, the Federal Aviation Administration (FAA) announced the establishment of the Aviation Rulemaking Advisory Committee (56 FR 2190, January 22, 1991). The committee charter became effective on February 5, 1991, when notices of establishment were sent to the appropriate Congressional Committees. The advisory committee provides advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues, including aircraft certification. The committee held its first meeting at Baltimore, MD, on May 23, 1991 (56 FR 20492, May 3, 1991). At that meeting, the committee formed several subcommittees and charged them with developing advisory recommendations in different safety-related areas. The subcommittee Chairs and Executive Directors were named, and the member organizations identified. Finally, several specific tasks were assigned to the various subcommittees. At this first meeting, the committee also adopted procedures concerning the operation of the committee, its subcommittees, and their working groups.

Under the procedures adopted by the full committee, each subcommittee meeting is open to the public, except as authorized in section 10(d) of the Federal Advisory Committee Act. Also, notice is given beforehand of the subcommittee meeting agenda. A subcommittee may form working groups made up of experts from those having an interest in an issue to do tasks assigned to the subcommittee. Working group meetings need not be open to the public. This is because working groups must bring their work product back to the subcommittee for full, open, and substantive discussion, and may not provide advice directly to the FAA. The subcommittee may: (1) Accept a working group work product and send it directly to the FAA; (2) Modify the work product and send it directly to the FAA; or (3) Return the work product to the working group with instructions for further activity. Thus, while the functions of a subcommittee are solely advisory, they create a framework within which interested parties may negotiate proposed or final rules and present their consensus to the FAA for action. The more complete these products, the more likely they are to be accepted by the FAA without change and formally published as proposed or final rules. The activities of the Aviation Rulemaking Advisory Committee, and its subcommittees, are consistent with the Negotiated Rulemaking Act of 1990 (Pub. L. 101-648).

The Aircraft Certification Procedures Subcommittee is a new subcommittee. It will provide advice and recommendations to the Director, Aircraft Certification Service, FAA, on regulatory standards and procedures for aircraft certification found in parts 21, 39, and 183 of the Federal Aviation Regulations (14 CFR parts 21, 39, and 183), and Special Federal Aviation Regulation No. 36. The membership of the Aircraft Certification Procedures Subcommittee consists solely of the members organizations of the Aviation Rulemaking Advisory Committee. The following members are being invited to join the Certification Procedures.

Subcommittee

- Aeronautical Repair Station Association
- Aerospace Industries Association of America, Inc.
- Air Line Pilots Association
- Air Transport Association of America
- Airbus Industrie
- Aircraft Electronics Association
- Association of European Airlines
- Association Europenne Constructeurs de Material

Aerospatiale

- Aviation Consumer Action Project
- Boeing Commercial Airplane Company
- Experimental Aircraft Association
- General Aviation Manufacturers Association
- Helicopter Association International
- International Airline Passengers Association
- International Air Transport Association
- International Association of Machinists and Aerospace

Workers

- Joint Aviation Authorities
- McDonnell Douglas Corporation
- National Air Transportation Association, Inc.
- National Business Aircraft Association, Inc.
- Professional Aviation Maintenance Association
- Public Citizen
- Regional Airline Association
- Transport Canada
- United States Ultralight Association, Inc.

The first Aircraft Certification Procedures Subcommittee working groups will be established in the near future. They will deal with international certification procedures, replacement and modification parts approval, production certification modernization, and aircraft certification delegation systems. The establishment of these committees will be announced in the **Federal Register.** The Secretary of Transportation has determined that the information and use of the Aviation Rulemaking Advisory Committee and its subcommittees are necessary in the public interest in connection with the performance of duties imposed on the FAA by law.

Issued in Washington, DC, on August 21, 1992.

William J. Sullivan,

Executive Director, Aircraft Certification Procedures Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-20718 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Delta County Airport, Escanaba, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Delta County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Harvey Setter, Airport Manager, of the County of Escanaba, Michigan, at the following address: Delta County Airport, 3300 Airport Road, Escanaba Michigan 49829

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the County of Escanaba under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Peter A. Serini, Manager, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, (313) 487-7300. The application may be reviewed in person at the same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Delta County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 13, 1992, the FAA determined that the application to impose a PFC submitted by County of Delta, Michigan was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 19, 1992.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: January 1, 1993

Proposed charge expiration date: July 10, 1998

Total estimated PFC revenue: $158,325

Brief description of proposed project(s):
Land
Acquisition; Rehabilitate, extend, widen, and apply surface treatment on runway 18/36 with associated taxiways and lighting

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxis and charters

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Escanaba, Michigan.

Issued in Des Plaines, Illinois on August 18, 1992.

W. Robert Billingsley,

Manager, Airports Division, Great Lakes Region.

[FR Doc. 92-20722 Filed 8-27-92; 8:45 am]

BILLING CODE 4910-13-M

UNITED STATES INFORMATION AGENCY

University Development Program in Business Management for Selected Regions in Eastern and Central Europe

AGENCY: United States Information Agency.

ACTION: Notice—Request for Proposals.

SUMMARY: Subject to the availability of funds, the United States Information Agency (USIA) invites applications from accredited U.S. educational institutions to conduct exchange programs with selected post-secondary educational institutions in Albania, Bulgaria, Croatia, the Czech and Slovak Federal Republic, Hungary, Macedonia, Poland, Romania and Slovenia to develop curricula and teaching methodologies for foreign faculties in the field of business management.

DATES: Deadline for proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Friday, October 23, 1992. Faxed documents will not be accepted, nor will documents postmarked on October 23, 1992, but received at a later date. It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Grants may not begin prior to January 15, 1993, and must be completed by November 1, 1993. Priority will be given to programs with an early start date.

ADDRESSES: The original and 14 copies of the completed application, including required forms, should be submitted by the deadline to:

U.S. Information Agency. Ref.: University Development in Business Management for Eastern and Central Europe.
Office of Grants Management, E/XE, Room 357, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested U.S. organizations and institutions should contact Ms. Mara Moldwin at the U.S. Information Agency, 301 4th Street, SW., European Branch, Academic Exchanges Division, E/AEE Room 208, Washington, DC 20547; telephone (202) 619-5341 to request detailed application packets, which include award criteria additional to this announcement, all necessary forms, and guidelines for preparing proposals, including specific budget preparation information. Other proposal requirements are stipulated and described in the application guidelines for this program.

SUPPLEMENTARY INFORMATION: Overall authority for these exchanges is contained in the Mutual Educational and Cultural Exchange Act of 1961, as amended, Public Law 87-256 (Fulbright-Hays Act). The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and people of other countries by means of educational and cultural exchange; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations . . . and thus to assist in the development of friendly, sympathetic, and peaceful relations between the United States and other countries of the world." Pursuant to the Bureau of Educational and Cultural Affairs

authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life. Programs shall also "maintain their scholarly integrity and shall meet the highest standards of academic excellence or artistic achievement."

Overview

The dramatic changes in Eastern and Central Europe provide an historic opportunity to contribute to the region's successful transition to a free market economy. Under the auspices of the U.S. assistance program for Eastern Europe, USIA is offering this program to help foster greater expertise in business management in selected regions of Eastern and Central Europe.

Guidelines

The purpose of this program is to assist Central and Eastern European countries in their transformation to free market economies through the development of business management training capabilities in select Central and Eastern European academic institutions. In an effort to make the program more responsive to the needs of the countries, programs will be focused on key institutions [identified by U.S. Information Service (USIS) posts] which have had limited contact with the U.S. and wish to develop linkages with U.S. institutions.

Note: A list of foreign partner institutions to which priority will be given is available with the application package and guidelines.

Grant activities must include placement of American faculty at Central and Eastern institutions for in-country training of faculty and to develop sustainable programs for educating future foreign business management teachers. Targeted programs activities may include: faculty development and enrichment; curriculum design; administrative organization; and direct teaching. Seminar, workshop and semester long course formats will be acceptable. One goal of the program is to create a linkage between the designated foreign institutions and U.S. universities. Preference will be given to programs of at least three months duration.

Components for the development of university to private sector linkages and the development of appropriate materials are encouraged. Courses developed may include, but are not limited to, marketing, production management, economics, industrial relations, finance, accounting, and international business. Proposals should provide for a two-way exchange. Preference will be given to programs where the majority of the time is spent at the foreign institution. Short term familiarization visits, feasibility planning trips, and study visits by foreign participants should not be included in the proposal. Applicants should not assume funding for such visits. Regional programs (e.g. programs spanning more than one country) will be considered technically ineligible. Proposals that are extensions or enhancements of past or current relationships with a partner institution will be acceptable.

A proposal will be deemed technically ineligible if:

1. It does not fully adhere to the guidelines established herein and in the application packet [E/AEE-92-03], including budgetary requirements.
2. The applicant is not an accredited U.S. college or university;
3. The project does not constitute a direct partnership with a post-secondary business management program in Albania, Bulgaria, Croatia, the Czech and Slovak Federal Republic, Hungary, Macedonia, Poland, Romania or Slovenia;
4. The project involves partnerships in more than one country;
5. The project does not seek to address the faculty, curriculum, and administrative aspects entailed in developing the business management program identified;
6. The project does not provide for in-country presence of American faculty; or
7. The project includes profit or fee.

Institutional Commitment

Proposals must include documentation of institutional support for the proposed program in the form of signed letters of endorsement from the U.S. and foreign institutions' presidents, chancellors, or directors, or in the form of a signed agreement by the same persons. The Letters of Endorsement must describe each institution's commitment and activities in support of an on-going partner linkage and make specific reference to the proposed program and each institution's activities in support of that program. Applicants may submit this documentation from the foreign institution by 5 p.m. Washington, DC time on November 11, 1992 to Mara Moldwin, E/AEE Room 208, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547, if the documentation is not included with the proposal. Organizations not submitting foreign institutional commitment documentation with the proposal must describe in the proposal measures taken to secure the documentation. Applicant institutions are expected to make their own arrangements with the appropriate foreign institutions.

Proposed Budget

Project awards to the U.S. Institutions will be made in a range of amounts but will not exceed $75,000. USIA anticipates awarding from six to nine grants in amounts ranging from $50,000 to $75,000. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program. For organizations with less than four years of experience in international exchange activities, grants will be limited to a maximum of $60,000. All organizations must submit a comprehensive line item budget, the details and format of which are contained in the application packet.

Allowable Costs: Program Costs

—International travel (via American flag carriers);
—Domestic travel;
—Maintenance (including lodging, meals and incidental expenses);
—Educational materials (including books, reference materials, computers, etc.);
—Honoraria or compensation for in-country work, which must not exceed $150 per day per person.
—Visa fees;

Medical insurance for the participants will be covered by the U.S. Information Agency.

*Administrative Costs—Not to exceed 20% of the requested Budget**

—Salaries and benefits;
—Communications (e.g. fax, telephone, postage);
—Office Supplies;
—Other Direct Costs; and
—Indirect Costs based on administrative and non-participant program expenses. [Please refer to the Application Package.]

Application should demonstrate substantial cost-sharing (dollar and in-kind) in both program and administrative expenses, including overseas partner contributions.

No grants funded under this program will include profit or fee.

**Please Note:* It is required that requested administrative funds not exceed 20 percent of the total amount requested, including administrative expenses for orientation and indirect costs applied to administrative and program costs; administrative expenses should be cost-shared.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Eligible proposals will be forwarded to panels of USIA officers for advisory review. All eligible proposals will also be reviewed by the appropriate geographic area office, and the budget and contracts offices. Proposals may also be reviewed by the Agency's Office of General Counsel. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the following criteria:

a. Quality of program plan, including academic rigor, thorough conception of project, demonstration of meeting partner needs, contributions to understanding the partner country, proposed follow-up, and qualifications of program staff and participants.

b. Feasibility of the program plan and the capacity of the organization to conduct the exchange. Proposals should clearly demonstrate how the institution will meet the program objectives and plan.

c. Track record—relevant Agency and outside assessments of the organization's experience with international exchanges; for organizations that have not worked with USIA, the demonstrated potential to achieve program goals will be evaluated.

d. Multiplier effect/impact—the impact of the exchange activity on the wider community and on the development of continuing ties, as well as the contribution of the proposed activity in promoting mutual understanding.

e. Value of U.S.-partner country relations—the assessment by USIA's geographic area office of the need, potential impact, and significance of the project with the partner country.

f. Cost effectiveness—greatest return on each grant dollar; degree of cost-sharing exhibited.

g. Adherence of proposed activities to the criteria and conditions described above.

h. Institutional commitment as demonstrated by financial and other support to the program.

i. Follow-on Activities—proposals should provide a plan for continued follow-on activity (without USIA support) which insures that USIA supported programs are not isolated events. There must be a clear demonstration by both institutions to a long-term commitment.

j. Evaluation plan—proposals should provide a plan for evaluation by the grantee institution.

Options for Renewal

Subject to the availability of funding for FY 1993 and the satisfactory performance of grant programs, USIA may invite grantees to submit proposals for renewals of awarded grants.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about January 8, 1992. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 24, 1992.

Barry Fulton,

Deputy Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-20709 Filed 8-27-92; 8:45 am]

BILLING CODE 8230-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Defense Policy Advisory Committee; Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Defense Policy Advisory Committee Meeting.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATE: The meeting of the Defense Policy Advisory Committee is scheduled for September 3, 1992, from 11 a.m. to 1 p.m.

ADDRESS: The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-20905 Filed 8-27-92; 8:45 am]

BILLING CODE 3190-01-M

Industry Policy Advisory Committee; Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Industry Policy Advisory Committee Meeting.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATE: The meeting of the Industry Policy Advisory Committee is scheduled for September 4, 1992, from 2 p.m. to 4 p.m.

ADDRESS: The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-20906 Filed 8-27-92; 8:45 am]

BILLING CODE 3190-01-M

Investment Policy Advisory Committee; Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Investment Policy Advisory Committee Meeting.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATE: The meeting of the Investment Policy Advisory Committee is scheduled for September 1, 1992, from 10:30 a.m. to 12:30 p.m.

ADDRESS: The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-20907 Filed 8-27-92; 8:45 am]

BILLING CODE 3190-01-M

Services Policy Advisory Committee; Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Services Policy Advisory Committee Meeting.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATE: The meeting of the Services Policy Advisory Committee is scheduled for August 27, 1992, from 10 a.m. to 12 p.m.

ADDRESS: The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-20908 Filed 8-27-92; 3:56 pm]

BILLING CODE 3190-01-M

Advisory Committee on Trade Policy and Negotiations; Meeting

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of Advisory Committee on Trade Policy and Negotiations Meeting.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions.

DATE: The meeting of the Advisory Committee for Trade Policy and Negotiations is scheduled for September 4, 1992, from 10 a.m. to 12 p.m.

ADDRESS: The meeting will be held at the United States Trade Representative, 600 Seventeenth Street, NW., room 203, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mollie Shields, Director, Office of Private Sector Liaison, Office of the United States Trade Representative, Executive Office of the President.

Carla A. Hills,

United States Trade Representative.

[FR Doc. 92-20909 Filed 8-27-92; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee (TPSC); Notice of the Effective Date, With Respect to the Republic of Kyrgyzstan, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the effective date, with respect to the Republic of Kyrgyzstan, of the Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics.

SUMMARY: In Proclamation 6352 of October 9, 1991 (56 FR 51317), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Union of Soviet Socialist Republics" enters into force and nondiscriminatory treatment would be extended to products of the U.S.S.R. in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with article XVII of the Agreement. Subsequently, the U.S.S.R. was succeeded by twelve independent states, including the Republics of Kyrgyzstan. An exchange of diplomatic notes with the Republic of Kyrgyzstan in accordance with article XVII of the Agreement, as modified by technical adjustments and retitled "Agreement on Trade Relations Between the United States of America and the Republic of Kyrgyzstan," took place in Bishkek, Kyrgyzstan on August 21, 1992. Accordingly, the Agreement became effective on August 21, 1992, with respect to the Republic of Kyrgyzstan, and nondiscriminatory treatment is extended to products of the Republic of Kyrgyzstan as of August 21, 1992 in accordance with the Agreement and as provided for in Proclamation 6352 of October 9, 1991.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 92-20904 Filed 8-28-92; 4:06 pm]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department from number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395-7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before September 28, 1992.

Dated: August 19, 1992.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Supporting Statement Regarding Marriage, VA Form 21–4171.

2. The use of this form will allow the gathering of information necessary to determine if a marital relationship is established and whether VA benefits are payable based on the relationship.

3. Individuals or households.

4. 800 hours.

5. 20 minutes.

6. On occasion.

7. 2,400 respondents.

[FR Doc. 92–20684 Filed 8–27–92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 168

Friday, August 28, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, September 1, 1992, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Application of Hawkeye Bank of Mount Ayr, Mount Ayr, Iowa, for the Corporation's consent to purchase the assets of and assume the liability to pay deposits made in First State Bank, Mount Ayr, Iowa, and for consent to establish the Diagonal, Iowa, office of First State Bank as a branch of Hawkeye Bank of Mount Ayr.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(9)(A)(ii), and (c)(9)(B)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 25, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–20806 Filed 8–26–92; 9:31 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, September 1, 1992, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Budget and Corporate Planning.

Discussion Agenda

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Savings Association Insurance Fund members.

Memorandum and resolution re: Final amendments to Part 327 of the Corporation's rules and regulations, entitled "Assessments," which amendments increase the assessment to be paid by Bank Insurance Fund members.

Memorandum re: Bank Insurance Fund Recapitalization Schedule.

Memorandum and resolution re: Final regulation establishing a transitional risk-based assessment.

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations in the form of a new Part 363 regarding independent annual audits and reporting requirements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 25, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–20807 Filed 8–26–92; 9:31 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, August 25, 1992, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Resolution honoring the late William Taylor, Chairman of the Corporation.

Matters relating to the probable failure of certain insured banks.

Recommendations concerning administrative enforcement proceedings.

Applications for exemption from the cross-guaranty provisions of the Federal Deposit

Insurance Act and issuance of notices of assessment of liability pursuant to those provisions.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Stephen R. Steinbrink (Acting Comptroller of the Currency), and concurred in by Director T. Timothy Ryan, Jr. (Office of Thrift Supervision) and Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: August 25, 1992.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 92–20939 Filed 8–26–92; 3:47 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 2:00 p.m., September 2, 1992.

PLACE: 1st Floor Hearing Room, Federal Maritime Commission, 800 North Capitol St., N.W., Washington, D.C. 20573–0001.

STATUS: Open.

MATTER(S) TO BE CONSIDERED:

1. Docket No. 92–37—Financial Responsibility for Non-Vessel-Operating Common Carriers—Consideration of comments.

2. Docket No. 92–25—Regulation of Military Rates Under the Shipping Act of 1984—Consideration of comments.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 92–20927 Filed 8–26–92; 3:11 pm]

BILLING CODE 6730–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 31, 1992.

Closed meetings will be held on Tuesday, September 1, 1992, at 2:30 p.m. and on Thursday, September 3, 1992, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, September 1, 1992, at 2:30 p.m., will be:

Institution of injunctive actions.
Settlement of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

The subject matter of the closed meeting scheduled for Thursday, September 3, 1992, at 2:30 p.m., will be:

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: August 25, 1992.

Jonathan G. Katz,

Secretary.

[FR Doc. 92–20897 Filed 8–26–92; 3:10 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 57, No. 168
Friday, August 28, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 260, 261, 262, 264, 265, 268, 270, and 271

[FRL–4132–4]
RIN 2050–AD36

Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris

Correction

In rule document 92–15997 beginning on page 37194 in the issue of Tuesday, August 18, 1992 in the first column under **EFFECTIVE DATES** in the seventh line, "November 18, 1992" should read "November 19, 1992".

BILLING CODE 1505–01–D

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federal register

Friday
August 28, 1992

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR 431 etc.

Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 442, 488, and 489

[HSQ-156-P]

RIN 0938-AD94

Medicare and Medicaid Programs; Survey, Certification and Enforcement of Skilled Nursing Facilities and Nursing Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would specify in regulations the process for surveying skilled nursing facilities (SNFs) under Medicare and nursing facilities (NFs) under Medicaid and for certifying that these facilities meet the Federal requirements for participation in the Medicare and Medicaid programs. This rule also would provide for a number of alternative remedies to be imposed on facilities that fail to comply with the Federal participation requirements, in lieu of or in addition to termination, and specified remedies for State survey agencies that do not meet surveying requirements. This proposed rule would also require that States provide only post action hearings for NFs and intermediate care facilities for the mentally retarded.

These proposed regulations would implement provisions of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87). The OBRA '87 provisions, which were further amended by 1988, 1989 and 1990 legislation, provide the impetus for SNFs and NFs to provide more consistent quality care and maintain continued compliance with new Federal participation requirements.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 27, 1992.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-156-P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code HSQ-156-P. Written comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Irene Gibson, (410) 966-6768.

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SUPPLEMENTARY INFORMATION:

I. Background

To participate in the Medicare and or Medicaid programs, long-term care facilities must be certified as meeting Federal participation requirements. Long-term care facilities include skilled nursing facilities (SNFs) for Medicare and nursing facilities (NFs) for Medicaid. (Beginning October 1, 1990, the term NF under Medicaid replaced the Medicaid terms SNF and intermediate care facility (ICF), except ICFs for the mentally retarded.) The Federal participation requirements for these facilities are specified in HCFA regulations at 42 CFR part 483, Subparts A through C.

Section 1864(a) of the Social Security Act (the Act) authorizes the Secretary to enter into agreements with State survey agencies to determine whether SNFs meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for State survey agencies to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of Medicare and Medicaid related surveys are used by HCFA and the State Medicaid agency, respectively, as the basis for a decision to enter into, deny, nonrenew or terminate a provider agreement with the facility.

To assess compliance with Federal participation requirements, surveyors conduct onsite inspections (surveys) of facilities. The survey process uses resident outcomes as a primary means to establish the compliance status of facilities. Specifically, surveyors directly observe the actual provision of care and services to residents and the effect or possible effects of that care to assess whether the care provided meets the assessed needs of individual residents. Prior to the passage of the 1987 legislation which is discussed in detail below and was effective October 1, 1990, for Medicare, the State survey agency has conducted a survey of SNFs annually, to certify compliance or noncompliance with program requirements, subject to HCFA approval. HCFA has then made the final decision of compliance or noncompliance. This process was based on section 1864(a) of the Act, which describes compliance recommendations by the survey agency to HCFA. Specifically, section 1864(a) states that "* * * *to the extent that the Secretary finds it appropriate* [emphasis added] an institution or agency which such a State (or local) agency certifies as a * * * skilled nursing facility * * * (as * * * defined in section 1861) may be treated as such by the Secretary * * *" (Section 1861(j) states that the term "skilled nursing facility" has the meaning given such term at section 1819(a).) Under Medicaid, the State has made the binding certification of compliance or noncompliance. This certification has not been subject to Federal review, except in the case of complaint or "look behind" surveys. (A "look behind" survey was a Federal monitoring survey of a long-term care facility. Since the effective date of OBRA '87, the term "look behind survey" only applies to ICFs/MR, and has been replaced by the term "validation surveys" for NFs.)

SNFs that are approved for participation in the Medicare program also meet the participation requirements for the Medicaid program. However, the Medicaid State agency is not obligated to enter into a Medicaid provider agreement with a facility just because the Secretary has entered into a Medicare provider agreement with the facility. Additionally, if a State imposes

Medicaid requirements that exceed those of Medicare, section 1863 of the Act provides that the higher requirements must be met by the Medicare SNFs in that State if the higher requirements are submitted under a State plan approved by the Secretary.

Also, before the 1987 legislation, the only adverse actions available to HCFA and the States against facilities that were determined to be out of compliance with Federal participation requirements included termination, nonrenewal, or automatic cancellation of provider agreements; denial of participation for prospective facilities; and denial of payment for new admissions in lieu of termination when the facilities had deficiencies that did not pose an immediate and serious threat to the health and safety of residents. (The denial of payment action has been considered an "alternative" sanction because it is an alternative to termination.)

The Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100-203, enacted on December 22, 1987, amended the Social Security Act to incorporate specific provisions for nursing home reform. These provisions included specific revised requirements for the survey and certification process (section 4202 for Medicare and section 4212 for Medicaid) and for the enforcement process (sections 4203 and 4213). Sections 4202 and 4212 of OBRA '87 added new sections 1819(g) and 1919(g) to the Act to revise and expand Medicare and Medicaid provisions, respectively, on State and Federal responsibilities for survey and certification, types and requirements for surveys, survey team composition and responsibilities, requirements for validation surveys, procedures for investigating complaints and monitoring nursing compliance, disclosure of results of inspections and activities, and provisions for penalties imposed on the States for failure to comply with survey process requirements. Sections 4203 and 4213 of OBRA '87 added sections 1819(h) and 1919(h) to the Act to specify the Medicare and Medicaid enforcement process, respectively, and specified remedies for noncompliance to be used in lieu of or in addition to termination of facilities' participation in the programs. Section 411 of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Public Law 100-360, enacted on July 1, 1988, also included a number of technical and correcting amendments affecting these OBRA '87 provisions. These changes will be discussed in detail later in this preamble.

Before OBRA '87 was enacted, we issued in the **Federal Register**, on November 18, 1987 (52 FR 44300), a notice of proposed rulemaking that would have implemented certain recommendations made by the National Academy of Sciences' Institute of Medicine (IoM) as a result of a contract HFCA had with the Institute to study the regulation of nursing homes. The focus of the study was on the chronic problem of nursing homes that fail to comply with Federal requirements and the manner in which "borderline" nursing homes were in and out of the Medicare and Medicaid programs for failure to meet one or more participation requirements. The IoM also found that many of these substandard facilities could easily avoid termination of participation if they came into compliance long enough to be recertified, but that these facilities had no commitment to sustained compliance. Therefore, the IoM study recommended that we implement a range of intermediate remedies to deter violations. OBRA '87 provided the statutory authority for these remedies.

Although OBRA '87 reflected many of the IoM recommendations which we included in the November 1987 NPRM, OBRA '87 also included new provisions beyond those we had included in that proposed rule. Consequently, we withdrew the November 1987 NPRM and are issuing a second proposed rule that reflects the recommendations of the IoM that were previously proposed in the November 1987 NPRM as well as additional provisions of OBRA '87 and subsequent legislation on the survey and certification process and the enforcement process for SNFs and NFs.

II. General Focus of the Proposed Regulations

These proposed regulations would alter the requirements for surveying facilities and expand the choice of alternative remedies for HCFA and the Medicaid agency to apply in lieu of or in addition to termination of facilities that do not comply with participation requirements. This will promote facility compliance by ensuring that all deficient providers are appropriately sanctioned. Termination is still possible any time a facility is identified as having deficiencies, and if a facility continues to have deficiencies after a specified period of time, the law requires that Federal payments for services in that facility cease at that time.

We intend that the proposed regulations be indicative of more fundamental changes in the principles upon which the enforcement system is based. We are implementing Congress' mandate, as indicated in OBRA '87, to abandon our hierarchal requirement system and develop a system capable of detecting and responding to noncompliance with any requirement. The proposed system is built on the assumption that all requirements must be met and enforced and that requirements take on greater or lesser significance as a function of the circumstances and resident outcomes in a particular facility at the time of survey. The surveyors would determine the existence or nonexistence of immediate and serious threat to residents as well as the severity and scope of a deficiency to arrive at a conclusion as to the seriousness of that deficiency in that facility. The proposed regulations have incorporated scope and severity surveyor guides for determining the remedy or remedies to apply. We are also proposing that the selection of a particular remedy be based on the nature of the deficiencies and the remedy (or remedies) that either HCFA or the Medicaid agency believes is most likely to achieve correction of the deficiencies. We believe that remedies applied in the manner described within the proposed regulations will deter violations as well as encourage immediate response and sustained compliance.

The basic components of these proposed regulations are premised on assumptions which include, but are not limited to, the following:

- The purpose of applying remedies is to achieve and maintain compliance with Federal requirements.
- Remedies are tailored to fit the desired corrective action. Our intent is to motivate corrective action and sustained compliance.
- The enforcement system prior to OBRA '87 needed an organized way to determine when a problem became a deficiency. The proposed system to implement OBRA '87 would achieve that. Our new survey process would direct surveyors to gather specific information about facility performance relating to resident care practices and outcomes and facility practices related to resident rights. Problems identified will be analyzed by the survey team to determine whether the information gathered is sufficient to support specific deficiencies. After the team determines a deficiency exists, the survey team would be required to determine the scope and severity of the deficiency or deficiencies for the purposes of determining the remedy or remedies.
- The choice of a remedy would be based on the severity and scope of the deficiency as well as a consideration of

prior facility performance, desired corrective and long-term compliance action, and the interrelationship among all deficiencies.

The new system would also establish changes in the enforcement authority for dually participating (Medicare and Medicaid) facilities. Historically, enforcement actions taken by HCFA with regard to the Medicare agreement of a dually participating facility resulted in the same action with the same effective date being taken with regard to the Medicaid agreement for that facility. For example, if HCFA notified the Medicaid agency that it had denied, terminated, or nonrenewed a Medicare provider agreement with a SNF, the Medicaid agency denied, terminated, or nonrenewed its Medicaid provider agreement with that SNF, effective the same date as the Medicare agreement action. The same requirement applied to denial of payment for new admissions to a SNF. However, OBRA '87 provided the basis for decisions as to whether the State's or the Secretary's determination of compliance or noncompliance or choice of remedies is to be binding in the case of dually participating facilities. Moreover, the statute, as explained below, provided that whether certification decisions and enforcement actions, as applied to Medicaid, are those of the Secretary or the State, the same certification decision and enforcement actions will also apply to Medicare in a dually participating facility. In addition, the statute specifies whether the Secretary's or State's certification decision and enforcement remedies will prevail in the case of Federal validation surveys. The proposed regulations reflect these changes.

OBRA '87 set forth a survey and certification process for Medicare and Medicaid which, in some respects, is similar to the one in place prior to October 1, 1990. Under the new process, the State survey agency surveys all facilities: it certifies compliance or noncompliance for Medicare SNFs, subject to HCFA approval, and issues a binding certification of compliance or noncompliance for Medicaid NFs. OBRA '87, however, added to pre-existing policy by establishing a similar set of parameters for State operated facilities, whether SNFs, NFs, or dually participating SNF/NFs. The State will survey State-operated facilities, but will only recommend a certification of compliance or noncompliance to HCFA. HCFA will issue the final certification of compliance or noncompliance for these facilities. The proposed regulations reflect these provisions.

III. Provisions of the Proposed Regulations

These proposed regulations would incorporate in the Medicare and Medicaid regulations the provisions of OBRA '87 as modified by subsequent legislation relating to survey and certification and enforcement and other policy clarifications or expansions that are dictated by the law or that we have determined necessary as a result of the recommendations of the IoM. The specific discussions and changes are as follows:

A. Authorities for Routine Process of Certificotion and Enforcement

1. State-Operated Facilities

Sections 1919(g)(1)(A) and 1919(h)(3)(A) of the Act give the Secretary complete authority to determine a State-operated facility's compliance with Federal Medicaid requirements, impose alternative remedies and terminate the facility's provider agreement. Section 1819(g)(1)(A) and 1819(h) give the Secretary analogous authority under the Medicare program. A State-operated facility can be a Medicare-only SNF, a Medicaid-only NF or a dually participating SNF/NF. "State operated" does not include SNFs or NFs operated by counties or other public entities other than State government. We are proposing at § 488.155 and § 488.180 that in all State-operated facilities, the State survey agency (SA) conduct the survey, recommend to HCFA a certification of compliance or noncompliance and recommend appropriate enforcement action(s). After the SA forwards its survey findings and recommended certification and enforcement action(s) to HCFA, HCFA in turn would certify facility compliance or noncompliance and impose any enforcement action(s).

2. Non-State Operated Facilities

• *SNFs*—For non-State operated SNFs, we propose at § 488.155 and § 488.180 to continue to use the process in effect before October 1, 1990, whereby the SA would conduct the survey, certify compliance or noncompliance with Federal requirements subject to HCFA approval. This provision, providing for a HCFA review of the State certification, is based on section 1819(g)(1)(A) which states that "Pursuant to an agreement under section 1864, each State shall be responsible for certifying, in accordance with surveys conducted under paragraph (2), the compliance of skilled nursing facilities (other than facilities of the State) with the requirements of subsections (b), (c), and (d) * * *." As explained above, section 1864(a) provides for a relationship between State survey agencies and the Secretary in which the survey agency acts as the Secretary's agent in making recommended decisions on the certification of Medicare institutions, including skilled nursing facilities. We are also proposing that the SA could recommend appropriate remedies. After the SA forwards its survey findings, certification, and recommended enforcement action(s) to HCFA for review, HCFA would determine the compliance or noncompliance of the facility and impose any enforcement action(s).

• *NFs*—For non-State operated NFs, section 1919(g)(1)(A) provides that the State shall be responsible for certifying the compliance or noncompliance of NFs with Federal requirements. We are proposing, at § 488.155 and § 488.180, to continue to use the process in effect before October 1, 1990, whereby the SA would conduct the survey, certify compliance or noncompliance with Federal requirements, and recommend appropriate enforcement actions. The certification of compliance or noncompliance by the State will be final except in the case of a complaint or validation survey, or review of the State's findings by HCFA in which the Secretary substitutes his judgment for that of the State. We have fixed the responsibility of certification only to the "State," without further definition, in order to recognize the differences in the functions of and delegations of authorities to specific entities within States, i.e., survey agency, State Medicaid agency. The State will make all enforcement decisions and impose remedies, after consideration of the survey findings and recommended enforcement remedies. Regardless of which agency of the State exercises certification and enforcement authority, however, we will look to the State Medicaid agency to assure compliance with Federal requirements since it is that entity in which the statute rests specific authority for the administration of the Medicaid program.

• *Dually participating SNF/NFs*—We are proposing at § 488.155 and § 488.180 that for dually participating SNF/NFs, the SA would conduct the survey, certify compliance or noncompliance with Federal requirements, and recommend appropriate enforcement actions. The certification of compliance or noncompliance and recommended enforcement action(s) by the State would be sent to both HCFA and the State Medicaid Agency (SMA) for review.

Section 1919(h)(6) of the Act, as added by section 6901(d) of OBRA '89 (which is discussed in greater detail below) specifies that the provisions of section 1919(h) apply to nursing facilities notwithstanding the fact that the facility (or portion thereof) also is a SNF under title XVIII. With regard to compliance, we interpret this provision to mean that the compliance decision applicable to the Medicaid NF will also apply to the Medicare SNF in a dually participating facility.

If HCFA and the State disagree on the compliance of the dually participating facility in situations which do not immediately jeopardize the health and safety of residents, section 1919(h)(6) specifies the means to resolve the disagreement. Specifically, section 1919(h)(6)(B) specifies that when the Secretary finds a facility out of compliance and the State makes no such finding, then the Secretary's noncompliance decision and enforcement actions control. On the other hand, section 1919(h)(6)(A) specifies that when the State finds noncompliance and the Secretary makes no such finding, the State's noncompliance decision and enforcement actions control. These provisions specify the means to determine compliance or noncompliance for the Medicaid NF which will then, by virtue of section 1919(h)(8), become the compliance/noncompliance decision for the Medicare SNF.

If both the Secretary and the State agree that the facility is out of compliance in a manner that does not immediately jeopardize resident health and safety, but the State wishes to pursue enforcement action(s) different than those chosen by the Secretary, the rules set forth at section 1919(h)(7) apply. Specifically, the provisions of section 1919(h)(7) determine whether the Secretary's or the State's enforcement actions will be applied to the Medicaid NF and then, by the authority at section 1919(h)(8), to the Medicare SNF. The provisions of section 1919(h)(7) are as follows:

• When both the Secretary and the State find that a facility should be terminated, section 1919(h)(7)(A)(i) specifies that the State's timing of the termination shall control so long as the termination does not occur later than 6 months after the finding to terminate.

• If the Secretary, but not the State finds that a facility should be terminated, section 1919(h)(7)(A)(ii) states that the Secretary shall, pending termination by the Secretary, permit continuation of payments for up to 6 months in accordance with section 1919(h)(3)(D).

• If the State, but not the Secretary, finds that the facility should be terminated, section 1919(h)(7)(A)(iii) states that the State's decision to terminate and the timing of such termination shall control.

• If the Secretary or the State, but not both, establish one or more remedies which are additional or alternative to the remedy of terminating the facility, section 1919(h)(7)(B)(i) specifies that such additional or alternative remedies shall also apply.

• If both the Secretary and the State establish one or more remedies which are additional or alternative to terminating the facility, section 1919(h)(7)(B)(ii) specifies that only the additional or alternative remedies of the Secretary shall apply.

We are proposing to implement section 1919(h)(7) of the Act at § 488.234. We are also proposing at § 488.234 that regardless of whose decisions control, the compliance and enforcement decisions for the Medicaid agreement are binding on the Medicare agreement. We also propose that when the provisions of section 1919(h)(7)(B)(i) apply, the additional or alternative remedy would be included as part of the Secretary's enforcement action.

We base this finding that the Medicaid decisions are controlling for Medicare on section 1919(h)(8) of the Act as discussed above. This is further supported in the OBRA '89 Conference Report which provides that "the enforcement rules for facilities participating in Medicaid apply also to those facilities participating in both Medicaid and Medicare" (H.R. Rept. No. 101-386, 101st Congress, 1st Sess., p. 484 (1989)). This will result in a dually participating facility being subject to the same enforcement action with respect to its Medicare and Medicaid agreements. We believe that Congress intended to give equivalency to the decision affecting both the Medicaid and Medicare agreements, since the requirements for each are virtually identical, and to allow for a consistent enforcement approach with respect to both agreements. In light of the virtual sameness of the requirements for both programs, we believe it is highly unlikely that Congress would have designed an enforcement system that would have a dually participating facility always subject to two entirely different sets of remedies, one by the Secretary and one by the State.

B. Authorities for Validation Surveys and HCFA Oversight Authority

Sections 1819(g)(3)(A) and 1919(g)(3)(A) direct the Secretary to conduct onsite surveys of a representative sample of nursing homes within 2 months of the last day of survey. Validation surveys are conducted on all types of facilities. If the State has determined that the facility is in compliance but the Secretary finds that the facility is out of compliance, the Secretary's determination as to the facility's noncompliance is binding and supersedes that resulting from the State survey as specified at § 488.234 of this proposed rule. If both the State and the Secretary find that a NF has not met all Federal requirements but disagree on the type or timing of remedies, the provisions at section 1919(h)(7), as explained above, apply.

While most situations posed by section 1919(h)(7) of the Act contemplate that one enforcement decision, either that of the State or the Secretary, will prevail, this may not always be the case. Specifically, section 1919(h)(7)(B) may create situations in which both the Secretary's and the State's enforcement choices will be given effect. This provision, for example, would require that when a State chooses to terminate a provider agreement, but the Secretary believes the imposition of a civil money penalty to be appropriate, both remedies must be applied.

Ideally, a provider would have the opportunity to contest the determinations of noncompliance at one hearing, but we believe the mechanics of the program may make this impossible if the two sets of remedies were based on 2 surveys, one of which being a validation survey. Validation surveys may be done at a different time than that of the State survey, and will be done by HCFA, not State personnel. Thus, whether the remedies selected by the State and the Secretary ought to be upheld may not turn on the same factual or legal bases, but rather on two separate sets of findings.

As a result, we foresee that providers may be entitled to two different hearings if they choose to contest the determination of noncompliance, one in accordance with Part 431 and the other in accordance with Part 498. (We have explained all hearing authorities in the following section.) We recognize that this administrative scheme may create some additional burdens for providers, but while it is not our intention to purposely create such burdens, we believe this result may be unavoidable. Certainly, we will consider comments on how this aspect of the program may be done differently.

In addition to the validation authority given the Secretary at section 1919(g)(3), the Act gives the Secretary general enforcement authority at section

1919(h)(3)(B) to impose remedies or to terminate a facility that the Secretary has found does not meet Federal requirements. Therefore, the Secretary can find noncompliance on the basis of State survey findings or his own validation surveys as he sees appropriate.

C. Authorities for Hearings and Appeals

A facility can request a hearing on denial of participation, termination of provider agreement, and a certification of noncompliance which leads to the imposition of remedies in accordance with proposed section 488.180(e). Because this proposed rule would eliminate time limited agreements for NFs and SNFs, as we explain later in section E entitled "Conforming Changes," ICFs/MR will be the only type of facility still subject to nonrenewals, and, therefore able to request a hearing on such a nonrenewal. We are proposing at § 488.180(e) to apply appeal procedures of part 498 or part 431, for the actions indicated below, based on whose authority initiates the certification and/or enforcement remedy.

Part 431

• The State's denial of participation, termination of provider agreement, or certification of noncompliance leading to an alternative remedy against a non-State Medicaid NF.

Part 498

• The Secretary's denial of participation, termination of provider agreement, or the Secretary's certification of noncompliance leading to an enforcement remedy against all State-operated facilities, as a result of a HCFA validation survey or HCFA's review of the State's survey findings as discussed earlier in the section entitled "Authorities for Validation Surveys and HCFA Oversight" in the preamble, and for non-State operated SNFs and dually participating SNF/NFs. The State would be required to take identical enforcement action, which would also be subject to these appeal procedures.

In attempting to find a way that would impose the least burden on providers, States, and HCFA, we believe that it would be the most efficient course to provide for a hearing under part 498 in all cases where a hearing is required for dually participating facilities. Section 1866(h) already entitles a Medicare provider to a hearing where the Secretary has found that it no longer meets the statutory definition of a provider. On the other hand, the Medicaid statute specifies no particular kind of hearing to which a Medicaid provider might be entitled in the case of adverse actions under that program.

We concluded that it would not be a sensible solution to require that a State and HCFA each provide its own hearing to dually participating facilities in adverse actions based on findings that would endanger the provider status of the facility under both programs. Such procedures would be costly, overly time consuming for the provider, and would potentially create confusion were there two different hearing results arising out of the same set of facts. Moreover, as explained above, we view section 1919(h)(8) as calling for the application of the decision made for Medicaid NFs to Medicare SNFs where a facility is dually participating. Thus, even where it is the State which dictates a certification of noncompliance under Medicaid, that decision would become one of the Secretary's under Medicare with respect to the facility's Medicare provider agreement.

Accordingly, these proposed rules would provide for only one hearing in such cases (which would reflect the current practice under both programs) to be provided under the procedures set forth in part 498 regardless of whether the decision to initiate the adverse action is the State's or HCFA's. The hearing decision would be binding on both the Secretary for Medicare and the State for Medicaid.

D. Prospective Providers

We propose in § 488.180(f) that prospective providers applying to participate in the Medicare or Medicaid (or both) programs meet all participation requirements as a precondition of their participation. We base this proposed rule on various provisions of the Act and the legislative history and on the overall structure of the Act which differs significantly from the one previously in effect. Specifically, we note that the Act, at sections 1819(a) and 1919(a), defines a skilled nursing facility and nursing facility, respectively, as one which "* * * meets the requirements * * * described in subsections (b), (c), and (d) of this section." Similarly, the enforcement sections of the Act, at sections 1819(h) and 1919(h), speak clearly to the need for remedial action if a facility fails to meet "a" requirement or "any" requirement set forth in the Act.

We realize that this approach would be a marked contrast from the current system in which facilities may be approved for program participation with level B deficiencies as long as all level A requirements are met. Congress, however, has removed this flexibility from the survey and certification system by admonishing the Secretary for having used a hierarchy of Federal requirements (as are represented by condition, standard, and element levels) and by removing the concept of "substantiality" from determinations of compliance. What will be in place under sections 1819 and 1919 is a "horizontal" system of requirements which obliges nursing home providers to comply with all such requirements, not just a portion of them.

We are fully cognizant that this approach to provider certification is a stringent one, but one that we believe reflects the plain language of the Act that Congress expects us to execute. We especially invite comment on this issue.

Under the proposed regulations, if a State-operated SNF is newly eligible as a provider under Medicare, HCFA would execute a provider agreement in accordance with 42 CFR 489.11. However, if a State-operated NF is newly eligible as a provider under Medicaid, HCFA would notify the Medicaid agency so that a provider agreement may be executed between the State and the facility if the State-operated NF meets all other requirements imposed by the Medicaid agency in addition to the Federal participation requirements.

If a non-State operated SNF is newly eligible as a provider, HCFA would execute a Medicare provider agreement in accordance with 42 CFR 489.11. If a non-State operated NF is newly eligible as a provider, the Medicaid agency may execute a Medicaid provider agreement in accordance with 42 CFR 431.107 if the NF meets all of the requirements imposed by the Medicaid agency in addition to the Federal participation requirements.

E. Substandard Care

The term "substandard care" is used in sections 1819(g)(2)(B) and 1919(g)(2)(B) of the Act in reference to extended surveys; sections 1819(g)(5)(C) and 1919(g)(5)(C) in reference to notice requirements to physicians and State nursing home facility administrator boards; and lastly in sections 1819(h)(2)(E) and 1919(h)(2)(D) in reference to specific remedies for repeated noncompliance when the Secretary or the State finds substandard care.

We propose to define substandard care in § 488.151 as care characterized by one or more deficiencies that meet a severity level of 3 or 4, regardless of scope; or level 2 in severity with a level 3 or 4 in scope in quality of care requirements, as defined in the regulations at 42 CFR 483.25. (The levels

for severity and scope are described in detail under the section of this preamble on "Enforcement Options.")

Our proposed definition of substandard care links certain levels of care for the purpose of extended surveys, notice requirements and imposing specific remedies as stated in the Act. Also, as pointed out in the IoM study, a more efficient survey process would permit surveyors to spend more time in poor performing facilities and less time in good facilities. Our definition of substandard care would help sort out the facilities that are performing at a particularly poor level from those whose performance may pose less of a threat to resident health and safety.

As explained below, if we were to use the term "substandard care" to generally mean noncompliance with any participation requirement it would result in a burdensome and labor intensive requirement for both the Secretary and the State. Although we do not propose to define substandard care as noncompliance with any participation requirement, we want to stress that any non-compliance with Federal requirements is unacceptable and may result in either termination or curtailment of Federal funding or the imposition of other alternative remedies.

In the case of extended surveys, the Act requires that the State or the Secretary conduct an extended survey in any facility that has provided substandard care. Our proposed definition of substandard care will aid surveyors in focusing on pervasive and significant problems identified in a facility. Additionally, sections 1819(g)(2)(B)(i) and 1919(g)(2)(B)(i) of the Act provide that the State or Secretary has the discretion to conduct an extended survey in any facility, and our definition in no way limits the surveyor from expanding his or her review.

Secondly, our proposed definition of substandard care would result in less of an administrative and financial burden to States in notifying each resident's attending physician and the State Nursing Facility Administrator Licensing Board. If a more general definition of substandard care were applied, it would result in a notification of attending physicians and State licensing boards for nursing home administrators for even the most minor deficiency. We believe the broader definition would defeat the purpose of the provision since attending physicians and State boards may ignore the large volume of notifications for some seemingly minor infractions of participation requirements. Conversely, notifying physicians and State boards of more significant deficiencies should prove more effective in facilitating an appropriate response.

Thirdly, our proposed definition of substandard care would highlight repeated cases of noncompliance which should be closely monitored. Because our definition of substandard care is focused on immediate and serious threat deficiencies and deficiencies found in the quality of care requirements, closer monitoring is appropriate. Again, a broader definition would result in a close monitoring of a much larger number of facilities. Although this may be ideal, there are limited resources available for this type of large scale monitoring. We believe that our proposed rule will monitor the most recalcitrant facilities.

F. Surveys

Sections 1819(g) (2) and (3) and 1919(g) (2) and (3) of the Act, as added by sections 4202 and 4212 of OBRA '87, specify the requirements for types and periodicity of surveys that are to be conducted for each facility; including standard, special, partial extended, extended, and validation surveys. These provisions include specific contents and procedures, frequency, consistency, and team composition. These regulatory provisions are an integral part of the long term care survey and enforcement system, and along with the requirements for long term care facilities published in a final rule on September 26, 1991 (56 FR 48826), and the interpretive guidelines and survey procedures issued in September 1989, and revised in April 1992, complete the execution of the long term care survey and certification process mandated under OBRA '87. This fully integrated system provides the comprehensive framework to ensure uniform surveyor interpretation of substandard care, and to guide recommendations with respect to the determination of appropriate remedies. The interpretive guidelines and survey procedures direct the State agency surveyors to gather information on facility performance relating to the delivery of care and services to the residents in the facility. These surveyor instructions structure the information gathering process and assist the surveyors in identifying situations that are indicative of a facility's compliance with the regulations. Moreover, the surveyor guidelines provide the surveyors with a consistent structure to evaluate the situation and the framework to analyze the information prior to making a compliance decision. For example, the survey guidelines related to the participation requirement concerning pressure sores list situations where pressure sores may be unavoidable. When surveyors observe a resident who acquired a pressure sore during the course of the stay in the facility, the surveyors must determine whether the resident's pressure sore was avoidable or unavoidable before they make a compliance decision. This type of guidance is provided for many of the resident centered requirements.

At the conclusion of the information gathering process, the survey team conducts the decision making process with respect to the facility's compliance with the participation requirements. The team evaluates its observations, including any information provided by the facility, in the context of what the regulations require and to determine whether the facility meets each particular requirement.

The survey guidelines provide the surveyors with structured information gathering procedures and interpretations related to the requirements that permit the surveyors to make consistent deficiency determinations. However, we do recognize that in many instances the decision with respect to whether a deficiency exists is ultimately a decision of professional judgment related to the particular situation observed and the context of the regulations. Therefore, to assure consistency, we promote team decision making and provide comprehensive training on the regulations and documentation techniques. We are also developing a surveyor competency test related to survey and certification techniques to enhance surveyors consistency.

This proposed rule also includes a scope and severity scale that reflects the relative seriousness of noncompliance with requirements for long term care facilities, and enhances the survey team's ability to classify identified deficiencies on an objective basis. The scope and severity scale provides a matrix to assist the survey team in assessing risks to the residents. The scale also serves to guide the survey team to ensure that remedy recommendations are uniform as well as appropriate to the seriousness of deficiencies.

Before arriving at the scope and severity scale which is reflected in the proposed regulation, we sponsored a workgroup comprised of representatives from the nursing home industry, consumer advocacy groups, State survey agencies, State Medicaid agencies and other interested parties. The workgroup met on three occasions in late 1988 and early 1989. The purpose of the workgroup was to assist HCFA in the development of an enforcement strategy

under the terms and concepts of nursing home reform as set forth in OBRA '87. The workgroup reviewed a number of concepts and ongoing projects concerned with enforcement of long term care requirements. While the workgroup posed several suggestions, no consensus was sought and no group recommendations were made.

Among the information considered was material related to the New York Quality Assurance System (NYQAS). NYQAS, which entailed a waiver of sections 1819(g) and 1864(a) of the Act, was a demonstration of an alternative long term care survey and certification methodology. One of the concepts of NYQAS was that the relative seriousness of deficiencies was not based on the relative value of requirements but rather upon the relative impact of a particular deficit in care on the residents. Based on this concept, NYQAS used an index incorporating the scope and severity of a deficit in care to determine its impact. The scope and severity of the deficit helped suggest whether a violation of program requirements had occurred. NYQAS's index was comprised of two components. One component was the "resident outcome scale" by which surveyors considered the seriousness of instances of potential or actual physical harm in order to assign a level from the scale. The second component was the "reaction scale,"' which purported to measure the seriousness of psychological harm to a resident by measuring the extent to which a resident reacted to a facility's violation of a requirement. Because many residents in nursing homes are bereft of reason and cannot react to a given situation, the scale incorporated the legal concept of the "reasonable man" to measure how a reasonable person would react in the same situation.

The "reasonable man" approach was rejected by most of the workgroup. The workgroup concluded, and we agree, that this approach would be unacceptable because, if used, it would result in inconsistent surveyor findings. Workgroup experience showed that there was a wide disparity in conclusions as to how the "reasonable man" would react in any given situation. This disparity would undermine the very consistency which the statute directs the Secretary and the States to pursue. On the contrary, the use of professional, adequately trained surveyors, with a thorough knowledge of professional standards of care and corresponding Federal regulations, helps ensure a consistent application of requirements. In fact, a representative of one of the nursing home industry associations participating in the workgroup specifically stated that the use of a reaction scale and reasonable person approach would serve no purpose and would only insert confusion and subjectivity into the enforcement process.

While the severity scale as reflected in the proposed regulation has been constructed without the "reasonable man" concept, and, indeed, without any reaction scale type of mechanism, it adds to the NYQAS model by incorporating the notion that the severity of a deficiency should include not only physical harm and resident rights violations, but also failures on the part of the facility to help the resident to achieve his other highest practicable physical, mental, or psychosocial well-being. This provision is based on the statutory language at sections 1819(b)(2) and 1919(b)(2) of the Act, enacted as part of the OBRA '87 legislation.

As described above, the proposed regulation also incorporates a scope scale. While the NYQAS approach required surveyors to consider frequency of occurrence and percentage of residents affected in determining the seriousness of outcomes, the scale reflected in this proposed rule would go beyond the NYQAS model. It is based on a plan developed by one of the organizations representing the nursing home industry. While the proposed scope scale began as one composed of five levels ranging from isolated to widespread occurrences, during the evolution of the draft regulation, the number of levels has been condensed to four. However, the system of graduated degrees of prevalence of a deficiency, as included in the organization's proposal, is reflected in the proposed rule. The one major difference between what the industry representative sought and what has been adopted in this proposed rule is the manner in which the scope and severity scales would be applied. One industry association favored the use of the scale for the purpose of determining whether to cite deficiencies. It suggested this approach in order to prevent the citation of deficiencies in situations in which the severity of actual or potential outcomes is so mild, and the incidence of the observation is so limited, that the negative impact on residents is negligible, at most. On the other hand, the proposed regulation would provide for the use of the scope and severity scales only for the purpose of determining the appropriate enforcement remedy.

The workgroup did discuss the use of scope and severity scales for both purposes: i.e. for determining whether a deficiency should be cited, and, if so, what remedy should be imposed. Thus, the workgroup considered the possibility of applying scope and severity scales twice: once when the survey team conducts its survey and again when the State survey agency makes its enforcement recommendations.

The Department would like to use scope and severity scales for determining deficiencies as well as sanctions. However, we have been unable to develop a viable regulatory approach for doing so. Therefore, we have limited the use of scope and severity scales in the proposed regulation to determining enforcement actions. At the same time, we are inviting comment and recommendations for a regulatory design that could accommodate the use of scope and severity scales for determining deficiencies.

This rule also includes a provision at § 488.182 that requires the Secretary and each State to implement programs to identify potential areas of inconsistency with respect to survey results, and develop programs to reduce any inconsistencies that may be identified. As described in detail elsewhere in this rule, HCFA has implemented an exhaustive surveyor training and testing program that will ensure that surveyors are adequately trained and competent at performing surveys. This program provides surveyors with the skills to identify both actual adverse outcomes experienced by residents of long term facilities and potential hazards in the long term care environment. Surveyors are trained to consider the possible consequences of deficiencies in evaluating the seriousness of the hazard, and the likelihood of their occurrence in evaluating the relative risk to the resident population.

This proposed rule will also provide uniformity of remedy recommendations and enforcement actions by implementing the specified remedies stipulated in the statute. Under this rule, the States are required to apply only the specified remedies unless they obtain prior approval to enforce alternative sanctions or alternate remedies under an amendment to their State plans. The Secretary will exercise his approval authority with respect to State plans to ensure that alternative remedies are appropriate and just as effective as those specified in the Act.

To further ensure consistent application of remedies imposed in response to noncompliance with requirements for long term care facilities, we will hold the facilities fully responsible for satisfying all requirements for the protection of the health, safety and rights of their residents. We believe that a facility is responsible for the management of its operations and for meeting the provisions of care, resident rights and facility administration requirements to which it commits itself. The statute clearly establishes that long term care facilities must meet specific requirements, and that the survey and enforcement process must verify that facilities comply with all requirements or ensure that facilities with deficiencies take prompt action to achieve full compliance with all requirements. However, we do expect surveyors to exercise reason in determining a facility's responsibility for certain situations. For example, it may be unreasonable for a surveyor to cite a facility with noncompliance when a resident, who requires assistance for all daily living activities, is found to be wet when the interview is conducted. The surveyor should consider the recency of the urination and the attentiveness of staff in assessing the occurrence. We train surveyors to exercise consistency and accuracy in determining a facility's responsibility for such situations. We believe that the nursing home requirements are reasonable and the survey protocols and survey process provide the structure to guide a survey team's consistent application of those requirements. When a survey team uses these protocols and processes, it can evaluate the extent to which a particular nursing home meets Federal requirements. The survey team documents what it finds in terms of scope and severity. A large number of similar findings (high scope) or only one egregious deficiency related to resident health and safety may be indicators of a nursing home that has a systemic problem adequately caring for its residents. On the other hand, a low scope of a minor problem may not be indicative of a problem in the delivery of care. In the case of the resident who is wet at the time of the interview, the surveyor may not be able to ascertain the recency of urination. However, nursing homes do care for incontinent individuals, and if this one case was an isolated instance of such a surveyor observation, the team could conclude that staff is sufficiently attentive, and examines residents frequently enough to preclude any subsequent problems. Moreover, surveyor training courses stress ways to arrive at consistent and accurate conclusions as to facility responsibility in cases such as these.

Therefore, to ensure program consistency, we would specify that to the extent a facility fails to meet requirements for long term care facilities, the facility is held fully responsible and will be expected to correct all deficiencies promptly or be subject to the remedies provided for in this rule. However, whenever there appears to be a conflict between a resident's right and the resident's health or safety, we would expect the surveyor to determine if the facility attempted to accommodate both the exercise of the resident's rights and the resident's health, including exploration of care alternatives through a thorough care planning process in which the resident may participate. We expect facilities to meet the standard of treating residents in such a manner as to attain or maintain the highest practicable physical, mental and psychosocial well-being, but to keep in mind that a resident has the right to participate in his or her care planning and to refuse treatment. In summary, we believe the scope and severity scales to assess risks to residents and classify identified deficiencies on an objective basis along with an intensive surveyor training program, as proposed, provide the Secretary and the States with the procedures to achieve the necessary prompt compliance by facilities. We request any comments and recommendations on the strategy or any other methods or techniques for enhancing surveyor consistency in the identification of deficiencies.

These proposed survey and enforcement procedures are intended to protect residents' rights, health and safety and not unduly burden the facilities or the survey agencies. We believe that these proposals will effectively implement the intent and substance of the survey, certification, and enforcement aspects of the long term care aspects of the statute. Due to the extreme importance of these regulations in realizing the entire nursing home reform initiative of OBRA'87, we are specifically requesting comments on the aforementioned provisions geared toward the realization of consistency in the survey and enforcement processes and the adequacy of surveyor training.

• Standard Survey—Content and Frequency.

Sections 1819(g)(2)(A)(ii) and 1919(g)(2)(A)(ii) of the Act require that each SNF or NF that seeks to participate in Medicare and Medicaid must be subject to a standard survey. Each standard survey must include, for a case-mix stratified sample of residents, a survey of quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities, and social participation; sanitation, infection control, and the physical environment; an audit of written plans of care and of residents' assessments to determine the accuracy of these assessments and the adequacy of the plans of care; and a review of compliance with residents' rights. The State survey agency's failure to follow the procedures set forth in this section will not invalidate otherwise legitimate determinetions that a facility's deficiencies exist. We propose to incorporate these provisions under § 488.155.

Sections 1819 (g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Act require that each SNF and NF be subject to a standard survey not later than 15 months after the last day of the previous standard survey and that the statewide average intervals between standard surveys must not exceed 12 months. We propose to incorporate this provision under § 488.158 and to specify when and how the average intervals would be computed. We propose to require that the survey agency compute the statewide average intervals annually at the end of each Federal fiscal year, beginning at the end of fiscal year 1992 (i.e., September 30, 1992). It would calculate the average by comparing the date of the most recent full standard survey for each currently participating facility in the State to the date of its preceding standard survey. Special purpose abbreviated surveys, which are not standard surveys, would not be considered in the statewide average computation. HCFA would assess State performance and apply an appropriate sanction specified at proposed § 488.170 and described in the preamble section entitled "substandard survey performance" to ensure that State survey agencies meet the 12-month average interval requirement.

• Special Surveys.

Sections 1819 (g)(2)(A)(iii) and 1919(g)(2)(A)(iii) of the Act, as added by OBRA '87, specify that a standard survey or an abbreviated standard survey may be conducted within 2 months of any change of ownership, administration, management of a facility, or director of nursing to determine whether the change has resulted in any decline in the quality of care furnished by the facility. A survey conducted for the purpose of investigating a complaint against a facility is also considered a special survey. An abbreviated standard survey is a partial survey that focuses on a

specific participation requirement or requirements. We are proposing that the decision of whether to conduct a standard or an abbreviated standard survey under these circumstances be at a State survey agency's or the Secretary's discretion, based on the individuals and facilities involved and the State's concern that the quality of care may have declined (§ 488.158(e)).

• Extended and Partial Extended Surveys.

Sections 1819 (g)(2)(B) and 1919(g)(2)(B) of the Act, as added by sections 4202 and 4212 of OBRA '87, require States and HCFA to conduct an extended survey if, at the completion of the standard survey, the facility is found to have furnished substandard quality of care. The State survey agency of HCFA would have the discretion to conduct an extended survey or partial extended survey at any time for any reason. However, the State agency or HCFA must conduct an extended survey when substandard quality of care deficiencies are found during the standard survey.

The Act requires that the extended survey be conducted immediately after the standard survey or, if that is not practicable, within 2 weeks after completion of the standard survey.

In accordance with the Act, we would require that, during an extended survey, the survey team must review and identify the policies and procedures for those provisions of the regulations that produced the substandard quality of care and must determine whether a facility complies with all requirements of participation. The extended survey must also include an expansion of the size of the sample of residents' assessments reviewed, a review of the staffing levels and staff inservice training, and, if appropriate, an examination of contracts with consultants.

These provisions would be incorporated in proposed § 488.160.

• Consistency of Surveys.

Sections 1819 (g)(2)(D) and 1919(g)(2)(D) of the Act, as added by sections 4202 and 4212 of OBRA '87, require each State to implement programs to measure and reduce inconsistency in the application of survey results among surveyors. We interpret this provision to include both inconsistencies in survey findings and inconsistencies in the application of enforcement remedies. Therefore, the proposed regulations at § 488.182 would specify that the State must conduct ongoing studies and analyses, and/or implement new programs to measure and reduce inconsistencies in survey results, such as validation of surveyor findings, and the application of enforcement remedies. The proposed regulations also would specify that HCFA will perform the same tasks.

• Composition of Survey Teams.

Sections 1819 (g)(2)(E) and 1919(g)(2)(E) require that surveys be conducted by a multidisciplinary team of professionals. This team must include a registered nurse. The team must not include (1) any individual who is serving, or has served within the previous 2 years, as a member of the staff of, or as a consultant to, the facility surveyed; or (2) any individual who has a personal or familial financial interest in the facility surveyed. We are proposing to interpret financial interest to mean having any direct or indirect ownership or controlling interest in the facility (§ 488.164(a)(2)(ii)).

The Act requires us to provide comprehensive training to all surveyors in conducting standard and extended surveys, including the auditing of resident assessments and plans of care. The Act also provides that no individual may serve as a member of the survey team unless the individual has successfully completed a training and testing program in survey and certification that we have approved. We are proposing (§ 488.164(b)) to specify that the training, at a minimum, would consist of: application and interpretation of regulations for SNF and NFs; techniques and survey procedures for conducting standard and extended surveys; and techniques and survey procedures for auditing resident assessments and plans of care.

We require that each State survey agency provide an orientation developed by HCFA for new surveyors. Following the orientation program, each surveyor is required to attend a HCFA basic surveyor training course. The basic course provides instruction on regulatory requirements, proper use of surveyor guidelines, techniques of surveying facilities, documentation skills, and communications skills.

HCFA has developed a test pursuant to sections 1819(g)(2)(E)(iii) and 1919(g)(2)(E)(iii) of the Act. This testing component has been developed with the assistance of survey directors (or their representatives) as well as with experienced long term care surveyors who identified critical knowledge, skills and abilities to conduct a long term care survey. Once the testing program is administered to all surveyors employed prior to the implementation of sections 1819(g)(2)(E)(iii) and 1919(g)(2)(E)(iii), it will be given on an ongoing basis to prospective surveyors, i.e., those who have not yet been authorized to participate on the survey team as more than an observer. The test will be given as part of the training and testing program mandated in the Act and incorporated in § 488.164(c) of the proposed rule. We will continue to consult with licensure and survey agencies to ensure the training and testing program is meeting its intended objectives.

HCFA will continue to provide, on an ongoing basis, updated, periodic in-service training and specialty courses designed to meet surveyor training needs. This training can be provided through interactive video disks and written materials, and provides continuing education units (CEUs) for the surveyor. In the future, we expect to develop a satellite network to facilitate ongoing training. During the time prior to the completion of training, we would permit these individuals to observe onsite survey activities under the supervision of a surveyor who has successfully completed the required program. Again, we would not allow any individual to serve as a member of the survey team unless the individual successfully completed the training and testing program.

• Unannounced Surveys.

Sections 1819(g)(2)(A)(i) and 1919(g)(2)(A)(i) of the Act, as added by sections 4202 and 4212 of OBRA '87, require the State or local survey agency to conduct the standard survey of facilities without providing any prior notice to the facilities. While the Act specifically requires unannounced standard surveys, we propose to require that all surveys, whether abbreviated, extended, follow up, validation or otherwise, be unannounced and have incorporated this provision in the proposed regulations (§ 488.157(a)).

These sections of the Act also provide for imposition of a civil money penalty on any individual who notifies or causes a SNF or NF to be notified, of the time or date on which a standard survey is scheduled to be conducted. The civil money penalty may not exceed $2,000, and will be determined and administered by the DHHS Office of the Inspector General (OIG) in accordance with the requirements under section 1128A(a) of the Act governing such penalties under Medicare and Medicaid. The proposed regulations (§ 488.157(c)) would specify that HCFA will refer to the OIG cases in which there is evidence to suggest that individuals have given prior notification of surveys to SNFs and NFs.

As further assurances that there are unannounced surveys, the Act requires HCFA to review each State's procedures for scheduling and conducting standard surveys to assure that the State has

taken all reasonable steps to avoid giving notice of the survey. We are proposing in § 488.157(b) to review States' procedures on at least an annual basis and specifically to include an examination of all long-term care survey scheduling for a selected period. We would use our discretion in assessing the conduct of survey practices. Sections 1819(g)(2)(A) and 1919(g)(2)(A) of the Act require the State survey agency to take all reasonable steps in scheduling surveys to avoid disclosure of survey dates and requires us to monitor State operations more closely. We will use a revised State agency evaluation program to ensure that States are in compliance with the new requirement. When a survey agency is found to have notified a SNF or NF through its scheduling or procedural policies, we are authorized to apply appropriate sanctions for inadequate survey performance specified at proposed § 488.170 and described in the preamble section entitled "substandard or inadequate survey performance."

• Substandard or Inadequate Survey Performance.

Section 1819(g)(3)(C) of the Act requires the Secretary to provide an appropriate remedy (which may include training) when the State has failed to perform surveys required under the Act or when the Secretary has decided survey performance is not otherwise adequate. We are proposing the following remedies to be applied as appropriate: (1) Corrective action plan; (2) technical assistance on scheduling and procedural policies; (3) HCFA-directed scheduling; and (4) inservice training.

Section 1919(g)(3)(C) of the Act requires the Secretary to reduce administrative costs to the State at a rate described in section 1919(g)(3)(C) each time the State fails to perform surveys required under the Act or the Secretary decides the State survey and certification performance is otherwise inadequate. Further, section 1919(g)(3)(C) gives the Secretary the option of using training as an additional remedy.

The respective remedies would be applied whenever the Secretary finds that the State has failed to: (a) Perform surveys required by sections 1819(g)(2) and 1919(g)(2) of the Act and implemented in HCFA regulations; (b) abide by Federal standards and use the forms, methods, and procedures prescribed by HCFA in manual instructions; (c) identify a situation that is an immediate threat to resident health and safety, substandard care, or other deficient provider problems; or (d) determine proper provider eligibility and certification.

In addition, the agreement between the Secretary and the State survey agency under section 1864 of the Act provides that if the Secretary determines that the State is not able or willing to carry out any part of the survey and certification functions specified under the agreement, then the Secretary may terminate the agreement in whole or in part. Termination in part would include the exclusion of specific classes of providers or suppliers from the State agency's survey and certification function or could otherwise limit or decrease the scope of the agreement, and we have included this possible remedy for inadequate survey performance in this rule. While this remedy already applies to all provider and supplier categories specified in the agreement under section 1864, we are specifically including this provision in the regulation to highlight the importance of the survey and certification process to the nursing home reform initiative and to underscore our commitment to achieving the goals of that initiative.

• Validation Surveys.

Sections 1819(g)(3) and 1919(g)(3) of the Act, as added by sections 4202 and 4212 of OBRA '87, require the Secretary to conduct validation surveys of a representative sample of SNFs and NFs in each State that have been surveyed by the State survey agency. Prior to the effective date of OBRA '87, HCFA, acting for the Secretary, monitored State performance in conducting Federal monitoring surveys. OBRA '87 formalizes this process.

The validation surveys must be conducted within 2 months of the date of the State's surveys and must be of sufficient number to allow inferences about the adequacy of the State's surveys. In addition, the Act requires us to conduct validation surveys in at least 5 percent of the SNFs and NFs surveyed by each State during the year but in no case less than 5 facilities in each State. The same protocol used for the standard or extended survey must be used for the validation survey. We propose to incorporate these requirements in § 488.166(a).

The Act also provides that, if the Secretary questions the compliance of a facility, he or she may conduct a validation survey and, on that basis, make an independent determination concerning the facility's compliance.

If we find, as a result of the validation surveys, that the State has failed to perform the standard and extended surveys properly or that the State's performance is otherwise inadequate, we are authorized to apply an appropriate sanction for inadequate survey performance (§ 488.170) as described earlier under the heading "Substandard or inadequate performance."

G. Investigations of Allegations of Resident Neglect and Abuse and Misappropriation of Resident Property

Sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, as added by OBRA '87 and amended by section 411(a)(5)(C) of Public Law 100-360 (MCCA), require the State, through the agency responsible for surveys and certification of nursing facilities, to develop a process for the receipt and timely review and investigation of allegations of neglect and abuse and misappropriation of resident property by a nurse aide of a facility or by another individual used by the facility in providing services to residents. These sections also provide, after notification of the allegations, for the State to provide the opportunity for a hearing to the individual against whom an allegation has been made; and if the allegations are confirmed, for the State to notify the individual, the nurse aide registry, and the appropriate licensure authorities if applicable. Sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, as amended by sections 4008(h)(2)(L) and 4801(e)(13), respectively, of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), Pub. L. 101-508, enacted November 5, 1990, clarify that a State shall not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

Under the proposed regulations (§ 488.151), "abuse" would be defined as physical, psychological, or verbal interaction with a facility resident, including, but not limited to, ill-treatment, physical violation, and/or other disregard of an individual which could cause or result in mild to severe, temporary or permanent mental or physical injury, harm, or, ultimately, death. "Neglect" would mean a failure, through inattentiveness, carelessness, or omission, of an individual, to provide timely, consistent and safe services, treatment, and care to a facility resident. "Misappropriation of resident property" would mean the deliberate misplacement, exploitation, or wrongful, temporary, or permanent taking or use of a facility resident's belongings or money, or both without the resident's consent.

We would require the State to investigate allegations and if there is reason to believe, either through oral or written evidence, that the abuse, neglect, or misappropriation of resident property occurred, to notify the individual implicated in the investigation by mail (§ 488.185). This notification must include the nature of the allegation; the time and date of the alleged occurrence; the individual's right to a hearing; and the State's intent to report substantiated findings to the nurse aide registry for all nurse aides; and to the State licensure authority for those licensed individuals employed by the facility for such action as the licensure body deems necessary. The notice would also indicate that the individual's failure to request a hearing in writing within a specified timeframe would result in the State reporting the substantiated findings to the nurse aide registry.

While HCFA is authorized to promulgate investigation and hearing procedures for nurse aides accused of resident abuse, neglect or misappropriation of resident property, we believe that such an approach is inconsistent with our view that States should have the flexibility to rely on State entities other than the survey agency to investigate and adjudicate these matters. States will likely be using an array of different licensing or investigative bodies to meet their obligations in this area, and each of them may well have its own hearing procedures (including its own burden of proof standard). While States will be provided flexibility to design their hearing process, we are proposing that States must provide for a hearing within 120 days from the day it receives the request for a hearing. We believe that a prompt response, i.e., within 120 days, is reasonable and assures that the nurse aide's livelihood is not unduly jeopardized.

The proposed regulations (§ 488.185(d)) would require the State to conduct the hearing and complete the hearing record within 120 calendar days from the receipt of the request for a hearing. The State would be required to hold the hearing in a place and at a time that is reasonable and convenient for the individual to attend.

If the hearing officer determines that the allegations are not affirmed, the individual would be notified of the findings. All hearing records and investigative reports, regardless of results, and all employee statements of waiver of hearing rights would be maintained in accordance with State recordkeeping procedures and requirements.

If the individual waives the right to a hearing, or is found in a hearing to have neglected or abused a resident or misappropriated resident property, the State would be required to report the findings to the individual, and the administrator of the facility that employs the individual within 30 calendar days from the date of the hearing decision. The State survey agency must report the finding to the State nurse aide registry and, for licensed individuals, to the appropriate State licensure authority within 10 working days of the finding.

We propose to allow only the State survey agency to place the adverse findings on the registry, and only after notice to the individual. The State survey agency would be required to include in the report to the registry documentation of the State's investigation, including the nature of the allegation and the evidence that led the State to conclude that the allegation was valid; the date of the hearing, if the individual chose to have one, and its outcome; and a statement by the individual disputing the allegation, if he or she chooses to make one. We would also note that while State survey agencies are free to delegate to other State agencies the investigative and adjudicatory functions described in sections 1819(g)(1)(C) and 1919(g)(1)(C) of the Act, we fully expect State survey agencies to retain ultimate responsibility for compliance with these statutory requirements.

H. Investigation of Complaints of Violations of Federal Participation Requirements and Monitoring Compliance

Sections 1819(g)(4) and 1919(g)(4) of the Act, as added by OBRA '87, require each State to maintain procedures and adequate staff to investigate complaints of violations of Federal participation requirements. (Prior to OBRA '87, this was an administrative procedure implemented through manual instructions.) In addition, these sections of the Act required each State to conduct onsite monitoring of a facility on a regular, as needed basis to determine compliance with Federal participation requirements in the following circumstances:

- A facility has been found to be noncompliant with the requirements and is in the process of correcting deficiencies to achieve compliance.
- A facility was previously found to be noncompliant with the requirements, has corrected deficiencies to achieve compliance, and verification of continued compliance is needed.
- The State has reason to question the compliance of the facility with the requirements.

The proposed regulations (§ 488.182) would require the State survey agency to conduct surveys as frequently as necessary to ascertain compliance with the Federal requirements of participation or to confirm the correction of deficiencies under the cited circumstances. The proposed regulations would also incorporate the provisions of sections 1819(g)(4) and 1919(g)(4) of the Act that a State may maintain and use a specialized team to identify, survey, gather, and preserve evidence and to administer appropriate enforcement remedies against substandard facilities. The specialized team may include, but is not limited to, an attorney, an auditor, and appropriate health professionals.

I. Disclosure of Survey Information

Sections 1819(g)(5) and 1919(g)(5), as added by OBRA '87, provide for the disclosure of information regarding inspections and other activities of SNFs and NFs. These provisions make the Medicare and Medicaid disclosure requirements equivalent for SNFs and NFs and expand disclosure to include notice of noncompliance to the State long-term care ombudsman, attending physicians of residents, and the State licensing board for SNF and NF administrators. OBRA '90 added the requirement that the State ombudsman also be notified of any adverse actions imposed on a facility. Specifically, these sections of the Act require States and HCFA to make available to the public SNF and NF survey and certification information, including statements of deficiencies and plans of correction; Medicare and Medicaid cost reports; statements of ownership, and the names of individuals with direct or indirect ownership interest in a SNF or NF and the names of individuals with direct or indirect ownership interest in a SNF or NF who have been convicted of a criminal offense in violation of Medicare or Medicaid law. We are proposing in § 488.175 to accept oral as well as written requests for information and to charge the public for the cost of retrieval, reproduction, and mailing information in accordance with regulations under the Freedom of Information/Privacy Act. The disclosing entity (HCFA, the survey agency, or the Medicaid agency) would respond within 10 days with the requested information, if releasable and already available, or with an interim response explaining whether the information is releasable and when it will be available for release.

OBRA '90 specifies which information is releasable and when it is available for release. Sections 4008(h)(2)(M) and 4801(e)(14) of OBRA '90 provide that each State, and the Secretary, shall make available to the public information concerning all surveys and certifications of NFs and SNFs, including statements of deficiencies, within 14 calendar days after such information is made available to those facilities, and approved plans of correction. We would propose to implement this provision at section 488.175(d)(3).

Sections 4008(h)(2)(N) and 4801(e)(15) of OBRA '90 require State survey agencies to notify the State's long-term care ombudsman of any adverse actions imposed against a facility. We would propose at section 488.175(e) that the State survey agency be required to provide the State's long-term care ombudsman with the report of noncompliance of a facility, report of any adverse actions imposed, any written response by the SNF or NF, and the results of any appeals.

As a result of sections 4008(h)(2)(E) and 4801(e)(5)(D) of OBRA '90, sections 1819(b)(4)(C)(ii)(IV) and 1919(b)(4)(C)(ii)(IV) of the Act require the Secretary and the State, respectively, to provide notice to the State long-term care ombudsman and the State protection and advocacy system for the mentally ill and mentally retarded of SNF and NF waivers. Sections 1819(b)(4)(C)(ii)(V) and 1919(b)(4)(C)(ii)(V), as added by OBRA '90, require the facility receiving such nursing waivers to notify the residents of the facility (or, when appropriate, the guardians or legal representatives of such residents) and a resident's immediate family of the waiver. We are proposing, at section 488.175 (f) and (g), that facilities make such notice within 10 days from the date the SNF or NF is granted the waiver.

Under OBRA '87, the State is required to notify each attending physician and the State board responsible for licensing nursing home administrators when a facility has provided substandard quality of care. We would require each SNF or NF to provide either HCFA or the State, no later than 10 days after receiving a notice of substandard care, with a list of each Medicare and Medicaid resident in the facility and the name and address of his or her attending physician. We would require the State to notify the attending physicians and the State licensing board within 30 days of the date the SNF or NF is notified of a finding of substandard care. We recognize that this and the notification requirement related to nurse waivers are the only provisions in our proposed regulation which set forth requirements for nursing homes. All other provisions in this rule set forth requirements for the Secretary and the State in the enforcement of nursing homes. We are including these facility requirements in this proposed rule because they directly or indirectly pertain to the enforcement process.

The same sections of the Act also required the State survey agency to provide access to any information incidental to a facility's participation in Medicare or Medicaid upon request by the State Medical fraud control unit established under 42 CFR Part 1002, Subpart C. We propose to incorporate this provision under section 488.175(j).

J. Enforcement Options

1. Overview

As stated earlier, before the passage of OBRA '87, the only adverse actions available to HCFA and the States for imposition against long term care facilities that were out of compliance with Federal requirements were termination of participation, nonrenewal and automatic cancellation, and denial of participation for prospective providers. In addition, HCFA and the States had authority, in cases of long-term care facilities, to deny payment for new admissions to facilities rather than to terminate the provider agreements when deficiencies did not present an immediate and serious threat to the health and safety of residents of the facilities. The denial of payment provision was considered both an alternative to the more severe measures, as well as an intermediate step that HCFA or the State could take prior to and possibly in lieu of termination from the Medicare and Medicaid programs. The sanction afforded HCFA and the States the opportunity to defer the decision to terminate. Thus, the terms "alternative sanction" and "intermediate sanction" came into use to designate denial of payment for new admissions to facilities for a period of up to 11 months after the month in which the sanction was imposed. Former sections 1866(f) and 1902(i) of the Act were the authority for the alternative sanction under Medicare and Medicaid respectively. The Family Support Act of 1988, Pub. L. 100–345, repealed the Medicare provision and MCCA made the Medicaid provision applicable only to ICFs/MR.

OBRA '87 included revised and expanded authority for enforcement of the Federal participation requirements for long-term care facilities. Specifically, sections 4203 and 4213 of OBRA '87 added new sections 1819(h) and 1919(h) to the Act. Under the Medicare provisions, if a State survey agency finds, on the basis of a standard, extended, or partial extended survey that a SNF no longer meets a Federal participation requirement and further finds that the facility's deficiencies immediately jeopardize the health or safety of residents, then the State survey agency recommends that HCFA take immediate action to remove the jeopardy and correct the deficiencies through temporary management or terminate the facility's participation. HCFA may, in addition, provide for one or more other specified remedies, including civil money penalties, denial of payment for new admissions, or require a directed plan of correction.

Under Medicaid, the State Medicaid agency must take the immediate action to remove the jeopardy and correct the deficiencies that are found to pose an immediate threat to health and safety of residents through temporary management or termination of the facility's participation. The State may also impose one or more other remedies, including denial of payment, imposition of civil money penalties, emergency closure of the facility and transfer of residents, or other additional or alternative State remedies (approved by HCFA), other than termination.

The Act, at section 1819(h)(2)(A)(ii), provides that when deficiencies are found that do not immediately jeopardize the health or safety of residents, HCFA may impose one or more remedies for Medicare SNFs. Section 1919(h)(3)(A) provides that when deficiencies are found at State operated facilities that do not immediately jeopardize the health and safety of residents, the Secretary may terminate the facility's participation, provide for one or more other remedies, or both. For non State-operated Medicaid facilities, the State Medicaid agency may terminate the facility's participation or impose one or more of the remedies, or both, in accordance with section 1919(h)(1)(B) of the Act. Moreover, we believe that Congress expects the Secretary to have the authority to terminate Medicaid provider agreements or impose one or more remedies in non-immediate jeopardy cases in both State operated and non-State operated facilities. Section 1919(h)(7) specifically speaks to the Secretary's authority to terminate Medicaid provider agreements, and section 1919(h)(3) clearly provides that nothing in that subparagraph of the statute "* * * shall be construed as

restricting the remedies available to the Secretary to remedy a nursing facility's deficiencies."

We certainly expect that wherever it is appropriate, we will use sanctions as reflected in the report of the House of Representatives Committee on the Budget (H.R. Rep. No. 391, 100th Cong., 1st Sess. 472 (1987)). That committee report states, "The Committee expects that these sanctions will be invoked by both the Secretary and the States *whenever necessary* to promote compliance with the requirements of participation and assure high quality care for nursing facility residents" (emphasis added). The use of the term "whenever necessary" definitely implies that sanctions will not be appropriate in all cases.

However, while sections 1819(h)(2)(A) and 1919(h)(1)(B) of the Act provide for termination of the provider agreement as an enforcement option in non-immediate and serious threat situations, we are interested in providing incentives for facilities to achieve and maintain full compliance with health and safety standards before termination becomes necessary. Accordingly, we are proposing to select an enforcement remedy based on the seriousness of the noncompliance and the enforcement action most likely to elicit a prompt response from the facility to achieve and maintain compliance. The seriousness of the noncompliance would be determined through an evaluation system discussed in this rule at § 488.208, Choices of Remedies. Generally, the more pervasive or severe the facility's shortcomings, the more severe the penalty. Therefore, we see provider agreement terminations generally to be the enforcement response to the most serious deficiencies, or when facilities are unwilling or unable to achieve compliance or are otherwise ineligible for other enforcement remedies. Accordingly, our proposed regulations at section 488.212 reflect that enforcement scheme.

In a dually participating facility, if the Secretary and the State agree that the facility is out of compliance and the deficiencies do not immediately jeopardize the health and safety of residents, the Secretary's choice of remedies will apply to both the Medicare SNF and the Medicaid NF unless the State does not agree with the Secretary's proposed enforcement action(s). In such a case, the rules at § 488.234 would apply. In the case of immediate and serious threat deficiencies, in accordance with sections 1819(h)(4) and 1919(h)(5), if either the State or the Secretary finds such deficiencies, the State or the Secretary, respectively shall notify the other, and shall take immediate steps to remove the jeopardy through temporary management or terminate the Medicaid agreement. The Medicare agreement would also be terminated, and residents would be transferred, as specified at § 488.210.

2. Determination of Deficiencies

Effective October 1, 1990, providers of nursing services participating in the Medicare or Medicaid programs are subject to the requirements of participation that were published on February 2, 1989 (54 FR 5316). These requirements, which create a new Part 483, Subpart B, are the outgrowth of the IoM study and the statutory revisions enacted primarily through OBRA '87 that are set forth at subsections (b), (c), and (d) of sections 1819 and 1919 of the Act. As has been explained in that rulemaking, the new authorities focus more sharply on the resident care practices and outcomes, and facility practices with respect to resident rights.

While the process of determining whether a provider is determined to have violated program requirements will be one that is revised to reflect the new Act and regulations, the collective exercise of surveyor judgments, which has always been the vehicle for the identification of deficiencies, will remain unchanged. For this reason, there is no more reason to have specific regulations governing this process than there has been in the past. Thus, as is true now, surveyors will gather information based upon direct observations, record review, and interviews with residents, staff, and family members. Based on their collection of information, they will collectively compile and analyze it, and match the data to the legal standards facilities are obliged to meet to determine if deficiencies exist. As is true now, these conclusions may be based upon single observations or groups of observations, either one of which may sustain a finding that a requirement has not been met. Once the survey team has made its judgments about whether the facts support a conclusion that deficiencies exist, it would be their responsibility to assess the scope and severity of those deficiencies (in the manner described later in this preamble) in order to recommend one or more remedies to either HCFA or the SMA for the enforcement of the requirements.

3. Remedies To Be Imposed as Alternative or Intermediate Sanctions

Sections 1819(h) and 1919(h) of the Act provide that the State or HCFA may impose one or more of the following remedies in addition to, or instead of, termination when the State survey agency or HCFA finds that a facility has deficiencies: temporary management; denial of payment for new admissions; civil money penalties; and, for participating Medicaid-only facilities, closure of the facility and transfer of residents, or additional or alternative State remedies approved by HCFA. These sections also provide that HCFA may impose denial of all payments with respect to care furnished by a facility to Medicare patients, and withhold FFP for medical assistance furnished by a facility to all Medicaid patients. In addition, sections 1819(h)(2)(B) and 1919(h)(2)(A) permit the Secretary and the States to provide for other specified remedies, such as directed plans of correction.

Consistent with these provisions, we propose to add the following additional remedies:

- Denial of payment for new admissions of persons in certain diagnostic categories or requiring specialized care;
- Directed plans of correction; and
- State monitors.

The law, as added by OBRA '87, also specifies that the State or HCFA must specify criteria as to when and how each of these remedies is to be applied, the amounts of any fines, and the severity of each of the remedies to be used in the imposition of the remedies. The criteria must be designed so as to minimize the time between the identification of violations and final imposition of the remedies and must provide for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies.

The application of remedies would have a dual purpose: (a) To protect residents against inadequate care; and (b) to motivate providers to comply with the requirements of participation so that they may continue to provide quality services to residents. HCFA's or the State's decision to impose one or more remedies would be based on deficiencies found during surveys performed by the State survey agency and reported to HCFA or the State with recommendations for corrective action. The decision would sometimes be based on deficiencies found during HCFA's own validation survey.

In order to determine which remedy or remedies to apply, we propose at § 488.208 that the State or HCFA (depending on the authorities specified at § 488.180) would consider:

- The existence or nonexistence of immediate and serious threat to resident health and safety;
- The severity and scope of the deficiency or deficiencies;
- The relationship of one deficiency or group of deficiencies to other deficiencies;
- The facility's prior compliance history in general and specifically with reference to the cited deficiencies; and
- Whether the deficiencies are directly related to resident care.

The selection of a particular remedy would also be based on the nature of the deficiencies. Every facility that is out of compliance with a program requirement would be required to have in addition to a remedy, a traditional plan of correction approved by HCFA or the State agency, except as noted otherwise in the "Application of Remedies."

4. Temporary Management as a Remedy

When alternative remedies are imposed instead of termination to bring a facility into compliance with program requirements in an immediate and serious threat situation, temporary management would always be imposed immediately to remove the threat to residents in accordance with sections 1819(h)(2)(A)(i), 1919(h)(1)(A), and 1919(h)(3)(B)(i) of the Act. Temporary management may also be used in addition to termination in an immediate and serious threat situation while there is an orderly termination or closure of the facility. In situations where deficiencies do not constitute immediate and serious threat, HCFA or the State also may appoint a temporary manager to substitute as a manager or administrator. (Other remedies in addition to temporary management may also be imposed in the case of immediate and serious threat situations.)

The temporary manager would have the authority to hire, terminate and reassign staff, obligate facility funds, alter facility procedures as appropriate, or otherwise manage the facility as necessary to correct deficiencies identified in the facility's operation. The temporary manager would be required to be a licensed nursing home administrator within the State or have a reciprocal agreement with the State in which he or she is to serve; demonstrate prior competence as a nursing home administrator; and have had no disciplinary action taken against him or her by any licensing board of any State or by any professional society in the past 5 years. Neither the temporary manager nor his or her immediate family may have a financial or ownership interest in the facility. The temporary manager's salary would be paid by the facility. We propose that the salary for the temporary manager may not exceed an amount equivalent to the prevailing salary paid by providers in the geographic area for positions of this type, additional costs that would have reasonably been incurred by the provider if such person had been in an employment relationship, and any other costs incurred by such a person in furnishing services under such an arrangement (i.e., travel allowance) or as otherwise set by the State.

Termination would be imposed if the facility does not agree to this remedy or refuses to relinquish authority to the temporary manager. In addition, if, despite the appointment of a temporary manager, the immediate and serious threat is not removed within 23 days of the appointment of the temporary manager or if non-immediate and serious threat deficiencies are not corrected within 6 months from the last day of survey, the facility's participation would be terminated.

We propose to incorporate this provision in § § 488.206, 488.210, and 488.215.

5. Denial of Payment for New Admissions as a Remedy

- For all new admissions.

HCFA or the State could deny payment for any new Medicare and/or Medicaid admission in a participating facility on or after the effective date of the imposition of the remedy. In accordance with sections 1819(h)(2) (D) and (E) and their Medicaid counterparts, we would require that regardless of other remedies imposed, denial of payment for new admissions be imposed whenever a provider has not corrected the deficiencies within 90 calendar days after the last day of a survey identifying the deficiencies or a provider has been found to have provided substandard care on the last 3 consecutive standard surveys. At the discretion of HCFA or the State, the denial of payment remedy could be imposed, either singly or with other remedies. However, the statute requires the imposition of this remedy in cases governed by sections 1819(h)(2) (D) and (E) and 1919(h)(2) (C) and (D). If compliance is achieved and the denial of payment for all new admissions remedy is ended, payment would resume prospectively rather than retroactively.

We propose to incorporate this provision in § § 488.206 and 488.217.

- For New Admissions of Persons in Certain Diagnostic Categories or Requiring Specialized Care.

We are proposing a denial of payment for new Medicare or Medicaid admissions who have certain specified diagnoses or require certain specified special care needs as a remedy. This remedy would be used whenever HCFA or the State survey agency finds that the facility is not currently able to provide adequate care for these individuals or that caring for such individuals would adversely affect care provided to the other residents. If compliance is achieved and the remedy is ended, payment would resume prospectively rather than retroactively.

We propose to incorporate this provision in § § 488.206 and 488.217.

6. Directed Plan of Correction

Sections 1819(h)(2)(B) and 1919(h)(2)(A) permit the Secretary and the State, respectively, to provide for other specified remedies. We propose adding a directed plan of correction as a remedy in which a facility could be required to take action within specified timeframes according to the plan of correction developed by HCFA, the State agency, or the temporary manager (with HCFA or State agency approval).

The directed plans of correction would set forth the expected correction actions which the facility must take to achieve compliance and the dates by which the actions must be taken.

7. Use of State Monitoring as a Remedy

In proposed § § 488.206 and 488.222, if State monitoring is used as a remedy, we would require State monitors to be onsite as frequently as necessary to oversee the correction of specific deficiencies cited. This remedy differs from traditional revisits by the survey agency in that State monitors are onsite, as necessary, while corrections are being made, as opposed to a revisit which occurs after corrections are completed, and serve to confirm that the deficiency has been removed. State monitoring must be used as a remedy when a survey agency has cited a facility with substandard quality of care on the last 3 consecutive standard surveys.

Individuals serving as State monitors would be required to be employees or contractors of the State survey agency, and maintain professional qualifications needed to address the specific nature of the deficiencies. The State would be responsible for ensuring that the monitors are appropriate health care professionals. A State monitor could not function as a consultant to the facility nor could the State monitor be an employee of the facility. We believe that a monitor serving as a consultant to a facility would put the State in a potential situation of defending the

monitor's recommendations rather than making the facility responsible for correcting its deficiencies. Additionally, a monitor employed by a facility and working for the State would constitute a conflict of interest.

8. Civil Money Penalties

HCFA or the State, in accordance with the authorities at § 488.180, may impose a civil money penalty against and SNF, SNF/NF or NF that is determined by HCFA or the State survey agency to be out of compliance with one or more Medicare and Medicaid participation requirements. Under the proposed regulations under § 488.230, we would allow penalties to be imposed for noncompliance regardless of whether or not the deficiencies constitute immediate and serious threat to resident health and safety. We are proposing at section 488.230(b) that civil money penalties would not be imposed during the pendency of a hearing on the imposition of that remedy.

If HCFA proposes to impose a civil money penalty, it would deliver or send by certified mail, return receipt requested, to the provider, written notice of the intent to impose a penalty. The notice would include reference to the statutory basis for the penalty; the amount of the penalty per day of noncompliance; any circumstances that were considered when determining the amount per day of the proposed penalty; and instructions for responding to the notice, including a specific statement of the facility's right to a hearing and implications of waiving a hearing.

If the State proposes to impose a civil money penalty, the State would notify the facility in accordance with State procedures.

A penalty amount would be permitted to be imposed within the following ranges: for deficiencies constituting immediate and serious threat (i.e., severity level of 4, regardless of scope)—$3,050 to $10,000 per day; for deficiencies constituting non-immediate and non-serious threat above a scope or severity level of 1, $50 to $3,000 per day. For both levels, the amount of civil money penalty would be set at $50 increments within these ranges. The proposed amounts of these fines are based on a review of a variety of State civil money penalty systems available under State licensure laws. Moreover, we believe that the range of these fines will provide the economic motivation to achieve compliance and will decrease any monetary benefit of noncompliance. Removal of the immediate and serious threat, but not the deficiencies, would justify the shift to the range of penalties that are imposed for non-immediate and non-serious threat above a scope or severity level of 1. A penalty would be imposed at the immediate and serious level for the number of days the immediate and serious threat is present. We propose that a provider may, in lieu of contesting the deficiency which led to the imposition of the civil money penalty, waive the right to a hearing within the specified timeframes and procedures in the regulations under § 498.40 for Medicare and § 431.221 for Medicaid. If the facility waives the right to a hearing within 60 days from the date of notice, HCFA or the State must reduce the civil money penalty by 35 percent. If the facility waives the right to a hearing after the 60th day, HCFA's or the State's settlement is discretionary. The reduction in the civil money penalty reflects the savings to both the government and the provider of costs that would otherwise be incurred to formally adjudicate the dispute. The provider would be free to reject the option to waive the right to a hearing. The daily fine amount of a facility may be increased if the facility alleges compliance, but on a revisit by HCFA or the State survey agency, the facility is still found to be noncompliant with the same requirements. The purpose of giving HCFA or the State discretion to increase the daily fine, we believe, is to deter unfounded allegations of compliance. The amount of increase, if any, would be effective the day following the resurvey.

In determining the amount of the penalty, section 1128A(d) requires the Secretary to consider specific matters and also provides authority to take into account any other items relevant to the penalty determination. We are proposing that the Secretary's non-discretionary and discretionary requirements be applicable to the State as well to make the Medicare and Medicaid requirements equivalent for SNFs and NFs. We do not believe that Congress intended to have two separate assessment methodologies in place between both enforcement authorities when a civil money penalty from each could potentially be imposed on a single facility. Our proposal includes two additional factors so that the noncompliance itself is considered when determining the penalty amount.

In determining the amount of the penalty, we are proposing at § 488.230(g) that HCFA or the State must take into account the following factors—

- The facility's degree of culpability;
- The facility's history of prior offenses, including repeat deficiencies;
- The facility's financial condition;
- The nature, scope, severity and duration of the noncompliance; and
- The category of requirement with which the facility is out of compliance (e.g., resident rights, life safety code, etc.)

The effective date for a civil money penalty would be the 10th day after the last day of the survey in the case of immediate and serious threat deficiencies; or the 20th day after the last day of survey in the case of non-immediate and non-serious threat deficiencies. These timeframes permit time to notify the facility of the intent to impose a civil money penalty 5 days after the last day of survey.

When HCFA's or the State's imposition of a civil money penalty is upheld on appeal or the facility waives its right to a hearing, the civil money penalty would be for the number of days between the effective date of the penalty and the date of correction of deficiencies, or, if applicable, the date of termination. Penalties would be computed after compliance is verified or the facility has been sent notice of termination and the effective date. In the case of the facility achieving compliance, HCFA or the State would send a separate notice to the facility containing the amount of penalty per day, the number of days involved, the due date of the penalty, and the total amount due. In the case of a facility to be terminated, HCFA or the State would send this penalty information in the termination notice.

The daily accrual of civil money penalties would be imposed for no longer than 6 months for non-immediate and non-serious threat deficiencies after which HCFA would terminate a SNF provider agreement, or stop Federal funding for a NF, and the State may terminate the provider agreement if deficiencies remain. In the case of immediate and serious threat deficiencies, the daily accrual of civil money penalties would continue until HCFA or the State terminates the provider agreement or the deficiencies are eliminated. If the facility can supply documentation acceptable to HCFA or the State survey agency that compliance with participation requirements was attained on a date preceding that of the revisit, fines would only accrue until that date.

Payments for civil money penalties would be due: (a) 15 days after compliance is verified, if a hearing decision upholding the imposition of the penalty had been rendered before compliance had been verified, or the 60-day period for requesting a hearing has expired and the facility has not requested a hearing or has waived its right to a hearing; (b) 15 days after a hearing decision upholding the imposition of the penalty if compliance was achieved before the hearing decision; or (c) 15 days after the effective date of termination if compliance has not been achieved by that time. Currently, § 431.153 does not specify the number of days a facility has to request a hearing. We propose amending § 431.153 to add a new paragraph (b) which specifies that a NF or ICF/MR must file a request for hearing within 60 days of receipt of the notice of denial, termination, nonrenewal, or imposition of a civil money penalty or other remedies.

Consistent with the way other civil money penalties are recovered, as provided in section 1128A(f) of the Act, we propose that the amount of any penalty, when determined, may be deducted from any sum then or later owing by HCFA or the State to the facility against whom the penalty has been assessed. Interest would be assessed on the unpaid balance of the penalty beginning on the due date. We propose that the rate of interest to be assessed on the unpaid balance would be negotiable and for that reason might vary on a case by case basis. Funds collected by the HCFA or the State as a result of a civil money penalty would be returned to the Medicare Trust Fund or to the State, respectively. Civil money penalties collected from dually participating facilities would be returned to the Medicare Trust Fund and the State in proportion commensurate with the relative proportions of the number of Medicare and Medicaid beds actually in use at the facility at the time the facilities receive notice of the imposition of the civil money penalty. Under section 1919(h)(2)(A)(ii) of the Act, funds collected by a State Medicaid agency must be put into a common fund to be applied to the protection of the health or property of residents of any NF that the State or HCFA finds deficient, including payment for the cost of relocating residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost. Oversight of the collection and use of funds will be addressed through HCFA's State evaluation program now in place.

With respect to SNFs, State-operated facilities, or HCFA validation actions when HCFA's enforcement choice prevails, HCFA would have the exclusive authority to settle any case at any time prior to a final administrative law judge hearing decision. With respect to non-State-operated NFs or dually participating facilities or HCFA validation surveys when the State's enforcement prevails, the State would have the authority to settle any case at any time prior to the hearing decision.

9. Closure of a Medicaid Facility and Transfer of Residents as a Remedy

Section 1919(h)(2)(A)(iv) of the Act allows the State to close a Medicaid facility and transfer its residents as an available remedy in emergency situations (proposed § 488.226). Notice and appeal rights would be in accordance with State procedures.

10. Other Alternative or Additional State Remedies Other Than Termination—Medicaid only

Section 1919(h)(2)(A) allows the State to develop alternative or additional State remedies (other than denial of payment for new admissions and State monitoring). For Medicaid facilities, the State may establish and impose alternative remedies if the State demonstrates to HCFA's satisfaction that the alternative remedies are as effective in deterring noncompliance and correcting deficiencies as the remedies of temporary management, civil money penalties, and emergency closure of the facility and transfer of residents. Regardless of which alternative remedies the State establishes, it must include a denial of payment for new admissions and State monitoring of remedies. These remedies must be included because section 1919(h)(2)(D) of the Act requires that denial of payment for new admissions and State monitoring be imposed when a NF was found to have provided substandard quality of care on three consecutive standard surveys. We would require that these alternative or additional remedies be approved by HCFA and specified in the State plan (proposed § 488.228).

11. Selecting an Enforcement Remedy

Once a State or HCFA determines that violations of nursing home requirements have occurred, there is an obligation to assess what the most effective remedy ought to be to assure the protection of the well being of the resident population. Under the traditional approach to enforcement that has been in place for years, determinations of remedy (largely a decision to choose between a plan of correction or termination) have been dictated by whether deficiencies were identified as being at the condition or standard level. This hierarchy of requirements, however, which was criticized by the Congress, has been replaced by a system of requirements that are not segregated by weight. At the same time, while it is clear that a nursing home must meet all requirements, violations of some requirements may pose far greater threats to resident health and safety than violations of others. For example, violations of resident abuse prohibitions are obviously more likely to pose such threats than might a failure of a facility to timely report a change of ownership as required by the Act.

We believe that by enacting a broad array of remedies that vary as to form and severity, Congress explicitly recognized that there would be great variations in impact posed by violations of different requirements. As discussed above in the Overview, we believe the statutory scheme recognizes that it may not be appropriate to terminate a facility's provider agreement when compliance may be achieved rapidly through a directed plan of correction or the imposition of a denial of payment for new admissions. With very few exceptions, the Act vests complete discretion in the States and the Federal government to choose among the various statutory remedies subject only to the Congress' expectation that we and the States specify when and how each of the remedies would be applied.

Accordingly, we are proposing to institute a system that would guide surveyors, in the first instance, and then the State or HCFA, to make judgments as to which remedy would be best suited to a particular facility. We propose to do this through an evaluation of the scope and severity of the facility's deficiencies so that, generally, the more pervasive or severe the facility's shortcomings the more severe the penalty. The facility will not receive an aggregate non-compliance rating, but rather each deficiency will receive an individual scope and severity rating. As explained more fully below, scope and severity each would be gauged along four levels that would give a picture of the facility's degree of non-compliance with each requirement. Judgments of this kind would be made on the basis of violations of individual requirements or groupings (cluster) of requirements, at the surveyors' discretion.

We wish to emphasize that we do not view scope and severity determinations, or the scales upon which they are based, as representing mathematical standards or requiring precise or neatly quantifiable measurements. Assessing the breadth or depth of a facility's deficiencies is, by definition, an exercise in judgment. The experience in one facility cannot always be neatly applied,

as a mathematical equation, to another facility. The virtually endless spectrum of possible violations, and their impact on facility residents, assures that this task defies the application of rigid rules, and it is not our intention that the scope and severity scales be such. Rather, we see the scope and severity scales to be only a guide to focus surveyor judgments that, on a national basis, would yield a substantially consistent approach to the selection of enforcement remedies.

Thus, where we describe below a spectrum of scope determinations that range from a "very limited" number of cases (Level 1) to a "pervasive" pattern of non-compliance (Level 4), we do not intend that distinctions among the four levels would be characterized by a sharp line such as a fixed number of cases. Similarly, where we propose in the severity scale to have determinations range from "any deficiency with respect to requirements for long term care facilities not meeting the criteria for Levels 2, 3, or 4" (Level 1), to "Actual Physical Harm which has caused serious impairment or death" (Level 4), we are fully aware that distinctions among these levels would reflect surveyors' professional judgments, and may vary from facility to facility.

Because the Act vests almost complete discretion in the Secretary and the States in choosing an enforcement remedy (limiting only what remedy may be imposed in cases of immediate jeopardy or in cases of repeated noncompliance), we are proposing to exclude from review challenges to scope and severity conclusions, including the manner in which surveyors go about formulating their judgments. While we intend that the scales provide internal guidance only to survey agencies, we are including them in the regulations to provide the public, and particularly regulated facilities, facility residents, and States, with full disclosure as to how we expect to undertake the task of determining appropriate remedies for providers that have violated Federal program requirements. Whether determinations rest at one level or another, however, their impact has a bearing only on the choice of a remedy, not on whether a violation of a statutory or regulatory requirement has occurred. It is these latter determinations that a violation has occurred, to the extent that they have triggered an enforcement remedy, that providers clearly have the opportunity to contest since they address whether a facility meets the definition of a provider under either the Medicare or Medicaid program. Should our conclusions, or those of a State, that a facility does not meet requirements of participation be upheld, it is an entirely different matter to select a remedy. Clearly, the Act requires the States and us to make those determinations in a way that reflects whatever judgments we believe are appropriate to remedy non-compliance and thereby protect resident health and safety. These judgments are not appealable. In other words, the choice of remedy by either HCFA or the State, predicated on the determination of a scope and severity level, is not subject to review as part of the appeals process set forth in Parts 431 or 498.

a. Scope scale. We would propose to use a scope scale to assist surveyors in making their judgments as to how widespread a facility's deficiencies are. The ranges would encompass observations of the most isolated of events to those that, in the eyes of the surveyor, reflect the existence of a pervasive or systemic problem in the facility. As explained above, the selection of a certain scope level would not reflect a mathematical finding or a conclusion based upon statistical certainty. Rather, it would only serve to represent the applied judgment of the survey team based upon their expertise and knowledge of Federal requirements.

- Level 1—Isolated

The survey team might conclude that a deficiency is isolated if its perception is such that it believed the deficiency to exist only in a very limited number of cases.

- Level 2—Occasional

The survey team might conclude that a deficiency is occasional if, in its combined judgment, the deficiency is identified in a number of cases, but which in its view does not appear to reflect a pattern of facility behavior.

- Level 3—Pattern

The survey team might conclude that a pattern exists when, in its judgment, there are a sufficient number of repeated observations that it is likely that the deficiency might also exist in cases not reviewed by the team.

- Level 4—Widespread

The survey team might conclude that a deficiency exists in sufficient number that, in its judgment, the deficiency represents a systemic or pervasive practice of the facility.

These proposed surveyor guides would be incorporated in section 488.204.

b. Severity scale. This scale would be used to assess the severity of deficiencies in the facility. The scale would reflect two features of the Act. First, it recognizes Congressional intent that all requirements of the Act must be met. Second, however, it would recognize that violations of requirements take on greater or lesser significance depending upon the actual or potential harm that did or could occur, in the judgment of the survey team, as a result of the facility's deficiencies. We must emphasize that the scale is used to evaluate the seriousness of identified deficiencies. The scale cannot be used to determine if a deficiency exists. As is true for the scope scale, the severity would have four levels, only here the range of surveyor judgment would be from "Actual Physical Harm Which Has Caused Serious Impairment or Death" (Level 4) to potential physical harm that could cause serious impairment or death (Level 3), other harm (Level 2) to deficiencies not meeting the criteria for Levels 2, 3, or 4 (Level 1). Because this scale often would reflect certain qualitative determinations by surveyors, of necessity the lines separating the various levels would not be, and cannot be, marked by clear or precise boundaries. It is for this reason that we would expect surveyors to call upon their experience to guide the judgments that they would be asked to make. The four levels of guidelines would be:

- Level 1—Any deficiency with respect to requirements for long term care facilities not meeting the criteria for levels 2, 3, or 4.

- Level 2—Either a negative outcome or resident rights violation has occurred, or, in the judgment of the survey team, the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being has been compromised, or both.

- Level 3—Potential physical harm which could cause serious impairment or death.

In the survey team's judgment, there is a recognizable health and safety hazard, which if left unabated, is likely to cause serious harm, impairment or death.

- Level 4—Actual physical harm, which has caused serious impairment or death. Life threatening harm, serious impairment or death has occurred.

As discussed previously, we believe the proposed severity levels will prove to be an invaluable tool in allowing the survey team to objectively determine the seriousness of identified deficiencies and in guiding recommendations for enforcement actions. The severity levels as presented will help focus surveyor judgment and the scale will enhance consistency of survey findings.

Level 4 deficiencies reflect the most serious consequences of noncompliance with the requirements for long term care facilities. In these instances, the deficiency has resulted in serious impairment or death. Level 3 deficiencies are nearly as serious, but have not yet resulted in serious harm, impairment or death. In these instances, however, the threat of such physical harm would require selection of the same remedy. Under the current enforcement system, an adverse action can be based upon conditions at a facility that may not be causing actual physical harm to residents at the time of the survey but which, if left unabated, will likely cause such harm. For example, faulty wiring that poses a fire hazard or the practice of allowing residents with dementia to wander outside of the building unsupervised would be grounds for termination even though no fire or loss of residents had yet occurred. Since the potential for serious harm or death constitutes an immediate and serious threat, the enforcement response should be the same as it would be if the severe harm or death had already occurred. In those cases where the threat to patient health and safety is apparent, but there is no actual harm, the purpose of the enforcement response would be to prevent the actual harm from occurring. In those cases where actual harm has occurred, the purpose of the enforcement action would be to prevent the negative outcome from recurring. In these cases, the deficiency also constitutes immediate and serious threat (in other words, repeated instances of harm). Therefore, deficiencies at either severity scale level 3 or severity scale level 4 constitute an immediate and serious threat to resident health and safety, and the law requires that these facilities be terminated from participation or placed under temporary management until the threat is removed.

Although deficiencies classified in severity scale level 3 or level 4 are both immediate and serious, the result or outcome of the deficiency would determine whether the deficiency falls into one level or the other. Level 3 acknowledges that potential severe physical risk to the resident exists but has not yet been realized, while level 4 is assigned only when at least one instance of actual severe physical harm or death has occurred.

Level 2 deficiencies include those that result in a negative resident outcome that is less severe than those under Level 4. They include deficiencies causing physical harm or those violating residents' rights or those that do both, but which do not pose immediate and serious threat to patient health and safety. The survey team categorizes all other deficiencies as severity level 1. In those instances, the survey team has identified noncompliance with the requirements for long-term care facilities and the deficiencies do not meet the criteria for severity levels 2, 3, or 4. We have presented examples of deficiencies for each of the severity levels below.

Example: A survey team has determined that during the administration of a penicillin injection, a resident of a facility suffered anaphylactic shock as a result of penicillin allergy. The staff member who administered the injection was not licensed or otherwise qualified, and was not trained to recognize the reaction or to provide emergency life support measures. An ambulance was summoned but the resident died enroute to the hospital. This deficiency would be classified as severity scale level 4.

Example: The survey team observes a resident who has several stage IV pressure sores that have become acutely inflamed and severely infected. The pressure sores have infiltrated muscle tissue and bone surfaces have become exposed. The resident is in severe distress, and in the survey team's judgment, the resident's condition requires immediate therapeutic intervention. The survey team subsequently finds, through a review of the records and interviews with the resident, that the pressure sores were not present when the resident was admitted to the facility 3 months prior to the survey. Further investigation reveals that the facility has failed to implement the plan of care and this has allowed the sores to develop and worsen, despite several requests for medical attention by the resident and the resident's family. This would be classified as a severity scale level 4 deficiency.

Example: A survey team observes that medications are being administered intravenously to residents of a facility by unlicensed, unqualified personnel. In this instance, no actual harm has resulted from this practice, but there is a clearly recognizable health and safety risk that could result in serious impairment or death. This deficiency would be classified at severity scale level 3.

Example: A facility is located in a three story wood frame building. The life safety code portion of the facility survey reveals that the water to the sprinkler system has been shut off, and the facility does not have a working fire alarm system. Because there has not been a fire, no physical harm has occurred, yet the threat to the residents is immediate and serious. These deficiencies would be classified at a severity scale level 3.

Example: A survey team observes a resident with 4 stage III pressure sores. These decubiti have penetrated into the subcutaneous tissue and some infection is apparent. The survey findings show that the sores have developed since the resident was admitted to the facility, and the resident has not received treatment as specified in the plan of care. In the survey team's judgment, unless the patient receives prompt medical attention and effective nursing care, the condition of the pressure sores will deteriorate and the resident will likely suffer serious impairment and require medical treatment that should have been preventable. This would be classified as a severity scale level 3 deficiency.

Example: A resident is admitted to a facility, and the comprehensive assessment reveals that the patient had no pressure sores on admission. The resident has only limited ability to turn in bed and the plan of care states that the resident is to be turned side to side every two hours. During a survey conducted 4 weeks after the resident's admission, the resident is found to have a stage II pressure sore. Upon investigation, including an interview with the resident, it is determined that the resident is being turned only once every 8 hours. This would be classified as a severity scale level 2 deficiency.

Example: A survey team observes a patient being fed by a facility staff member. A review of the resident's plan of care and interview with the resident discloses that the patient can feed himself with assistance from an aide. However, this procedure is time consuming and the staff have taken it upon themselves to feed the resident instead. While the resident is well nourished and has suffered no physical harm, the resident is losing the ability to feed himself, and his physical, mental and psychosocial well-being has been compromised. This would be classified as a severity scale level 2 deficiency.

Example: A resident is admitted to a facility, and the comprehensive assessment reveals that the patient had no pressure sores on admission. The resident has only limited ability to turn in bed and the plan of care states that the resident is to be turned side to side every two hours. The resident has not yet developed any pressure sores. During a 3-day survey, the team observes that the resident is turned very infrequently. Upon investigation, including an interview with the resident,

it is determined that the resident is being turned only once every 8 hours. This would be classified as a severity scale level 1 deficiency.

Example: The survey team determines that while a facility has complied with the requirements concerning the management of resident funds with respect to residents' written authorizations, deposits in appropriate accounts, and recordkeeping and notification requirements, the facility has failed to purchase a surety bond or provide other means of assurance to secure the funds on deposit. This would be a level 1 deficiency.

We are seeking general public comment about how the severity scale levels are described as well as assigned. We specifically would like comments on the proposed construction of the severity scale whereby deficiencies at a severity level of 3 or 4, regardless of the scope, can result in the same sanctions. This possibility is caused by both levels including immediate and serious threat deficiencies. In the case of level 3, the potential harm may be life-threatening but has not occurred yet, while at level 4, the harm has occurred and has resulted in critical consequences if not death. We also request comment about the desirability to include, as a criterion of one level on the severity scale, the need for intervention by a health care professional. This was a characteristic of the NYQAS resident outcome scale which attempted to measure severity. It was based on the assumption that harm to a resident requiring the intervention of a health care professional to reverse is more serious than that which does not require such intervention. While we did not construct the severity scale in the proposed rule with such a distinction between sequential severity levels, we are soliciting comments on the advisability of doing so.

12. Application of Remedies

If a determination has been made that a deficiency would present an immediate and serious threat to resident health or safety, HCFA or the State would take immediate action to appoint a temporary manager to remove the threat, impose other remedies as it determines necessary to bring the facility into full compliance, and/or terminate the facility's participation in the program within 23 calendar days of the last day of survey. We proposed to continue our use of a 23-day timeframe established through administrative procedures because it provides ample notice to facilities without adversely affecting resident health and safety. If the facility does not accept temporary management, HCFA or the State would immediately terminate the provider agreement within 23 calendar days of the last day of survey. If the facility accepts temporary management but does not remove the immediate and serious threat within 23 calendar days of the appointment of the temporary manager, HCFA or the State would terminate the provider agreement on the 23rd day from that appointment. The 5-calendar day period for providing notice to facilities of termination of a provider agreement as specified in § 489.53 of the regulations would be included within this 23-day period. These proposed rules are reflected at section 488.210.

If the facility is found, at the time of the survey, to have deficiencies that do not pose an immediate and serious threat to resident health and safety, HCFA or the State may impose any of the alternative remedies or terminate the facility's participation or both. If the facility, initially found to have immediate and serious threat deficiencies, accepts temporary management and the immediate and serious threat is removed but deficiencies remain, HCFA or the State may terminate the facility's provider agreement if, in their judgment, due to the nature of the deficiencies, alternative remedies are not likely to be effective. When termination is not the selected enforcement action, the decision not to terminate would be conditioned on all of the following: (a) whether HCFA or the State finds that it is more appropriate to impose alternative remedies than to terminate the provider agreement of the facility; (b) the State has submitted a plan of correction to HCFA and HCFA has approved the plan and timetable; and (c) if the facility (for Medicare) or the State (for Medicaid) has agreed to repay HCFA all Federal money paid to or on behalf of the facility during the correction period if corrections are not made according to the plan. We believe that the above conditions would meet the statutory requirements of sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act while ensuring that quality of care is provided to nursing home residents promptly after deficiencies are noted. To the extent that termination occurs less frequently, there would be less disruption to nursing home residents and ensured access to needed services.

If a facility does not correct deficiencies within 90 days from the last day of survey, HCFA or the State must impose a denial of payment for new admissions remedy until the deficiencies are corrected or the 6 month continuation of payment period has expired.

As specified at sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act, HCFA or the State agency would notify the facility at the time it authorizes continuation of payment for a correction period of up to 6 months (from the last day of survey) that failure to comply with all requirements by the end of this correction period would result in the termination of the provider agreement for Medicare SNFs and discontinuance of FFP and termination for NFs. Termination would be effective no later than the last day of the 6-month period. The 15-day period for providing notice of termination to the provider would be included within this 6-month period.

Not all combinations of severity and scope would be considered immediate and serious threat situations. HFCA or the State agency would decide which remedy or remedies, if any, in addition to temporary management, should be used in immediate and serious threat situations, and which remedy or remedies should be used for non-immediate and non-serious threat deficiencies. We would note that a severity of 3 or 4, regardless of scope, would always constitute an immediate and serious threat to resident health and safety. A severity of 1, regardless of scope, would never constitute an immediate and serious threat to resident health and safety. Sections 1819(h)(2) and 1919(h)(3) of the Act state that when facilities do not meet the participation requirements, and the facility's noncompliance does not pose an immediate and serious threat to resident health and safety, the Secretary may impose specified remedies.

Although a deficiency at a scope and severity of 1 constitutes an instance of not meeting participation requirements, the Secretary is not required to impose remedies, since the statute (at sections 1819(h)(2)(A)(ii) and (E) and 1919(h)(3)(B)(ii)) mandates the imposition of remedies only in cases of immediate jeopardy or cases of repeated noncompliance. For this reason, we propose that for deficiencies at the 1–1 level a remedy will not be imposed. We believe that this deficiency level will cause no harm nor likelihood of any harm and that these deficiencies occur once or a very limited number of times. We believe that Secretarial discretion to not impose a remedy should be exercised for such minor low level deficiencies. This policy would recognize that level 1–1 deficiencies are inconsequential and do not represent a significant problem to resident health and safety.

Facilities, however, must be aware that they are responsible for complying

with all requirements of participation. A facility would be furnished with a summary of the level 1–1 deficiencies and would be required to sign the summary to indicate receipt of the summary and agree to correct the deficiencies and maintain compliance. The requirement to summarize level 1–1 deficiencies and alert the facility to the presence of level 1–1 deficiencies acknowledges that a problem could potentially occur if the deficiency is permitted to go uncorrected and possibly increase in severity and scope. No formal plan of correction would be required for this low level of deficiency and no remedies would be applied, but correction is necessary nevertheless. If repeat deficiencies at a scope and severity level of 1 are identified at the next standard survey, one or more remedies specified at § 488.206 will be imposed due to the persistence of the deficiencies over time.

When deficiencies occur other than those at a scope level of 1 and severity level of 1, the State or HCFA would be required to apply a remedy or remedies that would correct the deficiency or deficiencies as rapidly as possible, including those remedies already described.

When deficiencies occur at a severity level of 1 and scope level of 2 or more, and the conditions at § 488.212(c)(1)(i) are met, HCFA or the State must direct the facility to develop a traditional plan of correction and may impose any other remedies. If the plan of correction is acceptable, HCFA or the Medicaid agency will use the facility's plan as a directed plan or correction and may impose one or more remedies specified at § 488.206. If the facility's plan is not acceptable, HCFA or the Medicaid agency will develop a directed plan of correction. If the conditions at § 488.212(b)(1) are not met, HCFA or the State will impose alternative remedies.

When deficiencies occur at a severity level of 2, regardless of scope, the State must (and HCFA does) impose one or more remedies specified at § 488.206 paired with a plan of correction. Additionally, if the scope level is 3 or 4 in quality of care, the State must notify the attending physician of each resident for which such a finding is made, and any State board responsible for the licensing of the facility administrator.

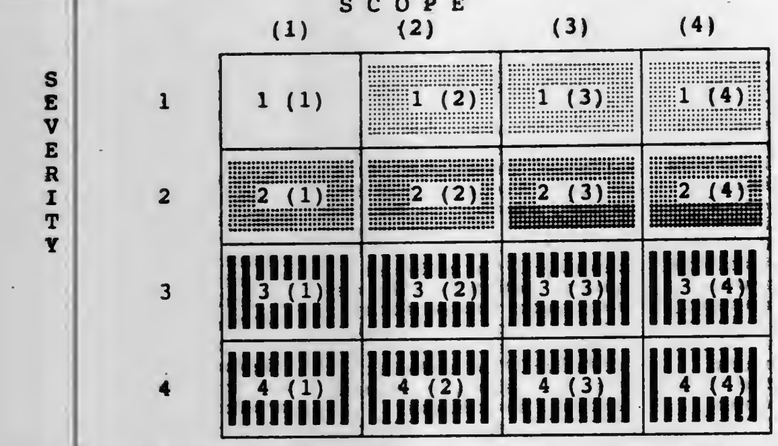
No remedy or combination of remedies could delay the termination of facility participation and discontinuation of FFP for more than 6 months from the last day of the survey if the facility fails to correct its deficiencies.

HCFA or the State may impose a separate remedy for each deficiency, or a single remedy for all deficiencies that are interrelated and subject to correction by a single remedy.

These proposed provisions would be incorporated in § 488.208 and are summarized in the following chart.

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1-1 Deficiency; No plan of correction; no remedy imposed; Recorded on Summary of 1-1 Deficiencies--not HCFA 2567. Written commitment by facility to correct. No appeal rights.

Deficiency with severity of 1 and scope of 2, 3 or 4. Requires facility-developed Plan of Correction.

Deficiency with severity of 2 regardless of scope. Must impose one or more remedies paired with a facility-developed plan of correction[1]; Appeal rights for all remedies except State monitoring.

Non-immediate & Serious Threat Substandard Care Deficiencies: Deficiencies at severity level of 2 and a scope level of 3 or 4 in quality of care[2] or severity of 3 or 4 and scope of any level for any deficiency. Must impose one or more remedies paired with a facility developed plan of correction[1]. Notification of attending physicians and licensure boards. Extended survey conducted. Appeal rights for all remedies except State monitoring.

III Immediate and Serious Threat Substandard Care Deficiencies. Must impose temporary manager to remove threat or terminate, and can, in addition impose one or more other remedies paired with a plan of correction.[1] Notification of attending physician and licensure boards. Extended survey conducted. Appeal rights for all remedies except State monitoring.

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[1] Unless the remedy is a directed plan of correction developed by HCFA, the State or the temporary manager.

[2] Must impose Denial of Payment & State monitoring remedies in a facility that was found to provide substandard care on 3 consecutive surveys.

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13. Procedures for the Imposition of Remedies: Notice

HCFA or the State would give the facility notice of intent to impose a remedy. Further, we propose that HCFA or the State give the facility notice of the remedy at least 2 days but not more than 4 days before the effective date of the remedy in immediate jeopardy situations, and at least 15 days before the effective date of remedy when there is no immediate jeopardy. Therefore, in practice, in immediate jeopardy situations, the remedy could be imposed anytime after the minimum 2 day notification period, but not later than the 10th day after the last day of survey. This allows up to 5 days for HCFA or the State to send the notice and an additional 2 to 4 days before the remedy is imposed.

14. Hearings: Medicare and Medicaid Consistency

The nursing home reform provisions now set forth in titles XVIII and XIX, with one exception, are silent as to the specific procedures that the Secretary or the States would need to employ in order to impose the various remedies set forth in the Act. Specifically, there is very little in the way of direction as to the type of hearing, if any, that providers might expect to have in the event of adverse action. Only with respect to civil money penalties, does the Act specify that a provider would be entitled to an evidentiary hearing prior to that adverse action through the incorporation of section 1128A of the Act into sections 1819(h) and 1919(h). Apart from the nursing home reform provisions, only section 1866(h) offers Medicare providers a right to a hearing (and judicial review), a hearing right which the courts have almost uniformly over the years concluded as properly being available only after the effective date of the adverse action.

What is clear, however, from both the Medicare and Medicaid provisions (at sections 1819(h)(2)(B) and 1919(h)(2)(A)) is the mandate that both the Secretary and the States design their enforcement systems in such a way as to minimize the time between the identification of deficiencies and the imposition of remedies. We read this to provide the clearest signal that Congress expected enforcement decisions affecting nursing home reform to be effective before providers exercise whatever appeal rights they may have. The Congress is cognizant, as are we, that to have an appeals system that must run its course before remedies are made effective would cause those remedies to be delayed significantly especially in light of what is very often a protracted process at both the State and Federal levels.

Apart from the explicit direction in the Act that remedies be imposed in this fashion, this approach to enforcement reflects the long history of enforcement procedures under the Medicare program where termination hearings have always been provided after the effective date of the termination and where denial of payment for new admissions have been imposed in a similar fashion. Certainly, the courts have almost universally endorsed this approach whenever they have been asked to resolve the issue of whether providers have a constitutional right to pre-action hearings. We believe that Congress intended for this to continue to be the rule especially since it carved out a prior hearing requirement only with respect to civil money penalties. Since neither the Constitution nor the Act require a prior hearing when a facility faces the most severe of remedies (i.e., termination), we believe that the imposition of lesser sanctions that now appear in the Act ought not merit any greater degree of due process.

As a result, we are proposing a set of appeal procedures for both the Medicare and Medicaid programs that will provide the opportunity for formal relief only after adverse action has taken effect, except for the imposition of civil money penalties. We propose to provide the opportunity for formal hearings in the case of all enforcement actions. While we believe that neither the Act nor the Constitution mandates that such formal relief be granted, we are mindful of striking a balance between the need to act quickly to remedy noncompliance with the opportunity for providers to fully air their concerns at an adversarial proceeding. We are excepting State monitoring from this appeal scheme because of our belief that these remedies are extremely mild and, therefore, do not raise the level of concern that a termination or temporary management might. Additionally, in light of the pervasive use of these remedies, we believe it would be unwise to allow formal appeals in these cases and thereby risk the overloading of both State and Federal enforcement machinery. Facilities dissatisfied with having State monitoring would have only an informal opportunity to challenge such action.

While under the Medicare program, this enforcement scheme would pose very little variation from current practice, certain State Medicaid programs may be more obviously affected. We know that under current Medicaid regulations at 42 CFR 431.153, which offer States the option of providing hearings either before or after the effective date of adverse actions, a number of States have opted to provide pre-termination hearings. This option was given in this regulation at a time when the Act was not as clear as it is now with respect to Congressional intent on the timing of appeal procedures, and at a time when the case law was not as overwhelmingly clear, as it is now on the fact that post-termination hearings satisfy facility due process concerns. We are concerned, however, that in many States that have opted to provide prior hearings, the pace of enforcement has materially slowed down in a way that we believe is not in the best interest of protecting the well-being of nursing home residents.

We believe, therefore, that there are compelling reasons to provide for an appeals mechanism under Medicaid that is triggered only after an adverse action has gone into effect. As discussed above, we believe this scheme most accurately reflects legislative intent. Additionally, we believe that the Act gives us general rulemaking authority to achieve this objective and that, in particular, we have the authority to regulate the timing of State Medicaid hearings that may be provided in accordance with section 1919(h)(7). We also see no reason why the rules governing the Medicaid program in this area should be any different than those governing the Medicare program when the substantive requirements affecting providers are exactly the same and where the enforcement options are virtually identical. Lastly, the broad array of new alternative enforcement choices coupled with the clear Congressional intent that all statutory requirements be met (and enforced) mean that there will be far more adverse actions being taken, and appealed, than previously. Therefore, we believe that there will be far greater pressures on the appeals machinery at both the State and Federal level which previously has only had to manage a relatively small number of termination actions. If appeals procedures were to be provided prior to the taking of the adverse action, there is a great likelihood that the potential clogging of the appeals system would result in little actual enforcement of Federal requirements.

Thus, we are proposing to revise section 431.153 to provide that States must impose remedies, with the exception of civil money penalties, against providers of services at the time that they identify the existence of violations of Federal requirements, notwithstanding any other provision of

State law. We intend that under this provision sanctions available under the program would become effective immediately after the identification of program violations once the provider has had notice of the deficiencies and the impending sanction. While the impetus for this change is the nursing home reform legislation enacted in the past few years by the Congress, it is our belief that the principles of due process that are reflected in these provisions are equally applicable to any provider of services that participates in the Medicaid program. We see no reason why a hospital, ICF/MR, or any other provider of services should have one set of rules for the imposition of sanctions while nursing facilities have another. Certainly, the considerations of due process are the same for all and, as indicated above, the courts have consistently ruled that providers of medical services are not constitutionally entitled to pre-sanction hearing relief. It is a cardinal principle of both the Medicare and Medicaid programs that while providers are entitled to have opportunities to redress their grievances, their interests are secondary to the needs of the program beneficiaries that they serve. It is our belief that the needs of individual program beneficiaries are best served by the availability of prompt and effective remedial action that will motivate the fastest efforts by providers to comply with Federal program requirements.

It is for this reason, as well as our desire to make the Medicare and Medicaid enforcement schemes parallel, that we propose to delete 42 CFR 442.40. This section has enabled States to continue FFP, under certain circumstances, for facilities whose provider agreement has been terminated, for up to 120 days after the effective date of the termination if a required administrative hearing decision has not been reached. In light of our objective to be more aggressive in the enforcement of nursing home requirements by requiring that States provide only post-action hearings, just as is done under Medicare, we see section 442.40 as plainly inconsistent with this objective. Certainly, if a nursing facility or ICF/MR were to be able to fall back upon the knowledge that it would continue to be paid for services furnished to program beneficiaries for perhaps as long as 4 months after the effective date of a provider agreement termination, the incentive to fully and promptly comply with all program requirements would simply not be as strong as if the facility were facing the elimination of Federal funding under a more accelerated schedule.

Since this change would affect not only nursing facilities, but ICFs/MR, we are specifically interested in comments on this change to the regulations.

We would note that terminations of ICFs/MR by the Secretary under section 1910(b) of the Act do provide for prior hearings in non-immediate jeopardy situations and this would continue to be the case where HCFA initiates the termination action. When States initiate termination actions against ICFs/MR, these rules would require that any State hearing be given after the effective date of the termination.

This is not to say that Medicaid institutional providers facing termination would not have the funding or time to assure an orderly transfer of the facility's residents. The provisions of such funding at 42 CFR 441.11 would continue to be applicable.

15. Continuation of Payment Pending Remedies

Sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act provide for the continuation of Federal payments to a provider having deficiencies for up to six months if: (a) the State finds it is more appropriate to apply an alternative remedy to termination, (b) the State has submitted a plan of correction that is approved by the Secretary, and (c) the facility (under Medicare) or the State (under Medicaid) agrees to repay us the payments under this arrangement should the facility fail to take the corrective action set forth in its approved plan of correction.

We believe that if any of the three factors set forth in the Act are not present, then a deficient facility would not be entitled to any Federal payments from the time that deficiencies are identified. We reach this conclusion because it is the only way we see to give these provisions any meaning. It is theoretically possible, for example, to read these provisions to mean that if a facility does not agree to make the required repayments, then the facility would be entitled to a continuation of payments with no limitation subject only to the termination of the facility's provider agreement. To read the Act in this manner, however, would be to nullify this provision since all a facility would have to do to avoid the Act's Federal payment limitation would be to refuse to comply with it. Since no facility would have any incentive to voluntarily limit the time in which it might receive Federal payments, it makes far greater sense to construe the provision to require the cessation of all Federal payments upon identification of deficiencies unless the State and facility agree to the terms of these sections of the Act. This reading, we believe, not only gives meaning to the Act (which would be consistent with canons of statutory construction), but would be consistent with the overall tenor of the legislation and its history which focus on the need for rapid and effective means to bring providers into full compliance with Federal certification requirements. HCFA or the State may terminate the SNF or NF agreement before the end of the six month correction period if the requirements of section 1819(h)(2)(C) and 1919(h)(3)(D) and corresponding requirements proposed at § 488.232(a)(1) are not met.

Remedies under this provision would cease when the facility fully complies with Federal certification requirements, or the facility's provider agreement is terminated. Accordingly, we are proposing in § 488.212 that HCFA terminate the SNF and NF agreements and discontinue FFP to NFs when deficiencies are not corrected within the maximum six month correction period.

We believe this action is appropriate since the Act does not authorize Federal payment beyond six months. Stopping payment at that time under Medicare would be tantamount to a termination of the provider agreement. Moreover, Medicare beneficiaries residing in a facility facing this remedy would not be able to stay there and have the cost of their care covered by the Medicare program. In such a case, they would need to move to a certified facility where the cost of their care would be covered. From their perspective, then, the remedy would also have the same impact as if the facility's provider agreement had been terminated.

We believe that it is appropriate to have an appeals mechanism for providers adversely affected by this provision since its impact may be the same as a provider agreement termination. Under Medicare, since we propose to terminate providers that are still out of compliance at the end of the period they are given for correction, it would be the termination that would be appealed in accordance with the procedures set forth in 42 CFR part 498. Under Medicaid, we propose to grant providers the same remedy notwithstanding the fact that sections 1819(h)(2)(C) and 1919(h)(3)(D) of the Act operate as payment provisions rather than as provisions that govern provider agreement terminations. While as a narrow matter it would be the State that would be denied the FFP for the provider in question, the central issue in dispute would be whether the facility had in fact successfully completed its obligations under the approved plan of correction. Accordingly, we believe it would be more logical to resolve such issues under the procedures normally used for them (Part 498) in which the provider would be the party, rather than the disallowance appeals mechanism heard through the Departmental Appeals Board (DAB) procedures at 45 CFR part 16 in which the State would be the party. However, we acknowledge the fact that despite facility compliance-related issues, the action taken by the Federal government would be against the State in the form of the withholding of FFP. FFP disputes are usually heard by the DAB and usually involve State performance matters. We therefore invite comments on whether our appeals mechanisms for such cases should offer DAB appeals to the States in addition to provider appeals under part 498.

16. Resolution of Differences in Findings and Recommended Remedies Between State and HCFA for Non-State operated Medicaid Facilities and Dually Participating Facilities

Sections 1919(h) (6) and (7) set forth special rules for when the State and Secretary do not agree on findings of noncompliance, timing of termination or where remedies overlap. If HCFA finds that a non State-operated NF or a dually participating facility has met all requirements, but the State survey agency finds that the facility has not met all requirements and the failure does not immediately jeopardize the health and safety of its residents, the State survey agency's finding will control (proposed § 488.234(a)(1)). In this instance the State's certification of noncompliance would control, but the facility would have its hearing rights met through the procedures set forth at part 498. If HCFA finds that a NF or a dually participating facility has not met all requirements and the failure does not immediately jeopardize the health or safety of its residents, but the State survey agency has not made such a finding, HCFA's finding will control. In this case, HCFA will impose the remedies and shall permit the State to continue payments to the facility during the correction period (proposed § 488.234(a)(2) and (3)). These provisions specify the means to determine compliance or noncompliance for the Medicaid NF which will then, by virtue of section 1919(h)(8) of the Act, become the compliance/noncompliance decision for the Medicare SNF.

If both HCFA and the State find that a facility has not met all requirements and neither find that the failure immediately jeopardizes the health or safety of its residents, the following procedures would apply:

- If both HCFA and the State find that a facility's participation should be terminated, the State's timing of any termination (as specified in proposed section 431.153(c)) would control so long as the termination date does not occur later than 6 months after the date of the finding to terminate (§ 488.234(b)).
- If HCFA, but not the State finds that a facility's participations should be terminated, HCFA's decision to terminate would prevail and HCFA would permit continuation of payment during the period prior to the effective date of termination, not to exceed 6 months from the last day of survey (§ 488.234(b)(1)).
- If the State, but not HCFA finds that a facility's participation should be terminated, the State's decision to terminate and the timing of the termination (as specified in proposed § 431.153(c)) would control (§ 488.234(b)(2)).
- If HCFA or the State, but not both, would impose one or more remedies that are additional or alternative to termination, the additional or alternative remedies would also be applied (§ 488.234(d)(1)).
- If both HCFA and the State would impose one or more remedies that are additional or alternative to termination, only the additional or alternative remedies of HCFA would apply (§ 488.234(d)(2)).

17. Termination of Provider Agreements and Discontinuation of FFP

Termination of the provider agreement and discontinuation of FFP would end continuation of payment and any remedy imposed, regardless of the proposed timeframes for the remedy or remedies originally specified. HCFA or the State would terminate the provider agreement and HCFA would discontinue FFP if (a) a facility fails to correct deficiencies within the timeframes specified; or (b) the facility fails to submit an acceptable plan of correction within the timeframes specified by HCFA; or (c) eligibility criteria for continuation of payment are not met. When HCFA or the State finds deficiencies which pose an immediate and serious threat and the facility refuses temporary management, HCFA or the State must terminate the provider agreement.

HCFA or the State would send to the facility and the public notice of termination of a provider agreement due to immediate and serious threat deficiencies at least 2 and not more than 4 calendar days before the effective date. The current termination notification requirement in 42 CFR 489.53(c)(1) requires HCFA to give notice to any provider at least 15 days before the actual effective date of a termination of a provider agreement, irrespective of whether the situation poses an immediate and serious threat, except in the case of Medicare SNFs. Section 489.53(c)(2) provides that SNFs with deficiencies that pose an immediate and serious threat are entitled to notice of the termination at least 2 days before the effective date of the termination of the provider agreement. Since the existing regulations do not discriminate between immediate and serious and non-immediate and serious threat situations except in the case of Medicare SNFs, we are proposing to amend § 489.53(c)(2) to require at least 2 and not more than 4 calendar days notice to all providers of a termination action involving an immediate and serious threat. This policy does not constitute an across-the-board increase in the number of days of prior notice. Rather, up to the 4 day notice in immediate and serious threat situations represents a decrease of notice for all providers except Medicare SNFs. The timeframe for notice to an SNF could be increased slightly from the current 2 days notice to the maximum 4 days notice because the 2 day deadline has proven to be administratively impracticable if a revisit is needed to verify that the jeopardy has been removed or corrections have been made. Notice of termination due to non-immediate and serious threat deficiencies would be sent at least 15 calendar days prior to the effective date (proposed § 488.238(c)). The procedures for termination of a provider agreement are those set forth in 42 CFR 489.53. These procedures form the basis for termination by HCFA and specify a provider's notice and appeal rights.

If HCFA or the State terminates the provider agreement, we would require the survey agency to arrange for the orderly transfer of all Medicare and Medicaid residents to another SNF or NF. If there is a closure of a Medicaid NF or dually participating facility by the State, the State would be required to arrange for an orderly transfer of all residents (§ 488.240). Current regulations and policy permit Federal funding for up to 30 days after termination if conditions at § 441.11(a) are met and we propose to continue this policy.

18. Conflict Resolution

With the publication of this notice of proposed rulemaking, we are seeking public comment about the desirability and feasibility of establishing a conflict

resolution system whereby facilities dissatisfied with a certification of noncompliance would be afforded a formal mechanism for disputing deficiencies prior to the administrative and judicial review processes. We are also requesting comments on the best way for such a system to be implemented. We wish to emphasize, however, that an informal conflict resolution system already exists. Providers have always had numerous opportunities to challenge survey findings throughout the survey process including during the survey, at the exit conference, while awaiting receipt of the official deficiency statement, upon receiving the deficiency statement, and through dialogue with the State and regional officials. Also, any further attempts by us to satisfy providers' perceived need for another codified dispute resolution system must be done in a way that satisfies the Congressional mandate that we minimize the time between the identification of deficiencies and the application of remedies.

K. Incentives for High Quality Care

Section 1919(h)(2)(F) of the Act, as added by section 4213 of OBRA '87, provides that, in addition to the remedies discussed, a State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to Medicaid. A State would incorporate such an incentive program in its State plan. We have incorporated this provision under proposed § 488.153(b).

L. Educational Program

Sections 1819(g)(1)(B) and 1919(g)(1)(B) of the Act provide that each State must conduct periodic educational programs for the staff and residents (and their representatives) of nursing homes in order to present current regulations, procedures, and policies on the survey and certification and enforcement processes. We propose to incorporate this provision under §§ 488.153(c) and 488.184.

M. Conforming Changes

In addition to changes already discussed in this preamble, we would make other conforming changes to regulations under Part 431, 442, and 489 as follows:

- In § 431.152, we would make a technical change to remove the reference to § 431.155, as § 431.155 no longer exists in the CFR.
- Section 431.221 has been changed to allow a request for a hearing to be made within 60 days from the date of notice rather than 90.
- Section 431.610 would be updated to remove the reference to § 405.1902 (now codified in part 483) and to add the change in responsibilities for surveying and certifying NFs.
- We propose to delete §§ 488.50, 489.15 and 489.16 for several reasons. Section 488.50 specifies the automatic cancellation clause for provider agreements under Medicare. Under the regulation, if a long-term care facility does not correct its deficiencies by the date specified in a plan of correction or make substantial effort and progress at correcting its deficiencies and submits an acceptable revised plan, its provider agreement would be automatically canceled not later than 60 days after the last day specified in the plan of correction. The cancellation of an agreement 60 days after the last date on a plan of correction is inconsistent with the timeframes established by OBRA '87 and the unannounced survey provisions. For example, the Act refers to continuation of payment to a facility with deficiencies for no longer than 6 months. Therefore, allowing 8 months of payments (6 months to attempt correction plus 60 days) while a deficiency persists would be a violation of the Act. However, allowing only 4 months as a target date on a plan of correction (with an automatic cancellation 60 days later, irrespective of any corrective action between the 4th and 6th months) impedes HCFA or the State's flexibility to continue a provider agreement for the maximum period of continuation of payment permitted by OBRA. The provisions for the automatic cancellation clause would be revised to delete SNFs and ICFs and retain ICFs/MR in §§ 442.109 and 442.110.

In addition, in order to maintain consistency with the OBRA provisions on unannounced surveys and a statutory change for Medicare which removed the 12-month time limit on Medicare agreements with SNFs, we are making the time limited agreements applicable only to ICFs/MR under Medicaid. Time limited agreements for SNFs and ICFs under Medicaid were required by regulations under Medicaid (to conform to the Medicare statutory requirement) in order to have uniform procedures for both the Medicare and Medicaid programs. Congress, through section 2153 of Pub. L. 97-35, removed the 12-month time limit on Medicare agreements with SNFs because experience indicated that the time limited agreements were not necessary to ensure compliance. However, the provision was never removed from the Medicaid regulations. We are, therefore, revising §§ 442.15 and 442.16 to make these sections applicable only to ICFs/MR and deleting §§ 488.50, 489.15 and 489.16.

The sections remaining in part 442, subparts A through C will deal with requirements for ICFs/MR only.

IV. Response to Comments

Because of the large number of comments we receive on proposed regulations, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble of that rule.

V. Regulatory Impact Statement

A. Introduction

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any proposed rule that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a regulation will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States and individuals are not considered small entities. However, all long-term care facilities are considered small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a metropolitan statistical area and has fewer than 50 beds.

Although we view the anticipated results as beneficial to the nursing home industry as well as to residents and

State and Federal Governments, we recognize that some of the proposed changes could be controversial and may be responded to unfavorably by some affected facilities.

We also recognize that not all of the potential effects of these proposals can be definitely anticipated, especially in view of their interaction with other Federal, State, and local activities regarding health and safety assurance. In particular, considering the effects of our simultaneous efforts to improve survey and certification activities, through both new survey procedures and instruments and the promulgation of regulations, it is impossible to quantify meaningfully the future effect of all of these proposals on facilities' compliance activities or costs. We also are unable to project the frequency with which deficiencies and termination proceedings may occur in light of the options available in addition to termination.

We do, however, expect adverse findings to be more consistent, better documented, and more effectively acted upon than under the current survey and certification procedures.

It is clear that a large number of small entities would be affected by adoption of these procedures, and a substantial number of those entities could be required to make changes in their operations in order to comply with these proposed health and safety standards.

For these reasons, we have determined that this is a major rule and prepared the following analysis. This analysis, in combination with the rest of the preamble, is consistent with the standards for analysis set forth by both E.O. 12291 and the RFA.

B. Affected Entities

As of March 1991, there are 713 SNFs certified for Medicare, 6,469 NFs certified for Medicaid, and 8,662 dually participating facilities certified for both Medicare and Medicaid. The majority (77 percent) of these facilities are proprietary. Approximately 21 percent are nonprofit and 2 percent are government operated.

The major rough indicator that we have available as a measure of facility compliance problems is the number of terminations. This includes both voluntary and involuntary terminations, since voluntary terminations are often precipitated by adverse survey findings. The number of voluntary terminations of SNFs for fiscal years 1987 through 1989 was 100, 96, and 101, respectively. Involuntary terminations for the same period were 60, 63, and 55, respectively. ICFs that voluntarily terminated for the same period were 62, 79, and 114, respectively. Involuntary terminations of ICFs for the same period were 13, 14, and 17, respectively. Current data show that there were still 92 active SNFs with repeat (two surveys) noncompliance for the same conditions of participation as of March 5, 1990. Fifty-eight terminated SNFs showed noncompliance with various conditions for 3 consecutive surveys. However, it should be noted that this proposed rule will not affect facility terminations until the effective date of this rule when it is published in final form.

We expect that the implementation of these proposed regulations as final rules will significantly influence those facilities that have been noncompliant in the past to come into full compliance with the Federal participation requirements. On the other hand, there will be a small percentage of facilities that may be unable to comply with these requirements because they are either poorly managed or have a poor financial structure.

We expect the proposed provisions on repeat deficiencies will increase the incentives for marginal facilities to maintain full ongoing compliance with health and safety standards. The use of irregularly timed unannounced surveys should also serve to reinforce those incentives. For the most part, terminations are avoidable by facilities that are willing and able to effectively allocate their resources to ensure compliance. Thus, these changes may not actually result in a greater number or percentage of terminations. To the extent that those marginal facilities that are most at risk from these provisions are able to come into full compliance, there may even be a reduction in the frequency of adverse actions. Of course, facilities would ordinarily incur some costs associated with compliance efforts. Those costs could be particularly burdensome if they necessitated substantial staffing increases or alterations to a physical plant. Our proposal to eliminate FFP after termination of the provider agreement, during the administrative hearing process provides an incentive for facilities to comply promptly with enforcement actions, but also would add to the burden on facilities.

C. Effect on State Survey Agencies

The impact that this proposed rule would have on State survey agencies must be viewed in the context of other ongoing activities related to survey and certification.

On October 1, 1986, HCFA implemented its new long-term care outcome oriented survey process (formerly called PaCS: Patient Care and Services Survey Process). This system reduced the number of standards from over 500 items to 357 items. On October 1, 1990 HCFA implemented a revised outcome oriented survey process that includes the OBRA provision of resident rights review. We expect the proposed 4-point severity and scope scale system to take the same amount of time to conduct a survey due to the addition of resident reviews and resident participation. Thus, we do not expect any significant economic changes.

HCFA employs a unit cost budget methodology that has established a 60-hour onsite survey time for SNFs. A total time of 148 hours for an average sized facility (100 beds) has been recommended based on several past studies conducted by central and regional office personnel. The supplemental hours include preparation, travel time, post-visit documentation, supervisory review, and clerical support. Based on OBRA '87 changes in survey and certification activities, we estimate that an average of 207 hours for a standard survey and 36 additional hours for an extended survey will be required for surveying activities.

Future survey or training courses will be designed to provide the new State agency surveyor with skills of observation as they relate to health facility surveys; and with the knowledge to apply Federal survey requirements in an accurate, consistent, and time efficient manner, thereby reducing costs.

We expect that these changes would not necessitate greater expenditures on the part of State survey agencies. However, they probably would result in a reallocation of resources, particularly geared to more intensive monitoring of marginal facilities. Further, these regulatory changes would contribute to a shift toward more enforcement-oriented roles for State survey agencies and surveyors.

Additionally, we expect some incremental costs to State agencies as a result of hearing appeals on termination and alternative remedies including civil money penalties as previously discussed. Negotiating civil money penalties alone will require additional and specialized staff (i.e. lawyer, accountant or auditor). However we believe that the range of these fines will provide the economic motivation to achieve compliance, thereby minimizing these potential costs.

D. Effect on Residents

The immediate benefits of compliance with these proposed regulations would be the increase in overall quality of health care provided in long-term care

facilities. Residents should also become more enthusiastic in light of their new participatory role in the survey process itself. This could result in better mental and/or physical condition.

Potential termination of SNFs and NFs could significantly impact beneficiaries, especially those living in rural areas.

E. Conclusion

We fully expect that the great majority of SNFs and NFs currently in marginal or noncompliance status relative to the repeat deficiencies provision will be able to comply with the new rules when they are finalized. However, we expect that facilities unable to comply, whether for financial or other reasons, would not be terminated as quickly under the proposed rules as under the existing regulations because of the additional options provided under these provisions. We believe the benefits of this proposed rule outweigh the problems that may be created for some borderline facilities.

VI. Information Collection Requirements

Section 4204(b) and 4214(d) of OBRA '87 provides a waiver of Office of Management and Budget review of information collection requirements for the purpose of implementing the nursing home reform amendments.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 442

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare.

42 CFR Chapter IV would be amended as set forth below:

A. Part 431 is amended as follows:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 431.115 is amended by revising paragraph (c) to read as follows:

§ 431.115 Disclosure of survey information and provider or contractor evaluation.

* * * * *

(C) *State plan requirements.* A State plan must provide that the requirements of this section and § 433.175 of this chapter are met.

* * * * *

3. Section 431.151 is revised to read as follows:

§ 431.151 Scope and applicability.

This subpart specifies the appeal procedures the State must make available to a nursing facility (NF) or intermediate care facility for the mentally retarded (ICF/MR), for which the State denies or terminates a provider agreement for the Medicaid program or nonrenews an agreement in the case of an ICF/MR. This subpart also specifies the appeal procedures for NFs which disagree with certification of noncompliance which led to the imposition of a remedy. The choice of remedy, including the amount of civil money penalty per day, is not appealable.

4. Section 431.152 is revised to read as follows:

§ 431.152 State plan requirements.

The State plan must provide for appeals procedures that, as a minimum, satisfy the requirements of §§ 431.153 through 431.154.

5. Section 431.153 is revised to read as follows:

§ 431.153 Evidentiary hearing.

(a) For actions specified at § 431.151, the Medicaid agency must give a provider the opportunity for a full evidentiary hearing as specified under paragraphs (c) and (d) of this section. If the facility requests a hearing, the hearing need not be completed before the proposed effective date of the denial, termination, nonrenewal, or imposition of any remedy except a civil money penalty.

(b) The affected NF, ICF/MR, or dually participating facility, or its legal representative or other authorized official, must file the request for hearing in writing within 60 days from receipt of the notice of the proposed denial, termination, nonrenewal, or imposition of a civil money penalty or other remedies.

(c) Notwithstanding any provision of State law, the State must impose all remedies promptly on any provider of services participating in the Medicaid program—

(1) At the time the State identifies violations of Federal requirements;

(2) After promptly notifying the facility of the deficiencies and impending remedy; and

(3) Except for civil money penalties, during any pending hearing that may be requested by the provider of services.

(d) In the case of a NF, ICF/MR or dually participating facility upon which a civil money penalty or other remedies has been imposed, the State must give notice to the facility and an opportunity for a full evidentiary hearing on the issue of the imposition of a civil money penalty or other remedy as specified under paragraph (e) of this section. Except for civil money penalties, the State must impose all such remedies during any pending hearing.

(e) The hearing must, at a minimum, include—

(1) Timely written notice to the facility of the basis for the decision and disclosure of the statement of deficiencies on which the decision is taken;

(2) An opportunity for the facility to appear before an impartial decision maker to refute the certification of non-compliance upon which the termination, denial, renewal or imposition of other remedy is based.

(3) An opportunity for the facility to be represented by counsel or another representative;

(4) An opportunity for the facility to be represented by counsel or another representative;

(5) An opportunity for the facility or its representatives to be heard in person, to call witnesses, and to present documentary evidence;

(6) A written decision by the impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

(f) If an NF or prospective NF is also participating or seeking to participate in Medicare as an SNF, and the basis for the State's denial, termination or nonrenewal of participation in Medicaid is also a basis for denial, termination or nonrenewal of participation in Medicare, the State must advise the facility that—

(1) The appeal procedures specified in Medicare facilities in Part 498 of this chapter apply; and

(2) A final decision entered under the Medicare review procedures will be binding for the purposes of Medicaid participation and Medicare participation in a dually participating facility.

(g) If HCFA determines that an NF or ICF/MR is not in compliance with requirements, thereby resulting in HCFA's imposition of alternative remedies, or if HCFA denies, nonrenews or terminates the provider agreement(s) of such a facility, and the findings and proposed remedies of HCFA prevail in accordance with § 488.234 of this chapter, the facility is entitled only to the review procedures specified in Part 498 of this chapter, in lieu of the procedures specified in this subpart.

6. Section 431.154 is amended by revising paragraph (a) and adding new paragraphs (c) and (d) to read as follows:

§ 431.154 Informal reconsideration.

(a) If the State decides to provide the opportunity for an evidentiary hearing required by § 431.153(a) only after the effective date of a denial, or, in the case of ICFs/MR, nonrenewal, the State must offer the facility an informal reconsideration, to be completed before the effective date.

* * * * *

(c) Determinations to impose civil money penalties or other alternative remedies in NFs, and SNFs in dually participating facilities do not require an informal reconsideration.

(d) Termination of the Medicare agreement of an SNF in a dually participating facility does not require an informal reconsideration.

7. Section 431.221 is amended by revising (d) to read as follows:

§ 431.221 Request for hearing.

* * * * *

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 60 days from the date that notice of action is mailed, to request a hearing.

8. Section 431.610 is amended by adding a new paragraph (a)(3), revising the introductory text in paragraph (g), and revising paragraphs (g) (2) and (3) to read as follows:

§ 431.610 Relations with standard-setting and survey agencies.

(a) * * *

(3) Section 1919(g)(1)(A) of the Act, concerning responsibilities of the State survey agency for certifying the compliance of non-State operated nursing facilities with Federal requirements for participation in the State's Medicaid program.

* * * * *

(g) *Responsibilities of survey agency.* The plan must provide that, in certifying NFs and ICFs/MR the survey agency designated under paragraph (e) of this section will—

* * * * *

(2) Take necessary action to achieve compliance or to withdraw certification in accordance with part 488 of this chapter, subparts D and E of this part; and

(3) Have qualified personnel perform on-site inspections periodically as appropriate based on the timeframes in the correction plan and—

(i) At least once during each certification period or more frequently if there is a compliance question; and

(ii) For non-State operated SNF and NFs, within the timeframes specified in § 488.158 of this chapter.

* * * * *

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

B. Part 441 is amended as follows:

1. The authority citation for Part 441 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.11 is amended by revising paragraphs (a) and (b) to read as follows:

§ 441.11 Continuation of FFP for institutional services.

(a) *Basic conditions for continuation of FFP.* FFP may be continued for up to 30 days after the executive date of termination or expiration of a provider agreement, if the following conditions are met:

(1) The Medicaid payments are for recipients admitted to the facility before the effective date of termination or expiration.

(2) The Medicaid agency is making reasonable efforts to transfer those recipients to other facilities or to alternate care.

(b) *When the 30-day period begins.* The 30-day period begins on either of the following:

(1) The effective date of termination or nonrenewal of the facility's Medicare provider agreement by HCFA, or of its Medicaid provider agreement as instructed by HCFA.

(2) The effective date of termination or nonrenewal of the facility's Medicaid provider agreement by the Medicaid agency on its own volition.

* * * * *

PART 442—STANDARDS FOR PAYMENT FOR NURSING FACILITIES AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

C. Part 442 is amended as follows:

1. The authority citation for part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302) unless otherwise indicated.

2. The heading for part 442 is revised as set forth above.

3. The headings for §§ 442.15, 442.16 and 442.110 are revised to read as follows:

§ 442.15 Duration of agreement: ICFs/MR.

§ 442.16 Extension of agreement: ICFs/MR.

* * * * *

§ 442.110 Certification period for ICFs/MR with standard level deficiencies.

* * * * *

4. Section 442.20 is removed and reserved.

5. Section 442.40 is removed and reserved.

6. Section 442.42 is amended by revising paragraph (a) to read as follows:

§ 442.42 FFP under a retroactive provider agreement following appeal.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, if an NF or ICF/MR is upheld on appeal from termination or nonrenewal of a provider agreement, and the State issues a retroactive agreement, FFP is available beginning with the retroactive effective date, which must be determined in accordance with § 442.13.

* * * * *

7. The heading for section 442.109 is revised to read as follows:

§ 442.109 Certification period for ICFs/MR: General provisions.

8. The heading for section 442.110 and paragraph (a) are revised to read as follows:

§ 442.110 Certification period for ICFs/MR with standard-level deficiencies.

(a) Facilities with deficiencies may be certified under § 442.105 for the period specified in either paragraph (b) or (c) of this section. However, ICFs/MR with deficiencies that may require more than 12 months to correct may be certified under 442.112.

* * * * *

9. Section 44.111 is removed and reserved.

Subchapter E—Standards and Certification

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

D. Part 488 is amended as follows:

1. The heading for part 488 is revised as set forth above.

2. The authority citation for part 488 is revised to read as follows:

Authority: Secs. 1102, 1128, 1128A, 1814, 1819, 1861, 1863, 1864, 1865, 1866, 1871, 1880, 1881, 1883, 1902, and 1919 of the Social Security Act (42 U.S.C. 1302, 1320a–7, 1320a–7a, 1395f, 1395i–3, 1395x, 1395z, 1395aa,

1395bb, 1395cc, 1395hh, 1395qq, 1395rr, 1395tt, 1396a, and 1396r).

§ 488.50 [Removed and Reserved]

3. In Subpart B, § 488.50 is removed and reserved.

4. A new subpart E is added to read as follows:

Subpart E—Survey and Certification of Long-Term Care Facilities

Sec.

488.150 Statutory basis.
488.151 Definitions.
488.153 State plan requirement.
488.155 Standard surveys.
488.157 Unannounced surveys.
488.158 Survey frequency.
488.160 Extended survey.
488.162 Consistency of survey results.
488.164 Survey teams.
488.166 Validation surveys.
488.168 Inadequate survey performance.
488.170 Sanctions for inadequate survey performance.
488.175 Disclosure of survey information.
488.180 Certification of compliance and noncompliance.
488.182 Investigation of complaints of violations; investigation and monitoring.
488.184 Educational programs.
488.185 Action on complaints of neglect, abuse, and misappropriation of property.

Subpart E—Survey and Certification of Long-Term Care

§ 488.150 Statutory basis.

Sections 1819 and 1919 of the Act establish requirements for surveying SNFs and NFs to determine whether they meet the requirements for participation in the Medicare and Medicaid programs.

§ 488.151 Definitions.

As used in this subpart—

Abbreviated standard survey means a partial survey that focuses on a specific participation requirement or requirements.

Abuse means physical, psychological, or verbal interaction with a SNF or NF resident, including but not limited to ill-treatment, physical violation, and/or otherwise disregard of an individual which could cause or result in mild to severe, temporary, or permanent mental or physical injury, harm, or, ultimately, death.

Deficiency means a SNF's or NF's noncompliance with or failure to meet a participation requirement specified in the Act or in Part 483, Subpart B of this chapter.

Dually participating facility means a facility that has a provider agreement in both the Medicare and Medicaid programs.

Facility means a SNF or NF, or a distinct part of a SNF or NF.

Licensed health professional means a physician, physician assistant, nurse practitioner, physical, speech, or occupational therapist, physical or occupational therapy assistant, registered professional nurse, licensed practical nurse, or licensed or certified social worker.

Misappropriation of resident property means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a facility resident's belongings or money, or both, without the resident's consent.

Neglect means a failure, through inattentiveness, carelessness, or omission of an individual to provide timely, consistent, and safe services, treatment and care to a facility resident.

NF means a Medicaid nursing facility.

Nurse aide means any individual who provides nursing or nursing related services to residents in a facility and who is not a licensed health professional, a registered dietitian, or someone who volunteers to provide such services without pay.

Substandard care means care furnished in a facility that has one or more deficiencies in any area with a severity level of 3 or 4, regardless of scope; or a level 2 in severity with a level 3 or 4 in scope in the quality of care requirements for long term care facilities.

§ 488.153 State plan requirement.

(a) A State plan must provide that the requirements of this subpart and subpart F of this part are met, to the extent that those requirements apply to the Medicaid program.

(b) A State may establish a program to reward, through public recognition, incentive payments, or both, nursing facilities that provide the highest quality care to residents who are entitled to medical assistance under this title. For purposes of section 1903(a)(7) of the Social Security Act, proper expenses incurred by a State in carrying out such a program are considered to be expenses necessary for the proper and efficient administration of the State plan under this title.

(c) A State must conduct periodic educational programs for the staff and residents (and their representatives) of NFs in order to present current regulations, procedures, and policies under this subpart and subpart F of this part.

(d) A State—

(1) Must establish the remedies of denial of payment for new admissions, civil money penalty, appointment of temporary management and authority to close a facility or transfer residents in emergency situations and State monitoring in accordance with sections 1819(h)(2)(E)(ii) and 1919(h)(2)(D)(ii) of the Act; or

(2) May establish additional remedies or remedies alternative to the remedies specified at section 488.206 other than denial of payment for new admissions, State monitoring and termination for non-State operated Medicaid facilities.

(3) Alternative remedies, in the Secretary's judgment, must be as effective in deterring noncompliance and correcting deficiencies as the remedies specified at section 488.206.

§ 488.155 Standard surveys.

(a) For each SNF and NF, the State survey agency must conduct standard surveys that include all of the following:

(1) A case-mix stratified sample of residents;

(2) A survey of the quality of care furnished, as measured by indicators of medical, nursing, and rehabilitative care, dietary and nutrition services, activities and social participation, and sanitation, infection control, and the physical environment;

(3) An audit of written plans of care and residents' assessments to determine the accuracy of such assessments and the adequacy of such plans of care; and

(4) A review of compliance with residents' rights requirements set forth in Subpart B of Part 483 of this chapter.

(b) The State survey agency's failure to follow the procedures set forth in this section will not invalidate otherwise legitimate determinations that a facility's deficiencies exist.

§ 488.157 Unannounced surveys.

(a) *Basic rule.* All surveys must be unannounced.

(b) *Review of survey agency's scheduling and surveying procedures.*

(1) HCFA reviews on an annual basis each State survey agency's scheduling and surveying procedures and practices to ensure that survey agencies avoid giving notice of a survey through the scheduling procedures and the conduct of the surveys.

(2) HCFA takes corrective action in accordance with the nature and complexity of the problem when survey agencies are found to have notified a SNF or NF through their scheduling or procedural policies. Sanctions for inadequate survey performance are in accordance with § 488.170.

(c) *Civil money penalties.*

An individual who notifies a SNF or NF, or causes a SNF or NF to be notified, of the time or date on which a standard survey is scheduled to be conducted is subject to a Federal civil money penalty not to exceed $2,000.

§ 488.158 Survey frequency.

(a) *Basic period.*

The survey agency must conduct a standard survey of each SNF and NF not later than 15 months after the date of the previous standard survey.

(b) *Average interval.*

(1) The statewide average interval between standard surveys must be 12 months or less, computed in accordance with paragraph (d) of this section.

(2) HCFA takes corrective action in accordance with the nature and complexity of the State's failure to ensure that survey agencies meet the 12-month average interval requirement. If the provider is a Medicaid facility, HCFA reduces FFP in accordance with § 488.170. Corrective action may include one or both of the following:

(i) Technical assistance.

(ii) Inservice training.

(c) *Other surveys.*

The survey agency may conduct a survey as frequently as necessary to—

(1) Determine whether a facility complies with the participation requirements; and

(2) Confirm that the facility has corrected deficiencies previously cited.

(d) *Computation of average interval.*

The survey agency computes the average interval at the end of each Federal fiscal year by comparing the last day of the most recent standard survey for each participating facility to the last day of that facility's previous standard survey. (Special purpose surveys are included in the computation if they were standard surveys, but not if they were abbreviated surveys.)

(e) *Special surveys.*

(1) The survey agency may conduct a standard or an abbreviated standard survey to determine whether certain changes have caused a decline in the quality of care furnished by a SNF or an NF, within 60 days of a change in the following:

(i) Ownership;

(ii) Entity responsible for management of a facility (management firm);

(iii) Nursing home administrator; or

(iv) Director of nursing.

(2) The survey agency must conduct a standard or an abbreviated standard survey to investigate complaints of violations of requirements by SNFs and NFs.

§ 488.160 Extended survey.

(a) *Purpose of survey.*

The purpose of an extended survey is to identify the policies and procedures that caused the facility to furnish substandard care.

(b) *Scope of extended survey.*

An extended survey includes all of the following:

(1) Review of a larger sample of resident assessments than the sample used in a standard survey.

(2) Review of the staffing and in-service training.

(3) If appropriate, examination of the contracts with consultants.

(4) A review of the policies and procedures related to the requirements for which deficiencies exist.

(5) Investigation of any participation requirement at the discretion of the survey agency.

(c) *Timing and basis for survey.*

(1) The survey agency must conduct an extended survey not later than 2 weeks after completion of a standard survey which found that the facility had furnished substandard care.

(2) In accordance with sections 1819(g)(2)(B)(i) and 1919(g)(2)(B)(i) of the Act, the survey agency or HCFA has the discretion to conduct an extended survey or partial extended survey at any facility.

§ 488.162 Consistency of survey results.

The survey agency must (and HCFA will) conduct ongoing studies and analyses and implement new programs to measure and reduce inconsistencies in survey results such as validation of surveyor findings, and in the application of enforcement remedies.

§ 488.164 Survey teams.

(a) *Team composition.*

(1) Surveys must be conducted by a multidisciplinary team of professionals, which must include a registered nurse.

(2) Either of the following circumstances disqualifies a surveyor for surveying a particular facility:

(i) The surveyor currently serves or, within the past two years, served as a member of the staff of, or as a consultant to that facility.

(ii) The surveyor or a member of his or her immediate family has any financial interest or any direct or indirect ownership interest in that facility.

(b) *HCFA training.*

HCFA provides comprehensive training to surveyors, including at least the following:

(1) Application and interpretation of regulations for SNFs and NFs.

(2) Techniques and survey procedures for conducting standard and extended surveys.

(3) Techniques for auditing resident assessments and plans of care.

(c) *Required surveyor training.*

(1) The survey agency may not permit an individual to serve as a member of a survey team unless the individual has successfully completed a training and testing program on the conduct of a standard and extended survey including the auditing of resident assessments and plans of care, and in survey and certification procedures.

(2) The survey agency must have a mechanism to identify and respond to in-service training needs of the surveyors.

(d) The survey agency may permit an individual, prior to the completion of the training program, to observe onsite survey activities under the supervision of a surveyor who has successfully completed the required program.

§ 488.166 Validation surveys.

(a) *Sample validations.*

HCFA conducts validation surveys of a representative sample of State-surveyed SNFs and NFs each year to determine the adequacy of the State survey—

(1) In at least 5 percent of the SNFs and NFs surveyed by the State, but in not less than 5 facilities in each State;

(2) Separate but concurrent with, or immediately after the State survey, as scheduling permits, but in all cases within 60 days of the date of the State survey;

(3) Unannounced to the facility prior to the survey; and

(4) Using the HCFA protocol prescribed for use by the survey agency.

(b) *Focused review.*

HCFA may conduct a validation survey of a SNF or NF whenever it has reason to question a facility's compliance or noncompliance with any requirement or any time at HCFA's discretion.

(c) *Appeals.*

The appeals procedures applicable to certifications of noncompliance based on validation surveys are set forth at § 488.180(e).

§ 488.168 Inadequate survey performance.

HCFA considers survey performance to be inadequate if the State survey agency failed to—

(a) Conduct surveys in accordance with the requirements of this subpart;

(b) Use Federal standards, protocols, and the forms, methods and procedures specified by HCFA in manual instructions; or

(c) Identify an immediate or non-immediate jeopardy situation, substandard care, or other deficiencies.

Inadequate survey performance does not relieve a SNF or NF of its obligations to meet all requirements for program participation, nor does it invalidate adequately documented deficiencies.

§ 488.170 Sanctions for inadequate survey performance.

(a) HCFA will assess the performance of the State's survey and certification program annually.

(b) When a State's performance is inadequate, HCFA takes the following action:

(1) For Medicaid facilities HCFA will—

(i) Reduce FFP as specified in paragraph (c) of this section, and if appropriate,

(ii) Provide for training of survey teams.

(2) For Medicare facilities HCFA will—

(i) Specify the inadequacy to the survey agency;

(ii) Require a plan of correction;

(iii) Provide for training of survey teams;

(iv) Provide technical assistance on scheduling and procedural policies;

(v) Provide HCFA-directed scheduling; or

(vi) Initiate action to terminate the agreement between the Secretary and the State under section 1864 of the Act, either in whole or in part.

(c) *Reduction of FFP.*

In reducing FFP for inadequate survey performance, HCFA uses the formula specified in section 1919(g)(3)(C) of the Act, that is 33 percent multiplied by a fraction—

(1) The numerator of which is equal to the total number of residents in the NFs that HCFA found to be noncompliant during a validation survey for that quarter; and

(2) The denominator of which is equal to the total number of residents in the NFs on which HCFA conducted validation surveys during that quarter.

(d) *Appeal of FFP reduction.*

When a State is dissatisfied with HCFA's determination to reduce FFP, the State may appeal the determination to the Departmental Appeals Board, using the procedures specified in 45 CFR Part 16.

§ 488.175 Disclosure of survey information.

(a) As provided in sections 1819(g)(5) and 1919(g)(5) of the Act, the following information must be made available to the public by the State or HCFA for all surveys and certifications of skilled nursing facilities and nursing facilities:

(1) Statements of deficiencies and providers' comments;

(2) Approved plans of correction;

(3) Statements that the facility refused to submit an acceptable plan of correction or refused to comply with the conditions of imposed remedies;

(4) Final appeal results;

(5) Notice of termination of a facility;

(6) Medicare and Medicaid cost reports;

(7) Names of individuals with direct or indirect interest in a SNF or NF; and

(8) Names of individuals with direct or indirect interest in a SNF or NF who have been found guilty by a court of law of a criminal offense in violation of Medicare or Medicaid law.

(b) HCFA or the State will charge the public for the cost of retrieval, reproduction, and mailing information in accordance with the fees and charges in § 401.140 of this chapter.

(c) The public may request the information orally or in writing.

(d) The time periods for responding to requests for information are as follows:

(1) HCFA or the survey agency responds within 10 days with the requested information (including cost reports) if information is releasable and already available for release.

(2) If the requested information is not releasable or not yet available for release, the disclosing entity must provide an interim response within 10 working days of the request which explains the status of the information; and

(3) The disclosing agency must make available to the public information concerning all surveys and certifications of SNFs and NFs, including statements of deficiencies and approved plans of correction, within 14 calendar days after such information is made available to those facilities.

(e) The State must provide the State's long-term care ombudsman with—

(1) Any report of facility noncompliance;

(2) Any report of adverse actions specified at § 488.206 imposed on a facility;

(3) Any written response by the provider; and

(4) Results of appeals.

(f) HCFA or the State will provide notice of approved nurse waivers granted under sections 1819(b)(4)(C)(ii) and 1919(b)(4)(C)(ii) of the Act to the—

(1) State's long-term care ombudsman; and

(2) State's mentally ill and mentally retarded protection and advocacy system.

(g) Not later than 10 working days after HCFA or the State grants a nurse waiver to a facility in accordance with sections 1819(b)(4)(C)(ii) and 1919(b)(4)(C)(ii) of the Act, the SNF or NF must provide residents (or, where appropriate, a resident's guardian or legal representative) and a resident's immediate family notice that such a waiver has been granted.

(h) To provide for the notice to physicians required under sections 1819(g)(5)(c) and 1919(g)(5)(c), not later than 10 working days after receiving a notice of substandard quality of care, a SNF or NF must provide the State with a list of each Medicare and Medicaid resident in the facility and the name address of his or her attending physician. Failure to disclose the information timely will result in termination or alternative remedies being imposed.

(i) Not later than 30 calendar days after a SNF or NF receives the notice of the existence of substandard quality of care, the State must provide written notice of the noncompliance to—

(1) The attending physician of each Medicare and Medicaid resident in the facility; and

(2) The State board responsible for licensing the facility's administrator.

(j) The State must provide access to any survey and certification information incidental to a SNF's or NF's participation in Medicare or Medicaid upon written request by the State Medicaid fraud control unit established under Part 1002, Subpart C, of this title, consistent with current State laws.

§ 488.180 Certification of compliance or noncompliance.

(a) *General rules.*

(1) *Responsibility for certification.*

(i) Except in the case of a validation survey, the State survey agency surveys all facilities for compliance or noncompliance with requirements for long term care facilities.

(A) The State certifies the compliance or noncompliance of non-State operated NFs. Regardless of the State entity doing the certification, it is final, except in the case of a complaint or validation survey conducted by HCFA, or HCFA review of the State's findings.

(B) HCFA certifies the compliance or noncompliance of all State-operated facilities.

(C) The State survey agency certifies the compliance or noncompliance of a non-State operated SNF, subject to the approval of HCFA.

(D) HCFA and the State certify compliance or noncompliance for a dually participating SNF/NF. In the case of a disagreement between HCFA and the State, the certification of noncompliance takes precedence over that of compliance.

(ii) In the case of a validation survey, the Secretary's determination as to the facility's noncompliance is binding, and takes precedence over a certification of compliance resulting from the State survey.

(2) *Basis for certification.*

(i) Certification by the State is based on the survey agency findings.

(ii) Certification by HCFA is based on either the survey agency findings or, in the case of a validation survey, or HCFA's own survey findings.

(b) *Effect of certification.*

(1) *Certification of compliance.*

A certification of compliance constitutes a determination that the facility is eligible to participate in Medicaid as a NF, or in Medicare as a SNF, or in Medicare and Medicaid as a dually participating facility.

(2) *Certification of noncompliance.*

A certification of noncompliance requires denial of participation for prospective providers and enforcement action for current providers in accordance with Subpart E of this part. Enforcement action may involve any of the following:

(i) Termination of any Medicare or Medicaid provider agreements that are in effect.

(ii) Application of alternative remedies instead of, or in addition to, termination procedures, to continue until the effective date of the termination or until compliance has been achieved.

(c) *Notice of certification of compliance and resulting action.*

The notice of certification of noncompliance and resulting action is issued by HCFA, except when the State is taking the action for a non-State operated NF.

(d) *Content of notice of certification of noncompliance.*

The notice of certification of noncompliance includes information on any or all of the following:

(1) Nature of noncompliance.

(2) Any alternative remedies to be imposed under Subpart E of this part.

(3) Any termination or denial of participation action to be taken under this part.

(4) Any appeal rights available to the facility under this part.

(5) Timeframes to be met by the provider and certifying agency with regard to each of the enforcement actions or appeal procedures addressed in the notice.

(e) *Appeals.*

(1) Notwithstanding any provision of State law, the State must impose remedies promptly on any provider of services participating in the Medicaid program—

(i) At the time the State identifies violations of Federal requirements;

(ii) After promptly notifying the facility of the deficiencies and impending remedy; and

(iii) Except for civil money penalties, during any pending hearing that may be requested by the provider of services.

(2) The provisions of part 498 of this chapter apply when the provider requests a hearing on HCFA's denial of participation, termination of provider agreement, or the Secretary's certification of noncompliance leading to an enforcement remedy, except State monitoring, against all State-operated facilities, as a result of a HCFA validation survey or HCFA's review of the State's survey findings and for non-State operated SNF and dually participating SNF/NFs. The State must take identical enforcement action, which is also subject to these appeal procedures.

(3) The provisions of part 431 of this chapter apply when the provider requests a hearing on the State's denial of participation, termination of provider agreement, or certification of noncompliance leading to an alternative remedy, except State monitoring, against a non-State Medicaid NF.

(f) *Provider agreements.*

HCFA or the Medicaid agency may execute a provider agreement when a prospective provider meets all the requirements for participation for a SNF or NF, respectively.

(g) *Special rules for Federal validation surveys.*

(1) HCFA may make independent certifications of a NF's, SNF's, or dually participating facility's noncompliance based on a HCFA validation survey.

(2) HCFA issues the notice of actions affecting facilities for which HCFA did a validation survey.

(3) For SNFs and State-operated facilities, HCFA's certification of noncompliance takes precedence over any current survey agency certification of compliance, and HCFA's choice of remedies is binding.

(4) For non-State operated NFs and non-State operated dually participating facilities, any disagreement between the HCFA certification or recommended remedies and survey agency certification or recommended remedies are resolved in accordance with § 488.234.

(5) Either HCFA or the survey agency, at HCFA's option, revisits the facility to ensure that corrections are made.

§ 488.182 Investigation of complaints of violations: Investigations and Monitoring.

(a) The State survey agency must establish procedures and maintain adequate staff to investigate complaints of violations of participation requirements.

(b) The State survey agency must conduct onsite monitoring on an as necessary basis when—

(1) A facility is not in compliance with the requirements and is in the process of correcting deficiencies;

(2) A facility has corrected deficiencies and verification of continued compliance is needed; or

(3) The survey agency has reason to question the compliance of the facility with requirements of participation.

(c) A State may use a specialized team, which includes an attorney, auditor and appropriate health professionals, to identify, survey, gather and preserve evidence, and administer remedies to noncompliant facilities.

§ 488.184 Educational programs.

A State must conduct periodic educational programs for the staff and residents (and their representatives) of SNFs and NFs in order to present current regulations, procedures, and policies under this subpart and Subpart F of this part.

§ 488.185 Action on complaints of neglect, abuse, and misappropriation of property.

(a) *Investigation.* The State must review all allegations and, if there is reason to believe, either through oral or written evidence that the abuse, neglect or misappropriation of property occurred, investigate such allegations.

(b) *Source of complaints.* The State must investigate complaints regardless of their source.

(c) *Notification.* If the State determines based on oral or written evidence that the abuse, neglect or misappropriation of property occurred, it must notify by mail the individual implicated in the investigation of the—

(1) Nature of the allegation(s);

(2) Date and time of the occurrence;

(3) Right to a hearing;

(4) Survey agency's intent to report the substantiated findings, once the individual has had the opportunity for a hearing, to the nurse aide registry or appropriate licensure authority; and

(5) Fact that the individual's failure to request a hearing in writing within 30 days from the date of the notice will result in the survey agency reporting the substantiated findings to the nurse aide registry.

(d) *Conduct of hearing.*

(1) The State must complete the hearing and the hearing record within 120 days from the day it receives the request for a hearing.

(2) The State must hold the hearing at a place and time convenient for the individual.

(e) A State must not make a finding that an individual has neglected a resident if the individual demonstrates that such neglect was caused by factors beyond the control of the individual.

(f) *Report of findings.* If the finding is that the individual has neglected or abused a resident or misappropriated resident property or if the individual waives the right to a hearing, the State must report the findings to—

(1) The individual;

(2) The administrator of the facility that employs the individual; and

(3) The licensing authority for staff other than nurse aides.

(g) *Report of findings to the nurse aide registry.* The survey agency, which may not delegate this responsibility, must report to the nurse aide registry within 10 working days of the finding the following information:

(1) The finding made as a result of the hearing;

(2) Any statement by the individual disputing the finding;

(3) That the individual waived the right to a hearing, if applicable; and

(4) Any failure by the individual to respond to the allegation.

(h) *Required content of registry records.* The survey agency must retain in accordance with State recordkeeping requirements—

(1) Records of occurrence;

(2) Investigative reports;

(3) Hearing findings; and

(4) Waivers of hearing rights.

5. A new subpart F is added to read as follows:

Subpart F—Remedies for Long-Term Care Facilities with Deficiencies

Sec.

488.200 Statutory basis.
488.201 Definitions.
488.202 General provisions.
488.204 Determination of remedies.
488.206 Available remedies.
488.208 Choice of remedies.
488.210 Action when there is immediate and serious threat.
488.212 Action when there is no immediate and serious threat.
488.214 Action when there is reported noncompliance.
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Subpart F—Remedies for Long-Term Care Facilities with Deficiencies

§ 488.200 Statutory basis.

Sections 1819(h) and 1919(h) of the Act specify remedies that may be used by the Secretary or the State respectively when a SNF or an NF is out of compliance with the requirements for participation in the Medicare and Medicaid programs. These sections also provide for ensuring prompt compliance and specify that these remedies are in addition to any others available under State or Federal law, and, except for civil money penalties, are imposed prior to the conduct of a hearing.

§ 488.201 Definitions.

As used in this subpart—

Immediate family means husband or wife; natural or adoptive parent, child or sibling; stepparent, atepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; and spouse of grandparent or grandchild.

Immediate jeopardy or *immediate and serious threat* means a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements of participation is at a severity level of 3 or 4, regardless of scope, and has already caused, or is likely to cause, at any time, serious injury, harm, impairment, or even death, to residents of the facility.

New admission means a resident who is admitted to the facility on or after the effective date of a denial of payment remedy and, if previously admitted, has been discharged before that effective date. Residents admitted before the effective date of the denial of payment, and taking temporary leave, are not considered new admissions, nor subject to the denial of payment.

Plan of correction means a plan developed by the facility and approved by the certifying agency which describes the actions the facility will take to correct deficiencies and specifies the date by which those deficiencies will be corrected.

§ 488.202 General provisions.

(a) *Purpose.*

The purpose of remedies is to encourage prompt, rapid compliance with program requirements so as to protect residents from actual or potential harmful outcomes resulting from deficiencies.

(b) *Basis for imposition of remedies.*

(1) The State or HCFA decides to apply one or more remedies on the basis of deficiencies found during surveys conducted by HCFA or by the survey agency. Survey findings are reported to the State and HCFA with recommendations for corrective action.

(2) The State or HCFA may apply one or more of the remedies specified in § 488.206 instead of terminating the provider agreement, or in addition to termination procedures, to continue until the effective date of the termination.

(c) *Number of remedies.*

HCFA or the State may apply a separate remedy for each deficiency, or a single remedy for all deficiencies that are interrelated and subject to correction by the same remedy.

(d) *Plan of correction requirement.*

Regardless of which remedy or remedies are applied, each facility that is out of compliance with a program requirement, except deficiencies at a scope and severity level of 1, must submit a plan of correction for approval by HCFA or the survey agency.

(e) *Disagreement regarding remedies.*

If the State and HCFA disagree on the decision to impose remedies, the disagreement is resolved in accordance with § 488.234.

(f) *Notification requirements.*

Except when the State is taking the action for a non-State operated NF, HCFA gives the provider notice of, the reasons for, and the effective date of the remedy. For all remedies specified in § 488.206, the notice must be given at least 2 days, but not more than 4 days, before the effective date of the remedy in immediate and serious threat situations, and at least 15 days before the effective date in non-immediate and serious threat situations.

§ 488.204 Determination of remedies.

(a) *Severity and scope scale guides.*

In order to determine the seriousness of deficiencies, the survey team applies the severity and scope scale guides specified in paragraphs (b) and (c) of this section.

(b) *Severity scale.*

The four levels of the severity scale are as follows:

(1) *Level 1.* Any deficiency with respect to requirements for long term care facilities that does not meet the criteria for severity levels 2, 3, or 4.

(2) *Level 2.* Either a negative outcome or resident rights violation has occurred, or, in the survey team's judgment, the ability of the individual to achieve the highest practicable physical, mental, or psychosocial well-being has been compromised, or both.

(3) *Level 3.* Potential physical harm, which could cause serious harm, impairment or death. In the survey team's judgment, there is a recognizable health or safety hazard, which if left unabated, is likely to cause serious harm, impairment or death.

(4) *Level 4.* Actual physical harm, which has caused serious impairment or death. Life threatening harm, severe impairment, or death has occurred.

(c) *Scope Scale.*

The four levels of the scope scale are as follows:

(1) *Level 1*—Isolated. The survey team might conclude that a deficiency is isolated if its perception is such that it believed the deficiency to exist only in a very limited number of cases.

(2) *Level 2*—Occasional. The survey team might conclude that a deficiency is occasional if in its combined judgment the deficiency is identified in a number of cases, but which in its view does not appear to reflect a pattern of facility behavior.

(3) *Level 3*—Pattern. The survey team might conclude that a pattern exists where, in its judgment, there are a sufficient number of repeated observations that it is likely that the deficiency might exist in cases not reviewed by the team.

(4) *Level 4*—Widespread. The survey team might conclude that a deficiency exists in sufficient number that, in its judgment, the deficiency represents a systemic or pervasive practice of the facility.

§ 488.206 Available remedies.

(a) *General.* In addition to termination of the provider agreement, the following remedies are available:

(1) Temporary management;

(2) Denial of payment including—

(i) Denial of payment for all new admissions;

(ii) Denial of payment for all new admissions in certain diagnostic categories or requiring specialized care; and

(iii) Denial of all payment (to be imposed only by HCFA) to facilities, for Medicare and to States, for Medicaid.

(3) Directed plan of corrections;

(4) State monitoring; and

(5) Civil money penalties.

(b) *Non-State operated Medicaid-only and dually participating facilities.* In addition to the remedies specified in paragraph (a) of this section, the following remedies are also available for non-State operated facilities that participate only in Medicaid or non-State operated dually participating facilities:

(1) Closure of the facility and transfer of residents; and

(2) Additional or alternative State remedies.

(c) *State plan requirement.* If a State wishes to use additional or alternative remedies, it must specify those remedies in the State plan, and demonstrate to HCFA's satisfaction that those remedies are as effective as the remedies listed in paragraph (a) of this section, for deterring noncompliance and correcting deficiencies. Whatever other additional or alternative remedies the State establishes, it must, at least, establish denial of payment for new admissions, and State monitoring.

§ 488.208 Choice of remedies.

(a) *General rule.*

In order to determine the appropriate remedy or remedies, HCFA follows (and the survey agency must follow) the procedures set forth in this section.

(b) *Initial assessment.*

The survey agency or HCFA assesses individual deficiencies or clusters of deficiencies first according to the following initial factors:

(1) The presence or absence of immediate and serious threat to resident health and safety;

(2) The severity of the deficiency; and

(3) The scope of the deficiency.

(c) *Other factors considered.*

Following the initial assessment, HCFA and the survey agency may consider the following secondary factors:

(1) The relationship of one deficiency or group (cluster) of deficiencies to other deficiencies; and

(2) The facility's prior compliance history in general and specifically with reference to the cited deficiencies.

(d) *Selection of remedies.*

(1) The selection of a remedy is based on the nature of the deficiencies or cluster of deficiencies.

(2) Sections 488.210 and 488.212 set the rules for imposition of particular remedies in specified circumstances. Regardless of which remedy or remedies are imposed, each facility that is out of compliance with a program requirement must submit a plan of correction for approval by HCFA or the survey agency, except in the case of deficiencies that HCFA or the State determines to be at a scope and severity level of 1.

(3) The choice of remedy, by either HCFA or the State, including the manner in which HCFA or the State uses the scope and severity scales specified in § 488.204 is not subject to review as part of the appeals process set forth in Parts 431 or 498 of this chapter.

§ 488.210 Action when there is immediate and serious threat.

(a) If there is an immediate and serious threat to residents' health and safety, (severity level of 3 or 4 regardless of scope) the State must (and HCFA does) either terminate the provider agreement within 23 days of the last date of the survey or appoint a temporary manager to remove the immediate and serious threat. The rules for appointment of a temporary manager in an immediate and serious threat situation are as follows:

(1) The State must (and HCFA does) notify the facility that a temporary manager is being appointed.

(2) If the facility does not accept the temporary manager or a temporary manager will not be available within 10 days of the last day of survey, the State must (and HCFA does) terminate the provider agreement within 23 days of the last day of survey if the immediate and serious threat is not removed.

(3) If the facility accepts the temporary manager, the State must (and HCFA does) notify the facility that, unless it removes all immediate and serious threat deficiencies, its provider agreement will be terminated effective on the 23rd day after the date of appointment of the temporary manager.

(4) The State must (and HCFA does) terminate the provider agreement on the 23rd day after the appointment of a temporary manager if the immediate and serious threat has not been removed.

(b) HCFA or the State may also impose other remedies, as appropriate.

(c)(1) In a Medicaid NF or dually participating facility, if either HCFA or the State finds that a facility's deficiencies pose an immediate and serious threat to resident health and safety HCFA or the State must notify the other of such a finding.

(2) HCFA will or the State must—

(i) Take immediate action to remove the jeopardy and correct the deficiencies through temporary management; or

(ii) Terminate the facility's provider participation under the State plan. If this is done, HCFA will also terminate the facility's provider participation in Medicare if it is a dually participating facility.

(d) The State must provide for the safe and orderly transfer of residents when the facility is terminated.

(e) The State must notify attending physicians and licensure boards of the immediate and serious threat, as specified in § 488.175(i).

§ 488.212 Action when there is no immediate and serious threat.

(a) *General rules.*

(1) If a facility's deficiencies do not pose immediate jeopardy to residents' health and safety, HCFA or the State may allow the facility to continue to participate for 6 months from the date of the survey if—

(i) The State finds that it is more appropriate to impose alternative remedies than to terminate the facility;

(ii) The State survey agency has submitted a plan of correction approved by HCFA; and

(iii) The facility in the case of a Medicare SNF or the State in the case of a Medicaid NF agrees to repay to the Federal government payments received if corrective action is not taken in accordance with the approved plan of correction.

(2) If a facility does not meet the eligibility criteria for continuation of payment under paragraph (a)(1) of this section, HCFA will and the State must terminate the facility's provider agreement.

(3) If any deficiency at any severity or scope level remains uncorrected within 90 calendar days after the last day of survey, HCFA will and the State must deny payment for new admissions.

(4) HCFA terminates provider agreements for SNFs and NFs, and stops FFP for NFs for which participation was continued under paragraph (a)(1) of this section, if cited deficiencies are not corrected within 6 months of the last day of the survey.

(b) *Specific rules: Low severity and scope levels.*

(1) If both the severity level and the scope level are 1, a deficiency still exists, but no alternative remedies are imposed or plan of correction is required as long as correction is achieved within 90 calendar days from the last day of survey.

(2) The State survey agency must give the facility a summary of the deficiencies.

(3) If the State survey agency identifies a recurrence of these deficiencies at the next standard survey, HCFA or the State imposes one or more remedies specified at § 488.206 due to the persistence of the deficiencies over time.

(c) *Specific rules: All other severity and scope levels.*

(1) If the severity level is 1 and the scope is 2, 3, or 4, the State must (and HCFA does) require a plan of correction and may impose one or more remedies specified at § 488.206.

(2) If the severity level is 2 and the scope level is 1 or 2, the State must (and HCFA does) impose one or more of the remedies specified at § 488.206 paired with a plan of correction.

(3) If the severity level is 2 and the scope level is 3 or 4 in quality of care, the State must (and HCFA does) impose one or more of the remedies specified at § 488.206 paired with a plan of correction. The State must notify the attending physician of each resident to which such finding is made as well as any State board responsible for the licensing of the facility administrator, as specified in § 488.175(i).

§ 488.214 Action when there is repeated noncompliance.

If a facility has been found to have provided substandard care on the last three consecutive surveys, regardless of other remedies provided, the Secretary will or the State must—

(a) Impose a denial of payment for new admissions remedy as described at § 488.217, and

(b) Impose the State monitoring remedy as described at § 488.222.

§ 488.215 Temporary management.

(a) *Definition.*

Temporary management means the temporary appointment by HCFA or the State of a substitute facility manager or administrator with authority to hire, terminate or reassign staff, obligate facility funds, alter facility procedures, and manage the facility to correct deficiencies identified in the facility's operation.

(b) *Qualifications.*

The temporary manager must—

(1) Be a licensed nursing home administrator in the State or have a reciprocal agreement with the State in which the deficient facility is located;

(2) Demonstrate prior competency as a nursing home administrator; and

(3) Have had no disciplinary action taken against him or her by any licensing board or professional society in any State.

(4) The temporary manager or a member of his or her immediate family has no financial, direct or indirect ownership interest.

(c) *Payment of salary.*

The temporary manager's salary is paid by the facility while the temporary manager is assigned to that facility.

(d) *Failure to agree to temporary management.*

If a facility fails to agree to the appointment of a temporary manager or fails to relinquish authority to the temporary manager as described in this section, HCFA will or the State must terminate the provider agreement in accordance with § 488.238.

§ 488.217 Denial of payment for all new admissions.

(a) *Denial of payment for all new admissions.*

(1) HCFA or the State may deny payment for new admissions. However, HCFA will and the state must deny payment for new admissions if—

(i) Any deficiency remains uncorrected within 90 calendar days after the last day of survey identifying the deficiencies; or

(ii) The survey agency has cited a facility with substandard quality of care on the last 3 consecutive standard surveys.

(2) If the facility achieves compliance with the requirements, HCFA does or the State must resume payments to the facility prospectively from the date that it determined that compliance has been achieved.

(b) Denial of payment for new admissions in certain diagnostic categories or requiring specialized care.

(1) HCFA or the State may deny payment for new admissions who have certain specified diagnoses or special care needs when HCFA or the State finds that—

(i) The facility is not currently able to provide care for these individuals; or

(ii) Caring for these individuals will adversely affect care provided to other residents.

(2) If the facility achieves compliance with the requirements, HCFA does or the State must resume payment to the facility prospectively from the date that it determines that compliance has been achieved.

§ 488.222 State monitoring.

(a) A State monitor—

(1) Oversees the correction of deficiencies at the facility site;

(2) Is an employee or a contractor of the survey agency;

(3) Is identified by the State as an appropriate health care professional for cited deficiencies;

(4) Is not an employee of the facility; and

(5) Does not function as a consultant to the facility.

(b) A State monitor must be used when a survey agency has cited a facility with substandard quality of care deficiencies on the last 3 consecutive standard surveys.

§ 488.224 Directed plan of correction.

HCFA, the State, or the temporary manager (with HCFA or State approval) may develop a plan of correction and require a facility to take action within specified timeframes.

§ 488.226 Closure of a Medicaid facility and transfer of residents.

In an emergency, the Medicaid facility may close and have its residents transferred by the State as an available remedy in accordance with factors specified at § 488.206(c).

§ 488.228 Alternative or additional State remedies.

Alternative or additional State remedies for facilities participating in Medicaid and non-State operated dually participating facilities may be imposed if the State demonstrates to HCFA's satisfaction that the alternative or additional remedies are as effective in deterring noncompliance and correcting deficiencies as the HCFA remedies. The alternative or additional remedies must be specified in the State plan, must be approved by HCFA, and must include, at least, denial of payment for new admissions and State monitoring.

§ 488.230 Civil money penalties.

(a) *Basis for imposing penalty.*

(1) HCFA or the State may impose a civil money penalty on any facility that is out of compliance with one or more participation requirements, regardless of whether or not the deficiencies constitute an immediate and serious threat.

(2) HCFA or the State may impose a civil money penalty for the number of days of noncompliance between two certifications of compliance.

(b) *Condition under which penalties will not be imposed.*

HCFA will not and the State may not impose a civil money penalty while the facility has a hearing pending on the imposition of a remedy.

(c) *HCFA notice of penalty.*

(1) HCFA will send a written notice of intent to impose the penalty to the facility by mail, return receipt requested, for all facilities except non-State operated NFs when the State is imposing the penalty.

(2) The notice that HCFA sends will include—

(i) The statutory basis for the penalty;

(ii) The amount of penalty per day of noncompliance;

(iii) Any circumstances specified in paragraph (g) of this section, such as repeated noncompliance, that were considered when determining the amount of the penalty; and

(iv) Instructions for responding to the notice, including a statement of the facility's right to a hearing, and the implication of waiving a hearing.

(d) *State notice.* The State must notify the facility in accordance with State procedures for all non-State operated NFs when the State takes the action.

(e) *Waiver of a hearing.* The facility may waive the right to a hearing, in accordance with procedures and time periods specified in § 498.40 of this chapter for Medicare, and § 431.221 of this chapter for Medicaid. If the facility waives the right to a hearing within 60 days from the date of notice, HCFA or the State may reduce the civil money penalty by 35 percent.

(f) *Amount of penalty.*

(1) The penalties are within the following ranges, set at $50 increments:

(i) Deficiencies constituting immediate and serious threat: $3,050–$10,000 each day the threat continues; and

(ii) Deficiencies that do not constitute immediate and serious threat, but which are above a severity and scope level of 1: $50–$3,000 per day.

(2) The amount of penalty is based on HCFA's or the State assessment of factors listed in paragraph (g) of this section.

(3) HCFA or the State may increase the daily penalty if the facility alleges compliance, but on a revisit, HCFA or the State finds that the facility is still noncompliant.

(g) *Factors affecting the amount of penalty.* In determining the amount of penalty, HCFA or the State must take into account the following factors:

(1) The facility's history of prior offenses, including repeat deficiencies;

(2) The facility's financial condition;

(3) The scope, severity, and duration of the noncompliance; and

(4) Whether the requirements with which the facility is out of compliance are health and safety requirements or administrative requirements.

(h) *Effective date of penalty.* The effective date of a civil money penalty is the 10th day after the last day of the survey in immediate and serious threat situations and the 20th day after the last day of the survey in non-immediate and serious threat situations.

(i) *Computation and Notice of Penalties.*

(1) When HCFA's or the State's decision of noncompliance is upheld after a hearing decision or the facility waives its right to a hearing, the civil money penalty will be for the number of days between the effective date of the penalty and the date of correction of deficiencies, or, if applicable, the date of termination.

(2) Penalties are computed after compliance is verified or on the effective date of the provider's termination.

(3) In the case of the provider achieving compliance, HCFA will or the State must send a separate notice to the facility containing—

(i) The amount of penalty per day;

(ii) The number of days involved;

(iii) The due date of the penalty; and

(iv) The total amount due.

(4) In the case of a facility to be terminated, HCFA will or the State must send this penalty information in the termination notice.

(5) The daily accrual of civil money penalties is imposed for no longer than 6 months for non-immediate and serious threat deficiencies after which HCFA will terminate the provider agreement and discontinue FFP and the State may terminate the provider agreement if any of the deficiencies remain.

(6) In the case of immediate and serious threat deficiencies, HCFA will or the State must terminate the provider agreement on the 23rd day after the appointment of temporary management if the threat remains.

(7) If the provider can supply documentation acceptable to HCFA or the State agency that compliance with participation requirements was attained on a date preceding that of the revisit, fines only accrue until that date of correction for which there is credible evidence.

(j) *Collection of penalties.*

(1) Payments for civil money penalties are due—

(i) Fifteen days after the survey agency verifies compliance if:

(A) A hearing decision upholding the imposition of the penalty had been rendered before compliance had been verified; or

(B) The 60-day period for requesting a hearing has expired and the facility has not requested a hearing or has waived its right to a hearing;

(ii) Fifteen days after a hearing decision upholding the imposition of the penalty if the hearing decision is rendered after compliance is verified; or

(iii) Fifteen days after the effective date of termination if—

(A) A hearing decision upholding the imposition of the penalty had been rendered prior to the effective date of termination; or

(B) The 60-day period for requesting a hearing has expired and the facility has not requested a hearing or has waived its right to a hearing.

(2) The amount of the penalty, when determined, may be deducted from any sum then or later owing by HCFA or the State to the facility.

(3) Interest will be assessed on the unpaid balance of the penalty, beginning on the due date.

(4) Civil money penalties or corresponding interest collected by HCFA or the State from Medicare and Medicaid facilities must be returned to the Medicare Trust Fund or the State, respectively.

(5) Civil money penalties collected from dually participating facilities are returned to the Medicare Trust Fund and the State in proportion commensurate

with the relative proportions of Medicare and Medicaid beds at the facility actually in use at the time the facility receives notice of the imposition of the civil money penalty.

(6) Civil money penalties collected by the State must be applied to the protection of the health and property of residents of facilities that the State or HCFA finds deficient, including—

(i) Payment for the cost of relocating residents to other facilities;

(ii) State costs related to the operation of a facility pending correction of deficiencies or closure; and

(iii) Reimbursement of residents for personal funds lost.

(k) *Settlement of penalties.*

(1) HCFA has authority to settle cases at any time prior to a final administrative law judge hearing decision for Medicare-only SNFs, State-operated facilities, or other facilities for which HCFA's enforcement action prevails, in accordance with § 488.180.

(2) The State has the authority to settle cases at any time prior to the evidentiary hearing decision for all cases in which the State's enforcement action prevails.

§ 488.232 Continuation of payments to a facility with deficiencies.

(a) *Criteria.*

(1) HCFA may continue payments to a facility with deficiencies, for the periods specified in paragraph (c) of this section if the following criteria are met:

(i) The State finds that is more appropriate to impose alternative remedies than to terminate the facility;

(ii) The State has submitted a plan of correction approved by HCFA; and

(iii) The facility in the case of a Medicare SNF or the State in the case of a Medicaid NF agrees to repay the Federal government payments received if corrective action is not taken in accordance with the approved plan of correction.

(2) HCFA or the State may terminate the SNF or NF agreement before the end of the six month correction period if the criteria in paragraph (a)(1) of this section are not met.

(b) *Cessation of payments.* If any of the criteria set forth in paragraph (a)(1) of this section are not met or agreed to by either the State or the facility, the facility will receive no Medicare or Federal Medicaid payments, as applicable, from the date of the determination of noncompliance by either HCFA or the State.

(c) *Period of continued payments.* If the conditions in paragraph (a)(1) of this section are met, HCFA or the State may continue payments to a facility with deficiencies that do not constitute immediate and serious threats for up to 6 months from the last day of the survey.

(d) *Deficiencies not corrected.* If the facility does not correct deficiencies by the end of the period specified in paragraph (b) of this section,

(1) HCFA will—

(i) Terminate the provider agreement for Medicare SNFs in accordance with § 488.238; and

(ii) Discontinue FFP to Medicaid NFs.

(2) The State may terminate the provider agreement for NFs.

(d) The required termination notice is sent 15 days before the end of the 6 month period and the notice period runs concurrently with the last 15 days of the 6 month period.

(e) *Appeals.* Medicare SNFs and dually participating facilities adversely affected by the requirement in paragraph (a)(1)(iii) of this section to repay the government all payments received if corrective action is not taken in accordance with paragraph (c) of this section, may appeal the decision in accordance with—

(1) 42 CFR part 498; and

(2) If the State terminates the NF provider agreement, 42 CFR part 431.

§ 488.234 State and Federal disagreements involving findings not in agreement in situations where there is no immediate and serious threat.

(a) *Disagreement over whether facility has met requirements.*

(1) The State's finding of noncompliance takes precedence when—

(i) HCFA finds that a NF or a dually participating facility has met all the participation requirements; and

(ii) The State finds that a NF or dually participating facility has not met all the participation requirements.

(2) HCFA's findings of noncompliance take precedence when—

(i) HCFA finds that a NF or a dually participating facility has not met all participation requirements; and

(ii) The State finds that a NF or a dually participating facility has met all the participation requirements.

(3) When HCFA's survey findings take precedence, HCFA may—

(i) Impose any of the alternative remedies specified in § 488.206; and

(ii) Permit payments to continue to the NF and dually participating facility if the applicable conditions of § 488.232 are met.

(b) *Disagreement over decision to terminate a non-State operated NF or dually participating facility.*

(1) HCFA's decision to terminate the participation of a facility takes precedence when—

(i) Both HCFA and the State find that the facility has not met all requirements; and

(ii) HCFA, but not the State, finds that the facility's participation should be terminated. HCFA will permit continuation of payment during the period prior to the effective date of termination not to exceed 6 months.

(2) The State's decision to terminate a facility's participation and the timing of termination, as specified in § 431.153(c) of this chapter, takes precedence when—

(i) The State, but not HCFA, finds that a facility's participation should be terminated; and

(ii) The State's timing is for no later than 6 months after the last day of survey.

(c) *Disagreement over timing of termination of facility.* The State's timing of termination, as specified in § 431.153(c) of this chapter, takes precedence if it does not occur later than 6 months after the date of the finding to terminate when both HCFA and the State find that—

(1) A NF or dually participating facility has not met all the requirements for participation; and

(2) The facility's participation should be terminated.

(d) *Disagreement over remedies.*

(1) When HCFA or the State, but not both, establishes one or more remedies, in addition to or as an alternative to termination, the additional or alternative remedies will also apply when—

(i) Both HCFA and the State find that a NF has not met all the participation requirements; and

(ii) Both HCFA and the State find that no immediate jeopardy exists.

(2) *Overlap of remedies.* When HCFA and the State establish one or more remedies, in addition to or as an alternative to termination, the HCFA remedies apply when both HCFA and the State find that a NF or dually participating facility has not met all the requirements for participation.

(e) Regardless of whose decision controls in paragraph (b), (c), or (d) of this section, the compliance and enforcement decision for the Medicaid agreement is binding on the Medicare agreement in the case of a dually participating facility.

§ 488.236 Duration of remedies.

Alternative remedies continue until—

(a) HCFA or the State determines that the facility has corrected all deficiencies;

(b) HCFA or the State terminates the provider agreement; and

(c) HCFA discontinues FFP.

§ 488.238 Termination of provider agreement.

(a) *Effect of termination.* Termination of the provider agreement ends—

(1) Payment to the facility; and

(2) Any alternative remedy.

(b) *Basis for termination.*

(1) HCFA and the State may terminate a facility's provider agreement if a facility—

(i) Fails to correct deficiencies within the specified time;

(ii) Fails to submit a plan of correction within the time specified by HCFA; or

(iii) Does not meet the eligibility criteria for continuation of payment as set forth in § 488.212(a)(1).

(2) HCFA and the State will terminate a facility's provider agreement if a facility with immediate and serious threat deficiencies refuses temporary management, if that remedy is offered by HCFA or the Medicaid agency.

(c) *Notice of termination.* Before terminating a provider agreement, HCFA does and the State must notify the facility and the public—

(1) At least two and not more than four calendar days before termination for a facility with immediate and serious threat deficiencies; and

(2) At least fifteen calendar days before termination for a facility with non-immediate and serious threat deficiencies.

(d) *Procedures for termination.*

(1) HCFA will terminate the provider agreement of a SNF in accordance with procedures set forth in § 489.53 of this chapter; and

(2) The State must terminate the provider agreement of a NF in accordance with procedures specified in parts 431 and 442 of this chapter.

§ 488.240 Transfer of residents.

The State must arrange for the orderly transfer of all residents to another facility when—

(a) HCFA or the State terminates the provider agreement; or

(b) The State closes a NF or a non-State operated dually participating facility.

PART 489—PROVIDER AND SUPPLIER AGREEMENTS

E. Part 489 is amended as follows:

1. The authority citation for part 489 is revised to read as follows:

Authority: Secs. 1102, 1819, 1861, 1864(m), 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395i–3, 1395x, 1395aa(m), 1395cc, and 1395hh).

§ 489.15 [Removed and Reserved]

2. Section 489.15 is removed and reserved.

§ 489.16 [Removed and Reserved]

3. Section 489.16 is removed and reserved.

4. In subpart E, § 489.53 is amended by revising paragraph (c)(2) to read as follows:

§ 489.53 Termination by HCFA.

* * * * *

(c) *Notice of termination.* * * *

(2) *Exception.* For a provider or supplier with deficiencies that pose immediate jeopardy to patients' health and safety, HCFA will give notice of termination at least two and no more than four calendar days before the effective date of termination of the provider agreement.

* * * * *

Subpart F—[Removed and Reserved]

5. Subpart F, consisting of §§ 489.60, 489.62, 489.64, and 489.66 is removed and reserved.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare Hospital Insurance)

Dated: August 10, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: August 12, 1992.

Louis W. Sullivan,

Secretary.

[FR Doc. 92–20372 Filed 8–27–92; 8:45 am]

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Part III

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing; Federal Housing Commissioner

NOFA for Federally Assisted Low Income Housing Drug Elimination Grants; FY 1992; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing, Federal Housing Commissioner

[Docket No. N-92-3436; FR-3235-N-01]

NOFA for Federally Assisted Low Income Housing Drug Elimination Grants; FY-1992

AGENCY: Office of the Assistant Secretary for Housing, Federal Housing Commissioner, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1992.

SUMMARY: This NOFA announces HUD's FY 1992 funding of $10,000,000 for Federally Assisted Low Income Housing Drug Elimination Grants. (Note: This NOFA does NOT apply to the funding available under the statute for Public and Indian Housing.) In the body of this document is information concerning the purpose of the NOFA, applicant eligibility, available amounts, selection criteria, financial requirements, management, and application processing, including how to apply, how selections will be made, and how applicants will be notified of results.

DATES: No applications will be accepted after 4 p.m. (local time) for the Regional Office on October 27, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

ADDRESSES: *(a) Application Form:* An application form may be obtained from the HUD Regional Office having jurisdiction over the location of the applicant project. The Regional Office will be available to provide technical assistance on the preparation of applications during the application period.

(b) Application Submission: Applications (original and one copy) must be received by the deadline at the appropriate HUD Regional Office with jurisdiction over the applicant project, Attention: Regional Director of Housing. It is not sufficient for the application to bear a postage date within the submission time period. Applications submitted by facsimile are not acceptable. Applications received after the deadline will not be considered.

FOR FURTHER INFORMATION CONTACT: William Schick, Office of Multifamily Housing Management, Operations Division, (202) 708-2654 (voice) or (202) 708-3938 (TDD for hearing-impaired). (These are not toll free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced in the **Federal Register.**

I. Purpose and Substantive Description

(a) Authority

These grants are authorized under chapter 2, subtitle C, title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended by section 581 of the National Affordable Housing Act of 1990 (NAHA), approved November 28, 1990, Public Law 101-625.

(b) Allocation Amounts

(1) Federal Fiscal Year 1992 Funding

The amount available for funding under this NOFA is $10,000,000. Section 581 of NAHA expanded the Drug Elimination Program to include federally assisted, low-income housing. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1992, (approved October 28, 1991, Pub. L. 102-139), (92 app. Act) appropriated $165 million for the Drug Elimination Program and made $10,000,000 of the total Drug Elimination Program appropriation available for federally assisted, low-income housing.

HUD is distributing grant funds under this NOFA to each of its 10 Regional Offices on the basis of a formula allocation. This formula allocation is based upon the relationship of the number of eligible federally assisted low-income housing units per Region and the level of drug-related crime within each Region, based on statistics compiled by the U.S. Department of Justice, Federal Bureau of Investigation, ("Uniform Crime Reports for Drug Abuse Violations-1990").

(2) Maximum Grant Award Amounts

The maximum grant award amount is limited to $175,000 per project.

(3) Reallocation.

Any grant funds under this NOFA that are allocated to a Region, but that are not reserved for grantees, must be released to HUD Headquarters for reallocation. HUD reserves the right to fund portions of full applications. If the Regional Office determines that an application cannot be partially funded and there are insufficient funds to fund the application fully, any remaining funds after all other applications have been selected will be released to HUD Headquarters for reallocation. Amounts that may become available due to deobligation will also be reallocated to Headquarters.

All reallocated funds will be awarded on a nationwide basis in the following manner: HUD Regional Offices will submit to Headquarters the applications that would have been funded had there been sufficient funds in the Regional allocation to do so. Headquarters will select applications from those submitted by the Regional Offices, using the ranking factors identified in section I.(d), below, of this NOFA, and make awards from any available reallocated funds.

(4) Reduction of Requested Grant Amounts

HUD may award an amount less than requested where:

(i) HUD determines the amount requested for an eligible activity is unreasonable;

(ii) Insufficient amounts remain under the allocation to fund the full amount requested by the applicant and HUD determines that partial funding is a viable option;

(iii) HUD determines that some elements of the proposed plan are suitable for funding and others are not; or

(iv) For any other reason where good cause exists.

(5) Distribution of Funds

HUD is distributing grant funds under this NOFA to its 10 Regional Offices, in accordance with the following schedule:

HUD Region	Allocation
Region I	$507,788
Region II	748,012
Region III	1,219,825
Region IV	2,027,171
Region V	2,447,368
Region VI	989,741
Region VII	476,164
Region VIII	236,145
Region IX	1,168,758
Region X	181,018

(c) Eligibility

Following is a listing of eligible activities, ineligible activities, eligible applicants, and general grant requirements under this NOFA:

(1) Eligible Activities

(i) *Physical improvements to enhance security.* Physical improvements that are specifically designed to enhance security are eligible for funding under this program. The improvements may include (but are not limited to) systems designed to limit building access to project residents, the installation of barriers, lighting systems, fences, bolts, locks; the landscaping or reconfiguration of common areas to discourage drug-related crime; and other physical improvements designed to enhance security and discourage drug-related activities. In particular, the Department is seeking plans that provide successful, proven and cost effective drug crime deterrents designed to address the realities of low-income assisted housing environments. All physical improvements must also be accessible to persons with disabilities. For example, some types of locks, buzzer systems, etc., are not accessible to persons with limited strength, mobility, or to persons who are hearing impaired. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(ii) *Programs to reduce the use of drugs.* Programs designed to reduce the use of drugs in and around federally-assisted low-income housing projects including drug-abuse prevention, intervention, referral, and treatment programs are eligible for funding under this program. The program should facilitate drug prevention, intervention and treatment efforts, to include outreach to community resources and youth activities, and facilitate bringing these resources onto the premises, or providing resident referrals to treatment programs or transportation to out-patient treatment programs away from the premises. Funding is permitted for reasonable, necessary and justified leasing of vehicles for resident youth and adult education and training activities directly related to "Programs to reduce the use of drugs" under this section. Alcohol-related activities/programs are not eligible for funding under this NOFA.

(A) Drug Prevention

Drug prevention programs that will be considered for funding under this NOFA must provide a comprehensive drug prevention approach for residents that will address the individual resident and his or her relationship to family, peers, and the community. Prevention programs must include activities designed to identify and change the factors present in federally-assisted low-income housing that lead to drug-related problems, and thereby lower the risk of drug usage. Many components of a comprehensive approach, such as refusal and restraint skills training programs or drug-related family counseling, may already be available in the community of the applicant's housing projects, and the applicant must act to bring those available program components onto the premises. Activities that should be included in these programs are:

(1) Drug Education Opportunities for Residents

The causes and effects of illegal drug usage must be discussed in a formal setting to provide both young people and adults the working knowledge and skills they need to make informed decisions to confront the potential and immediate dangers of illegal drugs. Grantees may contract (in accordance with 24 CFR 85.36) with drug education professionals to provide appropriate training or workshops. The drug education professionals contracted to provide these services shall be required to base their services upon the program plan of the grantee. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of residents.

(2) Family and Other Support Services

Drug prevention programs must demonstrate that they will provide directly or otherwise make available services designed to distribute drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the project or the community for federally-assisted low-income housing families.

(3) Youth Services

Drug prevention programs must demonstrate that they have included groups composed of young people as a part of their prevention programs. These groups must be coordinated by adults with the active participation of youth to organize youth leadership, sports, recreational, cultural and other activities involving housing youth. The dissemination of drug education information, the development of peer leadership skills and other drug prevention activities must be a component of youth services. Activities or services funded under this program may not also be funded under the Youth Sports Program.

(4) Economic/Educational Opportunities for Residents and Youth

Drug prevention programs should demonstrate a capacity to provide residents the opportunity for referral to established higher education or vocational institutions with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals. The program must also demonstrate the ability to provide residents the opportunity to interact with private sector businesses in their immediate community for the same desired goals.

(B) Intervention

The aim of intervention is to identify federally-assisted low-income housing resident drug users and assist them in modifying their behavior and in obtaining early treatment, if necessary. The applicant must establish a program with the goal of preventing drug problems from continuing once detected.

(C) Drug Treatment

(1) Treatment funded under this program shall be in or around the premises of the federally-assisted low-income housing projects proposed for funding.

(2) Funds awarded under this program shall be targeted towards the development and implementation of new drug referral treatment services and/or aftercare, or the improvement of, or expansion of such program services for residents.

(3) Each proposed drug program should address the following goals:

(i) Increase resident accessibility to drug treatment services;

(ii) Decrease criminal activity in and around federally-assisted low-income housing projects by reducing illicit drug use among residents; and

(iii) Provide services designed for youth and/or maternal drug abusers, e.g., prenatal/postpartum care, specialized counseling in women's issues, parenting classes, or other drug supportive services.

(4) Approaches that have proven effective with similar populations will be considered for funding. Programs should meet the following criteria:

(i) Applicants may provide the service of formal referral arrangements to other

treatment programs not in or around the project when the resident is able to obtain treatment costs from sources other than this program. Applicants may also provide transportation for residents to out-patient treatment and/or support programs.

(ii) Provide family/collateral counseling.

(iii) Provide linkages to educational/vocational counseling.

(iv) Provide coordination of services to appropriate local drug agencies, HIV-related service agencies, and mental health and public health programs.

(v) Applicants must demonstrate a working partnership with the Single State Agency or State license provider or authority with drug program coordination responsibilities to coordinate, develop and implement the drug treatment proposal.

(vi) Applicants must demonstrate a working partnership with the Single State Agency or State license provider or authority with drug program coordination responsibilities to coordinate, develop and implement the drug treatment proposal. In particular, applicants must review and determine with the Single State Agency or State license provider or authority with drug program coordination responsibilities whether:

(A) The drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years; and

(B) The drug treatment proposal is consistent with the State treatment plan and the treatment service meets all State licensing requirements.

(vii) Funding is not permitted for treatment of residents at any in-patient medical treatment programs/facilities.

(viii) Funding is not permitted for detoxification procedures, short term or long term, designed to reduce or eliminate the presence of toxic substances in the body tissues of a patient.

(ix) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(iii) *Resident Councils (RCs).* Providing funding to resident councils to develop programs of eligible activities involving site residents is eligible for funding under this program.

(2) *Ineligible activities.* Funding is not permitted for any activities listed below:

(i) Any activity or improvement that is normally funded from project operating revenues for routine maintenance or repairs, or those activities or improvements that may be funded through reasonable and affordable rent increases;

(ii) The acquisition of real property or physical improvements that involve the demolition of any units in the project or displacement of tenants.

(iii) Costs incurred prior to the effective date of the grant agreement, including, but not limited to, consultant fees for surveys related to the application or its preparation;

(iv) Reimbursement of local law enforcement agencies for additional security and protective services;

(v) The employment of one or more individuals—

(A) to investigate drug-related crime on or about the real property comprising any federally-assisted low-income project; and

(B) to provide evidence relating to such crime in any administrative or judicial proceeding; and

(vi) The provision of training, communications equipment and other related equipment for use by voluntary tenant patrols acting in cooperation with local law enforcement officials.

(3) *Eligible Applicants.* The applicant must be the owner of a federally assisted low-income housing project under:

(i) Section 221(d)(3), section 221(d)(4) or 236 of the National Housing Act (Note however, section 221(d)(4) and section 221(d)(3) market rate projects without tenant-based assistance contracts are not considered federally assisted low-income housing.)

(ii) Section 101 of the Housing and Urban Development Act of 1965, or

(iii) Section 8 of the United States Housing Act of 1937.

(4) *General grant requirements.* The following requirements apply to all activities, programs, or functions used to plan, budget and evaluate the work funded under this program.

(i) After applications have been ranked and selected, HUD and the applicant shall enter into a grant agreement setting forth the amount of the grant, the physical improvements or other eligible activities to be undertaken, financial controls, and special conditions, including sanctions for violation of the agreement.

(ii) The policies, guidelines and requirements of this NOFA, 48 CFR part 31, other applicable OMB cost principles, HUD program regulations, HUD Handbooks, and the terms of grant/special conditions and subgrant agreements apply to the acceptance and use of assistance by grantees and will be followed in determining the reasonableness and allocability of costs. All costs must be reasonable and necessary.

(iii) The term of funded activities may not exceed 12 months.

(iv) Owners must ensure that any funds received under this program are not commingled with other HUD or project operating funds.

(v) To avoid duplicate funding owners must establish controls to assure that any funding from other sources, such as Reserve for Replacement, Rent Increases, etc., are not used to fund the physical improvements to be undertaken under this program.

(vi) Employment preference. A grantee under this program shall give preference to the employment of residents, and comply with section 3 of the Housing and Urban Development Act of 1968 and 24 CFR part 135, to carry out any of the eligible activities under this part, so long as such residents have comparable qualifications and training as non-housing resident applicants.

(vii) Termination of funding. HUD may terminate funding if the grantee fails to undertake the approved program activities on a timely basis in accordance with the grant agreement; adhere to grant agreement requirements or special conditions; or submit timely and accurate reports.

(viii) Subgrants (subcontracting).

(A) A grantee may directly undertake any of the eligible activities under this NOFA or it may contract with a qualified third party, including incorporated Resident Councils (RCs). Resident groups that are not incorporated RCs may share with the grantee in the implementation of the program; but may not receive funds as subgrantees.

(B) Subgrants or cash contributions to incorporated RCs may be made only under a written agreement executed between the grantee and the RC. The agreement must include a program budget that is acceptable to the grantee, and that is otherwise consistent with the grant application budget. The agreement must obligate the incorporated RC to permit the grantee to inspect and audit the RC financial records related to the agreement, and to account to the grantee on the use of grant funds, and on the implementation of program activities. In addition, the agreement must describe the nature of the activities to be undertaken by the subgrantee, and the scope of the subgrantee's authority; and the amount of insurance to be obtained by the grantee and the subgrantee to protect their respective interests.

(C) The grantee shall be responsible for monitoring, and for providing technical assistance to, any subgrantee to ensure compliance with HUD program requirements, including OMB Circular Nos. A–110 and A–122, which apply to the acceptance and use of assistance by private nonprofit organizations. The procurement requirements of Attachment O of Circular A–110 apply to RCs. The grantee must also ensure that subgrantees have appropriate insurance liability coverage.

(d) Selection Criteria and Ranking Factors

HUD will review each application to determine that it meets the requirements of this NOFA and to assign points in accordance with the selection criteria. A total of 200 points is the maximum score available under the selection criteria. An application must receive a score of at least 131 points out of the maximum of 200 points that may be awarded under this competition to be eligible for funding. After assigning points to each application, HUD will rank the applications in order by Region. HUD will select the highest ranking applications whose eligible activities can be fully funded within each Region. Grants under this program are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321). However, prior to the award of grant funds under the program, HUD will perform an environmental review to the extent required under the provisions of 24 CFR 50.4. Each application submitted will be evaluated on the basis of the following selection criteria:

(1) The Quality of the Plan to Address the Problem (Maximum Points: 70)

In assessing this criterion, HUD will consider the following factors:

(i) The quality of the applicant's plan to address the drug-related crime problem, and the problems associated with drug-related crime, in the projects proposed for funding, and how well the activities proposed for funding fit in with the plan. (points: 20)

(ii) The anticipated effectiveness of the plan and the proposed activities in reducing or eliminating drug related crime problems over an extended period. (points: 20)

(iii) How the activities identified in the plan will affect and address the problem of drug related crime in adjacent properties. (points: 20)

(iii) Evidence that the proposed activities have been found successful in similar circumstances in terms of controlling drug-related crime. (points: 10)

(2) The Support of Local Government/Law Enforcement Agencies (Maximum Points: 20)

In assessing this criterion, HUD will consider the following factors:

(i) Evidence that the project owner has sought assistance in deterring drug-related crime problems and the extent to which the owner has participated in programs that are available from local governments or law enforcement agencies; (points: 10) and

(ii) The level of support by the local government or law enforcement agency for the applicant's proposed activities. (points: 10)

(3) The Extent of the Drug-Related Crime Problem in the Housing Project Proposed for Assistance (Maximum Points: 70)

In assessing this criterion, HUD will consider the degree of severity of the drug-related crime problem in the project proposed for funding, as demonstrated by the information required to be submitted under section III.(h) of the NOFA.

(4) The Support of Residents in Planning and Implementing the Proposed Activities (Maximum Points: 20)

In assessing this criterion, HUD will consider the following factors:

(i) Evidence that comments and suggestions have been sought from residents to the proposed plan for this program and evidence that the owner carefully considered the comments of residents and incorporated their suggestions in the plan, when practical. (points: 10)

(ii) Evidence of resident support for the proposed plan. (points: 10)

(5) Capacity of Owner and Management to Undertake the Proposed Activities (Maximum Points: 20)

In assessing this criterion, HUD will consider the following:

(i) The most recent Management Review completed by the HUD Office. (Note: the HUD Field Office will conduct another management review after application submission if the most recent management review is more than nine months old). (points: 10)

(ii) Submission of evidence that project owners have initiated other efforts to reduce drug-related crime by working with tenant/law enforcement groups (e.g. establishment of "Tenant Watches" or similar efforts). (points: 5)

(iii) Submission of evidence that project management carefully screens applicants for units and takes appropriate steps to deal with known or suspected tenants exhibiting drug-related criminal behavior. (points: 5)

II. Application Process

(a) Application Form

An application form may be obtained from the HUD Regional Office having jurisdiction over the location of the applicant project. The Regional Office will be available to provide technical assistance on the preparation of applications during the application period.

(b) Application Submission

A separate application must be submitted for each project. An application (original and one copy) must be received by the deadline at the appropriate HUD Regional Office with jurisdiction over the applicant project, Attention: Regional Director of Housing. It is not sufficient for the application to bear a postage date within the submission time period. Applications submitted by facsimile ("FAX") are not acceptable and will not be considered. Applications received after the deadline will not be considered. No applications will be accepted after 4 p.m. (local time) for the Regional Office on October 27, 1992. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

(c) Application Notification

HUD will notify all applicants whether or not they were selected for funding.

III. Checklist of Application Submission Requirements

To qualify for a grant under this program, an applicant must submit an application to HUD that contains the following:

(a) Application for Federal Assistance form (Standard Form SF–424 and SF–424A). The form must be signed by the applicant.

(b) A description of the applicant's plan for addressing the problem of drug related crime in the projects for which funding is sought, which should include the activities to be funded under this program along with all other initiatives being undertaken by the applicant. The description should also include a discussion of:

(1) The anticipated effectiveness of the plan and the proposed activities in reducing or eliminating drug related crime problems over an extended period.

(2) How the activities identified in the plan will affect and address the problem of drug related crime in adjacent properties.

(3) Other efforts that project owners have initiated to reduce drug-related crime by working with tenant/law enforcement groups (e.g. establishment of "Tenant Watches" or similar efforts).

(4) Procedures that project management uses to screen applicants for units and steps taken to deal with known or suspected tenants exhibiting drug-related criminal behavior.

(c) Each applicant for funding for physical improvements must submit a written plan fully describing the physical improvements to be undertaken with per unit dollar costs for each item. This plan must be signed by the owner.

(d) Each applicant must submit a letter from the local government or police (law enforcement) agency that describes the type of drug-related crime in the project proposed for grant funding and its immediate environs, and expresses a commitment to assist the owner in taking steps to reduce or eliminate the drug-related crime problems of the project.

(e) A description of the procedure used to involve residents in the development of the plan and written summaries of any comments and suggestions received from residents on the proposed plan, along with evidence that the owner carefully considered the comments of residents and incorporated their suggestions in the plan, when practical.

(f) A description of the support of residents for the proposed activities and their willingness to assist the owner in implementing the plan. Letters of support from tenants may be used.

(g) A copy of the most recent management review performed by HUD and evidence supporting the capacity of the owner and management to undertake the proposed activities.

(h) Detailed information, such as local government and police reports, evidencing the degree of drug-related crime in the project and adjacent properties to demonstrate the degree of severity of the drug-related crime problem. This information may consist of:

(1) Objective data. The best available objective data on the nature, source, and extent of the problem of drug-related crime, and the problems associated with drug-related crime. These data may include (but not necessarily be limited to) crime statistics from Federal, State, tribal or local law enforcement agencies, or information from the applicant's records on the types and sources of drug-related crime in the project proposed for assistance; descriptive data as to the types of offenders committing drug-related crime in the applicant's project (e.g., age, residence, etc.); the number of lease terminations or evictions for drug-related criminal activity; the number of emergency room admissions for drug use or drug-related crime; the number of police calls for drug-related criminal activity; the number of residents placed in treatment for substance abuse; and the school drop-out rate and level of absenteeism for youth. If crime statistics are not available at the project or precinct level, the applicant may use other reliable, objective data including those derived from the owner's records or those of private groups that collect such data. The crime statistics should be reported both in real numbers, and as a percentage of the residents in each project (e.g., 20 arrests for distribution of heroin in a project with 100 residents reflects a 20% occurrence rate). The data should cover the past three-year period and, to the extent feasible, should indicate whether these data reflect a percentage increase or decrease in drug-related crime over the past several years. Applicants must address in their assessment how these crimes have affected the project, and how the applicant's overall plan and strategy is specifically tailored to address these drug-related crime problems.

(2) Other data on the extent of drug-related crime. To the extent that objective data as described under paragraph (1)(i) of this section may not be available, or to complement that data, the assessment may use relevant information from other sources that have a direct bearing on drug-related crime problems in the project proposed for assistance. However, if other relevant information is to be used in place of, rather than to complement, objective data, the application must indicate the reason(s) why objective data could not be obtained and what efforts were made to obtain it. Examples of other data include: Resident/staff surveys on drug-related issues or on-site reviews to determine drug activity; the use of local government or scholarly studies or other research conducted in the past year that analyze drug activity in the targeted project; vandalism costs and related vacancies attributable to drug-related crime; information from schools, health service providers, residents and police; and the opinions and observations of individuals having direct knowledge of drug-related crime problems concerning the nature and extent of those problems in the project proposed for assistance. (These individuals may include law enforcement officials, resident or community leaders, school officials, community medical officials, drug treatment or counseling professionals, or other social service providers.)

(i) If applying for drug treatment program funding, a certification that the applicant has notified and consulted with the relevant Single State Agency or other local authority with drug program coordination responsibilities concerning its application; and that the proposed drug treatment program has been reviewed by the relevant Single State Agency or other local authority and that it is consistent with the State treatment plan; and that the relevant Single State Agency or other local authority has determined that the drug treatment provider(s) has provided drug treatment services to similar populations, identified in the application, for two prior years.

(j) Drug-free workplace. The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F and appendix C.

(k) Lobbying. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. See section VI.(g), below, of this NOFA. If the amount applied for is greater than $100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include the Disclosure of Lobbying Activities Form (SF–LLL).

(l) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

IV. Corrections to Deficient Applications

HUD will notify the applicant within ten (10) working days of the receipt of the application if there are any curable technical deficiencies in the application. Curable technical deficiencies relate to minimum eligibility requirements (such as certifications, signatures, etc.) that are necessary for funding approval but that do not relate to the quality of the applicant's program proposal under the selection criteria. The owner must submit corrections in accordance with the information provided by HUD within 14 calendar days of the date of the HUD notification.

VI. Other Matters

(a) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying from 7:30 to 5:30 weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20401.

(b) Federalism Impact.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the provisions of this NOFA do not have "federalism implications" within the meaning of the Order. The NOFA announces the availability of funds and provides the application requirements for federally Assisted Low Income Housing Drug Elimination Grants focusing on activities designed to deter drug-related crime. Deterring drug-related crime is a recognized goal of general benefit without direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

(c) Family Impact

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that the policies announced in this Notice would not have a significant impact on the formation, maintenance, and general well-being of families exempt indirectly to the extent of the social and other benefits expected from this program of assistance.

(d) Section 102 HUD Reform Act Applicant/Recipient Disclosures

Documentation and public access. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

Disclosures. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

(e) Section 103 HUD Reform Act.

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are limited by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants who have general questions about what information may be discussed with them during the selection may contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.)

(f) Section 112 HUD Reform Act

Section 13 of the Department of Housing and Urban Development Act contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

(g) Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance. Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of their sovereign power are excluded from coverage, but IHAs established under State law are not excluded from coverage.

Authority: 42 U.S.C. 11901 *et. seq.*

Dated: August 25, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–20641 Filed 8–27–92; 8:45 am]

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federal register

Friday
August 28, 1992

Part IV

Department of the Interior

Bureau of Indian Affairs

Environmental Impact Statement; Crownpoint and Church Rock In Situ Leach Mines, McKinley County, NM; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Environmental Impact Statement; Crownpoint In Situ Leach (ISL) Mine, and Church Rock Satellite Facility, Hydro Resources, Inc., McKinley County, NM

AGENCIES: Bureau of Indian Affairs and the Bureau of Land Management (Interior), and the Nuclear Regulatory Commission.

ACTION: Notice of Intent and Public Scoping Meeting.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs, with the cooperation of the Bureau of Land Management and the Nuclear Regulatory Commission, intends to gather information necessary for preparing an Environmental Impact Statement (EIS) for the Crownpoint and Church Rock in situ leach mines proposed for areas including the Navajo Indian Reservation located in McKinley County, New Mexico. A description of the proposed project, location, and environmental considerations to be addressed in the EIS are provided below (see supplemental information). In addition to this notice, public meetings regarding the proposal and preparation of the EIS will be held.

This notice is being published in accordance with the National Environmental Policy Act (NEPA) regulations found in 40 CFR 1501.7, and NRC's reporting requirements found in 10 CFR 51.26. The purpose of the notice is to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are encouraged.

The applicant has submitted an environmental report to accompany its source material license application. Copies of the environmental report are available for public inspection at the addresses listed below.

DATES: Comments should be received by October 9, 1992. Public scoping meetings will be held September 24, 1992, in the Navajo Nation Education Center, Morgan Boulevard, Window Rock, Arizona, from 2 p.m. to 4 p.m.; and September 24, 1992, at Crownpoint Chapter House, Crownpoint, New Mexico, from 7 p.m. to 9 p.m.

ADDRESSES: Comments should be addressed to Walt Mills, Area Director Navajo Area Office, P.O. Box 1060, Gallup, New Mexico 87301; Larry Woodard, State Director, Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, P.O. Box 27115, Sante Fe, New Mexico 87502–7115; Ramon Hall, Director, U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Leonard Robbins, Environmental Quality Coordinator, Bureau of Indian Affairs, Navajo Area Office, P.O. Box 1060, Gallup, New Mexico 87301, telephone (505) 863–8287; David Sitzler, Mining Engineer, Bureau of Land Management, Albuquerque District Office, 435 Montano Road, NE, Albuquerque, New Mexico 87107, telephone (505) 761–8919; Joel Grimm, Project Manager, U.S. Nuclear Regulatory Commission, Uranium Recovery Field Office, P.O. Box 25325, Denver, Colorado 80225, telephone (303) 231–5800.

SUPPLEMENTARY INFORMATION: The proposed project includes an in situ leach (ISL) mine and central processing plant located near Crownpoint, New Mexico, approximately 160 km (100 miles) west of Albuquerque. In addition, the applicant proposes to operate an ISL mine and satellite ion exchange (IX) plant near Churchrock, New Mexico, another 34 km (21 miles) westward. The project involves recovery of uranium from naturally occurring ore in the Morrison Formation using solution mining methods.

During the uranium extraction process, aqueous solutions including sodium carbonate, sodium bicarbonate, carbon dioxide, oxygen, and hydrogen peroxide, will be added to ground water. The mining solution, known as lixiviant, will be pumped under pressure down injection wells into the mineralized zones where it will dissolve uranium from the formation. The uranium-bearing solution will migrate through the formation, will be recovered from production wells, and the uranium extracted in a processing plant. Concentrated uranium solution from the satellite IX plant will be transported by tanker for processing at the central plant. The leaching solution is then recharged and reused. Well fields will be designed in a five-spot or seven-spot pattern, with each recovery well being located inside a ring of injection wells. The ground water near each mine unit is to be monitored for potential lixiviant excursions.

Following uranium recovery in each mine unit, the applicant shall restore ground-water conditions. Restoration may include ground-water sweep, clean water injection, and geochemical stabilization of the aquifer with a reductant. The goal will be restoring the aquifer to baseline conditions existing prior to mining.

Environmental issues to be addressed in the EIS are expected to include geomorphology, geologic stability, surface and ground-water hydrology, cultural, scientific, and biologic resources, land use, air quality, transportation, noise, health and safety, public services and utilities, and visual resources. In addition, the EIS will address a number of alternatives involving facility size and alternative locations. At this time, traditional methods of uranium mining, including open pit and shaft mining, are not economically feasible.

This notice is published pursuant to § 1501.7 of the Council on Environmental Quality Regulations (40 CFR, parts 1500 through 1508 implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM–8.

Dated: August 21, 1992.

David J. Matheson,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 92–20741 Filed 8–27–92; 8:45 am]

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federal register

Friday
August 28, 1992

PART V

Department of Transportation

Federal Transit Administration

49 CFR Ch. VI

Change in Policy on Sale and Replacement of Transit Vehicles; Rule

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Ch. VI

Change in Policy on Sale and Replacement of Transit Vehicles

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of policy.

SUMMARY: This Notice changes Federal Transit Administration (FTA) policy concerning use of proceeds from the sale or trade-in of vehicles purchased in part with a grant from the FTA. In addition, the Notice makes clear that a grantee may sell or trade in a vehicle before the vehicle has reached the end of its minimum normal service life.

The new policy provides grantees with options regarding the disposition of federally funded vehicles in circumstances in which the grantee is acquiring like-kind replacement vehicles. The grantee has discretion to apply the mechanisms provided under this policy initiative or to continue to apply existing policy, in which cash reimbursements to the FTA are required in disposition of federally funded vehicles.

EFFECTIVE DATE: August 28, 1992.

FOR FURTHER INFORMATION CONTACT: Douglas A. Kerr, Office of Grants Management, 202-366-2440.

SUPPLEMENTARY INFORMATION:

I. Purpose

The purpose of this document is to stimulate acquisition of new transit vehicles and to encourage development of a secondary market for the sale of used vehicles. Increasing the rate of acquisition of new transit vehicles will stimulate the economy and expedite the introduction of vehicles complying with the Clean Air Act Amendments of 1991 and the Americans with Disabilities Act of 1990.

II. Applicability

This policy applies to any passenger vehicle (e.g., transit bus or rail car) acquired with funds provided by the FTA under Sections 3, 5, and 9 of the Federal Transit Act, as amended, and under the Federal Aid to Urban Systems program (FAUS) and the Interstate Transfer Transit Program, public transit programs financed under Title 23, United States Code (The Federal Aid Highway Act). States managing Section 16 and Section 18 grants may undertake the transactions in this Notice pursuant to State procedures to the extent permitted by the Department of Transportation regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR part 18 (common grant management rule).

III. Policy

Effective immediately, grantees acquiring vehicles to replace existing equipment may sell or trade in the older vehicles and use the net proceeds to offset the cost of replacement vehicles, subject to prior approval of the FTA. All net proceeds from the sale or trade-in must be used to acquire like-kind replacement vehicles (i.e., generally, the same class of transit buses or rail cars). Proceeds may be applied to the leasing or the purchasing of vehicles.

FTA grant recipients wishing to take advantage of the new policy should contact the appropriate FTA Regional Office.

A. Related Existing Policies

This policy invokes Section 18.32(c)(4) of the common grant management rule, which provides

> When acquiring replacement equipment, the grantee or subgrantee may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property, subject to the approval of the awarding agency. 49 CFR 18.32(c)(4), Equipment.

This policy supersedes statements in FTA Circular 5010.1A, chapter 1, paragraph 15, "Sales Proceeds," by providing grantees the option to apply the proceeds from vehicles sold to like-kind replacement vehicles, rather than return the FTA's proportionate share of the proceeds. This policy will be evaluated after two years of implementation. The circular will be revised with a page change.

This action does not change FTA policies concerning minimum normal service life or Federal interest in a federally funded asset. Those policies are described in full detail in FTA Circular 9030.1A, "Section 9 Formula Grant Application Instructions," 9-18-87. They are summarized here because in certain cases minimum normal service life and the Federal interest in the vehicle have an effect on the calculations of local share and Federal share of grants for the replacement vehicles.

1. Service Life

As described in Circular 9030.1A, in order to ensure that equipment is adequately maintained, the FTA assigns a minimum normal service life in years or mileage to vehicles acquired with FTA assistance. A standard size heavy duty (approximately 35'—40') transit bus, for example, has a minimum normal service life of 12 years or 500,000 miles, and a rail car has a service life of 25 years. A medium size heavy duty (approximately 30') transit bus has a service life of 10 years of 350,000 miles. A small medium-duty (under 30') bus has a service life of 7 years or 200,000 miles, and other vehicles (such as regular and specialized vans) have a service life of 4 years or 100,000 miles.

2. Federal Interest

For purposes of determining the Federal interest in a federally funded transit vehicle during its minimum normal service life, a straight-line depreciation formula is used: for a vehicle with a 12-year useful life, the vehicle's value Decreases each year by 1/12 of the vehicle's original purchase price. Similarly, the Federal interest in the vehicle decreases each year by 1/12 of the amount of the Federal funds used to purchase the vehicle.

The Federal interest in a transit vehicle after service life is based on the fair market value of the vehicle.

B. Reimbursement of Federal Interest

In the past, if a grantee sold a vehicle before the end of its minimum normal service life, a cash payment to the Federal Government equal to the remaining Federal interest in the vehicle was required. With today's announcement, a grantee electing to remove a vehicle from service and sell it before the end of its minimum normal service life for the purpose of acquiring like-kind replacement vehicles will not be required to remit to the Federal Government a cash reimbursement of the remaining Federal interest in the vehicle removed. Instead, the remaining Federal interest shall be transferred to the replacement vehicle.

C. Payment from Sales Proceeds of Fully Depreciated Vehicles

In the past, if a grantee sold a vehicle that was beyond the end of its minimum normal service life and received sales proceeds exceeding $5,000, the grantee was required to remit a cash payment to the Federal Government equal to a proportional share of the net sales proceeds relative to the percentage of Federal participation in the original grant.

With today's announcement, a grantee electing to sell such a vehicle for the purpose of acquiring a like-kind replacement vehicle may elect not to remit a portion of the sales proceeds to the Federal Government. Instead, the grantee may apply 100 percent of the net sales proceeds to the acquisition of the like-kind replacement vehicle.

D. Grantee Financial Responsibility

In acquiring a like-kind replacement vehicle under the provisions of this policy, a grantee will be responsible for investing (a) the local share for the purchase of the new vehicle and (b) an amount equal to the straight-line depreciated value of the vehicle sold. In the event that the sales proceeds exceed the latter amount, any additional sales proceeds must be invested in the acquisition of the like-kind replacement vehicle or of other items eligible for capital assistance under the Federal Transit Act, as amended.

E. Trade-Ins

Grantees have the option under the Common Rule to trade in or sell used vehicles and apply the proceeds to the acquisition of replacement vehicles. FTA requires that the grantee choose the method of disposition that affords the greatest return on the used asset being replaced. FTA's experience suggests that the independent sale of the used vehicle rather than disposition by trade-in generally results in the higher proceeds.

F. Leasing

A grantee may choose to sell the vehicle and, rather than purchase replacement vehicles, elect to lease like-kind vehicles, using the proceeds from the sale. The grantee must propose to FTA how it will apply the proceeds. Before undertaking this action, a grantee should discuss alternatives with the appropriate FTA Regional Office.

G. Purchase of Used Vehicles

The purchase of used vehicles is eligible for a capital grant.

H. Disposition

Disposition standards for equipment are described in FTA Circular 5010.1A, Chng.1, dated 7-22-88, Paragraph 7.c.(3), "Equipment," pages I-19 and 20. This policy will add a new disposition option to these standards in allowing a grantee to sell a passenger vehicle and apply the sales proceeds to a like-kind replacement vehicle.

Authority: 49 U.S.C. App. sections 1601 *et seq.*

Issued on: August 25, 1992.

Brian W. Clymer,

Administrator.

[FR Doc. 92-20723 Filed 8-27-92; 8:45 am]

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August 28, 1992

Part VI

Department of Agriculture

Food Safety and Inspection Service

9 CFR Parts 317 and 381

Nutrition Labeling; Format for Use on Meat and Poultry Product Labels; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 91-006P-FRMT]

RIN 0583-AB34

Nutrition Labeling; Format for Use on Meat and Poultry Product Labels

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to adopt a standard format for use in presenting nutrition information on the labeling of meat and poultry products. FSIS is proposing to establish the CONTROL WITH DIETARY GUIDANCE (Exhibit 10) or the CONTROL WITH RECOMMENDED DAILY INTAKE RANGE (Exhibit 11) as the standard format. FSIS is requesting comments on the proposed formats, as well as other options. The Agency also seeks comments on various label format elements.

FSIS plans to publish a final regulation on nutrition labeling by November 8, 1992, which will include a standard format for presenting nutrition information on meat and poultry product labels.

This proposal would encourage consumer usage of beneficial nutrition information by presenting such information in a consistent format.

DATES: Comments must be received on or before September 28, 1992.

ADDRESSES: Written comments to Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Mr. Charles R. Edwards at (202) 205-0080.

FOR FURTHER INFORMATION CONTACT: Charles R. Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 205-0080.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Effect on Small Entities

FSIS published a proposed rule on nutrition labeling in the **Federal Register** on November 27, 1991. (56 FR 60302) The proposed rule was reviewed under USDA procedures established to implement Executive Order 12291 and was classified as a major rule pursuant to section 1(b)(1) of that order because it is likely to result in an annual effect on the economy of $100 million or more. The review is reported in a Preliminary Regulatory Impact Analysis (PRIA), which was published as an appendix to the nutrition labeling proposed rule, and in a supplement to the PRIA which was published on February 18, 1992 (57 FR 5956). The PRIA also satisfies the analysis requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), which deals with the effect on small entities.

This proposed rule on nutrition labeling format is one element of the overall nutrition labeling rulemaking which was considered in the PRIA, but deferred for later publication.

Executive Order 12778

This proposed rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. This proposed rule provides a standard format for presenting nutrition information on the labels of meat and poultry products.

This proposed rule concerns labeling of meat and poultry products. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat or poultry products that are in addition to, or different from, those imposed under the FMIA or the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and the PPIA, States that maintain meat and poultry inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA or PPIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

In the event of its adoption, no retroactive effect would be given to this proposed rule, and applicable administrative procedures must be exhausted before any judicial challenge to its provisions or their application. Those administrative procedures are set forth in the rules of practice governing proceedings for labeling determinations at 9 CFR parts 335 and 381, subpart W.

Paperwork Requirements

The proposed rule on nutrition labeling would require manufacturers to revise their labels to show specific nutrition information on most processed meat and poultry products. This proposed rule on format would specify the form in which such nutrition information would be presented on the label.

The paperwork requirements contained in the nutrition labeling proposed rule were submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This proposed rule would not affect those paperwork requirements, and would be covered under OMB's approval of paperwork requirements of the nutrition labeling rulemaking.

Comments

Interested persons are invited to submit written comments concerning this proposed rule. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 91-006P-FRMT. Any person desiring an opportunity for oral presentation of views as provided under the Poultry Products Inspection Act must make such request to Mr. Charles R. Edwards so that arrangements may be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this notice will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

On November 27, 1991, FSIS published in the **Federal Register** a proposed rule entitled "Nutrition Labeling of Meat and Poultry Products." (56 FR 60302) FSIS stated in its proposal that it would issue a separate proposed rule on nutrition label format at a later date.

FSIS seeks comments on the formats it is proposing, as well as on the other options presented in this proposal. Pursuant to the Administrative Procedure Act, the Agency is required to provide the public and the regulated community with adequate notice of, and a reasonable opportunity to comment on, the various formats and the issues raised by these formats, which the Agency will ultimately mandate in a final standard format.

FSIS has determined that it has statutory authority to require nutrition labeling, based on the Secretary of Agriculture's determination that meat and poultry products, other than single-ingredient, raw products, would be misbranded in the absence of such information on the label, under section 1(n) of the Federal Meat Inspection Act (21 U.S.C. 601(n)) and section 4(h) of the Poultry Products Inspection Act (21 U.S.C. 453(h)). Under these authorities, the Secretary may promulgate regulations, such as those proposed by FSIS concerning the format to be used in nutrition labeling, to ensure that meat and poultry products are not misbranded, *i.e.*, that their labeling is not false or misleading in any particular manner and that it does contain required information.

On July 20, 1992, the Food and Drug Administration (FDA) published in the **Federal Register** (57 FR 32058) a proposed rule to adopt a format for use in presenting nutrition information on the labeling of FDA-regulated foods. At that time, FDA proposed to establish the PERCENT DV WITH DRV, (Exhibit 3), format as the standard format for presenting nutrition information on the food label. At the same time, FDA acknowledged that inclusion of the DRV as a required element of the label will be contingent on a final determination based on review of the comments on its original and supplementary proposals for nutrition labeling, as well as the research results.

Policy has not yet been established within FSIS regarding the use of the DRV's. FSIS, like FDA, is considering whether DRV's represent the best way to help consumers use the nutrition information to plan a healthy diet that meets their individual needs. FSIS is seeking comments on the use of DRV's and on other ways or providing help to consumers in planning a healthy diet. If DRV's are ultimately determined by FSIS not to be the best way to accomplish this, the label format will reflect whatever mechanism is chosen to provide information in the most useful manner.

While FSIS recognizes that FDA has proposed PERCENT DV WITH DRV (Exhibit 3), (as well as requesting comments on a variety of other options, 57 FR 32058), the Agency has decided to propose two formats that differ from the FDA's proposal. While the Agency believes a uniform format for all processed foods is desirable, it is concerned that the FDA's proposed format: (1) Does not provide the consumer with a sufficient range of information on which to base individual dietary choices since advisable calorie, fat, carbohydrate, fiber, and protein intakes vary based on age, sex, height, weight, metabolism, and activity level; (2) the uses of a single set of values that may prove to be misleading to the individual consumer and encourage the consumption of inappropriate levels of nutrients; and (3) the uses of percents, as opposed to absolute amounts, on the nutrition label that may prove to be confusing to a significant portion of the population.

Further, the Agency is open to receiving suggestions about how the label format can be improved to better convey nutrition information in the context of a total daily diet.

A guiding principle for the revision of the nutrition label adopted by FSIS is that consumer ability to use information to facilitate choosing foods consistent with the Dietary Guidelines for Americans should be an important consideration in the selection of a format.

FDA conducted a series of research studies to determine the most useful and appropriate format for nutrition labeling, and to investigate new labeling approaches, such as highlighting, grouping, and techniques for graphic presentation. Extensive discussion of these studies can be found in FDA's July 20, 1992 proposed rule (57 FR 32058). Although FDA-regulated foods were used in the FDA studies, the following are examples of formats using a meat product:

BILLING CODE 3410-DM-M

Exhibit 1

CONTROL

CHILI WITH BEANS

NUTRITION INFORMATION PER SERVING

Serving Size: 1 cup (253 g)
Serving per Container: 1

Calories	260
Calories from fat	75
Fat	8.5 g
Saturated fat	3.5 g
Cholesterol	135 mg
Sodium	1010 mg
Carbohydrates	22 g
Fiber	9 g
Protein	25 g

PERCENT OF DAILY VALUE

Vitamin A	20
Vitamin C	2
Calcium	8
Iron	45

INGREDIENTS: xxxx

Exhibit 3

PERCENT DV WITH DRV

CHILI WITH BEANS

NUTRITION INFORMATION PER SERVING

Serving Size: 1 cup (253 g)
Serving per Container: 1

Calories	260	
Calories from fat	75	
	PERCENT OF DV	DAILY VALUE (DV)*
Fat (8.5 g)	10	Less than 75 g
Saturated fat (3.5 g)	15	Less than 25 g
Cholesterol (135 mg)	45	Less than 300 mg
Sodium (1010 mg)	40	Less than 2,400 mg
Carbohydrates (22 g)	6	325 g or more
Fiber (9 g)	35	25 g
Protein (25 g)	50	
Vitamin A	20	
Vitamin C	2	
Calcium	8	
Iron	45	

* As part of a 2,350 calorie diet
INGREDIENTS: xxxx

Exhibit 5

ADJECTIVE

CHILI WITH BEANS

NUTRITION INFORMATION PER SERVING

Serving Size: 1 cup (253 g)
Serving per Container: 1

Calories	260
Calories from fat	75

	AMOUNT	DAILY VALUE (DV)*
Fat	MEDIUM (8.5 g)	Less than 75 g
Saturated fat	MEDIUM (3.5 g)	Less than 25 g
Cholesterol	HIGH (135 mg)	Less than 300 mg
Sodium	HIGH (1010 mg)	Less than 2,400 mg
Carbohydrates	MEDIUM (22 g)	325 g or more
Fiber	HIGH (9 g)	25 g
Protein	HIGH (25 g)	

PERCENT OF DAILY VALUE

Vitamin A	HIGH 20
Vitamin C	LOW 2
Calcium	MEDIUM 8
Iron	HIGH 45

* As part of a 2,350 calorie diet
INGREDIENTS: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Exhibit 6

HIGHLIGHTING

CHILI WITH BEANS

NUTRITION INFORMATION PER SERVING

Serving Size: 1 cup (253 g)
Serving per Container: 1

Calories	260
Calories from fat	75

	AMOUNT	DAILY VALUE (DV)*
Fat	8.5 g	Less than 75 g
Saturated fat	3.5 g	Less than 25 g
Cholesterol	135 mg	Less than 300 mg
Sodium	1010 mg	Less than 2,400 mg
Carbohydrates	22 g	325 g or more
Fiber	9 g^^	25 g
Protein	25 g	

PERCENT OF DAILY VALUE

Vitamin A	20
Vitamin C	2
Calcium	8
Iron	45

* As part of a 2,350 calorie diet
Meets FDA definitions and is consistent with dietary recommendations as: ^^ High in amount per serving
INGREDIENTS: xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Exhibit 7

GROUPING

CHILI WITH BEANS

NUTRITION INFORMATION PER SERVING

Serving Size: 1 cup (253 g)
Serving per Container: 1

Calories	260	
Calories from fat	75	
CHOOSE A DIET LOW IN:	**AMOUNT**	**DAILY VALUE (DV)***
Fat	8.5 g	Less than 75 g
Saturated fat	3.5 g	Less than 25 g
Cholesterol	135 mg	Less than 300 mg
Sodium	1010 mg	Less than 2,400 mg
CHOOSE A DIET HIGH IN:		
Carbohydrates	22 g	325 g or more
Fiber	9 g	25 g
PERCENT OF DAILY VALUE		
Protein	50	
Vitamin A	20	
Vitamin C	2	
Calcium	8	
Iron	45	

* As part of a 2,350 calorie diet

INGREDIENTS: xxxx

Exhibit 8

SIMPLIFIED FORMAT

CONTROL/DRV

COOKED GROUND BEEF PATTIES

NUTRITION INFORMATION PER SERVING

Serving Size: 3 oz (85 g)
Serving per Container: 4

Calories	230
Calories from fat	150

	AMOUNT	DAILY VALUE (DV)*
Total fat	16.5 g	Less than 75 g
Saturated fat	6.5 g	Less than 25 g
Cholesterol	80 mg	Less than 300 mg
Total Carbohydrate	0 g	325 g or more
Sodium	65 mg	Less than 2,400 mg
Protein	21 g	

PERCENT OF DAILY VALUE
Iron 15

Not a significant source of sugars, complex carbohydrates, dietary fiber, vitamin A, vitamin C, or calcium.

* As part of a 2,350 calorie diet

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BILLING CODE 3410-DM-C

5. Alternate Formats

FSIS is proposing to select a standard format. At the same time, FSIS recognizes that the formats that have been tested obviously do not exhaust all possibilities.

Among the alternative formats discussed in this section and the formats discussed earlier in this document, FSIS requests comments on which format is most comprehensible while providing nutrition information in the context of e total daily diet

A. Formats With Daily Values for Men and Women

Recommended calorie and nutrient intakes vary widely across the general population; therefore, a single daily value may not be appropriate. The factor that has the greatest effect on calorie need is gender. One possible way to address this concern would be to include on the label an average daily value for men and an average daily value for women. The following example includes an illustration of such a format. Would this format help individuals better identify their daily nutritional needs? Would such a format be helpful to individuals even though it presents "average" daily values that are not applicable to all men and all women? Can such a "dual" declaration be accommodated in the space available for nutrition labeling on food labels? If such a format is suggested, the Agency requests comments along with supporting data on what the specific calorie and nutrient intake should be.

BILLING CODE 3410-DM-M

Exhibit 9

Control with Daily Guide for Men and Women

Chili with Beans

Nutrition Information Per Serving

Size		Servings	
Serving Size: 1 cup (253 g)		Servings per Container: 1	
Calories			
Calories:	260	Calories from fat:	75

Nutrient	Amount	Daily Guide	Women	Men
Total Fat	8.5 g	Less than	65 g*	80 g*
Saturated Fat	3.5 g	Less than	20 g*	25 g*
Cholesterol	135 mg	Less than	300 mg	300 mg
Sodium	1010 mg	Less than	2400 mg	2400 mg
Total Carbohydrate	22 g	More than	300 g*	375 g*
Complex Carbohydrate	18 g			
Sugars	4 g			
Dietary Fiber	9 g		25 g*	30 g*
Protein	25 g		50 g*	65 g*

Percent of Daily Guide

Vitamin A	20%	Calcium	8%
Vitamin C	2%	Iron	45%

* Based on an assumed calorie intake of 2,000 calories for women and 2,500 calories for men. Advisable calorie, fat, carbohydrate, fiber, and protein intake will vary based on age, height, weight, metabolism, and activity level.

INGREDIENTS: XXXX

Exhibit 10

Control with Dietary Guidance

Chili with Beans

Nutrition Information Per Serving

Size		Servings	
Serving Size: 1 cup (253 g)		Servings per Container:	1
Calories			
Calories:	260	Calories from fat:	75

Nutrient	Amount	Percent of Reference Daily Intake	
Total Fat (1g=9 calories)	8.5 g	Vitamin A	20%
Saturated Fat	3.5 g	Vitamin C	2%
Cholesterol	135 mg	Calcium	8%
Sodium	1010 mg	Iron	45%
Total Carbohydrate (1g=4 calories)	22 g		
Complex Carbohydrate	18 g		
Sugars	4 g		
Dietary Fiber	9 g		
Protein (1g=4 calories)	25 g		

Use this nutrition information to help you plan your total daily diet. The Dietary Guidelines recommend that Americans:
- Eat a wide variety of foods
- Choose a diet with plenty of vegetables, fruits, and grain products
- Choose a diet low in fat (30% of calories or less), saturated fat (less than 10% of calories), and cholesterol
- Use sugar, salt and sodium only in moderation

INGREDIENTS: XXXX

Exhibit 11

Control with Recommended Daily Intake Range

Chili with Beans

Nutrition Information Per Serving

Size	Servings
Serving Size: 1 cup (253 g)	Servings per Container: 1

		Recommended Daily Intake*
Calories	260	1600-2800
Calories from fat	75	480-840

Nutrient	Amount	Recommended Daily Intake*
Total Fat	8.5 g	53-93 g
Saturated Fat	3.5 g	18-31 g
Cholesterol	135 mg	300 mg
Sodium	1010 mg	2400 mg
Total Carbohydrate	22 g	240-420 g
Complex Carbohydrate	18 g	
Sugars	4 g	
Dietary Fiber	9 g	18-32 g
Protein	25 g	40-70 g

Percent of Recommended Daily Intake

Vitamin A	20%	Calcium	8%
Vitamin C	2%	Iron	45%

* Ranges are based on recommended intakes and food consumption surveys. Advisable calorie, fat, carbohydrate, fiber, and protein intake should vary based on age, sex, height, weight, metabolism, and activity level.

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August 31, 1992

Briefing on How To Use the Federal Register
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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: September 17, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clinton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

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Rules and Regulations

Federal Register
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Monday, August 31, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1098

[DA-92-09]

Milk in the Nashville, Tennessee Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends portions of the pool plant definition of the Nashville, Tennessee milk order. The suspension allows a distributing plant located in the Nashville, Tennessee marketing area, but having a greater volume of its fluid milk sales in the Georgia marketing area than in the Nashville area, to stay regulated under the Nashville, Tennessee milk order. The suspension was requested by Malone & Hyde, Inc. (Malone), a proprietary handler. The suspension is needed to avoid the shifting of regulation of the Malone plant based on a plurality of sales volume, which would cause disorderly marketing by adversely affecting its ability to procure milk.

EFFECTIVE DATE: August 1, 1992.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. 96456, Washington, DC 20090-6456, (202) 720-6274.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued May 6, 1992; published May 12, 1992; (57 FR 20210).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action should obviate the need for Malone & Hyde, Inc. to engage in inefficient movement of packaged milk in order to keep its plant regulated under the Nashville, Tennessee order.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity * * *.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Nashville, Tennessee marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on May 12, 1992, (57 FR 20210) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunities to file written data, views, and arguments thereon. Several comments were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that beginning August 1, 1992, for an indefinite period, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1098.7(d)(2)(iii), the words "so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at this same location."

Statement of Consideration

This action suspends portions of the pool plant definition of the Nashville, Tennessee, milk order for an indefinite period. The suspension allows a distributing plant located in the Nashville marketing area but having a plurality of its fluid milk sales in a different marketing area to stay regulated by the Nashville order.

The suspension was requested by Melone & Hyde, Inc. (Malone), a proprietary handler operating a distributing plant that is regulated under the Nashville order. Under the provisions of that order, the Malone plant would be regulated by the Georgia milk order after the third consecutive month in which it has greater route disposition of fluid milk products from its plant in the Georgia marketing area. Because of a change in its sales pattern, the Malone plant could become regulated under the Georgia order.

Because of a substantial difference in the Class I utilizations under the two orders, blend prices to Malone's producers would be substantially lower if the plant becomes regulated under the Georgia order. Since the plant would still be located in the Nashville procurement area, it would have a price disadvantage in competing for milk supplies with nearby plants under the Nashville order where the blend prices would be higher.

Four comments in opposition to the suspension were filed by proprietary handlers and one comment in opposition was filed by a cooperative association and one by an association for Georgia dairy farmers. The opponents argue that Malone should be pooled in Georgia so that producers supplying that market would realize the benefit of sharing in Malone's Class I sales. They contend that Malone always has the option of paying premiums to its Tennessee producers in order to remain competitive in the procurement area. Also, they contend that blend prices in the Georgia order would increase and blend prices in the Nashville, Tennessee

order would decrease if Malone became regulated by the Georgia milk order.

The Malone plant's sales area extends throughout the South. The plant does not have a substantial proportion of its sales volume associated with any particular Federal order market. It does have greater sales in the Nashville, Memphis, Alabama-West Florida, and Georgia markets than in other markets. The market where it has a plurality of its sales can easily shift from month to month.

A "lock-in" provision was adopted for the Nashville market to better effect a uniform minimum order price to producers for all the distributing plants located in the Nashville marketing area.

The reason the lock-in provisions may result in the plant shifting to the Georgia pool is that it excludes a plant that would have a higher Class I price if regulated by another order. The Georgia order Class I price is one-cent higher than the Nashville order Class I price at Nashville. It is this provision rather than the market of a plurality of its sales which could result in the plant shifting to the Georgia pool. Suspension of this price comparison provision will continue to effect the intent of the "lock-in" provision of the Nashville order.

Malone, in order to decrease its route disposition in the Georgia marketing area below that in the Nashville, Tennessee market, has arranged with another distributing plant to receive packaged fluid milk at the other handler's plant for distribution in the Georgia marketing area. This distribution is not considered "route disposition" from the Malone plant. This arrangement (plant transfers) is very costly to Malone. The suspension would obviate this wasteful marketing practice.

Accordingly, it is appropriate to suspend the aforesaid provisions.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that this action should obviate the need for Malone & Hyde, Inc. to engage in inefficient movements of packaged milk in order to keep its plant regulated under the Nashville, Tennessee order.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. Several comments were received.

Therefore, good cause exists for making this order effective less than 30 days from date of publication in Federal Register.

List of Subjects in 7 CFR Part 1098

Milk marketing orders.

It is therefore ordered, that the following provisions of the order (7 CFR part 1098) are hereby suspended for an indefinite period.

PART 1098—MILK IN THE NASHVILLE, TENNESSEE MARKETING AREA

1. The authority citation for 7 CFR part 1098 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1098.7 [Suspended in part]

2. In § 1098.7(d)(2)(iii), the words "so long as this order's Class I price applicable at such plant location is not less than the other order's Class I price applicable at this same location" are suspended.

Dated: August 24, 1992.

John E. Frydenlund,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 92–20887 Filed 8–28–92; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 91–134–2]

Ports Designated for Exportation of Animals; Boston, MA

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the "Inspection and Handling of Livestock for Exportation" regulations by adding Boston, Massachusetts, to the list of ports designated as ports of embarkation, and by adding Logan International Airport as an export inspection facility, for miniature swine only, for the Boston port. This change will add a port through which miniature swine may be exported. For the exportation of miniature swine, Logan International Airport meets the requirements of the regulations for inclusion in the list of export inspection facilities.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Dr. Andrea M. Morgan, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8383.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. Section 91.14 lists ports designated as ports of embarkation.

In a document published in the **Federal Register** on May 7, 1992 (57 FR 19555–19556, Docket No. 91–134), we proposed to amend § 91.14 by adding Boston, Massachusetts, to the list of ports designated as ports of embarkation and by adding Logan International Airport as an export inspection facility, for miniature swine only, for the Boston port. We also proposed to add a definition for miniature swine in § 91.1.

Comments on the proposed rule were required to be received on or before July 6, 1992. We did not receive any comments before the close of the comment period. Therefore, based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule without change. Executive Order 12291 and Regulatory Flexibility Act.

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Prior to the effective date of this document, there were no ports designated as ports of embarkation in Massachusetts. Livestock exporters in Massachusetts transported animals to John F. Kennedy Airport in New York to be exported. Of the approximately 50 exporters of miniature swine in Massachusetts, most would be considered small entities. This rule will give exporters of miniature swine in Massachusetts the option of using a closer export facility. Since the cost of transporting the miniature swine to John F. Kennedy Airport is a small portion of the overall cost of exporting them, allowing use of Logan International Airport in Massachusetts will have minimal economic effect on the exporters. Further, since this action involves one type of animal, it is unlikely to have any significant effect on any entity involved in handling or transporting livestock.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging its provisions.

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 91 is amended as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 continues to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d)

2. In § 91.1 a definition for "miniature swine" is added in alphabetical order to read as follows:

§ 91.1 Definitions.

* * * * *

Miniature swine. Swine bred and raised as pets or for laboratory testing purposes that do not weigh more than 100 pounds at maturity.

* * * * *

3. In § 91.14, paragraph (a) is amended by redesignating paragraphs (a)(7) through (a)(16) as paragraphs (a)(8) through (a)(17), respectively, and by adding a new paragraph (a)(7) to read as follows:

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(7) *Massachusetts.* (i) Boston—airport only.

(A) Logan International Airport (miniature swine only), East Boston, Massachusetts 02128, (617) 565–4649.

* * * * *

Done in Washington, DC, this 26th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–20891 Filed 8–28–92; 8:45 am]

BILLING CODE 3410–34–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 50

RIN 3150–AE30

Reducing the Regulatory Burden on Nuclear Licensees

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reduce the regulatory burden on nuclear licensees. This action reflects an initiative undertaken by the Commission in response to a Presidential memorandum requesting that selected Federal agencies review and modify regulations that would eliminate any unnecessary burden of governmental regulation and ensure that the regulated community is not subject to duplicative or inconsistent regulation. In that spirit, the NRC's Committee to Review Generic Requirements (CRGR) identified eight areas where regulations could be revised to reduce the regulatory burden on licensees without in any way reducing the protection for the public health and safety or the common defense and security. The final amendments address unnecessary regulatory requirements related to the frequency of reporting information, analysis of emergency core cooling systems for operating power reactors, and clarification and update of regulations affecting certain material licensees.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. C.W. Nilsen, telephone (301) 492–3834 or Mr. Joseph J. Mate, telephone (301) 492–3795, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, the President of the United States signed a memorandum addressed to selected Federal Agency Heads who are concerned with energy production and protection of the environment. The memorandum requested the addressees work together to streamline the regulatory process and ensure that the regulatory community is not subject to duplicative or inconsistent regulation.

On the same day, the President signed a second memorandum entitled "Reducing the Burden of Government Regulation." This memorandum, which was sent to all Federal agencies, set aside a 90-day period to review and evaluate existing regulations and programs and to identify and accelerate action on initiatives that will eliminate any unnecessary regulatory burden. At the end of the review period, agencies were to submit a written report indicating the regulatory changes recommended or made during the review period and the potential savings as a result of the changes.

In response to the Presidential memoranda, the Commission decided that it would be consistent with its policy to monitor the impact of complying with NRC regulations by its licensees to instruct its Committee to Review Generic Requirements (CRGR) to review existing NRC regulations to determine whether regulatory burdens can be reduced without in any way reducing the protection for the public health and safety and the common defense and security. In accomplishing their review, the CRGR drew upon previous studies and solicited comments from the public, other Federal agencies, and the Commission's staff. A **Federal Register** Notice was published on February 24, 1992 (57 FR 6299) seeking public comment in connection with the review, and a second **Federal Register** Notice on March 23, 1992 (57 FR 9985) discussed likely or possible candidates for action, based on CRGR's preliminary evaluation of comments. An associated

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public meeting was held on March 27, 1992, in Bethesda, Maryland.

After completing their special review, the CRGR recommended revising the regulations in eight areas. The proposed revisions met the criteria for reducing the burden without in any way reducing the protection for public health and safety and common defense and security.

The Chairman of the NRC sent a report to the President of the United States on April 27, 1992, which summarized NRC's activities concerning the President's directive and advised the President that NRC would pursue the CRGR's recommendations expeditiously within the framework of the procedures and practices for rulemaking.

On June 1, 1992, in response to a memorandum from the President of the United States, dated April 29, 1992, the Commission directed the staff to strive to publish the proposed rule changes in the eight areas identified by the CRGR in the **Federal Register** for comment as soon as possible, but not later than June 15, 1992, with a view to issuing the final rules in the **Federal Register** no later than August 27, 1992. On June 18, 1992 (57 FR 27187), the NRC published the proposed rulemaking in the **Federal Register** for comment. The comment period expired on July 20, 1992.

Summary and Analysis of Public Comments

Thirty comment letters were received on the proposed rule and are available for public inspection, and copying for a fee, at the Commission's Public Document Room located at 2120 L street, NW. (Lower Level), Washington, DC. The comments on the proposed rule came from a variety of sources. These included private citizens, publicly-held corporations, citizens' groups, the armed forces, industry representatives, electric power companies or their representatives, and legal firms. Eleven significant points were raised by the commenters. Of the 30 comment letters received, 28 letters were favorable and 2 letters were partially opposed to the regulation changes. The comments and their resolutions are discussed below.

1. *Comment.* One commenter suggested that the Commission not only amend § 20.1906(b) concerning contamination monitoring, but also issue a statement that those licensees still operating under the old part 20 not be required to monitor packages for contamination that meet the conditions of § 20.1906(b).

Response. The NRC does not believe that the suggested change by the commenter is necessary because the amendment of § 20.1906(b) will make the subject contamination monitoring requirements of the new part 20 essentially the same as those contained in the existing part 20 (§ 20.205(b)(1)(iii) and (c)(1)).

2. *Comment.* One commenter opposed the rule on the basis that sealed sources routinely leak and, therefore, should not be excluded from monitoring.

The commenter cited an example where a driver and a truck were contaminated because of a failure to conduct a proper radiation sweep.

Response. The final rule does not exempt licensees from monitoring or surveying any packages with evidence of degradation of package integrity, including evidence of potential contamination. Likewise, this revision does not relax the preshipment requirements for monitoring of packages contained in 10 CFR part 71. The NRC does not have any evidence that supports the commenter's assertion that sealed sources routinely leak and, thus, the NRC believes that the requirements in place are sufficient to detect potential abnormal situations. No amount of regulation can, a priori, preclude all incidents involving leaking sources. However, these incidents can be dealt with through followup inspection and enforcement under the present regulatory scheme.

3. *Comment.* Several commenters addressed in general terms the need for the NRC to continue its efforts to reduce any unnecessary regulatory burden on licensees through amendments to 10 CFR chapter I.

Response. The NRC will continue its efforts to identify additional amendments that will provide for a reduction in regulatory burden while still assuring adequate protection of the public health and safety.

4. *Comment.* One commenter questioned the basis for exempting from external monitoring for radiation levels only nuclear material that was either in the form of a gas or in a special form since the external radiation levels are dependent upon radionuclides, quantity, shielding, and distance between radioactive material and the point of interest rather than material form.

Response. The NRC agrees with the commenter that the requirement to survey, upon receipt, the radiation levels on the package exterior should be based on the potential radiation hazard. Therefore, the requirement specified in 10 CFR 20.1906(b)(2) that monitoring of radiation levels be performed on labeled packages is being revised to delete the exemption that the radioactive material be in the form of a gas or in special form as defined in 10 CFR 71.4.

5. *Comment.* One commenter questioned whether the monitoring requirements were applicable for packages that show evidence of damage.

Response. The wording of 10 CFR 20.1906(b)(3) has been revised to indicate more clearly that packages with evidence of damage are to be monitored for both radioactive contamination and for radiation levels.

6. *Comment.* Several commenters requested that the proposed wording to 10 CFR 50.71(e)(4) concerning FSAR updates be revised to decouple the FSAR updates from the refueling cycle and that the 24-month requirement for updates is an unnecessary restriction.

Response. The proposed changes were not accepted. The majority of facility design changes reflected in an updated FSAR are effected during the refueling outage. The use of the refueling cycle interval provides for a current plant status document that is coordinated with plant changes. The wording of § 50.71(e)(4) is not restrictive to plants that will eventually increase their refueling cycle to 24 months.

7. *Comment.* Three electric utilities requested that the proposed wording in 10 CFR 50.36(a)(2) concerning radiological effluent reporting be revised to specify a particular date. One commenter suggested: "The report must be submitted as specified in § 50.4 prior to March 31 of each year."

Response. The wording of 10 CFR 50.36(a)(2) gives the licensee maximum flexibility for scheduling submission of radiological effluent reports with the only restriction being that the interval between reports must not exceed 12 months. The reporting requirements remain as proposed.

8. *Comment.* Two commenters suggested that the amendments indicate that the changes in reporting requirements of the new regulations take precedence over the existing license technical specifications or license conditions where there may be a conflict.

Response. The proposed amendments are generic and licensees may request administrative amendments to any conflicting license condition or technical specification as needed.

9. *Comment.* Two commenters suggested that NRC reconsider the need for licensees to submit 10 CFR 50.36a(2) effluent release reports and 10 CFR 50.59 reports concerning annual design changes. The commenters noted the requirement for these reports was issued before the Final Safety Analysis Reports were required to be updated periodically and before resident inspectors were assigned to all reactor sites. The commenters also observed that these reports are now available on site for review by inspectors at any time and that most design changes are reflected in the FSARs. Further, the commenters did not believe that these reports are routinely reviewed by the NRC staff. The commenters believed that if the requirements to submit such a report were eliminated, there would be no impact on safety, the required evaluations could continue to be performed, and the reports would continue to be available for review. The commenters believed that the deletion of these requirements would contribute to significant increased savings by licensees.

Response. The consequence of eliminating the requirements for these reports requires significant additional assessment. Thus, the proposed revisions have not been modified in order not to delay the benefit of burden reduction. Although this proposal will not be addressed in the current rulemaking, these suggested revisions will be evaluated as part of an ongoing NRC effort.

10. *Comment.* One commenter questioned whether the changes in reporting frequency of facility changes under 10 CFR 50.59, FSAR updates, and radiological effluent reports would impair the ability of the NRC to review the information in a timely manner.

Response. The resident inspector program along with regional regulatory programs provide timely and in some cases day-by-day review of facility operations. The changes being made will not impair NRC's ability to review the information.

11. *Comment.* One commenter (Yankee Atomic Electric Co.) stated that the FSAR update changes discussed in Action Item 1 in the proposed rule and in Action Item 7 of this document emanated from a petition for rulemaking that they submitted to the NRC on February 9, 1990 (PRM 50–55). The notice of receipt for this petition was published in the **Federal Register** on May 3, 1990 (55 FR 18608). The petitioner originally requested that nuclear power plant licensees be allowed to file FSAR reports at periods greater than annually. They suggested that § 50.71(e)(4) be revised to read as follows: "Subsequent revisions shall be filed no later than 6 months after completion of each planned refueling outage for a licensee's facility. If two or more facilities share a common FSAR, the licensees shall designate the refueling outage schedule on one of the multiple facilities to establish the schedule for revisions of the common FSAR. The FSAR revisions shall reflect all changes up to a maximum of 6 months prior to the date of filing."

During the comment period on this proposed rule, Yankee Atomic Electric Co. stated that the period between successive FSAR updates should not be limited to 24 months as proposed. Their rationale was that the restriction of 24 months was unnecessary.

Response. Upon receipt of the Yankee Atomic Electric Co. comment letter of July 20, 1992, the NRC again reviewed the petition (PRM 50–55) submitted by Yankee Atomic Electric Co. and the comments submitted in response to the Notice of Receipt. Based on this review, the NRC believes that the current action being taken to reduce the burden on nuclear licensees is substantially similar to the relief requested in the petition. The 24-month interval for successive FSAR updates is addressed in comment number 6 above. It should be noted that the petition did not contain a specific reference to a number of months regarding successive FSAR updates. With respect to the petitioner's concern about multiple facilities sharing a common FSAR, licensees will have maximum flexibility for scheduling updates on a case-by-case basis. This final rule does not address multiple facilities.

This final rule is considered by the NRC to grant the petition submitted by the Yankee Atomic Electric Co. This final rule constitutes final NRC action on the petition.

Discussion

The Nuclear Regulatory Commission is amending 10 CFR parts 20 and 50 to implement the eight proposed actions identified below and also identified in the report on "Special Review of Existing NRC Regulations" that was completed by the CRGR and that was attached to Chairman Selin's letter to the White House dated April 27, 1992. These actions will not reduce the protection of the public health and safety or the common defense and security. Each of the eight actions is discussed below.

1. Posting of Rooms Occupied by Diagnostic Nuclear Medicine Potients (10 CFR 20.1903(b))

The revision reduces the posting requirements for rooms in hospitals occupied by patients administered radioactive materials who might otherwise be released from confinement under the provisions of 10 CFR 35.75.

The estimated savings to licensees is $300,000 for elimination of the need for posting.

2. Contamination Monitoring of Packages (10 CFR 20.1906(b))

This action clarifies the regulations and reduces the monitoring burden for packages containing radioactive material in the form of a gas or in a special form as defined in 10 CFR 71.4.

The estimated savings to licensees is $10.1 million.

3. Frequency of Radiological Effluent Reports (10 CFR 50.36a)

This action reduces the requirements for the submission of reports concerning the quantity of principal nuclides released to unrestricted areas in liquid and gaseous effluents from semiannually to annually.

The estimated savings for this action, assuming an average remaining plant life of 28 years, is $16,800,000 for licensees and $360,000 for the NRC.

4. Use of Fuel with Zirconium-Based (Other than Zircoloy) Cladding (10 CFR 50.44, 50.46, and Appendix K to Part 50)

This action revises the acceptance criteria in 10 CFR 50.44 and 50.46, relating to evaluations of emergency core cooling systems and combustible gas control applicable to zircaloy clad fuel to include ZIRLO clad fuel. This revision to include ZIRLO as an acceptable zirconium based cladding material along with zircaloy will reduce the licensee burden but will not reduce the protection of the public health or safety. The NRC will address, through an appropriate separate rulemaking, the use of other similar zirconium based cladding materials when all of the necessary safety evaluations for those materials have been completed.

The estimated savings for eliminating the need to process recurring exemptions to the regulations to licensees is $2 million and the savings to the NRC is $50,000. This estimate is based on six plants per year requesting the use of ZIRLO clad fuel over the next 8 years.

5. Receipt Back of Processed Low Level Waste (10 CFR 50.54)

This action is addressed in a separate rulemaking. For additional information, see the proposed rule entitled "Receipt of Byproduct and Special Nuclear Material" published in the **Federal Register** on April 24, 1992 (57 FR 15034).

6. Annual Design Change Reports (10 CFR 50.59)

This action revises the requirements for the annual submission of reports for facility changes under § 50.59 (Changes, tests, and experiments) to conform with the proposed change for updating the

FSAR (see Item 7). This action does not affect the substance of the evaluation or the documentation required for § 50.59 type changes. It only affects the interval for submission of the information to the NRC. Instead of submitting the information annually, the information can be submitted on a refueling cycle basis, provided the interval between successive reports does not exceed 24 months.

The estimated savings for this action, assuming an average remaining plant life of 26 years, is $1,500,000 for licensees and $400,000 for the NRC.

7. Frequency of Final Safety Analysis Report (FSAR) Updates (10 CFR 50.71)

This action provides licensees with an option from the current requirements for the annual updating of the Final Safety Analysis Report (FSAR). In lieu of an annual submission, licensees may choose to provide the required information once per each refueling outage. Updates to the FSAR can be submitted 6 months after each refueling outage, provided the interval between successive updates to the FSAR does not exceed 24 months. This action does not affect the substance of FSAR updates.

The estimated savings for this action, assuming an average remaining plant life of 26 years, is $11,100,000 for licensees and $910,000 for the NRC.

8. Elimination of Unnecessary Event Reports (10 CFR 50.72 and 50.73)

This action is addressed in a separate rulemaking. For additional information, see the proposed rule entitled "Minor Modifications to Nuclear Power Reactor Event Reporting Requirements" published in the **Federal Register** on June 26, 1992 (57 FR 28642).

Environmental Impact: Categorical Exclusion

The NRC determined that the final regulation is the type of action described in categorical exclusions 10 CFR 51.22(c)(2) and (3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final regulation.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval numbers, 3150–0014 and 3150–0011.

The reduction of the public reporting burden for this collection of information is estimated to average 208 hours per response for operating power reactors and 1 hour per response for certain materials licensees, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden reduction or any other aspect of this decrease in the collection of information including suggestions on this reduced burden to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0011, 3150–0014), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC is amending its regulations to reduce the regulatory burden on nuclear licensees. This action reflects an initiative on the part of the NRC and responds to the spirit of President Bush's memoranda of January 28, 1992, which requested that selected Federal agencies review and modify regulations that will reduce unnecessary burden of governmental regulation and ensure that the regulated community is not subject to duplicative or inconsistent regulation. The NRC has identified eight rulemaking actions that would eliminate duplicative or inconsistent regulatory requirements. Six of the actions are included in this package. Two of the eight actions are being processed as separate rulemakings and are not discussed here. The eight actions are as follows:

1. Posting of Rooms Occupied by Diagnostic Nuclear Medicine Patients—to include exceptions for posting requirements for rooms in hospitals for patients administered radiopharmaceuticals for diagnostic tests (10 CFR 20.1903(b)).

2. Contamination Monitoring of Packages—to eliminate certain provisions for contamination monitoring of packages containing certain types of radioactive material (10 CFR 20.1906(b)).

3. Frequency of Radiological Effluent Reports—to change the frequency of reports on power reactor radiological effluents from twice per year to once per year (10 CFR 50.36a).

4. Use of Fuel with Zirconium-Based Cladding—to eliminate the need to obtain exemptions in order to use certain fuel cladding material not presently addressed in the regulations (10 CFR 50.44, 10 CFR 50.46 and 10 CFR part 50, appendix K).

5. Receipt Back of Processed Low Level Waste—separate rulemaking (10 CFR 50.54).

6. Annual Design Change Reports—to change the frequency of reporting changes at power reactors from once per year to once per refueling cycle (10 CFR 50.59(b)).

7. Frequency of Final Safety Analysis Report Updates—to change the frequency of safety analysis report updates from once per year to once per refueling cycle (10 CFR 50.71).

8. Elimination of unnecessary event reports—separate rulemaking (10 CFR 50.72 and 50.73).

Each of these actions considers the elimination or relaxation of regulatory requirements currently imposed on NRC licensees. Action Items 1 and 2 would affect material licensees while Action Items 3 through 8 would affect power reactor licensees. For each regulatory action, the NRC has evaluated the health and safety implications and the cost impacts relative to a status quo alternative. The NRC finds that each would result in a reduction in burden without reducing protection of the public health and safety. The public health and safety determination appears in a document entitled "Report on Special Review of Existing NRC Regulations by the Committee to Review Generic Requirements" issued on April 13, 1992. Additionally, an analysis of the safety implications of Action Item 4 is available in a U.S. NRC letter to Westinghouse Corporation dated July 1, 1991, entitled "Acceptance For Referencing of Topical Report WCAP–12610 "Vantage+Fuel Assembly Reference Core Report" (TAC NO. 77258)."

The cost savings to both the licensee population and the NRC appear below. Dollar impacts are expressed on a 1992 present worth basis in 1992 dollars. The basis for these cost estimates is available in a report entitled "Analyses of Potential Cost Savings for Selected NRC Reforms" dated June 10, 1992.

TOTAL DISCOUNTED [1] COST SAVINGS ASSOCIATED WITH PROPOSED REGULATORY REVISIONS

[In millions of 1992 dollars]

Regulatory revision	Licensees	NRC
Item 1	0.3	[2] −0.100
Item 2	10.1	[2] −0.100
Item 3	16.8	0.360
Item 4	2.0	0.050
Item 5	[3] N/A	[3] N/A
Item 6	1.5	0.400
Item 7	11.1	0.910
Item 8	[3] N/A	[3] N/A

[1] Assumes an annual real discount rate of 5%.
[2] Negative cost savings represent a cost expenditure.
[3] Not applicable—separate rulemaking.

The NRC concludes that each of these proposed regulatory revisions is justified due to the net cost savings that will accrue without reducing public health and safety.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Commission certifies that, this rule will not have a significant adverse economic impact on a substantial number of small entities. The NRC has adopted size standards that classify a small entity as a small business or organization, one whose gross annual receipts do not exceed $3.5 million, or as a small governmental jurisdiction whose supporting population is 50,000 or less. The first two issues involve the relaxation of requirements which will affect approximately 5,000 material licensees. Although many of these licensees may be small entities, there should be no adverse impact on these small licensees because the regulations are being relaxed. The remaining six issues affect 112 power reactor licensees. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the NRC Size Standards.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this final rule and, therefore, that a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects

10 CFR Part 20

Byproduct material, Criminal penalty, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Criminal penalty, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 20 and 50.

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

1. The authority citation for part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 20.408 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, (42 U.S.C. 10155, 10161).

For the purposes of sec. 233, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 20.101, 20.102, 20.103(a), (b), and (f), 20.104 (a) and (b), 20.105 (b), 20.106 (a), 20.201, 20.202 (a), 20.205, 20.207, 20.301, 20.303, 20.304, and 20.305, 20.1102, 20.1201–20.1204, 20.1206, 20.1207, 20.1208, 20.1301, 20.1302, 20.1501, 20.1502, 20.1601 (a) and (d), 20.1602, 20.1603, 20.1701, 20.1704, 20.1801, 20.1802, 20.1901(a), 20.1902, 20.1904, 20.1906, 20.2001, 20.2002, 20.2003, 20.2004, 20.2005(b) and (c), 20.2006, 20.2101–20.2110, 20.2201–20.2206, and 20.2301 are issued under sec. 161(b), 68 Stat. 948 as amended (42 U.S.C. 2201(b)); § 20.2106(d) is issued under the Privacy Act of 1974, Pub. L. 93–579, 5 U.S.C. 552a; and §§ 20.102, 20.103(e), 20.401–20.407, 20.408(b), 20.409, 20.1102(a)(2) and (4), 20.1204(c), 20.1206 (g) and (h), 20.1904(c)(4), 20.1905 (c) and (d), 20.2005(c), 20.2006(b)–(d), 20.2101–20.2103, 20.2104(b)–(d), 20.2105–20.2108, and 20.2201–20.2207 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2001(o)).

2. Section 20.1903 is amended by revising paragraph (b) to read as follows:

§ 20.1903 Exceptions to posting requirements.

* * * * *

(b) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to § 20.1902 provided that the patient could be released from confinement pursuant to § 35.75 of this chapter.

* * * * *

3. Section 20.1906 is amended by revising paragraph (b) to read as follows:

§ 20.1906 Procedures for receiving and opening packages.

* * * * *

(b) Each licensee shall—

(1) Monitor the external surfaces of a labeled [3a] package for radioactive contamination unless the package contains only radioactive material in the form of a gas or in special form as defined in 10 CFR 71.4;

(2) Monitor the external surfaces of a labeled [3a] package for radiation levels unless the package contains quantities of radioactive material that are less than or equal to the Type A quantity, as defined in § 71.4 and appendix A to part 71 of this chapter; and

(3) Monitor all packages known to contain radioactive material for radioactive contamination and radiation levels if there is evidence of degradation of package integrity, such as packages that are crushed, wet, or damaged.

* * * * *

[3a] Labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in U.S. Department of Transportation regulations, 49 CFR 172.403 and 172.436–440.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

4. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 68 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.5, 50.46(a) and (b), and 50.54(c) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.5, 50.7(a), 50.10(a)–(c), 50.34(a) and (e), 50.44(a)–(c), 50.46(a) and (b), 50.47(b), 50.48(a), (c), (d), and (e), 50.49(a), 50.54(a), (i), (i)(l), (l)–(n), (p), (q), (t), (v), and (y), 50.55(f), 50.55a(a), (c)–(e), (g), and (h), 50.59(c), 50.60(a), 50.62(b), 50.64(b), 50.65, and 50.80(a) and (b) are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.9, 50.49(d), (h) and (j), 50.54(w), (z), (bb), (cc), and (dd), 50.55(e), 50.59(b), 50.61(b), 50.62(b), 50.70(a), 50.71(a)–(c) and (e), 50.72(a), 50.73(a) and (b), 50.74, 50.78, and 50.90 are

issued under sec. 161o, 68 Stat. 950 as amended (42 U.S.C. 2201(o)).

5. Section 50.36a is amended by revising paragraph (a)(2) to read as follows:

§ 50.36a Technical specifications on effluents from nuclear power reactors.

(a) * * *

(2) Each licensee shall submit a report to the Commission annually that specifies the quantity of each of the principal radionuclides released to unrestricted areas in liquid and in gaseous effluents during the previous 12 months of operation, including any other information as may be required by the Commission to estimate maximum potential annual radiation doses to the public resulting from effluent releases. The report must be submitted as specified in § 50.4, and the time between submission of the reports must be no longer than 12 months. If quantities of radioactive materials released during the reporting period are significantly above design objectives, the report must cover this specifically. On the basis of these reports and any additional information the Commission may obtain from the licensee or others, the Commission may require the licensee to take action as the Commission deems appropriate.

* * * * *

6. Section 50.44 is amended by revising the introductory text of paragraphs (a), (b), and paragraph (c)(1) to read as follows:

§ 50.44 Standards for combustible gas control system in light-water-cooled power reactors.

(a) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, must, as provided in paragraphs (b) through (d) of this section, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA), by—

* * * * *

(b) Each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with the capability for—

* * * * *

(c)(1) For each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, it must be shown that during the time period following a postulated LOCA, but prior to effective operation of the combustible gas control system, either:

* * * * *

7. Section 50.46 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 50.46 Acceptance criteria for emergency core cooling systems for light water nuclear power reactors.

(a)(1)(i) Each boiling and pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated loss-of-coolant accidents conforms to the criteria set forth in paragraph (b) of this section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated loss-of-coolant accidents of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated loss-of-coolant accidents are calculated. Except as provided in paragraph (a)(1)(ii) of this section, the evaluation model must include sufficient supporting justification to show that the analytical technique realistically describes the behavior of the reactor system during a loss-of-coolant accident. Comparisons to applicable experimental data must be made and uncertainties in the analysis method and inputs must be identified and assessed so that the uncertainty in the calculated results can be estimated. This uncertainty must be accounted for, so that, when the calculated ECCS cooling performance is compared to the criteria set forth in paragraph (b) of this section, there is a high level of probability that the criteria would not be exceeded. Appendix K, Part II, Required Documentation, sets forth the documentation requirements for each evaluation model.

* * * * *

8. Section 50.59 is amended by revising paragraph (b)(2) to read as follows:

§ 50.59 Changes, tests and experiments.

* * * * *

(b) * * *

(2) The licensee shall submit, as specified in § 50.4, a report containing a brief description of any changes, tests, and experiments, including a summary of the safety evaluation of each. The report may be submitted annually or along with the FSAR updates as required by § 50.71(e), or at such shorter intervals as may be specified in the license.

* * * * *

9. Section 50.71 is amended by revising paragraph (e)(4) to read as follows:

§ 50.71 Maintenance of records, making of reports.

* * * * *

(e) * * *

(4) Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months. The revisions must reflect all changes up to a maximum of 6 months prior to the date of filing.

* * * * *

Dated at Rockville, Maryland, this 19th day of August 1992.

For the Nuclear Regulatory Commission.

James H. Sniezek,

Acting Executive Director for Operations.

[FR Doc. 92-20855 Filed 8-28-92; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 202

[Release Nos. 33-6952; 34-31071; 35-25612; 39-2289; IC-18905; IA-1325; File No. S7-26-84]

Temporary Lockbox Rule

AGENCY: Securities and Exchange Commission.

ACTION: Extension of temporary rule.

SUMMARY: The Commission is extending for one year the effectiveness of a temporary rule, adopted in June, 1984, which permits filing fees to be remitted to a U.S. Treasury designated lockbox depository located in Pittsburgh, Pennsylvania. Use of the lockbox is currently voluntary except for those entities filing on the Commission's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system. This action will permit registrants to continue to use the lockbox pending adoption of a permanent rule.

EFFECTIVE DATE: September 1, 1992 through September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Wilson Butler, (202) 272-7210, Director, Office of Filings, Information and Consumer Services, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In Securities Act Release No. 6540, dated June 27, 1984 (49 FR 27306), the Commission adopted a temporary amendment to rule 3a, 17 CFR 202.3a, to permit filing fees to be remitted to a lockbox depository. The temporary rule has been extended on five previous occasions: February 3, 1986 (51 FR 4160), November 10, 1986 (51 FR 40791), September 4, 1987 (52 FR 33796), August 29, 1988 (53 FR 32890) and August 21, 1990 (55 FR 34010). Extension of the temporary rule permits filers to continue to submit filing fees to the Commission or transit fees to a lockbox depository in Pittsburgh, Pennsylvania by mail, wire transfer, or hand delivery.

A proposed permanent rule was published for public comment on August 7, 1992, as part of the Commission's EDGAR rules.[1] The permanent rule, when adopted, will revise the temporary rule as of its effective date. However, the EDGAR rules will not be adopted prior to the September 1, 1992 expiration of temporary rule 3a. Accordingly, the Commission has determined that the effectiveness of temporary rule 3a should be extended for a period of one year, until September 1, 1993.

Administrative Procedure Act

The Commission finds, in accordance with the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that temporary rule 3a relates solely to agency organization, procedure or practice and therefore, advance notice and opportunity for comment is unnecessary in connection with this action.

Accordingly, the effectiveness of 17 CFR 202.3a is extended from September 1, 1992 through September 1, 1993.

By the Commission.

Dated: August 24, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20895 Filed 8-28-92; 8:45 am]

BILLING CODE 8010-01-M

[1] See Release Nos. 33-6947, 34-30954; 35-25589; 39-2286; IC-18864 (July 23, 1992) [57 FR 35442 (August 7, 1992)].

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Final Regulations Under Sections 382 and 386 of the Internal Revenue Code of 1986; Pre-change Attributes

CFR Correction

In title 26 of the Code of Federal Regulations, part 1 (§§ 1.301-1.400), revised as of April 1, 1992, §§ 1.383-0 through 1.383-2 were inadvertently placed under the undesignated center heading reading "Regulations Applicable to Taxable Years Prior to Tax Reform Act of 1986". In both the table of contents and the text §§ 1.383-0 through 1.383-2 should appear following § 1.382-3 under the undesignated center heading "Carryovers".

In the same volume, on page 521, in the first column, § 1. 383-2T is correctly designated as § 1.383-2.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD2 92-05]

Special Local Regulations: Tall Stacks 1992 (Ohio River Mile 469.0 To Mile 471.0)

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Special local regulations are being adopted for the Tall Stacks 1992. This event will be held at Cincinnati, Ohio on the Ohio River, from mile 469.0 to mile 471.0, October 13 through October 18, 1992. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations will be effective 6 a.m. to 2:30 a.m., on October 13 through October 17 and 6 a.m. to midnight October 18, 1992.

FOR FURTHER INFORMATION CONTACT: Ensign D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103-2832. The telephone number is (314) 539-3971, Fax: (314) 539-2685.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations. Following normal rulemaking procedures would have been impracticable. There was not sufficient time remaining to publish proposed rules in advance of the event.

Drafting Information

The drafter of these regulations is Ensign D.R. Dean, Project Officer, Second Coast Guard District Boating Safety Division.

Discussion of Regulations

The Tall Stacks 1992 is a celebration of the sternwheeler age in America. Seventeen excursion boats will be attending. Steamboat races will be held Saturday, October 16th between 3 p.m. and 6 p.m. and Sunday, October 17th between 3 p.m. and 6 p.m. Other events that will take place during Tall Stacks 1992 are an owners' rowboat race, a towboat shove of war, and crew row boat races. A large number of spectator craft are expected to view these events. Regulation is required to protect the boating public from possible dangers and hazards associated with the event. In order to provide for the safety of spectators and participants, the Coast Guard will restrict vessel movement in the regulated area. The river will be closed during portions of the effective periods to all vessel traffic except participants, official regatta vessels, and patrol craft. Actual river closures will not exceed three hours in duration. Mariners will be afforded enough time between closure periods to transit the area. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T0205 is added, to read as follows:

§ 100.35-T0205 Tall Stacks 1992.

(a) *Regulated Area.* The Ohio River, mile 469.0 to mile 471.0.

(b) *Special Local Regulations.* (1) The U.S. Coast Guard and U.S. Coast Guard Auxiliary will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHZ) by the call sign " Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(2) The Patrol Commander may direct the anchoring, mooring or movement of any vessel within the regulated area. A succession of sharp, short blasts by whistle or horn from a designated patrol vessel shall be the signal to stop. Failure or refusal to stop or comply with orders of the Patrol Commander may result in expulsion from the area, citation for failure or refusal to comply, or both.

(3) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(6) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective Dates.* These regulations are effective 6 a.m. to 2:30 a.m., October 13 through October 17, 1992, and 6 a.m. to midnight on October 18, 1992.

Dated: August 19, 1992.

J.J. Lantry,

Captain, U.S. Coast Guard Commander, Second Coast Guard District, Acting.

[FR Doc. 92-20746 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD7-92-18]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation, the bridge owner, the Coast Guard is changing the operating regulations governing the Sunshine Skyway Drawbridge over the Gulf Intracoastal Waterway, mile 110.5, at Maximo Point, St. Petersburg, Pinellas County, Florida, by limiting the number of openings during certain periods. This change will relieve vehicular congestion due to back-to-back openings during construction of a replacement bridge, while still meeting the reasonable needs of navigation.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, Project Manager, Bridge Section, at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Mr. Ian MacCartney, Project Manager, and Lieutenant J.M. Losego, Project Counsel.

Regulatory History

On June 22, 1992, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL, in the **Federal Register** (33 FR 27720). The Coast Guard received no letters commenting on the change. A public hearing was not requested and one was not held.

Background and Purpose

This drawbridge presently opens on signal. The State of Florida requested that the bridge be allowed to open only on the hour and half-hour between 7 a.m. and 8 p.m. daily in order to eliminate back-to-back openings which contribute to traffic congestion. A Coast Guard evaluation of the proposal concluded that highway traffic congestion, brought on by construction of an adjacent replacement bridge with a reduction in available highway traffic lanes, is being exacerbated by frequent bridge openings.

Discussion of Comments and Changes

There were no letters or comments received in response to the proposed rule. The final rule is therefore unchanged from the proposed rule published on June 22, 1992.

Regulatory Evaluation

These regulations are considered to be not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule exempts tugs with tows.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this change will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since tugs with tows are exempt from this change, the economic impact is expected to be minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this final rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.287, paragraph (d)(3) is redesignated as (d)(4) and a new paragraph (d)(3) is added to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(d) * * *

(3) The draw of the Sunshine Skyway Structure "A" drawbridge, mile 110.5, at Maximo Point, shall open on signal; except that from 7 a.m. to 8 p.m., the draw need open only on the hour and half hour.

* * * * *

Dated: August 18, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92-20750 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD1 92-106]

Safety Zone: Narragansett Bay, RI

AGENCY: Coast Guard.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in Narragansett Bay, RI, during the fireworks display that will take place following the Navy Band Newport's "Salute to Summer" concert on August 28, 1992, at the Naval Education and Training Center in Newport. The safety zone will consist of the waters within a 500 yard radius around the barge from which the fireworks will be launched, approximate position (41-30-27N, 71-20-02W). The safety zone is needed to protect pleasure craft and personnel onboard these vessels from potential hazards associated with a fireworks display. This safety zone replaces the original safety zone for the "Salute to Summer" fireworks display, which was published in the August 10, 1992, **Federal Register** (57 FR 35465). Originally the fireworks were to be launched from the shore at the southwest corner of Coaster's Harbor Island. Presently the fireworks will be launched from a site in the water approximately 350 yards due west of the original launch site.

EFFECTIVE DATE: This regulation is effective at 8 p.m. on August 28, 1992, and will terminate at 10 p.m. on August 28, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence. If the event is postponed due to inclement weather, the rain date is September 4, 1992, and the safety zone will be effective on September 4, 1992, between the hours of 8 p.m. and 10 p.m. unless terminated sooner by the Captain of the Port Providence.

FOR FURTHER INFORMATION CONTACT: LTJG. T.M. Burke of Marine Safety Office Providence at (401) 528-5335.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LTJG T.M. Burke, Project Officer for the Coast Guard Captain of the Port Providence and LCDR J. Astley, Project Attorney, First Coast Guard District Legal Office.

Regulatory History

As authorized by 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. A safety zone for this event was originally published in the August 10, 1992, **Federal Register** (57 FR 35465). The Coast Guard was informed of the need to change the original safety zone parameters on August 3, 1992, which is insufficient notice to provide for full public participation in this rulemaking effort. In addition, this rule makes only a slight change to the area enclosed in the safety zone from that which was originally published. This change provides for increased safety of personnel viewing the fireworks display from shore. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent potential damage to the vessels and personnel in the vicinity of the fireworks display.

As discussed in the original rule, this event is significant because it provides the naval community in Newport, as well as the general public, the opportunity to recognize the Navy Band Newport's contributions to the community. The fireworks are being held in conjunction with the Navy Band Newport's last concert for the summer and delaying the fireworks display would make them meaningless. Also, as explained in the original rule, this regulation places only minimal burden on vessel traffic. Therefore, good cause exists for not making this rule effective thirty days after publication.

Background and Purpose

On August 28, 1992, the Naval Education and Training Center in Newport is sponsoring a fireworks display to be held following the Navy Band Newport's "Salute to Summer" concert. The "Salute to Summer" is the final concert in the summer 1992 series and the fireworks display serves to pay proper tribute to the ending of summer and to the efforts of the Navy Band Newport throughout the summer season. The concert and the fireworks are open to the public and significant public attendance is expected. The fireworks will be launched from a barge anchored in approximate position (41-30-27N, 70-20-02W), and the display will take place between the hours of 9 p.m. and 10 p.m. on August 28, 1992. The rain date is September 4, 1992.

The Coast Guard is establishing a safety zone on the waters within a 500 yard radius around the fireworks launch barge. This regulation is needed to protect the spectator vessels in the vicinity, as well as personnel onboard these vessels, from damage or personal injury due to the potential hazards associated with a fireworks display. These potential hazards include, but are not limited to, personal injury and fire aboard vessels in the area as a result of stray projectiles or hot/burning falling debris. The safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on August 28, 1992. If the fireworks display is postponed due to inclement weather, the safety zone will be in effect from 8 p.m. to 10 p.m. on September 4, 1992.

Regulatory Evaluation

This rule is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a Regulatory Evaluation is unnecessary. The Coast Guard expects the economic impact to be minimal on all entities. The Coast Guard expects the economic impact of this regulation to be minimal due to the limited duration of the zone, specifically two hours on one day. Also, the area of water enclosed in the safety zone is close to the shoreline and is not transited by commercial vessel traffic. Spectator vessels that might wish to transit through or to anchor in the waters inside the safety zone will be required to remain at least 500 yards from the launch site. These vessels are able to transit through alternate areas or to anchor to view the display at any location outside the zone. Therefore these vessels will not experience undue hardship.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). For the reasons outlined in the Regulatory Evaluation, the Coast Guard expects the impact to be minimal on all entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principals and criteria contained in Executive Order 12612, and has determined that this final rule does not have sufficient federalism implication to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.C of Commandant Instruction M16475.1B, this final rule will have no significant impact and is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of Part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 49 CFR 1.46; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T01–096 is amended to read as follows:

§ 165.T01–096 Safety Zone: Narragansett Bay, RI.

(a) *Location.* The following area is a safety zone: The area of water within a 500 yard radius around the barge from which the fireworks will be launched. The barge will be anchored in approximate position (41–30–27N, 71–20–02W).

(b) *Effective Date.* This regulation is effective at 8 p.m. on August 28, 1992. It terminates at 10 p.m. on August 28, 1992, unless terminated sooner by the Coast Guard Captain of the Port Providence. If the event is postponed due to inclement weather, the safety zone will be in effect between the hours of 8 p.m. and 10 p.m. on September 4, 1992, unless terminated sooner by the Captain of the Port Providence.

(c) *Regulations.* The general regulations governing safety zones contained in § 165.23 apply.

Dated: August 20, 1992.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port.

[FR Doc. 92–20744 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–93; RM–7950]

Radio Broadcasting Services; Fagaitua, American Samoa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276C2 to Fagaitua, American Samoa, as that community's first local FM service at the request of Aleki Sene. *See* 57 FR 19836, May 8, 1992. Channel 276C2 can be allotted to Fagaitua in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates South Latitude 14–16–19 and West Longitude 170–36–43. With this action, this proceeding is terminated.

DATES: Effective October 8, 1992. The window period for filing applications will open on October 9, 1992, and close on November 9, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–93, adopted July 24, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under American Samoa, is amended by adding Fagaitua, Channel 276C2.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20801 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–87; RM–7963]

Radio Broadcasting Services; Jonesboro, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 263C2 for Channel 262A at Jonesboro, Arkansas, and modifies the license of TM Jonesboro, Inc., for Station KDEZ (FM) as requested. See 57 FR 14886, April 22, 1992. Coordinates for Channel 263C2 at Jonesboro are 35–54–35 and 90–42–10. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–87, adopted July 24, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 262A and adding Channel 263C2 at Jonesboro.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20800 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–67; RM–7945]

Radio Broadcasting Services; McRae and Nashville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 237C3 for Channel 237A at Nashville, Georgia, modifies the license for Station WJYF (FM) to specify the higher powered channel, substitutes Channel 247A for Channel 237A at McRae, Georgia, and modifies the license for Station WDAX(FM) to specify the new Class A channel, at the request of Tifton Radio Partnership. See 57 FR 12793, April 13, 1992. Channel 237C3 can be allotted to Nashville in compliance with the Commission's minimum distance separation requirements at its current licensed site. The coordinates are North Latitude 31–10–18 and West Longitude 83–21–57. Channel 274A can be allotted to McRae in compliance with the Commission's minimum distance separation requirement with a site restriction 1.3 kilometers (0.8 miles) east, in order to avoid a short-spacing to Station WBGA(FM). Channel 273C1, Waycross, Georgia, and a proposal to allot Channel 273C1 to Brunswick, Georgia. The coordinates are North Latitude 32–04–19 and West Longitude 85–52–43. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–67, adopted July 24, 1992, and released August 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 237A and adding Channel 237C3 at Nashville, and by removing Channel 237A and adding Channel 274A at McRae.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20791 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–131; RM–7702, RM–7840 and RM–7841]

Radio Broadcasting Services; Flora and Kings, MS and Newellton, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 247C3 for Channel 248A at Flora, Mississippi, and modifies the construction permit for Station WXFJ(FM) accordingly, in response to a counterproposal filed by Crossroads Communications (RM–7840). The coordinates for Channel 247C3 are 32–36–25 and 90–23–27. The petition filed by Donald Brady to allot Channel 246A to Kings, Mississippi, as that community's first local service is dismissed. See 56 FR 21651, May 10, 1991. The counterproposal filed by Cynthia M. Gonzalez requesting the allotment of Channel 248A to Newellton, Louisiana, is also dismissed (RM–7840). With this action, this proceeding is terminated.

EFFECTIVE DATE: October 9, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Ruger, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 91–131, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by removing Channel 248A and adding Channel 247C3 at Flora.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20798 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–32; RM–7907]

Radio Broadcasting Services; Blacksburg and Roanoke, VA, and Lewisburg, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Blacksburg-Christiansburg Company, substitutes Channel 287C3 for Channel 285A at Blacksburg, Virginia, and modifies the license of Station WVVV–FM to specify the higher powered channel; and substitutes Channel 285C3 for Channel 287A at Roanoke, Virginia, and modifies the construction permit of Susan D. Brown for Station WULB, Roanoke, accordingly. To accommodate the allotments of Channel 287C3 and Channel 285C3 at Blacksburg and Roanoke, the Commission also substitutes Channel 276A for Channel 288A at Lewisburg, West Virginia. See 57 FR 08430, March 10, 1992, and Supplemental Information, *infra*. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 8, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–32, adopted July 24, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor.

Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

The channels can be allotted to the noted communities in compliance with the Commission's minimum distance separation requirements. Channel 287C3 can be allotted to Blacksburg with a site restriction of 6.2 kilometers (3.9 miles) northwest to accommodate Blacksburg-Christiansburg's desired site. The coordinates for Channel 287C3 at Blacksburg are 37–16–14 and 80–27–39. Channel 285C3 at Roanoke will require a site restriction of 8.4 kilometers (5.3 miles) northeast to avoid a short-spacing to Station WDOG–FM, channel 286C, Durham, North Carolina. The coordinates for Channel 285C3 at Roanoke are 37–20–33 and 79–53–50. Channel 276A can be allotted to Lewisburg and can be used at the transmitter site specified in Station WKCJ–FM's license. The coordinates for Channel 276A at Lewisburg are 37–48–17 and 80–21–03.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 285A and adding Channel 287C3 at Blacksburg; and by removing Channel 287A and adding Channel 285C3 at Roanoke.

3. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 288A and adding Channel 276A at Lewisburg.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20799 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–47; RM–7929]

Television Broadcasting Services; Bellingham and Anacortes, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Prism Broadcasting Company, Inc., reallots UHF television Channel 24 in lieu of Channel 64 at Bellingham, Washington, and modifies Station KBCB(TV)'s construction permit accordingly, and substitutes Channel 64 in lieu of Channel 24 at Anacortes, Washington, to accommodate the substitution at Bellingham. *See* 57 FR 9680, March 20, 1992. Channel 24 can be allotted to Bellingham and Channel 64 to Anacortes in compliance with the Commission's minimum distance separation requirements. The coordinates for Channel 24 at Bellingham are North Latitude 48–40–48 and West Longitude 122–50–23. The coordinates for Channel 64 at Anacortes are North Latitude 48–30–06 and West Longitude 122–36–36. See Supplementary Information, *infra.*

EFFECTIVE DATE: October 6, 1992.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–47, adopted August 4, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Since Anacortes and Bellingham are located within 400 kilometers (250) miles of the U.S.-Canadian border, concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

List of Subjects in 47 CFR Part 73

Television broadcasting

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments under Washington, is amended by removing Channel 24 and adding Channel 64 at Anacortes, and by removing Channel 64 and adding Channel 24 at Bellingham.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20792 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1020

[Ex Parte No. 55 (Sub-No. 89)]

Inspection of Records

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is removing 49 CFR part 1020—Inspection of Records—from the Code of Federal Regulations as unnecessary and redundant. This rule is intended to make the Commission's regulations up to date.

EFFECTIVE DATE: September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927–5610. (TDD for hearing impaired: (202) 927–5721)

SUPPLEMENTARY INFORMATION: This regulation, which empowers Commission personnel to inspect motor carrier and broker property and records, essentially paraphrases 49 U.S.C. 11144(b). Other than to clarify that receivers, trustees and representatives having control, direct or indirect, over, or affiliated with any such motor carrier or broker, are included in the class of persons whose records are subject to inspection, it contains nothing that is not expressly stated in the statute. It appears to satisfy no legal requirement, or serve any other useful purpose. No comments opposing the proposed rule were filed in response to our Notice of Proposed Rulemaking in this proceeding, issued May 26, 1992. (57 FR 21290).

We wish to emphasize that in eliminating this regulation, we intend no change in existing law. The scope of the statute, as interpreted by the Commission and clarified by the regulation, remains the same.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We conclude that the proposed action will have no adverse impact upon a significant number of small entities.

List of Subjects in 49 CFR Part 1020

Brokers, Motor carriers.

PART 1020—[REMOVED]

For the reasons set forth in the preamble, under the authority of 49 U.S.C. 10321 and 5 U.S.C. 553, 49 CFR part 1020 is removed.

Decided: August 18, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Commissioner Simmons dissented with a separate expression. Vice Chairman McDonald dissented.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92–20883 Filed 8–28–92; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

[Docket No. 920811–2211]

Snapper-Grouper Fishery of the South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS issues this emergency interim rule to establish a definition of "sea bass pot," applicable in the exclusive economic zone (EEZ) off North Carolina and South Carolina, and to remove the possession limits for snapper-grouper applicable to fishermen using sea bass pots aboard commercially permitted vessels in the EEZ off North Carolina and South Carolina. The intended effect of this rule is to respond to an economic emergency without jeopardizing the rebuilding program for those snapper-grouper species that are overfished.

EFFECTIVE DATES: August 31, 1992, through November 30, 1992.

ADDRESSES: Copies of documents supporting this action may be obtained from Peter J. Eldridge, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 813–893–3161.

SUPPLEMENTARY INFORMATION: Snapper-grouper species off the southern Atlantic states, including sea bass, are managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (FMP), prepared by the South Atlantic Fishery Management Council (Council), and its implementing regulations at 50 CFR part 646, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Under Amendment 4 to the FMP, implemented January 1, 1992, the use of fish traps in the EEZ was prohibited, but the use of sea bass traps north of Cape Canaveral, Florida, was allowed. A black sea bass trap is defined as a trap, other than a crustacean trap, that contains at any time no more than 25 percent, by number, of fish in the snapper-grouper fishery other than bank, rock, and black sea bass.

The current regulations limit a fisherman who uses or possesses a sea bass trap in the EEZ north of Cape Canaveral on any trip to the bag limits for those snapper-grouper species that have bag limits, and to zero for all other species except sea bass. This restriction was designed to preclude the use of a sea bass trap in a directed fishery for snapper-grouper species other than sea bass. However, the restriction has caused an economic hardship to fishermen in North Carolina and South Carolina who have traditionally fished with sea bass traps and other gear on a single trip because the fish harvested with other gear would exceed the bag limits for sea bass traps. The Council was unaware of the magnitude of this multiple-gear trip activity, and both the Council and fishermen were unaware of the impact of the bycatch restriction.

As of July 23, 1992, a total of 256 vessel permits have been issued that authorize the use of sea bass traps in the snapper-grouper fishery. Thirty-one of these vessels operate out of ports in Florida, one in Georgia, 63 in South Carolina, 152 in North Carolina, and nine in other states. Data for 1987 and 1988 show that the total sea bass catch off the southern Atlantic states taken by traps averaged about 465,000 pounds per year. North Carolina accounted for 65 percent, South Carolina 35 percent, and Florida and Georgia catches combined were about 1,000 pounds per year. Since then, Florida trap landings have averaged about 1,000 pounds of sea bass annually. In 1991, Georgia reported 37 pounds of sea bass taken by traps; South Carolina reported 238,815 pounds; and North Carolina reported approximately 500,000 pounds.

Landings data for North Carolina from June 1989 through May 1991 show that the peak season for sea bass landings occurs from October through April, with 85 percent of annual landings during this period. The monthly distribution of sea bass landings in South Carolina is similar to that in North Carolina.

In North and South Carolina the sea bass fishery has been traditionally an off-season fishery for shrimpers, inshore fishermen, and character and headboat crews, who use the fishery to supplement their incomes from other fisheries. The sea bass fishery has historically included sale of other snapper-grouper species taken as bycatch. Although the sea bass fishery is not the main source of income for most participants, often it can make the difference between a profitable or unprofitable year. In this context, the sea bass fishery is critical to many fishermen who could be forced to cease all fishing if their incomes from the sea bass fishery were eliminated.

Amendment 4 implemented a number of minimum size limits and gear restrictions—necessary to rebuild overfished stocks—which were expected to reduce temporarily the catch of snapper-grouper species. It appears that additional fishermen turned to sea bass trapping to make up for the lost income occasioned by these temporary reductions of catch. Hence, it appears that the bycatch restrictions for snapper-grouper species when using sea bass traps and other gear on a trip have been particularly burdensome during 1992.

Because recent cost and earnings data for the snapper-grouper fishery are not available, the direct and indirect negative impacts of existing sea bass trap regulations cannot be estimated precisely. The trap fishery for sea bass is an important component of the snapper-grouper fishery in North and South Carolina. The replacement value of the 6,941 sea bass traps currently in use is approximately $105,000. Sea bass trappers purchase bait, ice, and fuel; pay fees to fish houses for unloading and packing; and ship large and jumbo sea bass to markets in New York and cities in New England and Canada where as much as $3.50 to $5.00 per pound is received.

Ex-vessel revenues generated by the sea bass trap fishery in 1988 were $418,000 in North Carolina and $151,000 in South Carolina. Preliminary sea bass landings data from NMFS and testimony from fishermen indicate that higher revenues have been generated in more recent years. Before Amendment 4, the bycatch of other snapper-grouper species taken by hook and line on trips where sea bass traps were also used was an important component of the total value of all landings. While the official NMFS data have not been assembled to qualify the value of this bycatch, records from a sample of North and South Carolina sea bass trap fishermen indicate that 44 percent of the value of their catch may be lost under the present regulations.

Based on data provided by North and South Carolina fishermen through their respective fisheries agencies, it is estimated that $209,664 of ex-vessel revenues would be lost if current regulations remain in effect from October through December 1992. Because this estimate was not adjusted for the value of any bag-limit fish that might be taken in a sea bass trap and retained, the estimate may be slightly

high. Nevertheless, estimated lost revenues are significant.

The above estimate appears representative of the magnitude of the problem caused by the bycatch restrictions when using sea bass traps and confirms the public testimony of many fishermen. This testimony also indicated that 60 to 75 fishing firms in North and South Carolina formerly made trips with sea bass traps and other gear, but are now restricted to use of a single gear per trip. These fishermen, who have vessels designed for use of sea bass traps and other gear, must sacrifice the gain in productivity afforded by use of sea bass traps and other gear on the same trip.

Use of alternative gears, such as hook and line, on a trip that uses sea bass traps lessens the risk of an uneconomical trip because fish may sometimes be caught in traps when they are not being caught by hook and line and vice-versa. Fishermen in North Carolina and South Carolina, including sea bass fishermen, routinely lessen risk by participating in several fisheries and by using multiple gears on a trip.

To address this economic emergency, the Council has requested that a new term, "sea bass pot," be defined and applied to the waters off North Carolina and South Carolina. Under this emergency interim rule, a sea bass pot must have six rectangular sides; may not exceed 25 inches (63.5 cm) in height, width, or depth; must have specified mesh sizes; and must have openings and degradable fasteners as currently specified for sea bass traps. The specified mesh sizes vary slightly from the mesh sizes currently applicable to sea bass traps so that the traditional mesh used for sea bass pots may continue to be used.

The new term, "sea bass pot," is used in addition to the existing term, "sea bass trap." Thus, fishermen currently using traps that exceed the height/width/depth limitations for sea bass pots may continue to use them; however, the current restrictive bycatch limits for snapper-grouper species other than sea bass remain applicable when using such traps.

The new definition of sea bass pots is consistent with Amendment 4, which prohibited use of fish traps and allowed use of sea bass traps north of Cape Canaveral, Florida. Traditional sea bass pots that meet the height/width/depth limitations have had a low incidence of bycatch of snapper-grouper species other than sea bass. Studies by the South Carolina Wildlife and Marine Resources Department, conducted from 1978 through 1989, show that in 2,802 sea bass pot sets, 76 percent of catch by weight were sea bass. The remainder of the catch by weight consisted of porgies (16 percent), grunts (4 percent), snappers and groupers (1 percent), and others (3 percent). Further, the overall size restrictions will limit a pot's ability to be used in deep water, where legal-sized snapper-grouper other than sea bass are more prevalent, because currents and storms would increase the probability of loss of the pot. As is currently the case with sea bass traps, snapper-grouper species smaller than a minimum size limit must be released. However, released mortality is lessened in shallower water.

When using the newly defined sea bass pots and other gear on the same trip, there is no limitation on bycatch, other than minimum size.

The Council and NMFS have determined that these changes are in the best interests of the snapper-grouper fishery. The substantial negative impact under the current regulations justify emergency action to implement these changes as soon as possible. Accordingly, NMFS publishes this emergency interim rule, effective August 31, 1992, through November 30, 1992, as authorized by section 305(c)(2)(B) and (c)(3) of the Magnuson Act. By agreement of NMFS and the Council, this emergency interim rule may be extended for an additional period of not more than 90 days. During this rule's effective period, the Council is expected to initiate action under the framework procedure for adjusting management measures (50 CFR 646.25) to address permanent changes to the regulations.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for public comment.

The Assistant Administrator prepared an environmental assessment (EA) for this action, which concludes that there will be no significant impact on the human environment. A copy of the EA is available (see **ADDRESSES**).

The Assistant Administrator determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of North Carolina and South Carolina. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator for good cause under section 553(b)(B) of the Administrative Procedure Act finds that the need to relieve an economic hardship makes it contrary to the public interest to provide notice and public procedure thereon on this rule. Because this is a substantive rule that relieves a restriction, the 30-day delayed effectiveness provision of the Administrative Procedure Act does not apply and the rule is being made immediately effective.

List of Subjects in 50 CFR Part 646

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 25, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 646 is amended as follows:

PART 646—SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC

1. The authority citation for part 646 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 646.7, a new paragraph (nn) is added to read as follows:

§ 646.7 Prohibitions.

* * * * *

(nn) Use a sea bass pot in the EEZ off North Carolina and South Carolina other than as specified in § 646.28.

3. In subpart B, new § 646.28 is added to read as follows:

§ 646.28 Fishing with sea bass pots.

(a) *Applicability.* This section governs fishing with sea bass pots in the EEZ off North Carolina and South Carolina, other provisions of this part notwithstanding. "Off North Carolina and South Carolina" means the waters from a line extending directly east from the Virginia/North Carolina boundary (36°33'00.8" N. latitude) to a line extending in a direction of 104° from true north from the seaward terminus of the South Carolina/Georgia boundary.

(b) *Sea bass pot* means a trap that—

(1) Has six rectangular sides;

(2) Does not exceed 25 inches (63.5 cm) in height, width, or depth;

(3) Has mesh sizes as follows (based on centerline measurements between opposite, parallel wires or netting strands):

(i) Hexagonal mesh (chicken wire) must be at least 1.5 inches (3.8 cm) between the long sides;

(ii) Square mesh must be at least 1.5 inches (3.8 cm) between sides; and

(iii) Rectangular mesh must be at least 1 inch (2.5 cm) between the longer sides and 2 inches (5.1 cm) between the shorter sides;

(4) Has affixed to it an identification tag as specified in § 646.6(d) for a sea bass trap; and

(5) Has openings and degradable fasteners as specified in § 646.22(c)(3) for a sea bass trap.

(c) *Management measures.*

(1) Off North Carolina and South Carolina, a person aboard a vessel that has on board a permit issued under § 646.4(b) who uses or possesses a sea bass pot in the EEZ off North Carolina and South Carolina is exempt from the possession limits applicable for sea bass traps specified in § 646.22(c)(2).

(2) A sea bass pot in the EEZ off North Carolina and South Carolina may be pulled only by a person (other than an authorized officer) aboard the vessel permitted to fish such pot, or aboard another vessel if such vessel has on board written consent of the vessel permit holder.

[FR Doc. 92-20878 Filed 8-27-92; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 57, No. 169
Monday, August 31, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Docket No. FV-92-076]

Lemons Grown in California and Arizona; Proposed Weekly Volume Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on the quantities of fresh California-Arizona lemons that may be shipped weekly to domestic markets for the four week period from the week ending September 19 through the week ending October 10, 1992. Comments on the weekly levels of volume regulations must be received by the Department of Agriculture (Department) by 12:00 Noon Eastern Daylight Time and by the Lemon Administrative Committee (Committee) by 12 noon Pacific Daylight Time on the Monday prior to the Committee meeting associated with the week of regulation being addressed in the comment. A list of the committee meetings, dates and proposed levels of volume regulations can be found under the heading Committee Meetings and Dates. Consistent with program objectives, volume regulations for these weeks may be needed to establish and maintain orderly marketing conditions for fresh California-Arizona lemons. This proposal is based on a marketing policy which was adopted by the Committee on May 5, 1992. The Committee locally administers the marketing order covering lemons grown in California and Arizona.

DATES: Comments on the volume regulation proposed for the week ending September 19 must be received by the Department and the Committee by September 7; for the week ending September 26 by September 14; for the week ending October 3 by September 21; and for the week ending October 10 by September 28.

ADDRESSES: Interested persons are invited to submit written comments concerning the proposed weekly levels of volume regulation. Comments must be sent in triplicate to the Docket Clerk, room 2525–S, F&V, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456, or by faxogram at (202) 720–5698; and to the Lemon Administrative Committee, 25129 The Old Road, suite 304, Newhall, California 91381, or by faxogram at (805) 253–2764. Such comments should reference the docket number, date, and page number of this issue of the **Federal Register**, and the dates of the regulatory week or weeks being addressed. For ease of review, persons submitting comments in excess of five pages may wish to include a one page summary. Such comments will be made available for public inspection in the Office of the Docket Clerk and the Committee office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3670; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION:

This proposed rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This proposed rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons who are subject to regulation under the marketing order and approximately 2,000 producers of lemons in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona lemons may be classified as small entities.

The Administrator of the AMS has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

The declaration of policy in the Act includes provisions concerning establishing and maintaining such orderly marketing conditions as will protect producer prices and as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona lemons that each handler may handle on a weekly basis may contribute to the Act's objectives of orderly marketing and improving producers' returns.

The Committee may recommend to the Secretary the utilization of weekly volume regulations under the order to effectuate the purposes of the Act. Volume regulations may help to establish and maintain orderly marketing conditions for lemons, and at the same time benefit consumers by maintaining adequate supplies of lemons in the marketplace. Thus, volume regulation can be a valuable tool in achieving the goal of market stabilization for California-Arizona lemons.

Prior to evaluating the appropriate level of volume regulation to recommend for a particular week, the Committee considers the following factors: (1) The quantity of lemons in storage; (2) the available amount of lemons for shipment to the principal markets; (3) the trend in consumer income; (4) present and predicted weather conditions; (5) present and prospective prices of lemons; and (6) other relevant factors.

The lemon marketing order contains a variety of provisions designed to provide handlers with marketing flexibility within an established volume regulation week. When volume regulation is established for a given week, the Committee calculates the quantity of lemons (allotment) which may be handled by each handler. Certain provisions of the order allow handlers to ship lemons in excess of their allotments, within specified limits, in response to marketing opportunities. Handlers who want to ship more than their allotment are permitted to overship that amount by one car (one car equals 1,000 cartons at 38 pounds net weight each) or by 20 percent of their allotment level, whichever is greater. A handler may overship in a given week, but the overshipment must be offset against the following week's allotment. Handlers may also ship less than their allotment during a given week which would give them the opportunity to ship more than their allotment during the following week. Handlers may also request upward adjustments and/or on-tree certification to increase their average weekly picks. This allows them to receive and ship a larger amount of lemons during a particular week or weeks. The order also provides off-bloom allotment which allows handlers to handle off-bloom lemons and receive allotment for such lemons prior to normal harvest time. Further, handlers may borrow allotment from other handlers who choose to ship less than their allotment or who cannot fully utilize their allotments. These provisions allow handler flexibility.

In addition, lemons which are handled or disposed of in the following outlets are exempt from volume regulation: (a) Charitable institutions or relief organizations for distribution by such agencies; (b) processing into by-products, including juice; (c) export markets; (d) gift packages; and (e) livestock feed. The marketing and distribution of limited amounts of organic lemons is also exempt from volume regulation, and the Committee may exempt from volume and size regulations any grower, other than whose principal occupation is food distribution, who sells directly to consumers.

Pursuant to § 910.50 of the order, the Committee is required to submit a marketing policy to the Secretary. The Committee adopted its marketing policy for the 1992–93 fiscal year at its May 5, 1992, meeting in Newhall, California. Other meetings to develop, discuss and review the Committee's marketing policy were held on April 8, April 22 and April 28. In addition to Committee members, industry members were present at these meetings.

Preliminary estimates indicate the California-Arizona lemon crop at 42,400 cars for the 1992–93 fiscal year compared to the estimated 40,589 cars produced in 1991–92. The Committee estimates District 1, central California, 1992–93 production at 1,700 cars compared to the 400 cars produced in 1991–92. In District 2, southern California, the crop is expected to be 24,500 cars compared to the 26,071 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 16,200 cars compared to the 14,418 cars produced last year.

California-Arizona lemons are typically shipped and disposed of in three major distribution channels—domestic fresh, export fresh, and by-products. The fresh outlets are the most profitable, and the best quality fruit usually goes to these markets. The by-products channel (mostly frozen, concentrated lemon juice) is a low-value salvage outlet for the remaining fruit. In terms of total crop utilization, the Committee estimates as of May 5, 1992, that approximately 17,750 cars of the 1992–93 crop (42 percent) will be utilized in fresh domestic markets compared with an estimate of 17,000 cars (42 percent) in 1991–92; fresh exports are projected at 7,000 cars (16 percent of the total 1992–93 crop) compared to an estimate of 6,500 cars (16 percent) in 1991–92; and 17,650 cars (42 percent of the 1992–93 lemon crop) will be utilized in by-product channels and other forms of processing compared with an estimate of 17,089 cars (42 percent) in 1991–92.

Expressed in terms of percentages, the total volume of California-Arizona lemons shipped to fresh domestic markets in 1992–93 could increase by 4 percent from 1991–92 estimates; export shipments could increase by 5 percent from 1991–92 estimates; and utilization in by-product channels and other forms of processing in 1992–93 may increase by 3 percent from 1991–92.

The marketing policy includes a proposed industry shipping schedule showing possible levels of volume regulation for each week of the 1992–93 fiscal year. The recommended shipping schedule is based on the initial crop estimate and covers the entire fiscal year. The proposed shipping schedule is as follows:

Week ending	Estimated weekly shipments (cars)
Aug. 8, 1992	335
15	335
22	340
29	350
Sept. 5	310
12	300
19	310
26	310
Oct. 3	310
10	310
17	305
24	305
31	300
Nov 7	310
14	310
21	300
28	275
Dec. 5	320
12	360
19	355
26	275
Jan. 2, 1993	275
9	290
16	290
23	300
30	310
Feb. 6	320

Week ending	Estimated weekly shipments (cars)
13	330
20	330
27	350
Mar. 6	350
13	360
20	360
27	360
Apr. 3	375
10	400
17	340
24	360
May 1	365
8	375
15	395
22	395
29	400
Jun. 5	400
12	400
19	400
26	405
Jul. 3	400
10	390
17	380
24	370
31	350
Total	17,750

Currently, there is a size regulation in effect for lemons grown in California and Arizona which limits the handling of domestic fresh lemons to size 235's (1.82 inches in diameter) and larger in all districts. The size composition of fresh shipments of lemons normally peaks in the mid-sizes, 140's and 165's, with 80 percent to 85 percent of each fiscal year's total fresh shipments averaging 165's (2.13 inches in diameter) and larger. The Committee projects that the size composition of fresh shipments during the 1992–93 fiscal year will follow the same pattern.

Committee recommendations for volume regulations during the 1992–93 fiscal year may vary from the estimated shipping projections. Factors that may stimulate increased fresh lemon consumption and necessitate a Committee recommendation for volume regulation in excess of the shipping schedule include: (1) Significant changes in weather patterns in major consuming areas; (2) a regional or national concern for health; or (3) promotional efforts by industry marketing organizations. Factors that could adversely affect lemon demand in the marketplace and necessitate a recommendation for volume regulations at a lower level than indicated by the shipping schedule include: (1) Significant changes in weather conditions; (2) the size composition of existing supplies; (3) the condition of the fruit; (4) transportation problems; or (5) extreme supply fluctuations created by competitive imports.

Based on the Committee's deliberations and the marketing policy, it is evident that the Committee may recommend the implementation of volume regulation for certain weeks during the 1992–93 season. Because the Department has determined that volume regulation may be recommended and adopted, it is issuing this proposed rule covering the four week period from the week ending on September 19, 1992, through the week ending on October 10, 1992. Should the Committee recommend, and the Department adopt, regulation for any or all weeks during the four week period, the Department would issue final rules establishing such regulations. Similar proposed rules may be issued and subsequently finalized throughout the season.

The Department invites comments on the proposed weekly levels of volume regulation for the week ending September 19 through the week ending October 10, 1992. The Committee meets on a weekly basis to consider current and prospective marketing conditions and interested persons may orally present their position at such meetings. Interested persons are also invited to submit written comments to the Committee and the Department regarding the proposed levels of regulation for any or all weeks of the four week period specified in this rule. Interested persons who wish to comment in writing must submit copies to both the Department and the Committee. For ease of review, persons submitting comments in excess of five pages may wish to include a one page summary.

Comments proposing alternative levels of shipments, including no regulation, during this four week period should provide as much information as possible in support of the suggested alternatives. Interested persons are also invited to comment on the possible regulatory and informational impact of the proposed volume regulations on small businesses.

The Committee will consider comments received in response to this proposed rule when deliberating on its recommendations for volume regulation. The Department will also consider comments received in its evaluation of Committee recommendations for volume regulation. If warranted, the department will issue volume regulations on a weekly basis.

Comments on the weekly levels of volume regulation must be received by the Department by 12:00 Noon Eastern Daylight Time and by the Committee by 12:00 Noon Pacific Daylight Time the Monday prior to the Committee meeting associated with the week of regulation being addressed in the comment. Following is a list of the Committee's meeting dates, times, and locations, the regulatory week to be addressed at each meeting, and the proposed level of volume regulation for each regulatory week.

COMMITTEE MEETINGS AND DATES

1. Committee Meeting Date: September 8, 1992, Time: 11 a.m., Location: 25129 The Old Road, Suite 304, Newhall, California 91381.
Regulatory Week to be Addressed: September 13–September 19, 1992, Proposed Level: 310 cars.

2. Committee Meeting Date: September 15, 1992, Time: 11 a.m., Location: 25129 The Old Road, Suite 304, Newhall, California 91381.
Regulatory Week to be Addressed: September 20–September 26, 1992, Proposed Level: 310 cars.

3. Committee Meeting Date: September 22, 1992, Time: 11 a.m., Location: 25129 The Old Road, Suite 304, Newhall, California 91381.
Regulatory Week to be Addressed: September 27–October 3, 1992, Proposed Level: 310 cars.

4. Committee Meeting Date: September 29, 1992, Time: 11 a.m., Location: 25129 The Old Road, Suite 304, Newhall, California 91381.
Regulatory Week to be Addressed: October 4–October 10, 1992, Proposed Level: 310 cars.

Comments received will be analyzed and considered as part of the rulemaking process.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is proposed to be amended as follows:

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 910.1052 is added to read as follows:

§ 910.1052 Lemon Regulation 752.

The quantity of lemons grown in California and Arizona which may be handled during the period from September 13 through September 19, 1992, is 310,000 cartons.

3. A new § 910.1053 is added to read as follows:

§ 910.1053 Lemon Regulation 753.

The quantity of lemons grown in California and Arizona which may be handled during the period from September 20 through September 26, 1992, is 310,000 cartons.

4. A new § 910.1054 is added to read as follows:

§ 910.1054 Lemon Regulation 754.

The quantity of lemons grown in California and Arizona which may be handled during the period from September 27 through October 3, 1992, is 310,000 cartons.

5. A new § 910.1055 is added to read as follows:

§ 910.1055 Lemon Regulation 755.

The quantity of lemons grown in California and Arizona which may be handled during the period from October 4 through October 10, 1992, is 310,000 cartons.

Dated: August 26, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–20879 Filed 8–28–92; 8:45 am]

BILLING CODE 3410–02–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 100

Nuclear Power Plants, Seismic and Geologic Siting Criteria, Appendix Revision; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff will meet with the staff of the Nuclear Management and Resources Council (NUMARC) and other industry representatives to discuss the revision of appendix A, Seismic and Geologic Siting Criteria for Nuclear Power Plants, to 10 CFR part 100.

DATES: September 11, 1992 8 a.m.

ADDRESSES: 11555 Rockville Pike, room: 1 F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Chief, Structural and Seismic Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 492–3860.

SUPPLEMENTARY INFORMATION: Appendix A to 10 CFR part 100 describes the seismic and geologic siting and earthquake engineering criteria for nuclear power plants. Because of the advances in the state-of-the-art since the publication of the regulation (effective December 13, 1973), a need for the revision has been established. Staff progress in the revision of appendix A to 10 CFR part 100 has been discussed in public meetings with NUMARC and other industry representatives on February 4, 1992, April 23, 1992, June 4, 1992 and July 10, 1992.

The purpose of this meeting is to meet with NUMARC and other industry representatives to discuss industry recommended alternatives to the draft proposed revision of appendix A to 10 CFR part 100 that was placed in the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington, DC (Memorandum from Lawrence C. Shao to Raymond F. Fraley, dated January 21, 1992, subject: Revision of appendix A to 10 CFR part 100—Geological and Seismological Siting Criteria for Nuclear Power Plants). No specific agenda is being proposed.

Dated at Rockville, Maryland, this 21st day of August, 1992, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 92–20857 Filed 8–28–92; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–128–AD]

Airworthiness Directives; Aerospatiale Model ATR42–300 and –320 and Model ATR72–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–300 and –320 series airplanes and Model ATR72–100 and –200 series airplanes. This proposal would require removal of the cotter pins on the left and right elevator tab hinges; a recheck of the torque of the nuts; and installation of correct size cotter pins. This proposal is prompted by reports of missing cotter pins on the left elevator tab hinges and incorrect dimension of cotter pins on the right elevator tab hinges. The actions specified by the proposed AD are intended to prevent reduced controllability of the airplane.

DATES: Comments must be received by October 20, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–128–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gray Lium, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is make: "Comments to Docket Number 92–NM–128–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–128–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Model ATR42–300 and -320 series airplanes and Model ATR72–100 and -200 series airplanes. The DGAC advises that cases have been reported of missing cotter pins on the left elevator tab hinges and incorrect dimension of cotter pins on the right elevator tab hinges on in-service airplanes. This condition, if not corrected, could result in reduced controllability of the airplane.

Aerospatiale has issued Service Bulletins ATR42–55–0005, Revision 2, dated October 28, 1991, and ATR72–55–1001, Revision 2, dated October 28, 1991, which describe procedures for removal of the cotter pins on the left and right elevator tab hinges; a recheck of the torque of the nuts; and installation of correct size cotter pins. The DGAC classified these service bulletins as mandatory and has issued French Airworthiness Directives 91–214–042(B) and 91–215–006(B), both dated October 2, 1991, in order to assure the continued airworthiness of these airplanes in France.

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require removal of the cotter pins on the left and right elevator tab hinges; a recheck of the torque of the nuts; and installation of correct size cotter pins. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 76 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of parts is expected to be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,180. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accorance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aeropatiale: Docket 92–NM–128–AD.

Applicability: Model ATR42–300 and –320 series airplanes and Model ATR72–100 and –200 series airplanes, as listed in Aeropatiale Service Bulletins ATR42–55–0005, Revision 2, dated October 28, 1991, and ATR72–55–1001, Revision 2, dated October 28, 1991; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the cotter pins on the left and right elevator tab hinges; recheck the torque of the nuts; and install correct size cotter pins, in accordance with Aeropatiale Service Bulletin ATR42–55–0005, Revision 2, dated October 28, 1991 (for Model ATR42–300 and –320 series airplanes); or Aeropatiale Service Bulletin ATR72–55–1001, Revision 2, dated October 28, 1991 (for Model ATR72–100 and –200 series airplanes); as applicable.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 19, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20865 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 92–NM–130–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes having entry or service doors equipped with slide rafts, that currently requires a repetitive operational check to manually open and close all entry/service doors to verify the integrity of the door counterbalance inner torsion springs, and replacement, if necessary. This action would require eventual replacement of certain inner torsion springs or certain counterbalance assemblies; when accomplished, this replacement would terminate the need for the currently required repetitive operational checks. This action would also add airplanes to the applicability of the rule. This proposal is prompted by the development of an improved inner torsion spring that positively addresses the identified unsafe condition. The actions specified by the proposed AD are intended to ensure opening of entry/service doors when required for emergency evacuation.

DATES: Comments must be received by October 13, 1992.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–130–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Pliny Brestel, Seattle Aircraft Certification Office, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2783; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–130–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–130–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

On March 30, 1989, the FAA issued AD 89–08–07, Amendment 39–6186 (54 FR 14206, April 10, 1989), applicable to certain Boeing Model 767 series airplanes with entry or service doors equipped with slide rafts, to require a repetitive operational check to manually open and close those entry/service doors in order to verify the integrity of the door counterbalance inner torsion springs, and replacement of the springs, if necessary. That action was prompted by reports of several instances of broken graphite-composite inner torsion springs in the counterbalance assemblies that inhibited normal door operation. This condition, if not corrected, would require extra effort to unlatch the door, and manual assistance to open the door in the emergency mode, or would render the door inoperable should the broken spring jam the counterbalance assembly. A jammed counterbalance assembly would prevent the entry/service doors from opening when required during an emergency evacuation.

Since the issuance of that AD, the FAA has reviewed and approved Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992, that describes procedures for examination of the counterbalance assembly at each entry and service door to determine the part numbers of the assembly and serial numbers of the inner torsion spring. If parts having certain part/serial numbers are installed, continued functional tests of the doors are necessary to ensure that the doors operate properly; if parts having other part/serial numbers (improved parts) are installed, the tests may be discontinued. Additionally, the service bulletin describes procedures for installation of an improved inner torsion spring, or the installation of an improved counterbalance assembly containing the improved inner torsion spring. When either of these items are installed, the need for the currently required repetitive operational checks is eliminated. The service bulletin also expands the effectivity listing to include additional airplanes, line positions 002 through 409, that have entry or service doors equipped with slide rafts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 89–08–07 to require that operators verify the part numbers of the counterbalance assembly or the serial number of the inner torsion spring currently installed on the airplane. If certain part-numbered items are installed, operational checks of the door must be continued; if certain other part-numbered items are installed (improved parts), the checks may be discontinued. This proposal would require eventual replacement of certain currently-installed inner torsion springs with improved inner torsion springs, or replacement of certain counterbalance assemblies with improved counterbalance assemblies containing improved inner torsion springs. When installed, this replacement would constitute terminating action for the required repetitive operational checks. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Additionally, this proposal would expand the applicability of the rule to include additional airplanes that have been identified as being subject to the addressed unsafe condition.

There are approximately 122 Boeing Model 767 series airplanes of the affected design in the worldwide fleet (this number includes 18 airplanes that would be added worldwide via this proposal). The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD (no U.S. registered airplanes would be added via this proposal). The FAA estimates that it would take approximately 1 work hour per airplane to accomplish each operational check, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed operational check requirements on U.S. operators would be $2,750 per cycle ($55 per airplane).

Additionally, the FAA estimates that it would take 80 work hours per airplane to accomplish the replacement, at an average labor rate of $55 per work hour. Required parts would cost approximately $24,500 per airplane. Based on these figures, the total cost impact of the proposed replacement requirements on U.S. operators would be $1,445,000, or $28,900 per airplane.

Based on the figures discussed above, the total cost impact of the AD on U.S. operators is estimated to be $1,447,750.

This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6186 (54 FR 14206, April 10, 1989), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 92–NM–130–AD. Supersedes AD 89–05–07, Amendment 39–6186.

Applicability: Model 767 series airplanes with entry or service doors equipped with slide rafts; line positions 002 through 409, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure opening of entry/service doors when required for emergency evacuation, accomplish the following:

(a) For airplanes having line positions 132, 136, and 140 through 409, inclusive: Within 350 flight hours after May 9, 1989 (the effective date of AD 89–08–07, Amendment 39–6186), and thereafter at intervals not to exceed 350 flight hours, perform an operational check on each entry/service door to detect a broken counterbalance inner torsion spring, and replace with an airworthy part, if necessary, prior to further flight, in accordance with Boeing Alert Service Bulletin 767–52A0053, dated August 25, 1988; or Revision 1, dated December 22, 1988. After replacement of any counterbalance inner torsion spring, continue to perform the operational checks at intervals not to exceed 350 flight hours.

(b) For airplanes having line positions 002 through 409, inclusive: Within 400 flight hours after the effective date of this AD, or within 400 flight hours after the last operational check accomplished in accordance with paragraph (a) of this AD, whichever occurs first, determine if entry/service doors are equipped with an improved counterbalance assembly or an improved inner torsion spring and if further action is necessary, in accordance with Section III, paragraphs A. through F., of Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992. The airplane records may be reviewed in order to make this determination.

(1) For those doors equipped with an improved counterbalance assembly or an improved inner torsion spring, no further action is required. For airplanes affected by paragraph (a) of this AD, having doors equipped with these items: The operational checks required by paragraph (a) of this AD may be discontinued.

(2) For those doors not equipped with an improved counterbalance assembly or an improved inner torsion spring: Prior to further flight, perform an operational check to detect the existence of a broken inner torsion spring, in accordance with section III, paragraph G., of the Boeing service bulletin.

(i) If any broken inner torsion spring is found, prior to further flight, accomplish the procedures specified in either paragraph (b)(2)(i)(A) or (b)(2)(i)(B) of this AD:

(A) Replace the spring with an airworthy part in accordance with Section III., paragraph G., of the Boeing service bulletin, and repeat the operational check at intervals not to exceed 400 flight hours.

(B) Install an improved counterbalance assembly or an improved inner torsion spring, in accordance with Section III, paragraph H., of the Boeing service bulletin. Such installation constitutes terminating action for the requirements of this AD.

(ii) If no broken inner torsion spring is found, accomplish the procedures specified in either paragraph (b)(2)(ii)(A) or (b)(2)(ii)(B) of this AD:

(A) Repeat the operational check at intervals not to exceed 400 flight hours.

(B) Install an improved counterbalance assembly or an improved inner torsion spring, in accordance with Section III, paragraph H., of the Boeing service bulletin. Such installation constitutes terminating action for the requirements of this AD.

(C) For airplanes having line positions 002 through 409, inclusive, except those airplanes having doors affected by paragraph (b)(1) of this AD: Within 6 years after the effective date of this AD, install an improved counterbalance assembly, or an improved inner torsion spring, in accordance with Section III, paragraph H., of Boeing Service Bulletin 767–52A0053, Revision 2, dated April 30, 1992. Such installation constitutes terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 13, 1992.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 92–20866 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS–55–89]

RIN 1545–AN82

General Asset Accounts Under the Accelerated Cost Recovery System

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations on the election to maintain general asset accounts for depreciable assets to which section 168 of the Internal Revenue Code applies. Changes to the applicable tax law were made by the Tax Reform Act of 1986. The regulations will simplify certain depreciation calculations.

DATES: Written comments must be received by October 15, 1992. Requests to speak (with outlines of oral comments to be presented) at a public hearing scheduled for 10 a.m. on November 4, 1992, must be received by October 14, 1992.

ADDRESSES: Send comments and requests to speak (with outlines of oral comments to be presented) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attn: CC:CORP:T:R (PS–55–89), room 5228).

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, Carol Savage at (202) 622–8452 (not a toll-free number); concerning the regulations, Kathleen Reed at (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information requirement contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC 20224.

The collection of information in this regulation is in proposed regulation § 1.168(i)–1(g)(3). This information is required by the Internal Revenue Service to monitor compliance with the election requirement of section 168(i)(4) of the Internal Revenue Code. The likely respondents or recordkeepers are individuals, businesses, and other for-profit institutions.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents or recordkeepers may require more or less time depending on their particular circumstances. Estimated total annual reporting and recordkeeping burden: 250 hours.

The estimated annual burden per respondent or recordkeeper varies from .20 to .30 hours, depending on individual circumstances, with an estimated average of .25 hours. Estimated number of respondents and recordkeepers: *1,000.* Estimated annual frequency of responses: One.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 168 (i)(4) of the Internal Revenue Code (Code) reflecting amendments made by section 201 of the Tax Reform Act of 1986. The amendments are to be issued under the authority contained in sections 168(i)(4) and 7805 of the Code.

Explanation of Provisions

The proposed regulations would simplify the computation of depreciation by allowing taxpayers to elect to group assets in one or more general asset accounts under section 168(i)(4) of the Code. The assets in any particular general asset account are depreciated as a single asset.

The proposed regulations provide that a general asset account includes assets that have the same asset class, depreciation method, recovery period, and convention and that are placed in service in the same taxable year. Assets subject to the general depreciation system of section 168(a) of the Code or the alternative depreciation system of section 168(g) may be accounted for in general asset accounts. Unlike the rules under section 168 as in existence before enactment of the Tax Reform Act of 1986, general asset account treatment is not limited to "mass assets."

An asset may not be placed in a general asset account if a credit is determined under section 47 or 48 of the Code or if the asset initially is used both in a trade or business (or for the production of income) and in a personal activity. If investment credit assets were included, additional rules would be required to redetermine the basis of the general asset account for any recapture amount determined under section 50. The Service concluded that the added complexity of these rules is not warranted under the circumstances; however, taxpayers are invited to comment on this matter.

In addition, assets that are used predominantly outside the United States or that give rise to depreciation deductions that are apportioned in whole or in part to foreign source income may not be placed in a general asset account. The inclusion of such assets would present substantial difficulties in applying other provisions of the Code, such as the rules of section 864(e) of the Code for apportioning the deduction for interest expense and the rules of section 865(c) for determining the source of gain from the disposition of depreciable personal property. The Service invites comments on how the issues presented by including such assets in a general asset account might be resolved in a manner that would not be unduly burdensome.

As required by section 168(i)(4) of the Code, the proposed regulations provide generally that the amount realized upon the disposition of an asset from a general asset account is recognized as ordinary income. The ordinary income treatment, however, is limited to the unadjusted depreciable basis of the account (determined by disregarding any election made under section 179 or 190 with respect to assets in the account) less any amounts previously recognized as ordinary income at the time of disposition. Any excess amount realized is subject to all other applicable provisions of the Code relating to recognition and character of gain (except the recapture provisions). In computing the depreciation allowance for the account, the unadjusted depreciable basis and the depreciation reserve of the general asset account are not reduced as a result of the disposition.

A special rule is provided for the disposition of all the assets or the last asset from the general asset account. Moreover, the taxpayer may terminate general asset account treatment for a particular asset if the asset is disposed of as the result of a casualty, a charitable contribution, the cessation of a business, or in transactions to which certain nonrecognition sections of the Code apply. For transactions described in section 168(i)(7)(B) of the Code, the transferee generally is bound by the transferor's general asset account election.

The proposed regulations include an anti-abuse rule providing that if an asset in a general asset account is disposed of in certain transactions one of the principal purposes of which is to avoid the limitations imposed under the Code with respect to a net operating loss deduction or the utilization of any credit, the disposition of the asset is treated as though an election under section 168(i)(4) of the Code had never been made for the asset.

The proposed regulations further provide the time and manner in which to make the election to establish general asset accounts. The election generally is irrevocable and is binding on the taxpayer for computing taxable income as well as computing alternative minimum taxable income.

Finally, the proposed regulations provide that these regulations apply to assets placed in service in taxable years ending on or after [the date of publication of the final regulations in the **Federal Register**]. For prior taxable years, the Service will allow the use of any reasonable method that clearly reflects income and is consistently applied to the general asset accounts.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations. Therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, a copy of the rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Written Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. The public hearing will be held at 10 a.m. on November 4, 1992. See the notice of public hearing published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Kathleen Reed, Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development and style.

List of Subjects

26 CFR 1.56–0T through 1.58–9T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.161–1 through 1.194–4

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, title 26, chapter I, part 1 is proposed to be amended as follows:

PART 1—[AMENDED]

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.168(i)–1 also issued under 26 U.S.C. 168(i)(4). * * *

Par. 2. Section 1.56(g)–1 is amended by adding a new sentence at the end of paragraph (b) introductory text to read as follows:

§ 1.56(g)–1 Adjusted current earnings.

* * * * *

(b) * * * See § 1.168(i)–1(g) for an election to use general asset accounts.

* * * * *

Par. 3. Sections 1.168(i)–0 and 1.168(i)–1 are added to read as follows:

§ 1.168(i)–0 Table of contents for the general asset account rules.

This section lists the major paragraphs contained in § 1.168(i)–1.

Section 1.168(i)–1 General asset accounts

(a) Scope.
(b) Definitions.
(1) Unadjusted depreciable basis.
(2) Unadjusted depreciable basis of the general asset account.
(3) Adjusted depreciable basis of the general asset account.
(c) Establishment of general asset accounts.
(1) Assets eligible for general asset accounts.
(2) Grouping assets in general asset accounts.
(i) General rule.
(ii) Special rules.
(d) Determination of depreciation allowance.
(e) Disposition of an asset from a general asset account.
(1) Scope.
(2) General rule for a disposition.
(i) No immediate recovery of basis.
(ii) Treatment of amount realized.
(iii) Effect of disposition on a general asset account.
(iv) Coordination with nonrecognition provisions.
(v) Examples.
(3) Special rules.
(i) Disposition of all assets remaining in a general asset account.
(ii) Disposition of an asset in a qualifying disposition.
(iii) Transactions subject to section 168(i)(7).
(iv) Anti-abuse rule.
(f) Changes in use.
[Reserved].
(g) Election.
(1) Irrevocable election.
(2) Time for making election.
(3) Manner of making election.
(h) Effective date.

§ 1.168(i)–1 General asset accounts.

(a) *Scope.* This section provides rules for general asset accounts under section 168(i)(4) of the Internal Revenue Code (Code). The provisions of this section apply only to assets for which an election has been made under paragraph (g) of this section.

(b) *Definitions*—(1) *Unadjusted depreciable basis.* For purposes of this section, "unadjusted depreciable basis" is the basis of an asset for purposes of section 1011 of the Code without regard to any adjustments described in sections 1016(a) (2) and (3), reduced by the amount of the credit determined under section 44(a) and by the amount of any deductions allowed under section 179(a) or 190(a).

(2) *Unadjusted depreciable basis of the general asset account.* "Unadjusted depreciable basis of the general asset account" is the sum of the unadjusted depreciable bases of all assets included in the general asset account.

(3) *Adjusted depreciable basis of the general asset account.* "Adjusted depreciable basis of the general asset account" is the unadjusted depreciable basis of the general asset account less the adjustments to basis described in sections 1016(a) (2) and (3).

(c) *Establishment of general asset accounts.*—(1) *Assets eligible for general asset accounts.* Assets that are subject to either the general depreciation system of section 168(a) of the Code or the alternative depreciation system of section 168(g) may be accounted for in one or more general asset accounts. However, an asset is not to be included in a general asset account if—

(i) A credit is determined under section 47 or 48 for the asset;

(ii) A taxpayer uses the asset both in a trade or business (or for the production of income) and in a personal activity at any time before the close of the taxable year in which the asset is first placed in service by the taxpayer;

(iii) The asset is described in section 168(g)(1)(A); or

(iv) The asset give rise to a deduction for depreciation that would be apportioned in whole or in part to income from sources outside the United States under § 1.861–8.

(2) *Grouping assets in general assets accounts*—(i) *General rule.* If a taxpayer makes the election under paragraph (g) of this rule, assets that are subject to the election are grouped into one or more general asset accounts. Assets that are eligible to be grouped into a single general asset account may be divided into more than one general assets account. Each general asset account must include only assets that—

(A) Have the same asset class (for further guidance, see Rev. Proc. 87–56, 1987–2 C.B. 674, or its successors);

(B) Have the same applicable depreciation method;

(C) Have the same applicable recovery period;

(D) Have the same applicable convention; and

(E) Are placed in service by the taxpayer in the same taxable year.

(ii) *Special rules.* An asset for which an election under section 179 or 190 is made may be included in a general asset account to the extent of the asset's unadjusted depreciable basis. Assets without an asset class, but with the same characteristics described in paragraph (c)(2)(i)(B) through (E) of this section, may be grouped into a general asset account. Assets subject to the mid-quarter convention may only be grouped into a general asset account with assets that are placed in service in the same quarter of the taxable year. Passenger automobiles for which the depreciation allowance is limited under section 280F(a) must be grouped into a separate general asset account.

(d) *Determination of depreciation allowance.* Depreciation allowances are determined for each general asset account by using the applicable depreciation method, recovery period, and convention for the assets in the account. For purposes of applying section 280F(a) of the Code, the depreciation allowance for a general asset account established for passenger automobiles is limited for each taxable year to the amount prescribed in section 280F(a) multiplied by the number of automobiles originally included in the account less the number of automobiles disposed of during the year or in prior years in either qualifying dispositions (to which paragraph (e)(3)(ii) of this section applies) or transactions described in paragraph (e)(3)(iii) of this section. The depreciation allowances are recorded in a depreciation reserve account for each general asset account. The allowance for depreciation under this section constitutes the amount of depreciation allowable under section 167(a).

(e) *Disposition of an asset from a general asset account*—(1) *Scope.* This paragraph (e) provides rules applicable to dispositions of assets included in a general asset account. For purposes of this paragraph (e), an asset in a general asset account is disposed of when ownership of the asset is transferred or when the asset is permanently withdrawn from use in the taxpayer's trade or business or from use in the production of income. A disposition includes, but is not limited to, a sale, an exchange, a retirement, the physical abandonment, or the destruction of the asset. A disposition also occurs when an asset is transferred to a supplies or scrap account. A disposition does not include, however, the retirement of a structural component of real property.

(2) *General rule for a disposition*—(i) *No immediate recovery of basis.* Immediately before a disposition of any asset in a general asset account, the asset is treated as having an adjusted basis of zero for purposes of section 1011 of the Code. Therefore, no loss is realized upon the disposition of an asset from the general asset account. Similarly, where an asset is disposed of by transfer to a supplies or scrap account, the basis of the asset in the supplies or scrap account will be zero.

(ii) *Treatment of amount realized.* Any amount realized on a disposition is recognized as ordinary income (notwithstanding any other provision of subtitle A of the Code) to the extent the sum of the unadjusted depreciable basis of the general asset account and any amounts allowed as deductions under section 179 or 190 for assets in the account exceeds any amounts previously recognized as ordinary income upon the disposition of other assets in the account. The recognition and character of any excess amount realized are determined under other applicable provisions of the Code (other than sections 1245 and 1250).

(iii) *Effect of disposition on a general asset account.* The unadjusted depreciable basis and the depreciation reserve of the general asset account are not reduced as a result of a disposition of an asset from the general asset account.

(iv) *Coordination with nonrecognition provisions.* For purposes of determining the basis of an asset acquired in a transaction described in paragraph (e)(3)(ii)(B)(*4*) of this section (relating to certain nonrecognition provisions), the amount of ordinary income recognized under this paragraph (e)(2) is treated as the amount of gain recognized on the disposition.

(v) *Examples.* The following examples illustrate the application of this paragraph (e)(2).

Example 1. (i) *R*, a calendar-year corporation, maintains one general asset account for ten machines that cost a total of $100,000 and are placed in service in 1993. Of the ten machines, one machine costs $82,000 and nine machines cost a total of $18,000. This general asset account has a depreciation method of 200 percent declining balance, a recovery period of 5 years, and a half-year convention. No section 179 election was made for any of the machines. As of January 1, 1994, the depreciation reserve of the account is $20,000.

(ii) On February 8, 1994, *R* sells the machine that cost $82,000 to an unrelated party for $90,000. Under paragraph (e)(2)(i) of this section, this machine has an adjusted basis of zero.

(iii) On its 1994 tax return, *R* recognizes the amount realized of $90,000 as ordinary income because such amount does not exceed the unadjusted depreciable basis of the general asset account ($100,000) plus any deduction allowed under section 179 for assets in the account ($0) less amounts previously recognized as ordinary income ($0). Moreover, the unadjusted depreciable basis and depreciation reserve of the account are not reduced by the disposition of the machine. Thus, the depreciation allowance for the account in 1994 is $32,000 (($100,000 − $20,000) × 40%).

Example 2. (i) The facts are the same as in *Example 1*. On June 4, 1995, *R* sells seven machines to an unrelated party for a total of $11,000. In accordance with paragraph (e)(2)(i) of this section, these machines have an adjusted basis of zero.

(ii) On its 1995 tax return, *R* recognizes $10,000 as ordinary income (the unadjusted depreciable basis of $100,000 plus the deduction of $0 allowed under section 179 less the amount of $90,000 previously recognized as ordinary income). The recognition and character of the excess amount realized of $1,000 ($11,000 − $10,000) are determined under other applicable provisions of the Code (such as section 1231) other than section 1245. Moreover, the unadjusted depreciable basis and depreciation reserve of the account are not reduced by the disposition of the machines Thus, the depreciation allowance for the account in 1995 is $19,200 (($100,000 − $52,000) × 40%).

(3) *Special rules*—(i) *Disposition of all assets remaining in a general asset account.* Paragraph (e)(2) of this section does not apply to, and a general asset account terminates on, the disposition of all of the assets, or the last asset, in the general asset account. The amount of gain or loss is determined under section 1001(a) of the Code by taking into account the adjusted depreciable basis of the general asset account at the time of the disposition. The recognition and character of the gain or loss are determined under other applicable provisions of the Code, except that the amount of gain subject to section 1245 or 1250 is limited to the excess of the depreciation allowed or allowable for the general asset account (including any deduction allowed under section 179 or 190) over any amounts previously recognized as ordinary income under paragraph (e)(2) of this section. The following example illustrates the application of this paragraph (e)(3)(i).

Example. (i) *T*, a calendar-year corporation, maintains a general asset account for 1,000 calculators that cost a total of $60,000 and are placed in service in 1993. No section 179 election was made for any of the assets. In 1994, *T* sold 200 of the calculators to an unrelated party for a total of $10,000 and recognized the $10,000 as ordinary income in accordance with paragraph (e)(2) of this section.

(ii) On March 26, 1995, *T* sells the remaining calculators in the general asset account to an unrelated party for $35,000. As a result, this account terminates and gain or loss is determined for the account.

(iii) Upon disposition, the depreciation allowed or allowable for the account is $36,960. Consequently, at the time of disposition, the adjusted depreciable basis of the account is $23,040 (unadjusted depreciable basis of $60,000 less the depreciation allowed or allowable of $36,960). Thus, *T* recognizes gain of $11,960 (amount realized of $35,000 less the adjusted depreciable basis of $23,040). The gain of $11,960 is subject to section 1245 of the Code to the extent of the depreciation allowed or allowable for the account (plus the deduction allowed under section 179 for assets in the account) less the amounts previously recognized as ordinary income ($36,960+$0 $10,000=$26,960). As a result, the entire gain of $11,960 is subject to section 1245.

(ii) *Disposition of an asset in a qualifying disposition*—(A) *Optional determination of the amount of gain, loss, or deduction.* In a qualifying disposition of an asset (described in paragraph (e)(3)(ii)(B) of this section, a taxpayer may apply this paragraph (e)(3)(ii) (rather than having paragraph (e)(2) of this section apply) and determine the amount of gain, loss, or deduction for the asset by taking into account the asset's adjusted basis. For this purpose, the adjusted basis of the asset at the time of the disposition equals the unadjusted depreciable basis of the asset less the depreciation allowed or allowable for the asset, computed by using the depreciation method, recovery period, and convention applicable to the general asset account in which the asset was included. The recognition and character of the gain, loss, or deduction are determined under other applicable provisions of the Code. However, if amounts previously recognized as ordinary income under paragraph (e)(2) of this section exceed the sum of the unadjusted depreciable basis of the general asset account and any amounts allowed as deductions under section 179 or 190 with respect to assets in the account as of the end of the taxable year of the qualifying disposition, the amount of gain subject to section 1245 or 1250 is limited to the depreciation allowed or allowable for the asset (including any deduction allowed under section 179 or 190 for the asset) less such excess.

(B) *Qualifying dispositions.* A qualifying disposition is a disposition that does not involve all the assets, or the last asset, remaining in a general asset account and that is—

(*1*) A direct result of a fire, storm, shipwreck, or other casualty, or from theft;

(*2*) A charitable contribution for which a deduction is allowable under section 170;

(*3*) A direct result of a cessation, termination, curtailment, or disposition of a business, manufacturing, or other income producing process, operation, facility, plant, or other unit (other than by transfer to a supplies, scrap, or similar account); or

(*4*) A transaction, other than a transaction described in paragraph (e)(3)(iii) of this section, to which a nonrecognition section of the Code applies (determined without regard to this section), such as section 1031 or 1033.

(C) *Effect of a qualifying disposition*—(*1*) *Adjustments to the general asset account.* If the taxpayer applies this paragraph (e)(3)(ii) to a qualifying disposition of an asset, then—

(*i*) The taxpayer removes the asset from the account in the year of disposition;

(*ii*) The unadjusted depreciable basis of the general asset account is reduced by the unadjusted depreciable basis of the asset as of the first day of the taxable year in which the disposition occurs;

(*iii*) The depreciation reserve of the general asset account is reduced by the depreciation allowed or allowable for the asset as of the end of the taxable year immediately preceding the year of disposition, computed by using the deprecation method, recovery period, and convention applicable to the general asset account in which the asset was included; and

(*iv*) For purposes of determining the amount of gain realized on subsequent dispositions that is subject to ordinary income treatment under paragraph (e)(2)(ii) of this section, section 1245, or section 1250, the amount of any deduction allowed under section 179 or 190 with respect to the asset is disregarded.

(*2*) *No effect on prior dispositions.* The adjustments to a general asset account for qualifying disposition of an asset have no effect on the recognition and character of prior dispositions subject to paragraph (e)(2) of this section.

(*D*) *Example.* The provisions of this paragraph (e)(3)(ii) are illustrated by the following example.

Example. (i) *Z*, a calendar-year corporation, maintains one general asset account for 12 machines that cost a total of $150,000 alone and are placed in service in 1993. Of the 12 machines, nine machines that cost $100,000 are used in *Z*'s Kentucky plant and three machines that cost $50,000 are used in *Z*'s Ohio plant. This general asset account has a depreciation method of 200 percent declining balance, a recovery period of 5 years, and a half-year convention. No section 179 election was made for the assets. As of January 1, 1995, the depreciation reserve for the account is $78,000.

(ii) On May 27, 1995, *Z* sells its entire manufacturing plant in Ohio to an unrelated party. The sales proceeds allocated to the three machines is $17,000. Because this transaction is a qualifying disposition under paragraph (e)(3)(ii)(B)(*3*) of this section, *Z* chooses to apply paragraph (e)(3)(ii) of this section.

(iii) For *Z*'s 1995 return, the depreciation allowance for the account is computed as follows. As of December 31, 1994, the depreciation allowed or allowable for the three machines is $26,000. Thus, as of January 1, 1995, the unadjusted depreciable basis of the account is reduced from $150,000 to $100,000 ($150,000 less the basis of $50,000 for the three machines), and the depreciation reserve of the account is decreased from $76,000 to $52,000 ($78,000 less the depreciation allowed or allowable of $26,000 for the three machines at December 31, 1994). Consequently, the depreciation allowance for the account in 1995 is $19,200 (($100,000−$52,000)×40%).

(iv) Gain or loss for the three machines is determined on an asset by asset basis. However, for purposes of the computation in this example, the bases of the three machines have been aggregated. For *Z*'s 1995 return, the depreciation allowed or allowable for the disposed machines in a total of $4,800 [(($50,000−$26,000)×40%)/2]. Thus, the adjusted basis of the machines under section 1011 of the Code is $19,200 (the adjusted depreciable basis of $24,000 removed from the account less the depreciation allowed or allowable of $4,800 in 1995). As a result, the loss recognized in 1995 is $2200 ($17,000−$19,200), which is subject to section 1231.

(iii) *Transactions subject to section 168(i)(7).* If an asset in a general asset account is transferred in a transaction described in section 168(i)(7)(B), the transferor must remove the transferred asset from the account in accordance with paragraph (e)(3)(ii)(C)(*1*) of this section. The transferee is bound by the transferor's election under paragraph (g) of this section with respect to the asset's basis in the hands of the transferee that does not exceed the asset's adjusted basis in the hands of the transferor. If all of the assets, or the last asset, in a general asset account are transferred, the transferee's basis in the asset transferred in equal to the adjusted depreciable basis of the general asset account as of the beginning of the transferor's taxable year in which the transaction occurs, decreased by the amount of depreciation allocable to the transferor for the year of the transfer.

(iv) *Anti-abuse rule*—(A) *In general.* If an asset in a general asset account is disposed of by a taxpayer in a transaction described in paragraph (e)(3)(iv)(B) of this section, the taxpayer must determine the amount of gain, loss, or deduction attributable to the disposition in the manner prescribed in paragraph (e)(3)(ii)(A) of this section and must make the adjustments to the general asset account described in paragraph (e)(3)(ii)(C)(*1*) of this section.

(B) *Covered transactions.* A transaction is described in this paragraph (e)(3)(iv)(B) if the transaction is not described in paragraph (e)(3)(i) or paragraph (e)(3)(iii) of this section and one of the principal purposes of the transaction is to avoid the limitations imposed under the Code with respect to a net operating loss deduction or the utilization of any credit. The fact that a taxpayer with a net operating loss carryover or a credit carryover transfers an asset to a related person or transfers an asset pursuant to an arrangement where the asset continues to be used (or is available for use) by the taxpayer pursuant to a lease or otherwise indicates, absent strong evidence to the contrary, that a principal purpose of the transaction is to avoid relevant limitations imposed under the Code.

(f) *Changes in use.* [Reserved].

(g) *Election*—(1) *Irrevocable election.* If a taxpayer makes an election under this paragraph (g), the taxpayer consents to, and agrees to apply, all the provisions of this section to the assets included in a general asset account. Except as provided in paragraph (e)(3) of this section, an election made under this section is irrevocable and will be binding on the taxpayer for computing taxable income as well as alternative minimum taxable income for the taxable year for which the election is made and for all subsequent taxable years.

(2) *Time for making election.* The election to apply this section to depreciable assets shall be made on the taxpayer's income tax return for the taxable year in which the assets included in the general asset account are placed in service by the taxpayer, filed within the time prescribed by law (including extensions) for filing the return for such taxable year.

(3) *Manner of making election.* In the year of election, a taxpayer must file a completed Form 4562 and type or legibly print at the top of the Form 4562, "GENERAL ASSET ACCOUNT ELECTION MADE UNDER SECTION 168(i)(4)." The taxpayer shall maintain records (for example, "General Asset Account #1—all 1994 additions in asset class 00.11 for Salt Lake City, Utah facility") that identify the assets included in each general asset account, that establish the unadjusted depreciable basis and depreciation reserve of the general asset account, and that reflect the amount realized during the taxable year upon dispositions from each general asset account. The taxpayer's recordkeeping practices should be consistently applied to the general asset accounts. If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(h) *Effective date.* This section applies to depreciable assets placed in service in taxable years ending on or after [the date of publication of the final regulations in the **Federal Register**]. For depreciable assets placed in service after December 31, 1986, in taxable years ending before [the date of publication of the final regulations in the **Federal Register**], the Internal Revenue Service will not disallow any reasonable method that clearly reflects income and is consistently applied to the taxpayer's general asset accounts.

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-20910 Filed 8-27-92; 9:08 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[PS-55-89]

RIN 1545-AN82

General Asset Accounts Under the Accelerated Cost Recovery System; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides a notice of public hearing on proposed regulations relating to the election to maintain general asset accounts for depreciable assets to which section 168 of the Internal Revenue Code applies.

DATES: The public hearing will be held on Wednesday, November 4, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, October 14, 1992.

ADDRESSES: The public hearing will be held in the Commissioner's Conference Room, room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R. (PS-55-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 168(i)(4) the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, October 14, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-20911 Filed 8-27-92; 9:07 am]

BILLING CODE 4830-01-M

26 CFR Part 301

[IA-4-92]

RIN 1545-AQ49

Authority of the Federal Crop Insurance Corporation To Require Employer Identification Numbers From Policyholders and Reinsured Companies for Purposes of the Federal Crop Insurance Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the authority of the Federal Crop Insurance Corporation (FCIC) to require policyholders and reinsured companies to furnish employer identification

numbers for purposes of administering the Federal Crop Insurance Act. The authority to solicit employer identification numbers was conferred upon the FCIC by section 2201(d) of the Food, Agriculture, Conservation, and Trade Act of 1990.

DATES: Written comments and requests for a public hearing must be received by September 30, 1992.

ADDRESSES: Send comments and any requests for a hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R:[IA–4–92], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention: CC:IT&A:4) or telephone 202–566–6985 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) to provide rules under section 6109 of the Internal Revenue Code of 1986 (Code), as amended by section 2201(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law No. 101–624, 104 Stat. 3953 (1990 FACT Act). Section 2201(d) of the 1990 FACT Act added a new subsection (f) to section 6109 of the Code. The new subsection (f) authorizes the Federal Crop Insurance Corporation (FCIC) to require policyholders and reinsured companies to furnish each policyholder's employer identification number to the insurer or the FCIC for purposes of administering section 506 of the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.* (1988)) (relating to the creation of a national crop insurance system).

These proposed regulations only relate to the amendments made by section 2201(d) of the 1990 FACT Act. They do not relate to the amendments made by section 1735(c) of the 1990 FACT Act, which added another subsection (f) to section 6109 of the Code (concerning access to employer identification numbers by the Secretary of Agriculture for purposes of the Food Stamp Act of 1977). For clarity this preamble will refer to the new subsection added by section 2201(d) of the 1990 FACT Act as subsection (g) of section 6109.

Explanation of Provisions

This document proposes to add new regulation § 301.6109–3. Pursuant to section 6109(g)(1) of the Code, proposed § 301.6109–3(a) provides that the FCIC may require each policyholder and each reinsured company to furnish to the insurer or to the FCIC the employer identification number (EIN) of the policyholder. Proposed § 301.6109–3(a) further provides that the Manager of the FCIC may require each policyholder to provide the EIN of each entity that holds or acquires a substantial beneficial interest in the policyholder.

Pursuant to section 6109(g)(1) and proposed § 301.6109–3(b), an officer or employee of the FCIC or authorized person may have access to the EINs obtained pursuant to this section for purposes only of establishing and maintaining a system of records necessary for the effective administration of the Federal Crop Insurance Act.

Section 6109(g)(1) requires that access to the EINs be restricted to officers and employees of the United States or authorized persons whose duties or responsibilities require access for the administration or enforcement of the Federal Crop Insurance Act. This requirement is reflected in proposed § 301.6109–3(c).

Pursuant to section 6109(g)(2), proposed § 301.6109–3(d) provides that an officer or employee of the United States or authorized person (including former officers, employees, and authorized persons) who has or had access to an EIN obtained or maintained pursuant to section 6109(g)(1) may not disclose an EIN in any manner, except as authorized in that section.

Pursuant to section 6109(g)(3), proposed § 301.6109–3(e)(1) provides that the sanctions under section 7213(a)(1), (2), and (3) apply to any unauthorized, willful disclosure to any person of EINs obtained or maintained pursuant to section 6109(g)(1) in the same manner and to the same extent as section 7213(a)(1), (2), and (3) applies with respect to unauthorized disclosures of returns and return information. Proposed § 301.6109–3(e)(2) provides that the sanction under section 7213(a)(4) applies to any willful solicitation of EINs in the same manner and to the same extent that section 7213(a)(4) applies with respect to willful solicitation of returns or return information.

These proposed regulations have been coordinated with the FCIC and are proposed to be effective on [*the date that a Treasury decision on the subject of this notice of proposed rulemaking is published in the* **Federal Register**].

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an Initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably an original and eight copies) to the Internal Revenue Service by September 30, 1992. All comments will be available for public inspection and copying in their entirety. The Treasury Department expects to issue final regulations on this matter as soon as possible. A public hearing will be held upon written request submitted by September 30, 1992 to the Internal Revenue Service by any person who has submitted written comments by September 30, 1992. If a public hearing is held, notice of time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Beverly A. Baughman, Office of the Assistant Chief Counsel (Income Tax & Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend part 301 of title 26 of the Code of Federal Regulations as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6109–3 is added to read as follows:

§ 301.6109–3 Authority of the Federal Crop Insurance Corporation to collect employer identification numbers for purposes of the Federal Crop Insurance Act.

(a) *In general.* In connection with the administration of section 506 of the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) (relating to the creation of a national crop insurance system), the Federal Crop Insurance Corporation (FCIC) may require each policyholder and each reinsured company to furnish to the insurer or to the FCIC the employer identification number of the policyholder. In addition, the Manager of the FCIC may require each policyholder to provide to the FCIC or authorized person (as defined in paragraph (f) of this section) the employer identification number of each entity that holds or acquires a substantial beneficial interest in the policyholder. For purposes of the preceding sentence, a substantial beneficial interest in a policyholder is five percent or more of all beneficial interest in the policyholder.

(b) *Limited purpose.* An officer or employer of the FCIC or authorized person may have access to the employer identification numbers obtained pursuant to paragraph (a) of this section, but only for the purpose of establishing and maintaining a system of records necessary for the effective administration of the Federal Crop Insurance Act.

(c) *Restrictions on access.* The persons permitted access to employer identification numbers obtained pursuant to paragraph (a) of this section are officers and employees of the United States or authorized persons whose duties or responsibilities require access to the employer identification numbers for the administration or enforcement of the Federal Crop Insurance Act.

(d) *Confidentiality and disclosure of employer identification numbers.* Employer identification numbers obtained or maintained pursuant to this section are confidential. No officer or employee of the United States or authorized person (as defined in paragraph (f) of this section) who has or had access to any such employer identification number may disclose that number in any manner, except to persons described in paragraph (c) of this section. For purposes of this paragraph (d), the term *officer or employee* includes a former officer or employee, and the term "authorized person" includes a former authorized person.

(e) *Sanctions*—(1) *Unauthorized, willful disclosure of employer identification numbers.* Section 7213(a)(1), (2), and (3) apply with respect to the unauthorized, willful disclosure to any person of employer identification numbers that are obtained or maintained pursuant to this section in the same manner and to the same extent as section 7213(a)(1), (2), and (3) apply with respect to unauthorized disclosures of returns and return information described in those sections.

(2) *Willful solicitation of employer identification numbers.* Section 7213(a)(4) applies with respect to the willful offer of any item of material value in exchange for any employer identification number obtained or maintained pursuant to this section in the same manner and to the same extent as section 7213(a)(4) applies with respect to offers (in exchange for any return or return information) described in that section.

(f) *Authorized person.* For purposes of this section, the term *authorized person* means an officer or employee of an insurer whom the Manager of the FCIC designates by rule to obtain employer identification numbers pursuant to this section. The rule shall prohibit the officer or employee from disclosing employer identification numbers in any manner (other than to the FCIC) and apply any other appropriate safeguards to that officer or employee.

(g) *Effective date.* The provisions of this section are effective [*the date that a Treasury decision on the subject of this notice of proposed rulemaking is published in the* **Federal Register**].

Phil Brand,

Acting Commissioner of Internal Revenue.

[FR Doc. 92–20921 Filed 8–28–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–92–74]

Drawbridge Operation Regulations; Matlacha Pass, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Lee County, the bridge owner, the Coast Guard proposes to change the regulations of the SR78 drawbridge over Matlacha Pass, mile 6.0, between the mainland and Little Pine Island, Fort Myers, Lee County, Florida, by permitting the number of openings to be limited during certain periods.

DATES: Comments must be received on or before October 15, 1992.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments the telephone number is 305–536–4103. The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD7–92–74] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under

"ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register .

Drafting Information

The principal persons involved in drafting this document and Mr. Ian MacCartney, Project Manager, and LT. J.M. Losego, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal from 8 a.m. to 7 p.m. From 7 p.m. to 8 a.m., the draw need not be opened for the passage of vessels. Lee County has requested that the bridge open only on signal from 8 a.m. to 10 a.m. and from 3 p.m. to 7 p.m., Monday through Saturday and on Sundays, from 7 a.m. to 12 noon and from 3 p.m. to 7 p.m. The purpose of this proposal is to ease the financial burden on Lee County for a full time tender at the drawbridge. In view of the low number of openings of this drawbridge, the reduced periods of operation would still meet the reasonable needs of navigation.

Discussion of Proposed Amendment

A review of the bridge logs indicates this drawbridge averages less than one opening per day. Heavy shoaling within Matlacha Pass to the South of the bridge also limits the opportunity for large vessels to transit through the area. The Coast Guard has concluded the proposed reduction in hours of operation for the bridge would not significantly impact navigation.

Regulatory Evaluation

This proposal is not major under Executive Order 12291 and not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26,1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. We conclude this because the rule is written to accommodate the schedules of local commercial fishing vessels that normally transit the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the proposed rule considers the needs of local commercial fishing vessels, the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.)

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.303 is revised to read as follows:

§ 117.303 Matlacha Pass.

The draw of the SR78 bridge, mile 6.0 at Fort Myers, shall open on signal from 8 a.m. to 10 a.m. and from 3 p.m. to 7 p.m. Monday through Saturday. On Sundays the draw shall open on signal from 7 a.m. to 10 a.m. and from 3 p.m. to 7 p.m. At all other times, the draw need not be opened for the passage of vessels.

Dated: August 17, 1992.

William P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 92–20749 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–176, RM–8038]

Radio Broadcasting Services; Bentonville and Mountain Home, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Demaree media, Inc., licensee of Station KOLZ (FM), Channel 252C3, Bentonville, AR, seeking the substitution of Channel 252C2 for Channel 252C3 and modification of its license accordingly. In order to accommodate the request, petitioner seeks the substitution of Channel 232A for Channel 252A at Mountain Home, AR, and modification of the license of Station KTLO–FM, Channel 252A, accordingly. An Order to Show Cause is issued to Mountain Home Broadcasting Corp., licensee of Station KTLO–FM. Coordinates for Channel 252C2 at Bentonville, AR, are 36–11–00 and 94–00–00; coordinates for Channel 232A at Mountain Home, AR, are 36–20–55 and 92–23–59. Petitioner's modification proposal complies with the provisions of § 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 252C2 at Bentonville, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before October 15, 1992, and reply comments on or before October 30, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20054. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Demaree Media, Inc., Attn: L. Patrick Demaree, President, Post Office Box 878, Fayetteville, AR 72702.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No 92–176, adopted July 24, 1992, and released August 24, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The Complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20790 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–177, RM–8043]

Radio Broadcasting Services; Lamoni, IA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dwaine F. Meyer seeking the substitution of Channel 250C3 for Channel 249A at Lamoni, Iowa, and the modification of Station KLAL's license to specify operation on the higher class channel. Channel 250C3 can be allotted to Lamoni in compliance with the Commission's minimum distance separation requirements at Station KLAL's presently licensed transmitter site, at coordinates North Latitude 40–37–00 and West Longitude 93–56–20. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 250C3 at Lamoni or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Howard J. Braun, Esq., Jerold L. Jacobs, Esq., Rosenman & Colin, 1300—19th Street, NW., suite 200, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MM Docket No. 92–177, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20797 Filed 8–28–92; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 92–180, RM–8048]

Radio Broadcasting Services; Houghton, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Houghton Radio Group of North Carolina, Inc., proposing the substitution of Channel 272C2 for Channel 272A at Houghton, Michigan, and modification of the construction permit for Station WAAG(FM) accordingly. Canadian concurrence has been requested for this allotment at coordinates 47–039–43 and 88–35–27.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: George R. Parrish, President Houghton Radio Group of North Carolina, Inc. 815–12 Marlowe Road, Raleigh, North Carolina 27609.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MM Docket No. 92–180 adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452–1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 92-20795 Filed 8-28-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-182, RM-8047]

Radio Broadcasting Services; St. Charles, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by St. Charles Broadcasters proposing the allotment of Channel 299A to St. Charles, Minnesota, as that community's first local service. The coordinates for Channel 299A are 43-58-24 and 92-04-00.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Brian T. Grogan, Moss and Barnett, 4800 Norwest Center, 90 South Seventh Street, Minneapolis, Minnesota 55402-0340.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-182, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 92-20793 Filed 8-28-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-179, RM-8046]

Radio Broadcasting Services; State College, MS

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by PDB Corporation proposing the substitution of Channel 283C3 for Channel 282A at State College, Mississippi, and modification of the construction permit for Station WUMI (FM). The coordinates for Channel 283C3 are 33-24-00 and 88-53-00.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, III, Post Office Box 4203, Wilmington, North Carolina 28406.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MM Docket No. 92-179, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 92-20796 Filed 8-28-92; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 92-181, RM-8044]

Radio Broadcasting Services; Tomah, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Magnum Radio, Inc., proposing the substitution of Channel 241C2 for Channel 241A and modification of the construction permit for Station WBOG, Tomah, Wisconsin, to specify operation on the higher class channel. The coordinates for Channel 241C2 at Tomah are 44-01-50 and 90-49-03.

DATES: Comments must be filed on or before October 16, 1992, and reply comments on or before November 2, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David D. Oxenford, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MM Docket No. 92-181, adopted July 28, 1992, and released August 25, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC

Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036, (202) 452-1422.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Michael C. Ruger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 92-20794 Filed 8-28-92; 8:45 am]
BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 18)]

Railroad Consolidation Procedures: Class Exemption for Transactions Within a Corporate Family

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served August 6, 1992 (57 FR 34891, August 7, 1992), the Commission requested comments by September 8, 1992, on a proposal to modify the corporate family class exemption applicable to rail carrier transactions, by making it applicable to all transactions within a corporate family that do not result in adverse changes in service levels. Regulation of such transactions does not appear to be necessary to carry out the rail transportation policy. By petition filed August 21, 1992, The Association of American Railroads (AAR) requests a 30-day extension until October 8, 1992, to file comments. AAR states additional time is needed because the current schedules of AAR counsel and member road personnel do not permit sufficient time for an adequate and coordinated response on behalf of the railroad industry. The extension request is reasonable and will be granted.

DATES: Comments are due on October 8, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 18) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar: (202) 927-5660, [TDD for the hearing impaired: (202) 927-5721].

Decided: August 25, 1992.

By the Commission, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan,
Acting Secretary.
[FR Doc. 92-20686 Filed 8-28-92; 8:45 am]
BILLING CODE 7035-01-M

49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 17)]

Railroad Consolidation Procedures: Definition of, and Requirements Applicable to, "Significant" Transactions

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served August 7, 1992 (57 FR 35559, August 10, 1992), the Commission requested comments by September 9, 1992, on a proposal to revise the definition of "significant transaction" in rail carrier consolidation cases, and to eliminate certain requirements presently applicable to applications seeking approval of significant transactions. The proposed rule is intended, in most cases, to eliminate certain burdensome financial information requirements. By petition filed August 21, 1992, The Association of American Railroads (AAR) requests a 30-day extension until October 9, 1992, to file comments. AAR states additional time is needed because the current schedules of AAR counsel and member road personnel do not permit sufficient time for an adequate and coordinated response on behalf of the railroad industry. The extension request is reasonable and will be granted.

DATES: Comments are due on October 9, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 282 (Sub-No. 17) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar: (202) 927-5660, [TDD for the hearing impaired: (202) 927-5721].

Decided: August 25, 1992.

By the Commission, Anne K. Quinlan, Acting Secretary.

Anne K. Quinlan,
Acting Secretary.
[FR Doc. 92-20685 Filed 8-28-92; 8:45 am]
BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 57, No. 169
Monday, August 31, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB-92-43]

Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: Burley Tobacco Advisory Committee.

Date: October 2, 1992.

Time: 10 a.m.

Place: Campbell House Inn, North Colonial Hall, 1375 Harrodsburg Road, Lexington, Kentucky 40405.

Purpose: To recommend market opening dates, discuss Committee requests from previous meeting, review regulations pursuant to the Tobacco Inspection Act, 7 U.S.C. 511 *et seq.*, and other related issues.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, AMS, U.S. Department of Agriculture, room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090-6456, (202) 205-0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Dated: August 26, 1992.

Daniel Haley,
Administrator.

[FR Doc. 92-20849 Filed 8-28-92; 8:45 am]
BILLING CODE 3410-02-M

National Organic Standards Board (NOSB); Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92-463), as amended, the Agricultural Marketing Service announces the forthcoming meetings of the NOSB.

DATES: September 27-30, 1992.

ADDRESSES: The NOSB will hold a public input session at the Common Ground Fair Site at the Windsor Fairgrounds on Route 32 in Windsor, ME, on September 27. The NOSB will be conducting a full board meeting at the Best Western Senator Inn, 284 Western Avenue, Augusta, Maine on the morning of September 28, from 8 to 12 a.m. Committee meetings will be held at the Best Western Senator Inn on September 29, from 8 a.m. to 5 p.m., with a full board meeting at the Best Western Senator Inn on the morning of the 30th, from 8 to 12 a.m.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, National Organic Standards Board, Room 4006-South Building, P.O. Box 96456, Washington, DC 20090-6456. Telephone: (202) 720-2704.

SUPPLEMENTARY INFORMATION: Section 2119 of the Food, Agriculture, Conservation, and Trade Act of 1990 (Fact Act), Public Law No. 101-624 (7 U.S.C. § 6501 *et seq.*) requires establishment of a National Organic Standards Board. The purpose of the NOSB is to assist in the development of standards for substances to be used in organic production and handling and to advise the Secretary on any other aspects of the implementation of title XXI of the Fact Act. The NOSB met for the first time in Washington, D.C., in March and formed six committees to work on various aspects of the Program. The committees are: Crops Standards, Processing, Labeling and Packaging, Livestock Standards, Accreditation, National Materials List, and International Issues.

The purpose of this meeting is to review the work of the various committees, including draft position papers on product ingredients and labeling as developed by the Processing Committee; recommendations on emergency spray, pesticide drift policy, irrigation water quality, planting stock policies developed by the Crops Committee; and recommendations on the proposed National List being developed by the Materials Committee. In addition, the Board will develop plans for its operations in the next fiscal year in light of budget allocations.

A final agenda will be available on September 11, 1992. Persons requesting copies should contact Mrs. Fox at the above address or telephone number.

The meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Harold S. Ricker at the above address or FAX to (202) 690-0338 by September 18, 1992, in order to be scheduled. The Committees will schedule time for public input on Sunday, September 27, beginning at 1 p.m. and continuing until 5 p.m., at the Common Ground Fair Site at the Windsor Fairgrounds in Windsor, ME. Each individual or organization will be allocated 10 minutes for presenting orally the key issues of concern and should provide copies of written material elaborating on those issues for the Committees.

Dated: August 26, 1992.

Daniel Haley,
Administrator.

[FR Doc. 92-20888 Filed 8-28-92; 8:45 am]
BILLING CODE 3410-02-M

Rural Electrification Administration

Arkansas Electric Cooperative Corporation; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration has prepared an environmental assessment and subsequently made a finding of no significant impact with respect to the approval of a request by Arkansas Electric Cooperative Corporation to use its general funds for the cost of construction of a hydroelectric project at Lock and Dam Number 9 on the Arkansas River in Conway County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-1784.

SUPPLEMENTARY INFORMATION: Arkansas Electric Cooperative Corporation is involved in the construction of a 32.4 megawatt (MW) hydroelectric generating plant at the U.S. Army Corps of Engineers' existing Lock and Dam Number 9 which is located at navigation mile 176.9 on the Arkansas River 3 miles southwest of Morrilton, Arkansas. The entire project will be confined to the north side of the river. Approximately 0.5 miles of 161 kV transmission line and a switching station will be constructed to tie the facilities into an existing Arkansas Power and Light 161 kV transmission line.

The Rural Electrification Administration's alternatives related to the hydroelectric project are to approve Arkansas Electric Cooperative Corporation's use of general funds or take no action.

Copies of the Rural Electrification Administration's environmental assessment and finding of no significant impact are available for review at, or can be obtained from, the Rural Electrification Administration at the address provided herein or at the offices of Arkansas Electric Cooperative Corporation, P.O. Box 194208, Little Rock, Arkansas 72219.

Dated: August 24, 1992.

George E. Pratt,
Deputy Administrator—Program Operations.

[FR Doc 92-20892 Filed 8-28-92; 8:45 am]
BILLING CODE 3410-15-F

Oglethorpe Power Corporation; Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA) has made a finding of no significant impact (FONSI) with respect to the potential environmental impact resulting from a proposal by Oglethorpe Power Corporation to retain ownership, and take responsibility for operation of, a 230 kV switching station and connector transmission lines associated with the proposed Hartwell Generation Facility. The FONSI is based on a borrower's environmental report (BER) prepared by Oglethorpe Power Corporation and submitted to REA covering the proposed switching station and connector transmission lines. REA conducted an independent evaluation of the report and concurs with its scope and content. In accordance with REA Environmental Policies and Procedures, 7 CFR 1794.61, REA has adopted Oglethorpe Power Corporation's BER as the environmental assessment for the switching station and connector transmission lines.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, REA, South Agriculture Building, Washington, DC 20250, telephone (202) 720-1784.

SUPPLEMENTARY INFORMATION: The planned location of the Hartwell Generation Facility is in Hart County, Georgia, approximately one mile south of the Hartwell Dam. Hartwell Energy Limited Partnership will finance, construct, own, and operate the entire generation facility. It will also finance and construct the associated 230 kV switching station and connector transmission lines that will tie the output of the generation facility to Oglethorpe Power Corporation and Georgia Power Company's integrated transmission system. Upon completion of the switching station and connector transmission lines, Oglethorpe Power Corporation will retain ownership of these facilities and will take responsibility for their operation thenceforth. Oglethorpe Power Corporation's ownership and operation responsibilities will be limited solely to the switching station and connector transmission lines.

The planned location of the 230 kV switching station is approximately 200 feet northeast of the proposed Hartwell Generation Facility. The switching station will include conductors, support towers and foundations, disconnect switches, power circuit breakers, protective relaying and controls, metering equipment, and other ancillary equipment and wiring. An area of approximately 2 acres will be cleared and graded to accommodate the switching station.

The 230 kV connector transmission lines will entail one span of transmission line from the step-up transformers at the generation facility to the switching station and two transmission lines from the switching station to the existing 230 kV Bio to Hartwell Transmission Line at a point approximately 500 feet from the switching station.

Copies of the environmental assessment and FONSI are available for review at, or can be obtained from, REA at the address provided herein or from Mr. Somto Egbuna, Oglethorpe Power Corporation, 2100 East Exchange Place, Tucker, Georgia, 30085-1349, telephone (404) 270-7600.

Dated: August 25, 1992.

George E. Pratt,
Deputy Administrator—Program Operations.

[FR Doc 92-20892 Filed 8-28-92; 8:45 am]
BILLING CODE 3410-15-F

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 920816-2216]

Manufacturers' Shipments to Federal Government Agencies—1992

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Consideration.

SUMMARY: In accordance with title 13, United States Code, Sections 131, 182, 224, and 225, this quinquennial survey will be conducted for a sample of manufacturing establishments in selected industries that ship goods to the Federal Government. This survey is the only source of information on the value of manufacturers' shipments to Federal Government agencies by 4-digit Standard Industrial Classification (SIC) Code. The information collected in this survey is important to the business community and Federal, State, and local governments, all of which are interested in the economic effect of defense-related and other Federal procurements. The changing level and composition of Federal Government expenditures make it especially important that reliable information be available on the nature and extent of production for the Federal Government.

DATES: Comments must be submitted on or before September 30, 1992.

ADDRESSES: Director, Bureau of the Census, Washington, DC 20233.

FOR FURTHER INFORMATION CONTACT: John H. Berry, Assistant Chief for Economic Indicator Programs, Bureau of the Census, Washington, DC 20233 or 301-763-7464.

SUPPLEMENTARY INFORMATION: The Bureau of the Census is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by title 13, United States Code. The next economic census will be conducted for 1992. The data collected in this survey are within the general scope and nature of those inquiries covered in the economic

censuses. The Bureau of the Census will select a probability sample of manufacturing establishments in the United States from the economic censuses panel with the probability of selection based on total employment size. The sample will provide, with measurable reliability, statistics on shipments to Federal Government agencies for selected industries. We will mail report forms to the firms covered by this survey and require their submission within 60 days after receipt.

This survey will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Dated: August 21, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92–20915 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–07–M

Bureau of Export Administration

MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held September 23, 1992, 9:30 a.m., in the Herbert C. Hoover Building, room 1617 M–4, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations as needed.

Agenda: General Session

1. Opening Remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Review of 1992 Annual Report.
5. Discussion of Workplan for 1992–93.
6. Discussion of Papers on Restructuring Export Controls and Export Control Principles.

Executive Session

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, in order to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials two weeks prior to the meeting to the below listed address: TAC Unit/EA/BXA, Room 1621, U.S. Department of Commerce, 14th & Constitution Ave., NW., Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 28, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call 202–377–4959.

Dated: August 25, 1992.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit, Office of the Deputy Assistant Secretary for Export Administration.

[FR Doc. 92–20875 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 595]

Expansion of Foreign-Trade Zone 92; Harrison County, MS (Gulfport Port of Entry)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., Grantee of Foreign-Trade Zone 92, has made application (filed 7/16/91, FTZ Docket 43–91, 56 FR 37889, 8/9/91) to the Board for authority to expand its general-purpose zone in Harrison County, Mississippi, within the Gulfport Customs port of entry, and to establish a subzone (see Board Order 596);

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited;

Whereas, the expansion is necessary to improve and expand zone services in the Gulfport area; and,

Whereas, the Board has found that with respect to the proposed general-purpose zone expansion the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the expansion proposal subject to an activation limit is in the public interest;

Now, Therefore, the Board hereby orders: That the Grantee is authorized to expand its general-purpose zone in accordance with the expansion proposal in the application filed on July 16, 1991, subject to the requirement that further Board concurrence would be obtained before the activated zone area may exceed 2,000 acres, and subject to the Act and the Board's regulations (as revised, 56 FR 50790–50806), including § 400.28.

Signed at Washington, DC, this 17th day of August, 1992.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration-Chairman, Committee of Alternatives Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

(Acting) Executive Secretary.

[FR Doc. 92–20822 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DS–M

[Order No. 596]

Resolution and Order Approving With Restriction the Application of the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., for Special-Purpose Subzone Status, Avondale Enterprises, Inc. (Shipbuilding) Harrison County, MS

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 92, filed with the Foreign-Trade Zones Board (the Board) on July 16, 1991, requesting authority to expand Foreign-Trade Zone 92 in Harrison County, Mississippi (See Board Order 595), and requesting special-purpose subzone status at the shipyard of Avondale Enterprises, Inc. in Harrison County, Mississippi, within the Gulfport Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest, if approval is subject to certain conditions, approves the application subject to the following conditions: (1) Any activation of the general-purpose zone area beyond 2,000 acres requires further Board approval; (2) any foreign steel mill products admitted to the Avondale shipyard, including steel plate, angles, shapes, channels, rolled steel stock, bars, pipes and tubes, and not incorporated into merchandise otherwise classified, and which is used in manufacturing, shall be subject to the Customs duties in accordance with applicable law, if the same item is then being produced by a domestic steel mill; and, (3) in addition to the annual report, Avondale Enterprises, Inc., shall advise the Board's Executive Secretary as to significant new contracts, with appropriate information concerning foreign purchases otherwise dutiable, so that the Board may consider whether any foreign dutiable items are being imported for manufacturing in the shipyard primarily because of subzone status and whether the Board should consider requiring Customs duties to be paid on such items.

The approval is subject to the FTZ Act and the FTZ Board's regulations (as revised, 56 FR 50790–50808, 10/8/91), including § 400.28. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, the Greater Gulfport/Biloxi Foreign-Trade Zone, Inc., Grantee of Foreign-Trade Zone No. 92, has made application (filed 07–16–91, FTZ Docket 43–91, 56 FR 37889, 08–09–91) to the Board for authority to establish a special-purpose subzone at the shipbuilding facility of Avondale Enterprises, Inc., in Harrison County, Mississippi;

Whereas, notice of said application has been given in the **Federal Register** and public comment has been invited; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given subject to restrictions on steel mill products;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 92C) at the shipbuilding facility of Avondale Enterprises, Inc., in Harrison County, Mississippi, at the location described in the application, subject to the standard restrictions adopted by the Board for shipyard subzones as described in the resolution accompanying this action, and subject to the FTZ Act and the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), including § 400.28.

Signed at Washington, DC, this 17th day of August 1992, pursuant to Order of the Board.

Alan M. Dunn,

Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

(Acting) Executive Secretary.

[FR Doc. 92–20823 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–427–030]

Large Power Transformers From France; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on large power transformers from France.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding pursuant to § 353.25(d)(4) of the Department's regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on large power transformers from France for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding (57 FR 22713). We stated in the notice that no later than June 30, 1992, interested parties, as defined in section 353.2(k) of the Department's regulations, may object to the Department's intent to revoke the antidumping finding.

On June 29, 1992, and June 30, 1992, two interested parties (ABB Power T&D Company, Inc., and the National Electrical Manufacturers Association) objected to our intent to revoke this finding. Therefore, because interested parties object to the revocation, we no longer intend to revoke this finding.

Dated: August 20, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92–20824 Filed 8–28–92; 8:45 am]

BILLING CODE 3510–DS–M

[A–475–031]

Large Power Transformers From Italy; Determination Not To Revoke Antidumping Duty Finding

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping finding on large power transformers from Italy.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–4733.

SUPPLEMENTARY INFORMATION: The Department of Commerce (the Department) may revoke an antidumping finding pursuant to § 353.25(d)(4) of the Department's

regulations, if no interested party has requested an administrative review for four consecutive annual anniversary months and no interested party objects to the revocation. We had not received a request to conduct an administrative review of the antidumping finding on large power transformers from Italy for the last four consecutive annual anniversary months. Therefore, pursuant to the Department's regulations, on May 29, 1992, we published in the **Federal Register** a notice of intent to revoke the finding (57 FR 22713). We stated in the notice that no later than June 30, 1992, interested parties, as defined in § 353.2(k) of the Department's regulations, may object to the Department's intent to revoke the antidumping finding.

On June 29, 1992, an interested party (the National Electrical Manufacturers Association) objected to our intent to revoke this finding. Therefore, because an interested party objects to the revocation, we no longer intend to revoke this finding.

Dated: August 20, 1992.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 92-20825 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-814]

Antidumping Duty Order: Pure Magnesium From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Magd Zalok, Office of Countervailing Investigations, U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-4162.

ANTIDUMPING ORDER: In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)), on July 6, 1992, the Department of Commerce (the Department) made its final determination that pure magnesium from Canada is being sold at less than fair value (57 FR 30939, July 13, 1992). On August 19, 1992, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry.

In addition, on July 6, 1992, the Department found that critical circumstances existed with respect to pure magnesium from Norsk Hydro Canada, Inc. However, on August 19, 1992, the ITC notified the Department that critical circumstances do not exist with respect to any imports from Canada. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(3)(B) of the Act, the U.S. Customs Service will refund all cash deposits and release all bonds collected on pure magnesium from Canada entered or withdrawn from warehouse, for consumption, on or after November 22, 1991, and before February 20, 1992.

In accordance with sections 736 and 751 of the Act, the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of pure magnesium from Canada. These antidumping duties will be assessed on all unliquidated entries of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after February 20, 1992, the date on which the Department published its preliminary determination notice in the **Federal Register**.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average dumping margins as noted below:

Manufacturers/producers/exporters	Margin percentage
Norsk Hydro Canada, Inc.	31.33
All others	31.33

Imports of pure magnesium from Timminco Limited are excluded from this order.

This constitutes the antidumping duty order with respect to pure magnesium from Canada, pursuant to section 736(a) of the Act.

Interested parties may contact the Central Records Unit, room B099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

Scope of Investigation

The product covered by this investigation is pure magnesium from Canada. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope of this investigation. Pure magnesium is currently classified under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This order is published in accordance with section 736(a) of the Act and § 353.21 of the Commerce Regulations (19 CFR 353.21).

Dated: August 24, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20826 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-811]

Notice of Postponement of Preliminary Antidumping Duty Determination: Steel Wire Rope From Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Richard Rimlinger, Anna Snider, or Amy Beargie, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230, at (202) 377-4733.

POSTPONEMENT: On May 5, 1992, the Department of Commerce (the Department) initiated an antidumping duty investigation of steel wire rope from Korea. the notice stated that we would issue our preliminary determination on or before September 16, 1992 (57 FR 19280, May 5, 1992).

On August 6, 1992, petitioner requested that the Department postpone the preliminary determination in this investigation for one week until September 23, 1992, pursuant to 19 CFR 353.15(c). Petitioner requested the extension in order to adequately review, assess and comment on the responses submitted by Korea Iron and Steel Wire, Ltd., Man Ho Rope Mfg., Ltd. and Young Heung Iron and Steel Co., Ltd. (collectively "respondents"). Respondents had previously been granted an extension of time for filing their responses which reduced the number of days that the petitioner had to review the information. Respondents submitted comments in opposition to petitioner's request on August 7, 1992. Under 19 CFR 353.15(c), petitioner's request to postpone the date of the preliminary determination will be granted unless respondent provides compelling reasons for denying the request. We determined that respondents' arguments did not provide compelling reasons to deny petitioner's request. Therefore, we are postponing the date of the preliminary determination in this investigation until not later than September 23, 1992. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Tariff Act of 1930, as amended.

This notice is published pursuant to section 733(c) of the Act and 19 CFR 353.15(d).

Dated: August 24, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20827 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-333-401]

Cotton Shop Towels From Peru, Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended countervailing duty investigation on cotton shop towels from Peru. Interested parties who object to this termination must submit their comments in writing not later than September 30, 1992.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Megan Pilaroscia or Jean Kemp, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3793.

SUPPLEMENTARY INFORMATION:

Background

On September 12, 1984, the Department of Commerce (the Department) published an agreement suspending the countervailing duty investigation on cotton shop towels from Peru (49 FR 35835). The Department has not received a request to conduct an administrative review of the agreement suspending the countervailing duty investigation on cotton shop towels from Peru for seven consecutive annual anniversary months. September 1992 is the eighth anniversary of the suspension agreement.

The Department may terminate a suspended investigation if the Secretary of Commerce concludes that a suspension agreement is no longer of interest to interested parties. Accordingly, as required by the Commerce Department's regulations (19 CFR 355.25(d)(4)), the Department is notifying the public of its intent to terminate this suspended investigation.

Opportunity to Object

Not later than September 30, 1992, interested parties, as defined in § 355.2(i) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the following address: U.S. Department of Commerce, Import Administration, Central Records Unit, Room B-099, Washington, DC 20230. Attn: Office of Agreements Compliance.

If interested parties do not request an administrative review or object to the Department's intent to terminate by September 30, 1992, we shall conclude that the suspended investigation is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with 19 CFR 355.25(d)(4) of the Department's regulations.

Dated: August 21, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20828 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Industrial Phosphoric Acid From Israel; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On May 26, 1992, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on industrial phosphoric acid from Israel (57 FR 21958). We have now completed the review and determine the net subsidy to be 12.11 percent *ad valorem* for all firms during the period January 1, 1990 through December 31, 1990.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 21958) the preliminary results of its administrative review of the countervailing duty order on industrial phosphoric acid from Israel (52 FR 31057; August 19, 1987) covering the period January 1, 1990 through December 31, 1990. The Department has now completed this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of Israeli industrial phosphoric acid. During the review period, this merchandise was classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through December 31, 1990 and nine programs. Negev Phosphates, Ltd. (NPL) is the only known producer exporting the subject merchandise from Israel to the United States during the 1990 review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the respondent, NPL, and written rebuttal comments from the petitioners, the Monsanto Company and FMC Corporation. Because the petitioners' comments were solely in support of the Department's preliminary results, we have only discussed respondent's comments.

Comment 1: NPL argues that the Department's methodology for calculating the subsidy from ECIL grants to the Arad and Zin plants overstates the benefit actually conferred on industrial phosphoric acid (IPA). The problem arises primarily because the Department calculates the per-ton benefit on IPA based on ECIL grants received by the Arad and Zin plants and then multiplies this per-ton benefit by the total quantity of IPA sold to all markets. This total subsidy is then divided by the value of NPL's total sales of IPA to all markets to arrive at the *ad valorem* subsidy rate from these ECIL

grants. Respondent contends that the Department's methodology fails to take into account that some of the IPA sold is produced from leftover rock phosphate from the closed mine at Machtesh. NPL proposes to correct this distortion by determining the ratio of rock phosphate from Arad and Zin actually used in IPA production during a particular year over rock phosphate extracted from Arad and Zin in that same year.

Department's Position: Although the respondent provided quantity figures for the production of rock phosphate at Arad and Zin, respondent did not provide the Department with a specific figure for the quantity of rock used from Machtesh. Therefore, based on the information available to the Department, we consider it more appropriate to continue to apply our previous methodology, as in the past three administrative reviews, to calculate the benefits obtained by NPL from ECIL grants. In addition, the methodology proposed by the respondent relies on the amount of phosphate rock processed and not on actual sales of IPA to determine the amount of the subsidy during the review period. We consider our methodology, based on actual sales, to be a more accurate measure of the benefits received on the subject merchandise during the review period.

Comment 2: NPL maintains that the Department did not properly sum the benefits under the four programs to arrive at a net subsidy. The Department arrived at the net subsidy by rounding each of the four benefits individually and then adding them. NPL believes that the Department should add the four benefits and then round the total. Also, the benefit accruing from the Long-term Industrial Development Loans should be rounded down to zero percent, not up to 0.01 percent.

Department's Position: We disagree. It is the Department's standard methodology, as followed in the past three administrative reviews, to calculate the benefits from each individual subsidy program. These individual subsidy findings are then summed to arrive at a total net subsidy. Respondent has provided no reason for the Department to change its methodology.

The respondent also suggests that the Department incorrectly rounded the benefit derived from the Long-term Industrial Development Loans. However, the figure provided in NPL's case brief does not correspond to the one appearing in the calculation memo provided to respondent following publication of the preliminary results of this review. Therefore, the Department correctly rounded the benefit up to 0.01 percent.

Final Results of Review

After reviewing all of the comments received, we determine the net subsidy to be 12.11 percent *ad valorem* for all companies during the period January 1, 1990 through December 31, 1990.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 12.11 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1990 and on or before December 31, 1990.

Further, the Department will instruct the Customs Service to collect a cash deposit of 12.11 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This cash deposit shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 24, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20829 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-815]

Countervailing Duty Orders: Pure Magnesium and Alloy Magnesium From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Rick Herring or Magd Zalok, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-3530 or 377-4162, respectively.

Countervailing Duty Orders

In accordance with section 705(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(a)), on July 13, 1992, the Department of Commerce (the Department) made its final determinations that producers or exporters in Canada of pure magnesium and alloy magnesium receive benefits which constitute subsidies within the meaning of the countervailing duty law (57 FR 30946). On August 19, 1992, in accordance with section 705(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department of its determinations that imports of pure magnesium and alloy magnesium are materially injuring a U.S. industry.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department hereby directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act (19 U.S.C. 1671e(a)(1) and 1675), countervailing duties equal to the amount of the estimated net subsidy on all entries of pure magnesium and alloy magnesium from Canada. These countervailing duties will be assessed on all unliquidated entries of pure magnesium and alloy magnesium from Canada which were entered, or withdrawn from warehouse, for consumption, on or after December 6, 1991, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before April 4, 1992, the date on which we instructed the U.S. Customs Service to discontinue the suspension of liquidation, and all entries and withdrawals made on or after the date of publication of these orders in the **Federal Register**. Entries of pure magnesium and alloy magnesium made on or after April 4, 1992, and prior to the date of publication of these orders in the **Federal Register** are not liable for the assessment of countervailing duties since we cannot impose the suspension of liquidation of the subject merchandise for more than 120 days without the issuance of a final affirmative ITC injury determination.

On or after the date of publication of this notice, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit of 21.61 percent *ad valorem* for all entries of pure magnesium and alloy magnesium from Canada, except entries from Timminco Limited which are excluded from these orders.

These determinations constitute countervailing duty orders with respect to pure magnesium and alloy magnesium from Canada pursuant to 706 of the Act (19 U.S.C. 1671e). Interested parties may contact the Central Records Unit, room B-099, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, for copies of an updated list of orders currently in effect.

Scope of Investigations

The products covered by these orders are pure magnesium and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight, with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes. Pure and alloy magnesium are currently provided for in subheadings 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule (HTS). Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. Secondary and granular magnesium are not included in these orders.

Notice of Review

In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commence administrative reviews of these orders. For further information regarding these reviews, contact Barbara Tillman at (202) 377-2786, Office of Countervailing Compliance.

This notice is published in accordance with section 706 of the Act (19 U.S.C. 1671e).

Dated: August 24, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-20830 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Application for an Amendment to an Export Trade Certification of Review.

SUMMARY: The Office of Export Trading Company Affairs (OETCA), International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination of whether the Certificate should be amended. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 84-5A012."

OETCA has received the following application for an amendment to Export Trade Certificate of Review #84-00012, which was issued on June 11, 1984 (49 FR 24581, June 14, 1984) and previously amended on May 2, 1988 (53 FR 16306, May 6, 1988), September 21, 1988 (53 FR 37628, September 27, 1988), and September 20, 1989 (54 FR 39454, September 26, 1989).

Summary of the Application

Applicant: Northwest Fruit Exporters, 1005 Tieton Drive, Yakima, Washington, 98902.

Contact: Kenneth Severn, Secretary/Treasurer, Telephone: (509) 453-4837.

Application No.: 84-5A012.

Date Deemed Submitted: August 21, 1992.

Request For Amended Conduct: Northwest Fruit Exporters seeks to amend its certificate to:

1. Add the following companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Auvil Fruit Company, Orondo, WA and Columbia Reach Pack, Yakima, WA.; and

2. Delete the following company as a "Member" of the certificate: Amerifresh, Wenatchee, WA.

Dated: August 25, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-20820 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DR-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 92-00007.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to EXIM International. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1991) (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*

All Products.

2. *Services*

All Services.

3. *Technology Rights*

Technology rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services.

4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services, and Technology Rights)*

Export Trade Facilitation Services including professional services in the

areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Marina Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. With respect to the sale of Products and Service, licensing of Technology Rights and provision of Export Trade Facilitation Services, EXIM, subject to the terms and conditions listed below, may:

a. Provide and/or arrange for the provision of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights to Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers;

g. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;

h. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; and

i. Enter into contracts for shipping.

2. EXIM and individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by EXIM with its distributors in Export Markets.

Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, EXIM will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

2. EXIM will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine whether the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate continue to comply with the standards of Section 303(a) of the Act.

Definitions

"Supplier" means a person who produces, provides, licenses, or sells Products, Services, Technology Rights or Export Trade Facilitation Services.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: August 24, 1992.

George Muller,

Director, Office of Export Trading Company Affairs.

[FR Doc. 92-20821 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DR-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651); 80 Stat. 897; 15 CFR part 301, we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 92-099. *Applicant:* Boston College, 140 Commonwealth Avenue, Chestnut Hill, MA 02167. *Instrument:* EPR Spectrometer, Model ECS 106. *Manufacturer:* Bruker Instruments Inc., Germany. *Intended Use:* The instrument will be used to carry out studies on four classes of compounds: (i) Ru(III) complexes of nucleotides and nucleic acids, (ii) binuclear technetium species, (iii) polynuclear manganese oxo complexes, and (iv) vanadium (II) and (IV) compounds. For all of the compound types above, epr spectroscopy will be useful in determining electronic structure. This information in turn can be used to assess the three dimensional structure of the molecule of interest. *Application Received by Commissioner of Customs:* June 26, 1992.

Docket Numbers: 92-102 and 92-103. *Applicant:* U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 4700 Avenue U, Galveston, TX 77551-5997. *Instrument:* (3) Electronic Digital Fish Measuring Boards, Model FMB IV. *Manufacturer:* Limnoterra Atlantic, Inc., Canada. *Intended Use:* The instruments will be used in an area of research to update and expand shrimp trawl bycatch estimates both temporally and spatially in the offshore, nearshore, and inshore waters of the Gulf of Mexico and along the U.S. coast of the southeastern Atlantic. *Applications Received by Commissioner of Customs:* July 1, 1992.

Docket Number: 92-104. *Applicant:* Auburn University, 231 Leach Center, Auburn University, AL 36849. *Instrument:* Four Frame X-ray Imaging System. *Manufacturer:* Ingenieurburo Armin Schulz, Germany. *Intended Use:* The instrument will be used in the study of the physics of atoms found in vacuum spark discharges. The phenomenon to be investigated is concerned with the X-ray emission from highly compact, high temperature plasma pinches driven by magnetic compression in linear, high electric current, pulsed discharges. *Application Received by Commissioner of Customs:* July 1, 1992.

Docket Number: 92-105. *Applicant:* University of Miami, RSMAS/CIMAS, 4600 Rickenbacker Causeway, Miami, FL 33149. *Instrument:* Radar. *Manufacturer:* Marex Technology Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the temporal and spatial distribution of coastal ocean currents at both very high and moderate spatial and temporal resolution. *Application Received by Commissioner of Customs:* July 1, 1992.

Docket Number: 92-106. *Applicant:* City of Chicago, 1000 East Ohio Street, Chicago, IL 60611. *Instrument:* Electron Microscope, Model EM 910. *Manufacturer:* Carl Zeiss, Germany. *Intended Use:* The instrument will be used for studies of individual particles from raw and treated water sources. Experiments will consist of particle studies to examine the nature of materials found in lake water, comparisons with materials added in treatment processes, and culturing and identifying strains of microorganisms obtained from water. *Application Received by Commissioner of Customs:* July 8, 1992.

Docket Number: 92-107. *Applicant:* Utah State University, Logan, UT 84322-5230. *Instrument:* Portable Pulse-Modulated Chlorophyll Fluorometer, Model PAM 2000. *Manufacturer:* Walz Mess- und Regeltachnik, Germany. *Intended Use:* The instrument will be used in research on the photosynthetic characteristics of terrestrial higher plants in both laboratory and field experiments. These experiments will consist of: (1) Exposing plants to supplemental ultraviolet-B radiation in the field to determine the sensitivity of the photosynthetic apparatus under field conditions, (2) laboratory experiments where the effectiveness of the different ultraviolet wavelengths in causing damage to the photosynthetic apparatus will be assessed and (3) examination of the inhibition of photosynthesis by low humidities, by the resulting water stress, and by the water stress induced changes in phytohormones. In addition, the instrument will be used for educational purposes in the courses: Plant-Water Relationships, Physiological Ecology of Plants Practicum, Photosynthesis and Plant Physiology. *Application Received by Commissioner of Customs:* July 7, 1992.

Docket Number: 92-108. *Applicant:* University of California, Los Alamos National Laboratory, P.O. Box 990, Los Alamos, NM 87545. *Instrument:* Spectrometer System. *Manufacturer:* Turner Scientific, United Kingdom. *Intended Use:* The instrument will be used for studies of waste streams from the TA-55 facility. Experiments are conducted to collect various samples of the waste streams, perform semi-quantitative analysis for surveying contents followed by quantitative analysis of specific metals. *Application Received by Commissioner of Customs:* July 7, 1992.

Docket Number: 92-109. *Applicant:* Stanford University, P.O. Box 4409, Stanford, CA 94305. *Instrument:* Cryostream Nitrogen Gas Cooler System. *Manufacturer:* Stoe Diffraction Systems, United Kingdom. *Intended Use:* The instrument will be used to flash freeze protein crystals for x-ray studies of protein and DNA structures. *Application Received by Commissioner of Customs:* July 9, 1992.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 92-20831 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

August 24, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 24, 1992.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6714. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 360 and 361 are being increased for swing, reducing the limit for Categories 359-C/659-C to account for the increases.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 14563, published on April 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 24, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on April 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1992 and extends through December 31, 1992.

Effective on August 24, 1992, you are directed to amend the directive dated April 15, 1992, to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Pakistan:

Category	Adjusted twelve-month limit [1]
359-C/659-C [2]	810,395 kilograms.
360	1,745,687 numbers.
361	2,358,208 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1991.

[2] Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-20874 Filed 8-28-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Form, and Applicable OMB Number: Application of MSC Afloat Employment; MSC 12310/1; OMB Number 0703–0014.

Type of Request: Reinstatement.

Average Burden Hours/Minutes per Response: 2 hours.

Responses per Respondent: 11,700.

Annual Burden Hours: 23,400.

Annual Responses: 11,700.

Needs and Uses: The MSC Afloat Application, MSC 12310/1, is used in lieu of SF–171 because there is a need for specific license or certification information. It is also used by applicants to provide past shipboard experience and marine related education.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DOD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302.

Dated: August 25, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–20871 Filed 8–28–92; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Advisory Committee on Service Academy Athletic Programs; Meeting

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Service Academy Athletic Programs is scheduled to be held from 8:30 a.m. to 4:30 p.m. on September 29, 1992 and from 8:30 a.m. to 11:30 a.m. on September 30, 1992. The meeting will be held in the Superintendent's conference room, Building 600, United States Military Academy, West Point, New York. The purpose of the meeting is to review the administration of athletic programs at the U.S. Military, Naval and Air Force Academies. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Captain Mark A. Zamberlan, Accession Policy, Office of the Assistant Secretary of Defense (Force Management and Personnel), room 2B271, The Pentagon, Washington, DC 20301–4000; telephone (703) 697–9272, no later than September 18, 1992.

Dated: August 25, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92–20870 Filed 8–28–92; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Performance Review Boards; List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Secretariat

Maj. Gen Jay W. Kelley
Brig. Gen Harold H. Rhoden

Air Staff

Maj. Gen Marvin S. Ervin
Brig. Gen William M. Douglas
Brig. Gen Norman G. Lezy
Brig. Gen Glenn A. Profitt, II
Dr. Richard P. Hallion, Jr.

Air Force Materiel Command

Brig. Gen Dennis K. Hummel

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92–20845 Filed 8–28–92; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal advisory Committee Act (Public Law 92–463), announcement is made of the following Committee Meeting:

Nome of the Committee: Army Science Board (ASB).

Dates of the Meetings: 14–18 September 1992.

Time: 0800–1700 Hours.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Summer Study panel on "Command and Control on the Move (C2OTM)" will hold a series of closed meetings preparing for their final report. This meeting will be closed to the public in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraphs (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed is so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–20680 Filed 8–28–92; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Nome of the Committee: Army Science Board (ASB).

Dates of the Meetings: 24 September 1992.

Time: 0800–1630 Hours.

Place: White Sands Missile Range, NM.

Agenda: The Army Science Board's Analysis, Test and Evaluation Issue Group will meet to discuss professional development of test and evaluation civilian workforce and investigate procedures for improving the quality and timeliness of data at reduced resource levels. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 92–20681 Filed 8–28–92; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Solicitation for Financial Assistance Applications; Demonstration of Economic Benefits of Improved Electrical Power Generating Systems for Geothermal Applications

AGENCY: Department of Energy (DOE).

ACTION: Solicitation for Cooperative Agreement Applications Number DE–PS02–92CH10516.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR part 600, announces the availability of Solicitation for Cooperative Agreements No. DE–PS02–92CH01516 to demonstrate the economic benefits of improved electrical power generating systems for geothermal applications. The Catalog of Federal Domestic Assistance number for this program is 81.087. This solicitation replaces solicitation number DE–PS07–92ID13179 previously advertised by DOE's Idaho Operations Office. If a request was made in response to the CBD announcements, no request is required under this announcement.

DATES: The solicitation will be issued on or about September 15, 1992 and will include complete information on funding, eligibility, application preparation, selection criteria and proposal evaluation. Closing date for the solicitation will be approximately 45 days after issuance.

ADDRESSES: To obtain a copy of the solicitation write to the U.S. Department of Energy, NREL Area Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John W. Meeker, Contract Specialist. The Contracting Officer for this solicitation is Paul K. Kearns.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE), is seeking financial assistance applications, for cost sharing Cooperative Agreements to perform demonstration(s) of economic benefits relating to improved electrical power generating systems for geothermal applications. The purpose of the program is to promote geothermal technologies to obtain commercial feasibility.

One goal of the program, and the purpose of this solicitation, is to reduce the life-cycle cost of producing electricity from geothermal resources, thereby realizing economic benefits.

The economic benefits to be demonstrated by applicants responding to this solicitation must be derived from improvements in the technology of generating electricity from geothermal energy and must address either: (a) Increasing power plant efficiency; (b) reducing plant capital costs; (c) reducing plant operating and maintenance costs or; (d) increasing plant reliability. The improvements may be effected by constructing new power plant facilities for generation of electricity from geothermal energy or by retrofitting existing facilities. Activities relating to geothermal reservoir development e.g., exploration, resource assessment, drilling and completion of wells as opposed to power plant construction and operation will not be considered for award of a Cooperative Agreement under this solicitation.

Proposed projects are expected to demonstrate an innovative concept which is not currently used in commercial geothermal power plants. The technology demonstration must be applicable to performance of a commercial unit. Commercial demonstration does not mean that the demonstration must be performed on a commercial-size plant, but that the equipment, cost and performance characteristics can be readily extrapolated to commercial scale. The results of the project will be required to be presented in a form which will demonstrate the improvement's impact on economic operation of a geothermal electric power generating system.

A final report will be required at the completion of the project which details the economic benefits of the improvement. This report will be prepared when sufficient data are available to actually demonstrate the conclusion. The report will be of a form which can be disseminated to the geothermal industry to show the economic benefit of the concept. An annual progress report will be required at the conclusion of each funded year which details results of the project to date.

It is anticipated that selected projects will be for up to a three year duration and will be accomplished under Cooperative Agreement instruments. At least one agreement will be awarded as a result of the solicitation. Participants will be required to share at least 50 percent of the value of the agreement. No fee or profit will be paid to cooperative agreement recipients.

DOE anticipates that up to $3,000,000 will be available from DOE for support of activities during the first year of the selected program(s). Similar funding levels are anticipated for the two following years, however, all DOE funding is subject to availability. As a consequence, the selected project(s) resulting from this solicitation will be required to be designed such that should no additional DOE funding be available in subsequent years, useful output specifically advancing the purposes of this project as defined will be obtained (comprehensive reports similar to final reports will be required at the end of each budget period).

All responsible sources may submit an application and all submitted applications will be considered.

Issued in Chicago, Illinois on August 20, 1992.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 92–20918 Filed 8–28–92; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award, Intent To Award Grant to the National Academy of Sciences

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criterion set forth at 10 CFR 600.7(b)(2)(i)(D) to the National Academy of Sciences (NAS), Washington, DC, under Grant Number DE–FG01–92CE34100. The purpose of the grant is to support a study to assess the potential health risks from exposure to electromagnetic fields (EMFs). This effort will have a total estimated cost of $600,000 to be provided by the DOE. The grant follows a congressional recommendation in House Conference Report 102–177 on House Bill 2427, which was later enacted under Public Law 102–104, Energy and Water Development Appropriations Act, 1992.

FOR FURTHER INFORMATION CONTACT: Please write the U.S. Department of Energy, Office of Placement and administration, ATTN: Jeffrey R. Dulberg, PR–322.4, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The grant will provide funding to the NAS for a 27 month study which will: (1) Examine existing data on biological effects of EMFs to determine their applicability to risk assessment; (2) hold workshops to learn about current bioelectromagnetic research being performed and the data being produced by that research; (3) invite experts from scientific areas that appear to be important in the bioelectromagnetic arena, but who may not be doing bioelectromagnetic research, to present the latest information in those areas; (4) identify specific research agenda needed to answer unresolved issues; and, (5) identify a strategy to institute the research agenda. The study will result in two reports covering the first 18 months and the second 9 months of the study. The reports' topics will include: (1) An analysis of the available

dosimetric, experimental, and epidemiological data relating to health effects associated with exposure to EMFs routinely encountered in residential settings; (2) if possible, a comparison of the assessment of risk with other commonly encountered risks; and (3) recommendations of research needed to address unresolved issues and for a strategy to implement the research agenda.

The project is meritorious because of its relevance to the accomplishment of an important public purpose—providing an unbiased evaluation of the data on the biological effects of EMFs and bringing credibility to estimates of health risks that might be associated with EMF exposure. The reports will be distributed to Congress, the DOE, other Federal agencies, State and local governments, and the public.

Based on the evaluation of relevance to the accomplishment of a public purpose, it is determined that the proposal represents a beneficial method and approach for generating and disseminating an independent evaluation of the potential health risks associated with exposure to EMFs. Accordingly, this effort by the NAS will address a concern expressed by both Congress and the general public.

Thomas S. Keefe,

Director, Division "B", Office of Placement and Administration.

[FR Doc. 92-20917 Filed 8-28-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. JD92-08529T Louisiana-14]

State of Louisiana; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 25, 1992.

Take notice that on August 21, 1992, the Office of Conservation of the Department of Natural Resources for the State of Louisiana (Louisiana) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that a part of the Nacatoch Formation underlying parts of the Grogan and Red River Bull Bayou Fields in DeSoto and Natchitoches Parishes, Louisiana, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application is described as:

T11N-R10W, Sections 6, 7, 18, and 19
T11N-R11W, Sections 13, 23-26, 34-35

The notice of determination also contains Louisiana's findings that the referenced part of the Nacatoch Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20849 Filed 8-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08527T Oklahoma-25]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 25, 1992.

Take notice that on August 21, 1992, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Marmaton Formation underlying a portion of Roger Mills County, Oklahoma qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area consists of Section 31, Township 15 North, Range 21 West; Sections 1-19, Township 14 North, Range 22 West; Sections 7-36, Township 14 North, Range 23 West and Sections 7-36, Township 14 North, Range 24 West.

The notice of determination also contains Oklahoma's findings that the referenced portion of the Marmaton Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20848 Filed 8-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08528T Texas-66]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 25, 1992.

Take notice that on August 21, 1992, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Austin Chalk Formation in portions of Brazos and Burleson Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is described in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Austin Chalk Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol State, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

The recommended Austin Chalk Formation is located in Brazos and Burleson Counties, Texas, within Railroad Commission District 3.

Brazos County

B.B.B. & C.R.R. Co.—A-81
B.B.B. & C.R.R. Co.—A-82
Exekiel Clampitt—A-91
Francis Clampitt—A-102
Susanah Cummins—A-93
Samuel Davidson—A-13
W.L. Ellis—A-109
W.L. Ellis—A-116
Ephram Evans—A-118
Jessie Evans—A-112
J. Hope—A-23
James Hope—A-22
B. McGregor—A-170

John Millican—A-162
W.T. Millican—A-163
W.L. Millican—A-174
Willis Millican—A-177
D.B. Posey—A-189
James C. Stuteville—A-216
Walter Sutherland—A-55

Burleson County

Wm. W. Allen—A-66
S.F. Austin—A-300
John Brown—A-75
J.B. Chance—A-9
J. Chenowith—A-84
J.P. Cole—A-12
John P. Coles—A-94
H.C. Cooper—A-289
H.C. Cooper—A-290
H.C. Cooper—A-291
Walter R. Dallas—A-105
B.J. Dubose—A-103
James Fisher—A-23
David Frost—A-25
Jas. Gwinn—A-128
John H. Harrell—A-143
Wm. W. Hawkins—A-29
Alfred Kennon—A-32
H. Koontz—A-163
H. Koontz—A-164
S. Lawrence—A-36
Wm. McCary—A-169
Wm. McWilliams—A-39
J.F. Perry—A-44
Thomas B. Reese—A-206
Lott Shaw—A-225
Phillip Singleton—A-56
V. Urrutia—A-242
E.N. Wood—A-295
J. Ybarbo—A-260

[FR Doc. 92-20850 Filed 8-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-16-000]

Florida Gas Transmission Co.; Change in Date for Prefiling Conference

August 25, 1992.

Take notice that the prefiling conference in the above-captioned proceeding scheduled to begin at 1:30 p.m. on September 2, 1992 and to continue on September 3, 1992, has been rescheduled for a later date. It will now begin at 1:30 p.m. on September 14, 1992, and continue on September 15, 1992, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC.

This change will not affect the informal settlement conference in Docket Nos. RP91-167-000 and CP91-2448-000, previously scheduled for September 2, 1992. That conference will be held as originally scheduled.

For additional information concerning the above-captioned docket, interested parties can call Joanne Leveque at (202) 208-5705.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20851 Filed 8-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-000]

Great Lakes Gas Transmission Limited Partnership; Informal Settlement Conference

August 25, 1992.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, September 30, 1992, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE, Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact J. Carmen Gastilo at (202) 208-2182 or John P. Roddy at (202) 208-1176.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20853 Filed 8-28-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-11-000]

Texas Eastern Transmission Corp.; Rescheduled Conference

August 25, 1992.

Take notice that the conference scheduled for August 28, 1992, at 10 a.m., at The Department of Health and Human Services Auditorium, 300 Independence Avenue, SW., Washington, DC, has been cancelled. The conference is rescheduled for September 8-9, 1992 at a location to be announced. The conference will begin at 1 p.m. on September 8, 1992. The conference is being convened so that Texas Eastern can explain the tariff and rate changes made in the August 14, 1992 draft revisions package which would revise Texas Eastern's June 8, 1992 compliance filing. All interested parties are invited to attend. Attendance at the conference however, will not confer party status. For additional information, interested parties can call Neil L. Levy at (202) 208-2794.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20852 Filed 8-28-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

[CE-Support Office Boston]

Financial Assistance Award; Intent To Award Grant to New England Governors' Conference, Inc.

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: Persuant to 10 CFR 600.6(b)(2) and 600.31(c), the Department of Energy, Chicago Operations, through the Boston Support Office intends to award a noncompetitive renewal grant to the New England Governors' Conference (NEGC). The grant will provide funding in the amount of $200,000 for phase II of a regional energy strategy. This work will build on the success of Phase I, which established a steering committee, established objectives, analyzed existing planning capabilities, and designed and submitted a strategy proposal. The DOE is pleased with the effort thus far. During Phase II the NGC proposes to establish an integrated regional energy planning process. The goals of the energy strategy include increased efficiency, protecting the environment, ensuring adequate supplies and encouraging fuel diversity.

DOE knows of no other entity that is conducting or planning to conduct such an effort. This effort is suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a recent, current, or planned solicitation.

The budget period of this grant shall be twelve (12) months and the project period will be extended to September 30, 1995.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Boston Office, Attn: Mr. Hugh Saussy, Jr., One Congress Street, Boston, MA, 02114-2021.

Issued in Chicago, Illinois on August 20, 1992.

Alan E. Smith,

Director, Operations Management Support Division.

[FR Doc. 92-20919 Filed 8-28-92; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Order Confirming and Approving an Extension of the Parker-Davis Project Rates for Firm Power and Firm and Nonfirm Transmission Service

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice is given of Rate Order No. WAPA-57 extending the existing Parker-Davis Project (P-DP) rate schedules; for firm power PD-F3, firm transmission PD-NFT3, nonfirm transmission PD-NFT3, and transmission service for Salt Lake City Area Integrated Projects (SLCA/IP) PD-FCT3, until superseded by new P-DP rate schedules, but for not more than 1-year; republication.

SUMMARY: This notice replaces the document published on August 25, 1992. (57 FR 38501).

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005, (602) 352-2650.

SUPPLEMENTARY INFORMATION: Power and Transmission rates for the P-DP are established pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*) and the Reclamation Act of 1902 (43 U.S.C. 372 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and the Act of May 28, 1954 (ch. 241, 68 Stat. 143).

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary of Department of Energy delegated (1) the authority on a nonexclusive basis to develop long-term power and transmission rates to the Administrator of Western Area Power Administration (Western), (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary, Conservation and Renewable Energy, of the Department of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The procedures for public participation in rate adjustments for power and transmission service marketed by Western, which are found at 10 CFR part 903, were published in the **Federal Register** at 50 FR 37835 on September 18, 1985.

Pursuant to Delegation Order No. 0204-108, FERC, in the order issued November 15, 1990, in Docket No. EF90-5041-000, confirmed and approved Rate Schedules; PD-F3 for firm power service, PD-FT3 for firm transmission service, PD-NFT3 for nonfirm transmission service and PD-FCT3 for Transmission Service of SLCA/IP Power. The rate schedules were approved for the 2-year period October 1, 1990, through September 30, 1992.

Western proposes to extend the existing rates for P-DP firm power and firm and nonfirm transmission service until such time as new P-DP rate schedules supersede the existing P-DP rate schedules, but for not more than 1-year. This proposal resulted from responses to public comments stating that additional time is needed to comment on unresolved issues relative to the forthcoming P-DP rate adjustments. The public comment and consultation period for the P-DP rate adjustment has been extended to September 28, 1992 (57 FR 34776) and the anticipated effective date for the proposed P-DP rates is in the first half of FY 1993.

The purpose of Rate Order No. WAPA-57 is to extend the P-DP rate schedules PD-F3, PD-FT3, PD-NFT3 and PD-FCT3 until such time as new P-DP rate schedules supersede the existing P-DP rate schedules, but for not more than 1-year.

Issued in Washington, DC, August 19, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

In the matter of: Western Area Power Administration Rate Adjustment for Parker-Davis Project.

[Rate Order No. WAPA-57]

Order Confirming and Approving an Extension of Rates for the Parker-Davis Project Firm Power and Firm and Nonfirm Transmission Service

August 19, 1992.

Pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7101 *et seq.*, the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, ch. 1093, 372 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), and other acts specifically applicable to the projects involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 2 to Delegation Order No. 0204-108, published August 23, 1991 (56 FR 41835), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates in effect on an interim basis to the Assistant Secretary for Conservation and Renewable Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Background

Pursuant to Delegation Order No. 0204-108, the FERC, in the order issued November 15, 1990, in Docket No. EF90-5041-000, confirmed and approved Parker-Davis Project (P-DP) rate schedules; PD-F3 for firm power service, PD-FT3 for firm transmission service, PD-NFT3 for nonfirm transmission service, and PD-FCT3 for transmission service of Salt Lake City Area Integrated Projects Power, administered by the Western's Phoenix Area. The rates were approved for the period from October 1, 1990, through September 30, 1992.

Discussion

On May 8, 1992, Western's Phoenix Area published its proposal in the Federal Register to adjust the P-DP rates for firm power and firm and nonfirm transmission service. In response to public comments, it was determined by Western, that additional time is needed for customers to comment on unresolved issues relating to the forthcoming P-DP rate adjustments. The public comment and consultation period has been extended to September 28, 1992 (57 FR 34776, August 6, 1992) and the anticipated effective date on the proposed rates is in the first half of FY 1993. Therefore, Western proposes to extend the existing P-DP rates for firm power and firm and nonfirm transmission service until such time new P-DP rate schedules supersedes the existing P-DP rate schedules, but for not more than 1-year.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary, I hereby confirm and approve the extension of the P-DP rate schedules; for firm power PD-F3, firm transmission PD-FT3, nonfirm transmission PD-NFT3, and transmission service for Salt Lake City Area Integrated Projects PD-FCT3, until superseded by new P-DP rate schedules for a period effective October 1, 1992, until superseded by new P-DP rate schedules, but for not more than 1 year.

Issued in Washington, DC, August 19, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 92-20920 Filed 8-28-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4201-1]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Application for a Reference Method Determination

Notice is hereby given that on August 5, 1992, the Environmental Protection Agency received an application from Lear Siegler Measurement Controls Corporation, 74 Inverness Drive East, Englewood, Colorado 80112-5189, to determine if their Monitor Labs Model 9841 Nitrogen Oxides Analyzer should be designated by the Administrator of the EPA as a reference method under 40 CR part 53. If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the **Federal Register**.

John H. Skinner,

Acting Assistant Administrator for Research and Development.

[FR Doc. 92-20903 Filed 8-28-92; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4200-5]

Public Water System Supervision Program: Program Revision for the State of Iowa

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Iowa is revising its approved State Public Water System Supervision (PWSS) Program. Iowa has adopted regulations for (1) filtration, disinfection, turbidity, *Giardia lamblia*, viruses, *Legionella*, and heterotrophic bacteria that correspond to the National Primary Drinking Water Regulations for filtration, disinfection, turbidity, *Giardia lomblia*, viruses, *Legionella*, and heterotrophic bacteria published by EPA on June 29, 1989 (54 FR 27486); and (2) total coliforms (including fecal coliforms and *E. coli*) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and *E. coli*) published by EPA on June 29, 1989 (54 FR 27544). EPA has determined that these State program revisions are no less stringent than the corresponding Federal regulations. This determination was based upon a thorough evaluation of Iowa's PWSS program in accordance with the requirements stated in 40 CFR 142.10. Therefore, EPA has tentatively decided to approve these State program revisions.

All interested parties are invited to request a public hearing. A request for a public hearing must be submitted within thirty (30) days of the date of this Notice to the Regional Administrator, at the address shown below. If a public hearing is requested and granted, this determination shall not become effective until such time following the hearing that the Regional Administrator issues an order affirming or rescinding this action. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective thirty (30) days from this Notice date.

Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made within thirty (30) days after this notice, a public hearing will be held.

Requests for a public hearing should be addressed to: Ralph Langemeier, Chief, Drinking Water Branch, U.S. Environmental Protection Agency, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing; and (3) The signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Iowa. A notice will also be sent to the person(s) requesting the hearing as well as to the State of Iowa. The hearing notice will include a statement of purpose, information regarding time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

ADDRESSES: A copy of the primacy application relating to this determination are available for inspection between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, at the following locations: U.S. EPA Region VII Drinking Water Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101, and the Iowa Department of Natural Resources Surface and Groundwater Protection Bureau, Wallace State Office Building, 700 East Grand, Des Moines, Iowa 50319.

FOR FURTHER INFORMATION CONTACT: Pat Ritchey, EPA Region VII Drinking Water Branch, at the above address, telephone (913) 551-7409.

Authority: Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primacy Drinking Water Regulations.

Dated: June 11, 1992.

Morris Kay,

Regional Administrator, EPA, Region VII.

[FR Doc. 92-20726 Filed 8-28-92; 8:45 am]

BILLING CODE 6560-50-M

[OPPTS-62119; FRL-4062-4]

Accredited Training Programs under the Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of the National Directory of AHERA Accredited Courses (NDAAC).

SUMMARY: EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The August 31, 1992 directory, which supersedes the version released on May 29, 1992, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: NDAAC Clearinghouse, c/o ATLIS Federal Services, 6011 Executive Blvd., Rockville, MD 20852, Telephone: (301) 984-1929.

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FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, contractors who inspect or prepare management plans, or design or conduct response actions with respect to friable asbestos-containing materials in schools, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved State accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was published on August 30, 1991 (56 FR 43064). EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

Dated: August 3, 1992.

Joseph A. Cara,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 92–19652 Filed 8–28–92; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4198–8]

Proposed Assessment of Clean Water Act Class II Administrative Penalty to Cargill Incorporated and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal of a Clean Water Act Class II administrative penalty and notice of public comment period.

SUMMARY: Pursuant to 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessment pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a Respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after publication of this notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Thunderbird Management, Inc. (Shelby Wastewater Treatment Plant), 6006 N. 83rd St., #208, Glendale, AZ 85303, Docket No. IX–FY92–16; filed on August 25, 1992 with Steven Armsey, Regional Hearing Clerk, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1389; proposed penalty of $60,000, for discharges of pollutants without an NPDES permit.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed on this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information.

Dated: August 18, 1992.

Alexis Strauss,

Acting Director, Water Management Division.

[FR Doc. 92–20900 Filed 8–28–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice Concerning Issuance of Powers of Attorney

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Public Notice.

SUMMARY: In order to facilitate the discharge of its responsibilities as a conservator and liquidator of insured depository institutions, the Federal Deposit Insurance Corporation (FDIC) publishes the following notice. The publication of this notice is intended to comply with title 16, section 20 of the Oklahoma Statutes (16 O.S. 20) which, in part, declares Federal agencies that publish notices in the **Federal Register** concerning their promulgation of powers of attorney, to be exempt from the statutory requirement of having to record such powers of attorney in every county in which the agencies wish to effect the conveyance or release of interests in land.

Notice

Pursuant to section 11 of the Federal Deposit Insurance (FDI) Act (12 U.S.C. 1821), as amended by section 212 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), the FDIC is empowered to act as conservator or receiver of any state or federally chartered depository institution which it insures. Furthermore, under section 11A of the FDI Act (12 U.S.C. 1821a), as enacted under section 215 of FIRREA, the FDIC is also appointed to manage the FSLIC Resolution Fund.

Upon appointment as a conservator or receiver, the FDIC by operation of law, becomes successor in title to the assets of the depository institutions on behalf of which it is appointed. As Manager of the FSLIC Resolution Fund, the FDIC became successor in title to both the corporate assets formerly owned by the now defunct Federal Savings and Loan Insurance Corporation (FSLIC), as well as to the assets of the depository institutions for which the FSLIC was appointed receiver prior to January 1, 1989. In addition, pursuant to section 13(c) of the FDI Act (12 U.S.C. 1823(c)), the FDIC also acquires legal title in its corporate capacity to assets acquired in furtherance of providing monetary assistance to prevent the closing of insured depository institutions or to expedite the acquisition by assuming depository institutions of assets and liabilities from closed depository institutions of which the FDIC is receiver.

In order to facilitate the conservation and liquidation of assets held by the FDIC in its aforementioned capacities, the FDIC has provided powers of attorney to selected employees of its Oklahoma City Consolidated Office. These employees include: Kenneth N. Blincow, John H. Fisher, Gary R. Belair, and Deborah J. Hall.

Each employee to whom a power of attorney has been issued is authorized and empowered to: Sign, seal and deliver as the act and deed of the FDIC any instrument in writing, and to do every other thing necessary and proper for the collection and recovery of any and all monies and properties of every kind of nature whatsoever for and on behalf of the FDIC and to give proper receipts and acquittances therefor in the name and on behalf of the FDIC; release, discharge or assign any and all judgments, mortgages on real estate or personal property (including the release and discharge of the same of record in the office of any Prothonotary or Register of Deeds wherever located where payments on account of the same in redemption or otherwise may have been made by the debtor(s)), and to endorse receipt of such payment upon the records in any appropriate public office; receipt, collect and give all proper acquittances for any other sums of money owing to the FDIC for any acquired asset which the attorney-in-fact may sell or dispose of; execute any and all transfers and assignments as may be necessary to assign any securities or other choses in action; sign, seal, acknowledge and deliver any and all agreements as shall be deemed necessary or proper by the attorney-in-fact in the care and management of acquired assets; sign, seal, acknowledge and deliver indemnity agreements and surety bonds in the name of and on behalf of the FDIC; sign receipts for the payment of all rents and profits due or to become due on acquired assets; execute, acknowledged and deliver deeds of real property in the name of the FDIC; extend, postpone, release and satisfy or take such other action regarding any mortgage lien held in the name of the FDIC; execute, acknowledge and deliver in the name of the FDIC a power of attorney wherever necessary or required by law to any attorney employed by the FDIC; foreclose any mortgage or other lien on either real or personal property, wherever located; do and perform every act necessary for the use, liquidation or collection of acquired assets held in the name of the FDIC; and sign, seal, acknowledge and deliver any and all documents as may be necessary to settle any action(s) or claim(s) asserted against the FDIC, either in its Receivership or Corporate capacity, or as Manager of the FSLIC Resolution Fund.

Dated: August 26, 1992.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 92–20913 Filed 8–28–92; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Mitsui O.S.K./Hoegh-Ugland Auto Liners, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011384.

Title: Mitsui O.S.K./Hoegh-Ugland Auto Liners Space Charter Agreement.

Parties: Mitsui O.S.K. Lines, Ltd. Hoegh-Ugland Auto Liners A/S.

Synopsis: The proposed Agreement will authorize the parties to charter space from one another, consult and agree upon sailing schedules, service frequency, ports to be served and port rotation in the trade from ports in the United Kingdom and North Europe (Bordeaux to Wallhann, inclusive) to United States Atlantic, Pacific and Gulf Coasts.

Agreement No.: 224–010839–005.

Title: Port of Seattle/American President Lines, Ltd. Terminal Agreement.

Parties: Port of Seattle ("Port") American President Lines, Ltd. ("APL").

Synopsis: The amendment provides for the repayment by APL to the Port for the cost of three container cranes, redescribes the five Port-owned cranes used by APL and acknowledges APL's intent to install a sixth container crane owned by APL.

Agreement No.: 224–200405–002.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc. Incentive Wharfage Agreement.

Parties: Tampa Port Authority ("Port") Tampa Bay International Terminals, Inc. ("TBIT").

Synopsis: This modification extends the wharfage incentive agreement wherein the Port will charge reduced wharfage rates to TBIT on shipments of paper waste, subject to a minimum volume of 4,000 net tons.

Agreement No.: 224–200510–003.

Title: Tampa Port Authority/Tampa Bay International Terminals, Inc. Terminal Agreement.

Parties: Tampa Port Authority Tampa Bay International Terminals, Inc.

Synopsis: This modification amends the definition of iron and steel commodities on which the incentive wharfage rate applies from "steel billets and reinforcing bars, for export" to "iron or steel articles, for exports."

Agreement No.: 224–200692.

Title: New Orleans/ABB Combustion Engineering Terminal Agreement.

Parties: Port of New Orleans ("Port") ABB Combustion Engineering Systems ("ABB").

Synopsis: The Agreement concerns free time and demurrage assessments applicable to certain project cargo which ABB will ship through the Port's facilities.

Dated: August 25, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92–20818 Filed 8–28–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Acquisition Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in

lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 24, 1992.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Acquisition Corporation, Leawood, Kansas; to become a bank holding company by acquiring 51.54 percent of the voting shares of LeavCorp., Inc., Leavenworth, Kansas, and thereby indirectly acquire Leavenworth National Bank and Trust Co., Leavenworth, Kansas.

2. Carrollton Bancshares Corporation, Carrollton, Missouri; to become a bank holding company by acquiring First Carrollton Bancshares, Inc., Carrollton, Missouri, and thereby indirectly acquire First National Bank of Carrollton, Carrollton, Missouri.

3. Farmers National Bancshares, Inc., Stafford, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers National Bank of Stafford, Stafford, Kansas, and Mid-Kansas Financial Corp., Buhler, Kansas, and thereby indirectly acquire Buhler State Bank, Buhler, Kansas.

4. Upper Rio Grande Bank Corporation, Del Norte, Colorado; to become a bank holding company by acquiring 80 percent of the voting shares of The Rio Grande County Bank, Del Norte, Colorado.

Board of Governors of the Federal Reserve System, August 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20861 Filed 8-28-92; 8:45 am]

BILLING CODE 6210-01-F

Commercial Bancshares, Inc. Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 1992.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Commercial Bancshares, Inc. Employee Stock Ownership Trust, Parkersburg, West Virginia; to acquire 15 percent of the voting shares of Commercial Bancshares, Inc., Parkersburg, West Virginia, and thereby indirectly acquire Commercial Banking and Trust Company, Parkersburg, West Virginia; Jackson County Bank, Ravenswood, West Virginia; Farmers and Merchants Bank of Ritchie County, Hannisville, West Virginia; and The Dime Bank, Marietta, Ohio.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. James William Collins, McAllen, Texas; to acquire 27.09 percent of the voting shares of Gulf Southwest Bancorp, Inc., Houston, Texas, and thereby indirectly acquire Merchants Bank, Houston, Texas.

2. James William Collins, McAllen, Texas; to acquire 12.34 percent of the voting shares of Texas Regional Bancshares, Inc., McAllen, Texas, and thereby indirectly acquire Texas State Bank, McAllen, Texas.

Board of Governors of the Federal Reserve System, August 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20862 Filed 8-28-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F of the Statement of Organizations, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration, is amended to reflect a minor realignment in the Office of Human Resources, Office of Budget and Administration, Office of the Associate Administrator for Management.

The specific changes to part F are as follows:

• Section FH.20.a.1.b., Division of Staffing and Employee Services (FHA62), is deleted in its entirety and replaced with the new section. The new section reads as follows:

b. Division of Staffing and Employee Services (FHA64)

• Provides service to all central office HCFA components in the areas of recruitment, in-service staffing, selective placement, and pre-employment investigations for all types of appointments and all occupational classes and levels of work (except Senior Executive Service, Schedule C, and related appointments).

• Provides advice, guidance, and consultation to HCFA supervisory and management officials on such issues as optimal staffing mixes, recruitment sources, and qualification factors.

• Interprets regulations, guides, directives, and bulletins related to staffing and personnel services.

• Establishes and maintains the employment data base for routine and special reports and statistical studies related to the employee population.

• Plans and controls the central system for all personnel and payroll employee transaction processes, (except U.S. Savings Bonds), serves as the official custodian for all personnel folder clearances, confidential reports, employment agreements and other related areas.

• Plans, administers, and evaluates HCFA-wide employee benefits, health and wellness program activities.

• Provides employee counseling on such matters as retirement, life insurance, health plans, worker's compensation claims, and related areas.

• Serves as the central HCFA reference point for inquires, guidance and interpretation on employee relations matters.

• Processes insurance claims and annuity applications for retirees and survivors of deceased employees. Processes the full range of employee benefit and payroll transaction documents, with the exception of U.S. Savings Bonds.

• Directs programs for occupational health services, employee health enhancement, physical fitness, and blood assurance programs. Plans and administers the Agency's contract for the Employee Assistance Program. Directs and administers HCFA's child care initiative. Directs the Agency's Voluntary Leave Transfer and Video Display Terminal Eye Care Program.

• Under direction of the HCFA Deputy Ethics Officer, plans and administers the entire ethics program for both Central and Regional Offices. Reviews financial disclosure reports prior to departmental submittal and coordinates outside activities requests and approvals.

• Section FH.20.A.1.d., Labor/Management Relations Staff, is deleted in its entirety and replaced with the new section. The new section reads as follows:

d. Labor and Employee Relations Staff (FHA6-3)

• Plans, directs, and administers HCFA-wide labor relations activities including the application and interpretation of the Federal Labor-Management Relations Program, collective bargaining agreements, and regulations.

• Serves as Agency representatives in dealing with the Department of Health and Human Services, other Federal agencies, employee and supervisory organizations, and third-party representatives.

• Directs the Agency disciplinary and adverse action program. Provides procedural advice in the processing of grievances, including negotiations in the resolution of grievances and appeals under Agency and negotiated grievance procedures/agreements.

• Directs the Agency performance improvement and corrective action plan programs. Provides procedural advice in establishing and administering corrective plans and represents the Agency in related grievance and appeal processes.

• Directs the Agency personnel security liaison function. Provides procedural advice on all issues involving employee suitability and/or retention relevant to pre-employment or off-duty conduct/activities (exclusive of SES and Schedule C employees).

• Formulates HCFA-wide policy regarding the development, implementation, and evaluation of labor relations activities. Provides management advisory service on all labor/management relations issues.

• Directs the development and implementation of a labor and employee relations training program in conjunction with other Office of Human Resources components. Plans and coordinates the integration concerning the labor relations program with other personnel management functions and related management assistance activities.

Dated: August 21, 1992.

Robert A. Streimer,

Associate Administrator for Management. Health Care Financing Administration.

[FR Doc. 92-20872 Filed 8-28-92; 8:45 am]

BILLING CODE 4120-01-M

National Institutes of Health

Prospective Grant of Exclusive License; Adeno-Associated Virus (AAV) Vectors for Gene Therapy

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(91) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Number 4,797,368 (SN 06/712,236), entitled "Adeno-Associated Virus As Eukaryotic Expression Vector" to Theragen, Inc., of Ann Arbor, Michigan. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license will be limited to the fields of use of gene therapy treatments for metabolic disease, joint and connective tissue disorders, and nervous system diseases. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent to be licensed describes a novel expression vector based on the parvovirus, adeno-associated virus (AAV), which is valuable for the stable maintenance or expression of DNA sequences or genes in eukaryotic cells. The use of many previously available virus-based eukaryotic expression vectors has been limited because they do not integrate foreign DNA into the host genome at high frequency and are not easily rescued from their host. This AAV-based expression vector is easily rescued from the host and allows the host to express the foreign DNA or genes at high frequency.

ADDRESSES: Requests for a copy of this patent, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496-7735; Facsimile: (301) 402-0220.

Dated: August 11, 1992.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92-20839 Filed 8-28-92; 8:45 am]

BILLING CODE 4140-01-M

Prospective Grant of Exclusive License; Vectors for Gene Therapy Treatment of AIDS

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(91) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in U.S. Patent Application SN 07/596,299 entitled "Vector With Multiple Target Response Elements Affecting Gene Expression" and U.S. Patent Application SN 07/707,055 entitled "Eukaryotic Expression Vectors With Regulation Of RNA Processing" to Genetic Therapy, Inc. of Gaithersburg, Maryland. The patent rights in these two inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license will be limited to the field of use of gene therapy for Acquired Immunodeficiency Syndrome (AIDS). This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

U.S. Patent Application SN 07/596,299 outlines the design and construction of DNA sequences that will inhibit viral replication through competitive inhibition of function and down-regulating HIV-1 LTR-directed gene expression. Inhibition is mediated via the product of transcription of the newly constructed vector. The vector product is directed against the AIDS virus (HIV) and may be used in vaccine development (intracellular immunization) and as a therapeutic agent for treating viral infections. Unlike other similar vectors, this invention is not limited by retroviral mutations or by variations between different HIV isolates.

U.S. Patent Application SN 07/707,555 describes a retroviral vector in which

intron-containing RNA is transported and packaged by the host cell. This unique vector contains the *rev*-RRE elements of primate lentiviruses, which control RNA processing and transport. Exploitation of these elements helps overcome the primary problems of previous vectors, i.e., low titer and inefficient gene/protein expression. The retroviral vector is proposed as a possible therapeutic device for various gene therapy treatments.

ADDRESS: Requests for copies of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220.

Dated: August 11, 1992.

Reid G. Adler,

Director, Office of Technology Transfer.

[FR Doc. 92–20840 Filed 8–28–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–92–3443; FR–3206–N–02]

Deadline Extension, FY 1992 Fund Availability; Indian Applicants Under the HOME Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of deadline extension.

SUMMARY: HUD is extending the application deadline for Indian applicants for the HOME Investment Partnership Act, referred to as the Indian HOME program for those applicants who were adversely affected in their application submission as a result of the volcanic activities on August 18, 1992 which resulted in the closing of the Anchorage International Airport and stopping all air traffic. This same volcanic activity caused an official closure of the HUD Anchorage Office on the application due date August 19, 1992.

DATES: For qualified applicants, the application deadline is being extended from August 19, 1992 to September 8, 1992.

FOR FURTHER INFORMATION CONTACT: Dom Nessi, Office of Indian Housing, U.S. Department of Housing and Urban Development, room 4140, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–1015.

To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9800. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION: On June 15, 1992, HUD published Notices of Fund Availability announcing the availability of FY 1992 funds for the Indian Applicants under the HOME program (see 57 FR 26720).

In this Notice, HUD is extending the application deadline for submitting Indian HOME grant applications for those applicants who were adversely affected in the submission of applications as a result of the volcanic disturbances in the Anchorage Alaska area on and following August 18, 1992. For those applicants who qualify, the application deadline is being extended from August 19, 1992 to close of business on September 8, 1992.

An applicant may qualify for an extension of the application deadline for the Indian HOME grants if:

(A) The applicant submits a certification describing the reasons which justify a delayed submission pursuant to this Notice; and

(B) HUD determines that the certification adequately demonstrates that the applicant's ability to submit the HOME Grant application was substantially impaired as a result of the volcanic disturbances near the City of Anchorage, Alaska, on and following August 18, 1992. If HUD approves the certification, the application will be accepted for review.

A qualified applicant may submit such an application as long as the application is received by the HUD Anchorage field office by close of business on September 8, 1992. All submission requirements other than the date by which such applications must be received remain unaffected by this notice.

Dated: August 25, 1992.

Joseph G. Schiff,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 92–20812 Filed 8–28–92; 8:45 am]

BILLING CODE 4210–32–M

INTERSTATE COMMERCE COMMISSION

Agency Information Collection Under OMB Review

The following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) are being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Kathleen King, (202) 927–5493. Comments regarding this information collection should be addressed to Kathleen King, Interstate Commerce Commission, room 1312, Washington, DC 20423 and to Ed Clark, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. When submitting comments, refer to the OMB number or the Title of the Form.

Type of Clearance: Revision of a currently approved collection.

Bureau/Office: Office of Proceedings.

Title of Form: Authority Application Series.

OMB Form Number: 3120–0047.

Agency Form Number: OP–1 (T), (TF), (P), (B), (FF), and (W).

Frequency: Initiated by applicant for new or expanded authority.

Respondents: Motor Carriers, Freight Forwarders, and Water Carriers.

No. of Respondents: 16,336.

Total Burden Hours: 45,510.

Type of Clearance: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Bureau/Office: Office of Proceedings.

Title of Form: Application for Temporary Authority, Under 49 U.S.C. 11349, to Operate Motor Carrier or Water Carrier Authorities or Properties.

OMB Form Number: 3120–0079.

Agency Form Number: OP–F–46.

Frequency: Initiated by applicant seeking to operate Motor carrier and Water Carrier Authorities or Properties.

Respondents: Authorities of Properties.

No. of Respondents: 54.

Total Burden Hours: 108.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 92–20682 Filed 8–28–92; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32134]

The Atchison, Topeka and Santa Fe Railway Company—Trackage Rights Exemption—Missouri Pacific Railroad Company

Missouri Pacific Railroad Company has agreed to grant overhead trackage rights to The Atchison, Topeka and Santa Fe Railway Company over approximately 196 miles of rail line, between milepost 245.52 at Ft. Worth, TX, and milepost 440.98 at Tecific, TX. The trackage rights will become effective on or after September 1, 1992.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Guy Vitello, The Atchison, Topeka and Santa Fe Railway Company, 1700 E. Golf Road, Schaumburg, IL 60173.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to Norfolk and Western Ry. Co.—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Dated: August 24, 1992.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. 92–20884 Filed 8–28–92; 8:45 am]

BILLING CODE 7035–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–341; FERMI–2]

Detroit Edison Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–43 issued to the Detroit Edison Company (DECo or the licensee) for operation of the Fermi–2 facility, located in Monroe County, Michigan.

Environmental Assessment

Identification of Proposed Action

This Environmental Assessment is written in connection with the proposed core power level increase for the Fermi–2 facility in response to the licensee's application for a license amendment dated September 24, 1991 as modified January 31, and April 30, 1992. The proposed action would increase the rated core power level for Fermi–2 from the current level of 3293 megawatts thermal (MWt) to 3430 MWt. The Nuclear Steam Supply System (NSSS) power level would be increased accordingly. This represents an authorized power level increase of approximately 4.2 percent. This will require resetting of the safety relief valve setpoints to accommodate the slight operating pressure increase (less than 40 psi). Operating temperature will also increase slightly (less than 5 °F). The result of these changes will be an approximate 5 percent increase in NSSS power level. Plant instrumentation will be recalibrated to reflect the uprated power and core reload design will be modified to maintain the current 18-month reload cycle. This will include the use of higher enrichment fuel with extended burnup over that currently used. The licensee is planning to use fuel enrichments up to 4.8 weight percent U–235 burnup to 49,100 megawatt days per metric ton uranium (MWD/MTU). The licensee will implement these changes during the third refueling outage currently scheduled to begin September 12, 1992.

Additionally, at the recommendation of their NSSS vendor, the licensee is restoring a Reactor Core Isolation Cooling (RCIC) bypass line which had been previously removed. No changes will be made to the basic fuel design and fuel operating limits such as maximum average planar linear heat generation rate (MAPLHGR) or minimum critical power ratio (MCPR) will still be met at uprated power.

These changes will achieved by increasing core flow along existing flow control lines of the power/flow map thereby slightly increasing reactor vessel dome pressure. However, there will not be an increase in the maximum recirculation flow limit over the pre-uprate value.

The Need for the Proposed Action

The action would increase the thermal output by 138 megawatts thermal (MWt) which corresponds to approximately 44 megawatts electric (MWe). This would provide additional power to the grid which supplies the licensee's service area. The changes in higher fuel enrichment and extended burnup are necessary in order to maintain the current 18-month operating cycle.

Environmental Impacts of the Proposed Action

The effect of power uprate on radiological effluent or offsite doses, as evaluated in the Environmental Report, Operating Licensing Stages (ER/OL) and the NRC Final Environmental Statement (FES), is not significant. The original analyses were based on 104.2% (3430 MWt) of the licensed power (3293 MWt). The analyses for power uprate were performed at 102% of uprated power, resulting in a calculated increase of approximately 2% in effluents and doses, still well within 10 CFR Part 50, Appendix I, limits.

A slight increase in occupational radiation exposures may occur due to the slight increase in radiation levels in some areas of the plant, primarily due to increased activation products. The licensee used conservative assumptions; the design radiation source increase is proportional to the increase in power. Even with this assumption, neither individual nor cumulative occupational radiation exposure will be significantly increased. The expected increase would not be more than four to five percent of the current occupational exposure.

The non-radiological environmental impacts of the proposed power uprate were reviewed based on the information submitted in the ER/OL, the FES, and the requirements of the Environmental Protection Plan (EPP), Section 3.0 (Appendix B to the Operating License). Based on this review, it was concluded that the proposed uprate will not have significant impacts on the non-radiological effluent or releases and the plant will be operated in a manner as established by the FES. Existing Federal, State, and local regulatory permits presently in effect will not need to be modified as a result of power uprate.

There will not be any significant change in the types or amounts of any effluents that may be released offsite as a result of power uprate which have not already been evaluated in the FES or any significant increase in individual or cumulative occupational radiation exposure.

The Commission has completed its evaluation of the use of higher enriched fuel and extended burnup which would be necessary to support the proposed action.

The environmental consideration associated with reactor operation with higher enrichment and extended irradiation have been previously evaluated by the NRC staff for enrichment, up to 5.0 weight percent U-235 and burnup of up to 60,000 MWD/MTU (53 FR 60340 dated February 29, 1988).

The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with fuel burnup to 60,000 MWD/MTU, may slightly change the mix of fission products that might be released in the event of a serious accident, but such changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluent that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential non-radiological impacts of reactor operations with higher enrichment and extended irradiation, the proposed

changes to the Technical Specifications (TS) involving systems located within the restricted area are defined in 10 CFR part 20. They do not affect non-radiological plant effluents and have no environmental impact.

The environmental impacts of transportation resulting from the use of higher enrichment fuel and extended irradiation were published and discussed in the staff assessment entitled, "NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation," dated July 7, 1988, and published in the Federal Register on August 11, 1988 (53 FR 303555) as corrected August 24, 1988 (53 FR 32322), in connection with the Shearon Harris Nuclear Power Plant, Unit 1, Environmental Assessment and Finding of No Significant Impact. As indicated therein, the environmental cost contribution of the proposed increase in the fuel enrichment and irradiation limits are either unchanged or may, in fact, be reduced from those summarized in Table S-4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed change for Fermi-2.

Therefore, the Commission concludes that there are no significant radiological or non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternatives would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce the environmental impacts of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated July 1972 related to operation of the Fermi-2 facility.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with regard to this action, see the application for amendment dated September 24, 1991 as modified January 31 and April 30, 1992, which is available for public inspection at the Commision's Public Document Room, 2120 L Street, NW., Washington, DC and at the Monroe County Public Library, 3700 South Custer Road, Monroe, Michigan 48166.

Dated at Rockville Maryland, this 24th day of August 1992.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Project Directorate III-I, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-20856 Filed 8-28-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-70]

General Electric Co.; Consideration of Application for Renewal of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. TR-1, issued to the General Electric Company located on the Vallecitos Nuclear Center in Alemeda County, California.

The renewal would extend the expiration date of Facility License No. TR-1 to January 26, 2016, in accordance with the licensee's timely application for renewal dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992. The license is a possession only type which allows the licensee to possess but not operate the facility. All fuel has been removed from the facility. The licensee is maintaining the facility in a safe storage condition and will develop a decommissioning plan that considers and integrates decommissioning activities for applicable nuclear facilities at the Vallecitos Nuclear Center site. The expiration date for this license renewal is the same as the expiration date for the ESADA Vallecitos Experimental Superheat Reactor (License No. DR-10, Docket No. 50-183), which is also in a possession only status at the Vallecitos Nuclear Center site. It is also anticipated that the expiration date for the Nuclear Test Reactor (License No. R-33, Docket No. 50-73), which has an operating license that is due to expire on October 31, 1997, will be extended to about the same date as that for the current license renewal. Therefore, the term of the license renewal is consistent with the licensee's development of plans on all applicable 10 CFR part 50 licensed facilities at the Vallecitos Nuclear Center.

Prior to a decision to renew the license, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By September 30, 1992, the licensee may file a request for a hearing with respect to issuance of the subject Orders and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules and Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board Panel, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board Panel will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leve of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the orders under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Seymour H. Weiss: petitioner's name and telephone number; date petition was mailed; General Electric Company; and publication date and page of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. G. E. Cunningham, Senior Licensing Engineer, Irradiation Processing, Vallecitos Nuclear Center, General Electric Company, P.O. Box 460, Pleasanton, California 94566.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, presiding officer or the Atomic Safety and Licensing Board Panel that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the licensee's application dated July 9, 1990, as supplemented on December 17, 1990, and August 7, 1992. These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 25th day of August 1992.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Powered Reactors, Decommissioning and Environmental, Project Directorate, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 92-20858 Filed 8-28-92; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program Medically Underserved Areas for 1993

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 1993.

SUMMARY: The Office of Personnel Management has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 1993. This determination is necessary to comply with a provision of FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 1993, OPM has determined that the following States are Medically Underserved Areas under the FEHB Program: Alabama, Idaho, Louisiana, Mississippi, New Mexico, North Dakota, South Carolina, South Dakota, West Virginia, and Wyoming. This list is the same as that for 1992, with the exception of the addition of South Carolina.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Abby L. Block, (202) 606-0191.

SUPPLEMENTARY INFORMATION: FEHB law [5 U.S.C. 8902(m)(2)] mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires payment to all qualified providers in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest Department of Health and Human Services State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident population.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

[FR Doc. 92-20838 Filed 8-28-92; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31079; International Series Release No. 439; File No. SR-Amex-92-25]

Self-Regulatory Organizations; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Index Warrants Based on a Basket of Japanese Traded Stocks

August 24, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on July 29, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to approve for listing and trading under section 106 of the Amex Company Guide warrants on an index of not less than twenty-five common stocks actively traded on the Tokyo Stock Exchange; and to add commentary .04 to Rule 411 to provide that such warrants shall only be sold to accounts approved for options trading pursuant to Exchange Rule 921.[1]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Section 106 of the Amex Company Guide sets forth guidelines applicable to listing warrants based on foreign and domestic stock indexes. Pursuant to section 106, the Amex proposes to list and trade warrants on a basket of at least twenty-five common stocks actively traded on the Tokyo Stock Exchange (the "Basket").

The market value of the proposed basket of stocks will be calculated once a day based upon the closing prices of the component stocks on the Tokyo Stock Exchange and disseminated each morning before the opening of trading in the United States. At inception, each of the component stocks will be represented in the Basket in approximately equal percentages and market values.

[1] On August 19, 1992, the Amex submitted an amendment to increase the minimum number of stocks in the proposed index from 20 to 25. *See* letter from Benjamin D. Krause, Senior Vice President, Amex to Sharon Lawson, Assistant Director, Division of Market Regulation, dated August 19, 1992.

The number of shares of each component stock in the Basket will remain fixed during the life of the warrant, except in the event of certain types of corporate actions such as (1) the payment of a cash dividend or distribution in excess of 10% of the price of the component security (as of the close of trading on the declaration date); or (ii) a stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks in excess of 10% of the outstanding number of shares. In the event of such corporate actions, the number of shares of the security in the Basket may be adjusted to maintain the component's relative weight in the Basket at the level immediately prior to the corporate action. In the event of a merger, consolidation, dissolution or liquidation of a component security, the price of the component stock will be fixed at the closing price on the Tokyo Stock Exchange on the last day of trading. Advance notice of such action shall be disseminated by the Exchange. Thereafter, this stock will remain in the Basket and its value will remain static for the duration of the term of the warrant.

As noted above, the Basket will initially be constituted with not less than 25 component stocks. Each component stock will (1) have a minimum market value (in U.S. dollars) of at least $500 million, and (2) have an average monthly trading volume during the preceding six months of not less than 1,000,000 shares. In addition, not less than 75% of the component stocks will have a market value of at least $1 billion.

Warrant issues on the Basket will conform to the listing guidelines under section 106, which generally provide that (1) the issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earning requirements in section 101(a) of the Company Guide; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000. In addition, the warrant issuer and/or guarantor shall be expected to have shareholders' equity in excess of $100,000,000.

These warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (of not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Basket has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Basket has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

In addition, the Exchange proposes to add Commentary .04 to Exchange Rule 411 to ensure that transactions in warrants on the Basket will not be effected in a customer's account which has not been approved for options trading pursuant to Exchange Rule 921.

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 21, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20896 Filed 8-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31083; File No. SR-NASD-92-16]

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Extension of Public Comment Period for Proposed Rule Change

August 24, 1992.

On May 1, 1992, the National Association of Securities Dealers ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) and Rule 19b-4 thereunder, that would enhance operation of the SelectNet service by adding Consolidated Quotation Service ("COS") securities to those eligible for trading through SelectNet. Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 30961, July 27, 1992) and by publication in the **Federal Register** (57 FR 34158, August 3, 1992).

The Commission received three requests for extension of the period for public comment.[1] Commentators cited the complexity and significance of the filing. The NASD consented to an extension of the comment period until the middle of September.[2]

The Commission hereby extends the period for public comment on the proposed rule change for a period of 31 days, until September 24, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20894 Filed 8-28-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25614]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

August 26, 1992.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 14, 1992 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Official Bondholders' Committee of EUA Power Corporation

[70-8034]

The Official Bondholders' Committee of EUA Power Corporation ("Committee"), c/o State Street Bank and Trust Company, Corporate Trust Department, 5th Floor, One Heritage Drive, North Quincy, MA 02171-2128, has filed an application-declaration, as amended, including an amended plan of reorganization ("Plan") and a disclosure statement, under sections 11(f), 11(g), 12(c) and 12(d) of the Act and rules 42, 44, 62, 63 and 64 thereunder. The Committee requests the Commission to issue (1) a report on the Plan pursuant to section 11(g) that may be included in a solicitation of creditors for approval of the Plan in bankruptcy court proceedings,[1] and (2) an order approving the Plan and related transactions under section 11(f).[2]

EUA Power Corporation ("EUA Power"), a wholly-owned electric public-utility subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, filed a voluntary petition for protection under Chapter 11 of the United States Bankruptcy Code, as amended ("Bankruptcy Code") on February 28, 1991 in the United States Bankruptcy Court, District of New Hampshire ("Bankruptcy Court").[3] EUA Power's

[1] See letters to Elizabeth MacGregor, Branch Chief, Division of Market Regulation, SEC, from Harry F. Day, Counsel, New York Stock Exchange, dated August 20, 1992; Michael Cavalier, Assistant General Counsel, American Stock Exchange, dated August 21, 1992; and Andrew M. Klein, Schiff, Hardin & Waite (representing Dempsey & Company), dated August 21, 1992.

[2] Telephone call from Robert E. Aber, Deputy General Counsel, NASD, to Elizabeth H. MacGregor, August 24, 1992.

[1] Section 11(g) requires that any solicitation for consent or authorization with respect to any reorganization plan of a registered holding company or any subsidiary company thereof be "accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission."

[2] Section 11(f) provides, in pertinent part, that "a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court."

[3] On July 2, 1991, the Bankruptcy Court refused to extend EUA Power's exclusive right to file a plan. On August 12, 1992, the Committee submitted the Plan and the disclosure statement to the Bankruptcy Court. No other party (including EUA Power), other than the Committee, has filed a plan of reorganization to date. The application-declaration states that the hearing on the disclosure statement and the confirmation hearing are scheduled for September 8, 1992 and October 5, 1992, respectively. After the Bankruptcy Court approves the disclosure statement, the Committee expects to solicit the creditors for their approval of the Plan in mid-September of 1992.

principal asset is an undivided 12.1324% interest in the Seabrook Nuclear Power project ("Seabrook") and the electricity associated therewith.[4] Since filing for bankruptcy, EUA Power has remained in operation as a debtor in possession pursuant to section 1107 of the Bankruptcy Code.

On March 14, 1991, the United States Trustee appointed the Committee as the duly authorized representative of the bondholders holding the Series B Notes and Series C Notes in the aggregate principal amount of approximately $280 million issued by EUA Power (collectively, "Notes"). EUA Power is in default under the indenture pursuant to which the Notes were issued. The Notes represent 100% of the secured claims against EUA Power and 93% of all claims listed by EUA Power.

Under the proposed Plan, all existing equity securities of EUA Power and certain contingent interest certificates issued by EUA Power in connection with the Series A and Series B Notes would be extinguished.[5] The reorganized EUA Power would then issue a single class of common stock [6] in exchange for the secured debt held by the bondholders equal to each bondholder's proportionate share of 95% of the new securities; [7] all unsecured claims, including deficiency claims of the bondholders, in an amount in excess of $25,000 ("Class Three Claims") would be converted into the remaining 5% of the new securities.[8] The taxing authorities with claims for unpaid real property taxes would receive payment in three equal annual installments of principal and interest, having a present value, as of the date the Plan becomes effective ("Effective Date"),[9] of not less than the value of the taxing authority's lien on EUA Power's interest in the property which secures such claims. The holders of unsecured claims of $25,000 or less would be paid 50% of the allowed amount of their claims in cash. The Plan contemplates that reorganized EUA Power would enter into the Plan Facility prior to the Effective Date. In addition, the Plan provides that reorganized EUA Power will retain a preference claim against EUA, as well as any other claims, including claims under a tax allocation agreement,[10] which EUA Power or its creditors may have against EUA or others for the benefit of reorganized EUA Power.[11] Upon consummation of the Plan, reorganized EUA Power will replace EUA Power as owner of the Seabrook interest.

After the confirmation of the Plan by the Bankruptcy Court, the Committee expects to enter into a commitment letter for the syndication of a secured revolving credit facility to finance the Plan.[12] The Plan Facility would be in a principal amount of not less than $45 million and not more than $60 million. It is anticipated that reorganized EUA Power would issue warrants to the participants in the Plan Facility in the amount of the economic value of up to 15% of the equity interests in reorganized EUA Power on a fully diluted basis, excluding, however, any value attributable to recoveries that may be received as a result of any litigations. Taking into account the various anticipated fees (including, (1) an initial commitment fee of $350,000, (2) a commitment fee, equal to 0.5% per annum of the average daily unused amount of the Plan Facility, (3) an agent's fee of $75,000 per annum, (4) a facility fee of $1.35 million, and (5) the expenses of professionals incurred in conducting due diligence for and documenting the Plan Facility) in connection with the Plan Facility and an interest rate at a floating rate of up to prime plus 7% per annum (with a minimum rate of 13% to 14%), the effective interest rate, with the base rate of 13.5%, is expected to be approximately 16.2% per annum.[13] It is expected that the Plan Facility will have a final maturity of no later than December 1995 and will be secured by a first priority lien and mortgage on all assets of reorganized EUA Power. In addition, EUA Power may be required to indemnify the lender and certain other indemnitees against any liabilities arising out of a commitment letter to provide the Plan Facility.

The Committee states that it will use its best efforts to obtain a Plan Facility on substantially the terms stated above. The Plan will not become effective unless such Plan Facility is obtained. In the event the Committee is unable to enter into a Plan Facility on above terms and the Committee deems it necessary to enter into a facility on terms materially less favorable than above terms, the Plan authorizes the Committee to enter into such other facility, subject to the approval of the Bankruptcy Court and any regulatory bodies with jurisdiction under applicable law, including this Commission.

In the meantime, EUA Power will continue to be funded by two of the joint owners of Seabrook, namely Connecticut Light and Power Company (CL&P) and United Illuminating Company ("UI"). By order dated August 21, 1992 (HCAR No. 25609), the Commission authorized CL&P, UI and EUA Power to extend the borrowing period to February 28, 1994 and to increase the borrowing amount from $15 million to $22 million ("DIP Financing").

In addition, the Plan provides that, during the period between confirmation of the Plan and the Effective Date, EUA Power must employ agents designated by the Committee to act as (1) a marketing agent to maximize the value of reorganized EUA Power's assets, and (2) a managing agent to manage and maintain EUA Power's business, pursuant to written agreements to be approved by the Bankruptcy Court and any regulatory body with jurisdiction under applicable law, including this Commission.[14] On the Effective Date, all directors of EUA Power shall be deemed to have resigned without any further action on the part of any person and the Committee shall appoint the new board of directors of reorganized EUA Power.

Upon consummation of the Plan, any bondholder that receives 10% or more of the new securities would become a "holding company" within the meaning of section 2(a)(7). The application-declaration states that any such bondholder will file a separate application prior to the Effective Date for an order under section 3(a)(4) exempting such bondholder from all provisions of the Act, except section 9(a)(2). The Plan will not become effective if such exemption is not granted by the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20964 Filed 8-27-92; 11:59 am]

BILLING CODE 8010-01-M

[4] EUA Power financed its acquisition of its interest in Seabrook through the issuance and sale of $180 million of 17.5% secured notes ("Series A Notes") due November 15, 1991 pursuant to an indenture (HCAR Nos. 24244 and 24245; both dated November 21, 1986). As a result of its inability to pay the interest due on these notes, EUA Power exchanged and retired the Series A Notes for a new series of secured notes (Series B Notes") (HCAR No. 24641; May 12, 1988). The Series B Notes provide for the payment of interest thereunder through issuance of up to $100 million in additional secured notes ("Series C Notes") instead of cash. EUA Power has issued to date approximately $100 million of the Series C Notes (HCAR No. 24879; May 5, 1989).

[5] Rule 64 states that "[a]ny application for approval of a plan of reorganization under section 11, or otherwise, shall be deemed to include all applications and declarations under the Act which would otherwise be required as to any action necessary to consummate such plan." The Plan contemplates the cancellation of existing equity securities currently held by EUA under section 12(c) and the sale of utility assets by EUA to the bondholders under section 12(d). The Committee requests that the Commission address these transactions under rule 64 notwithstanding that EUA has not requested approval under sections 12(c) and 12(d).

[6] It is contemplated that a total of 12 million shares of common stock, at $0.01 per value, will be issued by reorganized EUA Power and that such securities, when issued, will be fully paid and non-assessable. Reorganized EUA Power will use its good faith efforts to have the new securities listed for trading on a national stock exchange.

[7] As a condition to participation under the Plan a holder of the Note that desires to receive its proportionate share of the new securities must surrender such Note.

[8] In each instance, these equity percentages would be calculated prior to any dilution resulting from the issuance of any securities such as the warrants that may be issued as part of a financing facility ("Plan Facility") under the Plan.

[9] The Plan, by its terms, will not become effective until certain conditions are satisfied or waived. The Effective Date will not be later than August 26, 1993 unless further extended by the Committee.

[10] EUA Power is a party to certain federal income tax allocation agreements between EUA and its subsidiary companies pursuant to rule 45(c). The Committee states that it believes that EUA Power is entitled to receive certain tax benefit payments, although the amount cannot be determined presently, under the tax allocation agreements. However, three of EUA's subsidiaries have filed proofs of claim in the amount of $8,176,759 against EUA Power claiming that they overpaid EUA Power for tax benefits due to EUA Power for the years 1988 and 1989.

[11] The preference suit against EUA in the amount of approximately $38 million was filed on May 30, 1991, contending that one of the factors leading to EUA Power's bankruptcy was its preferential transfers to EUA. In addition, the Committee sought leave of the Bankruptcy Court to file an adversary complaint on behalf of EUA Power and its creditors against EUA and others for a variety of tort, contract and bankruptcy law claims. The proceeds of such claims, if successful and depending on when such proceeds are received, will be used to pay down the Plan Facility or the DIP Financing (defined hereinafter) or for distribution to the holders of the Class Three Claims, or for working capital of reorganized EUA Power.

[12] The Committee obtained a commitment letter ("Shearson Commitment") from Shearson Lehman Brothers Inc. ("Shearson") to provide the Plan Facility. However, at a hearing on July 21, 1992, the Bankruptcy Court declined to approve entry into the Shearson Commitment apart from the confirmation process so that it will not be possible to obtain a committed Plan Facility prior to the confirmation of the Plan. The Shearson Commitment expired on July 22, 1992. The Committee states that, in order to ensure impartial, arms-length negotiations, it established a special subcommittee to negotiate with Shearson because Shearson is a member of the Committee.

[13] This figure does not include the economic value of any warrants.

[14] Such services are currently performed by EUA Service Corp., an affiliate of EUA Power, pursuant to a written service agreement which may be terminated by either party on thirty days notice.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 21, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48299.
Date filed: August 17, 1992.
Parties: Members of the International Air Transport Association.
Subject: TC3 Reso/C 0077 dated August r, 1992 TC3 (except to/from UST) Revalidation Of Cargo Resolutions.
Proposed Effective Date: October 1, 1992.

Docket Number: 48302.
Date filed: August 19, 1992.
Parties: Members of the International Air Transport Association.
Subject: Comp Mail Vote 589. Amend minimum cargo charges from China (except to/from US/UST). *Proposed Effective Date:* September 1, 1992.

Docket Number: 48303.
Date filed: August 19, 1992.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 588—Reso 015h. TC12 USA-UK Add-ons. *Proposed Effective Date:* October 1, 1992.

Docket Number: 48304.
Date filed: August 19, 1992.
Parties: Members of the International Air Transport Association.
Subject: CAC/Reso/172 dated July 9, 1992. Mail Vote A083—Enlargement of area covered by Reso 805 (Europe). *Proposed Effective Date:* September 1, 1992.

Docket Number: 48309.
Date filed: August 21, 1992.
Parties: Members of the International Air Transport Association.
Subject: Comp Mail Vote 591—Resolution 011. Mileages & Routes for Tariff Purposes. *Proposed Effective Date:* November 1, 1992.

Docket Number: 48310.
Date filed: August 21, 1992.
Parties: Members of the International Air Transport Association.
Subject: Resolution 033F. Cargo Rates/Charges From Lebanon. *Proposed Effective Date:* October 1, 1992.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-20836 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 21, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48301.
Date filed: August 18, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 15, 1992.
Description: Application of American Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for amendment of its certificate of public convenience and necessity for Route 389 so as to change segment (4), which was added by Order 90-12-12, December 6, 1990, to read as follows: "From a point or points in the United States, via intermediate points, to Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo Horizonte, and Salvador, Brazil, and beyond Brazil to Argentina, Uruguay, Paraguay, and Chile."

Docket Number: 48305.
Date filed: August 19, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 16, 1992.
Description: Application of United Air Lines, Inc., pursuant to section 401 and subpart Q of the Regulations applies for a certificate of public convenience and necessity to authorize service between a point or points in the United States and a point or points in South Africa, via Cape Verde or other intermediate points.

Docket Number: 48307.
Date filed: August 20, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 17, 1992.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for a new or amended certificate of public convenience and necessity to permit Delta to provide foreign air transportation between the United States and Venezuela.

Docket Number: 48311.
Date filed: August 21, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1992.
Description: Application of Bahamasair Holdings Limited, pursuant to sections 402 of the Act and subpart Q of the Regulations, for renewal of the

foreign air carrier permit which authorizes Bahamasair to engage in the foreign air transportation of mail, passengers, and property between any point in the Commonwealth of The Bahamas and coterminal points Miami, Orlando, Palm Beach, Fort Lauderdale, and Tampa. Bahamasair also seeks amendment of its current permit by the deletion of the coterminal points Atlanta, Chicago, Detroit, Houston, Dallas, Newark, New Orleans, Memphis, Nashville and Charlotte.

Docket Number: 48312.
Date filed: August 12, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1992.
Description: Application of United Air Lines Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for renewal and amendment of its Experimental Certificate of Public Convenience and Necessity for Route 248 authorizing service between the U.S. and the People's Republic of China (P.R.C.). United requests amendment of that certificate to include additional U.S. and P.R.C. gateways on its route pursuant to the recent amendments to the bilateral agreement.

Docket Number: 48314.
Date filed: August 21, 1992.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 18, 1992.
Description: Application of Balkan Bulgarian Airlines, pursuant to section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit authorizing it to engage in foreign scheduled air transportation of persons, property and mail as follows: From a point or points in Bulgaria to New York, New York, United States of America.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 92-20837 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-62-M

Order Adjusting International Cargo Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 92-6-29, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning August 1, 1992, we have projected non-fuel costs based on the year ended March 31, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92-8-39 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic	1.3101
Western Hemisphere	1.2045
Pacific	1.6420

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation:
August 24, 1992.

Patrick V. Murphy,
Deputy Assistant Secretary for Policy and International Affairs.
[FR Doc. 92-20834 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-62-M

[Docket No. 37554]

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 92-6-4 established the currently effective two-month SFFL applicable through July 31, 1992.

In establishing the SFFL for the two-month period beginning August 1, 1992, we have projected non-fuel costs based on the year ended March 31, 1992 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 92-8-40 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic	1.5668
Latin America	1.4394
Pacific	2.1020
Canada	1.4271

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation:
August 24, 1992.

Patrick V. Murphy,
Deputy Assistant Secretary for Policy and International Affairs.
[FR Doc. 92-20832 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-62-M

[Order 92-8-43; Docket 48232]

Proposed Issuance of a Certificate Authorizing Bellair, Inc., to Engage in Limited Interstate and Overseas Air Transportation for a Term of One Year

AGENCY: Department of Transportation.
ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Bellair, Inc., fit, willing, and able to engage in limited interstate and overseas air transportation of persons, property, and mail for a term of one year and award it a certificate of public convenience and necessity to do so.

DATES: Persons wishing to file objections should do so no later than September 3, 1992.

ADDRESSES: Objections and answers should be filed in Docket 48232 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served on all parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P-56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: August 24, 1992.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.
[FR Doc. 92-20833 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-62-M

[Notice 92-12]

Aircraft Accessibility Federal Advisory Committee

AGENCY: Department of Transportation (DOT), Office of the Secretary.
ACTION: Notice; Scheduled of committee meeting.

SUMMARY: The Department of Transportation gives notice, as required by the Federal Advisory Committee Act (Pub. L. 92-463), of the time and location of the second meeting of the Aircraft Accessibility Federal Advisory Committee.

DATES: The second meeting of this Committee is scheduled for Wednesday, September 16, and Thursday, September 17, 1992, in Conference Room 10234 of the Department of Transportation (Nassif Building), 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Nancy Ebersole, Senior Program Analyst, Department of Transportation, Office of Transportation Regulatory Affairs, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 366-4864; or
Ira Laster, Jr., Executive Director, Aircraft Accessibility Federal Advisory Committee, Department of Transportation, Office of Transportation Regulatory Affairs, 400 7th Street, SW., Washington, DC 20590, Telephone (202) 366-4859.

I. Supplementary Information

The purpose of the Aircraft Accessibility Federal Advisory Committee is to advise the Secretary of Transportation on issues necessary for further rulemaking to implement the Air Carrier Access Act of 1986. The Committee will advise the Department on matters such as:

1. The degree to which it is possible to design for placement in a narrow-body aircraft a toilet that will accommodate persons with disabilities, including those who use wheelchairs;
2. For the various cabin configurations of different aircraft types under 200 seats, what physical layouts are possible to offer passengers at least visual privacy, and the ability to maneuver in the lavatories?
3. What physical layouts are possible which would provide disabled passengers using an on-board chair full maneuvering room inside the lavatory? What layouts would provide partial accessibility (e.g., a privacy area curtain outside the lavatory)?
4. Which designs can be accomplished without the loss of revenue seats? Which designs can be accomplished with only a minimal loss of revenue seats?
5. How would such arrangements affect passenger traffic within the cabin, flight attendant duties in galleys, and the passenger ease of access to the remaining lavatories?
6. How might such arrangements impair safety, if at all?
7. In small planes, where can the on-board chairs be stored?
8. Down to what size airplanes and for what types can accessible lavatory requirements reasonably be imposed?
9. Should any requirements for accessible lavatories be made a function of stage length (i.e., range of distances the aircraft usually covers during a flight segment) instead of airplane size, and, if so, for what stage lengths should such requirements be imposed? How would this approach alter air carriers' operational flexibility?

II. Background

Concurrent with the March 1990 publication of DOT's Air Carrier Access Act rule, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) seeking comments on specifications for accessible lavatories in narrow-body aircraft. The ANPRM stated that if sufficient information was not received, the Department would bring together aircraft manufacturers, disabled consumers, air carriers, and flight duty personnel to exchange information from which to frame a regulatory requirement.

Comments to the Docket in response to the 1990 ANPRM revealed little agreement among commenters concerning the degree of accessibility that can be achieved in lavatories on narrow-body aircraft. This is a complex, controversial question best answered through structured dialogue between aircraft manufacturers, air carriers, consumers with disabilities, and flight duty personnel.

The Department will use advice provided by the Committee to develop a notice of proposed rulemaking and a final rule.

Issued on August 24, 1992.

Jeffrey N. Shane,
Assistant Secretary for Policy and International Affairs.
[FR Doc. 92-20835 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-62-M

Federal Aviation Administration

Proposed Advisory Circular 21-SQA; Quality Assurance of Software Used in Aircraft or Related Products

AGENCY: Federal Aviation Administration, DOT.
ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21-SQA, Quality Assurance of Software Used in Aircraft or Related Products. The proposed AC 21-SQA, provides information and guidance concerning the production of software used in type certificated aircraft or related products (airborne software). This AC is an acceptable means, but not the only means of demonstrating compliance with the requirements of Federal Aviation Regulations Part 21, Certification Procedures for Products and Parts.

DATES: Comments submitted must identify the proposed AC 21-SQA, File Number PO-220-0011, and be received by October 30, 1992.

ADDRESSES: Copies of the proposed AC 21-SQA can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:
Kim L Wolfley, Federal Aviation Administration, Production Certification Branch, AIR-220, Aircraft Manufacturing Division, room 333, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-7146.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21-SQA provides information and guidance concerning the production of software used in type certificated aircraft or related products (airborne software).

Comments Invited

Interested persons are invited to comment on the proposed AC 21-SQA listed in this notice by submitting such written data, views, or arguments as they desire to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21-SQA may be examined, before and after the comment closing date in room 333, Federal Aviation Administration Headquarters Building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Issued in Washington, DC, on August 28, 1992.

Dana D. Lakeman,
Assistant Manager, Aircraft Manufacturing Division.
[FR Doc. 92-20869 Filed 8-28-92; 8:45 am]
BILLING CODE 4910-13-M

Approval of Noise Compatibility Program for Ryan Airfield, Tucson, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Tucson Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 4, 1992, the Assistant Administrator for Airports approved the Noise Compatibility Program for Ryan Airfield. Three (3) of the eight (8) recommendations of the program were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Ryan Airfield noise compatibility program is August 4, 1992.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Airports Division, AWP–611.2, Western-Pacific Region, Federal Aviation Administration, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 310/297–1534. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Ryan Airfield, effective August 4, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an the FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The Tucson Airport Authority submitted to the FAA on November 22, 1989, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from September 1988 through August 1990. The Noise Exposure Maps were determined by the FAA to be in compliance with applicable requirements on April 5, 1990. Notice of this determination was published in the **Federal Register** on May 1, 1990.

The study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to, or beyond, the year 1994. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on April 9, 1992 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained eight (8) proposed actions for noise abatement and mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective August 4, 1992.

Outright approval was granted for three (3) Continuing Program Measures: Noise Compatibility Plan review and evaluation; Noise Control Updating; and Complaint Response. Four (4) Land Use Management measures were disapproved for the purposes of part 150: Pima County to maintain existing zoning designations consistent with Black Wash Drainage Analysis; Pima County to Adopt the recommendations of the Black Wash Drainage Analysis; Pima County to Amend Airport Environs Zoning; and Pima County to Amend the Southwest Area plan to reflect the Noise Compatibility Program and Airport Master Plan. One (1) Noise Abatement Measure was disapproved for the purposes of part 150 pending submission of additional information: Continue existing Preferential Runway Use Program.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on August 4, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Tucson Airport Authority.

Issued in Hawthorne, California on August 18, 1992.

Ellsworth L. Chan,

Acting Manager, Airports Division, AWP–600 Western-Pacific Region.

[FR Doc. 92–20868 Filed 8–28–92; 8:45 am]

BILLING CODE 4910–13–M

Approval of Noise Compatibility Program for Tucson International Airport, Tucson, AZ

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Tucson Airport Authority under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On August 7, 1992, the Assistant Administrator for Airports approved the Noise Compatibility Program for Tucson International Airport. All of the recommendations of the program involving land use were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Tucson International Airport noise compatibility program is August 7, 1992.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, Airport Planner, Airports Division, AWP–611.2, Western-Pacific Region, Federal Aviation Administration, Mailing Address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007, Telephone: 310/297–1534. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Tucson International Airport, effective August 7, 1992.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Hawthorne, California.

The Tucson Airport Authority submitted to the FAA on February 6, 1990, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from September 1988 through April 1991. The Noise Exposure Maps were determined by the FAA to be in compliance with applicable requirements on May 11, 1990. Notice of this determination was published in the **Federal Register** on May 22, 1990.

The study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to, or beyond, the year 1992. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on April 11, 1992 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 18 proposed actions for noise abatement and mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Assistant Administrator for Airports effective August 7, 1992.

Outright approval was granted for all six (6) Noise Abatement Measures: Informal nighttime preferential runway use policy, aircraft engine runup restriction, development of an agreement with the Arizona Air National Guard for limiting aircraft operations and use of after-burners, encouragement of the use of Stage 3 aircraft at the airport, maintaining airport noise abatement staff and the formation of an advisory committee to assist the Airport Authority in the implementation of the NCP. Outright approval of all 12 Noise Mitigation Measures was also granted: Acquisition and redevelopment of mobile home sites within aircraft noise exposure of DNL 70+; Develop Phase I of a single-family residential sound insulation program; Establish and conduct a single-family

residential sales assistance program; Purchase avigation easements for on noise-sensitive uses that are not suitable for sound insulation, or for which the property owner does not wish to participate in other remedial programs; Acquisition of undeveloped land southeast of the airport within DNL 65+; Work with the City of Tucson and San Xavier District to adopt land use plans related to aircraft noise exposure; Request Pima County inform the Airport Authority of plans to develop property within the 65 DNL contour southeast of the airport and request the State of Arizona notify the Airport Authority of plans to sell trust lands in this area; Work with the City of Tucson and Pima County to update city and county noise control/land use overlay maps; Work with the City of Tucson and Pima County to require dedication of avigation easements for all construction within DNL 65+ noise contour; Work with the City of Tucson to adopt a fair disclosure ordinance; Meet with Federal Housing Administration and Veterans Administration to ensure national standards and policies concerning noise exposure are being followed.

These determinations are set forth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on August 7, 1992. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Tucson Airport Authority.

Issued in Hawthorne, California on August 14, 1992.

Herman C. Bliss,

Manager, Airports Division, AWP-600, Western-Pacific Region.

[FR Doc. 92-20867 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-13-M

Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Air Carrier Operations Subcommittee of the Aviation Rulemaking Advisory Committee.

DATES: The meeting will be held on September 16, 1992, at 9 a.m.

ADDRESSES: The meeting will be held in the Department of Transportation, Nassif Building, room 3200-3202, 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Air Carrier Operations Subcommittee to be held on September 16, 1992, at Department of Transportation, Nassif Building, room 3200-3202, 400 7th Street, SW., Washington, DC. The agenda for this meeting will include progress reports from the Fuel Requirements Working Group, Wet Leasing Working Group, Autopilot Engagement Requirements Working Group, Flight Crewmember Flight/Duty/Rest Requirements Working Group, and Controlled Rest on the Flight Deck Working Group. Each Working Group Chair will report on the progress of the working group. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington,DC, on August 24, 1992.

David S. Potter,

Executive Director, Air Carrier Operations Subcommittee, Aviation Rulemaking Advisory Committee.

[FR Doc. 92-20863 Filed 8-28-92; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Privacy Act of 1974; New System of Records

AGENCY: Bureau of Engraving and Printing, Treasury.

ACTION: Notice of a proposed new Privacy Act system of records.

SUMMARY: The Bureau of Engraving and Printing (BEP) proposed to add one new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). The Automated Mutilated Currency Tracking System is being established to: (1) Maintain information on mutilated currency claims; (2) follow-up cases that have been submitted for reimbursement; and (3) keep track of both the amount and recipient of individual payments.

DATES: Comments must be received no later than September 30, 1992. The new system of records will be effective October 30, 1992, unless BEP receives comments on the new system of records which would result in a contrary determination.

ADDRESSES: Please submit comments to the Disclosure Officer, Bureau of Engraving and Printing, Room 321-12A, 14th and C Streets, SW, Washington, DC 20228

FOR FURTHER INFORMATION CONTACT: Lawrence F. Zenker, Disclosure Officer, Bureau of Engraving and Printing, Room 321-12A, 14th and C Streets, SW, Washington, DC 20228, Phone: (202) 874-2687.

SUPPLEMENTARY INFORMATION: The new system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Operations in the House of Representatives, the Committee on Governmental Affairs in the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of appendix I to OMB Circular A-130, "Federal Responsibilities for Maintaining Records About Individuals," dated December 12, 1985 (50 FR 52730, dated December 24, 1985).

Treasury/BEP .046

SYSTEM NAME:

Automated Mutilated Currency Tracking Systems—Treasury/BEP.

SYSTEM LOCATION:

Bureau of Engraving and Printing, 14th and C Streets, SW, Washington, DC 20228.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and financial institutions sending in mutilated paper currency claims.

CATEGORIES OF RECORDS IN THE SYSTEM:

Mutilated currency claimants' names, addresses, company names, amount of claim, amount paid, types of currency, and condition of currency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

The purpose of the Automated Mutilated Currency Tracking System is to maintain historical information and to respond to claimants' inquiries, e.g., non-receipt of reimbursement, status of case, etc.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in the records may be used to: (1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; (2) disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit; (3) disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings; (4) provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains; (5) provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings; (6) provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114; (7) provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records consist of paper records maintained in file folders and records in electronic media.

RETRIEVABILITY:

By claimant name, case number, address or registered mail number.

SAFEGUARDS:

Access is limited to those specific employees who process the mutilated currency cases, prepare payment, research inquiries or maintain the computer system. In addition, files and computer data are maintained in a secured area. Access to electronic records is by password.

RETENTION AND DISPOSAL:

Active claimant files are maintained for two years. Inactive files are maintained for seven years. After the seven years, the files are purged from the system and then destroyed. (Inactive files are those for which final payments have been made.)

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Office of Currency Standards, Bureau of Engraving and Printing, 14th and C Streets, SW., Room 344A, Washington, DC. 20228.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, gain access to the records, or contest the contents of any records maintained in this system may inquire in accordance with instructions appearing in 31 CFR part 1, subpart C, appendix F. Address inquiries to Disclosure Officer, Bureau of Engraving and Printing, 14th and C Streets, SW., Washington, DC 20228.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Individuals, banking institutions and BEP employees.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Dated: August 21, 1992.

Deborah M. Witchey,

Deputy Assistant Secretary (Administration).

[FR Doc. 92-20876 Filed 8-28-92; 8:45 am]

BILLING CODE 4840-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Masterworks From the Musee Des Beaux-Arts, Lille," (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about October 27, 1992, to on or about January 17, 1993, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register**.

Dated: August 25, 1992.

Alberto J. Mora,

General Counsel.

[FR Doc. 92-20846 Filed 8-28-92; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 57, No. 169
Monday, August 31, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, September 16, 1992, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Ave., NW, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: August 25, 1992.

M.J. Brodie,

Executive Director.

[FR Doc. 92-20956 Filed 8-27-92; 10:29 am]

BILLING CODE 7630-01-M

Corrections

Federal Register
Vol. 57, No. 169
Monday, August 31, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Proposed Additions and Deletions

Correction

In notice document 92-20064 beginning on page 37957 in the issue of Friday, August 21, 1992, make the following correction on page 37957, in the **COMMENTS MUST BE RECEIVED ON OR BEFORE:**, "December 21, 1992" should read "September 21, 1992."

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

Defense Information Systems Agency

Membership of the Defense Information Systems Agency Senior Executive Service (SES) Performance Review Board (PRB)

Correction

In notice document 92-19120 appearing on page 36073 in the issue of Wednesday, August 12, 1992, under **SUPPLEMENTARY INFORMATION**, the list of names following "James A. Rhoads, Chief, Civilian Personnel Division", should appear as set forth below.

Michael F. Slawson, Director, Center for Agency Services.

George J. Hoffman, Comptroller.

Benham E. Morriss, Deputy Manager, National Communications System.

E. William Harding, Director, Joint Data Systems Support Center.

David T. Signori, Jr., Associate Director.

John Hedrick, Director, Tactical Command, Control and Communications Agency.

Dennis W. Groh, Deputy Director, Acquisition Management.

Denis Brown, Director, Center for Information Management.

Clyde Jeffcoat, Director, Defense Information Technology Services Organization.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

[RIN 1010-AB81]

Oil Spill Prevention and Response for Offshore Facilities Including State Submerged Lands and Pipelines

Correction

In proposed rule document 92-19153 beginning on page 36032 in the issue of Wednesday, August 12, 1992, make the following correction:

On page 36032, in the third column, in the second full paragraph, in the second line "blesses" should read "lessees".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

RIN 3150-AE20

Revision of Fee Schedules; 100% Fee Recovery, FY 1992

Correction

In rule document 92-17027 beginning on page 32691 in the issue of Thursday, July 23, 1992, make the following corrections:

1. On page 32694, in the third column, in the first full paragraph, in the sixth line, "1UF_6" should read "UF_6".

2. On page 32701, in Table IV, remove the "Note:" appearing between footnotes 1 and 2 and insert the following information at the end of Table IV.

TOTAL BASE FEE AMOUNT ALLOCATED TO POWER REACTORS	$399.8 million [2]
LESS ESTIMATED PART 170 POWER REACTOR FEES	90.2 million
PART 171 BASE FEES FOR OPERATING POWER REACTORS	$309.6 million

3. On page 32703, in Table V, in the 3d column, in the 15th line, "2,810,D00" should read "2,810,000".

4. On page 32704, in Table VI, in the 2d and 3d columns, in the 11th line, "2,154" and "53.4" should appear in the 4th and 5th columns, respectively.

§ 171.16 [Corrected]

5. On page 32715, in § 171.16(d), in the table, in 3C, in the second line, "radiopharmaceuticals" was misspelled.#

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[T.D. 8421]

RIN 1545-AP48

Gasoline Excise Tax

Correction

In rule document 92-16561 beginning on page 32424 in the issue of Wednesday, July 22, 1992, make the following corrections:

1. On page 32424, in the second column, under Background, in the second paragraph, in the fourth line, "(26 CFR part 38)" should read "(26 CFR part 48)".

2. On page 32425, in the third column, in the third line from the top of the page, "to by properly" should read "to be properly".

3. On page 32427, in the third column, under "The Final Regulations":

a. In the first paragraph, in the eighth line, "on the same" should read "on that same".

b. In the second paragraph, in the second line, "set forth" should read "sets forth".

4. On page 32428, in the first column, in the fourth full paragraph, in the next to last line, "provided" should read "provide".

§ 48.4081-4 [Corrected]

5. On page 32432, in the second column, under § 48.4081-4(b), in the third line, "*gasoline)*—" should read "*gasoline*—".

6. On page 32433, in the first column, under § 48.4081-4(e)(3), in the third line, "Blendstock" should read "Blendstocks".

§ 48.4081-5 [Corrected]

7. On page 32433, in the second column, under § 48.4081-5(a), in the first line, "set forth" should read "sets forth".

§ 48.4081-6 [Corrected]

8. On page 32434, in the 1st column, under § 48.4081-6(b)(2)(i), in the 13th line from the end, "blended" should read "blender".

9. On page 32435, in the third column, under § 48.4081-6(f)(4) *Example 2,* in the fifth line from the top of the page, "gasohol into the" should read "gasohol into a".

10. On the same page, in the same column, under § 48.4081-6(g)(1)(ii), in the second line, after "at the time", "the " should be deleted.

11. On page 32436, in the first column, under § 48.4081-6(g)(2)(iii), in the first line, "The" should have been capitalized.

BILLING CODE 1505-01-D

federal register

Monday
August 31, 1992

Part II

Department of Energy

Office of Conservation and Renewable Energy

Draft Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings; Request for Public Comments and Announcement of Public Hearings; Notice

VOL 57 SS 169 AG 31 1992 UMI

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

[Docket No. CAS-RM-79-112-A]

Draft Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings; Request for Public Comments and Announcement of Public Hearings

AGENCY: Department of Energy.

ACTION: Notice of Draft Energy Conservation Interim Standards, Request for Public Comments, and Announcement of Public Hearings

SUMMARY: The Department of Energy today is publishing for public comment draft energy conservation interim voluntary performance standards for new non-Federal residential buildings pursuant to the Energy Conservation Standards for New Buildings Act of 1976, as amended. 42 U.S.C. 6831–6840, *et seq*. The draft interim standards published today have been prepared for the voluntary adoption by non-Federal standard and code entities and Federal agencies which provide Federally-subsidized loans and loan guarantees to home buyers to use in establishing energy conservation buildings standards and codes for new non-Federal residential buildings including single-family, multi-family low-rise, and manufactured (mobile homes) housing. The draft interim standards also provide building standard and code jurisdictions with a recommended methodology for establishing energy consumption goals for the design of new non-Federal residential buildings in locations throughout the United States. The methodology uses a computerized calculation procedure provided in a micro-computer program called Automated Residential Energy Standards (ARES). The draft interim standards also provide certain recommended procedures for users, such as State and local building code jurisdictions and Federal agencies, to impose on applicants. These procedures would require demonstration in any one of three ways that the design of a new non-Federal residential building is as energy-conserving as the energy consumption goal established for the design.

Today's draft interim standards are presented in a format commonly used by the private sector standards-setting organizations instead of that used for a Federal regulation. This format will facilitate acceptance by the private sector.

DATES: Written comments (8 copies) on the proposed interim rule must be received by the Department by November 30, 1992.

Public hearings will be held in Atlanta, Georgia on October 19, 1992 at 1 p.m.; San Francisco, California on October 21, 1992 at 9:30 a.m.; Chicago, Illinois on October 23, 1992 at 9:30 a.m.; and Washington, DC on October 27, 1992 at 9:30 a.m.

Requests to speak at the public hearings in Georgia, California, and Illinois must be received by October 9, 1992. Requests to speak at the Washington, DC hearing must be received by October 26, 1992.

ADDRESSES: All written comments (8 copies), requests to speak at the public Hearings, and requests for the supporting documentation are to be submitted to:

U.S. Department of Energy, CE–90, room 6B–025, Hearings & Dockets, Docket Number CAS–RM–79–112–A, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8757.

The public hearings will be will be held at the following locations:

Tishman Building, 525 Market Street (at 1st Street), Sierra Room, 30th Floor, San Francisco, California.

Insurance Exchange Building, 175 West Jackson (at Wells), room 1658, 16th Floor, Chicago, Illinois.

Peachtree Summit Building, 410 West Peachtree Street (at Ralph McGill Street), Conference Room B, 10th Floor, Atlanta, Georgia.

U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Room 1E–245 (1st Floor, E Corridor), Washington, DC.

Copies of the computer program, technical support documents, other supporting documentation, transcripts of the public hearings, individual oral statements, and the written public comments received may be viewed at the DOE Freedom of Information Reading Room, room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020, 9 a.m. – 4 p.m.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Turchen or Stephen P. Walder, U.S. Department of Energy, Office of Conservation and Renewable Energy, CE–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6262 or 586–0517.

Neal J. Strauss, Esq., or Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, GC–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Introduction
A. Legislative Requirements and History
B. Background
II. The Research and Development of the Draft Interim Standards
A. Equivalency Among Energy Types
B. Mandatory and Minimum Requirements
C. Domestic Hot Water
D. Building Types
E. Energy Analysis Tool for Development of the Draft Standards
F. Energy Data Base
G. Adjustment of Energy Data for Specific Locations
H. Thermal Mass
I. Infiltration
J. Windows
K. Foundations
L. Heat Pump Performance by Location
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I. Introduction

A. Legislative Requirements and History

The Energy Conservation Standards for New Buildings Act of 1976, as amended (Act), 42 U.S.C. 6831 *et seq*, requires the Department of Energy (Department or DOE) to issue "voluntary performance standards" for the design of new commercial and residential buildings. A Federal agency is required to comply with the standards for the design of any new "Federal building." 42 U.S.C. 6835. For non-Federal buildings, compliance is voluntary; the standards serve only as voluntary guidelines intended for adoption as part of existing building code and other construction control mechanisms. A "Federal building" is any building to be constructed by, or for the use of, any Federal agency which is not legally subject to State or local building codes or similar requirements. 42 U.S.C. 6832(6). "Federal agency" is defined to include any Executive agency and the United States Postal Service. 42 U.S.C. 6832(5).

As originally enacted, the Act required the Department of Housing and Urban Development (HUD) to develop, promulgate, implement, and enforce compliance with the performance standards. On August 4, 1977, the Act was amended by Section 304(a) of the Department of Energy Organization Act, Public Law 95–91, which transferred from HUD to DOE the responsibility to develop and promulgate the standards.

On November 28, 1979, DOE published proposed performance standards for new buildings in the **Federal Register**, 44 FR 68120 (hereafter referred to as the November 1979 proposal). The notice was controversial and generated extensive comments.

Less than a year after DOE published the November 1979 proposal, the Act was again amended by Section 328 of the Housing and Community Development Act of 1980, Public Law 96–399. This amendment requires that DOE first promulgate interim standards and then final standards. Additionally, the statute requires DOE to conduct demonstration projects in at least two geographical areas of the country and to report to Congress on the results. 42 U.S.C. 6833(a)(2). The demonstration projects are for the purpose of evaluating the interim standards and are to be completed prior to preparation and adoption of the final standards.

In August 1981, Congress again amended the Act. Subtitle D of Title 10 of the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, amended the Act by: Establishing the term "voluntary performance standards"; eliminating the provision for a possible statutory sanction for non-compliance; and adding a provision that, except for Federal buildings, "voluntary standards will be developed solely as guidelines to provide technical assistance for the design and construction of energy efficient buildings." 42 U.S.C. 6833(a)(4). The term "voluntary performance standards" was defined to mean "an energy consumption goal or goals to be met without specification of the methods, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary." 42 U.S.C. 6832(9).

The legislative changes enacted since 1976 required DOE to make fundamental changes to the compliance aspects of the standard regulatory approach which Congress had earlier directed the Department to take. DOE retains the responsibility for developing performance standards to achieve the maximum practicable improvements in energy efficiency and use of non-depletable resources for all new buildings. 42 U.S.C. 6831(b)(2). The Department has already published some of the required interim standards.

Mandatory interim energy conservation performance standards for new Federal residential buildings were published on August 25, 1988, at 53 FR 32536, and energy conservation interim voluntary performance standards for new commercial and multi-family high rise buildings were published on January 30, 1989, at 54 FR 4538. Amendments to the Federal residential standards were published on January 31, 1991, at 56 FR 3764.

B. Background

The public comments received in response to publication of DOE's November 1979 proposal demonstrated the need for DOE to revise the scope of the development of energy conservation standards.

The present program, of which the non-Federal residential standard is a part, began with FY 1982 funding and is a redirection of the original effort which created proposed "Building Energy Performance Standards" (BEPS). The original program was directed towards a mandatory national standard for all new buildings in the form of whole building energy budgets expressed in terms of Btu per square foot per year by building type and climate location. The activities since 1982 represent a new approach to the development of standards. The legislative changes, as well as the tenor and volume of comments on the proposed BEPS, convinced DOE that "voluntary standards" would have to be developed within the confines of traditional building industry practice and in simple enough terms to be useable. In addition, it became apparent that if standards were to be adopted by States and local governments, the building industry and code officials needed to be involved from the very beginning.

The current program represents an incremental approach to standards development. First, credible building research and industry-recognized energy analysis tools have been used in the development of the standards so that the basis for the standards is sound. Second, architects, engineers, builders, and code officials have been involved in the process, and they continue to work with the Department on specific issues. Third, the present work does not redo the large amount of underlying research that went into the original program; rather, it uses that information, builds on it, and packages it in a useable form.

The strategy in developing design energy conservation performance standards was to identify the most widely accepted and broadly based standard and build upon it in the development of the DOE standards which meet the legislative requirements set forth in the Act. Standards 90–75 and 90A–180 of the American National Standards Institute (ANSI)/American Society of Heating Refrigeration and Air-Conditioning Engineers (ASHRAE)/Illuminating Engineering Society of North America (IES) best fit these criteria (see National Conference of States on Building Codes and Standards, Inc., January 1984, *Directory and Compilation of Technical and Administrative Requirements in Energy Codes for New Building Construction Used Within the United States*, page V).

The strategy involved a request for competitive proposals for interdisciplinary teams to work under contract in order to assist DOE in the development of standards. DOE gave direction to the development of the draft standards while taking advantage of the experience and insights of the contracted team.

ASHRAE submitted the successful response to a request for proposal on the Voluntary Non-Federal Residential Standards. ASHRAE undertook the work and designated a committee known as Special Project 53 (SP–53) to

fulfill its contract. A Technical Evaluation Committee (TEC) of eight professionals was created by SP-53 which included architects, engineers, manufacturers, and builders.

To ensure that the needs and concerns of building code officials were incorporated into the development of the standards, DOE entered into a contract with the National Conference of States on Building Codes and Standards (NCSBCS) which brought into the process first-hand knowledge of building codes across the United States. NCSBCS's experience covers the range of technical, political, social, and legal issues that surround the implementation of building codes.

In addition to providing immediate feedback and comments during the development of the standards, NCSBCS assembled and maintained informal communication with officials selected from various State, county, and local code jurisdictions. These State officials periodically commented on the work and progress of the standards, provided recommendations for modifications or improvements, and "alpha tested" (operated in a simulated user environment) the recommended software.

DOE consulted with the National Institute of Standards and Technology (NIST) in developing requirements for the voluntary standards. NIST assembled technical input and background data relevant to the standards. This information was considered along with all other data sources in the development of the proposed standards.

In July 1988 the ASHRAE TEC submitted its contracted project recommendations to DOE in the form of four documents designed to provide the technical foundation for the energy standards for new non-Federal residential buildings. These documents were developed over a two-year period by the TEC, under the management of the Department of Energy.

DOE employed its Pacific Northwest Laboratory (PNL) to review the ASHRAE TEC output and perform related research. PNL also published the ASHRAE TEC documents which include:

Pacific Northwest Laboratory, May 1989, *Recommendations for Energy Conservation Standards for New Residential Buildings, Volume 1: Text of the Standards*, Richland, Washington, PNL-6878, Volume 1, UC-95d. (This document contains the text of the recommendations for the residential energy standard. The text contains a microcomputer program used in developing the standards requirements.)

Pacific Northwest Laboratory, May 1989, *Recommendations for Energy Conservation Standards for New Residential Buildings, Volume 2: Automated Residential Energy Standard-User's Guide-Version 1.1*, Richland, Washington, PNL-6878, Volume 2, UC-95d. (This document provides a description of how to use the computer program, recommends methods for obtaining and deriving input data, and provides guidance on the interpretation of the output.)

Pacific Northwest Laboratory, May 1989, *Recommendations for Energy Conservation Standards for New Residential Buildings, Volume 3: Introduction and Background to the Standard Development Effort*, Richland, Washington, PNL-6878, Volume 3, UC-95d. (This document describes how the recommendations were developed and contains the rationale for the general approach and specific criteria contained within the recommendations.)

Pacific Northwest Laboratory, May 1989, *Recommendations for Energy Conservation Standards for New Residential Buildings, Volume 4: Description of the Testing Process*, Richland, Washington, PNL-6878, Volume 4, UC-95d. (This document details how the recommended standards were tested and provides case studies of the possible impact of the standards in selected locations throughout the country. It is supported by a description of the assumptions and input data and an analysis of the results.)

II. The Research and Development of the Draft Interim Standards

The research underlying today's notice was guided by three general principles. First, it was understood that the substantial improvements in energy technology, analysis tools, and the understanding of building energy consumption characteristics offered an opportunity for greatly improving the existing consensus on energy conservation standards. Second, the importance of the cost of energy conservation had to be considered in newer standards because cost effectiveness would be an important consideration for standard and code officials when adopting new standards. Third, there was a great need for flexibility and ease of use by code officials and builders. The research described below reflects these factors and provides the foundation for draft interim standards that are inclusive of new technology and up-to-date design and construction procedures and are cost effective to the new home buyer.

The following is a list of the major objectives of the standard development process.

1. The draft interim standards should provide for multiple compliance paths. With multiple paths, the end user selects from compliance methods that range from a simple, relatively inflexible (highly prescriptive) method to one providing a significant degree of design latitude but requiring a more sophisticated analysis (highly performance oriented).

2. The requirements of the draft interim standards should be dictated by economics, as well as energy. That is, the requirements of the interim standards should be cost-effective for any level of energy conservation and for each location.

3. The draft interim standards should be established using the best energy use analysis procedures available. The energy analysis procedure selected to support standards development should be based on its ability to accurately model residential energy use patterns and the range of building design conditions that it can simulate.

4. The compliance procedures of the draft interim standards should be as simple and concise as possible to make codification easy and expedite design reviews by code officials. Complex standards will not be readily accepted by code agencies and end users. Therefore, DOE took into consideration several aspects of the codes and standards process when outlining the draft interim standards. They include the following:

The *implementation* process (the process a code agency must go through to convert standards to codes);

The *compliance* process (the process end users follow to demonstrate compliance with the code); and

The *enforcement* process (the process the local code agency follows in checking for compliance).

5. The draft interim standards should encourage a wide range of energy conservation measures. For example, energy measures such as innovative glazing should be encouraged by making explicit the procedures for receiving credits for the use of such a measure.

6. The draft interim standards should be comprehensive in coverage. To the extent practicable, the draft interim standards should be designed to equitably address the wide range of common residential unit types, such as site-built single-family and multi-family low-rise homes and manufactured housing (mobile homes); common construction materials, including light frame and heavy mass materials; and the major foundation types such as basements, crawlspaces, and slabs-on-grade.

7. The draft interim standards must be localized, as opposed to national, where appropriate and capable of utilizing local data in forming compliance requirements. The energy analyses and data incorporated in the draft interim standards should be derived from the substantive residential research results that preceded development. However, the compliance requirements of the draft interim standards should be determined using appropriate local data (typically energy and energy conservation measure cost data) provided by the codifying agency. The other information necessary to establish the compliance requirements, and the procedures to demonstrate compliance, should be contained in the interim standards.

8. The draft interim standards should accommodate new technologies. The draft interim standards should be designed to allow modification as new methods of saving energy become economical. Updating the draft interim standards should not require extensive modification of the compliance procedures. Rather, the draft interim standards should contain provisions to reference new materials and methods, as they become available.

9. The draft interim standards should contain equipment sizing requirements. Such a capability should be provided in recognition of the important role equipment sizing plays in end use energy consumption. Particular attention should be given to the regional performance of heat pumps.

In formulating the methodology for the recommendations, the following associated issues were taken into account:

- The current status and anticipated developments in building materials and equipment technology and construction practice;
- The current and projected capabilities of design practice, taking into account the availability of new design and analysis tools;
- The approach and format utilized by other existing or proposed national, State, and local energy standards;
- The significance of indoor air quality issues and the nature of indoor air pollutants;
- Opportunities to encourage the use of renewable energy sources, including, but not limited to, daylighting, solar, and geothermal systems and subsystems;
- The problems of enforcement by building code officials;
- The ability to encompass a wide range of residential unit types and construction materials; and
- The incorporation of examples of the standard's application.

The draft interim standards cover new residential buildings including single-family, multi-family low-rise, and manufactured housing (mobile homes). The influences on energy use of the design of the building envelope, mechanical systems, and the domestic hot water system were considered. Regional climate effects were included, as were regional variations that dictate cost-effectiveness such as local energy costs. Providing for regional equity was an important consideration. That is, the draft interim standards should not penalize one or more portions of the country because of climate, custom or economic singularity.

DOE used the ASHRAE SP-53 product as the basis for the development of today's draft interim standards. DOE has revised some of the assumptions (details discussed below) that were recommended by the ASHRAE Committee to conform more closely to governing statutory requirements and to reflect subsequent research results. The Department also conducted an economic analysis and an environmental assessment. Further analyses were performed to provide additional documentation and technical information to the public during the upcoming comment period.

The draft interim standards are documented in seven publications for new non-Federal residential buildings. They are:

U.S. Department of Energy, September 1989, *ARES 1.2-User's Guide (Automated Residential Energy Standard), In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, (ARES 1.2-User's Guide)*, Washington, DC, DOE/CE-0274, Volume 1 of 7. ARES 1.2-User's Guide explains the use of the ARES program to develop location-specific energy conservation requirements.

U.S. Department of Energy, September 1989, *Technical Support Documentation for the Automated Residential Energy Standard (ARES), In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, [Technical Support Document (ARES)]*, Washington, DC, DOE/CE-0274, Volume 2 of 7. The technical support document explains the data and algorithms used by the ARES program to optimize energy-related features of new residences.

U.S. Department of Energy, September 1989, *Background of the Development Process (of) Automated Residential Energy Standard (ARES), In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, [Background of Development Process (ARES)]*, Washington, DC, DOE/CE-0274, Volume 3 of 7. This document explains the background and philosophy of the ARES program and the standards developmentprocess.

U.S. Department of Energy, September 1989, *Technical Support Documentation for the Automated Residential Energy Standard (ARES) Data Base, In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, [Technical Support Document (ARES) Data Base]*, Washington, DC, DOE/CE-0274, Volume 4 of 7. This publication documents the assumptions and procedures used to develop the residential energy consumption data base in ARES.

U.S. Department of Energy, September 1989, *Description of the Testing Process for the Automated Residential Energy Standard (ARES), In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, [Testing Process for (ARES)]*, Washington, DC, DOE/CE-0274, Volume 5 of 7. This document describes the process used to initially test the ARES computer program.

U.S. Department of Energy, September 1989, *Economic Analysis, In Support of Proposed Interim Energy Conservation Voluntary performance Standards for New Non-Federal Residential Buildings, (Economic Analysis)*, Washington, DC, DOE/CE-0274, Volume 6 of 7. The economic analysis describes an assessment of the likely impacts of the new standards on the Nation's economy.

U.S. Department of Energy, September 1989, *Environmental Assessment, In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings, (Environmental Assessment)*, Washington, DC, DOE/CE-0274, Volume 7 of 7. The environmental assessment describes an assessment of the likely impacts of

the new standards on new home habitability, on institutions associated with residential construction, and on the economy in general.

The Department is also providing the following ancillary support document for public comment:

U.S. Department of Energy, November, 1991, *ACRES 1.2—User's Guide (Automated Compliance for Residential Energy Standard). In Support of Proposed Interim Energy Conservation Voluntary Performance Standards for New Non-Federal Residential Buildings*, Washington, DC, DOE/CE-0345. This guide explains the installation and use of ACRES to demonstrate compliance with the proposed standards using the points compliance technique.

In developing today's draft interim standards, the Department and its consultants attempted to use well-documented and proven sources of data, methodologies, and other pertinent information. However, many assumptions and/or parameters that influence the effectiveness of energy conservation measures are subject to change with time or differ substantially among locations. In such cases, the Department relied on engineering and economic judgment to establish reasonable values for these parameters. The following is a discussion of the major assumptions that form the technical and economic basis for these draft interim standards.

A. Equivalency Among Energy Types

One of the first major decisions concerned the treatment of different energy types. With a stated objective that each fuel type be treated equally, no fuel type was given preferential treatment and all levels of energy conservation were to be set solely on the economic impacts of the specific energy conservation actions. Therefore, it was important that the draft standards not require a user to switch fuels to obtain compliance for a design that was not previously in compliance. Accordingly, DOE decided not to set one firm energy dollar goal based on the standard gas-heated, electrically-cooled house, but rather to create separate targets for different energy types. Five heating/cooling equipment-type combinations were used in the development process. They were:

- Gas Furnace, Electric Direct Expansion Cooling;
- Oil Furnace, Electric Direct Expansion Cooling;
- Liquified Petroleum Gas (LPG) Furnace, Electric Direct Expansion Cooling;
- Electric Resistance Heating, Electric Direct Expansion Cooling; and
- Heat Pump for Heating and Cooling.

Each of these combinations represents a different energy-type and equipment combination.[1] Therefore, if the energy type changes in the course of the design process, the user must return to the beginning of the compliance process and begin again with the requirements of the new equipment combination.

DOE considered several options with the objective of providing a performance measure against which the proposed designs will be compared. They were: 1) compliance based on maximum allowable annual site energy consumption, 2) compliance based on maximum allowable annual source energy consumption, and 3) compliance based on maximum allowable annual energy costs. The first option is problematic in that differences in conversion efficiencies between fuel types make direct comparisons of site energy inequitable. Electricity, for example, is often produced by burning natural gas at an overall efficiency of less than 40 percent. Natural gas can be burned directly to heat a home at a much higher overall efficiency. The second option achieves the desired objective, but is difficult to implement because of the difficulty in obtaining data on reasonable source-to-site conversion efficiencies, particularly where the source is hydroelectric or nuclear. The third option, which was selected for the development of the draft interim standards, provides the most equitable and meaningful reflection of actual source energy consumption and eliminates questions of conversion efficiencies. It also allows market forces to dictate consumers' fuel preferences.

B. Mandatory and Minimum Requirements

The majority of requirements in the draft interim standards are determined directly from the life-cycle cost optimization done by the ARES computer program employed by a user (such as a building code authority). However, the Department recognizes that some home features and construction specifications might be required for reasons other than cost effectiveness or for which cost effectiveness is difficult to assess accurately. These are discussed in Position Paper 1–2 [see *Background of Development Process*, pages A.8–10]. Such features are generally intended to comply with regulatory requirements (such as the DOE appliance energy efficiency standards) and to prevent unreasonable construction in a particular climate area. An example of the latter would be a ban against a design with R–38 ceiling insulation and no wall insulation. Considerations such as occupant comfort, safety, and moisture protection and control make such a combination unreasonable in a particular climate area even though it might meet the standard on the basis of energy consumption savings.

Other energy conservation requirements are not covered by the life-cycle cost optimization. These requirements involve aspects of construction for which there is or should be no variability (e.g. installation procedures) or for which investment costs are insignificant. An example of the latter would be the requirement that all electrical and other penetrations through exterior walls be caulked and sealed.

The mandatory and minimum design requirements are set forth in Section 5.0 of the draft interim standards. The public is invited to comment on whether Section 5.0 should be modified by additions or deletions and whether Section 5.0 would withhold discretion designers ought to have in designing new residential buildings.

C. Domestic Hot Water

The Department considered several possibilities regarding the treatment of domestic hot water (DHW) in the draft interim standards, including: 1) eliminating DHW from the requirements entirely, 2) including DHW requirements separate from the space heating requirements, 3) allowing DHW options to be traded against heating, ventilating, and air-conditioning (HVAC) equipment options, and 4) allowing DHW options to be traded against the overall energy cost target, which would allow trade-offs between DHW and any other conservation features. DOE's decision to allow trade-offs between DHW and all other conservation features (option 4) is based on its belief that the minimum design requirements of Section 5.0 of the draft interim standards will prevent excessive trade-offs that would have deleterious effects on a home's long-term energy performance and generally would be unacceptable to building code officials in the United States. DOE invites comments on this decision.

The draft interim standards provide for the possible use of solar domestic water heaters. The analytical basis is set forth at *Background of Development Process*, pages A.170–A.214. DOE is especially interested in public comment on the basis for the credit for using solar DHW systems. It may be desirable to postpone inclusion of solar domestic water heaters until such time as there are consensus test procedures for rating system energy performance.

[1] DOE considered including a combination for solar heating and cooling, but in the absence of reliable test procedures for rating energy consumption, it is inappropriate to do so.

D. Building Types

Understanding that different types and styles of residential housing may use energy differently, the Department examined a number of residential structure types in determining whether to provide unique standards for each type. Previous DOE research had identified nine separate categories of residential structures that formed the basis for examining this issue. The nine categories are:

- One Story Single-Family Detached Home;
- Two Story Single-Family Detached Home;
- Split Level Single-Family Detached Home;
- End-Unit Apartment;
- Mid-Unit Apartment;
- End-Unit Townhouse;
- Mid-Unit Townhouse;
- Single Wide Manufactured (Mobile) Home; and
- Double Wide Manufactured (Mobile) Home.

Requiring private-sector builders to accommodate to many different standards for different housing types in the same location was viewed as a serious deterrent to the adoption and use of the standards because of excessive complexity. (A multiplicity of housing prototypes would multiply the compliance documents). For example, in a row of multi-family attached housing, those units on the ends are expected to use energy differently from those in the middle because they have more wall area. However, allowing design requirements to differ between the two is not practical since the apartments or townhouses make up a single structure in reality.

Accordingly, a method was developed to condense the categories by identifying combinations of the different types that performed similarly and provided the same energy conservation measure levels based on economics. Generic designs, representing the nine categories, were modeled and energy analyses conducted; see *Background of Development Process*, Position Paper 2–2, pages A.21–A.54. The analyses were done for five different locations found in the U.S. The five cities were: Phoenix, Arizona; Atlanta, Georgia; Washington, DC, Denver, Colorado; and Minneapolis, Minnesota. The analyses examined the costs and energy benefits of various levels of envelope and equipment conservation features in each location and for each of the nine prototypes. "Breakpoints," or the highest levels of conservation benefits that are economically justified, were identified for each housing prototype in each location. Groups of housing types that consistently exhibited identical breakpoints were consolidated for the draft standards. The condensed categories which resulted from this analyses were:

- Single-Family Detached Homes (representative of the three detached styles);
- Multi-Family Low-Rise Attached Homes (representative of the four apartment and townhouse styles); and
- Manufactured (Mobile) Homes (representative of the two mobile home types).

E. Energy Analysis Tool for Development of the Draft Standards

To successfully implement a performance-based standard, an accurate means of calculating energy requirements was necessary. DOE examined a number of alternative methodologies and software packages from both public domain and private sources. The methodologies examined included standard and variable- base degree-day methods, temperature bin methods, daily average temperaturemodels, simplified transient models available on microcomputers, and complex hourly thermal models generally used on main-frame computers. The following criteria were considered in selecting an energy calculation method:

(1) The flexibility of the procedure—The procedure must accommodate analysis of a broad range of energy conservation measures.

(2) The relative and perceived accuracy of the procedure—The procedure must have been widely exercised by the research community and be generally accepted as generating reliable energy consumption estimates.

(3) The use of the procedure in other related activities—This criterion considers the advantage of using a tool that has been demonstrated as viable by other codifying agencies. If a procedure that meets all other requirements has been used in similar activities, it is beneficial to minimize end-user confusion by adopting it.

(4) Acceptance of the procedure by the engineering and scientific community as being current and credible—The procedure must be well-documented. The equations and algorithms of any software must be publicly available.

(5) Ability to use the tool within the time and effort constraints of the standard development process.

(6) Compatibility of the procedure's results with the energy data requirements of the draft interim standards and with the required economic and environmental assessments of the standards.

Following a thorough consideration of the available procedures, the Department determined that the DOE–2.1 computer program best fulfilled the requirements, particularly with respect to widespread acceptance and previous demonstration in related activities (see *Background of Development Process (ARES)*, pages A.13–20).

F. Energy Data Base

From its Lawrence Berkeley National Laboratory, the Department obtained a database for insertion in ARES of DOE–2.1 energy estimates for the range of energy conservation measures available to home builders. However, these original analyses used an older version of the DOE–2.1 program that did not adequately model all conservation measures contemplated for the draft interim standards. Also, in consultation with the ASHRAE TEC, DOE determined that the operating conditions assumed in the original computer simulations were not best suited for an analysis designed to establish public policy. Therefore, a new database of energy consumption estimates was developed using the latest available version of DOE–2.1 (version 2.1C) and assuming more appropriate occupancy use and thermostat schedules. This work is documented in *Technical Support Document (ARES) Data Base*.

The resulting energy data base contains energy use by component (energy conservation measure). For example, the energy use for walls with different insulation levels is given as a function of the thermal resistance of the wall. Energy use is given on a per unit basis for each component; in most cases, this is per square foot but for some, like perimeter foundation insulation, it is per linear foot. Energy savings were calculated for each component in each of 45 base cities identified for their comprehensive coverage of U.S. climates. The estimated energy consumption data were converted to an equation format for use in the ARES software.[2]

[2] Weather data for the DOE–2.1 analyses were obtained from *Weather Year for Energy*

Continued

G. Adjustment of Energy Data for Specific Locations

The primary energy consumption estimates used by ARES are contained in a database of DOE–2.1C simulation results from 45 geographically diverse locations in the United States (see *Technical Support Document (ARES) Data Base*). The 45 locations were selected to account for the major climatic and economic differences across the Nation. To accommodate other locations, two sets of location modifiers were developed. The first, documented in Position Paper 2–3 (see *Background of Development Process*, pages A.55 and 56), adjusts the basic heating and cooling loads from a selected base city to account for minor weather differences between the base city and another city with a similar climate. The second, documented in Position Paper 2–4 (see *Background of Development Process*, pages A.57–65), accounts for the climate-induced variation of heat pump efficiency from the manufacturer's rated heating season performance factor.

Basic climate multipliers are computed as simple ratios of degree days between the two cities in question. The heat pump multipliers are based on common temperature bin analyses. (A bin analysis utilizes a frequency distribution of local hourly outdoor temperature occurrences to weight energy consumption by a device with a temperature-dependent thermal efficiency.)

H. Thermal Mass

The presence of materials capable of storing and releasing significant quantities of heat ("thermal mass") impacts a building's heating and cooling energy performance. There are two primary varieties of thermal mass relevant to an energy performance standard: 1) thermal mass in exterior walls, and 2) "interior" thermal mass used to provide heat storage in passive solar designs.

A compliance scheme for determining the contribution of interior thermal mass to a building's thermal performance was deemed too complex for the simplified prescriptive and points compliance paths. Therefore, builders seeking compliance with these standards utilizing passive solar designs must use the performance compliance path. Designs incorporating strategic window placement without relying on increased interior mass are accommodated by the prescriptive and points alternatives.

With regard to thermal mass in exterior walls, DOE did not consider the energy benefits of increased thermal mass when identifying cost-effective wall construction requirements because a builder's decision to use masonry or other massive wall construction is based on aesthetic and other considerations besides energy efficiency. However, because there are energy benefits from wall mass, especially in locations with significant cooling loads, the draft interim standards would allow builders to take credit for wall mass in demonstrating compliance with the requirements of these draft interim standards.

I. Infiltration

In developing the infiltration control requirements set forth in these standards, DOE sought to limit air exchange rates without adversely affecting indoor air quality. A set of minimum requirements, representing simple and proven practices such as caulking and sealing of joints and selection of well-fitted windows, was first developed. The air exchange rates implied by these requirements was calculated using the Effective Leakage Area method described in the *ASHRAE Handbook, 1985 Fundamentals* (American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., Atlanta, GA). A second, optional, set of measures was developed that incorporates more stringent control measures, primarily an air infiltration barrier (house wrap). This optional, "tight" package of options is designed to allow trade-offs between infiltration control measures and other building components.

The tightest infiltration control measures prescribed by these standards are designed to maintain air exchange rates not below approximately 0.35 air changes per hour (actual rates vary by climate). This rate is consistent with average exchange rates measured in recent infiltration studies (see, for example, *Air Change Rate and Airtightness in Buildings, ASTM STP 1067*, American Society for Testing and Materials, 1990, Table 2, page 101). Reducing the exchange rate below this average level could potentially have adverse effects on air quality, depending on many other factors, unless mechanical ventilation is provided.

J. Windows

The analysis of windows included accounting for the conduction effects of different sash types and different numbers of layers of glazings. The solar gain effects were calculated based on the orientation, shading coefficient, and shading by overhangs.

The potential for solar gains to offset heating load depends upon the timing of the gain and the overall thermal conductance of the structure. In some cases, the heat coming through a window during the winter may result in over-heating but does not displace fuel that would be consumed otherwise. Thus, the additional solar gain has no utility in that climate, and credit is not given for 100 percent of the solar heat gain. All of these variables were combined through the use of regression analysis techniques to establish sets of equations for use in the ARES energy data base (see *Technical Support Document (ARES) Data Base*, pages 50–60, and *Background of Development Process*, Position Papers 5–1 and 5–2, pages A.138–A.145). These equations are used to calculate the energy use per square foot of window area for different orientations. A solar gain reduction factor is also provided to account for the effects of different overhangs on each orientation.

K. Foundations

Four prevalent foundation types are included in the draft interim standards: slab-on-grade, crawlspace, heated basement, and unheated basement. In identifying optimal combinations of energy conservation measures for buildings with different foundation types, the optimal conservation measures occasionally differ. For example, the optimal slab house may differ from the optimal crawlspace house in areas other than foundation insulation. However, DOE deems it impractical to promulgate requirements that differ by foundation type because of the complexity that would result and the problems that would be associated with bringing a house with more than one foundation type into compliance (e.g., a partial basement).

DOE constrained its optimization of house features such that conservation levels are identical regardless of foundation type. To identify cost-optimal conservation measures, a prototypical house is assumed to have the most prevalent foundation type for its location. Optimal insulation levels of other foundation types are then identified assuming all other features of the home are fixed.

Experience with the building-to-ground contact model in DOE–2.1C indicated that it was not accurate enough for the development of the draft interim standards. A finite element model had been developed to work with the earlier B version of the DOE 2.1 computer program, but its results had not been verified. A two-dimensional finite element model developed at the University of Minnesota was used for the standards. When the standards were being developed, this model was fairly new and had not been published. This model, run for the four foundation types in each of the 45 climate locations, generated average weekly heat transfer rates that were then entered into the DOE–2.1C model to calculate the energy impact of each foundation type. A similar application of this model was subsequently published by Oak Ridge National Laboratory (see *Oak Ridge National Laboratory Building Foundation Design Handbook*, Oak Ridge, Tennessee, ORNL/Sub/86–72143/1), which verified the efficacy of the University of Minnesota model.

L. Heat Pump Performance by Location

The rated seasonal energy efficiency ratio and the heating seasonal performance factor for heat pumps are based on their performance in a climate region similar to St. Louis. Since the draft standards cover the entire country, it was necessary to account for the variations in heat pump performance with climate variations. Ratios of the performance factors (heating and cooling) for a given location were calculated using ASHRAE bin data with a nominal two-ton load. This was done for each of the 45 base cities in the energy data base and extended by regional multipliers to all of the locations in the data base (see *Background of Development Process*, Position Paper 2–4, pages A.57–65).

M. Equipment Oversizing

In developing these draft interim standards, the detrimental effects of equipment oversizing were acknowledged, and DOE determined to promote limitation of its occurrence. However, because estimates of peak building loads involve some uncertainty, the draft interim standards allow equipment capacity to exceed the calculated design load by up to 25 percent. The 25 percent allowance is consistent with industry recommendations (see *ASHRAE Handbook, 1985 Fundamentals*, ASHRAE, Inc., Atlanta, GA). Where the next available size exceeds this limitation or a larger size is required to provide adequate air flow rates, the next larger size may be used. DOE believes that this decision still allows the designer a great deal of latitude in equipment sizing while at the same time protecting the homeowner from the inefficiencies that result from severe oversizing.

N. Duct Insulation

Duct insulation was viewed as an important avenue for reducing energy consumption in new residences. However, because the variety of duct layouts, lengths, and locations is so vast, including duct insulation in the ARES optimization was not feasible. Rather, a one-time analysis of duct cost effectiveness in a few locations was used to establish minimum levels. This analysis is documented in Position Paper 4–12 (see *Background of Development Process*, pages A.130 and 131).

O. Cost-Effectiveness of Energy Conservation Measures

The primary criterion by which the energy conservation requirements of these draft interim standards are established is cost effectiveness. This is deemed essential by DOE because the legislation mandates that the standards achieve the "maximum practicable" savings of depletable energy sources and the "maximum practicable" use of non-depletable energy sources.

DOE developed an economic methodology for testing various levels of energy conservation measures to identify the most cost-effective among those readily available. The methodology evaluates conservation measures from the perspective of the new home owner, using a model of consumer investment opportunity that compares the economic "return" of conservation features with the return available to the owner from an equivalent alternative investment. The alternative investment was assumed to earn a fixed nominal rate of return. By comparing the performance of the alternative investment with the conservation investment, it is conceptually possible to calculate the justifiable first cost per unit annual energy cost savings for the conservation options. In practice, this economic test is easily executed by casting the test into the form of a common net present value calculation (see *Technical Support Document (ARES)*, Section 3, pages 3.1–7 and *Background of Development Process*, Position Paper 3–2, pages A.80–99). The draft standards' economic performance is based on minimizing the net present value of all energy-related costs. By evaluating all energy-related cash flows, the methodology ensures that conservation expenditures required by these standards are good consumer investments. The theory behind the economic methodology is described in *Background of the Development Process*, Position Papers 3–1 and 3–2, pages A.66–A.99.

The methodology was developed as a result of extensive analysis and discussion among DOE staff and its consultants. The ASHRAE TEC recommended that the economic test should not be designed to be greatly sensitive to economic parameters that require significant future projections, such as energy prices. The ASHRAE TEC members assumed that standard life-cycle cost analyses would not be understood by many prospective users of the ARES software, nor trusted by the building industry in general. The ASHRAE TEC also believed that the initial purchaser of the home should not be required to bear the burden of energy conservation purchases which would not be cost effective within the initial period of ownership. The TEC consequently recommended to DOE that the period of economic analysis be limited to seven years, which was considered by them a typical period of occupancy by the original home buyer and that real fuel prices be assumed constant over that period.

The ASHRAE TEC recommendation for period of analysis is reflected in the ARES default option and will automatically be selected by the computer program if the user does not select the option to use an "extended life-cycle cost" procedure. However, because the default option is based on a fixed seven-year analysis period, the treatment of resale values and replacement costs cannot be generalized to longer periods. It is geared to first time homeowners where equipment replacement and resale are minimal. In selecting the extended life-cycle cost alternative, the user modifies the manner in which the cash flows are calculated over a longer period of time. Each energy conservation measure is assigned a useful life. Thus, for example, if the user specifies a 30-year analysis period for homes and HVAC equipment is assumed to have a life of 18 years, the furnace and air conditioner would be replaced once during the analysis. If equipment life is 13 years, itwould be replaced twice. Resale values are calculated similarly.

Although DOE accepted the TEC's recommendation that the period of analysis should reflect the average period the original purchaser retains and lives in a new residential building, DOE disagrees with some aspects of the

Calculations (WYEC) Weather Year Data, where available. (WYEC data are on tapes available from ASHRAE, Atlanta, Georgia.) WYEC data were available for 39 of the 45 cities analyzed. *Typical Meteorological Year* (TMY) data were used for the other 6 cities. (TMY data are available from the National Climatic Data Center, Federal Building, Ashville, North Carolina, (704) 259–0682.)

ASHRAE TEC recommendations including the seven year figure. Consequently, DOE included an "extended life-cycle cost" methodology in the software to allow users to account for longer analysis periods, if appropriate, and included in the text of the draft interim standards a provision calling for use of that methodology with certain recommended assumptions. The differences between the ASHRAE TEC recommendations on economic data inputs and the resulting adjustments made by DOE are described below.

Period of Analysis. Based largely on committee consensus and without citing supporting survey data, the TEC recommended to DOE that seven years was a reasonable estimate of the median period of ownership by the first home buyer. They recommended that this parameter not be subject to change by ARES users. Concern was expressed that users would not have ready access to data supporting longer periods of analysis and that this input was error-prone relative to other inputs permitted in ARES.

DOE determined that there was a need to make it possible for users to change the period of analysis in ARES. While the seven year period of home ownership was widely cited in the home building industry at the time the recommendations were developed, recent data indicate the average period of ownership of a home was 12 years in 1989 (see Pfister, John F., "Housing Turnover Rates: Nation Steady, But Regions Fluctuate", *The Chicago Title Guarantor*, Chicago Title and Trust Co., September/October 1990, Chicago, Illinois, pages 10 and 11).

Therefore, DOE recommends that a user select an analysis period of at least 12 years (a user could input a longer period). DOE recognizes that, just as demographics of regions vary, regional differences may impact the length of average ownership of any particular "new" home. DOE also invites comment on the question of whether the average holding period of the original purchaser should be the relevant study period or whether the useful building life is the better study period. Commenters recommending the latter should take into account the extent of higher investment costs (initial and replacement) and the impact these costs would have on the home building industry and subsequent purchasers.

Because long analysis periods must account for the replacement of some energy conservation features in future years, each energy conservation measure in the software data base may be assigned a useful life by the user. In analyzing cost-effectiveness, the software assumes each conservation measure must be replaced each time its useful life has expired. The purchase price is assumed to increase at the rate of general inflation.

Resale Value of Home. The TEC concluded that, using a life-cycle of seven years, the resale value of the home (actually of the energy conservation features of the home) must be accounted for at the end of the analysis period. However, since there is little reliable information on resale values of conservation measures, the TEC argued for a resale value (at the end of seven years) at the original purchase price in current (nominal) dollars.

DOE decided that the value of the home's ECMs at the time of sale should be based on linear depreciation from the time of purchase (i.e., straight-line depreciation). DOE recognizes that the market value of increased conservation features in a home is largely unknown and that, generally, lenders do not recognize lower energy costs when considering loan qualifications. However, Federal loan programs do provide avenues for recognizing energy cost savings and public awareness of the value of energy conservation is growing. Thus, DOE's method of quantifying increased resale values is a compromise between the extremes of no value, as would be suggested by some real estate and lending institutions, and the full calculated value based on a thorough accounting of ECM benefits.

Fuel Escalation Rates. The real rate of increase in fuel prices was recognized by the TEC as difficult to predict accurately. Its consensus was that many ARES users would not have ready access to information on reasonable escalation rates. They recommended that fuel prices would be assumed to increase at the rate of general inflation (i.e., a real price escalation rate of 0 percent).

While the Department recognizes that projections of fuel price escalation rates involve some uncertainty, it disagrees with the TEC's recommendationto fix those rates at 0 percent real in the ARES software. DOE's Federal Energy Management Program (FEMP) annually publishes forecasted fuel price escalations. The latest forecast is in *Energy Prices and Discount Factors for Life-Cycle Cost Analysis 1990* (NISTIR 85-3273-4, Rev. 5/90) which presents projected fuel price escalations for 5-year blocks and for each of four U.S. Census Regions. Converting these data to equivalent annual price escalation rates yields the values in Table 1.

TABLE 1.—RESIDENTIAL FUEL PRICE ESCALATION RATES (PERCENT PER YEAR IN REAL TERMS) FOR 1990–2020 BY U.S. CENSUS REGION

Fuel type	North east	North central	South	West
Electricity	0.4	0.1	0.4	0.7
Fuel oil	2.6	2.8	2.6	2.8
Natural gas	3.5	1.9	2.6	2.5

Although these fuel escalation rates are used for analyzing proposed Federal building investments, they were derived from estimates by DOE's Energy Information Administration which are generally applicable and therefore suitable for use in the draft interim standards.

Alternative Investment Rate (Discount Rate). The Alternative Investment Rate (AIR) is used in the life-cycle cost-effectiveness analysis as an input for converting all future cash flows to present value. Since the objective of this analysis is to minimize the net present value of all energy-related costs, the selection of the AIR value clearly has a significant effect on the outcome and therefore on the resultant prescriptive standards. As discussed previously, the rate of return of the conservation investment for a potential new-home buyer should be equal to the rate of return (i.e., the AIR) of another investment that is in some sense equivalent to the buyer's spending money on energy conservation.

Two primary considerations for any investor are risk and liquidity. A low-risk investment, such as a common passbook savings account, normally provides a low rate of return. High-risk investments, conversely, must pay high interest rates to attract capital, capital that the investor may lose. Investments with low liquidity, such as long-term certificates of deposit, must also pay high rates to attract investors willing to tie up their money for long periods of time. Highly liquid investments generally offer lower interest rates since the principal amount is always available to the investor for withdrawal from the financial institution.

The ASHRAE TEC believed that an AIR of 5.5 percent was appropriate. 5.5 percent generally reflects the current passbook savings account rate, a low-risk, highly liquid investment.

DOE solicits public comment on two other approaches towards establishing the AIR. These approaches are based on DOE's own assessment of equivalency and yield AIRs higher than 5.5 percent. The Department agrees with the TEC

that a conservation investment is "low risk", but only in the sense that improving the conservation level of any ECM will always save the homeowner some money on his or her fuel bill. Whether this investment is cost-effective for the homeowner depends on many factors, both economic and climatic, other than fuel costs. The potential variability of some of these factors over the period of home ownership makes the investment somewhat risky.

Further, DOE considers a conservation investment to be highly illiquid: the money can not be recovered for any other use, at least during the time that the owner occupies the new home. As a consequence of both moderate risk and low liquidity, the Department recommends that an AIR higher than the passbook rate represents the rate for an "equivalent" investment for this homeowner.

Under the first DOE approach, the AIR is derived as follows: The Department recommends that inflation be set at 3.5 percent annually, as discussed in the subsection below on Inflation Rate. The current real (excluding inflation) discount rate as provided by FEMP for FY 1991 is 4.7 percent. This discount rate is published in the supplement to the Life-Cycle Costing Manual for the Federal Energy Management Program (NISTIR 85-3273). Since the FEMP discount rate is calculated annually from an average of U.S. Treasury bond rates and is representative of economic opportunity costs throughout the country, it may be appropriate for use in this proposal. (See 55 FR 2590–2599 (1/25/90) and 55 FR 48217 (11/20/90) for more information on this discount rate.) Combining the real discount rate of 4.7 percent with the inflation rate of 3.5 percent according to standard economic formulas results in DOE's recommendation of a nominal 8.4 percent discount rate for the AIR.

Under the second DOE approach, a real discount rate of 7 percent is used instead of 4.7 percent, yielding a nominal AIR of about 10.7 percent. Seven percent has been used by the Department of Energy in the past in developing energy efficiency standards for major consumer appliances. (See 54 FR 47921–47923 for a complete discussion of the selection of this discount rate.) The Department views 7 percent as the real rate of return for investment opportunities that are foregone to finance the purchase of energy efficient appliances and thus this figure may also be appropriate in the context of this proposal. Comments are solicited on the applicability of the approach discussed in 54 FR 47921–47923 towards the financing of residential ECMs.

Down Payment Percentage. The after-tax down payment recommended by the TEC was 10 percent; see *Background of Development Process*, page A.78. Generally, this percentage is correct when addressing Federal Housing Administration (FHA) or the Department of Veterans Affairs (VA) guaranteed loans. However, conventional loans typically require a greater down payment, as reported by the Office of Thrift Supervision, *1988 Savings and Home Financing Source Book* (OTS Source Book 1988), Table 2, page D–2, where the loan-to-price ratio is 75.6 percent, indicating a down payment of 24.4 percent. DOE decided 24.4 was the more appropriate percentage because conventional loans represent approximately 80 percent of the residential mortgage loans issued in the United States according to the Mortgage Bankers Association of America.

Mortgage Interest Rate. Based on further analysis, DOE has determined that a reasonable mortgage interest rate of 9.87 percent (as opposed to the committee's default value of 9 percent) could be used based on rates as of June 1990 (see U.S. Department of Commerce (DOC), June 1990, *Survey of Current Business*, Washington, DC).

A document published by DRI/McGraw-Hill (see *Review of the U.S. Economy; Long-Range Focus*, Summer 1990, Table 7, Housing) indicates that the projected (new homes) average effective mortgage rate on loans closed between the years 1990–2015 will be 9.18 percent. DOE suggests that this value is also a reasonable national average.

Points. Estimates of the average points associated with new home financing vary. The TEC estimated average points at 4.8 percent. However, DOE suggests using the *OTS Source Book 1988*, see page D–2, as a reasonable data source because it is the most recent, authoritative, national source available. It reports the average value of initial fees and charges to be 2.19 percent. Although points are tax deductible and loan fees are not, the two were not separated in the document. The quantities are so small that not separating them will have little effect on any analytical results associated with running ARES.

Inflation Rate. The inflation rate is used to convert between the nominal and real rates used in the ARES analysis. Nominal rates include inflation; real rates do not. The relevant nominal rates used in the ARES analysis are the mortgage rate and the alternative investment rate. The inflation rate recommended by the TEC and the default option in ARES are both 4.0 percent. DOE recommends a 3.5 percent inflation rate since this figure reflects the Department's most recent base-case forecast of the long-range Gross National Product implicit price deflator (see FEMP NISTIR 85–3273).

Property Tax Rate. Property taxes vary widely from State to State and even within a particular State. The DOC's *Statistical Abstract of the United States* (DOC Statistical Abstract), Bureau of the Census, U.S. Government Printing Office, Washington, DC, presents property tax rates in selected large cities. Thirteen of the 17 cities studied in the PNL analysis (see Pacific Northwest Laboratory's November 1990, *Comparison of Residential Energy Codes*, Richland, WA.) are reported in the DOC Statistical Abstract. DOE suggests using the average rate for these 13 cities, 1.28 percent, as the national value for property taxes but suggests that local rates be used for locally set standards and that States setting standards use State averages.

Income Tax Rate. The marginal income tax rate paid by the home buyer determines the value of the mortgage tax deduction. The median income for buyers of new homes is $58,700, which falls in the 28 percent Federal tax bracket (see Chicago Title and Trust Company, 1988, *Who's Buying Houses in America?*, Chicago, Illinois). State income taxes vary widely; a typical value of 4.2 percent is the suggested DOE selection for analysis with the State income tax deductible from Federal income tax; see DOC Statistical Abstract. For default purposes, the median total effective tax rate input to ARES is set at 21 percent. However, users are directed to add the actual median State and local tax rate to the median Federal income tax rate in Appendix B to the draft interim standard.

Table 2 presents a comparison of the values of economic parameters for input into the ARES computer program as recommended by the ASHRAE TEC (default values) and as selected for investigation by DOE (alternative values) using best estimates for all input parameters, wherever possible based on recently published data. In some instances, a range of numbers is shown for a given parameter, e.g., 12–30 years for the "Period of Analysis." Ultimately, for purposes of this notice, and for reasons discussed above, DOE selected single values for each parameter and provided in the draft interim standards

for use of those values (see Appendix B of the draft interim standards). DOE envisions amending Appendix B annually to update it.

TABLE 2.—ECONOMIC PARAMETERS FOR ARES

Parameter	TEC default input value	Alternative input values
Inflation rate	4%	3.5–4.8%
Mortgage interest rate.	9%	9.18–9.87%
Points & loan fee.	4.6%	2.19–4.8%
Alternative investment rate.	5.5% (nominal)	8.4–10.7% (nominal)
Income tax rate	21%	31%
Property tax rate.	1%	1.28%
Down payment percentage.	10%	24.4%
Loan term	30 years	30 years
Period of analysis.	7 years	12–30 years
Fuel price escalation		
Oil	0%	2.6–2.8% *
Gas	0%	1.9–3.5% *
Electric	0%	0.1–0.7% *

* Depends on region

DOE will be conducting sensitivity analyses to determine the impact of a variety of numerical values relative to the inputs associated with the ARES economic parameters.[3] The public is invited to suggest economic parameters and values for these parameters which ought to be analyzed.

DOE's recommended economic parameters for input into the ARES computer program are shown in Table 3. As indicated above, these numbers appear in Appendix B to the draft interim standards.

TABLE 3.—DOE INPUT ON ECONOMIC PARAMETERS FOR ARES

Parameter	Input Value
Inflation rate	3.5%
Mortgage interest rate	9.18%
Points & loan fee	2.19%
Alternative investment rate.	8.4%–10.7% (nominal)
Federal income tax rate	28% (median) [1]
Down payment percentage.	24.4%
Loan term	30 years [2]
Period of analysis	12 years
Fuel price escalation	
Oil	2.6–2.8% [3]
Gas	1.9–3.5%
Electric	0.1–0.7%

[1] Add relevant State and/or Local income tax rate.

[2] *Loan term.* The average loan term for first mortgage loans as reported by the Office of Thrift Supervision in the *OTS Source Book 1988* at, page D–2 is 26.0 years for newly built, single-family homes. This average term indicates that a 30-year mortgage term is likely the most typical.

[3] Depends on region.

[3] The ARES computer program automatically uses the default value unless the user inputs another reliant value. The software will be revised to reflect DOE-recommended values when final interim standards are published.

P. Cost Data Base

To properly compute the cost effectiveness of various levels of energy conservation measures, the costs of those measures must be known. DOE designed the draft interim standards to allow local code officials to specify conservation measure costs appropriate to local economies. However, recognizing that some jurisdictions may not have the means to acquire reliable local cost data, DOE provides "default" costs, representative of regional average prices in the ARES software.

Envelope conservation measure costs were obtained from a survey taken by the National Association of Home Builders (ASHRAE Research Project 494–RP, *An Economic Data Base in Support of SPC 90.2: Costs of Residential Energy, Thermal Envelope and HVAC Equipment*, NAHB National Research Center, ASHRAE Research Project 494–RP, December 1, 1986), and are available for 11 geographic zones defined along State boundaries and a national average zone. These are listed on a per unit basis (e.g., dollars per square foot) for each level of a conservation measure (e.g., R–11 and R–19 wall insulation).

HVAC equipment costs are complicated to express because price is affected by both efficiency and capacity (size). This is significant in optimizing whole-house efficiency because a well-insulated house may require smaller (and cheaper) space conditioning equipment than would a poorly insulated house. DOE and its consultants collected extensive pricing information from major equipment suppliers and attempted to identify relationships among equipment efficiency, capacity, and cost. The relationship identified between equipment capacity and cost was coded into the software that embodies the standards. The relationship between equipment efficiency and cost was entered as default data and may be modified by local jurisdictions.

DOE encourages users of the draft interim standards to modify costs to reflect actual local conditions. However, it is emphasized that the conservation levels deemed cost effective are sensitive to the differential prices between levels. For example, the software is sensitive to the cost difference between R–11 insulation and R–19 insulation, not the absolute cost of either. Therefore, users, when changing the costs for a given energy conservation measure, must be careful that consistent cost changes are also made for other levels of that measure. Whenever possible, costs for all levels should be obtained from the same source.

Q. Solar Spoce Conditioning Alternatives

Simple "solar tempering" options of placing glazing dominantly on southern exposures were accommodated as trade-offs against required insulation and/or efficiency levels, but no credit was given for the integration of interior thermal mass with the glazing or for the use of thermal storage walls or active solar systems. These can only be addressed in the performance compliance alternative. As discussed in Position Paper 5–1 (see *Background of Development Process*, pages A.138–140), the TEC considered solar space conditioning technologies too complex and infeasible in too few locations to warrant their inclusion as practicable options in ARES. In particular, the TEC concluded that solar options should not be considered in the economic optimization that establishes the standards' energy consumption goal.

DOE recognizes that some solar space conditioning designs may be cost-effective in some locations. DOE is looking for ways to further stimulate the use of non-depletable sources of energy. DOE will be evaluating the suitability for incorporation by reference into the rule of privately developed test procedures for active solar technologies. Reliable test procedures for rating energy consumption are essential before a new energy conservation measure could be covered by the performance compliance path. Part of the process of evaluating privately developed test procedures would be a proposal for public comment and review under section 32 of the Federal Energy Administration Act, as amended, 15 U.S.C. 788. The Department welcomes suggestions on approaches for incorporating more measures in ARES that use non-depletable sources of energy.

R. Shading Devices

Simple overhangs, viewed as common and well-understood, were accommodated as trade-offs against other ECMs. Position Paper 5–3 (see *Background of Development Process*, pages A.142–145), discusses how overhang effects were calculated. The TEC thought that shading devices should be excluded as energy

conservation features from the optimization step for reasons similar to those for solar space conditioning and because many shading devices require correct user operation to achieve energy benefits (see Position Papers 5–2 and 5–3, Background of Development Process, pages A.141–145). DOE accepted the TEC's reasoning on the exclusion of shading devices.

S. Micro-Computer Program to Embody the Methodology for Developing the Draft Standards

Several factors prompted DOE to embody procedures for establishing energy conservation requirements in software. First, legislative mandate requires that compliance with the standards be based on demonstration of comparable energy performance rather than conformance to wholly prescriptive specifications. Second, the standards are intended to be extremely flexible in accommodating innovative or unconventional construction practices and in adjusting to new and emerging technologies. Finally, the standards are intended to be cost effective within local climates and economies. A software based system is the best way to automate generation of a performance standard which is based on a necessarily complex data base. That data base includes cost data, energy calculation methods, economic evaluation methodologies, and other procedures and algorithms necessary to establish cost effective standard requirements. The core of the resulting software is an optimization procedure that identifies the most cost effective combinations of energy conservation measures for a given location.

Another reason for embodying the standards in a micro-computer program is flexibility for local adaptation. It allows a local code agency to tailor the standard to local conditions. Local component costs can be entered to reflect the value of energy conservation measures in a particular area; local energy costs can also be entered to accurately value energy savings. The micro-computer program also allows the local agency to generate a standard based on local climate and weather. Over 881 locations are represented in the data base and other areas can be tied to these locations as required or desired by the code generating group. It also allows the agency to include or exclude particular energy conservation measures or building practices as befits local practice. For example, if the jurisdiction desires to exclude the use of reflective glass in residences, then this can be done before the standard is generated by excluding that energy conservation measure. This provides the jurisdiction with a means for generating standards that fit the code philosophy and economic conditions for a given area.

T. Automated Residential Energy Standard (ARES) Micro-Computer Program

When employing the ARES micro-computer program, the user simply identifies the building and energy types for which the standard is to be generated. If desired, energy or energy conservation measure costs can be changed, but this is not necessary to create a standard. The outputs of ARES are prescriptive packages and point systems that specify the component requirements of a building needed to comply with the standard. There are packages for each heating/cooling equipment combination specified by the user. There is also a list of specifications for a reference design that is used in the performance compliance path. It should be noted that all of the features of the draft interim standards are established on the basis of the optimal energy dollar/conservation investment mix. This differs from the more traditional approach in standards where levels are determined to increase energy savings over present practice. ARES makes no identification of current practice but actually identifies the most cost-effective levels based on the specified economic conditions.

It should also be noted that specific requirements of the draft interim standards do not exist until the local code generating organization (the jurisdiction) executes the ARES computer program with a set of economic data. At that time, the standard for that locale is generated, including the prescriptive packages, points tables, and performance reference design. This is in contrast with other standards that list specifications or targets usually based on a set of national economic and energy criteria.

U. Compliance

DOE has included three compliance paths in response to legislative requirements and comments received during public review of the November 1979 proposal. Subject to meeting the minimum design requirements representing generally accepted, good design practices, compliance is completed by following one of these paths. The energy use requirements for each of the conservation measures contained within the compliance paths were developed using the DOE 2.1C whole building simulation model computer program. First, DOE has included a prescriptive compliance path in response to extensive public comments on the November 1979 proposal advocating prescriptive standards. The second is a component performance approach which permits tradeoffs within a point system. The third performance compliance path requires a whole building energy analysis.

DOE agrees with those who expressed a need for a simple prescriptive set of requirements which when incorporated into the building design will assure compliance. Some home builders would be unduly burdened by having to demonstrate compliance using either of the other compliance approaches. DOE believes that the prescriptive compliance path responds to those needs while assuring that designs complying with this approach will be as energy efficient as a design complying with the other compliance paths. The prescriptive compliance path provides an extremely simple, prescriptive list of design options that must be included on a building to demonstrate compliance. The prescriptive list, known as a "package" of conservation options, is generated by the ARES software from the same energy data used in establishing energy consumption goals. To accommodate the various preferences of those seeking to comply with codes, those responsible for promulgating and enforcing codes and standards may generate any number of alternative packages, each of which emphasizes a different type or style of construction. The components of each package are selected such that a typical residence containing those options will use no more energy than allowed by the standard.

The point system path uses a set of forms and point credits for measures generated by the ARES software to demonstrate compliance with energy consumption goals. The point system is derived from the same energy data base used by ARES to establish the standards' energy consumption goals. It provides a simplified technique for calculating a proposed design's energy performance and allows a builder flexibility in designing a house to meet the standards' requirements.

The point system in effect allows tradeoffs among conservation levels of the major building components identified in the prescriptive package, such as decreasing the amount of wall insulation while increasing the efficiency of the gas furnace. This tradeoff ability allows a residential architect or designer to evaluate many different combinations of ECMs before

settling on a final design. This design must still comply with the voluntary standards by not exceeding the annual energy costs dictated by the prescriptive requirements. Although DOE anticipates that the point system will be a very desirable path to compliance due to its design flexibility, the Department also believes that the process of looking up numbers in the points data tables and then performing extensive algebraic calculations will limit its useability.

To make the points compliance path more user-friendly, DOE has developed a microcomputer program that automates the data search and calculations. This program is called Automated Compliance for Residential Energy Standards, or ACRES. ACRES greatly decreases the time and effort involved in evaluating tradeoffs under the points system. For each house type/heating fuel combination, ACRES displays the individual ECM points and grand total points reflecting the basic prescriptive requirements (i.e., the "target design"). The ACRES program simultaneously displays the individual ECM and total points for a proposed design entered by the user. As the stringency level of any ECM is changed, ACRES instantly recalculates the points total and states whether the proposed design complies by comparing this total to the target design total. The ACRES user therefore receives continuous and immediate feedback on whether his or her design choices comply with the energy conservation requirements of the local building code jurisdiction.

The installation and use of ACRES, as well as additional background information, is contained in a special technical support document, DOE/CE-0345, *ACRES 1.2—User's Guide*. DOE emphasizes that ACRES is not a part of the Interim Voluntary Performance Standards *per se*, but rather a tool developed by the Department to assist the public in demonstrating compliance with these standards in jurisdictions that may adopt the ARES approach. The "manual" calculation method described in Section 7.0 and Appendix D of this proposal is equally valid for demonstrating compliance. DOE solicits comments on the utility of ACRES, the clarity of its display screens, and the completeness of its User's Guide. Interested parties with access to personal computers are urged to install and use the ACRES program before commenting.

DOE recognizes both the benefits and costs of implementing whole building energy performance standards as proposed in the November 1979 notice. A whole building performance approach provides the most open product competition and design freedom and the least inhibition to the introduction of new technologies. However, it also requires a time consuming energy performance analysis of every new home design which is costly and difficult to enforce. These difficulties were a major impetus for the development of three different compliance paths, including the development of the ARES software. DOE believes that open competition and broad design flexibility is provided for the design of the vast majority of new homes by the component performance (points system) compliance path. Furthermore, DOE believes that the combination of the whole building performance compliance path plus the regular updating of the standards can prevent the standards from inhibiting the introduction of new technologies.

V. Comparison of the DOE Draft Interim Voluntary Standards with Model Energy Codes

DOE has compared its draft interim standards and the TEC recommended standards to two voluntary model energy codes, one of which has been adopted in State and local building codes and an updated version that requires levels of conservation exceeding those of the previous model code. The existing model codes used are:

(1) The Council of American Building Officials' (CABO) Model Energy Code of 1986 (MEC–86). This model code is based on the ANSI/ASHRAE/IES Standard 90A–1980.

(2) The CABO Model Energy Code of 1989. MEC–89 is an updated version of CABO's model code that requires levels of conservation exceeding those of ASHRAE 90A–1980.

These model codes are voluntary in the same sense as the DOE standards. That is, they have been made available to States and localities for voluntary adoption into building codes.

The energy and economic impacts of these codes, the draft interim standards, and the TEC recommended standards were evaluated in 17 climate-diverse U.S. cities. The results of these comparisons are shown in Figures 1 through 3. Figure 1 displays the net life-cycle cost savings of the various standards relative to those of the MEC–86 standard. All costs (and savings) indicated are net present values of cash flows over a 25-year analysis period, using an 8.4 percent discount rate. Note that life-cycle cost *savings* relative to MEC–86 are shown. Figure 2 shows the life-cycle *energy cost* savings of the standards. Finally, the increases in *first costs* resulting from building to the various standards' requirements are shown in Figure 3, again relative to MEC–86. In all figures, the MEC–86 standard is considered the baseline and the impacts of the other standards are shown relative to it. The methodology used to calculate the net present costs (and savings) indicated is identical to the methodology used in ARES. The economic and financial parameters used are identical to those recommended by DOE with the exception of the analysis period which was 25 years. Costs are those that would be experienced by an average homeowner.

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Figure 1

LIFE-CYCLE COST SAVINGS RELATIVE TO MEC 1986

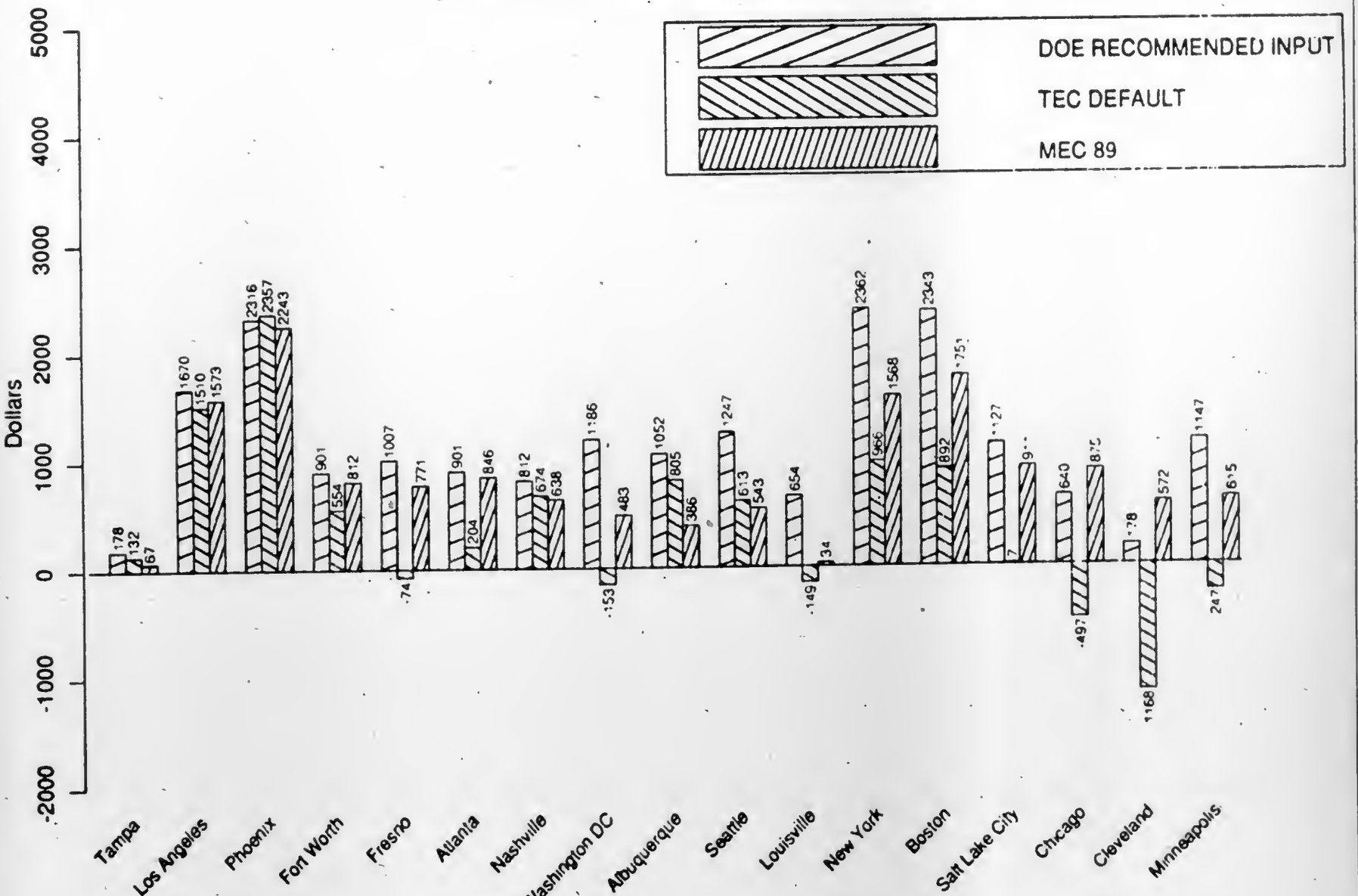


Figure 2

LIFE-CYCLE ENERGY COST SAVINGS RELATIVE TO MEC 1986

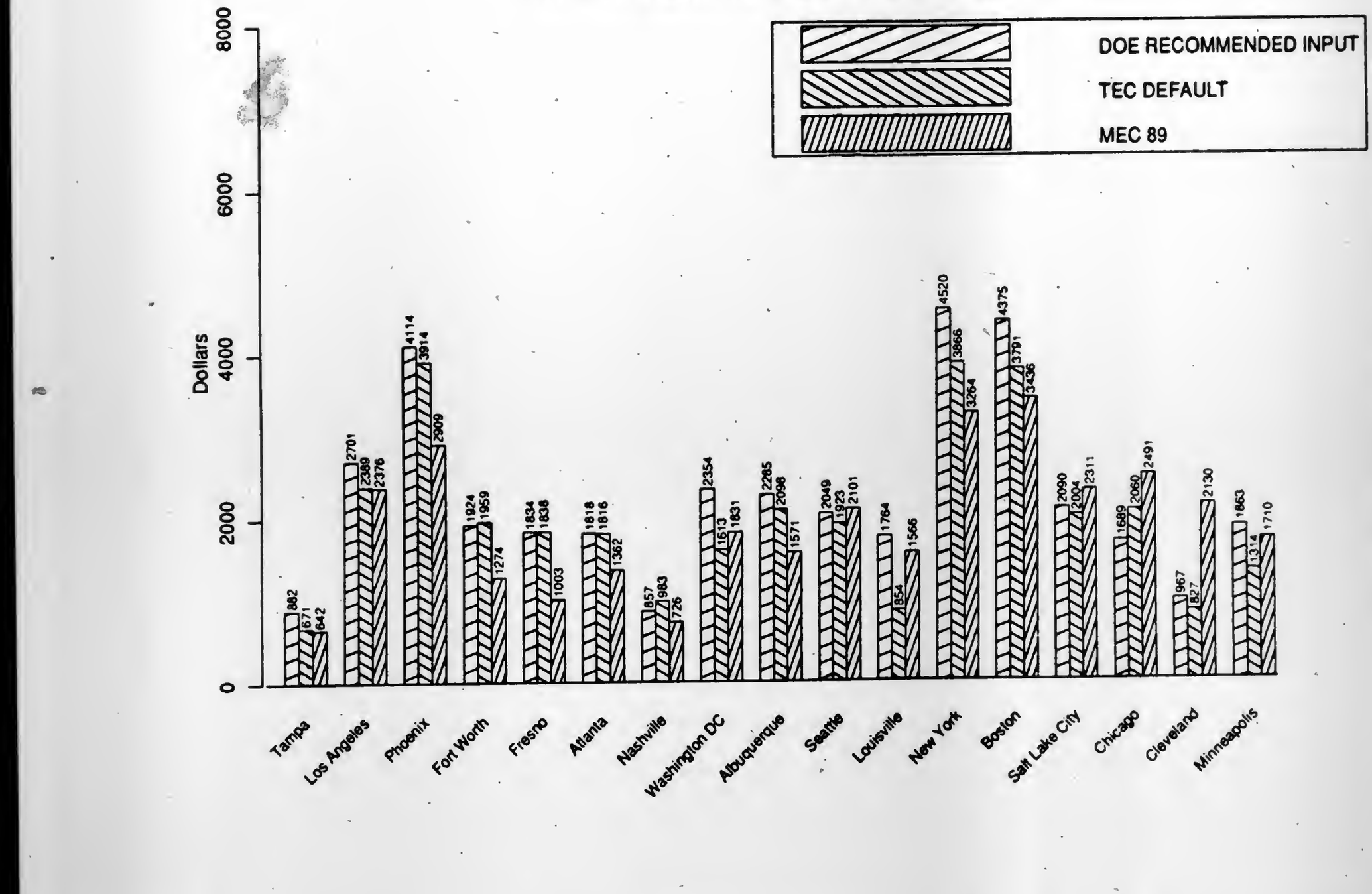
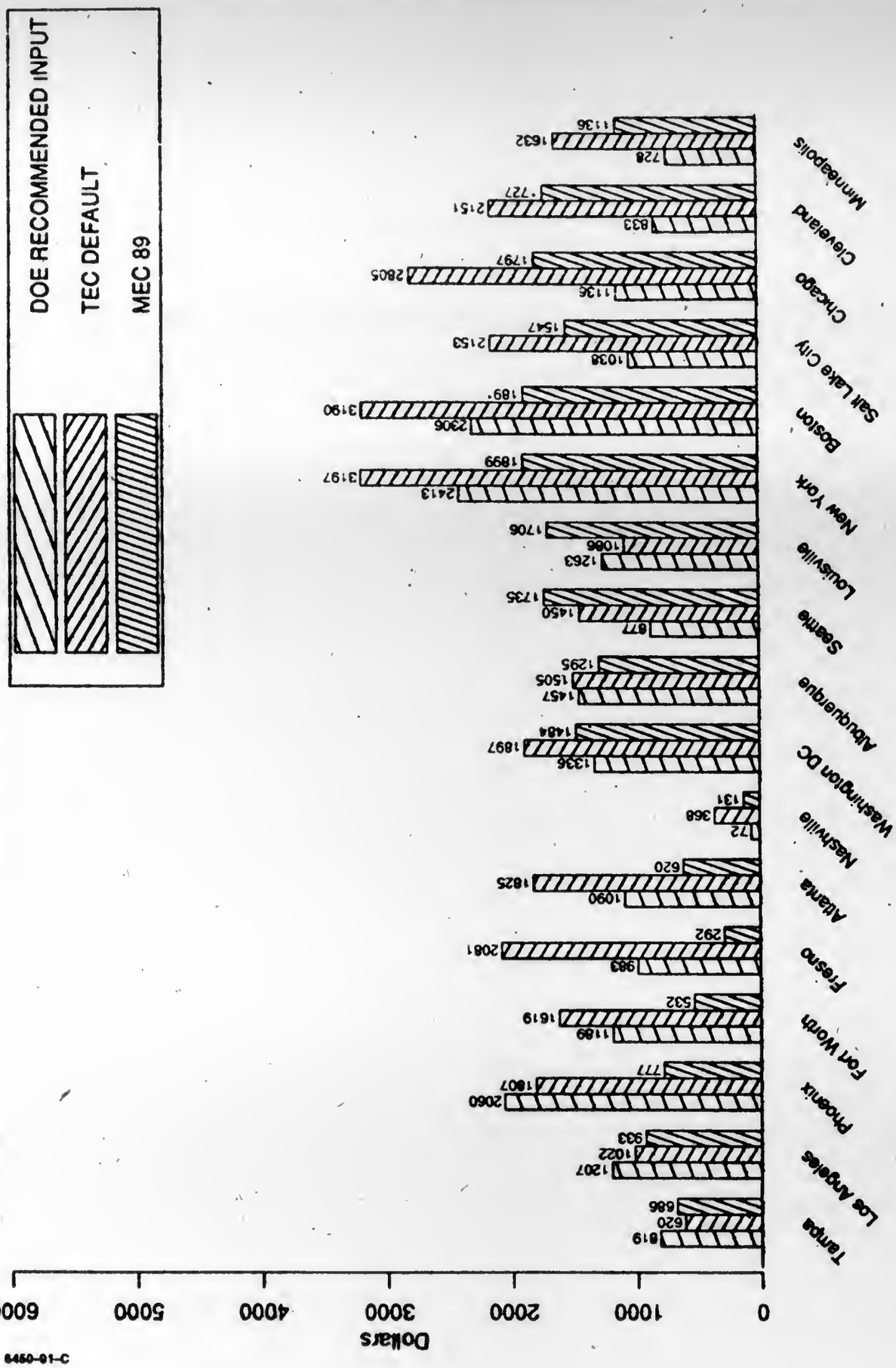


Figure 3

FIRST COST INCREASE RELATIVE TO MEC 1986



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Figure 1 shows that, with a few exceptions, the standard generated with DOE recommended input values results in the lowest life-cycle costs (highest life-cycle cost savings) of all standards (taller bars represent better economic performance than the shorter bars for the same location). The standard based on TEC default inputs shows poorer performance, although in all but a few cases, it is more cost effective than the MEC–86 standard. MEC–89 is always more cost effective than its predecessor, and is usually the second best performing standard of those compared. With a few exceptions, mostly in colder climates, MEC–86 is the least cost effective.

Figure 2 shows the effect of the standards on life-cycle energy cost savings relative to the MEC–86 standard (taller bars represent better energy performance than the shorter bars for the same location). All standards analyzed save energy costs compared to the MEC–86 baseline. Generally, a standard based on the DOE recommended input values or the MEC–89 values is the best performer in the colder climates. In the moderate to warm climates, the standard based on TEC default inputs saves slightly less than the DOE standard. The standards generated by the DOE recommended input values are more energy cost saving than MEC–89 in nine cities. The life-cycle energy cost savings of the DOE standards relative to MEC–86 range from 12 to 63 percent in the 17 climate-diverse cities studied.

Figure 3 shows the increase in homebuyer first costs required to comply with the various standards. Taller bars represent higher construction costs. Although it generally saved the most life-cycle costs and energy, the standard based on the DOE recommended input values is generally equal to or lower than the other standards in first cost. When based on TEC default inputs, the standard occasionally exceeds the first costs of the MEC standards, although in those locations it tends to save the most.

The DOE recommended input values (in Appendix B of the draft interim standards) indicate that DOE's draft interim standards save energy and reduce homeowner energy costs, without imposing unacceptably higher first costs, relative to MEC–86 or 89.

W. Use of the Recommendations by Others

The foundation of DOE's voluntary standards is a microcomputer program called ARES. The ARES software analyzes prototypical residences in a user-specified location to identify the most cost-effective combination of energy conservation features. The annual energy operating cost of a home built with these optimal features is the singular criterion of the resulting standards. Any home with an estimated annual energy cost at or below that of the optimal home complies with the resulting standard.

DOE intends that State and/or local code jurisdictions will use ARES to develop location-specific, cost-effective energy codes. Although no States have yet used the software (it has not yet been distributed), the usefulness of ARES for this task has been demonstrated by others who have used the software.

As the voluntary standards were undergoing DOE internal review, the Department of Housing and Urban Development (HUD) received a congressional mandate (Public Law 100–242, Section 568) to upgrade the thermal protection requirements of its Manufactured Housing Construction and Safety Standards (MHCSS). HUD recognized the DOE voluntary standard software (ARES) as a valuable tool for determining cost-effective energy conservation levels in manufactured houses and contracted with PNL to develop a new manufactured housing standard based on the ARES results. At the same time, the Manufactured Housing Institute (MHI) also proposed a new standard to HUD. Although MHI's proposal differed from PNL's recommendations because of differences in input parameters, MHI also used the ARES software as their primary standard development tool.

X. Updating of the Standards for New Technology

The ARES program addresses specific HVAC equipment, solar equipment, windows, and construction elements of the thermal envelope. For each of these items, there are discrete choices related to energy conservation. For example, ARES only analyzes ceiling insulation as R–11, R–19, R–30, R–38, R–49, or R–60. Wall insulation can only be R–11, R–13, R–19, R–23, or R–26. Windows can only be single, double, or triple pane/with thermal breaks, without thermal breaks, with heat-absorbing glass, or with low-E glass. Gas furnaces can only have efficiencies of 78, 80, 85, 90, or 95 percent.

The discrete values are based on common practice in the current residential construction industry using easily available building materials and components, and on the Federally-mandated minimum efficiencies for HVAC equipment and domestic hot water heaters. DOE anticipates that as energy-conserving construction technologies change, new levels of insulation, new types of windows, and higher efficiency mechanical equipment will be developed. The Department has considered various mechanisms for incorporating these new developments into the ARES software. By their inclusion in ARES, new conservation technologies will be aided in acceptance in real-world markets.

As an example, a manufacturer has developed an R–15 insulation batt that fits in a standard 2 x 4 stud wall. There are two possible ways for ARES to accommodate this new wall insulation level. A building code official using ARES to generate an energy standard can manually add the new level into the program. This is accomplished by going to the ECM Cost Data Menus in ARES, selecting "Wall Insulation", and using the "ADD A LEVEL" feature. The code official then types in "R–15", the initial construction cost, the annual non-fuel operation and maintenance cost (zero for insulation), and the fraction of installations requiring replacement during the default 7-year analysis period OR (if using the Extended LCC Method) the physical lifetime of R–15 insulation. With this information entered, ARES then treats R–15 as simply another wall insulation option when performing its economic optimization routine.

As indicated by this example, manual updating of ECM data is a "local" approach to revising ARES since a specific code official is entering the information and using it to establish a local energy standard only.

A second approach to accounting for new technologies is to revise the ARES software internally by programming modifications. These modifications would incorporate any additional ECM levels and their associated cost and failure rate/lifetime data directly into the permanent ARES program. This approach is more "global" in the sense that these updates can be distributed to all ARES users and are not dependent on the particular knowledge of one specific building code official. DOE would have the responsibility for managing the global updating of ARES through formal rulemaking proceedings: The Department would propose modifications on a regular basis, solicit comments on its proposals or other changes proposed by the general public, and (after evaluation of comments) publish a revised version of ARES available for nationwide distribution.

Comments are solicited on the appropriateness of either of the above two approaches, or other suggestions for keeping ARES current, so as not to discourage innovation and widespread use of emerging conservation technologies. DOE particularly solicits comments on how frequently building codes can be updated without having adverse practical impacts on homeowners, designers, or builders.

DOE emphasizes that updating the ACRES design tool program discussed previously to reflect changes to ARES can also be done in one of two ways: If a code official makes a local ECM level change before running ARES, that level will be automatically embedded in the ACRES program and displayed as an available option to the ACRES user. The option is available even if the new level has not been selected as optimum (i.e., the prescriptive requirement) for that ECM. If, under the global approach, DOE makes software changes to ARES, these same changes must be programmed into ACRES only if the code official has not re-generated the standards for his/her local jurisdiction.

III. Description of the Draft Interim Standards

A. Summary of the Draft Interim Standards

The draft interim standards have been developed for use by standard and code officials and Federal agencies assisting private sector housing who are interested in or required to establish effective new building design standards. The draft interim standards are structurally formed to provide these officials with a tool to establish cost-effective energy conservation standards for the most common residential building types in as many as 881 climate-representative locations in the United States. They are based on a micro-computer program developed especially to generate the draft interim standards. The micro-computer program, ARES, generates prescriptive packages and a point system for several building types and climate locations based on the optimal energy dollar/energy conservation investment mix for the particular location. ARES contains default economic information that represents national averages for energy conservation measures, materials and labor costs, and energy costs by geographic region. The local standard or code jurisdiction can amend the default values to suit energy conservation measures and energy prices specific to that location. An energy conservation measure is a building material or component whose use will affect the energy consumed for space heating, space cooling, and/or domestic hot water. Ventilation was explicitly excluded from the standards because few residences incorporate any mechanical ventilation, except for kitchens and bathrooms, and its use in those rooms is largely dependent upon idiosyncratic occupant behavior.

The goal of the draft interim standards is the maximum practicable energy performance of new residential structures. In establishing such standards, DOE sought consistency in the energy conservation requirements for all locations covered by the draft interim standards, flexibility in the requirements placed on building code and standards officials and homebuilders and designers, and equivalency among the three compliance paths. Another major objective was that the draft interim standards software be written so that, over time, emerging technologies could be incorporated without major revisions.

Subject to minimum design requirements which apply regardless of compliance path, the draft interim standards contain three distinct compliance paths that vary in complexity and flexibility. Each compliance path is based on the several key energy conservation measures that DOE concluded were most appropriate for residential building design. Each energy conservation measure was examined for its energy saving potential in each climate-specific location and for each of several building types. The economically optimal package of such measures, and their associated level of conservation, are the basis of the draft interim standards. To provide flexibility within the draft interim standards, different energy conservation levels of an energy conservation measure can be traded off against changes in the levels of other energy conservation measures as long as the total minimum design requirements are met, and the energy requirements for the structure are equal to or better than those of the optimal package.

The three compliance paths are as follows:

Prescriptive—Easy-to-follow design compliance packages designed for ease of use and quick identification of compliance requirements. This path may contain several equivalent packages at the discretion of the code official.

Points—An option-oriented method designed for ease of use but with greater flexibility than the prescriptive approach. Calculation of point totals is required before compliance can be assured.

Performance—A method based on analysis allowing the greatest flexibility and proper consideration of unique building and system designs. This process is more complex than the others as it requires the use of a separate calculation tool to determine the projected energy use of the proposed building design and then a comparison with a reference design to determine compliance. The separate calculation tool is not part of the draft interim standards. It is described, however, in Section 8.0. The performance method does not allow easy identification of the impacts associated with a change in an energy conservation measure. It requires considerable time and expertise and is not appropriate for simple trade-off calculations.

B. Section-By-Section Description of the Draft Interim Standards

1. Section 1.0: Purpose

The purpose section states that the standards are designed to achieve the maximum practicable improvements in energy efficiency and increases in the use of non-depletable sources of energy. It further states that, except in the case of Federal buildings, use of the draft interim standards is voluntary. However, DOE recommends use of these draft interim standards for the design of energy efficient new non-Federal residential buildings.

2. Section 2.0: Scope

Section 2.0 indicates that the proposed voluntary performance standards for new residential buildings apply to the design of buildings with three stories or fewer including single-family detached housing, multi-family low-rise buildings such as duplexes, townhouses, condominiums and garden apartments, and manufactured housing (mobile homes), all of which have complete kitchen facilities for each dwelling unit.

Hotels, motels, convents, monasteries, jails, barracks, and nursing homes, which generally provide housing for transient residents or do not have complete kitchen facilities in each dwelling unit, are not included in the draft interim standards. Standards for these types of buildings were promulgated by DOE on January 30, 1989, as part of voluntary performance standards for new commercial and multi-family high-rise residential buildings (54 FR 4538). The draft interim standards cover the design of the envelope and heating, cooling, and domestic water heating equipment and systems that are a permanent part of the building.

3. Section 3.0: General Definitions and Acronyms

Section 3.0 provides a listing of all the general definitions and acronyms used in the text of the draft interim standards. It also points out that definitions not found in draft Section 3.0 can be found in the 1986, or later, edition of *Terminology of Heating and Ventilation, Air Conditioning, and Refrigeration*, if appropriate, as published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE), 1791 Tullie Circle, NE., Atlanta, GA 30329.

4. Section 4.0: Developing the Criteria and Demonstrating Compliance

Section 4.1: General. Section 4.1 defines the scope of Section 4.0 and recommends adoption of the standards by building code and standard officials, States, local governments, and other governing jurisdictions in establishing building codes and other construction control mechanisms. The scope is described as the procedures for generating building energy consumption goals and compliance packages.

Section 4.2: ARES Input Requirements. Section 4.2 describes the inputs to the ARES computer program that are needed to generate standards for a particular location or region. The draft interim standards are designed to generate cost-effective energy conservation levels that apply to specific climatic locations. They are also designed to provide flexibility to users in generating requirements that are responsive to local needs. Requirements for a jurisdiction are based on a user-selected city representative of the jurisdiction's climate and other conditions such as fuel prices and local economies. If these conditions differ within jurisdictional boundaries, separate requirements may be generated for sub-regions. This section also describes inputs that are needed to define the types of housing that will be covered and the limits on equipment types to generate prescriptive requirements in the standards. The section provides for use of certain economic inputs set forth in Appendix B which is to be updated by DOE on an annual basis.

Sections 4.3 and 4.4: Generation of Criteria and Standards. Section 4.3 simply requires the running of ARES with the input developed above to generate localized criteria for the standards. Section 4.4 goes on to describe how individual standards for building types or locations can be combined to avoid unnecessarily redundant standards. ARES produces criteria for each location and building type specified. Criteria for adjacent locations may be the same or similar, and it is not necessary to maintain separate standards for each locale in such cases.

Section 4.5: Compliance Procedures. The draft interim standards include a set of minimum requirements (Section 5.0) and provide for three alternate methods of compliance with the standards. The three methods include: The Prescriptive Compliance Path (Section 6.0), the Point System Compliance Path (Section 7.0), and the Performance Compliance Path (Section 8.0). This section describes the most appropriate use of each. DOE is cognizant of the wide range of complexity in the design of residential buildings and the commensurate need for different compliance paths to respond to them. There are those who build using only conventional construction practices and equipment and need only a simple listing of requirements which, if incorporated, will assure compliance with the standards. Others need greater design freedom and wish to incorporate more complex combinations of design features for which they wish appropriate credit. Finally, a few people design innovative buildings and wish to use features that are unique but have demonstrable benefits for which they need appropriate credit. DOE believes that the compliance approaches incorporated in the draft interim standards respond to these disparate needs. The prescriptive approach is most appropriate where it is desirable to avoid extensive calculations and complexity. The Point System Compliance Path is appropriate when a more innovative design is desired, or when the prescriptive method does not provide the necessary design flexibility. It requires more manual calculations than the Prescriptive Compliance Path (the calculations are automated when using ACRES). Finally, the Performance Compliance Path is best used when the most innovative design concepts are being considered. The Performance Compliance Path allows the trade-off of energy use among the building systems so long as the total calculated design annual energy cost does not exceed the limit prescribed. It requires the use of a computer program to simulate the operation of the various systems and to model building design energy use.

5. Section 5.0: Minimum Design Requirements

This section contains the minimum design requirements and is used inconjunction with any one of the three alternative compliance paths. These minimum design requirements represent broadly accepted design practices which should not be subject to trade-off against other energy conservation measures.

Section 5.2: Building Thermal Envelope. This subsection provides minimum requirements that apply to the building thermal envelope of the conditioned space including the ceilings, walls, slab floors, floors over unconditioned spaces, foundation walls, basement walls, crawl spaces, doors, windows, and other assemblies or components separating conditioned space from unconditioned space or outside air.

Section 5.3: Infiltration/Ventilation Requirements. This subsection contains requirements for controlling air leakage into and out of conditioned spaces within a building's thermal envelope. Air leakage impacts both the energy performance of a building and the concentrations of pollutants in the indoor air. In seeking cost-effective energy requirements for new residences, DOE was cognizant of the complex interactions of these issues and the uncertainty involved in calculating infiltration-related energy consumption and air quality.

The requirements set forth in this subsection are intended to limit air leakage without reducing air exchange rates below what is typical of current practice homes. The tightest infiltration control measures prescribed by these standards are designed to maintain air exchange rates not below approximately 0.35 air changes per hour (rates will vary by climate).

The Department acknowledges that, in locations where radon has been determined to pose a health threat, infiltration control measures have an impact on the radon concentrations in a home. Appendix C of the draft interim standards contains recommended radon control measures for locations in which there is evidence of a radon problem. This appendix applies only where such evidence exists, and is not intended to influence construction practices in general.

Section 5.4: Heating, Ventiloting, and Air Conditioning (HVAC) Systems and Equipment. This subsection contains minimum requirements for heating, ventilating, and air conditioning systems and equipment. The equipment addressed is limited to the following:

- Equipment using single-phase electric power;
- Unitary air conditioners and heat pumps with capacities less than 65,000 BTU/h;
- Warm air furnaces with capacities less than 225,000 BTU/h input; and
- Boilers with capacities less than 300,000 BTU/h input.

The listed equipment types are most common in residences. Equipment types other than those listed are probably more complex systems that require more detailed specifications and are probably more applicable to building types such as those addressed in the DOE Commercial Standards.

For mechanical equipment or systems not included in the minimum requirements, the user is referred to the applicable DOE Commercial Standards (54 FR 4538) or 10 CFR part 435 subpart A.

Section 5.5: Domestic Hot Water—DHW. This subsection contains minimum requirements for non-solar domestic water heating equipment for the most common residential-type units only. These are distinguished from other, larger systems that may be used in some multi-family applications. The common residential equipment must be clearly identified on the basis of physical and/or performance parameters, such as upper limits on storage capacity and input rating. Domestic water heating equipment that does not fall under the criteria of residential-type service water heating equipment as defined by the subsection, such as central systems, will have to meet the criteria set in the applicable DOE commercial standards (54 FR 4538).

6. Section 6.0: Prescriptive Compliance Path

This section provides procedures for demonstrating compliance using the prescriptive method.

Section 6.2: Procedure Used in Producing the Prescriptive Compliance Packages. The requirements of the prescriptive compliance packages are developed using the procedures described in Section 6.0 of the draft interim standardsThe procedures in Section 6.0 allow for the development of a basic prescriptive compliance package, as well as several alternative compliance packages that meet the specific needs of the jurisdiction.

Separate prescriptive packages are developed for all applicable combinations of location, housing type, and heating and cooling systems, within a jurisdiction.

7 Section 7.0: Points Compliance Path

This section provides procedures for demonstrating compliance using the points method.

Section 7.2: Procedure to Develop the Points Compliance Path. A separate table and appropriate equations for each building type/equipment type combination are provided for demonstrating compliance using the points path. The equations use point values that are developed for each location within the jurisdiction using the procedures described in Section 4.1 of the draft interim standards.

The calculation of points for compliance is a two-step process:

- First, the determination of the total points ("Target Points") that the proposed home design would receive if built with the basic package of energy measures; and
- Second, the determination of the total points ("Design Points") that the proposed home design would receive if built with the proposed energy measures. The number of Design Points is not to exceed the number of Target Points to comply with the proposed standards. In demonstrating compliance, Target Point and Design Point totals are computed using the methods, procedures, and materials in accordance with proposed Section 7.0

8. Section 8.0: Performance Compliance Path

This section provides procedures for demonstrating energy performance equivalent to that of the basic prescriptive packages using a performance compliance approach. The provisions of this compliance path are intended to permit the broadest use of materials, systems, or methods of construction for which benefits can be reliably demonstrated. Where designs result in annual energy costs equivalent to or less than those that would result if the design were built with the basic package of energy measures, using the same energy types, compliance is demonstrated.

The performance compliance path is intended for residential designs that are atypical and that cannot readily be shown to comply under the package or points compliance paths. It provides an opportunity to use innovative materials, equipment, regional practices, and new technologies within the framework of the standards.

Performance analysis of energy costs is applicable to energy use for space conditioning only. Domestic water heating points are calculated separately, using the points compliance path, and then combined with the space conditioning points determined in this section. In this process, compliance trade-offs between the two are allowed within the limits on any feature prescribed in minimum design requirements (Section 5.0).

Estimates of energy used in other areas such as cooking or appliances are provided to allow calculation of energy costs under rate schedules that depend on total energy use. However, these uses do not vary between the proposed design and the reference design and can not be used as a variable in the compliance process.

Compliance through the performance path uses a reference approach. The procedure consists of calculating energy costs for the proposed or candidate design and comparing those with energy costs for a reference design with characteristics defined in this section. These costs are then converted to points and combined with points for domestic hot water to produce total design points and target points. If the calculated total points for the proposed design *do not* exceed the calculated total points of the reference design, the proposed design complies with the standards.

9. Appendix A: Explanation of Automated Residential Energy Standards (ARES) Computer Program

Appendix A contains explanatory material about the ARES computer program. It will provide background information when the standards are published separately.

10. Appendix B: DOE Input Assumptions on Economic Parameters for ARES

Appendix B sets forth certain economic inputs to be used in conjunction with Section 4.0 to generate the standards. As noted above, DOE intends to update this appendix annually.

11. Appendix C: Radon Control Measures

Appendix C sets forth information for the consideration of a building designer regarding radon control. This appendix was developed after informal consultation with Environmental Protection Agency staff. It is intended for use in conjunction with the infiltration/ventilation paragraph 5.3 of Section 5.0 (see *Background of Development Process*, page A.12).

12. Appendix D: Points Compliance Forms

Appendix D includes an example of blank, sample calculation tables and the point computation summary form. This form and the tables are used in conjunction with Sections 7.0 and 8.0.

IV. Procedural Requirements

A. Environmental Review

DOE performed an Environmental Assessment (EA), *Environmental Assessment: In Support of Proposed Interim Energy Conservotion Voluntary Performance Standards for New Non-Federal Residential Buildings*, Department of Energy, publication DOE/CE-0247, Volume 7 of 7, of the draft interim standards pursuant to the implementing regulations of the Council of Environmental Quality (CEQ) (40 CFR Parts 1500–1808 and the National Environmental Policy Act of 1969, as amended, (NEPA) Pub. L. 91–190, 40 U.S.C. 4221 et seq.) and DOE Guidelines implementing NEPA. This EA addresses the possible incremental environmental effects attributable to the application of the draft interim standards. This section summarizes the Finding of No Significant Impact (FONSI):

1. Contents of the Environmental Assessment

The analysis was conducted by first reviewing the standards now in use by State and local jurisdictions, referred to as the baseline, and then comparing them to the draft interim standards through computer simulation. The EA calculates the differences likely to occur in various indoor air pollutant concentrations and the concomitant health and safety effects to occupants as a result of the building design changes between the existing and proposed standards. This EA addresses only those differences likely to occur in new non-Federal residential building construction.

The EA analyzed two alternatives, the draft interim action and the no-action alternative which is also the baseline.

2. Specific Findings

Habitobility: In the assessment, habitability is expressed in terms of changes in various indoor air pollutant concentrations and concomitant occupant health and safety impacts that can be related to design changes attributed to the draft standards. No significant adverse effects were found that relate to building habitability.

Various pollutants are released continuously or intermittently within residential buildings. An indoor air quality computation model that uses specific pollution emission values (release rates) for selected materials was used to calculate pollutant concentration levels in the case-study residences based on baseline conditions and on the draft interim standards. Incremental pollutant concentrations were calculated for particulate matter, carbon monoxide (CO), carbon dioxide (CO_2), nitrogen dioxide (NO_2), radon, and formaldehyde. Also, the potential impact on indoor air quality of chemical compounds and microorganisms was assessed at a more qualitative level because the quantitative detail necessary for simulation modeling is not available.

Particulote Motter: Implementation of the draft interim standards are expected to have no effect on the level of particulate matter in residences.

Carbon Monoxide: Currently, computed indoor concentrations for CO from cooking and smoking are well below levels associated with health risk. The draft interim standards would have no effect on CO concentrations.

Carbon Dioxide: Residential units designed under the draft interim standards are expected to maintain low concentration levels of CO_2. The health risk from indoor CO_2 concentrations would not change.

Nitrogen Dioxide: Release of NO_2 in residential indoor environments is small. The computed concentrations of NO_2 for the draft interim standards residential units are the same as for the baseline residential units.

Radon: Computed values indicate that, for site-built residential units, indoor radon concentration levels of the baseline and the draft interim standards residential units would be the same.

Formaldehyde: The draft interim standards reduce the level of formaldehyde concentrations in some locations and increase concentrations at other locations. Although the magnitude of the change is small, increases could affect certain sensitive individuals who have a very low threshold of sensitivity to formaldehyde.

Chemical Compounds: A large number of chemical pollutants have been identified in indoor residential air. Many of these chemical compounds are either odorous, irritants, or suspected carcinogens. The draft interim standards are not expected to measurably increase or decrease health risks due to chemical pollutants in residential indoor air.

Microorganisms: Under certain conditions, microorganisms can become indoor air pollutants with a potential health risk. The most severe indoor microorganism pollution problems result from growth of organisms on a damp surface or on stagnant water collected on horizontal surfaces. The draft interim standards are not expected to change the levels of indoor microorganism pollution.

Outdoor Environmental Impacts: On a national basis, there would be a net improvement in outdoor environmental quality from reduced fossil fuel usage. The draft interim standards reduce estimated insulation levels in some locations that were tested, and increase them in other sites. As a result, the net impact on insulation production is expected to be so small that the general magnitude of airborne pollutants from its production should not change.

EPA Review: As required by Section 7(c)(2), 15 U.S.C. 778 (c)(2), of the Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 761 *et seq.*, a copy of this notice was submitted to the Administrator of the Environmental Protection Agency for comments on the impact of the draft interim standards on the quality of the environment. The Administrator did not submit comments.

3. Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) was issued by DOE on July 10, 1989.

B. Review Under Executive Order 12291

Section 3 of Executive Order (E.O.) 12291 (46 FR 13193, February 19, 1981) requires that DOE determine whether the draft interim standards are a "major rule," as defined by Section 1(b) of E.O. 12291, and prepare a regulatory impact analysis for each major rule.

A preliminary determination was made that this issuance does not constitute a "major rule." DOE, however, has prepared an *Economic Analysis* that follows the philosophy and intent of Executive Order 12291 of February 17, 1981, in order to determine whether or not the draft interim standards in fact do not meet the E.O. 12291 definition of a major rule as one likely to result in: (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The analysis concluded that no significant direct or indirect adverse impacts are expected to occur as a result of issuing voluntary performance standards for new residential buildings. The draft interim standards would only be voluntary for the non-Federal sector.

The economic analysis concludes that there are no significant adverse effects from adopting the draft interim standards. The draft interim standards will result in a positive net flow of benefits from energy savings that more than offset higher capital construction and other costs, when compared to current practice. By calculating the life-cycle cost of new construction as currently practiced and the construction that would be required by the draft interim standards, the analysis results in a calculation of regional and national net benefits of the draft interim standards over a 15-year time period.

Because compliance with the draft interim standards is voluntary, the level of penetration of the proposed standards into State and local energy codes is uncertain. Our analyses considered two scenarios: 1) a maximum penetration scenario of 100 percent compliance immediately upon the standards' issuance and 2) 100 percent compliance phased in over a five-year period. Both scenarios, especially the former, result in estimates near the upper limit of total impacts that could be expected from the voluntary standards.

The national net effect of the standards, assuming its immediate and full penetration, ranges from benefits of nearly $930 million in the first year to $1.04 billion in the fifth year. These net effects are based on the net present value of energy savings and capital costs over a 15-year period. For the fifth year, the year with the largest net effect, the capital costs of construction to comply with the standard are $1.2 billion. The energy savings accrued over the 15-year period are nearly $2.2 billion. The net effects under the phased-in scenario are similar, but first year benefits are only $168 million.

As measured in the gross value of industry output and employment, the total impact of the standards was estimated using Department of Commerce input- output tables. The energy savings of each structure built to comply with the standards were accounted to the year of construction; although in reality they would be spread over the 15-year analysis period. In the fifth year of implementation, the year showing the greatest impacts, the combined effect of output changes results in a net loss of approximately $2.5 billion in output.

This decrease is the difference between a $2.2 billion increase in output due to increased capital expenditures for construction and a $4.7 billion decrease in output due to decreased expenditures for energy. This net effect represents about 0.5 percent of the total U.S. Gross National Product.

The greatest total effect on employment is a net loss of 10,800 jobs during the fourth year. While nearly 31,800 jobs are gained as a result of increased construction, over 42,600 are lost due to decreased energy expenditures. This estimate of employment effects, which might be overstated because it does not take into account alternative patterns of consumption, is less than 0.01 percent of total U.S. employment.

The standards show a net benefit to all geographic regions of the U.S. Because the proposed standards are designed to optimize consumer economics on a local basis, these estimates of total economic impact should remain qualitatively similar, varying primarily in magnitude, if actual adoption is below 100 percent.

Three years have elapsed since the above-mentioned economic assessments were performed. DOE evaluated the sensitivity of the results to changes in key parameters that might vary with time. The most significant of these is the price of energy. Increasing fuel prices tend to increase the total net benefit of the standards but also increase the total impact on output and employment. Decreasing fuel prices lessen the net benefits and total effects on output and employment.

In the intervening years, real fuel prices have remained constant or decreased slightly as reported in DOE's State Energy Price and Expenditure Report (SEPER). The conclusion that the draft interim standards have net benefits to society is valid considering the small changes in fuel prices since the study was done and the overwhelming orientation of the results toward net benefits.

OMB Review

Pursuant to Section 3(c)(3) of E.O. 12291 this notice was submitted to the Director of the Office of Management and Budget (OMB) for review. The Director has concluded his review under that Executive Order.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 603, 604) requires DOE to prepare an initial regulatory flexibility analysis in certain circumstances. The draft interim standards in this notice are intended to be voluntary. Since they will not have the force and effect of law, DOE certifies that they will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared an initial regulatory flexibility analysis.

The analysis contained in Section 3.2 of the *Economic Analysis* determined that this rulemaking will have no impact on small business concerns.

D. Poperwork Reduction Act

No information collection or record keeping requirements are imposed on the public by the draft interim standards. Accordingly, authorizations are not required under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, as amended, or its implementing regulations, 5 CFR part 132.

E. Federalism Effects

Executive Order 12612, 52 FR 41685 (October 30, 1987), requires that regulations or rules be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. If there are sufficient "substantial direct effects," then Executive Order 12612 requires preparation of a Federalism Assessment to be used in all decisions involved in promulgating and implementing a regulation or a rule. Sections 2 through 5 of Executive Order 12612 set forth the principles, criteria, and requirements to be used in preparing a Federalism Assessment.

The principal impacts of the draft interim standards will be on new non-Federal residential buildings. These draft interim standards are being published pursuant to legislation that states that "except in the case of Federal buildings, voluntary performance standards shall be developed solely as guidelines for the purpose of providing technical assistance for the design and construction of energy efficient buildings." Therefore, the draft interim standards would not have a substantial direct effect on the States, the relationship between the States and Federal government, or distribution of the power and responsibilities among various levels of government.

F. Section 32 Findings

The draft interim standards reference several building industry standards and require building designers to use the industry standards in order to comply with the draft interim standards. As required by Section 32 of the Federal Energy Administration Act of 1974, as amended (15 U.S.C. 788), DOE must identify, by name, the organization that promulgated such standards and state whether the organization complied with the participatory requirements specified in the section.

The building industry standards referenced in the draft interim standards are listed below:

ASHRAE Handbook—Fundamentals Volume, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1985.

ASHRAE Handbook—Fundamentals Volume, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1989.
ASHRAE Handbook, HVAC Systems and Applications Volume, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1987.
ASHRAE Handbook—Systems Volume, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., 1984.
ASHRAE Standard 90A–1980, Energy Conservation in New Construction, American Society of Heating Refrigerating and Air Conditioning Engineers, Inc.
ASHRAE Standard 62–1981, Ventilation for Acceptable Indoor Air, American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., Atlanta, GA, 1981.
ASTM E283–84, Test Method for Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors, ASTM, Philadelphia, PA 19108, 1984.
"A Study and Review of Existing Data to Develop a Standard Methodology for Residential Heating and Cooling Load Calculations," ASHRAE Transactions, Vol. 90, Part 1, 1984.
Fibrous Glass Duct Construction Standard, 5th Ed., Sheet Metal and Air Conditioning Contractors National Association, Vienna, VA 22180, 1979.
Heat Loss Calculation Guide No. H–21, 2nd Edition, 1977, Hydronics Institute (HI).
HE–1–1980–Manual For Electric Comfort Conditioning, National Electrical Manufacturers Association (NEMA).
HVAC Duct Construction Standards–Metal and Flexible, 1st Ed., Sheet Metal and Air Conditioning Contractors National Association, Vienna, VA 22180, 1985.
HVAC Duct Leakage Test Manual, 1st Ed., Sheet Metal and Air Conditioning Contractors National Association, Vienna, VA 22180, 1985.
Insulation Manual 1979, National Association of Home Builders (NAHB).
RAC–1–1982, American National Standards Institute/Association of Home Appliance Manufacturers (ANSI/AHAM).
Residential Load Calculation Manual J, 7th Edition, Air-Conditioning Contractors of America (ACCA).
Simplified Energy Analysis Using the Modified Bin Method, American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1983.

DOE finds that while each of the organizations listed promulgates its standards in a manner that allows for the response and critique of interested persons, none of the organizations follows procedures that meet all of the specific requirements of Section 32.

As required by action 32(c), DOE will consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact of this standard on competition, prior to prescribing final interim standards.

V. Public Comment Procedures

A. Public Participation

DOE encourages the maximum level of public participation in the development of interim standards. Individuals, Federal agencies, architects, engineers, utilities, State and local governments, building code organizations, builders, builder associations, building owners, building owner associations, consumers, and others are urged to submit written statements on today's draft. The Department also encourages interested persons to participate in the public hearings to be held in San Francisco, California; Chicago, Illinois; Washington, DC; and Atlanta, Georgia, at the times and places indicated at the beginning of this Notice. An Environmental Assessment and Economic Analysis have been prepared in connection with this proposed rule and are referenced in the text of this Notice. Copies of these documents will be available for public inspection in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of these documents by writing to the Hearings and Dockets Office at the address listed at the beginning of this notice.

DOE has established a comment period of 90 days following publication of this notice, for interested persons to comment on this proposal. All comments will be available for review in the DOE Freedom of Information Reading Room.

B. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth below.

Comments should be labeled both on the envelope and on the documents, "Voluntary Residential Building Standards (Docket No. CAS–RM–79–112–A)", and must be received by the date indicated in the beginning of this notice, in order to assure full consideration. Eight (8) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed regulation. All written comments received on the draft interim standards will be available for public inspection at the Freedom of Information Reading Room as provided at the beginning of this notice.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which the submitting person believes to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and seven copies, if possible, from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information or data and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the item, (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential within the industry, (3) whether the information is generally known or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) an indication as to when such information might lose its confidential character due to the passage of time, and (7) whether disclosure of the information would be in the public interest.

C. Public Hearings

1. Procedure for Submitting Requests to Speak

In order to have the benefit of a broad range of public viewpoints in this proceeding, DOE will hold four public hearings. Listed earlier in this notice are the dates and addresses for the hearings. Any person who has an interest in these proceedings, or who is a representative of any group or class of persons having an interest, may request an opportunity to make an oral presentation at any of the public hearings. Such requests should be labeled both on the letter and the envelope, "Voluntary Residential Building Standards (Docket No. CAS–RM–79–112–A)", and should be sent to the address, and must be received by the date specified at the beginning of this notice.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted.

Each person to be heard is requested to bring to the hearing eight (8) copies of their statement. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made with the Office of Hearings and Dockets in advance by so indicating in a letter requesting to make an oral presentation.

Lists of the persons to be heard at the hearings will be available upon request from the Office of Hearings and Dockets. The lists will also be available for inspection in the DOE Freedom of Information Reading Room.

2. Conduct of Hearings

DOE reserves the right to select the persons to be heard at the hearings, to schedule the representative presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearings. The hearings will not be judicial or evidentiary-type hearings, but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal or clarifying statement, subject to time limitations.

The rebuttal or clarifying statements will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearings. The presiding official will determine whether the question is relevant or whether time limitations permit it to be presented for a response.

Any further procedural rules regarding proper conduct of the hearings will be announced by the presiding official.

Transcripts of the hearings will be made, and the entire record of this proceeding, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may also purchase a copy of the transcript from the transcribing reporter.

DOE may consolidate any or all of the public hearings if DOE does not receive sufficient interest concerning a particular hearing. In that event, DOE will contact each speaker and provide that person the opportunity to present testimony at any of the other hearings. However, DOE will not provide transportation or lodging for such speakers to appear at a hearing. DOE will include for the record at one of the other hearings a copy of the statement of any person who requested to speak at a hearing that was canceled by DOE.

The draft voluntary interim standards set forth below are issued in Washington, DC, on

Dated: August 7,1992.

J. Michael Davis, P.E.

Assistant Secretary, Conservation and Renewable Energy.

BILLING CODE 6450-01-M

Energy Conservation Interim Voluntary Performance Standards for New Non-Federal Residential Buildings

Sec.
1.0 Purpose.
2.0 Scope.
3.0 General Definitions and Acronyms.
4.0 Developing Criteria and Demonstrating Compliance
5.0 Minimum Design Requirements.
6.0 Compliance Path.
7.0 Point System Compliance Path.
8.0 Performance Compliance Path.
Appendix A—Explanation of Automated Residential Energy Standards (ARES) Computer Program.
Appendix B—DOE Input on Economic Parameters for ARES.
Appendix C—Radon Control Measures.
Appendix D—Points Compliance Forms.

Section 1.0 Purpose.

1.1 These standards are energy conservation "voluntary performance standards' for the design of new residential buildings which are not Federal buildings.

1.2 The "voluntary performance standards" are developed principally as guidelines for the purpose of providing technical assistance to State and local building code officials and to Federal agencies providing financial assistance for building new residential buildings, regarding requirements they should adopt for the design of energy efficient new residential buildings.

Section 2.0 Scope.

2.1 These "voluntary performance standards" apply to the design of new residential buildings, with three stories or less, including single-family detached housing, multi-family low-rise buildings such as duplexes, townhouses, condominiums and garden apartments, and manufactured housing (mobile homes), all of which have complete kitchen facilities for each dwelling unit.

2.1.1 Hotels, motels, convents, monasteries, jails, barracks, and nursing homes, which are transient in nature or do not have complete kitchen facilities in each dwelling unit, are not included in these standards.

2.1.2 The "voluntary performance standards" cover the design of the building envelope, and heating, cooling, and domestic water service heating equipment and systems that are a permanent part of the building.

Section 3.0 General Definitions and Acronyms

3.1 Definitions for the purpose of these standards:

Annual Fuel Utilization Efficiency (AFUE) means the ratio of the annual output of useful energy delivered by fossil fuel heating equipment to the total energy used by the equipment. The AFUE is expressed as a percentage.

Automatic Control means a self-acting, operating control actuated by an impersonal influence, such as a change in electrical current, fluid pressure, temperature, or other functional variable.

Building means any new structure except those specifically identified in Section 2.1.1, to be constructed for residential occupancy which includes provision for a heating or cooling system, or both, or for a hot water system.

Building Design means the architectural and engineering drawings and specifications used for the construction of a new building.

Building Thermal Envelope means the elements of a building which enclose conditioned spaces and through which thermal energy may be transferred to or from the ambient atmosphere or to or from unconditioned spaces.

Building Type means the classification of the building by usage or configuration.

Candidate Design or *Design Home* means a prospective building design to be tested for compliance.

Conditioned Floor Area means the floor area of the conditioned space measured from the interior wall surfaces.

Conditioned Space means a space within a building that is intended to be either heated or cooled.

Default Value means a preestablished value to be used in a calculation procedure when an alternative value has not been provided.

Domestic Hot Water means the supply of hot water for purposes other than space conditioning.

Dwelling Unit means a building or building space intended to house people, comprising one or more rooms designed for living, sleeping, and eating, and having cooking and sanitary facilities.

Energy Conservation Measure means a building material or component whose use will affect the energy consumed for space heating, space cooling, and/or domestic hot water.

Energy Factor means a measure of the overall efficiency of a water heater based on its recovery efficiency, standby loss, and energy input.

Federal Building means any building to be constructed by, or for the use of, any department, agency, corporation, or other entity or instrumentality or the executive branch of the Federal Government, including the United States Postal Service, the Federal National Mortgage Association, and the Federal Home Loan Mortgage Corporation, which is not legally subject to State and local building codes or similar requirements.

Fenestration means any light-transmitting opening in a building envelope. Included are: glazing materials of glass or plastic, with the framing, mullions, muntins, dividers, external and internal shading devices, and integral (between the glass) shading system.

Heating, Ventilating and Air-Conditioning (HVAC) System means a system that provides heating, ventilating and/or air-conditioning within a building for the purpose of occupant comfort.

Heating Seasonal Performance Factor (HSPF) means the total heating output (BTU) of a heat pump during its normal annual usage period for heating divided by the total electric input in watt-hours during the same period.

Manufactured Housing (Mobile Home) means a dwelling to be constructed for residential occupancy according to HUD Manufactured Housing Construction and Safety Standards as set fourth in 24 CFR part 3280.

Multi-Family Low-Rise Residential Building means a residential building containing two or more dwelling units and designed not to exceed three stories above grade.

Non-Depletable Energy Sources means sources of energy, excluding minerals, derived from incoming solar radiation; thermal, chemical, or electrical energy derived directly from conversion of incident solar radiation: wind, waves and tides; lake or pond thermal differences; and energy derived from the internal heat of the earth.

Opaque Areas means all exposed areas of a building envelope that enclose conditioned space and do not transmit solar radiation.

Orientation means the directional placement of a building surface with reference to its outward normal.

Reference Design or *Target Home* means a generic building design, of the same occupancy type as the *Candidate Design* or *Design Home*, which complies with the prescriptive requirements of these standards and has specified assumptions concerning shape, orientation, HVAC, and other system parameters.

Residential Building means a building to be used as single-family housing or containing multi-family dwelling units.

Sash Crack means the sum of all perimeters of all ventilators, sashes, doors, and other envelope penetrations based on overall dimensions of such parts expressed in feet, counting two adjacent lengths of perimeter as one.

Seasonal Energy Efficiency Ratio (SEER) means the total cooling of an air conditioner (BTU) during its normal annual usage period for cooling divided by the total electric energy input, in watt-hours, during the same period.

Single Family Housing means buildings each of which contains one dwelling unit.

Thermal Mass means materials with significant heat capacity and surface area which affect building loads by storing and releasing thermal energy.

Unconditioned Space means a space within a building that is not conditioned (see *Conditioned Space*).

Unitary Cooling and Heating Equipment means one or more factory-made assemblies which normally include an evaporator or cooling coil, a compressor and condenser combination, and in some cases a heating function as well.

Voluntary Performance Standards means an energy consumption goal or goals to be met without specification of the method, materials, and processes to be employed in achieving that goal or goals, but including statements of the requirements, criteria and evaluation methods to be used, and any necessary commentary.

3.2 *Definitions not found.* For definitions not found in Section 3.1, the 1986 or later edition of *Terminology of Heating and Ventilation, Air-Conditioning, and Refrigeration*, as published by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE), hereinafter referred to as ASHRAE terminology, shall apply to these standards.

3.3 *Acronyms and Abbreviations.* For purposes of these standards, the acronyms and abbreviations have the following meanings:

ach—Air Changes Per Hour.
Af—Floor Area in ft².
AFUE—Annual Fuel Utilization Efficiency.
ANSI—American National Standards Institute.
ARES—Automated Residential Energy Standard.
ARI—Air-Conditioning and Refrigeration Institute.
ASHRAE—American Society of Heating, Refrigerating, and ——— Air-Conditioning Engineers, Inc.
ASTM—American Society for Testing and Materials.
BTU—British Thermal Unit.
cfm—Cubic Feet Per Minute.
CFR—Code of Federal Regulations.
COP—Coefficient of Performance.
DEC—Design Energy Cost.
DHW—Domestic Hot Water.
DOE—U.S. Department of Energy.
DOS—Disk Operating System.
DP—Design Points.
DX—Direct Expansion Cooling Equipment.
ECM—Energy Conservation Measure.
EF—Energy Factor.
ELA—Effective Leakage Area.
°F or F—Degrees-Fahrenheit.
ft—Foot.
ft²—Square Foot.
ft³—Cubic Foot.
GAMA—Gas Appliance Manufacturers Association.
h or hr—Hour.
Hg—Mercury.
HI—Hydronics Institute.
HSPF—Heating Seasonal Performance Factor.
HVAC—Heating, Ventilating, and Air-Conditioning.
IBM—International Business Machines.
I-B-R—Institute of Boiler and Radiator Manufacturers.
K—Thousand.
kW—Kilo-Watts.
lb—Pound.
lin. ft—Linear Foot.
LPG—Liquified Petroleum Gas
MBTU—Millions of BTUs
min.—Minute.
R—Thermal Resistance.
SEER—Seasonal Energy Efficiency Ratio.
SMACNA—Sheet Metal and Air-Conditioning Contractors National —— Association.
TC 4.7—ASHRAE Technical Committee 4.7, "Energy Calculations".
TEC—Target Energy Cost.
W—Watts.
WH—Window Height.
Wh—Watt-hour.
WYEC—Weather Year for Energy Calculations.

Section 4.0 Developing Criteria and Demonstrating Compliance

4.1 *General.* This section describes the procedures to be used by those promulgating codes and standards, such as State and local building code officials and Federal agencies setting standards for financial assistance for new residential buildings. These are procedures for generating building energy consumption goals and criteria for the prescriptive and points compliance paths using the (ARES) micro-computer program, and for demonstrating compliance with the standards. The standards are recommended for adoption in building codes and other construction control mechanisms by those entities responsible for setting energy conservation standards for new non-Federal residential buildings. They include villages, townships, cities, counties, States, and other regional or national governmental jurisdictions.

4.2 *ARES Input Requirements*

4.2.1 *Location.* From the list of locations found in ARES, select the closest location climatologically to the jurisdiction. This is not necessarily the closest location geographically. Care should be taken to select a location that has corresponding weather conditions. If the jurisdiction is large enough to encompass areas with distinctly different climatic characteristics, select a location to represent each area.

4.2.2 *Building Type.* Select a building type in ARES for each building type to be built within the jurisdiction. For building types not included in ARES, or for proposed designs employing energy conservation measures not included in ARES, use Section 8.0, the Performance Compliance Path.

4.2.3 *Economic Variables and Energy Cost Data.* Select the appropriate input for each of the following items: inflation rate; mortgage interest rate; alternative investment rate; Federal income tax rate; down payment percentage; loan term; period of analysis; and fuel price escalation (see Appendix B).

4.2.4 *Property Tax Rate.* Revise the default property tax rate in ARES to reflect the annual tax rate for the jurisdiction, expressed as a percentage of the initial cost. Where the jurisdiction is large and encompasses multiple tax rates, use the average rate.

4.2.5 *Income Tax Rate.* Revise the income tax rate in ARES to reflect the marginal income tax bracket of the typical homeowner. Use the median Federal income tax rate in Appendix B and add the median State and local tax rates. Express the tax rate as a percentage.

4.2.6 *Local Cost Multiplier.* Revise the Local Cost Multiplier in ARES to reflect overall prices different from the regional average or to adjust for overall inflation in construction costs.

4.2.7 *Cost Data Base.* Review and adjust the ARES cost data base to reflect the construction costs in the jurisdiction for each of the envelope, HVAC, and domestic hot water energy conservation measures. Where jurisdictions are large and costs vary from one area to another, use average costs. Select the appropriate ARES cost data base from Table 4–1.

TABLE 4–1.—ENERGY CONSERVATION MEASURES COST DATA BASE FOR THE U.S.

Regional data base	States in region
National average	All
New England	CN, MA, ME, NH, RI, VT
Mid-Atlantic	DC, DE, MD, NJ, NY, PA
Mid-South	GA, NC, SC, VA, WV
Florida	FL
South Central	AL, AR, KY, LA, MS, OK, TN, TX
Central	IA, KS, MO, NB
North Central	IL, IN, MI, MN, ND, OH, SD, WI
Mountain	CO, NV, UT, WY
Southwest	AZ, NM
Pacific Southwest	AK, CA, HI
Pacific Northwest	ID, MT, OR, WA

4.2.8 *Prescriptive Equipment Types.* The Prescriptive Compliance Path can be used only with the combinations of heating and cooling equipment shown in Table 4–2 and with the domestic water heating equipment shown in Table 4–3.

TABLE 4–2.—PRESCRIPTIVE PATH EQUIPMENT TYPE COMBINATIONS

Heating equipment	Cooling equipment
Gas-fired furnace	Direct expansion
Oil-fired furnace	Direct expansion
LPG-fired furnace	Direct expansion
Electric resistance	Direct expansion
Electric heat pump	Electric heat pump

TABLE 4–3.

Prescriptive path water heating equipment
Gas-fired heater
Oil-fired heater
LPG-fired heater
Electric resistance heater
Electric heat pump

4.3 *Generation of Criteria*

4.3.1 *Prescriptive Package(s).* Run ARES to create the prescriptive package(s) for all of the geographic locations representative of the climatic areas of the adopting jurisdiction; all of the appropriate generic housing types (single-family detached, multi-family low-rise, and manufactured housing (mobile homes)) built in the adopting jurisdiction; and any appropriate economic scenarios for the jurisdiction.

4.3.2 *Point Systems.* Run ARES to create the point systems for all of the geographic locations representative of the climatic areas of the adopting jurisdiction; all of the generic housing types (single-family detached, multi-family low-rise, and manufactured (mobile) housing) built in the adopting jurisdiction; and appropriate economic scenarios for the jurisdiction.

4.4 *Generation of Prescriptive and Point Standards.* Compare the Prescriptive Package(s) run for each of the scenarios in Section 4.3.1 for differences. Where differences are significant for the climate, housing type, or economic scenarios, create separate standards for those categories. For example, there is no need to create separate standards for climatic areas where the packages do not vary significantly between climatic scenarios. For each resulting unique prescriptive package, include the corresponding point system.

4.5 *Compliance Procedures.* The standards include a set of minimum requirements, and then provide three alternative paths to demonstrate compliance with the standards. The alternative methods of achieving compliance are illustrated in Figure 4–1.

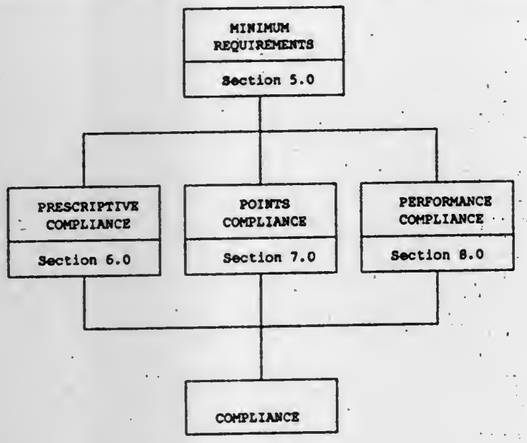


Figure 4-1—Schematic of standard compliance process.

A residential building design within the scope of these standards complies with the standards when it has been demonstrated that the design complies with the minimum requirements and any one of the three alternative compliance paths: prescriptive compliance path, point system compliance path, or performance compliance path.

4.5.1 *Advice on Selection of Compliance Path.* The following paragraphs provide advice which may be given to an applicant.

4.5.1.1 *Prescriptive.* Use the Prescriptive Compliance Path when the minimum amount of calculation and effort to achieve compliance is of primary concern. Its requirements can be readily specified in construction documents and are easily reviewed by code enforcement authorities. However, the Prescriptive Compliance Path only permits a few construction alternatives.

4.5.1.2 *Point System.* Use the Points Compliance Path when a more innovative design is desired, or when the prescriptive method does not provide the necessary design flexibility. It requires more calculations than the Prescriptive Compliance Path.

4.5.1.3 *Performance.* Use the Performance Compliance Path when the most innovative design concepts are being considered. The Performance Compliance Path allows the trade-off of energy use among the building systems so long as the total calculated annual energy cost of the design does not exceed the limit prescribed. It requires the use of an energy analysis methodology to simulate the operation of the various systems and to model building design energy use (see Section 8.0).

Section 5.0 Minimum Design Requirements

5.1 *General.* This section contains the minimum design requirements to be used by those promulgating codes and standards, such as State and local building code officials, and by Federal agencies setting standards for financial assistance for new residential buildings. These are requirements in the nature of construction specifications for design of the thermal envelope, infiltration and ventilation, heating, cooling, and domestic hot water systems and equipment. Use this section in conjunction with each of the alternative compliance paths: Prescriptive (Section 6.0), Point System (Section 7.0), or Performance (Section 8.0).

5.2 *Building Thermal Envelope.* Insulate all thermal envelope components to the minimum levels allowed by the point system of Section 7.0. The building thermal envelope includes the ceilings, walls, concrete slab floors on grade, floors over unconditioned spaces, foundation walls, basement walls, crawl spaces, doors, windows, and other assemblies or components separating conditioned space from unconditioned space or outside air.

5.2.1 *Door Thermal Requirements.* The opaque portions of all doors separating conditioned spaces from unconditioned spaces or outside air shall have a maximum thermal conductance of 0.395 Btu/h-ft²-°F. Consider the light-transmitting area in doors which cover more than 10 percent of the surface area of the door as fenestration.

5.2.2 *Shading Coefficients for Fenestration.* Fenestration shall have shading characteristics within the range of those options in the Point System in Section 7.0.

5.2.3 *Water Vapor Control.* Use vapor retarders, ventilation, and mechanical humidity control as required by engineering calculations to maintain the thermal and moisture integrity of the building envelope. The design of buildings for energy conservation may increase the water vapor pressure differentials between the interior and exterior environments.

5.3 *Infiltration/Ventilation.* This subsection contains requirements for controlling air leakage into and out of conditioned spaces within the building thermal envelope. Special provisions for controlling radon gas entry into the structure in geographical locations where radon has been deemed to pose a health threat are described in Appendix C of the standards.

5.3.1 Maintain a minimum average air exchange rate of 0.35 ach to maintain acceptable indoor air quality.

5.3.2 *Certification of Doors and Windows.* Windows and doors between conditioned and unconditioned spaces or outside air shall have a test-certified maximum air leakage rate. Perform tests in accordance with *ANSI/ASTM E 283–84, Standard Method of Test for Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors* at a pressure differential of 1.57 lb/ft² (equivalent to a 25 mph wind speed).

5.3.2.1 *Window Leakage.* All windows installed between conditioned and unconditioned spaces or outside air shall have a maximum air leakage rate of 0.37 ft³/min per foot of crack as determined under Section 5.3.2.

5.3.2.2 *Door Leakage.* All doors installed between conditioned and unconditioned spaces or outside air shall have a maximum air leakage rate of 0.37 ft³/min per ft² of surface area as determined under Section 5.3.2.

5.3.3 *Thermal Envelope Infiltration/Ventilation.*

5.3.3.1 *Foundations and Walls Below Grade.* Treat, caulk and seal foundation walls and walls below grade enclosing conditioned spaces to avoid the entry of moisture, chemicals, or radon gas.

5.3.3.2 *Exterior Joints.* Seal exterior joints, such as sole plate, wall frame corners, wall and ceiling joints, window and door frames, with a durable caulking material. Provide for differential expansion and contraction of the materials in joints between dissimilar materials, such as wood and masonry or concrete and metal, to provide a permanent seal for the joint.

5.3.3.3 *Outside Penetrations.* Use durable sealants to seal envelope penetrations between conditioned and unconditioned spaces or outside air, such as faucets, electrical outlets and wiring, and flues and vents and all penetrations through the top plate of exterior walls.

5.3.3.4 *Moveable Joints.* Provide for weatherstripped or gasketed moveable joints between doors and door frames and windows and window frames.

5.3.3.5 *Interior Joints.* Tape interior joints between the interior walls and ceilings to reduce air exchange.

5.3.3.6 *Exhaust Air.* Fit exhaust air vents from bathrooms, kitchens, and utility areas with back draft dampers to prevent air leakage into conditioned spaces while fans are not operating.

5.3.3.7 *Fireplaces.* Fit fireplaces with tight closing door assemblies on their combustion chambers. Seal the joint between the door assembly and the fireplace. Provide outside makeup combustion air using an operable damper to avoid loss of warm interior air during winter use. Fit the fireplace flue with readily accessible controls.

5.4 *Heating, Ventilating, and Air Conditioning (HVAC) Systems and Equipment.* This subsection addresses equipment using single phase electric power; unitary air conditioners and heat pumps with capacities equal to or less than 65,000 BTU/h; warm air furnaces with capacities equal to or less than 225,000 BTU/h input; and boilers with capacities equal to or less than 300,000 BTU/h input. Mechanical equipment or systems not addressed in this subsection shall meet all applicable requirements found in Section 8.0 of the *DOE Voluntary Performance Standards for New Commercial and Multi-Family High Rise Residential Buildings* (10 CFR part 435, Subpart A).

5.4.1 *Performance Data.* Unitary air-conditioning, heat-pumps, furnaces, and boilers shall meet the requirements of 10 CFR part 430. Do not use unrated indoor coil and outdoor condensing unit combinations as part of the heating and/or cooling system.

5.4.2 *Cooling Equipment Selection Criteria.* Base cooling equipment selections on calculations that determine the sensible and latent cooling capacity for the following conditions:

5.4.2.1 Air cooled condensing unit operating at the summer design conditions, or water cooled condensing unit operating at the expected average water temperature;

5.4.2.2 Indoor fan operating at an appropriate flow rate, approximately 300 cfm per ton of sensible coil capacity; and

5.4.2.3 Indoor coil operating in a range of entering dry bulb and entering wet bulb temperatures that can be expected to occur at the summer design conditions.

5.4.3 *Minimum Equipment Efficiency.* Use furnaces, boilers, central air conditioners and heat pumps which meet the applicable energy conservation requirements of 10 CFR part 430.

5.4.4 *Heating System Characteristics*

5.4.4.1 *Wall Heaters.* Do not install recessed heaters on outside walls.

5.4.4.2 *Electric Baseboard Heaters.* Do not exceed 250 W/lin. ft of heater.

5.4.4.3 *Central Electric Furnace.* Divide the operation of electric furnaces greater than 6 kW into at least two stages.

5.4.4.4 *Bath Ceiling Units.* Provide units with any combination of heat, light, or exhaust with controls permitting separate operation of each function.

5.4.5 *Equipment Sizing Procedures.* Size heating and cooling loads in accordance with the procedures in the *1989 ASHRAE Handbook, Fundamentals.*

5.4.5.1 *Outdoor design conditions.* For the proposed building site, use the 97.5 percent design value for winter and 2.5 percent design value for summer from the *1989 ASHRAE Handbook, Fundamentals*, Chapter 24, Table 1. Where documentation exists, adjustments may be made to reflect local climates or local weather experience.

5.4.5.2 *Indoor design conditions.* Use a winter heating design temperature of 70°F dry bulb. If humidification is provided, use a maximum relative humidity of 30 percent. For cooling calculations, use a design temperature of 75°F dry bulb. Design for a maximum 50 percent relative humidity within the conditioned space.

5.4.5.3 *Infiltration/Ventilation.* Design for a combination of infiltration and outdoor ventilation air of not less than an average of 0.35 ach.

5.4.6 *Heating-Cooling Equipment Sizing*

5.4.6.1 *Fossil Fuel Heating Equipment.* Size heating equipment capacity at no more than 125 percent of the design heating load. Where the next available size exceeds this limitation or a larger size is required to provide the air flow rate for cooling, the next larger size may be used.

5.4.6.2 *Electric Resistance Heating Equipment.* Design the total installed wattage of baseboard units not to exceed 125 percent of the design heating load. Size electric furnaces, fan-coil units, and duct heaters within 3 kW of the design heating load.

5.4.6.3 *Cooling Equipment.* Select cooling equipment for a sensible capacity not more than 125 percent of the design sensible cooling load, or the closest available size provided by the manufacturer, and for a latent capacity not less than the calculated latent cooling load. Perform separate calculations for each zone.

5.4.6.4 *Zoned Central Cooling Equipment.* Size central unit capacity of multi-zoned equipment at no more than 125 percent of the peak block load.

5.4.6.5 *Heat Pumps.* Base heat pump sizing on the design cooling load, unless the refrigeration cycle heating capacity is less than the design heating load of the conditioned space at the design condition. In this case, size the refrigeration cycle heating capacity to provide the lowest possible balance point on heating without exceeding 125 percent of the cooling design load. Do

not exceed the supplementary plus refrigeration cycle heating capacity by over 125 percent of the calculated design heating load. The total of the installed emergency and supplementary heat shall not exceed 100 percent of the design heating load.

5.4.7 *Distribution Systems*

5.4.7.1 *Air Distribution Systems.* Use accepted engineering standards such as *ASHRAE Handbook, 1987 HVAC Systems and Applications Volume*, or other equivalent procedures governed by the following:

5.4.7.1.1 *System Design.* Calculate each room cfm based on the greater of the heating or sensible cooling load; determine duct size by the cfm requirements of each room, the available static pressure and the total equivalent length of the various duct runs; and use friction loss data that corresponds to the type of material used in the duct construction.

5.4.7.1.2 *Installation.* Construct, erect, and seal all duct work in accordance with either the Sheet Metal and Air Conditioning Contractors National Association (SMACNA) Heating and Air Conditioning Installation Standards; or the SMACNA Fibrous Glass Duct Construction Standards, 5th Edition, 1979; or the SMACNA/TIMA/ADC Standard on Flexible Duct, 1980.

5.4.7.1.3 *Balancing.* Provide a means for balancing the air distribution system. Adjustable supply air diffuser dampers are acceptable.

5.4.7.1.4 *Diffusers and Grilles.* Select diffusers and grilles according to *1989 ASHRAE Handbook, Fundamentals* and use only those rated for throw and pressure loss over the appropriate range of flow rate by the manufacturer.

5.4.7.1.5 *Insulation.* Insulate air ducts located outside the conditioned space to at least a thermal resistance of 8h-ft²-°F/BTU, exclusive of inside and outside air film resistances. Install a vapor retarder where it is not an integral outside layer of the insulation. Seal joints in the ducts and vapor retarder with foil backed, acrylic adhesive tape.

5.4.7.1.6 *Ducts in Exterior Envelope Assembly.* Place ducts located in exterior envelope assemblies inside the thermal insulation so as not to reduce the insulating value of the insulation.

$$t = r_1\left[\exp\left(\frac{Req}{R_{per} * r_1}\right) - 1\right]$$

Equation 5-1

t = required thickness of insulation, inches
r_1 = pipe outside radius, inches
R_{eq} = required equivalent R-value of insulation = 4 hr-ft²-F/BTU
R_{per} = R-value per inch of insulating material (flat)

5.4.7.2.4 Insulate HVAC chilled water piping, regardless of location, with R-4 material having a permeability of not greater than 0.2 grain/h-ft²-in.Hg per inch. Protect material not meeting this requirement with a vapor-retarding covering having a permeance of at least 0.01 grain/h-ft²-in.Hg.

5.4.8 *Ventilation.*

5.4.8.1 *Outside Air.* If the design infiltration calculations (see Section 5.4.5) indicate that the average infiltration rate is less than 0.35 ach, provide additional outside air by using an energy recovery device to increase the total outside air to 0.35 ach and with a flow rate not less than 50 cfm.

5.4.8.2 *Combustion Air.* Design fossil fueled, central type heating equipment not to take combustion air from conditioned spaces.

5.4.8.3 *Exhaust Air.* Provide intermittent mechanical exhaust to the outdoors for kitchens of at least 100 cfm and for baths of at least 50 cfm.

5.4.8.4 *Ventilation Equipment.* Use only exhaust fans, heat recovery ventilators and other ventilating equipment rated by the manufacturer for airflow performance and installed accordingly.

5.4.8.4.1 *Heat Recovery Ventilators.* Consider the use of heat recovery in ventilation systems.

Insulate building assemblies which act as plenums (such as floors) as provided above for ducts.

5.4.7.2 *Hydronic Distribution Systems*

5.4.7.2.1 Size and design piping in accordance with recognized engineering standards such as the Hydronic Institute's publications, the Institute of Boiler and Radiator Manufacturers (I-B-R) *Installation Guide for Residential Hydronic Heating Systems No. 250*, or the *1985 ASHRAE Handbook, Fundamentals*, Chapter 34.

5.4.7.2.2 Install piping for space heating in accordance with recognized engineering guidelines and standards such as the I-B-R *Installation Guide for Residential Hydronic Heating Systems No. 200* and *Advanced Installation Guide for Hydronic Heating Systems No. 250.*

5.4.7.2.3 Insulate hydronic heating pipes located outside the conditioned space or within thermal envelope assemblies with pipe coverings having equivalent unit thermal resistance (R_{eq}) of 4 h-ft²-°F/BTU, R-4. Determine the thicknesses in accordance with Equation 5-1.

5.4.8.4.2 *Dampers.* Provide outside air intakes and exhausts with automatic or gravity dampers that close when the system is not operating.

5.4.9 *Controls.* When two or more electric resistance heaters (including baseboard units and low density ceiling radiant systems) are installed in any one zone, they shall be controlled by a single thermostat.

5.4.9.1 *Temperature Control.* Provide each system or zone and each floor of a dwelling unit with a separate thermostat to regulate the temperature. Each thermostat shall be manually or automatically adjustable.

5.4.9.1.1 *Set Points.* Use thermostats permitting set points from 55 to 85°F and incapable of simultaneous operation of heating and cooling.

5.4.9.1.2 *Location of Controls.* Mount temperature controls on an interior partition in an area sealed at the bottom and top and thermally insulated from the effects of the outside environment.

5.4.9.1.3 *Electric Furnaces.* A furnace greater than 6 kW in capacity shall have at least two stages. Control the second stage by an outdoor thermostat having a range selection of—22 to 55°F or by the second stage of a two-stage indoor thermostat.

5.4.9.1.4 *Heat Pump Controls.* Use thermostats for heat pump heating systems that are specifically designed for heat pump setback control, permitting suppression of electric resistance elements during post-setback warm-up periods.

5.4.9.2 *Zoned System Control.* Where zoned cooling units are used in conjunction with zoned heating, provide controls to prevent simultaneous heating and cooling.

5.4.9.3 *Ventilation Control.* Provide each mechanical ventilator (supply and/or exhaust) with a readily accessible, dedicated adjustable device for shut-off or volume reduction.

5.4.9.4 *Humidity Control.* Provide a humidistat for spaces or zones equipped to add moisture to maintain specific relative humidities. Use a humidistat that can be set to prevent additional energy from being used to provide space relative humidity levels above 30 percent.

5.4.9.5 *Heat Pump Supplementary Heater.* For electric resistance heaters, provide a control to prevent heater operation when the outdoor temperature is above the heat pump balance point except during defrost. For fossil fuel, activate supplementary combustion or stored-energy heating when the outdoor temperature is below the heat pump balance point.

5.5 *Domestic Hot Water (DHW).* This subsection applies to residential-type service water heating equipment only. Service water heating equipment not addressed in this section, such as central systems, shall meet the requirements of Section 9.0, Table 9.3–1 of the *DOE Voluntary Performance Standards for New Commercial and Multi-Family High-Rise Residential Buildings* (10 CFR part 435, subpart A).

5.5.1 *Equipment Performance.* Non-solar domestic water heaters shall meet the requirements of 10 CFR part 430.

5.5.2 *Water Heaters, Storage Tanks, and Piping.* Insulate DHW storage tanks, other than combination residential domestic water heating equipment, to at least 12 h-ft²-°F/BTU. Insulate above ground piping for non-circulating systems to at least 2 h-ft²-°F/BTU when the length of pipe is greater than 15 ft from the heater to the service point. Insulate continuously circulating hot water piping to a minimum of 4 h-ft²-°F/BTU.

5.5.3 *Combustion Air.* Design fossil fueled systems so that combustion air is taken only from outside the conditioned spaces.

Section 6.0 Prescriptive Compliance Path

6.1 *General.* This section sets requirements for an applicant, such as a builder, designer, or homeowner, who selects the Prescriptive Compliance Path. Use these requirements in conjunction with the minimum requirements provided in Section 5.0. Do not use this section in conjunction with Section 7.0 (Point System Compliance Path) or Section 8.0 (Performance Compliance Path) except as otherwise specifically provided therein. They may be used instead of this section.

6.2 *Selecting the Prescriptive Package.*

6.2.1 *Location and Building Type.* Select the prescriptive compliance packages appropriate to the building site location and closest to the building type of the proposed design. The housing types include: (1) single-family detached housing including one story, two story, bi-level, split level, and other housing

constructed on a single dwelling unit per building lot basis; (2) multi-family low-rise residential buildings including garden apartments, townhouses, rowhouses, multi-plexes, and other forms of housing with one or more common surfaces; and (3) manufactured housing or structures, transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation. If the proposed design does not categorically fit any of the building types, use the performance compliance method of Section 8.0.

6.2.2 *Component Requirements.* Select a package from one identified in 6.2.1 which the proposed design meets or exceeds.

6.3 *Compliance.* The proposed design must meet or exceed all of the component requirements of the selected package. If the proposed design does not meet or exceed all of the requirements, change the design to do so or use either the points compliance method of Section 7.0 or the performance compliance method of Section 8.0 to demonstrate compliance.

6.4 *Infiltration levels.* Prescriptive packages will specify normal or tight infiltration requirements.

6.4.1. A *normal infiltration package* shall comply with all requirements of paragraphs 5.3.2 and 5.3.3, including all subparagraphs, and shall comply, where applicable, with the air distribution duct sealing requirements of paragraph 5.4.7.1.2.

6.4.2 A *tight infiltration package* shall comply with paragraph 6.4.1 and the following:

6.4.2.1 Window leakage, as measured in accordance with paragraph 5.3.2, shall not exceed 0.28 cfm per foot of crack.

6.4.2.2 All means of access to attics, such as scuttle holes and pull-down staircases, shall be weatherstripped or gasketed.

6.4.2.3 All electrical outlets or switches, whether on exterior or interior walls, shall have gaskets installed under the cover plates.

6.4.2.4 A continuous air infiltration barrier shall be installed on walls and ceilings of the building's thermal envelope. All joints, overlaps, and penetrations of the air barrier shall be sealed. The barrier shall have a permeability rating of 4.0 or greater.

Section 7.0 Point System Compliance Path

7.1 *General.* This section sets requirements for an applicant, such as a builder, designer, or homeowner, who selects the Point System Compliance Path. Use the point system in conjunction with the minimum requirements in Section 5.0. Do not use the Prescriptive Path (Section 6.0) or the Performance Path (Section 8.0) in conjunction with this section except as otherwise specifically provided therein. Those compliance paths may be used instead of this section.

7.2 *Procedure to Develop the Points Compliance Path.*

7.2.1 Select the set of tables (generated according to Section 4.3.2) appropriate to the building site location and closest to the building type and equipment of the proposed design. From the selected tables, choose the appropriate multipliers for the proposed features of the proposed building design. Table 7-1 through 7-10 is a sample set of the forms used for computing the Target and Design Points. Target and Design cooling point calculations are required only if the dwelling unit is to be mechanically cooled using either a heat pump or direct expansion (DX) cooling system with central distribution.

7.2.2 *Point Computation.* Using the appropriate multipliers for each proposed feature, calculate the Target and Design Points, respectively, on the points compliance analysis forms. Combine the points for all end uses to obtain the Total Target Points and Total Design Points.

7.2.2.1 *Ceiling Insulation Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Ceiling Insulation Target and Design points for Heating and Cooling, respectively.

Table 7-1 - Point calculation for ceiling insulation.

NOTE: References to Tables 5-X in Tables 7-1 through 7-10 refer to the generic point tables generated under 4.3.2 and illustrated in the ARES User's Guide (DOE/CE-0274).

Point Calculation - Ceiling Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Ceiling Area) x _____ (TARGET Htg. Mult. (Table 5-2)) = _____/1000 = _____

Equation 7-1a

Cooling: _____ (Ceiling Area) x _____ (TARGET Clg. Mult. (Table 5-2)) = _____/1000 = _____

Equation 7-1b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Ceiling Area) x _____ (DESIGN Htg. Mult. (Table 5-3)) = _____/1000 = _____

Equation 7-1c

Cooling: _____ (Ceiling Area) x _____ (DESIGN Clg. Mult. (Table 5-3)) = _____/1000 = _____

Equation 7-1d

7.2.2.2 *Wall Insulation Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Wall Insulation Target and Design points for Heating and Cooling, respectively.

Table 7-2 - Point calculation for wall insulation.

Point Calculation - Wall Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Wall Area) x _____ (TARGET Htg. Mult. (Table 5-4)) = _____ /1000 = _____

Equation 7-2a

Cooling: _____ (Wall Area) x _____ (TARGET Clg. Mult. (Table 5-4)) = _____ /1000 = _____

Equation 7-2b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Wall Area) x _____ (DESIGN Htg. Mult. (Table 5-5)) = _____ /1000 = _____

Equation 7-2c

Cooling: _____ (Wall Area) x _____ (DESIGN Clg. Mult. (Table 5-5)) = _____ /1000 = _____

Equation 7-2d

7.2.2.3 *Floor/Foundation Insulation Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Floor/Foundation Target and Design points for Heating and Cooling, respectively.

Table 7-3- Point Calculation for floor and foundation insulation.

Point Calculation - Floor/Foundation Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Component Size[1]) x _____ (TARGET Htg. Mult. (Table 5-6)) = _____ /1000 = _____

Equation 7-3a

Cooling: _____ (Component Size[1]) x _____ (TARGET Clg. Mult. (Table 5-6)) = _____ /1000 = _____

Equation 7-3b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Component Size[1]) x _____ (DESIGN Htg. Mult. (Table 5-7)) = _____ /1000 = _____

Equation 7-3c

Cooling: _____ (Component Size[1]) x _____ (DESIGN Clg. Mult. (Table 5-7)) = _____ /1000 = _____

Equation 7-3d

[1] Enter the area in square feet of a floor over a crawlspace or unheated basement foundation. Enter the perimeter length in feet for slabs or heated basement foundations.

7.2.2.4 *Air Infiltration Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Air Infiltration Target and Design points for Heating and Cooling, respectively.

Table 7-4- Point calculation for air infiltration.

Point Calculation - Air Infiltration

TARGET HOME: TARGET POINTS

Heating: _____ (Floor Area) x _____ (TARGET Htg. Mult. (Table 5-8)) = _____ /1000 = _____

Equation 7-4a

Cooling: _____ (Floor Area) x _____ (TARGET Clg. Mult. (Table 5-8)) = _____ /1000 = _____

Equation 7-4b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Floor Area) x _____ (DESIGN Htg. Mult. (Table 5-9)) = _____ /1000 = _____

Equation 7-4c

Cooling: _____ (Floor Area) x _____ (DESIGN Clg. Mult. (Table 5-9)) = _____ /1000 = _____

Equation 7-4d

7.2.2.5 *Fenestration Layers and Sosh Moterial Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Fenestration Layers and Sash Material Target and Design points for Heating and Cooling, respectively.

Table 7-5- Point calculation for window layers and sash materials.

Point Calculation - Window Layers and Sash Material

TARGET HOME: TARGET POINTS

Heating: _____ (Floor Area) x _____ (TARGET Htg. Mult. (Table 5-10)) = _____ /1000 = _____

Equation 7-5a

Cooling: _____ (Floor Area) x _____ (TARGET Clg. Mult. (Table 5-10)) = _____ /1000 = _____

Equation 7-5b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Window Area) x _____ (DESIGN Htg. Mult. (Table 5-11)) = _____ /1000 = _____

Equation 7-5c

Cooling: _____ (Window Area) x _____ (DESIGN Clg. Mult. (Table 5-11)) = _____ /1000 = _____

Equation 7-5d

7.2.2.6 *Glazing Area and Orientation Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Glazing Area and Orientation Target and Design points for Heating and Cooling, respectively.

Table 7-6 - Point calculation for fenestration area and orientation.

TARGET Point Calculation - Fenestration Area and Orientation

TARGET HOME:		TARGET POINTS
Heating:	_____ Floor Area	_____ (Table 5-12)
Cooling:	_____ Floor Area	_____ (Table 5-12)

DESIGN Point Calculation - Fenestration Area and Orientation

DESIGN HOME: HEATING CALCULATION

Orientation	Glazing Area	Energy Option Multiplier (Table 5-13)	Overhang Multiplier (Table 5-14)	Fenestration Factor (F)
North	_____ x	_____ x	_____ /100 =	_____
Northwest	_____ x	_____ x	_____ /100 =	_____
East	_____ x	_____ x	_____ /100 =	_____
Southeast	_____ x	_____ x	_____ /100 =	_____
South	_____ x	_____ x	_____ /100 =	_____
Southwest	_____ x	_____ x	_____ /100 =	_____
West	_____ x	_____ x	_____ /100 =	_____
Northwest	_____ x	_____ x	_____ /100 =	_____
			+	
			Total HEATING Fenestration Factor (F)	_____
			DESIGN Points:	_____ (Table 5-15)

Equation 7-6a

DESIGN HOME: COOLING CALCULATION

Orientation	Glazing Area	Energy Option Multiplier (Table 5-13)	Overhang Multiplier (Table 5-14)	Fenestration Factor (F)
North	_____ x	_____ x	_____ /100 =	_____
Northwest	_____ x	_____ x	_____ /100 =	_____
East	_____ x	_____ x	_____ /100 =	_____
Southeast	_____ x	_____ x	_____ /100 =	_____
South	_____ x	_____ x	_____ /100 =	_____
Southwest	_____ x	_____ x	_____ /100 =	_____
West	_____ x	_____ x	_____ /100 =	_____
Northwest	_____ x	_____ x	_____ /100 =	_____
			+	
			Total HEATING Fenestration Factor (F)	_____
			DESIGN Points:	_____ (Table 5-15)

Equation 7-6b

7.2.2.7 *Base Load Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of Base Load Heating and Cooling Points.

Table 7-7- Point calculation for base load.

Point Calculation - Base Load

				TOTAL POINTS
Heating:	_____ Floor Area x	_____ Heating Multiplier (Table 5-16)	= _____ /1000 =	_____

Equation 7-7a

Cooling:	_____ Floor Area x	_____ Cooling Multiplier (Table 5-16)	= _____ /1000 =	_____

Equation 7-7b

7.2.2.8 *HVAC Equipment and System Efficiency Point Computation.* Use multipliers selected under 7.2.1 in the equations below to determine the number of HVAC System Target and Design points for Heating and Cooling, respectively.

Table 7-8— Point calculation for mechanical equipment.

Point Calculation - Mechanical Equipment

TARGET HOME:		TARGET POINTS
Heating:		_____ (Table 5-17)
Cooling:		_____ (Table 5-17)

DESIGN HOME:				DESIGN POINTS
Heating:	_____ Equipment Multiplier (Table 5-18)	+ _____ Efficiency Indicator	=	_____

Equation 7-8a

Cooling:	_____ Equipment Multiplier (Table 5-18)	+ _____ Efficiency Indicator	=	_____

Equation 7-8b

7.2.2.9 *Domestic Hot Water Point Calculation.* Use points selected under 7.2.1 in values for the DHW Target and Design Points.

Table 7-9 — Point calculation for domestic water heating.

Point Calculation - Non-solar Domestic Water Heating

TARGET HOME: TARGET POINTS

(Table 5-19)

DESIGN HOME: DESIGN POINTS

DHW (Table 5-20) + Energy Factor =

Equation 7-9

Point Calculation - Solar Domestic Water Heating

TARGET HOME: TARGET POINTS

(Table 5-21)

DESIGN HOME: DESIGN POINTS

(Table 5-21)

7.2.2.10 *Total Points.* Calculate the Total Target and Design points using Table 7–10. Compliance is demonstrated if the Total Design Points do not exceed the Total Target Points.

Table 7-10 — Point computation summary form.

Point Computation Summary Form

Component	Source Equation	TARGET Heating	TARGET Cooling	DESIGN Heating	DESIGN Cooling
Ceiling Insulation	7-1a - d				
Wall Insulation	7-2a - d				
Floor Insulation	7-3a - d				
Air Infiltration	7-4a - d				
Glazing Layers	7-5a - d	+ +	+ +	+ +	+ +
SUBTOTAL 1	Note (a)				
Glazing Orientation	7-6a - b	- +		- +	
SUBTOTAL 2	Note (b)				
Base Points	7-7a - b	± ±		± ±	

Notes for Table 7-10:

a) Sum the points in each column to obtain entries for the four SUBTOTAL 1 boxes.

b) Subtract the Glazing Layers Heating points and add Glazing Layers Cooling points to obtain entries for the four SUBTOTAL 2 boxes.

Table 7-10—Point Computation Summary Form (continued).

SUBTOTAL 3	Note (c)		
HVAC Efficiency Heating Cooling	7-8a - b	x _____ x _____	x _____ x _____
TOTAL HEATING AND COOLING POINTS	Note (d)	+	+
TOTAL SPACE CONDITIONING POINTS	Note (e)		
Domestic Hot Water Points	7-9 & Table 5-21	+ _____	+ _____
TOTAL POINTS	Note (f)		

Notes for Table 7-10 (continued):

c) Sum the Base Points and SUBTOTAL 2 to obtain SUBTOTAL 3 entries. Note: Some Base Points may be negative. In this case, subtract them from SUBTOTAL 2.

d) Multiply Heating SUBTOTAL 3 by HVAC Heating Points to obtain TOTAL HEATING POINTS. Multiply Cooling SUBTOTAL 3 by HVAC Cooling Points to obtain TOTAL COOLING POINTS.

e) Sum TOTAL HEATING and TOTAL COOLING POINTS to obtain TOTAL SPACE CONDITIONING POINTS.

f) Sum TOTAL SPACE CONDITIONING POINTS and Domestic Hot Water Points to obtain TOTAL POINTS.

Section 8.0 Performance Compliance Path

8.1 *General.* This section sets requirements for an applicant, such as a builder, designer, or homeowner, who selects the Performance Compliance Path. Use these procedures in conjunction with the minimum requirements presented in Section 5.0. Except as otherwise provided in this section, do not use Section 6.0 (Prescriptive Compliance Path) or Section 7.0 (Point System Compliance Path).

8.1.1 *Compliance Procedure.* The procedure consists of calculating energy costs for the proposed or candidate design and comparing those with energy costs for a reference design with characteristics defined in this section. These costs are then converted to points and combined with those for domestic hot water to develop design points and target points. If the TOTAL POINTS for the proposed design *do not* exceed the TOTAL POINTS of the reference or target design, the candidate design complies with the standards.

8.2 *Design Assumptions.*

8.2.1 *General.* Consider conditioned floor space in dwelling units to be fully conditioned to maintain the specified thermostat set points (except for minor deviations consistent with good sizing practice at thermostat setup/setback and peak load conditions) during the entire year. If equipment to supply full heating, cooling, or domestic hot water is not specified for the candidate design, assume that equipment meeting the minimum prescriptive requirements is installed.

8.2.2 *Candidate Design.* Take into account all qualities, details, and characteristics of the design that significantly affect energy use and energy cost. These may include construction, geometry, orientation, materials, equipment, and use of renewable energy sources. Include items for which minimum design requirements are specified in Section 5.0. Document minimum design requirements and all significant energy conservation features in construction documents.

8.2.2.1 *Design Points.* If multiple units of identical designs are planned, calculate design points for the candidate unit for one of the following conditions: (1) the Design Points of each specific dwelling unit, calculated based on its unique combination of design, orientation, site, and climate; (2) the highest Design Points for the Dwelling Unit Type for each orientation or closest cardinal orientation and site situation in which it is proposed to be built; or (3) the highest Design Points for the Dwelling Unit Type simulated in each of the four cardinal directions. Compliance by the third alternative demonstrates compliance of the candidate design, regardless of orientation.

8.2.2.2 Calculate Design Points separately for each single-family dwelling unit. For multi-family low-rise residential buildings, the Design Points may be calculated separately for each dwelling unit or may be calculated for the entire building.

8.2.3 *Reference Dwelling Unit.* Use the prescriptive compliance package, under Section 6.0, that represents the same generic dwelling type as the candidate design, for the reference unit. The three dwelling types are single-family dwelling, multi-family low-rise residential building, and manufactured (mobile home) dwelling. Use the prescriptive package envelope requirements for the reference unit with the same heating equipment type and same cooling equipment type as the candidate.

8.2.3.1 *Floor Area.* Use the same floor area as the candidate unit.

8.2.3.2 *Ceiling Area.* Use the same exposed ceiling area as the candidate unit. Use an exposed roof area that is horizontal, unventilated, of lightweight construction, and insulated to meet the roof conductance requirements of the prescriptive section for the candidate conditioning energy type.

8.2.3.3 *Wall Area.* Use the gross exterior wall area of the candidate with one-fourth of the area located on each cardinal orientation. Use the number, orientation, and area of non-glass doors of the candidate design.

8.2.3.4 *Glazing Area.* Use either the vertical glazed area of the candidate design (including skylights) or 12 percent of the conditioned floor area, whichever is less. Locate one-fourth vertically on each cardinal orientation.

8.2.3.5 *Construction.* Use light weight, standard frame construction.

8.2.3.6 *Floor and Foundation.* Use the candidate design constructions, fraction of floor area over conditioned space, unconditioned space, unconditioned basements, crawl spaces, and floor slabs. Insulate to the selected package requirements.

8.2.3.7 *Shading.* Use no external shading.

8.2.3.8 *Volume.* Calculate the volume as eight feet times the floor area.

8.3 *Standard Calculation Procedure for Space Conditioning Energy Use.* Taking into account the requirements of paragraph 8.2 of this section, and consistent with the calculation procedure in this section, estimate the average annual energy use for heating and cooling (in MBTU) for the candidate and reference designs, respectively.

8.3.1 *Internal Heat Gains.* Use equations 8–1 through 8–3 to calculate internal heat gains. Include internal heat gains from lights, people, and equipment. Distribute over the day according to the fractions in Table 8–1.

Total heat gains = Sensible heat gains + Latent heat gains

Equation 8–1

Sensible heat gains (BTU/day) = (floor area x 8.3) + 43,660

Equation 8–2

Latent heat gains (BTU/day) = 12,160

Equation 8–3

Table 8-1- Internal load (fraction of daily total)

Time of day	Multiple zones		Single zone
	Zone 1	Zone 2	
Mid - 1 am	0.0140	0.0063	0.0203
1 - 2 am	0.0140	0.0063	0.0203
2 - 3 am	0.0140	0.0063	0.0203
3 - 4 am	0.0140	0.0063	0.0203
4 - 5 am	0.0140	0.0063	0.0203
5 - 6 am	0.0140	0.0199	0.0339
6 - 7 am	0.0351	0.0075	0.0426
7 - 8 am	0.0315	0.0537	0.0852
8 - 9 am	0.0119	0.0379	0.0498
9 -10 am	0.0138	0.0166	0.0304
10 - 11 am	0.0138	0.0166	0.0304
11 - Noon	0.0138	0.0268	0.0406
Noon - 1 pm	0.0138	0.0166	0.0304
1 - 2 pm	0.0138	0.0116	0.0254
2 - 3 pm	0.0138	0.0126	0.0264
3 - 4 pm	0.0138	0.0126	0.0264
4 - 5 pm	0.0138	0.0248	0.0386
5 - 6 pm	0.0100	0.0316	0.0416
6 - 7 pm	0.0100	0.0346	0.0466
7 - 8 pm	0.0260	0.0440	0.0700
8 - 9 pm	0.0260	0.0440	0.0700
9 - 10 pm	0.0260	0.0471	0.0731
10 - 11 pm	0.0245	0.0486	0.0731
11 - Midnight	0.0300	0.0360	0.0660
Total	0.4254	0.5746	1.000

8.3.1.1 Where multiple zone space conditioning is modeled for the candidate unit only, use the hourly distribution shown for Zone 1 for bedrooms and bathrooms; use the hourly distribution shown for Zone 2 for all other conditioned rooms. Where single zone space conditioning is modeled, use the hourly distribution for single zone.

8.3.2 *Internal Thermal Mass.* Use an occupancy thermal mass (furniture and contents) of 4.5 lbs/ft² of floor area for both reference and candidate buildings. Use a structural mass of 1.5 lbs/ft² of floor area for the reference unit.

8.3.3 *Window Management.* Assume glazing is internally shaded by medium weight draperies in both the reference and candidate design even if no draperies are shown on the plan. Reduce the shading coefficient of the reference unit glazing 30 percent during the cooling season and 15 percent during the heating season, but assume no effect on window conductance. Higher performance shading and insulation systems may be modeled if supported by data and specified on the plans for the candidate design. To account for variations in occupant behavior, assume operable shading or insulation systems perform at 50 percent of their nominal decrease in shading coefficient or increase in insulation R-value when closed. If automatic motorized controls are installed, assume 100 percent of nominal performance.

8.3.4 *Natural Ventilation.* Assume that both candidate and reference dwelling units utilize natural ventilation for cooling whenever the outdoor air conditions allow the indoor conditions to be maintained at a relative humidity of 70 percent or less. Use identical ventilation control strategies in both reference and candidate designs. Natural ventilation may be used to reduce indoor air temperature below the cooling set point. For the reference unit, use a free vent area of 20 percent of the glazing area with vents uniformly distributed on each orientation. For the candidate design, use a free vent area of 50 percent of the operable sash area, to account for screens and other obstructions.

8.3.5 *Infiltration.* Use either a constant air change rate of 0.52 ach for both the candidate design and the reference design and meet the minimum infiltration requirements of Section 5.0; or calculate the Effective Leakage Area (ELA) per the *1989 ASHRAE Handbook, Fundamentals.* Use data from *ANSI/ASTM E/283–73, Standard Method of Test for Rate of Air Leakage Through Exterior Windows, Curtain Walls and Doors,* or *ASTM E/779–86, Determining Air Leakage Rate by Fan Pressurization,* where available. In no instance shall the ratio of ELA in square feet to the floor area in square feet of the candidate be less than 0.00023. For the reference unit, use the ratio of ELA in square feet to the floor area in square feet of the candidate of 0.00035. Calculate the energy loss from infiltration in both the reference and candidate design per the *1985 ASHRAE Handbook, Fundamentals* hourly calculation of the specific infiltration.

8.3.6 *HVAC Systems and Equipment.*

8.3.6.1 *Part Load and Outdoor Temperature.* Reflect the effects of part load and outdoor temperature.

8.3.6.2 *Multiple Energy Types.* If the candidate design uses more than one energy type for a single purpose, such as a combination of electricity and gas for space heating, then, in the reference dwelling unit, use the predominant energy source for that purpose and use the envelope requirements from the equipment type that represents the majority of that energy use. Use the same equipment types for heating and for cooling for both the candidate design and the reference dwelling unit, except use site solar with electric backup for space conditioning when included in the candidate design.

8.3.6.3 *Zones.* Use one thermal zone for the reference unit. Multiple thermal zones may be simulated in calculating the design energy cost of the candidate design if multi-zone automatic controls are specified.

8.3.6.4 *Equipment Sizing and Redundant Equipment.* Where equipment size affects energy consumption, use actual equipment sizes and types in the calculations. Size the equipment for the reference unit consistent with the sizing in the candidate design (Section 5.4.5). (The sizes need not be the same.) Redundant and/or emergency equipment need not be simulated if it is controlled so as not to be in use during normal operations.

8.3.6.5 *Thermostat Control and Equipment Size.* If the specified equipment in the candidate design is too small to meet the increased load from the required thermostat control strategy (see Section 8.2.1), increase its size to do so in the calculations. In no case shall the annual energy use of the candidate design be reduced by not fully conditioning its spaces. The number of hours that equipment does not meet the load in the candidate design must not exceed that of the reference dwelling unit.

8.3.6.6 *Single Zone Central System.* For central conditioning systems without zonal control, assume the entire living space consists of one thermostatically controlled zone. For houses with unconditioned basements, model the basement as a separate, unconditioned zone. Use the thermostat settings in Table 8–2 for the conditioned spaces in both the reference and candidate designs.

Table 8-2- Thermostat settings

Time of day	Thermostat setting (°F)					
	Multiple zones				Single zone	
	Zone 1		Zone 2			
Mid - 6am	60	78	60	85	60	78
6 - 9am	70	78	70	78	70	78
9 - 5pm	60	85	70	78	70	78
5 - 11pm	70	78	70	78	70	78
11 - Midnight	60	78	60	85	60	78

8.3.6.7 *Setbacks.* Use setbacks for heat pump heating only when the thermostat specified in the construction documents is specifically designed for heat pump setback control (i.e., controls the resistance elements independently of the refrigeration system) and uses a control strategy that reduces or eliminates the use of auxiliary heat for set up.

8.4 *Calculation Tool.* In performing calculation procedures under paragraph 8.3 of this section, use a calculation tool that is appropriate for the construction and configuration variables that are being analyzed. The calculation tool must be able to estimate the energy use of each specific construction parameter that deviates from the minimum prescribed values. The following classes of calculation methods may be used for the conditions as specified when the method complies with the subsequent criteria:

8.4.1 *Bin Calculation Method.* Use for envelope areas and thermal conductance, furnace, heat pumps, and cooling equipment efficiency.

8.4.1.1 *Criteria.* Only use methods compatible with ASHRAE Simplified Energy Calculation Procedure, ASHRAE Technical Committee 4.7 (TC 4.7) "Energy Calculations." Use ASHRAE WYEC bin weather data for the building location or a Bin method which is comparable to the TC 4.7 Method.

8.4.2 *Correlation Methods.* Use when construction variables to be analyzed are adequately quantified by the simulation program used to generate the data base, and the results are reliably re-created by the simplified algorithms. Do not use for analysis of weather or construction variables not covered by or outside the range of the data base.

8.4.2.1 *Criteria.* Only use when the methodology used to generate the data base, the correlation techniques, and their comparison to the basic data is well documented. (In correlation methods, heating and cooling loads for representative configurations are generated using a detailed hourly transient computer analysis model. The results are then translated into simplified algorithms that can be presented as tables, nomograms, or microcomputer programs).

8.4.3 *Transient Analysis Using Weather Sample.* Use to calculate any or all building variables.

8.4.3.1 *Criteria.* Use only if the method uses calculation techniques specified in the *1989 ASHRAE Handbook, Fundamentals*; the method uses transfer function, finite difference, or documented and approved techniques to calculate the transient responses of the dwelling; the method uses explicit equipment models to calculate equipment responses to varying weather conditions as recorded for consecutive intervals of one hour or less; it uses transcribed weather data for an entire year or it uses a minimum sample of at least 168 consecutive hours for each of the four seasons of the year, and it includes algorithms for computing shading and other solar effects as well as algorithms for computing the psychrometric properties of air systems when these are factors in measures being modeled. The weather data used must statistically represent the distribution of temperature and solar radiation in the long term weather records for the closest weather station having hourly records. ASHRAE Weather Year for Energy Calculations (WYEC) weather data is recommended for use with transient analysis programs. Weather data may be adjusted to compensate for microclimate differences between the building site and the weather station.

8.4.4 *Documentation.* For hand calculation analyses, include written documentation of the assumptions made as well as the calculations for each variable examined. For computer analyses, document the method used and provide supporting information showing that the conservation measures are accurately modeled by the program.

8.5 *Design and Target Energy Costs.* Using the results of the calculations in paragraph 8.3 of this section in Equations 8–6 and 8–7, calculate the design energy cost of the candidate and target energy cost reference designs, respectively.

8.5.1 *Energy Cost.* Use the unit cost of the energy type that is the current rate or price quoted by the usual supplier and available at the building site for the type and size of the candidate design. Use the same rate schedules for both the candidate design and the reference unit unless a different rate schedule is applicable to the candidate design due to energy conservation features. Use only in determining rates for those schedules where rate is based on amount of energy used in a given period. Include applicable demand charges, rate blocks, and time-of-use rates and calculate energy use for each time period specified in the rate schedule.

8.5.2 If the energy rate schedules are affected by total energy use, calculate occupant energy using Equations 8–4 and 8–5:

8.6 *Determining Compliance.* Using the results of the calculations in paragraph 8.5 of this section in Equations 8–6 through 8–9, calculate the Design Points for the candidate design and Target Points of the reference design, respectively. If the Design Points of the candidate do not exceed the Target Points of the reference, then the candidate design complies with the standards.

Daily Electrical Use = Af x 0.007
(in kWh) + No. of electric ranges x (1.7 + Af x 0.001)
+ No. of electric dryers x (1.2 + Af x 0.001)

Equation 8-4

(Af = Floor Area in ft^2.)

Daily Gas Use = No. of gas ranges x (0.10 + Af x 0.0007)
(in therms) + No. of gas dryers x (0.08 + Af x 0.0005)

Equation 8-5

DEC = [Annual Energy Use for Heating (in MBtu)
x Cost of Heating Energy (in $/MBtu)]
+ [Annual Energy Use for Cooling (in MBtu)
x Cost of Cooling Energy (in $/MBtu)]

Equation 8-6

TEC = [Annual Energy Use for Heating (in MBtu)
x Cost of Heating Energy (in $/MBtu)]
+ [Annual Energy Use for Cooling (in MBtu)
x Cost of Cooling Energy (in $/MBtu)]

Equation 8-7

Design Points = 100 x DEC + DHW Points

Equation 8-8

Target Points = 100 x TEC + DHW Points

Equation 8-9

NOTE: *DHW Points* = points for domestic hot water generated using procedure in paragraph 7.2.2.9

Appendix A—Explanation of the Automated Residential Energy Standards (ARES) Computer Program

1.0 *General.* The ARES computer program was designed to assist building code officials to implement these standards by creating a customized version of the residential energy standards for their jurisdiction based on local climate and costs. The computer program uses climate data for a selected location along with economic variables, energy prices, and construction cost information to determine the most economical way to design an energy conserving house for the location. Once the computer program has determined the optimal house, it uses the yearly energy cost of that house as the target energy budget for the standards. ARES then produces the standards in one of three forms: (1) a set of prescriptive packages of required energy conservation measures, (2) a set of point requirements with a corresponding set of point values assigned to energy conservation measures, and (3) a reference house for the performance compliance path. These materials can also be used as compliance forms.

1.1 *ARES is not a Compliance Tool.* The ARES computer program *is not intended to be used by builders,* and *is not a tool for demonstrating compliance with the interim standards.* It is not possible to enter the dimensions or characteristics of a particular house in the program. However, the builder does use the printed output of ARES, the prescriptive packages and points system, along with forms included in the text of the standards, to determine compliance.

2.0 *Using ARES*

2.1 *Hardware Requirements.* ARES requires a micro-computer that runs on either the MS or PC DOS operating systems. It should run on any IBM compatible personal computer with at least 256K bytes of memory and two floppy disk drives or one floppy disk drive and a hard disk. The computer need not have a math co-processor to function. A printer is required to print out the prescriptive packages and the points system tables generated by ARES.

2.2 *Menu Driven Program.* ARES is a menu-driven computer program that

does not require the user to be computer literate. A menu is a set of options that appears on the computer screen. Menus allow the user to direct the process of the computer program without knowledge of how the program operates. It comes with an easy-to-use User's Manual that describes in detail the operation of the program.

2.3 *General Operation.* ARES requires information about the location, local energy costs and the housing and energy types for which the requirements are to be developed. It then determines the specifications for the prescriptive packages and points system compliance paths and the reference house for the performance compliance path solely on the basis of cost-benefit criteria.

2.4 *Creating a Standard.* The ARES program allows the user to create a customized local standard in six basic steps:

2.4.1 *Retrieve Saved Inputs.* This process retrieves from a disk information a user may have saved previously.

2.4.2 *Choose Location, Housing Type, and Foundation Types.* This process establishes the location of the housing and the housing type for which the standard will be set. The foundation types may be customized or the default types may be used.

2.4.3 *Choose Energy Types and Change Energy Prices.* This process permits customizing of the energy types and prices available in a locale. The inputs are needed to generate separate standards for the five different energy/equipment combinations.

2.4.4 *Select Minimum and Disallowed Levels for Energy Conservation Measures.* This process permits the use of defaults or allows the specification of more stringent minimum efficiency levels for energy conservation measures.

2.4.5 *Create Prescriptive Packages and Point System Tables.* This process automatically retrieves the climate data for a specific location and then performs the economic analysis to create the standards.

2.4.6 *Save Inputs.* This allows the user to save all of the inputs made in the earlier steps.

3.0 *Selection of Economic Variables and Cost Data.* ARES also allows for the selection of economic variables and energy conservation measure cost data. Select the appropriate inputs from Appendix B. For all other inputs, use default values and modify as appropriate. The default data incorporated in ARES are not location specific. They are a combination of average regional and national data (see Table A–1 below).

TABLE A–1.—ENERGY CONSERVATION COST DATA FOR THE U.S.

Region	States in region
National average	All
New England	CN, MA, ME, NH, RI, VT
Mid-Atlantic	DC, DE, MD, NJ, NY, PA
Mid-South	GA, NC, SC, VA, WV
Florida	FL
South Central	AL, AR, KY, LA, MS, OK, TN, TX
Central	IA, KS, MO, NB
North Central	IL, IN, MI, MN, ND, OH, SD, WI
Mountain	CO, NV, UT, WY
Southwest	AZ, NM
Pacific Southwest	AK, CA, HI
Pacific Northwest	ID, MT, OR, WA

3.1 *Inflation Rate.* The expected overall rate of inflation in consumer prices over the analysis period, as an annual percentage.

3.2 *Alternative Investment Rate.* The annual rate of return, expressed as a percent, that is available to a typical homeowner if another investment is made instead of energy conservation. ARES considers a particular energy conservation measure to be cost effective only if it results in enough energy savings to provide an economic return to the homeowner at least equal to what would be available from a typical interest-bearing investment.

3.3 *Mortgage Interest Rate.* The annual interest rate available to most home buyers. ARES uses this value to properly account for the total cost of buying energy conservation features. The number entered should correspond to the loan term and down payment.

3.4 *Points.* The percentage of the face value of a mortgage often added to buy down the interest rate. Because points are tax deductible and because they are part of closing costs, they are used by ARES. A typical average value over time for a location is entered as a percent of the loan amount.

3.5 *Down Payment.* The fraction of the full price of the home paid by most homeowners at the time of closing (with the balance to be paid over time). A typical down payment, that corresponds to the interest rate and loan term, required to obtain a home loan is entered as a percentage of the home's value.

3.6 *Loan Fee.* The typical non-tax deductible mortgage closing costs for a location, including appraisal fees, title searches, etc., expressed as a percentage of the loan amount.

3.7 *Term of Loan.* The typical loan term of home mortgages that correspond to the interest rate and down payment in a particular location.

3.8 *Property Tax Rate.* The average annual tax rate over time for a location expressed as a percentage of the initial cost. Adding conservation features to a home increases its value, which in turn increases tax-deductible property taxes.

3.9 *Income Tax Rate.* The typical value that includes both Federal and State taxes, expressed as a percentage. Because property taxes and interest on home loans are tax deductible, ARES requires the marginal income tax bracket of the median income homeowner to properly account for energy conservation measure costs.

3.10 *Local Cost Multiplier.* A multiplier which allows the user to change the assumed costs of purchasing and installing energy conservation options. It raises or lowers all the costs at once. This function is best used if the location tends to have higher overall prices than the regional average. The Location Cost Multiplier can also be used to adjust for overall inflation in construction costs over time.

3.11 *Energy Conservation Measure Cost Data.* The construction costs for each of the envelope, HVAC equipment, and domestic hot water equipment energy conservation options. The consistency of these costs relative to each other is very important—more important than the absolute accuracy of the data due to the way that ARES assigns priorities among measures. The changes that may be made are described in detail in the ARES User's Manual.

4.0 *Economic Optimization Methodology.* These standards rely on a minimum life-cycle cost analysis using estimated energy consumption data, construction cost data, climate data, and consumer financial parameters. The cash flows included in the assessment of these life-cycle costs are initial construction costs, operation and maintenance costs, energy costs, tax effects, and resale value of the home, all of which are discounted (accounting for the devaluation of money with time) to adjust for inflation and lost opportunity costs.

4.1 *Use of ARES Data Bases.* ARES accesses data bases of estimated residential energy consumption, construction costs, economic and financial parameters, and typical building characteristics. Using these data, ARES identifies for each locality the combination of energy conservation measures that results in the minimum overall life-cycle costs. The annual energy costs of the optimal house constitute the target energy costs required by the standards. ARES then provides prescriptive requirements (packages) that meet this energy budget and a point system designed to allow

evaluation of specific building designs against the prescriptive target.

4.2 *ARES Energy Data Base.* The energy data base contains annual heating and cooling loads for residential housing built to common levels of thermal integrity in 861 United States locations. The energy data are derived from parametric computer simulations of residential energy performance.

4.3 *ARES Cost Data Base.* The cost data base contains construction costs for common levels of ceiling insulation levels, wall insulation levels, crawl space insulation levels, basement insulation levels, window types, and HVAC equipment efficiencies. Cost data are included for the 12 regions of the United States shown in Table A–1.

Section 5.0 *Life Cycle Cost Optimization.* The life-cycle cost (LCC) calculations required by the draft interim standards reflect the value of energy conservation measures to a typical homeowner. ARES provides two methods to calculate the value: a default 7 year LCC method and an extended LCC method. Local jurisdictions may choose the most appropriate of these methods. The life-cycle cost is defined as the sum of the net present values of the following cash flows: (1) down payment on loan, (2) loan fees and other closing costs of loan, (3) up-front interest charges (points) on loan, (4) tax deductions on points, (5) mortgage payments over the period of analysis, (6) tax deductions on mortgage interest over the period of analysis, (7) space conditioning energy costs over the period of analysis, (8) non-fuel operation and maintenance costs over the period of analysis, and (9) resale value of home at the end of the period of analysis.

5.1 *Optimization Process.* ARES identifies the minimum life-cycle cost dwelling via an exhaustive search of all insulation levels, equipment efficiencies, and window types available in the cost data base. In concept, the energy and construction costs of dwellings built to every unique combination of conservation options are calculated and compared. The combination with the lowest overall life-cycle cost is used as the basis for the energy cost budget. However, there are several constraints applied during the optimization. First, the optimization assumes that the window area of the dwelling is equally distributed on the four cardinal orientations. Though this seldom matches the construction of a particular dwelling, it represents the average condition of large numbers of residences. Second, the optimal levels of ceiling insulation, wall insulation, windows, and equipment efficiencies are forced to be the same for all foundation types. This is accomplished by identifying a prevalent foundation type for each location and optimizing a prototypical dwelling with that foundation. Once the upper envelope conservation levels are established, the insulation levels for each additional foundation type are optimized assuming the same upper envelope is installed. Thus, each foundation type results in a unique energy cost budget.

5.2 *ARES Default Method.* The ARES default method assumes a 7-year period of home ownership. Mortgage payments and interest fractions (the portion of each mortgage payment attributable to interest) are based on common financial calculations and current economic parameters. The home's resale value is assumed to be identical to its initial cost in current dollars at the end of the 7-year period of analysis. Thus the home's real value is assumed to decline at the rate of inflation.

5.3 *Extended Life-Cycle Cost Method.* The Extended Life-Cycle Cost method is provided for locations where data show that the 7-year period of home ownership is inappropriate. This method differs from the default method only in the period of analysis, and related provisions for entering values for the resale value of the dwelling. These factors are then added to the calculation.

Section 6.0 *Compliance Alternatives.*

6.1 *Prescriptive Package Compliance.* ARES provides prescriptive packages of options that will meet the energy cost budget identified by the life-cycle cost optimization. One prescriptive package is created for each of the five (5) fuel/equipment combinations. Each package differs from the corresponding optimal combination of options due to a constraint applied in the program. The prescriptive packages assume that windows are equally distributed on the east and west faces of the house. This configuration is intended to approximate the worst possible orientation scenario, so that virtually any house, regardless of its window placement, would have energy performance at least as good. The purpose is to minimize the possibility that a house allowable under the prescriptive compliance path would not be allowable under the points compliance path. Given this constraint, ARES identifies the combination of options that meets the energy cost budget with the minimum construction cost. These are used with the minimum requirements to demonstrate compliance.

6.1.1 *Additional Prescriptive Packages.* In addition to the five standard prescriptive packages, the ARES user may develop additional packages to satisfy local conditions. This is accomplished by applying specific constraints, such as a fixed wall insulation level, then allowing ARES to identify the other components of the house that result in acceptable energy costs at a minimum construction cost. ARES will attempt to find the least expensive dwelling that meets the energy budget and uses the levels specified by the user. This allows users to create simple compliance approaches for technologies common to localities.

6.2 *Point System Compliance.* The point system data tables produced by ARES are used to evaluate those house designs that deviate from the prescriptive packages identified by the cost optimization process. It permits one to trade lower efficiency in one part of the design dwelling for higher efficiency in another part while maintaining equivalence in overall energy efficiency with the standards. Various levels of conservation options are assigned "points," which are tabulated in the compliance materials printed by the computer program. The points are directly proportional to the annual energy costs of the home, providing those designing a residential unit for compliance the capability to estimate the energy cost impacts of various construction options. Options which may be evaluated by the point system include various insulation levels, equipment efficiencies, and various window parameters including number of glazings, solar transmittance, and orientation. ARES automatically creates the point system when it creates the basic packages. The basic package and point system data can also be transferred to ACRES to provide an automated means of evaluating point system compliance.

6.3 *Performance Compliance.* One of the prescriptive packages printed by ARES, along with the minimum requirements, defines the reference dwelling unit against which the candidate design is compared in the performance compliance path. The interim standards allow construction of any residential building that has annual energy costs less than or equal to those of the optimal reference unit. An energy analysis is conducted for both the candidate (design) dwelling and the reference (target) dwelling using an appropriate energy calculation methodology.

7.0 *Interpreting the ARES Output.* The prescriptive packages are designed to be more stringent than the average dwelling would need to be if the point system was used to demonstrate compliance. For example, the "target"

energy budget is determined assuming equal window areas on all orientations (north, south, east, and west). However, the basic packages are created assuming a less efficient distribution with half of the window area on the east and half on the west. The inefficient window distribution in the basic packages causes ARES to select higher energy conservation measure efficiencies to make up the difference.

Appendix B - DOE Input Assumptions on Economic Parameters for ARES

TABLE B-1—DOE RECOMMENDED ECONOMIC PARAMETERS FOR ARES

Parameter	Input Value
Inflation rate	3.5%
Mortgage interest rate	9.18%
Points & loan fee	2.19%
Alternative investment rate.	8.4%–10.7% (nominal)
Federal income tax rate	28% (median) [1]
Down payment percentage.	24.4%
Loan term	30 years
Period of analysis	12 years
Fuel price escalation	See Table B-2

[1] Add relevant State and/or Local income tax rate.

TABLE B-2—RESIDENTIAL FUEL PRICE ESCALATION RATES (PERCENT PER YEAR IN REAL TERMS) FOR 1990–2020 BY U.S. CENSUS REGION

Fuel type	North east	North central	South	West
Electricity	0.4	0.1	0.4	0.7
Fuel oil	2.6	2.6	2.6	2.6
Natural gas	3.5	1.9	2.6	2.5

Appendix C—Radon Control Measures

1.0 *Purpose.* The purpose of this appendix is to recommend construction techniques for the control of the entry of radon into the home. The construction techniques apply to basement, slab-on-grade, and crawl space construction. They should not be viewed as independent, unrelated techniques, but rather should be used in combinations, particularly where it is necessary to achieve large reductions in radon concentrations.

1.1 *Background.* Radon is a naturally occurring gas resulting from the radioactive decay of radium, a common element in many soils. Radon gas decays into radioactive progeny that can build up to unacceptable concentrations in houses. Exposure to radon and its progeny has been linked to lung cancer in uranium miners. The potential health impact (if any) of exposures to radon at typical indoor levels (less than eight picocuries per liter) is unknown.

The principal sources of radon in buildings are: 1) soil and rock surrounding the building, 2) potable water, and 3) natural building materials used in the house. Soil is generally believed to be the most significant contributor to indoor radon, although radon-contaminated private well water can be a significant, but usually secondary source.

The control methods presented in this appendix address only the mitigation of radon entry from soil. The major entry paths for radon are cracks in the concrete slab, cracks between poured concrete and blocks, pores and cracks in concrete blocks, slab-footing joints, exposed soil (as in sumps), and seams around plumbing and electrical penetrations of the slab and below-grade walls.

2.0 *Determination of Need for Radon Control Measures.* The susceptibility of a building site to radon gas should be determined by one or more of the following methods:

2.1 Check with State and/or regional EPA offices for other radon problems in the area.

2.2 Check local soil characteristics for conditions favorable for radon gas formation/transport.

2.3 Conduct on-site soil testing for radon.

3.0 *Construction to Reduce Radon Concentration.* If the region inwhich the site is located is determined to have a potential radon problem, the design of the structure should incorporate radon resistant construction techniques such as described in *Radon Reduction Techniques for Detached Houses—Technical Guidance* (EPA/625/5–86/019).

Construction techniques applicable to the different foundation types are described below.

3.1 *Crawl Space Houses.*

3.1.1 *Ventilation.* Ventilation of the crawl space to transport the radon-borne soil gas that enters the crawl space from the soil to the outside should be provided through the use of standard foundation ventilation louvers. Uniform ventilation rates can be provided by the installation of fans.

3.1.2 *Sub-Floor Sealing.* In addition to the insulation, the underside of the house should be sealed with a polyethylene sheet to further reduce radon entry.

3.2 *Basement and Slab-on-Grade Building.*

3.2.1 *Sealing of Major Radon Sources.* All exposed earth within the building, such as drainage sump areas, should be capped with an impermeable covering and exhaust-ventilated through the roof to the outdoors. All cover seams/joints should be sealed.

3.2.2 *Sealing of Radon Entry Paths.* All cracks in the concrete slab and below-grade walls, slab-footing joints, wall and slab penetrations of plumbing, and electrical service should be sealed with a gas-proof, non-shrinking sealant.

3.2.3 *Foundation/Slab Construction.* The sub-slab area should be filled with a uniform layer of loose aggregate to a minimum depth of eight inches and covered with a thick, reservoir-grade plastic vapor barrier. Any joints or other penetrations of the barrier should be sealed. The vapor barrier should be covered with a layer of sand.

The foundation and slab should be poured as a single (monolithic) unit wherever possible. Specially designed plastic strips should be used to separate any slab junctions.

The recommended water content of the concrete should be used to minimize shrinkage and cracks. Steel reinforcing mesh is to be imbedded in the slab for more effective resistance to shrinkage and cracking.

3.2.4 *Below-Grade Wall Construction.* Solid (poured) concrete walls should be used in below-grade wall construction whenever possible. If block wall construction is necessary, concrete blocks should be used in preference to the more porous cinder blocks. Footings and block walls should also be adequately reinforced with steel to minimize cracking.

Hollow block walls should be capped or otherwise sealed at the wall top.

Interior and exterior block wall surfaces should be parged with appropriate vapor/water sealants.

3.2.5 *Sub-Slab De-Pressurization.* A method of sub-slab de-pressurization should be provided for transport of the radon-borne soil gas that originates in the soil beneath the building to the exterior before it enters the habitable portions of the building. This is accomplished by installing a network of perforated PVC drain pipe in the aggregate beneath the basement floor. The tile is connected to a vertical ventilation stack that extends from the floor slab through the roof. Passive mechanical ventilation is provided by a turbine ventilator. If additional constant ventilation rates are required, a fan should be installed in the exhaust duct.

3.2.6 *Drain Tile Soil Ventilation.* A considerable amount of radon-borne soil gas enters a house through openings in the vicinity of the footings. If the house is designed with a perimeter drain system that surrounds the house, it can be used to draw radon away from these potential entry paths.

The drain tile ventilation system should consist of a water trap and riser(s) installed in the line to the soakaway, and an exhaust fan to provide the necessary suction on the tile system.

This approach is an alternative to the sub-floor de-pressurization technique described above.

4.0 *Post-Construction Requirements.*

4.1 *Indoor Radon Monitoring.* Monitoring for radon should be done during the first heating season, within 12 months of completion of the house. The monitoring period should follow standard indoor radon and radon decay product measurement protocols described in the EPA publication "Interim Indoor Radon and Radon Decay Product Measurement Protocols" (EPA 520/1–84–04, April 1986).

4.2 *Mitigation.* If the monitoring results exceed minimum levels (yet to be established), further specific mitigation measures should be implemented. The exact measures depend upon the actual radon results, the design of the building, and the radon mitigation measures already in effect.

Appendix D—Points Compliance Forms

Use the tables in this appendix to calculate the points when using Section 7.0.

Table D-1- Point calculation for ceiling insulation.

Point Calculation - Ceiling Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Ceiling Area) x _____ (TARGET Htg. Mult.) = _____/1000 = _____

Equation 7-1a

Cooling: _____ (Ceiling Area) x _____ (TARGET Clg. Mult.) = _____/1000 = _____

Equation 7-1b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Ceiling Area) x _____ (DESIGN Htg. Mult.) = _____/1000 = _____

Equation 7-1c

Cooling: _____ (Ceiling Area) x _____ (DESIGN Clg. Mult.) = _____/1000 = _____

Equation 7-1d

Table D-2- Point calculations for wall insulation.

Point Calculation - Wall Insulation

TARGET HOME: TARGET POINTS

Heating: _____ (Wall Area) x _____ (TARGET Htg. Mult.) = _____/1000 = _____

Equation 7-2a

Cooling: _____ (Wall Area) x _____ (TARGET Clg. Mult.) = _____/1000 = _____

Equation 7-2b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Wall Area) x _____ (DESIGN Htg. Mult.) = _____/1000 = _____

Equation 7-2c

Cooling: _____ (Wall Area) x _____ (DESIGN Clg. Mult.) = _____/1000 = _____

Equation 7-2d

Table D-3- Point calculation for floor and foundation insulation.

Point Calculation - Floor/Foundation Insulation

TARGET HOME: TARGET POINTS

Heating: _____ Component Size[1] x _____ TARGET Htg. Mult. = _____ /1000 = _____

Equation 7-3a

Cooling: _____ Component Size[1] x _____ TARGET Clg. Mult. = _____ /1000 = _____

Equation 7-3b

DESIGN HOME: DESIGN POINTS

Heating: _____ Component Size[1] x _____ DESIGN Htg. Mult. = _____ /1000 = _____

Equation 7-3c

Cooling: _____ Component Size[1] x _____ DESIGN Clg. Mult. = _____ /1000 = _____

Equation 7-3d

[1] Enter the area in square feet for a floor over a crawlspace or unheated basement foundation. Enter the perimeter length in feet for a slab or heated basement foundation.

Table D-4- Point calculation for air infiltration.

Point Calculation - Air Infiltration

TARGET HOME: TARGET POINTS

Heating: _____ Floor Area x _____ TARGET Htg. Mult. = _____ /1000 = _____

Equation 7-4a

Cooling: _____ Floor Area x _____ TARGET Clg. Mult. = _____ /1000 = _____

Equation 7-4b

DESIGN HOME: DESIGN POINTS

Heating: _____ Floor Area x _____ DESIGN Htg. Mult. = _____ /1000 = _____

Equation 7-4c

Cooling: _____ Floor Area x _____ DESIGN Clg. Mult. = _____ /1000 = _____

Equation 7-4d

Table D-5- Point calculations for window layers and sash materials.

Point Calculation - Window Layers and Sash Materials

TARGET HOME: TARGET POINTS

Heating: _____ (Floor Area) x _____ (TARGET Htg. Mult.) = _____/1000 = _____

Equation 7-5a

Cooling: _____ (Floor Area) x _____ (TARGET Clg. Mult.) = _____/1000 = _____

Equation 7-5b

DESIGN HOME: DESIGN POINTS

Heating: _____ (Floor Area) x _____ (DESIGN Htg. Mult.) = _____/1000 = _____

Equation 7-5c

Cooling: _____ (Floor Area) x _____ (DESIGN Clg. Mult.) = _____/1000 = _____

Equation 7-5d

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Table D-6 - Point calculation for fenestration area and orientation.

Target Point Calculation - Fenestration Area and Orientation

TARGET HOME: TARGET POINTS

Heating: _____ (Floor Area) = _____

Cooling: _____ (Floor Area) = _____

Design Point Calculation - Fenestration Area and Orientaion

DESIGN HOME: HEATING CALCULATION

Orientation	Glazing Area		Energy Option Multiplier		Overhang Multiplier		Fenestration Factor (F)
North	_____	x	_____	=	_____/1000	=	_____
Northwest	_____	x	_____	=	_____/1000	=	_____
East	_____	x	_____	=	_____/1000	=	_____
Southeast	_____	x	_____	=	_____/1000	=	_____
South	_____	x	_____	=	_____/1000	=	_____
Southwest	_____	x	_____	=	_____/1000	=	_____
West	_____	x	_____	=	_____/1000	=	_____
Northwest	_____	x	_____	=	_____/1000	=	_____
						+	

Total HEATING Fenestration Factor (F) _____
DESIGN Points _____

Equation 7-6a

DESIGN HOME: COOLING CALCULATION

Orientation	Glazing Area		Energy Option Multiplier		Overhang Multiplier		Fenestration Factor (F)
North	_____	x	_____	=	_____/1000	=	_____
Northwest	_____	x	_____	=	_____/1000	=	_____
East	_____	x	_____	=	_____/1000	=	_____
Southeast	_____	x	_____	=	_____/1000	=	_____
South	_____	x	_____	=	_____/1000	=	_____
Southwest	_____	x	_____	=	_____/1000	=	_____
West	_____	x	_____	=	_____/1000	=	_____
Northwest	_____	x	_____	=	_____/1000	=	_____
						+	

Total COOLING Fenestration Factor (F) _____
DESIGN Points _____

Equation 7-6b

Table D-7- Point calculation for base load.

Point Calculation - Base load

						TOTAL POINTS
Heating:	_____ Floor Area	x	_____ Heating Multiplier	= _____/1000	=	_____

Equation 7-7a

Cooling:	_____ Floor Area	x	_____ Cooling Multiplier	= _____/1000	=	_____

Equation 7-7b

Table D-8 — Point calculation for mechanical equipment.

Point Calculation - Mechanical Equipment

TARGET HOME: TARGET POINTS

Heating: = _____

Cooling: = _____

DESIGN HOME: DESIGN POINTS

Heating: _____ Equipment Multiplier ÷ _____ Efficiency Indicator = _____/1000 = _____

Equation 7-8a

Cooling: _____ Equipment Multiplier ÷ _____ Efficiency Indicator = _____/1000 = _____

Equation 7-8b

Table D-9 — Point calculation for domestic water heating.

Point Calculation - Non-solar Domestic Water Heating

TARGET HOME: TARGET POINTS

_____

DESIGN HOME: DESIGN POINTS

_____ DHW points + _____ Energy Factor = _____

Equation 7-9a

Point Calculation - Solar Domestic Water Heating

TARGET HOME: TARGET POINTS

_____

DESIGN HOME: DESIGN POINTS

_____

Equation 7-9b

Table D-10 — Point computation summary form.

Point Computation Summary Form

Component	Source Equation	TARGET Heating	TARGET Cooling	DESIGN Heating	DESIGN Cooling
Ceiling Insulation	7-1a - d	_____	_____	_____	_____
Wall Insulation	7-2a - d	_____	_____	_____	_____
Floor Insulation	7-3a - d	_____	_____	_____	_____
Air Infiltration	7-4a - d	_____	_____	_____	_____
Glazing Layers	7-5a - d	+ _____	+ _____	+ _____	+ _____
SUBTOTAL 1	Note (a)	□	□	□	□
Glazing Orientation	7-6a - b	- _____	+ _____	- _____	+ _____
SUBTOTAL 2	Note (b)	□	□	□	□
Base Points	7-7a - b	± _____	± _____	± _____	± _____

Notes for Table D-10:

a) Sum the points in each column to obtain entries for the four SUBTOTAL 1 boxes.

b) Subtract the Glazing Layers Heating points and add Glazing Layers Cooling points to obtain entries for the four SUBTOTAL 2 boxes.

Table D-10 — Point Computation Summary Form (continued).

SUBTOTAL 3	Note (c)	□ □	□ □
HVAC Efficiency	7-8a - b		
Heating		x _____	x _____
Cooling		x _____	x _____
TOTAL HEATING AND COOLING POINTS	Note (d)	□ □ +	□ □ +
TOTAL SPACE CONDITIONING POINTS	Note (e)	→ □ ←	→ □ ←
Domestic Hot Water Points	7-9a - b	+ _____	+ _____
TOTAL POINTS	Note (f)	□	□

Notes for Table D-10 (continued):

c) Sum the Base Points and SUBTOTAL 2 to obtain SUBTOTAL 3 entries. Note: Some Base Points may be negative. In this case, subtract them from SUBTOTAL 2.

d) Multiply Heating SUBTOTAL 3 by HVAC Heating Points to obtain TOTAL HEATING POINTS. Multiply Cooling SUBTOTAL 3 by HVAC Cooling Points to obtain TOTAL COOLING POINTS.

e) Sum TOTAL HEATING and TOTAL COOLING POINTS to obtain TOTAL SPACE CONDITIONING POINTS.

f) Sum TOTAL SPACE CONDITIONING POINTS and Domestic Hot Water Points to obtain TOTAL POINTS.

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Part III

State Justice Institute

Proposed Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed grant guideline.

SUMMARY: This Guideline sets forth the proposed administrative, programmatic, and financial requirements attendant to Fiscal Year 1993 State Justice Institute grants, cooperative agreements, and contracts.

DATES: The Institute invites public comment on the Guideline until September 30, 1992.

ADDRESSES: Comments should be sent to: State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Richard Van Duizend, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the administration of justice in the State courts of the United States.

Amount of Funds Available

At the time the Proposed Guideline was sent to the Federal Register, the level of the Institute's FY 1993 appropriation was uncertain. In H.R. 5678, the House of Representatives approved an appropriation of $13.55 million, the same amount appropriated for SJI in FY 1992. In S. 3026, however, the Senate proposed to appropriate $8.318 million for SJI, a 39% reduction from its FY 1992 level of funding.

The allocations made in certain areas of the Proposed Guideline, e.g., the reservation of up to $250,000 for a scholarship program (section II.B.2.b.v.), of up to $1,000,000 for "single jurisdiction" projects (section II.C.), and the reservation of up to $500,000 for a technical assistance grant program (section II.C.2.) are premised on the Institute receiving an appropriation of, or close to, $13.55 million. If the appropriation ultimately approved by Congress and the President is significantly below that level, the allocations may be changed in the Final Guideline, or in a subsequent notice. The number and scope of Special Interest categories also may need to be revised.

Funding Schedule

The FY 1993 concept paper deadline is December 2, 1992. Papers must be postmarked or bear other evidence of submission by that date. With two exceptions noted immediately below, the FY 1993 funding cycle will be substantially similar to the FY 1992 cycle: the Board will meet in early March, 1993 to invite formal applications based on the most promising concept papers; applications will be due in May; and awards will be approved by the Board in July.

The exceptions to this schedule pertains to proposals to follow up on the National Conference on Substance Abuse and the Courts that was sponsored by the Institute in November, 1991 and the National Conference on Family Violence and the Courts that is scheduled for March 1993. In FY 1992, the Institute established a special deadline for concept papers seeking to implement the State plans developed at the conference. Eleven of the 33 State teams that attended the conference submitted concept papers by that deadline. Because the Board of Directors is aware of the continuing need for SJI support to assist the State courts in coping with their drug caseloads, the Institute is renewing its solicitation of proposals to implement post-conference activities. An October 9, 1992 concept paper deadline has been established for those proposals; the concept papers will be considered in November, 1992 and invited applications will be considered in March, 1993.

Subject to the availability of appropriations in FY 1994, the Institute also contemplates establishing an accelerated timetable for proposals seeking to implement State plans arising from the National Conference on Family Violence and the Courts to be held in April 1993. The deadline for mailing concept papers will be October 8, 1993. The papers will be considered by the Board at its meeting in November 1993. The remainder of the application schedule will be published in the Institute's Proposed Grant Guideline for FY 1994.

Types of Grants Available From the Institute

Since SJI's establishment in 1987, it has sought to develop a grant program that would be responsive to the most pressing needs of the State courts. As a result, the Institute has initiated several different types of grant programs. The types of grants available in FY 1993 and a reference to the appropriate Guideline section is provided below:

Project Grants

These grants are awarded to support education, research, demonstration and technical assistance projects to improve the administration of justice in the State courts. As provided in section V., project grants ordinarily will not exceed ($200,000). Applicants must ordinarily submit a concept paper (see section VI.) and an application (see section VII.) in order to obtain a project grant. As indicated in section VI.C., the Board may make a project grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information would be provided in an application.

Package Grants

This grant program is new in FY 1993. A package grant could provide funding to support two or more closely-related projects, e.g., projects addressing interrelated topics or requiring the services of the same key staff persons. A package grant could be awarded in an amount up to $750,000 for one year. See below and sections III.J., V.C. and D., VI.A. and VII.

Technical Assistance Grants

This grant program also is new in FY 1993. As described below and in section II.C.2, a State or local court may receive a grant of up to $30,000 for up to one year to support the provision of technical assistance to help the jurisdiction diagnose and respond to a specific problem.

In-State Grants

A grant of up to $20,000 for up to one year may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. See section II.B.2.b.i.(b).

Scholarships

As described more fully below and in section II.B.2.b.v., this program would support scholarships of up to $1,500 enabling judges and court managers to attend out-of-State education and training programs.

Renewal Grants

There are two types of renewal grants available from SJI: continuation grants (see sections III.H., V.C. and D., and IX.A.) and on-going support grants (see sections III.I., V.C. and D., and IX.B.). Continuation grants are intended to support limited duration projects that involve the same type of activities as the original project. On-going support grants may be awarded for up to a three-year period to support national-scope projects that provide the State courts with importantly needed services, programs, or products.

Special Interest Categories

The proposed Guideline contains 13 Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts. Two categories in last year's Guideline have been eliminated ("Methods of Judicial Selection" and "Eliminating Unnecessary Barriers to the Courts") and four categories have been added ("Enhancing Court-Community Relations," "Application of Performance Based-Standards and Measures to the Courts," "Family Violence and the Courts," and "Use of Juries"; see section II.B.2.a.,i.,k. and l). Other special interest categories have been modified, and three new national conference topics are announced ("Court Management of Mass Tort Cases," "The Funding Crisis in the Courts," (section II.B.2.b.iv.) and "Increasing Public Confidence in the Courts" (section II.B.2.IV.a.).

Other significant changes in the FY 1993 Grant Guideline are noted below:

Package Grants

As noted above, the Board proposes to permit applicants to submit one concept paper (or application) for a "package" of related grants rather than to require the submission of separate proposals for each related component of the package. Annual package grants of up to $750,000 may be awarded to support projects that address interrelated topics or the core elements of a multifaceted program, or that require the services of all or some of the same key staff persons. Package grants must enhance (not merely maintain) an applicant's services and must otherwise meet the Institute's grant criteria. The Board retains the discretion to support all, none, or selected portions of the proposed package. See sections III.J., V.C and D., VI.A.2.b. and 3.b., VII.A.3., VII.C and VII.D. Comment is specifically invited on these sections.

Technical Assistance Grants

In section II.C.2., the Guideline proposes to establish an accelerated grant program under which awards of up to $30,000 would be available to help State and local courts engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems. Subject to the level of the Institute's appropriation for FY 1993, the Board has allocated up to $500,000 to support technical assistance grants next fiscal year.

Scholarships

In FY 1992, the Institute established an experimental $100,000 scholarship program to enable judges to attend out-of-State education and training programs. Pending resolution of the Institute's FY 1993 appropriation, the Board of Directors proposes to enlarge the funding pool to up to $250,000 and to make scholarships available to court personnel as well as judges. See section II.B.2.b.v.

With regard to both the scholarship and the technical assistance programs, the Board would be particularly interested in comments regarding the streamlined procedures described in the Guideline including the application requirements and the timing of reviews.

Renewal Funding

As in FY 1992, the Guideline establishes a target for renewal grants of no more than 25% of the amount available for grants in FY 1993. Unlike last year, the proposed FY 1993 Guideline divides the target allocation equally between continuation grants and on-going support grants. Accordingly, the Board intends to award no more than 12½% of available funds for continuation grants and no more than 12½% of available funds for on-going support grants. See section IX.

A number of technical changes have also been made in the Guideline including provisions relating to the accelerated consideration of proposals requesting less than $40,000 (see section VI.C.) and the contents of concept papers and applications (see sections VI.A. and VII. , respectively).

Interagency Agreements

Persons interested in the SJI program should also be aware that SJI has entered into a number of Interagency Agreements (IAA's) that will support projects during Fiscal Year 1993. It is anticipated that the following IAA's will be operational in FY 1993:

Substance Abuse Case Management Education and Technical Assistance

Under this agreement, it is expected that SJI and the Bureau of Justice Assistance (BJA) of the Department of Justice will provide $150,000 each to The American University to identify and assess case management methods through which courts may process substance abuse cases fairly and effectively, develop and test a curriculum for judges and court managers based on these methods, and provide technical assistance that would help training participants improve their ability to handle these case.

Substance Abuse Treatment Training

The Office of Treatment Improvement (OTI) of the Department of Health and Human Services and SJI expect to support approximately six regional training programs for State judges and legislators on alcohol and drug treatment. OTI anticipates providing $1.5 million to support this program over a three-year period. SJI expects to provide an additional $300,000 over the same period to enhance and expand the program.

Substance Abuse Conference State Plan Implementation

SJI and BJA will be providing $208,000 ($108,000 from SJI; $100,000 from BJA) to the National Center for State Courts to provide technical assistance to the State teams that attended the November 1991 National Conference on Substance Abuse and the Courts.

Intermediate Sanctions Training and Technical Assistance

In FY 1993, SJI and the National Institute of Corrections will continue their jointly supported national training and technical assistance project, helping teams of judges and criminal justice system officials plan and develop intermediate sanctions in their jurisdictions. Since the project's inception in 1989, the project has enabled the Center for Effective Public Policy to train and assist teams from 24 jurisdictions. SJI has contributed $390,000 to the project since FY 1989; NIC, $590,000.

Pro Se Modifications of Child Support Awards

SJI and the Office of Child Support Enforcement of the Administration on Children and Families (HHS) are supporting a pilot project to develop, demonstrate, and evaluate effective techniques that courts can use in proceedings to review and modify child support orders involving litigants not represented by counsel. This $70,000 project is being conducted by the American Bar Association Center for Children and the Law in two counties in South Carolina. The Institute is contributing $35,000 to support this project; OCSC/AFC is providing $25,000 plus $10,000 in in-kind services.

Recommendations to Grant Writers

Over the past five years, Institute staff have reviewed approximately 2,000 concept papers and 1000 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential

applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. What Is the Subject or Problem You Wish To Address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. What Do You Want To do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper.

3. How Will You Do it?

Describe the methodology carefully so that what you propose to do and how you would do it is clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, err on the side of caution and provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How Will You Know It Works?

Every project design must include an evaluation component to determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should describe the criteria that will be used to evaluate the project's effectiveness and identify program elements which will require further modification. The description in the application should include how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How Will Others Find Out About It?

Every project design must include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What Are the Specific Costs Involved?

The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified clearly. The components of "Other" or "Miscellaneous" items should be specified in the budget narrative, and should not include set asides for undefined contingencies.

7. What, if any, Match Is Being Offered?

Courts and other units of State and local government (not including publicly supported institutions of higher education) are required by the State Justice Institute Act, as amended, to contribute a match (cash, non-cash, or both) of not less than 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project. The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources (such as the monetary value of time contributed by existing personnel or members of an advisory committee). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. Which of the Two Budget Forms Should Be Used?

Section VII.A.3. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the funding request exceeds $100,000. Form C1 also works well for projects with discrete tasks, no matter what the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, applicants should use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How Much Detail Should Be Included in the Budget Narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.D. of the SJI Grant Guideline. To avoid common shortcomings of application budget narratives, the following information should be included:

• Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $30,000=$15,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

• Estimates for supplies and expenses supported by a complete description of the supplies to be used, nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, applicants should make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What Travel Regulations Apply to the Budget Estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which regulations are in force for the project and should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed separately. When combined, the subtotals for these categories should equal the estimate listed on the budget form.

11. May Grant Funds Be Used To Purchase Equipment?

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The budget narrative must list such equipment and explain why the equipment is necessary. Written prior approval of the Institute is required when the amount of automated data processing equipment to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3,000.

12. To What Extent May Indirect Costs Be Included in the Budget Estimates?

It is the policy of the Institute that all costs should be budgeted directly; however, if an applicant has an indirect cost rate that has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement, an indirect cost rate proposal should be prepared in accordance with section XI.H.4 of the Grant Guideline, based on the applicant's audited financial statements for the prior fiscal year (applicants lacking an audit must budget all project costs directly). If an indirect cost rate proposal is to be submitted, the budget should reflect estimates based on that proposal. Obviously, this requires that the proposal be completed for the applicant's use at the time of application so that the appropriate estimates may be included; however, grantees have until three months after the project start date to submit the indirect cost proposal to the Institute for approval. An indirect cost rate worksheet is available from the Institute on computer diskette upon request.

13. Does the Budget Truly Reflect All Costs Required To Complete the Project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Recommendations To Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the SJI Guidelines. On the basis of monitoring more than 600 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the Grant Has Been Awarded, When Are the First Quarterly Reports Due?

Submission of progress and financial status reports are required every calendar quarter, no later than January 30, April 30, July 30, and October 30 regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first quarterly report describing project activities between December 1 and December 31 will be due on January 30. A financial status report should be submitted even if funds have not been obligated or expended.

Progress reports are intended as a way of documenting what has happened over the past three months, providing an opportunity to resolve any questions before they become problems, and making any necessary changes in the project time schedule, budget allocations, etc. Thus, the project report should describe project activities, their relationship to the approved timeline, any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. Two copies of the progress report and attachments should be submitted to the Institute.

Additional quarterly program or financial reporting forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do Reporting Requirements Differ for Renewal Grants or Package Grants?

Recipients of a continuation, on-going support, or package grant are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the reports numbered accordingly. For example, if the last quarterly report filed under the original award is report number six, the first report including a portion of the renewal grant should be report number seven.

Recipients of a package grant should file a summary financial status report covering the entire package as well as separate financial reports for each of the projects in the package, identified by

number (e.g., SJI–93–15R–J–001–G1; SJI–93–15R–J–001–G2; SJI–93–15R–J–001–G3).

3. Why Is It Important To Address the Special Conditions That Are Attached to the Award Document?

In most instances, a list of special conditions are attached to the award document. The special conditions are imposed to establish a schedule for reporting certain key information, to assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and to provide reminders of some, but not all of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Manager any questions or problems with the conditions they may have. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections X., XI. and XII. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute staff are always available to answer questions and provide assistance regarding these provisions.

4. What Is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents, add small amounts to a grant award, or deobligate funds from the grant.

5. What Schedule Should Be Followed in Submitting Requests for Reimbursements or Advance Poyments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day closeout period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

6. Do Procedures for Submitting Requests for Reimbursement or Advance Payment Differ for Renewal Grants or Package Grants?

The basic procedures are the same for any grant.

A continuation or an on-going support grant should be considered as a supplement to and extension of the original award, and the payment requests numbered accordingly. For example, if the last payment request under the original award is number nine, then the first request for funds from the continuation award should be number ten.

Recipients of a package grant should file separate requests for each project in the package. For example, if there are three projects within a package grant, a grantee should prepare three separate payment requests, each identified by the project number designated in the award document (e.g., SJI–93–15R–J–001–G1; SJI93–15R–J–001–G2; SJI–93–15R–J–001–G3). Subsequent payment requests should be numbered consecutively for each project within the package (e.g., project SJI–93–15R–J–001–G1 payment number 2; SJI–93–15R–J–001–G2 payment number 4; etc.).

7. If Things Change During the Grant Period, Can Funds Be Reallocated From One Budget Category to Another?

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to renewal grants and package grants. However, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period. Prior written Institute approval also is needed to shift funds between projects included in a package grant.

8. What Information About Project Activities Should Be Communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations or other significant changes become necessary, the grantee should contact the Institute's program monitor prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting or payment requests, should be addressed to the Chief or Deputy Chief of the Institute's Finance and Management Division.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

9. What Is the 90-day Close-Out Period?

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

Starting the day after the end of the award period, and during the following 90 days, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

State Justice Institute Grant Guideline

The following Grant Guideline is proposed by the State Justice Institute for Fiscal Year 1993:

State Justice Institute Grant Guideline

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Summary

This Guideline sets forth the programmatic, financial, and administrative requirements of grants, cooperative agreements, and contracts awarded by the State Justice Institute. The Institute, a private, nonprofit corporation established by an Act of Congress, is authorized to award grants, cooperative agreements and contracts to improve the administration and quality of justice in the State courts.

Grants may be awarded to State and local courts and their agencies; national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branch of State governments; national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments; other nonprofit organizations with expertise in judicial administration; institutions of higher education; individuals, partnerships, firms, or corporations; and private agencies with expertise in judicial administration if the objectives of the funded program can be better served by such an entity. Funds may also be awarded to Federal, State or local agencies and institutions other than courts for services that cannot be provided for adequately through nongovernmental arrangements. The Institute may also provide financial assistance in the form of interagency agreements with other grantors.

The Guideline is premised on the availability of approximately $10–12 million for grants, contracts, and cooperative agreements from FY 1993 appropriations. If, however, the Institute's FY 1993 appropriation is significantly reduced from the FY 1992 level of $13.55 million, the final Guideline may reflect different funding allocations and priorities.

The Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. However, the Board of Directors of the Institute has designated certain program categories as being of special interest.

The Institute has established one round of competition for FY 1993 funds. The concept paper submission deadline for all but two funding categories is December 2, 1992. Concept papers to implement the plans developed at the November 1991 National Conference on Substance Abuse and the Courts must be mailed by October 9, 1992. Concept papers on projects that follow up on March 1993 National Conference on Family Violence and the Courts must be mailed by October 8, 1993. This Guideline applies to all concept papers and formal applications submitted for FY 1993 funding.

The awards made by the State Justice Institute are governed by the requirements of this Guideline and the authority conferred by Public Law 98–620, title II, 42 U.S.C. 10701, *et seq.*, as amended.

I. Background

The State Justice Institute ("Institute") was established by Public Law 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an eleven-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 1993, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated certain program categories as being of "special interest." See section II.B.

A. Authorized Program Areas

The State Justice Institute Act authorizes the Institute to fund projects addressing one or more of the following program areas:

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement

plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relate to and affect the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards; and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity; and the development, testing and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances and alternative techniques and mechanisms for resolving disputes between citizens; and

14. Other programs, consistent with the purposes of the Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems in areas where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 1993, the Institute is especially interested in funding those projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance in terms of their impact or replicability in that they develop products, services and techniques that may be used in other States;

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a "Special Interest" project if it meets the four criteria set forth above and (1) it falls within the scope of the "special interest" program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a "Special Interest" category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.B., "Concept Paper Submission Requirements for New Projects," and VIII.B., "Application Review Procedures.")

2. Specific Categories

The Board has designated the areas set forth below as "Special Interest" program categories. The order of listing does not imply any ordering of priorities among the categories.

a. Enhancing court-community relations. This category includes research, demonstration, evaluation and education projects designed to encourage greater public knowledge of and confidence in the courts, and to test innovative methods for eliminating economic, racial, ethnic, cultural or gender-based barriers to justice.

The Board is particularly interested in supporting a national conference or national town meeting on improving public confidence in the justice system which would bring together judges, court managers, representatives of community and public interest groups, attorneys, criminal justice system officials, and legislative and executive branch leaders. The conference should be designed to enable those in attendance to exchange information and opinions about effective ways to improve (1) the public's knowledge about the courts, (2) the public's access to the courts, and (3) practices in the courts (and court-connected programs and services) in order to better respond to the public's concept of justice. The conference also should provide an opportunity to explore the court-related needs and interests of racial and ethnic minorities. The conference should be designed to produce a national agenda of priorities for improving the public's confidence in, access to, and use of the courts as well as preliminary action plans for implementing this agenda at the State and local levels. The format could be either a large single-site conference or multi-site gatherings linked through videoconferencing technology.

Examples of other possible projects include but are not limited to the development and testing of: innovative methods that trial or appellate courts may use in fairly and effectively handling cases involving pro se litigants; the innovative use of volunteers; and other innovative approaches to respond to the needs of the culturally, demographically, economically and physically diverse public the courts serve. However, Institute funds may not be used to support legal representation of individuals in specific cases.

Projects previously funded by the Institute that address these issues include: Development of a manual for management of court interpretation services; codification and standardization of terms used in criminal proceedings into Spanish and preparation of glossaries of American legal terms in five Asian languages; development of materials in English and six other languages to assist pro se litigants in emergency proceedings before the probate and family courts; a survey model to measure the impact of racial, ethnic and gender bias on trial court users; a study of differential usage patterns among minority and nonminority populations; a demonstration of the use of volunteers to monitor guardianships; studies of effective and efficient methods of providing legal representation to indigent parties in criminal and family cases; a study of model court-annexed day care systems; a study of methods to improve the retention and productivity of volunteer community mediators; the applicability of various dispute resolution procedures to different cultural groups; the development of comprehensive guidelines for courthouse facilities; preparation of public education materials and systems including a documentary series based on an actual appellate case and a videotape developed in ten languages for new immigrants to the United States; testing telephone-based systems for obtaining general court information and case-specific information; development of touchscreen computer systems, videotapes and other materials to assist litigants in domestic relations, small claims, landlord-tenant and other types of cases; and preparation of a curriculum for media representatives and judges on reporting on the courts and the law, and a curriculum for secondary school students on the importance and operation of the jury system.

b. Education and training for judges and other key court personnel.—i. *State initiatives.* This category includes support for training projects developed or endorsed by a State's courts for the benefit of judges and other court personnel in that State. Funding of these initiatives does not include support for training programs conducted by national providers of judicial education unless such a program is designed specifically for a particular State and has the express support of the State Chief Justice, State Court Administrator, or State Judicial Educator. The types of programs to be supported within this category should be defined by individual State need but may include:

(a) Development of state court education programs. Projects to assist development of State court education programs include, but are not limited to:

- Seed money for the creation of an ongoing State-based entity for planning, developing, and administering judicial education programs;
- The development of a pre-bench orientation program and other training for new judges;
- The development of benchbooks and other educational materials;
- Seed money for innovative continuing education and career development programs, including seminars based on Institute-supported research, and training which brings together teams of judges, court managers and other court personnel to develop strategies for improving the quality and administration of justice;
- The preparation of State plans for judicial education, including model plans for career-long education of the judiciary (e.g., new judge training and orientation followed by continuing education and career development); and
- The development of innovative faculty training programs.

(b) Adaptation of model curricula for in-State training. The Board is reserving up to $250,000 to provide support for in-State adaptation and implementation of model curricula and/or model training programs previously developed with SJI support. The exact amount to be awarded for adaptation grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline.

Adaptation projects may include an in-State replication or State-specific modification of a model educational program, model curriculum, or course module developed with SJI funds by any other State or any national organization; an adaptation of a curriculum or a portion of a curriculum developed for a national or regional conference; or an adaptation of a curriculum for use as part of a State judicial conference or State training program for judges and other court personnel. Only State or local courts may apply for in-State adaptation funding. Grants to support in-State adaptation of educational programs previously developed with SJI funds are limited to no more than $20,000 each. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount requested.

In-State implementation grants will be awarded on the basis of criteria including: The need for outside funding; the certainty of effective implementation; and expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project. The Institute will also consider factors such as the reasonableness of the amount requested, compliance with the statutory match requirements, diversity of subject matter and geographic diversity in making implementation awards.

In lieu of concept papers and formal applications, applicants for in-State implementation grants may submit, at any time, a detailed letter describing the proposed project and addressing the criteria listed above. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

- *Project description.* What is the model curriculum or training program to be tested? Who developed it? How will it complement existing education and training programs? Who will the participants be and how will they be recruited? From where are they (e.g., from across the State, from a single local jurisdiction)? How many participants are anticipated and what limits, if any, will be placed on the number of participants? What are the proposed dates of the grant period?
- *Need for funding.* Why is this particular education program needed at the present time? Why cannot State or local resources fully support the modification and presentation of the model curriculum? What is the potential for replicating the program in the future using State or local funds, once it has been successfully adapted and tested?
- *Certainty of effective implementation.* What date has been set for presenting the program? What types of modifications in the length, format and content of the model curriculum are anticipated? Who will be responsible for adapting the model curriculum? Will the presentation of the program be evaluated, and if so, how and by whom?
- *Expressions of interest by the judges and/or court personnel.* A demonstration (e.g., by attaching letters of support) that the proposed program has the support of the judges, court managers, and judicial education personnel who are expected to attend.
- *Budget and matching State contribution.* An outline of the anticipated costs of the program, the amount of funding requested (including the basis for any travel), the amount of match to be contributed, and the sources of the match.

Letters of application may be submitted at any time. It is anticipated that they will be acted upon within 45 days of receipt. The Board of Directors has delegated its authority to approve these grants to its Judicial Education Committee.

Applicants seeking other types of funding for developing and testing educational programs must comply with the requirements for concept papers and applications set forth in sections VI and VII or the requirements for renewal applications set forth in section IX.

ii. *National and regional training programs.* This category includes

support for national or regional training programs developed by any provider, e.g., national organizations, State courts, universities, or public interest groups. Within this category, priority will be given to training projects which address issues of major concern to the State judiciary and other court personnel. Programs to be supported may include:

• Training programs or seminars on topics of interest and concern that transcend State lines;

• Multi-State or regional training programs sponsored by national organizations, nonprofit groups, State courts or universities; and

• Specialized training programs for State trial and appellate court judges, State and local court managers, or other court personnel, including seminars based on Institute-supported research and training which brings together teams of judges, court managers and other court personnel to develop strategies for improving the quality and administration of justice.

iii. *Technical assistance.* Unlike the preceding categories which support direct training, "Technical Assistance" refers to services necessary for the development of effective educational projects for judges and other court personnel. Projects in this category should focus on the needs of the States, and applicants should demonstrate their ability to work effectively with State judicial educators.

The Institute is currently funding the following judicial education technical assistance projects: the Judicial Education Reference, Information and Technology Transfer Project (JERITT), which collects and disseminates information (as well as providing technical assistance) on continuing education programs for judges and court personnel; the Judicial Education/Adult Education Project (JEAEP), which provides expert assistance on the application of adult and continuing education theory and practices to court education programs; the Leadership Institute in Judicial Education, which offers an annual training program and follow-up assistance to State judicial education leadership teams to help them develop improved approaches to court education; and NASJE NEWS, a newsletter of the National Association of State Judicial Educators.

iv. *Conferences.* This category includes support for regional or national conferences on topics of major concern to the State judiciary and court personnel. Applicants are encouraged to consider the use of videoconference and other technologies to increase participation and limit travel expenses in planning and presenting conferences. Applicants also are reminded that conference sites should be accessible to persons with disabilities in accordance with the Americans With Disabilities Act. In planning a conference, applicants should provide for a written, video, or other product that would widely disseminate the information, findings, and any recommendations resulting from the conference.

The Institute is particularly interested in supporting national conferences on the topics listed below (Management of Mass Tort Litigation, and the Crisis in Funding for the Courts) and in paragraph II.B.2.a. (Enhancing Public Confidence in the Courts).

(a) National conference on court management of mass tort cases. The Institute, together with the Federal Judicial Center, are interested in supporting a national conference which would bring together State and Federal judges, court managers, attorneys, legal scholars, policy makers, and representatives of business and public interest groups to exchange ideas and information on the efficient, fair and effective judicial management of mass tort cases. Among the issues that may be addressed by the conference and in the materials prepared for it are:

• The impact of mass tort litigation on the courts, litigants, business, consumers and the general public;

• Judicial management of mass tort litigation;

• The use of special masters, alternative dispute resolution, and specialized juries;

• Methods of coordination and cooperation among State judges hearing similar or related cases;

• Methods for cooperation among State and Federal courts hearing similar or related cases;

• The impact on the parties, settlements and verdicts of various coordination and disposition methods; and

• Identifying and planning for the next areas of mass tort litigation that reach the State courts (e.g., repetitive stress injuries; illness caused by insecticides; illness caused by leakage of electro-magnetic energy).

The Institute is currently funding three projects that address these topics: a study of the judicial management of mass tort litigation in the State and Federal courts; the Chief Justices' Special Committee of State Judges on Asbestos Litigation; and an American Law Institute study of complex litigation.

(b) *National conference on the funding crisis in the courts.* The Institute is interested in supporting a national conference which would bring together teams of judges, State and local legislators, executive branch leaders, court managers, and attorneys, as well as legal, public administration and other scholars to share information about the current fiscal crisis faced by many State and local judicial officials, and identify effective approaches for securing adequate funding for the courts.

Among the issues that may be addressed by the conference and in the materials prepared for it are:

• The impact of inadequate funding on the ability of the courts to provide justice in civil, criminal, family, and probate cases;

• The effect of inadequate funding on the independence of the judiciary;

• The approaches States and local jurisdictions have used to attempt to provide adequate resources for the courts;

• The methods courts have used to assure the delivery of justice through effective management of limited resources;

• Techniques for determining the resource needs of the judicial branch;

• Approaches for enhancing interbranch cooperation and communication within the limits established by the separation of powers doctrine; and

• The appropriate use of the inherent powers of the courts as a means of obtaining adequate resources.

v. *Scholarships for judges and court personnel.* The Institute is reserving up to $250,000 to support a scholarship program for State court judges and court managers.

(a) Program description/scholarship amounts. The purposes of the Institute scholarship program are to strengthen court judicial and managerial leadership; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending out-of-State programs within the United States. A scholarship may cover the cost of tuition and transportation between the recipient's home and the site of the educational program up to a maximum total of $1,500 per scholarship. (Transportation expenses include coach airfare or train fare, or up to $.25/mile if the recipient drives to the site of the program.) Funds to pay tuition and transportation expenses in excess of $1,500, and other costs of attending the program such as lodging, meals, materials, and local transportation (including rental cars) at the site of the education program, must be obtained from other sources or be borne by the scholarship recipient.

(b) Eligibility requirements. Because of the limited amount of funds available, scholarships are limited to full-time judges of State or local trial and appellate courts, and to full-time professional, State or local court personnel with management responsibilities. Senior judges, part-time judges, quasi-judicial hearing officers, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers and other executive branch personnel will not be eligible to receive a scholarship.

(c) Application procedures. Judges and court managers interested in receiving a scholarship must submit the Institute's Judicial Education Scholarship Application Form (Form S1, see Appendix III). Applications must be submitted by:

October 15, 1992, for programs beginning between December 1, 1992 and January 31, 1993;

November 1, 1992, for programs beginning between February 1 and May 31, 1993;

March 1, 1993, for programs beginning between June 1 and October 31, 1993; and

August 1, 1993, for programs beginning between November 1, 1993 and January 31, 1994.

No exceptions or extensions will be granted.

All scholarship applicants must obtain the written concurrence of the Chief Justice of his or her State (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Certificate of Concurrence (Form S2, see Appendix). Court managers, other than elected clerks of court, also should submit a letter of support from their supervisor.

(d) Review procedures/selection criteria. The Board of Directors has delegated the authority to approve or deny scholarships to its Judicial Education Committee. The Institute intends to notify each applicant whose scholarship has been approved within 45 days after the relevant application deadline. In order to assure the availability of scholarship funds throughout the year, the Committee will limit the amount of the scholarship support awarded in any quarter to no more than $62,500 (in addition to scholarship funds that may not have been awarded in previous quarters).

The factors that the Institute will consider in selecting scholarship recipients are:

• The applicant's need for training in the particular course subject and how the applicant would apply the information/skills gained.

• The absence of educational programs in the applicant's State addressing the particular topic;

• Whether the applicant intends to disseminate the knowledge gained by developing/teaching a course or providing in-service training for judges or court personnel at the State or local level;

• The length of time that the applicant intends to serve as a judge or court manager, assuming reelection or reappointment, where applicable;

• The length of time since the applicant attended a non-mandatory judicial or court management education program;

• The State's need for the applicant to attend the specific educational program, as demonstrated by a description of current legal, procedural, administrative or other problems affecting the State's courts, enactment of new legislation, or other indications of need, in addition to submission of a signed Form S2;

• The unavailability of State or local funds to cover the costs of attending the program;

• The quality of the educational program to be attended as demonstrated by the sponsoring organization's experience in judicial education, evaluations by participants or other professionals in the field, or prior SJI support for this or other programs sponsored by the organization;

• Geographic balance;

• The balance of scholarships among types of applicants and courts; and

• The balance of scholarships among educational programs.

(e) Responsibilities of scholarship recipients. In order to request the funds authorized by a scholarship award, recipients must submit Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program). Recipients also must submit to the Institute a certificate of attendance at the program and an evaluation of the educational program they attended. A copy of the evaluation also must be sent to the Chief Justice of their State.

A State or a local jurisdiction may impose additional requirements on scholarship recipients that are consistent with SJI's criteria and requirements, e.g., a requirement to serve as faculty on the subject at a State- or locally-sponsored judicial education program.

c. *Court financing and use of resources.* This category includes demonstration, evaluation, education, and research projects to improve methods for securing adequate resources for courts and efficiently managing those resources. Among possible topics that could be addressed under this category are: Preparation of a thorough "white paper" that documents the extent of the current crisis in court funding and its implications for the ability of the nation's courts to dispense justice and for the independence of the judiciary; the testing of innovative methods for enhancing interbranch communications; documentation and evaluation of effective techniques for managing court resources, services, and personnel and managing reductions of services and personnel levels in a court environment; examinations of the results, benefits and drawbacks of various methods of enhancing the stability and equity of court funding; and dissemination of information regarding these issues to the court community nationally.

In previous funding cycles, the Institute has supported projects that examined State court expenditures and staffing, and trial court reorganization; developed trial court financial management guides; documented methods for determining judgeship needs; and evaluated techniques for improving collection and administration of monetary penalties and restitution in criminal cases.

d. *Planning for the future of the courts.* The Institute is interested in supporting activities that would enable courts to implement and evaluate long-range strategic planning processes and complementary innovative management approaches in their own jurisdictions.

The types of projects that fall within this category are:

i. Development, implementation, and evaluation of long-range planning approaches in individual States and local jurisdictions, e.g., the development or inclusion of strategic planning techniques, environmental scanning, trends analysis and other comprehensive long-range, strategic planning methods as components of courts' current planning processes or as part of the initiation of such a process;

ii. Adaptation, implementation and evaluation of innovative management approaches established to complement, enhance or support use of a long-range strategic planning process.

iii. Development, presentation and evaluation of training necessary to enable judges and court staff to participate productively in the implementation of the planning process and/or related innovative management approaches; and

iv. Symposia or other educational programs dedicated to specific topics or issues (such as the impact of new technologies on established legal principles and traditional notions of due process, or the effect on the courts of changing demographics and other cultures' varied perceptions of justice, conflict, and dispute resolution procedures), identified during the 1990 Future and the Courts Conference or other futures activities.

The Institute has supported futures commissions in seven States. Because the Board of Directors believes that a sufficient variety of commission models now exists, the Institute will not support the development or implementation of any State futures commissions in FY 1993. The Institute also has supported planning and futures projects including: Computer-assisted facilitation of court innovation; national and State-wide "future and the courts" conferences and training; a symposium on the future of the family court; an examination of the effect of demographic changes on cultural variations in the perceptions and expectations of justice; seminars exploring judicial decision-making in the 21st century; analysis and recommendations of alternative methods of involving expert witnesses in court proceedings; development of a curriculum and guidebook to assist courts to conduct visioning exercises; development of a curriculum and guide on trial court-based long-range planning; a Supreme Court-based critical issues planning commission; preparation of training and materials on developing issues regarding court-ordered health care; and training and assistance on conducting futures activities with limited resources.

e. *Improving communication and coordination among courts.* This category includes the development, implementation and evaluation of innovative procedural, administrative, technological, and organizational methods to improve communication and coordination among State trial and appellate courts and between State and Federal courts and State and Tribal courts hearing related cases. Among the circumstances in which such improved communication and coordination are particularly needed are:

- Instances in which a litigant in a State civil, criminal or domestic relations case is subject to a Federal bankruptcy proceeding;
- Instances in which coordination of cases among different courts would significantly enhance the services provided to citizens;
- Instances in which a defendant has charges pending in both State and Federal court, in both State and Tribal court, or in more than one State court;
- Post-conviction challenges in capital cases; and
- Civil cases in which State and tribal courts have overlapping jurisdiction.

In previous funding cycles, grants have been awarded to support a study of States with coordinated family court systems, followed by a symposium for States which have or are interested in establishing family courts; a study of the nature and extent of cases that involve the same family within or across courts, and how best to integrate or coordinate these proceedings; the development of case management teams of court professionals to handle all cases pertaining to members of a family; development of guidelines for improving the process for preparing and transferring the record on appeal in a timely manner; and an evaluation of the effect of the California court coordination program. (See also paragraph II.B.2.m., The Relationship Between State and Federal Courts.)

f. *Application of technology.* This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Board seeks to support local experiments with promising but untested applications of technology in the courts that include a structured evaluation of the impact of the technology in terms of costs, benefits, and staff workload. In this context, "untested" refers to novel applications of technology developed for the private sector and other fields that have not previously been applied to the courts.

The Board is particularly interested in demonstrations and evaluations of innovative technologies and related issues presented at the Third National Conference on Court Technology held in March, 1992 in Dallas, Texas, including but not limited to: the evaluation of optical imaging as a tool for transferring information; preparation of staff for technological change, including innovative training on methods for avoiding or limiting work-related injuries; the development of policies and procedures regarding access by individuals, the media, commercial enterprises, and others to automated court records; and the use of videoconferencing and other innovative communications technologies to expedite the hearing and disposition of cases. (See paragraph XI.H.2.b. regarding the limits on the use of grant funds to purchase equipment and software.)

In previous funding cycles, grants have been awarded to support:

Demonstration and evaluation of communications technology, e.g., interactive computerized information systems to assist pro se litigants; an electronic mail system and computer-based bulletin board to facilitate information transfer among criminal justice agencies in adjoining local jurisdictions; the effects of telephone conferencing in interstate child support cases; the use of FAX technology by courts; a multi-user "system for judicial interchange" designed to link disparate automated information systems and share court information among judicial system offices throughout a State without replacement of the various hardware and software environments which support individual courts; a computerized voice information system permitting parties to access by telephone information pertaining to their cases; an automated public information directory of courthouse facilities and services; the use of a microcomputer local area network to foster communication among judges and promote a team approach to handling caseloads; and a computer-integrated courtroom that provides full access to the judicial system for hearing-impaired jurors, witnesses, crime victims, litigants, attorneys, and judges;

Demonstration and evaluation of records technology, e.g.: The effects, costs, and benefits of videotape as a technique for making the record of trial court proceedings; an automated microfilm system and an optical disk system for maintaining and retrieving court records; an automated Statewide records management system; the integration of bar-coding technology with an existing automated case management system; an on-bench automated system for generating and processing court orders; development of an information retrieval and analysis system specifically designed for court management; detailed specifications for construction of an automated judicial education management system; testing of a document management system for small courts that uses imaging technology; evaluation of the use of automated teller machines for paying jurors; and development of a multi-user, integrated State database of child abuse and neglect case files;

Court technology assistance services, e.g.: circulation of a court technology bulletin designed to inform judges and court managers about the latest developments in court-related technologies; creation of a court technology laboratory to provide judges and court managers with the opportunity to test automated court-related systems; enhancement of a data base and circulation of reports documenting automated systems currently in use in courts across the country; establishment of a technical information service to respond to specific inquiries concerning court-related technologies; development of court automation performance standards; a manual for court managers on practical issues relating to the use of computer-aided transcription; a handbook on appellate case management information systems; and an assessment of programs that allow public access to electronically stored court information.

Grants also support the development of a seminar for judges and court managers on the "courtroom of the future"; implementation and evaluation of a Statewide automated integrated case docketing and record-keeping system; a prototype computerized benchbook using hypertext technology; computer simulation models to assist State courts in evaluating potential strategies for improving civil caseflow; and a national assessment of the efforts to develop and implement Statewide automation of trial courts.

g. *Reduction of litigation expense and delay.* This category includes projects to adapt, implement, and evaluate methods developed through research and demonstration projects supported by the Institute and other funders for fairly and effectively managing dockets and reducing the time from the filing of a case to its final disposition (including the pretrial, adjudicatory, post-trial, and appellate stages to the litigation process) and the reduction of the cost and complexity of litigation. This category does not include the provision of operational support for mediation or arbitration programs.

In previous funding cycles, grants have been awarded to support the examination of the causes of delay and the methods for improving case processing in trial courts in rural jurisdictions, limited jurisdiction urban trial courts, and in intermediate appellate courts. In addition, grant support has been awarded to projects demonstrating the use of differentiated case management in trial and appellate courts, and examining the impact of innovative procedures for: screening civil cases, handling medical malpractice cases, and expediting appellate decisions.

The Institute has also supported development of a case management review process; studies of case processing in civil and domestic relations cases; the extent of case processing problems caused by discovery; methods for effectively managing motions practice in civil cases; and assistance to trial courts in major urban areas and to appellate courts to improve case processing, adopt and implement time standards, and otherwise reduce litigation delay.

h. *Substance abuse.* This category includes the development and evaluation of innovative techniques for courts to handle the increasing volume of substance abuse-related criminal, civil, juvenile and domestic relations cases fairly and expeditiously; the planning and presentation of seminars or other educational forums for judges, probation officers, caseworkers, and other court personnel to examine court-related issues concerning alcohol and other drug abuse and develop specific plans for how individual courts can respond to the impact of the increasing volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases on their ability to manage their overall caseloads fairly and efficiently.

The Board of Directors is particularly interested in funding innovative projects which establish coordinated efforts between local courts and treatment providers; enhance inter-branch communication regarding the effective disposition of cases involving substance abuse; and evaluate the effectiveness of various methods for treating substance abuse. Proposals should demonstrate a direct impact on the ability of State courts to handle cases involving substance abuse fairly and effectively. The Institute will not fund projects focused on developing additional assessment tools for substance abusers, or providing support for basic court or treatment services.

Follow-up Projects to the November 1991 Substance Abuse and the Courts Conference

In order to further enhance the impact of the November, 1991 National Conference on Substance Abuse and the Courts and facilitate wider implementation of the developed State strategies developed at that Conference, the Board has established an accelerated schedule for considering projects to implement the action plans and strategies developed by the State teams that attended the National Conference. The deadline for mailing concept papers proposing such projects is October 9, 1992. The Board will review the concept papers at its November, 1992 meeting and invite applications for consideration at its March, 1993 meeting.

In previous funding cycles, the Institute has supported projects to evaluate the drug court procedures initiated by the Dade County, Florida, and New York City courts, and the effectiveness of other court-based alcohol and drug assessment programs; replicate the Dade County program in non-urban sites; implement the plans developed by State teams at the National Conference on Substance Abuse and the Courts; assess the impact of legislation and court decisions dealing with drug-affected infants, and strategies for coping with increasing caseload pressures; develop a benchbook to assist judges in child abuse and neglect cases involving parental substance abuse; and present local and regional educational programs for judges and other court personnel on substance abuse and its treatment.

The Institute and the Bureau of Justice Assistance also are supporting two technical assistance projects: One by the National Center for State Courts to assist courts in implementing the plans developed at the National Conference; and the other by the American University Court Technical Assistance Project to identify successful drug case management strategies, conduct seminars on drug case management, and develop a guidebook for implementing drug case processing initiatives. In addition, the Institute expects to supplement a program supported by the Office for Treatment Improvement to conduct regional training programs for State judges and legislators on substance abuse treatment.

i. *Application of performance-based standards and measures to the courts.* This category includes the development and testing of standards and techniques to enable trial and appellate court officials to conduct user-oriented evaluations of the quality of court services and to use measures of public satisfaction to improve court performance.

In previous funding cycles, the Institute has supported a test in four States of the feasibility of implementing the Trial Court Performance Standards; demonstration of a court-based consumer research and service development process; and adaptation of

"total quality management" principles to trial court operations.

j. *Responding to the court-related needs of elderly persons and persons with disabilities.* This category includes research, demonstration, education, and evaluation projects on issues related to the fair and effective handling of cases affecting persons who are elderly and persons who are physically or mentally disabled including those requiring long-term health care. The issues that may be addressed include but are not limited to:

- Development of materials and training programs on the Americans with Disabilities Act and its implementation in the State courts;
- Implementation of the recommendations of the National Conference on Court Related Needs of Elderly Persons and Persons with Disabilities held February, 1991 in Reno, Nevada;
- Development and testing of innovative techniques for improving the physical accessibility, convenience and security of court facilities and services to the public, including persons with mobility or communications impairments or other physical or mental disabilities;
- The assessment of the impact on State courts of the judicial review of administrative decisions made under Medicaid and similar State authorized health care programs and the use of "medical practice guidelines" as a new standard of care in health-related litigation; and
- The definition of the basis for determining health-care related issues such as: the competency of individuals; what constitutes clear and convincing evidence of a person's wish not to initiate or continue life-sustaining treatment, including the implications of the Federal Patient Self-Determination Act; the allocation of costs for routine and extraordinary health care; the appropriate use of experimental and other health care procedures; and other health-care related legal issues.

In previous funding cycles, the Institute has supported projects to: Examine, identify and test procedures to improve the monitoring and enforcement of guardianship orders; develop guidelines for judges in considering cases regarding the withdrawal of life-sustaining treatment, and national standards for probate courts; prepare benchbooks, handbooks, videotapes and training materials on guardianship, the Americans with Disabilities Act and AIDS. The Institute also supported a national conference on the court-related problems of elderly persons and persons with disabilities in February, 1991; and is supporting technical assistance and educational programs to disseminate and help implement the findings and recommendations of that conference.

k. *Improving the use of juries.* This category includes innovative research, demonstration, evaluation, and education projects to assist courts to improve juror comprehension, the structure of jury decisionmaking, public understanding of jury decisions, and attitudes toward jury service. Among the topics that could be addressed are:

Studies exploring whether juries limited to individuals with certain educational or professional backgrounds are better able to understand and dispense justice in litigation involving complex subject matter than randomly selected juries, or judges; and

Demonstrations and evaluations of the effect on outcome, deliberation time, and juror satisfaction of innovative procedures including:

- The use of "plain English" preliminary and final instructions;
- Permitting juries, during their deliberations, to use or have on-line access to videotaped testimony, computerized transcripts, copies or videotapes of the instructions, any computer simulations used in the trial, and other similar materials;
- Permitting jurors to discuss the case during trial;
- Permitting attorneys to present brief, periodic "mini-summaries" or explanations of their case; and
- Using structured verdict forms or special verdicts.

Education projects developing and testing curricula to:

- Inform judges and court staff how to manage activities such as juror notetaking, juror questioning, and other jury innovations in their courtrooms; enhance the jury experience, through effective juror orientation procedures and trial management; and encourage public participation on juries; and
- Bring together judges, lawyers, litigants, jurors, scholars and representatives of different segments of American society, (e.g., representatives of business and public interest groups) to discuss common perceptions and misperceptions about the jury system and identify ways to correct the system and/or the misperceptions;

Proposals for research submitted under this category should demonstrate the direct applicability of the results to court practices and procedures.

l. *Family violence and the courts.* This category is limited to State and local court projects to implement the action plans and strategies developed by the teams participating in the Institute-supported National Conference on Family Violence and the Courts to be held in San Francisco in March, 1993, and projects designed to assist teams in implementing their plans. Concept papers proposing such projects must be mailed by October 8, 1993. They will be considered by the Institute's Board of Directors at its meeting in November, 1993. Applications based on those concept papers will be considered by the Board at its meeting in March, 1994.

Support of projects based on those concept papers and applications will be subject to the availability of appropriations to the Institute for Fiscal Year 1994.

m. *The relationship between State and Federal courts.* This category includes education, research, demonstration, and evaluation projects designed to build upon the insights and information gained at the Institute-supported National Conference on State-Federal Judicial Relationships held in Orlando in April, 1992. Among the topics that could be addressed in education projects are the development and testing of curricula and other educational materials to:

- Enhance operation of State-Federal Judicial Councils;
- Assist judges and court staff in promoting the interests of the courts within the bounds of the applicable codes of conduct;
- Illustrate effective methods being used at the trial court, State and Circuit levels to coordinate cases and administrative activities; and
- Conduct regional conferences replicating the National Conference.

Among the topics that could be addressed in other types of projects are the development and testing of new approaches to:

- Coordinate bankruptcy cases with State litigation involving the individual or entity in bankruptcy including improved notice, certification and communication procedures and practices;
- Exchange information and coordinating calendars among State and Federal courts;
- Handle capital habeas corpus cases fairly and efficiently;
- Share jury pools, alternative dispute resolution programs and court services; and
- Facilitate certification of cases from Federal to State courts and explore the implications of certification of cases from State to Federal courts.

In previous funding cycles, the Institute has supported a national and a regional conference on State-Federal judicial relationships and the Chief Justices' Special Committee of State Judges on Asbestos Litigation. In addition, the Institute has supported projects developing judicial impact statement procedures for national legislation affecting State courts, and projects examining the management of mass tort litigation in State and Federal courts, the impact on the State courts of diversity cases and cases brought under section 1983, the procedures used in Federal habeas corpus review of State court criminal cases, the factors that motivate litigants to select Federal or State courts and the mechanisms for transferring cases between Federal and State courts, as well as the methods for effectively consolidating, deciding, and managing complex litigation. The Institute has also supported a clearinghouse of information on State constitutional law decisions.

C. Single Jurisdiction Projects

The Board will consider supporting a limited number of projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. It has established two categories of Single Jurisdiction Projects:

1. Programs Addressing a Critical Need of a Single State or Local Jurisdiction.

a. Description of the program. The Board will set aside up to $1,000,000 to support projects submitted by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, and may, but need not, seek to implement the findings and recommendations of Institute supported research, evaluation, or demonstration programs. Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section X.B.1.

b. Application procedures. Concept papers and applications requesting funds for projects under this section must meet the requirements of sections VI. ("Concept Paper Submission Requirements for New Projects") and VII. ("Application Requirements"), respectively, and must demonstrate that:

i. The proposed project is essential to meeting a critical need of the jurisdiction; and

ii. The need cannot be met solely with State and local resources within the foreseeable future.

2. Technical Assistance Grants

a. Description of the program. The Board will set aside up to $500,000 to support the provision of technical assistance to State and local courts. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. It is anticipated, however, that at least $125,000 will be available each quarter to support Technical Assistance grants. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes.

Technical Assistance grants are limited to no more than $30,000 each, and the technical assistance must be completed within 12 months after the start-date of the grant. Only State or local courts may apply for Technical Assistance grants. As with other awards to State or local courts, cash or in-kind match must be provided equal to at least 50% of the grant amount. Technical Assistance grant recipients also are subject to the same quarterly reporting requirements as other Institute grantees.

At the conclusion of the grant period, a Technical Assistance grant recipient must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute three copies of a final report that explains how it intends to act on the consultant's recommendations as well as three copies of the consultant's written report.

b. *Review criteria.* Technical Assistance grants will be awarded on the basis of criteria including: whether the assistance would address a critical need of the court; the soundness of the technical assistance approach to the problem; the qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s); commitment on the part of the court to act on the consultant's recommendations; and the reasonableness of the proposed budget. The Institute will also consider factors such as the level and nature of the match that would be provided, diversity of subject matter, and geographic diversity in awarding Technical Assistance grants.

c. *Application procedures.* In lieu of concept papers and formal applications, applicants for Technical Assistance grants may submit, at any time, a detailed letter describing the proposed project and addressing the criteria listed above. Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information to assure that each of the criteria is addressed:

i. Need for funding. What is the critical need facing the court? How will the proposed technical assistance help the court to meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

ii. Project description. What tasks would the consultant be expected to perform? Who (organization or individual) would be hired to provide the assistance and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdiction's normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant?

If the consultant has been identified, a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time period and for the proposed cost, should accompany the applicant's letter. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

If the support or cooperation of agencies, organizations, or courts other than the applicant, would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the letter or be submitted under separate cover.

iii. Likelihood of implementation. What steps have been/will be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of a court other than the applicant, agencies, funding bodies or organizations will be needed to adopt the changes recommended by the consultant and approved by the court, how have they/will they be involved in the review of the recommendations and development of the implementation plan?

iv. Budget and matching State contribution. A completed Form E, "Concept Paper Preliminary Budget" (see Appendix IV to the Grant Guideline), must be included with the applicant's letter requesting technical assistance. Please note that the estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated

under the Consultant/Contractual category. In addition, the budget should provide for submission of three copies of the consultant's final report to the Institute.

v. Support for the project from the State supreme court or its designated agency or council. Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix V.) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between October 1 and December 15 will be notified of the Board's decision by February 15; those submitting letters between December 16 and March 15 will be notified by May 15. Notification of the Board's decisions concerning letters received between March 16 and June 15 will be made by August 15; and applicants submitting letters between June 16 and September 30 will be notified by November 15. The Board has delegated its authority to approve these grants to its Technical Assistance Committee.

The Technical Assistance grant program described in this section should not be confused with the Judicial Education Technical Assistance projects described in section II.B.2.b.iii.

III. Definitions

The following definitions apply for the purposes of this guideline:

A. Institute

The State Justice Institute.

B. State Supreme Court

The highest appellate court in a State, unless, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, *State Supreme Court* shall mean that court which also has administrative responsibility for the State's judicial system. *State Supreme Court* also includes the office of the court or council, if any, it designates to perform the functions described in this guideline.

C. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

D. Grantor Agency

The State Justice Institute.

E. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court.

F. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

G. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Match does not include project-related income such as tuition or payments for grant products, nor time of participants attending an education program.

H. Continuation Grant

A grant of no more than 24 months to permit completion of activities initiated under an existing Institute grant or enhancement of the programs or services produced or established during the prior grant period.

I. On-going Support Grant

A grant of up to 36 months to support a project that is national in scope and that pro-vides the State courts with services, programs or products for which there is a continuing important need.

J. Package Grant

A single grant that supports two or more closely related projects which logically should be viewed as a whole or would require substantial duplication of effort if administered separately. Closely related projects may include those addressing interrelated topics, or those requiring the services of all or some of the same key staff persons, or the core elements of a multifaceted program. Each of the components of a package grant must operate within the same project period.

K. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions and/or experiences through an interview, questionnaire, or other data collection technique(s).

IV. Eligibility for Award

In awarding funds to accomplish these objectives and purposes, the Institute has been directed by Congress to give priority to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant will be considered a "priority" education and training applicant under section 10705(b)(1)(C) if: (1) The principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the relevant program area(s) can be served better. In making this judgment, the Institute will consider the likely replicability of the projects' methodology and results in other jurisdictions. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

Finally, the Institute is authorized to make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section XI.B.2 of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in the Appendix.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

Except as expressly provided in sections II.B.2.b. and II.C. above, the Institute has placed no limitation on the overall number of awards or the number of awards in each special interest category. The general types of projects are:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute has established the following types of grants:

1. New grants (See chapters VI. and VII.).
2. Continuation grants (See sections III.H. and IX.A.).
3. On-going Support grants (See sections III.I. and IX.B.).
4. Package Grants (See sections III.J., VI.A.2.b., VI.A.3.b., and VII.).
5. Technical Assistance grants (See section II.C.2.).
6. In-State Curriculum Adaptation grants (See section II.B.2.b.i.(b)).
7. Scholarships (See section II.B.2.b.v.).

C. Maximum Size of Awards

1. Except as specified below concept papers and applications for new projects and applications for continuation grants may request funding in amounts up to $300,000, although new and continuation awards in excess of $200,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applications for on-going support grants may request funding in amounts up to $600,000. At the discretion of the Board, the funds to support on-going support grants may be awarded either entirely from the Institute's appropriations for the Fiscal Year of the award or from the Institute's appropriations for successive Fiscal Years beginning with the Fiscal Year of the award. When funds to support the full amount of an on-going support grant are not awarded from the appropriations for the Fiscal Year of award, funds to support any subsequent years of the grant will be made available upon (1) the satisfactory performance of the project as reflected in the quarterly Progress Reports required to be filed and grant monitoring, and (2) the availability of appropriations for that Fiscal Year.

3. Applications for package grants may request funding in amounts up to a total of $750,000.

4. Applications for technical assistance grants may request funding in amounts up to $30,000.

5. Applications for in-State curriculum adaptation grants may request funding in amounts up to $20,000.

6. Applications for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily will not exceed 24 months.

2. Grant periods for on-going support grants ordinarily will not exceed 36 months.

3. Grant periods for package grants, technical assistance grants and in-State curriculum adaptation grants ordinarily will not exceed 12 months.

VI. Concept Paper Submission Requirements for New Projects

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. Because of their importance, the Institute requires all parties requesting financial assistance from the Institute (except those seeking renewal funding pursuant to section IX.) to submit concept papers prior to submitting a formal grant application. This requirement and the submission deadlines for concept papers and applications may be waived for good cause (e.g., the proposed project would provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

All concept papers must include a cover sheet, a program narrative, and a preliminary budget, regardless of whether the applicant is proposing a single project or a "package of projects", or whether the applicant is requesting accelerated award of a grant of less than $40,000.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title describing the proposed project;

b. The name and address of the court, organization or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person(s) who can provide further information about the paper; and

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.B.1.) that the proposed project addresses most directly.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper, should add Application Waiver Requested to the information on the cover page.

2. The Program Narrative

a. Concept papers proposing a single project. The program narrative of a concept paper describing a single project should be no longer than necessary, but in no case should exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch and type no smaller than 12 point and 12 cpi must be used. The narrative should describe:

i. Why this project is needed and how it will benefit State courts? If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services or other resources, and the benefits that would be realized by the proposed site(s).

If the project is not site specific, applicants should discuss the problems that the proposed project will address, why existing materials, programs, procedures, services or other resources do not adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

ii. What will be done if a grant is awarded? A summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period.

iii. How the effects and quality of the project will be determined? A summary description of how the project will be evaluated, including the evaluation criteria.

iv. How others will find out about the project and be able to use the results? A

description of the products that will result, the degree to which they will be applicable to courts across the nation, and the manner in which the products and results of the project will be disseminated.

b. Concept papers requesting a package grant covering more than one project. The program narrative of a concept paper requesting a package grant (see definition in section III.J.) should be no longer than necessary, but in no case should exceed 15 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used.

In addition to addressing the issues listed in paragraph VI.A.2.a., the program narrative of a package grant concept paper must describe briefly each component project, as well as how its inclusion enhances the entire package; and explain:

i. How are the proposed projects related?

ii. How would their operation and administration be enhanced if they were funded as a package rather than as individual projects; and

iii. What disadvantages, if any, would accrue by considering or funding them separately.

3. The Budget

a. Concept papers proposing a single project. A preliminary budget must be attached to the narrative that includes the estimates and information specified on Form E included in appendix IV of this Guideline.

b. Concept papers requesting a package grant covering more than one project. A separate preliminary budget for each component project of the package, as well as a combined budget that reflects the costs of the entire package, must be attached to the narrative. Each of these budgets must include the estimates and information specified on Form E included in appendix IV of this Guideline.

c. Concept papers requesting accelerated award of a grant of less than $40,000. Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under section VI.C., must attach to Form E (see Appendix IV) a budget narrative explaining the basis for each of the items listed, and whether the costs would be paid from grant funds or through a matching contribution or other sources. The budget narrative is not counted against the eight page limit for the program narrative.

4. The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

5. The Institute will not accept concept papers with program narratives exceeding the limits set in sections VI.A.2.a. and b. The page limit does not include the cover page, budget form, the budget narrative if required under section VI.A.3.c., and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

6. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter, and incorporate that material by reference in each paper. The incorporated material will be counted against the eight-page limit for each paper. A copy of the cover letter should be attached to each copy of each concept paper.

7. Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Selection Criteria

1. All concept papers will be evaluated by the staff on the basis of the following criteria:

a. The demonstration of need for the project;

b. The soundness and innovativeness of the approach described;

c. The benefits to be derived from the project;

d. The reasonableness of the proposed budget;

e. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

f. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" concept papers submitted pursuant to section II.C. will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B., and on the special requirements listed in section II.C.1.

3. In determining which concept papers will be selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the submitter's anticipated match; whether the submitter is a "priority applicant" under the Institute's enabling legislation (see 42 U.S.C. 10705(b)(1) and section IV above); and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review Process

Concept papers will be reviewed competitively by the Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's funding program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for their review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants should be invited to submit formal applications for funding.

The decision to invite an application is solely that of the Board of Directors. With regard to concept papers requesting a package grant, the Board retains discretion to invite an application including all, none, or selected portions of the package for possible funding.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000, when the need for and benefits of the project are clear, and the methodology and budget require little additional explanation.

D. Submission Requirements

An original and three copies of all concept papers submitted for consideration in Fiscal Year 1993 must be sent by first class or overnight mail or by courier no later than December 2, 1992, except for concept papers proposing to implement an action plan developed during the National Conference on Substance Abuse and the Courts which must be sent by October 9, 1992 (see Special Interest category (h), and concept papers proposing projects that follow-up on the National Conference on Family Violence and the Courts which must be sent by October 8, 1993 (see Special Interest category I.). A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked Concept Paper and should be sent to: State Justice Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

It is preferable for letters of cooperation and support to be appended to the concept paper when it is submitted. However, any such letter received prior to the meeting of the Board of Directors at which the paper is considered will be brought to the attention of the Board.

The Board will meet on November 19–22, 1992 to review the concept papers and invite applications to implement an action plan developed during the National Conference on Substance Abuse and the Courts. It will meet on March 4–7, 1993, to review concept papers and invite applications on other topics, and will meet on November 18–21, 1993, to consider concept papers to follow-up on the National Conference on Family Violence and the Courts.

The Institute will send written notice to all persons submitting concept papers of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but does not prohibit resubmission of the concept paper or a revision thereof in a subsequent round of funding. The Institute will also notify the designated State contact listed in the Appendix when the Board invites applications that are based on concept papers which are submitted by courts within their State or which specify a participating site within their State.

Receipt of each concept paper will be acknowledged in writing. Extensions of the deadline for submission of concept papers will not be granted.

VII. Application Requirements for New Projects

Except as specified in section VI., a formal application for a new project is to be submitted only upon invitation of the Board following review of a concept paper. An application for Institute funding support must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. These documents are described below.

A. Forms

1. Application Form (FORM A)

The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding support requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete, that submission of the application has been authorized by the applicant, and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

2. Certificate of State Approval (FORM B)

An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

3. Budget Forms (FORM C or C1)

Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting more than $100,000 are encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See section VII.D.)

Applications for a package grant must include a separate budget and budget narrative for each project included in the proposed package, as well as a combined budget that reflects the total costs of the entire package.

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

4. Assurances (FORM D)

This form lists the statutory, regulatory, and policy requirements and conditions with which recipients of Institute funds must comply.

5. Disclosure of Lobbying Activities

This form requires applicants other than units of State or local government to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section X.D.)

B. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed one single-spaced page on 8½ by 11 inch paper.

C. Program Narrative

The program narrative for an application proposing a single project should not exceed 25 double-spaced pages on 8½ by 11 inch paper. The program narrative for an application requesting a package grant for more than one project should not exceed 40 double-spaced pages on 8½ by 11 inch paper. Margins must not be less than 1 inch, and type no smaller than 12-point and 12 cpi must be used. The page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to obtaining a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

1. Project Objectives

A clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

2. Program Areas To Be Covered

A statement which lists the program areas set forth in the State Justice Institute Act, and, if appropriate, the Institute's Special Interest program categories that are addressed by the proposed projects.

3. Need for the Project

If the project is to be conducted in a specific location(s), a discussion of the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through

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the use of existing materials, programs, procedures, services or other resources.

If the project is not site specific, a discussion of the problems that the proposed project will address, and why existing materials, programs, procedures, services or other resources do not adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

An application requesting a package grant to support more than one project also must describe how the proposed projects in the package are related; how their operation and administration would be enhanced if they were funded as a package rather than as individual projects; and what disadvantages, if any, would accrue by considering or funding them separately.

4. Tasks, Methods and Evaluation

a. Tasks and methods. A delineation of the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

i. For research and evaluation projects, the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included of the value of the proposed research and the methods to be used to minimize or eliminate such risk.

ii. For education and training projects, the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty will be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars or workshops to be conducted; the materials to be provided and how they will be developed; and the cost to participants.

iii. For demonstration projects, the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they will be identified and their cooperation obtained; how the program or procedures will be implemented and monitored.

iv. For technical assistance projects, the types of assistance that will be provided; the particular issues and problems for which assistance will be provided; how requests will be obtained and the type of assistance determined; how suitable providers will be selected and briefed; how reports will be reviewed; and the cost to recipients.

An application requesting a package grant for more than one project must describe separately the tasks associated with each project in the proposed package.

b. Evaluation. Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide ongoing or periodic feedback on the effectiveness or utility of particular programs, educational offerings, or achievements which can then be further refined as a result of the evaluation process. The plan should present the qualifications of the evaluator(s); describe the criteria, related to the project's programmatic objectives, that will be used to evaluate the project's effectiveness; explain how the evaluation will be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach is appropriate; and present a schedule for completion of the evaluation within the proposed project period.

i. The evaluation plan should be appropriate to the type of project proposed. For example, an evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

ii. The most valuable approaches to evaluating educational or training programs will serve to reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented and other relevant factors. Another appropriate approach would be to use an independent observer who might request verbal as well as written responses from participants in the program. When an education project involves the development of curricular materials an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

iii. The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed? did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court? what benefits resulted from the program?); and the replicability of the program or components of the program.

iv. For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided will be determined, and should develop a mechanism for feedback from both the users and providers of the technical assistance.

v. Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subjects protection issues ordinarily are not applicable to participants evaluating an education program.

vi. The evaluation plan in a package grant application should address the issues listed above for the particular types of projects included in the package, assessing the strengths and weaknesses of the individual components as well as the benefits and limitations of the projects as a package.

5. Project Management

A detailed management plan including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that will be used to ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination will occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Package grant applications must include a management plan for each project included in the package, as well as a plan embracing the package as a whole.

6. Products

A description of the products to be developed by the project (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they will be submitted to the Institute. The application must explain how and to whom the products will be disseminated; describe how they will benefit the State courts including how they can be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant will be offered to the courts community and the public at large (i.e., whether products will be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). Ordinarily, applicant should schedule all product preparation and distribution activities within the project period.

Package grant applications must discuss these issues with regard to the products that would result from each of the projects included in the package.

In most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that will be disseminated to the project's primary audience, or both. The products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

Applicants must provide for submitting a final draft of the final grant product(s) to the Institute for review and approval at least 30 days before the product(s) are submitted for publication or reproduction. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute.

Applicants must also provide for including in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section X.Q. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless the Institute approves another placement.

Twenty copies of all project products, including videotapes, must be submitted to the Institute. In addition, a copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in appendix II). To facilitate their use, all videotaped products should be distributed in VHS format. For all wordprocessed products, grantees must submit a diskette of the text in ASCII. For non-text products, a copy of the summary or a brief abstract in ASCII must be submitted.

7. Applicant Status

An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should include a statement indicating whether it is requesting "priority status" recognition as either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. A request for recognition as a priority recipient pursuant to 42 U.S.C. 10705 (b)(1)(B) or (1)(C) must set forth the basis for designation as a priority recipient in its application. Non-judicial units of Federal, State, or local government must demonstrate that the proposed services are not available from non-governmental sources.

8. Staff Capability

A summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that will be used to select persons for these positions should be included.

9. Organizational Capacity

Applicants that have not received a grant from the Institute within the past two years should include a statement describing the capacity of the applicant to administer grant funds including the financial systems used to monitor project expenditures (and income, if any), and a summary of the applicant's past experience in administering grants, as well as any resources or capabilities that the applicant has that will particularly assist in the successful completion of the project.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, "current" means no earlier than two years prior to the current calendar year. If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

10. Statement of Lobbying Activities

Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form that requires them to state whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

11. Letters of Support for the Project

If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, written assurances of cooperation and availability should

be attached as an appendix to the application.

D. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. An application for a package grant for more than one project must include a separate budget narrative for each project component. Additional background or schedules may be attached if they are essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should address the items listed below. The costs attributable to the project evaluation should be clearly identified.

1. Justification of Personnel Compensation

The applicant should set forth the percentages of time to be devoted by the individuals who will serve as the staff of the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rate of those individuals. The applicant should explain any deviations from current rates or established written organization policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds will be supporting only the portion of the employee's time that will be dedicated to new or additional duties related to the project.

2. Fringe Benefit Computation

The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented as well as a description of the elements included in the determination of the percentage rate.

3. Consultant/Contractual Services

The applicant should describe each type of service to be provided. The basis for compensation rates and the method for selection should also be included. Rates for consultant services must be set in accordance with section XI.H.2.c.

4. Travel

Transportation costs and per diem rates must comply with the policies of the applicant organization, If the applicant does not have an established travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose for travel should also be included in the narrative.

5. Equipment

Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the objectives of the project. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section XI.H.2.b.

6. Supplies

The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the details supporting the total requested for this expenditure category.

7. Construction

Construction expenses are prohibited except for the limited purposes set forth in section X.H.2. Any allowable construction or renovation expense should be described in detail in the budget narrative.

8. Telephone

Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used in developing the monthly and long distance estimates.

9. Postage

Anticipated postage costs for project-related mailings should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the justification material.

10. Printing/Photocopying

Anticipated costs for printing or photocopying should be included in the budget narrative. Applicants should provide the details underlying these estimates in support of the request.

11. Indirect Costs

Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities) the applicant should specify that these costs are not included within their approved indirect cost rate. These rates must be established in accordance with section XI.H.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

12. Match

The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services or materials actually contributed will be documented. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match. (Samples of forms used by current grantees to track in-kind match are available from the Institute upon request.)

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. (See sections III.G., VIII.B., X.B. and XI.D.1.)

E. Submission Requirements

1. An application package containing the application, an original signature on FORM A (and on FORM B, if the application is from a State or local court or the Disclosure of Lobbying Form if the applicant is not a unit of State or local government), and four photocopies of the application package must be sent by first class or overnight mail, or by courier no later than May 13, 1992. A postmark or courier receipt will constitute evidence of the submission date. Please mark Application on all application package envelopes and send to: State Justice Institute, 1650 King Street, suite 600, Alexandria, Virginia 22314.

Receipt of each proposal will be acknowledged in writing. Extensions of the deadline for receipt of applications will not be granted.

2. Applicants invited to submit more than one application may include material that would be identical in each application in a cover letter, and incorporate that material by reference in each application. The incorporated material will be counted against the 25-page (or in the case of package grant applications, the 40-page) limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

3. It is preferable for letters of cooperation or support to be appended to the application when it is submitted. However, any letters received prior to the meeting of the Board of Directors at which the application is considered will be brought to the attention of the Board.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter inviting submission of a formal application.

B. Selection Criteria

1. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

a. The soundness of the methodology;

b. The appropriateness of the proposed evaluation design;

c. The qualifications of the project's staff;

d. The applicant's management plan and organizational capabilities;

e. The reasonableness of the proposed budget;

f. The demonstration of need for the project;

g. The products and benefits resulting from the project;

h. The demonstration of cooperation and support of other agencies that may be affected by the project;

i. The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.; and

j. The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

2. "Single jurisdiction" applications submitted pursuant to section II.C.1. will also be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and on the special requirements listed in section II.C.1.b.

3. In determining which applicants to fund, the Institute will also consider the applicant's standing in relation to the statutory priorities discussed in section IV; the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; and the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements.

C. Review and Approval Process

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application, and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for a grant. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

The Institute will send written notice to applicants concerning all Board decisions to approve or deny their respective applications and the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but does not prohibit resubmission of a concept paper based on that application in a subsequent round of funding. The Institute will also notify the designated State contact listed in Appendix I when grants are approved by the Board to support projects that will be conducted by or involve courts in their State.

F. Response to Notification of Approval

Applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) has not been submitted to the Institute within 30 days after notification, the approval will be automatically rescinded and the application presented to the Board for reconsideration.

IX. Renewal Funding Procedures and Requirements

The Institute recognizes two types of renewal funding—"continuation grants" and "on-going support grants." Pursuant to the procedures and requirements set forth below, the Board may, in its discretion and subject to the availability of funds, consider requests for renewal funding at times other than those set for new projects in sections VI. and VII. The Board of Directors anticipates allocating no more than 25% of available grant funds for FY 1993 for renewal grants. Of this amount, the Board anticipates allocating half to continuation grants and half to on-going support grants.

A. Continuation Grants

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support.

In order for a project to be considered for continuation funding, the grantee must have completed the project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

A continuation grant may be awarded for either a single project or for more than one project as a package grant (see sections III.J., V.C.1 and 3, and V.D.1 and 3).

2. Application Procedures—Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its

intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and must contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in scope, focus or audience of the project.

b. Letters of intent will not be reviewed competitively. Institute staff will review the proposed activities for the next project period and, within 30 days of receiving a letter of intent, inform the grantee of specific issues to be addressed in the continuation application and the date by which the application for a continuation grant must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, a disclosure of lobbying form from (applicants other than units of State or local government), and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of an application for a continuation grant should address:

a. *Need for continuation.* Explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation will benefit the participating courts or the courts community generally. That is, to what extent will the goals and objectives of the project be unfulfilled if the project is not continued, and conversely, how will the findings or results of the project be enhanced by continuing the project?

A continuation application requesting a package grant to support more than one project should explain, in addition, how the proposed projects are related; how their operation and administration would be enhanced by the grant; the advantages of funding the projects as a package rather than individually; and the disadvantages, if any, that would accrue by considering or funding them separately.

b. *Report of current project activities.* Discuss the status of all activities conducted during the previous project period, identify any activities that were not completed, and explain why. A continuation application requesting a package grant must describe separately the activities undertaken in each of the projects included within the proposed package.

c. *Evaluation findings.* Describe the key findings or recommendations resulting from the evaluation of the project, if they are available, and explain how they will be addressed during the proposed continuation. If the findings are not yet available, provide the date by which they will be submitted to the Institute.

d. *Tasks, methods, staff and grantee capability.* Describe fully any changes in the tasks to be performed, the methods to be used, the products of the project, how and to whom those products will be disseminated, the assigned staff, or the grantee's organizational capacity. Include, in addition, the criteria and methods by which the proposed continuation project would be evaluated. A continuation application for a package grant must address these issues separately for each project included in the proposed package.

e. *Task schedule.* Present a detailed task schedule and time line for the next project period. A continuation application for a package grant should include a separate task schedule and timeline for each project included in the proposed package, as well as a schedule and time line that covers the package of projects as a whole.

f. *Other sources of support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

g. *Budget and budget narrative.* Provide a complete budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A continuation application for a package grant must include a separate budget narrative for each project component.

4. References to Previously Submitted Material

An application for a continuation grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for a continuation grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

B. On-Going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and that provide the State courts with services, programs or products for which there is a continuing important need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2 and V.D.2. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing important need for the services, programs or products provided by the project as indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

For FY 1993, the Institute will consider only single projects for on-going support.

Each project supported by an on-going support grant must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent, but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports

to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the grant period. The decision to obligate Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the three-year project period.

In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period. (See also section IX.B.3.h.)

2. Application Procedures—Letters of Intent

The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be made available in annual increments as specified in section V.C.2.

In lieu of a concept paper, a grantee seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for renewal funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in section IX.A.2.a.

3. Application Procedures and Format

An application for an on-going support grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in section VII.B., a program narrative, a budget narrative, and certain certifications and assurances.

The program narrative should conform to the length and format requirements set forth in section VII.C. However, rather than the topics listed in section VII.C., the program narrative of applications for on-going support grants should address:

a. *Description of need for and benefits of the project.* Provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. *Demonstration of court support.* Demonstrate support for the continuation of the project from the courts community.

c. *Report on current project activities.* Discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why.

d. *Evaluation findings.* Attach a copy of the final evaluation report regarding the effectiveness and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they will be addressed during the proposed renewal period.

e. *Tasks, methods, staff and grantee capability.* Describe fully any changes in the tasks to be performed; the methods to be used; the products of the project; how and to whom those products will be disseminated; the assigned staff; and the grantee's organizational capacity.

f. *Task schedule.* Present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. *Other sources of support.* Indicate why other sources of support are inadequate, inappropriate or unavailable.

h. *Budget and budget narrative.* Provide a complete three-year budget and budget narrative conforming to the requirements set forth in paragraph VII.D. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for each year, or portion of a year, for which grant support is requested. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that clearly justify the requested increase.

4. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

5. Submission Requirements, Review and Approval Process, and Notification of Decision

The submission requirements set forth in section VII.E., other than the deadline for mailing, apply to applications for an on-going support grant. Such applications will be rated on the selection criteria set forth in section VIII.B. The key findings and recommendations resulting from an evaluation of the project and the proposed response to those findings and recommendations will also be considered. The review and approval process, return policy, and notification procedures are the same as those for new projects set forth in sections VIII.C.–VIII.E.

X. Compliance Requirements

The State Justice Institute Act (Pub. L. 98–620, as amended) contains limitations and conditions on grants, contracts and cooperative agreements of which applicants and recipients should be aware. In addition to eligibility requirements which must be met to be considered for an award from the Institute, all applicants should be aware of and all recipients will be responsible for ensuring compliance with the following:

A. State and Local Court Systems

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The latter shall receive, administer, and be accountable for all funds awarded to such courts. 42 U.S.C. 10705(b)(4). The Appendix to this guideline lists the agencies, councils and contact persons designated to administer Institute awards to the State and local courts.

B. Matching Requirements

1. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50 percent of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give

preference to those applicants who provide a cash match to the Institute's award. (For a further definition of match, see I.C.)

The requirement to provide match may be waived in exceptionally rare circumstances upon approval of the Chief Justice of the highest court in the State and a majority of the Board of Directors. 42 U.S.C. 10705(d) (as amended).

2. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where a cash match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed cash match contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see section VIII.B. above and XI.D).

C. Conflict of Interest

Personnel and other officials connected with Institute-funded programs shall adhere to the following requirements:

1. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where to his/her knowledge he/she or his/her immediate family, partners, organization other than a public agency in which he/she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he/she is negotiating or has any arrangement concerning prospective employment, has a financial interest.

2. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

a. Using an official position for private gain; or

b. Affecting adversely the confidence of the public in the integrity of the Institute program.

3. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

D. Lobbying

Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

E. Political Activities

No recipient shall contribute or make available Institute funds, program personnel or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Finally, officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

F. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. 42 U.S.C. 10706(b).

G. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

H. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

1. To supplant State or local funds supporting a program or activity;

2. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

3. Solely to purchase equipment.

I. Confidentiality of Information

Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

J. Human Research Protection

All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

K. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

L. Reporting Requirements

Recipients of Institute funds, other than scholarships awarded under section II.B.2.b,v., shall submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

The quarterly financial status report shall be submitted in accordance with section XI.G.2. of this guideline.

M. Audit

Each recipient must provide for an annual fiscal audit. (See section XI.J. of this guideline for the requirements of such audits.)

Accounting principles employed in recording transactions and preparing financial statements must be based upon generally accepted accounting principles (GAAP).

N. Suspension of Funding

After providing a recipient reasonable notice and opportuni-ty to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, Institute guidelines, or the terms and conditions of the award. 42 U.S.C. 10708(a).

O. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act, as approved by the Institute. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

P. Original Material

All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

Q. Acknowledgment and Disclaimer

Recipients of Institute funds shall acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute.

Recipients also shall display the following disclaimer on all grant products:

"This [document, film, videotape, etc.] was developed under a [grant, cooperative agreement, contract] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

R. Institute Approval of Grant Products

No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each such product to the Institute for review and approval prior to submitting that product for publication or reproduction.

S. Distribution of Grant Products to State Libraries

Grantees shall send one copy of each final product developed with grant funds to the library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix II).

T. Copyrights

Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

U. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, August 23, 1971, and statement of Government Patent Policy as printed in 36 FR 16889).

V. Charges for Grant-Related Products/Recovery of Costs

When Institute funds fully cover the cost of developing, producing, and disseminating a product, (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may recover its costs for reproducing and disseminating the material to those requesting it.

Applicants should disclose the intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written, prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. See section XI.F. for requirements regarding project-related income.

W. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, a recipient shall submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

XI. Financial Requirements

A. Accounting Systems and Financial Records

All grantees, subgrantees, contractors and other organizations directly or indirectly receiving Institute funds are required to establish and maintain accounting systems and financial records to accurately account for funds they receive. These records shall include total program costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget.

1. Purpose

The purpose of this section is to establish accounting system requirements and to offer guidance on procedures which will assist all grantees/subgrantees in:

a. Complying with the statutory requirements for the awarding, disbursement, and accounting of funds;

b. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

c. Generating financial data which can be used in the planning, management and control of programs; and

d. Facilitating an effective audit of funded programs and projects.

2. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements. These materials supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied.

a. *Office of Management and Budget (OMB) Circular A–21*, Cost Principles for Educational Institutions.

b. *Office of Management and Budget (OMB) Circular A–87*, Cost Principles for State and Local Governments.

c. *Office of Management and Budget (OMB) Circular A–88 (revised)*, Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

d. *Office of Management and Budget (OMB) Circular A–102*, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

e. *Office of Management and Budget (OMB) Circular A–110*, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

f. *Office of Management and Budget (OMB) Circular A–128*, Audits of State and Local Governments.

g. *Office of Management and Budget (OMB) Circular A–122*, Cost Principles for Non-profit Organizations.

B. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving direct awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council.

The State Supreme Court shall receive all Institute funds awarded to such courts and shall be responsible for assuring proper administration of Institute funds. The State Supreme Court is responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. The responsibilities include:

a. *Reviewing financial operations.* The State Supreme Court should be familiar with, and periodically monitor, its subgrantees' financial operations, records system and procedures. Particular attention should be directed to the maintenance of current financial data.

b. *Recording financial activities.* The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court *OR* evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

c. *Budgeting and budget review.* The State Supreme Court should ensure that each subgrantee prepares an adequate budget as the basis for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

d. *Accounting for non-institute contributions.* The State Supreme Court will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of this guideline are applied to such funds.

e. *Audit requirement.* The State Supreme Court is required to ensure that subgrantees have met the necessary audit requirements as set forth by the Institute (see sections X.J. and XI.J).

f. *Reporting irregularities.* The State Supreme Court and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

C. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system is considered to be one which:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

D. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute shall be structured and executed on a "total project cost" basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget shall be the foundation for fiscal administration and accounting. Grant applications and financial reports

require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. However, the full matching share must be obligated by the end of the award period. Grantees that do not contemplate making matching contributions continuously throughout the course of a project or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. In instances where a proposed cash match is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does the Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See section XI.B.2.)

E. Maintenance and Retention of Records

All financial records, supporting documents, statistical records and all other records pertinent to grants, subgrants, cooperative agreements or contracts under grants shall be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this chapter.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, cancelled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

F. Project-Reloted Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income. The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State including State institutions of higher education and State hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are direct grantees must refund any interest earned. Grantees shall so order their affairs to ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the project provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute.

4. Income from the Sale of Grant Products

When grant funds fully cover the costs of producing and disseminating a limited number of copies of a product, the grantee may, with the written approval of the Institute, sell additional copies reproduced at its expense only at a price that recovers actual reproduction and distribution costs. These costs must be reported on the quarterly financial status reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product reproduction and dissemination costs as specified in section X.V.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the project's terms and conditions.

G. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. *Request for advance or reimbursement of funds.* Grantees will receive funds on a "Check-Issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should consider these grants as supplements to and extensions of the original award and number their requests on a project rather than a grant basis. (See Recommendations to Grantees in the Introduction for further guidance.)

Payment requests for projects within a package grant should be segregated by project and numbered accordingly. (See Recommendations to Grantees in the Introduction for further guidance.)

b. *Termination of advance and reimbursement funding.* When a grantee organization receiving cash advances from the Institute:

i. Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

ii. Engages in the improper award and administration of subgrants or contracts; or

iii. Is unable to submit reliable and/or timely reports, the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by the use of the Institute check method to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute reserves the right to suspend reimbursement payments until the deficiencies are corrected.

c. *Principle of minimum cash on hand.* Recipient organizations should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees will impair the goals of good cash management.

2. Financial Reporting

In order to obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees of these funds submit timely reports for review.

Two copies of the Financial Status Report are required from all grantees, other than recipients of scholarships under section II.B.2.b.v., for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, and any other fund sources included in the approved project budget. The report contains information on obligations as well as outlays. A copy of the Financial Status Report, along with instructions for its preparation, will be included in the official Institute Award package. In circumstances where an organization requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, in support of the Request for Advance or Reimbursement.

Grantees receiving a continuation or on-going support grant should provide financial information and number their quarterly Financial Status Reports on a project rather than a grant basis.

Grantees receiving a package grant must submit a quarterly financial report summarizing the financial activity for the entire package *and* separate reports for each project within the package.

3. Consequences of Non-Compliance With Submission Requirements

Failure of the grantee organization to submit required financial and program reports may result in a suspension of grant payments or revocation of the grant award.

H. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability shall be determined in accordance with the principles set forth in OMB Circulars A–87, Cost Principles for State and Local Governments; A–21, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and A–122, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations which are incurred after the approved grant period.

2. Costs Requiring Prior Approval

a. *Preagreement costs.* The written prior approval of the Institute is required for costs which are considered necessary to the project but occur prior to the award date of the grant.

b. *Equipment.* Grant funds may be used to purchase or lease only that equipment which is essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or the software to be purchased exceeds $3,000.

c. *Consultants.* The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established written travel policy, then travel rates shall be consistent with those established by the Institute or the Federal Government. Institute funds shall not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project, but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. It is the policy of the Institute that all costs should be budgeted directly; however, if a recipient has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. *Approved plan available.*—i. The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

ii. Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

iii. Organizations with an approved indirect cost rate, utilizing total direct costs as the base, usually exclude contracts under grants from any overhead recovery. The negotiation agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. *Establishment of indirect cost rates.* In order to be reimbursed for indirect costs, a grantee or organization must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute. The proposal must be submitted in a timely manner (within three months after the start of the grant period) to assure recovery of the full amount of allowable indirect costs, and it must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved.

c. *No approved plan.* If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received. This policy is effective for all grant awards.

I. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute is adopting the standards set forth in Attachment O of *OMB Circular A–102.* Institutions of higher education, hospitals, and other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110.*

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–102* and *A–110* shall be applicable to all grantees and subgrantees of Institute funds except as provided in Section X.O.

All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

J. Audit Requirements

1. Audit Objectives

Grants and other agreements are awarded subject to conditions of fiscal, program and general administration to which the recipient expressly agrees. Accordingly, the audit objective is to review the grantee's or subgrantee's administration of grant funds and required non-Institute contributions for the purpose of determining whether the recipient has:

a. Established an accounting system integrated with adequate internal fiscal and management controls to provide full accountability for revenues, expenditures, assets, and liabilities;

b. Prepared financial statements which are presented fairly, in accordance with generally accepted accounting principles;

c. Prepared Institute financial reports (including Financial Status Reports, Cash Reports, and Requests for Advances and Reimbursements) which contain accurate and reliable financial data, and are presented in accordance with prescribed procedures; and

d. Expended Institute funds in accordance with the terms of applicable agreements and those provisions of Federal law or Institute regulations that could have a material effect on the financial statements or on the awards tested.

2. Implementation

Each grantee (including a State or local court receiving a subgrant from the State Supreme Court) shall provide for an annual fiscal audit. The audit may be of the entire grantee organization (e.g., a university) or of the specific project funded by the Institute. The audit shall be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. The audit shall be conducted in compliance with generally accepted auditing standards established by the American Institute of Certified Public Accountants. A written report shall be prepared upon completion of the audit. Grantees are responsible for submitting copies of the reports to the Institute within thirty days after the acceptance of the report by the grantee, for each year that there is financial activity involving Institute funds.

Grantees who receive funds from a Federal agency and who satisfy audit requirements of the cognizant Federal agency, should submit a copy of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send this report directly to the Institute.

Audit reports from nonprofit organizations which do not receive Federal funds, and which decide to perform an audit of the entire organization, shall include a supplemental schedule depicting a project-by-project summary of Institute grant activity for the audit period. At a minimum, this summary should include the grant award number, project title, award amount, payments received, expenditures made and balances remaining. The auditors should also conduct adequate tests to ensure that the audit objectives listed in sections XI.J.1.c. and d. above have been satisfied.

3. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grant recipient shall have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up, maintaining a record of the actions taken on recommendations and time schedules, responding to and acting on audit recommendations, and submitting periodic reports to the Institute on recommendations and actions taken.

4. Consequences of Non-Resolution of Audit Issues

It is the general policy of the State Justice Institute not to make new grant awards to an applicant having an unresolved audit report involving Institute awards. Failure of the grantee organization to resolve audit questions may also result in the suspension of payments for active Institute grants to that organization.

K. Close-Out of Grants

1. Definition

Close-out is a process by which the Institute determines that all applicable administrative and financial actions and all required work of the grant have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (revised end date), the following documents must be submitted to the Institute by a grantee other than a recipient of a scholarship under section II.B.2.b.v.

a. *Financial status report.* The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. *Final progress report.* This report should describe the project activities during the final calendar quarter of the project and the closeout period, including to whom project products have been disseminated; specify whether all the objectives set forth in the approved

application or an approved adjustment thereto have been met; and, if any of the objectives have not been met explain the reasons therefor.

3. Extension of Close-out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XII. Grant Adjustments

All requests for program or budget adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments which require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories which, individually or in the aggregate, exceed or are expected to exceed five percent of the approved budget. For the purposes of this section, the Institute will view budget revisions cumulatively.

a. For package grants, reallocations among budget categories of an individual project within the package that total less than five percent of the approved budget for that project do not require a grant adjustment. However, transfers of funds between projects included in the package require prior, written approval by the Institute.

b. For continuation and on-going support grants, funds from the original award may be used during the renewal grant period and funds awarded by a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior, written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see section XII.D.).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see section XII.E.).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see sections XII.F. and G.).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section X.W.).

8. A successor in interest or name change agreements.

9. A transfer or contracting out of grant-supported activities (see section XII.H.).

10. A transfer of the grant to another recipient.

11. Preagreement costs, the purchase of automated data processing equipment and software, and consultant rates, as specified in section XI.H.2.

12. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Request for Grant Adjustments

All grantees and subgrantees must promptly notify the SJI program managers, in writing, of events or proposed changes which may require an adjustment to the approved application. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the SJI program managers determine would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his/her designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

A grantee/subgrantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager. Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany requests for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section XI.K.3.).

F. Temporary Absence of the Project Director

Whenever absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

A principal activity of the grant-supported project shall not be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements should be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, are to be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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David I. Tevelin,
Executive Director.

Appendix I

List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Administrative Director, Administrative Office of the Courts, 817 South Court Street, Montgomery, Alabama 36130, (205) 834–7990.
Mr. Arthur H. Snowden II, Administrative Director, Alaska Court System, 303 K Street, Anchorage, Alaska 99501, (907) 264–0547.
Mr. William L. McDonald, Administrative Director, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, Arizona 85007–3330, (602) 255–4359.
Mr. James D. Gingerich, Executive Secretary, Arkansas Judicial Department, Justice Building, Little Rock, Arkansas 72201, (501) 371–2295.
William C. Vickery, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100.
State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, Colorado 80203–2416, (303) 861–1111, ext. 585.
Ms. Faith A. Mandell, Director, External Affairs, Office of the Chief Court Administrator, Drawer N, Station A, Hartford, Connecticut 06106, (203) 566–8210.
Mr. Lowell Groundland, Director, Administrative Office of the Courts, Carvel State Office Building, 820 N. French Street, Wilmington, Delaware 19801, (302) 571–2480.
Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700.
Mr. Kenneth Palmer, State Courts Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621.
Mr. Robert L. Doss, Jr., Administrative Director of the Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 500, Atlanta, Georgia 30334, (404) 656–5171.
Mr. Perry C. Taitano, Administrative Director, Superior Court of Guam, Judiciary Building, 110 West O'Brien Drive, Agana, Guam 96920, 011 (671) 472–8961 through 8968.
Dr. Irwin I. Tanaka, Administrative Director of Courts, The Judiciary, Post Office Box 2560, Honolulu, Hawaii 96804, (808) 548–4605.
Mr. Carl F. Bianchi, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, Idaho 83720, (208) 334–2246.
William M. Madden, Acting Director, Administrative Office of the Courts, 30 N. Michigan Avenue, Suite 2017, Chicago, Illinois 60602, (312) 793–3250.
Mr. Bruce A. Kotzan, Executive Director, Supreme Court of Indiana, State House, Room 323, Indianapolis, Indiana 46204, (317) 232–2542.
Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, Iowa 50319, (515) 281–5241.
Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, Kansas 66612, (923) 296–4873.
Ms. Laura Stammel, Assistant Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, Kentucky 40601, (502) 564–2350.
Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 301 Loyola Avenue, Room 109, New Orleans, Louisiana 70112–1887, (504) 568–5747.
State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Downtown Station, Portland, Maine 04112, (207) 879–4792.
Ms. Deborah A. Unitus, Assistant State Court Administrator, Technical and Information Services, Administrative Office of the Courts, P.O. Box 431, Annapolis, Maryland 21404, (301) 974–2353.
Honorable John E. Fenton, Jr., Chief Administrative Justice, The Trial Court, Commonwealth of Massachusetts, 317 New Courthouse, Boston, Massachusetts 02108, (617) 725–8787.
Marilyn K. Hall, State Court Administrator, Michigan Supreme Court, P.O. Box 30048, 611 West Ottawa Street, Lansing, Michigan 48909, (517) 373–0131.
Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 230 State Capitol, St. Paul, Minnesota 55155, (617) 296–2474.
Director, Center for Court Education and Continuing Studies, Box 879, Oxford, Mississippi 38877, (601) 232–5955.
Mr. Ron Larkin, Director of Operations, Office of the State Court Administrator, 1105 R Southwest Blvd., Jefferson City, Missouri 65109, (314) 751–3585.
Mr. R. James Oppedahl, State Court Administrator, Montana Supreme Court, Justice Building, Room 315, 215 North Sanders, Helena, Montana 59620–3001, (406) 444–2621.
Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, State Capitol Building, Room 1220, Lincoln, Nebraska 68509, (404) 471–2643.
Mr. Donald J. Mello, Court Administrator, Administrative Office of the Courts, Capitol Complex, Carson City, Nevada 89710, (702) 885–5076.
Mr. James F. Lynch, State Court Administrator, Supreme Court of New Hampshire, Frank Rowe Kenison Building, Concord, New Hampshire 03301, (603) 271–2419.
Mr. Robert Lipscher, Administrative Director, Administrative Office of the Courts, CN–037, RJH Justice Complex, Trenton, New Jersey 08625, (609) 984–0275.
Mr. Robert L. Lovato, State Court Administrator, Administrative Office of the Courts, Supreme Court of New Mexico, Supreme Court Building, Room 25, Sante Fe, New Mexico 87503, (505) 827–4800.
Mr. Matthew T. Crosson, Chief Administrator of the Courts, Office of Court Administration, 270 Broadway, New York, New York 10007, (212) 587–2004.
Mr. Franklin E. Freeman, Jr., Administrative Director, Administrative Office of the Courts, Post Office Box 2448, Raleigh, North Carolina 27602, (929) 733–7106/7107.
Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, Bismarck, North Dakota 58505, (701) 224–4216.
Mr. Stephan W. Stover, Administrative Director of the Courts, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2653.
Mr. Howard W. Conyers, Administrative Director, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450.
Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046.
Mr. Thomas B. Darr, Director for Legislative Affairs, Communications and Administration, 5035 Ritter Road, Mechanicsburg, Pennsylvania 17055, (717) 795–2000.
Mr. Matthew J. Smith, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3263 or 277–3272.
Mr. Louis L. Rosen, Director, South Carolina Court Administration, Post Office Box

50447, Columbia, South Carolina 29250, (803) 758–2961.
Robert A. Miller, Chief Justice, Supreme Court of South Dakota, 500 East Capitol Avenue, Pierre, South Dakota 57501, (605) 773–4885.
Executive Secretary, Supreme Court of Tennessee, Supreme Court Building, Room 422, Nashville, Tennessee 37219, (615) 741–2687.
Mr. C. Raymond Judice, Administrative Director, Office of Court Administration of the Texas Judicial System, Post Office Box 12066, Austin, Texas 78711, (512) 463–1625.
Ronald W. Gibson, State Court Administrator, Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah 84102, (801) 533–6371.
Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, Montpelier, Vermont 05602, (802) 828–3281.
Ms. Viola E. Smith, Clerk of the Court/Administrator, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774–6680, ext. 248.
Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, Virginia 23219, (804) 786–6455.
Ms. Mary C. McQueen, Administrator for the Courts, Supreme Court of Washington, Highways-Licensing Building, 6th Floor, 12th & Washington, Olympia, Washington 98504, (206) 753–5780.
Mr. Ted J. Philyaw, Administrative Director of the Courts, Administrative Office, 402–E State Capitol, Charleston, West Virginia 25305, (304) 348–0145.
Mr. J. Denis Moran, Director of State Courts, Post Office Box 1688, Madison, Wisconsin 53701–1688, (608) 266–6828.
Mr. Robert L. Duncan, Court Coordinator, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7581.

Appendix II

SJI Libraries, Designated Sites and Contacts (August 1992)

State: Alabama
Location: Supreme Court Library
Contact: Mr. Timothy Lewis, State Law Librarian, Alabama Supreme Court Bldg., 445 Dexter Avenue, Montgomery, Alabama 36130, (205) 242–4347.

State: Alaska
Location: Anchorage Law Library
Contact: Ms. Cynthia S. Petumenos, State Law Librarian, Alaska Court Libraries, 303 K Street, Anchorage, Alaska 99501, (907) 264–0583.

State: Arizona
Location: State Law Library
Contact: Ms. Sharon Womack, Director, Department of Library & Archives, State Capitol, 1700 West Washington, Phoenix, Arizona 85007, (602) 542–4035.

State: Arkansas
Location: Administrative Office of the Courts
Contact: Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Administrative Office of the Courts, Justice Building, 625 Marshall, Little Rock, Arkansas 72201–1078, (501) 376–6655.

State: California
Location: Administrative Office of the Courts
Contact: William C. Vickery, State Court Administrator, Administrative Office of the Courts, 303 Second Street, South Tower, San Francisco, California 94107, (415) 396–9100.

State: Colorado
Location: Supreme Court Library
Contact: Ms. Frances Campbell, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, Colorado 80203, (303) 837–3720.

State: Connecticut
Location: State Library
Contact: Mr. Richard Akeroyd, State Librarian, 231 Capital Avenue, Hartford, Connecticut 06106, (203) 566–4301.

State: Delaware
Location: Administrative Office of the Courts
Contact: Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, Delaware 19801, (302) 571–2480.

State: District of Columbia
Location: Executive Office, District of Columbia Courts
Contact: Mr. Ulysses Hammond, Executive Officer, Courts of the District of Columbia, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700.

State: Florida
Location: Administrative Office of the Courts
Contact: Mr. Kenneth Palmer, State Court Administrator, Florida State Courts System, Supreme Court Building, Tallahassee, Florida 32399–1900, (904) 488–8621.

State: Georgia
Location: Administrative Office of the Courts
Contact: Mr. Robert L. Doss, Jr., Director, Administrative Office of the Courts, The Judicial Council of Georgia, 244 Washington Street, S.W., Suite 550, Atlanta, Georgia 30334, (404) 656–5171.

State: Hawaii
Location: Supreme Court Library
Contact: Ms. Ann Koto, Acting Law Librarian, Supreme Court Law Library, P.O. Box 2560, Honolulu, Hawaii 96804, (808) 548–4605.

State: Idaho
Location: AOC Judicial Education Library/State Law Library in Boise
Contact: Mr. Carl F. Bianchi, Administrative Director of the Courts for the State of Idaho, Idaho Supreme Court, 451 West State Street, Boise, Idaho 83720, (208) 334–2246.

State: Indiana
Location: Supreme Court Library
Contact: Ms. Constance Matts, Supreme Court Librarian, Supreme Court Library, State House, Indianapolis, Indiana 46204, (317) 232–2557.

State: Iowa
Location: Administrative Office of the Court
Contact: Mr. Jerry K. Beatty, Executive Director, Judicial Education & Planning, Administrative Office of the Courts, State Capitol Building, Des Moines, Iowa 50319, (515) 281–8279.

State: Kansas
Location: Supreme Court Library
Contact: Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, Kansas 66614, (913) 296–3257.

State: Kentucky
Location: State Law Library
Contact: Ms. Sallie Howard, State Law Librarian, State Law Library, State Capitol, Room 200–A, Frankfort, Kentucky 40601, (502) 564–4848.

State: Louisiana
Location: State Law Library
Contact: Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, Louisiana 70112, (504) 568–5705.

State: Maine
Location: State Law and Legislative Reference Library
Contact: Ms. Lynn E. Randall, State Law Librarian, State House Station 43, Augusta, Maine 04333, (207) 289–1600.

State: Maryland
Location: State Law Library
Contact: Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Blvd., Annapolis, Maryland 21401, (301) 974–3395.

State: Massachusetts
Location: Middlesex Law Library
Contact: Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, Massachusetts 02141, (617) 494–4148.

State: Michigan
Location: Michigan Judicial Institute
Contact: Mr. Dennis W. Catlin, Executive Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, Michigan 48909, (517) 334–7804.

State: Minnesota
Location: State Law Library (Minnesota Judicial Center)
Contact: Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, Minnesota 55155, (612) 297–2084.

State: Mississippi
Location: Mississippi Judicial College
Contact: Mr. Rick D. Patt, Staff Attorney, Mississippi Judicial College, 6th Floor, 3825 Ridgewood, Jackson, Mississippi 39211, (601) 982–6590.

State: Montana
Location: State Law Library
Contact: Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, Justice Building, 215 North Sanders, Helena, Montana 59620, (406) 444–3660.

State: National
Location: JERITT Project/Michigan State University
Contact: Dr. John K. Hudzik, Project Director, Judicial Education, Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, Michigan 48824.

State: Nebraska
Location: Administrative Office of the Courts
Contact: Mr. Joseph C. Steele, State Court Administrator, Supreme Court of Nebraska, Administrative Office of the Courts, P.O. Box 98910, Lincoln, Nebraska 68509–8910, (402) 471–3730.

State: Nevada
Location: National Judicial College
Contact: Dean V. Robert Payant, National Judicial College, Judicial College Building, University of Nevada, Reno, Nevada 89550, (702) 784–6747.

State: New Jersey
Location: New Jersey State Library
Contact: Mr. Robert L. Bland, Law Coordinator, State of New Jersey, Department of Education, State Library, 185 West State Street, CN520, Trenton, New Jersey 08625, (609) 292–6230.

State: New Mexico
Location: Supreme Court Library
Contact: Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, New Mexico 87504, (505) 827–4850.

State: New York
Location: Supreme Court Library
Contact: Ms. Susan M. Wood, Esq., Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, Syracuse, New York 13202, (315) 435–2063.

State: North Carolina
Location: Supreme Court Library
Contact: Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, (by courier) 500 Justice Building, 2 East Morgan Street, Raleigh, North Carolina 27601, (919) 733–3425.

State: North Dakota
Location: Supreme Court Library
Contact: Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, 2nd Floor, Judicial Wing, Bismarck, North Dakota 58505–0530, (701) 224–2229.

State: Northern Mariana Isl.
Location: Supreme Court of the Northern Mariana Islands
Contact: Honorable Jose S. Dela Cruz, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275.

State: Ohio
Location: Supreme Court Library
Contact: Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, Ohio 43266–0419, (614) 466–2044.

State: Oklahoma
Location: Administrative Office of the Courts
Contact: Mr. Howard W. Conyers, Director, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521–2450.

State: Oregon
Location: Administrative Office of the Courts
Contact: Mr. R. William Linden, Jr., State Court Administrator, Supreme Court of Oregon, Supreme Court Building, Salem, Oregon 97310, (503) 378–6046

State: Pennsylvania
Location: State Library of Pennsylvania
Contact: Ms. Betty Lutz, Head, Acquisitions Section, State Library of Pennsylvania, Technical Services, G46 Forum Building, Harrisburg, Pennsylvania 17105, (717) 787–4440

State: Puerto Rico
Location: Office of Court Administration
Contact: Mr. Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, Puerto Rico 00919

State: Rhode Island
Location: State Law Library
Contact: Mr. Kendall F. Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, Rhode Island 02903, (401) 277–3275

State: South Carolina
Location: Coleman Karesh Law Library (University of South Carolina School of Law)
Contact: Mr. Bruce S. Johnson, Law Librarian, Associate Professor of Law, Coleman Karesh Law Library, U. S. C. Law Center, University of South Carolina, Columbia, South Carolina 29208, (803) 777–5944

State: Tennessee
Location: Tennessee State Law Library
Contact: Ms. Donna C. Wair, Librarian, Tennessee State Law Library, Supreme Court Building, 401 Seventh Avenue N, Nashville, Tennessee 37243–0609, (615) 741–2016

State: Texas
Location: State Law Library
Contact: Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, Texas 78711, (512) 463–1722

State: U.S. Virgin Islands
Location: Library of the Territorial Court of the Virgin Islands (St. Thomas)
Contact: Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804

State: Utah
Location: Utah State Judicial Administration Library
Contact: Ms. Jennifer Bullock, Librarian, Utah State Judicial Administration Library, 230 South 500 East, Suite 300, Salt Lake City, Utah 84102, (801) 533–6371

State: Vermont
Location: Supreme Court of Vermont
Contact: Mr. Thomas J. Lehner, Court Administrator, Supreme Court of Vermont, 111 State Street, c/o Pavilion Office Building, Montpelier, Vermont 05602, (802) 828–3278

State: Virginia
Location: Administrative Office of the Courts
Contact: Mr. Robert N. Baldwin, Executive Secretary, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, Third Floor, Richmond, Virginia 23219, (804) 786–6455

State: Washington
Location: Washington State Law Library
Contact: Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, Mail Stop AV–02, Olympia, Washington 98504–0502, (206) 357–2148

State: West Virginia
Location: Administrative Office of the Courts
Contact: Mr. Richard H. Rosswurm, Deputy Administrative Director for Judicial Education, West Virginia Supreme Court of Appeals, State Capitol, Capitol E–400, Charleston, West Virginia 25305, (304) 348–0145

State: Wisconsin
Location: State Law Library
Contact: Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, Wisconsin 53707, (608) 266–1424

State: Wyoming
Location: Wyoming State Law Library
Contact: Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, Cheyenne, Wyoming 82002, (307) 777–7509

Contact: American Judicature Society, Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, Illinois 60602, (312) 558–6900

Contact: National Center for State Courts, Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, Virginia 23187–8798, (804) 253–2000

Appendix III.—State Justice Institute Scholarship Application

Applicant Information

1. Applicant Name:

(Last) (First) (M)

2. Position:
3. Name of Court:
4. Address:

Street/P.O. Box

City State Zip Code

5. Telephone No.
6. Congressional District:

Program Information

7. Course Name:
8. Course Dates:
9. Course Provider:
10. Location Offered:

Estimated Expenses

(Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)

Tuition $

Transportation $
(airfare, trainfare or if you plan to drive, the approximate distance and mileage rate)

Additional Information

Please answer the following questions:

1. Why do you need to take this course? How will your taking this course benefit either your court or the State's courts generally?

2. Is there any education or training currently available through your State on this topic?

3. How will you apply what you have learned? Please include any plans you may have to develop/teach a course in your jurisdiction/State on the topic, provide in-service training, or otherwise disseminate what you have learned to colleagues.

4. How long have you served as a judge or court manager? How long do you anticipate serving as a judge or court manager where applicable, assuming reelection or reappointment?

5. How long has it been since you attended a non-mandatory continuing professional education program?

6. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?

7. Please attach a current resume or professional summary.

Statement of Applicant's Commitment

If a scholarship is awarded, I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

Signature

Date

State Justice Institute

Judicial Education Scholarship Application

Certificate of Concurrence

I, _____,
Name of Chief Justice (or Chief Justice's Designee)
have reviewed the application for a scholarship to attend the program entitled _____, prepared by _____,
Name of Applicant
and concur in its submission to the State Justice Institute. I certify that the applicant's participation in the program would benefit the State, that the applicant's absence to attend the program would not present an undue hardship to the court, and that receipt of a scholarship would not diminish the amount of funds made available by the State for judicial education.

Signature

Name

Title

Date

Appendix IV—State Justice Institute

Concept Paper Preliminary Budget

Personnel $ _____
Fringe Benefits $ _____
Consultant/Contractual $ _____
Travel $ _____
Equipment $ _____
Supplies $ _____
Telephone $ _____
Postage $ _____
Printing/Photocopying $ _____
Audit $ _____
Other $ _____
Indirect Costs (%) $ _____
Project Total $ _____
Cash Match $ _____
In-Kind Match $ _____
Amount Requested From SJI $ _____

Financial assistance has been or will be sought for this project from the following other sources:

Form B—(Instructions on reverse side)
Revised 3/1/92

Appendix V—State Justice Institute

Certificate of State Approval

The _____
Name of State Supreme Court or Designated Agency or Council
has reviewed the application entitled _____
prepared by _____
Name of Applicant
approves its submission to the State Justice Institute, and
[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.
[ ] designates _____
Name of designated trial or appellate court or agency
to receive, administer and be accountable for all funds awarded by the Institute pursuant to the application.

Signature

Name

Title

Date

Instructions—Form B

The State Justice Institute Act requires that:

Each application for funding by a State or local court shall be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council, which shall receive, administer, and be accountable for all funds awarded by the Institute to such courts. 42 U.S.C. 10705(b)(4).

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in the Appendix to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

The term "State Supreme Court" refers to the court of last resort of a State. "Designated agency or council" refers to the office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer and be accountable for those funds.

Form B should be signed by the Chief Judge or Chief Justice of the State Supreme Court, or by the director of the designated agency or chair of the designated council. If the designated agency or council differs from the designee listed in the Appendix to the State Justice Institute Grant Guideline, evidence of the new or additional designation should be attached.

[FR Doc. 92-20670 Filed 8-28-92; 8:45 am]
BILLING CODE 6820-SC-M

federal register

Monday
August 31, 1992

Part IV

Department of Transportation

Federal Highway Administration

49 CFR Part 397

Transportation of Hazardous Materials; Highway Routing; Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 397

[FHWA Docket No. MC-92-6]

RIN 2125-AC80

Transportation of Hazardous Materials; Highway Routing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing regulations regarding the highway routing of hazardous materials to implement the requirements of section 105 (b) and (c) of the Hazardous Materials Transportation Act of 1975 (HMTA) (Pub. L. 93–633) as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615). The regulations would include Federal standards and procedures which the States and Indian tribes would be required to follow if they establish, maintain, or enforce routing designations that: (1) Specifiy highway routes over which placarded non-radioactive hazardous materials (NRHM) may and may not be transported within their jurisdictions, and/or (2) impose limitations or requirements with respect to highway routing of such hazardous materials. Also included are procedures relating to Federal preemption, waivers of preemption and resolution of disputes involving State or Indian tribe NRHM routing designations. States and Indian tribes would be required to furnish updated NRHM route information for publication by the FHWA. The existing motor carrier regulations with NRHM routing requirements would be incorporated into the proposed NRHM regulation, along with the new requirements which would require the motor carriers to comply with the NRHM routing designations of States and Indian tribes. Four public hearings are planned to provide an opportunity for interested parties to comment on this proposed regulation. A notice of public hearings with the dates, locations, times and other details for these hearings is published elsewhere in today's issue of the **Federal Register** under the title "Transportation of Hazardous Materials; Highway Routing."

DATES: Comments must be received on or before October 30, 1992.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC–92–6, room 4232, HCC–10, Office of Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Commenters may, in addition to submitting "hard copies" of their comments, also submit a floppy disk in standard or high density format containing files compatible with word processing programs such as WordPerfect, Wordstar, or Microsoft "Word" for IBM systems; or WordPerfect or Microsoft Word for MacIntosh. The disks should be clearly labeled with the software format used (e.g., WordPerfect 5.0 [IBM] or Microsoft Word 4.0 [Mac]).

All comments received will be available for examination at the above address between 8:30 a.m. and 3 p.m., e.t., Monday through Friday, except for legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Henry W. Sandhusen, Traffic Control Division (HHS–32), Office of Highway Safety, (202) 366–2218; Mr. Raymond Cuprill or Mr. Eric Kuwana, Office of Chief Counsel (HCC–20), (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

All sectors of the economy and all communities in the nation are dependent on the transportation of hazardous materials. It is estimated that four billion tons of regulated hazardous materials are transported annually and that approximately 500,000 movements of hazardous materials occur each day.

Despite an excellent safety record, the transportation of hazardous materials continues to be of concern to Congress, the public, and to Federal, State and local officials. Several States, including Colorado and California, as well as some regional and local governments have taken action to designate highway routes and/or impose route restrictions or limitations affecting the highway transportation of certain hazardous materials. While these localized routing designations are intended to improve safety, the proliferation of uncoordinated State and local routing designations could impede the free flow of commerce, have little or no demonstrable positive effect on public safety, and result in the exportation of risk from one jurisdiction to other jurisdictions. As a result of these concerns, section 105(b) of the Hazardous Materials Transportation Act of 1975 (HMTA) (Pub. L. 93–633, 88 Stat. 2156), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615, 104 Stat. 3244), requires the Secretary of Transportation (Secretary) to establish additional Federal regulations for the highway routing of hazardous materials. Also, section 105(c) of the HMTA, as amended by the HMTUSA, requires the Secretary to publish a list of hazardous materials highway route designations.

The Department of Transportation (DOT) currently has in effect two hazardous materials highway routing regulations (49 CFR 177.825, and 49 CFR 397.9) issued pursuant to the authority granted by the HMTA. Another routing related regulation is 49 CFR 177.810 which covers regulation of hazardous materials transported through urban tunnels used for mass transit. To assist State and local governments in the development of routes, the DOT published "Guidelines for Selecting Preferred Highway Routes for Highway Route Controlled Quantity Shipments of Radioactive Materials" (latest edition DOT/RSPA/OHMT–89/01 dated January 1989) and "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials" (latest edition DOT/RSPA/OHMT–89–2 dated July 1989). The guidelines were originally published in 1981 by the Research and Special Programs Administration (RSPA) and in 1980 by the FHWA, respectively. They have been used by a number of jurisdictions to develop hazardous materials transportation routes. The latest editions of the guidelines are available for review in the docket or may be requested from the FHWA Traffic Control Division contact person listed in this preamble under the heading "For Further Information Contact."

Currently, motor carriers must select routes for transporting placarded radioactive materials in accordance with 49 CFR 177.825, which requires them to consider information such as accident rates, transit time, population density, time of day, and day of week during which transportation will occur. Additionally, for "highway route controlled quantity" (HRCQ) shipments of radioactive materials (e.g., spent nuclear fuel), motor carriers must use "preferred routes" which include most Interstate highways and some State-designated highways.

The DOT concluded that the limited access Interstate Highway System, generally, would provide safe routing for

HRCQ shipments based on available risk assessments and the extensive comments received in response to its rulemaking in Docket HM–164. In developing 49 CFR 177.825, the DOT recognized the significant concerns and interests that State, regional, and local governments have in the highway routing of radioactive materials and the important role which their actions and knowledge of local conditions can have in reaching effective routing decisions. States are required to consult and coordinate with affected local jurisdictions and other affected States to ensure consideration of impacts and continuity of designated routes. The States are given considerable latitude to carry out their highway routing functions. DOT's nearly ten years of experience with the highway routing requirements for HRCQ shipments of radioactive materials generally have been successful. This, however, may be because the current number of such shipments is very small, and most of the shipments are of a long-haul, interstate nature.

For highway transportation of other hazardous materials, a generic routing rule (49 CFR 397.9) has been in effect for more than 20 years. This regulation requires that, unless there is no practicable alternative, motor vehicles must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, or through tunnels, narrow streets, or alleys. The operating convenience of the carrier is not a basis for deciding whether it is practicable to operate a motor vehicle in accordance with this requirement. Although 49 CFR 397.9 attempts to embody a "common-sense" approach to the routing of hazardous materials, the section is difficult to enforce because it is so broad and general in nature.

Another regulation, 49 CFR 177.810, states that "Except as regards radioactive materials, nothing in 49 CFR parts 170–189 shall be construed as to nullify or supersede regulations established and published under authority of a State or municipal ordinance regarding the kind, character or quantity of any hazardous material permitted by such regulation to be transported through urban tunnels used for mass transportation." With regard to routing of hazardous materials, 49 CFR 177.810 does not permit exceptions to 49 CFR 177.825 which pertains to radioactive hazardous material (RAM) or to 49 CFR part 397 which pertains of all hazardous materials.

On April 7, 1988, under Docket HM–203 (53 FR 11618), the Research and Special Programs Administration (RSPA) published an advance notice of proposed rulemaking (ANPRM) relating to the transportation safety aspects of the highway routing of placarded non-radioactive hazardous materials (NRHM). The RSPA notice was issued to consider the extent to which the DOT needed to exercise its rulemaking authority regarding NRHM, to ensure that State and local hazardous materials routing decisions were consistent, cost-effective and conducive to the public safety. It was designed to obtain information regarding the routing decisions being made by carriers, shippers and State and local governments, and the effects of their routing actions. It recognized the significant role of State and local governments in making highway routing decisions, and the fact that the Federal government lacks their specific knowledge concerning local highways, land use patterns, highway geometry, and the emergency response capabilities of their jurisdictions. RSPA held public hearings which generated approximately 400 pages of transcript material. In addition, 82 written comments were received in response to the ANPRM. The transcript and comments are available for review in the FHWA docket.

The ANPRM did not propose any specific action but presented three possible alternatives to the existing routing requirements to illustrate the range of possible Federal regulatory approaches that might be used. Briefly, these alternatives were: (A) Require hazardous materials carriers to comply with a set of routing standards and an analytic process similar to that required for HRCQ shipments of radioactive materials; (B) Require shippers and carriers of hazardous materials to conduct risk analyses of highway routes in accordance with federally prescribed procedures and to select only those routes which had the lower level of risk; and (C) Require each motor carrier of certain extremely hazardous materials to be licensed for each hazardous materials route. Implicit among these was the alternative of retaining the existing regulations for routing of hazardous materials (e.g., 49 CFR 397.9) and other regulations having routing implications.

Most of the comments received in response to the ANPRM were submitted by shippers (31), carriers (7), and their affiliated trade associations (17). Comments represented two fairly distinct viewpoints on the need for additional routing standards for hazardous materials.

Commenters in Favor of Enhanced Routing Standards

This group made the following major points: (1) There is a need for consistent Federal guidelines and criteria for the highway routing of hazardous materials; (2) the absence of such guidelines and criteria has led to the development of conflicting and uncoordinated routing requirements at the State and local level; and (3) of the alternatives presented in the ANPRM, an alternative providing similar regulatory requirements to those of 49 CFR 177.825 would best delineate the appropriate roles of the Federal, State and local governments. This would include establishment of a State routing agency, through which local governments would act in designating routes for NRHM. There were differences among the commenters favoring enhanced routing standards on a range of issues, including which hazardous materials ought to be subject to enhanced routing controls.

Commenters Opposed to Enhanced Routing Standards

This group of commenters was essentially of the view that the current routing rule for hazardous materials, 49 CFR 397.9, has worked reasonably well during the many years it has been in effect and should be changed only if it can be shown that such change would significantly improve public safety. Further, despite the generally successful experience with the routing standards for HRCQ shipments of radioactive materials, these commenters were of the view that it would be a mistake to assume that equal success could be achieved by establishing a similar routing regulatory system for the more than 30,000 hazardous materials in transportation. These commenters noted the sharp contrast between the annual totals of less than 300 shipments of radioactive materials subject to the routing requirements of 49 CFR 177.825 and the more than 183 million shipments of hazardous materials. They contended that while the shipment of HRCQ materials is usually of a long-haul, interstate nature, the majority of hazardous materials shipments are intrastate, regional, and local; therefore, anything more elaborate than a very general routing rule, such as embodied in 49 CFR 397.9, could result in an extremely intricate and burdensome system of routing standards. They argued that such a system also would be essentially unenforceable and would not enhance public safety. The complexity of hazardous materials transportation patterns and related delivery schedules,

and the vast number of origins and destinations, they claimed, defy anything other than a very general routing rule.

Comments From State Governments and Political Subdivisions

Comments about the RSPA ANPRM were received from only ten States, and eleven regional and local political subdivisions, despite the fact that the ANPRM stressed the important role that State and local governments have in making effective routing decisions. Of the ten State agencies that did respond to the advance notice, several favored the adoption of a Federal regulatory framework similar to that used for the routing of radioactive materials, i.e., alternative A described above. These commenters, however, asserted that routing standards to be established under this framework should focus exclusively on materials poisonous by inhalation or on other extremely hazardous materials. The majority of commenters from State and local government agencies contended that the routing standards as exemplified by 49 CFR 397.9 are adequate and that much more rigorous and convincing evidence is required before any changes should be made to these standards. One State declared that the "proposed options for additional routing regulations impose unnecessary burdens on government and commerce without a demonstrable increase in safety." Another stated that, as far as the establishment of routing criteria, anhydrous ammonia alone "would pose a virtually impossible routing problem in an agricultural state." One county suggested that any changes in the current routing standards, as represented by the options discussed in the ANPRM, "could easily become an administrative nightmare accompanied by an avalanche of paperwork," and that "gasoline, while obviously quite hazardous, is present in such a ubiquitous manner that it is difficult to conceive the practicality or possibility of regulating all necessary routes." Another State response was to "emphasize that any Federal activities or proposal should be published in the form of guidelines or recommendations so each State can provide for its population based on (its) unique characteristics."

None of these commenters addressed the dilemma posed by having more than 30,000 governmental jurisdictions who may attempt to impose their own routing rules and restrictions on the transportation of hazardous materials.

The State of Colorado's Statewide Hazardous Materials Routing System

The most extensive comments on the issues associated with routing hazardous materials were provided by the State of Colorado. Because Colorado has had in-depth experience in implementing a statewide routing network for hazardous materials, its comments and the nature of the statewide routing system it has adopted are discussed at length.

In July 1987, the State General Assembly passed the Hazardous Materials Transportation Act of 1987. This Act authorized, among other things, the designation of routes for the transportation of hazardous materials other than shipments of HRCQ radioactive materials. The Colorado State Patrol was delegated the responsibility for developing and implementing a statewide hazardous materials highway routing system.

In consultation with local governments and the State Highway Department, the Colorado State patrol instituted the process of designating a statewide hazardous materials highway network. As part of this process, it analyzed the risks associated with its 9,198-mile State highway system, in terms of traffic volume, accident rates, population, and other factors and employed the Interstate Highway System in Colorado as the core component of the network.

In conducting its statewide analysis of routing alternatives, Colorado closely followed the aforementioned DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials" to develop hazardous materials transportation routes.

In developing its hazardous materials highway system, Colorado conducted a study to determine the characteristics of hazardous materials transportation patterns within the State. It was found that about 9 percent of all truck trips within the State involved hazardous materials, and that only 3 percent of all hazardous materials trips were passing through the State. In other words, the transportation of hazardous materials occurs mainly to serve Colorado residents and businesses.

The study also revealed that the three most commonly transported classes of hazardous materials in Colorado, comprising 92 percent of all hazardous materials trips, are flammable liquids (such as gasoline, crude oil, paint and methanol), flammable gases (such as liquefied petroleum gas and acetylene) and combustible liquids (such as diesel fuel and fuel oil). With the information from this study, the Colorado State Patrol developed a statewide hazardous materials transportation network. This network applies to all vehicles transporting hazardous materials that are subject to placarding requirements under 49 CFR 172.504, except shipments of HRCQ radioactive materials as defined in 49 CFR 173.403. Vehicles carrying gasoline, diesel fuel, or liquefied petroleum gas are not affected unless a city or county specifically petitions that such vehicles be included; and vehicles carrying hazardous materials necessary for agricultural production to or from a farm or ranch are exempt. Also exempt from restrictions is that portion of a trip that is for pickup or delivery of hazardous materials after the vehicle has approached the pickup or delivery point as closely as is reasonable and feasible on a designated route.

Colorado's experience demonstrates how a State can determine and tailor the scope and characteristics of a routing system to its own particular needs. Also, it is generally only at the State level that there exists the necessary combination of data expertise on such matters as State highway conditions, accident rates, knowledge of local road conditions and characteristics, environmental issues, demographic factors, and appropriate sensitivity to local, regional and interstate concerns.

Colorado's experience also indicates that a large proportion of trips involving the transport of hazardous materials by truck are of a local and regional, or more generally, of an intrastate nature, and that these shipments are closely linked to the commercial activities of the State and its economic health and welfare. The highly local and regional of hazardous materials transportation in Colorado is not peculiar to it alone; it is characteristic of the transportation patterns of many other States. In fact, the average shipment distance for all hazardous materials transported by truck in the United States is about 200 miles. The average shipment distance is much less for gasoline and other refined petroleum products which, as noted previously, account for more than half of all hazardous materials transported in the United States. The short shipment distances, when coupled with numerous delivery points which change from day to day and month to month, make it extremely difficult to designate a fixed routing system for these materials.

The Colorado experience also shows that while there is a definite role for local and regional governments in designating routes for hazardous materials, this role cannot be exercised

in an isolated, unilateral, independent fashion. Thus, despite the local and regional nature of hazardous materials transportation patterns in Colorado, the State of Colorado does not allow local or county governments to regulate the routing of these materials. Unless local or county routing actions are coordinated at a higher level and informed by a broader perspective, significant economic and safety dislocations could result. Therefore, it is at the State level where the safety concerns and hazardous materials transportation patterns associated with local and regional governments can best be properly coordinated and integrated into a cohesive, unified hazardous materials transportation network.

Hazardous Materials Transportation Uniform Safety Act of 1990

On November 16, 1990, the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615, 104 Stat. 3244) was enacted. The FHWA was delegated the responsibility by the Secretary, as published in the **Federal Register** (56 FR 31343, July 10, 1991), to implement sections 105(b) and (c) of the Hazardous Materials Transportation Act of 1975 (HMTA), as amended by Section 4 of the HMTUSA. This included transferring the rulemaking and program responsibility for hazardous materials highway routing from RSPA to the FHWA, with the exception of the currently pending applications for inconsistency rulings and non-preemption determinations, which will remain a RSPA responsibility. Comments and other materials submitted to the RSPA docket (HM-203) have been transferred and are available in the FHWA docket established by this NPRM.

Section 4 of the HMTUSA partially amends section 105(b) of the HMTA (49 U.S.C. 1804(b)), and provides that "* * * each State and Indian tribe may establish, maintain and enforce: (A) Specific highway routes over which hazardous materials may and may not be transported by motor vehicle in the area which is subject to the jurisdiction of such State or Indian tribe, and (B) limitations and requirements with respect to highway routing." These "routing designations", as defined in the proposed regulation, would include regulation by or of such features as times, lanes, routes, types of loads or vehicles, inspections, permits and fees which would specifically apply to or affect the highway routing of hazardous materials.

Section 4 of the HMTUSA requires the Secretary to establish, by regulation, Federal standards which would be required to be followed by the States and Indian tribes if they establish, maintain or enforce routing designations. The Federal standards must provide for enhancement of safety; public participation; consultation with other State, local and tribal governments; through routing; reasonable time to reach agreement between affected States or Indian tribes; avoidance of unreasonable burden on commerce; timely establishment of State and Indian tribe routing; reasonable routes to terminals and other facilities; State responsibility for local compliance; and a number of "factors to consider." Section 4 prohibits the Secretary from assigning specific weights to the "factors to consider" in the Federal standards but does provide for Federal preemption and dispute resolution of State and Indian tribe routing designations to allow for reasonably consistent application of the Federal standards among adjacent jurisdictions. The Federal routing regulations, as a minimum, are required to be applicable to motor vehicles transporting in commerce hazardous materials for which placarding of the vehicle is required in accordance with 49 CFR 172.504. However, section 4 does not require that the existing radioactive routing regulations be revised and, therefore, no changes are proposed for those regulations in this rulemaking. Also, the proposed routing regulations, as required by the HMTUSA, would not supersede or affect application of the existing Federal truck size and weight regulations.

Section 4 of the HMTUSA also partially amends section 105(c) of the HMTA (49 U.S.C. 1804(c)) and requires the Secretary, in coordination with the States, to periodically update and publish a list of currently effective hazardous materials highway route designations.

Discussion of Proposed Regulations

Purpose and Scope

The FHWA is proposing regulations to implement the requirements of the HMTUSA in a new subpart C, Routing, in part 397 of title 49, Code of Federal Regulations. This proposed regulation would implement the requirements of the HMTUSA by establishing Federal standards and procedures which States and Indian tribes would be required to follow if they establish, maintain or enforce routing designations for the highway transportation of non-radioactive hazardous materials (NRHM). The intent is to ensure that NRHM are moved safely and that commerce is not burdened by restrictive, uncoordinated or conflicting requirements of various jurisdictions. For example, the regulation would require that through routing be maintained by prohibiting a forced deviation of over 100 miles or an increase of more than 25% in a trip length, whichever is shorter, from the most direct route. This would prevent a jurisdiction from imposing unreasonable routes or delays, with the consequential extra costs for the motor carrier. Although the proposed regulation limits the policy making discretion of the States, political subdivisions or Indian tribes if they decide to control or regulate NRHM routing, the standards and requirements of this regulation allow flexibility as prescribed or allowed by the HMTUSA. The FHWA does not propose to designate or approve routes used for transporting NRHM. However, any State or Indian tribe that chooses to establish, maintain or enforce NRHM routing designations would be required to follow the Federal standards being established by this rulemaking. The States and Indian tribes would also be required to ensure that any NRHM routing designations by political subdivisions under their jurisdiction are made in accordance with these standards. Any NRHM routing designations that fail to comply with these standards would be preempted by the HMTA. Any person, including a State, political subdivision thereof, or Indian tribe affected by such a NRHM routing designation could apply to the Administrator for a preemption determination. Procedures for obtaining Federal preemption determinations, waivers of preemptions and dispute resolutions are included in the proposed regulation.

The proposed routing regulations would require States and Indian tribes to report existing NRHM routing designations within their boundaries to the FHWA and, thereafter, to report any new additions or changes to these routing designations when established.

The motor carriers transporting NRHM would be required to comply with the State and Indian tribe NRHM routing designations, or, if no such designations, the routing requirements currently set forth in 49 CFR 397.9(a) which would be incorporated into the proposed regulation. The routing plan requirements currently set forth in 49 CFR 397.9(b) for transporting Class A or Class B explosives also would be incorporated into the proposed NRHM regulation.

Federal regulations for highway routing of radioactive materials, under 49 CFR 177.825, will remain unchanged

by this rulemaking. The FHWA and the RSPA are currently considering the moving of the highway routing provisions of 49 CFR 177.825 into 49 CFR part 397, and the changing of the location for reporting from the RSPA to the FHWA. These issues will be addressed in a separate rulemaking action.

When this regulation 49 CFR part 397, subpart C is issued, 49 CFR 177.810 which specifically applies to tunnels used for mass transit would no longer be applicable to the highway routing of hazardous materials. Because 49 CFR 177.810 would no longer be applicable to the highway routing of hazardous materials, comments are invited regarding whether 49 CFR 177.810 should be deleted from the hazardous materials regulations.

Applicability

The provisions of this proposed regulation would be applicable to States, including any political subdivisions, and Indian tribes that establish routing designations affecting the transportation of non-radioactive hazardous materials for which placarding of the vehicle is required pursuant to the Federal hazardous materials regulations. The proposed regulations also contain several provisions which would be applicable to motor carriers transporting in commerce NRHM for which placarding of the vehicle is required under Federal regulations.

The HMTUSA authorizes the Secretary to extend the applicability of the regulation to all hazardous materials. Therefore, the FHWA is hereby soliciting comments from the public as to whether other hazardous materials should be covered by the proposed regulations. As stated earlier in this document, existing regulations governing highway route designations for the transportation of radioactive materials will remain in 49 CFR 177.825; however, FHWA intends to incorporate the regulation into 49 CFR part 397 as part of a separate rulemaking action in the future.

This proposed regulation would be specifically applicable to NRHM routing designations. The general term "routing designations" as defined in the proposed regulation would include any regulation, limitation, or restriction which would have the effect of restricting or prohibiting the transportation of all hazardous materials over a highway route, a specific portion of a route, or during a specific time period. Accordingly, this proposed regulation would be applicable to NRHM routing designations—such as curfews or time limitations, lane restrictions, prior notice, bonding, permit, and escort requirements—that affect the transportation of NRHM.

Any routing designation, as defined, would be subject to the jurisdiction of the FHWA. Regulations, limitations, or restrictions affecting the transportation of hazardous materials and which are not related to routing designations, such as those relating to packaging, labeling, shipping papers, and reporting of releases, would not be affected by this proposed rule and would remain under the jurisdiction of the RSPA. Other regulations, limitations, or restrictions on motor vehicles which are not specific to the transporting of hazardous materials, such as height, width or weight restrictions for roads and bridges or prohibitions on use of downtown streets by trucks over certain sizes, would not be affected or reported.

Motor Carrier Responsibility for Routing

Motor carriers transporting NRHM would be required to comply with the NRHM routing designations of States or Indian tribes. Where States and Indian tribes do not have NRHM routing designations, motor carriers would be required to operate over routes which avoid heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys, as is currently required by 49 CFR 397.9. The proposed rule would incorporate this and the written route plan requirement of § 397.9 into the proposed § 397.67.

Motor carriers transporting radioactive hazardous materials would continue to follow the requirements of existing 49 CFR 177.825, which would remain unchanged by this rulemaking. The reporting requirements of § 177.825 will be modified so that the information is sent to the FHWA instead of the RSPA in a separate rulemaking action which will be separately published in the **Federal Register**.

State and Indian Tribe Jurisdiction Over Routing

This portion of the proposed rule would establish regulations that must be followed by States and Indian tribes if they impose routing designations for NRHM. If a political subdivision of a State wished to impose NRHM routing designations, the State would be required to ensure that the political subdivision follows these regulations including coordination with and approval by the routing agency designated by the Governor. The States would be responsible for any NRHM routing designations that local jurisdictions establish, including resolving any disputes between subdivisions. The proposed regulations would require the States and Indian tribes to designate routing agencies, which would ensure that all NRHM routing designations are made in compliance with the Federal standards.

Procedures for States and Indian Tribes

1. Federal Standards

The proposed Federal regulations include standards which closely follow the specific requirements of the HMTUSA and include procedures for States and Indian tribes to follow if they impose routing designations for NRHM transportation by motor carriers. The Federal standards provide for enhancement of safety; public participation; consultation with other State, local and tribal governments; through routing; reasonable time to reach agreement between affected States or Indian tribes; not burdening commerce; timely establishment of State and Indian tribe routing; reasonable routes to terminals; State responsibility for local compliance; and a number of "factors to consider." The list of "factors to consider" which State and Indian tribes would be required to use in regulating routing is contained in the proposed § 397.71 and includes the factors required by the HMTUSA and proposed additional factors regarding climatic conditions and congestion. The list also includes a proposed explanation for each factor. In accordance with the HMTUSA, the FHWA will not assign any specific weight to be given by the States or Indian tribes in considering the factors. These factors, together with the "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials", DOT/RSPA/OHMT–89–02, July 1989 (or an equivalent routing analysis) would be used in making any NRHM routing designations. Failure to comply with the standards would result in preemption. In order to ensure compliance with the Federal standards, the FHWA would monitor the practices and procedures being used by the States and Indian tribes.

2. Public Information and Reporting Requirements

The HMTUSA requires the Secretary, in coordination with the States, to periodically update and publish a list of currently effective hazardous materials highway routing designations. Accordingly, the FHWA proposes to compile and publish in the **Federal Register**, annually, a listing of all

hazardous materials routing designations. To comply with this requirement, the FHWA proposes to require States and Indian tribes to initially submit, to FHWA, information on all the existing NRHM routing designations within their boundaries. After the initial submission, any new or changed NRHM routing designation would be required to be submitted to FHWA within 60 days after establishment of such routing designation. Any NRHM routing designation which is not reported to the FHWA would be considered preempted. The States' and Indian tribes' routing agencies would report the required information to the FHWA.

The States and Indian tribes would be required to consider and use additional methods such as maps, listings, road signs, or some combination of these measures as may be needed to adequately inform the public of their NRHM routing designations.

3. Dispute Resolution

Disputes involving through highway routing or agreements between political jurisdictions within a State would be settled by the State's routing agency. Disputes involving through highway routing or agreements between States or Indian tribes would be submitted to the Federal Highway Administrator for resolution. Details of the dispute would be furnished, together with a description of what was done to try to settle it, plus a recommendation for action by the Administrator. Once a dispute is submitted to the Administrator, no court action could be taken for one year or until after a decision by the Administrator, whichever occurs first.

4. Judicial Review of Dispute Decision

A party to a dispute who is adversely affected by a dispute resolution decision of the Administrator could obtain judicial review of the decision if such court action is filed within 90 days after the Administrator's decision becomes final.

5. Preemption

Any person, including a State, political subdivision thereof, or Indian tribe, affected by a NRHM routing designation could apply to the Administrator for a determination of whether such routing designation is preempted. Any NRHM routing designation would be preempted if it did not comply with the requirements in the Federal standards. Detailed procedures are in the proposed regulation for carrying out this provision. Preemption would not apply if a waiver of preemption is granted by the Administrator, if the grandfather provision as noted in paragraph number 7, below, applies, or if Federal law provides otherwise.

6. Waivers of Preemption

A State, political subdivision or Indian tribe would be authorized to apply to the Administrator for a waiver of preemption. The Administrator would be authorized to waive preemption of a NRHM routing designation, based on a determination that it provided equal or better protection to the public than these regulations would provide, and it did not unreasonably burden commerce.

7. Grandfather Provisions

The proposed regulations would incorporate the grandfather clause of the HMTUSA, which allows routing designations which were established before the date of issuance of these regulations to be exempted from the: (1) Public participation, (2) consultation and (3) timeliness requirements of the proposed Federal standards. In addition, the proposed regulations would incorporate the HMTUSA requirement that allows routing designations established before the date of the HMTUSA enactment (November 16, 1990) to be exempted from complying with the "factors to be considered" by the States or Indian tribes in making routing designations.

8. Timeliness

Petitions for preemption determinations and waivers of preemption would be considered denied if the Administrator did not take action on an application within 180 days.

9. Judicial Review of Preemptions or Waivers of Preemption Decisions

A party to a proceeding involving a preemption determination or waiver of preemption could seek review of the Administrator's decision in a U.S. District Court if a petition were filed with the court within 60 days after the decision become final.

Request for Comments

Specific comments pertaining to the practicability and any alternatives to the proposed regulation are requested. The FHWA is particularly interested in receiving responses to the following specific questions:

1. Will the proposed Federal standards, particularly the "factors to consider," provide for the safe through-movement of NRHM or should other specific factors be established?

2. Are the proposed provisions of 49 CFR 397.71(b)(4) for through routing (no deviation of more than 100 miles or an increase of more than 25 percent in the trip length, whichever is shorter) and routes to terminals (no deviation over twice the shortest route) reasonable in terms of costs and effects or would other distances or percentage deviations be more appropriate?

3. Should stricter Federal standards be applied for some types and quantities of HRHM or is the proposed standard, which allows States and Indian tribes flexibility, considered adequate and desirable?

4. Are the dispute resolution procedures reasonable and adequate?

5. How should the routing information be reported by the States and Indian tribes?

6. What, if any, situations or problems could arise from the FHWA/RSPA jurisdictional overlap of routing and non-routing issues.

7. Comments are requested on anticipated costs and benefits associated with this rulemaking.

Commenters are not limited to responding to the above issues and may submit any comments or relevant information on the highway routing of hazardous materials in responding to this docket.

Rulemaking Analysis and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this rulemaking is not major within the meaning of Executive Order 12291. This rulemaking is considered a significant regulation under Department of Transportation regulatory policies and procedures because of substantial congressional and public interest. This interest involves minimizing risks while allowing reasonable highway routing for the transportation of NRHM. The proposed regulations would not require the use of NRHM routing designations or Federal preemption determinations, waivers of preemption, and dispute resolution but would provide standards and procedures which would be required to be followed if these actions are chosen to be used. The benefits from implementing the proposed regulations, such as NRHM routing designation continuity, public participation, uniform standards, and preemption and dispute resolution procedures, are considered greater than the costs of providing the required coordination, documentation, and analysis which would allow discretion in level of detail. The FHWA anticipates that the economic impact of this rulemaking will be minimal and,

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therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 605(b)), the FHWA has evaluated the effects of this proposed rule on small entities such as local governments and businesses. The proposed regulations would not require the use of NRHM routing designations or Federal preemption determinations, waivers of preemption, and dispute resolution but would provide standards and procedures which would be required to be followed if these actions are chosen to be used. The proposed discretionary nature of the actions would allow for cost saving options to be used in balancing the needs in commerce and the risks in the transportation of NRHM. To date, relatively few States (2) and local jurisdictions (approximately 20) have chosen to establish NRHM routing designations. The grandfather provisions would allow these existing NRHM routing designations to remain without full re-justification. The FHWA has concluded that the proposed regulation would not substantially affect the ability of or cost to local jurisdictions in establishing needed NRHM routing designations. The preemption and dispute resolution procedures provide all small entities more effective and efficient means of resolving routing issues. The benefits from implementing the proposed regulations, such as routing continuity, public participation, uniform standards, and preemption and dispute resolution procedures, are considered greater than the costs of providing the required coordination, documentation, and analysis which, for the most part, would be flexible and discretionary in level of detail. Based on the evaluation, the FHWA certifies that this rulemaking would not have a significant economic impact on a substantial number of small entities. The need to further evaluate economic consequences will be reviewed on the basis of comments submitted in response to this notice and the public meetings.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. The HMTUSA requires the Secretary to adopt standards which States and Indian tribes must follow if they establish, maintain, or enforce NRHM routing designations (specific highway routes over which NRHM may and may not be transported within their jurisdictions; limitations or requirements for highway routing). The proposed rule would recognize the State and Indian tribe roles in the designation of highway routes for NRHM while de-emphasizing the role of local governments. The proposed rule would allow discretion by the States and Indian tribes as to whether they impose NRHM routing designations. Each State and Indian tribe would be free to establish NRHM routing designations tailored to its own needs in accordance with the Federal standards, using the DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials," or an equivalent routing analysis which adequately considers overall risk to the public. States and localities have a better understanding of the relative safety of the highways within their jurisdictions than does the Federal government. The proposed NRHM routing standards, however, recognize that it is difficult for local governments to designate highway routes that are sensitive to national and State transportation needs.

The proposed rule would limit policy making discretion of the States, their political subdivisions and Indian tribes. The proposed rule is necessary, however, to achieve the purposes and implement the requirements of the HMTUSA. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order as well as the applicable legislative authority for this proposal.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection, reporting, and record-keeping provisions in § 397.73 of this proposed rule are being submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, attention: Desk Officer for the Department of Transportation. All comments must reference the title for this notice, "Transportation of Hazardous Materials, Highway Routing."

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identifier Number

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 397

Hazardous materials transportation, Highways and roads, Motor carrier safety permits.

In consideration of the foregoing, the Federal Highway Administration proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, part 397, by adding subpart C as set forth below.

Issued on: August 18, 1992.

T.D. Larson,

Administrator.

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS

1. The authority citation for part 397 is revised to read as follows:

Authority: 49 App. U.S.C. 1801 *et seq.*; 49 CFR 1.48.

§ 397.9 [Removed]

2. Part 397 is amended by removing § 397.9 and by adding a new subpart C to read as follows:

Subpart C—Routing

Sec.

397.61 Purpose and scope.
397.63 Applicability.
397.65 Definitions.
397.67 Motor carrier responsibility for routing.
397.69 Highway routing designations; preemption.
397.71 Federal standards.
397.73 Public information and reporting requirements.
397.75 Dispute resolution.
397.77 Judicial review of dispute decision.
397.79 Preemption determinations; procedure.
397.81 Waivers of preemption.
397.83 Grandfather provisions.
397.85 Timeliness.

Sec.

397.87 Judicial review of preemption or waiver of preemption decision.

Subpart C—Routing

§ 397.61 Purpose and scope.

This subpart contains routing requirements and procedures that States and Indian tribes are required to follow if they establish, maintain, or enforce routing designations over which placarded non-radioactive hazardous materials (NRHM) may and may not be transported by motor vehicles.

§ 397.63 Applicability.

The provisions of this subpart apply to any State or Indian tribe that establishes, maintains, or enforces routing designations over which NRHM may and may not be transported by motor vehicle. They also apply to any motor carrier that transports or causes to be transported placarded NRHM in commerce.

§ 397.65 Definitions.

For purposes of this subpart, the following definitions apply:

Administrator. The Federal Highway Administrator, who is the chief executive of the Federal Highway Administration, an agency within the Department of Transportation, or his/her designate.

Commerce. Any trade, traffic, or transportation in the United States which is between a place under the jurisdiction of a State or Indian tribe and any place outside of such jurisdiction; or is solely within a place under the jurisdiction of a State or Indian tribe.

FHWA. The Federal Highway Administration, an agency within the Department of Transportation.

Hazardous material. A substance or material which has been determined by the Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, or property when transported in commerce, and which has been so designated.

Indian tribe. Has the same meaning as contained in section 4 of the Indian Self-Determination and Education Act, 25 U.S.C. 450(b).

Motor carrier. A for-hire motor carrier or a private motor carrier of property. The term includes a motor carrier's agents, officers and representatives as well as employees responsible for hiring, supervising, training, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories.

Motor vehicle. Any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof.

NRHM. A non-radioactive hazardous material transported by motor vehicle in quantities which require placarding, pursuant to Tables 1 and 2 of 49 CFR 172.504. The term NRHM does not include radioactive materials covered by 49 CFR 177.825.

Political subdivision. A municipality, public agency or other instrumentality of one or more States, or a public corporation, board, or commission established under the laws of one or more States.

Radioactive material. Any material having a specific activity greater than 0.002 microcurie per gram (uCi/g), as defined in 49 CFR 173.403.

Routing agency. The State highway agency or other State agency designated by the Governor of that State, or an agency designated by an Indian tribe, to supervise, coordinate, and approve the NRHM routing designations for that State or Indian tribe. Any NRHM routing designation by a political subdivision of a State shall be considered as a designation made by that State.

Routing designations. Any regulation, limitation, or restriction which would have the effect of restricting or prohibiting the transportation of hazardous materials over a highway route, a specific portion of a route, or during a specific time period. This includes such highway route restrictions as curfews or time limitations, lane restrictions, prior notice, bonding, permit, and escort requirements, that affect the transportation of hazardous materials.

Secretary. The Secretary of Transportation.

State. A State of the United States, District of Columbia, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa or Guam.

§ 397.67 Motor carrier responsibility for routing.

(a) A motor carrier transporting NRHM shall comply with NRHM routing designations of a State or Indian tribe pursuant to this subpart.

(b) Where States and Indian tribes have not designated NRHM routes pursuant to this subpart, the motor carrier shall operate over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys, except where the motor carrier determines that:

(1) There is no practicable alternative,

(2) A reasonable deviation is necessary to reach terminals, points of loading and unloading, facilities for food, fuel, repairs, rest, or a safe haven, or

(3) A reasonable deviation is required by emergency conditions.

(c) Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with paragraph (b) of this section.

(d) Before a motor carrier requires or permits a motor vehicle containing Class A or Class B explosives, defined in 49 CFR 173.53 and 173.88, respectively, to be operated, a written route plan that complies with this section must be prepared and a copy furnished to the driver. However, the driver may prepare the written plan as agent for the motor carrier when the trip begins at a location other than the carrier's terminal.

(e) Motor carriers transporting radioactive materials must comply with § 177.825 of this title.

§ 397.69 Highway routing designations; preemption.

(a) Any State or Indian tribe that establishes, maintains, or enforces a highway routing designation over which NRHM may and may not be transported shall comply with the highway routing standards set forth in § 397.71 of this subpart. For purposes of this subpart, any highway route designation affecting the highway transportation of NRHM, made by a political subdivision of a State shall be considered as one made by that State, and all requirements of this subpart apply.

(b) Except as provided in §§ 397.75, 397.81, and 397.83, a NRHM route designation made in violation of paragraph (a) of this section is preempted pursuant to section 105(b)(4) of the Hazardous Materials Transportation Act (49 U.S.C. App. 1804(b)(4)). This provision shall become effective on [2 years after issuance of final rule].

(c) A State or Indian tribe may petition for a waiver of preemption in accordance with § 397.81 of this subpart.

§ 397.71 Federal standards.

(a) A State or Indian tribe shall comply with the Federal standards under paragraph (b) of this section when establishing, maintaining or enforcing specific NRHM routing designations over which NRHM may and may not be transported.

(b) The Federal standards are as follow:

(1) *Enhancement of public safety.* The State or Indian tribe shall make a

finding, supported by the record to be developed in accordance with paragraphs (b)(2)(ii) and (b)(3)(iv) of this section, that any NRHM routing designation enhance public safety in the areas subject to its jurisdiction and in other areas which are directly affected by such highway routing designation. In making such a finding, the State or Indian tribe shall consider:

(i) The factors established in paragraph (b)(9) of this section; and

(ii) The DOT "Guidelines for Applying Criteria to Designate Routes for Transporting Hazardous Materials," DOT/RSPA/OHMT–89–02, July 1989 [1] or its most current issuance, or

(iii) An equivalent routing analysis which adequately considers overall risk to the public.

(2) *Public participation.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall undertake the following actions to ensure participation by the public in the routing process:

(i) The public shall be given notice of the proposed NRHM routing designation at least 30 days prior to the date of the public hearing required to be held under paragraph (b)(2)(ii) of this section. Such notice shall be given by publication in at least two newspapers of general circulation in the affected area or areas; and shall contain a complete description of the proposed routing designation, together with the date, time, and location of any public hearings.

(ii) The State or Indian tribe shall hold at least one public hearing on the record during which the public will be afforded the opportunity to present their views and any information or data related to the proposed NRHM routing designation. The State shall make available to the public, upon payment of prescribed costs, copies of the transcript of the hearing, which shall include all exhibits and documents presented during the hearing or submitted for the record.

(3) *Consultation with others.* Prior to the establishment of any NRHM routing designation, the State or Indian tribe shall consult with officials of affected political subdivisions, States and Indian tribes, and any other affected parties. Such actions shall include the following:

(i) At least 60 days prior to issuing any such routing designation, the State or Indian tribe shall provide notice, in writing, of the proposed routing designations to officials responsible for highway routing in all affected States and Indian tribes. This notice shall request the approval of those States and Indian tribes, in writing, of the proposed routing designation.

(ii) The manner in which consultation under this paragraph is conducted is left to the discretion of the State or Indian Tribe.

(iii) The State or Indian tribe shall attempt to resolve any concerns or disputes expressed by the consulted officials related to the proposed routing designation.

(iv) The State or Indian tribe shall keep a record of the name and address of the officials notified pursuant to this section and of any consultation or meeting conducted with these officials or their representatives. Such record shall describe any concerns or disputes presented by the officials; and any actions undertaken to resolve such disputes or address any concerns.

(4) *Through routing.* In establishing any NRHM routing designation, the State or Indian tribe shall ensure through highway routing for the transportation of NRHM between adjacent areas. The term "through highway routing" as used in this paragraph means that the designation must ensure continuity of movement so as to not impede or unnecessarily delay the transportation of NRHM. Any designation shall not force a deviation of more than 100 miles or result in an increase of more than 25% in the trip length, whichever is shorter, from the most direct highway route between the primary origin and destination of an individual carrier's shipment. The State or Indian tribe shall utilize the procedures established in paragraphs (b)(2) and (b)(3) of this section in meeting this requirement.

(5) *Agreement of other States; burden on commerce.* Any NRHM routing designation which affects another State or Indian tribe shall be established, maintained, or enforced only if:

(i) It does not unreasonably burden commerce, and

(ii) It is agreed to by the affected State or Indian tribe, within 60 days of receipt of the notice sent pursuant to paragraph (b)(3)(i) of this section or it is approved by the Administrator pursuant to § 397.75.

(6) *Timeliness.* The establishment of a NRHM routing designation by any State or Indian tribe shall be completed within 18 months of the notice given in either paragraphs (b)(2) or (b)(3) of this section, whichever occurs first.

(7) *Reasonable routes to terminals and other facilities.* In establishing or providing for reasonable access, the State or Indian tribe shall use the shortest practicable route considering the factors listed in paragraph (b)(9) of this section; however, such route or deviation shall not exceed twice the distance of the most direct route. In establishing any NRHM routing designation, the State or Indian tribe shall provide reasonable access for motor vehicles transporting NRHM to reach—

(i) Terminals,

(ii) Points of loading and unloading, and

(iii) Facilities for food, fuel, repairs, rest, and safe havens.

(8) *Responsibility for local compliance.* The States shall be responsible for ensuring that all of their political subdivisions comply with the provisions of this subpart. The States shall be responsible for resolving all disputes between such political subdivisions within their jurisdictions. If a State or any political subdivision thereof, or an Indian tribe chooses to establish, maintain, or enforce any NRHM routing designation, the Governor, or Indian tribe, shall designate a routing agency for the State or Indian tribe, respectively. The routing agency shall ensure that all NRHM routing designations within its jurisdiction comply with the Federal standards in this section. The State or Indian tribe shall comply with the public information and reporting requirements contained in § 397.73.

(9) *Factors to consider.* Except as provided in § 397.83, in establishing any NRHM routing designation, the State or Indian tribe shall consider the following factors:

(i) *Population density.* The population potentially exposed to a NRHM release shall be estimated from the density of the residents, employees, motorists, and other persons in the area, using United States census tract maps or other reasonable means for determining the population within a potential impact zone along a designated highway route. The impact zone is the potential range of effects in the event of a release. Special populations such as schools, hospitals, prisons, and senior citizen homes shall, among other things, be considered when determining the potential risk to the populations along a highway routing. Consideration shall be given to the amount of time during which an area will experience a heavy population density.

(ii) *Type of highway.* The characteristics of each alternative NRHM highway routing designation shall be compared. Vehicle weight and size limits, underpass and bridge clearances, roadway geometrics, number of lanes, degree of access control, and median and shoulder structures are examples of characteristics which a State or Indian tribe must consider.

(iii) *Types of quantities of NRHM.* An examination shall be made of the type and quantity of NRHM normally transported along highway routes which are included in a proposed NRHM routing designation, and consideration shall be given to the relative impact zone and risks of each type and quantity.

(iv) *Emergency response capabilities.* In consultation with the proper fire, law enforcement, and highway safety agencies, consideration shall be given to the relative emergency response capabilities which may be needed as a result of a NRHM routing designation. The analysis of the emergency response capabilities shall be based upon the proximity of the emergency response facilities and their capabilities to contain and suppress NRHM releases within the impact zones.

(v) *Results of consultation with affected persons.* Consideration shall be given to the comments and concerns of all affected persons and entities provided during public hearings and consultations conducted in accordance with this section.

(vi) *Exposure and other risk factors.* States and Indian tribes may define the exposure and risk factors associated with any NRHM routing designations. The distance to sensitive areas shall be considered. Sensitive areas include, but are not limited to, homes and commercial buildings; special populations in hospitals, schools, handicapped facilities, prisons and stadiums; water sources such as streams and lakes; and natural areas such as parks.

(vii) *Terrain considerations.* Topography along and adjacent to proposed NRHM routing designations must be considered.

(viii) *Continuity of routes.* Adjacent jurisdictions shall be consulted to ensure routing continuity for NRHM across common borders. Deviations from the most direct route shall be minimized.

(ix) *Alternative routes.* Consideration shall be given to alternative routes for NRHM, which shall be reviewed, examined, and evaluated during any public hearings or consultations conducted in accordance with this section.

(x) *Effects on commerce.* Any NRHM routing designations made in accordance with this subpart shall not create an unreasonable burden upon interstate or intrastate commerce.

(xi) *Delays in transportation.* No NRHM routing designations may create unreasonable delays in the transportation of NRHM.

(xii) *Climatic conditions.* Weather, wind, and other climatic conditions affect the dispersion of the NRHM upon release and increase the difficulty of controlling it and cleaning it up, and as such, these conditions shall be given appropriate consideration.

(xiii) *Congestion.* The possibility of congestion in the traffic flow during certain times of the day or on certain days of the week shall be considered, since the exposure to any release and the subsequent emergency response operations are affected by congestion.

§ 397.73 Public information and reporting requirements.

(a) *Public information.* Information on NRHM routing designations must be made available by the States and Indian tribes to the public in the form of maps, lists, road signs or some combination thereof. If road signs are used, those signs and their placement must comply with the provisions of the Manual on Uniform Traffic Control Devices,[2] published by FHWA, particularly the Hazardous Cargo signs identified as R14–2 and R14–3 shown in Section 2B–43 of that Manual.

(b) *Reporting and publishing requirements.* Each State or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations which exist within their jurisdictions on [*DATE OF ISSUANCE OF FINAL REGULATION*] to the FHWA, HHS–30, 400 7th St., SW., Washington, DC 20590–0001 by [*90 DAYS AFTER ISSUANCE OF FINAL REGULATION*]. The State or Indian tribe shall include descriptions of these routing designations, along with the dates they were established. Information on any subsequent changes or new NRHM routing designations shall be furnished within 60 days after establishment to the FHWA at the above address. This information will be consolidated by the FHWA and published in whole or as updates in the **Federal Register** annually.

§ 397.75 Dispute resolution.

(a) *Petition.* One or more States or Indian tribes may petition the Federal Highway Administrator to resolve a dispute relating to through highway routing of NRHM or to an agreement on a proposed NRHM routing designation. In resolving a dispute under these provisions the Administrator will provide the greatest level of highway safety possible without unreasonably burdening commerce, and ensure compliance with the Federal standards established at § 397.71 of this subpart.

(b) *Filing.* Each petition for dispute resolution filed under this section must:

(1) Be submitted to the Federal Highway Administrator, Federal Highway Administration, U.S. Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. Attention: Hazardous Materials Routing Dispute Resolution Docket, HCC–20.

(2) Identify the State or Indian tribe filing the petition and any other State, political subdivision, or Indian tribe whose NRHM routing designation is the subject of the dispute.

(3) Contain a certification that the petitioner has complied with the notification requirements of paragraph (c) of this section, and include a list of the names and addresses of each State, political subdivision, or Indian tribe official who was notified of the filing of the petition.

(4) Clearly set forth the dispute for which resolution is sought, including a complete description of any disputed NRHM routing designation and an explanation of how the disputed routing designation affects the petitioner or how it impedes through highway routing.

(5) Describe any actions taken by the State or Indian tribe to resolve the dispute.

(6) Explain the reasons why the petitioner believes that the Administrator should intervene in resolving the dispute.

(7) Describe any proposed actions that the Administrator should take to resolve the dispute and how these actions would provide the greatest level of highway safety without unreasonably burdening commerce and would ensure compliance with the Federal standards established in this subpart.

(c) *Notice.* (1) Any State or Indian tribe that files a petition for dispute resolution under this subpart shall mail a copy of the petition to any affected States, political subdivisions, or Indian tribes, accompanied by a statement that the State, political subdivision, or Indian tribe may submit comments regarding the petition to the Administrator within 45 days.

(2) By serving notice on any other States, political subdivisions, or Indian tribes determined by the Administrator to be possibly affected by the issues in dispute or the resolution sought, or by publication in the **Federal Register**, the

[1] This document may be secured from Traffic Control Division, HHS–30, Federal Highway Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001.

[2] This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, DC 20402 and has Stock No. 050–001–81001–8. It is available for inspection and copying as prescribed in 49 CFR part 7, appendix D. See 23 CFR part 655, subpart F.

Administrator may afford those persons an opportunity to file written comments on the petition.

(3) Any affected States, political subdivisions, or Indian tribes submitting written comments to the Administrator with respect to a petition filed under this section shall send a copy of the comments to the petitioner and certify to the Administrator as to having complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond.

(d) *Court Actions.* After a petition for dispute resolution is filed in accordance with this section, no court action may be brought with respect to the subject matter of such dispute until a final decision has been issued by the Administrator or until the last day of the one-year period beginning on the day the Administrator receives the petition, whichever occurs first.

(e) *Alternative Dispute Resolution.* Upon receipt of a petition filed pursuant to paragraph (a) of this section, the Administrator may schedule a hearing to attempt to resolve the dispute and, if a hearing is scheduled, will notify all parties to the dispute of the date, time and place of the hearing. During the hearing the parties may offer any information pertinent to the resolution of the dispute. If an agreement is reached, it may be stipulated by the parties, in writing, and, if the Administrator agrees, made part of the decision in paragraph (f) of this section. If no agreement is reached, the Administrator may take the matter under consideration and announce his or her decision in accordance with paragraph (f) of this section. Nothing in this section shall be construed as prohibiting the parties from settling the dispute or seeking other methods of alternative dispute resolution prior to the final decision by the Administrator.

(f) *Decision.* The Administrator will issue a decision based on the petition, the written comments submitted by the parties, the record of the hearing, and any other information in the record. The decision will include a written statement setting forth the relevant facts and the legal basis for the decision.

(g) *Record.* The Administrator will serve a copy of the decision upon the petitioner and any other party who participated in the proceedings. A copy of each decision will be placed on file in the public docket. The Administrator may publish the decision or notice of the decision in the Federal Register.

§ 397.77 Judicial review of dispute decision.

Any State or Indian tribe adversely affected by the Administrator's decision under § 397.75 of this subpart may seek review by the appropriate district court of the United States under such proceeding only by filing a petition with such court within 90 days after such decision becomes final.

§ 397.79 Preemption determinations; procedure.

(a) *Application.* Any person including a State, political subdivision thereof, or Indian tribe, affected by a NRHM routing designation may apply to the Administrator for a determination of whether such routing designation is preempted in accordance with § 397.69. The Administrator will publish notice of the application in the **Federal Register.**

(b) *Filing.* Each application filed under this section for a determination of preemption must:

(1) Be submitted to the Federal Highway Administrator, Federal Highway Administration, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590–0001. Attention: Hazardous Materials Routing Preemption Docket, HCC–20;

(2) Describe or state the NRHM routing designation for which the determination is sought;

(3) Specify each requirement of the Hazardous Materials Transportation Act, or the regulations issued under the Act, which constitutes a basis for the petition;

(4) Explain why the applicant believes the NRHM routing designation should be preempted; and

(5) Set forth how the applicant is affected by the NRHM routing designation.

(c) *Relief restriction.* Once the Administrator has published notice in the **Federal Register** of an application received pursuant to the requirements set forth in this section, no applicant for such determination may seek relief with respect to the same or substantially the same issue in any court until final action has been taken on the application or until 180 days after filing of the application, whichever occurs first.

(d) *Eligibility.* This section shall not be construed as prohibiting any person, State, political subdivision, or Indian tribe directly affected by the NRHM routing designation from seeking a determination of preemption in any court of competent jurisdiction in lieu of applying to the Administrator under paragraph (b)(1) of this section.

(e) *Notice.* (1) The applicant shall mail a copy of the application to any affected State or Indian tribe. The notice must include a statement that the State or Indian tribe may submit comments regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification that the applicant has complied with this paragraph, and it must include the names and addresses of each State or Indian tribe official to whom a copy of the application was sent.

(2) The Administrator may, by serving notice on any other persons determined by the Administrator as persons who will be affected by the ruling sought, or by publication in the **Federal Register,** afford those persons an opportunity to file written comments on the application.

(3) Each person submitting written comments to the Administrator with respect to an application filed under this section shall send a copy of the comments to the applicant and certify to the Administrator as to having complied with this requirement. The Administrator may notify other persons participating in the proceeding of the comments and provide an opportunity for those other persons to respond within 45 days.

(f) *Processing.* The Administrator may investigate any statement in an application and may consider any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions from third persons relevant to an application and will provide the applicant an opportunity to respond to all third person submissions within 45 days. The Administrator may convene a hearing or conference, to advance the consideration of the application. Nothing in this section shall be construed as prohibiting the parties from settling the dispute or seeking other methods of alternative dispute resolution prior to the final determination by the Administrator.

(g) *Determination.*—(1) *Dismissal.* The Administrator may dismiss the application without prejudice if:

(i) It is determined that there is insufficient information upon which to base a determination; or

(ii) There is a request for additional information from the applicant, and the applicant fails to submit the additional information with 30 days.

(2) *Issuance.* Upon consideration of the application and other relevant information received, the Administrator will issue a determination. The determination will include a written statement setting forth the relevant facts and the legal basis for the determination.

(3) *Record.* The Administrator will serve a copy of the determination upon the applicant, upon any other person who participated in the proceeding, and upon any other person determined by the Administrator as affected by the determination. A copy of each determination will be placed on file in the Hazardous Materials Routing Preemption Docket. The Administrator may publish the determination or notice of the determination in the **Federal Register.**

(4) *Administrative determination.* A determination issued under this section constitutes an administrative determination as to whether a particular NRHM routing designation is preempted. The fact that a determination has not been issued under this section with respect to a particular highway routing designation carries no implication as to whether the designation is preempted.

§ 397.81 Waivers of preemption.

(a) *General rule.* The Administrator may waive the preemption of a NRHM routing designation upon a determination that such designation affords an equal or greater level of protection to the public than is afforded by this subpart and that it does not unreasonably burden commerce.

(b) *Procedure.*—(1) *Application.*—Any State, political subdivision, or Indian tribe may apply to the Administrator for a waiver of preemption with respect to any NRHM routing designation that the State, political subdivision, or Indian tribe acknowledge to be preempted in accordance with § 397.69 of this subpart. The Administrator will publish notice of the application in the **Federal Register.**

(2) *Filing.* Each application filed under this section for a waiver of preemption determination must:

(i) Be submitted to the Federal Highway Administrator, Federal Highway Administration, U.S. Department of Transportation, 400 7th St. SW., Washington, DC 20590–0001. Attention: Hazardous Materials Routing Preemption Docket, HCC–20;

(ii) Set forth the text of the NRHM routing designation for which the determination is being sought;

(iii) Include a copy of any court order and any determination issued pursuant to § 397.75 of this part pertinent to the application;

(iv) Contain an express acknowledgment by the applicant that the NRHM routing designation is preempted by this subpart unless a preemption has been so determined by a court of competent jurisdiction or in a ruling issued under § 397.75 of this subpart;

(v) State why the applicant believes the State, political subdivision, or Indian tribe NRHM routing designations afford an equal or greater level of protection to the public than is afforded by the requirements of the Act or the regulations issued under the Act; and

(vi) State why the applicant believes the State, political subdivision, or Indian tribe NRHM routing designations do not unreasonably burden commerce.

(c) *Notice.* (1) The applicant State, political subdivision, or Indian tribe shall mail a copy of the application and any subsequent amendments or other documents relating to the application to each person who is reasonably ascertainable by the applicant as a person who will be affected by the determination sought. The copy of the application must be accompanied by a statement that the person may submit comments regarding the application to the Administrator within 45 days. The application filed with the Administrator must include a certification that the application has complied with this paragraph, and it must include the names and addresses of each person to whom the application was sent.

(2) The Administrator may, by serving notice on any other persons readily identifiable as persons who will be affected by the ruling sought, or by publication in the **Federal Register,** afford those persons an opportunity to file written comments on the application.

(d) *Processing.* The Administrator may investigate any statement in an application and consider any relevant facts obtained by that investigation. The Administrator may solicit and accept submissions relevant to an application and will provide the applicant an opportunity to respond to all submissions. The Administrator may convene a hearing or conference to further investigate and consider any matter relevant to the advance of the application. Nothing in this section shall be construed as prohibiting the parties from settling the dispute or seeking other methods of alternative dispute resolution prior to the final determination by the Administrator.

(e) *Determination.*—(1) *Dismissal.* The Administrator may dismiss the application without prejudice if:

(i) It is determined that there is insufficient information upon which to base a waiver; or

(ii) There is a request for additional information from the applicant, and the applicant fails to submit the additional information.

(2) *Issuance.* Upon consideration of the application and other relevant information received, the Administrator will issue a determination. The determination will include a written statement setting forth the relevant facts and the legal basis for the determination.

(3) *Record.* The Administrator will serve a copy of the determination upon the applicant and place a copy of the waive determination in the Hazardous Materials Routing Preemption Docket. The Administrator may publish the waiver determination or notice of the waive determination in the **Federal Register.**

§ 397.83 Grandfather provisions.

NRHM routing designations established before [date of issuance of final regulations] are not required to comply with § 397.71(b)(2) on public participation; § 397.71(b)(3) on consultation with others; and § 397.71(b)(6) on timeliness. Any NRHM routing designations established before November 16, 1990, do not need to comply with the "factors to consider" contained in § 397.71(b)(9).

§ 397.85 Timeliness.

If the Administrator fails to take action on the application within 180 days of serving the notice required by §§ 397.79 or 397.81 of this subpart, the applicant may treat the application as having been denied in all respects.

§ 397.87 Judicial review of preemption or waiver of preemption decision.

A party to a proceeding under §§ 397.79 or 397.81 of this subpart may seek review by the appropriate district court of the United States of a decision of the Administrator under such proceeding only by filing a petition with such court within 60 days after such decision becomes final.

[FR Doc. 92–20803 Filed 8–28–92; 8:45 am]
BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 397

Transportation of Hazardous Materials; Highway Routing

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public hearings.

SUMMARY: The FHWA announces that it will hold four public hearings on the subject of proposed Federal regulations which would be applicable to the designation, limitation or restriction of routes for the highway transportation of placarded non-radioactive hazardous materials in commerce. The proposed

regulations are published in today's Federal Register.

DATES: The public hearings will be held between 9 a.m. and 5 p.m. (local time) at the following dates and locations:

October 14, 1992—Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024
October 16, 1992—Hyatt Regency Dallas at Reunion, 300 Reunion Boulevard, Dallas, Texas, 75207
October 19, 1992—San Francisco Marriott Hotel, 55 4th Street, San Francisco, California, 94103
October 21, 1992—Hyatt Regency O'Hare, West Bryn Mawr Street, near the Kennedy Expressway and River Road, Rosemont, Illinois, 60018

FOR FURTHER INFORMATION CONTACT: Mr. Henry W. Sandhusen, Traffic Control Division (HHS–32), Office of Highway Safety, (202) 366–2218; Mr. Raymond Cuprill or Mr. Eric Kuwana, Office of the Chief Counsel (HCC–20), (202) 366–0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal Federal holidays.

SUPPLEMENTARY INFORMATION: The proposed regulations would implement sections 4 (b) and (c) of the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA) (Pub. L. 101–615) which relates to the highway transportation of hazardous materials. The regulations would include Federal standards which States and Indian tribes must follow if they establish, maintain or enforce routing designations that: (1) Specify highway routes over which placarded non-radioactive hazardous materials (NRHM) may and may not be transported by motor vehicles within their jurisdictions, and/or (2) impose limitations or requirements affecting highway routing of such hazardous materials. Also included are procedures relating to Federal preemption, waivers of preemption and resolution of disputes involving State or Indian tribe NRHM routing designations. States and Indian tribes would be required to furnish updated routing information for publication annually by FHWA. Existing Federal motor carrier regulations relating to highway routing of hazardous materials would be incorporated into the new regulation, but revised to require compliance with routing designations of States and Indian tribes.

Hearing Procedures

The following procedures have been established to facilitate the hearings:

1. Each public hearing will begin with a discussion panel to summarize the proposed rule.

2. The hearing officer will then provide the audience the opportunity to submit formal oral or written comments for the remainder of the public hearing time. All speakers will be limited to a five minute formal statement in order to provide an opportunity for a wide variety of individuals and representatives to make statements at the hearings.

3. Any statements made by the hearing officer or any member of the discussion panel to clarify issues during the hearing should not be construed as the position of the FHWA with respect to the rulemaking proceeding.

4. The hearing will be recorded. A transcript of the hearings and any material accepted during the hearings will be included in FHWA Docket No. MC–92–6.

5. The hearings are designed to solicit public views and information on the proposed rule. Therefore, the hearings will be conducted in an informal and nonadversarial manner. An individual or representative will not be subject to cross-examination by any other participant. The discussion panel and the hearing officer may ask questions to clarify any statement made during the discussion period. Persons wishing to appear are not required to pre-register. Those wishing to notify the FHWA in advance may contact Mr. Henry W. Sandhusen, Traffic Control Division (HHS–32), Office of Highway Safety, (202) 366–2218, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. A table will be set up at the rear of the meeting room for on-site registration. All persons making an appearance are required to register.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 21, 1992.

T.D. Larson,

Administrator.

[FR Doc. 92–20804 Filed 8–28–92; 8:45 am]
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federal register

Monday
August 31, 1992

Part V

Department of the Treasury

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 17, et al.

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use and Public Information Collection Requirements; Proposed Rule and Notice

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 17, 19, 70, 170, 194, 197, 250

[Notice No. 748; Re Notice Nos. 634, 649]

RIN 1512-AA20

Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes amendment and recodification of the regulations on taxpaid distilled spirits used to manufacture nonbeverage products. The regulations in 27 CFR part 197 (Drawback on Distilled Spirits Used in Manufacturing Nonbeverage Products) are proposed to be recodified as a new part, designated 27 CFR part 17. In conjunction with the recodification, a number of changes to the drawback regulations are proposed. The regulations in 27 CFR part 170, subpart U (Manufacture and Sale of Certain Compounds, Preparations, and Products Containing Alcohol) are proposed to be distributed between 27 CFR part 19 and the new part 17. Conforming amendments are proposed in 27 CFR parts 19, 70, 194, and 250. Significant changes from current regulations are discussed below under "**SUPPLEMENTARY INFORMATION.**"

DATES: Comments must be submitted by September 30, 1992.

ADDRESSES: Submit all comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091-0221.

Copies of the proposed regulations and the public comments will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs, room 6300, 650 Massachusetts Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Simon or Cliff Mullen, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226; (202) 927-8210.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

On July 29, 1987, ATF published Notice No. 634 in the **Federal Register** (52 FR 28286). That notice proposed a revision of regulations concerning nonbeverage drawback, including certain changes to the current regulations.

Public comment was requested concerning the proposed changes. A 90-day comment period was provided, which ended on October 27, 1987. During the comment period for Notice No. 634, ATF received four written public comments.

On December 8, 1987, ATF published Notice No. 649 (52 FR 46628). That notice requested comments relating to Treasury Decision (T.D.) ATF-263, published the same day (52 FR 46592). T.D. ATF-263 prescribed temporary regulations concerning drawback on nonbeverage products brought into the U.S. from Puerto Rico or the Virgin Islands. The comment period for Notice No. 649 ended on January 8, 1988. Since T.D. ATF-263 incorporated provisions from 27 CFR part 197 by reference, the comment period for Notice No. 634 (recodifying Part 197) was concurrently extended until January 8, 1988. No additional comments concerning Notice No. 634 were received pursuant to that extension.

At the present time, ATF has decided to solicit further public comments concerning the amendment and recodification of 27 CFR part 197. Because more than 4 years have elapsed since the previous comment periods, the proposed regulations are being republished in their entirety, so that anyone else who may wish to comment on them will have an opportunity to do so.

Public Comments

In response to Notice No. 634, comments were received from four correspondents. Their comments and ATF's responses are explained below.

1. One commenter disagreed with the requirement in proposed § 17.183, that an approved substance to prevent recovery of potable alcohol be added to certain byproducts before their removal from the nonbeverage manufacturer's premises. However, this requirement is necessary, because potable alcohol recovered from a nonbeverage manufacturer's byproduct would have been previously subject to drawback; thus less than 10% of the tax would remain paid. The possible recovery of such potable alcohol by unknown persons would present an unacceptable jeopardy to the revenue.

The commenter referred particularly to § 17.183(b), which provides that spent vanilla beans may be removed from the manufacturer's premises after they have been treated with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent the recovery of residual alcohol. The commenter sought a liberalization of § 17.183 so as not to require those poisonous substances, in order that "spent" vanilla beans might be treated with other solvents such as isopropanol and ethyl acetate to yield useful "by-products" for food applications.

It has been the experience of ATF that efficient producers of acceptable extracts from vanilla beans leave very little useful residual material, other than alcohol, in the spent beans. Subject to formula approval, all of the proposals of the commenter for improving the yield of "useful 'by-products' for food products applications" can be used by a nonbeverage manufacturer under the current regulations and may be employed under the proposed new regulations. Proposed § 17.3, Alternate methods or procedures, may also be available in an appropriate case. Contrary to the unsupported inference of the correspondent, we know of no manufacturer who suffers economic hardship because he is unable to produce vanilla extract or any other nonbeverage product due to unreasonable compliance costs.

2. Another commenter expressed support for a number of the proposed changes, including the revised retention period for records, the use of one formula at multiple locations, the ability to make a claim for credit when the drawback claimant also operates a distilled spirits plant, simplified recordkeeping requirements, and the option to petition for a variance from prescribed procedures. However, this commenter also expressed reservations about some other proposals. He requested that AFT review the "historical compliance track record" before imposing new recordkeeping requirements concerning usage of finished products (§ 17.166(b)); he questioned the proposed new definition of "distilled spirits" in § 17.11, as being different from the definition of the same term in 27 CFR part 5; and he sought a "transition period" for the implementation of new language in § 17.161 (dealing with general requirements for records).

ATF has considered the compliance record of the nonbeverage manufacturing industry and has determined that the new records in § 17.166(b) concerning usage of nonbeverage products are needed to verify that such products were manufactured in the amount claimed. Although these records will be new to the regulations, ATF regards them as included in the more general

recordkeeping requirements of 26 U.S.C. 5132, as discussed in Industry Circular 79-5.

Under current regulations (§ 197.130), records of disposition are required, except for nonbeverage products disposed of other than by sale. This is a gap in the recordkeeping system that needs to be corrected. Since most nonbeverage products are disposed of by sale, the added burden is not expected to be very significant.

The most common disposition of nonbeverage products, other than by sale, is usage in other products. Theoretically, such usage could be verified by reference to the batch records for those other products. However, in some recent cases, when doubt arose as to whether the claimed amounts of products had been manufactured, inspectors found that verification by examination of other products' batch records was an unreasonably time-consuming task. A large plant may have thousands of formulas, and an inspector has no way of knowing which of them may call for use of the product being audited. Further, some manufacturers alleged that they used nonbeverage products for purposes such as cleaning equipment, without keeping records to verify this (because such records are not required by current regulations).

To facilitate verification of claims, it is necessary that required records reflect all possible uses. For this reason, the regulations proposed by this document include the new requirement to keep records of nonbeverage products disposed of other than by sale. The requirement is minimal: The manufacturer need only record the type of disposition, the date, and the quantity disposed of.

The revised definition of "distilled spirits" was also questioned by this commenter, due to its difference from the definition of that term in 27 CFR part 5. However, Part 5 is issued under the Federal Alcohol Administration Act, while the proposed regulations in part 17 will be issued under the Internal Revenue Code. Accordingly, it is appropriate that the definition of "distilled spirits" in § 17.11 be consistent with the definition of that term in the Internal Revenue Code (26 U.S.C. 5002(a)(8)). Other regulations under the Internal Revenue Code use similar or identical definitions of "distilled spirits." (See, for example, 27 CFR Part 19, Distilled Spirits Plants.)

Current regulations in § 197.5 define "distilled spirits" to include only such spirits as have been "fully taxpaid or tax determined at the distilled spirits rate." The revised definition in § 17.11 is the same as the current one except for removal of that qualifying phrase. When taxpaid or tax determined distilled spirits are specifically intended in part 17, the terms "taxpaid spirits" or "taxpaid distilled spirits" are used. (See also the new definition of "taxpaid" in § 17.11.)

Finally, with respect to the new language in § 17.161 that was questioned by this commenter, ATF sees no need for a transition period before its implementation, because the only substantive change brought about by the new language is liberalizing. That substantive change makes it clear that ordinary business records are adequate for regulatory purposes if they contain the required information. Other new language in § 17.161 does not impose a substantive requirement, but simply spells out the purposes of records ("to enable ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim").

3. A third commenter pointed out what appeared to him to be contradictions in the proposed regulations. However, the apparent contradictions were actually the result of misunderstanding. In one instance, the commenter confused the terms "eligible for drawback" and "subject to drawback." These terms are closely related but are by no means synonymous. The first refers to spirits that have not yet been used in nonbeverage products, while the second refers to spirits that have been so used. In order to prevent further confusion of this sort in the future, a definition of "subject to drawback" is added in § 17.11 of this proposed rule. (Notice No. 634 already contained a definition of "eligible for drawback.")

Another point of confusion concerned the difference between spirits contained in an intermediate product and spirits consumed in the manufacturer of such a product. Spirits contained in an intermediate product are eligible for drawback, and become subject to drawback when the intermediate product is used in the manufacture of a nonbeverage product. However, spirits consumed in the manufacture of an intermediate product (which are not contained in that product when completed) never become subject to drawback. Drawback cannot be claimed on such spirits, for two reasons—one legal and the other practical. The legal reason is that such spirits were never used in the manufacture of a nonbeverage product, as required by 26 U.S.C. 5134. The practical reason is that the latitude given to manufacturers with respect to intermediate products would make keeping records of such consumed spirits exceedingly difficult or impossible. (However, if a manufacturer chooses to give up some of that latitude, by treating the intermediate product as an unfinished nonbeverage product, then the consumed spirits may be included in a drawback claim; see the discussion later in this preamble concerning "Self manufactured ingredients optionally treated either as intermediate products or as unfinished nonbeverage products.")

4. A fourth commenter took issue with the standard used by ATF to determine whether to grant drawback of tax on spirits used in nonbeverage products. He questioned the standard that products produced with spirits must be "unfit for beverage use." The commenter asked that this standard be changed to "sale and use for [non]beverage purposes."

This commenter's requested change cannot be adopted in regulations, because the standard that must be met in order to receive drawback is expressly stated in the law. Drawback may be granted only for "distilled spirits on which the tax has been determined, [used] in the manufacture or production of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are *unfit for beverage purposes*" (emphasis added). See 26 U.S.C. 5131(a).

Differences From Notice No. 634

For the most part, the proposed regulations set forth in this document are identical with those that were published in Notice No. 634. However, there are some differences. Those differences are described and explained below.

1. Incorporation By Reference

Current regulations contain § 197.3, which incorporates several pharmaceutical publications by reference. (The publications are the National Formulary (N.F.), the United States Pharmacopoeia (U.S.P.), and the Homeopathic Pharmacopoeia of the United States (H.P.U.S.).) This incorporation was thought to be necessary because of the mention of those publications in §§ 197.5, 197.6 and 197.109. However, informal consultation with the Office of the Federal Register has led to the conclusion that the mention of those publications in this proposed rule (§ 17.132) is not of such a nature as to require a formal incorporation by reference. Although § 17.132 makes a "reference" to the N.F., U.S.P., and H.P.U.S., there is no "incorporation" of them into the regulations. There is merely an

authorization, for manufacturers who so choose, to utilize formulas from those publications as approved formulas without the necessity of submitting ATF Form 5530.5. Accordingly, § 17.3 as proposed in Notice No. 634 (which corresponded to current § 197.3) has been deleted.

2. Signature Authority

Proposed new § 17.6, generalized from the last sentences of current §§ 197.30 and 197.67(a), states the rule as to when evidence of signature authority is required.

3. Time for Payment of Special Tax

A sentence has been added to proposed § 17.24 in order to clarify when a payment of special tax is considered to be late. Under 26 U.S.C. 5131, special tax is a prerequisite for drawback eligibility. Therefore, no penalty will be imposed as long as special tax is paid before completion of final action on the claim.

4. Reincorporation

A new proposed § 17.77 has been added, stating that when an existing corporation or corporations are reorganized into a new corporation, a new special tax must be paid. This new section is similar to regulations for liquor dealers in § 194.163. Although § 17.77 states the general rule, there may be exceptions. For instance, ATF has ruled that a reorganization under 26 U.S.C. 368(a)(1)(F), consisting of a mere change in identity, a form, or place of organization of one corporation, however effected, does not require a new special tax. If there is any question as to whether a new special tax is required, the regional director (compliance) should be consulted.

5. Adoption of Predecessor's Formulas

The proposed method for adoption of a predecessor's formulas (for continued use at the same plant, when its ownership changes) has been slightly modified in § 17.125. As proposed in Notice No. 634, the adoption in such circumstances would have been accomplished by filing a notice of adoption listing only the serial numbers of the adopted formulas. (Current regulations in § 197.99 require the notice to list the serial numbers, names, and dates of approval.) Since the name of the formula is necessary for verification and to detect unauthorized alteration, this proposed rule would require the notice of adoption to list the adopted formulas by name and serial number. This would still be less burdensome than current regulations. Further, since copies of the articles of incorporation or other documents are necessary to prove the change of ownership, a sentence has been added to § 17.125(a) to mention this general requirement.

6. Adoption of Manufacturer's Own Formulas From Another Plant

Adoption of a company's own formulas for use at another of its plants (including adoption by a parent company of formulas of its wholly owned subsidiary, and vice versa) was proposed in Notice No. 634 and is also proposed in this notice. However, Notice No. 634 proposed that the procedure for this type of adoption be the submission of a copy of the adopted formula to the regional director (compliance) of the region(s) in which the additional plant(s) where the formulas would be used are located. Such a procedure would present problems, because that ATF official would not have access to the original formula for comparison, and the procedure also did not provide for submission of an additional copy for the ATF Laboratory. Therefore, this proposed rule provides that the adoption procedure, when a formula is adopted at a plant other than the one where it was originally approved, shall be the submission of a letterhead notice to the ATF Laboratory, accompanied by two photocopies of the formula to be adopted and some evidence of the relationship between the plants. After verifying the formulas, the ATF Laboratory will forward the notice to the regional director (compliance). As a precaution, the adopting plant is required to reference the notice in its first claim relating to the adopted formula(s). (See § 17.125(b).)

7. Liquor-Filled Candies

A paragraph has been added in proposed § 17.133, stating ATF's standing policy that candies with alcoholic fillings may be regarded as nonbeverage products only if the fillings meet the requirements for alcoholic sauces, as stated in § 17.133(a). Since some States may prohibit or restrict the manufacture or sale of liquor-filled candies, a sentence has been added in the introductory text of § 17.133, cautioning applicants that formula approval does not authorize violation of State law.

8. Supporting Data

Notice No. 634 proposed a simplification of the supporting data required to accompany claims. Information not necessary to the processing of drawback claims was proposed to be eliminated. For the most part, ATF still intends to implement this proposal. However, informal consultation with the Office of Management and Budget indicated that it would be better to prescribe an ATF form than to publish a recommended format for the required supporting data in regulations, as proposed in Notice No. 634. In accordance with the proposals in that notice, the new ATF form will simplify the distilled spirits account and eliminate detailed information on receipt of spirits, production and use of intermediate products, and use of finished products. The new form will be numbered "ATF F 5530.8" and titled "Supporting Data for Nonbeverage Drawback Claims."

As a result of comments from ATF personnel, the new ATF form will reflect the following changes from the supporting data format proposed in Notice No. 634:

(a) Information about the place of origin of Puerto Rican and Virgin Islands spirits and other imported rum will be required, because ATF needs this information in order to implement the Caribbean Basin Economic Recovery Act (Pub. L. 98–67, Title II).

(b) A separate reporting of spirits "on hand" and "in process" will be required (as under current regulations), because it would not be practicable to take inventory of spirits "in process."

(c) The alcohol content of finished products will be required (as under current regulations), in order to provide assurance against unauthorized formula changes, in view of the fact that usage of ineligible alcohol will not be shown (except for recovered alcohol). This change will also make the new form usable by persons claiming drawback on nonbeverage products brought into the U.S. from Puerto Rico and the Virgin Islands (under 27 CFR part 250).

(d) The kind of spirits used in each nonbeverage product will be required (as under current regulations), as a means of detecting the use of spirits that may be subject to a reduced effective tax rate, and verify formula compliance.

(e) Finally, since some manufacturers use spirits of more than one kind (e.g. alcohol and rum), they may prefer to submit separate accounts for each kind. The new AFT form will specifically permit that (but not require it).

Proposed regulations pertaining to the new form are in § 17.147. The form itself is printed for public comment at another place in this issue of the **Federal Register**, in a notice published by the Department of the Treasury entitled "Public Information Collection Requirements Submitted to OMB for Review."

Instructions to the new form will reflect the different requirements for domestic manufacturers and for claimants bringing nonbeverage products into the U.S. from Puerto Rico and the Virgin Islands under 27 CFR part 250. Another change relating to claimants under part 250 will require all of them to file claims with the Chief, Puerto Rico Operations, rather than with the regional director (compliance) of the region where the products are landed. This will centralize the operation and prevent inadvertent filing of duplicate claims. It is understood that all such claimants are, in fact, currently filing their claims with the Chief, Puerto Rico Operations. (See the proposed amendments to 27 CFR 250.173 and 250.309.)

9. Evidence of Effective Tax Rate

A proposed new provision in § 17.163 would require manufacturers purchasing distilled spirits from wholesale or retail liquor dealers to obtain evidence of the effective tax rate paid on spirits other than alcohol, grain spirits, neutral spirits, distilled gin, and straight whisky. (Notice No. 634 already proposed that evidence of effective tax rate be obtained by manufacturers purchasing distilled spirits from distilled spirits plants.) The added burden of the new requirement will be small, since the great preponderance of nonbeverage drawback is claimed on alcohol, grain spirits, or neutral spirits. The new requirement is necessary, because spirits to which the requirement applies may contain wine and/or flavoring material that brings the effective tax rate below the normal distilled spirits rate (currently $13.50 per proof gallon). If so, the manufacturer and ATF need to know it, since the drawback rate is $1 less than the effective tax rate. (See discussion below concerning Pub. L. 96–598). If the required evidence is not obtained, drawback will only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

10. Batch Records: Usage of Spirits

Notice No. 634 would have required that proof gallon of spirits used be recorded for each production batch of nonbeverage and intermediate product. This could be an unnecessary burden on a manufacturer who keeps records in pounds. Therefore, this proposed rule (§ 17.164) would require batch records to show only the quantity of spirits used, measured by either weight or volume. The proof or alcohol percentage by volume of the spirits must also be shown. A similar liberalization is proposed for records of recovered alcohol (see § 17.168).

11. Batch Records: Tests of Alcohol Content

Notice No. 634 proposed, in § 17.164(b), that the alcohol content be recorded for each batch of product produced. It was not clear whether this would have entailed an analytical test of alcohol content for each batch. Such a requirement would have been quite burdensome and generally unnecessary. Therefore, this proposed rule would only require the manufacturer to test the alcohol content of nonbeverage products "at representative intervals." This requirement is left deliberately vague, because the appropriate interval will vary to a great degree depending on the type of product and the frequency with which it is manufactured. The purpose of testing alcohol content is to verify the accuracy of the formula and monitor compliance with it. If a manufacturer feels unsure of how frequently alcohol content should be tested to accomplish this purpose for a particular product, advice may be requested from ATF. Whenever the manufacturer does make a test, the results must be recorded.

12. Batch Records: Ingredient Names

To enable an ATF officer to compare the ingredients used in a batch with the ingredients listed in the product's formula, this document proposes to require that batch records refer to ingredients by the same names as are used for them in the product's formula. Synonymous names may additionally be shown (§ 17.164(c)).

13. Discontinuance of Business

A proposed requirement has been added in § 17.187, that ATF be notified when a manufacturer permanently discontinues business. This will enable ATF to manage its files, and is reasonable in view of the conditional exemption from basic permit and special (occupational) tax requirements for the sale of alcohol remaining on hand.

14. Changes Made By Recent Treasury Decisions

Notice No. 634 reflected the changes made by T.D. ATF-251 (52 FR 19311), relating to the transfer of certain administrative functions from the Internal Revenue Service to the Bureau of Alcohol, Tobacco and Firearms. This proposed rule adds conforming changes to the following sections in 27 CFR part 70, which were added by that Treasury decision: §§ 70.321, 70.411, and 70.414. (The renumbering of these sections by T.D. ATF-301, 55 FR 47604, is also reflected.)

In addition, this document reflects the changes made by T.D. ATF-271, relating to the increase in the special tax rate. Sections affected by these changes are: §§ 17.21, 17.22, 17.24, 17.31, 17.32, and 17.41–17.43. Conforming changes are made in certain sections of 27 CFR part 250 that were amended or added by T.D. ATF–263, relating to drawback for nonbeverage products from Puerto Rico or the Virgin Islands. Sections affected by these conforming changes are: §§ 250.51, 250.171, 250.172, 250.307, and 250.308.

T.D. ATF–297 implemented section 6 of Public Law 96–598, effective January 1, 1980, which added 26 U.S.C. 5010. This section of law allows distilled spirits tax credit for certain wines and flavors contained in a distilled spirits product. Manufacturers of nonbeverage products may be affected by this credit, because drawback is allowed at $1 less than the rate at which tax was paid. The wine and flavors credit, by reducing the rate at which tax was paid, also reduces the rate at which drawback is allowed. The following sections in part 17 are affected by this change: §§ 17.11 (definition of "effective tax rate" and revised definition of "distilled spirits"), 17.141, 17.146(b), 17.147, 17.162–17.164, and 17.167.

In part 19, T.D. ATF–297 added § 19.780, which requires a record of shipment to accompany spirits shipped from a distilled spirits plant to a manufacturer of nonbeverage products. So that the manufacturer may use this record to meet the requirements of §§ 17.162 and 17.163, this document proposes to amend § 19.780 to require the record to specify the contents of each container in the shipment.

Other Changes from Previous Regulations

Many changes from current regulations, which were proposed in Notice No. 634, are also proposed in this final rule without substantial modification. Such proposed changes are described below:

1. Adoption of Rulings

The holdings of certain Revenue Rulings and ATF Rulings are reflected in the proposed regulations, as follows: Rev. Rul. 55–689, 1955–2 CB 729 (§ 17.187); Rev. Rul. 56–239, 1956–1 CB 715 (§ 17.135); Rev. Rul. 56–314, 1956–2 CB 1023 (§ 17.137); Rev. Rul. 56–335, 1956–2 CB 1024 (§ 17.181); Rev. Rul. 56–336, 1956–2 CB 1023 (§ 17.182); Rev. Rul. 56–367, 1956–2 CB 1026 (§ 17.135(b)(2)); Rev. Rul. 56–394, 1956–2 CB 1021 (§ 17.152(c)); Rev. Rul. 56–395, 1956–2 CB 1025 (§ 17.186); Rev. Rul. 58–350, 1958–2 CB 974 (§ 17.136); Rev. Rul. 63–87, 1963–1 CB 384 (§§ 17.11: definition of "food

products," and 17.133(d)); Rev. Rul. 69–138, 1969–1 CB 327 (§§ 17.126(b) and 17.152(a), (c), and (d)); ATF Rul. 73–1, 1973 ATF CB 85 (§ 17.133(b)); ATF Rul. 74–2, 1974 ATF CB 27 (§ 17.76); ATF Rul. 76–17, 1976 ATF CB 85 (§§ 17.151 and 17.152(b)); ATF Rul. 76–19, 1976 ATF CB 86 (§§ 17.169 and 17.185); ATF Rul. 77–27, 1977 ATF CB 165 (§ 17.122); and ATF Rul. 82–7, 1982–2 QB 46 (§ 17.11: definition of "medicines").

Rev. Rul 57–369, 1957–2 CB 948, will be adopted in the instructions to the revised ATF Form 5530.5 (formerly Form 1678; see discussion below). Rev. Rul. 58–317, 1958–1 CB 586, is not reflected in the regulations; it is obsolete since iso-alcoholic elixir has been removed from the National Formulary. Rev. Rul. 58–428, 1958–2 CB 975, is also not reflected in the regulations, because the repeal of 26 U.S.C. 5082 has removed its authority. The holding of ATF Rul. 81–8, 1981–4 QB 24, has been modified in § 17.183 (see discussion below). Revenue Procedure 64–32 (1964–2 CB 951) will be replaced by the new supporting data form (ATF Form 5530.8), per § 17.147.

2. Form Number Changes

The prescribed form entitled "Formula and Process for Nonbeverage Products" is being revised and renumbered from 1678 to 5530.5. This will not require resubmission of any formulas previously approved on Form 1678. Similarly, the form number of the "Bond for Drawback Under 26 U.S.C. 5131" is being changed from 1730 to 5530.3, but this will not require resubmission of any bonds previously approved.

3. Alternate Methods or Procedures

A new section (§ 17.3) has been added to provide for the employment of alternate methods or procedures, if approved by the Director pursuant to a showing of good cause.

4. Delegations of Authority

Authority to perform certain functions under part 17 may be delegated from time to time by the Director, through delegation orders, to subordinate officials. This possibility is reflected in the definition of "Director" in § 17.11 by addition of the words "or his or her delegate." For reasons of efficiency the ATF Alcohol and Tobacco Laboratory is specified as the recipient of certain documents, such as formulas, in §§ 17.121, 17.122, 17.126, 17.131, 17.132, and 17.136. Accordingly, a new definition of "Alcohol and Tobacco Laboratory," giving its address, is provided in § 17.11. The existing delegation, to the regional director (compliance), of authority to approve or disapprove claims is also codified in the proposed regulations (§ 17.142).

5. New Definitions

For clarity, some new definitions are added in § 17.11. Besides those mentioned elsewhere in this preamble, there are new definitions of "approved," "CFR," "eligible," "month," "person," "proof gallon," "quarter," "recovered spirits," and "this chapter." With respect to the definitions of "month" and "quarter," claimants desiring to use slightly different time periods would be allowed to apply under § 17.3. (Existing approvals would remain in effect.) Certain definitions in previous regulations have been deleted as unnecessary, and the definitions of "used" and "time distilled spirits are used" are in regulations §§ 18.151 and 17.152.

6. Retention of Special Tax Stamps

Current regulations in § 197.47a do not specify a time period for retention of special tax stamps. These proposed regulations (§ 17.55) make the retention period the same as for other required records and documents (generally 3 years). The retention period for the list of multiple business locations, which is 2 years under the current regulations in § 197.28, is proposed to be made the same as for other documents (§ 17.31).

7. Amount of Bond for Monthly Claims

Current § 197.107 was issued in 1955, when ATF practice was to conduct frequent inspections of drawback claimants. The bond requirement was worded in such a way that if a monthly claimant were inspected more frequently than quarterly, the bond needed only to be sufficient to cover the drawback claimed between inspections. At present, on-site inspections are conducted much less frequently. No claimant is regularly inspected as frequently as quarterly. Therefore, the concept that the amount charged against a bond might be reduced within a quarter, due to frequent inspections, has become obsolete. These proposed regulations reflect this in § 17.102. Bonds for monthly claims must be sufficient to cover the total amount of drawback that will be claimed during any quarter. It is not anticipated that this change will affect the required bond coverage of any current monthly claimant.

8. Time for Filing Formulas

Language currently in § 197.95, respecting time for filing formulas, is proposed to be revised in § 17.121 to express more clearly the statutory requirement of 26 U.S.C. 5131–5134. Both formula and claim are required to be filed within the statutory period of "6 months next succeeding the quarter in which the distilled spirits covered by the claim were used" (26 U.S.C. 5134(b)). However, if there is any doubt about the eligibility of a product for drawback, it is preferable that the formula be filed and approved before commencement of manufacture.

9. Formulas For Use at Multiple Plants

As proposed in Notice No. 634, the revised formula form (ATF F 5530.5) will permit a manufacturer to file a single formula for use at more than one plant, if the plants at which the formula is to be used are listed on the form. See § 17.121(a). The proposed revisions to the form are pictured at another place in this issue of the **Federal Register**, in a notice published by the Department of the Treasury entitled "Public Information Collection Requirements Submitted to OMB for Review."

10. Formulas for Intermediate Products

Current regulations do not explicitly require the submission of intermediate product formulas, though generally they have been submitted anyway. Since ATF needs to know all ingredients that will enter into the finished nonbeverage product, these proposed regulations (§ 17.126) require the submission of formulas on ATF Form 5530.5 (formerly 1678) for intermediate products, unless the formula for an intermediate product is written as part of the approved formula for the nonbeverage product(s) in which the intermediate product will be used.

11. Self-Manufactured Ingredients Optionally Treated Either as Intermediate Products or as Unfinished Nonbeverage Products

An intermediate product may freely be used in any nonbeverage product whose formula calls for its use, and may be accumulated and kept "on hand" indefinitely. Consequently, it is common for several batches of an intermediate product to be combined in one storage receptacle, and for less (or more) than a full batch of such a product to be used to produce a batch of a finished nonbeverage product. These common practices are for the convenience of manufacturers. However, as a result of these practices, if spirits are consumed or recovered in the manufacture of the intermediate product, it would be difficult or impossible to calculate the correct proportion of such spirits attributable to a given batch of finished nonbeverage product. For this reason, the current regulations (§§ 197.118 and 197.119) generally do not permit

drawback to be claimed on spirits consumed or recovered in the manufacture of intermediate products. (In the case of such recovered spirits, drawback may be claimed, but only if and when the spirits are subsequently reused in the manufacture of a nonbeverage product.) These restrictions are necessary for protection of the revenue, and in most cases they present no difficulty to manufacturers.

However, in some instances, the manufacture of an intermediate product requires consumption of significant quantities of spirits that are not ultimately contained in that intermediate product, and the inability to claim drawback on such spirits has posed a hardship to the manufacturers. Therefore, such manufacturers have been permitted to resubmit their formulas to show production of the intermediate product as an integral part of the formula for the related nonbeverage product. If this is done, the former "intermediate product" is henceforth regarded as an unfinished nonbeverage product; consequently, spirits necessarily consumed (or recovered) in its manufacture are regarded as consumed (or recovered) in the manufacture of a nonbeverage product and are subject to drawback.

This procedure avoids the hardship to manufacturers previously described. It also protects the Federal revenue, because, under the procedure, each batch of the unfinished product is restricted to use in a specific batch of a predetermined nonbeverage product and must be so used within the time period specified in the approved nonbeverage formula.

In order to make the availability of this procedure known to manufacturers who necessarily consume (or who recover) spirits in the manufacture of intermediate products, the procedure is described in §§ 17.127 and 17.185 of these proposed regulations. The regulations offer manufacturers the option of designating their self-manufactured alcoholic ingredients as either "intermediate products" or "unfinished nonbeverage products." There are advantages and disadvantages that would go with either choice.

The advantage of designating an ingredient as an "unfinished nonbeverage product" is that spirits recovered or consumed in the manufacture of the ingredient are subject to drawback in the same way as other spirits recovered or consumed in the manufacture of nonbeverage products. The disadvantages of this designation are:

(1) Each batch of the ingredient must be used within a limited time in a specific batch of a predetermined nonbeverage product. (The production of the ingredient and of the finished nonbeverage product are recorded in a single, unified batch record.)

(2) The ingredient cannot be transferred as an intermediate product under proposed § 17.185(b). (This latter restriction is due to the necessity of a single, unified batch record, which must be maintained at the place of production.)

Conversely, the advantages of designating an ingredient as an "intermediate product" are:

(1) Several batches may be accumulated, stored indefinitely, and used indiscriminately in the manufacture of any nonbeverage product whose formula calls for their use.

(2) Ingredients designated as "intermediate products" may be transferred to another branch or plant of the same manufacturer under §§ 17.169 and 17.185.

(3) For manufacturers who already have intermediate product formulas on file, another advantage of choosing the "intermediate product" designation is that no new formula or procedural changes would be required.

The disadvantage of that designation is that spirits consumed or recovered in production of the intermediate product may not be claimed for drawback.

12. Subpart U of 27 CFR Part 170

Subpart U of part 170 provides exemptions from special tax and qualification requirements for manufacturers and sellers of certain products that are unfit for beverage use. Subpart U predates nonbeverage drawback and was promulgated when the requirements relating to processing of distilled spirits were quite different from what they are today. Consequently, subpart U of part 170 has been thoroughly redrafted. Some material is proposed to be eliminated, either as unnecessary or as covered by other regulations. Material related exclusively to drawback manufacturers has been incorporated in the new part 17. The remaining material has been relocated into subpart D of part 19. Conforming amendments have been made in subpart C of part 194. Former § 170.613(a)(6) ("Salted wines") has already been incorporated into 27 CFR part 24 by T.D. ATF–299 (55 FR 24974). Sections in part 17 containing language from subpart U of part 170 are: §§ 17.132, 17.133, and 17.168.

13. Submission of Quantitative Formulas

The purpose of this proposed change is to strengthen requirements respecting submission of formulas for nonbeverage drawback products. Current regulations allow the use of formulas prescribed by the United States Pharmacopeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) without the prior filing and approval of quantitative formulas. This procedure has been allowed because of the descriptive nature of these formulas and their consistency over the years. At present, however, the N.F. and U.S.P. are deleting their requirements for specific quantities of ingredients in some of their formulas, except for the active ingredients. Such non-descriptive formulas are not adequate for regulatory purposes, since alcohol is usually a vehicle rather than an active ingredient and is therefore not stated as a specific quantity within such formulas. Drawback of distilled spirits tax under 26 U.S.C. 5134 is claimed and allowed on exact amounts of alcohol used in the manufacture of nonbeverage products according to the quantity specified in the approved formula.

Therefore, the proposed regulations are worded so that ATF may require submission of quantitative formulas on ATF Form 5530.5 (formerly 1678), Formula and Process for Nonbeverage Products, for preparations which appear in the N.F., U.S.P., or H.P.U.S. whenever it is determined that such submission is necessary to maintain control over alcohol used and to insure that the products meet the statutory requirements for drawback eligibility. It is expected that the list of preparations for which approval of quantitative formulas will be required under this proposal (if it is adopted) will be published as an ATF ruling in the ATF Bulletin. The section affected by this change is § 17.132. Current requirements are found or referred to in §§ 197.5 (definition of "time distilled spirits are used"), 197.95, 197.96, 197.109(d), and 197.115.

14. U.S.P., N.F., and H.P.U.S. Preparations; Drawback Approval

Current regulations do not state that preparations listed in the U.S.P., N.F., and H.P.U.S. are automatically approved for drawback, though some industry members have assumed so due to the exemption of such products from the formula filing requirement in § 197.96. To clarify this issue so that manufacturers may properly plan, these

proposed regulations state that formulas listed in the U.S.P., N.F. and H.P.U.S. are approved for drawback, except as otherwise provided by regulation or ATF ruling. However, alcohol, U.S.P. (including dehydrated alcohol and dehydrated alcohol injection); alcohol and dextrose injection, U.S.P.; tincture of ginger, H.P.U.S.; and all H.P.U.S. preparations made at dilutions higher than "4X" (one part in 10,000) are declared fit for beverage use. (See § 17.132.)

15. H.P.U.S. Preparations

Current regulations exempt preparations listed in the Homeopathic Pharmacopoeia of the United States (H.P.U.S.) from the requirement for filing of formulas (§ 197.96), but this exemption does not entail automatic approval for drawback. The statutory standard of "unfit for beverage purposes" remains and must be enforced (26 U.S.C. 5131(a)). Manufacturers of H.P.U.S. products, in accordance with homeopathic practice, often dilute the active ingredients in large quantities of alcohol and water, so that the resulting product is fit for beverage purposes. Such products cannot be approved for drawback. The ATF Laboratory has determined that even for H.P.U.S. products containing certain poisonous materials, dilutions of greater than "4x" (i.e. one part in 10,000) would be fit for beverage use. Therefore, it has been ATF's position to deny drawback for H.P.U.S. products diluted to greater than "4x." These proposed regulations reflect this position in § 17.132(b). At the same time, the proposed regulations would also permit manufacturers of dilute H.P.U.S. products to contest the presumption of beverage fitness by submitting appropriate evidence that the product is unfit for beverage use.

16. Determination of Beverage Unfitness

Proposed new § 17.134 clarifies the procedure used by ATF to determine whether any product, for which a formula is submitted for approval, is fit or unfit for beverage use. It is hoped that manufacturers will utilize this procedure themselves to identify products that are clearly fit for beverage use. The last sentence of § 17.134 (adapted from current §§ 170.615 and 170.618) makes it clear that drawback approval may be revoked if a product is found being used or sold for beverage purposes.

17. Manufacturers Who Are Also Users of Denatured Alcohol

Pursuant to § 5214(a)(1) of the Internal Revenue Code of 1986, no tax is paid on denatured spirits. Therefore, it would be conducive to fraud on the revenue for a single manufacturer to produce the same product out of both specially denatured alcohol and taxpaid alcohol on which drawback may be claimed. Proposed new § 17.135(a) prohibits this practice.

18. Compliance With Food and Drug Administration Requirements

Proposed new § 17.136 specifies that products shall not be considered to be medicines, medicinal preparations, food products, flavors, or flavoring extracts if they would violate the bans or restrictions of the U.S. Food and Drug Administration applicable to such products. This reflects a longstanding ATF policy. See Rev. Rul. 58–350, 1958–2 C.B. 974, and the following Industry Circulars: 61–2, 62–33, 65–4, 70–12, 72–8, 72–28, 72–29, 73–6, and 76–17. ATF will not consider a product approved for drawback if FDA has banned the product or any of its ingredients. Authority for this regulation comes from 26 U.S.C. 5131, which limits drawback to products which are medicines, medicinal preparations, food products, flavors, or flavoring extracts, and from 26 U.S.C. 5132, which authorizes ATF to prescribe reasonable regulations for the enforcement of that limitation.

19. Claims for Credit by Manufacturers of Nonbeverage Products

There are some business entities that are both manufacturers of nonbeverage products and proprietors of distilled spirits plants. For such entities, it may be more convenient to claim nonbeverage drawback in the form of a credit which may be used to offset distilled spirits taxes owed by the distilled spirits plant. Therefore, proposed § 17.142(b) would permit such a procedure.

20. Gains in Spirits Received or On Hand

If a manufacturer's gauge of spirits received in a tank car or tank truck differs from the taxpayment gauge by more than 0.2%, the receiving gauge must be recorded in the manufacturer's records as the quantity received (current regulations § 197.130a(a); proposed regulations § 17.162(d)). This rule is based on the assumption that if the discrepancy is that great, the receiving gauge is more likely to be accurate. However, the current regulations do not explicitly require that if the amount of spirits received exceeds the amount taxpaid, the difference must be deducted from the manufacturer's claim. Nevertheless, such deduction has been required by ATF inspectors, who have similarly required deduction for any gain disclosed by physical inventory of distilled spirits. Deduction is appropriate in these circumstances, since a gain indicates either receipt of ineligible (nontaxpaid) spirits or an excessive claim in a previous period. Therefore, the proposed regulations state that manufacturers shall deduct, from the drawback claimed for the applicable period; an amount reflecting any inventory gain of eligible spirits and any excess of spirits received over the amount that was taxpaid. (See §§ 17.147(d), 17.162(d), and 17.167(a).)

21. Public Law 98–369

This document reflects certain changes made by Public Law 98–369 (Deficit Reduction Act of 1984). Those changes are: (1) Addition of 26 U.S.C. 5206(d) (relating to obliteration of marks) and (2) imposition of a $1,000 penalty for nonfraudulent violations of drawback law and regulations, unless the manufacturer establishes reasonable cause for a violation. Sections affected are: §§ 17.148 and 17.184.

With respect to the $1,000 penalty, the statute requires that the penalty be imposed "for each failure to comply" with law or regulations. For products listed on a claim, this means that a separate penalty could be imposed for each product with respect to which there was noncompliance. For example, if products were not manufactured according to formula, but were still unfit for beverage use, a $1,000 penalty could be imposed for each nonconforming product. If the amount claimed on any such product is less than $1,000, the penalty is limited to the amount claimed.

Recordkeeping violations can also result in imposition of a penalty for each separate product. However, if the violations are so serious that they prevent the manufacturer from establishing that a product was unfit for beverage use, or the quantity of the product that was made, then the penalty provision would not apply. Each claim must be handled on its own merits, and the burden of proving entitlement to drawback is always on the manufacturer. If this burden is not met with respect to any product, the claim for drawback relating to that product would be denied.

The preceding comments also apply to products manufactured without submission of a formula. If the manufacturer can sustain the burden of proof, the claim would be approved subject to the penalty. However, without a formula, it is unlikely that the burden could be sustained, other than by examination of batch records. ATF is not obliged to send an inspector to examine batch records when a manufacturer refuses to comply with the requirement to submit a formula.

With respect to timely filing, a late-filed claim or formula counts as just one "failure to comply." So if the only noncompliance is lateness in filing a claim, the maximum penalty would be $1,000. Late-filed formulas result in a separate penalty for each late formula. Special tax paid subsequent to final action on a claim also results in a $1,000 penalty. (It should be noted that in no case will a claim be paid more than 6 years after the quarter in which the products were manufactured, due to the statute of limitations of 28 U.S.C. 2401.)

Finally, the penalty provision does not apply in the case of fraud. Fraud is considered to be a deliberate violation with intent to deceive. If there is fraud, the entire claim may be denied, and the manufacturer may be subject to other civil and criminal penalties as well.

22. Changes in Recordkeeping Requirements

Certain items that are proposed to be deleted from the supporting data have been incorporated into the records required by subpart H to be maintained at each nonbeverage premises. Certain currently required records which are duplicative of the information provided by the supporting data have been deleted from the proposed subpart H. The holding of Industry Circular 79–5 with respect to records of raw materials and finished products has been clarified and incorporated in the proposed regulations (see §§ 17.164 and 17.165). Recordkeeping requirements for recovered alcohol, currently in § 170.617(c), are incorporated in new § 17.168. New language is added in § 17.161 to emphasize the important point that a manufacturer's normal business records (including invoices and cost accounting records) are acceptable for ATF purposes if they contain the required information. ATF anticipates that, in most situations, no records besides these normal business records need be maintained for purposes of compliance with the proposed regulations.

23. Physical Inventories

Current regulations do not clearly specify the frequency of physical inventories, although arguably §§ 197.116–119 require such inventories every claim period for distilled spirits, recovered spirits, and intermediate products. These proposed regulations specify that the "on hand" figures in the supporting data must be verified by physical inventories at the end of each period for which a claim is filed. The proposed regulations would also authorize the regional director (compliance) to require physical inventories of nonbeverage products and raw ingredients whenever such inventories are deemed necessary to ensure compliance with regulations. (See § 17.167.)

24. Records Retention

Proposed § 17.170 (corresponding to current § 197.133) would extend the records retention period from 2 years to 3 years, for consistency with other ATF regulations. This change will ensure the availability of records to support any action that may be taken within the period of the statute of limitations prescribed by 26 U.S.C. 6531. This section of law prescribes a 3-year statute of limitations for most offenses; but for certain offenses involving fraud or willful violation, the statute of limitations is 6 years. Therefore, as in other ATF regulations, the proposed regulations contain a provision that would permit the regional director (compliance) to require a manufacturer to retain his records for a longer period, not to exceed an additional 3 years.

25. Inspection of Records

In addition to the records specifically required by regulations, ATF officers are authorized under 26 U.S.C. 5133 (as delegates of the Secretary) to inspect any records "bearing upon the matters required to be alleged" in drawback claims. This authority is reiterated in the proposed regulations in § 17.171.

In carrying out this authority, ATF will continue to protect proprietary information. For example, the production records in proposed § 17.164 do not require greater detail as to ingredients than is shown on ATF Form 5530.5. If some secret ingredients of a product are referred to in general terms, such as "essential oils," on Form 5530.5, then the required production record for that product would only need to show the quantity of "essential oils" used in the production of each batch. The production record would not have to specify the secret ingredients. If unusual circumstances should require an ATF officer to examine other records, such as master formulas that do specify the secret ingredients, § 17.171 does not provide authority for copies of such formulas to be made without the consent of the proprietor. (However, such copies could be required by the Director or a regional director (compliance) under § 17.123.)

The law, in 18 U.S.C. 1905 and 26 U.S.C. 7213, imposes criminal penalties on any ATF officer who makes unauthorized disclosure of confidential business information obtained in the course of his or her employment. Further restrictions on disclosure are found in 26 U.S.C. 6103, which generally prohibits unauthorized disclosure of returns and return information. "Returns" and "return information" in that section includes drawback claims and the records and reports which support them.

26. Disposition of Material From Which Alcohol Can Be Recovered

ATF Ruling 81–8 provided a liberalized procedure for the disposition of spent vanilla beans, under which they may be treated with any material that the manufacturer finds suitable to make recovery of potable alcohol impractical. The manufacturer is not required to obtain prior approval from ATF. In broadening this rule by these proposed regulations, to make it applicable to the disposition of any material from which alcohol can be recovered. ATF has concluded that prior approval should be obtained for the use of materials not previously approved.

Consequently, proposed § 17.183 lists materials that have already been authorized to be added to spent vanilla beans. No further authorization is needed for the use of these materials, when disposing of spent vanilla beans. However, approval of a written application is required (1) if other materials are proposed to be added to such beans, or (2) if other substances from which alcohol can be recovered are proposed to be disposed of. Manufacturers who may have received approval for the use of other methods of disposal not listed in § 17.183 may continue to operate under such approval.

DISTRIBUTION TABLE FOR PART 197

Former section	New section
Subpart A	
§ 197.1	§ 17.1
§ 197.2	§ 17.2
§ 197.3	Deleted.
Subpart B	
§ 197.5: (generally)	§ 17.11
§ 197.5: "Director of the Service Center".	Deleted.
"District Director"	Deleted.
"Time distilled spirits used".	§ 17.152(a)
Total annual use"	Deleted.
"Used"	§ 17.151
"Year"	Deleted.
Subpart C	
§ 197.25	§ 17.21 & § 17.22
§ 197.25a	§ 17.22
§ 197.26	§ 17.23
§ 197.27	§ 17.24
§ 197.28	§ 17.31

DISTRIBUTION TABLE FOR PART 197—Continued

Former section	New section
§ 197.29	§ 17.32
§ 197.29a(a)	§ 17.41
§ 197.29a(b)	§ 17.42
§ 197.29a(c)	§ 17.43
§ 197.30 (except last sentence).	§ 17.33
§ 197.30 (last sentence)	Covered by § 17.6.
§ 197.31	§ 17.34
Subpart D	
§ 197.40	§ 17.51
§ 197.40a	§ 17.52
§ 197.41	§ 17.54
§ 197.42	§ 17.53
§ 197.43	§ 17.61
§ 197.46	§ 17.62
§ 197.47	§ 17.63
§ 197.47a	§ 17.55
§ 197.48	§ 17.71
§ 197.49	§ 17.72
§ 197.50	§ 17.73
§ 197.51	§ 17.74
§ 197.52	§ 17.81
§ 197.53	§ 17.82
§ 197.54	§ 17.83
§ 197.57	§ 17.91
§ 197.58	§ 17.92
§ 197.59	§ 17.93
Subpart E	
§ 197.65	§ 17.101 (up to last sentence).
§ 197.66	§ 17.103
§ 197.67	§§ 17.105, 17.8
§ 197.68	§ 17.104
§ 197.69	§ 17.106
§ 197.70	§ 17.144 (2nd sentence).
§ 197.71	§ 17.101 (last sentence).
§ 197.72	§ 17.107
§ 197.73	§ 17.106
§ 197.75	§ 17.111
§ 197.76	§ 17.112
§ 197.77 (except last sentence).	§ 17.113
§ 197.77 (last sentence)	Covered by § 17.108 (last sentence).
§ 197.79	Covered by § 17.111.
§ 197.80	§ 17.114
Subpart F	
§ 197.95 (sentences 1–2, 6, 8–9).	§ 17.121
§ 197.95 (sentences 3 & 4).	§ 17.131
§ 197.95 (5th sentence)	§ 17.137
§ 197.95 (7th sentence)	§ 17.122
§ 197.95 (last sentence)	Will be covered by revised ATF Form 5530.5.
§ 197.96	§ 17.132(a)
§ 197.97	§ 17.123
§ 197.98	§ 17.124
§ 197.99	§ 17.125(a)
Subpart G	
§ 197.105	§ 17.141
§ 197.106 (up to proviso)	§ 17.142(a)
§ 197.106 (proviso, except next-to-last sentence).	§ 17.143
§ 197.106 (next-to-last sentence).	§ 17.146(b)

DISTRIBUTION TABLE FOR PART 197—Continued

Former section	New section
§ 197.107 (except first & last sentences).	§ 17.102
§ 197.107 (first & last sentences).	§ 17.144 (first & last sentences).
§ 197.108	§ 17.145
§ 197.109	§ 17.146(a)
§ 197.110	§ 17.147
§ 197.111	New supporting data form.
§ 197.111–113	§ 17.162(a)
§ 197.114	§ 17.162(b)
§ 197.115	§ 17.147 & new supporing data form.
§ 197.116 (except last sentence).	New supporting data form.
§ 197.116 (last sentence); also § 197.117 (2nd sentence), § 197.118 (2nd sentence), & § 197.119 (2nd sentence).	§ 17.176(a)
§ 197.117 (first sentence)	New supporting data form.
§ 197.117 (3rd & 4th sentences).	§ 17.153(b)
§ 197.117 (last sentence)	§ 17.153(c)
§ 197.118 (first sentence)	New supporting data form.
§ 197.118 (last sentence)	§ 17.153(a)
§ 197.119 (first sentence)	Deleted; covered by new supporting data form and § 17.164(b).
§ 197.119 (last sentence)	§ 17.155
Subpart H	
§ 197.130 (introduction)	§ 17.161 (first sentence).
§ 197.130(a)–(d)	Covered by § 17.162(a)–(c).
§ 197.130(e)–(g)	§ 17.164(b)
§ 197.130(h)–(j)	§ 17.166(a)
§ 197.130a(a)	§ 17.162(d)
§ 197.130a(b)	§ 17.164(d)
§ 197.130b	§ 17.163(a) & (c)
§ 197.131	§ 17.166(c)
§ 197.132 (except last clause).	§ 17.161 (from 2nd sentence to end).
§ 197.132 (last clause)	Covered by § 17.171.
§ 197.133 (except last sentence).	§ 17.170
§ 197.133 (last sentence)	§ 17.171

DERIVATION TABLE FOR PART 17

New section	Source
Subpart A	
§ 17.1	§ 197.1.
§ 17.2	§ 197.2.
§ 17.3	New.
§ 17.4	New.
§ 17.5	New.
§ 17.6	New (cf. last sentences of §§ 197.30 and 197.67(a)).
Subpart B	
§ 17.11: (generally)	§ 197.5.
"Alcohol & Tobacco Laboratory".	New.
"Approved"	New.
"CFR"	New.
"Effective tax rate"	New.
"Eligible"	New.
"Food products"	Rev. Rul. 63–87.
"Medicines"	ATF Rul. 82–7.
"Month"	New.
"Proof gallon"	New.
"Quarter"	New.
"Subject to drawback"	New.
"Taxpaid"	New.
Subpart C	
§ 17.21	§ 197.25.
§ 17.22	§ 197.25a.
§ 17.23	§ 197.26.
§ 17.24	§ 197.27.
§ 17.31	§ 197.28.
§ 17.32	§ 197.29.
§ 17.33	§ 197.30.
§ 17.34	§ 197.31.
§ 17.41	§ 197.29a(a).
§ 17.42	§ 197.29a(b).
§ 17.43	§ 197.29a(c).
Subpart D	
§ 17.51	§ 197.40.
§ 17.52	§ 197.40a.
§ 17.53	§ 197.42.
§ 17.54	§ 197.41.
§ 17.55	§ 197.47a.
§ 17.61	§ 197.43.
§ 17.62	§ 197.46.
§ 17.63	§ 197.47.
§ 17.71	§ 197.48.
§ 17.72	§ 197.49.
§ 17.73	§ 197.50.
§ 17.74	§ 197.51.
§ 17.75	New.
§ 17.76	ATF Rul. 74–2.
§ 17.77	New.
§ 17.81	§ 197.52.
§ 17.82	§ 197.53.
§ 17.83	§ 197.54.
§ 17.91	§ 197.57.
§ 17.92	§ 197.58.
§ 17.93	§ 197.59.
Subpart E	
§ 17.101	§§ 197.65 & 197.71.
§ 17.102	§ 197.107 (except first & last sentences).
§ 17.103	§ 197.66.
§ 17.104	§ 197.68.
§ 17.105	§ 197.67.
§ 17.106	§ 197.69.
§ 17.107	§ 197.72.
§ 17.108	§ 197.73.
§ 17.111	§§ 197.75 & 197.79.
§ 17.112	§ 197.78.
§ 17.113	§ 197.77.
§ 17.114	§ 197.80.
Subpart F	
§ 17.121	§ 197.95 (sentences 1–2, 6, 8–9).
§ 17.122	§ 197.95 (7th sentence) & ATF Rul. 77–27.
§ 17.123	§ 197 97.
§ 17.124	§ 197.98.
§ 17.125(a)	§ 197.99.
§ 17.125(b)	New.
§ 17.126(a)	New.
§ 17.126(b)	Rev. Rul. 69–138.
§ 17.127	New.
§ 17.131	§ 197.95 (3rd & 4th sentences).

DERIVATION TABLE FOR PART 17—Continued

New section	Source
§ 17.132(a)	§ 197.96.
§ 17.132(b)	§ 170.616.
§ 17.133	§ 170.613(a)(7)–(9), Rev Rul. 63–87 & ATF Rul. 73–1.
§ 17.134	New.
§ 17.135	Rev. Ruls. 56–239 & 56–367.
§ 17.136	Rev. Rul. 58–350.
§ 17.137	§ 197.95 (5th sentence) & Rev Rul. 56–314.
Subpart G	
§ 17.141	§ 197.105.
§ 17.142(a)	§ 197 106 (up to proviso) & ATF Order 1100.95A.
§ 17 142(b)	New.
§ 17.143	§ 197.106 (proviso, except next-to-last sentence.
§ 17.144	§§ 197.70 & 197.107 (first & last sentence).
§ 17 145	§ 197.108.
§ 17.146	§§ 197.106 (next-to-last sentence) § 197.109.
§ 17.147(a)	§ 197.110
§ 17.147(b)	§ 197.115 (last sentence).
§ 17.147 (c) & (d)	New.
§ 17.148	New.
§ 17.151	§ 197.11 ("Used").
§ 17.152(a)	§ 197.11 ("Time distilled spirits are used").
§ 17.152(b)	ATF Rul. 76–17.
§ 17.152(c)	Rev. Ruls. 56–394 & 69–136.
§ 17 152(d)	Rev. Rul. 69–138.
§ 17.153	§§ 197.117 (last three sentences) & 197.118 (last sentence).
§ 17.154	§ 197 11 ("Intermediate products").
§ 17.155	§ 197.119 (last sentence).
Subpart H	
§ 17.161	§§ 197.130 (introduction) & § 197.132 (except last clause).
§ 17.162(a)	§§ 197.112–113 & 197.130(a)–(d).
§ 17.162(b)	§§ 197.114 & 197.130(a)–(d).
§ 17.162(c)	New.
§ 17.182(d)	§ 197.130a(a).
§ 17.163 (a) & (c)	§ 197.130b.
§ 17.163(b)	New.
§ 17.164	§§ 197.130(e)–(g) & 197.130a(b).
§ 17.165	Industry Circular 79–5.
§ 17.166(a)	§ 197.130(h)–(j)
§ 17.166(b)	New.
§ 17.166(c)	§ 197.131.
§ 17.167(a)	§§ 197.116–119.
§ 17.167(b)	Industry Circular 79–5.
§ 17.168	§ 170.617(c).
§ 17.169	New.
§ 17.170	§ 197.133 (except last sentence).
§ 17.171	§ 197.132 (last two clauses), § 197 133 (last sentence) & Industry Circular 79–5.
Subpart I	
§ 17 181	Rev. Rul. 56–395.
§ 17.182	Rev. Rul. 56–396.
§ 17.183	ATF Rul. 81–8 (modified).
§ 17.184	New.
§ 17.185 (a) & (c)	New.
§ 17.185(b)	ATF Rul. 76–19.
§ 17.186	Rev Rul. 56–395.
§ 17.187	Rev Rul. 55–689.

Opportunity for Public Comment

Interested persons who wish to participate in the rulemaking process are invited to address written comments or suggestions to the Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, within 30 days after the date of publication of this notice in the **Federal Register**. Comments are particularly sought concerning records or other proposed requirements that go beyond what would normally be kept in the course of good business practice (except if such additional requirements are necessary for revenue protection).

For example, some information may be required by these regulations, or by forms prescribed under them, to be stated in proof gallons or other units of volume. These requirements are based on the law (26 U.S.C. 5001), which imposes distilled spirits tax on the basis of volumetric units in the English system. Manufacturers who keep records in pounds or other units may be able to apply for use of an alternate procedure under proposed § 17.3. ATF would appreciate any comments from such manufacturers regarding ways that these regulations could be made less burdensome for them.

Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material or comments as confidential. Comments may be disclosed to the public. Any material that the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his/her request, in writing, within the 30-day period. The request should include reasons why the commenter feels that a public hearing is necessary. However, the Bureau reserves the right to determine, in the light of all the circumstances, whether a public hearing should be held. Copies of the proposed changes and all public comments received are available for public inspection from 8:30 a.m. to 5 p.m. in Room 6300, 650 Massachusetts Avenue NW., Washington, DC.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this proposal is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control numbers 1512–0078, 1512–0079, 1512–0095, 1512–0141, 1512–0188, 1512–0378, 1512–0379, 1512–0472, 1512–0492, and 1512–0500. The likely respondents and recordkeepers are businesses or other for-profit institutions, including small businesses or organizations.

The collection of information under control number 1512–0078 is in § 17.106. This information is required by ATF to obtain the surety's agreement to any changes in the terms of bonds. The collections of information under control number 1512–0079 are in §§ 17.6 and 17.105. This information is required when agents obtain authority to sign official documents on behalf of the principal.

The collections of information under control number 1512–0095 are in §§ 17.121, 17.126, 17.127, 17.132, and 17.136. This information is required by ATF to describe the formulas for nonbeverage and intermediate products. The information is used to ensure that drawback products meet the statutory requirements for approval as being medicines, medicinal preparations, food products, flavors, or flavoring extracts that are unfit for beverage use.

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The collections of information under control number 1512–0141 are in §§ 17.92, 17.93, 17.142, 17.145, and 17.146. The information on this claim form must be submitted to ATF by manufacturers claiming nonbeverage drawback or refund of special (occupational) tax. The information is used to determine whether the claim is valid.

The collection of information under control number 1512–0188 is in § 17.6. The information on this form provides ATF with notification of corporate officials authorized to sign documents on behalf of the corporation.

The collections of information under control number 1512–0378 are in §§ 17.3, 17.54, 17.111, 17.112, 17.122–17.125, 17.143, 17.168(a), 17.183, and 17.187. This control number covers miscellaneous information required by ATF on an irregular basis to ensure compliance with law and regulations or to grant permission for the use of optional procedures.

The collections of information under control number 1512–0379 are in §§ 17.147, 17.161–17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186. This information is required to support claims for drawback. The supporting data submitted to ATF is used to make a preliminary verification of claims before they are paid. The records kept by manufacturers at their plants are used by ATF inspectors conducting on-site inspections.

The collections of information under control number 1512–0472 are in §§ 17.31–17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74. The information on this special tax return is required when paying special (occupational) tax. The collections of information under control number 1512–0492 are in §§ 17.42–43, 17.52, and 17.55. This control number pertains to records associated with the preparation and filing of the special tax return. The collections of information under control number 1512–0500 are in §§ 17.31–34, 17.41, and 17.53. This requirement is the same special tax return covered by control number 1512–0472, except that the form is modified (simplified) for use by renewal taxpayers.

The estimated total number of respondents and recordkeepers affected by these collections of information is 611. The estimated average annual burden is approximately 36 hours per respondent or recordkeeper. (This figure represents the additional time that would be required, beyond what a manufacturer would customarily spend on recordkeeping in the ordinary course of his business.) Comments on these collections of information, including comments relating to the accuracy of the burden estimate and suggestions for reducing this burden, should be submitted to the Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are applicable to this notice of proposed rulemaking. An initial regulatory flexibility analysis has been prepared and reads as follows.

I. Rationale for Agency Action

The law (26 U.S.C. 5131–5134) authorizes a drawback of internal revenue tax on alcohol used in the manufacture of certain nonbeverage products. This drawback shall be granted by the Department of the Treasury on receipt of a proper claim. To determine whether a claim is proper, regulations may require certain records to be kept and reports to be submitted by those claiming drawback, in order to establish their eligibility. That is, it must be shown that the alcohol on which drawback is claimed: (A) Was actually used, (B) was used in the manufacture of the particular products for which drawback is authorized, and (C) was originally taxpaid.

The regulations dealing with nonbeverage drawback are therefore issued under this primary rationale: to protect the revenue. However, this rationale is modified by a secondary rationale, which is: To require only those items of information to be submitted or to be recorded which are actually necessary to establish eligibility for drawback. With respect to those items required to be submitted to the Bureau of Alcohol, Tobacco and Firearms (ATF), only those should be submitted which are actually used to maintain control over the approval of claims. With respect to those records required to be maintained at the claimant's premises, the claimant's own record system should be utilized at all possible times to avoid duplication.

II. Objective and Legal Basis for the Proposed Rule

A. Objective Basis

The objective basis of these regulations is that a dual control system is used to verify the propriety of claims: Initially, a sampling procedure in the regional office is used to screen the claims before they are paid; subsequently, periodic field inspections at the manufacturing premises provide the opportunity to audit more detailed records.

At the regional offices, not every item on every report is checked every time; however, a sufficient number are checked in order to insure that there is no likelihood of fraud. Those reports which are checked must contain sufficient information to reveal undisguised fraud and/or honest mistakes. The information submitted should also permit detection of any problems which would result in scheduling an on-site inspection sooner than would otherwise be planned.

During on-site inspections, ATF officers examine original batch records to verify compliance with approved formulas. A physical inventory is taken and records are examined to see whether they agree with the inventory. If necessary, a claim adjustment may be required.

B. Legal Basis

The legal basis of these regulations is found in 26 U.S.C. 5131–5134 and 7805. These laws give the Secretary of the Treasury broad discretion to promulgate regulations, but the regulations must be limited to the function of revenue protection. Treasury Department Order No. 120–01 (dated June 6, 1972, effective July 1, 1972) delegated to the Bureau of Alcohol, Tobacco and Firearms the function of prescribing and administering such regulations.

C. Estimate of Number of Small Entities Affected and Types

It is estimated that this document will affect about 600 small entities which use taxpaid alcohol to manufacture nonbeverage products.

III. Detailed Estimate and Description of the Reporting, Recordkeeping and Compliance Requirements

A. Reporting Requirements

The most significant reporting requirements of this document pertain to the supporting data that is required to accompany each claim. The supporting data must include information regarding: The amount of taxpaid alcohol received, the amount of each product produced, the amount of taxpaid alcohol used and the product in which used, the amount of alcohol recovered (if any), the amount of tax claimed as drawback, the amount of alcohol on hand at the beginning and end of each claim period, and an explanation of any discrepancies disclosed by physical inventory. Other reports which are required less frequently include: Statements of formula and process (which are necessary to establish that the products being manufactured are of the types for which drawback is authorized under law), bonds and consents of surety in the case of claimants filing monthly claims, samples of the product if needed to determine its nonbeverage character, a special tax return and registration (as required by law in 26 U.S.C. 5131–5132), an application for an employer identification number in order to identify the special taxpayer, and information relating to any changes in the location or control of the business. If no drawback is claimed, then none of the requirements need be complied with. The reporting requirements affect all classes of nonbeverage drawback manufacturers. Some knowledge of chemistry is helpful in preparing the required formulas for submission, and an elementary knowledge of bookkeeping is needed to maintain the required accounts for submission.

B. Recordkeeping Requirements

The recordkeeping requirements of this regulation are designed to be supplementary to the reporting requirements. The records support and amplify the statements given in the required reports. Ultimately, the purpose is to facilitate verification of the amount of drawback claimed. No particular form of record is required; rather, the records may be kept in any format, so long as the information is clearly expressed. For the most part, these required records are merely ordinary business records which the manufacturer would normally maintain in the course of his business. However, it is still necessary for regulations to specify that these records must be kept; otherwise, a claimant under investigation might falsely deny keeping the records, and if there were no requirement that the records be kept, then it would be difficult to prove any violation against such a person. The records which this regulation requires claimants to keep are: Copies of the reports submitted, records of disposition of nonbeverage products, records of raw materials received, accounting for recovered alcohol, invoices of purchases, evidence of taxpayment, and batch records of ingredients used in each production batch. The regional director (compliance) may also require a manufacturer to keep inventory records of raw materials and nonbeverage products. All classes of nonbeverage drawback manufacturers are affected by these recordkeeping requirements. An elementary knowledge of bookkeeping is needed to prepare and record the prescribed accounts.

C. Compliance Requirements

The compliance requirements of this regulation are: To retain the special tax stamp at the place of business as evidence of payment of special tax; to observe the statutory time restrictions for filing of claims (six months following the close of the quarter within which the alcohol was used); to retain the required records for a period of at least 3 years; to obliterate taxpayment marks on emptied containers of distilled spirits (as required by 26 U.S.C. 5206); to use intermediate products, and alcohol recovered from nonbeverage products, for no purpose other than to manufacture nonbeverage products; to transfer intermediate products to no one except another branch or plant of the same manufacturer; to refrain from transferring unfinished nonbeverage products to any other premises; and to refrain from selling or transferring any recovered alcohol or material from which alcohol can be recovered, except as provided by regulation. All classes of nonbeverage drawback manufacturers are affected by these requirements. No special skills are needed for compliance.

IV. Conflicting, Duplicative or Overlapping Federal Rules

Some of the requirements of these regulations may overlap requirements of the Internal Revenue Service (IRS). The reason for this is that the IRS requires certain financial and cost accounting records in order to establish income tax liability, and in some cases the same information may be required by this part in order to establish eligibility for drawback of excise tax. In case of such overlap, the proprietor would not be required to keep two separate sets of records; the same set of records could suffice to meet the requirements of both ATF and IRS regulations. There would be no additional burden, because these records are merely those which anyone would keep in the ordinary course of business. The Food and Drug Administration (FDA) may also require certain records which duplicate or overlap the records required by these regulations. Such FDA records would also satisfy the ATF requirement, due to the fact that these regulations do not specify any particular format for the records, so long as the information is clearly presented and available to ATF inspectors.

V. Alternatives

A. Multitiering

This concept is not used, because the large majority of manufacturers of nonbeverage products are small entities. Consequently, the regulatory requirements have been specifically designed in consideration of the needs of small establishments. Larger establishments should also be able to comply with these requirements without particular difficulties.

B. Simplification of Requirements

The requirements as they are established are felt to be at the minimum. These requirements are necessary in order to protect the revenue and detect fraud against the Treasury. In most cases, of course, no fraud exists. But the requirements must be imposed equally on all claimants, so that if and when fraud exists, it will be detected. This is the statutory mandate of 26 U.S.C. 5132.

C. Performance Standards

This concept was utilized as much as possible. For example, an ATF form for "supporting data" reports will be provided—but the format presented on that form will not be required. (Any desired format may be used if it provides the necessary information.) Similarly, the required records also may be kept in any convenient format. However, the needs of the Government, with respect to expeditious processing of claims and tax payments, mandate prescription of specific forms for submission of drawback claims and payment of special tax. A specific form is also prescribed for formula submission, in order to facilitate communication concerning the formula among the applicable ATF offices as well as between ATF and the claimant. A special regulations section authorizes variation from most requirements if good cause can be shown for a variation.

D. Exemption of Small Entities

The law does not authorize exemption of any entity from the requirements.

Drafting Information

The principal drafters of this document are Steven C. Simon and C. A. Mullen of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Ports 17 and 197

Alcohol and alcoholic beverages, Authority delegations, Claims, Drugs,

Excise taxes, Foods, Spices and flavorings, Surety bonds, Reporting and recordkeeping requirements.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and Containers, Reporting and recordkeeping requirements, Research, Spices and flavorings, Surety bonds, Security measures, Stills, Transportation, U.S. possessions, Vinegar, Warehouses, Wine.

27 CFR Part 70

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Claims, Excise taxes, Firearms and ammunition, Government employees, Law enforcement, Law enforcement officers, Penalties, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Liquors, Penalties, Perfume, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Wine.

27 CFR Part 250

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Drugs, Electronic funds transfers, Excise taxes, Foods, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine

Issuance

Accordingly, it is proposed that title 27 of the Code of Federal Regulations be amended as follows:

Paragraph A. Title 27 CFR part 17 is added to read as follows:

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

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17.2 Forms prescribed.
17.3 Alternate methods or procedures.
17.4 OMB control numbers assigned under the Paperwork Reduction Act.
17.5 Products manufactured in Puerto Rico or the Virgin Islands.
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17.32 Completion of ATF Form 5630.5.
17.33 Signature on returns. ATF Form 5630.5.
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Employer Identification Number

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Authority: 26 U.S.C. 5010, 5131–5134, 5143, 5146, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 6676, 7011, 7213, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Subpart A—General Provisions

§ 17.1 Scope of regulations.

The regulations in this part apply to the manufacture of medicines, medicinal preparations, food products, flavors, and flavoring extracts that are unfit for beverage use and are made with taxpaid distilled spirits. The regulations cover the following topics: Obtaining drawback of internal revenue tax on distilled spirits used in the manufacture of nonbeverage products; the payment of special (occupational) taxes in order to be eligible to receive drawback; and bonds, claims, formulas and samples, losses, and records to be kept pertaining to the manufacture of nonbeverage products.

§ 17.2 Forms prescribed.

(a) The Director is authorized to prescribe all forms, including bonds and records, required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part.

(b) "Public Use Forms" (ATF Publication 1322.1) is a numerical listing of forms issued or used by the Bureau of Alcohol, Tobacco and Firearms. This publication may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(c) Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.

§ 17.3 Alternate methods or procedures.

(a) *General.* The Director may approve the use of an alternate method or procedure in lieu of a method or procedure prescribed in this part if he or she finds that—

(1) Good cause has been shown for the use of the alternate method or procedure;

(2) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the method or procedure prescribed by this part, and affords equivalent security to the revenue; and

(3) The alternate method or procedure will not be contrary to any provision of law, and will not result in any increase in cost to the Government or hinder the effective administration of this part.

(b) *Application.* A letter of application to employ an alternate method or procedure shall be submitted to the regional director (compliance) for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor.

(c) *Approval.* No alternate method or procedure shall be employed until the application has been approved by the Director. The Director shall not approve any alternate method relating to the giving of any bond or to the assessment, payment, or collection of any tax. The manufacturer shall, during the period of authorization, comply with the terms of the approved application and with any conditions thereto stated by the Director in the approval. Authorization for any alternate method or procedure may be withdrawn by written notice from the Director whenever in his or her judgment the revenue is jeopardized, the effective administration of this part is hindered, or good cause for the authorization no longer exists. The manufacturer shall retain, in the records required by § 17.170, any authorization given by the Director under this section.

§ 17.4 OMB control numbers assigned under the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to the information collection requirements of this part by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Public Law 96–511.

(b) *OMB control number 1512–0078.* OMB control number is assigned to the following section in this part: § 17.106.

(c) *OMB control number 1512–0079.* OMB control number 1512–0079 is assigned to the following sections in this part: §§ 17.6 and 17.105.

(d) *OMB control number 1512–0095.* OMB control number 1512–0095 is assigned to the following sections in this part: §§ 17.121, 17.126, 17.127, 17.132, and 17.136.

(e) *OMB control number 1512–0141.* OMB control number 1512–0141 is assigned to the following sections in this part: §§ 17.92, 17.93, 17.142, 17.145, and 17.146.

(f) *OMB control number 1512–0188.* OMB control number 1512–0188 is assigned to the following section in this part: § 17.6.

(g) *OMB control number 1512–0378.* OMB control number 1512–0376 is assigned to the following sections in this part: §§ 17.3, 17.54, 17.111, 17.112, 17.122, 17.123, 17.124, 17.125, 17.143, 17.168(a), 17.183, and 17.187.——

(h) *OMB control number 1512–0379.* OMB control number 1512–0379 is assigned to the following sections in this part: §§ 17.147, 17.161, 17.162, 17.163, 17.164, 17.165, 17.166, 17.167, 17.168(b), 17.169, 17.170, 17.182, and 17.186.

(i) *OMB control number 1512–0472.* OMB control number 1512–0472 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, 17.53, 17.61, 17.63, 17.71, and 17.74.

(j) *OMB control number 1512–0492.* OMB control number 1512–0492 is assigned to the following sections in this part: §§ 17.42, 17.43, 17.52, and 17.55.

(k) *OMB control number 1512–0500.* OMB control number 1512–0500 is assigned to the following sections in this part: §§ 17.31, 17.32, 17.33, 17.34, 17.41, and 17.53.

§ 17.5 Products manufactured in Puerto Rico or the Virgin Islands.

For additional provisions regarding drawback on distilled spirits contained in medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are unfit for beverage purposes and which are brought into the United States from Puerto Rico or the U.S. Virgin Islands, see Part 250 of this chapter.

§ 17.6 Signature authority.

No claim, tax return, or other required document executed by a person as an agent or representative is acceptable unless a power of attorney or other proper notification of signature authority has been filed with the ATF office with which the required document must be filed. Except as otherwise provided by this part, powers of attorney shall be filed on ATF Form 1534 (5000.8), Power of Attorney. If other than a manually signed original is submitted, it shall be accompanied by certification of its validity. Notification of signature authority of partners, officers, or employees may be given by filing a copy of corporate or partnership documents, minutes of a meeting of the board of directors, etc. For corporate officers or employees, AFT Form 5100.1, Signing Authority for Corporate Officials, may

be used. For additional provisions regarding powers of attorney, see § 17.105 and 26 CFR part 601, subpart E.

Subpart B—Definitions

§ 17.11 Meaning of terms.

As used in this part, unless the context otherwise requires, terms have the meanings given in this section. Words in the plural form include the singular, and vice versa, and words indicating the masculine gender include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

Alcohol and Tobacco Laboratory. The Alcohol and Tobacco Laboratory, Bureau of Alcohol, Tobacco and Firearms, 1401 Research Boulevard, Rockville, Maryland 20850.

Approved, or approved for drawback. When used with reference to products and their formulas, this term means that drawback may be claimed on eligible spirits used in such products in accordance with this part.

ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any function relating to the administration or enforcement of this part.

CFR. The Code of Federal Regulations.

Director. The Director, Bureau of Alcohol, Tobacco and Firearms, the Department of the Treasury, Washington, DC 20226; or his or her delegate.

Distilled spirits, or spirits. That substance known as ethyl alcohol, ethanol, spirits, or spirits of wine in any form (including all dilutions and mixtures thereof, from whatever source or by whatever process produced).

Effective tax rate. The next tax rate, after reduction for any credit allowable under 26 U.S.C. 5010 for wine and flavor content, at which the tax imposed on distilled spirits by 26 U.S.C. 5001 or 7652 is paid or determined. For distilled spirits with no wine or flavors content, the effective tax rate equals the rate of tax imposed by 26 U.S.C. 5001 or 7652.

Eligible, or eligible for drawback. When used with reference to spirits, this term designates taxpaid spirits which have not yet been used in nonbeverage products.

Filed. Subject to the provisions of §§ 70.305 and 70.306 of this chapter, a claim for drawback or other document or payment submitted under this part is generally considered to have been "filed" when it is received by the office of the proper Government official; but if an item is mailed timely, then the United States postmark date is treated as the date of filing.

Food products. Includes food adjuncts, such as preservatives, emulsifying agents, and food colorings, which are manufactured and used, or sold for use, in food.

Intermediate products. Products which (1) are made with taxpaid distilled spirits, (2) have been disapproved for drawback, and (3) are made by the manufacturer exclusively for its own use in the manufacture of nonbeverage products approved for drawback. Ingredients treated as unfinished nonbeverage products under § 17.127 are not considered to be intermediate products.

Medicines. Includes laboratory stains and reagents for use in medical diagnostic procedures.

Month. A calendar month.

Nonbeverage products. Medicines, medicinal preparations, food products, flavors, or flavoring extracts, which are manufactured using taxpaid distilled spirits, and which are unfit for use for beverage purposes.

Person. An individual, trust, estate, partnership, association, company, or corporation.

Proof gallon. A gallon of liquid at 60 degrees Fahrenheit, which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit (referred to water at 60 degrees Fahrenheit as unity), or the alcoholic equivalent thereof.

Quarter. A 3-month period beginning January 1, April 1, July 1, or October 1.

Recovered spirits. Taxpaid spirits that have been salvaged, after use in the manufacture of a product or ingredient, so that the spirits are reusable.

Regional director (compliance). The principal ATF regional official responsible for administering regulations in this part.

Special tax. The special (occupational) tax on manufacturers of nonbeverage products, imposed by 26 U.S.C. 5131.

Subject to drawback. This term is used with reference to spirits. Eligible spirits become "subject to drawback" when they are used in the manufacture of a nonbeverage product. When spirits have become "subject to drawback," they may be included in the manufacturer's claim for drawback of tax covering the period in which they were first used.

Tax year. The period from July 1 of one calendar year through June 30 of the following year.

Taxpaid. When used with respect to distilled spirits, this term shall mean that all taxes imposed on such spirits by 26 U.S.C. 5001 or 7652 have been determined or paid as provided by law.

This chapter. Chapter I of title 27 of the Code of Federal Regulations.

U.S.C. The United States Code.

Subpart C—Special Tax

§ 17.21 Payment of special tax.

Each person who uses taxpaid distilled spirits in the manufacture or production of nonbeverage products shall pay special tax as specified in § 17.22 in order to be eligible to receive drawback on the spirits so used. Special tax shall be paid for each tax year during which spirits were used in the manufacture of a product covered by a drawback claim. If a claim is filed covering taxpaid distilled spirits used during the preceding tax year, and special tax has not been paid for the preceding tax year, then special tax for the preceding tax year shall be paid. Regardless of the portion of a tax year covered by a claim, the full annual special tax shall be paid. The manufacturer is not required to pay the special tax if drawback is not claimed.

§ 17.22 Rates of special tax.

(a) *Previous rates.* Prior to January 1, 1988, the rates of special tax were based on usage of distilled spirits during the tax year, as follows: $25 per tax year for total annual use not exceeding 25 proof gallons, $50 per tax year for total annual use not exceeding 50 proof gallons, and $100 per tax year for total annual use exceeding 50 proof gallons.

(b) *Current rate.* Effective January 1, 1988, the rate of special tax is $500 per tax year for all persons claiming drawback on distilled spirits used in the manufacture or production of nonbeverage products.

(c) *Transition rule.* Manufacturers engaged in drawback operations on January 1, 1988, who paid special tax for a taxable period which began before January 1, 1988, and included that date, shall pay an increased special tax, which shall not exceed one-half the excess (if any) of the rate of special tax in effect January 1, 1988, over the rate of such tax in effect on December 31, 1987. The increased special tax shall be paid on or before April 1, 1988.

§ 17.23 Special tax for each place of business.

A separate special tax shall be paid for each place where distilled spirits are used in the manufacture or production of nonbeverage products, except for any such place in a tax year for which no claim is filed, or no drawback is paid, on spirits used at that place.

§ 17.24 Time for payment of special tax.

Special tax may be paid in advance of actual use of distilled spirits. Special tax shall be paid before a claimant may receive drawback. Special tax may be paid without penalty at any time prior to completion of final action on the claim.

Special Tax Returns

§ 17.31 Filing of return and payment of special tax.

Special tax shall be paid by return. The prescribed return is ATF Form 5630.5, Special Tax Registration and Return. Special tax returns, with payment of tax, shall be filed with ATF in accordance with instructions on the form.

(26 U.S.C. 6091, 6151)

§ 17.32 Completion of ATF Form 5630.5.

(a) *General.* All of the information called for on Form 5630.5 shall be provided, including:

(1) The true name of the taxpayer.

(2) The trade name(s) (if any) of the business(es) subject to special tax.

(3) The employer identification number (see §§ 17.41–43).

(4) The exact location of the place of business, by name and number of building or street, or if these do not exist, by some description in addition to the post office address. In the case of one return for two or more locations, the address to be shown shall be the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer).

(5) The class of special tax to which the taxpayer is subject.

(6) Ownership and control information: The name, position, and residence address of every owner of the business and of every person having power to control its management and policies with respect to the activity subject to special tax. "Owner of the business" shall include every partner if the taxpayer is a partnership, and every person owning 10% or more of its stock if the taxpayer is a corporation. However, the ownership and control information required by this paragraph need not be stated if the same information has been previously provided to ATF, and if the information previously provided is still current.

(b) *Multiple locations.* A taxpayer subject to special tax for the same period at more than one location or for more than one class of tax shall—

(1) File one special tax return, ATF Form 5630.5, with payment of tax, to cover all such locations and classes of tax; and

(2) Prepare, in duplicate, a list identified with the taxpayer's name, address (as shown on the Form 5630.5), employer identification number, and period covered by the return. The list shall show, by States, the name, address, and tax class of each location for which special tax is being paid. The original of the list shall be filed with ATF in accordance with instructions on the return, and the copy shall be retained at the taxpayer's principal place of business (or principal office, in the case of a corporate taxpayer) for the period specified in § 17.170.

(26 U.S.C. 6011, 7011)

§ 17.33 Signature on returns, ATF Form 5630.5.

The return of an individual proprietor shall be signed by the proprietor; the return of a partnership shall be signed by a general partner; and the return of a corporation shall be signed by a corporate officer. All signatures must be original; photocopies are not acceptable. In each case, the person signing the return shall designate his or her capacity, as "individual owner," "member of partnership," or, in the case of a corporation, the title of the officer. Receivers, trustees, assignees, executors, administrators, and other legal representatives who continue the business of a bankrupt, insolvent, deceased person, etc., shall indicate the fiduciary capacity in which they act.

§ 17.34 Verification of returns.

ATF Form 5630.5 shall contain or be verified by a written declaration that the return is made under the penalties of perjury.

(68A Stat. 749 U.S.C. 6065))

Employer Identification Number

§ 17.41 Requirement for employer identification number.

The employer identification number (defined in 26 CFR 301.7701–12) of the taxpayer who has been assigned such a number shall be shown on each special tax return (ATF Form 5630.5), including amended returns filed under this subpart. Failure of the taxpayer to include the employer identification number on Form 5630.5 may result in assertion and collection of the penalty specified in § 70.113 of this chapter.

(Secs. 1(a), (b), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109, 6723))

§ 17.42 Application for employer identification number.

(a) An employer identification number is assigned pursuant to application on IRS Form SS–4, Application for Employer Identification Number, filed by the taxpayer. Form SS–4 may be obtained from any office of the Internal Revenue Service.

(b) Each taxpayer who files a return on ATF Form 5630.5 shall make application on IRS Form SS–4 for an employer identification number, unless he or she has already been assigned such a number or made application for one. The application on Form SS–4 shall be filed on or before the seventh day after the date on which the first return on Form 5630.5 is filed.

(c) Each taxpayer shall make application for and shall be assigned only one employer identification number, regardless of the number of places of business for which the taxpayer is required to file Form 5630.5.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

§ 17.43 Preparation and filing of Form SS–4.

The taxpayer shall prepare and file the application on IRS Form SS–4, together with any supplementary statement, in accordance with instructions on the form or issued in respect to it.

(Sec. 1(a), Pub. L. 87–397, 75 Stat. 828 (26 U.S.C. 6109))

Subpart D—Special Tax Stamps

§ 17.51 Issuance of stamps.

Each manufacturer of nonbeverage products, upon filing a properly executed return on ATF Form 5630.5, together with the proper tax payment in the full amount due, shall be issued a special tax stamp designated "Manufacturer of Nonbeverage Products." This special tax stamp shall not be sold or otherwise transferred to another person (except as provided in §§ 17.71 and 17.72). If the Form 5630.5 submitted with the tax payment covers multiple locations, the taxpayer shall be issued one appropriately designated stamp for each location listed in the attachment to Form 5630.5 required by § 17.32(b)(2), but showing, as to name and address, only the name of the taxpayer and the address of the taxpayer's principal place of business (or principal office in the case of a corporate taxpayer).

§ 17.52 Distribution of stamps for multiple locations.

On receipt of the special tax stamps, the taxpayer shall verify that a stamp has been obtained for each location listed on the retained copy of the attachment to ATF Form 5630.5 required by § 17.32(b)(2). The taxpayer shall designate one stamp for each location and shall type on it the trade name (if different from the name in which the stamp was issued) and address of the

business conducted at the location for which the stamp is designated. The taxpayer shall then forward each stamp to the place of business designated on the stamp.

§ 17.53 Correction of errors on stamps.

(a) *Single location.* On receipt of a special tax stamp, the taxpayer shall examine it to ensure that the name and address are correctly stated. If an error has been made, the taxpayer shall return the stamp to ATF at the address shown thereon, with a statement showing the nature of the error and setting forth the proper name or address. On receipt of the stamp and statement, the data shall be compared with that on ATF Form 5630.5, and if an error on the part of ATF has been made, the stamp shall be corrected and returned to the taxpayer. If the Form 5630.5 agrees with the data on the stamp, the taxpayer shall be required to file a new Form 5630.5, designated "Amended Return," disclosing the proper name and address.

(b) *Multiple locations.* If an error is discovered on a special tax stamp obtained under the provisions of § 17.32(b), relating to multiple locations, and if the error concerns any of the information contained in the attachment to Form 5630.5, the taxpayer shall return the stamp, with a statement showing the nature of the error and the correct data, to his or her principal office. The data on the stamp shall then be compared with the taxpayer's copy of the attachment to Form 5630.5, retained at the principal office. If the error is in the name and address and was made by the taxpayer, the taxpayer shall correct the stamp and return it to the designated place of business. If the error was made in the attachment to Form 5630.5, the taxpayer shall file with ATF an amended Form 5630.5 and an amended attachment with a statement showing the error.

§ 17.54 Lost or destroyed stamps.

If a special tax stamp is lost or accidentally destroyed, the taxpayer shall immediately notify the regional director (compliance). On receipt of this notification, the regional director (compliance) shall issue to the taxpayer a "Certificate in Lieu of Lost or Destroyed Special Tax Stamp." The taxpayer shall keep the certificate available for inspection in the same manner as prescribed for a special tax stamp in § 17.55.

§ 17.55 Retention of special tax stamps.

Taxpayers shall keep their special tax stamps at the place of business covered thereby for the period specified in § 17.170, and shall make them available for inspection by any ATF officer during business hours.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146))

Change in Location

§ 17.61 General.

A manufacturer who, during a tax year for which special tax has been paid, moves its place of manufacture to a place other than that specified on the related special tax stamp, shall register the change with ATF within 90 days after the move to the new premises, by executing a new return on ATF Form 5630.5, designated as "Amended Return." This Amended Return shall set forth the time of the move and the address of the new location. The taxpayer shall also submit the special tax stamp to ATF, for endorsement of the change in location.

(Title II, sec. 201, Pub. L. 85–859, 72 Stat. 1374 (26 U.S.C. 5143))

§ 17.62 Failure to register.

A manufacturer who fails to register a change of location with ATF, as required by § 17.61, shall pay a new special tax for the new location if a claim for drawback is filed on distilled spirits used at the new location during the tax year for which the original special tax was paid.

§ 17.63 Certificates in lieu of lost stamps.

The provisions of §§ 17.61 and 17.62 apply to certificates issued in lieu of lost or destroyed special tax stamps.

Change in Control

§ 17.71 General.

Certain persons, other than the person who paid the special tax, may qualify for succession to the same privileges granted by law to the taxpayer, to cover the remainder of the tax year for which the special tax was paid. Those who may qualify are specified in § 17.72. To secure these privileges, the successor or successors shall file with ATF, within 90 days after the date on which the successor or successors assume control, a return on ATF Form 5630.5, showing the basis of the succession.

§ 17.72 Right of succession.

Under the conditions set out in § 17.71, persons listed below have the right of succession:

(a) The surviving spouse or child, or executor, administrator, or other legal representative of a taxpayer.

(b) A husband or wife succeeding to the business of his or her living spouse.

(c) A receiver or trustee in bankruptcy, or an assignee for the benefit of creditors.

(d) The members of a partnership remaining after the death or withdrawal of a general partner.

§ 17.73 Failure to register.

A person eligible for succession to the privileges of a taxpayer, in accordance with §§ 17.71 and 17.72, who fails to register the succession with ATF, as required by § 17.71, shall pay a new special tax if a claim for drawback is filed on distilled spirits used by the successor during the tax year for which the original special tax was paid.

§ 17.74 Certificates in lieu of lost stamps.

The provisions of §§ 17.71–73 apply to certificates issued in lieu of lost or destroyed special tax stamps.

§ 17.75 Formation of partnership or corporation.

If one or more persons who have paid special tax form a partnership or corporation, as a separate legal entity, to take over the business of manufacturing nonbeverage products, the new firm or corporation shall pay a new special tax in order to be eligible to receive drawback.

§ 17.76 Addition or withdrawal of partners.

(a) *General partners.* When a business formed as a partnership, subject to special tax, admits one or more new general partners, the new partnership shall pay a new special tax in order to be eligible to receive drawback. Withdrawal of general partners is covered by § 17.72(d).

(b) *Limited partners.* Changes in the membership of a limited partnership requiring amendment of the certificate but not dissolution of the partnership are not changes that incur liability to additional special tax.

§ 17.77 Reincorporation.

When a new corporation is formed to take over and conduct the business of one or more corporations that have paid special tax, the new corporation shall pay special tax and obtain a stamp in its own name.

Change in Name or Style

§ 17.81 General.

A person who paid special tax is not required to pay a new special tax by reason of a mere change in the trade name or style under which the business is conducted, nor by reason of a change in management which involves no change in the proprietorship of the business.

§ 17.82 Change in capital stock.

A new special tax is not required by reason of a change of name or increase in the capital stock of a corporation, if the laws of the State of incorporation provide for such changes without creating a new corporation.

§ 17.83 Sale of stock.

A new special tax is not required by reason of the sale or transfer of all or a controlling interest in the capital stock of a corporation.

Refund of Special Tax

§ 17.91 Absence of liability, refund of special tax.

The special tax paid may be refunded if it is established that the taxpayer did not file a claim for drawback for the period covered by the special tax stamp. If a claim for drawback is filed, the special tax may be refunded if no drawback is paid or allowed for the period covered by the stamp.

§ 17.92 Filing of refund claim.

Claim for refund of special tax shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol, Tobacco and Firearms Taxes. The claim shall be filed with the regional director (compliance) for the region in which the place of manufacture is located. The claim shall set forth in detail sufficient reasons and supporting facts to inform the regional director (compliance) of the exact basis of the claim. The special tax stamp shall be attached to the claim.

(68A Stat. 791 (26 U.S.C. 6402))

§ 17.93 Time limit for filing refund claim.

A claim for refund of special tax shall not be allowed unless filed within three years after the payment of the tax.

(68A Stat. 808 (26 U.S.C. 6511))

Subpart E—Bonds and Consents of Sureties

§ 17.101 General.

A bond shall be filed by each person claiming drawback on a monthly basis. Persons who claim drawback on a quarterly basis are not required to file bonds. Bonds shall be prepared and executed on ATF Form 5530.3, Bond for Drawback Under 26 U.S.C. 5131, in accordance with the provisions of this part and the instructions printed on the form. The bond requirement of this part shall be satisfied either by bonds obtained from authorized surety companies or by deposit of collateral security. Regional directors (compliance) are authorized to approve all bonds and consents of surety required by this part.

§ 17.102 Amount of bond.

The bond shall be a continuing one, in an amount sufficient to cover the total drawback to be claimed on spirits used during any quarter. However, the amount of any bond shall not exceed $200,000 nor be less than $1,000.

§ 17.103 Bonds obtained from surety companies.

(a) The bond may be obtained from any surety company authorized by the Secretary of the Treasury to be a surety on Federal bonds. Surety companies so authorized are listed in the current revision of Department of the Treasury Circular 570 (Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies), and subject to such amendatory circulars as may be issued from time to time. Bonds obtained from surety companies are also governed by the provisions of 31 U.S.C. 9304, and 31 CFR part 223.

(b) A bond executed by two or more surety companies shall be the joint and several liability of the principal and the sureties; however, each surety company may limit its liability, in terms upon the face of the bond, to a definite, specified amount. This amount shall not exceed the limitations prescribed for each surety company by the Secretary, as stated in Department of the Treasury Circular 570. If the sureties limit their liability in this way, the total of the limited liabilities shall equal the required amount of the bond.

(c) Department of the Treasury Circular No. 570 is published in the Federal Register annually on the first workday in July. As they occur, interim revisions of the circular are published in the Federal Register. Copies of the circular may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20227.

(Sec. 1. Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304))

§ 17.104 Deposit of collateral.

Except as otherwise provided by law or regulations, bonds or notes of the United States, or other obligations which are unconditionally guaranteed as to both interest and principal by the United States, may be pledged and deposited by principals as collateral security in lieu of bonds obtained form surety companies. Deposit of collateral security is governed by the provisions of 31 U.S.C. 9303, and 31 CFR Part 225.

(Sec. 1. Pub. L. 97–258, 96 Stat. 1048 (31 U.S.C. 9301, 9303))

§ 17.105 Filing of powers of attorney.

(a) *Surety companies.* The surety company shall prepare and submit with each bond, and with each consent to changes in the terms of a bond, a power of attorney in accordance with § 17.6, authorizing the agent or officer who executed the bond or consent to act in this capacity on behalf of the surety. The power of attorney shall be prepared on a form provided by the surety company and executed under the corporate seal of the company. The regional director (compliance) who is authorized to approve the bond may, when he or she considers it necessary, require additional evidence of the authority of the agent or officer to execute the bond or consent.

(b) *Principal.* The principal shall execute and file with the regional director (compliance) a power of attorney, in accordance with § 17.6, for every person authorized to execute bonds on behalf of the principal.

(Sec. 1. Pub. L. 97–258, 96 Stat. 1047 (31 U.S.C. 9304, 9306))

§ 17.106 Consents of surety.

The principal and surety shall execute on ATF Form 1533 (5000.18), Consent of Surety, and consents of surety to changes in the terms of bonds. Form 1533 (5000.18) shall be executed with the same formality and proof of authority as is required for the execution of bonds.

§ 17.107 Strengthening bonds.

Whenever the amount of a bond on file and in effect becomes insufficient, the principal may give a strengthening bond in a sufficient amount, provided the surety is the same as on the bond already on file and in effect; otherwise a superseding bond covering the entire liability shall be filed. Strengthening bonds, filed to increase the bond liability of the surety, shall not be construed in any sense to be substitute bonds, and the regional director (compliance) shall not approve a strengthening bond containing any notation which may be interpreted as a release of any former bond or as limiting the amount of either bond to less than its full amount.

§ 17.108 Superseding bonds.

(a) The principal on any bond filed pursuant to this part may at any time replace it with a superseding bond.

(b) Executors, administrators, assignees, receivers, trustees, or other persons acting in a fiduciary capacity continuing or liquidating the business of the principal, shall execute and file a superseding bond or obtain the consent of the surety or sureties on the existing bond or bonds.

(c) When, in the opinion of the regional director (compliance), the interests of the Government demand it, or in any case where the security of the

bond becomes impaired in whole or in part for any reason whatever, the principal shall file a superseding bond. A superseding bond shall be filed immediately in case of the insolvency of the surety. If a bond is found to be not acceptable or for any reason becomes invalid or of no effect, the principal shall immediately file a satisfactory superseding bond.

(d) A bond filed under this section to supersede an existing bond shall be marked by the obligors at the time of execution, "Superseding Bond." When such a bond is approved, the superseded bond shall be released as to transactions occurring wholly subsequent to the effective date of the superseding bond, and notice of termination of the superseded bond shall be issued, as provided in § 17.111.

Termination of Bonds

§ 17.111 General.

Bonds on ATF Form 5530.3 shall be terminated by the regional director (compliance), as to liability on drawback allowed after a specified future date, in the following circumstances:

(a) Pursuant to a notice by the surety as provided in § 17.112.

(b) Following approval of a superseding bond, as provided in § 17.108.

(c) Following notification by the principal of an intent to discontinue the filing of claims on a monthly basis. However, the bond shall not be terminated until all outstanding liability under it has been discharged. Upon termination, the regional director (compliance) shall mark the bond "canceled," followed by the date of cancellation, and shall issue a notice of termination of bond. A copy of this notice shall be given to the principal and to each surety.

§ 17.112 Notice by surety of termination of bond.

A surety on any bond required by this part may at any time, in writing, notify the principal and the regional director (compliance) in whose office the bond is on file that the surety desires, after a date named, to be relieved of liability under the bond. Unless the notice is withdrawn, in writing, before the date name in it, the notice shall take effect on that date. The date shall not be less than 60 days after the date on which both the notice and proof of service on the principal have been received by the regional director (compliance). The surety shall deliver one copy of the notice to the principal and the original to the regional director (compliance). The surety shall also file with the regional director (compliance) an acknowledgement or other proof of service on the principal.

§ 17.113 Extent of release of surety from liability under bond.

The rights of the principal as supported by the bond shall cease as of the date when termination of the bond takes effect, and the surety shall be relieved from liability for drawback allowed on and after that date. Liability for drawback previously allowed shall continue until the claims for such drawback have been properly verified by the regional director (compliance) according to law and this part.

§ 17.114 Release of collateral.

The release of collateral security pledged and deposited to satisfy the bond requirement of this part is governed by the provisions of 31 CFR part 225. When the regional director (compliance) determines that there is no outstanding liability under the bond, and is satisfied that the interests of the Government will not be jeopardized, the security shall be released and returned to the principal.

(Sec. 1, Pub. L. 97-258, 96 Stat. 1046 (31 U.S.C. 9301, 9303))

Subpart F—Formulas and Samples

§ 17.121 Product formulas.

(a) *General.* Except as provided in § § 17.132 and 17.182, manufacturers shall file quantitiative formulas for all preparations for which they intend to file drawback claims. Such formulas shall state the quantity of each ingredient, and shall separately state the quantity of spirits to be recovered or to be consumed as an essential part of the manufacturing process.

(b) *Filing.* Formulas shall be filed with the Alcohol and Tobacco Laboratory on ATF Form 5530.5, Formula and Process for Nonbeverage Products. Filing shall be accomplished no later than 6 months after the end of the quarter in which taxpaid distilled spirits were first used to manufacture the product for purposes of drawback. If a product's formula is disapproved, no drawback shall be allowed on spirits used to manufacture that product, unless it is later used as an intermediate product, as provided in § 17.137.

(c) *Numbering.* The formulas shall be serially numbered by the manufacturer, commencing with number 1 and continuing thereafter in numerical sequence. However, a new formula for use at several plants shall be given the highest number next in sequence at any of those plants. The numbers that were skipped at the other plants shall not be used subsequently.

(d) *Distribution and retention of approved formulas.* One copy of each approved Form 5530.5 shall be returned to the manufacturer. The formulas returned to manufacturers shall be kept in serial order at the place of manufacture, as provided in § 17.170, and shall be made available to ATF officers for examination in the investigation of drawback claims.

§ 17.122 Amended or revised formulas.

Amended or revised formulas are generally considered to be new formulas and shall be numbered accordingly. However, minor changes may be made to a current formula on ATF Form 5530.5 with retention of the original formula number, if approval is obtained from the Director. In order to obtain approval to make a minor formula change, the person holding the Form 5530.5 shall submit a letter of application to the Alcohol and Tobacco Laboratory, indicating the formula change and requesting that the proposed change be considered a minor change. Each such application shall clearly identify the original formula by number, date of approval, and name of product. The application shall indicate whether the product is, has been, or will be used in alcoholic beverages, and shall specify whether the proposed change is intended as a substitution or merely as an alternative for the original formula. No changes may be made to current formulas without specific ATF approval in each case.

§ 17.123 Statement of process.

The Director, or the regional director (compliance), may at any time require any person claiming drawback under the regulations in this part to file a statement of process, in addition to that required by ATF Form 5530.5, as well as any other data necessary for consideration of the claim for drawback. When pertinent to consideration of the claim, submission of copies of the commercial labels used on the finished products may also be required.

§ 17.124 Samples.

The Director, or the regional director (compliance), may at any time require any person claiming drawback or submitting a formula for approval under the regulations in this part to submit a sample of each nonbeverage or intermediate product for analysis. If the product is manufactured with a mixture of oil or other ingredients, the composition of which is unknown to the claimant, a 1-ounce sample of the mixture shall be submitted with the sample of finished product when so required.

§ 17.125 Adoption of formulas and processes.

(a) *Adoption of predecessor's formulas.* If there is a change in the proprietorship of a nonbeverage plant and the successor desires to use the predecessor's formulas at the same location, the successor may, in lieu of submitting new formulas in its own name, adopt any or all of the formulas of the predecessor by filing a notice of adoption with the regional director (compliance). The notice shall be filed with the first claim relating to any of the adopted formulas. The notice shall list, by name and serial number, all formulas to be adopted, and shall state that the products will be manufactured in accordance with the adopted formulas and processes. The notice shall be accompanied by a certified copy of the articles of incorporation or other document(s) necessary to prove the transfer of ownership. The manufacturer shall retain a copy of the notice with the related formulas.

(b) *Adoption of monufacturer's own formulas from a different location.* A manufacturer's own formulas may be adopted for use at another of the manufacturer's plants. Further, a wholly owned subsidiary may adopt the formulas of the parent company, and vice versa. The procedure for such adoption shall be by filing a letterhead notice, accompanied by two photocopies of each formula to be adopted, with the Alcohol and Tobacco Laboratory for transmittal to the regional director (compliance). The notice shall list the numbers of all formulas to be adopted and shall indicate the plant where each was originally approved and the plant(s) where each is to be adopted. Some evidence of the relationship between the plants involved in the adoption shall be attached to the notice. The notice shall be referenced in Part IV of the supporting data (ATF Form 5530.8) filed with the first claim relating to the adopted formula(s).

§ 17.126 Formulas for intermediate products.

(a) The manufacturer shall submit a formula on ATF Form 5530.5 to the Alcohol and Tobacco Laboratory for each self-manufactured ingredient made with taxpaid spirits and intended for the manufacturer's own use in nonbeverage products, unless the formula for any such ingredient is fully expressed as part of the approved formula for each nonbeverage product in which that ingredient is used, or unless the formula for the ingredient is contained in one of the pharmaceutical publications listed in § 17.132.

(b) Upon receipt of Form 5530.5 covering a self-manufactured ingredient made with taxpaid spirits, the formula shall be examined under § 17.131. If the formula is approved for drawback, the ingredient shall be treated as a finished nonbeverage product for purposes of this part, rather than as an intermediate product, notwithstanding its use by the manufacturer. (For example, see § 17.152(d).) If the formula is disapproved for drawback, the ingredient may be treated as an intermediate product in accordance with this part. Requirements pertaining to intermediate products are found in § 17.185(b).

(c) If there is a change in the composition of an intermediate product, the manufacturer shall submit an amended or revised formula, as provided in § 17.122.

§ 17.127 Self-manufactured ingredients treated optionally as unfinished nonbeverage products.

A self-manufactured ingredient made with taxpaid spirits, which otherwise would be treated as an intermediate product, may instead be treated as an unfinished nonbeverage product, if the ingredient's formula is fully expressed as a part of the approved formula for the nonbeverage product in which the ingredient will be used. A manufacturer desiring to change the treatment of an ingredient from "intermediate product" to "unfinished nonbeverage product" (or vice versa) may do so by resubmitting the applicable formula(s) on ATF Form 5530.5. Requirements pertaining to unfinished nonbeverage products are found in § 17.185(c).

Approval of Formulas

§ 17.131 Formulas on ATF Form 5530.5.

Upon receipt by the Alcohol and Tobacco Laboratory, formulas on ATF Form 5530.5 shall be examined and, if found to be medicines, medicinal preparations, food products, flavors, or flavoring extracts which are unfit for beverage purposes and which otherwise meet the requirements of law and this part, they shall be approved for drawback. If the formulas do not meet the requirements of the law and regulations for drawback products, they shall be disapproved.

§ 17.132 U.S.P., N.F., and H.P.U.S. preparations.

(a) *General.* Except as otherwise provided by regulation or ATF ruling, formulas for compounds in which alcohol is a prescribed quantitative ingredient, which are stated in the current revisions or editions of the United States Pharmacopoeia (U.S.P.), the National Formulary (N.F.), or the Homeopathic Pharmacopoeia of the United States (H.P.U.S.), shall be considered as approved formulas and may be used as formulas for drawback products without the filing of ATF Form 5530.5.

(b) *Exceptions.* Alcohol (including dehydrated alcohol and dehydrated alcohol injection), U.S.P.; alcohol and dextrose injection, U.S.P.; and tincture of ginger, H.P.U.S., have been found to be fit for beverage use and are disapproved for drawback. All attenuations of other H.P.U.S. products diluted beyond one part in 10,000 ("4X") are also disapproved for drawback, unless the manufacturer receives approval for a formula submitted on Form 5530.5 in accordance with this subpart. The formula shall be submitted with a sample of the product and a statement explaining why it should be classified as unfit for beverage use.

§ 17.133 Food product formulas.

Formulas for nonbeverage food products on ATF Form 5530.5 may be approved if they are unfit for beverage purposes. Approval does not authorize manufacture or sale contrary to State law. Examples of food products that have been found to be unfit for beverage purposes are stated below:

(a) *Sauces.* Sauces, or syrups consisting of sugar solutions and distilled spirits, in which the alcohol content is not more than 12 percent by volume and the sugar content is not less than 60 grams per 100 cubic centimeters.

(b) *Brandied fruits.* Brandied fruits consisting of solidly packaged fruits, either whole or segmented, and distilled spirits products not exceeding the quantity and alcohol content necessary for flavoring and preserving. Generally, brandied fruits will be considered to have met these standards if the container is well filled, the alcohol in the liquid portion does not exceed 23 percent by volume, and the liquid portion does not exceed 45 percent of the volume of the container.

(c) *Condies.* Candies with alcoholic fillings, if the fillings meet the standards prescribed for sauces and syrups by paragraph (a) of this section.

(d) *Other food products.* Food products such as mincemeat, plum pudding, and fruit cake, where only sufficient distilled spirits are used for flavoring and preserving; and ice cream and ices where only sufficient spirits are used for flavoring purposes. Also food adjuncts, such as preservatives,

emulsifying agents, and food colorings, that are unfit for beverage purposes and are manufactured and used, or sold for use, in food.

§ 17.134 Determination of unfitness for beverage purposes.

The Director has responsibility for determining whether products are fit or unfit for beverage purposes within the meaning of 26 U.S.C. 5131. This determination may be based either on the content and description of the ingredients as shown on ATF Form 5530.5, or on organoleptic examination. In such examination, samples of products may be diluted with water to an alcoholic concentration of 15% and tasted. Sale or use for beverage purposes is indicative of fitness for beverage use.

§ 17.135 Use of specially denatured alcohol (S.D.A.).

(a) *Use of S.D.A. in nonbeverage or intermediate products*—(1) *General.* Except as provided in paragraph (b) of this section, the use of specially denatured alcohol (S.D.A.) and taxpaid spirits in the same product by a nonbeverage manufacturer is prohibited where drawback of tax is claimed.

(2) *Alternative formulations.* No formula for a product on ATF Form 5530.5 shall be approved for drawback under this subpart if the manufacturer also has on file an approved ATF Form 1479–A or Form 5150.19, Formula for Article Made with Specially Denatured Alcohol or Rum, pertaining to the same product.

(b) *Use of S.D.A. in ingredients*—(1) *Purchased ingredients.* Generally, purchased ingredients containing S.D.A. may be used in nonbeverage or intermediate products. However, such ingredients shall not be used in medicinal preparations or flavoring extracts intended for internal human use, where any of the S.D.A. remains in the finished product.

(2) *Self-manufactured ingredients.* Self-manufactured ingredients may be made with S.D.A. and used in nonbeverage or intermediate products, so long as—

(i) No taxpaid spirits are used in manufacturing such ingredients; and

(ii) All S.D.A. is recovered or dissipated from such ingredients prior to their use in nonbeverage or intermediate products. (Recovery of S.D.A. shall be in accordance with subpart K of part 20 of this chapter; spirits recovered under this paragraph shall not be reused in nonbeverage or intermediate products.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 17.136 Compliance with Food and Drug Administration requirements.

ATF will not consider a product to be a medicine, medicinal preparation, food product, flavor, or flavoring extract if its formula would violate a ban or restriction of the U.S. Food and Drug Administration (FDA) pertaining to such products. If FDA bans or restricts the use of any ingredient in such a way that further manufacture of the product in accordance with that formula would violate the ban or restriction, then the manufacturer shall change the formula and resubmit it on ATF Form 5530.5 to the Alcohol and Tobacco Laboratory. Under § 17.123, manufacturers may be required to demonstrate compliance with FDA requirements applicable to this section.

§ 17.137 Formulas disapproved for drawback.

A formula may be disapproved for drawback either because it does not prescribe appropriate ingredients in sufficient quantities to make the product unfit for beverage use, or because the product is neither a medicine, a medicinal preparation, a food product, a flavor, nor a flavoring extract. The formula for a disapproved product may be used as an intermediate product formula under § 17.126. No drawback will be allowed on distilled spirits used in a disapproved product, unless that product is later used in the manufacture of an approved nonbeverage product. In the case of a product that is disapproved, any further use or disposition of such a product, other than as an intermediate product in accordance with this part, subjects the manufacturer to the qualification requirements of Parts 1 and 19 of this chapter.

Subpart G—Claims for Drawback

§ 17.141 Drawback.

Upon the filing of a claim as provided in this subpart, drawback shall be allowed to any person who meets the requirements of this part. Drawback shall be paid at the rate specified by 26 U.S.C. 5134 on each proof gallon of distilled spirits on which the tax has been paid or determined and which have been used in the manufacture of nonbeverage products. The drawback rate is $1.00 less than the effective tax rate. Drawback shall be allowed only to the extent that the claimant can establish, by evidence satisfactory to the regional director (compliance), the actual quantity of taxpaid or tax-determined distilled spirits used in the manufacture of the product, and the effective tax rate applicable to those spirits. Special tax as a manufacturer of nonbeverage products shall be paid before drawback is allowed.

§ 17.142 Claims.

(a) *General.* The manufacturer shall file claim for drawback with the regional director (compliance) for the region in which the place of manufacture is located. A separate claim shall be filed for each place of business. Each claim shall pertain only to distilled spirits used in the manufacture or production of nonbeverage products during any one quarter of the tax year. Unless the manufacturer is eligible to file monthly claims (see §§ 17.143 and 17.144), only one claim per quarter may be filed for each place of business. The regional director (compliance) has the authority to approve or disapprove claims. Claims shall be filed on ATF Form 2635 (5620.8), Claim—Alcohol and Tobacco Taxes.

(b) *Manufacturers who are also proprietors of distilled spirits plants.* If a manufacturer of nonbeverage products is owned and operated by the same business entity that owns and operates a distilled spirits plant, the manufacturer's claim for drawback may be filed for credit on Form 2635 (5620.8). After the claim is approved, the distilled spirits plant may use the claim as an adjustment decreasing the taxes due in Schedule B of ATF Form 5000.24, Excise Tax Return. Adjustments resulting from an approved drawback claim are not subject to interest. This procedure may be utilized only if the manufacturer of nonbeverage products and the distilled spirits plant have the same employer identification number.

§ 17.143 Notice for monthly claims.

If the manufacturer has notified the regional director (compliance), in writing, of an intention to file claims on a monthly basis instead of a quarterly basis, and has filed a bond in compliance with the provisions of this part, claims may be filed monthly instead of quarterly. The election to file monthly claims shall not preclude a manufacturer from filing a single claim covering an entire quarter, or a single claim covering just two months of a quarter, or two claims (one of them covering one month and the other covering two months). An election for the filing of monthly claims may be withdrawn by the manufacturer by filing a notice to that effect, in writing, with the regional director (compliance).

§ 17.144 Bond for monthly claims.

Each person intending to file claims for drawback on a monthly basis shall file with the regional director (compliance) an executed bond on ATF Form 5530.3, conforming to the provisions of Subpart E of this part. A monthly drawback claim shall not be allowed until bond coverage in a sufficient amount has been approved by the regional director (compliance). When the limit of liability under a bond given in less than the maximum amount has been reached, further drawback on monthly claims may be delayed until a strengthening or superseding bond in a sufficient amount is furnished.

§ 17.145 Date of filing claim.

Quarterly claims for drawback shall be filed with the regional director (compliance) within six months after the quarter in which the distilled spirits covered by the claim were used in the manufacture of nonbeverage products. Monthly claims for drawback may be filed at any time after the end of the month in which the distilled spirits coverd by the claim were used in the manufacture of nonbeverage products, but shall be filed not later than the close of the sixth month succeeding the quarter in which the spirits were used.

§ 17.146 Information to be shown by the claim.

The claim shall set forth the following:

(a) Whether the special tax has been paid.

(b) That the distilled spirits on which drawback is claimed were fully taxpaid or tax-determined at the effective tax rate applicable to the distilled spirits.

(c) That the distilled spirits on which the drawback is claimed were used in the manufacture of nonbeverage products.

(d) Whether the nonbeverage products were manufactured in compliance with quantitative formulas approved under Subpart F of this part. (If not, attach explanation.)

(e) That the data submitted in support of the claim are correct.

§ 17.147 Supporting data.

(a) Each claim for drawback shall be accompanied by supporting data presented according to the format shown on ATF Form 5530.8, Supporting Data for Nonbeverage Drawback Claims (or according to any other suitable format which provides the same information). Modifications of Form 5530.8 may be used without prior authorization, if the modified format shows all of the required information that is pertinent to the manufacturing operation. Under § 17.123, the regional director (compliance) may require additional supporting data when needed to determine the correctness of drawback claims.

(b) Separate data shall be shown for eligible distilled spirits taxpaid at different effective tax rates. This requirement applies to all eligible spirits, including eligible recovered alcohol and eligible spirits contained in intermediate products.

(c) Separate data shall be shown for imported rum, spirits from Puerto Rico containing at least 92% rum, and spirits from the U.S. Virgin Islands containing at least 92% rum. The total number of proof gallons of each such category used subject to drawback during the claim period shall also be shown. These amounts shall include eligible spirits and rum from intermediate products or recovered alcohol.

(d) Any gain in eligible distilled spirits reported in the supporting data shall be reflected by an equivalent deduction from the amount of drawback claimed. Gains in any category of spirits shall not be offset by losses in other categories.

§ 17.148 Allowance of claims.

(a) *General.* Except in the case of fraudulent noncompliance, no claim for drawback shall be denied for a failure to comply with either 26 U.S.C. 5131–5134 or the requirements of this part, if the claimant establishes that spirits on which the tax has been paid or determined were in fact used in the manufacture of medicines, medicinal preparations, food products, flavors, or flavoring extracts, which were unfit for beverage purposes.

(b) *Penalty.* Noncompliance with the requirements of 26 U.S.C. 5131–5134 or of this part subjects the claimant to a civil penalty of $1,000 for each separate product, reflected in a claim for drawback, to which the noncompliance relates, or the amount claimed for that product, whichever is less, unless the claimant establishes that the noncompliance was due to reasonable cause. Late filing of a claim subjects the claimant to a civil penalty of $1,000 or the amount of the claim, whichever is less, unless the claimant establishes that the lateness was due to reasonable cause.

(c) *Reasonable cause.* Reasonable cause will be accepted as a defense to a civil penalty where a claimant establishes it exercised ordinary business care and prudence, and still was unable to comply with the statutory and regulatory requirements. Ignorance of law or regulations, in and of itself, is not reasonable cause. Each case must be individually evaluated.

(Sec. 452, Pub. L. 98–369, 98 Stat. 819 (26 U.S.C. 5134(c))

Spirits Subject to Drawback

§ 17.151 Use of distilled spirits.

Distilled spirits are considered to have been used in the manufacture of a product under this part if the spirits are consumed in the manufacture, are incorporated into the product, or are determined by ATF to have been otherwise utilized as an essential part of the manufacturing process. However, spirits lost by causes such as spillage, leakage, breakage or theft, and spirits used for purposes such as rinsing or cleaning a system, are not considered to have been used in the manufacture of a product.

§ 17.152 Time of use of spirits.

(a) *General.* Distilled spirits shall be considered used in the manufacture of a product as soon as that product contains all the ingredients called for by its formula.

(B) *Spirits used in an ion exchange column.* Distilled spirits used in recharging an ion exchange column, the operation of which is essential to production of a product, shall be considered to be used when the spirits are entered into the manufacturing system in accordance with the product's formula.

(c) *Products requiring additional processing or treatment.* Further manipulation of a product, such as aging of filtering, subsequent to the mixing together of all of its ingredients, shall not postpone the time when spirits are considered used, as determined under the principle in paragraph (a) of this section. This is true even if at the time of use there has not yet been a final determination of alcoholic content by assay. If, however, it is later found necessary to add more distilled spirits to standardize the product, such added spirits shall be considered as used in the period during which they were added.

(d) *Nonbeverage products used to manufacture other products.* Nonbeverage products may be used to manufacture other nonbeverage (or intermediate) products. However, such subsequent usage of a nonbeverage product shall not affect the time when the distilled spirits contained therein are considered used. When distilled spirits are used in the manufacture of a nonbeverage product, the time of use shall be the point at which that product first contains all of its prescribed ingredients, and such use shall not be determined by the time of any subsequent usage of that product in another product.

§ 17.153 Recovered spirits.

(a) *Recovery from intermediate products.* Eligible spirits recovered in the manufacture of intermediate products are not subject to drawback until such recovered spirits are used in the manufacture of a nonbeverage product. (However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.) Spirits recovered in the manufacture of intermediate products shall be reused only in the manufacture of intermediate or nonbeverage products.

(b) *Recovery from nonbeverage products.* Distilled spirits recovered in the manufacture of a nonbeverage product are considered as having been used in the manufacture of that product. If the spirits were eligible when so used, they became subject to drawback at that time. Upon recovery, such spirits may be reused in the manufacture of nonbeverage products, but shall not be reused for any other purpose. When reused, such recovered spirits are not again eligible for drawback and shall not be used in the manufacture of intermediate products.

(c) *Cross references.* For additional provisions respecting the recovery of distilled spirits and related recordkeeping requirements, see §§ 17.168 and 17.183.

§ 17.154 Spirits contained in intermediate products.

Spirits contained in an intermediate product are not subject to drawback until that intermediate product is used in the manufacture of a nonbeverage product.

§ 17.155 Spirits consumed in manufacturing intermediate products.

Spirits consumed in the manufacture of an intermediate product—which are not contained in the intermediate product at the time of its use in nonbeverage products—are not subject to drawback. Such spirits are not considered to have been used in the manufacture of nonbeverage products. However, see § 17.127 with respect to optional treatment of ingredients as unfinished nonbeverage products, rather than as intermediate products.

Subpart H—Records

§ 17.161 General.

Each person claiming drawback on taxpaid distilled spirits used in the manufacture of nonbeverage products shall maintain records showing the information required in this subpart. No particular form is prescribed for these records, but the data required to be shown shall be clearly recorded and organized to enable ATF officers to trace each operation or transaction, monitor compliance with law and regulations, and verify the accuracy of each claim. Ordinary business records, including invoices and cost accounting records, are acceptable if they show the required infomation or are annotated to show any such information that is lacking. The records shall be kept complete and current at all times, and shall be retained by the manufacture at the place covered by the special tax stamp for the period prescribed in § 17.170.

§ 17.162 Receipt of distilled spirits.

(a) *Distilled spirits received in tank cars, tank trucks, barrels, or drums.* For distilled spirits received in tank cars, tank trucks, barrels, or drums, the manufacturer shall record, with respect to each shipment received—

(1) The date of receipt;

(2) The name and address of the person from whom received;

(3) The serial number or other identification mark (if any) of the tank car, tank truck, barrel, or drum;

(4) The name of the producer or warehouseman who paid or determined the tax;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(b) Distilled spirits received in bottles. For distilled spirits received in bottles, the manufacture shall record—

(1) The date of receipt;

(2) The name and address of the seller;

(3) The serial number of each case, if the bottles are received in cases;

(4) The name of the bottler;

(5) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(6) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(c) *Distilled spirits received by pipeline.* For distilled spirits received by pipeline, the manufacturer shall record—

(1) The date of receipt;

(2) The name of the producer or warehouseman who paid or determined the tax;

(3) The effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001); and

(4) The kind, quantity, and proof (or alcohol percentage by volume) of the spirits.

(d) *Determination of quantity.* At the time of receipt, each manufacturer shall determine (preferably by weight) and record the exact number of proof gallons of distilled spirits received. The amount received in bottles may be determined by the required statements on the labels. The amount received in sealed drums with no evidence of leakage may be determined from the record of shipment, which is required by § 19.780 of this chapter to accompany spirits received from a distilled spirits plant. If spirits are received in a tank car or tank truck, and the result of the manufacturer's gauge of the spirits is within 0.2 percent of the number of proof gallons reported on the record of shipment required by § 19.780, then the number of proof gallons reported on that record may be recorded as the quantity received. Nevertheless, the receiving gauge shall be noted on the record of receipt. If, for any shipment, the amount recorded in the manufacturer's records as the quantity received is greater than the amount shown as taxpaid on the record required by § 19.780, a deduction equivalent to the excess shall be made from the amount of drawback claimed in the manufacturer's claim covering that period. If no claim is filed for that period, then the deduction shall be made in the manufacturer's next claim. Losses in transit that exceed the 0.2 percent limitation provided in this paragraph shall be determined and noted on the record of receipt. Such losses shall not be recorded as distilled spirits received.

(e) *Receipt of imported rum, or spirits from Puerto Rico or the Virgin Islands.* If spirits are received which contain at least 92% rum, and which originate from Puerto Rico or the Virgin Islands, the record of receipt shall indicate the place of origin. If rum is received, the record shall indicate whether it is from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic.

(f) *Shipments from distilled spirits plants.* If spirits are received directly from the distilled spirits plant that paid or determined the tax, the manufacturer shall retain the record of shipment required by § 19.780 of this chapter. To the extent that the information on that record duplicates the requirements of this section, retention of that record shall satisfy those requirements. If there are differences between the information on the record of shipment and the information required to be recorded by this section, the requirements of this section may be met by appropriate annotations on the record of shipment.

§ 17.163 Evidence of taxpayment of distilled spirits.

(a) *Shipments from distilled spirits plants.* For each shipment of taxpaid spirits from the bonded premises of a distilled spirits plant, the manufacturer shall obtain the record of shipment prepared by the supplier under § 19.780 of this chapter. This record shall be retained as evidence of taxpayment of the spirits. Each such record shall show the effective tax rate (if other than the rate prescribed by 26 U.S.C. 5001) applicable to the shipment.

(b) *Purchases from wholesale and retail liquor dealers.* Manufacturers shall obtain commercial invoices or other documentation pertaining to purchases of distilled spirits from wholesale and retail liquor dealers (including such dealership operations when conducted in conjunction with a distilled spirits plant). For spirits other than alcohol, grain spirits, neutral spirits, distilled gin, or straight whiskey (as defined in the standards or identity prescribed by § 5.22 of this chapter), the manufacturer of nonbeverage products shall obtain evidence, from the producer or bottler of the spirits, as to the effective tax rate paid thereon.

(c) *Imported spirits.* For imported spirits that were taxpaid through Customs, evidence of such taxpayment (such as Customs Forms 7501 and 7505, receipted to indicate payment of tax, and the certificate of effective tax rate computation, if applicable) shall be secured from the importer and retained by the manufacturer.

(d) *Evidence of effective tax rate.* If the evidence of effective tax rate, required by this section for distilled spirits products that may contain wine or flavors, is not obtained, drawback shall only be allowed based on the lowest effective tax rate possible for the kind of distilled spirits product used.

§ 17.164 Production record.

(a) *General.* Each manufacturer shall keep a production record for each batch of intermediate product and for each batch of nonbeverage product. The production record shall be an original record made at the time of production by a person (or persons) having actual knowledge thereof. If any product is produced by a continuous process rather than by batches, the production record shall pertain to the total quantity of that product produced during each claim period.

(b) *Information to be shown.* The record shall show the name and formula number of the product, the actual quantities of all ingredients used in the manufacture of the batch (including the proof or alcohol percentage by volume of all spirits), the date when eligible spirits were considered used (see § 17.152), the effective tax rate applicable to those spirits (if other than the rate prescribed by 26 U.S.C. 5001), and the quantity of product produced. The alcohol content of the product shall be shown if a test of alcohol content was made (see paragraph (e) of this section). Usage of eligible and ineligible spirits shall be shown separately. If spirits from Puerto Rico or the U.S. Virgin Islands, containing at least 92% rum, were used, the record shall indicate their place of origin. If rum was used, the record shall indicate whether it was from Puerto Rico, from the U.S. Virgin Islands, imported from other countries, or domestic. If spirits were recovered, the production record shall so indicate, and the record required by § 17.168 shall be kept. If drawback is claimed on spirits consumed as an essential part of the manufacture of a nonbeverage product, which were not contained in that product at its completion, then the production record shall show the quantity of spirits so consumed in the manufacture of each batch.

(c) *Specificity of information.* If the product was manufactured in compliance with a formula submitted to ATF or exempt from such submission under § 17.132, the production record shall refer to ingredients by the same names as are used for them in the product's formula. (Other names may be added in the production record, if necessary for the manufacturer's operations.) Usage of spirits may be shown in units of weight or volume.

(d) *Determining quantity of distilled spirits used.* Each manufacturer shall accurately determine, by weight or volume, and record in the production records the quantity of all distilled spirits used. When the quantity used is determined by volume, adjustments shall be made if the temperature of the spirits is above or below 60 degrees Fahrenheit. A table for correction of volume of spirituous liquors to 60 degrees Fahrenheit, Table 7 of the "Gauging Manual," is available. See subpart E of part 30 of this chapter and § 30.67. Loases after receipt due to leakage, spillage, evaporation, or other causes not essential to the manufacturing process shall be accurately recorded in the manufacturer's permanent records at the time such losses are determined.

(e) *Tests of alcohol content.* At representative intervals, the manufacturer shall verify the alcohol content of nonbeverage products. The results of such tests shall be recorded.

§ 17.165 Receipt of raw ingredients.

For raw ingredients destined to be used in nonbeverage or intermediate products, the manufacturer shall record, for each shipment received—

(a) The date of receipt;

(b) The quantity received; and

(c) The identity of the supplier.

§ 17.166 Disposition of nonbeverage products.

(a) *Shipments.* For each shipment of nonbeverage products, the manufacturer shall record—

(1) The formula number of the product;

(2) The date of shipment;

(3) The quantity shipped; and

(4) The identity of the consignee.

(b) *Other disposition.* For other dispositions of nonbeverage products, the manufacturer shall record—

(1) The type of disposition (if used in another product, its formula number shall be shown);

(2) The date of disposition; and

(3) The quantity of each product so disposed of.

(c) *Exception.* The manufacturer need not keep the records required by paragraphs (a) and (b) of this section for any nonbeverage product which either (1) contains less than 3 percent of distilled spirits by volume, or (2) is sold by the producer directly to the consumer in retail quantities. However, when needed for protection of the revenue, the regional director (compliance) may at any time require the keeping of these records upon giving at least five days' notice to the manufacturer.

§ 17.167 Inventories.

(a) *Distilled spirits.* The "on hand" figures reported in Part II of ATF Form 5530.8 shall be verified by physical inventories taken as of the end of each claim period for which a claim is filed. Spirits taxpaid at different effective tax rates shall be inventoried separately. Details of the inventories (when taken, by whom taken, subtotals for each product inventoried) shall be retained with the manufacturer's records. The manufacturer shall explain in Part IV of the supporting data (Form 5530.8) any discrepancy between the amounts on hand as disclosed by physical inventory and the amounts indicated by the manufacturer's records. Any gain in eligible spirits disclosed by inventory requires an equivalent deduction from the claim with which the inventory is reported. Gains shall not be offset by losses in other categories. If no claim is filed, then no physical inventory is required for that claim period.

(b) *Raw ingredients and nonbeverage products.* When necessary for ensuring compliance with regulations and protection of the revenue, the regional director (compliance) may require a manufacturer to take physical inventories of finished nonbeverage products, and/or raw ingredients intended for use in the manufacture of nonbeverage or intermediate products. The results of such inventories shall be recorded in the manufacturer's records. Any discrepancy between the amounts on hand as disclosed by physical inventory and such amounts as indicated by the manufacturer's records shall also be recorded with an explanation of its cause.

§ 17.168 Recovered spirits.

(a) Each manufacturer intending to recover distilled spirits under the provisions of this part shall first notify the regional director (compliance). Recovery operations shall only be conducted on the premises covered by the manufacturer's special tax stamp.

(b) The manufacturer shall keep a record of the distilled spirits recovered and the subsequent use to which such spirits are put. The record shall show—

(1) The date of recovery;

(2) The commodity or process from which the spirits were recovered;

(3) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of distilled spirits recovered;

(4) The amount in proof gallons, or by weight and proof (or alcohol percentage by volume) of recovered distilled spirits reused;

(5) The commodity in which the recovered distilled spirits were reused; and

(6) The date of reuse.

§ 17.169 Transfer of intermediate products.

When intermediate products are transferred as permitted by § 17.185(b), supporting records of such transfers shall be kept at the shipping and receiving plants, showing the date and quantity of each product transferred.

§ 17.170 Retention of records.

Each manufacturer shall retain for a period of not less than 3 years all records required by this part, a copy of all claims and supporting data filed in support thereof, all commercial invoices or other documents evidencing taxpayment or tax-determination of domestic spirits, all documents evidencing taxpayment of imported spirits, and all bills of lading received which pertain to shipments of spirits. In addition, a copy of each formula submitted on ATF Form 5530.5 shall be retained at each factory where the formula is used, for not less than 3 years from the date of filing of the last claim for drawback under the formula. A copy of an approval to use an alternate method or procedure shall be retained as long as the manufacturer employs the method or procedure, and for 3 years thereafter. Further, the regional director (compliance) may require these records, forms, and documents to be retained for an additional period of not more than 3 years in any case where he or she deems such retention to be necessary or advisable for protection of the revenue.

§ 17.171 Inspection of records.

All of the records, forms, and documents required to be retained by § 17.170 shall be kept at the place covered by the special tax stamp and shall be readily available during the manufacturer's regular business hours for examination and copying by ATF officers. At the same time, any other books, papers, records or memoranda in the possession of the manufacturer, which have a bearing upon the matters required to be alleged in a claim for drawback, shall be available for inspection by ATF officers.

(Sec. 5133, 68A Stat. 623 (26 U.S.C. 5133); sec. 201, Pub. L. 85–859, 72 Stat. 1348 (26 U.S.C. 5146)).

Subpart I—Miscellaneous Provisions

§ 17.181 Exportation of medicinal preparations and flavoring extracts.

Medicinal preparations and flavoring extracts, approved for drawback under the provisions of this part, may be exported subject to 19 U.S.C. 1313(d), which authorizes export drawback equal to the entire amount of internal revenue tax found to have been paid on the domestic alcohol used in the manufacture of such products. (Note: Export drawback is not allowed for imported alcohol under this provision of customs law.) Claims for such export drawback shall be filed in accordance with the applicable regulations of the U.S. Customs Service. Such claims may cover either the full rate of tax which has been paid on the alcohol, if no nonbeverage drawback has been claimed thereon, or else the remainder of the tax if nonbeverage drawback under 26 U.S.C. 5134 has been or will be claimed.

§ 17.182 Drawback claims by druggists.

Drawback of tax under 26 U.S.C. 5134 is allowable on taxpaid distilled spirits used in compounding prescriptions by druggists who have paid the special tax prescribed by 26 U.S.C. 5131. The prescriptions so compounded shall be shown in the supporting data by listing the first and last serial numbers thereof. The amount of taxpaid spirits used in each prescription need not be shown, but such prescriptions shall be made available for examination by ATF officers. If refills have been made of prescriptions received in a previous quarter, their serial numbers shall be recorded separately. Druggists claiming drawback as authorized by this section are subject to all the applicable requirements of this part, except those requiring the filing of quantitative formulas.

§ 17.183 Disposition of recovered alcohol and material from which alcohol can be recovered.

(a) *General.* Manufacturers of nonbeverage products shall not sell or transfer recovered alcohol to any other premises. If recovered alcohol is stored pending reuse, storage facilities shall be adequate to protect the revenue. By-product material from which alcohol can be recovered shall not be sold or transferred unless the alcohol has been removed or an approved substance has been added to prevent recovery of residual alcohol. Material from which alcohol can be recovered may also be destroyed on the manufacturer's premises by a suitable method. Except as provided in paragraph (b) of this section, prior written approval shall be obtained from the regional director (compliance) as to the adequacy, under this section, of any substance proposed to be added to prevent recovery of alcohol, or of any proposed method of destruction.

(b) *Spent vanilla beans.* Specific approval from the regional director (compliance) is not required when spent vanilla beans containing residual alcohol are destroyed on the manufacturer's premises by burning, or when they are removed from those premises after treatment with sufficient kerosene, mineral spirits, rubber hydrocarbon solvent, or gasoline to prevent recovery of residual alcohol.

§ 17.184 Distilled spirits container marks.

All marks required by part 19 of this chapter shall remain on containers of taxpaid distilled spirits until the contents are emptied. Whenever such a container is emptied, such marks shall be completely obliterated.

(Sec. 454, Pub. L. 98–369, 98 Stat. 820 (26 U.S.C. 5206(d)))

§ 17.185 Requirements for intermediate products and unfinished nonbeverage products.

(a) *General.* Self-manufactured ingredients made with taxpaid spirits may be accounted for either as intermediate products or as unfinished nonbeverage products. The manufacturer may choose either method of accounting for such self-manufactured ingredients (see § 17.127). However, the method selected determines the requirements that will apply to those ingredients, as prescribed in paragraphs (b) and (c) of this section.

(b) *Intermediate products.* Intermediate products shall be used exclusively in the manufacture of nonbeverage products. Intermediate products may be accumulated and stored indefinitely and may be used in any nonbeverage product whose formula calls for such use. Intermediate products shall be manufactured by the same entity that manufactures the finished nonbeverage products. Intermediate products shall not be sold or transferred between separate and distinct entities. However, they may be transferred to another branch or plant of the same manufacturer, for use there in the manufacture of approved nonbeverage products. (See § 17.169 for recordkeeping requirement.) For the purposes of this section, the phrase "separate and distinct entities" includes parent and subsidiary corporations, regardless of any corporate (or other) relationship, and even if the stock of both the manufacturing firm and the receiving firm is owned by the same persons.

(c) *Unfinished nonbeverage products.* An unfinished nonbeverage product shall only be used in the particular nonbeverage product for which it was manufactured, and shall be entirely so used within the time limit stated in the approved ATF Form 5530.5. Spirits dissipated or recovered in the manufacture of unfinished nonbeverage products shall be regarded as having been dissipated or recovered in the manufacture of nonbeverage products. Spirits contained in such unfinished products shall be accounted for in the supporting data under § 17.147 and inventoried under § 17.167 as "in process" in nonbeverage products. Production of unfinished nonbeverage products shall be recorded as part of the production records for the applicable nonbeverage products. Unfinished nonbeverage products shall not be transferred to other premises.

§ 17.186 Transfer of distilled spirits to other containers.

A manufacturer may transfer taxpaid distilled spirits from the original package to other containers at any time for the purpose of facilitating the manufacture of products unfit for beverage use. Containers into which distilled spirits have been transferred under this section shall bear a label identifying their contents as taxpaid distilled spirits, and shall be marked with the serial number of the original package from which the spirits were withdrawn.

§ 17.187 Discontinuance of business.

The manufacturer shall notify ATF when business is to be discontinued. Upon discontinuance of business, a manufacturer's entire stock of taxpaid distilled spirits on hand may be sold in a single sale without the necessity of qualifying as a wholesaler under part 1 of this chapter or paying special tax as a liquor dealer under part 194 of this chapter. The spirits likewise may be returned to the person from whom purchased, or they may be destroyed or given away.

PART 19—[AMENDED]

Par. B. The regulations in 27 CFR part 19 are amended as follows:

1. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

2. Part 19, subpart D, is amended to add §§ 19.57–19.58 grouped under an undesignated center heading, to read as follows:

* * * * *

Subpart D—Administrative and Miscellaneous Provisions

Sec.

Activities Not Subject To This Part

19.57 Recovery and reuse of denatured spirits in manufacturing processes.
19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

* * * * *

Activities Not Subject to This Part

§ 19.57 Recovery and reuse of denatured spirits in manufacturing processes.

The following persons are not, by reason of the activities listed below, subject to the provisions of this part, but they shall comply with the provisions of part 20 of this chapter relating to the use and recovery of spirits or denatured spirits:

(a) Manufacturers who use denatured spirits, or articles or substances containing denatured spirits, in a process wherein any part or all of the spirits, including denatured spirits, are recovered.

(b) Manufacturers who use denatured spirits in the production of chemicals which do not contain spirits but which are used on the permit premises in the manufacture of other chemicals resulting in spirits as a by-product.

(c) Manufactures who use chemicals or substances which do not contain spirits or denatured spirits (but which were manufactured with specially denatured spirits) in a process resulting in spirits as a by-product.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1372, as amended (26 U.S.C. 5273))

§ 19.58 Use of taxpaid distilled spirits to manufacture products unfit for beverage use.

(a) *General.* Apothecaries, pharmacists, and manufacturers are not required to qualify as processors under 26 U.S.C. 5171 before manufacturing or compounding the following products, if the tax has been paid or determined on all of the distilled spirits contained therein:

(1) Medicines, medicinal preparations, food products, flavors, and flavoring extracts, conforming to the standards for approval of nonbeverage drawback products found in §§ 17.131–137 of this chapter, whether or not drawback is actually claimed on those products. Except as provided in paragraph (c) of this section, a formula need not be submitted if drawback is not desired.

(2) Patented, patent, and proprietary medicines that are unfit for use for beverage purposes.

(3) Toilet, medicinal, and antiseptic preparations and solutions that are unfit for use for beverage purposes.

(4) Laboratory reagents, stains, and dyes that are unfit for use for beverage purposes.

(5) Flavoring extracts, syrups, and concentrates that are unfit for use for beverage purposes.

(b) *Products classed as liquors.* Products specified under Part 17 of this chapter as being fit for beverage use are held to be liquors. Bitters, patent medicines, and similar alcoholic preparations which are fit for beverage purposes, although held out as having certain medicinal properties, are also classed as liquors. Such products are required to be manufactured on the bonded premises of a distilled spirits plant, and are subject to the provisions of this part.

(c) *Formulas and samples; when required.* On request of the Director, or when in doubt as to the classification of a product, the manufacturer shall submit

to the Director the formula for and a sample of the product for examination to verify the manufacturer's claim of exemption from qualification requirements.

(d) *Change of formula; when required.* If the regional director (compliance) finds at any time that any product manufactured under this section as an unfit product is being used for beverage purposes, or for mixing with beverage liquors other than by a processor, he or she shall notify the manufacturer to desist from manufacturing the product until the formula is changed to make the product not susceptible of beverage use and the change is approved by the Director. However, the provisions of this paragraph shall not prohibit the use of unfit products in small quantities for flavoring drinks at the time of serving for immediate consumption. Where, pursuant to notice, the manufacturer does not desist, or the formula is not so modified as to make the product unsusceptible of beverage use, the manufacturer shall immediately qualify as a processor.

(Sec. 805, Pub. L. 96-39, 93 Stat. 275, 278 (26 U.S.C. 5002, 5171))

§ 19.69 [Removed]

3. Section 19.69 is removed.

4. Section 19.780(c)(4) is revised to read as follows:

§ 19.780 Record of distilled spirits shipped to manufacturers of nonbeverage products.

* * * * *

(c) * * *

(4) Kind, proof, and quantity of each container of distilled spirits.

* * * * *

PART 70—[AMENDED]

Par. C. The regulations in 27 CFR part 70 are amended as follows:

1. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

2. The concluding text of § 70.321(a) is revised to read as follows:

§ 70.321 Registration of persons paying a special tax.

(a) *Persons required to register.* * * *

* * * * *

For provisions with respect to the registration of persons subject to the special tax imposed by section 5131, relating to the tax on persons claiming drawback on distilled spirits used in the manufacture of certain nonbeverage products, see section 5132 of the Internal Revenue Code and 27 CFR part 17 (Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products).

* * * * *

§ 70.411 [Amended]

3. Section 70.411(c)(2) is amended by removing paragraphs (c)(2)(v) and (c)(2)(vii), by renumbering existing paragraph (c)(2)(vi) as paragraph (c)(2)(v), and by adding a new paragraph (c)(2)(vi) to read as follows:

(c) * * *

(2) * * *

(vi) Floor stocks tax on alcoholic beverages and imported perfumes held for sale on January 1, 1991.

* * * * *

4. Section 70.411(c)(17) is amended by replacing the words "part 197" with the words "part 17".

§ 70.414 [Amended]

5. Section 70.414(j) is amended by replacing the words "part 197" with the words "part 17".

PART 170—[AMENDED]

Par. D. The regulations in 27 CFR part 170 are amended as follows:

1. The authority citation for part 170 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5064, 5101, 5102, 5179, 5291, 5301, 5362, 5601, 5615, 5687, 7805; 31 U.S.C. 9304, 9306.

Subpart U—[Removed and Reserved]

2. Subpart U is removed and reserved.

PART 194—[AMENDED]

Par. E. The regulations in 27 CFR part 194 are amended as follows:

1. The authority citation for part 194 is revised to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 6676, 7011, 7805.

2. Section 194.33(b) is revised to read as follows:

§ 194.33 Sales of alcoholic compounds, preparations, or mixtures containing distilled spirits, wines, or beer.

* * * * *

(b) *Products unfit for beverage use.* Products meeting the requirements for exemption from qualification under the provisions of § 19.58 of this chapter shall be deemed to be unfit for beverage purposes for the purposes of this part.

§ 194.191 [Amended]

3. Section 194.191(a) is amended by replacing the words "part 170" with the words "§ 19.58".

PART 197—[REMOVED]

Par. F. Title 27 CFR part 197 is removed.

PART 250—[AMENDED]

Par. G. The regulations in 27 CFR part 250 are amended as follows:

1. The authority citation for part 250 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5205, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 250.51 [Amended]

2. Paragraph (c) of § 250.51 is amended by removing the word "(1678)".

§ 250.171 [Amended]

3. The second sentence of § 250.171 is amended by replacing the words "part 197" with the words "part 17".

4. Section 250.172 is revised to read as follows:

§ 250.172 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5530.3. When the limit of liability under a bond given in less than the maximum amount has been reached, no further drawback on monthly claims will be allowed until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part.

(b) *Approval required.* No person bringing eligible articles into the United States from Puerto Rico may file monthly claims for drawback under the provisions of this subpart until bond on Form 5530.3 has been approved by the regional director (compliance) for the region in which is located the person's business premises from which entry of eligible articles is caused or effected.

5. In § 250.173, the first sentence of paragraph (a), the introductory text of paragraph (c), and the first sentence of paragraph (d) are revised to read as follows:

§ 250.173 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from Puerto Rico shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations.* * *

* * * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5530.7, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

* * * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States.* * *

§ 250.307 [Amended]

6. The second sentence of § 250.307 is amended by replacing the words "part 197" wherever they occur with the words "part 17".

7. Section 250.308 is revised to read as follows:

§ 250.308 Bonds.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands and intending to file monthly claims for drawback under the provisions of this subpart shall obtain a bond on Form 5530.3. When the limit of liability under a bond given in less than the maximum amount has been reached, no further drawback on monthly claims will be allowed until a strengthening or superseding bond in a sufficient amount has been furnished. For provisions relating to bonding requirements, subpart E of part 17 of this chapter is incorporated in this part.

(b) *Approval required.* No person bringing eligible articles into the United States from the Virgin Islands may file monthly claims for drawback under the provisions of this subpart until bond on Form 5530.3 has been approved by the regional director (compliance) for the region in which is located the person's business premises from which entry of eligible articles is caused or effected.

8. In § 250.309, the first sentence of paragraph (a), the introductory text of paragraph (c), paragraph (c)(1) in its entirety, and the first sentence of paragraph (d) are revised to read as follows:

§ 250.309 Claims for drawback.

(a) *General.* Persons bringing eligible articles into the United States from the Virgin Islands shall file claim for drawback on Form 2635 (5620.8) with the Chief, Puerto Rico Operations.* * *

* * * * *

(c) *Supporting data.* Each claim shall be accompanied by supporting data as specified in this paragraph. ATF Form 5530.7, Supporting Data for Nonbeverage Drawback Claims, may be used, or the claimant may use any suitable format that provides the following information:

(1) The control number of the Special Tax Stamp and the tax year for which issued:

* * * * *

(d) *Date of filing claim.* Quarterly claims for drawback shall be filed with the Chief, Puerto Rico Operations, within the 6 months next succeeding the quarter in which the eligible products covered by the claim were brought into the United States.* * *

Signed: June 5, 1992.

Stephen E. Higgins,

Director.

Approved: August 22, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92-20622 Filed 8-28-92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: August 24, 1992.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: New.
Form Number: AFT F 5530.8.
Type of Review: New collection.
Title: Supporting Data for Nonbeverage Drawback Claims.
Description: Data required to be submitted by manufacturers of nonbeverage products are used to verify claims for drawback of taxes and hence, protect the revenue. Maintains accountability; allows office (initial) verification of claims.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 611.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Monthly, Quarterly.
Estimated Total Reporting Burden: 3,666 hours.
OMB Number: 1512–0095.
Form Number: ATF F 5530.5.
Type of Review: Revision.
Title: Formula and Process for Nonbeverage Products.
Description: Businesses which use taxpaid alcohol to manufacture nonbeverage products may file a claim for drawback (refund or remittance), if they can substantiate by using ATF Form 5530.5 that the spirits were used in the manufacture of products unfit for beverage purposes. This determination is based on the formula for the product.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 625.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,500 hours.
OMB Number: 1512–0378.
Form Number: AFT REC 5530/1.
Type of Review: Revision.
Title: Application and Notices—Manufacturers of Nonbeverage Products.
Description: Reports (letterhead applications and notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits on which drawback will be claimed. Reports ensure that operations are in compliance with law; prevents spirits from diversion to beverage use. Protects the revenue.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 640.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 640 hours.
Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.

BILLING CODE 4810–31–M

Form Approved: OMB No. 1512-0095 ( )

Department of the Treasury -- Bureau of Alcohol, Tobacco and Firearms
FORMULA AND PROCESS FOR NONBEVERAGE PRODUCT
(See instructions on back -- prepare in triplicate, except as indicated.)

1. Formula No.

2. Kind (e.g. Alcohol, Rum) & Proof of Spirits on Which Drawback Will Be Claimed.

3. Name of Product.

4. Check if Sample Will Be Submitted. ☐

5. No. of Days to Complete Process.

6. Check Kind of Product:
__ Medicine/Medicinal Prep.
__ Food Product
__ Flavor/Flavoring Extract

7. Formulas Superseded.

8. Name of Manufacturer & Principal Address Where Product Will Be Produced (Space for More Addresses on Reverse).

9. Ratio of Eligible Spirits Used (in proof gals.) to Product Made (wine gals.).

10. Alcohol Content by Volume of Finished Product. %

11. If Finished Product Is to Be Used in Alcoholic Beverages:
A. Does Product Contain Natural Flavoring? (Yes or No) _____
B. Does Product Contain Greater Than 0.1% Artificial Flavoring (Excluding Vanillin, Ethyl Vanillin, Maltol, and Ethyl Maltol)? (Yes or No) _____
C. State Parts Per Million in Product of: Synthetic Vanillin _____ Ethyl Vanillin _____ Synthetic Maltol _____ Ethyl Maltol _____
D. Does Product Contain Any Color Additive? _____ If Yes, Which? _____
E. Are All Ingredients Approved by FDA for Use Without Limitation or Restriction? _____

12. If Made With Recovered Spirits: Ratio of Eligible Plus Recovered Spirits Used (in proof gals.) to Product Made (wine gals.).

13. Formula and Process (Use Additional Space on Reverse If Necessary).

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14. Person to Contact Regarding Submission (Include Area Code & Phone No.)

15. Signature & Title of Applicant or Authorized Agent.

16. Date.

APPLICANT: PLEASE MAKE NO ENTRY BELOW THIS LINE.

17. Laboratory Sample Number.

18. Action.

19. Alcohol by Volume. %

20. Analyst.

21. Date.

ATF FORM 5530.5 ( )

INSTRUCTIONS

A. Before filling out this form, read carefully Subpart F of Part 17, title 27, Code of Federal Regulations. Submit a separate formula for each nonbeverage product made with taxpaid distilled spirits on which drawback is claimed (except current U.S.P., N.F., and H.P.U.S. preparations for which quantitative formulas are not required).

B. This form must be filed within 6 months after the end of the quarter in which distilled spirits were used in the manufacture of nonbeverage products. Submit to: Alcohol & Tobacco Laboratory (Attn: Drawback), 1401 Research Blvd., Rockville, MD 20850. Submit in triplicate; however, if the product will be manufactured at more than one location, submit two additional copies for each additional location.

C. Item 1. Formula numbers begin with number "1" for the first submission and progress sequentially with future submissions. For numbering when formulas will be used at more than one plant, see 27 CFR 17.121(c).

D. Item 3. The name must reflect the type of product. For example, a "natural peach flavor" should contain all natural ingredients as well as real peach. If it does not contain peach, it could be called "natural peach type flavor."

E. Item 4. Submission of samples is voluntary, unless specifically required under 27 CFR 17.124. If it is known that a sample will be submitted, either with the formula or under separate cover, please check the box.

F. Item 5. State the number of days it takes to manufacture the product. If it takes only a few hours to mix it, but takes an additional day to filter it, that should be noted.

G. Item 6. Indicate the type of product. Cough syrups and cold relief products are considered medicines/medicinal preparations. Cakes and similar products are considered to be food products, while products such as lemon extracts are considered flavors. Submit commercial labels or facsimiles and any available supporting data for bitters (flavoring or medicinal) and for any other product that cannot be readily classified in the product types listed.

H. Item 7. State the number(s) of any formulas to be replaced by the current submission. If formula(s) being superseded have been approved for use at plant(s) other than the one given in item 8, specify such other plant(s).

I. Item 9. Divide the number of proof gallons of eligible alcohol used in manufacturing and standardizing the product by the yield of finished product (in wine gallons). Enter as a decimal. For example, if 32 proof gallons are used to make 100 gallons of product, "0.32 p.g./w.g." would be the ratio. Eligible alcohol includes alcohol contained in intermediate products (as defined in 27 CFR 17.11) but not alcohol contained in nonbeverage products, being used as ingredients, on which drawback may be claimed separately. If a range is stated, include the reason(s) for variation (item 22 may be used for this purpose).

J. Item 10. State the actual percentage of absolute alcohol by volume in the finished product. Include all alcohol, both eligible and ineligible. This is the percentage of alcohol that would be found by analysis. If the product is not a liquid, state the proof gals. of alcohol remaining in a given quantity (by weight) of finished product.

K. Item 11. Answer only if product is for use in alcoholic beverages. Definitions of "natural" and "artificial" are found in FDA regulations, 21 CFR 101.22. "Color additive" is defined in FDA regulations, 21 CFR 70.3. If the answer to question E is "No," limited or restricted ingredients must be noted as such in item 13, including quantity used.

L. Item 12. Answer only if recovered alcohol will be used. Enter as a decimal. Include eligible spirits and all recovered alcohol (both eligible and ineligible). A range may be stated.

M. Item 13. List the name, quantity, and alcohol content, if any (by volume), of each ingredient used. Either metric or English measure may be used. Usage of ingredients containing alcohol and the yield of liquid products must be expressed in wine gals. Include proof gallons of eligible spirits and recovered spirits used. Give the product name and ATF formula no. (from ATF Form 5530.5 or 1678) of alcoholic ingredients if self-manufactured. If purchased, give the manufacturer's name, the name of the product, and the ATF formula number, if known. Example:

Natural and Artificial Vanilla Flavor:

Vanilla Extract 10 Fold (35% alcohol, purchased from X Company, Formula No. 102) .	473 ml (.125 wine gal.)
Vanilla Flavor 2 Fold (30% alcohol, our drawback Formula No. 422)	1892 ml (.5 wine gal.)
Vanillin	30 g.
Alcohol - 190 proof . . . . (Eligible for drawback)	946 ml (.25 wine gal.) (.475 proof gal.)
Water Q.S. to	3785 ml (1 wine gal.)

If additional spirits may need to be added for standardization after all the ingredients called for by the formula have been mixed together, please so state. Identify any colors by their official FDA designations (e.g. caramel, FD&C Yellow No. 5). Describe the manufacturing process (i.e. simple mixture, maceration, percolation, etc.). Show the approximate loss of spirits, if any, during processing (i.e. filtration, evaporation, etc.), and indicate what quantity of alcohol, if any, is recovered. If the manufacturing process involves separate stages, fully describe them and indicate the alcohol content (as a percent by volume) at the end of each stage. For food products, such as preserved fruits, cakes, soups, etc., the formula need only show the number of proof gallons of distilled spirits used to make a given quantity of finished product. A sample will be required for such products.

N. Item 15. The applicant or his authorized agent must sign in the space provided and indicate the capacity in which he is signing (e.g. sole proprietor, attorney-in-fact, etc.).

O. Supplies of ATF Form 5530.5 may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153. Telephone number: (703) 455-7801.

PAPERWORK REDUCTION ACT NOTICE. This request is in accordance with the Paperwork Reduction Act of 1980. This form is used by ATF to determine if the product is nonbeverage in character so that the manufacturer may file for drawback of taxes. The information is required to obtain a benefit.

The estimated average burden associated with this collection of information is 0.5 hour per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512-0379), Washington, DC 20503.

Form Approved: OMB No. 1512-0379 ( )

SUPPORTING DATA FOR NONBEVERAGE DRAWBACK CLAIMS

(Page ___ of ___)

PART I -- Identification Data

1. Name of Claimant: _____

Address: _____

2. Period covered (Check one)

___ Quarter ___ Month

Ending: _____

3. Control Number on Special Tax Stamp

4. Tax Year Covered by Special Tax Stamp

PART II - Distilled Spirits Account (in proof gallons, except lines 1-2)

Was a physical inventory taken as required by 27 CFR 17.167(a)? (Check one.) ___ Yes. ___ No. (Explain "No" in Part IV.)	New Spirits (eligible, not previously used in intermediate or nonbeverage products) (a)	SPIRITS RECOVERED: In the Manufacture of Intermediate Products (eligible spirits) (b)	SPIRITS RECOVERED: In the Manufacture of Nonbeverage Products (ineligible spirits) (c)	Eligible Spirits Content of Intermediate Products (d)
1. Kind (optional, except for Puerto Rican or U.S. Virgin Islands spirits, and imported rum)				
2. Effective Tax Rate Per Proof Gallon	$ | $	$ | $	XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX	$ | $
3. On Hand, Start of Period				
4. In Process, Start of Period				
DURING PERIOD: 5. Received		XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX	XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX	
DURING PERIOD: 6. Recovered	XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX			XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX
DURING PERIOD: 7. Produced	XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX	XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX	XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX	
8. Gain Recorded by Closing Physical Inventory				
9. Total to Account for (Add lines 3-8)				
DURING PERIOD: 10. Used in Nonbeverage Products				
DURING PERIOD: 11. Used in Intermediate Products			XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX	
DURING PERIOD: 12. Otherwise Used (not subject to drawback)			XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX	
13. Loss Recorded by Closing Physical Inventory				
14. On Hand, End of Period				
15. In Process, End of Period				
16. Total Accounted for (Add lines 10-15)				

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ATF F 5530.8 ( )

PART III - Production of Nonbeverage Products (Page ___ of ___)

INFORMATION FROM ATF FORM 1678 OR 5530.5		Ineligible Recovered Spirits Used (proof gals.) (c)	ELIGIBLE SPIRITS USED			FINISHED PRODUCT PRODUCED	
Name of Product (a)	Formula No. (or "NF," "USP" or "HPUS") (b)		Kind (P.R. or V.I. spirits, imported rum, other kinds) (d)	Drawback Rate (= $1.00 less than effective tax rate) (e)	Amount Used (proof gals.) (f)	Amt. Produced (wine gals., except dry products) (g)	Alcohol Content by Volume (h)
1.				$			%
2.				$			%
3.				$			%
4.				$			%
5.				$			%
6.				$			%
7.				$			%
8.				$			%
9.				$			%
10.				$			%
11.				$			%
12.				$			%
13.				$			%
14.				$			%
15.				$			

PART IV - Additional and Explanatory Information

I certify, under the penalties of perjury, that the data submitted on this form are correct, to the best of my knowledge.	Signature & Title:	Date:

ATF F 5530.8 ( )

[FR Doc. 92-20623 Filed 8-28-92; 8:45 am]
BILLING CODE 4810-31-C

INSTRUCTIONS

(a) **General.** (1) Each claim for drawback shall be accompanied by supporting data containing the information presented by this form. Regulations pertaining to this form are found in 27 CFR 17.147. All quantities of spirits shown shall be in proof gallons.

(2) Modifications of this form may be used without prior authorization, as long as all required information pertinent to the manufacturing operation is shown. If certain lines or columns do not apply to an operation, then such lines or columns may be omitted. In omitting lines or columns, the letter or numerical designations of the remaining lines and columns shall not be changed. A continuation sheet for persons claiming on more than 15 products in Part III is on the reverse of these instructions.

(3) This form may be used by persons claiming drawback on nonbeverage products brought into the U.S. from Puerto Rico or the U.S. Virgin Islands under the provisions of 27 CFR Part 250, as well as by domestic manufacturers claiming drawback under 27 CFR Part 17. Certain instructions that only pertain to one of these types of claimants are so indicated. Such instructions are not to be confused with instructions pertaining to use, by domestic manufacturers, of Puerto Rican or Virgin Islands spirits.

(4) Supplies of this form may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, VA 22153; tel. (703) 455-7801.

(b) **Part II.** (1) Persons filing claims under 27 CFR Part 250 for Puerto Rican or Virgin Islands products are not required to complete Part II.

(2) Separate accounts shall be kept under Part II for spirits taxpaid at different effective tax rates. Separate accounts shall also be kept for: (A) spirits from Puerto Rico containing at least 92% rum, (B) spirits from the U.S. Virgin Islands containing at least 92% rum, and (C) imported rum. These separate accounts shall be maintained in columns (a), (b) and (d). Only a single account is needed in column (c), since spirits reported there are ineligible for drawback. If desired, additional separate accounts may be kept for other "kinds" (e.g. alcohol of various proofs in column (a), different products in column (d), etc.).

(3) In line 4, spirits "in process" are spirits contained in unfinished intermediate products or unfinished nonbeverage products prior to the time of use of the spirits as determined under the principles of § 17.152. Spirits in process are distinguished by their source; thus, for example, spirits "in process" in an unfinished intermediate product would appear in column (a) if the spirits had not been previously used, but they would appear in column (d) if they had come from other intermediate products.

(4) Any gain reported in columns (a), (b), or (d) of line 8 shall be reflected by an equivalent deduction from the amount of drawback claimed. Such a gain shall not be offset by losses in other columns.

(5) Note that column (d) only calls for the eligible spirits content of intermediate products, not the full volume of such products.

(c) **Part III.** (1) For claimants under 27 CFR Part 250: Columns (c) and (d) are not required; column (e) is not required, but if completed should read "$9.50"; column (f) should be used to state the proof gallons contained in each product (which may be less than the amount used).

(2) In column (b), if a formula was adopted from another plant under § 17.125(b), the plant from which the formula was adopted shall be indicated in addition to the formula number. This may be done by a letter or other symbol if the meaning is explained in Part IV.

(3) In column (c), show only spirits recovered in the manufacture of nonbeverage products (i.e. spirits from the account in column (c) of Part II). Note that usage of other ineligible spirits (e.g. spirits derived from other nonbeverage products) is not reported in Part III. Domestic U.S. manufacturers must record such usage in batch records.

(4) If spirits of more than one kind, or taxpaid at more than one effective tax rate, were used during the claim period in any nonbeverage product, then the number of proof gallons for each kind and for each drawback rate shall be shown separately in columns (d) and (e).

(5) In column (d), imported rum shall be distinguished from other rum; spirits from Puerto Rico or the Virgin Islands shall be distinguished by their place of origin if (and only if) they contain at least 92% rum.

(6) Yield of finished product (column (g)) shall be shown in wine gallons. For dry products, yield shall be shown in the same units used to express yield in the approved formula, ATF Form 1678 or 5530.5.

(7) If distilled spirits were added, as described in § 17.152(c), to a batch of nonbeverage product that was recorded as completed during a previous claim period, such addition shall be recorded on a separate line in Part III. The amount shown in column (f) in such a case shall be only the additional volume of finished product created by addition of the spirits, and words such as "addition after assay" shall be added in column (a).

(d) **Part IV.** (1) Part IV shall contain an explanation of any discrepancies (gains or losses) in the distilled spirits account (Part II) recorded by the physical inventory required in § 17.167(a).

(2) For domestic U.S. claimants under 27 CFR Part 17 only: If imported rum, or spirits from Puerto Rico or the U.S. Virgin Islands containing at least 92% rum, were used subject to drawback in nonbeverage products, Part IV shall state the total number of proof gallons so used during the claim period for each of those three categories. Such amounts shall include eligible spirits or rum from intermediate products and eligible recovered spirits. Ineligible spirits shall not be included.

(3) For domestic U.S. manufacturers: If a deduction was taken from the amount of drawback claimed, due to a gain in a shipment of spirits received (as required by § 17.162(d)) or to a gain in spirits on hand (as required by § 17.147(b)), this shall be noted in Part IV.

(4) For claimants under 27 CFR Part 250 only: Part IV shall state the name and address of the manufacturer of each product (if different from the claimant), the date of entry into the U.S., and the evidence of taxpayment as required by § 250.173(c)(2)(viii) or § 250.309(c)(2)(viii).

PAPERWORK REDUCTION ACT NOTICE.

This request is in accordance with the Paperwork Reduction Act of 1980. This form is used by ATF to verify that products on which drawback is claimed were made according to approved nonbeverage formulas, and that regulatory requirements have been met. The information is required to obtain a benefit.

The estimated average burden associated with this collection of information is 1 hour per respondent or recordkeeper, depending on individual circumstances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Information Programs Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, and the Office of Management and Budget, Paperwork Reduction Project (1512-0379), Washington, DC 20503.

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August 31, 1992

Part VI

Department of Transportation

Research and Special Programs Administration

49 CFR Part 192

Regulatory Review; Gas Pipeline Safety Standards; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS-124; Notice 1]

RIN 2137-AC25

Regulatory Review; Gas Pipeline Safety Standards

Dated: July 15, 1992.

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to change miscellaneous gas pipeline safety standards to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. The proposed changes result from the regulatory review RSPA carried out in response to the President's directive on reducing the burden of government regulation. The proposed changes would reduce costs in the gas pipeline industry without compromising safety.

DATES: RSPA invites interested persons to submit comments by September 30, 1992. Late filed comments will be considered as far as is practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8421, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in room 8419 between 8:30 a.m. and 5 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: A. Garnett, (202) 366-2392, regarding the subject matter of this notice, or the Dockets Unit, (202) 366-5046, regarding copies of this notice or other material that is referenced in this notice.

SUPPLEMENTARY INFORMATION:

Background

In a January 28, 1992, memorandum, President Bush wrote to Department and agency heads about the need to reduce the burden of government regulation. The President was concerned that agencies were not doing enough to review and revise existing regulations to eliminate unnecessary and overly burdensome requirements. He recognized that regulations that do not keep pace with new technologies and innovations impose needless costs and impede economic growth.

The memorandum called for a 90-day moratorium on issuing certain proposed or final regulations. The President asked agencies to use that period to review their existing regulations to identify those that are not cost-effective and to determine which could be more goal-oriented, could include market mechanisms, and could be clearer to avoid needless litigation. Each agency was asked to propose, as soon as possible, administrative changes to correct any problems the review found.

In response to the President's memorandum, DOT published a notice requesting public comment on the Department's regulatory programs (57 FR 4745; Feb. 7, 1992). Commenters were asked to identify regulations that substantially impede economic growth, may no longer be necessary, are unnecessarily burdensome, impose needless costs or red tape, or overlap or conflict with other DOT or Federal regulations. The deadline for submitting comments was March 2, 1992.

RSPA received comments from 39 persons and organizations about the pipeline safety regulations in part 192. Most of the comments came from regulated pipeline companies, pipeline trade associations, and state pipeline safety agencies. RSPA has carefully considered all the comments in its review of the regulations. Some comments will be considered in future rulemakings. Additionally, RSPA is preparing a separate rulemaking "Update of Standards Incorporated by Reference" which updates the editions of the industry standards that are set out in part 192.

One suggested change to part 192 that requires further study involves small gas distribution systems, such as master meter systems and petroleum gas systems serving mobile home or apartment complexes. The National Association of Pipeline Safety Representatives has recommended that RSPA develop separate, more appropriate safety standards for these systems in a new part to title 49 of the Code of Federal Regulations. RSPA invites persons interested in this topic to comment on whether such standards should be published.

Of the various pipeline regulations, the review showed that changes to the gas regulations in part 192 would result in the largest single cost savings. Therefore, changes to part 192 have the highest priority.

By memorandum of April 29, 1992, the President continued the moratorium on certain proposed and final regulations for 4 more months. With regard to the review of existing regulations, he requested that agencies publish proposed changes that require public comment as soon as possible.

Proposed Changes to Part 192 Safety Standards

The following discussion explains the changes RSPA proposes to various standards in part 192:

Section 192.1(b)(1) Scope of part. This section currently states that part 192 does not apply to the offshore gathering of gas upstream from the outlet flange of each facility on the outer continental shelf (OCS) where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. RSPA proposes to delete the phrase "on the outer continental shelf", and to apply to the same exception to similar pipelines in state offshore waters.

The current regulations are not clear where the applicability of part 192 begins on offshore gathering lines in state waters. Shell Offshore, Inc. proposed a similar change in comments to an NPRM proposing to better define gathering lines (56 FR 48505; September 25, 1991; Docket PS-122).

This revision will clarify that part 192 does not apply to field production lines, i.e., flow lines, in state offshore waters, similar to the present exception on the OCS. Part 192 regulations are currently being applied to some production lines in state offshore waters where such regulations were not intended to apply. The drug testing requirements in part 199 are also being applied to workers on some production platforms in state offshore waters where such regulations were not intended to apply. The proposed revision would make federal and state offshore rules consistent and should reduce operating expenses for the operator.

Section 192.3 Definitions (transmission line). In part 192, the term "transmission line" means "a pipeline, other than a gathering line, that (a) transports gas from a gathering line or storage facility to a distribution center or storage facility; (b) operates at a hoop stress of 20 percent or more of SMYS; or (c) transports gas within a storage field." This definition was based on the definition of "transmission line" in the 1968 edition of the *USAS B31.8 Code.* Although DOT intended the part 192 definition to have the same meaning as the B31.8 Code definition, the part 192 definition omits the term "large volume customer," which marked an end of a transmission line in the B31.8 Code definition. Despite the omission, RSPA has interpreted the part 129 definition of transmission line to include pipelines that transport gas from gathering lines or transmission lines to large volume customers, such as a power plant or factory. RSPA proposes to clarify this application of part 192 by adding the term "large volume customer" to the transmission line definition in § 192.3.

The definition of Secretary would be amended to eliminate the connotation of gender.

Section 192.5 Class locations. Section 192.5 classifies the location of onshore pipelines on a scale that increases from 1 to 4 according to the number of buildings in an area. The area extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline. However, if the area contains a cluster of buildings that by itself would qualify the area as Class 2 or 3, § 192.5(f) provides that the classification ends 220 yards from the nearest building in the cluster.

Comments from Enron Corporation, Northern Illinois Gas, and the RSPA internal regulatory review, indicated that some operators may not understand this cluster exception and add all the buildings in a 1-mile area to those in any cluster, determining a higher than required classification for the area. Because part 192 regulates pipelines more stringently as class location increases, any over-classification results in needless expenditures. RSPA proposes to clarify § 192.5 to minimize the possibility of over-classification of pipeline locations.

Section 192.7 Incorporation by reference. Section 192.7 sets out the general requirements for the incorporation in the regulations of industry standards for the design, construction and operation of gas pipelines. Paragraph 192.7(a) states that incorporation of a document by reference has the same force as if the document were copied in the regulations. Some operators have misinterpreted this section to mean that they must comply with all of the terms contained in a referenced document. RSPA proposes to revise § 192.7(a) to clarify that an entire standard is not incorporated when the document is incorporated by reference; rather, only those portions specifically referenced in the regulations are incorporated.

Section 192.9 Gathering lines. This section requires operators of gathering lines to comply with part 192 standards applicable to transmission lines. The requirements do not apply, however, to certain rural gathering lines that part 192 does not cover, as provided in § 192.1(b). Section 192.9 would be revised to highlight this limit on applicability. With a clear understanding of which gathering lines must meet transmission line requirements, operators should improve the efficiency of their compliance efforts. The proposed change would not reduce safety because it does not alter the scope of the existing regulation.

Section 192.11 Petroleum Gas Systems. (Also includes changes to §§ 192.1 and 192.3): Section 192.11 requires petroleum gas systems covered by part 192 to comply with National Fire Protection Association (NFPA) Standards No. 58 and No. 59 and other part 192 standards. Petroleum gas systems are pipeline distribution systems comprised of a liquefied petroleum gas (LPG) storage tank (or cylinder), piping, and other facilities to distribute petroleum gas (instead of natural gas) to customers who consume the gas. The systems covered are those that serve 10 or more customers, or fewer than 10 if any portion of the system is in a public place. However, RSPA has interpreted § 192.11 not to apply to systems where a single tank serves a single customer on the customer's premises even if part of the system is in a public place.

Petroleum gas is defined in § 192.11(c) as "propane, butane, or mixtures of these gases, other than a gas air mixture that is used to supplement supplies in a natural gas distribution system." Because of the petroleum "gas air mixture" exclusion, which was intended to exclude from § 192.11 natural gas distribution systems that transport such mixtures, RSPA has not enforced NFPA Standards No. 58 and No. 59 against LPG peak shaving plants. Operators of natural gas systems use LPG peak shaving plants in cold weather to augment natural gas supplies with mixtures of petroleum gas and air. Nevertheless, we have said these plants are pipeline facilities subject to all other requirements of part 192; there is no doubt NFPA intended Standards No. 58 and 59 to cover such plants.

NFPA petitioned RSPA to clarify the coverage of NFPA Standards No. 58 and No. 59 under § 192.11 (P-44; November 30, 1989). NFPA also requested that the definition of petroleum gas be amended to be more consistent with the definitions used in the NFPA standards. The Florida LP Gas Pipeline Advisory Committee (see Hillsboro Gas Company comments in Docket RR-1), an industry group that advises the Florida Division of Liquefied Petroleum Gas, the state regulatory agency on LPG matters, supported the petition. Because both pipeline industry and state safety officials have had difficulty understanding the existing rule, RSPA agrees that revisions are needed.

RSPA proposes to revise § 192.11(a) to provide that LPG peak shaving plants must comply with NFPA Standards No. 58 and No. 59 and the applicable part 192 standards. NFPA Standards No. 58 and No. 59 would not apply to natural gas distribution systems downstream from the point where petroleum gas/air mixtures are combined with natural gas. Section 192.11(b) would be revised to clarify that all regulated petroleum gas systems, including systems that carry petroleum gas and air mixtures, must meet NFPA Standards No. 58 and No. 59 and other applicable part 192 standards. The current rule that part 192 prevails if a conflict exists with an NFPA requirement would be revised under a proposed revision of § 192.11(c) to provide that the NFPA requirement would prevail. RSPA's experience shows the NFPA rules are updated regularly to include state of the art technology and should be given priority. However, if the NFPA standards are silent or nonspecific (such as for corrosion protection of the system), the operator would be required to comply with part 192 requirements.

In addition, this notice proposes to redefine "petroleum gas" to be consistent with current commercial usage. The changes should reduce confusion in knowing which standard to follow, and should result in increased operator efficiency in designing, operating and maintaining petroleum gas systems. The revised definition would appear in § 192.3 instead of § 192.11. Also, those petroleum gas systems that are not subject to part 192 would be stated in § 192.1, "Scope of part," instead of § 192.11.

RSPA currently incorporates by reference the 1979 editions of NFPA Standards No. 58 and 59, as shown in appendix A of part 192. The 1979 edition of NFPA Standard No. 58 does not permit the use of mechanical fittings for making polyethylene joints. In a concurrent rulemaking (referenced above), RSPA is updating appendix A to incorporate the 1992 edition of NFPA Standard 58, which allows the use of mechanical fittings for certain pipe. RSPA will not enforce the prohibition against mechanical fittings on these pipe in the interim should this rulemaking be concluded before the appendix is updated.

Section 192.14 Conversion to service subject to this part. (Also includes changes to § 192.553 General requirements.): Section 192.14 establishes various criteria for qualifying a pipeline previously used in service not subject to part 192 for use under part 192. Section 192.14(a)(1)

requires that the design of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in a satisfactory condition for safe operation. Section 192.14(a)(4) requires that the pipe must be hydrostatically tested in accordance with subpart J to substantiate the maximum allowable operating pressure (MAOP) permitted by subpart L.

Section 192.553 establishes general requirements for increasing the MAOP (uprating) a pipeline. Section 192.553(d) limits a new MAOP established under part 192 to the maximum that would be allowed under part 192 for a new segment of pipeline constructed of the same materials in the same location. Neither section provides for verifying design calculations or limiting MAOP when one or more of the steel pipe variables necessary for the determination of design strength or MAOP are unknown.

ANR Pipeline Company suggested using a hydrostatic test to establish the yield strength of pipelines for which yield strength is not known. The ASME B31.8 Code does not directly provide for hydrostatic testing to determine the yield strength of pipe (ASME B31.8 Code for Pressure Piping for Gas Transmission and Distribution Systems), paragraph 845.214, Qualification of a Steel Pipeline or Main to Establish the MAOP). However, the Code provides for establishing MAOP on the basis of hydrostatic testing of existing natural gas pipelines or of pipelines being converted to natural gas service where one or more of the factors in the design formula are unknown. The test pressure used in the referenced Code MAOP calculation is limited to the test pressure obtained at the high elevation point of the minimum strength test segment and to the pressure required to produce a stress equal to the yield strength as determined by hydrostatic testing. The procedure for determining yield strength by hydrostatic testing is included in B31.8 appendix N, Recommended Practice for Hydrostatic Testing Pipelines in Place.

RSPA proposes to change §§ 192.14(a)(1) and 192.553(d) to permit verifying the design pressure and establishing a new MAOP for steel pipelines when one or more of the variables necessary for determining those pressures are unknown by (1) testing the pipeline in accordance with ASME B31.8, appendix N, to produce a pressure equal to yield strength, and (2) applying to not more than 80 percent of the first pressure that produces yielding the appropriate factors in § 192.619(a)(2)(ii) and proposed § 192.619(a)(2)(iii).

The proposed change will enable the conversion or uprating of certain pipelines, or reduce the cost of conversion or uprating of certain pipelines, and will enable the operation of the lines at their fullest potential.

The proposed change should not have an adverse effect on pipeline safety. To determine the MAOP at a stress equivalent to the yield strength of the pipe in the affected pipelines, testing the lines to hydrostatic pressures greater than otherwise required for the determination of the MAOP under § 192.619 will be necessary. The result will be a greater margin of safety between hydrostatic test pressure and MAOP. Any defects present in the pipeline will likely fail during hydrostatic testing and be removed from the line.

Section 192.107 Yield strength (S) for steel pipe. Paragraph 192.107(b) provides that, for pipe that is manufactured in accordance with a specification not listed in section I of part 192's appendix B or whose specification or tensile properties are unknown, the yield strength (S) to be used in the design formula in § 192.105 is the lower of the following criteria if the pipe is tensile tested in accordance with section II–D of appendix B:

(i) 80 percent of the average yield strength determined by the tensile tests.

(ii) The lowest yield strength determined by the tensile tests, but not more than 52,000 p.s.i.

ANR Pipeline Company (ANR) suggested that the yield strength limitation in § 192.107(b)(1)(ii) to a maximum of 52,000 p.s.i. is out-dated. The 52,000 p.s.i. yield strength limit was developed and published in the ASME B31.8 Code for Pressure Piping, Gas Transmission and Distribution Piping Systems when the highest strength pipe commercially available had a specified minimum yield strength (SMYS) of 52,000 p.s.i. ANR argued that since then, pipe materials with higher yield strengths of 60,000, 65,000 and 70,000 p.s.i. have become commercially available and due to the current limitation, good, conditioned pipe lacking tensile property documentation is being under-utilized. ANR suggested that the maximum of 52,000 p.s.i. be increased to a value reflecting current pipe usage.

Instead, RSPA is proposing to remove the 52,000 p.s.i. SMYS limitation. By permitting an increase in the maximum value of the minimum yield strength determined by tensile test, utilizing a higher "S" value that is more representative of the true properties of the material as the basis for design will be possible. An increase will permit the use of some pipe lacking original tensile property documentation in higher design pressure applications where the only current alternative is the purchase of new pipe at market prices.

This change will have no impact on pipeline safety. If the maximum value of 52,000 p.s.i. were deleted as proposed, the two remaining § 192.107(b)(1) alternative criteria for the design value would provide adequate limitation of the yield strength used for design. The normal statistical distribution of yield strength for a uniform lot of steel pipe is such that a value equal to 80 percent of the average yield strength determined by tensile test usually will be less than the specified minimum yield strength. For example, unidentified pipe originally made as Grade X65 (65,000 p.s.i. SMYS) with an average mill test yield strength of 78,000 p.s.i., an exceptionally high average, could be used in the design formula as 62,400 p.s.i. A lower average yield strength determined by tensile test would result in a design yield strength less than 62,400 p.s.i. The alternative criterion, based on the lowest actual yield strength determined by test, is unlikely to be less than 80 percent of the average yield strength, except in the case of a lot of pipe with exceptionally high scatter in the test results, in which case the alternative protects against an average based on a skewed statistical distribution. Under either criteria, the yield strength value determined by test for use in the design formula will provide a reasonable conservative design pressure.

Section 192.121 Design of plastic pipe. This regulation establishes the design pressure for plastic pipe in accordance with the design formula, specified in § 192.121, and design limitations specified in § 192.123. RSPA recommends that an alternative formula, commonly used by industry, be added to provide greater flexibility and consistency with industry practices. The following formula would be added to § 192.121 to provide an alternative method of determining the design pressure for plastic pipe based on the Standard Dimension Ratio (SDR), often marked on the exterior surface of plastic pipe:

$$P = \frac{2S}{(SDR-1)}\ 0.32$$

The SDR, a common industry parameter, is the ratio of average specified outside diameter to minimum specified wall thickness in accordance with a preferred numbering system.

This proposed alternative formula would not compromise pipeline safety because it produces identical results to the existing formula. This formula differs only in its use of the SDR which avoids having to determine the outside diameter and wall thickness of the pipe.

Section 192.123 Design limitations for plastic pipe. This regulation establishes design limitations for the use of plastic pipe in natural gas pipelines. Several operators recommended that § 192.123(b)(1) be amended to reflect advancements in plastic pipe technology proven to provide safe transportation of natural gas by pipeline at temperatures below the current limit of −20°F RSPA proposes to lower the existing operating temperature limit from −20°F to −40°F, to give operators greater liberty in selecting plastic pipe for use in natural gas pipelines. In November 1979, RSPA granted a waiver to this regulation. Additionally, RSPA proposes to clarity § 192.123(b)(2). This section sets the maximum operating temperature for thermoplastic and reinforced plastic pipe to the temperature at which the long-term hydrostatic strength was determined. For pipelines manufactured before May 18, 1978, this section permits operation at temperatures up to 100°F even if the long-term hydrostatic strength was not determined at that temperature. RSPA proposes to amend § 192.123(b)(2) to clarify the upper operating temperature limit for thermoplastic pipe. The proposed change will not affect pipeline safety; rather, it clarifies the regulation in order to reduce misinterpretation.

Section 192.179 Transmission line valves. This rule establishes standards for spacing of transmission line sectionalizing block valves according to population density in the vicinity of the pipeline. ANR Pipeline Company stated that the current requirement for fixed valve spacing does not make sense and imposes needless costs. ANR proposed that the regulation be changed to permit the operator to determine the valve spacing. ANR said that initial damage is done within a very short time after a pipeline failure and that the spacing of valves will not limit the initial damage. ANR further stated that there is no danger to the public since natural gas is lighter than air, and the gas flowing from the pipeline will normally travel up (directly into the atmosphere) from the failure site.

RSPA recognizes that transmission line sectionalizing block valves are expensive; however, RSPA believes they are necessary to ensure pipeline safety. Therefore, to reconcile these competing interests, RSPA proposes to revise § 192.179(a) to allow the Administrator to approve other spacing of the sectionalizing block valves in those segments of a transmission line where the operator demonstrates a resulting equivalent level of pipeline safety. This revision accelerates the approval process and may reduce pipeline installation costs.

Section 192.203 Instrument, control, and sampling pipe and components. Section 192.203(b)(2) requires the installation of a shutoff valve in each takeoff line of a regulator station. The regulator controls line pressure downstream from the regulator. Mooney Controls, a manufacturer of pre-piped regulators and valves, petitioned that the requirement to install control valves on pre-piped regulators and valves be changed. Mooney's petition followed a Missouri Public Service Commission grant of waiver exempting the City of Perryville, Missouri from installing such valves on their system. Perryville's regulators are not pre-piped. RSPA proposes to revise the regulation to require shutoff valves only in those regulator stations, pre-piped or otherwise, where necessary to isolate the regulator from gas line pressure. The main purpose of the shutoff valve is for testing the regulator to insure its functions properly; therefore, RSPA expects no loss of safety if the station can be isolated between inlet and outlet valves.

Section 192.227 Qualification of welders and § 192.229 Limitations on welders. Welders qualified under § 192.227(a) are required under § 192.229 to requalify every 6 months, and welders qualified under § 192.227(b) are required to requalify every 15 months. Moreover, § 192.227(b) qualification is less comprehensive than qualification under § 192.227(a) because welders who qualify under § 192.227(b) may only weld on pipe that will be subjected to a hoop stress of less than 20 percent of SMYS. The Minnesota Office of Pipeline Safety (MnOPS) stated that many Minnesota operators would like to qualify welders under § 192.227(a) because those qualification requirements provide a better indication of the quality of the test weld. MnOPS also stated that operators would like the option to requalify under § 192.227(b) those who weld only on lines operating at less than 20 percent of SMYS. MnOPS believes that requalification requirements should be more appropriately based on the stress level of the pipe being welded rather than on the initial qualification.

Thus, RSPA proposes to revise §§ 192.227 and 192.229 to allow those who weld on lines operating at less than 20 percent of SMYS to qualify initially under either § 192.227(a) or § 192.227(b) and requalify under § 192.227(b). Those who weld under § 192.227(a) requirements would still be required to requalify under § 192.227(a). Pipeline safety would not be compromised, the rules would be more flexible, and compliance costs would be reduced.

Section 192.241 Inspection and test of welds. Section 192.241 establishes the requirements for inspection and test of welds made on steel materials in pipelines except welds that occur during the manufacture of pipe and pipeline components. Under paragraph (c), the acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104. In response to a petition by the American Petroleum Institute (API), the Seventeenth Edition of API Standard 1104, except the appendix, was incorporated by reference in parts 192, 193, and 195 by notice in the Federal Register (54 FR 27881; July 3, 1989). The appendix provides more liberal acceptance standards for certain weld flaws based on widely accepted fracture mechanics principles. In its notice, RSPA stated that the fracture mechanics model contained in the appendix could not be adopted as a Federal weld acceptance standard without the opportunity for public comment.

The American Gas Association, Midcon Corporation, and the internal regulatory review suggest that incorporation by reference should include the appendix, as requested in API's petition. API's petition was supported by research that confirmed the conservatism of the fundamental approach for flaw assessment in the appendix.

Accordingly, RSPA proposes to modify § 192.241(c) to permit the use of the appendix in API Standard 1104 as an alternative acceptance standard for flaws, except cracks, in girth welds. RSPA proposes to except cracks from evaluation under the Appendix because a crack is a flaw that results from a localized stress that is greater than the strength of the steel and that has the potential to increase in size when subjected to additional stress. Also, accurate measurement of the depth of a crack, a measurement needed for evaluation, is difficult.

By allowing the operator to elect to use the Appendix for certain pipelines,

the proposed change will reduce construction costs by eliminating the need to make weld repairs or replacements otherwise required under API section 6. The proposed change affects only acceptance criteria for girth welds. Historically, defects in girth welds are an infrequent contributor to pipeline accidents. Furthermore, considering the conservatism attributed to the approach to flaw assessment in the appendix, the proposed change should have no detrimental effect on pipeline safety or the environment.

Section 192.243 Nondestructive testing. Paragraph (d)(4) requires the 100 percent nondestructive testing at pipeline tie-ins of the field butt welds covered under paragraph (d). RSPA proposes to amend paragraph (d)(4) to add the phrase "including tie-ins of replacement sections." The proposed revision would improve clarity and understanding of the interpretation of "tie-ins." However, the proposed revision would not compromise safety because the change merely improves understanding of the intent of the regulation.

Section 192.281 Plastic pipe. This rule establishes minimum requirements for joining plastic pipe. Section 192.281(c) would be revised to include electrofusion as an accepted method of heat-fusion for joining polyethylene pipe. The proposed change would reduce regulatory burden by expanding the options available to operators for joining polyethylene pipe. Pipeline safety would not be compromised by adopting electrofusion because it is already widely used in the pipeline industry and has proven to work safely and reliably to join polyethylene pipe.

Section 192.283 Plastic pipe; qualifying joining procedures. This section establishes criteria for qualification of joining procedures for plastic pipe. RSPA proposes adopting the ASTM F1055–87 standards for joining polyethylene plastic pipe by electrofusion, and adding ASTM Standard F1055–87 to appendix A.II.B. Adoption of this standard would provide operators greater flexibility in selecting methods for joining polyethylene pipe. However, the proposal would not compromise pipeline safety because electrofusion is already in widespread use and its history of application has not revealed any risk to the safe transportation of natural gas.

Section 192.317(a) Protection from hazards. This section requires that gas transmission lines and mains be protected from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or sustain abnormal loads. Additionally, offshore pipelines must be protected from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations. RSPA recognizes that some gas pipelines are in locations where complete protection of the pipe from the cited hazards is not feasible and proposes to change the regulation to recognize that reality. Therefore, this notice proposes to amend the section to require the operator to take all practicable steps to protect gas pipelines from the cited hazards. The proposed revision would not compromise safety but would avoid needless discussion over the interpretation of the phrase "must be protected," when applied to certain locations.

Sections 192.319(c) and 192.327(e) Burial of offshore pipe. Under § 192.319(c), all offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. For offshore pipe installed under water less than 12 feet deep, as measured from mean low tide, § 192.327(e) requires a minimum cover of 36 inches in soil or 18 inches in consolidated rock, between the top of the pipe and the natural bottom, unless an underground structure prevents installation with the minimum cover, and the pipe is additionally protected to withstand anticipated external loads.

At the same time, a recently adopted rule, § 192.612(b)(3), requires operators to provide similar cover, without exception for underground structures, over pipelines in the Gulf of Mexico and its inlets under water less than 15 feet deep, if the pipelines are exposed or a hazard to navigation (Amendment 192–67; 56 FR 63764; Dec. 5, 1991). Section 192.3 defines "hazard to navigation" as "a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water." The term "Gulf of Mexico and its inlets" is defined to include only areas under 15 feet of water.

We see that § 192.319(c) is inconsistent with § 192.612(b)(3) for pipe in the Gulf of Mexico and its inlets under water less than 15 feet deep but at least 12 feet deep, because § 192.319(c) permits the pipe to be without cover or to be above the seabed if properly protected. Such pipe is a "hazard to navigation" under the definition of that term in § 192.3, and must have the minimum cover that § 192.612(b)(3) requires. In addition, § 192.327(e) is inconsistent with § 192.612(b)(3) for pipe in the Gulf of Mexico and its inlets under water less than 12 feet deep. In certain instances, § 192.327(e) allows that pipe to be without cover or less than 12 inches below the seabed, and neither condition is allowed under § 192.612(b)(3). In light of these inconsistencies, RSPA proposes to amend §§ 192.319(c) and 192.327(e) to correct the problem.

Section 192.321 Installation of plastic pipe. Paragraph (a) requires that plastic pipe be installed below ground level. RSPA proposes to allow, for a temporary period not exceeding 30 days, use of plastic pipe above ground level. The proposed revision would limit the use of the pipe to locations where it is unlikely to be damaged (or is protected from damage) by external forces. Moreover, the properties of the pipe must be suitable for its exposure to ultra violet light and temperature extremes. The proposed revision would provide the operator an option that may result in lower material and installation costs. However, safety would not be compromised because the temporary use of the pipe is limited to installations where the properties of the pipe are suitable for or protected from exposure and external forces.

Section 192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971. Paragraph (a)(2) requires a pipeline to have a cathodic protection system designed to protect the pipeline in its entirety. RSPA recognizes that the phrase "in its entirety" is redundant and misleading, and proposes its removal. It is redundant because the term "pipeline" as used in part 192, means all facilities through which gas flows, unless otherwise specified. It is misleading because some operators understand the phrase to include metallic casings. But under the "pipeline" definition in § 192.3, a casing is not part of the pipeline. The proposed change would avoid confusion. However, the proposed revision would not compromise safety because it would merely express the intent of the regulation with greater clarity and certainty.

Paragraph (f)(1) states that the external corrosion control requirements do not apply to electrically isolated metal alloy fittings in plastic pipelines if, for the size fitting used, an operator can show through various means that adequate corrosion control is provided by alloyage. RSPA recognizes that the word "alloyage" is not common usage and proposes its replacement with "alloy composition." to improve understanding.

Section 192.475 Internal corrosion control: General. Existing § 192.475(c) limits hydrogen sulfide content of natural gas stored in pipe-type or bottle-type holders to 0.1 grain per 100 standard cubic feet of gas. Columbia Gas Transmission Corporation proposed that the rule be relaxed to allow a concentration of 0.25 grain per 100 standard cubic feet of gas.

Because the 0.25 limit is within customary industry contract limits and is still lower than maximum allowable safe limits, RSPA proposes to increase the allowable hydrogen sulfide limit in gas to be stored in pipe-type and bottle-type holders to 0.25 grain per 100 standard cubic feet of gas. This action would lower the cost of processing natural gas that contains small quantities of hydrogen sulfide.

Section 192.485 Remedial measures: Transmission lines. Paragraph (a) requires that each segment of transmission line with general corrosion and with a remaining wall thickness less than that required for the maximum allowable operating pressure of the pipeline must be replaced or the operating pressure reduced commensurate with the strength of the pipe based on actual remaining wall thickness. However, if the area of general corrosion is small, the corroded pipe may be repaired. Corrosion pitting so clearly grouped as to affect the overall strength of the pipe is considered general corrosion for the purpose of this paragraph.

Paragraph (b) requires that each segment of transmission line pipe with localized corrosion pitting to a degree where leakage might result must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe, based on the actual remaining wall thickness in the pits.

RSPA recognizes that paragraphs (a) and (b) provide no guidance for an operator's use in determining the strength of the remaining wall thickness of corroded steel pipe. To provide this needed guidance, RSPA proposes the adoption of the ASME Manual B31G procedure for determining the remaining strength of corroded steel pipe in existing pipelines. Application of the procedure would be in accordance with the limitations set out in the B31G Manual. The proposal would provide guideline information as to whether a corroded region (not penetrating the pipe wall) may be left in service; an option that might require a reduction in maximum allowable operating pressure, but may be more economical than the replacement or repair of the corroded pipe. The proposed revision would not compromise safety because it merely accepts an established pipeline industry guideline, and does not impose any new requirements on the operators.

Section 192.491 Corrosion control records. Anode Locations. Paragraph (a) requires an operator to maintain records or maps showing the location of cathodically protected piping, cathodic protection facilities, other than unrecorded anodes installed before August 1, 1971, and neighboring structures bonded to the cathodic protection system. The Arizona Corporation Commission stated that records and maps showing the specific location of millions of individual galvanic anodes throughout the gas pipeline systems are not needed because many anodes have deteriorated and do not exist except for the connecting wire. Furthermore, Arizona said that the specific location of a galvanic anode is of little value to the operator or to pipeline safety.

RSPA proposes to eliminate this requirement. The proposed change would relieve operators of the burden of making precise field measurements and preparing and maintaining records and maps showing the specific location of millions of individual anodes. However, the proposed revision would not compromise safety because records or maps can show that a stated number of anodes were installed in a certain manner or spacing between particular reference points along the pipeline. Moreover, it is more common and practical to use electrical measurements to determine individual locations if locating individual anodes is necessary.

Record Retention

Under § 192.491(b), the retention period for records of corrosion control tests, surveys, and inspections is the service life of the pipeline. Several pipeline companies suggested we consider shortening this period as a cost saving measure that would not compromise safety.

Besides indicating compliance with the corrosion control standards, records of required tests, surveys, and inspections provide a history that is useful in analyzing corrosion problems that may arise. For some required corrosion control records, a 5-year retention period is adequate for these purposes. However, records used to determine the need for protection provide a valuable basis for comparison with later data and should be retained for the service life of the pipeline. Therefore, the minimum retention period for corrosion control records would be set at 5 years under a proposed change to § 192.491, except that certain data involving corrosion control determinations would still have to be kept for as long as the pipeline remains in service.

Section 192.553 General Requirements. (see previous discussion under § 192.14).

Section 192.607 Determination of class location and maximum allowable operating pressure. This rule required operators to determine the maximum allowable operating pressure, class location, and concurrence of associated hoop stress with class location requirements for segments of pipe which produce hoop stress in excess of 40 percent SMYS. For pipelines with hoop stress not commensurate with applicable class location requirements, the rule required operators to confirm or revise the maximum allowable operating pressures. These determinations had to be completed before April 15, 1971. Subsequent work was required to be completed before July 1973 or December 1974.

The South Carolina Public Service Commission recommended that this regulation be deleted because the time periods for completing the studies and compliance work has passed. Deleting this rule would eliminate irrelevant citations and simplify the remaining applicable regulations. Pipeline safety would not be compromised because the rule no longer has application.

Section 192.611 Change in class location. This section requires confirmation or revision of a pipeline's maximum allowable operating pressure (MAOP) within 18 months after a change in class location. As § 192.611(a)(3)(ii) provides, the MAOP that results from confirmation or revision under § 192.611 may not exceed the pipeline's previous MAOP. Any increase in a pipeline's MAOP must be accomplished under the uprating requirements of part 192's subpart K, not § 192.611. However, Enron Corporation pointed out that designating this restriction as § 192.611(a)(3)(ii) suggests that it applies only to confirmations or revisions under paragraph (a)(3), which is not the intent. Therefore, § 192.611(a)(3)(ii) would be redesignated as § 192.611(b), and the existing paragraphs (b) and (c) redesignated as (c) and (d), respectively. Because the proposed change is for clarification only, safety would not be compromised.

Section 192.614 Damage prevention program. Paragraph (b)(2) requires notification of the public in the vicinity of the pipeline and actual notification of persons who normally engage in excavation activities in the area in which the pipeline is located of the

damage prevention program's existence, purpose, and how to learn the location of underground gas pipelines before excavation activities are started. While the paragraph states that "actual" notification is to be given these excavators, no corresponding adjective describes the notification to be given the public in the vicinity of the pipeline. RSPA proposes the insertion of the word "general" to clarify that notification need only be provided by articles or announcements in newspapers, radio or television or other medium of mass communication which are appropriate for the public in the vicinity of the pipeline. The proposed revision would avoid confusion. However, safety would not be compromised because the revision merely expresses the intent of the regulation with greater clarity and certainty.

Section 192.619 Maximum allowable operating pressure: Steel or plastic pipelines. This section establishes various criteria for determining the maximum allowable operating pressure (MAOP) of steel or plastic pipelines, the lowest of which limits the MAOP. Paragraph (a)(4) limits MAOP for furnace butt welded steel pipe to a maximum of 60 percent of the mill test pressure, the same percent applied as the longitudinal joint factor (E) in the design formula under § § 192.105 and 192.113. Paragraph (a)(5) limits MAOP for steel pipe other than furnace butt welded pipe to a maximum of 85 percent of the highest test pressure to which the pipe has been subjected, whether by mill test or by the post installation test.

Enron Corporation proposed that § 192.619(a)(4) and (5) be deleted because mill tests are a quality control test during manufacture. ENRON argued that the only test affects the determination of MAOP should be the in-place hydrostatic strength test.

RSPA proposes to delete § 192.619(a)(4) and (5), but to add a paragraph (a)(2)(iii) applying the longitudinal joint factors for furnace butt welded and lap welded pipe in addition to the appropriate class location factor. The (a)(4) criterion which limits the MAOP of furnace butt welded steel pipe to 60 percent of the mill test pressure will be the applicable criterion in many installations because mill test pressures for this pipe are very low compared to specified minimum yield strength (SMYS). If § 192.619(a)(4) were deleted, no factor would remain to compensate for the low joint efficiency factor assigned to furnace butt welded pipe under § 192.113. For other than furnace butt welded steel pipe, the criterion of limiting MAOP to 85 percent of the mill test pressure is likely to be the applicable criterion for relatively small diameter pipe, because mill test pressure is based on 75 percent of SMYS, unless the operator has elected to test the pipe after construction to a pressure much lower than permitted by the design formula under § 192.105. The current regulations do not consider that § 192.619(a)(5) includes furnace lap welded pipe, which is no longer manufactured but remains in service. When such pipe was available for new construction, the joint efficiency factor for design was 0.8 or 80 percent of SMYS.

The proposed change will permit the operation of many pipelines with furnace butt welded pipe and some with non-furnace butt welded smaller diameter pipe at pressures higher than presently permitted on the basis of mill test pressure. This should result in reduced operating costs for those pipelines. The remaining limitations on MAOP and the application of the longitudinal joint factor in § 192.619(a)(2)(iii) adequately provide for the safe operation of the pipelines affected.

Section 192.625 Odorization of gas. The Oregon Public Utility Commission (Oregon) commented that master meter operators should be exempted from § 192.625(f) which requires sampling of gas to assure the gas contains the proper concentration of odorant. Oregon stated that master meter operators receive their gas from operators who verify by odorometer that the gas is meeting the one-fifth LEL requirement and that it is unnecessarily burdensome for these operators to buy an odorometer or to hire consultants to do this testing. Oregon suggested that instead of an expensive odorometer test, the master meter operator could be required to conduct a "sniff" test. Oregon estimated a savings of 98 percent in consulting fees.

RSPA currently allows master meter operators to (1) have the company that sells them the gas verify by records or tests that the gas meets the required criteria or (2) have a qualified person, the gas utility company, or transmission company, run an odorometer test of the gas in the system. This procedure is spelled out in the Guidance Manual for Operators of Small Gas Systems, U.S. Department of Transportation, 1991. The Manual further states that periodic "sniff" test can be a guide in determining odorization levels even though they do not replace the need to maintain odorant usage records or perform odorometer tests.

Accordingly, the rule proposes that master meter operators may comply with §§ 192.625(a) and (f) by (1) receiving written verification from their gas supplier that gas odorization levels are sufficient, and (2) conducting periodic "sniff" tests to confirm supplier's findings. These "sniff" tests should be run at the outer ends of the system. The operator must document the specific procedures in its Operating and Maintenance (O&M) plan and keep records of the tests, including dates, names and locations. Since some master meter operators are not aware of the flexibility provided in the manual, the proposal should reduce the cost of compliance for those operators.

Section 192.705 Transmission lines: Patrolling. Paragraph (a) requires an operator to have a patrol program to observe cited surface conditions on and adjacent to its gas transmission line right-of-way for indications of activities and other factors affecting the safety and operation of the pipeline. RSPA proposes that the section be changed to indicate that aerial patrols are an optional method of compliance. The proposed change would provide a more effective option for some operators, who may not be aware that aerial patrols of gas transmission lines are acceptable. The proposed revision would not compromise safety because some surface condition activities adjacent to the right-of-way, that affect safety and operation of pipelines, are more visible from an aerial patrol than from walking or driving the right-of-way.

Section 192.709 Transmission lines: Record keeping. Section 192.709 requires operators to keep various records about transmission lines for as long as the line remains in service. ANR Pipeline, Enron Corporation, and the Interstate Natural Gas Association of America suggested this lengthy record retention period could be significantly shortened with no adverse effect on safety. RSPA has considered changes that would not affect the usefulness of these records in determining an operator's level of compliance effort or in constructing the history of an accident or safety problem. Therefore, RSPA is proposing to adopt a 5-year retention period for records of patrols, surveys, inspections and tests. A 5-year retention requirement would assure that these records are on hand during the normal cycle of routine inspection visits by RSPA field inspection personnel. Also, the current service-life retention period appears unnecessary for records of repairs on facilities other than pipe. A retention period of 1 year would be established for such records. Section 192.709 also would be changed to clarify the information to be recorded.

Section 192.721 Distribution systems: Patrolling. This section governs the frequency at which operators must patrol mains in distribution systems. The regulation is written in performance terms, except that mains located where anticipated movement or loading could cause leakage must be patrolled at intervals not exceeding 4½ months, but at least four times a year. Northern Illinois Gas recommended that we adopt a more moderate patrol frequency as a cost saving measure, but did not recommend an alternative. The option we are considering is twice a year for mains in Class 1 or 2 locations. The lower frequency would correspond to the lower risk in these less densely populated locations. Twice a year checks also would match the frequency at which operators must patrol transmission lines at highway and railroad crossings in Class 1 and 2 locations (§ 192.705). Because these transmission line crossings pose a high level of risk, and twice-a-year patrols have proved satisfactory, RSPA believes the proposed change to § 192.721 would not reduce safety.

Rulemaking Analyses

Paperwork Reduction Act

The documentation for the information collection requirements for part 192 was submitted to the Office of Management and Budget (OMB) during the original rulemaking processes. Currently, regulations in part 192 are covered by OMB Control Numbers 2137–0049 (approved through October 31, 1994) and 2137–0583 (approved through May 31, 1994). This notice proposed no additional information collection requirements. Instead, the notice proposed to relax the information collection or retention and record retention burden on pipeline operators (described above). Accordingly, there is no need to repeat those submissions with this notice of proposed rulemaking.

Executive Order 12291 and DOT Regulatory Policies and Procedures

RSPA has concluded that this proposal is not a major rule under Executive Order 12291. However, it is "significant" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979) because of the interest expressed by the President and the substantial interest by the pipeline industry.

A Regulatory Evaluation has been prepared and is available in the docket. RSPA estimates the proposed changes to existing rules would result in savings of $33,000,000 per year without associated costs and with no adverse effect on safety. As discussed above, these savings would come largely from the use of new technology, greater flexibility in constructing, maintaining, and operating pipelines, improved clarity, and the elimination of burdensome regulations.

Regulatory Flexibility Act

RSPA criteria for small companies or entities are those with less than $1,000,000 in revenues and are independently owned and operated. Few of the companies subject to this rulemaking meet these criteria. However, RSPA seeks such impact information in response to this rulemaking. Accordingly, based on the facts available concerning the impact of this proposal, I certify under section 605 of the Regulatory Flexibility Act that this proposal would not, if adopted as final, have a significant economic impact on a substantial number of small entities.

Executive Order 12612

RSPA has analyzed the proposed rules under the criteria of Executive Order 12612 (52 FR 41685; October 30, 1987). We find it does not warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.1 would be amended by revising paragraph (b)(1) and adding paragraph (b)(4) to read as follows:

§ 192.1 Scope of part.

* * * * *

(b) This part does not apply to:

(1) Offshore pipelines upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed whichever facility is farther downstream; and

* * * * *

(4) Any pipeline system that transports only petroleum gas or petroleum gas/air mixtures to—

(i) Fewer than 10 customers, if no portion of the system is located in a public place; or

(ii) A single customer, if the system has only one tank and the system is located entirely on the customer's premises, regardless of whether a portion of the system is located in a public place.

3. In § 192.3, a definition of "petroleum gas" would be added and the definitions of "secretary" and "transmission line" would be revised to read as follows:

§ 192.3 Definitions.

* * * * *

Petroleum gas means propane, propylene, butane, (normal butane or isobutanes), and butylene (including isomers), or mixtures composed predominantly of these gases, having a vapor pressure not exceeding 208 psi at 100 degrees F.

* * * * *

Secretary means the Secretary of Transportation or any person to whom the Secretary has delegated authority in the matter concerned.

* * * * *

Transmission line means a pipeline, other than a gathering line, that:

(1) Transports gas from a gathering line or storage facility to a distribution center, large volume customer, or storage facility;

(2) Operates at a hoop stress of 20 percent or more of SMYS; or

(3) Transports gas within a storage field.

* * * * *

4. Section 192.5 would be revised to read as follows:

§ 192.5 Class locations.

(a) This section classifies pipeline locations for purposes of this part. The following criteria apply to classifications under this section:

(1) A "class location unit" is an onshore area that extends 220 yards on either side of the centerline of any continuous 1-mile length of pipeline.

(2) Each separate dwelling unit in a multiple dwelling unit building is counted as a separate building intended for human occupancy.

(b) Except as provided in paragraph (c) of this section, pipeline locations are classified as follows:

(1) A Class 1 location is:

(i) An offshore area; or

(ii) Any class location unit that has 10 or fewer buildings intended for human occupancy.

(2) A Class 2 location is any class location unit that has more than 10 but fewer than 46 buildings intended for human occupancy.

(3) A Class 3 location is:

(i) Any class location unit that has 46 or more buildings intended for human occupancy; or

(ii) An area where the pipeline lies within 100 yards of either a building or a small, well-defined outside area (such as a playground, recreation area, outdoor theater, or other place of public assembly) that is occupied by 20 or more persons on at least 5 days a week for 10 weeks in any 12-month period. (The days and weeks need not be consecutive.)

(4) A Class 4 location is any class location unit where buildings with four or more stories above ground are prevalent.

(c) The length of Class locations 2, 3, and 4 may be adjusted as follows:

(1) A Class 4 location ends 220 yards from the nearest building with four or more stories above ground.

(2) When a cluster of buildings intended for human occupancy requires a Class 3 location, the Class 3 location ends 220 yards from the nearest building in the cluster.

(3) When a cluster of buildings intended for human occupancy requires a Class 2 location, the Class 2 location ends 220 yards from the nearest building in the cluster.

5. Section 192.7 would be amended by revising paragraph (a) to read as follows:

§ 192.7 Incorporation by reference.

(a) Any documents or portions thereof incorporated by reference in this part are included in this regulation as though set out in full. When only a portion of a document is referenced, the remainder is not incorporated in this part.

* * * * *

6. Section 192.9 would be revised to read as follows:

§ 192.9 Gathering lines.

Each operator of a gathering line, except as provided in § 192.1, must comply with the requirements of this part applicable to transmission lines.

7. Section 192.11 would be revised to read as follows:

§ 192.11 Petroleum gas systems.

(a) Each plant that supplies petroleum gas by pipeline to a natural gas distribution system must meet the requirements of this part and NFPA Standards No. 58 and No. 59.

(b) Each pipeline system subject to this part that transports only petroleum gas or petroleum gas/air mixtures must meet the requirements of this part and of NFPA Standards No. 58 and No. 59.

(c) In the event of a conflict between this part and the requirements of NFPA Standards No. 58 and No. 59, NFPA Standards No. 58 and No. 59 prevail.

8. Section 192.14 would be amended by revising paragraph (a)(1) to read as follows:

§ 192.14 Conversion to service subject to this part.

(a) * * *

(1) The design, construction, operation, and maintenance history of the pipeline must be reviewed and, where sufficient historical records are not available, appropriate tests must be performed to determine if the pipeline is in satisfactory condition for safe operation. If one or more of the variables for a steel pipeline necessary to verify the design pressure under § 192.105 or to perform the testing under paragraph (a)(4) of this section are unknown, the design pressure may be verified and the MAOP determined by:

(i) Testing the pipeline in accordance with ASME B31.8 Code, Appendix N, to produce a stress equal to the yield strength, and

(ii) Applying, to not more than 80 percent of the first pressure that produces a yielding, the appropriate factors in §§ 192.619(a)(2)(ii) and (a)(2)(iii).

* * * * *

9. Section 192.107 would be amended by revising paragraph (b)(1) introductory text and paragraph (b)(1)(ii) to read as follows:

§ 192.107 Yield strength (S) for steel pipe.

* * * * *

(b) * * *

(1) If the pipe is tensile tested in accordance with section II–D of appendix B to this part, the lower of the following:

* * * * *

(ii) The lowest yield strength determined by the tensile tests.

* * * * *

10. Section 192.121 would be revised to read as follows:

§ 192.121 Design of plastic pipe.

Subject to the limitations of § 192.123, the design pressure for plastic pipe is determined in accordance with one of the two following formulas:

(1) $P = 2S \frac{t}{(D-t)} 0.32$

or

(2) $P = \frac{2S}{(SDR-1)} 0.32$

P = Design pressure, gage, kPa (psi).

S = For thermoplastic pipe the long-term hydrostatic strength determined in accordance with the listed specification at a temperature equal to 23° C (73° F), 38° C (100° F), 49° C (120° F), or 60° C (140° F); for reinforced thermosetting plastic pipe, 75,800 kPa (11,000 psi).

T = Specified wall thickness, mm (in.).

D = Specified outside diameter, mm (in.).

SDR = Standard Dimension Ratio = The ratio of average specified outside diameter to minimum specified wall thickness in accordance with a preferred numbering system.

11. Section 192.123 would be amended by revising paragraph (b) to read as follows:

§ 192.123 Design limitations for plastic pipe.

* * * * *

(b) * * *

(1) Below minus 40° C (−40° F); or

(2) Above the following applicable temperatures:

(i) For thermoplastic pipe, the temperature at which the long-term hydrostatic strength used in the design formula under § 192.121 is determined. However, if the pipe was manufactured before May 18, 1978 and its long-term hydrostatic strength was determined at 23° C (73° F), it may be used at temperatures up to 38° C (100° F).

(ii) For reinforced thermosetting plastic pipe, 66° C (150° F).

* * * * *

§ 192.145 [Amended]

12. Section 192.145 would be amended by changing the word "value" to read "valve" in paragraph (l).

13. Section 192.179 would be amended by revising paragraph (a) introductory text to read as follows:

§ 192.179 Transmission line valves.

(a) Unless otherwise approved in writing by the Administrator, upon an operator's demonstrating an equivalent level of safety, each transmission line, other than offshore segments, must have sectionalizing block valves spaced as follows:

* * * * *

14. Section 192.203 would be amended by revising paragraph (b)(2) to read as follows:

§ 192.203 Instrument, control, and sampling pipe and components.

* * * * *

(b) * * *

(2) Except for a pressure regulator that can be isolated by other valves from its source of pressure, a shutoff valve must be installed in each takeoff line as near as practicable to the point of takeoff. Blowdown valves must be installed where necessary.

* * * * *

15. Section 192.227 would be amended by revision paragraph (b) and adding paragraph (c) to read as follows:

§ 192.227 Qualification of welders.

* * * * *

(b) A welder may qualify to perform welding on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in section I of appendix C to this part. Each welder who is to make a welded service line connection to a main must first perform an acceptable test weld under section II of appendix C to this part as a requirement of the qualifying test.

(c) Except as provided in § 192.229(c), after initial qualification, a welder may not perform welding unless:

(1) Within the preceding 15 calendar months, but at least once each calendar year, the welder has requalified under paragraph (b) of this section; or

(2) Within the preceding 7½ calendar months, but at least twice each calendar year, the welder has had—

(i) A production weld cut out, tested and found acceptable in accordance with the qualifying test; or

(ii) For welders who work only on service lines 2 inches or smaller in diameter, two sample welds tested and found acceptable in accordance with the test in section III of appendix C to this part.

16. Section 192.229 would be amended by revising paragraph (c) to read as follows:

§ 192.229 Limitations on welders.

* * * * *

(c) A welder qualified under § 192.227(a) may not weld on pipe to be operated at a pressure that produces a hoop stress at or above 20 percent of SMYS unless within the preceding 6 calendar months the welder has had one weld tested and found acceptable under section 3 or 6 of API Standard 1104, except that a welder qualified under an earlier edition previously listed in appendix A may weld but my not requalify under that earlier edition.

17. Section 192.241 would be amended by revising paragraph (c) to read as follows:

§ 192.241 Inspection and test of welds.

* * * * *

(c) The acceptability of a weld that is nondestructively tested or visually inspected is determined according to the standards in section 6 of API Standard 1104. The operator may elect to evaluate a girth weld flaw, except a crack, that is unacceptable under section 6 of API Standard 1104, in accordance with the criteria of the appendix (alternative Acceptance Standards for Girth Welds) to API Standard 1104.

18. Section 192.243 would be amended by revising paragraph (d)(4) to read as follows:

§ 192.243 Nondestructive testing.

* * * * *

(d) * * *

(4) At pipeline tie-ins, including tie-ins of replacement sections, 100 percent.

* * * * *

19. Section 192.281 would be amended by redesignating paragraph (c)(3) as paragraph (c)(4) and adding paragraph (c)(3) to read as follows:

§ 192.281 Plastic pipe.

(c) * * *

(3) An electrofusion joint must be joined utilizing the equipment and techniques expressly prescribed by the fitting manufacturer.

* * * * *

20. Section 192.283 would be amended by revising paragraph (a)(1)(ii) and adding paragraph (a)(1)(iii) to read as follows:

§ 192.283 Plastic pipe; qualifying joining procedures.

(a) * * *

(1) * * *

(ii) In the case of thermosetting plastic pipe, paragraph 8.5 (Minimum Hydrostatic Burst Pressure) or paragraph 8.9 (Sustained Static Pressure Test) of ASTM D2517; or

(iii) In the case of electrofusion fittings for polyethylene pipe and tubing, paragraph 9.1 (Minimum Hydraulic Burst Pressure Tests) or paragraph 9.2 (Sustained Pressure Test) or paragraph 9.3 (Tensile Strength Test) or paragraph 9.4 (Joint Crush Test) of ASTM F1055;

* * * * *

21. Section 192.317 would be amended by revising paragraph (a) to read as follows:

§ 192.317 Protection from hazards.

(a) The operator must take all practicable steps to protect each transmission line or main from washouts, floods, unstable soil, landslides, or other hazards that may cause the pipeline to move or to sustain abnormal loads. In addition, the operator must take all practicable steps to protect offshore pipelines from damage by mud slides, water currents, hurricanes, ship anchors, and fishing operations.

* * * * *

22. Section 192.319 would be amended by revising paragraph (c) to read as follows:

§ 192.319 Installation of pipe in a ditch.

* * * * *

(c) All offshore pipe in water at least 12 feet deep but not more than 200 feet deep, as measured from the mean low tide, except pipe in the Gulf of Mexico and its inlets under 15 feet of water, must be installed so that the top of the pipe is below the natural bottom unless the pipe is supported by stanchions, held in place by anchors or heavy concrete coating, or protected by an equivalent means. Pipe in the Gulf of Mexico and its inlets under 15 feet of water must be installed so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

23. Section 192.321 would be amended by revising paragraph (a) and adding paragraph (g) to read as follows:

§ 192.321 Installation of plastic pipe.

(a) Plastic pipe must be installed below ground level unless otherwise permitted by paragraph (g) of this section.

* * * * *

(g) Uncased plastic pipe may be temporarily installed above ground level subject to all of the following:

(1) The duration of the installation must not exceed 30 days.

(2) The location of the pipe must be such that it is unlikely to be damaged by external forces, otherwise the pipe must be protected from such damage.

(3) The pipe must have adequate resistance for the exposure to ultraviolet light and for the exposure to high and low temperatures.

(4) The pipe must not be used in subsequent above ground level installations.

24. Section 192.327 would be amended by revising paragraph (e) to read as follows:

§ 192.327 Cover.

* * * * *

(e) All pipe which is installed in a navigable river, stream, or harbor must have a minimum cover of 48 inches in soil or 24 inches in consolidated rock, and all pipe installed in any offshore location under water less than 12 feet deep, as measured from mean low tide, must have a minimum cover of 36 inches

in soil or 18 inches in consolidated rock, between the top of the pipe and the natural bottom. However, less than the minimum cover is permitted in accordance with paragraph (c) of this section for pipe other than pipe in the Gulf of Mexico and its inlets.

25. Section 192.455 would be amended by revising paragraphs (a)(2) and (f)(1) to read as follows:

§ 192.455 External corrosion control: Buried or submerged pipelines installed after July 31, 1971.

(a) * * *

(2) It must have a cathodic protection system designed to protect the pipeline in accordance with this subpart, installed and placed in operation, within one-year after completion of construction.

* * * * *

(f) * * *

(1) For the size fitting to be used, an operator can show by test, investigation, or experience in the area of application that adequate corrosion resistance is provided by the alloy composition; and

* * * * *

26. Section 192.475 would be amended by revising paragraph (c) to read as follows:

§ 192.475 Internal corrosion control: General.

* * * * *

(c) Gas containing more than 0.25 grain of hydrogen sulfide per 100 standard cubic feet may not be stored in pipe-type or bottle-type holders.

27. Section 192.485 would be amended by adding paragraph (c) to read as follows:

§ 192.485 Remedial measures: Transmission lines.

* * * * *

(c) In paragraphs (a) and (b) of this section, the strength of the pipe based on actual remaining wall thickness may be determined by the procedure in ASME B31G Manual for Determining the Remaining Strength of Corroded Pipelines. Application of the procedure in the B31G Manual shall apply to corroded regions (not penetrating the pipe wall) in existing steel pipelines in accordance with limitations set out in the B31G Manual.

28. Section 192.491 would be revised to read as follows:

§ 192.491 Corrosion control records.

(a) Each operator shall maintain records or maps to show the location of cathodically protected piping, cathodic protection facilities, galvanic anodes, and neighboring structures bonded to the cathodic protection system. Records and maps showing a stated number of anodes, installed in a stated manner or spacing, need not show specific distances to each buried anode.

(b) Each record or map required by paragraph (a) of this section must be retained for as long as the pipeline remains in service.

(c) For each test, survey, or inspection required by this subpart, each operator shall maintain a record in sufficient detail to demonstrate the adequacy of corrosion control measures or that a corrosive condition does not exist. For each test, survey, or inspection required by §§ 192.465 (a) and (e) and § 192.475(b), records must be retained for as long as the pipeline remains in service. All other records required by this paragraph must be retained for at least 5 years.

29. Section 192.553 would be amended by revising paragraph (d) to read as follows:

§ 192.553 General requirements.

* * * * *

(d) *Limitation on increase of maximum allowable operating pressure.* Except as provided in § 192.555(c), a new maximum allowable operating pressure established under this subpart may not exceed the maximum that would be allowed under this part for a new segment of pipeline constructed of the same materials in the same location. However, when uprating a steel pipeline, if one or more of the variables necessary to determine the design pressure for the new segment under § 192.619(a)(1) is unknown, the design pressure may be determined by:

(1) Testing the segment in accordance with ASME B31.8, appendix N, to produce a stress equal to the yield strength, and

(2) Applying to not more than 80 percent of the first pressure that produces a yielding the appropriate factors in §§ 192.619(a)(2)(ii) and 192.619(a)(2)(iii).

§ 192.607 [Removed]

30. Section 192.607 would be removed and reserved.

§ 192.611 [Amended]

31. In § 192.611, paragraphs (b) and (c) would be redesignated as paragraphs (c) and (d), paragraph (a)(3)(ii) would be redesignated as paragraph (b), and paragraph (a)(3)(iii) would be redesignated as paragraph (a)(3)(ii) respectively.

32. Section 192.614 would be amended by revising paragraphs (b)(2) introductory text and (c)(2) as follows:

§ 192.614 Damage prevention program.

* * * * *

(b) * * *

(2) Provide for general notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of the following as often as needed to make them aware of the damage prevention program:

* * * * *

(c) * * *

(2) Pipelines in a Class 3 location defined by § 192.5(b)(3)(ii) that are marked in accordance with § 192.707.

* * * * *

33. Section 192.619 would be amended by adding paragraph (a)(2)(iii), and removing paragraphs (a)(4) and (a)(5) and redesignating paragraph (a)(6) as paragraph (a)(4) and revising it.

§ 192.619 Maximum allowable operating pressure: Steel or plastic pipelines.

(a) * * *

(2) * * *

(iii) For steel pipe operated at a 100 p.s.i.g. or more, the pressure determined from the table above further reduced by a factor of 0.60 for furnace butt welded pipe and by 0.80 for furnace lap welded pipe.

* * * * *

(4) The pressure determined by the operator to be the maximum safe pressure after considering the history of the segment, particularly known corrosion and the actual operating pressure.

* * * * *

34. Section 192.625 would be amended by revising paragraph (f) to read as follows:

§ 192.625 Odorization of gas.

* * * * *

(f) Each operator shall conduct periodic sampling of combustible gases to assure the proper concentration of odorant in accordance with this section. Operators of master meter systems may comply with this requirement by:

(1) Receiving written verification from their gas source that gas odorization levels meet the required levels; and

(2) Conducting periodic "sniff" tests, at the outer extremities of the system, to confirm that the gas contains odorant.

35. Section 192.705 would be amended by adding paragraph (c) to read as follows:

§ 192.705 Transmission lines: Patrolling.

* * * * *

(c) Methods of patrolling include walking, driving, flying or other appropriate means of traversing the right-of-way.

36. Section 192.709 would be revised to read as follows:

§ 192.709 Transmission lines: Record keeping.

Each operator shall maintain the following records for transmission lines for the periods specified:

(a) The date, location, and description of each repair made to pipe (including pipe-to-pipe connections) must be retained for the useful life of the pipe.

(b) The date, location, and description of each repair made to parts of the pipeline system other than pipe must be retained for at least 1 year.

(c) A record of each patrol, survey, inspection, and test required by subparts L and M of this part must be retained for at least 5 years or until the next patrol, survey, inspection, or test is completed, whichever is longer.

37. Section 192.721 would be amended by revising paragraph (b) to read as follows:

§ 192.721 Distribtuion systems: Patrolling.

* * * * *

(b) Mains in places or on structures where anticipated physical movement or external loading could cause failure or leakage must be patrolled—

(1) In Class 1 and 2 locations, at intervals not exceeding 7½ months, but at least twice each calendar year; and

(2) In Class 3 and 4 locations, at intervals not exceeding 4½ months, but at least four times each calendar year.

38. Appendix A would be amended by adding paragraph II.B. (12) to read as follows:

Appendix A—Incorporated by Reference

* * * * *

II. * * *

B. * * *

(12) ASTM Specification F1055 "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing" (F1055–87).

* * * * *

39. Appendix A would be amended by adding paragraphs II.D. (3) and (4) to read as follows:

Appendix A—Incorporated by Reference

* * * * *

II. * * *

D. * * *

(3) ASME B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).

(4) ASME B31.8 "Gas Transmission and Distribution Piping Systems" (1989 with Addenda A, B, C).

* * * * *

Issued in Washington, DC on August 21, 1992.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 92–20517 Filed 8–28–92; 8:45 am]

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Part VII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 15, 30, 31, and 52
Federal Acquisition Regulation (FAR); Cost Accounting Standards and FAR Availability on Electronic Bulletin Board and CD-ROM; Interim Rule and Notice

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 15, 30, 31, and 52

[FAC 90-12; FAR Case 92-18]

Federal Acquisition Regulation; Cost Accounting Standards

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending FAR part 30 based on the Cost Accounting Standards Board's recodification of the Cost Accounting Standards in 48 CFR Chapter 99. The Cost Accounting Standards (FAR subpart 30.4) are removed. FAR subpart 30.6 and the "Administration of Cost Accounting Standards" clause at 52.230-4 are revised to clarify procedures for submission of cost impact proposals. In addition, the clauses at 52.230-1, 52.230-2, 52.230-3, and 52.230-5 have been revised to reflect the recodification of the standards.

DATES: *Effective Date:* August 31, 1992.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 30, 1992 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Attn: Ms. Deloris Baker, Washington, DC 20405.

Please cite FAC 90-12, FAR case 92-18 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-12, FAR case 92-18.

SUPPLEMENTARY INFORMATION:

A. Background

The Cost Accounting Standards Board (CASB) issued a final rule in the **Federal Register** on April 17, 1992, recodifying the Cost Accounting Standards (CAS) at 48 CFR chapter 99 (57 FR 14148). The CAS were previously in both 48 CFR part 30 and 4 CFR parts 331 through 420. The CASB final rule was based upon the notice of proposed rulemaking published in the **Federal Register** on June 12, 1991 (56 FR 26968), where public comments were invited.

This rule removes the CAS rules and regulations (FAR subpart 30.3) and the standards (FAR subpart 30.4). For ease of reference, Appendix B of the FAR of the FAR loose-leaf edition is added, which incorporates the CAS and CAS rules and regulations recodified by the CASB in title 48 of the Code of Federal Regulations, chapter 99. Appendix B is provided for convenience; the official codified CAS are in 48 CFR chapter 99. FAR part 30 was revised based on the recodification and cross references were updated. A further review of cross references in the FAR and DFARS requiring revision as a result of the recodification is in the process.

FAR revisions originally proposed in FAR case 89-34, Cost Impact Proposals, were incorporated into this interim rule. Those revisions clarify the procedures for submission of cost impact proposals and the authority of the Administrative Contracting Officer (ACO) to withhold a portion of payments when the contractor does not submit the cost impact proposal in a timely manner. A proposed rule was issued June 16, 1989 (54 FR 25686). Revisions as a result of comments on that proposed rule are incorporated into this interim rule.

B. Regulatory Flexibility Act

The interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because small business are exempt from the application of the Cost Accounting Standards. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*, (FAR Case 92-18), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.* The information collection associated with the Cost Accounting Standards were approved by the Office of Management and Budget and assigned Control Number 0348-0051.

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to make the Federal Acquisition Regulation consistent with the Cost Accounting Standards Board's final rule recodifying Cost Accounting Standards, which was effective upon publication April 17, 1992.

List of Subjects in 48 CFR Parts 15, 30, 31, and 52

Government procurement.

Dated: August 24, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 90-12 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90-12 is effective August 31, 1992.

Dated: August 19, 1992.

Eleanor R. Spector,

Director, Defense Procurement, Department of Defense.

Dated: August 21, 1992.

Richard H. Hopf III,

Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: August 12, 1992.

Don G. Bush,

Assistant Administrator for Procurement, NASA.

Therefore, 48 CFR parts 15, 30, 31, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 15, 30, 31, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

15.805-3 [Amended]

2. Section 15.805-3 is amended in paragraph (d) by removing the reference

"Part 30" and inserting in its place "48 CFR Chapter 99 (Appendix B, FAR loose-leaf edition)".

15.812-1 [Amended]

3. Section 15.812-1 is amended in the first sentence of paragraph (a) by removing the reference "Part 30" and inserting in its place "48 CFR Chapter 99".

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

4. Part 30 is revised to read as follows:

30.000 Scope of part.

Subpart 30.1—General

30.101 Cost Accounting Standards.
30.102 Cost Accounting Standards Board Publication.

Subpart 30-2—CAS Program Requirements

30.201 Contract requirements.
30.201-1 CAS applicability.
30.201-2 Types of CAS coverage.
30.201-3 Solicitation provisions.
30.201-4 Contract clauses.
30.201-5 Waiver.
30.202 Disclosure requirements.
30.202-1 General requirements.
30.202-2 Impracticality of submission.
30.202-3 Amendments and revisions.
30.202-4 Privileged and confidential information.
30.202-5 Filing disclosure Statements.
30.202-6 Responsibilities.
30.202-7 Determinations.
30.202-8 Subcontractor Disclosure Statements.

Subpart 30.3—CAS Rules and Regulations [Reserved]

Subpart 30.4—Cost Accounting Standards [Reserved]

Subpart 30.5—[Reserved]

Subpart 30.6—CAS Administration

30.601 Responsibility.
30.602 Changes to disclosed or established cost accounting practices.
30.602-1 Equitable adjustments for new or modified standards.
30.602-2 Noncompliance with CAS requirements.
30.602-3 Voluntary changes.
30.603 Subcontract administration.

30.000 Scope of part.

This part describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations (48 CFR chapter 99 (appendix B, FAR loose-leaf edition)) to negotiated contracts and subcontracts. This part does not apply to sealed bid contracts or to any contract with a small business concern (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-1(b), for these and other exemptions).

Subpart 30.1—General

30.101 Cost Accounting Standards.

(a) Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

(b) Contracts that refer to this part 30 for the purpose of applying the policies, procedures, standards and regulations promulgated by the CASB pursuant to Public Law 100-679, shall be deemed to refer to the CAS, and any other regulations promulgated by the CASB (see 48 CFR chapter 99), all of which are hereby incorporated in this part 30.

(c) Appendix B to the FAR loose-leaf edition contains: Part I, CAS and CASB Rules and Regulations; Part II, nonregulatory preambles to the CAS; Part III, preambles to CAS Rules and Regulations; Part IV, preambles published under the FAR system; and Part V, CASB Rules and Procedures (administrative).

(d) The preambles are not regulatory but are intended to explain why the Standards and related Rules and Regulations were written, and to provide rationale for positions taken relative to issues raised in the public comments. The preambles are printed in chronological order to provide an administrative history.

30.102 Cost Accounting Standards Board Publication.

Copies of the CASB Standards and Regulations are printed in title 48 of the Code of Federal Regulations, chapter 99, and may be obtained by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Washington, DC, ordering desk at area code (202) 783-3238.

Subpart 30.2—CAS Program Requirements

30.201 Contract requirements.

Title 48 CFR chapter 99 (Appendix B, FAR loose-leaf edition), subpart 9903.201-1, describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. Negotiated contracts not exempt in accordance with subpart 9903.201-1(b) shall be subject to CAS. A CAS-covered contract may be subject to either full or modified coverage. The rules for determining whether full or modified coverage applies are in 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-2.

30.201-1 CAS applicability.

See 48 CFR chapter 99 (appendix B, FAR loose-lead edition), Subpart 9903.201-1.

30.201-2 Types of CAS coverage.

See 48 CFR chapter 99 (appendix B, FAR loose-lead edition), Subpart 9903.201-2.

30.201-3 Solicitation provisions.

The contracting officer shall insert the provision at 52.230-1, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 48 CFR chapter 99 (appendix B, FAR loose-lead edition), Subpart 9903.201.

30.201-4 Contract clauses.

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-2, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.201-1), the contract is subject to modified coverage (see 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.201-2), or the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at 52.230-2 requires the contractor to disclose actual cost accounting practices and to follow these practices consistently.

(b) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause at 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over $500,000, but less than $10 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.201-2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) The clause at 52.230-3 requires the contractor to comply with 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subparts 9904.401 and 9904.402, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

(c) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause at 52.230-4, Consistency in Cost Accounting Practices, in negotiated contracts that are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be

performed substantially in the United Kingdom (see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.201-1(b)(12)).

(d) *Administration of Cost Accounting Standards.* (1) The contracting officer shall insert the clause at 52.230-5, Administration of Cost Accounting Standards, in contracts containing either the clause prescribed in paragraph (a) of this subsection, or the clause prescribed in paragraph (c) of this subsection.

(2) The clause at 52.230-2 requires the contractor to disclose actual cost accounting practices and to follow these practices consistently.

30.201-5 Waiver.

In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of the CAS clauses (52.230-2, Cost Accounting Standards, and 52.230-3, Disclosure and Consistency of Cost Accounting Practices). If the contracting officer determines that it is impractical to obtain the materials, supplies, or services from any other source, the contracting officer shall prepare a request for waiver in accordance with 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.201-5.

30.202 Disclosure requirements.

30.202-1 General requirements.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-1.

30.202-2 Impracticality of submission.

See 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.202-2.

30.202-3 Amendments and revisions.

See 48 CFR chapter 99 (appendix B, FAR loose-lead edition), subpart 9903.202-3.

30.202-4 Privileged and confidential information.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-4.

30.202-5 Filing Disclosure Statements.

See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-5.

30.202-6 Responsibilities.

(a) The contracting officer is responsible for determining when a proposed contract may require CAS coverage and for including the appropriate notice in the solicitation. The contracting officer must then ensure that the offeror has made the required solicitation certifications and that required Disclosure Statements are submitted. (Also see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subparts 9903.201-3 and 9903.202.)

(b) The contracting officer shall not award a CAS-covered contract until the ACO has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the contracting officer waives the requirement for an adequacy determination before award. In this event, a determination of adequacy shall be required as soon as possible after the award.

(c) The cognizant auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance.

(d) The cognizant ACO is responsible for determinations of adequacy and compliance of the Disclosure Statement.

30.202-7 Determinations.

(a) *Adequacy determination.* The contract auditor shall conduct an initial review of a Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. If the ACO identifies any areas of inadequacy, the ACO shall request a revised Disclosure Statement. If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the auditor and contracting officer. The notice of adequacy shall state that a disclosed practice shall not, by virtue of such disclosure, be considered an approved practice for pricing proposals or accumulating and reporting contract performance cost data. Generally, the ACO shall furnish the contractor notification of adequacy or inadequacy within 30 days after the Disclosure Statement has been received by the ACO.

(b) *Compliance determination.* After the notification of adequacy, the auditor shall conduct a detailed compliance review to determine whether or not the disclosed practices comply with Part 31 and the CAS and shall advise the ACO of the results. The ACO shall take action regarding noncompliance with CAS under FAR 30.602-2. The ACO may require a revised Disclosure Statement and adjustment of the prime contract price or cost allowance. Noncompliance with part 31 shall be processed separately, in accordance with normal administrative practices.

30.202-8 Subcontractor Disclosure Statements.

(a) When the Government requires determinations of adequacy or inadequacy, the ACO cognizant of the subcontractor shall provide such determination to the ACO cognizant of the prime contractor or next higher tier subcontractor. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

(b) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.202-2.

Subpart 30.3—CAS Rules and Regulations [Reserved]

Note: See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.3.

Subpart 30.4—Cost Accounting Standards [Reserved]

Note: See 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), part 9904.

Subpart 30.5 [Reserved]

Subpart 30.6—CAS Administration

30.601 Responsibility.

(a) The cognizant ACO shall perform CAS administration for all contracts in a business unit notwithstanding retention of other administration functions by the contracting officer.

(b) Within 30 days of the award of any new contract or subcontract subject to CAS, the contracting officer, contractor, or subcontractor making the award shall request the cognizant ACO to perform administration for CAS matters (see subpart 42.2).

30.602 Changes to disclosed or established cost accounting practices.

Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining materiality, the ACO shall use the criteria in 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.305. The ACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the ACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the ACO shall inform the contractors that:

(a) the Government reserves the right to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material and

(b) the contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

30.602-1 Equitable adjustments for new or modified standards.

(a) *New or modified standards.* (1) The provision at 52.230-1, Cost Accounting Standards Notices and Certification, requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The contracting officer shall ensure that the contractor's response to the notice is made known to the ACO.

(2) Contracts and subcontracts containing the clause at 52.230-2, Cost Accounting Standards, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new contract or subcontract containing the clause at 52.230-2 is awarded on or after the effective date of the new or modified standard.

(3) Contracting officers shall encourage contractors to submit to the ACO any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the new or modified Standard has been promulgated by the CASB.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any change in cost accounting practices required to comply with a new or modified CAS within 60 days (or other mutually agreed to date) after award of a contract requiring the change.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall promptly analyze the cost impact proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustment on behalf of all Government agencies. The ACO shall invite contracting offices to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by $10,000 or more. At the conclusion of negotiations, the ACO shall—

(i) Execute supplemental agreements to contracts of the ACO's own agency (and, if additional funds are required, request them from the appropriate contracting officer);

(ii) Prepare a negotiation memorandum and send copies to cognizant auditors and contracting officers of other agencies having prime contracts affected by the negotiation (those agencies shall execute supplemental agreements in the amounts negotiated); and

(iii) Furnish copies of the memorandum indicating the effect on costs to the ACO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum shall be the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(2) If the parties fail to agree on the cost or price adjustment, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

30.602-2 Noncompliance with CAS requirements.

(a) *Determination of noncompliance.* (1) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the ACO shall make an initial finding of compliance or noncompliance and advise the auditor.

(2) If an initial finding of noncompliance is made, the ACO shall immediately notify the contractor in writing of the exact nature of the noncompliance and allow the contractor 60 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(3) If the contractor agrees with the initial finding of noncompliance, the ACO shall review the contractor submissions required by paragraph (a) of the clause at 52.230-5, Administration of Cost Accounting Standards.

(4) If the contractor disagrees with the initial noncompliance finding, the ACO shall review the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance. The ACO shall notify the contractor and the auditor in writing of the determination. If the ACO makes a determination of noncompliance, the procedures in (b) through (d), as appropriate, shall be followed.

(b) *Accounting changes.* (1) The clause at 52.230-5, Administration of Cost Accounting Standards, requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) The ACO shall request that the contractor submit a cost impact proposal within the time specified in the clause at 52.230-5, Administration of Cost Accounting Standards.

(2) Upon receipt of the cost impact proposal, the ACO shall then follow the procedures in 30.602-1(c)(1). In accordance with the clause at 52.230-2, Cost Accounting Standards, the ACO shall include and separately identify, as part of the computation of the contract price adjustment(s), applicable interest on any increased costs paid to the contractor as a result of the noncompliance. Interest shall be computed from the date of overpayment to the time the adjustment is effected. If

the costs were incurred and paid evenly over the fiscal years during which the noncompliance occurred, then the midpoint of the period in which the noncompliance began may be considered the baseline for the computation of interest. An alternate equitable method should be used if the costs were not incurred and paid evenly over the fiscal years during which the noncompliance occurred. Interest under 52.230–2 should be computed pursuant to Public Law 100–679.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is required (see 30.602), the ACO shall notify the contractor and request agreement as to the cost or price adjustment together with any applicable interest as computed in accordance with 30.602–2(c)(2). The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal, as provided in the clause at 52.233–1, Disputes.

(3) If the ACO determines that there is no material increase in costs as a result of the noncompliance, the ACO shall notify the contractor in writing that the contractor is in noncompliance, that corrective action shall be taken, and that if such noncompliance subsequently results in materially increased costs to the Government, the provisions of the clause at 52.230–2, Cost Accounting Standards, and/or the clause at 52.230–3, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

30.602–3 Voluntary changes.

(a) *General.* (1) The contractor may voluntarily change its disclosure statement or cost accounting practices.

(2) The contract price may be adjusted for voluntary changes. However, increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the Government.

(b) *Accounting changes.* (1) The clause at 52.230–5, Administration of Cost Accounting Standards, requires the contractor to notify the ACO and submit a description of any voluntary cost accounting practice change not less than 60 days (or such other date as may be mutually agreed to) before implementation of the voluntary change.

(2) The ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202–7). If the description of the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal in accordance with FAR 30.602.

(c) *Contract price adjustments.* (1) With the assistance of the auditor, the ACO shall promptly analyze the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by the Government. The ACO shall consider all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher-tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment shall not be considered.

(2) The ACO shall then follow the procedures in 30.602–1(c)(1).

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the general dollar magnitude of the change or cost impact proposal (in the form and manner specified), the ACO, with the assistance of the auditor, shall estimate the general dollar magnitude of the cost impact on CAS-covered contracts and subcontracts. The ACO may then withhold an amount not to exceed 10 percent of each subsequent amount determined payable related to the contractor's CAS-covered prime contracts up to the estimated general dollar magnitude of the cost impact, until the required submission is furnished by the contractor.

(2) If the contractor has not submitted the cost impact proposal before the total withheld amount reaches the estimated general dollar magnitude and the ACO determines that an adjustment is appropriate (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that, in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment subject to contractor appeal, as provided in the clause at 52.233–1, Disputes.

30.603 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the ACO cognizant of the subcontractor shall make the determination and advise the ACO cognizant of the prime contractor of next higher tier subcontractor of his decision. ACO's cognizant of higher tier subcontractors or prime contractors shall not reverse the determination of the ACO cognizant of the subcontractor.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31.201–2, 31.203, 31.205–6, 31.205–10, 31.205–11, 31.205–18, 31.205–19, 31.205–24, 31.205–38 [Amended]

5–6. In the list below, for each section indicated in the left column, remove the citation indicated in the middle column from wherever it appears in the section, and insert the citation indicated in the right column:

Section	Remove	Add
31.201–2(b)	Part 30	48 CFR 9903
31.203(e)	30.406	48 CFR 9904.406
31.205–6(j)(2)	30.412 (2 instances)	48 CFR 9904.412 (2 instances).
31.205–6(j)(2)	30.413	48 CFR 9904.413
31.205–6(j)(3)(i)(A)	30.412–40(a)(1)	48 CFR 9904.412–40(a)(1)
31.205–6(j)(3)(i)(A)	30.412–50(c)(3)	48 CFR 9904.412–50(c)(3)
31.205–6(j)(3)(i)(B)	30.412	48 CFR 9904.412
31.205–6(j)(3)(ii)(B)	30.413	48 CFR 9904.413
31.205–6(j)(3)(ii)	30.412–50(a)(7)	48 CFR 9904.412–50(a)(7)
31.205–6(j)(3)(ii)	30.413–50(c)(5)	48 CFR 9904.413–50(c)(5)
31.205–6(j)(3)(iii)	30.412–50(c)(3)	48 CFR 9904.412–50(c)(3)
31.205–6(j)(5)(i)		

Section	Remove	Add
31.205–6(k)(2)	30.415	48 CFR 9904.415
31.205–6(k)(3)	30.415	48 CFR 9904.415
31.205–10(a)(1)(ii)	30.414	48 CFR 9904.414
31.205–10(a)(2)(i)	30.414	48 CFR 9904.414
31.205–10(b)(1)(ii)	30.417	48 CFR 9904.417
31.205–10(b)(2)(i)(A)	30.417	48 CFR 9904.417
31.205–11(b)	30.409 (4 instances)	48 CFR 9904.409 (4 instances).
31.205–11(m)	30.404 (2 instances)	48 CFR 9904.404 (2 instances).
31.205–18(b)	30.420	48 CFR 9904.420
31.205–18(b)(1)	30.420	48 CFR 9904.420
31.205–18(b)(2)	30.420 (3 instances)	48 CFR 9904.420 (3 instances).
31.205–18(b)(2)	4 CFR 420.50(e)(2) (2 instances).	48 CFR.9904.420–50(e)(2) (2 instances)
31.205–18(b)(2)	4 CFR 420.50(f)(2) (2 instances).	48 CFR 9904.420–50(f)(2) (2 instances).
31.205–18(c)(1)(i)	30.420	48 CFR 9904.420
31.205–19(a)	30.416	48 CFR 9904.416
31.205–19(a)(3)(i)	30.416 (3 instances)	48 CFR 9904.416 (3 instances).
31.205–19(a)(3)(i)	4 CFR 416.50(a)(2)(ii)	48 CFR 9904.416–50(a)(2)(ii)
31.205–19(a)(3)(i)	30.416–50(a)(3)(ii)	48 CFR 9904.416–50(a)(3)(ii)
31.205–19(c)	30.416	48 CFR 9904.416
31.205–24(b)	30.404	48 CFR 9904.404
31.205–38(e)	30.405	48 CFR 9904.405

31.205–6 [Corrected]

7. Section 31.205–6 is corrected by removing the introductory text of paragraph (j)(3)(i).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

8. Sections 52.230–1 through 52.230–5 are revised and section 52.203–6 is removed to read as follows:

52.230–1 Cost Accounting Standards Notices and Certification.

As prescribed in 30.201–3, insert the following provisions:

Cost Accounting Standards Notices and Certification (Aug 1992)

Note: This notice does not apply to small businesses or foreign governments. This notice is in four parts, identified by Roman numerals I through IV.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of $500,000 resulting from this solicitation, except contracts in which the price negotiated is based on (1) established catalog or market prices of commercial items sold in substantial quantities to the general public, or (2) prices set by law or regulation, will be subject to the requirements of 48 CFR parts 9903 and 9904, except for those contracts which are exempt as specified in 48 CFR, Subpart 9903.201–1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR parts 9903 and 9904 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR, Subpart 9903.202. The Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

☐ (1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO), and (ii) one copy to the cognizant contract auditor.

(Disclosure must be on Form No. CASB DS–1. Forms may be obtained from the cognizant ACO.)

Date of Disclosure Statement:

Name and Address of Cognizant ACO where filed: _____

The offeror further certifies that practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

☐ (2) Certificate of Previously Submitted Disclosure Statement.

The offeror hereby certifies that Disclosure Statement was filed as follows:

Date of Disclosure Statement:

Name and Address of Cognizant ACO where filed: _____

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable disclosure statement.

☐ (3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling more than $10 million in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

☐ (4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR, Subpart 9903.202–1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a review certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of $10 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards—Exemption for Contracts of $500,000 or Less

If this proposal is expected to result in the award of a contract of $500,000 or less, the offeror shall indicate whether the exemption below is claimed. Failure to check the box below shall mean that the resultant contract is subject to CAS requirements or that the offeror elects to comply with such requirements.

☐ The offeror hereby claims an exemption from the CAS requirements under the provisions of 48 CFR, Subpart 9903.201–1(b)(2).

III. Cost Accounting Standards—Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 48 CFR, Subpart 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

☐ The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR, Subpart 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because (i) during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than $10 million in awards of CAS-covered prime contracts and subcontracts, and (ii) the sum of such awards equaled less than 10 percent of total sales during that cost accounting period. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of $10 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of $10 million or more.

IV. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

☐ Yes ☐ No

(End of provision)

52.230–2 Cost Accounting Standards.

As prescribed in 30.201–4(a), insert the following clause:

Cost Accounting Standards (Aug 1992)

(a) Unless the contract is exempt under 48 CFR, Subparts 9903.201–1 and 9903.201–2, the provisions of 48 CFR, Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR, Subpart 9903.202–1 through 9903.202–5, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR, Part 9904 (Appendix B, FAR loose-leaf edition), in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in 48 CFR part 9904 or a CAS rule or regulation in 48 CFR part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(1) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(2) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201–1.

(End of clause)

52.230–3 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in 30.201–4(b)(1), insert the following clause:

Disclosure and Consistency of Cost Accounting Practices (Aug 1992)

(a) The Contractor, in connection with this contract, shall—

(1) Comply with the requirements of 48 CFR, Subpart 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, and 48 CFR, Subpart 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, in effect on the date of award of this contract as indicated in 48 CFR, part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 48 CFR, subparts 9903.202–1 through 9903.202–5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 48 CFR, subpart 9903.201–6(b), that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States together with interest thereon computed at the annual rate of interest established under the Internal Revenue Code of 1986 (26 U.S.C. 6621), from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS, rule, or regulation as specified in 48 CFR, parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR, subpart 9903.201 is required to follow all CAS, the clause entitled "Cost Accounting Standards" set forth in FAR 52.230–2, shall be inserted in lieu of this clause; or

(2) This requirement shall apply only to negotiated subcontracts in excess of $500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Price set by law or regulation; or

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR, Subpart 9903.201–1.

(End of clause)

52.230–4 Consistency in Cost Accounting Practices.

As prescribed in 30.201–4(c), insert the following clause:

Consistency in Cost Accounting Practices (Aug 1992)

The Contractor agrees that it will consistently follow the cost accounting practices disclosed on Form CASB DS–1 in estimating, accumulating and reporting costs under this contract. In the event the Contractor fails to follow such practices, it agrees that the contract price shall be adjusted, together with interest, if such failure results in increased cost paid by the U.S. Government. Interest shall be computed at the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) from the time payment by the Government was made to the time adjustment is effected. The Contractor agrees that the Disclosure Statement filed with the U.K. Ministry of Defence shall be available for inspection and use by authorized representatives of the United States Government.

(End of clause)

52.230–5 Administration of Cost Accounting Standards

As prescribed in 30.201–4(d)(1), insert the following clause:

Administration of Cost Accounting Standards (Aug 1992)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (a) through (f) of this clause:

(a) Submit to the Contracting Officer a description of any cost accounting practice change, the total potential impact of the change on contracts containing a CAS clause, and a general dollar magnitude of the change which identifies the potential shift of costs between CAS-covered contracts by contract type (i.e., firm-fixed-price, incentive, cost-plus-fixed fee, etc.) and other contractor business activity. As related to CAS-covered contracts, the analysis should identify the potential impact on funds of the various Agencies/Departments (i.e., Department of Energy, National Aeronautics and Space Administration, Army, Navy, Air Force, other Department of Defense, other Government) as follows:

(1) For any change in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230–2, Cost Accounting Standards, within 60 days (or such other date as may be mutually agreed to) after award of a contract requiring this change.

(2) For any change in cost accounting practices proposed in accordance with subdivision (a)(4)(ii) or (iii) of the clause at FAR 52.230–2, Cost Accounting Standard, or with subparagraph (a)(3) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, not less than 60 days (or such other date as may be mutually agreed to) before the effective date of the proposed change.

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by subparagraph (a)(5) at FAR 52.230–2, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practice):

(i) Within 60 days (or such other date as may be mutually agreed to) after the date of agreement with the initial finding of noncompliance, or

(ii) In the event of Contractor disagreement with the initial finding of noncompliance, within 60 days of the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) After an ACO determination of materiality, submit a cost impact proposal in the form and manner specified by the Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230–2, Cost Accounting Standards, shall identify each additional standard and all contracts and subcontracts containing the clause in this contract entitled Cost Accounting Standards, which have an award date before the effective date of that standard.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4) (ii) or (iii) of the clause at 52.230–2, Cost Accounting Standards, or with subparagraph (a)(3) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices, shall identify all contracts and subcontracts containing the clause at FAR 52.230–2, Cost Accounting Standards, and FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) of the clause at FAR 52.230–2, Cost Accounting Standards, or by subparagraph (a)(4) of the clause at FAR 52.230–3, Disclosure and

Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the Contracting Officer, an amount not to exceed 10 percent of each subsequent amount determined payable related to the Contractor's CAS-covered prime contracts, up to the estimated general dollar magnitude of the cost impact, may be withheld until such time as the required submission has been provided in the form and manner specified by the Contracting Officer.

(d) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with subparagraphs (a)(4) and (a)(5) of the CAS clause at FAR 52.230-2 or with subparagraphs (a)(3) or (a)(4) of the CAS Disclosure and Consistency of Cost Accounting Practices clause at FAR 52.230-3.

(e) For all subcontracts subject either to the CAS clause or to the Disclosure and Consistency of Cost Accounting Practices clause—

(1) So state in the body of the subcontract, in the letter of award, or in both (self-deleting clauses shall not be used); and

(2) Include the substance of this clause in all negotiated subcontracts. In addition, within 30 days after award of the subcontract, submit the following information to the Contractor's cognizant contract administration office for transmittal to the contract administrative office cognizant of the subcontractor's facility:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the CAS clause or Disclosure and Consistency of Cost Accounting Practices clause, unless these changes have already been reported. If award of the subcontract results in making one or more CAS effective for the first time, this fact shall also be reported.

(f) Notify the Contracting Officer in writing of any adjustments required to subcontracts under this contract and agree to an adjustment, based on them, to this contractor's price or estimated cost and fee. This notice is due within 30 days after proposed subcontract adjustments are received and shall include a proposal for adjusting the higher tier subcontract or the prime contract appropriately.

(g) For subcontracts containing the CAS clause, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

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GENERAL SERVICES ADMINISTRATION

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Dated: August 26, 1992.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202-523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-2470).

H.R. 4312/P.L. 102-344
Voting Rights Language Assistance Act of 1992. (Aug. 26, 1992; 106 Stat. 921; 2 pages) Price: $1.00

H.R. 5481/P.L. 102-345
FAA Civil Penalty Administrative Assessment Act of 1992. (Aug. 26, 1992; 106 Stat. 923; 5 pages) Price: $1.00

S. 544/P.L. 102-346
Animal Enterprise Protection Act of 1992. (Aug. 26, 1992; 106 Stat. 928; 2 pages) Price: $1.00

S. 807/P.L. 102-347
To permit Mount Olivet Cemetery Association of Salt Lake City, Utah, to lease a certain tract of land for a period of not more than 70 years. (Aug. 26, 1992; 106 Stat. 930; 1 page) Price: $1.00

S. 1770/P.L. 102-348
To convey certain surplus real property located in the Black Hills National Forest to the Black Hills Workshop and Training Center, and for other purposes. (Aug. 26, 1992; 106 Stat. 931; 2 pages) Price: $1.00

S. 1963/P.L. 102-349
To amend section 992 of title 28, United States Code, to provide a member of the United States Sentencing Commission whose term has expired may continue to serve until a successor is appointed or until the expiration of the next session of Congress. (Aug. 26, 1992; 106 Stat. 933; 1 page) Price: $1.00

S. 2079/P.L. 102-350
Marsh-Billings National Historical Park Establishment Act. (Aug. 26, 1992; 106 Stat. 934; 3 pages) Price: $1.00

S. 3001/P.L. 102-351
To amend the Food Stamp Act of 1977 to prevent a reduction in the adjusted cost of the thrifty food plan during fiscal year 1993, and for other purposes. (Aug. 26, 1992; 106 Stat. 937; 1 page) Price: $1.00

S. 3112/P.L. 102-352
Public Health Service Act Technical Amendments Act. (Aug. 26, 1992; 106 Stat. 938; 3 pages) Price: $1.00

S. 3163/P.L. 102-353
Prescription Drug Amendments of 1992. (Aug. 26, 1992; 106 Stat. 941; 3 pages) Price: $1.00

H.R. 2549/P.L. 102-354
Administrative Procedure Technical Amendments Act of 1991. (Aug. 26, 1992; 106 Stat. 944; 3 pages) Price: $1.00

H.R. 2926/P.L. 102-355
To amend the Act of May 17, 1954, relating to the Jefferson National Expansion Memorial to authorize increased funding for the East Saint Louis portion of the Memorial, and for other purposes. (Aug. 26, 1992; 106 Stat. 947; 2 pages) Price: $1.00

H.R. 2977/P.L. 102-356
Public Telecommunications Act of 1992. (Aug. 26, 1992; 106 Stat. 949; 9 pages) Price: $1.00

H.R. 3795/P.L. 102-357
To amend title 28, United States Code, to establish 3 divisions in the Central Judicial District of California. (Aug. 26, 1992; 106 Stat. 958; 2 pages) Price: $1.00

H.R. 4437/P.L. 102-358
To authorize funds for the implementation of the settlement agreement reached between the Pueblo de Cochiti and the United States Army Corps of Engineers under the authority of Public Law 100-202. (Aug. 26, 1992; 106 Stat. 960; 2 pages) Price: $1.00

H.R. 5560/P.L. 102-359
To extend for one year the National Commission on Time and Learning, and for other purposes. (Aug. 26, 1992; 106 Stat. 962; 2 pages) Price: $1.00

H.R. 5623/P.L. 102-360
To waive the period of congressional review for certain District of Columbia Acts. (Aug. 26, 1992; 106 Stat. 964; 1 page) Price: $1.00

H.R. 5688/P.L. 102-361
Bankruptcy Judgeship Act of 1992. (Aug. 26, 1992; 106 Stat. 965; 2 pages) Price: $1.00

H.J. Res. 411/P.L. 102-362
To designate the week of September 13, 1992, through September 19, 1992, as "National Rehabilitation Week". (Aug. 26, 1992; 106 Stat. 967; 2 pages) Price: $1.00

H.J. Res. 507/P.L. 102-363
To approve the extension of nondiscriminatory treatment with respect to the products of the Republic of Albania. (Aug. 26, 1992; 106 Stat. 969; 1 page) Price: $1.00

Last List August 20, 1992

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-017-00001-9)	$13.00	Jan. 1, 1992
3 (1991 Compilation and Parts 100 and 101)	(869-017-00002-7)	17.00	[1] Jan. 1, 1992
4	(869-017-00003-5)	16.00	Jan. 1, 1992
5 Parts:			
1-699	(869-017-00004-3)	18.00	Jan. 1, 1992
700-1199	(869-017-00005-1)	14.00	Jan. 1, 1992
1200-End, 6 (6 Reserved)	(869-017-00006-0)	19.00	Jan. 1, 1992
7 Parts:			
0-26	(869-017-00007-8)	17.00	Jan. 1, 1992
27-45	(869-017-00008-6)	12.00	Jan. 1, 1992
46-51	(869-017-00009-4)	18.00	Jan. 1, 1992
52	(869-017-00010-8)	24.00	Jan. 1, 1992
53-209	(869-017-00011-6)	19.00	Jan. 1, 1992
210-299	(869-017-00012-4)	26.00	Jan. 1, 1992
300-399	(869-017-00013-2)	13.00	Jan. 1, 1992
400-699	(869-017-00014-1)	15.00	Jan. 1, 1992
700-899	(869-017-00015-9)	18.00	Jan. 1, 1992
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10 Parts:			
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400-End	(869-013-00130-3)	26.00	July 1, 1991
35	(869-013-00131-1)	10.00	July 1, 1991
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47 Parts:			
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50 Parts:			
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CFR Index and Findings Aids	(869-017-00053-1)	31.00	Jan. 1, 1992

Title	Stock Number	Price	Revision Date
Complete 1992 CFR set		620.00	1992
Microfiche CFR Edition:			
Complete set (one-time mailing)		185.00	1989
Complete set (one-time mailing)		188.00	1990
Complete set (one-time mailing)		188.00	1991
Subscription (mailed as issued)		188.00	1992
Individual copies		2.00	1992

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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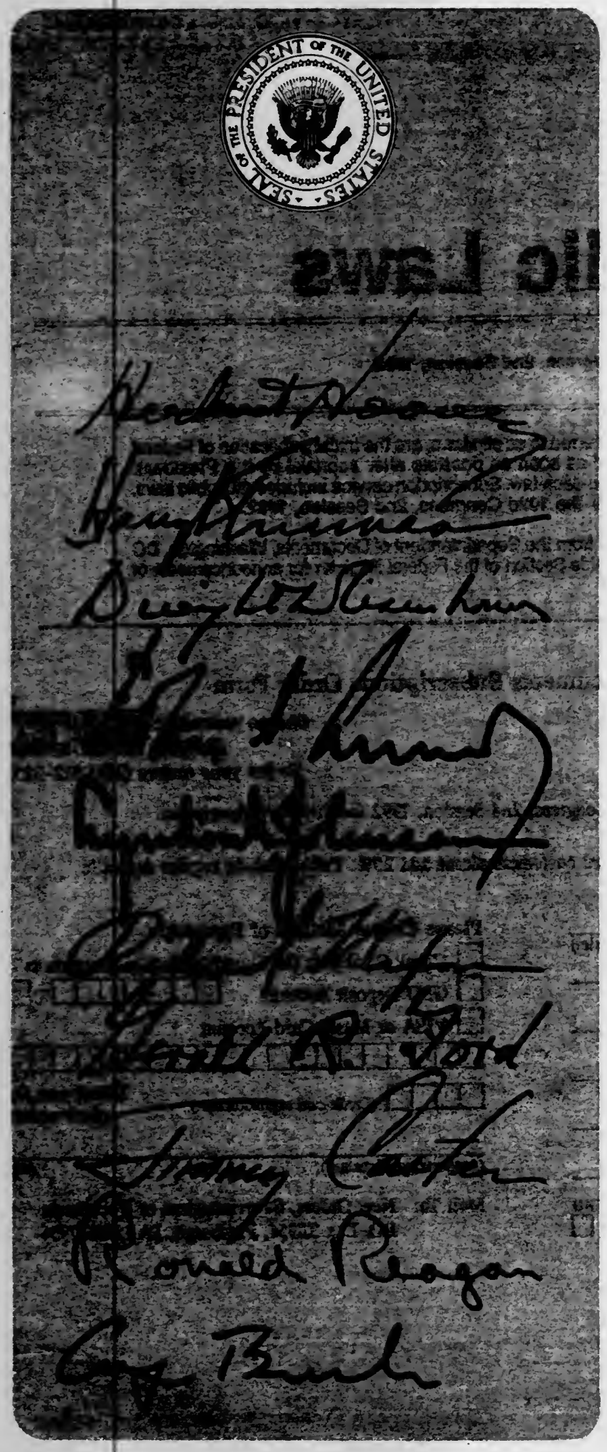
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9-1-92
Vol. 57 No. 170

federal register

Tuesday
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Tuesday
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WHERE: Centers for Disease Control
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Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: [404-639-3528 (Atlanta area)]
1-800-347-1997 (outside Atlanta area)

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1115

Substantial Hazard Reports; Revision to Interpretative Rule Governing Substantial Hazard Reporting

AGENCY: Consumer Product Safety Commission.

ACTION: Correction of rule.

SUMMARY: Because of changes in its statute, the Consumer Product Safety Commission revised its interpretative rules regarding the reporting of possible substantial product hazards. These revisions were published in the **Federal Register** on August 4, 1992. This notice is to correct a sentence in that publication.

EFFECTIVE DATE: The revisions become effective September 3, 1992.

FOR FURTHER INFORMATION CONTACT: Eric L. Stone, Division of Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: This document corrects a sentence in the amendments published in the **Federal Register** on August 4, 1992. (57 FR 34222). The fourth sentence of the first paragraph in § 1115.5(a) on page 34228 reads:

"This provision applies only when the Commission relies upon a voluntary standard in a rulemaking proceeding under section 9 of the CPSA, and does not apply when the Commission relies upon a voluntary standard in a rulemaking proceeding under another provision of the CPSA or one of the transferred acts."

This correction is being made to ensure that there is no inference that the Commission decision to publish the interpretative rule endorsed the notion that reliance can occur under another provision of the CPSA.

The Commission corrects on page 34228 the fourth sentence of section 1115.5(a) to read:

§ 1115.5 Reporting of failures to comply with a voluntary consumer product safety standard relied upon by the Commission under section 9 of the CPSA.

(a) * * * This provision applies only when the Commission relies upon a voluntary standard in a rulemaking proceeding under section 9 of the CPSA. * * *

* * * * *

Dated: August 27, 1992.

Sheldon Butts,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 92–21010 Filed 8–31–92; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 194

[T. D. ATF–329; CRT–92–73]

Registration of Catering Locations

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: ATF is amending regulations in 27 CFR part 194 to eliminate certain registration requirements imposed on caterers who change the location at which they sell or offer for sale alcoholic beverages, except when there is a permanent change of location of the principal place of business. Under current requirements, caterers must complete and submit two forms reflecting such changes: ATF Form 5630.5 (Special Tax Registration and Return) and ATF Form 5100.29 (Catering Locations). The amended regulations will eliminate this requirement. The final rule will require caterers to maintain adequate commercial records to support that all locations where alcoholic beverages were sold or offered for sale were covered by a special (occupational) tax payment. The final rule will require that these records must be kept available for ATF inspection in order to verify proper tax payments.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Shirley C. Osborne, Tax Compliance Branch (202–927–8220), 650 Massachusetts Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

Retailers (including caterers) of alcoholic beverages (liquor, wine, and/or beer) must pay special (occupational) tax at an annual rate of $250 per year, as required by 26 U.S.C. 5121. Under 26 U.S.C. 5143(c), a separate tax is imposed on each location at which alcoholic beverages are sold or offered for sale. The Bureau of Alcohol, Tobacco and Firearms (ATF) issues a tax stamp for each location for which special (occupational) tax is paid. If a retail dealer conducts business at more than one location, the taxpayer must pay special (occupational) tax and obtain a tax stamp for each location. Under 26 U.S.C. 5143(d), a special (occupational) taxpayer is allowed to change the location of the business without incurring additional tax by registering the change. This registration must be done within 30 days of the date the taxpayer begins to sell (or offer for sale) alcoholic beverages at the new location. Failure to register the change of location within 30 days make the dealer liable for an additional tax payment to cover the new location.

Caterers who sell (or offer for sale) alcoholic beverages at locations other than their principal business locations must acquire a sufficient number of tax stamps to ensure that they have as many separate tax stamps as the maximum number of locations at which they will be selling (or offering for sale) alcoholic beverages at any one time. Where a caterer dispenses (but does not sell or offer for sale) alcoholic beverages at one or several locations other than the caterer's office under contracts made at the caterer's office, no additional tax stamps are required.

Caterers who sell (or offer for sale) alcoholic beverages at locations other than the place of business for which a special tax stamp is held are currently required to register such locations within 30 days of the date of the first such sale, using ATF Form 5100.29, Catering Locations. ATF Form 5100.29 is filed with ATF in duplicate by the caterer, showing the name and address

of each place at which alcoholic beverages are sold or offered for sale and the dates and times during which such catering occurred, along with an amended ATF Form 5630.5, Special Tax Registration and Return, clearly marked "Caterer-Amended Return." ATF Form 5100.29 identifies where alcoholic beverages were sold by the drink at locations other than the location listed on the special occupational tax stamp issued to the caterer. ATF endorses both copies of ATF Form 5100.29 and returns a copy to the taxpayer to attach to his or her tax stamp.

This Treasury decision eliminates the current regulatory filing requirements for caterers set forth in 27 CFR 194.151(b). This decision will require caterers to maintain adequate commercial records pursuant to 27 CFR 194.55(c) enabling ATF to verify that all required special (occupational) tax has been paid for all locations subject to this tax. These records must establish that the caterer has a sufficient number of special (occupational) tax stamps to cover the number of locations at which it may conduct business at any one time. Pursuant to 27 CFR 194.151(a), caterers will continue to be required to file an amended return, ATF Form 5630.5, for changes in the address of the permanent place of business.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable to this final rule because the agency was not required to publish a general notice of proposed rulemaking under 5 U.S.C. 553 or any other law. A copy of this final rule has been submitted to the Administrator of the Small Business Administration for comment on the impact of such regulation on small business, pursuant to 26 U.S.C. 7805(f).

Executive Order 12291

It has been determined that this document is not a major regulation as defined in Executive Order 12291 and a regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets.

Administrative Procedure Act

Because this Treasury decision merely eliminates certain registration requirements for location changes for caterers that sell or offer to sell alcoholic beverages, it is found to be unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b) or subject to the effective date limitation in 5 U.S.C. 553(d).

Paperwork Reduction Act

The collection of information described in this final rule has been submitted to the Office of Management and Budget (OMB) for review and comment in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)).

The estimated average burden associated with the Catering Location Registration was .5 hours per respondent. We estimate that eliminating this form will save 250 burden hours per year.

Drafting Information

The principal author of this document is Shirley C. Osborne of the Tax Compliance Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 194

Alcohol and alcoholic beverages, Authority delegations (Government agencies), Beer, Claims, Excise taxes, Exports, Labeling, Liquors, Packaging and containers, Penalties, Report and recordkeeping requirements, Wine.

Authority and Issuance

27 CFR part 194, Liquor Dealers, is amended as follows:

PART 194—LIQUOR DEALERS

Paragraph 1. The authority citation for part 194 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5117, 5121–5124, 5142, 5143, 5145, 5146, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

Par. 2. Section 194.55 is amended by adding a new paragraph (c) and revising the authority citation to read as follows:

§ 194.55 Caterers.

* * * * *

(c) *Records.* Caterers must maintain sufficient commercial records to verify that their special (occupational) tax liabilities have been satisfied for all locations at which activities subject to special (occupational) tax occur. These commercial records should indicate the names and addresses of locations at which alcoholic beverages have been sold or offered for sale and the dates and times that such activities occurred. These commercial records must be available to ATF officers upon request.

(26 U.S.C. 5121, 5122, 5143, 5555, 6806, 7011)

Par. 3. Section 194.151(b) is revised to read as follows:

§ 194.151 Amended return, Form 5630.5; endorsement on stamp.

* * * * *

(b) *Caterers.* A caterer who sells liquor by the drink at locations other than his or her principal place of business shall not be required to provide the change of location registration prescribed in paragraph (a) of this section for such catering activities provided the records prescribed by § 194.55(c) are maintained as required. For a permanent change in location of the principal place of business, an amended return must be filed in accordance with paragraph (a) of this section.

Signed: June 2, 1992.

Stephen E. Higgins,

Director.

Approved: August 19, 1992.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92-20966 Filed 8-31-92; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF JUSTICE

28 CFR Parts 50 and 80

[AG Order No. 1620-92]

Antibribery Provisions of the Foreign Corrupt Practices Act

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Department of Justice is today publishing a final rule establishing a Foreign Corrupt Practices Act Opinion Procedure. This procedure will enable issuers and domestic concerns to obtain an opinion of the Attorney General regarding whether prospective conduct would conform with the Department of Justice's present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act. This procedure implements amendments made to the antibribery provisions of the Foreign Corrupt Practices Act by Title V of the Omnibus Trade and Competitiveness Act of 1988. This final rule adopts the FCPA Opinion Procedure in the same form as published for comment on January 9, 1992, without change.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Peter B. Clark, Deputy Chief, Fraud Section, Criminal Division, U.S. Department of Justice, room 2424, Bond Building, 1400 New York Avenue, NW., Washington, DC, (202) 514-0651.

SUPPLEMENTARY INFORMATION: The antibribery provisions of the Foreign Corrupt Practices Act of 1977, as amended (FCPA or the Act), 15 U.S.C. 78dd-1 and 78dd-2, are aimed at eliminating bribery of foreign government officials by issuers and domestic concerns. In 1988, the antibribery provisions of the FCPA were amended by section 5003 of the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418. As amended, the antibribery provisions require the Attorney General to establish a procedure to respond to inquiries concerning whether prospective conduct would conform with the Department of Justice's present enforcement policy. 15 U.S.C. 78dd-1(e) and 78dd-2(f).

On January 9, 1992, the Department of Justice published for comment proposed regulations establishing a Foreign Corrupt Practices Act Opinion Procedure. 57 FR 862. One comment was received. It was favorable to the proposal as published. The commentor also suggested that the Department of Justice consider establishing an opinion record to apply past opinions as precedent. The suggestion would be inconsistent with the function for which opinions are provided, to furnish an indication of the Department's current enforcement policy on a specific factual situation, and therefore is not adopted.

As set forth below, the FCPA Opinion Procedure is based upon the existing FCPA Review Procedure, 28 CFR 50.18, established by the Department of Justice in 1980. The FCPA Review Procedure will be revoked when the proposed FCPA Opinion Procedure becomes effective.

Under the FCPA Opinion Procedure, issuers and domestic concerns within the meaning of 15 U.S.C. 78dd-1 and 78dd-2, respectively, may submit a proposed transaction to the Attorney General for review. The Attorney General will then issue an opinion stating whether or not certain specified prospective conduct would, for purposes of the Department of Justice's present enforcement policy, violate the Act's antibribery provisions and lead the Department of Justice to take enforcement action. The FCPA Opinion Procedure will not be available for matters relating to the recordkeeping provisions of the FCPA. 15 U.S.C. 78m(b)(2) and (3).

As amended, Sections 78dd-1(e) and 78dd-2(f) provide that the Attorney General's opinion that disclosed conduct conforms with the Department of Justice's present enforcement policy creates a rebuttable presumption of compliance with the antibribery provisions of the FCPA. This presumption may be rebutted by a preponderance of the evidence. These provisions are incorporated in § 80.10 of the proposed FCPA Opinion Procedure.

As is the case with the existing FCPA Review Procedure, the Attorney General's opinion will be binding on the Department of Justice only as to the issuer or domestic concern submitting the request and no agency other than the Department of Justice will be bound. The Department of Justice has responsibility for all criminal enforcement of the antibribery provisions of the FCPA, and also for civil enforcement of 15 U.S.C. 78dd-2, which applies to domestic concerns. The Securities and Exchange Commission (SEC) has responsibility for civil enforcement of 15 U.S.C. 78dd-1, which applies to issuers. Notwithstanding the issuance of an FCPA opinion by the Attorney General, the SEC remains free to take a civil enforcement action against any domestic concern. Nevertheless, by statute the rebuttable presumption arising from an FCPA Opinion applies "[i]n any action brought" under the applicable provisions of the Act, 15 U.S.C. 78dd-1(e)(1) and 78dd-2(f)(1) (emphasis supplied). Collateral consequences of a violation of the antibribery provisions of the Act may include government-wide suspension or debarment from participation in Federal programs under guidelines issued by the Office of Management and Budget (53 FR 19161, May 26, 1988).

The FCPA Opinion Procedure differs from the existing FCPA Review Procedure in several respects to reflect the amendments made to 15 U.S.C. 78dd-1 and 78dd-2 in 1988. Among the differences, the procedure eliminates the Department of Justice's discretion, under the existing FCPA Review Procedure, to refuse to review a request. Further, the procedure requires the Attorney General to issue an opinion within 30 days after a request is deemed complete. In contrast, the existing FCPA Review Procedure states that "every reasonable effort" will be made to respond to requests within 30 days after receipt of the request or any additional information sought by the Department. Both the existing procedure and the new FCPA Opinion Procedure permit the Department of Justice to request additional information. The FCPA Opinion Procedure states that a request is not deemed to be complete until the issuer or domestic concern submitting the request provides the Department all additional information that it seeks, and requires the Department to request additional information, where needed, within 30 days.

The FCPA Opinion Procedure also contains an exemption from disclosure under the Freedom of Information Act, 5 U.S.C. 552, of any document or other material which is provided to, received by, or prepared in connection with a request. This exemption incorporates the statutory exemption from disclosure set forth in 15 U.S.C. 78dd-1(e)(2) and 78dd-2(f)(2).

Finally, the FCPA Opinion Procedure provides that a request may only be withdrawn before the Attorney General issues an opinion, and that a withdrawn request shall have no force or effect. This accommodates the statutory requirements of 15 U.S.C. 78dd-1(e)(3) and 78dd-2(f)(3). The existing FCPA Review Procedure allows a request to be withdrawn at any time, and permits the Department to submit to the requesting party any comments on the withdrawn request that it deems appropriate.

After considering the comments received, and consulting with the Departments of State, Treasury and Commerce, and with the Office of the United States Trade Representative and the SEC, the proposed rule has been adopted as a final regulation, without change.

The Department, in cooperation with the Department of Commerce, intends to produce for public distribution a brochure explaining, generally, the provisions of the FCPA.

This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, and it does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 of E.O. 12612. This rule does not have a significant impact on a substantial number of small entities.

List of Subjects

28 CFR Part 50

Administrative practice and procedure, Foreign Corrupt Practices Act.

28 CFR Part 80

Administrative practice and procedure, Foreign Corrupt Practices Act.

By virtue of the authority vested in the Attorney General by 28 U.S.C. 509 and 510, 5 U.S.C. 301, and Public Law 100–418, chapter I of title 28 of the Code of Federal Regulations is amended as follows:

PART 50—STATEMENTS OF POLICY

1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 15 U.S.C. 16(d); 21 U.S.C. 881(f)(2); 28 U.S.C. 508, 509, 510, 516, 517, 518, 519; Executive Order 12250.

§ 50.18 [Removed]

2. Section 50.18 is removed and reserved.

3. Part 80 is added to read as follows:

PART 80—FOREIGN CORRUPT PRACTICES ACT OPINION PROCEDURE

Sec.

§ 80.1 Purpose.
§ 80.2 Submission requirements.
§ 80.3 Transaction.
§ 80.4 Issuer or domestic concern.
§ 80.5 Affected parties.
§ 80.6 General requirements.
§ 80.7 Additional information.
§ 80.8 Attorney General opinion.
§ 80.9 No oral opinion.
§ 80.10 Rebuttable presumption.
§ 80.11 Effect of FCPA Opinion.
§ 80.12 Accounting Requirements.
§ 80.13 Scope of FCPA Opinion.
§ 80.14 Disclosure.
§ 80.15 Withdrawal.
§ 80.16 Additional requests.

Authority: 28 U.S.C. 509, 510; 15 U.S.C. 78dd–1, 78dd–2.

§ 80.1 Purpose.

These procedures enable issuers and domestic concerns to obtain an opinion of the Attorney General as to whether certain specified, prospective—not hypothetical—conduct conforms with the Department's present enforcement policy regarding the antibribery provisions of the Foreign Corrupt Practices Act of 1977, as amended, 15 U.S.C. 78dd–1 and 78dd–2. An opinion issued pursuant to these procedures is a Foreign Corrupt Practices Act opinion (hereinafter FCPA Opinion).

§ 80.2 Submission requirements.

A request for an FCPA Opinion must be submitted in writing. An original and five copies of the request should be addressed to the Assistant Attorney General in charge of the Criminal Division, Attention: FCPA Opinion Group. The mailing address is P.O. Box 28188, Central Station, Washington, DC 20038. The address for hand delivery is room 2424, Bond Building, 1400 New York Avenue, NW., Washington, DC 20005.

§ 80.3 Transaction.

The entire transaction which is the subject of the request must be an actual—not a hypothetical—transaction but need not involve only prospective conduct. However, a request will not be considered unless that portion of the transaction for which an opinion is sought involves only prospective conduct. An executed contract is not a prerequisite and, in most—if not all—instances, an opinion request should be made prior to the requestor's commitment to proceed with a transaction.

§ 80.4 Issuer or domestic concern.

The request must be submitted by an issuer or domestic concern within the meaning of 15 U.S.C. 78dd–1 and 78dd–2, respectively, that is also a party to the transaction which is the subject of the request.

§ 80.5 Affected parties.

An FCPA Opinion shall have no application to any party which does not join in the request for the opinion.

§ 80.6 General requirements.

Each request shall be specific and must be accompanied by all relevant and material information bearing on the conduct for which an FCPA Opinion is requested and on the circumstances of the prospective conduct, including background information, complete copies of all operative documents, and detailed statements of all collateral or oral understandings, if any. The requesting issuer or domestic concern is under an affirmative obligation to make full and true disclosure with respect to the conduct for which an opinion is requested. Each request on behalf of a requesting issuer or corporate domestic concern must be signed by an appropriate senior officer with operational responsibility for the conduct that is the subject of the request and who has been designated by the requestor's chief executive officer to sign the opinion request. In appropriate cases, the Department of Justice may require the chief executive officer of each requesting issuer or corporate domestic concern to sign the request. All requests of other domestic concerns must also be signed. The person signing the request must certify that it contains a true, correct and complete disclosure with respect to the proposed conduct and the circumstances of the conduct.

§ 80.7 Additional information.

If an issuer's or domestic concern's submission does not contain all of the information required by § 80.6, the Department of Justice may request whatever additional information or documents it deems necessary to review the matter. The Department must do so within 30 days of receipt of the opinion request, or, in the case of an incomplete response to a previous request for additional information, within 30 days of receipt of such response. Each issuer or domestic concern requesting an FCPA Opinion must promptly provide the information requested. A request will not be deemed complete until the Department of Justice receives such additional information. Such additional information, if furnished orally, shall be promptly confirmed in writing, signed by the same person or officer who signed the initial request and certified by this person or officer to be a true, correct and complete disclosure of the requested information. In connection with any request for an FCPA Opinion, the Department of Justice may conduct whatever independent investigation it believes appropriate.

§ 80.8 Attorney General opinion.

The Attorney General or his designee shall, within 30 days after receiving a request that complies with the foregoing procedure, respond to the request by issuing an opinion that states whether the prospective conduct, would, for purposes of the Department of Justice's present enforcement policy, violate 15 U.S.C. 78dd–1 and 78dd–2. The Department of Justice may also take such other positions or action as it considers appropriate. Should the Department request additional information, the Department's response shall be made within 30 days after receipt of such additional information.

§ 80.9 No oral opinion.

No oral clearance, release or other statement purporting to limit the enforcement discretion of the Department of Justice may be given. The requesting issuer or domestic concern may rely only upon a written FCPA Opinion letter signed by the Attorney General or his designee.

§ 80.10 Rebuttable presumption.

In any action brought under the applicable provisions of 15 U.S.C. 78dd–1 and 78dd–2, there shall be a rebuttable presumption that a requestor's conduct, which is specified in a request, and for which the Attorney General has issued an opinion that such conduct is in conformity with the Department's present enforcement policy, is in compliance with those provisions of the FCPA. Such a presumption may be rebutted by a preponderance of the evidence. In considering the presumption, a court, in accordance with the statute, shall weigh all relevant factors, including but not limited to whether information submitted to the Attorney General was accurate and complete and whether the activity was within the scope of the conduct specified in any request received by the Attorney General.

§ 80.11 Effect of FCPA Opinion.

Except as specified in § 80.10, an FCPA Opinion will not bind or obligate any agency other than the Department of Justice. It will not affect the requesting issuer's or domestic concern's obligations to any other agency, or under any statutory or regulatory provision other than those specifically cited in the particular FCPA Opinion.

§ 80.12 Accounting requirements.

Neither the submission of a request for an FCPA Opinion, its pendency, nor the issuance of an FCPA Opinion, shall in any way alter the responsibility of an issuer to comply with the accounting requirements of 15 U.S.C. 78m(b)(2) and (3).

§ 80.13 Scope of FCPA Opinion.

An FCPA Opinion will state only the Attorney General's opinion as to whether the prospective conduct would violate the Department's present enforcement policy under 15 U.S.C. 78dd–1 and 78dd–2. If the conduct for which an FCPA Opinion is requested is subject to approval by any other agency, such FCPA Opinion shall in no way be taken to indicate the Department of Justice's views on the legal or factual issues that may be raised before that agency, or in an appeal from the agency's decision.

§ 80.14 Disclosure.

(a) Any document or other material which is provided to, received by, or prepared in the Department of Justice or any other department or agency of the United States in connection with a request by an issuer or domestic concern under the foregoing procedure shall be exempt from disclosure under 5 U.S.C. 552 and shall not, except with the consent of the issuer or domestic concern, be made publicly available, regardless of whether the Attorney General responds to such a request or the issuer or domestic concern withdraws such request before receiving a response.

(b) Nothing contained in paragraph (a) of this section shall limit the Department of Justice's right to issue, at its discretion, a release describing the identity of the requesting issuer or domestic concern, the identity of the foreign country in which the proposed conduct is to take place, the general nature and circumstances of the proposed conduct, and the action taken by the Department of Justice in response to the FCPA Opinion request. Such release shall not disclose either the identity of any foreign sales agents or other types of identifying information. The Department of Justice shall index such releases and place them in a file available to the public upon request.

(c) A requestor may request that the release not disclose proprietary information.

§ 80.15 Withdrawal.

A request submitted under the foregoing procedure may be withdrawn prior to the time the Attorney General issues an opinion in response to such request. Any request so withdrawn shall have no force or effect. The Department of Justice reserves the right to retain any FCPA Opinion request, documents and information submitted to it under this procedure or otherwise and to use them for any governmental purposes, subject to the restrictions on disclosures in § 80.14.

§ 80.16 Additional requests.

Additional requests for FCPA Opinions may be filed with the Attorney General under the foregoing procedure regarding other prospective conduct that is beyond the scope of conduct specified in previous requests.

Dated: August 26, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–20914 Filed 8–31–92; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 315 and 353

Regulations Governing U.S. Savings Bonds, Series A, B, C, D, E, EE, F, G, H, HH, J, and K, and U.S. Savings Notes

AGENCY: Bureau of the Public Debt, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This Final Rule amends the regulations governing savings bonds and savings notes to ease restrictions with respect to powers of attorney and voluntary guardians acting on behalf of incapacitated savings bond owners.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dean A. Adams, Assistant Chief Counsel, Bureau of the Public Debt, Parkersburg, West Virginia 26106–1328, (304) 420–6505.

SUPPLEMENTARY INFORMATION: The purpose of this final rule is to simplify the regulatory requirements in administering the savings bond program, and thereby provide cost savings to the Bureau and simpler procedures for bondowners and their representatives. As the provisions contained in parts 315, for Series E and H bonds and notes, and 353, for Series EE and HH bonds, are identical, the changes thereto are described together. The following changes have been made:

Payment Pursuant to a Power of Attorney

The current provisions on powers of attorney (§§ 315.40(d) and 315.65 and §§ 353.40(d) and 353.65) are being replaced with a new provision which would permit acceptance of a power of attorney for redemptions, exchanges, or reinvestments, if it provides authority to sell the grantor's securities or personal property, or otherwise contains language providing similar authority. The new sections require a power of attorney to conform with State law, particularly as it relates to durability and notarization.

Payments to Voluntary Guardians

Payments to voluntary guardians (§§ 315.64 and 353.64) have been simplified to permit payment of an incapacitated person's bonds or notes to a person recognized as his or her voluntary guardian, if the total redemption value of the bonds and notes belonging to such owner, on the date received by the Bureau, is $20,000, or less. Currently, such securities may only be redeemed to pay expenses incurred during any 90-day period. Sections 315.65 and 353.65 are eliminated as it is no longer deemed necessary to provide separate rules for payment of savings bonds and notes upon the request of an attorney-in-fact where the owner is incompetent. The new provisions of §§ 315.64 and 353.64 apply to these latter redemptions as well. Accordingly, §§ 315.66 and 353.66 are redesignated §§ 315.65 and 353.65, respectively.

Procedural Requirements

This Final Rule is not considered a "major rule" for purposes of Executive Order No. 12291. A regulatory impact analysis, therefore, is not required. It has also been determined that Section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 6) does not apply to these regulations. As no notice of

proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply and a Regulatory Flexibility Analysis is not required.

List of Subjects in 31 CFR Parts 315 and 353

Banks and banking, Government securities, Federal reserve system.

Dated: August 25, 1992.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR parts 315 and 353 are amended to read as follows:

PART 315—[AMENDED]

1. The authority citation for 31 CFR part 315 is revised to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

2. Section 315.40(d) is revised to read as follows:

§ 315.40 Special provisions for payment.

* * * * *

(d) Attorneys-in-fact. A request for payment, reinvestment, or exchange executed by an attorney-in-fact will be recognized if it is accompanied by a copy of the power of attorney that meets the following requirements:

(1) The power of attorney must bear the grantor's signature, properly certified or notarized, in accordance with applicable State law;

(2) The power of attorney must grant, by its terms, authority for the attorney-in-fact to sell or redeem the grantor's securities, sell his or her personal property, or, otherwise contain similar authority; and

(3) In the case of a grantor who has become incapacitated, the power of attorney must conform with pertinent provisions of State law concerning its durability. Generally, in such circumstances, the power of attorney should provide that the authority granted will not be affected by the subsequent incompetence or incapacity of the grantor. Medical evidence or other proof of the grantor's condition may be required in any case.

3. Section 315.64 is revised to read as follows:

§ 315.64 Payment, reinvestment, or exchange—voluntary guardian of an incapacitated person.

(a) Payment of bonds. When an adult owner of bonds is incapable of requesting payment as a result of incapacity and there is no other person legally qualified to do so, the relative, or other person, responsible for the owner's care and support may submit an application for recognition as voluntary guardian for the purpose of redeeming the owner's bonds, if the total redemption value of all of the owner's bonds does not exceed $20,000. The redemption value of the bonds shall be determined as of the date the bonds are received, accompanied by an appropriate request for payment. If the total redemption value exceeds $20,000, a legal representative must be appointed, as set forth in Section 315.60.

(b) Reinvestment of bonds. If the bonds have finally matured and it is desired to redeem them and reinvest the proceeds in other savings bonds, the new bonds must be registered in the name of the incapacitated person, followed by words showing that he or she is under voluntary guardianship; for example, "John Jones 123–45–6789, under voluntary guardianship". A living coowner or beneficiary named on the matured bonds must be designated on the new bonds, unless such person furnishes a certified statement consenting to omission of his or her name. If an amount insufficient to purchase an additional bond of any authorized denomination of either series remains after the reinvestment, the voluntary guardian may furnish additional funds sufficient to purchase another bond of either series of the lowest available denomination. If additional funds are not furnished, the remaining amount will be paid to the voluntary guardian for the use and benefit of the incapacitated person.

(c) Exchange of bonds. The provisions for reinvestment of the proceeds of matured bonds are equally applicable to any authorized exchange of bonds of one series for those of another.

§ 315.65 [Removed]

§ 315.66 [Redesignated as § 315.65]

4. Section 315.65 is removed and § 315.66 is redesignated as § 315.65.

PART 353—[AMENDED]

5. The authority citation for 31 CFR part 353 is revised to read as follows:

Authority: 31 U.S.C. 3105 and 5 U.S.C. 301.

6. Section 353.40 is amended by revising paragraph (d) to read as follows:

§ 353.40 Special provision for payment.

* * * * *

(d) Attorneys-in-fact. A request for payment, reinvestment, or exchange executed by an attorney-in-fact will be recognized if it is accompanied by a copy of the power of attorney which meets the following requirements:

(1) The power of attorney must bear the grantor's signature, properly certified or notarized, in accordance with applicable State law;

(2) The power of attorney must grant, by its terms, authority for the attorney-in-fact to sell or redeem the grantor's securities, sell his or her personal property, or, otherwise contain similar authority; and

(3) In the case of a grantor who has become incapacitated, the power of attorney must conform with pertinent provisions of State law concerning its durability. Generally, in such circumstances, the power of attorney should provide that the authority granted will not be affected by the subsequent incompetence or incapacity of the grantor. Medical evidence or other proof of the grantor's condition may be required in any case.

7. Section 353.64 is revised to read as follows:

§ 353.64 Payment, reinvestment, or exchange—Voluntary guardian of an incapacitated person.

(a) Payment of bonds. When an adult owner of bonds is incapable of requesting payment as a result of incapacity and there is no other person legally qualified to do so, the relative, or other person, responsible for the owner's care and support may submit an application for recognition as voluntary guardian for the purpose of redeeming the owner's bonds, if the total redemption value of all of the owner's bonds does not exceed $20,000. The redemption value of the bonds shall be determined as of the date the bonds are received, accompanied by an appropriate request for payment. If the total redemption value exceeds $20,000, a legal representative must be appointed, as set forth in § 315.60.

(b) Reinvestment of bonds. If the bonds have finally matured and it is desired to redeem them and reinvest the proceeds in other savings bonds, the new bonds must be registered in the name of the incapacitated person, followed by words showing that he or she is under voluntary guardianship; for example, "John Jones 123–45–6789, under voluntary guardianship". A living coowner or beneficiary named on the matured bonds must be designated on the new bonds, unless such person furnishes a certified statement consenting to omission of his or her name. If an amount insufficient to purchase an additional bond of any authorized denomination of either series remains after the reinvestment, the voluntary guardian may furnish additional funds sufficient to purchase another bond of either series of the lowest available denomination. If additional funds are not furnished, the remaining amount will be paid to the voluntary guardian for the use and benefit of the incapacitated person.

(c) Exchange of bonds. The provisions for reinvestment of the proceeds of matured bonds are equally applicable to any authorized exchange of bonds of one series for those of another.

§ 353.65 [Removed]

§ 353.66 [Redesignated as § 353.65]

8. Section 353.65 is removed and § 353.66 is redesignated as § 353.65.

[FR Doc. 92–20731 Filed 8–31–92; 8:45 am]

BILLING CODE 4810–10–M

Office of Foreign Assets Control

31 CFR Part 575

Iraqi Sanctions Regulations; Repeal of Reporting Requirement

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: In furtherance of the President's Regulatory Initiative, the Office of Foreign Assets Control is amending the Iraqi Sanctions Regulations by repealing § 575.603, which requires U.S. financial institutions to file monthly reports regarding certain bank accounts in which the Government of Iraq has an interest.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief, Compliance Programs Division, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, (202) 622–2490.

SUPPLEMENTARY INFORMATION: The Iraqi Sanctions Regulations, 31 CFR part 575 (the "Regulations"), were issued by the Treasury Department in implementation of Executive Order 12722 of August 2, 1990, and Executive Order 12724 of August 9, 1990, and United Nations Security Council Resolution 661 (August 6, 1990) and subsequent relevant resolutions. Section 575.603 of the Regulations requires U.S. financial institutions to file a monthly report concerning any bank account held by the institution in the name of a bank in which the Government of Iraq holds an equity interest of 10% or more. While this information was needed during the early implementation of the Regulations and for a period thereafter, it is no longer required on a monthly basis and can be obtained by the Treasury Department on a case-by-case basis as required. To implement the President's Regulatory Initiative, this monthly reporting requirement is being eliminated.

Since the Regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the Regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981 dealing with Federal regulations.

List of Subject in 31 CFR Part 575

Administrative practice and procedure, Banks, Blocking of assets, Iraq, Reporting and recordkeeping requirements.

PART 575—IRAQI SANCTIONS REGULATIONS

For the reasons set forth in the preamble, 31 CFR part 575 is amended as set forth below:

1. The Authority citation for part 575 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12722, 55 FR 31803 (Aug. 3, 1990); E.O. 12724, 55 FR 33089 (Aug. 13, 1990).

Subpart F—Reports

§ 575.603 [Removed]

2. Section 575.603 is removed and reserved.

Dated: August 5, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 21, 1992.

Peter K. Nunez,

Assistant Secretary (Enforcement).

[FR Doc. 92–21117 Filed 8–28–92; 2:05 pm]

BILLING CODE 4801–25–M

31 CFR Part 580

Haitian Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendment.

SUMMARY: This rule amends the Haitian Transactions Regulations, 31 CFR part 580 (the "Regulations"), to give general authorization for the exportation of corn and corn flour, milk (including powdered milk) and edible tallow (*i.e.*, hardened shortening, including lard) from the United States to Haiti, and indicating the availability, on a case-by-case basis, of specific licenses for the exportation from the United States to Haiti of propane for noncommercial use. The amendment increases the type of food items, initially specified in § 580.206 of the Regulations, that may be exported from the United States on a commercial basis.

EFFECTIVE DATE: This rule is effective on August 27, 1992.

FOR FURTHER INFORMATION CONTACT: John T. Roth, Chief of Policy Planning and Program Management (tel. 202/622–1604), Steven I. Pinter, Chief of Licensing (tel. 202/622–2480), or William B. Hoffman, Chief Counsel (tel. 202/622–2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: On March 31, 1992, the Department of the Treasury promulgated the Haitian Transactions Regulations in consultation with the Department of State to implement the President's Executive Orders of October 4, 1991, declaring a national emergency with respect to Haiti and ordering specified measures against Haiti, and of October 28, 1991, ordering a trade embargo against Haiti. A new § 580.516 is added. Section 580.516(a) gives general authorization for the exportation from the United States to Haiti of corn and corn flour, milk (including powdered milk) and edible tallow (*i.e.*, hardened shortening, including lard). Section 580.516(b) provides that specific licenses are available on a case-by-case basis for the exportation from the United States to Haiti of propane for noncommercial use.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 580

Administrative practice and procedure, Banking and finance, Blocking of assets, Exports, Haiti, Imports, Penalties, Reporting and recordkeeping requirements, Shipping, Transfer of assets, Vessels.

For the reasons set forth in the preamble, 31 CFR part 580 is amended as follows:

PART 580—HAITIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 580 continues to read as follows:

Authority: 50 U.S.C. 1701, *et seq.*; E.O. 12775, 56 FR 50641 (Oct. 7, 1991); E.O. 12779, 56 FR 55975 (Oct. 30, 1991).

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 580.516 is added to read as follows:

§ 580.516 Shipments to Haiti of Certain Foodstuffs and Propane.

(a) The exportation from the United States to Haiti of corn and corn flour, milk (including powdered milk), and edible tallow (*i.e.*, hardened shortening, including lard) is authorized. No payments to the *de facto* regime in Haiti in connection with such export transactions are authorized.

(b) Specific licenses may be issued on a case-by-case basis authorizing the exportation from the United States to Haiti of propane for noncommercial use. Applicants for licenses should describe the controls, if any, that would be exercised by the importer in Haiti to ensure that the propane imported into Haiti pursuant to the license would not be diverted to other uses.

Dated: August 17, 1992.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: August 20, 1992.

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92-20950 Filed 8-27-92; 11:46 am]

BILLING CODE 4810-25-M

CENTRAL INTELLIGENCE AGENCY

32 CFR Part 1906

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Central Intelligence Agency

AGENCY: Central Intelligence Agency.

ACTION: Final rule.

SUMMARY: This regulation requires that the Central Intelligence Agency operate all of its programs and activities to ensure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination. This regulations is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap in programs or activities conducted by Federal Executive Agencies.

EFFECTIVE DATE: November 2, 1992.

ADDRESSES: Comments received on the Notice of Proposed Rulemaking will remain available with the Office of General Counsel, Central Intelligence Agency, Washington, DC 20505. Copies of this regulation will be made available on tape for persons with impaired vision who request them.

FOR FURTHER INFORMATION CONTACT: Cynthia Drabek, (703) 874-3150.

SUPPLEMENTARY INFORMATION: The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Central Intelligence Agency (herein "the Agency"). As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive Agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive, Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.* (29 U.S.C. 794) (1978 Amendment italicized).

On February 16, 1989, he Agency published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, 54 FR 7056. The period for receiving public comment expired April 17, 1989. The Agency received one comment from a national interest organization and none from individuals. After analysis of the comment, the Agency decided to adopt this final rule. The NPRM proposed a new part 1904. Due to the delay in publication of this final rule, this rule is being published as part 1906, and section numbers from the proposed rule have been adapted accordingly.

Section 504 requires that regulations that apply to the programs and activities of Federal Executive agencies shall be submitted to the appropriate authorizing committees of Congress and that such regulations may take effect no earlier than the thirtieth day after they have been so submitted. The Agency is submitting these regulations to the Senate Committee on Labor and Human Resources and its Subcommittee on the Handicapped and to the House Committee on Education and Labor and its Subcommittee on Select Education. The regulation will become effective on November 25, 1992.

The substantive nondiscrimination obligations of the Agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. (See 28 CFR part 41, the section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668 (daily ed. May 17, 1978) 38,552 (remarks of Rep. Sarasin).

The Agency has proposed a slightly modified version of rules to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended. The purpose of the variation is to assure that the amendment is enforced, as applied to the Central Intelligence Agency, in a manner consistent with the Agency's mission; the National Security Act of 1947 (50 U.S.C. 402 *et seq.*), as amended; and other applicable law. The commenter objected to language differences between this rule and the Federal Government's section 504 regulations for federally assisted programs. As explained in the preamble to the proposed rule, these changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See, *Dopico* v. *Goldschmidt*, 687 F. 2d 834 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F. 2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), in which the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medical coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "(the) regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access" *id.* 301 n. 21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Thus, because the Agency interprets the federally assisted regulations to reflect the judicial rulings described earlier, the Agency believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive Agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulation established in the Order.

Regulatory Flexibility Act Certification

The Director of Central Intelligence Agency certifies that these regulations would not have a significant economic impact on a substantial number of small entities. These regulations apply only to programs or activities conducted by the Central Intelligence Agency.

Section-by-Section Analysis and Response to Comments

Section 1906.101 Purpose

Section 1906.01 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 1906.102 Application

The regulation applies to all programs or activities conducted by the Agency. Under this section, a federally conducted program or activity is, in simple terms, anything a federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing Agency operations and those directly administered by the Agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Agency's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States. This regulation will apply to the Agency only to the extent consistent with the National Security Act of 1947 (50 U.S.C. 402 *et seq.*) as amended; the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a *et seq.*), as amended; and other applicable law. Nor shall anything in the regulation be deemed to impair the Director's responsibility for protecting intelligence sources and methods.

Section 1906.103 Definitions

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary Aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate and enjoy the benefits of the Agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 1906.160(a)(1), they also may be necessary to meet other requirements of the regulation. The Agency may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid, that the Office of Security (OS) determines creates a security risk. OS reserves the right to examine any auxiliary aid brought into an Agency facility.

The commenter suggested that the requirement for auxiliary aids in the aspects of the Agency's program other than those covered by § 1906.160(a)(1) should be specifically stated in the regulation. The Agency believes that such a statement is unnecessary, because the regulation makes the obligation not to discriminate clear and thus requires the provision of auxiliary aids whenever they are necessary to meet that obligation. The commenter suggested that "attendant services" should be included in the list of examples of auxiliary aids appearing in the definition. The Agency believes that attendant services are generally personal in nature and that they are therefore generally not required. It was also suggested that the definition of auxiliary aids be expected to include aids for people with physical impairments, and that the term auxiliary be changed to "aids for reasonable accommodation." The Agency retains the definition and terminology of the proposed rule in order to be consistent with similar regulations issued government-wide.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the Agency to investigate the compliant. The definition is necessary because the 180 day period for the Agency's investigation (*see* § 1906.170(g)) begins when it receives a complete complaint.

"Director" refers to the Director of Central Intelligence or an official or, employee of the Agency acting for the Director under a delegation of authority.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f) except that the term "rolling stock or other conveyances" has been added and the phrase, "or interest in such property," is deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights.

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 203(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute, as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In those programs, a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the Agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Davis*. In that case, the Court ruled that a hearing impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." Id. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *Id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It, therefore, concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the Agency. The Agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant would benefit or obtain results from some other program that the Agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The commenter argued that this definition of "qualified individual with handicaps" was unnecessary, because *Davis* was an interpretation of the definition in paragraph (2), which requires only that the individual meet "the essential eligibility requirements" for participation in the program. The Agency believes that *Davis* clarifies the meaning of "essential eligibility requirements" with respect to programs, such as the one at issue in that case, in which an individual, "is required to perform services or to achieve a level of accomplishment." In such a program, the Court held in *Davis*, an individual is not qualified if he or she cannot achieve the purpose of the program without modifications that would fundamentally alter its nature. The Agency believes that it is appropriate to reflect this clarification in the regulation.

The commenter also suggested that the rule rather than the preamble should address when modifications to a program must occur. The Agency believes that the obligation to make appropriate modifications or adjustments to enable individuals with handicaps to participate in its programs is made sufficiently clear in the substantive provisions of the regulation, so that a reference to it in this definition is unnecessary.

The Agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Agency must follow the procedures established in §§ 1906.150(a) and 1906.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Director or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Director determines that an action would result in a fundamental alteration, the Agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 1906.140. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "Section 504" applies only to programs or activities conducted by the Agency and not to programs or activities to which it provides Federal financial assistance.

Section 1906.110 Self-evaluation

The Agency shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 1906.111 Notice

Section 1906.111 requires the Agency to disseminate sufficient information to

employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 1906.130 General prohibitions against discrimination

Section 1906.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 1906.130 establish the general principles for analyzing whether any particular action of the Agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Agency violates a provision in any of the subsequent sections, it will violate one of the general prohibitions found in § 1906.130. If there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) of this section prohibits overt denials of equal treatment of individuals with handicaps. The Agency may not refuse to provide an individual with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumptions is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility for participation in the program or activity in question. It would be permissible, therefore, to exclude, without an individual evaluation, all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to disqualify automatically all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 1906.149–1906.151) and communications (§ 1906.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the Agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the Agency to develop separate or different aids, benefits, or services if necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the Agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only if necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even if separate aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program or activity that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Agency from denying a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the Agency's programs or activities. The phrase "criteria or methods of administration" refers to official written Agency policies and to the actual practices of the Agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 1906.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the Agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(6) prohibits the Agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certification. A person is a "qualified individual with handicaps" with respect to licensing or certification if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 1906.103).

In addition, the Agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicaps. For example, the Agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case, the Agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(6) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted, above, section 504 may affect the content of the rules established by the Agency for the operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

The commenter recommended that the Agency include in its final regulation the provision on the licensing and certification from regulations issued by other agencies that provide federal financial assistance. That provision was not included in the proposed rule and is not included in this final rule because it is not applicable to the Agency's programs.

Similarly, this regulation does not include the paragraph of the regulations for federally assisted programs that prohibits a recipient from providing significant assistance to an organization

that discriminates. To the extent that assistance from the Agency would provide significant support to an organization, it would constitute Federal financial assistance, and the organization as a recipient of such assistance would be covered by section 504's provisions applicable to federally assisted programs. The regulatory "significant assistance" provision, however, would be inappropriate in a regulation applying only to federally conducted programs or activities.

Paragraph (c) provides that programs conducted pursuant in Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the Agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, i.e., in a setting that enables individuals with handicaps to interact with non-handicapped persons to the fullest extent possible.

Section 1906.140 Employment

Section 1906.140 prohibits discrimination on the basis of handicap in employment by the Agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (8th Cir. 1984); *Prewitt* v. *United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–04 (7th Cir. 1984); *Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that, in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 1906.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR part 1613. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR part 1978 Comp., p. 206). Under this authority, he EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 1906.170(b) specifies that the Agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 1906.149 Program accessibility: Discrimination prohibited

Section 1906.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 1906.150 and 1906.151.

Section 1906.150 Program accessibility: Existing facilities

This regulation adopts, with certain modification, the program-accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57). Thus, § 1906.150 requires that each Agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the Agency is not required to make each of its existing facilities accessible (§ 1906.150(a)(1)). However, § 1906.150, unlike 28 CFR 41.57, places explicit limits on the Agency's obligation to ensure program accessibility (§ 1906.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines that scope of the Agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 1906.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See e.g., *Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis* (*APTA*), 655 F.2d 1272 (D.C. Cir. 1981).

Paragraph (a)(2) and § 1906.160(d) are also supported by the Supreme Court's decision in *Alexander* v. *Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *Id.* at 301, and that "reasonable adjustments in the nature of the benefits being offered must at times be made to assure meaningful access." *Id.* at n. 21 (emphasis added). However, section 504 does not require "'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration[s] in the nature of a program'." *Id.* at n. 20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situation, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the Agency of all obligations to individuals with handicaps. Although the Agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is the Agency's view that compliance with § 1906.150(a) would in most cases not result in undue financial and administrative burdens on the Agency. In determining whether financial and administrative burdens are undue, all of the Agency's resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 1906.150(a) would fundamentally alter the nature of a program or activity, or would result in undue financial and administrative burdens, rests with the Agency. The decision that compliance would result in that alteration, or those burdens, must be made by the Director, or his or her designee, and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Director's decision, or failure to make a decision, may file a complaint under the compliance procedures established in § 1906.170.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Agency shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member.) The Agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the Agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. If structural modifications are required, a transition plan must be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance must be taken within 60 days.

Section 1906.151 Program accessibility: New construction and alterations

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 1906.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Agency must be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act standard of section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standards for existing facilities in § 1906.150. To the extent that buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 1906.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Service*, 744 F.2d 13355 (9th Cir. 1985), the Ninth Circuit held that the architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded in the District Court for, among other things, consideration of that issue. The Agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 1906.160 Communications

Section 1906.160 requires the Agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps must include procedures for determining whether auxiliary aids are necessary under § 1906.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the Agency's program or activity. They must also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice must be given primary consideration by the agency (§ 1906.160(a)(1)(i)). The Agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 1906.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 1906.150(a)(3)). Unless not required by § 1906.160(d), the Agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 1906.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens, also applies to this section and should be referred to for a complete understanding of the Agency's obligation to comply with § 1906.160. The commenter argued that the decision that an action would result in undue burdens should be based on the resources of the Agency as a whole. The Agency believes that its entire budget is an inappropriate touchstone for making determinations as to undue financial and administrative burdens. Parts of the Agency's budget may be earmarked for specific purposes and may simply not be available for use in making the Agency's programs accessible to individuals with handicaps.

Section 1906.170 Compliance Procedures

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the Agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) designates the Director, Office of Equal Employment Opportunity, as the official responsible for coordinating implementation of this section. Complaints may be sent to the Central Intelligence Agency, Director, Office of Equal Employment Opportunity, Washington, DC 20505.

The Agency is required to accept and investigate all complete complaints (§ 1906.370(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable

efforts to refer the complaint to the appropriate entity of the Federal Government (§ 1906.170(e)).

Paragraph (f) requires the Agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps. The commenter suggested a provision for obtaining the expertise of the Architectural and Transportation Barriers Compliance Board to resolve deficiencies in construction or location of facilities. The process of notifying the Barriers Compliance Board includes the assumption that the Agency will consult experts on barriers free design at the Compliance Board and at all other appropriate resources.

Paragraph (g) requires the Agency to provide to the complainant, in writing, findings of fact and conclusions of law the relief granted if noncompliance is found, and notice of the right to appeal (§ 1906.170(g)). One appeal within the Agency must be provided (§ 1906.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance. The commenter suggested that the rule should incorporate a provision concerning judicial review. It is beyond the Agency's jurisdiction to specify the availability or scope of judicial review of agency actions. That issue is for the courts to decide.

The commenter requested the addition of a provision whereby the Agency would award attorneys fees to complainants and requested the addition of a provision whereby compensation would be awarded to the prevailing parties in administrative proceedings. There is no general authorization in title V of the Rehabilitation Act for the Agency award of attorney fees in Agency administrative proceedings, or for the payment of compensation to prevailing parties in Agency proceedings. For this reason the Agency has not adopted either an attorneys fee provision or a compensation provision in the final regulation.

Paragraph (l) permits the Agency to delegate its authority for investigating complaints to other Federal agencies. However, the statutory obligation of the Agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 32 CFR Part 1906

Blind, Buildings, Civil rights, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Robert M. Gates,

Director of Central Intelligence.

(Catalog of Federal Domestic Assistance Numbers does not apply.)

The Agency amends title 32 of the Code of Federal Regulations, chapter XIX, by adding a new part 1906 to read as follows:

PART 1906—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE CENTRAL INTELLIGENCE AGENCY

Sec.

1906.101 Purpose.
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1906.104–1906.109 [Reserved]
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1906.149 Program accessibility: Discrimination prohibited.
1906.150 Program accessibility: Existing facilities.
1906.151 Program accessibility: New construction and alterations.
1906.152–1906.159 [Reserved]
1906.160 Communications.
1906.161–1906.169 [Reserved]
1906.170 Compliance procedures.

Authority: 19 U.S.C. 794.

§ 1906.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1906.102 Application.

This part applies to all programs or activities conducted by the Agency except for programs or activities conducted outside the United States that do not involve handicapped persons in the United States. This regulation will apply to the Agency only to the extent consistent with the National Security Act of 1947 (50 U.S.C. 402 *et seq.*), as amended; the Central Intelligence Agency Act of 1949 (50 U.S.C. 403a *et seq.*), as amended; and other applicable law.

§ 1906.103 Definitions.

For purposes of this part, the following terms means—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Agency. For example, auxiliary aids useful for persons with impaired vision include readers, materials in braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. The Central Intelligence Agency may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid, that the Office of Security (OS) determines creates a security risk or potential security risk. OS reserves the right to examine any auxiliary aid brought into an Agency facility.

Complete complaint means a written statement that contains the complainant's name and address and describes the Agency's alleged discriminatory action in sufficient detail to inform the Agency of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

Director means the Director of Central Intelligence or an official or employee of the Agency acting for the Director under a delegation of authority.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances or other real or personal property.

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) *Physical or mental impairment* includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Cardiovascular; Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) *Major life activities* includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) *Has a record of such an impairment* means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(4) *Is regarded as having an impairment* means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Agency as having such an impairment.

Qualified individual with handicaps means—

(1) With respect to any Agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other Agency program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 1906.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–002, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by the Agency and not to federally assisted programs.

§ 1906.104–1906.109 [Reserved]

§ 1906.110 Self-evaluation.

(a) The Agency shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effect thereof, that do not or may not meet the requirements of this part, and to the extent modification of any of those policies and practices is required, the Agency shall proceed to make the necessary modifications.

(b) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Agency shall, for at least 3 years following completion of the self-evaluation, maintain on file, and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 1906.111 Notice.

The Agency shall make available, to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Agency, and make that information available to them in such manner as the Director finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.

§§ 1906.112–1906.129 [Reserved]

§ 1906.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the Agency.

(b)(1) The Agency, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified individual with handicap the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified individual with handicaps an opportunity to obtain the same result, to gain the same benefit, to reach the same level of achievement as that provided to others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless that action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a

program or activity with respect to individuals with handicaps.

(4) The Agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the Agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(6) The Agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap, nor may the Agency establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis on handicap. However, the programs or activities of entities that are licensed or certified by the Agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits or a program limited by Federal statute or Executive Order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive Order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 1906.131–1906.139 [Reserved]

§ 1906.140 Employment.

No qualified individual with handicaps shall, solely on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1979 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1613, shall apply to employment in federally conducted programs or activities.

§§ 1906.141–1906.148 [Reserved]

§ 1906.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1906.150, no qualified individual with handicaps shall, because the Agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Agency.

§ 1906.150 Program accessibility: Existing facilities.

(a) General. The Agency shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This program does not—

(1) Necessarily require the Agency to make each of its existing facilities accessible to and usable by individuals with handicaps;

(2)(i) Require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(ii) The Agency has the burden of proving that compliance with § 1906.150(a) would result in that alteration or those burdens.

(iii) The decision that compliance would result in that alteration or those burdens must be made by the Director after considering all of the Agency's resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(iv) If an action would result in that alteration or those burdens, the Agency shall take any other action that would not result in the alteration or burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) Methods. (1) The Agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps.

(2) The Agency is not required to make structural changes in existing facilities if other methods are effective in achieving compliance with this section.

(3) The Agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing that Act.

(4) In choosing among available methods for meeting the requirements of this section, the Agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) Time period for compliance. The Agency shall comply with the obligations established under this section within 60 days of the effective date of this part except that if structural changes in facilities are undertaken, the changes shall be made within 3 years of the effective date of this part, but in any event as expeditiously as possible.

(d) Transition plan. (1) In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Agency shall develop, within 6 months of the effective date of this part, a transition plan setting forth the steps necessary to complete those changes.

(2) The Agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan must be made available for public inspection.

(3) The plan must, at a minimum—

(i) Identify physical obstacles in the Agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(ii) Describe in detail the methods that will be used to make the facilities accessible;

(iii) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(iv) Indicate the official responsible for implementation of the plan.

1906.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the Agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4175), as established in 41 CFR 101–19.600 to 101–19–607, apply to buildings covered by this section.

§§ 1906.152–1906.159 [Reserved]

§ 1906.160 Communications.

(a) The Agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public as follows:

(1)(i) The Agency shall furnish appropriate auxiliary aids if necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Agency.

(ii) In determining what type of auxiliary aid is necessary, the Agency shall give primary consideration to the requests of the individual with handicaps.

(2) Where the Agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Agency shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Agency has the burden of proving that compliance with § 1906.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Agency head or his or her designee after considering all Agency resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 1906.161–1906.169 [Reserved]

§ 1906.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the Agency.

(b) The Agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to Central Intelligence Agency, Director, Office of Equal Employment Opportunity, Washington, DC 20505.

(d) The Agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The Agency may extend this time period for good cause.

(e) If the Agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The Agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the Agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the Agency of the letter required by § 1906.170(g). The Agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The Agency shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Agency determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 3

[CGD 92–046]

Realignment of Marine Inspection Zones and Captain of the Port Zones for New Orleans, and Morgan City, LA, and Port Arthur, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: This temporary rule realigns the Marine Inspection and Captain of the Port Zones for the Coast Guard Marine Safety Offices in New Orleans and Morgan City, Louisiana, and Port Arthur, Texas. These changes are being made due to the damage resulting from Hurricane Andrew in the Morgan City, Louisiana, area and are expected to remain in effect for approximately two weeks or until effective command and control is reestablished in Morgan City.

EFFECTIVE DATE: This rule is effective from August 28, 1992 until September 30, 1992.

FOR FURTHER INFORMATION CONTACT: Commander David W. Jones, Project Manager, Office of Marine Safety, Security, and Environmental Protection (G-MPS-3), (202) 267-0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Commander David W. Jones, Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Ms. Christena G. Green, Project Counsel, Office of Chief Counsel.

Discussion of Rule

The boundaries of the Marine Inspection Zones and Captain of the Port Zones for Coast Guard Marine Safety Offices, New Orleans and Morgan City, Louisiana and Port Arthur, Texas, are being temporarily adjusted due to the damage suffered in the Morgan City, Louisiana area as a result of Hurricane Andrew. This adjustment will not impair any services by the Coast Guard to the public.

No notice of proposed rulemaking was prepared for this final rule, which covers "agency organization" and is therefore exempt from the requirements of 5 U.S.C. 553(b) for notice and comment. Since the rule has no substantive effect, good cause exists under 5 U.S.C. 553(d) to give it effect less than 30 days after publication. It temporarily realigns three Marine Inspection and Captain of the Port Zones due to the damage suffered in the Morgan City, Louisiana area as a result of Hurricane Andrew. Functions previously performed by the Coast Guard Marine Safety Office in Morgan City, Louisiana will be temporarily assumed by the Coast Guard Marine Safety Offices in New Orleans, Louisiana, and Port Arthur, Texas.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 because it pertains to matters of "agency organization" as provided for in section 1(a)(3) of the Order. It is "nonsignificant" under DOT regulatory policies and procedures (44 FR 11040; February 26, 1979). Its economic impact has been found to be so minimal that further evaluation is unnecessary. It places no new requirements on any sector of the public. It will ensure uninterrupted services by the Coast Guard to the public. As its impact is minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment. This temporary organizational realignment has no preemptive effect.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation. The rule is an administrative matter within the meaning of subsection 2.B.2.1. of Commandant Instruction M16475.1B that clearly has no environmental impact.

List of Subjects in 33 CFR Part 3

Organization and functions (Government agencies).

For the reasons set out in the preamble, the Coast Guard temporarily amends 33 CFR part 3 as follows:

PART 3—COAST GUARD AREAS, DISTRICTS, MARINE INSPECTION ZONES, AND CAPTAIN OF THE PORT ZONES

1. The authority citation for part 3 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.45, 1.46.

2. Section 3.40–15 is amended by temporarily adding a new paragraph (c) to read as follows:

§ 3.40–15 New Orleans Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(c) The New Orleans Marine Inspection Zone and Captain of the Port Zone also includes that portion east of 91°30′ W. longitude of the area which starts at 28°50′ N. latitude, 88°00′ W. longitude; thence due west to 28°50′ N. latitude, 89°27′06″ W. longitude; thence northwesterly to 29°18′ N. latitude, 90°00′ W. longitude; thence northwesterly along the northern boundaries of Lafourche, Assumption, Iberia, and St. Martin parishes; thence westerly along the westerly boundary of Lafayette Parish; thence northwesterly along the northern boundary of Acadia Parish; to an intersection with 92°23′ W. longitude; thence south along 92°23′ W. longitude to the sea, with the exception that the New Orleans Captain of the Port Zone does not include the area described in § 3.40–17(b).

3. Section 3.40–17 is amended by temporarily revising paragraph (b) to read as follows:

§ 3.40–17 Morgan City Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(b) The Morgan City Captain of the Port zone is composed of the following segments of waterways: the Intracoastal Waterway Morgan City to Port Allen Alternate Route from Mile 0 to Mile 5; the Intracoastal Waterway from Mile 93 West of Harvey Lock (WHL) to Mile 99 WHL; the Atchafalaya River Route from Mile 113 to Mile 122; from Bayou Boeuf (Intracoastal Waterway Mile 94.5 WHL) south one statute mile along Bayou Shaffer; and from Berwick Lock northwest one statute mile along the Lower Atchafalaya River.

4. Section 3.40–20 is amended by temporarily adding a new paragraph (c) to read as follows:

§ 3.40–20 Port Arthur Marine Inspection Zone and Captain of the Port Zone.

* * * * *

(c) The Port Arthur Marine Inspection Zone and Captain of the Port Zone also includes that portion west of 91°30′ W. longitude of the area which starts at 28°50′ N. latitude, 88°00′ W. longitude; thence due west to 28°50′ N. latitude, 89°27′06″ W. longitude; thence northwesterly to 29°18′ N. latitude, 90°00′ W. longitude; thence northwesterly along the northern boundaries of Lafourche, Assumption, Iberia, and St. Martin parishes; thence westerly along the westerly boundary of Lafayette Parish; thence northwesterly along the northern boundary of Acadia Parish; to an intersection with 92°23′ W. longitude; thence south along 92°23′ W. longitude to the sea.

Dated: August 28, 1992.

A.E. Henn,

Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-21130 Filed 8-28-92; 1:52 pm]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-92-23]

Drawbridge Operation Regulations, Choctawhatchee River, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document removes the regulation for the State Route 20 swing span bridge across the Choctawhatchee River, mile 20.0, at Ebro, Florida, because a fixed span replacement bridge has been constructed and the swing span bridge has been removed. Notice and public procedure have been omitted from this action since the swing span bridge is no longer in existence.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: This action has no economic consequences. It merely removes a regulation that is now meaningless because it pertains to a drawspan that no longer exists. Consequently, this action is considered to be non-major under Executive Order 12291 and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). Since there is no economic impact, a full regulatory rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act (5 U.S.C. 605(b)). However, this action will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it haa been determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Drafting Information

The drafters of this document are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.275 is removed.

Dated: August 11, 1992.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 92-21011 Filed 8-31-92; 8:45 am]

BILLING CODE 4910-14-M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 92-4]

Registration of Claims to Copyright; Group Registrationof Daily Newspapers

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is adopting a new regulation that permits group registration of daily newspapers. Publishers of newspapers taking advantage of the new procedure will be allowed to register all issues of a given title published with issue dates in one calendar month on the basis of one application, a deposit of microfilm of the registered issues, and a fee of $40. The amendments implement a portion of the Copyright Act of 1976, relating to the deposit requirements for copyright registration.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, U.S. Copyright Office, Library of Congress, Washington, DC 20559. Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION: Under the Copyright Act of 1976, 17 U.S.C. 407, the owner of copyright, or of the exclusive right of publication, in a work published in the United States is required to deposit two copies of the work in the Copyright Office for the use or disposition of the Library of Congress. The deposit is to be made within three months after such publication. Failure to make the required deposit does not affect the copyright in the work, but may subject the copyright owner to fines and other monetary liability if the failure is continued after a demand for deposit is made by the Register of Copyrights.

Section 408 of title 17 of the United States Code requires deposit of material in connection with applications for registration of claims to copyright in unpublished and published works. Subsection 408(c)(1) of title 17 of the United States Code authorizes the Register of Copyrights to establish by regulation the nature of the deposit that is required. These regulations may require or permit "a single registration for a group of related works."

In 1990, the Copyright Office implemented special procedures for group registrations of serials at 37 CFR 202.3(b)(5)(55 FR 50556). The new procedure covered weekly and monthly serials published within a three-month period. Serials published on a daily basis were not covered.

Shortly after the new procedure was implemented, the Newspaper Association of America approached the Copyright Office and the Library about establishing a group registration privilege for daily newspapers. Because of the expense of registering individual issues, currently most daily newspapers are not registered in the Copyright Office. While the lack of registration does not invalidate copyright, it does limit the availability of certain remedies should infringement occur.

The Library of Congress studied carefully the advantages of group registration from the standpoint of securing acquisitions to the collections. Currently, the Library purchases microfilm copies of selected daily newspapers. If these microfilm copies can be secured on a timely basis through copyright deposit, a substantial cost savings will accrue to the Library.

With these considerations in mind, the Copyright Office is implementing group registration procedures for daily newspapers on the basis of a single application, fee, and microfilm deposit. The regulations and the new procedures will be applied prospectively only to the issues of newspapers first published on or after the effective date. New form GDN will be used to cover issues ofthe same newspaper title published with issue dates in one calendar month. The dates of publication space on the form must specify the first and last issue dates of the works covered by the group registration application.

The deposit must consist of positive, 35mm silver halide microfilm meeting the Library's best edition criteria that reproduces in their entirety all issues published as final editions with issue dates in the designated calendar month. While the final edition of the daily newspapers must be included in the microfilm deposit, the claim to copyright and the deposit may also include earlier editions published the same day in a given metropolitan area served by the newspaper. The privilege of including these earlier editions does not apply, however, in the case of national or regional distribution beyond a given metropolitan area. Registration must be

sought within three months from the dateof publication of the last issue included in the group registration application.

The fee for the registration service is a nonrefundable filing fee of $40, which is the approximate cost of providing the service.

The regulation is issued without inviting public commentfor these reasons: The regulation confers a positive benefit on the public affected; the regulation establishes an optional procedure only; and the Copyright Office prepared the regulation based on its experience in administering group registration of serials.

With respect to the Regulatory Flexibility Act, the Copyright Office takes the position that this Act does not apply to Copyright Office rulemaking. The Copyright Office is a department of the Library of Congress and is a part of the legislative branch. Neither the Library of Congress nor the Copyright Office is an "agency" within the meaning of the Administrative ProcedureAct of June 11, 1946, as amended (5 U.S.C. 551 et seq. and 5 U.S.C. 701 *et seq.*) The Regulatory Flexibility Act consequently does not apply tothe Copyright Office since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.[1]

Alternatively, if it is later determined by a court of competent jurisdiction that the Copyright Office is an "agency" subject to the Regulatory Flexibility Act, the Register of Copyrights has determined and hereby certifies that this regulation will have no significant impact on small business.

List of Subjects in 37 CFR Part 202

Claims, Copyright, Newspapers and Magazines.

Final Regulations

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

[1]The Copyright Office was not subject to the Administrative Procedure Act before 1978, and it is now subject to it only in areas specified by section 701(d) of the Copyright Act (i.e. "all actions taken by the Register of Copyrights under this title (17), except with respect to the making of copies of copyright deposits"). (17 U.S.C. 706(b)). The Copyright Act does not make the Office an "agency" as defined in the Administrative Procedure Act. For example, personnel actions taken by the Office are not subject to APA-FOIA requirements.

PART 202 - [AMENDED]

1. The authority citation for part 202 continues to read as follows:

Authority: Section 702, 90 Stat. 2541, 17 U.S.C. 702; 202.3 is also issued under 17 U.S.C. 407 and 408.

§ 202.3 [Amended]

2. In § 202.3 paragraphs (b)(6) and (7) are redesignated as paragraphs (b)(7) and (8) respectively.

3. Section 202.3(b)(6) is added to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b)* * *

(6) *Group registration of daily newspapers.* (i) Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights has determined that, on the basis of a single application, microfilm deposit, and filing fee, a single registration may be made for a group of daily newspapers published in a microfilm format if the following conditions are met:

(A) Registration covers a full month of issues of the same newspaper title published with issue dates in one calendar month.

(B) A completed GDN application form is submitted.

(C) A publication date is specified designating the first and last day that issues in the group were published.

(D) A deposit is made of positive, 35mm silver halide microfilm meeting the Library's best edition criteria that includes all issues published as final editions in the designated calendar month. In addition to the final edition of the daily newspaper, the claim to copyright and the deposit may also include earlier editions published the same day in a given metropolitan area served by the newspaper, but may not include national or regional editions distributed beyond a given metropolitan area.

(E) A nonrefundable filing fee of $40 is included with the submission, or charged to an active deposit account.

(F) Registration is sought within three months after the publication date of the last issue included in the group.

(ii) As used in this regulation, newspapers means serials which are classified as newspapers under the policy document "Newspapers Received Currently in the Library of Congress,"which is administered by the Newspaper Section of the Serials & Government Publications Division of the Library of Congress. In general, serials classified as newspapers are serials mainly designed to be a primary source of written information on current events, either local, national, or international in scope. A newspaper contains a broad range of news on all subjects and activities and is not limited to any specific subject matter. Newspapers are intended either for the general public or for a particular ethnic, cultural, or national group.

* * * * *

Dated: August 5, 1992.

Ralph Oman,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 92-20947 Filed 8-31-92; 8:45 am]

BILLING CODE 1410-07-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6943

[NM-930-4214-10; NMNM 83404]

Withdrawal of Public Lands for Highly Significant Caves and Their Associated Resources; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 2,924.65 acres of public lands from surface entry and mining, and 440 acres of federally reserved mineral interests underlying private surface estate from mining for a period of 20 years for the Bureau of Land Management to protect highly significant caves and their associated resources in Eddy County. The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505-438-7594.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect highly significant caves and their associated resources:

New Mexico Principal Meridian

McKittrick Hill Caves

T. 22 S., R. 24 E.,
sec. 14, S½SW¼, SW¼SE¼, and W½SE¼SE¼;
sec. 22, S½SW¼NE¼, SE¼NE¼, SE¼SE¼NW¼, E½E½SW¼, and SE¼;
sec. 23, W½, W½E½, and W½E¼E½;
sec. 28, W½NE¼NE¼, NW¼NE¼, and N½NW¼;
sec. 27, N½NE¼ and E½NE¼NW¼.

Mudgetts/Little Mudgetts Caves

T. 24 S., R. 24 E.,
sec. 21, SE¼SW¼NW¼, SW¼SE¼NW¼, N½NE¼SW¼, and NE¼NW¼SW¼.

Big Manhole/Little Manhole Caves

T. 24 S., R. 24 E.,
sec. 22, W½NE¼SW¼, E½SW¼SW¼, SE¼SW¼, and W½SW¼SE¼.

Honest Injun Cave

T. 22 S., R. 25 E.,
sec. 28, lot 6.

Yellow Jacket and Lair Caves

T. 23 S., R. 25 E.,
sec. 14, S½SE¼SW¼ and S½S½SE¼;
sec. 23, NE¼ and NE¼NW¼.

KFF (Elliott's) Cave

T. 24 S., R. 25 E.,
sec. 23, SE¼NE¼SE¼ and E½SE¼SE¼;
sec. 24, W½NE¼SW¼, NW¼SW¼, N½SW¼SW¼, SW¼SW¼SW¼, and NW¼SE¼SW¼.

Chosa Draw Caves

T. 25 S., R. 25 E.,
sec. 20, E½,SE¼;
sec. 21, S½SE¼NE¼ and S½;
sec. 22, SW¼SW¼NW¼ and W½W½SW¼;
sec. 27, W½NW¼NW¼;
sec. 28, E½NE¼;
sec. 29, E½NE¼, E½W½NE¼, NE¼SE¼, and E½NW¼SE¼.

Lost Cave

T. 22 S., R. 26 E.,
sec. 22, NE¼NE¼NE¼ and N½SE¼NE¼NE¼;
sec. 23, W½NW¼NW¼NW¼ and NW¼SW¼NW¼NW¼.

Fence Canyon Cave Area

T. 24 S., R. 26 E.,
sec. 17, NW¼NW¼;
sec. 18, lot 3, E½NE¼NE¼, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼SW¼, and N½SE¼.

The areas described aggregate approximately 2,924.64 acres in Eddy County.

2. Subject to valid existing rights, the federally reserved mineral interests in the following described land are hereby withdrawn from mining under the United States mining laws (30 U.S.C. Ch. 2 (1988)), but not from leasing under the mineral leasing laws, to protect highly significant caves and their associated resources:

New Mexico Principal Meridian

Chosa Draw Caves

T. 25 S., R. 25 E.,
sec. 28, NW¼NE¼, W½, and W½SE¼.

The area described contains 440 acres in Eddy County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: August 20, 1992.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 92-20955 Filed 8-31-92; 8:45 am]

BILLING CODE 4310-FB-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA-7545]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the fourth column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 457, Lanham, MD 20706, (800) 638-7418.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, 500 C Street, SW., room 417, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fifth column of the table. In the communities listed where a flood map has been published, section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Director finds that the delayed effective dates would be contrary to the public interest. The Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 11291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127.

No regulatory impact analysis has been prepared.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date of authorization/cancellation of sale of flood insurance in community	Current effective map date
New Eligibles—Emergency Program			
Georgia:			
Colquitt, city of, Miller County	130135	July 22, 1992	September 24, 1976.
Rocky Ford, town of, Screven County	130162	July 22, 1992	January 16, 1976.
New Hampshire:			
Mason, town of, Hillsborough County	330221	July 29, 1992	February 21, 1975.
Michigan:			
Nashville, village of, Barry County	260902	July 29, 1992	Do.
New Eligible—Regular Program			
Arizona:			
[1] Quartzsite, town of, La Paz County	040134	June 21, 1983, emerg.; September 19, 1984, reg.	Do.
Texas:			
Rancho Viejo, town of, Cameron County	481646	July 10, 1992	Do.
Arizona:			
Queen Creek, town of, Maricopa County	040132	July 22, 1992	September 4, 1991.
Reinstatements—Regular Program			
Missouri:			
Piedmont, city of, Wayne County	290451	June 4, 1975, emerg.; September 30, 1988, reg.; March 5, 1990, susp.; July 21, 1992, rein.	September 30, 1988.
Tennessee:			
Lake County, unincorporated areas	470334	April 22, 1975, emerg.; March 16, 1981, reg.; March 16, 1981, susp.; June 22, 1992, rein.	March 16, 1981.
Farragut, town of, Knox County	470387	August 14, 1970, emerg.; July 23, 1971, reg.; February 17, 1988, susp.; June 23, 1992, rein.	February 15, 1985.
Pennsylvania:			
Longswamp, township of, Berks County	421380	November 24, 1975, emerg.; July 3, 1990, reg.; July 3, 1990, susp.; July 23, 1992, rein.	July 3, 1990.
Virginia:			
Prince George County, unincorporated areas.	510204	May 17, 1974, emerg.; May 1, 1980, reg.; May 1, 1980, susp.; July 29, 1992, rein.	May 1, 1980.
Regular Program Conversions			
Region III			
West Virginia:			
Harrison County, unincorporated areas	540053	July 2, 1992, suspension withdrawn	July 2, 1992.
Marion County, unincorporated areas	540097	....do	July 2, 1992.
Somerset, township of, Somerset County	422055	....do	July 2, 1992.
Pennsylvania:			
Greene, township of, Pike County	421965	....do	July 2, 1992.
Region VI			
Arkansas:			
Ward, city of, Lonoke County	050372	....do	July 2, 1992.
Texas:			
Brazos County, unincorporated areas	481195	....do	July 2, 1992.
Oklahoma:			
Lookeba, town of, Caddo County	400025	....do	September 27, 1991.
Region I			
New Hampshire:			
Grantham, town of, Sullivan County	330158	July 15, 1992, suspension withdrawn	July 15, 1992.
South Hampton, town of, Rockingham County.	330193	July 15, 1992, suspension withdrawn	July 15, 1992.
Region IV			
Florida:			
Manatee County, unincorporated areas	120153	....do	July 15, 1992.
Region VIII			
Colorado:			
Fruita, town of, Mesa County	080194	....do	July 15, 1992.
Grand Junction, city of, Mesa County	080117	....do	July 15, 1992.
Mesa County, unincorporated areas	080115	....do	July 15, 1992.
Palisade, town of, Mesa County	080198	....do	July 15, 1992.

[1] The Town of Quartzsite is a newly incorporated community that was participating in the regular program as an unincorporated area of La Paz County. The town has adopted the county's FIRM for floodplain management and insurance purposes.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension; Rein.—Reinstatement.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Issued: August 21, 1992.

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-20994 Filed 8-31-92; 8:45 am]

BILLING CODE 6718-21-M

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: Base (100-year) flood elevations and modified base (100-year) flood elevations are made final for the communities listed below.

The base (100-year) flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: William R. Locke, Chief, Risk Studies Division, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, (202) 646-2754.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the final determinations of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register.**

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Regulatory Impact Analysis

This rule is not a major rule under Executive Order 12291, February 17, 1981. No regulatory impact analysis has been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12776.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground *Elevation in feet (NGVD)
ARKANSAS	
Ouachita County (unincorporated areas) (FEMA docket No. 7042)	
Two Bayou:	
Aproximately 1.3 miles downstream of Union Pacific Railroad	*113
At the downstream side of Old State Route 7	*114
Ouachita River:	
Aproximately .5 mile downstream of State Route 45	*116
Aproximately 0.85 mile upstream of U.S. Route 79	*117
Maps available for inspection at the Ouachita County Courthouse, 145 Jefferson Avenue, Camden, Arkansas.	
IOWA	
Davenport (City), Scott County ((FEMA docket No. 7042)	
Mississipi River:	
About 2.4 miles downstream of Interstate 280	*563
About 1.8 miles upstream of U.S. Government Bridge	*568
Black Hawk Creek:	
At mouth	*564
About 450 feet downstream of Homestead Avenue	*566
Maps available for inspection at the City of Davenport, Division of Community and Economic Development, 226 West Fourth Street, Davenport, Iowa.	
Ely (city), Linn County (FEMA docket No. 7045)	
Hooser Creek:	
About 0.3 mile downstream of Vista Road	*720
About 1.0 mile upstream of Vista Road	*731

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the City Hall, Community Center, 1570 Rowley Street, Ely, Iowa.	
KANSAS	
St. George (city), Pottawatomie County (FEMA docket No. 7042)	
Kansas River:	
About 1,800 feet downstream of confluence of Blood Creek	*993
About 650 feet upstream of confluence of Blackjack Creek	*994
Maps available for inspection at the City Hall, St. George, Kansas.	
LOUISIANA	
Ascension Parish (unincorporated areas) (FEMA docket No. 7034)	
Bayou Francois:	
At confluence with New River	*5
Approximately 3.3 miles upstream of U.S. Route 61	*12
Babin Canal:	
Approximately 350 feet downstream of Laurel Ridge Road	*6
At George Lambert Road	*8
Henderson Bayou:	
At confluence with Amite River	*14
Approximately 150 feet upstream of State Route 933	*16
Muddy Creek:	
Confluence with Bayou Manchac	*20
Approximately 160 feet upstream of State Route 42	*21
Black Bayou:	
At confluence of Babin Canal	*6
Approximately 0.5 mile downstream of State Highway 431	*7
New River:	
Approximately 150 feet downstream of confluence of Saveiro Canal	*5
Approximately 1.1 miles upstream of Saveiro Canal	*5
Amite River:	
At confluence with Amite River Diversion Canal	*9
At confluence of Bayou Manchac	*20
Maps available for inspection at 42077 Churchpoint Road, Gonzales, Louisiana.	
MISSOURI	
Ballwin (city), St. Louis County (FEMA docket No. 7045)	
Fishpot Creek:	
Approximately 3,800 feet downstream of Reis Road	*533
Just downstream of Old Ballwin Road	*580
Just upstream of Smith Drive	*607
Maps available for inspection at the City of Ballwin, 300 City Hall Drive, Ballwin, Missouri.	
NEW YORK	
Greenfield (town), Saratoga County (FEMA docket No. 7042)	
Kayaderosseras Creek:	
Approximately .2 mile downstream of Galway Road	*522
Approximately 75 feet upstream of State Route 9N	*599
South Branch:	
At the confluence with Kayaderosseras Creek	*575
Approximately 10 feet upstream of Allen Road	*671
Mud Creek:	
At the confluence with Kayaderosseras Creek	*599
Approximately 10 feet upstream of dam	*626
Maps available for inspection at the Greenfield Town Hall, corner of Route 9N and Wilton Road, Greenfield Center, New York.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
OKLAHOMA	
Lincoln County (unincorporated areas) (FEMA docket No. 7042)	
Bellcow Creek:	
Approximately 1.2 miles downstream of Burlington Northern Railroad	*823
Approximately .5 mile upstream of Lake Road	*864
Bellcow Creek Split:	
At confluence with Bellcow Creek	*827
Approximately 0.45 mile upstream of Burlington Northern Railroad	*834
Indian Creek:	
At confluence with Bellcow Creek	*830
At downstream side of 8th Street	*890
Bellcalf Creek:	
At confluence with Bellcow Creek	*857
Approximately 300 feet downstream from Chandler Dam	*867
Chucheho Creek:	
Approximately 1.2 miles downstream of U.S. Route 66	*862
Approximately 900 feet upstream of Section Road	*906
North Canadian River: For entire length affecting community	*1,063
Maps available for inspection at the USDASCS Office, 710 Manvel Avenue, Chandler, Oklahoma.	
McClain County (unincorporated areas) (FEMA docket No. 7042)	
Canadian River:	
At a point approximately .54 mile downstream of the confluence of Walnut Creek	*1,022
At Interstate Route 35	*1,105
Walnut Creek:	
Approximately 675 feet upstream of the confluence with the Canadian River	*1,025
At a point approximately .76 mile upstream of Interstate Route 35	*1,044
Beaver Creek:	
At a point approximately 950 feet upstream of its confluence with Walnut Creek	*1,038
At a point approximately 1,750 feet upstream of its confluence with Walnut Creek	*1,038
Crooked Bridge Creek:	
At a point approximately 1.1 miles upstream of State Route 74	*1,126
At a point approximately 1.8 miles upstream of State Route 74	*1,141
Goldsby Creek:	
At Interstate Route 35	*1,121
At a point approximately .36 mile upstream of Interstate Route 35	*1,126
Stinson Creek:	
At a point approximately 4.2 miles upstream of its confluence with North Fork of Walnut Creek	*1,249
At a point approximately 4.3 miles upstream of its confluence with North Fork of Walnut Creek	*1,255
Maps available for inspection at the McClain County Courthouse, 2nd and Washwesin, Purcell, Oklahoma.	
Verden (town), Caddo and Grady Counties (FEMA docket No. 7042)	
Washita River:	
Approximately .6 mile downstream of Section Line Road	*1,131
Approximately 175 feet upstream of confluence of Line Creek	1,132
Maps available for inspection at the Verden Town Hall, 101 Morris, Verden, Oklahoma.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
TEXAS	
Abilene (city), Taylor and Jones Counties (FEMA docket No. 7022)	
Elm Creek:	
Approximately 1,700 feet upstream of U.S. Route 83 (lower crossing)	*1,685
At U.S. Route 83	*1,706
Elm Creek Overflow Path 1:	
Approximately 800 feet upstream of the confluence with Elm Creek	*1,684
At divergence from Elm Creek	*1,703
Elm Creek Overflow Path 2:	
Approximately 1,500 feet upstream of confluence with Elm Creek	*1,682
Approximately 1,500 feet downstream of divergence from Elm Creek Overflow Path 1	*1,692
Little Elm Creek:	
At confluence with Elm Creek	*1,703
Approximately .85 mile upstream of confluence with Elm Creek	*1,705
Swale A:	
Upstream side of Interstate Route 20	*1,681
Approximately 120 feet downstream of Vogel Avenue	*1,691
Old Elm Creek Channel:	
Approximately 2,060 feet downstream of Interstate Route 20 culvert	*1,690
At upstream side of Interstate Route 20 culvert	*1,697
Maps available for inspection at the City Hall, 555 Walnut, Abilene, Texas.	
Cove (town), Chambers County (FEMA docket No. 7042)	
Hackberry Gully:	
At confluence with Cotton Bayou	*13
Approximately 1,100 feet upstream of FM 565	*20
Cotton Bayou:	
Approximately 0.5 mile downstream of FM 565	*13
Approximately 0.4 mile upstream of FM 565	*18
Trinity Bay:	
At Interstate Route 10	*13
Shoreline of Cotton Lake	*17
Maps available for inspection at the Chambers County Engineer's Office, 201 Airport Road, Anahuac, Texas.	
Lake Worth (city), Tarrant County (FEMA docket No. 7032)	
Lake Worth: Along the shoreline within the community	*600
Maps available for inspection at the City Hall, 6720 Telephone Road, Lake Worth, Texas.	
Old River-Winfree (town), Chambers County (FEMA docket No. 7042)	
Backwater from the Trinity River:	
Caney Creek: At FM 1409	*15
Old River: In the vicinity of Woodland Lane	*15
The Cutoff: 0.5 mile east of Hunters Cove	*15
Maps available for inspection at the Chambers County Engineer's Office, 201 Airport Road, Anahuac, Texas 77514.	
San Diego (city), Duval and Jim Wells Counties (FEMA docket No. 7042)	
San Diego Creek:	
Approximately 450 feet downstream of Palacios Street	*296
Approximately 0.4 mile upstream of the Texas-Mexican Railroad	*304
Maps available for inspection at the San Diego City Hall, 404 South Meir, San Diego, Texas.	
Westworth Village (city), Tarrant County (FEMA docket No. 7027)	
Kings Branch:	
At confluence with Farmers Branch	*566

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 320 feet upstream of confluence	*566
Farmers Branch:	
Approximately 2,050 feet upstream of confluence with West Fork Trinity River	*557
Approximately 820 feet downstream of State Route 341	*634
West Fork Trinity River on Carswell AFB:	
Approximately 480 feet upstream of confluence of Farmers Branch	*557
Approximately 2,000 feet upstream of confluence of Farmers Branch	*558
Maps available for inspection at the City Hall, 311 Burtonhill Road, Fort Worth, Texas.	
VERMONT	
Strafford (town), Orange County (FEMA docket No. 7042)	
West Branch Ompompanoosuc River:	
Approximately 3,900 feet downstream of Town Highway 39	*824
Approximately 120 feet upstream of Town Highway 2	*1,000
Tunbridge Branch:	
At confluence with West Branch Ompompanoosuc River	*983
Approximately 1,680 feet upstream of confluence with West Branch Ompompanoosuc River	*1,027
Maps available for inspection at the Strafford Town Hall, Strafford, Vermont.	
WISCONSIN	
Biron (Village), Wood County (FEMA docket No. 7042)	
Wisconsin River:	
About 1,800 feet upstream of Green Bay and Western Railroad	*1,014
Just downstream of Biron Dam	*1,022
Just upstream of Biron Dam	*1,035
About 3.0 miles upstream of Biron Dam	*1,037
Biron Overland Flow:	
At mouth	*1,021
Divergence with Wisconsin River	*1,037
Maps available for inspection at the Village Hall, Biron, Wisconsin.	
Nekoosa (City), Wood County (FEMA docket No. 7042)	
Wisconsin River:	
About 1.1 miles downstream of Nekoosa Dam	*937
Just downstream of Nekoosa Dam	*940
Just upstream of Nekoosa Dam	*950
About 1.3 feet upstream of State Highway 73	*954
Moccasin Creek:	
Within community	*955
Maps available for inspection at the City of Nekoosa, 225 1st Street, Nekoosa, Wisconsin.	
Port Edwards (Village), Wood County (FEMA docket No. 7042)	
Wisconsin River:	
About 1.2 miles upstream of State Highway 73	*954
Just downstream of Port Edwards Dam	*963
Just upstream of Port Edward Dam	*968
Just downstream of Centralia Dam	*976
Just upstream of Centralia Dam	*984
About 2,150 feet upstream of Centralia Dam	*986
Moccasin Creek:	
Within community	*955
Nepco Lake:	
Along shoreline	*980
Maps available for inspection at the Village Hall, Port Edwards, Wisconsin.	
Wisconsin Rapids (City), Wood County (FEMA docket No. 7042)	
Wisconsin River:	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
About 1,100 feet downstream of Centralia Dam	*975
Just downstream of Centralia Dam	*976
Just upstream of Centralia Dam	*984
Just downstream of Wisconsin Rapids Dam	*998
Just upstream of Wisconsin Rapids Dam	*1,011
About 1.2 miles downstream of Biron Dam	*1,019
Twomile Creek:	
Just upstream of Whitrock Avenue	*1,003
Just downstream of 8th Street	*1,006
Nepco Lake:	
Along shoreline	*980
Maps available for inspection at the City of Wisconsin Rapids, 444 West Grand Avenue, Wisconsin Rapids, Wisconsin.	
Wood County (Unincorporated Areas) (FEMA docket No. 7042)	
Yellow River:	
About 4,000 feet downstream of State Highway 73	*1,021
Just downstream of Weir No. 1	*1,076
Just upstream of Weir No. 1	*1,084
About 1.4 miles upstream of County Highway V	*1,238
Moccasin Creek:	
About 2,200 feet downstream of Soo Line Railroad	*955
About 1.2 miles upstream of State Highway 73	*1,034
Wisconsin River:	
At southern county boundary	*829
Just downstream of Nekoosa Dam	*940
Just upstream of Nekoosa Dam	*950
Just downstream of Biron Dam	*1,022
Just upstream of Biron Dam	*1,035
About 3.0 miles upstream of Biron Dam	*1,037
Biron Overland Flow:	
About 800 feet downstream of North Biron Drive	*1,027
About 1,400 feet upstream of North Biron Drive	*1,032
Twomile Creek:	
Just upstream of Sampson Avenue	*995
Just downstream of County Trunk Highway W	*1,027
Nepco Lake:	
Along shoreline	*980
Maps available for inspection at the County Building, 400 Market Street, Wisconsin Rapids, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

C.M. "Bud" Schauerte,

Administrator, Federal Insurance Administration.

[FR Doc. 92-20995 Filed 8-31-92; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 272

[Docket No. R-144]

RIN 2133-AA96

Administering Maintenance and Repair Subsidy; Audit Requirements and Procedure

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Correction of final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this notice of correction of a final rule which appeared in the **Federal Register** on August 6, 1992 (54 FR 34690) concerning the calculation of the Internal Rate of Return now required with applications for obligation guarantees.

EFFECTIVE DATE: August 6, 1992.

SUPPLEMENTARY INFORMATION: In the August 6, 1992 final rule preamble, in the paragraph with the heading Paperwork Reduction Act, the cited OMB Approval No. "2133-0006" is incorrect and is being revised.

PART 272—[CORRECTED]

Accordingly, on page 34690 in the **Federal Register** of August 6, 1992, Column 2, the final rulemaking notice for 46 CFR part 272 is corrected by amending the first sentence in the paragraph with the heading Paperwork Reduction Act, within the parentheses, to remove the Approval No. "2133-0006," and insert in its place the Approval No. "2133-0007."

Dated: August 26, 1992.

James E. Saari,

Secretary, Moritime Administration.

[FR Doc. 92-20925 Filed 8-31-92; 8:45 am]

BILLING CODE 4910-31-M

46 CFR Part 298

[Docket No. R-145]

RIN 2133-AA97

Obligation Guarantees

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Correction of final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this notice of correction of a final rule which appeared in the **Federal Register** on August 6, 1992 (54 FR 34690) concerning the administration of maintenance and repair subsidy.

EFFECTIVE DATE: August 6, 1992.

SUPPLEMENTARY INFORMATION: In the August 6, 1992 final rule preamble, in the paragraph with the heading Paperwork Reduction Act, the cited OMB Approval No. "2133-0006" is incorrect and is being revised.

PART 298—[CORRECTED]

Accordingly, on page 34691 in the **Federal Register** of August 6, 1992, Column 3, the final rulemaking notice for

46 CFR part 298 is corrected by amending the first sentence in the paragraph with the heading Paperwork Reduction Act, within the parentheses, to remove the reference to "Approval No. 2133–0006," and insert in its place "Approval Nos. 2133–0005 and 2133–0018."

Dated: August 26, 1992.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 92-20914 Filed 8-31-92; 8:45 am]

BILLING CODE 4910-31-M

FEDERAL MARITIME COMMISSION

46 CFR Parts 510, 514, 580 and 582

[Docket No. 92-27]

Filing Requirements for Anti-Rebate Certifications

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations which govern certification of freight forwarder and carrier policies and efforts to combat rebating in the foreign commerce of the United States. The amendments will reduce the annual certification filing requirement to every two years. The intent of this amendment is to reduce the cost imposed on regulated companies by these regulations and to reduce the cost incurred by the Commission in administering them, without loss of regulatory effectiveness.

DATES: Effective upon publication in the **Federal Register** except 46 CFR 514(c)(1)(iii) which is effective September 11, 1992.

FOR FURTHER INFORMATION CONTACT:

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5796.

or

Seymour Glanzer, Director, Bureau of Hearing Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5783.

SUPPLEMENTARY INFORMATION:

Background

Section 15 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1714, mandates that the Federal Maritime Commission ("Commission" or "FMC") require the Chief Executive Officer ("CEO") of each common carrier to file with the Commission a written anti-rebating certification ("ARC") under oath. Section 15 also authorizes the Commission to require the CEO of ocean freight forwarders to file ARCs under oath.

Part 582 of the Commission's rules, 46 CFR part 582, implements section 15 of the 1984 Act by establishing the content of ARCs and procedures governing their filing. Under part 582, the CEO of a common carrier in the foreign commerce of the United States must file an ARC with the Commission on or before December 31 of each year. Part 580, 46 CFR at 580.5(c)(2)(ii), governs tariff requirements regarding common carriers' ARCs. Part 514, 46 CFR at 514.1(c)(1)(iii), is the interim rule, published August 12, 1992, 57 FR 36247, which governs tariff requirements regarding common carriers' ARCs under the Automated Tariff Filing and Information System ("ATFI").

Similarly, part 510 of the Commission's rules, at 46 CFR 510.25, requires licensed ocean freight forwarders to file ARCs on or before December 31 of each year. The content of freight forwarders' ARCs and the procedures for filing them are governed by part 582, *supra*.

Section 15 of the 1984 Act also provides that whoever fails to file an ARC required by the Commission is liable to the United States for a civil penalty of not more than $5,000 for each day the violation continues. Under parts 510, 514, 580 and 582 of the Commission's regulations, 46 CFR parts 510, 514, 580 and 582, carriers' tariffs may be canceled and freight forwarders' licenses may be suspended for failure to file required ARCs.

To reduce the administrative and cost burdens on the regulated industry and the Commission, without causing any appreciable loss of regulatory effectiveness, the Commission proposed to amend parts 510, 580 and 582 of its rules to require ARCs be filed every two years rather than annually. For administrative consistency, the proposed rule required that ARCs be filed by December 31 of each even-numbered year. The proposed rule also made technical changes to reflect the redesignation of the Commission's Bureau of Domestic Regulation as the Bureau of Tariffs, Certification and Licensing.

The proposed rule was published in the **Federal Register** on June 4, 1992, 57 FR 23563. Comments were due to be filed by July 7, 1992. Comments on the proposed rule were filed timely by the following parties:

1. New York Foreign Freight Forwarders and Brokers Association ("NYFB")
2. Sea-Land Service, Inc. ("SeaLand")
3. Transpacific Westbound Rate Agreement ("TWRA")
4. Council of European and Japanese Shipowners Associations ("CENSA")
5. E.I. DuPont de Nemours and Company ("Dupont")
6. Crowley Maritime Corporation ("Crowley")
7. Pacific Coast Council of Customs Brokers and Freight Forwarders Associations, Inc. ("PCC")
8. International Association of NVOCCs ("IANVOCC")
9. National Customs Brokers and Forwarders Association of America, Inc. ("NCBFA")
10. A group of 15 South and Central American and Caribbean Conferences and Associations ("Conferences") [1]
11. Inter-American Freight Conference ("IAFC") [2]

NYFB, SeaLand, TWRA, and CENSA commend the proposed rule and fully support the text published by the Commission.

Dupont states that it generally opposes filing with the Commission of service contracts and their essential terms, as well as tariffs. Dupont asserts, however, that if the Commission continues to require tariff and service contract filing, the rule as proposed is "acceptable."

Crowley supports the proposed rule but voices its concern that this proceeding could be construed to signify a lessening of the Commission's resolve to carry out its enforcement program. There is no reason for such concern. This rulemaking is founded on the Commission's determination that the proposed changes will not reduce its regulatory effectiveness. This rule should not have any detrimental effect on the Commission's enforcement efforts designed to obtain statutory compliance and ensure equitable trading conditions in the U.S. ocean commerce.

PCC, IANVOCC and NCBFA support the proposed rule but ask the Commission to extend the filing period to three or more years. As several commentators observed, the ARC is intended to serve, and does serve, an important preventive function. It is a regular and frequent reminder to the CEOs of freight forwarders and carriers that they have particular Shipping Act obligations that must be memorialized, under oath, in periodic reaffirmations of their companies' commitments to abide by those obligations. Certification every two years appears sufficient to accomplish these purposes. Stretching such certifications beyond a two-year requirement may not achieve those purposes and could render them less effective. A longer than two year term also would appear to be beyond the scope of this proceeding and therefore require further notice and opportunity for comment. Accordingly, the Commission has concluded not to extend the filing period beyond two years.

The Conferences oppose adoption of the proposed rule for the stated reason that the rule "might be construed by various segments of the industry as a lessening of the Commission's resolve to fully enforce the Act." As aforementioned, there is no basis for such concern. This rule does not signify any lessening of the Commission's unwavering resolve to investigate and enforce Shipping Act violations and initiate appropriate enforcement actions.

The Conferences also ask the Commission to expand the scope of its ARC regulations to include "shippers, shippers' associations, maritime terminal operators, and brokers." Such request exceeds the scope of this rulemaking proceeding.

IAFC, based on an apparent misreading of the proposed rule, asserts the unfairness of singling out forwarders (but not carriers) for filing ARCs every two years. The proposed rule would apply to both forwarders and carriers.

After considering all of the comments filed in this proceeding, and for all of the foregoing reasons, the Commission has determined to adopt, in final form, the rule as originally set forth in the Notice of Proposed Rulemaking. In addition, although not referenced in the proposed rule, technical conforming changes are being made to part 510 at 46 CFR 510.16(a)(6). The word "annual" has been deleted from 46 CFR 510.16(a)(6), to ensure consistency with § 510.25 and to avoid potential misunderstandings. Appropriate changes also are being made to part 514 at 46 CFR 514.1(c)(1)(iii), the Commission's interim rule for ATFI, to ensure consistency with § 580.5(c)(2)(ii).

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it nonetheless reviewed this rule in terms of that Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) annual effect on the economy of $100 million or more;

(2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule reduces the administrative burdens and costs of freight forwarders, non-vessel operating common carriers and vessel operating ocean common carriers. Inasmuch as this reduction should be beneficial to such entities, the Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

This rule does not contain any collection of information requirements that require submission to the Office of Management and Budget ("OMB"). Therefore, OMB review is not required.

List of Subjects

46 CFR Part 510

Freight forwarders; Maritime carriers; Reporting and recordkeeping requirements; Surety bonds.

46 CFR Part 514

Barges; Cargo; Cargo vessels; Exports; Fees and user charges; Freight; Harbors; Imports; Maritime carriers; Motor carriers; Ports; Rates and fares; Reporting and recordkeeping requirements; Surety bonds; Trucks; Water carriers; Waterfront facilities; Water transportation.

46 CFR Part 580

Cargo; Cargo vessels; Freight; Exports; Harbors; Imports; Maritime carriers; Rates; Reporting and recordkeeping requirements; Surety bonds; Water carriers; Water transportation.

46 CFR Part 582

Maritime carriers; Penalties; Reporting and recordkeeping requirements.

Therefore, parts 510, 514, 580 and 582 of title 46, Code of Federal Regulations, are amended as follows:

PART 510—[AMENDED]

1. The authority citation for part 510 continues to read:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716 and 1718; 21 U.S.C. 853a.

2. Section 510.16(a)(6) is amended by revising the first and second sentences to read as follows:

§ 510.16 Revocation or suspension of license.

(a) • • •

(6) Failure to file an anti-rebate certification as required by § 510.25 and part 582 of this chapter. Any licensed freight forwarder who fails to file an anti-rebate certification will be notified by **Federal Register** publication and by certified mail that if within forty-five (45) days from the date the certified notice is mailed the licensee does not either establish that the required anti-rebate certification was filed in accordance with § 510.25 and part 582 of this chapter or file the required anti-rebate certification, its license will be suspended until such time as it is reinstated by the Commission after an anti-rebate certification is filed. • • •

• • • • • •

3. Section 510.25 is revised to read as follows:

§ 510.25 Anti-rebate certifications.

(a) Every licensed ocean freight forwarder shall file an anti-rebating certificate on or before December 31, 1992, and thereafter, on or before December 31 of each succeeding even-numbered calendar year.

(b) Every applicant for an ocean freight forwarder license shall file an anti-rebating certificate with its license application. Any application for an ocean freight forwarder license that does not include an anti-rebate certification in accordance with § 510.12 and part 582 of this chapter shall be rejected. Certificates filed with license applications shall be valid from the granting of an ocean freight forwarder license through the first succeeding December 31 of an even-numbered calendar year.

(c) The anti-rebating certificate shall comply with the requirements of part 582 of this chapter.

PART 514—[AMENDED]

4. The authority citation for part 514 continues to read:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1705, 1707–1709, 1712, 1714–1716, 1718 and 1722; and sec. 2(b) of Pub. L. 101–92, 103 Stat. 601.

5. Section 514.1(c)(1)(iii) (A) and (C) is revised to read as follows:

§ 514.1 Scope, purpose, requirements and penalties.

• • • • • •

[1] Five member carriers, including SeaLand and a Crowley affiliate, did not join in these comments.

[2] Two members of the IAFC did not join in these comments

(c) • • •
(1) • • •
(iii) • • •

(A) An anti-rebating certification shall be filed in paper format, as prescribed by part 582 of this chapter, by every common carrier in foreign commerce as a prerequisite to obtaining password authority to file its initial tariff under this part, and thereafter, on each succeeding December 31 of an even-numbered calendar year. Except for the initial certification, the certification filed on each succeeding December 31 of an even-numbered calendar year shall be valid for the two calendar years following the December 31 filing date.

• • • • • •

(C) Any common carrier who falls to file an anti-rebate certification as required by part 582 of this chapter will be notified by **Federal Register** publication and by certified mail that if, within forty-five (45) days from the date the certified notice is mailed, the common carrier does not either establish that the required anti-rebate certification was filed in accordance with this part and part 582 of this chapter, or file the required anti-rebate certification, its tariff(s) will be cancelled and attempted filings rejected.

• • • • • •

PART 580—[AMENDED]

6. The authority citation for Part 580 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1722.

7. Section 580.5(c)(2)(ii)(B) is revised to read as follows:

§ 580.5 Tariff contents.

• • • • • •

(c) • • •
(2) • • •
(ii) • • •

(B) In addition to the anti-rebate tariff provision, an anti-rebating certificate shall be filed by every common carrier with its initial tariff, and thereafter, on each succeeding December 31 of an even-numbered calendar year. The anti-rebating certificate shall comply with the requirements of part 582 of this chapter. Failure of a common carrier to file an anti-rebate certification with initial tariffs and publish notice of that certification in its tariff as required by this part and part 582 of this chapter shall result in rejection of that carrier's tariff. Any common carrier who fails to file an anti-rebate certification as required by part 582 of this chapter will be notified by **Federal Register** publication and by certified mail that if within forty-five (45) days from the date the certified notice is mailed the common carrier does not either establish that the required anti-rebate certification was filed in accordance with this part and part 582 of this chapter or file the required anti-rebate certification, its tariff will be canceled, and in the event its rates are published in one or more conference tariffs, its name will be stricken from the list of carriers participating in those conference tariffs. The tariff(s) of any common carrier who files an anti-rebate certification after December 31 but before the end of the forty-five (45) days notice period will not be canceled; however, the common carrier will be subject to civil penalties as provided in part 582 of this chapter. After the forty-five (45) days, any common carrier that does not have an anti-rebate certification on file with the Commission will be notified by **Federal Register** publication and certified mail, return receipt requested, that its tariff(s) have been canceled or its name has been stricken from conference tariff(s).

• • • • • •

PART 582—[AMENDED]

8. The authority citation for part 582 continues to read:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701, 1702, 1707, 1709, 1712, and 1714–1716.

9. Section 582.3 is revised to read as follows:

§ 582.3 Reporting requirements.

(a) Every common carrier required by this part to file a written certification in the form prescribed by § 582.2, shall file such certification with its initial tariff and, thereafter, on or before December 31 of each succeeding even-numbered calendar year.

(b) Every licensed ocean freight forwarder, required by § 510.25 of this chapter to file a written certification in the form prescribed by § 582.2 of this part, shall file such certification on or before December 31, 1992, and thereafter, on or before December 31 of each succeeding even-numbered calendar year. Every applicant for an ocean freight forwarder license initially shall file such certification with its license application.

(c) The certification required by this section shall be valid from the initial filing of a tariff or granting of an ocean freight forwarder license through the first succeeding December 31 of an even-numbered calendar year.

(d) Every person other than a common carrier or ocean freight forwarder which is ordered by the Commission pursuant to § 582.2 to file a written certification shall file such certification in the manner prescribed by the Commission.

(e) In those instances in which a single firm operates in more than one capacity, such as both a non-vessel-operating common carrier and an ocean freight forwarder, a single certificate may be submitted to satisfy the reporting requirements of this section.

Joseph C. Polking,

Secretary.

[FR Doc. 92–20819 Filed 8–31–92; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–476; RM–7343, RM–7652, RM–7653, RM–7654]

Radio Broadcasting Services; Cordova, Warrior, Holly Pond, Eva, Fairview and Falkville, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action substitutes Channel 223A for Channel 237A at Cordova, Alabama, and modifies the license of Radio South, Inc., for Station WFFN(FM) to specify operation on the substituted channel, and allots Channel 260A at Eva, Alabama, as its first local service. The coordinates for Channel 223A at Cordova are 33–40–38 and 87–11–33. The coordinates for Channel 260A at Eva are 34–20–00 and 86–45–00. This action also dismisses counterproposals filed by Warrior Communications and Ross Broadcasting Company, Inc. at their request pursuant to settlement agreements between each party and Radio South, Inc. See 55 FR 46078 (November 4, 1991). With this action, this proceeding is terminated.

DATES: Effective October 13, 1992. The window period for filing applications for Channel 260A at Eva will open on October 14, 1992, and close on November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report Order, MM Docket No. 90476, adopted July 29, 1992, and released August 26, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 237A and adding Channel 223A at Cordova, and by adding Eva, Channel 260A.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20930 Filed 8–31–92; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 89–290; RM–6607, RM–6801, RM–6958]

Radio Broadcasting Services; Magnolia, Mena, and Murfreesboro, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 271C2 for Channel 269A at Mena, Arkansas, and modifies the license of Station KENA, Mena, Arkansas, to specify operation on Channel 271C2. This document also substitutes Channel 258C3 for Channel 237A at Murfreesboro, Arkansas, and modifies the license of Station KMTB, Murfreesboro, Arkansas, to specify operation on Channel 258C3. Finally, this document dismisses a proposal to allot Channel 271A to Magnolia, Arkansas. See 54 FR 27904, published July 3, 1989. The reference coordinates for the Channel 271C2 allotment at Mena, Arkansas, are 34–30–05 and 94–20–10. The reference coordinates for the Channel 258C3 allotment at Murfreesboro, Arkansas, are 34–05–44 and 93–41–31. With this action, the proceeding is terminated.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89–290, adopted July 31, 1992, and released August 26, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 269A and adding Channel 271C2 at Mena, and by removing Channel 237A and adding Channel 258C3 at Murfreesboro.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20933 Filed 8–31–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–108; RM–7970]

Radio Broadcasting Services; St. Joseph, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 225C3 to St. Joseph, Minnesota, as that community's first local service in response to a petition filed by St. Joseph Broadcasters. See 57 FR 21919, May 26, 1992. The coordinates for Channel 225C3 are 45–37–14 and 94–22–05. There is a site restriction 7.3 kilometers (4.5 miles) northwest of the community. With this action, this proceeding is terminated.

DATES: Effective October 13, 1992. The window period for filing applications for Channel 225C3 at St. Joseph will open on October 14, 1992, and close on November 13, 1992.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 92–108, adopted July 30, 1992, and released August 26, 1992. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1990 M Street, NW., suite 640, Washington, DC 20036. (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by adding St. Joseph, Channel 225C3.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20931 Filed 8–31–92; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 92–113; RM–7983]

Radio Broadcasting Services; Huntsville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of New Wavo Communication Group, Inc., permittee of Station KVST–FM, Channel 278A, Huntsville, Texas, substitutes Channel 279C3 for Channel 278A at Huntsville, and modifies Station KVST–FM's construction permit to specify operation on the higher powered channel. *See* 57 FR 2190, May 26, 1992. Channel 279C3 can be allotted to Huntsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.4 kilometers (1.5 miles) east to accommodate New Wavo's desired site. The coordinates for Channel 279C3 are 30–43–24 and 95–31–

30. With this action, this proceeding is terminated.

EFFECTIVE DATE: October 13, 1992.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 92–113, adopted July 31, 1992, and released August 26, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1990 M Street, NW., suite 640, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 278A and adding Channel 279C3 at Huntsville.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92–20934 Filed 8–31–92; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 920412–2112]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Reopening and inseason adjustments.

SUMMARY: NMFS announces that the commercial fishery from the U.S.-Canada border to Cape Falcon, Oregon, will reopen for 3 days on August 20–22, 1992, with a possession and landing limit of 44 coho salmon. This fishery was closed August 14, 1992, upon the projected attainment of the coho salmon harvest guideline. The Director, Northwest Region, NMFS (Regional Director), has determined that a sufficient number of coho salmon remain to allow reopening of this fishery for 3 days with an adjusted possession and landing limit for coho salmon. This action is intended to maximize the harvest of coho salmon without exceeding the ocean share allocated to the commercial fishery in this subarea.

DATES: Effective at 0001 hours local time, August 20, 1992, through 2400 hours local time, August 22, 1992. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.23. Comments will be accepted through September 15, 1992.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way NE., BIN C15700–Bldg. 1, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at (206) 526–6140.

SUPPLEMENTARY INFORMATION: In its emergency interim rule and notice of 1992 management measures (57 FR 19388, May 8, 1992), NMFS announced that the 1992 commercial fishery between the U.S.-Canada border and Cape Falcon, Oregon, would open July 20 and continue through the earliest of August 31 or attainment of harvest guidelines of either 18,100 coho salmon or 4,400 chinook salmon.

These harvest guidelines have since been revised to be 17,600 coho salmon and 9,700 chinook salmon (57 FR 36021, August 12, 1992).

Preseason restrictions for the July/August commercial fishery included a cycle of 2 days open and 3 days closed, a possession and landing limit of 30 coho salmon per opening, and gear limited to 6-inch plugs or larger and no more than 4 spreads per line. Inseason actions were taken such that this fishery's subsequent open periods were for 3 days each on July 25–27, July 31–August 2, August 6–8, and August 12–14 with a possession and landing limit of 44 coho salmon for each open period (57 FR 34085, August 3, 1992; 57 FR 34883, August 7, 1992; 57 FR 36021, August 12, 1992; 57 FR 37906, August 21, 1992). It was anticipated that the harvest guideline for coho salmon would be fully harvested during the last period and the fishery in this subarea was closed effective 2400 hours local time, August 14, 1992.

Based on the best available information on August 18, 1992, the commercial catch in the subarea from the U.S.-Canada border to Cape Falcon during the 5 open periods totaled about 15,400 coho salmon and about 7,900 chinook salmon. The remainder of the coho salmon harvest guideline is projected to be harvested during a 3-day fishing period with an appropriate adjustment to the possession and landing limit. Therefore, the commercial fishery in the subarea from the U.S.-Canada border to Cape Falcon will open for 3 days, effective 0001 hours local time, August 20 through 2400 hours local time, August 22, 1992. Each vessel may possess, land and deliver not more than 44 coho salmon for this open period. Modifications of fishing seasons and limited retention regulations are authorized by regulations at 50 CFR 661.21(b)(1) (i) and (ii).

In accordance with the inseason notice procedures of 50 CFR 661.23, actual notice to fishermen of this action was given prior to 0001 hours local time August 20, 1992, by telephone hotline number (206) 526–6667 or (800) 662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 Khz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Washington Department of Fisheries, and the Oregon Department of Fish and Wildlife regarding the reopening and adjustments affecting the commercial fishery between the U.S.-Canada border and Cape Falcon. The States of Washington and Oregon will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment.

Classification

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–20991 Filed 8–31–92; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 57, No. 170
Tuesday, September 1, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1744

Borrower Investments—Telephone Loan Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to add new subpart E to part 1744 on the types of investments REA telephone borrowers may make without prior approval of the Administrator of REA. REA also proposes to add the procedure for the treatment of investments in rural development projects when determining a borrower's allowable distribution of capital.

This proposed rule aims to promote economic growth in the communities served by REA telephone borrowers by making available additional sources of funding for rural economic development projects.

DATES: Comments concerning this proposed rule must be received by REA or bear a postmark or its equivalent no later than November 2, 1992.

ADDRESSES: Submit written comments to Matthew Link, Director, Rural Telephone Bank Management Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2832-S, 14th and Independence Avenue, SW., Washington, DC 20250–1500. REA requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for inspection at room 2238 South Building (address as above) between 8:30 a.m. and 5 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Cheryl Gamboney, Management Analyst, Rural Telephone Bank Management Staff, at the address listed above, telephone number (202) 720–0415.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is intended to have retroactive effect with respect to investments in rural development projects. This proposed rule is not intended: (1) To have preemptive effect with respect to any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; and (2) To require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because few borrowers of REA loans meet the requirements for small entities. Further, the regulations are applied equally to all borrowers.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, a portion of the information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572–0031. The uncleared portion of the information collection requirements have been submitted to OMB for review. Comments concerning these requirements should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20402.

National Environmental Policy Act Certification

The Administrator has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.851, Rural Telephone Loans and Loan Guarantees and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA loans and loan guarantees and RTB loans, to governmental and nongovernmental entities from coverage under this Order.

Background

Section 2356 of the Rural Economic Development Act of 1990 (RED Act) (7 U.S.C. 926) amended the Rural Electrification Act of 1936 (RE Act)(7 U.S.C. 901 *et seq.*) to enable an REA telephone borrower to invest in rural development projects without prior approval of the Administrator of REA. Specifically, this new section of the RE Act allows certain borrowers to invest up to one-third of their net worth in rural development projects without prior approval of the Administrator of REA. In particular, those borrowers that have a net worth to total assets ratio of at least 20 percent do not require REA approval for such projects. Before the RED Act, all REA telephone borrowers were required to obtain REA approval prior to investing in rural development projects.

This regulation could potentially affect rural communities and businesses served by the REA telephone borrowers that have a high enough net worth to total assets ratio and choose to invest their funds in rural economic development projects. Total funding available from all 908 reporting telephone borrowers amounted to $2.4 billion as of December 31, 1990 (one-third of net worth). Eligible telephone borrowers that choose to invest in rural development projects could benefit both directly, through returns on their rural development project investments, and indirectly if the local economy grows, generating increased demand for telephone services.

The requirements of the RED Act have been incorporated into the standard form of mortgage between REA and its borrowers. This proposed rule clarifies the provisions of the RED Act and sets forth REA's policy concerning borrowers' investments in rural development projects.

List of Subjects in 7 CFR Part 1744

Accounting, Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set forth in the preamble, REA proposes to add new subparts D and E to 7 CFR part 1744 as follows:

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

1. The authority citation for part 1744 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

2. Subpart D is added and reserved and subpart E is added as follows:

Subpart E—Borrower Investments

Sec.

1744.200 General statement.
1744.201 Definitions.
1744.202 Borrowers may make qualified investments without prior approval of the Administrator.
1744.203 Determinations and application of limitations described in § 1744.202.
1744.204 Determining whether a rural development investment is within the limits of the maximum investment ratio.
1744.205 Rural development investments that exceed the maximum investment ratio.
1744.206 Rural development investments before November 28, 1990.
1744.207 Records.
1744.208 Effect of this subpart on REA loan contract and mortgage.
1744.209 OMB control number.

Subpart E—Borrower Investments

§ 1744.200 General statement.

REA telephone borrowers are encouraged to utilize their own funds to participate in the economic development of rural areas, provided that such activity does not impair a borrower's ability to provide modern telecommunications services at reasonable rates or to repay its indebtedness to REA and other lenders. When considering loans, investments, or guarantees, borrowers are expected to act in accordance with prudent business practices and in conformity with the laws of the jurisdictions in which they serve.

§ 1744.201 Definitions.

As used in this subpart:

Administrator means the Administrator of the Rural Electrification Administration (REA).

Affiliated company means any organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the borrower.

Borrower means any organization which has an outstanding loan made or guaranteed by REA, or which is seeking such financing.

Guarantee means to undertake collaterally to answer for the payment of another's debt or the performance of another's duty, liability, or obligation, including, without limitation, the obligations of affiliated companies. Some examples of such guarantees would include:

(1) Guarantees of payment or collection on a note or other debt instrument;

(2) Issuing performance bonds or completion bonds; or

(3) Cosigning leases or other obligations of third parties.

Maximum investment ratio is defined in § 1744.202(e).

Minimum total assets ratio is defined in § 1744.202(b).

Net plant means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Telecommunications plant in service.	2001
(2) Property held for future telecommunications use.	2002
(3) Telecommunications plant under construction-short term.	2003
(4) Telecommunications plant under construction-long term.	2004
(5) Telecommunications plant adjustment.	2005
(6) Nonoperating plant	2006
(7) Goodwill	2007
(8) Less accumulated depreciation.	3100 through 3300s
(9) Less accumulated amortization.	3400 through 3600s

All references to account numbers are to the Uniform System of Accounts (47 CFR part 32).

Net worth means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Capital stock	4510
(2) Additional paid-in capital	4520
(3) Treasury stock	4530
(4) Other capital	4540
(5) Retained earnings	4550

For nonprofit organizations, owners' equity is shown in subaccounts of 4540 and 4550. All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Qualified investment is defined in § 1744.202(c).

REA means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

RE Act means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

REA mortgage means the instrument creating a lien on or security interest in the borrower's assets in connection with a loan made or guaranteed under the RE Act.

Rural development investment is defined in § 1744.202(d).

Total assets means the sum of the balances of the following accounts of the borrower:

Account Names	Number
(1) Current assets	1100s through 1300s
(2) Noncurrent assets	1400s through 1500s
(3) Total telecommunications plant.	2001 through 2007
(4) Less accumulated depreciation.	3100 through 3300s
(5) Less accumulated amortization.	3400 through 3600s

All references regarding account numbers are to the Uniform System of Accounts (47 CFR part 32).

Uniform System of Accounts means the Federal Communications Commission Uniform System of

Accounts for Telecommunications Companies (47 CFR part 32) as supplemented by 7 CFR part 1770, Accounting Requirements for REA Telephone Borrowers.

§ 1744.202 Borrowers may make qualified investments without prior approval of the Administrator.

(a) A borrower that equals or exceeds the minimum total assets ratio, defined in § 1744.202(b), may make a qualified investment, defined in § 1744.202(c), without prior written approval of the Administrator.

(b) The minimum total assets ratio means the borrower's net worth is at least twenty percent of its total assets including the proposed qualified investment.

(c) A qualified investment is a rural development investment, defined in § 1744.202(d), meeting the following criteria:

(1) Unless the borrower's commitment is as guarantor, the borrower receives any financial return accruing to such investment, or the borrower's proportionate share of such return;

(2) Unless the borrower's commitment is as guarantor, the borrower retains title to any asset acquired with such investment, or the borrower's proportionate share of such title; and

(3) The funds committed are the borrower's own funds, provided that a rural development investment will not be considered to be a qualified investment to the extent that the amount of such investments exceeds the borrower's maximum investment ratio (see § 1744.202(e)). As used in this paragraph, own funds shall mean money belonging to the borrower other than:

(i) Proceeds of loans made, guaranteed or lien accommodated by REA;

(ii) Funds necessary to make timely payments of principal and interest on loans made, guaranteed or lien accommodated by REA; and

(iii) Funds on deposit in the cash construction fund-trustee account, as defined in the borrower's loan contract with REA.

(d) A rural development investment is an investment, extension of credit, advance, or guarantee by a borrower for a period longer than one year and for one or more of the following purposes:

(1) Improve the economic well-being of rural residents and alleviate the problems of low income, elderly, minority, and otherwise disadvantaged rural residents;

(2) Improve the business and employment opportunities, occupational training and employment services, health care services, educational opportunities, energy utilization and availability, housing, transportation, community services, community facilities, water supplies, sewage and solid waste management systems, credit availability, and accessibility to and delivery of private and public financial resources in the maintenance and creation of jobs in rural areas;

(3) Improve state and local government management capabilities, institutions, and programs related to rural development and expand educational and training opportunities for state and local officials, particularly in small rural communities;

(4) Strengthen the family farm system; or

(5) Maintain and protect the environment and natural resources of rural areas.

As used in paragraph (d) of this section, the term rural development investment shall include investments by a borrower in its own name, in affiliated companies, and in entities not affiliated with the borrower.

(e) Maximum investment ratio means that the aggregate of all qualified investments by the borrower including the proposed qualified investment shall not be more than one-third of the net worth of the borrower.

§ 1744.203 Determinations and application of limitations described in § 1744.202.

(a) REA will not include qualified investments, including qualified investments in affiliated companies, in calculating the amount of dividend or capital distributions a borrower may make under its REA mortgage.

(b) A borrower's investment in its net plant shall not be considered a rural development investment for purposes of calculating the maximum investment ratio or the minimum total assets ratio.

(c) The borrower's net plant, net worth, and total assets shall be determined using the balances of the respective accounts of the borrower as of December 31 of the last complete calendar year preceding the date on which the borrower's maximum investment ratio and minimum total assets ratio are calculated.

(d) All determinations required to be made under 7 U.S.C. 926 or this subpart will be made in accordance with the Uniform System of Accounts (USoA)(47 CFR part 32). References to specific USoA accounts shall include revised or replacement accounts.

§ 1744.204 Determining whether a rural development investment is within the limits of the maximum investment ratio.

For purposes of determining whether a rural development investment is within the limits of the borrower's maximum investment ratio or the minimum total assets ratio, the amount of the qualified investment shall be the total amount of funds committed to the rural development project as of the date of determination and a reasonable estimate of the amount the borrower is committed to provide to the rural development project in future years. The total amount of funds committed includes the principal amount of loans, advances, and guarantees made by the borrower to the rural development project.

§ 1744.205 Rural development investments that exceed the maximum investment ratio.

(a) Each borrower is authorized to make expenditures other than qualified investments only in accordance with the provisions of the borrower's mortgage with REA. Without REA's approval, the portion of any expenditure of funds or commitment to expend funds for any rural development investment that will exceed the borrower's maximum investment ratio or cause the borrower to fall below the minimum total assets ratio, must comply with the provisions of the REA mortgage.

(b) REA will consider, on a case-by-case basis, requests for approval of expenditures not constituting qualified investments. REA may condition such approval, if granted, on such requirements and restrictions as REA may determine to be in the best interests of the Government, including, without limitation, the borrower's agreement to limit dividends or distributions of capital by an amount specified by REA. Requests for such approvals must be submitted in writing to the relevant REA regional office and shall include:

(1) A description of the rural development project and the type of investment to be made, such as a loan, guarantee, stock purchase or equity investment;

(2) A reasonable estimate of the amount the borrower is committed to provide to the rural development project including expenditures that may be required in the future; and

(3) A pro forma balance sheet and cash flow statement for the period covering the borrower's future commitments to the rural development project.

(b) In determining whether to approve a rural development investment that may cause the borrower to exceed the maximum investment ratio or to fall below the minimum total assets ratio in the future, REA will consider annual increases to the borrower's net worth and total assets as might be reasonably anticipated from the borrower's normal operations.

(c) A borrower shall not make a qualified investment or a rural development investment which jeopardizes:

(1) The security of loans made or guaranteed by REA; or

(2) The borrower's ability to repay such loans under the terms and conditions as agreed.

§ 1744.206 Rural development investments before November 28, 1990.

All investments made by a borrower shall be subject to the provisions of this subpart, regardless of when the investment was made or whether it has been approved by REA. Any restrictions required by REA as a condition to approving a rural development investment before November 28, 1990, shall continue to be in effect to the extent that such investment exceeds the maximum investment ratio or causes the borrower to fall below the minimum total assets ratio.

§ 1744.207 Records.

(a) The records of borrowers, including records relating to qualified investments, shall be subject to the auditing procedures prescribed in part 1773 of this chapter. REA reserves the right to review the records of the borrower relating to qualified investments to determine if the borrower is in compliance with this subpart.

(b) Borrowers shall report to REA on the end-of-year operating report, REA Form 479, the current status and principal amount of each qualified investment it has made or is committed to make pursuant to § 1744.202.

§ 1744.208 Effect of this subpart on REA loan contract and mortgage.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its loan contract with REA, its notes issued to REA, and the REA mortgage, including all provisions thereof relating to investments not covered by this subpart.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the REA mortgage, or other creditors of the borrower, to limit a borrower's investments, loans and guarantees to levels below those permitted in § 1744.202.

(c) As used in paragraph (b) of this section, supplemental lender means a creditor of the borrower, other than REA, whose loan to the borrower is secured by the REA mortgage.

§ 1744.209 OMB control number.

A portion of the information collection requirements in this subpart have been approved by the Office of Management and Budget and assigned OMB control number 0572–0031. The uncleared portion of the information collection requirements have been submitted to OMB for review.

Dated: August 24, 1992.

James B. Huff, Sr.,

Administrator.

[FR Doc 92–20816 Filed 8–31–92; 8:45 am]

BILLING CODE 3410–15–F

Farmers Home Administration

7 CFR Parts 1902 and 1930

RIN 0575–AB31

Supervised Bank Accounts and Multi-Housing Reserve Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Agency seeks to require reserve accounts to be subject to counter signature by an Agency official before funds can be withdrawn. The intended effect of this action is to reduce the incidence of fraud, waste, and abuse by requiring reserve funds to be subject to Agency counter signature for all withdrawals. This action is intended to prevent abuses before they occur.

DATES: Written comments must be received on or before November 2, 1992.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, room 6348, South Building, Washington, DC 20250. All written comments will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: James E. Vollmer, Senior Loan Specialist, Multi-Family Housing Servicing and Property Management Division, Farmers Home Administration, USDA, Washington, DC 20250; telephone: (202) 720–1060.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and has been determined to be non-major. This action will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Agency seeks to improve FmHA oversight of reserve accounts in its multi-housing programs by requiring them to be subject to counter-signature in a supervised bank account. Reserve accounts are presently required to be funded and used in accordance with Agency regulations, which already requires the prior consent of the Agency prior to withdrawing reserve funds. However, internal Agency reviews and audits conducted by the Office of the Inspector General (OIG) are highlighting various violations of Agency regulations.

The most common concerns include the withdrawal of reserve funds without Agency consent, funds being pledged as security for other loans without Agency knowledge, withdrawal of interest earned on reserve funds for nonproject purposes, lenders withdrawing funds for application on other defaulted loans, reserve funds withdrawn at a lending institution for application on other debts, and reserve accounts held at a lending institution for a short period of time before transferring to another institution.

The Agency expects to curtail reserve fund abuses by shifting emphasis to oversee compliance through procedures aimed at preventing abuses (e.g., requiring the counter signature of Agency officials for withdrawal of reserve funds which are to be placed in a supervised bank account). The Agency's present procedures rely on oversight through monitoring routines with the threat of potential punitive measures being imposed should violations be discovered.

The Agency solicits comments concerning the impact of the proposed rules on those holding reserve funds in money market accounts, bonds, or financial holdings other than in checking or savings accounts in federally insured institutions. The Agency desires to ensure that the proposed rules to reduce reserve account abuses are met in a practical manner without inadvertently imposing severe financial hardship on existing borrowers. The Agency is aware that the proposed rule may result in some borrowers having to pay financial fees or penalties which will erode reserve funds and is concerned that such adverse impacts be minimized

to the extent practical. The Agency also solicits other alternative approaches to curtail reserve account abuses.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator, FmHA, has determined this action will not have a significant economic impact on a substantial number or small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). Since this action will not have a significant economic impact on a substantial number of small entities, a Regulatory Impact Analysis is not needed.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to vary from 1 minute to 15 minutes per response, with an average of 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

Intergovernmental Review

The programs affected are listed in the Catalog of Federal Domestic Assistance under numbers 10.405—Farm Labor Housing Loans and Grants, 10.415—Rural Rental Housing Loans, and 10.427—Rural Rental Assistance Payments and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3105, subpart V; 48 FR 29112, June 24, 1983; 49 FR 2267, May 31, 1984; 59 FR 14088, April 10, 1985).

Civil Justice Reform

This proposed regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and 2 (b)(2) of that Order. Provisions within this part which are inconsistent with state law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B must be exhausted prior to filing suit.

List of Subjects

7 CFR Part 1902

Accounting, Banks, Banking, Grant Programs—Housing and Community Development, Loan Programs—Agriculture, Loan Programs—Housing and Community Development.

7 CFR Port 1930

Accounting, Administrative Practice and Procedure, Grant Programs—Housing and Community Development, Loan Programs—Housing and Community Development, Low and Moderate Income Housing—Rental, Reporting and recordkeeping requirements.

Accordingly, as proposed, title 7, chapter XVIII of the Code of Federal Regulations is amended as follows:

PART 1902—SUPERVISED BANK ACCOUNTS

1. The authority citation for part 1902 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Disbursement of Loan, Grant, or Other Funds

2. The heading of subpart A of part 1902 is revised to read as follows: "Disbursement of Loan, Grant or Other Funds."

3. Section 1902.1 is amended by revising paragraphs (j) and (k) to read as follows:

§ 1902.1 General.

* * * * *

(j) Form FmHA 402–1 provides for the deposit of funds in a supervised bank account to assure the performance of the borrower's obligation to FmHA in connection with loan, grant, or other funds.

(1) Monthly bank statements will not normally be required for Multiple Family Housing (MFH) accounts and if received, will not normally require reconciliation. It is expected that bank statements will normally be forwarded annually to the Agency. See § 1902.14 of this subpart for guidance.

(2) Reserve accounts for MFH borrowers which exceed the federal insurance levels must be collaterlized in accordance with the principles set out in §§ 1902.6 and 1902.7 of this subpart for guidance.

(k) "Interest-Bearing Deposit Agreement," (Exhibit B of this subpart) provides for the deposit of loan or grant funds that are not required for immediate disbursement in specified interest-bearing deposits, and it is executed in conjunction with Form FmHA 1940–1.

§ 1902.2 [Amended]

4. Section 1902.2(a)(4) is amended by revising the phrase "loan and grant funds" in the first sentence to read "loan, grant, or other funds"; and by adding the following sentence at the end of the paragraph: "However, when used in conjunction with MFH reserve accounts, such accounts will remain in place as long as the borrower is indebted to the Agency."

§ 1902.2 [Amended]

5. Section 1902.2(a)(6) is amended in the first sentence by revising the words "County Supervisor" to read "authorized FmHA Official"; and by adding the following sentence at the end of the paragraph: "This provision is not intended to limit MFH reserve accounts from being placed in a supervised bank account for as long as the borrower is indebted to the Agency."

§ 1902.2 [Amended]

6. Section 1902.2(a)(7) is amended by removing the parenthetical phrase at the end of the sentence.

§ 1902.9 [Amended]

7. Section 1902.9(b) is amended by removing the period at the end of the introductory text and adding the following: ", unless this requirement is waived by the District Director for MFH reserve accounts."

8. Section 1902.9 is amended by revising paragraph (b)(2) to read as follows:

§ 1902.9 Deposits.

* * * * *

(b) * * *

(2) Funds other than loan or grant funds may be deposited by the borrower in those instances where an agreement is reached between the District Director or County Supervisor and the borrower, whereby the borrower will make deposits of income from any source directly into the supervised bank account. In such instances the borrower will be instructed to prepare the deposit skip in the manner described in § 1902.9(a)(5); however, the District Director may waive having copies of the deposit slip required to be distributed to the case file for MFH reserve accounts.

9. Section 1902.14 is amended by revising paragraph (a) to read as follows:

§ 1902.14 Reconciliation of accounts.

(a) A checking account statement will be obtained periodically in accordance with established practices in the area. If the checking account statement does not include sufficient information to reconcile the account (the name of the payee or the check number and the account of each check, i.e., a negotiable demand draft drawn on a financial institution), the original cancelled check or either a microfilm copy or other reasonable facsimile of the cancelled check must be provided to the District or County Office with the statement. Checking account statements will be reconciled promptly with District or County Office records. The person making the reconciliation will initial the record and indicate the date of the action. The District Director may waive the receipt of copies of frequent checking account statements for reconciliation purposes for MFH reserve accounts and may instead require a checking account statement as needed, an annual checking account statement, or audit(s), when they are sufficient, in combination with other Agency record systems used to track reserve funds, to ensure reserve funds are at authorized levels.

* * * * * *

PART 1930—GENERAL

10. The authority citation for part 1930 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

11. In paragraph XIII, the introductory text of paragraph B, and paragraphs B1, B2 introductory text, and B2 a, b, and c of Exhibit B of Subpart C of Part 1930 are revised to read as follows:

Exhibit B—Multiple Housing Management Handbook

* * * * * *

XIII *Accounting and Reporting Requirements and Financial Management Analysis*

* * * * * *

B. *Accounting System.* A bookkeeping and accounting system provides the financial information needed to effectively plan, control, and evaluate project activity, whether required by FmHA or not. The type of system should be determined prior to loan closing but may be revised with FmHA approval to meet program objectives. The Agency may also prescribe the system to be used. Form FmHA 1930–5, "Bookkeeping System—Small Borrower," can be adapted to the bookkeeping needs of small projects. Bookkeeping for MFH projects may be maintained using a cash, modified cash, or accrual type accounting system.

1. *Type of accounts.* As used in this paragraph, the term account is used interchangeably to mean either a ledger (or bookkeeping account) or an actual banking account, except for reserve accounts. Reserve accounts must be kept in a supervised bank account but may also be reflected in an appropriate ledger in the recordkeeping or accounting system. Depending upon the complexity of the accounting system being used, these accounts may be further subdivided into subsidiary ledgers or accounts to assist the borrower in providing the information needed for project financial analysis or reporting requirements. Regardless of the number or types of accounts established, all bookkeeping and accounting systems must meet the following:

a. All project funds shall be held only in domestic accounts. All project funds shall be held only in accounts insured by an agency of the Federal Government or backed by collateral provided by the bank.

b. All funds in any account shall be used only for authorized purposes as described in their loan agreement or resolution and this subpart.

c. All funds received and held in any account, except the security deposit, membership fee, and management reserve (patronage capital), shall be held in trust by the borrower for the loan obligation until used and serve as a security for the FmHA loan or grant.

d. All project funds will be accounted for by adequate and clear accounting methods and practices that otherwise maintain proprietary identity of said funds.

e. Each project will maintain at least one demand deposit or checking account, in addition to the supervised bank account for the reserve account. It is not necessary for each bookkeeping account within one project to be maintained as a checking account. However, a separate checking account may also be required for any tenant security account to comply with local and State laws and regulations.

f. In no case shall project funds be pledged as collateral for non-FmHA debts.

2. *Accounts.* All RRH, RCH, and LH borrowers will maintain, as a minimum, the accounts required by their loan agreement or resolution. The following accounts are standard for all RRH and RCH loans approved after October 27, 1980, or those who have amended their previous loan agreements or resolutions to adopt these accounts, or those required by a servicing plan. The following listing of accounts also identifies the order of funding of each of the listed accounts through available project revenues each month

a. *Genral Operating Account.* This account records all project income and disbursements. Excess project cash held in this account may be combined with other project funds described in this paragraph in temporary (immediate call) interest bearing accounts when separate bookkeeping records are maintained for the individual project accounts. This account may be further subdivided as follows:

(1) *Initial Operating Capital.* The initial operating capital may be in the form of cash, an irrevocable letter of credit, or in a combination of the two as set forth in § 1944.211 (a)(8) of subpart E of part 1944 of this chapter. The borrower will have deposited the required initial operating cash into the General Operating Account by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. These funds will blend with other revenue that accrues to the account to cover budgeted expenditures including payment of return to owner. Any letters of credit will be supplied by the time of the FmHA loan closing or when interim financing funds are obtained, whichever occurs first. Letters of Credit will be maintained in the casefile. They must be renewed as needed so that a current Letter of Credit is always in effect. If a borrower does not renew the Letter of Credit they will be required to deposit an equivalent amount of cash into the General Operating Account before the Letter of Credit expires. If a borrower supplied all or part of the initial operating capital in the form of a Letter of Credit and the borrower makes cash deposits into the General Operating Account for operating purposes, the borrower can provide the District Office with a new Letter of Credit in a smaller amount with evidence of the cash deposit. The new Letter of Credit and the cash deposit must total the required

initial operating capital. The old Letter of Credit will be returned to the borrower. After two, but before five full (12 month) borrower fiscal years of project operation, the borrower may request (in writing) the State Director's authorization to make a onetime withdrawal of the initial operating capital, or a part of it. The withdrawal can be in the form of cash, release or reduction in the Letter of Credit, or a combination of both. The one time withdrawal can never exceed the initial operating capital as described in the loan agreement or loan resolution. The withdrawal can be approved provided that:

(i) The project has achieved at least a 95 percent occupancy level at the time of the withdrawal;

(ii) The withdrawal will not affect the financial integrity of the project. After withdrawal, approximately 10 percent of the projected operation and maintainenance expenses should remain in the general operating account in excess of current liabilities then outstanding. The reserve account must be on schedule less authorized withdrawals. The borrower must demonstrate that all prudent maintenance is being planned and performed, and payment of necessary project expenses are not being deferred;

(iii) The State Director determines that the withdrawal will not necessitate a rent increase during the year of withdrawal or during the next year of operation, except that rent increases needed because of normal increases of operation and maintenance expenses unrelated to the withdrawal may be approved; and

(iv) The State Director has reviewed and approved any required borrower reports before the initial operating capital is withdrawn. Promptness is expected but actual withdrawal of funds could occur in the sixth year.

(2) *Deposits.* All income and revenue from the housing project shall, upon receipt, be immediately deposited in the general operating account. This will include rent or occupancy charge receipts, housing subsidy payments (including HUD Section 8 and FmHA RA payments), occupancy surcharge monies, laundry revenue, or any other project income, including interest earned on project accounts. The borrower may also deposit other funds at any time, which are to be used for purposes authorized by this section, including transfers from the reserve account.

(3) *Disbursements.* Not later than the 15th of each month, out of the general operation account, the borrower shall pay or fund the actual, reasonable and necessary monthly project expenses. Current expenses may include the initial purchase and installation of furnishings and equipment with any other funds deposited in the general operating account which are not proceeds of the loan or income or revenue from the project. (However, nonprofit borrowers are permitted to use loan funds specified for initial operating capital purposes as authorized in supbarts D and E of part 1944 of this chapter.). Other authorized disbursements are FmHA approved installments of debt service, including occupancy surcharge, real estate tax and insurance escrow, reserve, and return on investment. Any balance remaining in an RRH general operating account except as authorized above, may be retained in this account or transferred to the reserve account. Any balance remaining in an RCH general operating account will be transferred into the cooperative's patronage capital account at the end of the fiscal year.

(4) *Unauthorized Disbursements.* Except for cooperatives, late fees charged the borrower according to subpart K of part 1951 of this chapter, may not be paid from project income. When late fees are deducted by FmHA from payments made from project income, the project general operating account must be reimbursed from nonproject income of the owner or management agent or deducted from the owner's return on investment.

b. *Real Estate Tax and Insurance Escrow Account.* According to the borrower's management plan, project funds for periodic payment(s) of real estate taxes and real property insurance may be deposited in a real estate tax and insurance escrow account or held in the general operating account as cash on hand. The escrow account may be an interest bearing account. Deposits to the account should be in monthly increments of one-twelfth of the annual anticipated real estate tax and insurance payments. Any interest earned shall accrue to the project as project operational cash income.

c. *Reserve Account.* The reserve account is a required account subject to the requirements set out in this section.

(1) The reserve account is primarily used to meet the major capital expenditure needs of a project. It is expected that the reserve account should rarely have to be used to meet any non-capital expenditure needs of a project; however, the District Director may approve such uses when warranted in unusual circumstances.

(2) Effective as of _____ (date) _____ 60 DAYS AFTER THE PUBLICATION OF THE FINAL RULE, reserve accounts will be required to be placed in a supervised bank account. The provisions set out in Subpart A of Part 1902 of this chapter will apply.

(3) The borrower will initiate monthly deposits in this project account, preferably an interest bearing account, starting the same month the first loan payment is due FmHA. As projects age, the required Reserve Account level may be adjusted to meet anticipated "Life-cycle" needs, including equipment and facility replacement costs, by amending the loan agreement/resolution. Reserve accounts shall be subject to the following:

(i) Immediately after paying each installment for the orderly retirement of the FmHA loan, as provided in the borrower's promissory note, required reserve installments shall be transferred to the reserve account at the monthly rate stipulated by the borrower's loan agreement or resolution. Monthly transfers will continue until the account reaches the total amount specified in the loan agreement or resolution. Monthly transfers shall be resumed the month following withdrawals that decrease the reserve account balance below its required level until it is restored to the specified total minimum sum.

(ii) Reserve account funds not immediately needed for authorized purposes may be invested in saving certificates issued by a Federal Agency or invested in readily marketable obligations of the United States Treasury Department; however, the borrower must demonstrate that such funds are still subject to the supervised bank account provisions set out in subpart A of part 1902 of this chapter.

(iii) The Agency encourages borrower's to establish interest bearing reserve accounts; however, the borrower may choose whether to deposit reserve account funds in an interest or non-interest bearing account. If reserve funds are deposited in an interest bearing account, the interest earnings may be used to meet the monthly installments to the reserve account and/or to meet a modified and higher reserve level established periodically by an FmHA approved amendment to the borrower's loan agreement or resolution. Such amendment may be made to build reserve for scheduled replacement of depreciable property items in addition to general reserve requirements.

(iv) The reserve account withdrawal and verification policies are set out in subpart A of part 1902 of this chapter. Any withdrawal from the reserve account should be recorded on a withdrawal format for tracking and reconciliation. Authorized purposes are:

(A) To meet payments due on the loan obligations in the event the amount for debt service is not sufficient for that purpose.

(B) To pay costs of repairs or replacements to the housing, furnishings or equipment, or shortfalls of current expenses. Withdrawal for planned authorized purposes should be approved in advance during the annual budget approval process. Annual budgets will include realistic routine income and expense levels to minimize use of the reserve for routine expenses (operating deficits).

(C) To make improvements to the housing project without creating new living units or to retrofit units to make them accessible to the physically handicapped.

(D) For other purposes desired by the borrower, which in the judgment of the Government will promote the loan purposes, strengthen the security, or facilitate, improve, or maintain the orderly collection of the loan without jeopardizing the loan or impairing the adequacy of the security.

(E) To pay a return on investment at the end of the borrower's project operating year, provided that after such disbursements the amount in the reserve account will not be less than that required by the loan agreement or resolution to be accumulated by that time minus any authorized withdrawals, and the amount in the reserve account will likely not fall below that required to be accumulated during the next 12 months.

(*1*) In the case of borrowers operating on a limited profit basis, to pay a return on the borrower's initial investment as identified in the loan agreement or resolution.

(*2*) In the case of borrowers operating on a full profit basis, to pay an annual return as specified in the borrower's loan agreement or resolution.

(v) Any amount in the reserve account which exceeds the total sum specified in the loan agreement or resolution may be transferred to the general operating account for the authorized purposes only when it is agreed between the borrower and the FmHA to be in excess of the requirement, and there is a specified need for the excess funds. However, the District Director may direct the excess sum to be retained in the reserve account when determined necessary to protect the Government's security interest, including a "trust fund" to provide future tenant or member subsidy when the current subsidy agreement(s) expires.

(vi) Funds in the reserve account may be used for purposes in accordance with this subpart. The borrower will request withdrawal of reserve funds in a written or confirmed manner. The District Director will provide written authorization, in a timely manner, to the borrower for any authorized withdrawal of funds by the use of a letter before the borrower actually withdraws any funds. Any conditions for approval will be indicated in the letter. The District Director may post-approve reimbursement of the emergency use of general operating account funds from the reserve account if they were used for authorized purposes, and their expenditure would have been approved had a request for approval been submitted prior to the expenditure. The borrower must provide documented evidence showing the actual amount and use of funds before the post-approval action.

(vii) The borrower and the FmHA may develop systems to record deposits and withdrawals in the reserve account and to perform reconciliation of the account to determine the correct account balance.

* * * * *

Dated: July 17, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-20814 Filed 8-31-92; 8:45 am]

BILLING CODE 3410-07-M

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7 CFR Part 1944

RIN 0575-AA92

Housing Application Packaging Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend the Agency's policies and procedures governing the administration of Housing Application Packaging Grants (HAPG). This action is necessary to comply with the Cranston-Gonzalez Affordable Housing Act of 1990, which allows private and public nonprofit organizations to participate as grant recipients to package housing applications in targeted underserved areas and colonias. The agency's proposal will result in reimbursing qualified organizations for the costs of preparing application for housing under certain agency housing programs.

DATES: Comments must be received on or before November 2, 1992.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agricultural Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Betsy McDaniel, Senior Loan Specialist, Single Family Housing, Farmers Home Administration, U.S. Department of Agriculture, room 5346, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 690-4209

SUPPLEMENTARY INFORMATION: This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of $100 million or more. There is no major increase in the cost or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions, or significant adverse effects on competition, employment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion

Section 709 of the Cranston-Gonzalez National Affordable Housing Act provides for grants to public and private non-profit agencies to promote the development of affordable housing in designated counties and colonias. The designated counties are defined by the following criteria: (a) twenty percent or more of the population is at or below poverty level and (b) ten percent or more of the occupied housing units are substandard. These grants cannot exceed customary and reasonable costs of preparing an application for a loan under sections 502, 504, 514, 515, or 524, or a grant under section 533. Under Sections 514 and 515, a portion of the costs will come from loan funds as well as grant funds. Grant recipients will have to complete an application packaging training certification course given by FmFA each year in order to be qualified to submit application packages. Grantees will be reimbursed for the complete loan and grant packages submitted. State Directors will determine how many of each type of loan can be feasibly processed in each designated county. This number will be based on the State's allocation and staffing resources to process the loans

After sufficient packages are received, the State Director may stop the availability of HAPG funds in a particular county. FmHA will also make additional conforming amendments for other rules contained in 7 CFR at the final rule stage to reflect the addition of the program and any necessary changes.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Public Law 96–354), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

Paperwork Reduction Act

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980. Public reporting burden for this collection of information is estimated to average 3 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in section 2 of the E.O

Programs Affected

The Catalog of Federal Domestic Assistance programs affected by this action are:

10.405 Farm Labor Housing Loans and Grants
10.410 Low-Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low-Income Housing Repair Loans and Grants
10.433 Rural Housing Preservation Grants

Intergovernmental Consultation

For the reason set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, 10.410 Low-Income Housing Loans and 10.417 Very Low-Income Housing Repair Loans and Grants are excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials. All other programs affected by this program are included in this process.

List of Subjects in 7 CFR Part 1944

Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Migrant labor, Nonprofit organizations, Reporting and recordkeeping requirements, Rural housing.

Therefore, as proposed, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart B—Housing Application Packaging Grants

2. Subpart B of part 1944 is added to read as follows:

Subpart B—Housing Application Packaging Grants

Sec.
1944.51 Objective.
1944.52 Definitions.
1944.53 Grantee eligibility.
1944.54–1944.61 [Reserved]
1944.62 Authorized representative of the applicant.
1944.63 Authorized use of grant funds.
1944.64–1944.65 [Reserved]
1944.66 Administrative requirements.
1944.67 Ineligible activities.
1944.68 [Reserved]
1944.69 FmHA point of contact.
1944.70 Targeting of HAPG funds to States.
1944.71 Term of grant.
1944.72 Application packaging orientation.
1944.73 Application package submission.
1944.75 Exception authority.
1944.76–1944.100 [Reserved]
Exhibit A—[Reserved]
Exhibit B—Housing Application Packaging Grants (HAPG) Fee Processing
Exhibit C—Requirements for Housing Application Packages
Exhibit D—Designated Counties for Housing Application Packaging Grants

Subpart B—Housing Application Packaging Grants

§ 1944.51 Objective.

This subpart states the policies and procedures for making grants under section 509 of the Housing Act of 1949, as amended (42 U.S.C. 1479). Grants reimburse eligible organizations for part or all of the costs of conducting, administering, and coordinating an effective housing application packaging program in colonias and designated counties. Eligible organizations will aid very low- and low-income individuals and families in obtaining benefit from Federal, State, and local housing progams. The targeted groups are very low- and low-income families without adequate housing who will receive priority for recruitment and participation and nonprofit organizations able to propose rental or housing rehabilitation assistance benefitting such families. These funds are available only in the areas defined in Exhibit D of this subpart. Participants will assist very low- and low-income families in solving their housing needs. One way of assisting is to package single family housing applications for families wishing to buy, build, or repair houses for their own use. Another way is to package applications for organizations wishing to develop rental units for lower income families. The intent is to make Farmers Home Administration (FmHA) housing assistance programs available to very low- and low-income rural residents in colonias and designated counties. FmHA will reimburse eligible organizations packaging loan/grant applications without discrimination because of race, color, religion, sex, national origin, age, familial status, or handicap if such an organization has authority to contract.

§ 1944.52 Definitions.

References in this subpart to County District, State, National and Finance Offices, and to County Supervisor, District Director, State Director, and Administrator refer to FmHA offices and officials and should be read as prefaced by FmHA. Terms used in this subpart have the following meanings:

Colonias. As defined in Exhibit C of subpart L of part 1940 of this chapter.

Complete application package (hereafter called package). The package submitted to the appropriate FmHA office which is considered acceptable in accordance with Exhibit C of this subpart.

Cost reimbursement. Amount determined by the Administrator that equals the customary and reasonable costs incurred in preparing an application package for a loan or grant. These amounts are included in Exhibit B of this subpart.

Designated counties. These counties are listed in Exhibit D of this subpart. Using the most recent published census data, the counties meet the following criteria:

(1) Twenty percent or more of the county population is at or below the poverty level; and

(2) Ten percent or more of the occupied housing units are substandard.

Organization. Any of the following entities which are legally authorized to work in designated counties and/or colonias and are:

(1) A State, State agency, or unit of general local government; or

(2) A private nonprofit organization or corporation that is owned and controlled by private persons or interests, is organized and operated for purposes other than making gains or profits for the corporation and is legally precluded from distributing any gains or profits to its members.

Packager. Any eligible organization which is reimbursed with Housing Application Packaging Grants (HAPG) funds.

Technical assistance. Any assistance necessary to carry out housing efforts by or for very low- and low-income individuals/families to improve the quality and/or quantity of housing available to meet their needs. Such assistance must include but is not limited to:

(1) Contacting and assisting very low- and low-income families in need of adequate housing by:

(i) Implementing an organized outreach program using available media and personal contacts;

(ii) Explaining available housing programs and alternatives to increase the awareness of very low- and low-income families and to educate the community as to the benefits from improved housing;

(iii) Assisting very low- and low-income families in locating adequate housing; and

(iv) Developing and packaging loan/grant applications for new construction, and/or rehabilitation, or repair of existing housing.

(2) Contacting and assisting eligible applicants to develop Multi-Family Housing loan and/or grant applications for new construction, rehabilitation or repair to serve very low- and low-income families.

§ 1944.53 Grantee eligibility.

An eligible grantee is an organization as defined in § 1944.52 of this subpart and has received a current "Certificate of Training" pertaining to the type of application being packaged. In addition, the grantee must:

(a) Have the financial, legal and administrative capacity to carry out the responsibilities of packaging housing applications for very low- and low-income applicants. To meet this requirement it must have the necessary background and experience with proven ability to perform responsibly in the field of housing application packaging, low-income housing development, or other business or administrative ventures which indicate an ability to perform responsibly in this field of housing application packaging.

(b) Legally obligate itself to administer grant funds, provide adequate accounting of the expenditure of such funds, and comply with FmHA regulations.

(c) If the organization is a private nonprofit corporation, be a corporation that:

(1) Is organized under State and local laws.

(2) Is qualified under section 501(c)(3) of the Internal Revenue Code of 1988.

(3) Has as one of its purposes assisting very low- and low-income families to obtain affordable housing.

§§ 1944.54–1944.61 [Reserved]

§ 1944.62 Authorized representative of the applicant.

FmHA will deal only with authorized representatives designated by the applicant. The authorized representatives must have no pecuniary interest in any of the following, as they would relate in any way to the HAPG: the award of any engineering, architectural, management, administration, or construction contracts; purchase of the furnishings, fixtures or equipment; or purchase and/or development of land.

§ 1944.63 Authorized use of grant funds.

Grant funds may only be used to reimburse a packager for delivered packages. Payment will be made for each complete package received and accepted in accordance with Exhibit C of this subpart.

§§ 1944.64–1944.65 [Reserved]

§ 1944.66 Administrative requirements.

The following policies and regulations apply to grants made under this subpart:

(a) Grantees must comply with the nondiscrimination regulation, subpart E of part 1901 of this chapter, which states that no person in the United States shall, on the grounds of race, color, national origin, sex, religion, familial status, handicap, or age, be excluded from participating in, be denied the benefits of, or be subject to discrimination in connection with the use of grant funds and all provisions of the Fair Housing Act of 1988.

(b) The policies and regulations contained in subpart S of part 1940 of this chapter apply to grantees under this subpart.

(c) The policies and regulations contained in subpart Q of part 1940 of this chapter apply to grantees under this subpart.

(d) Grantees should be aware of the policies and regulations contained in subpart G of part 1940 of this chapter. They will supply needed information requested by the local FmHA office in connection with the loan or grant application.

(e) The grantee will retain records for three years from the date Standard Form (SF) 269A, "Financial Status Report (Short Form)" is submitted. These records will be accessible to FmHA and other Federal officials in accordance with 7 CFR part 3015.

(f) Annual audits will be completed if the grantee has received more than $25,000 of Federal assistance in the year in which HAPG funds were received. These audits will be due 13 months after the end of the fiscal year in which funds were received.

(1) States, State agencies, or units of general local government will complete an audit in accordance with 7 CFR parts 3015 and 3016 and OMB Circular A–128.

(2) Nonprofit organizations will complete an audit in accordance with 7 CFR part 3015 and OMB Circular A–133.

(g) Performance reports, as required, will be submitted in accordance with 7 CFR part 3015.

§ 1944.67 Ineligible activities.

The packager may not charge fees or accept compensation or gratuities directly or indirectly from the very low- and low-income families being assisted under this program. The packager may not represent or be associated with anyone else, other than the applicant, who may benefit in any way in the

proposed transaction. If the packager is compensated for this service from other sources, then the packager is not eligible for compensation from this source except as permitted by FmHA. Grantees who are funded to do Self-Help Housing, may not be reimbursed for packaging applications for participation in the Self-Help Housing effort.

§ 1944.68 [Reserved]

§ 1944.69 FmHA point of contact.

Grantees must submit packages to the appropriate FmHA office serving the designated county and/or colonias. Packages for Single Family Housing loans and grants are submitted to the appropriate County Office. All other packages are submitted to the appropriate District Office. The applicable forms required to develop a complete application package can be obtained in any District or County Office. Packagers should coordinate their packaging activity with the appropriate District and County Offices.

§ 1944.70 Targeting of HAPG funds to States.

(a) HAPG funds will be distributed administratively by the Administrator to achieve the success of the program. Allocations will be distributed to States as set forth in Attachment 2 of exhibit A of subpart L of part 1940 of this chapter.

(b) The State Director will determine based on the housing funds available and the personnel available, how many applications can be processed for each program during the fiscal year in each FmHA office serving a designated county and/or colonias. The number of applications will be published in the advertisement required under § 1944.72 of this subpart.

§ 1944.71 Term of grant.

(a) For Single Family Housing loans and grants, HAPG funds will be specifically available for designated counties. Packages may be submitted after the annual housing application packaging training is held. The grant period will end when sufficient packages are received for each designated county or colonia or on September 30 of the fiscal year, whichever is earlier.

(b) For Multi-Family Housing loans and grants, HAPG funds will be available for designated areas or colonias to the extent specified in the State Director's public notice. Preapplications approved in one fiscal year, for which grant funds were obligated, may have the balance disbursed in a later fiscal year when the application is submitted and approved.

§ 1944.72 Application packaging orientation.

FmHA approval officials will orient and train organizations on how to package. A newspaper advertisement will be published by FmHA offices serving designated counties and/or colonias after October 1. The advertisement will announce that application packaging services are being requested and specify the date of the certification training. All eligible organizations may attend this training. This date will be no more than 30 days after the advertisement appears in the newspaper and no later than December 31 of any year. The announcement will include the estimated number of packages needed by loan type, i.e., single family, multi-family, etc. Exhibit A of this subpart (available in any FmHA office) is an example of an appropriate announcement. "Certificates of Training" as required under § 1944.53 of this subpart will be signed by the State Director and given after completion of the training. Efforts will be made by the appropriate FmHA office to complete this training process and certify packagers as quickly as possible. Grantees must attend this training each year in order to quality for assistance.

§ 1944.73 Application package submission.

(a) When submitting their first complete application package to an FmHA office, in addition to the item in paragraph (b) of this section and the information set forth in Exhibit C of this subpart, the organization must submit the following. A file of these documents will be established in the FmHA office and retained in accordance with FmHA Instruction 2033–A (available in any FmHA office).

(1) Proof of their nonprofit status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986 or of their existence as a State agency or unit of general local government legally authorized to work in the designated county and/or colonias. If the FmHA approval official is in doubt about the legal status of the organization, the evidence will be sent to the State Director. The State Director may, if needed, submit the above documents with any comments or questions to the Office of General Counsel for an opinion as to whether the applicant is a legal organization of the type required by these regulations.

(2) An original and copy of Form FmHA 400–1, "Equal Opportunity Agreement," and FmHA 400–4, "Assurance Agreement."

(3) A copy of a current "Certificate of Training" pertaining to the type of application package submitted.

(b) All packages must contain a signed statement which states, "Neither the organization nor any of its employees have charged, received or accepted compensation from any source other than FmHA for packaging this application and are not associated with or represent anyone other than the applicant in this transaction."

(c) An SF 270, "Request for Advance or Reimbursement" will be submitted with each application package for the amount authorized for the specific loan type in Exhibit B of this subpart.

(d) The FmHA approval official will review each application package for completeness, accuracy and conformance to program policy and regulations. Cost reimbursement will be made in accordance with Exhibit B of this subpart (available in any FmHA office). Packagers that submit incomplete packages for Sections 502 and 504 loans/grants will be sent a letter within 5 working days after submission of the package advising of additional information needed. Payment will be held until all the information is received.

(e) Submissions for sections 514, 515, and 524 loans and grants will be reviewed and, if incomplete, a letter sent within 15 working days advising of additional information required.

(f) An SF 269A will be submitted within 15 days of the end of the fiscal year.

§ 1944.74 Debarment or suspension.

Certified packagers whose actions or acts warrant they not be allowed to participate in the program are to be investigated in accordance with paragraph § 1940.606(c) of FmHA Instruction 1940–M (available in any FmHA office).

§ 1944.75 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if the Administrator determines that the Government's interest would be adversely affected. The Administrator will exercise this authority only at the request of the State Director and recommendation of the Assistant Administrator, Housing. Requests for exceptions must be in writing by the State Director and supported with documentation to explain the adverse affect on the Government's interest and/or impact on the applicant, borrower, or

community, proposed alternative course of action, and show how the adverse affect will be eliminated or minimized if the exception is granted.

§§ 1944.76–1944.100 [Reserved]

Exhibits to Subpart B

Exhibit A—[Reserved]

Exhibit B—Housing Application Packaging Grants (HAPG) Fee Processing

The Farmers Home Administration (FmHA) approval official will execute and distribute Form FmHA 1940–1, "Request for Obligation of Funds," in accordance with the Forms Manual Insert (FMI). HAPG funds will be used for the fees except as otherwise noted in sections 514 and 515. Funds for all loan and/or grant application packages will be paid as follows.

I. For all Single Family Housing loans. (Sections 502, 504, and 514 ("on farm" labor housing only) of the Housing Act of 1949) checks will be ordered when complete application packages as defined in § 1944.73 and Exhibit C of this subpart are received. The fees are as follows:

(A) Section 502 Single Family Housing Loans—$300

(B) Section 504 Rural Housing Loans and Grants—$300

(C) Section 514 On Farm Labor Housing Loans—$300

II. For all multi-family housing loans and grants (Sections 514/516, 515, 524, and 533 of the Housing Act of 1949) the entire amount of the fee coming from HAPG funds will be obligated when the packager has met all the requirements of the preapplication stage, however, payments will be made in accordance with the following schedules:

(A) Sections 514/516 Farm Labor Housing Loans and Grants

"Off" Farm Labor Housing loans/grants—fees paid in accordance with the schedule for Section 515 Rural Rental Housing.

(B) Section 515 Rural Rental Housing Loans

(1) The scale for packaging fees is based on the percentage of the total development cost as follows:

Up to $400,000: 1.6 percent.

For additional amounts between:

$400,001 and $800,000: add 1.2 percent.

$800,001 and $1,200,000: add 1.0 percent.

$1,200,001 and $1,600,000: add .7 percent.

$1,600,001 and $2,000,000: add .5 percent.

Over $2,000,001: No additional amount.

(2) Twenty-five percent paid from HAPG funds when Form AD–622, "Notice of Preapplication Review Action," is sent inviting submission of a complete application.

(3) Twenty percent paid from HAPG funds when a complete application is filed including plans and specifications.

(4) The 55 percent balance paid when the loan is approved. Funds for this 55 percent will be drawn from loan funds in accordance with § 1944.212(j) of subpart E of part 1944 of this chapter for section 515 and § 1944.158(i) of subpart D of part 1944 of this chapter for section 514.

(C) Section 524 Rural Housing Site Loans

Total fee is 1 percent of the loan amount payable in two installments.

(1) Thirty percent paid after the State Director's review of the preapplication under paragraph XI, A of subpart G of part 1822 of this chapter (FmHA Instruction 444.8).

(2) Seventy percent paid upon the completion and submission of the docket in accordance with paragraph XI, C of subpart G of part 1822 (FmHA Instruction 444.8).

(D) Section 533 Housing Preservation Grants

Total fee is 2 percent of the grant amount paid in two installments.

(1) Forty percent will be paid when the Form AD–622, inviting submission of a complete application, is sent.

(2) Sixty percent will be paid after grant closes.

Exhibit C—Requirements for Housing Application Packages

I. A package will consist of the following requirements for the respective program.

A. Section 502—a complete application package will be submitted in accordance with the requirements of Exhibit A of subpart A of part 1944 of this chapter. The package must also include the following:

Form FmHA 410–9—"Statement Required by the Privacy Act."

Form FmHA 1910–11—"Applicant Certification, Federal Collection Policies for Consumer or Commercial Debts."

Form FmHA 1944–3—"Budget and/or Financial Statement."

B. Section 504—Complete application packages will be submitted in accordance with the requirements of Exhibit C of subpart J of part 1944 of this chapter. The package must include the forms listed in paragraph I. A. of this exhibit and the following:

Form FmHA 410–4—"Application for Rural Housing Assistance (Non-Farm Tract)."

Form FmHA 1910–5—"Request for Verification of Employment."

Form FmHA 1944–12—"Rural Housing Loan Application Package."

Evidence of ownership in accordance with § 1944.461(a) of subpart J of part 1944 of this chapter.

Cost estimates or bid prices for removal of health or safety hazards in accordance with § 1944.463(a) of subpart J of part 1944 of this chapter.

C. Section 514/516—Complete application packages will be submitted in accordance with Exhibit A–1 of subpart D of part 1944 of this chapter.

D. Section 515—Complete application packages will be submitted in accordance with the requirements of Exhibit A–7 of subpart E of part 1944 of this chapter.

E. Section 524—Complete application packages will be submitted in accordance with paragraph XI, A of subpart G of part 1822 of this chapter (FmHA Instruction 444.8). After Farmers Home Administration's review and as instructed, the application should be completed in accordance with paragraph XI, C of subpart G of part 1822 of this chapter (FmHA Instruction 444.8).

F. Section 533—Complete application packages will be submitted in accordance with the requirements of subpart N of part 1944 of this chapter.

Exhibit D—Designated Counties for Housing Application Packaging Grants

Alabama Counties (30)

Barbour	Lee
Bibb	Lowndes
Bullock	Macon
Butler	Marengo
Choctaw	Monroe
Clarke	Perry
Clay	Pickens
Conecuh	Pike
Coosa	Randolph
Crenshaw	Russell
Dallas	Sumter
Greene	Talladega
Hale	Tuscaloosa
Henry	Washington
Lawarence	Wilcox

Alaska (1)

Palmer

Arizona (2)

Apache	Conconino

Arkansas (22)

Calhoun	Lafayette
Chicot	Lee
Columbia	Lincoln
Crittenden	Madison
Cross	Mississippi
Desha	Monroe
Jefferson	Nevada

Newton
Phillips
Scott
Searcy

Conejos
Costilla
Dolores

Franklin
Gadsden
Glades
Hamilton
Hardee
Hendry

Appling
Atkinson
Baker
Brooks
Bulloch
Burke
Calhoun
Camden
Candler
Charlton
Clay
Clinch
Crisp
Decatur
Dodge
Dooly
Early
Echols
Emanuel
Evans
Gilmer
Glascock
Grady
Greene
Hancock
Irwin
Jasper
Jefferson
Jenkins
Johnson
Lanier
Laurens
Liberty
Macon

Madison

Alexander
Pope

Adair
Allen
Bath
Bell
Breathitt
Breckinridge
Butler
Carter
Casey
Christian
Clay
Clinton
Cumberland
Edmonson
Elliott
Estill
Fleming
Floyd
Garrard
Grayson

St. Francis
Stone
Union
Woodruff

Colorado (5)

Huerfano
Saguache

Florida (11)

Jackson
Jefferson
Liberty
Madison
Taylor

Georgia (68)

Marion
McDuffie
McIntosh
Meriwether
Miller
Mitchell
Montgomery
Morgan
Peach
Pulaski
Putnam
Quitman
Randolph
Schley
Screven
Seminole
Stewart
Sumter
Talbot
Taliaferro
Taylor
Telfair
Terrell
Thomas
Toombs
Treutlen
Turner
Warren
Washington
Webster
Wheeler
Wilcox
Wilkes
Worth

Idaho (1)

Illinois (3)

Pulaski

Kentucky (58)

Green
Harlan
Hart
Henry
Jackson
Johnson
Knott
Knox
Larue
Laurel
Lawrence
Lee
Leslie
Letcher
Lewis
Lincoln
Madison
Magoffin
Marion
Martin

McCreary
Menifee
Monroe
Morgan
Owen
Owsley
Perry
Powell
Pulaski

Acadia
Assumption
Avoyelles
Bienville
Catahoula
Clairborne
Concordia
De Soto
East Carroll
East Felicia
Evangeline
Franklin
Iberville
Madison

Washington

Clearwater

Adams
Amite
Attala
Benton
Bolivar
Calhoun
Carroll
Chickasaw
Choctaw
Clairborne
Clarke
Clay
Coahoma
Copiah
Covington
Franklin
Greene
Grenada
Holmes
Humphreys
Issaquena
Jasper
Jefferson
Jefferson Davis
Kemper
Lafayette
Lauderdale
Leake
Leflore
Lincoln

Bollinger
Carter
Douglas
Mercer
New Madrid
Oregon
Ozark
Pemiscot

Big Horn
Blaine

Catron
Dona Ana
Guadalupe

Robertson
Rockcastle
Rowan
Russell
Washington
Wayne
Whitley
Wolfe

Louisiana (26)

Morehouse
Natchitoches
Pointe
Coupee
Red River
Richland
Sabine
St. Helena
St. Landry
Tangipahoa
Tensas
Union
West Feliciana

Maine (1)

Minnesota (2)

Mahnomen

Mississippi (59)

Lowndes
Madison
Marion
Marshall
Monroe
Montgomery
Neshoba
Newton
Noxubee
Oktibbeha
Panola
Perry
Pike
Quitman
Scott
Sharkey
Simpson
Smith
Sunflower
Tallahatchie
Tate
Tunica
Walthall
Washington
Wayne
Wilkinson
Winston
Yalobusha
Yazoo

Missouri (15)

Reynolds
Ripley
Scotland
Shannon
Texas
Washington
Wayne

Montana (4)

Glacier
Petroleum

New Mexico (12)

Luna
McKinley
Mora

Rio Arriba
San Juan
San Miguel

Socorro
Taos
Torrance

North Carolina (28)

Ashe
Beaufort
Bertie
Bladen
Chowan
Columbus
Duplin
Edgecombe
Franklin
Greene
Halifax
Hertford
Hoke
Hyde

Jones
Madison
Martin
Northampton
Pender
Perquimans
Pitt
Robeson
Sampson
Tyrrell
Vance
Warren
Washington
Yancey

North Dakota (3)

Benson
Rolette

Sioux

Ohio (2)

Adams

Pike

Oklahoma (7)

Adair
Atoka
Choctaw
McCurtain

Okfuskee
Pushmataha
Sequoyah

Puerto Rico (23)

Adjuntas
Aguadilla
Barranquitas
Bayamon
Caguas
Camuy
Ciales
Coamo
Corozal
Fajardo
Gueyama
Humacao

Jayuya
Juana Diaz
Lares
Mayagues
Morovis
Rio Grande
San German
San Lorenzo
San Sebastian
Utuado
Yauco

South Carolina (29)

Allendale
Bamberg
Calhoun
Clarendon
Colleton
Darlington
Dillon
Edgefield
Fairfield

Florence
Georgetown
Hampton
Jasper
Lee
Marion
Marlboro
Sumter
Williamsburg

South Dakota (11)

Bennett
Buffalo
Charles Mix
Corson
Dewey
Faulk

Jackson
Mellette
Shannon
Todd
Ziebach

Tennessee (28)

Bledsoe
Campbell
Claiborne
Clay
Cocke
Crockett
Cumberland
DeKalb
Fayette
Fentress
Grainger
Grundy
Hancock
Hardeman

Hardin
Haywood
Jackson
Johnson
Lake
Lauderdale
Lewis
Morgan
Overton
Pickett
Scott
Sequatchie
Tipton
Union

Texas (58)

Atascosa
Bailey
Bee
Brooks
Caldwell
Cameron
Castro
Cochran
Crosby
Dawson
De Witt
Dickens
Dimmit
Duval
Edwards
El Paso
Falls
Floyd
Frio
Gaines
Glasscock
Gonzales
Crimes
Hale
Hidalgo
Houston
Hudspeth
Jeff Davis
Jim Hogg

Jim Wells
Karnes
Kenedy
Kinney
Kleberg
La Salle
Leon
Lynn
Madison
Marion
Maverick
Medina
Menard
Newton
Parmer
Presidio
Real
Reeves
Robertson
San Augustine
San Jacinto
Starr
Terry
Uvalde
Walker
Webb
Willacy
Zapata
Zavala

Utah (2)

San Juan

Wayne

Virginia (12)

Accomack
Brunswick
Charlotte
Cumberland
Franklin
Greensville

Lee
Mecklenburg
Northampton
Scott
Southampton
Surry

West Virginia (11)

Doddridge
Gilmer
Grant
Hardy
Lincoln
McDowell

Mingo
Monroe
Pendleton
Summers
Webster

Dated: July 21, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-20815 Filed 8-31-92; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0773]

Applications Under Regulation H and Regulation Y

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board's Regulation H and Regulation Y establish procedures and provide guidance for obtaining Board approval for various transactions that are subject to Board review under the Federal Reserve Act, the Bank Holding Company Act, the Bank Merger Act, the Change in Bank Control Act and various other statutes. The Board periodically reviews these procedures in an attempt to reduce burden associated with these procedures and to ensure that these processes function as efficiently as possible consistent with statutory requirements. As a result of this review, on August 12, 1992, the Board approved several proposals to change certain applications procedures to improve efficiency and reduce regulatory burden in the applications process. These changes include establishing certain procedures to limit extension of the pre-acceptance period for applications; offering prospective applicants the opportunity to submit a pre-filing notice of intent to file an application; eliminating the stock redemption notice requirement for bank holding companies that are and, following the redemption would remain, "well capitalized" on a consolidated basis and in generally satisfactory condition; expanding the authority of Reserve Banks to process all delegable applications without Board staff review; modifying the Board's delegation rules pertaining to competition and market concentration; reducing redundant post-acceptance processing of Board action cases; increasing the monitoring of cases requiring extended processing; and inviting public comment on a proposal to establish a general consent procedure under section 24A of the Federal Reserve Act for investments by state member banks in bank premises.

In addition to taking these steps, the Board invites public comment on any other ways in which the burden on applicants associated with the various application and notice procedures in the Board's regulations may be reduced, consistent with the Board's responsibilities and obligations under the relevant statutes.

DATES: Comments must be received by October 28, 1992.

ADDRESSES: Comments, which should refer to Docket No. R-0773, may be mailed to the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, to the attention of Mr. William W. Wiles, Secretary; or delivered to the Board's Mail Room between 8:45 a.m. and 5:15 p.m., or to the Board's Security Control Room outside of those hours. Both the Mail Room and the Security Control Room are accessible from the courtyard entrance of 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room B-1122 between 9 a.m. and 5 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452-3583), Robert D. Frierson, Managing Senior Counsel (202/452-3711), or Terence F. Browne, Attorney (202/452-3707), Legal Division; or Sidney M. Sussan, Assistant Director (202/452-2638), Beverly Evans, Supervisory Financial Analyst (202/452-2573), or Nicholas A. Kalambokidis, Supervisory Financial Analyst (202/452-3830), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Federal Reserve System (System), has taken a number of significant steps over the past two decades to improve the overall efficiency of its processing of applications. The Board has recently reviewed its applications procedures again, and has taken a number of additional steps, described below, to reduce the burden associated with these procedures. The Board will implement the changes described in this notice immediately.

In addition, the Board invites comment on any additional steps the Board may take to improve the efficiency and increase the effectiveness of the applications process. In particular, the Board invites public comment on any other steps that the Board should consider for revising or streamlining the applications and notice procedures under the Board's rules to reduce the burden on applicants of these procedures without impairing the Board's ability to fulfil its statutory obligations in reviewing these proposals.

Explanation of Board Actions to Date to Reduce Regulatory Burden

Overview of Applicotions Processing

The System has, for the past 15 years, met the Board's publicly articulated goal of processing 90 percent or more of System-wide applications within a self-imposed processing deadline (currently, 60 days from acceptance). During that time, more than 35,000 applications and notices have been processed, including approximately 10,000 nonbanking activity applications and notices, approximately 8,300 bank holding company formation applications, and 5,800 bank acquisition applications. The number of applications and notices

processed each year increased during the late 1970s and early 1980s to a peak of approximately 3,000 in 1983. Annual volumes declined in the mid 1980s, but then increased back up to the 3,000 level in 1991.

Over the past several years, approximately 14 percent of applications were processed for Board action, 52 percent were processed under delegated authority with Board staff review, and the remaining 34 percent were processed under delegated authority without Board staff review. The average post-acceptance processing time per application generally has declined to a low of 33 days in 1991. The average processing time for delegated cases has been significantly below the average processing time of the typically more complex Board action cases. In 1991, the average processing time for delegated cases was 28 days, compared to 50 days for Board action cases.[1] In comparison, in 1986 the average post-acceptance processing time per application was 30 days: the average processing time was 32 days for delegated cases and 71 days for Board action cases.

Based on its experience in reviewing proposals under the Federal banking laws, the Board has made a number of revisions to the applications process designed to improve the efficiency of the process and reduce burdens on interested parties to the process. Reserve Banks have been delegated substantial authority; application forms have been streamlined consistent with the Paperwork Reduction Act; unnecessary application procedures have been eliminated and notice procedures have been substituted for applications where appropriate under the statutory framework; information requirements for certain activities have been reduced; Board standards and policies have been more widely disseminated; internal time guidelines for reviewing and acting on proposals have been voluntarily imposed by regulation, and, after experience, substantially shortened. These efforts have resulted in the ability of the System to process more quickly a large number of increasingly complex applications with staffing levels that have remained relatively constant.

On April 22, 1992, as part of a broad review of the Board's regulations, policies, and reports, the Board requested that staff conduct a review of various aspects of the applications process. This review has resulted in several final and proposed changes to the Board's applications rules. For example, the Board determined to substantially lessen the information required of a state member bank—in satisfactory conditions and with satisfactory community reinvestment and consumer compliance ratings—applying to establish additional branches. In an effort to facilitate acquisitions by nonbank subsidiaries of bank holding companies, the Board also revised Regulation Y to increase the applicability of its expedited applications procedure for small nonbank acquisitions. This revision, which became effective on June 29, 1992, increased the size of acquisitions that could be made after expedited procedures from a maximum of $15 million to a maximum of the lesser of $100 million or 5 percent of the applicant's consolidated assets, subject to certain criteria. The Board also increased the relative size of nonbank assets (from 20% to 50%) that may be acquired by a bank holding company in the ordinary course of business without any prior System approval, and established criteria for determining whether an application under the Bank Holding Company Act may be waived for transactions involving certain bank mergers.[2]

As a result of this review, the Board also requested comment on other proposals to reduce regulatory burden. In particular, on June 29, 1992, the Board published for comment proposed regulatory amendments that would reduce from twice to once the number of times notice must be published in a newspaper of general circulation of the filing, with the Board, of certain applications under the Federal Reserve Act and the Bank Holding Company Act.[3] These amendments, intended to reduce the burden associated with the Board's notice requirements, would have no effect on the length or timing of public comment periods, which currently start when the first notice is published. At the same time, the Board also published for comment a proposed rule that would exempt from the limitations of section 23A of the Federal Reserve Act the transfer of assets and liabilities between affiliated insured depository institutions when such transfer is part of the merger or consolidation of the affiliated institutions.[4] This proposed exemption would be available for transactions requiring the approval of the resulting insured depository's primary regulator under the Bank Merger Act.

As part of the April review, the Board also directed staff to analyze the extent of the information being required in applications, timing considerations and procedures for pre-acceptance review and post-acceptance analysis of applications, standardization of application forms, and procedures for Board monitoring of the status of cases that exceed internal processing guidelines. This analysis had two primary objectives:

(1) To determine whether applications are being processed as efficiently as possible; and

(2) To identify opportunities to increase efficiency and/or reduce regulatory burden on the banking industry without jeopardizing important public policy objectives or the Board's ability to fulfill specific statutory objectives. This review was particularly focused on issues affecting processing time and duplication of effort, and this review resulted in several additional changes to certain applications procedures to improve efficiency, eliminate redundancy and otherwise reduce regulatory burden in the applications process.

Based on the Board's review, the Board has determined to take the following steps.

Change No. 1: Implementation of Certain Procedures to Limit Extension of the Pre-Acceptance Period for Applications

The goal of the pre-acceptance review is to assure that a reasonably complete record on which to base an analysis and supportable action has been established at the inception of the formal processing period. The review is generally conducted by Reserve Bank staff although Board staff, usually at the request of the Reserve Bank, also may participate in pre-acceptance review.

There is a common perception that pre-acceptance processing has resulted in unnecessary delays in the processing of applications. This perception is largely a result of certain conflicting considerations that often exist during the pre-acceptance period. The applicant often elects, or is required, to publicly announce a transaction soon after an agreement which circumscribes the transaction has been reached. From the applicant's perspective, this announcement may signal the beginning of the "processing period", yet the actual submission of the application may not occur for several weeks or even months after the announcement. To a large extent, both the timing and the quality of a submission are within the applicant's control, regardless of efforts the System may make to facilitate the process. Board and Reserve Bank staff, faced with the responsibility of completing processing under a tight time schedule, understandably are reluctant to accept a submitted application until most of the factors requiring the Board's consideration are addressed.

The System has taken a number of steps through the years to attempt to address applicants' concerns with the pre-acceptance process. These efforts include a willingness to accept and review draft applications, periodic reviews and modifications of the application forms, and an "open-door policy" permitting prospective applicants to discuss informally their proposals with Board or Reserve Bank staff.

In an attempt to monitor the timing of pre-acceptance activities, the System has adhered to formal timing guidelines in pre-processing most applications. If an applicant chooses to submit an application in draft, the draft application is to be reviewed for no more than 10 business days, with up to 3 additional business days for complicated applications. At the end of this period, the Reserve Bank must return the application to the applicant with comments. Once a formal application is received, the Reserve Bank has no more than 10 business days to either accept the application for processing, return the application to the applicant as materially deficient, or request additional information from the applicant. If more information is requested, the applicant has 8 business days in which to respond, after which the Reserve Bank has up to 5 business days to review the submission. At this point, the Reserve Bank must either accept the application for processing (under either delegated authority or for Board action) or return it.[5]

The pre-acceptance timing guidelines were last tightened in 1983 from a 13-10-6-day standard to the current 10-8-5-day standard. Given weekends and holidays, the current pre-acceptance process can take up to approximately 34 calendar days to complete if each step requires the maximum number of days.

When organizations are contemplating a large acquisition or a sophisticated proposal, the Reserve Banks often have encouraged the applicant to file a draft application. The Reserve Banks believe that the filing of a draft application in these cases helps both the System and the applicant identify and address potential issues early in the process. Although the filing of a draft application may result in fewer questions being asked during the official pre-acceptance process, such filing may extend the total application processing period.

The Board always has considered draft applications to be an option available to an applicant, but the Board's rules do not require the filing of a draft under any circumstance. In this regard, the Board emphasizes that draft applications are not required for any proposals, and may be filed when an applicant determines in its discretion to do so.

There have been cases in which Reserve Banks have not returned an incomplete application at the end of the pre-acceptance process, and instead have accepted the application after expiration of the time provided in the Board's regulations governing the pre-acceptance process. The Reserve Banks have taken this step generally in an effort to reduce the applicant's burden of refiling the application.

When the Board implemented its regulations establishing a pre-acceptance schedule, the Board indicated that it intended the Reserve Banks to abide by this schedule and to return incomplete applications at the end of the period. The Board has determined to increase monitoring efforts to ensure that the Reserve Banks abide by the pre-acceptance schedule. To address the possibility that an applicant may be able to complete an application if given a brief extension of the pre-acceptance process, the Board believes that an extension of the pre-acceptance review period should be permitted only where the applicant files a written request for such an extension.

Change No. 2: Offering Prospective Applicants the Opportunity to Submit a Pre-Filing Notice of Intent to File an Application

The information used in processing an application comes from four sources: the applicant, the System, other state and federal agencies, and the public. Each application form is intended to enable the System to gather essential information needed to make a reasoned judgment about the proposal. The formal questions in the application form are not intended to limit the applicant's presentation, but are designed to provide a sufficient record in a majority of cases if answered fully and appropriately. The applicant bears the burden of presenting and documenting a case to meet the statutory criteria for approval, and is invited to submit any additional information that may support its proposal.

All applicants use the same application form for the same type of transaction regardless of the condition of the applicant or differences in the structure of the transaction. For example, bank holding company applications to acquire additional banks are filed on a given application form, and all applications to engage in nonbanking activities are filed on another form.

The application forms contain sunset dates and are reviewed and updated periodically through the System review process. The information requested in these forms has been streamlined significantly over the past several years in an attempt to limit requests for extraneous information, less frequently needed information, and information that is otherwise readily available to the System.

At the same time, however, there is some evidence that an applicant's initial submission is becoming, on average, less adequate because of a general increase in the complexity of proposed transactions and because of a lack of focus on emerging critical issues. As a result, a growing volume of information is being requested during Reserve Bank pre-acceptance processing and post-acceptance communications between both Board and Reserve Bank staff and the applicant. Although the reasons for additional information being requested varies, common reasons include:

- Application forms are not designed to request information on issues that may be unique to a particular proposal or that involve certain issues that may vary by proposal but are, nonetheless, significant, such as information regarding CRA performance and programs, risk assessment involving various complex activities, employment agreements, and commitment requirements for proposed nonbanking activities;
- Required follow-up on developments at subsidiaries in less than satisfactory condition or with sub-par CRA performance; and
- Information necessitated by comments or protests on a proposal.

Applicants occasionally provide more information than is needed by the System to process a given application. In some of these cases, the applicant is endeavoring to anticipate possible future questions; in general, however, the additional information is comprised of readily available information.

[1] In 1991, the average processing time for domestic delegated cases that required Board staff review was 29 days, compared to 25 days for domestic delegated cases not requiring Board staff review.

[2] 57 FR 28777, June 29, 1992.

[3] 57 FR 28807, June 29, 1992.

[4] 57 FR 28809, June 29, 1992.

[5] Current procedures do not provide for a second request for information during pre-acceptance processing

In some cases, time and expense can be avoided if the applicant is provided with early feedback on a proposal. Although the draft application is intended to serve as a vehicle for early feedback, in some cases, a pre-filing notice should more effectively achieve the same goals and be less burdensome to the applicant. The submission of a pre-filing notice is entirely voluntary. It would not detract from the applicant's opportunity to file a draft application, although the Board believes that the notice could diminish the need for a draft application.

The pre-filing notice should contain little more than a description of the proposal, and may be communicated to the Reserve Banks in writing or at a face-to-face meeting. After a brief review of the proposal, the Reserve Bank will then discuss with the prospective applicant what, if any, unusual or particular information beyond what is requested in the application form will likely be needed to process the application. This should enable the applicant to better focus on the issues in an application that are likely to be of greatest concern. Accordingly, the Board has determined to offer to prospective applicants the opportunity to submit a pre-filing notice of intent to file an application.

Change No. 3: Elimination of the Stock Redemption Notice Requirement for Bank Holding Companies That are and, Following the Redemption, Would Remain "Well Capitalized" on a Consolidated Basis and in Generally Satisfactory Condition

Bank holding companies currently are required under Regulation Y to submit a written notice before purchasing or redeeming their equity securities if the gross consideration for the purchase or redemption, when aggregated with the net consideration paid by the company for all such purchases or redemptions during the preceding 12 months, is equal to 10 percent or more of the company's consolidated net worth.[6] This notice requirement is a prudential requirement imposed by the Board to monitor the capital levels of bank holding companies, and is not a statutory requirement.

The Board has determined that a bank holding company that is and will continue to be "well capitalized" and in generally satisfactory condition should not be required to file this notice prior to the redemption of its stock. The Board believes that the elimination of this notice requirement for companies that meet the criteria noted above would not compromise safety and soundness concerns.

Change No. 4: Expansion of the Authority of Reserve Banks to Process All Delegable Applications Without Board Staff Review

Upon accepting an application, the System currently has four basic procedures for processing the application:

(1) *Board Action ("Nondelegated action")*—Applications analyzed by both Reserve Bank and Board staff, and presented to the Board for action, normally within a 60-day time frame.

(2) *Delegated Action with Prior Board Staff Review*—Applications analyzed by both Reserve Bank and Board staff, and approved by the Reserve Bank, normally within a 30-day time frame if no delegation criterion is violated.

(3) *Delegated Action without Prior Board Staff Review*—Applications analyzed only by Reserve Bank staff, and approved by the Reserve Bank, normally within a 30-day time frame.

(4) *Delegated Action for Small Nonbank Activities*—Applications involving certain small 4(c)(8) proposals analyzed by Reserve Bank staff, and approved with prior review by Board staff, normally within a 15-day time frame.

The criteria for processing applications under delegated authority are enumerated in the Board's Rules Regarding Delegation of Authority,[7] and allow for Reserve Bank approval unless one or more of the following conditions is present:

(i) A member of the Board has indicated an objection prior to the Reserve Bank's action;

(ii) The Board has indicated that such delegated authority shall not be exercised by the Reserve Bank in whole or in part;

(iii) A written substantive objection to the application has been properly made;

(iv) The application raises a significant policy issue or legal question on which the Board has not established its position;

(v) With respect to BHC formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations:

(A) That upon consummation of the proposal, would control over 30 percent of total deposits in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a post-merger HHI of at least 1800); or

(B) Where divestitures designed to address any substantive anticompetitive effects are not effected on or before consummation of the proposed transaction;

(vi) With respect to nonbank acquisitions, the nonbanking activities involved do not clearly fall within activities that the Board has designated as permissible for bank holding companies under § 225.25(b) of Regulation Y.

As explained above, a subset of applications delegated to Reserve Banks currently may be approved without prior Board staff review. In 1991, 1,034 cases, or 34 percent of all applications processed by the System, were approved under delegated authority without Board staff review. In general, these cases must be "non-complex" and satisfy certain well-established financial and competitive criteria. These criteria were last revised at the end of 1990, at which time the range of proposals eligible for Reserve Bank approval without prior Board staff review was expanded. At the same time, the types of applications that could be processed without Board staff review also was expanded to include applications involving capital note requests, certain investments in bank premises, state member bank mergers involving unaffiliated banks, state bank memberships, change in bank control notifications, and director interlocks under the Management Interlock Revision Act of 1988.

Although each of the three delegated procedures described above allow for Reserve Bank approval, only the second category allows for Reserve Bank approval without concurrent Board staff involvement. In delegated cases that are subject to prior Board staff review, Board and Reserve Bank staff both analyze and review the case, although memoranda are not prepared for the Board because approval authority has been delegated to the Reserve Bank. In delegated cases that are not subject to prior Board staff review, all analysis and review is conducted at the Reserve Bank.

The internal timing guidelines for post-acceptance processing of delegated and Board action cases were last adjusted in 1983. The processing schedule for delegated cases was shortened from 45 days to 30 days and the processing schedule for Board action cases was reduced from 90 days to 60 days.

As discussed above, Reserve Banks over the years have been given greater responsibility in processing applications. Reserve Banks also have been given the authority to process a larger variety of increasingly complex activities and proposals. The Board has determined to broaden the Reserve Banks' responsibilities further by giving the Reserve Banks the authority to process all delegable cases without Board staff review. According to the System's processing trends over the past few years, this change could eliminate the duplication of efforts by the Board and Reserve Bank staffs on approximately half of the total applications and notices processed by the System.

Although the Board believes that some improvement in average processing times will result from streamlining the processing of delegated applications, the Board believes there are two more important benefits that will result. First, a reduction in Board staff involvement should permit closer alignment of Reserve Bank authority with responsibility and should facilitate increased objectivity in measuring performance. Second, streamlining of delegated cases should permit more effective allocation of Board staff resources to work on the larger and more complicated cases that go to the Board, resulting in more efficient and timely processing of these cases. In addition, the Board believes that this change will enable Board staff to more effectively assist with pre-acceptance reviews of cases that are likely to be accepted for Board action, which should facilitate earlier identification of issues and result in fewer post-acceptance requests for information.

Because this change does not expand the types of cases that are delegable, the Reserve Banks essentially will be processing cases in which they have had prior experience. The Board's views on specific policy issues and legal questions which may affect the determination to delegate a case will continue to be communicated to the Reserve Banks through monthly conference calls, periodic meetings and conferences, Supervision and Regulation (SR) letters, and distribution of case memoranda and Board Orders. To ensure that the System's policies and procedures are being applied consistently across the System, Board staff will continue to monitor processing of applications through operational reviews of Reserve Banks, after-the-fact reviews of selected case files, SR letters, conference calls, and System meetings. In addition, Reserve Bank staffs will be expected to continue to consult with Board staff on issues and problems as they arise.

Change No. 5: Modification of the Board's Delegation Rules Pertaining to Competition and Market Concentration

Recent experience indicates that applications not meeting the Board's rules for delegation solely because the combined market share of the merging firms is slightly over 30 percent generally do not raise competitive concerns. Furthermore, in many applications the increase in the HHI is well under 200. For example, an application representing the combination of banks with respective markets shares of 30 percent and 1 percent would result in an increase in the HHI of only 60 points, but would not be a delegable case.[8] Consequently, the Board has determined to increase the market share criterion from 30 percent to 35 percent. Although it is difficult to specify the exact level at which a proposed merger would be viewed as an antitrust violation based on the resulting market share, the Board believes that 35 percent would be a reasonable level and would conform with the Justice Department's treatment of market concentration.[9]

The Board also has determined to modify the delegated processing criterion that an applicant proposing divestitures to meet competitive concerns must complete the divestiture on or before consummation of the proposed transaction. The Board has established its position on the timing of divestitures in several recent Board Orders.[10] The Board has stipulated that applicants may be given up to six months after consummation to complete a divestiture provided that, prior to consummation, the applicant has entered into a binding agreement with another party to acquire the relevant offices. If the divestiture is not accomplished within this time frame, the branches to be divested must be placed with an independent trustee for immediate sale. The Board has determined to modify its criterion for delegated action to reflect this position on competitive divestitures.

With these two changes, the Board's fifth delegation limitation would read as follows:

(v) With respect to bank holding company formations, bank acquisitions or mergers, the proposed transaction involves two or more banking organizations that, upon consummation of the proposal, would control over 35 percent of total deposits (includes 50 percent of thrift deposits) in banking offices in the relevant geographic market, or would result in an increase of at least 200 points in the Herfindahl-Hirschman Index (HHI) in a highly concentrated market (a market with a post-merger HHI of at least 1800).

Change No. 6: Reduction of Redundant Post-Acceptance Processing of Board Action Cases

In processing Board action cases, both the Reserve Bank and Board staff analyze the proposal, recommend action, and prepare memoranda for the Board. The memoranda often are redundant and because the Reserve Bank must prepare its memorandum prior to completion of Board staff memoranda, the Reserve Bank memorandum may contain information that is not as current as the information in Board staff memoranda. In addition, communications between the applicant and the System are occasionally duplicated.

The Board has determined to give the Reserve Banks more discretion to determine the extent of their involvement in the post-acceptance analysis and memoranda writing on Board action cases. The Reserve Banks will continue to receive applications and perform pre-acceptance analysis on all applications. For applications accepted for Board action processing, the Reserve Banks generally will determine the extent of their subsequent involvement. The Board expects that Board staff will request the Reserve Banks to provide analysis for some cases in the same manner that the Reserve Banks currently analyze cases. In other cases, however, the Reserve Banks may elect

[6] 12 CFR 225.4(b).

[7] 12 CFR part 265. The Board recently amended its delegation rules to eliminate certain numerical criteria that restricted a Reserve Bank's authority to act on applications involving: (a) Banking organizations that rank among a state's five largest banking organizations or among the 50 largest banking organizations in the United States; and (b) the acquisition of certain large nonbanking companies by bank holding companies with over $1 billion in assets.

[8] The increase in the HHI is calculated by multiplying the product of the respective market shares of the institutions involved in the transaction by 2. In other words, the increase in the HHI is determined by the formula 2xy, where x and y represent the respective market shares of the merging firms.

[9] The Department of Justice guidelines include what is called a leading firm proviso under which the department is likely to challenge the acquisition by the leading firm in a market of any firm that has a market share of 1 percent or more. The Department of Justice considers a company to be a leading firm if it has a market share of at least 35 percent and this share is approximately twice as large as that of the second largest firm.

[10] *See e.g., BankAmerica Corporation*, 78 Federal Reserve Bulletin 338, 340 n.15 (1992).

not to participate in post-acceptance analysis or to participate to a limited extent in a more focused manner.

This change will preserve the Reserve Bank's opportunity to present its views on an application or on an issue raised by a particular proposal, and should, in the case of requested comments, provide further support for the record in cases where the Reserve Bank's knowledge of local conditions would be especially beneficial. For example, Reserve Bank involvement can be an essential element in the timely resolution of protested issues.

In addition to the efficiency benefits of reducing duplicative processing in general, and memoranda writing in particular, this change also will give the Reserve Banks greater flexibility in allocating their resources. For example, resources that are currently devoted to the post-acceptance processing of certain Board action cases could be shifted to time sensitive delegated cases or to pre-acceptance meetings with prospective applicants.

Change No. 7: Increased Monitoring of Cases That Require Extended Processing

As part of the System's current overall process of monitoring applications activity, closer scrutiny is given to cases that are not on schedule for timely processing or have exceeded targeted action dates. Once a week, managers responsible for applications processing from the appropriate Board divisions (or their representatives), meet to discuss each application that is scheduled for Board action as well as other applications of interest. Previously delegated cases that have not been acted on within 30 days also are discussed at these meetings, as these cases usually have already been transferred to Board action status. The basis for this discussion is a weekly status report of applications filed with the System that is distributed to managers and others involved in the process.

Any bank holding company whose application does not meet the internal timing target, regardless of the reason or responsible party, receives a letter explaining the delay as required by Regulation Y.[11] A member of the Board must approve the letter before it is sent. Other monitoring efforts include an agenda scheduling report, monthly conference calls, and an annual applications processing conference. Applications being processed under delegated authority are tracked by either the Reserve Bank or Board staff on an ongoing basis. More intense scrutiny typically is given to each case in which one-half of the processing period for the application has elapsed without action having been taken or without action being imminent.

Although the System monitors all phases of the applications process, the Board has emphasized the importance of minimizing the processing period and burden on the applicant associated with the entire process. Current monitoring efforts of applications are driven primarily by the post-acceptance, 60-day internal processing guideline, and to a lesser extent by the totalamount of time an applicant needs to obtain regulatory approval. In an effort to heighten management's focus on this timing issue, the Board has determined that a new report will be developed. The report will be organized in chronological order and will include the total length of time an application is in process and an explanation of the application's status. The report will be distributed to the directors of the divisions that are involved in the applications process.

Change No. 8: Establishing a General Consent Limit for Investments in Bank Premises for State Member Banks

Section 24A of the Federal Reserve Act requires state member banks to obtain the Board's approval prior to making investments in bank premises that would result in the bank's aggregate level of direct and indirect investment in bank premises exceeding the bank's capital stock account.[12] The Board has determined to amend Regulation H to establish a general consent procedure that would allow a "well capitalized" state member bank that is also in generally satisfactory condition to make bank premises investments up to a certain percent of the bank's capital accounts. This would eliminate the current requirement that a state member bank obtain approval for each investment in bank premises that exceeds the bank's capital stock. A proposed revision to Regulation H to accomplish this goal, and a request for comments on this proposal, will be published shortly in a separate notice.

Invitation for Public Comment

As described above, the Board invites public comment on any additional proposals or measures the Board should consider for revising or streamlining the applications and notice procedures under the Board's rules to reduce the burden on applicants caused by the current procedures without impairing the Board's ability to fulfil its statutory obligations in reviewing applications and notices requiring Board approval.

Regulatory Flexibility Act Analysis

The Board is inviting public comment on proposals to reduce regulatory burdens imposed by the Board's procedures on bank holding companies. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), the Board does not believe that these changes will have a significant adverse economic impact on a substantial number of small entities.

Paperwork Reduction Act Analysis

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes, and comment is invited on proposals that may reduce the current information collection requirements imposed in connection with various applications.

Board of Governors of the Federal Reserve System, August 25, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-20860 Filed 8-31-92; 8:45 am]

BILLING CODE 6210-01-F

[11] 12 CFR 225.14(d)(2).

[12] 12 U.S.C. 371d. Section 24A applies to: (1) Investments in bank premises, or in the stock, bonds, debentures, or other such obligations of any corporation holding the premises of such bank; and (2) the making of loans to or upon the security of the stock of any such corporation.

POSTAL SERVICE

39 CFR Part 111

Collect on Delivery (COD) Mail

AGENCY: Postal Service.

ACTION: Notice of proposed rule.

SUMMARY: The Postal Service proposes amending its COD regulations to replace its current Forms 3816 and 3816-AS with multilayer forms for the mailing of COD articles. These current COD card-stock forms, however, do not adequately meet many customer and Postal Service needs. They must be teped on or tied on, and are easily torn off in mechanized handling. The redesigned multilayer forms will include a self-adhesive mailing label and a remittance coupon to be returned to the mailer with the COD payment.

DATES: Comments on the proposed rule must be received on or before October 1, 1992.

ADDRESSES: Written comments should be mailed or delivered to the Director, Office of Classification and Rates Administration, U.S. Postal Service, room 8430, 475 L'Enfant Plaza SW., Washington, DC 20260-5903. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Mary Bronson, (202) 268-5181.

SUPPLEMENTARY INFORMATION: The Postal Service currently provides two types of COD forms at no charge to mailers. Form 3816 is intended for customers who mail fewer than three COD articles at one time. Form 3816-AS is intended for customers who mail three or more articles at one time.

If the new Form 3816-AS is adopted, privately printed forms will be required to be nearly identical in design to it. Customers who are currently authorized to privately print Form 3816-AS will have until January 1, 1994, to use existing supplies and convert to the new form.

Benefits of the new forms include:

(1) Improved customer service because the remittance coupon will give the mailer all information necessary to credit the addressee's account.

(2) Provides an opportunity for automating the acceptance and carrier assignment of COD articles because the accountable mail number is preprinted in a 3-of-9 barcoded format with OCR-readable numbers below.

(3) Reduces errors in printing, reading, and filing delivery records for COD articles because the article number is preprinted.

(4) Standardizes the return envelope for all COD payments (checks made payable to the mailer and money orders issued by the delivery post office) because the remittance coupon will fit into an EM 04 penalty envelope, currently used only for money orders.

(5) Provides Form 3816-AS in a pin-fed continuous format so that customers can imprint COD mailing information.

(6) Standardizes and simplifies the numbering requirement for COD forms currently in DMM 914.411.

Although exempt from the notice and comment requirements of the Administrative Procedure Act ([5 U.S.C. of 553 (b), (c)]) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations (CFR). See 39 CFR 111.1.

Lsit of Subjects in 39 CFR Part 111

Potal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. Amend 914.175, 914.3, 914.41, 914.51, 914.6, 914.7 and 914.8 of the Domestic Mail Manual to read as follows:

914 COLLECT ON DELIVERY (COD) MAIL

* * * * *

914.175 Express Mail COD. [Deleted last sentence]

* * * * *

914.3 COD Forms

* * * * *

914.32 Privately Printed Forms

914.321 Authorization.

Mailers may be authorized to use specially designed and privately printed COD forms, if the requirements of 914.322 and 914.323 are met. Mailers must submit proposed COD forms for approval before printing, through the local postmaster, to the Office of Classification and Rates Administration.

914.322 Design Requirements.

a. *Format.* Forms must be nearly identical in design to forms provided by the Postal Service.

b. *Parts.* Forms must, at a minimum, consist of a delivery record identical to the delivery record of Form 3816-AS provided by the Postal Service, a remittance coupon to be returned to the mailer with the COD payment, and a mailing label.

c. *COD Number.* The COD article number must begin with the letter M followed by nine digits (see 914.411). The COD article number must be placed in the upper right corner of the form and be printed either in OCR-A font or in a barcoded format. If a barcode is used, the barcode must be:

(1) In the 3 of 9 format.

(2) Scannable and readable.

(3) Printed with the corresponding human readable numbers below the barcode.

d. *COD Marking.* Forms must be conspicuously marked "COD."

e. *Order of Parts.* All the following parts, arranged in order of usage from top to bottom, are required on each COD form: delivery record, remittance coupon, and mailing label.

f. *Preprinted Mailing Information.* To facilitate processing, and if volume warrants, the postmaster may authorize mailers to type or computer print "mailed at" with the date and place of mailing in the areas of the COD form calling for a postmark of the mailing office. The date printed on the COD form must be the same as the date the article was presented for mailing.

914.323 Construction Requirements.

a. *Size.* To facilitate filing and retrieval at the delivery office, the delivery record should be the approximate size of the Postal Service form (minimum, 3 inches by 5 inches long; maximum, 3.5 inches by 6.75 inches long).

b. *Paper Stock.* Forms must be made of paper stock with a minimum base weight of 17 pounds (17 by 22 inches, 500-sheet base) and the bottom copy (mailing label) must be coated with a glue or adhesive that can firmly attach the form to the article.

* * * * *

914.33 [Renumbered as 914.322f. Renumber 914.34 as 914.33]

* * * * *

914.4 Mailing

914.41 Preparation

914.411 Identification by Number.

COD articles must be identified by the same number appearing on each part of the COD form. The COD article number must begin with the letter M followed by nine digits. The Office of Classification and Rates Administration may authorize mailers who privately print their COD forms to use customer order numbers containing nine digits and the prefix M. When either Express Mail COD or registered COD service is used, the article must bear both the COD form and the appropriate Express Mail or registered mail label. (The Express Mail or registered mail article number is used if a claim or inquiry is filed.)

* * * * *

914.413 COD Forms.

The sender must securely affix a COD form to each COD article. The form must show the article number, the names and addresses of the sender and the addressee, the amount due the sender, and the money order fee necessary for cash remittance. Delivery employees must not collect the money order fee if the recipient pays by a check payable to the mailer. The post office furnishes two types of multilayer forms without charge: Form 3816, a 5-part form for customers mailing fewer than three articles at one time, and Form 3816-AS, a 3-part continuous feed form for mailers mailing three or more articles at one time.

* * * * *

914.415 Addressing.

The name and address of the person to whom the remittance is to be sent must appear in the proper spaces on the address side of the delivery office coupon and in the return address area on the COD article itself, along with the mailer endorsements for return if undeliverable. Only domestic addresses may be used. The return address appearing on the COD form must be identical to the return address on the COD article.

Exception: Mailers who use privately printed COD forms (see 914.32) may print a different address on the remittance coupon where payments are to be sent. The mailer's address where undeliverable articles are to be returned must appear on the other parts of the COD form.

• • • • •

914.416 Remittance by Express Mail.

[Replace current text with the following:] Mailers may choose to have COD payments remitted to them by Express Mail and have the postage costs charged to their Express Mail Corporate Account (EMCA). To receive this service, mailers must mark the applicable box on the remittance coupon of the COD form and enter their EMCA number.

• • • • •

914.5 Delivery

914.51 Procedure

• • • • •

914.513 Obtaining Signatures.

Have recipient or authorized representative sign the delivery record part of the COD form. The delivery employee must sign and enter the date of delivery on the delivery record and must remove and retain the remittance coupon that is returned to the sender with the COD payment. Do not use Form 3849 as a delivery record for ordinary COD mail.

Exception: Post offices using the Automated Delivery Receipt System (ADRS) obtain the recipient's signature on the Form 3849 generated by the system. The check or money order number is entered into the system. The COD form and the customer's receipt portion of the money order are retained at the delivery post office. If the article is Express Mail COD, the recipient signs both the Express Mail label and the Form 3849 generated by the system.

• • • • •

914.519 Obtaining Receipt From Sender.

[Revise first sentence as follows:] Obtain a receipt from the sender on the COD form when delivering on return to sender. [Remainder of 914.519 unchanged]

• • • • •

914.6 Issuance of Payment

914.61 Preparing Money Orders.

• • • • •

914.61e.

[Revise first sentence as follows:] Keep the remittance coupon with the money order. [remainder of 914.61e unchanged]

914.61f.

Enter the money order number and the date the money order was mailed to the sender on the delivery record portion of the COD form. [renumber 914.61f and 914.61g as 914.61g and 914.61h, respectively]

• • • • •

914.62 Remitting to Sender.

a. Mail the COD payment with its accompanying remittance coupon in an EM04 penalty envelope on the day of issue or not later than the following workday. If the mailer provides prepaid (or business reply) envelopes, use them instead of penalty envelopes.

b. If the sender requests that the COD payment be sent by Express Mail (see 914.418), complete Label 11–B, enter the sender's Express Mail Corporate Account number, and mail the COD payment with its remittance coupon in an Express Mail envelope on the day of issue.

• • • • •

914.64 Payment by Check.

• • • • •

914.641d

Enter the check number and the date the check was mailed to the sender on the delivery record of the COD form.

• • • • •

914.65 Returned Money Orders and Checks.

• • • • •

914.65c.

Annotate the delivery record of the COD form to show when a check has been returned and forward the returned check to the customer who issued the check.

• • • • •

914.7 Special Instructions

• • • • •

914.72 Assignment and Reporting.

• • • • •

914.725 Reports.

[And the following note at the end:] Note: Post offices using the Automated Delivery Receipt System (ADRS) use a combined Form 3867/3821. A separate Form 3821 is not prepared and the locked receptacle is not used.

914.726 Disposal.

[Add the following note after 914.726(b):] Note: Post offices using the Automated Delivery System (ADRS) use a combined Form 3867/3821. A separate Form 3821 is not prepared and the locked receptacle is not used.

914.73 Clearance.

914.73a

[Replace the first sentence with the following] The carriers must account for all COD mail charged to them by turning in either undelivered articles or signed receipts, including the remittance coupons, the charges due sender, and the money order fee, if applicable. [remainder unchanged] [Add the following note after 914.73(d):] Note: Post offices using the Automated Delivery System (ADRS) use a combined Form 3867/3821. The carrier will be given a copy of the combined Form 3867/3821 as a receipt. A separate Form 3821 is not prepared and the locked receptacle is not used. In addition, use the Form 3849 generated by ADRS as the disposition record for undeliverable COD articles.

• • • • •

914.74 Remitting Units.

914.741 Completion of Form 3822 in Duplicate.

Each day, units delivering COD mail must complete Form 3822 in duplicate. Post offices using ADRS will use the system for generating the Form 3822.

• • • • •

914.743 Systems A and B.

[Add the following note after 914.743(b)(5):] Note: Post offices using the Automated Delivery System (ADRS) obtain the recipient's signature on the system generated Form 3849. The check or money order is entered into the system either at the time of clearance or when the remittances are mailed to the sender. The COD form and the customer's receipt portion of the money order are retained at the delivery post office. The signed Forms 3849 are sent to the centralized customer inquiry center for imaging. After imaging, Forms 3849 are stored by date.

• • • • •

914.743b(2)

The money order clerk must: (a) verify the cash, the number of COD forms and the amount shown on Form 3822; (b) receipt and return Form 3822 in duplicate to the COD clerk; (c) issue the money orders the same day of delivery, if practical, and send with remittance coupons to mailers; (d) attach the customers' money order receipts to the corresponding COD forms and deliver them to the superintendent or designee, with adding machine tape separately listing charges and money order fees, and with funds representing COD money orders not issued; and (e) process COD forms with checks made payable to the sender under 914.64.

• • • • •

914.75 Main Office Window Unit.

[Add the following note at the end of 914.75(g)] Note: Post offices using the Automated Delivery Receipt System (ADRS) obtain the recipient's signature on the system generated Form 3849. The check or money order number is entered into the system either at the time of clearance or when the remittances are mailed to the sender. The COD form and customer's receipt portion of the money order are retained at the delivery post office. The signed Forms 3849 are sent to the centralized customer inquiry center for imaging. After imaging, Forms 3849 are stored by date.

• • • • •

a. Issue the money orders and mail the COD payments (money orders or recipients' checks) with the remittance coupons to the sender (see 914.62).

• • • • •

914.8 Registered COD Mail

914.81 Acceptance.

Customers mailing fewer than three articles at one time must complete Form 3806, *Receipt for Registered Mail*, and Form 3816 for each article. Customers mailing three or more articles should complete Form 3877, *Firm Mailing Book*, or an approved computer-generated facsimile (see DMM 914.416), and Form 3816–AS for each article. Check the box on the COD form marked "Registered." Affix the COD form and the registered mail Label 200 to the address side of the article.

• • • • •

An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposed is adopted.

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

BILLING CODE 7710-12-M

1st Notice | 2nd Notice | Date Returned

PS Form 3816, May 1992
1 - DELIVERY RECORD

UNITED STATES POSTAL SERVICE

Collect COD charges as shown if customer pays by check made payable to the mailer.
Collect COD charges AND Money Order Fee ONLY if paid by cash.

COD Charges *(Remit to Sender)* | MO Fee $

To:

From:

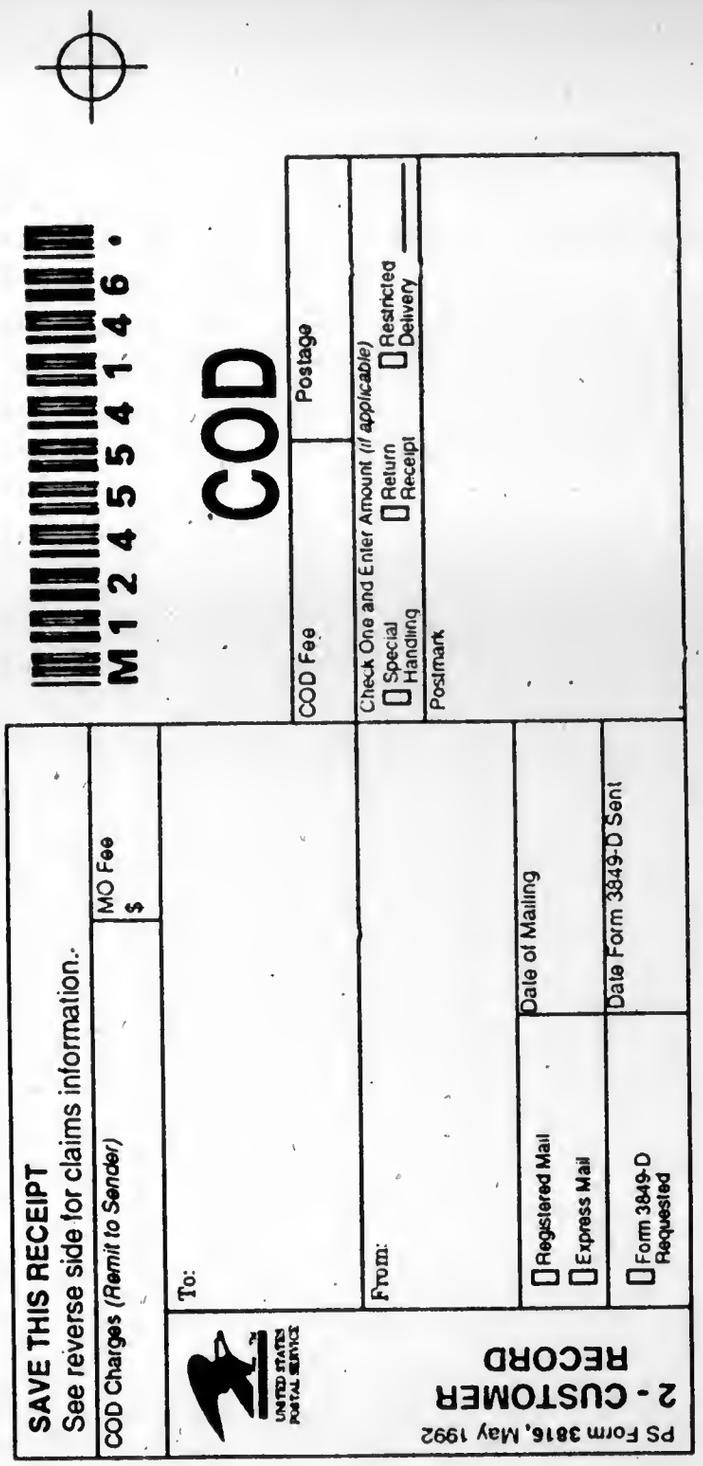
☐ Registered Mail
☐ Express Mail
☐ Form 3849-D Requested

M 1 2 4 5 5 4 1 4 6 •

COD

Date Money Order/Check Sent to Mailer	
Check Number	MO Number
Delivered By	Date Delivered
Date of Mailing	Signature of Addressee
Date Form 3849-D Sent	

1. DO NOT allow recipient (addressee or agent) to examine contents before payment.
2. DO NOT deliver the article until payment is collected.
3. If payment is by check, enter check number above.


SAVE THIS RECEIPT
See reverse side for claims information.
COD Charges (Remit to Sender)
MO Fee
$
M 1 2 4 5 5 4 1 4 6 *
COD
COD Fee
Postage
Check One and Enter Amount (if applicable)
Special Handling
Return Receipt
Restricted Delivery
Postmark
To:
From:
Date of Mailing
Date Form 3849-D Sent
Registered Mail
Express Mail
Form 3849-D Requested
UNITED STATES POSTAL SERVICE
PS Form 3816, May 1992
2 - CUSTOMER RECORD

The fees for COD service include insurance against loss, rifling, or damage to the article and failure to receive the postal money order or the recipient's check *(some limitations apply - see DMM 914.11)*. Coverage may not exceed the limit fixed for the insurance fee paid. Ask the postmaster for details of insurance limits and coverage. NOTE: Postmaster will not participate in any disputes regarding the recipient's check.

FILING A CLAIM: You must file a claim for loss within 1 year from the date the COD article was mailed *(within 90 days if sent by Express Mail)*. You must present the original mailing receipt and evidence of value when filing a claim for a lost article. File damage claims immediately *(preferably by the recipient)*. Failure to file a damage claim immediately may void payment of the claim.

When filing a damage claim, present the following:

(1) original mailing receipt *(if available)*;
(2) parcel wrapper;
(3) box and packing;
(4) evidence of value, and
(5) damaged contents.

When an article is received damaged, do not direct the recipient to return it to you, as this may also void payment of the claim. Instead, instruct the recipient to contact the local post office immediately.

PS Form 3816, May 1992 (reverse)

M1 2 4 5 5 4 1 4 6 •

COD

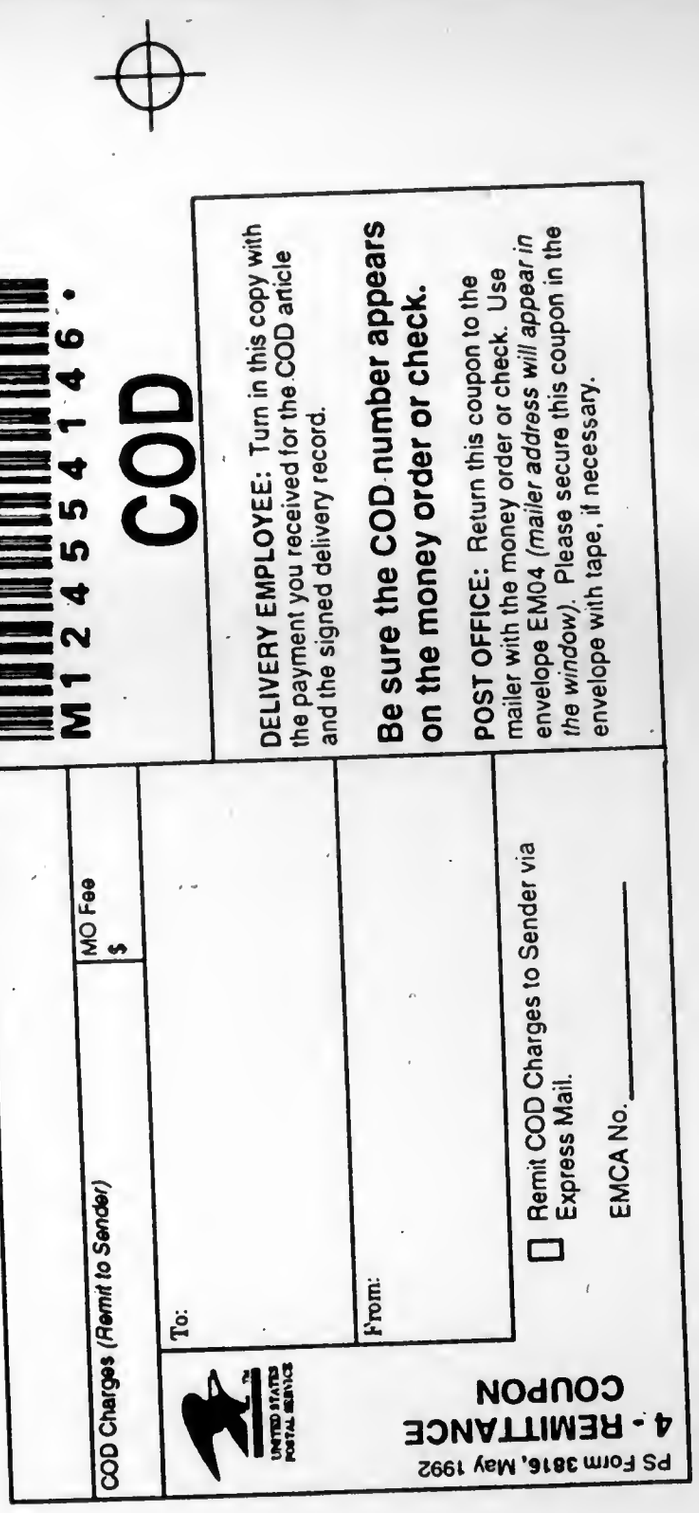
COD Fee	Postage
Check One and Enter Amount *(if applicable)* ☐ Special Handling ☐ Return Receipt ☐ Restricted Delivery	
Postmark	
File this copy numerically and keep for 1 year	

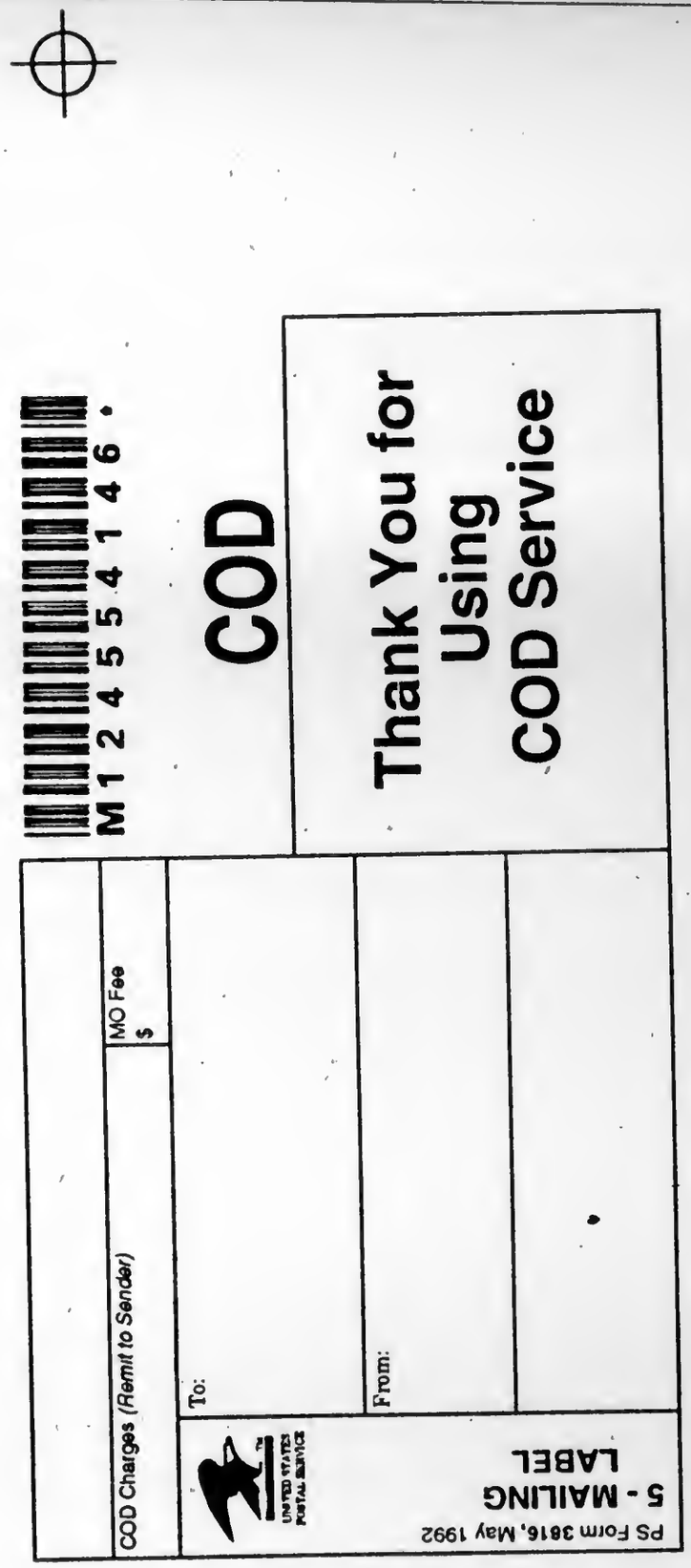
COD Charges *(Remit to Sender)*	MO Fee $
To:	
From:	
☐ Registered Mail ☐ Express Mail	Date of Mailing
☐ Form 3849-D Requested	Date Form 3849-D Sent

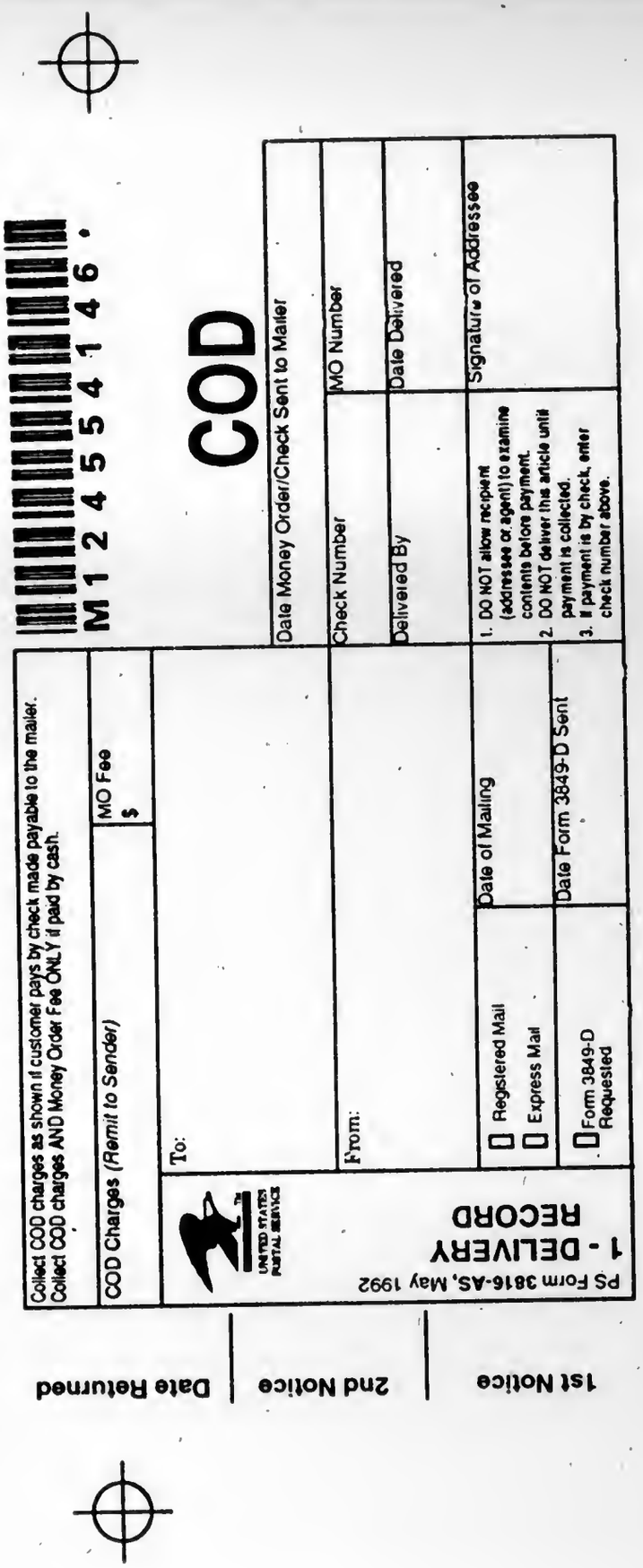
UNITED STATES POSTAL SERVICE

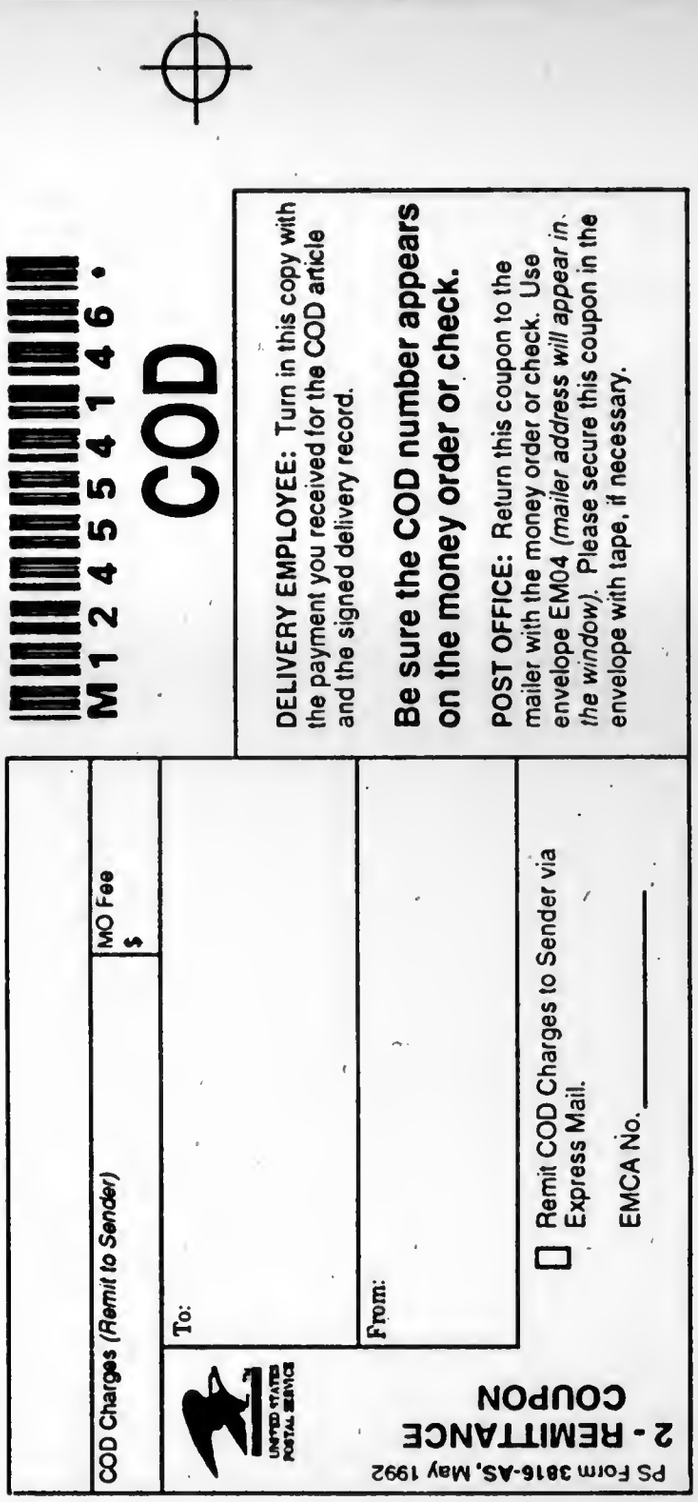
3 - MAILING OFFICE RECORD

PS Form 3816, May 1992


M1 2 4 5 5 4 1 4 6 •
COD
DELIVERY EMPLOYEE: Turn in this copy with the payment you received for the COD article and the signed delivery record.
Be sure the COD number appears on the money order or check.
POST OFFICE: Return this coupon to the mailer with the money order or check. Use envelope EM04 (mailer address will appear in the window). Please secure this coupon in the envelope with tape, if necessary.
COD Charges (Remit to Sender)
MO Fee
$
To:
From:
PS Form 3816, May 1992
4 - REMITTANCE COUPON
Remit COD Charges to Sender via Express Mail.
EMCA No. _____


M12455414 6 •
COD
Thank You for Using COD Service
COD Charges (Remit to Sender)
MO Fee
$
To:
From:
PS Form 3816, May 1992
5 - MAILING LABEL


COD
M 1 2 4 5 5 4 1 4 6
Collect COD charges as shown if customer pays by check made payable to the mailer.
Collect COD charges AND Money Order Fee ONLY if paid by cash.
MO Fee
$
COD Charges (Remit to Sender)
To:
From:
Date Money Order/Check Sent to Mailer
Check Number
MO Number
Delivered By
Date Delivered
Signature of Addressee
1. DO NOT allow recipient (addressee or agent) to examine contents before payment.
2. DO NOT deliver this article until payment is collected.
3. If payment is by check, enter check number above.
Date of Mailing
Date Form 3849-D Sent
Registered Mail
Express Mail
Form 3849-D Requested
UNITED STATES POSTAL SERVICE
PS Form 3816-AS, May 1992
1 - DELIVERY RECORD
1st Notice
2nd Notice
Date Returned


M12455414 6 •
COD
DELIVERY EMPLOYEE: Turn in this copy with the payment you received for the COD article and the signed delivery record.
Be sure the COD number appears on the money order or check.
POST OFFICE: Return this coupon to the mailer with the money order or check. Use envelope EM04 (mailer address will appear in the window). Please secure this coupon in the envelope with tape, if necessary.
COD Charges (Remit to Sender)
MO Fee
$
To:
From:
UNITED STATES POSTAL SERVICE
PS Form 3816-AS, May 1992
2 - REMITTANCE COUPON
Remit COD Charges to Sender via Express Mail.
EMCA No. _____

COD Charges *(Remit to Sender)*	MO Fee $

UNITED STATES POSTAL SERVICE

PS Form 3816-AS, May 1992
3 - MAILING LABEL

To:

From:

M1 2 4 5 5 4 1 4 6 •

COD

Thank You for Using COD Service

[FR Doc. 92-20810 Filed 8-31-92; 8:45 am]
BILLING CODE 7110-12-C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4200-8]

National Oil and Hazardous Substances Contingency Plan; the National Priorities List

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of intent to delete a site from the national priorities list; request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) announces its intent to delete the Adrian, MN site from the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) National Priorities List (NPL), Appendix B, and requests public comment. EPA, in consultation with the State of Minnesota, has determined that all appropriate Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA) actions have been implemented and no further clean-up under the authority of CERCLA is appropriate. Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such action. The purpose of this notice is to request public comment on the proposed deletion of the Adrian site from the NPL.

DATES: Comments concerning the proposed deletion of the site from the NPL may be submitted until October 1, 1992.

ADDRESSES: Comments may be mailed to Edward J. Hanlon (HSRM-6J), Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, IL 60604; direct telephone number: (312) 353-9228, facsimile: (312) 886-4071. The comprehensive information on the site is available at the local information repository located at the office of John Moeger, Tanks and Spills Division, Minnesota Pollution Control Agency (MPCA), 520 Lafayette Rd., St. Paul, MN 55155; direct telephone number: (612) 297-8613. Requests for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. The address for the Regional Docket Office is C. Freeman (HSMA-5J), Region V, U.S. EPA, 77 West Jackson Blvd., Chicago, IL 60604, (312) 886-6214.

FOR FURTHER INFORMATION CONTACT: Edward J. Hanlon (HSRM-6J), Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, IL 60604. (312) 353-9228; or Gina Weber (P19-J), Office of Public Affairs, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, IL 60604, (312) 886-6128.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Proposed Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (EPA) announces its intent to delete the Adrian site from the National Priorities List (NPL), appendix B, of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300 (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions funded either by the Hazardous Substances Response Trust Fund (Superfund) or Potentially Responsible Parties. Any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this proposal for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

II. NPL Deletion Criteria

Amendments to the NCP published in the **Federal Register** on March 8, 1990 (55 FR 8813) establish the criteria the Agency uses to delete sites from the NPL. Section 300.425(e) of the NCP provides that releases may be deleted from or recategorized on the NPL where no further response is appropriate. In making this decision, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA have been implemented, and EPA, in consultation with the State, has determined that no further clean-up by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate under CERCLA.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment. CERCLA, though, excludes petroleum contamination from coverage under the act and precludes use of Superfund monies from being spent to address petroleum contamination. As will be discussed further below, a determination was made to transfer responsibility of the site to another regulatory program. The UST (Underground Storage Tanks) program, established in subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and as amended by SARA, is the regulatory authority with jurisdiction over clean-up of releases of petroleum from leaking underground storage tanks. Clean-up responsibility for the site was transferred to the U.S. EPA UST Program and the MPCA Hazardous Waste Division (Tanks and Spills Section), which has entered into a cooperative agreement with the U.S. EPA At this time, no further action will be conducted under CERCLA.

Deletion of a site from the NPL does not preclude eligibility for subsequent additional Fund-financed actions if future site conditions warrant such actions, and they are authorized under CERCLA. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

Deletion of sites from the NPL does not itself create, alter or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Prior to proposing deletion from the NPL, EPA must consult with the State prior to developing the Notice of Intent to Delete. In making the determination to delete a site from the NPL, EPA must consider, in consultation with the State, whether the criteria described above found in section 300.425(e)(3) have been met. Once these actions have taken

place. EPA may begin the formal deletion process by publishing a Notice of Intent to Delete in the **Federal Register**. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and deletion docket. EPA will accept comments for a period of thirty (30) calendar days starting today.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The summary will be placed in the Docket and information repository. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA determines that deletion from the NPL is appropriate after close of the public comment period, a final notice announcing the deletion will be published in the **Federal Register**.

IV. Basis for Proposed Site Deletion

The following summary provides the Agency's rationale for deleting the Site from the NPL.

The city of Adrian, with a population of approximately 1400 people, is located in west-central Nobles County in southwestern Minnesota. The area of investigation is in the north-central portion of the city along the southern bank of a channel occupied by Kanaranzi Creek. The city uses 8 water supply wells, two of which produce from outwash deposits and channels along Kanaranzi Creek. Sampling of these water supply wells in September 1983 by the Minnesota Department of Health (MDH) indicated 1,2-dichloroethane (1,2 DCA) was found at a concentration of 16 ppb in Well No. 3, exceeding the 9.4 ppb human health water quality criterion for 1,2 DCA. Well No. 4 contained 3.8 ppb 1,2 DCA. Subsequent sampling in January 1984 for benzene in the same wells showed 88–160 ppb for Well No. 3 and 90–130 ppb benzene for Well No. 4, above the human health water quality criterion of 6.6 ppb for benzene. Upon this discovery, city Wells No. 3 and No. 4 were discontinued. Two new replacements wells were installed (No. 5 and No. 8) in 1984.

The estimated 1987 population of Adrian was 1,035 residents. All households, with one exception, are connected to the municipal water supply. The nearest residence is one half block east of the contaminated area of groundwater. Several recreational facilities are located between the areas of contamination and the upper arm of Kanaranzi Creek, including a swimming pool, two ballfields, and a campground.

The September 1983 MDH sampling results prompted MPCA, on January 16, 1984, to authorize the use of Minnesota Environmental Response Liability Act (MERLA) funds to investigate the contamination and define short term and long term alternative water supplies. Barr Engineering was retained by MPCA to investigate the potential source and extent of the contamination. Barr located several underground storage tanks (UST's) and determined which might be sources of the 1,2 DCA, and other VOCs. In order to address the long term remediation needs for the well field, on October 15, 1984 the MPCA proposed to list the site on EPA's NPL.

In early 1986, IT corporation was retained by the MPCA to prepare a work plan for a more detailed Remedial Investigation (RI) which followed the quality assurance and scope requirements of CERCLA. After the site was placed on EPA's Final NPL on June 6, 1986, the MPCA entered into a Cooperative Agreement (CA) with the EPA in the fall of 1986 to conduct a Superfund Remedial Investigation/ Feasibility Study (RI/FS).

Malcolm Pirnie Inc. was retained by MPCA in the fall 1988 to complete the RI report based on data from IT corporation and Barr Engineering Co. Since contaminants found in Adrian wells are typical of gasoline contamination, source investigations focused on nine UST's used for storage of gasoline and fuel oil within the Adrian well field. The RI located a contaminated groundwater plume moving west/northwest and approximately 2200 cubic yards of soil contamination,[1] and indicated that releases of petroleum fuels, gasoline and fuel oil were the likely cause of the contamination. No Superfund Feasibility Study (FS) was conducted because results of the RI indicated that the source of contamination to be leaking underground petroleum storage tanks and no further remediation was appropriate under CERCLA.

The Record of Decision for this site, which was signed by the Regional Administrator of EPA Region V on September 29, 1989, selected a "No Further Action" decision for this site under CERCLA and MERLA. In this case, "No Further Action" is envisioned under CERCLA and MERLA, but additional actions are provided for under other regulatory authorities.

This decision stems from the fact that neither MERLA nor CERCLA provide the statutory authority to address sites contaminated with petroleum products. The UST program, established in Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) and as amended by SARA, is the regulatory authority with jurisdiction over clean-up of releases of petroleum from leaking underground storage tanks. Clean-up responsibility for the site was transferred to the EPA UST Program and the MPCA Hazardous Waste Division (Tanks and Spills Section), which is acting under a cooperative agreement with the EPA. Since actions will be conducted by the MPCA to address the petroleum contamination to be addressed under the UST program, no five-year review will be conducted under CERCLA. After considering criteria regarding deletion from the NPL which are listed in the NCP and referred to above, EPA, in consultation with the State of Minnesota, has determined that all appropriate CERCLA actions have been implemented, no further clean-up under the authority of CERCLA is appropriate, and this Notice of Intent to Delete the site should be published.

Various clean-up activities pursuant to MERLA were conducted. (Activities at the site after the transfer to the UST program provided in the Record of Decision were undertaken under UST authorities.) Activated Carbon Filtration was installed and operated for city Wells No. 3 and 4 from July through November 1984. The landowners of Adrian Glass and Signs, Adrian Auto and Adrian Motel each removed two inactive underground gasoline tanks by September 1984. An inactive underground gasoline tank was removed from Adrian Tile on August 20, 1985. Between 1986 and 1991, the remaining six UST's within the area of groundwater contamination, and areas of soil contamination which could be removed in a cost-effective manner, were removed. The tanks removed prior to January 1990 were removed under the direction and oversight of MPCA's MERLA program; those after January 1990 were removed under the direction and oversight of MPCA's UST program. All remediation activities necessary to remove the sources of contamination to the groundwater have been completed.

Regarding the existing groundwater contamination which resulted from petroleum releases from the source areas, MPCA's UST program has determined the extent of the plume, and determined that the groundwater contamination has not yet reached the city of Adrian's drinking water wells which are currently in use. MPCA, through a design contractor, is currently designing a groundwater remediation remedy involving active soil venting, gas collection, and air sparging, for the purpose of removing the petroleum contaminants in the aquifer. The MPCA expects to receive a "Corrective Action Design Plan" by mid-July, 1992. Following approvals, MPCA will then solicit bids from prospective construction contractors to construct the groundwater remediation remedy.

The EPA, with the concurrence of the Minnesota Pollution Control Agency, has determined that all appropriate responses under CERCLA at the Adrian Site have been completed.

Dated: July 20, 1992.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 92-20902 Filed 8-31-92; 8:45 am]

BILLING CODE 6560-50-M

[1] Refer to the Record of Decision for locations and detailed discussion of the investigation.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[CC Docket No. 92-166; DA 92-1085]

Mobile Satellite Service in the Frequency Bands Above 1 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; establish advisory committee.

SUMMARY: The Commission requests comments on whether it should establish a Federal Advisory Committee to negotiate proposed technical rules to govern the provision of mobile satellite services in the 1610–1626.5 MHZ and 2483.5–2500 MHz frequency bands.

DATES: Comments may be filed on or before September 14, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Fern Jarmulnek, Satellite Radio Branch, Common Carrier Bureau, (202) 634–1682.

SUPPLEMENTARY INFORMATION:

1. The Commission is considering establishing an Advisory Committee to negotiate regulations defining the technical rules appropriate to the provision of mobile-satellite services (MSS) in the 1610–1626.5 MHz and 2483.5–2500 MHz frequency bands subject to the adoption of a Report and Order allocating this spectrum for MSS services in ET Docket No. 92-28. The negotiations are to assist the Commission in developing regulations that will facilitate the shared use of this spectrum by the maximum number of MSS providers. Any negotiating committee would be created under the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 2, and the Negotiated Rulemaking Act of 1990 (NRA), Pub. L. 101–648, November 28, 1990, and would consist of representatives of the interests that will be significantly affected by the outcome of these rules.

2. The Commission has recently proposed to reallocate the 1610–1626.5/ 2483.5–2500 MHz frequency bands to MSS on a co-primary basis with other allocated services in those bands. Notice of Proposed Rulemaking, FCC 92-358 (adopted August 4, 1992). This domestic allocation would conform with the international allocation that was made at the World Administrative Radio Conference, 1992 (WARC-92). Six applications have been filed seeking authority to construct and launch MSS systems in these bands. Five applicants propose low-Earth orbit (LEO) systems; one proposes a geostationary-satellite orbit (GSO) system. The only domestic user in the bands is the National Academy of Sciences, which provides radio astronomy service in the 1610.6–1613.8 MHz band segment on a secondary basis. Geostar Positioning Corporation (Geostar) is authorized to implement a radiodetermination satellite service (RDSS) system in the entire bandwidth, but the system has not been built and Geostar is in the liquidation phase of bankruptcy.

I. Regulatory Negotiation

3. Regulatory negotiation is a technique through which the Commission hopes to develop better regulations that may be implemented in a less adversarial setting. Negotiations are conducted through an Advisory Committee chartered under FACA. The goal of the Committee is to reach consensus on the language or substance of appropriate rules. If a consensus is reached, it is used as the basis of the Commission's proposal. If a consensus is not reached, majority and minority input may be used by the Commission in ultimately proposing regulations. All procedural requirements of the Administrative Procedure Act (APA) and other applicable statutes continue to apply.

4. When making a determination regarding the suitability of a proceeding for the negotiated rulemaking process, the Commission must consider whether:

(a) There is a need for the rule,

(b) There are a limited number of identifiable interests that will be significantly affected by the rule,

(c) There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who (1) can adequately represent the identifiable interests and (2) are willing to negotiate in good faith to reach a consensus on the proposed rules,

(d) There is a reasonable likelihood that a committee will reach a consensus on the proposed rules within a fixed period of time,

(e) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of final rules,

(f) The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee, and

(g) The agency will, to the maximum extent possible consistent with the legal obligations of the agency, use the consensus of the committee with respect to the proposed rules as the basis for the rules proposed by the agency for notice and comment. NRA section 3, 5 U.S.C. 583(a).

II. Subject and Scope of Rule Proposed for Negotiated Rulemaking

5. The Commission is proposing that the technical regulations to govern the provision of MSS in the 1610–1626.5/ 2483–2500 MHz frequency bands be developed through negotiation. We believe that the selection criteria listed above are met. Technical regulations are needed to establish and govern this service, should we adopt the allocations proposed in the *NPRM, supra*, in a manner that maximizes use of the spectrum and protects existing users from harmful interference. Affected interests are relatively small in number and these interests are likely to be adequately represented on any negotiating committee. Further, while we recognize that several of the applicants' proposed systems may be technically incompatible, we believe it is reasonably likely that the Committee could reach a consensus with respect to sharing criteria in a reasonable amount of time. We will use the consensus of the Committee as the basis for our rules to the extent possible. Nonetheless, if a consensus cannot be achieved, the majority and minority input will be considered by the Commission and will serve to expedite the issuance of a notice of proposed rulemaking and a final order. Finally, the Commission has adequate resources to devote to the negotiations.

6. The Commission has identified the following issues that should be addressed in the negotiations and incorporated in the proposed rules developed by the Committee:

(a) What technical rules should be adopted for this service so as to maximize the sharing of the spectrum and the capacity for multiple entry, and

(b) What technical rules should be adopted in order for this service to co-exist with other allocated services.

Other issues may be included by the parties. All proposals must comply with International Telecommunication Union (ITU) treaty obligations.

III. Potential Interests and Participants

7. The Commission has identified the following interests as those likely to be significantly affected by the MSS service rules:

(a) Applicants to provide MSS in the affected bands, and

(b) Existing users of the bands.

8. The following have initially been identified as potential interests should the Commission proceed with a negotiated rulemaking: American Mobile Satellite Corporation, Constellation Communications, Inc., Ellipsat Corporation, Loral Cellular Communications, Inc., Motorola Corporation, TRW, Inc., the National Academy of Sciences, and the Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission.

IV. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

9. Under FACA, an Advisory Committee may be established only after consultation with the General Service Administration (GSA) and the filing of a charter. The Commission will prepare a charter and initiate the requisite consultation process prior to formation of the Committee and the commencement of negotiations.

B. Participants

10. The number of participants in the group is estimated to be about 12 and should not exceed 25. A number larger than this could make it difficult to conduct efficient negotiations. Each interest will have the opportunity to be adequately represented, although this does not necessarily mean that each potentially affected entity will have its own representative. Further, we must be satisfied that the group, as a whole, reflects a proper balance and mix of interests.

11. Entities that will be significantly affected by the proposed rules and which believe that their interests will not be adequately represented by any entity specified in paragraph 8 above, may apply for, or nominate another entity for, membership on the Committee. Each application for nomination must include:

(a) The name of the applicant or nominee and a description of the interests the entity will represent,

(b) Evidence that the applicant or nominee is authorized to represent parties related to the interests the entity proposes to represent,

(c) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rules under consideration,

(d) The reasons that the entities specified in paragraph 8 do not adequately represent the interests of the entity submitting the application or nomination.

12. If, in response to this Notice, any additional entities request membership or representation in the negotiating group, the Commission will determine whether that entity should be added to the group. The Commission will make that decision based on whether the entity would be substantially affected by the rule and whether that entity is already adequately represented in the negotiating group.

C. Agenda

13. If the Commission decides to establish a negotiating committee and its charter is approved, it is expected that the Committee's first meeting will take place in November 1992, at the Commission's offices, Washington, DC., at a building, room, date, and time that will be announced. At this initial meeting, the committee will complete action on all procedural matters and establish a target date for submission of its recommendations. We expect that the target date would be no later than March 1, 1993. We anticipate publication of a notice of proposed rulemaking not later than May 1993.

V. Negotiation Procedures

14. The following procedures and guidelines will apply to the Committee, if formed. These procedures may be modified, however, after reviewing the comments received in response to this Notice or during the negotiation process.

A. Facilitator

15. The Commission will nominate a person to serve as a neutral facilitator for the negotiations of the Committee, subject to the approval of the Commission by consensus. The facilitator will not be involved in the substantive development of the regulations. The facilitator's roles are to (1) chair negotiating sessions, (2) help the negotiation process run smoothly, (3) help participants define and reach a consensus, and (4) manage record-keeping and minute-keeping.

B. Good Faith Negotiations

16. Each organization—including the Commission—must designate a qualified individual to represent its interests. Thomas S. Tycz, Deputy Chief, Domestic Facilities Division, Common Carrier Bureau, will be the Commission's representative.

C. Meetings and Compensation

17. Meetings will be held in the Washington, DC area at the convenience of the Committee. The Commission, if requested, will provide the facilities needed to conduct the meetings, and will provide any necessary technical support. Private sector members of the Committee will serve without government compensation or reimbursement of expenses. Private sector members will not be special government employees for any purposes whatsoever.

D. Committee Procedures

18. Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the procedures for committee meetings that they consider most appropriate.

E. Consensus

19. The goal of the Committee is consensus. We expect the participants to fashion their own working definition of this term. In the event the Committee is unable to reach a consensus, majority and minority reports may be submitted and the Commission will develop its own approach. Parties to the negotiation may withdraw at any time. If this happens, the remaining committee members and the Commission will evaluate whether the Committee should continue.

F. Record of Meetings

20. Pursuant to FACA, the Committee will keep a record of all committee meetings. This record will be placed in the public docket for this rulemaking. The Commission will announce committee meetings in the **Federal Register**. These meetings will be open to the public.

VI. Conclusion

21. The Commission requests public comment on whether: (1) it should establish a Federal Advisory Committee, (2) it has properly identified the interests that are significantly affected by the key issues listed above, (3) the proposed committee membership reflects a balanced representation of these interests, and (4) regulatory negotiation is appropriate for this rulemaking.

22. Pursuant to the applicable procedures set forth in section 4(c) of the Negotiated Rulemaking Act of 1990, 5 U.S.C. 584(c), interested parties may file comments and applications for Committee membership on or before September 14, 1992. Comments and/or applications should be sent to the Office of the Secretary, CC Docket No. 92-166, Federal Communications Commission, Washington, DC 20554. Comments and applications will be available for public inspection during regular business hours in the Dockets Public Reference Room of the Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

23. For further information pertaining to the establishment of the negotiation committee and associated matters, contact Fern J. Jarmulnek, Satellite Radio Branch, 2025 M Street NW., Washington, DC 20554, (202) 634-1682.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-20854 Filed 8-31-92; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 92-192, RM-7960; RM-8036]

Radio Broadcasting Services; Walton and Rochester, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive petitions for rule making seeking the allotment of FM Channel 229A. The first, filed on behalf of J.B. Ladd, seeks the allotment to Walton, Indiana, as that community's first local aural transmission service (RM-7960). The second proponent, Dowagiac Broadcasting Company, Inc. ("DBC"), licensee of Station WDOW-FM, Channel 221A, Dowagiac, Michigan, seeks the substitution of Channel 229A for Channel 221A at Rochester, Indiana, and modification of the license of Manitou Broadcasting Corporation ("Manitou") for Station WROI (FM), Channel 221A, to enable DBC to increase its effective radiated power to 6 kilowatts (RM-8036). An Order to Show Cause to Manitou is not required as it has endorsed DBC's proposal. Canadian concurrence will be required for these proposals. Coordinates used for Walton are 40-40-45 and 86-12-39; those for Rochester are 41-03-02 and 86-15-39.

DATES: Comments must be filed on or before October 19, 1992, and reply comments on or before November 3, 1992.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Lawrence Roberts and Mark N. Lipp, Esqs., Mullin, Rhyne, Emmons and Topel, P.C., 1000 Connecticut Ave., NW., suite 500, Washington, DC 20036 (counsel for J.B. Ladd); and Leonard S. Joyce, Esq., Blair, Joyce & Silva, 1825 K Street, NW., suite 510, Washington, DC 20006 (counsel for Dowagiac Broadcasting Company, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 92-192, adopted July 30, 1992, and released August 26, 1992. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1990 M St., NW., suite 640, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 92-20932 Filed 8-31-92; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1039

[Ex Parte No. 346 (Sub-28)]

Rail General Exemption Authority: Export Corn and Export Soybeans

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of comment due date.

SUMMARY: By decision served July 15, 1992 (57 FR 31489, July 16, 1992), the Commission sought public comment by August 17, 1992, on whether to exempt from regulation the rail transportation of export corn and soybeans. The Commission has concluded, preliminarily, that regulation of rail transport of export corn and export soybeans is not necessary to carry out the rail transportation policy. The proposal is intended to eliminate burdensome regulatory oversight. By decision served and published July 29, 1992 (57 FR 33478), the comment due date was extended to September 16, 1992. By letters filed July 29 through August 14, 1992, a number of interested persons request a further 90-day extension of the comment due date. Parties state additional time is needed to consult experts, avoid schedule conflicts with other proceedings, assess potential impacts and prepare comments on what they view as a significant policy change. They also mention the possible impact of pending legislation on this proceeding. In view of the Commission's prior 30-day extension and its interest in expediting review of deregulatory proposals, a 30-day extension will be permitted.

DATES: Comments are due on October 16, 1992.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 346 (Sub-No. 28) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610. [TDD for the hearing impaired: (202) 927-5721].

Decided: August 26, 1992.

By the Commission, Anne K. Quinlan, Acting Secretary.
Anne K. Quinlan,
Acting Secretary.
[FR Doc. 92-20987 Filed 8-31-92; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To List the Southwestern Willow Flycatcher and Initiation of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to add the southwestern willow flycatcher (*Empidonax traillii extimus*) to the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that the requested action may be warranted. A status review is initiated.

DATES: The finding announced in this notice was made on August 14, 1992. To be incorporated into the one-year finding on this petition, any information should be submitted to the Service by October 1, 1992. See **ADDRESSES** below). However, the Service will continue to accept information on the status of the southwestern willow flycatcher at any time.

ADDRESSES: Information, comments, or questions concerning the southwestern willow flycatcher petition may be submitted to the Field Supervisor, Phoenix Field Office, U.S. Fish and Wildlife Service, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Sam Spiller, Field Supervisor at the above address (telephone 602/379-4720 or FTS 261-4720).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service also is required to promptly commence a status review of the species concerned.

On January 30, 1992, the Service received a petition from Kieran Suckling, David Hogan, and Robin Silver to list the southwestern willow flycatcher (*Empidonax traillii extimus*) as an endangered species. The petition also requested critical habitat be designated and the species be emergency listed. The petition was dated January 25, 1992, and co-sponsored by the Biodiversity Legal Foundation, Friends of the Owls, and Forest Guardians.

This finding is based on various documents, including published and unpublished studies, agency documents, and field survey records. All documents on which this finding is based are on file in the Fish and Wildlife Service Field Office in Phoenix, Arizona.

A species that is in danger of extinction throughout all or a significant portion of its range may be declared an endangered species under the Act. A species that is in danger of endangerment (as defined above) throughout all or a significant portion of it's range may be declared a threatened species under the Act. Section 3(15) of the Act includes under the term species "* * * any subspecies * * * and any distinct population segment of any species * * * which interbreeds when mature."

The southwestern willow flycatcher is one of four subspecies of the willow flycatcher (*Empidonax traillii*) recognized in North America. The widely distributed *E. t. traillii* occurs across the northern United States from New England through northern Wyoming and Montana, and into British Columbia. *E. T. adastus* occurs from Colorado west of the plains, to the west through the intermountain states and into eastern California, eastern Oregon and eastern Washington. The range of *E. t. brewsteri* extends from coastal California (just north of Los Angeles) north, through western Oregon and Washington to Vancouver Island. The range of the southwestern willow flycatcher (*E. t. extimus*) includes southern California, southern Nevada, southern Utah, western New Mexico, and Arizona. It may also occur in southwestern Colorado, but verified records are lacking. Several records from Baja California del Norte and Sonora indicate the subspecies had limited distribution in extreme northwestern Mexico.

The southwestern willow flycatcher is recognized as a valid subspecies. Phillips (1948) first described the subspecies, a taxon subsequently recognized and supported by Aldrich (1951), Phillips *et al.* (1964), Monson and Phillips (1981), Hubbard (1987), and Unitt (1987). The Service also recognized the *extimus* subspecies (56 FR 58804). However, the subspecies was not recognized by the American Ornithologists' Union (AOU 1957). The above information, presented by the petitioners and/or otherwise available to the Service, indicates the southwestern willow flycatcher may be listed under the Act, as "* * * any subspecies * * * and any distinct population segment of any species which interbreeds when mature" [section 3(15)].

The southwestern willow flycatcher occurs in densely vegetated riparian habitats, preferring streamside associations of cottonwood (*Populus* sp.), willow (*Salix* sp.), and other riparian vegetation (Grinnell and Miller 1944, Phillips 1948, Zimmerman 1970, Hubbard 1987, Unitt 1987). The petition contends that listing the southwestern willow flycatcher as endangered is necessary because populations have seriously declined, essential habitat is subject to widespread present and threatened destruction, and the existing regulatory mechanisms for protection are inadequate. Population declines were documented and habitat loss and modification was discussed. The petition also presented information on other, often interrelated threats to the continued existence of the southwestern willow flycatcher. These threats included brood parasitism by the brown-headed cowbird (*Molothrus ater*), replacement of native riparian vegetation by the exotic tamarisk (*Tamarix* sp.), livestock grazing, pesticide contamination, predation, and probable loss of winter habitat due to tropical deforestation.

I. Population Trends

The petitioners accurately represented the published information, which indicates that the southwestern willow flycatcher has declined throughout its range. A summary of the status of the southwestern willow flycatcher was published by Unitt (1987). Unitt reviewed historical and contemporary published records on the subspecies across its range, determining, that it had

"declined precipitously," and that "although the data reveal no trend in the past few years, the population is clearly much smaller now than 50 years ago, and no change in the factors responsible for the decline seem likely." The petitioners accurately represented new information that has become available since Unitt's (1987) summary. Recent information indicates a continuing downward trend of the population (Brown 1991, Whitfield and Laymon unpublished data).

In the January 6, 1989, Animal Notice of Review (54 FR 554), the Service listed the southwestern willow flycatcher as a Category 2 species. Category 2 species are those species for which information in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. In the November 21, 1991, Animal Notice of Review (56 FR 58804), the Service elevated the southwestern willow flycatcher to Category 1 status. Category 1 status indicates that the Service has sufficient information to propose listing a species as threatened or endangered but a proposed rule has yet to be issued because the action is precluded at present by other listing activities. The majority of the southwestern willow flycatcher's range lies within California, Arizona, and New Mexico (Phillips 1948, Unitt 1987). Each of those states list the willow flycatcher as endangered on their respective lists of threatened, endangered and/or sensitive species (Arizona Game and Fish Department 1988, New Mexico Department of Game and Fish 1988, California Department of Fish and Game 1991). Population trends by state are briefly discussed below.

California

Southwestern willow flycatchers were common breeders in coastal southern California (Willet 1912, 1933). Egg collections confirmed it must have been common in the Los Angeles basin, the San Bernardino/Riverside area and San Diego County (Unitt 1987). Collections by Brown, discussed in Unitt (1987), suggest the subspecies was also a common breeder along the lower Colorado River near Yuma in 1902. California may have once supported the majority of nesting southwestern willow flycatchers.

The subspecies is no longer known to nest on the lower Colorado River (Hunter *et al.* 1987, Rosenberg *et al.* 1991), and currently exists as small, widely disjunct remnant nesting groups elsewhere in the state (Unitt 1987). Three recent status reviews (Garrett and Dunn 1981, Harris *et al.* 1988, Schlorff 1990) considered extirpation from California to be possible, even likely, in the foreseeable future. Only two nesting groups have been stable or increasing in recent years. One is on private land where threats from livestock grazing (see below) have been virtually eliminated (Harris *et al.* 1987, Whitfield 1990). However, after remaining stable for several years, this group on the Kern River experienced declines in 1991 (Whitfield and Laymon unpublished data). The other nesting group is on a military base, Camp Pendleton, where threats from cowbird parasitism (see below) have been reduced. Approximately six other nesting groups are known in California, all of which consisted of six or fewer nesting pairs in recent years (Suckling *et al.* 1992, Fish and Wildlife Service unpublished data).

Arizona

The type collection for *E. t. extimus* (by Gale Monson, May 30, 1940) came from the lower San Pedro River and was described by Phillips (1948). The former range in Arizona included the lower Colorado River (Phillips 1948, collections by Brown discussed in Unitt 1987), and also the Colorado River near the Little Colorado River confluence and Lees Ferry (Phillips pers. comm. cited in Unitt 1987). The subspecies was also known from the Santa Cruz River (Swarth 1914, Phillips 1948), the Verde River (Phillips 1948), the White River at Whiteriver, the White Mountains near Springerville and Alpine, and the Gila River at Fort Thomas (W.C. Hunter pers. comm. cited in Unitt 1987).

The subspecies is no longer known to nest on the lower Colorado River (Hunter *et al.* 1987, Rosenberg *et al.* 1991), and is known to persist elsewhere in the state in only three areas. Two are located in the Grand Canyon, and these had declined to a total of two pairs by 1991 (Brown 1991). Two possible breeding birds were seen in 1991 in the White Mountains area, known to have supported small nesting groups (Arizona Game and Fish Department unpublished data). Extensive loss and modification of riparian habitats has occurred throughout much of the state and most willow flycatcher habitat is now gone. Unitt (1987) concluded that "* * * it is clear that *extimus* has been extirpated from much of the area from which it was originally described, the riparian woodlands of southern Arizona."

New Mexico

Hubbard (1987) reviewed and summarized the flycatcher's status in New Mexico. He believes the breeding populations to be generally confined to the regions west of the Rio Grande River, with records from Rio Grande, Chama, Zuni, San Francisco, Gila, and possibly lower Penasco drainages. Phillips (1948) also noted records from southwestern New Mexico, and from Las Vagas in the northeast.

The total range of the willow flycatcher has not been reduced in New Mexico, but numbers have likely declined (Hubbard 1987, Unitt 1987). A majority of remaining nesting southwestern willow flycatchers may occur in New Mexico (Unitt 1987). Nesting groups of 19 and 53 flycatcher pairs were found on the upper Gila River (Montgomery *et al.* 1985). Recent information on those nesting groups is not available, and Hubbard (1987) noted that data were lacking for trends of most nesting groups. Where data were available, they documented loss of a group of 15 breeding pairs by the rising waters of Elephant Butte Reservoir. Hubbard noted that this colony may have moved upstream, to new shoreline habitat created by the impoundment. However, he also found that the "virtually inescapable" conclusion was that "a decrease has occurred in the population of breeding willow flycatchers in New Mexico over historic time," resulting from habitat loss (Hubbard 1987).

Texas

The eastern edge of the southwestern willow flycatcher's range is believed to be in western Texas (Unitt 1987). Collections of the subspecies have been made at Fort Hancock on the Rio Grande (Phillips 1948), in the Guadalupe Mountains (Phillips pers. comm. cited in Unitt 1987), and the Davis Mountains (Oberholser 1974). Wauer (1973) considered the southwestern willow flycatcher a rare summer resident in Big Bend National Park. Data are lacking on current population levels and trends in Texas.

Utah

The northern limits of breeding southwestern willow flycatchers, in the eastern half of its range, are in southern Utah. However, because of intergradations with the *adastus* subspecies, the exact limits are not well defined (Behle 1985, Unitt 1987). The subspecies apparently has always been rare in southern Utah (Behle pers. comm. cited in Unitt 1987). Records that are likely to represent the *extimus* subspecies are from the Virgin River, from Saint George to Springdale (Phillips 1948), Kanab Creek near Kanab, and along the San Juan and

Colorado Rivers in southeastern Utah (Behle 1985). Other possible records corroborate the subspecies being present along the Virgin, Colorado, San Juan, and perhaps Paria Rivers (Bureau of Land Management, unpublished data).

Few data are available on population trends in southern Utah. However, loss of habitat is assumed to have reduced populations on the Virgin, Colorado, and San Juan Rivers. These losses have been due to urban and suburban expansion on the Virgin River, and inundation by Lake Powell on the Colorado and San Juan Rivers (Behle pers. comm. cited in Unitt 1987, Bureau of Land Management unpublished data).

Nevada

Unitt (1987) reported only three records for Nevada, all before 1962. Unitt (1987) and Hubbard (1987) both considered extreme southern Nevada to be within the subspecies' range. However, no recent data are available on population levels or trends.

Colorado

It is unknown whether the southwestern willow flycatcher occurs in Colorado. Some authors believe the subspecies may range into extreme southwestern Colorado (e.g. Hubbard (1987); others do not (e.g. Unitt 1987). Willow flycatchers in this region display considerable individual variation, and may represent intergrades between the *extimus* and *adastus* subspecies (Phillips 1948). There are not recent data on current population levels or trends from this area.

Mexico

Six specimens from Baja California del Norte and two from mainland Mexico (Sonora) were discussed by Unitt (1987). That author and Phillips (pers comm. cited in Unitt 1987) believe the suospecies is not common in northwestern Mexico. There are no recent data on current population levels or trends.

II. Habitat Trends

The petitioners noted that extensive loss of southwestern willow flycatcher habitat has taken place, and that current habitat exists only as small, widely dispersed, fragmented islands. The petition indicated these habitat islands are highly vulnerable to further fragmentation and loss, and southwestern willow flycatchers inhabiting them are vulnerable to local extirpation from a variety of threats which are exacerbated by habitat fragmentation and isolation.

Widespread losses of southwestern wetlands are well-described, particularly the cottonwood-willow riparian habitats of southwestern willow flycatchers (Phillips *et al.* 1964, Bulmer and Thornburg 1988, General Accounting Office 1988, Szaro 1989, Dahl 1990, State of Arizona 1990). Dahl (1990) reviewed losses of wetlands between 1780 and the 1980's in the southwestern states: California 91%; Nevada 52%; Utah 30%; Arizona 36%; New Mexico 33%; and Texas 52%. Bulmer and Thornburg (1988) estimated losses of as much as 90% of lowland riparian habitat in Arizona. These losses have been attributed to urban encroachment, water diversion, channelization, livestock grazing, and hydrological changes resulting from numerous land uses.

Loss of the cottonwood-willow riparian forests has had widespread impact on the distribution and abundance of bird species associated with that forest type (Hunter *et al.* 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991).

The petition contends that as habitat becomes fragmented, small isolated habitat islands and their resident flycatchers are increasingly susceptible to extinction through stochastic events like floods, fire, brood parasitism, and predation.

III. Additional Threats to the Southwestern Willow Flycatcher

The petition stated that, in addition to loss of habitat and reductions in known populations, the southwestern willow flycatcher faces a variety of other, often interrelated threats to its continued existence. These include brood parasitism, invasion of habitat by exotic species, livestock grazing, pesticide contamination, predation, and probable loss of wintering habitat due to tropical deforestation.

Cowbird Parasitism

The petitioners stated that brood parasitism by the brown-headed cowbird (*Molothrus ater*) constitutes a threat to the southwestern willow flycatcher. Expansion of the range of the brown-headed cowbird and observed parasitism have been correlated with declines in various songbirds (Mayfield 1977a). The cowbird lays it eggs in the nest of other songbirds. The larger, more aggressive cowbird nestlings typically outcompete those of the host species for parental care. Several host species have experienced acute declines following the combination of habitat fragmentation and cowbird parasitism. These include the Kirtland's warbler (*Dendroica kirtlandii*) (Mayfield 1977a, 1977b), the least Bell's vireo (*Vireo bellii pusillus*) (Pike and Hays 1991), and the willow flycatcher.

Brood parasitism of the willow flycatcher by brown-headed cowbirds is well documented (Hanna 1928, Rowley 1930, Willet 1933, Gaines 1974, Garret and Dunn 1981, Harris *et al.* 1987, Laymon *et al.* 1987, Brown 1988, 1991, Sedgewick and Knopf 1988, Whitfield 1990, Harris 1991). The effects of such parasitism include reducing overall nest success rate, overall egg-to-fledging rate, and delaying successful fledging (because of renesting attempts) (Harris 1991). Harris believes the delayed fledging may not give fledglings sufficient time to prepare for migration. The typical response to parasitism was abandonment of the nest. Willow flycatcher sometimes renest after abandoning a nest parasitized by cowbirds. Renesting usually results in smaller clutches, further reducing overall reproductive potential (Holcomb 1974).

Habitat fragmentation is strongly associated with increased rates of brood parasitism by brown-headed cowbirds (Rothstein *et al.* 1980, Brittingham and Temple 1983, Airola 1986). Host species nesting in linear riparian habitats are particularly vulnerable to parasitism (Airola 1986, Laymon *et al.* 1987, Harris 1991, Bleitz 1956 cited in Harris 1991). Thus the habitat fragmentation described above is likely to increase the threat of cowbird parasitism.

Rothstein *et al.* (1980), Stafford and Valentine (1985), and Harris (1991) believe parasitism may be correlated with elevation, being more severe at lower elevations. Coupled with greater loss of lowland (desert) riparian habitat, the effects of habitat loss and parasitism are compounded. As discussed above, the lower Colorado River may have once been the core of this subspecies' range. Not only has this area suffered widespread habitat loss and modification, but being at a low elevation, cowbird parasitism may have been an equally potent agent of extirpation.

Tamarisk Invasion

The petitioners indicated that the rapid spread of the exotic tamarisk (*Tamarix* sp.) has impacted the southwestern willow flycatcher. Tamarisk was introduced into North America in the 1800's as an ornamental windbreak and erosion-control plant. It has spread rapidly along southwestern watercourses, typically to the detriment of native riparian vegetation, especially cottonwood/willow associations. The resulting changes include altered floristic species composition, related changes in structure and volume of vegetation, and overall riparian ecology (Rosenberg *et al.* 1991). Changes in bird species communities resulting from invasion by tamarisk are well known. Conversion to tamarisk typically results in significant reductions or complete loss of bird species strongly associated with cottonwood-willow habitats. These include the yellow-billed cuckoo (*Coccyzus americanus*), summer tanager (*Piranga rubra*,), northern oriole (Icterus galbula), and the southwestern willow flycatcher (Hunter *et al.* 1987, Hunter *et al.* 1988, Rosenberg *et al.* 1991).

Willow flycatchers are generally absent where the exotic tamarisk has replaced native riparian vegetation (Hunter *et al.* 1987). The *extimus* subspecies is not known to nest in tamarisk at low or high elevations (Hunter *et al.* 1987, Hunter *et al.* 1988), but has nested in tamarisk at middle elevations (Hubbard 1987, Brown 1988, 1991). The petitioners cite numerous references quantifying tamarisk invasion and associating it with woodcutting vegetation clearing, and grazing (e.g. Behle and Higgins 1959, Hunter *et al.* 1988, Rosenberg *et al.* 1991).

Livestock Grazing

The petition also presented information on the detrimental effects of livestock grazing on the southwestern willow flycatcher and its habitat. The information presented indicated that livestock grazing negatively affects willow flycatchers through three mechanisms:

1. Destruction of nests by direct physical contact with livestock (Valentine *et al.* 1988, Flett and Sanders 1987, Stafford and Valentine 1985). Studying the *brewsteri* subspecies in California, Valentine (1987) found that 8 of 20 (40%) nests were trampled by cattle.

2. Changes in riparian vegetation caused by grazing include reduction of available nesting habitat, changes in vegetation structure, and changes in hydrology that result in altered riparian ecosystems (Serena 1982, Cannon and Knopf 1984, Taylor 1986). Linear riparian habitats in arid regions are particularly vulnerable to fragmentation due to their disproportionate attractiveness to cattle (Johnson 1989).

3. Cattle attract brown-headed cowbirds, whose detrimental effects are described above (Valentine *et al.* 1988). Cowbirds are strongly associated with livestock and human agriculture. Birds nesting in linear riparian habitats are particularly vulnerable to parasitism (Airola 1986, Laymon *et al.* 1987, Harris 1991, Bleitz 1956 cited in Harris 1991). As noted above, linear riparian habitats are also vulnerable to fragmentation by grazing, which further increases the threat of parasitism.

Strong circumstantial evidence is available that livestock grazing negatively affects willow flycatchers. Pronounced increases in willow flycatcher numbers have coincided with dramatic reductions in cattle grazing (Taylor and Littlefield 1986, Taylor 1986, Harris *et al.* 1987). Southwestern willow flycatchers increased by 61% over a five-year period after grazing was reduced (Harris *et al.* 1987). Taylor and Littlefield (1986) found higher numbers of *brewsteri* willow flycatchers correlated with minimal or nonexistent livestock grazing. The petitioners also noted that most of the areas still known to support southwestern willow flycatchers have low or nonexistent levels of livestock grazing.

Water Impoundment

The petitioners stated that water developments (particularly dams) have significantly reduced southwestern willow flycatcher habitat. The series of dams along most major southwestern rivers (Colorado, Gila, Salt, Verde, Rio Grande) have altered riparian habitats downstream of dams through hydrological changes, and inundated habitats upstream of the dams. New habitat is sometimes created along the shoreline of reservoirs, but this habitat (often tamarisk) is unstable with fluctuating levels of regulated reservoirs (Grinnell 1914, Phillips *et al.* 1964, Rosenberg *et al.* 1991).

Logging

The petitioners discussed logging of southwestern forests as another potential threat to the southwestern willow flycatcher. The petitioners stated that logging increases the likelihood of damaging floods in southwestern willow flycatcher nesting habitat. The petitioners presented no information to document specific impacts of logging on southwestern willow flycatcher nesting habitat. This issue will be investigated during the Service's status review.

Tropical Deforestation

The petitioners discussed deforestation of tropical and neotropical forests as another potential threat to the southwestern willow flycatcher. The petitioners stated that the subspecies winters in tropical regions, that tropical deforestation is widespread, and that the flycatcher may therefore be limited by availability of wintering habitat as well as breeding habitat.

The petitioners presented no information to document specific impacts of tropical deforestation on wintering southwestern willow flycatchers. This issue will be investigated during the Service's status review.

Pesticides

The petitioners discussed the southwestern willow flycatcher's preference for, and former abundance in, floodplain areas that are now largely agricultural. The petitioners argued that, where flycatcher populations remain, they are in proximity to agriculture areas, with the associated pesticides and herbicides. These agents may potentially affect the southwestern willow flycatcher, through direct toxicity and/or effects on their insect food base.

The petitioners presented no specific information to document effects of pesticides. The potential for negative effects on the flycatcher will be investigated during the Service's status review.

Predation

The petitioners maintained that predation on southwestern willow flycatchers may also be a significant threat, and may be increasing with habitat fragmentation. This contention is supported by some literature. Rosenberg *et al.* (1991) found increases in the great-tailed grackle in the lower Colorado River valley. The great-tailed grackle preys heavily on the eggs and young of other birds. Breeding southwestern willow flycatchers were apparently once common in the lower Colorado River valley (see discussion above). The flycatcher is no longer known to nest in that region. Whitfield (1990) found predation was significant on southwestern willow flycatcher nests. Predation increased with decreasing distance from nests to forest edge, suggesting that habitat fragmentation may increase the threat of predation, as well as increasing the threat of brood parasitism by cowbirds.

IV. Inadequacy of Existing Regulatory Mechanisms

The petitioners discussed the inadequacy of existing regulatory mechanisms to protect the southwestern willow flycatcher and its habitat. They noted that no conservation plans or habitat restoration projects exist on flycatcher habitat managed by the U.S. Forest Service, U.S. Bureau of Land Management, National Park Service, Bureau of Reclamation, U.S. Fish and Wildlife Service, Indian Nations, or

state agencies. The petitioners discussed specific management practices of each of these agencies which have resulted in loss of southwestern willow flycatcher habitat. The petitioners noted that the only measures implemented to benefit southwestern willow flycatchers have been on private (The Nature Conservancy) and military land (U.S. Marine Corps Camp Pendleton). In the latter instance, measures implemented primarily to recover the least Bell's vireo have also benefitted the flycatcher. The southwestern willow flycatcher is currently protected under the Migratory Bird Treaty Act (16 U.S.C. 703–712).

The adequacy of existing regulatory mechanisms protecting the southwestern willow flycatcher and its habitat will be evaluated during the Service's status review.

After a review of the petition, the references cited, and information otherwise available to the Service, the Service found that the petition presented substantial information indicating that listing the southwestern willow flycatcher may be warranted. The available information indicates that the numbers and range of the southwestern willow flycatcher have declined, in response to loss and modification of habitat, brood parasitism, predation, lack of existing regulatory mechanisms, and probably other factors yet to be defined. The Service will consider the request for emergency listing and designation of critical habitat. If the Service determines emergency listing is prudent, a proposed emergency rule will be published. If the Service determines designation of critical habitat is prudent and determinable, it will be included if a proposed rule is published.

This finding initiates a status review for the southwestern willow flycatcher as required under section (4)(b)(3)(A) of the Act. Within one year of receiving the petition, the Service is required under section 4(b)(3)(B) of the Act to make a finding whether the petitioned action is warranted. The Service requests any additional data, information or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of the southwestern willow flycatcher.

References Cited

A complete list of all references cited herein is available on request from the Field Supervisor, Phoenix Field Office (See **ADDRESSES** section).

Author

The primary author of this notice is Timothy Tibbitts of the Phoenix, Arizona Fish and Wildlife Service Ecological Services Field Office (see **ADDRESSES** section).

Authority: The authority for this action is 16 U.S.C. 1531–1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: August 14, 1992.

Jay L. Gerst,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92–20997 Filed 8–31–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 57, No. 170

Tuesday, September 1, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 92–114–2]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms; Correction

AGENCY: Animal and Plan Health Inspection Service, USDA.

ACTION: Notice; correction.

SUMMARY: We are correcting an editorial error that apeared in a notice published in the **Federal Register** on July 23, 1992 (57 FR 32772–32773, Docket No. 92–114–1). The notice advised the public that two applications for permits to release genetically engineered organisms into the environment were being reviewed by the Animal and Plant Health Inspection Service, and that the applications had been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products. In the first and second lines of the fifth column of the chart on page 32772, the field test location for permit application number 92–176–01, received from the Monsanto Agricultural Company on June 24, 1992, was incorrectly listed as "Yolo County, California; Jersey County, Illinois." The correct field test location is "Collier and Lee Counties, Florida."

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612.

Done in Washington, DC, this 26th day of August 1992.

Robert Melland,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–71006 Filed 8–31–92; 8:45 am]

BILLING CODE 3410–34–M

Forest Service

Intermountain Region; Fee Schedule For Communications Uses

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: The Intermountain Regional Forester has modified the fee schedule for communications uses authorized on National Forest System lands located in the States of Nevada, Utah, and portions of California, Colorado, Idaho, and Wyoming.

ADDRESSES: Copies of the schedule may be obtained by writing to the Regional Forester, Intermountain Region, 324 25th Street, Ogden, UT 84401.

FOR FURTHER INFORMATION CONTACT: Frank Elder (801) 625–5150, Recreation and Lands Staff.

SUPPLEMENTARY INFORMATION: On August 23, 1989, the Regional Forester for the Intermountain Region published a notice of adoption of fee schedule for communications uses (54 FR No. 162, pages 35019 to 35023). Congress delayed implementation of the fee schedule and directed the Forest Service to review and report to the Appropriations Committees on the ability of fee schedules to reflect values associated with local market conditions. The report was completed and sent to the Appropriations Committee in March of 1991.

The fee schedule modifications are based on the findings of the report to Congress and additional administrative review. Most of the modifications either reduce the fees adopted in 1989, or require appraisals or other sound business management principles be used to establish fees. The modified fee schedule reflects the fair market value of the authorized use as required by the Federal Land Policy and Management Act.

Dated: August 21, 1992.

Robert C. Joslin,

Deputy Regional Forester, Resources.

[FR Doc. 92–20942 Filed 8–31–92; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Michigan Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Tuesday, September 29, 1992 at the Omni International Hotel, 333 Jefferson Avenue, Detroit, Michigan. The purpose of this meeting is to discuss current issues, orient members, and plan future activities.

Persons desiring additional information should contact Dr. Janice G. Frazier, Committee Chairperson at (313) 964–4000 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353–8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 25, 1992.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92–20958 Filed 8–31–92; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–100–003 and C–100–004]

Adoption of Additional Streamlining Procedures for the Antidumping and Countervailing Duty Investigations of Certain Steel Products From Various Countries

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ann Sebastian, APO Specialist for Investigations, at (202) 377–3354, or Gary Taverman, Division Director, Office of Antidumping Investigations, at (202) 377–0161.

SUMMARY: The International Trade Administration (ITA) is adopting the proposed additional streamlining procedure to be used in the antidumping (AD) and countervailing duty (CVD) investigations of certain steel products from various countries, as published in the **Federal Register** on August 18, 1992.

Written comments were solicited in the August 18, 1992 notice. Two parties responded favorably to this proposal. No comments in opposition to the proposal were received. Therefore, effective September 1, 1992, the records of the AD investigations of each class or kind of merchandise from one country will be combined to create a single AD record for each country, as is now being done in the CVD investigations. A single administrative protective order (APO) will apply to the consolidated record for each country subject to AD or CVD investigations. Under this procedure, respondents will now file only one set of AD or CVD questionnaire responses, as appropriate, for all relevant classes or kinds of merchandise for each country, including both the narrative response, and computer tape/diskette submissions, rather than separate responses and databases for each class or kind of merchandise subject to investigation. Likewise, only a single set of ten copies of any other submission by any party will have to be made for one country. Each party will now make only one APO version (and one public version) of any submission for each country, rather than one for each separate class or kind, or different combinations of classes or kinds of merchandise.

Only the records will be combined under a lead case number. Separate investigations for each class or kind of merchandise will continue to be conducted. This procedure will simplify the administration of the AD and CVD provisions of the Tariff Act of 1930, as amended. It will also reduce the number of filings required of parties in each investigation, and assist in preventing inadvertent APO violations.

All submissions should indicate the lead case number followed by other appropriate case numbers for that country. Lead case numbers are currently being utilized in the CVD investigations. The lead AD case numbers by country are as follows: Argentina (A–357–808), Australia (A–602–803), Austria (A–433–803), Belgium (A–423–803), Brazil (A–351–814), Canada (A–122–820), Finland (A–405–802), France (A–427–806), Germany (A–428–813), Italy (A–475–807), Japan (A–588–824), Korea (A–580–814), Mexico (A–201–808), Netherlands (A–421–803), Poland (A–455–802), Romania (A–485–803), Spain (A–469–802), Sweden (A–401–805) and United Kingdom (A–412–814).

This will not affect the deadlines for filing applications for APO as set forth in 19 CFR 353.34(b) and 355.34(b). The Department will accept amendments to previously submitted protective order requests to reflect these changes.

Dated: August 27, 1992.

Francis J. Sailer,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92–21157 Filed 8–31–92; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration

[Docket No. 920384–2084]

RIN 0648–AE72

Process for the Management of Highly Migratory Species

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of proposed process and request for comments; extension of the public comment period.

SUMMARY: On May 29, 1992, NMFS published a notice of a proposed agency process for implementing provisions of the Fishery Conservation Amendments of 1990 (Pub. L. 101–627) concerning the management of highly migratory species in the Atlantic Ocean; Gulf of Mexico, and Caribbean Sea (57 FR 22718). The notice proposes a process that NOAA will follow in preparing, amending, and implementing fishery management plans and identifies the opportunities for involvement by the public, the Regional Fishery Management Council, and the U.S. Commissioners (and their advisors) to the International Convention for the Conservation of Atlantic Tunas. Public comments were invited through July 28, 1992. Based upon public requests for additional time for commenting on the proposed process, NMFS extended the public comment period through August 27, 1992 (57 FR 34121). Based on further public requests for additional time, NMFS is extending the public comment through September 11, 1992.

DATES: Comments must be received on or before September 11, 1992.

ADDRESSES: Comments on proposed process should be mailed to Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910. Please mark the envelope "Highly Migratory Species Process—Comments.".

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, NMFS, telephone: (301) 713–2334 or Davis A. Hays, Office of Fisheries Conservation Management, NMFS, telephone: (301) 713–2343.

Dated: August 26, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries National Marine Fisheries Service.

[FR Doc. 92–20992 Filed 8–27–92; 2:23 pm]

BILLING CODE 3510–22–M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council (Council) and its Demersal Species Committee, together with the Summer Flounder Industry Advisors Subcommittee, will meet on September 16–17, 1992, beginning at 10 a.m., at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215–521–9600).

The Council will begin its regular session on September 16 at 8 a.m. and should adjourn at approximately 12 noon on September 17.

The Council will consider the following agenda items: (1) Hear Committee reports, (2) adopt surf clam and ocean quahog specifications for 1993; (3) discuss the Summer Flounder Fishery Management Plan; and (4) discuss other fishery management matters as deemed necessary. The Council may go into closed session (not open to the public) to discuss personnel and/or national security matters.

For more information, contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: August 26, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–20984 Filed 8–31–92; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, DOC.

The North Pacific Fishery Management Council (Council), its Advisory Panel (AP) and Scientific and Statistical Committee (SSC) will hold public meetings during the week of September 21, 1992, at the Hilton Hotel, Anchorage, AK.

The Council is scheduled to convene its regular public meeting on September 22 at 10:30 a.m., possibly continuing through Sunday, September 27. A Council executive session, that is not open to the public and pertains to a briefing on current litigation and discussion of employment matters, is scheduled to begin at noon on September 22. The Council's AP and SSC will begin their public meetings on September 21 at noon at the same location as the Council. Their agenda items will be similar to that of the Council (see below). Other workgroup and committee meetings also may be scheduled on short notice throughout the meeting week.

The Council will consider the following agenda items:

(1) Election of officers;

(2) Reports by the Alaska Department of Fish and Game, the National Marine Fisheries Service (NMFS) and the U.S. Coast Guard, and reports on current legislation and international fisheries;

(3) A status report on marine mammals and seabirds, and need for protective regulations;

(4) Reports on the status of stocks for the halibut, crab, and groundfish fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands;

(5) Consideration of release of Community Development Quota (CDQ) for pollock for late 1992 and CDQ harvest management for 1993;

(6) Initial consideration of 1993 groundfish harvests, apportionments and prohibited species apportionments for the Gulf of Alaska and Bering Sea/Aleutian Islands;

(7) Review and approval of observer requirements for 1993;

(8) Review and approval of a qualitative analysis of alternatives for a Comprehensive Rationalization Program for all fisheries under the Council's jurisdiction for public review;

(9) A status report on the Sablefish and Halibut Individual Fishing Quota program and initial review of block proposals and a 1,000-pound floor;

(10) Initial review of analysis of optimum yield alternatives for *C. opilio* crab;

(11) Hear reports and recommendations regarding updating the habitat portion of the Council's fishery management plans, and

(12) Review the need for the Council's Salmon Fishery Management Plan.

The Council also will review and take appropriate action on the following groundfish subjects:

Groundfish Plan Amendments—Final Review

Receive workgroup report on Amendment 26, Eastern Gulf of Alaska trawl closure, and consider final approval for Secretarial review.

Groundfish Plan Amendments—Initial Review

(a) Pribilof Island trawl closure.

(b) Pollock "B" season delay/Exclusive Registration Areas.

(c) Preferential allocation of Pacific cod to gear types with low bycatch.

Groundfish Regulatory Amendments—Final Review

(a) Fixed gear halibut prohibited species catch (PSC) in the Bering Sea/Aleutian Islands for 1993.

(b) Performance-based pelagic trawl definition.

(c) Hook and line longline fair start/gangion-cutting provisions.

Groundfish Regulatory Amendments—Initial Review

(a) Inshore/Offshore and CDQ bycatch provisions.

(b) Legal gear types definition.

(c) Total catch measurement/interactive communications.

(d) Bycatch standards for 1993.

(e) Groundfish seasons for 1993.

Other Groundfish Issues

(a) Comprehensive Gulf of Alaska rockfish management plan.

(b) Bycatch management planning and indexing halibut PSC caps to biomass/numbers.

(c) Discard Committee report.

(d) Need for various outdated groundfish regulations.

(e) Petition for pollock research from St. Paul Island.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (907) 271–2809.

Dated: August 26, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–20983 Filed 8–31–92; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council (Council) and its advisory entities will meet on September 14–18, 1992, at the Clarion Hotel (near the San Francisco Airport), 401 East Millbrae Avenue, Millbrae, CA. Except as noted below, the meetings are open to the public.

The Council will convene on September 15 at 1 p.m. in a closed session (not open to the public) to discuss personnel matters and litigation. The Council's open session will begin on September 15 at 1:30 p.m. to consider administrative and other matters, including the election of the Chair and Vice Chair of the Council, review the fiscal year 1993 budget proposal, and consider the composition of the Scientific and Statistical Committee and the advisory subpanels. Also on September 15, the Council will address allocation of Pacific halibut for the 1993 fisheries and management measures for the recreational halibut fisheries.

The public may address the Council on fisheries issues unrelated to the agenda items on September 15 at 4 p.m. Public comments that pertain to action items on the agenda will be heard during the Council's deliberations on each issue.

The Council will reconvene on September 16 at 8 a.m. to consider limited access alternatives for the coastal pelagic species fisheries. For the remainder of September 16, the entire day of September 17 and a portion of September 18, the Council will address groundfish management items:

(1) Federal decision on license limitation,

(2) Status of the 1992 fisheries and inseason adjustments;

(3) Status of U.S./Canada Pacific whiting allocations;

(4) Preliminary 1993 harvest levels;

(5) Trawl fishery management in 1993;

(6) Pacific whiting allocation framework;

(7) Plan amendment to establish whiting fishery by-catch restrictions;

(8) Regulations to control by-catch in 1993;

(9) Individual quotas for Pacific halibut and fixed gear sablefish fisheries; and

(10) Status of legal gear definition changes.

Following the groundfish discussion on September 18, the Council will address habitat matters and salmon management.

Salmon issues on the agenda include:

(1) Sequence of events and status of the 1992 fisheries;

(2) Status of five stocks of Puget Sound chinook and coho salmon;

(3) Policy on adjustments to seasons due to unusual weather; and

(4) Plan amendment number 11, which includes three issues:

(a) Creation of a new subarea and allocation for the recreational fishery between Cape Alava and the Queets River, (b) sharing increases in the recreational harvest in the Westport and Columbia River subareas, and (c) creation of a separate Columbia River management area between Leadbetter Point and Cape Falcon.

Other Meetings

The Scientific and Statistical Committee will meet on September 14 at 8 a.m. to address scientific issues on the Council's agenda, and reconvene on September 15 at 8 a.m. to complete its business.

The Groundfish Advisory Subpanel will meet on September 14 at 1 p.m. to address groundfish management issues on the Council's agenda, and reconvene on September 15 at 8 a.m.

The Halibut Managers Group will meet on September 14 at 7 p.m. to discuss the 1992 halibut fisheries.

The Budget Committee will meet on September 15 at 10 a.m. to review the fiscal year 1993 Council budget proposal.

The Halibut Committee will meet on September 15 at 9 a.m. to address activities affecting the habitat of fish stocks managed by the Council.

The Enforcement Consultants will meet on September 15 at 10 a.m. to address enforcement issues on the Council's agenda.

The Salmon Advisory Subpanel will meet on September 17 at 10 a.m. to address salmon management items on the Council's agenda.

Detailed agendas for the above meetings will be available to the public after September 3, 1992. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326–6352.

Dated: August 26, 1992.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–20962 Filed 8–31–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals, Issuance of Permit

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Issuance of permit (P135C).

SUMMARY: On April 10, 1992, notice was published in the **Federal Register** (57 FR 12478) that an application had been filed by Dr. James H.W. Hain, Associated Scientists at Woods Hole, Inc., Box 721, Woods Hole, MA 02543, to take annually up to 25 right whales (Eubalaena glacialis), 45 humpback whales (*Megaptera novaeangliae*), 550 Atlantic bottlenose dolphins (*Tursiops truncatus*), 20 sperm whales (*Physeter macrocephalus*), 500 *Stenella* spp., 300 pilot whales (*Globicephala spp.*), 5 Cuvier's beaked whales (*Ziphius cavirostris*), 50 fin whales (*Balaenoptera physalus*), 40 minke whales (*B. acutorostrata*), 200 Atlantic white-sided dolphins (*Lagenorhynchus acutus*), 175 loggerhead turtles (*Caretta carretta*), 25 Kemp's Ridley Turtles (*Lepidochelys kempi*) and 45 leatherback turtles (*Dermochelys coriacea*). The animals would be taken by inadvertent harassment, primarily during surveys from an airship, including experiments with low-level flight and close approaches. Takes by inadvertent harassment would also occur during research involving fixed-wing aircraft, surface vessels, and underwater acoustic surveys in the continental shelf waters of the east coast of the United States out to a distance of 100 nautical miles from the shoreline.

Notice is hereby given that on August 24, 1992, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service issued a Permit for the above taking, subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on the finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of the Permit; and (3) is consistent with the purposes and policies set forth in section 2 of the Act. This Permit was also issued in accordance with and is subject to the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 220–222).

Documents submitted in connection with this Permit are available, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Room 7324, Silver Spring, MD 20910 (301/713–2289);

Director, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, Massachusetts 01930 (508/281–9200); and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141).

Dated: August 24, 1992.

Charles Karnella, Ph.D.,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 92–20960 Filed 8–31–92; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

August 28, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: September 2, 1992.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 377–3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution on Categories 341/641 and 347/348, the United States Government has decided to control imports in these categories for the twelve-month periods beginning on June 29, 1992 and extending through June 28, 1993, in the case of Categories 341/641; and beginning on May 31, 1992 and extending through May 30, 1993, in the case of Categories 347/348.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of Oman, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 56 FR 60101, published on November 27, 1991). Also see 57 FR 27031, published on June 17, 1992; and 57 FR 31494, published on July 16, 1992.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 26, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 2, 1992, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Oman and exported during the twelve-month periods which began, in the case of Categories 341/641, on June 29, 1992 and extends through June 28, 1993; and, in the case of Categories 347/348, on May 31, 1992 and extends through May 30, 1993, in excess of the following limits:

Category	Twelve-month limit [1]
341/641	113,871 dozen.
347/348	617,492 dozen.

[1] The limits have not been adjusted to account for any imports exported after May 30, 1992, in the case of Categories 347/348; and June 28, 1992, in the case of Categories 341/641.

Textile products which have been exported to the United States prior to June 29, 1992, in the case of Categories 341/641; and May 31, 1992, in the case of Categories 347/348, shall not be subject to the limits established in this directive.

Textile products in Categories 341/641 and 347/348 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92–20967 Filed 8–31–92; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Women in the Services Advisory Committee; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS).

ACTION: Notice of conference.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming conference of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of DACOWITS is to advise the Secretary of Defense on matters relating to women in the Services. The Committee meets semiannually.

DATES: October 18–21, 1992 (summarized agenda follows).

ADDRESSES: Seattle Marriott SeaTac Airport Hotel, 3201 S. 176 Street, Seattle, Washington, unless otherwise noted in agenda.

AGENDA: Sessions will be conducted daily and will be open to the public. The agenda will include the following:

Sunday, October 18, 1992, 7:30 a.m.–7 p.m.

Conference Registration (Former Members and Conference Participants; Briefings; Force Reductions and Restructuring; Weight Standards After Pregnancy; Sexual Harassment; National Guard Promotion Opportunities; Women's Health Issues; No-host Working Breakfast (current DACOWITS members only); Get Acquainted Luncheon (current DACOWITS members, military representatives, advisors, and liaison officers only); Subcommittee Sessions; and Social.

Monday, October 19, 1992, 9:30 a.m.–10 p.m.

Official Opening Ceremony; OSD Luncheon (By Invitation Only); Subcommittee Sessions; and OSD Reception and Dinner (By Invitation Only).

Tuesday, October 20, 1992, 7:30 a.m.–8 p.m.

Field trip to Fort Lewis, Washington (By Invitation Only), and Executive Committee Session.

Wednesday, October 21, 1992, 7:30 a.m.–11 a.m.

No-host Working Breakfast (current DACOWITS members only); Individual Review of Resolutions; General Business Session; Installation Visit Reports; Presentations by Members of the Public.

FOR FURTHER INFORMATION CONTACT: Major Branda M. Weidner, Assistant Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, room 3D769, Washington, DC 20301–4000; telephone (703) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the conference.

(1) Members of the public will not be permitted to attend official OSD Luncheon, Field Trip, or OSD Reception and Dinner.

(2) All business sessions will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the conference.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than September 25.

(5) Length and number of oral presenations to be made will depend on the number of requests received from members of the public.

(6) Oral presentations by members of the public will be permitted only on Wednesday, October 21, before the full Committee.

(7) Each person desiring to make an oral presentation must provide the DACOWITS office 1 copy of the presentation by October 2, and make available 175 copies of any material that is intended for distribution at the conference.

(8) Persons submitting a written statement for inclusion in the minutes of the conference must submit to the DACOWITS staff one copy either before or by the close of the conference.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for transmittal to the DACOWITS Chair or Director, DACOWITS and Military Women Matters, to consider.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executvie Committee Session, or the General Business Session. Sessions will be conducted daily and will be open to the public.

Dated: August 26, 1992.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-20926 Filed 8-31-92; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Final Supplemental Environmental Impact Statement for Base Realignment at Fort Huachuca, AZ

AGENCY: Department of Defense, United States Army.

ACTION: Notice of availability.

SUMMARY: The recommendation to retain Headquarters, U.S. Army Information Systems Command (USAISC) and its subordinate supporting elements at Fort Huachuca, Arizona was mandated by Public Law 101-510 (BRAC 91), the Defense Base Closure and Realignment Act of 1990. This action is additional to the consolidation of the U.S. Army Intelligence School, Fort Devens with the U.S. Army Intelligence Center and School at Fort Huachuca, as mandated by Public Law 100-526 (BRAC I). This document focuses on additional environmental and socioeconomic impacts and mitigations associated with retaining the personnel associated with USAISC at Fort Huachuca, Arizona. Additional actions that may be taken unrelated to this realignment may affect the number of positions at Fort Huachuca and the impacts are projected in this document.

No long-term adverse ecological or environmental health effects are expected due to the retention of Headquarters, USAISC and it supporting elements. The increased population is expected to be a net positive impact on the local economy. Proposed construction projects will not significantly impact environmental resources.

SCOPING: A scoping meeting was held in Sierra Vista on September 25, 1991. Public notices requesting input and comments from the public were issued in the regional area surrounding Fort Huachuca.

The Draft Supplemental Environmental Impact Statement (SEIS) was distributed to the public and interested agencies on June 5, 1992 for a 45 day review period. A public hearing was held on June 24, 1992 in Sierra Vista concerning the Draft SEIS. The purpose of the hearing was to give individuals or groups the opportunity to comment, either orally or in writing, on the environmental, social and economic impacts of the proposed realignment as presented in the Draft SEIS. All comments were considered and incorporated into the Final Supplemental Environmental Impact Statement (SEIS), where appropriate.

A copy of the Final SEIS will automatically be mailed to those receiving the Draft SEIS and any additional individual who commented.

FOR FURTHER INFORMATION CONTACT: Copies of the Final SEIS can be requested by contacting Mr. Alex Watt, (213) 894-5088 or by writing to: United States Army, Corps of Engineers, Los Angeles District, ATTN: CESPL-PD-RN, P.O. Box 2711, Los Angeles, CA 90053-2325.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health), OASA (I, L&E).

[FR Doc. 92-21035 Filed 8-31-92; 8:45 am]

BILLING CODE 3710-08-M

Environmental Assessment for Realignment Actions at Tobyhanna Army Depot, PA

AGENCY: Department of Defense.

ACTION: Findings of no significant impact.

SUMMARY: The Proposed Action is to implement the Defense Base Closure Commission's decision to realign the electronic maintenance workload at the Sacramento Army Depot (SAAD) by transferring five maintenance workloads to Tobyhanna Army Depot (TOAD), and to transfer the Air Defense electronic maintenance workload (AN/TSQ-73) from TOAD to Letterkenny Army Depot (LEAD)

The five maintenance workloads, including all applicable secondary items, sub-assemblies, and peripherals, being transferred to TOAD are: Airborne Electronics, Radio, Intelligence/Electronics/Warfare, Test Measurement and Diagnostic Equipment/Radiac, and Wire/Data/Communications/Switches. The realignment of workload from SAAD will be accomplished through "public-to-public" competition between TOAD and the Sacramento Air Logistics Center.

The air defense electronics maintenance workload to be transferred from TOAD to LEAD, as required by the Base Closure and Realignment Act, includes receipt, storage, maintenance, and repair for the AN/TSQ-73 Air Defense Command and Control System.

The relocation of workloads to and from TOAD is expected to result in an increase of 506 civilian positions on the depot.

Alternatives considered in the Environmental Assessment (EA) include the following: Preferred Alternative, which would transfer the five maintenance workloads from SAAD to TOAD in a phase-in approach over a two-year period, and the transfer of the Air Defense Command and Control System (AN/TSQ-73) maintenance workload from TOAD to LEAD; a Modified Timing Alternative, which would transfer all five workloads into TOAD at one time, and transfer the AN/TSQ-73 Air Command and Control System maintenance workload from TOAD to LEAD; an Unsuccessful Competition Alternative, which would result in no transfers from SAAD to TOAD, but would transfer the AN/TSQ-73 Air Defense Command and Control System maintenance workload from TOAD to LEAD; and the No Action Alternative, which provides the baseline at TOAD against which the other alternatives can be compared.

None of the alternatives would require building construction or modifications at TOAD. The workload to be transferred from SAAD to TOAD is similar to work currently being performed at TOAD, and would be accommodated in existing facilities. The increased workload would result in a subsequent increase in the amount of resources consumed and wastestreams produced by the personnel and production processes at TOAD. Biological, physical, and cultural resources such as native vegetation, wildlife including threatened and endangered species, groundwater, floodplains, historic structures and archaeological sites would not be affected by this action. Other resources such as potable water, raw materials used in the production processes, and electricity would be affected due to the increased workload. Wastestreams affected would include air emissions, waste water treatment plant effluent, sanitary solid wastes, and hazardous wastes generated in the production processes. Neither the resources consumed or wastestreams produced would have significant impacts on the human environment.

Positive impacts from implementing the proposed realignment action at TOAD occur in the socioeconomic environment. Sales volume, employment, and personal income would each experience growth. However, these socioeconomic benefits would not be significant.

Based on the environmental impact analyses found in the EA, which is hereby incorporated into this Finding of No Significant Impact (FNSI), it has been determined that implementation of the proposed action would not have significant individual or cumulative impacts on the quality of the natural or the human environment. Because there would be no significant environmental impacts resulting from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Comments must be received on or before October 1, 1992.

ADDRESSES: Persons wishing to comment may obtain a copy of the EA or inquire into this FNSI by writing to the U.S. Army Corps of Engineers, Baltimore District, ATTN: CENAB-PL-EM (Mr. Larry Eastman), P.O. Box 1715, Baltimore, Maryland 21203-1715.

FOR FURTHER INFORMATION CONTACT: Questions regarding this FNSI may be directed to Mr. Larry Eastman by calling (410) 962-4938.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health), OASA (IL&E).

[FR Doc. 92-21034 Filed 8-31-92; 8:45 am]

BILLING CODE 3710-08-M

Cancellation of the Preparation of the Programmatic Environmental Impact Statement for the Kinetic Energy Antisatellite (KE ASAT) Weapon System

AGENCY: Department of Defense, United States Army.

ACTION: Notice of intent.

SUMMARY: The proposed KE ASAT weapon system being developed by a joint Army and Air Force program office would employ ground-based missiles to intercept and disable designated target space vehicles. The current defense budget does not support pursuing Engineering and Manufacturing Developmental Testing and subsequent production and deployment of a KE ASAT system. Therefore, the Programmatic Environmental Impact Statement will not be completed at this time.

System concepts and requirements have been developed. Testing and support of the concept demonstration is occurring at Edwards Air Force Base, California. This activity is discussed in "A Kinetic Energy Anti-Satellite Demonstration/Validation Environmental Assessment (USASDC 1990)."

The KE ASAT program has been restructured to focus on technology development activities, all of which have been assessed in the previous environmental documentation. These activities specifically involve continued development of the control system and prototype interceptor.

Further surveys and analysis of the potential environmental impacts of the KE ASAT program will be formally conducted and properly documented should the program again consider plans for Engineering and Manufacturing Developmental Testing. Public notification would be made through the **Federal Register**, news media, and other sources as appropriate.

ADDRESSES: Deputy Commander, U.S. Army Strategic Defense Command, ATTN: CSSD-EN (David C. Hasley), P.O. Box 1500, Huntsville, AL 35807-3801.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health, OASA (I,L&E).

[FR Doc. 92-20950 Filed 8-31-92; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet September 21, 1992, from 0900 to 1530, at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting shall be closed to the public because they concern matters listed in 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LT J. E. Williams (OP-213E), Pentagon, Room 4D534, Washington, DC 20350, Telephone Number: (703) 697-8887.

Dated: August 18, 1992.

Wayne T. Baucino

Lieutenant, JAGC, U.S. Naval Reserve, Alternate Federal Register Liaison Officer.

[FR Doc. 92-20957 Filed 8-31-92; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing sponsored by the Advisory Committee on Student Financial Assistance. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Tuesday, September 15, 1992, beginning at 9 a.m. and ending at 5 p.m.

ADDRESSES: Beaver Run Resort and Conference Center, in the Theatre, Breckenridge, Colorado 80424-2115.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, room 4600, ROB-3, 7th & D Streets, SW., Washington, DC 20202-7582 (202) 708-7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee is established to provide advice and counsel to the Congress and the Secretary of Education on student financial aid matters, including providing technical expertise with regard to systems of need analysis and application forms, making recommendations that will result in the maintenance of access to postsecondary education for low- and middle-income students, and conducting a study of institutional lending in the Stafford Student Loan Program. The Congress has also directed the Advisory Committee to assist with a series of special assessments and produce an in-

depth study of student loan simplification.

The Advisory Committee will meet in Breckenridge, Colorado on September 15, 1992, from 9 a.m. to 5 p.m.

The proposed agenda includes discussion sessions on (a) the paperwork burden experienced by financial aid officers within the current structure of the loan program; (b) simplification and standardization of forms, procedures and other aspects of guaranty operations; (c) simplification of the bank repayment process; and (4) efficient utilization of loan programs.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, room 4600, 7th and D Streets, SW., Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: August 25, 1992.

Dr. Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 92-20923 Filed 8-31-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6272(c)(1)(A)(i)), the following notice of meetings is provided:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on Wednesday, September 9, 1992, at the offices of the Organization for Economic Cooperation and Development (OECD), 2, rue Andre Pascal, Paris, France, beginning at 10:30 a.m. The purpose of this meeting is to permit representatives of U.S. company members of the IAB to attend a meeting of a joint government/industry Design Group which has been established by the IEA's Standing Group on Emergency Questions (SEQ) for the preparation of the Seventh Allocation Systems Test (AST-7). The agenda for the meeting, which is under the control of the Design Group, is expected to be as follows:

1. Summary Record of the last meeting.
2. AST-7 Test Guide.
3. Training program for National Emergency Sharing Organizations (NESOs) and Reporting Companies.
4. Other issues concerned with the organization of AST-7.

In addition to the foregoing, there will be an informal meeting of the IAB at 9:30 a.m. on Wednesday, September 9, 1992, at the OECD to discuss possible additions and/or deletions to the agenda described above or the agenda for the meeting of the SEQ that is to take place on September 10, 1992 (see Part II below).

II. A meeting of the IAB will be held on Thursday, September 10, 1992, at the OECD, beginning at 9:30 a.m. The purpose of this meeting is to permit attendance by representatives of U.S. company members of the IAB at a meeting of the SEQ which is scheduled to be held at the OECD.

The agenda for the meeting is under the control of the IEA Secretariat. It is expected that the following draft agenda will be followed:

1. Adoption of the Agenda.
2. Summary Record of the 75th meeting.
3. Preparations for AST-7.

—Results of Design Group meeting of September 9
—Draft AST-7 Test Guide
—AST training program for NESOs and companies
—Possible media contacts on AST-7

4. IAB activities.
5. Main lines of SEQ Program of Work for 1993.
6. Emergency response situation of IEA countries and emergencies response reviews of IEA countries.
7. Emergency reserve and net import situation of IEA countries on January 1, 1992 and April 1, 1992.
8. Emergency data system and related questions.

—Monthly Oil Statistics (MOS) to May 1992
—MOS to June 1992
—Base Period Final Consumption 2Q91/1Q92

9. Any other business.

—Next meeting

As permitted by 10 CFR § 209.32, the usual 7-day period for publication of the notice of these meetings in the **Federal Register** has been shortened because unanticipated circumstances pertaining to the IEA's scheduling of these meetings delayed the issuance of this notice.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings are open only to representatives of members of the IAB and their counsel, representatives of the Departments of Energy, Justice, and State, the Federal Trade Commission, the General Accounting Office, Committees of the Congress, the IEA, the Commission of the European Communities, and invitees of the IAB, the SEQ, or the IEA.

Issued in Washington, DC, August 26, 1992.

Eric J. Fygi,

Acting General Counsel.

[FR Doc. 92-21015 Filed 8-31-92; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

(1) The sponsor of the collection (a DOE component which term includes the Federal Energy Regulatory Commission (FERC));

(2) Collection number(s);

(3) Current OMB docket number (if applicable);

(4) Collection title;

(5) Type of request, e.g., new, revision, extension, or reinstatement;

(6) Frequency of collection;

(7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;

(8) Affected public;

(9) An estimate of the number of respondents per report period;

(10) An estimate of the number of responses per respondent annually;

(11) An estimate of the average hours per response;

(12) The estimated total annual respondent burden; and

(13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254-5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-561.
3. 1902-0099.
4. Annual Report of Interlocking Positions.
5. Extension.
6. Annually.
7. Mandatory.
8. Individuals or households.
9. 1,500 respondents.
10. 1 response per respondent.
11. .25 hour per response.
12. 375 hours.
13. This information collection is required by section 305(c) of the Federal Power Act. The information is collected by FERC to identify persons holding interlocking positions involving public utilities and possible conflicts of interest.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Public Law No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, August 24, 1992.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 92-21014 Filed 8-31-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 92-22: Program for Ecosystem Research

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research (ER), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for Special Research Grants to support a new program for global climate change research "Program for Ecosystem Research: Fundamental (PERF)." Research within PERF is intended to provide opportunities for new insights into how terrestrial ecosystems and their component organisms adjust to global climate changes. For the purposes of this notice, the global climate changes of interest include temperature, moisture, and elevated greenhouse gases. Ecosystem adjustment may be viewed as the result of (1) biological adjustments, including homeostatic (physiological, biochemical) and genetic responses at the level of the organism; and (2) ecological adjustments, including succession and hierarchical integration at the ecosystem level. Research to detect and quantify the mechanisms that control adjustment processes should be an integral part of each research application. Proposed research must include the most appropriate research technologies available (from molecular to community methods), and should be designed to contribute to the broader more holistic perspectives of terrestrial ecosystem adjustment. Cooperative multidisciplinary research that contributes to research projects organized around the following core themes is encouraged.

This notice requests grant applications for research that include the themes: (1) How terrestrial organisms respond to atmospheric and global climate changes; (2) how these responses are controlled; (3) how these responses and controls can be detected and measured; and (4) how these responses are integrated across organizational levels to produce terrestrial ecosystem adjustments. Preapplications and the grant applications should emphasize theoretical and empirical couplings of these themes.

DATES: Formal applications submitted in response to this Notice must be received by the Acquisition and Assistance Management Division by 4:30 p.m., EST, January 4, 1993, to be accepted for a merit review in February 1993 and to permit timely consideration for award in Fiscal Year 1993.

ADDRESSES: Formal applications referencing Program Notice 92-22 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER-64, Washington, DC 20585, Attn: Program Notice 92-22. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Drs. Clive D. Jorgensen or Jerry W. Elwood, Office of Health and Environmental Research, Environmental Sciences Division, ER-74 (GTN), U.S. Department of Energy, Washington, DC 20585, (301) 903-5778/4583, or by OMNET, C. Jorgensen or J. Elwood.

SUPPLEMENTARY INFORMATION: Potential applicants are strongly encouraged to submit a brief preapplication in accordance with 10 CFR 600.10(d)(2). The preapplication is required to provide information that can be used to arrange for adequate reviews and also to provide applicants with an indication of DOE's interest in a potential application. The preapplication will be reviewed relative to the scope and research priorities of the U.S. Global Climate Change Research Program (USGCRP), including reference to specific DOE interests described in the DOE report on Program for Ecosystem Research (PER). The preapplications should include no more than two double-spaced pages (10 pt): including proposed research; how the research will contribute an understanding of ecosystem adjustments to global climate change; names and telephone numbers for all principal investigators (PIs), co-principal investigators (Co-PIs), and collaborators; and telefax numbers and addresses for the PIs and Co-PIs. Preapplications referencing Program Notice 92-22 should be received by October 15, 1992, and sent to Dr. Clive D. Jorgensen or Dr. Jerry W. Elwood, Office of Health and Environmental Research, ER-74, Washington, DC 20585. A response to the preapplications will be communicated to the PIs and Co-PIs by November 1, 1992.

DOE has responsibility for developing energy resources, technologies, and policies to provide for the nation's energy needs in a manner that will maintain, protect, and enhance environmental quality. Complementary to this commitment, and as part of the USGCRP, DOE also addresses the question of how ecosystems respond

and adjust to global and regional climate changes. The focus of PERF on fundamental responses and control mechanisms will enhance understanding of ecological/biological processes, and provide an improved scientific basis for assessing how and at what rates terrestrial ecosystems will adjust to global climate changes, especially regional adjustments to changes in moisture, temperature, and elevated greenhouse gases.

The themes listed in the Summary must be integrated into research applications designed to focus on understanding adjustments to global climate changes. The biological adjustment processes to receive emphasis in this notice are homeostasis and genetic selection. Ecological adjustment processes to receive emphasis are hierarchical integration and succession. Brief approximate descriptions of these processes are: Homeostasis—Homeostatic adjustments are the interdependent biochemical and physiological processes. Genetic Selection—Genetic selection is used herein as the selection of genotypes best suited for the changing climates at given locations. Hierarchical Integration—The integration of specific ecological and biological responses across hierarchical levels of ecosystem organization. Also, the ecosystem is itself one level of an even broader hierarchical organization. Succession—The process of changing species composition leading, in a somewhat predictable manner, toward an adjusted state of the ecosystem.

Each application will be reviewed on its own scientific merit and how it will contribute to the ecological research goals of the USGCRP, particularly gaps in information relative to the Dynamics of Growth and Decline, Prediction of Threshold Responses, and Modeling of adjustment processes across hierarchical levels. Although it may benefit applicants to attempt some pre-review coordination with other applicants to form core research programs, coordination cannot be formalized until after the review has been completed and the research interests evaluated. To provide this formal coordination, the meritorious applications will be grouped such that the researchers can collectively provide integrated core programs for enhanced understanding and synthesis.

It is anticipated that approximately $2 million will be available for grant awards during FY 1993, contingent upon availability of appropriated funds. Previous awards have ranged from $50,000 up to $225,000 per year (total costs with terms from 1 to 3 years). Most awards are in the $100,000 to $175,000 per year range (total costs from $300,000 to $525,000 for 3 years). Similar award sizes are anticipated for new grants. Funding of multiple year grant awards is expected, and is also contingent upon availability of funds.

The technical portion of each application should not exceed 25 double-spaced 10 pt pages with one-inch margins. Lengthy applications are not encouraged, and may be returned with a request to reduce length.

Information about the development and submission of applications, eligibility limitations, evaluation, selection processes, and other policies and procedures, may be found in 10 CFR part 605. The Application Kit and Guide is available from the U.S. Department of Energy, Acquisition and Assistance Management Division, Office of Energy Research, ER–64, Washington, DC 20585. Telephone requests may be made by calling (301) 903–4208. Additional information pertaining to the Program for Ecosystem Research is also available by calling (301) 903–4208. Instructions for preparation of an application are included in the application kit. The Catalog of Federal Assistance Number for this program is 81.049.

Issued in Washington, DC, on August 24, 1992.

D.D. Mayhew,

Deputy Director for Monogement, Office of Energy Research.

[FR Doc. 92–21020 Filed 8–31–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP92–657–000, et al.]

Southwest Gas Corporation, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Southwest Gas Corporation v. El Paso Natural Gas Company

[Docket No. CP92–657–000]

August 21, 1992.

Take notice that on August 17, 1992, Southwest Gas Corporation (Southwest), P.O. Box 98510, Las Vegas, NV 89193–8510, filed in Docket No. CP92–657–000, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206), a complaint against El Paso Natural Gas Company (El Paso) for violations of the Natural Gas Act, Commission Regulations, Commission Policy, El Paso's effective gas tariff, El Paso's expansion certificate in Docket No. CP90–2214–000, and El Paso's approved "Global Settlement" in Docket Nos. RP88–44–000, *et al.*, all as more fully set forth in the complaint which is on file with the Commission and open to public inspection.

Southwest's complaint addresses the contracts executed by El Paso with the expansion shippers for service at Southwest's Southern Nevada delivery points. The areas of concern are:

1. El Paso's oversubscription of delivery point capacity at Southwest's Southern Nevada delivery points constitutes an abandonment of service to Southwest without compliance with the requirements of section 7 of the NGA.

2. The expansion shipper's contracts violate El Paso's tariff and Commission policy, by failing to designate specific maximum contract quantities for each separate delivery point. This omission also affords the expansion shippers an undue preference by allowing them delivery point flexibility not afforded other shippers.

3. The expansion shippers' contracts violate El Paso's certificate in Docket No. CP90–2214–000 by allowing the expansion shippers to designate delivery points that were not contemplated for use under the expansion.

4. The expansion shippers' contracts violate the settlement in Docket Nos. RP88–44–000, *et al.*, and Commission policy and regulations by allowing the expansion shippers to designate firm delivery points that were already completely committed on a firm basis to Southwest.

In light of these violations of law and policy, Southwest requests the Commission to modify the contracts with the expansion shippers so as to delete the Southern Nevada delivery points previously dedicated to Southwest, and to provide such other relief as is consistent with the statutory, regulatory, tariff and policy violations committed by El Paso.

Comment date: September 21, 1992, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

2. EnergyNorth Natural Gas, Inc., et al.

[Docket No. CI92–70–000,[1] et al]

August 21, 1992.

Take notice that each of the Applicants listed herein filed applications on August 17, 1992, under sections 4 and 7 of the Natural Gas Act (NGA) for unlimited-term blanket certificates with pregranted abandonment authorizing sales in interstate commerce for resale of all categories of natural gas subject to the Commission's NGA jurisdiction. Applicant's applications are on file with the Commission and open to public inspection.

Comment date: September 14, 1992, in accordance with Standard Paragraph J at the end of this notice.

Docket No.	Applicant
CI92–770–000	Energy North Natural Gas, Inc., 1260 Elm Street, Box 3209, Manchester, NH 03105–0329.
CI92–771–000	Kamine/Besicorp Carthage L. P.
CI92–772–000	Kamine/Besicorp Natural Dam L. P.
CI92–773–000	Kamine/Besicorp Syracuse L. P.
CI92–774–000	Kamine/Besicorp South Glens Falls L. P., 1620 Route 22 East, Union, NJ 07083.
CI92–775–000	Sioux Pointe Inc., 1325 Lewis Blvd., P.O. Box 1078, Sioux City, IA 51102.

3. ANR Pipeline Company

[Docket No. CP92–659–000]

August 25, 1992.

Take notice that on August 18, 1992, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP92–659–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to operate an existing delivery point and appurtenant facilities as a jurisdictional sales facility to deliver gas to Iowa Electric Light and Power Company (Iowa Electric), under ANR's blanket certificate issued in Docket No. CP82–480–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that the existing delivery point, located in Van Buren County, Iowa, was constructed and operated under Section 311 authority and that it now proposes to use the facilities to make sales deliveries of natural gas to Iowa Electric.

ANR asserts that the natural gas delivered at the proposed delivery point would be within Iowa Electric's current peak day and annual entitlements, as set forth in the service agreement under ANR's Rate Schedule CD–1.

ANR states that the proposed delivery point would have no adverse impact on ANR's peak day and annual delivery capacity.

Comment date: October 9, 1992, in accordance with Standard Paragraph G at the end of this notice.

4. Trunkline Gas Company

[Docket No. CP92–651–000]

August 25, 1992.

Take notice that on August 12, 1992, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, filed an application with the Commission in Docket No. CP92–651–000 pursuant to section 7 of the Natural Gas Act (NGA) for permission and approval to abandon a firm transportation service it provides for Chevron U.S.A., Inc. (Chevron) under Trunkline's FERC Rate Schedule T–12, all as more fully set forth in the request which is open to the public for inspection.

Trunkline proposes to abandon, at Chevron's request, a firm transportation service under Trunkline's Rate Schedule T–12 of up to forty-five percent of the capacity of Trunkline's pipeline facilities for Chevron from Grand Isle Block 95, offshore Louisiana, to Chevron's platform in South Timbalier Block 151, offshore Louisiana. Trunkline requests authority to abandon its Rate Schedule T–12 transportation service effective June 1, 1992. No facilities would be abandoned in this proposal.

Comment date: September 15, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Arkla Energy Resources, a Division of Arkla, Inc.

[Docket No. CP92–662–000]

August 25, 1992.

Take notice that on August 20, 1992, Arkla Energy Resources, a division of Arkla, Inc. (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP92–662–000 a request pursuant to § 157.205 of the Commission's Regulations to: (1) Construct and operate a new sales tap and related facilities for delivery of natural gas to Arkansas Louisiana Gas Company (ALG) for resale to domestic customers in Caddo Parish, Louisiana; (2) upgrade one existing tap for increased deliveries to ALG for resale customers in Claiborne Parish, Louisiana; and (3) abandon six domestic sales taps in Ouachita County, Arkansas and Seminole County, Oklahoma under AER's blanket certification issued in Do. CP82–384–001, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

AER proposes to: (a) Construct and operate a 2-inch tap on AER's Line R in Caddo Parish, Louisiana for initial service to ALG's new Rural Extension No. 1307 for service to domestic and commercial customers using approximately 2,500 Mcf of natural gas per year and 50 Mcf of natural gas per peak day at an estimated cost of $39,586; (b) upgrade and replace an existing 1-inch meter with a 2-inch meter station on AER's Line K–2 in Claiborne Parish, Louisiana for service to domestic and commercial customers on ALG's existing Rural Extension No. 699 using approximately 425 Mcf of natural gas per year and 5 Mcf of natural gas per peak day at an estimated cost of $1,230; (c) abandon a 1-inch meter station on AER's Line K in Ouachita County, Arkansas which has been inactive for many years with an estimated abandonment cost of $517; (d) abandon three 1-inch meter stations on AER's Line 634–1 and two 1-inch meter stations on AER's Line 634–9 in Seminole County, Oklahoma which have been inactive for many years at an estimated abandonment cost of $625. AER states that the natural gas required for the sales services would be delivered from AER's general system supply, which is adequate to provide the service. AER states that its deliveries of natural gas to ALG are intercompany transfers that are not conducted pursuant to a FERC jurisdictional tariff and that natural gas sold would be billed at ALG's applicable retail rates as filed and effective with the appropriate state regulatory authority from time to time.

Comment date: October 9, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21001 Filed 8-31-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08552T Wyoming-33, Docket No. JD92-08553T Wyoming-34]

State of Wyoming; NGPA Notices of Determination by Jurisdictional Agency Designating Tight Formations

August 26, 1992.

Take notice that on August 24, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notices of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota (JD92-08552T) and the Frontier (JD92-08553T) Formations underlying a portion of Sweetwater County, Wyoming, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978. Each notice covers approximately 27,860 acres described on the attached appendix.

The notices of determination also contain Wyoming's and the Bureau of Land Management's findings that the referenced portions of the Dakota and the Frontier Formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The applications for determination are available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determinations may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Dakota Formation—Wyoming-33 (JD92-08552T)

Frontier Formation—Wyoming-34 (JD92-08553T)

The recommended area for the two formations cover the same surface acreage in Sweetwater County, Wyoming. The area consists of approximately 92.19% Federal Minerals, 6.89% State Minerals and 0.92% Fee minerals.

Township 12 North, Range 100 West

Section 6: W/2NW/4

Township 12 North, Range 101 West

Sections 1-5, 8-11, 15-16: All
Section 12: N/2, SW/4
Section 14: N/2, SW/4, NW/4SE/4
Section 17: Lots 1-6, N/2N/2
Section 20: Lots 3-11
Section 21: Lots 3-6, N/2
Section 22: Lots 3-6, N/2
Section 23: NW/4
Tract 37

Township 13 North, Range 100 West

Section 2: SW/4NE/4, W/2, W/2SE/4
Sections 3-4, 8-10, 15-17, 20-21, 29: All
Section 5: SE/4
Section 7: Lots 7, 8, E/2, E/2SW/4
Section 11: W/2NE/4, W/2, NW/4SE/4
Section 14: N/2NW/4, SW/4NW/4, NW/4SW/4
Section 18: Lots 5-8, E/2, E/2W/2
Section 19: Lots 5-8, E/2, E/2W/2
Section 22: N/2NE/4, SW/4NE/4, W/2, NW/4SE/4
Section 30: Lots 5-8, E/2, E/2W/2
Section 31: Lots 5-8, NE/4, E/2W/2

Township 13 North, Range 101 West

Section 13: SE/4
Section 23: SE/4
Section 24, 33-34, 36: All
Section 25: Lots 1-3, E/2, NW/4
Section 26: Lots 1-9, NE/4, N/2NW/4
Section 27: SE/4
Section 32: SE/4
Section 35: Lot 1, NW/4NE/4, S/2NE/4, W/2, SE/4
Tracts 43-44

Township 14 North, Range 100 West

Section 33: SE/4NE/4, E/2SE/4
Section 34: S/2N/2, S/2
Section 35: W/2SW/4, SE/4SW/4

[FR Doc. 92-20998 Filed 8-31-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-08554T Wyoming-35]

State of Wyoming NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

August 26, 1992.

Take notice that on August 24, 1992, the Wyoming Oil and Gas Conservation Commission (Wyoming) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sixth Frontier Formation underlying a portion of Fremont County, Wyoming, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The notice covers the following acreage:

Township 33 North, Range 95 West

Section 1: All
Section 2: NE/4, NE/4SE/4

Township 34 North, Range 95 West

Section 26: All
Section 35: All
Section 36: All

The notice of determination also contains Wyoming's findings that the referenced portion of the Sixth Frontier Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-20999 Filed 8-31-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-8-000]

Northern Natural Gas Company; Conference

August 26, 1992.

Take notice that on September 21, 1992, at 1 p.m., the Commission staff is convening a conference to discuss Northern Natural Gas Company's "draft" Order No. 636 tariff filing. This conference is a follow-up to the conference convened by the Commission staff on July 30, 1992, where the staff, representatives of Northern Natural, and parties to the restructuring proceeding discussed Northern Natural's summary proposal.

The conference will be held at the Offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Hearing Room #1, Washington, DC. The conference will run for two days, convening at 9 a.m. on the second day, September 22, 1992. Attendance at the conference does not confer party status. For additional information, please contact Jane Wilson at (402) 398-7088.

Lois D. Cashell,

Secretary.

[FR Doc. 92-21000 Filed 8-31-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[Docket Nos. 92-107-NG, 92-108-NG, 92-110-NG, 92-111-NG]

GPM Gas Corp., et al.; Applications for Blanket Authorization To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of applications.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice that the applications identified in the attached Appendix were filed pursuant to section 3 of the Natural Gas Act and DOE Delegation Order Nos. 0204-111 and 0204-127. The applicants request blanket authorization to import and/or export natural gas, including liquefied natural gas (LNG), from and to Canada, Mexico, and other foreign countries on a short-term or spot market basis over a period of two years beginning on the date of the first delivery. The proposed imports and exports would take place at any point on the borders of the United States that would not require the construction of new pipeline or LNG processing facilities.

Copies of these applications are available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, at the below address. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. You are invited to submit protests, motions to intervene, notices of intervention, and written comments with respect to any docket listed above.

DATE: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures and written comments are to be filed in the specific docket at the address listed below no later than 4:30 p.m., eastern time, October 1, 1992.

ADDRESSES: Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, Room 3F-056, FE-50, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: P.J. Fleming, Office of Fuels Programs, Fossil Energy, U.S. Department of Energy, Forrestal Building, room 3F-094, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-4819.

SUPPLEMENTARY INFORMATION: Notice of these applications is consolidated for administrative reasons, but DOE is conducting separate proceedings and will issue individual decisions on each application. Any protestor, intervenor, commenter, or other respondent who wishes to participate in more than one docket must submit a separate filing in each docket. DOE's decision on applications for import authority will be made consistent with DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the market served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). In reviewing natural gas export applications DOE considers domestic need for the gas and any other issue determined to be appropriate, including whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties, especially those that may oppose any of these applications, should comment on these issues as they relate to the requested import/export authority. The applicants assert that their proposals are in the public interest. Parties opposing any of these applications bear the burden of overcoming these assertions.

NEPA Compliance

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed actions. No final decision will be issued in these proceedings until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments Any person wishing to become a party to a proceeding and to have written comments considered as the basis for any decision on an application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to an application will not serve to make the protestant a party to that proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on an application. The filing of an intervention with respect to a particular docket will not serve to make the person a party in any other docket. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR part 590. Protests, motions to intervene, notices of intervention, requests for additional procedures, and written comments should be filed to the specific docket with the Office of Fuels Programs at the address listed above.

It is intended that a decisional record on an application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A

party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

Issued in Washington, DC, on August 27, 1992.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Fossil Energy.

APPENDIX

Filing date	Applicant name and docket No.	Two-year maximum			Comments
		Import volume	Export volume	Import/ export volume[1]	
8/18/92	GPM Gas Corp. (92-107-NG)		100 Bcf		Exports to Mexico.
8/19/92	Petro-Canada Hydrocarbons Inc. (92-108-NG)	150 Bcf			Imports from Canada.
8/24/92	Wes Cana Energy Marketing (U.S.) Inc. (92-110-NG)			200 Bcf	Imports/Exports (including LNG) from/to any foreign country.
8/24/92	Colonial Gas Co. (92-111-NG)	20 Bcf			Imports from Canada.

[1] Represents combined total of imports and exports.

[FR Doc. 92-21003 Filed 8-31-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 92-14; Certification Notice—106]

Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy Department of Energy.

ACTION: Notice of filing.

SUMMARY: Kamine/Besicorp Beaver Falls L.P. has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586-9625.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*, provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load poweplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Kamine/Besicorp Beaver Falls L.P. Union, New Jersey.

Operator: Stewart & Stevenson Operations, Inc. Houston, Texas.

Location: Beaver Falls, New York.

Plant Configuration: Combined cycle.

Capacity: 80 megawatts.

Fuel: Natural gas or number 2 fuel oil.

Purchasing Utility: Niagara Mohawk Power Corporation.

Expected In-Service Date: Before May 29, 1985.

Issued in Washington, DC on August 27, 1992.

Anthony J. Comb,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-21017 Filed 8-31-92; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. FE C&E 92-13; Certification Notice—105]

Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant, Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Sithe/Independence Power Partners, L.P. has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of the self-certification filing are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F-056, FE-52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586-9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Sithe/Independence Power Partners, L.P. Oswego County, New York.

Operator: Sithe/Independence Power Partners, L.P.

Location: Scriba, Oswego County, New York.

Plant Configuration: Four General Electric MS7001FA combustion turbine generators; four heat recovery steam generators; and two multi-pressure steam turbine generators.

Capacity: 1,012 megawatts.

Fuel: Natural gas.

Purchasing Utility: Consolidated Edison and Niagara Mohawk Corporation.

Expected In-Service Date: First quarter of 1995.

Issued in Washington, DC on August 27, 1992.

Anthony J. Commo,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-21016 Filed 8-31-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearing and Appeals

Cases Filed Week of August 14 through August 21, 1992

During the week of August 14 through August 21, 1992, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 25, 1992.

Richard Dugan,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of August 14 through August 21, 1992]

Date	Name and location of applicant	Case No.	Type of submission
Aug. 17, 1992	Gulf/Munford, Inc., Atlanta, GA	RR300-198	Request for modification/rescission in the Gulf refund proceeding. If granted: The July 17, 1992 Decision and Order (Case No. RF300-14694) issued to Munford, Inc. would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.
Aug. 20, 1992	E. B. Brooks, Jr., Washington, D.C.	LEE-0048	Implementation of special refund procedures. If granted: The Office of Hearings & Appeals would implement Special Refund Procedures pursuant to 10 C.F. R., Part 205, Subpart V, in connection with an April 6, 1988 Consent Order entered into with E. B. Brooks, Jr.
Aug. 21, 1992	William C. Adams, Lexington, KY	LFA-0233	Appeal of a Privacy Act & FOIA denial. If granted: The July 16, 1992 denial of access to records issued by the Oak Ridge Field Office would be rescinded, and William C. Adams would receive access to records generated during his security clearance investigation.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
8/14/92 thru 8/21/92.	Texaco refund applications received.	RF321-19110 thru RF321-19147
8/14/92 thru 8/21/92.	Gulf Oil refund applications received.	RF300-20462 thru RF300-20475
8/14/92 thru 8/21/92.	Crude oil applications received.	RF272-93809 thru RF272-93818
8/18/92	Ed Foog's ARCO	RF304-13253
8/18/92	Tony's ARCO	RF304-13254
8/18/92	Tony's ARCO	RF304-13255

[FR Doc. 92-21019 Filed 8-31-92; 8:45 am]

BILLING CODE 6450-01-M

EXPORT-IMPORT BANK OF THE UNITED STATES

Open Meeting of the Advisory Committee of the Export-Import Bank of the United States

SUMMARY: The Advisory Committee was established by Public Law 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Wednesday, September 16, 1992, from 9:30 a.m. to 12 noon. The meeting will be held at Eximbank in room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Status Report on Project Finance; Subcommittee Reports: Credit Reform—Latin America—EE/CIS—and FCIA; Next Steps; and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export—Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566-8893, not later than September 15, 1992. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 10, 1992, Loretta Carrier, room 935, 811 Vermont Avenue, NW., Washington, DC 20571.

Voice: (202) 566–8893 or TDD: (202) 535–3913.

FURTHER INFORMATION: For further information, contact Loretta Carrier, room 935, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893.

Helene H. Wall,

Vice President, Administrative and Management Services.

[FR Doc. 92-21115 Filed 8-31-92; 8:45 am]

BILLING CODE 6690-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4201-2]

Clean Air Act; Contractor Access to Confidential Business Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA has authorized that a subcontractor receive access to information that has been, or will be, submitted to EPA under Section 114 of the Clean Air Act (CAA) as amended. The Research Triangle Institute (RTI), Research Triangle Park, North Carolina is the primary contractor on contract 68D10143. JACA Corporation, 550 Pinetown Road, Fort Washington, Pennsylvania is the subcontractor that will provide technical assistance to RTI.

Some of the information may be claimed to be confidential business information (CBI) by the submitter.

DATES: Access to confidential data submitted to EPA will occur no sooner than August 31, 1992.

FOR FURTHER INFORMATION CONTACT: Gene W. Smith, Document Control Officer, Office of Air Quality Planning and Standards (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5439.

SUPPLEMENTARY INFORMATION: The EPA is issuing this notice to inform all submitters of information under Section 114 of the CAA that EPA may provide the above mentioned subcontractor access to the information on a need-to-know basis. The contractor, with the assistance of the subcontractor, will provide technical support to the Office of Air Quality Planning and Standards (OAQPS) in the development of cost, economic, and regulatory impact analyses to support the development of standards for a Federal Air Pollution Control Regulation.

In accordance with 40 CFR 2.301 (h), EPA has determined that this subcontractor requires access to CBI submitted to EPA under Sections 112 and 114 of the CAA in order to perform work under the above noted contract. The subcontractor's personnel will be given access to information submitted under Section 114 of the CAA. Some of the information may be claimed or determined to be CBI. The subcontractor's personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before hey are permitted access to CBI. All access to CAA CBI under this contract will take place at the subcontractor's facility. Clearance for access to CAA CBI under this contract is scheduled to expire on September 30, 1994.

Dated: August 24, 1992

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 92-21025 Filed 8-31-92; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA 92-1144]

Private Radio Bureau Seeks Comments on Dial Page, L.P's, Request for Rule Waiver To Implement a Digital Trunked Specialized Mobile Radio System in Nine Southeastern States

August 20, 1992.

Dial Page, L.P., seeks waiver of Commission Rules to implement a digital, trunked Specialized Mobile Radio (SMR) service in 82 predominantly secondary markets in nine southeastern States: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee and Virginia. Dial Page states that its proposed system will bring the benefits of digital SMR service to users outside of metropolitan areas. The system is intended to fill in gaps between systems in major urban areas along the southeast Atlantic coast by accelerating the development of a "virtually seamless, ubiquitous network" between northern Virginia and southern Florida.

To implement its proposal, Dial Page requests waivers of (1) §§ 90.621(a)(iv) and 90.627 to allow creation of SMR systems with 40 channels per site, (2) § 90.621(b) to permit frequency re-use at multiple sites separated by less than 70 miles and (3) §§ 90.631(e) and (f) to allow an extended construction schedule. Dial Page includes in its waiver request a proposed construction schedule, an examination of the effect of its proposed system on available spectrum in the geographic areas specified and a forecast of subscriber demand/channel requirements.

The Private Radio Bureau solicits comments on all aspects of the Dial Page proposal. Comments should be filed on or before September 30, 1992. Reply comments should be filed on or before October 19, 1992. Comments and reply comments should be addressed to: Compliance Branch, Land Mobile and Microwave Division, Private Radio Bureau, room 5202, STOP 1700A2, Federal Communications Commission, Washington, DC 20554. Reference: Case No. 92143.

Copies of the Dial Page, L.P., filing may be obtained from the Downtown Copy Center, 1990 M Street, NW., Washington, DC 20036, (202) 659–8657. A copy is also available for public inspection in Room 5202, 2025 M Street, NW., Washington, DC 20554.

For further information contact John J. Borkowski at (202) 632–7125.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 92-20929 Filed 8-31-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-955-DR]

Florida; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

EFFECTIVE DATE: August 24, 1992.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Florida (FEMA–955–DR), dated August 24, 1992, and related determinations.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 24, 1992, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*).

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Major P. May of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Florida to have been affected adversely by this declared major disaster:

The counties of Dade, Broward, and Monroe for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Wallace E. Stickney,

Director.

[FR Doc. 92-20996 Filed 8-31-92; 8:45 am]

BILLING CODE 6718-02-M

Meeting; FEMA Security Practices Board of Review

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, FEMA announces the following committee meeting, portions of which may be closed:

Nome: FEMA Security Practices Board of Review.

Dates of meeting: Friday, August 28, 1992 and Friday, September 4, 1992.

Place: Federal Emergency Management Agency, John W. Macy, Jr. Conference Room, room 829, 500 C Street, SW., Washington, DC 20472.

Times: 9 a.m. to 4 p.m. on both days.

Proposed agenda: Both days, discuss and prepare final report.

FOR FURTHER INFORMATION CONTACT: Dirk J. Vande Beek, Office of the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3923.

SUPPLEMENTARY INFORMATION: The Review Board must complete its review and report by September 11, 1992. In view of this time limit and owing to the complex, sensitive, and urgent nature of FEMA security matters, less than 15 days notice of the meeting is given, under 41 CFR 101–6.1015(b)–(2).

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Director, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3923 on or before Friday, August 28, 1992 or Wednesday, September 2, 1992.

The Director has determined that portions of the Board meeting may have to be closed to the public in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, and 5 U.S.C. 552b(c), because discussions may (1) disclose matters that are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense, (2) relate solely to the internal personnel rules and practices of an agency, and (3) disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of privacy.

Minutes of the meeting (minus those portions of the meeting which may be closed to the public) will be prepared and will be available for public viewing in the Office of the Director, Federal Emergency Management Agency, room 828, 500 C Street, SW., Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: August 26, 1992.

Wallace E. Stickney,

Director.

[FR Doc. 92-20993 Filed 8-31-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

San Francisco Port Commission/ Evergreen Marine Corp. et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200374–001.

Title: San Francisco Port Commission/Evergreen Marine Corp. (Taiwan) Ltd., Marine Terminal Agreement.

Parties: San Francisco Port Commission ("Port"), Evergreen Marine Corp. (Taiwan) Ltd. ("Evergreen").

Synopsis: The Agreement allows Evergreen to receive fifty percent of all demurrage collected by the Port on cargoes subject to the Agreement.

Agreement No.: 224–200403–002.

Title: Georgia Ports Authority/ Safbank Line, Ltd.

Parties: The Georgia Ports Authority, Safbank Line, Ltd.

Synopsis: The Agreement extends the term of the basic Agreement for another six month period from September 3, 1992 through March 3, 1993.

Agreement No.: 224–200695.

Title: Port of Houston Authority/ Houston Deepwater, Inc., Marine Terminal Lease Agreement.

Parties: The Port of Houston Authority ("Port") Houston Deepwater, Inc.

Filing Agent: Robert J. Stefani, Jr., Esq Robins, Kaplan, Miller & Ciresi Attorneys At Law, Suite 1200, 1801 K Street, NW., Washington, DC 20006–1301.

Synopsis: The Agreement is a marine terminal lease agreement whereby the Port will lease approximately 30.9 acres of land to Houston Deepwater, Inc. The term of the Agreement is for four years.

Dated: August 26, 1992.

By Order of the Federal Maritime Commission.

[FR Doc. 92-20945 Filed 8-31-92; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Protocol International Company, 500 E. Carson Plaza Drive, #102, Carson, CA 90746, Luis R. Hallon, Sole Proprietor.

Columbia Shipping Inc., 1164 Cherry Ave., San Bruno, CA 94066, Officers: Phillip Harrison, President/ Stockholder, Ronald McDonald, Vice President/Stockholder, Kerry McDonald, Vice President/ Stockholder, Diane Weldon, Vice

President, Lawrence Bauer, Secretary/Stockholder.

Fast Forward Transportation Services, Inc., 9777 Satellite Blvd., Suite 220, Orlando, FL 32837, Officer: John P. Jordan, President.

Davis Freight Systems, Inc., 7722 N.W. 56 Street, Miami, FL 33166, Officer: Larry E. Davis, President/Stockholder.

SAI Worldwide Inc., 175 West 13th Street, New York, NY 10011, Officers: Elizabeth de Martino, President/Treasurer, John M. Lynn, Vice President/Secretary.

Total Transport Inc., 7749 E. 11th Street, Tulsa, OK 74112, Officers: Clifford Randal Honeycutt, President/C.E.O., Elizabeth Ann Honeycutt, Vice President/Treasurer.

F. Angel & Associates Inc., 15575 Miami Lakeway North, #102, Miami Lakes, FL 33014, Officer: Fernando Angel, President.

Fashion Distribution Services, Inc., 148-08 Guy R. Brewer Blvd., Jamaica, NY 11434, Officers: Anthony Turrigiano, President, Gabriele Gaetani, Director, Filippo Occaso, Secretary/Treasurer, Carl Mussa, Vice President.

Long Transportation Services, Inc., 5604 Departure Drive, Raleigh, N.C. 27604, Officers: L. Duane Long, Pres./Treas./Dir./Stockh., Ernest H. Beauregard, Asst. Vice President.

Dated: August 26, 1992.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-29837 Filed 8-31-92; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Central-State Bancorp, Inc., et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 25, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Central-State Bancorp, Inc., Frankfort, Michigan; to engage *de novo* through its subsidiary, Central State Service Corp., Beulah, Michigan, in the making and selling of fixed rate mortgages in the secondary mortgage market pursuant to § 225.25(b)(1) of the Board's Regulation Y.

2. Kennedy Bancshares, Inc., Bancroft, Iowa; to engage *de novo* in making commercial and agricultural loans, residential real estate mortgage loans and commercial and agricultural real estate mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the State of Iowa.

Board of Governors of the Federal Reserve System, August 26, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-20961 Filed 8-31-92; 8:45 am]

BILLING CODE 6210-01-F

Hawkeye Bancorporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 25, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Hawkeye Bancorporation, Des Moines, Iowa; to merge with Jasand, Inc., Cedar Rapids, Iowa, and thereby indirectly acquire City National Bank of Cedar Rapids, Cedar Rapids, Iowa.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Nichols Hills Bancorporation, Inc., Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of Leadership Bank, N.A., Oklahoma City, Oklahoma.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. BancTexas Group, Inc., Dallas, Texas; to acquire 100 percent of the voting shares of First Bank/Las Colinas, Irving, Texas.

Board of Governors of the Federal Reserve System, August 26, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-20963 Filed 8-31-92; 8:45 am]

BILLING CODE 6210-01-F

Metrocorp, Inc. Employee Stock Ownership Plan; Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Metrocorp, Inc. Employee Stock Ownership Plan, East Moline, Illinois; to acquire 22.87 percent of the voting shares of Metrocorp, Inc., East Moline, Illinois, and thereby indirectly acquire Metrobank, East Moline, Illinois.

Board of Governors of the Federal Reserve System, August 26, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-20962 Filed 8-31-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[Dkt. C-3396]

Bertolli USA, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a New Jersey-based company from misrepresenting the validity, results, conclusions or interpretations of any test or study; and from representing that olive oil or any other edible oil produces any health benefits, such as reducing blood pressure and blood sugar, unless the respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

DATES: Complaint and Order issued August 17, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Nancy Warder, FTC/S-4002, Washington, DC 20580. (202) 326-3048.

SUPPLEMENTARY INFORMATION: On Tuesday, September 17, 1991, there was published in the **Federal Register**, 56 FR 47083, a proposed consent agreement with analysis In the Matter of Bertolli USA, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,

Secretary.

[FR Doc. 92-20970 Filed 8-31-92; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. 9223]

Campbell Soup Company; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent Order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Camden, N.J., based company to disclose in future advertisements that directly or by implication mention heart disease—in connection with soups containing significant amounts of sodium—both the sodium content of a serving of such soup and the recommended maximum daily limit on sodium intake. Respondent also is prohibited from representing a connection between any soup and a reduction in the risk of heart disease, unless such representations are substantiated by competent and reliable scientific or medical evidence.

DATES: Complaint issued January 25, 1989. Order issued August 18, 1992.[1]

[1] Copies of the Complaint, the Decision and Order, and the statement of Commissioner Azcuenaga are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Lee Peeler or Nancy Warder, FTC/S-4002, Washington, DC 20580. (202) 326-3090 or 326-3048.

SUPPLEMENTARY INFORMATION: On Thursday, April 18, 1991, there was published in the **Federal Register**, 56 FR 15880, a proposed consent agreement with analysis In the Matter of Campbell Soup Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 92-20968 Filed 8-31-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3395]

Pacific Rice Products, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California company from misrepresenting the contents, validity, results, conclusions or interpretations of any test or study; and from representing that any food produces any health benefit, unless the respondent possesses and relies upon competent and reliable scientific evidence to substantiate the representation.

DATES: Complaint and Order issued August 17, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Phillip Broyles, Cleveland Regional Office, Federal Trade Commission, 668 Euclid Ave., suite 520-A, Cleveland, OH 44114. (216) 522-4207.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Tuesday, September 17, 1991, there was published in the **Federal Register**, 56 FR 47086, a proposed consent agreement with analysis In the Matter of Pacific Rice Products, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Donald S. Clark,

Secretary.

[FR Doc. 92-20971 Filed 8-31-92; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C-3391]

The Vons Companies, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a California-based national grocery chain to sell its Madonna Road supermarket in San Luis Obispo to an FTC-approved purchaser within twelve months or else consent to the appointment of a Commission-approved trustee to divest the property. The respondent is also required, for a period of 10 years, to obtain FTC approval before making similar acquisitions.

DATES: Complaint and Order issued August 7, 1992.[1]

FOR FURTHER INFORMATION CONTACT: Steven Newborn, FTC/S-2308, Washington, DC 20580. (202) 326-2815; or Paul Roark, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13209, Los Angeles, CA 90024. (310) 575-7890.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Azcuenaga's statement are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On Wednesday, June 3, 1992, there was published in the **Federal Register**, 57 FR 23410, a proposed consent agreement with analysis In the Matter of The Vons Companies, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 92-20969 Filed 8-31-92; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: National Institute on Drug Abuse, ADAMHA, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Drug Testing Section, Division of Applied Research, National Institute on Drug Abuse, room 9-A-53, 5600 Fishers Lane, Rockville, Maryland 20857; tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of NIDA certification are not to be considered as meeting the minimum requirements expressed in the NIDA Guidelines. A laboratory must have its letter of certification from HHS/NIDA which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

AccuTox Analytical Laboratories, 427 Fifth Avenue, N.W., P.O. Box 770, Attalla, AL 35954-0770, 205-538-0012/800-247-3893.
Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615-331-5300.
Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800-541-4931/205-263-5745.
Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-282-2257.
American Medical Laboratories, Inc., 11091 Main Street, P.O. Box 188, Fairfax, VA 22030, 703-691-9100.
Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866.
Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787.
Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-227-2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center).
Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016.
Bellin Hospital—Toxicology Laboratory, 215 N. Webster Ave., Green Bay, WI 54301, 414-433-7485.

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900.
California Toxicology Services, 1925 East Dakota Avenue, Suite 206, Fresno, CA 93726, 209-221-5655/800-448-7600.
Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810.
Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500.
Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917.
CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263/800-833-3984.
CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263.
Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800-876-3652/417-836-3093.
Damon Clinical Laboratories, 140 East Ryan Road, Oak Creek, WI 53154, 800-638-1100 (name changed: formerly Chem-Bio Corporation; CBC Clinilab).
Damon Clinical Laboratories, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214-929-0535.
Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006.
Drug Labs of Texas, 15201 I-10 East, Suite 125, Channelview, TX 77530, 713-457-3784.
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310.
Eagle Forensic Laboratory, Inc., 950 North Federal Highway, Suite 308, Pompano Beach, FL 33062, 305-946-4324.
Eastern Laboratories, Ltd., 95 Seaview Boulevard, Port Washington, NY 11050, 516-625-9800.
ElSohly Laboratories, Inc., 1215-1/2 Jackson Ave., Oxford, MS 38655, 601-236-2609.
Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800-627-8200 (name change: formerly Alpha Medical Laboratory, Inc.).
General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267.
Harris Medical Laboratory, 7606 Pebble Drive, Fort Worth, TX 76118, 817-595-0294.
Harrison & Associates Forensic Laboratories, 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800-725-3784/915-687-6877.
HealthCare/Preferred Laboratories, 24451 Telegraph Road, Southfield, MI 48034, 800-328-4142 (inside MI)/800-225-9414 (outside MI).
Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713-793-6080.
IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800-967-9766.
Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672.
Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961.
Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715-389-3734.
Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507-284-3631.
Med-Chek Laboratories, Inc., 4900 Perry Highway, Pittsburgh, PA 15229, 412-931-7200.
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901-795-1515.
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 9176 Independence Avenue, Chatsworth, CA 91311, 818-718-0115/800-331-8670 (outside CA)/800-464-7081 (inside CA) (name changed: formerly Laboratory Specialists, Inc.: Abused Drug Laboratories).
MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc., 2356 North Lincoln Avenue, Chicago, IL 60614, 312-880-6900 (name changed: formerly Bio-Analytical Technologies).
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800-832-3244/612-636-7466.
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317-929-3587.
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800-752-1835/309-671-5199.
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708-595-3888.
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201-393-5000.
MetWest-BPL Toxicology Laboratory, 18700 Oxnard Street, Tarzana, CA 91356, 800-492-0800/818-343-8191.
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410-536-1485 (name changed: formerly Maryland Medical Laboratory, Inc.).
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800-749-3784 (name changed: formerly Med Arts Lab).
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103-6710, 919-760-4620/800-334-8627 (outside NC)/800-642-0894 (inside NC).
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016-2843, 908-272-2511.
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A-15, Nashville, TN 37217, 615-360-3992/800-800-4522.
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703-742-3100/800-572-3734 (inside VA)/800-336-0391 (outside VA).
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800-251-9492.
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805-322-4250.
Nichols Institute Substance Abuse Testing (NISAT), 8985 Balboa Avenue, San Diego, CA 92123, 800-446-4728/619-694-5050 (name changed: formerly Nichols Institute).
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800-322-3361.
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504-465-0751.
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440-0972, 503-687-2134.
Parke DeWatt Laboratories, Division of Comprehensive Medical Systems, Inc., 1810 Frontage Rd., Northbrook, IL 60062, 708-480-4680.
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509-926-2400.
PDLA, Inc. (Precision), 5 Industrial Park Drive, Oxford, MS 38655, 601-236-5600/800-237-7352.
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908-769-8500/800-237-7352.
PharmChem Laboratories, Inc., 1505-A O'Brien Drive, Menlo Park, CA 94025, 415-328-6200/800-446-5177.
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619-279-2600.
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 512-493-3211.
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601-264-3856/800-844-8378.
Regional Toxicology Services, 15305 N.E. 40th Street, Redmond, WA 98052, 206-882-3400.
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803-233-5639.
Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205-581-4170.
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404-939-4811.
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601-342-1286.
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800-437-4986.
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800-749-3788.
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505-848-8800.
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800-648-5472.
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818-376-2520.
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404-934-9205 (name changed: formerly SmithKline Bio-Science Laboratories).
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708-885-2010 (name changed: formerly International Toxicology Laboratories).
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314-567-3905.
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800-523-5447 (name changed: formerly SmithKline Bio-Science Laboratories).

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301 (name changed: formerly SmithKline Bio-Science Laboratories).
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176.
Southgate Medical Services, Inc., 21100 Southgate Park Boulevard, Cleveland, OH 44137–3054, 800–338–0166 (outside OH)/ 800–362–8913 (inside OH) (name changed: formerly Southgate Medical Laboratory).
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052.
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628.
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273.
Toxicology Testing Service, Inc., 5426 N.W. 79th Avenue, Miami, FL 33166, 305–593–2260

The following laboratory voluntarily withdrew from the National Laboratory Certification Program:

Center for Human Toxicology, 417 Wakara Way; Room 290, University Research Park, Salt Lake City, UT 84108, 801–581–5117.

Richard A. Millstein,

Acting Director, National Institute on Drug Abuse.

[FR Doc. 92–20912 Filed 8–31–92; 8:45 am]

BILLING CODE 4160–20–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Mental Health Council for September 1992.

The Council will be performing review of applications for Federal assistance; therefore, a portion of this meeting will be closed to the public as determined by the Acting Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meeting and a roster of committee members may be obtained from: Ms. Joanna L. Kieffer, NIMH Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (telephone: 301–443–4333).

Substantive program information may be obtained from the contact whose name, room number, and telephone number is listed below.

Committee Name: National Advisory Mental Health Council.
Meeting Date: September 14–15, 1992.
Place: September 14—Conference Rooms C and H, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.
September 15—Wilson Hall, Building 1, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: September 14, 8:30 a.m.–12:30 p.m.
Open: September 14, 1:30 p.m.–Adjournment on September 15.
Contact: Carolyn Strete, Ph.D., Room 9–105, Parklawn Building, Telephone (301) 443–3367.
Dated: August 26, 1992.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 92–20937 Filed 8–31–92; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

[Program Announcement 302]

FY 1993 Human Immunodeficiency Virus (HIV)/Acquired Immunodeficiency Syndrome (AIDS) Surveillance Cooperative Agreements

Introduction

The Centers for Disease Control (CDC), the Nation's prevention agency, announces the availability of fiscal year (FY) 1993 funds for cooperative agreements for human immunodeficiency virus (HIV)/acquired immunodeficiency syndrome (AIDS) surveillance. These activities are intended to continue and strengthen HIV/AIDS surveillance programs; evaluate and develop alternative HIV/AIDS surveillance methods; and measure and evaluate the extent of HIV/AIDS incidence and prevalence throughout the United States and its territories. These programs will provide information for public policy and for targeting strategies for HIV prevention and treatment programs, including improving linkages to medical and social support services.

Cooperative agreements will be awarded for three major programs:

A. HIV/AIDS Surveillance
  1. Surveillance of AIDS (AIDS)
  2. Adult/Adolescent HIV Infection Surveillance (AAHIS)
  3 Pediatric HIV Infection Surveillance (PHIS)
B. Expanded Initiatives for HIV/AIDS Surveillance
  1. Adult/Adolescent Spectrum of Disease (ASD)
  2. Supplement to HIV/AIDS Surveillance (SHAS)
  3. National Death Index (NDI)
C. HIV Serosurveillance
  1. Survey in Childbearing Women (SCBW)
  2. Ongoing Unlinked Surveys (US)
  3. New Time-limited Surveys and Studies (TLS)

Applicants may request funds for more than one program under this announcement. Each request, however, must be complete as it will be evaluated separately without reference to any other program.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000, see the section Where To Obtain Additional Information.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)), 311 (42 U.S.C. 243), and 317(k)(3) (42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended. Application program regulations are found in 42 CFR Part 52—Grants for Research Projects.

Eligible Applicants

Assistance will be provided only to the official public health departments of states or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

A. HIV/AIDS Surveillance

Surveillance of AIDS; Adult/Adolescent HIV Infection Surveillance; Pediatric HIV Infection Surveillance

Eligible applicants are official health agencies of the states; the cities of Chicago, Houston, Philadelphia, New York, San Francisco; and the County of Los Angeles.

Eligible applicants for Adult/Adolescent HIV Infection Surveillance must document that reporting of HIV infection by name or other unique identifier is required by statute or law, and that such requirements are scheduled for implementation by January 1, 1993. All applicants for Adult/Adolescent HIV Infection Surveillance will be expected to establish pediatric HIV infection reporting activities.

For separate funding under the Pediatric HIV Infection Surveillance component, applicants must meet the HIV reporting requirement described above or not be prohibited from receiving reports of HIV infection in children by current statute or law.

B. Expanded Initiatives for HIV/AIDS Surveillance

1. Maintenance of Existing ASD, SHAS, and NDI Components

Eligible applicants for competing continuation funding of the Adult Spectrum of Disease (ASD), Supplement to HIV/AIDS Surveillance (SHAS), and National Death Index (NDI) projects are the official state and local health agencies who are current recipients of funding in the 1991 Expanded Initiatives and the Evaluation of Surveillance of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection Cooperative Agreements.

2. Development of New ASD and SHAS Programs

Eligible applicants for new funding for the ASD and SHAS projects are official health agencies of the states; the cities of Chicago, Houston, Philadelphia, New York, San Francisco; and the County of Los Angeles; who are not current recipients of funding for the ASD and SHAS projects. New projects for NDI are not solicited.

C. HIV Serosurveillance

1. Survey in Childbearing Women

Eligible applicants for new and competing continuation funding for the survey in childbearing women and the evaluation of the effects of prenatal and perinatal HIV testing policies are the official public health agencies of states, the District of Columbia, and the Commonwealth of Puerto Rico.

2. Ongoing Unlinked Surveys and New Time-Limited Surveys

Eligible applicants for ongoing Unlinked Surveys and new Time-limited Surveys and Studies are those state and local public health agencies who are currently participating in unlinked, urban, clinic-based surveys in 44 sentinel cities.

Eligible applicants of sentinel hospital serosurveys are those public health agencies who are funded for these projects under the current HIV/AIDS Surveillance cooperative agreement.

Availability of Funds

Approximately $48 million will be available in FY 1993 to fund approximately 65 awards. Awards are expected to range from $6,000 to $3,500,000. The awards will begin on or about January 1, 1993, and will be for a 12-month budget period within a project period of up to three years. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Funding estimates for the components listed below may vary and are subject to change.

A. HIV/AIDS Surveillance

Approximately $25.1 million will be available for AIDS Surveillance and Adult, Adolescent, and Pediatric HIV Surveillance.

1. Surveillance of AIDS (AIDS)

Approximately $20 million will be available for 65 new and competing continuation projects.

2. Adult/Adolescent HIV Infection Surveillance (AAHIS)

Approximately $3.6 million will be available for 25 new and competing continuation projects.

3. Pediatric HIV Infection Surveillance (PHIS)

Approximately $1.5 million will be available for 18 new and competing continuation projects.

B. Expanded Initiatives for HIV/AIDS Surveillance

Approximately $3.9 million will be available for Expanded Initiatives for HIV/AIDS Surveillance.

1. Adult/Adolescent Spectrum of Disease (ASD)

Approximately $2.0 million will be available for 6 competing continuation and 2 new projects.

2. Supplement to HIV/AIDS Surveillance (SHAS)

Approximately $1.2 million will be available for 12 competing continuation and 2 new projects.

3. National Death Index (NDI)

Approximately $0.7 million will be available for 17 competing continuation projects. Funds are not available for new competing awards for National Death Index projects.

C. HIV Serosurveillance

Approximately $19.2 million is available for HIV serosurveillance activities.

1. Survey in Childbearing Women (SCBW)

Approximately $9.1 million will be available for new and competing continuation projects.

2. Ongoing Unlinked Surveys (US) and new Time-limited Serosurveillance Surveys and Studies (TLS)

Approximately $10.1 million will be available for these surveys and studies in approximately 20 competing continuation projects.

Flexibility

To increase flexibility of this cooperative agreement, recipients may, with prior CDC approval, redirect during 1993 up to 5% of their total award for emerging surveillance/serosurveillance needs. This funding is intended to support focused, one-time projects (e.g., serosurvey in a prison or hospital, evaluation of surveillance completeness, etc.) and to obtain information specifically required for policy decisions or planning prevention programs at the state or local level. Proposals for these projects should not be described in this application but should be submitted during the budget year as funds are identified to support them.

Purpose

The purpose of the HIV/AIDS Surveillance Cooperative Agreement Program is to assist state and local public health departments in (1) monitoring trends in the HIV epidemic and estimating the number of HIV-infected persons diagnosed with severe immunodeficiency; (2) conducting alternative surveillance initiatives that complement or extend information routinely collected through HIV or AIDS surveillance; (3) utilizing HIV/AIDS surveillance and, where available, HIV serosurveillance data collected using CDC protocols to determine populations and areas to which prevention efforts should be especially directed or intensified so that the risk of transmission can be minimized; and (4) detecting and preventing the further spread of HIV infection through developing, implementing, and evaluating serosurveillance surveys and studies, HIV infection surveillance, and selected epidemiologic investigations. The data collected through these activities can assist health departments in developing, targeting, and evaluating education and prevention programs, as well as help the nation monitor the overall patterns and trends of HIV infection and AIDS in the United States. Throughout all these program activities, special emphasis is to be placed on surveillance of HIV/AIDS in racial/ethnic minority populations.

Program Requirements

Cooperative Activities

In conducting activities to achieve the purpose of this program, the recipients shall be responsible for the activities under A., below, and CDC shall be responsible for conducting activities under B, below.

A. Recipient Activities

The following activities must be planned and conducted in collaboration and coordination with CDC by state and local health departments and, where appropriate, with the participation of:

—Appropriate state and local professional associations;
—Health-care providers and institutions serving, diagnosing, or providing treatment and care for persons with HIV/AIDS including laboratories providing HIV and CD4 lymphocyte testing;
—Organizations that serve persons at increased risk of HIV/AIDS, (e.g., drug use treatment facilities, STD clinics, family planning agencies, maternal and infant care programs, TB clinics, comprehensive hemophilia treatment centers, correctional facilities);
—Community groups and organizations, especially those with a racial and ethnic minority membership and focus; and
—HIV/AIDS service organizations.

Resource/Needs Assessment. Establish an ongoing assessment process to examine and document current and projected resource requirements for all surveillance efforts. The purpose of the resource/needs assessment is to ensure continued support for current activities and the need for additional program effort. Under section 317 of the PHS Act, direct assistance ("in lieu of cash") may be requested.

The resource/needs assessment should describe how HIV/AIDS surveillance and serosurveillance data are used to direct prevention activities and assess linkages to medical and support services.

1. HIV/AIDS Surveillance

Design, implement, and maintain active surveillance programs for adult, adolescent, and pediatric cases of HIV infection and AIDS meeting the CDC surveillance definitions. Conduct associated epidemiologic investigations to determine trends in incidence of AIDS and prevalance and incidence of HIV infection and identify populations at risk in accordance with CDC guidelines and recommendations. CD4+ lymphocyte counts are routinely recommended in the care of all HIV-infected patients. When available, they should be reported to enhance understanding of the epidemiology of HIV infection and the relationship between clinical manifestations and the severity of HIV-related immunosuppression.

Specific required surveillance activities: a. Design and conduct active surveillance activities to promote optimal reporting of all cases of HIV infection and AIDS (including all pediatric cases) diagnosed in the public health agency's geographic jurisdiction. HIV reporting and other related surveillance activities should complement AIDS case surveillance.

b. Establish liaison with appropriate reporting sources, such as hospitals and clinics, laboratories conducting HIV antibody testing and/or CDR lymphocyte subset analysis, selected physicians (e.g., infectious disease subspecialists), TB clinics, drug treatment facilities, death certificate registries, drug registries (e.g. AZT), and other public health agencies to enhance identification and reporting of cases. Assess yield from reporting sources and direct efforts at these sources based on how effectively they augment active surveillance. Provide periodic feedback to reporting sources.

c. Develop and maintain a secure registry of all reported cases, which includes laboratory, demographic, epidemiologic, and clinical information for individual cases, source of report (e.g., hospital outpatient clinic), and which permits rapid, uniform updates and retrieval of case information for regular and special tabulations and analyses of data. The case registry must be located in an area of limited and controlled access. Procedures must be in place to protect the confidentiality of patient records and the integrity of the surveillance system.

d. Report all cases of HIV infection and AIDS meeting the CDC surveillance definitions to CDC at least monthly.

e. Conduct epidemiologic investigations of cases that have no identified risk factors, including health-care workers who may have been occupationally exposed; selected blood transfusion-related or transplant cases and their donors; and other cases of epidemiologic importance using CDC developed protocols and criteria. Health departments should alert CDC to unusual occurrences identified through these investigations.

f. Augment surveillance through the use of at least one population-based alternative database (e.g., death certificates); and document methods, results, and how the results are being used to re-direct surveillance activities in the semiannual narratives.

g. Analyze, present, and publish the results of surveillance activities and epidemiologic investigations in consultation with CDC.

h. Focus and/or re-direct surveillance activities as indicated through critical review of data and evaluation of yield from various surveillance activities.

i. In collaboration with CDC, initiate additional methods of surveillance for adult and/or pediatric HIV-related morbidity and mortality.

j. Participate in national planning and implementation meetings (e.g., National HIV/AIDS Surveillance Workshop) by ensuring that appropriate representatives attend using travel funds provided through this cooperative agreement.

k. Provide in the application the current reporting laws/regulations for the applicant's jurisdiction related to reporting of HIV infection, HIV disease, and AIDS. Provide copies of regulations protecting confidentiality of HIV/AIDS reports, including release of data, if not contained in the reporting laws.

2. Expanded Initiatives for HIV/AIDS Surveillance

Conduct alternative surveillance Initiatives to define the spectrum of HIV-related disease, identify the contribution of HIV infection to mortality trends, characterize the behaviors and needs of HIV-infected persons with and without AIDS, and test alternative methods.

Specific required expanded initiative/evaluation activities: a. *Spectrum of Disease.*

Tasks:

Identify one or more hospitals (including the hospital ER and affiliated clinics) and/or one or more separate outpatient facilities (e.g., physicians' offices, public health clinics, health maintenance organizations) which treat a large volume of AIDS patients and other persons with HIV infection and disease.

For a prospective period, record all or a sample of patients who are admitted, evaluated, and/or treated because of illness associated with confirmed or suspected HIV infection. Sampling methods will be developed in collaboration with CDC to ensure sufficient representation of persons with different gender, race/ethnicity, and mode of HIV exposure.

Through review of medical records using data collection forms and software developed collaboratively by participating areas and CDC, describe all AIDS indicator diseases that have been diagnosed at any time in the past, and for the preceding 12-month period and subsequent 6-month intervals:

—illnesses that occur in identified HIV-infected persons
—use of antiviral and other medications for treatment of HIV disease and treatment or prevention of its complications
—results of CD4+ lymphocyte tests and other tests of immunologic function
—use of specific diagnostic or screening tests
—use of health services

Suggested Methods: Prospectively identify persons diagnosed with definitive or presumptive HIV infection and conduct surveillance for morbidity and mortality in selected hospitals, outpatient clinics, health maintenance organizations, and/or physician practices.

b. *Use of the National Death Index (NDI) to Evaluate Mortality in AIDS Patients.*

Tasks:

Abstract data from death certificates already on file.

Develop list of persons with AIDS presumed living with appropriate identifiers for NDI.

Submit list of cases directly to National Center for Health Statistics (NCHS). NCHS, will provide from the NDI match, a list of possible matches-death certificate numbers, state of death certificate registration to state/local areas.

Request death certificates from and confirm matches to their case surveillance reports.

Add selected data from death certificates (e.g., cause of death, location of death) to states/cities surveillance records, using a special modification of the AIDS Reporting System.

Suggested methods: Many areas already collect death certificates as part of AIDS surveillance. These records would be abstracted. In addition, the NDI provides matches between individual names and death certificates. Data from selected cities and/or states would be provided directly to NCHS. Matches identified from the NDI would then be verified by obtaining death certificates from state health departments. Information from death certificates would be added to state/city surveillance records.

c. *Supplement to HIV/AIDS Surveillance.* Collect supplemental information on AIDS cases and reports of HIV infection in reporting areas that have a need to know.

Categories of information may include: (1) More detailed information on race/ethnicity and social and economic status,

(2) Illicit drug use (injecting and "crack"),

(3) Changes in sex behaviors associated with HIV transmission and occurrence of other sexually transmissible diseases,

(4) Use of medical care (outpatient and inpatient services, treatments) and social services,

(5) Gynecologic and reproductive health,

(6) Risk behaviors among young adults, and

(7) Extent and types of disabilities.

Suggested Methods: Supplemental information would be collected through interviews with persons newly reported with HIV infections or AIDS as an extension of routine investigations of AIDS cases or HIV infections in participating states/cities. Standardized modules for each topic have been developed by CDC and participating areas, and CDC is providing computer software. These modules may be modified or extended in subsequent project years.

3. Serosurveillance Activities

a. Description of Surveys and Studies—(1) Ongoing Serosurveillance Activities. (a) Conduct ongoing unlinked serosurveys in childbearing women: monitor HIV in childbearing women nationwide using newborn filter paper blood specimens; and improve data completeness, quality, and reporting to CDC (e.g., to include age, race/ethnicity, county of birth). The protocol for this survey is the existing CDC protocol for seroprevalence surveys in childbearing women, May 1, 1992. Sample size recommendations may change from those previously used.

(b) Conduct ongoing unlinked serosurveys in patients at drug treatment centers (DTC) and at clinics for sexually transmitted diseases (STD), tuberculosis (TBC), homeless persons, women having induced abortions, and adolescents to determine prevalence and monitor trends of HIV infection in these sentinel groups.

(c) Continue HIV-2 surveillance by testing sera from ongoing surveys at STD clinics and DTC in a subset of sentinel cities. An applicant may request support for serosurveillance activities in some or all of these clinical settings.

(d) For the following surveys and studies, the specific clinics proposed must be able to meet the minimum sample size requirements in the corresponding protocols, unless otherwise noted.

STD Patients: In 20 cities, monitor HIV prevalence in STD patients in 1–2 principal clinics per city (up to 40 clinics nationally) that collect risk behavior information routinely from all clients. The protocol for this study is the existing CDC protocol for seroprevalence surveys in STD clinics, June 1, 1990.

Drug Users: In 20 cities, monitor HIV prevalence in drug users in (1) 1–3 principal drug treatment centers per city (30–40 centers nationally) that provide treatment to injecting drug users (not limited to heroin users), and (2) up to 3 centers per city (10–20 centers nationally) that provide treatment to users of drugs by routes other than injection (such as crack cocaine users). The protocol for this survey is the existing CDC protocol for seroprevalence surveys in drug treatment centers, June 1, 1990.

Homeless Persons: In 15–20 cities nationally (up to 2 clinics per city), monitor HIV prevalence in homeless persons. The protocol for this survey is the existing CDC protocol for seroprevalence surveys in clinics serving homeless persons, June 1, 1990.

Adolescents: In 20 cities, monitor HIV prevalence in up to 3 adolescent clinics per city (30–40 clinics nationally) hat collect risk behavior information routinely from all clients; up to 3 juvenile detention centers per city (total of 20 centers nationally); and in 10 cities, monitor HIV prevalence in up to 3 clinics (total of 10 clinics nationally) serving homeless youth. The protocols for these surveys are the existing CDC protocols for seroprevalence surveys in clinics for homeless persons, clinics for adolescents and in juvenile detention centers, June 1, 1991.

TB Patients: In 10 cities, monitor HIV prevalence in all clinics which each routinely obtain blood samples from at least 100 confirmed and suspect TB cases per year. The protocol for this survey is the existing CDC protocol for seroprevalence surveys in TB clinics, June 1, 1990.

Women Having Induced Abortions: Monitor HIV prevalence in women seeking abortions at abortion clinics in 4–5 cities where demographic data from the survey in childbearing women and abortion clinics are comparably complete in terms of age, race, and area of residence. Evaluate whether women having induced abortions are more or less likely to be HIV infected than childbearing women in the same city. The protocol for abortion clinic surveys is the existing CDC protocol for seroprevalence surveys in clinics serving women of reproductive age, June 1, 1990.

(e) Evaluate trends in seroprevalence in each sentinel clinic. The minimum sample size for unlinked surveys should be increased based on observed clinic rates in previous years' unlinked surveys by extending the survey period to collect more specimens. The current minimum sample size for each survey is

given in the CDC protocols. Proposed increased sample sizes will be evaluated individually for each clinic.

(f) Sentinel Hospital Patients: Monitor HIV seroprevalence among acute-care patients in 5 hospitals through unlinked serosurveys. (There will be an additional 5 hospitals supported directly through contracts.) Patients will be sampled regardless of presenting clinical condition. HIV-positive specimens will be tested for beta-2-microglobulin. The protocol for this study is the existing CDC protocol for seroprevalence surveys in sentinel hospitals (universal sample), May 1989.

(2) New Time-limited Surveys and Studies. Any state or other governmental authority conducting surveys in childbearing women may be funded for evaluation of prenatal and perinatal HIV testing as described below. For the other new time-limited surveys and studies, only those metropolitan areas selected for clinic-based surveys will be funded.

(a) New Surveys and Studies based on Interviews.

Compare Injecting Drug Users in High and Low Prevalence Areas: Evaluate behavioral and other differences between injecting drug users attending drug treatment centers in 2 "high" (approximately 15% or above) HIV prevalence areas and 2 "low" (approximately 5% or below) prevalence areas from among the 20 sentinel cities through modification of the risk behavior (nonblinded) surveys used through 1992. Drug users will be retested one time within one year of interview to provide a comparison of seroincidence in low and high prevalence areas. Areas conducting unlinked surveys in drug treatment centers may apply for inclusion as either a "high" or a "low" prevalence area based on findings form previous unlinked surveys. A standardized protocol for this study will be developed in 1993 by a working group composed of persons from CDC and the funded areas.

Assess Risk Behaviors in Homeless Persons: Assess risk behaviors in homeless persons, including adolescents, in 5–10 clinics providing services specifically for the homeless from among the 15–20 clinics conducting unlinked surveys. The final standardized protocol for this study will be based on the existing CDC protocol for risk behavior surveys in homeless persons and will be developed early in 1993 by a working group composed of persons from CDC and the funded areas.

Assess Risk Behaviors in Adolescents: Within the cities conducting HIV serosurveys, assess HIV risks through cross-sectional interview-based surveys in adolescents attending 6–10 clinics specifically serving youth and in adolescents seeking services at 6–10 general STD clinics. The standardized protocol for this study will be developed early in 1993 by a working group composed of persons from CDC and the funded areas.

Assess Risk Behaviors in Adolescent and Young Adult Men Who Have Sex with Men: Assess risk behaviors and prevalence of HIV and STD infections in young men, recruited from sites other than clinics, who have sex with men. Evaluate markers to stage HIV infection (e.g., beta-2-microglobulins, CD4 count) in this population for possible inclusion in ongoing studies. Five sites from among the 20 sentinel cities will be funded for one year with the possibility of a repeat study in selected areas. A draft protocol for this study has been developed and will be finalized early in 1993 by a working group of persons from CDC and the funded areas.

(b) *New Surveys and Studies Not Necessarily Involving Interviews.*

Evaluate Effects of Prenatal and Perinatal HIV Testing Policies: Evaluate effects of voluntary prenatal or perinatal HIV testing in 2–4 states that have adopted policies on HIV screening for women or infants. These studies will be funded in states that have ongoing surveys in childbearing women and that have existing or proposed mechanisms for providing counseling and testing of prenatal or childbearing women along with subsequent referral, follow-up, and treatment of seropositive women. Methods for this 12-month study will be chosen by the applicant.

Evaluate Stable or Decreasing Prevalence in STD Clinics: To document prospectively whether new infection is occurring in STD patients during a time when overall prevalence is stable or decreasing in the STD clinic, develop "passive" cohorts to assess patient seroconversion between repeat visits by linking STD records or by other methods to be proposed by the applicant. Three to five clinics with stable or decreasing seroprevalence documented in previous CDC unlinked surveys will be funded for this activity for 1–2 years, to be conducted concurrently with unlinked surveys.

Evaluate Coverage of Counseling and Testing in STD Clinics: In collaboration with STD Program Managers, prospectively evaluate the extent to which HIV-infected STD patients access HIV testing and receive test results in STD clinics. The results will be used to develop guidelines for clinics to evaluate their testing coverage of HIV-infected persons using serosurvey data. Four clinics concurrently conducting unlinked serosurveys will be funded for this activity for 1 year.

Other Studies: Limited funds will be available for special studies related to HIV serosurveillance. These studies may include: innovative approaches for using serosurveillance data to target and evaluate prevention programs or to evaluate specific interventions; projections and trend analysis in selected populations using serosurveillance data; application of HIV staging markers (e.g., beta-2-microglobulins, CD4 count) in serosurveillance projects; and studies of other viruses and their association with HIV infection.

b. *Specific Required HIV Serosurveillance Activities*

(1) *Survey Protocols*—(a) *For Ongoing Unlinked Surveys.* For ongoing unlinked serosurveillance activities (Section 3.a(1)), applicants must comply with the latest CDC protocols for unlinked HIV seroprevalence surveys (STD, TB, WHC, DTC, homeless, juvenile detention centers, adolescents), dated June 1, 1990; Survey in Childbearing Women (SCBW), May 1, 1992; and future revisions. Applicants must use CDC data collection forms for all surveys and studies except the SCBW. Copies of protocols and forms are available from the Division of HIV/AIDS (DHA) program consultants.

(b) *For New Surveys and Studies.* Participants in a given type of study will form a working group to meet with the respective CDC Project Officer to finalize a mutually agreed upon standardized protocol and, where applicable, a study questionnaire. The protocol and questionnaire will be used by all areas, with potential for additions and variations of local interest, if approved in advance by CDC.

(2) Develop and maintain a data base of demographic and risk behavior information and HIV test results to be provided line-by-line on a monthly basis to CDC. These data bases must be kept securely and have procedures in place to ensure anonymity of test results.

(a) *Survey in Childbearing Women.* For the survey in childbearing women, data should be transferred to CDC within 3 months of birth and within 1 month of testing. Demographic variables should be completed on at least 95 percent of records.

(b) Ongoing Clinic-based Surveys. For serosurveillance activities based on clinics, data must be provided to CDC using HFS software within 1 month of collection.

(c) *New Time-limited Surveys and Studies.* For new surveys and studies, all data generated must be provided to CDC monthly in the format agreed upon in the standardized protocol.

(3) Aliquot and store sera from clinic surveys and selected eluates from neonatal testing that remain after completion of HIV testing. Specimens will be held for one calendar year following the survey period to provide specimens for other studies and for quality control purposes. One 0.5–ml aliquot of each serum specimen is to be provided upon request to CDC. Dried blood spot eluates are to be selected and stored as described in the protocol for the SCBW and provided upon request to CDC.

(4) (a) **Survey in Childbearing Women.** Use serosurveillance data to develop, implement, and evaluate policies for counseling and voluntary HIV testing and provision of care for reproductive-age women or HIV screening of infants.

(b) *Clinic-based Surveys.* Assure that summary serosurveillance data are made available at least quarterly to participating clinic sites and to those responsible for prevention activities to assist in planning and evaluating prevention activities.

(5) Ensure that other studies proposed for the clinic settings do not hinder the timely completion of serosurveys and studies funded by this cooperative agreement.

(6) Participate in national planning and implementation meetings, (e.g., the National HIV Serosurveillance Workshop) by ensuring that appropriate representatives attend, using travel funds provided through this cooperative agreement for these meetings.

(7) Provide laboratory services, including screening tests, confirmatory procedures, and training of personnel necessary to support serosurveys and studies. Participate in a laboratory performance evaluation program for HIV testing. For consistency of HIV serologic survey data from state to state, applicants must use an FDA-licensed enzyme immunoassay kit (EIA) for all HIV–1 screening (this may be a combined HIV–1/HIV–2 EIA), and (except for the SCBW) an FDA-licensed HIV–1 Western blot kit for supplemental testing of repeatedly reactive serum specimens which are part of the HIV–1 serologic surveys and studies supported by these agreements. Since no Western blot kit has been licensed for use with dried blood spots, equipment and reagents approved by CDC for the Western blot assay must be used in the SCBW. Areas previously included in the CDC serosurveillance system for HIV–2 infection in STD clinics and drug treatment centers may use an FDA-licensed EIA for HIV–1/HIV–2 screening (combi kit) and, in addition to the HIV–1 Western blot kit described above, an FDA-licensed supplemental or confirmatory test(s) for HIV–2 in accordance with the manufacturer's recommendations. The algorithms for HIV testing recommended by CDC and the Association of State and Territorial Public Health Laboratory Directors (ASTPHLD) must be followed.

4. Optional Recipient Activities

To increase flexibility of this cooperative agreement, recipients may, with prior CDC approval, redirect during 1993 up to 5% of their total award for emerging surveillance/serosurveillance needs. This funding is intended to support focused, one-time projects (e.g., serosurvey in a prison hospital, evaluation of surveillance completeness, etc.) and to obtain information specifically required for policy decisions or planning prevention programs at the state or local level. Any study involving HIV testing must use an Institutional Review Board (IRB)-approved CDC protocol or guidelines. Proposals for these projects should not be described in this application, but should be submitted during the budget year as funds are identified to support them.

B. Centers for Disease Control Activities

1. Provide consultation and scientific and technical assistance in planning, operating, analyzing, and evaluating serosurveillance, surveillance, and expanded initiatives activities.

2. Provide training in surveillance methodology, serosurveillance survey and study methodology, and in program planning and management.

3. Provide (1) a national performance evaluation system for laboratory procedures related to the EIA, Western blot, and CD4 lymphocyte analysis, or other appropriate testing procedures, and (2) laboratory training that includes current scientific and technical information about the practical and the theoretical sensitivity and specificity of the different serological tests.

4. Develop, refine, and disseminate HIV/AIDS surveillance program information which describes effective methods to carry out program activities and monitor progress.

5. Provide criteria for the surveillance definition of nationally reported HIV infection/disease, case report forms, and assistance in establishing and maintaining the computerized AIDS Reporting System (ARS), HIV Reporting System (HRS) and HIV Family of Surveys (HFS).

6. Participate in the analysis of information and data gathered from program activities and facilitate the transfer of information and technology among all states and communities.

7. Provide standardized protocols for ongoing serosurveillance activities, data collection forms, and computer software for the CDC serosurveillance surveys. Participate in working groups with funded areas to finalize mutually agreed upon standardized study protocols and, where appropriate, data collection instruments for the new time-limited surveys and studies.

8. Assist in the evaluation of the overall effectiveness of program operations, including the impact of serosurveillance data on the development of public policy and on targeting and evaluating prevention activities.

9. Provide standard data collection forms, questionnaires, and computer software for the Expanded Initiatives activities.

Evaluation Criteria

Each application will be reviewed and evaluated individually according to the following criteria.

A. HIV/AIDS Surveillance (100 Points)

1. The extent to which HIV/AIDS surveillance activities have been or will be strengthened in inpatient and outpatient facilities and laboratories by addressing the following issues:

(1) Educating providers about reporting;

(2) establishing criteria for active surveillance sites;

(3) enrolling or removing sites from the active surveillance net;

(4) frequency and content of surveillance visits;

(5) establishing liaison with laboratories doing CD4 lymphocyte analysis, EIA, and Western blot testing;

(6) identifying and accessing a population-based secondary data set (e.g., death certificates);

(7) analyzing and disseminating data;

(8) evaluating yield from various surveillance activities; and

(9) following-up on cases of epidemiologic interest, (e.g., NIR's, particularly among health-care workers, transfusion cases after March 1985). (50 points)

2. The extent to which AIDS and HIV infection surveillance data are submitted to CDC in a complete manner on at least a monthly basis. (5 points)

3. The extent to which HIV/AIDS surveillance activities have or will assist in prevention activities, in formulating and targeting additional prevention strategies, the continued development of linkages to available medical and social

support services, and to the projection of trends. (10 points)

4. The extent to which the project objectives are realistic, specific, measurable, and address the required recipient activities. (10 points)

5. The extent to which realistic plans for evaluation of project activities have been developed and implemented and the quality of such plans. (10 points)

6. The extent to which the applicant has in place adequate procedures to ensure the physical security of HIV/AIDS reports and policies or legislation to protect the confidentiality of persons reported with HIV/AIDS. (15 points)

7. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

B. Expanded Initiatives

Competing continuation Applications: (Applications for ASD, NDI, and SHAS will be evaluated separately based on 100 points each.) Competing continuation awards will be made on the basis of the following criteria:

1. Satisfactory documentation of progress in meeting project objectives for each component, including the extent to which: potential sources of surveillance data have been identified, accessed, and used; procedures for protection of confidentiality have been adequately described; proper conduct of the study component has been documented, including ability to provide CDC with computer diskettes containing standard data items from software program; data from the project have been used locally; the project has been used to augment and enhance ongoing HIV or AIDS surveillance (i.e., AIDS reporting, updating HIV exposure information; updating vital status). (40 points)

2. The extent to which the objectives for each component for the new budget period are realistic, specific, and address the required recipient activities. (30 points)

3. The potential success of the new or revised methods of operations in meeting the proposed objectives. (20 points)

4. The appropriateness of any proposed changes in evaluation plans. (10 points).

5. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

New Competing Applications

(Applications for ASD and SHAS will be evaluated separately based on 100 points each.) Applications for new competing awards will be reviewed and evaluated based on the evidence submitted which specifically describes the applicants abilities to meet the following criteria:

1. The quality of plans to develop and implement the initiative project describing how potential sources of surveillance data will be identified, accessed, and used, including a plan to protect the confidentiality of all surveillance data. In addition, plans to integrate the project with ongoing HIV/AIDS surveillance should be described, including assurances that data collected from the project (i.e., AIDS reporting, updating HIV exposure information, updating vital status) will be used to augment and enhance the surveillance database. Specifically:

ASD

The ASD project will be evaluated on the quality of plans to include procedures to identify patients from outpatient facilities and inpatient facilities (or to obtain information on hospitalizations), and emergency rooms. In addition, procedures to obtain information on gynecologic and oncologic diagnoses should be described if these services are not provided in the clinics or other settings that are the primary focus of surveillance activities.

SHAS

The SHAS project will be evaluated on the ability to identify and interview persons with AIDS or HIV infections without AIDS. For those states interviewing persons with HIV infections, priority should be given to those with newly recognized infection and those with a known interval of HIV seroconversion, (e.g., those with previously documented negative tests). (25 points)

2. *ASD*

The ability to follow an adequate number of HIV-infected persons, including men and women of different racial/ethnic groups and with different modes of HIV exposure, to assure proper conduct of the study. The known or projected prevalence of HIV infection in the population to be studied and characterization by racial/ethnic group, gender, and mode of HIV exposure will be an important area of consideration.

SHAS

New applicants to the SHAS project will be evaluated on their ability to improve the representation of individuals from specific geographic areas, ethnic groups, and/or persons with newly recognized HIV infection. Regarding ethnicity, sites should document their capacity for including substantial numbers of Hispanic individuals of Puerto Rican ancestry. Regarding inclusion of persons with newly recognized HIV infection, sites should document their capacity for determining whether information is available on previous negative tests among such individuals. (25 points)

3. The applicant's understanding of the objectives of the surveillance initiative or evaluation and the applicant's ability, willingness and/or need to cooperate in a study with CDC and other participants, including use of standard protocols and software developed by CDC and participating sites during the initial project year in 1989. (15 points)

4. The applicant's current and/or past activities in the surveillance of AIDS, other HIV disease, and asymptomatic HIV infection and how they will be applied to achieving the objectives of the evaluation study or expanded initiative. (15 points)

5. How the project will be administered, including the size, qualifications, and time allocation of the proposed staff and the availability of facilities to be used during the surveillance evaluation/initiative and a schedule for accomplishing the activities of the evaluation/initiatives, including time frames. (20 points)

6. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

C. HIV Serosurveillance

1. Survey in Childbearing Women

For Competing Continuation Applications (100 points). The extent to which the applicant:

a. Demonstrates that survey data will complement data otherwise available from AIDs surveillance and HIV infection reporting. (10 points)

b. Documents ways that survey data have been used to help formulate public health policies and direct prevention activities. (10 points)

c. Has previously conducted the survey in accordance with the CDC survey protocol. (20 points)

d. Specifies laboratory methods conforming to CDC protocol (specimen collection and storage, HIV testing procedures, participation in quality assurance program). (20 points)

e. Describes and documents collaboration among epidemiology, HIV laboratory, metabolic screening and AIDS program components of the health department. (10 points)

f. Has previously collected adequate specimens and data with satisfactory demographic detail; describes plans for improving specimen and data quality. (20 points)

g. Details acceptable data management procedures, including linkage of laboratory and demographic data, editing and correction of errors, and transmission to CDC. (5 points)

h. Delineates administration of the project, including size, qualifications, time allocation and supervision of proposed staff. (5 points)

i. Provides a budget that is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

For New Applications (100 points). The extent to which the applicant:

a. Demonstrates that survey data will complement data otherwise available from AIDS surveillance and HIV infection reporting. (10 points)

b. Documents ways that survey data will be used to help formulate public health policies and direct prevention activities. (10 points)

c. Demonstrates understanding, ability, and willingness to follow the CDC survey protocol. (20 points)

d. Specifies laboratory methods conforming to CDC protocol (specimen collection and storage, HIV testing procedures, participation in quality assurance program). (20 points)

e. Describes and documents collaboration among epidemiology, HIV laboratory, metabolic screening and AIDS program components of the health department. (10 points)

f. Demonstrates an ability to collect adequate specimens and data with satisfactory demographic detail. (20 points)

g. Details acceptable data management procedures, including linkage of laboratory and demographic data, editing and correction of errors, and transmission to CDC. (5 points)

h. Delineates administration of the project, including size, qualifications, time allocation and supervision of proposed staff. (5 points)

i. Provides a budget that is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

2. Ongoing Unlinked Surveys and New Time-limited Surveys (100 Points)

a. The extent to which previously funded surveys and studies have been implemented and conducted in accordance with CDC protocols. (30 points)

b. The ability in previously funded serosurveillance activities to achieve required sample sizes in unlinked surveys, to enroll the required number of participants in Surveys of Risk Behaviors, to collect essential data and to ensure good data quality according to CDC protocols. (25 points)

c. The extent to which data from previously funded serosurveys were submitted to CDC in a timely (i.e., monthly) and complete manner using HFS software. (10 points)

d. The extent to which valid data from previously funded surveys are available to follow trends over several years. (15 points)

e. The diversity of survey and special project opportunities offered by the applicant. (10 points)

f. The applicant's ability and willingness (documented in part by letters from proposed clinics or hospitals indicating concurrence with the study plans) to cooperate in new studies with CDC and other participants, including the use of standardized protocols and software developed by CDC and the participating health departments during the next project year. (10 points)

g. The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. (Not scored)

Funding Priorities

A. HIV/AIDS Surveillance

1. Surveillance of AIDS (AIDS)
2. Adult/Adolescent HIV Infection Surveillance (AAHIS)
3. Pediatric HIV Infection Surveillance (PHIS)

Highest priority will be given to continuing support for applicants currently receiving support for these projects.

B. Expanded Initiatives for HIV/AIDS Surveillance

Highest priority will be given to continuing support for applicants currently receiving support for these projects.

1. Adult Spectrum of Disease

Priority for new competing applications for the Adult Spectrum of Disease Project will be given to those applicants who document an ability to implement alternative (to routine AIDS case reporting) surveillance techniques and to identify and follow a substantial number of (1) HIV-infected women, and who can enlist the participation of those facilities that provide obstetrical/gynecological services to HIV-infected women, (2) HIV-infected persons of minority racial/ethnic groups, and (3) HIV-infected persons who are injecting drug users and those who were exposed to HIV through heterosexual contact.

2. Supplement to HIV/AIDS Surveillance

Priority for new competing applications for the Supplement to HIV/AIDS Surveillance project will be given to those geographic areas who document their ability to (1) improve the representation of Hispanic individuals of Puerto Rican ancestry and/or (2) those areas who can improve the representation of persons with newly recognized HIV infections, especially persons with a known interval between the last seronegative HIV result and seroconversion, (e.g., ability to obtain information on previous test results during post-test counseling).

3. National Death Index

Funds are not available for new competing awards for National Death Index projects to evaluate mortality of AIDS patients (NDI).

C. HIV Serosurveillance

1. Survey in Childbearing Women

Highest priority will be given to those states (as well as the District of Columbia and Puerto Rico) currently receiving support for these projects.

2. Ongoing Unlinked Surveys and new Time-limited Surveys and Studies (based primarily in clinics)

Twenty "sentinel cities" will be funded for clinic-based surveys. Selection of sentinel cities will be competitive and based on demonstrated good past performance on serosurveys to permit continued monitoring of trends and on the opportunity in the project area to conduct the various types of surveys and studies.

Priority will be given to selecting sentinel cities which will, as a group, provide both geographic and epidemiologic diversity to facilitate monitoring the various patterns of HIV in the country. Approximately 40% of the selected cities will be located in the states and territories along the Atlantic coast (including Puerto Rico), 25% in the Rocky Mountain and Pacific states, and 35% in the remainder of the country. While the majority of funds will be awarded to major metropolitan areas, some smaller population centers will be included. Of the funded areas, approximately 40% will have low seroprevalence (at or below the national median) in females without acknowledged risk attending STD clinics and in injecting drug users entering drug treatment as demonstrated by previous CDC-funded unlinked surveys. For national median values, refer to the *National HIV*

Serosurveillance. Summary of Results through 1990. Approximately 60% will have higher seroprevalence rates (above the national median) in these target groups. Priority will also be given to areas with opportunities to conduct studies in adolescents and in clinics specifically serving men who have sex with men.

Executive Order 12372

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally recognized Indian tribal governments.) should contact their state Single Point of Contacts (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Edwin L. Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 93.118.

Other Requirements

Paperwork Reduction Act

Projects initiated under B.1., B.3. (Expanded Initiatives for HIV/AIDS Surveillance), C.1.–C.3. (HIV Serosurveillance) that involve the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Data collection initiated under sections A.1.–A.3. (HIV/AIDS Surveillance) has been approved by the Office of Management and Budget under number 0920–0004, "National Disease Surveillance Program I. Case Report," Expiration date 11/92. Data collection initiated under section B.2. (Expanded Initiatives for HIV/AIDS Surveillance) has been approved under number 0920–0262, "Supplement to AIDS Case Reporting." Expiration date 7/93.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 Code of Federal Regulations part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

HIV/AIDS Requirements

Recipients must comply with the document entitled "Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions," (June 1992), a copy of which is included in the application kit. In complying with the requirements for a program review panel, recipients are encouraged to use an existing program review panel such as the one created by the state health department's HIV/AIDS prevention program. If the recipient forms its own program review panel, at least one member must be an employee (or a designated representative) of a governmental health department consistent with the Content guidelines. The names of the review panel members must be listed on the Assurance of Compliance Form CDC 0.113, which is also included in the application kit. The recipient must submit the program review panel's report that indicates all materials have been reviewed and approved.

Application Submission and Deadline

The original and two copies of the application, PHS Form 5161–1, must be submitted to *Edwin L. Dixon*, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Mailstop E–14, Atlanta, GA 30305, on or before September 30, 1992.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications. Late applications shall not be considered in the current competition for funding and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, an application package, and business management technical assistance may be obtained from Nealean K. Austin, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, Mailstop E–14, (404) 842–6508.

Programmatic technical assistance may be obtained from Willis R. Forrester, Field Services Branch, Division of HIV/AIDS, National Center for Infectious Diseases, Centers for Disease Control, Atlanta, GA 30333, (404) 639–2056.

Please refer to Announcement Number 302 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1), referenced in the Introduction, through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, (Telephone 202–783–3238).

Dated: August 25, 1992.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control.

[FR Doc. 92–20980 Filed 8–31–92; 8:45 am]

BILLING CODE 4160–18–M

National Minority Organization Consultant Meeting

The National Center for Prevention Services (NCPS) of the Centers for Disease Control (CDC) announces the following meeting:

Name: National Minority Organization (NMO) Consultant Meeting.

Time and Date: 8:30 a.m.–4:30 p.m., September 15, 1992.

Place: Hotel Nikko Atlanta, 3300 Peachtree Road, NE., Atlanta, Georgia 30305.

Status: Open to the public, limited only by space available.

Purpose: Representatives from CDC, other federal agencies, state and local health departments, community-based organizations and other consultants representing a broad cross section of racial/ethnic minority populations and geographic areas will review and discuss the draft program announcement for fiscal year 1993 funding of NMOs for human immunodeficiency virus (HIV) prevention.

Matters to be Discussed: Meeting attendees will review and comment on the draft program announcement. All suggestions will be considered when the final announcement is developed.

Contact Person for More Information: P. Imani Thompson, M.C.P., Ed.M., Health Education Specialist, NCPS (HIV), CDC, Mailstop E07, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639–1480.

Dated: August 26, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 92–20979 Filed 8–31–92; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

[OPA–004–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for September 14, 1992 from 9 a.m. until 5 p.m. e.d.t. An additional meeting is tentatively scheduled for December 14, 1992 from 9 a.m. until 5 p.m. e.s.t.

ADDRESSES: The meeting will be held in room 800, 8th Floor of the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Matthew Crow, Executive Director, Practicing Physicians Advisory Council, room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, enacted on November 5, 1990), to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration (HCFA) not later than December 31st of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Advisory Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Advisory Committee by appropriate action before the end of the 2-year term.

The current members are: Gary Dennis, M.D., Harvey Hanlen, D.O., Kenneth Hansen, M.D., Isabel Hoverman, M.D., Ramon Jimenez, M.D., Jerilyn Kaibel, D.O., William Kirsch, D.O., Marie Kuffner, M.D., David Massanari, M.D., Kenton Moss, M.D., Susan Owens, M.D., Isadore Rosenfeld, M.D., Richard Tompkins, M.D., James Waites, M.D., and Gary Yordy, M.D. The chairperson is Richard Tompkins, M.D.

The Council will discuss items in connection with staff leasing by physicians. Section 1861(s)(2)(A) of the Social Security Act provides for the coverage of services and supplies furnished incident to a physician's professional service. The implementing manual instructions set forth in section 2050 of the Medicare Carriers Manual stipulate that services furnished by a physician's auxiliary personnel can be covered under this benefit only if the auxiliary personnel are employees of the physician. In addition, the Council will discuss HCFA's "Dear Doctor" letter, which is sent to all physicians given them the opportunity to enroll as a participating physician in the Medicare program.

Those individuals or organizations who wish to make 10-minute oral presentations on scheduled topics must contact the Executive Director to be scheduled. For the name, address and telephone number of the Executive Director, see the "**FOR FURTHER INFORMATION CONTACT**" section at the beginning of this notice. A written copy of the oral remarks must be presented to the Executive Director at the time of the presentation. Anyone who is not scheduled to speak may submit written comments to the Executive Director. The meeting is open to the public but attendance is limited to the space available on a first-come basis.

Authority: Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 19, 1992.

William Toby,

Acting Deputy Administrator, Health Care Financing Administration.

[FR Doc. 92–21024 Filed 8–31–92; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Mineralogical Infrared Data Set From MACH I Inc.

AGENCY: U.S. Geological Survey.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. Geological Survey has accepted from MACH I Inc. a Mineralogical Infrared Data Set, containing mineral and infrared spectra data, and the use of a Perkin Elmer IR Data Station Model 3600 and Model 660 Graphic Printer to work with the data. This reference library of mineral spectra can be used to assist in mineral identification and characterization.

DATES: This notice is effective September 1, 1992.

ADDRESSES: Material in the data set is available to the public upon request at the following location: U.S. Geological Survey, Branch of Central Mineral

Resources, Denver Federal Center, Bldg. 25, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene Foord of the U.S. Geological Survey, Branch of Central Mineral Resources, at the address given above; telephone 303/236–4755.

B.A. Morgan,
Chief Geologist.

[FR Doc. 92–20808 Filed 8–31–92; 8:45 am]
BILLING CODE 4310–31–M

National Park Service

Concession Contract Negotiations; Jefferson National Expansion Historical Association

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to negotiate a concession permit with the Jefferson National Expansion Historical Association authorizing it to continue to provide photographic film/supplies and female sanitary napkins facilities and services for the public at the Jefferson National Expansion Memorial National Historic Site, Missouri, for a period of five (5) years from September 1, 1990, through August 31, 1995.

EFFECTIVE DATE: November 2, 1992.

ADDRESS: Interested parties should contact the Superintendent, Jefferson National Expansion Memorial National Historic Site, 11 North Fourth Street, St. Louis, MO 63102, for information as to the requirements of the proposed permit

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The foregoing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on August 31, 1990, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new proposed permit as defined in 36 CFR 51.5.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be postmarked or hand delivered on or before the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: August 25, 1992.

Don H. Castleberry,
Regional Director, Midwest Region.

[FR Doc. 92–21036 Filed 8–31–92; 8:45 am]
BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 22, 1992. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by September 16, 1992.

Antoinette J. Lee,
Acting Chief of Registration, National Register.

California

Riverside County

First Church of Christ, Scientist, 3606 Lemon St., Riverside, 92001250.

Colorado

Denver County

Gebhard Mansion, 2253 Downing St., Denver, 92001254.

Connecticut

Fairfield County

Redding Center Historic District, Roughly, 4—25B Cross Hwy., including Read Cemetery, 61—100 Hill Rd., 0—15 Lonetown Rd. and 118 Sanfordtown Rd., Redding, 92001253.

Louisiana

Rapides Parish

Lecompte High School, 1610 Charter St., Lecompte, 92001251.

St. Tammany Parish

Dendinger House, 206 Covington St., Madisonville, 92001252.

Nevada

Churchill County

Churchill County Courthouse, 10 Williams St., Fallon, 92001258.

Elko County

Elko County Courthouse, 571 Idaho St., Elko, 92001259.

Washoe County

California Building, 1000 Cowan Dr., Idlewild Park, Reno, 92001257.

North Carolina

Lenoir County

Tull—Worth—Holland Farm, NC 1579 N side, .5 mi. E of jct. with NC 1578, Kinston Vicinity, 92001260.

Ohio

Ottowa County

Main Street Historic District, Roughly bounded by Eighth, Washington, Fifth and West Sts., Genoa, 92001261.

Oregon

Lane County

Patterson—Stratton House (Eugene West University Neighborhood MPS), 1605 Pearl St., Eugene, 92001262.

Tennessee

Shelby County

Pope, Leroy, Elementary School, 190 Chelsea Ave., Memphis, 92001263.

Washington County

Salem Presbyterian Church, 147 Washington College Rd., Washington College, 92001255.

Texas

Anderson County

Anderson County Courthouse, 1 Public Sq., Palestine, 92001256.

[FR Doc. 92–20936 Filed 8–31–92; 8:45 am]
BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 509]

Railroad Revenue Adequacy—1991 Determination

AGENCY: Interstate Commerce Commission.

ACTION: Denial of motion for reconsideration in 1991 revenue adequacy determination.

SUMMARY: On July 22, 1992, the Commission served a decision in this proceeding (57 FR 32563). On July 24, 1992, the Association of American Railroads filed a Motion for Reconsideration requesting that the Commission use predecessor cost in lieu of acquisition cost in measuring the net investment base of the railroads. AAR also requests that the Commission confirm that, should AAR prevail in a court challenge it will modify the 1991 decision by using predecessor costs. We deny the motion to use predecessor cost in the instant decision, but do acknowledge that should AAR prevail in its court challenge, the 1991 decision would be modified accordingly.

EFFECTIVE DATE: This decision shall be effective on September 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr. (202) 927–5740 (TDD for the hearing impaired : (202) 927–5721).

SUPPLEMENTARY INFORMATION: By decision served July 22, 1992, published at 8 I.C.C.2d 666 (1992), the Commission issued its revenue adequacy findings for the nation's Class I railroads for the year 1991. In that decision, for the fourth time, we used acquisition cost in lieu of predecessor cost for determining the railroads' net investment bases. On July 24, 1992, the Association of American Railroads ("AAR") filed a motion for reconsideration arguing for the use of predecessor costs. AAR requests that, at the very least, the Commission confirm that if the court requires the use of predecessor costs, we will modify the 1991 revenue adequacy decision accordingly. Upon consideration of the AAR's petition, we conclude that our decision to use acquisition cost is correct. However, we acknowledge that AAR has preserved its acquisition cost argument by specifically raising it in the instant proceeding, and we agree that should the AAR prevail in its pending court appeal, it will be appropriate to recompute 1991 revenue adequacy for those railroads that would be affected by this issue.

Additional information is contained in a concurrent decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Interstate Commerce Commission Building, room 2229, Washington, DC 20423.

TELEPHONE: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: August 25, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioner Simmons, Phillip, and Emmett.

Anne K. Quinlan,
Acting Secretary.

[FR Doc. 92–20986 Filed 8–31–92; 8:45 am]
BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 92–68; Exemption Application No. D–9042, et al.]

Grant of Individual Exemptions; Ralston Purina Co., Savings Investment Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Ralston Purina Company Savings Investment Plan (the Plan), Located in St. Louis, Missouri

[Prohibited Transaction Exemption 92–68; Exemption Application No. D–9042]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the advance of funds (the Advances) to the Plan by the Ralston Purina Company (Ralston), a party in interest with respect to the Plan, and a return of such funds with interest to Ralston upon the Plan's receipt of payments under two guaranteed investment contracts (the GICs) issued by Executive Life Insurance Company (ELIC), provided the following conditions are satisfied: (a) All of the terms of the transaction are no less favorable to the Plan than those which the Plan could obtain in an arms-length transaction with an unrelated party; (b) the Advances and interest thereon will be repaid only out of amounts paid to the Plan by ELIC, its successors, or any other responsible third party; (c) interest will be credited at the GIC Market Rate (as defined in the notice of proposed exemption) to each GIC after its stated maturity date; (d) Ralston will make the Advances at the Loan Rate (as defined in the notice of proposed exemption) from the date the Advances are made through the date they are repaid; (e) the Plan's liability to Ralston resulting from the transaction will in no event exceed the amounts paid to the Plan by or on behalf of ELIC, its successors or any other third party with respect to ELIC's obligations under the GICs; and (f) repayment of the Advances will be waived to the extent the Plan receives less from the disposition of the GICs than the total amount of the Advances, plus interest at the Loan Rate.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 7, 1992 at 57 FR 29894.

EFFECTIVE DATE: This exemption is effective June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

The General Motors Hourly-Rate Employees' Pension Plan; The General Motors Retirement Program for Salaried Employees; The AT&T Pension Plan; and The AT&T Management Pension Plan together, the Plans), Located in Detroit, Michigan (the GM Plans) and in New York, New York (the AT&T Plans)

[Prohibited Transaction Exemption 92-69; Exemption Application Nos. D-9027 through D-9030]

Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the proposed granting to The Industrial Bank of Japan, Limited, New York Branch (IBJ), as the representative of lenders (the Lenders) participating in a credit facility (the Facility), of security interests in limited partnership interests in The Morgan Stanley Real Estate Fund, L.P. (the Partnership) owned by the Plans with respect to which some of the Lenders are parties in interest; and (2) the proposed agreements by the Plans to honor capital calls made by IBJ in lieu of the Partnership's general partner; provided that (a) the proposed grants and agreements are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; and (b) the decisions on behalf of each Plan in the Partnership and to execute such grants and agreements in favor of IBJ are made by a fiduciary which is not included among, and is independent of, the Lenders and IBJ.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on July 7, 1992 at 57 FR 29899.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of August, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-20990 Filed 8-31-92; 8:45 am]

BILLING CODE 4510-29-M

[Application No. D-9122, et al.]

Proposed Exemptions; Thomas S. Monaghan, Inc., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

WRITTEN COMMENTS AND HEARING REQUESTS: All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this Federal Register Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESS: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

NOTICE TO INTERESTED PERSONS: Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Thomas S. Monaghan, Inc. Tax Deferred Savings Plan (the Plan), Located in Ann Arbor, Michigan

[Application No. D-9122].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to (1) the proposed extension of credit (the Advances) to the Plan by Thomas S. Monaghan, Inc. (the Company), the sponsor of the Plan, with respect to four guaranteed investment contracts (the GICs) assumed and/or issued by Inter-American Insurance Company of Illinois (Inter-American Illinois); and (2) the potential repayment of the Advances (the Repayments) by the Plan; provided that the following conditions are satisfied:

(a) All terms of such transactions are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with an unrelated party;

(b) No interest and/or expenses are paid by the Plan;

(c) The Advances are made only in lieu of payments due from Inter-American with respect to the GICs;

(d) The Repayments shall not exceed the amount of the Advances;

(e) The Repayments shall not exceed the amounts actually received by the Plan from Inter-American Illinois, any state guaranty fund, and other responsible third party payors with respect to the GICs (the GIC Proceeds); and

(f) The Repayment of the Advances shall be waived to the extent that the amount of the Advances exceeds the total GIC Proceeds.

Summary of Facts and Representations

1. The Plan is a defined contribution retirement plan which includes a cash or deferred arrangement under section 401(k) of the Code and which provides for employer matching contributions and additional employer discretionary contributions. As of December 31, 1990, the Plan had approximately 721 participants and total assets of approximately $4,163,726. The Company is a Michigan privately-held corporation operating as a holding company with its headquarters in Ann Arbor, Michigan. The Company's subsidiaries are engaged in financing, equipment leasing, real estate acquisition and management, computer software development and active equity investments. The Company maintains the Plan on behalf of its employees and of the employees of its subsidiaries. The participants in the Plan also members of a group of corporations with which the Company is under common control (the Controlled Group). Since November 1, 1990, the trustee of the Plan has been Comerica Bank (the Trustee). Prior to November 1, 1990, the trustee of the Plan was William Brannan (the Predecessor Trustee), an officer of a member of the Controlled Group.

2. The Plan provides for individual participant accounts (the Accounts) and for participant-directed investment of the portion of each Account attributable to employee elective deferrals and matching employer contributions, including earnings thereon. Plan participants direct that portion of their Accounts among various investment options (the Funds) offered by the Plan. Participants' directions and changes of directions, with respect to investments of the Accounts among the Funds, are permitted twice each calendar year, at January 1 and June 30. The Funds include a guaranteed investment fund (the GIC Fund), which invests in guaranteed investment contracts issued by insurance companies. As of December 31, 1990, with assets of $2,417,656, the GIC Fund comprised 58 percent of the Plan's total assets.

Among the assets in the GIC Fund are the GICs, which are four benefit-responsive guaranteed investment contracts purchased for the Plan by the Predecessor Trustee from 1986 to 1989. Two of the GICs, purchased in 1988 and 1987, were issued by Inter-American Insurance Company, a Delaware corporation whose contracts were assumed by Inter-American Illinois on April 4, 1988. The GICs purchased in 1988 and 1989 were issued by Inter-American Illinois.

Each GIC is a "window" contract which provides that principal deposits over a one-year period will earn interest from the date of issuance (the Issue Date) at rates designated by its terms (the Contract Rates). Under each GIC, the Contract Rate is fixed for the first three-year period of the GIC's term, beginning with the GIC's Issue Date (the Initial Contract Rate). For the remaining term of each GIC, the interest rate is set just before the third anniversary of the Issue Date (the Third Anniversary), and if such new rate is not at least equal to a pre-established minimal rate (the Subsequent Base Rate), the Plan may withdraw all principal deposits and interest earnings from the GIC (the Pre-maturity Withdrawal). Withdrawals from the GICs may also be made to enable the GIC Fund to effect, in accordance with the terms of the Plan, benefit distributions, in-service withdrawals, participant loans, and participant-directed transfers of Account balances to other investment options offered by the Plan (collectively, the Withdrawal Events).

In addition to withdrawals for the Withdrawal Events and the Pre-maturity Withdrawals, each GIC requires the Inter-American Illinois to make a final payment to the Plan's GIC Fund, upon a maturity date occurring six years from the Issue Date of each GIC, in the amount of the GIC's accumulated book value, representing total principal deposits plus interest earnings at the Contract Rates less previous withdrawals. As of December 31, 1990, the GICs had a total accumulated book value of $128,069.56, representing total principal deposits plus interest at the Contract Rates less previous withdrawals.

Upon each GIC's Third Anniversary, the Trustee did not effect Pre-maturity Withdrawals of any of the GICs, and each GIC commenced, on its Third Anniversary, to earn interest at a rate in excess of its Subsequent Base Rate. The GICs are further described as follows:

(a) Contract No. B90874, issued June 23, 1986, with an Initial Contract Rate of 8.5 percent, a Subsequent Base Rate of 6.5 percent, a maturity date of June 23, 1992, an accumulated book value of $28,101.28 as of December 31, 1990, and earning interest after the Third Anniversary at the rate of 7.00 percent;

(b) Contract No. B90948, issued June 6, 1987, with an Initial Contract Rate of 7.0 percent, a Subsequent Base Rate of 5.25 percent, a maturity date of June 8, 1993, an accumulated book value of $13,490.36 as of December 31, 1990, and earning interest after the Third Anniversary at the rate of 8.50 percent;

(c) Contract No. C90341, issued in 1988, with an Initial Contract Rate of 9.0 percent, a Subsequent Base Rate of 7.0 percent, a maturity date of January 4, 1994, an accumulated book value of $25,927.91 as of December 31, 1990, and earning interest after the Third Anniversary at the rate of 9.00 percent;

(d) Contract No. C90578, issued January 27, 1989, with an Initial Contract Rate of 9.15 percent, a maturity date of January 27, 1995, an accumulated book value of $60,541.01 as of December 31,

1990, and earning interest after the Third Anniversary at the rate of 9.15 percent.[1]

3. On December 23, 1991, Inter-American Illinois was placed in receivership and ordered to be liquidated by the Circuit Court of Cook County, Illinois, for reasons of insolvency.[2] Since the commencement of the receivership, payments on all Inter-American Illinois guaranteed investment contracts, including the GICs, have been suspended. Consequently, the GIC Fund has been and remains unable to withdraw amounts from the GICs for Withdrawal Events, and the maturity payment which was due June 23, 1992, under Contract No. B90874 has not been made. The Plan assets attributable to the GIC Fund's investments in the GICs are frozen and Withdrawal Events with respect to Account investments in the GICs are not being funded.

The Company represents that under prevailing circumstances it is unlikely that Inter-American Illinois will make timely payments, or provide the full amounts of principal and interest due, with respect to the GICs. In order to enable the Plan to resume normal operation, and to facilitate the funding of Withdrawal Events, the Company proposes to make the Advances to the Plan. The Company is requesting an exemption to permit the Advances, and their potential Repayments by the Plan, under the terms and conditions described herein.

4. The terms of the Advances and the Repayments are set forth in a written agreement (the Agreement) between the Company and the Trustee, under which the Company agrees to make the Advances to the Plan in such amounts and at such times as withdrawals and maturity payments are due under the GICs. Under the Agreement the amount of each Advance will be determined on the basis of the accumulated book values of the GICs through each GIC's maturity date, representing total principal deposits plus interest earnings at the applicable Contract Rate less previous withdrawals. The Company's obligation to make an Advance under the Agreement with respect to any Withdrawal Event or maturity payment due under the GICs is reduced by (a) the amount actually received by the Plan from Inter-American Illinois or any state guaranty fund with respect to such withdrawal or maturity payment, and (b) the amount of any previous Advance with respect to such withdrawal or maturity payment. The Employer will receive no interest or fees for the Advances.

In return for the Advances, the Trustee agrees to make the Repayments of the Advances as specified in the Agreement. The Agreement provides that the Repayments will be made only from the proceeds received by the Plan with respect to the GICs from Inter-American Illinois, any other insurer obligated with respect to the GICs, or any state guaranty fund (collectively, the GIC Proceeds). No other Plan assets may be used to repay the Advances. The Agreement becomes effective upon the issuance, if granted, of the final exemption proposed herein by the Department.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plan will be relieved of any further risk or uncertainty with respect to payments due from Inter-American Illinois with respect to the GICs; (2) The proposed transaction will enable the Plan to resume full funding of Withdrawal Events involving Accounts invested in the GIC Fund; (3) The Plan will receive Advances based upon the full accumulated book values of the GICs as of the date of the Advances, representing total principal deposits plus accrued interest at the Contract Rates less previous withdrawals; (4) The Plan will incur no interest or expenses for the Advances; (5) The Repayments will be restricted to the GIC Proceeds; and (6) The Repayments will be waived to the extent the Advances exceed the GIC Proceeds.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Geosonics Inc. 401(k) Profit Sharing Plan (the Plan), Located in Warrendale, Pennsylvania

[Application Nos. D-9017 and D-9018]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to loans of money to Don Froedge and Monica Froedge, parties in interest with respect to the Plan, from each of their individual accounts in the Plan, provided that the following conditions are met:

1. The terms of the loans are at least as favorable as the Plan could obtain in an arm's-length transaction with an unrelated party;

2. The loans do not exceed 25 percent of the assets of each of the individual accounts throughout the term of the loans;

3. The loans are secured through a promissory note and a perfected security agreement;

4. The fair market value of the collateral securing the loans is established by an independent real estate appraiser; and

5. The collateral is maintained throughout the loan terms at no less than 150 percent of the combined amount of the balance on the two loans and any other encumbrance on the collateral.

Summary of Facts and Representations

1. Geosonics Inc. (the Employer), a subchapter S corporation, is a seismic consulting firm that also manufacturers portable seismographs. The Plan is a profit sharing plan that had approximately 39 participants and total assets of $941,907 as of July 31, 1991. The Plan has a participant loan program which provides that participants may borrow money from their individual accounts for the purpose of purchasing a principal residence.

2. Don Froedge is the president of the Employer and owns 79.6 percent of the outstanding stock of the Employer. Don Froedge and his wife Monica are both participants in the Plan. Don and Monica Froedge would like to borrow money from their individual accounts in the Plan in order to help finance a principal residence. However, because the Employer is a Subchapter S corporation and Don Froedge is a shareholder-employee with respect to the Employer (and Monica Froedge is a "member of the family" of such shareholder-employee), in accordance with the provisions of section 408(d) of the Act, the provisions of section 408(b)(1) of the Act which permit loans to plan participants under certain conditions would not be available in this case.

3. Don Froedge had a vested account balance of $127,272 as of July 31, 1991, and Monica Froedge had a vested account balance of $87,778 on the same date. Don Froedge requests a loan of $31,818 and Monica Froedge requests a loan of $21,945 from their respective individual accounts in the Plan. In each case, the applicant represents that the loan will not exceed 25 percent of the assets in the individual account throughout the term of the loan. The Plan administrators, Don Froedge and Philip Berger, Jr., will monitor the balances of the loans and the participants' account balances monthly, and prior to any distributions to participants, will insure that the 25 percent limitation is strictly enforced. This will be accomplished by reviewing the monthly statements received from the Plan's investment advisors. If the Plan administrators foresee any event which could cause the 25 percent limitation to be exceeded, the participant will be required to repay a portion of the loan before such excess occurs.

The loans will be for a period of 15 years, with equal monthly payments of principal and interest. The interest rate on the loans will be 9.18 percent per annum. Prior to closing on the loans, the Plan administrators will verify that the rate is still appropriate and will make any adjustment necessary to bring the rate into line with market rates at that time.

4. The administrators of the Plan have obtained a letter from Pittsburgh National Bank (the Bank) dated June 15, 1992, concerning the requested loans. The applicants represent that the Bank is independent of Don and Monica Froedge and the Employer. The Bank states that the applicable interest rate on such loans for a second mortgage position (as described below) is 9.18 percent. The rate takes into account points and closing costs. The Bank concludes that it would make the same loans using the same terms as those described in the application. The Plan will obtain a similar letter from an unrelated commercial lender every five years until the maturity of the loans, and the interest rate on the loans will be adjusted accordingly.

5. The loans will be secured through a promissory note and a security agreement which will be duly perfected under Pennsylvania state law. The two loans together will be secured by a second mortgage on the principal residence (the Property) which was purchased by Don and Monica Froedge in Glasgow, Kentucky, in December 1991. The Plan obtained an appraisal on the Property from Harold Armstrong (Armstrong), a real estate appraiser located in Glasgow. The applicants represent that Armstrong is not related in any way to Don and Monica Froedge or to the Employer. According to Armstrong, the Property consists of a 130-year old two-story house on approximately 2.1 acres (in one of Glasgow's historic and most desirable neighborhoods) which has been completely renovated within the last year. Using the comparable sales approach to value, Armstrong estimated that the fair market value of the Property was $310,000 as of September 10, 1991.

6. Don and Monica Froedge secured a first mortgage on the Property from Trans Financial Bank of Glasgow. The amount remaining on the first mortgage was $135,015 as of May 6, 1992. The applicants represent that the collateral will be maintained throughout the terms of the loans at no less than 150 percent of the combined amount of the balance of the two proposed loans and any other encumbrance on the Property. An independent appraisal of the Property as to its fair market value will be updated annually to verify that the 150 percent collateral requirement is being met. If necessary, the Plan will require the participants to repay a portion of the loans or post additional collateral so as to maintain the 150 percent security for the loans.

Monthly payments on the loans will be made to the individual accounts through payroll deduction to ensure timely payments in full. If payments should become delinquent for more than 60 days, the Plan administrators, in accordance with the procedures outlined in the promissory notes, will take appropriate action on behalf of the accounts, including foreclosing on the collateral if necessary.

7. In summary, the applicant represents that the proposed transactions will satisfy the statutory criteria of section 408(a) of the Act because: (1) A commercial bank independent of the Employer has stated that it would be willing to make the same loans on the same terms; (2) the two loans together will be secured by a second mortgage on the Property; (3) the fair market value of the Property has been established by an unrelated real estate appraiser; and (4) the collateral for the loans will at all times be no less than 150 percent of the combined balance of the loans and any other encumbrance on the Property.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Tyco Laboratories, Inc. Collective Trust (the Trust), Located in Exeter, New Hampshire

[Application No. D-9132]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The interest-free extensions of credit (the Advances) by Tyco Laboratories, Inc. (Tyco), the sponsor of the Trust, to the Trust with respect to Guaranteed Investment Contract No. CG0127303A (the GIC), issued to the Trust by Executive Life Insurance Company of California (ELIC); and (2) the Trust's potential repayment of the Advances (the Repayments); provided that (a) all terms of such transactions are no less favorable to the Trust than those which the Trust could obtain in an arm's-length transaction with an unrelated party, (b) no interest and/or expenses are paid by the Trust, (c) the Advances are made only in lieu of payments due from ELIC and other responsible parties with respect to the GIC (or a Replacement GIC as defined below), (d) the Repayments do not exceed the total amount of the Advances, (e) the Repayments in no event exceed the amounts actually received by the Trust from ELIC and other responsible parties with respect to the GIC, and (f) the Repayments will be waived to the extent the Trust recoups less from or on behalf of ELIC from the disposition of the GIC (or a replacement GIC) than the total amount of the Advances.

EFFECTIVE DATE: If the proposed exemption is granted, it will be effective June 30, 1992.

Summary of Facts and Representations

1. Tyco is a Massachusetts corporation with its principal place of business located in Exeter, New Hampshire. The Trust, established February 16, 1983, forms part of several defined contribution plans (the Plans) which are maintained by Tyco and its

[1] The Employer represents that a copy of contract No. C90578, which was delivered to the Predecessor Trustee, has been misplaced, and the Subsequent Base Rate for that contract cannot be determined. The Employer represents that the Trustee continues to credit the Accounts invested in this contract with interest of 9.15 percent. The Employer, which is proceeding with efforts to secure a new copy of this contract, represents that its terms and conditions are substantially the same as those of the other GICs.

[2] The Department notes that the decisions to acquire and hold the GICs are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GICs.

affiliates.[3] Investment decisions with respect to Trust assets are currently made by a retirement committee (the Committee) appointed by Tyco's Board of Directors.[4] As of March 31, 1992, there were total assets of approximately $133,721,524 in the Trust. The trustee of the Trust is Mellon Bank, N.A.

2. Tyco represents that the GIC bears interest at the rate of 9.61% per annum and as of March 31, 1992, constituted approximately 10.6% of the total assets of the Trust. The maturity date of the GIC is December 31, 1992. Under the terms of the GIC, withdrawals made prior to maturity may be made by the Trust in order to fund the payment of benefits under the Plans or participant-directed investment transfers. As of March 31, 1992, the GIC had an accumulated book value of $14,149,007, representing total deposits, plus accrued interest, less previous withdrawals.

3. On April 11, 1991, ELIC was placed into conservatorship by the California Insurance Commissioner (the Commissioner). As a result of the commencement of conservatorship, ELIC has ceased all payments with respect to its guaranteed investment contracts, including the GIC.[5]

The Commissioner is proceeding with the development of a plan of rehabilitation (the Rehab Plan) with respect to all of ELIC's outstanding obligations. Under the Rehab Plan as currently proposed, the Trust will be permitted to choose either (i) a lump sum settlement of ELIC's obligations under the GIC, or (ii) an exchange of the GIC for a guaranteed investment or other contract (the Replacement GIC) issued by Aurora National Life Assurance Corporation (Aurora), the successor to certain assets and liabilities of ELIC. Although the exact terms of both arrangements are not yet finalized, Tyco represents that it is expected that the total amount received by the Trust under either option will be less than the accumulated book value of the GIC. Nonetheless, it is anticipated that a greater percentage of the accumulated book value of the GIC will be received by the Trust if the Replacement GIC option is selected.

4. Tyco represents that the Trust's inability to make withdrawals from the GIC pending settlement or satisfaction of ELIC's obligations thereunder severely impedes benefit distributions from the Plans and will hinder the ability of the Plans to honor participant-directed investment instructions (see footnote 2, above). To protect the participants and beneficiaries in the Plans from any adverse effects of the nonpayment of the GIC or a prolonged rehabilitation or liquidation of ELIC, Tyco proposes to make Advances to the Trust as interest-free loans in such amounts and at such times as are necessary to fulfill the obligations of the Trust and the Plans with respect to benefit distributions and investment transfers pending settlement or satisfaction of ELIC's obligations under the GIC or the Replacement GIC, as the case may be.

5. The proposed transactions are detailed in a written agreement (the Agreement) between Tyco and the Trustee embodying all terms of the extension of credit and its repayment. Under the Agreement, Tyco will make such Advances to the Trust as are necessary to satisfy the short-term liquidity needs of the Trust, including the payment of benefit distributions and investment transfers, pending settlement of the Trust's claims under the GIC.

6. Under the Agreement, the total amount of Advances made by Tyco (less any Repayments as described below) may not exceed, on any date, the then current value (Current Value) of the GIC or the Replacement GIC, as the case may be. For this purpose, the Agreement provides that the Current Value of the GIC or the Replacement GIC, as of any date, means the issue price of the GIC, plus the interest credited or which should have been credited as of such date, less any proceeds received by the Trust on or before such date with respect to the GIC or the Replacement GIC, as the case may be, from ELIC, its successors and assigns, any conservator or trustee of ELIC or other person performing similar functions with respect to ELIC, or by any state guaranty fund or other person or entity (other than Tyco) acting as a surety or insurer with respect to ELIC (collectively, the GIC Payors). For this purpose, the interest which should have been credited shall be 9.61% for the period through December 31, 1992, and interest at the rate set forth in the Replacement GIC for the period commencing on December 31, 1992 and ending on the date the Replacement GIC matures. If no Replacement GIC is issued and a lump sum settlement of the ELIC GIC is received by the Trust after December 31, 1992, then interest will be credited at 9.61% for the period through December 31, 1992 and, subject to the approval of the Internal Revenue Service under Revenue Procedure 92-16,[6] interest at the rate paid on money market funds by Mellon Bank, N.A. for the period commencing on December 31, 1992 and ending on the date the lump sum settlement is received.

7. Tyco represents that, under the terms of the Agreement, the Trust will have no obligation to pay any interest to Tyco on account of any Advances made to the Trust. Repayment of the Advances is limited under the Agreement to payments made by any GIC Payor on account of the GIC or the Replacement GIC, as the case may be, and will not exceed the total amount of the Advances. No other assets of the Trust will be available for Repayments. If payments by GIC Payors are not sufficient to fully repay the Advances, Tyco will have no recourse against the Trust or against any participants or beneficiaries of the Plans for the unpaid amount.

8. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (a) The Trust will be relieved of any further risk and uncertainty with respect to payments due from ELIC under the GIC; (b) the proposed transactions would facilitate benefit distributions and investment transfers under the Plans which would otherwise not be possible because of ELIC's suspension of payments under the GIC; (c) the Repayments by the Trust will not exceed the amounts actually received by the Trust on account of the GIC or the Replacement GIC; and (d) the Repayment of the Advances will be waived to the extent the Trust recoups less from or on behalf of ELIC on the disposition of the GIC (or the Replacement GIC) than the total amount of the Advances.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

[3] Tyco and/or its affiliates may establish other defined contribution plans, the assets of which may be invested in the Trust. The proposed exemption is intended to cover such plans to the extent they acquire an interest in the GIC or the Replacement GIC [as defined below] through such investment.

[4] Effective June 30, 1992, the Plans as amended permit participants to direct the investment of their account balances among several investment options specified by the Committee.

[5] The Department notes that the decisions to acquire and hold the GIC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this regard, the Department herein is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GIC.

[6] Revenue Procedure 92-16 [I.R.B. 1992-7, February 18, 1992] provides for a temporary closing agreement program to settle certain tax liabilities that arise out of transactions between an employer-sponsor and the trust of a qualified defined contribution plan. This temporary closing agreement program applies to transactions in which the employer makes conditional payments to the plan on account of plan assets that are invested in contracts issued by a life insurance company that has been placed in state insurer delinquency proceedings.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 27th day of August, 1992.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 92-20989 Filed 8-31-92; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL COMMISSION ON AMERICA'S URBAN FAMILIES

Meeting

Notice is hereby given, pursuant to Public Law 92-463, that the National Commission on America's Urban Families will hold a roundtable discussion and site visits in Knoxville, Tennessee, on Tuesday, September 15, 1992. For exact time and locations, please contact the Commission two days prior to the event at 202-690-6462.

The purpose of the roundtable and site visits is to gather information about programs and approaches that work to strengthen families.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 200 Independence Avenue, SW., room 305-F, Washington, DC 20201.

Anna Kondratas,

Executive Director.

[FR Doc. 92-21104 Filed 8-31-92; 8:45 am]

BILLING CODE 4150-01-M

NATIONAL SCIENCE FOUNDATION

Ocean Sciences Review Panel; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meetings.

Date and Time: September 18, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500B, NSF, 1800 G Street NW., Washington, DC.

Contact Person: Rodger Baier, Associate Program Director, Division of Ocean Sciences, Rm. 609, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357-7910.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Date and Time: September 15, 1992; 8:30 a.m. to 5 p.m.

Place: Room 500C, NSF, 1800 G Street NW., Washington, DC.

Contact Person: Richard W. West, Program Director, Division of Ocean Sciences, Rm. 609, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-9639.

Agenda: To review and evaluate Intermediate Ship Mid-Life proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1992.

Modestine Rogers,

Acting Committee Management Officer.

[FR Doc. 92-20964 Filed 8-31-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-04632; License No. 20-03529-01]

Interstate Nuclear Service Corporation, Indian Orchard, Massachusetts; Receipt of Petition Under 10 CFR 2.206

Notice is hereby given that, by Petition dated June 29, 1992, Gloria M. Mitchell and Linda Hammons, on behalf of the Indian Orchard Citizens Council, requested that the Nuclear Regulatory Commission take action with regard to Interstate Nuclear Service Corporation (INS). Petitioners request that the NRC: participate in a public hearing in Indian Orchard to respond to the concerns of neighborhood residents; hold a surprise inspection of INS; check homes in the area for radiation contamination; provide a copy of the NRC regulations under which INS operates; check adjoining Park Department land, including Dimmock Pond and Loon Pond, for contamination and illegal dumping of waste material; determine what INS has done with waste material not shipped; provide the docket number for INS; identify a Public Document Room for INS and its location; and describe the type of monitoring done, who does it, and how frequently. Petitioners further request on behalf of neighborhood residents that: Radioactive readings outside the INS fence perimeters be "0" at all times; "0" nuclear waste by-products be allowed to enter Springfield's water/sewer system; INS stop using residential streets, specifically Nagle and Nichols Streets, to go to and from its plant; and under no circumstances should INS be allowed to store nuclear waste on its property.

Petitioners assert as bases for these requests that the residents of the Indian Orchard neighborhood of Springfield, Massachusetts, live in close proximity to INS and have expressed great concern over possible health issues, especially since publication of an article in the Springfield Sunday Republican on June 7, 1992, which reported that: Radiation readings outside the INS perimeter fence, near a waste-filled truck, were 12 to 15 times normal background radiation levels experienced in everyday life; all INS waste will be stored on site beginning January 1, 1993; in 1989 INS waste stored was twice the volume shipped; the corporate health physics manager of INS, Michael Bovino, said that waste is removed twice a year but NRC records indicate it is removed only once a year and not at all in 1990; a person standing at the INS fence for two days in early May would have received a higher radiation dose than a person standing at Vermont Yankee's fence for a year because of stiffer regulations for nuclear power plants; and there have been allegations that INS discharges radioactive water into the City sewer system.

The Petition has been referred to the Director of the Office of Nuclear Material Safety and Safeguards pursuant to 10 CFR 2.206. As provided by § 2.206, appropriate action will be taken with regard to the specific issues raised by the petition in a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2110 L Street, NW., Washington DC 20555, and at the Local Public Document Room for the INS facility located at the Nuclear Regulatory Commission, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

Dated at Rockville, Maryland this 25th day of August, 1992.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92-20973 Filed 8-31-92; 8:45 am]

BILLING CODE 7590-01-M

Availability of Staff Technical Position on the Investigation of Fault Displacement Hazards and Seismic Hazards at a Geologic Repository

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission is announcing the availability of NUREG-1451, "Staff Technical Position (STP) on Investigations to Identify Fault Displacement Hazards and Seismic Hazards at a Geologic Repository."

ADDRESSES: Copies of NUREG-1451, including the staff disposition of comments, can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy of NUREG-1451 is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street (Lower Level), NW., Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Anne E. Garcia, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management Office of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. Telephone 301/504-2438.

SUPPLEMENTARY INFORMATION: 10 CFR part 60 does not specify the manner in which potential fault displacement hazards and seismic hazards at a candidate site for a geologic repository are to be identified. The purpose of this STP, therefore, is to provide guidance to the DOE on acceptable geologic repository investigations that can be used to identify fault displacement hazards and seismic hazards. The staff considers that the approach this STP takes to investigations of fault displacement and seismic phenomena is appropriate for the collection of sufficient data for input to analyses of fault displacement hazards and seismic hazards, both for the preclosure and postclosure performance periods. However, detailed analyses of fault displacement and seismic data, such as those required for comprehensive assessments of repository performance, may identify the need for additional investigations.

Guidance on methods of analysis of fault displacement hazards and seismic hazards at a geologic repository is being developed separately.

On August 24, 1989, the Nuclear Regulatory Commission published, in the **Federal Register**, the "Notice of Availability" for the draft Technical Position (TP) on "Methods of Evaluating the Seismic Hazard at a Geologic Repository" and solicited public comments (see 54 FR 35266). Approximately 40 comments were received from three different parties. On December 19-20, 1989, the staff conducted a technical exchange with DOE, the State of Nevada, and DOE program participants to discuss the intent of the draft TP and related topics. Following the December 1989 technical exchange, and a review of the public comments, significant changes and clarifications were incorporated into the draft TP. (Staff responses to the public comments were documented separately as an appendix to the draft TP.)

On February 20, 1991, the NRC staff conducted a second technical exchange with DOE; the State of Nevada; Nye County, Nevada; and the Edison Electric Institute, to discuss the revised 1989 draft TP and the staff's response to public comments. In light of the additional comments received at the technical exchange, and because the revised TP contained significant revisions, the staff decided to make the revised TP available again for public comment.

On May 13, 1991, NRC published the "Notice of Availability" for the draft TP in the **Federal Register** (see 56 FR 22020), now renamed "Staff Technical Position on Investigations to Identify Fault Displacement and Seismic Hazards at a Geologic Repository" and solicited public comments. As a result, more than 80 comments were received from five different parties. The NRC staff reviewed these comments and, as a result, changes and clarifications were incorporated into the STP. Staff responses to these comments are documented separately as appendix E to NUREG-1451.

On December 18, 1991, the NRC staff briefed the Advisory Committee on Nuclear Waste (ACNW) on the revised STP following the end of the public comment period. As a result, the staff received a number of comments from the ACNW. The staff's responses to these comments are documented separately, as Appendix F to NUREG-1451.

Also included in NUREG-1451 is the staff response to a set of comments, dated February 27, 1990, submitted by DOE after the December 19-20, 1989, technical exchange. These comments were considered, along with the public comments made on the May 1991 draft STP. Staff responses to DOE's February 1991 comments are documented separately, as appendix D to NUREG-1451.

Dated at Rockville, Maryland this 8th day of June, 1992.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 92-20975 Filed 8-31-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Company; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would modify the existing steam generator tubes repair (plugging/sleeving) limits in the Technical Specifications. The licensee justified the proposed change based on a combination of enhanced inservice inspection, a repair limit based on crack length rather than crack depth and a limit on the number of tubes with characterized cracks retained in service.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 1, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first pre-hearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated July 31, 1992, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW.,

Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 25th day of August 1992.

For the Nuclear Regulatory Commission.

John F. Stolz,

Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–20976 Filed 8–31–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–13204, License No. 21–00864–02 EA 91–017]

Lafayette Clinic, Detroit, MI; Order Imposing Civil Monetary Penalties

I

Lafayette Clinic (licensee) is the holder of Byproduct Material License No. 21–00864–02 issued by the Nuclear Regulatory Commission (NRC or Commission) on September 13, 1977. The license was most recently amended in its entirety on December 21, 1990, and is due to expire on January 31, 1996. The license authorizes the licensee to possess and use a limited number of radioisotopes in millicurie quantities for in-vitro laboratory research studies in accordance with the conditions specified therein.

II

An inspection of the licensee's activities was conducted October 3 through 24, 1988. The results of this inspection and a subsequent investigation conducted by the NRC Office of Investigations (OI) indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and proposed Imposition of Civil Penalties (Notice) was served upon the licensee by letter dated October 3 1991. The Notice states the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalties proposed for the violations. The licensee responded to the Notice by letter dated November 1, 1991. In its response, the licensee admitted Violations I.A. and III.A–I and denied Violations I.B., II.A, and II.B. Additionally, the licensee requested a change in severity levels for Violations I.B and II.A, and requested mitigation of the base civil penalty for Violations I.B and II.B.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, as well as all information concerning these matters available to date, the NRC staff has determined, as set forth in the Appendix to this Order, that: (1) Violations II.A and II.B did occur (Violation II.B is amended as stated in the Appendix); (2) Consistent with a settlement agreement between the NRC staff and Dr. Natraj Sitaram where Violation I.B. was withdrawn, the cumulative amount of the proposed civil penalties should be reduced by $4,000 based on the withdrawal of Violation I.B.; (3) the licensee has not provided an adequate basis for any further reduction in the amount of the civil penalties; and (4) civil penalties in the cumulative amount of $7,500 should be imposed.

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the cumulative amount of $7,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this order shall be effective without further proceedings. If a hearing has not been requested and payment has not been made by that time, the matter may be referred to the U.S. Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in Violation II.A of the Notice referenced in Section II above the Violation II.B. as amended in the Appendix to this Order, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Rockville, Maryland this 21st day of August 1992.

For the Nuclear Regulatory Commission

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusions

On October 3, 1991, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection on October 3 through October 24, 1988, and a subsequent investigation conducted by the NRC Office of Investigations (OI). Lafayette Clinic responded to the Notice through the Attorney General of the State of Michigan in a letter dated November 1, 1991. In its response, the licensee admitted Violations I.A. and III.A-III.I and denied Violations I.B, II.A, and II.B. Additionally, the licensee requested a change in severity levels for Violations I.B. and II.A, and requested mitigation of the base civil penalty for Violations I.B and II.B. The NRC's evaluation and conclusions regarding the licensee's requests are as follows:

Restatement of Violation I.B.

License Condition No. 12, as contained in Amendment No. 5, dated April 6, 1988, states that licensed materials listed in subitems A. through I. shall be used by, or under the supervision of Kenneth Warner, Eugene L. Dembicki, or Lew Hryhorczuk.

Contrary to above, Dr. Sitaram used phosphorus-32, a licensed material listed in Subitem E., on June 18 and 19, 1988, and was not under the supervision of Messrs. Warner, Dembicki, or Hryhorczuk.

Summary of Licensee's Response to Violation I.B.

Briefly stated, the licensee believes that the use of phosphorous-32 did occur on June 18–19, 1988, but that this use was authorized by the RSO and was therefore not a violation; and even if the use was not authorized, the resulting violation should be categorized, in accordance with the examples in the NRC Enforcement Policy, at Severity Level III instead of Severity Level II.

NRC Evaluation of Licensee's Response

After the Notice was issued and as a result of a hearing request by Dr. Natraj Sitaram in connection with an Order Modifying License (Effective Immediately) dated October 3, 1991 (EA 91–130), which is related to this issue, the NRC staff continued to evaluate the circumstances described in Violation I.B. Although the NRC staff does not find the licensee's arguments to be persuasive, upon further consideration of all relevant information, including information received following the OI investigation, the NRC staff decided to withdraw Violation I.B. in connection with a settlement agreement between the NRC staff and Dr. Natraj Sitaram. Since Violation I.B. was assessed at $4,000, the cumulative amount of the civil penalties is being reduced by $4,000.

Restatement of Violation II.A

10 CFR 30.7(a) states that discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment.

Contrary to above, on August 26, 1988, Lafayette Clinic's Radiation Safety Officer (RSO) was informed that he was to be removed on September 1, 1988 from the Radiation Safety Committee and from his position as RSO by the Acting Director for conducting an internal investigation during June 1988, into the possible unauthorized procurement and use of phosphorus-32 at the Clinic and for his identification of an apparent discriminatory firing by a researcher of a research assistant.

Summary of Licensee's Response to Violation II.A

The licensee denies the violation. The licensee submits that Dr. Rosenzweig of Wayne State University made the decision as to who would be on the Radiation Safety Committee and who would be the RSO as part of the negotiations for Wayne State University to take over control of research laboratories at Lafayette Clinic. According to the licensee, the RSO did not appear on the July 8, 1988, list of proposed committee members (the list was proposed by Dr. Rosenzweig of Wayne State University); and, although Dr. Sitaram's name appears on the proposed list, there is no evidence that Dr. Rosenzweig knew of the alleged violation of licensed requirements by Dr. Sitaram at the time he made this proposal nor is there evidence that he knew that the RSO was in fact conducting an investigation.

The licensee further states that: (1) The RSO did not complain that he was discriminated against; (2) the ROS's responsibilities included ensuring that radioactive material is used by or under the direct supervision of individuals specifically listed on the license; (3) the RSO failed to ensure that Dr. Sitaram did not use radioactive material outside the direct supervision of the individuals named in the license; (4) the RSO also failed to ensure that personnel monitoring equipment was provided to individuals during the experiments conducted by Dr. Sitaram, and failed to ensure that radioactive materials were properly secured after he learned that, on or about May 31, 1988, radioactive materials had been inappropriately brought into the premises; (5) the RSO did not ensure that the terms and conditions of the license were met and that all required records were maintained; (6) the NRC rejects any implication that the RSO had failed to perform his job adequately; (7) it is clear, from the findings made by the NRC, that there was ample reason to remove the RSO from his position; (8) Lafayette Clinic did not remove the RSO for any reason connected with the Radiation Safety Committee, the Radiation Safety Program, or the license issued by the NRC; (9) at the time of the RSO's removal, the only reason for the removal was the proposed transfer of authority over research laboratories to Wayne State University and the desire of the University to name other individuals to positions of responsibility in relation to research activity; and (10) what the licensee terms "NRC's speculative statements" such as "it appears unnecessary to have replaced the RSO for this short period of time unless discrimination was the motivating factor," should be given equal weight to the countervailing conjecture that Lafayette Clinic, which had already internally identified what it considered to be a possible act of discrimination by Dr. Sitaram against his research assistant, would be unlikely to totally disregard that situation and discriminate against the RSO regarding the same incident.

NRC Evaluation of Licensee's Response

Lafayette Clinic is the licensee in this matter. The NRC staff rejects the assertion that an outside entity (such as Dr. Rosenzweig of Wayne State University, or Ms. Censoni, the Director of Psychiatric Hospitals) may make the decision as to who would be on the Radiation Safety Committee and who would be the RSO at Lafayette Clinic. The circumstances of the pending takeover of Lafayette Clinic by Wayne State University notwithstanding, under the terms of the NRC License issued to Lafayette Clinic, the senior licensee official, Dr. Sullivan, was responsible for making the final decision in this matter and was accountable for all decisions regarding the organization of the Radiation Safety Committee and who would be RSO at Lafayette Clinic during the time period in question. If, in fact, Lafayette Clinic transferred management control of licensed activities to Wayne State University by permitting Dr. Rosenzweig to direct licensed activities, such as determining who should be RSO, then that transfer would be a separate violation of the Atomic Energy Act and would be subject to additional sanction.

While Lafayette Clinic, as the licensee, remains responsible, the NRC does not dispute that Lafayette Clinic may have been influence by Dr. Rosenzweig in this matter, or that the impetus for the discretionary activity may have come from, or through, Dr. Rosenzweig. The reconstitution of the Radiation Safety Committee, which was done at the request of Dr. Rosenzweig, added Dr. Sitaram and concomitantly left out the RSO, who had been a member of the committee up until that time. Dr. Sitaram was the subject of the RSO's investigation concerning potential violations of Lafayette Clinic radiation safety procedures, and had been warned by the RSO that, under the extent circumstances, firing a research assistant could constitute discrimination under the Commission's regulations. According to the minutes of the August 15, 1988 meeting of the Radiation Safety Committee, which show that Dr. Sullivan was present, Dr. Sitaram was not cooperating with the committee by responding to the committee's written questions concerning the potential violations. In fact, the minutes state that Dr. Sullivan intended to elevate this matter to Dr. Rosenzweig by the end of that week. Dr. Sitaram, in his sworn, transcribed statement to the NRC Office of Investigations (OI), admits that he never did respond to the committee's questions. Despite these facts, Dr. Sullivan reconstituted the committee on August 26, 1988, adding Dr. Sitaram and deleting the RSO. It is this action against the RSO that constitutes the basis for the violation. Such treatment, in particular since it occurred in full view of the members of the Radiation Safety Committee, can only result in the message that persons raising safety issues will not be supported by the licensee.

The NRC staff disagrees with the licensee's statement that there is no evidence that Dr. Rosenzweig had knowledge of the potential violations attributable to Dr. Sitaram and the RSO's investigation into those matters at the time that Dr. Rosenzweig made his July 6, 1988 request for reconstitution of the Radiation Safety Committee. For example, the RSO's memorandum dated June 30, 1988, addressed to Dr. Rosenzweig and others, is evidence that Dr. Rosenzweig had knowledge of the pending issues involving Dr. Sitaram and the RSO. Further, Dr. Rosenzweig, in his sworn, transcribed statement to OI, stated:

• • • [w]hen [the research assistant] learned that he [Dr. Sitaram] was using radioisotopes • • • she went to [the RSO] and asked for a radiation badge and he got her a radiation badge. But he also blew a gasket, because this was the first he knew that Sitaram was doing this. Then he created a storm in a teacup, giving Sitaram a citation for having brought this material in the improper way.

When asked by the OI investigator how he became aware of the allegation that Dr. Sitaram improperly used radioactive material a second time, Dr. Rosenzweig responded: "I was getting the repercussions. I was getting the noise coming over from the clinic." Dr. Rosenzweig continues, "• • • I said to [Dr.] Sullivan, we can't go on like this • • • I said to [Dr.] Sullivan, I want all the researchers who have had experience with radioisotopes to furnish me with that experience in writing • • • Dr. Rosenzweig attached the information on the researchers' experience to his July 6, 1988, memorandum requesting that the Radiation Safety Committee be reorganized. Thus, the NRC staff can date Dr. Rosenzweig's knowledge of the potential violations attributable to Dr. Sitaram and the RSO's investigation into those matters.

Regarding the licensee's argument that the RSO did not complain that he was discriminated against to anyone, 10 CFR 30.7 does not require the employee who is discriminated against to believe that discrimination has occurred or to come forth with a complaint of discrimination in any manner. Further, the RSO, in his sworn, transcribed statement to OI, stated:

I believe that the reason that I was replaced as the RSO was because I was pressuring the administration with respect to the Sitaram issue • • • after I received a dismissal from the Radiation Safety Officer [position] • • • I talked to Dr. Sullivan and he clearly told me • • • 'we don't want to challenge Dr. Rosenzweig on this one.' I

didn't go to get a grievance out of that because I still had the other grievance in operation * * * so I figured as that proceeds, all of this would come out.

The NRC staff adheres to its reasoning that, since the Wayne State University RSO was to take over the RSO function at Lafayette Clinic after the reorganization, it appears unnecessary to have replaced the RSO at Lafayette Clinic for what was then believed to be a very short interim period, unless discrimination was the motivating factor. The licensee's countervailing argument is that it would be unlikely to sanction discrimination against the RSO when it had just recently identified what it considered to be a possible act of discrimination by Dr. Sitaram against his research assistant. In point of fact, however, it was the RSO who identified the discrimination issue regarding Dr. Sitaram and the research assistant, and it was the licensee that did not take effective steps to correct that problem, just as the licensee did not take effective steps to assure that discrimination against the RSO did not occur.

By the licensee's own admission, the argument that the RSO performed poorly is not relevant to the action that the licensee took in this matter and therefore need not be addressed in detail. In its November 1, 1991 response (p. 15), the licensee states that it "* * * did not remove the RSO for any reason connected with the Radiation Safety Committee, the Radiation Safety Program, or the license issued by the NRC." Likewise, Dr. Sullivan's letter to NRC dated November 18, 1991, states "* * * [The RSO] was not removed because of poor performance." Further, there is no documentation of the RSO's poor performance or evidence of counseling (e.g., a letter of reprimand or poor performance appraisal), and in Dr. Sullivan's August 26, 1988, memorandum removing the RSO, Dr. Sullivan commended the RSO for his hard work and stated he was surprised that the removal was occurring at this time.

Accordingly, the NRC maintains that the RSO was involved in a protected activity, that adverse action was taken against the RSO as a result of his involvement in the protected activity, and that the licensee's arguments are without merit and do not provide a basis for withdrawing the violation.

Summary of Licensee's Request for Change in Severity Level

The License also argues that if Dr. Sullivan did discriminate against the RSO, it would not be a Severity Level I violation. According to the licensee, based on the examples in the NRC Enforcement Policy, Supplement VII, Dr. Sitaram was a first-line supervisor, Dr. Sullivan was plant management, and Diana Censoni or the Director of the Department of Mental Health was senior corporate management. Thus, the alleged act of discrimination against the RSO should be characterized as Severity Level II and the penalty assessed should be $4,000.

NRC Evaluation of Licensee's Request for Change in Severity Level

As previously stated, Lafayette Clinic is the licensee. Dr. Sullivan is considered to be senior corporate management because he was the most senior licensee individual. Therefore, NRC concludes that Violation II.A was appropriately categorized at Severity Level I and that the civil penalty should be $5,000.

Violation II.B, as Originally Stated

10 CFR 30.7(a) states that discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment.

Contrary to above, on June 20, 1988, a research assistant's employment was terminated by her supervisor as a result of her expressing concern to the RSO about the radiation exposure she was receiving at the Clinic and her request to the RSO for a radiation monitoring badge.

Restatement of Violation II.B, as Amended

As restated below, Violation II.B is modified to include additional facts concerning the discrimination against the research assistant and to correct the date of the termination of the research assistant:

10 CFR 30.7(a) states that discrimination by a Commission licensee, an applicant for a Commission license, or a contractor or subcontractor of a Commission licensee or applicant against an employee for engaging in certain protected activities is prohibited. Discrimination includes discharge and other actions that relate to compensation, terms, conditions, and privileges of employment.

Contrary to above, beginning on June 7, 1988 and extending through July 20, 1988, a research assistant, who worked in an area of the licensee's facility where licensed material was being used, was discriminated against as a result her actions on June 6, 1988, when she expressed concern to the licensee's RSO about the radiation exposure she was receiving at the licensee's facility and requested that the RSO provide her with a radiation monitoring badge. Specifically, during this time period, the research assistant did not receive the wages due to her; and she was informed by, or at the behest of, her supervisor that she was being terminated on a number of occasions including June 13, 1988 (the ultimate termination occurred by memorandum dated July 20, 1988). Individually and severally, these actions against the research assistant constitute discrimination for engaging in protected activity.

Summary of Licensee's Response to Violation II.B

The licensee denies the violation. The licensee submits that: (1) The investigative report of the Michigan Department of Labor is not a finding of any sort even though, according to the licensee, the NRC, in its October 3, 1991, letter accompanying the Notice, has characterized it as such; (2) there was no evidentiary hearing regarding this matter; and (3) there was not a determination by any administrative officer of the Michigan Department of Labor that the allegations made by the research assistant were accurate. According to the licensee, the matter involved a Wayne State University professor (Dr. Sitaram) and a Wayne State University student (the research assistant) who used research facilities at Lafayette Clinic. The licensee further asserts that the research assistant was an employee of Dr. Sitaram, not an employee of the licensee.

According to the licensee: (1) The NRC's reliance on the licensee's failure to provide any evidence of poor performance by the research assistant is an example of an attempt to switch the burden of proof to the licensee in this matter; whereas the investigation was conducted by the NRC, and the burden of proof with regard to alleged license violations should be with the NRC; (2) Wayne State University resolved this matter with the research assistant by the entry of a consent order involving a Michigan Department of Labor complaint that she had filed, and this document specifically indicates that it is not to be construed as an admission of liability on behalf of either party; (3) the research assistant was not in the process of commencing, causing to commence, or about to commence any proceeding under the Atomic Energy Act of 1954, was not about to testify in any such proceeding, and had not assisted or participated in any action to carry out purposes of the Atomic Energy Act since her sole activity with regard to this matter was to ask for a ring monitor so that she could be protected against exposure to radiation during her laboratory work; and (4) the research assistant was not reporting unauthorized activity, she did not know whether the activity was authorized or not, and it was the RSO who investigated and determined that unauthorized activity had taken place.

NRC Evaluation of Licensee's Response

NRC acknowledges that there was no evidentiary hearing or formal adjudicatory determination that the allegations made by the research assistant were accurate. However, the facts and conclusions of the Michigan Department of Labor investigation were considered by NRC in issuing Violation II.B, as were the results of the enforcement conference that NRC held with the licensee. 10 CFR 30.7 prohibits discrimination against an employee by Commission licensees *and their contractors or subcontractors*. In this case, the protected activity occurred in connection with the conduct of licensed activities under the NRC license issued to Lafayette Clinic. Therefore, it is appropriate to hold Lafayette Clinic responsible for the violations regardless of whether or not Wayne State University might be the employing entity. With regard to whether the research assistant was engaged in protected activity within the meaning of the Commission's regulations, the NRC considers a request by an employee to his or her management for equipment designed to monitor the individual's exposure to radiation to be protected activity.

The facts as determined by the NRC staff are that: (1) The research assistant requested the radiation monitoring badge on June 6, 1988; (2) that same day, the RSO, acting on the information provided by the research assistant, confronted Dr. Sitaram concerning his unauthorized use of phosphorus-32; (3) on June 7, 1988, Dr. Sitaram told the research assistant that there would be no work for her since the RSO would not allow him to work with radioactive material; (4) on June 13, 1988, Dr. Sitaram had Drs. Dube and Grabowski tell the research assistant that she was being terminated, but later that day Dr. Sitaram told her that he might give her a second chance; (5) during the period June 1988–July 20, 1988, the research assistant did not receive any wages due to her; and (6) the research assistant was formally notified of her termination by memorandum dated July 20, 1988.

Dr. Sitaram, in his letter to NRC dated November 25, 1991, states:

I realized that the Lafayette Clinic patient samples processed by [the research assistant] were seriously degraded. [She] had apparently been processing many samples in the way she had been used to before for plasmid preparations and consequently had caused considerable shearing of human high molecular weight DNA . . . *I emphasize also that my expressed concerns* [to the research assistant regarding the technique that she used to process laboratory samples] *were made much before her very legitimate request . . . for a radiation safety badge on June 6* [1988] (emphasis in original).

It is clear from the exhibits to the OI investigation that the discussions regarding the termination of the research assistant occurred only *after* her request for the radiation badge. If the termination was based on her alleged poor technique in processing laboratory samples, then the subject of termination would have been raised *before* the request for the radiation monitoring badge.

In Exhibit 14 of Dr. Sitaram's November 25, 1991, letter (consisting of a typewritten memorandum to Dr. Rosenzweig from Dr. Sitaram with handwritten annotations by Dr. Sitaram), Dr. Sitaram states that he did not obtain autoradiography results on the laboratory work until the last of June. Dr. Sitaram indicates that the autoradiography results were disappointing, but "[s]ince the process consists of a chain of procedures . . . it would be unfair to blame a single person for the disappointing result." He further indicates that the disappointing autoradiography results led him, in discussion with his colleagues, to change the direction of his research; and that it was this change in direction that made the job held by the research assistant no longer necessary, thus leading to her termination.

Dr. Rosenzweig, in his sworn, transcribed statement to OI, also dates the decision to change the direction of the research to Dr. Sitaram's return from Gaithersburg, Maryland. Dr. Sitaram indicates in his November 25, 1991 letter to NRC that he left Gaithersburg on June 27, 1988.

In sum: (1) The performance of the research assistant in processing the samples was substantially known well before she requested a radiation monitoring badge; (2) she was not informed that she was being terminated until after she requested a radiation monitoring badge; and (3) the decision to change the direction of the research did not occur until well after the research assistant was informed that she was being terminated. Based on this chain of events, the NRC staff concludes that the aforementioned treatment of the research assistant between June 6 and July 20, 1988, constitutes discrimination for engaging in a protected activity.

Therefore, the NRC staff concludes that the licensee's argument is without merit and does not provide a basis for withdrawing the violation.

Summary of Licensee's Request for Mitigation

With regard to the discrimination against the research assistant, the licensee submits that: (1) There was prompt identification and reporting, and intervention of officials at Wayne State University regarding her termination; (2) the RSO counselled Dr. Sitaram regarding his action involving the research assistant and promptly reported it to the Director of Lafayette Clinic; and (3) there were no prior incidents of this nature in the history of Lafayette Clinic and it was a single event. According to the licensee, its prior good past performance in this area was disregarded by the NRC, as was the licensee's subsequent refusal to allow Dr. Sitaram to conduct experiments using the Lafayette Clinic facility. In sum, the licensee claims that there was prompt identification and reporting, there was corrective action to prevent recurrence, this was a singular event, and the past performance of the licensee was exemplary. In the opinion of the Licensee, under these conditions, the base civil penalty assessed against the licensee should be reduced by 50% to $1,250.

NRC Evaluation of Licensee's Request for Mitigation

Violation II.B was not a reportable event. Although the threatened termination was identified by the RSO as a potential violation in the RSO's June 14, 1988 memorandum to Dr. Fischhoff, who was acting in the absence of Dr. Rosenzweig, a pattern of retaliation for the research assistant's exercise of protected activities continued, culminating in her termination in violation of NRC requirements. Mitigation is not warranted for extensive corrective action because the licensee's actions were not prompt and extensive in assuring that all employees understand their rights to raise safety issues without fear of discrimination. In addition, NRC does not generally mitigate civil penalties for good past performance when a willful violation is involved. Discrimination is considered to be willful. Additionally, no mitigation is warranted for the singular nature of the occurrence. In accordance with section V.B.5 of the NRC Enforcement Policy (1988), the base civil penalty may be increased as much as 50% where multiple examples of a particular violation are identified; however, there is no provision for mitigation for singular occurrences. Therefore, the NRC concludes that no mitigation is warranted for Violation II.B.

NRC Conclusion

Based on its evaluation of the licensee's response, the NRC staff concludes that Violations II.A and II.B did occur as stated, and that the licensee's arguments for mitigation of base civil penalties and changes to severity levels are without merit. Accordingly, NRC concludes that a civil monetary penalty of $7,500 should be imposed by order.

[FR Doc. 92-20974 Filed 8-31-92; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-387 and 50-388]

Pennsylvania Power and Light Co., Allegheny Electric Cooperative, Inc.; Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-14 and NPF-22 issued to Pennsylvania Power and Light Company and Allegheny Electric Cooperative, Inc. (the licensees) for operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2, located in Salem Township, Pennsylvania.

The proposed amendments would make changes to the technical specifications to prevent inadvertent isolation of the Reactor Water Cleanup (RWCU) system due to high seasonal temperatures while still providing timely leak detection capability.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

No Significant Hazards Consideration

I. The proposed change does not involve a significant increase in the probability or

consequence of an accident previously evaluated.

The SSES FSAR does not analyze the size of the small leak on which the temperature setpoints are based. Other accidents which result in coolant leakage outside containment are analyzed in FSAR Sections 15.6.2 (Instrument Line Break) and 15.6.4 (Steam System Piping Break Outside Containment). Both of these are assumed accidents, with no causes identified. The analysis in Section 15.6.4 is the enveloping evaluation for pipe breaks outside containment. The proposed 25 gpm leakage rate basis is well below the leakage corresponding to a catastrophic pipe failure for the applicable system piping and does not significantly increase the risk of a break.

The radiological consequences of a coolant leak outside primary containment was analyzed. The analysis concludes that there is no impact on the 10 CFR Part 100 offside dose limits or on the 10 CFR Part 50, appendix A, GDC 19 control room dose limits.

Additionally, the temperature switches and isolation valves are redundant. Failure of a single switch to detect a leak does not preclude detection and where appropriate, isolation by the other switch and valve. The reliability of the temperature switches is not affected by the setpoint. The other methods of leak detection provide backup for the temperature instruments.

II. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed technical specification changes does not affect any systems other than leak detection and does not affect the ability to detect and isolate leakage. Although a 25 gpm leak is not specifically analyzed in the FSAR, it is bounded by the analysis in Chapter 15.6.4. The proposed change does not, therefore, create the possibility of an accident or malfunction of a different type than any evaluated previously in the FSAR.

III. The proposed change does not involve a significant reduction in a margin of safety.

The temperature switches and setpoints are listed in Technical Specification Section 3.3.2, "Isolation Actuation Instrumentation," but the Technical Specification basis does not discuss setpoint basis with respect to leakage rate or process conditions. The bases does, however, state "the set points . . . are established at a level away from the normal operating range to prevent inadvertent actuation of the system involved." Temperature measurement is not discussed in the basis for Technical Specification 3.4.3, "Reactor Coolant System Leakage."

The proposed technical specification change satisfies the bases for Section 3.3.2 by defining that the setpoints margin above maximum design temperatures, but does not reduce any margin of safety defined for any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Directives Review Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 1, 1992, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 10555 and at the local public document room located at Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Charles L. Miller, Director, Project Directorate I-2, Division of Reactor Projects—1/II: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated January 9, 1991, and its supplements dated August 19, 1991, June 22, 1992 and August 3, 1992, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Dated at Rockville, Maryland, this 26th day of August 1992.

For the Nuclear Regulatory Commission.

Richard J. Clark,

Acting Project Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-20977 Filed 8-31-92; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting of Full Board in Las Vegas, Nevada—October 14-16, 1992

Pursuant to the Nuclear Waste Technical Review Board's (the Board) authority under section 5051 of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987 (Public Law 100-203), the Board will hold its fall meeting October 14-16, 1992, in Las Vegas, Nevada. The meeting will address two issues: the source term and the fiscal year 1993 budget for the Yucca Mountain Site Characterization Project Office. The meeting, which is open to the public, will be held at the Plaza-Suite Hotel, 4255 South Paradise, Las Vegas, Nevada, 89109; telephone (702) 369-4400.

The Board has invited representatives from the DOE's Office of Civilian Radioactive Waste Management and its contractors to make presentations on the source term, which can be defined as the kinds and amounts of radionuclides that could be released from the waste package and its immediate repository surroundings and, thereby, be available for transport under various release scenarios. Three areas will be addressed. First, how could factors such as fuel characteristics, fuel oxidation, glass dissolution rates, and cladding failure affect the source term? Second, how could geochemical reactions at the potential site affect the source term? For example, factors affecting the potential release of ^{14}C and the effects of backfill materials on solubility and sorption will be discussed. Finally, how has the source term been treated in previous performance assessment calculations, and how might it be treated in future performance assessments?

Carl Gertz, director of the Yucca Mountain Site Characterization Project Office, also will make a presentation on that office's fiscal year 1993 budget and its implications for the 2001 license application target date.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 (NWPAA) to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent fuel. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for disposal of that spent nuclear fuel.

Transcripts of the meeting will be available on a library-loan basis from Ms. Victoria Reich, Board Librarian, beginning November 30, 1992. For further information, contact Paula N. Alford, Director, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235-4473.

Dated: August 27, 1992.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 92-21022 Filed 8-31-92; 8:45 am]

BILLING CODE 6820-AM-M

RESOLUTION TRUST CORPORATION

List of Institutions in Conservatorship and Receivership

AGENCY: Resolution Trust Corporation.

ACTION: Notice of Conservatorships and Receiverships.

SUMMARY: The Resolution Trust Corporation (Corporation or RTC) on

May 7, 1992 [57 FR 19651] published for comment an Interim Statement of Policy on Foreclosure Consent and Redemption Rights. As part of that Policy, the RTC agreed to publish a list of all institutions for which the RTC has been appointed receiver or conservator. In addition, the RTC agreed to periodically publish a notice indicating new institutions for which the RTC has been appointed receiver since the date of the previous notice.

DATES: This publication includes all institutions which passed through receivership between August 9, 1989 and June 30, 1992.

FOR FURTHER INFORMATION CONTACT: Prem Dhawan, Asset Specialist, Office of Asset Disposition, (214) 443-4816, or Joseph S. Schantz, Asset Specialist, Asset Management and Sales Division, (202) 416-7302. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Listed below are institutions controlled by the RTC which have been passed through the receivership process between August 9, 1989 and June 30, 1992. This list is sorted alphabetically first by state, then city, and finally by name of institution.

LIST OF INSTITUTIONS—BY STATE/CITY, AUGUST 9, 1989 THRU JUNE 30, 1992

Bank No.	Docket before/after	Institution name before pass-through, institution name after pass-through	City before pass-through, city after pass-through	State before/after	Date of pass-thru	Conserv. date	Resolution date
8301	06020	First Federal Bank of Alaska SB	Anchorage	AK		3/02/89	1/12/90
8302	07329	Home Savings Bank	Anchorage	AK	8/31/89	3/02/89	1/12/90
	08647	Home Savings Bank, FSB	Anchorage	AK			
8233	02937	First FS&LA	Andalusia	AL	12/28/90	12/28/90	9/27/91
	09041	First FS&LA of Andalusia, FA	Andalusia	AL			
8303	04939	City FS&LA	Birmingham	AL		3/30/89	9/14/90
8304	04439	Guaranty FS&LA	Birmingham	AL		2/17/89	5/04/90
7868	02439	Jefferson FS&LA	Birmingham	AL	3/08/91	3/08/91	3/13/92
	09089	Jefferson FS&LA, FA	Birmingham	AL			
8307	06772	First Savings Bank of Alabama, FA	Hamilton	AL		3/09/89	12/15/89
8230	02747	Altus Bank, A FSB	Mobile	AL	5/17/91	5/17/91	
	09231	Altus Federal Savings Bank	Mobile	AL			
8306	08439	Phenix FS&LA, FA	Phenix City	AL		3/09/89	5/18/90
8305	00840	Baldwin County FSB	Robertsdale	AL		3/30/89	8/10/90
7870	04793	Tuskegee FS&LA	Tuskegee	AL	11/30/90	11/30/90	10/11/91
	09017	Tuskegee S&LA, FA	Tuskegee	AL			
8310	07255	Independence FS&LA	Batesville	AR		2/17/89	9/07/90
8312	05724	First FS&LA	Fayetteville	AR		3/02/89	11/02/90
8692	00668	First America Federal Savings Bank	Fort Smith	AR	5/25/90	5/25/90	12/07/90
	08838	First American SB, FSB	Fort Smith	AR			
8311	03115	Landmark Savings Bank, FSB	Hot Springs	AR		3/02/89	6/22/90
7867	02362	United FS&LA	Jonesboro	AR	6/28/91	6/28/91	3/13/92
	09290	United FS&LA, FA	Jonesboro	AR			
8833	07899	Arkansas Federal Savings Bank	Little Rock	AR	12/21/90	12/21/90	9/06/91
	09040	Arkansas Federal Savings Bank, FA	Little Rock	AR			
8308	02354	First Federal of Arkansas, FA	Little Rock	AR	8/31/89	2/10/89	7/26/91
	08543	First Savings of Arkansas, FA	Little Rock	AR			
8309	03429	Savers FS&LA	Little Rock	AR	10/05/89	2/10/89	9/20/91
	08673	Savers Savings Association, FSA	Little Rock	AR			
8315	05836	First FS&LA	Malvern	AR		3/02/89	8/25/89
8314	06401	First State Savings Bank FSB	Mountain Home	AR		3/02/89	10/26/90
8316	07625	Home FS&LA	Mountain Home	AR		3/02/89	8/25/89
8313	07601	Madison Guaranty S&LA	McCrory	AR		3/02/89	11/30/90
8317	07306	Commonwealth S&LA	Osceola	AR		3/02/89	12/07/90
7885	03495	First FS&LA	Paragould	AR	11/30/90	11/30/90	9/13/91
	09019	First Savings Association, FA	Paragould	AR			
8825	07700	Grand Prairie S&LA	Stuttgart	AR	1/26/90	1/26/90	11/09/90
	08743	Grand Prairie FS&LA	Stuttgart	AR			
8897	00137	Texarkana FS&LA	Taxarkana	AR	12/07/90	12/07/90	8/30/91
	09023	Texarkana FS&LA, FA	Texarkana	AR			
8318	07617	Unipoint Federal Savings Bank	Trumann	AR		3/02/89	6/22/90
8622	07599	Capital S&LA	Wes Helena	AR	7/27/89	7/27/89	6/29/90
	08615	Capital FS&LA	Little Rock	AR			
8806	06877	Merabank, a Federal Savings Bank	Phoenix	AZ	1/31/90	1/31/90	9/28/90
	08764	Merabank FSB	Phoenix	AZ			
8840	08065	Sentinel S&LA	Phoenix	AZ	2/02/90	2/02/90	6/15/90
	08763	Sentinel FS&LA	Phoenix	AZ			
8522	05628	Southwest S&LA	Phoenix	AZ	9/14/89	2/17/89	7/19/91
	08636	Southwest S&LA, FA	Phoenix	AZ			
8563	07710	Sun State S&LA	Phoenix	AZ	6/14/89	6/14/89	11/30/90
	08590	Sun State S&LA, FSA	Phoenix	AZ			
8603	01920	Western S&LA	Phoenix	AZ	6/14/89	6/14/89	5/31/90
	08579	Western S&LA, FA	Phoenix	AZ			
8319	06875	Security S&LA	Scottsdale	AZ		2/17/89	3/15/91
8524	08493	Universal S&LA, A FS&LA	Scottsdale	AZ		2/17/89	1/26/90
7905	08048	First American Savings, Inc.	Tucson	AZ	8/16/91	8/16/91	4/24/92
	09388	First American Federal Savings Bank	Tucson	AZ			
8858	05762	PIMA S&LA	Tucson	AZ	5/25/90	3/02/90	2/15/91
	08839	PIMA FS&LA	Tucson	AZ			
7900	06962	Progressive S&LA	Alhambra	CA	5/24/91	5/24/91	3/13/92
	09232	Progressive Savings Bank, FSB	Pasadena	CA			
8606	00924	First FS&LA	Bakersfield	CA		6/29/89	4/27/90

LIST OF INSTITUTIONS—BY STATE/CITY, AUGUST 9, 1989 THRU JUNE 30, 1992—Continued

Bank No.	Docket before/after	Institution name before pass-through, institution name after pass-through	City before pass-through, city after pass-through	State before/after	Date of pass-thru	Conserv. date	Resolution date
8564	07896	The Guardian FS&LA	Bakersfield	CA		6/29/89	4/27/90
7790	06325	Columbia S&LA	Beverly Hills	CA	3/22/91	1/25/91	9/13/91
	09104	Columbia S&LA, FA	Beverly Hills	CA			
8557	07277	Gibraltar Savings	Beverly Hills	CA	10/31/89	3/31/89	6/29/90
	08687	Gibraltar Savings, FA	Simi Valley	CA			
8604	08253	Sierra FS&LA	Beverly Hills	CA	7/20/89	7/20/89	5/04/90
	08613	Sierra S&LA, FA	Beverly Hills	CA			
7881	07868	Unity S&LA	Beverly Hills	CA	2/08/91	2/08/91	8/02/91
	09054	Unity Savings & Loan Association, FA	Beverly Hills	CA			
8805	06811	Enterprise S&LA	Compton	CA		5/31/91	
8320	01841	Pacific Savings Bank	Costa Mesa	CA		2/07/89	10/13/89
7906	08224	Gold River SB	Fair Oaks	CA			9/27/91
8846	08164	Financial S&LA	Fresno	CA	1/11/90	1/11/90	6/01/90
	08715	Financial FS&LA	Fresno	CA			
8625	06207	Security FS&LA	Garden Grove	CA	11/16/89	11/16/89	5/04/90
	08708	Security FSA	Garden Grove	CA			
8859	07663	Westport Savings Bank	Hanford	CA	3/09/90	3/09/90	8/17/90
	08779	Westport Federal Savings Bank	Hanford	CA			
8553	07901	Cabrillo Savings Bank	Hayward	CA	8/31/89	4/06/89	5/11/90
	08631	Cabrillo Federal Savings Bank	Hayward	CA			
7887	08154	Beach Savings Bank	Huntington Beach	CA	1/18/91	1/18/91	7/19/91
	09046	Beach Savings Bank, FSB	Fountain Valley	CA			
8822	07608	Charter Savings Bank	Huntington Beach	CA	6/15/90	6/15/90	12/07/90
	08881	Charter Savings Bank, FSB	Newport Beach	CA			
8829	07846	Huntington S&LA	Huntington Beach	CA	2/09/90	2/09/90	6/22/90
	08751	Huntington FS&LA	Huntington Beach	CA			
8901	06649	Mercury S&LA	Huntington Beach	CA	5/25/90	2/23/90	9/21/90
	08833	Mercury FS&LA	Huntington Beach	CA			
8837	07970	Liberty S&LA	Huntington Park	CA	11/16/90	11/16/90	6/07/91
	08978	Liberty Federal Savings Bank	Montebello	CA			
8828	07754	Heartland S&LA	La Mesa	CA			9/06/91
7828	07961	Guardian S&LA	Long Beach	CA	12/06/91	6/21/91	
	09569	Guardian Federal Savings Association	Long Beach	CA			
8565	08306	American Interstate Savings, A FS&L	Los Angeles	CA	7/20/89	7/20/89	5/04/90
	08595	American Interstate SA, FA	Los Angeles	CA			
8656	07887	Brookside S&LA	Los Angeles	CA	11/30/89	11/30/89	11/16/90
	08705	Brookside FS&LA	Los Angeles	CA			
8867	07974	First Network Savings Bank	Los Angeles	CA	4/20/90	4/20/90	9/14/90
	08808	First Network SFB	Los Angeles	CA			
8324	07353	Founders S&LA	Los Angeles	CA	9/07/89	4/06/89	1/18/91
	08634	Founders FS&LA	Los Angeles	CA			
8560	03805	Lincoln S&LA	Los Angeles	CA	8/03/89	4/14/89	3/06/91
	08619	Lincoln S&LA, FA	Los Angeles	CA			
8561	05073	Southwest S&LA	Los Angeles	CA	10/05/89	4/27/89	11/16/90
	08678	Southwest FS&LA	Los Angeles	CA			
8321	07611	Westwood S&LA	Los Angeles	CA		2/17/89	8/24/90
8674	07979	Wilshire S&LA	Los Angeles	CA	1/11/90	1/11/89	6/22/90
	08716	Wilshire S&LA	Los Angeles	CA			
7820	07888	Malibu Savings Bank	Malibu	CA	1/11/91	1/11/91	7/19/91
	09045	Malibu Savings Bank, FSB	Malibu	CA			
8332	07886	Royal Oak S&LA	Manteca	CA		4/06/89	5/11/90
7830	07991	Executive S&LA	Marina Del Rey	CA	4/26/91	4/26/91	2/28/92
	09166	Executive Savings Bank, FSB	Marina Del Rey	CA			
7711	01314	Far West S&LA	Newport Beach	CA	2/15/91	1/11/91	3/20/92
	09077	Farwest S&LA, FA	Irvine	CA			
7966	08277	First Newport, FSB (University, FSB)	Newport Beach	CA	6/19/92	6/19/92	
	08277	First Newport Federal Savings Bank	Newport Beach	CA			
7948	08004	Advanced S&LA	Northridge	CA	1/24/92	1/24/92	
	09696	Advanced Federal Savings Bank	Northridge	CA			
8331	08352	Unified Savings, A FS&LA	Northridge	CA		4/06/89	9/22/89
8334	07347	City FS&LA	Oakland	CA		4/06/89	5/18/90
8323	08445	First California Savings, FSA	Orange	CA		4/06/89	9/22/89
8328	07781	Arrowhead Pacific Savings Bank	San Bernardino	CA	8/24/89	4/06/89	5/04/90
	08638	Arrowhead Pacific FSB	San Bernardino	CA			
7932	06991	San Clemente Savings Bank	San Clemente	CA	6/12/92		
	06991	San Clemente FSB	San Clemente	CA			
7705	00789	Great American First Savings Bank	San Diego	CA	10/25/91	8/09/91	
	09496	Great American FSA	San Diego	CA			
8206	01761	Imperial Savings Association	San Diego	CA	6/22/90	2/23/90	4/19/91
	08882	Imperial FSA	San Diego	CA			
8881	07959	Rancho Bernardo Savings Bank	San Diego	CA	10/26/90	10/26/90	6/07/91
	08962	Rancho Bernardo Federal Savings Bank	San Diego	CA			
7840	08117	Atlantic Financial Savings Bank, FSB	San Francisco	CA	7/26/91	7/26/91	4/10/92
	09384	Atlantic Financial FSB	San Francisco	CA			
8326	07799	Gateway Savings Bank	San Francisco	CA	4/06/89	6/08/90	
	08640	Gateway Federal Savings Bank	San Francisco	CA			
8830	07849	Pacific Coast S&LA of America	San Francisco	CA	4/27/90	3/16/90	7/12/91

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	08836	Pacific Coast FSA of America	San Francisco	CA			
8815	07325	Time S&LA	San Francisco	CA	6/01/90	6/01/90	5/17/91
	08834	Time FS&LA	San Francisco	CA			
8618	07928	Saratoga S&LA	San Jose	CA	5/24/90	11/09/89	6/01/90
	08828	Saratoga FS&LA	San Jose	CA			
8841	07483	Pan American SB	San Mateo	CA		7/21/91	
8330	08388	Perpetual Savings Association, a FS&LA	Santa Ana	CA		4/06/89	8/25/89
7818	07847	County Bank, SSB	Santa Barbara	CA	3/27/91	3/27/91	3/27/92
	09099	County Bank, FSB	Santa Barbara	CA			
8213	02079	Santa Barbara S&LA	Santa Barbara	CA	5/11/90	4/27/90	8/09/91
	08850	Santa Barbara FS&LA	Santa Barbara	CA			
7704	00437	Santa Paula S&LA	Santa Paula	CA			9/27/91
8824	07688	Peninsula S&LA	South San Francisco	CA	05/04/90	05/04/90	6/22/90
	08829	Peninsula FSA	South San Francisco	CA			
0827	07835	Washington S&LA	Stockton	CA		04/06/89	5/11/90
8800	06645	Constitution FS&LA	Tustin	CA	4/12/90	4/12/90	8/29/90
	08796	Constitution FSA	Monterey Park	CA			
8526	07438	Independence S&LA	Vallejo	CA		4/06/89	10/20/89
7810	07443	Valley FS&LA	Van Nuys	CA			4/10/92
8527	07985	City S&LA	Westlake Villa	CA		4/06/89	8/25/89
7930	07897	Delta Savings Bank	Westminster	CA	5/08/92	11/08/91	
	09976	Delta FSB	Westminster	CA			
8562	01737	Westco Savings Bank, FSB	Wilmington	CA		4/27/89	4/27/90
8823	07634	Investment S&LA	Woodland Mills	CA	1/11/90	1/11/90	8/24/90
	08735	Investment FS&LA	Woodland Mills	CA			
8855	07853	Western Empire S&LA	Yorba Linda	CA	2/16/90	2/16/90	8/31/90
	08750	Western Empire FS&LA	Yorba Linda	CA			
6660	07308	Aspen S&LA	Aspen	CO	11/09/89	11/09/89	8/08/90
	08694	Aspen Savings Bank, FSB	Aspen	CO			
8207	01777	Capitol FS&LA of Denver	Aurora	CO	6/15/90	5/04/90	7/12/91
	08869	Capitol FS&LA	Aurora	CO			
8525	02864	American FS&LA of Colorado	Colorado Springs	CO	9/28/89	4/06/89	5/18/90
	08670	American Savings of Colorado, A FS&LA	Colorado Springs	CO			
8532	02424	First FS&LA of Colorado Springs	Colorado Springs	CO		3/09/89	6/29/90
8529	00948	Otero S&LA	Colorado Springs	CO		3/09/89	5/25/90
8878	08476	Great West SB, FSB	Craig	CO	5/11/90	5/11/90	8/16/91
	08824	Great West, A Federal Savings Bank	Craig	CO			
8340	05776	Equity Federal Savings Bank	Denver	CO		4/06/89	9/14/90
8530	07623	Colorado S&LA	Englewood	CO		3/09/89	2/09/90
8335	01421	Mesa FS&LA of Colorado	Grand Junction	CO		3/09/89	2/02/90
8337	02337	Modern FS&LA	Grand Junction	CO		3/09/89	1/26/90
8336	01541	Valley FS&LA of Grand Junction	Grand Junction	CO	8/24/89	3/09/89	2/02/90
	08642	Valley FS&LA	Grand Junction	CO			
8872	05134	Heritage S&LA	Lamar	CO	4/20/90	4/20/90	8/23/91
	08823	Heritage Federal Savings Association	Lamar	CO			
8844	08151	First America Savings Bank, FSB	Longmont	CO	3/16/90	3/16/90	9/13/91
	08802	First America Federal Savings Bank	Longmont	CO			
8528	03651	Sun S&LA	Parker	CO		3/09/89	7/20/90
8338	03029	Alpine FS&LA	Steamboat Springs	CO	8/24/89	3/09/89	6/22/90
	08641	Alpine Savings, A FS&LA	Steamboat Springs	CO			
6567	08354	Colorado FSB	Sterling	CO	9/28/89	9/28/89	6/29/90
	08669	Colorado Savings Bank, FSB	Sterling	CO			
8339	07782	Rocky Mountain S&LA	Woodland Park	CO		3/09/89	6/22/90
8628	07373	Community FS&LA	Bridgeport	CT	12/07/89	12/07/89	9/14/90
	08707	Community Federal Savings Association	Bridgeport	CT			
7856	00350	Danbury S&LA Inc	Danbury	CT	7/12/91	7/12/91	3/13/92
	09321	Danbury FS&LA	Danbury	CT			
7879	07179	Connecticut S&LA	Hartford	CT	1/11/91	1/11/91	2/07/92
	09044	Connecticut Federal Savings and Loan	Hartford	CT			
7843	08195	Financial Federal Savings Bank	Hartford	CT	8/17/90	8/17/90	6/19/91
	08906	Financial Savings of Hartford	Hartford	CT			
7907	03633	New London FS&LA	New London	CT	6/19/92	6/19/92	
	03633	Coastal SB, FSB	New London	CT			
8889	08009	Charter FS&LA	Stamford	CT	6/29/90	6/29/90	6/21/91
	08868	Charter FSA	Stamford	CT			
8849	07792	Security S&LA	Waterbury	CT	4/12/91	4/12/91	3/20/92
	09157	Security FS&LA	Waterbury	CT			
8341	06927	Columbia Federal Savings Bank	Westport	CT		2/17/89	4/12/90

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8348	08401	Southern Floridabanc FS&LA	Boca Raton	FL	2/17/89	10/06/89	
7817	08263	Coral Coast Savings Bank, FSB	Boynton Beach	FL	8/02/91	8/02/91	
	09385	Coral Coast Federal Savings Bank	Boynton Beach	FL			
8839	08053	Enterprise FS&LA	Clearwater	FL	4/20/90	4/20/90	9/07/90
	08819	Enterprise FS, FSA	Clearwater	FL			
8896	07699	Life Savings Bank	Clearwater	FL	10/11/91	10/11/91	
	09470	Life Federal Savings Bank	Clearwater	FL			
8288	05942	Pioneer Savings Bank	Clearwater	FL	3/09/90	2/02/90	3/01/91
	08801	Pioneer Federal Savings Bank	Clearwater	FL			
7783	06002	Professional Savings Bank	Coral Gables	FL	7/27/90	7/27/90	3/13/92
	08917	Professional Federal Savings Bank	Coral Gables	FL			
8850	08381	Coral S&LA	Coral Springs	FL	1/25/91	1/25/91	6/28/91
	09049	Coral S&LA, FA	Coral Springs	FL			
8245	03121	Security First FS&LA	Daytona Beach	FL			4/10/92
8843	08133	Investors of Florida Savings Bank	Deerfield Beach	FL	6/01/90	6/01/90	6/07/91
	08821	Investors Federal Savings Bank	Deerfield Beach	FL			
8347	08548	Financial Security S & LA	Delray Beach	FL		3/16/89	5/25/90
8808	06996	First Citizens FS&LA	Fort Pierce	FL	3/08/91	3/08/91	9/20/91
	09090	First Citizens S&LA, FA	Fort Pierce	FL			
8607	08331	New Metropolitan FS&LA	Hialeah	FL	7/19/91	7/19/91	2/28/92
	09322	New Metropolitan Federal Savings Bank	Hialeah	FL			
7734	02767	Hollywood FS&LA	Hollywood	FL	2/22/91	2/22/91	
	09079	Hollywood Federal Savings Bank	Hollywood	FL			
7860	08531	Citizens FederalSavings Bank	Jacksonville	FL	10/16/91	10/16/91	
	09473	Citizens Federal Savings Association	Jacksonville	FL			
8653	05731	Duval FS&LA	Jacksonville	FL	1/18/90	1/18/90	8/16/91
	08754	Duval Federal Savings Association	Jacksonville	FL			
7964	05108	Jacksonville Federal Savings Bank	Jacksonville	FL	6/26/92	6/26/92	
	05108	Jacksonville FSB	Jacksonville	FL			
8345	05553	First FS&LA of the Florida Keys	Key West	FL		3/16/89	4/27/90
8344	06596	First FS&LA	Largo	FL		2/17/89	6/08/90
8617	07823	Commonwealth S&LA	Margate	FL	7/20/89	7/20/89	3/08/91
	08628	Commonwealth FS&LA	Margate	FL			
7767	05078	United Savings of America, FA	Melbourne	FL			2/07/92
7722	02143	Amerifirst Bank, A FSB	Miami	FL	3/15/91	3/15/91	3/20/92
	09094	Amerifirst Federal Savings Bank	Miami	FL			
8353	07731	Brickellbanc Savings Association	Miami	FL		3/16/89	6/08/90
8229	02745	Centrust Bank, A State Savings Bank	Miami	FL	3/09/90	2/02/90	6/29/90
	08800	Centrust FSB	Miami	FL			
7782	05976	Flagler FS&LA	Miami	FL			3/27/92
8629	07763	General Bank, A Federal Savings Bank	Miami	FL	11/16/89	11/16/89	1/11/91
	08695	General Federal Savings Bank	Miami	FL			
8531	07769	Lincoln S&LA	Miami	FL	10/05/89	3/16/89	6/08/90
	08674	Lincoln FS&LA	Miami	FL			
8346	07363	Miami Savings Bank	Miami	FL		3/16/89	8/7/90
8350	08409	Liberty FS&LA	New Port Richey	FL		3/16/89	8/10/89
7880	07805	International S&LA	North Miami Beach	FL	10/12/90	10/12/90	7/05/91
	08971	International Federal S&LA	North Miami Beach	FL			
8886	07796	American Pioneer Savings Bank	Orlando	FL	6/29/90	5/25/90	9/20/91
	08867	American Pioneer Federal Saving Bank	Daytona Beach	FL			
7725	02314	The First, FA	Orlando	FL			10/11/91
7838	08060	Hansen Savings Bank	Palm Beach Gardens	FL	1/10/92	1/10/92	
	09619	Hansen Federal Savings Bank	Palm Beach Gardens	FL			
7854	08365	Sovereign Savings Bank	Palm Harbor	FL	3/15/91	3/15/91	9/13/91
	09092	Sovereign Savings Bank, FSB	Palm Harbor	FL			
7875	05587	Security FSB of Florida	Panama City	FL	1/31/92	1/31/92	
	09697	Security Federal Savings Association	Panama City	FL			
7834	08036	Citizens & Builders FSB	Pensacola	FL	7/27/90	7/27/90	7/12/91
	08914	Citizens & Builders FS, FSB	Pensacola	FL			
7837	08056	Gold Coast Savings Bank	Plantation	FL	10/19/90	10/19/90	8/23/91
	08970	Gold Coast Federal Savings Bank	Planation	FL			
7744	03421	First FS&LA of Seminole County	Sanford	FL	4/05/91	4/05/91	4/03/92
	09121	First FS&LA of Seminole County, FA	Sanford	FL			
8211	01943	Florida Federal Savings Bank	St Petersburg	FL	11/09/90	11/09/90	8/02/91
	08968	Florida Federal Savings, FSB	St. Petersburg	FL			
7793	06482	Goldome SA	St. Petersburg	FL	5/31/91	5/31/91	
	09235	Goldome Federal Savings Bank	St. Petersburg	FL			
8885	08144	Great Life Savings Association	Sunrise	FL	6/01/90	6/01/90	6/21/91
	08845	Great Life FSA	Sunrise	FL			
7832	08015	Ambassador S&LA	Tamarac	FL	8/24/90	8/24/90	6/21/91
	08916	Ambassador FS&LA	Tamarac	FL			
8356	07163	Community FS&LA	Tampa	FL		3/16/89	9/07/90
8342	08427	Freedom S&LA A FS&LA	Tampa	FL		2/07/89	10/13/89
8351	07829	First Venice S&LA	Venice	FL		3/16/89	6/01/90
7909	08281	Bay Savings Bank	West Plam Beach	FL	9/06/91	9/06/91	
	09419	Bay Federal Savings Bank	West Plam Beach	FL			

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8533	07923	Royal Palm Savings Bank	West Palm Beach	FL	7/19/89	3/16/89	6/08/90
	08602	Royal Palm FS&LA	West Palm Beach	FL			
8851	08497	Haven FS&LA	Winter Haven	FL	3/02/90	3/02/90	12/07/90
	08783	Haven S&LA, FA	Winter Haven	FL			
8568	05384	First FS&LA	Americus	GA	6/22/89	6/22/89	8/22/90
	08582	First Savings of Americus, A FS&LA	Americus	GA			
8827	06643	First Federal Savings Bank	Ashburn	GA	4/05/91	4/05/91	4/03/92
	09122	First Federal Savings Bank, FSB	Ashburn	GA			
8357	00141	First FS&LA	Atlanta	GA		3/09/89	5/25/90
8215	02322	Fulton Federal Savings Bank	Atlanta	GA	2/01/91	1/04/91	7/26/91
	09052	Fulton Federal Savings Association	Atlanta	GA			
8569	00552	Habersham FSB	Atlanta	GA	6/22/89	6/22/89	9/21/89
	08592	Habersham FS&LA	Cornelia	GA			
7796	06529	First FS&LA	Dallas	GA	2/22/91	2/22/91	9/27/91
	09080	First Federal Savings, FSB	Dallas	GA			
7852	08414	Cobb Federal Savings Bank	Marietta	GA	11/08/91	11/08/91	
	09500	Cobb Federal Savings Association	Marietta	GA			
8688	00490	Moultrie Federal Savings Bank	Moultrie	GA	6/15/90	6/15/90	1/04/91
	08874	Moultrie Savings Bank, FSB	Moultrie	GA			
8570	03572	Great Southern FSB	Savannah	GA	6/22/89	6/22/89	6/22/90
	08586	Great Southern FS&LA	Savannah	GA			
7877	06650	United FS&LA	Smyrna	GA	5/31/91	5/31/91	3/27/92
	09237	United Federal Savings Bank	Smyrna	GA			
8359	06090	First FS&LA	Summerville	GA		3/09/89	6/22/90
7781	06146	The Federal Savings Bank	Swainsboro	GA	3/22/91	3/22/91	3/27/92
	09102	The Federal Savings Bank, FSB	Atlanta	GA			
8299	06582	First FS&LA	Warner Robins	GA	4/12/90	4/12/90	8/17/90
	08825	First FSA	Warner Robins	GA			
7819	07852	Guaranty Federal Savings Bank	Warner Robins	GA	5/10/91	5/10/91	3/13/92
	09229	Guaranty Federal Savings Association	Warner Robins	GA			
7749	03709	Home FS&LA	Algona	IA	4/26/91	4/26/91	1/31/92
	09165	Home FS&LA, FA	Algona	IA			
8571	04234	Banc Iowa Savings Bank	Cedar Rapids	IA	10/16/89	10/16/89	8/10/90
	08680	Banc Iowa Federal Savings Bank	Cedar Rapids	IA			
8271	04604	Firstcentral Bank, a FSB	Chariton	IA	1/04/90	1/04/90	9/07/90
	08742	Firstcentral Federal Savings Bank	Chariton	IA			
8360	05488	Sioux Valley S&LA	Cherokee	IA		4/06/89	8/18/89
8223	02557	First FS&LA of Creston	Creston	IA	5/10/91	5/10/91	11/01/91
	09227	First FS&LA of Creston, FA	Creston	IA			
8262	03965	American FS&LA of Iowa	Des Moines	IA	2/09/90	2/09/90	2/08/91
	08749	American FSA of Iowa	Des Moines	IA	2/09/90	2/09/90	2/08/91
8247	03228	United Federal Savings Bank of Iowa	Des Moines	IA	3/22/91	3/22/91	
	09103	United FSA of Iowa	Des Moines	IA			
8534	03406	First FS&LA of Estherville & Emmetsburg	Estherville	IA		4/06/89	6/15/90
8861	07162	Sun Savings Bank	Fort Dodge	IA	3/16/90	3/16/90	6/28/90
	08788	Sun FS&LA	Fort Dodge	IA			
7738	02896	Home FS&LA of Harlan	Harlan	IA			9/27/91
7910	01319	Peoples S&LA	Ottumwa	IA	11/22/91	11/22/91	3/30/92
	09568	Peoples FSA	Ottumwa	IA			
7858	08482	Statesman Bank for Savings, FSB	Waterloo	IA	7/27/90	7/27/90	3/01/91
	08890	Statesman Federal Savings Bank	Des Moines	IA			
7771	05217	Germaniabank, a FSB	Alton	IL		6/22/90	7/26/91
8281	05469	Arlington Heights FS&LA	Arlington Heights	IL	12/07/89	12/07/89	9/28/90
	08710	Arlington Heights SA, FA	Arlington Heights	IL			
8682	00241	Frontier Financial	Belleville	IL	1/18/90	1/18/90	11/29/90
	08728	Frontier Federal Savings Bank	Belleville	IL			
8365	00168	Midwest Home FSB	Belleville	IL		3/16/89	11/30/90
8695	00982	Olympic Federal S&LA	Berwyn	IL	12/14/90	12/14/90	3/27/92
	09028	Olympic Federal Savings Association	Berwyn	IL			
8370	02193	Home FS&LA of Centralia	Centralia	IL		3/16/89	5/08/90
8368	00104	American Security FS&LA	Chicago	IL		3/16/89	6/19/90
7731	01774	Capitol Federal Bank for Savings	Chicago	IL			5/10/91
7772	05242	Century Federal Savings Bank	Chicago	IL	5/03/91	5/03/91	1/31/92
	09170	Century Federal Savings Bank, FSB	Chicago	IL			
7743	03418	Enterprise Savings Bank, FA	Chicago	IL			12/27/90
8691	00636	United Savings of America	Chicago	IL			9/27/91
7931	01614	Western S&LA	Chicago	IL	11/22/91	11/22/91	3/20/92
	09567	Western FS&LA	Glenview	IL			
8369	03416	Chillicothe FS&LA	Chillicothe	IL		3/16/89	8/24/90
8864	02441	Fidelity S&LA of Danville	Danville	IL	2/16/90	2/16/90	8/22/90
	08758	Fidelity Savings Bank, FSB	Danville	IL			
8554	01186	First Federal Savings Bank	East Alton	IL		4/06/89	5/04/90
8294	06338	Community Savings Bank	East Moline	IL	2/23/90	2/23/90	11/02/90
	08784	Community Federal Savings Bank	East Moline	IL			
8649	00345	Fidelity FS&LA	Galesburg	IL	11/09/89	11/09/89	11/16/90
	08698	Fidelity Federal Savings Association	Galesburg	IL			
8364	00238	Madison County FS&LA	Granite City	IL		3/16/89	5/18/90

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Bank No.	Docket before/after	Institution name before pass-through, institution name after pass-through	City before pass-through, city after pass-through	State before/after	Date of pass-thru	Conserv. date	Resolution date
8572	06743	Amerimac Savings Bank, FS	Hillsboro	IL		6/29/89	5/15/90
8626	05655	Heritage S&L	Jerseyville	IL	8/24/89	8/24/89	8/24/90
	08658	Heritage Savings Association, FA	Jerseyville	IL			
8363	06330	Home FS&LA of Joliet	Joliet	IL	9/07/89	3/16/89	11/09/90
	08654	Home Savings, a FS&LA	Joliet	IL			
8657	06102	Crest Savings	Kankakee	IL	11/09/89	11/09/89	9/14/90
	08697	Crest FS&LA	Kankakee	IL			
8361	03366	Concordia Federal Bank for Savings	Lansing	IL		2/17/89	5/29/90
7935	06239	Lemont SA	Lemont	IL	2/28/92	2/28/92	
	09701	Lemont Federal Savings Association	Lemont	IL			
8367	00072	Libertyville FS&LA	Libertyville	IL		4/06/89	4/27/90
8366	00354	Midwestern SA	Macomb	IL		3/16/89	6/22/90
7955	08213	Republic Savings Bank, FSB	Matteson	IL	6/05/92	6/05/92	
	09978	Republic FSB	Matteson	IL			
7753	04152	American S&LA	Mt Carmel	IL	8/10/90	8/10/90	6/07/91
	08912	American SA of Mt Carmel, FA	Mt Carmel	IL			
8297	06489	New Athens S&LA	New Athens	IL	3/02/90	3/02/90	11/16/90
	08803	New Athens FS&LA	New Athens	IL			
8852	03502	Clyde FS&LA	North Riverside	IL	2/02/90	2/02/90	5/31/91
	08775	Clyde FSA	North Riverside	IL			
8224	02605	Great American FS&LA	Oak Park	IL	5/25/90	2/16/90	9/21/90
	08822	Great American S&LA, FA	Oak Park	IL			
8373	08362	First Savings of America, a FS&LA	Orland Park	IL		3/16/89	8/10/89
8537	08798	Illinois Savings Bank, FA	Peoria	IL		3/16/89	8/17/90
8615	04203	Security S&LA, FA	Peoria	IL	8/17/89	8/17/89	8/17/90
	08644	Security FS&LA	Peoria	IL			
8220	02442	GEM City S&LA	Quincy	IL	1/18/90	1/18/90	9/07/90
	08719	GEM City FS&LA	Quincy	IL			
8620	03080	Black Hawk FS&LA	Rock Island	IL	8/17/89	8/17/89	6/29/90
	08633	Black Hawk S&LA, FA	Rock Island	IL			
8888	07626	Bank USA Savings Association	Silvis	IL		5/25/90	11/09/90
8536	06137	Skokie FS&LA	Skokie	IL	7/20/89	7/20/89	2/06/90
	06137	Skokie FS&LA, FA	Skokie	IL			
8621	00908	Citizens S&LA of Springfield	Springfield	IL	9/07/89	9/07/89	6/22/90
	08653	Citizens S&LA of Springfield FA	Springfield	IL			
8654	01006	St Charles S&LA	St Charles	IL	1/11/90	1/11/90	11/30/90
	09729	St. Charles FSA	St. Charles	IL			
8614	03437	Peoples Bank for Savings	Streator	IL	7/20/89	7/20/89	5/08/90
	08609	Peoples S&LA, FA	Streator	IL			
7735	02779	Summit First FS&LA	Summit	IL	7/13/90	7/13/90	10/26/90
	08870	Summit First S&LA, FA	Summit	IL			
8877	03238	First FS&LA of Tuscola	Tuscola	IL	8/17/90	8/17/90	8/07/91
	08910	First Federal SA of Tuscola	Tuscola	IL			
8296	06442	Home FS&LA of Lake County	Waukegan	IL	12/14/90	12/14/90	9/13/91
	09030	Home Federal Savings Bank, FA	Waukegan	IL			
7776	05524	Cooperative FS&LA	Westmont	IL	7/19/91	7/19/91	12/13/91
	09323	Co-operative FSB	Westmont	IL			
8227	02651	Horizon Federal Savings Bank	Wilmette	IL	1/11/90	1/11/90	3/08/91
	08718	Horizon Savings Bank, FSB	Wilmette	IL			
8276	05150	Hometown S&LA, FA	Winfield	IL	8/03/90	8/03/90	5/31/91
	08911	Hometown FS&LA	Winfield	IL			
7892	05230	First Savings Bank of Zion	Zion	IL	4/05/91	4/05/91	11/01/91
	09175	First Federal Savings Bank of Zion	Zion	IL			
8630	00004	First S&LA of Central Indiana	Anderson	IN	11/16/89	11/16/89	10/05/90
	08704	First FS&LA of Central Indiana	Anderson	IN			
8887	02211	Hometown Federal Savings Bank	Delphi	IN	6/08/90	6/08/90	12/14/90
	08663	Hometown SB, FSB	Delphi	IN			
7903	06654	First Commerce Bank, a FSB	Lowell	IN	6/14/91	6/14/91	2/07/92
	09242	First Commerce Savings Bank, FSB	Lowell	IN			
8573	01946	Pioneer FS&LA	Plymouth	IN	7/13/89	7/13/89	5/18/90
	08629	Pioneer Savings, FA	Plymouth	IN			
8382	04314	First FS&LA of Coffeyville	Coffeyville	KS		3/02/89	8/18/89
8676	03582	The Garnett S&LA	Garnett	KS		12/07/89	8/10/90
8387	00261	First of Kansas B&SA	Hays	KS	7/20/89	4/06/89	6/01/90
	08626	First of Kansas Savings, a FS&LA	Hays	KS			
8214	02171	The Hiawatha S&LA	Hiawatha	KS	3/09/90	3/09/90	11/16/90
	08770	The Hiawatha Federal Savings Association	Hiawatha	KS			
8380	03251	First FS&LA of Hutchinson	Hutchinson	KS		3/02/89	4/20/90
8377	01020	Valley FS&LA of Hutchinson	Hutchinson	KS	9/07/89	3/02/89	11/09/90
	08652	Valley Savings, a FS&LA	Hutchinson	KS			
8376	00382	Anchor SA	Kansas City	KS	8/31/89	2/17/89	6/22/90
	08632	Anchor FS&LA	Kansas City	KS			
8379	02172	Sun Savings Association, FA	Kansas City	KS		2/17/89	5/11/90
8388	06437	Colonial SA of America	Liberal	KS		3/02/89	9/22/89
8388	00178	The Barber County S&LA	Medicine Lodge	KS		3/02/89	5/04/90
8286	05909	First FSB of Newton	Newton	KS	5/10/91	5/10/91	10/28/91
	09225	First FSA of Newton	Newton	KS			

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Bank No.	Docket before/after	Institution name before pass-through, institution name after pass-through	City before pass-through, city after pass-through	State before/after	Date of pass-thru	Conserv. date	Resolution date
8856	05149	Franklin SA	Ottawa	KS		2/16/90	
8385	00985	Mid-America FS&LA	Parsons	KS		3/02/89	5/04/90
8384	00424	Peoples S&LA	Parsons	KS		3/02/89	5/04/90
7732	02711	First FS&LA of Pittsburg	Pittsburg	KS	5/03/91	5/03/91	11/01/91
	09174	First FS&LA of Pittsburg, FA	Pittsburg	KS			
8298	06547	Colonial Savings, A FA	Prairie Village	KS	1/18/90	1/18/90	8/10/90
	08730	Colonial Federal Savings Association	Prairie Village	KS			
8575	02587	Peoples Heritage FS&LA	Salina	KS	8/10/89	8/10/89	1/12/90
	08648	Peoples Heritage Savings, A FS&LA	Salina	KS			
8378	02485	Shawnee FS&LA	Topeka	KS		3/02/89	5/18/90
8383	08447	Topeka Savings, a FS&LA	Topeka	KS		3/02/89	5/11/90
8381	03187	First FSB of Kansas	Wellington	KS		3/02/89	12/14/90
8576	02865	Mid Kansas FS&LA of Wichita	Wichita	KS	10/19/89	10/19/89	2/15/91
	08685	Mid Kansas S&LA, FA	Wichita	KS			
8689	00538	Henderson Home FS&LA	Henderson	KY	2/02/90	2/02/90	11/30/90
	08772	Henderson Home S&LA, FA	Henderson	KY			
7703	00422	Future FSB	Louisville	KY			8/30/91
8696	06180	United FS&LA	Prestonsburn	KY	8/30/91	8/30/91	11/22/91
	09417	United SB	Prestonsburg	KY			
7803	07168	Vermilion S&LA	Abbeville	LA	5/10/91	5/10/91	11/01/91
	09264	Vermilion Federal Savings Bank	Abbeville	LA			
8694	00759	Capital-Union Savings FA	Baton Rouge	LA	7/13/90	7/13/90	6/21/91
	08902	Capital-Union FSA	Baton Rouge	LA			
8407	07842	First City S&LA of Baton Rouge LA	Baton Rouge	LA	8/07/89	8/07/89	9/07/90
	08600	First City FS&LA	Baton Rouge	LA			
8404	06100	First FS&LA	Baton Rouge	LA		3/16/89	8/17/90
8400	07777	River City FSB	Baton Rouge	LA		3/16/89	10/06/89
8810	07091	First FS&LA	Breaux Bridge	LA	5/11/90	5/11/90	6/21/91
	08826	First FSA of Breaux Bridge	Breaux Bridge	LA			
8631	07513	Red River S&LA	Coushatta	LA	12/14/89	12/14/89	5/17/91
	08740	Red River FS&LA	Coushatta	LA			
8396	08436	Acadia S&LA, A FSA	Crowley	LA		3/16/89	10/06/89
8593	07690	Parish Federal Savings Bank	Denham Springs	LA	7/20/89	7/20/89	11/30/90
	08617	Parish FS&LA	Denham Springs	LA			
8409	07160	First FS&LA	Eunice	LA		3/16/89	5/11/90
8594	07504	Lafayette S&LA	Gretna	LA	7/27/89	7/27/89	6/01/90
	08611	Lafayette S&LA, FA	Gretna	LA			
8595	07809	Commercial Federal Savings Bank	Hammond	LA	7/27/89	7/27/89	5/31/91
	08612	Commercial S&LA, FA	Hammond	LA			
8402	07667	Elmwood FS&LA	Harahan	LA		3/02/89	9/06/89
8406	06867	Terrebonne S&LA	Houma	LA	8/07/89	8/07/89	12/07/90
	08625	Terrebonne S&LA, FA	Houma	LA			
8237	02959	Jennings FS&LA	Jennings	LA	5/18/90	5/18/90	8/02/91
	08851	Jennings Federal Savings Association	Jennings	LA			
8884	02406	Jonesboro FS&LA	Jonesboro	LA	5/18/90	5/18/90	8/16/91
	08840	Jonesboro FSA	Jonesboro	LA			
8394	07342	Delta S&LA	Kenner	LA	8/07/89	8/07/89	9/28/90
	08621	Delta FS&LA	Kenner	LA			
8408	08435	First Savings of Louisiana FSA	La Place	LA		3/02/89	9/15/89
8405	07885	Evangeline FS&LA	Lafayette	LA		3/16/89	8/18/89
8395	08088	First Louisiana FSB	Lafayette	LA	11/02/89	11/02/89	11/30/90
	08691	First Louisiana FSB, FA	Lafayette	LA			
8677	03457	Louisiana SA	Lake Charles	LA	12/14/89	12/14/89	9/13/91
	08741	Louisiana Savings Association, FA	Lake Charles	LA			
7723	02218	Desoto FS&LA	Mansfield	LA	11/02/90	11/02/90	9/06/91
	08960	Desoto Federal Savings Bank	Mansfield	LA			
8399	07702	Enterprise FS&LA	Marrero	LA		3/02/89	9/08/89
8632	04335	Columbia Homestead Association	Metairie	LA	10/13/89	10/13/89	8/30/91
	08679	Columbia Federal Homestead Association	Metairie	LA			
8820	07526	First FSB of New Orelans	Metairie	LA	6/15/90	6/15/90	7/26/91
	08883	First Savings Bank of New Orleans, FSB	Metairie	LA			
8392	08434	French Market Homestead FSA	Metairie	LA		2/17/89	9/14/90
8390	08299	Horizon FS&LA	Metairie	LA		2/17/89	5/18/90
8838	08031	Louisiana FSB	Metairie	LA	11/09/90	11/09/90	9/13/91
	08977	Louisiana Savings Bank, FSB	Kenner	LA			
8258	03584	Pelican Homestead & SA	Metairie	LA			1/31/92
8831	07876	Deposit Trust Savings Bank	Monroe	LA	1/11/90	1/11/90	12/07/90
	08722	Deposit Trust Federal Savings Bank	Monroe	LA			
8651	01053	People's Homestead FS for Savings	Monroe	LA	10/19/89	10/19/89	8/02/91
	08684	People's Homestead Savings Bank, FSB	Monroe	LA			
8246	03154	Progressive Federal Savings Bank	Natchitoches	LA	7/13/90	7/13/90	8/23/91
	08892	Progressive Savings Bank, FSB	Natchitoches	LA			
7804	07841	Oak Tree Savings Bank, SSB	New Orleans	LA	10/13/91	10/13/91	
	09471	Oak Tree Federal Savings Bank	New Orleans	LA			
8398	06345	First FS&LA	New Ibena	LA		3/16/89	9/28/90
8397	00225	American S&LA	New Orleans	LA	8/07/89	8/07/89	6/08/90
	08618	American S&LA, FA	New Orleans	LA			

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7949	03605	Carrollton Homestead Association	New Orleans	LA	3/13/92	3/13/92	
	09723	Carrollton Homestead Association, FA	New Orleans	LA			
8401	04230	Central S&LA	New Orleans	LA	8/07/89	8/07/89	6/22/90
	08605	Central S&LA, FA	New Orleans	LA			
8538	00215	Citizens Homestead Association	New Orleans	LA	8/07/89	8/07/89	6/07/91
	08601	Citizens Homestead FSA	New Orleans	LA			
8269	04228	Commonwealth SA	New Orleans	LA	7/20/90	7/20/90	7/12/91
	08889	Commonwealth FSA	New Orleans	LA			
7713	01022	Dryades S&LA	New Orleans	LA	6/07/91	6/07/91	
	09240	Dryades S&LA, FA	New Orleans	LA			
8577	04231	Home S&LA	New Orleans	LA	8/07/89	8/07/89	6/22/90
	08623	Home S&LA, FA	New Orleans	LA			
8389	01205	Security Homestead Association	New Orleans	LA	8/07/89	8/07/89	5/24/91
	08606	Security Homestead FSA	New Orleans	LA			
7710	01302	Southern Savings Bank, FSB	New Orleans	LA	12/28/90	12/28/90	9/27/91
	09031	Southern Federal Savings Bank	New Orleans	LA			
8809	06997	United FS&LA	New Orleans	LA	3/16/90	3/16/90	9/28/90
	08798	United Federal Savings, FA	New Orleans	LA			
8539	07804	Family FS&LA	Shreveport	LA		3/16/89	6/15/90
8393	00025	First FS&LA	Shreveport	LA		3/16/89	12/07/90
8403	07747	Fontainebleau FSB	Slidell	LA		3/02/89	6/01/90
8391	04161	South S&LA	Slidell	LA	8/07/89	8/07/89	6/14/91
	08620	South S&LA, FA	Slidell	LA			
8410	07508	Peoples FS&LA of Thibodaux	Thibodaux	LA		3/16/89	5/11/90
8300	06642	United FS&LA	Vidalia	LA			7/20/90
8234	02941	First FS&LA	Winnfield	LA	8/31/90	8/31/90	9/06/91
	08903	First Federal Savings Association	Winnfield	LA			
8879	03696	Home Owners Savings Bank FSB	Boston	MA		4/27/90	9/07/90
7863	01450	Sentry Federal Savings Bank	Hyannis	MA	9/21/90	9/21/90	7/26/91
	08942	Sentry Federal Bank, FSB	Hyannis	MA			
7745	03483	Comfed Savings Bank	Lowell	MA	2/01/91	12/14/90	9/13/91
	09051	Comfed Savings Bank, FA	Lowell	MA			
7911	03487	Plymouth Federal Savings Bank	Plymouth	MA	9/27/91	9/27/91	
	09467	Plymouth Federal Savings Association	Plymouth	MA			
8665	05269	Home Federal Savings Bank	Worcester	MA	6/08/90	6/08/90	11/09/90
	08871	Home FSB of Worcester	Worcester	MA			
8204	01557	First Annapolis Savings Bank, FSB	Annapolis	MD	6/01/90	6/01/90	5/03/91
	08820	First FSB of Annapolis	Annapolis	MD			
8412	08275	Gibraltar Federal Savings Bank, FSB	Annapolis	MD	7/11/89	3/02/89	6/08/90
	08610	Gibraltar S&LA, FA	Annapolis	MD			
7752	04142	Augusta Federal Savings Bank	Baltimore	MD	4/26/91	4/26/91	3/20/92
	09163	Augusta Federal Savings Association	Baltimore	MD			
8411	01718	Baltimore Federal Financial FSA	Baltimore	MD		2/07/89	4/20/90
7936	01903	Irvington FS&LA	Baltimore	MD	2/28/92	2/28/92	
	09700	Irvington Federal Savings Bank	Glen Burnie	MD			
8666	05728	Yorkridge-Calvert S&LA	Baltimore	MD	12/14/89	12/14/89	9/28/90
	08701	Yorkridge-Calvert FSA	Baltimore	MD			
7844	08204	John Hanson Savings Bank, FSB	Beltsville	MD	4/26/91	4/26/91	
	09187	John Hanson Federal Savings Bank	Beltsville	MD			
8578	08366	Liberty Federal Savings Bank	Randallstown	MD	2/09/90	2/09/90	1/04/91
	08755	Liberty Savings Bank, FSB	Randallstown	MD			
6212	01999	Royal Oak FS&LA	Randallstown	MD			1/04/91
7851	08455	Republic Federal Savings Bank	Rockville	MD	3/22/91	3/22/91	2/28/92
	09098	Republic Savings Bank, FSB	Rockville	MD			
8268	04177	Vermont FS&LA	Timonium	MD	2/09/90	2/09/90	6/28/91
	08756	Vermont Savings Association, FA	Timonium	MD			
7956	03823	First FS&LA	Lewiston	ME	5/21/92	5/21/92	
	09977	First FSA	Lewiston	ME			
8664	01398	American Bank, FSB	Sanlord	ME	1/11/90	1/11/90	9/13/91
	08717	American Federal Savings Bank	Sanford	ME			
7898	04100	Ludington Savings Bank, FSB	Ludington	MI	5/17/91	5/17/91	2/07/92
	09230	Ludington Federal Savings Bank	Ludington	MI			
7740	03310	First Federal Savings Bank & Trust	Pontiac	MI	10/16/91	10/16/91	
	09472	First FS&LA	Pontiac	MI			
8414	00322	Peoples SA, FA	St Joseph	MI		3/09/89	2/02/90
8579	05424	Guaranty Federal Savings Bank	Taylor	MI	7/27/89	7/27/89	4/27/90
	08598	New Guaranty FS&LA	Taylor	MI			
8238	02979	Lakeland Federal Savings Bank	Detroit Lakes	MN	3/16/90	3/16/90	8/24/90
	08789	Lakeland Savings Bank, FSB	Detroit Lakes	MN			
8698	01139	Fairmont FS&LA	Fairmont	MN	2/09/90	2/09/90	9/07/90
	08752	Fairmont FSA	Fairmont	MN			
8521	05516	Midwest FS&LA of Minneapolis	Minneapolis	MN	5/04/89	2/13/89	10/05/90
	08574	Midwest Savings Association, FA	Minneapolis	MN			
8231	02617	First FS&LA of Thief River Falls	Thief River Falls	MN			8/09/91
8241	03058	United Federal Savings Bank	Windom	MN	5/11/90	5/11/90	7/06/90
	08827	United Savings Bank, FSB	Windom	MN			
8291	08209	Boonslick S&LA	Boonville	MO	11/02/90	11/02/90	5/24/91

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	08956	Boonslick FS&LA	Boonville	MO			
8419	06263	Mid Missouri S&LA	Boonville	MO	6/29/89	6/29/89	4/27/90
	08589	Mid Missouri S&LA, FA	Boonville	MO			
8275	05147	Colonial FS&LA	Cape Girardeau	MO	1/26/90	1/26/90	11/09/90
	08737	Colonial S&LA, FA	Cape Girardeau	MO			
8417	00259	First Federal S&LA of Southeast MO	Cape Girardeau	MO		4/06/89	5/18/90
8416	01893	Missouri Savings Association	Clayton	MO	6/29/89	6/29/89	9/07/90
	08588	Missouri Savings Association, FA	Clayton	MO			
8225	02637	St. Louis County FS&LA of Ferguson	Ferguson	MO	1/11/90	1/11/90	6/28/90
	08714	St Louis County SA, FA	Ferguson	MO			
8420	02769	Cass FS&LA of St. Louis	Flonissant	MO		4/06/89	6/22/90
8418	03485	Financial FS&LA	Joplin	MO		4/06/89	4/27/90
8415	00658	Blue Valley FS&LA	Kansas City	MO		2/17/89	6/15/90
8869	01243	First Savings Bank & Trust, FSB	Kansas City	MO	5/04/90	5/04/90	7/06/90
	08852	First Federal Savings Bank & Trust	Kansas City	MO			
8232	02882	Home SA of Kansas City, FA	Kansas City	MO	3/15/91	3/15/91	3/27/92
	09093	Home Federal Savings of Kansas City	Kansas City	MO			
7869	03702	First State SA	Sedalia	MO			4/03/92
8217	02403	Community FS&LA	St. Louis	MO			12/14/90
8894	00064	New Age FS&LA of St. Louis	St. Louis	MO	8/23/91	8/23/91	3/19/92
	09389	New Age Federal Savings Association	St. Louis	MO			
8860	08235	Mississippi Savings Bank	Batesville	MS	5/08/90	5/08/90	12/14/90
	08841	Mississippi Savings Bank, FSB	Batesville	MS			
7889	04401	Peoples FS&LA	Bay St. Louis	MS	2/08/91	2/08/91	8/09/91
	09057	Peoples Federal Savings Association	Bay St. Louis	MS			
8803	06702	First FS&LA of Brookhaven	Brookhaven	MS	1/18/90	1/18/90	7/12/91
	08738	Brookhaven FS&LA	Brookhaven	MS			
8421	08061	Fidelity FSB	Corinth	MS		4/06/89	5/04/90
8862	07511	Great American Federal S&LA	Corinth	MS	3/16/90	3/16/90	12/14/90
	06792	Great American S&LA, FA	Corinth	MS			
8425	07538	Delta FS&LA	Drew	MS		4/06/89	6/29/90
8289	06016	First FS&LA	Greenwood	MS	2/23/90	2/23/90	5/31/91
	08765	Greenwood Federal S&LA	Greenwood	MS			
8891	07500	Southern Federal Bank for Savings	Gulfport	MS	6/22/90	6/22/90	8/16/91
	08860	Southern Federal Savings Bank	Gulfport	MS			
8870	08001	Charter Bank, a Federal Savings Bank	Hattiesburg	MS	7/20/90	7/20/90	7/26/91
	08894	Charter Savings Bank, FSB	Hattiesburg	MS			
8821	07588	First Guaranty Bank for Savings	Hattiesburg	MS	1/04/90	1/04/90	6/14/91
	08712	First Guaranty FS&LA	Hattiesburg	MS			
8422	07514	Central S&LA	Jackson	MS		4/06/89	9/28/90
8812	07289	First Jackson Savings Bank, FSB	Jackson	MS	6/29/90	6/29/90	7/12/91
	08864	First Jackson Federal Savings Bank	Jackson	MS			
8423	07152	Republic Bank for Savings, FA	Jackson	MS		4/06/89	6/29/90
8426	06614	State Mutual FS&LA	Jackson	MS		4/06/89	5/11/90
8623	02873	Unifirst Bank for Savings, FA	Jackson	MS	8/10/89	8/10/89	6/15/90
	08637	Unifirst Bank for Savings, A FS&LA	Jackson	MS			
8876	07580	Southeastern Savings Bank	Laurel	MS	4/20/90	4/20/90	5/31/91
	08811	Southeastern Federal Savings Bank	Waynesboro	MS			
7812	07570	First City FS&LA	Lucedale	MS	9/07/90	9/07/90	7/19/91
	08923	Fist City Federal Savings Bank	Lucedale	MS			
7896	07598	Mercantile Savings Bank	Southaven	MS	4/19/91	4/19/91	10/25/91
	09166	Mercantile Federal Savings Bank	Southaven	MS			
8817	07414	North Carolina FS&LA	Charlotte	NC	3/02/90	3/02/90	9/21/90
	08769	North Carolina S&LA, FA	Charlotte	NC			
7842	08166	Southeastern Savings Bank, Inc	Charlotte	NC	11/16/90	11/16/90	9/20/91
	08969	Southeastern Federal Savings Bank	Charlotte	NC			
8684	00284	Guaranty Federal Savings Bank	Fayetteville	NC	7/27/90	7/27/90	6/14/91
	08872	Guaranty Savings Bank, FSB	Fayetteville	NC			
8259	03722	First American Savings Bank, FSB	Greensvoro	NC	6/05/92	6/05/92	
	09982	First American FSB	Greensboro	NC			
7841	08162	Preferred S&LA, Inc	High Point	NC	3/08/91	3/08/91	9/27/91
	09085	Preferred Savings Bank, FSB	High Point	NC			
8428	08229	Great Atlantic Savings Bank FSB	Manteo	NC		3/30/89	9/15/89
8427	05634	Heritage FS&LA	Monroe	NC		3/30/89	9/21/90
7857	08459	Surety FS&LA, FSA	Morganton	NC	7/09/91	7/09/91	
	09318	Surety FS&LA, FA	Morganton	NC			
7756	04426	First FS&LA	Raleigh	NC	12/07/90	12/07/90	3/06/92
	09021	First FSA of Raleigh	Raleigh	NC			
8226	02638	First FS&LA of Bismarck	Bismarck	ND	1/26/90	1/26/90	9/21/90
	08746	First Saving Association, FA	Bismark	ND			
7708	01263	First FS&LA of Fargo	Fargo	ND	5/10/91	5/10/91	11/01/91
	09226	First FS&LA of Fargo, FA	Fargo	ND			
8690	00546	Midwest Federal Savings Bank	Minot	ND	1/04/90	1/04/90	9/21/90
	08745	Midwest FSB of Minot	Minot	ND			
8804	06726	Equitable S&LA, FA	Columbus	NE	2/16/90	2/16/90	6/22/90
	08757	Equitable FS&LA	Columbus	NE			
8432	04379	Equitable FSB	Fremont	NE		2/17/89	11/16/90

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8431	03396	Platte Valley FS&LA	Gering	NE	7/13/89	2/17/89	5/11/90
	08630	Platte Valley Savings, A FS&LA	Gering	NE			
8433	02998	Midwest FS&LA	Nebraska City	NE		2/17/89	5/18/90
8248	03273	Heritage FSB	Omaha	NE	2/16/90	2/16/90	11/30/90
	08760	Heritage FSB of Omaha	Omaha	NE			
8430	04906	Occidental Nebraska FSB	Omaha	NE	7/13/89	2/17/89	6/22/90
	08603	Occidental Nebraska Savings Bank, FSB	Omaha	NE			
8434	05492	Nile Valley FS&LA	Scottsbluff	NE		2/17/89	9/15/89
8673	06017	First FS&LA of York	York	NE	1/18/90	1/18/90	6/22/90
	08726	First FSA of York	York	NE			
7913	02664	Home Bank, FSB	Berlin	NH	10/10/91	10/10/91	
	09468	Homebank Federal Savings Association	Gilford	NH			
7891	03348	First Northern Cooperative Bank	Keene	NH	2/20/91	2/20/91	8/02/91
	09078	First Northern Co-Op Bank, A FSB	Keene	NH			
7764	04881	Center S&LA	Clifton	NJ	1/25/91	1/25/91	9/20/91
	09050	Center S&LA, FA	Clifton	NJ			
8438	05248	Metropolitan FS&LA	Denville	NJ		4/27/89	9/28/90
7788	06268	Hansen Savings Bank, SLA	East Brunswick	NJ	1/10/92	1/10/92	
	09618	Hansen Federal Savings Association	Hammonton	NJ			
7865	01531	City Federal Savings Bank	Elizabeth	NJ	12/08/89	12/08/89	1/11/91
	08734	City Savings Bank, FSB	Bedminister	NJ			
7865	01531	City Federal Savings Bank	Elizabeth	NJ	12/08/89	9/21/90	1/11/91
	08843	City Savings, FSB	Bedminster	NJ			
7866	01659	Empire Savings Bank, SLA	Hammonton	NJ	12/14/90	12/14/90	10/11/91
	09037	Empire Savings Bank, FSB	Hammonton	NJ			
8436	07133	Elysian FSB	Hoboken	NJ		2/17/89	6/29/90
7818	08032	Amerifederal Savings Bank	Lawrenceville	NJ	3/01/91	3/01/91	9/20/91
	09082	Amerifederal Savings Bank, FSB	Lawrenceville	NJ			
8242	00182	Volunteer Savings Bank SLA	Little Ferry	NJ	6/05/92	6/05/92	
	09980	Volunteer FSA	Little Ferry	NJ			
8874	04809	Mutual Aid S&LA	Manasquan	NJ	5/04/90	5/04/90	8/16/91
	08843	Mutual Aid FS&LA	Manasquan	NJ			
8278	05279	Yorkwood S&LA	Maplewood	NJ	3/09/90	3/09/90	10/18/91
	08780	Yorkwood FS&LA	Warren	NJ			
7928	04590	Marine View Savings Bank, SLA	Middletown	NJ	11/01/91	11/01/91	
	09499	Marine View Federal Savings Bank	Middletown	NJ			
7878	06067	Trident FS&LA	Newark	NJ	1/04/91	1/04/91	8/02/91
	09043	Trident FS&LA, FA	Newark	NJ			
7797	06497	Newton Savings Bank, SLA	Newton	NJ	5/03/91	5/03/91	3/20/92
	09172	Newton Savings Bank, FSB	Fairfield	NJ			
8890	02264	Nutley S&LA	Nutley	NJ			9/27/91
8685	05866	Metrobank for Savings FSB	Palisades Park	NJ	6/28/91	6/28/91	4/10/92
	09289	Metrobank FS&LA	Palisades Park	NJ			
8435	04636	North Jersey S&LA	Passaic	NJ	12/21/90	2/17/89	6/07/91
	09039	North Jersey FSA	Passaic	NJ			
7761	04826	Alexander Hamilton S&LA of Paterson	Paterson	NJ	3/08/91	3/08/91	9/13/91
	09088	Alexander Hamilton FS&LA	Paterson	NJ			
8272	04825	Irving S&LA	Paterson	NJ	1/18/91	1/18/91	2/21/92
	09047	Irving FS&LA	Paterson	NJ			
8882	04839	United Savings Bank, SLA	Paterson	NJ	5/15/90	5/15/90	12/13/90
	08837	United Savings, FSB	Paterson	NJ			
8681	00202	First Atlantic S&LA	Plainfield	NJ	6/22/90	2/23/90	9/13/91
	08862	First Atlantic FSA	South Plainfield	NJ			
8287	05931	Nassau S&LA	Princeton	NJ	3/09/90	3/09/90	8/23/91
	08778	Nassau FS&LA	Princeton	NJ			
7762	04827	Mainstay Federal Savings Bank	Red Bank	NJ	7/20/90	7/20/90	9/27/91
	08893	Mainstay Federal Savings, FSB	Red Bank	NJ			
7777	05606	Riverside Savings Bank, SLA	Riverside	NJ	11/02/90	11/02/90	10/04/91
	08957	Riverside Federal Savings Bank	Riverside	NJ			
8659	04916	Colonial Savings Bank, SLA	Roselle Park	NJ	11/09/89	11/09/89	7/05/91
	08693	Colonial Federal Savings Association	Roselle Park	NJ			
7864	04995	Action Savings Bank, SLA	Somers Point	NJ	11/15/90	11/15/90	10/25/91
	08978	Action Federal Savings Bank	Somers Point	NJ			
7720	01900	Mercer Savings Bank S&LA	Trenton	NJ	9/21/90	9/21/90	6/02/91
	08930	Mercer Federal Savings Bank	Trenton	NJ			
8282	05679	Old Borough S&LA	Trenton	NJ	12/14/90	12/14/90	8/23/91
	09029	Old Borough FS&LA	Trenton	NJ			
8853	00005	The United S&LA of Trenton, NJ	Trenton	NJ	6/15/90	6/15/90	9/06/91
	08861	United Savings and Loan of Trenton, FA	Trenton	NJ			
7914	05711	White Horse S&LA	Trenton	NJ	11/22/91	11/22/91	
	09565	White Horse FS&LA	Trenton	NJ			
7775	04188	Prospect Park Savings Bank, SLA	West Paterson	NJ	4/19/91	4/19/91	
	09158	Prospect Park Federal Savings Bank	West Paterson	NJ			
7707	00997	First Jersey S&LA	Wyckoff	NJ	2/08/91	2/08/91	9/13/91
	09056	First Jersey Savings, FA	Wyckoff	NJ			
8236	02953	ABQ Bank, A Federal Savings Bank	Albuquerque	NM	3/16/90	2/09/90	3/01/91
	08797	ABQ Federal Savings Bank	Albuquerque	NM			

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8441	06675	American FS&LA	Albuquerque	NM		3/09/89	6/08/90
8580	06785	New Mexico Federal Savings & Loan	Albuquerque	NM	7/20/89	7/20/89	6/15/90
	08616	New Mexico FSA	Albuquerque	NM			
8439	06441	Sandia FS&LA	Albuquerque	NM	9/13/89	2/10/89	3/01/91
	08646	Sandia Federal Savings Association	Albuquerque	NM			
8848	08236	Security FS&LA of Albuquerque	Albuquerque	NM	5/03/91	5/03/91	3/13/92
	09169	Security FS&LA, FA	Albuquerque	NM			
8443	07749	Sun Country SB of New Mexico, FSB	Albuquerque	NM		3/09/89	5/31/90
8807	06957	Security Savings Bank, FSB	Carlsbad	NM	5/04/90	5/04/90	11/16/90
	08813	Security Federal Savings Bank	Albuquerque	NM			
8244	03100	First FS&LA	Las Vegas	NM	11/16/90	11/16/90	6/21/91
	08975	First Federal Savings Association	Las Vegas	NM			
8442	05120	Valley Federal Savings Bank	Roswell	NM	8/30/89	3/09/89	6/08/90
	08645	Valley Savings Banks, FSB	Roswell	NM			
8866	07813	First American Savings Bank, FSB	Santa Fe	NM	8/31/90	8/31/90	11/30/90
	08900	First American FSB	Santa Fe	NM			
8633	07595	Silver S&LA, A Federal Association	Silver City	NM	12/21/89	12/21/89	1/18/91
	08599	Silver Savings Association, FA	Silver City	NM			
7792	06429	Frontier SA	Las Vegas	NV			12/14/90
7736	02810	Beacon Federal Savings Bank	Baldwin	NY	3/08/91	3/08/91	10/18/91
	08084	Beacon Federal Savings Association	Baldwin	NY			
7864	03269	Yorkville FS&LA	Bronx	NY	9/21/90	9/21/90	9/20/91
	06944	Yorkville FSA	Bronx	NY			
8235	02947	Nassau FS&LA	Brooklyn	NY	3/16/90	3/16/90	11/16/90
	06809	Nassau Savings and Loan Association	Brooklyn	NY			
8277	05160	Empire of America FSB	Buffalo	NY	2/28/90	1/24/90	9/28/90
	06790	Empire Federal Savings Bank of America	Buffalo	NY			
7894	01747	State Savings, FA	Jamaica Estates North	NY	3/22/91	3/22/91	3/27/92
	09096	State Savings, FSB	Jackson Heights	NY			
7759	01901	Larchmont FS&LA	Larchmont	NY			8/09/91
8267	04153	Central Federal Savings FSB	Long Beach	NY	12/07/90	12/07/90	3/13/92
	09024	Central Federal Savings Bank	Long Beach	NY			
7733	02750	Edison FS&LA	New York	NY	11/30/90	11/30/90	8/30/91
	09020	Edison Federal Savings Association	New York	NY			
8836	07966	Ensign Bank, FSB	New York	NY	8/31/90	8/31/90	7/19/91
	08898	Ensign Federal Savings Bank	New York	NY			
7919	04209	Columbia Banking FS&LA	Rochester	NY	6/12/92	6/12/92	
	04209	Columbia Banking FSA	Rochester	NY			
8670	03445	Salamanca FS&LA	Salamanca	NY	11/30/89	11/30/89	8/17/90
	06702	Salamanca Federal Savings Association	Salamanca	NY			
7746	03671	Eastern FS&LA of Sayville	Sayville	NY			9/27/91
8205	00753	Westerleigh Savings, A FS&LA	Staten Island	NY	5/31/91	5/31/91	3/27/92
	09236	Westerleigh FS&LA	Staten Island	NY			
8273	04925	Whitestone Savings, FA	Whitestone	NY	3/16/90	3/16/90	11/16/90
	06787	Whitestone FS&LA	Whitestone	NY			
8444	03899	Midland-Buckeye FS&LA	Alliance	OH	9/14/89	3/30/89	9/07/90
	08655	Midland-Buckeye Savings, A FS&LA	Alliance	OH			
7751	03939	Arcanum FS&LA	Arcanum	OH	3/15/91	3/15/91	9/20/91
	09091	Arcanum Federal Savings Association	Arcanum	OH			
8542	01703	Broadview Savings Bank	Cleveland	OH	8/24/89	3/30/89	5/18/90
	08639	Broadview Federal Savings Bank	Cleveland	OH			
7714	01640	Superior Savings Association	Cleveland	OH	10/23/90	10/23/90	9/27/91
	08973	Superior FSA	Cleveland	OH			
8687	00388	Freedom FS&LA	Columbus	OH	2/16/90	2/16/90	8/09/91
	08759	Freedom Savings Association, FA	Columbus	OH			
7726	02359	Mid-America FS&LA	Columbus	OH			12/15/90
7712	01410	Columbia FS&LA	Hamilton	OH	4/05/91	4/05/91	11/01/91
	09120	Columbia FSA of Hamilton	Hamilton	OH			
8683	05750	Liberty SB&L Co.	Marietta	OH	5/03/91	5/03/91	1/31/92
	09171	Liberty Savings Bank, FSB	Marietta	OH			
7706	00795	Pioneer S&L Co.	Marietta	OH	6/29/90	6/29/90	11/16/90
	08873	Pioneer FS&LA	Marietta	OH			
8203	01339	First S&L Co	Massillon	OH	4/20/90	4/20/90	7/19/91
	08818	First Savings and Loan Co., FA	Massillon	OH			
7701	00376	First FS&LA	Mt Vernon	OH			8/23/91
8581	01981	Civic Savings Bank	Portsmouth	OH	12/14/90	6/08/89	8/02/91
	09032	Civic Federal Savings Bank	Portsmouth	OH			
8871	00126	Merchants and Mechanics FS&LA	Springfield	OH			8/23/91
7938	03011	First Ohio SB, FSB	St Bernard	OH			3/13/92
7888	03427	First FS&LA	Toledo	OH	2/28/91	2/01/91	9/27/91
	09083	First Federal SA of Toledo	Toledo	OH			
7742	03412	United Home Federal	Toledo	OH			9/06/91
7895	07299	American FS&LA of ADA	ADA	OK	3/22/91	3/22/91	11/01/91
	09101	American Savings Bank, FSB	ADA	OK			
8274	05081	Peoples FS&LA	Bartlesville	OK	3/09/90	3/09/90	12/14/90
	08753	Peoples Federal Savings Association	Bartlesville	OK			
8260	03743	Broken Arrow FS&LA	Broken Arrow	OK	8/24/90	8/24/90	6/07/91

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	08915	Broken Arrow SA, FA	Broken Arrow	OK			
8605	07912	Cross Roads S&LA	Checotah	OK	7/13/89	7/13/89	5/11/90
	08627	Cross Roads FS&LA FA	Checotah	OK			
8210	01937	First FS&LA of Chickasha	Chickasha	OK	3/22/91	3/22/91	2/07/92
	09097	First FSA of Chickasha	Chickasha	OK			
8270	04540	Clinton S&LA	Clinton	OK			7/19/91
8546	04585	The Duncan S&LA	Duncan	OK		3/16/89	8/17/90
8641	07907	American Home S&LA	Edmond	OK	10/05/89	10/05/89	9/12/90
	08675	American Home S&LA, FA	Edmond	OK			
8608	08518	Chisholm FS&LA	Kingfisher	OK	4/19/91	4/19/91	3/20/92
	09160	Chisholm FSA	Kingfisher	OK			
8609	08520	Red River FS&LA	Lawton	OK	4/26/91	4/26/91	3/27/92
	09162	Red River FS&LA, FA	Lawton	OK			
8610	08511	Cimarron FS&LA	Muskogee	OK	4/19/91	4/19/91	
	09159	Cimarron FSA	Muskogee	OK			
8445	00817	Continental FS&LA	Oklahoma City	OK	7/13/89	3/16/89	8/09/91
	08604	Continental FS&LA, FA	Oklahoma City	OK			
8446	01819	Family FSB	Sapulpa	OK	10/05/89	10/05/89	5/25/90
	08676	Family Savings Bank, FSB	Sapulpa	OK			
8447	02954	First FS&LA of Seminole	Seminole	OK		3/16/89	9/21/90
8655	02036	Sooner FS&LA	Tulsa	OK	11/16/89	11/16/89	9/14/90
	08690	Sooner Federal Savings Association	Tulsa	OK			
8202	01228	State FS&LA	Tulsa	OK	2/16/90	2/16/90	8/16/91
	08761	State FSA	Tulsa	OK			
8582	02159	Great Plains FS&LA of Weatherford	Weatherford	OK	10/26/89	10/26/89	8/17/90
	08689	Great Plains Savings Association, FA	Weatherford	OK			
7760	02773	First FS&LA of Wewoka	Wewoka	OK	3/08/91	3/08/91	8/02/91
	09086	First FSA of Wewoka	Wewoka	OK			
8667	02514	Family FS&LA	Dallas	OR	1/11/90	1/11/90	6/22/90
	08731	Family FSA	Dallas	OR			
8243	03091	Far West Federal Bank, SB	Portland	OR	6/07/91	5/23/91	
	09239	Far West Federal Savings Bank	Portland	OR			
8201	01165	The Benjamin Franklin FS&LA	Portland	OR		2/21/90	9/07/90
8661	02555	Atlantic Financial Federal	Bala Cynwyd	PA	1/11/90	1/11/90	11/15/91
	08721	Atlantic Financial Savings, FA	Bala Cynwyd	PA			
8450	05166	Liberty Bell SA	Beaver Falls	PA		3/09/89	12/15/89
7915	02564	Abraham Lincoln Federal Savings Bank	Dresher	PA	9/19/91	9/19/91	
	09422	Abraham Lincoln FSA	Dresher	PA			
7728	02521	Home Unity S&LA	Lafayette Hill	PA	6/04/92	6/04/92	
	09979	Home Unity FS&LA	Lafayette Hill	PA			
7815	07649	Heritage SA	Lancaster	PA	7/06/90	7/06/90	5/31/91
	0888	Heritage Federal SA	Lancaster	PA			
7926	07223	Homestead SA	Middletown	PA	8/30/91	8/30/91	
	09418	Homestead Federal SA	Middletown	PA			
8868	00371	Colony Savings Bank, FSB	Monaca	PA	4/05/90	4/05/90	10/11/91
	08810	Colony Federal Savings Bank	Monaca	PA			
8449	00472	Concord-Liberty S&LA	Monroeville	PA	9/21/89	3/09/89	12/15/89
	08663	Concord-Liberty FS&LA	Monroeville	PA			
7750	03806	Peoples FS&LA	New Kensington	PA	3/01/91	3/01/91	9/06/91
	09081	Peoples Federal Savings Bank	New Kensington	PA			
7939	06590	Alpha Indian Rock S&LA	Philadelphia	PA	2/28/92	2/28/92	
	09698	Alpha Indian Rock FS&LA	Manayunk	PA			
7924	05164	Chase S&LA	Philadelphia	PA	11/22/91	11/22/91	
	09566	Chase FS&LA	Philadelphia	PA			
7940	06013	Ukrainian S&LA	Philadelphia	PA	3/12/92	3/12/92	
	09722	Ukrainian Federal S&LA	Philadelphia	PA			
8240	03014	First FS&LA of Pittsburgh	Pittsburgh	PA			1/04/91
7927	01233	First Home SA	Pittsburgh	PA	6/19/92	6/19/92	
	01233	First Home FSA	Pittsburgh	PA			
8541	04944	Hill Financial SA	Red Hill	PA		3/09/89	10/13/89
8583	04159	Horizon Financial, FA	Southampton	PA		6/08/89	5/25/90
7902	05516	Springfield FA&LA	Springfield	PA	6/14/91	6/14/91	3/20/92
	09241	Springfield FSA	Springfield	PA			
7893	02371	Bell S&LA	Upper Darby	PA	3/19/91	3/15/91	3/20/92
	09095	Bell Federal Savings Bank	Upper Darby	PA			
8252	03474	Vanguard Federal Savings Bank	Vandergrift	PA	2/23/90	2/23/90	7/05/91
	08761	Vanguard Savings Bank, FSB	Vandergrift	PA			
8865	06344	Caguas-Central FSB of Puerto Rico	Caguas	PR		5/25/90	8/31/90
7890	08404	Colonial Bank	Cranston	RI	5/10/91	5/10/91	3/13/92
	09228	Colonial Federal Savings Bank	Cranston	RI			
8257	02481	Cooper River FS&LA	Charleston Heights	SC	6/05/92	6/05/92	
	09981	Cooper River FSA	North Charleston	SC			
7957	07972	First South Savings Bank	Columbia	SC	4/24/92	4/24/92	
	09884	First South FSB	Columbia	SC			
8671	02843	Security Federal Savings Bank	Columbia	SC	11/30/89	11/30/89	2/15/91
	08709	Security Federal Savings, FSB	Columbia	SC			
8892	00006	Standard Federal Savings Bank	Columbia	SC	8/02/91	8/02/91	

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Bank No.	Docket before/after	Institution name before pass-through, institution name after pass-through	City before pass-through, city after pass-through	State before/after	Date of pass-thru	Conserv. date	Resolution date
	09386	Standard FS&LA	Columbia	SC			
8559	08027	Seabank Savings, FSB	Myrtle Beach	SC	9/20/89	4/27/89	12/19/89
	08664	Seabank FSB	Myrtle Beach	SC			
7785	06178	First Federal Bank FSB	Huron	SD	3/08/91	3/08/91	9/13/91
	09087	First Federal Savings Bank	Huron	SD			
7702	00392	First FSB of South Dakota	Rapid City	SD			4/24/92
8566	02884	Cherokee Valley Federal Savings Bank	Cleveland	TN	6/12/92	6/12/92	
	02884	Cherokee Valley FSA	Cleveland	TN			
8875	07534	The Tennessee Savings Bank	Cookeville	TN	8/03/90	8/03/90	5/31/91
	08913	Tennessee Federal Savings Bank	Cookeville	TN			
8540	07562	Germantown Trust Savings Bank	Germantown	TN		3/09/89	5/18/90
7886	07542	George Washington S&LA Inc	Jonesboro	TN	2/01/91	2/01/91	7/05/91
	09042	George Washington FSA	Jonesboro	TN			
8584	00664	Home FS&LA	Memphis	TN		7/20/89	6/15/90
8451	07549	Lincoln FS&LA	Mt Carmel	TN		3/09/89	6/15/90
8860	07556	Investor Federal Savings Bank	Nashville	TN	3/09/90	3/09/90	6/07/91
	08771	Investors Savings Bank, FSB	Nashville	TN			
8679	05271	Metropolitan FS&LA	Nashville	TN	4/19/91	4/19/91	3/27/92
	09161	Metropolitan FS&LA, FA	Nashville	TN			
8543	03946	Century FSB	Trenton	TN		3/09/89	6/15/90
8453	07512	United Guaranty FSB	Tullahoma	TN		3/09/89	5/04/90
7748	03703	First FS&LA	Waynesboro	TN	2/08/91	2/08/91	8/09/91
	09055	First FSA of Waynesboro	Waynesboro	TN			
8491	07840	Palo Duro S&LA	Amarillo	TX	1/26/90	1/26/90	5/17/91
	08744	Palo Duro FS&LA	Amarillo	TX			
8293	06315	Andrews S&LA	Andrews	TX	12/07/90	12/07/90	9/06/91
	09022	Andrews FS&LA	Andrews	TX			
7836	08052	Centre Savings Association	Arlington	TX	8/16/91	8/16/91	2/21/92
	09387	Centre Savings Association, FA	Arlington	TX			
8488	07764	Meridian SA	Arlington	TX		4/06/89	4/13/90
8295	06439	The Savings Banc, A S&LA	Arlington	TX	5/11/90	5/11/90	8/09/91
	08832	The Federal Savings Banc, FA	Beaumont	TX			
8254	03546	Atlanta FS&LA	Atlanta	TX	8/31/90	8/31/90	6/14/91
	08899	Atlanta Federal Savings Association	Atlanta	TX			
8505	08072	American FSB	Austin	TX		4/06/89	9/08/89
8585	08091	Austin Savings Association	Austin	TX	11/30/89	11/30/89	6/26/91
	08706	Austin FS&LA	Austin	TX			
8616	07278	Capitol City SA	Austin	TX	7/27/89	7/27/89	9/14/90
	08608	Capitol City FSA	Austin	TX			
7833	08018	Fidelity Savings—Austin, FA	Austin	TX	7/12/91	7/12/91	2/07/92
	09320	Fidelity FS&LA	Austin	TX			
8498	07719	Southside S&LA	Austin	TX	8/17/90	8/17/89	6/08/90
	08651	Southside FS&LA	Austin	TX			
9935	079942	Windsor Savings Association	Austin	TX	6/29/90	6/29/90	7/12/91
	08859	Windsor Federal Savings Association	Austin	TX			
8472	07489	Western Gulf S&LA	Bay city	TX		3/09/89	11/08/90
8492	07364	Century S&LA	Baytown	TX		3/09/89	8/18/89
8487	06475	Citizens of Texas S&LA	Baytown	TX		3/09/89	8/10/90
8893	00028	First FS&LA	Beaumont	TX			9/27/91
8476	06882	Jefferson S&LA	Beaumount	TX		3/16/89	8/24/90
8471	07883	Spindletop SA	Beaumont	TX	9/14/89	3/16/89	6/01/90
	08656	Spindletop Savings Association, FA	Beaumont	TX			
8475	08085	Bedford SA	Bedford	TX		4/06/89	4/20/90
8544	08532	Continental Savings, a FS&LA	Bellaire	TX		3/09/89	8/18/91
7789	06321	San Jacinto SA	Bellaire	TX	12/14/90	11/30/90	9/27/91
	09033	San Jacinto Savings Association, FA	Bellaire	TX			
7827	07951	Citizens Security S&LA	Borger	TX	3/22/91	3/22/91	8/16/91
	09100	Citizens Security Bank, FA	Borger	TX			
8634	05327	First S&LA	Borger	TX	5/18/90	5/18/90	6/28/91
	08848	First Fedeal Savings Association	Borger	TX			
8635	01574	First SA of Brenham	Brehnam	TX	9/21/89	9/21/89	5/25/90
	08668	First FS&LA of Brenham	Brenham	TX			
8509	07460	Golden Triangle S&LA	Bridge City	TX		3/16/89	10/12/90
7814	07648	Amigo S&LA	Brownsville	TX	8/03/90	8/03/90	6/28/91
	08901	Amigo FS&LA	Brownsville	TX			
8481	06865	Southmost S&LA	Brownsville	TX		3/02/89	10/26/90
7882	07880	Burleson County SA	Caldwell	TX	5/31/91	5/31/91	2/28/92
	09234	Burleson County FSA	Caldwell	TX			
8503	06371	Sabine Valley S&LA	Center	TX	12/14/90	3/16/89	5/31/91
	09027	Sabine Valley FSA	Center	TX			
8482	07174	Trinity Valley S&LA	Cleveland	TX		3/09/89	10/06/89
8228	02659	First S&LA of Conroe	Conroe	TX	5/18/90	5/18/90	7/19/91
	08842	First FSA of Conroe	Conroe	TX			
8814	07314	Texasbanc Savings Association	Conroe	TX	2/23/90	2/23/90	8/02/91
	08776	Texasbanc FSB	Conroe	TX			
8662	07676	Fortune Financial a S&L Institution	Copperas Cove	TX	11/30/89	11/30/89	10/19/90
	08724	Fortune Financial FS&LA	Copperas Cove	TX			

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Bank No.	Docket before/after	Institution name before pass-through, institution name after pass-through	City before pass-through, city after pass-through	State before/after	Date of pass-thru	Conserv. date	Resolution date
8511	07272	Padre Federal Savings & Loan	Corpus Christi	TX		3/02/89	1/11/91
8510	08020	Golden Circle SA, FSB	Corsicana	TX		4/06/89	8/24/90
7899	08019	Davy Crockett Federal Savings Bank	Crockett	TX	9/13/91	9/13/91	3/06/92
	09421	Davy Crockett Federal SA	Crockett	TX			
8454	06370	Bright Banc SA	Dallas	TX		2/10/89	2/02/90
8624	00053	Metropolitan Financial Savings & Loan	Dallas	TX	8/10/89	8/10/89	6/22/90
	08660	Metropolitan Financial FS&LA	Dallas	TX			
8458	06623	Murray SA	Dallas	TX	5/04/89	4/05/89	6/08/90
	08580	Murray FS&LA	Dallas	TX			
8496	08086	Park Cities Savings Association	Dallas	TX		4/06/89	8/10/89
8280	05603	Southwest SA	Dallas	TX	6/15/90	5/18/90	7/26/91
	08865	Southwest Federal Savings Association	Dallas	TX			
8612	08513	Sunbelt Savings FSB	Dallas	TX	4/26/91	4/26/91	4/10/92
	09164	Sunbelt Federal Savings, FSB	Irving	TX			
8501	07593	Southeastern SA	Dayton	TX		3/09/89	10/26/90
8462	00033	Resource SA	Denison	TX		4/06/89	11/16/90
8627	02310	Denton SA	Denton	TX	8/24/89	8/24/89	6/22/90
	08659	Denton FS&LA	Denton	TX			
8552	06761	Heritagebanc SA	Duncanville	TX		4/06/89	4/27/90
7791	06346	Hidalgo S&LA	Edinburg	TX	9/21/90	9/21/90	8/09/91
	08945	Hidalgo FS&LA	Edinburg	TX			
8895	00078	El Paso FS&LA	El Paso	TX	9/07/90	9/07/90	9/20/91
	08922	El Paso Federal Savings Association	El Paso	TX			
7859	08501	Merabank Texas, FSB	El Paso	TX	5/31/91	5/31/91	4/03/92
	09233	New Merabank Texas, FSB	El Paso	TX			
9663	07240	Southwestern S&LA	El Paso	TX	11/30/89	11/30/89	6/14/91
	08703	Southwestern FSA	El Paso	TX			
8650	06869	Surety SA	El Paso	TX	10/19/89	10/19/89	6/07/91
	8681	Surety Federal Savings Association	El Paso	TX			
8816	07387	Remington SA	Elgin	TX	5/25/90	5/25/90	5/30/91
	08812	Remington FS&LA	Elgin	TX			
8478	00017	Bankers S&LA	Galveston	TX		3/09/89	3/16/90
8292	06228	Bannerbanc Savings Association	Garland	TX	1/04/90	1/04/90	9/28/90
	08713	Bannerbanc FS&LA	Garland	TX			
8636	03842	First Garland Savings Association	Garland	TX	9/21/89	9/21/89	6/22/90
	08667	First Garland FS&LA	Garland	TX			
8637	04113	Certified SA	Georgetown	TX	1/11/90	1/11/90	7/19/91
	08720	Certified Federal Savings Association	Georgetown	TX			
8477	00060	Centennial Savings Bank, FSB	Greenville	TX	7/13/89	4/06/89	3/02/90
	08622	Centennial FS&LA	Greenville	TX			
8586	05364	Hearne B&LA	Hearne	TX	8/17/89	8/17/89	5/25/90
	08649	Hearne B&LA, FA	Hearne	TX			
7862	08499	First Federal Savings Bank of Hempstead	Hempstead	TX	9/14/90	9/14/90	7/26/91
	08921	First Savings Bank of Hempstead, FSB	Hempstead	TX			
8545	07469	General SA	Henderson	TX		3/16/89	6/29/90
8470	06907	Ameriway Savings	Houston	TX		3/09/89	5/11/90
8456	05872	Benjamin Franklin SA	Houston	TX	6/29/89	3/09/89	9/16/91
	08591	Benjamin Franklin FSA	Houston	TX			
8457	07579	Commonwealth SA	Houston	TX	5/25/89	3/09/89	6/21/91
	08550	Commonwealth FSA	Houston	TX			
8596	08222	Cornerstone Savings Association	Houston	TX	7/13/89	7/13/89	5/18/90
	08584	Cornerstone FSA	Houston	TX			
8483	07194	First Capital SA of Texas	Houston	TX		3/09/89	9/22/89
8464	05907	Meritbanc SA	Houston	TX		3/16/89	9/14/90
8479	06139	Spring Branch S&LA	Houston	TX		3/09/89	8/31/90
8512	06314	Standard SA	Houston	TX	1/18/90	1/18/90	8/26/91
	08739	Standard FSA	Houston	TX			
8658	02729	Texas Western FS&LA	Houston	TX	11/16/89	11/16/89	8/17/90
	08692	Texas Western FSA	Houston	TX			
8474	07213	Universal SA	Houston	TX	5/24/90	3/09/89	6/22/90
	08831	Universal FSA	Houston	TX			
8455	05749	University SA	Houston	TX	5/25/89	2/14/89	10/13/89
	08578	University Federal SA	Houston	TX			
8484	07734	Village Savings FSB	Houston	TX		3/09/89	9/22/89
8494	07391	Humble S&LA	Humble	TX		3/09/89	9/15/89
8489	07456	Savings of Texas Association	Jacksonville	TX		3/16/89	9/28/90
8495	07482	Deep East Texas SA	Jasper	TX		3/16/89	11/02/90
8473	03190	Jasper FS&LA	Jasper	TX		3/16/89	6/14/91
7806	07258	Atascosa SA	Jourdanton	TX	11/30/90	11/30/90	8/02/91
	09018	Atascosa Federal Savings Bank	Jourdanton	TX			
8638	07018	Karnes County S&LA	Karnes City	TX	1/18/90	1/18/90	12/07/90
	08736	Karnes County FS&LA	Karnes City	TX			
8513	06408	Permian S&LA	Kermit	TX		3/02/89	8/10/90
8597	07492	Guadalupe S&LA	Kerrville	TX	8/17/89	8/17/89	6/08/90
	08657	Guadalupe S&LA, FA	Kerrville	TX			
8502	08338	Federal Savingsbanc of the Southwest	Kilgore	TX	7/27/89	7/27/89	6/01/90
	08614	Federal SA of the Southwest	Kilgore	TX			

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8485	07592	Vision Banc SA	Kingsville	TX		3/02/89	12/07/90
8504	06124	Bayshore SA	La Porte	TX	12/14/90	3/09/89	9/20/91
	09036	Bayshore Federal Savings Association	La Porte	TX		3/09/89	9/28/90
8465	06917	American S&LA of Brazona	Lake Jackson	TX		4/06/89	12/14/90
8548	06222	Excel Banc SA	Laredo	TX	9/14/89	9/14/89	6/15/90
8640	02607	First FS&LA	Laredo	TX			
	08666	First Savings of Laredo, FA	Laredo	TX		3/09/89	8/31/90
8507	07871	City Savings Association	League City	TX		3/09/89	7/19/91
8499	03094	Liberty County FS&LA	Liberty	TX	8/01/89	8/01/89	9/21/90
8598	07870	Caprock S&LA	Lubbock	TX			
	08624	Caprock FS&LA	Lubbock	TX	10/11/91	10/11/91	3/20/92
8263	03073	First Federal Savings Bank	Lubbock	TX			
	09469	First Federal Savings Association	Lubbock	TX	1/18/90	1/18/90	6/29/90
8253	03493	Marshall FS&LA	Marshall	TX			
	08723	Marshall SA, FA	Marshall	TX	10/19/89	10/19/89	6/29/90
8652	03059	Valley FS&LA	McAllen	TX			
	08682	Valley Federal Savings Association	McAllen	TX	6/08/90	6/08/90	5/10/91
8285	05893	First Bankers Trust & Savings	Midland	TX			
	08884	First Bankers T&SA, FA	Midland	TX	11/30/90	11/30/90	5/31/91
8218	02429	First FS&LA	Nacogdoches	TX			
	09015	First FSA of Nacogdoches	Nacogdoches	TX	8/10/90	8/10/90	7/19/91
8290	06077	Superior Federal Savings Bank	Nacogdoches	TX			
	08904	Superior Savings Bank, FSB	Nacogdoches	TX	12/14/90	3/16/89	8/02/91
8493	07591	Timberland SA	Nacogdoches	TX			
	09025	Timberland FSA	Nacogdoches	TX	12/21/89	12/21/89	9/13/91
8639	08214	Columbia Savings Association	Nassau Bay	TX			
	08700	Columbia FSA	Nassau Bay	TX	11/09/90	11/09/90	8/09/91
7849	08311	Executive Banc Savings	New Braunfels	TX			
	08974	Executive Banc SA, FA	New Braunfels	TX	5/25/90	5/25/90	6/07/91
8249	03281	First FS&LA	New Braunfels	TX			
	08830	First Federal Savings, FSA	New Braunfels	TX	7/27/89	7/27/89	6/01/90
8599	07406	New Braunfels S&LA	New Braunfels	TX			
	08607	New Braunfels S&LA, FA	New Braunfels	TX	2/23/90	2/23/90	8/16/91
8818	07484	Nowlin SA	North Richland Hills	TX			
	08777	Nowlin Federal Savings Association	Fort Worth	TX	12/14/90	3/09/89	9/20/91
8460	06433	Bancplus Savings Association	Pasadena	TX			
	09028	Bancplus Federal Savings Association	Houston	TX	7/27/89	7/27/89	5/16/90
8600	02685	Hallmark Savings Association	Plano	TX			
	08597	Hallmark S&LA, FA	Plano	TX	9/21/89	9/21/89	6/15/90
8587	06871	Plano S&LA	Plano	TX			
	08662	Plano S&LA, FA	Plano	TX	10/19/89	3/16/89	11/30/90
8551	00134	Fidelity S&LA	Port Arthur	TX			
	08683	Fidelity Federal Savings Association	Port Arthur	TX	12/14/90	3/15/89	7/12/91
8466	05647	First South SA	Port Neches	TX			
	09038	First South FSA	Port Neches	TX		3/16/89	6/29/90
8500	02813	Rusk FS&LA	Rusk	TX	6/29/89	3/02/89	5/03/91
8463	05120	Alamo SA of Texas	San Antonio	TX			
	08583	Alamo FSA of Texas	San Antonio	TX		3/02/89	6/15/90
8549	08289	Bexar Savings Association	San Antonio	TX	10/26/90	10/26/90	9/04/91
7847	08227	City S&LA of San Antonio	San Antonio	TX			
	08958	City S&LA, FA	San Antonio	TX	12/14/90	2/28/89	7/12/91
8461	06298	Commerce SA	San Antonio	TX			
	09034	Commerce Federal Savings Association	San Antonio	TX			1/4/91
8863	03792	First FS&LA	San Antonio	TX	6/29/89	3/02/89	5/04/90
8467	07437	First State SA	San Antonio	TX			
	08585	First State FSA	San Antonio	TX		2/07/89	6/15/90
8459	07082	Gill Savings Association	San Antonio	TX		3/02/89	5/04/90
8490	07670	La Hacienda Savings Association	San Antonio	TX		3/02/89	5/04/90
8480	07309	Mission SA of Texas	San Antonio	TX	7/27/89	7/27/89	5/22/90
8501	07507	North American Savings Association	San Antonio	TX			
	08594	North American FSA	San Antonio	TX	7/13/89	3/02/89	3/09/90
8550	01537	San Antonio SA	San Antonio	TX			
	08596	San Antonio Savings Association, FA	San Antonio	TX		3/02/89	9/14/90
8547	07557	Suburban Savings Association	San Antonio	TX	4/20/90	4/20/90	5/22/91
8873	05140	Texas S&LA	San Antonio	TX			
	08794	Texas Federal Savings Association	San Antonio	TX	6/29/90	6/29/90	6/21/91
8678	00026	Travis Savings & Loan	San Antonio	TX			
	08866	Travis FS&LA	San Antonio	TX		3/16/89	11/30/90
8497	07486	First SA of Southeast Texas	Silsbee	TX	9/21/90	9/21/90	6/14/91
7839	08080	Texas Commercial SA	Sulphur Springs	TX			
	08946	Texas Commercial FSA	Sulphur Springs	TX	8/17/89	8/17/89	6/22/90
8588	05429	Taylorbanc SA	Taylor	TX			
	08650	Taylorbanc FS&LA	Taylor	TX	8/24/90	8/24/90	9/06/91
7741	03349	First FS&LA	Temple	TX			
	08905	First S&LA, FA	Temple	TX			
8468	06415	Security Savings Association, FSA	Texarkana	TX	9/28/89	3/16/89	12/07/90
	08671	Security Federal Savings Association	Texarkana	TX			

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8486	07439	First Equity SA	Tomball	TX	8/17/89	3/09/89	5/11/90
	08635	First Equity Savings Association, FA	Tomball	TX			
8589	01092	East Texas S&LA	Tyler	TX	9/21/89	9/21/89	6/06/90
	08661	East Texas S&LA, FA	Tyler	TX			
8819	07510	First Southwest S&LA	Tyler	TX	11/30/90	11/30/90	8/23/91
	09016	First Southwest FS&LA	Tyler	TX			
8619	07722	Uvalde S&LA	Uvalde	TX	1/26/90	1/26/90	10/19/90
	08733	Uvalde FS&LA	Uvalde	TX			
8556	03359	Victoria Savings Association	Victoria	TX	6/29/89	6/29/89	10/25/91
	08587	Victoria Savings Association FSA	Victoria	TX			
8469	05347	Central Texas S&LA	Waco	TX		4/06/89	11/02/90
8590	00453	First FS&LA	Waco	TX	7/13/89	7/13/89	6/15/90
	08599	First S&LA, FA	Waco	TX			
8221	02482	Mutual B&LA	Weatherford	TX	6/01/90	6/01/90	7/12/91
	08835	Mutual S&LA, FA	Weatherford	TX			
8251	03400	First FS&LA	Wichita Falls	TX	3/16/90	3/16/90	6/07/91
	08791	First Federal Savings Association	Wichita Falls	TX			
8216	02363	North Texas FS&LA	Wichita Falls	TX	7/13/90	7/13/90	5/31/91
	08891	North Texas FSA	Wichita Falls	TX			
8508	06632	Southeast Texas S&LA	Woodville	TX	12/14/90	3/16/89	6/28/91
	09035	Southeast Texas FSA	Woodville	TX			
8523	08537	Mountainwest S&LA, A FS&LA	Ogden	UT		2/17/89	5/25/90
8514	01894	American S&LA, A Federal Association	Salt Lake City	UT	9/07/89	2/17/89	6/08/90
	08665	American Savings, A FS & LA	Salt Lake City	UT			
8515	01827	Deseret FS&LA	Salt Lake City	UT	10/05/89	2/10/89	5/25/90
	08677	Deseret S&LA, FA	Salt Lake City	UT			
8883	07772	Home Savings Bank	Salt Lake City	UT	7/05/90	7/05/90	2/28/92
	08849	Home Savings Bank, FSB	Salt Lake City	UT			
8854	07367	Williamsburg Savings Bank	Salt Lake City	UT	1/26/90	1/26/90	9/14/90
	08727	Williamsburg FSB	Salt Lake City	UT			
7961	08557	Federal Savings Bank of Virginia	Falls Church	VA	4/10/92	4/10/92	
	09883	Federal SA of Virginia	Falls Church	VA			
8591	01470	Peoples S&LA, FA	Hampton	VA		6/29/89	5/18/90
7952	06995	Commonwealth Savings Bank of Virginia	Manassas	VA	4/03/92	4/03/92	
	09882	Commonwealth FSB	Manassas	VA			
7920	06579	Perpetual SB	McLean	VA			1/10/92
8517	07567	Community FS&LA	Newport News	VA		3/30/89	5/18/90
8672	01179	Atlantic Permanent Savings Bank FSB	Norfolk	VA	12/08/89	12/08/89	7/12/91
	08711	Atlantic Permanent FSB	Norfolk	VA			
7773	05301	Berkley Federal Savings Bank	Norfolk	VA	5/03/91	5/03/91	3/20/92
	09173	Sentry Federal Savings Association	Norfolk	VA			
7945	08207	Vista Federal Savings Bank	Reston	VA	2/28/92	2/28/92	
	09699	Vista Federal Savings Association	Reston	VA			
7807	07307	Coreast Savings Bank, FSB	Richmond	VA	2/01/91	2/01/91	3/06/92
	09053	Coreast Federal Savings Bank	Roanoke	VA			
7805	07103	Heritage Savings Bank, FSB	Richmond	VA	10/19/90	10/19/90	7/05/91
	08972	Heritage Federal Savings Bank	Richmond	VA			
7917	07385	Investors Savings Bank	Richmond	VA	12/13/91	12/13/91	
	09570	Investors Federal Savings Bank	Richmond	VA			
8592	07337	Seasons Savings Bank, FSB	Richmond	VA	10/19/89	10/19/89	9/28/90
	08686	Seasons Federal Savings Bank	Richmond	VA			
8284	05854	Security FS & LA	Richmond	VA	3/02/90	3/02/90	9/28/90
	08768	Security Federal Savings Association	Richmond	VA			
7808	07359	Dominion FS&LA	Tysons Corner	VA	1/25/91	1/25/91	3/20/92
	09048	Trustbank Federal Savings Bank	Tysons Corner	VA			
7801	06980	United Savings Bank	Vienna	VA	7/31/90	7/31/90	9/20/91
	08918	United Federal Savings Bank	Vienna	VA			
8558	06661	Gibraltar Savings, FA	Bellevue	WA	10/31/89	3/31/89	6/29/90
	08688	Gibraltar Savings Bank, FSB	Seattle	WA			
7809	07379	Family S&LA	Seattle	WA	2/08/91	2/08/91	7/19/91
	09058	Family S&LA, FA	Seattle	WA			
8857	01690	Frontier FS&LA	Walla Walla	WA	2/23/90	2/23/90	6/22/90
	08773	Frontier FSA	Walla Walla	WA			
7765	03236	Monycor Savings Bank, FSB	Barron	WI	7/12/91	7/12/91	3/13/92
	09319	Monycor Federal Savings Bank	Barron	WI			
8520	03253	Durand FS&LA	Durand	WI		3/30/89	5/25/90
8519	02410	Community S&LA	Fond Du Lac	WI		2/17/89	2/09/90
8697	01058	First FS&LA	Bluefield	WV	2/23/90	2/23/90	11/09/90
	08767	First Federal SA of Bluefield	Bluefield	WV			
7918	01061	Evergreen Federal Savings Bank	Charleston	WV	9/13/91	9/13/91	
	09420	Evergreen Federal S&LA	Charleston	WV			
8279	05476	First Standard Savings FA	Fairmont	WV	2/23/90	2/23/90	11/02/90
	08766	First Standard Federal SA	Fairmont	WV			
8899	07318	Shenandoah Federal Savings Bank	Martinsburg	WV	5/08/92	5/08/92	
	09975	Shenandoah FSA	Martinsburg	WV			
8669	01344	Provident FS&LA	Casper	WY	2/23/90	2/23/90	8/17/90
	08774	Provident SA, FA	Casper	WY			

LIST OF INSTITUTIONS—BY STATE/CITY, AUGUST 9, 1989 THRU JUNE 30, 1992—Continued

Bank No.	Docket before/after	Institution name before pass-through, institution name after pass-through	City before pass-through, city after pass-through	State before/after	Date of pass-thru	Conserv. date	Resolution date
8668	07238	First Guaranty S&LA	Gillette	WY	11/30/89	11/30/89	6/15/90
	08725	First Federal Savings Bank	Diamondville	WY			
8255	03556	Westland FS&LA	Rawlins	WY			7/26/91
8256	03557	Sweetwater FS&LA	Rock Springs	WY			8/22/90

Dated at Washington, D.C., this 25th day of August, 1992.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 92-20954 Filed 8-31-92; 8:45 am]

BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 26, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)91)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Discount Auto Parts, Inc.
Common Stock, $.01 Par Value (File No. 7-8945)
LTC Properties, Inc.
Common Stock, $.01 Par Value (File No. 7-8946)
Sunbeam Oster Company, Inc.
Common Stock, $.01 Par Value (File No. 7-8947)
Blackrock 2001 Term Trust, Inc.
Common Stock, $.01 Par Value (file No. 7-8948)
Provident Life & Accident Insurance Company of America
Class A Common Stock, $.01 Par Value (File No. 7-8949)
Provident Life & Accident Insurance Company of America
Class B Common Stock, $.01 Par Value (File No. 7-8950)
Washington Energy Company
Common Stock, $5.00 Par Value (File No. 7-8951)
Indresco, Inc.
Common Stock, $.25 Par Value (File No. 7-8952)
Pacificorp
$1.98 Series 1992 Preferred Stock, No Par Value (File No. 7-8953)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 17, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20459. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21003 Filed 8-31-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for hearing; Pacific Stock Exchange, Incorporated

August 26, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Sunbeam Oster, Inc.
Common Stock, $.01 Par Value (File No. 7-8954)
Universal Foods Corporation
Common Stock, $.10 Par Value (File No. 7-8955)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 17, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21005 Filed 8-31-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Application for Unlisted Trading Privileges in Over-the-Counter Issues

August 26, 1992.

On August 21, 1992, the Philadelphia Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") securities, *i.e.*, securities not registered under Section 12(b) of the Act.

File no.	Symbol	Issuer
7-8939	CMCSA	Comcast Corporation, Common Stock $1. Par Value.
7-8940	GIBG	Gibson Greetings, Inc., Common Stock $0.01, Par Value.
7-8941	LINB	Lin Broadcasting Corporation, Common Stock $0.01, Par Value.
7-8942	MCCRK	McCormick & Company Inc., Common Stock, No Par Value.
7-8943	PCTL	Picturetel Corporation, Common Stock $0.01, Par Value.
7-8944	STBK	State Street Boston Corp., Common Stock $1, Par Value.

Comments

Interested persons are invited to submit, on or before September 16, 1992, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Commentators are asked to address whether they believe the requested grant of UTP would be consistent with Section 12(f)(1), which requires that, in considering an application for extension of UTP in OTC securities, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such securities, and the desirability of removing impediments to and the progress that has been made toward the development of a National Market System.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-21002 Filed 8-31-92; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 26, 1992.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

First Boston Strategic Income Fund
Common Stock, $.001 Par Value (File No. 7-8956)
Sunbeam Oster Company, Inc.
Common Stock, $.01 Par Value (File No. 7-8957)
Pudget Sound Power & Light Company
Pfd Stock Cum. 7⅞ Series, $.25 Par Value (File No. 7-8958)
Discount Auto Parts, Inc.
Common Stock, $0.01 Par Value (File No. 7-8959)
Provident Life and Accident Insurance Company of America
Class A Common Stock, $1.00 Par Value (File No. 7-8960)
Provident Life and Accident Insurance Company of America
Class B Common Stock, $1.00 Par Value (File No. 7-8961)
Blackrock 2001 Term Trust, Inc.
Common Stock, $0.01 Par Value (File No. 7-8962)
LTC Properties, Inc.
Common Stock, $0.01 Par Value (File No. 7-8963)
Washington Energy Company
Common Stock, $0.01 Par Value (File No. 7-8964)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 17, 1992, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-21004 Filed 8-31-92; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18893; 812-7783]

Keene Corporation; Application

August 12, 1992.

Correction

In FR Document No. 92-19820 beginning on page 37861 for Thursday, August 20, 1992, the release number for File No. 812-7763 was incorrectly stated as IC-18894. The correct release number is IC-18893.

Dated: August 26, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-20940 Filed 8-31-92; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Elk County, Pennsylvania

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Elk County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: John A. Gerner, District Engineer, Federal Highway Administration, 228 Walnut Street, P.O. Box 1086, Harrisburg, Pennsylvania 17108-1086, Telephone: (717) 782-3411 or James R. Bathurst, P.E., Design Services Engineer, Pennsylvania Department of Transportation, 1924-30 Daisy Street, Clearfield, Pennsylvania 16830, Telephone (814) 765-0437.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), will prepare an Environmental Impact Statement and an Engineering Basis Report for a section of U.S. Route 219 in Elk County, Pennsylvania. Located in Johnsonburg, Pennsylvania, this two mile project will improve the safety and relieve traffic congestion on this section of U.S. Route 219. The northern terminus and study area limits will be the existing two lanes of U.S. Route 219 just north of Johnsonburg. The southern terminus and study area limits will be approximately one-half mile south of Pennsylvania Route 255.

It is anticipated that at least five alternatives will be evaluated during the course of the study. Based on existing and projected traffic volumes, all build alternatives will require a two-lane facility to accommodate the traffic volumes. The alternates under consideration are: upgrading the existing facility, transportation system management, two alternatives on new location west of existing U.S. Route 219, and the "NO BUILD" alternate. Mass transit and multi-modal design will not be considered on this project.

A two phased approach will be used to develop the Environmental Impact Statement. The initial phase of this project will be the development of the need for the project. A Plan of study for the Environmental Impact Statement and Engineering Basis Report will be prepared and circulated to resourced

agencies for the alternatives under consideration.

The Scoping Process for the Environmental Impact Statement begins with the circulation of the Plan of Study. Following the comment period, a Scoping Field View and Meeting will be scheduled at the site of the project to discuss comments received and view the area to be studied. As a result of the Scoping Field View and meeting, the Plan of Study will be revised to incorporate any changes required and a revised Plan of Study will be distributed.

The second phase of the study process will consider detailed environmental and engineering studies on the alternatives that meet the project need. The results on these studies will be presented in the Environmental Impact Statement. From this analysis, a preferred alternative will be identified which best meets the project need and satisfies the environmental, socio-economic, and engineering evaluations and public input.

An active public participation program will be pursued during the project. At the beginning of the study an advertisement will be placed in local newspapers and the Pennsylvania Bulletin informing the public and public agencies of the study and soliciting names of individuals, organizations and agencies interested in participating in the study. A Citizens Advisory Committee will be formed and will meet regularly during the study. This comment will provide liaison between the Commonwealth of Pennsylvania and the local citizens, and participate in all aspects of the study. Public meeting will be held throughout the study to gather input to be used in the study and distribute information on the study. A Public Hearing will be held at the conclusion of the study to solicit comments from the public on alternatives presented. The Draft Environmental Impact Statement will be available for public and agency review and comment prior to the public hearing. Should it become apparent during the development of the project that an alternative emerges which causes no public controversy on environmental grounds and causes no significant impacts, a revised notice of intent will be published, advising of intent to perform an Environmental Assessment/ Finding of No Significant Impact.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernment consultation on Federal programs and activities apply to this program.)

Dated: August 14, 1992.

George Hannon,

Asst. Division Administrator.

[FR Doc. 92-20959 Filed 8-31-92; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Special Request: The Department is requesting approval of the Internal Revenue Service sponsored survey below by August 28, 1992. To allow public comment and review, the survey and its instructions is attached to this notice.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Child Care Survey.
Description: The Survey was developed by a doctoral student working on her PhD. dissertation at the University of South Florida (USF) to gather research data on the child care arrangements of single parents and two-income parents and on how these arrangements change over a 3 year (1988-1990) period. Respondents will mail questionnaires directly to the USF student for tabulation and analysis.
Respondents: Individuals or household.
Estimated Number of Respondents: 900.
Estimated Burden Hours Per Respondent: 16 minutes.
Frequency of Response: Other (one-time survey).
Estimated Total Reporting Burden: 234 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Managment and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Louis K. Holland,

Departmental Reports, Management Officer.

Attachment I

Date:

Dear Parent: In a few days, you will be receiving a questionnaire from Karen Lanese, a doctoral student working on her Ph.D at the University of South Florida. Karen is working on her dissertation and is interested in the use of child care services and how child care arrangements change over time. Your help in completing this questionnaire would be most appreciated.

In an effort to gather responses from a broad group of parents, we asked the Internal Revenue Service to identify a group of taxpayers who had claimed the child care credit in 1988 and to allow us to send a questionnaire to these people. As the Internal Revenue Service is required to keep all information regarding taxpayers private, they agreed to send the questionnaires for us. The Internal Revenue Service has identified approximately 900 taxpayers for this purpose. All responses to the questionnaires are to be completely anonymous and no individual level information will be made available to the Internal Revenue Service. Summary statistical data from the survey is scheduled to be presented, along with other tax studies, at an IRS Tax Research Conference this November in Washington, DC. The survey findings may result in the IRS considering changes to the Dependent Care Credit form and instructions, and possibly in suggested legislative revisions to improve the dependent care credit.

If you would like more information regarding how you were selected to receive the questionnaire, please contact John Szilagyi at the Internal Revenue Service's Research Division (202) 874-0608. If you would like more information regarding Karen's research project, please contact me at (813) 974-4186.

Thank you for your participation in this project. A high level of responses to this questionnaire will allow Karen to draw meaningful conclusions for her project.

Sincerely,

Cherie J. O'Neil,

Quinn Professor.

Attachment II

Date:

Dear Parent: I am a doctoral student at the University of South Florida. In relation to research I am conducting for my dissertation, I would appreciate it if you would take a few minutes to complete the enclosed questionnaire and return it in the postage paid envelope. Total anonymity of your responses is guaranteed.

I am conducting research on the child care arrangements of single parents and two-income parents, and how child care arrangements change over time. Please try to recall, what child care arrangement you made over a three (3) year period from 1988 through 1990. I am interested in the amount you spent for child care, the number of children you had to arrange child care for and the types of child care provider(s) you used. If you did not have any children under the age of 15 living in your home, please answer only question #1.

Thank you for your cooperation.

Sincerely,

Karen Lanese,

Ph.D Candidate.

Child Care Survey

If yes or no answer is required, please circle the appropriate answer.

1. Did you have one or more children under the age of 15 living in your home any time during the following years?

1988 Yes / No
1989 Yes / No
1990 Yes / No

If you answered NO to all three years, do not answer the remainder of the questionnaire. Please return the questionnaire in the postage paid return envelope.

2. Please indicate in each of the columns the answer that best applies to your family during the years indicated.

If a series of potential answers is provided, please place the number that corresponds to your situation in the spaces provided. If you select 'other', please explain in the comments section provided on the last page of the questionnaire.

	1988	1989	1990
A. Marital Status:			
1. Married			
2. Single or divorced			
If married, answer for both mother and father (B. and C.).			
If single or divorced, answer only for yourself (B. and C.).			
B. Earned Income of Father: The dollar amount of earned income in each year (wages, salaries, self-employment income)	$	$	$
Average hours per week worked outside the home			
C. Earned Income of Mother: The dollar amount of earned income in each year (wages, salaries, self-employment income)	$	$	$
Average hours per week worked outside the home			
D. If a single parent, did you receive alimony or child support payments in any of the three years?	Yes / No	Yes / No	Yes / No
E. Total Nonwage Income: Amount of household savings income (interest and dividends) earned			
1. $0-99			
2. 100-199			
3. 200-399			
4. 400-799			
5. 800-999	$	$	$
6. Over-1,000			
F. Number of Children: (age based on birthday in the year for each column)			
number of newborns to 2 year olds			
number of 3 and 4 year olds			
number of 5 year olds			
number of 6 year olds			
number of 7 to 12 year olds			
number of 13 to 14 year olds			
number of children at home (or full-time students) above 14 years old)			
G. Who cared for the children while you worked? (outside regular school hours) Enter as many numbers as apply for each year.			
1. other parent			
2. family relative (unpaid)			
3. self-care (latch-key after-school)			
4. paid care in child's home			
5. paid care in baby sitter's home			
6. day care center			
7. extended day program at child's school			
8. other _____			
H. If paid care was provided in your home, did you:			
1. pay social security taxes on behalf of your babysitter?			
2. withhold social security from your babysitter's pay?			
3. did not do either 1. or 2. above			
I. If paid care was used, did you take the child care credit on your tax return?	Yes / No	Yes / No	Yes / No
J. If paid care was used and you did not take the credit, what was your reason(s) for not taking the credit?			
1. babysitter did not want you to			
2. babysitter would not give you their			
3. forms were too complicated			
4. did not keep good records of expenses			
5. employer provided on-site child care benefits			
6. child care expenses aid from employer salary reduction plan			
7. other _____?			
K. If paid care was used, how much was spent on child care each year?	$	$	$
L. If paid care was used, for how many children was care provided?			

	1988	1989	1990
M. If you stopped using paid child care in 1988, 1989, or 1990, what was the reason? 1. one parent able to care for child 2. child old enough to care for self 3. relatives caring for child (unpaid) 4. employer provided child care assistance plan 5. other _____			
N. Do you own your own home?	Yes / No	Yes / No	Yes / No
O. Did you use a paid preparer for the preparation of your tax return? If yes, how much did you pay per year?	Yes / No $.....	Yes / No $.....	Yes / No $
P. Did you itemize your deductions?	Yes / No	Yes / No	Yes / No

	Father	Mother
Q. Education: level of education of each parent: 1. did not graduate high school 2. high school 3. two-year college 4. four-year college 5. graduate/professional education		
R. Are you self-employed?	Yes / No	Yes / No
S. Age: please give the current age of each parent.		
T. Occupation: please specify for each parent: Father Mother		

Comments: _____

DATE:

Dear Parent: A few days ago you received a questionnaire from Karen Lanese, a doctoral student from the University of South Florida. In order to ensure a high level of response to her questionnaire, we would appreciate your answering the questions on the enclosed post card and returning it. Each post card is numbered so that we may account for all participants in the survey. No such identifying number appears on any of the questionnaires, ensuring the confidentiality of your responses.

Thank you for your participation in this project. A high level of responses to this study is necessary for Karen to draw meaningful conclusions for her project.

Sincerely,

Cherie J. O'Neil,

Quinn Professor.

Attachment V

Post Card

Front Side: IRS LOIS AVENUE RETURN ADDRESS

Back Side: Identifying Number, OMB No. 1545–

Please Check One:

____ I completed the questionnaire and have mailed it.

____ I will complete the questionnaire and mail it within a few days.

____ I have misplaced the questionnaire, please send me another.

____ I do not wish to participate in this study.

Attachment VI

SCHOOL OF ACCOUNTANCY
COLLEGE OF BUSINESS ADMINISTRATION
UNIVERSITY OF SOUTH FLORIDA
2203 NORTH LOIS AVENUE
TAMPA, FL 33607–2356

This is the IRS Tampa POD street address (so undelivered mail will come back to IRS)

Out going envelope to taxpayers using mail labels for KCSC sample

Attachment VII

School of Accountancy
BSN 3403
14–02–000–00
Tampa, FL 33620–5500

Return envelope for taxpayers to mail back USF questionnaire

BUSINESS REPLY MAIL
FIRST CLASS MAIL PERMIT NUMBER 2039 TAMPA FL
POSTAGE WILL BE PAID BY ADDRESSEE
UNIVERSITY OF SOUTH FLORIDA
4202 E FOWLER AVE
TAMPA FL 33620–9989

[FR Doc. 92–20141 Filed 8–31–92; 8:45 am]
BILLING CODE 4830–01–M

Office of Thrift Supervision

[No. 92-294]

General Valuation Allowances

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Request for comment.

SUMMARY: The Office of Thrift Supervision (OTS) is today publishing for comment a description of proposed revisions to its guidance to savings associations and its examination staff regarding the appropriate levels of general valuation allowances (GVAs) savings associations should maintain. Associations are required to maintain GVAs that are sufficient to absorb probable losses not yet identified in their portfolios. An association's management has the primary responsibility for the assessment of the adequacy of general allowances. The role of the examiners is to ensure that associations have thoroughly documented their process for determining the level of the allowances, including analysis of all significant factors.

The proposed policy directs examiners to rely on management's estimates of adequate GVAs if the association's process for determining adequate allowances is sound. To guide examiners in evaluating the reasonableness of an association's allowance levels and in reviewing associations that do not maintain adequate policies, the proposed guidelines set forth quantitative benchmarks as a starting point for the determination of appropriate levels of GVAs. The guidelines also set forth additional quantitative and qualitative factors for analysis in determining the appropriate adjustments to the benchmark amounts for the specific association.

DATES: Comments requested must be received on or before October 1, 1992.

ADDRESSES: Send comments to: Director, Information Services, Office of Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: Docket No. [92–294]. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days, they may be sent by facsimile transmission to FAX Number (202) 906–7753 or (202) 906–5755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered. Comments will be available for public inspection at 1776 G Street, NW., Street Level.

FOR FURTHER INFORMATION CONTACT: John C. Price, Jr., Deputy Assistant Director for Policy, (202) 906–5745; Robert J. Fishman, Program Manager, (202) 906–5672; William J. Magrini, Project Manager, (202) 906–5744; or Dorene Cadoff, Attorney, (202) 906–7268; Regulations, Legislation and Opinions Division; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. Current GVA Policy

The OTS's current policy, which is set forth at 12 CFR 563.160, 563.172 and 571.26 (1992) and in the Thrift Activities Handbook at section 261 (and the policy followed by the OTS's predecessor, the Federal Home Loan Bank Board), requires savings associations to classify their assets on a regular basis and to establish prudent GVAs for loan losses sufficient to absorb estimated losses inherent in the portfolio.

Valuation allowances as defined in the above regulations may include both specific valuation allowances and general valuation allowances. Specific valuation allowances are established in lieu of charge-offs for probable identified losses attributable to specific assets. GVAs are established to absorb probable losses that have not been identified but that are inherent in the portfolio. This notice deals exclusively with GVAs.

GVAs, in general, address two different concerns: (1) Poor credit quality at origination or deterioration in credit quality after origination or purchase, a concern that applies to classified assets and some assets subject to Special Mention; and (2) the need to protect against probable losses inherent in the portfolio from unidentified asset weaknesses, a concern that applies to all assets, including Pass assets and unreviewed assets. The appropriate level of GVAs is determined differently for these two concerns.

GVAs should be established based upon an analysis of the portfolio that includes: (1) A review of the assets and the determination of the likelihood of loss within the portfolio; (2) the historical loss experience for assets and pools and assets of similar quality and type; and (3) other qualitative factors.

Current OTS guidance requires that an association's management develop a reliable loss analysis methodology to establish and maintain adequate GVAs [1]. Through examinations, OTS evaluates the adequacy of an associations's internal asset review function, including its loss analysis methodologies and procedures. As part of its evaluation of an association's GVA adequacy, the OTS evaluates whether management's process considers appropriate quantitative and qualitative factors. These factors are discussed in the November 7, 1991 "Interagency Policy Statement on the Review and Classification of Commercial Real Estate Loans."[2]

The only specific quantitative guidance the OTS currently gives is that, at a minimum, GVAs should be maintained at a level that correlates with the association's typical average annual loss experience over at least the last three calendar years, unless a higher level is warranted based on current conditions and trends.

Management of savings associations and OTS examination staff have requested better guidance concerning the appropriate level of GVAs an association should maintain. This proposed guidance is intended to provide all regulatory personnel, lending institutions and other interested parties with a clearer understanding of the OTS's policy regarding GVAs and should help to ensure that associations maintain GVAs at prudent levels that contribute to their safe and sound operations.

B. Proposed OTS Policy on GVAs

1. General Policy

Associations must maintain GVAs that are adequate to absorb probable losses in their portfolios that are not clearly attributable to specific loans. An association's management is responsible for maintaining an effective asset review system and controls that identify, monitor and address asset quality problems in an accurate and timely manner. An association must also adequately document its process for evaluating and determining the level of allowance, including its analysis of all significant factors.

The association must analyze its entire portfolio when evaluating the adequacy of its GVAs. Generally, however, it is not practical or necessary for associations to individually review smaller classified or uncriticized assets. Associations may provide for such assets as part of a pool of assets based on historical loss experience, adjusted for current economic conditions and trends. OTS encourages associations to segment their portfolios into components that have similar characteristics, such as risk exposure, past due status, type of loan, industry or collateral.

2. Examiner Guidelines

The responsibility for the assessment of the adequacy of GVAs lies principally with the association's management. The role of examiners is to ensure that management's judgment and analytical approach are sound, the analysis is adequately documented, and all significant factors have been considered. Examiners will evaluate the methodology and process that management has followed to evaluate the adequacy of the GVAs in order to assure that all of the relevant factors affecting the collectability of the portfolio have been appropriately considered. The review will focus on the reasonableness of the GVAs in light of these factors and the quality of the association's systems and management in identifying, monitoring and addressing asset quality problems.

Examiners will rely on management's evaluation of the adequacy of the GVAs if the association's process is sound, based on reliable information, consistently applied and well-documented.

Examiners should utilize the procedures described below to evaluate the reasonableness of an association's GVA level. For associations that do not maintain adequate policies, procedures and systems for establishing appropriate GVA levels, examiners should use the process described below to calculate a prudent level of GVAs.

(a) *Classified assets and assets subject to special mention.* GVAs for

[1] One tool that can be used to assess the appropriate level of allowance would be a "migration-to-loss" tracking system. Such analysis involves the maintenance by savings associations of sufficient information for management and examiners to closely track assets over time to determine the amount of unreviewed, Pass, Special Mention, Substandard, and Doubtful assets that eventually become Loss.

[2] These factors include: (1) The establishment of prudent written lending policies, loan administration procedures, and credit risk control procedures; (2) the borrower's willingness and capacity to repay the debt; and (3) the income-producing capacity of collateral that supports a loan.

classified assets and assets subject to Special Mention,[3] should generally fall within the ranges listed below:

- 0% to 5% of assets subject to Special Mention.
- 5% to 25% of assets classified Substandard.
- 40% to 60% of assets classified Doubtful.

Classification reflects a judgment that the risk of loss on an asset is greater than normal. When estimating the overall loss exposure from classified assets, a number of factors must be considered, including the borrower's overall financial condition, resources, payment record, and other relevant characteristics; the prospects for support from any financially responsible guarantors; and, if appropriate, the value of the collateral.

The actual percentage used should be based on specific circumstances that pertain to the criticized asset and the association. In general, examiners should begin at the midpoint of the range and move higher or lower along the range depending on whether the likelihood of loss is greater or smaller than that amount. Examiners should review the factors listed in subsection 2 (c), below, to determine the appropriate percentage to use for each of the Special Mention, Substandard and Doubtful asset classifications.

For example, assets (or pools of assets) subject to Special Mention would be subject to the higher end of the percentage range if the rating was due to credit quality deterioration (such as delinquency status). The lower end of the range would be appropriate if the rating was based on non-credit quality problems, such as inadequate documentation in loan files. (For Special Mention assets, GVAs should, in no case, be less than the amount required for similar Pass and unreviewed assets, discussed below.)

Similarly, assets classified as Substandard would be subject to the lower end of the range if, for example, they were collateralized and there was a history of relatively low losses on such assets (such as single family home mortgage loans).

In addition, the association's historical loss experience on classified assets is an important factor. Examiners should consider whether Special Mention, Substandard and Doubtful assets improve or deteriorate over time and the level of losses that are ultimately experienced on criticized assets.

The quality of the association's management, particularly in the workout area, is usually quite important in the determination of the appropriate percentage. Associations with strong troubled loan and real estate workout departments often experience smaller losses on troubled assets and therefore would require lower GVAs.

Allowances outside of these ranges may also be used, if supported by careful analysis and appropriate documentation.

(b) *Pass and unreviewed assets.* GVAs for Pass and unreviewed assets should generally equal expected net charge-offs during the next year. These should normally be based on the level of annual net charge-offs experienced by the association over the previous 3 to 5 years on similar assets, adjusted for current economic conditions and trends [4].

The association's net charge-off experience should be the starting point for the assessment of the adequacy of allowances. This allowance level would then be adjusted for qualitative factors, outlined below. For example, associations in areas of worsening economic conditions and trends should maintain commensurately higher levels of allowances than would be indicated by the association's average charge-off experience over the previous 3 to 5 years. Similarly, improving economic conditions may warrant a downward adjustment of charge off experience.

(c) *Factors for determining appropriate GVA levels.* For both criticized and Pass/unreviewed assets, associations and examiners should consider the quality of the following factors in determining appropriate GVA levels:

- Management;
- Written policies of the association, including the effects of any changes in policies and procedures (including those for collection, charge off and recovery);
- Underwriting standards;
- Board of Directors oversight;
- Internal Asset Review function;
- Management risk identification systems;
- Internal controls; and,
- An assessment of whether personnel are adequately implementing the association's written policies.

The items listed below should also be taken into consideration:

- Economic conditions and trends;
- Asset concentrations;
- Level and trend of delinquencies and nonaccruals;
- Level and trend of Troubled Debt Restructurings and modifications;
- Level and trend of repossessed assets;
- Historical collection experience; and,
- Loss levels and trends.

Judgment must be used in the assessment of the relative importance of the above factors. While the analysis of the appropriate GVAs for each savings association is unique, each of the factors listed above is likely to be relevant in determining the appropriate level of GVAs.

3. Other Considerations

In addition to the guidance outlined above, associations and examiners should factor into their determination of appropriate levels of GVAs the fact that asset classification and loss estimation processes are not precise. This factor should be addressed: (1) In the selection of the appropriate percentage of classified and Special Mention assets to use for allowance purposes, and (2) in any adjustment made to an association's historical charge-off experience to determine appropriate allowance levels for Pass and unreviewed assets.

Associations must maintain appropriate levels of allowances at all times. This means that examiners should confirm that once associations have determined the appropriate level of GVAs, they record those allowances promptly, to ensure that their books accurately reflect recoverable asset values.

[3] Special Mention assets are those assets that do not currently expose a savings association to a sufficient degree of risk to warrant classification, but that have a potential weakness or pose an unwarranted financial risk that, if not corrected, could weaken the asset and increase risk in the future. Substandard assets have a well-defined weakness and are inadequately protected by the current net worth and paying capacity of the obligor or of the collateral pledged; they are characterized by the distinct possibility that the savings associations will sustain some loss if the deficiencies are not corrected. Doubtful assets have all the weaknesses of Substandard assets with the added characteristic that the weaknesses make collection or liquidation in full highly questionable and improbable. Substandard assets, Doubtful assets and Loss assets are collectively referred to as "classified assets." Classified assets and assets subject to Special Mention are collectively referred to as "criticized assets." Pass assets are those that have been specifically reviewed and found to have no deficiencies that warrant an adverse classification. Unreviewed assets are those that have not been reviewed.

[4] For example, if an association has historically experienced annual charge-offs of 5 basis points on single family home mortgage loans and it currently has a non-criticized single family home mortgage portfolio of $100 million, the starting points for the appropriate level of GVAs would be 5 basis points, or $50,000. Similar to the process outlined above for criticized assets, examiners would then undertake a qualitative analysis of the association to determine appropriate adjustments—up or down—to this amount.

II. Implementation

The OTS proposes to implement the proposed policy on GVAs by issuing guidance to associations and OTS regional staff.

The OTS recognizes that the proposed policy may cause many savings associations to increase the levels of GVAs they currently maintain and, thus reduce their tangible capital. This will primarily affect associations with high levels of classified assets and those with high historical charge-off levels.

III. Request for Comment

The OTS invites comments from all interested parties on all aspects of the proposed GVA guidance and suggestions for alternative GVA guidence. All comments will be considered when formulating the final policy statement. Commenters are specifically requested to address the following issues:

1. Is the proposed GVA policy guidance appropriate? Will it improve the likelihood that savings associations are establishing appropriate levels of GVAs? Is the proposed policy likely to result in savings associations maintaining GVAs that more accurately reflect the value of their assets and thus enable the OTS to better ascertain the true economic condition of the industry?

2. Are the proposed ranges for Special Mention, Substandard and Doubtful assets appropriate? Are they too wide or too narrow? Is there too much discretion left to associations or examiners?

3. What additional quantitative and qualitative factors should be used to determine appropriate GVA levels for criticized, Pass and unreviewed assets?

4. Is the proposed use of an association's specific net charge-off experience an appropriate starting point for the determination of the adequacy of GVAs for Pass and unreviewed assets? Should the OTS instead use industry-wide loss experience (such as national or regional net charge-off data) as the starting point?

5. Should associations be allowed a transition period to increase their allowances? If so, how should the transition period be structured?

6. Should the OTS have a policy that requires associations and examiners to factor in a "supplemental" amount of GVAs beyond the amount established under the proposal outlined above in order to address the potential for errors in calculations?

7. Is it appropriate for the OTS to adopt the proposed policy guidance before the adoption of similar guidance by the Federal bank regulatory agencies?

Dated: June 29, 1992.

By the Office of Thrift Supervision.

Timothy Ryan,

Director.

[FR Doc. 92-20948 Filed 8-31-92; 8:45 am]

BILLING CODE 6720-01-M

UNITED STATES INFORMATION AGENCY

University Affiliations Program; Application Notice for Fiscal Year 1993

AGENCY: United States Information Agency.

ACTION: Notice: Request for proposals.

SUMMARY: The Bureau of Educational and Cultural Affairs of the United States Information Agency announces a program of support for institutional partnerships between U.S. and foreign universities and colleges with a demonstrated commitment to internationalization of their academic programs. The University Affiliations Program seeks to promote institutional relationships through grants for the exchange of faculty and staff for a period of three years. Participating institutions should be prepared to exchange faculty and staff for teaching, lecturing, and research assignments of one month or longer (preferably three months or one semester); maintain their faculty on full salary and benefits; and receive visiting faculty from the partner institution. USIA grant funds, not to exceed $100,000, can be used to defray expenses for travel and per diem. A modest amount of the grant total can be allocated for educational materials and communications expenses. Proposals will be accepted either to establish new affiliations or to allow for innovation and strengthening of existing partnerships not previously funded by the University Affiliations Program. Proposals for technical or development assistance projects and feasibility studies to plan affiliations will be not be considered. Research proposals must include collaboration by researchers from both institutions and be linked to substantial participation in graduate-level seminars.

The competition, as described in separate geographic area programs, is limited to selected countries and academic disciplines which represent USIA's geographic and academic priorities for the University Affiliations Program. Subject to the availability of funds, approximately 20–25 grants will be awarded for Fiscal Year 1993.

U.S. institutions are responsible for the submission of proposals and should collaborate with their foreign partners in planning and preparing proposals. Foreign institutions are encouraged to consult with the U.S. Information Service (USIS) office and/or Fulbright Commission in their countries about the proposed project.

DATES: Deadline for proposals: Proposals must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on January 15, 1993. Proposals received by the Agency after this deadline will not be eligible for consideration. Faxed documents will not be accepted, nor will documents be accepted which are postmarked on January 15, 1993 but received at a later date. It is the responsibility of each grant applicant to ensure that their proposal is received by the above deadline. Grants should begin not later than September 1, 1993.

ADDRESSES: The original and 19 complete copies of the proposal should be submitted by the deadline to: U.S. Information Agency, Ref.: University Affiliations Program, Office of Grants Management, E/XE, room 357, 301 4th St., SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: For general information and requests for application packets, which include all necessary forms and guidelines for preparing budgets, interested institutions should contact Ms. Camille Barone or Ms. Deborah Trent at (202) 619–5289, or write to the following address: University Affiliations Program, Office of Academic Programs, U.S. Information Agency, 301 4th Street, SW., rm. 349, Washington, DC.

SUPPLEMENTARY INFORMATION:

Overview

Authority for the University Affiliations Program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256 (Fulbright-Hays Act). The Fulbright Program seeks to increase mutual understanding between the people of the United States and people of other countries. USIA strives to accomplish this goal by promoting affiliations between U.S. and foreign institutions of higher education.

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social and cultural life.

Guidelines

Eligibility.

In the U.S., participation in the program is limited to accredited four-year colleges and universities, including

graduate schools and consortia of universities. Overseas, participation is limited to recognized degree-granting institutions of higher education and internationally recognized and highly regarded independent research institutes. Proposals from a consortium may be submitted by a member institution with authority to represent the consortium. Community colleges are eligible only as members of an eligible consortium and not the lead institution, which submits the proposal. Participants traveling under USIA grant support must be U.S. citizens (representing the U.S. institution); and (representing the foreign institution) citizens, nationals, or permanent residents of the country of the foreign partner, who are qualified to hold a valid passport.

The Agency invites proposals from eligible Historically Black Colleges and Universities (HBCUs) and other institutions in the U.S. with significant minority student enrollment. Consortia of universities including such institutions are also strongly encouraged to apply.

Proposed Budget

A comprehensive line item budget should be submitted with the proposal by the deadline. Budget should not exceed $100,000. Specific guidelines for budget preparation are available in the application packet. Note: Grants awarded to eligible institutions with fewer than four years' experience in conducting international exchange programs will be limited to $60,000. Budget submissions from these institutions should not exceed this amount.

Geographic Area Programs

The program invites proposals for two-way projects only (involving the U.S. and one foreign country) except for the three-way (Canada-U.S.-Mexico) exchanges. Proposals can focus on one or more eligible academic disciplines.

Africa

Eligible countries are limited to: Botswana, Ethiopia, Nigeria, Senegal, South Africa, Tanzania and Zimbabwe. Eligible academic disciplines are limited to the social sciences, humanities, and the arts. Possible fields include but are not limited to anthropology, archaeology, *American studies, African studies/African-American studies, Islamic studies, economics, law, language and linguistics, literature, political science, public policy, sociology and demography. In addition, the program encourages proposals in comparative religious studies, architecture and urban planning, historic conservation, museum management and conservation, and parks management. For South Africa, proposals which focus on conflict resolution are also encouraged.

American Republics

Eligible countries are limited to: Bolivia, Chile, Colombia, Ecuador and Peru. Eligible academic fields are: *American studies, economics, environmental studies/natural resource management, political science, and post-secondary education.

East Asia/Pacific

Eligible countries are limited to: Indonesia, Malaysia, and Mongolia. Eligible academic disciplines are limited to the social sciences and humanities. Preference will be given to proposals in *American studies, Islamic studies, comparative religious studies, education, environmental studies, international business/management, international law, and political science.

Europe

Eligible countries are limited to: Albania, Bulgaria, Czech and Slovak Federal Republic (limited to universities outside Prague and Bratislava), Romania, Turkey, and the following Newly Independent States: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. Russia is excluded in this year's competition due to the large number of existing linkages with that country. Eligible academic fields are limited to the social sciences, humanities, and the arts. Preference will be given to proposals in *American studies, Islamic studies, comparative religious studies, business administration, communications (including journalism), economics, educational administration and reform, environmental studies, fine/performing arts, history, historic conservation, law, psychology (non-clinical), public administration, public policy analysis, political science, and sociology.

North Africa/Near East/South Asia

Eligible countries/regions are limited to: Algeria, Bahrain, Bangladesh, Egypt, Israel, Jordan, Kuwait, Mauritania, Morocco, Oman, Pakistan, Qatar, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, West Bank, Gaza, and Yemen. Eligible academic disciplines are limited to the social sciences and humanities. Preference will be given to proposals in *American studies, Islamic studies, comparative religious studies, economics, environmental policy studies, journalism, and public administration.

Trilateral Exchanges: Canada-U.S.-Mexico

The Agency also invites proposals for three-way projects linking an institution in the U.S. with institutions in Canada and Mexico. Eligible academic disciplines are: The humanities and the arts, comparative education and culture, environmental studies, economics, and international business and trade.

This program encourages the expansion of trilateral educational exchange between Canada and the U.S. and Mexico. The objective is to broaden opportunities for educational and cultural exchanges among these countries, thereby enriching their respective educational systems.

Application Requirements

Proposals must be submitted within the deadline and conform to the selected countries and academic fields identified under the geographic area programs. The proposal package should include one original and 19 complete copies and all required documentation. Proposals should be presented as follows:

1. *A proposal cover sheet* (in addition to the Bureau cover sheet) with names of both institutions, name of foreign country, project directors including their addresses, telephone and fax numbers, and academic field(s) of proposal. A sample cover sheet format is included in the application packet.

2. *An executive summary* (abstract) of proposed project, not to exceed one single-spaced page.

3. *A narrative*, not to exceed twenty double-spaced pages, including descriptions of institutions and participating academic departments or schools; a detailed description of the proposed affiliation program, including names and qualifications of designated project directors; a statement of need for the proposed program; a detailed description of proposed activities, including who will travel, when, where, and how activities will occur for each of the three years; anticipated benefits of the program to participating institutions; a plan for institutional evaluation of the project; and evidence of the institutions' commitment to the internationalization of their academic programs, e.g. through

Note: American studies includes the fields of American history, civilization, literature, social sciences, and the arts.

international partnerships, student exchanges, etc.

4. *A comprehensive line item budget* outlining specific expenditures and sources from which funds are anticipated. Detailed information concerning eligible and ineligible items and required budget format is available in the application packet.

5. *Documentation of institutional support* for the proposed linkage, including signed letters of endorsement from the U.S. and foreign institutions' presidents, chancellors, or directors making specific reference to the 1993 University Affiliations Program and committing their participating institution(s) to maintaining their exchange participants on full salary and benefits during the exchange. *A general letter of support or an agreement between the two institutions without reference to the maintenance of salaries and benefits will not fulfill this requirement.* A sample letter of endorsement and commitment is included in the application packet.

6. *Brief academic resumes*, not to exceed two single-spaced pages, of participating faculty/staff from both institutions, clearly indicating level of language skills, overseas experience, knowledge of prospective partner country, relevant scholarly and non-scholarly travel, publications, and research activities.

Note: All pages in excess of the two-page limit will be discarded.

Review Process

The University Affiliations Program review process is conducted in three stages: Technical, academic, and Agency. Proposals will be deemed ineligible if they do not adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to outside academic panels for advisory review. All proposals recommended for funding will be reviewed in the Agency by the Office of Academic Programs, the appropriate geographic area office, and the budget and contracts offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Grant awards will be submitted for approval to the J. William Fulbright Foreign Scholarship Board. Final technical authority for grant awards resides with USIA's contracting officer.

Upon completion of the technical review, applicants will be notified in writing of the status of their proposals. A grace period will be granted to applicants whose proposals lack the following:

A signed letter of endorsement from the president, chancellor, or director of the foreign institution, making specific reference to the 1993 University Affiliations Program and committing the institution to maintaining their exchange participants on full salary and benefits during the exchange. The deadline for submission of this document is 5 p.m. Washington, DC time on January 29, 1993.

Review Criteria

Academic Review Criteria

Proposals are reviewed by independent academic peer panels with geographic and discipline expertise which make recommendations to the Agency based on the following criteria:

1. Soundness of proposal indicating academic quality, as reflected by a clear statement of program goals and means to accomplish the goals, and detailed description of project with statement on how the proposed project will be implemented and evaluated.

2. If the proposal requests support for an established active linkage, evidence that the University Affiliations funding would result in innovation in the exchange relationship.

3. Promise of the production of new skills/knowledge and advancement of scholarship in fields covered by the program.

4. Evidence that theme(s) of proposed project fits field(s) stated in the announcement.

5. Evidence of strong mutual benefits to the institutions involved in the exchanges.

6. Feasibility of the program plan as it relates to the stated goals and selected topics and activities.

7. Academic quality of credentials/experience of participants in relation to the goals of the proposed exchange plan (including linguistic proficiency, where required).

8. Appropriateness of length of exchange visits given project goals.

9. Evidence of strong institutional commitment by participating institutions.

10. Evidence of a strong commitment to internationalization of their academic programs by participating institutions.

11. Evidence of mutual advancement of cultural and political understanding of the countries or geographic areas represented in the partnership through development of individual and institutional ties.

12. For proposals focused on research as its primary activity: Inclusion of collaboration by researchers from both institutions, linked to substantial participation in graduate-level seminars.

13. Evidence that the partnership is likely to continue after the expiration of the USIA grant.

Agency Review Criteria

USIA will consider for further review only those proposals recommended by academic review panels. Agency considerations will be based on:

1. Academic quality, reflected in academic review panel's comments and recommendations

2. Feasibility of program plun

3. Advancement of mutual cultural and political understanding between the countries or geographic areas represented in the partnership

4. USIA overseas post assessments of nced and feasibility

5. Promise of long-term impact

6. Cost-effectiveness

7. Submission by institutions with significant minority enrollment, applying alone or in consortia with other U.S. institutions.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. Final award cannot be made until funds have been fully appropriated by Congress, allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about July 1, 1993. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: August 26, 1992.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 92-21031 Filed 8-31-92; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 170
Tuesday, September 1, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AGENCY: AGENCY HOLDING THE MEETING:
Nuclear Regulatory Commission.

DATE:
Weeks of August 31, September 7, 14, and 21, 1992.

PLACE:
Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS:
Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 31

Tuesday, September 1

3:00 p.m. Affirmation/Discussion and Vote (PUBLIC MEETING) (if needed)

Thursday, September 3

1:00 p.m. Briefing by EPRI on Status of EPRI Design Requirements Document for Advanced Light Water Reactors (PUBLIC MEETING)

Week of September 7—Tenative

Tuesday, September 8

10:00 a.m. Briefing on Advanced and Evolutionary Reactor Topics: Form and Content for a Design Certification Rule and Follow-up to SECY-90-016 (PUBLIC MEETING) (Contact: Dennis Crutchfield, 301/504-1199)

Wednesday, September 9

3:30 p.m. Affirmation/Discussion and Vote (PUBLIC MEETING) (if needed)

Friday, September 11

8:00 a.m. Discussion of Management-Organization and Internal Personnel Matters (CLOSED—Ex. 2 and 6)
8:30 a.m. Briefing by Charles Meinhold on 1990 Recommendations of the International Commission on Radiological Protection (ICRP Publication 60) (PUBLIC MEETING)
10:00 a.m. Periodic Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (PUBLIC MEETING) (Contact: Raymond Fraley, 301/492-8049)

Week of September 14—Tentative

Monday, September 14

2:00 p.m. Briefing on Electricity Forecast from Energy Information Administration (EIA) Annual Energy Outlook (PUBLIC MEETING)

Thursday, September 17

2:00 p.m. Status Briefing on Shutdown and Low Power Risk Issues (PUBLIC MEETING) (Contact: Mark Caruso 301/504-3235)
3:30 p.m. Affirmation/Discussion and Vote (PUBLIC MEETING) (if needed)

Week of September 21—Tentative

Thursday, September 24

11:30 a.m. Affirmation/Discussion and Vote (PUBLIC MEETING) (if needed)

note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

To verify the status of meeting call (recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: August 27, 1992.

William M. Hill, Jr.,

Office of the Secretary.

[FR Doc. 92-21123 Filed 8-28-92; 3:23 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 57, No. 170
Tuesday, September 1, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL ELECTION COMMISSION

11 CFR Part 200

[Notice 1992-12]

Administrative Regulations

Correction

In rule document 92-18473 beginning on page 34508 in the issue of Wednesday, August 5, 1992, make the following correction:

§ 200.1 [Corrected]

On page 34510, in the first column, in § 200.1, in the first line, "prescribed" should read "prescribes".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[BPD-423-F]

RIN 0938-AD25

Medicare Program; Fee Schedules for the Services of Certified Registered Nurse Anesthetists

Correction

In rule document 92-16943 beginning on page 33878 in the issue of Friday, July 31, 1992, make the following correction on page 33896, in the second column, under Part 410, in the **Authority** citation, in the third line, remove "7,".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub—No. 10)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1992 Update

Correction

In proposed rule document 92-18949 beginning on page 35557 in the issue of Monday, August 10, 1992, make the following corrections:

§ 1002.2 [Corrected]

1. On page 35558, in the first column, in § 1002.2(f), in entry (1), in the third line, "certification" should read "certificate".

2. On the same page, in the second column, in the same section, in entry (14), "Reserved" should read "[Reserved]".

3. On the same page, in the third column, in the same section, in entry (40), insert a period after "railroads".

4. On page 35559, in the first column, in the same section, in entry (50), in the second line, insert a period after "competition".

5. On the same page, in the same column, in the same section, in entry (54)(i), in the sixth line, insert "; or an application" after "authorization".

6. On the same page, in the second column, in the same section, in footnote 2, "band." should read "bond."

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1109

[Ex Parte No. 55 (Sub No. 83)]

Use of Alternative Dispute Resolution Procedures in Commission Proceedings and Those in Which the Commission is a Party

Correction

In the correction to rule document 92-17290 appearing on page 35628 in the issue of Monday, August 10, 1992, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the National Cooperative Research Act of 1984; Southwest Research Institute

Correction

In notice document 92-16019 beginning on page 30510 in the issue of Thursday, July 9, 1992, make the following corrections:

On page 30511, in the first column, in the first complete paragraph, in the sixth line, "Mobile" should read "Mobil" and in the same paragraph, in the ninth line, "Texas" should read "Texaco".

BILLING CODE 1505-01-D

RESOLUTION TRUST CORPORATION

12 CFR Part 1625

Procedures Applicable to RTC Investigations

Correction

In proposed rule document 92-16545 beginning on page 33133 in the issue of Monday, July 27, 1992, on page 33134, in the first column, in the fourth full paragraph, in the seventh line, after "provisions" insert "specified therein. The confidentiality provisions".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-23-92]

RIN 1545-AQ66

Voluntary Employees' Beneficiary Association Qualification—Geographic Locale Restriction

Correction

In proposed rule document 92-18532 beginning on page 34886 in the issue of Friday, August 7, 1992, make the following corrections:

1. On page 34888, in the second column, under **BACKGROUND**, in the first paragraph, in the 3d line from the end of the paragraph, after "same" insert "line of business in the same".

2. On page 34887, in the 1st column, in the last paragraph, in the 11th line, "or" should read "of".

3. On the same page, in the second column, in the last paragraph, in the 8th line, "section 502" should read "section 501".

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Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 412 and 413

Medicare Program; Changes to Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-756-F]

RIN 0938-AF79

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: We are revising the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement necessary changes arising from our continuing experience with the systems. In addition, in the addendum to this final rule, we are describing changes in the amounts and factors necessary to determine prospective payment rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes will be applicable to discharges occurring on or after October 1, 1992. We are also setting forth rate-of-increase limits for hospitals and hospital units excluded from the prospective payment systems.

Finally, we are changing and clarifying the criteria and procedures concerning the reclassification of hospitals by the Medicare Geographic Classification Review Board (MGCRB). These changes result from public comment and our analysis of hospital reclassifications for Federal fiscal year (FY) 1992.

EFFECTIVE DATE: The provisions of this final rule are effective on October 1, 1992. The changes in Section IV concerning the reclassification of hospitals by the MGCRB will apply for applications received by October 1, 1992 for geographic reclassifications to be implemented on October 1, 1993 (FY 1994).

FOR FURTHER INFORMATION CONTACT: Barbara Wynn (410) 966-4529.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Summary

Under section 1886(d) of the Social Security Act (the Act), a system of payment for the operating costs of acute hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates was established effective with hospital cost reporting periods beginning on or after October 1, 1983. Under this system, Medicare payment for hospital inpatient operating costs is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412. On August 30, 1991, we published a final rule (56 FR 43196) to implement changes to the prospective payment system for hospital operating costs for Federal fiscal year (FY) 1992.

For cost reporting periods beginning before October 1, 1991, hospital inpatient operating costs were the only costs covered under the prospective payment system. Payment for capital-related costs had been made on a reasonable cost basis because, under sections 1886(a)(4) and (d)(1)(A) of the Act, those costs had been specifically excluded from the definition of inpatient operating costs. However, section 4006(b) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) revised section 1886(g)(1) of the Act to require that, for hospitals paid under the prospective payment system for operating costs, capital-related costs would also be paid under a prospective payment system effective with cost reporting periods beginning on or after October 1, 1991.

Therefore, on August 30, 1991, we published an additional final rule (56 FR 43358) in which we revised the Medicare payment methodology for inpatient capital-related costs for hospitals paid under the prospective payment system for operating costs. As required by section 1886(g) of the Act, we replaced the reasonable cost-based payment methodology with a prospective payment methodology for hospital inpatient capital-related costs. Under the new methodology, effective for cost reporting periods beginning on or after October 1, 1991, a predetermined payment amount per discharge is made for Medicare inpatient capital-related costs.

We established the standard Federal rate for FY 1992 using the FY 1989 Medicare inpatient capital cost per discharge updated to FY 1992 by the estimated increase in Medicare capital costs per discharge. In addition, we established a 10-year transition period for hospitals to be paid for their capital-related costs under one of two different payment methods. Generally, a hospital with a FY 1992 hospital-specific rate below the Federal rate is paid based on a fully prospective payment methodology. A hospital with a FY 1992 hospital-specific rate at or above the Federal rate is paid based on a hold-harmless method or 100 percent of the Federal rate, whichever results in a higher payment. Beginning with hospital cost reporting periods beginning on or after October 1, 2001, all hospitals are paid the Federal rate except for certain new hospitals that have not completed their transition period. (See the August 30, 1991 final rule (56 FR 43358) for a complete discussion of the prospective payment system for hospital inpatient capital-related costs.)

Hospitals and hospital distinct-part units that are excluded from the prospective payment system under the regulations at part 412, subpart B continue to be paid for capital-related costs on a reasonable cost basis under the provisions of part 413, subpart G. Also, rural primary care hospitals are not currently subject to prospective payment rules as provided under section 1814(l) of the Act and the last sentence of section 1861(e) of the Act.

B. Summary of the Provisions of the June 4, 1992 Proposed Rule

On June 4, 1992, we published a proposed rule in the Federal Register (57 FR 23618) to amend the prospective payment systems for operating costs and capital-related costs as follows:

- We proposed changes for FY 1993 DRG classifications and weighting factors as required by section 1886(d)(4)(C) of the Act. This section requires that we adjust the DRG classifications and relative weights at least annually.

- We proposed a revised wage index for discharges occurring on or after October 1, 1992 that incorporated all reclassifications of hospitals based on decisions made by the Medicare Geographic Classification Review Board (MGCRB) as of March 30, 1992. The proposed wage index also incorporated all corrections of errors that have been identified in the survey wage data since the construction of the wage index implemented for FY 1992 in the August 30, 1991 final rule (56 FR 43196).
- We discussed the criteria and procedures for hospital reclassifications by the Medicare Geographic Classification Review Board and set forth proposed changes concerning the following:
  - —General guidelines—reclassifications for individual hospitals.
    - + Reclassification to a single geographic area.
    - + Individual urban hospital reclassification to a rural area.
    - + Special access rule for rural referral centers and sole community hospitals seeking reclassification.
    - + Guidelines for a hospital requesting reclassification for wage index purposes.
    - + Application of numeric standards.
  - —Implementation of FY 1994 hospital reclassifications.
    - + Appropriate wage data.
    - + Revised labor market areas.
  - —Administrative and procedural guidelines.
    - + Withdrawing an application.
    - + Reopenings.
- We discussed the prospective payment system for inpatient operating costs in 42 CFR parts 412 and 413 and set forth certain proposed changes concerning:
  - —Outlier payments.
  - —Rural referral center criteria.
  - —Direct graduate medical education payments.
- We discussed several provisions of the regulations at 42 CFR part 412, subpart M, concerning capital prospective payment system rules, and proposed changes concerning the following:
  - —Payments to new hospitals.
  - —Portions of hospital assets put in patient care service after December 31, 1990.
  - —Treatment of old capital costs when hospitals are leased after December 31, 1990.
  - —Obligated capital costs.
  - —Adjusting the hospital-specific rate—transfer adjusted discharge and case-mix index for subsequent base periods.
  - —Redetermination of the hospital-specific rate.
  - —Effect of hospital mergers, consolidations or dissolution on the hospital-specific rate.
  - —Extraordinary circumstances exceptions payments.
  - —Minor technical corrections.
- We discussed changes to the regulations at 42 CFR parts 412 and 413 for hospitals and units excluded under the prospective payment system. The proposed changes concerned the following:
  - —Provisionally excluded hospitals and units.
  - —Definition of discharge for purposes of applying the rate-of-increase limits applicable to excluded hospitals and distinct part units.
  - —New hospital exemption applicable to excluded hospitals.
  - —Adjustments under the rate-of-increase ceiling.
- In the addendum to the proposed rule, we set forth changes to the amounts and factors for determining the FY 1993 prospective payment rates for operating costs and capital-related costs. We also proposed new target rate percentages for determining the rate-of-increase limits for cost reporting periods beginning in FY 1993 for hospitals and hospital units excluded from the prospective payment system.
- In Appendix A of the proposed rule, we set forth an analysis of the impact that the changes described in the proposed rule would have on affected entities.
- In Appendix B of the proposed rule, we set forth the technical appendix on the proposed FY 1993 capital acquisition model and budget neutrality adjustment.
- In appendix C of the proposed rule, we set forth our initial estimate of an update factor for FY 1993 for both prospective payment hospitals and hospitals excluded from the prospective payment system, as required by section 1886(e)(3)(B) of the Act.
- In Appendix D of the proposed rule, we provided our recommendation of the appropriate percentage changes for FY 1993, as required by sections 1886(e)(4) and (e)(5) of the Act, for the following:
  - —Large urban, other urban, and rural average standardized amounts (and hospital-specific rates applicable to sole community hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
  - —Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

In the June 4, 1992 proposed rule, we also discussed in detail the March 1, 1992 recommendations made by the Prospective Payment Assessment Commission (ProPAC). ProPAC is directed by section 1886(e)(2)(A) of the Act to make recommendations on the appropriate percentage change factor to be used in updating the average standardized amounts beginning with FY 1986 and thereafter. In addition, section 1886(e)(2)(B) of the Act directs ProPAC to make recommendations regarding changes in each of the Medicare payment policies under which payments to an institution are prospectively determined. In particular, the recommendations relating to the hospital inpatient prospective payment systems are to include recommendations concerning the number of DRGs used to classify patients, adjustments to the DRGs to reflect severity of illness, and changes in the methods under which hospitals are paid for capital-related costs. As set forth in section 1886(e)(3)(A) of the Act, the recommendations required of ProPAC under sections 1886(e)(2) (A) and (B) of the Act are to be reported to Congress not later than March 1 of each year.

We printed ProPAC's March 1, 1992 report, which includes its recommendations, as appendix E of the proposed rule. The recommendations, and the actions we proposed to take with regard to them (when an action is recommended), were discussed in detail in the appropriate sections of the preamble, the addendum, or the appendixes of the proposed rule.

Set forth below in sections II, III, IV, V, VI, and VII of this preamble, the addendum to this final rule, and the appendices, are detailed discussions of the June 4, 1992 proposed rule, the public comments received in response to that proposal, and the responses to those comments as well as any changes we are making. Appendix C sets forth a modified framework for developing the update for the prospective payment system for inpatient hospital operating costs that we are considering for FY 1994. Also, we are adding a new appendix D, which sets forth a preliminary framework for developing the update for the prospective payment system for inpatient hospital capital-related costs. As discussed in the appendices, we are inviting suggestions for improvements that could be made in these frameworks before we propose to implement them in future rulemaking documents.

C. Number and Types of Public Comments Received in Response to the June 4, 1992 Proposed Rule

A total of 527 items of correspondence containing comments on the June 4, 1992 proposed rule were received timely. The main areas of concern addressed by commenters were the following:

- The proposed changes in the criteria for the geographic reclassification of hospitals for purposes of the wage index.
- Proposed changes to the payment methodology for day outliers and the amounts of the FY 1992 outlier payments.
- Proposed changes to the capital prospective payment system rules.
- The rate of increase in the market basket and the update to the standardized amounts.
- The proposed revisions to rate-of-increase limits for hospitals and units excluded from the prospective payment system.
- Requests for changes in DRG classification and relative weights.

II. Changes to DRG Classifications and Weighting Factors

A. Background

Under the prospective payment system, we pay for hospital inpatient services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in other DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and weighting factors annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The changes to the DRG classification system and the recalibration of the DRG weights for discharges occurring on or after October 1, 1992 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient.[1] The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Edition, Clinical Modification (ICD–9–CM). The intermediary enters the information into its claims system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment.

Currently, cases are assigned to one of 489 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, principal diagnosis determines MDC assignment. However, there are four DRGs to which cases are assigned on the basis of procedure codes rather than first assigning them to an MDC based on the principal diagnosis. These are the DRGs for liver and bone marrow transplant (DRGs 480 and 481, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (hereafter CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

We proposed to make several changes to the DRG classification system. These proposed changes and the comments we received concerning them as well as our responses are set forth below.

2. Reassignment of Certain Endoscopic Procedures (DRGs 76 and 77)

Currently, the only endoscopic procedure performed on the respiratory system that is considered an OR procedure is procedure code 33.27 (Closed endoscopic biopsy of lung). This procedure code is assigned to DRG 76 or 77 (Other Respiratory System OR Procedures) [2] if the patient's principal diagnosis is classified in MDC 4 (Diseases and Disorders of the Respiratory System). If procedure code 33.27 is performed in connection with a principal diagnosis assigned to another MDC, and no other procedure related to that diagnosis is performed, the case is assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis).

Based on inquiries from the industry as well as our own concerns, we have reviewed the appropriate assignment of two other respiratory system endoscopic procedures: Endoscopic excision or destruction of lesion or tissue of lung (procedure code 32.28) and Closed [endoscopic] biopsy of bronchus (procedure code 33.24). Currently, performance of these non-OR procedures affects DRG assignment only in MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasms). For principal diagnoses that are assigned to that MDC, the performance of procedure codes 32.28 or 33.24 results in assignment to medical DRG 412 (History of Malignancy with Endoscopy).

As a result of our analysis of the FY 1991 Medicare provider analysis and review file (MEDPAR) data, we proposed that endoscopic procedure codes 32.28 and 33.24 be designated as OR procedures and assigned to DRGs 76 and 77 in MDC 4. In addition, if procedure code 32.28 or 33.24 appears on a claim with a principal diagnosis in MDC 17, it would be assigned to surgical DRG 408 (Myeloproliferative Disorders or Poorly Differentiated Neoplasms with Other OR Procedure) rather than DRG 412.

Although we received no comments on changing the status of the endoscopic procedure codes from non-OR to OR, we have reevaluated our proposal based on more recent information. In modeling the impact of the proposed DRG classification and recalibration changes, we must estimate which cases would be affected by the changes because we do not have a revised GROUPER program at the time the proposed rule is prepared. Thus, our analysis in the proposed rule of the impact of the DRG changes was based on an approximation of the placement of the cases under the proposed reclassification and the resulting recalibration of the DRG weights.

When we receive the revised GROUPER software, we can more accurately test the DRG classification and recalibration changes. This year, after testing the changes, we discovered that the DRG changes including the reassignment of the two endoscopic procedures would have a much more significant negative impact on small hospitals than we had stated in the proposed rule. For example, rural hospitals with under 50 beds would have an average reduction in payment per case of 0.6 percent and rural hospitals with 50 to 99 beds would have an average reduction of 0.3 percent. In the proposed impact analysis, we estimated these reductions at 0.2 and 0.1, respectively (57 FR 23819). The increase in the negative impact is entirely due to the endoscopic change. As the affected hospitals did not have an opportunity to comment on this significant impact on their payments, we believe it would be unfair to proceed with the change at this time. Therefore, we are not making this change effective for FY 1993.

3. Automatic Implantable Cardioverter Defibrillator (AICD) Procedures (DRG 120)

For several years, we have received a great deal of correspondence concerning the appropriate DRG assignment of certain procedures involving automatic implantable cardioverter defibrillators (AICDs). Currently, when a patient whose principal diagnosis is classified to MDC 5 (Diseases and Disorders of the Circulatory System) receives a total AICD system implant or replacement (procedure code 37.94), the case is assigned to DRG 104 or 105 (Cardiac Valve Procedures with or without Cardiac Catheterization). However, if a procedure is performed that involves the implantation or replacement of only part of the AICD system (that is, replacement or implant of either the leads or pulse generator only), the case is assigned to DRG 120 (Other Circulatory System OR Procedures). The related procedure codes are the following: 37.95 (Implantation of automatic cardioverter/defibrillator lead(s) only), 37.96 (Implantation of automatic cardioverter/defibrillator pulse generator only), 37.97 (Replacement of cardioverter/defibrillator lead(s) only), and 37.98 (Replacement of automatic cardioverter/defibrillator pulse generator only). We note that if a case is coded with a pair of codes that indicates total implant (37.95 and 37.96) or total replacement (37.97 and 37.98), it groups to DRG 104 or 105.

After reviewing the current DRGs in terms of clinical coherence and similar resource use, we proposed to reassign procedure codes 37.95, 37.96, 37.97, and 37.98, when they do not occur as pairs, to DRG 116 (Permanent Cardiac Implant without AMI, Heart Failure, or Shock). As explained in the proposed rule, the relative weight for DRG 116 is higher than that of both DRGs 112 (Percutaneous Cardiovascular Procedures) and 120 and, from a clinical perspective, we believe that the surgical implant of an AICD device is similar to a pacemaker implant. (Cases of an AICD lead or generator procedure are assigned to DRG 112 when electrophysiologic (EP) studies are also performed.) In addition, we proposed a new title for DRG 116 "Other Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure."

Comment: While our proposal to reassign procedure codes 37.95, 37.96, 37.97, and 37.98 to DRG 116 met with general approval, we received many comments urging that these codes be reassigned to DRG 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure or Shock) instead. The commenters state that these cases will continue to be underpaid in DRG 116 and that reassignment to DRG 115 is more reasonable in terms of both clinical coherency and resource use. Many commenters believe that the AICD cases are as complicated as the cases that currently group to DRG 115. That is, in many cases, the AICD device is being placed in high-risk ventricular arrhythmia patients with poor left ventricular cardiac function, which is as risky as implanting a pacemaker in a patient with AMI, heart failure, or shock.

As a result of a study commissioned by the AICD manufacturer, the commenters estimate that these procedures should be assigned to a DRG with a weight of at least 3.7966, based on an average charge of $26,396 for correctly coded and billed AICD cases. The proposed weights for DRGs 115 and 116 were 3.6230 and 2.4759, respectively. (Several of the commenters mistakenly reported a proposed weight of 3.8230 for DRG 115.) Therefore, the commenters assert that assignment of AICD cases to DRG 115 would be much more equitable. Several commenters also alleged that hospitals are limiting the availability of the AICD device to Medicare patients as a response to the current level of compensation.

Response: As explained in the proposed rule (57 FR 23621), the current clinical composition and weights of the surgical DRGs in MDC 5 do not offer a perfect match with the AICD cases. After reviewing the current DRGs in terms of clinical coherence and similar resource use, we determined that DRG 116 was the best fit possible.

Since publication of the proposed rule, we have reanalyzed these cases based on the most recent update to the FY 1991 MEDPAR file. Based on those data, the average standardized charge for AICD cases is now $19,550 for the 971 cases assigned to DRG 120 and $32,363 for the 288 cases assigned to DRG 112. Thus, the overall average standardized charge for the 1,259 cases is $22,481. If the cases currently assigned to DRGs 117, 118, 478, and 479 are included in the calculation, the average standardized charge is $22,427 (1,284 cases). The average standardized charge for all cases assigned to DRG 116 is $17,224 and $25,737 for DRG 115.

The difference in average charges between our analysis and the analysis performed for the commenters is that we have included all the cases in our data base and they have excluded those cases they believe to be incorrectly coded or for which the charges reported by the hospital appear to be too low. In the proposed rule, we described the measures we had taken in an attempt to improve the charge and coding information on AICD cases. In May 1991, we instructed fiscal intermediaries to return to hospitals any bill for an AICD case for which the total charges

[1] Effective with discharges occurring on or after October 1, 1991, we allowed an expansion of the number of reported diagnosis and procedure codes from 5 to 9 and from 3 to 6, respectively. Hospitals are required to code at the new level effective with discharges occurring on or after April 1, 1992.

[2] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second is for cases without CC. If a third number is included, it represents cases of patients who are age 0–17. Occasionally, a pair of DRGs are split on age > 17 and age 0–17.

were less than $17,000 (the minimum charge necessary based on the cost of the device ($13,500) and a 4-day inpatient stay). (See Transmittal No. 1525.) This action was designed to ensure proper coding and charge information for these cases.

We have performed a separate analysis using data from bills submitted after June 1, 1991, the date we believe all intermediaries should have had the charge edit in place. Using these data, the average standardized charges for AICD cases in DRGs 112 and 120 are $32,714 and $20,789, respectively. These charges are slightly higher than the charges for all cases; therefore, we believe that the steps we have taken are improving the AICD data in the MEDPAR. Nonetheless, we continue to believe that we should use all the cases in the MEDPAR file in calculating the average standardized charges and in assessing the correct DRG placement for a set of cases.

In reviewing the average charges and the best placement for AICD cases, we note that it is only those cases assigned to DRG 120 that are likely to be AICD-only cases. That is, cases currently assigned to DRGs 112, 117, 118, 478, and 479 that include the performance of an AICD implant also include the performance of another heart-related procedure. Therefore, the charges for these cases encompass resource use for at least one other procedure. For example, an AICD case in DRG 112 has also had either a percutaneous transluminal coronary angioplasty (PTCA) or electrophysiologic (EP) studies performed. Therefore, it is more than likely that the average charge for these cases will be higher than the charges for the single procedure cases within the DRG. In fact, when reviewing the DRG 120 cases, the average charge for an AICD case is only $19,550. This charge is only about $2,300 more than the average charge for other cases in DRG 116 and is well within the variation in charges for that DRG. We believe that it is important to note these facts even though the remainder of our discussion of the data includes all AICD cases.

With regard to the commenters' statement that the cases receiving AICD devices are as complicated as the cases in DRG 115, we rely on two factors to assess that assertion. First, the average charge for the universe of AICD cases is approximately $3,300 less than the average charge for a case assigned to DRG 115. In addition, the average length of stay for the DRG 115 cases is 13.6 days compared to 7.7 days for the AICD cases in DRG 112 and 4.0 days for the DRG 120 cases. Using the same universe of 1,284 cases as we did in the average charge analysis, we compute an average length of stay of 6.7 days. Not only is this length of stay far lower than the one for DRG 115, it is actually lower than the average for DRG 116 (7.1 days). Thus, it is clear that, regardless of the condition of these patients, they are not remaining in the hospital for the same length of time as the DRG 115 and 116 patients. This leads us to conclude that they are neither as severely ill nor as complex to treat as the DRG 115 cases.

We believe that the cost of the AICD device is largely responsible for the high average charge for these cases. If the cost of the device ($13,500) is subtracted from the average charge for the case, the charge for the hospital resources consumed is only $6,050 for DRG 120 cases, $18,863 for DRG 112 cases, and $8,927 for all cases. Thus, the largest component of the charge is for the device, which is currently marketed by a single manufacturer. Based on conversations we have recently had with other device manufacturers as well as staff at the Food and Drug Administration (FDA), we understand that up to three other implantable defibrillator devices may be approved by the FDA in the near future. With increased competition, there may be a decrease in the price of these devices and a corresponding drop in the average charge for a hospital stay for AICD implantation. Pending these developments and future improvements in code and charge reporting, we believe our best course is to assign the AICD cases to DRG 116 as proposed and review our decision in the future as circumstances change.

Finally, with regard to the commenters' concern that hospitals are limiting the availability of the AICD device to Medicare beneficiaries, we note that the regulations at 42 CFR 489.53(a)(2) provide that HCFA may terminate a hospital's Medicare provider agreement if it finds that the hospital places restrictions on the number of Medicare beneficiaries it will accept for a particular treatment if it does not place the same restriction on the other populations it treats. Therefore, individuals and groups that are aware of specific cases where a hospital has refused to provide this covered service to a beneficiary should provide this information to us for review.

4. Major Joint and Limb Reattachment Procedures of Lower Extremity (DRG 209)

As a part of the DRG changes set forth in the August 30, 1991 final rule, we revised the classification of cases assigned to DRG 209. Before October 1, 1991, DRG 209 was titled: "Major Joint and Limb Reattachment Procedures", and procedures of both the upper and lower extremity were assigned that DRG. Effective with discharges occurring on or after October 1, 1991, former DRG 209 was split into two DRGs: DRG 209 (Major Joint and Limb Reattachment Procedures of Lower Extremity) and DRG 491 (Major Joint and Limb Reattachment Procedures of Upper Extremity). (See 56 FR 43205.)

In the August 30, 1991 final rule, in response to a comment we received on the DRG 209 change, we stated that we would analyze the appropriate assignment of major limb reattachment procedures as part of our analysis of potential FY 1993 changes. We analyzed the FY 1991 MEDPAR data for limb reattachment cases and found that there were no major limb reattachment cases in the 10 percent sample of all Medicare cases that we use for analyzing possible classification changes. That is, in the 10 percent sample, there were no cases of limb reattachments (of either upper or lower extremities) found in any DRG, including DRG 209 and DRG 485 (Limb Reattachment, Hip and Femur Procedures for Multiple Significant Trauma). While these limb reattachment cases may be different clinically and in terms of resource consumption from the major joint replacement cases in DRG 209 and from the other cases in DRG 485, these cases appear to be especially rare in the Medicare population. Based on the lack of supporting data and the fact that few reattachment procedures are performed, we did not propose any changes to the DRG assignment of major limb reattachment cases.

Comment: One commenter expressed concern that the evaluation of the appropriateness of DRG classification changes, in particular the decision not to make a change in the DRGs for limb reattachment cases, is based on only a sample of MEDPAR cases, rather than the entire MEDPAR file. The commenter stated that it appears to be appropriate to search all records before concluding that no change should be made.

Response: The data we analyzed in deciding whether or not to reassign the major limb reattachment procedures was a 10 percent random sample of the September 1991 update of the FY 1991 MEDPAR, which contained approximately 9.5 million cases. We have found that a 10 percent sample (approximately 1 million claims) is fully representative of the 100 percent file and is completely reliable as a basis for making decisions about DRG revisions.

In response to this comment, using the June 1992 update of the FY 1991 MEDPAR file, which contains approximately 10.4 million Medicare discharges, we searched the entire file for major limb reattachment cases. The limb reattachment procedure codes 84.23 (Forearm, wrist, or hand reattachment), 84.24 (Upper arm reattachment), 84.26 (Foot reattachment), 84.27 (Lower leg or ankle reattachment), and 84.28 (Thigh reattachment). In FY 1991, these procedures were assigned to DRGs 209, 441 (Hand Procedures), 442 and 443 (Other OR Procedures for Injuries), 459 (Nonextensive Burns with Wound Debridement or Other OR procedure), 472 (Extensive Burns with OR Procedure), 485, and 486 (Other OR Procedures for Multiple Significant Trauma). In these DRGs, we found only four cases: Two in DRG 209 and one each in DRGs 441 and 443. All of these cases were reattachments of the upper extremity.

(Note: The upper extremity case in DRG 209 in FY 1991 would be classified in DRG 491 effective October 1, 1991.)

An additional 15 cases of major limb reattachment were found in the review of the full FY 1991 MEDPAR. Of these cases, 11 cases were assigned to DRG 424 (O.R. Procedure with Principal Diagnosis of Mental Illness), which consisted of 9 cases of lower leg or ankle reattachments and 2 cases of forearm, wrist, or hand reattachments. The following DRGs each had one case: DRG 113 (Amputation for Circulatory System Disorders Except Upper Limb and Toe), DRG 357 (Uterine and Adnexa Procedures for Ovarian or Adnexal Malignancy), DRG 440 (Wound Debridements for Injuries), and DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis). All these cases were forearm, wrist, or hand reattachments, except for the DRG 468 case, which is an upper arm reattachment.

The total standardized charges for the 19 cases range from $1,113 to $74,718, with an average charge of $23,731. The lengths of stay range from 1 to 123 days, with an average length of stay of 36 days. These cases were distributed across 19 hospitals, that is, each hospital had only one case.

Based on this analysis, we believe that our proposed decision to make no changes for major limb reattachments was correct. There were only two cases in DRG 209, the DRG from which the commenter wished to move these cases. The charges for these cases were well within the expected variation of charges for cases in this DRG. With a universe of only 19 cases, of which only 4 occurred in DRGs to which the procedures are assigned, and the wide distribution of these cases among hospitals, we continue to believe that there is no support for the creation of a separate DRG for limb reattachments.

Comment: We received three comments regarding the DRG classification of major joint replacements of the lower extremity involving infections or mechanical complications, which are currently assigned to DRG 209. The commenters wrote to support the creation of a separate DRG for these cases, citing the August 30, 1991 final rule (56 FR 43205) where we stated that we intend to address this issue through our refinements to the DRG system to reflect variation in the severity of illness among patients. The commenters pointed out that since a handful of specialty hospitals treat a disproportionate number of these very complicated cases, they are being systematically underpaid under the present DRG classification.

One commenter submitted a report that analyzes the DRG 209 cases treated at one of these specialty hospitals and makes recommendations on how to reclassify certain DRG 209 cases to improve payment equity to these types of hospitals. The commenter believes that the type of severity adjustment HCFA is considering (that is, one in which consideration is given to a set of major complicating conditions applied across all DRGs) is not the type of system that will remedy the problem in DRG 209. The issue in DRG 209 is a type of severity problem in which a specific diagnosis or procedure represents a clinically meaningful subset of patients within a certain DRG that are more severely ill. Therefore, the commenter recommends creating new DRGs for replacement of infected prosthesis of the lower extremity and for mechanical and other complications of limb replacement of the lower extremity. In response to our request in the proposed rule for comments on methods for predicting the effect of DRG changes on coding and payment (see detailed discussion below in section II.D of this preamble), this commenter proposes a methodology and believes that the change he is seeking in DRG 209 could serve as the "field" test for the proposal.

Response: In general, we do not make DRG changes for a small subset of cases in a DRG that tend to have charges higher than average. Our response to requests for such changes is to point out the averaging effect of cases in a DRG. That is, in each DRG there are cases for which the costs are higher than average; however, there are also cases with costs lower than average, and the cases will, over the long run, balance out. We consider making exceptions to this policy when the subset of higher cost cases is not spread over many hospitals but, rather, is concentrated in a few specialty hospitals. Based on the evidence we have seen so far, it appears that the distribution of these complicated joint replacements may be systematically underpaying a small number of hospitals that, because of their specialization, are unable to balance the expensive cases with a comparable number of less expensive cases.

Since we are unable to thoroughly evaluate this suggestion for a possible change in FY 1993, we will add this issue to our FY 1993 DRG analysis agenda.

5. Alcohol/Drug Use and Alcohol/Drug Induced Organic Mental Disorders (MDC 20)

In response to concerns that the alcohol/drug DRGs needed further refinement, alcohol/drug treatment hospitals and distinct part hospital units were excluded from the prospective payment system soon after its implementation. This exclusion was temporary until an adjustment to the DRG classification system would permit prospective payment to be made appropriately for alcohol and drug treatment services.

Effective with discharges occurring on or after October 1, 1987, the alcohol/drug DRGs were restructured as follows:

DRG 433 Alcohol/Drug Abuse or Dependence, Left Against Medical Advice
DRG 434 Alcohol/Drug Abuse or Dependence, Detoxification or Other Symptomatic Treatment, with CC
DRG 435 Alcohol/Drug Abuse or Dependence, Detoxification or Other Symptomatic Treatment, without CC
DRG 436 Alcohol/Drug Dependence with Rehabilitation Therapy
DRG 437 Alcohol/Drug Dependence, Combined Rehabilitation and Detoxification Therapy

Effective with the same date, the exclusion of alcohol/drug treatment hospital and units from the prospective payment system was eliminated, and these hospitals and units were brought under the prospective payment system. (For a detailed discussion of this change, see the June 10, 1987 proposed rule (52 FR 22081), the September 1, 1987 final rule (52 FR 33036), and the September 1, 1987 final notice on DRG classification changes (52 FR 33143).)

Since that time, we have received inquiries concerning the possibility of

adding a surgical partitioning to MDC 20. Based on our analysis of the FY 1991 MEDPAR data, we estimated in the proposed rule that the total number of cases in MDC 20 that would result in a surgical DRG assignment is under 1 percent. We did not believe that this was a sufficient number of cases to propose the creation of a surgical DRG.

However, a review of the average charges for the surgical cases shows that these cases tend to be much more expensive than the medical cases that group to MDC 20. In fact, the average charge for a case with an OR procedure more closely resembles the average charge of those cases classified to DRGs 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis), depending on the assignment procedure. Therefore, to ensure equitable payment and to accommodate surgeries performed during alcohol/drug admissions, we proposed that all cases classified in MDC 20 for which an OR procedure is performed would be assigned to DRG 468, 476, or 477 as appropriate, effective with discharges on or after October 1, 1992.

We received no comment on this change; thus, we are incorporating our proposal into this final rule.

6. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103) and the class "coronary bypass" consists of two DRGs (DRGs 106 and 107). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class, therefore, involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5, and that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we will weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes will then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lowerweighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, which may sometimes occur in cases involving multiple procedures, this result is unavoidable.

We would like to point out that, notwithstanding the foregoing discussion, there are a few instances where a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs regardless of the fact that the weighting factor for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the weighting factors are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we proposed to modify the surgical hierarchy for the pre-MDC DRGs and MDCs 3, 5, 8, and 12 as set forth below.

- In the pre-MDC DRGs, we proposed to reorder Tracheostomy Except for Mouth, Larynx, or Pharynx Disorder (DRG 483) above Bone Marrow Transplant (DRG 481).
- In MDC 3, we proposed to reorder Myringotomy with Tube Insertion (DRGs 61 and 62) above Cleft Lip and Palate Repair (DRG 52) and reorder Sinus and Mastoid Procedures (DRGs 53 and 54) above Sialoadenectomy (DRG 50).
- In MDC 5, we proposed to reorder Amputation for Circulatory System Disorders Except Upper Limb and Toe (DRG 113) above Permanent Cardiac Pacemaker Implant or AICD Lead or Generator Procedure (DRGs 115 and 116) and to reorder Upper Limb and Toe Amputation for Circulatory System Disorders (DRG 114) above Cardiac Pacemaker (DRGs 117 and 118).
- In MDC 8, we proposed to reorder Foot Procedures (DRG 225) above Major Shoulder/Elbow Procedures or Other Upper Extremity Procedures with CC (DRG 223).
- In MDC 12, we proposed to reorder Testes Procedures (DRGs 336, 339, and 340) above Transurethral Prostatectomy (DRGs 336 and 337).

Comment: The only comment we received on the surgical hierarchy changes was from a national association representing children's hospitals regarding two of our proposed changes. The first comment concerned our proposal to reorder pre-MDC DRG 483, Tracheostomy, Except for Mouth, Larynx, or Pharynx Disorder, above DRG 481, Bone Marrow Transplant. The commenter states that, based on his review of data, the arithmetic mean costs for bone marrow transplant patients are the same or more than those for tracheostomy patients. He also suggests that, from a clinical coherence standpoint, it is advantageous to group bone marrow patients above the more heterogeneous tracheostomy grouping. The commenter, therefore, urges that we leave the pre-MDC hierarchy as it is currently.

In addition, the commenter is concerned about our proposal to reorder Myringotomy with Tube Insertion (DRGs 61 and 62) above Cleft Palate and Palate Repair (DRG 52). The commenter reports that, for a pediatric population, patients are not often admitted for an inpatient stay just for a myringotomy, although there are a number who are admitted for other surgical procedures and also receive a myringotomy. In contrast, many pediatric patients are admitted for the more complex procedure of cleft lip and palate repair. If our hierarchy change is implemented, the commenter foresees a number of cases in which the child will be admitted to the hospital in order to have a cleft palate repair and a myringotomy, and the child will group to one of the myringotomy DRGs rather than the cleft lip and palate DRG.

Response: In our analysis of FY 1991 MEDPAR data, we determined that the average standardized charge for patients in DRG 483 is higher than that for the cases in DRG 481. Based on cases in the FY 1991 MEDPAR file, the average standardized charges for DRG 483 and 481 are $115,093 and $103,213, respectively. The commenter did not report which data were used for his analysis, but we have used consistently the same data (that is, the MEDPAR file) and methodology to make all changes to the surgical hierarchy. It is possible that the commenter has many more pediatric patients in his data than does MEDPAR and that that had an effect on his average costs. However, since the purpose of the surgical hierarchy is to ensure that Medicare cases with multiple surgical procedures are assigned to the Medicare DRG associated with the most resource-intensive surgical class, we are proceeding with this change.

Regarding the second comment about the reordering of DRGs 61 and 62 above DRG 52, we understand the commenter's concern. However, for the Medicare population, this ordering is more accurate than the current hierarchy. As we have stated in previous years, the changes we make to the prospective payment system, and the DRG classification in particular, are based on Medicare data and are designed for the Medicare population, that is, the elderly and disabled. Therefore, changes and modification we make to that system may not always be appropriate for a younger population, such as the one treated most often in children's hospitals. With regard to the commenter's specific concern that this change in hierarchy would result in cases previously classified to DRG 52 now being classified in DRGs 61 and 62 because they have both procedures performed, based on our data, no cases moved from DRG 52 to 61 and 62 as a result of the hierarchy change. We also note that we had previously proposed this change as a part of our FY 1991 changes and, in response to a similar comment, decided not to proceed with the change because of the small difference in average charges. (See the September 1, 1990 final rule; 54 FR 36025.) However, this year, the difference in average charges between these two surgical classes has increased so much we believe we must implement the change to ensure correct payment for the Medicare cases in these DRGs.

Based on a test of the proposed surgical hierarchy using the most recent MEDPAR file and the revised GROUPER software, we find that the changes we proposed are still supported by the data and no additional changes are indicated. Therefore, the proposed surgical hierarchy is incorporated in this final rule.

7. Refinement of Complications and Comorbidities List

There is a standard list of diagnoses that are considered complications or comorbidities (CCs). This list was developed by physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In preparing the original CC list, a substantial CC was defined as a condition that, because of its presence with a specific principal diagnosis, would increase the length of stay by at least one day for at least 75 percent of the patients.

In previous years, we have made changes to the standard list of CCs, either the addition of new CCs or the deletion of CCs already on the list. For FY 1993, we did not propose to make any changes to the current CC list.

We proposed a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 1992. (See section II.B.9, below, for a discussion of these changes.) We proposed the changes in accordance with the principles established when we created the CC Exclusions List in 1987. In this final rule, we are implementing the changes as proposed.

Tables 6g and 6h in section IV of the addendum to this final rule contain the revisions to the CC Exclusions List that are effective for discharges occurring on or after October 1, 1992. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6g—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 1992, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6h—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 1992, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $73.00 and on microfiche for $19.00, plus $3.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number, ((PB) 88–133970), should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, and 1992) and those in Tables 6g and 6h of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 1992.

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The DRG Definitions Manual, Version 10.0, is available for $195.00, which includes $15.00 for shipping and handling. This manual may be obtained by writing 3M/HIS at: 100 Barnes Road, Wallingford, Connecticut 06492; or by calling (203) 949–0303.

Comment: Although we proposed no changes in our CC list, we received a comment from an association of children's hospitals concerning the CC list. The commenter notes that the CC list would be different if the Medicare DRGs were intended to serve a pediatric population and requested that we restate our explanation, published in the August 31, 1991 final rule (55 FR 43211),

of the intended patient population for the Medicare DRGs.

Response: In response to the commenter's request, we will restate the specified explanation. While we are aware of the fact that changes we make or do not make in the Medicare DRG system may have an impact on children's hospitals with regard to other payment systems that use our DRGs, the prospective payment system, and the DRG classifications in particular, are based on Medicare data and are designed for the Medicare population, that is, the elderly and disabled. Therefore, changes and modifications we make to that system may not always be appropriate for a different population.

8. Review of Procedure Codes in DRGs 468 and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether, in conjunction with certain principal diagnoses, there were certain procedures performed that are not currently included in the surgical hierarchy for the MDC in which the diagnosis falls. In FY 1989, this review resulted in the addition of DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis) and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis). For a detailed discussion of these changes, see the September 30, 1988 final rule (53 FR 38487).

Since DRG 468 is reserved for those cases in which none of the OR procedures is related to the principal diagnosis, it is intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRGs 476 and 477 are assigned to specific subsets of these cases. DRG 476 is currently assigned to those discharges in which a prostatic procedure is performed that is unrelated to the principal diagnosis.

DRG 477 is assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures if performed with an unrelated principal diagnosis was published in Table 6c in section IV of the addendum to the September 30, 1988 final rule (53 FR 38591). As a part of the September 4, 1990 final rule, we moved a large number of procedures from DRG 468 to 477. We listed the procedure codes in Table 6g in section IV of the addendum to that final rule (55 FR 36135).

We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. This year's review did not identify any changes that are necessary; therefore, we are not moving any procedures from DRGs 468 or 477 to one of the surgical DRGs.

We also reviewed the list of OR procedures that produce DRG 468 assignments to ascertain if any of those procedures should be moved to the list of nonextensive procedures that produce DRG 477 assignments. We analyzed the charge and length of stay data for cases assigned to DRG 468 to identify those procedures that are associated with discharges that are more similar to the discharges that currently group to DRG 477 than to the discharges that group to DRG 468. Generally, we consider moving only those procedures for which we have an adequate number of discharges to analyze the data.

Based on our analysis, we proposed to add the following four procedures to the list of nonextensive procedures that group to DRG 477:

04.41 Decompression of trigeminal nerve root
04.42 Other cranial nerve decompression
04.44 Release of tarsal tunnel
04.49 Other peripheral nerve or ganglion decompression or lysis of adhesions

These cases will group to DRG 477 instead of DRG 468 beginning with discharges on or after October 1, 1992.

We received no comments on our proposals for DRG 468 and 477. Therefore, we are incorporating these changes into the final DRG classifications.

9. Changes to the ICD–9–CM Coding System

As discussed above in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee charged with the mission of maintaining and updating the ICD–9–CM. This includes approving coding changes, developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The Committee is co-chaired by the National Center for Health Statistics (NCHS) and HCFA. The NCHS has lead responsibility for the ICD 9-CM diagnosis codes included in Volume 1—Diseases: Tabular List and Volume 2—Diseases: Alphabetic Index, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in Volume 3—Procedures: Tabular List and Alphabetic Index.

The Committee encourages participation in the above process by major health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding fields, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes at public meetings held on May 2, August 1 and 2, and December 5 and 6, 1991 and finalized the coding changes after consideration of oral comments received at the meetings and written comments received in the 30 days following the December 1991 meeting. The initial meeting for consideration of coding issues for resolution in FY 1993 was held on May 7, 1992 and a second meeting concerning diagnosis codes only was held on August 4, 1992. Copies of the minutes of these meetings may be obtained by writing to the co-chairpersons representing NCHS and HCFA. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Sue Meads, R.R.A, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, NCHS, Rm. 9–58, 6525 Belcrest Road, Hyattsville, Maryland 20782.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, HCFA, Office of Coverage and Eligibility Policy, Rm. 401 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

The ICD–9–CM code changes that have been approved will become effective October 1, 1992. The new ICD–9–CM codes are listed, along with their proposed DRG classifications, in Tables 6a and 6b (New Diagnosis Codes and New Procedure Codes, respectively) in section IV of the addendum to this final rule. As we stated above, the code numbers and their titles were presented for public comment in the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes or have been deleted are in Table 6c (Invalid Diagnosis Codes). Procedure codes that have been replaced by expanded codes or have been deleted are in Table 6d (Invalid Procedure Codes). These diagnosis and procedure codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 1992. The corresponding new expanded codes are included in Tables 6a and 6b. Revisions to diagnosis and procedure code titles are in Tables 6e (Revised Diagnosis Code Titles) and 6f (Revised Procedure Code Titles), which also include the proposed DRG assignments for these revised codes.

No comments were received on our proposed DRG assignments for new and revised ICD–9–CM codes.

10. Other Issues

a. Cochlear Implants

Comment: We received two comments strongly urging us to reassign multi-channel cochlear implants from DRG 49 (Major Head and Neck Procedures) to a new DRG. The commenters noted that this issue has been brought to HCFA's attention every year since 1986 with no change in DRG classification. In the commenters' opinion, classification to DRG 49 vastly underpays these cases, resulting in large losses to hospitals and possible disincentives for hospitals to provide this service to Medicare beneficiaries. This year's proposed reduction in relative weight for DRG 49 (from 2.2790 in FY 1992 to 1.6364 in the proposed rule) will further reduce hospital payment.

One of the commenters commissioned an independent study on payment for cochlear implants and included the report from that study in the comment. This study identified 100 cochlear implant cases in the FY 1991 MEDPAR file assigned to DRG 49. Of that number, 14 cases were from hospitals that had not purchased the cochlear implant device from the only company in the United States that manufactures the devices. An additional 34 claims had billed charges less than $17,000, which the commenter believes is a minimum charge for one of these cases. This minimum charge is based on the cost of the device (approximately $14,695) and the resources consumed by a 2-day hospital stay. These cases were identified as "misbilled" in the study.

The study calculated that the remaining 52 correctly coded and billed cochlear implant cases had average standardized charges of $23,489. The report concluded with four alternative recommendations:

- Reassign cochlear implant procedure codes to DRG 1 (Craniotomy Age > 17 Except for Trauma), which has a proposed weight of 3.2349.
- Reassign cochlear implant procedures to a new DRG within MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth and Throat) and assign a payment weight of 3.3785.
- Reassign the less costly cases (that is, virtually all cases other than cochlear implants) from DRG 49 to DRG 63 (Other Ear, Nose, Mouth and Throat OR Procedures).
- Allow separate Part B Medicare payment for the external components of the cochlear implant system.

Response: We have previously addressed the issue of cochlear implants, most recently in the prospective payment final rule for FY 1991 published on September 4, 1990 (55 FR 36029). Cochlear implants were first covered by Medicare in 1988 and were assigned to DRG 49, which is the highest weighted surgical DRG in MDC 3. Since that time, the cochlear industry has contended that the weight of DRG 49 is too low and does not adequately reflect the resources necessary for cochlear implant.

In response to these most recent comments, we analyzed the FY 1991 MEDPAR data for DRG 49 to determine the current charges and length of stay for cochlear implants. The ICD–9–CM procedure codes we used to identify these cases are 20.96 (Implantation or replacement of cochlear prosthetic device, NOS), 20.97 (Implantation or replacement of cochlear prosthetic device, single channel), and 20.98 (Implantation or replacement of cochlear prosthetic device, multiple channel). We found no cases coded with 20.97 (Single channel devices) and, in fact, these devices have been replaced by the multi-channel devices and are no longer available.

In reviewing the FY 1991 data, we identified 100 cochlear implant cases (the same number identified by the independent study). These cases had an average charge of $17,135, compared to an average charge of $11,696 for all other cases in the DRG. This is a change from the last analysis we did using FY 1989 MEDPAR data. At that time, the average charge for cochlear implants cases was $13,338. The average charge for all other cases in DRG 49 was $15,680. However, cochlear implant cases currently comprise only 3.4 percent of the total DRG 49 cases (100 out of 2,963). We also note that, although the number of cases increased from 69 in FY 1987 to 113 in FY 1988, they have been decreasing since then with 107 cases in FY 1989 and 100 in FY 1991.

Although the average charge for cochlear implants has increased, the charge we have calculated based on FY 1991 MEDPAR data is still much lower than the charge calculated by the study. This is because we have included in our calculation all the cases in the FY 1991 MEDPAR file with a cochlear implant procedure code. The study excluded almost one-half of the cases (48 out of 100) because they believe they were miscoded or misbilled. We have previously addressed this problem and, in fact, we issued instructions to the Medicare Part A fiscal intermediaries (Transmittal No. 1525, May 1991) and the Part B carriers (Transmittal No. 1393, May 1991) concerning this issue. The intermediaries were instructed to return to the hospital any claim for cochlear implants where total charges are less than $17,000. The hospitals are instructed to review and verify the procedure codes and total charges. The carriers are instructed to deny charges under Part B for speech processors furnished in support of surgery during an inpatient hospital stay. We believe that these steps should assist in improving the MEDPAR data on cochlear implants.

In the meantime, while there is a higher charge for the 100 cochlear cases than for the noncochlear cases in DRG 49, we note that the cases are distributed across 53 hospitals and the highest volume of cases at any one

hospital is only 8. There are only 10 hospitals with 3 or more cases; 4 with 6 or more. Charges per case range from $1,235 to $32,951. Length of stay is quite low, with many patients staying in the hospital for only one day.

In response to the recommendation submitted by the commenters to assign cochlear implant cases to a new DRG with a weight of 3.3785, we believe the process for calculating DRG relative weights needs to be clarified. HCFA does not assign weights to DRGs arbitrarily, but, rather, calculates the weight for each DRG based on the resources necessary to treat patients assigned to that DRG relative to all other DRGs. A DRG weight cannot be adjusted or a new DRG created without affecting the weight of other DRGs. It would be inappropriate and inadvisable for us to create a new DRG with a specified weight assigned, as such action would impact the weight and, therefore, the payment, for other DRGs. The process by which DRG weights are recalibrated is described in detail below in section II.C. of this preamble. The weight for DRG 49 in Table 5 reflects both decreases in the charges submitted for the case assigned to DRG 49 and increases in charges for other DRGs, causing a redistribution of the relative weights and resulting in a lower weight for DRG 49.

As discussed above, the reported study recommends several options for resolving the perceived payment inequities for cochlear implants. First, the study suggests moving cochlear implant procedure codes to DRG 1. However, the diagnosis code category assigned to patients admitted for cochlear implants is 389 (Hearing loss). These diagnosis codes are assigned to MDC 3. As noted above in section II.B.1 of this preamble, except for a few special cases, principal diagnosis determines MDC assignment and each code is assigned to a unique MDC. The commenter suggests we handle this problem in the same manner that liver and bone marrow transplant cases are classified, which is by using the procedure codes instead of diagnosis codes for assignment. Liver and bone marrow transplant cases are not assigned to any MDC but are classified by procedure to DRG 480 (Liver Transplant) and DRG 481 (Bone Marrow Transplant) prior to MDC assignment. These DRGs are structured in this way because liver and bone marrow transplants are performed for patients who have principal diagnoses that are assigned to more than one MDC. Therefore, the only way to create one DRG for the procedure and to assign all the appropriate cases to the DRG is to place it before the MDC assignment step.

This method would not be appropriate for cochlear implants. To move these cases to DRG 1, we would have to move the principal diagnosis code category 389 from MDC 3 to MDC 1 (Diseases and Disorders of the Nervous System). However, based on clinical coherence, code category 389 is correctly placed in MDC 3. We note that heart transplant cases are assigned only to MDC 5 (Diseases and Disorders of the Heart) because they are performed only on patients with principal diagnoses assigned to that MDC. Not only would moving cochlear implants to DRG 1 be clinically indefensible, it would also result in significant overpayment to the 100 cochlear cases, which have an average charge of $17,135 compared to the average charge for the cases in DRG 1 of $22,598.

As noted by the commenter, DRG 49 is the highest weighted DRG in MDC 3. Therefore, there is no other DRG conveniently available for assignment of cochlear implants. We believe that the low volume of these cases does not justify the establishment of a new DRG specific to cochlear implants, nor do we generally create DRGs that are specific to a single technology, especially those available only through a single source manufacturer. Assigning less costly cases from DRG 49 to DRG 63, as also suggested by the commenter, would produce the same result, a separate DRG for a small number of technology-specific cases, and would underpay the noncochlear DRG 49 cases (average charge $11,789) relative to other cases in DRG 63 (average charge $7,291). We also note that DRG 63 is the "Other OR procedures" class for MDC 3. This is a group of procedures that are the least likely to be related to the diagnoses assigned to MDC 3, but are occasionally performed on patients with these diagnoses. The procedures assigned to DRG 49 are specifically related to the MDC 3 diagnoses and should not be reassigned to a catchall DRG.

Finally, the commenter states that a substantial portion of the hardware cost of cochlear implant devices is for the externally worn components, the speech processor and headset, which are typically provided to the patient 4 to 6 weeks after the surgery. This commenter suggests these costs be "unbundled" from other inpatient supplies and services and be billed by the surgeon or audiologist to part B Medicare. Since the short length of stay incurred by these patients (70 percent of the admissions in the FY 1991 data had a length of stay of only 1 or 2 days) indicates that the cost of the device is the major component of the charges, allowing this practice would substantially lower the average charge for these cases.

Prior to implementation of the prospective payment system, it was a practice for certain nonphysician services and supplies furnished to hospital inpatients to be billed directly to patients under part B of the program. However, with the enactment of Public Law 98–21 and the implementation of the prospective payment system, several statutory changes concerning the bundling policy were made. More specifically, section 1862(a)(14) of the Act provides that, to qualify for Medicare payment, all services (with limited exceptions) furnished to hospital inpatients must be provided directly or arranged for by the hospital. Thus, these services become inpatient hospital services payable under part A. Section 1833(d) of the Act, in turn, requires that services that are payable under part A may not be paid for under part B. Therefore, all the services provided to a Medicare beneficiary as part of the inpatient hospital stay are covered under part A and may not be billed under part B. This includes the external components of the cochlear device that is implanted during a inpatient stay covered under part A. Therefore, we cannot allow separate part B payment for part of the cochlear device.

We acknowledge that the payment for cochlear implant patients has been an issue for several years. We will continue to evaluate the payment for these cases and its impact on hospitals.

b. HIV-Related Conditions

Comment: We received three comments urging HCFA to adopt the newly identified conditions that are considered by the Centers for Disease Control (CDC) to be HIV-related. The commenters state that these conditions should be included in the list of "major related conditions" as soon as practicable after they are identified to allow these cases to group to DRG 489 (HIV with Major Related Condition).

Response: As we stated in the September 4, 1990 final rule (55 FR 36019) and the August 30, 1991 final rule (56 FR 43208), the HIV-related conditions that qualify for classification to MDC 25 (HIV Infections) are limited to those conditions identified by CDC as being HIV-related. This process includes listing these conditions in Volume 1 of ICD–9–CM in the "Includes Only" notes under diagnosis codes 042.0, 042.1, 042.2, 043.1, 043.3, and 044.0. Since we established the HIV DRGs effective with discharges in FY 1991, we have worked with the National Center for Health Statistics (NCHS), CDC to ensure that our classification of HIV patients is as current and inclusive as possible. In response to this comment, we again contacted NCHS to ensure that our list of HIV-related conditions is complete. Although CDC has reported that new diagnoses are occurring with increasing frequency within the HIV-infected population, these diagnoses have not yet been added to the list of HIV-related conditions. When they are, we will incorporate them into our next list of conditions for MDC 25.

We note that whether these conditions will be considered "major" will be determined by the nature of the condition. Using our criteria, a major HIV related condition involves a disease or disorder of the central nervous system, a malignancy, an infection, or other major related condition.

c. MCE Age Conflict Edits

Comment: We received two comments concerning certain age conflict edits in the MCE. Currently, the MCE identifies and rejects for further development claims that include codes for congenital conditions for patients who are no longer in the newborn age period. However, as stated in the November-December 1988 issue of Coding Clinic for ICD–9–CM, it is correct to report congenital conditions as principal diagnoses for patients beyond the newborn stage. The commenters recommend that, while it may be appropriate to edit for these conditions in the Medicare population, recoding of the cases should not be required and cases should be grouped and paid by the fiscal intermediary once the accuracy of the coding has been verified.

Response: The purpose of the MCE is to identify cases that may require further review due to questionable information on the Medicare claim, and a case that lists a diagnosis that is unlikely in a patient of a certain given age is considered questionable. However, all edits in the MCE can be overridden by the fiscal intermediary once it has verified the correctness of the claim. Although some edits should never be overridden (for example, a noncovered procedure edit or a sex conflict edit), most of the age edits may be occasionally overridden after verification of the claim. We believe the reason that the commenters are experiencing trouble recently is not due to the actions of the fiscal intermediaries, but rather the fact that the HCFA Common Working File (CWF), through which all Medicare inpatient hospital claims must pass before payment, does not provide a mechanism to override MCE edits. We agree with the commenters that Medicare payment should be made for claims that have been coded properly based on coding principles and instructions. Therefore, we will pursue revising the current data edits in the CWF to allow payment for correctly coded claims.

d. Lung Transplants

Comment: We received three comments requesting that immediate consideration be given to recognizing single and double lung transplants as approved, covered Medicare services and creating one or more new DRGs specifically for these cases. One of the commenters (a consulting firm writing on behalf of the other two commenters) submitted an analysis of the cost of these cases and asserted that the payment currently being made for these cases under the prospective payment system is inadequate. In addition, the commenter submitted a recently completed evaluation of the risks, benefits, and clinical effectiveness of lung transplants prepared by the Office of Health Technology Assessment, Agency for Health Care Policy and Research, HHS. ("Single and Double Lung Transplantation", Health Technology Assessment Reports, 1991, Number 5, May 1992, Pub. No. 920028.)

Response: Currently, lung transplants have not yet been the subject of a national coverage decision. Therefore, under HCFA policy, the Medicare contractors (that is, the Part A fiscal intermediaries and the Part B carriers) determine whether or not to cover and pay for claims associated with a lung transplant. Under the current DRG classifications, ICD–9–CM procedure code 33.5 (Lung transplant) is assigned to DRG 75 (Major Chest Procedures) in MDC 4 (Disease and Disorders of the Respiratory System). We note that combined heart-lung transplants (procedure code 33.6) are not covered under Medicare as provided in the notice of HCFA ruling that extended coverage to heart transplants, which was published in the Federal Register on April 6, 1987 (52 FR 10936).

HCFA has begun exploring the possibility of covering lung transplants on a national basis. However, based on our recent experience with other transplant coverage decisions, we believe this process could take a year or more to complete. As part of that process, we will also consider the appropriateness of establishing a new DRG for these cases. We will consider the commenters' suggestions as a part of this determination. We note that any classification of lung transplants, and the resulting DRG relative weight, will be based, to the extent possible, on the cost of providing this service to Medicare beneficiaries.

e. Classification of Vascular Device Infections

Comment: We received a comment requesting that consideration be given to moving ICD–9–CM diagnosis code 996.62 (Infection and inflammatory reaction due to other vascular device, implant and graft) from DRGs 144 and 145 (Other Circulatory System Diagnoses) to DRG 416 and 417 (Septicemia). The commenter states that patients with vascular devices are prone to developing septicemia as a result of the device. However, coding rules require that the complication code (996.62) be coded as the principle diagnosis and the code for septicemia be a secondary diagnosis. (Coding Clinic for ICD–9–CM, Second Quarter 1990, PDX #15.) This results in the patient being classified to DRGs 144 and 145, with proposed weights of 1.0691 and .6304, respectively. A septic patient whose condition is not attributed to the presence of a vascular device will group to DRG 416, with a proposed weight of 1.5203. Therefore, the commenter believes we should consider changing the DRG assignment for code 996.62.

Response: The commenter is correct in stating the applicable coding rules. When the admission is for the treatment of a complication resulting from surgery or other medical care, the complication code is sequenced as the principal diagnosis. If the complication is classified to the 966 through 999 series, an additional code for the specific complication may be assigned. Thus, the case as described by the commenter is correctly coded with 996.62 as the principal diagnosis and the applicable diagnosis code for septicemia from the 038 series as secondary.

According to our medical consultants, patients with vascular devices rarely develop septicemia that is attributable to the presence of the device. It is much more likely that the septicemia is not related to the device. The attending physician is responsible for stating in the medical record the relationship between the septicemia and the presence of the medical device. However, if the case described by the commenter does occur, it is correctly placed in DRGs 144 and 145, which are located in MDC 5. We note that all the complication codes associated with devices of the circulatory system are assigned to these DRGs. It would be

inappropriate to place these codes in MDC 18 (Infectious and Parasitic Disease (Systemic or Unspecified States). Code 996.62 is neither a systemic or unspecified infection and is clinically coherent with the other MDC 5 diagnoses. Therefore, we do not intend to move it to any other MDC.

C. Recalibration of DRG Weights

We proposed to use the same basic methodology for the FY 1993 recalibration as we did for FY 1992. That is, we proposed to recalibrate the weights based on charge data for Medicare discharges. However, we proposed to use the most current charge information available, the FY 1991 MEDPAR file, rather than the FY 1990 MEDPAR file. The MEDPAR file is based on fully coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights were constructed from FY 1991 MEDPAR data, received by HCFA through December 1991, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1991 MEDPAR file at that time included data for approximately 10.2 million Medicare discharges. The MEDPAR file updated through June 1992 includes data for approximately 10.4 million discharges and this is the file used to calculate the weights set forth in Table 5 of the addendum to this final rule.

The methodology used to calculate the DRG relative weights from the FY 1991 MEDPAR file is as follows:

- All the claims were regrouped using the revised DRG classifications discussed above in section II.B of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education costs, disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers using the same criterion as was used in computing the current weights. That is, all cases outside of 3.0 standard deviations from the mean of the log distribution of charges per case for each DRG were eliminated.
- The average charge for each DRG was then recomputed excluding the statistical outliers and divided by the national average standardized charge per case to determine the weighting factor.
- We established the weighting factor for heart transplants (DRG 103) and liver transplants (DRG 480) in a manner consistent with the methodology for all other DRGs except that the heart and liver transplant cases that were used to establish the respective weight were limited to those Medicare-approved heart and liver transplant centers that have cases in the FY 1991 MEDPAR file.
- Acquisition costs for kidney, heart, and liver transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); and DRG 480 (Liver Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges prior to computing the average charge for the DRG and prior to eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. In the FY 1990 MEDPAR data used to establish the FY 1992 weights, there were 37 DRGs that contained fewer than 10 cases. We proposed to use that same case threshold in recalibrating the DRG weights for FY 1993. Using the FY 1991 MEDPAR data set, there are 37 DRGs that contain fewer than 10 cases. We computed the weight for the 37 low-volume DRGs by adjusting the original weights of these DRGs by the percentage change in the average weight of the cases in the remaining DRGs.

The weights developed according to the methodology described above, using the DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that reclassification and recalibration changes beginning with FY 1991 be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. We interpret section 1886(d)(4)(C)(iii) of the Act to require that we ensure the FY 1993 reclassification and recalibration changes do not affect aggregate payments. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals. Therefore, as discussed in section II.A.4.b of the Addendum to this final rule, we are making a budget neutrality adjustment to assure the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

Comment: We received one comment recommending that Medicare exclude the low-volume DRGs from the prospective payment system. The commenter stated that, because the FY 1993 weights for these DRGs were set by applying the average increase in the case-mix index across all cases to the FY 1992 weights for these DRGs, the weights no longer reflect the resources used to treat patients in these DRGs. The commenter notes that all but three of these DRGs are for pediatric (the age 0–17 category) or neonatal cases. These "artificial" weights have a minor impact on payments under Medicare but may result in severe distortions in payments for other populations for whom the Medicare weights are used. Therefore, HCFA should refrain from calculating and publishing weights for these DRGs.

Response: As described above, the weight for every DRG with fewer than 10 cases was computed by adjusting the DRG's original weight by the percentage change in the average weight of the cases in the remaining DRGs. Increasing the weight by the percentage change in the average case weight maintains a constant relationship between the average resources required for these cases and the average Medicare case. We believe that this is a reasonable approach to establishing the relative weight when there are insufficient cases to calculate the weight based on current charge data. The original weights for the low volume DRGs were calculated by supplementing the MEDPAR data with records from Maryland and Michigan. (See the September 1, 1983 final rule with comment period (48 FR 39768).) There were 109 DRGs whose weights were calculated in this manner. We note that there have been fewer than 40 low-volume DRGs for several years and that these DRGs vary somewhat from year to year. In addition, although low volume, cases continue to be classified to these DRGs. It would be inappropriate to exclude the low volume DRGs from the prospective payment system because we have no other basis for paying the cases that are classified to these DRGs.

In response to the concern that others who use the Medicare weights may experience distortions in payments due to the presence of these low volume DRGs, we reiterate that the DRG weights set forth in this final rule are established for the Medicare population. While other payers may wish to follow the Medicare classification scheme, we have consistently cautioned against the use of Medicare DRG weights for other populations.

Comment: One commenter examined the impact of the proposed DRG weights for the top 58 high volume DRGs at his hospital. Based on this analysis, the commenter notes that payments to his hospital will decrease dramatically. The commenter protests a loss in payment that is attributable only to recalibration, further reducing overall payments to hospitals already suffering from the effects of the recession.

Response: Each year, as directed by section 1886(d)(4)(C) of the Act, we recalibrate the DRG weights to accurately reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The DRG weights are not arbitrarily set by HCFA, but rather are calculated based on the actual case charges submitted by hospitals.

Because the DRG weights are relative to each other, it is impossible for weights to increase for all DRGs. As some increase, others must decrease. In the past few years, average charges in the more resource-intensive DRGs have tended to rise more rapidly than those in the less resource-intensive DRGs. As a result, those hospitals that tend to treat cases that are assigned to the more resource-intensive DRGs will realize an overall increase in payments due only to the recalibrated weights (regardless of any update factor applied to the standardized amounts), whereas hospitals that tend to treat cases in the less resource-intensive DRGs will realize an overall decrease in payments. Reclassification and recalibration are intended to reflect changes in relative resource costs and to distribute the payments made to all hospitals under the prospective payment system in the most equitable way possible based on the types of cases the hospitals treat.

D. FY 1991 DRG Classification Changes and Their Effect on DRG Relative Weights and Payments

As described above in sections II.B and C of this preamble, each year we make changes to the DRG classifications in addition to recalibrating the relative weights based on the most recent charge data available. In the September 4, 1990 final rule, we made several major modifications to the DRGs effective with discharges occurring on or after October 1, 1990 (FY 1991). These changes included creating two new DRGs for liver and bone marrow transplants, which had recently been approved for coverage under the Medicare program. In addition, we added two DRGs for cases in which a tracheostomy is performed: one for patients with a disorder of the mouth, larynx, or pharynx and one for all other patients. Cases are assigned to these four DRGs prior to assignment to one of the MDCs.

We also added two new MDCs, one for multiple significant trauma (MDC 24) and one for human immunodeficiency virus (HIV) infections (MDC 25). MDC 24 consists of four DRGs (three surgical and one medical) and MDC 25 is made up of three DRGs (one surgical and two medical).

The FY 1991 changes were designed to improve payment equity by increasing the amount of variation in resource costs explained by the DRGs. For the most part, these new DRGs have extremely high weights, and the cases that are now classified to them receive much higher payments than they would have absent the changes.

When changes in DRG classifications are made, we account for the effect the changes will have on future program payments through the recalibration and normalization of the DRG weights. In the year in which the changes are effective, they are intended to be budget neutral; that is, the payments in that year should be no more or no less than the payments would have been without the changes. As discussed in more detail above, in Section II.C of this preamble, recalibration is accomplished by processing the most recent, complete MEDPAR data through a revised GROUPER that encompasses the DRG classification changes and reweighting the DRGs based on the charges submitted by the hospitals. After recalibration is complete, the new weights are normalized by an adjustment factor. The normalization process compares the average case weight before recalibration to the average case weight after reclassification and recalibration using the same set of MEDPAR data, and an adjustment is made to the new weights so that these two average case weights are the same.

When we conducted the normalization of the FY 1991 DRG weights, we used the FY 1989 MEDPAR data. The FY 1989 claims were first mapped into their FY 1990 equivalents and processed through the FY 1990 GROUPER to determine the average case weight for that year. Those same data were then remapped into their FY 1991 equivalents and processed through the FY 1991 GROUPER to estimate what would be the average case weight during that year. The new DRG weights were then adjusted so that the two average case weights (FYs 1990 and 1991) are equal. (In addition to this process, we also made a budget neutrality adjustment to ensure that aggregate payments made in FY 1991 would be no more than and no less than they would have been absent the DRG and wage index changes.)

Now that the MEDPAR file for FY 1991 is available, we can evaluate the effect of the new DRGs on the actual distribution of cases under the revised DRGs. We find that many more cases than we had originally estimated were classified into the new DRGs. In addition, there are many DRGs that experienced at least a 20 percent increase or decrease in percentage of cases assigned between FY 1989 and FY 1991 when both sets of cases are grouped using the FY 1991 GROUPER. These include several of the new DRGs, other DRGs that were revised effective with FY 1991, and some DRGs for which there was no major change.

Based on our analysis of the MEDPAR received by HCFA through December, 1991, the effect of these unanticipated changes in the distribution of cases and the resulting increase in average DRG weight resulted in a 1 percent increase in Medicare inpatient hospital program payments compared to the payments that would have resulted if we had not made DRG reclassification and recalibration changes in FY 1991. If we had been in possession of the actual FY 1991 cases when we established the weights for FY 1991, the overall average case-mix index would have been 0.99 percent lower than the actual FY 1991 case-mix index. The total case-mix change between FY 1990 and FY 1991 was 2.5 percent.

Although there can be many reasons for increases in the relative number of cases assigned to a particular DRG, including an increase in the frequency with which procedures are performed or an increase in inpatient treatment of certain diagnoses, we believe that the 1 percent increase attributable to the DRG classification and recalibration changes was, for the most part, caused by coding improvements made in response to the FY 1991 DRG changes. The increase in cases assigned to higher-weighted DRGs

is most dramatic in the new tracheostomy DRG 483 and the three new HIV-related DRGs (488 through 490). When the FY 1989 and 1991 cases are separately classified using the FY 1991 GROUPER, the number of cases assigned to DRG 483 increases 30 percent between the 2 years and the number of cases assigned to DRGs 488 through 490 increases by 123 percent.

The following table illustrates the changes:

DRG	Number of cases in DRG		DRG cases as percent of total cases		Percent increase
	Estimate	Actual	Estimate	Actual	
483	25,191	32,751	0.25	0.32	30
488	261	473	.003	.005	81
489	1,801	4,187	.02	.04	133
490	780	1,679	.01	.02	115
Total MDC 24	2,842	6,334	.03	.08	123
Total cases	28,013	39,085	.28	.38	40

As noted above, we believe that the increases in the tracheostomy and HIV DRGs are due, in large part, to the fact that hospitals changed their coding practices between FYs 1989 and 1991 in response to the FY 1991 DRG changes. Before implementation of the FY 1991 changes, there was no incentive to code a tracheostomy outside of MDC 4 nor was there any incentive to code a secondary diagnosis of HIV.

However, once these codes became significant for correct DRG classification, they were included on claims where they might previously have been left off.

Based on our analysis of the FY 1989 MEDPAR, in setting the FY 1991 relative weights, we estimated that 55 percent of the cases reassigned to DRG 483 would have been classified to DRG 474 (Respiratory System Diagnoses with Ventilator Support) in MDC 4 before the FY 1991 changes. However, the actual number of cases reassigned from DRG 474 was lower while the number of cases reassigned from all other DRGs increased dramatically. The following table demonstrates these changes:

BREAKDOWN OF CASES ASSIGNED TO DRG 483 IN FY 1991

FY 1989 DRG	Estimate		Actual	
	Number of cases	Percent of DRG 483 cases	Number of cases	Percent of DRG 483 cases
DRG 474	13,929	55	11,851	36
All other DRGs	11,262	45	20,900	64
Total	25,191	100	32,751	100

This indicates that a significant number of cases assigned to other DRGs in the FY 1989 MEDPAR did not include a code for a tracheostomy procedure that was performed during the stay. Because DRG 483 had such a high relative weight in FY 1991 (14.0597) compared to the DRGs from which these cases were reclassified, the inability to predict correctly the actual case distribution resulted in a substantial unanticipated increase in program payments.

The new DRGs created for HIV cases experienced a similar influx of cases. In this case, the actual FY 1991 cases came from the DRGs we had predicted they would; however, they came in much larger numbers than we had estimated. For example, based on our analysis of the FY 1989 MEDPAR, we predicted that 21 percent of the cases reassigned to DRG 489 (HIV with Major Related Condition) would have been assigned to DRG 79 (Respiratory Infections and Inflammation with CC) absent the reclassification. The actual percentage of FY 1991 cases assigned to DRG 489 that would have been assigned to DRG 79 remained virtually constant at 22 percent. However, the estimated number of cases was 385 and the actual number was 922. Therefore, even though we correctly predicted the percent of cases in DRG 489 that would move from DRG 79, the number of cases more than doubled. While we recognize the incidence of HIV increased between FY 1989 and 1991, we believe a 123 percent increase must also be attributable to improved coding for HIV infection.

This type of change in coding happens every year in response to DRG changes. One example of such a change is the deletion of diagnoses from the list of CCs. When CCs are present in a case, hospitals will make sure to code at least one CC in order to classify a case in the higher-weighted "with CC" DRG. However, if that CC is deleted from the list of recognized CCs for the DRG and we predict that the case will now be classified in the non-CC DRG, it is possible that hospitals will simply code another CC present in the medical record in order to achieve the "with CC" classification. Therefore, cases that we had predicted would be classified to the "without CC" DRG actually remain as CC cases because of a change in coding.

Based on the FY 1989 MEDPAR, we had estimated that CC revisions effective for FY 1991 would change the distribution of cases in DRGs 320 and 321 (Kidney and Urinary Tract Infections Age > 17) by decreasing the number of cases assigned to DRG 320 (with CC). (The number of cases assigned to DRG 321 was estimated to remain about the same.) However, the actual number of cases assigned to DRG 320 in the FY 1991 MEDPAR file increased and the number of cases assigned to DRG 321 decreased. The number of cases assigned to DRGs 320 and 321 and their percent of total MEDPAR cases are shown below:

	Relative weight	Estimate		Actual	
		Number of cases	DRG cases as percent of total cases	Number of cases	DRG cases as percent of total cases
DRG 320	1.0055	145,039	1.47	162,874	1.60
DRG 321	.6507	34,523	.38	28,718	.28

Thus, the actual number of cases assigned to the higher-weighted DRG was higher than the number we had estimated, and the actual number of cases assigned to the lower-weighted DRG was lower. The coding practice changes made in response to our reclassification of CCs resulted in additional program payments beyond those we had estimated.

This can also happen in response to surgical hierarchy changes or to changes in the procedures that affect classification. This can be seen in the movement of cases in MDC 5 between FYs 1989 and 1991. We completely reconstructed the majority of the surgical DRGs in MDC 5 effective for FY 1991 and there were significant deviations from the estimated frequency for each DRG. For example, the changes made in MDC 5 for FY 1991 resulted in a tremendous increase of cases coded with percutaneous cardiovascular procedures. We assigned these cases to DRG 112 effective with FY 1991 and, based on the FY 1989 MEDPAR, we estimated that 83,614 cases would group to this DRG. The FY 1991 MEDPAR as of December 1991 shows that 128,778 cases were assigned to this DRG, an increase of 54 percent. Although this is the DRG that changed the most in terms of number of cases, virtually all of the revised MDC 5 DRGs experienced some change in the number of cases assigned in FY 1991 as opposed to our estimates.

Even though we have experienced this type of case-mix increase before (see the September 1, 1989 final rule for a discussion of the inflationary effect of the FY 1987 DRG changes (54 FR 36469)), we are particularly concerned about this problem in light of the fact that we are seriously considering major changes to the DRG system to better explain the effects of severity of illness. Besides the mandate of section 1886(d)(4)(C)(iii) of the Act, which provides that aggregate payments may not be affected by DRG reclassification and recalibration changes, we do not believe it is prudent policy to make changes for which we cannot predict the effect on the case-mix index and, thus, payments.

Although we can predict that changes in certain hospital coding practices may result from DRG changes we make, it is not possible to predict which claims will be affected by these changes. Thus, in the reclassification and recalibration process, we can rely only on the code information included on actual cases. We are hoping that the expansion of the hospital bill to include nine diagnosis and six procedure codes will help to alleviate this problem to some extent. However, this change went into effect on April 1, 1992 and, thus, will not be reflected in a full year of MEDPAR data until FY 1993, which means it will not be available to us for purposes of weight construction until FY 1995.

As we stated in the proposed rule, we are strongly committed to making changes in the DRG system to improve payment equity; however, in light of the mandate of budget neutrality, our current inability to predict the changes in coding behavior that may result from our revisions limits the extent to which we can revise the system. Thus, we announced in the proposed rule that, until such time as we are able either to improve our ability to predict coding changes by validating in advance the impact that potential DRG classification changes may have on coding behavior or to make methodological changes to prevent building the inflationary effects of the coding changes into future program payments, we intend to make only relatively insignificant changes in the DRG classification system. As a general policy, we will consider the changes to be insignificant if, in the aggregate, we estimate that program payments will increase by less than 0.1 percent if we have underestimated by 10 percent the number of cases that will receive more favorable payment under the DRG classification changes that provide incentives for coding improvement.

This general policy will preclude our making significant refinements to the DRG system until we are able to protect program payments against the inflationary impact of those changes. We emphasize that we will continue to make certain DRG reclassification changes that are appropriate. In fact, as discussed above in section II.B of this preamble, we are implementing changes in this final rule to reflect changes in relative resource use. The limitation on making DRG classification changes applies only to significant modifications to the system.

One approach to this problem that we have considered is maintaining the average case weight at 1.0 after recalibration, thereby eliminating the process of normalization. In other words, after recalibration, we would not scale the new weights upward to carry forward the cumulative effects of past case mix increases. We would, instead, make an adjustment or include in the annual update factor a specific allowance for any real case-mix change that occurred during the previous year. This is a relatively simple and straightforward system for preventing the effects of year to year increase in case mix index from accumulating in the DRG weights.

This methodology would have several advantages. First, it would be an easy and effective means of removing from the payment base inappropriate year-to-year case-mix increase (that is, case-mix increases mainly due to changes in coding practices). It would also streamline the current process of adjustments, where recalibration of the weights is followed by normalization, and the recommended update factor includes a negative adjustment to offset all case-mix increase estimated for the previous year followed by a positive increase to add back the real case-mix increase (that is, a genuine increase in the resources required to treat patients). Finally, the change would restore the meaning of the relative weights by bringing the average weight back to 1.0 each year. Thus, 1.0 would reflect the average resources used to treat the average Medicare inpatient hospital case, while a weight of 2.0 would reflect a case that requires twice the average resources to treat and a weight of 0.5 would reflect a case that requires one-half the average resources. Since the final estimated average FY 1991 DRG relative weight is 1.3647, this type of comparison is not readily accomplished using normalized DRG relative weights.

We solicited public comments on this and other possible approaches that could be implemented to account for coding changes that result from

revisions in the DRGs. These comments and our responses are presented below.

Comment: One commenter protested our decision to do only minor recalibration of the DRG weights. The commenter believes that the result of this action is to keep payments artificially low for many of the higher-cost DRGs.

Response: We believe that this commenter misunderstood what we stated in the proposed rule. We intend to fully recalibrate the DRG weights every year based on the most recent MEDPAR data. We intend to limit only the extent to which we will make changes to the classification of cases into DRGs.

Comment: Many commenters objected to our decision not to make significant revisions in the DRGs until we improve our ability to predict the results of those changes or until we have made methodologic changes in the recalibration or in the determination of the annual update factor applied to the standardized amounts. The commenters urged us to adhere to the requirements of section 1886(d)(4)(C)(i) of the Act, which mandates annual revisions to the DRG classifications to reflect changes in resource use. The commenters believe that HCFA's current inability to account for the impact of DRG classification changes does not relieve the agency, legally or logically, of its statutory obligation to make all appropriate changes on an annual basis.

Response: We acknowledge our obligation to make appropriate DRG classification changes and to recalibrate DRG relative weights as mandated by section 1886(d)(4)(C) of the Act. In accordance with this provision, as the DRG reclassification changes set forth in this final rule demonstrate, we will continue to make changes to the DRGs to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. Our decision to limit our changes is not an attempt to circumvent our statutory obligation. On the contrary, we are making every effort to improve our ability to account for valid changes in case mix, technology, and treatment patterns that legitimately affect hospital resource consumption. At the same time, we are also mindful of our obligation under section 1886(d)(4)(C)(iii) to make the DRG changes in a budget neutral manner. In light of this provision, we do not intend to recommend DRG modifications with inflationary outcomes that we are unable to predict and that may, therefore, result in a violation of the mandate of budget neutrality. Our goal is to refine our methodology so that we can fulfill both statutory requirements in the most appropriate manner.

Comment: We received one recommendation that we seek a legislative change that would allow the DRG reclassification and recalibration budget neutrality adjustment to be based on estimated rather than actual experience. Thus, budget neutrality would require that, for the distribution of cases used for reclassification and recalibration of the DRGs, estimated total payments under section 1886(d) of the Act after reclassification and recalibration are equal to estimated total payments before reclassification and recalibration.

Response: The use of "estimated" versus "actual" payments is an issue only to the extent that we are unable to predict accurately the impact of modifications on program payments. Changing the law to require only that the estimated impact of DRG reclassification and recalibration be budget neutral does not address the inflationary effects of coding improvements and other areas prone to misestimation. Regardless of whether the statute requires that "estimated" or "actual" payments be budget neutral, we need to improve our methodology for projecting changes that will occur between the estimation year and the payment year in the distribution of cases, enabling us to fulfill both the letter and the spirit of the law. To the extent we are unable to improve the estimation methodology, we need to establish a methodology that will avoid building the inflationary impact of the changes into future program payments. Unlike other estimates that are redone on an annual basis (for example, estimated outlier payments), misestimating the effect of DRG changes results in a permanent increase in the average case weight. Thus, since implementation of the prospective payment system, the average case weight has increased 35 percent. Although some portion of this increase reflects real changes in the mix of cases treated by hospitals, we believe much of it is a result of improved coding practice. Thus, we will continue to seek suggestions and explore and evaluate a variety of methodologies to improve our ability to make our DRG modifications budget neutral.

Comment: Commenters argued that in analyzing the unanticipated change in case movement following the FY 1991 DRG changes, we overstated the impact of the changes on coding. These commenters believe that there is an actual increase in case complexity every year and that attributing all the change to improved coding practice overstates the problem. The example used most frequently by the commenters is the HIV infection DRGs. They believe that the incidence of these cases is increasing at such a rate that it could easily have accounted for the 123 percent increase we saw between FYs 1989 and 1991 data.

Response: We agree with the commenters that HIV infection is a condition for which there is real change in case numbers. And, in fact, we acknowledged this trend in the proposed rule (57 FR 23628). However, the increase in case numbers between those 2 years for HIV patients far exceeded the increase we would have expected based on the trends in previous years. We note that our methodology for determining the effect of the DRG changes compares the average DRG weight for the actual FY 1991 cases using the FY 1991 GROUPER and relative weights to the average DRG weight for the same cases using the FY 1990 GROUPER and relative weights. By using the actual FY 1991 cases on both sides of the comparison, all coding changes, whether real or not, are recognized. The analysis is designed to determine how much of the increase in the case-mix index is attributable to the DRG changes and recalibration. The analysis is not designed to determine how much of the observed case-mix change is real and how much is attributable to coding improvements.

Comment: Some commenters objected to our proposal to maintain the average case weight at 1.0 after recalibration. Many commenters urged us never to adopt this procedure. Other commenters agreed that normalizing the recalibrated DRG weights to an average of 1.0 each year and making an accompanying adjustment for real case-mix change in the annual update factor is appropriate, but they do not believe we currently have a method to distinguish real case-mix change from changes in coding practice.

Many of the comments expressed concern that, in an effort to control for changes in coding behavior, we would risk eliminating the effects of real case-mix increase. The commenters state that real case-mix changes are occurring due to shifts from inpatient to outpatient settings for less resource-intensive patients, increasing patient age, and improvements in technology. They believe that recalibrating to 1.0 would introduce a bias against recognizing new medical technologies and practices in DRG classification, particularly those that increase hospital costs.

Among the other recommendations received were suggestions that there

should be a built-in mechanism to reduce standardized amounts in future years to account for any overpayment in past years made as a result of DRG changes. It was suggested that HCFA develop and propose a method for measuring and reflecting real case-mix change in the update factor. This method should measure increases in case complexity within DRGs as well as across DRGs. However, one commenter was concerned that any positive real case-mix allowance HCFA recommended for the update factor would be vulnerable because section 1886(b)(3)(B)(i) of the Act specifies all future update factors applied to the standardized amounts. Legislation would be needed to ensure that the update factor in the law allows an explicit adjustment for real case-mix change.

ProPAC states that the proposal to rebase the case-mix index annually is consistent with the approach ProPAC recommended in its annual discussion of the prospective payment update factor through 1988, but indicated that it could not support such a methodological change unless the update were adjusted to reflect real case-mix change.

Response: As noted above, we will continue to work toward a methodology that will allow us to make the appropriate changes to the DRG classifications without risking an inflationary effect on payments. As a part of this process, we will carefully consider the concerns expressed by the commenters. We recognize that if we were to recalibrate to 1.0 each year, there would need to be an on-going adjustment to the standardized amounts to account for real case-mix change. In our update framework, we reduce the standardized amount for observed case-mix change and increase it for real case-mix change. Our estimate of real case-mix change is based on a study by the Rand Corporation using reabstracted medical records. We would need a mechanism to update the results from that study or an alternative way to determine real-case mix change.

Comment: The suggestion we received most frequently from commenters concerning better methods for estimating coding changes before we make DRG classification changes was that HCFA should conduct a detailed review of individual medical records every year. This review would ensure a more accurate estimate of case weights and would reduce the potential for eliminating changes in real case-mix growth.

Review of patient records from a prior period would provide empirical evidence to determine the extent to which certain diagnoses and procedures are, in fact, present in the Medicare patient records but were not coded either because of lack of space on the bill or because they did not affect DRG assignment. This approach would help ensure that the new DRG weights would be correctly estimated before the reclassified DRGs are implemented and any resulting increase in case mix could be assumed to be attributable to legitimate changes in the types of cases treated by hospitals.

Response: Although the commenters have identified a mechanism to estimate the potential for coding improvement, we are uncertain that a review of patient records as a part of our analysis prior to making DRG classification changes is feasible. The process of collecting and reabstracting from actual medical records is a time-consuming process. We believe that using this method would delay any potential DRG changes while the reabstraction is taking place. It may be more appropriate as a method to determine retroactively how much of observed case-mix increase is attributable to real case-mix increase. This approach was taken by RAND Corporation in its research for HCFA under cooperative agreement 18-C-98489/9-01 to examine changes in case mix between 1981 and 1984. ("The Medicare Case-Mix Index Increase: Medical Practice Changes, Aging, and DRG Creep;" Grace M. Carter, Paul Ginsberg; June 1985.) In either event, reabstracting medical records would improve our ability to predict changes only to the extent that the information is already in the medical record and simply not reported on the bill. It would not help measure the coding changes that will result from improvements in recording information in the medical record in response to our DRG changes.

Comment: The commenters believe that, in the interest of fairness and equity, HCFA should publish the specifications for any new methodology for improved forecasting of coding changes due to reclassified DRGs in a notice of proposed rulemaking so that the hospital community has the opportunity to comment upon its potential effectiveness and feasibility.

Response: As has always been our practice in the past concerning the prospective payment system, we will publish any changes we make in proposed rule format for public comment.

Comment: One commenter asserted that a 1 percent increase in the average case weight does not necessarily translate into a 1 percent increase in Medicare inpatient hospital payments. If a higher proportion of cases classify to relatively higher-weighted DRGs than had previously been the case, and these cases do not generate the same proportion of additional dollars in outlier payments as they do in basic DRG payments, then the aggregate prospective payment system expenditures will rise more slowly than the increase in the average case weight.

Response: We agree with the commenter that the effect of DRG changes in a given year on total program payments should take into account the effect on outlier payments in that year. As discussed below in section V.A of this preamble, we believe that the DRG changes that we made in FY 1991 were largely responsible for the outlier underpayment in that year and the estimated outlier underpayment for FY 1992. However, it is important to note that under our current recalibration methodology, the DRG changes have only a 2-year effect on outlier payments and a permanent effect on total program payments. Outlier payments are re-estimated each year, so that once the effect of the DRG changes is reflected in the MEDPAR file used to estimate outlier payments, any outlier underpayment resulting from those changes ceases. In contrast, the effect of the DRG changes on the case-mix index translates into a permanent increase in total program payments since the increase in the average case weight is built into the DRG relative weights through the normalization process. If we were to recalibrate to an average case weight of 1.0 each year, the DRG changes would have only a 2-year effect on both outlier payments and total payments.

III. Changes to the Hospital Wage Index

A. Background

Sections 1886(d)(2)(H) and 1886(d)(3)(E) of the Act require that the standardized urban and rural amounts be adjusted for area variations in hospital wage levels as part of the methodology for determining prospective payments to hospitals. To fulfill this requirement, we construct an index that reflects average hospital wages in each urban and rural area relative to the national average hospital wage.

For determining prospective payments to hospitals in FY 1992, the wage index is based on a HCFA survey of hospital wage and salary data for all hospitals subject to the prospective payment system with cost reporting periods ending in calendar year 1988. Home office costs and fringe benefits associated with hospital and home

office salaries were included in the updated wage index. Contract labor and nonhospital direct wage costs were excluded from the wage index. The FY 1992 wage index reflected all corrections that had been made in the wage survey data through August 15, 1991.

Section 1886(d)(3)(E) of the Act requires that the hospital wage index be updated annually beginning October 1, 1993.

B. Wage Data Used in Determining the Hospital Wage Index for FY 1993

For discharges occurring on or after October 1, 1992, the wage index continues to be based solely on 1988 wage data. In determining the wage index for FY 1993, we incorporated all corrections of errors in the survey wage data that have been processed through August 15, 1992 since the construction of the wage index implemented for FY 1992. The final revised national average hourly wage is $13.9937 compared to $13.9752 used to establish the wage index values that were effective for discharges occurring on or after October 1, 1991.

The wage indexes for FY 1993 are shown in Tables 4a through 4c in the addendum to this final rule.

C. Revisions to the Wage Index Based On Hospital Reclassifications

Under section 1886(d)(8)(B) of the Act, for discharges occurring on or after October 1, 1988, hospitals in certain rural counties adjacent to one or more Metropolitan Statistical Areas (MSAs) are considered to be located in one of the adjacent MSAs if certain standards are met.

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. The first hospital reclassifications based on the decisions of the MGCRB took effect on October 1, 1991.

In determining the wage index values, the wage data for hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act is combined with the wage data for hospitals that were reclassified to the same MSA as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the MSA to which they have been redesignated. Therefore, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals reduces the MSA wage index value by 1 percentage point or less, the MSA wage index value applies to the redesignated hospitals deemed to be a part of that MSA. The MSA wage index value is determined exclusive of the wage data for the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to the wage index value of the area that results from including the wage data of the redesignated hospitals. However, the wage index value for the redesignated hospitals cannot be reduced below the wage index value for the rural areas of the State in which the hospitals are located.
- Rural areas whose wage index values would be reduced by excluding the data for hospitals that have been redesignated to another area continue to have their wage index calculated as if no redesignation had occurred. Those rural areas whose wage index values increased as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage index calculated exclusive of the redesignated hospitals.
- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, the wage index for an urban area may not be reduced, as a result of geographic reclassification, below the Statewide rural average.

We note that, except for those rural areas where redesignations would reduce the rural wage index value, the wage index value for each area is computed exclusive of the data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, there are a few MSAs listed in Table 4a that have no hospitals remaining in the MSA. This is because the hospitals in the original MSA have been reclassified to another area by the MGCRB, and our records indicate that there are no other hospitals currently classified in those areas. For those areas, we have listed the Statewide rural wage index value.

The revised wage index values effective for discharges occurring on or after October 1, 1992 are shown in Tables 4a, 4b, and 4c of the addendum to this final rule. Hospitals that are redesignated should use the wage index values shown in Table 4c. It should be noted that for some areas, more than one wage index value will be shown in Table 4c. This occurs when hospitals from more than one area are included in the group of redesignated hospitals, and one or more hospitals (usually a rural hospital), receive the Statewide rural wage index value rather than the wage index value otherwise applicable to the redesignated hospitals.

The FY 1993 wage index values incorporate all geographic reclassification decisions that will be effective for FY 1993. The wage index values published in this final rule are different from those proposed in the June 4, 1992 proposed rule as a result of changes in the decisions made by the MGCRB since the publication of the proposed rule that resulted from hospital appeals, discretionary review by the Administrator, withdrawals of reclassification requests, and wage index corrections. The reclassification changes affected not only the wage index values for specific geographic areas, but also whether redesignated hospitals receive the wage index value of the area to which they are redesignated or a combined wage index that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index values for the areas from which the hospitals were redesignated were also affected. A hospital that requested to withdraw its application may not request that the MGCRB decision be reinstated after publication of the prospective payment rates in this final rule.

Comment: Some commenters pointed out that the wage index for urban hospitals remaining in their original wage area is calculated exclusive of the wage data of those hospitals reclassified out of the area and that while most urban areas are protected from having their area wage index fall below the Statewide rural floor, urban areas with wage index values already below the Statewide rural wage index prior to any reclassification are not protected from a further decline in their wage index values. Similarly, in two states, New Jersey and Rhode Island, where there is no Statewide rural wage index, hospitals in these urban areas are also not protected. It was suggested that we provide "hold harmless" protection to urban areas that would preclude their wage index value from falling below their original (prior to any reclassification) wage index. One commenter indicated that our interpretation of the "floor" provision for FY 1993, as reflected in Table 4c, appears to give only reclassified rural hospitals the benefit of the rural wage index floor. The commenter stated that this interpretation is contrary to the statute, which requires that the floor provision applies to any county whose wage index value falls below the Statewide rural value.

Response: Our rationale for not establishing a new "hold harmless" provision for urban areas whose wage index values are below the statewide rural wage index prior to reclassification and decline as a result of reclassifications is discussed thoroughly in the August 30, 1991 final rule (56 FR 43221). Section 1886(d)(8)(C)(iii) of the Act specifically precludes the reclassification of hospitals under sections 1886(d)(8)(B) and 1886(d)(10) of the Act from resulting in "the reduction of a county's wage index to a level below the wage index for rural areas in the State in which the county is located." The statute establishes a floor that applies only when a hospital's wage index value falls from above the Statewide rural wage index value to below the Statewide rural wage index value.

The statutory requirement of budget neutrality specifically applies only to reclassifications and wage index recomputations that occur as prescribed under statute. The statute is very specific with respect to the treatment of the wage index values for geographic areas from which and to which hospitals have been reclassified. We do not believe it is appropriate to establish a new "hold harmless" rule that would result in a significant change in the scheme constructed by Congress. Therefore, even if the change is warranted, we believe that it should be made through legislation.

With respect to our application of the provisions of section 1886(d)(8)(C)(iii) as reflected in Table 4c, we note that the rural floor applies not only to rural hospitals that were reclassified to an area where the wage index is less than the Statewide rural wage index for the area it came from, but also to urban hospitals whose wage index prior to reclassification is above the Statewide rural wage index value, and after being reclassified falls below the Statewide rural wage index value. The results for any area subject to this floor are incorporated in Table 4c. We note that for FY 1993, there are no urban areas for which the Statewide rural floor applies.

Comment: Two commenters asked that we use "real wage indexes" rather than the wage index calculated after the hospitals have been removed from the MSA as a result of reclassification. We received one comment suggesting that instead of our current practice of inserting the Statewide rural wage index for MSAs that become "empty" as a result of reclassification, it would be more appropriate to use the wage index that the MSA had prior to any reclassifications. In this way, hospitals would be better able to judge whether to withdraw their application for reclassification. The commenter also stated that it would be helpful if we indicated how many hospitals are used to calculate the wage index for each MSA and which MSAs are "empty" because all hospitals were reclassified out of the MSA.

Response: The law is very specific concerning how the wage index values should be calculated as a result of hospital reclassifications. Congress clearly contemplated that reclassified hospitals would not be considered part of their original labor market areas for purposes of computing the wage indexes for those areas. This is evidenced by section 1886(d)(8)(C) of the Act, which provides an exception to this requirement for those rural areas where reclassification of hospitals from those areas would reduce the rural wage index value. Accordingly, we believe the statute is clear that the wage index for each area would be computed exclusive of the data for the hospitals that have been granted reclassification from those areas.

Regarding the use of Statewide rural wage index values for MSAs that no longer have any hospitals as a result of reclassifications, we believe this comment has some merit in that hospitals would have difficulty determining whether to withdraw their applications in cases where the MSA is "empty." Therefore, in future proposed rules, where all the hospitals are tentatively reclassified out of the MSA, we will provide information on the wage index value for that area prior to any reclassifications. We will also indicate which areas no longer contain any hospitals. However, we will continue to assign the Statewide rural wage index value to the "empty" MSA. These values are needed in the event a new hospital or any other hospital that is not represented in the 1988 wage survey data furnishes services to Medicare beneficiaries during the fiscal year. In an empty MSA, all the hospitals that reported wages in 1988 are reclassified, so no hospitals currently exist for wage index purposes. We believe that any new hospital in the MSA should receive the Statewide rural wage index until such time that the new hospital's data is utilized in the calculation of an updated wage index. Since there is no rural Statewide average for New Jersey or Rhode Island, we will assign the wage index value before reclassification to any "empty" MSA in those States.

We see no purpose in publishing the number of hospitals used in calculating each MSA's wage index value. Since the average for each area is hour-weighted, rather than hospital-weighted, each hospital's influence on the area wage index is dependent on the number of hours of employment incurred by that hospital. For purposes of this final rule, the Statewide rural wage index was used for the following MSAs where all hospitals were reclassified from the MSA: Bloomington, IN; Bradenton, FL; Bremerton, WA; Cedar Rapids, IA; Danville, VA; Elkhart-Goshen, IN; Jacksonville, NC; Janesville-Beloit, WI; Lawrence, KS; Lewiston-Auburn, ME; Melbourne-Titusville, FL; New Bedford-Falls River-Attleboro, MA; Niagara Falls, NY; Pine Bluff, AR; Tacoma, WA; Trenton, NJ (pre-reclassification value); York, PA; Yuba City, CA.

D. Midyeor Corrections to the Wage Index Values

It has been our policy under § 412.63(p)(2) to make midyear corrections to the hospital wage data and adjust the wage index for the affected areas on a prospective basis. However, implementation of midyear corrections has resulted in several problems related to the reclassification of hospitals by the MGCRB.

In the June 4, 1991 final rule with comment period concerning the MGCRB (56 FR 25477), we indicated that the MGCRB would use the latest updated survey data, including midyear corrections, to assess reclassification requests. We adopted this policy in order to ensure that hospitals whose applications were submitted based on corrected wage data would be treated fairly. However, because wage data corrections are processed on an ongoing basis throughout the year, the outcome of a hospital's reclassification request may in some cases depend on whether the intermediary's audit and our subsequent processing of its wage correction are completed before the MGCRB issues its decision on the hospital's application. That is, since the MGCRB makes its determination based on the data available at the time a hospital's case is being considered, whether a hospital meets the criteria for reclassification for purposes of the wage index may depend on the timing of the implementation of a wage correction.

Also, under section 1886(d)(8)(C) of the Act, the wage index applicable to reclassified hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on

the wage index value for the MSA to which they have been redesignated. As explained above, if the impact is a reduction of 1 percentage point or less, the reclassified hospitals receive the MSA wage index value. If the impact is a reduction of greater than 1 percentage point, the reclassified hospitals receive the wage index value that results from combining their wage data with the MSA data. This combined value is normally lower than the MSA value. Under our current policy, we have had instances in which a correction to the wage data for a hospital in an MSA has increased the impact of reclassifications on the MSA wage index value to greater than 1 percentage point. In these situations, reclassified hospitals that had been receiving the MSA wage index value became subject to the lower combined wage index value. Thus, solely as a result of another hospital's wage corrections, payments to these reclassified hospitals were reduced midway through the fiscal year. These hospitals are confronted with an unanticipated reduction in revenues when their Medicare payments are reduced because of midyear wage data corrections.

The current wage index based on 1988 calendar year data has been in effect since FY 1991. Thus, we believe that hospitals have had sufficient time to review their wage data and submit corrections where appropriate. Therefore, in order to resolve the problems described above, we proposed eliminating midyear wage data corrections effective with requests for correction received on or after October 1, 1992. As discussed below, after consideration of all comments received on this issue, we are implementing this provision as proposed.

Under this provision, only those requests for wage data corrections for 1988 calendar year data, that are submitted with supporting documentation and received by the fiscal intermediary no later than September 30, 1992 will be implemented as a midyear wage index change. Changes based on those corrections will be made on a prospective basis in FY 1993 in accordance with our current policy. The specific requirements are as follows:

- A hospital that wishes to make a correction to its reported 1988 calendar year wage data must submit to its fiscal intermediary a revised wage survey form (HCFA 2561) along with supporting documentation by no later than September 30, 1992.
- Within 30 days, the fiscal intermediary will review the data and adjust it as appropriate. Upon completion of its review, the fiscal intermediary will forward the hospital's request to HCFA's Division of Hospital Payment Policy, along with a letter that summarizes the hospital's request and makes a recommendation concerning the appropriateness of the requested wage correction.
- HCFA will review the request and, if HCFA determines that a wage correction is warranted, the wage index value for the area in which the hospital is located will be revised on a prospective basis.
- In cases where the hospital submitted supporting documentation but additional information is required by the fiscal intermediary or HCFA, the hospital must submit the required information within 30 days of receiving the request.

As required by section 1886(d)(3)(E) of the Act, we will update the wage index data on an annual basis beginning October 1, 1993. We are currently collecting wage data on an ongoing basis as part of the Medicare cost report. Fiscal intermediaries are transmitting these wage data through the Hospital Cost Report Information System (HCRIS). We expect to use the latest data available through HCRIS to update the wage index on an annual basis. A hospital that wishes to make corrections to the wage data reported on its Medicare cost report will do so through its fiscal intermediary in accordance with the normal cost report revision or reopening procedures. Fiscal intermediaries will forward any corrections to HCFA through HCRIS, and we will incorporate those corrections into the wage index on an annual basis, at the same time we update the wage index for payment purposes.

Comment: Several commenters, including some of the major hospital associations, indicated that they believed the sunset provision for submitting midyear wage index corrections based on the 1988 wage survey data is reasonable. There were two commenters who indicated that hospitals should be able to continue to submit corrections and that we should not eliminate midyear corrections. In addition, one of these commenters indicated that we should make retroactive changes to the wage index if a correction results in a revision of 1 percent or more to the area wage index.

Response: A prudent hospital would have ensured that data submitted for the 1988 wage survey was complete and accurate. Since the survey was completed in 1990, we believe that hospitals have had sufficient opportunity to review the wage data, and to submit corrections where appropriate. Moreover, because the wage index data will be updated annually, problems with any data errors will no longer be perpetuated from year to year. Therefore, effective October 1, 1992, fiscal intermediaries will no longer accept any requests for corrections to the 1988 wage survey data. In the near future, we will issue instructions to the intermediaries for reviewing, verifying and submitting completed requests to HCFA. It is our intention that all corrections to the 1988 data be completed on or before January 1, 1993, so that the latest, corrected wage data will be available to the MGCRB when deliberating on geographic reclassification requests effective for FY 1994.

With respect to retroactive corrections to the wage data, it has been our longstanding policy to make any corrections to the wage index on a prospective basis only. Our policy for applying prospective corrections to the wage index was originally set forth in the preamble to the January 3, 1984 final rule (49 FR 258) implementing the prospective payment system and was later codified at § 412.63 as part of the September 4, 1990 final rule (55 FR 36042). Under the policy, if a correction of a data error changes the wage index value for an area, the revised wage index is effective prospectively from the date the data correction is approved. This policy was established so as not to disadvantage hospitals in areas where a wage data error was detected by waiting until the beginning of the next fiscal year to recognize the correction.

Congress has twice visited this issue and has failed to require that we make wage data corrections retroactively. In section 9103 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), Congress eliminated the provision of section 2316 of the Deficit Reduction Act of 1984 (Pub. L. 98-369) that would have required retroactive application of the new HCFA wage index that was implemented May 1, 1986. Congress provided that the revised wage index be applied prospectively, which is consistent with the prospective only rule established in January 1984. Congress again addressed this issue in Pub. L. 101-239. In section 6003(h) (5) of Pub. L. 101-239, Congress did require the Secretary to make retroactive adjustments in the 1984 wage data to account for errors, but only under very limited circumstances. The fact that Congress severely limited the application of this provision, not only with respect to the specific database, but also with respect to a specific situation using such database, indicates Congressional intent that the provision have no further applicability beyond the situations specified in the statute. We should also point out that when corrections were made in these very limited cases, the hospitals who committed the errors in reporting the original data did not receive any benefit of the retroactive wage index corrections.

Comment: We received a number of comments concerning perceived problems with the wage data currently being collected through the Medicare cost report that will be used to formulate future wage index updates. Specifically, the commenters stated that the instructions for fringe benefit and contracted services should be further defined and clarified. One commenter suggested that contracted labor be expanded to include all contracted services rather than only those directly related to patient care. Also, each commenter on this issue expressed concern that the current survey instrument (the worksheet S-3, Part II of the HCFA-2552) does not allow hospitals to remove wages associated with non-hospital salaries that are included in the overhead of the other cost centers.

Response: These comments do not directly apply to the proposed wage index changes for FY 1993; rather, they address issues related to the calculation and formation of future wage indexes. We have already taken steps to revise the cost reporting instructions accompanying the worksheet S-3, Part II with respect to fringe benefits. This revision will be included in the latest cost report revisions (HCFA 2552-92), which will be effective for cost reporting periods beginning on or after October 1, 1991. The revised instructions will enable hospitals to more accurately determine appropriate fringe benefit costs to be reported for purposes of the wage index calculation.

Regarding the expansion of the contracted services definition to include all contracted services, we continue to believe it is not appropriate to include contract services other than those directly related to patient care for a number of reasons. First, many contracts, especially those that are not for direct patient care services, include items that are not merely labor costs. Frequently, these costs include supplies and equipment that may be provided by the contractor, and thus may not reflect current or local salary trends. Second, it is frequently difficult or impossible to ascertain the appropriate hours associated with the provision of some types of contracted services. Hospitals have consistently indicated problems with accurately determining these hours, especially for services such as contracted housekeeping and laundry. Finally, it is the contracted services such as those associated with nursing and technicians' services that hospitals must incur due to shortages of workers in those skilled areas that have most disadvantaged hospitals by not including these services in the wage index calculation. Since these services are directly related to hands-on patient care, hospitals can more readily maintain accurate records on hours worked in this context than in the case of other contracted services. If we did not limit the nature of contracted services included in the wage data, it is likely that the reliability of the data would be questionable (as in the case of the 1988 survey data) because of problems with accurately reporting contracted labor. Therefore, we believe it is appropriate to limit contract services to those directly related to patient care.

Regarding the exclusion of overhead costs associated with non-hospital services, we are taking measures to allocate overhead salaries to the excluded areas of the hospital. For the FY 1994 wage index update, we will be asking fiscal intermediaries to obtain data with respect to hours worked in the overhead (general service) cost centers and will develop a methodology to allocate overhead salaries to non-hospital cost centers that are excluded from the wage index computation. We note that the revised cost report (HCFA 2552-92) will include an additional line to capture these data in the future.

Comment: One commenter suggested that since we had allowed hospitals in Nebraska to make changes to their current wage survey data to carve out overhead wage costs related to excluded areas such as SNFs, all hospitals should have the same opportunity to revise their wage data.

Response: The premise of the commenter's suggestion is incorrect. No changes were made to any 1988 hospital wage survey data to remove overhead salary costs associated with non-hospital services. We have had several conversations with representatives of Nebraska hospitals on this issue. However, these discussions were related to future updates to the wage data using data submitted on the Medicare cost report (HCFA-2552, worksheet S-3, Part II). Because the data necessary to allocate overhead salaries to the excluded wage areas are not available for all hospitals, we do not believe it would be appropriate to allow individual hospitals to adjust their 1988 survey data to eliminate overhead salaries associated with those excluded areas.

Comment: One commenter indicated that it is very difficult to make corrections to the wage index data reported on the HCFA-2552, worksheet S-3, Part II since the data are transmitted electronically to HCFA using the Hospital Cost Report Information System (HCRIS). The commenter indicated that instructions are needed for fiscal intermediaries that would require them to transmit corrections to the wage survey data through HCRIS on a systematic basis. This would ensure that the most current and updated data are used to construct future wage indexes.

Response: We concur that it is important that fiscal intermediaries react timely to requests from hospitals to submit revisions to the HCFA-2552, worksheet S-3, Part II. Since we intend to update the wage index yearly based on the data reported through HCRIS, we will issue instructions to the fiscal intermediaries directing them to transmit all corrections to the wage form via HCRIS prior to our development of any revised wage index incorporating the cost report data.

Comment: We received one comment suggesting that we include contracted labor in the calculation of the current wage index.

Response: As we indicated in the final rule for FY 1992, the data submitted from hospitals for contracted services were incomplete and plagued with problems. As mentioned earlier, hospitals related numerous problems in determining what contracted services to include and in determining the hours associated with these services. A thorough discussion as to why contracted labor is not included in the current survey was included in the September 4, 1990 final rule (55 FR 36036).

E. Revised Metropoliton Statistical Area (MSA) Definitions Based on 1990 Census Data

In the August 30, 1991 final rule (56 FR 43202), we indicated that the Office of Management and Budget (OMB) expected to issue revised MSA definitions based on 1990 census data in June 1992. We had anticipated implementing the new MSA definitions in the FY 1993 final rule in accordance with our policy of adopting MSA changes at the beginning of the Federal fiscal year following OMB's

announcement (see § 412.63(b)(4)). However, we pointed out potential problems associated with implementing major MSA changes (such as reconfiguring the wage index and standardized amounts and determining appropriate geographic reclassifications) in a final rule without prior notification in the proposed rule. We also solicited public comments on possible approaches to implementing the revised MSA definitions.

Because of significant delays in obtaining the necessary data from the Bureau of Census, OMB was unable to publish the revised MSA definitions by June 30, 1992, as originally planned. The delay in publication of the new MSA definitions has precluded the implementation of the revised MSAs in this final rule. Therefore, we now plan to implement the revised MSA definitions based on 1990 census data in FY 1994. Since OMB's originally expected publication date was actually 1 year ahead of normal schedule (the MSAs based on 1980 census data were announced in 1983 and implemented in FY 1984), implementation of the revised MSAs in FY 1994 is on a comparable schedule to implementation of the 1980 census data. Therefore, we intend to announce the revised MSAs and describe their effect on the wage index and geographic reclassifications in the FY 1994 proposed rule.

Comment: We received several comments indicating that even though OMB has not yet published the new MSA definitions based on the 1990 census data, we should recognize the new definitions. The commenters believe that the information concerning the revised MSA definitions is currently available and therefore should be used immediately because some hospitals may be adversely affected by the delay in implementation. In addition, we received comments asking that we provide an exception for hospitals in the Niagara Falls, NY and Buffalo, NY MSAs to allow those areas to combine into a singe large MSA on the premise that OMB will recognize those areas as a single MSA once the new definitions are issued. Some commenters stated that it is inappropriate to use the current definitions for MSAs for submitting applications to the MGCRB when new MSA definitions will be in effect when the decisions become effective in FY 1994.

Response: OMB has not yet issued its revised MSA designations based on 1990 census data. Until OMB makes its announcement, definitions are subject to change and are not final. We are aware of potential changes that OMB is considering, but we are required to use the current MSAs until the revised MSA definitions have been officially announced. We note that the Federal Executive Committee on Metropolitan Statistical Areas, which makes recommendations to OMB with respect to the MSA definitions, has not yet completed its deliberations, nor have any recommendations been made to OMB as of this date. It would be inappropriate to recognize some potential changes, while ignoring others, or to make changes based on preliminary information that is subject to change once OMB makes its final announcement. Therefore, as we indicated in the proposed rule, the delay in the publication of the new MSA definitions has precluded the implementation of revised MSAs in the final rule. We intend to announce the revised MSAs and describe their effect on the wage index and geographic reclassifications in the FY 1994 proposed rule.

IV. Changes Concerning Reclassifications by the Medicare Geographic Classification Review Board

A. Background

Section 6003(h)(1) of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239), enacted on December 19, 1989, added section 1886(d)(10) to the Act to provide for creation of the Medicare Geographic Classification Review Board (MGCRB). Guidelines concerning the criteria and conditions for hospital reclassification are located at 42 CFR part 412 subpart L, §§ 412.230 through 412.236. (Regulations concerning MGCRB composition and procedures are located at §§ 412.246 through 412.280.) The purpose of the criteria is to provide direction, to both the MGCRB and hospitals seeking geographic reclassification, with respect to the situations that merit an exception to the rules governing the geographic classification of hospitals for purposes of payment under the Medicare prospective payment system. Hospitals may be reclassified individually for purposes of their wage index or standardized amount or both. Hospitals may be reclassified as a group for purposes of both their wage index and standardized amount, but not solely for one of these measures.

A request for reclassification must be filed by October 1 of the Federal fiscal year preceding the Federal fiscal year for which the reclassification decision would be effective. For example, a request for reclassification effective for FY 1994 must be filed by October 1, 1992. The MGCRB is required to issue its decision within 180 days of October 1. A reclassification decision by the MGCRB is generally effective for 1 year. However, depending on its assessment of the facts supporting an individual hospital's or group of hospitals' request for reclassification, the MGCRB may provide for an automatic 1 year renewal of its decision.

Section 1886(d)(8)(D) of the Act requires that the effect of decisions of the MGCRB be budget neutral. Under this section, the Secretary is to adjust the standardized amounts for urban hospitals to ensure that total aggregate payments under the prospective payment system after the incorporation of the geographic reclassifications under sections 1886(d)(8) (B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these reclassifications. Also, the standardized amounts for rural hospitals are to be adjusted to ensure that aggregate payments to rural hospitals not affected by these provisions neither increase nor decrease as a result of the reclassifications.

The first reclasaification decisions issued by the MGCRB became effective on October 1, 1991 for discharges occurring in FY 1992. The August 30, 1991 final rule (56 FR 43196) setting forth the FY 1992 prospective payment system rules reflected 930 hospital reclassificatlons approved by the MGCRB and the HCFA Administrator effective for FY 1992. The effects of the MGCRB reclassification decisions on FY 1992 payments were significant. To meet the statutory budget neutrality requirements, each of the urban standardized amounts (large and other) was reduced 1.1 percent. Among all hospitals not reclassified, the overall impact of hospital reclassifications was an average decrease in payment per case of about 1 percent.

In the August 30, 1991 final rule (56 FR 43198), we also discussed public comments we had received concerning geographic reclassification issues raised in the June 3, 1991 proposed rule for the prospective payment system (56 FR 25178) and the June 4, 1991 final rule with comment period for the MGCRB (56 FR 25458). Many commenters addressed the impact of geographic reclassification on payment to hospitals. In response to the comments, we stated in the August 30, 1991, rule that we intended to evaluate the FY 1992 reclassifications made under the current guidelines and to propose such revisions as may be appropriate for future application cycles. In addition, we solicited public comments concerning those potential

revisions. We described the public comments we received in response to this request in the June 4, 1992 proposed rule (57 FR 23633).

B. Changes to the Regulations

Thus, as described above, the changes in the reclassification guidelines were formulated after multiple occasions for public comment. They were also based on our analysis of the FY 1992 reclassifications. We also took into account the effects of reclassifications, which, because they must be budget neutral, result in increased payments to one group of hospitals being offset by reduced payments to other groups. In light of this effect, we have an obligation to assure both that those hospitals meriting reclassification are afforded proper consideration and that other hospitals are protected from the effects of inappropriate reclassifications. In addition, we determined that a number of issues which have arisen concerning the reclassification guidelines warranted clarification.

Accordingly, as discussed in detail below, we proposed in our June 4, 1992 proposed rule to make several changes to the MGCRB guidelines. After considering all comments received in responses to the proposed rule, we are implementing the following changes to the MGCRB guidelines in this final rule. The changes will not affect reclassifications that will be effective for discharges occurring in FY 1993. However, given the 1-year time lag between the effective date of any changes to the MGCRB regulations and the effect of these changes on hospital reclassifications, we believe it is essential that the following changes be implemented in time to affect applications that will be processed by the MGCRB during FY 1993. Therefore, the new guidelines will be effective for applications submitted by October 1, 1992, for geographic reclassifications effective for discharges in FY 1994.

1. General Guidelines—Reclassifications for Individual Hospitals

a. *Reclassification to a Single Geographic Area (§ 412.230(a)(1)).* We are revising § 412.230(a)(1) to specify that a hospital may seek reclassification to only one area. In situations where a hospital can qualify for the wage index of one area and the standardized amount of another area, the hospital must decide the area to which it wishes to be reclassified and must indicate that decision in its application.

Comment: One commenter stated that hospitals should not be limited to applying to only one area for both the wage index and the standardized amount. The commenter asserted that because the pattern of hospital expenditures for wages and salaries may be different from the pattern of expenditures for utilities and supplies, it would be appropriate for a hospital to reclassify to one area due to the comparability of labor costs and another area for its nonlabor costs.

Response: The standardized payment amount a hospital receives includes both labor and nonlabor payments. Moreover, more than 71 percent of the hospital's operating costs covered by the standardized amount are labor-related costs. Since payments for labor are reflected in both measures, we do not believe it is appropriate for a hospital to be reclassified to one area for its wage index and a different area for its standardized amount.

In addition, the purpose of the MGCRB process is to permit hospitals that are disadvantaged by their geographic classification to obtain a more appropriate classification to the area with which they have the most economic interaction. Therefore, we believe that hospitals that meet the general proximity criteria should be reclassified to only one alternative geographic area. For the same reasons, we believe it also is appropriate to provide that sole community hospitals and rural referral centers may be reclassified to only one area using either the special access rule or the proximity rule, but not both.

b. *Individual Urban Hospital Reclassification to a Rural Area (§ 412.230(a)).* We are revising § 412.230(a)(1) to clarify that the only types of reclassifications that are permissible are rural to urban, urban to urban, and rural to rural reclassifications.

Comment: One commenter did not agree that urban to rural reclassifications should be disallowed. The commenter argued that a small MSA containing one hospital surrounded by rural counties is an example of a situation where an urban hospital would compete with rural hospitals.

Response: Section 1886(d)(8)(C)(i) of the Act, which addresses application of the wage index to reclassified hospitals, specifically references reclassifications of rural hospitals to urban areas and of urban hospitals to other urban areas. However, the statute does not require HCFA to provide for reclassification of urban hospitals to rural areas.

Moreover, we disagree that the situation described by the commenter demonstrates that a hospital should be allowed to reclassify from an urban area to a rural area. We believe the situation of hospitals located in small MSAs surrounded by rural areas is very different from a rural hospital near the border of another state. A lone hospital in an MSA already receives a wage index that is fully reflective of its own wage costs. As such, the hospital is not being unfairly disadvantaged by its wage index.

We recognize that an urban hospital in an MSA surrounded by rural areas may compete with a few rural hospitals in its vicinity. However, the rural labor market area is comprised of all rural hospitals in the State, and would be less representative of the hospital's labor market than an area comprised of hospitals in the same geographic vicinity. In fact, the most common criticism of the rural wage index is that it is an average of all the rural hospitals in a State and may not be representative of the wage costs in different regions of the State. It would be inappropriate to reclassify a hospital from a labor market area based on the data for geographically proximate hospitals to one based on hospitals dispersed throughout the State. This is in contrast to a rural to rural reclassification, which involves reclassification from one broad labor market to another. In that case, a rural hospital near the border of an adjacent State could be more like the hospitals in the next State than in its own State. It is for these reasons that, while not required by the statute, we decided to provide for rural to rural reclassifications and not to provide for urban to rural reclassifications.

c. *Special Access Rule for Rural Referral Centers and Sole Community Hospitals Seeking Reclassification (§ 412.230(a)(4)).* Consistent with the change we are making to § 412.230(a)(1), we are revising the regulations to specify that a sole community hospital or rural referral center may not be redesignated under both the special access rule and the general proximity criteria in order to reclassify to different areas for wage index and standardized amount purposes.

Comment: One commenter pointed out that under § 412.230(a)(4)(iii), HCFA neglected to recognize that a hospital designated as either a rural referral center or a sole community hospital or both would be allowed to reclassify to the nearest urban area or the nearest rural area.

Response: We have amended the regulations text to reflect the fact that these hospitals may reclassify to the nearest urban area or, if the hospital is closer to another rural area than an urban area, it has the option of requesting reclassification to that rural

area rather than the nearest urban area. Consistent with the guideline that allows rural hospitals to reclassify to another rural area, we believe the same type of reclassification should also be afforded to sole community hospitals and rural referral centers that apply for reclassification under the special access rule. The MGCRB has currently been allowing such reclassifications. However, consistent with the current requirement under the special access rule that the hospital must be reclassified to the nearest urban area, we believe such reclassifications should be allowed only in those situations where the hospital is closer to another rural area than an urban area. In that situation, the hospital would have the option of seeking reclassification to the nearest rural area, or to the nearest urban area.

Comment: One commenter pointed out that some hospitals may be in jeopardy of losing their rural referral center status as a result of triennial reviews that will begin October 1, 1992, if the existing "grandfather" provision for such status is not extended by legislation. Thus, hospitals that previously were able to qualify for reclassification based on the special access rules under § 412.230(a)(4) would no longer be able to do so. However, because of the uncertainty as to whether the grandfather provision will be extended, hospitals that would lose their status, absent grandfathering, may have to apply for reclassification under both the special access rule and the proximity rule. This commenter stated that the MGCRB should determine whether a hospital can qualify under the special access rule based on its status as of the date of the MGCRB's review.

Response: We agree with the commenter and are revising § 412.230(a)(4) to specify that any hospital that qualifies as a rural referral center or sole community hospital as of the date of the MGCRB's review of its application is eligible to request reclassification under the special access rule. This is consistent with current MGCRB policy that the wage data to be considered is the data available at the time of the MGCRB's review. We will provide the MGCRB on an ongoing basis with information on changes in hospital status. Hospitals should anticipate any change in their rural referral center status as a result of triennial reviews and apply for reclassification accordingly. A hospital that is uncertain whether its RRC status will be in effect as of the date of the MGCRB's decision may wish to apply under both the special access and, if it is eligible, proximity guidelines. At the time the MGCRB makes its decision, the hospital's reclassification request will be reviewed under the special access rule, if the hospital has retained its rural referral center status, or the proximity requirements, if the hospital has lost its rural referral center status. We note that any Administrator review of an MGCRB decision in such a case will be based on the hospital's status at the time of the MGCRB's decision.

d. *Guidelines for a Hospital Requesting Reclassification for Wage Index Purposes (§ 412.230(e)).* As proposed in our June 4, 1992 proposed rule, we are revising the wage index guidelines at § 412.230(e) to add the requirement that a hospital cannot be reclassified unless its average hourly wage is at least 108 percent of the average hourly wage of the area in which it is located. The 108 percent threshold is based on the national average hospital wage as a percentage of its area wage (96 percent) plus one standard deviation (12 percent). Currently, the 85 percent standard for the relationship between the hospital's wages and the average hourly wage of the area to which it requests reclassification (found in § 412.230(a)) approximates the average hospital wage as a percentage of its area wage less one standard deviation. (To be consistent, this provision also replaces the 85 percent standard with an 84 percent standard (96 percent minus one standard deviation)). Thus, to qualify for a wage index reclassification, a hospital must have an average hourly wage that is more than one national standard deviation above its original labor market area and not less than one national standard deviation below its new labor market area. We are adopting this change as an additional standard for wage index reclassifications. Thus, the revised wage index guidelines at § 412.230(e) will now specify that a hospital can be reclassified only if its average hourly wage is at least 108 percent of the average hourly wage of hospitals in its original labor market area and at least 84 percent of the average hourly wage of the hospitals in the area to which it is seeking reclassification (or 90 percent of the average hourly wage after adjustment for occupational mix).

We have included in section V of the addendum to this final rule new Tables 4d and 4e, which list the inflated average hourly wage for each labor market area before any geographic reclassifications. These tables can be used to make the average hourly wage comparisons for purposes of filing a wage index reclassification request. We note that the average hourly wages are subject to change once the final corrections to the 1988 wage data have been processed (see wage index discussion in section III of this document) and that the MGCRB will rely on the latest corrected wage data available at the time of its decision. As we indicated in the proposed rule, the hospital-specific data supplied to hospitals by HCFA during the application process already reflect the average hourly wage for the hospital's own labor market area. In addition, we are publishing the average hourly wage for each labor market area in Tables 4d and 4e. Therefore, we do not believe it is necessary to provide by rule an automatic extension for perfecting applications for FY 1994 reclassifications. However, we note that under § 412.256(c)(2), the MGCRB may, for good cause, grant a hospital that has submitted an application by October 1, an extension beyond October 1 to complete its application.

We received over 350 comments on the proposed change to the guidelines on reclassification for purposes of the wage index. These comments and our responses are presented below.

Comment: In general, hospitals located in large urban areas that have not benefited from geographic reclassification expressed strong support for the revised guideline that requires that, to be reclassified, a hospital's average hourly wage must be at least 108 percent of the average hourly wage of hospitals in the geographic area in which the hospital is located. They believe that the intent of the original legislation was to adjust payment levels in those special cases where a national payment rule could not appropriately address local circumstances. They stated that the original guidelines were too liberal to ensure that all qualifying hospitals were truly disadvantaged by their current geographic classification. As a result, the guidelines had an overly adverse impact on urban hospitals through the required reduction in the urban standardized amount to offset the cost of increased payments to reclassified hospitals. In addition, ProPAC supported the change stating that the "Commission believes the Secretary's solution strikes a reasonable balance between the need to provide relief to hospitals disadvantaged by their current geographic classification and the need to avoid inappropriate reclassifications."

In contrast, most of the commenters who strongly opposed the new

guidelines represent hospitals that are currently reclassified for purposes of the wage index. They believe that the 108 percent guideline is contrary to Congressional intent. Specifically, these commenters believe that neither the statutory requirements under section 1886(d)(10)(D) of the Act nor any other legislative directive indicates that Congress intended to limit the number of reclassified hospitals or contemplated the comparison of a hospital's wages to the average hourly wages in the area in which it is located. The commenters stated that the proposed guideline added a new factor to those that Congress intended that we consider. They expressed the opinion that the new guideline also reflected a change in focus from the previous MGCRB regulations, citing a recent court decision's affirmation of the proximity requirements based, in part, on the court's assessment that those requirements were consistent with the goal of the reclassification process "to adequately compensate hospitals that face increased costs due to competition with hospitals in geographic areas reimbursed at higher rates under the Medicare system." *Universal Health Services of McAllen, Inc.* v. *Sullivan*, 770 F. Supp. 704, 714 (D.D.C. 1991). The commenters believe the new threshold is an unreasonable obstacle to achieving this goal. Finally, many commenters expressed their belief that the new guideline was "arbitrary" and "outcome-oriented," that is, that HCFA selected the 108 percent threshold merely to achieve a satisfactory number of reclassifications. One commenter stated that this is evidenced by our failure to provide a similar guideline for the standardized amount since such a guideline would not affect as many hospitals.

Response: It is important to note from the outset that the Secretary's obligations under the prospective payment system extend beyond the implementation of section 1886(d)(10) of the Act. Specifically, under section 1886(d)(8)(D) of the Act, the Secretary is required to make a proportional adjustment in the standardized amounts for hospitals located in an urban area to assure that the provisions of sections 1886(d)(8) (B) and (C) or decisions issued pursuant to the MGCRB guidelines do not result in aggregate payments under the prospective payment system that are greater or less than those that would otherwise be made. The Secretary's obligation to effectuate this provision, commonly referred to as the "budget neutrality" provision, in a responsible manner is no less important than his duty to publish reclassification guidelines which are consistent with the purpose of section 1886(d)(10). In other words, the Secretary is equally responsible for assuring that hospitals meriting reclassification are afforded proper consideration and for protecting other hospitals against any effects of the budget neutrality adjustment which may result from inappropriate reclassifications. In recognition of both duties, the Secretary has repeatedly solicited public comment on the reclassification guidelines and has examined the results of reclassification to ensure that his guidelines are accomplishing their intended purpose. We believe that the inclusion of the 108 percent threshold in the guidelines fulfills this dual responsibility. It provides a reasonable standard for measuring one of the factors which should be considered to achieve appropriate reclassifications, i.e., how a hospital's own wage level compares to the wage level reflected in the wage index value for its current area.

Some commenters stated that the implementation of the new wage index guideline is contrary to the authority given the Secretary under the statute or contrary to legislative intent. We disagree. The Secretary has been given broad authority under the statute to determine the factors which should be considered in adjudicating applications for reclassification under section 1886(d)(10) of the Act. Section 1886(d)(10)(D)(i) provides that:

> The Secretary shall publish guidelines to be utilized by the Board in rendering decisions on applications submitted under this paragraph, and shall include in such guidelines the following:
>
> (I) Guidelines for comparing wages, taking into account occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified.
>
> (II) Guidelines for determining whether the county in which the hospital is located should be treated as being a part of a particular Metropolitan Statistical Area.
>
> (III) Guidelines for considering information provided by an applicant with respect to the effects of the hospital's geographic classification on access to inpatient hospital services by medicare beneficiaries.
>
> (IV) Guidelines for considering the appropriateness of the criteria used to define New England County Metropolitan Areas.

A guideline that compares a hospital's wages to the wage level in its own area does not create a standard inconsistent with any of the four factors the Secretary has been directed to include in his guidelines. Moreover, a plain reading of the statute reveals that Congress did not intend to limit the guidelines to the four factors listed in section 1886(d)(10)(D)(i). In fact, the use of the word "include" indicates Congress' grant of authority to issue guidelines in addition to those expressly mentioned by the Act. In addition, nothing in that section or other relevant portions of the Act restricts the Secretary's authority to amend his initial guidelines for future application periods in consideration of additional factors.

There is nothing in the legislative history that indicates either that Congress intended the guidelines to be static or that suggests that promulgation of the 108 percent guideline is contrary to Congressional intent. In fact, the commenters have not pointed to any portion of the legislative history of section 6003(h)(1) of Public Law 101-239, the original legislation that created the MGCRB process, that contradicts the Secretary's authority to promulgate a threshold that compares the hospital's wage level to that of the area where it is located.

Moreover, although it included a number of revisions to section 1886(d)(10) of the Act, section 4002(h) of Public Law 101-508 did not change any of the reclassification criteria which the Secretary had published in September 6, 1990 interim final rule. We agree that this indicated that Congress generally endorsed the approach that the Secretary had outlined in his September 6, 1990 guidelines. However, section 4002(h) did not restrict the Secretary's authority to consider other factors or to further refine the reclassification guidelines at a later date.

However, some commenters have pointed to certain language in the Conference Committee report accompanying Public Law 101-508 to support their contention that we are adding a factor which Congress did not intend for us to consider. Specifically, they assert that the fact that Congress recommended a lower criterion for reclassification for purposes of the wage index is evidence that Congress would not now support this new guideline. We do not believe that the legislative history supports this contention.

The Conference Report which accompanied Public Law 101-508 reflects Congress' acknowledgement that the Secretary has the ultimate authority, absent explicit Congressional direction to the contrary, to assess the completeness and effectiveness of his guidelines and to make appropriate changes for future application periods. This conclusion is reflected in the manner in which Congress identified two areas of the original guidelines which it believed that the Secretary

should reconsider, i.e., group applications and the numeric threshold for the wage index guideline. With respect to group applications, the conferees stated that they believed that the omission in the September 6, 1990 interim final rule, of guidelines for urban hospitals to seek reclassification as a group was contrary to the intent of Congress and "should be rectified at the earliest possible date."

In the second area, concerning numeric guidelines, the report concluded:

> The conferees are also concerned that the thresholds for consideration of applications by the board may be set too high and would urge the Secretary to consider changing them. In particular, the Committee is concerned that the 85 percent criterion for average hourly wages is too high and that the Secretary should consider a threshold of 70 percent for this purpose."

(H.R. Rep. No. 964, 101st Cong., 2nd Sess. 715 (1990))

It is axiomatic that Congress could have enacted both suggested changes by adding them to the legislation. Instead, it left any necessary rectification of the problems identified and the timing of the changes to the Secretary. Moreover, it left the ultimate evaluation of the appropriateness of the 85 percent threshold to the Secretary. Accordingly, we believe that the report establishes that Congress itself is aware that it has given broad authority to the Secretary to determine which guidelines are appropriate and to make corrective changes as necessary.

The Conference Committee report in no way suggests that the Secretary does not have the authority to continue to assess the effectiveness of the current guidelines or to promulgate the specific guideline at issue here. We also note that when the conferees issued their report, no reclassification applications had been adjudicated. Accordingly, the conferees concern that the 85 percent threshold might be too high was expressed before results of the original guidelines were available.

We also believe that the revisions to the wage index guidelines provided in this final rule are consistent with our previous assessment of the purpose of the statute. In our June 4, 1991 final rule with comment period we stated, in part, that we believe "that the geographic reclassifications should be limited to those hospitals which are disadvantaged by their current geographic classification because they compete with the hospitals that are located in the geographic area to which they seek to be reclassified." (56 FR 25469). We also stated in the same section of the final rule that:

> We believe that section 1886(d)(10) of the Act addresses those situations where a hospital competes in the same market with hospitals in an adjacent area: that is the hospital is more like the hospitals in an adjacent area than the hospitals in its geographic area. (56 FR 25469)

Both statements reflect our concern that a hospital that is not disadvantaged by its current classification should not be reclassified. In addition, the first indicates that in setting the 85 percent guideline we were establishing a minimum standard; no hospitals which did not compete with hospitals in another geographic area should be reclassified. The first statement also reflects our belief at that time that providing a guideline that provided an appropriate comparison of a hospital's wages to those of hospitals in the area to which it requested reclassification would be sufficient to achieve those goals.

However, from the outset, we have been concerned about the appropriateness of the guidelines. In issuing the September 6, 1990 interim final rule, we noted that we did not have the necessary data to estimate the impact on hospitals and that it was possible the provisions could create effects that were unintended or costly. We specifically requested comments on the reclassification criteria (55 FR 36765). However, the comments received on the interim final rule, which we responded to in the June 4, 1991 final rule with comment, were received before data were available on the impact of the guidelines. We also announced in the June 4, 1991 final rule with comment (56 FR 25470), and repeated in the August 30, 1991 final rule (56 FR 43202), that we planned to evaluate the extent and appropriateness of reclassifications under the original criteria and, if necessary, propose revisions to the guidelines for future application cycles. Thus, we recognized that the original guidelines may not have been sufficient to ensure appropriate reclassifications, and we have made public our intention to refine the criteria if they resulted in reclassifications inconsistent with the goal of the reclassification process.

Thus, we believe that we have not only the statutory authority but also an obligation to evaluate the reclassification criteria based on the latest available data and to refine them as necessary. The new reclassification guideline is "outcome-oriented" only in the sense that it is aimed at ensuring the overall fairness of the prospective payment system for all affected hospitals. The 108 percent threshold was not an arbitrary figure selected in order to achieve a preconceived number of reclassifications that HCFA deemed satisfactory. Rather, the 108 percent threshold is consistent with our view that, in order to qualify for reclassification, a hospital's wage level should be out-of-line with the level reflected in its current wage index and comparable with the average for the area to which it requests reclassification.

The 108 percent standard we are adopting is based on our analysis of hospitals reclassified for the wage index by the MGCRB in its first year of operation. Our analysis demonstrates that 36 percent of the reclassified hospitals had wages that were less than 100 percent of wages in the area from which they were reclassified. An additional 35 percent had wages that were less than 108 percent of, or one national standard deviation above, their old area. Our analysis indicates that hospitals may be reclassified under the current wage guidelines even though, as evidenced by the relationship between their average hourly wages and the wage index value for the area in which they are located, they may not be significantly disadvantaged by remaining in their original labor market area. Our goal is not to achieve a targeted number of reclassifications but instead to insure that hospitals which are reclassified are both significantly disadvantaged by their original labor market area, and similar to the area into which they are reclassified.

Comment: Several commenters stated that the statistical methods for determining the 108 percent threshold are unreasonable and based on potentially inaccurate assumptions. They believe that it is not appropriate to apply a national average standard to individual labor market areas. A few commenters suggested that we use area-specific standard deviations.

Response: These comments address two related, but different issues. The first issue is whether the qualifying standard should be national or area-specific, and the second is how the standard should be established statistically. Regarding the first issue, we believe that, since the geographic reclassification process is applied on a national basis, it is appropriate to develop a standard that can be applied to all hospitals in a consistent and uniform manner. A national standard based on the average variation in wages across all areas meets this objective; area-specific standards do not. The use of area-specific standards would mean that a hospital whose wages are only 3 percent higher than its area average may qualify for reclassification, while a hospital in a different area whose wages are 10 percent higher than its area average may not qualify. Thus, we believe that a uniform national standard is required to avoid inequities across areas that would necessarily arise if area-specific standards were used.

Second, we developed the national standard threshold using the standard deviation, across all wage areas, of the ratio of a hospital's hourly wage to the average hourly wage for its area. The standard deviation depends in part on the number of hospitals used in its calculation. Area-specific standards would be much more sensitive to differences in the number of hospitals across labor market areas than is the national standard. We want to minimize the effect of variation across areas in the number of hospitals because it should not be a factor that influences the criteria for whether a hospital qualifies for reclassification. We believe that the national standard deviation addresses this issue appropriately.

In summary, in devising the national standard threshold, we wanted a threshold based on relevant data, that was not arbitrarily selected, and that could be applied uniformly to hospitals across all wage areas. The standard deviation, across all wage areas, of the ratio of a hospital's hourly wage to the average hourly wage for its area meets all of these objectives. It is based on data that compares a hospital's own wage level to the average for its area. To determine the actual threshold in a non-arbitrary manner, we used the standard deviation as a reasonable measure of divergence between a hospital's own wage level and the average for its area. Finally, we based the threshold on national data from all wage areas because we wanted a standard that could be applied uniformly to all hospitals. The use of the standard deviation, as well as the choice of the mean plus one standard deviation for the threshold, are based on the considerations described above and not on the basis of statistical inference.

Comment: Many commenters suggested that the hospital's own wages be excluded from the area average for purposes of making the 108 percent comparison. One statistician took issue with our methodology, stating "that comparing an individual measurement with summary statistics computed with that measurement deleted from the data set is more appropriate for determining whether it is out of line." Some commenters suggested that the 108 percent standard was inappropriate for single hospital MSAs because it would be impossible for the hospital to have an hourly wage that was 108 percent of itself.

Response: The purpose of the reclassification guidelines is to address only those situations in which a hospital is clearly disadvantaged by its wage index value under the existing labor market definitions. The 108 percent threshold is used to determine whether the average hourly wage that is used in calculating the wage index adjustment with which the hospital is currently being paid adequately represents the hospital's wage costs. Since that hospital's wages are included in the determination of the area wage index, it is appropriate that its wages be included in the area average in order to make a valid determination of whether the hospital is disadvantaged by its current wage index adjustment. Moreover, in establishing the 108 percent threshold, the comparison is not intended to measure whether a hospital's wage data are out of line with the wage data of other hospitals in the labor market area; instead, the comparison is intended to measure whether the hospital's wages are out of line with the wage level used to set the wage index for the hospital's labor market area. Therefore, the wages for the hospital requesting reclassification must be included in its labor market area when applying the 108 percent wage test.

With respect to single hospital MSAs, a hospital in such an MSA receives a wage index value that is based entirely on its own wage data and, therefore, its actual wage levels. Since such a hospital is clearly not disadvantaged by its inclusion in a labor market area where its wage index is determined based on its own wage levels, it is appropriate under this guideline that a hospital should not be reclassified if it is the only one in its area.

However, we note that a hospital that is the only hospital in its county may qualify for reclassification under the guidelines applicable to hospital groups. Since the guidelines for group appeals are based on demographic criteria as opposed to individual hospital guidelines, hospitals applying as a group are not required to meet the wage comparison to its own labor market area.

Comment: A commenter believes that the standard deviation should be taken to four decimal places (or, in percentage terms, two decimal places) in order to replicate the number of decimal places used in the wage index values.

Response: We do not believe that it is appropriate to use four decimal places in the standard deviation (and the mean to which it is added in order to develop the 108 percent guideline). We believe it is appropriate to use four decimal places in the wage index but not in the standard deviation because the wage index values are used for specific payment purposes to individual labor market areas whereas the standard deviation is a threshold applied to all areas. We also note that the standard deviation is 12.47 percent, and the mean is 98.04 percent; therefore, taking the values to four decimal places would only increase the standard from 108 percent to 108.51 percent. Any numerical standard will necessarily result in some hospitals just qualifying and others just missing qualification, regardless of the number of decimal points used.

Comment: Several commenters suggested using different numerical standards than 108 percent, with many suggesting using 100 percent of the original labor market area as the threshold. Another commenter suggested deleting the requirement that a hospital pay wages that are at least 108 percent of its original labor market area and instead requiring that a hospital must pay wages that are at least 100 percent of the area to which it requests reclassification.

Response: As discussed in the June 4, 1992 proposed rule (55 FR 23635), before proposing the 108 percent standard for the hospital's original labor market area, and the 84 percent standard for the area to which the hospital requests reclassification, we examined two other options. One of these options was to adopt a 100 percent standard for the hospital's original labor market area. We rejected this option because we believe that a hospital that receives a wage index adjustment based on 100 percent of its own wages is not significantly disadvantaged by its current classification. While the wage index value for those hospitals that pay more than 100 percent, but less than 108 percent, of the average wage levels of their original labor market area, does not fully represent their actual wages, our analysis indicates that these hospitals incur wage costs within the normal range of wage variation within a labor market area. Since the wage index value is based on average wages in an area, it is expected that some hospitals necessarily will have wages above the average but still within the normal range. We have defined the normal range as within one national standard deviation of the average hourly wage. We believe that the new criterion is necessary to ensure that only those hospitals disadvantaged by their current labor market area are reclassified.

Increasing the threshold for the comparison with the area to which a hospital is seeking reclassification and eliminating the comparison with the hospital's own labor market area does not achieve this goal.

Comment: A few commenters objected to the 108 percent guideline because they believe that it rewards inefficient hospitals that have not held their labor costs down. They believe that the new guideline will encourage hospitals that are close to the threshold to increase their labor costs in order to qualify for reclassification.

Response: The 108 percent threshold is not designed to reward inefficient hospitals, but rather to ensure that a significant difference in wages exists before reclassification is permitted. Because of the time lag between the data used to determine reclassification and the benefits of receiving reclassification, we do not believe that hospitals will raise their wages in order to qualify for reclassification. For example, we anticipate using 1990 cost report data to construct the wage index for FY 1994.

Comment: A number of commenters stated that the new wage index criterion applicable to individual wage index reclassifications should also be applied to group applications for reclassification.

Response: We did not propose applying the new wage criterion to group appeals because these applications involve the reclassification of all hospitals in a county to an alternative urban area. Since group applications are based on the interrelationship of geographic areas rather than the relationship of an individual hospital to a given labor market area, all hospitals in the area receive reclassification for all payment purposes, not just the wage index. This is similar to reclassifications provided under section 1886(d)(8)(B) of the Act where hospitals located in a rural county that meets certain specific geographic requirements are deemed urban and receive the urban standardized amount as well as the urban wage index.

For example, the requirements for rural to urban group reclassifications are that the county in which the hospitals are located must be adjacent to the area to which they seek reclassification; must comply with certain MSA guidelines related to commuting and population; and must demonstrate that, as a group, the hospitals pay wages that are at least 85 percent of the average for the area to which they request redesignation. Guidelines for urban to large urban group reclassifications have similar geographic and wage requirements with an additional standardized amount guideline.

Since group applications are primarily based on commuting and population requirements that apply to an entire area as opposed to individual hospitals in an area, and hospitals are reclassified for all prospective payment system purposes, we do not believe hospitals in a group appeal should be required to meet an additional criterion related to their current labor market area. The wage index criterion and, in the case of urban to urban group applications, the standardized amount criterion are intended to demonstrate that in addition to the county's geographic connection to the adjacent urban area, the hospitals in the county are also similar economically to hospitals in the adjacent urban area both in terms of its average wage levels and overall average hospital costs per discharge. Therefore, we are maintaining without modification the wage criterion for hospitals applying for reclassification as a group (that is, that the average hourly wage for the group must be at least 85 percent of the average for the area to which they are seeking reclassification). However, given the demographic nature of the group reclassification guidelines, we will review the appropriateness of those guidelines in light of any refined labor market area definitions that may be adopted in the future.

Comment: A number of commenters stated that the use of the 108 percent threshold without consideration of occupational mix is contrary to section 1886(d)(10)(D)(i)(I) of the Act, which states that the guidelines established by the Secretary shall include "guidelines for comparing wages, taking into account occupational mix, in the area in which the hospital is classified and the area in which the hospital is applying to be classified." These commenters believe that the language in the statute clearly precludes any wage comparison unless an occupational mix adjustment is also provided. The commenters believe that either the 108 percent threshold should be deleted or an occupational mix adjustment should be permitted when comparing the hospital with its own labor market area.

Response: We do not believe that the statute requires that any wage comparison included in the guidelines would be limited to those that include an occupational mix adjustment. Rather, we believe that Congress intended that, in devising the guidelines, the Secretary would consider taking into account a hospital's occupational mix, where appropriate. Further, we do not believe the statute precludes comparisons using the average hourly wage costs that are actually used to develop the wage index.

Consistent with our interpretation of Congressional intent, the initial guidelines for individual hospital reclassifications for purposes of the wage index provided for two bases of comparison: one on the basis of the hospital's average hourly wage cost and the other on the basis of the prices that the hospital pays for its labor. Recognizing that the variation in average hourly wages is greater than price level variation because of occupational mix differences, we set the threshold for a hospital that wishes to be compared on the basis of labor prices at a higher level than the threshold for a hospital that wishes to be compared on the basis of its average hourly wage. We set the threshold for the labor price comparison at 90 percent since we would expect the hospital to pay a comparable price for labor as hospitals in the area to which it is requesting reclassification.

Based on public comment, we have carefully considered the issue of whether the wage comparison with the hospitals in the original market area should also include an occupational mix adjustment. We believe that, if we were to institute such a provision, any hospital that requests reclassification based on an occupational mix adjustment in one labor market area should base its request on occupational mix adjustments for both labor market areas. For example, we considered whether to provide that a hospital electing the labor price comparison would be reclassified if its occupational-mix adjusted average hourly wage were at least 114 percent of the average hourly wage for its original labor market area and at least 90 percent of the average hourly wage for the area to which it requests reclassification. This provides the same 2 standard deviation band as for the labor cost comparison, since the range is 0.5 standard deviations below the mean to 1.5 standard deviations above. Just as is the case with the 90 percent threshold, we believe a more stringent threshold would be appropriate for a labor price comparison with the hospitals in the original labor market area because the occupational-mix adjusted average wage, which reflects only price differences, is being compared to an average hourly wage that reflects both price and occupational mix differences.

However, we have concluded that requiring an occupational mix adjustment to the wage comparison for a hospital that has elected the labor price comparison with the hospitals in the area to which it seeks reclassification would not be appropriate because it would result in consequences that are contrary to the intent of the guideline.

Because a hospital's average hourly wage is a function of the mix of labor that it employs and the price it pays for that labor, two hospitals may have the same average hourly wage but one may have a more expensive occupational mix while the other may face higher price levels. Within the same labor market area, the hospitals with higher than average hourly wages tend to have the more expensive occupational mix. The effect of an occupational mix adjustment is to reduce the average hourly wage for hospitals with a more expensive skill mix and to increase the average hourly wage of hospitals that have a less expensive occupational mix.

The 90 percent threshold allows a hospital to qualify for reclassification that has a lower occupational mix than the hospitals in the area to which it is requesting reclassification. Although a hospital requesting reclassification based on a labor price comparison would have a lower occupational mix than the hospitals in the area to which it is requesting reclassification, the hospital would not necessarily have a lower occupational mix than the hospitals in the area in which it is located. If an occupational mix adjustment were applied in making the wage comparison for purposes of the 108 percent threshold, a hospital that is significantly disadvantaged by the wage index for its area because of factors that include a higher occupational mix, may no longer qualify. Instead, a hospital with a lower occupational mix whose average hourly wage is within the normal range of wage variation within a labor market area may qualify.

The following example illustrates this in greater detail. Hospital A and Hospital B both have average hourly wages of $11.95, but they have different occupational mixes and wage rates. Both are currently located in area X, which has an average hourly wage of $11.04. Both seek reclassification to MSA Y, which has an average hourly wage of $14.42. Since 84 percent of $14.42 is $12.1128, both hospitals must use the occupational mix guidelines to reclassify for wage index purposes. The occupational mix and wage rates of the hospitals are illustrated below:

Employment category	Hospital A		Hospital B	
	Occupational mix (percent)	Wage rate	Occupational mix (percent)	Wage rate
Administration	5	$32.00	2	$50.00
Registered nurses	30	18.00	8	25.63
LPNs and therapists	30	10.00	30	15.00
Clerical	15	5.00	20	8.00
Other	20	6.00	40	7.00

The wages of the two hospitals, adjusted to the occupational mix of MSA Y, are as follows:

Employment category	Hospital A				Hospital B			
	MSA occ. mix (percent)	×	Hospital wage rate	=	MSA occ. mix (percent)	×	Hospital wage rate	=
Administration	7	×	$32.00	= $2.24	7	×	$50.00	= $3.50
Registered nurses	35	×	18.00	= 6.30	35	×	25.63	= 8.97
LPNs and therapists	40	×	10.00	= 4.00	40	×	15.00	= 6.00
Clerical	8	×	5.00	= 0.40	8	×	8.00	= 0.64
Other	10	×	6.00	= 0.60	10	×	7.00	= 0.70
Total				$13.54				$19.81

Since 90 percent of MSA Y's average hourly wage is $12.98, both hospitals satisfy the 90 percent threshold for reclassification to MSA Y for wage index purposes. One hundred eight percent of the average hourly wage for area X is $11.9232. Both hospitals would therefore qualify to be reclassified for wage index purposes to MSA Y. If, however, we added the requirement that any hospital that uses occupational mix to qualify for reclassification to a new labor market area also must use occupational mix to prove that its wages are significantly different from its original labor market area, only hospital B would qualify:

Employment category	Hospital A				Hospital B			
	Area X occ. mix (percent)	×	Hospital wage rate	=	Area X occ. mix (percent)	×	Hospital wage rate	=
Administration	4	×	$32.00	= $1.28	4	×	$50.00	= $2.00
Registered nurses	18	×	18.00	= 2.88	18	×	25.63	= 4.10
LPNs and therapists	40	×	10.00	= 4.00	40	×	15.00	= 6.00
Clerical	15	×	5.00	= 0.75	15	×	8.00	= 1.20
Other	25	×	6.00	= 1.50	25	×	7.00	= 1.75

Employment category	Hospital A: Area X occ. mix (percent)	×	Hospital wage rate	=	Hospital B: Area X occ. mix (percent)	×	Hospital wage rate	=
Total				$10.41				$15.05

Since 114 percent of the Area X's average hourly wage is $12.5856, only Hospital B would qualify. As a result, two hospitals in the same labor market area with the same average hourly wage would be treated differently under an occupational mix guideline for the home labor market area average hourly wage.

We believe it is more important for the hospital that is significantly disadvantaged by its wage index to qualify for reclassification than one that is not. The hospital with the less expensive labor mix is already receiving, through its wage index value, the benefit of being included with hospitals that have average wages that reflect a higher skill mix of employees. We concluded that an occupational mix adjustment would be counter to the purpose of the guideline, which is to identify those hospitals that are significantly disadvantaged by their wage index value. Therefore, we have decided not to add an occupational mix adjustment to the threshold for a hospital that has elected a labor price comparison with the hospitals in the area to which it requests reclassification.

Comment: Several commenters addressed the impact of the budget neutrality adjustment. Some commenters suggested limiting the impact of the budget neutrality adjustment on urban hospitals by obtaining additional funding from Congress to pay for the reclassifications. Other commenters suggested limiting the budget neutrality adjustment to the MSAs directly involved in urban to urban reclassifications, and computing the budget neutrality adjustment on a State-by-State basis.

Response: While we share the commenters' concern about the impact of the budget neutrality adjustment on urban hospitals, we do not agree that the reclassifications granted by the MGCRB require additional funds. Each year Congress establishes an update to the standardized amount to Health Subcommittee voted to approve the revised guidelines in H.R. 5502, the Health Care Cost Reduction and Reform Act of 1992, which would institute the new guidelines for FY 1993.

Response: Absent final legislative action and Congressional grant of authority, we may not make retroactive changes to the MGCRB regulations. Moreover, absent Congressional direction to make a retroactive change, we do not believe that it would be appropriate in this instance to apply the new threshold retroactively. FY 1993 reclassifications have been duly granted by the MGCRB based on guidelines in effect at the time decisions were made and therefore should be implemented.

Comment: Some commenters suggested a 2-year phase-in of the new wage guideline.

Response: The commenters did not explain what they intended by a 2-year phase-in. One type of phase-in would be to spread the payment redistribution effect of the reclassification change over 2 years. We do not believe we have authority to provide for this type of phase-in because hospital payments are based on geographic location. Unless a hospital receives reclassification to another area, we do not have the authority to provide additional payments to non-reclassified hospitals.

Another type of phase-in would be to move from a 100 percent threshold in the first year to a 108 percent threshold in the next. However, this would not phase in the redistribution effect for a reclassified hospital since it would allow one group of hospitals to continue to be inappropriately reclassified for an additional year and not allow other hospitals to do so. In our view, a hospital is either appropriately reclassified or it is not, and payment should be made accordingly. It would not be appropriate to provide additional payments to hospitals that are inappropriately reclassified through the reduced payments to urban hospitals. Moreover, since the new guideline will not affect hospital payments until FY 1994, we believe the delayed implementation date is sufficient to allow hospitals to adapt to the change.

Comment: Some commenters suggested that instead of instituting the 108 percent wage test, we should simply limit the number of hospitals eligible for reclassification by restricting the program to rural hospitals or by allowing urban hospitals to reclassify for wage index purposes only. Other commenters suggested giving special consideration to certain types of hospitals such as rural hospitals with over 225 beds One hospital suggested "grandfathering in" hospitals already reclassified and applying the new threshold only to new applications. One commenter suggested that we limit reclassifications only to those hospitals where the payment effect was greater than 3 percent.

Response: Under the statute, we do not have the authority to deny both wage index and standardized amount reclassifications to any prospective payment system hospital because of its location if it otherwise meets the required guidelines. Section 1886(d)(10)(C)(i) of the Act requires that the MGCRB consider the application of any prospective payment hospital that requests that the Secretary change the hospital's geographic classification for purposes of determining the hospital's standardized amount or wage index. Therefore, an urban hospital should not be limited to reclassification for its wage index only.

We do not believe it is appropriate to institute special wage guidelines for certain classes of hospitals, such as large capacity rural hospitals, nor to limit the types of hospitals that can be reclassified. Further, it would be inappropriate to "grandfather" hospitals that cannot meet the revised guideline. The statute is clear in the requirement that reclassifications are for a period of 1 year, and there is no implication that reclassification would be permanent. Moreover, as discussed above, we announced in previous **Federal Register** documents that we intended to reevaluate the reclassification guidelines and revise them if necessary. Accordingly, we believe it would be unfair to use two different standards for reclassification decisions, depending upon whether a hospital applied in a prior year. To do so would conflict with the purpose of the MGCRB provisions by allowing some hospitals to be reclassified even though they are not significantly disadvantaged by their current wage index.

Comment: Some commenters believe that the proposed 108 percent standard does not reflect the statutory directive to develop guidelines for considering information provided by an applicant with respect to the effects of the hospital's geographic classification on access to inpatient hospital services to

Medicare beneficiaries. The commenters maintained that Congress intended that the special access provision result in special consideration for rural referral centers and sole community hospitals, which the 108 percent standard does not provide.

Other commenters recommended that sole community hospitals and rural referral centers be exempt from the 108 percent standard because they must compete with metropolitan hospitals for labor, or alternatively, that they should be subject to a wage threshold of 100 percent rather than 108 percent.

Response: Section 1886(d)(10)(i)(III) of the Act requires that the guidelines include criteria for considering information provided by a hospital with respect to the effect the hospital's geographic classification has on access to inpatient hospital services for Medicare beneficiaries. In drafting the MGCRB guidelines, we gave special consideration to sole community hospitals and rural referral centers with respect to the issue of access to inpatient hospital services for Medicare beneficiaries by waiving the proximity and adjacency requirements for those hospitals. As we stated in our September 6, 1990 interim final rule (55 FR 36762), we believe that the intent of this provision is to ensure continued access to care where a hospital is the sole source of inpatient hospital care or is the only provider of needed tertiary services in rural areas.

We believe that by waiving the proximity and adjacency test for sole community hospitals and rural referral centers we have complied with the directive in the statute to recognize the issue of maintaining access to patient care that these types of hospitals provide. The current access provisions recognize that these types of hospitals, because of their locations in isolated rural areas, may have wages and costs more similar to hospitals in urban areas. Therefore, because of the need to maintain access to inpatient care in those areas, we do not require these hospitals to meet the proximity guidelines. We do not, however, believe it would be appropriate to provide a lower wage standard for sole community hospitals and rural referral centers than for other hospitals applying for reclassification. The issue of whether a hospital is disadvantaged by its current labor market area is equally relevant to sole community hospitals and rural referral centers as it is to other types of hospitals. If a hospital does not pay wages that are out of line with its original labor market area, it is not disadvantaged by its current wage index value. We see no justification for providing a different threshold for sole community hospitals and rural referral center with respect to the 108 percent comparison. As is the case with the other thresholds applicable to both wage index and standardized amount reclassifications, we believe the 108 percent threshold should be applied consistently to all hospitals.

We remind hospitals that voluntarily terminated their sole community hospital status in favor of geographic reclassification and that anticipate losing that status as of the start of the next or any Federal fiscal year (that is, October 1) that they must reapply for sole community status under the provision of § 412.92(b)(4). Although § 412.92(b)(4)(iii)(A) states that at least one full year must have passed between the effective date of cancellation of sole community status and any future reclassification to that status, we note that all the affected hospitals will meet this criterion as of the date they lose their geographic reclassification. However, § 412.92(b)(2) provides that sole community status is effective 30 days after the date of HCFA written approval. To avoid any loss in special payment status, we encourage hospitals in this situation to reapply for sole community status 3 months prior to the date they anticipate losing geographic reclassification (that is, July 1 of the applicable year). Assuming that a hospital requalifies as a sole community hospital under the current criteria at § 412.92(a), the HCFA regional office will approve the hospital's request effective October 1 contingent upon the hospital reverting to rural status on that date. Although regional offices will process applications as quickly as possible for these hospitals, those that do not submit an application to requalify for sole community hospital status by July 1 may experience a delay in obtaining sole community status.

Comment: One commenter stated that the proposed 108 percent standard would endanger the viability of health care in rural America. The commenter also stated that a rural hospital reclassified only for its wage index would not receive the urban standardized amount, and therefore would still be paid less than an urban hospital. Also, even when the single rate standardized amount payment is adopted, rural hospitals still would have been penalized for several years.

Response: We note that approximately 30 percent of all rural hospitals were reclassified by the MGCRB in FY 1993 for purposes of the wage index. Our analysis indicates that 10 percent of rural hospitals will still be able to qualify for reclassification based on the new wage guideline. Therefore, only 20 percent of all rural hospitals will be impacted by the change. Since 80 percent of all rural hospitals will not be affected by the change, either because they never qualified for reclassification or are still eligible for reclassification, we do not believe that the revised guidelines will have a significant impact on the financial viability of rural hospitals as a group.

Moreover, we note that the benefit of reclassification is diluted for those hospitals that are significantly disadvantaged by their wage index because the wage index value for hospitals reclassified to a given area is reduced as a result of inappropriate reclassifications. For FY 1993, there are 15 reclassified areas listed in table 4c that will be receiving the Statewide rural wage index value because the wage index for their reclassified areas fell below the rural value. Clearly, inappropriate reclassification of hospitals with relatively lower wages is limiting the benefit of reclassification for those hospitals that are disadvantaged by their current labor market area.

We also note that of the hospitals reclassified for FY 1992 by the MGCRB, a higher percentage of the urban hospitals will be affected by this change than rural hospitals. Our analysis indicates that 90 percent of all urban hospitals that were reclassified for their wage index will no longer qualify for reclassification.

Since the inception of the prospective payment system, many programs have been initiated to ensure that the payment system is not biased against rural hospitals. Congress has passed many special provisions to help rural hospitals, such as the gradual phase out of separate standardized amounts, higher annual updates for rural hospitals, and higher disproportionate share payments for sole community hospitals and rural referral centers to provide equity between urban and rural hospitals.

An analysis of hospital profit margins indicates that the differences in profit margins for prospective payment hospitals based on PPS-7 cost report data for urban and rural hospitals has begun to narrow. We expect this trend to continue under current law with the elimination of the differential between the urban and rural standardized amounts.

Comment: Some commenters stated that Medicare policy should encourage a stable payment system from year to year. They believe that instituting

changes to the MGCRB guidelines for FY 1993 applications, and then instituting the revised MSA definitions and potential changes to labor market definitions for FY 1994, is inconsistent with that goal. Commenters suggested that the change in the guidelines be delayed until the revised labor market areas and new MSA definitions are implemented and updated wage data are available. One commenter suggested that HCFA implement the revised MSA definitions for MGCRB decisions in FY 1993 affecting reclassifications in FY 1994.

Response: Since the effects of reclassifications must be budget neutral, increased payments to one group of hospitals are offset by reduced payments to other groups. Accordingly, we believe that we have an obligation to ensure that reclassifications are granted only to those hospitals that truly warrant such reclassification because they are disadvantaged by their original labor market designation. Since our analysis clearly indicated that the current guidelines have resulted in the reclassification of some hospitals that are not disadvantaged by their original labor market designation, we have a responsibility to revise the guidelines in order to improve payment equity across all hospitals. Because the reclassification process is budget neutral, inappropriate reclassifications result not only in increased payments to hospitals that are not disadvantaged, but also in reduced payments to the hospitals that must fund the reclassifications.

We recognize that the revised guidelines may create difficulties for those hospitals that have altered their operations in anticipation of continued reclassification. While we are sympathetic to the impact that the revised guidelines will have on their financial condition, we believe it would be inappropriate to defer any revisions until next year. Since the revised guidelines will not affect payment until FY 1994, hospitals will have time to adjust to their loss of reclassification status. The benefits of providing additional adjustment time to these hospitals must be balanced against continuing to disadvantage non-reclassified hospitals through the budget neutrality adjustment. While we agree that payment stability is important, we have made it clear from the outset that it was our intention to examine the guidelines and propose any changes that were warranted.

Given these considerations, we do not believe it would be appropriate to delay implementing the new wage guidelines until the revised MSAs and/or labor market area definitions are also implemented. As we indicated in the June 4, 1992 proposed rule, the revised MSA definitions based on the 1990 census will be implemented in FY 1994 at the same time that the MGCRB reclassifications based on revised guidelines will take effect. Updated wage data will be incorporated into the FY 1994 wage index and it is also possible that refinements to the labor market areas will also be implemented at the same time that the MSA definitions are revised. Since these changes will coincide with the implementation of the revised guidelines for payment purposes, they may mitigate the adverse effect on hospitals that no longer qualify for reclassification. Some rural areas will become urban under the revised MSA definitions. In addition, the more recent wage data will help hospitals located in areas where wage levels have risen more rapidly than the national average. Finally, we believe that the revised guidelines will have relevance to any refined labor market area definitions.

Because the revised definitions have not yet been announced by OMB, we cannot adopt the revised MSA definitions in time for the MGCRB's review of reclassification requests during FY 1993. It is not simply a question of recognizing the new MSAs but also a question of reconfiguring the wage data to match those MSAs. However, we note that the new MSAs will be taken into account when we issue the proposed rule for FY 1994. As we stated in the proposed rule (57 FR 23637), in constructing the FY 1994 wage index, it will be necessary for us to group hospitals into their appropriate labor market areas based on the reconfigured MSAs and any other refinements in the labor market area definitions, and to determine where reclassified hospitals should be located.

Comment: A few commenters were concerned about the proportion of labor to non-labor costs in the standardized amounts. These commenters stated that the labor portion of the standardized amount was greater for rural hospitals than urban hospitals and was not consistent with 71.40 percent labor portion stated in the proposed rule (57 FR 23688). These commenters believed that any changes in the MGCRB guidelines should be delayed until the computation of the standardized amount is reevaluated.

Response: The comments reflect a misunderstanding of how the standardized amounts were computed. The urban and rural adjusted standardized amounts were developed from actual cost data as reported by hospitals on their Medicare cost reports for fiscal years ending in calendar year 1981. We described this methodology at great length in both the September 1, 1983 interim final rule (48 FR 39752) and the January 3, 1984 final rule (49 FR 234). The difference in the proportion of labor versus nonlabor between the urban and rural standardized amounts is a result of the standardization process that occurs after the percentage of the labor-related share is determined based on the hospital market basket. In the current market basket, 71.40 percent of hospital costs are considered to be labor-related. The labor/nonlabor portions derived from the hospital market basket are applied to hospital costs before the standardization adjustments for area wage differences are made. As a result, the labor/nonlabor proportions of the final urban and rural standardized amounts will vary. As described in the rules mentioned above, the labor portion of a hospital's costs is standardized by dividing those costs by the area wage index. The individual standardized costs are combined to derive a single urban or rural standardized amount. Because rural hospitals generally have wage index values less than 1.0 and urban hospitals generally have values greater than 1.0, during the standardization process, the rural labor portion of the standardized amount increases while the urban labor portion decreases. Therefore, while the labor portions of the standardized amounts appropriately reflect the market basket labor component (that is, 71.40 percent of costs), the proportions for the urban and rural rates will vary.

e. *Guidelines for a Hospitol Seeking Reclassification for Purposes of its Standardized Amount.* As discussed in the June 4, 1992 proposed rule (57 FR 23636), we did not propose changing the guideline for individual hospital reclassifications for purposes of the standardized amount.

f. *Application of Numeric Standards.* In order to ensure consistency throughout the MGCRB adjudicative process, we are modifying the MGCRB regulations in each section where a numeric standard is set forth to specify that rounding is not permitted. No comments were received on the rounding issue, but, as discussed below, we received one comment on the broader issue of numeric standards.

Comment: Some commenters recommended that an exceptions process be established regarding the numeric criteria applied by the MGCRB. They argued that any set of numerical criteria is arbitrary and that an exceptions process would allow hospitals that do not meet the criteria, but have a justifiable case, to be considered for reclassification.

Response: To fairly assess the merits of reclassification requests, the MGCRB must base its decisions on a consistent, reliable set of criteria that can be applied equally in every case. We believe that objective criteria are necessary to ensure that all hospitals are treated fairly and consistently. Moreover, given the volume of applications, a determination process based on subjective guidelines, such as those necessarily associated with an exceptions process, would likely be very time-consuming and would therefore make it less feasible for the MGCRB to meet the March 30 deadline for issuing decisions. Given the subjective nature of an exceptions process, it would be very difficult for the MGCRB to make individual case-by-case determinations in a consistent and equitable manner. Therefore, we are not providing for an exceptions process at this time. However, we will continue to evaluate the reclassification process to determine if further revisions are appropriate in order to better target reclassifications to those hospitals that warrant reclassifications.

2. Implementation of FY 1994 Hospital Reclassifications

a. *Appropriate Wage Data.* We are revising §§ 412.230(e)(2) and 412.232(d)(2) to clarify that the appropriate wage data are the data used to construct the wage index in effect for prospective payment purposes during the year in which the MGCRB considers the applications. Because the wage data will be updated annually beginning in FY 1994, there will always be a 1-year lag between the wage data used by the MGCRB to make its determinations and the data used to develop the wage index in effect during the year reclassification is effective.

Comment: Several commenters indicated that they do not believe it is appropriate that hospitals are being asked to submit their applications for FY 1994 reclassification based on 1988 wage data. They argue that the 1988 wage data will determine if they qualify for reclassification, while the wage index that will be effective for FY 1994 payments will be based on 1990 wage data and revised labor market areas. Many of the commenters referred to this as the "Blind Leap Rule" because hospitals must make reclassification decisions based on data that will not be a factor when the reclassifications take effect. In addition, one commenter wanted the 1990 wage data to be used if there has been a change of ownership since 1988. Another commenter asked for clarification as to what data will be used for the FY 1994 wage index update. Some of these commenters noted that rural hospitals were disadvantaged by the exclusion of contract labor from the 1988 wage data and suggested that the revised guidelines be deferred until contract labor is incorporated into the average hourly wages.

Response: We anticipate using FY 1990 hospital wage data to construct the updated wage index for FY 1994. While this data is currently being submitted to HCFA through the HCRIS system, a complete database will not be available by October 1, 1992, when the MGCRB begins to consider applications for FY 1994 reclassifications. Moreover, the data currently available on the HCRIS system has not yet been tabulated, edited or reviewed. As we evaluate the data and as additional cost reports are submitted, we expect the data to continue to change until such time that the final wage index for FY 1994 is developed. In addition, the wage data will need to be reconfigured to conform to the revised MSA definitions and any refinements that we make in the FY 1994 labor market areas after proposed rulemaking. Therefore, complete and accurate 1990 wage data consistent with the FY 1992 labor market areas will not be available for use in making wage comparisons with respect to applications considered during FY 1993. The very nature of the reclassification process, which requires hospitals to apply 1 year before the reclassification takes effect, precludes the use of data in the application process that coincide with those that will be used to make payments after reclassifications are implemented. Once the wage data is updated annually beginning in FY 1994, there will necessarily be a 1-year lag between the wage data used by the MGCRB to make its determinations and the data used to develop the wage index in effect during the year reclassification is effective. Accordingly, the MGCRB will continue to use 1988 wage data and FY 1993 labor market areas to determine if a hospital qualifies for a wage index reclassification for FY 1994. These data represent the latest complete database on which valid comparisons can be made across areas.

The issue of contract labor costs is discussed in section III above. However, we note that the reported 1988 contract labor data had such varied and significant problems that to rely upon it would have arbitrarily advantaged some areas and disadvantaged others. Since the 108 percent threshold will compare a rural hospital to other rural hospitals, it is not clear that the omission of contract labor from the wage index will affect the ability of most rural hospitals to meet this guideline.

Comment: Several commenters were concerned about the process of reclassification for merged hospitals that were previously single entities during the 1988 survey process and suggested that post-merger wage data be used.

Response: Merged hospitals that have been assigned a single provider number must apply jointly to the MGCRB. In recognition of this situation, the MGCRB has a process whereby merged facilities may be considered for reclassification. If both facilities are located in the same geographic area, this is accomplished by combining the wage and/or cost data for the two facilities. The wage survey data is combined by adding the inflation-adjusted salaries and hours of the two facilities together and then dividing the total combined salaries by the total combined hours to obtain a new average hourly wage. Cost data also may be combined by adding the required data of the two facilities together to achieve a combined cost per discharge. The adjustment factor such as case-mix index can be combined based on the discharge-weighted average of the two facilities.

On the other hand, if the hospitals continue to operate as separate providers, a separate reclassification decision will be made for each facility. In either case, the 1988 wage data must be used. There is no provision for adjustment of any wage data for events occurring subsequent to the survey period.

b. *Revised Labor Market Areas.* As noted in section III.E. of this preamble and the response to a previous comment, in FY 1994 we expect to implement revised MSA definitions based on the 1990 census data. The revised labor market areas that will be effective for FY 1994 will be based on the new MSA definitions that will be announced by OMB later this year, as well as any refinements in the labor market area definitions that our analysis indicates would be appropriate. As in the past, we anticipate significant changes to the MSA definitions, including the creation, elimination, or merging of MSAs, as well as the movement of counties from one MSA to another.

OMB is not expected to publish revised MSA definitions until later this year, by which time most or all hospitals may have already submitted their

applications for FY 1994 reclassification. To be consistent and equitable to all hospitals, hospitals that are applying for geographic reclassification effective in FY 1994 will need to base their requests on the current MSA definitions, and the MGCRB will make its determinations during FY 1993 based on the MSA definitions used for prospective payment purposes in FY 1993.

In constructing the FY 1994 wage index, it will be necessary for us to group hospitals into their appropriate labor market areas based on the reconfigured MSAs and any other refinements in the labor market area definitions, and to determine where reclassified hospitals should be located. The proposed rule on the prospective payment system for FY 1994 will provide a detailed discussion of our proposed policies concerning the effects of the new labor market area definitions on the geographic reclassification of hospitals. We note that, as provided in § 412.273(a)(2), a hospital will have 45 days from publication of the FY 1994 proposed rule to withdraw its application for reclassification if it determines that such reclassification would not be advantageous in view of the revised wage data or new labor market areas that will be implemented in FY 1994. The revised MSA definitions will be used by the MGCRB in making determinations for FY 1995 reclassification requests, which must be submitted to the MGCRB by October 1, 1993.

3. Administrative and Procedural Guidelines

a. *Withdrawing an Application (§ 412.273).* We are revising § 412.273 to specify that a hospital's request for withdrawal of an application must be submitted to the MGCRB. Additionally, we are adding a new paragraph (c) to § 412.273 to provide appeal rights for a hospital whose request for withdrawal has been denied by the MGCRB. A hospital may request that the Administrator review the MGCRB's denial within 15 days of the date of the notice of denial. Within 20 days of receipt of the hospital's appeal request, the Administrator will either affirm or reverse the denial. We received no comment on this specific change and we are adopting the proposed change with a revision to clarify that the 15-day deadline applies to the date of receipt; that is, the hospital's request for review must be received within 15 days of the date of the notice of denial. However, we received one comment concerning the withdrawal process which we address below.

Comment: One commenter noted that hospitals have 45 days from publication of the annual prospective payment system proposed rule to withdraw their applications for reclassification. The commenter asserted that since changes may occur in the wage index values between the publication of the proposed rule and the final rule, hospitals should be permitted to withdraw their applications within 30 days of the publication of the final rule.

Response: We believe that the proposed rule constitutes the latest feasible resource for providing hospitals with the necessary information to decide whether to withdraw requests for reclassification. We recognize that the proposed wage index values will change slightly in the final rule to take into account the impact of any withdrawal requests and the effect of any decisions by the MGCRB or the Administrator that were not issued in time to be taken into account in the proposed rule. We cannot extend the 45-day deadline, however, because doing so would not provide reasonable time to take withdrawals into account in the development of the final wage index and prospective payment system rates.

We note that although hospitals are permitted to withdraw their applications for reclassification at any time during the 45-day period, even if an MGCRB decision has already been made, a hospital that requests that its application be withdrawn may not request that the MGCRB decision be reinstated after publication of the prospective payment system final rule.

b. *Reopening.* We are adding a new paragraph (g) to § 412.278 to provide that, within 10 days following a decision issued by the Administrator, a hospital may request that the Administrator amend the decision only to correct mathematical or computational errors, or facial errors. Examples of mathematical or computational errors include, but are not limited to, the erroneous entry of data for the respective cost or wage comparison calculation. An example of a facial error would be a decision that includes incorrect identifying information for the affected hospital(s). The Administrator would promptly review the hospital's request and amend the decision, if necessary, within 5 days following receipt of the hospital's request for amendment. The Administrator, at his or her discretion, may also amend the decision to correct mathematical, computational, or facial errors within 15 days following the issuance of his or her initial decision. The Administrator's amended decision is final and is not subject to judicial review. In accordance with these changes, we are also revising § 412.278(f)(3) to state that the Administrator's decision issued under §§ 412.278 (a) or (c) is final unless it is amended under § 412.278(g).

Comment: One commenter apparently misinterpreted the republishing of current § 412.278 of the regulations text in the proposed rule as proposing a new provision concerning judicial review of the Administrator's decisions.

Response: In the proposed rule, we republished § 412.278 of the regulations text to correct technical errors in the CFR. The provisions concerning Administrator review were subject to the notice and comment rulemaking process in the September 6, 1990 interim final rule (55 FR 36754) and the June 4, 1991 final rule with comment period (56 FR 25458) and, with the exception of the new reopening provision, have not been materially altered in this rule. We note that section 1886(d)(10)(C)(iii)(II) of the Act specifies that with regard to appeals of MGCRB decisions, "the decision of the Secretary shall be final and shall not be subject to judicial review." Our regulations are consistent with that provision.

c. *Technical Changes to § 412.278(f)(1).* In title 42 of the Code of Federal Regulations, parts 400 to 429, revised as of October 1, 1991, on page 331, the text of § 412.278(f)(1) was printed incorrectly. The correct text, which describes what evidence the Administrator may consider in reviewing an MGCRB decision on a hospital's reclassification request, was originally published as § 412.278(c) in our September 6, 1990 interim final rule (55 FR 36770) and was redesignated as § 412.278(f)(1) in our June 4, 1991 final rule with comment period (56 FR 25489). In addition, technical changes to paragraph (f)(1) are needed to clarify that the Administrator may review comments submitted by HCFA or a hospital during the appeals and discretionary review process. These changes should have been included in our June 4, 1991 final rule but were inadvertently omitted.

Accordingly, we are revising § 412.278(f)(1) to ensure that this section of the Code of Federal Regulations is correct and to incorporate the necessary references to comments submitted during the appeals and discretionary review process.

V. Other Changes to the Prospective Payment System for Inpatient Operating Costs

A. Outlier Payments (§ 412.82)

1. Background

Section 1886(d)(5)(A) of the Act requires the Secretary to pay an additional amount beyond the basic prospective payment amount for a hospital inpatient case that involves an extremely long length of stay or extraordinarily high costs when compared to other discharges classified in the same DRG. We refer to these atypical cases as "day outliers" and "cost outliers," respectively. Section 1886(d)(5)(A)(iii) of the Act specifies that outlier payments approximate the marginal cost of care beyond the outlier threshold. The purpose of the outlier payment is to protect the hospital from significant financial loss in individual cases.

In the two final rules published on August 30, 1991 that implemented changes to the inpatient operating prospective payment system and a new prospective payment system for capital-related costs for FY 1992 (56 FR 43196 and 43358, respectively), we established a unified outlier payment methodology for capital and operating outlier cases. Under § 412.82, for day outliers, an additional per diem payment is made for each covered day of care beyond the length of stay threshold. The per diem payment is equal to 60 percent of the average per diem payment (operating and capital) for the DRG, which is calculated by dividing the standard payment for that DRG by the geometric mean length of stay for the DRG. The capital portion of the day outlier payment is multiplied by the applicable Federal transition percentage during the transition to a prospective payment system for capital-related costs.

For cost outliers, we pay 75 percent of charges, adjusted to equal capital and operating costs, beyond the cost outlier threshold. Charges are adjusted to cost using hospital-specific cost-to-charge ratios and standardized to eliminate the effects of the indirect costs of medical education and the costs of treating a disproportionate share of low income patients, for both operating costs and capital-related costs. As with day outliers, the capital portion of the cost outlier payments is then multiplied by the applicable Federal blend percentage. Cases that qualify as both day and cost outliers are paid under the methodology that yields the highest combined capital and operating payment.

The current outlier payment methodology reflects refinements that we have made since the inception of the prospective payment system to improve the financial protection for high cost cases.

2. Changes to the Payment Methodology for Day Outliers

In the August 30, 1991 final rule implementing the prospective payment system for hospital inpatient capital-related costs, we stated that, as part of our ongoing study of possible refinements to outlier payment policy, we would examine whether changes in the marginal cost factors used to determine outlier payments would be appropriate in light of the inclusion of capital in the outlier payment (56 FR 43383). We believe that the marginal cost factor should be set at a level that is appropriate for Medicare cases, and that is based on more recent data for operating and capital costs.

Based on a study by the RAND Corporation and our own analysis which indicated the significant potential for improvements in payment equity across types of outlier cases (see 57 FR 23640), we proposed in the June 4, 1992 rule to revise the day outlier payment policy effective for discharges occurring on or after October 1, 1992. We proposed revising § 412.82(c) to reflect that the per diem payment would be calculated using the arithmetic mean and a 0.55 marginal cost factor. That is, for each DRG the per diem day outlier payment under the prospective payment system for operating costs would be determined by dividing the standard DRG payment by the arithmetic mean length of stay for that DRG, and multiplying the result by 0.55. During the transition to a prospective payment system for capital, the capital portion of the day outlier payment would also be multiplied by the Federal payment blend percentage. (For cost reporting periods beginning in FY 1993, the blend percentage will be 20 percent for fully prospective hospitals, a hospital-specific percentage that reflects the ratio of Medicare inpatient new capital costs to Medicare inpatient total capital costs for hospitals receiving hold harmless payments, and 100 percent for hospitals receiving 100 percent of the Federal rate.)

For cost outlier cases, we pay 75 percent of the charges adjusted to cost beyond the cost outlier threshold. If we were to adopt this same policy for day outlier cases, the marginal cost factor would be set at .40 (.55×.75) for day outlier cases. As stated in the proposed rule, we considered adopting a 2-year phase-in of this policy by implementing a .50 marginal cost factor for day outliers in FY 1993 and moving to a .40 marginal cost factor in FY 1994. However, because of the significant impact this change would have on those hospitals with longer lengths of stay that have more day outlier cases than average, we proposed to adopt an incremental change to a .55 marginal cost factor in FY 1993 and evaluate its effects before considering additional revisions to the day outlier payment policy.

After consideration of all comments received on this issue, as discussed below, we are implementing the changes to the outlier payment methodology as proposed.

Comment: Several commenters supported our proposed change in the day outlier payment methodology. ProPAC agreed that this change would result in better targeting of outlier payments to those cases that impose the largest financial burden on hospitals. Other commenters opposed the change, or advocated a 2-year phase-in of the change in order to mitigate its impact on those hospitals with a relatively high proportion of day outlier cases. A few commenters advocated further reductions in payments to day outlier cases by adopting a .40 marginal cost factor for FY 1993, while others suggested that we wait to assess the impact of these changes before contemplating additional reductions. One commenter requested that we publish the information used to determine the reduction in the marginal cost factor for day outlier payments.

Response: As discussed in the June 4, 1992 proposed rule (57 FR 23640), research by the RAND Corporation shows that hospitals receiving day outlier payments are paid more than the marginal costs of caring for these patients during the outlier portion of their stay. As a result, payments for the most costly outlier cases are a smaller proportion of the costs of treating these cases than they would be in the absence of the excessive day outlier payments. The results of the study [3] indicate that the change in the calculation of the per diem payment for day outliers will more accurately reflect the marginal cost of treating patients during the outlier portion of their stay. In addition, we note that the hospitals that are most affected by this policy change, those in Region II (hospitals in New York, New Jersey, and Pennsylvania), will continue to have the highest payment-to-cost

[3] A technical paper describing the study and the results, Carter, G.M. and Rumpel, J.D., "Payment Rates for Unusual Medicare Hospital Cases", is available from HCFA.

ratio for outlier cases of any payment region after the change is implemented.

We believe that making this change on a phased-in basis would be inappropriate because it would result in continued overpayment for day outlier cases during the phase-in period. Also, it would be extremely difficult to achieve an even phase-in of the redistributional effect of the policy change. Because the change to the arithmetic mean length of stay provides the bulk of the change in distribution of outlier payments, an even transition would require pricing of bills under the old and new payment systems and then averaging the payments. This would be administratively difficult and costly, and would lead to problems in the definition of day and cost outliers, since a case which qualified as a day outlier under the old methodology might qualify as a cost outlier under the new methodology.

We agree that it would be inappropriate to establish further modifications in day outlier policy until we can assess the results of the changes implemented in this final rule. However, we will continue to evaluate possible changes to outlier policy in order to improve our ability to protect hospitals from significant financial loss in individual cases.

Comment: Several commenters believe that the proposed change to the day outlier per diem would result in unfairly shifting payments from major teaching (IME) and disproportionate share (DSH) hospitals to proprietary hospitals. In addition, they stated that there are serious methodological flaws in the cost outlier payment formula that should be corrected before shifting funds from day outlier cases to cost outlier cases. Specifically, the commenters asserted that the use of a single hospital-wide cost-to-charge ratio distorts cost outlier payments. They provided an example that purports to show that departmental cost-to-charge ratios would increase payments to IME and DSH hospitals.

Response: The change in outlier payment policy does not result in the shifting of payments from most major teaching or disproportionate share hospitals. Estimates of the impact of the proposed change indicate that, with the exception of hospitals in Region II, the hospitals receiving DSH or IME payments in no other region will experience a major decline in payments, and most will experience modest increases in total payments. Overall, hospitals in Region II show the largest total payment declines as a result of the change, but they maintain the highest payment-to-cost ratios for outlier cases even after the proposed change. The effects on the IME/DSH hospitals in that Region are similar. If the outlier change resulted in payment decreases for high DSH hospitals, we would expect it to result in payment decreases for government-controlled hospitals, which tend to provide a relatively large proportion of care to low income patients. However, this is not the case. Overall, the impact on government-controlled hospitals is a 0.0 percent change in total payments (See appendix A to this final rule, Table 1).

The cost-to-charge ratios are determined on a hospital-specific basis, and we do not believe the use of departmental cost-to-charge ratios in lieu of an overall cost-to-charge ratio would have a significant effect since any differential mark-up policies should be captured in the overall cost-to-charge ratios. We believe that the example submitted by the commenters on the effects of using departmental cost-to-charge ratios is based on distorted cost-to-charge data, and that a different methodology would better show the effect of using departmental cost-to-charge ratios on cost estimation. We used the average cost-to-charge ratios for ancillary and routine services as presented by the commenters to develop our analysis. We examined the costs for the same type of case at two hospitals where the total costs were the same when calculated using separate ancillary and routine cost-to-charge ratios. Our analysis showed that the only difference between the costs estimated using the overall cost-to-charge ratio and those estimated using separate routine and ancillary cost-to-charge ratios is due to rounding. However, we plan to analyze the use of separate cost-to-charge ratios for calculating cost outlier payments in time for consideration of the results in developing the FY 1994 proposed rule.

Comment: One commenter suggested that any savings realized through changing the per diem payment calculation for day outliers be used to lower the thresholds for day outliers, rather than lowering the cost outlier threshold.

Response: In establishing the FY 1993 thresholds, we reduced both the day and cost outlier thresholds so that the percentage of cases that qualify as day outlier cases remains about the same. However, a larger portion of these cases will now be paid as cost outliers instead of day outliers. We believe that the payment-to-cost ratios for day outlier cases and for cost outlier cases should be approximately the same. As discussed in detail in the June 4, 1992 proposed rule, we calculated the payment-to-cost ratios of different types of outlier cases under the current policy and under the proposed policy (57 FR 23641). Under the day outlier policy change, the payment-to-cost ratios are more equal across types of outlier cases, with a range of 0.4891 (for those cases that qualify only as cost outliers) to 0.5667 (for those cases that qualify as both types of outliers and are paid under the day outlier methodology). Under the current policy of using the geometric mean length of stay and a 0.60 marginal cost factor, the range is 0.4773 to 0.6549, for the same types of cases. Even under the new policy, the type of case with the highest payment-to-cost ratio will be paid under the day outlier formula. Thus, we believe that it is appropriate to redistribute some outlier funds from cases paid under the day outlier methodology to cases paid under the cost outlier methodology, since it is these cases that experience greater losses.

Comment: One commenter asserted that the research upon which the revised policy is based is potentially flawed, and urges that we delay implementation of any policy change until the results are confirmed by another researcher. This commenter is concerned with the construction of the cost data used in the study, with the standardization procedure used to remove the effects of the payment adjustments from the costs, and with several statistical issues: These issues include the choice of a linear model in the primary regressions, the use of a single day outlier payment multiplier (equivalent to the marginal cost factor) when a wide range is reported across DRGs in the study, and sample selection issues and sensitivity analysis. Another commenter urged that we use more current data to confirm the results of the RAND study, which was based on FY 1990 charge data and FY 1988 and 1989 cost report data.

Response: We are confident that the research done by the RAND Corporation is accurate and that the policy change is appropriate. The method for calculating the costs of a given case has been used by RAND in numerous studies for HCFA, ProPAC, and independent research purposes, and we believe that it provides accurate results. The standardization procedure is based on the total cost regressions performed for the August 30, 1991 final rule that implemented the prospective payment system for capital-related costs, as explained in detail at 56 FR 43369. Thus, we believe that the standardization process used by RAND represents the appropriate relationships between the payment adjustment factors and the total cost per case. RAND chose the particular linear specification only after ascertaining that it produced an accurate description of how costs per case increase with the number of outlier days. In addition to an examination of plots of data within individual large DRGs, several alternative specifications were tested as described in the RAND report. A spline formulation was used to determine whether costs increase at different rates in different portions of the outlier part of the stay. As described in the report, the larger coefficient in the spline formulation was only 0.025 higher than the average coefficient. Using the arithmetic mean length of stay rather than the geometric mean length of stay did not affect average estimated cost per outlier day. Medical and surgical DRGs groups have only modestly different coefficients. Thus, the simple linear specification with the arithmetic mean length of stay provides a very close approximation to the cost data. Although RAND reported the R-square for each model, it was not used by RAND to choose among models. Rather, the RAND study shows that the estimate of how costs increase with length of stay is robust across a large variety of model specifications.

As the commenter noted, the RAND study found a range of day outlier payment multipliers across DRGs. However, approximately two-thirds of the DRGs had multipliers between 0.40 and 0.70, or within 27 percent of 0.55 (these figures are calculated using the arithmetic mean length of stay). Although the use of DRG-specific marginal cost factors may be a potentially more accurate method of paying for day outliers, we did not contemplate such a step for reasons of administrative complexity. A finding that a few DRGs had day outlier payment multipliers that are significantly different from 0.55 does not, we believe, contradict the choice of an appropriate single marginal cost factor based on the results of the RAND research. A few DRGs have day outlier payment multipliers significantly different from 0.60, the current factor, as well.

Regarding the issue of sample selection and sensitivity analysis, we believe that the authors of the RAND study have shown that their results are valid in this respect. On page 22 of their study, Table 3.3 shows that the coefficient used to determine the day outlier cost multiplier is almost identical when using the current method of paying cost outliers and when using the alternative fixed loss methodology (that is, a case qualifies as a cost outlier if its standardized costs exceed the DRG payment amount by a fixed dollar amount, regardless of DRG). The difference between the fixed loss methodology and the current cost outlier methodology is a much larger change in cost outlier policy than any movement in the cost outlier thresholds under the current cost outlier policy that we would contemplate in concert with the day outlier policy change. Therefore, we do not believe that the definition of cost outlier cases under alternative policies could cause a sample selection problem or bias the results of this study.

We have confirmed the results of the RAND study using more recent data. The analysis in the proposed rule at 57 FR 23640 of the payment-to-cost ratios of different types of outlier cases was completed using the FY 1991 charge and hospital-specific data. As we expected, we again found that the payment-to-cost ratios of different types of hospitals and different types of outlier cases become more equal after the policy change. In fact, since our confirmation of the results of the RAND study occurred using a completely different structure (that is, looking at the payment-to-cost ratios of FY 1991 cases under the alternative policies, rather than at the variables examined in the RAND study), we are even more confident of the validity of its results than if we had merely replicated the methodology and results.

Comment: Two commenters opposed the change in outlier policy based on their understanding that cost outlier payments are made only if the day outlier threshold has not been passed. Therefore, they believe that, under the new policy, cases with long lengths of stay would receive lower day outlier payments, and not be eligible for cost outlier payments.

Response: Beginning in FY 1989, all cases are eligible for cost outlier payments if their charges, adjusted to cost, exceed the cost outlier threshold. If a case has also passed the length of stay threshold for day outlier cases, it is paid under the method that yields the higher outlier payment. Therefore, the policy change does not penalize hospitals that have long lengths of stay, since their costly cases with long lengths of stay will continue to be eligible for cost outlier payments.

Comment: A commenter requested that we make available, as quickly as possible, the actual impact of the policy change so that the new payment methodology can be assessed.

Response: We will make every attempt to monitor the results of the policy change, and will make those results public as they become available.

3. Analysis of the Factors that Affected FY 1991 Outlier Payments

As we stated in the proposed rule, we do not believe that it is appropriate to make an adjustment in prospective payment system payments to account for the difference between the estimated and actual FY 1991 outlier payments, just as we have not made adjustments in earlier years (see 51 FR 31525; 52 FR 33048; 53 FR 38508; 54 FR 36500; 55 FR 36077; and 56 FR 43227).

Although actual outlier payments (based on the latest FY 1991 billing data) were 4.24 percent of total standard DRG payments (exclusive of DSH and IME) instead of the estimated 5.1 percent, there was no reduction in total standard DRG payments between the payment per case estimated in the August 30, 1991 final rule and the actual FY 1991 total standard payment per case. As the following table illustrates, the lower outlier payments were more than offset by the increase in standardized amount payments.

	FY 1991 payment per case	
	Estimated	Actual
Average standardized amount payment	$4,414.13	$4,543.57
Average outlier payment	237.36	216.35
Total standard DRG payment per case	4,651.49	4,759.92

The average total payment per case increased 2.3 percent over the amount estimated in the FY 1991 final rule. We would expect some increase in the average payment for increases in the case-mix index (CMI). The observed CMI increase was 2.5 percent. After removing the increase attributable to the FY 1991 DRG reclassification changes (see Section II.D.), the net CMI increase is 1.5 percent. Thus, the payment increases attributable to the DRG classification changes offset the payment reductions attributable to lower outlier payments. Moreover, the average increase in payment per case of 2.3 percent exceeds our estimate that real case-mix change was between 1.0 and 1.25 percent.

Comment: Several commenters asserted that section 1886(d)(5)(A)(iv) of the Act requires that actual outlier payments for any fiscal year be between 5 and 6 percent of total DRG payments estimated to be made in that fiscal year. Other commenters stated that we should pay retroactively for any difference between actual and estimated outlier payments. One of these commenters suggested that the adjustment be made

prospectively as part of the update framework. Another commenter disputed our statement that we do not make any retroactive adjustments, since the variables that are the basis for the IME, DSH, and capital payments are subject to change at cost report settlement. Finally, ProPAC opposed any retroactive adjustment, stating its belief that such an adjustment would be contrary to the intent of a prospective payment system.

Response: The statutory requirement under section 1886(d)(5)(A)(iv) of the Act, requires that outlier payments be between 5 and 6 percent of the total payments "projected or estimated to be made" based on DRG prospective payment rates for discharges in that year. This statutory language plainly directs the Secretary to establish outlier payments based on projections and estimates. This is what we did. Of course, amounts that are based on projections may differ, at times, from actual amounts that are determined after the operative events have passed. But Congress did not direct that outlier payments be based on actual amounts of total payments but rather on the projected amounts. Thus, we have met this requirement, for FY 1992 and for all other prospective payment system years, through our estimation process as described in the June 4, 1992 proposed rule. We have met our statutory obligations by making every effort to ensure that we have the best possible data to make our estimate of total DRG and outlier payments when setting the outlier thresholds for a given year.

As ProPAC suggests, the commenters' argument that actual payments must be between 5 and 6 percent of total payments is inconsistent with the nature of a prospective payment system. The adjustment to outlier payments that the commenters propose must be considered in the broader context of the prospective payment system. Moreover, we note that the retroactive adjustments suggested by the commenters could also result in reductions in payments to hospitals in years where the outlier percentage was too high. However, we did not make adjustments in outlier payments in those years that we paid out more in outlier payments than anticipated.

We always use the most current data available at the time we set the outlier thresholds. Sometimes, as in FY 1991, the estimates based on that data result in outlier payment percentages being too low. At other times, the actual outlier payment percentages were too high. Such imprecision is inherent in a system that is required by statute to use estimates.

Thus, in light of the nature of a prospective payment system, and our attempts to estimate outlier payments as accurately as possible, we believe that we have satisfied the statute and that no retroactive adjustment is warranted.

We recognize that some hospital-specific data, such as the ratios used to determine the IME and DSH adjustments and the capital costs used to determine the payment methodology and hospital-specific rate under the capital prospective payment system, are corrected at cost report settlement. However, we do not correct the basic outlier payment amount determined for cost outliers (based on the standardization of charges to costs using the cost-to-charge ratios and IME and DSH adjustments available) at cost report settlement, but maintain the amounts determined based on the adjustment factors and cost-to-charge ratios available at the time the outlier payment was calculated. That is, while the various hospital-specific adjustments are adjusted at cost report settlement, the basic outlier and DRG payment amounts are not. We note that we could not correct the outlier cost standardization process or the thresholds at cost report settlement without repricing all discharges, because some cases that were paid under the day outlier methodology might switch to the cost outlier methodology (and vice-versa), and some cases that did not previously qualify as outliers might do so under revised thresholds or vice versa. We see no contradiction between correcting hospital-specific data relating to the payment adjustments at cost report settlement and not correcting system-wide elements, such as the standardized amounts and outlier thresholds. We agree with ProPAC that retroactive adjustment of the system wide elements would be contrary to the nature of the prospective payment system.

Comment: A commenter urged that we consider the decline in length of stay as a result of technological advancements when setting the outlier thresholds.

Response: The average length of stay, after declining at the beginning of the prospective payment system, has levelled out in recent years. We do not believe that it is advisable to make predictions about changing lengths of stay when setting the outlier thresholds.

4. FY 1992 Outlier Payments

As we stated in the June 4, 1992 proposed rule, we anticipate that FY 1992 outlier payments will be less than the 5.1 percent that we originally estimated when we set the outlier thresholds (57 FR 23645). This is due, in part, to the fact that the FY 1992 thresholds were set using FY 1990 cases that did not reflect the coding effects of the FY 1991 DRG classification changes. In addition, the first quarter of the FY 1990 data included the effects of catastrophic coverage, for which an adjustment was made in estimating FY 1992 outlier payments. Thus, the considerations involved in analyzing the FY 1992 outlier payments are similar to those involved in analyzing the FY 1991 outlier payments.

Using the FY 1991 cases and the FY 1992 payment data, we currently estimate that FY 1992 operating outlier payments will be approximately 3.84 percent of FY 1992 total DRG payments, and that FY 1992 capital outlier payments will be approximately 3.72 percent of capital DRG payments. (If indirect teaching and disproportionate share payments are included in the calculation, the estimated operating outlier percentage is 4.00 percent.) The 3.84 percent estimate for FY 1992 is lower than the 4.24 actual outlier percentage for FY 1991 largely because of changes in the payment adjustment factors.

Comment: Several commenters stated that we should institute a midyear correction of the FY 1992 outlier thresholds, given our estimate in the proposed rule that FY 1992 outlier payments would equal 3.6 percent of total FY 1992 DRG payments. These commenters also believe that we should institute a midyear monitoring process in order to make corrections to the thresholds in the event that we discover a difference between the estimated and actual outlier percentages.

Response: Section 1886(d)(5)(A)(iv) of the Act requires that outlier payments in a fiscal year be between 5 and 6 percent of the total payments "projected or estimated to be made" based on DRG prospective payment rates for discharges in that year. As explained in an earlier response, this statutory language directs the Secretary to make outlier payments based on estimates. In implementing this provision, we consider the projected total amount of DRG payments for all cases and set the outlier thresholds accordingly.

As ProPAC suggests, we believe that the commenters' argument that actual payments must be between 5 and 6 percent of total payments is inconsistent with the nature of a prospective payment system. This is necessarily a prospective process and the estimates upon which payments are based may prove to be inaccurate. We currently anticipate that FY 1992 outlier payments will fall short of the 5.1 percent level that we originally estimated when setting the FY 1992 outlier thresholds. Moreover, while our current estimate of FY 1992 outlier payments is approximately $516 million lower than the estimate of FY 1992 contained in the August 30, 1991 final rule, our estimate for standard payments (DRG payments plus outlier payments) is approximately $2.1 billion higher and our estimate for total prospective payments is approximately $2.4 billion higher. However, in other years, the estimates on which outlier payments are based resulted in outlier percentages which were too high.

We used the most recent Medicare discharge and hospital-specific data available to estimate total payments and outlier payments. We do not believe that Congress envisioned we would revise in mid-year any of the estimates of factors used to set prospective payment rates for a given Federal fiscal year. These factors include not only the outlier thresholds, but the market basket rate of increase used to establish the update factors, the recalibration of the DRG rates, and the various required budget neutrality provisions. The market basket rate of increase has been overestimated for the past two fiscal years, but we have not made reductions in the standardized amounts during the year as new estimates of the market basket rate of increase became available. Further, our most recent estimate of the FY 1992 market basket rate of increase is 3.6 percent, or 0.8 percentage points lower than that used to establish the FY 1992 standardized amounts. This represents an additional $480 million in payment. In addition, although we now have evidence that the DRG recalibration resulted in a 1.0 percent increase in FY 1991 program payments, we have not contemplated a retroactive adjustment in the DRG weights or the recalibration of the budget neutrality adjustment factor. Since these increased payments are built into the DRG weights, FY 1992 payments are $600 million higher than they would have been if we had not made the changes (prior to taking into account the lower outlier payments). Even taking the estimated outlier shortfall into account, the net difference due to the level of the DRG weights and budget neutrality factors is an increase in payments. Another example is the FY 1992 budget neutrality adjustment to the capital prospective payment system. Based on the most current data available we estimate that in FY 1992 capital payments will be 92.6 percent (instead of the statutorily mandated 90 percent) of Medicare inpatient capital costs. Taking the phase-in of the capital prospective payment system into account, this represents an additional $90 million in program payments. Taken together, these differences between the original estimates and our most recent projections net to more than $570 million in excessive Medicare payments for FY 1992.

We do not believe it would be appropriate to make these mid-year corrections given the requirements under sections 1886(d)(6) and 1886(e)(5)(B) of the Act that we publish annual prospective payment rates and update factors by September 1 of each year. First, this provision is meant to provide hospitals with advance notice of the rates that will be in effect for the fiscal year. Second, as a practical matter, any mid-year correction to the prospective payment rates and adjustment factors would have to remove any anticipated payments in excess of our total payment target in order to maintain budget neutrality. Of necessity, any midyear correction would also rely on estimated data that may not be representative of the entire fiscal year. We note, for example, our estimate of FY 1992 outlier payments is based on FY 1991 MEDPAR data and has increased from 3.6 to 3.84 percent between the June 4, 1992 proposed rule and this final rule.

While we do not believe midyear corrections are appropriate, we will explore whether there are methodological changes that we could make in the rate-setting process that would improve the accuracy of our payment projections in the future. One area we will examine is whether it would be feasible and appropriate to incorporate more recent claim data into our projections. Although these data would be limited using available data from the fiscal year immediately preceding the fiscal year for which the rates are effective may improve the projections by capturing more quickly the effects of changes in case mix on payments. If we determine that using limited data from a more recent period would improve the rate calculations, we would propose methodological changes through the rulemaking process. Any changes would be effective no earlier than FY 1994.

Comment: A few commenters stated that our observation that FY 1992 DRG payments are projected to be higher than originally expected is irrelevant when determining whether or not to adjust the FY 1992 thresholds. The commenters believe that we have not demonstrated that the higher DRG payments were inappropriate, and that overall budget neutrality does not ensure that individual hospitals will not be harmed.

Response: While we are unable to isolate the effect that coding improvements in response to the FY 1991 DRG classification changes had on outlier payments, we are confident that at least a portion of the difference between actual and estimated outlier payments is due to the classification changes. If we had been able to predict the effect of the coding improvements on the distribution of cases across DRGs, we would have taken that effect into account when setting the outlier thresholds and budget neutrality factors. Similarly, we believe that at least a portion of the difference between estimated and actual payments at the individual hospital level was in fact a result of increases in payments based on the standardized amount. Cases that would have received an outlier payment in FY 1990 received higher standardized payments instead. The observation that FY 1992 DRG payments will be higher than originally estimated is not irrelevant. Since total payments to hospitals are higher than anticipated, hospitals as a whole are not harmed by the difference between our original and current estimates of FY 1992 outlier payments.

Comment: A commenter urged that we make available all data from all years of the prospective payment system that would enable the public to analyze any differences between estimated and actual outlier and total payments.

Response: We presented comparisons between estimated and actual outlier payments in the June 4, 1992 proposed rule, at 57 FR 23644. We believe that this is sufficient data to analyze differences between estimated and actual outlier payments under the prospective payment system.

5. FY 1993 Outlier Thresholds

For FY 1993, we proposed to set the day outlier threshold at the geometric mean length of stay for each DRG plus the lesser of 23 days or 3 standard deviations and the cost outlier threshold at the greater of 2.0 times the prospective payment rate for the DRG or $34,500. The thresholds that we are establishing in this final rule are: for day outliers, the geometric mean length of stay for each DRG plus the lesser of 23 days or 3 standard deviations, and for cost outliers, the greater of 2.0 times the prospective payment rate for the DRG or $35,500. The thresholds we would have implemented in this final rule if we were not implementing the change in day outlier payment methodology discussed

above would be: for day outliers, the geometric mean length of stay for each DRG plus the lesser of 27 days or 3 standard deviations, and for cost outliers, the greater of 2.0 times the prospective payment rate for the DRG or $39,000.

The FY 1993 outlier thresholds will result in a slight increase in the proportion of outliers paid as cost outliers relative to those paid as day outliers. We estimate that 57.8 percent of cases will be paid using the cost outlier methodology and 42.2 percent will be paid using the day outlier methodology, compared to 57.8 percent of cases being paid using the cost outlier methodology without the FY 1993 day outlier payment change. Cases that meet the day outlier threshold but that will be paid using the cost outlier methodology, because it yields the higher payment, will increase from 13.9 percent to 17.4 percent of all outlier cases under the final policy. Our simulation of FY 1993 outlier payments based on FY 1991 MEDPAR data indicates that the percentage of outlier cases that will qualify as day outliers is about 75.2 percent under this final policy. The cases qualifying as day outliers will receive 77.2 percent of operating outlier payments in FY 1993. An estimated 24.8 percent of outlier cases will be cost-only outlier cases, which will receive about 22.8 percent of operating outlier payments under this final policy. The following table illustrates this finding in greater detail:

Type of outlier	Percentage of outlier cases		Percentage of operating outlier payments		Percentage of capital outlier payments		Percentage of total outlier payments	
	Current policy	New policy	Current policy	New policy	Current policy	New policy	Current policy	New policy
Meets day threshold only	46.6	48.6	24.6	19.7	24.4	19.8	24.6	19.7
Meets day and cost thresholds, paid using day methodology	11.2	9.2	21.1	14.2	20.9	14.3	21.0	14.2
Meets day and cost thresholds, paid using cost methodology	13.9	17.4	31.8	43.2	30.4	41.4	31.6	43.0
Subtotal—All cases meeting day threshold	71.8	75.2	77.5	77.2	75.8	75.5	77.3	77.0
Meets cost threshold only	28.2	24.8	22.5	22.8	24.2	24.5	22.7	23.0
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a slightly lower percentage of outlier payments for capital-related costs as for operating costs. We estimate the final thresholds for FY 1993 will result in outlier payments equal to 5.1 percent of operating DRG payments and 5.0 percent of capital payments based on the Federal rate.

The final outlier adjustment factors that will be applied to the standardized amounts and the capital Federal rate for FY 1993 are as follows:

Urban standardized amount	Rural standardized amount	Capital Federal rate
0.944598	0.978420	0.9496

6. Other Changes Concerning Outliers

We proposed to remove certain provisions of § 412.82 that are now obsolete. One provision in § 412.82(c) sets forth the factors to be used to compute day outlier payments during the transition period to the prospective payment system for inpatient hospital operating costs. It applied to cost reporting periods beginning before October 1, 1987 and is no longer applicable. We also proposed to remove § 412.82(d). This provision was implemented to conform our regulations to section 4008(d)(1)(A) of Public Law 100–203, which directed the Secretary to compute day and high cost outlier payments for burn cases using a marginal cost factor of 90 percent in place of the 60 percent and 75 percent factors we used to calculate day and high cost outlier payments for other types of cases. Section 4008(d)(1)(A) was effective only for discharges occurring on or after April 1, 1988 and before October 1, 1989. Unlike payments for high cost, burn outliers, we did not continue to use a 90 percent marginal cost factor to compute payments for day outlier burn cases following expiration of the statutory provision. Therefore, we proposed to delete § 412.82(d) since it is no longer applicable in determining day outlier payments. We received no comments on these changes and are implementing both of them in the final rule.

Because of the change to the calculation of day outlier payments, we are now including the arithmetic mean length of stay in Table 5 of section IV of the addendum to this final rule. When we recalibrate DRG weights, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight and geometric mean length of stay. DRGs that do not have at least 10 cases are considered to be low volume DRGs. For the low volume DRGs, we use the original geometric mean lengths of stay. In order to calculate day outlier payments for cases in DRGs that contained fewer than 10 cases in FY 1991, we are using the original geometric mean length of stay, because no arithmetic mean length of stay was calculated based on the original data.

Table 8a in section IV of the addendum to this final rule contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. Effective October 1, 1992, these Statewide average ratios replace the ratios published in the August 30, 1991 final rule (56 FR 43196). Table 8b contains comparable Statewide average capital cost-to-charge ratios. These average ratios will be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.311473 or greater than 0.632770 and capital cost-to-charge ratios lower than 0.013573 or greater than 0.259693. This range represents 3 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. The cost-to charge ratios in Tables 8a and 8b would be applied to all hospital-specific cost-to-charge ratios based on cost report settlements occurring during FY 1993.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center (that is, payment is based on the other urban payment rate rather than the rural payment rate). One of the criteria under which a rural hospital may qualify as a referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (number of discharges and case-mix index) and at least one of three optional criteria (medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital is classified as a rural referral center if its—

- Case-mix index is equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (We note that the number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. In determining the proposed national and regional case-mix index values, we followed the same methodology we used in the November 24, 1986 final rule, as set forth in regulations at § 412.96(c)(1)(ii). Therefore, the proposed national case-mix index value included all urban hospitals nationwide and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

The values in the proposed rule were based on discharges occurring during FY 1991 (October 1, 1990 through September 30, 1991) and include bills posted to HCFA's records through December 1991. Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1992, a hospital's case-mix index value for FY 1991 must be at least—

- 1.2791; or
- Equal to the median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located. (See table set forth in the June 4, 1992 proposed rule at 57 FR 23647.)

Based on the latest data available (through June 1992), the final national case-mix index value is 1.2760 and the median case-mix values by region are as follows:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.1852
2. Middle Atlantic (PA, NJ, NY)	1.1878
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.2838
4. East North Central (IL, IN, MI, OH, WI)	1.2063
5. East South Central (AL, KY, MS, TN)	1.2125
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	1.1985
7. West South Central (AR, LA, OK, TX)	1.2561
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3256
9. Pacific (AK, CA, HI, OR, WA)	1.2818

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1991 case-mix index values in Table 3c in section IV of the addendum to this final rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

We received no comments on this issue.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii)(II) of the Act, the national standard is set at 5,000 discharges. However, we proposed to update the regional standards. The final regional standards are based on discharges for urban hospitals' cost reporting periods that began during FY 1990 (that is, October 1, 1989 through September 30, 1990). That is the latest year for which we have complete discharge data available.

Therefore, in addition to meeting other criteria, we proposed that to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1992, the number of discharges a hospital must have for its cost reporting period that began during FY 1991 would have to be at least the lesser of—

- 5,000; or
- The median number of discharges for urban hospitals in the census region in which the hospital is located. (See table set forth in the proposed rule at 57 FR 23647.)

Based on the latest discharge data available, the final median numbers of discharges for urban hospitals by census region are as follows:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	7,405
2. Middle Atlantic (PA, NJ, NY)	8,250
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	6,922
4. East North Central (IL, IN, MI, OH, WI)	7,581
5. East South Central (AL, KY, MS, TN)	5,678
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	5,696
7. West South Central (AR, LA, OK, TX)	4,961
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	8,753
9. Pacific (AK, CA, HI, OR, WA)	5,636

We reiterate that to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1992, an osteopathic hospital's number of discharges for its cost reporting period that began during FY 1991 would have to be at least 3,000.

We received no comments on this issue.

3. Retention of Referral Center Status

The Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101–239) was enacted on December 19, 1989. Section 6003(d) of that Act states that any hospital that was classified as a referral center as of September 30, 1989, including those so classified as a result of section 9302(d)(2) of Public Law 99–509, would continue to be classified as a referral center for cost reporting periods beginning on or after October 1, 1989 and before October 1, 1992.

In the proposed rule, we stated that, with the expiration of the requirement of section 6003(d) of Public Law 101–239 on October 1, 1992, we would implement the retention criteria and methodology specified in § 412.96(f) that we had developed previously. These criteria and methodology were discussed in the June 10, 1985 proposed rule (50 FR 24380), in the September 3, 1985 final rule (50 FR 35676) and in the September 1, 1989 final rule (54 FR 36486).

Basically, to retain status as a referral center, a hospital will have to meet the criteria for classification as a referral center specified in § 412.96(b)(1) or (b)(2) or (c) for 2 of the last 3 years or it must qualify on the basis of the requirements for the current year. A hospital may meet any one of three sets of the specific criteria for individual years during the 3-year period or the current year. For example, a hospital may meet the two mandatory requirements in § 412.96(c)(1) (case-mix index) and (c)(2) (number of discharges) and the optional criterion in paragraph (c)(3) (medical staff) during the first year. During the second or third year, the hospital may meet the criteria under § 412.96(b)(1) (rural location and appropriate bed size).

A hospital will have to meet all of the criteria within any applicable section of the regulations in order to meet the retention criteria for a given year. That is, it will have to meet all of the criteria of § 412.96(b)(1) or § 412.96(b)(2) or § 412.96(c). For example, if a hospital meets the case-mix index standards in § 412.96(b)(2) in years 1 and 3 and the number of discharge standards in § 412.96(c)(2) in years 2 and 3, it will not meet the retention criteria. All of the standards will have to be met in the same year.

In accordance with § 412.96(f)(2), the review process will be limited to the hospital's compliance during the last 3 years. Thus, if for at least 2 of the last 3 years or for the current year a hospital meets the criteria for FY 1993 outlined above in section V.C.1 and 2 of this preamble, it will retain its status for another 3 years. No hospital will be subject to a review until the end of its third full cost reporting period as a referral center. We have constructed the following chart and example to aid hospitals that qualify as referral centers under the criteria in § 412.96(c) in projecting whether they will retain their status as a referral center.

Under § 412.96(f), to qualify for a 3-year extension effective with cost reporting periods beginning in FY 1993, a hospital must meet the mandatory criteria in § 412.96(c) for FY 1993 or it must meet the criteria for 2 of the last 3 years as follows.

For the cost reporting period beginning during FY	Use hospital's case-mix index for FY	Use the discharges for the hospital's cost reporting period beginning during FY	Use numerical standards as published in the Federal Register on
1992	1990	1990	August 30, 1991.
1991	1989	1989	September 4, 1990.
1990	1988	1988	September 1, 1989.

Example: A hospital with a cost reporting period beginning July 1 qualified as a referral center effective July 1, 1988. The hospital has fewer than 275 beds. Its status as a referral center is protected through June 30, 1993 (the end of its cost reporting period beginning July 1, 1992). To determine if the hospital should retain its status as a referral center for an additional 3-year period, we will review its compliance with the applicable criteria for its cost reporting periods beginning July 1, 1990, July 1, 1991, and July 1, 1992. The hospital must meet the criteria in effect for either its cost reporting period beginning July 1, 1993 or for two out of the three past periods. For example, to meet the criteria at § 412.96(c)(2) for its cost reporting period beginning July 1, 1991, the hospital's case-mix index value during FY 1989 must have equalled or exceeded the lower of the national or the appropriate regional standard as published in the September 4, 1990 final rule. The hospital's total number of discharges during its cost reporting year beginning July 1, 1989 must have equalled or exceeded 5,000 or the regional standard as published in the September 4, 1990 final rule.

For those hospitals that seek to retain referral center status by meeting the criteria of § 412.96 (b)(1), (b)(1)(i) and (b)(1)(ii) (that is, rural location and appropriate bed size (500 or more beds for discharges occurring before April 1, 1988 and 275 or more beds thereafter)), we will look at the number of beds shown for indirect medical education purposes (as defined at § 412.105(b)) on the hospital's cost report for the appropriate year. We will consider only full cost reporting periods when determining a hospital's status under § 412.96(b)(1)(ii). This definition varies from the bed size criterion used to determine a hospital's initial status as a referral center because we believe it is important for a hospital to demonstrate that it has maintained at least 275 beds throughout its entire cost reporting period, not just for a particular portion of the year.

Comment: Several commenters suggested delaying implementation of the rural referral center triennial review procedure indefinitely or postponing it for at least 2 years when there will no longer be separate other urban and rural standardized amounts. The commenters stated that this would allow current rural referral centers to continue to receive the payments that they have been receiving and prevent those hospitals that would lose their rural referral center status from having to modify services because of a temporary reduction in their Medicare payments. One other commenter, noting that proposed legislation extending the grandfathering provision is pending in Congress, requested that we postpone implementation of the triennial reviews until Congress adjourns in October.

Response: We continue to believe that it is equitable and reasonable to review periodically rural referral centers' compliance with the criteria in the statute and regulations to ensure that only those hospitals that are truly functioning as rural referral centers receive the special adjustment. Some hospitals qualified as rural referral centers based on their case-mix index values and number of discharges from 1981 and have not met the criteria since that time. We believe that the special payment provision extended to rural referral centers should be limited to hospitals that truly warrant such designations based on current conditions. Many hospitals received their classification as a referral center based on conditions that existed many years ago. Thus, we do not agree with the commenters who suggested that we either not implement the triennial review procedures or that we delay implementation for 2 years. Therefore, effective with cost reporting periods beginning on or after October 1, 1992, rural referral centers that do not qualify for an extension will lose their special status. With regard to proposed legislation that would extend the grandfathering provision, we cannot set policy or delay implementing provisions of the regulations based on pending legislation that may be enacted in any one of several forms or may not be enacted at all. If legislation that has an impact on our policy concerning rural referral centers is enacted, we will comply with it as rapidly as possible.

Comment: We received one comment suggesting that since the change in the rural referral center policy will have an impact on payments to hospitals, it should be implemented in a budget-neutral fashion. That is, the money saved from no longer paying these hospitals at the other urban rate should be used to increase the standardized amounts.

Response: It has not been our practice to make budget neutrality adjustments to reflect increases or decreases in aggregate payments due to changes in hospital status for special payment

provisions except when we have been required to do so by the statute. For example, we made a budget neutrality adjustment as required by section 9302(d)(3) of Public Law 99-509 when the rural referral center case-mix index criterion was revised to exclude teaching hospitals effective for cost reporting periods beginning on or after October 1, 1988; however, we did not make subsequent adjustments to the payment rates for additional payments made to newly qualifying referral centers after that date and before the bed-size criterion was lowered, effective April 1, 1988 by section 1886(d)(5)(C)(i)(I) of the Act. Therefore, we do not believe we should adjust the rates when hospitals no longer qualify. We have also taken this position for disproportionate share hospitals, which must qualify annually for additional payments under the disproportionate share hospital provision.

C. Direct Graduate Medical Education Payment (§ 413.86)

Section 1886(h) of the Act sets forth the provisions governing direct payments for graduate medical education. As implemented by regulations at § 413.86, HCFA pays a hospital a fixed amount per full time equivalent (FTE) resident employed by the hospital. Under § 413.86(f), HCFA determines the number of hospital resident FTEs by applying a weighting factor to each resident.

The Foreign Medical Graduate Examination in the Medical Sciences (FMGEMS) and the National Board of Medical Examiners Examination (NBMEE), examinations that a foreign medical graduate must pass in order for a hospital to receive direct graduate medical education payments for that resident, are about to be replaced by the United States Medical Licensing Examination (USMLE). Beginning June 1, 1992, foreign medical graduates will have the option of taking the USMLE or the FMGEMS. Effective July 1, 1993, only the USMLE will be administered, and foreign medical graduates must pass steps I and II in order to receive certification. Therefore, we proposed to revise § 413.86(h) to reflect this change in the examination requirements.

We received one comment supporting the proposed change, and we are adopting the change without revision in this final rule.

We note that section 1886(h) references only the FMGEMS. As stated in the proposed rule, we intend to seek a technical amendment so that the statute will provide explicitly for recognition of successor tests. We expect the Congress to act on the technical amendment within one year.

VI. Changes to Capital Prospective Payment System Rules

In the June 4, 1992 proposed rule, we proposed to make a number of minor policy changes and clarifications in the capital prospective payment system rules. Several commenters indicated that in general the proposed changes were reasonable and did not comment on specific changes. The proposals and the specific comments that we received on them are discussed below.

A. Payments to New Hospitals (§§ 412.300, 412.302, 412.324, and 412.328)

The August 30, 1991 final rule implementing the capital prospective payment system established special payment provisions for new hospitals (56 FR 43418). Under § 412.324(b), a new hospital is paid 85 percent of its allowable Medicare capital-related costs through its cost reporting period ending at least 2 years after the hospital accepts its first patient. The first cost reporting period beginning at least 1 year after the hospital accepts its first patient is the hospital's base year for purposes of determining its hospital-specific rate. Beginning with the third year, the hospital is paid under the fully prospective or hold-harmless payment methodology, as appropriate. If the hospital is paid under the hold-harmless payment methodology, the hospital's hold-harmless payments for its old capital costs continue for up to 8 years.

As defined under § 412.300(b), a new hospital is one that has operated (under previous or present ownership) for less than 2 years and does not have a 12-month cost reporting period that ends on or before December 31, 1990. As stated in the June 4, 1992 proposed rule, we believe that the reasonable cost payment protection under the new hospital exemption should only be available to those hospitals that have not received reasonable cost payments in the past and need special protection during their initial period of operation. Therefore, we proposed to clarify that the new hospital exemption under the capital prospective payment system would not apply to a facility that opens as an acute care hospital if that hospital operated in the past under current or previous ownership and has a historic asset base.

Also, we proposed that a hospital that replaces its entire facility (with or without a change of ownership) would not qualify for a new hospital exemption. Although the hospital may experience a significant change in its asset base, we believe it would be inappropriate to provide the hospital with special payment protection.

Therefore, we proposed to amend the definition of a new hospital at § 412.300(b) to clarify that the exemption applies only to hospitals that have been in operation for less than 2 years and does not apply to the following situations:

- A hospital that changes status from an excluded hospital paid under section 1886(b) of the Act to an acute care hospital subject to the provisions of section 1886(d) of the Act.
- A hospital that has been in operation for more than 2 years but has been participating in the Medicare program for less than 2 years.
- A hospital that closes and then reopens under either the same or different ownership.
- A hospital that builds a new or replacement facility at the same or a new location, even if a change in ownership or new leasing arrangements are involved.

Consistent with these changes, we proposed to revise § 412.328 to clarify that if a hospital (other than a new hospital) does not have a 12-month cost reporting period ending on or before December 31, 1990 as an acute care hospital, its hospital-specific rate would be based on the hospital's old capital costs per discharge in its first 12-month cost reporting period (or a combination of cost reporting periods covering at least 12-months) ending after December 31, 1990.

We also proposed to clarify the old capital definition applicable to hospitals that qualify for a new hospital exemption. Under § 412.328(a)(2), a new hospital's base period is its first 12-month cost reporting period (or combination of cost reporting periods covering at least 12 months) that begins at least 1 year after the hospital accepts its first patient. Although the preamble of the August 30, 1991 final rule (56 FR 43418) stated our intent to treat the hospital's base year costs as old capital costs, the regulations did not explicitly contain this provision. We proposed to revise § 412.302 to define a new hospital's old capital costs as its allowable capital-related costs for land and depreciable assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of its base period cost reporting period. The limitations in § 412.302(b) that apply to old capital costs would also apply to a new hospital except that the limitations would be based on the hospital's old capital costs for assets that were put in use as of the later of

December 31, 1990 or the last day of its base period cost reporting period.

After evaluating the comment discussed below, we are adopting the proposed changes in the new hospital capital payment provisions with one addition. In this final rule, we are clarifying that if a hospital has such low Medicare utilization in its original base period that it is not required to file a cost report, its hospital-specific rate will be based on the hospital's old capital costs per discharge in its first 12-month cost reporting period for which a cost report is filed.

Comment: One commenter expressed concern that the proposed clarification of the new hospital definition at § 412.300(b) is too broad in scope and would prohibit many newly operating facilities from obtaining the new hospital exemption. The commenter indicated that restrictions on what would constitute a new hospital are premature based on limited program experience to date under the capital prospective payment system and suggested that if restrictions are necessary, HCFA should revise the new hospital definition to allow case-by-case determinations of whether a replacement facility qualifies as a new hospital. The commenter recommended that the determination be based on considerations such as the distance between the facilities and changes in the patient population, the medical staff, and patient care services.

Response: We believe that it is appropriate to proceed expeditiously to clarify the new hospital definition so that hospitals that are planning to replace their existing plant will know in advance how the replacement facility will be treated under the capital prospective payment system. It is particularly important to do so because the new hospital definition under the capital prospective payment system is not identical to the definitions used in other areas of the Medicare program, such as the new hospital definition for purposes of determining if a new provider agreement is needed or for purposes of determining eligibility for a new hospital exemption to the rate-of-increase limits applicable to hospitals that are excluded from the prospective payment system. Thus, we need to clarify the new hospital definition for capital prospective payment purposes to eliminate any confusion on this point.

Further, we believe it is appropriate to restrict the new hospital exemption under the capital prospective payment system to new entrants into the hospital field that do not have a historic asset base. As we pointed out in the preamble of the June 4, 1992 proposed rule (57 FR 23649), it would be inappropriate to provide special payment protection to a hospital simply because the hospital experiences a significant increase in its asset base. If we were to allow new facilities built by existing hospitals to qualify for the new hospital exemption, we would provide an inappropriate incentive for a hospital to replace existing plant instead of renovating or expanding its current facility. If the capital prospective payment system is to be effective in encouraging prudent capital spending, payment policies must be neutral with respect to decisions concerning whether to renovate or replace existing assets. Consistent with the need to provide neutral incentives, the proposed changes in the new hospital definition clarify that existing hospitals that move, realign, or replace the physical assets from which they operate will not qualify as a new hospital regardless of the mode through which such capital changes are effected.

In our view, criteria related to operational aspects of a hospital, such as those suggested by the commenter, should not apply to a determination affecting capital payments. A hospital could undergo the operational changes with little or no change in its asset base. Regardless of whether new patient care services, staff, patient demographics or other operational factors are involved or even form the basis for a substantial change in hospital assets, the determining factor in deciding whether a hospital is new for purposes of making capital payments should be directly related to a hospital's assets rather than its operations. Further, operational criteria would require a comparison of the hospital's operations before and after the replacement facility is opened; if such criteria were used in determining eligibility for the new hospital exemption, a hospital would not know with certainty at the planning stage for a replacement facility how the new assets would be treated under the capital prospective payment system. This uncertainty would not be desirable given the magnitude of the capital expenditure.

B. Portion of Hospital Assets Put in Patient Care Service after December 31, 1990 (§ 412.302)

In the June 4, 1992 proposed rule, we proposed to establish a general principle to follow in situations where nonreimbursable cost centers in the base year subsequently become allowable cost centers (57 FR 23650). Specifically, we proposed to revise § 412.302(b) to address situations in which a hospital may have a nonreimbursable cost center or otherwise incur unallowable hospital costs for a depreciable asset as of December 31, 1990. Examples of these non-reimbursable costs include costs attributable to space or equipment that is leased to another party or used to provide non-hospital services in part of a building or department that is also used to provide acute care inpatient hospital services. To the extent the costs of such space or equipment become allowable inpatient hospital capital-related costs after December 31, 1990, we proposed that those costs would be recognized as old capital costs as long as a portion of the asset was in use for hospital inpatient care as of December 31, 1990. The allowable costs that could be recognized as old capital costs would be subject to the current provisions at § 412.302(b). If no portion of an asset was used to provide hospital inpatient care as of December 31, 1990, any allowable hospital inpatient capital-related costs of the asset would be recognized as new capital costs when the asset was returned to hospital inpatient care service. After consideration of the comment discussed below, we are adopting the proposed rule with a revision to clarify that only those costs that would otherwise qualify as old capital will be recognized as old capital costs if the non-reimbursable cost center is put in use for patient care.

Comment: One commenter requested that a building's "shelled in space" should be cited as an example of old capital cost and that costs associated with bringing such space into inpatient care use should be classified as old capital.

Response: We assume that by the term "shelled-in space" the commenter means partially completed construction that has never been put in use for patient care. If the "shelled-in space" was part of an asset that was used to provide hospital patient care as of December 31, 1990 (for example, a partially constructed floor of a building with other floors that are in use for patient care), the costs for the "shelled-in space" as of December 31, 1990 that otherwise meet the criteria for recognition of old capital would qualify as old capital costs when it is put into use for patient care. However, additional costs that are incurred after December 31, 1990 to bring the asset into patient care use would be classified as new capital because the hospital was not obligated to incur those costs as of December 31, 1990. If the "shelled-in space" is not part of an asset that was in hospital patient care use as of December 31, 1990 (for example, if the "shelled-in space" is a separate building), it would not qualify as old capital. We do not believe it is necessary to identify specific types of costs that would be recognized under the proposed change. However, we are revising the proposed change to clarify that the costs for the non-reimbursable cost center will be recognized as old capital when it is put in use only to the extent the remaining criteria for recognition of old capital are also met.

C. Treatment of Old Capital Costs When Hospitals Are Leased After December 31, 1990 (§ 412.302(b))

The August 30, 1991 final rule addressed how various situations involving changes of ownership and sale-and-leaseback transactions are treated under the capital prospective payment system (56 FR 43395 and 43405). In the June 4, 1992 proposed rule, we proposed a clarification of our policy in this area (57 FR 23650).

We proposed to revise § 412.302(b) to allow continued recognition of the base period old capital cost determinations in situations where a hospital is leased without assumption of the hospital's asset costs. However, we proposed to limit the amount of allowable capital-related costs that could be recognized as old capital to the amount that could be recognized for the same assets in the last cost reporting period before the current lease became effective. Any lease costs above that limitation would be paid for as new capital cost. Without the proposed change, all lease costs would have been recognized as new capital since there was no lease obligation as of December 31, 1990. The proposed policy would affect only those hospitals eligible for capital prospective payments on the basis of the hold-harmless methodology.

As noted in the June 4, 1992 proposed rule, for purposes of determining old capital costs, treatment of lease costs that involve leasing of portions of a hospital's operation or assets would continue to be subject to the provisions of §§ 412.302 (b)(3) and (c)(1)(vi).

No comments were received on the proposed change and we are adopting it without revision in this final rule.

D. Obligated Capital Costs (§ 412.302(c))

We received one comment associated with the general requirement for obligated capital that was not directly related to any of the proposed changes discussed below.

Comment: Obligated capital costs for moveable equipment is recognized under the regulations if there was a binding contractual agreement that was executed before December 31, 1990. The comment suggests that HCFA clarify that the definition of legally obligated capital includes purchase orders that are issued by hospitals.

Response: As we stated in the preamble to the final regulations implementing the capital prospective payment system (56 FR 43392), in most cases the determination of the existence of a binding enforceable agreement will be a relatively straightforward matter that can be made by the intermediary based on the documentation submitted by the hospital. To address issues concerning whether particular documents establish a binding agreement and create an enforceable obligation under State law, we are establishing an internal process for legal review of such evidence. We provided for this approach because we are aware, based on previous program experience, that we must look to State law when there is no controlling federal statute on a matter. This approach is particularly applicable in cases where the issue arises of whether a purchase order represents a binding agreement under State law in light of the fact that most States have adopted the Uniform Commercial Code with little or no change and the code provides that an order may represent an invitation to contract for goods and not an absolute obligation in many cases. Since the obligated capital regulation requires that a contract between two unrelated parties must be formed no later than December 31, 1990, the requirements of that provision clearly may not be met unless the supplier of the goods or services indicates acceptance (i.e., delivery, invoice, receipt of payment, etc.) or is required to perform by the regulatory deadline under State law even in the absence of evidence of acceptance. When this evidence is not submitted, we do not believe that we can recognize the purchase order alone as unquestionable evidence of a binding contract under any State's law. When there is an issue of acceptance of a purchase order, or automatic requirement for performance due to the simple issuance of a purchase order under State law, we will employ the internal legal review process referred to in the preamble to the final regulations for the capital prospective payment system. As a result we are retaining the current regulatory language regarding binding agreements at § 412.302(c)(1).

1. Deadline for Putting Assets in Use

Capital-related costs attributable to assets that are put in use after December 31, 1990 but for which the hospital was obligated as of December 31, 1990 may be recognized as old capital costs under certain conditions. Under the general rule, one condition is that the asset be put in use for patient care before October 1, 1994. Under the rule relating to hospitals affected by a lengthy certificate-of-need process (§ 412.302(c)(2)), the asset must be put in use before the earlier of October 1, 1996 or 4 years from the date the certificate-of-need was approved. Under § 412.302(c)(1)(iv), if a hospital experiences delays due to extraordinary circumstances beyond its control, HCFA may extend the October 1, 1994 deadline for putting an asset in use to no later than September 30, 1996.

Current regulations do not establish a process for granting an extension in the October 1, 1994 deadline. Therefore, we proposed requiring that a hospital requesting an extension of the deadline must notify its intermediary of the extraordinary circumstances that delayed, or will delay, completion of the project beyond the original deadline. The request for an extension must be in writing and filed with the intermediary by the later of January 1, 1993 or 180 days after the event leading to the delay. The request must describe the circumstances contributing to the delay and explain why they are extraordinary and beyond the hospital's control. The request must also explain why the delay cannot be overcome and must provide a new estimated completion date established by the contractor, supplier, or other servicing party. The intermediary would review and verify the documentation submitted by the hospital. The intermediary would forward the request and the results of its review to HCFA within 60 days. Unless additional information is required, HCFA would notify the intermediary of its decision on the request within 90 days of receiving the request from the intermediary.

Based on public comments supporting the proposed change, we are adopting it in this final rule without revision.

Comment: A commenter requested that we describe the requirements and timeframe for a hospital to appeal a decision regarding an extension in the deadline for putting a project into patient care use.

Response: There is no separate appeals process for decisions regarding whether an extension in the deadline for completing a project is warranted by extraordinary circumstances. Instead, as provided in §§ 412.328(g)(2)(iii) and 412.344(d)(2), the final determinations for the hospital-specific rate and the hold-harmless payment affected by such decisions are subject to administrative and judicial review under Chapter 42, part 405, subpart R. Thus, if a hospital is

denied an extension in the deadline, the decision is not subject to formal appeal until the first cost reporting period affected by the decision, that is, the first cost reporting period during which the asset has been put in use and is classified as new capital. The intermediary's determination of capital payments for that cost reporting period is subject to the normal appeal procedures for intermediary cost report determinations. In the interim, if the hospital has additional information that would affect the determination, it may appeal the decision informally to HCFA through the intermediary.

2. Deadline for Notifying Intermediary of Obligated Capital

Section 412.302(c)(1)(v) provides that a hospital must notify its intermediary that it has obligated capital within 90 days of the date the hospital first becomes subject to the capital prospective payment system. The hospital's notification must include documentation establishing that the capital project meets the criteria for recognition as obligated capital and a description of the project and its estimated costs as of December 31, 1990. The intermediary determines whether the applicable criteria are met and notifies the hospital of its decision before the close of the hospital's first cost reporting period under the capital prospective payment system. The intermediary's determination is contingent on the asset being put in use for patient care by the applicable date.

To avoid disadvantaging hospitals that may not have understood the importance of making a timely submission to the intermediary, we proposed revising § 412.302(c)(1)(v) to extend the deadline for submission of obligated capital cost documentation. We proposed that a hospital must notify its intermediary of any obligated capital by the later of October 1, 1992 or 90 calendar days after the hospital becomes subject to the capital prospective payment system.

Consistent with the extension of the notification deadline for the hospital, we also proposed to extend the deadline for the intermediary's notification to the hospital of its obligated capital determination. We proposed that the intermediary would have 1 year from the date the hospital submits its complete documentation to advise the hospital of the intermediary's decision. Based on further consideration, we are revising the proposed changes to require that the intermediary notify the hospital of its determination by the later of the end of the hospital's first cost reporting period under the capital prospective payment system or 9 months from the date the hospital submits its complete documentation.

Comment: Several commenters specifically indicated that the proposed change was reasonable. Noting that hospitals are at different stages of complying with the notification requirement based on when they became subject to the capital prospective payment system, one commenter recommended that the date for notifying the intermediary of obligated capital be extended to 90 days after the publication of this final rule.

Response: We believe that the proposed change represents a reasonable deadline for all affected hospitals. In general, we believe that 90 days after a hospital becomes subject to the capital prospective payment system is sufficient time for a hospital to notify its intermediary of obligated capital. Since hospitals with cost reporting periods beginning in late FY 1992 have had more advance warning on the notification requirements and their implications than hospitals with cost reporting periods beginning in early FY 1992, an extension in the deadline is unnecessary for these hospitals. Morever, an additional 90 day extension would limit the amount of information on obligated capital that we would have available in developing the proposed rule for FY 1994 capital payment policies and rates. As complete information as possible is needed not only to refine the capital acquisition model used for budget neutrality purposes but also to monitor the impact of the capital prospective payment system and determine if any policy changes would be appropriate. Based on these considerations, we are extending the notification deadline in this final rule as proposed.

After further consideration, we are also shortening the deadline for the intermediary's determination. The current rules provide that the intermediary will have until the end of the hospital's first cost reporting period under the capital prospective payment system, or 9 months if the hospital notified the intermediary on the 90 day deadline. In the June 4, 1992 proposed rule, we proposed to allow the intermediary one year to make its determination. In view of both the hospital's and HCFA's need to know the obligated capital determination as soon as possible, we are revising the intermediary's deadline to the later of the end of the hospital's first cost reporting period under the capital prospective payment system or 9 months from the date the hospital submits its complete documentation on obligated capital to the intermediary.

3. Certificate-of-Need Approvals

Under § 412.302(c)(2), a capital project that is affected by a lengthy certificate-of-need (CON) approval process may qualify as old capital if certain conditions are met. One of the conditions is that the hospital filed the initial CON application on or before December 31, 1989 and had not received approval as of September 30, 1990. If the hospital received approval no later than September 30, 1990, we believe it is reasonable for the hospital to have entered into a contractual obligation for the project on or before December 31, 1990, in which case the project will qualify under the general rule for obligated capital. However, as discussed in the June 4, 1992 proposed rule, some states grant CON approvals that are conditional upon the hospital fulfilling certain requirements (57 FR 23652).

Because the August 30, 1991 final rule did not address conditional approvals, we proposed amending § 412.302(c)(2)(i)(B) to provide that if a hospital received conditional CON approval for a project, the intermediary will assess the nature of the conditions and determine whether the hospital received sufficient approval for the project to proceed without undue delay. We believe that the intermediary could best ascertain whether such conditions were sufficient in themselves, given the specific circumstances, to prevent a hospital from proceeding with the project without delay. As is the case with other obligated capital determinations, there would be an internal review process for the intermediary to obtain guidance on questionable cases.

We received several comments that were supportive of the proposed change and we are adopting it without revision in this final rule. As discussed below, we received other comments on the provisions relating to obligated capital for hospitals subject to a lengthy certificate-of-need process that were not directly related to the proposed change.

Comment: We received several comments from individual hospitals and associations requesting revision to the provisions related to obligated capital costs for hospitals subject to a lengthy certificate-of-need (CON) process. Citing problems and delays frequently encountered throughout the process, such as a requirement for separate CON approvals for each phase of a multi-phase project that are contingent on completion of earlier phases, the commenters suggested that the policies be revised to:

- Allow later phases of a staged construction project to be deemed part of the originally approved obligation for purposes of meeting the December 31, 1989 deadline.
- Extend the deadline for putting the project into patient care use by up to 3 years.
- Allow a 10-year transition for each phase under the hold-harmless methodology.

We also received comments suggesting that the expenditure threshold for recognition of obligated capital was too stringent for small hospitals. Some of the commenters suggested that we lower the initial expenditure threshold to the lowest of $750,000, 10 percent of the estimated cost or 1 percent of inpatient operating cost (excluding capital costs), and extend the deadline for incurring the expenditures from December 31, 1990 to December 31, 1991.

Response: In developing the capital prospective payment policies set forth in the August 30, 1991 final rule, we were aware that some hospitals would be undertaking major capital projects during the transition from reasonable cost-based payments to prospective payments based solely on the Federal rate. We are monitoring the implementation of the capital prospective payment system closely. As we obtain additional information on those hospitals undertaking major projects that have been delayed by the CON process but do not qualify as obligated capital, we will reassess our transition payment policies. However, any reassessment will be made within the policy framework used to establish the initial transition payment policies.

In establishing the special provision for hospitals that are subject to a lengthy CON process, we recognized that such hospitals should not be disadvantaged if they reasonably anticipated the CON approval process in their capital planning but were unable to meet the December 31, 1990 cut-off date for obligated capital because timely CON approval was not received. Our intent was not to afford more favorable treatment for these hospitals than for other hospitals, but rather to make a reasonable and equitable allowance for the impact a lengthy CON process may have on the hospital's ability to meet the criteria for recognition of obligated capital costs as old capital in order to not disadvantage those hospitals that had already made a substantial financial commitment. Thus, the intent was to put these hospitals on a comparable footing with other hospitals.

We believe that it would be premature to make modifications in the CON provision at this time. We are sympathetic to the difficulties faced by some hospitals subject to a lengthy CON process. However, we believe that any modifications should be made only after we have sufficient information about the extent of potential problems unique to hospitals subject to the lengthy CON process as well as other hospitals that, for example, may meet all requirements for obligated capital other than the deadline for putting the project in use for patient care or have multi-phase projects, only the first stages of which will qualify as obligated capital. We wish to avoid ad hoc policy changes that might appear appropriate based on the specific circumstances of a few hospitals but which are not appropriate when the situations of other hospitals are also taken into account. Since the first three changes suggested by the commenters would not affect actual program payments until the capital projects are completed later in the transition, we believe it is not necessary to give them additional consideration before we complete a preliminary evaluation of how the capital prospective payment transition rules affect hospitals that are initiating major capital projects that do not meet the obligated capital requirements. To facilitate a systematic evaluation of this issue before next Spring, we welcome information from hospitals that are in this situation but have not already advised us of their circumstances. If we conclude that changes in our transition payment policies would be appropriate, we would include them in the proposed rule setting forth our FY 1994 capital payment policies and rates.

With regard to the recommendations by the commenters on the CON expenditure threshold, we note that we established the CON provision to protect hospitals with major capital projects that had made a significant financial commitment as of December 31, 1990 (the cut-off date for obligated capital), but would not be able to meet the obligated capital provision because of a lengthy CON process (56 FR 43393). If the hospital had not made a substantial financial investment, there is no indication that it was fully committed to proceeding with a project regardless of the capital prospective payment system nor would the hospital suffer financial loss if it decided not to proceed with the project. In the August 30, 1991 final rule, we established the threshold, based on comments received to the proposed rule, at the lesser of $750,000 or 10 percent of the estimated project cost, to ensure that it would be proportionate to the size of the project without being unreasonably high for large projects. We believe that the threshold is a reasonable standard to identify whether a substantial financial commitment had been made on a major capital project. Also, we believe it is appropriate to require that the commitment be made as of the same deadline for legally obligated capital. To provide otherwise would be to give hospitals subject to a lengthy CON process more favorable treatment than that afforded other hospitals. Based on the foregoing considerations, we are retaining the current expenditure thresholds.

E. Adjusting the Hospital-Specific Rate—Transfer-Adjusted Discharge and Case Mix Index for Subsequent Base Periods (§§ 412.328(b)(3) and (c)(1))

Sections 412.328(b)(3) and (c) provide for transfer adjustment factors to the discharge count and case-mix index used to calculate each hospital's hospital-specific rate. (See 57 FR 23652 for details.)

In the August 30, 1991 final rule, we provided for only the transfer adjustment factors for the initial base year period. In the June 4, 1992 proposed rule, we proposed to amend §§ 412.328(b)(3) and 412.328(c) to apply appropriately updated transfer adjustment factors for later cost reporting periods that may be used as a base period in the case of a new hospital or a hospital-specific rate redetermination. For later base periods beginning before October 1, 1991, we proposed to determine the discharge transfer adjustment factor for a hospital using the applicable base period MEDPAR data on file as of the December 31 or June 30 update occurring at least 6 months after the close of the base period involved. Thus, for cost reporting periods ending on or before June 30, 1991, the transfer-adjusted case mix index and discharge transfer adjustment factors provided in Table 9 of the June 4, 1992 proposed rule would be considered final values. We stated that we would publish values for cost reporting periods ending after June 30, 1991 through December 31, 1991 in this final rule. We proposed that for subsequent periods beginning on or after October 1, 1991, the intermediary for the hospital would determine the discharge transfer adjustment factor for a base period using the most recent billing data available from the Provider Statistical and Reimbursement System as of the date of the final determination of the hospital-specific rate. The transfer-adjusted case-mix index would be

determined by using the same data that is used to determine the discharge transfer adjustment factor.

Since no specific comments were received on the proposed change, we are making the change as proposed in this final rule. The transfer adjustment factors for cost reporting periods ending after June 30, 1991 through December 31, 1991 are in Table 9 of this **Federal Register** document.

F. Redetermination of the Hospital-Specific Rate (§ 412.328(f))

Section 412.328(f) provides that upon request by a hospital paid under the fully prospective payment methodology, the intermediary redetermines the hospital-specific rate to reflect changes in old capital costs as determined in a cost reporting period beginning subsequent to the base period but no later than the hospital's cost reporting period beginning in FY 1994 (or the cost reporting period beginning after obligated capital that is recognized as old capital is put in use, if later).

We proposed to amend § 412.328(f)(1)(i) to clarify that a redetermination is permitted only when there is an increase in the hospital's total old capital costs. We proposed to state explicitly that no redetermination would be made to recognize other conditions that could affect the hospital-specific rate, such as a decline in utilization that produced an increase in the hospital's old capital cost per discharge.

Also, current regulations provide that a request for redetermination must be made within 90 days of the close of the affected cost reporting period, when the cost report is ordinarily due. We proposed to amend § 412.328(f)(1)(iii) to extend the deadline to coincide with the cost report due date and any extension in the cost report filing date granted by the intermediary.

Last, we wish to avoid unnecessary requests, that is, situations where the redetermined hospital-specific rate would be lower than the hospital's current rate. As a result, we proposed revising § 412.328(f)(1)(iii) to require that a hospital requesting a redetermination must submit, along with the cost report for the period it is requesting as its new base year, an estimate indicating that its new hospital-specific rate would be higher than its current rate. However, since at the time a redetermination is requested the hospital's current old capital costs have not been audited and the Medicare statistical data is subject to change, we also proposed to amend § 412.328(f)(3) to provide that if the intermediary determines after audit that the new hospital-specific rate is lower, the hospital would be allowed to withdraw its request within 60 days of the intermediary's notification to the hospital of the redetermined rate.

After consideration of the comments discussed below, we are modifying one proposed change. In this final rule, we are providing that if a redetermined hospital-specific rate is lower than the hospital's current hospital-specific rate, the intermediary will deny the hospital's request instead of providing the hospital with an opportunity to withdraw the request.

Comment: Several commenters disagreed with our clarification that only an actual increase in total old capital costs will be recognized as a basis for a redetermination of the hospital-specific rate and that a change in utilization would not be recognized. One commenter argued that other events, such as loss of physician staff, have a critical impact on a hospital's capital costs per case, especially for small rural hospitals. The commenter noted that since capital costs are fixed, they cannot be reduced as readily as operating costs in response to lower utilization. Another commenter requested clarification regarding how a utilization change would be taken into account when the hospital-specific rate is recalculated based on an increase in total old capital costs. Finally, a commenter noted that if the hospital's discharges in the new base period were used in redetermining the hospital-specific rate, hospitals with an increase in total old capital costs but reduced utilization would have an advantage over hospitals with no increase in total old capital costs but reduced utilization. The commenter suggested that no adjustment be made for any utilization change when the hospital-specific rate is redetermined; instead, the hospital-specific rate should be adjusted by the percentage increase in old capital costs.

Response: As we pointed out in the preamble of the June 4, 1992 proposed rule (57 FR 23653), the proposed limitation on hospital-specific rate redeterminations is not a change from our original policy but a necessary clarification because of confusion over the original language of the regulation (56 FR 43454). We further explained that the redetermination provision was incorporated into the final rule in order to provide for recognition of obligated capital costs comparable with the provision for hospitals paid under the hold-harmless payment methodology. There was no intention to provide protection from utilization declines through the hospital-specific rate redetermination policy. We reiterate that one of the primary purposes for moving to a per discharge payment was to enable the Medicare program to provide incentives for efficiency by ending subsidies for under-utilized capacity. We believe that to expand the basis for redetermination to utilization changes, regardless of the cause or the fact that capital-related costs are more difficult for providers to control, would undermine the balance we have obtained with this policy. We believe that the minimum payment levels that we have established through the exceptions policy are adequate protection for hospitals that suffer a drop in utilization or other adverse conditions that are often experienced in the normal course of hospital operations. We do not find the rationale presented by the commenters to be a sufficient basis to revise our original policy intent in this matter.

Once a hospital qualifies for a hospital-specific rate redetermination based on an increase in total old capital costs, the hospital-specific rate will be redetermined based on the hospital's Medicare old capital costs and discharges in the new base period. As one commenter pointed out, using the discharges in the new base year could in some cases give the hospital that experiences a decline in utilization an advantage over hospitals with declining utilization that do not qualify for a redetermination. Although this may occur in some cases, we would expect that most hospitals with significant obligated capital will experience an increase in utilization when the project is completed and put in use for patient care. If we were to simply adjust the hospital-specific rate by the percentage increase in total old capital costs, we would not be accounting for the increased utilization or any change in Medicare's share of old capital costs resulting from the obligated capital. Since payment is on a per discharge basis, the Medicare program would in effect be paying the hospital twice for the increased costs attributable to utilization increases: Once through the higher hospital-specific rate and again through the increased number of admissions. Therefore, we are not adopting the commenter's recommendation.

Comment: Instead of notifying a hospital that a redetermination request would result in a lower hospital-specific rate and allowing 60 days for the hospital to withdraw its request, one commenter suggested that the intermediary should reject the request for redetermination.

Response: Our intent in requiring the hospital to withdraw its request was to make the hospital an active and responsible participant in the redetermination process and to avoid unnecessary requests. As pointed out in the preamble to the June 4, 1990 proposed change (57 FR 23653), the hospital must recognize the significance of requesting a redetermination for increased old capital costs. However, upon further consideration, we believe that the requirement that the hospital demonstrate an increase in its hospital-specific rate is sufficient to reduce the incidence of unwarranted requests. To avoid establishing an unnecessary administrative burden, we are adopting the commenter's suggestion in this final rule.

Comment: One commenter requested that the deadline for requesting a hospital-specific rate redetermination be set at 120 days from the end of the cost reporting period to allow a hospital time to analyze its capital costs.

Response: We believe that the proposed change will allow a hospital adequate time to analyze its costs and provide the necessary documentation for a hospital-specific rate redetermination at the same time the cost report is due. Since the revised cost reports will provide for separate reporting of old capital costs, the hospital will be able to compare its old capital costs per discharge for the cost reporting period with those for the original base year. Moreover, since the redetermination request is in part a request for a retroactive change in the basis for the capital payment determination for the cost reporting period, it is most appropriately filed as part of the cost report submission. This will allow the intermediary to take the request into consideration during tentative settlement and avoid in many cases the administrative burden of an additional retroactive adjustment prior to final settlement of the cost report. Since the hospital-specific rate redetermination and the cost report settlement process are so closely linked, we are adopting the proposed change without revision in this final rule.

Comment: One commenter stated that HCFA has not addressed when retroactive and prospective payments would be made to a hospital reflecting the redetermined hospital-specific rate and suggested that provision be made for interim payment adjustments so that hospitals will not have to wait a significant length of time before receiving the additional payments. The commenter also indicated that no deadlines are set for responses to hospital requests for a hospital-specific rate redetermination.

Response: Payments to providers, including interim payments, are addressed comprehensively in regulations at part 413, subpart E. These rules provide intermediaries with adequate flexibility to adjust payments on the basis of appropriately documented changes in capital costs during a cost reporting period. We believe they are as appropriate for capital payment purposes as they are for all other hospital payment provisions.

Based on an initial redetermination of the hospital-specific rate, the intermediary has discretionary authority to make a retroactive adjustment in the tentative settlement for any closed cost reporting periods affected by the redetermined hospital-specific rate. In addition, the intermediary may adjust the interim payments for a current cost reporting period to take into account the initial redetermined hospital-specific rate. The intermediary's decision to make these payment adjustments will be based on its assessment of the accuracy and adequacy of the documentation supporting the redetermination request. The final redetermination of the hospital-specific rate cannot be made until there has been a final settlement of the new base period cost report and the transfer-adjusted discharge and case-mix data needed to compute the rate are available. Since redetermination requests may be filed at different stages of the cost report cycle, a standard deadline for intermediary adjudication of a redetermination request and the resulting payment adjustments cannot be established. However, full retroactive application of the redetermined hospital-specific rate to the beginning of the new base period is clearly protected by § 412.336(c).

G. Effect of Hospital Mergers, Consolidations or Dissolution on the Hospital-Specific Rate (§ 412.331)

In the preamble to the August 30, 1991 final rule, we discussed the appropriate method to determine capital prospective payments when multiple hospitals merge or consolidate during the transition period (56 FR 43405). However, the guidelines set forth in that discussion were not incorporated into the regulations. Also, we did not address situations where a hospital would separate into two or more hospitals after the base period.

Therefore, we proposed to add § 412.331 to incorporate the guidelines provided in the preamble to the final rule of August 30, 1991 for mergers or consolidations that meet the criteria under § 413.134(k) and to establish rules for dealing with situations where a hospital separates into two or more hospitals. We also proposed that if hospitals merge or consolidate into one hospital after the base year but during the transition period, the hospitals' latest 12-month or longer cost reporting periods ending on or before December 31, 1990 would be combined to determine a discharge-weighted average hospital-specific rate.

In addition, we proposed to clarify that the recalculation of the hospital-specific rate would be applicable only to those cases that meet the previously existing reasonable cost reimbursement rules regarding the criteria for recognizing a merger or consolidation for Medicare program purposes under § 413.134(k). In cases in which the merger or consolidation rules are not met, the transaction involved would simply be treated as a normal asset acquisition for Medicare program purposes.

We also proposed that if after the base year, a multi-campus hospital splits into two or more separate hospitals that are subject to the capital prospective payment system, the intermediary would determine if the base year capital-related costs and other statistical data for each of the resulting hospitals can be reconstructed from the original hospital's financial and other records. If that data can be determined, the hospital-specific rate for each of the resulting hospitals would be recomputed for the original base year under the current rules. If reconstruction of the necessary data is not feasible, each hospital's hospital-specific rate would be recalculated by establishing the respective hospital's base year as its first 12-month or longer cost reporting period (or combination of cost reporting periods covering at least 12 months) subsequent to the dissolution.

In determining each hospital's old capital costs, the amount that would be recognized as old capital would be limited to the capital-related costs attributable to assets that were in patient care use as of December 31, 1990, and the hospitals will be subject to all other transition period rules. The interim payments for such hospitals would be determined by the intermediary on the basis of the best data available prior to receipt of the new base period cost reports. The final hospital-specific rates would be applied retroactively to the later of the hospitals' first cost reporting period under the capital prospective payment system or the effective date of the dissolution in accordance with § 412.336(c)(2).

Comment: One commenter suggested that merged facilities should have the same opportunities to apply for

redetermination as other hospitals. In particular, the commenter noted that if the hospitals merged after the deadline for requesting a hospital-specific rate redetermination, they may be disadvantaged if one of the hospitals had been paid under the hold-harmless methodology and had not had a hospital-specific rate determination when obligated capital was put in use.

Response: The proposed change would not preclude a hospital that results from a merger of two or more previously independent hospitals from obtaining a redetermination of its old capital costs (as determined in the base year audits for the previously separate entities) if it is otherwise eligible for such a redetermination of the hospital-specific rate pursuant to the provisions at section 412.328(f). However, the commenter is correct that under current rules the resulting hospital would not qualify for a redetermination if the request is not filed timely. As a general rule, we do not believe that payment rules that are appropriately applied at the time should be reversed for subsequent events. At the same time, we can envision situations such as the one pointed out by the commenter where the result may be inequitable. We will examine the issue raised by the commenter and if we determine that any policy changes would be appropriate, we will propose them in a future rulemaking document.

Comment: A commenter questioned the preamble clarification that unless the asset acquisition meets the requirements stipulated for hospital merger or consolidation in the proposed § 412.331, those asset's costs would be treated as old or new capital under the rules provided at § 412.302 of the final capital prospective payment system regulations. The question arises because the writer understood that old capital costs always retain their identity as old capital.

Response: We provided discussion in the preamble of the June 4, 1990 proposed rule (57 FR 23653–23654) to call attention to the fact that old capital determinations are hospital-specific determinations and do not follow the asset if ownership of the asset is transferred to another hospital, except in the case of certain specified conditions. We believe that our descriptions of the limits on old capital have been adequate to alert hospitals that the purchase or sale of assets, even between facilities, will affect the treatment of the asset's costs unless a particular regulatory provision attaches to the type of transaction or asset involved.

If there is a change in the ownership of the hospital, the old capital determination made in the base year is retained by the hospital and its new owner(s). Similarly, we have extended this old capital protection to mergers and consolidations that are recognized under § 413.134(k). However, when Hospital A simply purchases the assets of Hospital B, even if it is the entire hospital (for example, when the latter hospital has filed for bankruptcy protection and its assets are being auctioned), those assets represent new capital assets to the purchaser (Hospital A) even if they were determined to be old capital assets when Hospital B was a participating Medicare provider. When there is no finding of merger or consolidation under Medicare program provisions, a simple asset acquisition is involved and the assets would be recognized as new capital costs if they were acquired after December 31, 1990 and no obligation to acquire them was in effect as of that date.

We believe these distinctions are necessary and appropriate so that no special incentives are created under the capital prospective payment system for hospitals to acquire assets that carry a potential advantage of being identified as old capital assets. We will make this distinction as clear as possible in our program instructions on the capital prospective payment system when those instructions are issued, as well.

Comment: One commenter asserted that HCFA should explicitly explain issues regarding change of ownership such as the limitations on recognition of old capital costs for new owners under the limits on valuation of assets when there is a change of ownership under section 1861(v)(1)(o) of the Social Security Act.

Response: The cost limitations on old capital assets when there is a change of ownership was addressed in the preamble to the August 30, 1991 final rule implementing the capital prospective payment system (56 FR 43405). Issues that arise from application of that limitation on an ongoing basis are addressed in program correspondence and will be included in program manual instructions that will be issued shortly.

H. Extraordinary Circumstances Exceptions Payments (§ 412.348(e))

Section 412.348(e) provides that a hospital may request an additional payment if the hospital incurs an unanticipated capital expenditure in excess of $5 million (net of insurance proceeds) due to extraordinary circumstances beyond the hospital's control. A hospital must apply to the HCFA Regional Office servicing its area within 180 days of the extraordinary circumstance causing the unexpected expenditures in order to qualify for exceptions payments. We proposed to amend the requirement in § 412.348(e)(2) to acknowledge the possibility that eligible events could occur prior to, or early in, the hospital's first cost reporting period under the capital prospective payment system. Consistent with our decision to extend the deadline for obligated capital notifications discussed above, we proposed changing the deadline for extraordinary circumstances applications to the later of October 1, 1992 or within 180 days of the occurrence of the extraordinary circumstances.

No comments were received on this proposal, and we are therefore adopting it without change in this final rule.

I. Special Payment Protections

1. Hospitals with High Medicare Usage

As discussed in detail in the June 4, 1992 proposed rule (57 FR 23654–23656), we believe it would not be appropriate to institute a payment adjustment or any special exceptions provisions for high Medicare utilization hospitals at this time. Our analyses found that the Medicare market shares for high Medicare utilization hospitals are not appreciably different from those of other prospective payment system hospitals. Their capital costs per case, and their total costs per case, are not higher than other hospitals, once we control for payment adjustments, occupancy, and the capital age and financing variables. Finally, there is no evidence that the older patients high utilization Medicare hospitals treat require more intensive resource use that would warrant a payment adjustment. As stated in the June 4, 1992 proposed rule, we will continue to monitor the characteristics of high Medicare hospitals, particularly once the data on their capital payment status is available.

Comment: One commenter believes that we did not adequately address several issues in our discussion of hospitals with high Medicare usage in the proposed rule (57 FR 23654). In particular, the commenter believes that we have not considered the role of seasonal population shifts in defining hospital market share, especially with regard to high Medicare utilization hospitals in Florida. The commenter also believes we should consider the extent to which the alternative sources of hospital care for Medicare beneficiaries are higher cost facilities or facilities that receive higher Medicare payments. In addition, the commenter believes we should examine the extent to which care received at alternate hospitals relates to specialized services not available at the high Medicare facility. The commenter notes that we have not previously applied a market share test for other facilities which receive special payment protection. The commenter further notes that high Medicare hospitals have never claimed to have higher costs per case than other hospitals, but rather that they receive insufficient payments per case. Finally, the commenter is concerned that facilities with high Medicare usage show a lower increase in payments per case than other facilities in the impact analysis published in the proposed rule.

Response: In general, payment adjustments have two justifications: a classification that shows systematically higher Medicare costs of treating patients, such as the disproportionate share and indirect medical education adjustments, or a classification that raises systematic access concerns, such as sole community status and the special exceptions provisions for high disproportionate share hospitals under the capital prospective payment system. Since high Medicare hospitals do not have higher costs per case than other hospitals that treat Medicare beneficiaries, we turned to the market share information as a method of testing the importance of access issues with regard to high Medicare hospitals. With regard to the use of market share in determining the appropriateness of any payment adjustment for high Medicare hospitals, one method of qualifying for rural sole community hospital (SCH) status is to show that a hospital's market share meets various criteria. Urban SCHs must show that alternative sources of care are at least 35 miles away, which is evidence of limited access to care.

Our analysis indicated rural high Medicare hospitals that are not a SCH have a market share that is similar to other non-SCH rural hospitals. While it is true our analysis indicates that urban high Medicare facilities have higher market shares for medical discharges than their non-high Medicare counterparts, it is also true that a variety of alternative sources of patient care are available in their market area. According to research by Brigid Goody ("Medicare Dependent Hospitals: Who Depends on Whom?" Health Care Financing Review, forthcoming), on average more than four other hospitals currently serve the residents of the market areas of urban high Medicare hospitals, and there are on average over 11 other hospitals within a 15 mile radius of a high Medicare hospital. This research shows that access is not a significant concern for Medicare patients of urban high Medicare hospitals.

The fact that payments to high Medicare hospitals are lower than payments to other hospitals does not lead to a conclusion that the high Medicare hospitals should receive a payment adjustment. High Medicare facilities treat less resource-intensive patients and are less likely to receive teaching and disproportionate share adjustments. As explained below in our response to ProPAC's comments regarding the level of the indirect teaching and disproportionate share adjustments, we believe that these adjustments are too high for operating payments, and that the lower adjustment levels set for capital PPS are appropriate for both capital and operating payments. However, we do not believe that the excessive operating teaching and disproportionate share adjustments to other hospitals support a payment adjustment for high Medicare hospitals that is not warranted by their costs.

It is unclear how seasonal migration could affect the market share analysis discussed in the proposed rule. The market share is defined as the share of Medicare discharges from all ZIP codes in a hospital's market area. The market area is defined as those ZIP codes, ranked in order of importance, that provide at least 75 percent of a hospital's discharges. It is extremely unlikely that a ZIP code from another State would contribute enough discharges to be included in a hospital's labor market area. In order for the effect of seasonal migrants to distort the market share analysis, seasonal migrants would have to have different hospitalization rates than residents. Moreover, a forthcoming article in Health Services Research by William Buczko ("Factors Affecting Interstate Use of Inpatient Care by Medicare Beneficiaries") demonstrates that the vast majority of interstate patient flow is due to beneficiaries seeking specialized care not available in their market area, rather than seasonal migration. In fact, 7.7 percent of admissions of Florida residents occur in other States (Buczko, page 303), while 9.1 percent of admissions occurring in Florida are residents of other States (Buczko, page 301), so the net migration effect is small.

Given that the standardized costs of high Medicare hospitals are lower than non-high Medicare hospitals, and that there does not seem to be an access issue to alternative sources of care for the beneficiaries that use urban high Medicare facilities (those high Medicare hospitals with a significantly higher market share), we continue to believe that it would be inappropriate to establish any special payment protection for high Medicare hospitals at this time. We will continue to monitor their situation, however. In this regard, we note that the relatively lower average payment increases indicated in the impact analysis of this final rule for high Medicare hospitals is largely attributable to the elimination of the Medicare-dependent hospital provision effective for cost reporting periods ending after March 31, 1993.

2. Financially Distressed Hospitals that Serve Low Income Patients

As we noted in the proposed rule of June 4, 1992 (57 FR 23656), several organizations representing financially distressed hospitals that serve a large volume of low-income patients have expressed concern that their payments under the capital prospective payment system may be insufficient for the hospitals to obtain the necessary financing to undertake needed capital projects in the future. The organizations note that these hospitals do not have internal reserves that can be used to finance their capital projects and rely heavily on the Medicare and Medicaid programs for their revenues. If the funding from these sources is not adequate to cover the financing costs, the hospitals will not be able to complete the renovation and construction projects that are needed to preserve access to care for low-income populations.

In the proposed rule, we noted that organizations representing financially distressed hospitals had suggested a number of changes in the capital prospective payment system that were similar to suggestions made in the public comments that we considered in developing the August 30, 1991 final rule. We indicated that we believe it would be premature to modify the policies in that rule until we have had an opportunity to assess their impact.

Comment: Several commenters expressed general concern over the impact that the capital prospective payment system might be having on hospitals that do not have capital reserves and need to undertake major capital projects and stressed the need to monitor their situation closely. Specific

suggestions made by commenters included: payment adjustments for capital cycle and reliance on debt; special exceptions payments; and permanently maintaining the capital payment level at 80 percent of reasonable costs for high disproportionate hospitals and extending this provision for 10 years beyond the transition period.

Response: As we stressed in the proposed rule, we are concerned that financially distressed hospitals that provide needed services receive adequate payments under the capital prospective payment system. However, we believe that it is premature to modify the original policies after less than one year into the transition and before we have had an opportunity to assess the impact of those initial policies and evaluate whether they provide sufficient payment protections.

We note that we do not have evidence that indicates that the capital prospective payment system has had an immediate adverse impact on financially distressed hospitals that would warrant changes in our payment policies for FY 1993. To the extent a financially distressed hospital has recently completed or will be completing a major capital project within the year, the higher capital costs should be accounted for by the hold-harmless payment policies for old capital. Those with older plants and equipment should benefit from receiving a blend of their hospital-specific rate and Federal rate that is at or above their historical cost per case level. Moreover, the minimum payment level for urban disproportionate share hospitals with at least 100 beds will remain at 80 percent in FY 1993. The issue of adequate payments to financially distressed hospitals with new capital needs is closely related to issues involving hospitals that are undertaking major capital projects that do not qualify as obligated capital. In our earlier response to comments on the obligated capital policies, we noted that we will undertake a preliminary evaluation of how the capital prospective payment transition rules affect hospitals that are initiating major capital projects that do not meet the obligated capital requirements in time to consider policy changes beginning in FY 1994. In our evaluation, we intend to pay particular attention to financially distressed hospitals that serve low income patients. If we conclude that changes in our capital payment policies would be appropriate, we would include them in the proposed rule setting forth the FY 1994 capital payment policies and rates. We may find, however, that the problems faced by these hospitals cannot be addressed through change in the Medicare capital prospective payment system, but that special legislation may be required to assure that these hospitals have access to needed capital.

We are also interested in the effect of the capital prospective payment system on rural areas. We solicit comments on whether there are unique capital problems of rural hospitals in meeting the needs of their Medicare populations, and, if so, how those problems might be addressed appropriately.

J. Minor Technical Corrections

We are making the following technical changes to the regulations:

- Section 412.113(a)(2)(E) will be corrected to note that sole community hospitals, as defined in § 412.92, are excluded from the capital payment reduction for periods prior to a hospital's cost reporting period beginning on or after October 1, 1991.
- Section 413.134(f)(2)(iii)(D) will be corrected to change the last reference for capital prospective payment system purposes to § 412.344(a)(2).
- Section 412.302(c)(1)(ii) will be revised to clarify that the qualifying criterion for obligation of moveable equipment is that a binding contract for lease or purchase of the equipment was executed on or before December 31, 1990 and obligates the hospital on or before December 31, 1990.

In addition, we proposed a series of minor conforming changes throughout 42 CFR parts 412 and 413. These conforming changes are needed to ensure that our regulations specify which provisions apply to the prospective payment system for operating costs, which provisions apply to the prospective payment system for capital-related costs, and which provisions apply to both systems.

Comment: One comment was received requesting that HCFA clarify the obligated capital provision for moveable equipment due to its ambiguity in the final rule issued August 30, 1991 (56 FR 43450).

Response: We believe that the correction proposed to section 412.302(c)(1)(ii) (57 FR 23657) resolves the concern raised in this comment. We are, therefore, adopting the technical corrections made in the proposed rule without change in this final rule.

VII. Changes for Hospitals Excluded From the Prospective Payment System

A. Provisionally Excluded Hospitals and Units (§§ 412.22, 412.23, 412.25, 412.30, and 412.32)

1. Changes in the Status of Excluded Hospitals and Psychiatric and Rehabilitation Distinct-Part Hospital Units (§§ 412.22 and 412.25)

Since the inception of the prospective payment system for operating costs of hospital inpatient services in October 1983, certain types of specialty-care hospitals and hospital units have been excluded from that system under section 1886(d)(1)(B) of the Act. These currently include psychiatric and rehabilitation hospitals and distinct part units, children's hospitals, and long-term care hospitals. Section 6004(a)(1) of Public Law 101-239 amended section 1886(d)(1)(B) of the Act to provide that certain cancer hospitals are also excluded. The preamble to the January 3, 1984 final rule implementing the prospective payment system for operating costs (49 FR 235) stated that the status of a hospital or unit (that is, whether it is subject to, or excluded from, the prospective payment system) will be determined at the beginning of each cost reporting period. It also provided that changes in a hospital's or unit's status that result from meeting or failing to meet the criteria for exclusion will be implemented prospectively only at the start of a cost reporting period, that is, starting with the beginning date of the next cost reporting period (49 FR 243). However, this policy is not set forth in the regulations.

Current regulations at § 412.25(b) specify that changes in the bed size or square footage of an excluded unit may be made only at the start of the cost reporting period. However, that regulation does not specifically address cases in which an existing hospital changes the function of the unit, adds an entire new unit, or converts an existing excluded unit to an acute care unit paid under the prospective payment system. As a result, questions have arisen as to whether such changes could be recognized at times other than the start of a cost reporting period.

We proposed revising §§ 412.22 and 412.25 to specify that changes in the status of each hospital or hospital unit would be recognized only at the start of a cost reporting period. Except in the case of retroactive payment adjustments for excluded rehabilitation units described in § 412.30(c), any change in a hospital's or unit's compliance with the exclusion criteria that occurs after the start of a cost reporting period would not be taken into account until the start of the following period. This policy would also apply to any unit that is added to a hospital during the hospital's cost reporting period.

We also proposed revising § 412.25(a) to specify that as a requirement for exclusion, a hospital unit must be fully equipped and staffed, and be capable of providing inpatient psychiatric or rehabilitation care, as of the first day of the first cost reporting period for which all other exclusion requirements are met. A unit that meets this requirement would be considered open regardless of whether there are any inpatients in the unit.

After consideration of the following comments, we are adopting the proposed changes without revision.

Comment: One commenter expressed support for the concept of making changes in the status of a hospital only for entire cost reporting periods. However, other commenters objected to this policy, stating that it unnecessarily penalizes hospitals for factors beyond their control, such as construction delays, that it discourages hospitals from making changes in their programs to meet community needs, or that it can place undue workload demands on regulatory agencies during certain time periods.

Response: We understand these commenters' concerns, and are particularly appreciative of the concern expressed regarding the workloads of regulatory agencies. However, we note that the current policies do not prohibit hospitals from making changes in their operations, nor do they result in denial of payment for the hospitals' services, since all the types of care furnished by hospitals that are excluded from the prospective payment system are also payable under the prospective payment system. We also believe that regulatory agencies, hospitals, and the public generally will benefit from policies that are clearly stated, can be easily understood by both hospitals and intermediaries, and can be simply administered. Recognizing changes in status only at the beginning of cost reporting periods is consistent with these goals, while recognizing changes in the middle of cost reporting periods would introduce added complexity to the administration of the exclusion provisions. Therefore, we are not revising the proposed changes based on these comments.

Comment: Several commenters objected to our concern that misallocations of cost could occur if changes in unit size or the opening of a new unit were recognized during cost reporting periods. One commenter stated that cost reporting techniques such as the use of weighted averages or short-term interim cost reports are available and could be used to allow changes in facility size or status during a cost reporting period without causing a misallocation of cost. Another commenter suggested that Medicare cost reporting rules be revised to allow such changes to be recognized.

Response: We recognize that cost reporting techniques such as the use of weighted averages or the introduction of short-term interim cost reports could be used to identify the cost of changes in facility size or status during a cost reporting period. However, these proposed solutions would introduce significant added complexity to the administration of the exclusion provisions. This is particularly true if hospitals would make size changes more than once in a cost reporting period.

We are also concerned about the effect that allowing such midyear changes would have on making payment to excluded rehabilitation units. Hospitals with such units are now allowed to add new beds to those units at the start of a cost reporting period, based on a certification that the patient population treated in the beds will meet the 75 percent rule (see §§ 412.23(b)(2) and 412.30(b)). The added beds are provisionally excluded from the prospective payment system, and a retroactive adjustment is made if the rule is not actually complied with. If we were to allow hospitals to add beds during a cost reporting period as well, the compliance of those beds with the 75 percent rule would have to be assessed separately. Again, multiple changes within a year would further complicate this situation.

Because of these considerations, we continue to believe that changes in the bed size of an excluded unit or the establishment of new units should be recognized only at the beginning of a hospital's cost reporting period.

Comment: Several commenters approved of the proposal to consider a fully equipped and staffed unit to be open even if the unit has not yet provided any care to patients. However, the commenters recommended that the term "fully staffed" be interpreted relative to the initial expected usage of the new unit, not to the level of utilization that might be expected over the long term after the unit's start-up period.

Response: We recognize that hospitals do not always keep enough personnel on staff to function at 100 percent of their licensed capacity, but instead hire staff to meet expected demand and maintain various contingency plans for calling in additional staff to deal with unexpected patient loads. Therefore, we agree that staffing levels should be realistic in relation to expected utilization. However, we do not believe any change in the regulations is needed to achieve this. We will clarify this point in instructions to individuals responsible for verifying compliance with the exclusion criteria.

Comment: One commenter stated that the term "fully equipped and staffed" could be subject to various interpretations, and recommended that we eliminate this test of whether a unit is open and instead allow a unit to be considered open if it admitted its first patient within 30 days of the start of its cost reporting period.

Response: We agree that some judgment will be required to determine whether a unit is fully equipped and staffed. However, the HCFA Regional Office staff responsible for implementing the exclusion provisions are also responsible for implementing Medicare health and safety requirements, and we believe they are well-suited to make these judgments. Moreover, the purpose of the judgment is not to decide whether the staffing levels are the best possible to deal with various patient loads, but to assure that a unit is actually a functional entity, rather than one which is set up to simulate compliance with the exclusion criteria and allow exclusion at the start of a particular cost reporting period, but is not capable of delivering patient care. We do not agree that the admission of at least one patient within 30 days would be a better indicator of whether a unit is actually functioning. The date of admission of the first patient may be beyond the hospital's control, and if no patient were admitted within the required time period, it would be necessary to reverse the exclusion of an otherwise qualified unit retroactively. Thus, we are not making the change recommended by this commenter.

2. Exclusion of New Rehabilitation Hospitals and Distinct-Part Rehabilitation Units with Initial Cost Reporting Periods of Less than 12 Months (§§ 412.23 and 412.30)

Under § 412.23(b)(8), a new rehabilitation hospital may be provisionally excluded from the prospective payment system for its first full 12-month cost reporting period of Medicare participation based on a written certification that the patients it intends to serve meet the criteria for patients needing rehabilitation services set forth in § 412.23(b)(2). The

regulations, however, do not address the case of a new hospital that begins operating at a time other than at the start of its regular 12-month cost reporting period. Similarly, our regulations at § 412.30 do not specify how a new rehabilitation unit that is a distinct part of a new hospital is to be treated when the hospital begins operating at a time other than at the start of its regular cost reporting period. New hospitals often begin operating at times other than the start of their regular cost reporting periods because of construction delays or other difficulties in starting a new facility. The cost reporting instructions in § 2414.1 of the Medicare Provider Reimbursement Manual allow a new hospital to select an initial cost period of not less than 1 month and not more than 13 months to cover the period between the actual start-up date and the beginning of the hospital's preferred 12-month cost reporting cycle.

To avoid requiring a new rehabilitation hospital to operate under the prospective payment system from the date it opens until the beginning of its first full 12-month cost reporting period, we proposed to revise § 412.23(b)(8) to permit provisional exclusion of the hospital for both the initial period it may elect under section 2414.1 of the Provider Reimbursement Manual and for the next full 12-month period. Under the proposal, the provisional exclusion would be effective for no more than two consecutive cost reporting periods with a combined total provisional exclusion period not to exceed 25 months.

Under the proposed policy, a separate retroactive adjustment would be made for each cost reporting period during which the hospital is provisionally excluded from the prospective payment system but does not meet the condition that at least 75 percent of the hospital's patients require intensive rehabilitative services (known as the 75-percent rule) set forth in § 412.23(b)(2). During the second cost reporting period of provisional exclusion, the hospital's compliance with the 75-percent rule will be assessed, and the status of the hospital for its third cost reporting period would depend on whether the hospital met the 75-percent requirement for its second cost reporting period.

We proposed to revise § 412.30(a) in order to provide similar treatment for rehabilitation units in hospitals that are newly participating in the Medicare program. Under this proposal, when a hospital begins participating in the Medicare program and concurrently opens a rehabilitation unit that meets the applicable exclusion criteria, the unit would be provisionally excluded from the prospective payment system from the first day of the hospital's participation through the end of the second cost reporting period. Again, we proposed that the combined total provisional exclusion period not exceed 25 months. We also proposed revising the regulations to make it clear that a hospital that has undergone a change of ownership or leasing as defined in § 489.18 would be treated as a newly participating hospital for purposes of qualifying for the prospective payment system exclusion. However, the hospital itself would not be considered newly participating for purposes of exemption from the rate-of-increase limit because it has previously participated under the old ownership.

In this final rule, we are adopting the proposed changes as described above, with one revision. After further review of our proposal, we have concluded that provisional exclusion for the initial cost reporting period of a new rehabilitation hospital (or for the rehabilitation unit of a new hospital) that is other than 12 months in length should be no longer than 11 months, so that the total period of provisional exclusion for such a hospital or unit would be limited to 23 months, not to 25 months as we had proposed.

We are making this change in order to provide more uniform treatment of hospitals that begin at times other than the start of their regular 12-month cost report cycle relative to those whose opening coincides with the start of that cycle. As noted in the preamble to the June 4, 1992 proposed rule (57 FR 23658), current cost reporting instructions allow a new hospital to select an initial cost reporting period as short as 1 month, or as long as 13 months, to cover the period between the hospital's actual start-up date and the beginning of its preferred 12-month cost reporting cycle. If a hospital chooses an initial cost reporting period of 1 through 11 months, it will not have had a full 12-month cost reporting period of exclusion in which to show compliance with the 75 percent criterion. We therefore would allow it an additional 12-month period of provisional exclusion, in order to allow it the same qualifying period as a hospital that began operating at the start of its regular 12-month cost reporting period. However, a hospital that selects an initial cost reporting period of 13 months has a qualifying period that is longer than it would have had if it had started up at the beginning of its preferred 12-month cost reporting cycle, and there is no need to provide such a hospital with an additional 12-month period of provisional exclusion. Therefore, we have revised these final regulations to provide, in §§ 412.23(b)(8) and 412.30(a)(3), that the total period of provisional exclusion for a new rehabilitation hospital or for the rehabilitation unit of a new hospital is the first full 12-month cost reporting period plus any initial short cost reporting period which is not less than 1 month and not more than 11 months in length.

Comment: One commenter expressed approval of the proposal to revise the regulations to specify that a hospital that has had a change of ownership as defined under § 489.18 may establish a rehabilitation unit and (assuming the unit is otherwise qualified) have that unit excluded from the prospective payment system as a new unit. The commenter asked whether this provision would apply only when the hospital has not previously operated a rehabilitation unit, and whether the change of ownership would trigger establishment of a new TEFRA base year.

Response: Under § 412.30, an exclusion for a new unit is available only to a hospital that has not previously sought exclusion for any rehabilitation unit. This provision would apply if the owner of the hospital following the change of ownership had not sought a rehabilitation unit exclusion for a unit of the hospital. The change of ownership would not in itself trigger a new TEFRA base year.

Comment: One commenter stated that the kind of provisional exclusion available to new rehabilitation hospitals and units should also be made available to new long-term care hospitals, since those hospitals also could be disadvantaged by being paid under the prospective payment system.

Response: We do not agree that provisional exclusion is appropriate for new long-term care hospitals, nor do we believe the law would support such a policy. The statute, at section 1886(d)(1)(B) of the Act, confers broad discretion on the Secretary in determining whether a hospital or hospital unit may be excluded on the basis that it furnishes rehabilitation services. In accordance with the authority, we permit such exclusions on the basis of written certifications. However, section 1886(d)(1)(B) sets forth specific criteria for a hospital to be excluded as a long-term care hospital; a hospital may be excluded as a long-term care hospital only if the hospital has an average inpatient length of stay of greater than 25 days. We do not believe that the statute permits us to extend the exclusion for long-term care hospitals to a hospital which has not demonstrated actual compliance with the statutory requirement. We note that qualification as a rehabilitation hospital or unit depends on the characteristics of the patients and the types of services that the facility furnishes; such criteria can be assessed at a given point in time. In contrast, the criterion for exclusion as a long-term care hospital (average inpatient length of stay greater than 25 days) can be assessed only over a period of time. Thus, a hospital cannot qualify as a long-term care hospital until it has been in operation for some period of time. Therefore, we did not adopt this comment.

Comment: One commenter recommended that retroactive payment adjustments not be limited to provisionally excluded rehabilitation hospitals and units but also be available for hospitals or units that convert from one exclusion category to another, such as former psychiatric units that qualify for exclusion as rehabilitation units.

Response: The purpose of the retroactive payment adjustment for improperly excluded hospitals and units is to allow facilities that have been granted excluded status on a provisional basis to have their payments adjusted retroactively to reflect their actual functioning in situations where they expressed the intention of functioning as excluded facilities but did not actually do so. There is no provision that would allow us to adjust payments to a facility that actually converted from one type of hospital or unit to another, in order to reflect the amounts the facility might have been paid if the conversion had not occurred. For example, if a hospital stops functioning as a psychiatric hospital and reconfigures itself as a rehabilitation facility in an attempt to qualify for a prospective payment system exclusion as a rehabilitation hospital, but does not actually meet the 75 percent requirement, there would be no legal basis on which we could continue to pay the hospital as a psychiatric hospital, nor would there be any justification for doing so. Instead, the hospital would be paid under the prospective payment system. Thus, we did not adopt this recommendation.

3. Removal of Provisions for Excluded Alcohol/Drug Hospitals and Units (§§ 412.23 and 412.32)

Existing regulations at §§ 412.23(c) and 412.32 apply to the exclusion of alcohol/drug hospitals and units. However, as reflected in § 412.32, the exclusion for alcohol/drug hospitals and units ended with cost reporting periods beginning on or after October 1, 1987. Because this exclusion is no longer in effect, we are deleting §§ 412.23(c) and 412.32.

B. Definition of Discharge for Purposes of Applying the Rate-of-Increase Limit Applicable to Excluded Hospitals and Hospital Distinct Part Units (§ 413.40(c))

We proposed to revise the regulations to include a definition of "discharge" for purposes of applying the rate-of-increase limit applicable to hospitals and hospital distinct part units excluded from the prospective payment system. Section 412.4(a) defines a discharge for purposes of the prospective payment system as any of the following occurrences: The patient is formally released from the hospital; the patient dies in the hospital; or, the patient is transferred to a hospital or unit that is excluded from the prospective payment system. There is no definition of discharge specific to the rate-of-increase provision in § 413.40. However, our policy has been that the definition of § 412.4(a) should be followed in applying the rate-of-increase limit.

As explained in the June 4, 1992 proposed rule, we have found that in practice this policy is not followed in many situations involving exhaustion of Medicare benefits prior to discharge. We proposed to change our policy to conform to current practice. We proposed to revise § 413.40(c)(2) to indicate that a discharge would be defined as set forth in § 412.4(a), except when the beneficiary exhausts Medicare inpatient hospital benefits (including the election to use lifetime reserve days) during the inpatient stay. In that case, the patient would be considered discharged on the date that Medicare benefits are exhausted.

We received several comments concerning the proposed definition of discharge. Many commenters supported the proposed change. After consideration of those comments and the comments discussed below, we are establishing the definition of discharge as proposed.

Comment: One commenter believes that the proposed definition of discharge may affect the comparability between a hospital's current cost per discharge and the hospital's base year cost per discharge. A hospital's TEFRA target rate is based on its inpatient operating costs divided by the number of Medicare discharges in the hospital's base year. The commenter stated that a hospital should be allowed to elect to rebase due to the change in definition of discharge regardless of whether it has a material effect on its TEFRA target rate, because a hospital may not be able to compute the effect due to the time that may have elapsed since its base year.

Response: We do not agree with the commenter. Even if a different discharge definition were used in the base period, we believe that there should be no distortion in the target amount. Although there may be situations in which benefits were exhausted in the base year but the patient was not counted as a discharge until a subsequent cost reporting period, it is just as likely that the base year cost report discharge count included patients who were discharged in that period but who exhausted benefits in an earlier cost reporting period. This is similar to the averaging that occurs with other discharges. That is, there are discharges early in the cost reporting period for which most costs were incurred in the previous cost reporting period and there are admissions later in the cost reporting period that will not be discharged until the subsequent cost reporting period. Therefore, there is no cause to adjust the target amount due to the new definition of discharge.

As we stated in the proposed rule, the revised discharge definition is necessary to conform the discharge count to current practice. Although the revised definition is effective with discharges (as defined in revised § 413.40(c)(2)) occurring on or after October 1, 1992, we do not intend to enforce the discharge definition in § 412.4 retroactively. Retroactive enforcement would require cost report reopenings because most Medicare cost reports have been settled based on the practice of counting a discharge when the patient exhausts benefits. If, contrary to common practice, the hospital's discharge count has been based on § 412.4 in prior cost reporting periods, the hospital should be advantaged by the revised discharge count. In this case, the first cost reporting period affected by the new policy (that is, the cost reporting period ending on or after October 1, 1992), the hospital's discharge count would include all patients that are discharged in that cost reporting period (and have not previously been counted as a discharge for that inpatient stay) and any patients who exhausted Medicare benefits in that or an earlier period but have not been discharged from the hospital. In no event will a patient be counted as a discharge more than once during an inpatient stay.

Comment: A commenter recommended that HCFA review its practice of establishing the count of discharges and establish in this final rule an approach to reconcile

differences in provider and intermediary discharge counts.

Response: The discharge count used by fiscal intermediaries in settling Medicare cost reports is derived from the PS&R. The PS&R is designed to capture all statistical and payment data through the claims processing system. Any differences between the hospital's records, which should reflect the same data as the claims to Medicare, should be easily reconciled to the data derived from the PS&R. Any discrepancies detected through an error in the PS&R will be corrected through modifications to the PS&R data in the same manner as other reconciliations are effected. Establishing a separate approach to reconcile the differences is not necessary since the PS&R is an interface system through the claims processing system and should tie into the hospital records.

C. New Hospital Exemption Applicable to Excluded Hospitals (§ 413.40 (e) and (f))

Excluded hospitals and units receive payment for the inpatient hospital services they furnish on the basis of reasonable cost, subject to rate-of-increase limits. Under the rate-of-increase limits, an annual target amount (stated as the inpatient operating cost per discharge) is set for each hospital based on the hospital's own cost experience in its base year. This target amount, updated for inflation, is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

Under §§ 413.40 (e) and (f), a new hospital may be exempted from the rate-of-increase limit on its inpatient operating costs if the hospital files a request with its fiscal intermediary within 180 days of receiving the notice of program reimbursement for the hospital's second cost reporting period. (This would be the first cost reporting period for which a hospital is subject to the rate-of-increase limit on its inpatient operating costs). As specified under § 413.40(f)(1)(i), a new hospital is a provider of hospital inpatient services that has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership, or both, for less than three full years. The new hospital exemption expires at the end of the first cost reporting period beginning at least 2 years after the date the hospital admits its first patient. The last cost reporting period for which the exemption is in effect is the base period for determining the target amount applicable to subsequent cost reporting periods.

We proposed making three changes to the provisions of § 413.40(f)(1)(i) concerning new hospital exemptions from the rate-of-increase limit. The first proposed change would make the new hospital exemption automatic rather than at the hospital's discretion. As discussed in the proposed rule (57 FR 23659), we believe that offering a hospital the choice of requesting or foregoing an exemption sometimes allowed new hospitals to obtain a competitive advantage over other hospitals. To remedy this situation, we proposed revising § 413.40(f)(1)(i) to apply the exemption automatically to all new hospitals rather than making the exemption contingent on a request from the hospital.

Also, under current policy, a hospital may be in operation for 3 or more years before it is subject to the rate-of-increase limit. We believe that a hospital's second year of operation should be sufficiently representative to be used to establish the target amount. Therefore, we proposed reducing the new provider exemption to 2 years. A new hospital would be exempt from the rate-of-increase limit through its cost reporting period ending at least 2 years after the hospital accepts its first patient. The base period would be the first 12-month cost reporting period that begins at least 1 year after the hospital accepts its first patient.

Our third proposed change in the new hospital exemption policy concerned the issue of whether a participating facility that reorganizes (for example, from an excluded hospital to an excluded unit of an acute care hospital) or changes the basis of its participation in the Medicare program (for example, from a rehabilitation hospital to a long-term hospital) is a new hospital, even if it continues to provide the same services as it did before the reorganization. To preclude hospitals from qualifying for a new hospital exemption based solely on such operational reorganizations or changes in certification status, we proposed to revise § 413.40(f) to specify that a hospital would qualify as a new hospital only if it had not previously provided the type of hospital inpatient services for which HCFA granted it approval to participate in the Medicare program.

As explained in the June 4, 1992 proposed rule (57 FR 23659–23660), a hospital undergoing a change in organizational structure does not incur the significant patient care cost distortions associated with being a new hospital. Any cost distortions that affect the comparability of cost reporting periods stem from a change in the organizational structure of the facility rather than in the type of services it provides to patients in the excluded portion of the facility.

However, we also recognized that the target amount that applied before the hospital's reorganization might not appropriately reflect costs after its reorganization. Therefore, to account for the effect of changes in the operational structure of the hospital or distinct-part unit (that is, a freestanding rehabilitation hospital becomes a distinct-part unit or vice versa) on operating costs per discharge, we proposed to revise § 413.40(b) to clarify that the base period would be the first full 12-month cost reporting period effective with the revised Medicare certification classification.

In contrast, the target amount would continue to reflect the costs of a hospital that changes the basis of its certification but does not experience a significant change in organizational structure or in the type of services provided. The potential new hospital exemption period for these hospitals would begin with the first day of the cost reporting period in which the hospital provided services consistent with its new certification status. An example would be a new hospital with an average length of stay exceeding 25 days that changes its certification from an acute care hospital to a long-term hospital after 1 year. Since the hospital served the requisite patient population from the outset, the base year would be the first cost reporting period beginning at least 12 months after the hospital accepted its first patient as an acute care hospital.

After consideration of the following comments, we are adopting the proposed changes without revision.

Comment: A commenter argued that there may be cases where the established base year under the new hospital provision does not reflect the hospital's per-case costs because it could take a longer period of time before the on-going cost structure for a new hospital is in place. In cases where it is subsequently determined that the base year's per-case rates are distorted, a permanent adjustment to the base year per case rate should be made, so that these hospitals do not have to seek a payment adjustment to their per-case rates each year.

Response: The situation described above is not unique to new hospitals. There are many circumstances that could cause cost distortions between the base year and subsequent periods. Regulations at § 413.40(g)(1) currently provide the mechanism by which hospitals may receive adjustments under the cost per case limitations. One general basis for an adjustment is lack of comparability between the base period and subsequent periods. To the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified, and separately identified by the hospital, an adjustment may be warranted. If the cause of the cost distortion is permanent, the adjustment will be made permanent as well.

Comment: A commenter asserted that the existing new hospital exemption process provides the most effective incentive to reduce health care costs. Increases in hospital spending could be more effectively controlled through the existing new hospital exemption rules. The new hospital exemption was implemented in order to provide a hospital with enough to establish a good base of operations.

Response: We do not agree with the commenter that the current new hospital exemption more effectively controls hospital spending. During the exemption period, a hospital has little incentive to control its costs. Under the current exemption policy, a hospital may choose, after the fact, whether it wants its base year to be its initial year of operation (even though it may not be representative of its on-going costs), or its third year. Since the hospital knows in advance that it may choose either the first or the third year of operation as its base period, it has an incentive in both years to increase its costs in order to raise the target amount that would be applicable to subsequent periods.

The reason for allowing an exemption to the rate-of-increase limit during the early years of a hospital's operations is to recognize that certain cost distortions may be present when a hospital is beginning its operations. The first year of operation is commonly atypical. That is, there are normally start-up costs in the first year and utilization may be lower in that year. Since the first year is typically unrepresentative of the hospital's on-going operation, it should not be used as a base period. However, by the second year of operation, the hospital's operations should be well established. To provide an exemption beyond this period unnecessarily delays the incentives for cost containment imposed by the rate-of-increase limits.

Comment: A commenter suggested that in determining the base year per-case rate for a new hospital that is exempt from the prospective payment system, HCFA should select whichever cost reporting period, within two years after the hospital accepts its first patient, is most representative of the hospital's legitimate cost structure.

Response: We believe the commenter's suggestion would be problematic in that it would require including a subjective judgment in the selection of the base year. New hospitals that are exempt from the prospective payment system have an advantage over other hospitals already under the rate-of-increase ceiling since the new hospital knows in advance which period will be its base period and can react accordingly. One problem with the current provision is that the hospital has the flexibility to choose after the close of the potential base periods which period it wants as the base year. In some situations, hospitals have prematurely requested an exemption and later wanted to withdraw the request due to subsequent extenuating circumstances. Making the exemption automatic, and shortening its length, puts all new hospitals on the same footing with respect to the rate-of-increase ceiling. Any distortions after the base year can be addressed through the normal adjustment procedures.

D. Adjustments Under the Rate-of-Increase Ceiling (§ 413.40(g))

Section 413.40(g)(3) provides that HCFA may make an adjustment to take into account factors that will result in a significant distortion in the operating costs of hospital inpatient services between its base year and the cost reporting period subject to the rate-of-increase ceiling. Section 413.40(g)(3)(ii) was added in the August 30, 1991 final rule to clarify those circumstances under which HCFA may adjust the amount of operating costs in establishing the ceiling without a formal request from a hospital (56 FR 43232). Although this clarification was not intended to limit HCFA's authority to adjust base year costs to only those factors specifically stated in § 413.40(g)(3)(iii), we believe the current regulations could be interpreted to preclude HCFA from making adjustments except under the specified circumstances. However, there may be other cases in which the base period is not a representative base for adjusting future costs. This would include cases in which the hospital had extremely low Medicare utilization during the base period, or cases in which there was a significant change in Medicare coverage during the base year (for example, as a result of the Medicare Catastrophic Coverage Act of 1988). In such cases, the base period would not be appropriate for establishing a target amount for limiting cost increases in future periods. Therefore, we proposed revising § 413.40(g)(3)(iii) to specify the circumstances when HCFA may adjust the amount of operating costs. We proposed that these circumstances include, but not be limited to, adjustments to take into account the factors set forth under § 413.40(g)(3)(ii) (A), (B), (C), (E) and (F).

After consideration of the following comments, we are adopting the proposed changes without revision.

Comment: Commenters recognized that there may be situations where it would be appropriate for HCFA to make adjustments to overcome distortions in the comparison of base year and current costs. However, they argued that the proposed unqualified wording ("certain adjustments" which "include, but are not limited to" those specified in the rule) invites arbitrary and inappropriate actions both in the determination of what constitutes a significant distortion and in the nature of the adjustment. Furthermore, there is currently no requirement that HCFA advise the hospital in advance or seek its participation in resolving a reputed distortion. The commenters recommended that HCFA expand the list of specific situations causing distortions, provide for HCFA's general adjustment authority in the context of regulatory language describing the nature of other possible situations that would constitute or result in significant distortions, and that HCFA be required to notify the affected hospital of the distortion that it intends to address, describe the proposed remedy, and permit the hospital to present its views and data in advance of HCFA making any adjustments.

Response: We do not believe the proposed language invites arbitrary and inappropriate actions. Although there may be similarities in some adjustment requests, each case presented for a determination, is to a certain extent, unique to the individual hospital. The examples cited in the proposed rule are cases we are aware of to date, but there may be other situations that have not come to our attention. It is almost impossible to develop an all-inclusive listing of circumstances that may warrant adjustments. Therefore, we believe it is important to permit some latitude in the adjustment process by addressing the most common circumstances in the regulation and allowing flexibility to address unknown circumstances. Anytime HCFA makes an adjustment, the decision is forwarded to the hospital's fiscal intermediary, which in turn notifies the hospital of the decision, including a full explanation of the grounds for the decision. The hospital has 180 days after the date of the intermediary's notice of the decision to appeal a determination.

E. Other Issues

We received two comments unrelated to the proposed changes. We considered the comments, but we do not intend to make any additional changes as a result of these comments.

Comment: Several commenters wanted to treat new distinct-part units that are exempt from the prospective payment system the same as new hospitals in terms of the initial exemption from the rate-of-increase ceiling and the determination of the base year.

Response: We proposed no changes to this provision of the Medicare regulations. However, we continue to believe that the new hospital exemption should not be extended to include newly established distinct-part units. The basic premises regarding the new hospital exemption are that new hospitals have incurred start-up costs to become operational and they need to build a relationship with the community. With respect to distinct-part units of a hospital, start-up costs should be minimal and the distinct-part unit, to some degree, has its own patient population already established through the acute care hospital. Thus, we believe the considerations which underlie the exemption to new hospitals do not apply to distinct-part units.

Comment: A commenter suggested that HCFA should allow the rebasing of any long-term hospital that can show that it is providing a significantly greater amount of routine and/or ancillary services per discharge or per day for medically necessary services. A significant segment of long-term hospitals' base years are distorted due to such factors as increases in Medicare utilization, increases in ancillary usage among Medicare patients, and changes in the PRO criteria since the base year.

Response: We did not propose any changes to the rebasing provisions of the regulations. The circumstances described by the commenter are already accounted for in the adjustment provision for comparability of cost reporting periods. One of the conditions of the assignment of a new base period is that the general TEFRA adjustment provisions would not result in recognition of the reasonable and necessary costs of providing inpatient services. Therefore, we do not agree that the change in rebasing provisions recommended by the commenter is necessary.

VIII. Other ProPAC Recommendations

As required by law, we reviewed the March 1, 1992 report submitted by ProPAC to Congress and gave its recommendations careful consideration in conjunction with the proposals set forth in the proposed rule. We also responded to the individual recommendations in the proposed rule. The comments we received on the treatment of the ProPAC recommendations are set forth below along with our responses to those comments. However, if we received no comments from the public concerning a ProPAC recommendation or our response to that recommendation, we have not repeated the recommendation and response in the discussion below. Recommendations 1, 2, and 11 concerning the update factors for inpatient operating costs are discussed in Appendix C to this document. The remaining recommendations on which we received comments are discussed below.

A. Updating Capital Payment Rates (Recommendation 3)

Recommendation: ProPAC recommends that a single update factor be developed for adjusting operating and capital prospective payment rates. The update framework should be consistent with that currently used by ProPAC to develop the prospective payment operating rate update recommendation and should be put into use for FY 1994.

Response: In the August 30, 1991 final rule (56 FR 43414), we established the capital update methodology to be used through FY 1995. Under that methodology, we will update the capital Federal rate and the hospital-specific rates for hospitals paid under the fully prospective payment methodology using a lagged 2-year moving average of actual increases in Medicare inpatient capital costs per discharge, adjusted for case mix index change. The capital update proposed in the Addendum to this **Federal Register** document is based on the average increase in Medicare inpatient capital costs between 1988 and 1990. The capital update established in FY 1995, the last year in which we will use the current methodology, will be based on the average increase in Medicare inpatient capital costs between 1990 and 1992. We established this methodology in response to hospital industry concerns regarding the uncertainty of the capital update over the first few years of the prospective payment system for capital-related costs. We believe that it would be inappropriate to change the method of updating capital payments before FY 1996, because of this desire of the industry for more certainty regarding capital updates.

We believe that it is appropriate to establish a capital-specific update framework until the prospective payment systems for capital-related and operating costs are unified in a single payment system. The development of an update framework for capital payment is conceptually and empirically more difficult than the development of a framework for updating operating payments. For this reason, and in order to solicit comments and to refine our framework, we included a preliminary discussion of an update framework for the capital prospective payment system in the August 30, 1991 final rule implementing the prospective payment system for capital-related costs (56 FR 43522). In the FY 1993 final rule, we will publish a more detailed discussion of the proposed framework, including an empirical illustration of the proposed update framework. This illustration will show the consistency and relationships of the framework with historical trends in operating and capital-related costs through 1990 and with the proposed FY 1993 update. Comments will be solicited on this framework, and we will provide successively improved frameworks in the final rules for FY 1994 and FY 1995. We will continue to solicit comments on these refined frameworks in order to improve the framework that will be adopted for FY 1996. Until this framework is appropriately refined, we believe that using the lagged increase in actual capital costs, adjusted for case-mix index change, is the most reasonable approach to take regarding capital updates.

Comment: ProPAC reiterated its recommendation that HCFA implement an update framework for fiscal year 1994 instead of using the 2-year average of historical cost-per-case increases.

Response: We present a preliminary discussion of an update framework for the prospective payment system for capital-related costs in Appendix D of this final rule. Section 412.308(c)(1) provides that HCFA will use a framework to determine the update factor beginning in FY 1996. We welcome comments on the preliminary concepts and methodologies for a capital update framework, and on the issue of whether framework update should be implemented before FY 1996 to determine the update factor.

B. Level of Indirect Medical Education and Disproportionate Share Adjustments to the Prospective Payment System for Operating Payments (Recommendation 4)

Recommendation: ProPAC recommends that the indirect medical education adjustment to the prospective payment system for operating payments be reduced from its current level of 7.7 percent to 7.0 percent for FY 1993. This reduction should be implemented in a budget neutral fashion, with the anticipated decrease in indirect medical education payments returned to teaching hospitals that are designated as disproportionate share providers through a corresponding increase in their disproportionate share adjustment percentages.

Response in the Proposed Rule: ProPAC's recommended reduction of 0.7 percentage points in the operating adjustment for indirect medical education (IME) represents approximately one-third of the difference between the current level of 7.7 percent (set forth at section 1886(d)(5)(B)(ii) of the Act) and 5.7 percent, which is ProPAC's most recent estimate of the effect of teaching activity on inpatient operating costs. That is, ProPAC estimates that for every 10 percent change in the resident-to-bed ratio, there is, on average, a 5.7 percent increase in Medicare inpatient operating costs per case.

ProPAC uses a statistical model to generate its estimate of the effect of teaching on Medicare inpatient operating costs that does not control for the hospital's costs of treating a disproportionate share of low income patients. Controlling for these costs would result in a substantially lower estimate of IME costs because of the overlap in hospitals receiving IME and disproportionate share (DSH) payments. We believe that it is appropriate to control for the effects of DSH status when estimating the effects of teaching. Not controlling for the effects of all of the payment variables would distort the results of the regressions by attributing some of the effects of the missing variables to the variables present in the regression. We strongly believe that payment for the indirect costs associated with graduate medical education should be based on the best estimate of the added costs incurred in treating Medicare patients and that payments in excess of this amount are an inappropriate use of Medicare trust funds. We further believe, as stated below in our response to ProPAC's Recommendation 5 with respect to the IME adjustment for capital-related costs, that the appropriate level of the IME adjustment is that currently paid in the prospective payment system for capital-related costs. This adjustment is based on regressions on total cost per case, controlling for all of the prospective payment system payment adjustments, including DSH.

ProPAC further recommends that the reduction in IME payments for the prospective payment system for operating costs be returned to teaching hospitals that also receive DSH payments through a modification in the DSH adjustment for operating costs. We do not agree that the reduction in IME payments should be returned to teaching hospitals that also receive DSH payments. These hospitals currently have payment-to-cost ratios that are significantly higher than other hospitals. While we believe that it is possible to improve payment equity across all classes of hospitals by returning at least a portion of the IME payments to all hospitals, any such increase in payments to hospitals must be examined in the larger context of health care reform.

We strongly disagree that the low total operating margins (which are based on the facility's overall operations, not just Medicare patients) of DSH hospitals that also receive IME payments should be relevant to the distribution of Medicare payments. These lower total margins are associated with the fact that DSH hospitals that also receive IME payments tend to be faced with a broad array of social issues not directly related to Medicare patients, stemming largely from their location in urban areas and their role in providing services to low-income individuals. We continue to believe that social problems that are not directly related to Medicare beneficiaries should be addressed through more targeted policies rather than through indirect subsidies in the form of higher payments to a class of hospitals that are not underpaid relative to the costs of treating Medicare beneficiaries.

Comment: ProPAC had several comments on our response in the proposed rule to this recommendation. First, ProPAC agreed with our ultimate objective of one IME adjustment and one DSH adjustment for both the operating and capital prospective payment systems, but thought separate adjustments for operating and capital were necessary in the interim. ProPAC disagreed with our assertion that the estimate of the effects of teaching should control for the costs of treating a disproportionate share of low-income patients. ProPAC's position is based on its perception that the DSH adjustment is not intended specifically to reflect cost differences, but instead fulfills a broader public policy objective to maintain access to care.

In response to our statement that total operating margins are not relevant to an examination of Medicare payment policy, ProPAC argued that total margins are a useful analytic tool. For example, based on the relatively worse overall financial condition of teaching hospitals that serve a disproportionate share of low-income patients, as seen from these hospitals' low total operating margins, ProPAC commented that the savings from a reduction in the IME payment adjustment should be returned to these hospitals.

Response: As we noted above in our response in the proposed rule and in our response to Recommendation 5, below, we believe the adjustments for the operating and the capital prospective payment systems should be uniform. We have not, however, proposed changing the IME or DSH operating adjustments for FY 1993. These adjustments are specified in the statute.

We have serious concerns about ProPAC's rationale for not controlling for the costs of treating a disproportionate share of low-income patients in the estimation of the teaching effect. Numerous analyses have illustrated the interactive effects of IME and DSH on costs. We believe the payment adjustments should, as precisely as possible, reflect the actual cost impacts of the factors for which they are targeted. We have consistently maintained that the appropriate level of the IME adjustment should be one that is based on a more recent statistical estimate of the effects of teaching on costs, separate from all other factors for which hospitals' prospective payments are adjusted.

This position would seem to be consistent with Congressional intent, based on recent legislation. Since the DSH adjustment was implemented effective with discharges occurring on or after May 1, 1986, Congress has repeatedly acted to link the level of the IME adjustment to the level of the DSH adjustment. When the DSH adjustment was enacted by section 9105 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99-272), Congress simultaneously lowered the IME adjustment in section 9104(a) in recognition of the overlap of these two adjustments in terms of the hospitals receiving them. Similarly, the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) further reduced the IME adjustment (section 4003(a)) to correspond with changes to the DSH payment policy (section 4003 (b), (c), and (d)). Finally, the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) deleted the expiration date for the

DSH adjustment (section 4002(b)(1)(A)) and correspondingly deleted the provision to increase the IME adjustment upon the expiration of the DSH adjustment (section 4002(b)(3)(B)).

Regarding the use of total margins to evaluate Medicare payment policy, we believe that our position is consistent with our argument that the IME estimate should reflect only the effect of teaching costs because the prospective payment system should, as precisely as possible, pay hospitals for their costs of treating Medicare patients efficiently. As we have stated in the past, we recognize the important role that large, inner-city hospitals play in fulfilling larger public health needs. However, as we have also indicated, we believe that social problems that are not directly related to Medicare beneficiaries should be addressed through more targeted policies rather than through indirect subsidies in the form of higher Medicare payments to all teaching hospitals. As we expressed in the proposed rule and above, the issue of equitably dealing with these larger social problems should be addressed within the context of health care reform.

Finally, as we have noted before, teaching hospitals that also receive DSH payments have consistently had Medicare payment-to-cost ratios above those of other hospital groups. Therefore, we disagree with ProPAC's recommendation that the savings from reducing the IME adjustment should be returned to teaching hospitals that also receive DSH payments.

Comment: One commenter supported our position that Medicare payment equity could be improved by returning at least a portion of IME savings to all hospitals. This commenter pointed out that the IME adjustment represents one component in the prospective payment system, and that savings from reducing IME payments should be used to close the gap between the Medicare operating margins of teaching hospitals and nonteaching hospitals. Another commenter expressed strong opposition to reducing the level of the IME adjustment until a within-DRG severity measure is developed.

Response: We take note of the first commenter's support for improving overall payment equity in conjunction with reducing the IME adjustment. Although we are concerned with the financial viability of large inner-city teaching and DSH hospitals, our responsibility in evaluating potential system changes includes the objective of overall payment equity. We believe this can best be achieved by ensuring that the payment adjustments accurately reflect the across-hospital variations in Medicare costs due to the factors for which we make adjustments. Consequently, in response to the second commenter, we repeat our belief that the appropriate level of the IME operating adjustment is the level currently paid in the prospective payment system for capital-related costs. Because this estimate was made by controlling for case-mix variation using the FY 1991 GROUPER, it reflects our ability to control for the cost effects of varying levels of within DRG severity. To the extent that teaching hospitals have higher costs due to more severely ill patients that are not explained by controlling for case-mix, those costs would be reflected in the IME estimate. Therefore, we disagree with the argument that any reduction to IME should be delayed pending the adoption of a refined severity measure.

C. Consistency of Indirect Medical Education and Disproportionate Share Adjustments to Prospective Payment System Capital and Operating Payments (Recommendation 5)

Recommendation: ProPAC recommends that the same level of IME and DSH payment adjustments be applied to both operating payments and the prospective component of capital payments, beginning in FY 1994. Further, ProPAC believes that the methods of determining these adjustments in the prospective payments for operating costs should also be applied to the prospective payments for capital-related costs as follows:

- The measure of teaching intensity used for the IME adjustments should be defined in terms of the ratio of residents per bed.
- The criteria for designation as a DSH should be based on urban or rural location and number of beds.

These changes would better reflect the policy objectives of the Congress in defining and setting the levels of the payment adjustments. They would also be consistent with the principle of incorporating capital into the prospective payment rate.

Response in the Proposed Rule: We agree with ProPAC that an appropriate policy would be to apply the same DSH and IME adjustments to the prospective payments for operating costs and for capital-related costs. However, we continue to believe that the appropriate level of the adjustments is that justified by the total cost regressions, as developed in the August 30, 1991 final rule implementing the prospective payment system for capital-related costs (56 FR 43378). That is, the adjustments for both operating and capital payments should reflect the effect on total costs per case of IME and DSH status. We implemented these IME and DSH adjustments under the capital prospective payment system. We cannot implement them under the prospective payment system for operating costs since the IME and DSH operating adjustments are set by statute. Until we have statutory authority to change the IME and DSH adjustments to operating payments, we are faced with choosing between using different adjustments for capital and operating payments or making the IME and DSH adjustments to capital payments at the same levels used for operating payments. Since our regression analysis indicates the adjustments to operating payments are not reflective of the effect that IME and DSH status have on Medicare costs per discharge, we believe it would be inappropriate to use these adjustments for capital payments. Thus, we have decided to use different adjustments and base the adjustments to capital payments on the results of the total cost regressions.

With regard to the ProPAC recommendation that the criteria for designation as a disproportionate share hospital should be based on urban or rural location and number of beds, we believe that the only hospital groups that should receive the DSH adjustment are those with significantly higher costs due to their disproportionate share of low income patients. As explained in further detail in the August 30, 1991 final rule implementing the prospective payment system for capital related costs (56 FR 43378), we found no evidence in the total cost regressions that costs for any rural hospital grouping were significantly correlated with the DSH patient percentage. We also found no evidence that there is a correlation between the total costs per case of urban hospitals with fewer than 100 beds and their DSH patient percentage. For urban hospitals with at least 100 beds, we did not find a threshold disproportionate share patient percentage above which a higher adjustment formula was appropriate, nor did we find a threshold patient percentage below which no correlation between costs and patient percentage exists. For these reasons, we continue to believe that the DSH adjustment to capital payments, which provides an adjustment to only urban hospitals with more than 100 beds and does not require a threshold patient percentage, is correctly formulated and should apply to payments for operating costs as well.

We also disagree with the recommendation that the ratio of interns and residents to beds be used as the measure of teaching intensity for the IME adjustment to capital payments. As discussed in the August 30, 1991 final rule (56 FR 43380), we believe that the ratio of residents to average daily census is a more appropriate measure of teaching intensity. Residency programs are intended to provide participants the opportunity to treat patients in a supervised setting. We believe that the indirect costs of a teaching program are more highly correlated with the ratio of residents to the average number of patients than with the ratio of residents to available beds, both occupied and unoccupied. This expectation is borne out by our regression results, which show both a smaller standard error and a slightly larger t-statistic when the resident-to-day ratio is used than when the resident-to-bed ratio is used in the cost regression.

In the August 30, 1991 final rule, we also stated our concern regarding the potential for manipulation of the bed count in order to increase teaching payments. In this regard, we note that the General Accounting Office, in its report on the IME adjustment for operating costs, refers to average daily census as a more "verifiable" statistic than beds. (A copy of this report, "Flawed Data Add Millions to Teaching Hospital Payments" GAO/IMTEC–91–31, June 1991, can be obtained by contacting the U.S. General Accounting Office, P.O. Box 6015, Gaithersburg, MD 20877, or by calling (202) 275–6421.)

Comment: In its comments on the proposed rule, ProPAC stated that it continues to believe that the IME and DSH adjustments to the operating and capital prospective payments should be consistent. Also, ProPAC argued that the measure of teaching intensity used for capital IME payments, that is, the ratio of residents to average daily census, rewards hospitals with low occupancy rates. ProPAC was unable to reproduce our finding that the average daily census ratio performed better in explaining differences in cost per case. ProPAC believes that our regression results were based on total costs per case, and that our findings were due to lower occupancy hospitals having higher capital cost per case. As a result, ProPAC asserted that the use of the resident-to-day ratio rewards hospitals that use capital inefficiently. Finally, ProPAC suggested that the operating DSH formulas and criteria should be applied to capital payments, because of the public policy goals reflected in them. One commenter supported our position that the operating DSH adjustment should be made equal to the capital DSH adjustment. Another commenter believed that the capital IME adjustment should be set equal to the current operating IME adjustment.

Response: We agree with ProPAC that the formulas and criteria of the operating and capital IME and DSH adjustments should be equivalent. However, we continue to believe that the appropriate level of the adjustments is that justified by the total cost regressions, as implemented in the capital prospective payment adjustments. As we stated above in our response to ProPAC's comments regarding Recommendation 4, we believe the payment adjustments should reflect the increase in the cost of treating Medicare beneficiaries due to increases in the resident-to-day ratio and the disproportionate share patient percentage, rather than any broader policy goals.

We disagree with ProPAC's position that the resident-to-day ratio rewards hospitals with low occupancy rates. ProPAC cites an example where two hospitals have the same numbers of residents and beds but different occupancy rates, so that the hospital with the lower average daily census would have a higher resident-to-day ratio. Focusing on occupancy rates obscures the fact that residents furnish services to patients and not beds. We believe it is intuitively appropriate to pay identical IME adjustments to hospitals with the same resident-to-day ratio but different resident-to-bed ratios, rather than the reverse. Therefore, although there would be a distributional effect of switching to the resident-to-day ratio for the operating prospective payment system, the result should more closely resemble the actual distribution of teaching costs. We also note that the capital IME adjustment formula results in a rising marginal rate of increase as teaching intensity rises. This would alleviate some of the distributional impact, since the current operating IME adjustment formula results in a declining marginal rate of change.

ProPAC indicates that it was unable to duplicate our findings of smaller standard errors and larger t-statistics in its regressions on operating costs using the resident-to-day ratio instead of the resident-to-bed ratio and assumes our findings are based on the combination of operating and capital costs as the dependent variable in our regressions. In fact, our analysis of a single standard rate operating prospective payment system yielded results similar to those for total costs. In that analysis, which focused solely on Medicare operating costs, the standard error of the log of the resident-to-bed ratio was .0487, and the standard error of the log of the resident-to-day ratio was .0315. The respective t-statistics were 9.643 and 9.705. We would be happy to discuss these findings with ProPAC.

We disagree with ProPAC's suggestion that the better performance of the resident-to-day ratio in the statistical analysis is due to the higher capital costs per case of low-occupancy teaching hospitals with relatively high resident-to-day ratios. Based on this belief, ProPAC states that the resident-to-day ratio in the capital prospective payment system rewards hospitals for the inefficient use of capital resources. In fact, in a regression on FY 1988 and FY 1989 capital costs that controlled for occupancy levels, the resident-to-day ratio was significant and positive while the resident-to-bed ratio was insignificant.

Finally, we disagree with the commenter who believes the capital IME adjustment should be set at a level equal to the current operating IME adjustment. As stated in the proposed rule and repeated several times above, we continue to believe that the appropriate level of the IME and DSH adjustments are those justified by regressions on hospitals' total (operating and capital) Medicare costs, and adopted for the capital prospective payment system.

D. Medicare Transfer Payment Policy (Recommendation 7)

Recommendation: Cases transferred out of a hospital should be paid based on a graduated per diem up to the full DRG payment to recognize the higher daily costs associated with the first few days in a patient stay. In addition, outlier payment policy should be reexamined, particularly with respect to transfer cases received by a hospital. ProPAC believes that hospitals are penalized by the current payment for transfers and that further examination of whether hospitals have the appropriate incentive to transfer patients, particularly with respect to recuperative care, is warranted.

Response in the Proposed Rule: Since a Medicare discharge is the basis of payment under the prospective payment system, it is necessary to distinguish between discharges in which a patient has received complete treatment and discharges in which the patient is transferred to another acute-care hospital for related care. If a full DRG payment were made to each hospital involved in a transfer situation irrespective of the length of time the patient spent in the sending hospital prior to transfer, this would create a

strong incentive to increase transfers, thereby unnecessarily endangering patients' health and increasing program outlays. Therefore, in a transfer situation, the regulations at § 412.4(d) provide that full payment is made to the final discharging hospital, and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred. The per diem rate is determined by dividing the full DRG payment that would have been paid in a nontransfer situation by the average length of stay for the DRG into which the case falls. Transferring hospitals are also eligible for outlier payments for cases that meet the cost outlier criteria, but are not eligible for day outlier payments. Two exceptions to the transfer payment policy are transfer cases classified into DRG 385 (Neonates, Died or Transferred to Another Acute Care Facility) or DRG 456 (Burns, Transferred to Another Acute Care Facility), which are not paid on a per diem basis but receive the full DRG payment instead.

In the past, we have reviewed the transfer payment policy for potential improvements. The September 3, 1986 final rule (51 FR 31489) pointed out that, based on our analysis of the possible effects of making a single payment for all the hospitals involved in a transfer case, it was not possible to develop such a policy that would be equitable or administratively feasible. That is, we determined that a single payment based only on the DRG classification of one hospital would probably not be sufficient to be split equitably among the two or more hospitals based on the actual resources that each expended in the episode of care.

We issued a report to Congress in 1988 on the impact of outlier and transfer payment policies upon rural hospitals (Review of the Impact of Outlier and Transfer Payment Policy upon Rural Hospitals, DHHS, 1988). We examined the ratio of payments under the prospective payment system to total charges in the transferring hospital by length-of-stay and found that the ratios were actually highest for the shortest lengths-of-stay and declined as length-of-stay increased. Furthermore, the ratios for cases with lengths-of-stay of up to 3 days exceeded those for all inpatient stays paid under the prospective payment system. Although the focus of that report was primarily on the impacts of outlier and transfer policy on rural hospitals, it concluded that the current policy was more practical than another potential alternative, establishing separate DRG categories for transfer cases.

ProPAC's report indicates that payment-to-cost ratios for transfer cases in the transferring hospitals were substantially below average for cases with short lengths-of-stay, but that the ratios were closer to average for cases with lengths-of-stay approximating the average. Since ProPAC's findings differ from those in our 1988 report to Congress, we intend to review ProPAC's results to determine whether refinements in the transfer payment policy are now warranted. (A ProPAC technical report containing the results of their analysis is scheduled for publication in April 1992.)

Any change in the transfer payment methodology needs to be evaluated in terms of its potential for creating incentives that may adversely affect the quality of care received by Medicare beneficiaries. For example, the declining per diem rate in a graduated per diem methodology would create an incentive for initiating transfers earlier in the course of treatment, potentially endangering patients' health. The magnitude of this incentive would depend on the gradation of the rate.

We share ProPAC's concern that the transfer payment policy not create substantial disincentives to the transfer of patients for recuperative care at a local hospital after completion of any specialty treatment provided in the tertiary hospital. However, we believe that, in light of the alternatives we have reviewed, our policy adequately maintains the efficiency incentives of the prospective payment system while establishing relatively neutral financial incentives to transfer or accept transfer patients. A decision to transfer a patient should be based upon the medical facts of a patient's case and not the financial effects upon the hospital.

Comment: In its comments submitted in response to the proposed rule, ProPAC reiterated its concern about the equity of the current transfer payment policy. In defense of its recommendation to pay transfer cases using a graduated per diem up to the full DRG payment, ProPAC cited a study conducted by RAND that shows average daily costs to be highest during the first part of a patient's stay. ("How Services and Costs Vary by Day of Stay for Medicare Hospital Stays," RAND Report No. R-3870-ProPAC, March 1990.) ProPAC urged HCFA to undertake further analysis of its current policy, pointing out that the differences between the findings in the 1988 HCFA Report to Congress and its more recent analysis could be due to differences in accounting for the per diem payment for transfer cases.

Response: As noted in our response to this recommendation in the proposed rule, we have examined potential revisions to the current transfer payment methodology in the past without finding an acceptable replacement. We will continue to examine transfer payment alternatives and look forward to the release of ProPAC's technical report containing the results of its analysis of the current policy. However, until we review ProPAC's analysis, we can only speculate on the reason or reasons for the differences.

With regard to the analysis performed by RAND, we note that in its report RAND states that its sample "does not contain enough either small or rural hospitals for us to make reliable statements about this class of hospitals" (p. 19). The RAND report was not designed to evaluate transfer payment policy. In fact, the sample used by RAND is most representative of urban hospitals with 100 or more beds and is slightly overrepresentative of major teaching hospitals compared to the universe. In our 1988 Report to Congress on transfer policy, we reported that rural hospitals and urban hospitals with fewer than 100 beds tend to transfer larger proportions of their cases than do other classes of hospitals. In addition, our analysis in that report of the cost-to-charge ratios by length-of-stay focused solely on transfer cases, whereas RAND analyzed all cases discharged from the sample hospitals, including "true" discharges as well as transfer cases. These differences may explain some of the different findings. Treatment prior to release by a transferring hospital may be different than treatment provided by a hospital that treats the entire episode of care due to the unavailability of the often costly technology necessary to provide definitive treatment at the transferring hospital.

Comment: One commenter questioned our belief in the neutrality of the incentives of our current transfer policy, stating that the policy fails to distinguish between complex cases transferred for more sophisticated care, and cases transferred near the end of a treatment episode. The commenter described a systematic risk of underpayment to hospitals accepting a large number of patients that will ultimately require transfers, and a systematic overpayment to hospitals receiving transfer patients at the end of the treatment episode for recuperative care. Another point raised by this commenter in relation to the payment policy for transfer cases concerned the exception to the policy made for DRG 385 (Neonates, Died or Transferred to Another Acute Care Facility). The commenter believed the types of cases assigned to this DRG were too varied to ensure payment equity, ranging from newborns who receive very little care and die soon after birth to those who receive many days or even months of complex neonatal intensive care before death.

Response: We have no evidence that our current policy either systematically underpays for complex cases transferred out or systematically overpays for cases transferred in for recuperative care. A DRG is assigned to each hospital stay involved in a transfer situation based on the patient's principal and secondary diagnoses and treatment received. Therefore, the more complex needs of a patient during the early phase of a severe illness should be reflected by the DRG assignment. We reiterate, however, that we have devoted a good deal of effort to examining alternative methodologies in the past, and we remain interested in identifying refinements that could further reduce any financial disincentives to appropriately transferring patients for either a higher or lower level of care.

With regard to the commenter's second point, paying a per diem amount for DRGs 385 and 456 would result in an underpayment to the transferring hospital since the weighting factor for these two DRGs is based on the assumption that the patient will be transferred. Therefore, in the January 3, 1984 final rule, we provided for payment of the full prospective payment rate for transfer cases assigned to either of these two DRGs (49 FR 244). We note that, as shown in Table 7B of the addendum to this final rule, only 5 Medicare discharges were assigned to DRG 385 during FY 1991. Given this low volume of cases in the Medicare population, further differentiation would be impractical. Furthermore, hospitals are protected from inordinate losses for all transfer cases through cost outlier payments.

We note that this commenter represents a national association of children's hospitals, a group that is excluded from the prospective payment system. These hospitals are affected indirectly by the DRG classifications and weights through non-Medicare payers that model their classification and payment structure after Medicare's. As we note above in section II.B.6 of this preamble, given the low volume of pediatric patients covered by Medicare, this aspect of Medicare payment policy could produce anomalous results when applied directly to payments for services to non-Medicare populations.

E. Payment for Hemophilia Blood Clotting Factor (Recommendation 8)

Recommendation: ProPAC believes that current prospective payment system policies are adequate to prevent significant payment inequities for hospitals that treat Medicare beneficiaries with hemophilia. Therefore, ProPAC does not recommend reinstatement of an add-on payment for the costs of blood clotting factor provided to hemophilia patients. However, should the current situation change, ProPAC may reevaluate this issue.

Response in the Proposed Rule: In 1989, ProPAC recommended implementation of a temporary, add-on payment for the costs of providing blood clotting factor to patients with hemophilia. ProPAC believed the add-on payment was necessary because of the rapidly increasing costs for clotting factor due in large part to manufacturing processes designed to reduce the risk of transmitting the human immunodeficiency virus. In response to ProPAC's recommendation, Congress enacted section 6011 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), which amended section 1886(a)(4) of the Act to provide that hospitals paid under the prospective payment system receive an additional payment for the costs of administering blood clotting factor to hemophiliacs who are hospital inpatients. This add-on payment was effective for blood clotting factor furnished on or after June 19, 1990 and before December 19, 1991. A detailed discussion of this provision and its implementation can be found in the April 20, 1990 final rule with comment period (55 FR 15157) and the September 4, 1990 final rule (55 FR 36000).

ProPAC states that its analysis indicated that, in FY 1990, there were fewer than 3,000 Medicare discharges with hemophilia. Not all of them required blood clotting factor, and the vast majority of hospitals (94 percent) treated five or fewer cases. Therefore, ProPAC concluded that even though hemophiliacs are more costly to treat than the average case within a given DRG, there are insufficient data to indicate that these differences are due to the administration of clotting factor.

HCFA data analysis resulted in similar findings. Evaluation of hospital admissions in which blood clotting factor was administered (from June 19, 1990, when the add-on was implemented, to October 1, 1991) identified only 97 hemophilia inpatients. We found, as did ProPAC, that not only was there a low volume of patients, but also, there were very few hospitals with a significant number of cases. Only eight hospitals administered clotting factor to four or more hemophilia patients. The impact of the increased cost of the clotting factor was distributed across 35 hospitals submitting claims for administering clotting factors to inpatients with hemophilia during the time period under analysis, with the majority of hospitals incurring only one admission.

As ProPAC states, the costs for the clotting factor are included in the hospital charges and are, therefore, reflected in the DRG weights. Under the prospective payment system, we do not pay for the costs of individual cases; rather, payment is based on an averaging process, as the cases in each DRG vary in resource requirements and length of stay. Given a normal distribution, most cases will require resources close to the average, with some cases costing more and some costing less. With the low volume of hemophilia inpatients requiring clotting factor, the higher costs for these cases are offset by the lower costs for other cases in the same DRG. In addition, the system does make provision for exceptionally high cost cases through outlier payments. Approximately 9 percent of the cases we analyzed received outlier payments.

We agree with ProPAC that, given the low volume of cases and the fact that these cases are not concentrated in a few hospitals, there is not sufficient justification to reinstate the add-on payment. Therefore, we support ProPAC's recommendation concerning the add-on payment for blood clotting factor provided to hemophilia patients.

Comment: We received three comments in response to our decision to discontinue the add-on payment for blood clotting factor administered to Medicare inpatients with hemophilia. The commenters all expressed concern that elimination of the add-on payment for blood clotting factor would result in significant underpayment to hospitals providing this service to Medicare inpatients with hemophilia who require blood clotting factor. These commenters believe that since the situation that led Congress to mandate a special payment for clotting factor remains unchanged, and the price of clotting factor remains high, eliminating the add-on payment must be expected to have an adverse financial impact on the hospitals that treat these patients. One commenter included data specific to his hospital that identified the magnitude of the differences between the cost of treating

hemophilia patients who require blood clotting factor and the Medicare payment received by the hospital for these cases.

Response: Since publication of the proposed rule, we have updated our evaluation of blood clotting factor administered to Medicare hemophilia inpatients. The most recent bill data contains all claims received through June 1992 from hospitals that administered blood clotting factor to hemophilia inpatients admitted between June 19, 1990 and December 19, 1991, the duration of the add-on payment. We compared the claims that contain codes for both a diagnosis of hemophilia (either as principal or secondary diagnosis) and revenue codes for blood clotting factor to all other hemophilia hospital inpatients for the same time period. As in our original analysis, we found that the costs experienced by hospitals administering blood clotting factor, while higher than the costs for all other hemophilia patients, are incurred by a small number of patients, and are distributed across hospitals in such a way that no one hospital is adversely affected in a significant way. Thus, results of our current review support the conclusions reached in our earlier data analysis, which was described in the proposed rule and repeated above. ProPAC continues to agree with HCFA that there is no need for an add-on payment for blood clotting factor.

Comment: Two commenters expressed concern that accounting for the cost of blood clotting factor in establishing the relative weights for all DRGs would be unlikely to yield adequate payment as the volume of cases is too small to have sufficient impact on the weights. One commenter believes including the charges in the relative weights would overcompensate hospitals generally without correcting the underpayment suffered by other hospitals.

Response: The DRG relative weights are based on total charges submitted by all prospective payment hospitals. Because we could not identify specifically the charges for blood clotting factor as distinguished from the aggregate charges for all hemophilia patients, these costs were not excluded from the calculation of the DRG weights when the add-on payment was instituted. Thus, these costs have always been included in the charges used for establishing the DRG weights. Therefore, the add-on payment did not affect the aggregate charges used in calculating DRG relative weights.

Comment: We received one comment acknowledging that, for the Medicare population, there may be few hospitals facing a systematic risk of higher costs in treating hemophilia patients. However, this commenter believes that for children's hospitals that are paid under a DRG-type system for other than Medicare patients, there is substantial systematic risk. Therefore, the commenter requested that HCFA advise other payers that the payment policy that is appropriate for Medicare may not be appropriate in the case of a system that includes children and young adults.

Response: We have in the past, and continue to, caution against the use of Medicare DRGs that are developed based on a Medicare population for use with other populations. However, it would not be suitable for HCFA to advise other payers as to what may or may not be appropriate payment policy for their specific needs and populations.

F. Payment for Epilepsy Coses (Recommendation 9)

Recommendation: The current DRG assignment should be revised to account for the resource requirements of patients with epilepsy receiving intensive neurodiagnostic monitoring. ProPAC analyzed Medicare data from FY 1990 to identify patients with epilepsy in DRGs 24, 25, and 26 (Seizure and Headache) and found that payment-to-cost ratios were lower for patients with epilepsy compared to other patients in the same DRGs. These payment differences were greater for patients with intractable epilepsy and for those receiving neurodiagnostic monitoring. The Commission also found that the majority of patients with epilepsy were not concentrated in any hospital type but that hospitals providing specialized epilepsy services had a higher percentage of patients with epilepsy who receive monitoring. Therefore, ProPAC believes that the Secretary should evaluate the current DRG assignment for patients with intractable epilepsy, particularly those receiving intensive neurodiagnostic monitoring.

Response in the Proposed Rule: HCFA analyzed FY 1991 MEDPAR data and identified 22,223 discharges with a principal diagnosis of epilepsy in DRGs 24, 25, and 26. Although epilepsy represents 29 percent of all patients classified to these DRGs, intractable epilepsy accounts for only 3.7 percent (2,780 cases). Our findings parallel those of ProPAC, with epilepsy cases diagnosed as intractable having higher average charges ($7310) than the nonintractable cases ($6274). These charges compare to $6393 for all cases classified to DRG 24, 25, and 26. The following table summarizes the comparison of average charges between epilepsy and other cases assigned to the same DRGs. For each entry, the number of cases is included in the parentheses.

DRG	Intractable epilepsy	Nonintractable epilepsy	All epilepsy	All cases
24	$8,867 (1,606)	$7,260 (13,727)	$7,440 (15,333)	$7,400 (53,661)
25	$5,027 (1,173)	$3,901 (5,700)	$4,093 (6,873)	$3,977 (22,386)
26	$4,070 (1)	$5,959 (16)	$5,848 (17)	$7,174 (54)
All cases	$7,310 (2,780)	$6,274 (19,443)	$6,403 (22,223)	$6,393 (76,101)

If video and radio-telemetered electroencephalographic monitoring (procedure code 89.19) is performed, the result is higher charges, with both intractable and nonintractable patients receiving this service averaging a charge of $7215, while those without the service had an average charge of $6471. The differential in charges for intractable epilepsy cases with and without telemonitoring service, however, was less than 3 percent. With only 2 percent of the cases reporting codes for video-telemonitoring, and only two cases reporting psychological services, it is impossible to reach a definitive conclusion concerning the use and cost of neurodiagnostic services.

Evaluation of ancillary charges resulted in similar findings. That is, average ancillary charges were slightly above average for intractable patients and slightly below for nonintractable patients. Since 90 percent of the epilepsy admissions are for nonintractable cases and only 10 percent are for intractable, these slightly higher treatment costs for intractable cases are distributed across DRGs 24, 25, and 26, with some charges occurring above the average and some below. Given this distribution of cases, the average ancillary charge for all epilepsy patients ($3,431) was actually lower than the average charge for all patients in these DRGs ($3,541).

To measure the impact on hospitals of providing services to patients with intractable epilepsy, we evaluated utilization by these patients at the hospital level, identifying high-volume hospitals (defined as hospitals treating 10 or more intractable epilepsy cases). We found that for intractable epilepsy patients, there were 1,042 hospitals providing service to 2,780 patients, with fewer than 4 percent of these hospitals having 10 or more cases (40 hospitals). Only 22 percent of the claims submitted by the high-volume hospitals for intractable epilepsy patients had charges that were higher than the average charge for the DRG for all patients. In addition, for approximately one-half of the claims submitted by these hospitals for all epilepsy patients in DRGs 24, 25, and 26, the average charge for treating intractable cases was less than the average charge for treating nonintractable cases.

Our evaluation of the relationship between Medicare costs and Medicare payments, for the first 7 years of prospective payment, identified only three high-volume hospitals with a negative average Medicare operating margin. (A negative operating margin means that a hospital incurred costs in excess of payment for its Medicare patients.) Without a high concentration of cases in a few hospitals, the impact of treating intractable epilepsy is distributed across many hospitals treating a low volume of these patients, with no significant impact on profit margins. This is consistent with the overall design of the prospective payment system. Under that system, payment is based on an averaging process, with some cases incurring costs in excess of payment while for others payment exceeds costs. The incentive is for hospitals to treat a mix of patients and, thus, achieve a balance between costs and payments.

As part of our analysis, we also examined the charge data from those 25 hospitals that were identified by the National Association of Epilepsy Centers as hospitals that specialize in the treatment of epilepsy. Based on our data, these epilepsy specialty centers did not necessarily treat a high volume of Medicare intractable epilepsy patients. The volume of these cases ranged from 0 to 34. In addition, there was no consistent pattern concerning charges for either intractable or nonintractable epilepsy. The 10 specialty hospitals that were also high-volume hospitals (that is treated 10 or more epilepsy cases) had average charges lower than the national average for these cases. We evaluated Medicare operating margins for the specialty centers, again reviewing the relationship between cost and payment for treating Medicare patients. As with the high-volume hospitals, the overall average operating margin for the first 7 years under prospective payment was positive. Only two centers (one of which was also a high-volume hospital) experienced an overall negative operating margin.

As ProPAC suggested, HCFA has evaluated the current DRG assignment for patients with intractable epilepsy, particularly those receiving intensive neurodiagnostic monitoring. While the results of our analysis confirm that intractable epilepsy patients incur higher charges on average than do patients with nonintractable epilepsy, particularly those receiving neurodiagnostic monitoring, these differences are not significant enough to warrant any DRG classification change.

We note that the data for both intractable and nonintractable cases were inconsistent across DRGs as well as among hospitals. Without accurate coding for the intensive services required for these patients, we cannot document consistent and reliable differences between patients receiving neurodiagnostic services and those not using these services. With minimal differences in average charges between intractable epilepsy cases and those of the DRG overall, given the distribution of cases across a large number of hospitals and the inconsistencies between both the high-volume hospitals and the epilepsy treatment centers, we find there is insufficient evidence to justify a DRG modification at this time. Therefore, we are not proposing any revision to the current DRG assignment for epilepsy patients.

We received several comments concerning the DRG classification for patients with intractable epilepsy. These commenters all disagreed with our decision not to make any changes in the current structure of DRGs 24, 25, and 26. The specific comments and our responses follow.

Comment: Commenters objected to the findings of our data analysis, stating that the data failed to identify charges for intractable epilepsy patients admitted for comprehensive medical evaluations, did not sufficiently distinguish those patients receiving neurodiagnostic monitoring, and was not representative of the true cost of diagnosing and treating intractable epilepsy patients. Many commenters questioned why the results of our analysis differed from ProPAC's findings and requested that we reconsider our decision and implement ProPAC's recommendation. In its comments, ProPAC reiterated its recommendation to modify the current DRGs to recognize the increased costs of treating patients with intractable epilepsy.

The commenters urged us to reassess our data, citing the failure of the present DRGs to account for the complexity and scope of the multidisciplinary services provided by hospitals that treat intractable epilepsy patients. Commenters recognized that additional procedure or diagnostic codes might be necessary to identify correctly the patients and services applicable to a new or revised DRG. In addition to offers to provide information and to assist HCFA efforts in DRG restructuring, a few commenters included data specific to their hospitals to supplement and enhance the reliability and validity of our data analysis.

Response: Since publication of the proposed rule, we have reexamined our analysis of both intractable and nonintractable epilepsy cases using the latest update to the FY 1991 MEDPAR file (June 1992). Our reassessment of these data confirms our prior conclusion that, although intractable epilepsy patients, particularly those with video-telemetered monitoring, do incur higher charges than patients without intractable epilepsy or telemetry, those differences are not currently of significant magnitude to justify a new DRG or other modification to the existing DRGs for these cases.

In response to assertions that our data do not truly represent the cost of caring for intractable epilepsy patients, we note that the data we analyzed for this issue and the results presented in the proposed rule included charge and coding information from all the FY 1991 bills received in HCFA as of December 1991. Our updated analysis includes the additional FY 1991 bills received in the 6 months following that date. The MEDPAR file contains 100 percent of the fully-coded Medicare claims submitted by hospitals and includes both the total

and covered charges. Thus, it is the coding and charge data submitted by hospitals themselves that are used during our DRG classification analyses. Accordingly, our analysis of the cost of caring for intractable epilepsy patients is based on data submitted by hospitals.

We used ICD–9–CM procedure codes 89.10 (Intracarotid amobarbital test) and 89.19 (Video and radio-telemetered electroencephalographic monitoring) to identify the complex patient subset of the entire intractable epileptic population. With the expansion of space on the HCFA UB–82 claim for reporting inpatient services from three to six fields, future data should be more comprehensive and complete. In addition, we note that this same extra space could be used in delineating the complex intractable epilepsy patients from the less complex patients. In past years, attempts have been made to obtain better coding of the diagnostic components of the comprehensive medical evaluation of intractable epileptics. Procedure codes 89.10 and 89.19 are a result of these attempts. We believe that it may be possible to develop additional codes to identify these patients. Therefore, we plan to include this topic on the agenda for the next meeting of the ICD–9–CM Coordination and Maintenance Committee (December 3, 1992).

While we appreciate the resource-use data for intractable epilepsy patients from specific hospitals included with some of the comments, the use of MEDPAR data ensures standard, uniform, unbiased information across all Medicare hospitals. Hospital-specific data from the provider community are used to enhance our understanding of the problem under analysis, but cannot be used to determine payment policy. ProPAC agreed with our finding that more accurate codes for intensive services for intractable epilepsy patients may need to be implemented. We encourage hospitals to use accurate coding and to furnish HCFA with information that would help improve the codes that are available to reflect the treatment being administered. Although our conclusions differ from those of ProPAC, we did consider its recommendation and evaluated our data in light of the results obtained by the ProPAC study. However, based on the number of cases in the MEDPAR file and the relatively small difference in average charges between intractable epilepsy cases and all other cases in DRGs 24, 25, and 26, as well as our assessment of the impact these cases have on the specialty or high-volume hospitals, we continue to believe that there is insufficient evidence to justify a DRG revision at this time.

Comment: Many commenters stated that HCFA's analysis failed to take into account the level of care received by intractable epilepsy patients in highly specialized epilepsy treatment centers. These commenters believe that, in analyzing the data, HCFA did not differentiate between the highly specialized centers and general acute care hospitals treating epilepsy patients with shorter and less expensive lengths of stay. One commenter expressed concern that the sampling method used was inadequate, stating that the majority of patients in our analysis were treated at acute care general hospitals for an intermittent problem related to their intractable epilepsy and, therefore, incurred shorter lengths of stay. Some commenters compared the length of stay experienced by intractable epilepsy patients admitted to specialty centers (approximately 2 to 5 weeks) with the geometric mean lengths of stay printed in Table 5 of the addendum to the proposed rule. (The geometric mean lengths of stay in that table were 5.2, 3.4, and 3.9 days for DRGs 24, 25, and 26, respectively.) They stated that the current DRG system, which is based on average resource use, does not account for the higher number of severely ill intractable patients found in these centers. The commenters assert that, for these hospitals, the averaging process inherent in the DRG classifications and the prospective payment system as a whole does not work. One commenter is concerned that we did not consider differences in the level of care available at an individual hospital. To ensure appropriate, equitable payment, the commenters recommended establishing a new DRG or modifying the present DRG to accommodate the additional costs incurred by the level of service available at these specialty institutions.

Response: In our analysis of epilepsy data for the proposed rule and the updated analysis conducted for this final rule, we evaluated the performance of acute care general hospitals and epilepsy treatment centers both as a group and separately. In our analysis, we did not use a sample of these hospitals, but rather 100 percent of the FY 1991 discharges from all hospitals for all epilepsy patients, both intractable and nonintractable. In our analysis for all hospitals, we focused on the high volume providers, defined as those treating 10 or more patients with intractable epilepsy in a year. Our most recent findings are similar to those set forth in the proposed rule, with only 25 percent of the high-volume hospitals incurring average charges in excess of the mean charge for all intractable epilepsy cases.

As in our previous analysis, we examined the experience of the epilepsy treatment centers. Our current findings, however, are more comprehensive than those for the proposed rule, as we were able to identify 52 epilepsy centers (rather than 25 as in the proposed rule). For these 52 hospitals, 8 had no Medicare epilepsy discharges in FY 1991; of the remaining 44 hospitals, 42 treated at least one Medicare intractable epilepsy patient. The results of this analysis parallel those presented in the proposed rule. As was the case in the previous analysis, the epilepsy specialty centers did not necessarily treat a high volume of Medicare intractable epilepsy patients. The number of patients for FY 1991 at the 42 centers ranged from 1 to 38. Considering only the 42 specialty hospitals that treated intractable epilepsy cases in FY 1991, we identified 15 hospitals where the average charge for nonintractable epilepsy cases exceeded the average charge for treating patients with intractable epilepsy. As we also found in our original analysis, the charges for patients with intractable epilepsy were highly variable, with 13 (72 percent) of the 18 high-volume hospitals (those with 10 or more cases) reporting average charges below the mean for all intractable epilepsy patients.

Although length of stay is one indicator of resource use, it is not one of the factors used in establishing DRG weights. More to the point, the geometric mean length of stay is used by HCFA to establish the outlier threshold for day outlier cases and is not relevant to other payment issues. A more illustrative statistic for the commenters' purpose is the arithmetic mean (average) length of stay for a DRG. In fact, the arithmetic mean lengths of stay for DRGs 24 through 26 are somewhat higher than the geometric—7.2, 4.3, and 5.9 days, respectively. (See Table 7B of the addendum to this final rule.)

The prospective payment system methodology ensures that all cases are included in establishing the weight for the DRGs. As payment is based on averages rather than individual cases, there will be cases that fall below the average and others that fall above the average. Outlier payment is provided for cases incurring excessive lengths of stay or high costs. We recognize the commenters' concerns that the averaging process may fail to address the special populations at epilepsy treatment centers. We intend to continue to monitor this situation, and will explore whether improved codes can be used to identify these cases and review the charges in the FY 1992 MEDPAR data.

Comment: Many commenters objected to our use of Medicare operating margins as supporting documentation for our decision not to modify the DRG classification system to account for intractable epilepsy patients. These commenters stated that analysis of profit margins was inappropriate in determining the DRG classification, and that the classification system should be based on a combination of the patient's diagnoses, condition, services provided, and resources used during the patient's hospitalization.

Response: We believe that using Medicare operating margins as one indicator of the financial impact of Medicare payment on individual hospitals is appropriate. This variable provides perspective on total hospital resource use and payment under the prospective payment system. As noted, above, payment under this system relies on an averaging process both within a given DRG, as well as across all DRGs. Thus, while some cases within a given DRG will receive payment in excess of costs while others will receive payment below costs, this is equally true for the hospital's cases as a whole. There are DRGs for which payment to a particular hospital exceeds costs, just as there are DRGs for which the hospital receives payment below the actual cost of delivering service. The incentive to the hospital is to manage its operations more efficiently by evaluating those areas in which increased efficiencies can be instituted without affecting the quality of care and by treating a mix of patients to balance costs and payments.

Assignment to a DRG is based on a combination of patient diagnoses, procedures, age, and discharge status. The resources used during a patient's hospitalization are measured by total charges, which are the basis for establishing the DRG relative weights. A hospital's profit margin is not a factor in determining DRG classification. However, when questions arise concerning whether a hospital's loss on a particular set of Medicare cases is undermining its ability to provide its services to the Medicare population overall, we believe that considering the hospital's Medicare operating margin is appropriate. The decision not to implement modifications to the DRGs for intractable epilepsy was based on our total evaluation of hospital experience in treating these patients, and not on the operating margin of the specialty or high-volume hospitals.

Comment: Several commenters referred to the age of their patient population, stating that most of the Medicare patients receiving comprehensive treatment for intractable epilepsy are under age 40. These commenters stated that a DRG modification assuring appropriate payment would be cost beneficial in the long run, providing a predominantly young population suffering from intractable epilepsy the treatment to allow them to assume productive lives.

Response: Medicare data confirm that the population of intractable epilepsy patients contains more patients under age 65 than is typical. However, a very high proportion of the patients in our data are in fact over 65 years of age. With an average age of 65 or greater at more than 50 percent of the hospitals, we do not believe it is feasible to use age as a criteria for assigning DRG classification for intractable epilepsy patients. Every effort is made to ensure that payment for Medicare patients encourages maximum benefit and does not impede access to care.

Comment: Some comments included references to surgical treatment for intractable epilepsy patients, citing specific examples of cases receiving surgical care and their successful outcomes. One hospital, which evaluates patients with intractable epilepsy for epilepsy surgery, stated that they were significantly underpaid under Medicare for these patients. Commenters requested an adjustment to the current payment system to accommodate these inequities between cost and payment.

Response: Patients diagnosed with a principal diagnosis of intractable epilepsy who have a surgical procedure performed during the same admission are classified to surgical DRGs, not to DRGs 24, 25, and 26. There were 351 discharges during FY 1991 with a principal diagnosis of intractable epilepsy and the performance of a surgical procedure. Of these, 79 percent were assigned to DRG 1 (Craniotomy Age > 17 Except for Trauma), which currently has a relative weight of 3.2322. We have received no indication that the DRG 1 payment does not adequately compensate hospitals for intractable epilepsy patients who have surgery and our discussions with representatives of the hospital community identified the payment for DRGs 24 through 26 as the area of concern. Therefore, we concentrated our analysis on medical treatment, particularly neurodiagnostic monitoring and comprehensive medical evaluation of intractable epilepsy patients.

G. Essentiol Access Community Hospital Program (Recommendation 10)

Recommendation: ProPAC recommends that the Secretary waive, on an individual case basis, some of the requirements for participation in the Essential Access Community Hospital Program. This would encourage increased hospital participation and allow the Secretary to gain additional experience with alternative policies. Over time, policies should be expanded to target the larger group of hospitals that should continue to operate but offer limited, less specialized inpatient services. By refocusing these hospitals' operations, ProPAC believes that overall system efficiency may be improved without sacrificing access to care.

Response in the Proposed Rule: On October 25, 1991, we published a proposed rule in the **Federal Register** to implement the Essential Access Community Hospital (EACH) program, including criteria that facilities would have to meet to qualify to be designated as EACHs or rural primary care hospitals (RPCHs) (56 FR 55382). These criteria were based on the provisions of section 1820 of the Act (the statutory section that establishes the EACH program). That section of the Act does not include any mechanism for waiving the statutory requirements for designation as an EACH or RPCH.

In response to our proposed rule, we received a number of comments recommending greater flexibility in the application of the statutory provisions cited by ProPAC, including the criteria for designation as an RPCH. The provisions for which commenters recommended waiver included those provisions relating to the certification of the need for temporary inpatient care, the bed-size and length-of-stay limitations for RPCHs, and the criteria related to the bed size or location of EACHs and their responsibilities with respect to RPCHs. Some commenters expressed the opinion that HCFA should waive some or all of these provisions; other commenters recommended that we publish final regulations to permit the designation of "intermediate EACHs" that would appear to be similar in concept to the larger facilities that ProPAC believes should be encouraged to become more efficient through appropriate restructuring of their services.

We are considering these comments and will respond to them in the preamble to the final rule implementing the EACH program. We do not believe it would be appropriate to adopt any of

the ProPAC recommendations outside of the rulemaking process.

Comment: ProPAC suggested, as did some commenters in response to the proposed RPCH regulations published on October 25, 1991 (56 FR 55382), that the Secretary has broad authority under section 1820(j) of the Act to waive various provisions of the EACH program, as set forth in section 1820 of the Act, in order to induce eligible hospitals to participate.

Response: As explained in our response to this recommendation in the proposed rule (57 FR 23665), we are considering all public comments with regard to the EACH proposals. Because this issue is under consideration in developing the final EACH regulations, we do not believe it would be appropriate to respond to ProPAC recommendations regarding it at this time. However, we will respond fully to the comments on this issue in the preamble to the final EACH regulations.

H. Update Factor for Payments to Diolysis Facilities (Recommendation 12)

Recommendation: ProPAC is not recommending an increase in payments for dialysis services at this time. Currently, data are inadequate to assess the relationship between the payments and the costs of furnishing various types of dialysis services in different settings. ProPAC recommends that HCFA expedite work necessary to complete its data base of unaudited dialysis facility cost reports. In addition, HCFA should annually audit the cost reports of a representative sample of dialysis facilities and maintain a data base with this information.

Response in the Proposed Rule: Section 4201(b) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) directed ProPAC to conduct a study to determine the costs and services and profits associated with various modalities of dialysis treatments provided to end stage renal disease (ESRD) patients under the Medicare program. Based on this information, ProPAC was directed to make recommendations to Congress regarding the method or methods of payment and the levels at which the payments made for the facility component of dialysis services by providers of service and renal dialysis facilities under Medicare should be established for dialysis services furnished during FY 1993 and the methodology to be used to update these payments for subsequent fiscal years. These recommendations were to be submitted as a report to Congress by March 1, before the beginning of each fiscal year, beginning with March 1, 1992 for FY 1993. The study requires ProPAC to examine the following factors: Hemodialysis and other modalities, adjustment factors for facility's characteristics, adjustments for labor and nonlabor costs, profit margin, and adjustments for patient complexity and costs associated with positive outcomes.

ProPAC believes that existing evidence, based on 1988 audit data, does not justify a rate increase at this time. However, ProPAC concluded that the 1988 audit data were not representative of the proportion of patients treated at home, the types of dialysis provided, and the characteristics of all dialysis facilities. Thus, the Commission concluded that this sample was not adequate to address the issues raised by Congress in Pub. L. 101–508 and that more extensive cost data was needed. The 1988 audit sample was designed to estimate the median costs of a dialysis service in an efficiently operated renal facility, that is, to set a rate for payment, and not to determine the costs of dialysis services that were affected by other factors (such as volume, type of ownership, and location of facility) as referenced by the statute.

We agree with ProPAC's assessment that the 1988 audit data were not sufficient to address the issues raised by Congress, as the audits were not designed to provide data on the issues raised in the Congressional mandate. We are maintaining computer files of cost report data for independent renal facilities with fiscal years ending in 1989, 1990 and 1991, and for hospital renal facilities with fiscal years ending in 1990 and 1991. ProPAC is in the process of analyzing these data.

ProPAC is also recommending that we annually audit a representative sample of cost reports to use in evaluating payments and costs by type of treatment and setting. This is an appropriate recommendation for rate-setting purposes, but we do not believe it would be cost effective to conduct annual audits under the prospective payment system, since there is no recovery of Medicare funds to offset the costs of these audits. Also, section 4201(a) of Pub. L. 101–508 limited the Secretary's authority to set rates. With respect to ProPAC's recommendation regarding audits, we believe that the audits should be conducted, and the results should be used to set payment rates. We believe that to conduct audits without using these results to set rates would result in inefficient use of government expenditures.

In this final rule, we are not republishing the tables included in the June 4, 1992 proposed rule (57 FR 23667) that contained patient data from the ESRD Facility Survey. The tables were included in that notice to summarize the number of patients on the different treatment modalities. The tables showed that 95 percent of dialysis patients are on either outpatient hemodialysis or continuous ambulatory peritoneal dialysis. We presented this information for ProPAC to consider in revising the payment methodology for dialysis services.

When the base rates were originally established, they were weighted using the cost experiences of small renal units, especially hospitals, which then dominated the dialysis industry. This resulted in overpaying the more efficient larger facilities. This imbalance could be eliminated by establishing different rates for the larger, more efficient renal facilities that benefit from economies of scale. For facilities that meet certain limited criteria, a different payment structure based on the characteristics of these facilities might be considered. For example, pediatric hospitals could have their own payment rate, and small rural facilities, with less than a defined number of treatments (for example, 4,000 treatments) could have their payment rates adjusted to reflect the financial disadvantages associated with low volume. For hospitals, a case-mix adjustment would be appropriate to eliminate the administrative burden and costs borne by hospitals filing for exceptions to their payment rates.

In 1990 the treatment modalities for 97 percent of renal patients were outpatient hemodialysis, CAPD (continuous ambulatory peritoneal dialysis) or CCPD (continuous cycling peritoneal dialysis). The percentage of patients on hemodialysis and CAPD continues to grow. Any new rate structure should reflect this trend and account for the decrease in the number of intermittent peritoneal dialysis (IPD) and home hemodialysis patients.

Comment: ProPAC expressed its disappointment that HCFA does not play to audit a representative sample of cost reports.

Response: Conducting annual audits results in substantial expenditures of resources. Auditing not only affects government spending but also spending by intermediaries and renal facilities in the audit sample. Before deciding to conduct audits, it is critical to define the goal of these audits. This is important, since the last three sets of audits have not been used to revise payment rates; in fact, section 4201(a) of Publ. L. 101–508 prohibits HCFA from changing the current composite rates.

In lieu of conducting annual audits, we suggest that the same sample group of renal facilities be analyzed on an annual basis. ProPAC and HCFA would initially select this group of facilities and would analyze these same facilities' cost reports on an annual basis. HCFA would audit a facility's cost report on a variable basis or when the data warranted one. This format would provide ProPAC, HCFA, and Congress audited historical data of the costs to furnish a dialysis treatment. Furthermore, using the same facilities' cost reports would track the Medicare costs of a dialysis treatment over time.

With the advent of facilities submitting their cost reports electronically, renal cost data are now available to satisfy the program's responsibility of gauging dialysis costs. At this time, we do not plan to audit these data on an annual basis.

Comment: One commenter was under the impression that HCFA's suggestions are recommendations that we are trying to implement.

Response: Our suggestions are only factors that we believe ProPAC should examine before making final recommendations to Congress as mandated by section 4201(b) of Pub. L. 101–508. This law requires ProPAC to examine the effect that size, location, type of facility, and mix of services has on the costs of furnishing a dialysis treatment.

Comment: One commenter stated that the 1988 audit sample was inadequate since it represented only a 5 percent sample, included a high proportion of large facilities, and consisted of old data.

Response: The 1988 audit sample was scientifically designed to determine the median cost of furnishing a maintenance dialysis treatment in an efficiently operated renal facility. We did not design the audit sample to determine the costs of dialysis treatments in different types of renal facilities. ProPAC realized the limitation of the audit sample and stated that it was not adequate for the type of study mandated by section 4201(b) of Pub. L. 101–508. Although ProPAC decided not to use the audit data for its study, they believed the audit data did not justify a rate increase.

The sample size of 5 percent was adequate for determining the median cost of a maintenance dialysis treatment. Selecting a larger sample size would have an insignificant statistical effect on the confidence level in estimating the median cost of a dialysis treatment.

We do not believe the age of the data is a critical problem. Based on the results of the prior three audits, using the more current audit data in the payment formula has consistently produced lower payment rates. These audits consistently showed a decrease in Medicare costs of independent renal facilities, while hospitals' costs showed little variation.

To conduct audits and prepare a Federal Register notice would take about 18 months. Using current year audited cost data would delay any final notice for at least 18 months. Using unaudited data would expedite the process of revising payment rates. With the advent of renal facilities submitting their cost reports electronically, revising the composite payment rate using more current data could be accomplished more timely. Of course, this can only happen if renal facilities complete their cost reports timely and accurately.

Presently, independent facilities submitting cost data do not adhere to all the Medicare reimbursement principles in completing their cost reports. Cost data submitted by hospital facilities show wide ranges in the cost per treatment by treatment modality. From our review of the data, it appears that some hospitals are not completing their cost reports properly, resulting in incorrect allocation of costs. Until the data become reliable, updating payment rates using the most current unaudited data is not prudent. To help ensure timely and accurate payment revisions, renal facility administrators should verify that their facility cost reports are correctly prepared.

Comment: Two commenters objected to our suggestion that ProPAC consider a payment method that establishes different rates for the larger more efficient facilities.

Response: We are not suggesting that ProPAC penalize the larger more efficient facilities. We merely emphasize that a payment methodology that matches payment with expenditures should be considered. The present composite payment rate formula combines the cost experiences of all renal facilities to establish a single payment rate. Such a methodology penalizes the small rural facilities, pediatric facilities and backup hospitals that furnish dialysis treatment to ESRD patients requiring more medical resources. This methodology also inflates the amount paid for a maintenance dialysis treatment by using the cost experiences of smaller facilities. We believe that the payment rates should reflect the fact that 57 percent of all dialysis facilities furnish 83 percent of all dialysis treatments, and should account for the cost experience of small facilities or inefficient facilities. As part of the study mandated by Congress, ProPAC will examine what effect size, location, type of facility and mix of services has on a facility's costs.

Comment: Two commenters stated that the case mix adjustment should apply to all facilities, not just hospitals. In the proposed rule, we had recommended that ProPAC consider a case-mix adjustment for hospitals only.

Response: There is no study that clearly documents that one type of facility treats a sicker ESRD patient population than another type of facility. To date there is no medical definition of an atypical ESRD patient population. Until there is a clear definition, we are limited to assumptions regarding atypical patient mix based on patient characteristics.

During the last three exception windows, no independent renal facility was granted a rate increase because of an atypical ESRD patient mix. Generally, patient characteristics of independent renal facilities are not aberrant when compared to national ESRD patient characteristics. Furthermore, independent renal facilities have the option to transfer a sicker patient to their backup facility when the patient's condition requires more intense medical services. ProPAC will examine the possibility of adjusting payment rates to reflect a case-mix index. Such an index would ensure a matching of revenues with medical resources consumed by ESRD patients.

Comment: One commenter proposed that ProPAC structure a new payment methodology similar to the hospital prospective payment system that includes payment for outliers and exceptions.

Response: HCFA is suggesting that ProPAC consider a payment system that is adjusted for a case-mix index and provides different payment levels for pediatric and small rural facilities. We do not believe it is appropriate to make the exception process more complex, since most facilities already believe this process is burdensome and costly.

Comment: One commenter agreed that there was a shift in treatment modalities but did not agree with the conclusion that the rate should be adjusted to reflect this trend. The commenter suggested that because of this shift blended costs of all dialysis treatments has increased compared to the data used to set the original base composite rates.

Response: The commenter incorrectly assumes that HCFA is recommending a rate reduction because of changes in the type of dialysis being furnished. HCFA only summarized patient data in the June 4, 1992 proposed rule to show the shift in treatment modalities. We made no recommendations to ProPAC that the composite payment rate should be

reduced because of this shift. We suggested that ProPAC should take into consideration the increase in CAPD and CCPD in any rate structure. We brought this to ProPAC's attention because most owners of renal facilities argue that these forms of dialysis are more costly.

Comment: Two commenters disagreed with our statement that if ProPAC recommends a separate home dialysis rate, only those facilities that have a significant home patient population should be used to establish the payment rate to reflect the economic efficiencies and training expertise of such programs.

Response: One commenter misunderstood our discussion of the costs of home dialysis. We are not suggesting that the payment methodology exclude hospital facilities in computing new rates. On the contrary, hospitals have a higher percentage of home dialysis patients than independent renal facilities. To use all home dialysis programs in setting a payment rate for home dialysis would result in small or inefficient programs overstating the costs to furnish home dialysis in an efficiently operated facility. Audited cost data reveal that renal facilities with large home programs (home costs in excess of $1 million) tend to report home costs properly. Renal facilities with small home programs generally fail to report or to allocate home dialysis costs properly. We suggest that ProPAC consider this in determining if a separate home dialysis payment rate is justified. If special circumstances exist because Medicare is the principal payer for dialysis, then ProPAC might consider adjusting the rate for small rural facilities or for other justified circumstances. Again, HCFA is not implementing these recommendations. Rather, we are expressing our concerns and are emphasizing those factors that ProPAC should consider in its recommendations to Congress.

Comment: One commenter recommended that CCPD reimbursement should be set at levels currently reimbursed to durable medical equipment suppliers.

Response: Section 1881(b) of the Act provides two distinct methods for reimbursing CCPD. Under Method I, payment for CCPD is made at the facility's composite payment rate. Under Method II, payment for CCPD supplies and related services is limited to the amount established by section 6203(b) of Pub. L. 101–239, which is 130 percent of the median hospital payment rate. The Method II payment limit applies only to suppliers and not to dialysis facilities.

I. Cost Data Collection for Outpatient Providers (Recommendation 15)

Recommendation: A mechanism should be implemented for periodic collection of procedure-specific cost data in free-standing settings, including physicians' offices and ambulatory surgical centers.

Response in the Proposed Rule: We have specifically chosen not to require Medicare-participating ambulatory surgical centers (ASCs) to submit annual cost reports, primarily to avoid imposing on ASCs the burden and expense that these reports engender. Some ASCs, especially the smaller facilities, would have difficulty absorbing the added expense of maintaining billing and recordkeeping systems necessary to satisfy an annual Medicare cost report requirement. Additional facility costs would, in turn, be reported to Medicare, inflating Medicare ASC payment rates and beneficiary co-payments (see Recommendation 16 below) as well as Medicare administrative costs. Therefore, we do not concur with the ProPAC recommendation that an annual cost report would be an appropriate mechanism for the systematic and comprehensive collection of data for free-standing settings.

We surveyed Medicare-participating ASCs in 1986 to collect procedure-specific cost data for use in setting ASC payment rates. Also, an ASC survey will be conducted during 1992. These surveys collect information regarding charges, costs, and volume on a procedure-specific basis. One portion of the 1992 survey will ask ASCs to identify component services of selected high-volume procedures and to report their actual costs in furnishing those services. The data reported for this "procedure costing" portion of the 1992 survey as well as the more general charge, cost, and utilization data collected from all ASCs are validated by random on-site audits of a representative sample of facilities. We have found this method of data collection to be cost effective at both the national and provider level and minimally disruptive to the industry. The increase in the number of Medicare-certified ASCs from slightly fewer than 500 in 1988 to more than 1400 in 1992 suggests that our current data collection procedures are not a significant impediment to Medicare participation by ASCs.

HCFA is currently sponsoring research to obtain facility cost data (that is, excluding physician professional service costs) on a sample of about 400 frequently found procedures in hospital outpatient departments, ambulatory surgical centers, and physicians' offices. The research, due to HCFA in 1993, will demonstrate a methodology for collecting and analyzing these data and enable us to explore the reasons for differences in costs between types of outpatient sites. After the report is delivered, HCFA will be able to determine whether or not the data collection should be performed periodically.

Comment: ProPAC continues to recommend that ASCs be required to submit annual cost reports. Although they agree that the costs of outpatient data collection should be minimized, they believe that an annual cost report containing the minimum essential information might be less disruptive than a retrospective method that occurs at irregular intervals.

Response: We do not agree with ProPAC's recommendation that ASCs be required to submit annual cost reports. As we stated previously, to require annual cost reports of ASCs would be burdensome, expensive, and ultimately more costly to Medicare than the current system of rebasing ASC payment rates periodically, using audited survey data and making interim annual adjustments based on an inflationary measure such as the consumer price index for urban consumers (CPI–U).

J. Beneficiary Liability (Recommendation 16)

Recommendation: Beneficiary Part B coinsurance for hospital outpatient services that are paid for prospectively should be limited to 20 percent of the payment amount allowed by Medicare.

Response in the Proposed Rule: We recognize ProPAC's concern. We have been reviewing this issue in the context of our development of a comprehensive prospective payment system for all hospital outpatient services. We are working to develop an approach that will be fair to beneficiaries, while minimizing the negative financial impact on the Medicare program.

Comment: In its comments, ProPAC reiterated the proposal that a beneficiary's liability for hospital outpatient services should be based on 20 percent of the payment amount allowed by Medicare, rather than on 20 percent of charges.

Response: At this time, such a methodology cannot be applied with sufficient accuracy to that majority of hospital outpatient services that are paid on a full or partial cost basis. Costs for these individual services are not known at time of delivery. Rather, Medicare payment for these services depends on retroactive settlement of the hospital's cost report and is determined in the aggregate, based on the type of service (that is, radiology services, ASC-approved surgeries), not on the individual service. Only charges are determined for each patient and are known when the patient is billed.

We are in the process of developing a prospective payment system that will supersede the current cost-based system. In this context, we are reviewing the issue of beneficiary liability. As we stated in our comments on this recommendation, we are working to come up with an approach that will be fair to beneficiaries, while minimizing the negative financial impact on the Medicare program.

K. Revision of the Classification System Used to Group Ambulatory Surgery Cases (Recommendation 19)

Recommendation: The Secretary should revise the classification system used to group ambulatory surgery cases for payment. Cases treated in both hospitals and free-standing ambulatory surgical centers (ASCs) should be used to establish the payment groups.

Response in the Proposed Rule: In compliance with section 1833(i)(2)(A) of the Act, the current ASC payment classification system groups Medicare covered Physicians' Current Procedural Terminology (CPT) codes so as to assure that the standard overhead payment amount established for the procedures in each group takes into account the costs incurred by ASCs generally in providing services furnished in connection with the performance of those procedures.

Absent a complete revision of those sections of the Act that provide for the ASC benefit under Medicare, Part B, combining hospital data with free standing ASC data to establish a classification system for payments to ASCs would not be in compliance with the law.

Comment: ProPAC asserted that at the time the ASC patient groups were developed, cost data were not available for a number of ASC-approved services, and that the original ASC data were from a limited selection of 90 ASC sites. ProPAC also reiterated that combining hospital cost data with ASC data would result in a more accurate classification system. They believed that such an approach would not need to violate the statutory requirement that the average standard overhead payment amount established for the procedure in each group take into account the costs incurred by ASCs generally.

Response: ProPAC's concern about previous inaccuracies in payment group classifications of ASC procedures should be alleviated by the expanded scope and depth of data being collected through the Medicare Ambulatory Surgical Center Payment Rate Survey 1992 (Form HCFA–452).

We agree with ProPAC that there might be merit in ranking ASC procedures by their cost in a hospital outpatient setting to determine each procedure's position relative to other procedures, and then to compare that scale with a parallel ranking by cost when the same procedures are performed in an ASC. However, we reiterate our initial position with respect to ProPAC's recommendation that hospital cost data be combined with ASC data to produce a more accurate classification system. To add hospital cost data to ASC cost data for the purpose of determining ASC facility payment classifications would not be in compliance with section 1833(i)(2)(A) of the Act, as stated in our response in the proposed rule. In addition, we believe that an approach such as that proposed by the Commission could significantly inflate Medicare costs.

L. Payment Adjustments for Hospital-Provided, ASC-Approved Surgery and Radiology Services (Recommendation 21)

Recommendation: ProPAC believes that national prospective payment rates for ASC-approved ambulatory surgery and radiology services should be adjusted to reflect differences in labor costs. This adjustment should take into account the appropriate labor share and occupational mix of ASC-approved surgery and radiology services in the hospital outpatient setting. The Secretary should conduct additional research to determine whether other adjustments are warranted.

Response in the Proposed Rule: We currently do not have access to the necessary data to implement this recommendation. For example, hospitals would have to maintain records that would provide a breakdown of salaries and personnel hours attributable to inpatient and outpatient services. We are concerned that any future requirement for collecting the necessary data might place an undue administrative burden on hospitals. However, we encourage comments from hospitals with respect to how burdensome it would be to maintain such detail.

We would welcome comments from hospitals on this recommendation, particularly with regard to the scope and effects of the additional collection that would be required to carry out this recommendation.

Comment: ProPAC, in its comments, restated the recommendation that national prospective payment rates for ASC-approved ambulatory surgery and radiology services be adjusted to reflect differences in labor costs. More specifically, ProPAC suggested that the appropriate labor share of the hospital outpatient setting be taken into account, and that we study whether an outpatient specific wage index is necessary.

Response: We believe that we would be able to determine a reasonably accurate representation of the labor share of hospital outpatient services. However, we do not now have access to the data required to develop an outpatient-specific wage index. We have already commented on our belief that requiring the collection of such data might place an undue administrative burden on hospitals. One commenter, representing a number of hospitals, responded to the proposed rule by voicing the concern that "ProPAC's recommendation for further study of payment adjustments for hospital-provided ASC and radiology services would result in an unreasonable data collection burden on hospitals."

The commenter pointed out that hospitals would have to maintain records that would provide a breakdown of salaries and personnel hours attributable to inpatient and outpatient services. Unless a hospital maintains completely separate inpatient and outpatient surgery and radiology areas, this would be virtually impossible. In addition, ASC procedures are not limited to just an operating room area but can occur in other ancillary departments such as emergency rooms. Also, because of observation status, it is often difficult for a hospital to know whether it is treating an inpatient or an outpatient.

M. Nursing Facility Wage Index (Recommendation 22)

Recommendation: The Secretary should collect data on employee compensation and paid hours of employment for nursing facilities that care for Medicare SNF patients. Once these data become available, the Secretary should develop a nursing facility wage index and use it to adjust Medicare SNF payments.

Response in the Proposed Rule: ProPAC simulated a nursing facility wage index with limited data and found significant differences from the hospital wage index. However, ProPAC indicates that these differences could be due to differences in State regulations that affect nursing homes. The differences in State regulations should be minimized drastically with the implementation of the nursing home reform provisions of

the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), effective October 1, 1990, which made the certification requirements for SNFs virtually identical for both Medicare and Medicaid.

ProPAC states that another potential reason for the failure of the hospital wage index to reflect adequately the variation in SNF wages is the skill-mix differences between hospital and nursing facility personnel. We agree that there may be a skill-mix difference between hospitals and skilled nursing facilities. We do not know whether the differences in the skill mix would result in a different wage index.

ProPAC also notes that the current system contributes to inequitable Medicare SNF payments across regions. For example, almost half of the facilities in New England and almost a third of those in the Mid-Atlantic region receive less than 85 percent of their costs. This compares with an average of only 15 percent of the facilities in other regions. We believe, however, that factors other than the current wage index are responsible for the higher than average costs being reported for the facilities in New England and the Mid-Atlantic States. Among these factors are the nursing shortage and the fact that some of those States pay for SNF services under Medicaid using a prospective case-mix system, which encourages facilities to admit higher cost, resource-intensive patients.

Furthermore, based on our experience with similar attempts to mandate the establishment of a home health agency (HHA) based wage index for determining HHA cost limits, we believe it advisable to continue using the hospital wage index for SNFs until the SNF payment system is totally revised through legislation.

Comment: ProPAC disagreed with the Secretary's decision to postpone the collection of data on SNF wages and the development of a SNF wage index until after the payment system is revised through legislation. They asserted that some of the differences between the hospital wage index and a SNF wage index might be eliminated through more uniform staffing requirements, which were mandated under sections 4201(b)(1) and 4211(b) of Pub. L. 100–203, and are currently being implemented. They acknowledged that because States may exceed Federal requirements, variation in staffing patterns across States is not likely to be completely eliminated. They stated that a SNF wage index would more appropriately reflect the impact of possible nursing shortages in nursing facilities. ProPAC indicated that it would be advisable to collect the appropriate wage data at this time.

Response: As previously indicated, we have no way of knowing what impact a SNF wage index would have on individual SNFs. Moreover, our prior attempt to develop a wage index for HHAs proved troublesome.

When we implemented the first HHA wage index based on data received from HHAs, we received many industry complaints concerning the burdensome requirements and the accuracy of the data. As a result, Congress passed legislation that repealed the mandate for the Secretary to develop the HHA wage index. Instead, section 4027(d) of Public Law 101–508 required the hospital wage index to be used for HHAs. This legislation had a retroactive effective date, so HCFA was required to issue new cost limits using the hospital wage index for a retroactive period and all future periods. As with HHAs, we believe SNFs will have difficulty maintaining the data needed for HCFA to develop an accurate SNF wage index.

ProPAC believes a SNF wage index would more appropriately reflect the impact of possible nursing shortages in nursing facilities. We believe a nursing shortage would impact all classes of providers including hospitals, as well as SNFs. Therefore, we believe the hospital wage index also would reflect a nursing shortage.

In summary, based on the uncertain impact a SNF wage index would have on individual SNFs and on program experience in the context of HHAs, we believe it would be inappropriate to develop a SNF wage index at this time. Instead, we believe it is advisable to continue using the hospital wage index for SNFs until the SNF payment system is totally revised through legislation.

IX. Paperwork Reduction Act

Sections 412.230 and 412.273 contain information collection requirements that are subject to Office of Management and Budget (OMB) review under the Paperwork Reduction Act. Section 412.230 has been approved by OMB through October 1993 under OMB control number 0938–0573. Section 412.273 contains a new requirement whereby a hospital may request the Administrator to review a denial. Burden associated with this collection of information is estimated to be 1 hour per respondent. A notice will be published in the **Federal Register** when approval is obtained.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B—MEDICARE PROGRAMS

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

I. Part 412 is amended as follows:

A. The authority citation for part 412 continues to read as follows:

Authority: Sections 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

Subpart A—General Provisions

B. Subpart A is amended as follows:

1. Section 412.1 is revised to read as follows:

§ 412.1 Scope of part.

(a) *Purpose.* This part implements sections 1886(d) and (g) of the Act by establishing a prospective payment system for the operating costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1983 and a prospective payment system for the capital-related costs of inpatient hospital services furnished to Medicare beneficiaries in cost reporting periods beginning on or after October 1, 1991. Under these prospective payment systems, payment for the operating and capital-related costs of inpatient hospital services furnished by hospitals subject to the systems (generally, short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis. Payment for other costs related to inpatient hospital services (organ acquisition costs incurred by hospitals with approved organ transplantation centers and direct costs of medical education) is made on a reasonable cost basis. Additional payments are made for outlier cases, bad debts, indirect medical education costs, and for serving a disproportionate share of low-income patients. Under either prospective payment system, a hospital may keep

the difference between its prospective payment rate and its operating or capital-related costs incurred in furnishing inpatient services, and the hospital is at risk for inpatient operating or inpatient capital-related costs that exceed its payment rate.

(b) *Summary of content.* This subpart describes the basis of payment for inpatient hospital services under the prospective payment systems, and sets forth the general basis of these systems. Subpart B of this part sets forth the classifications of hospitals that are included in and excluded from the prospective payment systems, and sets forth requirements governing the inclusion or exclusion of hospitals in the systems as a result of changes in their classification. Subpart C sets forth certain conditions that must be met for a hospital to receive payment under the prospective payment systems. Subpart D sets forth the basic methodology by which prospective payment rates for inpatient operating costs are determined. Subpart E describes the transition rate-setting methods that are used to determine transition payment rates for inpatient operating costs during the first four years of the prospective payment system. Subpart F sets forth the methodology for determining additional payments for outlier cases. Subpart G sets forth rules for special treatment of certain facilities under the prospective payment system for inpatient operating costs. Subpart H describes the types, amounts, and methods of payment to hospitals under the prospective payment system for inpatient operating costs. Subpart K describes how the prospective payment system for inpatient operating costs is implemented for hospitals located in Puerto Rico. Subpart L sets forth the procedures and criteria concerning applications from hospitals to the Medicare Geographic Classification Review Board for geographic redesignation. Subpart M describes how the prospective payment system for inpatient capital-related costs is implemented effective with cost reporting periods beginning on or after October 1, 1991.

2. Section 412.2 is amended as follows:

a. Paragraphs (a), (b)(1), and the introductory text of paragraph (b)(2) are revised;

b. Paragraphs (d) and (e) are redesignated as paragraphs (e) and (f), and a new paragraph (d) is added;

c. The introductory text of newly redesignated paragraph (e) and newly redesignated paragraphs (e)(1) and (e)(2) are revised;

d. The introductory text of newly redesignated paragraph (f) and newly redesignated paragraphs (f)(2), (f)(3), and (f)(6) are revised;

e. Newly redesignated paragraph (f)(7) is redesignated as paragraph (f)(8), and a new paragraph (f)(7) is added.

§ 412.2 Basis of payment.

(a) *Payment on a per discharge basis.* Under both the inpatient operating and inpatient capital-related prospective payment systems, hospitals are paid a predetermined amount per discharge for inpatient hospital services furnished to Medicare beneficiaries. The prospective payment rate for each discharge (as defined in § 412.4) is determined according to the methodology described in subpart D, E, or G of this part, as appropriate, for operating costs, and according to the methodology described in subpart M of this part for capital-related costs. An additional payment is made for both inpatient operating and inpatient capital-related costs, in accordance with subpart F of this part, for cases that have an atypically long length of stay or are extraordinarily costly to treat.

(b) *Payment in full.* (1) The prospective payment amount paid for inpatient hospital services is the total Medicare payment for the inpatient operating costs (as described in paragraph (c) of this section) and the inpatient capital-related costs (as described in paragraph (d) of this section) incurred in furnishing services covered by the Medicare program.

(2) The full prospective payment amount, as determined under subpart D, E, or G and under subpart M of this part, is made for each stay during which there is at least one Medicare payable day of care. Payable days of care, for purposes of this paragraph include the following:

* * * * *

(d) *Inpatient capital-related costs.* For cost reporting periods beginning on or after October 1, 1991, the capital prospective payment system provides a payment amount for inpatient hospital capital-related costs as described in part 413, subpart G of this chapter.

(e) *Excluded costs.* The following inpatient hospital costs are excluded from the prospective payment amounts and are paid on a reasonable cost basis:

(1) Capital-related costs for cost reporting periods beginning before October 1, 1991, and an allowance for return on equity, as described in §§ 413.130 and 413.157, respectively, of this chapter.

(2) Direct medical education costs for approved nursing and allied health education programs as described in § 413.85 of this chapter.

* * * * *

(f) *Additional payments to hospitals.* In addition to payments based on the prospective payment rates for inpatient operating costs and inpatient capital-related costs, hospitals receive payments for the following:

* * * * *

(2) The indirect costs of graduate medical education, as specified in subparts F and G of this part and in § 412.105 for inpatient operating costs and in § 412.322 for inpatient capital-related costs.

(3) Costs excluded from the prospective payment rates under paragraph (e) of this section, as provided in § 412.115.

* * * * *

(6) Serving a disproportionate share of low-income patients, as provided in § 412.106 for inpatient operating costs and § 412.320 for inpatient capital-related costs.

(7) The direct graduate medical education costs for approved residency programs in medicine, osteopathy, dentistry, and podiatry as described in § 413.86 of this chapter.

* * * * *

§ 412.4 [Amended]

3. In § 412.4, the term "prospective payment system" is revised to read "prospective payment systems" wherever it appears; and in paragraph (d)(1), the term "prospective payment rate" is changed to read "prospective payment rates", and the phrase "subparts D and E" is revised to read "subparts D, E, and M" wherever it appears.

4. Section 412.6 is revised to read as follows:

§ 412.6 Cost reporting periods subject to the prospective payment systems.

(a) *Initial cost reporting period for each prospective payment system.* (1) Each subject hospital is paid under the prospective payment system for operating costs for inpatient hospital services effective with the hospital's first cost reporting period beginning on or after October 1, 1983 and for inpatient capital-related costs effective with the hospital's first cost reporting period beginning on or after October 1, 1991.

(2) The hospital is paid the applicable prospective payment rate for inpatient operating costs and capital-related costs for each discharge occurring on or after the first day of its first cost reporting period subject to the applicable prospective payment system.

(3) If a discharged beneficiary was admitted to the hospital before the first day of the hospital's first cost reporting period subject to the prospective

payment system for inpatient operating costs, the reasonable costs of services furnished before that day are paid under the cost reimbursement provisions of part 413 of this chapter. For such discharges, the amount otherwise payable under the applicable prospective payment rate is reduced by the amount paid on a reasonable cost basis for inpatient hospital services furnished to that beneficiary during the hospital stay. If the amount paid under reasonable cost exceeds the inpatient operating prospective payment amount, the reduction is limited to the inpatient operating prospective payment amount.

(b) *Changes in cost reporting periods.* HCFA recognizes a change in a hospital's cost reporting period made after November 30, 1982 only if the change has been requested in writing by the hospital and approved by the intermediary in accordance with § 413.24(f)(3) of this chapter.

5. Section 412.8 is revised to read as follows:

§ 412.8 Publication of schedules for determining prospective payment rates.

(a) *Initial prospective payment rates*—(1) *For inpatient operating costs.* Initial prospective payment rates for inpatient operating costs (for the period October 1, 1983 through September 30, 1984) were determined in accordance with documents published in the **Federal Register** on September 1, 1983 (48 FR 39838), and January 3, 1984 (49 FR 324).

(2) *For inpatient capital-related costs.* Initial prospective payment rates for inpatient capital-related costs (for the period October 1, 1991 through September 30, 1992) were determined in accordance with the final rule published in the **Federal Register** on August 30, 1991 (56 FR 43196).

(b) *Annual publication of schedule for determining prospective payment rates.* (1) For cost reporting periods beginning after September 30, 1984, HCFA publishes an annual document setting forth the methodology and data used, including the percentage increase factor, to determine prospective payment rates for inpatient operating costs and (for cost reporting periods beginning after September 30, 1991) for inpatient capital-related costs applicable to discharges occurring during the Federal fiscal year beginning on or after October 1 of that year.

(2) HCFA proposes changes in the methods, amounts, and factors used to determine inpatient prospective payment rates in a **Federal Register** document published for public comment not later than the May 1 before the beginning of the Federal fiscal year in which the proposed changes would apply.

(3) HCFA publishes a **Federal Register** document setting forth final methods, amounts, and factors for determining inpatient prospective payment rates not later than the September 1 before the Federal fiscal year in which the rates would apply.

§ 412.10 [Amended]

6. In § 412.10(a), the phrase "DRG changes will be effective" is revised to read "DRG changes are effective".

C. Subpart B is amended as follows:

1. The heading of subpart B is revised to read as follows:

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

§ 412.20 [Amended]

2. In § 412.20, the term "prospective payment system" is revised to read "prospective payment systems" wherever it appears. In § 412.20(b)(1), remove the phrase ", and § 412.32" and add the word "and" before "§ 412.29.".

3. In § 412.22, in paragraph (a), the phrase "A hospital will be excluded from the prospective payment system" is revised to read "A hospital is excluded from the prospective payment systems"; in paragraph (b), the phrase "will be subject to the ceiling" is revised to read "are subject to the ceiling" and the phrase "and § 412.32" is removed; and a new paragraph (d) is added to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(d) *Changes in hospitals' status.* For purposes of exclusion from the prospective payment systems under this subpart, the status of each currently participating hospital (excluded or not excluded) is determined at the beginning of each cost reporting period and is effective for the entire cost reporting period. Any changes in the status of the hospital are made only at the start of a cost reporting period.

4. In § 412.23, the term "prospective payment system" is revised to read "prospective payment systems" wherever it appears; paragraph (b)(8) is revised; and paragraph (c) is removed and reserved, to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(b) * * *

(8) A hospital that seeks exclusion as a rehabilitation hospital for the first full 12-month cost reporting period that occurs after it becomes a Medicare participating hospital may provide a written certification that the inpatient population it intends to serve meets the requirements of paragraph (b)(2) of this section, instead of showing that it has treated such a population during its most recent 12-month cost reporting period. The written certification is also effective for any cost reporting period of not less than one month and not more than 11 months occurring between the date the hospital began participating in Medicare and the start of the hospital's regular 12-month cost reporting period.

* * * * *

5. In § 412.25, the term "prospective payment system" is revised to read "prospective payment systems" wherever it appears; the introductory text of paragraph (a) is revised; a new paragraph (a)(13) is added; in paragraph (b), the phrase "will remain the same" is revised to read "remains the same"; and a new paragraph (c) is added, to read as follows:

§ 412.25 Excluded distinct part hospital units: Common requirements.

(a) *Basis for exclusion.* In order to be excluded from the prospective payment system, a distinct part psychiatric or rehabilitation unit must meet the following requirements.

* * * * *

(13) As of the first day of the first cost reporting period for which all other exclusion requirements are met, the unit is fully equipped and staffed and is capable of providing hospital inpatient psychiatric or rehabilitation care regardless of whether there are any inpatients in the unit on that date.

* * * * *

(c) *Changes in the status of hospital units.* For purposes of exclusion from the prospective payment systems under this section, the status of each hospital unit (excluded or not excluded) is determined at the beginning of each cost reporting period and is effective for the entire cost reporting period. Any changes in the status of a unit are made only at the start of a cost reporting period. If a unit is added to a hospital after the start of a cost reporting period, it cannot be excluded from the prospective payment systems before the start of the hospital's next cost reporting period.

§ 412.27 [Amended]

6. In the introductory text of § 412.27, the term "prospective payment system" is revised to read "prospective payment systems".

§ 412.29 [Amended]

7. In the introductory text of § 412.29, the term "prospective payment system" is revised to read "prospective payment systems".

8. In § 412.30, paragraph (a) is revised and, in paragraph (c), the term "prospective payment system" is revised to read "prospective payment systems", to read as follows:

§ 412.30 Exclusion of new distinct part rehabilitation units and expansion of units already excluded.

(a) *New units.* (1) A hospital that seeks exclusion of a new rehabilitation unit may provide a written certification that the inpatient population the hospital intends the unit to serve meets the requirements of § 412.23(b)(2) instead of showing that the unit has treated such a population during the hospital's most recent 12-month cost reporting period.

(2) If a hospital that is currently participating in Medicare has not previously sought exclusion for any rehabilitation unit and has obtained approval for added bed capacity under State licensure and under its Medicare certification, it may identify the new beds as a new rehabilitation unit for the first full 12-month cost reporting period during which the beds are used to furnish inpatient care. A unit of a currently participating hospital that includes some beds that were previously licensed and certified and some new beds is recognized as a new rehabilitation unit only if more than one-half of the beds are new.

(3) If a hospital that has not previously participated in the Medicare program seeks exclusion of a rehabilitation unit, it may designate certain beds as a new rehabilitation unit for the first full 12-month cost reporting period that occurs after it becomes a Medicare participating hospital. The written certification described in paragraph (a)(1) of this section also is effective for any cost reporting period of not less than 1 month and not more than 11 months occurring between the date the hospital began participating in Medicare and the start of the hospital's regular 12-month cost reporting period.

(4) For purposes of paragraph (a) of this section, a hospital that has undergone a change of ownership or leasing as defined in § 489.18 of this chapter is not considered to have participated previously in the Medicare program.

* * * * *

§ 412.32 [Removed]

9. Section 412.32 is removed.

D. Subpart C is amended as follows:

1. The heading for subpart C is revised to read as follows:

Subpart C—Conditions for Payment Under the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

§ 412.40 [Amended]

2. In § 412.40(a), the term "prospective payment system" is revised to read "prospective payment systems".

§ 412.42 [Amended]

3. In § 412.42, the term "prospective payment system" is revised to read "prospective payment systems" in paragraph (a) and in the introductory text of paragraph (b).

§ 412.46 [Amended]

4. In § 412.46, in paragraph (d)(1), the phrase "The PRO will review" is revised to read "The PRO reviews"; in paragraph (e)(1), the phrase "the Medicare claim will be appropriately changed" is revised to read "the Medicare claim is appropriately changed"; and in paragraph (e)(2), the phrase "the PRO will change the coding and assign the appropriate DRG" is revised to read "the PRO changes the coding and assigns the appropriate DRG".

§ 412.48 [Amended]

5. In § 412.48(c), the term "prospective payment system" is revised to read "prospective payment systems".

§ 412.50 [Amended]

6. In § 412.50(a), the phrase "The applicable payments made under the prospective payment system, as described in subpart H" is revised to read "The applicable payments made under the prospective payment systems, as described in subparts H and M".

§ 412.52 [Amended]

7. In § 412.52, the term "prospective payment system" is revised to read "prospective payment systems".

E. Subpart D is amended as follows:

1. The heading for Subpart D is revised to read as follows:

Subpart D—Basic Methodology for Determining Prospective Payment Federal Rates for Inpatient Operating Costs

§ 412.60 [Amended]

2. Section 412.60 is amended as follows:

a. In paragraphs (a) and (c) introductory text, the phrase "HCFA will establish" is revised to read "HCFA establishes";

b. In paragraph (b), the phrase "HCFA will assign" is revised to read "HCFA assigns";

c. In paragraph (c)(1), the phrase "The classification of a particular discharge will, as appropriate, be based" is revised to read "The classification of a particular discharge is based, as appropriate,"; in paragraphs (c)(2) and (c)(3), the phrase "will be" is revised to read "is"; and in paragraph (c)(3), the phrase "will provide" is revised to read "provides".

3. Section 412.62 is amended as follows:

a. The section heading and paragraph (a) are revised;

b. The heading in paragraph (b) is revised and the phrase "HCFA will determine" is revised to read "HCFA determines";

c. In the introductory text, in paragraph (c), the phrase "HCFA will update" is revised to read "HCFA updates";

d. In the introductory text, in paragraph (d), the phrase "HCFA will standardize" is revised to read "HCFA standardizes";

e. In the introductory text, in paragraph (e), the phrase "HCFA will compute" is revised to read "HCFA computes";

f. The heading and introductory text of paragraph (j) are revised.

§ 412.62 Federal rates for inpatient operating costs for fiscal year 1984.

(a) *General rule.* HCFA determines national adjusted DRG prospective payment rates for operating costs, for each inpatient hospital discharge in fiscal year 1984 involving inpatient hospital services of a hospital in the United States subject to the prospective payment system under subpart B of this part, and determines regional adjusted DRG prospective payment rates for inpatient operating costs for such discharges in each region, for which payment may be made under Medicare Part A. Such rates are determined for hospitals located in urban or rural areas within the United States and within each such region, respectively, as described in paragraphs (b) through (k) of this section.

(b) *Determining allowable individual hospital inpatient operating costs.*

* * * * *

(j) *Computing Federal rates for inpatient operating costs for urban and rural hospitals in the United States and in each region.* For each discharge classified within a DRG, HCFA establishes a national prospective payment rate for inpatient operating costs and a regional prospective

payment rate for inpatient operating costs for each region, as follows:

* * * * *

4. Section 412.63 is amended by revising the section heading, paragraph (a)(1), the introductory text of paragraph (o) and paragraph (p)(1); by revising in paragraph (a)(2) the phrase "Each such rate will be" to read "Each such rate is"; by revising in paragraph (b)(2)(ii) the phrase "will receive the lower" to read "receives the lower"; and by revising in paragraph (n)(1) the phrase "HCFA will adjust" to read "HCFA adjusts", to read as follows:

§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.

(a) *General rule.* (1) HCFA determines a national adjusted prospective payment rate for inpatient operating costs for each inpatient hospital discharge in a Federal fiscal year after fiscal year 1984 involving inpatient hospital services of a hospital in the United States subject to the prospective payment system, and determines a regional adjusted prospective payment rate for operating costs for such discharges in each region, for which payment may be made under Medicare Part A.

* * * * *

(o) *Computing Federal rates for inpatient operating costs for large urban, other urban, and rural hospitals.* For each discharge classified within a DRG, HCFA establishes for the fiscal year a national prospective payment rate and a regional prospective payment rate for inpatient operating costs, for each region, as follows:

* * * * *

(p) *Adjusting for different area wage levels.* (1) HCFA adjusts the proportion (as estimated by HCFA from time to time) of Federal rates for inpatient operating costs computed under paragraph (j) of this section that are attributable to wages and labor-related costs for area differences in hospital wage levels by a factor (established by HCFA based on survey data) reflecting the relative level of hospital wages and wage-related costs in the geographic area (that is, urban or rural area as determined under the provisions of paragraph (b) of this section) of the hospital compared to the national average level of hospital wages and wage-related costs.

* * * * *

F. Subpart E is amended as follows:

1. The heading for Subpart E is revised to read as follows:

Subpart E—Determination of Transition Period Payment Rates for the Prospective Payment System for Inpatient Operating Costs

2. Section 412.70 is revised to read as follows:

§ 412.70 General description.

For discharges occurring on or after April 1, 1988 and before October 1, 1993, payments to a hospital are based on the greater of the national average standardized amount or the sum of 85 percent of the national average standardized amount and 15 percent of the average standardized amount for the region in which the hospital is located.

3. Section 412.71 is amended by revising the section heading; by revising paragraph (c)(1) introductory text; by revising the phrase "will decide" to read "decides" in paragraph (c)(2); and by revising the phrase "will use" to read "uses" in paragraph (d), to read as follows:

§ 412.71 Determination of base-year inpatient operating costs.

* * * * *

(c) *Hospital's request for adjustment of base-year inpatient operating costs.* (1) Before the date it becomes subject to the prospective payment system for inpatient operating costs, a hospital may request the intermediary to further adjust its estimated base-period costs to take into account the following:

* * * * *

§ 412.73 [Amended]

4. In § 412.73, paragraph (d)(1) is amended by revising the phrase "HCFA will adjust" to read "HCFA adjusts" and by revising the phrase "will be based on a factor" to read "is based on a factor"; in paragraph (d)(2), by revising the phrase "HCFA will adjust" to read "HCFA adjusts"; and in paragraph (e) by revising the phrase "cost per discharge will be multiplied" to read "cost per discharge is multiplied".

§ 412.74 [Removed]

5. Section 412.74 is removed.

6. Section 412.75 is amended by revising the section heading; in paragraph (b), by revising the phrase "considered to be a discharge" to read "considered to be a discharge" and by combining the concluding paragraph with paragraph (b); and in paragraph (e), by revising the phrase "cost per discharge will be multiplied" to read "cost per discharge is multiplied", to read as follows:

§ 412.75 Determination of the hospital-specific rate for inpatient operating costs based on a Federal fiscal year 1987 base period.

* * * * *

§ 412.76 [Amended]

6. Section 412.76 is amended by revising the phrase "costs will be adjusted" to read "costs are adjusted" and by revising the phrase "HCFA will recover" to read "HCFA recovers".

G. Subpart F is amended as follows:

1. In § 412.80, the introductory text of paragraph (a)(1)(ii) is republished; paragraphs (a)(1)(ii)(A) and (c) are revised; and in paragraph (a)(2), the phrase "HCFA will provide cost outlier payments" is revised to read "HCFA provides cost outlier payments", to read as follows:

§ 412.80 General provisions.

(a) *Basic rule.* (1) * * *

(ii) The beneficiary's length of stay does not exceed criteria established under paragraph (a)(1)(i) of this section, but the hospital's charges for covered services furnished to the beneficiary, adjusted to cost by applying a cost-to-charge ratio as described in § 412.84(h), exceed the greater of the following:

(A) A fixed dollar amount (adjusted for geographic variation in costs) as specified by HCFA.

* * * * *

(c) *Relation to hospitals that incur indirect costs for graduate medical education programs and that serve a disproportionate share of low-income patients.* The outlier payment amounts are included in total DRG revenue for purposes of determining payments to hospitals that incur indirect costs for graduate medical education programs under § 412.105 and to hospitals that serve a disproportionate share of low-income patients under § 412.106.

2. In § 412.82, paragraph (c) is revised; paragraph (d) is removed; and paragraph (e) is redesignated as paragraph (d), to read as follows:

§ 412.82 Payment for extended length-of-stay cases (day outliers).

* * * * *

(c) Except as provided in § 412.86, the per diem payment made under paragraph (a) of this section is derived by taking 55 percent of the average per diem payment for the applicable DRG, as calculated by dividing the Federal prospective payment rate for inpatient operating costs and inpatient capital-related costs determined under subpart D by the arithmetic mean length-of-stay for that DRG.

* * * * *

§ 412.84 [Amended]

3. In § 412.84(d), the phrase "through this review will be denied" is revised to read "through this review are denied" and the phrase "these services will be recovered" is revised to read "these services are recovered".

H. Subpart G is amended as follows:

1. The heading of subpart G is revised to read as follows:

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

2. Section 412.90 is revised to read as follows:

§ 412.90 General rules.

(a) *Sole community hospitals.* HCFA may adjust the prospective payment rates for inpatient operating costs determined under subpart D or E of this part if a hospital, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hosptials, is the sole source of inpatient hospital services reasonably available in a geographic area to Medicare beneficiaries. If a hospital meets the criteria for such an exception under § 412.92(a), its prospective payment rates for inpatient operating costs are determined under § 412.92(d).

(b) *Referral center.* HCFA may adjust the prospective payment rates for inpatient operating costs determined under subpart D or E of this part if a hospital acts as a referral center for patients transferred from other hospitals. Criteria for identifying such referral centers are set forth in § 412.96.

(c) *Christian Science Sanatoria.* HCFA may adjust the prospective payment rates for inpatient operating costs determined under subpart D or E of this part if a hospital is a Christian Science sanatorium. Such a sanatorium's prospective payment rates are determined in accordance with § 412.98.

(d) *Kidney acquisition costs incurred by hospitals approved as renal transplantation centers.* HCFA pays for kidney acquisition costs incurred by renal transplanation centers on a reasonable cost basis. The criteria for this special payment provision are set forth in § 412.100.

(e) *Hospitals that are located in urban areas and that are reclassified as rural.* HCFA adjusts the rural Federal payment amounts for inpatient operating costs for hospitals reclassified as rural, as defined in § 412.62(f). The criteria for this adjustment are set forth in § 412.102.

(f) *Hospitals that have a high percentage of ESRD beneficiary discharges.* HCFA makes an additional payment to a hospital if ten percent or more of its total Medicare discharges in a cost reporting period beginning on or after October 1, 1984 are ESRD beneficiary discharges. In determining ESRD discharges, discharges in DRG Nos. 302, 316, and 317 are excluded. The criteria for this additional payment are set forth in § 412.104.

(g) *Hosptials that incur indirect costs for graduate medical education programs.* HCFA makes an additional payment for inpatient operating costs to a hospital for indirect medical education costs attributable to an approved graduate medical education program. The criteria for this additional payment are set forth in § 412.105.

(h) *Hospitals that serve a disproportionate share of low-income patients.* For discharges occurring on or after May 1, 1986, HCFA makes an additional payment for inpatient operating costs to hospitals that serve a disproportionate share of low-income patients. The criteria for this additional payment are set forth in § 412.106.

(i) *Medicare-dependent, small rural hospitals.* For cost reporting periods beginning on or after April 1, 1990 and ending before April 1, 1993, HCFA adjusts the prospective payment rates for inpatient operating costs determined under subparts D and E of this part if a hospital is classified as a Medicare-dependent, small rural hospital. Criteria for identifying these hospitals are set forth in § 412.108.

3. In § 412.92, in paragraphs (b)(1)(iv) and (b)(1)(v), the phrase "will review" is revised to read "reviews"; in paragraph (b)(3), the phrase "will remain" is revised to read "remains"; in paragraph (b)(5), the phrase "will be" is revised to read "is"; and the heading of paragraph (d), and paragraphs (e)(3) introductory text and (e)(3)(i)(B) are revised to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(d) *Determining prospective payment rates for inpatient operating costs for sole community hospitals.*

* * * * *

(e) *Additional payments to sole community hospitals experiencing a significant volume decrease.*

* * * * *

(3) The intermediary determines a lump sum adjustment amount not to exceed the difference between the hospital's Medicare inpatient operating costs and the hospital's total DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs (including outlier payments for inpatient operating costs determined under subpart F of this part and additional payments made for inpatient operating costs for hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.105).

(i) * * *

(B) The hospital's fixed (and semi-fixed) costs, other than those costs paid on a reasonable cost basis under part 413 of this chapter; and

* * * * *

4. In § 412.96, the reference "§ 412.118(b)" in paragraph (b)(1) introductory text is revised to read "§ 412,105(b)"; the reference "§ 412.116" in paragraph (c)(1)(ii) is revised to read "§ 412.105"; and paragraph (d) is revised to read as follows:

§ 412.96 Special treatment: Referral centers.

* * * * *

(d) *Payment to rural referral centers.* Effective for discharges occurring on or after April 1, 1988, a hospital that is located in a rural area and meets the criteria of paragraphs (b)(1), (b)(2) or (c) of this section is paid prospective payments for inpatient operating costs per discharge based on the applicable other urban payment rates as determined in accordance with § 412.63, as adjusted by the hospital's area wage index.

* * * * *

5. In § 412.98, paragraphs (a) and (b) are revised to read as follows:

§ 412.98 Special treatment: Christian Science Sanatoria.

(a) *General rule.* If a Christian Science Sanatorium is not excluded from the prospective payment systems under subpart B of this part, HCFA pays, for inpatient hospital services furnished to a beneficiary by that sanatorium, a predetermined fixed amount per discharge based on the sanatorium's historical inpatient operating costs per discharge.

(b) *Prospective payment rates.* For cost reporting periods beginning on or after October 1, 1983, the sanatorium's prospective payment rate for inpatient operating costs equals the amount that would constitute the sanatorium's target amount under § 413.40(c)(4) of this chapter if the institution were subject to the rate of increase ceiling specified in § 413.40 of this chapter instead of the prospective payment systems. This amount is not adjusted for the DRG weighting factor.

* * * * *

6. In § 412.100, paragraph (a) is revised to read as follows:

§ 412.100 Special treatment: Renal transplantation centers.

(a) *Adjustments for renal transplantation centers.*

(1) HCFA adjusts the prospective payment rates for inpatient operating costs determined under subparts D and E of this part for hospitals approved as renal transplantation centers (described at §§ 405.2170 and 405.2171 of this chapter) to remove the estimated net expenses associated with kidney acquisition.

(2) Kidney acquisition costs are treated apart from the prospective payment rate for inpatient operating costs, and payment to the hospital is adjusted in each reporting period to reflect an amount necessary to compensate the hospital for reasonable expenses of kidney acquisition.

* * * * *

§ 412.102 [Amended]

7. In the introductory text of § 412.102, the phrase "rural Federal payment amount" is revised to "rural Federal payment amount for operating costs".

§ 412.104 [Amended]

8. In § 412.104, in paragraph (a), the phrase "will provide" is revised to read "provides"; in the introductory text of paragraph (b) and in paragraph (b)(4) the phrase "will be" is revised to read "is"; and in paragraph (b)(5), the phrase "will be equal to" is revised to read "equals".

9. In § 412.105, the section heading and the introductory text to the section are revised; the introductory text of paragraph (a) is reprinted; and paragraphs (a)(2) and (e) are revised, to read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

HCFA makes an additional payment to hospitals for indirect medical education costs using the following procedures:

(a) *Basic data.* HCFA determines the following for each hospital:

* * * * *

(2) The hospital's total DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs, including outlier payments for inpatient operating costs determined under subpart F of this part, but excluding additional payments made under the provisions of this subpart.

* * * * *

(e) *Determination of payment amount.* Each hospital's indirect medical education payment under the prospective payment system for inpatient operating costs is determined by multiplying the total DRG revenue for inpatient operating costs, as determined under paragraph (a)(2) of this section, by the applicable education adjustment factor derived in paragraph (d) of this section.

* * * * *

10. In § 412.106, paragraphs (a)(2) and (d)(1) are revised; the reference "§ 412.118(b)" in paragraph (a)(1)(i) is revised to read "§ 412.105(b)"; the reference "§ 412.118" in paragraph (a)(2)(ii) is revised to read "§ 412.105"; and in paragraphs (d)(2)(i)(B) (*1*) and (*2*) the date "January 1, 1993" is revised to read "October 1, 1993", to read as follows:

§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.

(a) *General considerations.* * * *

(2) The payment adjustment is applied to the hospital's total DRG revenues for inpatient operating costs.

(i) A hospital's total DRG revenues for inpatient operating costs are determined on the basis of DRG-adjusted prospective payment rates for inpatient operating costs or, for transition period payments under subpart B of this part, on the basis of the Federal portion of the hospital's payment rates.

(ii) For purposes of this section, total DRG revenues for inpatient operating costs include outlier payments for inpatient operating costs under subpart F of this part, but exclude additional payments made under this subpart.

* * * * *

(d) *Payment adjustment*—(1) *Method of adjustment.* If a hospital serves a disproportionate number of low-income patients, its total DRG revenues for inpatient operating costs are increased by an adjustment factor as specified in paragraph (d)(2) of this section.

* * * * *

10. In § 412.108, paragraphs (c) introductory text and (d)(3) introductory text are revised; in paragraph (a)(1)(i) the reference "§ 412.118(b)" is revised to read "§ 412.105(b)"; and in paragraph (d)(3)(i)(B) the term "reimbursed" is revised to read "paid" to read as follows:

§ 412.108 Special treatment: Medicare-dependent, small rural hospitals.

* * * * *

(c) *Payment methodology.* A hospital that meets the criteria in paragraph (a) of this section is paid for its inpatient operating costs based on whichever of the following amounts yields the greatest aggregate payment for the cost reporting period:

* * * * *

(d) *Additional payments to hospitals experiencing a significant volume decrease.*

* * * * *

(3) The intermediary determines a lump sum adjustment amount not to exceed the difference between the hospital's Medicare inpatient operating costs and the hospital's total DRG revenue for inpatient operating costs based on DRG-adjusted prospective payment rates for inpatient operating costs (including outlier payments for inpatient operating costs determined under subpart F of this part and additional payments made for inpatient operating costs hospitals that serve a disproportionate share of low-income patients as determined under § 412.106 and for indirect medical education costs as determined under § 412.105).

* * * * *

I. Subpart H is amended as follows:

1. The heading of subpart H is revised to read as follows:

Subpart H—Payments to Hospitals Under the Prospective Payment Systems

§ 412.110 [Amended]

2. In § 412.110, the phrase "prospective payment system" is revised to read "prospective payment systems".

3. In § 412.112, the introductory text of the section and paragraph (a) are revised to read as follows:

§ 412.112 Payments determined on a per case basis.

A hospital is paid the following amounts on a per case basis:

(a) The appropriate prospective payment rate for inpatient operating costs for each discharge as determined in accordance with subparts D, E, and G of this part.

* * * * *

4. In § 412.113, paragraph (a)(2)(i) introductory text is republished and paragraph (a)(2)(i)(E) is revised to read as follows:

§ 412.113 Other payments.

(a) *Capital-related costs.* * * *

(2) *Reduction to capital-related payments.* (i) Except for sole community hospitals as defined in § 412.92, the amount of capital-related payments for cost reporting periods beginning before October 1, 1991 (including a return on equity capital as provided under

§ 413.157 of this chapter) is reduced by—

* * * * *

(E) Ten percent for payments attributable to portions of cost-reporting periods occurring on or after October 1, 1991 and before the beginning of the hospital's first cost-reporting period beginning on or after October 1, 1991.

* * * * *

§ 412.115 [Amended]

5. In § 412.115, in paragraph (a), the phrase "An additional payment will be made" is revised to read "An additional payment is made".

§ 412.120 [Amended]

6. In § 412.120 in paragraph (a), the phrase "payments otherwise payable to a hospital will be reduced" is revised to read "payments otherwise payable to a hospital are reduced"; and in the introductory text of paragraph (b) the phrase "the Medicare payment will be determined" is revised to read "the Medicare payment is determined".

7. In § 412.130, in paragraphs (b)(1) and (b)(2), the phrase "prospective payment system" is revised to read "prospective payment system".

J. Subpart K is amended as follows:

1. The heading of subpart K is revised to read as follows:

Subpart K—Prospective Payment System for Inpatient Operating Costs for Hospitals Located in Puerto Rico

2. Section 412.200 is revised to read as follows:

§ 412.200 General provisions.

Beginning with discharges occurring on or after October 1, 1987, hospitals located in Puerto Rico are subject to the rules governing the prospective payment system for inpatient operating costs. Except as provided in this subpart, the provisions of subparts A, B, C, F, G, and H of this part apply to hospitals located in Puerto Rico. Except for § 412.60, which deals with DRG classification and weighting factors, the provisions of subparts D and E, which describe the methodology used to determine prospective payment rates for inpatient operating costs for hospitals, do not apply to hospitals located in Puerto Rico. Instead, the methodology for determining prospective payment rates for inpatient operating costs for these hospitals is set forth in §§ 412.204 through 412.212.

3. Section 412.204 is revised to read as follows:

§ 412.204 Payments to hospitals located in Puerto Rico.

Payments for inpatient operating costs to hospitals located in Puerto Rico that are paid under the prospective payment system are equal to the sum of—

(a) 75 percent of the Puerto Rico prospective payment rate for inpatient operating costs, as determined under § 412.208 or § 412.210; and

(b) 25 percent of a national prospective payment rate for inpatient operating costs, as determined under § 412.212.

4. In § 412.208, paragraphs (a) and (b), and the heading of paragraph (h) are revised to read as follows:

§ 412.208 Puerto Rico rates for Federal fiscal year 1988.

(a) *General rule.* HCFA determines the Puerto Rico adjusted DRG prospective payment rate for inpatient operating costs for each inpatient hospital discharge occurring in Federal fiscal year 1988 for a prospective payment hospital. These rates are determined as described in paragraphs (b) through (i) of this section.

(b) *Determining target amounts.* For each hospital subject to the prospective payment system for inpatient operating costs, HCFA determines the Medicare target amount, as described in § 413.40(c) of this chapter, for the hospital's cost reporting period beginning in fiscal year 1987. Revisions in the target amounts made subsequent to establishment of the standardized amounts under paragraph (d) of this section do not affect the standardized amounts.

* * * * *

(h) *Computing Puerto Rico rates established under the prospective payment system for inpatient operating costs for urban and rural hospitals.*

* * * * *

§ 412.210 [Amended]

5. In § 412.210, in paragraphs (a)(1), (b)(3) and the introductory text of paragraphs (d), the phrase, "for inpatient operating costs" is added after the phrase "prospective payment rate".

§ 412.212 [Amended]

6. In § 412.212, paragraph (a), the phrase "national prospective payment rate" is revised to read "national prospective payment rate for inpatient operating costs".

§ 412.220 [Amended]

7. In § 412.220, introductory text for the section, the phrase "prospective payment system." is revised to read "prospective payment system for inpatient operating costs."

Subpart L—The Medicare Geographic Classification Review Board

L. Subpart L is amended as follows:

1. Section 412.230 is amended as follows:

a. The heading is revised;

b. Paragraphs (a)(1), (a)(3) and (a)(4) introductory text and (a)(4)(iii) are revised;

c. New paragraphs (a)(4)(v) and (a)(5) are added;

d. In the heading of paragraph (d) and in paragraphs (d)(1) and (d)(3) introductory text, the phrase "standardized amount" is revised to read "standardized amount for inpatient operating costs";

e. In paragraph (d)(3)(ii), the phrase "prospective payment system rates for inpatient hospital services" is revised to read "prospective payment rates for inpatient operating costs";

f. Paragraph (e)(1) is revised;

g. Paragraph (e)(2) introductory text is republished and paragraph (e)(2)(i) is revised;

h. Paragraph (e)(2)(ii) introductory text and paragraph (e)(2)(ii)(A) are revised.

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

(a) *General*—(1) *Purpose.* An individual hospital may be redesignated from a rural area to an urban area, from a rural area to another rural area, or from an urban area to another urban area for the purposes of using the other area's standardized amount for inpatient operating costs, wage index value, or both. An individual hospital may not be redesignated to more than one area.

* * * * *

(3) *Proximity.* Except as provided in paragraph (a)(4) of this section, to be redesignated to another rural area or an urban area, a hospital must demonstrate a close proximity to the adjacent area to which it seeks redesignation by meeting the criteria in paragraph (b) of this section, and submitting data requested under paragraph (c) of this section.

(4) *Special rules for sole community hospitals and rural referrel centers.* To be redesignated under the special rules in this paragraph, a hospital must be a sole community hospital or a rural referral center as of the date of the MGCRB's review.

* * * * *

(iii) If a hospital that is a rural referral center, a sole community hospital, or both qualifies for urban redesignation, it is redesignated to the urban area that is closest to the hospital. If the hospital is closer to another rural area than to any

urban area, it may seek redesignation to either the closest rural or the closest urban area.

* * * * *

(v) A hospital that is redesignated under paragraph (a)(4) of this section may not be redesignated in the same fiscal year under paragraph (a)(2) or (a)(3) of this section.

(5) *Application of criteria.* In applying the numeric criteria contained in §§ 412.230(b)(1) and (2), (d)(2), (e)(1)(iii), and (e)(l)(iv) (A) and (B), rounding of numbers to meet the mileage or qualifying percentage standard is not permitted.

* * * * *

(e) *Use of urban or other rural area's wage index—*

(1) *Criteria for use of adjacent area's wage index.* To use an adjacent area's wage index, a hospital must demonstrate the following:

(i) The hospital's incurred wage costs are comparable to hospital wage costs in an adjacent urban or other rural area;

(ii) The hospital has the necessary geographic relationship as specified in paragraphs (a) and (b) of this section;

(iii) The hospital's average hourly wage is at least 108 percent of the average hourly wage of hospitals in the area in which the hospital is located; and

(iv) One of the following conditions apply:

(A) The hospital's average hourly wage is equal to at least 84 percent of the average hourly wage of hospitals in the adjacent area to which it seeks redesignation; or

(B) The hospital's average hourly wage weighted for occupational categories is at least 90 percent of the average hourly wage of hospitals in the adjacent area to which it seeks redesignation.

(2) *Appropriate wage data.* For a wage index change, the hospital must submit appropriate data as follows:

(i) For hospital-specific data, the hospital must provide data from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospital requests reclassification.

(ii) For data of other hospitals, the hospital must provide data concerning the following:

(A) The average hourly wage in the area in which the hospital is located and the average hourly wage in the adjacent area. The wage data are taken from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospital requests reclassification and;

* * * * *

4. In § 412.232, paragraph (c) is revised; paragraphs (d)(2) introductory text and (d)(2)(ii) introductory text are republished; and paragraphs (d)(2)(i) and (d)(2)(ii)(A) are revised, to read as follows:

§ 412.232 Criteria for all hospitals in a rural county seeking urban redesignation.

* * * * *

(c) *Wage criteria.* In applying the following numeric criteria, rounding of numbers to meet the qualifying percentages is not permitted.

(d) * * *

(2) *Appropriate wage data.* The hospitals must submit appropriate data as follows:

(i) For hospital-specific data, the hospitals must provide data from the HCFA wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospitals request reclassification.

(ii) For data for other hospitals, the hospitals must provide the following:

(A) The average hourly wage in the adjacent area, which is taken from the HCFA hospital wage survey used to construct the wage index in effect for prospective payment purposes during the fiscal year prior to the fiscal year for which the hospitals request reclassification.

* * * * *

5. In § 412.234, paragraph (b) is revised, and in the heading of paragraph (c) the phrase "inpatient operating costs" is added after the phrase. "standardized amount", to read as follows:

§ 412.234 Criteria for all hospitals in an urban county seeking redesignation to another urban area.

* * * * *

(b) *Wage criteria.* In applying the following numeric criteria, rounding of numbers to meet the qualifying percentages is not permitted.

* * * * *

6. In § 412.273, the introductory text of paragraph (a), paragraph (a)(1) and paragraph (b) are revised; and paragraph (c) is added, to read as follows:

§ 412.273 Withdrawing an application.

(a) *Timing of a withdrawal.* The MGCRB allows a hospital, or group of hospitals, to withdraw its application if the request for withdrawal is submitted to the MGCRB during the following time periods:

(1) At any time before the MGCRB issues a decision on the application; or

* * * * *

(b) *Written request only.* A request to withdraw an application must be made in writing to the MGCRB by all hospitals that are party to the application.

(c) *Appeal of the MGCRB's denial of a hospital's request for withdrawal.* (1) A hospital may file an appeal of the MGCRB's denial of its request for withdrawal of an application to the Administrator. The appeal must be received within 15 days of the date of the notice of the denial.

(2) Within 20 days of receipt of the hospital's request for appeal, the Administrator affirms or reverses the denial.

(3) In § 412.278, a heading is added to paragraph (f) and paragraphs (f)(1) and (f)(3) are revised; and a new paragraph (g) is added to read as follows:

§ 412.278 Administrator's review.

* * * * *

(f) *Administrator's decision.* (1) The Administrator may not receive or consider any new evidence and must issue a decision based only upon the record as it appeared before the MGCRB and comments submitted under paragraphs (b)(2), (b)(3), (b)(4), (c)(2), and (c)(3) of this section.

* * * * *

(3) The Administrator's decision issued under § 412.278 (a) or (c) is the final Departmental decision, unless it is amended under § 412.278(g). The final Departmental decision is not subject to judicial review.

(g) *Amendment of Administrator decision—*(1) *Hospital's request for amendment.* The hospital may request the Administrator to amend the decision for the limited purpose of correcting mathematical or computational errors, or to correct the decision if the evidence that was considered in making the decision clearly shows on its face that an error was made. The following procedure is followed:

(i) The hospital's request for amendment must be received by the Administrator within 10 days after the date the Administrator issues a decision. The request for amendment must be in writing, with a copy to HCFA.

(ii) The Administrator promptly reviews the hospital's request and amends the decision, if necessary, within 5 days following receipt of the hospital's request for amendment.

(2) *Discretionary review by the Administrator.* Within 15 days following the issuance of the Administrator's decision, the Administrator, at his or her discretion, may amend the decision to correct mathematical or computational errors, or to correct the decision if the evidence that was considered in making the decision clearly shows on its face that an error was made. The Administrator's amended decision is final and is not subject to judicial review.

Subpart M—Prospective Payment System for Inpatient Hospital Capital Costs

M. Subpart M is amended as follows:

1. In § 412.300, paragraph (b) is revised to read as follows:

§ 412.300 Scope of subpart and definition.

* * * * *

(b) *Definition.* For purposes of this subpart, a new hospital means a hospital that has operated (under previous or present ownership) for less than 2 years. The following hospitals are not new hospitals:

(1) A hospital that builds new or replacement facilities at the same or another location even if coincidental with a change of ownership, a change in management, or a lease arrangement.

(2) A hospital that closes and subsequently reopens.

(3) A hospital that has been in operation for more than 2 years but has participated in the Medicare program for less than 2 years.

(4) A hospital that changes its status from a hospital that is excluded from the prospective payment systems to a hospital that is subject to the capital prospective payment systems.

2. In § 412.302, the introductory text of paragraph (b) is revised; paragraphs (b)(3)(iii) and (b)(7) are added; paragraphs (c)(1)(ii), (c)(1)(iv), (c)(1)(v), (c)(1)(vii)(B) are revised; the introductory text of paragraph (c)(2)(i) is republished; and paragraph (c)(2)(i)(B) is revised, to read as follows:

§ 412.302 Introduction to capital costs.

* * * * *

(b) *Old capital costs.* Except as provided in paragraph (c) of this section with respect to capital obligations that qualify for recognition as old capital, old capital costs are allowable capital-related costs for land and depreciable assets that were put in use for patient care on or before December 31, 1990. However, for a new hospital as defined in § 412.300(b), old capital costs are defined as those allowable capital-related costs for land and depreciable assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period under § 412.328(a)(2). Old capital costs include the following:

* * * * *

(3) * * *

(iii) If an entire hospital is leased without assumption of the hospital's asset costs after December 31, 1990, the amount of allowable capital-related costs recognized as old capital costs is limited to the amount allowed for old capital costs in the base year or the last cost reporting period these costs were recognized under this subpart, whichever is later.

* * * * *

(7) If a hospital had nonreimbursable costs applicable to an old capital asset as of December 31, 1990 that subsequently become allowable inpatient capital-related costs, the allowable costs for such an asset that are attributable to inpatient hospital services are recognized as old capital costs if a portion of the asset was in use for inpatient hospital care on December 31, 1990 and the costs meet all other provisions for recognition of old capital costs contained in this section.

* * * * *

(c) *Obligated capital costs—*(1) *General rule.* * * *

(ii) *Moveable equipment.* Moveable equipment is recognized as old capital only if all of the conditions specified in paragraphs (c)(1)(i) (B) through (D) of this section are met and one of the following conditions is met:

(A) There was a binding contractual agreement that was executed on or before December 31, 1990 and obligates the hospital on or before December 31, 1990 for the lease or purchase of the item of equipment on or before December 31, 1990.

(B) There was a binding contractual agreement that was executed on or before December 31, 1990 and obligates the hospital on or before December 31, 1990 for financing the acquisition of the equipment; the item of equipment costs at least $100,000; and the item was specifically listed in an equipment purchase plan approved by the Board of Directors on or before December 31, 1990.

* * * * *

(iv) *Extension of deadline.* HCFA may extend the deadline in paragraph (c)(1)(i)(B) of this section, under which an asset must be put in use for patient care before October 1, 1994, to no later than September 30, 1996 for extraordinary circumstances beyond the hospital's control. Extraordinary circumstances include, but are not limited to, a construction strike or atypically severe weather that significantly delayed completion of a construction project. Normal construction delays do not constitute extraordinary circumstances.

(A) The hospital must submit its request for an extended deadline with documentation of the extraordinary circumstances by the later of January 1, 1993 or 180 days after the extraordinary circumstance.

(B) The intermediary reviews the request and verifies the hospital's documentation, and forwards the request to HCFA within 60 days. Within 90 days, HCFA notifies the intermediary of its decision and, if an extension is granted, of the revised deadline for putting the asset in use for patient care service.

(v) *Notificotion to intermediary.* The hospital must submit to its intermediary the binding agreement and supporting documents that relate to the obligated capital expenditure by the later of October 1, 1992 or within 90 days after the start of the hospital's first cost reporting period beginning on or after October 1, 1991.

* * * * *

(vii) *Determining old capitol costs.*

* * * * *

(B) The intermediary advises the hospital of its determination by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification under paragraph (c)(1)(v) of this section.

* * * * *

(2) *Lengthy certificate-of-need process.* (i) If a hospital does not meet the criteria under paragraph (c)(1)(i) or paragraph (c)(1)(ii) of this section, but meets all of the following criteria, the estimated cost for the project as of December 31, 1990 may be recognized as old capital costs:

* * * * *

(B) The hospital filed an initial application for a certificate of need on or before December 31, 1989 that includes a detailed description of the project and its estimated cost and had not received approval or disapproval on or before September 30, 1990. If the hospital received conditional approval on or before September 30, 1990, the hospital's intermediary assesses the nature of the conditions. The hospital will be considered to have received approval for the project as of September 30, 1990 if the intermediary determines that the hospital received sufficient approval for the project to proceed without significant delay.

* * * * *

3. In § 412.328, paragraph (a)(3) is added; paragraphs (b)(2), (b)(3), (c)(1), (f)(1)(i), and (f)(1)(iii) are revised; the introductory text of paragraph (f)(3) is republished; paragraph (f)(4) is redesignated as paragraph (f)(5); and a new paragraph (f)(4) is added, to read as follows:

§ 412.328 Determining and updating the hospital-specific rate.

(a) *Base-year cost reporting period.*

* * * * *

(3) *Other hospitals.* For other than a new hospital as defined in § 412.300(b), if a hospital does not have a 12-month cost reporting period or does not have adequate Medicare utilization to file a cost report in a period ending on or before December 31, 1990, the hospital-specific rate is based on the hospital's old capital costs (per discharge) in its first 12-month cost reporting period (or combination of cost reporting periods covering at least 12 months) ending after December 31, 1990.

(b) *Base-year costs per discharge.*

* * * * *

(2) *Discharges.* For the purpose of determining a hospital's base period capital costs per discharge, a discharge includes discharges as defined in § 412.4(a) and transfers as defined in § 412.4(b)(2), adjusted by the transfer adjustment factor that is determined under paragraph (b)(3) of this section.

(3) *Transfer adjustment factor.* (i) For base year cost reporting periods ending on or before December 31, 1990, HCFA uses the base year MEDPAR data received as of June 30, 1991 to develop an adjustment to discharges to account for transfers. HCFA divides the length of stay for each transfer case by the geometric mean length of stay for the DRG (but in no case using a number greater than 1.0) and assigns each nontransfer case a value of 1.0. To determine the transfer adjustment factor, HCFA adds together the adjusted discharges and divides the result by total discharges including transfers.

(ii) For base year cost reporting periods ending after December 31, 1990 but beginning before October 1, 1991, HCFA determines a transfer adjustment factor as described in paragraph (b)(3)(i) of this section for a hospital using the applicable base year MEDPAR data on file as of the December 31 or June 30 occurring at least 6 months after the close of the approved base year.

(iii) For base year cost reporting periods beginning on or after October 1, 1991, the intermediary determines the transfer adjustment factor in place of HCFA as described in paragraph (b)(3)(i) of this section based on the most recent billing data available as of the date of the final determination of the hospital-specific rate.

(c) *Case-mix adjustment*—(1) *Determining transfer-adjusted case mix value. Step 1:* For base year cost reporting periods ending on or before December 31, 1990, HCFA uses the base year MEDPAR data received as of June 30, 1991 to determine the hospital's transfer-adjusted case-mix value. For base year cost reporting periods ending after December 31, 1990 and beginning before October 1, 1991, HCFA determines a transfer-adjusted case-mix value for a hospital using the applicable base year MEDPAR data on file as of the December 31 or June 30 occurring at least 6 months after the close of the base year. For base year cost reporting periods beginning on or after October 1, 1991, the intermediary determines the transfer-adjusted case-mix value based on the most recent billing data available as of the date of the final determination of the hospital-specific rate. HCFA or the intermediary, as appropriate, multiplies the DRG weight for each case by one of the following factors:

* * * * *

(f) *Redetermination of hospital-specific rate*—(1) *General.* (i) Upon request by a hospital, the intermediary redetermines the hospital-specific rate to reflect an increase in old capital costs as determined in a cost reporting period subsequent to the base year. An increase in Medicare old capital cost per discharge that is related solely to a decline in utilization is not recognized as an increase in old capital costs for purposes of this section. New capital costs are excluded from the redetermination of the hospital-specific rate.

* * * * *

(iii) The hospital must request a redetermination in writing no later than the date the cost report must be filed with the hospital's intermediary for the first cost reporting period beginning on or after October 1, 1991 or the cost reporting period that will serve as the new base period, whichever is later. The hospital's redetermination request must include the cost report for the new base period and an estimate of the revised hospital-specific rate indicating that the new rate exceeds the hospital's current hospital-specific rate.

* * * * *

(3) *Redetermined hospital-specific rate.* The intermediary redetermines the hospital-specific rate based on the old capital costs that are determined under paragraph (f)(2) of this section for the new base period. The intermediary—

* * * * *

(4) *Denial by intermediary.* If the intermediary determines, after audit, that the revised hospital-specific rate is lower than the current hospital-specific rate, it advises the hospital that its request is denied and explains the basis for the denial.

* * * * *

4. A new § 412.331 is added to read as follows:

§ 412.331 Determining hospital-specific rates in cases of hospital merger, consolidation, or dissolution.

(a) *Hospital merger or consolidation.* If, after the base year, two or more hospitals merge or consolidate into one hospital as provided for under § 413.134(k) of this chapter, the intermediary determines a revised hospital-specific rate applicable to the combined facility under § 412.328, which is effective beginning with the date of merger or consolidation. The following rules apply to the revised hospital-specific rate and payment determination:

(1) *Revised hospital-specific rate.* Using each hospital's base period data, the intermediary determines a combined average discharge weighted hospital-specific rate.

(2) *Payment determination.* The discharge-weighted hospital-specific rate determined by the intermediary is compared to the Federal rate to establish the appropriate payment methodology under § 412.336 and for payment purposes under §§ 412.340 or 412.344. The revised payment methodology is effective as of the date of merger or consolidation.

(3) *Old capital cost determination.* The capital-related costs related to the assets of each merged or consolidated hospital as of December 31, 1990 are recognized as old capital costs during the transition period. If the hospital is paid under the hold-harmless methodology after merger or consolidation, only that original base year old capital is eligible for hold-harmless payments.

(b) *Hospital dissolution.* If a hospital separates into two or more hospitals that are subject to capital payments under this subpart after the base year, the intermediary determines new hospital-specific rates for each separate hospital under the provisions of § 412.328 effective as of the date of the dissolution. The new hospital-specific rates are determined as follows:

(1) *Hospitol-specific rate*—(i) *Adequate base year data.* The intermediary determines whether the base year capital-related cost data and necessary statistical records are adequate to reconstruct the cost and other data required under § 412.328 from the former hospital's financial records to determine the hospital-specific rates for each facility. If the data are adequate, the intermediary uses the former hospital's base period to determine the hospital-specific rate for each separate hospital.

(ii) *Inadequate original base year data.* If the intermediary determines that the base period data for the former hospital is inadequate to establish separate hospital-specific rates, the intermediary establishes a new base period for each hospital. The new base period is each hospital's first 12-month or longer cost reporting period (or combination of cost reporting periods covering at least 12 months) immediately following separation of the hospitals. The intermediary determines the hospital-specific rate for each hospital using the new base period under § 412.328.

(2) *Payment determinations.* The intermediary applies the payment methodology provisions of § 412.336. The revised payment determination is effective as of the date of the hospital's dissolution.

(3) *Old capital cost determination.* In determining the old capital costs for each hospital, the amount recognized as old capital is limited to the allowable capital-related costs attributable to assets that were in use for patient care as of December 31, 1990, and the hospitals are subject to all other transition period rules of this subpart.

5. Section 412.348(e)(2) is revised to read as follows:

§ 412.348 Exception payments during transition period.

* * * * *

(e) * * *

(2) A hospital must apply to its HCFA Regional Office by the later of October 1, 1992 or 180 days after the extraordinary circumstance causing the unanticipated expenditures for a determination by the HCFA Administrator of whether the hospital is eligible for an additional payment based on the nature of the circumstances and the amount of financial loss documented by the hospital.

* * * * *

PART 413—[AMENDED]

II. Part 413 is amended as follows:

A. The authority citation for part 413 continues to read as follows:

Authority: Sections 1102, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l (a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100-360 as amended by sec. 608(d)(3) of Pub. L. 100-485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 101-234 (42 U.S.C. 1395ww (note)).

Subpart A—Introduction and General Rules

B. Subpart A is amended as follows:

1. In § 413.1, paragraph (d)(2) introductory text and paragraph (d)(2)(i) are revised to read as follows:

§ 413.1 Introduction.

* * * * *

(d) *Payment for inpatient hospital services.*

* * * * *

(2) Payment to short-term general hospitals located in the 50 States and the District of Columbia for the operating costs of hospital inpatient services for cost reporting periods beginning on or after October 1, 1983, and for the capital-related costs of inpatient services for cost reporting periods beginning on or after October 1, 1991, are determined prospectively on a per discharge basis under part 412 of this chapter except as follows:

(i) Payment for capital-related costs for cost reporting periods beginning before October 1, 1991, medical education costs, kidney acquisition costs, and the costs of certain anesthesia services, is described in § 412.113 of this chapter.

* * * * *

2. In § 413.5, the introductory text of paragraph (c) is revised to read as follows:

§ 413.5 Cost reimbursement: General

* * * * *

(c) As formulated herein, the principles given recognition to such factors as depreciation, interest, bad debts, educational costs, compensation of owners, and an allowance for a reasonable return on equity capital (in the case of certain proprietary providers). With respect to allowable costs some items of inclusion and exclusion are:

* * * * *

Subpart B—Accounting Records and Reports

C. Subpart B is amended as follows:

§ 413.24 [Amended]

In § 413.24(f)(3)(iii), the term "prospective payment system" is revised to read "prospective payment systems".

Subpart C—Limits on Cost Reimbursement

D. Subpart C is amended as follows:

In § 413.40, paragraph (a)(2)(i) introductory text is republished; paragraphs (a)(2)(i)(B), (c)(2), (f)(1)(i), and (g)(3)(iii) are revised; and a sentence is added at the end of paragraph (b)(1) to read as follows:

§ 413.40 Ceiling on rate of hospital cost increases.

(a) * * *

(2) *Applicability.* (i) This section is not applicable to—

* * * * *

(B) Hospitals that are paid under the prospective payment systems for inpatient hospital services in accordance with section 1886 (d) and (g) of the Act and part 412 of this chapter.

* * * * *

(b) *Cost reporting periods subject to the rate of increase ceiling*—(1) * * * when the operational structure of a hospital or distinct unit changes (that is, a freestanding hospital becomes a distinct part unit or vice versa) the base period would be the first full 12-month cost reporting period effective with the revised Medicare certification classification.

(c) * * *

(2) *Cost determined on a per case basis.* Costs subject to the ceiling as described in paragraph (c)(1) of this section are determined on a per discharge basis. For purposes of this subpart, a patient is considered discharged on the earliest of the following dates:

(i) The date the patient has exhausted Medicare Part A inpatient hospital benefits (including the election to use lifetime reserve days) during his or her spell of illness.

(ii) The date the patient is formally released as specified in § 412.4(a)(1) of this chapter;

(iii) The date the patient is transferred to another facility.

(iv) The date the patient dies.

* * * * *

(f) *Exemptions* (1)(i) *New hospitals.* A new hospital is exempt from the rate-of-increase ceiling imposed under this section. The exemption begins when the hospital accepts its first patient and ends at the end of the first cost reporting period ending at least two years after the hospital accepts its first patient. The first 12-month cost reporting period beginning at least one year after the hospital accepts it first patient is the base year in accordance with paragraph (b) of this section. For purposes of this

section, a new hospital is a provider of hospital inpatient services that—

(A) Has operated as the type of hospital for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership (or both), for less than two full years; and

(B) Has provided the type of hospital inpatient services for which HCFA granted it approval to participate in the Medicare program, for less than two years.

. . . . . .

(g) *Adjustments*—

. . . . . .

(3) . . .

(iii) *Adjusting operating costs.* Without a formal request from a hospital, HCFA may adjust the amount of operating costs determined under paragraph (c)(1) of this section to take into account certain adjustments. These adjustments include, but are not limited to, adjustments under paragraphs (g)(3)(ii)(A), (B), (C), (E), and (F) of this section.

. . . . . .

Subpart E—Payments to Providers

E. Subpart E is amended as follows:

§ 413.64 [Amended]

In § 413.64, in paragraphs (h)(1)(i) and (h)(1)(ii), the term "prospective payment system" is revised to read "prospective payment systems".

Subpart F—Specific Categories of Costs

F. Subpart F is amended as follows:

Section 413.86 is amended by adding paragraph (h)(6) to read as follows:

§ 413.86 Direct graduate medical education payments.

. . . . . .

(h) . . .

(6) On or after June 1, 1992, the United States Medical Licensing Examination may be substituted for the FMGEMS for purposes of the determination made under paragraphs (h)(1) and (h)(4) of this section. On or after July 1, 1993 only the results of steps I and II of the United States Medical Licensing Examination shall be accepted for purposes of making this determination.

. . . . . .

Subpart G—Capital Related Costs

G. Subpart G is amended as follows:

§ 413.134 [Amended]

1. In § 413.134, in paragraph (f)(2)(iii)(D), the reference "§ 412.340(a)(2)" is revised to read "§ 412.344(a)(2)".

§ 413.157 [Amended]

2. In § 413.157, paragraph (c)(5) is removed.

(Catalog of Federal Domestic Assistance Programs No. 93.733, Medicare—Hospital Insurance; No. 93.744, Medicare—Supplementary Medicare Insurance)

Dated: August 24, 1992.

William Toby, Jr.,

Acting Deputy Administrator, Health Care Financing Administration.

Approved: August 24, 1992.

Louis W. Sullivan,

Secretary.

[**Editorial Note:** The following addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Schedule of Standardized Amounts Effective With Discharges on or After October 1, 1992 and Update Factors and Target Rate Percentages Effective With Cost Reporting Periods Beginning on or After October 1, 1992

I. Summary and Background

In this addendum, we are making changes in the amounts and factors for determining prospective payment rates for Medicare inpatient hospital operating costs and Medicare inpatient hospital capital-related costs. We are also setting forth new target rate percentages for determining the rate-of-increase limits (target amounts) for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1992, except for sole community hospitals, Medicare-dependent for cost reporting periods ending on or before March 31, 1993 small rural hospitals, hospitals located in Puerto Rico, and hospitals subject to the regional floor, each hospital's payment per discharge under the prospective payment system will be comprised of 100 percent of the Federal national rate.

For cost reporting periods beginning on or after April 1, 1990, sole community hospitals and, for cost reporting periods ending on or before March 31, 1993, Medicare-dependent small rural hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate (subject to the regional floor), the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Hospitals in Puerto Rico are paid on the basis of a rate per discharge composed of 75 percent of a Puerto Rico rate and 25 percent of a national rate (section 1886(d)(9)(A) of the Act). Hospitals affected by the regional floor are paid on the basis of 85 percent of the Federal national rate and 15 percent of the Federal regional rate (section 1886(d)(1)(A)(iii) of the Act).

As discussed below in section II, we are making changes in the determination of the prospective payment rates for Medicare inpatient operating costs. The changes, to be applied prospectively, will affect the calculation of the Federal rates. In section III we discuss changes we are making in the determination of the prospective payment rates for Medicare inpatient capital-related costs. Section IV sets forth our changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system. The tables to which we refer in the preamble to the final rule are presented at the end of this addendum in section V.

II. Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 1993

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the manner in which we are changing some of the factors used in determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, will be effective with discharges occurring on or after October 1, 1992. As required by section 1886(d)(4)(C) of the Act, we must adjust the DRG classifications and weighting factors for discharges in FY 1993.

In summary, the standardized amounts set forth in Tables 1a, 1b, and 1c of section V of this addendum were—

- Updated by 2.55 percent for urban hospitals (that is, the market basket percentage increase of 4.1 percent minus 1.55 percent); and 3.55 percent for rural hospitals (that is, the market basket percentage increase of 4.1 percent minus 0.55 percent);
- Adjusted by removing the FY 1992 outlier offsets and applying the revised urban and rural outlier offsets;
- Adjusted to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1992 budget neutrality factor and applying a revised factor; and
- Adjusted to ensure budget neutrality as provided for in sections 1886 (d)(4)(C)(iii) and (d)(3)(E) of the Act by removing the FY 1992 budget neutrality adjustment factors and applying revised budget neutrality adjustment factors to the urban and rural standardized amounts.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required that Medicare target amounts be determined for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886 (d)(2)(C) and (d)(9)(B)(ii) of the Act required that the updated base-year per discharge costs and, for Puerto Rico, the updated target amounts, respectively, be standardized in order to remove from the cost data the effects of certain sources of variation in cost among hospitals. These include case mix, differences in area wage levels, cost of living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Since the standardized amounts have already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, no additional adjustments for these factors for FY 1993 were made. That is, the standardization adjustments reflected in the FY 1993 standardized amounts are the same as those reflected in the FY 1992 standardized amounts.

Sections 1886 (d)(2)(H) and (d)(3)(E) of the Act require that, in making payments under the prospective payment system, the Secretary adjust the proportion of payments that are wage-related (as estimated by the Secretary from time to time). Beginning with October 1, 1990, when the market basket was rebased, we have considered 71.40 percent of costs to be labor-related for purposes of the prospective payment system.

2. Computing Urban and Rural Averages Within Geographic Areas

Section 1886(d)(3) of the Act requires the Secretary to compute three average standardized amounts for discharges occurring in a fiscal year: One for hospitals located in rural areas; one for hospitals located in large urban areas; and one for hospitals located in other urban areas. In addition, under section 1886(d)(9)(B)(iii) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and rural areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 75 percent of the applicable Puerto Rico standardized amount and 25 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines a "large urban area" as an urban area with a population of more than 1,000,000. In addition, section 4009(i) Public Law 100-203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Under that section, urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas."

Based on 1990 population estimates published by the Bureau of the Census, the current 49 large urban areas continue to meet the criteria to be defined as large urban areas for FY 1993. These areas are identified by an asterisk in Tables 4a and 4c. No additional areas have been identified. Therefore, we are making no change in these areas for purposes of this final rule.

Table 1a contains the three national standardized amounts that continue to be applicable to most hospitals. Table 1b sets forth the 27 regional standardized amounts that continue to be applicable for hospitals located in census areas subject to the regional floor. Under section 1886(d)(9)(A)(ii) of the Act, the national standardized payment amount applicable to hospitals in Puerto Rico consists of the discharge-weighted average of the national rural standardized amount, the national large urban standardized amount, and the national other urban standardized amount (as set forth in Table 1a). The national average standardized amount for Puerto Rico is set forth in Table 1c. This table also includes the three standardized amounts that would be applicable to most hospitals in Puerto Rico.

The methodology for computing the national average standardized amounts is identical to the methodology for determining the regional amounts.

3. Updating the Average Standardized Amounts

In accordance with section 1886(d)(3)(A) of the Act, we will update the large urban, other urban, and rural average standardized amounts using the applicable percentage increases specified in section 1886(b)(3)(B)(i). Section 1886(b)(3)(B)(i)(VIII) of the Act (as added by sections 4002 (a) and (c) of Public Law 101-508) specifies the following update factors for the standardized amounts for FY 1993:

- The market basket percentage increase minus 1.55 percentage points (that is, 2.55 percent) for hospitals located in urban areas.
- The market basket percentage increase minus 0.55 percentage points (that is, 3.55 percent) for hospitals located in rural areas.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecasted hospital market basket increase for FY 1993 is 4.1 percent.

Although the update factor for FY 1993 is set by law, we were required by section 1886(e)(3)(B) of the Act to report to Congress no later than March 1, 1992 on our initial recommendation of update factors for FY 1993 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we published the report to Congress as Appendix C to the proposed rule. Our final recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix C to this final rule.

4. Other Adjustments to the Average Standardized Amounts

a. *Reclassified Hospitals—Budget Neutrality Adjustment.* Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals

beginning in FY 1992 based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Section 1886(d)(8)(D) of the Act specifies two budget neutrality objectives that must be met. First, the FY 1993 urban standardized amounts are to be adjusted so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8) (B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. Second, the rural standardized amounts are to be adjusted to ensure that aggregate payments to rural hospitals not affected by these provisions neither increase nor decrease as a result of implementation of these provisions. We note that some rural referral centers have been reclassified for purposes of the standardized amount. The budget neutrality adjustment for geographic reclassifications does not include the cost of paying the rural referral centers the other urban standardized amount since they are already paid on this basis. Rather, the budget neutrality adjustment includes only the difference between the payments to these hospitals after reclassification and payments as a rural referral center before reclassification (for example, higher disproportionate share payments or the difference between large urban and other urban rates, as applicable). Once the rural referral center triennial reviews are implemented beginning October 1, 1992 (see section V.B., above), it is likely that several of these hospitals will no longer be eligible for rural referral center status. At that point, it would be appropriate to include the cost of paying the hospitals the other urban standardized amount in the budget neutrality adjustment factor. Therefore, in calculating the final FY 1993 budget neutrality adjustment factor, we have identified those hospitals that are likely to lose their rural referral center status and determined the cost of paying them the urban standardized amount for the portion of FY 1993 that we estimate they will no longer qualify as a rural referral center. We have included this cost in the budget neutrality adjustment factor. The following adjustment factors, necessary to achieve the requisite budget neutrality constraints, were applied to the proposed standardized amounts:

Urban	Rural
.987245	.999457

The following adjustment factors were applied to the final standardized amounts:

Urban	Rural
.987471	.999433

The adjustment factors are applied to the standardized amounts after removing the effects of the FY 1992 budget neutrality adjustment factors. We note that the proposed FY 1993 adjustments reflected wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of March 30, 1992. The final budget neutrality adjustment factors reflect the effects of all reclassification decisions and changes in these decisions resulting from appeals and review of the MGCRB's decisions for FY 1993, or from a hospital's request for the withdrawal of a reclassification.

b. *Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment.* Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassifications and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II.C of the preamble to this final rule, we normalized the recalibrated DRG weights by an adjustment factor so that the average case weight after recalibration is equal to the average case weight prior to recalibration. While this adjustment is intended to ensure that recalibration does not affect total payments to hospitals, our analysis indicates that the normalization adjustment does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals.

Section 1886(d)(3)(E) of the Act specifies that the hospital wage index must be updated based on new survey data no later than October 1, 1990 and on an annual basis beginning October 1, 1993. This provision also requires that any updates or adjustments to the wage index must be made in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that the DRG reclassification changes and recalibration of the relative weights be budget neutral and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be implemented in a budget neutral manner, we compared aggregate payments using the FY 1992 relative weights and the wage index effective October 1, 1991 to aggregate payments using the proposed FY 1993 relative weights and wage index. The same methodology was used for the FY 1992 budget neutrality adjustment. (See the discussion in the August 30, 1991 final rule (56 FR 43246).) Based on this comparison, we computed a proposed budget neutrality adjustment factor equal to 1.000007. We applied this budget neutrality adjustment factor to the standardized amounts after removing the effects of the FY 1992 budget neutrality adjustment.

The budget neutrality adjustment factor that was applied to the final standardized amount is .999851.

In addition, we are continuing to apply the same FY 1993 adjustment factor to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1992, in order to ensure that we meet the statutory requirement that aggregate payments neither increase nor decrease as a result of the implementation of the DRG weights and updated wage index. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

c. *Retroactive Budget Neutrality Adjustment to Reflect FY 1992 Midyear Wage Index Corrections.* In the September 4, 1990 final rule (55 FR 36042), we set forth under § 412.63(l) (redesignated at § 412.63(p)) our policy for making midyear corrections in the wage index and applying those corrections on a prospective basis effective with discharges occurring after the date the corrections are made. As described in that rule, when midyear corrections are made under the provisions of § 412.63(l), the correction in the wage index value for the affected area is effective prospectively from the date the revision is made; however, both the corresponding prospective adjustment to the wage index values for all other wage areas (to reflect the effect of the corrected data on the national average hourly wage), and the budget neutrality adjustment to the standardized amounts required by section 1886(d)(3)(E) of the Act (to account for the effect on payments of the midyear corrections), are not made until the beginning of the next fiscal year.

To account for the effect that mid-year corrections in the wage index for FY 1992 had on program payments for that year, we computed a retroactive budget neutrality adjustment factor of .999586 in the proposed rule. This adjustment was computed by comparing FY 1992 aggregate payments before the wage data corrections were made with aggregate payments after the revised wage index values were implemented. Based on the additional revised wage values that have been implemented since the proposed rule was issued, the final budget neutral adjustment factor is .999490. This adjustment has been applied to the FY 1993 standardized amounts after removing the effects of the FY 1992 budget neutrality adjustment for mid-year wage corrections.

d. *Outliers.* Section 1886(d)(5)(A) of the Act requires that, in addition to the basic prospective payment rates, payments must be made for discharges involving day outliers and may be made for cost outliers. Section 1886(d)(3)(B) of the Act requires that the urban and rural standardized amounts be separately reduced by the proportion of estimated total DRG payments attributable to estimated outlier payments for hospitals located in urban areas and those located in rural areas. Section 1886(d)(9)(B)(iv) of the Act requires that the urban and rural standardized amounts be reduced by the proportion of estimated total payments made to hospitals in Puerto Rico attributable to estimated outlier payments.

Consequently, instead of a uniform reduction factor applying equally to all the standardized amounts, there are two separate reduction factors, one applicable to the urban national and regional standardized amounts and the other applicable to the rural national and regional standardized amounts. Furthermore, sections 1886(d)(5)(A)(iv) and 1886(d)(9)(D)(i) of the Act direct that outlier payments in any year may not be less than 5 percent nor more than 6 percent of total payments projected to be made based on the prospective payment rates.

In the August 30, 1991 final rule, we set the outlier thresholds so as to result in estimated operating outlier payments equal to 5.1 percent of total operating prospective payments. We also set the same outlier thresholds and offsets for the Puerto Rico prospective payment standardized amounts as we had for hospitals located outside Puerto Rico. For FY 1992, the day outlier threshold is the geometric mean length of stay for each DRG plus the lesser of 32 days or 3.0 standard deviations. The cost outlier threshold is the greater of 2.0 times the prospective payment rate for the DRG or $44,000 ($40,100 for hospitals that have not yet entered the prospective payment system for inpatient capital-related costs). The outlier adjustments for FY 1992 that were effective for discharges on or after October 1, 1991 were .944047 for the urban rates, .979202 for the rural rates, and .949722 for the capital Federal rate.

As discussed in section V.A of the preamble to this final rule, we proposed to establish outlier thresholds that would be applicable to both inpatient operating costs and inpatient capital-related costs. The proposed outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1993 were as follows:

Urban standardized amount	Rural standardized amount	Capital federal rate
.944828	.976065	.9490

The final outlier adjustment factors applied to the standardized amounts and the capital Federal rate for FY 1993 are as follows:

Urban standardized amount	Rural standardized amount	Capital federal rate
.944598	.978420	.9496

We proposed to continue to set the outlier thresholds so as to result in estimated outlier payments equal to 5.1 percent of total prospective payments. The model that we use to determine the outlier thresholds necessary to target our desired outlier payment percentage for FY 1993 uses the FY 1991 MEDPAR file and the most recent available information on hospital-specific payment parameters (such as the cost-to-charge ratios). This information is based on the June 30, 1992 update of the provider-specific file used in the PRICER program.

B. Adjustments for Area Wage Levels and Cost-of-Living

This section contains an explanation of the application of two types of adjustments to the adjusted standardized amounts that will be made by the intermediaries in determining the prospective payment rates as described in section II.D of this addendum. For discussion purposes, it is necessary to present the adjusted standardized amounts divided into labor and nonlabor portions. Tables Ia, Ib, and Ic, as set forth in this addendum, contain the actual labor-related and nonlabor-related shares that will be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico.

1. Adjustment for Area Wage Levels

Sections 1886(d)(2)(H) and 1886(d)(9)(C)(iv) of the Act require that an adjustment be made to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by the intermediaries by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of the preamble to this final rule, we discuss certain revisions we are making to the wage index. This index is set forth in Tables 4a through 4c of the addendum.

2. Adjustment for Cost of Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related cost for these two States are taken into account in the adjustment for area wages above. For FY 1993, the adjustment necessary for nonlabor-related costs for hospitals in Alaska and Hawaii would be made by the intermediaries by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below.

Table of Cost-of-Living Adjustment Factors, Alaska and Hawaii Hospitals

Alaska—All areas	1.25
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui	1.20
Molokai	1.20
Lanai	1.20
Hawaii	1.15

(The above factors are based on data obtained from the U.S. Office of Personnel Management)

C. DRG Weighting Factors

As discussed in section II of the preamble to this final rule, we have developed a classification system for all hospital discharges, assigning them into DRGS, and have developed relative weights for each DRG that are intended to reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs.

Table 5 of section V of this addendum contains the weighting factors that we will use for discharges occurring in FY 1993. These factors have been recalibrated as explained in section II.C of the preamble.

D. Calculation of Prospective Payment Rates for FY 1993

General Formula for Calculation of Prospective Payment Rates for FY 1993

Prospective payment rate for all hospitals located outside Puerto Rico except sole community hospitals and, for cost reporting periods ending on or before March 31, 1993, Medicare-dependent, small rural hospitals = Federal rate

Prospective payment rate for sole community hospitals and, for cost reporting periods ending on or before March 31, 1993, Mediare-dependent, small rural hospitals = Whichever of the rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the FY 1982 hospital-specific rate, or 100 percent of the FY 1987 hospital specific rate

Prospective payment rate for Puerto Rico = 75 percent of the Puerto Rico rate + 25 percent of a discharge-weighted average of the large urban, other urban, and rural national rates

1. Federal Rate

For discharges occurring on or after October 1, 1992 and before October 1, 1993, except for sole community hospitals, Medicare-dependent, small rural hospitals (for cost reporting periods ending on or before March 31, 1993), hospitals located in Puerto Rico, and hospitals subject to the regional floor, the hospital's rate is comprised exclusively of the Federal national rate. Section 1886(d)(1)(A)(iii) of the Act provides that the Federal rate is comprised of 100 percent of the Federal national rate except for those hospitals located in census regions that have a regional rate that is higher than the national rate. The Federal rate for hospitals located in census regions that have a regional rate that is higher than the national rate equals 85 percent of the Federal national rate plus 15 percent of the Federal regional rate. For discharges occurring on or after October 1, 1992, rural hospitals in regions I, II, III, and IV and urban hospitals in regions I, IV, and VI are affected by the regional floor.

The Federal rates are determined as follows:

Step 1—Select the appropriate regional or national adjusted standardized amount considering the type of hospital and designation of the hospital as large urban, other urban, or rural (see Tables 1a and 1b, section V of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4a, 4b, and 4c, section V of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted if appropriate under Step 3).

Step 5—Multiply the final amount from Step 4 by the weighting factor corresponding to the appropriate DRG (see Table 5, section V of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals)

Section 1886(d)(5)(D)(i) of the Act provides that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate (subject to the regional floor), the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Under section 1886(d)(5)(G) of the Act, Medicare-dependent small rural hospitals are eligible for special payment under the prospective payment system for cost reporting periods beginning or after April, 1, 1990 and ending on or before March 31, 1993 using the same formula applicable to sole community hospitals.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. *Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 1993 Cost Reporting Periods.* For cost reporting periods beginning on or after October 1, 1992, we are increasing the hospital-specific rates by 4.1 percent (the hospital market basket percentage increase) for sole community hospitals located in all areas. The update, which is effective for cost reporting periods beginning in FY 1993, is not applicable to Medicare-dependent small rural hospitals since the provision ends with cost reporting periods ending after March 31, 1993. Section 1886(b)(3)(C)(ii) of the Act (as amended by section 4002(c)(2)(A)(ii) of Pub. L. 101-508) provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(ii) of the Act, which, for cost reporting periods beginning in FY 1993, is the market basket rate of increase.

b. *Calculation of Hospital-Specific Rate.* For sole community hospital cost reporting periods beginning on or after October 1, 1992 and before October 1, 1993, the applicable hospital-specific rate will be calculated by multiplying a hospital's hospital-specific rate for the preceding cost reporting period by the applicable update factor (that is, 104.1 percent). In addition, the hospital-specific rate will be adjusted by the budget neutrality adjustment factor (that is, .999851) as discussed in section II.A.4.b of this addendum. This resulting rate will be used in determining under which rate a sole community hospital is paid for its cost reporting period beginning on or after October 1, 1992, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1992 and Before October 1, 1993

a. *Puerto Rico Rate.* The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban, other urban, or rural designation of the hospital (see Table 1c, section V of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate wage index (see Tables 4a and 4b, section V of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 75 percent.

Step 5—Multiply the amount from Step 3 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section V to the addendum).

b. *National Rate.* The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1c, section V of the addendum) by the appropriate wage index.

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 25 percent.

Step 4—Multiply the amount from Step 3 by the weighting factor corresponding to the appropriate DRG weight (see Table 5, section V of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Changes to Payment Rates for Inpatient Capital-Related Costs for FY 1993

The prospective payment system for hospital inpatient capital costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period, hospital inpatient capital-related costs are paid during a 10-year transition period extending through FY 2001 on the basis of an increasing proportion of a Federal rate for capital and a decreasing proportion of a hospital's historical costs for capital as described below.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308-412.352 of the regulations. Below we discuss the manner in which the factors used for determining the Federal rate and the hospital-specific rate are changed. The rate changes will be effective for discharges occurring on or after October 1, 1992.

The FY 1992 standard Federal payment rate for capital-related costs under the prospective payment system was computed by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per discharge. The standard Federal rate is updated each year for increases in capital-related costs as provided in § 412.308(c)(1). Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of total capital payments under the Federal rate. For FY 1992 through FY 2001, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated additional payments made for exceptions under § 412.348. Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that estimated aggregate payments after any changes resulting from the annual DRG reclassification and the recalibration of DRG weights and in the geographic adjustment factor are budget neutral. For FY 1992 through FY 1995, § 412.352 requires that the Federal rate is also adjusted by a budget neutrality factor, so that estimated aggregate payments for inpatient hospital capital costs will equal 90 percent of the estimated payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year.

The hospital-specific rate for each hospital was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment reduction factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. The hospital-specific rate is updated each year for inflation and for changes in the exceptions payment adjustment factor and the budget neutrality adjustment factor.

To determine the appropriate budget neutrality adjustment factors and the exceptions reduction factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. The model and its application are more fully described in appendix B.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid under a special payment formula. These hospitals are paid a blended rate that takes into account their geographical designation and is comprised of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals in the prospective payment system for inpatient capital costs. Accordingly, we compute a separate Federal rate specific to Puerto Rico hospitals using the same methodology used to compute the national rate for capital costs. The Federal rate for hospitals in Puerto Rico is based on 75 percent of the Puerto Rico rate and 25 percent of the national rate.

A. Determination of the FY 1993 Federal Rate for Capital Costs.

For FY 1992, the Federal rate was $415.59. With the changes we proposed to the factors used to establish the Federal rate, we proposed that the FY 1993 Federal rate would be $416.36. In this final rule, we are establishing an FY 1993 Federal rate of $417.29.

In the discussion that follows, we explain the factors that determined the FY 1993 Federal rate. In particular, we explain why the Federal rate has increased only 0.41 percent over FY 1992. The major factor contributing to the modest increase in the Federal rate is the requirement that estimated payments each year from FY 1992 through FY 1995 for capital costs equal 90 percent of what would have been payable that year on a reasonable cost basis. Based on the most recent data, we now estimate that capital payments for FY 1992 will equal 92.85 percent of reasonable costs. The data thus indicates that the budget neutrality adjustment for FY 1992 was not sufficient to meet the 90 percent target. As a consequence, the Federal rate for FY 1992 was higher than it should have been on the basis of the current data. While we do not retroactively adjust the budget neutrality factor and the Federal rate for previous years to account for revised estimates, we do employ the most recent information to refine the budget neutrality adjustment for subsequent years. The result is a larger budget neutrality adjustment for FY 1993, which restricts the increase in the Federal rate to 0.41 percent.

Although the Federal rate for FY 1993 is only 0.41 percent higher than the FY 1992 Federal rate, we note that Federal rate payments (holding the proportion of payment based on the Federal rate constant) will increase by 2.0 percent before any increase in the case-mix index is taken into account. More importantly, we estimate that total capital payments per case will increase 6.21 percent in FY 1993.

If FY 1992 payments had not been excessive (that is, had equalled 90 percent of what would have been payable on a reasonable cost basis), total payments would increase 9.6 percent. We explain below in section III.A.6. why the rate of increase in the Federal rate will generally be lower than the rate of increase in payments. It is important to emphasize that the increase in capital payments is a much more important factor in gauging the adequacy of payment under the capital prospective payment system than changes in the Federal rate alone.

Finally, it should be noted that total payments to hospitals under the prospective payment system will be relatively insensitive to changes in the Federal rate even after the expiration of the budget neutrality provision in FY 1996. Since capital payments constitute about 10 percent of hospital payments, a 1 percentage point change in the Federal rate yields only about a 0.1 percent change in actual payments to hospitals.

1. Standard Federal Rate Update Factor for Inflation

Section 412.308(c)(1)(i) provides that for FY 1993 through FY 1995, the standard Federal rate is updated on the basis of a lagged 2-year moving average of actual increases in Medicare inpatient capital-related costs per discharge. The 2-year moving average is based on the actual increase, adjusted for case-mix index change, in Medicare inpatient capital-related costs per case for the fiscal years 3 and 4 years before the fiscal year in question.

We proposed that the FY 1993 update factor for the Federal rate would be 3.76 percent. In this final rule, we are providing that the final FY 1993 update factor for the Federal rate will be increased by 6.07 percent.

Comment: Several commenters argued that the proposed update factor of 3.76 percent was too low. Some of these commenters noted that the calculation of the average cost per case increases seemed to employ data from a larger set of hospitals than just prospective payment hospitals. These commenters contended that using data only from prospective payment hospitals would produce an update factor of 4.37 percent, or .61 of a percentage point higher than the proposed update factor. One commenter noted that the proposed update factor of 3.76 percent was significantly lower (2.21 percentage points) than the update factor projected at the time of the August 30, 1991 final rule implementing the capital prospective payment system (56 FR 43522).

Response: For FY 1993, the update factor is based on the increase in Medicare inpatient capital-related costs per case between FY 1988 and FY 1990. These are the most recent fiscal years for which cost report data are available. To determine the amount of the increase, we apportioned a hospital's costs and discharges to each fiscal year based on the number of days in the hospital's cost reporting period that occurred during the applicable fiscal year. Thus, an individual hospital may have more than one cost report included in the calculation.

We proposed that the FY 1993 update for the Federal rate would be 3.76 percent. The following chart shows how this figure was computed:

CAPITAL PER CASE INCREASE FROM COST REPORT DATA

FY	Number of hospitals	Capital cost per case [1]	Percent increase	Observed case mix increase (percent)	Adjustment to Case-mix increase (percent)
1988	6356	$485.75			
1989	6282	516.90	6.83	2.52	
1990	5155	547.23	5.46	0.85	1.22

FY	Adjusted case mix (percent)	Case mix adjusted increase (percent)	Average 2-year increase (percent)
1989	2.52	4.20	
1990	2.08	3.31	3.76

[1] These figures represent the capital cost per case, with adjustments for the anticipated effects of cost report audits and reopenings, based on data in the December 1991 update of the HCRIS file. Differences between these figures and the figures in other charts is due to revised data in successive HCRIS updates. For example, the figure for average cost per case used in setting the PPS-capital rate for FY 1992, $527.22, was the 1989 average cost per case, with adjustments for audits and reopenings, based on data from the June 1991 HCRIS update. The figure of $516.90 for FY 1989 in this chart was derived from data in the December 1991 HCRIS update, the latest update available before the publication of the NPRM.

As we noted when we published the June 4, 1992 proposed rule, some cost reports were not included in the HCRIS data we used to compute the proposed update (57 FR 23692). We believed at the time that the missing data was probably from cost reporting periods ending June 30, which include a relative high proportion of hospitals with higher capital costs.

In determining the budget neutrality target for FY 1993 in the proposed rule, we estimated that the final FY 1990 rate of increase in the average cost per case would be 9.6 percent rather than the 5.46 percent increase indicated by the available data on actual costs. Since the regulation provides that the capital update factor be computed as the 2-year average of actual increases in capital-related costs per case, we believed it was more appropriate to use the 5.46 percent supported by actual cost data rather than an estimated increase for FY 1990. (We did, however, use the estimated increase for budget neutrality purposes). As several commenters acknowledged, we made it clear in the proposed rule that we would recompute the average increase using the latest data, and that the results would not necessarily be the same. The latest FY 1990 cost per case rate of increase (8.45 percent) is, in fact, closer to our estimate for budget neutrality purposes than to the calculated rate of actual increase in the proposed rule. It is also similar to the projected FY 1990 rate of increase in the August 31, 1991 final rule.

We emphasize that even though we use cost report data as the basis for our estimates of FY 1993 capital costs, the budget neutrality target is determined by the estimate of FY 1993 capital costs, not by the 2-year average update factor applied to the FY 1992 Federal rate.

Furthermore, as the data on the HCRIS file continue to be updated for the effects of cost report audits, reopenings, and other factors, the FY 1989 increase in average capital cost per case has also risen to 8.55 percent. In this case, the rise in the rate of increase from FY 1988 to FY 1989 was primarily due to a relatively greater decline in the FY 1988 average capital cost per discharge compared to the FY 1989 decline reported in the HCRIS data.

We computed the final update factor of 6.07 percent from the data for all short-term acute care hospitals, including hospitals under alternative payment waivers. We used the group of all short-term acute care hospitals because these hospitals are all similar and the waivers could be terminated at some future date. Furthermore, we use all short-term acute care hospitals for related program purposes, such as determining DRG relative weights. (Since waivered hospitals will not be paid prospectively in FY 1993, we excluded them from the budget neutrality determination. We discuss this issue in section III.A.4 below.) Contrary to the assertions of some commenters, including hospitals excluded from the prospective payment system in the determination of the 2-year average rate of increase would have slightly increased the update factor by 0.13 percent.

The final update factor of 6.07 percent is actually 0.10 of a percentage point higher than the 5.97 percent projected for FY 1993 in the August 30, 1993 final rule, and 2.31 percentage points higher

than the FY 1993 update of 3.76 percent proposed in the June 4, 1992 proposed rule. Because the issues relating to the revised capital update factor in this final rule are so complex, we have developed the following more detailed chart to show how the final FY 1993 update factor was computed:

CAPITAL PER CASE INCREASE FROM COST REPORT DATA

FY	Number hospitals 1st HCR (1)	Number hospitals 2nd HCR (2)	Unadj-capital cost per case (3)	Increase in cost per case (Unadj.) (4)	Audit adjusted capital cost per case [2] (percent) (5)	Increase in adjusted cost per case (percent) (6)	Average two increase in adjusted cost per case (percent) (7)	Observed CMI (percent) (8)	Adj. to CMI (percent) (9)	Adjusted CMI (percent) (10)	Adjusted increase (percent) (11)	Update (Average two year increase of CMI adjusted rate of increase) (percent) (12)
1988	4,329	5,600	$467.50		$468.04							
1989	4,298	5,486	517.31	10.65	508.06	8.55		2.52		2.52	5.88	
1990	4,259	5,406	582.20	12.54	551.07	8.47	8.51	0.86	1.22	2.09	6.25	6.07

[1] Colums 1 and 2 represent the numbers of hospital cost reports used in developing the capital cost per case figure in colume 3. Since hospital cost reporting periods do not all coincide with the Federal fiscal year, data for a given Federal fiscal year must be derived from more than one hospital cost report, allocated proportionately to the Federal fiscal year. For example, for a hospital with a cost reporting period beginning January 1, one quarter of its cost report for the period ending December 31, 1987 would be allocated to Federal fiscal year 1988, and three quarters of its cost report for the period ending December 31, 1988 would be allocated to Federal fiscal year 1987. Column 1 represents the number of cost reports used that ended in the Federal fiscal year in question. Column 2 represents the number of cost reports used that began in the Federal fiscal year in question. Column 2 is greater than Column 1 because Column 2 includes cost reports for hospitals whose cost reporting period coincides with the Federal year along with cost reports for those hospitals whose cost reporting periods do not coincide with the Federal fiscal year. Column 1 includes only cost reports for hospitals whose cost reporting periods do not coincide with the Federal fiscal year.

[2] Figures in column 5 represent the capital cost per case, adjusted for the anticipated effects of cost report audits and reopenings, from the June 1992 update of HCRIS. This column is equivalent to the column labelled Capital Cost per Case in the previous chart showing the computation of the update factor in the June 4, 1992 proposed rule. Differences between the capital cost per case figures used in this chart and in previous charts are due to use of more recent HCRIS data. The following factors were used in adjusting the capital cost per case figures from column 3 for the effects of audits and reopenings:

Audit Adjustment Applied to As-Submitted Cost Reports

Cost reporting periods beginning in:

FY 1987—0.9278
FY 1988—0.9238
FY 1989—0.9212
FY 1990—0.9430

Audit Adjustment Applied to Settled Cost Reports

All years—1.0034

The cost per case figures that result after the application of these audit adjustments to submited and settled costs reports, respectively, are entered in Column 5.

We note that the effect of the update on the Federal rate is limited by the requirement of budget neutrality until FY 1996. Although the update is 2.31 percentage points higher than in the proposed rule, the final FY 1993 Federal rate has only increased 0.22 percent from the proposed FY 1993 rate. It is only 0.41 percent higher than last year's Federal rate, and 2.99 percent lower than the FY 1993 projection in the August 30, 1992 final rule. This is due primarily to the change in the budget neutrality adjustment factor required to assure that payments in FY 1993 will equal 90 percent of what we estimate would have been paid for capital-related costs on a reasonable cost basis. We discuss the change in this factor, and the reasons for that change, in III.A.3 below.

Comment: Some commenters requested clarification of the discrepancy between our estimates of the FY 1989 and FY 1990 increases in the average capital cost per case in the August 1991 projection and the June 1992 final rule.

Response: The following table summarizes the figures we have used at various times for the FY 1989 and FY 1990 rates of increase in capital cost per case.

RATES OF INCREASE IN CAPITAL COST PER CASE

	FY 1989 (percent)	FY 1990 (percent)
FY 1992 Final Rule	[1] 7.82	[2] 8.37
FY 1993 Proposed Rule	[1] 6.83	[1] 5.46
FY 1993 Final Rule	[1] 8.55	[1] 8.47

[1] Cost report calculations with audit adjustments.
[2] Estimate.

As the chart shows, all the figures for the FY 1989 increases were calculated from cost report data with adjustments for the anticipated effects of audits. The FY 1990 figure in the August 30, 1991 final rule was an estimate; the other figures for FY 1990 were calculated from cost report data. The variation in the figures calculated from cost report data is due entirely to changes in that data from one HCRIS update to another. The effects of audits have varied from our adjustments for their projected effects. We base our audit adjustment on the reported effects of previous audits. If the effect of audits on cost reports that are audited later differs from the effect of cost reports audited earlier, then the audit-adjusted capital cost per case will also vary from one HCRIS update to the next.

Comment: One commenter requested an explanation of the 1.22 percent adjustment to case mix increase for FY 1990 used in the computation of the capital update in the June 4, 1992 proposed rule. The commenter noted that the update would have been 4.38 percent without this adjustment.

Response: As we explained in the final rule for FY 1990 (54 FR 36471), 1.22 percent of the total increase in case mix from FY 1987 to FY 1988 resulted from FY 1988 GROUPER changes and recalibration. In other words, 1.22 percent of the increase of case mix from FY 1987 to FY 1988 did not represent an increase in resource requirements that should be recognized in increased payments in subsequent years. To assure that this distortion was not continued into subsequent years, we reduced the FY 1990 weights to remove prospectively the 1.22 percent increase in the average case weight attributable to GROUPER changes and recalibration in FY 1988. In computing the capital update factor, we adjust the rate of increase in capital cost per case for each year used in determining the update for observed case mix increase in that year.

Since 1.22 percent was removed from the FY 1990 weights to adjust for the effects of administrative changes on the DRG weights in 1988, that reduction must be reincorporated into the FY 1990 case mix increase. Case-mix increases for this purpose must be determined with consistent measures of case mix in two comparison years. The 1.22 percent adjustment corrects this inconsistency in determining the appropriate FY 1990 rate of increase. Otherwise, the adjustment would not be based on total observed case-mix increase for FY 1990.

Comment: Two commenters recommended that an add-on adjustment be employed in setting the update factor to account for appropriate changes in new technology prior to the adoption of an analytical update framework in FY 1996.

Response: The present update factor is based on a two-year lagged average of actual costs. Since actual costs include spending for new technology, the cost of new technology is already accounted for in the update factor. A separate adjustment for new technology is therefore not appropriate (and would be double counting) as long as the update is determined by a lagged average of actual costs. The cost of appropriate new technology is one of the factors that we believe should be included in the analytical update framework that will be used beginning in FY 1996. As we discuss in appendix D, we are studying methodologies for incorporating appropriate changes of cost due to new technology along with other factors into the update framework for FY 1996 and beyond.

Comment: One commenter alleged that HCFA was violating its commitment to provide fair and just capital updates by playing budget games with the capital update factor.

Response: The computation of the proposed update factor for FY 1993 was not driven by budget considerations. We employed the methodology established in the August 30, 1991 final rule implementing the capital prospective payment system and the best data available to us at the time to compute the proposed FY 1993 rate. As explained above, the change in the final update factor for FY 1993 is due to more complete and accurate data than were available at the time when we computed the proposed update. As also explained above, the major constraint on the increase in the Federal rate in FY 1993 is the budget neutrality requirement. This requirement was established by statute and we have no discretion in applying it. The update factor is determined independently of the budget neutrality adjustment.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 20 percent for cost reporting periods beginning in FY 1993 for hospitals paid under the fully prospective methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments under the Federal rate for outlier cases, determined as a proportion of inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that 5.1 percent of estimated inpatient operating payments are paid as outlier payments. The inpatient capital-related outlier reduction factor is then set according to the estimated inpatient capital-related outlier payments that would be made if hospitals were all paid according to 100 percent of the Federal rate. It is appropriate, for purposes of calculating the outlier thresholds and the outlier reduction factor, to model all hospitals as if paid 100 percent of the Federal rate. This is because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

For FY 1992, we estimated that outlier payments would equal 5.03 percent of inpatient capital-related payments based on the Federal rate. Accordingly, we applied an outlier adjustment factor of 0.9497 to the Federal rate. In the June 4, 1992 proposed rule, we proposed an outlier reduction factor of 0.9490. Based on the thresholds as set forth in section VI of the preamble to this final rule, we estimate that outlier payments will equal 5.04 percent of inpatient capital-related payments based on the Federal rate in FY 1993. We are therefore applying an outlier adjustment factor of 0.9496 to the Federal rate.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net change in the outlier adjustment to the Federal rate for FY 1993 is 0.9496/.9497 or 0.9999. Thus, the higher outlier payment percentage in FY 1993 will reduce the FY 1993 Federal rate by an additional .01 percent (1−0.9999) compared with the FY 1992 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Weight and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that estimated aggregate payments for the fiscal year based on any changes resulting from the annual reclassification and recalibration of the DRG weights and in the geographic adjustment factor equal estimated aggregate payments that would have been made on the basis of the Federal rate without such changes.

We proposed to adjust the Federal rate to maintain budget neutrality for changes in DRG weight and the geographic adjustment factor by a factor of 0.9906. In this final rule, we are applying a factor of 0.9980 to meet this requirement.

Comment: One commenter observed that the application of the "new" factor to preserve budget neutrality for changes resulting from any annual recalibration and reclassification of the DRG weights and in the geographic adjustment factor accounted for almost 1 percentage point of the 3.21 percent difference between the projection of the FY 1993 Federal rate in the August 30, 1991 final rule and the proposed FY 1993 Federal rate.

Response: This adjustment factor is not new in the sense that provision was made for the adjustment in the August 30, 1991 final rule implementing the capital prospective payment system. Consistent with the prospective payment system for operating costs, we believe that changes in the DRG weights and geographic adjustment factor (including those resulting from geographic reclassifications) should be budget neutral. The adjustment is applied for the first time this year since it was designed to adjust for all changes in DRG weights and in the geographic adjustment factor after the initial year of the capital prospective payment system.

We use the actuarial model described in Appendix B to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the geographic adjustment factor. We also use the model to estimate aggregate payments that would have been made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the geographic adjustment factor. For FY 1993, we estimated in the proposed rule that a budget neutrality factor of 0.9906 was necessary for this purpose. For the final rule, we have determined that a factor of 0.9980 is necessary. Appendix B contains a more detailed description of the methodology used to determine this factor. We note that this factor accounts only for changes due to DRG classification changes and recalibration and in the geographic adjustment factor. It does not account for changes in payments due to changes in the disproportionate share and indirect medical education adjustment factors. It incorporates the effects of the geographic adjustment factor of FY 1993 geographic reclassification decisions made by the MGCRB compared to FY 1992 decisions.

4. Budget Neutrality Factor To Assure Aggregate Payments Equal 90 Percent of Reasonable Cost Payments

As amended by section 4001(b) of Public Law 101–508, section 1886(g)(1)(A) of the Act requires that aggregate payments made each year from FY 1992 through FY 1995 for hospital inpatient services be reduced in a manner that results in savings equivalent to 10 percent of what HCFA estimates would have been payable on a reasonable cost basis for inpatient capital-related costs in that year. The Conference Committee report accompanying Pub. L. 101–508 indicated that, prior to the fiscal year, the Secretary may estimate the budget neutrality adjustment based on the best available information (H.R. Conf. Rep. No. 964, 101st Cong., 2nd Sess. 691 (1990)). In keeping with the legislation, no retroactive adjustment is made if aggregate payments are greater than or less than 90 percent of actual Medicare inpatient capital-related costs for that year.

Section 412.352 of the regulations provides that HCFA determines an adjustment to the hospital-specific rate and the Federal rate proportionately, so that the estimated payments for capital in each year from FY 1992 through FY 1995 will equal 90 percent of what would have been payable that year on a reasonable cost basis. The effect of this provision is that the savings required under section 1886(g)(1)(A) of the Act are realized entirely through a reduction in payment for capital costs in FY 1992 through FY 1995.

We proposed a budget neutrality adjustment factor of 0.9564. In this final rule, we are establishing a budget neutrality factor of 0.9162. One reason for the change in the budget neutrality factor since the June 4, 1992 proposed rule is a decline in the projected FY 1993 capital cost per case budget neutrality target. We develop this target from available data on the average Medicare capital cost per case of all short-term acute care hospitals subject to the capital prospective payment system (excluding waiver hospitals), which we update to FY 1993 on the basis of estimated rates of increase in Medicare capital costs per case. The FY 1993 capital cost per case budget neutrality target declined 3.12 percent from the June 4, 1992 proposed rule to this final rule. Two significant factors account for this decline. One factor is the decline in the Medicare capital cost per case reported in the HCRIS updates. We believe that this decline is due to actual audit reductions higher than we originally projected. The second factor is a decline in our latest estimates of the projected increases in Medicare capital costs per case.

For the June 4, 1992 proposed rule, we had data from the December 1991 HCRIS update on the average Medicare capital cost per case for all hospitals in FY 1989. We adjusted this figure for the effects of audits and developed a projected average Medicare capital cost per case for FY 1993 on the basis of estimated rates of increase in Medicare inpatient capital cost per case. We then used the projected FY 1993 average Medicare capital cost per case as the budget neutrality target for FY 1993, and computed the budget neutrality adjustment accordingly.

For this final rule, we have actual data for FY 1990 from the June 1992 HCRIS update. Therefore, we are able to use FY 1990 capital costs per case rather than FY 1989 costs per case as the basis for projecting a FY 1993 average capital cost per case budget neutrality target. In computing the final FY 1993 budget neutrality target, we adjusted the FY 1990 capital cost per case for the effect of audits as we had done in the June 4, 1992 proposed rule for the FY 1989 amount. We eliminated the data from excluded and waiver hospitals, so that the average capital cost per case is based only on short-term acute care hospitals subject to the capital prospective payment system. Eliminating the waiver hospitals from the budget neutrality determination has the effect of raising the capital cost per case by 0.7 percent (from $551.07 per case to $554.94 per case) compared to using all short-term acute case hospitals including those in waiver states. We also adjusted the FY 1990 average Medicare capital costs for expansion of the preadmission DRG window and for the effects of transfers on the total discharge count used to determine the Medicare cost per case. We made both these adjustments in calculating the FY 1989 Medicare inpatient cost per case in the August 30, 1991 final rule (56 FR 43368). We included these adjustments in the budget neutrality target computation for consistency. Finally, we applied revised estimates of the rate of increase in capital costs per case between FY 1990 and FY 1993 to arrive at a projected FY 1993 average Medicare capital cost per case.

In the June 4, 1992 proposed rule, we estimated there would be a 29.1 percent increase in Medicare inpatient capital costs per case, between FY 1990 and FY 1993. In this final rule, we estimate the increase over that period will be 26.9 percent. The following chart shows how the rate of increase estimates for FY 1991 through FY 1992 were calculated in the June 4, 1992 proposed rule and for this final rule:

COMPARISON OF FACTORS FOR MEDICARE INPATIENT CAPITAL COST PER CASE INCREASES: NPRM AND FINAL RULE

[In Percentages]

FY	(1) Total inpatient capital			(2) Medicare share			(1) × (2) = (3) Medicare inpatient capital			(4) Medicare enrollment			(5) Admissions incidence			(4) × (5) = (6) Medicare admissions			(3)/(6) = (7) Estimated increase in medicare inpatient capital cost per case		
	NPRM	Final	Change	NPRM	Final	Change	NPRM	Final	Change	NPRM	Final	Change	NPRM	Final	Change	NPRM	Final	Change	NPRM	Final	Change
91	5.99	5.81	−0.17	2.94	2.34	−0.58	9.11	8.28	−0.76	2.19	2.19	−0.00	−0.72	−0.71	0.01	1.46	1.47	0.01	7.54	6.71	−0.77
92	8.00	8.00	0.00	3.00	3.00	0.00	11.24	11.24	0.00	1.99	2.22	0.23	−0.03	0.25	0.28	1.96	2.47	0.50	9.10	8.56	−0.50
93	9.00	9.00	0.00	3.30	3.30	0.00	12.60	12.60	0.00	1.73	2.11	0.37	0.56	0.62	0.06	2.30	2.75	0.44	10.07	9.58	−0.45

The chart shows the causes of the decline in the rate of increase projections. For FY 1991, the decline in the projected rate of increase is due to the 0.17 percent decline in the projected rate of increase of total Medicare capital and the 0.58 percent decline in the projected rate of increase of Medicare dayshare. Together these factors produced a 0.76 percent decline in the projected rate of increase of Medicare inpatient capital. Combined with a 0.01 percent rise in the projected rate of increase of Medicare admissions, this produced a 0.77 percent decline in the projected rate of increase of Medicare capital cost per case. For FY 1992 and FY 1993, the decline is due to higher projected rates of increase in Medicare admissions (0.50 percent and 0.44 percent respectively). These changes are due in turn to higher projected rates of increase for Medicare enrollment (0.23 percent for FY 1992 and 0.37 percent for FY 1993) and higher projected rates of increase for admissions incidence (0.28 percent for FY 1992 and 0.06 percent for FY 1993).

The revised figures employed in this final rule come from our regular midsession budget review. The revised figures for FY 1991 derive from actual data which differed from our projections. For FY 1992, we now have preliminary data that shows admissions are increasing. We expect these increases to continue into FY 1993. Accordingly, we have raised our estimates of the rate of increase in admissions for the rest of FY 1992 and for FY 1993. The higher rates of increase in enrollment are based on SSA data that have become available since the June 4, 1992 proposed rule and show an increase in the disability population.

The following chart shows the effect of the reduced rates of increase by comparing the projections from FY 1990 to FY 1993 in the proposed rule and in the final rule:

EFFECT OF REVISED RATE OF INCREASE ESTIMATES ON CALCULATION OF FY 1993 BUDGET NEUTRALITY TARGET

	Capital cost per case	Percent change in rate of increase	Percent change in capital cost per case
FY 1990:			
Proposed	$568.66 [1]		
Final	560.49 [2]	N/A	−1.44
FY 1991:			
Proposed 7.54%	611.54		
Final 6.71%	598.10	−0.77	−2.20
FY 1992:			
Proposed 9.10%	667.19		
Final 8.56%	649.30	−0.49	−2.68
FY 1993:			
Proposed 10.07%	734.38		
Final 9.58%	711.50	−0.45	−3.12
Cumulative		−1.70	

[1] FY 1990 estimate, based on December 1991 HCRIS data (audit-adjusted) for FY 1989 and estimated rate of increase of 9.59 percent.
[2] FY 1990 cost per case based on June 1992 HCRIS data, audit-adjusted, excluding waiver hospitals and PPS-excluded hospitals, and adjusted for preadmission DRG window and transfers.

The chart shows that the cumulative effect on the revised rates of increase is to lower the FY 1993 budget neutrality target by 1.70 percent. Together with the 1.44 percent decline due to updated HCRIS data, this accounts for the 3.12 percent reduction in the FY 1993 capital cost per case budget neutrality target.

In addition to the lower FY 1993 capital cost- per-case budget neutrality target, the other factor that contributes to the revised budget neutrality adjustment factor in this final rule is higher update factor for the Federal and hospital-specific rates. Even without a decrease in the budget neutrality target, the higher update factor would have produced high payments based on those rates that would have required a reduction in the budget neutrality adjustment factor.

One implication of the revised capital cost per case budget neutrality targets is that, based on current data, the budget neutrality adjustment for FY 1992 was not sufficient to meet the 90 percent target. As a consequence, the Federal rate for FY 1992 was higher than it should have been on the basis of the revised capital cost per case estimates. While we do not retroactively adjust budget neutrality factors for previous years to account for revisions in our estimates, we do employ the information obtained through our monitoring efforts to refine the budget neutrality adjustment for subsequent years. Thus, in this final rule, we use the most recently available data to establish the budget neutrality adjustment for FY 1993. For FY 1993, we proposed to apply a budget neutrality factor of 0.9564 to realize the required expenditure level. The budget neutrality factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. In this final rule, the budget neutrality adjustment factor is 0.9162. This represents a net −4.58 percent adjustment (.9162/.9602 = .9542) to the FY 1992 Federal rate, and a net adjustment of −4.20 percent (.9162/.9564 = .9580) in the FY 1993 Federal rate proposed in the June 4, 1992 proposed rule.

5. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated additional payments for exceptions under § 412.348 determined as a proportion of total payments under the hospital-specific rate and Federal rate. The model developed for determining the budget neutrality adjustment factor is also used to estimate payments under the exceptions payment process and to determine the exceptions payment adjustment factor.

For FY 1992, we estimated that exceptions payments would equal 1.87 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of .9813 (1-0.0187) in determining the Federal rate. For FY 1993, we estimated in the June 4, 1992 proposed rule that exceptions payments would equal 3.9 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we proposed to apply an exceptions reduction factor of 0.9610 to determine the FY 1993 Federal rate. For this final rule, we are estimating that exceptions payments for FY 1993 will equal 2.44 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We are therefore applying an exceptions payment reduction factor of 0.9756 to the Federal rate for FY 1993.

We expect exceptions payments to increase during the transition period as payments are increasingly based on the Federal rate. This accounts for the higher level of exceptions payments for FY 1993 compared to FY 1992. The lower level of exceptions payments in this final rule compared to the proposed rule is due to the lower projected FY 1993 capital costs per case, which has the effect of reducing the number of hospitals that qualify for an exception and the amount of the exception for those that do qualify.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the net adjustment to the FY 1993 Federal rate is −0.58 percent (.9756/.9813, or 0.9942) in comparison to the FY 1992 Federal rate, and +1.52 percent (.9756/.9610 or 1.0152) in comparison to the proposed Federal rate.

6. Standard Federal Rate for FY 1993

For FY 1992, the Federal rate was $415.59. With the changes we proposed to the factors used to establish the Federal rate, we proposed that the FY 1993 Federal rate would be $416.36. In this final rule, we are establishing an FY 1993 Federal rate of $417.29. The final Federal rate for FY 1993 was calculated as follows:

- The FY update factor is 1.0607.
- The FY 1993 outlier adjustment factor is 0.9496.
- The FY 1993 budget neutrality factor applied to the standard Federal rate for changes in the DRG relative weights and in the geographic adjustment factor is 0.9980.
- The FY 1993 budget neutrality adjustment factor that is applied to the standard Federal payment rate and the hospital-specific rate to assure that aggregate payments equal 90 percent of payments that would have been made on a reasonable cost basis is 0.9162.
- The FY 1993 exceptions payment adjustment factor is 0.9756.

Since the Federal rate had already been adjusted for differences in case mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we proposed to make no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factors for changes in the DRG relative weights and the geographic adjustment factor.

Comment: We received 15 comments on the proposed FY 1993 capital Federal rate. All the commenters noted that the proposed FY 1993 rate represented only a small increase over the FY 1992 rate. Seven commenters noted that the proposed FY 93 Federal rate was 3.21 percent lower than the rate of $430.17 projected in the August 30, 1991 final rule (56 FR 43522). One commenter also noted that while reasonably accurate projections of the budget neutrality adjustment and the exceptions reduction factor were included in the August 30, 1991 final rule projection, the projection did not include an estimate of the effects of the budget neutrality adjustment for case-mix change and change in the geographic adjustment factor. The commenter noted that this accounted for 1 percentage point of the difference between the August 1991 projection and the proposed FY 1993 Federal rate.

Seven commenters expressed concern that the proposed increase in the Federal capital rate would not be adequate to meet hospitals' Medicare capital-related costs. Three commenters noted that the small increase in the proposed Federal capital rate had already made it more difficult or more costly for hospitals to borrow. One commenter noted that the investment community places great (perhaps symbolic) importance on the amount of the Federal rate over total per case capital payments in judging whether hospitals are likely to have adequate funds under the capital prospective payment system to meet debt service.

Response: We explain in detail below the reasons why the FY 1993 Federal rate is lower than the rate projected in the August 30, 1991 final rule. We believe it is important to keep in mind, however, that while the Federal rate has increased by only 0.4 percent, largely because of budget neutrality constraints, we estimate total capital payments will increase by 6.2 percent.

We are sensitive to the concerns of hospitals that there be predictability in the levels of their capital payments. We make our projections based on the best data available at the time, and we share them so that others will have the most current information on what we estimate capital payments will be over the next few years. At the same time, we have a statutory obligation to assure that payments equal 90 percent of what would have been available on a reasonable cost basis and to revise our estimates for rate-setting purposes as better data become available. When we published the projections for fiscal years 1993 through 1996 in the August 30, 1991 final rule, we cautioned that they were only estimates, and that they were subject to revisions resulting from continued methodological refinements, more recent data, and payment policy changes. Some difference between the projection and the proposed FY 1993 Federal rate were therefore only to be expected.

The chart below compares the final FY 1993 Federal rate with the August 1991 projection. As the chart shows, the final update factor of 6.07 percent is slightly higher (0.09 percent) than the August 1991 projection. While the final FY 1993 GAF/DRG budget neutrality factor and the final outlier reduction factor have the effect of slightly decreasing the Federal rate (0.20 percent and 0.01 percent, respectively) in comparison to the projection, the final exceptions reduction factor has the effect of increasing the Federal rate by 1.57 percent compared to the projection. Our August 30, 1991 projection did not include the DRC/GAF budget neutrality factor because we had no basis for predicting the additional FY 1993 geographic reclassifications. While we estimate exceptions payments will be higher in FY 1993 than they were in FY 1992, they will be lower than we projected in August, 1991. This is probably due to the lower FY 1993 capital cost-per-case budget neutrality target for FY 1993, as we explained in section III.A.5. above. Finally, the major cause for the decrease in the final FY 1993 Federal rate compared to the August 1991 projection is the budget neutrality adjustment factor. We have explained the effects of the lower FY 1993 budget neutrality target and the higher FY 1993 update factor on the determination of the final budget neutrality adjustment factor for FY 1993 in section III.A.4. above.

COMPARISON OF FEDERAL RATE CALCULATION AUGUST 1991 PROJECTION AND FINAL FY 1993 RATE

	Cost per discharge	Percent change from FY 93	Cumulative percent change
	Projection		
FY 89 cost per discharge	$527.22		
FY 89 cost per discharge updated to 92, adjusted for transfers and payment parameters	464.42		
Update factor:			
Projection: 1.0597	492.15		
Final FY 93: 1.0607	492.61	0.09	0.09
GAF/DRG budget neutrality factor:			
Projection: 1.0000	492.15		
Final FY 93: 0.9980	491.63	−0.20	−0.11

COMPARISON OF FEDERAL RATE CALCULATION AUGUST 1991 PROJECTION AND FINAL FY 1993 RATE—Continued

	Cost per discharge	Percent change from FY 93	Cumulative percent change
	Projection		
Outlier reduction factor:			
Projection: 0.9497	467.39		
Final FY 93: 0.9496	466.85	−0.01	−0.12
Exceptions reduction factor:			
Projection: 0.9605	448.93		
Final FY 93: 0.9756	455.46	1.57	1.45
Budget neutrality reduction factor:			
Projection: 0.9582	430.17		
Final FY 93: 0.9162	417.29	−4.38	−2.99
Net change:			
Projected FY 93 rate	430.17		
Final FY 93 rate	417.29	−2.99	

We provide below a comparison of the final rate calculation that accounts for changes in the Federal rate from FY 1992. At each step, dollar amounts are shown to illustrate the cumulative effect on the Federal rate of each adjustment factor, and the difference in the effect of each adjustment factor between the final FY 1992 rate and the final rate for FY 1993. The cumulative percent change column shows the difference, to that point in the table, between the FY 1992 rate and the final FY 1993 rate.

The 1993 update increases the Federal rate 6.07 percent compared to the rate in FY 1992 while the DRG/GAF budget neutrality factor decreases the Federal rate by 0.20 percent. The exceptions reduction factor decreases the proposed Federal rate by 0.58 percent compared to the exceptions reduction for FY 1992. The budget neutrality adjustment factor reduces the FY 1993 rate by 4.58 percent compared to the budget neutrality reduction in FY 1992. The combined effect of all the changes is to increase the FY 1993 Federal rate by 0.41 percent over the FY 1992 Federal rate.

COMPARISON OF FEDERAL RATE CALCULATION FROM FY 1992 FINAL RULE TO FY 1993 FINAL RULE

	Cost per discharge	Percent change from FY 92 rate from FY 92 (percent)	Cumulative percent change
FY 89 cost per discharge	$527.22		
FY 89 cost per discharge updated to 92, adjusted for transfers and payment parameters	464.42		
Update factor:			
FY 92	464.42		
FY 93: 1.0607	492.61	6.07	6.07
GAF/DRG budget neutrality factor:			
FY 92: 1.0000	464.42		
FY 93: 0.9980	491.63	−0.20	5.86
Outlier reduction factor:			
FY 92: 0.9497	441.06		
FY 93: 0.9496	466.85	−0.01	5.85
Exceptions reduction factor:			
FY 92: 0.9813	432.61		
FY 93: 0.9756	455.46	−0.58	5.23
Budget neutrality reduction factor:			
FY 92: 0.9602	415.59		
FY 93: 0.9162	417.29	−4.58	.41
Net change:			
FY 92 rate	415.59		
FY 93 rate	417.29	.41	

Below we are providing a chart that demonstrates how our final FY 1993 Federal rate differs from the proposed FY 1993 Federal rate. The final update factor has the effect of raising the Federal rate by 2.23 percent. The revised DRG/GAF budget neutrality adjustment and outlier reduction factor have the effect of increasing the Federal rate marginally, and the revised exceptions reduction factor has the effect of increasing the Federal rate by 1.52 percent. However, the revised budget neutrality adjustment factor has the effect of decreasing the Federal rate by 4.20 percent, thus producing an increase of only 0.22 percent in the FY 1993 Federal rate between the June 4, 1992 proposed rule and this final rule.

COMPARISON OF FY 1993 PROPOSED FEDERAL RATE TO FY 1993 FINAL FEDERAL RATE

	Cost per discharge proposed	Percent change from FY 93 proposed (percent)	Cumulative change from FY 93 (percent)
FY 89 cost per discharge	$527.22		
FY 89 cost per discharge updated to 92, adjusted for transfers and payment parameters	464.42		
Update factor:			
Proposed FY 93: 1.0376	481.88		
Final FY 93: 1.0607	492.61	2.23	2.23
GAF/DRG budget neutrality factor:			
Proposed FY 93: 0.9906	477.35		
Final FY 93: 0.9980	491.63	.75	2.99
Outlier reduction factor:			
Proposed FY 93: 0.9490	453.01		
Final FY 93: 0.9498	466.85	.06	3.06
Exceptions reduction factor:			
Proposed FY 93: 0.9610	435.34		
Final FY 93: 0.9756	455.46	1.52	4.62
Budget neutrality reduction factor:			
Proposed FY 93: 0.9564	416.36		
Final FY 93: 0.9162	417.29	−4.20	.22
Net change:			
Proposed FY 93 rate	416.36		
Final FY 93 rate	417.29	.22	

We estimated in the June 4, 1992 proposed rule that capital payments per case would increase 7.7 percent in FY 1993. With the lower budget neutrality target in this final rule, we project that capital payments per case will increase 6.2 percent in FY 1993. It is to be expected that the rate of increase in the Federal rate will generally be lower than the rate of increase in payments. As capital costs per case increase, total capital payments per case will increase proportionately through FY 1995 because of the requirement that aggregate payments for capital-related costs equal 90 percent of what would have been payable on a reasonable cost basis. At the same time, the amount of exceptions payments will increase as the transition progresses. These higher exceptions payments must be offset in the Federal rate determination, which reduces the increase in the Federal rate. For FY 1993, we expect exceptions payments to be more than twice as much as in FY 1992. The increase in capital payments per case is a much more important factor in gauging the adequacy of reimbursement under the capital prospective payment system than changes in the Federal rate alone. We believe that the projected increase in capital payments per case of 6.2 percent should be sufficient to provide adequate payment to hospitals to cover their Medicare related costs. In this regard, we note that the 6.2 percent increase is in relation to FY 1992 payment levels that we now estimate will equal 92.85 percent of what would have been payable on a reasonable cost basis (instead of 90 percent as required by statute). If FY 1992 payments had not been excessive, the FY 1993 increase would be 9.6 percent.

7. Rate for Puerto Rico Hospitals

For FY 1992, the rate for Puerto Rico hospitals was $319.68. With the changes we proposed making to the factors used to determine the rate, the FY 1993 standard rate for Puerto Rico would have been $320.27. With the changes we are adopting in this final rule, the standard rate for Puerto Rico is $320.99.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate each year be determined by adjusting the FY 1992 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 1993, we proposed that the hospital-specific rate be updated by a factor of 1.0376. In this final rule, we are updating the hospital-specific rate by a factor of 1.0607.

2. Exceptions Payment Adjustment Factor

For FY 1992 through FY 2001, the updated hospital-specific rate is reduced by an adjustment factor equal to the estimated additional payments for capital-related costs for exceptions under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 1993, we estimated in the proposed rule that exceptions payments would be 3.9 percent of aggregate payments based on the Federal rate and the hospital-specific rate. We therefore proposed that the updated hospital-specific rate be reduced by a factor of 0.9610. In this final rule, we are applying an exceptions reduction factor of 0.9756 to the hospital-specific rate. The exceptions reductions factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. The net adjustment to the FY 1993 hospital-specific rate compared to FY 1992 would therefore be −.58 percent (.9756/.9813 or .9942).

3. Budget Neutrality Adjustment Factor

For FY 1992 through FY 1995, the updated hospital specific rate is adjusted by a budget neutrality adjustment factor determined under § 412.352 of the regulations so that estimated aggregate payments under the capital prospective payment system will equal 90 percent of what would have been payable on a reasonable cost basis. (The budget neutrality adjustment for changes in the DRG relative weights and in the geographic adjustment factor is not applied to the hospital-specific rate.) For FY 1993, we proposed a budget neutrality factor of 0.9564. In the final rule, we are applying a budget neutrality factor of 0.9162 to the hospital-specific rate. The budget neutrality factor is not built permanently into the rates; that is, the factor is not applied cumulatively in determining the hospital-specific rate. The net adjustment to the FY 1993 hospital-specific rate in comparison to

FY 1992 would therefore be −4.58 percent (.9162/.9602 or .9542).

4. Net Change to Hospital-Specific Rate

We are providing a chart below to show the net change to the hospital-specific rate. The chart shows the factors for FY 1992 and Fy 1993 and the net adjustment for each factor. It also shows that the proposed cumulative net adjustment from FY 1992 to FY 1993 is 1.0062, which represents an increase of 0.62 percent to the hospital-specific rate. The FY 1993 hospital-specific rate for each hospital is determined by multiplying the FY 1992 hospital-specific rate by the cumulative net adjustment of 1.0062.

FINAL FY 1993 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

		Net adjustment	Percent change
Update Factor:			
FY 92:			
FY 93:	1.0607	1.0607	6.07
Exceptions payment adjustment factor:			
FY 92:	0.9813		
FY 93:	0.9755	0.9942	−0.58
Budget neutrality adjustment factor:			
FY 92:	0.9602		
FY 93:	0.9162	0.9542	−4.58
Cumulative adjustments:			
FY 92:	0.9422		
FY 93:	0.9481	1.0062	0.62

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 1993

Comment: One commenter expressed concern over HCFA's use of the hospital wage index to adjust the Federal rate for local cost variations (the geographic adjustment factor). The commenter maintained that the use of the area wage index for payment to hospitals for purchases of new equipment is inappropriate since the cost of equipment from national manufacturers is unrelated to a hospital's geographic location. The commenter thus recommended the development of a more accurate index.

Response: The formula for the geographic adjustment factor already accounts for the concern expressed in the comment. The adjustment factor equals the hospital wage index value applicable to a hospital raised to the .6848 power and is applied to 100 percent of the Federal rate. When the wage index is raised to the .6848 power, it has the effect, on average, of adjusting .6848 of the Federal rate by the wage index. This means that only the part of the Federal rate which is actually affected by local cost variations, rather than the part which is determined by uniform national costs for equipment, is adjusted by the wage index. The exponential form is used in order to apply one factor to the whole capital payment, rather than forming labor and nonlabor shares. The present formula still provides the most accurate adjustment available to account for local cost variation. As we explained in the preamble to the August 30, 1991 final rule for the capital prospective payment system (56 FR 43374), the use of the hospital wage index was justified by our regression analyses, and the formula was determined in accordance with the results yielded by those analyses. While we still believe that the hospital wage index is the most appropriate basis for the geographic adjustment factor that is currently available, we agree with the commenter that the issue warrants continued study and evaluation.

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two alternative payment methodologies: the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate is determined by adjusting:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's geographic adjustment factor, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, where appropriate).

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor) × (Large Urban Add-on, if applicable) × (for hospitals located in Alaska and Hawaii, COLA adjustment) × (1 + Disproportionate Share Adjustment Factor + Indirect Medical Education Adjustment Factor, if applicable).

The result is termed the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost-reporting period beginning on or after October 1, 1993 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis throughout the transition period.

Payment for each discharge under the fully prospective methodology is the sum of:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 1993 are 20 percent of the adjusted Federal rate and 80 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that will be 20 percent of the Federal rate for discharges occurring in cost reporting periods beginning during FY 1993. Thus, a fully prospective hospital will receive 20 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 1993. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the hospital's outlier payments is included in its payments.

The rules to establish outlier thresholds for FY 1993 are published in section V.A of the preamble to this final rule. For FY 1993, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the larger of 2.0 times the prospective payment rate for the case of $35,500. A case qualifies as a day outlier for FY 1993 if the length of stay is greater than the geometric mean length of stay for the DRG plus the lesser of three standard deviations of the length of stay or 23 days. For hospitals not subject to capital PPS (such as new hospitals under section 412.300(b) of the regulations), the operating cost outlier threshold is the greater of 2.0 times the operating prospective payment rate or $32,500. This threshold is derived by apportioning $35,500 in operating cost using the national average operating and capital cost-to-charge ratios (.6326 and .0594, respectively). This method is the same one used to develop last year's operating only threshold, as described at 56 FR 43227.

During the capital prospective payment system transition period, any hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The minimum payment levels for portions of cost reporting periods occurring in FY 1993 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent and urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and,
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first two years of operation and are paid 85 percent of their reasonable costs during that period. As discussed in section VI.A. of the preamble to this final rule, we are clarifying that a new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period will extend for 8 years, even though the hold-harmless payments may extend beyond the normal transition period.

IV. Target Rate Percentages for Hospitals and Hospital Units Excluded From the Prospective Payment System

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1866(b) of the Act, which is implemented in § 413.40 of the regulations. Under these limits, an annual target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience, trended forward by the applicable update factors. This target amount is applied as a ceiling on the allowable costs per discharge for the hospital's next cost reporting period.

Effective with cost reporting periods beginning on or after October 1, 1991, a hospital that has inpatient operating costs per discharge in excess of its target amount will be paid its target amount plus 50 percent of its costs in excess of the target amount. Total payments may not exceed 110 percent of the target amount. However, a hospital that has inpatient operating costs less than its target amount will be paid its costs plus the lower of—

- Fifty percent of the difference between the inpatient operating cost per discharge and the target amount; or
- Five percent of the target amount.

Each hospital's target amount is adjusted annually, by an applicable target rate percentage. For cost reporting periods beginning on or after October 1, 1992 and ending before October 1, 1993, section 1886(b)(3)(B)(ii) of the Act provides that the applicable percentage increase is the market basket percentage increase. In order to determine a hospital's target amount for its cost reporting period beginning in FY 1993, the hospital's target amount for its reporting period that began in FY 1992 is increased by the market basket percentage increase for FY 1993. The most recent forecasted market basket increase for FY 1993 for hospitals and units excluded from the perspective payment system is 4.2 percent. Therefore, the applicable percentage increase is also 4.2 percent.

V. Tables

This section contains the tables referred to throughout the preamble to this final rule and in this addendum. For purposes of this final rule, and to avoid confusion, we have retained the designations of Tables 1a, 1b, 1c, 3c, 4a, 4b, and 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1a, 1b, 1c, 1d, 3c, 4a, 4b, 4c, 4d, 4e, 5, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 7A, 7B, 8a, 8b, and 9 are presented below. The tables presented below are as follows:

Table 1a—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1b—Regional Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1c—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1d—Capital Standard Federal Payment Rate
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1991

Table 4a—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4b—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4c—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals that are Reclassified
Table 4d—Average Hourly Wage for Urban Areas
Table 4e—Average Hourly Wage for Rural Areas
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, Arithmetic Mean Length of Stay, and Day Outlier Threshold Used in the Prospective Payment System
Table 6a—New Diagnosis Codes
Table 6b—New Procedure Codes
Table 6c—Invalid Diagnosis Codes
Table 6d—Invalid Procedure Codes
Table 6e—Revised Diagnosis Code Titles
Table 6f—Revised Procedure Code Titles
Table 6g—Additions to the CC Exclusions List
Table 6h—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 91 MEDPAR Update 6/92 GROUPER V9.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 91 MEDPAR Update 6/92 GROUPER V10.0
Table 8a—Statewide Average Operating Cost-to-Charge Rations for Urban and Rural Hospitals (Case Weighted)
Table 8b—Statewide Average Capital Cost-to-Charge Rations for Urban and Rural Hospitals (Case Weighted)
Table 9—1991 Transfer Adjusted Case Mix Index and Transfer Adjustment to Discharges for Capital Hospital-Specific Rate Redeterminations

TABLE 1A—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large Urban		Other Urban		Rural	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2588.38	1066.39	2547.40	1049.51	2621.30	844.54

TABLE 1B—REGIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

	Large urban		Other Urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
1. New England (CT, ME, MA, NH, RI, VT)	2718.22	1113.53	2675.18	1095.89	2906.21	1002.29
2. Middle Atlantic (PA, NJ, NY)	2442.07	1054.94	2403.41	1038.24	2783.27	947.50
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	2606.83	973.59	2565.55	958.18	2660.69	821.62
4. East North Central (IL, IN, MI, OH, WI)	2749.57	1151.92	2706.04	1133.68	2694.30	913.15
5. East South Central (AL, KY, MS, TN)	2501.84	881.57	2462.22	867.62	2637.01	766.17
6. West North Central (IA, KS, MN, MO, NB, ND, SD)	2607.57	1049.59	2566.29	1032.98	2562.99	818.54
7. West South Central (AR, LA, OK, TX)	2592.57	967.00	2551.51	951.70	2458.00	752.76
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	2500.91	1035.78	2461.31	1019.39	2485.70	865.78
9. Pacific (AK, CA, HI, OR, WA)	2432.68	1183.17	2394.18	1164.44	2417.56	975.34

TABLE 1C—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban		Other urban		Rural	
	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
Puerto Rico	2327.98	484.16	2291.12	476.50	1786.74	385.18
National	2581.80	1004.12	2581.80	1004.12	2581.80	1004.12

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

BILLING CODE 4120-03-M

	Rate
National	417.29
Puerto Rico	320.99

BILLING CODE 4120-03-C

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 1 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
010001	01.2807	010065	01.2058	010130	01.1135	030011	01.3734	030084	01.1632
010004	00.9097	010066	00.9287	010131	01.2425	030012	01.2299	030085	01.3884
010005	01.1227	010068	01.2062	010134	00.8432	030013	01.2443	030086	01.1918
010006	01.3393	010069	01.1583	010136	00.9547	030014	01.4031	030087	01.6008
010007	01.1009	010072	01.1131	010137	01.2986	030016	01.2762	030088	01.2860
010008	01.0077	010073	00.8980	010138	00.9357	030017	01.3632	030089	01.2309
010009	01.0273	010078	01.1942	010139	01.5216	030018	01.5880	030091	00.8278
010010	01.1156	010079	01.1448	010143	01.1285	030019	01.2814	030092	01.4688
010011	01.3574	010080	00.9558	010144	01.3789	030022	01.4006	030093	01.2437
010012	01.1928	010081	01.8053	010145	01.2076	030023	01.2054	030094	01.2765
010015	01.0730	010083	01.0932	010146	01.0485	030024	01.6310	030898	00.7311
010016	01.0765	010084	01.2908	010148	00.9447	030025	01.0782	030899	00.6006
010018	00.9150	010085	01.2717	010149	01.3690	030027	01.0651	040001	01.0679
010019	01.1785	010086	00.9694	010150	01.0028	030030	01.8629	040002	01.1367
010020	01.0007	010087	01.5097	010152	01.2536	030033	01.3734	040003	01.0336
010021	01.2115	010089	01.1003	010153	00.8914	030034	01.0286	040004	01.2209
010022	00.9401	010090	01.4705	010155	01.1307	030035	01.2489	040005	01.0550
010023	01.2778	010091	01.0169	010898	00.6959	030036	01.2334	040007	01.5318
010024	01.2337	010092	01.3663	010899	00.5933	030037	01.8935	040008	01.0179
010025	01.2158	010094	01.1763	020001	01.4834	030038	01.4606	040010	01.1393
010027	00.8711	010095	01.0181	020002	01.1941	030040	00.9724	040011	00.9214
010029	01.4931	010096	00.9048	020004	01.0873	030041	00.9511	040013	00.9602
010031	01.2797	010097	01.0095	020005	00.8986	030043	01.1931	040014	01.1017
010032	00.9070	010098	01.0219	020006	01.0388	030044	01.1142	040015	01.0677
010033	01.9500	010099	01.0825	020007	00.8894	030046	00.9612	040016	01.4707
010034	01.0531	010100	01.1681	020008	01.0337	030047	00.9275	040017	01.2500
010035	01.1657	010101	01.0596	020009	00.8031	030049	00.9341	040018	01.2014
010036	01.1478	010102	00.9137	020010	00.9224	030051	01.0494	040019	01.1889
010038	01.2293	010103	01.5453	020011	00.9338	030054	00.9025	040020	01.4579
010039	01.5918	010104	01.5707	020012	01.1664	030055	01.1924	040021	01.2006
010040	01.2753	010108	01.1573	020013	00.8977	030059	01.3816	040022	01.7042
010043	00.9501	010109	01.0679	020014	00.8471	030060	01.1243	040024	01.0779
010044	00.9779	010110	00.9101	020017	01.3587	030061	01.4282	040025	00.9912
010045	01.0128	010112	01.1441	020018	00.8830	030062	01.2490	040026	01.4413
010046	01.3194	010113	01.5946	020019	00.9503	030064	01.5476	040027	01.2715
010047	00.9036	010114	01.1854	020020	00.8628	030065	01.4554	040028	01.0000
010049	01.0788	010115	00.9016	020021	00.9057	030067	01.0547	040029	01.0846
010050	00.9495	010117	01.1192	020024	01.0246	030068	01.0087	040030	00.9079
010051	00.8718	010118	01.1355	020025	01.0078	030069	01.2786	040031	00.9728
010052	00.9603	010119	01.1920	020026	01.1908	030071	00.9551	040032	00.9237
010053	01.0067	010120	00.9828	020027	00.8359	030072	00.8989	040035	00.9041
010054	01.1921	010121	01.1109	030001	01.3599	030073	01.0328	040036	01.2320
010055	01.3346	010122	00.9563	030002	01.7380	030074	01.0462	040037	01.1284
010056	01.2842	010123	01.2910	030003	01.3336	030075	00.9442	040039	01.0557
010057	01.0200	010124	01.2798	030004	00.9854	030076	01.0117	040040	00.9778
010058	00.9263	010125	01.0978	030006	01.5817	030077	00.7776	040041	01.1297
010059	00.9996	010126	01.0798	030007	01.2790	030078	01.1100	040042	01.3115
010061	00.9621	010127	01.5077	030008	01.8927	030079	00.7854	040044	00.9187
010062	00.9492	010128	00.8924	030009	01.2224	030080	01.5176	040045	00.9487
010064	01.6518	010129	01.0554	030010	01.4361	030083	01.3441	040047	01.0544

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 2 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
040048	01.2069	050007	01.4703	050073	01.2120	050135	01.3049	050208	01.1976
040050	01.1109	050008	01.3953	050074	01.0395	050136	01.3076	050211	01.3168
040051	01.0280	050009	01.6000	050075	01.2731	050137	01.2767	050212	01.1095
040053	01.0717	050013	02.1120	050076	01.4954	050138	01.7096	050213	01.3564
040054	00.9446	050014	01.0900	050077	01.6483	050139	01.2205	050214	01.5716
040055	01.3252	050015	01.4684	050078	01.3238	050140	01.3019	050215	01.4204
040058	00.9180	050016	01.1946	050079	01.5241	050143	01.4009	050217	01.2056
040060	00.9695	050017	01.9933	050080	01.2311	050144	01.4930	050219	01.3706
040062	01.3526	050018	01.2796	050081	01.6282	050145	01.2900	050220	01.2450
040063	01.4390	050019	00.7922	050082	01.4809	050146	01.3049	050222	01.5296
040064	00.8984	050021	01.2764	050084	01.4872	050147	00.7747	050224	01.6173
040066	01.0283	050022	01.5545	050087	01.7521	050148	01.1390	050225	01.3297
040067	01.0036	050024	01.3828	050088	01.1315	050149	01.3558	050226	01.4251
040069	01.0551	050025	01.6798	050089	01.3407	050150	01.2390	050228	01.2661
040070	00.9657	050026	01.4721	050090	01.2425	050152	01.3970	050230	01.3292
040071	01.4155	050028	01.2747	050091	01.2298	050153	01.6477	050231	01.4958
040072	01.0725	050029	01.3320	050092	00.9567	050154	01.2110	050232	01.8455
040074	01.1757	050030	01.2945	050093	01.5271	050155	01.1197	050233	01.2228
040075	01.0993	050032	01.2717	050095	01.8435	050158	01.6879	050234	01.2798
040076	01.0551	050033	01.3884	050096	01.0718	050159	01.3837	050235	01.4968
040077	00.9291	050034	01.3070	050097	01.4338	050161	01.5294	050236	01.3888
040078	01.2401	050036	01.7045	050099	01.6542	050166	01.0654	050238	01.5071
040080	01.0646	050038	01.4082	050100	01.8331	050167	01.3999	050239	01.4064
040081	00.8575	050039	01.6461	050101	01.3574	050168	01.6888	050240	01.4360
040082	01.2094	050040	01.1045	050102	01.2827	050169	01.4921	050241	01.2925
040084	01.1260	050041	01.2924	050103	01.4956	050170	01.3981	050242	01.3955
040085	01.1257	050042	01.2177	050104	01.3491	050172	01.3240	050243	01.4729
040088	01.2212	050043	01.5692	050107	01.3433	050173	01.2573	050245	01.4000
040090	00.9494	050045	01.2626	050108	01.4305	050174	01.6003	050248	01.1513
040091	01.1566	050046	01.1808	050109	02.0924	050175	01.4063	050251	01.1670
040093	01.0247	050047	01.6987	050110	01.1464	050177	01.2293	050254	01.1327
040095	00.8694	050049	01.5231	050111	01.2808	050179	01.2228	050256	01.6656
040100	01.1223	050051	01.1343	050112	01.4457	050180	01.4073	050257	01.1369
040105	01.0147	050053	01.3009	050113	01.1647	050181	01.2654	050258	01.2623
040106	01.1790	050054	01.2674	050114	01.4614	050183	01.1410	050260	00.9203
040107	01.0462	050055	01.2734	050115	01.4725	050186	01.3155	050261	01.1843
040109	01.1371	050056	01.3617	050116	01.4336	050188	01.3696	050262	01.7410
040114	01.7026	050057	01.4453	050117	01.2996	050189	00.9187	050263	01.2486
040115	01.0629	050058	01.4042	050118	01.1611	050191	01.3865	050264	01.4191
040116	01.3681	050060	01.4612	050121	01.2872	050192	01.1849	050267	01.5151
040118	01.1909	050061	01.2545	050122	01.4208	050193	01.3445	050269	01.1058
040119	01.1355	050063	01.3401	050124	01.2011	050194	01.3361	050270	01.3105
040122	01.0989	050065	01.5135	050125	01.2949	050195	01.5421	050272	01.3153
040124	01.0864	050066	01.2789	050126	01.3888	050196	01.2815	050274	00.9881
040126	00.9696	050067	01.2843	050127	01.2583	050197	01.9228	050276	01.1377
040132	01.4616	050068	01.1129	050128	01.5007	050199	01.2276	050277	01.3979
040898	00.6959	050069	01.5887	050129	01.5397	050201	00.9026	050278	01.4018
040899	00.5933	050070	01.2006	050131	01.2597	050204	01.4002	050279	01.2294
050002	01.2983	050071	01.3234	050132	01.4007	050205	01.2271	050280	01.4564
050006	01.2943	050072	01.2213	050133	01.1959	050207	01.2364	050281	01.2638

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050282	01.2764	050366	01.2921	050446	00.8826	050535	01.3147	050607	01.2286
050283	01.4280	050367	01.2409	050447	01.0450	050537	01.2327	050608	01.1835
050286	01.0233	050369	01.2777	050448	01.0844	050539	01.2006	050609	01.2928
050289	01.6775	050373	01.3694	050449	01.2900	050541	01.4822	050613	01.0774
050290	01.4695	050376	01.3023	050450	00.7796	050542	01.1170	050615	01.3840
050291	01.1753	050377	01.0017	050451	00.9616	050543	01.3723	050616	01.3271
050292	01.1735	050378	01.1711	050454	01.6680	050545	00.9442	050618	01.1788
050293	01.2844	050379	01.1440	050455	01.8541	050546	01.0840	050619	01.3645
050295	01.3270	050380	01.6147	050456	01.3843	050547	00.9517	050622	01.0719
050296	01.1094	050382	01.4271	050457	01.8021	050549	01.7820	050623	01.1541
050298	01.2238	050385	01.3200	050458	00.9161	050550	01.1195	050624	01.2614
050299	01.2460	050387	00.9345	050459	01.2542	050551	01.2659	050625	01.4711
050300	01.2902	050388	00.9735	050464	01.7916	050552	01.0667	050630	01.2409
050301	01.1886	050390	01.2351	050467	01.2338	050557	01.5124	050633	01.2249
050302	01.2718	050391	01.4169	050468	01.6306	050559	01.2622	050635	01.2970
050305	01.4733	050392	00.9526	050469	01.0978	050560	01.2600	050636	01.2824
050307	01.4248	050393	01.5023	050470	01.1282	050561	01.1617	050637	01.1655
050308	01.5479	050394	01.4670	050471	01.7538	050564	01.3177	050638	00.9996
050309	01.2945	050396	01.5851	050476	01.2720	050565	01.1404	050641	01.1268
050310	01.2309	050397	00.8711	050477	01.3886	050566	01.0255	050643	00.9122
050312	01.7654	050401	01.2004	050478	01.0122	050567	01.6058	050644	01.1533
050313	01.1759	050404	01.0486	050481	01.4772	050568	01.3335	050649	01.3011
050315	01.2783	050406	01.0865	050482	01.0200	050569	01.2108	050651	01.2654
050317	01.2021	050407	01.1093	050483	01.2346	050570	01.6917	050655	00.7806
050320	01.3141	050410	00.8373	050485	01.7340	050571	01.4062	050660	01.1276
050324	01.8384	050411	01.3077	050486	01.4179	050573	01.6324	050661	00.8980
050325	01.2875	050414	01.2610	050488	01.2117	050575	01.2198	050662	00.8531
050327	01.6197	050417	01.1623	050489	01.0758	050577	01.3010	050663	01.0998
050328	01.2457	050418	01.3068	050491	01.4430	050578	01.4718	050666	01.0160
050329	01.2419	050419	01.2804	050492	01.2782	050579	01.4533	050667	01.0146
050331	01.2892	050420	01.3684	050494	01.0816	050580	01.2570	050668	01.1530
050333	00.9827	050421	01.3509	050496	01.7974	050581	01.3633	050669	00.7468
050334	01.4737	050423	01.0531	050497	00.7612	050583	01.7158	050670	01.2287
050335	01.2454	050424	01.6926	050498	01.1493	050584	01.2698	050671	01.1563
050336	01.2361	050425	01.3158	050502	01.6792	050585	01.3702	050672	00.6888
050337	01.2209	050426	01.3721	050503	01.2945	050586	01.3415	050674	01.1883
050342	01.3019	050427	00.9574	050506	01.4774	050587	01.2528	050675	01.4658
050343	01.0393	050430	00.9684	050510	01.2988	050588	01.2727	050676	00.9970
050345	01.3581	050431	01.0790	050512	01.2488	050589	01.3571	050677	01.2970
050348	01.7297	050432	01.8124	050515	01.3300	050590	01.3116	050678	01.1937
050349	01.0154	050433	01.0497	050516	01.3384	050591	01.1255	050680	01.1983
050350	01.4030	050434	01.1028	050517	01.3959	050592	01.2906	050682	00.9421
050351	01.4762	050435	01.2959	050522	01.3347	050593	01.2581	050684	01.2137
050352	01.2563	050436	01.0197	050523	01.2541	050594	01.9573	050685	01.1519
050353	01.6556	050438	01.4790	050526	01.3647	050597	01.3686	050686	01.2866
050355	00.9737	050440	01.2119	050527	01.2051	050598	01.3490	050688	01.1387
050357	01.8314	050441	01.7417	050528	01.2103	050599	01.6809	050689	01.3519
050359	01.1263	050442	00.8889	050530	00.9029	050601	01.3015	050690	01.1989
050360	01.4353	050443	00.9006	050531	01.2892	050603	01.4256	050691	00.9397
050363	01.3328	050444	01.2331	050534	01.4080	050604	01.4158	050693	01.2522

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 4 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
050694	01.1504	060056	00.9128	070024	01.1917	100017	01.6857	100075	01.7358
050695	01.2129	060057	01.0869	070025	01.6621	100018	01.3536	100076	01.3036
050696	01.7837	060058	00.8806	070026	01.2454	100019	01.4866	100077	01.3088
050698	01.8389	060060	01.0304	070027	01.2121	100020	01.3013	100078	01.1500
050699	00.9356	060062	01.0017	070028	01.4817	100021	01.3728	100079	01.1615
050898	00.5377	060063	01.1875	070029	01.2268	100022	01.6069	100080	01.5864
050899	00.5820	060064	01.3938	070030	01.2659	100023	01.3255	100081	01.0953
060001	01.4537	060065	01.3386	070031	01.3098	100024	01.2636	100082	01.3671
060003	01.2156	060066	00.9333	070033	01.3505	100025	01.5104	100083	01.3273
060004	01.0675	060068	01.1729	070034	01.2985	100026	01.4232	100084	01.3030
060005	01.7813	060070	01.1757	070035	01.3659	100027	00.8912	100085	01.3484
060006	01.1670	060071	01.0883	070036	01.3503	100028	01.2919	100086	01.3038
060007	01.1839	060072	00.9143	070038	00.8890	100029	01.3180	100087	01.7270
060008	01.0556	060073	01.0004	070898	00.7101	100030	01.2712	100088	01.5078
060009	01.3432	060074	00.8741	070899	00.5820	100032	01.7888	100089	01.2650
060010	01.5297	060075	01.2896	080001	01.6203	100034	01.6040	100090	01.2979
060011	01.2223	060076	01.3983	080002	01.1631	100035	01.4681	100092	01.3276
060012	01.4471	060085	00.8803	080003	01.2607	100038	01.6042	100093	01.5344
060013	01.1505	060087	01.4024	080004	01.2434	100039	01.6060	100098	01.0275
060014	01.6559	060088	01.1060	080005	01.1994	100040	01.6511	100099	01.2759
060015	01.4645	060090	00.9483	080006	01.1651	100042	01.2671	100100	01.2814
060016	01.1601	060096	01.0273	080007	01.2389	100043	01.3738	100102	01.2038
060018	01.1688	060100	01.3751	080898	00.6958	100044	01.4134	100103	01.0159
060020	01.4505	060101	01.4004	080899	00.5933	100045	01.3916	100105	01.3785
060022	01.5881	060102	04.0098	090001	01.4328	100046	01.3301	100106	01.1512
060023	01.4604	060103	01.3774	090002	01.2079	100047	01.5568	100107	01.2535
060024	01.6057	060104	01.2517	090003	01.4379	100048	00.9520	100108	01.1000
060026	01.4023	070001	01.7942	090004	01.5412	100049	01.3485	100109	01.2367
060027	01.4827	070002	01.7811	090005	01.2648	100050	01.2139	100110	01.3986
060028	01.3210	070003	01.1871	090006	01.3040	100051	01.2870	100112	00.9408
060029	01.0007	070004	01.1326	090007	01.2714	100052	01.3188	100113	01.9451
060030	01.3095	070005	01.2834	090008	01.3726	100053	01.2674	100114	01.4609
060031	01.4289	070006	01.2723	090009	01.2361	100054	01.3822	100117	01.2920
060032	01.3471	070007	01.3703	090010	00.9757	100055	01.3528	100118	01.1792
060033	01.1387	070008	01.2363	090011	01.8891	100056	01.5788	100121	01.1110
060034	01.3458	070009	01.2980	090898	00.7231	100057	01.3448	100122	01.3070
060036	01.1428	070010	01.4681	090899	00.5933	100059	01.5171	100124	01.2997
060037	01.0125	070011	01.2013	100001	01.4000	100060	01.7764	100125	01.1738
060038	01.1306	070012	01.2408	100002	01.4215	100061	01.4974	100126	01.4667
060041	01.0393	070013	01.3397	100004	01.0157	100062	01.6824	100127	01.5839
060042	00.9483	070014	01.2906	100005	00.9150	100063	01.3069	100128	02.2763
060043	00.9035	070015	01.2409	100006	01.6171	100065	01.2932	100129	01.3774
060044	01.2137	070016	01.2973	100007	01.8788	100067	01.3951	100130	01.1935
060046	01.1133	070017	01.2895	100008	01.7281	100068	01.4310	100131	01.2139
060047	01.1518	070018	01.3003	100009	01.4251	100069	01.3909	100132	01.2988
060049	01.0787	070019	01.1693	100010	01.3952	100070	01.3160	100134	00.9937
060050	01.2072	070020	01.3936	100012	01.5525	100071	01.3930	100135	01.5132
060052	00.9865	070021	01.2032	100014	01.3344	100072	01.1687	100137	01.1308
060053	01.0330	070022	01.8788	100015	01.4048	100073	01.8207	100138	00.9779
060054	01.3048	070023	01.2600	100016	01.0734	100074	01.2304	100139	01.0598

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
100140	01.1109	100211	01.2754	100271	01.5410	110046	01.1827	110111	01.1528
100142	01.1554	100212	01.6385	100273	01.1315	110048	01.1312	110112	00.9332
100143	01.2493	100213	01.6171	100275	01.2908	110049	01.0813	110113	00.9359
100144	01.2342	100217	01.1825	100276	01.3876	110050	01.0816	110114	01.1584
100145	01.3950	100218	00.8936	100277	00.9858	110051	01.0597	110115	01.5940
100146	01.0733	100219	01.3936	100278	00.7001	110052	00.9588	110117	01.0856
100147	01.0822	100220	01.6915	100279	01.2467	110054	01.2304	110118	01.0223
100150	01.4413	100221	01.5388	100898	00.6949	110055	00.8773	110120	01.0427
100151	01.7316	100222	01.2115	100899	00.6006	110056	01.0010	110121	01.1166
100152	01.2547	100223	01.4299	110001	01.1521	110059	01.3460	110122	01.3175
100154	01.6119	100224	01.3205	110002	01.2100	110061	00.9824	110123	00.8407
100156	01.0572	100225	01.3552	110003	01.2807	110062	00.9283	110124	01.0701
100157	01.4940	100226	01.3232	110004	01.2335	110063	01.0237	110125	01.1454
100159	01.0483	100227	00.9987	110005	01.4139	110064	01.2407	110127	00.9562
100160	01.2020	100228	01.2815	110006	01.2835	110065	01.0074	110128	01.1585
100161	01.4972	100229	01.4520	110007	01.3649	110066	01.2501	110129	01.5776
100162	01.3005	100230	01.2915	110008	01.1195	110069	01.1877	110130	00.9831
100164	00.9793	100231	01.7215	110009	01.0965	110070	00.9533	110132	01.1265
100165	01.1584	100232	01.3052	110010	01.9743	110071	01.0251	110133	00.8840
100166	01.4862	100234	01.3446	110011	01.1453	110072	01.0014	110134	00.8867
100167	01.3312	100235	01.3244	110013	00.9995	110073	01.2412	110135	01.1890
100168	01.3000	100236	01.3262	110014	01.0751	110074	01.2548	110136	01.0683
100169	01.7889	100237	02.0913	110015	01.0547	110075	01.2140	110140	00.8759
100170	01.4209	100238	01.4063	110016	01.2489	110076	01.3555	110141	00.9009
100172	01.3702	100239	01.4274	110017	00.9250	110078	01.5980	110142	01.1020
100173	01.5692	100240	00.8782	110018	01.1500	110079	01.2995	110143	01.2729
100174	01.3802	100241	00.9973	110020	01.1531	110080	01.0573	110144	01.2323
100175	01.0959	100242	01.3171	110023	01.1880	110082	02.0469	110146	00.9212
100176	01.9604	100243	01.3904	110024	01.3752	110083	01.4836	110149	01.0848
100177	01.3378	100244	01.3450	110025	01.2755	110085	01.1704	110150	01.2289
100179	01.7123	100246	01.3711	110026	01.0967	110086	01.0771	110151	00.9758
100180	01.4072	100248	01.6901	110027	01.0378	110087	01.2536	110152	01.0233
100181	01.3175	100249	01.2850	110028	01.5517	110088	00.9038	110153	01.0138
100183	01.3328	100252	01.3833	110029	01.2996	110089	01.0962	110154	00.9353
100185	01.2225	100253	01.3613	110030	01.1911	110091	01.2709	110155	01.0543
100186	01.3573	100254	01.6178	110031	01.3097	110092	01.0621	110156	00.9178
100187	01.3150	100255	01.3761	110032	01.1164	110093	00.9371	110157	01.0763
100189	01.3593	100256	01.7248	110033	01.3355	110094	01.0178	110161	01.2827
100191	01.3654	100258	01.6866	110034	01.4077	110095	01.3290	110162	00.8182
100194	01.2580	100259	01.4085	110035	01.3190	110096	01.1582	110163	01.3511
100196	01.2443	100260	01.4028	110036	01.6238	110097	01.0965	110164	01.3161
100199	01.1796	100262	01.3321	110037	01.0704	110098	00.9990	110165	01.1867
100200	01.3590	100263	01.4506	110038	01.3240	110100	01.0916	110166	01.3448
100203	01.0913	100264	01.3849	110039	01.3166	110101	01.0179	110168	01.6530
100204	01.5664	100265	01.2832	110040	00.9159	110103	00.9406	110169	00.7644
100206	01.3801	100266	01.3117	110041	01.0693	110104	01.1343	110171	01.3323
100207	01.3742	100267	01.2275	110042	01.0518	110105	01.1652	110172	01.1520
100208	01.5110	100268	01.2570	110043	01.5543	110107	01.6078	110174	00.8696
100209	01.5225	100269	01.4176	110044	01.1345	110108	00.9078	110176	01.1254
100210	01.6631	100270	00.9092	110045	01.0129	110109	01.1161	110177	01.3896

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 6 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
110178	01.2100	120899	00.5933	140008	01.4056	140070	01.2229	140132	01.5680
110179	01.1950	130001	01.1096	140010	01.3494	140072	01.1192	140133	01.3426
110181	00.9654	130002	01.3102	140011	01.0820	140074	01.1313	140135	01.2026
110183	01.3391	130003	01.2385	140012	01.2222	140075	01.3874	140137	00.9961
110184	01.1991	130005	01.3730	140013	01.3866	140077	01.2278	140138	01.0727
110185	00.9950	130006	01.6766	140014	01.0578	140078	01.2507	140139	01.0721
110186	01.2728	130007	01.4940	140015	01.2327	140080	01.8248	140140	01.0429
110187	01.1397	130008	00.8795	140016	00.9881	140081	01.1358	140141	00.8690
110188	01.3434	130009	00.9873	140018	01.4046	140082	01.2611	140143	01.0522
110189	01.0960	130010	00.9302	140019	00.9165	140083	01.2738	140144	00.9696
110190	01.1041	130011	01.3203	140024	00.9756	140084	01.1863	140145	01.0514
110191	01.1444	130012	01.0135	140025	01.1038	140086	01.1050	140146	00.9206
110192	01.3332	130013	01.2715	140026	01.1490	140087	01.3220	140147	01.1802
110193	01.2038	130014	01.2564	140027	01.0760	140088	01.4819	140148	01.5298
110194	00.9166	130015	01.0194	140029	01.3280	140089	01.2433	140150	01.3610
110195	01.0943	130016	00.8736	140030	01.5137	140090	01.3584	140151	01.0544
110198	01.3080	130017	00.9874	140031	01.0307	140091	01.6612	140152	01.0207
110200	01.7368	130018	01.5607	140032	01.2771	140093	01.2364	140154	01.2636
110201	01.2753	130019	01.1290	140033	01.2012	140094	01.2388	140155	01.2025
110202	00.9738	130021	00.8888	140034	01.1094	140095	01.2428	140158	01.4262
110203	01.0435	130022	01.1546	140035	01.0080	140097	00.9008	140159	01.1715
110204	00.9352	130024	01.1239	140036	01.1251	140098	01.3743	140160	01.1383
110205	00.9701	130025	01.0674	140037	00.9821	140100	01.2459	140161	01.1281
110206	02.6891	130026	01.1421	140038	01.0483	140101	01.0459	140162	01.4844
110207	00.9220	130027	00.8684	140039	00.9958	140102	00.9996	140164	01.2479
110208	00.9302	130028	01.2871	140040	01.2393	140103	01.3355	140165	01.0678
110898	00.7011	130029	00.9880	140041	01.0562	140105	01.2929	140166	01.2815
110899	00.5820	130030	00.9651	140042	01.0393	140107	00.9125	140167	01.0735
120001	01.6839	130031	00.9623	140043	01.1749	140108	01.1886	140168	01.2103
120002	01.1500	130034	00.9022	140045	00.9523	140109	01.1323	140170	00.9655
120003	01.0844	130035	00.9563	140046	01.1928	140110	01.2309	140171	00.8737
120004	01.2495	130036	01.1786	140047	01.0309	140112	01.0432	140172	01.5159
120005	01.2184	130037	01.4076	140048	01.2229	140113	01.3775	140173	01.0015
120006	01.2192	130039	01.1610	140049	01.3555	140114	01.2525	140174	01.3772
120007	01.5721	130040	01.0513	140051	01.2983	140115	01.1965	140176	01.2109
120009	00.8843	130043	00.9911	140052	01.2085	140116	01.2294	140177	01.2533
120010	01.5693	130044	00.9124	140053	01.7380	140117	01.2878	140179	01.2690
120011	01.2296	130045	00.9209	140054	01.3546	140118	01.4766	140180	01.4634
120012	00.9233	130048	01.0189	140055	00.9723	140119	01.6519	140181	01.3250
120014	01.1607	130049	01.1800	140058	01.0897	140120	01.1685	140182	01.3122
120015	00.9311	130051	00.9839	140059	01.0961	140121	00.9697	140184	01.1419
120016	00.9376	130054	00.9209	140061	01.0740	140122	01.3840	140185	01.4079
120018	01.0064	130056	00.9856	140062	01.2481	140123	01.1927	140186	01.2105
120019	01.1949	130058	00.9828	140063	01.3171	140124	01.1214	140187	01.4454
120021	00.9316	140001	01.2698	140064	01.1548	140125	01.2435	140188	00.9610
120022	01.5083	140002	01.2583	140065	01.3288	140126	01.6272	140189	01.1598
120025	00.9026	140003	00.9624	140066	01.2204	140127	01.2812	140190	01.1855
120026	01.2685	140004	00.9855	140067	01.6999	140128	01.1243	140191	01.4398
120027	01.3548	140005	00.9579	140068	01.1981	140129	01.0391	140192	01.1451
120898	00.7175	140007	01.2724	140069	01.0660	140130	01.1338	140193	00.9858

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 7 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
140197	01.2882	140294	01.0919	150049	01.0924	150106	01.0668	160035	00.9368
140199	01.0106	140295	03.2098	150050	01.1859	150109	01.2650	160036	01.0395
140200	01.4366	140297	01.4210	150051	01.2452	150110	00.8976	160037	01.0143
140202	01.2227	140299	00.8993	150052	01.0428	150111	01.0917	160039	01.0458
140203	01.1278	140898	00.8924	150053	01.0452	150112	01.1969	160040	01.3641
140205	00.9527	140899	00.6352	150054	01.0374	150113	01.2254	160041	01.1105
140206	01.0917	150001	01.0872	150056	01.6681	150114	01.0604	160043	00.9607
140207	01.2752	150002	01.3396	150057	02.2248	150115	01.2862	160044	01.2347
140208	01.4301	150003	01.6335	150058	01.5514	150122	01.0811	160045	01.6083
140209	01.5796	150004	01.3049	150059	01.2200	150123	00.9500	160046	01.0233
140210	01.0418	150005	01.2120	150060	01.1691	150124	01.1757	160047	01.4117
140211	01.1430	150006	01.2427	150061	01.1915	150125	01.3902	160048	01.0463
140212	01.2923	150007	01.1958	150062	01.0878	150126	01.5391	160049	00.8896
140213	01.1891	150008	01.3471	150063	01.1266	150127	01.1255	160050	01.0356
140215	01.0481	150009	01.2883	150064	01.0547	150128	01.1864	160051	01.2980
140217	01.2404	150010	01.1807	150065	01.1110	150129	01.2685	160052	00.9752
140218	00.9903	150011	01.2480	150066	01.1229	150130	01.1040	160054	01.0605
140220	01.1380	150012	01.5707	150067	01.0802	150132	01.3875	160055	01.0045
140223	01.5097	150013	01.1969	150069	01.2349	150133	01.2524	160056	01.0432
140224	01.3237	150014	01.3615	150070	01.0952	150134	01.1594	160057	01.3604
140226	00.9496	150015	01.2205	150071	01.1539	150135	00.8998	160058	01.6167
140228	01.5284	150017	01.6692	150072	01.2502	150136	01.0712	160059	01.2381
140229	00.9591	150018	01.2400	150073	01.0557	150898	00.7260	160060	01.0618
140230	00.9458	150019	01.1684	150074	01.4864	150899	00.5933	160061	00.9854
140231	01.5632	150020	01.1266	150075	01.2370	160001	01.1451	160062	00.9270
140233	01.6567	150021	01.6148	150076	01.0498	160002	01.2223	160063	01.1758
140234	01.1285	150022	01.1076	150077	01.1775	160003	01.0648	160064	01.5209
140236	00.9971	150023	01.3818	150078	01.0640	160005	01.0807	160065	01.1123
140239	01.5826	150024	01.1843	150079	01.1552	160007	00.9657	160066	01.0604
140240	01.2535	150025	01.5039	150082	01.3845	160008	01.0890	160067	01.2617
140242	01.4080	150026	01.1843	150084	01.6812	160009	01.1263	160068	01.0580
140245	01.0274	150027	01.0029	150085	00.9948	160012	01.1684	160069	01.3498
140246	01.0311	150029	01.2353	150086	01.2483	160013	01.2530	160070	01.1060
140250	01.2363	150030	01.1539	150088	01.1363	160014	00.9618	160071	01.1144
140251	01.3085	150031	01.0706	150089	01.2738	160016	01.2818	160072	01.0518
140252	01.2863	150032	01.6930	150090	01.2715	160018	00.9819	160073	00.8924
140253	01.2931	150033	01.5659	150091	01.2111	160020	01.0939	160074	01.0304
140258	01.3979	150034	01.3002	150092	01.1845	160021	01.1478	160075	01.0603
140271	01.0344	150035	01.4019	150094	01.0414	160023	01.0621	160076	00.9834
140275	01.1770	150036	01.0040	150095	01.1058	160024	01.4469	160077	01.1095
140276	02.0385	150037	01.2103	150096	00.9957	160025	01.8041	160079	01.2857
140280	01.1551	150038	01.2428	150097	01.0367	160026	01.0311	160080	01.1228
140281	01.5138	150039	00.9885	150098	01.0378	160027	01.1356	160081	01.0751
140285	01.2667	150042	01.1889	150099	01.2905	160028	01.2583	160082	01.6686
140286	01.1118	150043	01.0630	150100	01.6108	160029	01.4707	160083	01.5523
140288	01.5938	150044	01.2287	150101	01.0723	160030	01.3123	160085	01.1194
140289	01.2903	150045	01.1566	150102	01.1110	160031	01.0370	160086	01.0224
140290	01.3760	150046	01.4038	150103	01.1377	160032	01.0520	160088	01.0071
140291	01.2686	150047	01.6561	150104	01.1765	160033	01.3371	160089	01.2042
140292	01.1829	150048	01.1894	150105	01.1899	160034	01.0069	160090	01.0612

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
160091	01.1484	170001	01.1766	170060	01.0271	170119	00.9660	180014	01.5682
160092	00.9577	170003	01.1989	170061	00.9579	170120	01.2204	180015	01.1127
160093	01.1072	170004	01.0516	170062	00.8377	170121	00.7809	180016	01.2169
160094	01.1693	170006	01.2448	170063	00.9206	170122	01.7991	180017	01.2192
160095	01.0180	170007	01.1010	170064	01.1751	170123	01.6654	180018	01.1517
160097	01.1539	170008	00.9991	170066	00.9209	170124	00.9671	180019	01.1733
160098	00.9540	170009	01.1522	170067	01.0420	170125	00.9370	180020	01.0135
160099	01.1000	170010	01.1259	170068	01.2396	170126	00.9444	180021	00.8932
160101	01.1539	170011	01.3697	170069	00.8692	170128	00.9867	180023	00.8378
160102	01.4277	170012	01.4225	170070	01.0520	170131	01.1211	180024	01.1971
160103	00.9088	170013	01.2044	170072	00.9388	170133	01.1665	180025	01.1364
160104	01.1289	170014	01.0518	170073	01.1051	170134	00.9839	180026	01.1047
160106	01.0244	170015	01.0848	170074	01.1606	170137	01.1593	180027	01.1584
160107	01.1155	170016	01.5595	170075	00.8531	170139	00.9930	180028	00.9983
160108	01.1355	170017	01.1637	170076	01.1126	170140	01.0413	180029	01.2807
160109	00.9404	170018	01.0952	170077	00.9616	170142	01.2571	180030	01.1426
160110	01.5133	170019	01.1744	170079	00.9817	170143	01.0974	180031	01.0072
160111	01.1219	170020	01.2290	170080	00.9380	170144	01.4918	180032	00.9826
160112	01.3817	170021	00.8715	170081	01.1493	170145	01.1412	180033	01.0839
160113	01.0406	170022	01.1905	170082	00.9060	170146	01.3039	180034	01.0142
160114	00.9999	170023	01.3064	170084	00.9248	170147	01.2069	180035	01.4414
160115	01.0056	170024	01.1095	170085	00.9504	170148	01.3398	180036	01.1078
160116	01.1577	170025	01.4207	170086	01.6370	170150	01.1203	180037	01.2749
160117	01.3154	170026	00.9821	170087	01.3418	170151	01.0078	180038	01.3275
160118	00.9818	170027	01.1582	170088	00.9179	170152	00.9171	180040	01.9553
160119	00.8638	170030	00.9603	170089	01.0088	170159	00.9089	180041	01.0752
160120	01.0027	170031	00.8710	170090	00.9886	170160	00.9558	180042	01.0414
160122	01.2211	170032	01.0511	170092	00.8533	170164	01.0932	180043	01.0160
160123	01.0925	170033	01.2049	170093	01.0010	170166	01.0040	180044	01.0751
160124	01.1718	170034	00.9479	170094	01.0075	170168	00.8770	180045	01.1608
160126	01.1321	170035	00.8775	170095	01.1793	170170	00.8764	180046	01.0588
160129	01.1705	170036	00.9422	170097	00.9444	170171	01.1352	180047	01.0240
160130	01.2416	170037	01.1652	170098	01.0209	170172	01.0228	180048	01.2059
160131	01.1606	170038	01.0037	170099	01.3717	170173	00.8102	180049	01.3416
160133	01.2038	170039	01.1149	170100	00.8651	170174	00.9340	180050	01.3005
160134	00.8828	170040	01.4016	170101	00.9907	170175	01.2210	180051	01.2125
160135	01.0239	170041	01.0179	170102	00.9830	170176	01.4211	180053	01.1658
160138	01.1582	170043	01.0588	170103	01.2192	170898	00.7011	180054	01.0992
160140	01.0684	170044	01.2595	170104	01.4420	170899	00.5933	180055	01.0622
160141	00.9181	170045	01.0009	170105	00.9777	180001	01.1568	180056	01.0495
160142	01.1483	170049	01.3135	170106	00.8914	180002	01.1128	180058	00.9086
160143	01.1009	170050	00.9428	170108	00.8933	180004	01.1876	180059	00.9006
160145	00.9850	170051	00.9672	170109	01.0080	180005	01.0878	180060	00.9007
160146	01.3144	170052	01.1010	170110	00.9566	180006	00.9384	180062	00.8038
160147	01.2240	170053	00.8500	170112	00.9259	180007	01.4138	180063	01.0339
160151	01.1435	170054	01.0908	170113	01.0555	180009	01.1713	180064	01.0689
160152	01.0277	170055	01.0664	170114	01.0878	180010	01.7280	180065	00.9945
160153	01.5615	170056	00.9870	170115	01.0850	180011	01.1112	180066	01.1728
160898	00.6959	170057	01.0294	170116	01.1178	180012	01.2604	180067	01.8949
160899	00.5933	170058	01.0300	170117	00.9506	180013	01.3284	180069	01.0734

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
180070	01.0604	190005	01.3288	190089	01.0615	190166	01.0025	200021	01.1379
180072	01.0944	190006	01.1351	190090	01.1961	190167	01.2823	200023	00.7985
180075	00.9469	190007	01.0395	190092	01.1582	190170	00.9991	200024	01.1779
180078	01.0119	190008	01.4417	190095	01.0340	190173	01.4355	200025	01.1393
180079	01.0166	190009	01.0851	190098	01.3985	190175	01.8435	200026	00.9960
180080	01.1256	190010	00.9175	190099	01.1843	190176	01.4068	200027	01.0935
180081	01.3824	190011	01.0666	190102	01.4389	190177	01.4835	200028	01.0334
180085	01.3287	190013	01.2161	190103	00.8983	190178	00.9782	200031	01.2861
180087	00.9932	190014	00.9811	190106	01.1573	190182	01.0127	200032	01.2792
180088	01.6306	190015	01.1926	190109	01.0888	190183	01.0827	200033	01.6831
180092	01.1195	190017	01.2253	190110	00.9559	190184	00.9057	200034	01.1662
180093	01.3949	190018	01.1571	190111	01.5694	190185	01.2344	200037	01.1597
180094	00.9899	190019	01.4998	190112	01.2864	190186	00.9483	200038	00.9975
180095	00.9747	190020	01.1555	190113	01.2797	190187	00.6412	200039	01.3035
180099	00.9687	190023	00.6808	190114	00.8308	190189	01.0911	200040	01.0475
180101	01.2638	190025	01.2536	190115	01.2853	190190	00.9922	200041	01.1668
180102	01.3971	190026	01.3165	190116	01.2228	190191	01.2162	200043	00.6671
180103	01.7927	190027	01.3975	190118	00.9961	190193	01.1742	200044	01.1585
180104	01.3910	190029	01.2529	190120	00.9064	190194	01.1284	200050	01.1171
180105	00.9748	190033	00.9707	190122	01.1329	190196	00.8243	200051	00.9904
180106	00.9035	190034	01.2313	190124	01.4467	190197	01.1989	200052	01.0218
180108	00.9010	190035	01.3875	190125	01.3914	190198	01.1858	200055	01.0384
180115	00.9740	190036	01.6287	190127	01.4598	190199	01.2694	200062	00.9884
180116	01.2751	190037	00.9902	190128	00.8313	190200	01.5712	200063	01.2180
180117	01.2463	190039	01.4272	190130	00.9233	190201	01.2069	200066	01.1416
180118	01.0101	190040	01.3813	190131	01.2752	190202	01.4032	200898	00.7186
180120	00.9151	190041	01.5707	190132	01.0494	190203	01.6151	200899	00.5933
180121	01.0529	190043	01.0441	190133	01.0812	190204	01.4464	210001	01.3187
180122	00.9415	190044	01.0906	190134	01.0061	190205	01.3525	210002	01.8268
180123	01.4435	190045	01.2700	190135	01.3432	190206	01.4626	210003	01.3868
180124	01.3284	190046	01.4261	190136	01.0332	190207	01.1786	210004	01.2835
180125	01.0282	190047	01.1475	190138	00.7637	190208	00.8766	210005	01.2017
180126	01.0501	190048	00.9763	190140	01.0116	190211	00.8754	210006	01.0687
180127	01.1553	190049	00.9837	190142	00.9468	190212	00.8972	210007	01.4397
180128	01.1060	190050	01.0298	190144	01.1482	190213	00.8023	210008	01.2563
180129	01.0536	190053	01.0184	190145	00.9264	200001	01.3043	210009	01.6435
180130	01.3800	190054	01.3946	190146	01.4517	200002	01.0658	210010	01.1370
180132	01.3111	190059	00.9436	190147	00.9622	200003	01.0435	210011	01.2905
180133	01.2224	190060	01.2386	190148	00.9443	200006	01.0568	210012	01.4621
180134	01.0785	190064	01.4479	190149	00.9865	200007	01.0301	210013	01.3075
180136	01.2725	190065	01.4536	190151	01.0819	200008	01.2185	210015	01.1962
180137	01.7633	190071	00.8966	190152	01.4090	200009	01.6646	210016	01.7570
180138	01.2008	190075	01.4380	190155	00.9290	200012	01.1761	210017	01.1492
180139	01.0218	190077	00.8858	190156	00.8485	200013	01.0999	210018	01.2185
180898	00.7011	190078	01.1560	190158	01.2945	200015	01.2713	210019	01.3370
180899	00.5933	190079	01.2140	190160	01.1171	200016	01.0251	210021	01.2287
190001	00.9031	190081	00.8842	190161	00.8602	200017	01.3000	210022	01.3076
190002	01.5748	190083	00.8864	190162	01.2684	200018	01.1012	210023	01.2875
190003	01.3824	190086	01.2301	190164	01.0616	200019	01.2191	210024	01.2470
190004	01.1594	190088	01.3338	190165	01.0990	200020	01.0770	210025	01.2665

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 10 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
210026	01.3399	220030	01.0759	220100	01.2685	230027	01.0726	230099	01.2165
210027	01.1915	220031	01.7720	220101	01.3751	230029	01.4937	230100	01.1909
210028	01.0603	220033	01.2325	220102	00.8471	230030	01.1900	230101	01.0486
210029	01.3483	220035	01.1796	220104	01.2517	230031	01.3663	230103	01.0063
210030	01.0737	220036	01.4857	220105	01.1727	230032	01.6988	230104	01.5840
210031	01.4343	220038	01.2594	220106	01.1047	230034	01.1813	230105	01.4848
210032	01.2017	220041	01.1651	220107	01.1484	230035	01.1610	230106	01.1158
210033	01.1315	220042	01.1582	220108	01.1408	230036	01.2927	230107	00.9927
210034	01.1957	220045	01.1922	220110	01.9242	230037	01.2618	230108	01.1927
210035	01.1516	220046	01.3649	220111	01.1749	230038	01.5814	230110	01.2233
210036	01.2090	220048	01.1731	220114	01.0691	230039	01.2706	230111	01.0531
210037	01.1963	220049	01.1770	220115	01.2586	230040	01.3094	230113	01.0332
210038	01.3690	220050	00.9935	220116	01.7808	230041	01.1244	230114	00.7155
210039	01.2111	220051	01.2231	220118	01.9184	230042	01.0922	230115	01.0247
210040	01.3483	220052	01.2324	220119	01.3480	230046	01.7778	230116	00.8998
210043	01.1912	220053	01.2759	220120	00.9897	230047	01.2132	230117	01.8012
210044	01.1947	220055	01.1790	220123	00.9544	230053	01.4582	230118	01.2633
210045	00.9711	220057	01.1952	220126	01.2221	230054	01.6087	230119	01.2036
210046	01.1133	220058	01.0110	220128	01.1054	230055	01.1378	230120	01.0488
210048	01.1709	220060	01.1410	220131	01.1603	230056	00.9746	230121	01.2042
210049	01.1592	220062	00.6506	220133	00.8198	230058	01.1557	230122	01.3548
210051	01.3069	220063	01.1302	220135	01.1201	230059	01.4298	230124	01.1293
210054	01.2430	220064	01.1842	220153	01.0533	230060	01.1576	230125	01.3861
210055	01.1873	220065	01.1730	220154	00.9739	230062	01.1168	230128	01.3852
210056	01.3827	220066	01.2844	220156	01.2135	230063	01.2740	230129	01.8948
210057	01.2412	220067	01.2421	220162	01.4141	230065	01.4458	230130	01.5789
210058	01.7326	220068	00.6158	220163	01.9524	230066	01.3086	230132	01.3555
210059	01.3338	220070	01.1448	220171	01.6218	230068	01.3535	230133	01.1355
210060	01.0691	220071	01.8433	220173	00.4926	230069	01.0882	230134	01.3103
220001	01.1452	220073	01.2256	220175	01.0281	230070	01.3145	230135	01.3091
220002	01.3378	220074	01.1306	220897	05.1063	230071	00.6451	230137	01.0714
220003	01.1019	220075	00.7660	220898	00.7055	230072	01.1737	230138	00.8905
220004	01.3471	220076	01.1958	220899	00.5933	230075	01.3005	230140	01.5729
220006	01.2662	220077	01.6055	230001	01.1368	230076	01.2066	230141	01.5224
220008	01.1510	220079	01.1158	230002	01.2313	230077	02.1526	230142	01.2201
220010	01.1982	220080	01.1925	230003	01.1349	230078	01.3371	230143	01.2272
220011	01.1712	220081	00.9674	230004	01.7077	230080	01.2354	230144	01.1998
220012	01.1800	220082	01.2243	230005	01.2118	230081	01.1767	230145	01.1053
220015	01.2004	220083	01.1209	230006	00.9919	230082	01.1676	230146	01.2260
220016	01.1906	220084	01.1424	230007	01.0868	230085	01.1435	230147	01.5011
220017	01.2497	220086	01.5547	230012	00.8113	230086	00.9529	230149	01.0477
220019	01.0969	220088	01.4865	230013	01.2918	230087	01.1429	230150	01.5926
220020	01.1520	220089	01.2757	230014	00.9400	230089	01.3407	230151	01.3913
220021	01.2291	220090	01.1721	230015	01.3911	230090	01.2163	230153	01.0626
220023	01.2605	220092	01.1975	230017	01.5372	230092	01.2598	230154	01.1020
220024	01.1963	220094	01.2036	230019	01.5695	230093	01.1943	230155	01.0481
220025	01.0212	220095	01.1863	230020	01.5820	230095	01.1378	230156	01.6427
220026	01.2735	220097	01.0102	230021	01.5274	230096	01.0961	230157	01.3922
220028	01.4023	220098	01.2922	230022	01.2625	230097	01.5044	230159	01.3484
220029	01.1179	220099	01.1357	230024	01.4735	230098	00.7519	230162	00.9254

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
230165	01.7088	230259	01.0814	240050	01.1246	240111	01.0053	240173	00.9818
230167	01.1964	230264	01.3379	240051	00.8788	240112	01.0203	240175	00.8058
230169	01.3236	230266	01.3527	240052	01.2180	240114	01.0895	240178	00.8781
230171	01.1730	230269	01.2338	240053	01.4600	240115	01.5260	240179	00.9741
230172	01.1684	230270	01.2680	240056	01.3083	240116	00.9281	240180	00.9701
230173	01.4305	230273	01.4920	240057	01.7598	240117	01.1230	240183	01.1023
230174	01.2339	230275	00.7517	240058	00.9866	240119	00.9196	240184	01.0748
230175	01.0288	230276	01.0259	240059	01.1128	240121	00.9339	240187	01.1987
230176	01.1450	230277	01.1410	240061	01.4290	240122	01.0981	240192	00.9211
230178	01.1113	230278	01.4955	240063	01.5098	240123	01.1306	240193	01.0804
230179	00.8224	230898	00.7113	240064	01.2314	240124	01.0103	240196	01.3439
230180	01.1210	230899	00.6096	240065	00.9942	240125	00.9385	240200	00.8994
230184	01.1455	240001	01.5487	240066	01.3506	240127	01.0861	240201	01.0092
230186	01.0154	240002	01.6757	240069	01.1869	240128	01.1684	240205	00.8532
230188	01.1331	240003	01.2466	240071	01.1155	240129	00.9801	240206	00.8888
230189	00.9138	240004	01.4783	240072	00.9939	240130	01.0192	240207	01.1804
230190	00.9790	240005	00.9433	240073	01.0033	240132	01.2909	240210	01.2456
230191	00.9616	240006	01.1764	240075	01.2355	240133	01.1252	240211	01.3121
230193	01.3041	240007	01.1059	240076	01.1264	240134	01.0216	240898	00.7011
230194	01.2159	240008	01.0324	240077	01.0247	240135	00.8382	240899	00.5820
230195	01.3667	240009	01.0705	240078	01.3836	240136	00.8763	250001	01.5351
230197	01.2310	240010	01.8486	240079	01.0791	240137	01.1818	250002	00.8077
230199	01.1837	240011	01.0393	240080	01.3605	240138	00.8802	250003	00.9684
230201	00.9747	240013	01.2251	240082	01.1982	240139	00.9800	250004	01.4420
230204	01.2507	240014	01.1819	240083	01.2390	240140	00.8296	250005	00.9528
230205	01.1182	240016	01.3521	240084	01.2448	240141	01.0087	250006	00.9699
230207	01.2930	240017	01.1897	240085	00.8683	240142	01.0533	250007	01.1588
230208	01.0780	240018	01.2181	240086	01.0728	240143	00.9570	250008	00.8840
230211	00.9553	240019	01.3366	240087	01.0552	240144	00.9825	250009	01.0973
230212	01.0962	240020	01.2241	240088	01.4404	240145	00.9147	250010	01.0840
230213	01.0969	240021	01.0442	240089	01.0130	240146	00.9886	250012	00.9714
230216	01.3120	240022	01.0947	240090	01.0246	240148	00.9878	250015	00.9498
230217	01.0827	240023	01.0434	240091	00.9799	240150	00.9497	250016	00.8817
230219	01.0083	240025	01.1964	240093	01.2910	240152	00.9632	250017	00.9812
230221	01.2415	240027	01.0586	240094	00.9949	240153	00.9833	250018	01.0138
230222	01.3501	240028	01.1193	240096	01.0553	240154	00.9785	250019	01.2655
230223	01.2913	240029	01.1741	240097	01.0524	240155	00.9636	250020	01.0207
230227	01.3514	240030	01.3263	240098	00.9298	240156	01.0391	250021	00.8890
230228	01.1930	240031	00.9580	240099	00.9524	240157	01.0666	250023	00.8334
230230	01.3405	240036	01.4943	240100	01.3042	240158	00.9179	250024	00.9398
230232	01.0412	240037	01.0507	240101	01.2096	240160	00.9688	250025	01.0209
230235	00.9867	240038	01.4815	240102	01.0953	240161	00.9893	250027	00.9823
230236	01.3399	240040	01.2780	240103	01.1884	240162	01.0592	250029	00.9110
230237	01.0889	240041	01.2177	240104	01.2187	240163	00.9859	250030	00.8907
230239	01.1560	240043	01.1255	240105	00.8992	240166	01.1525	250031	01.2567
230241	01.2143	240044	01.1644	240106	01.3209	240167	00.8388	250032	01.2072
230244	01.3681	240045	01.1021	240107	00.9677	240169	00.9884	250033	01.0385
230253	01.1032	240047	01.3887	240108	00.9392	240170	01.0584	250034	01.4442
230254	01.2625	240048	01.2591	240109	00.9691	240171	01.0991	250035	00.8410
230257	00.9182	240049	01.6577	240110	01.0154	240172	01.0845	250036	00.9614

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991

PROVIDER	CASE MIX
250037	00.8930
250038	00.9187
250039	01.0118
250040	01.2053
250042	01.1271
250043	00.8909
250044	01.0525
250045	01.1647
250046	01.0475
250047	00.9326
250048	01.3353
250049	00.9272
250050	01.1693
250051	00.8808
250057	01.0880
250058	01.1730
250059	01.0052
250060	00.8007
250061	00.9120
250062	00.9942
250063	00.8561
250065	00.9442
250066	00.9378
250067	01.0106
250068	00.8515
250069	01.2290
250071	01.0512
250072	01.2240
250073	00.9892
250076	00.9129
250077	00.9331
250078	01.3886
250079	00.8598
250081	01.2215
250082	01.2514
250083	00.8997
250084	01.1966
250085	01.0008
250086	00.9265
250088	01.0092
250089	00.9999
250091	01.0206
250093	01.1580
250094	01.2725
250095	01.0480
250096	01.1992
250097	01.1853
250098	00.8454
250099	01.2061
250100	01.1505
250101	00.8826
250102	01.4419
250104	01.3143
250105	00.9087
250107	00.9189
250109	00.9856
250112	00.9541
250113	00.9556
250117	01.0880
250119	00.9687
250120	01.0682
250122	01.2651
250123	01.1486
250124	00.8813
250125	01.2550
250126	00.9919
250127	00.8436
250128	00.9709
250129	01.1736
250131	00.9613
250134	00.9535
250136	00.7432
250137	00.9631
250138	01.3198
250139	00.9033
250140	00.8149
250141	01.1843
250142	00.7975
250143	00.9179
250898	00.7011
250899	00.5933
260001	01.5613
260002	01.3257
260003	00.9540
260004	01.0358
260005	01.3728
260006	01.3907
260007	01.2514
260008	01.1982
260009	01.2630
260011	01.5392
260012	01.0056
260013	01.1565
260014	01.6238
260015	01.1876
260016	01.2309
260017	01.2115
260018	00.9483
260019	01.0160
260020	01.6188
260021	01.2831
260022	01.3869
260023	01.2732
260024	01.0607
260025	01.3033
260026	00.9474
260027	01.5417
260029	01.1609
260030	01.1169
260031	01.4644
260032	01.6111
260033	01.2668
260034	01.0358
260035	01.0577
260036	01.0900
260037	01.2409
260039	01.2995
260040	01.4981
260042	01.1125
260044	01.0607
260047	01.3407
260048	01.3525
260049	00.9763
260050	01.0947
260051	01.2169
260052	01.1899
260053	01.0725
260054	01.3329
260055	01.2043
260057	01.1640
260059	01.0850
260061	01.1065
260062	01.1663
260063	01.1723
260064	01.3736
260065	01.6096
260066	01.0404
260067	00.9180
260068	01.7683
260070	01.0768
260073	00.9728
260074	01.1957
260077	01.3904
260078	01.1134
260079	01.0063
260080	01.1100
260081	01.4046
260082	01.1548
260085	01.4457
260086	01.0581
260089	01.0829
260090	01.4544
260091	01.5467
260092	01.1280
260094	01.0700
260095	01.3661
260096	01.4280
260097	01.1961
260100	01.1503
260102	00.9735
260103	01.3136
260104	01.6018
260105	01.9059
260107	01.3046
260108	01.6531
260109	00.9996
260110	01.6543
260111	00.9715
260112	01.4243
260113	01.1687
260115	01.0292
260116	01.2167
260119	01.1453
260120	01.1658
260122	01.2201
260123	00.9644
260127	01.1482
260128	01.0252
260129	01.0795
260131	01.3650
260134	01.2778
260137	01.2258
260138	01.8004
260141	02.0416
260142	01.2080
260143	01.1436
260146	01.3910
260147	01.0426
260148	01.0096
260158	01.1385
260159	01.1010
260160	01.1248
260162	01.0112
260163	01.2131
260164	01.0692
260165	00.9779
260166	01.2324
260172	01.0210
260173	01.0721
260175	01.1367
260176	01.4620
260177	01.3048
260178	01.4142
260179	01.5442
260180	01.5485
260182	01.0209
260183	01.4446
260186	01.1420
260188	01.1727
260189	00.9530
260190	01.1426
260191	01.2506
260193	01.2130
260195	01.1116
260197	01.2125
260198	01.2873
260200	01.1639
260202	01.3792
260898	00.6959
260899	00.5933
270002	01.2268
270003	01.2111
270004	01.6654
270006	00.8607
270007	00.9635
270009	01.0755
270011	01.1328
270012	01.3842
270013	01.2712
270014	01.6252
270016	00.8858
270017	01.1953
270019	00.9792
270021	01.0883
270023	01.3089
270024	01.0469
270026	00.9326
270027	01.0139
270028	01.0329
270029	01.0812
270030	00.9514
270031	00.8901
270032	01.1279
270033	00.8346
270035	01.0480
270036	00.9983
270039	00.9205
270040	01.0094
270041	00.9284
270044	01.1145

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
270046	00.9532	280031	01.1046	280092	00.9934	300008	01.2355	310032	01.2549
270047	00.9928	280032	01.1851	280094	01.1222	300009	01.2220	310034	01.1526
270048	01.1120	280033	00.9335	280097	00.8690	300010	01.2353	310038	01.2028
270049	01.5750	280034	01.2721	280098	01.0099	300011	01.2187	310037	01.2170
270050	01.0269	280035	00.9044	280101	01.1203	300012	01.2578	310038	01.6843
270051	01.1910	280037	00.9497	280102	00.8643	300013	01.1540	310039	01.2925
270052	01.0407	280038	01.0366	280104	00.9322	300014	01.3486	310040	01.2080
270053	00.9047	280039	01.0737	280105	01.2152	300015	01.0421	310041	01.2512
270055	00.6803	280040	01.5866	280106	01.0201	300016	01.2323	310042	01.1506
270057	01.1117	280041	00.9218	280107	01.0745	300017	01.2003	310043	01.2114
270058	00.9434	280042	00.9783	280108	01.0455	300018	01.2254	310044	01.2584
270059	00.8462	280043	01.1572	280109	00.8824	300019	01.2697	310045	01.2746
270060	00.9544	280045	01.1270	280110	00.9953	300020	01.1540	310047	01.2626
270063	00.8789	280046	01.0164	280111	01.1988	300021	01.1536	310048	01.2321
270067	00.9538	280047	01.1721	280114	00.9322	300022	01.1215	310049	01.2456
270068	00.8818	280048	01.0670	280115	00.9657	300023	01.2290	310050	01.1909
270072	00.8453	280049	01.0303	280117	01.0890	300024	01.2535	310051	01.2915
270073	01.2183	280050	00.9881	280118	01.0141	300028	01.1845	310052	01.1763
270074	00.8436	280051	00.9674	280119	00.9109	300029	01.2856	310054	01.2753
270075	00.9671	280052	01.0106	280123	00.9142	300033	01.0735	310056	01.1859
270078	00.8432	280054	01.1549	280898	00.7011	300034	01.7411	310057	01.2249
270079	00.9288	280055	00.9710	280899	00.5933	300898	00.7055	310058	01.1769
270080	01.1143	280056	00.9827	290001	01.5962	300899	00.5933	310060	01.2048
270081	00.9430	280057	01.0219	290002	00.9406	310001	01.6578	310061	01.1485
270082	00.9041	280058	01.2317	290003	01.6382	310002	01.8335	310062	01.1534
270083	00.9864	280060	01.4590	290005	01.1879	310003	01.2124	310063	01.3049
270084	00.9482	280061	01.2910	290006	01.0956	310005	01.2569	310064	01.2228
270898	00.7186	280062	01.1223	290007	01.7005	310006	01.1518	310067	01.2307
270899	00.5933	280064	01.0678	290008	01.2704	310008	01.3109	310069	01.1381
280001	01.1182	280065	01.1466	290009	01.5518	310009	01.1789	310070	01.2633
280003	01.8260	280066	01.1535	290010	01.0428	310010	01.2440	310071	00.9062
280005	01.4500	280068	00.9262	290011	01.0069	310011	01.2175	310072	01.2813
280009	01.4855	280070	00.9697	290012	01.3145	310012	01.5288	310073	01.4049
280011	00.9936	280073	00.9819	290013	01.0691	310013	01.2815	310074	01.2930
280012	01.1906	280074	01.1627	290014	00.9938	310014	01.5702	310075	01.2412
280013	01.9172	280075	01.2967	290015	01.0594	310015	01.5982	310076	01.3239
280014	00.9868	280076	00.9741	290016	01.2954	310016	01.2386	310077	01.5759
280015	01.0075	280077	01.2704	290018	01.0306	310017	01.3287	310078	01.2965
280017	01.1621	280078	00.9440	290019	01.2083	310018	01.2118	310081	01.1984
280018	00.9322	280079	00.9652	290020	01.0173	310019	01.6564	310083	01.2911
280020	01.4323	280080	01.0670	290021	01.5430	310020	01.1989	310084	01.2308
280021	01.1422	280081	01.4435	290022	01.6758	310021	01.2415	310085	01.2262
280022	01.0214	280082	01.4939	290027	00.9600	310022	01.2106	310086	01.1769
280023	01.3568	280083	00.9711	290029	00.7746	310024	01.2169	310087	01.1864
280024	00.8310	280084	00.9581	290032	01.4420	310025	01.1601	310088	01.2569
280025	00.9937	280085	00.9546	300001	01.2914	310026	01.2314	310090	01.2539
280026	01.0445	280088	01.6300	300003	01.8799	310027	01.2724	310091	01.2398
280028	00.8807	280089	01.0398	300005	01.3445	310028	01.1847	310092	01.3387
280029	01.0108	280090	00.9305	300006	01.1117	310029	01.8190	310093	01.0833
280030	01.7771	280091	01.0154	300007	01.1003	310031	02.7545	310096	01.7282

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 14 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
310105	01.0944	320067	00.8602	330053	01.0513	330127	01.2252	330201	01.4914
310108	01.3596	320068	00.8736	330055	01.3973	330128	01.4005	330202	01.2794
310110	01.2095	320069	01.0429	330056	01.4060	330132	01.1135	330203	01.4157
310111	01.2331	320070	00.9856	330057	01.5811	330133	01.2789	330204	01.2648
310112	01.2160	320072	01.5919	330058	01.3020	330135	01.1790	330205	01.0993
310113	01.2212	320074	01.0663	330059	01.4747	330136	01.2399	330208	01.1781
310115	01.1844	320076	01.1175	330061	01.3031	330140	01.6372	330209	01.2066
310116	01.2549	320079	01.0770	330062	01.0569	330141	01.2477	330211	01.2290
310118	01.1946	320898	00.7241	330064	01.2798	330142	01.3141	330212	01.2391
310119	01.5145	320899	00.5933	330065	01.1733	330144	01.0037	330213	01.1508
310120	01.0583	330001	01.1560	330066	01.2167	330148	01.0177	330214	01.7146
310121	01.0506	330002	01.4240	330067	01.3164	330151	01.1024	330215	01.1883
310898	00.7011	330003	01.3300	330072	01.3217	330152	01.4034	330218	01.2156
310899	00.5820	330004	01.3071	330073	01.1219	330153	01.3076	330219	01.5641
320001	01.4300	330005	01.6638	330074	01.2650	330154	01.3975	330221	01.2786
320002	01.2442	330006	01.3572	330075	01.0670	330155	01.1739	330222	01.2062
320003	01.1382	330007	01.3469	330078	01.3601	330157	01.3135	330223	01.0765
320004	01.1776	330008	01.1911	330079	01.1014	330158	01.3151	330224	01.2649
320005	01.2389	330009	01.3027	330080	01.2452	330159	01.2762	330225	01.1733
320006	01.1944	330010	01.2150	330082	01.2209	330160	01.4381	330226	01.2993
320009	01.3605	330011	01.1975	330084	00.9867	330161	01.0558	330229	01.1804
320011	00.9584	330012	01.5788	330085	01.3318	330162	01.2408	330230	01.4463
320012	00.9736	330013	02.0376	330086	01.2710	330163	01.1750	330231	01.2100
320013	01.0998	330014	01.3760	330088	01.0905	330164	01.3939	330232	01.2402
320014	00.9454	330015	00.8720	330090	01.7340	330166	00.9389	330233	01.5026
320016	01.2056	330016	00.9942	330091	01.3319	330167	01.5214	330234	01.8929
320017	01.2002	330019	01.3449	330092	00.9838	330169	01.3728	330235	01.1854
320018	01.2417	330020	00.9904	330094	01.3141	330171	01.2915	330236	01.3596
320019	01.3538	330022	01.0132	330095	01.2325	330174	00.7840	330238	01.1009
320021	01.6441	330023	01.2086	330096	01.1394	330175	01.0503	330239	01.1813
320022	01.2261	330024	01.6925	330097	01.1737	330176	00.8622	330240	01.3378
320023	01.1057	330025	01.1062	330100	00.6809	330177	01.0684	330241	01.7462
320030	01.0421	330027	01.4311	330101	01.6650	330179	00.9373	330242	01.2437
320031	00.9598	330028	01.3321	330102	01.2920	330180	01.2225	330244	01.0699
320032	00.9241	330029	01.1444	330103	01.1701	330181	01.2585	330245	01.3008
320033	01.0992	330030	01.1690	330104	01.3306	330182	02.2748	330246	01.1757
320035	01.0732	330033	01.1243	330106	01.5433	330183	01.4318	330247	00.6020
320037	01.2479	330034	01.0723	330107	01.2394	330184	01.2495	330249	01.1964
320038	01.2570	330036	01.2036	330108	01.2452	330185	01.1809	330250	01.2499
320046	01.0924	330037	01.0767	330110	01.0962	330186	00.9961	330252	00.9324
320048	01.2282	330038	01.1750	330111	01.1248	330188	01.1807	330254	00.9844
320056	00.9453	330039	00.8940	330114	00.9982	330189	00.8684	330258	01.3202
320057	01.0938	330041	01.3626	330115	01.2553	330191	01.2528	330259	01.3134
320058	00.8775	330043	01.2780	330116	01.0004	330193	01.3674	330261	01.2055
320059	01.0857	330044	01.2124	330118	01.5905	330194	01.7304	330263	01.0704
320060	00.9163	330045	01.2999	330119	01.5732	330195	01.6563	330264	01.2158
320061	01.2288	330046	01.5843	330121	01.0137	330196	01.3772	330265	01.2840
320062	00.8894	330047	01.2787	330122	01.2779	330197	01.0166	330267	01.2482
320063	01.2761	330048	01.2433	330125	01.7608	330198	01.3351	330268	01.1270
320065	01.1642	330049	01.3131	330126	01.2178	330199	01.2794	330270	01 8912

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: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
330273	01.1818	330394	01.3836	340049	00.5900	340121	00.9534	350012	00.9745
330275	01.2036	330395	01.3399	340050	01.2019	340122	01.0402	350013	01.0994
330276	01.1937	330396	01.2195	340051	01.2279	340123	01.1842	350014	01.0561
330277	01.1679	330397	01.4256	340052	00.9710	340124	01.0969	350015	01.5097
330279	01.2534	330398	01.3058	340053	01.5724	340125	01.4446	350016	00.9590
330281	00.5845	330399	01.3674	340054	00.9793	340126	01.2844	350017	01.2594
330285	01.6000	330898	00.5377	340055	01.1561	340127	01.2259	350018	01.0383
330286	01.3285	330899	00.5933	340060	01.1859	340129	01.1190	350019	01.5307
330288	01.0172	340001	01.2439	340061	01.6056	340130	01.3969	350020	01.3376
330290	01.6601	340002	01.7820	340063	01.0220	340131	01.3435	350021	01.0483
330293	01.1152	340003	01.1432	340064	01.1011	340132	01.3657	350023	00.9208
330304	01.1618	340004	01.3930	340065	01.2382	340133	01.2081	350024	01.0031
330306	01.3793	340005	01.2186	340067	01.1095	340135	01.0705	350025	00.9630
330307	01.1383	340006	01.1747	340068	01.2600	340136	00.8650	350027	00.9789
330308	01.2434	340007	01.1159	340069	01.7413	340137	01.2023	350029	00.9882
330309	01.2846	340008	01.2221	340070	01.2915	340138	01.1161	350030	01.0583
330314	01.2954	340009	01.2706	340071	01.0893	340141	01.5263	350031	00.9835
330315	01.1883	340010	01.3135	340072	01.0470	340142	01.1674	350032	01.3053
330316	01.2443	340011	01.0800	340073	01.3473	340143	01.3674	350033	00.9688
330327	00.9478	340012	01.0754	340075	01.1885	340144	01.2598	350034	00.9734
330331	01.1957	340013	01.1941	340076	01.0245	340145	01.1897	350035	00.8348
330332	01.2885	340014	01.6288	340080	01.0938	340146	01.0141	350036	00.9224
330333	01.3099	340015	01.2265	340084	01.0217	340147	01.2841	350038	00.9552
330336	01.2740	340016	01.2028	340085	01.2478	340148	01.3166	350039	00.8885
330338	01.1616	340017	01.2021	340087	01.0869	340151	01.1652	350041	00.9925
330339	00.8648	340018	01.2130	340088	01.0748	340153	01.9099	350042	00.9260
330340	01.1313	340019	01.0666	340089	01.0036	340154	00.9800	350043	01.5731
330350	01.8948	340020	01.2499	340090	01.1399	340155	01.4954	350044	00.8569
330351	01.0933	340021	01.2157	340091	01.6623	340156	00.8579	350047	01.1519
330353	01.2145	340022	01.1448	340093	01.0485	340158	01.0443	350049	01.0629
330354	01.1615	340023	01.3133	340094	01.3397	340159	01.2070	350050	00.9960
330357	01.3723	340024	01.2259	340096	01.2118	340160	01.0404	350051	00.9419
330359	00.9412	340025	01.0964	340097	01.0040	340162	01.2682	350053	00.8935
330362	00.6536	340027	01.1215	340098	01.6166	340164	01.3371	350055	00.9582
330363	00.6845	340028	01.3883	340099	01.1462	340166	01.3205	350056	00.8781
330366	00.7261	340030	01.7642	340100	01.0987	340167	00.5762	350058	00.9941
330367	00.5881	340031	01.0764	340101	01.0661	340168	00.5394	350060	00.9295
330368	00.6233	340032	01.2851	340104	01.0037	340898	00.6959	350061	01.0154
330369	00.6711	340034	01.2774	340105	01.3337	340899	00.5704	350063	00.8245
330371	00.6549	340035	01.0880	340106	01.1051	350001	01.1012	350064	00.8353
330372	01.2391	340036	01.0849	340107	01.2960	350002	01.6350	350065	00.9904
330373	00.6795	340037	01.2492	340109	01.2881	350003	01.1388	350066	00.9846
330381	01.3061	340038	01.2031	340111	01.1685	350004	01.8746	350067	01.0297
330383	01.3788	340039	01.2352	340112	01.0075	350005	01.1909	350898	00.5196
330385	01.2000	340040	01.7179	340113	01.9528	350006	01.3931	350899	00.5200
330386	01.2119	340041	01.2312	340114	01.3849	350007	01.0256	360001	01.2208
330387	00.8627	340042	01.1518	340115	01.4475	350008	01.0437	360002	01.1442
330389	01.8157	340044	01.0104	340116	01.7306	350009	01.1634	360003	01.5880
330390	01.2245	340045	00.9701	340119	01.2109	350010	01.0859	360006	01.7210
330393	01.6510	340047	01.7865	340120	01.0633	350011	01.7361	360007	01.1485

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 16 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
360008	01.1885	360064	01.4600	360120	00.7106	360179	01.2535	370020	01.2583
360009	01.3042	360065	01.2015	360121	01.1847	360180	02.1065	370021	00.9723
360010	01.1622	360066	01.2308	360122	01.2237	360184	00.7100	370022	01.3410
360011	01.2673	360067	01.1829	360123	01.1505	360185	01.1692	370023	01.3165
360012	01.2772	360068	01.4427	360124	01.2238	360186	01.1560	370025	01.3100
360013	01.0931	360069	01.0316	360125	01.0834	360187	01.3206	370026	01.3143
360014	01.1689	360070	01.4018	360126	01.2596	360188	00.9687	370028	01.6147
360015	01.4481	360071	01.2758	360127	01.0204	360189	01.0651	370029	01.2188
360016	01.4685	360072	01.1559	360128	01.0601	360192	01.2783	370030	01.2113
360017	01.7324	360074	01.3153	360129	01.0463	360193	01.2608	370032	01.3442
360018	01.3731	360075	01.4178	360130	01.1047	360194	01.0646	370033	01.2104
360019	01.1745	360076	01.2600	360131	01.2733	360195	01.1869	370034	01.1218
360020	01.2387	360077	01.3972	360132	01.1794	360197	01.1575	370035	01.5126
360021	01.2084	360078	01.2704	360133	01.3232	360200	01.2071	370036	01.1042
360024	01.2724	360079	01.6191	360134	01.5318	360203	01.1218	370037	01.5306
360025	01.2127	360080	01.2267	360135	01.1194	360204	01.1640	370038	01.0635
360026	01.1237	360081	01.3315	360136	01.0698	360210	01.1851	370039	01.2286
360027	01.4963	360082	01.3182	360137	01.5094	360211	01.1710	370040	01.0324
360028	01.3266	360083	01.2132	360139	01.1154	360212	01.4200	370041	01.0246
360029	01.1008	360084	01.4106	360140	01.0630	360213	01.0973	370042	00.8843
360030	01.1579	360085	01.6739	360141	01.4123	360218	01.3145	370043	00.9562
360031	01.2545	360086	01.3417	360142	00.9861	360230	01.2830	370045	01.0659
360032	01.1178	360087	01.3150	360143	01.2290	360231	01.1230	370046	01.0201
360034	01.0803	360088	01.1521	360144	01.2917	360232	01.1335	370047	01.2533
360035	01.4548	360089	01.1109	360145	01.4940	360234	01.2280	370048	01.2083
360036	01.1750	360090	01.1711	360147	01.2193	360236	01.2063	370049	01.2957
360037	01.8293	360091	01.3045	360148	01.1836	360238	00.8516	370050	00.8128
360038	01.4265	360092	01.1612	360149	01.0868	360239	01.2051	370051	01.0003
360039	01.2393	360093	01.1582	360150	01.2099	360240	00.5398	370054	01.2478
360040	01.2684	360094	01.2206	360151	01.2817	360241	00.6470	370056	01.4618
360041	01.2353	360095	01.2945	360152	01.4955	360242	01.5841	370057	01.0880
360042	01.0930	360096	01.1047	360153	01.1568	360243	00.9016	370059	01.2278
360044	01.0944	360098	01.3047	360154	01.0441	360898	00.7055	370060	01.0457
360045	01.5035	360099	01.0450	360155	01.2076	360899	00.6006	370063	01.1852
360046	01.1259	360100	01.2811	360156	01.1317	370001	01.6630	370064	00.9042
360047	01.1087	360101	01.6028	360159	01.1440	370002	01.1831	370065	01.1241
360048	01.7146	360102	01.2225	360161	01.2195	370004	01.1904	370069	01.0116
360049	01.2561	360103	01.3406	360162	01.2199	370005	00.9163	370071	01.0079
360050	01.2480	360104	00.8989	360163	01.6523	370006	01.2095	370072	00.9698
360051	01.4791	360106	01.1837	360164	00.9753	370007	01.1117	370076	01.1117
360052	01.5950	360107	01.2072	360165	01.0777	370008	01.2182	370077	01.2633
360054	01.2983	360108	01.0218	360166	01.0321	370011	00.9381	370078	01.5373
360055	01.1899	360109	01.0370	360169	01.0140	370012	00.9169	370079	00.9247
360056	01.2907	360112	01.6095	360170	01.1557	370013	01.4016	370080	00.9494
360057	00.9616	360113	01.2408	360172	01.3402	370014	01.1517	370082	00.9971
360058	01.1008	360114	01.0511	360174	01.1523	370015	01.1269	370083	00.9946
360059	01.4813	360115	01.2479	360175	01.1492	370016	01.2491	370084	00.8590
360061	00.9603	360116	01.0275	360176	01.1366	370017	00.9861	370085	00.8928
360062	01.6108	360118	01.2524	360177	01.2603	370018	01.1800	370086	01.0952
360063	01.0531	360119	01.2161	360178	01.2593	370019	01.1325	370089	01.2511

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 17 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
370091	01.5313	370179	01.0750	380056	01.0380	390023	01.2283	390078	01 0548
370092	01.0351	370180	01.0228	380059	00.9145	390024	00.7847	390079	01.6542
370093	01.6174	370183	01.0842	380060	01.3258	390025	00.8124	390080	01.1715
370094	01.2787	370185	00.6561	380061	01.6086	390026	01.2380	390081	01.2354
370095	00.9083	370186	00.9834	380062	00.9536	390027	01.7205	390083	01.1254
370097	01.2421	370189	00.9860	380063	01.2683	390028	01.6786	390084	01.1549
370099	01.1489	370190	01.3183	380064	01.3214	390029	01.6470	390086	01.0827
370100	01.0450	370898	00.7011	380065	01.0798	390030	01.1475	390088	01.3304
370103	00.9072	370899	00.5933	380066	01.1358	390031	01.1584	390090	01.7880
370105	01.8882	380001	01.3203	380068	01.0718	390032	01.2139	390091	01.1112
370106	01.3370	380002	01.2313	380069	01.1687	390035	01.2510	390092	01.2270
370108	01.0358	380003	01.1420	380070	01.0683	390036	01.2135	390093	01.2238
370110	00.9971	380004	01.8249	380071	01.2575	390037	01.2069	390095	01.2449
370112	00.9205	380005	01.2024	380072	00.9389	390039	01.0661	390096	01.2257
370113	01.0953	380006	01.1757	380075	01.3712	390040	00.9802	390097	01.3060
370114	01.5430	380007	01.7822	380078	01.1830	390041	01.2212	390098	01.5804
370117	01.3063	380008	01.0571	380081	01.0498	390042	01.2589	390100	01.7299
370121	01.1788	380009	01.8433	380082	01.2904	390043	01.0783	390101	01.2252
370122	00.9339	380010	01.1516	380083	01.1859	390044	01.5304	390102	01.2725
370123	01.1579	380011	01.1471	380084	01.2609	390045	01.2991	390103	01.0780
370125	00.9808	380013	01.2419	380087	00.9779	390046	01.4233	390104	01.0662
370126	01.0998	380014	01.3127	380088	00.9280	390047	01.4582	390106	01.0788
370131	00.9952	380017	01.7214	380089	01.2922	390048	01.1050	390107	01.1896
370133	01.1936	380018	01.8707	380090	01.3307	390049	01.5231	390108	01.3382
370138	01.1842	380019	01.2649	380091	01.1711	390050	01.8804	390109	01.2110
370139	01.0073	380020	01.3445	380094	01.1491	390051	02.0915	390110	01.3387
370140	01.0652	380021	01.2315	380096	01.1107	390052	01.1415	390111	01.7172
370141	01.4378	380022	01.2338	380898	00.6959	390054	01.1127	390112	01.1828
370146	01.0242	380023	01.2872	380899	00.5933	390055	01.6890	390113	01.2474
370148	01.2687	380024	01.2863	390001	01.2248	390056	01.0962	390114	01.0313
370149	01.2109	380025	01.2421	390002	01.1848	390057	01.2574	390115	01.2930
370153	01.0973	380026	01.4084	390003	01.1522	390058	01.3240	390116	01.1821
370154	01.0248	380027	01.2104	390004	01.2474	390059	01.3276	390117	01.1647
370156	01.0210	380029	01.1555	390005	01.0906	390060	01.1557	390118	01.1609
370157	00.9195	380030	00.8953	390006	01.6859	390061	01.2393	390119	01.3166
370158	01.0514	380031	01.0175	390007	01.1727	390062	01.1877	390121	01.2056
370159	01.1521	380033	01.6755	390008	01.1245	390063	01.6215	390122	01.0424
370161	01.1959	380035	01.1882	390009	01.4983	390064	01.4194	390123	01.2041
370163	00.8649	380036	01.0905	390010	01.1734	390065	01.2442	390125	01.2187
370165	01.1643	380037	01.2117	390011	01.2003	390066	01.2678	390126	01.2167
370166	01.1656	380038	01.2444	390012	01.1989	390067	01.5103	390127	01.1118
370169	00.9965	380039	01.3112	390013	01.1550	390068	01.2594	390128	01.1941
370170	00.8238	380040	01.3427	390014	00.8159	390069	01.2592	390130	01.0671
370171	00.9483	380042	01.1124	390015	01.1104	390070	01.1882	390131	01.2059
370172	00.8966	380047	01.5541	390016	01.1718	390071	01.1218	390132	01.1606
370173	01.0663	380048	00.9951	390017	01.1498	390072	00.9935	390133	01.4044
370174	00.9662	380050	01.3293	390018	01.2180	390073	01.4717	390135	01.2238
370176	01.2706	380051	01.4251	390019	01.1113	390074	01.2243	390136	01.1704
370177	00.9393	380052	01.1735	390021	01.0858	390075	01.3036	390137	01.1857
370178	01.0007	380055	01.1787	390022	01.2705	390076	01.2570	390138	01.2470

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
. CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 18 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
390139	01.4427	390197	01.2864	390277	01.4534	400111	01.2195	420036	01.2537
390142	01.7099	390198	01.2504	390278	00.8975	400112	01.2237	420037	01.2720
390143	03.1916	390199	01.2182	390898	00.6478	400113	01.2075	420038	01.2051
390145	01.2120	390200	01.0823	390899	00.5756	400114	01.0776	420039	01.1188
390146	01.1901	390201	01.3181	400001	01.1869	400115	01.0326	420040	01.2994
390147	01.1880	390203	01.2909	400002	01.2608	400117	01.1714	420042	01.0812
390148	01.1487	390204	01.2726	400003	01.1319	400118	01.1614	420043	01.1473
390149	01.2551	390205	01.2345	400004	01.1172	400120	01.3128	420044	01.1484
390150	01.1998	390206	01.2600	400005	01.1165	400121	01.0225	420048	01.1354
390151	01.2693	390209	00.9546	400006	01.1717	400898	00.7124	420049	01.0893
390152	01.0243	390211	01.1389	400007	01.0901	400899	00.5933	420051	01.5386
390153	01.2058	390213	01.0185	400008	01.1139	410001	01.2640	420053	01.0857
390154	01.1150	390215	01.1789	400009	00.9820	410002	01.2483	420054	01.1379
390155	01.2832	390217	01.1413	400010	00.9631	410004	01.4267	420055	01.0351
390156	01.3735	390219	01.1923	400011	01.1131	410005	01.2981	420056	01.0152
390157	01.1812	390220	01.1139	400012	01.0397	410006	01.1874	420057	01.0846
390158	01.2492	390222	01.2000	400013	01.0272	410007	01.5205	420059	01.0531
390159	01.3079	390223	01.5759	400014	01.3318	410008	01.1990	420061	01.2593
390160	01.1721	390224	00.9580	400015	01.0801	410009	01.3382	420062	01.2822
390161	01.0728	390225	01.2692	400016	01.2660	410010	01.0374	420064	01.0772
390162	01.2402	390226	01.6126	400017	01.1062	410011	01.1929	420065	01.3053
390163	01.2013	390228	01.1929	400018	01.2698	410012	01.5862	420066	01.0015
390164	01.8775	390229	01.4457	400019	01.3510	410013	01.1477	420067	01.1124
390165	01.0801	390231	01.3036	400021	01.3106	410898	00.7124	420068	01.1785
390166	01.1110	390232	01.0866	400022	01.2852	410899	00.5933	420069	01.0072
390167	01.2332	390233	01.2834	400024	01.0343	420002	01.3260	420070	01.2626
390168	01.1968	390235	01.8436	400026	00.9306	420004	01.9502	420071	01.3694
390169	01.2263	390236	01.2111	400027	01.0976	420005	01.1085	420072	01.0073
390170	01.6284	390237	01.4882	400028	01.0450	420006	01.5297	420073	01.2811
390171	01.0849	390238	00.9991	400029	01.0198	420007	01.4123	420074	00.9710
390172	01.1793	390242	01.2145	400031	01.0733	420009	01.2309	420075	01.0716
390173	01.1246	390244	00.8734	400032	01.1247	420010	01.0818	420076	01.2637
390174	01.5844	390245	01.3513	400037	00.5692	420011	01.0829	420078	01.5714
390176	01.2046	390246	01.2118	400038	00.9750	420014	01.1158	420079	01.5497
390178	01.3257	390247	01.1039	400044	01.2547	420015	01.2538	420080	01.1505
390179	01.2349	390249	00.9705	400048	01.1327	420016	01.2156	420081	00.7982
390180	01.3894	390252	00.9369	400061	01.7728	420018	01.6260	420082	01.3709
390181	01.0718	390256	01.6519	400079	01.1418	420019	01.1687	420083	01.1952
390183	01.1446	390258	01.2930	400087	01.2463	420020	01.1766	420084	00.8372
390184	01.1044	390260	01.2363	400088	00.7437	420022	00.9970	420085	01.2551
390185	01.1571	390261	01.8268	400089	01.0897	420023	01.2479	420086	01.3756
390186	01.0995	390262	01.6813	400094	00.9192	420026	01.8115	420087	01.5254
390187	01.0994	390263	01.4368	400098	01.2320	420027	01.3416	420088	01.1805
390189	01.1126	390265	01.2574	400102	01.0991	420028	01.0602	420089	01.2609
390191	01.0654	390266	01.1242	400103	01.4111	420029	01.8435	420898	00.8771
390192	01.0701	390267	01.2187	400104	01.2781	420030	01.1604	420899	00.5933
390193	01.1907	390268	01.2201	400105	01.2795	420031	00.9787	430004	01.0610
390194	01.0999	390270	01.3042	400106	01.1440	420032	00.8739	430005	01.3185
390195	01.5428	390272	00.6193	400109	01.5059	420033	01.1658	430007	01.1426
390196	01.2912	390275	00.5439	400110	01.1676	420035	00.8266	430008	01.2152

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 19 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
430009	01.0311	430084	01.0086	440059	01.1388	440146	01.3387	450014	01.1052
430010	01.0947	430085	00.9279	440060	01.2150	440147	00.7335	450015	01.5143
430011	01.3501	430086	00.8651	440061	01.1043	440148	01.1316	450016	01.6549
430012	01.3030	430087	01.0579	440063	01.4087	440149	01.1647	450018	01.6541
430013	01.2439	430088	00.9259	440064	01.0984	440150	01.2898	450019	02.8940
430014	01.1898	440001	00.9701	440065	01.1393	440151	01.1705	450020	01.0537
430015	01.0331	440002	01.5635	440067	01.1641	440152	01.5789	450021	01.7689
430016	01.7030	440003	01.1093	440068	01.1625	440153	00.9848	450023	01.4111
430017	01.0879	440006	01.3877	440069	01.0897	440154	00.7352	450024	01.2651
430018	00.9467	440007	01.0247	440070	00.9311	440156	01.4045	450025	01.4534
430022	00.9431	440008	00.9625	440071	01.3252	440157	01.0030	450027	01.1921
430023	00.9419	440009	01.0302	440072	01.3619	440159	01.2169	450028	01.4417
430024	01.0061	440010	00.9354	440073	01.2878	440160	01.0547	450029	01.3741
430025	01.0109	440011	01.2239	440074	00.8640	440161	01.5777	450031	01.1828
430026	00.8677	440012	01.3394	440078	01.0115	440162	01.0043	450032	01.2115
430027	01.8594	440014	00.8841	440079	00.8339	440166	01.2809	450033	01.6066
430028	01.0992	440015	01.4882	440081	01.1405	440168	01.0334	450034	01.4988
430029	00.9978	440016	00.9545	440082	01.8142	440170	01.3329	450035	01.4719
430031	00.9946	440017	01.4827	440083	01.2404	440173	01.4742	450037	01.4609
430033	00.9962	440018	01.2963	440084	01.0804	440174	00.9098	450039	01.1670
430034	01.0563	440019	01.4679	440087	01.0114	440175	01.1642	450040	01.6219
430036	01.0365	440020	01.2166	440090	01.0373	440176	01.2734	450041	00.9493
430037	00.9672	440022	01.0826	440091	01.3862	440177	00.9367	450042	01.6210
430038	01.0455	440023	00.9772	440095	01.0858	440178	01.1885	450043	01.4135
430039	01.0100	440024	01.1448	440100	01.0961	440180	01.0862	450044	01.5010
430040	00.9229	440025	01.1533	440102	01.0579	440181	00.9708	450046	01.3774
430041	00.9428	440026	01.2767	440103	01.2834	440182	00.9304	450047	01.0038
430042	01.0035	440029	01.2274	440104	01.4361	440183	01.4239	450050	01.2953
430043	01.1949	440030	01.0530	440105	01.3156	440184	01.2415	450051	01.6324
430044	00.9390	440031	01.0537	440109	01.0700	440185	01.0482	450052	01.0335
430047	01.0916	440032	00.9586	440110	01.0866	440186	01.1493	450053	01.1164
430048	01.1354	440033	01.0885	440111	01.2814	440187	01.0728	450054	01.6334
430049	00.9242	440034	01.3829	440114	00.9988	440189	01.4744	450055	01.0755
430051	00.9914	440035	01.1732	440115	01.1522	440192	00.9500	450056	01.6181
430054	00.9401	440038	00.9220	440120	01.4553	440193	01.0686	450057	01.1861
430056	00.8737	440039	01.5792	440121	01.0594	440194	01.2554	450058	01.5148
430057	00.9685	440040	00.8998	440125	01.4373	440196	00.9960	450059	01.2827
430060	00.9537	440041	00.8852	440128	00.9216	440197	01.3298	450060	01.3405
430062	00.8552	440046	01.0297	440130	01.1124	440200	01.0749	450063	00.9390
430064	01.0464	440047	00.9236	440131	01.1110	440203	00.9790	450064	01.4570
430065	00.9444	440048	01.5935	440132	01.0456	440205	00.9780	450065	01.1392
430066	01.0843	440049	01.6186	440133	01.4550	440898	00.6864	450068	01.6465
430073	01.1100	440050	01.1555	440135	01.3845	440899	00.8006	450070	01.1236
430076	01.0099	440051	00.9219	440136	01.2579	450002	01.3855	450072	01.1840
430077	01.4189	440052	01.1565	440137	01.0527	450004	01.0807	450073	01.1736
430079	01.0408	440053	01.1704	440141	00.9151	450005	01.0299	450074	01.1915
430080	00.8204	440054	00.9825	440142	01.0537	450007	01.3586	450076	01.2381
430081	01.0026	440056	00.9654	440143	01.0324	450008	01.2447	450077	00.9754
430082	00.8949	440057	00.9617	440144	01.1294	450010	01.2755	450078	00.9893
430083	00.8473	440058	01.1467	440145	00.9832	450011	01.5581	450079	01.4452

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 20 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450080	01.1702	450153	01.5808	450234	00.9339	450351	01.2829	450484	01.5176
450081	01.1807	450154	01.1220	450235	01.0289	450352	01.2194	450486	00.9476
450082	00.9919	450155	01.0564	450236	01.1313	450353	01.1300	450488	01.2052
450083	01.5521	450157	01.0128	450237	01.5059	450355	01.1050	450489	01.0417
450085	00.9963	450160	01.0277	450239	01.1864	450358	01.9688	450497	01.1283
450087	01.3391	450162	01.3390	450241	00.9570	450362	00.9602	450498	01.0559
450090	01.1520	450163	01.1107	450243	00.9256	450365	00.9874	450508	01.4144
450092	01.2884	450164	00.8291	450246	00.9993	450366	01.6512	450514	01.1391
450094	01.3869	450165	00.9342	450249	00.9333	450369	01.1976	450517	00.9456
450096	01.4927	450166	00.8710	450253	01.0894	450370	01.1805	450518	01.3298
450097	01.4102	450169	00.8654	450258	01.1207	450371	01.1090	450523	01.4783
450098	01.1212	450170	01.1030	450259	01.2272	450372	01.3069	450530	01.3074
450099	01.2182	450175	01.1695	450264	00.8619	450373	01.1578	450534	00.9581
450101	01.3864	450176	01.2791	450268	01.2150	450374	00.8738	450535	01.2197
450102	01.6956	450177	01.1028	450269	00.9470	450376	01.4582	450537	01.3805
450104	01.2475	450178	01.0727	450270	01.1469	450378	01.2817	450538	01.2929
450107	01.4170	450179	01.0314	450271	01.1899	450379	01.5851	450539	01.2836
450108	00.9755	450181	01.0091	450272	01.3336	450381	00.8685	450544	01.2441
450109	00.9858	450183	00.9973	450276	00.9935	450388	01.6342	450545	01.1621
450110	01.2221	450184	01.4694	450278	00.9019	450389	01.2288	450546	01.3549
450111	01.1780	450185	01.0479	450280	01.3141	450393	01.2912	450547	00.9894
450112	01.2148	450187	01.1956	450283	01.1470	450395	01.0765	450550	01.0390
450113	01.2870	450188	00.9714	450286	01.0916	450399	01.0324	450551	01.0309
450115	01.0676	450190	01.2586	450288	01.1421	450400	01.0697	450557	01.0522
450118	01.4149	450191	01.1034	450289	01.3842	450403	01.2084	450558	01.7843
450119	01.2402	450192	01.0860	450292	01.2537	450410	01.0562	450559	00.8868
450121	01.3731	450193	02.1589	450293	00.9902	450411	01.0614	450561	01.5104
450123	01.0640	450194	01.1285	450296	01.2171	450417	01.0327	450563	01.2053
450124	01.4598	450195	01.4252	450297	01.0690	450418	01.3688	450565	01.2918
450126	01.3117	450196	01.2384	450299	01.3459	450419	01.2443	450570	01.0129
450127	00.9705	450197	01.2032	450303	00.9486	450422	00.7583	450571	01.4388
450128	01.1501	450200	01.2931	450306	01.0436	450423	01.3455	450573	01.0348
450130	01.4854	450201	00.9801	450307	00.9979	450424	01.2620	450574	01.0248
450131	01.2387	450203	01.1710	450309	01.0402	450429	00.9315	450575	00.9941
450132	01.4478	450207	01.0962	450315	01.2236	450431	01.5019	450578	00.9649
450133	01.4367	450208	02.8823	450320	01.3066	450438	01.0544	450580	01.1793
450135	01.5878	450209	01.3417	450321	00.8834	450446	00.9118	450583	01.0090
450137	01.3454	450210	01.2006	450322	00.9486	450447	01.2783	450584	01.1749
450140	00.9018	450211	01.2561	450324	01.5258	450450	01.0858	450586	01.1145
450142	01.2795	450213	01.4343	450325	01.1917	450451	01.0106	450587	01.2594
450143	01.0184	450214	01.3070	450327	00.9892	450457	01.6706	450591	01.2424
450144	01.1376	450217	00.8680	450330	01.0898	450460	00.9721	450596	01.2329
450145	00.9723	450218	00.9966	450334	01.0666	450462	01.5906	450597	01.0384
450146	01.0127	450219	01.1242	450337	01.1856	450464	00.9138	450603	00.9844
450147	01.3529	450221	00.9881	450340	01.3507	450465	01.1064	450604	01.2342
450148	01.3120	450222	01.6916	450341	00.9360	450467	01.0551	450605	01 2250
450149	01.4242	450224	01.1342	450346	01.3101	450469	01.2731	450607	00.8998
450150	01.0191	450229	01.3599	450347	01.2250	450473	01.0851	450609	00.8576
450151	01.0829	450231	01.5954	450348	00.9782	450475	01.1437	450610	01.3851
450152	01.4143	450233	01.0909	450349	01.1459	450476	01.0202	450614	01.0259

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
. CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
450615	00.9536	450691	01.1613	450766	01.6145	470001	01.1553	490043	01.1753
450617	01.3711	450694	01.2182	450768	01.0854	470003	01.9216	490044	01.2720
450620	01.0812	450696	01.0786	450769	00.9330	470004	01.1731	490045	01.1529
450623	01.1476	450697	01.4611	450770	00.9871	470005	01.1976	490046	01.3425
450626	00.9647	450698	00.9556	450771	01.4283	470006	01.2796	490047	01.1639
450628	00.9652	450700	00.9224	450773	01.1471	470008	01.2179	490048	01.3228
450630	01.6381	450702	01.2762	450775	01.1682	470010	01.0269	490050	01.3131
450631	01.6317	450703	01.2745	450898	00.5372	470011	01.1543	490052	01.4080
450632	00.9899	450704	01.2882	450899	00.5933	470012	01.2574	490053	01.2126
450633	01.5660	450705	00.8070	460001	01.6016	470013	01.1251	490054	01.0640
450634	01.3371	450706	01.2435	460003	01.4090	470015	01.2147	490057	01.3413
450637	01.3089	450709	01.1897	460004	01.7104	470018	01.1755	490059	01.4083
450638	01.4822	450711	01.6222	460005	01.2454	470020	01.0039	490060	01.0832
450639	01.5131	450712	00.7254	460006	01.3409	470023	01.2332	490063	01.5838
450641	00.8878	450713	01.2507	460007	01.3771	470024	01.1079	490066	01.1103
450643	01.1682	450715	01.3715	460008	01.3177	490001	01.1387	490067	01.2667
450644	01.6063	450716	01.2262	460009	01.7617	490002	01.0308	490069	01.3553
450646	01.4764	450717	01.2323	460010	01.9808	490003	00.6383	490071	01.2842
450647	01.9626	450718	01.1212	460011	01.3147	490004	01.2117	490073	01.2107
450648	01.1072	450723	01.2479	460013	01.4278	490005	01.4018	490074	01.2452
450649	01.0714	450724	01.1884	460014	01.0575	490006	01.1329	490075	01.2427
450651	01.8222	450725	00.9412	460015	01.2503	490007	01.9211	490077	01.1728
450652	00.9569	450726	00.8623	460016	00.9768	490008	01.1192	490079	01.2327
450653	01.2340	450727	00.9602	460017	01.2157	490009	01.6423	490083	00.7777
450654	00.9878	450728	00.8694	460018	00.9469	490010	01.1743	490084	01.1377
450656	01.2864	450729	00.9587	460019	00.9871	490011	01.2760	490085	01.2287
450658	00.9579	450730	01.3964	460020	00.9421	490012	01.0049	490088	01.1241
450659	01.4426	450732	01.1773	460021	01.2999	490013	01.1182	490089	01.0397
450660	01.6533	450733	01.3126	460022	00.9610	490014	01.5665	490090	01.1350
450661	01.2200	450734	01.2399	460023	01.1392	490015	01.4621	490091	01.1648
450662	01.4437	450735	00.8450	460024	01.0085	490017	01.2820	490092	01.1219
450665	00.9783	450737	00.8791	460025	00.8483	490018	01.0968	490093	01.2530
450666	01.2154	450742	01.3280	460026	00.9618	490019	01.1421	490094	01.0831
450668	01.5214	450743	01.4463	460027	00.9446	490020	01.0727	490095	01.2819
450669	01.3213	450745	00.8077	460029	00.9560	490021	01.3966	490097	01.1400
450670	01.2267	450746	00.8982	460030	01.1082	490022	01.2210	490098	01.2638
450672	01.5935	450747	01.3199	460032	00.9744	490023	01.1902	490099	00.9339
450673	01.0142	450749	01.0312	460033	00.9922	490024	01.6464	490100	01.2995
450674	00.8497	450750	00.9812	460035	00.9074	490027	01.0346	490101	01.1062
450675	01.3358	450751	01.3228	460036	00.9919	490028	01.2916	490104	00.8727
450677	01.3343	450753	00.8613	460037	00.9503	490030	01.3058	490105	00.7232
450678	01.4926	450754	00.8778	460039	00.9546	490031	01.0669	490106	00.8091
450681	01.5291	450755	01.0099	460041	01.2425	490032	01.6518	490107	01.2613
450682	01.2877	450757	00.9658	460042	01.3774	490033	01.2290	490108	00.8697
450683	01.2976	450758	01.4997	460043	01.2879	490035	01.3112	490109	00.8224
450684	01.2924	450759	01.1293	460044	01.1249	490037	01.1306	490110	01.2084
450685	01.2284	450760	01.3408	460046	00.9837	490038	01.2374	490111	01.1711
450686	01.3757	450761	00.9399	460047	01.8139	490040	01.3881	490112	01.5160
450688	01.3312	450763	01.0429	460898	00.7066	490041	01.1724	490113	01.2372
450690	01.3172	450765	01.0829	460899	00.5933	490042	01.2836	490114	01.0184

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

TABLE 3C : HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1991 PAGE 22 OF 23

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
490115	01.1527	500048	00.9335	500123	01.0131	510050	01.2320	520031	01.1652
490116	01.1860	500049	01.2302	500124	01.3235	510053	01.0007	520032	01.1489
490117	01.0709	500050	01.2740	500125	00.9519	510055	01.1703	520033	01.2565
490118	01.7037	500051	01.6318	500127	01.0546	510058	01.2083	520034	01.1890
490119	01.3388	500052	01.2202	500129	01.6826	510059	01.3569	520035	01.2525
490120	01.3135	500053	01.2395	500132	00.8229	510060	01.1631	520037	01.6022
490122	01.2100	500054	01.8326	500134	00.7324	510061	01.0428	520038	01.2987
490123	01.1422	500055	01.0012	500135	01.1246	510062	01.1423	520039	01.0161
490124	01.2071	500057	01.2807	500137	00.8154	510063	01.0610	520040	01.4177
490126	01.1959	500058	01.3179	500138	07.0911	510065	00.9971	520041	01.1157
490127	01.0639	500059	01.1465	500139	01.3357	510066	01.1441	520042	01.0195
490129	01.1401	500060	01.1850	500140	00.9810	510067	01.2705	520044	01.3324
490130	01.2419	500061	01.1698	500141	01.2473	510068	01.1017	520045	01.6515
490131	00.9471	500062	00.9538	500143	00.5857	510070	01.1866	520047	00.9726
490898	00.6901	500064	01.5581	500898	00.8949	510071	01.2579	520048	01.3234
490899	00.5704	500065	01.2768	500899	00.6006	510072	01.0285	520049	01.8058
500001	01.3064	500068	01.1688	510001	01.6879	510076	00.9675	520051	02.0395
500002	01.4458	500069	00.9942	510002	01.2809	510077	01.1330	520053	01.0651
500003	01.2859	500071	01.4231	510004	00.9722	510080	00.9922	520054	01.1973
500005	01.7205	500072	01.1843	510005	00.9611	510081	01.0027	520056	01.2998
500007	01.3026	500073	00.9397	510006	01.2035	510082	01.0235	520057	01.1426
500008	01.9064	500074	01.1160	510007	01.3758	510084	00.9458	520058	01.1022
500009	01.3359	500075	01.1804	510008	01.1685	510085	01.1980	520059	01.2665
500011	01.2214	500076	01.3117	510009	01.0270	510086	01.0419	520060	01.2399
500012	01.4978	500077	01.2325	510012	01.0406	510087	00.7818	520062	01.1771
500014	01.6616	500078	01.2968	510013	01.1448	520002	01.2749	520063	01.1928
500015	01.2864	500079	01.2518	510015	00.9202	520003	01.1458	520064	01.5249
500016	01.3659	500080	00.9282	510016	01.0086	520004	01.2492	520066	01.2379
500019	01.2500	500084	01.0119	510018	01.1258	520006	01.0211	520068	01.0636
500021	01.3900	500085	01.0574	510020	01.0994	520007	01.0786	520069	01.1985
500023	01.1981	500086	01.3083	510022	01.6317	520008	01.2066	520070	01.3206
500024	01.3352	500088	01.3063	510023	01.0319	520009	01.4828	520071	01.1777
500025	01.9341	500089	01.0355	510024	01.3162	520010	01.1006	520074	01.1111
500026	01.2609	500090	00.9145	510025	00.9089	520011	01.0878	520075	01.3986
500027	01.5774	500092	01.1105	510026	00.9774	520012	00.9378	520076	01.1655
500028	00.9916	500093	01.1741	510027	01.0039	520013	01.3000	520077	01.0303
500029	00.9016	500094	00.9211	510028	01.0682	520014	01.1698	520078	01.3126
500030	01.3461	500096	01.0396	510029	01.2375	520015	01.1637	520081	01.2238
500031	01.2379	500097	01.1722	510030	01.1182	520016	00.9800	520082	01.2960
500033	01.1721	500098	00.8660	510031	01.2725	520017	01.1687	520083	01.5012
500034	00.9292	500101	00.9255	510033	01.2116	520018	00.9687	520084	01.0843
500035	01.3867	500102	00.9650	510035	01.0518	520019	01.2358	520087	01.4903
500036	01.2761	500104	01.2724	510036	01.0958	520021	01.1869	520088	01.2162
500037	01.1628	500106	00.9994	510038	01.0036	520024	00.9859	520089	01.4093
500039	01.3067	500107	01.1449	510039	01.2756	520025	01.1238	520090	01.1472
500041	01.2100	500108	01.6490	510040	00.9728	520026	01.0938	520091	01.2351
500042	01.3030	500110	01.2213	510043	01.0028	520027	01.1475	520092	01.1657
500043	01.1757	500118	01.1950	510046	01.2549	520028	01.3674	520094	01.1705
500044	01.9124	500119	01.2518	510047	01.1247	520029	00.9306	520095	01.3066
500045	01.1611	500122	01.2276	510048	01.1451	520030	01.5266	520096	01.4422

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX	PROVIDER	CASE MIX
520097	01.2957	520173	01.0630						
520098	01.6973	520174	01.4653						
520100	01.2329	520176	00.8295						
520101	01.1682	520177	01.5402						
520102	01.1985	520178	01.1607						
520103	01.3448	520180	00.5761						
520104	00.9950	520898	00.7124						
520107	01.2347	520899	00.6006						
520109	01.0764	530001	01.2405						
520110	00.9832	530002	01.1456						
520111	01.0898	530003	00.9566						
520112	01.1216	530004	00.9964						
520113	01.2121	530005	01.0804						
520114	01.0560	530006	01.0912						
520115	01.2905	530007	01.0418						
520116	01.1972	530008	01.1467						
520117	01.0769	530009	00.9850						
520118	00.9365	530010	01.2582						
520120	01.0775	530011	01.1237						
520121	00.9657	530012	01.6087						
520122	01.0398	530014	01.1254						
520123	01.0393	530015	01.1318						
520124	01.1554	530016	01.1459						
520130	01.0636	530017	00.9856						
520131	01.0723	530018	01.0635						
520132	01.1596	530019	00.9848						
520134	01.1496	530022	01.1262						
520135	01.0653	530023	00.9055						
520136	01.4682	530024	00.9604						
520138	01.8465	530025	01.2472						
520139	01.1979	530026	01.0539						
520140	01.4135	530027	00.8637						
520141	01.0937	530029	00.8958						
520142	00.9855	530031	00.9951						
520144	01.0099	530032	01.2402						
520145	01.0208	530898	00.7113						
520146	01.1638								
520148	01.0991								
520149	01.0493								
520151	01.0604								
520152	01.1405								
520153	01.0127								
520154	01.1128								
520156	01.0859								
520157	01.0042								
520159	00.9120								
520160	01.7563								
520161	01.0644								
520170	01.3000								
520171	00.9813								

NOTE: CASE MIX INDEXES DO NOT INCLUDE DISCHARGES FROM PPS-EXEMPT UNITS.
: CASE MIX INDEXES INCLUDE CASES RECEIVED IN HCFA CENTRAL OFFICE THROUGH JUNE 1992

BILLING CODE 4120-03-C

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Abilene, TX	0.9425	0.9603
Taylor,TX		
Aguadilla, PR	0.4566	0.5846
Aguada, PR		
Aguadilla, PR		
Isabella, PR		
Moca, PR		
Akron, OH	0.8917	0.9245
Portage, OH		
Summit, OH		
Albany, GA	0.8046	0.8617
Dougherty, GA		
Lee, GA		
Albany-Schenectady-Troy, NY	0.8953	0.9271
Albany, NY		
Greene, NY		
Montgomery, NY		
Rensselaer, NY		
Saratoga, NY		
Schenectady, NY		
Albuquerque, NM	1.0119	1.0081
Bernalillo, NM		
Alexandria, LA	0.8272	0.8782
Rapides, LA		
Allentown-Bethlehem-Easton, PA-NJ	0.8945	0.9265
Warren, NJ		
Carbon, PA		
Lehigh, PA		
Northampton, PA		
Altoona, PA	0.9235	0.9470
Blair, PA		
Amarillo, TX	0.8735	0.9115
Potter, TX		
Randall, TX		
*Anaheim-Santa Ana, CA	1.1751	1.1168
Orange, CA		
Anchorage, AK	1.4170	1.2696
Anchorage, AK		
Anderson, IN	0.9579	0.9710
Madison, IN		
Anderson, SC	0.7255	0.8027
Anderson, SC		
Ann Arbor, MI	1.1379	1.0925
Washtenaw, MI		
Anniston, AL	0.7928	0.8530
Calhoun, AL		
Appleton-Oshkosh-Neenah, WI	0.9219	0.9456
Calumet, WI		
Outagamie, WI		
Winnebago, WI		
Arecibo, PR	0.3952	0.5295
Arecibo, PR		
Camuy, PR		
Hatillo, PR		
Quebradillas, PR		
Asheville, NC	0.8735	0.9115
Buncombe, NC		
Athens, GA	0.7770	0.8413
Clarke, GA		
Jackson, GA		
Madison, GA		
Oconee, GA		
*Atlanta, GA	0.9592	0.9719
Barrow, GA		
Butts, GA		
Cherokee, GA		
Clayton, GA		
Cobb, GA		
Coweta, GA		
De Kalb, GA		
Douglas, GA		
Fayette, GA		
Forsyth, GA		
Fulton, GA		
Gwinnett, GA		
Henry, GA		
Newton, GA		
Paulding, GA		
Rockdale, GA		
Spalding, GA		
Walton, GA		
Atlantic City, NJ	1.0604	1.0410
Atlantic, NJ		
Cape May, NJ		
Augusta, GA–SC	0.9397	0.9583
Columbia, GA		
McDuffie, GA		
Richmond, GA		
Aiken, SC		
Aurora-Elgin, IL	0.9459	0.9624
Kane, IL		
Kendall, IL		
Austin, TX	0.9595	0.9721
Hays, TX		
Travis, TX		
Williamson, TX		
Bakersfield, CA	1.0863	1.0583
Kern, CA		
*Baltimore, MD	1.0151	1.0103
Anne Arundel, MD		
Baltimore, MD		
Baltimore City, MD		
Carroll, MD		
Hartford, MD		
Howard, MD		
Queen Annes, MD		
Bangor, ME	0.9060	0.9346
Penobscot, ME		
Baton Rouge, LA	0.9085	0.9364
Ascension, LA		
East Baton Rouge, LA		
Livingston, LA		
West Baton Rouge, LA		
Battle Creek, MI	0.9095	0.9371
Calhoun, MI		
Beaumont-Port Arthur, TX	0.9600	0.9724
Hardin, TX		
Jefferson, TX		
Orange, TX		
Beaver County, PA	1.0160	1.0109
Beaver, PA		
Bellingham, WA	1.0492	1.0334
Whatcom, WA		
Benton Harbor, MI	0.8163	0.8702
Berrien, MI		
*Bergen-Passaic, NJ	0.8370	0.8853
Bergen, NJ		
Passaic, NJ		
Billings, MT	0.9321	0.9530
Yellowstone, MT		
Biloxi-Gulfport, MS	0.8059	0.8626
Hancock, MS		
Harrison, MS		
Binghamton, NY	0.9256	0.9484
Broome, NY		
Tioga, NY		
Birmingham, AL	0.8766	0.9138
Blount, AL		
Jefferson, AL		
Saint Clair, AL		
Shelby, AL		
Walker, AL		
Bismarck, ND	0.8878	0.9217
Burleigh, ND		
Morton, ND		
Bloomington, IN	0.7833	0.8460
Monroe, IN		
Bloomington-Normal, IL	0.8655	0.9058
McLean, IL		
Boise City, ID	0.9753	0.9830
Ada, ID		
*Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1804	1.1203
Essex, MA		
Middlesex, MA		
Norfolk, MA		
Plymouth, MA		
Suffolk, MA		
Boulder-Longmont, CO	1.0736	1.0498
Boulder, CO		
Bradenton, FL	0.8727	0.9110
Manatee, FL		
Brazoria, TX	0.8943	0.9264
Brazoria, TX		
Bremerton, WA	0.9631	0.9746
Kitsap, WA		
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1900	1.1265
Fairfield, CT		
Brownsville-Harlingen, TX	0.8597	0.9017
Cameron, TX		
Bryan-College Station, TX	0.9485	0.9644
Brazos, TX		
Buffalo, NY	0.8905	0.9237
Erie, NY		
Burlington, NC	0.7936	0.8536
Alamance, NC		
Burlington, VT	0.9354	0.9553
Chittenden, VT		
Grand Isle, VT		
Caguas, PR	0.4586	0.5863
Caguas, PR		
Gurabo, PR		
San Lorenz, PR		
Aguas Buenas, PR		
Cayey, PR		
Cidra, PR		
Canton, OH	0.8449	0.8910
Carroll, OH		
Stark, OH		
Casper, WY	0.8887	0.9224
Natrona, WY		
Cedar Rapids, IA	0.7528	0.8233
Linn, IA		
Champaign-Urbana-Rantoul, IL	0.8741	0.9120
Champaign, IL		
Charleston, SC	0.8328	0.8822
Berkeley, SC		
Charleston, SC		
Dorchester, SC		
Charleston, WV	0.9688	0.9785
Kanawha, WV		
Putnam, WV		
*Charlotte-Gastonia-Rock Hill, NC-SC	0.9462	0.9628
Cabarrus, NC		
Gaston, NC		
Lincoln, NC		
Mecklenburg, NC		
Rowan, NC		
Union, NC		
York, SC		
Charlottesville, VA	0.9611	0.9732
Albermarle, VA		
Charlottesville City, VA		
Fluvanna, VA		
Greene, VA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Chattanooga, TN-GA	0.9194	0.9441
Catoosa, GA		
Dade, GA		
Walker, GA		
Hamilton, TN		
Marion, TN		
Sequatchie, TN		
Cheyenne, WY	0.7773	0.8415
Laramie, WY		
*Chicago, IL	1.0513	1.0349
Cook, IL		
Du Page, IL		
McHenry, IL		
Chico, CA	1.0977	1.0659
Butte, CA		
*Cincinnati, OH–KY–IN	0.9817	0.9874
Dearborn, IN		
Boone, KY		
Campbell, KY		
Kenton, KY		
Clermont, OH		
Hamilton, OH		
Warren, OH		
Clarksville-Hopkinsville, TN–KY	0.7379	0.8121
Christian, KY		
Montgomery, TN		
*Cleveland, OH	1.0734	1.0497
Cuyahoga, OH		
Geauga, OH		
Lake, OH		
Medina, OH		
Colorado Springs, CO	0.9812	0.9671
El Paso, CO		
Columbia, MO	0.9502	0.9656
Boone, MO		
Columbia, SC	0.8937	0.9259
Lexington, SC		
Richland, SC		
Columbus, GA–AL	0.7368	0.8113
Russell, AL		
Chattanoochee, GA		
Muscogee, GA		
*Columbus, OH	0.9669	0.9772
Delaware, OH		
Fairfield, OH		
Franklin, OH		
Licking, OH		
Madison, OH		
Pickaway, OH		
Union, OH		
Corpus Christi, TX	0.8590	0.9012
Nueces, TX		
San Patricio, TX		
Cumberland, MD–WV	0.8184	0.8718
Allegany, MD		
Mineral, WV		
*Dallas, TX	0.9634	0.9748
Collin, TX		
Dallas, TX		
Denton, TX		
Ellis, TX		
Kaufman, TX		
Rockwall, TX		
Danville, VA	0.7823	0.8452
Danville City, VA		
Pittsylvania, VA		
Davenport-Rock Island-Moline, IA–IL	0.8467	0.8923
Scott, IA		
Henry, IL		
Rock Island, IL		
Dayton-Springfield, OH	0.9727	0.9812
Clark, OH		
Greene, OH		
Miami, OH		
Montgomery, OH		
Daytona Beach, FL	0.8903	0.9235
Volusia, FL		
Decatur, AL	0.7484	0.8200
Lawrence, AL		
Morgan, AL		
Decatur, IL	0.8282	0.8789
Macon, IL		
*Denver, CO	1.0753	1.0510
Adams, CO		
Arapahoe, CO		
Denver, CO		
Douglas, CO		
Jefferson, CO		
Des Moines, IA	0.9187	0.9422
Dallas, IA		
Polk, IA		
Warren, IA		
*Detroit, MI	1.0822	1.0556
Lapeer, MI		
Livingston, MI		
Macomb, MI		
Monroe, MI		
Oakland, MI		
Saint Clair, MI		
Wayne, MI		
Dothan, AL	0.7586	0.8261
Dale, AL		
Houston, AL		
Dubuque, IA	0.8371	0.8854
Dubuque, IA		
Duluth, MN–WI	0.9513	0.9664
St. Louis, MN		
Douglas, WI		
Eau Claire, WI	0.8484	0.8935
Chippewa, WI		
Eau Claire, WI		
El Paso, TX	0.0.8710	0.9098
El Paso, TX		
Elkhart-Goshen, IN	0.7833	0.8460
Elkhart, IN		
Elmira, NY	0.8848	0.9196
Chemung, NY		
Enid, OK	0.8909	0.9239
Garfield, OK		
Erie, PA	0.9151	0.9411
Erie, PA		
Eugene-Springfield, OR	1.0159	1.0109
Lane, OR		
Evansville, IN–KY	0.9423	0.9601
Posey, IN		
Vanderburgh, IN		
Warrick, IN		
Henderson, KY		
Fargo-Moorhead, ND–MN	0.9702	0.9795
Clay, MN		
Cass, ND		
Fayetteville, NC	0.8292	0.8796
Cumberland, NC		
Fayetteville-Springdale, AR	0.7986	0.8573
Washington, AR		
Flint, MI	1.1539	1.1030
Genesee, MI		
Florence, AL	0.7714	0.8372
Colbert, AL		
Lauderdale, AL		
Florence, SC	0.8425	0.8893
Florence, SC		
Fort Collins-Loveland, CO	1.0234	1.0160
Larimor, CO		
*Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0352	1.0240
Broward, FL		
Fort Myers-Cape Coral, FL	0.9795	0.9859
Lee, FL		
Fort Pierce, FL	1.1038	1.0698
Martin, FL		
St. Lucie, FL		
Fort Smith, AR–OK	0.7928	0.8530
Crawford, AR		
Sebastian, AR		
Sequoyah, OK		
Fort Walton Beach, FL	0.8937	0.9259
Okaloosa, FL		
Fort Wayne, IN	0.8999	0.9303
Allen, IN		
De Kalb, IN		
Whitley, IN		
*Fort Worth-Arlington, TX	0.9743	0.9823
Johnson, TX		
Parker, TX		
Tarrant, TX		
Fresno, CA	1.0733	1.0496
Fresno, CA		
Gadsden, AL	0.8196	0.8726
Etowah, AL		
Gainesville, FL	0.8795	0.9158
Alachua, FL		
Bradford, FL		
Galveston-Texas City, TX	0.9424	0.9602
Galveston, TX		
Gary-Hammond, IN	0.9592	0.9719
Lake, IN		
Porter, IN		
Glens Falls, NY	0.9227	0.9464
Warren, NY		
Washington, NY		
Grand Forks, ND	0.9573	0.9706
Grand Forks, ND		
Grand Rapids, MI	0.9879	0.9917
Kent, MI		
Ottawa, MI		
Great Falls, MT	0.9967	0.9991
Cascade, MT		
Greeley, CO	0.9354	0.9553
Weld, CO		
Green Bay, WI	0.9581	0.9711
Brown, WI		
Greensboro-Winston-Salem-High Point, NC	0.9161	0.9418
Davidson, NC		
Davie, NC		
Forsyth, NC		
Guilford, NC		
Randolph, NC		
Stokes, NC		
Yadkin, NC		
Greenville-Spartanburg, SC	0.8919	0.9248
Greenville, SC		
Pickens, SC		
Spartanburg, SC		
Hagerstown, MD	0.9154	0.9413
Washington, MD		
Hamilton-Middletown, OH	0.9149	0.9409
Butler, OH		
Harrisburg-Lebanon-Carlisle, PA	0.9914	0.9941
Cumberland, PA		
Dauphin, PA		
Lebanon, PA		
Perry, PA		
*Hartford-Middletown-New Britain-Bristol, CT	1.1905	1.1268

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Hartford, CT		
Litchfield, CT		
Middlesex, CT		
Tolland, CT		
Hickory, NC	0.8663	0.9064
Alexander, NC		
Burke, NC		
Catawba, NC		
Honolulu, HI	1.1575	1.1053
Honolulu, HI		
Houma-Thibodaux, LA	0.7341	0.8092
Lafourche, LA		
Terrebonne, LA		
*Houston, TX	0.9931	0.9953
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
Huntington-Ashland, WV-KY-OH	0.9434	0.9609
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
Huntsville, AL	0.8831	0.9184
Madison, AL		
*Indianapolis, IN	0.9658	0.9765
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
Iowa City, IA	0.9524	0.9672
Johnson, IA		
Jackson, MI	0.8882	0.9220
Jackson, MI		
Jackson, MS	0.7730	0.8383
Hinds, MS		
Madison, MS		
Rankin, MS		
Jackson, TN	0.8325	0.8820
Madison, TN		
Jacksonville, FL	0.9047	0.9337
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
Jacksonville, NC	0.7936	0.8536
Onslow, NC		
Jamestown-Dunkirk, NY	0.6631	0.7548
Chatauqua, NY		
Janesville-Beloit, WI	0.8443	0.8906
Rock, WI		
Jersey City, NJ	1.0648	1.0439
Hudson, NJ		
Johnson City-Kingsport-Bristol, TN-VA	0.8665	0.9065
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
Johnstown, PA	0.8609	0.9025
Cambria, PA		
Somerset, PA		
Joliet, IL	1.0504	1.0342
Grundy, IL		
Will, IL		
Joplin, MO	0.7953	0.8548
Jasper, MO		
Newton, MO		
Kalamazoo, MI	1.1705	1.1138
Kalamazoo, MI		
Kankakee, IL	0.8485	0.8936
Kankakee, IL		
*Kansas City, KS-MO	0.9584	0.9713
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
Kenosha, WI	0.8851	0.9198
Kenosha, WI		
Killeen-Temple, TX	1.1290	1.0866
Bill, TX		
Coryell, TX		
Knoxville, TN	0.8689	0.9083
Anderson, TN		
Blount, TN		
Grainger, TN		
Jefferson, TN		
Knox, TN		
Sevier, TN		
Union, TN		
Kokomo, IN	0.9486	0.9645
Howard, IN		
Tipton, IN		
LaCrosse, WI	0.8952	0.9270
LaCrosse, WI		
Lafayette, LA	0.8223	0.8746
Lafayette, LA		
St. Martin, LA		
Lafayette, IN	0.8619	0.9032
Tippecanoe, IN		
Lake Charles, LA	0.8371	0.8854
Calcasieu, LA		
Lake County, IL	0.9404	0.9588
Lake, IL		
Lakeland-Winter Haven, FL	0.7939	0.8538
Polk, FL		
Lancaster, PA	0.9274	0.9497
Lancaster, PA		
Lansing-East Lansing, MI	1.0218	1.0149
Clinton, MI		
Eaton, MI		
Ingham, MI		
Laredo, TX	0.7275	0.8042
Webb, TX		
Las Cruces, NM	0.7906	0.8514
Dona Ana, NM		
Las Vegas, NV	1.0626	1.0425
Clark, NV		
Lawrence, KS	0.7443	0.8169
Douglas, KS		
Lawton, OK	0.8384	0.8863
Comanche, OK		
Lewiston-Auburn, ME	0.8324	0.8819
Androscoggin, ME		
Lexington-Fayette, KY	0.8443	0.8906
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Scott, KY		
Woodford, KY		
Lima, OH	0.8449	0.8910
Allen, OH		
Auglaize, OH		
Lincoln, NE	0.8952	0.9270
Lancaster, NE		
Little Rock-North Little Rock, AR	0.8416	0.8886
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
Longview-Marshall, TX	0.8688	0.9082
Gregg, TX		
Harrison, TX		
Lorain-Elyria, OH	0.8892	0.9227
Lorain, OH		
*Los Angeles-Long Beach, CA	1.2352	1,1556
Los Angeles, CA		
Louisville, KY-IN	0.9088	0.9366
Clark, IN		
Floyd, IN		
Harrison, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
Shelby, KY		
Lubbock, TX	0.8786	0.9152
Lubbock, TX		
Lynchburg, VA	0.8540	0.8976
Amherst, VA		
Campbell, VA		
Lynchburg City, VA		
Macon-Warner Robins, GA	0.8800	0.9162
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Madison, WI	1.0307	1.0209
Dane, WI		
Manchester-Nashua, NH	1.0126	1.0086
Hillsborough, NH		
Merrimack, NH		
Mansfield, OH	0.8389	0.8867
Richland, OH		
Mayaguez, PR	0.4769	0.6023
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
San German, PR		
McAllen-Edinburg-Mission, TX	0.7712	0.8370
Hidalgo, TX		
Medford, OR	1.0041	1.0028
Jackson, OR		
Melbourne-Titusville, FL	0.8727	0.9110
Brevard, FL		
Memphis, TN-AR-MS	0.9056	0.9344
Crittenden, AR		
De Soto, MS		
Shelby, TN		
Tipton, TN		
Merced, CA	1.0310	1.0211
Merced, CA		
*Miami-Hialeah, FL	0.9950	0.9966
Dade, FL		
*Middlesex-Somerset-Hunterdon, NJ	1.0405	1.0276
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Midland, TX	1.0372	1.0253
Midland, TX		
*Milwaukee, WI	0.9715	0.9804
Milwaukee, WI		
Ozaukee, WI,		
Washington, WI		
Waukesha, WI		
*Minneapolis-St. Paul, MN-WI	1.0813	1.0550
Anoka, MN		
Carver, MN		
Chisago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Washington, MN		
Wright, MN		
St. Croix, WI		
Mobile, AL	0.8241	0.8759
Baldwin, AL		
Mobile, AL		
Modesto, CA	1.1383	1.0928
Stanislaus, CA		
Monmouth-Ocean, NJ	0.9940	0.9959
Monmouth, NJ		
Ocean, NJ		
Monroe, LA	0.7860	0.8480
Ouachita, LA		
Montgomery, AL	0.7735	0.8387
Autauga, AL		
Elmore, AL		
Montgomery, AL		
Muncie, IN	0.8427	0.8894
Delaware, IN		
Muskegon, MI	0.9849	0.9896
Muskegon, MI		
Naples, FL	1.0320	1.0218
Collier, FL		
Nashville, TN	0.9393	0.9580
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford, TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
*Nassau-Suffolk, NY	1.2149	1.1426
Nassau, NY		
Suffolk, NY		
New Bedford-Fall River-Attleboro, MA	1.1708	1.1140
Bristol, MA		
New Haven-Waterbury-Meriden, CT	1.2090	1.1388
New Haven, CT		
New London-Norwich, CT	1.1568	1.1048
New London, CT		
*New Orleans, LA	0.8985	0.9293
Jefferson, LA		
Orleans, LA		
St. Bernard, LA		
St. Charles, LA		
St. John The Baptist, LA		
St. Tammany, LA		
*New York, NY	1.3455	1.2253
Bronx, NY		
Kings, NY		
New York City, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
*Newark, NJ	1.0734	1.0497
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Niagara Falls, NY	0.8398	0.8873
Niagara, NY		
*Norfolk-Virginia Beach-Newport News, VA	0.8511	0.8955
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
James City Co., VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City, VA		
Williamsburg City, VA		
York, VA		
*Oakland, CA	1.4128	1.2670
Alameda, CA		
Contra Costa, CA		
Ocala, FL	0.8611	0.9027
Marion, FL		
Odessa, TX	1.0835	1.0565
Ector, TX		
Oklahoma City, OK	0.9228	0.9465
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
Olympia, WA	1.0997	1.0672
Thurston, WA		
Omaha, NE-IA	0.8985	0.9293
Pottawattamie, IA		
Douglas, NE		
Sarpy, NE		
Washington, NE		
Orange County, NY	0.9193	0.9440
Orange, NY		
*Orlando, FL	0.9617	0.9736
Orange, FL		
Osceola, FL		
Seminole, FL		
Owensboro, KY	0.8148	0.8691
Daviess, KY		
Oxnard-Ventura, CA	1.1787	1.1192
Ventura, CA		
Panama City, FL	0.8629	0.9040
Bay, FL		
Parkersburg-Marietta, WV-OH	0.8536	0.8973
Washington, OH		
Wood, WV		
Pascagoula, MS	0.8787	0.9138
Jackson, MS		
Pensacola, FL	0.8620	0.9033
Escambia, FL		
Santa Rosa, FL		
Peoria, IL	0.8706	0.9095
Peoria, IL		
Tazewell, IL		
Woodford, IL		
*Philadelphia, PA-NJ	1.0947	1.0639
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
*Phoenix, AZ	1.0424	1.0288
Maricopa, AZ		
Pine Bluff, AR	0.6976	0.7815
Jefferson, AR		
*Pittsburgh, PA	1.0123	1.0084
Allegheny, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
Pittsfield, MA	1.0778	1.0526
Berkshire, MA		
Ponce, PR	0.4599	0.5875
Juana Diaz, PR		
Ponce, PR		
Portland, ME	0.9253	0.9482
Cumberland, ME		
Sagadahoc, ME		
York, ME		
*Portland, OR	1.1571	1.1051
Clackamas, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Portsmouth-Dover-Rochester, NH	1.0042	1.0029
Rockingham, NH		
Strafford, NH		
Poughkeepsie, NY	1.0443	1.0301
Dutchess, NY		
*Providence-Pawtucket-Woonsocket, RI	1.0291	1.0198
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
Provo-Orem, UT	1.0226	1.0154
Utah, UT		
Pueblo, CO	0.8716	0.9103
Pueblo, CO		
Racine, WI	0.9627	0.9743
Racine, WI		
Raleigh-Durham, NC	0.9461	0.9628
Durham, NC		
Franklin, NC		
Orange, NC		
Wake, NC		
Rapid City, SD	0.8396	0.8872
Pennington, SD		
Reading, PA	1.0267	1.0162
Berks, PA		
Redding, CA	1.0545	1.0370
Shasta, CA		
Reno, NV	1.1613	1.1078
Washoe, NV		
Richland-Kennewick, WA	0.9398	0.9584
Benton, WA		
Franklin, WA		
Richmond-Petersburg, VA	0.9413	0.9594
Charles City Co., VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
*Riverside-San Bernardino, CA	1.1103	1.0743
Riverside, CA		
San Bernardino, CA		
Roanoke, VA	0.8281	0.8788
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
Rochester, MN	1.1025	1.0691
Olmsted, MN		
*Rochester, NY	0.9706	0.9798
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
Rockford, IL	0.9279	0.9500
Boone, IL		
Winnebago, IL		
*Sacramento, CA	1.2257	1.1495
Eldorado, CA		
Placer, CA		
Sacramento, CA		
Yolo, CA		
Saginaw-Bay City-Midland, MI	1.0479	1.0326
Bay, MI		
Midland, MI		
Saginaw, MI		
St. Cloud, MN	0.8915	0.9244
Benton, MN		
Sherburne, MN		
Stearns, MN		
St. Joseph, MO	0.9410	0.9592
Buchanan, MO		
*St. Louis, MO–IL	0.9384	0.9574
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Salem, OR	0.9833	0.9885
Marion, OR		
Polk, OR		
Salinas-Seaside-Monterey, CA	1.3035	1.1990
Monterey, CA		
*Salt Lake City-Ogden, UT	0.9928	0.9951
Davis, UT		
Salt Lake, UT		
Weber, UT		
San Angelo, TX	0.8136	0.8683
Tom Green, TX		
*San Antonio, TX	0.8448	0.8809
Bexar, TX		
Comal, TX		
Guadalupe, TX		
*San Diego, CA	1.1929	1.1284
San Diego, CA		
*San Francisco, CA	1.4521	1.2910
Marin, CA		
San Francisco, CA		
San Mateo, CA		
*San Jose, CA	1.4863	1.3136
Santa Clara, CA		
*San Juan, PR	0.4965	0.6208
Barceloneta, PR		
Bayoman, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luquillo, PR		
Manati, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Santa Barbara-Santa Maria-Lompoc, CA	1.1800	1.1200
Santa Barbara, CA		
Santa Cruz, CA	1.1814	1.1209
Santa Cruz, CA		
Santa Fe, NM	0.9158	0.9415
Los Alamos, NM		
Santa Fe, NM		
Santa Rosa-Petaluma, CA	1.2973	1.1951
Sonoma, CA		
Sarasota, FL	0.9777	0.9487
Sarasota, FL		
Savannah, GA	0.8324	0.8819
Chatham, GA		
Effingham, GA		
Scranton-Wilkes Barre, PA	0.8912	0.9242
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Monroe, PA		
Wyoming, PA		
*Seattle, WA	1.0866	1.0585
King, WA		
Snohomish, WA		
Sharon, PA	0.8910	0.9240
Mercer, PA		
Sheboygan, WI	0.8868	0.9210
Sheboygan, WI		
Sherman-Denison, TX	0.9085	0.9364
Grayson, TX		
Shreveport, LA	0.9295	0.9512
Bossier, LA		
Caddo, LA		
Sioux City, IA-NE	0.8500	0.8947
Woodbury, IA		
Dakota, NE		
Sioux Falls, SD	0.8829	0.9182
Minnehaha, SD		
South Bend-Mishawaka, IN	1.0179	1.0122
St. Joseph, IN		
Spokane, WA	1.0687	1.0466
Spokane, WA		
Springfield, IL	0.9292	0.9510
Menard, IL		
Sangamon, IL		
Springfield, MO	0.8079	0.8641
Christian, MO		
Greene, MO		
Springfield, MA	0.9614	0.9734
Hampden, MA		
Hampshire, MA		
State College, PA	0.9897	0.9929
Centre, PA		
Steubenville-Weirton, OH-WV	0.8708	0.9096
Jefferson, OH		
Brooke, WV		
Hancock, WV		
Stockton, CA	1.1784	1.1190
San Joaquin, CA		
Syracuse, NY	0.9912	0.9940
Madison, NY		
Onondaga, NY		
Oswego, NY		
Tacoma, WA	0.9631	0.9746
Pierce, WA		
Tallahassee, FL	0.9216	0.9456
Gadsden, FL		
Leon, FL		
*Tampa-St. Petersburg-Clearwater, FL	0.9244	0.9476
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
Terre Haute, IN	0.8823	0.9178
Clay, IN		
Vigo, IN		
Texarkana-TX-Texarkana, AR	0.7903	0.8512
Miller, AR		
Bowie, TX		
Toledo, OH	0.8710	0.9098
Fulton, OH		
Lucas, OH		
Wood, OH		
Topeka, KS	0.9299	0.9514
Shawnee, KS		
Trenton, NJ	1.0034	1.0023
Mercer, NJ		
Tucson, AZ	0.9616	0.9735
Pima, AZ		
Tulsa, OK	0.8573	0.8999
Creeks, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
Tuscaloosa, AL	0.8518	0.8960
Tuscaloosa, AL		
Tyler, TX	0.9833	0.9885
Smith, TX		
Utica-Rome, NY	0.8398	0.8873
Herkimer, NY		
Oneida, NY		
Vallejo-Fairfield-Napa, CA	1.2912	1.1913
Napa, CA		
Solano, CA		
Vancouver, WA	1.0706	1.0480
Clark, WA		
Victoria, TX	0.8990	0.9297
Victoria, TX		
Vineland-Millville-Bridgeton, NJ	0.9645	0.9756
Cumberland, NJ		
Visalia-Tulare-Porterville, CA	1.0388	1.0264
Tulare, CA		
Waco, TX	0.7811	0.8444
McLennan, TX		
*Washington, DC–MD–VA	1.0936	1.0632
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

[Areas that qualify as large urban areas are designated with an asterisk]

Urban area (constituent counties or county equivalents)	Wage index	GAF
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Stafford, VA		
Waterloo-Cedar Falls, IA	0.8639	0.9047
Black Hawk, IA		
Bremer, IA		
Wausau, WI	0.9744	0.9824
Marathon, WI		
West Palm Beach-Boca Raton-Delray Beach, FL	1.0227	1.0155
Palm Beach, FL		
Wheeling, WV–OH	0.8923	0.7774
Belmont, OH		
Marshall, WV		
Ohio, WV		
Wichita, KS	0.9805	0.9866
Butler, KS		
Harvey, KS		
Sedgwick, KS		
Wichita Falls, TX	0.8169	0.8707
Wichita, TX		
Williamsport, PA	0.8861	0.9205
Lycoming, PA		
Wilmington, DE–NJ–MD	1.0880	1.0595
New Castle, DE		
Cecil, MD		
Salem, NJ		
Wilmington, NC	0.8708	0.9096
New Hanover, NC		
Worcester-Fitchburg-Leominster, MA	0.9682	0.9781
Worcester, MA		
Yakima, WA	1.0107	1.0073
Yakima, WA		
York, PA	0.8609	0.9025
Adams, PA		
York, PA		
Youngstown-Warren, OH	0.9862	0.9905
Mahoning, OH		
Trumbull, OH		
Yuba City, CA	1.0159	1.0109
Sutter, CA		
Yuba, CA		
Yuma, AZ	0.8743	0.9121
Yuma, AZ		

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7130	0.7932
Alaska	1.3492	1.2277
Arizona	0.8743	0.9121
Arkansas	0.6976	0.7815
California	1.0159	1.0109
Colorado	0.8412	0.8883
Connecticut	1.1900	1.1265
Delaware	0.8568	0.8996
Florida	0.8727	0.9110
Georgia	0.7770	0.8413
Hawaii	0.9614	0.9734
Idaho	0.9101	0.9375
Illinois	0.7896	0.8358
Indiana	0.7833	0.8460
Iowa	0.7528	0.8233
Kansas	0.7443	0.8189
Kentucky	0.7790	0.8428
Louisiana	0.7381	0.8122
Maine	0.8324	0.8819
Maryland	0.8058	0.8626
Massachusetts	1.1708	1.1140
Michigan	0.8882	0.9220
Minnesota	0.8305	0.8806
Mississippi	0.6960	0.7802
Missouri	0.7246	0.8020
Montana	0.8251	0.8766
Nebraska	0.6992	0.7827
Nevada	0.9698	0.9792
New Hampshire	0.9543	0.9685
New Jersey [1]		
New Mexico	0.8317	0.8814
New York	0.8398	0.8873
North Carolina	0.7936	0.8536
North Dakota	0.7715	0.8372
Ohio	0.8449	0.8910
Oklahoma	0.7399	0.8136
Oregon	0.9603	0.9728
Pennsylvania	0.8609	0.9025
Puerto Rico	0.4331	0.5638
Rhode Island [1]		
South Carolina	0.7657	0.8329
South Dakota	0.7165	0.7959
Tennessee	0.7337	0.8089
Texas	0.7592	0.8281
Utah	0.9040	0.9332
Vermont	0.9702	0.9795
Virginia	0.7823	0.8452
Washington	0.9631	0.9746
West Virginia	0.8484	0.8935
Wisconsin	0.8443	0.8906
Wyoming	0.8453	0.8913

[1] All counties within the State are classified urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area reclassified to	Wage index	GAF
Abilene, TX	0.9425	0.9603
Akron, OH	0.8917	0.9245
Albany, GA	0.7894	0.8505
Albany-Schenectady-Troy, NY	0.8953	0.9271
Albany-Schenectady-Troy, NY (Rural Vermont Hospitals)	0.9702	0.9795
Albuquerque, NM	0.9938	0.9958
Alexandria, LA	0.8046	0.8617
Allentown-Bethlehem-Easton, PA–NJ	0.8945	0.9265
Altoona, PA	0.9235	0.9470
Amarillo, TX	0.8735	0.9115
Anaheim-Santa Ana, CA	1.1540	1.1031
Anchorage, AK	1.3995	1.2588
Ann Arbor, MI	1.1058	1.0713
Appleton-Oshkosh-Neenah, WI	0.8695	0.9087
Asheville, NC	0.8468	0.8924
Athens, GA	0.7214	0.7996
Athens, GA (Rural Georgia Hospitals)	0.7770	0.8413
Atlanta, GA	0.9474	0.9637
Augusta, GA–SC	0.9397	0.9583
Aurora-Elgin, IL	0.8870	0.9212
Baltimore, MD	1.0151	1.0103
Bangor, ME	0.8797	0.9160
Baton Rouge, LA	0.9085	0.9364
Battle Creek, MI	0.9095	0.9371
Beaver County, PA	0.9447	0.9618
Billings, MT	0.9045	0.9336
Biloxi-Gulfport, MS	0.7801	0.8436
Binghamton, NY	0.8864	0.9207
Birmingham, AL	0.8768	0.9138
Bismarck, ND	0.8878	0.9217
Bloomington, IN	0.7754	0.8401
Bloomington, IN (Rural Indiana Hospitals)	0.7833	0.8460
Boise City, ID	0.9554	0.9692
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1581	1.1044
Boston-Lawrence-Salem-Lowell-Brockton, MA (Rural Massachusetts Hosp)	1.1708	1.1140
Brazoria, TX	0.8789	0.9154
Bremerton, WA	1.0361	1.0246
Buffalo, NY	0.8773	0.9143
Burlington, VT	0.9014	0.9314
Burlington, VT (Rural Vermont Hospitals)	0.9702	0.9795
Caguas, PR	0.4586	0.5863
Canton, OH	0.8062	0.8628
Canton, OH (Rural Ohio Hospitals)	0.8449	0.8910
Casper, WY	0.8769	0.9140
Champaign-Urbana-Rantoul, IL	0.8741	0.9120
Charleston, SC	0.8168	0.8706
Charleston, WV	0.9535	0.9679
Charlotte-Gastonia-Rock Hill, NC–SC	0.9281	0.9502
Charlottesville, VA	0.9370	0.9564
Chattanooga, TN–GA	0.8875	0.9215
Cheyenne, WY	0.7496	0.8209
Chicago, IL	1.0513	1.0349
Chico, CA	1.0845	1.0571
Cincinnati, OH–KY–IN	0.9817	0.9874
Cleveland, OH	1.0470	1.0320
Columbia, MO	0.9265	0.9491
Columbia, SC	0.8745	0.9123
Columbus, GA–AL	0.7368	0.8113
Columbus, OH	0.9515	0.9665
Dallas, TX	0.9634	0.9748
Davenport-Rock Island-Moline, IA–IL	0.8342	0.8833
Dayton-Springfield, OH	0.9727	0.9812
Daytona Beach, FL	0.8903	0.9235
Decatur, AL	0.7484	0.8200
Denver, CO	1.0753	1.0510
Des Moines, IA	0.9028	0.9324
Detroit, MI	1.0740	1.0477
Dothan, AL	0.7566	0.8261
Dubuque, IA	0.8117	0.8669
Dubuque, IA (Rural Wisconsin Hospitals)	0.8443	0.8908
Duluth, MN–WI	0.9390	0.9578
Eau Claire, WI	0.8484	0.8935
El Paso, TX	0.8710	0.9098
Elkhart-Goshen, IN	0.8868	0.9210
Elmira, NY	0.8655	0.9058
Erie, PA	0.9151	0.9411
Eugene-Springfield, OR	1.0159	1.0109
Evansville, IN–KY	0.9068	0.9352
Fargo-Moorhead, ND–MN	0.9312	0.9524
Fayetteville, NC	0.7892	0.8503
Fayetteville, NC (Rural North Carolina)	0.7936	0.8536
Fayetteville-Springdale, AR	0.7986	0.8573

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area reclassified to	Wage index	GAF
Flint, MI	1.1203	1.0809
Florence, AL	0.7714	0.8372
Florence, SC	0.8425	0.8893
Fort Collins-Loveland, CO	1.0027	1.0018
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.0229	1.0156
Fort Myers-Cape Coral, FL	0.9795	0.9859
Fort Pierce, FL	1.0256	1.0175
Fort Smith, AR	0.7928	0.8530
Fort Walton Beach, FL	0.8937	0.9259
Fort Wayne, IN	0.8724	0.9108
Fort Worth-Arlington, TX	0.9743	0.9823
Fresno, CA	1.0619	1.0420
Galveston-Texas City, TX	0.9424	0.9602
Glens Falls, NY	0.8985	0.9293
Grand Forks, ND	0.9205	0.9449
Grand Rapids, MI	0.9879	0.9917
Great Falls, MT	0.9258	0.9486
Greeley, CO	0.8952	0.9270
Green Bay, WI	0.9274	0.9497
Greensboro-Winston-Salem-High Point, NC	0.8968	0.9295
Greenville-Spartanburg, SC	0.8772	0.9142
Hagerstown, MD	0.8754	0.9129
Hamilton-Middletown, OH	0.8431	0.8897
Harrisburg-Lebanon-Carlisle, PA	0.9386	0.9575
Hartford-Middletown-New Britain-Bristol, CN	1.1803	1.1202
Hickory, NC	0.8421	0.8890
Honolulu, HI	1.1575	1.1053
Houston, TX	0.9931	0.9953
Huntington-Ashland, WV-KY-OH	0.9251	0.9481
Huntsville, AL	0.8477	0.8930
Indianapolis, IN	0.9556	0.9694
Iowa City, IA	0.9323	0.9531
Jackson, MI	0.8822	0.9177
Jackson, MI (Rural Michigan Hospitals)	0.8882	0.9220
Jackson, MS	0.7590	0.8279
Jackson, TN	0.8069	0.8634
Jacksonville, FL	0.9047	0.9337
Johnson City-Kingsport-Bristol, TN-VA	0.8665	0.9065
Johnstown, PA	0.8335	0.8827
Johnstown, PA (Rural Pennsylvania Hosp)	0.8609	0.9025
Joliet, IL	1.0207	1.0141
Joplin, MO	0.7835	0.8461
Kalamazoo, MI	1.1189	1.0600
Kansas City, KS-MO	0.9584	0.9713
Knoxville, TN	0.8669	0.9083
Kokomo, IN	0.9115	0.9385
LaCrosse, WI	0.8743	0.9121
Lafayette, LA	0.8223	0.8746
Lafayette, IN	0.8619	0.9032
Lake Charles, LA	0.8371	0.8854
Lancaster, PA	0.9092	0.9369
Lansing-East Lansing, MI	1.0041	1.0028
Las Vegas, NV	1.0484	1.0329
Lawrence, KS	0.7501	0.8213
Lawton, OK	0.8282	0.8789
Lewiston-Auburn, ME	0.8454	0.8914
Lexington-Fayette, KY	0.8320	0.8817
Lincoln, NE	0.8458	0.8916
Little Rock-North Little Rock, AR	0.8204	0.8732
Longview-Marshall, TX	0.8517	0.8959
Lorain-Elyria, OH	0.8892	0.9227
Los Angeles-Long Beach, CA	1.2352	1.1556
Louisville, KY-IN	0.8965	0.9279
Lubbock, TX	0.8786	0.9152
Lynchburg, VA	0.8386	0.8864
Macon-Warner Robins, GA	0.8618	0.9032
Madison, WI	0.9787	0.9654
Manchester-Nashua, NH	1.0126	1.0086
Mansfield, OH	0.8389	0.8867
Mansfield, OH (Rural Ohio Hospitals)	0.8449	0.8910
Medford, OR	0.9880	0.9916
Memphis, TN-AR-MS	0.8769	0.9140
Merced, CA	1.0310	1.0211
Miami-Hialeah, FL	0.9950	0.9966
Middlesex-Somerset-Hunterdon, NJ	0.9923	0.9947
Midland, TX	1.0372	1.0253
Milwaukee, WI	0.9599	0.9724
Minneapolis-St. Paul, MN-WI	1.0813	1.0550
Mobile, AL	0.8241	0.8759
Modesto, CA	1.1383	1.0928
Monroe, LA	0.7860	0.8480
Montgomery, AL	0.7735	0.8387
Muncie, IN	0.8270	0.8780
Nashville, TN	0.9393	0.9580
New London-Norwich, CT	1.1290	1.0866
New Orleans, LA	0.8985	0.9293
New York, NY	1.3455	1.2253
Newark, NJ	1.0613	1.0416
Norfolk-Virginia Beach-Newport News, VA	0.8511	0.8955
Oakland, CA	1.4128	1.2670
Odessa, TX	1.0835	1.0565
Oklahoma City, OK	0.9228	0.9465
Olympia, WA	1.0386	1.0263
Omaha, NE-IA	0.8985	0.9293
Orange County, NY	0.9193	0.9440
Orlando, FL	0.9442	0.9614
Owensboro, KY	0.8148	0.8691
Oxnard-Ventura, CA	1.1787	1.1192
Panama City, FL	0.8629	0.9040
Panama City, FL (Rural Florida Hospitals)	0.8727	0.9110
Parkersburg-Marietta, WV-OH	0.8536	0.8973
Pascagoula, MS	0.8767	0.9138
Peoria, IL	0.8706	0.9095
Philadelphia, PA-NJ	1.0792	1.0536
Phoenix, AZ	1.0424	1.0268
Pine Bluff, AR	0.6978	0.7815
Pittsburgh, PA	0.9950	0.9966
Pittsfield, MA	1.0115	1.0079
Portland, ME	0.9106	0.9379
Portland, OR	1.1416	1.0949
Portsmouth-Dover-Rochester, NH	1.0042	1.0029
Poughkeepsie, NY	0.9960	0.9973
Providence-Pawtucket-Woonsocket, RI	1.0036	1.0025
Provo-Orem, UT	0.9997	0.9998
Pueblo, CO	0.8515	0.8958
Raleigh-Durham, NC	0.9193	0.9440
Rapid City, SD	0.8280	0.8788
Redding, CA	1.0401	1.0273
Reno, NV	1.1433	1.0960
Roanoke, VA	0.8163	0.8702
Rochester, NY	0.9560	0.9697
Rockford, IL	0.9091	0.9368
Sacramento, CA	1.2257	1.1495
Saginew-Bay City-Midland, MI	1.0206	1.0141
St. Cloud, MN	0.8915	0.9244
St Louis, MO-IL	0.9236	0.9470
Salem, OR	0.9633	0.9685
Salinas-Seaside-Monterey, CA	1.2693	1.1901
Salt Lake City-Ogden, UT	0.9929	0.9951
San Angelo, TX	0.8136	0.8683
San Antonio, TX	0.8448	0.8909
San Diego, CA	1.1929	1.1284
San Francisco, CA	1.4521	1.2910
San Jose, CA	1.4715	1.3026
San Juan, PR	0.4985	0.6206
Santa Barbara-Santa Maria-Lompoc, CA	1.1631	1.1090
Santa Fe, NM	0.8852	0.9199
Santa Rosa-Petaluma, CA	1.2973	1.1951
Sarasota, FL	0.9442	0.9614
Scranton-Wilkes Barre, PA	0.8912	0.9242
Seattle, WA	1.0715	1.0484
Sharon, PA	0.8910	0.9240
Sheboygan, WI	0.8719	0.9104
Sherman-Denison, TX	0.8930	0.9254
Shreveport, LA	0.9295	0.9512
Sioux City, IA-NE	0.8320	0.8817
Sioux Falls, SD	0.8829	0.9182
South Bend-Mishawaka, IN	0.9684	0.9783
Spokane, WA	1.0687	1.0466
Springfield, IL	0.9189	0.9437
Springfield, MO	0.7912	0.8518
State College, PA	0.9324	0.9532
Steubenville-Weirton, OH-WV	0.8396	0.8828
Stockton, CA	1.1784	1.1190
Syracuse, NY	0.9510	0.9662
Tacoma, WA	0.9863	0.9906
Tallahassee, FL	0.8849	0.9197
Tampa-St. Petersburg-Clearwater, FL	0.9244	0.9476
Terre Haute, IN	0.8714	0.9100
Texarkana, TX-Texarkana, AR	0.7903	0.8512
Toledo, OH	0.8710	0.9098
Toledo, OH (Rural Michigan Hospitals)	0.8882	0.9220
Topeka, KS	0.9299	0.9514
Tucson, AZ	0.9616	0.9735
Tulsa, OK	0.8427	0.8894
Tuscaloosa, AL	0.8263	0.8790
Tyler, TX	0.9326	0.9533
Vallejo-Fairfield-Napa, CA	1.2716	1.1789
Vancouver, WA	1.0120	1.0082
Victoria, TX	0.8635	0.9187
Waco, TX	0.7811	0.8444
Washington, DC—MD—VA	1.0936	1.0632
Waterloo-Cedar Falls, IA	0.8639	0.9047
Wausau, WI	0.9093	0.9370
West Palm Beach-Boca Raton-Delray Beach, FL	1.0227	1.0155
Wichita, KS	0.9559	0.9696
Wichita Falls, TX	0.8169	0.8707
Williamsport, PA	0.8704	0.9093
Wilmington, NC	0.8296	0.8789
Worcester-Fitchburg-Leominster, MA	0.9682	0.9781
Yakima, WA	0.9981	0.9867
Youngstown-Warren, OH	0.9503	0.9657
Rural California	0.9997	0.9998
Rural Connecticut	1.1578	1.1054
Rural Georgia	0.7770	0.8413
Rural Illinois	0.7696	0.8358
Rural Indiana	0.7833	0.8460
Rural Iowa	0.7528	0.8233
Rural Kansas	0.7443	0.8169
Rural Kentucky	0.7790	0.8428
Rural Louisiana	0.7381	0.8122
Rural Michigan	0.8882	0.9220
Rural Minnesota	0.8305	0.8806
Rural Missouri	0.7246	0.8020
Rural New Hampshire	0.9543	0.9685
Rural New Hampshire (Rural Vermont Hosp)	0.9702	0.9795
Rural North Carolina	0.7936	0.8536
Rural Ohio	0.8449	0.8910
Rural Oklahoma	0.7399	0.8136
Rural Pennsylvania	0.8609	0.9025
Rural South Dakota	0.7165	0.7959
Rural Tennessee	0.7337	0.8069
Rural Texas	0.7592	0.8261
Rural Utah	0.9040	0.9332
Rural Virginia	0.7823	0.8452
Rural Washington	0.9425	0.9603
Rural Washington (Rural Oregon Hosp)	0.9603	0.9726
Rural West Virginia	0.8484	0.8935
Rural Wisconsin	0.8443	0.8906
Rural Wyoming	0.8285	0.8791

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	12.8965
Aguadilla, PR	6.3891
Akron, OH	12.2791
Albany, GA	11.2600
Albany-Schenectady-Troy, NY	12.4806
Albuquerque, NM	14.1605
Alexandria, LA	11.5753
Allentown-Bethlehem-Easton, PA-NJ	13.7884
Altoona, PA	12.9225
Amarillo, TX	12.2235
Anaheim-Santa Ana, CA	16.9674
Anchorage, AK	19.8289
Anderson, IN	13.4045
Anderson, SC	10.1524
Ann Arbor, MI	15.9238
Anniston, AL	11.0938
Appleton-Oshkosh-Neenah, WI	12.8386
Arecibo, PR	5.5300
Asheville, NC	12.2240
Athens, GA	11.9635
Atlanta, GA	13.4224
Atlantic City, NJ	14.6966
Augusta, GA-SC	13.1493
Aurora-Elgin, IL	13.5186
Austin, TX	13.4267
Bakersfield, CA	15.2019
Baltimore, MD	14.2056
Bangor, ME	12.6780
Baton Rouge, LA	12.7130
Battle Creek, MI	13.2392
Beaumont-Port Arthur, TX	13.4335
Beaver County, PA	14.2180
Bellingham, WA	14.6826
Benton Harbor, MI	11.8274
Bergen-Passaic, NJ	14.4089
Billings, MT	13.0434
Biloxi-Gulfport, MS	11.2771
Binghamton, NY	12.9526
Birmingham, AL	12.2666
Bismarck, ND	12.3267
Bloomington, IN	12.0838
Bloomington-Normal, IL	12.1113
Boise City, ID	13.6480
Boston-Lawrence-Salem-Lowell-Brockton, MA	16.5188
Boulder-Longmont, CO	14.1963
Bradenton, FL	12.9557
Brazoria, TX	13.0281
Bremerton, WA	13.3378
Bridgeport-Stamford-Norwalk-Danbury, CT	18.8305
Brownsville-Harlingen, TX	12.0309
Bryan-College Station, TX	13.2727
Buffalo, NY	12.4609
Burlington, NC	11.1706
Burlington, VT	13.0898
Caguas, PR	6.2649
Canton, OH	12.3253
Casper, WY	12.4361
Cedar Rapids, IA	12.4596
Champaign-Urbana-Rantoul, IL	12.2322
Charleston, SC	11.6535
Charleston, WV	13.5576
Charlotte-Gastonia-Rock Hill, NC-SC	13.2414
Charlottesville, VA	13.4492
Chattanooga, TN-GA	12.8660
Cheyenne, WY	11.0618
Chicago, IL	14.7119
Chico, CA	15.3604
Cincinnati, OH-KY-IN	13.7371
Clarksville-Hopkinsville, TN-KY	10.3256
Cleveland, OH	15.0210
Colorado Springs, CO	13.7311
Columbia, MO	13.2974
Columbia, SC	12.5055
Columbus, GA-AL	10.4663
Columbus, OH	13.5306
Corpus Christi, TX	12.0212
Cumberland, MD-WV	11.4529
Dallas, TX	13.4814
Danville, VA	10.4995
Davenport-Rock Island-Moline, IA-IL	11.8485
Dayton-Springfield, OH	13.5646
Daytona Beach, FL	12.5096
Decatur, AL	10.4723
Decatur, IL	11.5902
Denver, CO	15.0478
Des Moines, IA	12.8279
Detroit, MI	15.1409
Dothan, AL	10.5672
Dubuque, IA	11.7141
Duluth, MN-WI	13.3127
Eau Claire, WI	11.8584
El Paso, TX	12.1891
Elkhart-Goshen, IN	12.5172
Elmira, NY	12.3239
Enid, OK	12.4665
Erie, PA	12.8062
Eugene-Springfield, OR	14.2167
Evansville, IN-KY	13.1857
Fargo-Moorhead, ND-MN	13.5774
Fayetteville, NC	11.6037
Fayetteville-Springdale, AR	11.1760
Flint, MI	16.1469
Florence, AL	10.7414
Florence, SC	11.7898
Fort Collins-Loveland, CO	14.3206
Fort Lauderdale-Hollywood-Pompano Beach, FL	14.4860
Fort Myers-Cape Coral, FL	13.7065
Fort Pierce, FL	15.4435
Fort Smith, AR-OK	11.0943
Fort Walton Beach, FL	12.4721
Fort Wayne, IN	12.5931
Fort Worth-Arlington, TX	13.6344
Fresno, CA	15.0186
Gadsden, AL	11.4686
Gainesville, FL	12.3072
Galveston-Texas City, TX	13.1915
Gary-Hammond, IN	13.8130
Glens Falls, NY	12.9117
Grand Forks, ND	13.3966
Grand Rapids, MI	13.8241
Great Falls, MT	13.9760
Greeley, CO	13.0898
Green Bay, WI	13.4079
Greensboro-Winston-Salem-High Point, NC	12.8197
Greenville-Spartanburg, SC	12.4814
Hagerstown, MD	12.8093
Hamilton-Middletown, OH	13.1268
Harrisburg-Lebanon-Carlisle, PA	13.8739
Hartford-Middletown-New Britain-Bristol, CT	18.6679
Hickory, NC	12.2271
Honolulu, HI	16.1983
Houma-Thibodaux, LA	10.2729
Houston, TX	13.8967
Huntington-Ashland, WV-KY-OH	13.2013
Huntsville, AL	12.3581
Indianapolis, IN	13.5158
Iowa City, IA	13.3273
Jackson, MI	13.5173
Jackson, MS	10.8165
Jackson, TN	11.0644
Jacksonville, FL	12.6601
Jacksonville, NC	10.0072
Jamestown-Dunkirk, NY	10.8192
Janesville-Beloit, WI	11.8416
Jersey City, NJ	14.7239
Johnson City-Kingsport-Bristol, TN-VA	12.1249
Johnstown, PA	12.5841
Joliet, IL	14.3772
Joplin, MO	11.1297
Kalamazoo, MI	16.3790
Kankakee, IL	11.8736
Kansas City, KS-MO	13.4119
Kenosha, WI	12.3859
Killeen-Temple, TX	15.7993
Knoxville, TN	12.1590
Kokomo, IN	13.2741
LaCrosse, WI	12.5272
Lafayette, LA	11.5076
Lafayette, IN	12.0615
Lake Charles, LA	11.7138
Lake County, IL	13.9788
Lakeland-Winter Haven, FL	11.6521
Lancaster, PA	12.9499
Lansing-East Lansing, MI	14.2990
Laredo, TX	10.1800
Las Cruces, NM	11.0633
Las Vegas, NV	14.8703
Lawrence, KS	12.5003
Lawton, OK	11.7329
Lewiston-Auburn, ME	12.6689
Lexington-Fayette, KY	11.8143
Lima, OH	11.2775
Lincoln, NE	12.5260
Little Rock-North Little Rock, AR	11.7777
Longview-Marshall, TX	12.1572
Lorain-Elyria, OH	12.5459
Los Angeles-Long Beach, CA	17.2810
Louisville, KY-IN	12.7172
Lubbock, TX	12.2947
Lynchburg, VA	11.9507
Macon-Warner Robins, GA	12.3144
Madison, WI	14.4229
Manchester-Nashua NH	14.3525
Mansfield, OH	11.7367
Mayaguez, PR	6.6740
McAllen-Edinburg-Mission, TX	10.7920
Medford, OR	14.0511
Melbourne-Titusville, FL	12.8679
Memphis, TN-AR-MS	12.6726
Merced, CA	14.4242
Miami-Hialeah, FL	14.2513
Middlesex-Somerset-Hunterdon, NJ	14.5485
Midland, TX	14.5148
Milwaukee, WI	13.5945
Minneapolis-St. Paul, MN-WI	15.1320
Mobile, AL	11.6369
Modesto, CA	16.1936
Monmouth-Ocean, NJ	13.8730
Monroe, LA	10.9996
Montgomery, AL	10.8242
Muncie, IN	11.7831
Muskegon, MI	13.3830
Naples, FL	14.4410
Nashville, TN	13.1448
Nassau-Suffolk, NY	18.0971
New Bedford-Fall River-Attleboro, MA	13.9910

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
New Haven-Waterbury-Meriden, CT	16.9179
New London-Norwich, CT	16.1857
New Orleans, LA	12.5738
New York, NY	18.8279
Newark, NJ	15.7113
Niagara Falls, NY	11.7272
Norfolk-Virginia Beach-Newport News, VA	11.9106
Oakland, CA	19.9782
Ocala, FL	12.0496
Odessa, TX	15.1305
Oklahoma City, OK	12.9135
Olympia, WA	15.3889
Omaha, NE-IA	12.5738
Orange County, NY	13.5021
Orlando, FL	13.4573
Owensboro, KY	11.3504
Oxnard-Ventura, CA	17.2175
Panama City, FL	12.0750
Parkersburg-Marietta, WV-OH	11.9450
Pascagoula, MS	12.2466
Pensacola, FL	12.0624
Peoria, IL	12.1828
Philadelphia, PA-NJ	15.3190
Phoenix, AZ	14.5873
Pine Bluff, AR	11.0111
Pittsburgh, PA	14.1661
Pittsfield, MA	15.0819
Ponce, PR	6.4363
Portland, ME	12.9972
Portland, OR	16.1919
Portsmouth-Dover-Rochester, NH	14.0996
Poughkeepsie, NY	14.6131
Providence-Pawtucket-Woonsocket, RI	14.8684
Provo-Orem, UT	14.3096
Pueblo, CO	12.2002
Racine, WI	12.3782
Raleigh-Durham, NC	13.2395
Rapid City, SD	11.7497
Reading, PA	12.3287
Redding, CA	14.7558
Reno, NV	16.2510
Richland-Kennewick, WA	13.1513
Richmond-Petersburg, VA	13.1726
Riverside-San Bernardino, CA	15.8107
Roanoke, VA	11.5877
Rochester, MN	15.4279
Rochester, NY	13.5825
Rockford, IL	12.9846
Sacramento, CA	17.1232
Saginaw-Bay City-Midland, MI	14.6188
St. Cloud, MN	13.1769
St. Joseph, MO	13.1676
St. Louis, MO-IL	13.1322
Salem, OR	14.6104
Salinas-Seaside-Monterey, CA	18.2410
Salt Lake City-Ogden, UT	13.8926
San Angelo, TX	11.3852
San Antonio, TX	11.8222
San Diego, CA	18.6930
San Francisco, CA	20.3365
San Jose, CA	20.8415

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
San Juan, PR	6.9756
Santa Barbara-Santa Maria-Lompoc, CA	16.4615
Santa Cruz, CA	17.8823
Santa Fe, NM	12.7832
Santa Rosa-Petaluma, CA	18.1542
Sarasota, FL	13.6812
Savannah, GA	11.6460
Scranton-Wilkes Barre, PA	12.5217
Seattle, WA	15.2062
Sharon, PA	12.6742
Sheboygan, WI	12.4098
Sherman-Denison, TX	12.7131
Shreveport, LA	13.0076
Sioux City, IA-NE	11.8949
Sioux Falls, SD	12.3553
South Bend-Mishawaka, IN	14.2436
Spokane, WA	14.9550
Springfield, IL	13.0023
Springfield, MO	11.3051
Springfield, MA	14.4511
State College, PA	13.8497
Steubenville-Weirton, OH-WV	12.1860
Stockton, CA	16.2434
Syracuse, NY	13.8711
Tacoma, WA	14.4318
Tallahassee, FL	12.8971
Tampa-St. Petersburg-Clearwater, FL	12.9357
Terre Haute, IN	12.3463
Texarkana-TX-Texarkana, AR	11.0389
Toledo, OH	14.1229
Topeka, KS	13.0121
Trenton, NJ	14.0413
Tucson, AZ	13.4151
Tulsa, OK	11.9967
Tuscaloosa, AL	11.9195
Tyler, TX	13.7607
Utica-Rome, NY	11.9069
Vallejo-Fairfield-Napa, CA	18.4685
Vancouver, WA	15.1047
Victoria, TX	12.5802
Vineland-Millville-Bridgeton, NJ	13.6515
Visalia-Tulare-Porterville, CA	14.5366
Waco, TX	10.9308
Washington, DC-MD-VA	15.3037
Waterloo-Cedar Falls, IA	12.0885
Wausau, WI	13.6355
West Palm Beach-Boca Raton-Delray Beach, FL	14.1762
Wheeling, WV-OH	11.2840
Wichita, KS	13.7212
Wichita Falls, TX	11.4308
Williamsport, PA	12.3992
Wilmington, DE-NJ-MD	15.2032
Wilmington, NC	12.1861
Worcester-Fitchburg-Leominster, MA	15.1431
Yakima, WA	14.1430
York, PA	12.6185
Youngstown-Warren, OH	13.8000
Yuba City, CA	14.3528
Yuma, AZ	12.4286

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	9.9782
Alaska	18.7800
Arizona	12.2352
Arkansas	9.7615
California	14.2158
Colorado	11.7715
Connecticut	16.6527
Delaware	11.9902
Florida	12.2119
Georgia	10.8640
Hawaii	13.4534
Idaho	12.5228
Illinois	10.7702
Indiana	10.9616
Iowa	10.5352
Kansas	10.4157
Kentucky	10.9009
Louisiana	10.3290
Maine	11.6490
Maryland	11.2762
Massachusetts	16.3011
Michigan	12.4296
Minnesota	11.6218
Mississippi	9.7401
Missouri	10.1393
Montana	11.5467
Nebraska	9.7847
Nevada	13.5711
New Hampshire	13.3536
New Jersey [1]	
New Mexico	11.6391
New York	11.7524
North Carolina	11.1061
North Dakota	10.7966
Ohio	11.8238
Oklahoma	10.3540
Oregon	13.4376
Pennsylvania	12.0476
Puerto Rico	6.0612
Rhode Island [1]	
South Carolina	10.7144
South Dakota	10.0267
Tennessee	10.2677
Texas	10.6238
Utah	12.5648
Vermont	12.6386
Virginia	10.9323
Washington	13.4773
West Virginia	11.8723
Wisconsin	11.8155
Wyoming	11.8294

[1] All counties within the State are classified urban.

BILLING CODE 4120-03-M

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
1	01	SURG		CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.2324	11.3	15.8	34
2	01	SURG		CRANIOTOMY FOR TRAUMA AGE >17	3.1311	10.8	15.1	34
3	01	SURG	*	CRANIOTOMY AGE 0-17	2.9627	12.7	12.7	36
4	01	SURG		SPINAL PROCEDURES	2.3612	8.8	12.8	32
5	01	SURG		EXTRACRANIAL VASCULAR PROCEDURES	1.5504	5.2	8.5	28
6	01	SURG		CARPAL TUNNEL RELEASE	.5437	2.0	3.0	22
7	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC WITH CC	1.8363	11.1	21.5	34
8	01	SURG		PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	.7944	2.9	4.5	28
9	01	MED		SPINAL DISORDERS & INJURIES	1.2786	6.4	10.0	29
10	01	MED		NERVOUS SYSTEM NEOPLASMS WITH CC	1.2884	7.4	10.9	30
11	01	MED		NERVOUS SYSTEM NEOPLASMS W/O CC	.7649	4.3	6.2	27
12	01	MED		DEGENERATIVE NERVOUS SYSTEM DISORDERS	.9550	6.8	9.9	30
13	01	MED		MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.8236	6.6	8.2	30
14	01	MED		SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.2180	7.0	9.8	30
15	01	MED		TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS	.6662	4.1	5.2	27
16	01	MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.1086	6.6	9.0	30
17	01	MED		NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6424	4.4	5.7	27
18	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS WITH CC	.9170	5.8	7.7	29
19	01	MED		CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.5958	3.9	5.4	27
20	01	MED		NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.0042	8.6	12.6	32
21	01	MED		VIRAL MENINGITIS	1.4505	7.2	9.5	30
22	01	MED		HYPERTENSIVE ENCEPHALOPATHY	.7261	4.2	5.4	27
23	01	MED		NONTRAUMATIC STUPOR & COMA	.8202	4.2	6.0	27
24	01	MED		SEIZURE & HEADACHE AGE >17 WITH CC	.9714	5.2	7.2	28
25	01	MED		SEIZURE & HEADACHE AGE >17 W/O CC	5282	3.4	4.3	28
26	01	MED		SEIZURE & HEADACHE AGE 0-17	1.0515	4.0	5.9	27
27	01	MED		TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3744	4.3	8.2	27
28	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 WITH CC	1.2208	5.9	9.3	29
29	01	MED		TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.5885	3.3	4.6	26
30	01	MED	*	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3893	2.0	2.0	17
31	01	MED		CONCUSSION AGE >17 WITH CC	.7707	4.4	6.4	27
32	01	MED		CONCUSSION AGE >17 W/O CC	.4454	2.7	3.6	25
33	01	MED	*	CONCUSSION AGE 0-17	.2494	1.5	1.5	9
34	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM WITH CC	1.1442	5.9	8.5	29
35	01	MED		OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5690	3.6	4.9	27

* MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM MARYLAND AND MICHIGAN FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
NOTE: ARITHMETIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
36	02	SURG		RETINAL PROCEDURES	.6238	1.9	2.3	11
37	02	SURG		ORBITAL PROCEDURES	.7883	2.8	4.2	26
38	02	SURG		PRIMARY IRIS PROCEDURES	.3584	2.1	2.8	16
39	02	SURG		LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.4858	1.5	1.9	8
40	02	SURG		EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.5150	2.0	3.2	25
41	02	SURG	*	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3713	1.6	1.6	7
42	02	SURG		INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.5868	1.9	2.5	14
43	02	MED		HYPHEMA	.4026	3.6	4.8	27
44	02	MED		ACUTE MAJOR EYE INFECTIONS	.5767	5.2	6.2	28
45	02	MED		NEUROLOGICAL EYE DISORDERS	.5889	3.5	4.4	26
46	02	MED		OTHER DISORDERS OF THE EYE AGE >17 W CC	.7217	4.3	6.3	27
47	02	MED		OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4156	2.9	4.1	26
48	02	MED	*	OTHER DISORDERS OF THE EYE AGE 0-17	.4079	2.9	2.9	26
49	03	SURG		MAJOR HEAD & NECK PROCEDURES	1.6029	5.0	7.3	28
50	03	SURG		SIALOADENECTOMY	.6594	2.0	2.5	12
51	03	SURG		SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.6278	2.1	2.9	19
52	03	SURG		CLEFT LIP & PALATE REPAIR	.7859	2.2	2.9	19
53	03	SURG		SINUS & MASTOID PROCEDURES AGE >17	.7237	2.0	3.1	24
54	03	SURG	*	SINUS & MASTOID PROCEDURES AGE 0-17	.6994	3.2	3.2	22
55	03	SURG		MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.5469	1.7	2.4	15
56	03	SURG		RHINOPLASTY	.6168	1.9	2.6	17
57	03	SURG		T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.8845	3.3	5.1	26
58	03	SURG	*	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.3145	1.5	1.5	4
59	03	SURG		TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.4273	1.5	2.0	10
60	03	SURG	*	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2655	1.5	1.5	4
61	03	SURG		MYRINGOTOMY W TUBE INSERTION AGE >17	.8613	2.5	4.8	26
62	03	SURG	*	MYRINGOTOMY W TUBE INSERTION AGE 0-17	.3136	1.3	1.3	5
63	03	SURG		OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.0429	3.7	5.5	27
64	03	MED		EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.1039	5.1	8.8	28
65	03	MED		DYSEQUILIBRIUM	.4922	3.3	4.1	23
66	03	MED		EPISTAXIS	.4885	3.3	4.3	25
67	03	MED		EPIGLOTTITIS	.8424	4.1	5.2	27
68	03	MED		OTITIS MEDIA & URI AGE >17 WITH CC	.7216	4.7	5.8	28
69	03	MED		OTITIS MEDIA & URI AGE >17 W/O CC	.5000	3.6	4.3	22
70	03	MED		OTITIS MEDIA & URI AGE 0-17	.6126	3.2	4.4	26

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					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
71	03	MED		LARYNGOTRACHEITIS	.7664	4.0	5.1	27
72	03	MED		NASAL TRAUMA & DEFORMITY	.5844	3.3	5.0	26
73	03	MED		OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7522	4.1	5.9	27
74	03	MED	*	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3480	2.1	2.1	20
75	04	SURG		MAJOR CHEST PROCEDURES	3.0400	11.2	13.6	34
76	04	SURG		OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.3973	10.5	14.8	34
77	04	SURG		OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.0208	4.3	6.5	27
78	04	MED		PULMONARY EMBOLISM	1.4350	8.5	10.0	31
79	04	MED		RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 WITH CC	1.7510	9.0	11.8	32
80	04	MED		RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	.9617	6.4	7.9	29
81	04	MED	*	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.1200	6.1	6.1	29
82	04	MED		RESPIRATORY NEOPLASMS	1.2809	6.7	9.6	30
83	04	MED		MAJOR CHEST TRAUMA WITH CC	.9490	6.0	7.9	29
84	04	MED		MAJOR CHEST TRAUMA W/O CC	.4783	3.4	4.3	26
85	04	MED		PLEURAL EFFUSION WITH CC	1.1969	6.8	9.0	30
86	04	MED		PLEURAL EFFUSION W/O CC	.6711	4.0	5.3	27
87	04	MED		PULMONARY EDEMA & RESPIRATORY FAILURE	1.3597	5.8	8.0	29
88	04	MED		CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9941	5.8	7.2	29
89	04	MED		SIMPLE PNEUMONIA & PLEURISY AGE >17 WITH CC	1.1581	7.0	8.6	30
90	04	MED		SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.7090	5.2	6.1	28
91	04	MED		SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.7985	4.7	5.8	28
92	04	MED		INTERSTITIAL LUNG DISEASE WITH CC	1.1975	6.8	8.7	30
93	04	MED		INTERSTITIAL LUNG DISEASE W/O CC	.7723	4.8	6.0	28
94	04	MED		PNEUMOTHORAX WITH CC	1.2774	7.1	9.3	30
95	04	MED		PNEUMOTHORAX W/O CC	.5973	4.3	5.3	27
96	04	MED		BRONCHITIS & ASTHMA AGE >17 WITH CC	.9369	5.8	7.0	29
97	04	MED		BRONCHITIS & ASTHMA AGE >17 W/O CC	.6191	4.3	5.1	24
98	04	MED		BRONCHITIS & ASTHMA AGE 0-17	.8924	4.7	6.3	28
99	04	MED		RESPIRATORY SIGNS & SYMPTOMS WITH CC	.7623	3.8	5.0	27
100	04	MED		RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5049	2.5	3.1	17
101	04	MED		OTHER RESPIRATORY SYSTEM DIAGNOSES WITH CC	.9135	5.0	6.7	28
102	04	MED		OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5428	3.3	4.3	26
103	05	SURG		HEART TRANSPLANT	12.5568	23.7	32.3	47
104	05	SURG		CARDIAC VALVE PROCEDURES W CARDIAC CATH	7.7521	17.2	20.1	40
105	05	SURG		CARDIAC VALVE PROCEDURES W/O CARDIAC CATH	5.8291	11.9	14.3	35

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TABLE 5

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
106	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.6583	13.3	14.9	38
107	05	SURG	CORONARY BYPASS W/O CARDIAC CATH	4.2348	10.2	11.4	33
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.8725	12.3	15.1	35
109			NO LONGER VALID	.0000	.0	.0	0
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES WITH CC	4.0823	9.9	13.3	33
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2979	7.3	8.4	30
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	1.9874	4.5	6.0	28
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE	2.7789	14.0	18.8	37
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.5957	8.9	12.3	32
115	05	SURG	PERM CARDIAC PACEMAKER IMPLANT W AMI, HEART FAILURE OR SHOCK	3.6092	11.3	13.6	34
116	05	SURG	OTH PERM CARDIAC PACEMAKER IMPLANT OR AICD LEAD OR GEN PROC	2.4604	5.3	7.1	28
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.2264	3.7	5.4	27
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5858	2.5	3.9	26
119	05	SURG	VEIN LIGATION & STRIPPING	.9650	3.5	6.0	28
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	1.9906	7.2	12.3	30
121	05	MED	CIRCULATORY DISORDERS W AMI & C.V. COMP DISCH ALIVE	1.6114	7.8	9.5	31
122	05	MED	CIRCULATORY DISORDERS W AMI W/O C.V. COMP DISCH ALIVE	1.1532	5.7	6.8	28
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.4090	2.9	5.3	26
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG	1.2029	4.2	5.7	27
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG	.7587	2.2	3.1	22
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.8464	15.5	20.3	39
127	05	MED	HEART FAILURE & SHOCK	1.0150	5.9	7.6	29
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7873	7.2	8.2	30
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.2831	2.4	4.7	25
130	05	MED	PERIPHERAL VASCULAR DISORDERS WITH CC	.9106	6.1	7.9	28
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5861	4.7	6.0	28
132	05	MED	ATHEROSCLEROSIS WITH CC	.7591	4.0	5.4	27
133	05	MED	ATHEROSCLEROSIS W/O CC	.5312	2.9	3.8	24
134	05	MED	HYPERTENSION	.5655	3.8	4.8	27
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 WITH CC	.8625	4.6	6.4	28
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE > 17 W/O CC	.5266	3.1	4.2	24
137	05	MED	* CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.6411	3.3	3.3	26
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS WITH CC	.8110	4.3	5.7	27
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5020	2.9	3.8	21
140	05	MED	ANGINA PECTORIS	.6219	3.6	4.4	24

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
141	05	MED	SYNCOPE & COLLAPSE WITH CC	.6998	4.2	5.5	27
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5048	3.1	3.8	22
143	05	MED	CHEST PAIN	.5164	2.7	3.3	18
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.0650	5.0	7.0	28
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6240	3.1	4.1	26
146	06	SURG	RECTAL RESECTION WITH CC	2.5394	11.9	13.6	35
147	06	SURG	RECTAL RESECTION W/O CC	1.5192	8.2	9.0	31
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES WITH CC	3.1353	13.0	15.6	36
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.4948	8.3	9.0	28
150	06	SURG	PERITONEAL ADHESIOLYSIS WITH CC	2.5484	11.3	13.7	34
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.1885	6.3	7.7	29
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES WITH CC	1.7736	8.8	10.4	32
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.0426	6.5	7.1	25
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 WITH CC	4.0491	14.0	17.9	37
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE > 17 W/O CC	1.4617	7.2	8.5	30
156	06	SURG *	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8510	6.0	6.0	29
157	06	SURG	ANAL & STOMAL PROCEDURES WITH CC	.9575	4.5	6.2	27
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.4975	2.3	3.0	17
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 WITH CC	1.0747	4.7	6.1	28
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	.8168	2.7	3.3	19
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 WITH CC	.7820	3.2	4.4	26
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.4651	1.8	2.2	11
163	06	SURG	HERNIA PROCEDURES AGE 0-17	.4843	2.3	2.7	14
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG WITH CC	2.1607	9.5	11.2	32
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2080	6.3	7.0	25
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG WITH CC	1.3251	5.9	7.0	29
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.7495	3.6	4.1	15
168	03	SURG	MOUTH PROCEDURES WITH CC	.9902	3.4	5.5	26
169	03	SURG	MOUTH PROCEDURES W/O CC	.5788	2.1	2.8	18
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES WITH CC	2.7310	10.7	15.6	34
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.0898	5.0	6.7	28
172	06	MED	DIGESTIVE MALIGNANCY WITH CC	1.2990	7.1	10.4	30
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.6346	3.5	5.2	27
174	06	MED	G.I. HEMORRHAGE WITH CC	.9794	5.3	6.8	28
175	06	MED	G.I. HEMORRHAGE W/O CC	.5506	3.6	4.3	22

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
176	06	MED	COMPLICATED PEPTIC ULCER	1.0331	5.8	7.5	29
177	06	MED	UNCOMPLICATED PEPTIC ULCER WITH CC	.7931	5.0	6.1	28
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.5720	3.7	4.4	22
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.1044	7.0	9.1	30
180	06	MED	G.I. OBSTRUCTION WITH CC	.9279	5.7	7.4	29
181	06	MED	G.I. OBSTRUCTION W/O CC	.5007	3.8	4.5	25
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 WITH CC	.7721	4.8	6.1	28
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC	.5296	3.4	4.2	24
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.5625	3.0	4.1	25
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17	.7854	4.4	6.2	27
186	03	MED	* DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	.4174	2.9	2.9	23
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.5650	2.6	3.8	28
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 WITH CC	.9971	5.2	7.3	28
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.4804	2.8	3.8	26
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.6796	4.1	5.3	27
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES WITH CC.	4.4652	15.3	19.9	38
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.7051	7.7	9.5	31
193	07	SURG	BILIARY TRACT PROC W CC EXCEPT ONLY CHOLECYST W OR W/O CDE .D.E	3.0376	13.7	16.4	37
194	07	SURG	BILIARY TRACT PROC W/O CC EXCEPT ONLY CHOLECYST W OR W/O C.D.E	1.6333	7.9	9.6	31
195	07	SURG	CHOLECYSTECTOMY W C.D.E. WITH CC	2.2744	10.4	12.0	33
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.4039	7.2	8.0	30
197	07	SURG	CHOLECYSTECTOMY W/O C D.E. WITH CC	1.6916	8.2	8.3	29
198	07	SURG	CHOLECYSTECTOMY W/O C.D.E. W/O CC	.8757	2.6	3.6	26
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.3376	11.0	14.3	34
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY	2.7205	9.0	13.4	32
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	2.5221	10.0	14.4	33
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.2996	7.0	9.6	30
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.2158	6.8	9.7	30
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1158	6.0	7.8	29
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA WITH CC	1.2249	6.5	9.1	30
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.6113	3.8	5.0	27
207	07	MED	DISORDERS OF THE BILIARY TRACT WITH CC	.9814	5.3	6.9	28
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.5564	3.1	4.0	25
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES - LOWER EXTREMITY	2.3688	9.4	10.4	32
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 WITH CC	1.9077	10.7	12.5	34

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.3307	8.3	9.3	31
212	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.0345	4.2	6.1	27
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS	1.7888	9.2	12.8	32
214	08	SURG	BACK & NECK PROCEDURES WITH CC	1.8886	8.1	10.1	31
215	08	SURG	BACK & NECK PROCEDURES W/O CC	1.0905	5.1	6.0	28
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	2.0429	10.0	14.5	33
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS	3.0601	13.6	21.3	37
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 WITH CC	1.4186	6.8	8.8	30
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC	.8956	4.2	5.1	28
220	08	SURG *	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0-17	.9382	5.3	5.3	28
221	08	SURG	KNEE PROCEDURES WITH CC	1.7828	7.3	10.6	30
222	08	SURG	KNEE PROCEDURES W/O CC	.9544	3.7	5.2	27
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	.8087	3.0	3.8	22
224	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	.6538	2.4	2.9	14
225	08	SURG	FOOT PROCEDURES	.8212	3.3	5.0	26
226	08	SURG	SOFT TISSUE PROCEDURES WITH CC	1.3241	5.7	8.7	29
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.6767	2.8	3.8	23
228	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC	.7961	2.5	3.5	25
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.5539	1.9	2.8	15
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR	.9179	3.9	6.0	27
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR	1.1044	3.9	6.3	27
232	08	SURG	ARTHROSCOPY	1.1792	3.6	6.6	27
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC WITH CC	1.8579	8.3	11.6	31
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	.8957	3.9	5.3	27
235	08	MED	FRACTURES OF FEMUR	1.0209	6.8	11.2	30
236	08	MED	FRACTURES OF HIP & PELVIS	.8128	6.2	8.6	29
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5496	4.2	5.5	27
238	08	MED	OSTEOMYELITIS	1.5435	10.2	13.7	33
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY	1.0415	7.4	9.9	30
240	08	MED	CONNECTIVE TISSUE DISORDERS WITH CC	1.1468	6.8	9.2	30
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.5782	4.3	5.6	27
242	08	MED	SEPTIC ARTHRITIS	1.1864	7.8	10.3	31
243	08	MED	MEDICAL BACK PROBLEMS	.6834	5.0	6.7	28
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES WITH CC	.7353	5.2	7.0	28
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.5043	3.8	5.3	27

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5706	4.2	5.3	27
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE	.5682	3.7	5.0	27
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.6750	4.5	6.0	28
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE	.8965	4.1	6.2	27
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 WITH CC	.7047	4.5	6.5	28
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC	.4395	2.6	3.5	25
252	08	MED	* FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.3549	1.8	1.8	15
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 WITH CC	.7774	5.5	7.8	29
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC	.4231	3.4	4.8	26
255	08	MED	* FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.4709	2.9	2.9	26
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES	.6505	3.7	5.2	27
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.8950	4.2	4.9	23
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7002	3.2	3.8	14
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY WITH CC	.8774	3.8	5.4	27
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.5659	2.1	2.5	12
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION	.7183	2.2	2.8	14
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.5345	2.1	3.1	22
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS WITH CC	2.5403	14.3	20.2	37
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC	1.2662	8.2	11.3	31
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC	1.3939	6.0	9.5	29
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC	.6978	3.0	4.3	26
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.6245	2.7	4.1	26
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	.7519	2.6	4.4	26
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE WITH CC	1.6956	8.0	12.0	31
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROCEDURE W/O CC	.6343	2.8	3.9	26
271	09	MED	SKIN ULCERS	1.1970	8.4	11.2	31
272	09	MED	MAJOR SKIN DISORDERS WITH CC	1.0477	7.1	9.2	30
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.6583	5.2	6.7	28
274	09	MED	MALIGNANT BREAST DISORDERS WITH CC	1.1572	6.7	10.8	30
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5957	3.0	4.8	26
276	09	MED	NON-MALIGANT BREAST DISORDERS	.6085	4.0	5.4	27
277	09	MED	CELLULITIS AGE >17 WITH CC	.9038	6.8	8.2	30
278	09	MED	CELLULITIS AGE >17 W/O CC	.5941	5.1	6.0	28
279	09	MED	* CELLULITIS AGE 0-17	.7479	4.2	4.2	24
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 WITH CC	.6807	4.6	6.3	28

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4270	3.1	4.1	26
282	09	MED *	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.3476	2.2	2.2	19
283	09	MED	MINOR SKIN DISORDERS WITH CC	.7558	5.2	7.1	28
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4450	3.5	4.7	26
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS	2.7519	14.7	21.1	38
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.3944	9.0	11.1	32
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS	2.1744	12.5	18.3	38
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0378	6.9	10.1	30
289	10	SURG	PARATHYROID PROCEDURES	1.0252	3.7	5.3	27
290	10	SURG	THYROID PROCEDURES	.7448	2.6	3.2	18
291	10	SURG	THYROGLOSSAL PROCEDURES	.4896	1.7	2.0	9
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC WITH CC	2.8428	12.0	17.7	35
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1284	5.3	7.5	28
294	10	MED	DIABETES AGE >35	.7491	5.6	7.1	29
295	10	MED	DIABETES AGE 0-35	.7721	4.3	5.7	27
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 WITH CC	.9410	5.9	8.1	29
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5271	3.9	5.0	27
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.4777	2.6	3.4	21
299	10	MED	INBORN ERRORS OF METABOLISM	.8392	4.5	6.7	28
300	10	MED	ENDOCRINE DISORDERS WITH CC	1.1251	6.9	9.2	30
301	10	MED	ENDOCRINE DISORDERS W/O CC	.5811	3.9	5.3	27
302	11	SURG	KIDNEY TRANSPLANT	3.8885	13.5	15.7	37
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM	2.6532	10.9	13.1	34
304	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL WITH CC	2.4103	9.9	13.3	33
305	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC	1.1548	5.0	6.4	28
306	11	SURG	PROSTATECTOMY WITH CC	1.2744	6.5	8.6	30
307	11	SURG	PROSTATECTOMY W/O CC	.8888	3.7	4.5	20
308	11	SURG	MINOR BLADDER PROCEDURES WITH CC	1.4315	6.0	8.9	29
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.7287	2.9	3.9	26
310	11	SURG	TRANSURETHRAL PROCEDURES WITH CC	.8880	3.8	5.4	27
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.5153	2.1	2.7	14
312	11	SURG	URETHRAL PROCEDURES, AGE >17 WITH CC	.8082	3.7	5.2	27
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.4623	2.1	2.7	17
314	11	SURG *	URETHRAL PROCEDURES, AGE 0-17	.4389	2.3	2.3	25
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0382	8.6	12.0	30

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
316	11	MED	RENAL FAILURE	1.2898	5.2	9.1	29
317	11	MED	ADMIT FOR RENAL DIALYSIS	.5075	2.8	3.9	26
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS WITH CC	1.1244	6.0	9.0	29
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.5069	2.5	3.7	26
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 WITH CC	.9807	6.5	8.1	29
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.6252	4.8	5.7	27
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.6389	4.6	5.6	28
323	11	MED	URINARY STONES WITH CC, &/OR ESW LITHOTRIPSY	.7381	3.1	4.2	26
324	11	MED	URINARY STONES W/O CC	.3858	2.1	2.5	13
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 WITH CC	.6551	4.2	5.7	27
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4152	2.8	3.6	22
327	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.7038	4.9	6.5	28
328	11	MED	URETHRAL STRICTURE AGE >17 WITH CC	.6383	3.6	4.8	27
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4113	2.1	2.9	18
330	11	MED *	URETHRAL STRICTURE AGE 0-17	.2830	1.6	1.6	9
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 WITH CC	.8765	5.3	7.4	28
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5347	3.0	4.4	26
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.9590	5.2	7.6	28
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.7728	8.2	8.9	28
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.3597	6.8	7.3	19
336	12	SURG	TRANSURETHRAL PROSTATECTOMY WITH CC	.8704	4.6	5.5	24
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6066	3.4	3.8	12
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	.9386	3.9	6.1	27
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	.7572	3.1	4.5	28
340	12	SURG *	TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.4401	2.4	2.4	13
341	12	SURG	PENIS PROCEDURES	.9681	3.3	4.2	25
342	12	SURG	CIRCUMCISION AGE >17	.5766	2.5	3.7	25
343	12	SURG *	CIRCUMCISION AGE 0-17	.3845	1.7	1.7	6
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY	1.0568	3.9	5.2	27
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY	.7521	3.2	4.6	26
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, WITH CC	.9906	5.7	8.5	29
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5120	2.9	4.4	26
348	12	MED	BENIGN PROSTATIC HYPERTROPHY WITH CC	.6815	4.0	5.5	27
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.3952	2.3	3.0	20
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6707	4.8	5.8	28

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					RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
351	12	MED	*	STERILIZATION, MALE	.3384	1.3	1.3	5
352	12	MED		OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.5801	3.2	4.7	26
353	13	SURG		PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.9031	9.2	11.1	32
354	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG WITH CC	1.3686	6.8	7.8	30
355	13	SURG		UTERINE,ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	.8493	4.7	5.0	12
356	13	SURG		FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	.7030	3.8	4.2	15
357	13	SURG		UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIG	2.3097	10.0	12.3	33
358	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY WITH CC	1.1066	5.6	6.3	22
359	13	SURG		UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.7723	4.2	4.5	11
360	13	SURG		VAGINA, CERVIX & VULVA PROCEDURES	.8024	4.0	5.0	27
361	13	SURG		LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	.9767	3.5	5.5	27
362	13	SURG	*	ENDOSCOPIC TUBAL INTERRUPTION	.5057	1.4	1.4	5
363	13	SURG		D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.6251	3.0	4.1	24
364	13	SURG		D&C, CONIZATION EXCEPT FOR MALIGNANCY	.5659	2.6	3.8	26
365	13	SURG		OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.7093	7.1	10.4	30
366	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM WITH CC	1.2158	6.5	10.1	29
367	13	MED		MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.4808	2.7	3.8	26
368	13	MED		INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	.8820	5.8	7.3	29
369	13	MED		MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS	.5321	3.1	4.5	26
370	14	SURG		CESAREAN SECTION W CC	.8916	5.3	6.8	27
371	14	SURG		CESAREAN SECTION W/O CC	.6461	4.0	4.2	11
372	14	MED		VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.4619	2.9	3.6	19
373	14	MED		VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3182	2.1	2.4	8
374	14	SURG		VAGINAL DELIVERY W STERILIZATION &/OR D&C	.6297	2.8	4.0	24
375	14	SURG	*	VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6921	4.4	4.4	27
376	14	MED		POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	.3247	2.3	2.9	17
377	14	SURG		POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	.8392	3.6	5.1	27
378	14	MED		ECTOPIC PREGNANCY	.7894	3.3	3.7	13
379	14	MED		THREATENED ABORTION	.2743	2.0	2.9	20
380	14	MED		ABORTION W/O D&C	.3430	1.9	2.8	20
381	14	SURG		ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.4326	1.7	2.4	14
382	14	MED		FALSE LABOR	.1486	1.3	1.4	5
383	14	MED		OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.3947	3.2	4.3	26
384	14	MED		OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	.2701	2.0	2.7	18
385	15	MED	*	NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.2418	1.8	1.8	25

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TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
386	15	MED	* EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	3.7035	17.9	17.9	41
387	15	MED	* PREMATURITY W MAJOR PROBLEMS	1.8545	13.3	13.3	36
388	15	MED	* PREMATURITY W/O MAJOR PROBLEMS	1.1747	8.6	8.6	32
389	15	MED	* FULL TERM NEONATE W MAJOR PROBLEMS	1.4229	4.7	4.7	28
390	15	MED	NEONATE W OTHER SIGNIFICANT PROBLEMS	1.1340	3.8	6.1	27
391	15	MED	* NORMAL NEWBORN	.2252	3.1	3.1	11
392	16	SURG	SPLENECTOMY AGE >17	3.1287	11.0	14.0	34
393	16	SURG	* SPLENECTOMY AGE 0-17	1.5437	9.1	9.1	32
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS	1.5986	5.6	10.0	29
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.7881	4.6	6.3	28
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.6802	2.0	3.2	24
397	16	MED	COAGULATION DISORDERS	1.1905	5.3	7.4	28
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS WITH CC	1.2081	6.4	8.2	29
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6735	4.0	5.2	27
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.5572	8.9	13.3	32
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.3497	10.2	15.0	33
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	.8836	3.5	5.1	27
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.6827	8.1	12.0	31
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.7428	4.0	5.6	27
405	17	MED	* ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.0585	4.9	4.9	28
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC	2.7669	11.0	15.3	34
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.1999	5.0	8.5	28
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC	1.3279	4.9	8.4	28
409	17	MED	RADIOTHERAPY	.9886	8.1	8.9	29
410	17	MED	CHEMOTHERAPY WITHOUT ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	.6095	2.8	3.5	20
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4256	2.4	3.3	23
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4257	2.0	2.8	20
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG WITH CC	1.3336	7.3	10.7	30
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.8857	4.1	6.0	27
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5162	14.6	20.5	38
416	18	MED	SEPTECEMIA AGE >17	1.5222	7.4	10.3	30
417	18	MED	SEPTECEMIA AGE 0-17	.8874	4.4	5.5	27
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9878	6.4	8.1	28
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 WITH CC	.9500	5.7	7.3	28
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6510	4.4	5.3	27

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NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
NOTE: ARITHMETIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR OUTLIER CASES.
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LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
421	18	MED	VIRAL ILLNESS AGE >17	.8882	4.3	5.4	27
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.7829	4.8	6.2	28
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.5976	7.9	11.0	31
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.4058	13.8	23.4	37
425	19	MED	ACUTE ADJUST REACT & DISTURBANCES OF PSYCHOSOCIAL DYSFUNCTION	.7045	4.5	6.2	27
426	19	MED	DEPRESSIVE NEUROSES	.6023	5.1	7.2	28
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.6322	5.1	7.6	28
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7703	6.4	10.5	29
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.9460	7.6	11.4	31
430	19	MED	PSYCHOSES	.9040	8.6	12.3	32
431	19	MED	CHILDHOOD MENTAL DISORDERS	.5980	5.1	7.3	28
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7113	4.5	6.9	27
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.3545	2.9	4.4	28
434	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT WITH CC	.7494	5.4	7.4	28
435	20	MED	ALC/DRUG ABUSE OR DEPENDENCE, DETOX OR OTHER SYMPT TRT W/O CC	.4818	4.5	6.3	27
436	20	MED	ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.9869	14.8	17.9	38
437	20	MED	ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY	1.0888	14.2	16.7	37
438			NO LONGER VALID	.0000	.0	.0	0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.2126	5.8	9.2	29
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.8359	8.1	12.9	31
441	21	SURG	HAND PROCEDURES FOR INJURIES	.7321	2.3	3.5	25
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES WITH CC	1.9106	5.9	9.7	29
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.7518	2.6	3.7	28
444	21	MED	TRAUMATIC INJURY AGE > 17 W CC	.7643	5.2	7.2	28
445	21	MED	TRAUMATIC INJURY AGE > 17 W/O CC	.4649	3.3	4.3	26
446	21	MED	* TRAUMATIC INJURY AGE 0-17	4869	2.4	2.4	22
447	21	MED	ALLERGIC REACTIONS AGE >17	4919	2.5	3.4	24
448	21	MED	* ALLERGIC REACTIONS AGE 0-17	3523	2.9	2.9	17
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 WITH CC	7889	4.0	5.7	27
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4325	2.3	3.2	22
451	21	MED	* POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.5268	2.1	2.1	17
452	21	MED	COMPLICATIONS OF TREATMENT WITH CC	.8550	4.2	6.1	27
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.4175	2.7	3.5	23
454	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG WITH CC	.8873	4.3	6.8	27
455	21	MED	OTHER INJURY, POISONING & TOXIC EFF DIAG W/O CC	.4130	2.3	3.1	21

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NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5

LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC MEAN LENGTH OF STAY, AND LENGTH OF STAY OUTLIER CUTOFF POINTS USED IN THE PROSPECTIVE PAYMENT SYSTEM

				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
456	22	MED	BURNS, TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	1.7285	4.6	8.8	28
457	22	MED	EXTENSIVE BURNS W/O O.R. PROCEDURE	2.0147	3.6	8.8	27
458	22	SURG	NON-EXTENSIVE BURNS W SKIN GRAFT	3.8787	16.0	22.7	39
459	22	SURG	NON-EXTENSIVE BURNS W WOUND DEBRIDEMENT OR OTHER O.R. PROC	1.8906	10.2	14.9	33
460	22	MED	NON-EXTENSIVE BURNS W/O O.R. PROCEDURE	1.0032	6.3	9.1	29
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES	.8808	2.5	5.1	26
462	23	MED	REHABILITATION	1.7805	13.9	17.9	37
463	23	MED	SIGNS & SYMPTOMS W CC	.7277	4.8	6.6	28
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4567	3.1	4.1	26
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.3531	1.9	2.8	20
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS	.5328	2.4	4.4	25
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.4469	2.7	5.4	28
468			EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	3.4195	13.1	19.0	36
469		**	PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	.0	0
470		**	UNGROUPABLE	.0000	.0	.0	0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	3.8978	11.9	13.7	35
472	22	SURG	EXTENSIVE BURNS W O.R. PROCEDURE	11.7093	16.1	29.9	39
473	17	MED	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.4402	9.7	17.1	33
474	04		NO LONGER VALID	.0000	.0	.0	0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.5965	9.6	14.1	33
476			PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	2.2014	13.6	16.9	37
477			NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS	1.4337	6.0	10.2	29
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.1845	6.8	10.2	30
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.2718	4.1	5.5	27
480		SURG	LIVER TRANSPLANT	20.1614	26.9	40.3	50
481		SURG	BONE MARROW TRANSPLANT	15.2244	41.2	45.7	64
482		SURG	TRACHEOSTOMY W MOUTH, LARYNX OR PHARYNX DISORDER	3.4826	13.7	18.0	37
483		SURG	TRACHEOSTOMY EXCEPT FOR MOUTH, LARYNX OR PHARYNX DISORDER	16.8590	43.9	57.2	67
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	6.5706	14.9	23.3	38
485	24	SURG	LIMB REATTACH., HIP AND FEMUR PROCS FOR MULTI SIGN TRAUMA	3.1669	13.0	16.4	36
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.8231	10.6	17.4	34
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9406	7.5	11.3	31
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.1539	16.5	23.1	39
489	25	MED	HIV W MAJOR RELATED CONDITION	1.9151	9.3	14.1	32
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.1285	5.4	8.8	28

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				RELATIVE WEIGHTS	GEOMETRIC MEAN LOS	ARITHMETIC MEAN LOS	OUTLIER THRESHOLD
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES - UPPER EXTREMITY	1.5676	5.3	6.3	28
492	17	MED	CHEMOTHERAPY WITH ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS	2.7815	8.5	14.3	32

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NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
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NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

BILLING CODE 4120-03-C

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
008.00	Intestinal infection due to unspecified E. coli	N	06	182, 183, 184
008.01	Intestinal infection due to enteropathogenic E. coli	N	06	182, 183, 184
008.02	Intestinal infection due to enterotoxigenic E. coli	N	06	182, 183, 184
008.03	Intestinal infection due to enteroinvasive E. coli	N	06	182, 183, 184
008.04	Intestinal infection due to enterohemorrhagic E. coli	N	06	182, 183, 184
008.09	Intestinal infection due to other intestinal E. coli infections	N	06	182, 183, 184
008.43	Intestinal infection due to Campylobacter	N	06	182, 183, 184
008.44	Intestinal infection due to Yersinia enterocolitica	N	06	182, 183, 184
008.45	Intestinal infection due to Clostridium difficile	N	06	182, 183, 184
008.46	Intestinal infection due to other anaerobes	N	06	182, 183, 184
008.47	Intestinal infection due to other gram-negative bacteria	N	06	182, 183, 184
008.61	Enteritis due to Rotavirus	N	06	182, 183, 184
008.62	Enteritis due to Adenovirus	N	06	182, 183, 184
008.63	Enteritis due to Norwalk virus	N	06	182, 183, 184
008.64	Enteritis due to other small round viruses [SRV's]	N	06	182, 183, 184
008.65	Enteritis due to Calcivirus	N	06	182, 183, 184
008.66	Enteritis due to Astrovirus	N	06	182, 183, 184
008.67	Enteritis due to Enterovirus not elsewhere classified	N	06	182, 183, 184
008.69	Enteritis due to other viruses	N	06	182, 183, 184
041.00	Bacterial infection due to unspecified Streptococcus	N	18	423
041.01	Bacterial infection due to Streptococcus, Group A	N	18	423
041.02	Bacterial infection due to Streptococcus, Group B	N	18	423
041.03	Bacterial infection due to Streptococcus, Group C	N	18	423
041.04	Bacterial infection due to Streptococcus, Group D	N	18	423
041.05	Bacterial infection due to Streptococcus, Group G	N	18	423
041.09	Bacterial infection due to other Streptococcus	N	18	423
041.10	Bacterial infection due to unspecified Staphylococcus	N	18	423
041.11	Bacterial infection due to Staphylococcus aureus	N	18	423
041.19	Bacterial infection due to other Staphylococcus	N	18	423
041.81	Bacterial infection due to Mycoplasma	N	18	423
041.82	Bacterial infection due to Bacillus fragilis	N	18	423
041.83	Bacterial infection due to Clostridium perfringens	N	18	423
041.84	Bacterial infection due to other anaerobes	N	18	423
041.85	Bacterial infection due to other gram-negative organisms	N	18	423
041.89	Bacterial infection due to other specified bacteria	N	18	423
099.40	Unspecified nongonococcal urethritis [NGU]	N	12	350
			13	358, 359, 368
099.41	Venereal urethritis due to Chlamydia trachomatis	N	12	350
			13	358, 359, 368
099.49	Venereal urethritis due to other specified organism	N	12	350
			13	358, 359, 368
099.50	Chlamydia trachomatis infection of unspecified site	N	12	350
			13	358, 359, 368
099.51	Chlamydia trachomatis infection of pharynx	N	03	88, 69, 70
099.52	Chlamydia trachomatis infection of anus and rectum	N	06	186, 189, 190
099.53	Chlamydia trachomatis infection of lower genitourinary sites	N	12	350
			13	358, 359, 368
099.54	Chlamydia trachomatis infection of other genitourinary sites	N	11	320, 321, 322
099.55	Chlamydia trachomatis infection of unspecified genitourinary site	N	12	350
			13	358, 359, 368
099.56	Chlamydia trachomatis infection of peritoneum	N	06	188, 189, 190
099.59	Chlamydia trachomatis infection of other specified site	N	12	350
			13	358, 359, 368
112.84	Candidiasis of the esophagus	Y	06	182, 183, 184
			15	387, 389 [1]
			25	489
112.85	Candidiasis of the intestine	Y	06	182, 183, 184
			15	387, 389 [1]
			25	489
320.81	Meningitis due to anaerobic bacteria	Y	01	20
			15	387, 389 [1]
320.82	Meningitis due to gram-negative bacteria, not elsewhere classified	Y	01	20
			15	387, 389 [1]
320.89	Meningitis due to other specified bacteria	Y	01	20
			15	387, 389 [1]
346.00	Classical migraine without mention of intractable migraine	N	01	24, 25, 26
346.01	Classical migraine with intractable migraine, so stated	N	01	24, 25, 26
346.10	Common migraine without mention of intractable migraine	N	01	24, 25, 26
346.11	Common migraine with intractable migraine, so stated	N	01	24, 25, 26
346.20	Variants of migraine without mention of intractable migraine	N	01	24, 25, 26
346.21	Variants of migraine with intractable migraine, so stated	N	01	24, 25, 26
346.80	Other forms of migraine without mention of intractable migraine	N	01	24, 25, 26
346.81	Other forms of migraine with intractable migraine, so stated	N	01	24, 25, 26
346.90	Migraine, unspecified, without mention of intractable migraine	N	01	24, 25, 26
346.91	Migraine, unspecified, with intractable migraine, so stated	N	02	46, 47, 48
371.82	Corneal disorder due to contact lens	N	01	16, 17
437.7	Transient global amnesia	N	05	130, 131
440.20	Atherosclerosis of arteries of the extremities, unspecified	N	05	130, 131
440.21	Atherosclerosis of arteries of the extremities with intermittent claudication	N	05	130, 131
440.22	Atherosclerosis of arteries of the extremities with rest pain	N		

TABLE 6a.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
482.30	Pneumonia due to unspecified Streptococcus	Y	04	89, 90, 91
			15	387, 389 [1]
			25	489
482.31	Pneumonia due to Streptococcus, Group A	Y	04	89, 90, 91
			15	387, 389 [1]
			25	489
482.32	Pneumonia due to Streptococcus, Group B	Y	04	89, 90, 91
			15	387, 389 [1]
			25	489
482.39	Pneumonia due to other Streptococcus	Y	04	89, 90, 91
			15	387, 389 [1]
			25	489
482.81	Pneumonia due to anaerobes	Y	04	79, 80, 81
			15	387, 389 [1]
			25	489
482.82	Pneumonia due to Escherichia coli (E. coli)	Y	04	79, 80, 81
			15	387, 389 [1]
			25	489
482.83	Pneumonia due to other gram-negative bacteria	Y	04	79, 80, 81
			15	387, 389 [1]
			25	489
482.89	Pneumonia due to other specified bacteria	Y	04	79, 80, 81
			15	387, 389 [1]
			25	489
483.0	Pneumonia due to Mycoplasma pneumoniae	Y	04	89, 90, 91
			15	387, 389 [1]
483.8	Pneumonia due to other specified organism	Y	04	89, 90, 91
			15	387, 389 [1]
524.00	Unspecified anomaly of jaw size	N	03	185, 186, 187
			—	482
524.01	Maxillary hyperplasia	N	03	185, 186, 187
			—	482
524.02	Mandibular hyperplasia	N	03	185, 186, 187
			—	482
524.03	Maxillary hypoplasia	N	03	185, 186, 187
			—	482
524.04	Mandibular hypoplasia	N	03	185, 186, 187
			—	482
524.05	Macrogenia	N	03	185, 186, 187
			—	482
524.06	Microgenia	N	03	185, 186, 187
			—	482
524.09	Other specified anomaly of jaw size	N	03	185, 186, 187
			—	482
524.10	Unspecified anomaly of relationship of jaw to cranial base	N	03	185, 186, 187
			—	482
524.11	Maxillary asymmetry	N	03	185, 186, 187
			—	482
524.12	Other jaw asymmetry	N	03	185, 186, 187
			—	482
524.19	Other specified anomaly of relationship of jaw to cranial base	N	03	185, 186, 187
			—	482
524.70	Unspecified alveolar anomaly	N	03	185, 186, 187
			—	482
524.71	Alveolar maxillary hyperplasia	N	03	185, 186, 187
			—	482
524.72	Alveolar mandibular hyperplasia	N	03	185, 186, 187
			—	482
524.73	Alveolar maxillary hypoplasia	N	03	185, 186, 187
			—	482
524.74	Alveolar mandibular hypoplasia	N	03	185, 186, 187
			—	482
524.79	Other specified alveolar anomaly	N	03	185, 186, 187
			—	482
596.51	Hypertonicity of bladder	N	11	331, 332, 333
596.52	Low bladder compliance	N	11	331, 332, 333
596.53	Paralysis of bladder	N	11	331, 332, 333
596.54	Neurogenic bladder, not otherwise specified	N	11	331, 332, 333
596.55	Detrusor sphincter dyssynergia	N	11	331, 332, 333
596.59	Other functional disorder of bladder	N	11	331, 332, 333
599.81	Urethral hypermobility	N	11	331, 332, 333
599.82	Intrinsic (urethra) sphincter deficiency (ISD)	N	11	331, 332, 333
599.83	Urethral instability	N	11	331, 332, 333
599.84	Other specified disorders of urethral	N	11	331, 332, 333
599.89	Other specified disorders of urinary tract	N	11	331, 332, 333
659.60	Other advanced maternal age, unspecified as to episode of care or not applicable.	N	14	370, 371, 372, 373, 374, 375

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
659.61	Other advanced maternal age, delivered, with or without mention of antepartum condition.	N	14	370, 371, 372, 373, 374, 375
659.63	Other advanced maternal age, antepartum condition or complication	N	14	383, 384
692.72	Acute dermatitis due to solar radiation	N	09	283, 284
692.73	Actinic reticuloid and actinic granuloma	N	09	283, 284
692.74	Other chronic dermatitis due to solar radiation	N	09	283, 284
692.82	Dermatitis due to other radiation	N	09	283, 284
692.83	Dermatitis due to metals	N	09	283, 284
710.5	Eosinophilia myalgia syndrome	N	06	240, 241
738.10	Unspecified acquired deformity of head	N	08	256
738.11	Zygomatic hyperplasia	N	08	256
738.12	Zygomatic hypoplasia	N	08	256
738.19	Other specified acquired deformity of head	N	08	256
780.01	Coma	Y	01	23
			15	387, 389 [1]
780.02	Transient alteration of awareness	N	01	23
780.09	Other alteration of consciousness	N	01	23
780.57	Other and unspecified sleep apnea	N	01	34, 35
788.30	Unspecified urinary incontinence	N	11	325, 326, 327
788.31	Urge incontinence	N	11	325, 326, 327
788.32	Stress incontinence, male	N	11	325, 326, 327
788.33	Mixed incontinence, urge and stress	N	11	325, 326, 327
788.34	Incontinence without sensory awareness	N	11	325, 326, 327
788.35	Post-void dribbling	N	11	325, 326, 327
788.36	Nocturnal enuresis	N	11	325, 326, 327
788.37	Continuous leakage	N	11	325, 326, 327
788.39	Other urinary incontinence	N	11	325, 326, 327
864.05	Injury to liver without mention of open wound into cavity, unspecified laceration.	Y	07	205, 206
			24	487 [2]
864.15	Injury to liver with open wound into cavity, unspecified laceration	Y	07	205, 206
			24	487 [2]
V07.4	[Need for] prophylactic postmenopausal hormone replacement therapy	N	23	467
V25.43	[Encounter for] surveillance of implantable subdermal contraceptive	N	23	467
V25.5	[Encounter for] insertion of implantable subdermal contraceptive	N	23	467
V29.0	Observation and evaluation of newborns and infants for suspected infectious condition not found.	N	15	391 [3]
			23	467
V29.1	Observation and evaluation of newborns and infants for suspected neurological condition not found.	N	15	391 [3]
			23	467
V29.8	Observation and evaluation of newborns and infants for other specified suspected condition not found.	N	15	391 [3]
			23	467
V29.9	Observation and evaluation of newborns and infants for unspecified	N	15	391 [3]
			23	467

[1] Diagnosis code is classified as a "major problem" in these DRGs.
[2] Diagnosis code is assigned to the "Significant Abdominal Trauma" body site category.
[3] Diagnosis code is considered in this classification only if it is a secondary diagnosis.

TABLE 6b.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
02.96	Insertion of sphenoidal electrodes	N		
66.01	Salpingotomy	Y	13	354, 355, 357, 358, 359
66.02	Salpingostomy	Y	13	354, 355, 357, 358, 359
68.9	Other and unspecified hysterectomy	Y	13	354, 355, 357, 358, 359
			14	375
81.97	Revision of joint replacement of upper extremity	Y	08	233, 234
			21	442, 443
			24	486

TABLE 6C.—INVALID DIAGNOSIS CODES [1]

Diagnosis code	Description	CC	MDC	DRG
008.0	Intestinal infection due to Escherichia coli [E. coli]	N	06	182, 183, 184
008.6	Enteritis due to specified virus	N	06	182, 183, 184
041.0	Bacterial infection due to Streptococcus	N	18	423
041.1	Bacterial infection due to Staphylococcus	N	18	423
041.8	Other specified bacterial infections	N	18	423
099.4	Other nongonococcal urethritis	N	12	350
			13	358, 359, 368
320.8	Meningitis due to other specified bacteria	Y	01	20
			15	387, 389 [2]

TABLE 6C.—INVALID DIAGNOSIS CODES [1]—Continued

Diagnosis code	Description	CC	MDC	DRG
346.0	Classical migraine	N	01	24, 25, 26
346.1	Common migraine	N	01	24, 25, 26
346.2	Variants of migraine	N	01	24, 25, 26
346.8	Other forms of migraine	N	01	24, 25, 26
346.9	Migraine, unspecified	N	01	24, 25, 26
440.2	Atherosclerosis of arteries of the extremities	N	05	130, 131
482.3	Pneumonia due to Streptococcus	Y	04	89, 90, 91
482.8	Pneumonia due to other specified bacteria	Y	04	79, 80, 81
483	Pneumonia due to other specified organism	Y	04	89, 90, 91
524.0	Major anomalies of jaw size	N	03	185, 186, 187
524.1	Anomalies of relationship of jaw to cranial base	N	03	185, 186, 187
596.5	Other functional disorders of bladder	N	11	331, 332, 333
599.8	Other specified disorders of urethra and urinary tract	N	11	331, 332, 333
738.1	Other acquired deformity of head	N	08	256
780.0	Coma and stupor	Y	01	23
788.3	Incontinence of urine	N	11	325, 326, 327

[1] See Table 6a for new diagnosis codes (4- or 5-digits) that will be considered valid by the FY 1993 GROUPER.
[2] Diagnosis code is classified as a "major problem" in these DRGs.

TABLE 6d—INVALID PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
46.12	Permanent magnetic colostomy	Y	06	148, 149
			17	400, 406, 407
			21	442, 443
			24	486
66.0	Salpingotomy	Y	13	354, 355, 357, 358, 359
69.11	Removal of intraligamentous ectopic pregnancy	Y	13	354, 355, 357, 358, 359
89.49	Artificial pacemaker slew rate check	N	14	375

TABLE 6e—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
079.8	Other specified viral and Chlamydial infections	N	18	421, 422
079.9	Unspecified viral and Chlamydial infection	N	18	421, 422
200.00	Reticulosarcoma, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
200.10	Lymphosarcoma, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
200.20	Burkitt's tumor or lymphoma, unspecified site, extranodal and solid organ sites.	Y	17	400, 401, 402, 403, 404
200.80	Other named variants, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
201.00	Hodgkin's paragranuloma, unspecified site, extranodal and solid organ sites.	Y	17	400, 401, 402, 403, 404
201.10	Hodgkin's granuloma, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
201.20	Hodgkin's sarcoma, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
201.40	Lymphocytic-histiocytic predominance, unspecified site, extranodal and solid organ sites.	Y	17	400, 401, 402, 403, 404
201.50	Nodular sclerosis, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
201.60	Mixe cellularity, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
201.70	Lymphocytic depletion, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
201.90	Hodgkin's disease, unspecified, unspecified site, extranodal and solid organ sites.	Y	17	400, 401, 402, 403, 404
202.00	Nodular lymphoma, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
202.10	Mycosis fungoides, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
202.20	Sezary's disease, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
202.30	Malignant histiocytosis, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
202.40	Leukemic reticuloendotheliosis, unspecified site, extranodal and solid organ sites.	Y	17	400, 401, 402, 403, 404
202.50	Letterer-Siwe disease, unspecified site, extranodal and solid organ sites	Y	17	406, 407, 408, 413, 414

TABLE 6e.—REVISED DIAGNOSIS CODE TITLES—Continued

Diagnosis code	Description	CC	MDC	DRG
202.60	Malignant mast cell tumors, unspecified site, extranodal and solid organ sites.	Y	17	400, 401, 402, 403, 404
202.80	Other lymphomas, unspecified site, extranodal and solid organ sites	Y	17	400, 401, 402, 403, 404
202.90	Other and unspecified malignant neoplasms of lymphoid and histiocytic tissue, unspecified site, extranodal and solid organ sites.	Y	17	400, 401, 402, 403, 404
481	Pneumococcal pneumonia [Streptococcus pneumoniae pneumonia]	Y	04	89, 90, 91
654.20	Previous cesarean delivery, unspecified as to episode of care or not applicable.	N	14	469
654.21	Previous cesarean delivery, delivered, with or without mention of antepartum condition.	N	14	370, 371, 372, 373, 374, 375
654.23	Previous cesarean delivery, antepartum condition or complication	N	14	383, 384
665.10	Rupture of uterus during labor, unspecified as to episode of care or not applicable.	Y	14	370, 371, 372, 373, 374, 375
665.11	Rupture of uterus during labor, delivered, with or without mention of antepartum condition.	Y	14	370, 371, 372, 373, 374, 375
665.12	Rupture of uterus during labor, delivered, with mention of postpartum complication.	Y	14	370, 371, 372, 373, 374, 375
665.14	Rupture of uterus during labor, postpartum condition or complication	Y	14	376, 377
692.79	Other dermatitis due to solar radiation	N	09	283, 284
768.4	Fetal distress, unspecified as to time of onset, in liveborn infant	N	15	390
785.2	Undiagnosed cardiac murmurs	N	05	135, 136, 137
V30.00	Single liveborn, born in hospital, delivered without mention of cesarean delivery.	N	15	391
V30.01	Single liveborn, born in hospital, delivered by cesarean delivery	N	15	391
V31.00	Twin, mate liveborn, born in hospital, delivered without mention of cesarean delivery.	N	15	391
V31.01	Twin, mate liveborn, born in hospital, delivered by cesarean delivery	N	15	391
V32.00	Twin, mate stillborn, born in hospital, delivered without mention of cesarean delivery.	N	15	391
V32.01	Twin, mate stillborn, born in hospital, delivered by cesarean delivery	N	15	391
V33.00	Twin, unspecified, born in hospital, delivered without mention of cesarean delivery.	N	15	391
V33.01	Twin, unspecified, born in hospital, delivered by cesarean delivery	N	15	391
V34.00	Other multiple, mates all liveborn, born in hospital, delivered without mention of cesarean delivery.	N	15	391
V34.01	Other multiple, mates all liveborn, born in hospital, delivered by cesarean delivery.	N	15	391
V35.00	Other multiple, mates all stillborn, born in hospital, delivered without mention of cesarean delivery.	N	15	391
V35.01	Other multiple, mates all stillborn, born in hospital, delivered by cesarean delivery.	N	15	391
V36.00	Other multiple, mates live- and stillborn, born in hospital, delivered without mention of cesarean delivery.	N	15	391
V36.01	Other multiple, mates live- and stillborn, born in hospital, delivered by cesarean delivery.	N	15	391
V37.00	Other multiple, unspecified, born in hospital, delivered without mention of cesarean delivery.	N	15	391
V37.01	Other multiple, unspecified, born in hospital, delivered by cesarean delivery.	N	15	391
V39.00	Liveborn infant, type of birth unspecified, born in hospital, delivered without mention of cesarean delivery.	N	15	391
V39.01	Liveborn infant, type of birth unspecified, born in hospital, delivered by cesarean delivery.	N	15	391
V73.8	Other specific viral and Chlamydial diseases	N	23	467

TABLE 6f.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
04.01	Excision of acoustic neuroma	Y	01	1, 2, 3
			03	63
46.13	Permanent colostomy	Y	06	148, 149
			17	400, 406, 407
			21	442, 443
			24	466
54.91	Percutaneous abdominal drainage	N		
74.3	Removal of extratubal ectopic pregnancy	Y	14	375
81.59	Revision of joint replacement of lower extremity, not elsewhere classified	Y	08	233, 234
			21	442, 443
			24	466

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Table 6g - Additions to the CC Exclusions List

CCs that are added to the list are in Table 6g-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*00321	48289	4830	4838	*01126	48230	48231	48232
32081	4830	4838	*01121	48230	48231	48232	48239
32082	4838	*01113	48230	48231	48232	48239	48281
32089	*01105	48230	48231	48232	48239	48281	48282
*01100	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01151
48281	48282	48283	48289	4830	4838	*01143	48230
48282	48283	48289	4830	4838	*01135	48230	48231
48283	48289	4830	4838	*01130	48230	48231	48232
48289	4830	4838	*01122	48230	48231	48232	48239
4830	4838	*01114	48230	48231	48232	48239	48281
4838	*01106	48230	48231	48232	48239	48281	48282
*01101	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01152
48281	48282	48283	48289	4830	4838	*01144	48230
48282	48283	48289	4830	4838	*01136	48230	48231
48283	48289	4830	4838	*01131	48230	48231	48232
48289	4830	4838	*01123	48230	48231	48232	48239
4830	4838	*01115	48230	48231	48232	48239	48281
4838	*01110	48230	48231	48232	48239	48281	48282
*01102	48230	48231	48232	48239	48281	48282	48283
48230	48231	48232	48239	48281	48282	48283	48289
48231	48232	48239	48281	48282	48283	48289	4830
48232	48239	48281	48282	48283	48289	4830	4838
48239	48281	48282	48283	48289	4830	4838	*01153
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48282	48283	48289	4830	4838	*01140	48230	48231
48283	48289	4830	4838	*01132	48230	48231	48232
48289	4830	4838	*01124	48230	48231	48232	48239
4830	4838	*01116	48230	48231	48232	48239	48281
4838	*01111	48230	48231	48232	48239	48281	48282
*01103	48230	48231	48232	48239	48281	48282	48283
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48239	48281	48282	48283	48289	4830	4838	*01154
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4838	*01112	48230	48231	48232	48239	48281	48282
*01104	48230	48231	48232	48239	48281	48282	48283
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01102	01182	4950	48281	48282	48283	48289	4830
01103	01183	4951	48282	48283	48289	4830	4838
01104	01184	4952	48283	48289	4830	4838	*502
01105	01185	4953	48289	4830	4838	*4958	48230
01106	01186	4954	4830	4838	*4953	48230	48231
01110	01190	4955	4838	*4871	48230	48231	48232
01111	01191	4956	*4847	48230	48231	48232	48239
01112	01192	4957	48230	48231	48232	48239	48281
01113	01193	4958	48231	48232	48239	48281	48282
01114	01194	4959	48232	48239	48281	48282	48283
01115	01195	5060	48239	48281	48282	48283	48289
01116	01196	5061	48281	48282	48283	48289	4830
01120	01200	5070	48282	48283	48289	4830	4838
01121	01201	5071	48283	48289	4830	4838	*503
01122	01202	5078	48289	4830	4838	*4959	48230
01123	01203	5080	4830	4838	*4954	48230	48231
01124	01204	5081	4838	*494	48230	48231	48232
01125	01205	5171	*4848	48230	48231	48232	48239
01126	01206	*4841	48230	48231	48232	48239	48281
01130	01210	48230	48231	48232	48239	48281	48282
01131	01211	48231	48232	48239	48281	48282	48283
01132	01212	48232	48239	48281	48282	48283	48289
01133	01213	48239	48281	48282	48283	48289	4830
01134	01214	48281	48282	48283	48289	4830	4838
01135	01215	48282	48283	48289	4830	4838	*504
01136	01216	48283	48289	4830	4838	*496	48230
01140	0310	48289	4830	4838	*4955	48230	48231
01141	11505	4830	4838	*4950	48230	48231	48232
01142	11515	4838	*485	48230	48231	48232	48239
01143	1304	*4843	48230	48231	48232	48239	48281
01144	1363	48230	48231	48232	48239	48281	48282
01145	481	48231	48232	48239	48281	48282	48283
01146	4820	48232	48239	48281	48282	48283	48289
01150	4821	48239	48281	48282	48283	48289	4830
01151	4822	48281	48282	48283	48289	4830	4838
01152	48230	48282	48283	48289	4830	4838	*505
01153	48231	48283	48289	4830	4838	*500	48230
01154	48232	48289	4830	4838	*4956	48230	48231
01155	48239	4830	4838	*4951	48230	48231	48232
01156	4824	4838	*486	48230	48231	48232	48239
01160	48281	*4845	48230	48231	48232	48239	48281
01161	48282	48230	48231	48232	48239	48281	48282
01162	48283	48231	48232	48239	48281	48282	48283
01163	48289	48232	48239	48281	48282	48283	48289
01164	4829	48239	48281	48282	48283	48289	4830
01165	4830	48281	48282	48283	48289	4830	4838
01166	4838	48282	48283	48289	4830	4838	*5060
01170	4841	48283	48289	4830	4838	*501	48230
01171	4843	48289	4830	4838	*4957	48230	48231
01172	4845	4830	4838	*4952	48230	48231	48232

48239	48281	48282	48283	5996	58089	58181	5847
48281	48282	48283	48289	7882	5809	58189	5848
48282	48283	48289	4830	*59981	5810	5819	5849
48283	48289	4830	4838	5800	5811	5834	585
48289	4830	4838	*5198	5804	5812	5845	59010
4830	4838	*5088	48230	58081	5813	5846	59011
4838	*5070	48230	48231	58089	58181	5847	5902
*5061	48230	48231	48232	5809	58189	5848	5903
48230	48231	48232	48239	5810	5819	5849	59080
48231	48232	48239	48281	5811	5834	585	59081
48232	48239	48281	48282	5812	5845	59010	5909
48239	48281	48282	48283	5813	5846	59011	591
48281	48282	48283	48289	58181	5847	5902	5921
48282	48283	48289	4830	58189	5848	5903	5935
48283	48289	4830	4838	5819	5849	59080	5950
48289	4830	4838	*5199	5834	585	59081	5951
4830	4838	*5089	48230	5845	59010	5909	5952
4838	*5071	48230	48231	5846	59011	591	5954
*5062	48230	48231	48232	5847	5902	5921	59581
48230	48231	48232	48239	5848	5903	5935	59582
48231	48232	48239	48281	5849	59080	5950	59589
48232	48239	48281	48282	585	59081	5951	5959
48239	48281	48282	48283	59010	5909	5952	5961
48281	48282	48283	48289	59011	591	5954	5962
48282	48283	48289	4830	5902	5921	59581	5964
48283	48289	4830	4838	5903	5935	59582	5966
48289	4830	4838	*5722	59080	5950	59589	5967
4830	4838	*5171	78001	59081	5951	5959	5970
4838	*5078	48230	*59651	5909	5952	5961	5981
*5063	48230	48231	5960	591	5954	5962	5982
48230	48231	48232	5964	5921	59581	5964	5990
48231	48232	48239	5996	5935	59582	5966	5994
48232	48239	48281	7882	5950	59589	5967	5996
48239	48281	48282	*59652	5951	5959	5970	5997
48281	48282	48283	5960	5952	5961	5981	*59989
48282	48283	48289	5964	5954	5962	5982	5800
48283	48289	4830	5996	59581	5964	5990	5804
48289	4830	4838	7882	59582	5966	5994	58081
4830	4838	*5178	*59653	59589	5967	5996	58089
4838	*5080	48230	5960	5959	5970	5997	5809
*5064	48230	48231	5964	5961	5981	*59984	5810
48230	48231	48232	5996	5962	5982	5800	5811
48231	48232	48239	7882	5964	5990	5804	5812
48232	48239	48281	*59654	5966	5994	58081	5813
48239	48281	48282	5960	5967	5996	58089	58181
48281	48282	48283	5964	5970	5997	5809	58189
48282	48283	48289	5996	5981	*59983	5810	5819
48283	48289	4830	7882	5982	5800	5811	5834
48289	4830	4838	*59655	5990	5804	5812	5845
4830	4838	*51889	5960	5994	58081	5813	5846
4838	*5081	48230	5964	5996	58089	58181	5847
*5069	48230	48231	5996	5997	5809	58189	5848
48230	48231	48232	7882	*59982	5810	5819	5849
48231	48232	48239	*59659	5800	5811	5834	585
48232	48239	48281	5960	5804	5812	5845	59010
48239	48281	48282	5964	58081	5813	5846	59011

5902	430	*80025	*80061	*80095	*80131	*80165	*80301
5903	431	78001	78001	78001	78001	78001	78001
59080	4320	*80026	*80062	*80096	*80132	*80166	*80302
59081	4321	78001	78001	78001	78001	78001	78001
5909	436	*80029	*80063	*80099	*80133	*80169	*80303
591	78001	78001	78001	78001	78001	78001	78001
5921	*7802	*80030	*80064	*80100	*80134	*80170	*80304
5935	78001	78001	78001	78001	78001	78001	78001
5950	*7804	*80031	*80065	*80101	*80135	*80171	*80305
5951	78001	78001	78001	78001	78001	78001	78001
5952	*7809	*80032	*80066	*80102	*80136	*80172	*80306
5954	78001	78001	78001	78001	78001	78001	78001
59581	*7998	*80033	*80069	*80103	*80139	*80173	*80309
59582	78001	78001	78001	78001	78001	78001	78001
59589	*80000	*80034	*80070	*80104	*80140	*80174	*80310
5959	78001	78001	78001	78001	78001	78001	78001
5961	*80001	*80035	*80071	*80105	*80141	*80175	*80311
5962	78001	78001	78001	78001	78001	78001	78001
5964	*80002	*80036	*80072	*80106	*80142	*80176	*80312
5966	78001	78001	78001	78001	78001	78001	78001
5967	*80003	*80039	*80073	*80109	*80143	*80179	*80313
5970	78001	78001	78001	78001	78001	78001	78001
5981	*80004	*80040	*80074	*80110	*80144	*80180	*80314
5982	78001	78001	78001	78001	78001	78001	78001
5990	*80005	*80041	*80075	*80111	*80145	*80181	*80315
5994	78001	78001	78001	78001	78001	78001	78001
5996	*80006	*80042	*80076	*80112	*80146	*80182	*80316
5997	78001	78001	78001	78001	78001	78001	78001
*7105	*80009	*80043	*80079	*80113	*80149	*80183	*80319
7105	78001	78001	78001	78001	78001	78001	78001
*74861	*80010	*80044	*80080	*80114	*80150	*80184	*80320
48230	78001	78001	78001	78001	78001	78001	78001
48231	*80011	*80045	*80081	*80115	*80151	*80185	*80321
48232	78001	78001	78001	78001	78001	78001	78001
48239	*80012	*80046	*80082	*80116	*80152	*80186	*80322
48281	78001	78001	78001	78001	78001	78001	78001
48282	*80013	*80049	*80083	*80119	*80153	*80189	*80323
48283	78001	78001	78001	78001	78001	78001	78001
48289	*80014	*80050	*80084	*80120	*80154	*80190	*80324
4830	78001	78001	78001	78001	78001	78001	78001
4838	*80015	*80051	*80085	*80121	*80155	*80191	*80325
*78001	78001	78001	78001	78001	78001	78001	78001
430	*80016	*80052	*80086	*80122	*80156	*80192	*80326
431	78001	78001	78001	78001	78001	78001	78001
4320	*80019	*80053	*80089	*80123	*80159	*80193	*80329
4321	78001	78001	78001	78001	78001	78001	78001
436	*80020	*80054	*80090	*80124	*80160	*80194	*80330
78001	78001	78001	78001	78001	78001	78001	78001
*78002	*80021	*80055	*80091	*80125	*80161	*80195	*80331
430	78001	78001	78001	78001	78001	78001	78001
431	*80022	*80056	*80092	*80126	*80162	*80196	*80332
4320	78001	78001	78001	78001	78001	78001	78001
4321	*80023	*80059	*80093	*80129	*80163	*80199	*80333
436	78001	78001	78001	78001	78001	78001	78001
78001	*80024	*80060	*80094	*80130	*80164	*80300	*80334
*78009	78001	78001	78001	78001	78001	78001	78001

*80335	*80371	*80405	*80441	*80475	*85103	*85139	*85173
78001	78001	78001	78001	78001	78001	78001	78001
*80336	*80372	*80406	*80442	*80476	*85104	*85140	*85174
78001	78001	78001	78001	78001	78001	78001	78001
*80339	*80373	*80409	*80443	*80479	*85105	*85141	*85175
78001	78001	78001	78001	78001	78001	78001	78001
*80340	*80374	*80410	*80444	*80480	*85106	*85142	*85176
78001	78001	78001	78001	78001	78001	78001	78001
*80341	*80375	*80411	*80445	*80481	*85109	*85143	*85179
78001	78001	78001	78001	78001	78001	78001	78001
*80342	*80376	*80412	*80446	*80482	*85110	*85144	*85180
78001	78001	78001	78001	78001	78001	78001	78001
*80343	*80379	*80413	*80449	*80483	*85111	*85145	*85181
78001	78001	78001	78001	78001	78001	78001	78001
*80344	*80380	*80414	*80450	*80484	*85112	*85146	*85182
78001	78001	78001	78001	78001	78001	78001	78001
*80345	*80381	*80415	*80451	*80485	*85113	*85149	*85183
78001	78001	78001	78001	78001	78001	78001	78001
*80346	*80382	*80416	*80452	*80486	*85114	*85150	*85184
78001	78001	78001	78001	78001	78001	78001	78001
*80349	*80383	*80419	*80453	*80489	*85115	*85151	*85185
78001	78001	78001	78001	78001	78001	78001	78001
*80350	*80384	*80420	*80454	*80490	*85116	*85152	*85186
78001	78001	78001	78001	78001	78001	78001	78001
*80351	*80385	*80421	*80455	*80491	*85119	*85153	*85189
78001	78001	78001	78001	78001	78001	78001	78001
*80352	*80386	*80422	*80456	*80492	*85120	*85154	*85190
78001	78001	78001	78001	78001	78001	78001	78001
*80353	*80389	*80423	*80459	*80493	*85121	*85155	*85191
78001	78001	78001	78001	78001	78001	78001	78001
*80354	*80390	*80424	*80460	*80494	*85122	*85156	*85192
78001	78001	78001	78001	78001	78001	78001	78001
*80355	*80391	*80425	*80461	*80495	*85123	*85159	*85193
78001	78001	78001	78001	78001	78001	78001	78001
*80356	*80392	*80426	*80462	*80496	*85124	*85160	*85194
78001	78001	78001	78001	78001	78001	78001	78001
*80359	*80393	*80429	*80463	*8500	*85125	*85161	*85195
78001	78001	78001	78001	78001	78001	78001	78001
*80360	*80394	*80430	*80464	*8501	*85126	*85162	*85196
78001	78001	78001	78001	78001	78001	78001	78001
*80361	*80395	*80431	*80465	*8502	*85129	*85163	*85199
78001	78001	78001	78001	78001	78001	78001	78001
*80362	*80396	*80432	*80466	*8503	*85130	*85164	*85200
78001	78001	78001	78001	78001	78001	78001	78001
*80363	*80399	*80433	*80469	*8504	*85131	*85165	*85201
78001	78001	78001	78001	78001	78001	78001	78001
*80364	*80400	*80434	*80470	*8505	*85132	*85166	*85202
78001	78001	78001	78001	78001	78001	78001	78001
*80365	*80401	*80435	*80471	*8509	*85133	*85169	*85203
78001	78001	78001	78001	78001	78001	78001	78001
*80366	*80402	*80436	*80472	*85100	*85134	*85170	*85204
78001	78001	78001	78001	78001	78001	78001	78001
*80369	*80403	*80439	*80473	*85101	*85135	*85171	*85205
78001	78001	78001	78001	78001	78001	78001	78001
*80370	*80404	*80440	*80474	*85102	*85136	*85172	*85206
78001	78001	78001	78001	78001	78001	78001	78001

*85209	*85244	*85400	86402	86415	86405
78001	78001	78001	86403	*86809	86415
*85210	*85245	*85401	86404	86405	*9599
78001	78001	78001	86405	86415	86405
*85211	*85246	*85402	86409	*86810	86415
78001	78001	78001	86410	86405	
*85212	*85249	*85403	86411	86415	
78001	78001	78001	86412	*86813	
*85213	*85250	*85404	86413	86405	
78001	78001	78001	86414	86415	
*85214	*85251	*85405	86415	*86814	
78001	78001	78001	86419	86405	
*85215	*85252	*85406	*86409	86415	
78001	78001	78001	86405	*86819	
*85216	*85253	*85409	86415	86405	
78001	78001	78001	*86410	86415	
*85219	*85254	*85410	86405	*8690	
78001	78001	78001	86415	86405	
*85221	*85255	*85411	*86411	86415	
78001	78001	78001	86405	*8691	
*85222	*85256	*85412	86415	86405	
78001	78001	78001	*86412	86415	
*85223	*85259	*85413	86405	*8792	
78001	78001	78001	86415	86405	
*85224	*85300	*85414	*86413	86415	
78001	78001	78001	86405	*8793	
*85225	*85301	*85415	86415	86405	
78001	78001	78001	*86414	86415	
*85226	*85302	*85416	86405	*8794	
78001	78001	78001	86415	86405	
*85229	*85303	*85419	*86415	86415	
78001	78001	78001	86400	*8795	
*85230	*85304	*86380	86401	86405	
78001	78001	86405	86402	86415	
*85231	*85305	86415	86403	*8796	
78001	78001	*86399	86404	86405	
*85232	*85306	86405	86405	86415	
78001	78001	86415	86409	*8797	
*85233	*85309	*86400	86410	86405	
78001	78001	86405	86411	86415	
*85234	*85310	86415	86412	*8798	
78001	78001	*86401	86413	86405	
*85235	*85311	86405	86414	86415	
78001	78001	86415	86415	*8799	
*85236	*85312	*86402	86419	86405	
78001	78001	86405	*86419	86415	
*85239	*85313	86415	86405	*9290	
78001	78001	*86403	86415	86405	
*85240	*85314	86405	*86800	86415	
78001	78001	86415	86405	*9299	
*85241	*85315	*86404	86415	86405	
78001	78001	86405	*86803	86415	
*85242	*85316	86415	86405	*9588	
78001	78001	*86405	86415	86405	
*85243	*85319	86400	*86804	86415	
78001	78001	86401	86405	*9598	

Table 6h - Deletions to the CC Exclusions List

CCs that are deleted from the list are in Table 6h-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

*00321	4828	4828	4828	4828	4828	4828	*01316
3208	483	483	483	483	483	483	3208
*01100	*01120	*01140	*01160	*01180	*01200	*01280	*01790
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01101	*01121	*01141	*01161	*01181	*01201	*01281	*01791
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01102	*01122	*01142	*01162	*01182	*01202	*01282	*01792
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01103	*01123	*01143	*01163	*01183	*01203	*01283	*01793
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01104	*01124	*01144	*01164	*01184	*01204	*01284	*01794
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01105	*01125	*01145	*01165	*01185	*01205	*01285	*01795
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01106	*01126	*01146	*01166	*01186	*01206	*01286	*01796
4823	4823	4823	4823	4823	4823	4823	4823
4828	4828	4828	4828	4828	4828	4828	4828
483	483	483	483	483	483	483	483
*01110	*01130	*01150	*01170	*01190	*01210	*01300	*0212
4823	4823	4823	4823	4823	4823	3208	4823
4828	4828	4828	4828	4828	4828	*01301	4828
483	483	483	483	483	483	3208	483
*01111	*01131	*01151	*01171	*01191	*01211	*01302	*0310
4823	4823	4823	4823	4823	4823	3208	4823
4828	4828	4828	4828	4828	4828	*01303	4828
483	483	483	483	483	483	3208	483
*01112	*01132	*01152	*01172	*01192	*01212	*01304	*0360
4823	4823	4823	4823	4823	4823	3208	3208
4828	4828	4828	4828	4828	4828	*01305	*0391
483	483	483	483	483	483	3208	4823
*01113	*01133	*01153	*01173	*01193	*01213	*01306	4828
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4828	4828	4828	4828	4828	4828	*01310	*0410
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*80393	*80429	*80463	*8500	*85125	*85161	*85195	*85232
7800	7800	7800	7800	7800	7800	7800	7800
*80394	*80430	*80464	*8501	*85126	*85162	*85196	*85233
7800	7800	7800	7800	7800	7800	7800	7800
*80395	*80431	*80465	*8502	*85129	*85163	*85199	*85234
7800	7800	7800	7800	7800	7800	7800	7800
*80396	*80432	*80466	*8503	*85130	*85164	*85200	*85235
7800	7800	7800	7800	7800	7800	7800	7800
*80399	*80433	*80469	*8504	*85131	*85165	*85201	*85236
7800	7800	7800	7800	7800	7800	7800	7800
*80400	*80434	*80470	*8505	*85132	*85166	*85202	*85239
7800	7800	7800	7800	7800	7800	7800	7800
*80401	*80435	*80471	*8509	*85133	*85169	*85203	*85240
7800	7800	7800	7800	7800	7800	7800	7800
*80402	*80436	*80472	*85100	*85134	*85170	*85204	*85241

7800	7800
*85242	*85316
7800	7800
*85243	*85319
7800	7800
*85244	*85400
7800	7800
*85245	*85401
7800	7800
*85246	*85402
7800	7800
*85249	*85403
7800	7800
*85250	*85404
7800	7800
*85251	*85405
7800	7800
*85252	*85406
7800	7800
*85253	*85409
7800	7800
*85254	*85410
7800	7800
*85255	*85411
7800	7800
*85256	*85412
7800	7800
*85259	*85413
7800	7800
*85300	*85414
7800	7800
*85301	*85415
7800	7800
*85302	*85416
7800	7800
*85303	*85419
7800	7800
*85304	
7800	
*85305	
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*85314	
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*85315	

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	28876	15.9617	4	7	11	19	32
002	6031	15.1069	4	7	11	19	30
003	3	2.0000	1	1	1	4	4
004	5300	13.0400	3	5	9	16	27
005	53888	6.7762	2	3	5	8	13
006	888	3.2857	1	1	2	3	7
007	5961	22.0765	2	6	11	23	47
008	2772	4.6032	1	1	3	6	10
009	1731	10.3039	2	4	7	12	21
010	20406	10.9344	2	4	7	14	22
011	3565	6.3719	1	2	4	8	13
012	21663	10.6732	2	4	7	12	19
013	5723	8.5598	3	4	7	10	15
014	342315	10.0711	3	4	7	12	19
015	135323	5.4583	2	3	4	6	10
016	11124	9.3788	3	4	7	11	18
017	2966	5.8736	2	3	4	7	10
018	13951	8.0095	2	4	6	9	15
019	6986	5.4705	1	2	4	7	10
020	7578	12.6498	3	5	9	16	25
021	1032	9.8909	3	4	7	12	19
022	9831	5.5487	2	3	4	7	10
023	3143	6.2685	1	2	4	7	12
024	54473	7.3996	2	3	5	9	14
025	22879	4.4291	1	2	3	5	8
026	61	5.9344	1	2	3	5	8
027	2808	8.2942	1	2	4	8	14
028	8249	9.5305	2	3	6	10	19
029	3690	4.8705	1	2	3	6	9
030	2	1.0000	1	1	1	1	1
031	3757	7.0186	2	2	4	8	13
032	2713	3.6922	1	2	3	4	7
034	13703	8.9718	2	3	6	10	17
035	3837	5.2434	1	2	4	6	10
036	20529	2.3437	1	1	2	3	4
037	2746	4.6555	1	1	3	5	10
038	784	2.9426	1	1	2	3	5
039	9719	1.9414	1	1	1	2	3
040	3422	3.4278	1	1	2	4	8
042	20598	2.5786	1	1	2	3	5
043	207	5.5266	1	2	4	6	10
044	1996	6.2856	2	4	5	7	11
045	2641	4.4623	1	2	4	6	8
046	2904	6.3402	1	2	5	8	12
047	1891	4.4093	1	1	3	5	8
048	2	7.0000	5	5	9	9	9
049	2985	7.5400	2	3	5	9	15
050	4928	2.6331	1	1	2	3	4
051	534	2.8614	1	1	2	3	6
052	175	3.1886	1	1	2	3	6
053	8507	3.4372	1	1	2	3	6

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
055	3659	2.7349	1	1	1	2	6
056	1151	2.7958	1	1	2	3	6
057	710	5.3820	1	2	3	6	11
058	1	1.0000	1	1	1	1	1
059	185	2.1568	1	1	1	2	4
060	1	18.0000	18	18	18	18	18
061	385	5.0026	1	1	2	6	12
063	4945	5.6977	1	2	4	7	11
064	4372	8.9318	1	2	6	11	20
065	32587	4.1850	1	2	3	5	8
066	7860	4.3564	1	2	3	5	8
067	437	5.2014	2	3	4	6	9
068	11729	6.0495	2	3	5	7	11
069	3772	4.2858	2	2	4	5	8
070	18	4.3889	1	2	2	5	9
071	136	5.1176	2	3	4	6	10
072	685	5.7460	1	2	3	6	9
073	6685	6.0432	1	2	4	7	12
074	2	11.0000	9	9	13	13	13
075	32193	13.7943	6	8	10	16	26
076	40220	14.8394	4	7	11	18	28
077	3502	6.5580	1	2	5	9	14
078	26963	10.0607	4	7	9	12	16
079	140699	11.8842	4	6	9	14	22
080	9304	7.9451	3	4	7	10	14
081	1	7.0000	7	7	7	7	7
082	70711	9.5833	2	4	7	12	19
083	7420	8.1515	2	4	6	10	15
084	1879	4.4050	1	2	3	6	8
085	17755	9.0945	2	4	7	11	17
086	1757	5.3199	1	2	4	7	10
087	61415	8.1182	2	4	6	10	15
088	166636	7.3926	3	4	6	9	13
089	380530	8.7583	3	5	7	11	15
090	46157	6.2384	3	4	5	8	10
091	48	6.1042	2	3	5	7	11
092	9085	8.7428	3	4	7	11	16
093	1504	6.0632	2	3	5	8	11
094	9730	9.5251	3	4	7	11	18
095	1324	6.1284	2	3	4	7	10
096	181510	7.1183	3	4	6	8	12
097	32577	5.1442	2	3	4	6	9
098	18	6.2778	2	3	5	6	10
099	31096	5.1861	1	2	4	6	10
100	11482	3.1253	1	2	2	4	6
101	19157	6.8025	2	3	5	8	13
102	3754	4.3207	1	2	3	5	8
103	282	33.8262	10	14	21	40	68
104	17814	20.3496	9	12	17	25	35
105	16203	14.4966	7	9	11	16	25
106	76162	15.2542	8	10	13	17	24

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
107	52857	11.7523	7	8	9	13	18
108	8959	15.2274	7	9	12	18	28
110	51947	13.5024	3	8	11	16	25
111	6304	8.4123	3	6	8	10	13
112	131484	6.0934	2	3	5	8	12
113	37250	19.0177	6	8	14	23	37
114	8226	12.4919	3	5	9	15	24
115	8518	13.9283	5	8	11	17	24
116	65949	7.2686	2	3	6	9	14
117	3402	5.5091	1	2	3	7	12
118	8487	3.9126	1	1	2	4	8
119	3237	6.3031	1	2	3	7	15
120	35546	12.2367	2	3	8	15	27
121	146199	9.6359	4	6	8	11	16
122	100359	6.8565	2	4	7	9	11
123	56218	5.3458	1	1	3	7	13
124	125726	5.7739	1	2	5	7	11
125	89536	3.1482	1	1	2	4	7
126	4302	20.4328	5	10	16	29	41
127	612827	7.7478	2	4	6	9	14
128	23541	8.4050	4	5	7	10	13
129	6269	4.7437	1	1	1	6	12
130	71880	8.1132	2	4	7	10	14
131	26526	5.9725	1	3	6	8	10
132	12394	5.5501	1	2	4	7	11
133	4077	3.9146	1	2	3	5	7
134	29162	4.9837	2	2	4	6	9
135	6400	6.5938	2	3	5	8	13
136	1424	4.2507	1	2	3	5	7
138	188352	5.8759	2	3	4	7	11
139	72186	3.6766	1	2	3	5	7
140	346480	4.4712	2	2	4	5	8
141	77799	5.7258	2	3	4	7	10
142	37177	3.9232	1	2	3	5	7
143	117399	3.3738	1	2	3	4	6
144	58530	7.0916	1	3	5	9	14
145	8425	4.1858	1	2	3	5	8
146	7640	13.8241	7	9	11	15	23
147	1590	8.9233	5	7	9	11	13
148	143851	15.9248	7	9	12	19	28
149	18122	9.0774	6	7	8	10	13
150	21960	13.9135	5	8	11	17	25
151	4781	7.7473	3	4	7	10	13
152	4605	10.6725	5	7	9	12	18
153	2059	7.0515	4	5	7	8	10
154	37694	18.0724	7	9	14	22	34
155	4202	8.5626	4	5	7	10	14
157	13356	6.5860	2	3	4	8	13
158	9999	3.0529	1	1	2	4	6
159	16539	6.3772	2	3	5	8	12
160	12946	3.3294	1	2	3	4	6

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
101	24227	4.8378	1	2	3	6	10
102	21251	2.2036	1	1	2	3	4
103	13	2.6923	1	1	2	4	5
104	4886	11.4055	5	7	9	13	19
105	1819	6.9940	3	5	7	9	11
106	2982	7.1586	3	4	6	9	13
107	2188	4.1165	2	3	4	5	7
108	1871	5.7691	1	2	3	7	12
109	1381	2.8246	1	1	2	3	6
170	12992	15.9273	3	7	11	20	31
171	1463	6.8578	1	3	5	9	13
172	31475	10.4531	2	4	7	13	22
173	3286	5.2655	1	2	4	7	11
174	168078	6.9517	2	4	5	8	13
175	22521	4.3582	2	3	4	5	7
176	13120	7.7104	2	4	6	9	14
177	15058	6.2747	2	3	5	7	11
178	6478	4.4373	2	3	4	5	8
179	8803	9.5372	3	4	7	11	18
180	70546	7.6470	2	4	6	9	14
181	22180	4.5757	2	3	4	6	8
182	261192	6.2600	2	3	5	7	11
183	77885	4.1977	1	2	3	5	8
184	58	4.0508	1	2	3	4	7
185	3998	6.2581	1	3	5	8	12
186	1	4.0000	4	4	4	4	4
187	1050	3.8629	1	1	2	5	8
188	50849	7.4105	2	3	5	9	15
189	9116	3.8873	1	1	3	5	8
190	89	5.3131	2	3	4	6	10
191	10256	20.0998	7	10	15	24	40
192	965	9.5440	3	6	8	12	18
193	12618	16.6354	7	9	14	20	28
194	1427	9.6797	3	6	9	12	17
195	17622	12.3428	6	7	10	14	20
196	1802	8.0733	4	5	7	10	13
197	78222	8.5152	2	4	7	11	16
198	48188	3.6220	1	1	3	5	7
199	2686	14.4016	4	7	11	18	28
200	1957	13.6811	2	5	10	18	25
201	3042	14.3859	3	6	10	18	30
202	18194	9.7128	2	4	7	12	19
203	29827	9.7680	2	4	7	12	20
204	39939	8.0722	3	4	6	9	15
205	21234	9.1487	2	4	7	11	18
206	2450	5.0184	1	2	4	7	10
207	38205	7.0373	2	3	5	9	13
208	14164	4.0379	1	2	3	5	7
209	271606	10.5789	5	7	9	12	16
210	118940	13.0684	6	8	10	14	21
211	29021	9.4534	5	6	8	11	14

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V8.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
212	18	6.1111	2	2	3	7	9
213	5859	13.0282	3	6	9	16	25
214	42479	10.3023	4	5	8	12	19
215	38652	6.0877	3	4	5	7	10
216	7180	14.5878	3	6	11	18	29
217	17145	21.5360	4	8	14	27	46
218	18844	9.1075	3	4	7	11	17
219	18074	5.1644	2	3	4	6	9
220	4	2.2500	1	1	2	3	3
221	4936	10.7784	2	4	8	13	21
222	5308	5.2472	1	2	4	7	10
223	16064	4.0505	1	2	3	4	7
224	8886	2.9099	1	2	2	3	5
225	10186	5.2852	1	2	3	6	12
226	5572	9.0720	2	3	6	11	20
227	6542	3.8658	1	2	3	4	7
228	4411	3.7150	1	1	2	4	8
229	2541	2.6564	1	1	2	3	5
230	3279	6.4535	1	2	4	7	13
231	10405	6.5790	1	2	4	7	15
232	809	6.6897	1	2	3	7	17
233	5329	11.7467	3	5	9	15	23
234	3072	5.3665	1	2	4	7	11
235	6401	11.4805	2	4	7	12	24
236	39084	8.9773	2	4	7	10	17
237	1693	5.8328	2	3	4	7	10
238	6472	13.9322	4	6	10	17	28
239	60286	10.0598	3	5	7	12	19
240	11175	9.5085	3	4	7	11	18
241	4000	5.6287	2	3	4	7	11
242	2544	10.5491	3	5	8	13	22
243	106101	6.8511	2	3	5	9	13
244	11219	7.2646	2	3	5	9	14
245	5730	5.5091	1	2	4	6	10
246	1753	5.4780	2	3	4	7	10
247	9961	5.1535	1	2	4	6	10
248	6331	6.2402	2	3	5	7	12
249	8552	6.4259	1	2	4	8	13
250	3461	6.8050	2	3	5	8	13
251	3274	3.6130	1	1	2	4	7
253	17409	8.1683	2	3	6	9	16
254	12343	4.7343	1	2	3	6	9
255	2	2.5000	1	1	4	4	4
256	9411	5.4601	1	2	4	6	11
257	28803	5.1188	2	3	4	6	9
258	26586	3.8258	2	2	3	4	6
259	4071	5.8580	1	2	3	6	13
260	4963	2.5350	1	1	2	3	4
261	3080	2.8042	1	1	2	3	5
262	1296	3.5517	1	1	2	3	7
263	29564	20.5709	5	8	14	24	41

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
264	4234	11.3791	3	5	8	14	23
265	4899	9.8200	2	3	6	11	21
266	4190	4.4174	1	2	3	5	9
267	379	4.8021	1	1	3	5	11
268	1482	5.0628	1	1	2	5	9
269	11065	12.2933	2	4	9	15	25
270	5144	4.0072	1	2	3	5	8
271	20052	11.6591	3	5	8	13	21
272	6944	9.4241	3	5	7	11	18
273	2223	6.8277	2	3	5	8	14
274	3099	10.9935	2	4	7	13	21
275	383	5.6789	1	1	3	5	9
276	877	5.6328	1	2	4	7	11
277	72052	8.4759	3	5	7	10	15
278	26250	6.1446	3	4	5	7	10
279	6	7.0000	2	3	4	11	11
280	13349	6.8287	2	3	5	8	13
281	7419	4.1867	1	2	3	5	8
282	1	2.0000	2	2	2	2	2
283	5928	7.2763	2	3	5	8	14
284	2390	5.0753	1	2	4	6	9
285	4656	21.4021	5	9	15	25	41
286	1753	11.3440	5	6	8	13	22
287	6675	18.9768	5	7	12	21	39
288	533	10.1576	3	4	6	10	21
289	4013	5.6845	2	2	3	5	12
290	9686	3.4577	1	2	2	4	6
291	146	2.1027	1	1	2	2	4
292	5120	17.8982	4	7	13	22	35
293	496	7.4839	1	3	6	10	15
294	90766	7.2914	3	4	6	8	13
295	3379	5.8387	2	3	4	7	11
296	215338	8.3968	2	4	6	10	16
297	44861	5.2013	2	3	4	6	9
298	69	4.4638	1	2	2	5	7
299	888	6.6678	1	3	5	8	14
300	12045	9.3885	3	4	7	11	18
301	2085	5.3050	1	2	4	7	10
302	7144	15.9681	7	9	13	19	28
303	17590	13.3629	6	8	10	15	23
304	14273	13.5524	4	6	10	16	26
305	3538	6.4002	2	3	5	8	12
306	12338	8.8517	3	4	6	11	17
307	4245	4.5246	2	3	4	5	8
308	10437	9.0834	2	3	6	11	19
309	4429	3.9600	1	2	3	5	8
310	35678	5.8214	1	2	4	7	11
311	19461	2.6887	1	1	2	3	5
312	3139	5.5027	1	2	4	7	11
313	1844	2.7533	1	1	2	3	5
314	1	8.0000	8	8	8	8	8

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
315	27894	12.3610	1	3	7	15	27
316	49895	9.1767	2	4	7	12	19
317	745	4.1195	1	2	3	4	8
318	6697	9.0769	2	3	6	11	19
319	839	3.9774	1	1	2	5	8
320	165178	8.4285	3	4	6	10	15
321	29299	5.8938	2	3	5	7	10
322	53	5.6038	2	3	5	7	10
323	20914	4.2820	1	2	3	5	9
324	13699	2.5722	1	1	2	3	5
325	9767	5.7981	2	3	4	7	11
326	3603	3.5795	1	2	3	4	7
327	10	6.5000	1	2	5	8	10
328	1298	4.9561	1	2	4	6	9
329	338	2.8787	1	1	2	4	5
331	30171	7.5097	2	3	6	9	15
332	5910	4.4795	1	2	3	5	9
333	339	7.6254	2	3	5	10	16
334	22733	9.1258	5	6	8	10	14
335	10704	7.2682	5	6	7	8	10
336	107269	5.8199	3	3	4	7	10
337	89282	3.8213	2	3	3	4	6
338	7501	5.3325	1	1	2	6	13
339	3288	4.6946	1	1	2	5	11
340	3	4.6667	3	3	4	7	7
341	13025	4.4253	1	2	3	5	8
342	416	3.8341	1	1	2	4	9
343	2	2.0000	1	1	2	3	3
344	4869	5.3828	1	2	4	6	10
345	2562	4.8989	1	2	3	5	10
346	7815	8.6271	2	3	6	10	17
347	925	4.4108	1	1	3	5	9
348	4360	5.7681	1	2	4	7	11
349	1641	3.0494	1	1	2	4	6
350	8153	5.8803	2	3	5	7	10
352	787	4.8475	1	2	3	5	10
353	2326	11.4596	5	6	9	14	21
354	9589	8.2302	4	5	6	9	14
355	6048	4.9854	3	4	5	6	7
356	31936	4.3107	2	3	4	5	7
357	6917	12.5038	5	7	10	15	23
358	23628	6.5656	3	4	5	7	11
359	27186	4.4800	3	4	4	5	8
360	9695	5.2309	2	3	4	5	9
361	448	5.5670	1	2	3	6	14
363	5796	4.3171	1	2	3	4	8
364	2694	4.1771	1	1	2	4	8
365	3201	10.7688	3	4	7	13	23
366	4975	10.1785	2	3	7	13	22
367	817	3.9584	1	1	3	4	8
368	1515	7.5129	2	4	6	9	14

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
369	2542	4.547	1	2	3	6	9
370	683	7.040	3	4	5	7	11
371	764	4.419	3	3	4	5	6
372	443	3.731	1	2	3	4	6
373	2715	2.594	1	2	2	3	3
374	75	4.027	2	2	2	3	6
375	7	14.714	1	2	2	7	14
376	180	2.906	1	1	2	3	6
377	27	5.111	1	2	4	7	10
378	144	3.632	2	2	3	4	6
379	329	2.960	1	1	2	3	6
380	72	2.792	1	1	1	3	6
381	245	2.482	1	1	1	3	4
382	60	1.433	1	1	1	2	2
383	900	4.437	1	2	3	5	9
384	104	2.654	1	1	2	3	6
385	5	3.000	1	1	3	4	6
386	1	149.000	149	149	149	149	149
387	1	6.000	6	6	6	6	6
389	8	8.375	1	4	7	9	11
390	18	6.056	1	2	3	11	13
392	2500	14.038	5	7	10	18	27
394	1992	10.334	1	2	6	12	22
395	72540	6.472	2	3	5	8	13
396	13	3.154	1	1	2	2	5
397	12766	7.490	2	3	5	9	15
398	14721	8.382	3	4	6	10	15
399	1662	5.261	1	2	4	7	10
400	8125	13.401	3	5	9	17	28
401	6816	15.097	3	6	11	18	31
402	2348	5.159	1	2	3	7	11
403	28354	12.006	2	5	8	15	25
404	5255	5.683	1	2	4	7	12
405	5	2.000	1	1	2	3	3
406	3737	15.477	4	7	11	18	31
407	958	6.558	2	3	5	8	12
408	4841	8.490	1	2	5	10	20
409	7660	9.110	2	4	5	11	21
410	124349	3.621	1	2	3	5	8
411	162	3.272	1	1	2	4	7
412	157	2.892	1	1	2	4	6
413	9700	10.734	2	4	8	14	22
414	1716	6.115	1	2	4	8	13
415	29926	20.640	5	9	15	25	41
416	138291	10.414	2	5	8	13	19
417	47	5.532	2	3	5	7	8
418	14577	8.311	3	4	7	10	15
419	17412	7.497	2	4	6	9	14
420	3780	5.416	2	3	4	7	10
421	12412	5.645	2	3	4	7	10
422	109	6.156	2	3	5	7	12

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
423	7323	11.226	3	5	8	13	22
424	2818	23.715	3	8	16	28	47
425	18133	6.508	2	3	4	8	13
426	6147	7.331	2	3	5	9	15
427	2046	7.858	1	3	5	9	16
428	1150	10.689	2	3	6	13	24
429	31113	12.334	3	4	7	13	23
430	57475	12.437	3	5	9	16	25
431	250	11.300	1	3	5	9	14
432	548	7.708	1	2	4	8	15
433	6008	4.534	1	1	3	5	11
434	18337	7.918	2	3	5	9	15
435	12935	6.364	2	3	5	7	13
436	2504	17.861	5	10	19	25	28
437	10883	16.706	6	10	15	23	28
439	971	9.550	1	3	6	12	22
440	4736	13.224	2	4	8	16	29
441	872	3.688	1	1	2	4	8
442	11761	9.987	1	3	6	12	21
443	6002	3.737	1	1	2	5	8
444	4028	7.426	2	3	5	8	13
445	2264	4.339	1	2	3	5	8
447	3187	3.543	1	1	2	4	7
448	1	1.000	1	1	1	1	1
449	29594	6.013	1	2	4	7	12
450	7607	3.304	1	1	2	4	7
451	7	147.571	1	3	5	10	11
452	18057	6.266	1	2	4	7	13
453	5986	3.560	1	2	3	4	7
454	4165	7.084	1	2	4	8	14
455	1149	3.269	1	1	2	4	8
456	182	9.242	1	2	5	10	21
457	127	8.835	1	1	3	10	18
458	1650	22.930	5	10	17	30	45
459	585	14.899	3	6	11	18	30
460	2421	9.185	2	4	7	12	19
461	5377	5.533	1	1	2	5	13
462	6756	17.934	5	8	15	23	33
463	9499	6.760	2	3	5	8	13
464	2995	4.124	1	2	3	5	8
465	448	3.364	1	1	1	3	6
466	3722	5.015	1	1	2	4	10
467	3626	6.329	1	1	2	5	10
468	63537	19.078	4	8	14	23	37
471	7812	14.127	7	9	11	18	23
472	184	29.788	1	8	24	43	63
473	8381	17.072	2	4	10	26	41
475	75734	14.078	2	6	11	18	28
476	10885	17.193	6	10	14	20	29
477	37365	10.590	1	3	7	13	22
478	105150	10.287	2	4	7	13	21

TABLE 7A - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V9.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
479	17990	5.4611	1	2	5	7	10
480	117	40.2906	11	16	23	47	90
481	85	45.6615	24	31	39	53	77
482	6901	18.3908	6	9	13	21	35
483	34649	56.5547	17	28	44	69	105
484	316	23.1867	2	9	18	33	49
485	2647	17.1417	6	9	12	19	31
486	1932	17.5088	1	7	13	23	36
487	3112	11.3249	2	4	8	14	22
488	519	22.9518	5	10	15	27	44
489	4816	14.2091	3	5	10	17	29
490	1787	8.9485	2	3	5	10	19
491	6826	6.3898	3	4	5	8	11
492	998	14.3337	3	4	6	24	34
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TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
001	28876	15.9617	4	7	11	19	32
002	6031	15.1069	4	7	11	19	30
003	3	2.0000	1	1	1	4	4
004	5300	13.0400	3	5	9	16	27
005	53888	6.7762	2	3	5	8	13
006	868	3.2857	1	1	2	3	7
007	5961	22.0765	2	6	11	23	47
008	2772	4.6032	1	1	3	6	10
009	1731	10.3039	2	4	7	12	21
010	20406	10.9344	2	4	7	14	22
011	3565	6.3719	1	2	4	8	13
012	21663	10.6732	2	4	7	12	19
013	5723	8.5598	3	4	7	10	15
014	342315	10.0711	3	4	7	12	19
015	135323	5.4583	2	3	4	6	10
016	11124	9.3788	3	4	7	11	18
017	2966	5.8736	2	3	4	7	10
018	13951	8.0095	2	4	6	9	15
019	6986	5.4705	1	2	4	7	10
020	7578	12.6498	3	5	9	16	25
021	1032	9.6909	3	4	7	12	19
022	9831	5.5487	2	3	4	7	10
023	3143	6.2685	1	2	4	7	12
024	54473	7.3996	2	3	5	9	14
025	22879	4.4291	1	2	3	5	8
026	61	5.9344	1	2	3	5	8
027	2808	8.2942	1	2	4	8	14
028	8249	9.5305	2	3	6	10	19
029	3690	4.8705	1	2	3	6	11
030	2	1.0000	1	1	1	1	1
031	3757	7.0186	2	2	4	8	13
032	2713	3.6922	1	2	3	4	7
034	13703	8.9718	2	3	5	10	17
035	3837	5.2434	1	2	4	6	10
036	20529	2.3437	1	1	2	3	4
037	2746	4.6555	1	1	3	5	10
038	784	2.9426	1	1	2	3	5
039	9719	1.9414	1	1	1	2	3
040	3422	3.4278	1	1	2	4	8
042	20598	2.5786	1	1	2	4	5
043	207	5.5266	1	2	4	7	11
044	1996	6.2856	2	3	5	8	12
045	2641	4.4623	1	2	4	6	8
046	2904	6.3402	1	2	4	8	12
047	1891	4.4093	1	2	3	5	8
048	2	7.0000	5	5	5	9	15
049	2965	7.5400	2	3	5	8	12
050	4906	2.6229	1	1	2	3	4
051	534	2.8614	1	1	2	3	5
052	175	3.1886	1	1	2	3	5
053	6529	3.4422	1	1	2	3	5

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
055	3659	2.7348	1	1	1	2	6
056	1151	2.7958	1	1	2	3	6
057	710	5.3620	1	2	3	6	11
058	1	1.0000	1	1	1	1	1
059	185	2.1568	1	1	1	2	4
060	1	18.0000	18	18	18	18	18
061	385	5.0026	1	1	2	6	12
063	4945	5.6977	1	2	4	7	11
064	4372	8.9318	1	2	6	11	20
065	32587	4.1850	1	2	3	5	8
066	7860	4.3564	1	2	3	5	8
067	437	5.2014	2	3	4	6	9
068	11729	6.0495	2	3	5	7	11
069	3772	4.2858	2	2	4	5	8
070	18	4.3889	1	2	2	5	9
071	136	5.1176	2	3	4	6	10
072	685	5.7460	1	2	3	6	9
073	6685	6.0432	1	2	4	7	12
074	2	11.0000	9	9	13	13	13
075	32193	13.7943	6	8	10	16	26
076	40220	14.8394	4	7	11	18	28
077	3502	6.5580	1	2	5	8	14
078	28963	10.0607	4	7	9	12	16
079	140699	11.8842	4	6	9	14	22
080	9304	7.9451	3	4	7	10	14
081	1	7.0000	7	7	7	7	7
082	70711	9.5833	2	4	7	12	19
083	7420	8.1515	2	4	6	10	15
084	1879	4.4050	1	2	3	5	8
085	17755	9.0945	2	4	7	11	17
086	1757	5.3199	1	2	4	7	10
087	61415	8.1182	2	4	6	10	15
088	186636	7.3826	3	4	6	9	13
089	380530	8.7583	3	5	7	11	15
090	46157	6.2364	3	4	5	8	10
091	48	6.1042	2	3	5	7	11
092	9095	8.7428	3	4	7	11	16
093	1504	6.0632	2	3	5	8	11
094	9730	8.5251	3	4	7	11	16
095	1324	6.1284	2	3	4	7	10
096	181510	7.1153	3	4	6	8	12
097	32577	5.1442	2	3	4	6	9
098	16	6.2778	2	3	5	6	10
099	31096	5.1861	1	2	4	6	10
100	11482	3.1253	1	2	2	4	6
101	19157	6.8025	2	3	5	8	13
102	3754	4.3207	1	2	3	5	8
103	282	33.8262	10	14	21	40	66
104	17814	20.3496	9	12	17	25	35
105	16203	14.4966	7	9	11	16	25
106	76162	15.2542	8	10	13	17	24

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
107	52857	11.7523	7	8	9	13	18
108	8959	15.2274	7	9	12	18	28
110	51947	13.5024	3	8	11	16	25
111	6304	8.4123	3	6	8	10	13
112	131196	6.0898	2	3	5	8	12
113	37297	19.0379	6	8	14	23	37
114	8229	12.4901	3	5	9	15	24
115	8512	13.9016	5	8	11	17	24
116	67194	7.2077	2	3	5	9	14
117	3381	5.5061	1	2	3	7	12
118	8483	3.9088	1	1	2	4	8
119	3237	6.3031	1	2	3	7	15
120	34573	12.4687	2	3	6	16	27
121	146199	9.6359	4	6	8	11	16
122	100359	6.8565	2	4	7	9	11
123	56218	5.3458	1	1	3	7	13
124	125726	5.7739	1	2	5	7	11
125	89536	3.1482	1	1	2	4	7
126	4302	20.4328	5	10	16	29	41
127	612827	7.7476	2	4	6	9	14
128	23541	8.4050	4	5	7	10	13
129	6269	4.7437	1	1	1	6	12
130	71880	8.1132	2	4	7	10	14
131	26526	5.9725	1	3	6	8	10
132	12394	5.5501	1	2	4	7	11
133	4077	3.9146	1	2	3	5	7
134	29162	4.9837	2	2	4	6	9
135	6400	6.5938	2	3	5	8	13
136	1424	4.2507	1	2	3	5	7
138	188352	5.8759	2	3	4	7	11
139	72186	3.6766	1	2	3	5	7
140	346480	4.4712	2	2	4	5	8
141	77799	5.7258	2	3	4	7	10
142	37177	3.9232	1	2	3	5	7
143	117399	3.3738	1	2	3	4	6
144	56530	7.0916	1	3	5	9	14
145	8425	4.1858	1	2	3	5	8
146	7640	13.8241	7	9	11	15	23
147	1590	8.9233	5	7	9	11	13
148	143851	15.9248	6	9	12	19	28
149	18122	9.0774	5	7	8	10	13
150	21960	13.9135	3	8	11	17	25
151	4781	7.7473	5	4	7	10	13
152	4605	10.6725	4	7	9	12	18
153	2059	7.0515	7	5	7	8	10
154	37694	18.0724	4	9	14	22	34
155	4202	8.5626	2	5	7	10	14
157	13358	6.5860	1	3	4	8	13
158	9999	3.0529	2	1	2	4	6
159	16539	6.3772	1	3	5	8	12
160	12946	3.3294		2	3	4	6

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
161	24227	4.6376	1	2	3	6	10
162	21251	2.2036	1	1	2	3	4
163	13	2.6923	1	1	2	4	5
164	4685	11.4055	5	7	9	13	19
165	1819	6.9940	3	5	7	9	11
166	2982	7.1596	3	4	6	9	13
167	2188	4.1165	2	3	4	5	7
168	1871	5.7691	1	2	3	7	12
169	1391	2.8246	1	1	2	3	6
170	12992	15.9273	3	7	11	20	31
171	1463	6.8578	1	3	5	9	13
172	31475	10.4531	2	4	7	13	22
173	3266	5.2655	1	2	4	7	11
174	168078	6.9517	2	4	5	8	13
175	22521	4.3582	2	3	4	5	7
176	13120	7.7104	2	4	6	9	14
177	15059	6.2747	2	3	5	7	11
178	6479	4.4373	2	3	4	5	8
179	8803	9.5372	3	4	7	11	18
180	70546	7.6470	2	4	6	9	14
181	22180	4.5757	2	3	4	6	8
182	261192	6.2600	2	3	5	7	11
183	77885	4.1977	1	2	3	5	8
184	59	4.0508	1	2	3	4	7
185	3999	6.2591	1	3	5	8	12
186	1	4.0000	4	4	4	4	4
187	1050	3.8629	1	1	2	5	8
188	50649	7.4105	2	3	5	9	15
189	9116	3.8873	1	1	3	5	8
190	99	5.3131	2	3	4	6	10
191	10256	20.0999	7	10	15	24	40
192	965	9.5440	3	6	8	12	16
193	12618	16.6354	7	9	14	20	29
194	1427	9.6797	3	6	8	12	17
195	17822	12.3429	6	7	10	14	20
196	1802	8.0733	4	5	7	10	13
197	78222	8.5152	2	4	7	11	16
198	49186	3.6220	1	1	3	5	7
199	2886	14.4016	4	7	11	18	28
200	1957	13.6811	2	5	10	18	28
201	3042	14.3859	3	6	10	18	30
202	18194	9.7128	2	4	7	12	19
203	29827	9.7680	2	4	7	12	20
204	39939	8.0722	3	4	6	9	15
205	21234	9.1487	2	4	7	11	18
206	2450	5.0184	1	2	4	7	10
207	38205	7.0373	2	3	5	9	13
208	14184	4.0379	1	2	3	5	7
209	271606	10.5789	6	7	9	12	16
210	118940	13.0684	6	8	10	14	21
211	29021	9.4534	5	6	8	11	14

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
212	18	6.1111	2	2	3	7	9
213	5859	13.0282	3	6	9	16	25
214	42479	10.3023	4	5	8	12	19
215	38652	6.0877	3	4	5	7	10
216	7180	14.5876	3	6	11	18	29
217	17145	21.5360	4	8	14	27	46
218	18844	9.1075	3	4	7	11	17
219	18074	5.1644	2	3	4	6	9
220	4	2.2500	1	1	2	3	3
221	4938	10.7784	2	4	8	13	21
222	5908	5.2472	1	2	4	7	10
223	16039	4.0491	1	2	3	4	7
224	8886	2.9099	1	2	2	3	5
225	10380	5.2777	1	2	3	6	12
226	5572	9.0720	2	3	6	11	20
227	8542	3.8658	1	2	3	4	7
228	4272	3.8987	1	1	2	4	8
229	2541	2.8564	1	1	2	3	5
230	3279	6.4535	1	2	4	7	13
231	10405	6.5790	1	2	4	7	15
232	799	6.8083	1	2	3	7	17
233	5329	11.7467	3	5	9	15	23
234	3072	5.3665	1	2	4	7	11
235	6401	11.4805	2	4	7	12	24
236	39084	8.9773	2	4	7	10	17
237	1893	5.8328	2	3	4	7	10
238	6472	13.9322	4	6	10	17	28
239	60286	10.0598	3	5	7	12	19
240	11175	9.5085	3	4	7	11	18
241	4000	5.6287	2	3	4	7	11
242	2544	10.5491	3	5	8	13	22
243	106101	6.8511	2	3	5	8	13
244	11219	7.2646	2	3	5	9	14
245	5730	5.5091	1	2	4	6	10
246	1753	5.4780	2	3	4	7	10
247	9961	5.1535	1	2	4	6	10
248	6331	6.2402	2	3	5	7	12
249	8552	6.4258	1	2	4	8	13
250	3461	6.8050	2	3	5	8	13
251	3274	3.6130	1	1	2	4	7
253	17409	8.1683	2	3	6	9	16
254	12343	4.7343	1	2	3	5	9
255	2	2.5000	1	1	2	4	4
256	9411	5.4601	1	2	4	6	11
257	28803	5.1188	2	3	4	6	9
258	26586	3.6258	1	2	3	4	6
259	4071	5.9580	2	2	3	6	13
260	4963	2.5350	1	1	2	3	4
261	3080	2.8042	1	1	2	3	5
262	1296	3.5517	1	1	2	3	7
263	29564	20.5709	5	8	14	24	41

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
264	4234	11.3791	3	5	8	14	23
265	4999	9.8200	2	3	6	11	21
266	4190	4.4174	1	2	3	5	9
267	379	4.8021	1	1	3	5	11
268	1482	5.0628	1	1	2	5	9
269	11065	12.2933	2	4	9	15	25
270	5144	4.0072	1	2	3	5	8
271	20052	11.6591	3	5	8	13	21
272	6944	9.4241	3	5	7	11	18
273	2223	6.8277	2	3	5	8	14
274	3089	10.9935	2	4	7	13	21
275	383	5.6789	1	1	3	5	9
276	877	5.6328	1	2	4	7	11
277	72052	8.4759	3	5	7	10	15
278	26250	6.1446	3	4	5	7	10
279	6	7.0000	2	3	4	11	11
280	13349	6.8287	2	3	5	8	13
281	7419	4.1867	1	2	3	5	8
282	1	2.0000	2	2	2	2	2
283	5928	7.2763	2	3	5	8	14
284	2390	5.0753	1	2	4	6	9
285	4656	21.4021	5	9	15	25	41
286	1753	11.3440	5	6	8	13	22
287	6675	18.9768	5	7	12	21	39
288	533	10.1576	3	4	6	10	21
289	4013	5.6845	2	2	3	5	12
290	9686	3.4577	1	2	2	4	6
291	146	2.1027	1	1	2	2	4
292	5120	17.8982	4	7	13	22	35
293	496	7.4839	1	3	6	10	15
294	90786	7.2914	3	4	6	8	13
295	3379	5.8387	2	3	4	7	11
296	215338	8.3968	2	4	6	10	16
297	44861	5.2013	2	3	4	6	9
298	69	4.4638	1	2	2	5	7
299	888	6.6678	1	3	5	8	14
300	12045	9.3865	3	4	7	11	18
301	2085	5.3050	1	2	4	7	10
302	7144	15.9681	7	9	13	19	28
303	17590	13.3629	6	8	10	15	23
304	14273	13.5524	4	6	10	16	26
305	3538	6.4002	2	3	5	8	12
306	12338	8.8517	3	4	6	11	17
307	4245	4.5246	2	3	4	5	8
308	10437	9.0834	2	3	6	11	19
309	4429	3.9600	1	2	3	5	8
310	35678	5.6214	1	2	4	7	11
311	19461	2.6887	1	1	2	3	5
312	3139	5.5027	1	2	4	7	11
313	1844	2.7533	1	1	2	3	5
314	1	8.0000	8	8	8	8	8

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
315	27894	12.3610	1	3	7	15	27
316	49895	9.1787	2	4	7	12	19
317	745	4.1195	1	2	3	4	8
318	6897	9.0789	2	3	6	11	19
319	839	3.9774	1	1	2	5	8
320	185178	8.4285	3	4	6	10	15
321	29299	5.8938	2	3	5	7	10
322	53	5.6038	2	3	5	7	10
323	20914	4.2820	1	2	3	5	9
324	13899	2.5722	1	1	2	3	5
325	9767	5.7981	2	3	4	7	11
326	3603	3.5795	1	2	3	4	7
327	10	6.5000	1	2	5	8	10
328	1298	4.9561	1	2	4	6	9
329	338	2.8787	1	1	2	4	5
331	30171	7.5087	2	3	6	9	15
332	5910	4.4795	1	2	3	5	9
333	339	7.6254	2	3	5	10	16
334	22733	9.1258	5	6	8	10	14
335	10704	7.2682	5	6	7	8	10
336	101256	5.7064	3	3	4	6	10
337	87102	3.8107	2	3	3	4	6
338	14297	6.1942	1	2	4	8	13
339	4685	4.8273	1	2	3	5	10
340	3	4.6667	3	3	4	7	7
341	13025	4.4253	1	2	3	5	8
342	416	3.8341	1	1	2	4	9
343	2	2.0000	1	1	3	3	3
344	4869	5.3828	1	2	4	6	10
345	2562	4.8989	1	2	3	5	10
346	7815	8.6271	2	3	6	10	17
347	925	4.4108	1	1	3	5	9
348	4360	5.7881	1	2	4	7	11
349	1841	3.0494	1	1	2	4	6
350	8153	5.8803	2	3	5	7	10
352	787	4.8475	1	2	3	6	10
353	2328	11.4596	5	6	9	14	21
354	9569	8.2302	4	5	6	9	14
355	6048	4.9854	3	4	5	6	7
356	31936	4.3107	2	3	4	5	7
357	6917	12.5038	5	7	10	15	23
358	23628	6.5656	3	4	5	7	11
359	27186	4.4800	3	4	4	5	6
360	9895	5.2309	2	3	4	6	9
361	448	5.5870	1	2	3	6	14
363	5796	4.3171	1	2	3	4	8
364	2894	4.1771	1	1	2	5	8
365	3201	10.7688	3	4	7	13	23
366	4975	10.1785	2	3	7	13	22
367	817	3.9584	1	1	3	4	8
368	1515	7.5129	2	4	6	9	14

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
369	2542	4.547	1	2	3	6	9
370	883	7.040	3	4	5	7	11
371	784	4.419	2	3	4	5	8
372	442	3.731	1	2	3	4	6
373	2716	2.594	1	2	2	3	5
374	75	4.027	2	2	2	3	6
375	7	14.714	1	2	2	7	14
376	160	2.906	1	1	2	3	6
377	27	5.111	1	2	4	7	10
378	144	3.632	2	2	3	4	6
379	329	2.980	1	1	2	3	6
380	72	2.792	1	1	1	3	6
381	245	2.482	1	1	1	3	4
382	60	1.433	1	1	1	2	2
383	900	4.437	1	2	3	5	8
384	104	2.654	1	1	2	3	5
385	5	3.000	1	1	3	4	5
386	1	149.000	149	149	149	149	149
387	1	6.000	6	6	6	6	6
389	8	8.375	1	4	7	9	11
390	18	6.056	1	2	3	11	13
392	2500	14.038	5	7	10	18	27
394	1992	10.334	1	2	6	12	22
395	72540	6.472	2	3	5	8	13
396	13	3.154	1	1	2	2	5
397	12766	7.490	2	3	5	9	15
398	14721	8.382	3	4	6	10	15
399	1662	5.261	1	2	4	7	10
400	6125	13.401	3	5	9	17	28
401	6515	15.097	3	6	11	19	31
402	2346	5.159	1	2	3	7	11
403	28364	12.006	2	5	8	15	25
404	5256	5.682	1	2	4	7	12
405	5	2.000	1	1	2	3	3
406	3737	15.477	4	7	11	19	31
407	958	6.558	2	3	5	8	12
408	4641	8.490	1	2	5	10	20
409	7660	9.110	2	4	5	11	21
410	124348	3.621	1	2	3	5	8
411	162	3.272	1	1	2	4	7
412	157	2.892	1	1	2	4	6
413	9700	10.734	2	4	5	14	22
414	1718	6.115	1	2	4	8	13
415	29926	20.640	5	9	15	25	41
416	138291	10.414	2	6	8	13	19
417	47	5.532	2	3	5	7	8
418	14577	8.311	3	4	7	10	15
419	17412	7.497	2	4	6	9	14
420	3780	5.416	2	3	4	7	10
421	12412	5.645	2	3	4	7	10
422	109	6.156	2	3	5	7	12

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
423	7323	11.226	3	5	8	13	22
424	2818	23.715	3	8	16	28	47
425	18133	6.508	2	3	4	8	13
426	6147	7.331	2	3	5	9	15
427	2046	7.858	1	3	5	9	16
428	1150	10.689	2	3	6	13	24
429	31113	12.334	3	4	7	13	23
430	57475	12.437	3	5	9	16	25
431	250	11.300	1	3	5	9	14
432	548	7.708	1	2	4	8	15
433	5992	4.500	1	1	3	5	11
434	17930	7.661	2	3	5	9	15
435	12858	6.344	2	3	5	7	13
436	2469	17.753	5	10	18	25	28
437	10763	16.620	6	10	15	23	28
439	971	9.550	1	3	6	12	22
440	4738	13.224	2	4	8	16	29
441	872	3.588	1	1	2	4	8
442	11761	9.987	1	3	6	12	21
443	6002	3.737	1	1	2	5	8
444	4028	7.426	2	3	5	8	13
445	2264	4.339	1	2	3	5	8
447	3187	3.543	1	1	2	4	7
448	1	1.000	1	1	1	1	1
449	29594	6.013	1	2	4	7	12
450	7607	3.304	1	1	2	4	7
451	7	147.571	1	3	5	10	11
452	18057	6.266	1	2	4	7	13
453	5986	3.560	1	2	3	4	7
454	4165	7.084	1	2	4	8	14
455	1149	3.269	1	1	2	4	6
456	182	9.242	1	2	5	10	21
457	127	8.835	1	1	3	10	18
458	1650	22.930	5	10	17	30	45
459	585	14.899	3	6	11	18	30
460	2421	9.185	2	4	7	12	19
461	5377	5.533	1	1	2	5	13
462	6756	17.934	5	8	15	23	33
463	9499	6.760	2	3	5	8	13
464	2995	4.124	1	2	3	5	8
465	448	3.364	1	1	1	3	6
466	3722	5.015	1	1	2	4	10
467	3626	6.329	1	1	2	5	10
468	63800	19.120	4	8	14	23	37
471	7812	14.127	7	9	11	16	23
472	184	29.788	1	8	24	43	63
473	8381	17.072	2	4	10	26	41
475	75734	14.078	2	6	11	18	28
476	10935	17.198	6	10	14	20	29
477	37707	10.597	1	3	7	13	22
478	105147	10.267	2	4	7	13	21

TABLE 7B - MEDICARE PROSPECTIVE PAYMENT SYSTEM
SELECTED PERCENTILE LENGTHS OF STAY
FY91 MEDPAR UPDATE 06/92 GROUPER V10.0

DRG	NUMBER DISCHARGES	ARITHMETIC MEAN LOS	10TH PERCENTILE	25TH PERCENTILE	50TH PERCENTILE	75TH PERCENTILE	90TH PERCENTILE
479	17890	5.4611	1	2	5	7	10
480	117	40.2906	11	16	23	47	90
481	64	44.8906	23	31	37	50	72
482	6901	18.3908	6	9	13	21	35
483	34650	56.5558	17	28	44	69	105
484	316	23.1867	2	9	18	33	49
485	2647	17.1417	6	9	12	19	31
486	1922	17.5088	1	7	13	23	36
487	3112	11.3249	2	4	8	14	22
488	519	22.9518	5	10	18	27	44
489	4816	14.2091	3	8	10	17	29
490	1787	8.9485	2	3	5	10	19
491	6826	6.3898	3	4	5	8	11
492	998	14.3337	3	4	8	24	44
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BILLING CODE 4120-03-C

TABLE 8a.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED)

State	Urban	Rural
Alabama	0.495	0.532
Alaska	0.657	0.883
Arizona	0.576	0.622
Arkansas	0.598	0.570
California	0.502	0.542
Colorado	0.570	0.620
Connecticut	0.645	0.688
Delaware	0.601	0.641
District of Columbia	0.574	
Florida	0.496	0.503
Georgia	0.593	0.581
Hawaii	0.573	0.772
Idaho	0.657	0.673
Illinois	0.553	0.621
Indiana	0.664	0.675
Iowa	0.810	0.729
Kansas	0.562	0.706
Kentucky	0.588	0.579
Louisiana	0.542	0.600
Maine	0.702	0.625
Maryland	0.765	0.806
Massachusetts	0.727	0.800
Michigan	0.560	0.660
Minnesota	0.634	0.721
Mississippi	0.627	0.583
Missouri	0.530	0.581
Montana	0.626	0.698
Nebraska	0.588	0.723
Nevada	0.478	0.681
New Hampshire	0.656	0.688
New Jersey	0.796	
New Mexico	0.524	0.580
New York	0.661	0.734
North Carolina	0.662	0.582
North Dakota	0.660	0.712
Ohio	0.626	0.659
Oklahoma	0.549	0.599
Oregon	0.613	0.680

TABLE 8a.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED)—Continued

State	Urban	Rural
Pennsylvania	0.510	0.602
Puerto Rico	0.526	0.620
Rhode Island	0.765	
South Carolina	0.551	0.545
South Dakota	0.627	0.688
Tennessee	0.573	0.572
Texas	0.548	0.653
Utah	0.620	0.641
Vermont	0.674	0.658
Virginia	0.576	0.595
Washington	0.703	0.740
West Virginia	0.598	0.563
Wisconsin	0.720	0.745
Wyoming	0.693	0.776

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED)

State	Ratio
Alabama	0.062
Alaska	0.106
Arizona	0.062
Arkansas	0.065
California	0.051
Colorado	0.058
Connecticut	0.040
Delaware	0.065
District of Columbia	0.045
Florida	0.063
Georgia	0.061
Hawaii	0.057
Idaho	0.052
Illinois	0.053

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED)—Continued

State	Ratio
Indiana	0.071
Iowa	0.064
Kansas	0.065
Kentucky	0.068
Louisiana	0.079
Maine	0.047
Maryland	0.058
Massachusetts	0.056
Michigan	0.058
Minnesota	0.060
Mississippi	0.059
Missouri	0.060
Montana	0.075
Nebraska	0.061
Nevada	0.053
New Hampshire	0.057
New Jersey	0.079
New Mexico	0.058
New York	0.062
North Carolina	0.055
North Dakota	0.073
Ohio	0.064
Oklahoma	0.068
Oregon	0.041
Pennsylvania	0.054
Puerto Rico	0.090
Rhode Island	0.042
South Carolina	0.069
South Dakota	0.076
Tennessee	0.068
Texas	0.071
Utah	0.063
Vermont	0.060
Virginia	0.068
Washington	0.084
West Virginia	0.067
Wisconsin	0.077
Wyoming	0.081

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
010001	10/01/90	09/30/91	1.2806	0.9979
010004	10/01/90	09/30/91	0.9033	0.9616
010005	10/01/90	09/30/91	1.1249	0.9743
010007	10/01/90	09/30/91	1.1007	0.9635
010008	10/01/90	09/30/91	1.0046	0.9708
010009	08/01/90	07/31/91	1.0238	0.9660
010010	10/01/90	09/30/91	1.1145	0.9681
010016	10/01/90	09/30/91	1.0753	0.9774
010019	10/01/90	09/30/91	1.1702	0.9869
010020	07/01/90	11/20/91	1.0085	0.9690
010021	10/01/90	09/30/91	1.2109	0.9802
010029	10/01/90	09/30/91	1.4918	0.9964
010032	01/01/91	12/31/91	0.8937	0.9142
010033	10/01/90	09/30/91	1.9478	0.9962
010035	10/01/90	09/30/91	1.1651	0.9755
010040	01/01/91	12/31/91	1.3049	0.9890
010043	10/01/90	09/30/91	0.9482	0.9536
010044	10/01/90	09/30/91	0.9697	0.9678
010045	10/01/90	09/30/91	1.0115	0.9725
010046	07/01/90	07/31/91	1.3105	0.9906
010047	10/01/90	09/30/91	0.9033	0.9736
010049	09/01/90	08/31/91	1.0894	0.9758
010051	10/01/90	09/30/91	0.8599	0.9590
010052	10/01/90	09/30/91	0.9563	0.9122
010053	07/01/90	09/30/91	1.0054	0.9477
010059	10/01/90	09/30/91	0.9973	0.9683
010061	10/01/90	09/30/91	0.9575	0.9669
010062	10/01/90	09/30/91	0.9481	0.9778

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
010065	01/01/91	12/31/91	1.1990	0.9549
010069	10/01/90	09/30/91	1.1602	0.9505
010073	10/01/90	09/30/91	0.8982	0.9292
010079	10/01/90	09/30/91	1.1474	0.9719
010081	09/01/90	08/31/91	1.8118	0.9952
010083	10/01/90	09/30/91	1.0972	0.9534
010084	01/01/91	12/31/91	1.2941	0.9972
010087	10/01/90	09/30/91	1.5170	0.9965
010092	10/01/90	09/30/91	1.3697	0.9999
010094	09/01/90	08/31/91	1.1874	0.9758
010095	10/01/90	09/30/91	1.0125	0.9462
010096	10/01/90	09/30/91	0.9047	0.9716
010097	10/01/90	09/30/91	1.0062	0.9688
010099	10/01/90	09/30/91	1.0895	0.9614
010100	10/01/90	09/30/91	1.1675	0.9821
010102	10/01/90	09/30/91	0.9123	0.9609
010108	11/01/90	10/31/91	1.1574	0.9745
010109	10/01/90	09/30/91	1.0718	0.9889
010110	10/01/90	09/30/91	0.9068	0.9665
010112	10/01/90	09/30/91	1.1465	0.9662
010115	10/01/90	09/30/91	0.8956	0.9389
010117	10/01/90	09/30/91	1.1192	1.0000
010119	10/01/90	09/30/91	1.1919	0.9942
010120	10/01/90	09/30/91	0.9815	0.9669
010122	01/01/91	12/31/91	0.9541	0.9658
010123	09/01/90	08/31/91	1.2749	0.9815
010124	09/01/90	08/31/91	1.2798	0.9876
010125	10/01/90	09/30/91	1.0998	0.9682
010126	10/01/90	09/30/91	1.0810	0.9709
010127	09/01/90	08/31/91	1.4985	0.9980
010129	10/01/90	09/30/91	1.0510	0.9460
010130	10/01/90	09/30/91	1.1140	0.9612
010137	10/01/90	09/30/91	1.2943	0.9936
010139	01/01/91	12/31/91	1.5773	0.9992
010143	10/01/90	09/30/91	1.1302	0.9731
010144	01/01/91	12/31/91	1.3851	0.9871
010146	10/01/90	09/30/91	1.0477	0.9549
010149	09/01/90	08/31/91	1.3679	0.9915
010152	10/01/90	09/30/91	1.2562	0.9839
010153	10/01/90	09/30/91	0.8914	1.0000
010155	10/01/90	09/30/91	1.1262	0.9360
020001	01/01/91	12/31/91	1.4826	0.9975
020005	10/01/90	09/30/91	0.8931	0.9354
020006	01/01/91	12/31/91	1.0309	0.9708
020012	01/01/91	12/31/91	1.1408	0.9917
020013	01/01/91	12/31/91	0.9180	0.9697
020017	09/01/90	08/31/91	1.3624	0.9902
020025	01/01/91	12/31/91	1.0106	0.9611
030001	01/01/91	12/31/91	1.3279	0.9860
030002	01/01/91	12/31/91	1.7477	0.9970
030004	10/01/90	09/30/91	0.9790	0.9678
030008	09/01/90	08/31/91	1.8840	0.9989
030012	01/01/91	12/31/91	1.2553	0.9815
030013	10/01/90	09/30/91	1.2358	0.9866
030014	01/01/91	12/31/91	1.4202	0.9976
030018	01/01/91	12/31/91	1.6005	0.9985
030023	01/01/91	12/31/91	1.2270	0.9842
030025	01/01/91	12/31/91	1.0695	0.9510
030030	09/01/90	08/31/91	1.6606	0.9994
030035	01/01/91	12/31/91	1.2880	0.9923
030036	01/01/91	12/31/91	1.2311	0.9895
030038	10/01/90	09/30/91	1.4609	0.9990
030041	01/01/91	12/31/91	0.9364	0.9179
030044	10/01/90	09/30/91	1.1153	0.9496
030046	01/01/91	12/31/91	0.9388	0.9615
030047	01/01/91	12/31/91	0.8914	0.9778
030051	07/01/90	09/30/91	1.0618	0.9832
030060	01/01/91	12/31/91	1.0843	0.9703
030061	01/01/91	12/31/91	1.4526	0.9988
030062	01/01/91	12/31/91	1.2974	0.9562
030065	01/01/91	12/31/91	1.4788	0.9980
030067	10/01/90	09/30/91	1.0451	0.9575
030068	01/01/91	12/31/91	0.9909	0.9485
030069	01/01/91	12/31/91	1.3128	0.9724
030083	09/01/90	08/31/91	1.3389	0.9837
030085	09/01/90	08/31/91	1.3875	0.9869
030086	09/01/90	08/31/91	1.1940	0.9428

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
030087	10/01/90	09/30/91	1.6019	0.9988
030088	01/01/91	12/31/91	1.2877	0.9884
030089	01/01/91	12/31/91	1.2560	0.9857
030092	01/01/91	12/31/91	1.4652	0.9848
030093	01/01/91	12/31/91	1.3038	0.9984
030094	09/01/90	08/31/91	1.2967	0.9878
040004	01/01/91	12/31/91	1.2316	0.9956
040005	10/01/90	09/30/91	1.0551	0.9494
040007	10/01/90	09/30/91	1.5315	0.9983
040010	01/01/91	12/31/91	1.1608	0.9869
040013	01/01/90	07/31/91	0.9609	0.9818
040014	09/01/90	08/31/91	1.0982	0.9894
040015	07/01/90	09/30/91	1.0368	0.9748
040018	01/01/91	12/31/91	1.2236	0.9875
040020	10/01/90	09/30/91	1.4571	0.9982
040021	01/01/91	12/31/91	1.2200	0.9941
040024	10/01/90	09/30/91	1.0629	0.9468
040027	01/01/91	12/31/91	1.2885	0.9851
040028	10/01/90	09/30/91	0.9933	0.9736
040029	01/01/91	12/31/91	1.1117	0.9750
040031	01/01/91	12/31/91	0.9701	0.9414
040036	01/01/91	12/31/91	1.2251	0.9921
040041	09/01/90	08/31/91	1.1306	0.9836
040042	01/01/91	12/31/91	1.3007	0.9870
040044	01/01/91	12/31/91	0.9470	0.9568
040045	01/01/91	12/31/91	0.9433	0.9360
040047	01/01/91	12/31/91	1.0526	0.9731
040050	10/01/90	09/30/91	1.1125	0.9720
040064	01/01/91	12/31/91	0.9004	0.9194
040066	01/01/91	12/31/91	1.0686	0.9637
040067	10/01/90	09/30/91	1.0005	0.9688
040072	12/01/90	11/30/91	1.0641	0.9620
040075	01/01/91	12/31/91	1.1147	0.9643
040078	01/01/91	12/31/91	1.2373	0.9900
040081	10/01/90	09/30/91	0.8627	0.9536
040085	01/01/91	12/31/91	1.1474	0.9611
040100	01/01/91	12/31/91	1.1261	0.9864
040105	10/01/90	09/30/91	1.0121	0.9493
040106	10/01/90	09/30/91	1.1806	0.9667
040107	10/01/90	09/30/91	1.0510	0.9564
040114	01/01/91	12/31/91	1.7152	0.9991
040118	01/01/91	12/31/91	1.2038	0.9842
040119	10/01/90	09/30/91	1.1353	0.9883
050082	10/01/90	09/30/91	1.3006	0.9874
050087	01/01/91	12/31/91	1.4666	0.9971
050096	01/01/91	12/31/91	1.4389	0.9899
050013	01/01/91	12/31/91	2.0096	0.9969
050016	01/01/90	12/31/91	1.1762	0.9858
050021	09/01/90	08/31/91	1.2898	0.9777
050022	01/01/91	12/31/91	1.5182	0.9964
050024	01/01/91	12/31/91	1.3870	0.9913
050030	12/01/90	11/30/91	1.2991	0.9888
050032	09/01/90	08/31/91	1.2768	0.9825
050043	09/01/90	08/31/91	1.5657	0.9988
050047	08/17/90	12/31/91	1.8993	0.9980
050053	01/01/91	12/31/91	1.3473	0.9966
050058	10/01/90	09/30/91	1.4050	0.9973
050060	09/01/90	08/31/91	1.4669	0.9974
050061	09/01/90	08/31/91	1.2586	0.9829
050070	01/01/91	12/31/91	1.2068	0.9802
050071	01/01/91	12/31/91	1.3136	0.9851
050072	01/01/91	12/31/91	1.2479	0.9843
050073	01/01/91	12/31/91	1.2152	0.9855
050074	01/01/91	12/31/91	1.0190	0.9606
050075	01/01/91	12/31/91	1.3040	0.9894
050076	01/01/91	12/31/91	1.4446	0.9548
050078	01/01/91	12/31/91	1.3510	0.9923
050080	01/01/91	12/31/91	1.2326	0.9922
050081	09/01/90	08/31/91	1.6385	0.9853
050084	01/01/91	12/31/91	1.5145	0.9989
050091	09/01/90	08/31/91	1.2531	0.9922
050096	01/01/91	12/31/91	1.0380	1.0000
050097	01/01/91	12/31/91	1.4292	0.9938
050099	12/30/90	12/28/91	1.6728	0.9954
050100	10/01/90	09/30/91	1.8267	0.9962
050101	01/01/91	12/31/91	1.3792	0.9882
050102	01/01/91	12/31/91	1.3268	0.9908

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
050103	01/01/91	12/31/91	1.4915	0.9969
050107	12/01/90	11/30/91	1.3609	0.9871
050108	01/01/91	12/31/91	1.4254	0.9849
050109	01/01/91	12/31/91	2.1164	0.9973
050111	01/01/91	12/31/91	1.2680	0.9983
050112	10/01/90	09/30/91	1.4481	0.9989
050117	01/01/91	12/31/91	1.2730	0.9948
050121	01/01/91	12/31/91	1.2924	0.9847
050122	01/01/91	12/31/91	1.4411	0.9988
050125	01/01/91	12/31/91	1.2931	0.9862
050126	11/01/90	10/31/91	1.4070	0.9970
050127	10/01/90	09/30/91	1.2631	0.9847
050131	01/01/91	12/31/91	1.2296	0.9802
050132	10/01/90	09/30/91	1.4021	0.9939
050135	10/01/90	09/30/91	1.3064	0.9991
050137	01/01/91	12/31/91	1.2754	0.9839
050138	01/01/91	12/31/91	1.7056	0.9927
050139	01/01/91	12/31/91	1.2103	0.9934
050140	01/01/91	12/31/91	1.3111	0.9832
050144	09/01/90	08/31/91	1.4833	0.9925
050145	01/01/91	12/31/91	1.2967	0.9836
050148	10/01/90	09/30/91	1.3043	1.0000
050149	10/01/90	09/30/91	1.3563	0.9898
050150	01/01/91	12/31/91	1.2240	0.9780
050154	10/01/90	09/30/91	1.2227	0.9811
050155	10/01/90	09/30/91	1.1176	0.9957
050189	10/01/90	09/30/91	1.4898	0.9957
050173	09/01/90	08/31/91	1.2582	0.9854
050180	12/31/90	12/29/91	1.4345	0.9976
050186	09/01/90	09/30/91	1.3260	0.9806
050189	10/01/90	09/30/91	0.9175	0.9862
050196	01/01/91	12/31/91	1.2952	0.9865
050204	10/01/90	09/30/91	1.4014	0.9963
050205	01/01/91	12/31/91	1.2380	0.9963
050206	01/01/91	12/31/91	1.2087	0.9980
050211	01/01/91	12/31/91	1.3405	0.9937
050212	09/01/90	08/31/91	1.1018	0.9934
050214	01/01/91	12/31/91	1.5519	0.9877
050217	01/01/91	12/31/91	1.2153	0.9642
050222	10/01/90	09/30/91	1.5354	0.9979
050224	09/18/90	09/14/91	1.8166	0.9990
050225	01/01/91	12/31/91	1.3236	0.9861
050226	10/01/90	09/30/91	1.4272	0.9988
050231	01/01/91	12/31/91	1.5130	0.9955
050233	10/01/90	09/30/91	1.2236	0.9849
050234	10/01/90	09/30/91	1.2822	0.9911
050235	01/01/91	12/31/91	1.4983	0.9975
050236	01/01/91	12/31/91	1.3921	0.9835
050238	01/01/91	12/31/91	1.4902	0.9930
050239	01/01/91	12/31/91	1.4077	0.9966
050241	01/01/91	12/31/91	1.3074	0.9807
050251	01/01/91	12/31/91	1.1612	0.9684
050254	11/01/90	10/31/91	1.1369	0.9843
050256	11/01/90	10/31/91	1.6747	0.9938
050257	01/01/91	12/31/91	1.1540	0.9872
050264	09/01/90	08/31/91	1.4151	0.9939
050269	10/01/90	09/30/91	1.1091	0.9889
050270	10/01/90	09/30/91	1.3154	0.9850
050272	10/01/90	09/30/91	1.3150	0.9937
050281	10/01/89	08/31/91	1.2894	0.9870
050292	10/01/90	09/30/91	1.2798	0.9879
050288	08/01/90	07/31/91	1.0042	0.9595
050298	01/01/91	12/31/91	1.2365	0.9731
050300	01/01/91	12/31/91	1.2973	0.9920
050301	01/01/91	12/31/91	1.2100	0.9856
050302	01/01/91	12/31/91	1.3079	0.9869
050305	12/30/90	12/28/91	1.4793	0.9970
050309	01/01/91	12/31/91	1.2928	0.9947
050310	09/01/90	08/31/91	1.2163	0.9954
050313	01/01/91	12/31/91	1.1417	0.9807
050317	01/01/91	12/31/91	1.2356	0.9832
050324	10/01/90	09/30/91	1.8415	0.9958
050327	01/01/91	12/31/91	1.6237	0.9984
050328	09/01/90	09/30/91	1.2638	0.9702
050335	01/01/91	12/31/91	1.2144	0.9847
050336	01/01/91	12/31/91	1.2404	0.9715
050345	10/01/90	09/30/91	1.3643	0.9851

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
050351	01/01/91	12/31/91	1.5234	0.9870
050352	01/01/91	12/31/91	1.2688	0.9869
050357	10/01/90	09/30/91	1.8316	0.9963
050363	09/01/90	08/31/91	1.3268	0.9889
050367	01/01/91	12/31/91	1.2458	0.9754
050369	01/01/91	12/31/91	1.2762	0.9920
050385	08/01/90	07/31/91	1.2892	0.9777
050391	01/01/91	12/31/91	1.4138	0.9865
050394	01/01/91	12/31/91	1.4959	0.9973
050398	01/01/91	12/31/91	1.5996	0.9994
050404	01/01/91	12/31/91	1.0486	0.9768
050407	01/01/91	12/31/91	1.0963	0.9990
050411	01/01/91	12/31/91	1.3220	0.9875
050417	01/01/91	12/31/91	1.1814	0.9748
050420	01/01/91	12/31/91	1.4096	0.9910
050424	09/01/90	10/31/91	1.7034	0.9985
050425	01/01/91	12/31/91	1.3113	0.9810
050426	09/01/90	08/31/91	1.3808	0.9947
050427	09/01/90	08/31/91	0.9550	0.9405
050431	09/01/90	08/31/91	1.0762	0.9948
050438	10/01/90	09/30/91	1.4842	0.9959
050440	01/01/91	12/31/91	1.1946	0.9895
050441	09/01/90	08/31/91	1.7438	0.9962
050447	09/01/90	08/31/91	1.0444	0.9824
050455	01/01/91	12/31/91	1.8769	0.9975
050456	07/01/90	12/31/91	1.3619	0.9932
050458	01/01/91	12/31/91	0.9534	0.9857
050467	01/01/91	12/31/91	1.2552	0.9870
050469	01/01/91	12/31/91	1.0711	0.9761
050471	09/01/90	08/31/91	1.7495	0.9963
050478	01/01/91	12/31/91	1.0330	0.9500
050481	09/01/90	08/31/91	1.4876	0.9973
050483	10/01/90	09/30/91	1.2361	0.9966
050486	10/01/90	09/30/91	1.4179	0.9916
050489	10/01/90	09/30/91	1.0753	0.9903
050492	09/01/90	08/31/91	1.2800	0.9899
050498	01/01/91	12/31/91	1.1677	0.9855
050503	10/01/90	09/30/91	1.2974	0.9789
050506	08/01/90	07/31/91	1.4945	0.9963
050510	01/01/91	12/31/91	1.3104	0.9843
050512	01/01/91	12/31/91	1.2588	0.9853
050515	01/01/91	12/31/91	1.3251	0.9876
050517	10/01/90	09/30/91	1.3935	0.9885
050523	01/01/91	12/31/91	1.2478	0.9750
050526	09/01/90	08/31/91	1.3600	0.9717
050531	09/01/90	08/31/91	1.2749	0.9969
050537	01/01/91	12/31/91	1.2256	0.9786
050541	01/01/91	12/31/91	1.5068	0.9819
050543	01/01/91	12/31/91	1.3113	0.9857
050549	01/01/91	12/31/91	1.7702	0.9960
050550	09/01/90	08/31/91	1.1381	0.9886
050552	01/01/91	12/31/91	1.0558	0.9981
050557	10/01/90	09/30/91	1.5128	0.9973
050561	01/01/91	12/31/91	1.1930	0.9900
050567	01/01/91	12/31/91	1.6044	0.9983
050570	11/01/90	10/31/91	1.7032	0.9954
050571	10/01/90	09/30/91	1.4060	0.9914
050575	10/01/90	09/30/91	1.2209	0.9956
050580	01/01/91	12/31/91	1.2294	0.9921
050585	01/01/91	12/31/91	1.3795	0.9776
050586	09/01/90	08/31/91	1.3275	0.9910
050587	01/01/91	12/31/91	1.2731	0.9974
050588	09/01/90	08/31/91	1.2534	0.9833
050590	01/01/91	12/31/91	1.3090	0.9881
050591	09/01/90	08/31/91	1.1298	0.9923
050592	09/01/90	08/31/91	1.3014	0.9829
050593	01/01/91	12/31/91	1.2678	0.9874
050597	10/01/90	09/30/91	1.3688	0.9880
050604	01/01/91	12/31/91	1.4412	0.9721
050607	10/01/89	08/31/91	1.2518	0.9873
050609	01/01/91	12/31/91	1.2982	0.9967
050619	01/01/91	12/31/91	1.3745	0.9882
050622	09/01/90	08/31/91	1.0701	0.9718
050624	10/01/90	09/30/91	1.2750	0.9817
050630	01/01/91	12/31/91	1.2385	0.9747
050635	01/01/91	12/31/91	1.2936	0.9913
050644	09/01/90	08/31/91	1.1627	0.9888

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
050655	01/01/91	12/31/91	0.8693	0.9974
050663	10/01/90	09/30/91	1.0987	0.9996
050669	01/01/90	08/31/91	0.9242	1.0000
050670	09/01/90	08/31/91	1.1533	1.0000
050674	01/01/91	12/31/91	1.1965	0.9903
050677	01/01/91	12/31/91	1.3197	0.9860
050680	01/01/91	12/31/91	1.2462	0.9631
050686	01/01/91	12/31/91	1.2746	0.9891
050690	01/01/91	12/31/91	1.1658	0.9870
050695	01/01/91	12/31/91	1.2087	0.9706
060001	01/01/91	12/31/91	1.4559	0.9986
060003	01/01/91	12/31/91	1.2114	0.9903
060004	01/01/91	12/31/91	1.1098	0.9691
060006	01/01/91	12/31/91	1.1637	0.9859
060007	01/01/91	12/31/91	1.1789	0.9553
060009	01/01/91	12/31/91	1.3666	0.9956
060010	01/01/91	12/31/91	1.5334	0.9981
060011	01/01/91	12/31/91	1.2187	0.9845
060014	09/01/90	08/31/91	1.6526	0.9972
060018	01/01/91	12/31/91	1.1693	0.9792
060022	01/01/91	12/31/91	1.5931	0.9982
060027	01/01/91	12/31/91	1.4496	0.9979
060029	01/01/91	12/31/91	0.9594	0.9537
060030	01/01/91	12/31/91	1.3232	0.9933
060033	01/01/91	12/31/91	1.1362	0.9679
060034	01/01/91	12/31/91	1.3456	0.9921
060037	01/01/91	12/31/91	0.9974	0.8319
060038	01/01/91	12/31/91	1.1011	0.9799
060041	01/01/91	12/31/91	1.1076	1.0000
060042	01/01/91	12/31/91	0.9639	0.9706
060043	01/01/91	12/31/91	0.8738	0.9249
060044	01/01/91	12/31/91	1.1889	0.9839
060046	01/01/91	12/31/91	1.0796	0.9578
060047	01/01/91	12/31/91	1.0260	0.9755
060049	01/01/91	12/31/91	1.0374	0.9543
060050	01/01/91	12/31/91	1.2399	0.9705
060052	01/01/91	12/31/91	1.0298	0.9639
060053	01/01/91	12/31/91	1.1423	0.9683
060056	01/01/91	12/31/91	0.8923	0.9838
060057	01/01/91	12/31/91	1.0223	0.9577
060058	01/01/91	12/31/91	0.9001	0.9160
060060	01/01/91	12/31/91	1.0425	0.9648
060062	01/01/91	12/31/91	1.0011	0.9391
060063	01/01/91	12/31/91	1.1814	0.9560
060064	01/01/91	12/31/91	1.3824	0.9963
060065	09/01/90	08/31/91	1.3251	0.9933
060066	01/01/91	12/31/91	0.9405	0.9222
060068	01/01/91	12/31/91	1.1586	0.9807
060070	01/01/91	12/31/91	1.2129	0.9739
060071	01/01/91	12/31/91	1.1363	0.9832
060072	10/01/90	09/30/91	0.9170	0.9707
060073	01/01/91	12/31/91	0.9947	0.9576
060075	01/01/91	12/31/91	1.3080	0.9869
060076	01/01/91	12/31/91	1.4055	0.9798
060085	01/01/91	12/31/91	0.8981	0.9379
060087	09/01/90	08/31/91	1.3945	0.9955
060088	01/01/91	12/31/91	1.1193	0.9236
060090	01/01/91	12/31/91	0.8710	0.9037
060096	11/01/90	10/31/91	0.9925	0.8964
060100	09/01/90	08/31/91	1.3806	0.9847
060101	10/01/90	09/30/91	1.4281	0.9686
060103	01/01/91	12/31/91	1.3073	0.9866
070001	10/01/90	09/30/91	1.7864	0.9995
070002	10/01/90	09/30/91	1.7801	0.9992
070003	10/01/90	09/30/91	1.1602	0.9803
070004	10/01/90	09/30/91	1.1337	0.9843
070005	10/01/90	09/30/91	1.2836	0.9914
070006	10/01/90	09/30/91	1.2742	0.9945
070007	10/01/90	09/30/91	1.3699	0.9919
070008	10/01/90	09/30/91	1.2371	0.9920
070009	10/01/90	09/30/91	1.2983	0.9898
070010	10/01/90	09/30/91	1.4679	0.9987
070011	10/01/90	09/30/91	1.2026	0.9899
070012	10/01/90	09/30/91	1.2419	0.9883
070013	10/01/90	09/30/91	1.3405	0.9914
070014	10/01/90	09/30/91	1.2877	0.9886
070016	10/01/90	09/30/91	1.2395	0.9902

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
070016	10/01/90	09/30/91	1.2969	0.9925
070017	10/01/90	09/30/91	1.2922	0.9860
070018	10/01/90	09/30/91	1.3006	0.9971
070019	10/01/90	09/30/91	1.1696	0.9872
070020	10/01/90	09/30/91	1.3970	0.9892
070021	10/01/90	09/30/91	1.2044	0.9883
070022	10/01/90	09/30/91	1.6748	0.9973
070023	10/01/90	09/30/91	1.2601	0.9997
070024	10/01/90	09/30/91	1.1922	0.9921
070025	10/01/90	09/30/91	1.6628	0.9987
070026	10/01/90	09/30/91	1.2425	0.9873
070027	10/01/90	09/30/91	1.2145	0.9876
070028	10/01/90	09/30/91	1.4915	0.9997
070029	10/01/90	09/30/91	1.2279	0.9916
070030	10/01/90	09/30/91	1.2667	0.9974
070031	10/01/90	09/30/91	1.3122	0.9942
070033	10/01/90	09/30/91	1.3514	0.9924
070034	10/01/90	09/30/91	1.2992	0.9947
070035	10/01/90	09/30/91	1.3613	0.9913
070036	10/01/90	09/30/91	1.3474	0.9612
080005	10/01/90	09/30/91	1.1994	0.9941
090002	01/01/91	12/31/91	1.1861	0.9887
090005	01/01/91	12/31/91	1.2739	0.9979
090006	01/01/91	12/31/91	1.3121	0.9957
090007	10/01/90	09/30/91	1.2718	0.9919
090008	01/01/91	12/31/91	1.4030	0.9948
100001	10/01/90	09/30/91	1.3979	0.9968
100002	10/01/90	09/30/91	1.4242	0.9869
100004	10/01/90	09/30/91	1.0139	0.9353
100005	10/01/90	09/30/91	0.9150	0.9947
100006	10/01/90	09/30/91	1.6152	0.9957
100007	01/01/91	12/31/91	1.8834	0.9971
100008	10/01/90	09/30/91	1.7187	0.9962
100009	10/01/90	09/30/91	1.4240	0.9971
100012	10/01/90	09/30/91	1.5506	0.9993
100014	10/01/90	09/30/91	1.3297	0.9919
100015	08/01/90	07/31/91	1.4013	0.9953
100017	10/01/90	09/30/91	1.6843	0.9957
100018	10/01/90	09/30/91	1.3548	0.9883
100019	10/01/90	09/30/91	1.4874	0.9995
100020	12/01/90	11/30/91	1.3329	0.9942
100021	01/01/91	12/31/91	1.2859	1.0000
100022	10/01/90	09/30/91	1.6075	0.9965
100023	10/01/90	09/30/91	1.3262	0.9831
100024	10/01/90	09/30/91	1.2642	0.9888
100025	01/01/91	12/31/91	1.5216	0.9985
100026	10/01/90	09/30/91	1.4238	0.9998
100028	10/01/90	09/30/91	1.2986	0.9761
100029	10/01/90	09/30/91	1.3179	0.9963
100030	10/01/90	09/30/91	1.2694	0.9963
100034	01/01/91	12/31/91	1.6251	0.9994
100035	09/01/90	08/31/91	1.4645	1.0000
100040	01/01/91	12/31/91	1.6537	0.9979
100042	01/01/91	12/31/91	1.2427	0.9963
100043	10/01/90	09/30/91	1.3729	0.9890
100044	10/01/90	09/30/91	1.4161	0.9906
100045	10/01/90	09/30/91	1.3927	0.9871
100046	01/01/91	12/31/91	1.3332	0.9770
100047	01/01/91	12/31/91	1.5832	0.9952
100048	10/01/90	09/30/91	0.9471	0.9662
100049	10/01/90	09/30/91	1.3533	0.9780
100050	01/01/91	12/31/91	1.2197	0.9961
100051	10/01/90	09/30/91	1.2863	0.9564
100052	10/01/90	09/30/91	1.3213	0.9875
100053	10/01/90	09/30/91	1.2657	0.9959
100054	08/01/90	07/31/91	1.3924	0.9699
100055	10/01/90	09/30/91	1.3559	0.9890
100056	01/01/91	12/31/91	1.5678	0.9851
100057	10/01/90	09/30/91	1.3489	0.9575
100060	01/01/91	12/31/91	1.7888	0.9992
100061	09/01/90	08/31/91	1.4929	0.9978
100062	10/01/90	09/30/91	1.6836	0.9988
100063	01/01/91	12/31/91	1.2967	0.9850
100065	10/01/90	09/30/91	1.2930	0.9986
100069	01/01/91	12/31/91	1.3789	0.9927
100071	10/01/90	09/30/91	1.3921	0.9868
100072	10/01/90	09/30/91	1.1723	0.9835

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
100074	10/01/90	09/30/91	1.2318	0.9903
100077	09/01/90	08/31/91	1.3139	0.9849
100078	10/01/90	09/30/91	1.1488	0.9824
100080	10/01/90	09/30/91	1.5859	0.9990
100081	10/01/90	09/30/91	1.0962	0.9802
100082	10/01/90	09/30/91	1.3658	0.9971
100085	01/01/91	12/31/91	1.3618	0.9905
100087	10/01/90	09/30/91	1.7277	0.9991
100088	10/01/90	09/30/91	1.5083	0.9979
100089	01/01/91	12/31/91	1.2736	0.9863
100090	10/01/90	09/30/91	1.2997	0.9846
100092	10/01/90	09/30/91	1.3270	0.9975
100093	10/01/90	09/30/91	1.5352	0.9938
100098	10/01/90	09/30/91	1.0270	0.9841
100099	10/01/90	09/30/91	1.2802	0.9500
100100	01/01/91	12/31/91	1.2708	0.9970
100102	10/01/90	09/30/91	1.2016	0.9732
100103	10/01/90	09/30/91	1.0130	0.9657
100105	10/01/90	09/30/91	1.3795	0.9860
100107	09/01/90	08/31/91	1.2546	0.9865
100108	10/01/90	09/30/91	1.0990	0.9794
100109	01/01/91	12/31/91	1.2573	0.9724
100110	09/01/90	08/31/91	1.3800	0.9909
100112	10/01/89	07/24/91	0.9678	0.9561
100117	10/01/90	09/30/91	1.2988	0.9701
100118	11/01/90	10/31/91	1.1560	0.9889
100121	10/01/90	09/30/91	1.1162	0.9613
100124	11/01/90	10/31/91	1.2825	0.9760
100127	10/01/90	09/30/91	1.5842	0.9989
100128	10/01/90	09/30/91	2.2783	0.9962
100129	12/01/89	09/10/91	1.4226	0.9884
100130	10/01/90	09/30/91	1.1908	0.9871
100131	09/01/90	08/31/91	1.2109	0.9917
100132	01/01/91	12/31/91	1.3270	0.9730
100134	10/01/90	09/30/91	0.9827	0.9355
100135	10/01/90	09/30/91	1.5133	0.9989
100137	10/01/90	09/30/91	1.1369	0.9656
100138	10/01/90	09/30/91	0.9754	0.9810
100139	10/01/90	09/30/91	1.0578	0.9640
100140	10/01/90	09/30/91	1.1144	0.9697
100142	10/01/90	09/30/91	1.1523	0.9763
100143	01/01/91	12/31/91	1.2722	0.9903
100144	10/01/90	09/30/91	1.2340	0.9905
100146	10/01/90	09/30/91	1.0764	0.9684
100147	10/01/90	09/30/91	1.0828	0.9763
100151	01/01/91	12/31/91	1.7245	0.9996
100154	10/01/90	09/30/91	1.6110	0.9983
100156	11/01/90	10/31/91	1.0674	0.9707
100157	10/01/90	09/30/91	1.4942	0.9993
100159	10/01/90	09/30/91	1.0490	0.9612
100162	10/01/90	09/30/91	1.2998	0.9901
100164	10/01/90	09/30/91	0.9793	1.0000
100165	01/01/91	12/31/91	1.1044	0.9920
100169	11/01/90	10/31/91	1.8109	0.9990
100170	10/01/90	09/30/91	1.4183	0.9949
100173	10/01/90	09/30/91	1.5686	0.9995
100174	10/01/90	09/30/91	1.3610	0.9950
100175	10/01/90	09/30/91	1.0950	0.9713
100176	10/01/90	09/30/91	1.9619	0.9958
100177	10/01/90	09/30/91	1.3381	0.9913
100180	09/01/90	08/31/91	1.4088	0.9956
100181	12/01/90	11/30/91	1.2629	0.9975
100183	01/01/91	12/31/91	1.3537	0.9988
100185	10/01/90	09/30/91	1.2176	0.9024
100186	12/18/90	12/31/91	1.3317	0.9875
100187	01/01/91	12/31/91	1.3433	0.9917
100189	01/01/91	12/31/91	1.3387	0.9844
100194	09/01/90	10/14/91	1.2668	0.9962
100196	09/01/90	08/31/91	1.2388	0.9924
100199	09/01/90	08/31/91	1.1906	0.9963
100203	09/01/90	09/29/91	1.1278	0.9973
100206	12/01/90	11/30/91	1.3591	0.9908
100208	01/01/91	12/31/91	1.4739	0.9929
100209	06/01/90	12/31/91	1.5331	0.9987
100210	01/01/91	12/31/91	1.7034	0.9979
100211	09/01/90	08/31/91	1.2691	0.9863
100212	09/01/90	08/31/91	1.6306	0.9981

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
100217	09/01/90	08/31/91	1.1724	0.9780
100219	09/01/90	10/31/91	1.3843	0.9864
100220	01/01/91	12/31/91	1.7197	0.9995
100221	09/01/90	08/31/91	1.5163	0.9978
100222	01/01/90	11/04/91	1.2342	0.9889
100223	09/01/90	08/31/91	1.4171	0.9857
100224	01/01/91	12/31/91	1.3665	0.9836
100226	09/01/90	08/31/91	1.3133	0.9921
100227	09/01/90	08/31/91	0.9756	0.9881
100228	09/01/90	08/31/91	1.2731	0.9866
100229	09/01/90	08/31/91	1.4623	0.9890
100232	10/01/90	09/30/91	1.3071	0.9853
100234	09/01/90	08/31/91	1.3369	0.9909
100235	09/01/90	09/29/91	1.3401	0.9922
100237	10/01/90	09/30/91	2.0922	0.9990
100238	09/01/90	08/31/91	1.4011	0.9924
100241	10/01/90	09/30/91	0.9984	0.9707
100243	09/01/90	08/31/91	1.3848	0.9876
100246	01/01/91	12/31/91	1.3591	0.9943
100246	08/01/90	07/31/91	1.6899	0.9990
100253	10/01/90	09/30/91	1.3647	0.9817
100255	01/01/91	12/31/91	1.3552	0.9861
100259	09/01/90	08/31/91	1.4203	0.9706
100260	10/01/90	09/30/91	1.4024	0.9889
100262	10/01/90	09/30/91	1.3347	0.9912
100263	09/01/90	08/31/91	1.4559	0.9837
100265	10/01/90	09/30/91	1.2841	0.9858
100266	10/01/90	09/30/91	1.3137	0.9866
100267	01/01/91	12/31/91	1.2673	0.9839
100269	09/01/90	08/31/91	1.4127	0.9808
100273	09/01/90	08/31/91	1.1329	0.9769
100275	01/01/91	12/31/91	1.2911	0.9940
100278	10/01/90	09/30/91	0.6872	0.9294
110001	10/01/90	09/30/91	1.1509	0.9885
110002	01/01/91	12/31/91	1.1993	0.9810
110004	10/01/90	09/30/91	1.2328	0.9927
110005	01/01/91	12/31/91	1.3594	0.9566
110006	10/01/90	09/30/91	1.2862	0.9950
110007	08/01/90	08/31/91	1.3723	0.9975
110009	11/01/90	10/31/91	1.0799	0.9640
110010	09/01/90	08/31/91	1.9547	0.9982
110013	10/01/90	09/30/91	1.0005	0.9558
110014	08/01/90	07/31/91	1.0605	0.9728
110016	09/30/90	09/28/91	1.2461	0.9899
110018	01/01/91	12/31/91	1.1748	0.9568
110020	09/01/90	08/31/91	1.1551	0.9859
110023	01/01/91	12/31/91	1.2044	0.9538
110024	01/01/91	12/31/91	1.3827	0.9912
110025	10/01/90	09/30/91	1.2773	0.9875
110028	12/31/90	12/29/91	1.5625	0.9982
110029	10/01/90	09/30/91	1.3032	0.9906
110032	10/01/90	09/30/91	1.1204	0.9679
110033	08/01/90	07/31/91	1.3284	0.9889
110036	01/01/91	12/31/91	1.6297	0.9975
110037	01/01/91	12/31/91	1.0605	0.9816
110038	10/01/90	09/30/91	1.3245	0.9968
110044	10/01/90	09/30/91	1.1271	0.9706
110045	08/01/90	07/31/91	1.0130	0.9627
110046	11/01/90	10/31/91	1.1848	0.9710
110048	10/01/90	09/30/91	1.1293	0.9692
110049	10/01/90	09/30/91	1.0818	0.9618
110050	01/01/91	12/31/91	1.1083	0.9696
110059	10/01/90	09/30/91	1.3396	0.9660
110061	10/01/90	09/30/91	0.9793	0.9644
110063	12/01/90	11/30/91	1.0270	0.9716
110065	01/01/91	12/31/91	0.9794	0.9675
110070	11/01/90	10/31/91	0.9581	0.9335
110072	01/01/91	12/31/91	0.9904	0.9709
110073	08/01/90	07/31/91	1.2631	0.9611
110074	10/01/90	09/30/91	1.2570	0.9864
110075	10/01/90	09/30/91	1.2160	0.9822
110076	10/01/90	09/30/91	1.3581	0.9880
110078	09/01/90	08/31/91	1.5963	0.9979
110079	01/01/91	12/31/91	1.3224	0.9974
110080	10/01/90	09/30/91	1.0552	0.9945
110082	01/01/91	12/31/91	2.0553	0.9983
110083	01/01/91	12/31/91	1.5286	0.9991

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
110085	01/01/91	12/31/91	1.1694	0.9610
110086	09/01/90	08/31/91	1.0824	0.9691
110087	09/01/90	08/31/91	1.2606	0.9852
110088	01/01/91	12/31/91	0.8980	0.9302
110089	01/01/91	12/31/91	1.1196	0.9629
110091	10/01/90	09/30/91	1.2791	0.9731
110092	10/01/90	09/30/91	1.0652	0.9703
110095	10/01/90	09/30/91	1.3301	0.9757
110096	01/01/91	12/31/91	1.1422	0.9710
110097	01/01/91	12/31/91	1.0895	0.9714
110100	01/01/91	12/31/91	1.1062	0.9777
110105	10/01/90	09/30/91	1.1849	0.9824
110107	10/01/90	09/30/91	1.6085	0.9979
110111	10/01/90	09/30/91	1.1403	0.9872
110112	09/01/90	08/31/91	0.9201	0.9742
110114	10/01/90	09/30/91	1.1536	0.9706
110115	01/01/91	12/31/91	1.6217	0.9983
110118	10/01/90	09/30/91	1.0071	0.9467
110120	10/01/90	09/30/91	1.0366	0.9319
110121	10/01/90	09/30/91	1.1158	0.9747
110122	10/01/90	09/30/91	1.3221	0.9856
110123	10/01/90	09/30/91	0.8699	1.0000
110129	01/01/91	12/31/91	1.5724	0.9975
110130	12/01/90	11/30/91	0.9954	0.9630
110133	07/01/90	09/01/91	0.8836	0.9309
110140	08/01/90	12/31/91	0.8778	0.9621
110142	10/01/90	09/30/91	1.1108	0.9577
110144	10/01/90	09/30/91	1.2363	0.9642
110146	01/01/91	12/31/91	0.9191	0.9587
110149	07/01/90	10/31/91	1.1052	0.9749
110150	10/01/90	09/30/91	1.2278	0.9785
110161	10/01/90	10/31/91	1.2651	0.9897
110165	11/01/89	07/31/91	1.1638	0.9891
110166	10/01/90	09/30/91	1.3456	0.9867
110171	11/01/90	10/31/91	1.3287	0.9919
110172	10/01/90	09/30/91	1.1532	0.9881
110177	09/01/90	08/31/91	1.3965	0.9978
110179	01/01/91	12/31/91	1.2188	0.9766
110187	01/01/91	12/31/91	1.1241	0.9320
110189	01/01/91	12/31/91	1.1022	0.9613
110190	01/01/91	12/31/91	1.1202	0.9606
110192	09/01/90	08/31/91	1.3426	0.9877
110193	01/01/91	12/31/91	1.2226	0.9806
110195	10/01/90	09/30/91	1.0969	0.9744
110198	11/01/90	10/31/91	1.3260	0.9857
110200	10/01/90	09/30/91	1.7387	0.9962
110201	09/01/90	08/31/91	1.2647	0.9946
110203	10/01/90	09/30/91	1.0427	0.9762
120006	01/01/91	12/31/91	1.2132	0.9956
120011	01/01/91	12/31/91	1.2199	0.9946
120022	01/01/91	12/31/91	1.4828	0.9987
130001	12/01/90	11/30/91	1.0871	0.9691
130002	10/01/90	09/30/91	1.3148	0.9868
130005	01/01/91	12/31/91	1.3644	0.9920
130006	10/01/90	09/30/91	1.6766	0.9983
130009	10/01/90	09/30/91	0.9889	0.9438
130010	10/01/90	09/30/91	0.9302	0.9614
130011	01/01/91	12/31/91	1.3006	0.9801
130012	10/01/90	09/30/91	1.0122	0.9455
130014	10/01/90	09/30/91	1.2587	0.9800
130015	10/01/90	09/30/91	0.9981	0.9735
130018	10/01/90	09/30/91	1.5621	0.9993
130019	01/01/91	12/31/91	1.1630	0.9482
130021	12/01/90	11/30/91	0.9053	0.9299
130024	09/01/90	08/31/91	1.1126	0.9586
130025	10/01/90	09/30/91	1.0680	0.9806
130026	01/01/91	12/31/91	1.1236	0.9718
130027	10/01/90	09/30/91	0.8584	0.9564
130028	10/01/90	09/30/91	1.2874	0.9949
130030	10/01/90	09/30/91	0.9618	0.9785
130031	10/01/90	09/30/91	0.9623	0.9558
130034	10/01/90	09/30/91	0.9073	0.9614
130036	01/01/91	12/31/91	1.2010	0.9727
130037	10/01/90	09/30/91	1.4009	0.9633
130039	10/01/90	09/30/91	1.1602	0.9804
130040	10/01/90	09/30/91	1.0492	0.9931
130043	10/01/90	09/30/91	0.9815	0.9717

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
130044	10/01/90	09/30/91	0.9094	0.9480
130045	10/01/90	09/30/91	0.9224	0.9731
130049	12/01/90	11/30/91	1.1969	0.9861
130051	12/01/90	12/31/91	0.9918	0.9837
130054	10/01/90	09/30/91	0.9194	0.9712
130056	10/01/90	09/30/91	0.9862	0.9825
130058	10/01/89	08/31/91	0.9495	1.0000
140002	01/01/91	12/31/91	1.2404	0.9680
140004	10/01/90	09/30/91	0.9856	0.9624
140007	09/01/90	08/31/91	1.2563	0.9920
140008	01/01/91	12/31/91	1.4098	0.9956
140010	10/01/90	09/30/91	1.3500	0.9970
140012	01/01/91	12/31/91	1.2324	0.9868
140013	01/01/91	12/31/91	1.4145	0.9906
140015	10/01/90	09/30/91	1.2324	0.9913
140019	09/01/90	08/31/91	0.9152	0.9706
140029	01/01/91	12/31/91	1.3470	0.9933
140031	01/01/91	12/31/91	1.0586	0.9781
140033	09/01/90	08/31/91	1.2003	0.9921
140034	01/01/91	12/31/91	1.1101	0.9823
140036	10/01/90	09/30/91	1.1245	0.9848
140039	01/01/91	12/31/91	1.0066	0.9561
140046	01/01/91	12/31/91	1.2066	0.9696
140048	01/01/91	12/31/91	1.2186	0.9954
140049	11/01/90	10/31/91	1.3549	0.9974
140051	10/01/90	09/30/91	1.2992	0.9916
140052	01/01/91	12/31/91	1.1951	0.9856
140054	09/30/90	09/28/91	1.3516	0.9892
140058	10/01/90	09/30/91	1.0895	0.9861
140062	01/01/91	12/31/91	1.2520	0.9899
140063	01/01/91	12/31/91	1.3347	0.9948
140064	10/01/90	09/30/91	1.1583	0.9842
140065	01/01/91	12/31/91	1.3743	0.9960
140066	01/01/91	12/31/91	1.1913	0.9889
140067	10/01/90	09/30/91	1.7011	0.9989
140072	07/01/90	08/23/91	1.1304	0.9896
140074	10/01/90	09/30/91	1.1381	0.9369
140075	07/01/90	08/31/91	1.3840	0.9964
140079	01/01/91	12/31/91	1.2521	0.9926
140080	01/01/91	12/31/91	1.8474	0.9959
140084	01/01/91	12/31/91	1.1909	0.9910
140087	01/01/91	12/31/91	1.3704	0.9911
140090	01/01/91	12/31/91	1.3693	0.9978
140093	09/01/90	08/31/91	1.2451	0.9840
140094	01/01/91	12/31/91	1.2807	0.9888
140095	09/01/90	08/31/91	1.2502	0.9853
140097	01/01/91	12/31/91	0.8783	0.9668
140098	01/01/91	12/31/91	1.4170	0.9917
140101	12/01/90	11/30/91	1.0545	0.9762
140103	01/01/91	12/31/91	1.3556	0.9948
140105	01/01/91	12/31/91	1.2889	0.9843
140107	01/01/91	12/31/91	0.9248	0.9833
140108	01/01/91	12/31/91	1.1708	0.9890
140112	10/01/90	09/30/91	1.0460	0.9848
140113	01/01/91	12/31/91	1.4039	0.9979
140118	01/01/91	12/31/91	1.4717	0.9979
140122	01/01/91	12/31/91	1.3930	0.9942
140123	01/01/91	12/31/91	1.1980	0.9957
140124	12/03/90	12/01/91	1.1377	0.9985
140125	01/01/91	12/31/91	1.2510	0.9885
140126	10/01/90	09/30/91	1.1318	0.9591
140129	01/01/91	12/31/91	1.0440	0.9785
140130	01/01/91	12/31/91	1.1376	0.9951
140132	10/01/90	09/30/91	1.5682	0.9987
140135	10/01/90	09/30/91	1.2017	0.9897
140137	01/01/91	12/31/91	1.0057	0.9489
140139	10/01/90	09/30/91	1.0677	0.9590
140141	08/01/90	07/31/91	0.9738	0.9703
140143	10/01/90	09/30/91	1.0546	0.9783
140147	12/01/90	11/30/91	1.1928	0.9837
140148	10/01/90	09/30/91	1.5307	0.9986
140152	01/01/91	12/31/91	1.0219	0.9981
140154	09/01/90	08/31/91	1.2571	0.9877
140155	01/01/91	12/31/91	1.1878	0.9899
140160	08/01/90	07/31/91	1.1532	0.9854
140161	10/01/90	09/30/91	1.1287	0.9818
140162	10/01/90	09/30/91	1.4834	0.9886

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
140167	10/01/90	09/30/91	1.0723	0.9817
140176	10/01/90	09/30/91	1.2124	0.9838
140180	01/01/91	12/31/91	1.4230	0.9972
140181	01/01/91	12/31/91	1.2838	0.9941
140182	11/01/90	10/31/91	1.3137	0.9954
140185	01/01/91	12/31/91	1.3918	0.9889
140186	01/01/91	12/31/91	1.2096	0.9859
140188	09/01/90	08/31/91	0.9522	0.9316
140191	01/01/91	12/31/91	1.4306	0.9959
140192	10/01/90	09/30/91	1.1449	0.9906
140197	10/01/90	09/30/91	1.2887	0.9961
140202	01/01/91	12/31/91	1.2302	0.9905
140203	10/01/90	09/30/91	1.1259	0.9641
140206	10/01/90	09/30/91	1.0900	0.9962
140207	01/01/91	12/31/91	1.2960	0.9959
140208	01/01/91	12/31/91	1.4567	0.9979
140209	01/01/91	12/31/91	1.5995	0.9977
140211	09/01/90	08/31/91	1.1438	0.9893
140212	01/01/91	12/31/91	1.2629	0.9960
140217	09/01/90	08/31/91	1.2150	0.9931
140220	10/01/90	09/30/91	1.1310	0.9689
140226	10/01/90	09/30/91	0.9399	0.9837
140233	10/01/90	09/30/91	1.6558	0.9956
140236	10/01/90	09/30/91	0.9842	0.9918
140240	01/01/91	12/31/91	1.3118	0.9930
140252	11/01/90	10/31/91	1.2851	0.9879
140253	10/01/90	09/30/91	1.2956	0.9990
140258	01/01/91	12/31/91	1.4248	0.9925
140271	01/01/91	12/31/91	1.0489	0.9585
140281	09/01/90	08/31/91	1.5165	0.9984
140285	01/01/91	12/31/91	1.2715	0.9956
140288	01/01/91	12/31/91	1.5491	0.9970
140289	01/01/91	12/31/91	1.2683	0.9848
140290	09/01/90	08/31/91	1.3822	0.9926
140291	01/01/91	12/31/91	1.2727	0.9902
140292	01/01/91	12/31/91	1.1977	0.9719
140294	01/01/91	12/31/91	1.0800	0.9648
150001	01/01/91	12/31/91	1.0653	0.9794
150002	01/01/91	12/31/91	1.3296	0.9956
150003	01/01/91	12/31/91	1.6028	0.9957
150004	01/01/91	12/31/91	1.3222	0.9977
150005	01/01/91	12/31/91	1.2193	0.9802
150006	01/01/91	12/31/91	1.1986	0.9834
150007	01/01/91	12/31/91	1.1959	0.9828
150008	01/01/91	12/31/91	1.3371	0.9979
150009	01/01/91	12/31/91	1.2999	0.9940
150010	01/01/91	12/31/91	1.1878	0.9875
150013	01/01/91	12/31/91	1.2320	0.9744
150014	07/01/90	08/31/91	1.3260	0.9910
150015	01/01/91	12/31/91	1.2376	0.9932
150017	01/01/91	12/31/91	1.6696	0.9996
150018	01/01/91	12/31/91	1.2651	0.9839
150020	10/01/90	09/30/91	1.1241	0.9952
150021	01/01/91	12/31/91	1.6160	0.9984
150022	01/01/91	12/31/91	1.1214	0.9796
150023	09/01/90	08/31/91	1.3740	0.9969
150024	01/01/91	12/31/91	1.1993	0.9927
150026	01/01/91	12/31/91	1.1750	0.9818
150027	01/01/91	12/31/91	1.0046	0.9620
150029	01/01/91	12/31/91	1.2490	0.9868
150030	01/01/91	12/31/91	1.1425	0.9859
150031	10/01/90	09/30/91	1.0721	0.9690
150033	01/01/91	12/31/91	1.5659	0.9983
150034	01/01/91	12/31/91	1.3172	0.9971
150035	01/01/91	12/31/91	1.4009	0.9975
150036	01/01/91	12/31/91	1.0322	0.9822
150037	01/01/91	12/31/91	1.2001	0.9815
150038	01/01/91	12/31/91	1.2252	0.9749
150039	10/01/90	09/30/91	0.9885	0.9598
150042	01/01/91	12/31/91	1.1896	0.9912
150044	01/01/91	12/31/91	1.2335	0.9914
150045	10/01/90	09/30/91	1.1584	0.9788
150046	05/01/90	08/31/91	1.4191	0.9968
150047	01/01/91	12/31/91	1.6844	0.9996
150048	01/01/91	12/31/91	1.1919	0.9864
150049	01/01/91	12/31/91	1.1042	0.9861
150050	01/01/91	12/31/91	1.1569	0.9817

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
150051	10/01/90	09/30/91	1.2461	0.9911
150052	01/01/91	12/31/91	1.0397	0.9607
150053	01/01/91	12/31/91	1.0269	0.9726
150054	01/01/91	12/31/91	1.0263	0.9807
150057	01/01/91	12/31/91	2.1621	0.9675
150058	01/01/91	12/31/91	1.5511	0.9973
150059	01/01/91	12/31/91	1.2267	0.9844
150060	01/01/91	12/31/91	1.1650	0.9672
150061	01/01/91	12/31/91	1.1894	0.9871
150062	01/01/91	12/31/91	1.0766	0.9746
150063	01/01/91	12/31/91	1.1477	0.9765
150064	10/01/90	09/30/91	1.0560	0.9737
150065	01/01/91	12/31/91	1.1029	0.9774
150066	01/01/91	12/31/91	1.1404	0.9719
150067	01/01/91	12/31/91	1.1103	0.9617
150069	01/01/91	12/31/91	1.2483	0.9783
150070	01/01/91	12/31/91	1.0849	0.9342
150071	01/01/91	12/31/91	1.1399	0.9543
150072	01/01/91	12/31/91	1.2786	0.9815
150073	01/01/91	12/31/91	1.0474	0.9649
150074	10/01/90	09/30/91	1.4864	0.9996
150075	10/01/90	09/30/91	1.2383	0.9917
150078	01/01/91	12/31/91	1.0664	0.9879
150079	10/01/90	09/30/91	1.1550	0.9815
150086	01/01/91	12/31/91	1.2567	0.9810
150090	07/01/90	12/31/91	1.2784	0.9864
150091	01/01/91	12/31/91	1.1941	0.9563
150092	01/01/91	12/31/91	1.1163	0.9291
150094	01/01/91	12/31/91	1.0335	0.9701
150095	10/01/90	09/30/91	1.1065	0.9702
150096	01/01/91	12/31/91	1.0522	0.9538
150097	01/01/91	12/31/91	1.0378	0.9702
150098	01/01/91	12/31/91	1.0456	0.9411
150101	01/01/91	12/31/91	1.0838	0.9534
150102	01/01/91	12/31/91	1.0877	0.9638
150104	01/01/91	12/31/91	1.1697	0.9670
150105	01/01/91	12/31/91	1.1936	0.9764
150106	01/01/91	12/31/91	1.0776	0.9536
150109	01/01/91	12/31/91	1.2844	0.9951
150111	01/01/91	12/31/91	1.0875	0.9678
150112	01/01/91	12/31/91	1.1913	0.9871
150113	01/01/91	12/31/91	1.2430	0.9813
150114	01/01/91	12/31/91	1.0742	0.9455
150122	01/01/91	12/31/91	1.0842	0.9371
150123	08/01/90	07/31/91	0.9589	0.9854
150124	10/01/90	09/30/91	1.1830	0.9802
150127	10/01/90	09/30/91	1.1323	0.9363
150128	10/01/90	09/30/91	1.1876	0.9963
150129	09/01/90	08/31/91	1.2691	0.9878
150132	01/01/91	12/31/91	1.3798	0.9980
150133	01/01/91	12/31/91	1.2262	0.9709
150134	09/01/90	08/31/91	1.1485	0.9813
150136	09/01/90	08/31/91	1.0882	1.0000
160001	11/01/90	10/31/91	1.1504	0.9785
160002	10/01/90	09/30/91	1.2315	0.9698
160003	01/01/91	12/31/91	1.0415	0.9751
160008	10/01/90	09/30/91	1.0831	0.9758
160024	01/01/91	12/31/91	1.4475	0.9984
160044	01/01/91	12/31/91	1.2670	0.9649
160045	09/01/90	08/31/91	1.6143	0.9963
160047	10/01/90	09/30/91	1.4141	0.9910
160051	10/01/90	09/30/91	1.3118	0.9486
160071	01/01/91	12/31/91	1.1043	0.9527
160072	01/01/91	12/31/91	1.0534	0.9752
160082	08/01/90	07/31/91	1.6609	0.9980
160092	01/01/91	12/31/91	0.9405	0.9546
160099	10/01/90	09/30/91	1.1015	0.9657
160104	12/01/90	11/30/91	1.1248	0.9881
160110	01/01/91	12/31/91	1.5254	0.9952
160111	09/01/90	08/31/91	1.1404	0.9713
160119	07/01/90	09/30/91	0.8411	0.9534
160122	10/01/90	09/30/91	1.2221	0.9619
160129	01/01/91	12/31/91	1.1463	0.9625
160130	10/01/90	09/30/91	1.2440	0.9905
160131	01/01/91	12/31/91	1.1389	0.9879
160133	01/01/91	12/31/91	1.2545	0.9634
160138	01/01/91	12/31/91	1.2621	0.9668

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
160147	01/01/91	12/31/91	1.1959	0.9747
170001	01/01/91	12/31/91	1.1871	0.9801
170004	01/01/91	12/31/91	1.0666	0.9702
170006	10/01/90	09/30/91	1.2445	0.9904
170008	09/01/90	08/31/91	0.9737	0.9690
170012	10/01/90	09/30/91	1.4313	0.9815
170014	01/01/91	12/31/91	1.0799	0.9543
170017	01/01/91	12/31/91	1.1914	0.9781
170018	01/01/91	12/31/91	1.0790	0.9614
170019	01/01/91	12/31/91	1.1816	0.9778
170021	01/01/90	08/31/91	0.9124	0.9767
170022	10/01/90	09/30/91	1.1870	0.9699
170023	01/01/91	12/31/91	1.3268	0.9880
170024	10/01/90	09/30/91	1.1094	0.9948
170026	10/01/90	09/30/91	0.9680	0.9790
170027	10/01/90	09/30/91	1.1657	0.9621
170030	01/01/91	12/31/91	0.9619	0.9198
170031	01/01/91	12/31/91	0.8845	0.9873
170032	10/01/90	09/30/91	1.0483	0.9672
170033	01/01/91	12/31/91	1.2181	0.9753
170034	01/01/91	12/31/91	0.9467	0.9886
170035	10/01/90	09/30/91	0.8666	0.8963
170036	01/01/91	12/31/91	0.9163	0.9737
170038	01/01/91	12/31/91	1.0021	0.9573
170039	01/01/91	12/31/91	1.0813	0.9645
170041	01/01/91	12/31/91	1.0285	0.9599
170043	01/01/91	12/31/91	1.0836	0.9541
170049	01/01/91	12/31/91	1.2901	0.9865
170050	01/01/91	12/31/91	1.0298	0.9253
170054	01/01/91	12/31/91	1.0964	0.9768
170055	01/01/91	12/31/91	1.0824	0.9788
170060	01/01/91	12/31/91	1.0253	0.9784
170062	10/01/90	09/30/91	0.8355	0.9748
170063	01/01/91	12/31/91	0.9246	0.9233
170064	01/01/91	12/31/91	1.2035	0.9613
170066	01/01/91	12/31/91	0.9297	0.9297
170068	01/01/91	12/31/91	1.2806	0.9775
170070	01/01/91	12/31/91	1.0607	0.9643
170073	01/01/91	12/31/91	1.1376	0.9694
170075	10/01/90	09/30/91	0.8523	0.9754
170076	01/01/91	12/31/91	1.0856	0.9964
170077	01/01/91	12/31/91	0.9483	0.9633
170079	01/01/91	12/31/91	0.9515	0.9101
170080	01/01/91	12/31/91	0.9663	0.9673
170081	01/01/91	12/31/91	1.1453	0.9790
170082	01/01/91	12/31/91	0.9336	0.9815
170086	10/01/90	09/30/91	1.6362	0.9989
170087	10/01/90	09/30/91	1.3417	0.9985
170088	01/01/91	12/31/91	0.9132	0.9387
170090	01/01/91	12/31/91	0.9873	0.9473
170092	01/01/91	12/31/91	0.8454	0.9291
170094	01/01/91	12/31/91	1.0792	0.9475
170097	01/01/91	12/31/91	0.9314	0.9595
170098	01/01/91	12/31/91	1.0584	0.9855
170099	01/01/91	12/31/91	1.3736	1.0000
170101	10/01/90	09/30/91	0.9966	0.9746
170102	01/01/91	12/31/91	0.9843	0.9478
170104	01/01/91	12/31/91	1.4312	0.9972
170106	09/01/90	08/31/91	0.8840	0.9261
170108	01/01/91	12/31/91	0.9255	0.9134
170109	01/01/91	12/31/91	1.0164	0.9400
170110	01/01/91	12/31/91	0.9366	0.9712
170112	01/01/91	12/31/91	0.9089	0.9810
170113	01/01/91	12/31/91	1.0569	0.9695
170114	01/01/91	12/31/91	1.0517	0.9601
170116	01/01/91	12/31/91	1.1438	0.9398
170117	01/01/91	12/31/91	0.9797	0.9836
170119	01/01/91	12/31/91	0.9921	0.9422
170120	01/01/91	12/31/91	1.2404	0.9663
170121	01/01/91	12/31/91	0.7783	0.9407
170122	10/01/90	09/30/91	1.7991	0.9962
170123	01/01/91	12/31/91	1.6703	0.9978
170124	01/01/91	12/31/91	0.9567	0.9512
170126	10/01/90	09/30/91	0.9325	0.9729
170128	01/01/91	12/31/91	0.9678	0.9153
170131	01/01/91	12/31/91	1.1317	0.9660
170134	01/01/91	12/31/91	0.9780	0.9807

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
170137	01/01/91	12/31/91	1.1353	0.9796
170139	01/01/91	12/31/91	1.0304	0.9662
170143	01/01/91	12/31/91	1.1006	0.9487
170144	10/01/90	09/30/91	1.4929	0.9929
170145	01/01/91	12/31/91	1.1522	0.9898
170146	01/01/91	12/31/91	1.2837	0.9966
170147	10/01/90	09/30/91	1.2052	0.9801
170148	10/01/90	09/30/91	1.3403	0.9973
170150	01/01/91	12/31/91	1.1231	0.9535
170151	01/01/91	12/31/91	1.0189	0.9438
170152	01/01/91	12/31/91	0.9367	0.9567
170160	01/01/91	12/31/91	0.9708	0.9535
170164	01/01/91	12/31/91	1.0513	0.9765
170166	01/01/91	12/31/91	0.9869	0.9879
170168	01/01/91	12/31/91	0.9263	0.9585
170170	01/01/90	10/31/91	0.9068	0.9624
170173	01/01/90	10/25/91	0.8782	0.8674
170174	01/01/91	12/31/91	0.9475	0.9086
170175	09/01/90	08/31/91	1.2204	0.9777
170178	09/01/90	08/31/91	1.4214	0.9966
180001	01/01/91	12/31/91	1.1806	0.9856
180004	10/01/90	09/30/91	1.1858	0.9737
180009	10/01/90	09/30/91	1.1718	0.9960
180010	09/01/90	08/31/91	1.7046	0.9995
180011	09/01/90	08/31/91	1.1240	0.9744
180014	09/01/90	08/31/91	1.5630	0.9993
180015	01/01/91	12/31/91	1.1145	0.9921
180016	01/01/91	12/31/91	1.2556	0.9785
180017	10/01/90	09/30/91	1.2195	0.9927
180019	12/01/90	11/30/91	1.1725	0.9766
180023	10/01/90	09/30/91	0.8333	0.9770
180025	09/01/90	08/31/91	1.1348	0.9718
180026	01/01/91	12/31/91	1.1060	0.9641
180030	10/01/90	09/30/91	1.1471	0.9837
180031	10/01/90	09/30/91	1.0060	0.9930
180035	01/01/91	12/31/91	1.4445	0.9990
180036	01/01/91	12/31/91	1.1007	0.9907
180037	09/01/90	08/31/91	1.2798	0.9918
180040	01/01/91	12/31/91	1.9836	0.9993
180041	10/01/90	09/30/91	1.0810	0.9650
180043	10/01/90	09/30/91	1.0062	0.9469
180044	10/01/90	09/30/91	1.0789	0.9811
180045	01/01/91	12/31/91	1.1768	0.9918
180048	10/01/90	09/30/91	1.2056	0.9829
180051	12/01/90	11/30/91	1.2023	0.9864
180058	01/01/91	12/31/91	0.8913	0.9411
180059	01/01/91	12/31/91	0.9118	0.9514
180060	01/01/91	12/31/91	0.8573	1.0000
180062	07/01/90	09/04/91	0.8121	0.9458
180063	10/01/90	09/30/91	1.0327	0.9833
180064	10/01/90	09/30/91	1.0597	0.9753
180066	11/01/90	10/31/91	1.1757	0.9559
180072	10/01/90	09/30/91	1.0925	0.9667
180078	10/01/90	09/30/91	1.0086	0.9848
180079	10/01/90	09/30/91	1.0186	0.9828
180080	09/01/90	08/31/91	1.1375	0.9782
180081	01/01/91	12/31/91	1.4039	0.9960
180085	01/01/91	12/31/91	1.3268	0.9945
180088	01/01/91	12/31/91	1.6584	0.9996
180094	01/01/91	12/31/91	1.0093	0.9713
180095	10/01/90	09/30/91	0.9768	0.9753
180099	10/01/90	09/30/91	0.9662	0.9675
180102	01/01/91	12/31/91	1.4136	0.9967
180103	09/01/90	08/31/91	1.7691	0.9976
180104	09/01/90	08/31/91	1.4002	0.9990
180106	09/01/90	08/31/91	0.8949	0.9598
180115	11/01/90	10/31/91	0.9694	0.9642
180118	09/01/90	08/31/91	1.2810	0.9827
180120	01/01/91	12/31/91	0.8883	0.9658
180121	01/01/91	12/31/91	1.0603	0.9605
180123	09/01/90	08/31/91	1.4452	0.9957
180124	10/01/90	09/30/91	1.3297	0.9958
180126	11/01/90	10/31/91	1.0408	0.9512
180127	08/01/90	07/31/91	1.1495	0.9720
180128	09/01/90	08/31/91	1.1173	0.9816
180130	09/01/90	08/31/91	1.3783	0.9961
180132	09/01/90	08/31/91	1.3109	0.9844

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
180133	09/01/90	08/31/91	1.2193	0.9888
180136	09/01/90	08/31/91	1.2780	0.9906
180137	09/01/90	08/31/91	1.7639	0.9963
180138	01/01/91	12/31/91	1.2505	0.9877
190002	10/01/90	09/30/91	1.5780	0.9983
190003	09/01/90	08/31/91	1.3715	0.9770
190004	10/01/90	09/30/91	1.1510	0.9802
190013	01/01/91	12/31/91	1.1919	0.9812
190018	10/01/90	09/30/91	1.1615	0.9779
190025	10/01/90	09/30/91	1.2542	0.9922
190026	10/01/90	09/30/91	1.3170	0.9978
190034	01/01/91	12/31/91	1.2138	0.9826
190039	01/01/91	12/31/91	1.4427	0.9989
190040	10/01/90	09/30/91	1.3627	0.9963
190043	01/01/91	12/31/91	1.0782	0.9816
190044	10/01/90	09/30/91	1.0913	0.9808
190046	01/01/91	12/31/91	1.3967	0.9984
190049	01/01/91	12/31/91	0.9612	0.9649
190050	11/01/90	10/31/91	1.0344	0.9706
190053	12/01/90	11/30/91	1.0248	0.9590
190054	07/01/90	09/30/91	1.3816	0.9809
190059	11/01/90	10/31/91	0.9408	0.9692
190060	01/01/91	12/31/91	1.2396	0.9934
190064	01/01/91	12/31/91	1.4544	0.9991
190065	10/01/90	09/30/91	1.4556	0.9981
190077	01/01/91	12/31/91	0.9049	0.9641
190078	01/01/91	12/31/91	1.1399	0.9769
190083	10/01/90	09/30/91	0.8837	0.9647
190088	09/01/90	08/31/91	1.3234	0.9780
190089	10/01/90	09/30/91	1.0606	0.9754
190090	09/01/90	08/31/91	1.1983	0.9703
190092	01/01/91	12/31/91	1.1950	0.9922
190095	10/01/90	09/30/91	1.0355	0.9764
190099	09/01/90	08/31/91	1.1890	0.9593
190102	10/01/90	09/30/91	1.4396	0.9986
190106	09/01/90	08/31/91	1.1604	0.9819
190109	10/01/90	09/30/91	1.0960	0.9760
190110	10/01/90	09/30/91	0.9634	0.9731
190111	10/01/90	09/30/91	1.5684	0.9989
190113	01/01/91	12/31/91	1.2906	0.9963
190115	01/01/91	12/31/91	1.2652	0.9943
190116	01/01/91	12/31/91	1.2188	0.9911
190118	10/01/90	09/30/91	0.9912	0.9673
190120	09/01/90	08/31/91	0.8938	0.9106
190125	10/01/90	09/30/91	1.3917	0.9978
190127	10/01/90	09/30/91	1.4583	0.9969
190128	10/01/90	09/30/91	0.8293	0.9961
190130	10/01/90	09/30/91	0.9182	0.9712
190134	10/01/90	09/30/91	1.0004	0.9650
190135	10/01/90	09/30/91	1.3431	0.9979
190136	10/01/90	09/30/91	1.0323	0.9753
190142	11/01/90	10/31/91	0.9442	0.9684
190144	09/01/90	08/31/91	1.1496	0.9736
190145	10/01/90	09/30/91	0.9274	0.9922
190148	01/01/91	12/31/91	1.4728	0.9984
190147	10/01/90	09/30/91	0.9570	0.9589
190149	10/01/90	09/30/91	0.9803	0.9738
190151	10/01/90	09/30/91	1.0824	0.9899
190160	09/01/90	08/31/91	1.1126	0.9965
190162	01/01/91	12/31/91	1.3001	0.9978
190164	01/01/91	12/31/91	1.0557	0.9858
190167	09/01/90	08/31/91	1.2898	0.9844
190175	01/01/91	12/31/91	1.1239	0.8571
190177	01/01/91	12/31/91	1.4642	0.9919
190178	09/01/90	08/31/91	0.9728	0.9639
190184	10/01/90	09/30/91	0.8960	0.9796
190185	01/01/91	12/31/91	1.2192	0.9961
190186	10/01/90	09/30/91	0.9519	0.9799
190189	01/01/91	12/31/91	1.1090	0.9321
190190	04/01/90	12/31/91	0.9948	0.9764
190191	01/01/91	12/31/91	1.2447	0.9805
190193	01/01/91	12/31/91	1.1975	0.9841
190194	10/01/90	09/30/91	1.1301	0.9763
190197	01/01/91	12/31/91	1.2036	0.9918
190198	09/01/90	08/31/91	1.1923	0.9894
190200	09/01/90	08/31/91	1.5966	0.9969
190201	09/01/90	08/31/91	1.2137	0.9837

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
190202	09/01/90	08/31/91	1.4228	0.9969
190203	01/01/91	12/31/91	1.6042	1.0000
190205	09/01/90	08/31/91	1.3354	0.9936
190206	09/01/90	08/31/91	1.4352	0.9978
190207	09/01/90	08/31/91	1.2129	0.9797
190208	01/01/91	12/31/91	0.8820	0.9295
190211	01/01/91	12/31/91	0.5007	1.0000
190212	01/01/91	12/31/91	0.9109	1.0000
200001	01/01/91	12/31/91	1.3139	0.9932
200006	10/01/90	09/30/91	1.0647	0.9657
200007	11/01/90	10/31/91	1.0291	0.9794
200009	10/01/90	09/30/91	1.6652	0.9981
200017	09/01/90	08/31/91	1.3031	0.9916
200018	01/01/91	12/31/91	1.1075	0.9829
200021	10/01/90	09/30/91	1.1342	0.9783
200025	01/01/91	12/31/91	1.1802	0.9929
200026	10/01/90	09/30/91	0.9954	0.9857
200027	01/01/91	12/31/91	1.1128	0.9724
200028	12/01/90	11/30/91	1.0183	0.9850
200031	01/01/91	12/31/91	1.2773	0.9933
200032	01/01/91	12/31/91	1.3002	0.9775
200033	09/30/90	09/28/91	1.6828	0.9968
200034	01/01/91	12/31/91	1.1762	0.9913
200041	01/01/91	12/31/91	1.1606	0.9863
200043	01/01/91	12/31/91	0.6497	0.9527
200044	10/01/90	09/30/91	1.1539	0.9906
200052	10/01/90	09/30/91	1.0225	0.9891
200055	01/01/91	12/31/91	1.0381	0.9703
200062	01/01/91	12/31/91	0.9859	0.9729
200066	10/01/90	09/30/91	1.1383	0.9816
210006	01/01/91	12/31/91	1.0833	0.9921
210011	01/01/91	12/31/91	1.2911	0.9941
210046	07/01/90	11/26/91	1.1206	0.9866
210049	01/01/91	12/31/91	1.1617	0.9880
220001	10/01/90	09/30/91	1.1452	0.9899
220002	10/01/90	09/30/91	1.3390	0.9985
220003	10/01/90	09/30/91	1.1005	0.9781
220004	10/01/90	09/30/91	1.3480	0.9899
220006	10/01/90	09/30/91	1.2643	0.9935
220008	10/01/90	09/30/91	1.1499	0.9878
220010	10/01/90	09/30/91	1.2007	0.9903
220012	10/01/90	09/30/91	1.1818	0.9792
220015	10/01/90	09/30/91	1.2005	0.9920
220016	10/01/90	09/30/91	1.1896	0.9838
220017	10/01/90	09/30/91	1.2507	0.9938
220019	10/01/90	09/30/91	1.0950	0.9867
220020	10/01/90	09/30/91	1.1518	0.9888
220021	10/01/90	09/30/91	1.2296	0.9918
220023	10/01/90	09/30/91	1.2617	0.9937
220024	10/01/90	09/30/91	1.1935	0.9913
220025	10/01/90	09/30/91	1.0234	0.9836
220026	10/01/90	09/30/91	1.2712	0.9944
220028	10/01/90	09/30/91	1.4016	0.9983
220029	10/01/90	09/30/91	1.1155	0.9854
220030	10/01/90	09/30/91	1.0736	0.9802
220031	09/30/90	09/28/91	1.7788	0.9975
220033	10/01/90	09/30/91	1.2330	0.9953
220035	10/01/90	09/30/91	1.1784	0.9948
220036	10/01/90	09/30/91	1.4854	0.9978
220038	10/01/90	09/30/91	1.2641	0.9801
220042	10/01/90	09/30/91	1.1604	0.9880
220045	10/01/90	09/30/91	1.1920	0.9880
220046	10/01/90	09/30/91	1.3652	0.9957
220048	10/01/90	09/30/91	1.1728	0.9928
220049	10/01/90	09/30/91	1.1794	0.9844
220050	10/01/90	09/30/91	0.9903	0.9790
220051	10/01/90	09/30/91	1.2256	0.9880
220052	10/01/90	09/30/91	1.2318	0.9895
220053	10/01/90	09/30/91	1.2758	0.9961
220055	10/01/90	09/30/91	1.1782	0.9920
220057	10/01/90	09/30/91	1.1955	0.9932
220058	10/01/90	09/30/91	1.0048	0.9722
220060	10/01/90	09/30/91	1.1391	0.9944
220062	10/01/90	09/30/91	0.6543	0.9618
220063	10/01/90	09/30/91	1.1276	0.9908
220064	10/01/90	09/30/91	1.1817	0.9852
220065	10/01/90	09/30/91	1.1739	0.9829

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
220066	10/01/90	09/30/91	1.2842	0.9964
220067	10/01/90	09/30/91	1.2425	0.9901
220068	10/01/90	09/30/91	0.8150	0.9916
220070	10/01/90	09/30/91	1.1438	0.9906
220071	10/01/90	09/30/91	1.8445	0.9973
220073	10/01/90	09/30/91	1.2258	0.9930
220074	10/01/90	09/30/91	1.1346	0.9750
220075	10/01/90	09/30/91	0.7565	0.9901
220076	10/01/90	09/30/91	1.1981	0.9872
220077	10/01/90	09/30/91	1.6054	0.9977
220079	10/01/90	09/30/91	1.1169	0.9928
220080	10/01/90	09/30/91	1.1952	0.9926
220081	10/01/90	09/30/91	0.9596	0.9603
220082	10/01/90	09/30/91	1.2244	0.9933
220084	10/01/90	09/30/91	1.1440	0.9686
220086	09/30/90	09/28/91	1.5565	0.9984
220088	10/01/90	09/30/91	1.4871	0.9923
220089	10/01/90	09/30/91	1.2772	0.9902
220090	10/01/90	09/30/91	1.1730	0.9897
220092	10/01/90	09/30/91	1.1913	0.9878
220094	10/01/90	09/30/91	1.2034	0.9901
220095	10/01/90	09/30/91	1.1870	0.9815
220097	10/01/90	09/30/91	1.0106	0.9943
220098	10/01/90	09/30/91	1.2848	0.9779
220099	10/01/90	09/30/91	1.1372	0.9878
220100	10/01/90	09/30/91	1.2696	0.9911
220101	10/01/90	09/30/91	1.3759	0.9920
220102	10/01/90	09/30/91	0.8471	1.0000
220104	10/01/90	09/30/91	1.2536	0.9892
220105	10/01/90	09/30/91	1.1748	0.9877
220106	10/01/90	09/30/91	1.1095	0.9859
220107	10/01/90	09/30/91	1.1494	0.9923
220108	10/01/90	09/30/91	1.1414	0.9902
220110	10/01/90	09/30/91	1.9210	0.9968
220111	10/01/90	09/30/91	1.1783	0.9760
220115	07/01/90	12/05/91	1.2749	0.9913
220116	09/30/90	09/28/91	1.7804	0.9962
220118	10/01/90	09/30/91	1.9208	0.9966
220119	10/01/90	09/30/91	1.3499	0.9883
220120	10/01/90	09/30/91	0.9903	0.9958
220123	10/01/90	09/30/91	0.9499	0.9613
220126	10/01/90	09/30/91	1.2248	0.9767
220128	10/01/90	09/30/91	1.1026	0.9884
220135	10/01/90	09/30/91	1.1185	0.9801
220156	10/01/90	09/30/91	1.2157	0.9871
220162	10/01/90	09/30/91	1.4238	0.7980
220171	10/01/90	09/30/91	1.6225	0.9973
220173	01/01/91	12/31/91	0.5125	1.0000
230003	10/01/90	09/30/91	1.1367	0.9882
230007	01/01/91	12/31/91	1.0879	0.9749
230012	01/01/91	12/31/91	0.8616	0.9919
230013	01/01/91	12/31/91	1.2956	0.9937
230014	04/01/90	12/31/91	0.9522	0.9625
230015	01/01/91	12/31/91	1.4123	0.9841
230017	01/01/91	12/31/91	1.5371	0.9970
230020	01/01/91	12/31/91	1.5989	0.9983
230021	10/01/90	09/30/91	1.5244	0.9973
230022	01/01/91	12/31/91	1.2727	0.9766
230040	10/01/90	09/30/91	1.3122	0.9800
230042	01/01/91	12/31/91	1.1196	0.9908
230053	01/01/91	12/31/91	1.4426	0.9992
230055	01/01/91	12/31/91	1.1107	0.9966
230056	10/01/90	09/30/91	0.9722	0.9609
230063	01/01/91	12/31/91	1.2719	0.9941
230065	01/01/91	12/31/91	1.4319	0.9950
230071	11/01/90	10/31/91	0.6457	1.0000
230076	01/01/91	12/31/91	1.2358	0.9982
230078	10/01/90	09/30/91	1.3192	0.9797
230080	10/01/90	09/30/91	1.2339	0.9835
230087	01/01/91	12/31/91	1.1456	0.9747
230089	09/01/90	08/31/91	1.3523	0.9961
230090	01/01/91	12/31/91	1.1740	0.9757
230096	10/01/90	09/30/91	1.0955	0.9843
230101	10/01/90	09/30/91	1.0478	0.9644
230103	01/01/91	12/31/91	1.0166	0.9687
230105	01/01/91	12/31/91	1.5115	0.9984
230107	01/01/91	12/31/91	0.9771	0.9704

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
230110	10/01/90	09/30/91	1.2243	0.9884
230114	01/01/91	12/31/91	0.7160	1.0000
230115	01/01/91	12/31/91	1.0103	0.9633
230118	10/01/90	09/30/91	1.2660	0.9740
230119	10/01/90	09/30/91	1.2023	0.3900
230121	01/01/91	12/31/91	1.2257	0.9814
230122	10/01/90	09/30/91	1.3557	0.9921
230125	10/01/90	09/30/91	1.3903	0.9822
230126	01/01/91	12/31/91	1.3727	0.9966
230129	01/01/91	12/31/91	1.9116	0.9973
230130	01/01/91	12/31/91	1.5889	0.9992
230134	01/01/91	12/31/91	1.2774	0.9873
230135	01/01/91	12/31/91	1.3010	0.9915
230137	10/01/90	09/30/91	1.0719	0.9841
230138	01/01/91	12/31/91	0.9051	0.9947
230141	10/01/90	09/30/91	1.5223	0.9980
230143	01/01/91	12/31/91	1.2210	0.9784
230144	07/01/90	12/31/91	1.1934	0.9932
230145	10/01/90	09/30/91	1.1114	0.9566
230146	01/01/91	12/31/91	1.2487	0.9875
230149	01/01/91	12/31/91	1.1197	0.9732
230150	10/01/90	09/30/91	1.5916	0.9978
230151	01/01/91	12/31/91	1.3942	0.9825
230155	01/01/91	12/31/91	1.0618	0.9634
230165	06/24/90	07/06/91	1.6982	0.9991
230167	01/01/91	12/31/91	1.1868	0.9945
230169	10/01/90	09/30/91	1.3223	0.9896
230171	01/01/91	12/31/91	1.1133	0.9641
230175	10/01/90	09/30/91	1.0144	0.9491
230184	10/01/90	09/30/91	1.1428	0.9880
230186	01/01/91	12/31/91	1.0063	0.9736
230190	01/01/91	12/31/91	0.9708	0.9554
230191	01/01/91	12/31/91	0.9232	0.9584
230193	01/01/91	12/31/91	1.2926	0.9924
230194	01/01/91	12/31/91	1.1699	0.9782
230195	10/01/90	09/30/91	1.3657	0.9870
230197	10/01/90	09/30/91	1.2315	0.9949
230204	10/01/90	09/30/91	1.2508	0.9944
230205	10/01/90	09/30/91	1.1162	0.9480
230206	01/01/91	12/31/91	1.0606	0.9787
230211	01/01/91	12/31/91	0.9233	0.9441
230213	01/01/91	12/31/91	1.0931	0.9656
230216	01/01/91	12/31/91	1.3052	0.9837
230217	01/01/91	12/31/91	1.1050	0.9787
230223	01/01/91	12/31/91	1.2866	0.9935
230227	01/01/91	12/31/91	1.3578	0.9968
230228	01/01/91	12/31/91	1.2029	0.9931
230230	01/01/91	12/31/91	1.3538	0.9886
230235	01/01/91	12/31/91	0.9915	0.9863
230236	10/01/90	09/30/91	1.3398	0.9972
230237	10/01/90	09/30/91	1.0878	0.9969
230239	10/01/90	09/30/91	1.1530	0.9767
230244	10/01/90	09/30/91	1.3711	0.9871
230253	10/01/90	09/30/91	1.1027	0.9819
230254	01/01/91	12/31/91	1.2664	0.9925
230257	06/24/90	07/06/91	0.8611	0.9601
230259	01/01/91	12/31/91	1.0923	0.9812
230266	10/01/90	09/30/91	1.2935	0.9830
230269	01/01/91	12/31/91	1.2294	0.9945
230273	01/01/91	12/31/91	1.5122	0.9960
230275	01/01/91	12/31/91	0.9074	1.0000
230276	01/01/91	12/31/91	1.0482	0.9893
230277	01/01/91	12/31/91	1.1543	0.9884
240001	01/01/91	12/31/91	1.5241	0.9968
240003	09/01/90	08/31/91	1.2481	0.9794
240004	01/01/91	12/31/91	1.4824	0.9795
240006	01/01/91	12/31/91	1.1396	0.9751
240007	10/01/90	09/30/91	1.1068	0.9705
240008	10/01/90	09/30/91	1.0283	0.9614
240010	01/01/91	12/31/91	1.8606	0.9947
240011	10/01/90	09/30/91	1.0342	0.9877
240013	10/01/90	09/30/91	1.2272	0.9757
240014	01/01/91	12/31/91	1.1829	0.9734
240016	10/01/90	09/30/91	1.3550	0.9870
240018	01/01/91	09/30/91	1.2384	0.9729
240019	01/01/91	12/31/91	1.3374	0.9989
240020	10/01/90	09/30/91	1.2248	0.9624

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
240021	10/01/90	09/30/91	1.0259	0.9499
240022	01/01/91	12/31/91	1.1065	0.9653
240023	01/01/91	12/31/91	1.0495	0.9514
240025	01/01/91	12/31/91	1.2071	0.9746
240027	10/01/90	09/30/91	1.0615	0.9713
240028	10/01/90	09/30/91	1.1175	0.9705
240029	10/01/90	09/30/91	1.1760	0.9798
240030	01/01/91	12/31/91	1.3259	0.9842
240031	01/01/91	12/31/91	0.9270	0.9572
240038	01/01/91	12/31/91	1.4546	0.9985
240041	10/01/90	09/30/91	1.2216	0.9972
240043	01/01/91	12/31/91	1.1400	0.9751
240045	10/01/90	09/30/91	1.1153	0.9494
240047	01/01/91	12/31/91	1.3942	0.9932
240048	09/01/90	08/31/91	1.2606	0.9891
240050	09/01/90	08/31/91	1.1107	0.9767
240051	10/01/90	09/30/91	0.8744	0.9292
240052	10/01/90	09/30/91	1.2223	0.9832
240056	01/01/91	12/31/91	1.3150	0.9824
240057	01/01/91	12/31/91	1.7321	0.9983
240058	10/01/90	09/30/91	0.9987	0.9196
240059	10/01/90	09/30/91	1.1115	0.9747
240061	01/01/91	12/31/91	1.4353	0.9945
240063	09/01/90	08/31/91	1.4998	0.9888
240064	01/01/91	12/31/91	1.2106	0.9746
240065	01/01/90	09/30/91	1.0076	0.9619
240066	10/01/90	09/30/91	1.3516	0.9744
240069	01/01/91	12/31/91	1.1981	0.9719
240071	01/01/91	12/31/91	1.1188	0.9696
240072	01/01/91	12/31/91	0.9585	0.9362
240073	01/01/91	12/31/91	1.0173	0.9442
240076	01/01/91	12/31/91	1.1096	0.9678
240078	01/01/91	12/31/91	1.3926	0.9971
240079	10/01/90	09/30/91	1.0762	0.9690
240080	01/01/91	12/31/91	1.3699	0.9974
240082	01/01/91	12/31/91	1.1664	0.9856
240083	01/01/91	12/31/91	1.2498	0.9438
240084	01/01/91	12/31/91	1.2999	0.9674
240085	01/01/91	12/31/91	0.8611	0.9679
240086	10/01/90	09/30/91	1.0704	0.9846
240087	01/01/91	12/31/91	1.0593	0.9760
240088	01/01/91	12/31/91	1.4549	0.9729
240090	05/01/90	09/30/91	1.0207	0.9747
240091	01/01/91	12/31/91	0.9866	0.9792
240093	10/01/90	09/30/91	1.2947	0.9770
240094	10/01/90	09/30/91	1.0016	0.9046
240096	01/01/91	12/31/91	1.0241	0.9647
240097	01/01/91	12/31/91	1.1094	0.9322
240098	10/01/90	09/30/91	0.9247	0.9523
240100	12/01/90	11/30/91	1.3039	0.9824
240102	01/01/91	12/31/91	1.0884	0.9730
240103	10/01/90	09/30/91	1.1640	0.9721
240105	10/01/90	09/30/91	0.8942	0.9730
240106	01/01/91	12/31/91	1.3227	0.9916
240107	01/01/91	12/31/91	0.9526	0.9685
240108	10/01/90	09/30/91	0.9344	0.9673
240109	01/01/91	12/31/91	0.9792	0.9885
240111	01/01/91	12/31/91	0.9856	0.9450
240112	01/01/91	12/31/91	0.9702	0.9777
240114	01/01/91	12/31/91	1.0439	0.8536
240115	01/01/91	12/31/91	1.5609	0.9950
240118	10/01/90	09/30/91	0.9139	0.9547
240117	11/01/90	10/31/91	1.1304	0.9592
240119	01/01/91	12/31/91	0.9073	0.9444
240121	10/01/90	09/30/91	0.9304	0.9339
240122	10/01/90	09/30/91	1.0907	0.9756
240123	01/01/91	12/31/91	1.1197	0.9250
240124	01/01/91	12/31/91	1.0318	0.9671
240127	01/01/91	12/31/91	0.9813	0.9697
240128	01/01/91	12/31/91	1.1150	0.9765
240130	01/01/91	12/31/91	0.9835	0.9529
240132	01/01/91	12/31/91	1.2614	0.9847
240133	01/01/91	12/31/91	1.1554	0.9509
240135	10/01/90	09/30/91	0.8410	0.9697
240138	01/01/91	12/31/91	0.8833	0.9400
240138	10/01/90	09/30/91	0.8740	0.9631
240139	10/01/90	09/30/91	0.9807	0.9638

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
240140	01/01/91	12/31/91	0.7912	0.9409
240141	01/01/91	12/31/91	1.0218	0.9494
240142	01/01/91	12/31/91	1.0787	0.9875
240143	10/01/90	09/30/91	0.9575	0.9297
240144	01/01/91	12/31/91	0.9736	0.9386
240146	10/01/90	09/30/91	0.9870	0.9487
240148	01/01/91	12/31/91	0.9621	0.9524
240150	10/01/90	09/30/91	0.9483	0.9596
240152	01/01/91	12/31/91	0.9629	0.9522
240153	10/01/90	09/30/91	0.9831	0.9869
240154	01/01/91	12/31/91	0.9714	0.9641
240155	10/01/90	09/30/91	0.9229	0.8731
240157	09/01/90	08/31/91	1.0535	0.9566
240158	05/01/90	07/31/91	0.9470	0.9354
240161	10/01/90	09/30/91	0.9873	0.9617
240162	01/01/91	12/31/91	1.0559	0.9588
240163	01/01/91	12/31/91	0.9190	0.9480
240166	10/01/90	09/30/91	1.1563	0.9623
240169	01/01/91	12/31/91	0.9770	0.9579
240170	01/01/91	12/31/91	1.0848	0.9589
240172	01/01/91	12/31/91	1.1216	0.9530
240173	01/01/91	12/31/91	0.9711	0.9473
240176	10/01/90	09/30/91	0.8986	1.0000
240179	01/01/91	12/31/91	0.9651	0.9640
240180	01/01/91	12/31/91	0.9581	0.9602
240183	01/01/90	11/30/91	1.1558	0.9705
240184	10/01/90	09/30/91	1.0729	0.9831
240187	01/01/91	12/31/91	1.2212	0.9627
240192	01/01/91	12/31/91	0.9275	0.9593
240193	10/01/90	09/30/91	1.0762	0.9748
240196	01/01/91	12/31/91	1.2889	0.9965
240200	01/01/91	12/31/91	0.8728	0.8800
240201	01/01/90	08/14/91	1.0074	0.9734
240207	01/01/91	12/31/91	1.1590	0.9699
240210	09/01/90	08/31/91	1.2412	0.9828
240211	10/01/90	09/30/91	1.3121	1.0000
250002	10/01/90	09/30/91	0.8050	0.9495
250003	10/01/90	09/30/91	0.9659	0.9531
250004	10/01/90	09/30/91	1.4418	0.9980
250005	10/01/90	09/30/91	0.9575	0.9532
250007	10/01/90	09/30/91	1.1603	0.9924
250008	10/01/90	09/30/91	0.8875	0.9388
250009	10/01/90	09/30/91	1.0943	0.9837
250010	10/01/90	09/30/91	1.0839	0.9523
250012	01/01/91	12/31/91	0.9437	0.9543
250015	10/01/90	09/30/91	0.9458	0.9553
250016	05/01/90	12/31/91	0.8609	0.9958
250018	10/01/90	09/30/91	1.0173	0.9475
250019	10/01/90	09/30/91	1.2662	0.9974
250020	10/01/90	09/30/91	1.0173	0.9481
250021	10/01/90	09/30/91	0.8911	0.9606
250023	10/01/90	09/30/91	0.8304	0.9587
250024	10/01/90	09/30/91	0.9341	0.9660
250025	10/01/90	09/30/91	1.0210	0.9675
250027	10/01/90	09/30/91	0.9803	0.9632
250029	01/01/91	12/31/91	0.9321	0.9507
250030	01/01/91	12/31/91	0.9347	0.9669
250035	10/01/90	09/30/91	0.8378	0.9752
250036	10/01/90	09/30/91	0.9633	0.9609
250037	10/01/90	09/30/91	0.8884	0.9344
250038	10/01/90	09/30/91	0.8919	0.9677
250039	10/01/90	09/30/91	1.0096	0.9576
250040	10/01/90	09/30/91	1.2067	0.9923
250042	10/01/90	09/30/91	1.1284	0.9873
250043	10/01/90	09/30/91	0.8837	0.9441
250045	10/01/90	09/30/91	1.1650	0.9640
250047	10/01/90	09/30/91	0.9318	0.9740
250048	01/01/91	12/31/91	1.3615	0.9971
250049	10/01/90	09/30/91	0.9237	0.9751
250050	10/01/90	09/30/91	1.1696	0.9838
250051	10/01/90	09/30/91	0.8801	0.9581
250057	10/01/90	09/30/91	1.0658	0.9829
250058	10/01/90	09/30/91	1.1685	0.9677
250059	10/01/90	09/30/91	1.0076	0.9474
250060	10/01/90	09/30/91	0.7967	0.9510
250061	10/01/90	09/30/91	0.9060	0.9754
250062	01/01/91	12/31/91	0.9781	0.9618

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
250063	10/01/90	09/30/91	0.8544	0.9714
250065	10/01/90	09/30/91	0.9447	0.9680
250066	10/01/90	09/30/91	0.9373	0.9761
250067	10/01/90	09/30/91	1.0111	0.9850
250068	10/01/90	09/30/91	0.8492	0.9448
250069	01/01/91	12/31/91	1.2494	0.9942
250071	10/01/90	09/30/91	1.0477	0.9587
250073	01/01/91	12/31/91	0.9885	0.9520
250076	10/01/90	09/30/91	0.9145	0.9406
250077	10/01/90	09/30/91	0.9283	0.9710
250078	10/01/90	09/30/91	1.3873	0.9978
250079	10/01/90	09/30/91	0.8617	0.9617
250081	10/01/90	09/30/91	1.2182	0.9929
250082	10/01/90	09/30/91	1.2492	0.9907
250083	01/01/91	12/31/91	0.9028	0.9719
250084	10/01/90	09/30/91	1.1969	0.9947
250085	10/01/90	09/30/91	1.0031	0.9714
250086	10/01/90	09/30/91	0.9208	0.9686
250088	10/01/90	09/30/91	1.0110	0.9630
250089	01/01/91	12/31/91	0.9931	0.9799
250091	10/01/90	09/30/91	1.0214	0.9743
250093	10/01/90	09/30/91	1.1520	0.9687
250095	10/01/90	09/30/91	1.0467	0.9701
250096	10/01/90	09/30/91	1.1961	0.9897
250097	10/01/90	09/30/91	1.1841	0.9744
250098	10/01/90	09/30/91	0.8418	0.9454
250099	10/01/90	09/30/91	1.2073	0.9846
250100	10/01/90	09/30/91	1.1521	0.9833
250101	10/01/90	09/30/91	0.8836	0.9764
250104	10/01/90	09/30/91	1.3148	0.9981
250105	10/01/90	09/30/91	0.9041	0.9587
250107	10/01/90	09/30/91	0.9158	0.9698
250109	10/01/90	09/30/91	0.9824	0.9523
250112	10/01/90	09/30/91	0.9499	0.9660
250117	01/01/91	12/31/91	1.1020	0.9834
250119	10/01/90	09/30/91	0.9624	0.9716
250120	10/01/90	09/30/91	1.0683	0.9922
250122	09/01/90	08/31/91	1.2603	0.9946
250124	01/01/91	12/31/91	0.8784	0.9662
250125	01/01/91	12/31/91	1.2835	0.9889
250129	09/01/90	12/31/91	1.1708	0.9882
250136	01/01/91	12/31/91	0.7666	1.0000
250139	10/01/90	09/30/91	0.9012	0.9568
250140	10/01/90	09/30/91	0.8143	0.9670
260003	09/01/90	08/31/91	0.9668	0.9558
260004	01/01/91	12/31/91	1.0707	0.9824
260005	01/01/91	12/31/91	1.3836	0.9949
260011	01/01/91	12/31/91	1.5313	0.9945
260012	10/01/90	09/30/91	1.0062	0.9673
260014	01/01/91	12/31/91	1.6131	0.9989
260015	01/01/91	12/31/91	1.2203	0.9493
260017	01/01/91	12/31/91	1.2136	0.9785
260018	10/01/90	09/30/91	0.9483	0.9429
260019	01/01/91	12/31/91	1.0231	0.9666
260021	10/01/90	09/30/91	1.2800	0.9924
260023	10/01/90	09/30/91	1.2745	0.9934
260024	12/01/90	11/30/91	1.0524	0.9867
260025	10/01/90	09/30/91	1.3079	0.9813
260027	01/01/91	12/31/91	1.5166	0.9984
260029	10/01/90	09/30/91	1.1625	0.9783
260030	10/01/90	09/30/91	1.1174	0.9796
260032	01/01/91	12/31/91	1.6358	0.9981
260034	01/01/91	12/31/91	1.0373	0.9816
260035	12/01/90	11/30/91	1.0507	0.9777
260036	01/01/91	12/31/91	1.0389	0.9531
260039	09/01/90	08/31/91	1.3077	0.9722
260040	10/01/90	09/30/91	1.4982	0.9989
260044	01/01/91	12/31/91	1.0679	0.9801
260050	01/01/91	12/31/91	1.0874	0.9675
260053	10/01/90	09/30/91	1.0735	0.9840
260054	01/01/91	12/31/91	1.3418	0.9941
260057	10/01/90	09/30/91	1.1603	0.9797
260062	10/01/90	09/30/91	1.1677	0.9853
260063	01/01/91	12/31/91	1.1645	0.9647
260064	01/01/91	12/31/91	1.3670	0.9869
260068	01/01/91	12/31/91	1.7744	0.9994
260070	01/01/91	12/31/91	1.1166	0.9389

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
260073	01/01/91	12/31/91	1.0164	0.9714
260074	01/01/91	12/31/91	1.1967	0.9679
260078	01/01/91	12/31/91	1.1004	0.9761
260080	09/01/90	08/31/91	1.1325	0.9173
260091	01/01/91	12/31/91	1.5519	0.9970
260092	01/01/91	12/31/91	1.0959	0.9632
260097	10/01/90	09/30/91	1.1887	0.9691
260100	10/01/90	09/30/91	1.1553	0.9746
260102	01/01/91	12/31/91	0.9515	0.9748
260103	01/01/91	12/31/91	1.3060	0.9918
260107	10/01/90	09/30/91	1.3056	0.9994
260110	01/01/91	12/31/91	1.6245	0.9980
260111	01/01/91	12/31/91	0.9776	0.9668
260113	10/01/90	09/30/91	1.1684	0.9859
260116	01/01/91	12/31/91	1.2021	0.9887
260119	01/01/91	12/31/91	1.1421	0.9700
260120	12/01/90	11/30/91	1.1855	0.9719
260122	11/01/90	10/31/91	1.2564	0.9749
260123	01/01/91	12/31/91	0.9326	0.9846
260134	01/01/91	12/31/91	1.2845	0.9848
260138	01/01/91	12/31/91	1.8406	0.9990
260158	01/01/91	12/31/91	1.0872	0.9730
260159	01/01/91	12/31/91	1.1101	0.9713
260160	01/01/91	12/31/91	1.1429	0.9707
260162	01/01/91	12/31/91	1.0360	0.9749
260165	01/01/91	12/31/91	0.9467	0.9723
260166	01/01/91	12/31/91	1.2228	0.9886
260178	01/01/91	12/31/91	1.4275	0.9959
260179	01/01/91	12/31/91	1.5147	0.9993
260180	01/01/91	12/31/91	1.5581	0.9964
260182	07/01/90	09/30/91	1.0276	0.9673
260188	01/01/91	12/31/91	1.1871	0.9805
260190	01/01/91	12/31/91	1.1618	0.9923
260191	01/01/91	12/31/91	1.2471	0.9840
260193	01/01/91	12/31/91	1.2247	0.9822
260195	09/28/90	09/26/91	1.1173	0.9634
260198	07/01/90	10/31/91	1.2658	0.9809
260200	01/01/91	12/31/91	1.1923	0.9687
260202	10/01/90	09/30/91	1.3740	0.9754
270002	10/01/90	09/30/91	1.2246	0.9838
270006	10/01/90	09/30/91	0.8607	1.0000
270007	10/01/90	09/30/91	0.9594	0.9566
270013	01/01/91	12/31/91	1.3018	0.9888
270014	01/01/91	12/31/91	1.6441	0.9968
270019	01/01/91	12/31/91	0.9794	0.9594
270021	10/01/90	09/30/91	1.0866	0.9896
270030	01/01/91	12/31/91	0.9277	0.9168
270033	01/01/91	12/31/91	0.8019	0.9586
270035	10/01/90	09/30/91	1.0434	0.9849
270039	01/01/91	12/31/91	0.9036	0.9673
270048	11/01/90	10/31/91	1.0827	0.9698
270057	01/01/91	12/31/91	1.1048	0.9834
270059	11/01/90	10/31/91	0.8522	0.9605
270063	10/01/90	09/30/91	0.8775	0.9807
270083	01/01/91	12/31/91	1.0149	0.9535
280001	10/01/90	09/30/91	1.1286	0.9485
280005	09/01/90	08/31/91	1.4427	0.9914
280012	01/01/91	12/31/91	1.1809	0.9853
280015	10/01/90	09/30/91	1.0098	0.9808
280017	08/01/90	07/31/91	1.1658	0.9673
280025	09/01/90	08/31/91	0.9861	0.9612
280030	09/01/90	08/31/91	1.7555	0.9983
280031	10/01/90	09/30/91	1.1035	0.9736
280032	01/01/91	12/31/91	1.2118	0.9915
280034	09/01/90	08/31/91	1.2686	0.9887
280038	10/01/90	09/30/91	1.0332	0.9771
280039	10/01/90	09/30/91	1.0738	0.9458
280040	01/01/91	12/31/91	1.5883	0.9944
280041	01/01/91	12/31/91	0.9268	0.9894
280046	01/01/91	12/31/91	1.0125	0.9727
280047	01/01/91	12/31/91	1.1805	0.9672
280048	10/01/90	09/30/91	1.0651	0.9972
280054	10/01/90	09/30/91	1.1591	0.9721
280057	10/01/90	09/30/91	1.0140	0.9793
280058	10/01/90	09/30/91	1.2385	0.9643
280061	01/01/91	12/31/91	1.3005	0.9937
280065	01/01/91	12/31/91	1.1577	0.9860

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
280074	10/01/90	09/30/91	1.1618	0.9805
280076	08/01/90	07/31/91	0.9625	0.9490
280078	05/01/90	10/18/91	0.9264	0.9093
280079	08/01/90	07/31/91	0.9452	0.9814
280081	10/01/90	09/30/91	1.4439	0.9969
280083	11/01/90	10/31/91	0.9812	0.9637
280085	01/01/91	12/31/91	0.9515	1.0000
280088	09/24/90	09/22/91	1.6348	0.9984
280089	10/01/90	09/30/91	1.0325	0.9939
280101	10/01/90	09/30/91	1.1227	0.9959
280102	01/01/91	12/31/91	0.8383	0.9334
280106	08/01/90	07/31/91	1.0201	0.9758
280107	11/01/90	10/31/91	1.0708	0.9474
280108	01/01/91	12/31/91	1.0423	0.9874
280109	08/01/90	07/31/91	0.9163	0.9805
280114	08/01/90	07/31/91	0.9298	0.9880
280115	01/01/91	12/31/91	0.9729	0.9705
290003	09/01/90	08/31/91	1.6223	0.9983
290005	09/01/90	08/31/91	1.1910	0.9932
290006	01/01/91	12/31/91	1.0680	0.9722
290009	01/01/91	12/31/91	1.5643	0.9964
290010	01/01/91	12/31/91	1.0543	0.9828
290018	10/01/90	09/30/91	0.9938	0.9543
290021	01/01/91	12/31/91	1.5631	0.9982
290022	10/01/90	09/30/91	1.6766	0.9987
290032	01/01/91	12/31/91	1.3852	0.9780
300001	10/01/90	09/30/91	1.2908	0.9955
300005	10/01/90	09/30/91	1.3439	0.9930
300006	10/01/90	09/30/91	1.1131	0.9585
300007	10/01/90	09/30/91	1.1022	0.9757
300008	10/01/90	09/30/91	1.2357	0.9915
300009	10/01/90	09/30/91	1.2334	0.9555
300011	01/01/91	12/31/91	1.2347	0.9936
300012	10/01/90	09/30/91	1.2615	0.9809
300013	10/01/90	09/30/91	1.1566	0.9812
300014	10/01/90	09/30/91	1.3455	0.9915
300016	10/01/90	09/30/91	1.2373	0.9888
300017	08/01/90	07/31/91	1.1791	0.9793
300018	01/01/91	12/31/91	1.1924	0.9926
300020	10/01/90	09/30/91	1.1541	0.9928
300021	10/01/90	09/30/91	1.1561	0.9849
300022	01/01/91	12/31/91	1.1134	0.9653
300023	10/01/90	09/30/91	1.2241	0.9822
300024	10/01/90	09/30/91	1.2564	0.9767
300028	10/01/90	09/30/91	1.1812	0.9707
300033	10/01/90	09/30/91	1.0753	0.9748
310001	01/01/91	12/31/91	1.6577	0.9995
310002	01/01/91	12/31/91	1.8318	0.9986
310003	01/01/91	12/31/91	1.2299	0.9940
310005	01/01/91	12/31/91	1.2373	0.9909
310006	01/01/91	12/31/91	1.1527	0.9942
310008	01/01/91	12/31/91	1.3263	0.9948
310009	01/01/91	12/31/91	1.1823	0.9963
310010	01/01/91	12/31/91	1.2262	0.9938
310011	01/01/91	12/31/91	1.2183	0.9833
310012	01/01/91	12/31/91	1.5608	0.9988
310013	01/01/91	12/31/91	1.2893	0.9969
310014	01/01/91	12/31/91	1.6075	0.9973
310015	01/01/91	12/31/91	1.6005	0.9989
310016	01/01/91	12/31/91	1.2585	0.9984
310017	01/01/91	12/31/91	1.3329	0.9902
310018	01/01/91	12/31/91	1.2422	0.9941
310019	01/01/91	12/31/91	1.6587	0.9982
310020	01/01/91	12/31/91	1.2177	0.9952
310021	01/01/91	12/31/91	1.2315	0.9940
310022	01/01/91	12/31/91	1.2058	0.9936
310024	01/01/91	12/31/91	1.2351	0.9907
310025	01/01/91	12/31/91	1.1611	0.9896
310026	01/01/91	12/31/91	1.2179	0.9952
310027	01/01/91	12/31/91	1.2667	0.9949
310028	01/01/91	12/31/91	1.1674	0.9790
310029	01/01/91	12/31/91	1.8053	0.9956
310031	01/01/91	12/31/91	2.7639	0.9966
310032	01/01/91	12/31/91	1.2687	0.9876
310034	01/01/91	12/31/91	1.1591	0.9933
310036	01/01/91	12/31/91	1.2208	0.9913
310037	01/01/91	12/31/91	1.2156	0.9924

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
310038	01/01/91	12/31/91	1.7265	0.9977
310039	01/01/91	12/31/91	1.2903	0.9970
310040	01/01/91	12/31/91	1.2030	0.9987
310041	01/01/91	12/31/91	1.2659	0.9951
310042	01/01/91	12/31/91	1.1365	0.9967
310043	01/01/91	12/31/91	1.1940	0.9944
310044	01/01/91	12/31/91	1.2474	0.9923
310045	01/01/91	12/31/91	1.2620	0.9968
310047	01/01/91	12/31/91	1.2770	0.9883
310048	01/01/91	12/31/91	1.2203	0.9942
310049	01/01/91	12/31/91	1.2695	0.9971
310050	10/01/90	09/30/91	1.1906	0.9933
310051	01/01/91	12/31/91	1.2875	0.9943
310052	01/01/91	12/31/91	1.1881	0.9936
310054	01/01/91	12/31/91	1.2728	0.9950
310056	01/01/91	12/31/91	1.1524	0.9850
310057	01/01/91	12/31/91	1.2381	0.9921
310058	01/01/91	12/31/91	1.1516	0.9962
310060	01/01/91	12/31/91	1.1951	0.9931
310061	01/01/91	12/31/91	1.1779	0.9874
310062	01/01/91	12/31/91	1.1892	0.9972
310063	01/01/91	12/31/91	1.3007	0.9949
310064	01/01/91	12/31/91	1.2243	0.9919
310067	01/01/91	12/31/91	1.2155	0.9927
310069	01/01/91	12/31/91	1.1418	0.9782
310070	01/01/91	12/31/91	1.2847	0.9963
310071	01/01/91	12/31/91	0.6936	1.0000
310072	01/01/91	12/31/91	1.2939	0.9886
310073	01/01/91	12/31/91	1.3973	0.9981
310074	01/01/91	12/31/91	1.2923	0.9938
310075	01/01/91	12/31/91	1.2579	0.9944
310076	01/01/91	12/31/91	1.3520	0.9964
310077	01/01/91	12/31/91	1.5813	0.9981
310078	01/01/91	12/31/91	1.3174	0.9988
310081	01/01/91	12/31/91	1.2105	0.9903
310083	01/01/91	12/31/91	1.2825	0.9971
310084	01/01/91	12/31/91	1.2199	0.9941
310085	01/01/91	12/31/91	1.2154	0.9963
310086	01/01/91	12/31/91	1.1849	0.9916
310087	01/01/91	12/31/91	1.1833	0.9822
310088	01/01/91	12/31/91	1.2435	0.9881
310090	01/01/91	12/31/91	1.2598	0.9905
310091	01/01/91	12/31/91	1.2488	0.9865
310092	01/01/91	12/31/91	1.3295	0.9951
310093	01/01/91	12/31/91	1.1019	0.9937
310096	01/01/91	12/31/91	1.7318	0.9960
310105	01/01/91	12/31/91	1.1204	0.9906
310108	01/01/91	12/31/91	1.3575	0.9955
310110	01/01/91	12/31/91	1.2319	0.9947
310111	01/01/91	12/31/91	1.2379	0.9924
310112	01/01/91	12/31/91	1.2275	0.9966
310113	01/01/91	12/31/91	1.2209	0.9844
310115	01/01/91	12/31/91	1.1913	0.9933
310116	01/01/91	12/31/91	1.2660	0.9939
310118	10/01/90	09/30/91	1.2049	0.9943
310120	01/01/91	12/31/91	1.0594	0.9923
310121	01/01/91	12/31/91	1.0688	0.9034
320019	09/01/90	08/31/91	1.3408	0.9977
320035	01/01/91	12/31/91	1.0556	0.9691
320038	09/01/90	08/31/91	1.2492	0.9602
320048	07/01/90	12/31/91	1.2824	0.9958
320063	09/01/90	08/31/91	1.2816	0.9786
320067	01/01/91	12/31/91	0.8769	0.9847
330001	01/01/91	12/31/91	1.1577	0.9891
330002	01/01/91	12/31/91	1.4261	0.9966
330003	01/01/91	12/31/91	1.3330	0.9963
330004	01/01/91	12/31/91	1.3560	0.9958
330005	01/01/91	12/31/91	1.6850	0.9995
330006	01/01/91	12/31/91	1.3704	0.9932
330007	01/01/91	12/31/91	1.3633	0.9945
330008	01/01/91	12/31/91	1.1902	0.9903
330009	01/01/91	12/31/91	1.3196	0.9975
330010	01/01/91	12/31/91	1.2416	0.9874
330011	01/01/91	12/31/91	1.1795	0.9954
330012	01/01/91	12/31/91	1.5904	0.9953
330013	01/01/91	12/31/91	2.0580	0.9963
330014	01/01/91	12/31/91	1.4092	0.9928

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
330015	01/01/91	12/31/91	0.8736	1.0000
330016	01/01/91	12/31/91	0.9805	0.9757
330019	01/01/91	12/31/91	1.3070	0.9951
330020	01/01/91	12/31/91	0.9994	0.9808
330022	01/01/91	12/31/91	0.9905	0.9738
330023	01/01/91	12/31/91	1.2098	0.9890
330024	01/01/91	12/31/91	1.7348	0.9996
330025	01/01/91	12/31/91	1.1008	0.9911
330027	01/01/91	12/31/91	1.4005	0.9826
330028	01/01/91	12/31/91	1.3003	0.9943
330029	01/01/91	12/31/91	1.1108	0.9936
330030	01/01/91	12/31/91	1.1574	0.9918
330033	01/01/91	12/31/91	1.1226	0.9820
330034	01/01/91	12/31/91	1.0669	0.9949
330036	01/01/91	12/31/91	1.1939	0.9928
330037	01/01/91	12/31/91	1.0526	0.9882
330038	01/01/91	12/31/91	1.1852	0.9874
330039	01/01/91	12/31/91	0.8981	0.9704
330041	01/01/91	12/31/91	1.3626	0.9975
330043	01/01/91	12/31/91	1.2430	0.9917
330044	01/01/91	12/31/91	1.1996	0.9938
330045	01/01/91	12/31/91	1.3076	0.9949
330046	01/01/91	12/31/91	1.5956	0.9973
330047	01/01/91	12/31/91	1.2635	0.9947
330048	01/01/91	12/31/91	1.2585	0.9915
330049	01/01/91	12/31/91	1.3039	0.9893
330053	01/01/91	12/31/91	1.0465	0.9921
330055	01/01/91	12/31/91	1.3877	0.9955
330056	01/01/91	12/31/91	1.4353	0.9980
330057	01/01/91	12/31/91	1.5729	0.9981
330058	01/01/91	12/31/91	1.3215	0.9904
330059	01/01/91	12/31/91	1.4891	0.9993
330061	01/01/91	12/31/91	1.3168	0.9957
330062	01/01/91	12/31/91	1.0897	0.9747
330064	01/01/91	12/31/91	1.3062	0.9964
330065	01/01/91	12/31/91	1.1855	0.9948
330066	01/01/91	12/31/91	1.2114	0.9961
330067	01/01/91	12/31/91	1.3305	0.9893
330072	01/01/91	12/31/91	1.3365	0.9963
330073	01/01/91	12/31/91	1.1686	0.9859
330074	01/01/91	12/31/91	1.2262	0.9920
330075	01/01/91	12/31/91	1.0491	0.9885
330078	01/01/91	12/31/91	1.3601	0.9965
330079	01/01/91	12/31/91	1.1036	0.9868
330082	01/01/91	12/31/91	1.2040	0.9919
330084	01/01/91	12/31/91	0.9497	0.9793
330085	01/01/91	12/31/91	1.3489	0.9925
330086	01/01/91	12/31/91	1.2678	0.9952
330088	01/01/91	12/31/91	1.0996	0.9793
330090	01/01/91	12/31/91	1.7093	0.9968
330091	01/01/91	12/31/91	1.3826	0.9953
330092	01/01/91	12/31/91	0.9649	0.9778
330094	01/01/91	12/31/91	1.2793	0.9899
330095	01/01/91	12/31/91	1.2530	0.9972
330097	01/01/91	12/31/91	1.1576	0.9919
330100	01/01/91	12/31/91	0.6753	0.9978
330101	01/01/91	12/31/91	1.6301	0.9980
330102	01/01/91	12/31/91	1.2835	0.9979
330103	01/01/91	12/31/91	1.1719	0.9840
330104	01/01/91	12/31/91	1.3352	0.9935
330106	01/01/91	12/31/91	1.5305	0.9993
330107	01/01/91	12/31/91	1.2543	0.9806
330108	01/01/91	12/31/91	1.2213	0.9929
330110	01/01/91	12/31/91	1.0812	0.9801
330111	01/01/91	12/31/91	1.1379	0.9715
330114	01/01/91	12/31/91	0.9716	0.9647
330115	01/01/91	12/31/91	1.2007	0.9777
330116	01/01/91	12/31/91	0.9737	0.9632
330118	01/01/91	12/31/91	1.5710	0.9979
330119	01/01/91	12/31/91	1.6069	0.9992
330121	01/01/91	12/31/91	0.9922	0.9870
330122	01/01/91	12/31/91	1.3014	0.9934
330125	01/01/91	12/31/91	1.7736	0.9982
330126	01/01/91	12/31/91	1.2054	0.9868
330132	01/01/91	12/31/91	1.1018	0.9816
330133	01/01/91	12/31/91	1.2999	0.9964
330135	01/01/91	12/31/91	1.2178	0.9804

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
330136	01/01/91	12/31/91	1.2479	0.9681
330140	01/01/91	12/31/91	1.6427	0.9981
330141	01/01/91	12/31/91	1.2623	0.9958
330144	01/01/91	12/31/91	1.0315	0.9764
330148	01/01/91	12/31/91	1.0184	0.9789
330151	01/01/91	12/31/91	1.1353	0.9826
330152	01/01/91	12/31/91	1.3951	0.9949
330153	01/01/91	12/31/91	1.3152	0.9944
330154	01/01/91	12/31/91	1.4343	0.9995
330155	01/01/91	12/31/91	1.1867	0.9777
330157	01/01/91	12/31/91	1.3015	0.9916
330158	01/01/91	12/31/91	1.2923	0.9946
330159	01/01/91	12/31/91	1.3053	0.9935
330160	01/01/91	12/31/91	1.4509	0.9968
330161	01/01/91	12/31/91	1.0523	0.9929
330162	01/01/91	12/31/91	1.2550	0.9947
330163	01/01/91	12/31/91	1.1614	0.9951
330164	01/01/91	12/31/91	1.3725	0.9963
330166	01/01/91	12/31/91	0.9165	0.9686
330167	01/01/91	12/31/91	1.5388	0.9978
330169	01/01/91	12/31/91	1.3878	0.9965
330171	01/01/91	12/31/91	1.2918	0.9960
330174	01/01/91	12/31/91	0.6686	0.9939
330175	01/01/91	12/31/91	1.0456	0.9932
330179	01/01/91	12/31/91	0.9425	0.9864
330180	01/01/91	12/31/91	1.2191	0.9948
330181	01/01/91	12/31/91	1.2596	0.9972
330182	01/01/91	12/31/91	2.2788	0.9988
330183	01/01/91	12/31/91	1.4314	0.9944
330184	01/01/91	12/31/91	1.2307	0.9917
330185	01/01/91	12/31/91	1.1676	0.9931
330186	01/01/91	12/31/91	0.9769	0.9685
330188	01/01/91	12/31/91	1.2120	0.9956
330189	01/01/91	12/31/91	0.8722	1.0000
330191	01/01/91	12/31/91	1.2472	0.9965
330193	01/01/91	12/31/91	1.3380	0.9962
330194	01/01/91	12/31/91	1.7382	0.9990
330195	01/01/91	12/31/91	1.6286	0.9973
330197	01/01/91	12/31/91	1.0129	0.9826
330198	01/01/91	12/31/91	1.3286	0.9941
330201	01/01/91	12/31/91	1.5001	0.9995
330203	01/01/91	12/31/91	1.3978	0.9974
330205	01/01/91	12/31/91	1.0892	0.9820
330206	01/01/91	12/31/91	1.1877	0.9955
330209	01/01/91	12/31/91	1.2120	0.9854
330211	01/01/91	12/31/91	1.2443	0.9868
330212	01/01/91	12/31/91	1.2332	0.9959
330213	01/01/91	12/31/91	1.1090	0.9704
330214	01/01/91	12/31/91	1.7320	0.9992
330215	01/01/91	12/31/91	1.2038	0.9923
330218	01/01/91	12/31/91	1.2668	0.9906
330219	01/01/91	12/31/91	1.5482	0.9984
330221	01/01/91	12/31/91	1.2762	0.9962
330222	01/01/91	12/31/91	1.2217	0.9886
330223	01/01/91	12/31/91	1.0822	0.9742
330224	01/01/91	12/31/91	1.2347	0.9946
330225	01/01/91	12/31/91	1.1868	0.9958
330226	01/01/91	12/31/91	1.2793	0.9916
330229	01/01/91	12/31/91	1.2083	0.9824
330230	01/01/91	12/31/91	1.4617	0.9948
330232	01/01/91	12/31/91	1.2602	0.9973
330233	01/01/91	12/31/91	1.5136	0.9971
330235	01/01/91	12/31/91	1.2051	0.9955
330236	01/01/91	12/31/91	1.3353	0.9951
330238	01/01/91	12/31/91	1.0762	0.9875
330239	01/01/91	12/31/91	1.1767	0.9945
330241	01/01/91	12/31/91	1.7846	0.9952
330242	01/01/91	12/31/91	1.2800	0.9967
330244	01/01/91	12/31/91	1.0915	0.9967
330245	01/01/91	12/31/91	1.3205	0.9977
330246	01/01/91	12/31/91	1.2066	0.9948
330247	01/01/91	12/31/91	0.6192	1.0000
330249	01/01/91	12/31/91	1.2142	0.9923
330250	01/01/91	12/31/91	1.2671	0.9949
330252	01/01/91	12/31/91	0.9231	0.9485
330254	01/01/91	12/31/91	1.0081	0.9868
330258	01/01/91	12/31/91	1.3424	0.9911

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
330259	01/01/91	12/31/91	1.3447	0.9959
330261	01/01/91	12/31/91	1.2431	0.9940
330263	01/01/91	12/31/91	1.0611	0.9799
330264	01/01/91	12/31/91	1.1762	0.9920
330265	01/01/91	12/31/91	1.2482	0.9943
330267	01/01/91	12/31/91	1.2433	0.9934
330268	01/01/91	12/31/91	1.1202	0.9727
330270	01/01/91	12/31/91	1.8605	0.9971
330273	01/01/91	12/31/91	1.2056	0.9893
330275	01/01/91	12/31/91	1.2347	0.9981
330276	01/01/91	12/31/91	1.2125	0.9847
330277	01/01/91	12/31/91	1.1833	0.9831
330279	01/01/91	12/31/91	1.2308	0.9953
330281	01/01/91	12/31/91	0.5490	1.0000
330285	01/01/91	12/31/91	1.6676	0.9977
330286	01/01/91	12/31/91	1.3184	0.9918
330288	01/01/91	12/31/91	1.0362	0.9839
330290	01/01/91	12/31/91	1.6676	0.9981
330293	01/01/91	12/31/91	1.1914	0.9938
330304	01/01/91	12/31/91	1.1936	0.9915
330306	01/01/91	12/31/91	1.3668	0.9961
330307	01/01/91	12/31/91	1.1312	0.9812
330308	01/01/91	12/31/91	1.2220	0.9968
330309	01/01/91	12/31/91	1.2787	0.9963
330314	01/01/91	12/31/91	1.3124	0.9937
330315	01/01/91	12/31/91	1.1847	0.9917
330316	01/01/91	12/31/91	1.2838	0.9926
330327	01/01/91	12/31/91	0.9646	0.9763
330331	01/01/91	12/31/91	1.1964	0.9942
330332	01/01/91	12/31/91	1.2709	0.9950
330333	01/01/91	12/31/91	1.3218	0.9976
330336	01/01/91	12/31/91	1.2602	0.9863
330338	01/01/91	12/31/91	1.1473	0.9937
330339	01/01/91	12/31/91	0.8252	1.0000
330340	01/01/91	12/31/91	1.1362	0.9791
330350	01/01/91	12/31/91	1.8601	0.9970
330353	01/01/91	12/31/91	1.2202	0.9916
330357	01/01/91	12/31/91	1.3670	0.9875
330359	01/01/91	12/31/91	0.9375	0.9742
330372	01/01/91	12/31/91	1.2491	0.9920
330381	01/01/91	12/31/91	1.2263	0.9986
330386	01/01/91	12/31/91	1.1966	0.9701
330387	01/01/91	12/31/91	0.8518	0.9429
330389	01/01/91	12/31/91	1.8306	0.9943
330390	01/01/91	12/31/91	1.1703	1.0000
330393	01/01/91	12/31/91	1.6281	0.9975
330394	01/01/91	12/31/91	1.3967	0.9985
330395	01/01/91	12/31/91	1.3223	0.9928
330397	01/01/91	12/31/91	1.4223	0.9962
330398	01/01/91	12/31/91	1.2796	0.9909
330399	01/01/91	12/31/91	1.3598	0.9982
340001	10/01/90	09/30/91	1.2428	0.9817
340002	10/01/90	09/30/91	1.7824	0.9964
340003	10/01/90	09/30/91	1.1463	0.9553
340004	10/01/90	09/30/91	1.3921	0.9937
340005	10/01/90	09/30/91	1.2275	0.9861
340006	10/01/90	09/30/91	1.1724	0.9682
340007	10/01/90	09/30/91	1.1175	0.9733
340008	10/01/90	09/30/91	1.2245	0.9822
340009	10/01/90	09/30/91	1.2459	0.9868
340010	09/24/90	09/28/91	1.3121	0.9770
340011	10/01/90	09/30/91	1.0776	0.9767
340012	10/01/90	09/30/91	1.0763	0.9854
340013	10/01/90	09/30/91	1.1930	0.9735
340015	10/01/90	09/30/91	1.2281	0.9777
340016	10/01/90	09/30/91	1.2019	0.9800
340017	10/01/90	09/30/91	1.2022	0.9854
340018	10/01/90	09/30/91	1.2033	0.9711
340021	10/01/90	09/30/91	1.2187	0.9865
340022	10/01/90	09/30/91	1.1383	0.9590
340023	01/01/91	12/31/91	1.3119	0.9881
340024	10/01/90	09/30/91	1.2321	0.9600
340025	10/01/90	09/30/91	1.0963	0.9850
340027	10/01/90	09/30/91	1.1213	0.9936
340028	10/01/90	09/30/91	1.3819	0.9923
340031	10/01/90	09/30/91	1.0763	0.9821
340034	10/01/90	09/30/91	1.2825	0.9615

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
340035	10/01/90	09/30/91	1.0860	0.9740
340036	10/01/90	09/30/91	1.0823	0.9596
340037	10/01/90	09/30/91	1.2533	0.9862
340038	10/01/90	09/30/91	1.2044	0.9839
340039	10/01/90	09/30/91	1.2308	0.9804
340040	10/01/90	09/30/91	1.7185	0.9991
340041	10/01/90	09/30/91	1.2352	0.9717
340042	10/01/90	09/30/91	1.1506	0.9799
340044	10/01/90	09/30/91	1.0088	0.9562
340045	10/01/90	09/30/91	0.9709	0.9405
340049	10/01/90	09/30/91	0.5900	1.0000
340050	10/01/90	09/30/91	1.2031	0.9736
340051	10/01/90	09/30/91	1.2320	0.9774
340052	10/01/90	09/30/91	0.9564	0.9778
340053	10/01/90	09/30/91	1.5728	0.9960
340054	10/01/90	09/30/91	0.9766	0.9722
340055	10/01/90	09/30/91	1.1573	0.9862
340060	10/01/90	09/30/91	1.1815	0.9859
340063	10/01/90	09/30/91	1.0201	0.9685
340064	10/01/90	09/30/91	1.0986	0.9630
340065	10/01/90	09/30/91	1.2349	0.9662
340067	10/01/90	09/30/91	1.1112	0.9704
340068	10/01/90	09/30/91	1.2557	0.9721
340069	10/01/90	09/30/91	1.7419	0.9962
340070	10/01/90	09/30/91	1.2917	0.9733
340071	10/01/90	09/30/91	1.0850	0.9583
340072	10/01/90	09/30/91	1.0490	0.9740
340075	10/01/90	09/30/91	1.1890	0.9832
340080	10/01/90	09/30/91	1.0912	0.9713
340084	10/01/90	09/30/91	1.0187	0.9836
340085	10/01/90	09/30/91	1.2491	0.9673
340087	10/01/90	09/30/91	1.0739	0.9604
340088	10/01/90	09/30/91	1.0851	0.9629
340089	10/01/90	09/30/91	1.0024	0.9645
340090	10/01/90	09/30/91	1.1459	0.9571
340091	10/01/90	09/30/91	1.6608	0.9989
340093	10/01/90	09/30/91	1.0467	0.9813
340094	10/01/90	09/30/91	1.3460	0.9861
340096	10/01/90	09/30/91	1.2126	0.9677
340097	10/01/90	09/30/91	1.0050	0.9631
340098	09/30/90	09/28/91	1.6140	0.9972
340099	10/01/90	09/30/91	1.1447	0.9661
340100	10/01/89	09/30/91	1.2013	0.9680
340101	01/01/91	12/31/91	1.0685	0.9624
340104	10/01/90	09/30/91	1.0045	0.9909
340105	10/01/90	09/30/91	1.3333	0.9963
340106	10/01/90	09/30/91	1.1011	0.9649
340107	01/01/91	12/31/91	1.3185	0.9798
340109	10/01/90	09/30/91	1.2925	0.9815
340111	10/01/90	09/30/91	1.1769	0.9584
340112	10/01/90	09/30/91	1.0080	0.9663
340113	10/01/90	09/30/91	1.9529	0.9990
340114	10/01/90	09/30/91	1.3834	0.9974
340115	10/01/90	09/30/91	1.4477	0.9955
340119	10/01/90	09/30/91	1.2129	0.9782
340120	10/01/90	09/30/91	1.0568	0.9497
340121	10/01/90	09/30/91	0.9505	0.9729
340122	10/01/90	09/30/91	1.0412	0.9621
340123	10/01/90	09/30/91	1.2013	0.9656
340124	10/01/90	09/30/91	1.0945	0.9515
340125	10/01/90	09/30/91	1.4419	0.9901
340126	10/01/90	09/30/91	1.2851	0.9815
340127	10/01/90	09/30/91	1.2221	0.9664
340129	10/01/90	09/30/91	1.1279	0.9783
340130	10/01/90	09/30/91	1.4048	0.9724
340131	10/01/90	09/30/91	1.3438	0.9910
340132	10/01/90	09/30/91	1.3693	0.9828
340133	10/01/90	09/30/91	1.2042	0.9541
340141	10/01/90	09/30/91	1.5276	0.9974
340142	10/01/90	09/30/91	1.1672	0.9757
340145	10/01/90	09/30/91	1.1948	0.9730
340146	10/01/90	09/30/91	1.0162	0.9637
340147	10/07/90	10/05/91	1.2836	0.9928
340151	10/01/90	09/30/91	1.1661	0.9810
340159	10/01/90	09/30/91	1.2011	0.9535
340162	01/01/91	12/31/91	1.2550	0.9866
340166	10/01/90	09/30/91	1.3215	0.9914

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
340168	10/01/90	09/30/91	0.5394	1.0000
350004	10/01/90	09/30/91	1.8750	0.9985
350007	10/01/90	09/30/91	1.0198	0.9563
350015	01/01/91	12/31/91	1.5242	0.9954
350016	01/01/91	12/31/91	0.9758	0.9885
350018	10/01/90	09/30/91	1.0307	0.9727
350019	01/01/91	12/31/91	1.5200	0.9965
350020	10/01/90	09/30/91	1.3390	0.9893
350023	01/01/91	12/31/91	0.9428	0.9948
350024	10/01/90	09/30/91	1.0004	0.9851
350027	10/01/90	09/30/91	0.9808	0.9863
350032	07/01/90	12/29/91	1.1451	1.0000
350033	01/01/91	12/31/91	0.9818	0.9844
350038	01/01/91	12/31/91	0.9640	0.9639
350041	01/01/91	12/31/91	0.9867	0.9742
350042	01/01/91	12/31/91	0.9259	0.9937
350051	01/01/91	12/31/91	0.9237	0.9761
350055	01/01/91	12/31/91	0.9464	0.9433
350066	10/01/90	09/30/91	0.9845	0.9509
360001	01/01/91	12/31/91	1.2267	0.9897
360002	01/01/91	12/31/91	1.1530	0.9758
360007	01/01/91	12/31/91	1.1598	0.9850
360009	01/01/91	12/31/91	1.3244	0.9894
360010	01/01/91	12/31/91	1.1637	0.9729
360012	01/01/91	12/31/91	1.2956	0.9808
360013	01/01/91	12/31/91	1.0928	0.9735
360015	01/01/91	12/31/91	1.4545	0.9982
360016	01/01/91	12/31/91	1.4854	0.9990
360018	01/01/91	12/31/91	1.3809	0.9990
360019	01/01/91	12/31/91	1.1824	0.9868
360020	01/01/91	12/31/91	1.2523	0.9936
360021	01/01/91	12/31/91	1.1998	0.9893
360024	01/01/91	12/31/91	1.2610	0.9914
360025	01/01/91	12/31/91	1.2159	0.9846
360026	01/01/91	12/31/91	1.1348	0.9921
360027	01/01/91	12/31/91	1.5200	0.9977
360030	01/01/91	12/31/91	1.1521	0.9766
360032	01/01/91	12/31/91	1.1268	0.9772
360034	01/01/91	12/31/91	1.0958	0.9472
360036	01/01/91	12/31/91	1.1847	0.9807
360037	01/01/91	12/31/91	1.8629	0.9904
360038	01/01/91	12/31/91	1.4772	0.9975
360039	01/01/91	12/31/91	1.2374	0.9932
360041	01/01/91	12/31/91	1.2398	0.9926
360042	01/01/91	12/31/91	1.0810	0.9566
360044	01/01/91	12/31/91	1.1141	0.9744
360045	01/01/90	08/31/91	1.4509	0.9966
360046	01/01/91	12/31/91	1.1344	0.9790
360047	01/01/91	12/31/91	1.1075	0.9741
360049	01/01/91	12/31/91	1.2513	0.9919
360050	01/01/91	12/31/91	1.2033	0.9660
360051	01/01/91	12/31/91	1.4573	0.9974
360055	01/01/91	12/31/91	1.1903	0.9908
360058	01/01/91	12/31/91	1.3094	0.9888
360057	01/01/91	12/31/91	0.9635	0.9687
360059	01/01/91	12/31/91	1.4728	0.9943
360061	01/01/91	12/31/91	1.1965	1.0000
360063	01/01/91	12/31/91	1.0440	0.9719
360064	01/01/91	12/31/91	1.4653	0.9971
360065	01/01/91	12/31/91	1.1896	0.9816
360068	01/01/91	12/31/91	1.2372	0.9899
360067	01/01/91	12/31/91	1.1249	0.9723
360068	01/01/91	12/31/91	1.4608	0.9977
360069	01/01/91	12/31/91	1.0494	0.9682
360070	01/01/91	12/31/91	1.4329	0.9917
360071	01/01/91	12/31/91	1.2858	0.9795
360072	01/01/91	12/31/91	1.1634	0.9724
360074	10/01/90	09/30/91	1.3164	0.9944
360075	01/01/91	12/31/91	1.4103	0.9940
360076	01/01/91	12/31/91	1.2503	0.9883
360077	01/01/91	12/31/91	1.4076	0.9966
360078	01/01/91	12/31/91	1.3057	0.9865
360079	01/01/91	12/31/91	1.6483	0.9984
360080	01/01/91	12/31/91	1.2267	0.9913
360081	01/01/91	12/31/91	1.3116	0.9970
360082	01/01/91	12/31/91	1.3121	0.9897
360083	01/01/91	12/31/91	1.2053	0.9893

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
360084	01/01/91	12/31/91	1.4184	0.9950
360086	01/01/91	12/31/91	1.3178	0.9916
360087	01/01/91	12/31/91	1.3168	0.9887
360088	01/01/91	12/31/91	1.1471	0.9736
360089	01/01/91	12/31/91	1.1064	0.9826
360091	01/01/91	12/31/91	1.3101	0.9672
360092	01/01/91	12/31/91	1.1503	0.9684
360093	01/01/91	12/31/91	1.2105	0.9720
360094	01/01/91	12/31/91	1.2387	0.9960
360095	01/01/91	12/31/91	1.2884	0.9839
360096	01/01/91	12/31/91	1.1105	0.9861
360098	01/01/91	12/31/91	1.3091	0.9893
360099	10/01/90	09/30/91	1.0405	0.9751
360100	01/01/91	12/31/91	1.2768	0.9889
360101	01/01/91	12/31/91	1.6186	0.9952
360102	01/01/91	12/31/91	1.2469	0.9957
360103	01/01/91	12/31/91	1.3518	0.9974
360104	01/01/91	12/31/91	0.9000	0.9954
360106	01/01/91	12/31/91	1.1242	0.9821
360107	09/01/90	08/31/91	1.2023	0.9680
360108	01/01/91	12/31/91	1.0197	0.9684
360109	01/01/91	12/31/91	1.0426	0.9691
360112	01/01/91	12/31/91	1.6215	0.9981
360113	01/01/91	12/31/91	1.2377	0.9929
360114	01/01/91	12/31/91	1.0423	0.9761
360115	01/01/91	12/31/91	1.2475	0.9901
360116	01/01/91	12/31/91	1.0458	0.9815
360118	01/01/91	12/31/91	1.2714	0.9856
360119	01/01/91	12/31/91	1.2327	0.9918
360120	01/01/91	12/31/91	0.5370	1.0000
360121	10/01/90	09/30/91	1.1904	0.9843
360122	01/01/91	12/31/91	1.2472	0.9905
360123	01/01/91	12/31/91	1.1627	0.9928
360124	01/01/91	12/31/91	1.2223	0.9788
360125	01/01/91	12/31/91	1.0769	0.9777
360126	01/01/91	12/31/91	1.2292	0.9897
360127	01/01/91	12/31/91	1.0349	0.9690
360128	01/01/91	12/31/91	1.0575	0.9788
360129	01/01/91	12/31/91	1.0374	0.9506
360130	01/01/91	12/31/91	1.1056	0.9841
360131	01/01/91	12/31/91	1.2531	0.9889
360132	01/01/91	12/31/91	1.1616	0.9843
360133	01/01/91	12/31/91	1.3247	0.9951
360135	01/01/91	12/31/91	1.0922	0.9830
360136	01/01/91	12/31/91	1.1116	0.9475
360137	01/01/91	12/31/91	1.5101	0.9987
360139	01/01/91	12/31/91	1.0720	0.9677
360140	01/01/91	12/31/91	1.0483	0.9828
360141	01/01/91	12/31/91	1.4184	0.9977
360142	01/01/91	12/31/91	0.9963	0.9552
360143	01/01/91	12/31/91	1.2329	0.9939
360144	01/01/91	12/31/91	1.2822	0.9921
360145	01/01/91	12/31/91	1.5243	0.9971
360147	10/01/90	09/30/91	1.2249	0.9680
360148	01/01/91	12/31/91	1.2000	0.9751
360149	01/01/91	12/31/91	1.1031	0.9899
360150	01/01/91	12/31/91	1.2363	0.9845
360151	01/01/91	12/31/91	1.3006	0.9941
360152	01/01/91	12/31/91	1.5025	0.9976
360153	01/01/91	12/31/91	1.1381	0.9887
360154	01/01/91	12/31/91	1.0700	0.9760
360155	01/01/91	12/31/91	1.2207	0.9968
360158	10/01/90	09/30/91	1.1352	0.9766
360159	01/01/91	12/31/91	1.1406	0.9708
360162	01/01/91	12/31/91	1.2472	0.9928
360163	01/01/91	12/31/91	1.6391	0.9970
360164	01/01/91	12/31/91	0.9701	0.9874
360165	11/01/90	10/31/91	1.0911	0.9822
360166	01/01/91	12/31/91	0.9723	0.9934
360169	01/01/91	12/31/91	1.0188	0.9558
360170	01/01/91	12/31/91	1.1666	0.9808
360172	01/01/91	12/31/91	1.3425	0.9865
360174	01/01/91	12/31/91	1.1711	0.9892
360175	01/01/91	12/31/91	1.1311	0.9756
360176	01/01/91	12/31/91	1.1512	0.9618
360177	01/01/91	12/31/91	1.1965	0.9624
360179	12/30/90	12/28/91	1.2456	0.9968

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
360180	01/01/91	12/31/91	2.1171	0.9987
360184	01/01/91	12/31/91	0.7143	0.9778
360186	01/01/91	12/31/91	1.1444	0.9626
360188	01/01/91	12/31/91	1.0064	0.9612
360189	01/01/91	12/31/91	1.0439	0.9870
360192	01/01/91	12/31/91	1.2611	0.9940
360193	01/01/91	12/31/91	1.2682	0.9920
360194	10/01/90	09/30/91	1.0657	0.9826
360195	01/01/91	12/31/91	1.2155	0.9577
360197	01/01/91	12/31/91	1.1790	0.9537
360200	01/01/91	12/31/91	1.1631	0.9825
360203	01/01/91	12/31/91	1.1251	0.9740
360204	01/01/91	12/31/91	1.1855	0.9888
360210	01/01/91	12/31/91	1.1895	0.9730
360211	01/01/91	12/31/91	1.1898	0.9909
360212	01/01/91	12/31/91	1.4148	0.9965
360213	01/01/91	12/31/91	1.0878	0.9879
360218	01/01/91	12/31/91	1.2981	0.9858
360230	01/01/91	12/31/91	1.3032	0.9915
360231	01/01/91	12/31/91	1.1291	0.9657
360232	01/01/91	12/31/91	1.1424	0.9770
360234	01/01/91	12/31/91	1.2469	0.9937
360236	01/01/91	12/31/91	1.1986	0.9864
360239	01/01/91	12/31/91	1.2010	0.9838
360240	01/01/91	12/31/91	0.5534	1.0000
360241	01/01/91	12/31/91	0.6349	1.0000
370001	01/01/91	12/31/91	1.6645	0.9961
370002	01/01/91	12/31/91	1.2051	0.9815
370006	10/01/90	09/30/91	1.2104	0.9897
370007	01/01/91	12/31/91	1.1412	0.9660
370014	10/01/90	09/30/91	1.1519	0.9821
370017	01/01/91	12/31/91	0.9980	0.9560
370018	11/01/90	10/31/91	1.1852	0.9883
370020	10/01/90	09/30/91	1.2597	0.9830
370021	09/01/90	08/31/91	0.9662	0.9617
370025	10/01/90	09/30/91	1.3097	0.9902
370032	11/01/90	10/31/91	1.3385	0.9973
370033	10/01/90	09/30/91	1.2096	0.9894
370037	01/01/91	12/31/91	1.5410	0.9981
370039	11/01/90	10/31/91	1.2375	0.9781
370040	10/01/90	09/30/91	1.0307	0.9685
370049	01/01/91	12/31/91	1.2992	0.9751
370051	10/01/90	09/30/91	0.9755	0.9678
370054	01/01/91	12/31/91	1.2703	0.9823
370057	01/01/91	12/31/91	1.0796	0.9662
370071	07/01/90	12/31/91	1.0037	0.9662
370077	01/01/91	12/31/91	1.1983	0.9912
370078	01/01/91	12/31/91	1.5209	0.9993
370092	10/01/90	09/30/91	1.0339	0.9472
370093	09/01/90	08/31/91	1.6126	0.9983
370094	01/01/91	12/31/91	1.2836	0.9975
370095	01/01/91	12/31/91	0.8996	0.9650
370105	10/01/90	09/30/91	1.8890	0.9941
370106	11/01/90	10/31/91	1.3358	0.9995
370108	10/01/90	09/30/91	1.0337	0.9744
370114	10/01/90	09/30/91	1.5430	0.9994
370117	10/01/90	10/20/91	1.3104	0.9895
370121	09/01/90	08/31/91	1.1812	0.9723
370141	09/01/90	08/31/91	1.4333	0.9961
370146	01/01/91	12/31/91	1.0293	0.9819
370148	09/01/90	08/31/91	1.2728	0.9887
370149	10/01/90	09/30/91	1.2142	0.9781
370157	10/01/90	09/30/91	0.9177	0.9555
370161	11/01/90	10/31/91	1.1359	0.9856
370165	10/01/90	09/30/91	1.1678	0.9866
370169	01/01/91	12/31/91	1.0252	0.9602
370176	01/01/91	12/31/91	1.2606	0.9815
370177	01/01/91	12/31/91	0.9454	0.9689
370179	10/01/90	09/30/91	1.0758	0.9290
370189	01/01/91	12/31/91	0.9631	0.9823
380004	01/01/91	12/31/91	1.8075	0.9804
380006	01/01/91	12/31/91	1.2208	0.9778
380010	01/01/91	12/31/91	1.1584	0.9795
380014	01/01/91	12/31/91	1.3162	0.9788
380018	10/01/90	09/30/91	1.8719	0.9977
380019	01/01/91	12/31/91	1.2112	0.9922
380020	10/01/90	09/30/91	1.3492	0.9836

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
380021	10/01/90	09/30/91	1.2308	0.9906
380022	10/01/90	09/30/91	1.2365	0.9823
380026	01/01/91	12/31/91	1.4080	0.9554
380029	10/01/90	09/30/91	1.1623	0.9595
380036	01/01/91	12/31/91	1.0743	0.9431
380038	08/01/90	07/31/91	1.2550	0.9751
380039	01/01/91	12/31/91	1.3001	0.9893
380042	01/01/91	12/31/91	1.0988	0.9678
380047	01/01/91	12/31/91	1.5499	0.9994
380050	10/01/90	09/30/91	1.3313	0.9841
380051	10/01/90	09/30/91	1.4278	0.9930
380052	01/01/91	12/31/91	1.1835	0.9786
380055	01/01/91	12/31/91	1.1800	0.9903
380056	01/01/91	12/31/91	1.0506	0.9654
380059	07/01/90	07/31/91	0.9216	0.9662
380060	01/01/91	12/31/91	1.3427	0.9912
380061	01/01/91	12/31/91	1.6171	0.9960
380064	08/01/90	07/31/91	1.3093	0.9890
380068	10/01/90	09/30/91	1.0739	0.9600
380070	01/01/91	12/31/91	1.0567	0.9585
380075	01/01/91	12/31/91	1.3789	0.9916
380082	01/01/91	12/31/91	1.2601	0.9895
380091	01/01/91	12/31/91	1.1475	0.9856
390028	01/01/91	12/31/91	1.7001	0.9976
390054	01/01/91	12/31/91	1.1090	0.9820
390060	01/01/91	12/31/91	1.1547	0.9892
390128	01/01/91	12/31/91	1.1854	0.9916
390169	01/01/91	12/31/91	1.2253	0.9975
390186	01/01/91	12/31/91	1.1687	0.9810
390224	10/01/90	09/30/91	0.9582	0.9775
390237	01/01/91	12/31/91	1.4831	0.9977
400002	01/01/91	12/31/91	1.2248	0.9990
400005	01/01/91	12/31/91	1.0805	0.9997
400007	01/01/91	12/31/91	1.1059	0.9989
400008	01/01/91	12/31/91	1.1672	0.9980
400010	10/01/90	09/30/91	0.9643	0.9905
400011	01/01/91	12/31/91	1.0818	0.9981
400014	01/01/91	12/31/91	1.3134	0.9986
400016	10/01/90	09/30/91	1.2611	0.9994
400017	01/01/91	12/31/91	1.1175	0.9976
400019	01/01/91	12/31/91	1.4370	0.9988
400022	01/01/91	12/31/91	1.2918	0.9998
400024	01/01/91	12/31/91	1.0581	0.9987
400029	07/01/90	06/31/91	1.0231	0.9957
400032	01/01/91	12/31/91	1.1341	0.9981
400089	01/01/91	12/31/91	1.0793	0.9968
400094	01/01/91	12/31/91	0.9243	0.9934
400098	01/01/91	12/31/91	1.2146	0.9987
400106	10/01/90	09/30/91	1.1439	0.9978
400109	10/01/90	09/30/91	1.4983	0.9997
400111	01/01/91	12/31/91	1.2501	0.9976
400112	09/01/90	08/31/91	1.2031	0.9959
400113	10/01/90	09/30/91	1.1983	0.9987
400115	01/01/91	12/31/91	1.0223	0.9944
400117	01/01/91	12/31/91	1.1765	0.9976
400118	1/01/91	12/31/91	1.1673	0.9979
400120	01/01/91	12/31/91	1.2988	0.9994
410001	10/01/90	09/30/91	1.2662	0.9921
410002	10/01/90	09/30/91	1.2509	0.9904
410004	10/01/90	09/30/91	1.4269	0.9940
410005	10/01/90	09/30/91	1.2986	0.9964
410006	10/01/90	09/30/91	1.1891	0.9903
410007	10/01/90	09/30/91	1.5203	0.9980
410008	10/01/90	09/30/91	1.1992	0.9902
410009	10/01/90	09/30/91	1.3381	0.9947
410010	10/01/90	09/30/91	1.0294	0.9872
410011	10/01/90	09/30/91	1.1919	0.9932
410012	10/01/90	09/30/91	1.5865	0.9979
410013	10/01/90	09/30/91	1.1509	0.9835
420005	01/01/91	12/31/91	1.0876	0.9793
420007	09/23/90	10/05/91	1.4065	0.9989
420009	10/01/90	09/30/91	1.2309	0.9622
420010	10/01/90	09/30/91	1.0721	0.9530
420011	10/01/90	09/30/91	1.0639	0.9713
420014	10/01/90	09/30/91	1.1135	0.9763
420015	10/01/90	09/30/91	1.2546	0.9842
420016	10/01/90	09/30/91	1.2158	0.9845

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
420018	09/30/90	09/28/91	1.8263	0.9957
420019	10/01/90	09/30/91	1.1680	0.9761
420020	10/01/90	09/30/91	1.1754	0.9781
420022	09/23/90	10/05/91	0.9958	0.9743
420023	01/01/91	12/31/91	1.2720	0.9952
420026	09/09/90	09/07/91	1.7991	0.9975
420027	09/30/90	09/28/91	1.3438	0.9691
420028	10/01/90	09/30/91	1.0488	0.9657
420029	10/01/90	09/30/91	1.8435	1.0000
420030	01/01/91	12/31/91	1.1872	0.9583
420031	10/01/90	09/30/91	0.9742	0.9319
420033	10/01/90	09/30/91	1.1675	0.9811
420036	10/01/90	09/30/91	1.2538	0.9828
420037	10/01/90	09/30/91	1.2815	0.9706
420038	10/01/90	09/30/91	1.2053	0.9692
420039	10/01/90	09/30/91	1.1185	0.9800
420040	10/01/90	09/30/91	1.3052	0.9952
420042	10/01/90	09/30/91	1.0814	0.9814
420043	10/01/90	09/30/91	1.1441	0.9746
420044	10/01/90	08/30/91	1.1474	0.9901
420048	10/01/90	09/30/91	1.1336	0.9657
420049	10/01/90	09/30/91	1.0915	0.9767
420051	10/01/90	09/30/91	1.5379	0.9979
420054	09/01/90	08/31/91	1.1393	0.9583
420055	10/01/90	09/30/91	1.0306	0.9841
420056	10/01/90	09/30/91	1.0070	0.9070
420057	10/01/90	09/30/91	1.0836	0.9748
420059	10/01/90	09/30/91	1.0510	0.9601
420061	10/01/90	09/30/91	1.2715	0.9562
420064	10/01/90	09/30/91	1.0773	0.9636
420066	10/01/90	09/30/91	0.9927	0.9472
420067	10/01/90	09/30/91	1.1022	0.9549
420068	10/01/90	09/30/91	1.1784	0.9908
420069	10/01/90	09/30/91	1.0010	0.9458
420070	10/01/90	09/30/91	1.2662	0.9781
420071	10/01/90	09/30/91	1.3715	0.9914
420072	10/01/90	09/30/91	1.0016	0.9724
420073	10/01/90	09/30/91	1.2618	0.9674
420074	10/01/90	09/30/91	0.9675	0.9484
420075	10/01/90	09/30/91	1.0723	0.9638
420076	01/01/91	12/31/91	1.2336	0.9956
420078	10/01/90	09/30/91	1.5706	0.9981
420081	10/01/90	09/30/91	0.7937	0.9714
420086	10/01/90	09/30/91	1.3756	0.9930
420087	10/01/90	09/30/91	1.5223	0.9985
420088	10/01/90	09/30/91	1.1815	0.9887
420089	09/01/90	08/31/91	1.2692	0.9879
430008	01/01/91	12/31/91	1.2104	0.9812
430009	01/01/91	12/31/91	0.9819	0.9494
430013	10/01/90	09/30/91	1.2429	0.9828
430014	10/01/90	09/30/91	1.1908	0.9831
430015	08/01/90	07/31/91	1.0321	0.9783
430016	10/01/90	09/30/91	1.7031	0.9977
430017	01/01/90	12/18/91	1.0902	0.9814
430023	09/01/90	08/31/91	0.9512	0.9729
430024	01/01/91	12/31/91	1.0153	0.9517
430026	01/01/91	12/31/91	0.8874	0.9570
430028	01/01/91	12/31/91	1.0921	0.9863
430029	09/01/90	08/31/91	0.9991	0.9892
430031	01/01/91	12/31/91	0.9924	0.9631
430034	01/01/91	12/31/91	1.0600	1.0000
430036	01/01/91	12/31/91	1.0445	0.9820
430038	01/01/91	12/31/91	1.0571	0.9916
430040	10/01/90	09/30/91	0.9194	0.9612
430041	01/01/91	12/31/91	0.9497	0.9491
430043	01/01/91	12/31/91	1.1726	0.9900
430044	01/01/91	12/31/91	0.9371	0.9726
430047	01/01/91	12/31/91	1.1379	0.9663
430048	01/01/91	12/31/91	1.1525	0.9850
430049	01/01/91	12/31/91	0.9244	0.9562
430051	01/01/91	12/31/91	0.9945	0.9335
430056	01/01/91	12/31/91	0.6854	0.9406
430057	01/01/91	12/31/91	0.9508	0.9776
430060	01/01/91	12/31/91	1.0189	0.9053
430064	12/01/90	11/30/91	1.0512	0.9711
430065	10/01/90	09/30/91	0.9439	0.9233
430073	10/01/90	09/30/91	1.1114	0.9949

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
430076	01/01/91	12/31/91	0.9984	0.9794
430079	01/01/91	12/31/91	1.0127	0.9897
430080	10/01/90	09/30/91	0.8204	1.0000
430087	01/01/91	12/31/91	1.0659	0.9661
430088	01/01/91	12/31/91	0.9353	0.9770
440008	01/01/91	12/31/91	0.9674	0.9628
440018	11/01/90	10/31/91	1.3078	0.9707
440020	09/01/90	09/29/91	1.2123	0.9702
440026	09/01/90	09/30/91	1.2592	0.9827
440034	01/01/91	12/31/91	1.3929	0.9967
440046	01/01/91	12/31/91	1.0276	0.9957
440047	09/01/90	08/31/91	0.9033	0.9687
440048	10/01/90	09/30/91	1.5925	0.9975
440049	01/01/91	12/31/91	1.6117	0.9990
440050	01/01/91	12/31/91	1.1605	0.9870
440058	01/01/91	12/31/91	1.1619	0.9729
440061	10/01/90	09/30/91	1.1047	0.9703
440064	01/01/91	12/31/91	1.1236	0.9680
440067	09/01/90	08/31/91	1.1662	0.9680
440068	10/01/90	09/30/91	1.1649	0.9750
440071	01/01/91	12/31/91	1.3317	0.9984
440072	01/01/91	12/31/91	1.3975	0.9652
440078	10/01/90	09/30/91	1.0118	0.9811
440079	01/01/91	12/31/91	0.8359	0.9666
440081	01/01/91	12/31/91	1.1793	0.9756
440083	01/01/91	12/31/91	1.2345	0.9794
440087	01/01/91	12/31/91	0.9950	0.9478
440091	09/01/90	08/31/91	1.3908	0.9988
440095	01/01/91	12/31/91	1.0625	0.9706
440100	01/01/91	12/31/91	1.0898	0.9626
440110	01/01/91	12/31/91	1.0966	0.9636
440120	01/01/91	12/31/91	1.4435	0.9990
440125	01/01/91	12/31/91	1.4548	0.9990
440136	09/01/90	08/31/91	1.2368	0.9825
440145	11/01/89	09/30/91	0.9976	0.9586
440146	01/01/91	12/31/91	1.2639	0.9750
440148	01/01/91	12/31/91	1.1627	0.9693
440149	11/01/90	10/31/91	1.1682	0.9742
440150	01/01/91	12/31/91	1.3003	0.9909
440157	01/01/91	12/31/91	0.9953	0.9833
440161	01/01/91	12/31/91	1.5728	0.9979
440166	01/01/91	12/31/91	1.0236	0.9545
440174	01/01/91	12/31/91	0.9155	0.9458
440178	09/01/90	08/31/91	1.1862	0.9873
440181	01/01/91	12/31/91	1.0171	0.9593
440182	01/01/91	12/31/91	0.9260	0.9503
440184	01/01/91	12/31/91	1.2642	0.9883
440185	09/01/90	08/31/91	1.0551	0.9876
440186	11/01/90	10/31/91	1.1406	0.9551
440189	06/01/90	07/31/91	1.4639	0.9927
440194	09/01/90	08/31/91	1.2402	0.9823
440196	01/01/91	12/31/91	0.9593	0.9706
440200	12/01/90	11/30/91	1.0918	0.9560
440203	01/01/91	12/31/91	0.9910	0.9600
440205	01/01/91	12/31/91	0.9641	0.9783
450002	01/01/91	12/31/91	1.4287	0.9987
450005	09/01/90	08/31/91	1.0257	0.9776
450010	10/01/90	09/30/91	1.2778	0.9942
450011	01/01/91	12/31/91	1.5650	0.9980
450014	01/01/91	12/31/91	1.1148	0.9658
450015	10/01/90	09/30/91	1.5148	0.9990
450016	01/01/91	12/31/91	1.6676	0.9975
450018	09/01/90	08/31/91	1.6354	0.9989
450020	01/01/91	12/31/91	1.0695	0.9606
450024	10/01/90	09/30/91	1.2745	0.9932
450025	01/01/91	12/31/91	1.4745	0.9953
450026	01/01/91	12/31/91	1.4051	0.9935
450032	10/01/90	09/30/91	1.2141	0.9746
450033	09/01/90	08/31/91	1.6021	0.9993
450037	10/01/90	09/30/91	1.4813	0.9978
450039	10/01/90	09/30/91	1.1669	0.9987
450041	01/01/91	12/31/91	0.9680	0.9505
450043	01/01/90	10/04/91	1.4065	0.9983
450046	01/01/90	09/30/91	1.4016	0.9972
450047	10/01/90	09/30/91	1.0057	0.9721
450050	01/01/91	12/31/91	1.2977	0.9671
450053	01/01/91	12/31/91	1.1278	0.9389

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
450054	09/01/90	08/31/91	1.6250	0.9982
450055	10/01/90	09/30/91	1.0724	0.9639
450057	07/04/90	11/26/91	1.2081	0.9917
450058	09/01/90	08/31/91	1.5007	0.9967
450059	01/01/91	12/31/91	1.3316	0.9749
450063	10/01/90	09/30/91	0.9350	0.9435
450065	10/01/90	09/30/91	1.1409	0.9734
450068	10/01/90	09/30/91	1.6478	0.9976
450072	01/01/91	12/31/91	1.1702	0.9610
450073	01/01/91	12/31/91	1.1079	0.9608
450076	09/01/90	08/31/91	1.2329	0.9999
450077	10/01/90	09/30/91	0.9717	0.9851
450080	10/01/90	09/30/91	1.1683	0.9744
450081	01/01/91	12/31/91	1.2080	0.9780
450082	10/01/90	09/30/91	0.9919	0.9458
450083	11/01/90	10/31/91	1.5629	0.9917
450085	10/01/90	09/30/91	0.9964	0.9787
450087	09/01/90	08/31/91	1.3355	0.9864
450094	01/01/91	12/31/91	1.3867	0.9948
450097	01/01/91	12/31/91	1.4069	0.9919
450098	11/01/90	10/31/91	1.1282	0.9799
450101	09/01/90	08/31/91	1.3795	0.9983
450104	01/01/91	12/31/91	1.2224	0.9712
450107	01/01/91	12/31/91	1.4521	0.9986
450108	10/01/90	09/30/91	0.9627	0.9495
450110	10/01/90	09/30/91	1.2206	0.9950
450112	01/01/91	12/31/91	1.2484	0.9849
450118	09/01/90	08/31/91	1.4270	0.9988
450119	10/01/90	09/30/91	1.2430	0.9817
450121	10/01/90	09/30/91	1.3732	0.9920
450123	05/01/90	12/31/91	1.0563	0.9819
450124	10/01/90	09/30/91	1.4619	0.9992
450127	10/01/90	09/30/91	0.9736	0.9496
450130	01/01/91	12/31/91	1.4751	0.9990
450131	08/01/90	07/31/91	1.2383	0.9888
450132	10/01/90	09/30/91	1.4472	0.9962
450133	10/01/90	09/30/91	1.4367	0.9967
450135	10/01/90	09/30/91	1.5550	0.9974
450137	10/01/90	09/30/91	1.3443	0.9949
450140	10/01/90	09/30/91	0.9001	0.9352
450142	09/01/90	08/31/91	1.2780	0.9875
450144	10/01/90	09/30/91	1.1362	0.9725
450145	01/01/91	12/31/91	0.9849	0.9678
450146	10/01/90	09/30/91	1.0151	0.9484
450148	10/01/90	09/30/91	1.3142	0.9796
450149	11/01/90	10/31/91	1.3871	0.9950
450150	10/01/90	09/30/91	1.0018	0.9409
450151	10/01/90	09/30/91	1.0753	0.9773
450152	10/01/90	09/30/91	1.4101	0.9954
450153	01/01/91	12/31/91	1.5958	0.9989
450154	10/01/90	09/30/91	1.1204	0.9645
450155	10/01/90	09/30/91	1.0537	0.9759
450160	10/01/90	09/30/91	1.0303	0.9536
450162	09/01/90	09/29/91	1.3480	0.9853
450163	01/01/91	12/31/91	1.1154	0.9678
450164	10/01/90	09/30/91	0.9316	0.9597
450165	01/01/91	12/31/91	0.9464	0.9688
450166	01/01/91	12/31/91	0.8739	0.9685
450169	01/01/91	12/31/91	0.8471	0.9495
450175	01/01/90	09/30/91	1.2209	0.9791
450178	10/01/90	09/30/91	1.2811	0.9733
450178	01/01/91	12/31/91	1.0877	0.9553
450181	01/01/91	12/31/91	1.0169	0.9702
450185	10/01/90	09/30/91	1.0490	0.8945
450187	01/01/91	12/31/91	1.2248	0.9819
450191	01/01/91	12/31/91	1.1094	0.9761
450192	09/01/90	08/31/91	1.1054	0.9823
450193	10/01/90	09/30/91	2.1579	0.9989
450194	01/01/91	12/31/91	1.1427	0.9873
450195	01/01/91	12/31/91	1.3861	0.9790
450196	01/01/91	12/31/91	1.2515	0.9873
450197	09/01/90	08/31/91	1.2111	0.9914
450200	10/01/90	09/30/91	1.2927	0.9960
450201	01/01/91	12/31/91	0.9547	0.9516
450203	10/01/90	09/30/91	1.1623	0.9910
450209	10/01/90	09/30/91	1.3431	0.9924
450210	01/01/91	12/31/91	1.1553	0.9588

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
450211	01/01/91	12/31/91	1.2503	0.9928
450213	01/01/91	12/31/91	1.4458	0.9932
450214	09/01/90	08/31/91	1.3040	0.9729
450218	10/01/89	07/08/91	0.9753	0.9627
450224	10/01/90	09/30/91	1.1294	0.9688
450229	09/01/90	08/31/91	1.3647	0.9893
450231	01/01/91	12/31/91	1.5913	0.9981
450234	10/01/90	09/30/91	0.9360	0.9254
450236	10/01/90	09/30/91	1.1319	0.9844
450237	01/01/91	12/31/91	1.5122	0.9975
450239	08/01/90	07/31/91	1.1595	0.9645
450243	09/01/90	08/31/91	0.9226	0.9678
450246	10/01/90	09/30/91	0.9865	0.9453
450253	01/01/91	12/31/91	1.0854	0.9828
450259	01/01/91	12/31/91	1.2132	0.9888
450264	10/01/90	09/30/91	0.8622	0.9733
450271	01/01/91	12/31/91	1.2010	0.9700
450272	01/01/91	12/31/91	1.3414	0.9712
450276	10/01/90	09/30/91	0.9944	0.9644
450280	01/01/91	12/31/91	1.3219	0.9951
450283	11/01/90	10/31/91	1.1408	0.9429
450286	01/01/91	12/31/91	1.0929	0.9818
450292	10/01/90	09/30/91	1.2528	0.9766
450293	01/01/91	12/31/91	1.0120	0.9524
450296	01/01/91	12/31/91	1.1909	0.9711
450297	01/01/91	12/31/91	1.0831	0.9934
450299	09/01/90	08/31/91	1.3598	0.9832
450303	01/01/91	12/31/91	0.9492	0.9543
450306	01/01/91	12/31/91	1.0313	0.9368
450315	09/01/90	08/31/91	1.2251	0.9959
450321	01/01/91	12/31/91	0.8468	0.9630
450322	01/01/91	12/31/91	0.9284	0.9381
450327	10/01/90	09/30/91	0.9950	0.9573
450334	10/01/90	09/30/91	1.0743	0.9830
450337	11/01/90	10/31/91	1.1766	0.9809
450340	01/01/91	12/31/91	1.3383	0.9873
450346	09/01/90	08/31/91	1.3163	0.9868
450347	01/01/91	12/31/91	1.2101	0.9790
450348	09/01/90	08/31/91	0.9825	0.9584
450352	10/01/90	09/30/91	1.2137	0.9610
450353	09/01/90	08/31/91	1.1378	0.9606
450355	08/01/90	07/31/91	1.0480	0.9195
450358	01/01/91	12/31/91	1.9932	0.9968
450365	01/01/91	12/31/91	0.9500	0.9944
450369	10/01/90	09/30/91	1.2014	0.9508
450371	01/01/91	12/31/91	1.1331	0.9840
450373	11/01/90	10/31/91	1.1519	0.9702
450374	10/01/90	09/30/91	0.8627	0.9181
450376	01/01/90	09/30/91	1.4706	0.9953
450378	09/01/90	08/31/91	1.3133	0.9826
450388	10/01/90	09/30/91	1.6332	0.9991
450389	11/01/90	10/31/91	1.2225	0.9857
450399	10/01/90	09/30/91	1.0342	0.9692
450403	10/01/90	09/30/91	1.2076	0.9891
450410	01/01/90	11/10/91	1.0733	0.9891
450417	01/01/91	12/31/91	1.0491	0.9237
450419	10/01/90	09/30/91	1.2507	0.9694
450422	10/01/90	09/30/91	0.7583	1.0000
450423	09/01/90	08/31/91	1.3829	0.9960
450424	01/01/91	12/31/91	1.2943	0.9780
450429	12/01/90	11/30/91	0.9101	0.9603
450431	01/01/91	12/31/91	1.5383	0.9975
450438	01/01/91	12/31/91	1.0401	0.9578
450446	01/01/91	12/31/91	0.8818	0.9682
450450	10/01/90	09/30/91	1.0881	0.9777
450462	10/01/90	09/30/91	1.5907	0.9966
450464	10/01/90	09/30/91	0.9141	0.9752
450465	10/01/90	09/30/91	1.1021	0.9778
450475	10/01/90	09/30/91	1.1378	0.9837
450488	10/01/90	09/30/91	1.2064	0.9643
450514	01/01/91	12/31/91	1.1361	0.9827
450516	01/01/91	12/31/91	1.3095	0.9959
450523	01/01/91	12/31/91	1.5068	0.9919
450530	12/01/90	11/30/91	1.2867	0.9954
450534	10/01/90	09/30/91	0.9602	0.9588
450535	01/01/91	12/31/91	1.2130	0.9880
450538	01/01/91	12/31/91	1.2380	0.9809

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
450539	09/01/90	09/29/91	1.2853	0.9570
450544	08/01/90	07/31/91	1.2416	0.9934
450547	10/01/90	09/30/91	0.9701	0.9705
450550	01/01/91	12/31/91	1.0519	0.9939
450558	09/01/90	08/31/91	1.7904	0.9966
450559	10/01/90	09/30/91	0.8843	0.9789
450561	10/01/90	09/30/91	1.5108	0.9979
450565	10/01/90	09/30/91	1.2898	0.9839
450571	10/01/90	09/30/91	1.4391	0.9986
450574	10/01/90	09/30/91	1.0266	0.9367
450575	10/01/90	09/30/91	0.9916	0.9894
450578	10/01/90	09/30/91	0.9534	0.9568
450580	10/01/90	09/30/91	1.1794	0.9815
450583	10/01/90	09/30/91	1.0084	0.9895
450584	10/01/90	09/30/91	1.1806	0.9695
450587	09/01/90	08/31/91	1.2459	0.9828
450591	10/01/90	09/30/91	1.2403	0.9759
450596	10/01/90	09/30/91	1.2377	0.9776
450597	10/01/90	09/30/91	1.0338	0.9710
450604	01/01/91	12/31/91	1.2403	0.9776
450605	01/01/91	12/31/91	1.2221	0.9654
450607	10/01/90	09/30/91	0.9056	0.9370
450609	10/01/90	09/30/91	0.8575	0.9792
450614	10/01/90	09/30/91	1.0172	0.9355
450615	01/01/91	12/31/91	0.9560	0.9603
450617	09/01/90	08/31/91	1.3755	0.9956
450620	07/01/90	09/30/91	1.0837	0.9294
450623	10/01/90	09/30/91	1.1524	0.9746
450626	10/01/90	09/30/91	0.9541	0.9173
450628	10/01/90	09/30/91	0.9605	0.9701
450631	09/01/90	08/31/91	1.6431	0.9975
450632	10/01/90	09/30/91	0.9911	0.9683
450633	09/01/90	08/31/91	1.5670	0.9972
450634	01/01/91	12/31/91	1.3617	0.9933
450637	09/01/90	08/31/91	1.3126	0.9793
450639	10/01/90	09/30/91	1.5123	0.9978
450644	09/01/90	08/31/91	1.5941	0.9957
450646	01/01/91	12/31/91	1.4885	0.9960
450647	09/01/90	08/31/91	1.9489	0.9990
450648	10/01/90	09/30/91	1.1052	0.9818
450652	10/01/90	09/30/91	0.9360	0.9419
450653	08/01/90	07/31/91	1.2340	0.9844
450654	10/01/90	09/30/91	0.9855	0.9915
450656	01/01/91	12/31/91	1.2559	0.9920
450659	01/01/91	12/31/91	1.4484	0.9982
450661	01/01/91	12/31/91	1.2415	0.9922
450662	09/01/90	08/31/91	1.4170	0.9900
450666	09/01/90	08/31/91	1.2138	0.9898
450669	07/01/90	07/01/91	1.2844	0.9814
450672	08/01/90	07/31/91	1 5957	0.9964
450673	10/01/90	09/30/91	1.0201	0.9685
450677	01/01/91	12/31/91	1.3292	0.9952
450683	10/01/90	09/30/91	1.2997	0.9713
450685	07/01/90	09/23/91	1.2335	0.9918
450686	12/31/90	12/31/91	1.3484	0.9936
450690	09/01/90	08/31/91	1.3215	0.9957
450696	11/01/90	10/31/91	1.1030	1.0000
450697	01/01/91	12/31/91	1.4486	0.9935
450698	10/01/89	09/30/91	0.8955	0.9375
450700	01/01/91	12/31/91	0.9278	0.9510
450702	09/01/90	08/31/91	1.2830	0.9925
450703	01/01/91	12/31/91	1.3000	0.9860
450705	10/01/90	09/30/91	0.8045	0.9776
450706	01/01/91	12/31/91	1.2497	0.9750
450711	10/01/90	09/30/91	1.6238	0.9962
450712	11/01/90	10/31/91	0.7660	1.0000
450713	01/01/91	12/31/91	1.2557	0.9824
450715	09/01/90	08/31/91	1.3498	0.9939
450716	01/01/91	12/31/91	1.2058	0.9822
450717	01/01/91	12/31/91	1.1978	0.9662
450718	01/01/91	12/31/91	1.1202	0.9826
450724	01/01/91	12/31/91	1.1409	0.9954
450725	09/01/90	08/31/91	0.9157	0.9873
450726	10/01/90	09/30/91	0.8589	0.9388
450727	10/01/90	09/30/91	0.9540	0.9696
450728	10/01/90	09/30/91	0.8538	0.9113
450729	01/01/91	12/31/91	1.0063	0.9791

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
450732	08/01/90	07/31/91	1.1639	0.9493
450734	09/01/90	08/31/91	1.2400	0.9915
450735	01/01/91	12/31/91	0.8527	0.9792
450742	09/01/90	12/18/91	1.3082	0.9777
450745	01/01/91	12/31/91	0.8729	0.9968
450746	10/01/90	09/30/91	0.9038	0.9070
450747	01/01/91	12/31/91	1.3262	0.9772
450751	01/01/91	12/31/91	1.3289	0.9772
450754	10/01/90	09/30/91	0.8799	0.9580
450757	01/01/91	12/31/91	0.9338	0.9108
450759	01/01/90	12/31/91	1.0712	0.9928
450760	01/01/90	12/31/91	1.2785	0.9837
450761	10/01/90	09/30/91	0.9393	0.9630
450763	10/01/90	09/30/91	1.0462	0.9475
450766	01/01/91	12/31/91	1.6546	0.9973
460001	01/01/91	12/31/91	1.6042	0.9960
460004	01/01/91	12/31/91	1.7099	0.9980
460006	01/01/91	12/31/91	1.3234	0.9860
460007	01/01/91	12/31/91	1.3637	0.9839
460010	01/01/91	12/31/91	1.9961	0.9989
460011	01/01/91	12/31/91	1.3182	0.9682
460013	09/01/90	08/31/91	1.4279	0.9937
460014	01/01/91	12/31/91	1.0365	0.8998
460015	01/01/91	12/31/91	1.2228	0.9707
460016	01/01/91	12/31/91	0.9737	0.9539
460017	09/01/90	08/31/91	1.2304	0.9794
460018	01/01/91	12/31/91	0.9520	0.9820
460019	01/01/91	12/31/91	0.9794	0.9588
460020	01/01/91	12/31/91	0.9409	0.9691
460021	01/01/91	12/31/91	1.3083	0.9905
460022	01/01/91	12/31/91	0.9658	0.9922
460023	01/01/91	12/31/91	1.0875	0.9760
460024	10/01/90	09/30/91	1.0085	0.9963
460025	01/01/91	12/31/91	0.8296	0.9868
460026	01/01/91	12/31/91	0.9268	0.9453
460027	01/01/91	12/31/91	0.9402	0.9841
460029	01/01/91	12/31/91	0.9919	0.9579
460033	01/01/91	12/31/91	0.9783	0.9021
460036	01/01/91	12/31/91	0.9487	0.9468
460039	01/01/91	12/31/91	0.9283	0.9276
460041	09/01/90	08/31/91	1.2405	0.9751
460042	10/01/90	09/30/91	1.3798	0.9854
460043	01/01/91	12/31/91	1.4477	0.8859
460044	01/01/91	12/31/91	1.1163	0.9696
460048	01/01/91	12/31/91	1.1878	0.5694
460047	11/01/90	10/31/91	1.6065	0.9986
470001	10/01/90	09/30/91	1.1566	0.9793
470003	10/01/90	09/30/91	1.9195	0.9972
470004	10/01/90	09/30/91	1.1700	0.9793
470005	10/01/90	09/30/91	1.1992	0.9909
470006	10/01/90	09/30/91	1.2789	0.9778
470008	10/01/90	09/30/91	1.2181	0.9765
470010	10/01/90	09/30/91	1.0242	0.9684
470011	10/01/90	09/30/91	1.1590	0.9848
470012	10/01/90	09/30/91	1.2581	0.9853
470013	10/01/90	09/30/91	1.1233	0.9882
470015	10/01/90	09/30/91	1.2187	0.9952
470018	10/01/90	09/30/91	1.1700	0.9701
470020	10/01/90	09/30/91	0.9983	0.9727
470023	10/01/90	09/30/91	1.2301	0.9519
470024	10/01/90	09/30/91	1.1111	0.9700
490001	10/01/90	09/30/91	1.1390	0.9847
490002	09/01/90	09/29/91	1.0256	0.9769
490003	10/01/90	09/30/91	0.6383	0.9998
490004	01/01/91	12/31/91	1.2313	0.9879
490005	01/01/91	12/31/91	1.3969	0.9956
490006	10/01/90	09/30/91	1.1331	0.9706
490008	01/01/91	12/31/91	1.1698	0.9837
490011	01/01/91	12/31/91	1.3148	0.9926
490012	08/01/90	07/31/91	1.0070	0.9636
490013	09/01/90	08/31/91	1.1266	0.9861
490014	01/01/91	12/31/91	1.5962	0.9888
490015	09/01/90	12/10/91	1.4713	0.9932
490017	09/01/90	08/31/91	1.2811	0.9862
490018	01/01/91	12/31/91	1.0967	0.9737
490019	10/01/90	09/30/91	1.1416	0.9737
490020	01/01/91	12/31/91	1.0847	0.9781

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
490021	01/01/91	12/31/91	1.3966	0.9960
490023	10/01/90	09/30/91	1.1882	0.9941
490024	10/01/90	09/30/91	1.6479	0.9982
490027	10/01/90	09/30/91	1.0299	0.9774
490030	10/01/90	09/30/91	1.3039	0.9976
490031	01/01/91	12/31/91	1.0589	0.9672
490033	01/01/91	12/31/91	1.2290	0.9809
490037	01/01/91	12/31/91	1.1280	0.9833
490038	10/01/90	09/30/91	1.2386	0.9869
490040	10/01/90	09/29/91	1.3896	0.9888
490041	01/01/91	12/31/91	1.1601	0.9881
490042	10/01/90	09/30/91	1.2789	0.9852
490044	10/01/90	09/30/91	1.2705	0.9825
490045	10/01/90	09/30/91	1.1531	0.9928
490047	10/01/90	09/30/91	1.1620	0.9840
490048	01/01/91	12/31/91	1.3586	0.9963
490050	01/01/91	12/31/91	1.3227	0.9970
490052	01/01/91	12/31/91	1.4139	0.9986
490054	10/01/90	09/30/91	1.0617	0.9695
490057	01/01/91	12/31/91	1.3604	0.9995
490059	09/01/90	08/31/91	1.4025	0.9990
490060	09/01/90	08/31/91	1.0792	0.9888
490063	01/01/91	12/31/91	1.5865	0.9983
490066	01/01/91	12/31/91	1.1257	0.9689
490067	01/01/91	12/31/91	1.2768	0.9913
490069	10/01/90	09/30/91	1.3551	0.9989
490071	01/01/91	12/31/91	1.3146	0.9943
490073	09/01/90	08/31/91	1.1743	0.9930
490074	01/01/91	12/31/91	1.2773	0.9921
490075	01/01/91	12/31/91	1.2630	0.9864
490077	10/01/90	09/30/91	1.1730	0.9942
490079	01/01/91	12/31/91	1.2537	0.9775
490083	10/01/90	09/30/91	0.7790	0.9914
490084	01/01/91	12/31/91	1.1339	0.9271
490085	10/01/90	09/30/91	1.2241	0.9701
490088	10/01/90	09/30/91	1.1262	0.9799
490089	10/01/90	09/30/91	1.0387	0.9723
490091	10/01/90	09/30/91	1.1636	0.9934
490092	01/01/91	12/31/91	1.1466	0.9766
490095	01/01/91	12/31/91	1.2779	0.9858
490097	09/01/90	08/31/91	1.1294	0.9914
490099	09/01/90	08/31/91	0.9518	0.9537
490100	10/01/90	09/30/91	1.2960	0.9969
490101	01/01/91	12/31/91	1.1204	0.9824
490107	01/01/91	12/31/91	1.2668	0.9895
490110	10/01/90	09/30/91	1.2088	0.9959
490112	09/01/90	08/31/91	1.5131	0.9981
490113	11/01/90	10/31/91	1.2327	0.9745
490115	10/01/90	09/30/91	1.1523	0.9827
490116	09/01/90	08/31/91	1.1748	0.9826
490117	12/01/90	11/30/91	1.0755	0.9840
490122	01/01/91	12/31/91	1.2187	0.9939
490126	10/01/90	09/30/91	1.1978	0.9856
490129	01/01/91	12/31/91	1.1320	1.0000
490130	01/01/91	12/31/91	1.2380	0.9794
500001	01/01/91	12/31/91	1.2970	0.9836
500002	01/01/91	12/31/91	1.4504	0.9878
500003	01/01/91	12/31/91	1.2646	0.9844
500005	01/01/91	12/31/91	1.7013	0.9979
500007	01/01/91	12/31/91	1.3185	0.9801
500009	01/01/91	12/31/91	1.3636	0.9908
500011	01/01/91	12/31/91	1.2267	0.9669
500012	01/01/91	12/31/91	1.4868	0.9974
500014	01/01/91	12/31/91	1.6738	0.9983
500015	01/01/91	12/31/91	1.2899	0.9881
500016	01/01/91	12/31/91	1.3464	0.9916
500019	01/01/91	12/31/91	1.2249	0.9717
500024	01/01/91	12/31/91	1.3638	0.9893
500025	01/01/91	12/31/91	1.9064	0.9986
500026	01/01/91	12/31/91	1.2789	0.9853
500027	01/01/91	12/31/91	1.5768	0.9985
500028	01/01/91	12/31/91	0.9556	0.9759
500029	01/01/91	12/31/91	0.9233	0.9317
500031	01/01/91	12/31/91	1.2594	0.9676
500033	01/01/91	12/31/91	1.1896	0.9410
500035	01/01/91	12/31/91	1.3940	0.9937
500036	11/01/90	10/31/91	1.2793	0.9932

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
500037	01/01/91	12/31/91	1.1866	0.9863
500042	01/01/91	12/31/91	1.3228	0.9787
500043	01/01/91	12/31/91	1.2249	0.9400
500044	01/01/91	12/31/91	1.8639	0.9997
500045	01/01/91	12/31/91	1.2083	0.9879
500048	08/01/90	07/31/91	0.9433	0.9687
500049	01/01/91	12/31/91	1.2372	0.9888
500050	10/01/90	09/30/91	1.2736	0.9903
500051	10/01/90	09/30/91	1.6321	0.9983
500052	01/01/91	12/31/91	1.2104	0.9953
500053	01/01/91	12/31/91	1.2501	0.9828
500054	01/01/91	12/31/91	1.8535	0.9987
500055	08/01/90	07/31/91	0.9633	0.9633
500057	10/01/90	09/30/91	1.2811	0.9878
500058	01/01/91	12/31/91	1.3570	0.9821
500059	01/01/91	12/31/91	1.1252	0.9543
500060	01/01/91	12/31/91	1.2055	0.9735
500061	01/01/91	12/31/91	1.1906	0.9042
500062	01/01/91	12/31/91	0.9371	0.9237
500065	01/01/91	12/31/91	1.3252	0.9609
500068	01/01/91	12/31/91	1.1557	0.9856
500069	01/01/91	12/31/91	1.0029	0.9055
500071	01/01/91	12/31/91	1.3758	0.9506
500072	01/01/91	12/31/91	1.1995	0.9818
500073	01/01/91	12/31/91	0.9586	0.9693
500074	01/01/91	12/31/91	1.0982	0.9839
500077	08/01/90	07/31/91	1.2387	0.9871
500078	11/01/90	10/31/91	1.2867	0.9929
500079	10/01/90	09/30/91	1.2507	0.9820
500080	01/01/91	12/31/91	0.8805	0.9175
500084	01/01/91	12/31/91	1.0142	0.9832
500085	01/01/91	12/31/91	1.0608	0.9527
500088	01/01/91	12/31/91	1.3045	0.9908
500089	01/01/91	12/31/91	0.9888	0.9783
500090	01/01/91	12/31/91	0.8569	0.9231
500092	01/01/91	12/31/91	1.1096	0.9779
500094	01/01/91	12/31/91	0.8671	0.8975
500096	01/01/91	12/31/91	1.0038	0.9390
500097	01/01/91	12/31/91	1.1901	0.9742
500098	01/01/91	12/31/91	0.9062	0.9932
500101	01/01/91	12/31/91	0.8961	0.9377
500102	01/01/91	12/31/91	0.9386	0.9654
500106	01/01/91	12/31/91	0.9803	0.9633
500107	01/01/91	12/31/91	1.1532	0.9787
500110	01/01/91	12/31/91	1.2111	0.9813
500118	01/01/91	12/31/91	1.2002	0.9498
500119	01/01/91	12/31/91	1.2372	0.9838
500122	01/01/91	12/31/91	1.2396	0.9672
500123	01/01/91	12/31/91	0.9900	0.9627
500124	01/01/91	12/31/91	1.3030	0.9846
500125	01/01/91	12/31/91	0.9645	0.9397
500129	01/01/91	12/31/91	1.6686	0.9974
500132	01/01/91	12/31/91	0.8387	0.9585
500134	01/01/91	12/31/91	0.7658	0.9938
500140	10/01/90	09/30/91	0.9810	1.0000
510001	01/01/91	12/31/91	1.6762	0.9936
510002	09/01/90	08/31/91	1.2913	0.9771
510004	11/01/90	10/31/91	0.9587	0.9273
510005	01/01/91	12/31/91	0.9445	0.9613
510006	10/01/90	09/30/91	1.2050	0.9868
510007	10/01/90	09/30/91	1.3756	0.9997
510008	01/01/91	12/31/91	1.1462	0.9927
510009	01/01/91	12/31/91	1.0408	0.9810
510012	10/01/90	09/30/91	1.0412	0.9833
510013	10/01/90	09/30/91	1.1464	0.9939
510016	01/01/91	12/31/91	0.9640	0.9660
510018	10/01/90	09/30/91	1.1305	0.9814
510022	01/01/91	12/31/91	1.6335	0.9985
510028	01/01/91	12/31/91	1.0591	0.9894
510029	10/01/90	09/30/91	1.2375	0.9890
510030	10/01/90	09/30/91	1.1187	0.9924
510031	01/01/91	12/31/91	1.2671	0.9930
510033	01/01/91	12/31/91	1.2335	0.9932
510038	10/01/90	09/30/91	1.0024	0.9676
510039	01/01/91	12/31/91	1.2758	0.9928
510040	01/01/91	12/31/91	0.9602	0.9911
510047	01/01/91	12/31/91	1.1351	0.9831

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
510048	01/01/91	12/31/91	1.1573	0.9860
510050	10/01/90	09/30/91	1.2335	0.9931
510053	10/01/90	09/30/91	1.0016	0.9626
510055	10/01/90	09/30/91	1.1704	0.9937
510059	01/01/91	12/31/91	1.3021	0.9908
510060	09/01/90	08/31/91	1.1601	0.9844
510063	01/01/91	12/31/91	1.0489	0.9627
510065	01/01/91	12/31/91	0.9841	0.9622
510066	01/01/91	12/31/91	1.1224	0.9905
510067	09/01/90	08/31/91	1.2654	0.9912
510068	10/01/90	09/30/91	1.1022	0.9784
510076	01/01/91	12/31/91	1.0242	0.9863
510077	10/01/90	09/30/91	1.1352	0.9899
510081	10/01/90	09/30/91	1.0050	0.9749
510082	01/01/91	12/31/91	1.0014	0.9690
510084	01/01/91	12/31/91	0.9518	0.9603
510085	10/01/90	09/30/91	1.1973	0.9861
520002	10/01/90	09/30/91	1.2780	0.9778
520003	01/01/91	12/31/91	1.1432	0.9629
520008	10/01/90	09/30/91	1.2058	0.9883
520010	01/01/91	12/31/91	1.0845	0.9551
520012	10/01/90	09/30/91	0.9411	0.9521
520014	10/01/90	09/30/91	1.1710	0.9849
520018	10/01/90	09/30/91	0.9827	0.9612
520019	10/01/90	09/30/91	1.2388	0.9826
520021	10/01/90	09/30/91	1.1852	0.9899
520024	10/01/90	09/30/91	0.9845	0.9657
520026	01/01/91	12/31/91	1.0865	0.9827
520029	10/01/90	09/30/91	0.9270	0.9722
520031	10/01/90	09/30/91	1.1637	0.9811
520032	10/01/90	09/30/91	1.1472	0.9642
520033	09/01/90	08/31/91	1.2481	0.9628
520034	10/01/90	09/30/91	1.1804	0.9768
520035	01/01/91	12/31/91	1.2333	0.9877
520037	10/01/90	09/30/91	1.6024	0.9989
520038	01/01/91	12/31/91	1.2627	0.9821
520039	01/01/91	12/31/91	1.0191	0.9460
520042	10/01/90	09/30/91	1.0163	0.9527
520045	01/01/91	12/31/91	1.6931	0.9986
520048	10/01/90	09/30/91	1.3200	0.9888
520049	10/01/90	09/30/91	1.8080	0.9955
520053	01/01/91	12/31/91	1.0808	0.9380
520054	01/01/91	12/31/91	1.1890	0.9766
520056	10/01/90	09/30/91	1.3019	0.9903
520057	01/01/91	12/31/91	1.1617	0.9809
520058	10/01/90	09/30/91	1.1012	0.9714
520059	10/01/90	09/30/91	1.2678	0.9718
520060	10/01/90	09/30/91	1.2478	0.9593
520062	10/01/90	09/30/91	1.1787	0.9764
520064	12/30/90	12/28/91	1.5396	0.9890
520069	01/01/91	12/31/91	1.1928	0.9904
520070	01/01/91	12/31/91	1.3637	0.9855
520071	10/01/90	09/30/91	1.1819	0.9715
520077	10/01/90	09/30/91	1.0274	0.9813
520078	01/01/91	12/31/91	1.3239	0.9922
520082	08/01/90	07/31/91	1.2997	0.9803
520083	01/01/91	12/31/91	1.5158	0.9984
520084	10/01/90	09/30/91	1.0874	0.9651
520088	01/01/91	12/31/91	1.4474	0.9959
520090	10/01/90	09/30/91	1.1410	0.9620
520095	01/01/91	12/31/91	1.3340	0.9685
520100	01/01/91	12/31/91	1.2255	0.9815
520101	10/01/90	09/30/91	1.1709	0.9682
520102	01/01/91	12/31/91	1.2104	0.9721
520103	10/01/90	09/30/91	1.3486	0.9802
520107	01/01/91	12/31/91	1.2459	0.9861
520109	10/01/90	09/30/91	1.0769	0.9786
520110	01/01/91	12/31/91	0.9853	0.9917
520113	10/01/90	09/30/91	1.2143	0.9803
520115	10/01/90	09/30/91	1.2829	0.9658
520118	10/01/90	09/30/91	1.2023	0.9736
520117	09/01/90	08/31/91	1.0600	0.9693
520116	01/01/91	12/31/91	0.9669	0.9541
520123	10/01/90	09/30/91	1.0428	0.9540
520130	10/01/90	09/30/91	1.0552	0.9091
520131	01/01/91	12/31/91	1.0519	0.9348
520135	01/01/91	12/31/91	1.0352	0.9618

TABLE 9.—1991 TRANSFER ADJUSTED CASE MIX INDEX AND TRANSFER ADJUSTMENT TO DISCHARGES FOR CAPITAL HOSPITAL-SPECIFIC RATE REDETERMINATIONS—Continued

Provider number	Cost reporting period		Transfer adjusted case mix index	Transfer adjustment to discharges
	Begin	End		
520138	12/30/90	12/28/91	1.8574	0.9979
520139	09/03/90	09/01/91	1.1996	0.9834
520140	01/01/91	12/31/91	1.4267	0.9974
520144	10/01/90	09/30/91	1.0104	0.9588
520145	01/01/91	12/31/91	1.0190	0.9970
520146	01/01/91	12/31/91	1.1808	0.9655
520148	01/01/91	12/31/91	1.1001	0.9651
520149	01/01/91	12/31/91	1.0452	0.9498
520152	10/01/90	09/30/91	1.1381	0.9665
520153	10/01/90	09/30/91	1.0132	0.9362
520154	10/01/90	09/30/91	1.1116	0.9678
520156	01/01/91	12/31/91	1.0869	0.9421
520157	01/01/91	12/31/91	1.0253	0.9825
520160	01/01/91	12/31/91	1.7842	0.9954
520171	01/01/91	12/31/91	0.9747	0.9766
520173	10/01/90	09/30/91	1.0623	0.9807
520174	01/01/91	12/31/91	1.4358	0.9874
520177	01/01/91	12/31/91	1.5539	0.9929
530008	01/01/91	12/31/91	1.1720	0.9834
530010	01/01/91	12/31/91	1.2714	0.9902
530023	01/01/91	12/31/91	0.8741	0.9478
530024	01/01/91	12/31/91	0.9579	0.9300
530032	01/01/91	12/31/91	1.2207	0.9549

Appendix A—Regulatory Impact Analysis

I. Introduction

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. 12291 criteria for a "major rule;" that is, a rule that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- A significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a final rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any final rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area or a New England County Metropolitan Area.

Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98-21) designated hospitals in certain New England counties as belonging to the adjacent New England Metropolitan County. Thus, for purposes of the prospective payment system, we classified these hospitals as urban hospitals.

It is clear that the changes being implemented in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this final rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis in accordance with E.O. 12291 and the RFA.

II. Changes in the Final Rule

There are no major policy changes in this final rule compared to those in the proposed rule. Consequently, in general, the differences in this final rule impact analysis compared to that in the proposed rule are the result of using later or more complete hospital data. For example, a more complete FY 1991 MEDPAR file is now available compared to the one available at the time of the proposed rule. In addition, more recent hospital-specific data, including cost reports, are used in this analysis.

Since publication of the June 4, 1992 proposed rule, the latest hospital market basket forecast provides an increase of 4.1 percent in the operating costs of hospitals paid under the prospective payment system, compared to the 4.3 percent increase projected in the proposed rule. This results in a 2.55 percent increase in the standardized payment amounts for hospitals paid the urban rate rather than the 2.75 percent increase projected at the time of the proposed rule. The rural standardized amounts will increase by 3.55 percent rather than 3.75 percent. The hospital-specific rates for sole community hospitals and Medicare-dependent, small rural hospitals will increase by 4.1 percent. For hospitals excluded from the prospective payment system, the increase in the market basket is now projected to be 4.2 percent, down from a projected 4.5 percent at the time of the proposed rule.

With regard to the capital prospective payment system, we have revised our estimate of the rate of increase in capital costs per case and our budget neutrality target. The FY 1993 Federal rate and the hospital-specific rate will increase 0.4 percent and 0.62 percent, respectively, from their FY 1992 levels. However, our estimate of FY 1993 capital costs per case, which is used to establish the budget neutrality target, is lower than in the proposed rule. We now estimate that FY 1993 payments per case will increase 6.2 percent over FY 1992 levels. The impacts of these revised increases are illustrated in the analyses below.

III. Limitations of Our Analysis

As has been the case in previously published regulatory impact analyses, the following quantitative analysis is limited to presenting the projected effects of the final policy and rate changes on current and projected payment rates. In this analysis, we examine the effects on hospital operating and capital payments of both statutory and regulatory policy. The analysis projects estimated payments under each major statutory or policy change while holding all other payment variables constant and compares these with current estimated payments to calculate the percentage differences. We cannot, however, predict behavioral responses to our policy changes, and we are not generally accounting for changes in such exogenous variables as admissions, lengths of stay, or case mix. We would expect hospitals to adapt to many of these changes, however. To the extent they are able to do so, the actual impacts of these changes will vary from the estimates discussed below.

IV. Hospitals Included In and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. Only 57 short-term, acute care hospitals remain excluded from the prospective payment systems under section 1814(b)(3) of the Act (in Maryland) or a demonstration project (in the Finger Lakes region of New York State). Thus, as of August 1992, just under 5,400 hospitals were receiving prospectively based payments for their Medicare inpatient services. This represents about 83 percent of all Medicare-participating hospitals.

Among the 5,386 prospective payment hospitals included in our analysis, there are over 850 hospitals that are paid on special bases under the prospective payment system for operating costs, as required by statute, as sole community hospitals or rural referral centers. As discussed above in section IV.B.3 of the preamble to this final rule, we are implementing triennial reviews of hospitals' eligibility for rural referral center status during FY 1993, and we expect some hospitals currently designated as rural referral centers will lose their status. We have included all current rural referral centers in the tables in this impact analysis, however, without projecting which hospitals may no longer meet the criteria. In addition, there are approximately 1,600 hospitals that receive additional payments on the basis of qualifying as disproportionate share hospitals. Of these hospitals, 46 also receive special payments as rural referral centers, and 101 as sole community hospitals. Our analysis identified 1,041 hospitals that are receiving additional payments for the indirect cost of medical education, reduced from 1,207 in the proposed rule. This reduction is the result of our identification of a number of hospitals, most of which were previously reported as small teaching programs, that are in fact no longer teaching hospitals. There are approximately 560 urban hospitals that qualify for additional payments under both the indirect medical education and disproportionate share payment provisions under the prospective payment system for operating costs.

Section 1886(d)(5)(G)(i) of the Act directs the Secretary to pay Medicare-dependent, small rural hospitals on the basis of the greater of a hospital-specific rate based on their FY 1982 or FY 1987 operating costs per discharge, whichever is higher, or the applicable standardized payment amount. This provision was effective with cost reporting periods beginning after April 1, 1990, and expires with cost reporting periods ending on or before March 31, 1993. According to the latest hospital-specific data, some of these hospitals have already begun to lose their special status (cost reporting periods beginning on May 1, 1992, for example). For purposes of the operating impact analysis, we have shown all hospitals that qualified for this special provision as of the beginning of FY 1992 in the tables. There are 501 such hospitals in our analysis. Since this special provision is not applicable for capital payments, we have grouped these hospitals according to the most recent data, which results in a decline to 443 in the number of Medicare-dependent, small rural hospitals shown in the capital impact tables.

Under the capital prospective payment system, approximately 2,250 urban hospitals with more than 100 beds receive an additional payment for serving low-income patients. (A capital disproportionate share adjustment is made to all urban hospitals with more than 100 beds that serve low-income patients.) Additional capital payments are also made to the 1,041 hospitals that we have identified as teaching hospitals.

In addition, there are special payment protections for sole community hospitals and for urban hospitals with 100 or more beds that either have a disproportionate share percentage of at least 20.2 percent or derive at least 30 percent of their total inpatient revenues from State or local government sources for the care of indigent patients. We have identified 561 sole community hospitals and about 760 urban hospitals that qualify for these special provisions.

As of August 1992, about 1,050 Medicare hospitals are excluded by statute from the prospective payment system and continue to be paid on the basis of their reasonable costs, subject to limits on the rate of increase in their costs. These hospitals include psychiatric, rehabilitation, long-term care, and children's hospitals. Another 1,893 psychiatric and rehabilitation units in hospitals subject to the prospective payment system are excluded from the prospective payment system as of the same date. These units, too, are paid on the basis of reasonable cost subject to limits on the rate of increase in their costs. In addition, there are nine hospitals extensively involved either in the treatment of cancer or cancer research that are excluded from the prospective payment system.

V. Impact on Excluded Hospitals and Units

As noted in the previous section of this impact analysis, approximately 1,050 excluded hospitals and 1,893 excluded units in hospitals included in the prospective payment systems are paid on a reasonable cost basis subject to the rate-of-increase ceiling requirement of § 413.40. For hospital cost reporting periods beginning on or after October 1, 1992, excluded hospitals and units will be paid the full increase in their reasonable costs up to the percentage increase in the hospital market basket. We are projecting an increase in the excluded hospital market basket of 4.2 percent.

The impact of this update in the rate-of-increase limit on excluded hospitals and units depends on the rate of cost increases experienced by each hospital and excluded unit since its base period. For excluded hospitals and units with per case increases in inpatient operating costs below the cumulative update in their rate-of-increase limit, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with cost increases per case above the cumulative update in their rate-of-increase limit, the major

effect will be the amount of excess costs that the hospitals will have to absorb.

In this context, we note that for cost reporting periods beginning in FY 1992, section 1886(b)(1)(B) of the Act allows an excluded hospital or unit whose costs exceed the rate-of-increase limit to receive the lower of its target amount plus 50 percent of reasonable costs in excess of the target amount or 110 percent of the target amount. In addition, under the various provisions set forth in § 413.40, excluded hospitals and units can obtain substantial relief from the rate-of-increase limit for significant and justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases to the growth rate in the hospital market basket, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Final Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this final rule, we are implementing policy changes and payment rate updates for the prospective payment systems for operating costs and for capital-related costs. We have prepared a separate analysis of the changes to each system.

The data used in developing the quantitative analysis of changes in operating payments that are presented below are taken from FY 1991 MEDPAR data and the most current hospital-specific data. For purposes of determining which method of payment to apply for sole community hospitals (the Federal payment rate or the applicable hospital-specific payment rate as prescribed by section 1886(d)(5)(D)(i) of the Act), we assume that all sole community hospitals have a cost reporting period that coincides with the Federal fiscal year.

Our analysis has several limitations. First, as noted above, it does not take into account behavioral changes that hospitals may adopt in response to the policy changes. Second, we are unable to precisely quantify every effect of the changes contained in this rule. Given the data we have available, however, we have attempted to estimate payments under each scenario as precisely as possible. Third, we could not categorize every hospital in accordance with the groupings we examined because in some cases the hospital-specific data necessary to do so were missing. For example, parts of the data needed to determine Medicare's utilization percentage were missing for 245 hospitals.

To illustrate the effects of hospital geographic reclassifications for FY 1993, hospitals are grouped in Table I based on both their actual geographic location and their actual payment classification after any reclassifications under sections 1886(d) (8) or (10) of the Act. For example, Table I shows that the numbers of prospective payment hospitals actually located in large urban, other urban, and rural areas are 1,474, 1,422, and 2,490, respectively. The corresponding numbers of hospitals in these three groups after geographic reclassification shows the numbers of large urban, other urban, and rural hospitals to be 1,628, 1,487, and 2,271, respectively. The effects of geographic reclassification are further evident in column 2 and in the row groupings of reclassified and nonreclassified hospitals.

To simulate the impact of the expiration of the provisions of section 1886(d)(5)(G) of the Act on payments to Medicare-dependent, small rural hospitals (MDHs), we computed hospital-specific payments from October 1, 1992 through the end of each MDH's cost reporting period that ends on or before March 31, 1993. That is, we simulated payments for this period based on the higher of the hospital-specific payment or the FY 1993 standardized amount payments for operating costs. We then computed payments for the remainder of the Federal fiscal year based on the FY 1993 standardized amount payments for operating costs. For example, if the hospital's cost reporting period ends December 31 and the hospital-specific payments are higher than the standardized amount payments, we computed hospital-specific payments for 3 months and payments under the standardized amounts for 9 months. Hospitals with cost reporting periods ending after March 31 and on or before September 30 were paid on the basis of the Federal payment rates for the entire period. Since some MDHs lost their special protection during FY 1992 (for example, MDHs with cost reporting periods beginning July 1), a similar reduction was made in estimated FY 1992 payments. The annual impact on MDHs of the expiration of this special provision is illustrated below. We simulated a full 12 months of FY 1993 payments to MDH's under the special provision compared with 12 months of payment without the provision.

Average payment/ case 12 months payment as an MDH	Average payment/ case 12 months payment without the MDH payment protection	Percent change
$3,446	$3,114	−9.6

The analysis in Table I examines the following major changes set forth in this final rule—

- The effects of the annual reclassification of DRGs and the recalibration of the DRG weights required by section 1886(d)(4)(C) of the Act (column 1).
- The effects of hospital reclassifications by the MGCRB (column 2).
- The effects of the additional outlier payments that we estimate will be made during FY 1993 compared to our estimate of FY 1992 outlier payments (column 3A).
- The effect of the outlier payment changes (using a marginal cost factor of .55 and the arithmetic mean to calculate day outlier payments) and increase in outlier payment levels (column 3B).
- The net effect of the outlier changes shown in columns 3A and 3B (column 3C).
- The combined effect of all changes being presented in this final rule (column 4).

In order to present the effects of the separate policy changes displayed in columns 1, 2, 3A, 3B, and 3C of Table I, we added each change incrementally, so that the percentages in the columns represent the differences in payments relative to the previous column. The baseline for comparison is an FY 1993 system absent any of the changes described above. It does reflect the statutory MDH phase-out during FY 1993. For example, column 1 displays the impacts of the DRG reclassifications and recalibration relative to estimated FY 1993 payments absent these changes. Similarly, column 2 examines the impacts of the standardized amount and wage index changes resulting from geographic reclassifications exclusive of the effects of the DRG reclassifications and recalibration. Columns 3A, 3B, and 3C show the impacts of the outlier changes in a similar manner. The last column in Table I displays the combined changes from the previous columns, as well as corrections to the wage index values, the phase-out of the MDH provision, and the update and budget neutrality factors. This column compares estimated final FY 1993 payments to estimated FY 1992 payments. Thus, the last column is the only one that reflects the effects of all the quantifiable policy changes on simulated FY 1993 payments.

TABLE I.—IMPACT OF CHANGES IN THE PROSPECTIVE PAYMENT SYSTEM FOR OPERATING COSTS FOR FY 1993

[Percent Change in Payments]

	Number of hospitals [1]	DRG reclassification and recalibration [2] (1)	Geographic reclassification [3] (2)	Outlier Payment Changes			All changes [6] (4)
				Payment level adjust.[4] (3A)	Proposed policy [5] (3B)	Sum of (A) & (B) (3C)	
By geographic location:							
All hospitals	5,386	0.0	0.0	1.4	0.0	1.4	4.0
Large urban areas (populations over 1 million)	1,474	0.1	−0.1	1.6	−0.1	1.5	4.1
Other urban areas (populations of 1 million or fewer)	1,422	0.0	0.1	1.5	0.1	1.6	4.2
Rural areas	2,490	−0.1	0.1	0.6	0.0	0.6	3.0
Urban hospitals	2,896	0.0	0.0	1.6	0.0	1.6	4.1
0–99 beds	682	−0.1	0.0	0.9	0.2	1.1	3.7
100–199 beds	872	0.1	0.1	1.2	0.2	1.4	4.1
200–299 beds	612	0.1	0.0	1.4	0.1	1.5	4.2
300–499 beds	537	0.0	−0.1	1.7	−0.1	1.6	4.1
500 or more beds	193	0.0	0.0	1.9	−0.3	1.6	4.2
Rural hospitals	2,490	−0.1	0.1	0.6	0.0	0.6	3.0
0–49 beds	1,232	−0.2	0.2	0.1	0.0	0.1	2.0
50–99 beds	761	−0.1	0.2	0.3	0.0	0.3	2.6
100–149 beds	259	0.0	0.0	0.6	0.1	0.7	3.1
150–199 beds	123	0.0	−0.1	0.7	0.0	0.7	3.6
200–499 beds	112	0.0	−0.2	1.1	0.0	1.1	3.6
500 or more beds	3	−0.1	−0.4	0.9	0.1	1.0	3.5
Urban by region:							
New England	172	−0.2	0.3	1.6	−0.3	1.3	4.0
Middle Atlantic	456	0.4	0.0	2.1	−1.2	0.9	3.8
South Atlantic	421	−0.1	0.0	1.7	0.2	1.9	4.4
East North Central	476	0.0	−0.2	1.3	0.3	1.6	4.0
East South Central	168	0.1	−0.1	1.7	0.4	2.1	4.7
West North Central	183	−0.1	−0.2	1.3	0.4	1.7	3.9
West South Central	357	0.1	0.3	1.5	0.5	2.0	5.0
Mountain	113	−0.1	−0.2	1.4	0.5	1.9	4.3
Pacific	501	−0.2	0.0	1.3	0.4	1.7	3.9
Puerto Rico	49	0.2	−0.2	0.8	0.1	0.9	3.5
Rural by region:							
New England	56	−0.1	−0.2	0.8	0.0	0.8	3.9
Middle Atlantic	93	0.0	−0.4	1.1	−0.8	0.3	1.5
South Atlantic	340	0.0	−0.7	1.0	0.0	1.0	3.1
East North Central	344	−0.1	0.5	0.4	0.1	0.5	2.9
East South Central	298	0.0	−0.2	0.6	0.1	0.7	3.4
West North Central	564	−0.2	0.7	0.2	0.1	0.3	2.3
West South Central	396	−0.1	0.5	0.5	0.2	0.7	3.2
Mountain	237	−0.2	0.0	0.3	0.1	0.4	3.5
Pacific	156	−0.1	0.8	0.3	0.1	0.4	4.1
Puerto Rico	6	−0.1	−0.4	0.2	0.1	0.3	3.3
By payment classification:							
All Hospitals	5,386	0.0	0.0	1.4	0.0	1.4	4.0
Large Urban areas (populations over 1 million)	1,628	0.1	0.0	1.6	−0.1	1.5	4.2
Other Urban areas (populations of 1 million or fewer)	1,487	0.0	0.0	1.4	0.1	1.5	4.1
Rural areas	2,271	−0.1	−0.1	0.5	0.0	0.5	2.8
Teaching status:							
Non-teaching	4,345	0.0	0.0	1.2	0.2	1.4	3.9
Resident/bed ratio less than 0.25	611	0.0	−0.1	1.5	−0.1	1.4	3.9
Resident/bed ratio 0.25 or greater	230	0.1	0.1	2.0	−0.5	1.5	4.2
Disproportionate share hospitals (DSH):							
Non-DSH	3,734	−0.1	0.0	1.3	0.1	1.4	3.9
Urban DSH:							
100 beds or more	1,161	0.1	0.0	1.6	−0.2	1.4	4.1
Fewer than 100 beds	99	−0.1	0.0	0.6	0.2	0.8	3.3
Rural DSH:							
Sole Community (SCH)	101	0.0	−0.5	0.3	0.0	0.3	3.3
Referral Centers (RRC)	46	0.0	0.4	1.0	−0.1	0.9	3.9
Other rural DSH hospitals:							
100 beds or more	66	0.0	−2.4	0.6	−0.1	0.7	1.7
Fewer than 100 beds	179	−0.2	−0.4	0.3	0.0	0.3	2.8
Urban teaching and DSH:							
Both teaching and DSH	561	0.1	0.0	1.6	−0.4	1.4	4.1
Teaching and no DSH	429	−0.1	−0.1	1.6	0.1	1.7	4.0
No teaching and DSH	699	0.1	0.0	1.3	0.1	1.4	4.1
No teaching and no DSH	1,426	0.0	0.1	1.4	0.2	1.6	4.3
Rural hospital types:							
Non special status	983	−0.1	−0.9	0.5	0.0	0.5	3.1
RRC	180	0.0	0.4	0.9	0.1	1.0	3.9
SCH	561	−0.1	0.0	0.1	0.0	0.1	3.6
Medicare-dependent (MDH)	501	−0.2	0.3	0.2	0.0	0.2	−4.0

TABLE I.—IMPACT OF CHANGES IN THE PROSPECTIVE PAYMENT SYSTEM FOR OPERATING COSTS FOR FY 1993 —Continued

[Percent Change in Payments]

	Number of hospitals [1]	DRG reclassification and recalibration [2] (1)	Geographic reclassification [3] (2)	Outlier Payment Changes: Payment level adjust. [4] (3A)	Outlier Payment Changes: Proposed policy [5] (3B)	Outlier Payment Changes: Sum of (A) & (B) (3C)	All changes [6] (4)
SCH and RRC	46	0.1	0.2	0.5	−0.3	0.2	3.7
SCH or MDH	1,108	−0.1	0.1	0.2	−0.1	0.1	1.6
Type of ownership:							
Voluntary	3,212	0.0	−0.1	1.5	−0.1	1.4	3.9
Proprietary	729	0.0	0.0	1.5	0.4	1.9	4.6
Government	1,445	0.0	0.2	1.2	0.0	1.2	3.8
Medicare utilization Percent of days:							
0–25%	293	0.2	0.0	1.4	−0.1	1.3	4.1
25–50%	1,782	0.0	0.0	1.6	0.0	1.6	4.1
50–65%	2,201	0.0	0.0	1.3	0.0	1.3	4.0
Over 65%	865	0.1	−0.1	1.1	0.0	1.1	2.9
N/A	245	0.4	0.6	1.6	−0.5	1.1	4.7
Hospitals Reclassified by the Medicare Geographic Classification Review Board							
Reclassification Status during FY 1992 and FY 1993:							
Reclass. FY92 and FY93	849	0.0	−0.7	1.0	0.0	1.0	3.1
Reclass. FY93 only	344	0.2	4.4	1.4	−0.3	1.1	8.2
Reclass. FY92 only	80	0.0	−3.1	1.0	0.2	1.2	0.8
FY93 reclassifications—All hospitals:							
Reclassified	1,193	0.0	1.0	1.2	−1.0	1.1	4.7
Nonreclassified	4,143	0.0	−0.3	1.5	0.0	1.5	3.6
Urban hospitals:							
Reclassified	370	0.1	1.4	1.5	−0.2	1.3	5.5
Nonreclassified	2,526	0.0	−0.3	1.6	0.0	1.6	3.9
Rural Hospitals:							
Reclassified	823	−0.1	0.3	0.7	0.0	0.7	3.8
Nonreclassified	1,617	−0.1	−0.4	0.4	0.0	0.4	2.1
Other Reclassified Hospitals: (Section 1886(D)(5)(B))	50	0.0	0.2	0.9	0.1	1.0	3.8

[1] Because data necessary to classify some hospitals by category were missing, these hospitals were not categorized, or are shown as N/A. Therefore, the total number of hospitals in each category may not equal the national total. Hospital-specific data and number of discharges data are from FY 1991, and hospital cost report data are from cost reporting periods beginning in FY 1990.

[2] Recalibration of the DRG weights and classification changes are based on FY 1991 MEDPAR data and are performed annually in accordance with section 1886(d)(4)(C) of the Act.

[3] Under section 1886(d)(10) of the Act, a hospital may apply to the Medicare Geographic Classification Review Board for the purpose of obtaining a higher wage index, standardized payment amount, or both. Under section 1886(d)(8)(D) of the Act, changes in the geographic designation of hospitals must be budget neutral and payments to rural hospitals after reclassification cannot be lower than they would be absent reclassification. This column reflects the impact of changes in reclassifications between FY 1992 and FY 1993.

[4] This column displays the effects of increasing outlier payments between FY 1992 and FY 1993. The thresholds implemented for FY 1992 were intended to result in 5.1 percent of payments for outlier cases. FY 1992 outlier payments are now estimated to equal 3.84 percent of total prospective payments. FY 1993 outlier payments are estimated at 5.1 percent.

[5] This column displays the impact of the change for computing day outlier cases as follows: using the arithmetic mean length of stay in place of the geometric mean length of stay for computing the per diem payment amount and using a marginal cost factor of .55 instead of .60.

[6] This column shows the combined effects of all the previous columns as well as the effects of updating the standardized amounts in accordance with section 1886(b)(3)(B)(i)(VII) of the Act. It also reflects the phase-out of the Medicare-dependent, small rural hospital provision. In addition, this column captures any interactive effects that we are not able to quantify.

B. The Impact of the Changes to the DRG Weights (Column 1)

In column 1 of Table I, we present the combined effects of the revised DRG classification system and the subsequent recalibration of the DRG weights incorporating these redefined DRGs. Section 1886(d)(4)(C)(i) of the Act requires us to make appropriate classification changes and recalibrate the DRG weights each year in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The impact of reclassification and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral.

The redistributional impact of the classification and recalibration changes across hospital groupings is small. Column 1 shows that, for most hospital groups, the impact of this change would be between plus or minus 0.2 percent difference relative to payments without these changes. The reductions occur primarily among small urban and rural hospitals. The impact on rural hospitals overall is 0.1 percent lower payments. Rural hospitals with fewer than 50 beds are projected to lose an average of 0.2 percent in payments per case, and rural hospitals with between 50 and 99 beds are projected to lose 0.1 percent of their payments. Also, urban hospitals with fewer than 100 beds can expect an average 0.1 percent reduction in payments per case. However, urban hospitals with between 100 and 299 beds can expect an average increase in payments of 0.1 percent. An exception to the generally minimal impact are urban hospitals in the Middle Atlantic region. Their payments increase by 0.4 percent due to the DRG changes, up from 0.3 percent in the proposed rule.

C. The Impact of MGCRB Reclassifications on Hospitals (Column 2)

1. Impact of Current Policies

Section 1886(d)(10) of the Act established the Medicare Geographic Classification Review Board (MGCRB). The first hospital reclassifications based on decisions of the MGCRB were effective October 1, 1991. The MGCRB considers hospitals' applications for geographic reclassification for purposes of receiving a different wage index value or a higher standardized amount or both under the prospective payment system. The MGCRB may reclassify a hospital to an adjacent urban area or to another rural area with which it has a close proximity for the purposes of using the other area's standardized amount, wage index value, or both. (A rural referral center or a sole community hospital may be redesignated to an area that is not an adjacent county.)

Both the FY 1993 standardized payment amounts and wage index values incorporate all the MGCRB's reclassification decisions that will be effective for FY 1993. The MGCRB approved 1,243 hospital reclassifications for FY 1993. This number includes 50 hospitals that have also been reclassified under provisions of section 1886(d)(8)(B) of the Act, which deems certain rural counties adjacent to one or more urban areas as belonging to an urban area.

The wage index values and the standardized payment amounts also reflect any decisions that result from the Administrator's review of MGCRB decisions for FY 1993 as of August 1992 and any reclassification withdrawal requests that were received by the MGCRB. These Administrator's decisions and withdrawals may affect the wage index value for specific geographic areas relative to those used in the impact analysis in the June 4, 1992 proposed rule. They may also determine whether a redesignated hospital receives the wage index of the area to which it is redesignated or a combined wage index that includes the data for both the hospitals already in the area and the redesignated hospitals.

Approximately 69 percent of all hospitals reclassified for FY 1993 are located in rural areas (823 hospitals). This represents 33 percent of all rural hospitals in our data base. Of the total number of rural hospitals that were reclassified, 79 percent (652 hospitals) were reclassified for purposes of their wage index. Just under 10 percent of rural reclassified hospitals were reclassified for purposes of their standardized amounts and 11 percent were granted reclassification for purposes of both their wage index and their standardized payment amount.

Among the 245 hospitals located in other urban areas that were reclassified for FY 1993, almost 57 percent (139 hospitals) were reclassified for purposes of increasing their wage index value. Another 36 percent (89 hospitals) were reclassified for purposes of both their wage index value and standardized amount. The following table shows the number (and percentage) of reclassified hospitals by their actual geographic location.

DISTRIBUTION OF RECLASSIFIED HOSPITALS

Geographic location	Total number of hospitals reclassified	Reclassified for both wage index value and standardized amount: Number	Reclassified for both wage index value and standardized amount: Percent	Reclassified for standardized amount: Number	Reclassified for standardized amount: Percent	Reclassified for wage index: Number	Reclassified for wage index: Percent
Large Urban	125	38	28	0	0	89	71
Other Urban	245	89	36	17	7	139	57
Rural	823	91	11	80	10	652	55
Total	1193	216	18	97	8	880	74

Overall, 74 percent of the reclassified hospitals were reclassified for purposes of their wage index value, 8 percent were reclassified for purposes of their standardized amounts, and 18 percent were reclassified for purposes of both their wage index value and standardized payment amount.

In the proposed rule, only 6 hospitals in large urban areas were reclassified for both the standardized amount and the wage index, and 125 hospitals in large urban areas were reclassified for purposes of the wage index only. As shown above, a sizable shift occurred among these hospitals in the interim, so that now 36 are reclassified for both the standardized amount and the wage index, and only 89 are reclassified for the wage index only. This shift resulted from a group application from hospitals in a large urban area that was originally granted reclassification by the MGCRB for the wage index only, but upon review was subsequently granted reclassification for the standardized amount as well. (If a group of hospitals is reclassified, the group is reclassified for both its standardized amount and its wage index. Although these hospitals are reported reclassified for both, the payment effect is only on the wage index value.)

Table I shows the impact of changes in reclassification status between FY 1992 and FY 1993. The percentage change shown in Column 2 compares payments incorporating the DRG changes and FY 1992 reclassifications with payments based on the FY 1993 MGCRB decisions. For example, for hospitals that were reclassified in FY 1992, only the differences between their FY 1992 and FY 1993 payments attributable to the MGCRB decisions for FY 1993 are shown. For hospitals reclassified in both FY 1992 and FY 1993, the effect of the increased number of MGCRB reclassifications is to reduce their payments by 0.7 percent. The increased number of reclassifications results in a larger budget neutrality reduction applicable to the urban standardized amount and a decrease in the wage index values assigned to reclassified hospitals. Hospitals that were reclassified for the first time in FY 1993 experience a 4.4 percent increase in payments. Hospitals that were reclassified in FY 1992 but not in FY 1993 will experience a 3.1 percent reduction in payments as a result. This impact is also shown among nonreclassified rural hospitals, where payments are 0.4 percent lower. Fifty-nine rural hospitals that lost their reclassification from FY 1992 to FY 1993 are in this group, and their average decrease in payments per case is 5.8 percent. Overall, geographic reclassification is expected to increase payments per case to rural and other urban hospitals by an average of 0.1 percent, matched by a reduction of 0.1 percent in payments to large urban hospitals. Payments to rural hospitals with fewer than 100 beds are projected to increase by 0.2 percent, while payments to rural hospitals with between 200 and 499 beds will decrease 0.2 percent, and those to hospitals with 500 or more beds are expected to decrease 0.4 percent. Among urban hospitals, we expect hospitals with between 300 and 499 beds to receive an average decrease of 0.1 percent in

payments compared with FY 1992 payments.

Among the hospitals receiving special payments, rural referral centers are expected to benefit the most, receiving an average increase of 0.4 percent in their payments. This net increase, however, is primarily the impact of rural referral centers reclassified during FY 1993 that were not reclassified during FY 1992. The impact of reclassification on this group of hospitals is a 9.2 percent increase. Other rural referral centers experience a negative impact from reclassification, especially those which lost their reclassification from FY 1992 to FY 1993, which experience a 2.7 percent decrease in payments. Nonreclassified rural referral centers' payments are reduced on average 0.1 percent due to the budget neutrality adjustment to the urban standardized amounts. Rural disproportionate share hospitals with 100 or more beds may expect an average decrease in payments of 2.4 percent compared with current levels. This reduction is attributable primarily to a few hospitals in this category that were reclassified to an urban area in FY 1992 and received disproportionate share payments at the urban rate. Since these hospitals were not reclassified to urban areas for FY 1993, their payments fall dramatically.

The geographic analysis by census division shows that generally hospitals in urban areas are more likely than rural hospitals to receive a decrease in payments and hospitals located in rural areas are, on average, expected to receive an increase. However, there are notable exceptions in both groups. While urban hospitals in several census divisions are projected to receive decreased payments of 0.2 percent, hospitals in the New England and the West South Central census divisions are expected to receive an average increase of 0.3 percent. Also, rural hospitals in the Pacific, West North Central and the West South Central census divisions can expect an increase of 0.8, 0.7, and 0.5 percent, respectively. However, our analysis shows that rural hospitals in the South Atlantic census division can expect average payment reductions of 0.7 percent, the largest decrease of any census division, urban or rural. These changes result from concentrations of hospitals within these census divisions that are dramatically affected by the FY 1993 geographic reclassifications. For example, in the Pacific division, 12 hospitals reclassified for the first time during FY 1993 have an 11.0 percent average increase in their payments per case due to reclassification. Conversely, in the South Atlantic census division, 9 hospitals that were reclassified during FY 1992 but are not reclassified for FY 1993 will have payments 8.5 percent less than they would have been if they maintained their geographic reclassification.

We conducted an analysis that shows the effects of reclassification on payments to reclassified and non-reclassified hospitals in FY 1993. This analysis is presented in Table II, below. It compares simulated payment levels after the FY 1993 reclassifications with those based on the actual geographic location of reclassified hospitals. In this respect, the analysis in Table II is comparable to the analysis we presented in the August 30, 1991 final rule (56 FR 43350).

TABLE II.—EFFECTS ON PAYMENTS PER CASE OF FY 1993 GEOGRAPHIC RECLASSIFICATION CURRENT RECLASSIFICATION POLICIES

	Number of hospitals	(a) Payment per case without reclassification[1]	(b) Payment per case after reclassification	(c) Percent change in payment per case due to reclassification only [2]
FY 93 reclassifications:				
All reclassified hospitals	1,193	4,961	5,187	4.6
Standardized amount only	97	4,892	5,016	2.5
Wage index only	880	4,859	5,081	4.6
Both	216	5,292	5,554	4.9
All urban reclassified hospitals:	370	5,922	6,079	2.6
Standardized amount only	17	6,709	6,687	−0.3
Wage index only	228	5,997	6,165	2.8
Both	125	5,707	5,862	2.7
All reclassified rural hospitals:	823	3,991	4,287	7.4
Standardized amount only	80	3,658	3,881	6.1
Wage index only	652	4,013	4,274	6.5
Both	91	3,987	4,584	15.0
All nonreclassified hospitals:	4,143	6,003	5,932	−1.2
Urban non-reclassified hospitals	2,526	6,357	6,276	−1.3
Rural non-reclassified hospitals	1,617	3,526	3,531	0.2

[1] This column shows payments without regard to any previous MGCRB reclassification decision. This column reflects the fact that reclassifications are in effect for only 1 fiscal year.

[2] This column only shows the percentage change in payments resulting from decisions of the MGCRB for FY 1993. It does not reflect other changes such as outliers, DRG recalibration & reclassification or the update.

Table II shows the changes in payments per case for all FY 1993 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, and both).

As evidenced by the increase in payment for reclassified hospitals and the decrease in payments for nonreclassified hospitals, the effects of the MGCRB reclassification decisions are significant. The net impact of reclassification relative to no reclassification is to increase payments per case to reclassified hospitals by 4.6 percent and to decrease payments per cast to nonreclassified hospitals by 1.2 percent. Because reclassified hospitals have only 28 percent as many cases as nonreclassified hospitals, the per case payment reduction to nonreclassified hospitals is smaller than the per case increase to reclassified hospitals. Hospitals located in rural areas that were reclassified for purposes of both their wage index value and their standardized amount will receive the largest percentage increase in payments per case. They experience an average increase of nearly 15.0 percent above what they would experience without reclassification.

The impact on the 17 hospitals located in urban areas that were reclassified for purposes of their standardized amounts is an average decrease in payments per case of 0.3 percent compared to what they would receive if there were no reclassifications. This outcome reflects the effects of the budget neutrality adjustment for urban hospitals and the reclassification of other hospitals from their labor market area. Thus, for the hospitals remaining in the labor market area after the wage index reclassifications, on average the decrease in the wage index value for the area is greater than the increase in their standardized amount after reclassification to a large urban area. Of course, if they were not reclassified, their payments would have decreased even more.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and through the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Nonreclassified urban hospitals (comprising about 61 percent of nonreclassified hospitals) will experience a 1.3 percent decrease in payments per case compared to the level of payments they would receive if there were no reclassifications. The 0.2 percent increase for nonreclassified rural hospitals is largely attributable to a smaller offset to the rural standardized amount for outliers after reclassification. This occurs because the hospitals reclassified for the urban standardized amounts, which have the largest proportion of outlier cases among rural hospitals, are considered as urban hospitals for the purpose of determining the outlier offset percentages after reclassification. The larger rural standardized amount due to the smaller outlier offset results in a net gain for hospitals with the fewest outlier cases (nonreclassified rural hospitals). In the aggregate, payments to hospitals that are receiving the rural standardized payment amounts (which includes rural hospitals reclassified for the wage index only) are budget neutral.

2. Impact of Guideline Changes

Section 412.230(e) of the regulations specifies the criteria a hospital must meet in order to be reclassified from one labor market to an adjacent one for purposes of the wage index. These criteria are based on average hourly wage differences between the two areas. As discussed in section IV of the preamble to this final rule, we are adding an additional criterion that requires a hospital to demonstrate that its average hourly wage is at least 108 percent of the average hourly wage in its current labor market area. The revised guideline is effective for applications filed by October 1, 1992, which will be reviewed by the MGCRB in FY 1993. They do not affect payment until FY 1994.

Based on the FY 1993 reclassifications, we estimate that under the new wage guideline, 75 percent of the hospitals that qualified for reclassification based on their wage index values would no longer qualify. This includes 89 percent of the urban hospitals and 67 percent of the rural hospitals that qualified in FY 1993. The following table shows the effect of the new wage guideline on the number of hospitals that would qualify for reclassification under the three reclassification categories and by urban and rural geographic location.

DISTRIBUTION OF HOSPITALS BY RECLASSIFICATION STATUS

Reclassification status	Actual FY 1993 reclassification	Proposed change
All hospitals	5386	5386
All reclassified hospitals	1193	553
Standardized amount only	97	274
Wage index only	880	240
Both	216	39
All nonreclassified hospitals	4143	4833
Hospitals affected by revised guideline		817
Changed from wage index only to no reclassification		640
Changed from both to standardized amount only		177
All reclassified urban hospitals	370	170
Standardized amount only	17	133
Wage index only	228	28
Both	125	9
All nonreclassified urban hospitals	2526	2726
Urban hospitals affected by revised guideline		316
Changed from wage index only to no reclassification		200
Changed from both to standardized amount only		116
All reclassified rural hospitals	823	383
Standardized amount only	80	141
Wage index only	652	212
Both	91	30
All nonreclassified rural hospitals	1617	2057
Rural hospitals affected by revised guideline		501

DISTRIBUTION OF HOSPITALS BY RECLASSIFICATION STATUS—Continued

Reclassification status	Actual FY 1993 reclassification	Proposed change
Changed from wage index only to no reclassification		440
Changed from both to standardized amount only		61

For several reasons, it is difficult to estimate the impact the revised guideline will have on FY 1994 reclassifications (the year in which reclassifications based on the revised guidelines take effect). Our estimates are based on the best data available. However, there are several policy changes that we anticipate will occur that will affect our estimates, but whose outcome cannot be predicted at this point. The following is a partial list of expected changes:

- The revised MSA definitions based on the 1990 Census that are expected to be effective for FY 1994 are likely to have a significant impact on hospital classifications. Until the new MSA definitions are released and hospitals are regrouped based on these definitions, the impact on hospital reclassifications cannot be determined.
- As indicated in section IV.C of the preamble to this final rule, we are in the process of evaluating alternative methods for defining labor market areas and refinements could be implemented as early as FY 1994, the year in which reclassifications based on the revised guidelines would take effect. Any refinements to the labor market area definitions could significantly affect the impact of geographic reclassifications.
- Beginning in FY 1994, the wage data used to develop the wage index will be updated annually. The new wage data, together with revised labor market areas, will affect the impact of FY 1994 wage index reclassifications and the number of hospitals that will qualify for reclassification beginning in FY 1995.

D. Effect of Changes in Outlier Poyments (Columns 3A, B, and C)

1. Outlier Policy Changes

Table I, column 3A, displays the impact of increased FY 1993 outlier payments compared with estimated FY 1992 outlier payments. Ordinarily, we account for the difference between the estimated outlier payment percentage in the current year and the outlier payment percentage for the subsequent year in the "All Changes" column of Table I.

However, given the magnitude of the difference between the estimated FY 1992 outlier payments and the 5.1 percent estimated for FY 1993, we are explicitly displaying the increase that will occur in total outlier payments in column 3A rather than in column 4. However, because of its significance, we discuss first the impact of the outlier policy changes shown in column 3B, and then the impact of the outlier payment level.

Under current regulations at § 412.82(c), we compute the per diem DRG payment amount for day outlier cases by dividing the adjusted DRG payment amount by the geometric mean length of stay for the DRG. We then multiply the per diem amount by a marginal cost factor of 60 percent times the number of days beyond the outlier threshold that the patient remains in the hospital. As explained in section V.A.1. of the preamble to this final rule, analysis conducted by the RAND Corporation shows that using the arithmetic mean length of stay in place of the geometric mean length of stay, and using a marginal cost factor of 55 percent instead of 60 percent, results in more appropriate payments for day outlier cases. These changes also produce a more equitable distribution of payments across all outlier cases and better protect hospitals from losses resulting from cost outlier cases.

Since we have made the aggregate effect of the change in outlier policy budget neutral, there is no overall effect on payments under the prospective payment system. Similarly, because there are separate outlier offsets to the urban and rural standardized amounts, there is no payment redistribution between urban and rural hospitals. When examined by census division, however, the effects of these changes are quite pronounced. Except for hospitals in the New England, Puerto Rico and Middle Atlantic divisions, we project increases in payments to urban hospitals of between 0.2 and 0.5 percent. Urban hospitals in the Middle Atlantic and New England census divisions would experience decreases in their payments of 1.2 and 0.3 percent, respectively. This is because hospitals in these regions have a higher percentage of cases meeting the criteria to qualify as day outliers under the current policy. For rural hospitals, we find similar though less dramatic redistributive effects. The impact on rural hospitals in the Middle Atlantic census division is projected to be a reduction of 0.8 percent.

Our analysis indicates that the effect of this change is that payments per case to large hospitals (over 500 beds) located in urban areas will be about 0.3 percent less. The effect on hospitals located in large urban areas will be 0.1 percent lower payments per case. On the other hand, payments per case to urban hospitals with fewer than 100 beds increase about 0.2 percent.

Among hospitals receiving special payments, payments to hospitals with large teaching programs (resident-to-bed ratios of 0.25 or greater) are reduced 0.6 percent. Estimated payments to disproportionate share hospitals will be 0.3 percent lower. These average payment reductions reflect the reduced payments to hospitals in the Middle Atlantic census division. This is the only census division where payments per case to teaching and disproportionate share hospitals would be decreased.

The principal impact, however, of these changes in day outlier payment policy appears to be one of redistributing payments from hospitals in two of the census divisions to hospitals in the other census divisions, especially among hospitals located in urban areas.

2. FY 1992 Outlier Payments

Section 1886(d)(5)(A)(iv) of the Act requires that the total amount of additional payments made for outlier cases in a fiscal year may not be less than 5 percent nor more than 6 percent of the total prospective payments estimated to be made for discharges in that fiscal year. As described in the August 30, 1991 final rule (56 FR 43246), we established the thresholds for day and high cost outliers based on an estimate that outlier payments would equal 5.1 percent of total prospective payments. In addition, we reduced the standardized amounts by 5.1 percent for the estimated outliers payments. As the analysis in section V.A.4 of the preamble to this final rule describes, we now estimate that FY 1992 outlier payments will equal 3.84 percent of total DRG payments (exclusive of indirect teaching and disproportionate share payments) and 4.0 percent of total payments under the prospective payment system for operating costs. The outlier payment percentage in FY 1993 is estimated to be 5.1 percent. The percentage changes shown in column 3A reflect the additional outlier payments that we estimate would be made during FY 1993 under our outlier policy before making the changes to the day outlier calculations as described above compared to our estimate of FY 1992 outlier payments.

The effect is to increase average payments per case, overall, by 1.4 percent. Among the hospital groupings, the effect is the greatest for those hospitals that receive a relatively high percentage of outlier payments. In terms of geographic location, the effect is larger for hospitals located in large urban areas—raising payments an average of 1.6 percent. The effect is smallest for rural hospitals—raising their payments by 0.6 percent. Among hospitals that receive additional payments or are grouped according to certain characteristics, hospitals with large teaching programs receive the largest payment increases. The increase averages about 2.0 percent.

The analysis by census division shows urban hospitals in the Middle Atlantic census division receiving the greatest increase in payments. Among hospitals within this census division, urban hospitals receive an average increase of 2.1 percent, the largest increase of all hospital groups, and rural hospitals would receive an average increase of 1.1 percent, the largest increase among rural groups. Thus, in column 3C, we see that the net effect of the difference between FY 1992 outlier payments and FY 1993 estimated payments including the outlier policy changes, is an increase in payments to hospitals in the Middle Atlantic census division of 0.9 percent for urban hospitals and 0.3 percent for rural hospitals.

E. Combined Effects of All Changes (Column 4)

In column 4 of Table I, we present the effects of all final changes for FY 1993 compared to estimated payments under policies in effect for FY 1992. In addition to the changes being implemented for DRG weights (presented in column 1), the effects of FY 1993 geographic reclassification decisions (presented in column 2), and the changes to outlier payments (presented in columns 3A, B, and C), we incorporate the update factors for hospitals located in urban and rural areas (2.55 percent for urban hospitals and 3.55 percent for rural hospitals), the phase-out of the MDH provision, and revisions to the wage index and cost of living adjustments. Although we have not explicitly analyzed these changes in this impact analysis, they are discussed in the addendum to the final rule and in the preamble. As explained in our introductory remarks to the quantitative analysis section, some changes cannot be captured because we lack either current or complete data. There may also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 4 may not equal the sum of the previous columns plus the other variables we are able to identify.

At the national level, our simulation of the final FY 1993 prospective payment rates shows that the average payment to hospitals would increase 4.0 percent. Urban hospitals can expect an increase of 4.1 percent, with hospitals in the large urban areas receiving an increase of 4.1 percent and hospitals in the other urban areas receiving an increase of 4.2 percent. Hospitals in rural areas can expect an average increase in payments of 3.0 percent. The lower increase in rural hospital payments is attributable to the phase-out of the MDH provision and a smaller impact from the underpayment of outliers during FY 1992.

The analysis by census division shows that among urban hospitals, those in the West South Central census division are projected to receive an increase in payments per case of 5.0 percent, the largest increase of any census division. With the exception of hospitals in Puerto Rico, other projected increases range from 3.6 percent for hospitals in the Middle Atlantic division to 4.7 for the East South Central census division. Hospitals in Puerto Rico are projected to receive average increases of 3.5 percent.

Among the rural areas, the Pacific census division will receive the largest increase in payments per case of 4.1 percent. The smallest increase is projected for the Middle Atlantic census division, where rural payments per case are projected to be 1.5 percent above FY 1992 levels.

Consistent with our expectations, reclassified hospitals will gain the most under the policies being implemented in this document. Hospitals that are being reclassified for the first time in FY 1993 will receive the largest payment gains, 8.2 percent, which is largely as a result of an increase of 4.4 percent directly attributable to their reclassification. In contrast, hospitals that were reclassified in FY 1992 and will be reclassified again in FY 1993 are projected to receive an average payment increase of 3.1 percent, which is below the national average increase. Hospitals that were reclassified in FY 1992 but will not be reclassified in FY 1993 can expect average increases amounting to only 0.6 percent. Again, the small increase is due largely to the drop in payments of 3.1 percent as a result of these hospitals not being reclassified in FY 1993.

Nonreclassified hospitals may expect increased payments amounting to about 3.8 percent.

Rural hospitals with fewer than 50 beds are projected to receive a payment increase of 2.0 percent, and rural hospitals with from 50 to 99 beds are projected to receive an average increase of 2.6 percent. The expiration of the MDH provision has an adverse impact on hospitals in both of these groups. Among MDHs, average payments per case during FY 1993 will be 4.0 percent lower than during FY 1992, because of the elimination of the hospital-specific rate option effective with cost reporting periods ending after March 31, 1993.

Table III presents the projected average payments per case for FY 1992 and FY 1993, for urban and rural hospitals, and for the different categories of hospitals shown in Table I. It compares the projected payments with the average estimated per case payments under policies that were effective October 1, 1991. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. Consequently, the last column in Table III is identical to the column 4 in Table I.

TABLE III.—COMPARISON OF OPERATING PROSPECTIVE PAYMENTS PER CASE

[FY 1992 Payments Compared To FY 1993 Payments]

	Number of hospitals	FY 1992 payments/ case	FY 1993 payments/ case	All changes[1]
By geographic location all hospitals	5,386	5,537	5,756	4.0
Large urban areas (populations over 1 million)	1,474	6,510	6,775	4.1
Other urban areas (populations of 1 million or fewer)	1,422	5,452	5,682	4.2
Rural areas	2,490	3,837	3,952	3.0
Urban hospitals	2,896	6,000	6,248	4.1
0–99 beds	682	4,230	4,385	3.7
100–199 beds	872	5,092	5,303	4.1
200–299 beds	612	5,556	5,788	4.2
300–499 beds	537	6,264	6,521	4.1
500 or more beds	193	7,723	8,047	4.2
Rural hospitals	2,490	3,837	3,952	3.0
0–49 beds	1,232	3,189	3,253	2.0
50–99 beds	761	3,529	3,621	2.6
100–149 beds	259	3,974	4,098	3.1
150–199 beds	123	4,031	4,176	3.6
200–499 beds	112	4,566	4,732	3.6
500 or more beds	3	6,026	6,236	3.5
Urban by region:				
New England	172	6,358	6,615	4.0
Middle Atlantic	456	6,572	6,823	3.8
South Atlantic	421	5,729	5,979	4.4
East north central	476	5,853	6,084	4.0
East south central	168	5,184	5,426	4.7
West north central	183	5,835	6,061	3.9
West south central	357	5,451	5,725	5.0
Mountain	113	5,865	6,118	4.3
Pacific	501	6,772	7,038	3.9
Puerto Rico	49	2,320	2,401	3.5
Rural by region:				
New England	56	4,538	4,713	3.9
Middle Atlantic	93	4,311	4,377	1.5
South Atlantic	340	4,038	4,163	3.1
East north central	344	3,846	3,957	2.9
East south central	298	3,424	3,540	3.4
West north central	564	3,553	3,634	2.3

TABLE III.—COMPARISON OF OPERATING PROSPECTIVE PAYMENTS PER CASE—Continued

[FY 1992 Payments Compared To FY 1993 Payments]

	Number of hospitals	FY 1992 payments/ case	FY 1993 payments/ case	All changes[1]
West south central	396	3,481	3,594	3.2
Mountain	237	4,110	4,255	3.5
Pacific	156	4,654	4,843	4.1
Puerto Rico	6	1,549	1,600	3.3
All hospitals	5,386	5,537	5,758	4.0
Large urban areas (populations over 1 million)	1,628	6,390	6,656	4.2
Other urban areas (populations of 1 million or fewer)	1,487	5,392	5,613	4.1
Rural areas	2,271	3,788	3,893	2.8
Teaching status:				
Non-teaching	4,345	4,632	4,812	3.9
Resident/bed ratio less than 0.25	811	6,068	6,306	3.9
Resident/bed ratio 0.25 or greater	230	9,357	9,755	4.2
Disproportionate share:				
Hospitals (DSH)	3,734	5,013	5,208	3.9
Non-DSH				
Urban DSH:				
100 beds or more	1,161	6,629	6,901	4.1
Fewer than 100 beds	99	4,040	4,175	3.3
Rural DSH:				
Sole community (SCH)	101	3,645	3,766	3.3
Referral centers (RRC)	46	4,614	4,795	3.9
Other rural DSH hospitals:				
100 beds or more	66	3,500	3,561	1.7
Fewer than 100 beds	179	3,029	3,113	2.8
Urban teaching and DSH:				
Both teaching and DSH	561	7,517	7,825	4.1
Teaching and no DSH	429	6,205	6,453	4.0
No teaching and DSH	699	5,315	5,533	4.1
No teaching and no DSH	1,426	4,873	5,083	4.3
Rural hospital types:				
Non special status	983	3,348	3,452	3.1
RRC	180	4,396	4,569	3.9
SCH	561	3,849	3,995	3.8
Medicare-dependent (MDH)	501	3,290	3,157	-4.0
SCH and RRC	46	4,664	4,838	3.7
SCH or MDH	1,108	3,815	3,875	1.6
Type of ownership:				
Voluntary	3,212	5,691	5,913	3.9
Proprietary	729	5,055	5,288	4.6
Government	1,445	5,114	5,310	3.8
Medicare util: percent of days				
0–25	293	7,213	7,507	4.1
25–50	1,782	6,241	6,499	4.1
50–65	2,201	5,020	5,218	4.0
Over 65	865	4,526	4,658	2.9
Unknown	245	5,822	6,094	4.7
Hospitals reclassified by the Medicare Georgraphic Classification Review Board				
Reclassification status during FY 1992 and FY 1993:				
Reclass. FY92 and FY93	849	4,845	4,993	3.1
Reclass. FY93 only	344	5,201	5,626	8.2
Reclass. FY92 only	80	4,973	5,011	0.8
FY93 reclassifications:				
All hospitals				
Reclassified	1,193	4,955	5,187	4.7
Nonreclassified	4,143	5,716	5,932	3.8
All urban hospitals:				
Reclassified	370	5,764	6,079	5.5
Nonreclassified	2,526	6,039	6,276	3.9
All rural hospitals:				
Reclassified	823	4,137	4,287	3.6
Nonreclassified	1,617	3,460	3,531	2.1
Other reclassified:				
(Section 1886(D)(8)(B))	50	4,284	4,446	3.8

[1] Percentage changes shown in the column are taken from Table I, column 4. Because the dollar amounts shown in this table are rounded to the nearest whole dollar, percentage changes computed on the basis of these amounts will differ slightly from those presented in the last column of Table I.

VII. Impact of Changes in the Capital Prospective Payment System

A. General Considerations

An impact analysis of the capital prospective payment system must control for the two transitional payment methods (the hold-harmless method and the fully prospective payment method) and accurately forecast FY 1993 asset acquisitions and disposals. Our analysis is limited by the lack of hospital-specific data on future hospital capital investments. The lack of hospital-specific data limits our impact analysis in the following ways:

- Major investment in hospital capital assets (for example in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the actual hospital capital growth rate for an individual hospital.
- Moreover, our policy of recognizing certain obligated capital as old capital complicates the problem of projecting future capital-related costs for individual hospitals. With the changes we are making to § 412.302(c) in this final rule, a hospital will have until the later of October 1, 1992 or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system to notify its intermediary that it has obligated capital. The intermediary will make its determination as to whether the obligated capital will qualify as old capital by the later of the end of the hospital's first cost reporting period under the capital prospective payment system or 9 months from the notification date. Since we do not have information on what proportion of an individual hospital's future capital spending will qualify as old capital, we cannot accurately project how an individual hospital will be affected by the transition payment policies.

Prior to this final rule, we had only limited information on which transition payment method would be applicable to an individual hospital. Limited information on initial payments under the capital prospective payment system coupled with an inability to accurately forecast FY 1993 asset acquisition meant that any projection of capital-related costs could be very inaccurate for individual hospitals. We concluded that a cross-sectional impact analysis using the usual prospective payment system hospital groupings (for example, urban or rural, teaching or nonteaching, etc.) that would rely on individual hospital projections from prior cost reports would not be representative. Instead, in the August 30, 1991 final rule we presented the estimated impact of the capital prospective payment system using the results of the FY 1992 actuarial model that distinguished between high capital cost and low capital cost hospitals only.

Although we integrated hospital-specific data into the proposed FY 1993 actuarial model, the data were still sufficiently limited that we continued to present only the effects of the FY 1993 capital payment policies by payment methodology category in the impact analysis for the June 4, 1992 proposed rule. In Table IV of this final rule, we continue to present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 1993. In addition, we believe that we have now integrated sufficient hospital-specific information into our actuarial model to project with more confidence the impact of the FY 1993 capital payment policies by the usual prospective payment system hospital groupings. We caution that while we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system for some hospitals and base year cost report data for most of the remaining hospitals, we need to randomly generate the change in old capital costs, the new capital ratio, and obligated costs for individual hospitals. This means that we continue to be unable to accurately predict an individual hospital's FY 1993 capital costs; however, with the more recent data on the experience to date under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings. If a grouping has a limited number of hospitals, the results may not be representative of the actual hospitals in the grouping. We combined these small groupings with other hospital groupings where appropriate. We present the transition payment methodology by hospital grouping in Table V. In Table VI we present the results of the cross-sectional analysis using the results of our actuarial model. This table presents aggregate impact of the FY 1993 payment policies. In Table VII, we present a simulation of payments based on 100 percent of the Federal rate. This simulation shows the average percentage change in the Federal rate attributable to the updated rate and changes in payment adjustments.

B. Projected Impact By Transition Payment Methodology

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1992 through FY 1993 using an actuarial model. The FY 1993 actuarial model, described in appendix B of this **Federal Register** document, integrates actual data from individual hospitals with randomly generated amounts developed from the results of the capital acquisition model used in the August 30, 1991 final rule. We have available more recent capital cost data from cost reports beginning in FY 1989 and FY 1990 through the Hospital Cost Reporting Information System (HCRIS), interim payment data for hospitals already receiving capital prospective payments through PRICER, and limited capital audit data from intermediary reports. However, we do not have individual hospital data on old capital changes, new capital formation, and obligated capital. Because we can combine actual data for individual hospitals with the results from the capital acquisition model, we need to generate only the old and new capital changes and obligated capital randomly. All Federal rate payment parameters, which were randomly assigned by the capital acquisition model in the FY 1992 final rule, are assigned in the FY 1993 model to the applicable hospital.

For purposes of this impact analysis, the FY 1993 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will increase at the following rates during these periods:

Fiscal year	Average percentage increase in capital costs per discharge
1992	8.56
1993	9.58

- The Medicare case mix index will increase by 2 percent annually.
- The Federal capital rate as well as the hospital-specific rate is updated by the two-year moving average increase in Medicare capital costs per case, net of case-mix change, between FY 1988 and FY 1990. The FY 1993 update is 6.07 percent (see Addendum, part III).
- Consistent with the budget neutrality constraints provided in section 4001(b) of Pub. L. 101–508, estimated aggregate Medicare payments for capital costs in FY 1993 equal 90 percent of total Medicare inpatient

capital costs. The budget neutrality adjustment factor is applied to the Federal and hospital-specific rates only and not to the hold-harmless payment for old capital.

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1992 to FY 1993. To show the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals, we are presenting in Table IV the results of our simulation separately by payment category. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it is paid under the fully prospective payment methodology in FY 1992. A high cost hospital is a hospital that, based on its initial hospital-specific rate, is paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY

Type of hospital	Percent of hospitals	FY 1993 percent of discharges	FY 1993 percent of capital costs	FY 1993 percent of capital payments
Low Cost Hospital	65	60	44	47
High Cost Hospital	35	40	56	53

A low cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use. If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital would become a hold-harmless payment hospital as a result of a redetermination in FY 1992 or FY 1993, we have continued to show these hospitals as low cost hospitals in Table IV. The following table shows our estimate of the percentage of low capital cost hospitals that would be paid under the hold-harmless payment methodology through a hospital-specific rate redetermination and the basis of their payment under hold-harmless payment methodology:

Fiscal year	Percent of low cost fully prospective hospitals that qualify as hold-harmless	Of these, percent that are paid:	
		100% federal rate	Hold-harmless
1992	0.7	9	91
1993	0.7	5	95

Assuming no behavorial changes in capital expenditures, Table IV displays the percentage change in payments from FY 1992 to FY 1993 using the above described actuarial model.

TABLE IV.—IMPACT OF FY 1993 CHANGES ON PAYMENTS PER DISCHARGE

	No. of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold-harmless payment	Exceptions payment	Total payment	Percent change
FY 1992									
Low Cost Hospitals	3,474	5,814,013	$64.55	10.03	$393.49	$3.38	$3.12	$464.54	
Fully Prospective	3,090	5,334,882	64.77	10.00	397.93		2.57	465.26	
Rebase—Fully Prospective	362	446,832	59.42	10.00	368.97		9.38	437.77	
Rebase—100% Federal Rate	2	2,949	523.34	100.00				523.34	
Rebase—Hold Harmless	20	29,350	57.32	9.31		670.16	8.34	735.82	
High Cost Hospitals	1,886	3,849,477	323.54	48.50		481.71	6.62	811.86	
100% Federal Rate	556	1,406,141	696.94	100.00				696.94	
Hold Harmless	1,330	2,443,336	108.64	16.72		758.94	10.42	878.00	
Total Hospitals	5,360	9,663,490	167.72	25.69	236.74	193.93	4.51	602.90	
FY 1993									
Low Cost Hospitals	3,474	5,814,013	$132.77	20.12	$358.92	$3.57	$9.11	$504.37	8.57
Fully Prospective	3,090	5,334,882	132.89	20.00	362.96		6.10	501.95	7.89
Rebase—Fully Prospective	362	446,832	121.89	20.00	336.73		42.28	500.90	14.42
Rebase—100% Federal Rate	1	1,040	528.00	100.00				528.00	0.89
Rebase—Hold Harmless	21	31,259	253.89	40.23		663.64	48.80	966.33	31.33
High Cost Hospitals	1,886	3,849,477	355.36	51.97		476.68	13.68	845.72	4.17
100% Federal Rate	541	1,353,931	696.80	100.00				696.80	−0.02
Hold Harmless	1,345	2,495,546	170.11	25.14		735.30	21.10	926.51	5.52

TABLE IV.—IMPACT OF FY 1993 CHANGES ON PAYMENTS PER DISCHARGE—Continued

	No. of hospitals	Discharges	Adjusted federal payment	Average federal percent	Hospital specific payment	Hold-harmless payment	Exceptions payment	Total payment	Percent change
Total Hospitals	5,360	9,663,490	221.44	33.07	215.95	192.03	10.93	610.35	6.21

Under section 1886(g)(1) of the Act, aggregate payments under the capital prospective payment system for FY 1992 through 1995 are to equal 90 percent of what would have been payable on a reasonable cost basis in each year, respectively. (See Addendum, Part III for a full discussion of the budget neutrality provision.) We project that in FY 1992 aggregate payments under the capital prospective payment system are higher than 92.85 percent of reasonable costs. Taking the phase-in of the capital prospective payment system into account, this represents excessive capital payments of approximately $90 million. To achieve budget neutrality in FY 1993, we estimate there should be an aggregate 6.2 percent increase in Medicare capital payments over the FY 1992 payments.

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average case-weighted increase in payments of 8.6 percent, and high capital cost hospitals will experience an average increase of 4.2 percent.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 10 percent to 20 percent and the hospital-specific rate payment percentage will decrease from 90 to 80 percent in FY 1993.

The Federal rate payment percentage for a hospital paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs of total capital costs. We estimate average Federal rate payment percentage for those hospitals receiving a hold-harmless payment for old capital will increase from 16.7 percent to 25.1 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will change only marginally.

We are making no changes in our exceptions policies in FY 1993. As a result, the minimum payment levels will be:

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or
- 70 percent for all other hospitals.

We estimate that there will be a 96 percent increase in exceptions payments in FY 1993. As a result, exceptions will increase from 0.7 percent to 1.7 percent total capital payments. The projected distribution of the payments is shown in the table below:

ESTIMATED FY 1993 EXCEPTIONS PAYMENTS

Type of hospital	No. of hospitals	Percent of exceptions payments
Low Capital Cost	294	50.1
High Capital Cost	235	49.9
Total	529	100.0

C. Distribution of Hospitals By Payment Methodologies

Table V presents a cross-sectional summary of hospitals by capital prospective payment methodology. This distribution is not generated by our actuarial model. Rather, it is based on the June 30, 1992 update of the Provider-Specific File used by intermediaries to make interim capital payments using the PRICER program, audit information reported by intermediaries, and cost report data from fiscal years 1988, 1989, and 1990.

As we explain in appendix B, we were not able to determine a hospital specific rate for 26 of the 5,386 hospitals in our data base. Consequently, the payment methodology distribution is based on 5,360 hospitals. In the June 4, 1992 proposed rule, we were able to present interim capital payment data from our Provider Specific File for only 44 percent of the hospitals. Therefore, the data in Table V of the proposed rule was not fully representative of the payment methodologies that will be applicable to the full set of hospitals. In the impact analysis for this final rule, the data from 5,360 should be fully representative of the payment methodologies that will be applicable to hospitals.

In Table V, we are presenting the distribution of the capital payment methodologies for teaching hospitals in terms of the resident-to-bed ratio specifically so that readers may compare these analysis with those for the prospective payment system for operating costs. Also, we have not yet developed a break point for distinguishing heavy teaching involvement from light teaching involvement using the resident-to-average-daily-census ratio that is comparable to the break point developed for the resident-to-bed ratio (resident-to-bed ratios less than .25 or ratios equal to or greater than .25). Although we are classifying teaching hospitals according to their resident-to-bed ratio for display purposes, for our Federal rate payment simulations, we have computed the indirect medical education adjustment factor using the ratio of resident-to-average daily census.

The distribution of hospitals by payment methodology is provided by: (1) Geographic location, (2) region, and (3) payment classification. This provides an indication of what percentage of hospitals within a particular hospital grouping is under the fully prospective payment methodology and under the hold-harmless methodology. The information is based on the 5,360 hospitals with interim capital payment data on our data base.

TABLE V.---DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total No. of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	5,360	25.5	10.1	64.4
Large urban areas (populations over 1 million)	1,464	33.4	13.3	53.3
Other urban areas (populations of 1 million or fewer)	1,410	30.4	13.4	56.2
Rural areas	2,486	18.1	6.4	75.5
Urban hospitals	2,874	31.9	13.3	54.8
0-99 beds	665	32.3	8.3	59.4
100-199 beds	868	39.3	12.2	48.5
200-299 beds	611	30.8	16.9	52.4
300-499 beds	537	24.6	15.8	59.6
500 or more beds	193	21.2	17.6	61.1
Rural hospitals	2,486	18.1	6.4	75.5
0-49 beds	1,228	13.2	3.5	83.3
50-99 beds	761	21.3	7.6	71.1
100-149 beds	259	24.7	13.9	61.4
150-199 beds	123	26.8	7.3	65.9
200 or more beds	115	24.3	11.3	64.3
By Region:				
Urban by Region	2,874	31.9	13.3	54.8
New England	172	15.7	8.7	75.6
Middle Atlantic	450	19.8	16.2	64.0
South Atlantic	419	40.8	13.8	45.3
East North Central	478	21.2	13.4	65.3
East South Central	168	46.4	11.9	41.7
West North Central	183	27.3	13.7	59.0
West South Central	353	56.7	16.7	26.6
Mountain	112	38.4	12.5	49.1
Pacific	494	28.9	10.7	60.3
Puerto Rico	47	31.9	4.3	63.8
Rural by Region	2,486	18.1	6.4	75.5
New England	56	7.1	8.9	83.9
Middle Atlantic	91	12.1	7.7	80.2
South Atlantic	340	24.7	6.8	68.5
East North Central	344	11.6	6.4	82.0
East South Central	298	25.2	8.7	66.1
West North Central	564	10.8	5.0	84.4
West South Central	394	26.6	8.1	65.2
Mountain	237	16.0	3.0	81.0
Pacific	156	19.9	5.1	75.0
By Payment Classification:				
All hospitals	5,360	25.5	10.1	64.4
Large urban areas (populations over 1 million)	1,618	32.9	13.4	53.6
Other urban areas (populations of 1 million or fewer)	1,475	29.5	12.7	57.8
Rural areas	2,267	17.6	6.0	76.4
Teaching Status:				
Non-teaching	4,321	26.2	9.3	64.5
Resident/bed ratio less than 0.25	809	23.7	13.7	62.5
Resident/bed ratio 0.25 or greater	230	18.7	12.2	69.1
Disproportionate share hospitals (DSH):				
Non-DSH, rural	2,267	17.6	6.0	76.4
Non-DSH, urban, fewer than 100 beds	842	31.1	8.3	60.6
Urban DSH, 100 beds or more	2,251	31.4	14.9	53.8
Urban teaching and DSH:				
Both teaching and DSH	933	22.2	14.1	63.7
Teaching and no DSH	55	29.1	5.5	65.5
No teaching and DSH	1,318	37.9	15.4	46.7
No teaching and no DSH	767	31.3	8.5	60.2
Rural Hospital Types:				
Non-special status hospitals	1,034	16.0	6.8	77.3
RRC	180	23.9	13.3	62.8
SCH	561	22.8	2.9	74.3
Medicare-dependent hospitals (MDH)	443	11.5	5.2	83.3
SCH or MDH	1,050	18.1	4.0	77.9
Type of Ownership:				
Voluntary	3,186	24.0	11.7	64.2
Proprietary	729	52.8	13.0	34.2
Government	1,445	14.9	5.1	80.1
Medicare Utilization as a Percent of Inpatient Days:				
0-25	293	27.3	8.2	64.5
25-50	1,782	28.3	11.3	60.3
50-65	2,201	23.3	9.9	66.8
Over 65	865	20.7	8.7	70.6

The distribution of hospitals by capital payment methodology is somewhat different than the distribution of low and high capital cost hospitals in the August 30, 1991 final rule. In the August 1991 final rule, we anticipated that 71 percent of hospitals would receive payment on a fully prospective basis. Table V indicates that 64.4 percent of hospitals are fully prospective. As expected, a relatively higher percentage of rural and governmental hospitals are being paid on the fully prospective payment methodology. This is a reflection of their lower than average capital costs per case. More than 75 percent of rural hospitals and 80 percent of governmental hospitals are paid under the fully prospective payment methodology compared to an average of 64.4 percent of all hospitals. In contrast, only 34.2 percent of the proprietary hospitals are being paid under the fully prospective payment methodology. This is the only group of hospitals that has a majority of hospitals paid under the hold harmless methodology. As we noted in the August 30, 1991 final rule (56 FR 43430), we found that about 62.7 percent of proprietary hospitals have a capital cost per case above the national average cost per case.

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 1993 actuarial model to estimate the potential impact of the FY 1993 operating and capital payment policy changes on total capital payments per case using a universe of 5,360 hospitals. The individual hospital payment parameters are taken from the best available data, including: FY 1991 MEDPAR bills, the June 30, 1992 update to the Provider-Specific File, and cost report data for cost reporting periods beginning in FY 1990. Table VI presents a comparison of payments per case for FY 1992 and FY 1993. It also presents the portion of the total percentage change in payments that can be attributed to Federal rate changes. Federal rate changes include the 0.41 percent increase in the Federal rate, a 2.0 percent increase in case mix, changes in the adjustments to the Federal rate (e.g., wage index corrections), and reclassifications by the Medicare Geographic Classification Review Board. The residual increase over the portion attributable to Federal rate changes can be attributed to the effects of transition changes, which include: the change from 10% to 20% in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold harmless hospitals, changes in old capital (e.g., obligated capital coming on line), redeterminations, and exceptions. The comparisons are provided by: (1) Geographic location, (2) payment classification, and (3) payment region.

The simulation results show that, on average, payments per case can be expected to increase by 6.2 percent in FY 1993. The results also show that a 0.7 percent increase is attributable to Federal rate changes, leaving 5.5 percent attributable to the effects of transition changes and budget neutrality.

By geographic location, rural hospitals can be expected to experience a higher rate of increase than urban hospitals (6.7 percent compared to 6.1 percent). Urban hospitals will gain slightly more than rural hospitals (0.7 percent compared to 0.6 percent) from the Federal rate changes. However, rural hospitals will gain more than urban hospitals (6.1 percent to 5.4 percent) from the effects of transition changes. Since more rural hospitals than urban hospitals (75.5 percent to 54.8 percent) are paid on a fully prospective basis, the greater gain of rural hospitals from the Federal rate changes must result to some degree from the increase in the percentage of the Federal rate portion.

By region, rural hospitals of the Pacific region have the highest rate of increase (8.5 percent, of which 0.5 percent is due to Federal rate changes and 8.0 percent to the effects of transition changes). Urban hospitals of the West South Central region will have the lowest rate of increase (4.0 percent, of which 0.8 percent is due to Federal rate changes and 3.2 percent is due to effects of transition changes).

By type of ownership, government hospitals are projected to have the highest rate of increase (8.5 percent, of which 0.8 percent is due to Federal rate changes and 7.7 percent to the effects of transition changes). Significantly, government hospitals, which have the highest percentage of hospitals paid under the fully prospective methodology (80.1 percent) by type of ownership, can be expected to do much better than proprietary hospitals, which have the highest percentage of hospitals paid hold-harmless (52.8 percent). Payments to proprietary hospitals will increase 4.8 percent and payments to voluntary hospitals will increase 6.1 percent.

Section 1886(d)(10) of the Act established the Medicare Geographic Classification Review Board (MGCRB). Fiscal year 1992 is the first year that hospitals were reclassified as a result of decisions by the MGCRB. Hospitals may apply for reclassification for the purpose of obtaining a higher wage index value, standardized payment amount or both a higher standardized payment amount and wage index value. Although there is no difference with respect to the Federal capital rate, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor since it is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 1993 compared to FY 1992, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 1993 reclassifications, we are indicating those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both factors. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Reclassified hospitals as a whole can be expected to realize a 6.8 percent increase, of which 0.9 percent is attributable to the Federal rate changes and 5.9 percent is attributable to the effects of transition changes. Nonreclassified hospitals will gain less than reclassified hospitals overall (6.1 percent). While nonreclassified hospitals will gain slightly less (0.7 percent to 0.9 percent) than reclassified hospitals from the Federal rate changes, they will gain significantly less (5.4 percent to 5.9 percent) than the reclassified hospitals from the effects of transition changes. In other words, more (0.5 percent to 0.2 percent) of the greater gain for reclassified hospitals derives from the effects of transition changes than from the Federal rate changes (including the effects of their reclassifications). This result is not unexpected because (1) the comparison is to FY 1992 payments, which already reflect the results of reclassification for most hospitals and (2) a higher percentage of reclassified hospitals are paid under the fully prospective payment methodology. Hospitals reclassified by the Medicare Geographic Classification Review Board only during FY 1993 can be expected to realize a much larger increase (7.8 percent total) than other reclassified hospitals. Of that 7.8 percent aggregate increase for these hospitals, 1.8 percent can be attributed to Federal rate changes, and 6.0 percent is attributable to transition effects. Hospitals reclassified during both FY

1992 and FY 1993 can be expected to experience a 6.4 percent increase, of which 0.5 percent is attributable to Federal rate changes and 5.9 percent is attributable to the effects of transition changes. Hospitals reclassified during FY 1992 only are expected to realize a much smaller increase (3.4 percent, net of a 0.1 percent decrease from Federal rate changes) than other reclassified hospitals in FY 1993 as they lose the higher payments from their geographic reclassification during FY 1992.

TABLE VI.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 1992 Payments Compared to FY 1993 Payments]

	No. of hospitals	Average FY 1992 payments/ case	Average FY 1993 payments/ case	All changes	Portion attributable to Federal rate change
By Geographic Location:					
All hospitals	5,360	603	640	6.2	0.7
Large urban areas (populations over 1 million)	1,464	711	757	6.4	0.7
Other urban areas (populations of 1 million or fewer)	1,410	605	640	5.7	0.8
Rural areas	2,486	402	429	6.7	0.6
Urban hospitals	2,874	660	700	6.1	0.7
0–99 beds	665	557	587	5.4	0.5
100–199 beds	868	616	656	6.1	0.6
200–299 beds	611	636	678	6.1	0.7
300–499 beds	537	653	692	5.9	0.7
500 or more beds	193	781	833	6.7	0.8
Rural hospitals	2,486	402	429	6.7	0.6
0–49 beds	1,228	282	308	9.0	0.5
50–99 beds	781	373	401	7.4	0.6
100–149 beds	259	449	474	5.6	0.7
150–199 beds	123	432	465	7.8	0.5
200 or more beds	115	498	522	4.9	0.7
By Region:					
Urban by Region	2,874	660	700	6.1	0.7
New England	172	593	638	7.5	0.9
Middle Atlantic	450	654	694	6.1	0.9
South Atlantic	419	674	714	5.9	0.7
East North Central	476	608	652	7.2	0.6
East South Central	168	606	639	5.5	0.9
West North Central	183	651	684	5.0	0.5
West South Central	353	789	821	4.0	0.8
Mountain	112	697	729	4.6	0.6
Pacific	494	715	769	7.6	0.6
Puerto Rico	47	257	274	6.5	0.4
Rural by Region	2,486	402	429	6.7	0.6
New England	56	395	423	7.1	0.6
Middle Atlantic	91	397	428	7.9	0.7
South Atlantic	340	447	468	4.7	0.6
East North Central	344	380	411	8.2	0.7
East South Central	298	384	405	5.4	0.6
West North Central	564	348	373	7.4	0.7
West South Central	394	402	431	7.3	0.9
Mountain	237	449	480	7.0	0.2
Pacific	156	487	528	8.5	0.5
By Payment Classification:					
All hospitals	5,360	603	640	6.2	0.7
Large urban areas (populations over 1 million)	1,618	701	746	6.4	0.7
Other urban areas (populations of 1 million or fewer)	1,475	595	629	5.7	0.7
Rural areas	2,267	394	421	6.9	0.6
Teaching Status:					
Non-teaching	4,321	546	577	5.7	0.7
Resident/bed ratio less than 0.25	809	632	672	6.4	0.8
Resident/bed ratio 0.25 or greater	230	859	925	7.7	0.8
Disproportionate share hospitals (DSH):					
Non-DSH, rural	2,267	394	421	6.9	0.6
Non-DSH, urban, fewer than 100 beds	842	533	563	5.6	0.5
Urban DSH, 100 beds or more	2,251	662	703	6.1	0.7
Urban teaching and DSH:					
Both teaching and DSH	933	693	740	6.8	0.8
Teaching and no DSH	55	614	653	6.3	0.4
No teaching and DSH	1,318	630	663	5.4	0.7
No teaching and no DSH	787	529	558	5.6	0.5
Rural Hospital Types:					
Non special status hospitals	1,034	345	371	7.5	0.6
RRC	180	476	504	5.9	0.8
SCH	561	409	439	7.4	0.3
Medicare-dependent hospitals (MDH)	443	304	327	7.8	0.7
SCH or MDH	1,050	390	418	7.1	0.4

TABLE VI.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 1992 Payments Compared to FY 1993 Payments]

	No. of hospitals	Average FY 1992 payments/ case	Average FY 1993 payments/ case	All changes	Portion attributable to Federal rate change
Hospitals Reclassified by the Medicare Geographic Classification Review Board					
Reclassification Status During FY92 and FY93:					
Reclassified During Both FY92 and FY93	849	504	536	6.4	0.5
Reclassified During FY93 Only	344	560	604	7.8	1.8
Reclassified During FY92 Only	80	519	536	3.4	0.1
FY93 Reclassifications:					
All Reclassified Hospitals	1,193	521	557	6.8	0.9
All Nonreclassified Hospitals	4,117	628	666	6.1	0.7
All Urban Reclassified Hospitals	370	603	647	7.2	1.1
Urban Nonreclassified Hospitals	2,504	669	709	6.0	0.7
All Reclassified Rural Hospitals	823	442	470	6.4	0.8
Rural Reclassified Hospitals	1,613	354	379	7.1	0.4
Other Reclassified Hospitals:					
(Section 1886(D)(8)(B))	50	447	477	6.6	0.6
Type of Ownership:					
Voluntary	3,186	612	649	6.1	0.7
Proprietary	729	712	746	4.8	0.6
Government	1,445	476	517	8.5	0.8
Medicare Utilization as a Percent of Inpatient Days:					
0–25	293	648	698	7.7	0.6
25–50	1,782	665	707	6.3	0.8
50–65	2,201	553	587	6.2	0.7
Over 65	865	549	578	5.2	0.7

E. Cross-Sectional Analysis of Changes in the Federal Rate

The analysis in Table VII examines the impact of following changes in the Federal Rate set forth in this final rule—

- The effects of the annual reclassification of DRGs and the recalibration of the DRG weights required by section 1886(d)(4)(c) of the Act (column 4).
- The effects of hospital reclassifications by the MGCRB for FY 1993 (column 5).
- The net effect of outlier changes (column 6), that is, the additional outlier payments that we estimate will be made during FY 1993 compared to our estimate of FY 1992 outlier payments, the increase in outlier payment levels, and the effect of the outlier payment changes (using a marginal cost factor of .55 and the arithmetic mean to calculate day outlier payments).
- The effects of all changes, including those separately displayed in columns 4, 5, and 6; reflects update and budget neutrality factors.

To estimate the impact of DRG changes, changes due to geographic reclassification, and outlier changes, we simulated payments based on 100% of the Federal rate. Thus, the simulation in Table VII is not representative of changes in capital prospective payment system payments from FY 1992 to FY 1993. Rather, it reflects the percentage change in payments for hospitals receiving 100% of the Federal rate. For other hospitals, it reflects the percentage change in the Federal rate portion of the payments, holding the proportion of the Federal rate payment constant. Unlike the Federal rate payment change in Table VI, the analysis in Table VI does not include any increase in Federal rate payments attributable to anticipated increases in the case-mix index.

In order to present the effects of the separate policy changes displayed in columns 4, 5, and 6, we added each change incrementally, so that the percentages in each column represent the differences in payment relative to the previous column. The baseline for comparison is an FY 1993 system absent any of the changes above. For example, column 4 displays the impact of DRG recalibration and reclassification relative to estimated FY 1993 payments absent these changes. Similarly, column 5 examines the impact of the changes resulting from geographic reclassifications over and above the changes resulting from the DRG reclassifications and recalibration. Column 6 displays the impact of the outlier changes after accounting for the DRG recalibration and geographic reclassification changes. Column 7 displays the combined changes from the previous columns, as well as the effects of the update and budget neutrality factors. This column compares estimated FY 1993 Federal rate payments to estimated FY 1992 Federal rate payments. Thus, the last column is the only one which reflects the effects of all quantifiable policy changes on simulated FY 1993 Federal rate payments.

The table shows that Federal rate payments can be expected to increase 2.0 percent overall prior to consideration of any increase in the case-mix index. Of this total increase, 1.4 percent is due to the outlier changes. DRG recalibration and geographic reclassifications produce no overall effect. The residual over and above the 1.4 percent increase due outlier changes is mostly due to the 0.41 percent increase in the Federal rate.

The table also shows the distributional effects of the changes in Federal rate payments from DRG recalibration, changes due to the geographic adjustment factor and reclassifications, and changes in the outlier payment policy. The DRG changes are expected to produce only minimal effects on the distribution of Federal rate payments. The highest gain from recalibration is projected at 0.4 percent (for urban Middle Atlantic hospitals). The largest loss from recalibration is projected at −0.3 percent (for four categories of hospitals).

The geographic adjustment factor and reclassification changes are in relation to the FY 1992 reclassifications. They are expected to produce only minor effects (from −0.6 percent to 0.5 percent) outside the categories of reclassified hospitals. Among reclassified hospitals, those reclassified during FY 1993 only are expected to experience the largest increase (4.4 percent) from the effects of reclassification of any category.

Hospitals reclassified only during FY 1992 will experience the largest decline (−3.5 percent) from the effects of reclassification. That decline is attributable to the loss of the higher payments from the reclassification in FY 1992. The small (−0.6 percent) decline in payments for hospitals reclassified both during FY 1992 and FY 1993 is due to the effects of the budget neutrality adjustment for changes in the geographic adjustment factor and a decrease in their geographic adjustment factor values. These changes are largely attributable to the additional geographic reclassifications in FY 1993. Reclassified hospitals as a group are expected to experience a 1.0 percent increase from the effects of reclassifications. Nonreclassified hospitals as a group will experience a decline of −0.3 percent from the effects of reclassifications. Relatively more urban hospitals were reclassified for the first time for FY 1993. As a result, urban reclassified hospitals will experience a larger increase in payments (1.4 percent) than rural reclassified hospitals (0.5 percent).

Reclassified hospitals will also experience higher than average overall Federal rate increases. In fact, hospitals reclassified during FY 1993 only will experience the highest overall Federal rate increase (6.4 percent) of any category. All reclassified hospitals will receive on average a higher overall increase (2.7 percent) than all nonreclassified hospitals (1.8 percent). As a group, therefore, reclassified hospitals are projected to do better than nonreclassified hospitals not only from the effects of reclassifications, but also from the effects of other changes to the Federal rate.

Urban hospitals will experience larger increases in payments than rural hospitals from the outlier changes (1.5 percent to 0.7 percent). This is because rural hospitals have fewer outliers than urban hospitals; therefore, rural hospitals will not receive as much benefit from the increase in outlier payments. The lower projected rate of increase for urban hospitals in Region II (Middle Atlantic) compared to other urban hospitals is also explained by the fact that urban hospitals in Region II have proportionately more day outliers than other hospitals. The shift in payments from day outliers to cost outliers therefore has a greater impact on them.

TABLE VII.—HEALTH CARE FINANCING ADMINISTRATION 1993 FINAL CAPITAL PAYMENT SIMULATION BY GEOGRAPHIC LOCATION

	(1) Number of hospitals	(2) Payment per case FY92	(3) Payment per case FY93	(4) Recalibration change	(5) reclassification change	(6) Sum of outlier changes	(7) All changes
All hospitals	5,386	632	644	0.0	0.0	1.4	2.0
Large urban areas (populations over 1 million)	1,474	735	749	0.0	−0.1	1.4	2.0
Other urban areas (populations of 1 million or fewer)	1,422	626	639	0.0	0.1	1.5	2.2
Rural areas	2,490	447	453	−0.1	0.1	0.7	1.3
Urban hospitals	2,896	682	696	0.0	0.0	1.6	2.1
0- 99 beds	682	501	510	−0.1	0.0	1.3	1.8
100–199 beds	872	593	607	0.1	0.1	1.5	2.3
200–299 beds	612	645	660	0.0	0.1	1.5	2.2
300–499 beds	537	710	724	0.0	−0.1	1.5	2.0
500 or more beds	193	838	855	−0.1	0.0	1.5	2.0
Rural hospitals	2,490	447	453	−0.1	0.1	0.7	1.3
0- 49 beds	1,232	374	376	−0.2	0.1	0.2	0.7
50- 99 beds	761	415	420	−0.2	0.1	0.5	1.1
100–149 beds	259	465	471	−0.1	0.0	0.9	1.4
150–199 beds	123	471	478	−0.1	0.1	0.7	1.4
200 or more beds	115	531	540	0.0	0.1	1.1	1.8
Urban by region:							
New England	172	714	724	−0.2	0.3	0.8	1.5
Middle Atlantic	456	730	743	0.4	0.0	0.7	1.7
South Atlantic	421	657	674	−0.1	0.0	2.0	2.6
East North Central	476	666	678	−0.1	−0.1	1.4	1.8
East South Central	168	593	609	0.1	−0.1	2.2	2.6
West North Central	183	675	688	−0.1	−0.2	1.5	1.9
West South Central	357	629	651	0.1	0.3	2.4	3.4
Mountain	113	687	704	−0.2	−0.1	2.1	2.5
Pacific	501	769	782	−0.3	0.0	1.5	1.8
Puerto Rico	49	277	282	0.2	−0.2	1.1	1.7
Rural by region:							
New England	56	519	522	−0.2	−0.4	0.6	0.7
Middle Atlantic	93	496	499	0.0	−0.3	0.3	0.6
South Atlantic	340	471	478	0.0	−0.3	1.1	1.4
East North Central	344	450	456	−0.1	0.3	0.8	1.4
East South Central	298	403	407	0.0	−0.2	0.7	1.1
West North Central	564	416	421	−0.2	0.5	0.4	1.4
West South Central	396	410	417	−0.1	0.5	0.8	1.7
Mountain	237	466	470	−0.2	−0.4	0.8	0.9
Pacific	156	537	545	−0.2	0.5	0.7	1.6
Puerto Rico	6	219	220	−0.1	−0.3	0.4	0.6
All hospitals	5,386	632	644	0.0	0.0	1.4	2.0
Large urban areas (populations over 1 million)	1,628	723	739	0.0	0.0	1.4	2.1
Other urban areas (populations of 1 million or fewer)	1,487	618	631	−0.1	0.0	1.5	2.1
Rural areas	2,271	441	446	−0.1	0.0	0.7	1.2
Teaching status:							
Non-teaching	4,345	546	557	0.0	0.1	1.4	2.1
Resident/bed ratio less than 0.25	811	692	704	0.0	−0.1	1.3	1.8
Resident/bed ratio 0.25 or greater	230	963	983	0.0	0.1	1.4	2.1
Disproportionate share hospitals (DSH):							
Non-DSH, rural	2,271	441	446	−0.1	0.0	0.7	1.2
Non-DSH, urban fewer than 100 beds	859	493	502	−0.1	0.1	1.2	1.8
Urban DSH 100 beds or more	2,256	689	704	0.0	0.0	1.5	2.1

TABLE VII.—HEALTH CARE FINANCING ADMINISTRATION 1993 FINAL CAPITAL PAYMENT SIMULATION BY GEOGRAPHIC LOCATION—Continued

	(1) Number of hospitals	(2) Payment per case FY92	(3) Payment per case FY93	(4) Recalibration change	(5) reclassification change	(6) Sum of outlier changes	(7) All changes
Urban teaching and DSH:							
Both teaching and DSH	934	763	776	0.0	−0.1	1.4	1.9
Teaching and no DSH	58	568	576	−0.3	−0.2	1.7	1.8
No teaching and DSH	1,322	610	624	0.0	0.1	1.7	2.4
No teaching and no DSH	803	489	498	−0.1	0.1	1.2	1.8
Rural hospital types:							
Non special status hospitals	1,038	407	410	−0.1	−0.3	0.8	0.8
RRC	180	508	517	−0.1	0.4	0.9	1.9
SCH	561	424	427	−0.1	−0.3	0.8	0.8
Medicare-dependent hospitals (MDH)	443	376	380	−0.2	0.3	0.4	1.1
SCH and RRC	46	513	520	0.0	−0.1	0.8	1.4
SCH or MDH	1,050	426	431	−0.1	−0.1	0.8	1.0
Type of ownership:							
Voluntary	3,212	850	862	0.0	0.0	1.3	1.8
Proprietary	729	598	614	0.0	0.0	2.4	3.0
Government	1,445	568	578	−0.1	0.2	1.1	1.9
Medicare utilization as a percent of inpatient days:							
0–25	293	752	765	0.2	0.0	1.1	1.8
25–50	1,782	698	712	−0.1	0.0	1.5	2.1
50–65	2,201	587	598	0.0	0.0	1.3	1.9
Over 65	865	536	546	0.0	0.0	1.3	1.8
Unknown	245	651	667	0.3	0.5	1.0	2.5
By Payment Classification							
Hospitals reclassified by the Medicare Geographic Classification Review Board reclassification status during FY92 and FY93							
Reclassified during both FY92 and FY93	849	564	569	0.0	−0.6	1.0	1.0
Reclassified during FY93 only	344	596	634	0.1	4.4	1.1	6.4
Reclassified during FY92 only	80	568	559	−0.1	−3.5	1.3	−1.6
FY93 reclassifications:							
All reclassified hospitals	1,193	574	589	0.0	1.0	1.0	2.7
All nonreclassified hospitals	4,143	650	661	0.0	−0.3	1.5	1.8
Urban reclassified hospitals	370	663	685	0.1	1.4	1.2	3.4
Urban nonreclassified hospitals	2,526	685	698	0.0	−0.2	1.5	1.9
Rural reclassified hospitals	823	484	493	−0.1	0.5	0.8	1.8
Rural nonreclassified hospitals	1,617	400	403	−0.1	−0.5	0.6	0.6
Other reclassified hospitals (section 1886(D)(8)(B))	50	510	519	−0.1	0.1	1.1	1.7

Appendix B: Technical Appendix on the Capital Acquisition Model and Budget Neutrality Adjustment

Section 1886(g)(1) of the Act requires that for FY 1992 through FY 1995 aggregate prospective payments for operating costs under section 1886(d) and prospective payments for capital costs under section 1886(g)(1) of the Act be reduced each year in a manner that results in savings equal to 10 percent of the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. Under § 412.352, the 10 percent savings is generated entirely from the capital prospective payments. A budget neutrality adjustment factor is applied to the Federal rate and hospital-specific rate so that total capital payments for FY 1992 through FY 1995 approximately equal 90 percent of Medicare inpatient capital costs in each year.

To calculate budget neutrality, the hold-harmless provision of the payment methodology requires that we identify old and new capital; that is, we must be able to project the rate at which old capital will be depreciated and written off and at which new capital will be acquired and depreciated. (Old capital costs are depreciation, lease, interest expenses, and other capital-related costs defined in § 412.302 that are in use or obligated on or before December 31, 1990.)

In developing the FY 1992 prospective payment rates, there was limited capital data available that could be used to project payments under the capital prospective payment system and develop the budget neutrality adjustment factor. Consequently, we developed a capital acquisition model that relied on Monte Carlo random simulation techniques to project capital costs for 6000 hypothetical hospitals. This model is described in detail in the August 30, 1991 final rule (56 FR 43517–43522). The model will be referred to as the capital acquisition model in the following discussion.

Since publication of the August 31, 1991 final rule, capital data have become available that can be incorporated directly into the determination of budget neutrality. The more recent data include the June 30, 1992 update of the Hospital-Specific File that provides the data items needed by the PRICER program used by the intermediaries to determine interim capital payments to hospitals, cost reports for cost reporting periods beginning in FY 1989 (PPS–6) (that overlap the base year for determining the hospital-specific rate) and FY 1990 (PPS–7), and data reported by the intermediaries that includes the hospital-specific rate determinations that have been made through June 1992. The June 30, 1992 update to the Provider-Specific File contains data on interim payments under the capital prospective payment system for approximately 60 percent of all hospitals. Generally, the data are for hospitals that became subject to the capital prospective payment system effective with their cost reporting period beginning on or before June 1, 1992.

The available data sources directly supply, or can be used to calculate, the hospital-specific rate. For those hospitals with capital data on the Provider-Specific File, the payment

methodology as well as the estimated FY 1992 hold-harmless amount and new capital ratio for hospitals paid under the hold-harmless payment methodology is also available.

The available data still lack certain items which are required for the determination of budget neutrality. These items are the hospital's new capital costs for each year, its old capital costs for each year, and the obligated capital amounts that will be put in use for patient care services and recognized as old capital each year.

For FY 1993, we are using an integrated model that starts with the available data for existing hospitals and back-fills the missing items with results from the capital acquisition model that was used to develop the FY 1992 payment rates. Since hospitals under alternative payment system waivers are currently excluded from the capital prospective payment system, we excluded these hospitals (hospitals in Maryland and hospitals in the Finger Lakes Area Hospital Corporation in New York) from our model.

We have not modified the parameters of the FY 1992 capital acquisition model; however, we analyzed several capital growth patterns generated by that model to backfill the elements for which actual data are not available. These patterns include the distribution of growth rates in old capital (exclusive of obligated capital), the new capital ratio (which includes obligated capital), and the ratio of obligated capital costs for assets being put in use for patient care to total capital costs. In all cases, the distributions from the model were fitted to the beta distribution. The beta distribution is a two parameter distribution with the range restricted from zero to one. The growth rate for old capital (which is exclusive of obligated capital) must be between zero and one since depreciation and interest on old capital cannot increase. The ratio of new capital to total capital and the ratio of obligated capital to total capital are necessarily between zero and one. Hence, the beta distribution is ideal for these purposes, especially since the two parameters provide a range of shapes.

With regard to the new capital ratio for years after FY 1992, the model fits the change in the ratio from one year to the next to the beta distribution. This is to prevent large swings in the new capital ratio over time. It is possible to have a decrease in the new capital ratio since some new capital may have a short life time compared to old capital. Therefore, we rescaled the range of the changes in the ratios since the beta distribution must have numbers between zero and one.

The model first develops the hospital-specific rate. Where available, this rate is taken from the June 1992 update of the Provider-Specific File. This file contains the actual amounts used by the intermediaries with the PRICER program to compute interim capital prospective payments. If the hospital-specific rate is not available from the Provider-Specific File, the second source is the audit information reported by the intermediaries. If this is not available, the model computes the hospital-specific rate from the hospital's cost reporting period beginning in FY 1989 (PPS–6) as reported on the HCRIS as of June 1992 update. If the hospital-specific rate cannot be determined from the PPS–6 cost reports, the model computes the hospital-specific rate from cost reports beginning in FY 1988 (PPS–5). If still unsuccessful, the model computes the hospital-specific rate from cost reports beginning in FY 1990 (PPS–7). The June 1992 update of HCRIS is used in all cases.

The following table summarizes the data sources for the hospital specific rate.

HOSPITAL SPECIFIC RATE SOURCES BY NUMBER OF HOSPITALS

[In order of selection priority]

Data source	Number of hospitals
Hospital specific file	3,462
Intermediary activity file	1,660
PPS–6 cost reports	216
PPS–5 cost reports	10
PPS–7 cost reports	12
Total	5,360

We were not able to determine a hospital specific rate for 26 of the 5,386 hospitals in the analysis data base. Consequently, we modeled capital budget neutrality using 5,360 hospitals.

The model also develops the old capital amount for each hospital. If available, the model uses the hold-harmless payment per discharge from the Provider-Specific File. If the actual hold-harmless amount is not available, the model develops an estimate from the hospital's hospital-specific rate. It computes an FY 1990 capital cost per discharge by dividing the 1992 hospital-specific rate by factors used to inflate base year capital cost per discharge to FY 1992 as set forth in the August 30, 1991 final rule (56 FR 43390). The model updates the base year capital per discharge to FY 1992 using a two-year rate of increase (FY 1990 to FY 1992) in old capital that is randomly generated from the beta distribution described above. This old capital amount for FY 1992 excludes any obligated capital that has been put in use since the base year. Excluding obligated capital from the old capital growth factors produces a more stable growth sequence with lower variance. The development of the hospital's obligated capital costs is described below. Before we update the hospital's old capital costs in a given year, the model adds the obligated capital that is first depreciated in the current year to the old capital cost for that year. As a result, any obligated capital depreciation and interest expense projected by the model is incorporated into the hospital's old capital costs in subsequent years.

The model also develops the new capital ratio for each hospital. If available, the model uses the hospital's new capital ratio from the Provider-Specific File. If the actual new capital ratio is not available, the model generates the ratio from a beta distribution as described above. For purposes of fitting the new capital ratio to the beta distribution, the model treats obligated capital as new capital. The model restricts the new capital ratio to 90 percent in all cases. After fitting the FY 1992 new capital ratio, the year-to-year change in the new capital ratio is fit to the beta distribution. The new capital ratio combined with the old capital amount generates the total capital costs.

Finally, the model develops the obligated capital ratio for obligations first being depreciated in the year under analysis. It generates an obligated capital ratio using a beta distribution fitted to the results of the capital acquisition model (and obligation capital assumptions) as described above. This ratio is an offset to the new capital ratio. Consequently, the obligated capital ratio is restricted to the magnitude of the new capital ratio. The new capital ratio is reduced by the obligated capital ratio.

If a hospital has a hold-harmless payment amount available on the Hospital-Specific File, this amount includes the effect of obligated capital on its FY 1992 old capital costs per discharge. Therefore, the model does not generate any additional FY 1992 obligated capital for these hospitals. We necessarily generated obligated capital amounts for all hospitals for FY 1993 and later.

The model does not recompute the hospital's total capital costs for obligated capital. Instead, obligated capital costs are the product of the obligated capital ratio rate and total capital costs. The hospital's costs for

new capital are the product of the revised new capital ratio times the hospital's total capital costs.

We computed the average total capital cost per discharge from the capital costs that were generated by the model and compared the results to total capital costs per discharge that we had projected independently of the model. We adjusted the component amounts of total capital costs (old capital, obligated capital, and new capital) proportionately so that the total capital costs per discharge generated by the model match the independently projected capital costs per discharge.

As a refinement, we have independently projected total capital costs per discharge for short term care acute care hospitals that do not have Medicare waivers. (The waiver hospitals are in Maryland, and the Finger Lakes area of New York.) We compared the Medicare inpatient capital per case for short-term acute care hospitals subject to the capital prospective payment system to all short term acute care hospitals (including the waiver hospitals for FY 1990. Excluding the waiver hospitals increased the capital cost per case by 0.7 percent. The rate of increase in capital cost per case with, or without the waiver hospitals is practically identical for FY 1988, FY 1989, and FY 1990. Consequently, we can safely assume that waiver status has negligible impact on average rates of change in capital costs.

To summarize, the model integrates actual data with randomly generated amounts developed from the results of the capital acquisition model. For purposes of aggregate capital, we generated at most three numbers for each hospital each year. Only the old capital increase, new capital ratio, and obligated capital ratio are randomly generated.

Once each hospital's capital-related costs are generated, the model projects capital payments. In FY 1992, we randomly generated all payments parameters (for example, the case-mix index and the geographic adjustment factor). In the model, we now use the actual payment parameters that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital. If available, the model uses the payment methodology method indicated in the Provider-Specific File. Otherwise, the model determines the methodology by comparing the hospital's FY 1992 hospital-specific rate to the adjusted Federal rate applicable to the hospital. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the 1991 MEDPAR file using the FY 1993 DRGs and relative weights published in this final rule. The case-mix index is increased 2 percent per year after FY 1991 consistent with the continuing trend (which we expect to continue) in case-mix increase.

Changes in geographic reclassification and corrections in the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year based on the Federal rate after any changes resulting from changes in the DRG classification system and relative weights and in the geographic adjustment factor equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. To determine the budget neutrality adjustment factor needed to make the effect of the DRG and geographic adjustment changes budget neutral on estimated Federal rate payments, we first determined the portion of the Federal rate that would be paid for each hospital in FY 1993 based on its applicable payment methodology. We then compared what aggregate Federal rate payments would be based on the FY 1992 DRG relative weights and FY 1992 geographic adjustment factor to aggregate Federal rate payments based on the FY 1993 relative weights and the FY 1993 geographic adjustment factor. In making the comparison, we held the FY 1993 Federal rate portion constant and set the other budget neutrality adjustment factor and exceptions reduction factor to 1.00. We determined that to achieve budget neutrality for the changes in the geographic adjustment factor and the DRG weights, a budget neutrality adjustment factor of .9980 should be applied to the FY 1993 Federal rate.

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low income patients or the large urban add-on.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to project total aggregate payments under the prospective payment system and to compute the budget neutrality adjustment factor that would result in estimated payments under the capital prospective payment system equal to 90 percent of what would have been payable on a reasonable cost basis. This budget neutrality factor is applied to the Federal and hospital-specific rates, but not to the hold-harmless payments.

Additional payments under the exceptions process are financed through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate estimated exceptions payments and the exceptions reduction factor. This exceptions reduction factor ensures that estimated aggregate payments under the capital prospective payment system, including exceptions payments, equal what aggregate payments would be under the capital prospective payment system without an exceptions process. Since changes in the level of payment rates change the level of payments under the exceptions process, the budget neutrality and exceptions adjustments factors must be determined through iteration. Further, these two factors interact with each other so that they must be determined simultaneously. We successfully determined values for these factors so that the exceptions adjustment factor is correct and estimated payments under the capital prospective payment system equal 90 percent of estimated Medicare inpatient capital costs.

In the August 30, 1991 final rule, we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next five years. The table below provides the actual FY 1992 and FY 1993 factors, and the estimated factors that would be applicable through FY 1997. We caution that, except with respect to FY 1992 and FY 1993, these are estimates only and are subject to revisions resulting from continued methodological refinements, more recent data, and any payment policy changes

that may occur. In this regard, we note that in making these projections we have assumed that the DRG/GAF adjustment factor will remain at .9980 because we do not have sufficient information to estimate the change that will occur in the factor in FY 1994. In this final rule, we are adding a new requirement for individual hospital wage index reclassification that we estimate will result in 75 percent of the individual hospitals that qualified for reclassification in FY 1993 no longer qualifying in FY 1994. Although we expect that the fewer reclassification will result in a positive budget neutrality adjustment, we cannot estimate the magnitude of the adjustment at this time for two reasons. First, we do not know how many of the hospitals that no longer qualify for individual wage reclassification will qualify for a group reclassification for purposes of both the wage index and the standardized amount. Second, we do not know the effect that fewer reclassifications, coupled with the new wage data and revised labor market areas, will have on the hospital wage index and geographic adjustment factor.

The projections are as follows:

Fiscal year	Increase in cost per discharge [1]	Update factor	Exceptions reduction factor	Budget Neutrality factor	Federal rate (after outlier reduction)
1992	6.43	N/A	0.9813	0.9602	415.59
1993	7.43	6.07	.9756	.9162	417.29 [2]
1994	8.48	5.19	.9379	.9367	431.43
1995	8.44	5.28	.9000	.9597	446.55
1996	8.47	6.93	.9000	N/A	497.55
1997	8.51	7.95	.9000	N/A	537.11

[1] NOTE: Adjusted for estimated 2.0 percent annual increase in case-mix index.
[2] NOTE: Includes the DRG/GAF adjustment factor of 0.9980 and the change in the outlier adjustment from 0.9497 in FY 1992 to 0.9495 in FY 1993. Future adjustments are, for purposes of this projection, assumed to remain at the same level.

Comment: A few commenters expressed concern about the sensitivity of estimating per case capital payment rates to the assumptions used in the capital projection model. These commenters claim that there are clear differences between the model and actual data for factors such as the amount of obligated capital, and number of hold-harmless hospitals, exceptions, and outlier payments.

Response: It is important to draw a distinction between the model, and the assumptions used by the model. The model must necessarily be sensitive to changes in assumptions. As information becomes available, we refine our assumptions, and the model responds appropriately. Since we are setting budget neutrality prospectively, we must make assumptions about future changes, and about factors which have not been completely determined, or which have not yet been reported to us.

As stated in the June 4, 1992 proposed rule and repeated in the above description of the model, we modified the FY 1992 capital acquisition model to incorporate actual data to the maximum extent possible. As more data become available, we will incorporate this additional data. Until audits and hospital-specific rate determinations and obligated capital have been completed, it is not possible to improve our estimates of obligated capital, exceptions and outlier payments and the number of hold-harmless hospitals.

We have confidence in our model. It is the only model that is constrained to historic and projected capital levels, and reacts in an appropriate manner to all the provisions and factors in the capital prospective payment system. We are monitoring emerging experience, and we will continue to modify our assumptions in conformance with the experience. We will also continue to incorporate actual data to the maximum extent possible.

Comment: Several commenters requested that HCFA increase efforts to assure that funds set aside for exceptions and outlier payments are paid to hospitals.

Response: As part of the rate-setting process, we estimate anticipated exceptions payments and reduce the Federal rate and hospital-specific rate by the estimated value of the exceptions payments. (In addition, the Federal rate is reduced by the estimated value of outlier payments.) There are, however, no funds "set aside" for these payments. As with the budget neutrality adjustment, the estimates are based on the best data available at the time the rates are established and actual payments may be more or less than the estimated amounts. Although capital outlier payments are lower than we estimated when the FY 1992 capital rates were established, we estimate total capital payments will exceed 90 percent of what would have been payable on a reasonable cost basis. Based on our current estimates, capital payments will equal 92.85 percent of reasonable costs. Taking the phase-in of the capital prospective payment system into account, this represents excessive capital payments of approximately $90 million. We do not make retroactive adjustments for any of our estimates. Instead, we are refining our FY 1993 estimates for outliers and exceptions payments and the budget neutrality adjustment factor on the basis of the more recent data. We will continue to refine our estimates for future rate-setting as more recent data become available.

Commenter: A commenter requested that we separately report the DRG recalibration and geographic adjustment factor budget neutrality factors.

Response: We determine a joint budget neutrality adjustment factor because of potential interactive effects between the DRG changes and the geographic adjustment factor. However, we have computed separate factors to determine the magnitude of each on the combined adjustment factor. We first determined that to achieve budget neutrality for the changes in the geographic adjustment factor using the FY 1992 DRG weights the budget neutrality adjustment factor be .9984. We then compared what aggregate Federal rate payments would be based on the FY 1992 DRG relative weights and the FY 1993 geographic adjustment factor to aggregate Federal rate payments based on the FY 1993 relative weights and geographic adjustment factor with the 0.9984 adjustment factor applied in both cases. In making the comparison, we held the FY 1993 Federal rate portion constant and set the other budget neutrality adjustment factor and exceptions reduction factor to 1.00. We determined that to achieve budget neutrality for the changes in the DRG weights, a further budget neutrality adjustment factor of 0.9996 in addition to the 0.9984 should be applied to the FY 1993 Federal rate. This yields a total adjustment of 0.9980.

Appendix C: Recommendation of Update Factors for Rates of Payment for Hospital Inpatient Operating Costs

I. Background

Several provisions of the Social Security Act (the Act) address the setting of update factors for services furnished in FY 1993 by hospitals subject to the prospective payment system and hospitals excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(VIII) of the Act, as enacted by Public Law 101-508, sets the FY 1993 applicable percentage increases in the operating cost standardized amounts for prospective payment hospitals equal to the hospital market basket percentage increase minus 1.55 percentage points for hospitals located in urban areas and the market basket percentage increase minus 0.55 percentage points for hospitals located in rural areas. Section 1886(b)(3)(B)(ii) of the Act governs the target rate-of-increase limits for hospitals excluded from the prospective payment system and the hospital-specific rate applicable to sole community hospitals. In accordance with section 1886(d)(3)(A) of the Act, we are updating the average standardized amounts, the hospital-specific rates and the target rate-of-increase limits for hospitals excluded from the prospective payment system as provided for in section 1886(b)(3)(B) of the Act, as set forth above.

Sections 1886(e)(2)(A) and (3)(A) of the Act require that the Prospective Payment Assessment Commission (ProPAC) recommend to the Congress by March 1 of each year an update factor for the next fiscal year that takes into account changes in the market basket index, hospital productivity, technological and scientific advances, the quality of health care provided in hospitals, and long-term cost effectiveness in the provision of inpatient hospital services.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. As required by section 1886(e)(5) of the Act, we published the recommended FY 1993 update factors as appendix D of the proposed rule (57 FR 23835).

II. Secretary's Final Recommendations for Updating the Prospective Payment System for Operating Costs Standardized Amounts

We received several public comments concerning our proposed recommendation. After consideration of the recommendations presented by the commenters, we have decided that our final recommendation will be the same as our proposed recommendation. That is, we are recommending that the operating standardized amounts be increased by an amount equal to the market basket percentage minus 1.55 percentage points for hospitals located in urban areas and the market basket percentage increase minus 0.55 percentage points for hospitals in rural areas. Based on the currently forecasted market basket increase of 4.1 percent, the recommended updates are 2.55 percent for hospitals in urban areas and 3.55 percent for hospitals in rural areas.

We are recommending that the hospital-specific rate applicable to sole community hospitals be updated by an amount equal to the market basket percentage increase minus 1.55 percentage points, or 2.55 percent. With the exception of the higher update for the rural standardized amount, we believe that the considerations used to develop our update recommendation for the standardized amounts are also applicable to the hospital-specific rate for sole community hospitals. Our recommendation for a higher update to the rural standardized amount is intended to reduce the differential between the standardized amounts for other urban and rural hospitals, which is not an applicable consideration for hospital-specific rates.

In recommending these increases, we have followed section 1886(e)(4) of the Act, which indicates that we should take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. In addition, as required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of ProPAC.

We are recommending an update that is consistent with the Administration's budget proposal that all hospitals receive an update in their payments for FY 1993 based on the current market basket forecast with the adjustments set forth in Public Law 101-508. The latest forecast shows that the FY 1993 rate-of-increase in the hospital market basket will be 4.1 percent.

Our recommendation is supported by our analyses, which measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix. We are recommending that the standardized amounts applicable to urban hospitals and the hospital-specific rates applicable to sole community hospitals be updated in FY 1993 by an amount equal to the market basket percentage increase minus 1.55 percentage points. However, we believe a differential update for the standardized amount applicable to rural hospitals is appropriate in order to phase out the differential between the rural and other urban standardized amounts. Therefore, we are recommending that the rural standardized amount be updated by an additional 1.0 percentage point, for a total update of 3.55 percent (that is, market basket minus 0.55 percentage points).

Comment: Several commenters believe that the hospital market basket does not properly reflect increases in costs faced by hospitals.

Response: The process used to develop the hospital market basket was specifically designed to reflect price increases that are appropriate for efficiently managed hospitals. The methodology and rationale are described in detail in the September 4, 1990 final rule (55 FR 36044). Since we provided a thorough response to comments on the hospital market basket in the September 4, 1990 final rule and did not propose any changes in the June 4, 1992 proposed rule, we are not responding to specific comments on the hospital market basket in this final rule. We believe that the market basket continues to recognize appropriate input price increases for efficiently managed hospitals.

Comment: A commenter believes that we should adjust the hospital market basket rate of increase to account for the cost-increasing effects of new technologies.

Response: In the framework used to support our update recommendations, we adjust the market basket rate of increase to account for the costs of new technology. This factor is encompassed as part of the update framework, rather than the market basket itself. In the framework used to support our FY 1993 update recommendation, we include a +0.3 to +0.5 percent increase for science and technology.

Comment: A few commenters advocate an update factor equal to the market basket rate of increase, rather than those updates set by the statute.

Response: Section 1886(b)(3)(B)(i)(VIII) of the Act requires that the update factors be set at the market basket rate of increase minus 0.55 percentage points for rural

hospitals, and the market basket percentage rate of increase minus 1.55 percentage points for urban hospitals. We are required by the statute to implement these update factors.

Comment: ProPAC disagreed with our recommendation that the hospital-specific rate applicable to sole community hospitals be updated by an amount equal to the urban update, or the market basket percentage increase minus 1.55 percentage points. The Commission believed that the update applied to the hospital-specific rate should be the rural update factor, that is, the market basket percentage increase minus 0.55 percentage points. The Commission believed that our recommendation is contrary to Congress' intention to provide financial relief to these hospitals.

Response: We responded to a similar comment in the FY 1992 final rule (56 FR 43354). We continue to believe that the differential update for the rural standardized amounts is intended to phase out the lower rural payment rates. Sole community hospitals are assured payment at the greater of the Federal rate or the hospital-specific rate. Hospitals that are paid at the hospital-specific rate are already benefitting from payments higher than other rural hospitals receive. We do not believe that these high cost rural hospitals that are already receiving higher payments should also benefit from a payment change intended for rural hospitals paid at a lower Federal rate. Rather,we are recommending that the hospital-specific rate applicable to sole community hospitals be updated by the market basket percentage rate of increase minus 1.55 percentage points, or 2.55 percent.

Comment: ProPAC disagreed with the framework we used to develop our recommended updates for the standardized amounts. In particular, they objected to the use of a practice patterns adjustment that was based on a study done in the early years of the prospective payment system. ProPAC believed that our adjustment for science and technology was too low. Finally, they believed that we should consider within-DRG severity and should not adjust for the effects of DRG reclassification and recalibration in setting the CMI component of our update framework.

Response: Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of ProPAC, recommend for each fiscal year update factors that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Since FY 1986, we have used an analytical framework to support the update recommendation. In appendix D to the FY 1992 final rule (56 FR 43354), we noted that we were in the process of refining that analytical framework. Our intent is to develop an expanded conceptual framework and appropriate measures for each component, that would be used to support our update recommendations. In appendix C to the FY 1992 proposed rule (56 FR 25321), we invited public comment on the appropriate factors and measures that should be taken into consideration in determining an appropriate update.

Under the current framework used to calculate our recommended updates, we look at the hospital market basket rate of increase and make adjustments to take into account both policy adjustment factors and changes in case mix, as well as corrections to forecast errors in previous estimates of the market basket rate of increase. The policy adjustment factors consist of measures of change in hospital productivity, quality-enhancing scientific and technological advances, and changes in practice patterns. The productivity measure consists of a normative standard, based partly on economy-wide increases in productivity, that accounts for the effect on prices that productivity increases would have in a competitive industry. The science and technology factor adjusts for the diffusion of new technology that is also quality-enhancing. Finally, the practice pattern adjustment is designed to ensure that the government shares in any improvements in practice patterns that make the provision of care less costly, while maintaining quality of care.

The adjustment in the current framework consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change which we believe is due to increased severity of illness rather than coding improvements, and an adjustment for the effect of reclassification and recalibration changes, to reflect what the total case-mix index change would have been if a new GROUPER and relative weights had not been instituted. The adjustment for the reclassification effect may be either a positive or a negative adjustment and represents a correction to the observed case-mix change. It is determined by comparing the average case weight for the actual cases in a given year based on the DRG relative weights for that year with the average case weight for the same cases based on the DRG relative weights for the previous year. Since the actual cases for the fiscal year are used on both sides of the comparison, the difference represents the change in the case-mix index and, therefore, reflects aggregate payments attributable to the new GROUPER and relative weights.

Presented below is a modified analytical framework for the update recommendation. We are considering using the revised framework to develop our recommendation for updating the prospective payment system standardized amounts beginning in FY 1994. We are presenting it in order to solicit comments and suggestions for improvement. So that we may take any comments into account prior to development of the proposed update recommendation for FY 1994, any comments should be sent to the following address by December 31, 1992: Update Framework, Division of Hospital Payment Policy, 1–H–1 East Low Rise, 6325 Security Blvd., Baltimore, Md. 21207.

III. Modifications to the Update Framework

A. General

The modified framework we are presenting is similar to our current framework, except in the definition of the policy adjustment factors. We have continued to use our current framework with the FY 1993 update recommendation; however, we are considering using the modified framework beginning in FY 1994. Our current framework and the modified framework are both based on the following formula:

$$\underset{(A)}{\frac{\text{Nominal cost}}{\text{Discharge}}} = \underset{(B)}{\frac{\text{Real Outputs}}{\text{Real caseweights}}} \times \underset{(C)}{\frac{\text{Real caseweights}}{\text{Discharges}}} \times \underset{(D)}{\frac{\text{Real noncapital inputs}}{\text{Real outputs}}} \times \underset{(E)}{\frac{\text{Nominal costs}}{\text{Real noncapital inputs}}}$$

In the formula, (A) represents the average cost per discharge, (B) represents our measure of case-mix constant intensity, (C) represents the case-mix index, (D) represents the inverse of service productivity, and (E) represents the hospital market basket. The main differences between the current and the modified frameworks lie in the data used to develop the productivity standard, and in the definition of intensity. The current framework divides intensity into a practice patterns adjustment and an adjustment for science and technology, while the modified framework uses a direct measure of intensity.

Under the modified framework, we would have two policy adjustment factors: Productivity and intensity. The first would reflect a forward-looking adjustment for expected changes in services level productivity in hospitals. This measure would reflect the efficiency with which individual services (for example, laboratory tests, diagnostic procedures) are produced. The intensity component would reflect how these services are utilized to produce the final output—the discharge. This component would account for the intensity of services per discharge and would include changes in the use of quality-enhancing services including new technologies and expected modification of practice patterns to remove cost-ineffective services. It would also be used to account for changing resource requirements due to variations in within-DRG severity of illness. The intensity component would replace our previous separate components for science and technology and practice patterns, and would take into account within-DRG severity changes. Throughout the following discussion, we compare our modified framework to the existing ProPAC framework.

The following is a summary of the FY 1993 update ranges supported by our modified analyses compared to our existing framework and ProPAC's framework.

TABLE 1.—Comparison of FY 1993 Update Recommendations

	Current HHS	Modified HHS	ProPAC
Market Basket	MB	MB	MB
Difference Between HCFA & ProPAC Market Baskets			+0.2
Subtotal	MB	MB	MB +0.2
Policy Adjustment Factors:			
Productivity	−1.0	−0.8 to −1.0	−1.0
Intensity		+1.0 to +1.1	
Science and Technology	+0.3 to +0.5		+1.0
Practice Patterns	−1.8 to 0		(1)
Real Within-DRG Change			(2)
OSHA Modification to 29 CFR Part 1910.1030	+0.14	(3)	(3)
Subtotal	−2.36 to −0.36	+0.0 to +0.30	+0.0
Case-Mix Adjustment Factors:			
Observed Case-Mix Change	−2.5	−2.5	−2.5
Real Across-DRG Change	+1.0 to +1.3	+1.0 to +1.3	+1.5
Real Within-DRG Change	(4)	(5)	+0.3
Effect of 1990 Reclassification and Recalibration	−1.0	−1.0	
Subtotal	−2.5 to −2.2	−2.5 to 2.2	−0.7
Forecast Error Correction	−0.9	−0.9	−0.6
Total Recommended Update	MB −5.76 to MB −3.46	MB −3.40 to MB −2.80	MB −1.3

[1] Included in ProPAC's Productivity Measure.
[2] Included in ProPaC's Case Mix Adjustment.
[3] Included in HHS' Productivity Adjustment and ProPAC's Science and Technology Adjustment
[4] Included in HHS' Practice Patterns and Science and Technology components.
[5] Included in HHS' Intensity Factor.

There are two basic reasons for having a modified framework that recognizes two levels of production in hospitals. First, the modified framework allows us to refine the concepts of productivity, efficiency, and cost-effectiveness as they apply to the hospital setting, because we envision employing and developing a wider range of relevant data series to use in formulating our annual recommendations. For example, we would be able to evaluate our productivity standard with respect to unit productivity and real output data from both the hospital industry and the general economy. Second, this framework recognizes that while hospitals are largely responsible for the efficiency with which individual services are produced, the cost-effective use of these services in providing care during the hospital stay is jointly determined by the hospital and its medical staff. Therefore, by distinguishing the two levels of production, we can in the future improve the consistency between the objectives embodied in the cost-effective practice component of the prospective payment system update recommendation and our Volume Performance Standard (VPS) recommendation for the physician fee schedule.

In employing this framework, we would recognize that the potential for changes in service productivity is related to the overall output of services. Economy-wide, unit productivity tends to increase most rapidly during periods of output growth, and grow more slowly or decrease during periods in which output declines. Thus, in formulating our recommendation for the productivity component of the update factor, we would consider expected growth in total hospital services including admissions, case mix, technology and cost-effective practice. Our expectations for output, which are partly determined by our policy target for the intensity component (which includes many of these factors), will therefore influence our service productivity recommendation. In the discussion below, we first describe how our recommendation for the intensity component would be determined

followed by the development of our productivity recommendation.

B. Intensity Component

We would base our intensity standard on the combined effect of three separate factors: changes in the use of quality-enhancing new technology, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For 1993, we would have recommended that this factor be 1.0 percent to 1.1 percent. The basis of this recommendation is discussed below.

We have no empirical evidence that accurately gauges the level for quality-enhancing technology changes. Typically, a specific new technology increases costs in some uses and decreases costs in other uses. Concurrently, health status is improved in some situations while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost-increasing effects for individual technologies and new technologies. In the early years of the prospective payment system, ProPAC conducted several studies of new technology costs and concluded that they were fairly low. Those studies focused primarily on the acquisition costs of the new technologies but also looked at diffusion of new technologies and operating costs. Project Hope, under contract with ProPAC annually estimates the incremental operating costs of specific cost-increasing technologies. However, we know of no definitive studies that establish an appropriate level or range for this factor. ProPAC's recommended adjustment is for the cost-increasing effect of new technologies only, and for FY 1993 assumes the range of estimated costs for these technologies at 0.9 to 1.0 percent, with a best estimate of 1.0 percent. ProPAC includes the cost-decreasing effect on new technology in its productivity adjustment factor.

The quality-enhancing technology component is intended to recognize the use of services that increase cost, but whose value in terms of enhanced health status is commensurate with these costs. Such services may result from technological change, or in some cases, increased use of existing technologies. The latter recognizes that as cost and medical effectiveness studies become available, some increased use of existing, as well as new, services may be warranted.

The component for reduction of cost-ineffective practices recognizes that some improvements in practice patterns could be made so that the intensity of services provided is more consistent with the efficient use of limited resources. That is, improvements could be made so that the number of services provided during an inpatient stay, and their complexity, produce an improvement in health status that is consistent with the cost of care. This component of our update recommendation is intended to encourage both hospitals and physicians to consider more carefully the cost effectiveness of medical care.

In our current framework, the component for real within-DRG change is implicitly recognized in the new science and technology factor and in the practice pattern components. In our proposed framework, it would be recognized in the intensity component.

Since 1985, intensity of services per inpatient admission has increased, even after adjusting for the growth in real case mix each year. These increases, which are similar to pre-prospective payment system increases, followed intensity decreases in both 1984 and 1985. ProPAC, following methods developed by HCFA's Office of the Actuary for deriving hospital output estimates from total hospital charges, has estimated that case-mix constant intensity per admission increased at an average of 1.5 percent annually from 1985–1990. We have developed Medicare-specific intensity measures for inpatient services based on 1985–1991 MEDPAR billing data. Consistent with ProPAC, case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the Medical Consumer Price Index hospital component and changes in real case mix. Past studies of case-mix change by the RAND Corporation indicate that the change in real case mix ranges from 1.0 percent to one-half of total case-mix change. If we assume that real case-mix change is one-half of total case-mix change, we estimate case-mix constant intensity to have grown by an average of 2.0 percent each year during the 1985–1991 period, a cumulative increase of 12.8 percent. If we assume that real case mix has been growing at 1.0 percent annually, case-mix constant intensity has grown by an average of 2.3 percent annually, for a cumulative increase of 14.3 percent.

We believe that the estimated intensity increases have been due to a combination of changes in science and technology, within-DRG severity, and cost-ineffective practice. Currently, however, there are no conclusive studies that quantify either the net impact of new science and technology on operating costs or on within-DRG complexity changes. Thus, we cannot estimate precisely what portion of the overall intensity increase was due to a combination of quality-enhancing technology and within-DRG complexity, and what portion was due to cost-ineffective practice. We are instead assuming that one-half of the 2.0 to 2.3 percent annual increase was due to a combination of quality-enhancing services and within-DRG complexity. Therefore, based on these trends, our proposed recommendation would have included a 1.0 percent to 1.1 percent positive adjustment to the update to allow for a cost-effective increase in the intensity of services in FY 1993.

While we would continue in the future to examine historical trends in formulating the intensity component, our intent is that it will become a forward-looking factor that incorporates expanding knowledge from medical effectiveness studies. Our eventual objective is to identify a set of efficient or "best practice" hospitals to serve as a basis for this adjustment. In addition, in recognition of the joint roles of hospitals and their medical staff in furnishing inpatient care, we intend to examine methods for calibrating our hospital update recommendation with our annual volume performance standard (VPS) recommendation for the Medicare physician fee schedule. In evaluating methods for calibrating our two recommendations, one potential area of study will be to examine those services billed simultaneously by physicians under Part B and by hospitals under Part A.

C. Productivity Component

Service level productivity is defined as the ratio of total service output to full time equivalent employees (FTEs). It is also called service productivity since these services become inputs for the production of a hospital discharge. While we recognize that productivity is multifactor in nature (that is, a function of labor, non-labor material, and capital inputs), we propose to use a labor productivity measure in the modified framework since the current update framework applies to operating payment. To recognize that we are apportioning the short run output changes to the labor input, we propose to weight our productivity measure for operating costs by the appropriate share of labor input to total operating input to determine the expected effect on cost per case. In our proposed framework for updating capital payments (see Appendix D), we discuss unifying the capital and operating frameworks by considering expanded productivity concepts with regard to the capital input.

ProPAC believes hospitals should be given an incentive to improve productivity. In its recommended update framework, ProPAC measures productivity as the ratio of hospital admissions (adjusted for case mix and outpatient services) per FTE employee (adjusted for changes in skill mix). This year, ProPAC assumes a per case productivity gain of at least 2.0 percent and recommends a −1.0 percentage point adjustment in determining the update on the basis that any productivity gains should be shared equally by Medicare and hospitals. However, ProPAC's measurement is based on per-case productivity rather than service productivity, so ProPAC's productivity measurement includes the effect of changes in practice patterns and cost-decreasing new technology. As explained earlier, the productivity measurement in the proposed framework embraces only changes in service productivity. We would make an adjustment to reflect average expected gains in service productivity; a hospital would retain in full any service growth at 3.8 percent annually, implying a ratio of service productivity gains it achieves above this level.

Our proposed recommendation for the service productivity component is based on historical trends in productivity and total output for the hospital industry and the general economy, as well as projected levels of future hospital service output. ProPAC has also estimated cumulative service productivity growth to be 4.6 percent from 1985–1989, or 1.1 percent annually. At the same time, it estimates total service growth at 3.8 percent annually, implying a ratio of service productivity growth to output growth of approximately 0.3 percent. Our MEDPAR analysis implies total Medicare service output (charges per admission, adjusted for CPI change) increased 22.1 percent from 1985–1991, or 3.4 percent annually. It is not possible at this time to develop a productivity measure specific to Medicare patients. We also examined output (gross domestic product) and productivity (output per hour) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 percent to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with an 0.3 to 0.35 percent change in output per hour).

Under the modified framework, the recommended update would be based in part on expected productivity, that is, projected service output during the year multiplied by the historical ratio of service productivity to total service output, multiplied by the share of labor in total operating inputs, as calculated in the hospital market basket. This method would estimate an expected labor productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. In doing so, the recommendation allows for unit productivity to be smaller than the historical averages in years in which output growth is relatively low, and higher in years in which output growth is larger than the historical trend. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected "real" case-mix growth and expected quality-enhancing intensity growth, net of expected decline in intensity due to reduction of cost ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected output growth is simply product of the expected change in intensity (1.0 to 1.1 percent), projected admissions change (2.3 percent for 1993) and projected "real" case-mix growth (1 percent for 1993), or 4.3 to 4.5 percent. The share of direct labor services in the hospital market basket (consisting of wages, salaries, and employee benefits) is 61.7 percent. Multiplying the expected change in total hospital service output by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage provides our productivity standard of 0.8 percent to 1.0 percent.

In the December 6, 1991 **Federal Register** (56 FR 64004), the Occupational Safety and Health Administration (OSHA) published a final rule (29 CFR 1910.1030) implementing regulations requiring organizations to use a variety of means to reduce the risk of employees contracting blood borne pathogens, including hepatitis B virus and human immunodeficiency virus. In that rule, OSHA estimates the impact on hospitals will be additional costs of 0.14 percent of total revenues. Under the existing framework, we are providing for a positive adjustment of 0.14 percent to account for these additional costs. This is a one-time adjustment, since the 0.14 percent will be built into the rates for subsequent years. Under the modified framework, we would have included the adjustment in the productivity factor. ProPAC has not recommended any explicit adjustment for the effects of these regulations but has implicitly included the costs in its adjustment for new science and technology.

D. Case-Mix Adjustments

Our modified update framework continues to take into account changes in case mix, net of changes attributable to improved coding practices and DRG reclassification and recalibration. We found that the observed increase in case mix was 2.5 percent during FY 1991. We estimate real case-mix increase at 1.0 percent to 1.3 percent. We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but that do not reflect greater resource requirements. This estimate is supported by past studies of case-mix change by the RAND Corporation. In addition, we estimate that DRG reclassification and recalibration in FY 1991 resulted in a 1.0 percent increase in the case-mix index. This estimate results from classifying cases using the FY 1991 and FY 1990 GROUPERS using actual FY 1991 cases received by HCFA as of December 31, 1991. Any resulting change in the case-mix index based on the FY 1991 GROUPER as compared to the FY 1990 GROUPER must be the result of reclassification and recalibration effects. The resulting adjustment to account for changes in case mix during FY 1991, the most recent year for which data are available, is −2.5 to −2.2 percent (the sum of −2.5, +1.0 to +1.3, and −1.0). The −2.5 and 1.8 percent figures used in the ProPAC framework for their FY 1993 update recommendation represent ProPAC's projection for observed case-mix change and real case-mix change, including within-DRG case complexity change, during FY 1992. ProPAC's observed case-mix change is estimated, whereas our observed case-mix change is based on FY 1991 bills received through June 30, 1992.

E. Forecast Error Correction

The FY 1991 estimated market basket percentage increase used to update the payment rates was 5.2 percent. Our most

recent data indicate the actual FY 1991 increase was 4.3 percent, reflecting that the increase in wages was lower than projected. The resulting forecast error in the projected FY 1991 market basket rate of increase forecast was −0.9 percentage points. Our policy has been to make a forecast error correction if our estimate is off by 0.25 percentage points or more. We would continue to make corrections for forecast errors under the modified framework, and would therefore include a forecast error adjustment of −0.9 percentage points in setting PPS rates for FY 1993. ProPac's FY 1993 recommendation includes a forecast error adjustment of −0.8 percentage points, based on an earlier estimate of the FY 1991 market basket rate of increase.

F. Comparison of Increases in Expected Costs and Payments

In addition to comparing our modified update framework with the existing framework and ProPAC's recommended framework, we examined the expected increase in costs implied by the framework from FY 1985 through FY 1991. Applying the analysis of the modified framework, the costs for efficiently operated hospitals would have been expected to increase 41.2 percent during that time, assuming the "real" increase in the case-mix index (CMI) growth was one-half of the total CMI growth for each fiscal year:

CUMULATIVE PERCENTAGE CHANGE IN EXPECTED COST PER CASE INCREASES, ASSUMING ONE-HALF OF ACTUAL ANNUAL CMI GROWTH IS REAL

Fiscal year	Actual market basket	Productivity	Real CMI growth	Allowable intensity	Total
1986	3.9	−0.8	1.7	1.7	6.6
1987	3.7	−0.8	1.3	2.4	6.6
1988	4.7	−0.8	1.1	1.4	6.5
1989	5.4	−0.8	1.3	0.3	6.3
1990	4.5	−0.8	1.1	0.2	5.0
1991	4.3	−0.8	1.0	0.1	4.6
Cumulative Change (Compounded)					41.2

Note: Actual market basket figures include correction for any forecast errors. The productivity amount is based on average annual increases in real Medicare output of 3.4 percent from FY 1985 through FY 1991. Real CMI growth for FY 1988 is determined as half of the CMI growth remaining after allowing for the 1.22 percent growth determined to be caused by administrative factors (and for which the DRG weights were reduced in FY 1990). The FY 1990 and FY 1991 CMI growth is adjusted for the DRG weight change implemented in FY 1990. The components of change must be multiplied together to obtain the total percentage change.

If "real" CMI growth is assumed to be 1.0 percent annually, the cumulative percentage change in expected cost per case would be 40.3 percent.

We also determined the increase in prospective payments from FY 1985 through FY 1991:

ACTUAL PERCENTAGE INCREASE IN PPS PAYMENTS PER CASE, FY 1985–FY 1991

Fiscal year	Average published update	PPS CMI growth	Residual payment change	Actual increase
1986	0.5	3.4	−0.7	3.2
1987	1.2	2.5	1.5	5.3
1988	1.5	3.3	1.3	6.2
1989	3.3	2.7	−0.1	6.0
1990	5.8	1.0	−1.2	5.5
1991	3.4	2.7	−1.5	4.6
Cumulative Change (Compounded)				35.0

Note: Payment growth rates are calculated from Medicare cost report data. Residual payment growth is due to factors such as increased IME and DSH factors, and legislative changes (such as increases in the DSH adjustment formula). CMI growth rates are calculated by HCFA's Office of the Actuary.

Payments in FY 1985 were more than adequate for the efficient and cost-effective delivery of quality health care to beneficiaries, as shown by the prospective payment system margins exhibited by hospitals in that year. The average prospective payment system FY 1985 operating margin was 14.5 percent. In fact, when setting the update to the standardized amounts for FY 1986, we stated in our September 3, 1985 final rule (50 FR 35708) that a negative update was justified due to the overstatement of the base year costs used to determine the FY 1984 and FY 1985 standardized amounts, but that we believed that such a negative update would be disruptive and cause unintended consequences that could compromise the quality of care provided to Medicare beneficiaries. Instead, we anticipated that payments would increase more slowly than expected cost increases, in order to gradually adjust the standardized amounts to their appropriate levels. ProPAC agreed that the FY 1985 standardized amounts were set at too high a level, and also agreed that a precipitous adjustment would not be appropriate. The Commission, in its April 1, 1987 report to the Secretary, recommended that an average 5.4 percent reduction to the standardized amounts be made over a 3-year period to reflect the inappropriate levels of base year costs reflected in the original standardized amounts.

Although the expected increase in the cost of providing cost-effective and quality care was between 40.3 and 41.2 percent, we believe that the increase in payments of 35.0 percent was more than adequate to cover the costs of efficiently operated hospitals, given the high margins in FY 1985 and the overstated FY 1985 standardized amounts. We will continue to examine the relationship between payment increases and expected cost increases in order to monitor the adequacy of Medicare

payments for inpatient hospital operating costs.

IV. Secretary's Final Recommendations for Updating the Rate-of-Increase Limits for Excluded Hospitals and Units

We are updating the rate of increase limits in accordance with section 1886(b)(3)(B)(ii) of the Act, which establishes a uniform update factor for excluded hospitals and units at the market basket rate of increase. (The market basket for excluded hospitals is currently estimated at 4.2 percent.) However, as we proposed in the June 4, 1992 final rule, we are recommending an average update for excluded hospitals that would result in total payments comparable to those resulting from an update equal to the market basket rate of increase. More specifically, we recommend that excluded hospitals and units whose base year began during the period FY 1983 through FY 1987 receive a higher update than hospitals whose base year began in FY 1982 or after FY 1987.

We recommend that excluded hospitals and units with an FY 1982 base year or a base year that began after FY 1987 receive an update equal to the market basket percentage increase minus 1.6 percent. The 1.6 percentage point adjustment is to account for the forecast error in the FY 1990 market basket rate of increase of 0.9 percentage points, plus the forecast error in the FY 1991 market basket rate of increase of 0.7 percentage points.

In addition, we recommend, and ProPAC agrees, that a higher update for hospitals and units that were excluded in the early years of the prospective payment system is appropriate. This is because the updates applied to excluded hospitals in FYs 1986, 1987, and 1988 were considerably less than the market basket rate of increase and were based on some considerations appropriate only to hospitals subject to the prospective payment system. We agree with ProPAC as to the basis for the cumulative positive allowance adjustment, which is consistent with our calculation of the compounded difference between the updates received and the market basket rate of increase, as described in the June 3, 1991 proposed rule (56 FR 25322).

Base year began in FY	FYs subject to ceiling	Compounded adjustment
1982	1983–1988	−0.5
1983	1984–1988	2.1
1984	1985–1988	4.2
1985	1986–1988	6.9
1986	1987–1988	4.4
1987	1988	2.1

We recommend, and ProPAC agrees, that any additional update allowance be made in a budget neutral fashion. The lower updates are only part of the explanation for why hospitals with early base years are more financially vulnerable than hospitals that more recently became subject to the rate-of-increase limits. Another consideration is that these hospitals have been subject to the limits for a longer period of time and, in the case of those hospitals with a FY 1982 or FY 1983 base year, have a target amount that was established before the prospective payment system was implemented. For these reasons, we are recommending a 2.6 percent update (4.2 percent market basket for excluded hospitals minus 1.6 percent) for hospitals with an FY 1982 base year, even though a lower update would appear warranted based on the cumulative difference between the market basket increase and the update factors.

We have used the results of the analysis of the cumulative difference between the market basket rate-of-increases and the update factors to determine differential additional adjustments that will result in program outlays that approximate the outlays that would result if a 4.2 percent update were applied in FY 1993. Our recommended update factor is 2.6 percent for all excluded hospitals and units, plus an additional update for hospitals and units with a base year beginning during the period FY 1983 through FY 1987. The recommended updates are as follows:

Base year began in FY	General update	HCFA recommended additional adjustment	HCFA recommended FY 1993 update
1982	2.6		2.6
1983	2.6	1.8	4.4
1984	2.6	3.8	6.4
1985	2.6	6.0	8.6
1986	2.6	3.9	6.5
1987	2.6	1.8	4.4
1988 and later	2.6		2.6

Comment: A commenter stated the update for excluded units and hospitals should equal the entire excluded hospital market basket rate of increase.

Response: Section 1886(b)(3)(B)(ii) of the Act sets the FY 1993 target rate-of-increase limits for hospitals excluded from the prospective payment system at the market basket rate of increase for excluded facilities. Our recommendation is to provide an average update equal to the market basket rate of increase while providing differential updates to those facilities with base years that began in FY 1983 through FY 1987. The update that will be implemented, however, is that set in law.

Comment: Several commenters objected to our use of the FY 1990 and FY 1991 TEFRA market basket forecast error to finance the differential updates for excluded hospitals and units with a base year beginning between FY 1983 and FY 1987. The commenters believe that it is inappropriate to lower the update amounts for excluded facilities with base years that began in FY 1982 or after FY 1987 in order to finance the differential updates for other facilities. The commenters indicated that the differential updates should be financed with additional funds. Another commenter supported our recommendation.

Response: We believe that it is appropriate to remove market basket forecast errors from future updates. These errors in estimation of the increase in payments are permanently built into the excluded facilities' target amounts. As a result, the target amounts do not properly reflect the updated cost per discharge necessary for efficiently operated hospitals to maintain quality care for Medicare beneficiaries. We are in no way penalizing any excluded facility, regardless of its base year, but are ensuring that the appropriate market basket rates of increase are reflected in the target amounts.

Our recommendation for updates for all excluded facilities in this final rule is based on a 2.6 percent update for FY 1993 (consisting of an estimated excluded hospital market basket rate of increase of 4.2 percentage points, and forecast error adjustments of −0.9 percentage points for FY 1990 and −0.7 percentage points for FY 1991). We are recommending that the 1.6 percentage points, consisting of the FY 1990 and FY 1991 forecast errors, be used to fund the higher updates for those hospitals with base years beginning in Federal FYs 1983 through 1987, which were subject to the prospective payment system updates for those years. Additionally, some exceptions payments to these hospitals will no longer be necessary as a result of the higher updates, and we have taken our estimation of this effect into consideration in developing the differential updates.

We believe that the differential update should be budget neutral because it is not clear that an aggregate

increase in payments in excess of the market basket rate of increase is warranted, or that any increase in payments is more appropriately distributed to excluded hospitals through a differential update factor rather than through a more targeted approach directed toward groups of hospitals whose costs are systematically above the rate-of-increase limit. We believe any increase in aggregate payments to excluded hospitals and units is premature until the reasons why some hospitals have been adversely affected by the rate-of-increase limits and others have received substantial incentive payments are more fully understood.

Comment: Two commenters oppose our recommendation that the costs of new technology should be offset by productivity gains. These commenters believe that the TEFRA system provides an automatic sharing of productivity gains between the facility and HCFA, through the capping of hospital gains, when the facility's costs are less than its target amount. These commenters believe that no additional productivity adjustment is warranted.

Response: As a systemwide standard, we believe that increased costs for quality-enhancing new technologies should be offset by productivity gains and that explicit adjustments in the rate-of-increase limit for productivity and new technology are inappropriate. The sharing of gains when the target amount exceeds cost is based on individual hospital behavior above and beyond the standard we believe all excluded facilities should meet.

Appendix D: Development of Update Framework for Prospective Payment System for Inpatient Hospital Capital-Related Costs

I. Introduction

For FY 1992 through FY 1995, § 412.308(c)(1) provides that the update for the capital prospective payment rates (Federal rate and hospital-specific rate) will be based on a 2-year moving average of actual increases in Medicare inpatient capital costs per discharge. Beginning in FY 1996, the regulations provide that HCFA will determine the update in the capital prospective payment rates based on an analytical framework that will take into account (1) changes in the price of capital (which we will incorporate into a capital input price index), and (2) appropriate adjustments to account for changes in capital requirements, such as the development of new technologies, diffusion of existing technologies, existing hospital capacity and utilization, and other factors. The objective of the update framework is to provide a rate of increase in aggregate capital prospective payments which, along with a rate of increase in DRG payments, ensures a joint flow of capital and operating services for efficient and effective care for Medicare patients.

Although the analytical framework will not be employed to determine the annual update factor until FY 1996, we are presenting a preliminary model, using available data and concepts, of an update framework for the capital prospective payment system. The preliminary update framework below includes a capital input price index which parallels the operating input price index. The capital input price index measures the changes in input prices for capital-related costs necessary to maintain the composition of capital in the base year. The composition of capital is the mix of capital inputs, that is, the mix of type, quantity, and age of capital, as well as a proportion of expenses for movable equipment and for buildings and fixed equipment. As such, the composition of capital reflects the underlying capital acquisition process. For consistency with the operating input price index, we have selected 1987 as the base year for this preliminary capital input price index. We would periodically update both the operating and the capital input price indexes to reflect the changing composition of inputs for capital and operating costs. We expect to have rebased the capital and operating input price indexes by the time we implement the final capital update framework for FY 1996. The preliminary capital input price index below illustrates the methodology we propose to employ.

The preliminary capital update framework, like the proposed operating update framework, incorporates several policy adjustments in addition to the capital input price index. We would adjust for case-mix index-related changes, for intensity, and for the efficiency and cost-effective use of capital (i.e., movable equipment, buildings and fixed equipment, etc.) in the hospital industry, as well as for error in the capital input price index forecast.

We have developed the following model of a capital prospective payment system update framework in conjunction with the proposed changes to the operating prospective payment system framework discussed in appendix C. In developing this model, we have attempted as much as possible to maintain consistency with the proposed operating framework in order to facilitate the eventual development of a single prospective payment system update framework. We have also been concerned to promote the goals that motivated the adoption of a prospective payment system for inpatient capital-related costs, especially the goals of promoting more effective and efficient utilization of capital resources in the hospital industry and establishing incentives for hospitals to make cost-effective decisions regarding acquisition of new capital resources.

It is important to emphasize that this presentation represents our current thinking, and that we encourage submission of comments and recommendations for improvements. We are especially interested in suggestions regarding the capital input price index, the adequacy of the proposed policy adjustment factors, and alternative methodologies for deriving the factors. We are also interested in information concerning empirical studies and sources of data that could be useful in developing the framework. Comments should be sent by December 31, 1992 to: Update Framework, Division of Hospital Payment Policy, 1-H-1 East Low Rise, 6325 Security Boulevard, Baltimore, Maryland 21207.

In conjunction with the prospective payment system rule-making processes for FY 1994 and FY 1995, our current plan is to provide successively more developed models based on our further study of the conceptual and empirical foundations of the framework and on our evaluation of the comments and recommendations submitted in response to this preliminary discussion. However, in view of ProPAC's recommendation that we implement a capital update framework beginning in FY 1994, we also invite public comment on this issue.

II. Measurement of Capital Input Price Increases

A. Introduction

Our capital update framework would utilize a capital input price index to parallel the existing operating input price index. Both indexes measure price aspects of changes in input resources. The operating expense input price index measures per unit price changes in labor and other non-capital materials and services; the capital input price index measures the price changes in capital-related expenses per unit of real capital still in use.

The capital input prices index would differ from the operating input price index in one respect. The operating input price index measures changes in costs related to flows of labor and non-capital goods and services over time.

The proposed capital input price index would measure changes in costs related to stocks of real capital assets rather than costs related to flows of capital services.

The stock of capital is the physical quantity of depreciable resources whose nominal and/or real value is measured annually (for example, at the end of a fiscal or calendar year). Depreciable capital includes movable equipment, buildings, and other manufactured, non-labor resources that have a useful life of two years or more.

A hospital uses capital services generated by capital stocks to produce outputs. The flow of capital services is measured over time. For example, flow of x-ray machine services is measured as the number of available x-ray machine hours over a given period of time.

It is the flow of capital services (for example, the number of available x-ray machine hours), not the stock of capital (for example, the nominal and/or real value of the x-ray machines), that is most relevant to hospital production. It would therefore be desirable to measure capital-related expenses related to flows of capital services. Measuring flows of capital services would also preserve a more complete parallel with the operating input price index. However, it is necessary to measure capital-related expenses related to stocks of real capital assets because no information on the flow of hospital capital services is currently available. In the absence of such information, we assume that the flow of capital services per unit of real capital stock has remained constant over time, and that, therefore, the ratio of changes in capital-related costs per unit of real capital stock is an appropriate measure of change in a capital input price index.

We selected 1987 as the base year for the capital input price index to parallel the operating input price index. The most recent rebasing of the operating input price index employed relative weights from the year 1987. Employing the same base year for the capital input price index will facilitate the eventual development of a joint update framework for capital and operating expenses. We will rebase the capital input price index periodically in conjunction with the rebasing of the operating input price index to account for the changing composition of capital stock.

B. Consistency with the Capital Acquisition Model

The capital input price index uses weights, asset life assumptions, and financing patterns derived from the capital acquisition model developed for the August 31, 1990 final rule (see 56 FR 43417–43422). Since the model successfully reproduced Medicare capital costs per discharge distributions among hospitals, and since the model was designed to be consistent with observed capital patterns, we believe that it is a good source of weighting factors for the capital input price index.

- Three categories of capital-related expenses for owner-operated capital are considered in the index, including depreciation, interest, and other expenses (capital-related taxes and insurance). Since leases and rentals are a substitute for owner-operated capital, and since cost increases for leases and rentals are assumed to grow at a rate similar to owner-operated capital, we implicitly included leases and rentals in rates of change for the depreciation and interest categories. We are currently studying cost patterns for leases and rentals. After further study, we may continue to treat leases and rentals like depreciation and interest, or we may treat them separately in another category if we are able to determine an appropriate price proxy for leases.
- Two categories of straight-line depreciation expense are recognized, including depreciation expense for buildings and fixed equipment and depreciation expenses for movable equipment.
- In determining depreciation amounts, we adopted a 25-year useful life for building and fixed equipment and a 7-year useful life for movable equipment.
- In determining interest amounts, we adopted an expected 20-year life for debt instruments associated with the purchase of buildings and fixed equipment and an expected 6-year life for debt instruments associated with the purchase of movable equipment.
- We incorporated an amortization adjustment to interest costs to account for effects of aging of the debt instrument.
- The relative expenditure weights for owner-operated capital expenses by type of capital-related expense in the 1987 base year were .655 for depreciation, .295 for interest, and .050 for other capital-related expenses (taxes and insurance). In 1987, the relative internal expenditure weights for depreciation amounts were 54.0 percent for building and fixed equipment depreciation and 46.0 percent for movable equipment depreciation. In 1987, the relative internal expenditure weights for interest amounts by type of debt instrument were 85.4 percent for debt instruments related to building and fixed equipment purchases and 14.6 percent for debt instruments related to movable equipment purchases. The full complement of relative expenditure weights for the capital input price index are, therefore, as follows:

RELATIVE EXPENDITURE WEIGHTS

Type of Expense	Relative weight
Depreciation:	
Building and fixed equipment	.354
Moveable equipment	.301
Interest:	
Building and fixed equipment	.252
Moveable equipment	.043
Other Capital-related Expenses	.050
	1.000

We will continue to study all relative expenditure weights for appropriateness.

Since the capital input price index is intended to measure price changes in capital-related costs per unit of real capital assets over time, we examined the determinants of price change in each of the major components of capital-related costs. Below we present a discussion of each of these components: depreciation, interest, and "other" capital-related costs.

C. Depreciation

Current depreciation costs represent the sum of the depreciation costs for all items of currently depreciable capital stock. The depreciation cost for each item is determined by dividing the nominal (actual) purchase price by the useful life of the item. We assume that the useful life of the stock for a particular category of assets does not change over time and that the same amount of depreciable real capital stock was purchased in each year starting with the current year back to the year representing the earliest year in the useful life of the stock type. Since the nominal amount of all past purchases of currently depreciable capital stock is the purchase price per unit of stock multiplied by the amount of real capital stock purchased, depreciation costs per unit of real capital stock change under our assumptions only because the average purchase price of currently depreciable assets change.

Some capital stock currently in use was fully depreciated before the current period and thus there are no current depreciation costs associated with such capital stock. Therefore, the depreciation portion of our capital input price index, which measures changes in capital costs per unit of capital stock still in use, requires some estimate of the changes in the proportion of total capital

still in use which represents fully depreciated capital stock. We assume that the proportion remains constant over time and, therefore, is not a factor in the capital input price index.

For purposes of developing the capital input price index, we selected the building cost index derived and maintained by the Engineering News-Record (ENR) as the best currently available source of measuring changes in costs of fixed assets. The ENR building index is published monthly by the Bureau of Economic Analysis in its Survey of Current Business (Current Business Statistics). This index tabulates surveyed cost changes in 20 cities for three major building categories and three classifications of skilled tradesmen predominantly utilized by the construction industry. The ENR index assigns aggregate weights to fixed quantities of structured steel, Portland cement, and lumber. In the labor component, it calculates an average wage paid to carpenters, bricklayers, and structural ironworkers. The actual weights are based on the relative importance of the various components in construction that were obtained from a survey of construction authorities. Because the ENR index deals only with the effects of trends in wage rates and material prices, it is considered an appropriate means of updating the fixed asset component of the hospital input price index. (A number of other indexes were reviewed and evaluated for use, including some hospital or health-specific measures. This board-based index met several criteria. We are continuing research in this area.) A 25-year moving average in this index provides rates of change in average purchase prices for currently depreciable building and fixed capital stock.

For purposes of developing the capital input price index, we selected the percentage change in the cost of machinery and equipment as measured by the Producer Price Index (SIC code #11) as the best currently available source for measuring changes in the purchase price of movable equipment. The index is published monthly by the U.S. Department of Labor, Bureau of Labor Statistics, in the Monthly Labor Review. We selected this broad based index of machinery and equipment as a price proxy for all hospital movable assets because it encompasses a wide range of heavy duty electrical and mechanical products. Included in the array of manufactured products are furnaces and ovens, power tools and accessories, pumps and compressors, scales and balances, elevators, and air-conditioning and refrigeration equipment. Many electrical product components are also evaluated within this variable. Of special note, this proxy incorporates x-ray equipment and other testing and measuring instruments, as well as commercial laundry equipment. A 7-year moving average in this index provides rates of change in average purchase prices for currently depreciable movable capital stock.

D. Interest

Current interest costs represent the sum of all interest costs related to past debt instruments that are still alive. Thus, current interest costs are the product of:

- Nominal amounts of all past purchases of capital stock within the expected life of the debt instruments. These nominal amounts are the product of the average purchase price per unit of capital stock multiplied by the number of units of real capital stock purchased;
- The proportion of the nominal purchase amounts that were financed by debt (and not by equity financing). Current evidence from Medicare Cost Reports indicates that this proportion has remained constant over time and, therefore, is not a factor in changing interest costs per unit of capital stock;
- The amortized interest patterns in the periodic debt payment as a function of the interest rate applicable on the loan, the life of the debt instrument, and the age of the debt instrument;
- The proportion of the debt which represents interest costs in the current period (a function of the interest rate applicable to the loan, the life of the debt instrument, and the current age of the debt instrument).

In the capital input price index, where our concern is interest costs per unit of real capital still in use, we assume that the amount of real capital stock implicit in any debt instrument as a proportion of real capital stock still in use remains constant over time and, therefore, is not a factor of change in the capital input price index.

The interest component of the capital input price index is therefore composed of the summed changes in the product of past purchase prices, past interest rates, and current amortized effects of past interest rates.

The external price proxy used to represent interest rates in the capital input price index is a weighted average of the percentage changes for two interest rate series:

- The average yield on domestic municipal bonds, Daily Bond Buyer (20 bonds) is given a 85 percent weight; and
- The average yield on Moody's AAA corporate bonds is given a 15 percent weight.

Data for municipal and corporate bonds is published by the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), in the Survey of Current Business, Finance Section. BEA publishes the yield on the Thursday nearest the end of the month.

The internal weights applicable to each bond type were estimated from long term debt data reported in Medicare cost reports by type of hospital control. Percentage changes in the municipal bond rate approximate interest rate changes paid by the non-profit and government sectors of the industry and the percentage changes in the AAA bond rate approximate interest rate changes paid by the for-profit sector. A 20-year moving average of the product of this composite interest rate and the price proxy for building and fixed equipment, adjusted for amortization, provides a measure of change in interest costs per unit of building and fixed capital stock. A 6-year moving average of the product of this composite interest rate and the price proxy for movable equipment, adjusted for amortization, provides a measure of change in interest costs per unit of movable capital stock.

E. Other Capital-Related Costs

In addition to depreciation and interest, which account for the bulk of capital costs, there are several other relatively minor cost expenditures that are considered capital-related. Payments for fire and allied property insurance, and real estate taxes all fall within this category. A measurement of rent costs would implicitly recognize these related cost factors, and thus reflects changes in costs for the "other" capital-related costs. Since no commercial rental proxy exists, residential rental is a reasonable proxy that can, over time, reflect the trend in price movements of the residual capital-related costs. We used the residential rent component of the Consumer Price Index for All Urban Consumers as a price proxy for this component. This index is prepared by the U.S. Department of Labor, Bureau of Labor Statistics, and is published monthly in the Monthly Labor Review.

F. Review of Data Sources

We continue to explore data sources and applications in order to refine and to improve the weights and price proxies in our capital input price index. We use at least three basic criteria to evaluate price proxies to enter into our price indexes: The price proxy data must be publicly available, it must be based in valid sampling designs, and it must have been collected for a sufficiently long period of time to ensure stability and credibility. These criteria exclude a number of proprietary and anecdotal data bases and other recently devised indexes that are frequently cited as alternatives to the price proxies which we selected.

Although we have selected the best price proxies currently available to us under these criteria, we are aware that other price proxy data bases may exist which are superior to those we have chosen. Therefore, we invite suggestions and recommendations for any changes which may be required.

G. An Application

We have combined the weights and price proxies discussed previously in Table 1 to produce annual rates of change in our proposed capital input price index. The price projections used in this exercise were prepared by Data Resources Inc., a forecasting service engaged by the Health Care Financing Administration.

TABLE 1.—CAPITAL INPUT PRICE INDEX: PERCENT CHANGE FOR TOTAL INDEX AND FOR INDEX COMPONENTS, FEDERAL FISCAL YEARS 1987 TO 1997

	Total	Depreciation		Interest		Other
		Fixed	Movable	Fixed	Movable	
1987 Weights	1.000	0.345	0.301	0.252	0.043	0.059
Fiscal Year:						
1987	4.5	5.8	3.8	5.3	−6.2	4.5
1988	4.2	5.6	2.8	5.5	−4.0	3.8
1989	3.8	5.4	2.3	4.3	−2.8	3.8
1990	3.7	5.2	2.3	3.9	−1.8	4.2
1991	3.5	5.0	2.3	3.2	−0.7	3.9
1992	3.1	4.9	2.1	2.5	−0.6	2.6
1993	3.0	4.7	2.1	2.5	0.6	2.0
1994	3.1	4.5	2.3	2.3	1.3	3.8
1995	3.0	4.4	2.5	1.9	1.5	3.4

NUMBER OF YEARS IN MOVING AVERAGES

Depreciation	
Fixed	25
Movable	7
Interest	
Fixed	20
Movable	6
Other	Not Applicable

Interest Rate Adjusted for Purchase Price and for Amortization.

Source: Health Care Financing Administration.

III. Case-Mix Adjustment and Adjustment for Forecast Error

The case-mix index (CMI) is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the CMI corresponds to an equal percentage increase in hospital payments.

The case-mix index is the measure of the average DRG weight. The case-mix index can change for any of several reasons: because the average resource use of Medicare patients changes ("real" case-mix change), because changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"), and because the annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect"). In the current framework, we adjust the update upward to reflect increases in real case mix, but remove the effects of coding. In addition, we remove the effect on total payments of changing the DRG classifications and relative weights, in order to retain budget neutrality for all changes other than patient severity and the update.

In the present update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all CMI-related changes other than patient severity (for example, we adjusted for the effects of the FY 1991 recalibration and reclassification as part of our FY 1993 update recommendation). The proposed operating framework retains these adjustments. The operating adjustment consists of a reduction for total observed case-mix change, an increase for the portion of case-mix change that we determine is due to real case-mix change rather than coding modifications, and an adjustment for the effect of prior DRG reclassification and recalibration changes. We would adopt this CMI adjustment as well in the capital update framework.

The proposed operating update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the following year. In any given year there can be unanticipated price fluctuations that can result in differences between the actual increase in prices faced by hospitals and the forecast used in calculating the update factors. We therefore believe that the capital update framework should also include a forecast error adjustment factor. In setting a prospective payment rate under the proposed framework, we would make an adjustment for forecast error only if our estimate of the capital input price index rate of increase for any year is off by 0.25 percentage points or more. Thus, for example, in determining whether to make a forecast error adjustment in FY 1993, we would look at the forecast error for FY 1991.

IV. Policy Adjustment Factors

The capital input price index measures the changes in input prices for capital-related costs necessary to maintain the composition of capital in the base year. We would address through the policy adjustment factor appropriate changes in the amount and composition of capital stock.

The existing update framework for the prospective payment system for operating costs includes factors designed to adjust the input price index rate of increase for policy considerations. Appendix C describes the revised policy adjustment factors that we are proposing for the operating framework. Under the proposed operating framework, we would adjust for service productivity (the efficiency with which providers produce individual

services such as laboratory tests and diagnostic procedures) and intensity (the amount of services used to produce a discharge).

The proposed service productivity factor for the operating update framework would reflect a forward-looking adjustment for the changes that hospitals can be expected to make, on the basis of a normative standard, in service-level productivity during the year. A hospital would retain any productivity increases above the average.

The intensity factor for the operating update framework would reflect how hospital services are utilized to produce the final product—the discharge. This component would account for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services. We intend the quality-enhancing practice component to recognize the use of services that increase cost but whose value in terms of enhanced health status is at least commensurate with those costs. The component for real within-DRG change is intended to capture changes in resource requirements resulting from increases in case complexity within DRGs. The real within-DRG component allows hospitals to be compensated for this otherwise unmeasured portion of real case-mix change. The component for reduction in cost-ineffective practice recognizes that some improvements in practice patterns could be made so that the intensity of services provided is more consistent with the efficient use of limited resources. We intend this component to encourage both hospitals and physicians to consider more carefully the cost-effectiveness of medical care.

We believe that the proposed intensity adjustment factor can be adopted in the capital update framework. Under the proposed operating update framework, we would calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component) and changes in real case mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. We can therefore incorporate the proposed intensity adjustment from the operating update framework into the capital update framework. We know of no reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity. We would therefore assume, as in the proposed operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework would thus provide an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG complexity and the adoption of quality-enhancing technology.

Productivity is intrinsically a multi-factor concept. In our proposed operating update framework, we allocate a share of productivity to labor according to labor's share of total inputs, as calculated in the input price index for the prospective payment system for operating costs. We considered developing a multi-factor productivity measure for use both in the proposed operating update framework and in the capital update framework. However, we lack an adequate measure of the flow of capital services from capital inputs for use in developing such a measure. In the absence of an adequate multi-factor productivity measure based on the flow of capital services, we are unable to propose a single productivity adjustment adequate for use in both frameworks.

Other considerations suggest that the capital update framework should incorporate a productivity adjustment distinct from the measure employed on the operating side. Operating inputs are more variable and adjustable in the short run. The productivity target incorporated into the proposed operating framework thus operates on a short-run, year-to-year basis. We believe that there should also be targets for improved efficiency and effectiveness of capital, but capital efficiency and effectiveness targets must be on a longer-run basis. This is because the level of capital inputs is generally fixed in the short run, and therefore longer periods of time are needed to adjust these inputs to levels consistent with cost-effective output, that is, to achieve longer-run productivity improvements. We believe that the capital update framework should incorporate an adjustment for long-run efficiency and cost-effectiveness. Such an adjustment would require a long-run concept of the efficient and cost-effective level of capital resources.

In developing an adjustment for the long-run efficiency and cost-effectiveness of capital (movable equipment, buildings and fixed equipment, etc.), we believe that we should take into account that the existing resources of the hospital industry are not being used with sufficient efficiency and effectiveness. Prior to the adoption of the prospective payment system for capital-related costs, Medicare payment policy for capital-related costs, as well as the policies of other payers, did not provide sufficient incentives for efficient and cost-effective capital spending. As a result, capital costs per case, and therefore base year prospective capital rates, may be higher than would have been consistent with capital acquisition policy in more efficiency-oriented competitive markets. Volume and intensity of capital acquisition have far outpaced the increase in capital input prices during the years between the implementation of the prospective payment system for operating costs and the introduction of the capital system. Hospitals may have responded to the incentives of the cost-based reimbursement system for capital by expanding beyond what was necessary for efficient and cost-effective delivery of services.

As a preliminary examination of this issue, we analyzed the change in actual Medicare capital cost per case for the years 1986–1991 in relation to the change in the capital input price index (which accounts for change in the input prices for capital-related costs), and the other adjustment factors we propose to include in the framework, for which we currently have measures, that is, the increase in real case mix, and the increase in intensity due to quality-enhancing technological change and within-DRG complexity. We could not, of course, include any adjustment for efficiency since we have not identified an appropriate measure. We found rates of increase in spending per case that exceeded the rate of increase attributable to inflation in capital input prices, quality-enhancing intensity increases, and real case mix growth. (These numbers would be higher or lower if an efficiency adjustment were included). From a high of 11.4 percent in 1986, the residual increase over inflation, quality-enhancing intensity increases, and real case mix growth fell until 1988. In that year, the increase in the average cost per case was only 0.7 percent greater than the rate of increase in inflation, intensity, and real case mix growth. However, the residual increase in cost rose again beginning in 1989. It rose from 1.3 percent in 1989 to 4.3 percent in 1990 before declining again to 2.7 percent in 1991. Cumulatively, the residual of actual increases in average cost per case over increases in cost attributable to inflation, intensity, and real case mix from 1986 to 1991 was 28.9 percent.

CUMULATIVE PERCENTAGE CHANGE IN COST PER CASE DUE TO INFLATION, REAL CMI, AND INTENSITY, 1986–1991

Year	Capital price index [1]	Real CMI [2]	Allowable intensity [3]	Resulting increase [4]	Actual % change cost/case [5]	Residual [6]
1986	5.4	1.7	1.7	9.0	21.4	11.4
1987	4.5	1.3	2.4	8.4	14.8	5.9
1988	4.2	1.1	1.4	6.8	7.6	0.7
1989	3.8	1.3	0.3	5.5	6.8	1.3
1990	3.7	1.1	0.2	5.1	9.6	4.3
1991	3.5	1.0	0.1	4.6	7.5	2.7
Cumulative (compounded)				46.3	88.7	28.9

[1] Figures for 1987 to 1991 are from Table 1, Part B; the figure for 1986 was supplied separately by HCFA OACT.
[2] Assuming that real CMI is one-half of observed CMI.
[3] One-half of observed intensity increase as determined by the methodology of the proposed joint operating/capital intensity measure.
[4] The increase attributable to inflation, real CMI, and allowable intensity, calculated as the product of the rates of increase of those factors (i.e., 1.054×1.017×1.017=1.09 for 1986).
[5] Figures supplied by HCFA's Office of the Actuary.
[6] The actual increase in average cost per case divided by the appropriate increase in cost (i.e., 1.214/1.09=1.114, a residual of 11.4% for 1986).

If real CMI growth is assumed to be 1.0 percent annually, rather than half of observed case mix, the cumulative residual of actual increases in average cost per case would be 30.0 percent. Therefore, we believe that the long-run adjustment for capital efficiency and cost-effectiveness should take into account the efficiency and effectiveness of the capital resources present in the base year for the prospective payment system for capital-related costs. We do not believe that Medicare capital payment rates should provide for maintenance of capital in excess of the level that would be produced in an efficiency-oriented competitive market. The capital productivity adjustment should be designed to give hospitals an incentive to reduce inefficiency and ineffectiveness in capital resources. At the same time, the estimate for long-run productivity must allow for enhancements in capital resources as existing capital resources deteriorate. At this time, we are beginning to evaluate alternative efficiency measures. We welcome comments and recommendations on the merits of such an adjustment and on methodologies and factors for determining the amount of the adjustment.

Finally, we are aware that certain geographic areas may, during the coming years, experience insufficient bed supply for their Medicare populations. We solicit comment on the unique capital problems of these geographic areas in assuring a sufficient bed supply in a budget neutral manner. We do not intend to make any facility-specific adjustments.

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Tuesday,
September 1, 1992

Part III

Administrative Committee of the Federal Register

1 CFR Parts 2, 3, and 11

Price Changes to Federal Register Publications and Relocation of the Office of the Federal Register; Final Rule

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

1 CFR Parts 2, 3, and 11

Price Changes to Federal Register Publications and Relocation of the Office of the Federal Register

AGENCY: Administrative Committee of the Federal Register.

ACTION: Final rule with request for comments.

SUMMARY: The Administrative Committee of the Federal Register (ACFR) announces increases in the prices of Federal Register publications. The price changes apply to annual subscription rates for the daily **Federal Register**, the Code of Federal Regulations (CFR), and the Weekly Compilation of Presidential Documents, as well as to the single issue price of the daily **Federal Register**. The price increases are necessary to more accurately reflect the Government's cost of production and distribution of these publications. This rule also changes the street address listed for the Office of the Federal Register in ACFR regulations.

DATES: The changes to 1 CFR 11.2 (**Federal Register** prices) and to 1 CFR 11.6 (Weekly Compilation of Presidential Documents prices) are effective October 1, 1992. The changes to 1 CFR 11.3 (CFR prices) are effective January 1, 1993. The technical amendments to 1 CFR 2.3(b) and 3.2(a) (Office of the Federal Register address) are effective July 20, 1992. Comments will be accepted until January 1, 1993.

ADDRESSES: Street Address: 800 North Capitol Street, NW., suite 700, Washington, DC 20002–4246. Mailing address: Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Michael White at (202) 523–4534.

SUPPLEMENTARY INFORMATION: The Administrative Committee of the Federal Register, which establishes prices for **Federal Register** publications, has recently determined that price adjustments must be made to move toward full cost recovery for production and distribution of these publications. The prices charged for the **Federal Register** in paper format have remained constant at $340 per year for a subscription and $1.50 per single issue since October 1986; the price of a subscription to the Weekly Compilation of Presidential Documents was set at $55 in October 1988; and the subscription rate for the paper edition of the Code of Federal Regulations (CFR) was set at $620 in January 1989. In the years since these prices were set, the Administrative Committee has taken note of substantial escalations in the costs of production at the Government Printing Office plant, as well as major postal rate increases. The microfiche editions of the **Federal Register** and the CFR are subject to a competitive bidding process that determines the prices charged.

To lessen the effect of price increases on **Federal Register** customers, the Administrative Committee has decided to work toward achieving full recovery of current and anticipated expenditures by phasing in price changes over several years.

In addition, the Committee will offer **Federal Register** subscribers the economy and flexibility of a basic subscription consisting of only the daily issues of the **Federal Register**. The basic **Federal Register** subscription will not include the **Federal Register** Index and List of CFR Sections Affected (LSA). Subscribers wishing to augment the basic subscription will have the option of ordering these publications as separate items or as part of a combined **Federal Register** subscription. The prices charged for individual copies of the **Federal Register** Index and the LSA will remain unchanged.

The Administrative Committee will meet annually to assess production and distribution costs and will take further incremental steps as necessary to achieve full cost recovery for the Federal Register program. The Committee welcomes comments on the pricing structure of **Federal Register** publications and its intent to seek full cost recovery.

The following rates are effective as of October 1, 1992. The annual subscription rates for the **Federal Register** paper edition will be $375, or $415 for a combined **Federal Register**, **Federal Register** Index and LSA subscription. The microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA will be $353. Single copies of the paper edition of the daily **Federal Register** will be $4.50. The annual subscription rate for the Weekly Compilation of Presidential Documents will be $96 by first-class mail or $58 by non-priority mail.

As of January 1, 1993, the annual subscription rates for the Code of Federal Regulations will be $775 for the paper edition and $223 for the microfiche edition.

In this rule, the Administrative Committee also makes technical amendments to 1 CFR 2.3(b) and 3.2(a) to reflect the relocation of the Office of the Federal Register to 800 North Capitol Street, NW., suite 700, Washington, DC. The mailing address for the Office of the Federal Register will continue to be: Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408.

The Administrative Committee has not published a notice of proposed rulemaking on the revised price schedule, as allowed by 5 U.S.C. 553(b)(B) when there is good cause not to publish a proposed rule and obtain comments from interested persons.

The Administrative Committee has determined that publication of a proposed rule is unnecessary for the following reasons. The Administrative Committee has authority under 44 U.S.C. 1506 to set the price to be charged for copies of, and subscriptions to, the **Federal Register**. To the extent possible the Administrative Committee sets prices to reflect the actual cost of producing and distributing Federal Register publications. The revised prices are based on an in-depth cost study conducted for the Administrative Committee by the Government Printing Office. Because only actual costs were considered in setting the revised price schedule based on an in-depth cost study, the Administrative Committee has determined that there is good cause for promulgating this final rule without a prior notice of proposed rulemaking.

This is not a major rule under Executive Order 12291. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to rate increases necessary to recover the costs to the Government of printing and distributing these publications.

List of Subjects in 1 CFR Parts 2, 3 and 11

Federal Register publications, Government publications, Organization and functions (Government agencies), Subscription rates.

For the reasons discussed in the preamble, the Administrative Committee of the Federal Register amends parts 2, 3, and 11 of chapter I of title 1 of the Code of Federal Regulations as set forth below:

PART 2—GENERAL INFORMATION

1. The authority citation for part 2 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189; 1 U.S.C. 112; 1 U.S.C. 113.

§ 2.3 [Amended]

2. In § 2.3(b), revise the address "1100 L Street NW., Washington, DC" to read "800 North Capitol Street, NW., suite 700, Washington, DC".

PART 3—SERVICES TO THE PUBLIC

1. The authority citation for part 3 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

§ 3.2 [Amended]

2. In § 3.2(a), revise the phrase "in Room 8301, 1100 L Street NW., Washington, DC" to read "at 800 North Capitol Street, NW., suite 700, Washington, DC".

PART 11—SUBSCRIPTIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2709, 3 CFR, 1954–1958 Comp., p. 189.

2. Section 11.2 is revised to read as follows:

§ 11.2 Federal Register.

Daily issues are furnished by mail to subscribers for $375 per year in paper form. A combined subscription consisting of the daily issues, the monthly **Federal Register** Index and the LSA (List of CFR Sections Affected) is furnished by mail to subscribers for $415 per year in paper form or $353 per year in microfiche form. The daily issues are available on magnetic tape for $37,500 per year. Six-month subscriptions are also available at one-half the annual rate. Limited quantities of current or recent issues may be obtained for $4.50 per copy in paper form, $1.50 per copy in microfiche form, or $175 per copy in magnetic tape form.

3. Section 11.3 is revised to read as follows:

§ 11.3 Code of Federal Regulations.

A complete set is furnished by mail to subscribers for $775 per year for the bound, paper edition; $223 per year for the microfiche edition; or $21,750 per year for the magnetic tape edition. Individual volumes of the bound, paper edition of the Code are sold at prices determined by the Superintendent of Documents under the general direction of the Administrative Committee. The price of an individual volume in microfiche form is $2.00 per copy or $125 per magnetic tape.

4. Section 11.6 is revised to read as follows:

§ 11.6 Weekly Compilation of Presidential Documents.

Copies in paper form are furnished to subscribers for $96 per year by first-class mail or $58 per year by non-priority mail. The price of an individual copy in paper form is $2.00.

Don W. Wilson,
Chairman.
Robert W. Houk,
Member.
David G. Leitch,
Member.
William P. Barr,
Attorney General.
Don W. Wilson,
Archivist of the United States.

[FR Doc. 92-21084 Filed 8-31-92; 8:45 am]

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Part IV

Environmental Protection Agency

Hazardous Waste: Exemption From Land Disposal Restrictions; Allied-Signal Inc.; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4200-3]

Intent To Grant Allied-Signal Inc., a Modification of the Exemption From the Land Disposal Restrictions of the Hazardous and Solid Waste Amendments of 1984 (HSWA) Regarding Injection of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Intent To Grant Allied-Signal Inc., of Danville, Illinois, a Modification of the Exemption for the injection of Certain Hazardous Wastes.

SUMMARY: The United States Environmental Protection Agency (EPA or Agency) is today proposing to grant a modification to the exemption from the ban on disposal of hazardous wastes through injection wells to Allied-Signal Inc., (Allied), of Danville, Illinois. This modification allows Allied to inject additional Resource Conservation and Recovery Act (RCRA) regulated hazardous wastes, identified by codes U211, U121, U226, and U075, through Waste Disposal Well (WDW) No. 1 if granted. The Agency currently plans to finalize the exemption for certain Toxicity Characteristic wastes, D019 and D022, when ban dates for those wastes are established. On May 8, 1990, the Agency issued Allied an exemption for injection of arsenic (D004) after determining that there is a reasonable degree of certainty that Allied's injected wastes will not migrate out of the injection zone within the next 10,000 years.

DATES: The EPA is requesting public comments on its proposed decision to exempt all of the wastes listed above. Comments will be accepted until October 16, 1992. Comments post-marked after the close of the comment period will be stamped "Late". A public hearing to allow comment on this proposed action may be scheduled if significant comments are received, and notice of this hearing will be given in a local paper and to all people on a mailing list developed by the Illinois EPA. If you wish to request that a public hearing be held, or to be notified of the date and location of any public hearing, please contact the lead petition reviewer listed below.

ADDRESSES: Submit written comments, by mail, to: United States Environmental Protection Agency, Region 5, Underground Injection Control Section (WD-17J), 77 West Jackson Street, Chicago, Illinois 60604, Attn: Richard J. Zdanowicz, Chief.

FOR FURTHER INFORMATION CONTACT: George Hudak, Lead Petition Reviewer, UIC Section, Water Division, Office Telephone Number: (312) 353-4142, 17th floor Metcalfe Building, 77 West Jackson Street, Chicago, Illinois.

SUPPLEMENTARY INFORMATION

I. Background

A. Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the waste remains hazardous (RCRA section 3004(d)(1), (e)(1), (f)(2), (g)(5)). The statute specifically defined land disposal to include any placement of hazardous waste in an injection well (RCRA section 3004(k)). After the effective date of prohibition, hazardous waste can be injected only under two circumstances:

(1) When the waste has been treated in accordance with the requirements of 40 CFR part 268 pursuant to section 3004(m) of RCRA (the EPA has adopted the same treatment standards for injected wastes in 40 CFR part 148, subpart B); or

(2) When the owner/operator has demonstrated that there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. Applicants seeking an exemption from the ban must demonstrate either:

(a) That the waste undergoes a chemical transformation so as to no longer pose a threat to human health and the environment; or

(b) By use of mathematical models (40 CFR 148.20(a)), that fluid flow is such that injected fluids would not migrate vertically upward out of the injection zone to a point of discharge in a period of 10,000 years.

The EPA promulgated final regulations on July 26, 1988 (53 FR 28118) which govern the submission of petitions for exemption from the disposal prohibition (40 CFR part 148). A time frame of 10,000 years was specified for the demonstration not because migration after that time is of no concern, but because a demonstration which can meet a 10,000 year time frame will likely provide containment for a substantially longer time period, and also to allow time for geochemical transformations which would render the waste immobile. The Agency's standard thus does not imply that leakage will occur at some time after 10,000 years, rather, it is a showing that leakage will not occur within that time frame.

The EPA regulations at 40 CFR 148.20(f) provide that any person who has been granted an exemption to the land disposal restrictions may request that the Agency modify the exemption to include additional wastes. If the EPA determines, to a reasonable degree of certainty, that the new wastes will behave hydraulically and chemically in a manner similar to previously exempted wastes and that injection thereof will not interfere with the containment capability of the injection zone, the modification may be granted.

B. Facility Operation

The Allied facility in Danville, Illinois, produces chlorofluorocarbon refrigerant gases. Liquid hazardous wastes containing arsenic, carbon tetrachloride, chloroform, trichlorofluoromethane, and dichlorodifluoromethane are produced as a result of this manufacturing process. Since the injection well became operational in 1973, an average of approximately 25 million gallons of hazardous waste have been disposed of per year.

C. Exemption

The modification to the exemption will allow Allied to dispose of U121 (Genetron 11), U075 (Genetron 12), U211 (carbon tetrachloride as a raw material), and U226 (waste trichloroethane) into its deep well immediately. When D019 (carbon tetrachloride) and D022 (chloroform) are banned, it is anticipated that they will be added to the list of exempted wastes.

D. Submission

On April 15, 1991, Allied submitted a request to modify its existing petition for exemption from the land disposal restrictions on hazardous waste injection under the HSWA Amendments of RCRA (40 CFR part 148). In response to Agency comments on Allied's request, Allied submitted revised documents on October 25, 1991, February 25, 1992, June 18, 1992, and July 10, 1992. The submission was reviewed by staff at the EPA and, in part, by the Illinois EPA.

II. Basis for Determination

A. Waste Description and Analysis (148.22)

The wastes to be added immediately to the exemption are defined under 40 CFR part 261 as U121, U075, U211, and U226. Genetron 11 and Genetron 12 are produced at the Allied facility and, under certain conditions can be classified as wastes with the codes U121 and U075, respectively. Carbon tetrachloride is used as a raw material at the Allied plant, and under certain conditions can be classified as a waste with the code U211. The wastes with codes U121, U075, and U211 have not been disposed of in Allied's well in the past; however, Allied is requesting the modification to include these wastes to cover injection of recovered groundwater from groundwater remediation activities being conducted on-site, and to cover injection of other wastes containing the above mentioned compounds. Because of the impending nationwide ban on the production of chlorofluorocarbons, Allied is contemplating modifying its production activities to produce an alternate product. In so doing, it would substitute 1,1,1-trichloroethane (TCA) for carbon tetrachloride as a raw material. Waste TCA is classified as U226. Although TCA is not yet used at the Allied plant, its use is contemplated and Allied has asked for the exemption to cover this waste. Wastes which are currently proposed to be added later to the exemption are carbon tetrachloride (D019) and chloroform (D022). These wastes are currently not restricted. However, when a land disposal ban date for these two wastes is established, the EPA proposes to include them within the exemption, provided that no new information becomes available requiring reexamination of the suitability of the exemption. Comments on the acceptability of this proposal should be made at this time as no further proposal is anticipated before the exemption is modified to include these wastes.

B. Model Demonstration of No Migration

The demonstration of no migration of hazardous constituents from the injection zone involves the use of predictive mathematical models. These models were described in the **Federal Register** notice for the original exemption (55 FR 5265, February 14, 1990). The only effect the addition of any of these wastes will have on the modeling is to increase the distance the waste moves vertically because of molecular diffusion. These wastes will not change the viscosity or density of the injectate, and are thus hydraulically identical to the previously modeled waste stream. Therefore, the determinations with respect to the Basic Plume Model, the Multilayer Pressure Model, and the Multilayer Vertical Permeation Model, set forth in the original exemption notice, remain valid. Only the Molecular Diffusion Model needed to be revised because of the difference in the molecular diffusion coefficients. This model was revised by calculating the diffusion coefficient in free solution for each new waste species. The diffusion coefficient was then adjusted, using the same conservative assumptions as in the original petition, to take into account movement through porous media, resulting in an effective diffusion coefficient. A new concentration reduction factor (CRF) was also calculated for each waste species by dividing the health based limit for the compound by the permit limit, except for carbon tetrachloride and chloroform, where permit limits of 50 mg/l and 300 mg/l will be imposed, respectively, as requested by Allied. Then, using Fick's second law of diffusion and the new values for the CRF and the effective diffusion coefficient, the new vertical diffusion distance was calculated. The largest diffusion distance for immediately exempt wastes is 107 feet, for TCA. The diffusion distance in the original petition was 91 feet for arsenic. Thus, diffusion movement increases only 16 feet over the originally calculated movement. After 10,000 years, the modified maximum modeled vertical extent of the waste plume is 3361 feet below ground level, rather than 3397 feet below ground level calculated in the original petition. This is still well within the originally defined injection zone, which is the top of the Eminence Formation at 3332 feet.

This maximum migration analysis was also performed for two wastes for which EPA is deferring an exemption at this time. The maximum molecular diffusion distance of D019 and D022 is 112 feet, for D022 (chloroform). Thus this additional modification will increase the calculated vertical migration distance only 5 feet over that calculated for the immediately effective exempted wasies. The top of the waste plume will move from 3381 feet below ground level, to 3376 feet below ground level, still well within the originally defined injection zone. When the ban dates are established for D019 and D022, provided of new information is received on the suitability of these wastes for exemption, the EPA will finalize an exemption modification to include these two additional wastes without reproposal or comment. However, the Agency is proposing to limit the concentration of chloroform in the wastestream to 300 mg/l at that time as a condition for the issuance of the exemption. Comments on this limitation are solicited.

III. Conditions of Petition Approval

As a condition of granting these modifications to the exemption from the ban on injection of certain hazardous wastes, the EPA will require the following conditions to be met:

(1) Allied must remain in compliance with all conditions in its permit.

92) Allied must limit the concentration of carbon tetrachloride in the wastestream to 50 mg/l.

Dated: July 29, 1992.

Dale S. Bryson,

Director, Water Division, Region 5, U.S. Environmental Protection Agency.

[FR Doc. 92-20901 Filed 8-31-92; 8:45 am]

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Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1992-93 Early Season; Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1992-93 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This is in response to tribal requests for Service recognition of their authority to regulate hunting under established guidelines. This rule is necessary to allow establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

EFFECTIVE DATE: This rule takes effect on September 1, 1992.

ADDRESSES: Comments received on the proposed special hunting regulations and tribal proposals are available for public inspection during normal business hours in Room 634–Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA. Communications regarding the documents should be addressed to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 634–Arlington Square, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dr. Keith A. Morehouse, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, room 634–Arlington Square, Washington, DC 20240 (703/358–1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 7, 1992 **Federal Register** (57 FR 35446), the U.S. Fish and Wildlife Service (Service) proposed special migratory bird hunting regulations for the 1992–93 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for: (1) On-reservation hunting by both tribal members and nonmembers, with hunting by nontribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s); (2) on-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

Tribes that desired special hunting regulations in the 1992–93 hunting season were requested in the May 8, 1992, **Federal Register** (57 FR 19863) to submit a proposal that included details on: (1) Requested season dates and other regulations to be observed; (2) harvest anticipated under the requested regulations; (3) methods that will be employed to measure or monitor harvest; (4) steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resource; and (5) tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations that are established by the State(s) in which an Indian reservation is located. The guidelines have been used successfully since the 1985–86 hunting season, and they were made final beginning with the 1988–89 hunting season (August 18, 1988; 53 FR 31612).

Although the August 7, 1992, proposed rule includes generalized regulations for both early and late season hunting, this rulemaking addresses only the early season proposals. Late season hunting will be addressed in the rulemaking to follow in September, 1992. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons are those that begin October 1 or later each year and have a primary emphasis on waterfowl.

Also, in the August 7, 1992, proposed rule, the Service pointed out that duck hunting regulations likely would have to continue to be restrictive because of the possibility of little overall improvement in the duck population status from last year. Hunting regulations were restrictive last year for the same reason. Recently completed production surveys on the breeding ground and the projected fall flight forecast indicate that the continental fall flight of ducks in 1992, statistically, is unchanged from the low level of last year (62 million vs. 61 million in 1992 and 1991, respectively). Although they have not been fully established as yet, late season duck hunting regulations will be somewhat restrictive again during the 1992–93 hunting season.

Comments and Issues Concerning Tribal Proposals

For the 1992–93 migratory bird hunting season, the Service received requests from eleven tribes and/or Indian groups that followed the June 4, 1985, guidelines and are appropriate for final rulemaking. This is one less than the number cited in the proposed rule; one tribe failed to provide supporting information for its informal proposal. Some of the proposals submitted by the tribes have both early and late season elements. However, as noted earlier, only those with early season proposals are included in this final rulemaking; six tribes have proposals with early seasons.

Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 7, closed on August 24, 1992. Because of the brief comment period that was necessary, any comments received on the proposed rule and/or these early season regulations not responded to herein will be addressed in the late season final rule to be published in September.

Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

In a July 9, 1992, letter to the Great Lakes Indian Fish and Wildlife Commission (GLIFWC), copied to the Service, the State of Wisconsin Department of Natural Resources (WIDNR), voiced an overall nonobjection to the regulations then proposed by the GLIFWC for hunting by Chippewa tribal members. With regard to the opening dates of the duck and goose seasons, the WIDNR had no objection at that time to the GLIFWC proposal. However, the WIDNR reserved the right to modify its position pending further development of 1992 waterfowl production and fall flight forecast information. The WIDNR requested further that tribal members honor the noon opening of the State's shooting hours regulations for the first day of the duck season opening, and comply with Wisconsin's open-water restrictions. In addition, the WIDNR noted that the GLIFWC proposed earlier opening for woodcock is consistent with Federal frameworks.

In an August 7, 1992, FAX to the Service, the GLIFWC further defined their proposed duck hunting regulations for the 1992–93 season, as they had pledged to do as more information became available on 1992 duck populations. The revised GLIFWC proposal differs from the original only in respect to duck bag limits, and leaves intact season dates given in the proposed rule. The communication from GLIFWC states in relevant part:

"The tribes propose an unlimited daily limit including no more than 5 mallards, 3 wood ducks, 1 black duck, 1 redhead and 1 pintail. The season on canvasbacks remains closed . . .

"On reviewing the proposed tribal regulations, please consider the following. The tribes are as concerned about resource protection as the U.S. Fish and Wildlife Service. Harvest regulations and projects aimed at protecting or enhancing waterfowl habitat are but two examples of how this concern is manifested by the tribes.

"In addition, tribal members hunt primarily for subsistence rather than sport. A subsistence waterfowl harvest might also be described as 'opportunistic,' with members harvesting waterfowl for food when the birds are available and in as short a period of time as possible. In order to provide tribal members with a subsistence hunt, liberal bag limits have been proposed. However, bag limits for species exhibiting low population levels have been maintained.

"Furthermore, these proposed regulations should be considered in light of the level of tribal waterfowl harvest during the past years (see attached report). The number of waterfowl taken has ranged from 336 to 1478.

"This compares to approximately 62,000 waterfowl harvested by state hunters in the Wisconsin Ceded Territory. The tribal waterfowl harvest represents 0.5% to 2.3% of the state harvest in the Ceded Territory."

The Service's response is that under any but the most extraordinary circumstances a request for an unlimited bag limit for any species or group of species is unacceptable because it is not consistent with sound wildlife management principles. Thus, given the continuing depressed state of continental duck populations, such a request appears not to be appropriate—irrespective of harvest regulations and/or habitat projects for enhancement and protection. As stated earlier, statistically speaking, the 1992 fall flight forecast of 62 million birds is not an improvement over the low figure of 61 million birds for the 1991 season. In fact, the 1991 continental duck fall flight was essentially unchanged from that of 1990. Yet in the 1991–92 season the Service acknowledged the need and concurred with the request by the GLIFWC for an additional duck in the daily bag, and 2 in the possession limit bag. The 1-duck increase approval was based at that time on a jurisdiction to realize a subsistence harvest for tribal members and a modest production increase in strictly local birds. In consideration of all the pertinent factors, including those outlined above, the Service is denying the request for an unlimited daily bag limit for the GLIFWC. The Service will hold the bag limit for GLIFWC for the 1992–93 season at the 1991–92 season level, with special limits on certain species, until such time as the overall duck population situation improves and/or a biologically appropriate request for bag limit change can be entertained.

The Service has received no communication from the State of Wisconsin regarding the revised GLIFWC proposal; the recency of the revision may have precluded a response.

In an August 24, 1992, letter, the Michigan Department of Natural Resources (MIDNR) reiterated their objection to the Service's recognition of a Michigan 1836 Treaty Zone for regulations purposes and also objected to an unlimited duck limit in the Minnesota/Wisconsin Zone requested by the GLIFWC. Discussion of the June 2, 1992, letter from the MIDNR, regarding Service recognition of the GLIFWC 1836 Treaty area, can be found in the August 7 proposed rule; the August 7 service response also covers the more recent August 24 letter. The matter of the request for an increased bag limit by the GLIFWC is discussed earlier in this document.

The Service has received no oral or written communications from the State of Minnesota regarding either the original or revised GLIFWC proposals.

Other Tribal Regulatory Proposals and Contacts

Discussion of the June 1, 1992, letter to the Service from the Arizona Game and Fish Department concerning last year's regulations for the White Mountain Apache Tribe can be found in the August 7 proposed rule (57 FR 35452). In an August 24, 1992, letter to the Service, the White Mountain Apache Tribe revised their dove season dates to be in compliance with the early season framework for Arizona.

In their May 26, 1992, proposed regulations letter to the Service, the Confederated Salish and Kootenai Tribes advised that they and the State of Montana signed a comprehensive long-term (4-year) agreement in 1990 that enables all hunters to utilize waterfowl hunting opportunities on the Reservation. On June 2, 1992, the Service forwarded to the Mille Lacs Band of Chippewa a completed agreement with the Service regarding migratory bird management and hunting by tribal members on tribal lands for the 1992–93 season. The Service continues to seek further dialogue with the other tribes, i.e., the Klamath Tribe (Oregon), the Hoopa Valley Tribe (CA) and the Seminole Tribe of Florida, regarding the guidelines and future participation in the migratory bird harvest regulations process. As reflected in the proposed rule, the Service would like to work toward establishing migratory bird hunting regulations with other tribal groups that have an interest in cooperating on behalf of sound migratory gamebird management.

In summary, this rule amends § 20.110 of 50 CFR to make current for the early 1992–93 migratory bird hunting season the regulations that will apply on Federal Indian reservations, off-reservation trust lands and ceded lands. These regulations take into account the need to continue the reduced harvest of ducks.

Administrative Actions

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–

14)" was filed on June 9, 1988, and a notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). In addition, an August 1985 environmental assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On May 13, 1991 (56 FR 22100), the Service published the final rulemaking on nontoxic shot zoning for the 1991–92 hunting season and future years. This rule, titled "Nationwide Requirement to Use Nontoxic Shot for the Taking of Waterfowl, Coots and Certain Other Species Beginning in the 1991–92 Season" provides that all of the waterfowl harvest beginning in that year will occur in nontoxic shot zones. This final rule also reminded hunters that nontoxic shot use is required in all U.S. offshore territorial waters and for the taking of captive-reared mallards on shooting preserves, in field trails and for bona fide dog training activities. All of the final hunting regulations covered by this rulemaking are in compliance with the Service's nontoxic shot requirements.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *." Consequently, the Service has initiated section 7 consultation under the Endangered Species Act for the 1992–93 migratory bird hunting season regulations, which includes those that apply on Federal Indian reservations and ceded lands.

In a July 2, 1992, biological opinion, the Division of Endangered Species advised the Office of Migratory Bird Management of its conclusions that the proposed action is not likely to jeopardize either listed species or critical habitat. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act may be inspected by the public in either the Division of Endangered Species or the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634–Arlington Square Building, 4401 N. Fairfax Drive, Arlington, VA, or write Director/MBMO, U.S. Fish and Wildlife Service, 634 ARLSQ, Main Interior Building, Washington, DC 20240.

Regulatory Flexibility Act, Executive Orders 12291, 12612, and 12630, the Civil Justice Reform Executive Order (Executive Order 12778) and the Paperwork Reduction Act

In the May 8, 1992 **Federal Register** (57 FR 19865), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 12291, "Federal Regulation," of February 17, 1981. These included preparing a Determination of Effects and revising the Final Regulatory Impact Analysis, and publication of a summary of the latter. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. It has been determined that this rule will not involve the taking of any property rights, as defined in Executive Order 12630, and will not have any significant federalism effects, under Executive Order 12612. These determinations are detailed in the aforementioned documents which, with other documentation, are available on request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 634–Arlington Square, Washington, DC 20240. The Department of the Interior has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778. These regulations contain no collection of information subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

Memorandum of Law

The Service's Memorandum of Law, required by Section 4 of Executive Order 12291, was published in the **Federal Register** on August 21, 1992 (57 FR 38202).

Authorship

The primary author of this early season final rule is Dr. Keith A. Morehouse, Office of Migratory Bird Management, working under the direction of Thomas J. Dwyer, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed hunting regulations for certain tribes were published on August 7, 1992, the Service established the longest possible period for public comments. In doing this, the Service recognized that time would be of the essence. However, the comment period provided the maximum amount of time possible while ensuring that this final rule would be published before the beginning of the early hunting season beginning on September 1, 1992.

Under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), the Service prescribes final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands) and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds other than waterfowl.

Therefore, for the reasons set out above, the Service finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and this final rule will take effect on September 1, 1992.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: Migratory Bird Treaty Act, as amended (16 U.S.C. 703 *et seq.*). **(Editorial Note: The following hunting regulations provided for by § 20.110 of 50 CFR part 20 will not appear in the Code of Federal Regulations because of their seasonal nature).**

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) *Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only).*

Ducks.

Wisconsin and Minnesota Zones:

Season Dates: Open September 21, close November 1, 1992.

Daily Bag Limit: The daily bag limit is 4, including no more than: 1 hen mallard and 3 mallards total; 3 wood ducks; 1 black duck; 1 redhead and 1 pintail. The taking of canvasbacks is prohibited.

Mergansers.

Wisconsin and Minnesota Zones:
Season Dates: Open September 21, close November 1, 1992.
Daily Bag Limit: The daily bag limit is 5, including no more than 1 hooded merganser.

Canada Geese.

Wisconsin and Minnesota Zones:
Season Dates: Open September 14, close December 1, 1992.
Daily Bag Limit: The daily bag limit is 5.

Michigan, 1842 Treaty Zone:
Season Dates: Open September 1, close September 10, 1992.
Daily Bag Limit: The daily bag limit is 5.

Michigan, 1836 Treaty Zone:
Season Dates: Open September 1, close September 10, 1992.
Daily Bag Limit: The daily bag limit is 5.

Other Geese (Blue, Snow, and White-fronted).

Wisconsin and Minnesota Zones:
Season Dates: Open September 14, close December 1, 1992.
Daily Bag Limit: The daily bag limit is 7 minus the number of Canada geese taken, including no more than 2 white-fronted geese.

Coots and Common Moorhens (Gallinule).

Wisconsin and Minnesota Zones:
Season Dates: Open September 21, close November 1, 1992.
Daily Bag Limit: The daily bag limit is 20, singly or in the aggregate.

Sora and Virginia Rails.

Wisconsin and Minnesota Zones:
Season Dates: Open September 21, close November 1, 1992.
Daily Bag Limit: The daily bag limit is 25, singly or in the aggregate. The possession limit is 25.

Michigan, 1842 and 1836 Zones:
Season Dates: Open September 15, close November 14, 1992.
Daily Bag and Possession Limits: The daily bag limit is 25, singly or in aggregate. The possession limit is 25.

Common Snipe.

Wisconsin and Minnesota Zones:
Season Dates: Open September 21, close November 1, 1992.
Daily Bag Limit: The daily bag limit is 8.

Michigan, 1842 and 1836 Zones:
Season Dates: Open September 15, close November 14, 1992.
Daily Bag Limit: The daily bag limit is 8.

Woodcock.

Wisconsin and Minnesota Zones:
Season Dates: Open September 8, close November 30, 1992.
Daily Bag Limit: The daily bag limit is 5.

Michigan, 1842 and 1836 Zones:
Season Dates: Open September 15, close November 14, 1992.
Daily Bag Limit: The daily bag limit is 5.

General Conditions: (i) While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

(ii) Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. This Model Code was the subject of the stipulation in *Lac Courte Oreilles* v. *State of Wisconsin* regarding migratory bird hunting. Except as modified herein, these amended regulations parallel Federal requirements, 50 CFR part 20, and shooting hour regulations in 50 CFR part 20, subpart K, as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

(iii) Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

(iv) Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Minnesota will comply with tribal codes that contain provisions parallel to M. S. 100.29, Subd. 18 (duck blinds and decoys). Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(v) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise specified.

(vi) Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with Sec. NR 19.12, Wis. Adm. Code. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(b) *Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members).*

Geese

Season Dates: Open September 1, close November 11, 1992.

Daily Bag and Possession Limits: Daily bag limit is two (2) tribally tagged Canada geese. The tribe will reissue tags as each 2 birds are registered. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

(c) *Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers).*

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 1992.

Daily Bag and Possession Limits: The daily bag limit is 5 and the possession limit is 10.

Mourning Doves.

Season Dates: Open September 1, close September 30, 1992.

Daily Bag and Possession Limits: The daily bag limit is 10 and the possession limit is 20.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(d) *Penobscot Indian Nation, Old Town, Maine (Tribal Members Sustenance Season).*

Ducks.

Season Dates: Begin September 19, close November 30, 1992.

Daily Bag Limits: The daily bag limit is 4, except that it may include no more than 1 black duck and 2 wood ducks.

Geese.

Season Dates: Begin September 19, close November 30, 1992.

Daily Bag Limits: The daily bag limit is 3 Canada geese, 3 snow geese, or 3 geese in the aggregate.

General Conditions: (i) Tribal members may hunt waterfowl (ducks and geese) on Penobscot Indian Territory under special sustenance regulations during the 1992–93 hunting season. When the sustenance and Maine's general waterfowl season overlap, the daily bag limit for tribal members is only the larger of the two daily bag limits.

(ii) Possession limits on ducks and geese during the tribal sustenance season are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's residence.

(iii) Tribal members shall comply with all other basic Federal migratory bird hunting regulations in 50 CFR part 20, except that when sustenance hunting tribal members shall be permitted to hunt one-half hour before sunrise to one-half after sunset.

(iv) Each tribal waterfowl hunter 16 years of age or over must possess and carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp), signed in ink across the face.

(v) Special regulations established by the Penobscot Indian Nation also apply in Penobscot Indian Territory.

(e) *Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members).*

Ducks/Coot.

Season Dates: Open September 1, 1992, and close February 1, 1993.

Daily Bag and Possession Limits: The daily bag limit is 6, with 12 in possession; except that bag and possession limits are restricted for pintail (1) and canvasback/redhead (2 of either or 1 each).

Geese.

Season Dates: Open September 1, 1992, and close February 1, 1993.

Daily Bag and Possession Limits: The daily bag limit is 6, with 12 in possession; except that the bag limits for brant and cackling and dusky Canada geese are to be those established for the State of Washington in accordance with final Federal frameworks, to be announced.

Snipe.

Season Dates: Open September 1, 1992, and close February 1, 1993.

Daily Bag and Possession Limits: The daily bag limit is 6, with 12 in possession.

General Conditions: All hunters are required to adhere to shooting hour regulations of one-half hour before sunrise to sunset, and a number of other special regulations enforced by the tribes and available at the tribal office.

(f) *Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nonmembers).*

Band-tailed Pigeons.

Season Dates: Open September 1, close September 30, 1992.

Daily Bag and Possession Limits: The daily bag limit is 5 and the possession limit is 10.

Mourning Doves.

Season Dates: Open September 1, close September 15, 1992.

Daily Bag and Possession Limits: The daily bag limit is 10 and the possession limit is 20.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Bank-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

Dated: August 26, 1992.

Bruce Blanchard,

Director, Fish and Wildlife Service.

[FR Doc. 92–20893 Filed 8–31–92; 8:45 am]

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September 1, 1992

Part VI

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 91 and 570

Comprehensive Housing Affordability Strategies; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 91 and 570

[Docket No. R-92-1507; FR-2932-F-06]

RIN 2501-AB13

Comprehensive Housing Affordability Strategies

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises an interim rule now in effect with respect to the Comprehensive Housing Affordability Strategy (CHAS) document to be prepared and submitted to HUD as part of the planning process for a jurisdiction with respect to HUD programs and other resources related to affordable housing and supportive services. The interim rule, published on February 4, 1991 (56 FR 4480), has been the subject of considerable public comment, especially since the jurisdictions have had experience with the CHAS procedure in the Fall of 1991. This rule responds to those comments. It provides guidance to be followed in the preparation of the annual plans and for submission of a complete CHAS.

EFFECTIVE DATE: October 1, 1992.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Office of Community Planning and Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-2470 or (202) 708-2565 (TDD).

SUPPLEMENTARY INFORMATION: This preamble is organized in the following outline:

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III. Revised CHAS
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I. Information Collections

The information collection requirements contained in §§ 91.17, 91.19, 91.21, 91.23, 91.25, 91.40, 91.42, 91.44, 91.46, 91.48, 91.60, 91.62, 91.63, 91.68, 91.70, 91.78 and 91.82 of this rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Public reporting burden for the collection of information requirements contained in this rule are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in paragraph IV.G. of this preamble.

Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW, Washington, DC 20410-0500; and to the Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 3001, Washington, DC 20503, Attention: Desk Officer for HUD.

II. Background

The interim rule on the CHAS published last February was the foundation for forms and instructions made available to the jurisdictions in August of 1991. The public comments received on the CHAS included both comments on the rule and comments on the forms and instructions.

In addition to the interim rule, there were several other publications in the **Federal Register** concerning the CHAS. A final rule was published on October 31, 1991 (56 FR 56124), amending various program regulations that had referred to the planning documents that were superseded by the CHAS. A Notice was published on December 16, 1991 (56 FR 65271), giving instructions on how to prepare an abbreviated housing strategy. (The abbreviated strategy had received only cursory attention in the interim rule on the CHAS, and jurisdictions and HUD field offices had asked for more guidance in advance of a final rule for the following fiscal year.)

The initial comment period for the interim rule, announced in the rule, was February 4–May 6, 1991. The Department decided that, since the forms were not yet available and jurisdictions had not yet had experience under the interim rule, an additional comment period was needed. Therefore, a second comment period was announced in the **Federal Register** on August 12, 1991 to last through September 12, 1991. Since CHAS documents were due to HUD October 31, 1991, a third comment period was announced on October 1, 1991, to last through November 15, 1991.

In addition to written public comments, HUD received criticism and recommendations concerning both the rule and the forms in various meetings. The principal meeting was held on November 21, 1991 at HUD Headquarters in Washington, DC. The meeting was attended by representatives of city, county and State agencies, as well as associations representing the interests of States, real estate developers, low income housing providers, and manufactured housing developers, as well as homeless advocacy groups and a group concerned about lead-based paint. Minutes of that meeting were prepared and entered in the record of comments received.

III. Revised CHAS

The main changes to the CHAS rule have been made in response to public comments, which are described in more detail below. The structure of the rule has been changed to provide separate subparts for local governments and for States, so that the contents of the strategy of each can be described in more than one section. The contents of the strategy have been organized into three major components: Community (or State) profile, five-year strategy, and annual plan. This preamble discusses each of these major components, generally, and then discusses the main changes from the interim rule provisions.

The Department also must point out that, although this final rule, containing new requirements for the five-year strategy and the annual plan, is becoming effective during this fiscal year, the CHAS requirements that will actually affect jurisdictions this year will be those that deal with the annual plan, since a new five-year plan based on the 1990 Census data will not be due until the following fiscal year. The Department will furnish special instructions for this transition period. New Community Development Block Grant (CDBG) Entitlement grantees and new HOME Consortia submitting a CHAS for the first time in FY 93, will be required to submit a full five-year strategy this year. However, no needs or market inventory tables will be required of these jurisdictions.

A. Community Profile

In response to public comments, the community needs and resources descriptions have been organized in a community profile section, with important factors and trends to be discussed to enhance citizen understanding of the housing strategy. This section provides for a description of the significant housing and supportive housing market and inventory characteristics, factors affecting the availability of affordable and supportive housing, current and projected needs for housing assistance, and resources and programs expected to be available to address these identified needs.

B. Five-Year Strategy

In this section, the jurisdiction must describe its general priorities for allocating available Federal, State, local, and private resources over the five-year period among different needs and activities and among geographic areas. The description must include an analysis of how the size, distribution, condition, and cost of the jurisdiction's housing inventory matches the severity of needs and types of housing problems of each priority category of residents. In addition, the jurisdiction must indicate the housing activities to be undertaken, e.g., acquisition, rehabilitation, new construction, rental assistance, homebuyer assistance, or support facilities and services, and the programs and resources it plans to pursue. The description must identify a relative priority of 1, 2, 3, or 0 (no priority) for the various categories of residents to be served. This narrative material will be supplemented by completion of a HUD-prescribed table. The planned geographic distribution of assistance will also be described, by whatever geographic breakdown seems useful to the jurisdiction.

Each priority will be the subject of a description of what is already being done to serve the target population and a strategy for accomplishing the goal.

C. One-Year Action Plan (Annual Plan)

This component specifies the jurisdiction's plan for use of affordable and supportive housing funds expected to be received during the Federal fiscal year. The narrative must discuss what is to be done to respond to the needs identified, particularly with respect to the highest priority categories. It will also discuss what actions are to be taken to resolve public policy issues, to overcome gaps in the institutional structure, to encourage public housing improvements (for local jurisdictions) and public housing resident initiatives, and to coordinate the Low-Income Housing Tax Credit with development of affordable housing (for States). In addition, the one-year action plan projects the number of families to be served during the year with either funds on hand or to be received during the year.

This component of the strategy also contains the certifications that the jurisdiction will affirmatively further fair housing and will comply with its residential displacement plan.

D. Changes From Interior Rule

There are five principal changes from the interim rule contained in this final rule: (1) The document has been reorganized and redundancies have been eliminated; (2) the data requirements have been streamlined, reducing the burden on States and localities; (3) the citizen participation process has been strengthened; (4) the rule reflects differences between States and local governments to the extent permitted by the statute; and (5) an explanation of the meaning of "consistency with the CHAS" has been added.

1. Reorganization

The reorganization (discussed above, and at more length below) makes the document much more understandable to citizens and to the preparers.

2. Reduction of Data Requirements

The State is not required to present needs and market inventory data beyond that which is provided by HUD while the only data a local jurisdiction must gather itself is an assessment of housing conditions in the area. Otherwise, Census data may be relied upon. In several categories of data, information is only required to be provided to the extent it is available, such as for homeless subpopulations, for non-homeless persons with special needs, and for assessments of environmental concerns, such as lead-based hazard.

The elimination of the requirement to provide data separately for each racial and ethnic group by income category and tenure type reduces the burden on jurisdictions of all types. The interim rule also eliminates the requirement for separate data breakouts for CDBG entitlement communities and nonentitlement communities within the State, and for metropolitan/nonmetropolitan breakouts for each nonentitlement area of the State. Although the statute suggested categorization of data by metro/nonmetro areas, public response indicated that it would be too limiting to States, which might be using other geographic breakdowns for planning purposes.

3. Citizen Participation

The final rule strengthens this process by placing the public hearings at the beginning of the development process, focusing on needs. Although the minimum length of the citizen comment period on the draft CHAS has been shortened from 60 days to 30 days to accommodate the needs of jurisdictions, the rule adds suggestions for making citizen input on the CHAS more meaningful. Outreach to neighborhood organizations, advocacy groups, and social service organizations is encouraged.

4. Differences for States

States found the incorporation of local CHASs into State CHASs, encouraged in the interim rule, was unworkable (as discussed below in the public comment response). Therefore, it has been eliminated in this final rule. The assisted

housing inventory item for States has been limited to cover only State Housing Agency administered assisted housing.

5. Consistency With a CHAS

A section has been added to address the question of what it means for a jurisdiction to certify that an application for funding under a particular HUD program is consistent with its CHAS. This helps both jurisdictions and citizens affected by CHAS certifications understand the significance of the various elements of the document. The annual plan, which contains descriptions of the categories of residents to be served (including goals), specific activities to be undertaken, geographic allocation of resources, and service delivery systems for the jurisdiction's strategy, is the component of the CHAS against which the application should be measured in terms of the program, location, and beneficiaries. The five-year strategy is used to determine whether the activity serves a priority category of residents.

In addition, the rule tailors the statutory requirements to the unique circumstances of the District of Columbia—a city that the statute classifies as a State. The rule provides, in § 91.48, that the District of Columbia is to follow the CHAS requirements for local governments, with the addition of one of the requirements for States: A strategy to coordinate low-income housing tax credits.

IV. Comments and Responses

A. Overview

In response to publication of the CHAS interim rule and the issuance of forms and instructions, the Department received 190 comments from States, localities, intergovernmental organizations, public interest groups, community organizations, private firms, professional associations, universities, Congressmen, and concerned citizens. The overall thrust of the comments was very supportive of the concept of the CHAS—a well reasoned, action-oriented planning and management tool leading to realistic strategies intended to meet the affordable housing needs identified within each jurisdiction. However, there were numerous objections to provisions of the interim rule and instructions, as well.

Several commenters commended the CHAS process for providing a forum for housing planning and information exchange. Overall, they felt that the process is valuable, particularly due to the involvement of numerous housing and social service providers in determining priorities. For instance, according to one commenter, the development of the Fiscal Year 1992 CHAS provided an excellent opportunity for Texas to initiate long-range planning for affordable housing. This CHAS represented Texas' first effort to address housing needs on a comprehensive, statewide basis. Six advocacy agencies praised the CHAS and CHAS process. Four of the six expressed their enthusiasm at being provided this "extraordinary opportunity" to improve housing programs across the country.

The Department believes that the CHAS process has strengthened Federal, State and local partnerships to meet the housing needs of low-income families, homeless and those needing supportive services. It is hoped that the annual process for preparing or updating the strategy will continue to provide a productive public forum.

However, some commenters criticized the lack of opportunity for public review of the rule before the regulations became effective, suggesting that the regulations should have taken the form of a proposed rule, not an interim rule. The Department had to prepare an interim rule rather than a proposed rule because of the statutory requirement that a jurisdiction must have an approved CHAS before it could receive either CDBG or HOME funds. This final rule does take into account the significant public comment that has been received, making major revisions as a result.

One commenter called for greater emphasis in the CHAS on targeting limited resources to those most in need. The Department has responded to the comments requesting greater targeting to those most in need and has required the needs, priorities, and goals be established for those below 30 percent of median income.

A commenter noted that section 106 of the National Affordable Housing Act of 1990 requires applications for housing assistance "to be accompanied by a certification by an appropriate State or local public official that the proposed housing activities are consistent with the housing strategy of the jurisdiction to be served." The commenter felt that "consistency" has not been defined and should be defined. We agree, and a section has been added to this rule, as described above.

The commenter suggested that the standards for determining consistency should be broad enough to allow a consistency determination if the proposed activity meets a need, goal or objective identified in the CHAS, involves a funding source identified in the CHAS, or is consistent with information contained in the CHAS. The final rule is not so broad as this last item requested, but it is generally responsive to this commenter's request.

One commenter pointed out that States will have to certify that applications for HUD funds are consistent with the State CHAS. The commenter feels that additional suggestions on the minimal requirements of such a certification would be beneficial, along with ideas on how to establish procedures for applicants to obtain certifications. The new section on certification of consistency should be helpful. The procedure to be followed in obtaining such a certification will be determined by each State.

Three commenters commented on the monitoring requirements. One commenter requested that HUD provide guidance on developing local standards and procedures for monitoring. Another commenter suggested that HUD provide specific monitoring criteria and general reporting standards. One commenter recommended that HUD require jurisdictions to report on the results of their strategies, particularly with regard to homeless individuals. In § 91.85, the Department has outlined the issues it will review annually. However, the most important part of oversight of State and local housing strategies will be the citizen review of actual performance in meeting the priorities based on needs identified in the strategies.

Eight commenters objected to CHAS coverage of the Low-Income Housing Preservation Program, since funds are allocated directly to individual project sponsors, and not to local or State governments. The rule has been clarified to provide that only State agency administered preservation programs are covered by the CHAS requirements.

One commenter asked that the CHAS requirements be extended to include housing assistance programs other than those funded by HUD, such as the Low-Income Housing Tax Credit. Two commenters were concerned that major housing programs, such as Section 8 rental assistance, would not require a certification of compliance with an approved housing strategy. The rule simply reflects the statute in this respect—it cannot extend the applicability of CHAS requirements beyond the statutory mandate. However, the Low-Income Housing Tax Credit program is taken into consideration by jurisdictions in development of their CHASs.

(We note, however, that one component of the Section 8 program is subject to a certification of consistency with the CHAS—the Moderate Rehabilitation Single Room Occupancy program, which is a program for homeless persons operated under the authority of the McKinney Homeless Assistance Act. There is also a link with the CHAS in the Section 8 Certificate program in that one basis for HUD approval of rents above Fair Market Rents is that implementation of the approved housing strategy for the area requires the higher rents.)

Clarification was requested by a commenter on whether the list of "Programs not covered" was all-inclusive, since programs such as the congregate Housing Services Program and Hope for Elderly Independence (sections 802 and 803 of the National Affordable Housing Act—NAHA) are not mentioned either as being covered or not being covered. These two programs are not covered by the CHAS. The list of programs covered is all-inclusive, while the other is not intended to be.

One commenter asked for clarification regarding whether an environmental finding will be required for the CHAS and, if so, what type. The commenter suggested that the issue of environmental findings and review be addressed in the regulations. Environmental reviews are required when related to the release and use of HUD program dollars but are not required for the preparation of a housing strategy. (See §§ 50.19 and 50.20.)

B. Organization of the CHAS

Most comments concerning the organization of the CHAS were critical, finding it generally repetitive, overlapping, and lacking the normal sequence of a planning document. Others urged simplification and called for greater flexibility so as not to stifle creativity.

Among the recommendations made were to prepare a clear Table of Contents listing issues which must be addressed (others objected to a rigid structure claiming that it reduces creativity) and to simplify the numbering of sections, parts, and tables. In response to those comments, the Department has developed a table of contents which provides structure to the document and eliminates redundancy. As described above, the document will consist of three parts: I. Community (or State) Profile; II. Five-Year Strategy; and III. Annual Plan. In the CHAS instructions, all the tables have been renumbered to reflect this new organization.

Another recommendation was to allow States and localities to structure the document in any manner, so long as the required 15 elements of a CHAS are addressed. It was suggested that a checklist or crosswalk (similar to one HUD developed for States submitting an exiting strategy) could be used to identify the sections in the document that address the 15 statutory elements. Two commenters said that if the State or Community Profile is to become the foundation upon which the strategy rests, then HUD must require that its tables be used, enforce its narrative instructions, and provide training to jurisdictions on how to analyze data.

These differing opinions are difficult to resolve, but the Department has decided to maintain its position of prescribing the general format for the CHAS. While the Department appreciates the need for State flexibility in meeting the CHAS requirements, it found that submissions providing crosswalks to other planning documents often did not address all statutory elements. The Department also found that these submissions often referred to documents that either were not included or were not relevant to the contents of the CHAS. Therefore, the Department is prescribing the format for the document. However, the format does provide some flexibility in the order of some of the elements. If a jurisdiction wants to address an element in a place other than that prescribed, it can change its location and provide a cross-reference to the altered location. As described, training will be provided next Spring.

Commenters suggested that the Department merge the "needs assessment" and "market conditions" in the first part, or move the market conditions to precede the needs assessment. We have responded to this suggestion by placing the market conditions, as part of the community profile, as the first element of the CHAS after the summary of the development process. However, these two sections may appear in the order the States and local governments deem most appropriate.

The Department was also asked to permit the discussion of relevant public policies, institutional structure, and resources to precede presentation of the priorities. Another commenter suggested that the use of resources be discussed in the context of the priorities. We have rearranged this material somewhat. Resources are now to be discussed in the first part, Community Profile, whereas the public policies, institutional structure and priorities are to be included in the second part, Five-year Strategy. However, in the second part, the final rule does provide for priorities to be the first focus, with the discussion of institutional structure and public policies to follow.

The suggestion was made that HUD reorganize and consolidate discussions (including current conditions, needs analysis and implementation plan) under the groups to be served. Several commenters believed that the structure of the CHAS under the interim rule fragmented information with respect to particular groups and discouraged citizen participation. In the priority analysis and strategy development section of the Five-year Strategy, a State and local jurisdiction must analyze each category of residents and determine whether or not it is a priority. For those determined to be a priority, a State or local jurisdiction must describe how it will use the resources identified to meet the needs of that priority group.

Commenters suggested that HUD prepare and distribute a summary of available housing resources to include eligible uses and applicants. The Department will provide this information for Federally-assisted housing resources, and it is to be included in the CHAS so that citizens may have it when evaluating how well the strategy meets identified needs.

A new section that would restate the various action steps to be taken under the CHAS was also requested. In the Five-year Strategy, States and local governments are encouraged to provide a summary of their five year plan to provide the nexus between the needs identified and the actions and resources they plan to employ to address these needs. More than 80 percent of those State and local preparers contacted (10 States and 46 cities) had either prepared or endorsed the preparation of a summary, citing its importance as a link between identified needs and the priorities for action as well as its value for citizen review.

Among the other recommendations offered to improve the quality of the CHAS submissions was one that called for HUD to establish a clearinghouse so that jurisdictions with limited planning capabilities could obtain copies of exemplary housing strategies. The Department will establish a clearinghouse, and the local HUD field office can be consulted for technical assistance. In addition, HUD plans to offer, in the Spring of 1993, a course in strategic planning in major cities throughout the country.

Another recommendation was to combine the CHAS regulation, notice, forms and instructions into a single comprehensive, thorough, and consistent set of materials. It is the Department's intent to provide a complete package of CHAS regulations, instructions and forms.

C. Focus of CHAS

Eighteen commenters suggested that the CHAS should require that the jurisdiction demonstrate through its plan that resources are being allocated in accordance with the greatest need, and that strategic priorities should favor families and individuals at or below fifty percent of median income with particular emphasis on those below thirty percent of median. In response to comments on greatest need, the Department has required separate discussions on needs, five-year strategy and one-year action plan goals for two very low-income categories: (1) 0 to 30 percent and (2) 31 to 50 percent of median family income.

Commenters suggested that there is no need for emphasis on income categories higher than 80 percent of median, since most housing assistance programs serve only those at 80 percent or below. The statute requires that information be provided concerning needs of "moderate-income" families. The Department has chosen 95 percent of median family income as the upper limit of the moderate-income category for this purpose, since that is the limit used in some other HUD programs, such as the section 235 homeownership and section 221(d)(3) BMIR rental programs.

Several commenters encouraged HUD to include the below 30 percent of median family income category in its 1990 census special tabs so that jurisdictions can choose to analyze that group without undue burden. Information on the below 30 percent of median family income group will be provided in the special reports to be prepared by HUD. Furthermore, separate narratives and tabular breakouts on this group will be required in the CHAS, since they constitute the most distressed portion of the population and are most threatened with becoming homeless.

Four commenters were concerned that the additional federal housing funds being made available through HUD programs might simply be used as a substitute for State or local resources currently dedicated to housing. Consequently, they recommended that over the five-year period covered by the CHAS an analysis should be conducted of the extent to which federal funds are used to augment or replace currently planned State and local housing efforts. This analysis is needed, in the view of the commenters, to promote informed citizens review of the CHAS.

Requesting an analysis on the amount of HUD funds used in substitution for other State and local resources goes beyond the statutory requirements for a housing strategy. The Department has not included such a requirement.

Throughout the CHAS, HUD requires States and local governments to discuss unassisted low-income (and especially very low-income) families who pay more than 50% of their income for rent, live in substandard housing, or have been involuntarily displaced. Three advocacy agencies commented that they were pleased with HUD's emphasis on families experiencing "severe cost burden." The Department also received praise from five commenters for requiring information relating specifically to persons with disabilities.

Twelve commenters sought to require an allocation of resources proportionate to the needs identified in the particular jurisdiction while eight others would require jurisdictions to justify spending that was disproportionate to needs. In their view, mechanisms should be put in place to assure that funds distributed on a competitive basis are proportionate to need.

With regard to additional regulatory requirements on allocation of resources proportionate to needs, the Department has not adopted this recommendation. However, the Department believes that public review and comment on households served evaluated in the context of need is the most critical part of the citizen participation process.

Nine commenters favored a requirement for localities to identify any serious gaps in available private resources, such as long-term debt financing for small low-income projects, and to specify actions intended to bridge those gaps. As they discuss gaps in their delivery systems, State and local governments are free to discuss the absence of private financing for low-income housing and their strategies to secure additional funds.

Another commenter criticized the omission of any requirement to specify a baseline of the jurisdiction's activity to provide affordable housing. While jurisdictions are free to provide a history of their activities to serve low-income families, the homeless and other special needs population, the statute does not require a baseline of activity. Over time, the housing strategy and annual performance reports will provide level of effort information.

One commenter suggested that the CHAS should place more emphasis on energy conservation. The suggestion was made that, as a condition of approval, a jurisdiction be required to demonstrate in its CHAS that: (1) Its building code contains energy efficiency criteria at least as stringent as the 1989 Council of American Building Officials' Model Energy Code; (2) it has or will establish energy efficiency guidelines for housing rehabilitation that meet HUD criteria for stringency and cost-effectiveness; (3) planning for the strategy directly involved energy organizations; (4) the planning process specifically sought funding from utility energy efficiency and public weatherization programs; and (5) it has articulated its affordable housing definition and program requirements to specifically encourage construction, rehabilitation or retrofit practices that strike a proper balance between initial cost and energy operating cost.

While the Department believes that the energy-related recommendations have merit they go beyond the statutory requirements of the CHAS.

D. Data Collection

1. Burden of Collection

Numerous commenters maintained that the time and cost of preparing the CHAS has been grossly underestimated for both localities and States in the interim rule. (HUD had estimated that producing the first CHAS would take 248 hours and subsequently require an additional 40 hours to produce performance review reports.) One State noted that the estimate was particularly low for States since they have so much territory to cover in order to solicit feedback from the public throughout the State as part of the citizen participation requirements. Regarding the cost of producing the CHAS, one State estimated that its CHAS preparation cost $15,333 and one local government had spent $11,300 at the time its comment was written but it had not yet completed its CHAS. One commenter recommended that the Department consult with State and local government agencies to develop more accurate estimates to be used in the final rule. In addressing the cost burden issue, one commenter recommended that HUD allow jurisdictions to exceed the cap on CDBG administrative costs or provide additional funds to States and localities for CHAS preparation.

The Department conducted an assessment of 46 local CHASs selected at random and consulted with their preparers, as well as with 10 State agencies, to get a better estimate of time and cost. Based on substantial reduction in the CHAS forms, the availability of 1990 Census data in the required format for the Fiscal Year 1994 complete submission, and the experience that States and local governments have gained to date, the Department believes its revised estimates are accurate reflections of the time required and the costs to be incurred. The Department has now broken out the estimates separately for States and for localities, in recognition of the differences in their tasks.

2. Excessive Data Collection

Numerous commenters objected to the data collection requirements, contending that they exceeded the data collection authorized by NAHA and that the rule placed too much emphasis of data collection instead of on planning and strategy development. (It should be noted, however, that most of the specific examples cited were contained in the Paperwork Burden Submission to OMB published in the **Federal Register** on January 14, 1991, but removed before the publication of the interim rule.) This opinion was held, for the most part, by commenters representing States, localities, and their associations. On the other hand, many commenters stressed the importance of data collection, including racial, ethnic, and special need categories, and rued the lack of specific criteria by which the "validating" of strategies will be measured. These comments were made largely by representatives of public interest groups.

One commenter noted that the structural condition of housing, the extent of overcrowding, and cost burden of housing on families are not required by the statute. The information on the structural condition of housing, the extent of overcrowding, the cost burden of housing on families, occupancy status (i.e., occupied/vacant), and needs of special populations (e.g., elderly, disabled) constitute the very foundation for the development of any meaningful housing strategy, and requiring that such information be provided is firmly rooted in the statute. Moreover, HUD will supply the data on overcrowding, cost burden, and occupancy status. Information concerning special needs populations is required, to the extent it is available.

One commenter questioned how a city was to gather all the unit information and then categorize it as suitable for occupancy by elderly or disabled families and families with children, among others. The interim rule and the final rule request this information but do not require it, precisely because it may be difficult to obtain. However, through consultations with various social service agencies and nonprofit organizations seeking to serve these populations, a jurisdiction may become informed about units that would be suitable for them.

Of the eighteen comments received concerning racial/ethnic data, one commenter asked that HUD eliminate the requirement to identify and describe neighborhoods with racial/ethnic concentrations, especially the requirement to identify specific locations. If eliminating the requirement is not possible, they requested that HUD simplify what must be presented in the CHAS document. One commenter said that it was not clear how the need for racial/ethnic group information results from the statutory requirements for the CHAS, and this information is not directly related to the strategy to be developed on the local level. Another commenter said that any housing policy that targets resources to racial/ethnic areas is questionable, since to do so could have the effect of promoting segregation.

The Department believes that the requirement to identify and describe neighborhoods with "racial/ethnic minority concentrations" is a key to evaluating how well State and local governments create housing opportunities both within and outside of areas of racial/ethnic concentrations, and therefore, the extent to which they are carrying out their promise to affirmatively further fair housing. The CHAS annual report requires jurisdictions to describe how they made housing resources more available both within and outside of these areas and the racial and ethnic status of those they served.

Other commenters objected to the inclusion of racial and ethnic data on the homeless, since it was not mentioned in the statute and does not seem useful or appropriate in developing a housing strategy. The Department believes that this information is useful in determining what groups may be most useful in providing supportive services (especially in the case of an ethnic group whose primary language is other than English). Therefore, the final rule requires the racial and ethnic composition of the homeless population to be discussed, to the extent that the information is available.

In recognition of the fact that States, in particular, may not have access to good data on their population in every respect, the data requirements for States have been significantly decreased in the final rule. For example, no information on structural condition is being required of States, and other requested information, such as cost burden and occupancy status, may be presented by those sub-State areas and regions determined by the State to be significant and meaningful to the development of a housing strategy and for which data is available from HUD.

For all HOME participating jurisdictions and CDBG entitlement communities, HUD will prepare special reports on a state-by-state basis that provide the data needed to complete the needs, and market inventory and conditions tables in the CHAS, plus many more housing characteristics for each State, county, and city of 25,000 or more in the State. States and localities are encouraged to use this additional data in their analyses.

With respect to the State housing strategy, one commenter opposed the CHAS language calling for the disaggregation of statewide housing data by geographic regions on the basis that it exceeded the statute. Two States, among several commenters, felt that HUD's requirement that States break out data by entitled areas, non-entitled metropolitan areas and non-entitled non-metropolitan areas is inappropriate and cumbersome. They said it is difficult, awkward and time-consuming to look at State needs without the entitled areas. Both States recommended that aggregated metropolitan data and aggregated non-metropolitan data be used, instead of entitled/non-entitled metro and non-metro. Alternatively, it was recommended that States be able to define geographically similar sub-state divisions based on population density, economic patterns, housing conditions, and existing planning regions. One commenter pointed out that 91.20 of the interim rule provided latitude to States in the geographic presentation of data on housing needs, homeless assistance and market characteristics. Others pointed out that HUD's own data is collected on a county basis.

The Department agrees that the requirement that States break out data by entitled areas, non-entitled metropolitan areas and non-entitled non-metropolitan areas is cumbersome and may not be suitable for their purposes. Consequently, the final rule permits States to cover the whole State or those subareas that are most logical to them.

Another State protested the over-reliance on Census Data, which has only limited utility in many rural areas. This commenter called for greater flexibility by allowing States to develop appropriate indices of needs and markets. One commenter recommended that HUD should simply clarify for States what types of data are acceptable in the preparation of their strategies.

The final rule permits a State or locality to supplement Census data with other data obtained using HUD-approved methodologies. The rule also permits a State or locality to substitute data from a reliable source for Census data, if the jurisdiction describes the

source and the method used to generate the data. (See §§ 91.17(b) and 91.42(b).)

Two commenters called for cooperation between HUD and States having similar housing strategies already in place, such as California, on such matters as coordination of submission dates. Another contended that States which have put a great deal of effort into preparing housing plans not be penalized by having to rewrite these existing plans, but be allowed to use those strategies in their existing form.

It was the Department's experience in allowing the substitution of other planning documents for the CHAS, that information was incomplete, inadequate or irrelevant in meeting the statutory requirements of NAHA. Therefore, the final rule requires preparation of a CHAS, which may use much of the product of any State-created housing plan.

3. Insufficient Data Elements

Expansion of data presentation was urged by ten other commenters. They sought numbers on single parent households by gender, waiting lists for public and assisted housing, emergency or domestic violence shelter populations. Other commenters recommended that information requirements be expanded to include the rural housing needs of farm workers, adequacy of public assistance grants to pay for housing, the barriers to affordability that exist for people on welfare and those in transitional housing and the special needs of all persons with disabilities who are now homeless or who are at risk of becoming homeless. One citizen and three advocacy agencies urged HUD to require that housing and market conditions information be broken down by neighborhood within a jurisdiction, so that trends in the neighborhoods could be determined. Six commenters were of the opinion that information should be included on the number occupied "uninhabitable" units while seven wanted data on the number of "abandoned" units suitable for rehabilitation and affordable. Eight commenters also raised the need for estimating expected changes to the housing stock inventory over time due to such factors as demolition, conversion, and the expiration of tax exempt financing or other subsidies.

Seventeen commenters called for the Department to include an assessment of lead-based paint hazards in the CHAS requirements. These commenters felt that the CHAS is the appropriate vehicle for integrating the consideration of lead hazards into local housing decisions. Their recommended changes would require CHASs to contain information on the presence of lead-based paint hazards in the local housing stock, including public housing, and would broaden the social service consultation requirement to include public health agencies. These commenters also called for inclusion in the CHAS of available information on the numbers of children already lead-poisoned including their home addresses.

Six commenters requested that the required data be expanded and elaborated upon to include estimates of the total number of homeless, including a breakdown by categories beyond those stated in the regulation (i.e., singles, families with children, veterans, persons with AIDS, elderly) and to provide more detail on the type of accommodations available at existing facilities. Eight advocacy agencies, one citizen and one local government commented in very strong terms about the need to require stricter reporting on homelessness in the CHAS. They argued that a housing strategy which does not document the problem and extent of homelessness cannot be the basis for a sound strategy to alleviate the problem. Several suggested that the CHAS instructions require documentation of the "at-risk" of being homeless population. Several commenters, however, deemed requirements such as attaching a list of all shelters and facilities for the homeless as "ridiculous".

Each of the recommended additions was considered, with the understanding that the CHAS rule and instructions represent the minimum information and discussion that is required of any jurisdiction in its CHAS submission. Jurisdictions may, and often do, exceed and expand upon the minimum requirements in order to better tailor the document to local housing conditions, needs, and circumstances. The existing CHAS rule and instructions do not prevent or exclude presentation of information or discussion relating to any particular category of residents or their housing needs. Upon consideration, however, it was decided to include a discussion of the jurisdiction's Section 8 and public housing waiting list(s), discussion of any anticipated loss of subsidized housing stock, and a broader discussion of a jurisdiction's homeless population, and to encourage a description of housing stock likely to contain lead-based paint hazard.

In the section of this rule on general market and inventory conditions, States and local governments are encouraged to provide, to the extent information is available, an assessment of the hazards of housing-related environmental concerns, such as lead-based paint. Any plan to reduce such hazards should be included in any summary of the five-year strategy. Preparers are directed to consult community health organizations and census data on pre-1950 housing stock, which constitutes a satisfactory indicator of lead-based paint hazard for the purposes of the CHAS. (Data on pre-1978 housing is also useful, since that is the year in which the use of lead-based paint was discontinued throughout the country. However, the Department has found that use of lead-based paint was much more prevalent before 1950.) No special surveys are being required, and the Department will not require data on the numbers of lead-poisoned children or their home addresses.

The homeless table has been reinstated in the CHAS instructions, and required narratives remain at least as detailed. Jurisdictions may use 1990 Census data on homeless populations or any other source(s), such as social service providers, which they consider meeting the standards for accuracy and reliability that HUD specifies. HUD is making available to States and local jurisdictions a technical assistance resource Practical Methods for Counting Homeless People: A Manual for State and Local Jurisdictions, that is an easy to read compendium of techniques already being used by State and local governments to collect information on the extent and characteristics of homelessness. The Department sees value in the listing of shelters and facilities and has maintained that requirement.

Although housing and market conditions by neighborhood are not required by the statute or the rule, the Department will provide States and local governments 1990 Census data in a manner that would allow subsequent analysis. A jurisdiction may use this information to analyze trends in submarkets, such as neighborhoods. All jurisdictions, however, are expected to review and analyze this data in order to meet minimum tabular and narrative submission requirements.

4. Sources of Data

The issue of census versus alternative informational sources for the needs data was discussed by a number of commenters who essentially took the position that given that detailed population and housing census reports may not be available until 1993 and the 1990 data will become outdated, a greater reliance on locally generated "updated estimates" would seem to be called for. Consequently, they argued,

more explicit regulations describing the standards that HUD will use in accepting or rejecting these estimates are needed. Two commenters argued that if HUD provides relevant data in tabulated form and includes detailed instructions on how to use that data, the State or Community Profile section could become what it was meant to be. One commenter asked that HUD not require jurisdictions to submit data that goes beyond the scope of what was collected during the Census, but suggested that HUD accept additional data if a jurisdiction should opt to submit them. Other commenters suggested that required data be provided to States and cities in its final form.

In order to address the important issue of alternative data sources to the Census, HUD will prepare a handbook for jurisdictions on how to analyze a low-income housing market and will make recommendations on local sources of data and acceptable methodologies to be used. The handbook will also discuss State needs and data sources. It is understood that the need for reliable locally generated updates will increase over time.

E. Definitions

Several commenters requested that other terms be defined, including "habitability," "not substantially complete," "homeless family," "imminent danger of becoming homeless," and "primary nighttime residence." They felt that HUD should define these terms, or make reference to an existing definition, for the sake of consistency and to avoid requiring each locality to make up definitions.

The Department is not defining "habitability" but is asking local governments to characterize their housing stock as "standard" and "suitable for rehab" which are to be locally defined. The phrase "not substantially complete" refers to one of two bases for rejecting a housing strategy, and § 91.72 describes how that is defined. Section 91.5 defines "homeless family with children" and "homeless individuals." Instead of asking for information on those in "imminent danger of becoming homeless," the final rule requests information on "needs of persons threatened with homelessness," allowing jurisdictions to provide a definition but suggesting that those with incomes below 30 percent of median income would be most vulnerable. While the final rule does not define "primary nighttime residence," the CHAS instructions do define sheltered and unsheltered, which describe the facilities under sheltered and the lack of appropriate facilities for unsheltered.

One commenter pointed out the HUD does not define concentrations of racial/ethnic minorities and low-income families. The Department has indicated in this final rule that the jurisdiction must state how it defines "area of racial/ethnic minority concentration" for purposes of describing its population characteristics. (See §§ 91.17(a)(1)(ii) and 91.42(a)(1)(ii).) The Department expects to publish a proposed rule for public comment on affirmatively furthering fair housing, which will include a definition of "area of minority concentration." Until public comment is obtained and a final rule is prepared, however, jurisdictions are to continue to define the concept.

Various commenters suggested changes or expanded language for several of the definitions given. A commenter objected to the definition of "overcrowding" because it might include common situations such as a mother and child living in a Single Room Occupancy unit. Since the Department will be providing 1990 Census data on overcrowding which uses the definition stated in the rule, this definition is preserved. Two commenters posited that the definition of "substantial amendment" was inadequate. Since it would be impossible for jurisdictions to anticipate all the programs that might eventually be applied for, an application for assistance through a program not specifically mentioned in the plan should not be considered as a "major change" requiring a "substantial amendment" to the strategy. The Department agrees with those concerned about the present definition of substantial amendment triggered by an application for a particular program. The term "substantial amendment" has been redefined to be a change to the five year strategy, which may be occasioned by a decision to undertake activities or programs that are inconsistent with the strategy. (See § 91.5.)

Finally, the suggestion was made by five commenters to substitute the term "persons with disabilities" for "those not capable of independent living" which was used in the interim rule, since it is more descriptive, easier to define, and less subjective. We have adopted the change.

F. Coordination of State and Local CHASs

1. Incorporation

Several commenters proposed that States no longer be given the option of incorporating local CHASs. It appeared to them that incorporation of local CHASs poses an additional workload on States with only minimal benefit. One commenter voiced concern that a State would be penalized for the late or inadequate submission by a local government. The commenter went on to suggest that language be included to ensure that there would be no penalty for States which have demonstrated good faith efforts at coordination with local jurisdictions in preparing the CHAS.

On the other hand, one commenter expressed support for HUD's proposal to give States the option of incorporating local CHASs into their CHAS, or to cover those localities in their State CHAS. In order to permit incorporation, one commenter suggested that local CHASs be due three months before those of States so that States have an opportunity to truly review the local CHASs. One commenter expressed a concern that States in general do not necessarily consult with local governments on issues that touch those communities and, therefore, State strategies may not reflect local needs in a particular area or may in fact conflict with a local planning strategy and needs. This commenter recommended that States be required to incorporate the housing strategy prepared by a unit of local government for a particular area or explain why it does not.

The Department agrees that the requirement to incorporate local CHASs into the State CHAS was not worthwhile, in that it generated an additional workload on the State without corresponding benefit in the quality of the CHASs. However, States and units of local government are urged to cooperate in the identification of State-wide needs and the use of resources to meet those needs.

2. Mandatory Coordination

One commenter felt that the rule should be changed so that States and local governments are encouraged rather than required to coordinate their housing strategies. The rule has been revised to reflect this approach.

Six commenters suggested that the rule should be expanded to include a requirement that jurisdictions in the same Metropolitan Statistical Area coordinate their housing strategies. This section of the rule has been revised to encourage coordination among jurisdictions in the same metropolitan area.

G. Consultotion with Social Service Agencies

Of the thirty-three commenters who responded to this topic, twenty-two

requested that HUD expand the consultation requirement to refer to various types of non-profit and social service agencies. Eight commenters believed that the requirement should be broadened to include public health agencies and that information on the number of children known to be lead poisoned be included where available. In addition, nine commenters recommended that the requirement be extended to include various types of voluntary, nonprofit housing and homeless assistance service providers (i.e., nonprofit housing developers, housing referral agencies, providers of homeless self-reliance program services). Nine commenters recommended that HUD require each jurisdiction preparing a CHAS to describe the "reasonable efforts" it has made to confer with social service agencies and certify to these efforts. Five commenters asked that the Department provide specific criteria that define the term "reasonable effort" in this section. One commenter suggested that the rule explicitly state that the purpose of the consultation requirement is for jurisdictions to gather input to help shape the CHAS, as opposed to an information gathering session for local officials.

The final rule includes a requirement that the jurisdiction include in its CHAS a summary of the development process, which describes the consultation with social service agencies serving the various populations in need. Beyond that, the citizen participation process and the requirement for a public hearing on needs should provide the means for extensive exchange and coordination among both public and private social service agencies. The Department believes that the State and local governments should be free to determine how this consultation takes place.

One commenter contended that the language in section 576 of the National Affordable Housing Act that requires consultation regarding the housing needs of foster care children in the development of the Housing Assistance Plan (HAP) also applies to the CHAS and should be included in the rule. The statute did not apply that consultation requirement to the CHAS, and so it is not included in this rule.

H. Resources

Two commenters responded to this section of the rule. One of the commenters believed that the phrase "where the State deems it appropriate" should be struck from this part so that all States would be required to include all Federally or State-owned land or property located in a geographic area that may be used to carry out the purposes of the Act. The commenter claimed that this language provided a "large loophole" that allowed States to exclude certain suitable properties from consideration. This commenter also recommended that States be required to consider sources of non-Federal money that may be available to assist jurisdictions in nonmetropolitan areas in meeting match requirements of Federal programs. One commenter did not understand how States could be asked to indicate Federal funding going to the State months before Federal budgets are established. One commenter stressed that the plan for investment should be considered an estimate only since the actual distribution of funds depends upon the ability and number of applicants and the needs actually revealed by applications. This same commenter felt that States should only be required to include programs that they actually administer and that they should be permitted to show percentages rather than actual dollar amounts for the estimated allocation of funds under each program.

The Department believes that States are in the best position to determine the use of Federal and State land to meet the purposes of the Act. The language of the rule follows the statute in requiring the identification of publicly-owned land for affordable housing use—where the State deems it appropriate. The Department agrees with comments on the difficulty of forecasting the level and availability of Federal funds particularly for competitive programs. The Department will provide a listing of Federal resources available and requests that the State provide similar information on non-Federal and private sources for use in carrying out proposed activities.

I. Goals

Six of the eight commenters responding to the section on goals recommended that the language more clearly indicate that the goals must reflect the number of families assisted by all programs. These commenters also suggested that goals be established for both the one-year and five-year periods, and cover assistance provided with State, local or private funds where no Federal monies are involved. A commenter recommended that goals for investment and household assistance should be specified by program, suggesting then that progress could be measured on the basis of a specific program, rather than on goals that may cover two or more programs.

The goals are to reflect the number of households that have benefitted through the investment of Federal funds (alone or in conjunction with other public or private funds) to provide housing that, at a minimum, satisfies HUD's housing quality standards for the Section 8 Housing Assistance Payments program. The Department believes that the development of a one-year investment plan naturally results in one-year goals, and that the development of goals for five years would be highly speculative. The Department has chosen not to request goals based on State or local funds, but State and local governments are free to provide more information than what is requested. Since two or more sources of funds may be used in a project, goals by program are not required.

Seven commenters wanted information displayed by the additional categories of race and ethnicity. While the goals are not broken down by race or ethnicity, the annual performance report statutorily requires such a breakdown for households served.

J. Public Hearing

Eighteen of the twenty-three commenters responding to the section requiring that a housing strategy include discussion of the public housing stock requested that language be added to require PHAs to cooperate in providing public housing information to the offices assigned the task of preparing the CHASs. The information should also include existing lead-based paint hazards, in their opinion. These commenters went on to propose that since jurisdictions may not have authority over PHAs or may not otherwise be able to ensure cooperation, the instructions in this section should be issued to all PHAs in the form of an amendment to the HUD handbook governing public housing management. The statute does not mandate PHA cooperation; however, the Department hopes that the CHAS is the product of cooperative efforts among all housing and social service agencies within the jurisdiction. The Department will consider providing management instructions to PHAs.

Four commenters urged that the information on public housing include the number of units available that are accessible and usable (or readily adaptable for use) by persons with disabilities. The accessibility issue with respect to public housing is addressed in the final rule (§ 91.17(a)(2)(ii)) by requiring information about accessible units and the need for modifying additional units. (Similar information is requested but not required with respect to other housing.)

One commenter sought to eliminate the language in the section of the strategy that leaves the impression that all PHAs are in need of improvements to management, operation, and the living conditions of residents, by adding the words "if appropriate" to the second sentence. The final rule preserves the language of the interim rule, because the statute requires the CHAS to include the PHA's strategy for such improvement.

One commenter objected to States having to include a description of the States' activities to encourage tenant management and ownership of public housing units, since States play a limited role in the operation of PHAs. The commenter noted that PHAs are subject to HUD review, and that HUD should exercise control directly. States are to discuss public housing resident initiatives only to the extent that a State housing authority or agency owns and manages public housing. This fact has been clarified in the final rule (§ 91.44(e)).

In the preamble of the interim rule, the Department mentioned the possibility of adding an element to the final rule requiring States to take a stronger role in preserving and improving the public housing stock. Five commenters responded, opposing such a requirement as exceeding the statute and as contrary to the intent of Congress. Commenters contended that such a requirement would add an unnecessary layer of bureaucracy to the operation of public housing and be overly burdensome to States. The final rule does not include this feature.

The Department received ten comments concerning public housing homeownership, eight of which suggested that language should be inserted to indicate that this section applies to jurisdictions only "if appropriate". Two commenters asked that HUD specifically mention in the rule that a jurisdiction's failure to convert public housing to private ownership would not affect CHAS approval. The rule reflects the statutory language concerning resident management and ownership. The failure to convert public housing to private ownership will not affect CHAS approval.

K. Public Policies

Twenty-two commenters responded with thirty-two comments to the section dealing with relevant public policies. Six of them recommended that State and local policies that promoted the preservation of affordable housing and prevented the displacement of very low-, other low-, and moderate-income families also be identified and included along with those policies negatively affecting the availability of affordable housing. These same commenters called for the identification of public policies and efforts that expand housing opportunities for minorities outside of areas of minority concentration or that equalize municipal services.

One commenter took issue with the wording of this section which assumes that every public policy that has a negative effect on the cost of housing is bad and must be ameliorated. Many necessary policies needed to protect the public health and welfare, such as building codes and zoning ordinances, do generally increase the cost of housing. Yet, a plan to ameliorate the "negative effects" of these policies is absurd. The commenter asks that the regulation be rewritten to distinguish between "reasonable" policies from those which inordinately effect the cost of housing. The rule does not require a jurisdiction to have a plan to ameliorate negative effects of every public policy that has an impact on affordable housing. Of course, a jurisdiction will not develop a strategy to change policies that are required by Federal law or that are viewed as having effects that are beneficial to the public.

A second commenter concluded that this section would be much more useful if it called for an examination of the costs and benefits of the policies in question, addressing as well the issue of who pays and who benefits. The Department believes this type of requirement would exceed its authority under NAHA, but would welcome such discussions in CHAS submissions.

One commenter strongly recommended the inclusion of concrete examples of actions that localities and States should take to remove or ameliorate negative effects of public policies. Another commenter asked that this section require a description of the jurisdiction's provisions for the development of affordable housing in its zoning and building codes, suggesting that plans to eliminate "bad" code provisions be mentioned in this section of the CHAS. Certainly, zoning and building codes are prime examples of policies that should receive scrutiny under this section. Other public policies that might be considered are discussed in the July, 1991 report to the President by the Advisory Commission on Regulatory Barriers to Affordable Housing.

One advocacy agency commented that it preferred the earlier draft of the CHAS, which required jurisdictions to cite local barriers to affordable housing and explain why recommendations to eliminate those barriers were not implemented. The statute does not permit the Department to require removal of barriers as a condition of CHAS approval. Therefore, the rules does not require an explanation of why actions have not been taken to remove them. However, if the CHAS does describe a plan to remove barriers, the performance report will be expected to describe the actions actually taken.

Although the rule text reflects the statutory language only, State and local jurisdictions are free to discuss policies that promote preservation, prevent displacement of low-income families, expand housing opportunities for minorities and equalize municipal services in this section.

L. Institutional Structure

Among the twenty-three comments addressing this section, fourteen recommended that the jurisdiction assess the existing and potential capacity of Community Housing Development Organization (CHDO) to productively use the funds being set aside for their use. They also recommended that the jurisdiction outline the steps that it is prepared to take in order to build capacity where it is lacking. Six commenters stressed the importance of disability organizations in the delivery system to ensure that the housing needs of the disabled are considered, while one commenter suggested that a voice for the homeless in this institutional structure would be encouraged by changing the term "housing strategy" where it appears in this section to "housing and homeless assistance strategy".

Assessment and involvement of CHDOs and disability organizations are both appropriate for discussion under this section. While the Department is not changing the term "housing strategy," both the rule and the accompanying instructions provide a strong emphasis on the nature and extent of homelessness and other persons with special needs requiring supportive housing and what facilities and services State and local jurisdictions have and are planning to provide.

In response to commenters concerned about intergovernmental cooperation in implementing a CHAS, a jurisdiction may describe under "Public Institutions," the section where a jurisdiction identifies the institutional structure through which it will carry out its affordable and supportive housing strategy, any intergovernmental cooperation and coordination taking place or contemplated among the State and any units of general local

governments in implementing the strategy.

M. Court Orders and Consent Decrees

Two commenters recommended that HUD issue specific instructions to jurisdictions under court orders or consent decrees with respect to assisted housing, to ensure that their housing strategies adequately address any obligations imposed by the judicial order. The rule requires State and local governments to specifically identify and explain any court orders (including a consent decree) or HUD-imposed sanctions that affect the provision of assisted housing or fair housing remedies. If none exist, that, too, should be stated.

Four commenters took issue with the language removing authority from the courts to enjoin activities which are being undertaken to implement an approved housing strategy during the pendency of an action challenging the adequacy of a strategy or the action of HUD in approving a strategy. The rule simply reflects the language of the statute on this issue.

N. Monitoring Procedures

Of the seven commenters responding on this topic, six suggested that the local governing body or the Chief Executive Officer should be required to approve a monitoring plan. One commenter contended that HUD should permit a jurisdiction to monitor under the same guidelines and reporting requirements already in place for the CDBG Program. One commenter requested that HUD provide guidance on developing local standards and procedures for monitoring. Other commenters suggested that HUD provide specific monitoring criteria, model procedures, and general reporting standards.

The CHAS, including the monitoring plan, is a document of the jurisdiction. Therefore, it must be signed by the Chief Executive Officer of the jurisdiction. Whether the CHAS is also approved by the local governing body is a matter for local determination.

The Department believes that the specific monitoring guidelines and reporting requirements of each program should be used. However, the Department will provide general monitoring guidelines.

O. Certifications

1. Fair Housing

Twenty commenters vehemently objected to the absence of strong provisions regarding fair housing and equal opportunity in the interim rule, fearing that this may give jurisdictions the impression that HUD has lowered its fair housing standards. Eighteen of these commenters contended that, at minimum, the CHAS should include the CDBG program requirements (24 CFR 570.904), which require recipients to conduct a study of the impediments to fair housing choice and to analyze possible actions to remedy the discriminatory condition. Sixteen commenters recommended that the rule should contain provisions that would require each jurisdiction to analyze institutional, policy and procedural impediments to fair housing and develop programs to intervene in discriminatory practices and eliminate discriminatory institutional elements. One commenter believed that the requirement for a fair housing certification was inadequate to ensure compliance with fair housing laws and suggested that the CHAS rule specifically require that jurisdictions comply with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, the Civil Rights Act of 1866, the Community Reinvestment Act, the Home Mortgage Disclosure Act, and the Equal Credit Opportunity Act. Another commenter expressed concern about the absence of administrative or legal recourse for citizens who feel that a State or local CHAS does not adequately identify or provide remedies for barriers to fair housing.

The Department is developing a proposed rule that would define and provide guidelines on "affirmatively furthering fair housing." The Department believes that current administrative and legal procedures are generally adequate to address complaints with regard to fair housing until that rule is issued. However, this rule has been revised to specifically require that records be maintained pertaining to any steps taken to carry out the fair housing obligation, consonant with the statutory definition of "certification." (See §§ 91.21(c) and 91.46(c).)

That reference to records also has been amplified to indicate that the records may include the analysis of impediments to fair housing and the description of actions taken to overcome these impediments, as described in § 570.904(c). Such records would be satisfactory to support a certification that the jurisdiction is affirmatively furthering fair housing.

The question of whether a certification that a jurisdiction is affirmatively furthering fair housing could be challenged by HUD and be cause for disapproval of a CHAS submission is addressed in § 91.72 of this rule. If HUD determines that a certification is inaccurate, it has the authority to reject the certification. Rejection of the certification would render the submission substantially incomplete and be cause for disapproval of the CHAS. HUD must provide the jurisdiction with notice and an opportunity to comment on its determination.

2. Replacement of Low-Income Housing and Relocation Assistance

All six commenters on this topic believed that the rule needed to be strengthened by specifically listing programs that are covered by residential antidisplacement and relocation assistance plans. The commenters went on to suggest that the CDBG antidisplacement plan should be appended to the CHAS so as to raise its visibility and to reinforce its role in the housing strategy. The Department believes a certification is sufficient for the housing strategy.

P. Citizen Participation

1. General

Twenty commenters responded to this topic. A large number of these commenters made suggestions to expand the citizen participation process to include specific groups in the process and to increase the level of citizen participation throughout all phases of CHAS development. Two commenters recommended that the CHAS document be required to be made available in accessible formats. Three commenters felt that copies of the CHAS document and any substantial amendments should be provided directly to disabled groups. Seven commenters contended that the citizen participation process should include outreach to homeless persons, persons with critical housing needs, low-income tenants who may be marginally housed, and people with special housing needs.

The Department has suggested in this final rule various means of outreach in order to engage more active participation from all groups which may have an interest.

Six commenters suggested that HUD prescribe a format for the CHAS forms and narrative that is understandable to citizens and is likely to enhance meaningful citizen participation. One commenter stated that HUD should include in the instructions, specific examples of ways that jurisdictions can facilitate input during the CHAS development process and that these should include broadly representative advisory task forces, surveys of and by community-based organizations, and neighborhood or regional public forums.

The Department believes that the standard outline for a housing strategy, a summary of the five-year plan, and simplification of the forms will go a long way in making the document more accessible and understandable to the public.

One commenters expressed concern regarding the lack of a process through which citizens can appeal to HUD if they disagree with specific CHAS documents. The commenter contended that such a mechanism would encourage jurisdictions to develop more thoughtful housing strategies. The statute does not authorize HUD to assure satisfaction of all citizens with a CHAS. However, HUD will be looking for compliance with citizen participation requirements when reviewing a submission for approval and may disapprove a CHAS as substantially incomplete if the jurisdiction has failed to follow these requirements.

2. Public Hearings

Twenty-one commenters responded to this section. Of these commenters, five objected to the lack of mandatory citizen participation during the initial development of the CHAS and recommended that the rule require jurisdictions to hold at least one additional hearing prior to or during the drafting of the CHAS. An additional six commenters felt that the rule should require one public hearing on the draft CHAS and another on the final CHAS document. Another commenter noted that the wording of the rule made it unclear whether the required hearing on "housing needs" and that on the "housing strategy" were one and the same. Another commenter felt that the public notice requirements should be extended to include public hearings for the issuance of the proposed CHAS, performance reports and substantial amendments.

The Department now requires that one or more public hearings on housing needs be conducted before the strategy is developed. The Department agrees with the commenters that one or more public hearings is appropriate on needs before the CHAS is developed. We believe that this placement of the hearing early in the CHAS development process more nearly reflects the statutory directive and will elicit more participation than a hearing after the document is prepared. If hearings are conducted at a later stage, they must provide a reasonable opportunity to review the draft CHAS.

Seven commenters contended that public hearings should be required for substantial amendments to the CHAS and for CHAS performance reports. Although public notice of these actions must be given, there is no statutory requirement to require a hearing. Consequently, the rule requires none.

One commenter stated that public hearings should be required to be held in accessible sites. Eight commenters recommended that the rule require public hearing to be conducted in the evening, to maximize the opportunity for meaningful citizen participation. The final rule does require that public hearings be conducted at accessible locations and at convenient times.

One commenter stated that States should be required to conduct more than one public hearing. The rule does provide that States must conduct an appropriate number of hearings in various parts of the State to effectively solicit comments from the public.

One commenter disagreed with the provision concerning HOME consortia stating that a separate public hearing need not be held in each member jurisdiction. We have eliminated the language at issue.

Citizens of all the member jurisdictions will have an opportunity to comment on the CHAS submission. Member jurisdictions may wish to conduct separate public hearings on need. However, the citizen participation provisions of the rule only require that the jurisdiction submitting the CHAS (the HOME consortium) conduct the required public hearing.

3. Public Comment Period

Of the thirty-six commenters responding to this section, thirteen contended that the required sixty-day comment period was excessive. Of these thirteen, eleven suggested that a thirty-day comment period would be adequate and more appropriate. One commenter felt that the sixty-day comment period increased the likelihood that jurisdictions would have to do substantial amendments to their CHASs, since the CHAS would have to be prepared months before appropriation levels for Federal housing programs are known. The Department has reduced the minimum period to thirty days.

Seven commenters believed that the rule should require interpreters for non-English speaking residents at public hearings. Another commenter felt that jurisdictions should be required to schedule a reasonable number of geographically dispersed hearings. The Department is supportive of the idea of a jurisdiction providing for an interpreter, but is leaving such matters to local discretion. Similarly, the location of hearings is left to the jurisdiction's discretion.

4. Publicity

Fourteen commenters contended that the rule should explicitly identify types of publications other than newspapers of general circulation in which CHAS summaries should be published. Among the publications suggested were neighborhood newspapers, foreign language publications, housing advocacy and union publications, and publications likely to be read by low-income, elderly, disabled or homeless persons. One additional commenter requested guidance on what constituted an "appropriate" number of newspapers of general circulation and on the required content of a "summary" of the CHAS. Commenters also felt that notice of public hearing should be required to be printed in nonlegal portions of local newspapers and announced on local radio and television stations. Twelve commenters recommended that the rule require the CHAS to be made available at places where citizens most likely to benefit from assisted housing congregate. Five commenters believed that jurisdictions should be required to provide full copies of the CHAS to interested parties at no charge upon request.

Publication of summaries in appropriate newspapers or periodicals is a local determination, not one specified by regulation. The cost of providing free copies of the entire CHAS could be considerable. Therefore, HUD declines to require it.

5. Access to Records

The interim rule provided that before a jurisdiction could submit a housing strategy, it must provide citizens a reasonable length of time to review the proposed strategy and reasonable access to "records requiring any uses of assistance the jurisdiction may have received during the preceding five years." One commenter questioned whether the records referenced here apply only to programs funded through the Act, or other programs as well. This section (§ 91.60 of the final rule) applies to HUD funds and those used with HUD funds.

Six commenters felt that this section should be altered to have broader coverage. Access to proposed substantial amendments to the housing strategy and access to proposed performance reports is assured under the revised language of § 91.62. In addition, the final rule includes a new section on public access to documents (§ 91.68). It provides that citizens be afforded reasonable and timely access to the source of estimates of need used

in the development of the housing strategy and to the written comments received by the jurisdiction on the proposed strategy, amendments, or performance report.

Another commenter felt that jurisdictions should be required to directly provide copies of substantial amendments and performance reports to all interested parties. Whether (free) copies should be provided to all interested parties is a matter of local discretion.

6. Summary of Citizen Comments

Six commenters responded to this section by recommending that, in addition to a summary of citizen comments, the CHAS include a summary of citizen comments regarding needs and a summary of the comments received regarding the jurisdiction's performance during the previous year. Some commenters suggested that a written transcript of all citizen comments be made available for citizen review at a central location, while another suggested that HUD require jurisdictions to provide all citizen commenters with a summary of comments to ensure that all comments, whether favorable or unfavorable, are included.

Generally, public hearings on needs are governed by local law. Local law may require that a transcript be prepared, but HUD is not requiring one in this rule. The CHAS must contain a summary of citizen comments on the CHAS, and those comments may discuss needs. The annual performance report is also required to have a summary of citizen comments. A written transcript of verbatim comments is an expensive undertaking and not one that HUD is requiring, although many States and larger jurisdictions may voluntarily do this.

7. Resolution of Citizen Complaints

The ten commenters responding to the section on resolution of citizen complaints contended that the requirements should be more specific and stringent. The commenters recommended that HUD require that all written complaints be answered in writing. Eight of the commenters suggested that a 15-day deadline from date of receipt be imposed on responses to written requests, that all requests and responses be kept on file in a central location, and that HUD establish a procedure for resolving complaints not resolved at the jurisdictional level. One commenter recommended that HUD review all complaints and responses.

The Department believes that resolving disputes about how to meet housing needs and how to establish priorities for assistance is best done at the jurisdictional level. While States and local governments must respond to citizen comments and complaints, reasonable time periods are best established without HUD-imposed timeframes. However, for CDBG entitlement grantees, existing regulations require that a response be provided within 15 working days, where practicable.

Q. CHAS Submission and Review

1. Submission of Housing Strategy

Two of the thirteen commenters responding to this section objected to the linkage of timely submission of a CHAS to "favorable allocation of Section 8 Program funding," since the Section 8 Program is not subject to CHAS requirements. Although Section 8 does not require a certification of consistency with a CHAS, NAHA provides that allocations for the Section 8 Certificate and Voucher Programs are to be made in a way that enables participating jurisdictions to carry out their strategies. However, this section has been revised to simply state the deadline and not elaborate on the impact of failure to satisfy it. The submission target date has been changed from October 31 in the interim rule to the period of October 1 to December 31 in the final rule, with December 31 being an actual deadline for submission. Since a certification of consistency with an approved CHAS is required for applicants for many HUD programs, jurisdictions are strongly encouraged to submit their housing strategy on October 1 to avoid the possibility that they or a non-profit operating in the jurisdiction would be unable to apply for assistance during the early part of a fiscal year.

One commenter contended that the requirement that a new five-year housing strategy be developed whenever new Census data becomes available is unnecessary. The commenter believed that needs so far outweigh available resources that only very substantial changes in data would justify preparation of a new CHAS. Another commenter suggested that the Department allow jurisdictions to amend the affected sections of the CHAS when new Census data becomes available, rather than requiring a new CHAS submission. One commenter asked for clarification on how often jurisdictions participating in the American Housing Survey and other special U.S. Census studies must submit a new CHAS.

The Department believes that the advent of a new decennial Census mandates a new complete submission after all data items are generally available. There are no special requirements imposed on those jurisdictions participating in the American Housing Survey or special U.S. Census studies.

Six commenters recommended that citizens be allowed to petition for a new housing strategy when a major change in the housing market or a natural disaster has occurred, if the jurisdiction does not voluntarily choose to do so. Citizens may communicate with their governments about the extent and content of the housing strategy at any point. The Department does not want to prescribe additional procedures about resolution of complaints.

2. Approval of Housing Strategy

Numerous commenters objected to the bases upon which a CHAS may be disapproved. Twenty-one commenters believed that the purposes of NAHA (section 103), standing alone, are neither broad enough nor specific enough to serve as a basis for a determination of inconsistency. They called for the seven objectives of National Housing Policy (section 102 of NAHA) to be combined with the five purposes (section 103 of NAHA) as bases for determining whether a CHAS is inconsistent with NAHA. The Department cannot expand upon the purposes of the act as a basis for disapproval, since the act specifically limits HUD's authority to disapprove to the "purposes of the act."

In the opinion of other commenters, the second criterion, that a CHAS submission is "not substantially complete", emphasizes the provision of data but does not ensure accuracy. These commenters suggested that a CHAS submission should be able to be disapproved on the basis of grossly erroneous needs and market data. If the jurisdiction uses Census data, HUD would not disapprove the CHAS on the basis of incomplete data. If the jurisdiction uses other data, the methodology for gathering the data must meet HUD standards in order to avoid rejection on the basis of incomplete data.

Other commenters maintained that the final rule should allow disapproval of a CHAS that fails to have a sufficiently specific strategy or whose priorities and programs do not address the most crucial housing needs identified. A strategy must meet the regulatory requirements, which do mandate a specific strategy. The adequacy of the strategy to meet the needs identified is not within the scope of the incompleteness test. A statutory change would be needed to make such a change in the rule.

One commenter objected to the provision that prohibits HUD from disapproving a strategy based on the jurisdiction's adoption or continuation of a public policy identified as affecting the availability of affordable housing. The commenter contended that any public policy that results in a reduction of the amount of affordable housing should result in a disapproval. The statute directly prohibits the Department from disapproving a strategy based on a jurisdiction's adoption or continuation of a public policy which adversely affects the production of affordable housing.

3. Amendment and Resubmission of Housing Strategy

Three commenters expressed concern regarding the timeframe for resubmission of a CHAS that has been disapproved. The commenters felt that a resubmission due date 45 days from the date of first disapproval might prove inadequate in cases where major changes are needed. One commenter suggested that HUD allow a jurisdiction 60 days from the time that it receives the specific reasons for the disapproval to resubmit its CHAS. Another commenter suggested that the language of the rule be changed to allow "not less than 45 days" for resubmission. This is the statutory language. The Department believes that these timeframes are generally adequate. If a jurisdiction believes that it has good cause for submission or resubmission of a CHAS after the deadline, it may seek a waiver of the deadline from HUD.

Seven commenters suggested that, in the case of changes to or resubmission of a disapproved strategy, jurisdictions be required to notify the public and citizens be given the opportunity to comment. A change to, or resubmission of, a disapproved strategy does not require notification of, or comment by, the public. However, copies of the strategy eventually submitted by the jurisdiction must be made available to the public.

R. Performance Reports and Reviews

Of the eighteen commenters responding to these sections, six felt that the performance report should be provided in an easily understandable form for citizen review before submission to HUD. These commenters felt that the performance report should show how resources are spent by source, activity and location and that all government resources unexpended at the end of the year should be documented. Another five commenters requested that the performance report contain information on the racial and ethnic status of persons assisted. Six commenters requested the inclusion of information on persons with disabilities.

The Department has developed a format for the annual performance report that parallels the contents of the one-year action plan. States and local governments are to discuss annual performance, including resources made available within the jurisdiction, how the available resources are utilized, and the households and persons assisted along with their racial and ethnic status. An assisted household or individual is one who has received benefit during the reporting period.

One commenter objected to HUD's intention to measure performance based on the number of families served, rather than how well a jurisdiction carried out its strategy. The statute requires statement of goals in terms of number of families served, and the Department feels a duty to evaluate its performance on that basis. Another commenter said that, as with reporting requirements in the Community Development Block Grant programs, there is a problem reporting on housing achievements for units that are vacant at the time of project commitment. Under the final rule, goals are not based on commitments but on the number of families that actually have received a benefit during the period. Therefore, a vacant unit cannot be reported as having accomplished a goal.

Six commenters suggested that HUD apply the same sanctions contained in § 91.75 of the interim rule regarding the failure to submit a performance report to jurisdictions that fail to perform. In § 91.82, the Department has maintained the sanctions regarding the failure to submit a satisfactory report. Failure to perform will be the subject of HUD comments in its report to the jurisdiction (and likely citizen comment, as well).

Four commenters noted that the October 31 due date for the performance report is unrealistic, given the time necessary to collect the information, analyze progress, prepare the report and comply with the citizen participation requirements. One commenter suggested that States be given at least 6 to 8 months after the end of the fiscal year to submit the performance report. Others recommended allowing at least 90 days after the end of the reporting year for submission.

The rule has been revised to allow additional time. Annual performance reports must be submitted no later than December 31 for the prior Federal fiscal year.

S. Miscellaneous

1. Abbreviated Strategy

Four of the six commenters responding to this subject requested that the Department provide more detailed guidance on the applicability of and specific content requirements for abbreviated strategies. One of these commenters felt that only jurisdictions participating in the HOME Program should be required to do a full CHAS. Another commenter contended that the requirement to prepare a full CHAS constituted an undue burden on small CDBG entitlement communities. One commenter suggested language that would require that abbreviated strategies to include only those elements that directly relate to the program for which they are being submitted.

In § 91.25 of the final rule, the Department has detailed the contents of an abbreviated strategy and has streamlined the requirements (i.e., no data forms are required, discussion of only the elements directly related to the need identified and the program(s) being applied for). However, a full CHAS must be submitted by CDBG entitlement communities, insular areas, and HOME participating jurisdictions.

2. Special Cases

Two commenters requested clarification in the rule regarding the CHAS content requirements for HOME consortia and for CDBG entitlement communities participating in HOME consortia and urban county agreements. Section 91.23 of the rule addresses the requirements of a consortia submission. Each consortium is now required (instead of being permitted) to submit combined information for the Community Profile market condition and needs, as well as a combined Five-year Strategy. The Annual Plan must contain information for the entire consortium, as well as separate submissions for each CDBG entitlement community for investment plan and goals.

The interim rule was silent on this issue. The Department believes that it is necessary for each HOME consortium to have a consolidated CHAS. The jurisdiction is the consortium, and it must submit its CHAS and it must certify consistency with that document.

3. Waiver Authority

Seven commenters recommended that HUD require all jurisdictions requesting waivers under this section to provide citizens with notice and the opportunity to comment. Time constraints for

preparation and submission of a waiver request make this suggestion impracticable.

Another commenter suggested that the Department interpret "good cause" in connection with waiver request liberally and that the waiver authority be delegated to the Regional Office level. In accordance with the Department of HUD Reform Act of 1989 (Pub. L. 101–135, approved December 15, 1989), waivers can only be granted by a Departmental official of Assistant Secretary rank or higher. The provision of the interim rule requiring any waiver to be granted by the Secretary has been removed in this final rule, so that the authority may be delegated to the Assistant Secretary for Community Planning and Development.

V. Findings and Certifications

A. Environmental Review

A Finding of No Significant Impact with respect to the environment was made when the interim rule was issued, in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The changes made in the interim rule and in this final rule do not change the program sufficiently to affect the validity of that Finding. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

B. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291, Regulatory Planning Process. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

C. Federalism Impact

One commenter felt that the Department's finding of no substantial impact on federalism is unwarranted given the interim rule's lack of clarity regarding the requirement for State and local coordination. The degree of State and local coordination is left to the determination of these governments in this final rule. This arrangement has the least intrusive effect on those governments, leaving the least federalism impact.

The same commenter supported the provision prohibiting the disapproval of a CHAS based on the adoption or continuation of a public policy by a jurisdiction that affects the availability of affordable housing, but expressed great concern about the proposal contained in the report of the Secretary's Commission on Barriers to Affordable Housing that would abrogate this principle. However, another commenter contended that the Department should drop this prohibition on disapproval to further encourage affordable housing. The final rule retains the provision prohibiting disapproval of a CHAS based on the adoption or continuation of a public policy affecting the availability of affordable housing, since the statute contains this limitation. The report of the Secretary's commission is the subject of legislative consideration, but no changes can be made in the rule without legislative action.

Another commenter objected to the absence of a federalism assessment in the interim rule. The federalism assessment is somewhat lengthy, and so it is prepared as a separate document for submission to the Office of Management and Budget. It is available for review by members of the public in the office of the Rules Docket Clerk, room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410–0500 during the hours of 7:30 a.m. to 5:30 p.m. on regular business days.

In connection with the preparation of this final rule, the General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has certified that the method of implementing the Comprehensive Housing Affordability Strategy requirements of the National Affordable Housing Act used in this final rule achieves the goals of the statute in a way that promotes the Federal objectives, while having the least possible adverse effects on the operations and functions of the States and local governments.

D. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The rule governs the planning function of State and local governments in their efforts to provide affordable housing for families. Therefore, to some degree the rule has an indirect effect of promoting better living conditions for families. However, the changes in this rule from the interim rule are not likely to have any direct impact on families, as such.

E. Regulatory Agenda

This rule was listed as sequence number 1120 under the Office of the Secretary in the Department's Semiannual Regulatory Agenda published in April 27, 1992 (57 FR 16804, 16818), under Executive Order 12291 and the Regulatory Flexibility Act.

F. Impact on Small Entities

One commenter disagreed with the Department's finding that the Interim Rule had no significant economic impact on small entities. The commenter contended that the requirements exceed the minimum burden required by the Act in the way of a planning document. The Department has substantially modified and reduced the requirements associated with the preparation of a housing strategy and believes the burden is minimal in terms of a plan required by the statute. Furthermore, this final rule provides for abbreviated strategies, where appropriate, which will often be the case with small cities.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities.

G. Public Reporting Burden

The Department has determined that the following sections of the final rule contain information collection or recordkeeping requirements.

ANNUAL REPORTING BURDEN

FINAL RULE—COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY

Rule provision	Number of respondents	Responses/ respondent	Hours per response	Burden hours
Five-year CHAS:				
Localities (91.15–.23, 91.50–.53)	800	1	391	312,800
States (91.40–.48)	50	1	469	23,450
Annual Plan: [1] (91.21, .46, .53)	850	1	158	134,300
Abbreviated strategy: [2] (91.25)	100	1	100	10,000
Recordkeeping (included in above)	[3] 850	1	12	([4])
	[5] 100	1	4.5	([4])
Total burden				480,550.

[1] Submitted in each of the four years following submission of the complete strategy.
[2] Submitted by a jurisdiction instead of the complete CHAS.
[3] For complete CHAS.
[4] For abbreviated strategies.
[5] Included in above figures.

List of Subjects

24 CFR Part 91

Grant programs—Indians, Low and moderate income housing, Homeownership, Public housing.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—housing and community development, Grant programs—education, Guam, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands, Student aid.

Accordingly, parts 91 and 570 of title 24 of the Code of Federal Regulations are amended as follows:

PART 91—STATE AND LOCAL HOUSING AFFORDABILITY STRATEGIES

1. Part 91 is revised to read as follows:

Subpart A—General

Sec.
91.1 Purpose and applicability.
91.5 Definitions.
91.10 Review by courts.

Subpart B—Contents of Strategy: Local Governments

91.15 General.
91.17 Community profile.
91.19 Five-year strategy.
91.21 Annual plan.
91.23 Special case—Home consortia.
91.25 Special case—abbreviated strategy.

Subpart C—Contents of Strategy: States

91.40 General.
91.42 State profile.
91.44 Five-year strategy.
91.46 Annual plan.
91.48 Special case—District of Columbia.

Subpart D—Insular Areas

91.50 General.
91.51 Insular area profile.
91.52 Five-year strategy.
91.53 Annual plan.

Subpart E—Coordination and Consultation

91.55 Coordination of State and local housing strategies.
91.57 Consultation with social service agencies.

Subpart F—Citizen Participation

91.60 Preparation of housing strategy.
91.62 Substantial amendment to housing strategy or submission of performance report.
91.63 Minor amendment.
91.65 Resolution of citizen complaints.
91.68 Public access to documents.

Subpart G—HUD Review and Approval

91.70 Submission of housing strategy.
91.72 Approval of a strategy.
91.75 Actions in case of disapproval of a strategy.
91.78 Revision and resubmission of a housing strategy.

Subpart H—Use of Housing Strategy

91.80 Consistency certification.
91.82 Performance reports.
91.85 HUD performance reviews.

Subpart I—Miscellaneous

91.99 Waiver authority.

Authority: 42 U.S.C. 12701–12708; 42 U.S.C. 3535(d).

Subpart A—General

§ 91.1 Purpose and applicability.

(a) *Purpose.* The purpose of the State and local housing affordability strategy is to assure that jurisdictions receiving HUD assistance plan for the housing and related needs of very low-income, low-income, and moderate-income families in their jurisdictions in a way that improves the availability and affordability of decent, safe, and sanitary housing in a suitable living environment, including housing for persons needing supportive services, using private resources as well as governmental ones, and including both homeownership and rental options.

(b) *Applicability.* In order to receive funding under certain HUD programs, a State or unit of general local government must have a Comprehensive Housing Affordability Strategy (CHAS or housing strategy) that has been approved by HUD.

(1) *Categories of program requirements.* In addition to the requirement to have a CHAS, each of the programs listed in paragraph (b)(2) of this section has specific certification requirements, which are set forth in the program regulations, guidelines, or notices of funding availability. They fall into the following categories:

(i) In certain HUD programs, a jurisdiction that is an applicant for funds must submit a certification that the proposed housing activities are consistent with the housing strategy of the jurisdiction.

(ii) In certain HUD programs, an applicant that is not a jurisdiction must obtain a certification by the public official responsible for submitting the housing strategy that the proposed housing activity is consistent with the approved housing strategy for the jurisdiction in which the proposed project will be located. The certification must be obtained from the lowest level of government that has an approved housing strategy.

(A) If the local government does not have an approved housing strategy, the applicant would have a few options. If the proposed project were consistent with the State CHAS, it could obtain a certification of consistency from the State. If the proposed project were not consistent with the State CHAS, it could ask the local government to prepare an abbreviated strategy (see § 91.25)

appropriate to the proposed project, or it could ask the State to amend its CHAS to make it consistent with the proposed project.

(B) If the local jurisdiction has an approved CHAS but the proposed project is not consistent with it, the applicant could ask the locality to amend its CHAS, to form the basis for a certification of consistency.

(iii) In certain HUD programs, an applicant that is a jurisdiction also must submit a certification that it is "following" an approved housing strategy.

(iv) In certain HUD programs, an applicant that is a jurisdiction must certify that the funds will be used pursuant to the jurisdiction's approved housing strategy.

(2) *Programs covered.* (i) The HOME Program (Title II of the Act; 24 CFR part 92);

(ii) The HOPE I (Public Housing Homeownership) Program (Secs. 411–419 of the Act, adding title III to the United States Housing Act of 1937);

(iii) The HOPE II Program (Homeownership of Multifamily Units) (Secs. 421–431 of the Act);

(iv) The HOPE III Program (Homeownership of Single Family Homes) (Secs. 441–448 of the Act);

(v) The Low-Income Housing Preservation Program (prepayment avoidance incentives, Secs. 601–613 of the Act, creating the Low-Income Preservation and Resident Homeownership Act of 1990), when administered by a State agency (see 24 CFR 248.177);

(vi) The Housing Opportunities Program for Persons with AIDS (Secs. 851–863 of the Act; 24 CFR part 574);

(vii) The Supportive Housing for the Elderly Program (Sec. 202 of the Housing Act of 1959, as amended by Sec. 801 of the Act; 24 CFR part 889);

(viii) The Supportive Housing for Persons with Disabilities Program (Sec. 811 of the Act, 24 CFR part 890);

(ix) The Homeless Housing Assistance Programs (Secs. 411–443 and 451–484 as amended by Sec. 837 of the Act) of the Stewart B. McKinney Homeless Assistance Act: Emergency Shelter Grants (24 CFR part 576); Transitional Housing (24 CFR part 577); Permanent Housing for Handicapped Homeless Persons (24 CFR part 578); Supplemental Assistance for Facilities to Assist the Homeless (24 CFR part 579); Single Room Occupancy Housing (24 CFR part 882, subpart H); and Shelter Plus Care (24 CFR Subtitle A, Appendix D); and

(x) The Community Development Block Grant Programs—Entitlement, Small Cities, States and Insular Areas (Secs. 106 and 107 of the Housing and Community Development Act of 1974; see 24 CFR part 570).

(3) *Programs not covered.* Public Housing and Indian Housing funding (authorized under titles I and II of the United States Housing Act of 1937) is not dependent on the existence of, or a certification of consistency with, an approved housing strategy for the jurisdiction. Section 8 funding is not dependent on the existence of, or certification of consistency with, an approved housing strategy, except for the Section 8 Moderate Rehabilitation Single Room Occupancy Program (authorized under Section 441 of the McKinney Act). However, HUD funding allocations for the Section 8 Certificate and Voucher Programs are to be made in a way that enables participating jurisdictions to carry out their housing strategies (Sec. 556 of the Act). In addition, one basis for approval of rents for the Section 8 Programs that are higher than 110 percent of the fair market rents for the area based on special local conditions is a HUD determination that implementation of the approved housing strategy for the area requires the higher rents (Sec. 543(b) of the Act).

§ 91.5 Definitions.

Act. The Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, 104 Stat. 4079).

Annual plan. The component of the complete submission that specifies the jurisdiction's plan for the first Federal fiscal year covered by the submission, or the sole required submission in each of the four years after a complete submission was made. (See §§ 91.21 and 91.46.)

Assisted family. For purposes of identification of goals, in accordance with §§ 91.21(a)(1)(iv), 91.46(a)(1)(iv) and 91.52(a)(1)(iv), a family is assisted if, during the period covered by the annual plan, they will benefit through one or more programs included in the jurisdiction's investment plan. A renter is benefitted if the person takes occupancy of affordable housing that is newly acquired (standard housing), newly rehabilitated, or newly constructed, and/or receives rental assistance. An existing homeowner is benefitted during the year if the home's rehabilitation is completed. A first-time homebuyer is benefitted if a home is purchased during the year. A homeless person is benefitted during the year if the person becomes an occupant of transitional or permanent housing. A non-homeless person with special needs is considered as being benefitted, however, only if the provision of supportive services is linked to the acquisition, rehabilitation, or new construction of a housing unit and/or the provision of rental assistance during the year. Families that will benefit from more than one program activity (e.g., a renter who receives rental assistance while occupying newly rehabilitated housing) must be counted only once. To be included in the goals, the family's housing unit must, at a minimum, satisfy the HUD Section 8 Housing Quality Standards (see, e.g., section 882.109).

Certification. A written assertion, based on supporting evidence which must be kept available for inspection by HUD, by the Inspector General of HUD, and by the public. The assertion shall be deemed to be accurate unless HUD determines otherwise, after inspecting the evidence and providing due notice and opportunity for comment.

Complete submission. A strategy prepared in accordance with subparts E and F that fulfills the requirements of subpart B, C, or D, as appropriate, with respect to the entire five-year period to follow.

Cost burden. The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data available from the U.S. Census Bureau.

Disabled family. A family composed of one or more persons at least one of whom is an adult (a person of at least 18 years of age) who has a disability. A person shall be considered to have a disability if the person is determined to have a physical, mental or emotional impairment that:

(1) Is expected to be of long-continued and indefinite duration,

(2) substantially impedes his or her ability to live independently, and

(3) is of such a nature that the ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–6007). The term "disabled family" also includes the surviving member or members of any family described in the first sentence of this paragraph who were living in an assisted unit with the deceased member of the family at the time of his or her death.

Elderly family. For HUD rental programs, a family of no more than two persons in which the head of the household or spouse is at least 62 years of age.

Elderly person. A person who is at least 62 years of age.

Family. See definition in § 812.2, which differs from the Census definition.

Federal preference for admission. The preference given to otherwise eligible applicants under HUD's rental assistance programs who, at the time they seek housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. (See, for example, § 882.219.)

Homeless family. Family that includes at least one parent or guardian and one child under the age of 18, a homeless pregnant woman, or a homeless person in the process of securing legal custody of a person under the age of 18.

Homeless individual. An unaccompanied youth (17 years or younger) or an adult (18 years or older) without children.

Housing. Includes manufactured housing and manufactured housing lots.

Housing strategy (CHAS). A Comprehensive Housing Affordability Strategy prepared in accordance with this part, consisting of a complete submission, an annual plan, or an abbreviated strategy.

HUD. The United States Department of Housing and Urban Development.

Insular area. One of the following: the Northern Mariana Islands, the U.S. Virgin Islands, Guam, or American Samoa.

Jurisdiction. A State or unit of general local government.

Large families. Families of five or more persons.

Large family unit. A housing unit containing at least three bedrooms.

Low-income families. Families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. (This term corresponds to low and moderate-income households in the CDBG programs.)

Moderate-income families. Families whose incomes are between 80 percent and 95 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 95 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. (This definition differs from that for moderate-income households in the CDBG programs.)

Other low-income families. Families whose incomes qualify as "low-income" but not "very low-income", i.e., those whose incomes are between 50 percent and 80 percent of the median income for the area. (This term corresponds to moderate-income households in the CDBG programs.)

Overcrowding. A housing unit containing more than one person per room.

Participating jurisdiction. Any State or unit of general local government that has been so designated in accordance with the HOME Program (24 CFR part 92).

Primary housing activity. In the five-year strategy, a means of providing or producing affordable housing, such as rental assistance, production, rehabilitation, or acquisition, that will be allocated significant resources and/or will be pursued intensively for addressing a particular housing need.

Resubmission. A housing strategy that has been revised after being disapproved by HUD, which is then resubmitted to HUD.

Secondary housing activity. In the five-year strategy, a means of providing or producing affordable housing, such as rental assistance, production, rehabilitation, or acquisition, that will receive fewer resources and less emphasis than primary housing activities for addressing a particular housing need.

Severe cost burden. The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, based on data available from the U.S. Census Bureau.

State. Any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Substantial amendment. A major change in an approved housing strategy. It involves a change to the five-year strategy, which may be occasioned by a decision to undertake activities or programs that are inconsistent with that strategy. A change to the annual plan that is consistent with the five-year strategy does not constitute a substantial amendment. (See § 91.63).

Unit of general local government. A city, town, township, county, parish, village, or other general purpose political subdivision of a State; an urban county; the insular areas, or a general purpose political subdivision thereof; a consortium of such political subdivisions recognized by HUD in accordance with the HOME Program (24 CFR part 92); and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to HUD assistance.

Very low-income families. Low-income families whose incomes do not exceed 50 percent of the median family income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. (This term corresponds to low-income households in the CDBG programs.)

§ 91.10 Review by courts.

(a) The adequacy of information contained in a housing strategy about public policies affecting the affordability of housing shall not be reviewable by any Federal, State, or other court. Review of a housing strategy by any Federal, State, or other court shall be limited to determining whether the process of development and the content of the strategy are in substantial compliance with the requirements of the statute.

(b) During the pendency of any action challenging the adequacy of a housing strategy or the action of HUD in approving a strategy, the court shall not have the authority to enjoin activities taken by the jurisdiction to implement an approved housing strategy. Any housing assisted during the pendency of such action shall not be subject to any order of the court resulting from such action.

Subpart B—Contents of Strategy: Local Governments

§ 91.15 General.

(a) A complete housing strategy for a unit of general local government consists of the information required in §§ 91.15 through 91.21, submitted in accordance with the instructions prescribed by HUD. An abbreviated strategy consists of the information required in § 91.25.

(b) The jurisdiction shall describe the significant aspects of the process by which the housing strategy was developed, the identity of the agencies, groups, organizations, and others who participated in the process, and a description of the jurisdiction's consultations with social service agencies regarding the housing needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by such agencies. It shall also include a summary of the citizen

participation process, and a description of the efforts made to broaden public participation in the development of the CHAS. (See subparts E and F of this part.)

§ 91.17 Community profile.

(a) *Market and inventory characteristics.*

(1) *Community description.*—(i) *Background and trends.* In order to create a context for formulation of the CHAS, the jurisdiction shall describe the important historical, social, and economic factors and trends affecting housing affordability in the jurisdiction. It may also describe these factors and trends with respect to specific neighborhoods within the jurisdiction.

(ii) *Demographics.* The jurisdiction must present essential demographic data describing the general population (including trends in population), family, and racial and ethnic characteristics of the community. The jurisdiction must identify and describe any areas within the jurisdiction with concentrations of racial/ethnic minorities and/or low-income families, stating how it defines the terms "area of low-income concentration" and "area of racial/ethnic minority concentration" for this purpose. The locations and degree of these concentrations must be identified, either in a narrative or on one or more maps.

(2) *Market and inventory conditions.*— (i) *General market and inventory.* (A) Based on the data and information available, the jurisdiction must describe the significant general housing market and inventory conditions, including such aspects as supply, demand, condition, and cost of housing. Data on the housing inventory must include the ownership or rental status of units, whether they are occupied or vacant, their cost and size by number of bedrooms, and their structural condition, i.e., standard, substandard but suitable for rehabilitation, or substandard and not suitable for rehabilitation. (The jurisdiction must define in its CHAS the terms "standard condition" and "substandard condition but suitable for rehabilitation.") An assessment of the hazards of housing related environmental concerns, such as lead-based paint, should be included, to the extent information is available.

(B) The jurisdiction should indicate whether units are suitable for occupancy by elderly families, disabled families (including whether modifications are necessary to enable elderly and disabled people to remain in their homes), families with children, and any other category of need identified by the jurisdiction. The impediments and opportunities created by these market conditions for providing affordable rental housing, promoting homeownership opportunities, alleviating overcrowding, and meeting the needs of underserved population groups, such as large families, should be highlighted.

(ii) *Assisted housing inventory.* This description shall include the total numbers of units assisted by a local, State or federally funded program, and an assessment of whether any such units are expected to be lost from the assisted housing inventory for any reason.

(A) The public housing inventory information shall include the total number of public housing units in the jurisdiction broken out by unit size, the number of vacant units, and a description of the condition and rehabilitation needs (including the need for modifying additional units to provide accessibility to persons with disabilities).

(B) Information about other assisted housing shall include, to the extent known, by unit size, the number of units assisted (including those occupied by tenants receiving tenant-based assistance), broken out by "elderly" or "family" type, under the Section 8 Housing Assistance Payments program; under the Section 202 program for the elderly; under the Section 811 program for persons with disabilities; under the Section 221(d)(3) and Section 236 interest reduction programs; and under the Farmers Home Administration Section 502 program. The number of these units that are vacant should be estimated.

(iii) *Inventory of facilities and services for the homeless and persons threatened with homelessness.* For homeless individuals or homeless families, the jurisdiction must estimate the number of emergency shelters, transitional housing for homeless persons, permanent housing for homeless persons with disabilities, and of the overnight sleeping capacity or number of housing units in each of these types of facilities. It also shall describe the availability of day shelters, soup kitchens and other facilities providing assistance on less than an overnight basis, and the nature and extent of the programs providing vouchers to assist homeless persons in obtaining shelter, meals, or services. It shall discuss the nature and extent of social service programs and describe the programs targeted to prevent low-income individuals and families with children from becoming homeless.

(iv) *Inventory of supportive housing for non-homeless persons with special needs.* The jurisdiction must describe the facilities and services that assist persons who are not homeless but who require supportive housing, such as the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addictions, persons diagnosed with AIDS and related diseases, and any other categories the jurisdiction specifies. This description must include estimates of the number and types of supportive housing, such as group homes, single-room occupancy (SRO), or other housing that includes a planned service component; efforts to coordinate service programs for addressing the needs of populations in supportive housing; and the nature and extent of programs for ensuring that persons returning to the community from mental and physical health institutions receive appropriate supportive housing.

(b) *Needs assessment.* Information included in this portion of the CHAS shall be based on data available from the U.S. Census, as updated by any properly conducted local study, or any other reliable source that the jurisdiction clearly identifies, and should reflect the consultation with social service agencies conducted in accordance with § 91.57 and the citizen participation process.

(1) *Current estimates and five-year projections.* The jurisdiction must discuss its estimate of the significant current needs for housing assistance separately for very low-income, other low-income, and moderate-income families by tenure type (renter/owner) and for different family categories (such as large families). To the extent that any racial or ethnic group has disproportionately greater need for any income category, family type, or tenure type, in comparison to the needs of that category as a whole, assessment of that specific need shall be included. The discussion shall include:

(i) Discussion of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by very low-income, other low-income, and moderate-income renters and owners compared to the jurisdiction as a whole;

(ii) Examination and discussion of the local public housing agency's (PHA's) section 8, public housing (or combined) waiting list(s), including such aspects as the number of families on the list(s), when the list was last open and for how long, the percentage of those qualifying for a Federal preference for admission, the PHA's system for applying the Federal preferences, its own local preferences, if any, and the factors influencing the composition of the waiting list;

(iii) The need for homeownership for first-time homebuyers;

(iv) To the extent data are available, as assessment of the housing needs of elderly persons and persons with disabilities who do not require supportive housing services; and

(v) Consideration of whether and how the jurisdiction's housing needs for current residents and those expected to reside in the area will change over the five-year period covered by the CHAS for each income group.

(2) *Nature and extent of homelessness.*—(i) *Needs of sheltered and unsheltered homeless.* The jurisdiction shall describe the nature and extent of homelessness within the jurisdiction, addressing separately the need for facilities and services for homeless individuals and homeless families, both sheltered and unsheltered, and, to the extent this information is available, by racial and ethnic group. Any numerical estimates must reflect methods for counting the homeless that eliminate or correct for duplicative reporting.

(ii) *Subpopulations.* To the extent the jurisdiction has data that were gathered using a methodology acceptable to HUD, it shall describe, within the sheltered and unsheltered categories, the need for facilities and services for homeless persons who are: severely mentally ill only, alcohol/other drug addicted only, severely mentally ill and alcohol/other drug addicted, fleeing domestic violence, homeless youth, diagnosed with AIDS and related diseases, and other categories that the jurisdiction identifies, and provide the percentages of these subgroups who are sheltered and unsheltered.

(iii) *Needs of persons threatened with homelessness.* The jurisdiction shall also describe the characteristics and needs of low-income individuals and families with children (especially those with incomes below 30 percent of area median income) who are currently housed but threatened with homelessness. A quantitative analysis is not required. If a jurisdiction provides estimates of the numbers of such individuals and families with children, it must include in the CHAS a definition of this population, and it must describe the method used to generate the estimate.

(3) *Populations with special needs—other than homeless.* The jurisdiction shall estimate, to the extent practicable, the number of persons who are not homeless but require supportive housing, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons diagnosed with AIDS and related diseases, and any other category the jurisdiction may specify, and describe their supportive housing needs. The jurisdiction also should assess the need of low-income families in public or assisted housing for a homeownership program, or an organized program to achieve economic independence and self-sufficiency identified in the public housing agency's Family Self-Sufficiency Program Plan, if any.

(c) *Available resources.* The jurisdiction shall list by activity type (e.g., acquisition, rehabilitation, new construction, homebuyer assistance, rental assistance, homeless assistance, homeless prevention), all resources and programs expected to be available to the jurisdiction from non-Federal public (i.e., State and local governments) and private sources for use in carrying out activities. The jurisdiction shall include among its resources, where the jurisdiction deems it appropriate, an identification of any publicly-owned land or property located in the jurisdiction that may be used to carry out the activities. A separate list shall describe Federal program resources, for which HUD will provide the information to be included. The jurisdiction should summarize its experience with these programs and evaluate their advantages and disadvantages in achieving affordable and supportive housing goals.

§ 91.19 Five-year strategy.

(a) *Summary of five-year strategy.* The jurisdiction is encouraged to provide a summary of the significant elements of its five-year plan for achieving its strategic purposes and objectives.

(b) *Priority analysis and strategy development.* The jurisdiction shall establish its general priorities for allocating Federal, State, and local governmental resources reasonably expected to be available, as well as any identified private resources over the next five-year period, geographically within the jurisdiction, among different activity types appropriate for meeting identified needs, and among different categories of low-income families with needs for housing and supportive housing assistance. This identification will include the type and size of family to be served and the types of activities to be undertaken, indicating a relative assignment for the importance of each priority from 1 (highest) to 3 (lowest), indicating "0" where the category is not a priority at all. It must discuss the basis for assigning the relative priority given to a particular group's needs. When determining the relative priority, attention should be paid to the extent to which various categories of residents are already receiving housing assistance.

(1) *Analysis.* An analysis of each priority category of very low- and other low-income residents or activities shall consider how the size, distribution, condition, and cost of the jurisdiction's housing inventory matches the severity of needs and types of housing problems of each priority category of residents. (Family types may be grouped together for discussion where the analysis would apply to more than one of them.) The jurisdiction shall describe how this analysis provides the basis for establishing the category of residents or activity type as a priority. For very low-income renters, the analysis should discuss how the housing problems of households meeting Federal or local preferences for housing assistance were considered. The rationale for establishing the priorities and determining the relative numerical assignment of priorities should flow logically from the analysis.

(2) *Investment plan (activities and programs).* (i) For each category of residents assigned a priority, the jurisdiction shall describe the primary and secondary housing activities it plans to undertake and the programs and resources it plans to pursue over the coming five-year period to respond to the identified needs. Decisions about primary and secondary activities (as defined in § 91.5) and appropriate programs should be based upon their relative efficiency in addressing a particular housing need under the jurisdiction's current and anticipated housing market and inventory conditions, with primary activities being those judged most cost-effective and appropriate. The jurisdiction shall explain how these significant market characteristics influence its decisions about using funds and allocating investment among activities such as rental assistance, production of new units, rehabilitation of units (including modifications necessary to enable elderly and disabled people to remain in their homes), and acquisition of existing units.

(ii) The investment plan must include a description of the five-year strategy for addressing the emergency shelter and transitional housing needs of homeless individuals and families with children (including subpopulations), preventing low-income individuals and

families with children (especially those with incomes below 30 percent of median) from becoming homeless, and helping homeless individuals and homeless families make the transition to permanent housing and independent living.

(c) *Relevant public policies, court orders, and HUD sanctions.*—(1) *Public policies.* The jurisdiction shall describe all public policies, particularly those of the jurisdiction (including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment), that affect the provision of affordable housing and assess the extent to which the costs or incentives to develop, maintain, or improve affordable housing are affected by each of these policies. For purposes of this paragraph, the term "public policies" includes policies embodied in the jurisdiction's statutes, ordinances, regulations, or administrative procedures and processes. The jurisdiction shall describe its strategy, including specific actions to be taken over the next five years, to remove or ameliorate any negative effects of the public policies.

(2) *Court orders and HUD sanctions.* The jurisdiction shall specifically identify and explain any court orders (including consent decrees) or HUD-imposed sanctions that affect the provision of assisted housing or fair housing remedies. It shall state how the court orders or sanctions affect resources and housing goals. If there are no court orders or sanctions, the jurisdiction must so state.

(d) *Institutional structure and intergovernmental cooperation*—(1) *Description.* The jurisdiction must identify the institutional structure through which it will carry out its housing strategy. Each organization should be identified by type (public, private, profit or non-profit) and purpose (financial institution, planning agency, mental health agency, etc.). The relationships of the various organizations and the respective roles and responsibilities of each organization in carrying out the strategy must be described. With respect to public institutions, the jurisdiction must describe any intergovernmental cooperation and coordination taking place or contemplated.

(2) *Overcoming gaps.* (i) The jurisdiction shall assess the capacity of the institutional structure to carry out the housing strategy. It shall identify and discuss the existing strengths and gaps in the delivery of programs and services, including efforts to make use of available housing, social service, and mental and other health care resources. The assessment also should discuss the gaps in program and service delivery that may result in persons becoming homeless.

(ii) The jurisdiction shall describe the actions to be taken over the next five years to eliminate identified gaps.

(e) *Public housing improvements.* The jurisdiction must describe the public housing agency's plan, including specific actions and steps to be taken over the next five years, to improve the management and operation of the public housing units located in the jurisdiction and to improve the living environment of public housing residents.

(f) *Public housing resident initiatives.* The jurisdiction must describe its activities to be undertaken over the next five years, in coordination with the local public housing agency, to encourage public housing residents to become more involved in the management of public housing and in acquiring ownership of their units.

(g) *Monitoring standards and procedures.* The jurisdiction shall describe its standards and procedures for monitoring activities undertaken with funds the jurisdiction receives from HUD. The standards and procedures described must provide for monitoring to be carried out on a regular basis to ensure that statutory and regulatory requirements are being met and that information submitted to HUD is correct and complete.

§ 91.21 Annual plan.

(a) *Strategy implementation*—(1) *Investment plan.* For each priority category of residents or activities discussed in the five-year strategy that will receive attention during the coming Federal fiscal year, the jurisdiction shall identify the categories of residents to be assisted, housing activities to be undertaken, and all programs and resources in support of those activities for which it intends to apply to the Federal or State government, as well as its own funds that it will budget or that otherwise will be available for this purpose during the coming Federal fiscal year.

(i) Among the types of Federal resources to be identified are HUD programs, Farmers Home Administration programs, Department of Energy energy conservation programs, and the Low-Income Housing Tax Credit allocated to the jurisdiction. Among the types of non-Federal resources to be identified are the State and local governmental programs and any private resources that are available. In describing available resources, where the jurisdiction deems it appropriate, it shall identify publicly-owned land or property located in the jurisdiction that could be used to carry out activities under the housing strategy.

(ii) The jurisdiction shall describe any matching requirement of the various funding sources to be used or for which it will apply, and how it anticipates meeting those requirements. It also shall specifically describe its plan for leveraging private and non-Federal funds by the use of Federal funds.

(iii) In addition to programs for which it plans to apply directly, the jurisdiction must identify programs for which it would be generally supportive of an application by another entity.

(iv) The jurisdiction must specify one-year goals for numbers of families to be assisted, by tenure type, under each activity specified with funds already on hand, including program income, and those funds to be available during the Federal fiscal year covered by the annual plan. (See definition of "assisted family" in § 91.5.)

(v) The jurisdiction must specify its actions during the next year to address emergency shelter and transitional housing needs of homeless individuals and homeless families, to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, and to help homeless persons make the transition to permanent housing and independent living.

(2) *Geographic distribution.* The jurisdiction shall specify the geographic areas in which it will direct assistance over the Federal fiscal year, giving its rationale for the selection and describing the nature of the impact the jurisdiction hopes to achieve in those areas through such investment. (The jurisdiction need only describe assistance that it will direct to one or more geographic areas within the jurisdiction; assistance not described by the jurisdiction will be presumed to be available anywhere within the jurisdiction.)

(3) *Service delivery and management.* The jurisdiction shall identify the governmental and other entities that will deliver and manage the specific housing assistance programs identified in the plan.

(b) *Other actions.* The jurisdiction shall describe the actions it plans to take in the Federal fiscal year to address relevant public policies, to develop institutional structure, to foster public housing improvements or resident initiatives. (See § 91.19(c)–(f).)

(c) *Certifications.* Each jurisdiction submitting a CHAS is required to submit a certification that it will affirmatively further fair housing and is required to maintain records pertaining to any steps taken to carry out the certification. These records may include the analysis of impediments to fair housing and the description of actions taken to overcome them described in 24 CFR 570.904(c). If a jurisdiction receives Community Development Block Grant funds, its CHAS also must include a certification that it is in compliance with a residential anti-displacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974.

(d) *Summary of citizen comments and responses.* To demonstrate compliance with subpart F of this part, the jurisdiction must submit its summary of comments received from citizens concerning the housing strategy and its response.

§ 91.23 Special case—HOME Consortia.

(a) *General.* When two or more jurisdictions form a consortium for the purpose of receiving a formula allocation under the HOME program (24 CFR part 92), the consortium *must* submit a single, consolidated CHAS that covers the entire geographic area encompassed by the consortium as a condition funding. Where a consortium includes one or more Community Development Block Grant (CDBG) entitlement grantee (24 CFR part 570, subpart D), the entitlement community is not to submit a separate CHAS in addition to the consortium's CHAS.

(b) *Requirements for consolidated HOME consortium CHAS that covers an entitled community.* In addition to the information covering the entire consortium, the CHAS must contain an investment plan, covering the information required by § 91.21(a)(1)(i), (ii) and (iv), separately for each entitlement community.

§ 91.25 Special case—abbreviated strategy.

(a) *Who may submit an abbreviated strategy.* A jurisdiction that is not a CDBG entitlement community under 24 CFR part 570, subpart D, is not expected to be a participating jurisdiction (in the HOME program), and is not an insular area, may submit an abbreviated housing strategy that is appropriate to the types and amounts of assistance sought from HUD. (See §§ 91.50–91.52 for requirements applicable to insular areas.)

(b) *When is on abbreviated strategy necessary?*

(1) *Jurisdiction.* When a jurisdiction that is permitted to use an abbreviated strategy applies to HUD for funds under a program requiring an approved CHAS (see § 91.1(b)(2)), it must obtain approval of an abbreviated strategy, so that it can submit the required certification of consistency with a housing strategy.

(2) *Other applicants.* When an eligible applicant other than a jurisdiction (e.g., a PHA or nonprofit organization) seeks to apply for funding under a program requiring an approved CHAS (see § 91.1(b)(2)), the jurisdiction—if it is permitted to use an abbreviated strategy—may prepare an abbreviated strategy appropriate to the project. (See also § 91.1(b)(1)(ii)(A) and (B).)

(3) *Limitation.* There are limitations on submission of an abbreviated strategy for two of the programs for which an approved housing strategy is required (listed in § 91.1(b)(2)). For the HOME program, an abbreviated strategy is only permitted with respect to reallocations to other than participating jurisdictions (see part 92, subpart J). For the CDBG program, an abbreviated strategy may be submitted only for the Small Cities program.

(c) *Contents.* In an abbreviated strategy, a jurisdiction only must address the requirements described in this paragraph.

(1) *Market Characteristics.* Jurisdictions must provide information on market characteristics pertaining to the eligible population group(s) to be assisted by the program for which funds are being requested, or in the case of a request for HOPE funding, information pertaining to the homeownership market for the target population.

(2) *Needs data.* A jurisdiction must address its current needs for the population that is eligible to be assisted by the program for which funds are being requested (e.g., low-income and very low-income persons for the CDBG and HOME programs; homeless persons for the McKinney Act programs).

(3) *Homeless assistance strategy.* If McKinney Act funds are being applied for, the jurisdiction must include a description of its strategy for addressing the emergency shelter and transitional housing needs of homeless individuals and families with children, preventing low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, and helping homeless individuals and homeless families make the transition to permanent housing and independent living.

(4) *Investment plan.* A jurisdiction must indicate whether any additional private or public resources will be used to address the identified needs. The strategy must clearly identify any Federal or State agencies that are providing or being requested to provide funds for the program(s) being applied for, and must identify any private or local resources drawn wholly or partially from other Federal funding sources.

(5) *Geographic distribution.* The geographic area (if other than the entire jurisdiction) that the strategy intends to serve for the target population(s) specified must be identified.

(6) *Fair housing.* A jurisdiction must provide a certification that it will affirmatively further fair housing and must maintain records pertaining to any steps taken to carry out the certification.

(7) *Replacement of low-income housing and relocation assistance.* A jurisdiction applying for assistance under the CDBG Small Cities program must provide a certification that it is in compliance with a residential anti-displacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974.

(8) *Goals.* A jurisdiction must include a statement indicating the number of families or persons that will be assisted with the funds being requested under each program for which it is applying.

(d) *Procedure*—(1) *Citizen participation.* An abbreviated strategy and any amendment to it must be prepared in accordance with the citizen participation procedures of subpart F of this part.

(2) *Timing.* An abbreviated strategy must be submitted for HUD approval before or at the time of submission of the application for funding. A jurisdiction having an approved abbreviated strategy that decides at a later date to submit an application for assistance under one or more programs not consistent with the approved strategy, must submit an amended abbreviated strategy covering the new program(s) to HUD before or with the new application(s).

(e) *HUD review and approval.* An abbreviated strategy and any amended abbreviated strategy is subject to the review and approval requirements of subpart G of this part. An application for funds with respect to which HUD approval of a submitted abbreviated strategy is pending will either be put on hold until the strategy is approved or will be disapproved, dependent on the rules or time frames involved in the particular program(s) for which funds are being requested.

(f) *Performance reports.* The requirements of subpart G of this part apply to an abbreviated strategy. These annual reports must continue to be submitted by the jurisdiction in connection with an abbreviated strategy until completion of the project(s) or activities funded.

Subpart C—Contents of Strategy: States

§ 91.40 General.

(a) A complete housing strategy for a State consists of the information required in §§ 91.40 through 91.46, submitted in accordance with the instructions prescribed by HUD.

(b) The State has the discretion to structure, within the framework provided, its presentation of the required narratives, data, and tables for the entire State and for those sub-State areas and regions it considers to be significant and meaningful to the development of a housing strategy.

(c) The State is not required to present needs and market inventory data beyond that which is provided by HUD, except where data are being required "to the extent available".

(d) The State shall describe the significant aspects of the process by which the housing strategy was developed, the identity of the agencies, groups, organizations, and others who participated in the process, and a description of the State's consultations with social service agencies regarding the housing needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by such agencies. It shall also include a summary of the citizen participation process, and a description of the efforts made to broaden public participation in the development of the CHAS. (See subparts E and F of this part.)

§ 91.42 State profile.

(a) *Market and inventory characteristics*—(1) *Description of State*—(i) *Background and trends.* In order to create a context for formulation of the CHAS, the State shall describe the important historical, social, and economic factors and trends affecting the housing affordability in the State or in specific areas or communities within the State.

(ii) *Demographics.* The State must present essential demographic data describing the general population (including trends in population), family, and racial and ethnic characteristics of the State and describe any areas within the State with concentrations of racial/ethnic minorities and/or low-income families, stating how it defines the terms "area of low-income concentration" and "area of racial/ethnic minority concentration" for this purpose. The locations and degree of these concentrations must be identified, either in a narrative or on one or more maps.

(2) *Market and inventory conditions.*

(i) *General market and inventory.* (A) Based on the data and information available to the State, it must describe the significant general housing market and inventory conditions Statewide, and for sub-state areas or regions considered appropriate, including such aspects as supply, demand, condition, and cost of housing. Data on the housing inventory must include the ownership or rental status of units, whether they are occupied or vacant, and their cost and size by number of bedrooms. An assessment of the hazards of housing related environmental concerns, such as lead-based paint, should be included, to the extent information is available. The discussion of the general market inventory shall also include an assessment of whether any rental housing is expected to be lost from the Federally assisted housing inventory administered by a State housing agency for any reason, including losses through demolition or conversion to homeownership, or through prepayment or voluntary termination of a Federally assisted mortgage. If no such losses are anticipated or there is no Federally assisted housing inventory being administered directly by a State housing agency, this must be clearly stated.

(B) To the extent available, the State may include information on the structural condition of the housing inventory, i.e., standard, substandard but suitable for rehabilitation, or substandard and not suitable for rehabilitation. (If the State does provide this description, the State must define in its CHAS the terms "substandard condition" and "substandard condition but suitable for rehabilitation", for the entire State or for sub-State areas.) The State may indicate whether units are suitable for occupancy by elderly families, disabled families (including whether modifications are necessary to enable elderly and disabled people to remain in their homes), families with children, and any other category of need identified by the State. The impediments and opportunities created by these market conditions for providing affordable rental housing, promoting homeownership opportunities, alleviating overcrowding, and meeting the needs of underserved population groups, such as large families, should be highlighted.

(ii) *Inventory of facilities and services for homeless persons and persons threatened with homelessness.* For homeless individuals and families with children, the State must provide a brief inventory of facilities and services that meet emergency shelter and transitional housing needs, such as estimates of the number of emergency shelters, transitional housing for homeless persons, permanent housing for homeless persons with disabilities, and of the overnight sleeping capacity or number of housing units of each of these types of facilities, the availability of day shelters, soup kitchens and other facilities providing assistance on less than an overnight basis and the nature and extent of the programs providing vouchers to assist homeless persons in obtaining shelter, meals, or services; discussion of the nature and extent of social service programs; and descriptions of the programs targeted to prevent low-income individuals and families with children from becoming homeless.

(iii) *Inventory of supportive housing for non-homeless persons with special needs.* The State must describe, to the extent information is available, the facilities and services that assist persons who are not homeless but who require supportive housing, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addictions, persons diagnosed with AIDS and related diseases, and any other categories the State specifies. This description must include estimates of the number and types of supportive housing such as group homes, single-room occupancy (SRO), or other housing that includes a planned service component; efforts to coordinate service programs for addressing the needs of populations in supportive housing; and the nature and extent of programs for ensuring that persons returning to the community from mental and physical health institutions receive appropriate supportive housing.

(b) *Needs assessment.* Information included in this portion of the CHAS shall be based on data available from the U.S. Census, as updated by any properly conducted study, or any other reliable source that the State clearly identifies, and should reflect the consultation with social service agencies conducted in accordance with § 91.57 and the citizen participation process.

(1) *Current estimates and five-year projections.* The State must discuss its estimate of significant current needs for housing assistance separately for very low-income, other low-income, and moderate-income families by tenure type (renter/owner) and for different family categories (such as large families and single persons). To the extent that any racial or ethnic group has disproportionately greater need for any income category, family type, or tenure type, in comparison to the needs of that category as a whole, an assessment of that specific need shall be included. The discussion shall include:

(i) Discussion of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by very low-income, other low-income, and moderate-income renters and owners;

(ii) For States administering Section 8 and public housing programs, examination and discussion of the State housing agency's waiting list(s) for assisted housing, including such aspects as the number of families or individuals on the list(s), when the list was last open and for how long, the percentage of those qualifying for Federal preferences for admission, the State housing agency's system for applying the Federal preferences, its own preferences, if any, and the factors influencing the composition of the waiting list;

(iii) The need for homeownership by first-time homebuyers;

(iv) To the extent data are available, an assessment of the housing needs of the elderly persons and persons with disabilities who do not require supportive housing services; and

(v) Consideration of whether and how the State's housing needs for current residents and those expected to reside in the State will change over the five-year period covered by the CHAS for each income group.

(2) *Nature and extent of homelessness*—(i) *Needs of sheltered and unsheltered homeless.* The State shall describe the nature and extent of homelessness within the State, addressing separately the need for facilities and services for homeless individuals and homeless families, both sheltered and unsheltered, and, to the extent this information is available, by racial and ethnic group. Any numerical estimates must reflect methods for counting the homeless that eliminate or correct for duplicative reporting.

(ii) *Subpopulations.* To the extent the State has data that were gathered using a methodology acceptable to HUD, it shall describe, within the sheltered and unsheltered categories, the need for facilities and services for homeless persons who are: severely mentally ill only, alcohol/other drug addicted only, severely mentally ill and alcohol/other drug addicted, fleeing domestic violence, homeless youth, diagnosed with AIDS and related diseases, and other such categories as the State identifies, and provide the percentages of these subgroups who are sheltered and unsheltered.

(iii) *Needs of persons threatened with homelessness.* The State also shall describe the characteristics and needs of low-income individuals and families with children (especially those with incomes below 30 percent of area median income) who are currently housed but threatened with homelessness. A quantitative analysis is not required. If a State provides estimates of the numbers of such individuals and families with children, it must include in the CHAS a definition of this population and provide a description of the method used to generate the estimates.

(3) *Populations with special needs—other than homeless.* The State shall estimate, to the extent practicable, the number of persons who are not homeless but who require supportive housing, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addiction, persons diagnosed with AIDS and related diseases, and any other category the State may specify, and describe their supportive housing needs. The State should also assess the need of low-income families in public or assisted housing for a homeownership program or an organized program to achieve economic independence and self-sufficiency, as identified in the public housing agency's Family Self-Sufficiency Program Plan, if any.

(c) *Available resources.* The State shall list by activity type (e.g., acquisition, rehabilitation, new construction, homebuyer assistance, rental assistance, homeless assistance, homeless prevention), all resources and programs expected to be available to the State from non-Federal public and private sources for use in carrying out activities. The State shall include among its resources, where the State deems it appropriate, an identification of any publicly-owned land or property located in the State that may be used to carry out the activities. A separate list shall describe Federal program resources, for which HUD will provide the information to be included. The State should summarize its experience with these programs and evaluate their advantages and disadvantages in achieving affordable and supportive housing goals.

§ 91.44 Five-year strategy.

(a) *Summary of five-year strategy.* The State is encouraged to provide a summary of the significant elements of its five-year plan for achieving its strategic purposes and objectives.

(b) *Priority analysis and strategy development.* The State shall establish its general priorities for allocating Federal and State governmental resources reasonably expected to be available, as well as any identified private resources over the next five-year period, geographically within the State, among different activity types appropriate for meeting identified needs, and among different categories of very low- and other low-income families with needs for housing and supportive housing assistance. This identification will include the type and size of family to be served and the types of activities to be undertaken, indicating a relative assignment for the importance of each priority from 1 (highest) to 3 (lowest), indicating "0" where the category is not a priority at all. It must discuss the basis for assigning the relative priority given to a particular group's need. When determining relative priority, attention should be paid to the extent to which various categories of residents are already receiving housing assistance.

(1) *Analysis.* An analysis of each priority category of very low- and other low-income residents or activities shall consider how the size, distribution, condition, and cost of the jurisdiction's housing inventory matches the severity of needs and types of housing problems of each priority category of residents. (Family types may be grouped together for discussion where the analysis would apply to more than one of them.) The State shall describe how this analysis provides the basis for establishing the category of residents or activity type as a priority. For very low-income renters, the analysis should discuss how the housing problems of households meeting Federal or local preferences for housing assistance were considered. The rationale for establishing the priorities and determining the relative numerical assignment of priorities should flow logically from this analysis.

(2) *Investment Plan (activities and programs).* (i) For each category of residents assigned a priority, the State shall describe the primary and secondary housing activities it plans to undertake and the programs and resources it plans to pursue over the coming five-year period to respond to the identified needs. Decisions about primary and secondary activities (as defined in § 91.5) and appropriate programs should be based on their

relative efficiency in addressing a particular housing need under the State's current and anticipated housing market and inventory conditions, with primary activities being those judged most cost-effective and appropriate. The State shall explain how these significant market characteristics influence its decisions about using funds and allocating investment among activities such as rental assistance, production of new units, rehabilitation of units (including modifications necessary to enable elderly and disabled people to remain in their homes), and acquisition of existing units.

(ii) The investment plan must include a description of the five-year strategy for addressing the emergency shelter and transitional housing needs of homeless individuals and families with children (including subpopulations), preventing low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, and helping homeless persons make the transition to permanent housing and independent living.

(b) *Relevant public policies, court orders, and HUD sanctions.*—(1) *Public policies.* The State shall describe all public policies, particularly those of the State (including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment), that affect the provision of affordable housing and assess the extent to which the costs or incentives to develop, maintain, or improve affordable housing are affected by each of these policies. For purposes of this paragraph, the term "public policies" includes policies embodied in the State's statutes, regulations, or administrative procedures and processes. The discussion should also include an analysis of the extent to which State laws and policies permit local jurisdictions to develop or maintain excessive, exclusionary, discriminatory, or duplicative policies. The State shall describe its strategy, including specific actions to be taken over the next five years, to remove or ameliorate any negative effects of the public policies.

(2) *Court orders and HUD sanctions.* The State shall specifically identify and explain any court orders (including consent decrees) or HUD-imposed sanctions that affect the provision of assisted housing or fair housing remedies. It shall state how the court orders or sanctions affect resources and housing goals. If there are no court orders or sanctions, the State must so indicate.

(c) *Institutional structure and intergovernmental cooperation.*—(1) *Description.* The State must identify the institutional structure through which it will carry out its housing strategy. Each organization should be identified by type (public, private, profit or non-profit) and purpose (financial institution, planning agency, mental health agency, etc.). The relationships of various organizations and the respective roles and responsibilities of each organization in carrying out the strategy must be described. With respect to public institutions, the State must describe any intergovernmental cooperation and coordination taking place or contemplated. The State shall specifically address the relationship between the State and local jurisdictions, their respective roles, and the extent to which the State plans to require local governments to assume responsibilities.

(2) *Overcoming gaps.* (i) The State shall assess the capacity of the institutional structure to carry out the housing strategy. It shall identify and discuss the existing strengths and gaps in the delivery of programs and services, including efforts to make use of available housing, social service, and mental and other health care resources. The assessment also should discuss the gaps in program and service delivery that may result in persons becoming homeless.

(ii) The State shall describe the actions to be taken over the next five years to eliminate identified gaps.

(d) *Low-income housing tax credits.* The State shall describe its strategy, including specific actions and steps to be taken over the five years, for coordinating the low-income housing tax credit with the development of housing for which rents are affordable to very low-income and other low-income families.

(e) *Public housing resident initiatives.* The State must describe its activities to be undertaken over the next five years to encourage residents of public housing operated by the State housing agency to become more involved in the management of public housing and in acquiring ownership of their units.

(f) *Monitoring standards and procedures.* The State shall describe its standards and procedures for monitoring activities undertaken with funds the State receives from HUD. The standards and procedures described must provide for monitoring to be carried out on a regular basis to ensure that statutory and regulatory requirements are being met and that information submitted to HUD is correct and complete.

§ 91.46 Annual plan.

(a) *Strategy implementation*—(1) *Investment plan.* For each priority category of residents or activities discussed in the five-year strategy that will receive attention during the coming Federal fiscal year, the State shall identify the categories of residents to be assisted, housing activities to be undertaken, and all programs and resources in support of those activities for which it intends to apply to the Federal government, as well as its own funds that it will budget or that otherwise will be available for this purpose during the coming Federal fiscal year.

(i) Among the types of Federal resources to be identified are HUD programs, Farmers Home Administration programs, Department of Energy energy conservation programs, and the Low Income Housing Tax Credit allocated to the State. Among the types of non-Federal resources to be identified are the State programs and any private resources that are available. In describing available resources, where the State deems it appropriate, it shall identify the publicly-owned land or property located in the State that could be used to carry out activities under the housing strategy.

(ii) The State shall describe any matching requirement of the various funding sources to be used and how it anticipates meeting those requirements. It also shall specifically describe its plan for leveraging private and non-Federal funds by the use of Federal funds.

(iii) In addition to programs for which it plans to apply directly, the State must identify programs for which it would be generally supportive of an application by another entity.

(iv) The State must specify one-year goals for numbers of families to be assisted, by tenure type, under each activity or program specified with funds already on hand, including program income, and those funds to be available during the Federal fiscal year covered by the annual plan. (See definition of "assisted family" in § 91.5.)

(v) The State must specify its actions during the next year to address emergency shelter and transitional housing needs of homeless individuals and homeless families, to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, and to help homeless persons make the transition to permanent housing and independent living.

(2) *Geographic distribution.* The State shall specify the geographic areas in which it will direct assistance over the next Federal fiscal year, giving its rationale for the selection and describing the nature of the impact the State hopes to achieve in those areas through such investment. (The State need only describe assistance that it will direct to one or more geographic areas within the State; assistance not described by the State will be presumed to be available anywhere within the State.)

(3) *Service delivery and management.* The State shall identify the governmental and other entities that will deliver and manage the specific housing assistance programs identified in the plan.

(b) *Other actions.* The State shall describe the actions it plans to take during the Federal fiscal year to address relevant public policies, to develop institutional structure, to coordinate the Low-Income Housing Tax Credit, and to foster public housing resident initiatives. (See § 91.44(c)–(f).)

(c) *Certifications.* Each State submitting a CHAS is required to submit a certification that it will affirmatively further fair housing and is required to maintain records pertaining to any steps taken to carry out the certification. These records may include the analysis of impediments to fair housing and the description of actions taken to overcome them described in 24 CFR 570.904(c). If a State receives Community Development Block Grant funds, its CHAS also must include a certification that it is in compliance with a residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974.

(d) *Summary of citizen comments and responses.* To demonstrate compliance with subpart F of this part, the State must submit its summary of comments received from citizens concerning the housing strategy and its response.

§ 91.48 Special case—District of Columbia.

Although the District of Columbia is defined as a State for purposes of the Act, it must follow the strategy content requirements for a unit of local government with the addition of a description of its strategy to coordinate low-income housing tax credits.

Subpart D—Insular Areas

§ 91.50 General.

(a) A complete housing strategy for an insular area consists of the information required in §§ 91.50 through 91.53, submitted in accordance with the instructions and tables prescribed by HUD.

(b) The insular area shall describe the significant aspects of the process by which the housing strategy was developed, the identity of the agencies, groups, organizations, and others who participated in the process, and a description of the insular area's consultations with social service agencies regarding the housing needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by such agencies. It shall also include a summary of the citizen participation process, and a description of the efforts made to broaden public participation in the development of the CHAS. (See subparts E and F of this part.)

§ 91.51 Insular area profile.

(a) *Market and inventory characteristics*—(1) *Description of insular area.* (i) *Background and trends.* In order to create a context for formulation of the CHAS, the insular area shall describe the important historical, social, and economic factors and trends affecting housing affordability in the jurisdiction or in specific neighborhoods within the insular area.

(ii) *Demographics.* The insular area must present essential demographic data describing the general population (including trends in population), family, and racial and ethnic characteristics of the insular area.

(2) *Market and inventory conditions.* (i) *General market and inventory.* Based on the data and information available to the insular area, it must describe the significant general housing market and inventory in the insular area. This shall include a discussion of the entire insular area (and areas or communities within insular area that the insular area considers appropriate for discussion) general housing market in terms of supply, demand, condition, and cost of housing. To the extent information is available, the insular area must describe the ownership or rental status of units, whether they are occupied or vacant, and their cost and size by number of bedrooms, as well as information on the structural condition of the housing inventory, i.e., standard, substandard but suitable for rehabilitation, or substandard and not suitable for rehabilitation. (The insular area must define in its CHAS the terms "substandard conditions" and "substandard condition but suitable for rehabilitation," for the entire insular area or for areas within the insular area.) The impediments and opportunities created by these market conditions on producing rental housing, promoting homeownership opportunities, alleviating overcrowding, and meeting the needs of underserved population groups, such as large families, should be highlighted. The discussion of the general market inventory shall also include an assessment of whether any rental housing is expected to be lost from the Federally assisted housing inventory administered by the insular area or public housing agency for any reason, including losses through demolition or conversion to homeownership, or through prepayment or voluntary termination of a Federally assisted mortgage. If no such losses are anticipated or there is no Federally assisted housing inventory being administered directly by the insular area or public housing agency, this must be clearly stated.

(ii) *Inventory of facilities and services for homeless persons and persons threatened with homelessness.* The insular area must estimate the number and give a brief description of emergency shelters, transitional housing for homeless persons, permanent housing for homeless persons with disabilities, and non-housing facilities (such as soup kitchens) providing assistance to homeless persons. The insular area shall also describe social service programs for homeless persons and programs to prevent low-income individuals and families with children from becoming homeless.

(iii) *Inventory of supportive housing for non-homeless persons with special needs.* To the extent information is available, the insular area must describe the facilities and services that assist persons who are not homeless but who require supportive housing, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with alcohol or other drug addictions, persons diagnosed with AIDS and related diseases, and any other categories the insular area specifies. This description must include estimates of the number and types of supportive housing such as group homes, single-room occupancy (SRO), or other housing that includes a planned service component; efforts to coordinate service programs for addressing the needs of populations in supportive housing; and the nature and

extent of programs for ensuring that persons returning to the community from mental and physical health institutions receive appropriate supportive housing.

(b) *Needs assessment.* Information included in this portion of the CHAS shall be based on data available from the U.S. Census, as updated by any properly conducted local study, or any other reliable sources that the insular area clearly identifies, and should reflect the consultation with social service agencies conducted in accordance with § 91.57 and the citizen participation process.

(1) *Current estimates and five-year projections.* The insular area must discuss its estimate of the significant current needs for housing assistance for very low-income and other low-income families by tenure type (renter/owner) and for different size families. The insular area shall discuss whether and how the insular area's housing needs for current residents and those expected to reside in the insular area will change over the five-year period covered by the CHAS for each income group.

(2) *Nature and extent of homelessness.* The insular area shall describe the nature and extent of homelessness within the insular area.

(3) *Populations with special needs who are not homeless.* The insular area shall estimate, to the extent information is available, the number of persons who are not homeless but who require supportive housing.

(c) *Available resources.* The insular area shall list by activity type (e.g., acquisition, rehabilitation, new construction, homebuyer assistance, tenant assistance, homeless assistance, homeless prevention), all resources and programs expected to be available to the insular area from non-Federal public and private sources for use in carrying out activities. The insular area shall include among its resources, where the insular area deems it appropriate, an identification of any publicly-owned land or property located in the insular area that may be used to carry out the activities. The list will also include Federal program resources, for which HUD will provide the information to be included.

§ 91.52 Five-year strategy.

(a) *Priority analysis and strategy development.* The insular area shall establish its general priorities, to be pursued over the next five-year period, for allocating Federal, insular area, and any identified private resources reasonably expected to be available based upon analyses of the insular area's needs for housing assistance and its affordable and supportive housing and services inventory. The strategy shall identify the categories (renter/owner and different family sizes) of very low- and other low-income families with housing needs that will be assisted, the different activity types the insular area determines to be appropriate for meeting the identified needs, and the geographic area within the insular area where activities will be undertaken. The insular area must also set forth its strategy for helping low-income families avoid becoming homeless; addressing the emergency shelter and transitional housing needs of homeless persons; and helping homeless persons make the transition to permanent housing and independent living.

(b) *Court orders and HUD sanctions.* The insular area shall identify and explain any court orders (including consent decrees) or HUD-imposed sanctions that affect the provision of assisted housing or fair housing remedies. It shall state how the court orders or sanctions affect resources and housing goals. If there are no court orders or sanctions, the insular area should so indicate.

(c) *Institutional structure and intergovernmental cooperation.*—(1) *Description.* The insular area must identify the institutional structure through which it will carry out its housing strategy. Each organization should be identified by type (public, private, profit or non-profit) and purpose (financial institution, planning agency, mental health agency, etc.). The relationships of the various organizations and their respective roles and responsibilities in carrying out the strategy must be described. With respect to public institutions, the insular area must describe any intergovernmental cooperation and coordination taking place or contemplated. The insular area shall specifically address the relationship between the insular area and local jurisdictions, their respective roles, and the extent to which the insular area plans to require local governments to assume responsibilities.

(2) *Overcoming gaps.* (i) The insular area shall assess the capacity of the institutional structure to carry out the housing strategy. It shall identify and discuss the existing strengths and gaps in the delivery of programs and services, including efforts to make use of available housing, social service, and mental and other health care resources. The assessment also should discuss the gaps in program and service delivery that may result in persons becoming homeless.

(ii) The insular area shall describe the actions to be taken over the next five years to eliminate identified gaps.

(d) *Public housing improvements.* If there is a public housing agency that manages and operates public housing in the insular area, the insular area must describe the strategy of the public housing agency, including specific actions and steps to be taken over the next five years, to improve the management and operation of the public housing units located in the insular area and to improve the living environment of public housing residents.

(e) *Public housing resident initiatives.* If there is public housing in the insular area, the insular area must describe its activities, to be taken over the next five years, in coordination with the public housing agency, to encourage public housing residents to become more involved in the management of public housing and in acquiring ownership of their units.

(f) *Monitoring standards and procedures.* The insular area shall describe its standards and procedures for monitoring activities undertaken with funds the insular area receives from HUD. The standards and procedures described must provide for monitoring to be carried out on a regular basis to ensure that statutory and regulatory requirements are being met and that information submitted to HUD is correct and complete.

§ 91.53 Annual plan.

(a) *Strategy implementation.*—(1) *Investment plan.* For each category of residents or activities discussed in the five-year strategy which will receive assistance during the coming Federal fiscal year, the insular area shall identify the categories of residents to be assisted, housing activities to be undertaken, and the programs and resources in support of those activities for which it intends to apply to the Federal government, as well as its own funds that it will budget or that otherwise will be available for this purpose during the coming Federal fiscal year.

(i) Among the types of Federal resources that should be identified are HUD programs, Farmers Home Administration programs, and Department of Energy energy conservation programs. Among the types of non-Federal resources to be identified are the insular area programs and any private resources that are available. In describing available resources, the insular area shall identify the publicly-owned land or property located in the insular area that it intends to use over the coming year to carry out activities, if any.

(ii) The insular area shall describe any matching requirement of the various funding sources to be used and how it anticipated meeting those requirements. It also shall specifically describe its plan for leveraging private and non-Federal funds by the use of Federal funds.

(iii) In addition to programs for which it plans to apply directly, the insular area must identify programs for which it would be generally supportive of an application by another entity.

(iv) The insular area must specify one-year goals for numbers of families to be assisted, by tenure type, under each activity or program specified with funds already on hand, including program income, and funds to be available during the Federal fiscal year covered by the annual plan. (See definition of "assisted family" in § 91.5.)

(v) The insular area must specify its actions during the next year to address emergency shelter and transitional housing needs of homeless individuals and homeless families, to prevent low-income individuals and families with children (especially those with income below 30 percent of median) from becoming homeless, and to help homeless persons make the transition to permanent housing and independent living.

(2) *Geographic distribution.* The insular area shall specify the geographic areas in which it will direct assistance over the next Federal fiscal year, giving its rationale for the selection and describing the nature of the impact the insular area hopes to achieve in those areas through such investment.

(3) *Service delivery and management.* The insular area shall identify the governmental and other entities that will deliver and manage the specific housing assistance programs identified in the plan.

(b) *Other actions.* The insular area shall describe the actions it plans to take during the Federal fiscal year to develop institutional structure and to foster public housing resident initiatives.

(c) *Certifications.* The insular area must submit a certification that it will affirmatively further fair housing.

(d) *Summary of citizen comments and responses.* To demonstrate compliance with subpart F of this part, the insular area must submit its summary of comments received from citizens concerning the housing strategy and its response.

Subpart E—Coordination and Consultation

§ 91.55 Coordination of State and local housing strategies.

Methods of coordinating the development and implementation of housing strategies between and among a State and units of general local government that are participating jurisdictions within the State should be established. States are encouraged to take a leadership role in convening meetings to coordinate efforts to increase the availability of affordable housing. A unit of general local government need not seek approval of any elements of its housing strategy by the State government, nor may the State require such approval for purposes of this part. In addition to State/local government coordination, local governments in close proximity to one another should coordinate their housing strategies.

§ 91.57 Consultation with social service agencies.

In the preparation of its housing strategy, a jurisdiction must make reasonable efforts to confer with social service agencies (both public and private) regarding the housing needs of children, elderly persons, persons with disabilities, homeless persons, and other persons served by the agencies.

Subpart F—Citizen Participation

§ 91.60 Preparation of housing strategy.

Before submitting a housing strategy under this part, a jurisdiction must complete the following actions:

(a) *Public hearings.* (1) The jurisdiction must hold one or more public hearings to obtain the views of citizens, public agencies, and other interested parties on the housing needs of the jurisdiction during the CHAS development period and, for Fiscal Year 1994 and thereafter, it must be conducted before the 30-day period for public comment on the proposed CHAS. The hearings held on housing needs must be held in accessible meeting places and locations and at convenient times, giving reasonable notice to the public and making reasonable efforts to inform interested groups (e.g., public housing resident, homeless advocacy, and housing-related nonprofit organizations). The hearings on housing needs for housing strategy development may be combined with other public hearings required in the CDBG program, provided that the requirements of the two programs are treated separately. In the case of a State, there must be an appropriate number of hearings held in various parts of the State to effectively solicit comments from the public affected by the housing strategy.

(2) Any hearings held during the comment period should be scheduled so that the public has had a reasonable opportunity to review the draft CHAS and has sufficient time to comment prior to its submission to HUD.

(b) *Publication of strategy.* The jurisdiction must make available to the public for comment the proposed housing strategy for the jurisdiction, which is based on the determination of housing needs made after public hearing(s), by publishing a summary of the proposed strategy in one or more newspapers of general circulation, and by making copies of the housing strategy available at libraries, government offices and other public places.

(1) The summary must describe the content (priorities for assisting categories of residents and types and locations of activities to be undertaken) and the purpose of the strategy. It must include a list of the locations where copies of the entire strategy may be examined.

(2) The CHAS package released for public examination and comment must include all required tables, narratives, and attachments to be submitted to HUD. For a proposed annual plan, the jurisdiction must also make available to the public the five-year strategy, to-date annual plans, and any amendments.

(3) The jurisdiction also may publicize the availability of the proposed strategy by press releases, contacts with radio and television stations as well as with the print media, contacts with neighborhood organizations, and organizations that serve particular groups that might be affected by the strategy.

(c) *Public comment period.* The jurisdiction must give affected citizens, public agencies, and other interested parties a reasonable length of time (at least 30 days) to examine the proposed housing strategy and to submit comments.

(d) *Access to records.* The jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records regarding uses of assistance the jurisdiction received during the preceding five years, consistent with any State and local laws regarding privacy and obligations of confidentiality.

(e) *Consideration of comments.* The jurisdiction must consider any comments or views of citizens. The jurisdiction must prepare a summary of the comments received from citizens and provide an explanation of why specific recommendations received were

not accepted, if any. This summary is to be submitted to HUD as part of the housing strategy. The complete package submitted to HUD and the subsequently approved strategy must be made available to the public.

§ 91.62 Substantial amendment to housing strategy or submission of performance report.

Before submitting any performance report or substantial amendment to a housing strategy, a participating jurisdiction must provide citizens with reasonable notice of (at least 30 days), access to, and opportunity to comment on, the performance report or substantial amendment, and it must consider any comments or views of citizens. When a substantial amendment to a housing strategy, or a performance report is submitted, it must include a summary of citizen views received. The amendment or report must be made available to the public.

§ 91.63 Minor amendment.

The citizen participation requirement for a housing strategy amendment that does not rise to the level of a substantial amendment, as defined in § 91.5, is to inform the public of the change by publication of the description of the change concurrently with its submission to HUD. The jurisdiction is not required to solicit comment on the change.

§ 91.65 Resolution of citizen complaints.

A jurisdiction must establish appropriate and practicable procedures to handle complaints from citizens related to the housing strategy or performance reports. At a minimum, the jurisdiction must provide a timely, substantive response to every written citizen complaint, either orally or in writing, within an established period of time (within 15 working days, where practicable, if the jurisdiction is a CDBG grantee).

§ 91.68 Public access to documents.

The source of estimates of need used in the development of the housing strategy must be made available to all interested persons upon request. Copies of written comments received by the jurisdiction on the proposed housing strategy or amendments must be made available to the public.

Subpart G—HUD Review and Approval

§ 91.70 Submission of housing strategy.

(a) *General.* Except as provided in §§ 91.25(d)(1) and 570.306(c), a housing strategy with an annual plan covering the Federal fiscal year (October 1 of that year through September 30 of the following year) must be submitted annually between October 1 and December 31, with December 31 being the deadline for submission.

(b) *Type of submission.* The first time a housing strategy is submitted, it must be a complete submission (as defined in § 91.5), or an abbreviated strategy, if appropriate. Thereafter, the annual submission will be an annual plan, as defined in § 91.5, until five years after the previous complete submission. However, when major new census data become available, a complete housing strategy must be submitted. Whenever a complete submission is made, the five-year cycle starts over again.

§ 91.72 Approval of a strategy.

(a) HUD will review the housing strategy upon receipt. Any housing strategy will be deemed to have been approved, unless HUD determines, within 60 days after receipt of the strategy, one of the following:

(1) The strategy is inconsistent with the purposes of the Act. The purposes of the Act are the following:

(i) To help families not owning a home to save for a down payment for the purchase of a home;

(ii) To retain, wherever feasible, as housing affordable to low-income families, those dwelling units produced for such purpose with Federal assistance;

(iii) To extend and strengthen partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations, in the production and operation of housing affordable to low-income and moderate-income families;

(iv) To expand and improve Federal rental assistance for very low-income families; and

(v) To increase the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.

(2) The CHAS submission is not substantially complete under the following circumstances:

(i) Information submitted to satisfy the requirements of subparts B through F is not substantially complete;

(ii) A certification is rejected because HUD has determined it to be inaccurate, after opportunity for comment by the jurisdiction;

(iii) The jurisdiction failed to follow the citizen participation requirements of subpart F; or

(iv) The jurisdiction failed to follow the requirements of subpart E for consultation with social service agencies.

(b) HUD may not disapprove a housing strategy based on the jurisdiction's adoption or continuation of a public policy affecting the availability of affordable housing.

§ 91.75 Actions in case of disapproval of a strategy.

(a) If HUD disapproves a housing strategy, it will immediately notify the jurisdiction of the disapproval. Not later than 15 days after HUD's communication of the disapproval, the Department must inform the jurisdiction in writing of the following:

(1) The reasons for the disapproval;

(2) The actions that the jurisdiction could take to meet the criteria for approval; and

(3) The time within which amendments to, or the resubmission of, a strategy will be permitted under § 91.78.

(b) If HUD fails to inform the jurisdiction of the reasons for disapproval within the 15-day period, the housing strategy will be deemed to have been approved.

§ 91.78 Revision and resubmission of a housing strategy.

HUD will permit revisions to, or resubmission of, any housing strategy that is disapproved, for a period of 45 days following the date of the written disapproval. HUD will approve or disapprove a housing strategy within 30 days after receiving the revisions or resubmission.

Subpart H—Use of Housing Strategy

§ 91.80 Consistency certification.

(a) A jurisdiction's certification that an application is consistent with its housing strategy means that the jurisdiction's annual plan indicates the jurisdiction planned to apply for the program or was willing to support an application by another entity for the program; the location of the activities is consistent with the geographic areas specified in the annual plan; and the activities benefit a category of residents for which the jurisdiction's five-year strategy shows a priority.

(b) The certification of consistency shall be made with respect to the jurisdiction's CHAS that contains an annual plan for the Federal fiscal year that covers the application submission deadline; *except that* where a competitive funding application submission deadline falls between October 1 and December 31, the certification of consistency may be made with respect to the jurisdiction's CHAS (including annual plan) for the prior fiscal year if the jurisdiction has not yet submitted its CHAS (including annual plan) for the current fiscal year, unless the notice of funding availability provides otherwise.

§ 91.82 Performance reports.

(a) *General.* Each jurisdiction that has an approved housing strategy shall annually review and report, in a form prescribed by HUD, on the progress it has made in carrying out its housing strategy. The report must provide information on the funding made available, the types of activities undertaken, and other actions indicated in the five-year strategy and annual plan. In addition, information must be provided concerning the number and types of families assisted, including the number of very low-income and other low-income persons assisted and the racial and ethnic status of persons assisted.

(b) *Submission.* Reports must be submitted to the HUD Field Office no later than December 31 of each year covering performance for the period of October 1 through September 30 of the Federal fiscal year just ended.

(c) *Failure to report.* If a jurisdiction fails to submit a report satisfactory to HUD in a timely manner, HUD may take one of the following actions with respect to assistance to the jurisdiction under the HOPE Program, the Community Development Block Grant Programs, or the Homeless Housing Assistance Programs:

(1) Suspend assistance until a satisfactory report is submitted to HUD; or

(2) Withdraw and reallocate the assistance if HUD finds, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report. Hearings will be governed by the procedures set forth at 24 CFR part 92, subpart L, or 24 CFR part 570, as appropriate.

(d) *Documentation of assistance provided.* Documentation of assistance provided to each family must be maintained by the jurisdiction or other entity providing the assistance, or, in the case of Federal funds received by the State but distributed to a unit of general local government, by the unit of general local government receiving the Federal funds through the State. However, for each program, the jurisdiction (including a State) must keep a summary record of each family assisted and must make this summary available for inspection by the public during the performance report public comment period and by HUD.

§ 91.85 HUD performance reviews.

(a) *General.* HUD must review the activities of each jurisdiction that has an approved housing strategy at least annually. The review must include, insofar as practicable, on-site visits by HUD and must include an assessment of the jurisdiction's—

(1) Management of funds made available under programs administered by HUD;

(2) Compliance with its housing strategy;

(3) Accuracy in the preparation of performance reports under § 91.80; and

(4) Efforts to ensure that housing assisted under programs administered by HUD are in compliance with contractual agreements and the requirements of law.

(b) *Report by HUD.* HUD must report to the jurisdiction on its performance review in writing and give the jurisdiction not less than 30 days to review and comment on the report. After taking into consideration the comments of the jurisdiction, HUD may revise the report and must make the jurisdiction's comments and the report, with any revisions, readily available to the public within 30 days after receipt of the jurisdiction's comments.

Subpart I—Miscellaneous

§ 91.99 Waiver authority.

Upon determination of good cause, HUD may, subject to statutory limitations, waive any provision of this part. Each such waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

3. The authority citation for part 570 is revised to read as follows:

Authority: 42 U.S.C. 5301–5320; 42 U.S.C. 3535(d).

4. In § 570.306, paragraphs (b) and (c) are revised, to read as follows:

§ 570.306 Comprehensive housing affordability strategy.

* * * * *

(b) *Recipient's responsibilities.* Each recipient is responsible for following a current HUD-approved CHAS. Each CDBG housing or housing-related activity must be consistent with the CHAS, as defined in part 91.

(c) *Newly entitled communities.* Any newly entitled community that is not a member of a consortium under the HOME program (24 CFR part 92) and that was not notified by HUD of its CDBG entitlement status for a fiscal year by April 1 before the fiscal year starts, shall be considered unable to prepare a CHAS early enough to meet the CHAS submission deadline. As a result, it will be permitted, for that year only, to submit its CHAS as soon as possible, and in any event soon enough to permit it to make the submission required under § 570.302 before the grant is awarded.

Dated: August 7, 1992.

Jack Kemp,

Secretary.

[FR Doc. 92-20941 Filed 8-31-92; 8:45 am]

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federal register

Tuesday
September 1, 1992

Part VII

Office of Personnel Management

5 CFR Part 550
Pay Administration (General); Payments During an Evacuation Caused by Natural Disasters, Interim Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Administration (General); Payments During an Evacuation

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is removing a restriction in the regulations on payments during an evacuation to permit Federal agencies to make such payments when the evacuation is occasioned by natural disasters.

DATES: Interim regulations effective on September 1, 1992. Comments must be received on or before October 1, 1992.

ADDRESSES: Comments may be sent or delivered to Barbara L. Fiss, Assistant Director for Pay and Performance, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 7H28, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jane R. Kuhl, (202) 606–2858.

SUPPLEMENTARY INFORMATION: Sections 5522 and 5523 of title 5, United States Code, respectively, authorize agency heads to—(1) Make advance payments of up to 30 days pay, allowances, and differentials, and (2) continue payment of pay, allowances, and differentials for certain periods when employees are prevented from performing their duties by an evacuation that has been officially approved or ordered. Section 550.405 of title 5, Code of Federal Regulations, prevents agency heads from making payments under sections 5522 and 5523 when the evacuation has been occasioned by a natural disaster within the 48 contiguous States or the District of Columbia. The devastation caused by Hurricane Andrew has caused OPM to reassess the appropriateness of this restriction. OPM believes that this regulation no longer serves a useful purpose. In order to facilitate immediate and effective response to this unprecedented disaster, OPM is removing this restriction.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists for making this rule effective in less than 30 days. The regulation is being made effective immediately in order to make this benefit available to employees on the earliest practicable date.

E.O. 12991, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12991, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal agencies and Federal employees.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

U.S. Office of Personnel Management.

Douglas A. Brook,

Acting Director.

Accordingly, OPM is amending part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550——PAY ADMINISTRATION (GENERAL)

1. The Authority citation for subpart D of part 550 continues to read as follows:

Authority: 5 U.S.C. 5527; E.O. 10982, 3 CFR 1959–1963 Comp., p. 502.

§ 550.405 [Removed]

2. § 550.405 is removed and reserved.

[FR Doc. 92–21210 Filed 8–31–92; 9:56 am]

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Vol. 57, No. 170

Tuesday, September 1, 1992

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List August 31, 1992

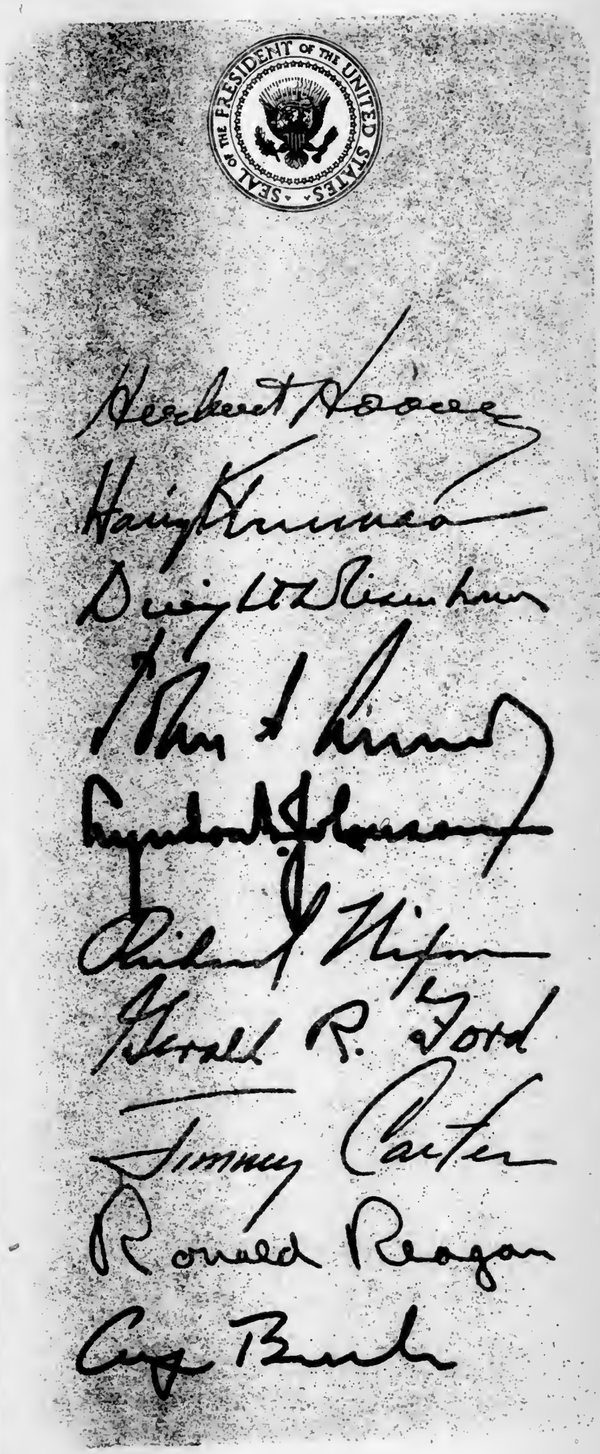
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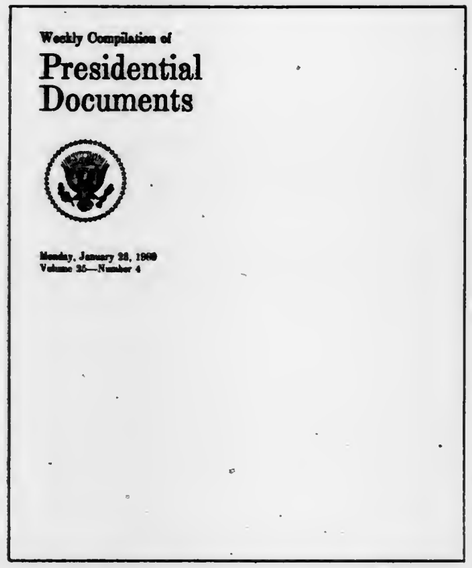
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